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**ON TRIAL: THE LENGTH OF CIVIL
AND CRIMINAL TRIALS**

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Preface

This study is the first of its kind and offers fresh perspectives on the trial process. Trial length for both civil and criminal trials varies greatly among states and within states. Factors contributing significantly to these variations are the types and complexity of cases and methods used to select juries. Generally, variations in the length of trial segments (voir dire, plaintiff's case, etc.) in different courts parallel overall trial length differences.

These findings are based upon data that have been gathered and analyzed from more than 1,500 jury and nonjury trials in three trial courts of general jurisdiction in each of three states — New Jersey, Colorado, and California. The statistical picture that emerges is complemented by numerous interviews, site visits, and questionnaire responses from judges and lawyers.

The major conclusion is that trial length can be shortened without sacrificing fairness by increasing continuity in trial days and by judicial management of each phase of the trial. It is recommended that all courts measure trial time. This seminal study illuminates our knowledge of the trial process while providing a foundation for continued examination of that process.

Acknowledgements

A great many people have contributed to this research. In particular, we would like to thank Larry Sipes, whose vision led to initiation of the project, who was the project director for the early stages of the effort, and who contributed much to its methodology and ultimately to its result. Additionally, we would like to credit Barry Mahoney for the major role he played in the design of the project and the continued support he offered during its execution. We also thank Alex Aikman, Geoff Gallas, Tom Henderson, Tom Dibble, Marilyn Little, and Marilyn Callaway who have each been involved in some aspect of the research or preparation of this report. We extend a special note of thanks to Dr. Richard Rau for his insight and unflagging support as project monitor.

Finally, we would be remiss if we did not acknowledge the contribution of the judges, courtroom clerks, and court administrative staff in each of our nine participating courts. We thank them for agreeing to gather the trial time data and for the care they exercised in so doing. This effort illustrates the interest and commitment that trial courts bring to improving the nation's system of providing justice.

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**ON TRIAL: THE LENGTH OF CIVIL
AND CRIMINAL TRIALS**

Trial length deserves examination because trials that are expedited fairly reduce delay and expense and promote overall court productivity. Presented here for the first time in the United States are reliable measurements of civil and criminal trials in courts within and across states. These measurements are supplemented by important qualitative information. The resulting picture, developed in detail in subsequent chapters, shows dramatic variations in trial lengths for similar cases and the promising potential for improvement through increased judicial involvement in trials.

Chapter 1

WHAT IS THIS REPORT ABOUT?

Consider two jury trials in progress in two different courts. The cases both involve injuries to persons and property caused by automobile collisions. The courts both have general jurisdiction, are comparable in size but are situated in different states. The trial in Court A is completed in 10 hours over a two-day span. The trial in Court B continues for 30 hours over six days. In the first, the jury is selected, opening statements are made, and presentation of the plaintiff's case is nearing completion before the jury is selected in the second trial. As the trial in the first court is being submitted to the jury for decision, the plaintiff in the second court has not yet completed the presentation of evidence. It will take the trial in Court B approximately 300% longer to conclude than the one in Court A. And this is typical of all trials in these two courts: all types of criminal and civil jury trials are shorter in the first court than in the second.

In his farewell address as 1986-87 President of the American Bar Association, Eugene Thomas made an observation regarding this situation:

We know that it should not be necessary for cases that 15 years ago could be tried in two days to require now two months — cases that when I was a lawyer beginning my practice 25 to 35 years ago could be tried by all the attorneys in the case for less than one single court reporter takes out of it today in disposition fees . . . *The Recorder*, San Francisco, California (August 11, 1987).

He also stated that the length and expense of trials are among the reasons people "are terrified of going to court" and "stunned by the length of time it takes to serve on a jury."

These are sufficient reasons to be concerned about the length of trials. There are others. Unduly long trials squander tax dollars by squandering court resources. Although only a small portion of cases filed require a trial, trials consume the largest single segment of available judge time, a court's most precious resource. Each hour a judge, clerk, court reporter, bailiff, and courtroom are monopolized by a trial that takes longer than reasonably necessary is forever lost to other litigants awaiting their day in court.

Even litigants who settle without trial are penalized by excessively long trials. In the vast majority of trial courts at least nine out of ten cases are resolved without trial whether the dispute is criminal or civil. We know that settlements usually occur later rather than sooner in the process, often close to or on the trial date. In the words of one observer: "There's nothing like the sound of jurors' footsteps entering the courtroom to produce a settlement or guilty plea." Stated another way, a firm and unavoidable trial date in the near future is the most effective stimulant to attorney preparation for trial. And it is attorney preparation that is critical to stimulating fair pretrial settlements. To make a trial date believable, the court must have a judge and courtroom available. Lengthy trials use limited courtroom space and even more limited judicial time, extending the wait for those in line. Lengthy trials decrease availability; shorter trials expand availability. Greater availability translates directly into more scheduled trials, earlier settlements, and more prompt resolution of those disputes that require trials. The list of reasons to be concerned about trial length could be continued, but the above list of undue delay, expense, waste, and stalled settlements is sufficient to make the point.

The threshold purpose of this study is to reliably measure the length of civil and criminal trials among general jurisdiction courts within the same state and in different states.¹ (Chapter 2). Then, our task is to identify the factors that seem to contribute to longer trials (Chapter 3), followed by identifying promising techniques for expediting trials without adversely affecting fairness or perceptions of fairness. (Chapter 4).

Assessing whether fairness suffers on the way to expedited trials is complicated by the fact that fairness in this context is in the eye of the beholder. Unlike the overall pace of litigation,² there are no national norms of reasonable time for trial duration. The issue of fairness of trial

¹See Hans Zeisel et al., *Delay in the Court* ch. 9 (Boston: Little, Brown, 1959). This landmark study compares trial length for personal injury cases in New Jersey and New York.

²See American Bar Association, *Standards Relating to Court Delay Reduction* (1984); Conference of State Court Administrators, *National Time Standards for Case Processing* (1983).

length does not appear to have been litigated at the appellate level. Nor have commentators ventured opinions that can be regarded as authoritative.³ This situation is reminiscent of the analyses by the late Professor Edmond N. Cahn in his book *The Sense of Injustice*, in which he argues that the difficulties of defining "justice" should lead us instead to search for "injustice," which is something most of us can agree upon when it occurs.⁴ In this study, we learned that 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.

To undertake this study the National Center for State Courts solicited and obtained the cooperation of three general jurisdiction courts located in each of three states: California (the superior courts located in Oakland, Monterey, and Marin County); Colorado (the district courts located in Denver, Colorado Springs, and Golden); and New Jersey (the superior courts located in Jersey City, Paterson, and Elizabeth). Extensive data were then recorded for trials that occurred in each of these nine courts for almost a year. This produced information on more than 1,500 civil and criminal felony trials, both jury and nonjury. Probate, domestic relations, and juvenile matters were excluded as well as less frequent civil matters such as mental health, administrative law, and equity matters. Although this is "first impression" research we are satisfied that the extent, reliability and comparability of the data furnish a solid foundation for exploring this important subject.

The quantitative data were supplemented by extensive field visits to each court during which judges, attorneys, and key court personnel were interviewed and proceedings observed. To this was added an attitudinal survey regarding the trial process that was submitted early in the project to judges and trial attorneys in each jurisdiction. Data gathering and other field work was preceded by a search for existing literature regarding trials and trial time. The results are appended in the Bibliography, but it should be noted here that almost no pertinent literature exists other than that devoted to single issues, such as the best method of jury selection.⁵

Our information only furnishes a snapshot but it is a vivid snapshot. It is a picture of trial lengths that vary dramatically within a state and between states; lengthy trials that cannot be fully explained away in light of much more expeditious trials elsewhere; trial attorneys' desire

³See the Bibliography in Appendix D.

⁴Edmond Cahn, *The Sense of Injustice: An Anthropocentric View of Law* 11-27 (New York, New York: University Press, 1949).

⁵A complete description of the project methodology is presented in Appendix A.

for, or approval of, management of trials by judges; and the promising potential of increased judicial involvement in the trial process.

In any original effort of this kind the methodology is necessarily exploratory, unavoidably restricted by available time and money, and inevitably blemished. Equally inevitable will be laments by commentators about lack of grounding in theoretical literature, absence of testable hypotheses, the need to be more theoretically salient, sample selection biases, specification errors, and so forth. Patience is our counsel to these commentators. As research in this important area matures, today's blemishes will pass. In the meantime, we all know much more today about trials than we knew before. This should aid the researcher, the judge, the attorney, and others concerned with our process of adjudication, indeed our system of justice, in deciding what else we need to know, what else we need to ask, what else we need to do.

Criminal and civil trials in state courts adhere to a common format. Examination of combined lengths of trials in all of the participating courts confirms that (1) jury trials last longer than nonjury trials, (2) civil trials are longer than criminal trials, (3) motor vehicle tort cases produce the shortest civil jury trials, and product liability cases the longest, (4) theft cases produce the shortest criminal jury trials, with homicide cases the longest. Beyond this, both civil and criminal trials vary dramatically in length from state to state and among courts within the same state, whether cases are tried to a jury or judge. The most expeditious civil jury trials among the participating courts occurred in Jersey City, New Jersey while Elizabeth, New Jersey had the most expeditious criminal jury trials. The lengthiest civil and criminal jury trials occurred in Oakland, California. Overall trial length also governs the length of segments in the trial process. Each trial segment is longer in courts with lengthier trials and requires less time in courts with shorter trials.

Chapter 2

HOW LONG ARE TRIALS?

A. WHAT IS THE PROFILE OF A TRIAL?

The typical trial in a state court consists of the following stages in both civil and criminal actions:

- Selection of the jury in jury trials
- Plaintiff's/prosecution's opening statement
- Defense's opening statement
- Presentation of plaintiff's/prosecution's evidence
- Presentation of defense's evidence
- Rebuttal by plaintiff/prosecution
- Plaintiff's/prosecution's closing argument
- Defense's closing argument
- Charge to the jury in jury trials
- Submission of case to the jury or judge in a "bench" trial

Although these are the typical stages, some may be waived, others added, and the order of some stages may vary from trial to trial. An important option is whether issues of fact are decided by a jury or judge. Any party to a civil or criminal action may request a jury trial unless trial solely by a judge is compelled by the subject matter (i.e. probate or divorce), the nature of the relief sought (i.e. injunction), or the "signifi-

cance" of the case (certain misdemeanors and dollar claim in civil cases). These variations and options do not significantly alter the fact that civil and criminal trials in state courts proceed in a similar manner across the United States.

B. HOW LONG ARE TRIALS FOR ALL NINE COURTS?

Although the stages of a trial are fairly uniform, the length of trials is not. The balance of this chapter explores the varying lengths of civil and criminal trials, trial time from court to court, and the comparative time consumed by stages of the trial.

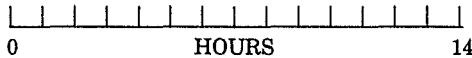
Before presenting trial time data, two matters of methodology should be noted. First, in-chambers time devoted to an on-going trial is included in these calculations. Second, all of our calculations appear in hours and minutes rather than days. This is not merely a researcher's tool, it is the most accurate way to reflect comparative times. The number of days over which the hours and minutes spread and the continuity of trials from day to day are presented for separate consideration in Chapter 4.

At the threshold we can confirm that (1) jury trials last considerably longer than nonjury trials; and (2) that civil jury trials are slightly longer than criminal jury trials. When the trial is broken into its components, the plaintiff/prosecutor consumes considerably more time than does the defense in both civil and criminal trials, between 2 and 2.7 times more time. The second most time-consuming trial stage differs between civil and criminal trials — it is jury selection in criminal and presentation of the defense case in civil trials.

These findings are based upon the information in Table 1, which reflects a broad cross-section of civil and criminal trials from all nine of the participating courts. (Trial lengths in the individual courts are presented in the following section of this chapter.) Civil cases include everything from complex product liability cases to motor vehicle torts to contract disputes. Criminal cases include homicide, rape, robbery, assault, burglary, narcotics, theft, and other less serious felonies. Several murder cases in which a death sentence was at issue were included in the trial sample; they are, however, omitted from all calculations unless otherwise noted. Capital cases skew the "typicality" of a court's criminal or homicide profile and thus are described separately in Chapter 3.

TABLE 1
How Long Are Trials for all Courts Combined?^a

	Median (Hrs:Mins)
CIVIL JURY (N=393)	
Total ^b	13:30
Jury Selection	1:30
Plaintiff's Case ^c	6:55
Defense Case ^d	2:57
Jury Deliberation	1:55
CRIMINAL JURY (N=444)	
Total ^b	11:07
Jury Selection	3:06
Prosecutor's Case ^c	4:22
Defense Case ^d	1:46
Jury Deliberation	2:45
CIVIL NONJURY (N=224)	
Total ^b	4:54
CRIMINAL NONJURY (N=46)	
Total ^b	3:29



- ^a These figures were calculated from all cases tried to jury verdict (for jury trials) or to judge decision (for nonjury cases).
- ^b Total trial length includes the total length of time, in hours and minutes, that the trial consumed, not including day-of-trial motions heard before the start of trial or, for jury trials, jury deliberation time. Since each trial segment time represents a median, the total trial time is not cumulative.
- ^c Length of the plaintiff's/prosecutor's portion includes the time consumed by the plaintiff's/prosecutor's opening statement, presentation of evidence ("case-in-chief"), rebuttal, if any, and closing argument(s).
- ^d Length of the defense's portion includes the defense's opening statement, case-in-chief, and closing argument.

The composite picture presented in Table 1 is refined by Tables 2 and 3, which document that the length of trial varies according to the type of case. Whether tried to a jury or to a judge the shortest civil trials involve motor-vehicle torts. Other civil trials continue up the scale of time consumed in the following order: other tort (non-motor vehicle), contract, other civil, professional malpractice, and product liability. (All product liability trials in the sample were heard by a jury.) (Table 2)

TABLE 2
How Long Are Civil Jury Trials—
By Case Type—For All Courts?^a

	Motor Vehicle Tort	Other Tort ^e	Contract	Other Civil ^f	Professional Malpractice	Product Liability
Total length ^b	10:54	12:16	14:02	15:20	17:20	26:23
Jury selection	1:10	1:31	1:26	1:59	1:32	2:25
Plaintiff's portion ^c	5:36	5:45	7:02	8:18	8:20	16:04
Defense's portion ^d	2:13	2:10	3:52	3:42	5:26	5:38
Jury deliberation	1:26	1:50	2:54	1:58	2:28	2:05
(Number of cases)	(122)	(103)	(54)	(40)	(58)	(15)

^a Median hrs:mins calculated for all cases tried to jury verdict.

^b Total trial length includes the total length of time, in hours and minutes, that the trial consumed, not including day-of-trial motions heard before the start of voir dire, or jury deliberation time.

^c Length of the plaintiff's portion includes the time consumed by the opening statement, presentation of evidence ("case-in-chief"), rebuttal, and closing argument.

^d Length of the defense portion includes the opening statement, case-in-chief, and closing argument.

^e "Other tort" includes non-motor vehicle, wrongful death, negligence, personal injury, property damage, and so-called "slip and fall" cases.

^f "Other civil" includes real property rights, civil fraud, and other miscellaneous cases.

In all civil jury trials the two most time-consuming stages are the presentation of the plaintiff's and defense's cases, in that order, regardless of the type of case. In all but the longest trials (those involving product liability), jury deliberation is the third longest trial stage, followed by jury selection.

The lengths of criminal jury trials generally arrange themselves in the standard order used to indicate relative seriousness of the crime involved: theft cases took the least time, followed in order by narcotics, burglary, aggravated assault, robbery, rape, and homicide. (Table 3)

Presentation of the prosecution's case is the single most time-consuming stage in every type of criminal jury trial, which parallels civil trials. However, in contrast to civil trials, duration of the defense's case in criminal trials slips to fourth place behind jury selection and jury deliberation, which in turn trade second and third place depending upon the type of case. Jury selection is the second longest stage in cases involving homicide, rape, robbery, burglary, and theft, while jury deliberation place second in aggravated assault and narcotics trials.

TABLE 3
How Long Are Criminal Jury Trials
—By Case Type—For All Courts?^a

	Agg.						
	Theft	Narcotics	Burglary	Assault	Robbery	Rape	Homicide
Total length ^b	6:57	7:38	9:45	10:00	10:17	14:20	33:14
Jury selection	2:32	2:00	2:43	2:11	3:00	4:15	8:14
Prosecutor's portion ^c	2:51	2:49	4:07	4:06	3:41	6:14	13:43
Defense's portion ^d	:58	1:30	1:07	1:47	1:40	2:08	4:38
Jury deliberation	1:40	2:12	2:19	2:38	1:50	3:40	5:30
(Number of cases)	(29)	(83)	(51)	(37)	(63)	(26)	(59)

^a Median hours:minutes calculated for all cases tried to jury verdict.

^b Total trial length includes the total length of time, in hours and minutes, that the trial consumed, not including day-of-trial motions heard before the start of voir dire, or jury deliberation time.

^c Length of the prosecutor's portion includes the time consumed by the prosecutor's opening statement, case-in-chief, rebuttal, and closing argument.

^d Length of the defense's portion includes the time consumed by the defense's opening statement, case-in-chief, and closing argument.

C. HOW LONG ARE TRIALS IN EACH COURT?

The following presentation of measurements will focus on each court's overall trial time and the most time consuming stages or segments of trials: plaintiff's/prosecution's case, defense's case, and jury selection. We have not overlooked the other parts of a trial. They do not, however, contribute as substantially to trial length, nor do they tend to differ so much from state to state or court to court. This does not mean there are no opportunities in other trial stages to improve the conduct of trials. These opportunities and possible responses to them are explored in Chapter 4.

We also confine these inter-court comparisons to all jury trials without regard to subject matter, distinguishing only between civil and criminal. We have made this choice because the composite picture of jury trials effectively demonstrates differences in trial length, and segments, from court to court. The importance of the subject matter involved in a trial is its possible impact as a variable that may explain trial time differences from court to court; this is considered in the next chapter.

1. Civil Jury Trial Time

Trials vary in length from court to court. To compare trial length between courts we primarily rely on three measures: the median, 75th percentile, and 95th percentile. The median is the middle trial time in the sample; half of the trials are longer and half are shorter. The 75th percentile represents the trial time for the trial that took more time than three-fourths of the trials, less time than one-fourth. The 95th percentile is the point at which only 5% of the trials are longer. A review of the tables suggests that concentrating only on median trial time may obscure important differences among courts, even if additional measures are strongly related to median time. It is useful not only to know typical trial time, but also to understand the time required for the unusually long trials in a court.

Using these measures we compared the amount of time required for trial in the nine participating courts. (Table 4)¹ The court with the fastest trials, Jersey City, and the court with the slowest, Oakland, maintain their positions across all three measures. The remaining courts shift positions slightly depending upon the point of measurement, but it is fair to say that each of the courts is consistent at each point of measurement when its trial time is measured in relationship to the other courts.

TABLE 4
How Long Are Civil Jury Trials in Each Court?^a

Court ^b	(n)	Median	75th Percentile ^c	95th Percentile ^d
Jersey City, NJ	(72)	9:48	13:56	22:14
Paterson, NJ	(42)	10:02	16:55	27:35
Elizabeth, NJ	(94)	11:06	16:03	32:54
Colorado Springs, CO	(26)	14:08	19:37	28:39
Golden, CO	(12)	14:11	18:23	42:25 ^e
Monterey, CA	(31)	14:26	24:37	47:13
Marin Co., CA	(15)	17:33	33:30	64:54 ^e
Denver, CO	(65)	17:36	26:56	57:48
Oakland, CA	(35)	30:48	47:04	160:35

^a Hrs:mins calculated from all cases tried to jury verdict. They do not include jury deliberation time.

^b Courts are listed from shortest to longest by median civil jury trial time.

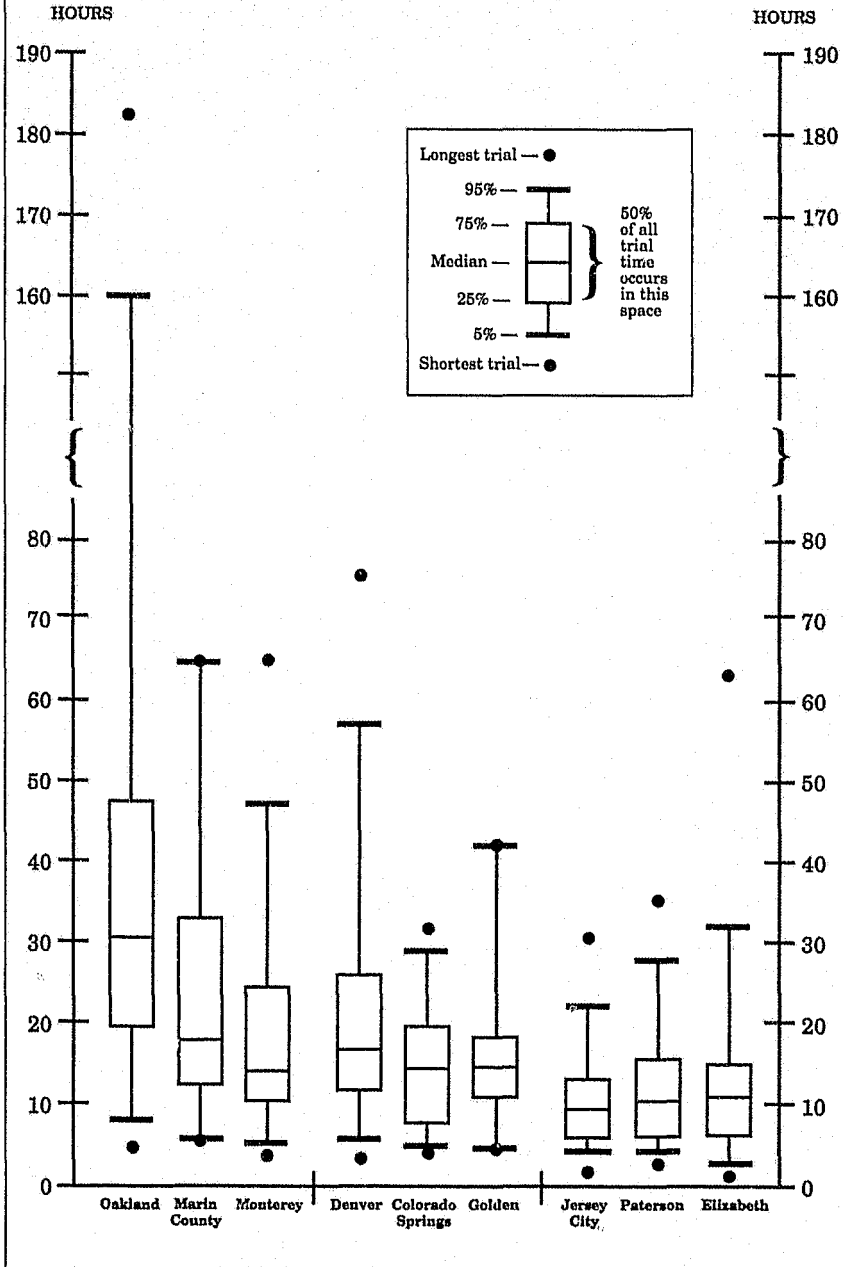
^c Represents the disposition time for the case that took more time than three-fourths of the cases in the sample, less time than the remaining one-fourth.

^d Represents the disposition time for the case that took more time than 95% of the cases in the sample; only 5% of the cases are slower.

^e Too few cases to calculate the 95th percentile. This calculation is the time for the longest trial.

¹Complete median data appear in Appendix B.

FIGURE 1
Total Time for Completed Civil Jury Trials in Hours
(Not Including Jury Deliberation)



The differences in trial time across all nine courts are intriguing, but equally interesting are differences between courts within the same state, as illustrated in Figure 1. The California courts show the largest variation; over 16 hours separate the medians for Oakland and Monterey. In Colorado the variation among medians is only 2½ hours, and in New Jersey it is less than 1½ hours. This in-state variation widens with longer trials, especially in California. New Jersey shows the least variation between courts for civil trials of all lengths.

There is a significant rise in civil jury trial time in all courts after the 75th percentile. The rise is less noticeable in the courts with shorter median trials, and more noticeable in the courts with longer median trials. For instance, in Oakland, trial time increases more than 300% between the 75th and 95th percentiles, while in Jersey City, the increase is less than 60%. Oakland has distinctly longer civil trials than any other court.

Another way to examine trial time is to compare median trial time by trial segments. We find that trial segments tend to proportionally follow a court's overall trial time. (Table 5) There are small exceptions, but the court with the shortest median trial time tends to have the shortest median time for each segment, and each court tends to stay in line.

TABLE 5
How Long Are Civil Trial Stages in Each Court?^a

Court^b	(n)	Trial Total^c	Jury Selection	Pltf. Case^d	Def. Case^e	Jury Delib.
Jersey City, NJ	(90)	9:48	:45	4:20	2:00	1:15
Paterson, NJ	(53)	10:02	:44	4:18	2:10	1:19
Elizabeth, NJ	(111)	11:06	1:00	5:05	2:31	1:15
Colorado Springs, CO	(48)	14:08	2:32	5:23	1:39	2:38
Golden, CO	(21)	14:11	1:50	6:34	2:36	2:00
Monterey, CA	(45)	14:26	2:17	7:18	2:15	1:57
Marin Co., CA	(35)	17:33	2:34	10:24	3:26	3:15
Denver, CO	(155)	17:36	2:10	9:24	2:39	3:05
Oakland, CA	(58)	30:48	4:49	15:04	6:17	4:12

^a Median hrs:mins calculated from all cases tried to jury verdict.

^b Courts are listed from shortest to longest by median civil jury trial time.

^c Does not include jury deliberation.

^d Includes opening statement, case-in-chief, rebuttal, and closing statement.

^e Includes opening statement, case-in-chief, and closing statement.

2. Civil Nonjury Trial Time

Civil nonjury trial time is dramatically faster than jury trial time in every court. Median times range from 2 hours and 30 minutes to 6 hours and 20 minutes as follows:

<i>Court*</i>	<i>Median (n)</i>
Jersey City	4:08 (18)
Oakland	4:39 (23)
Golden	4:40 (9)
Colorado Springs	4:51 (22)
Denver	5:03 (89)
Monterey	5:18 (14)
Elizabeth	5:52 (17)
Marin Co.	6:20 (20)

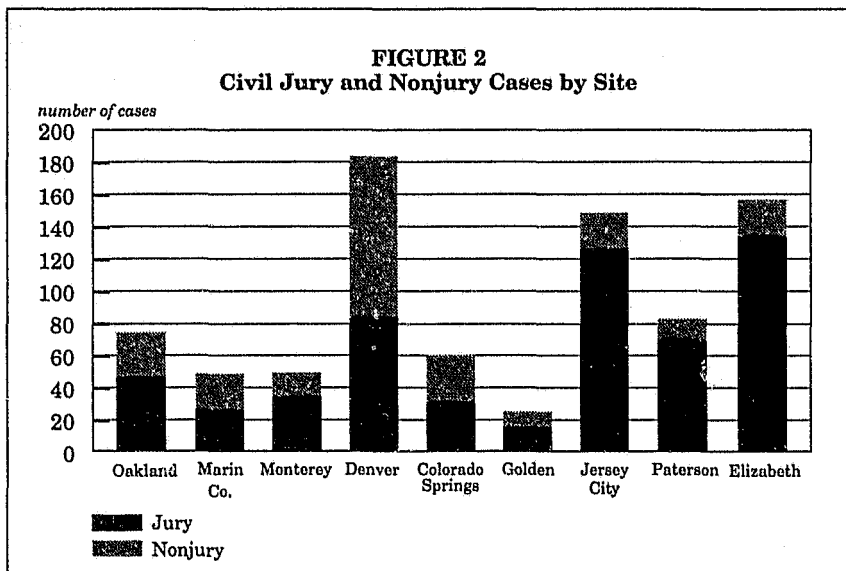
Compared to the list for civil jury trial times, nonjury ranking shifts considerably at both ends. Oakland has the longest jury trial times, but ranks third shortest for nonjury trials. Elizabeth moves from third shortest for civil jury trials to next-to-longest for nonjury. Ranking within states shifts as well; for instance, within California, Oakland has the shortest nonjury trials, Marin the longest. This shift across and within states suggests that the most important aspect of nonjury trials may not be how long they take, but *how many* and *what kinds* of cases are tried to the court.

Colorado reported more civil nonjury trials, ranging from 38% to 54% of the total civil trial caseload, with Denver reporting the highest percentage of nonjury trials. (Figure 2) A significant caveat about the Colorado nonjury sample should be noted. An independent verification of our trial sample reveals that a large number of nonjury trials in the three Colorado courts were not reported, either because the trial judge failed to complete a data form or because the trial was heard by a judge not participating in the project. This means that the percentage of nonjury trials in those courts is actually much higher than our sample suggests, which further increases the disparity between the percentage of nonjury trials heard in Colorado compared to the other states.

In California, 28% to 47% of the civil trials were decided by judges, with the highest percentage reported in Marin County. Fifteen percent of the civil trials reported from New Jersey were heard without juries.

What types of cases are tried nonjury? Of the 224 nonjury trials reported by all nine courts, 57% were contract cases. Well over half of these cases are reported in Denver alone. The miscellaneous "other civil" cases category accounts for another 33% of the nonjury trials. The motor vehicle, other tort, and professional malpractice case types together account for the final 10% of the nonjury trials. No nonjury product liability cases were reported in our sample.

*No median appears for the court in Paterson, N.J. Only one civil nonjury trial was completed there.



Why do some courts hear so many more nonjury trials than others? This question is especially important since the nonjury trials are faster than jury trials. Although at first glance one might question why Denver has so many nonjury trials, on closer inspection it appears more appropriate to ask why New Jersey has so few. If more New Jersey civil trials were tried by the court, might median trial times for all civil trials shorten further and might the courts' trial calendars become even more productive? The following factors appear to be primarily responsible for the small number of civil nonjury trials reported from New Jersey:

- Data from New Jersey included fewer contract and "other civil" cases, which are tried nonjury in the greatest numbers in the other courts;
- There is a smaller disparity between the jury and nonjury trial times in New Jersey compared to Colorado and California, eliminating some of the incentive lawyers may have to favor a nonjury trial;
- New Jersey court calendars are relatively "current," compared to some of the other courts (Oakland, Denver) and lawyers can get a jury trial as fast as a nonjury trial. For example, nonjury trials receive no calendaring priority in Jersey City.

Although conjectural, it should be noted that New Jersey's trial sample contained more motor vehicle and professional malpractice

torts, which are considered by many lawyers and insurance companies to be inappropriate for a court trial. This, combined with the foregoing considerations, may further explain New Jersey's more extensive use of the jury system.

3. Criminal Jury Trial Time

In general, the New Jersey courts have shorter criminal jury trials than Colorado. California criminal jury trials are longest. (Table 6) Two notable exceptions are that Monterey trials rank fourth out of nine and Jersey City trials rank seventh. All courts maintain their positions at the 75th percentile, except Denver and Colorado Springs switch positions. For trials at the 95th percentile, there is substantial shifting of rank.

TABLE 6
How Long Are Criminal Jury Trials in Each Court?^a

Court ^b	Median	75th Percentile ^c	95th Percentile ^d
Elizabeth, NJ	6:20	9:56	20:52
Paterson, NJ	7:24	10:35	71:24
Golden, CO	8:10	12:19	49:40 ^e
Monterey, CA	9:27	13:43	45:30
Denver, CO	10:50	18:12	38:54
Colorado Springs, CO	10:54	13:56	22:54
Jersey City, NJ	12:09	27:07	58:05
Marin Co., CA	17:44	34:34	186:54
Oakland, CA	23:16	35:42	53:22

^a Hrs:mins calculated from all cases tried to jury verdict. They do not include jury deliberation time.

^b Courts are listed from shortest to longest by median criminal jury trial time.

^c Represents the disposition time for the case that took more time than three-fourths of the cases in the sample, less time than the remaining one-fourth.

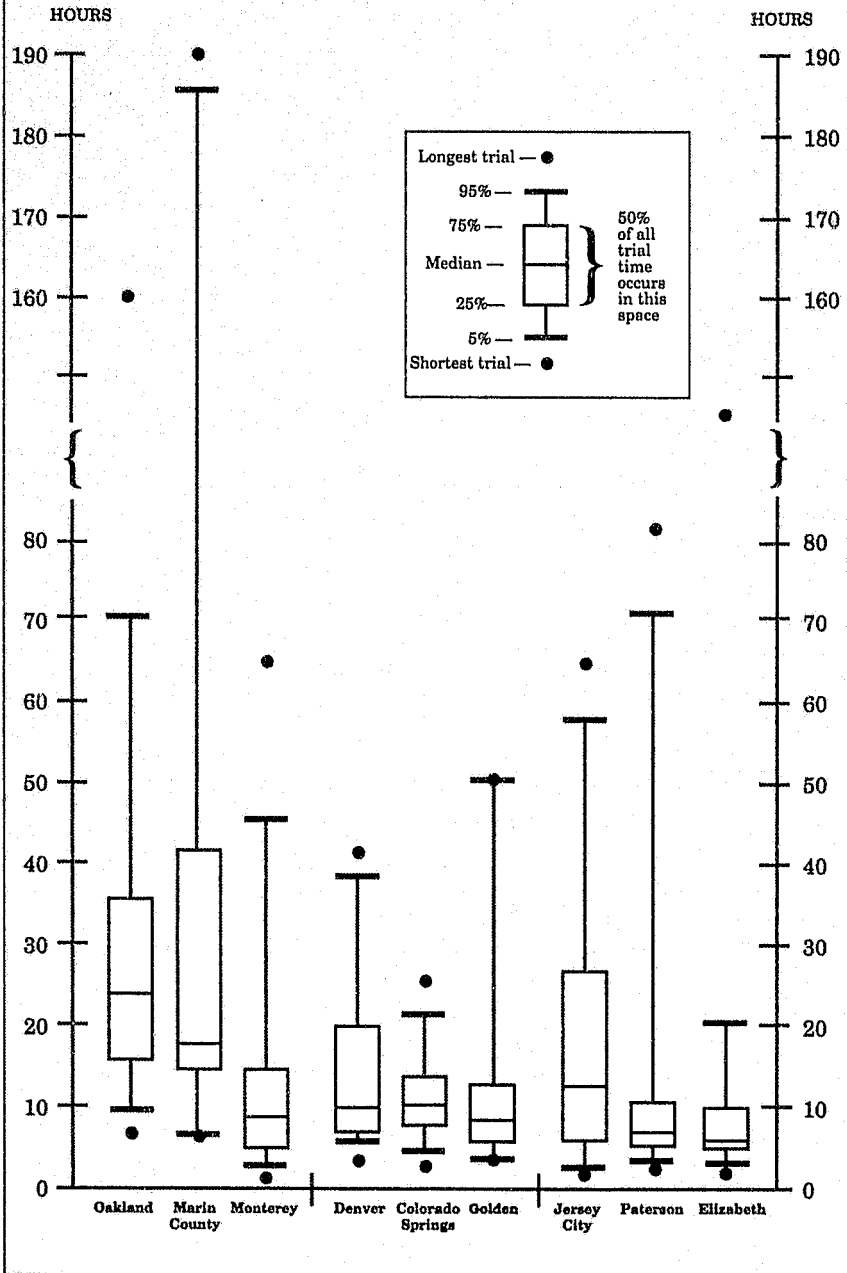
^d Represents the disposition time for the case that took more time than 95% of the cases in the sample; only 5% of the cases are slower.

^e Two few cases to calculate the 95th percentile. This figure represents the time for the longest trial.

The distributions of criminal trial length across all nine courts are set forth in Figure 3. Just as for civil jury trials, California criminal trials vary most among courts, with a difference of over 14 hours between the medians for Oakland and Monterey. New Jersey also has a substantial variation — 5½ hours separate the medians for Jersey City and Elizabeth. Colorado criminal jury trials appear to be most homogeneous, with medians varying less than 2½ hours.

Three of the courts — Oakland, Marin, and Jersey City — differ considerably from the other six courts, with great variation between short and long trials. In addition, long trials are *much* lengthier in these three courts. (Figure 3) However, even the fastest courts are not im-

FIGURE 3
Total Time for Completed Criminal Jury Trials in Hours
(Not Including Jury Deliberation)



mune from long trials. Elizabeth, New Jersey has the shortest median time for criminal jury trials, but it also has the longest criminal trial in the sample, over 319 hours for the guilt phase of a single-defendant capital homicide case.²

Criminal jury trial lengths, similar to civil jury trials, increase significantly after the 75th percentile. This increase is least noticeable in the Colorado courts, most noticeable in Oakland, Marin County, and Paterson. For example, in Colorado Springs, trial time increases 64% between the 75th and 95th percentile. In Marin County, the increase is more than 400% between these two points, and it is over 550% in Paterson.

We can examine trial segments as well. (Table 7) The major criminal trial segments tend to line up according to overall trial time, i.e., the court with the longest median total time has the longest median segment times as well. This again mirrors the pattern in civil trials. There are limited exceptions; in particular, Jersey City has a very short jury selection time. This exception is a good illustration of the time-saving of New Jersey's system of judge-conducted voir dire (discussed in Chapter 3).

TABLE 7
How Long Are Criminal Trial Stages in Each Court?^a

Court ^b	(n)	Trial Total ^c	Jury Selection	Pros. Case ^d	Def. Case ^e	Jury Delib.
Elizabeth, NJ	(69)	6:20	1:10	2:42	1:16	1:33
Paterson, NJ	(48)	7:24	1:05	3:40	1:26	2:11
Golden, CO	(19)	8:10	2:15	4:05	1:05	2:21
Monterey, CA	(42)	9:27	2:38	3:36	1:52	2:52
Denver, CO	(72)	10:50	3:10	4:54	1:10	2:58
Colorado Springs, CO	(52)	10:54	3:24	3:40	1:26	2:28
Jersey City, NJ	(27)	12:09	1:58	5:56	2:03	2:25
Marin Co., CA	(20)	17:44	4:37	7:56	4:07	5:37
Oakland, CA	(95)	23:16	8:17	8:16	3:21	5:26

^a Median hrs:mins calculated from all cases tried to jury verdict.

^b Courts are listed from shortest to longest by median criminal jury trial time.

^c Does not include jury deliberation time.

^d Includes opening statement, case-in-chief, rebuttal, and closing statement(s).

^e Includes opening statement, case-in-chief and closing statement.

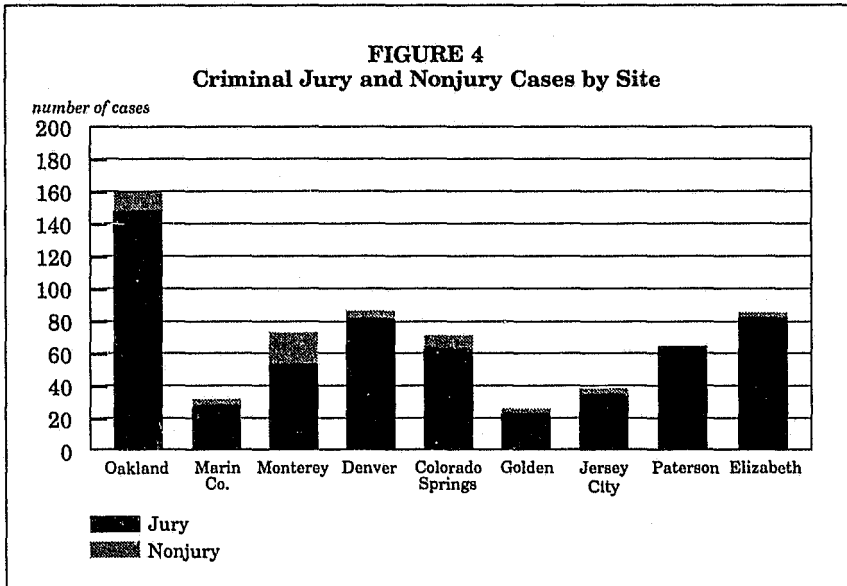
4. Criminal Nonjury Trial Time

For the sample period, data were reported for a total of only 46 nonjury criminal trials in all nine courts, which is too few for a site-by-

²Eight capital homicide cases were included in our sample from the nine courts. They are separately discussed in Chapter 3.

site comparison. Those courts hearing criminal nonjury trials on average take between 1 and 8½ hours to complete the trials.³

Repeating the analysis of civil nonjury trials, it is perhaps more worthwhile to examine which courts hear criminal trials without a jury. In only three courts — Monterey, Colorado Springs, and Oakland — were significant numbers of criminal nonjury trials reported. (Figure 4)



Of the 46 reported nonjury trials, the following case types were tried by the court: "other" (22%), burglary (15%), narcotics (15%), aggravated assault (11%), child sex abuse (11%), theft (7%), rape (7%), homicide (7%), and robbery (4%).⁴

In Denver, Golden, Marin County, and the three New Jersey courts, nonjury criminal trials are virtually nonexistent. Defense lawyers in these courts told interviewers that they "would rather take a chance with a jury of twelve than a jury of one." In Marin County, several lawyers and one judge suggested that defense counsel agreement to a nonjury criminal trial "would be malpractice." Particularly in New Jersey, defense attorneys mentioned that "the bench is largely composed of former prosecutors" who are "not to be trusted" with a criminal case.

³This calculation is from prosecutor's opening statement through defendant's closing statement. Many of these cases were taken under submission by the judge; we did not include this submission time period in the total time figure.

⁴An independent verification of the trials held in each court during the project period revealed that there were a few additional criminal nonjury trials held in five courts. See Appendix A.

Defense attorneys in the courts that reported data for criminal trials without a jury referred to the following cases as good candidates for nonjury trials: (1) cases deemed especially heinous or offensive (i.e. child sexual abuse or torture) since a judge may not be as "emotional" about the crime charged and will be more willing to hear the facts with an open mind; and (2) cases involving complex, alternative, or conflicting theories of law. Aside from the legally complex or emotionally-charged cases, defense attorneys added that the less serious cases were more appropriate for nonjury trials, a view corroborated by the data. And, particularly in California, nonjury trials are used when "a guilty defendant just needs his day in court" (described as a "slow plea" by some observers) or to preserve an issue for appeal that would be lost if the defendant were to plead guilty.

The decision to try a criminal case to the court rather than to a jury may also depend upon the judge selected to preside over the trial. During interviews, specific judges were named by defense attorneys as someone "who would be reasonable" in a court trial. Several Monterey judges were mentioned in this regard, a factor that seems to contribute to the unusually high number of criminal nonjury trials in that court. A background review of every judge in the nine project courts was not part of this research, but it did appear that more judges in Monterey had criminal defense experience than judges in the other courts. The Monterey bench also is comparatively young and is perceived by some to be more liberal than the pool of potential jurors in Monterey County. These perceptions may further contribute to Monterey's higher nonjury trial rate.

The wide variation in trial lengths among courts is attributable in part to the types and complexity of cases tried and the method of jury selection. These are readily discernible. The relationship between trial length and other likely factors is more speculative since those factors are not readily discernible. They involve the legal or social environment in which the court operates or style differences of the individual participants.

Chapter 3

WHAT ACCOUNTS FOR VARIATIONS IN TRIAL LENGTH?

During the course of this study, judges and lawyers in all nine jurisdictions were interested in whether the characteristics of their cases were sufficiently unique to distinguish their court from others. In courts where trials are longer, judges and attorneys were especially interested and suggested that these differences might justify or explain their longer trials. This chapter addresses this and other questions about trial length variation.

To this point and throughout the balance of this report we use the subject matter of a case as a broad indicator of case comparability. A motor vehicle tort, for example, is compared to other motor vehicle torts just as a burglary is compared to other burglaries. This is consistent with recent cross-jurisdictional research in the field of court delay.¹ It also reflects an informed judgment that cases sharing the same subject matter tend to be more similar than dissimilar.

This obviously is not a statement that any two cases are identical merely because they share a common subject matter. Everyone knows that cases may differ according to case-specific characteristics that can range from the complexity of legal or factual issues to the relative resources of the adversaries. The researcher's dilemma is whether to attempt to gather sufficient and reliable information on specific cases to enhance the possibility of comparability or to utilize broad indicators of comparability and get on with the business of measurement.

Past researchers have adopted the latter approach and we join them. In doing so, we are comforted by the predictable expense, diffi-

¹Thomas W. Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg: National Center for State Courts, 1978).

culties, and lack of assured success in pursuing the former course. Who could assess, for example, the complexity of issues in any case without a thorough review of the court file, examination of all discovery, including depositions and documents produced, legal research, and attendance at the trial? How would the resulting measurement of case complexity by one researcher be reliably related to that of another researcher in another case? And, who would subsidize these years of research investment? Certainly, these and a cadre of lesser methodological adventures were beyond the scope of this threshold research.

This is not to say that no effort was made to differentiate between trials involving the same subject matter. Readily discernible characteristics such as the number of witnesses or evidentiary exhibits were captured and are analyzed. These more measurable characteristics are set forth in the data collection instruments (Appendix A) and represent what we perceived to be a responsible initial effort to enrich comparability based on common legal subject matter.

Early in the examination of data we began to conduct an analysis of covariance in order to rank identified factors that vary. We quickly learned that this statistical tool was inappropriate due to the small size of our sample. Nevertheless, while we cannot account for all variation or rank the factors contributing to variation, the statistical data examined together with the information obtained from interviews, survey responses, and on-site observation furnish a useful picture of the nature of the variations and what may in part account for them.

From this point on, any analysis based upon the quantitative data will focus only on jury trials. There are simply too few nonjury trials to permit exploration beyond that appearing in Chapter 2. This does not mean that none of our conclusions apply to nonjury trials. On the contrary, most of the discussion in Chapter 4 would seem to be as applicable to nonjury as it is to jury trials.

A. CASE PROFILE

1. Types of Cases Tried

a. *Civil Jury Trials*

The types of civil cases tried by juries in each of the project courts are shown in Table 8, which lists the courts by trial time from shortest to longest. What is the case type profile for each court and does it appear to contribute to variations in trial length?

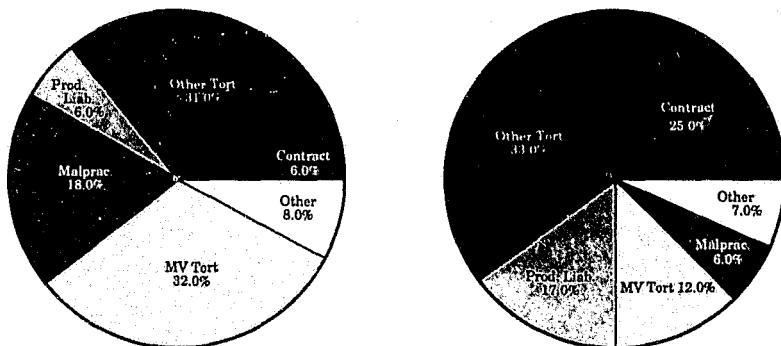
TABLE 8
What Kinds of Civil Cases Were Tried to a Jury in Each Court?

Court ^a	(n)	MV Tort	Other Tort ^b	Contract	Other Civil ^c	Prof Malp	Prod Liab
Jersey City, NJ	(126)	32% ^d	31%	6%	8%	18%	5%
Paterson, NJ	(70)	31%	24%	14%	7%	20%	3%
Elizabeth, NJ	(134)	40%	20%	10%	8%	17%	4%
Colorado Springs, CO	(34)	44%	29%	9%	15%	3%	0%
Golden, CO	(15)	40%	7%	13%	20%	13%	7%
Monterey, Ca	(36)	28%	44%	3%	14%	11%	0%
Marin Co., CA	(26)	8%	35%	19%	35%	4%	0%
Denver, CO	(84)	24%	24%	23%	13%	11%	6%
Oakland, CA	(48)	12%	33%	25%	6%	6%	17%

^a Courts are listed in order from shortest to longest by median civil jury trial time.
^b "Other tort" includes non-motor vehicle, wrongful death, negligence, personal injury, property damage, and so-called "slip and fall" cases.
^c "Other civil" includes real property rights, civil fraud and other miscellaneous matters.
^d Each percentage reflects that case type's portion of all civil jury trials reported by court location.

While case type/trial length correlations are ambiguous for some case types, courts with the shorter trial times tried more motor vehicle tort and professional malpractice cases, and fewer products liability and contract cases. The quantity of "other tort" cases seems to be similar at both ends of the chart, while "other civil" cases are tried more often in courts in the middle range.

FIGURE 5
Civil: Types of Cases For Jury Trial



Jersey City, N.J.

Oakland, Ca.

This is consistent with the findings noted in Chapter 2, that the median trial length is shortest in cases involving motor vehicle torts; it becomes progressively longer in trials involving other torts, contract, other civil, professional malpractice, and product liability. Figure 5 illustrates the trial caseload composition of the court with the shortest median civil trial length (Jersey City) with that of the longest (Oakland).

Perceptions and reality regarding which case types cause long trials do not always converge. To cite one of several examples, the courts having the shortest civil trials (New Jersey) tried many more professional malpractice cases than the other courts. This fact contrasts sharply with survey and interview responses, which suggested that this case type produces lengthy trials. Closer examination reveals that malpractice trials in New Jersey are the same length or even shorter than trials of other case types in many of the other courts. (Table 9) Even though the New Jersey courts tried a much greater percentage of professional malpractice trials, these trials were comparatively expeditious — even more expeditious than motor vehicle tort trials in Oakland, Marin County, and Denver.

While motor vehicle torts are the shortest trials in every court, the length of trials in this category varies considerably from court to court. This is documented in Table 9, which presents case type trial time averages by court.² The spectrum of average time in motor vehicle tort trials ranges from a low of 8.5 hours in Jersey City to a high in Oakland of 21.5 hours.³ Moreover, a court's relative ranking for each case type is generally consistent with that court's overall rank when trial times for all types of cases are combined. New Jersey courts, therefore, have the shortest trials on a composite basis; they also have the shortest trials within each case type. New Jersey is followed by Colorado and then California, except that Monterey resembles the Colorado case type trial times, which is consistent with Monterey's overall trial time.

b. *General Felony Trials*

What is the relationship between median trial length and the type of criminal offenses being tried in each court? To answer that question, we need to recall that the longest to shortest median trial type lengths in all nine courts occur, in descending order, in: homicide, rape, robbery, aggravated assault, burglary, narcotics, and theft cases. (Table 3) In

²The small number of jury trials of any one case type in any one court location makes presentation of median data inappropriate for this discussion.

³The Marin County time of 37.75 hours is not compared since it represents only one trial.

TABLE 9
How Long Are Civil Jury Trials—By Case Type—By Court^a

Court	Prod Liab	(n)	Prof Malpr	(n)	Other Civil	(n)	Contract	(n)	Other Tort	(n)	MV Tort^b	(n)
CALIFORNIA												
Oakland	101:53	(4)	29:01	(2)	44:03	(8)	43:43	(7)	39:32	(10)	21:30	(6)
Marin Co.	-c-		12:57	(1)	19:33	(5)	30:21	(3)	26:18	(4)	37:48	(1)
Monterey	-c-		36:19	(3)	21:50	(3)	-c-		13:41	(14)	16:51	(10)
COLORADO												
Denver	33:48	(4)	41:05	(8)	17:16	(9)	20:39	(13)	16:14	(16)	18:40	(16)
Colorado Springs	-c-		-c-		20:34	(4)	13:00	(3)	13:33	(9)	12:19	(10)
Golden	18:55	(1)	29:24	(2)	11:36	(2)	16:48	(1)	4:48	(1)	14:26	(5)
NEW JERSEY												
Jersey City	23:25	(1)	15:10	(14)	10:45	(6)	11:48	(5) ^c	9:12	(19)	8:27	(27)
Paterson	5:10	(1)	20:39	(10)	25:08	(1)	10:28	(8)	8:10	(13)	9:15	(9)
Elizabeth	26:04	(4)	17:56	(18)	14:37	(7)	10:11	(11)	11:43	(16)	10:01	(38)

^a Average hrs:mins for cases tried to verdict, excluding jury deliberation time.

^b Case types are listed from left to right according to longest to shortest median trial time for all courts.

^c No cases of this type were tried to verdict.

TABLE 10
What Kinds of Criminal Cases Were Tried to a Jury in Each Court?

Court ^a	(n)	Homicide ^b	Sex Assault/		Agg.				
			Rape	Robbery	Assault	Burglary	Narcotics	Theft	Other ^c
Elizabeth, NJ	(80)	0% ^d	6%	25%	9%	6%	44%	6%	4%
Paterson, NJ	(64)	12%	5%	12%	14%	12%	31%	6%	8%
Golden, CO	(23)	9%	0%	0%	4%	22%	4%	26%	35%
Monterey, CA	(52)	12%	17%	15%	2%	9%	10%	0%	35%
Colorado Springs, CO	(62)	2%	14%	10%	6%	11%	6%	16%	35%
Denver, CO	(82)	13%	8%	11%	10%	20%	5%	10%	23%
Jersey City, NJ	(32)	22%	6%	28%	9%	6%	9%	3%	17%
Marin Co., CA	(28)	4%	0%	7%	14%	4%	32%	0%	39%
Oakland, CA	(144)	31%	11%	15%	6%	10%	16%	1%	10%

^a Courts are listed in order from shortest to longest by median criminal jury trial time.

^b Case types are listed from left to right according to longest to shortest median trial time for all courts.

^c "Other" includes attempted murder, attempted rape, involuntary manslaughter, DWI injury and death, arson, kidnapping, sexual abuse of a child, gambling, receiving stolen property, and prisoner weapon violations.

^d Each percentage reflects that case type's portion of all criminal jury trials reported by court location.

TABLE 11
How Long Are Criminal Jury Trials—By Case Type—By Court^a

Court	Agg.								
	Homicide ^b (n)	Rape (n)	Robbery (n)	Assault (n)	Burglary (n)	Narcotics (n)	Theft (n)		
CALIFORNIA									
Oakland	44:35 (27)	28:38 (8)	25:11 (13)	24:32 (5)	15:13 (9)	17:22 (17)	24:13 (1)		
Marin Co.	119:00 (1)	-c-	75:23 (2)	23:02 (3)	7:13 (1)	51:40 (5)	-c-		
Monterey	29:13 (5)	23:36 (5)	7:41 (7)	-c-	8:02 (5)	10:38 (4)	-c-		
COLORADO									
Denver	25:24 (9)	15:16 (6)	10:47 (7)	7:36 (8)	12:27 (13)	18:36 (4)	8:18 (7)		
Colorado Springs	21:30 (1)	11:49 (5)	17:53 (4)	8:12 (4)	9:08 (6)	7:42 (4)	7:14 (8)		
Golden	32:12 (2)	-c-	-c-	16:34 (1)	8:04 (4)	7:46 (1)	7:30 (4)		
NEW JERSEY									
Jersey City	33:16 (7)	-c-	10:25 (8)	11:37 (2)	9:08 (1)	10:01 (3)	9:55 (1)		
Paterson	55:15 (6)	10:12 (2)	7:54 (4)	10:34 (8)	9:03 (7)	6:00 (17)	5:37 (3)		
Elizabeth	-c-	5:52 (1)	7:08 (18)	8:52 (6)	8:54 (5)	10:05 (28)	10:36 (5)		

^a Average hrs:mins for cases tried to verdict, excluding jury deliberation time.

^b Case types are listed from left to right according to longest to shortest median trial time for all courts.

^c No cases of this type were tried to verdict.

of its 28 criminal jury trials fell into the "other" category. Five of these were "prisoner with weapon" cases. If the seriousness of offense does not explain such lengthy trials in Marin County, what does? The most likely explanation is that some extraordinarily long and unusual cases statistically skew Marin's median trial time. Of its 28 criminal trials, 8 were very lengthy: one homicide, two robbery, and five narcotics cases. The homicide case involved 54 witnesses and 191 exhibits. One robbery case involved 4 defendants, 55 witnesses, and 135 exhibits. One of the narcotics trials involved three defendants. The others exhibited similar characteristics of complexity.

It may be, however, that Marin County has a steady stream of these lengthy cases. San Quentin Prison is located in Marin County and houses some of the most difficult and aggressive prisoners in the country. According to Marin judges and lawyers these prisoners are also well organized and quite sophisticated in criminal legal defense. As observed by one judge, "Ever since the San Quentin shootout in the 1970's, defense lawyers with great imaginations have spent an inordinate amount of time ringing every bell and blowing every whistle" in Marin County criminal trials. He further remarked that a lawyer failing to do this for a San Quentin inmate will quickly find himself or herself in a hearing to determine competence of counsel. To a certain extent, defense strategies and approaches in San Quentin cases are believed to spill over to the regular caseload in Marin County, as well.

Another characteristic distinguishes Marin County trials. Five (18%) of the 28 criminal jury trials ended with a hung jury, which is significantly more than any other court. Three of these were for narcotics cases. While we made no attempt to analyze the socio-economic environment surrounding each court, except in a general manner, 1980 census data show that the average Marin County resident is much wealthier and better educated than residents of the other eight jurisdictions. This is a sophisticated, and in the opinion of many, a liberal population. One court official noted that "it seems like most of our jurors have a Master's degree." These jurors "demand a lot of information; they are not content with unanswered questions," noted one lawyer. Perhaps the hung-jury rate and overall trial time in some way reflect the juror community in Marin and attorney responses to that community when trying cases.

c. *Capital Murder Trials*

It is worth noting that variation in criminal jury trial length is *not* attributable to capital cases. While information on eight capital homicide trials was collected, it has been excluded from all of the above calcula-

tions due to the very significant potential for the data to be skewed by their inclusion.⁵

While the number of cases is too small for statistical comparison, most of these eight capital cases are *much* longer than other homicide cases. Jury selection alone accounted for 11% to 70% of these 8 cases, which contrasts with an average range of 21% to 37% in all criminal trials. (Table 12)

TABLE 12
How Long Are Capital Homicide Trials?

Court	Case ^a	Voir Dire		Total Trial ^b (Hrs:Mins)
		(Hrs:Mins)	(% Total Case) ^b	
Monterey	1	3:20	(11%)	31:83 ^c
Oakland	1	53:41	(70%)	76:38 ^d
	2	68:30	(70%)	98:05 ^f
	3	13:15	(31%)	42:33 ^e
	4	22:12	(25%)	88:18 ^e
Denver	1	45:00	(56%)	80:41 ^d
Elizabeth	1	128:23	(76%)	168:44 ^e
	2	147:55	(46%)	323:04 ^d

^a Each case represents one single-defendant trial.

^b Not including jury deliberation.

^c Guilt phase only, separate panel used for penalty phase with an additional voir dire time of 21:50 and an additional total of time 45:30.

^d Guilt phase only, same panel used for penalty phase.

^e Guilt phase only, no penalty phase documented.

^f Guilt phase only, separate panel used for penalty phase with an additional voir dire time of 49:24 and an additional total time of 118:25.

There are several other striking features about capital cases. Five of the courts tried no capital cases, while Oakland had four trials involving a possible death penalty. No other court had more than two capital cases. The court in Elizabeth, New Jersey had by far the longest trial time for each of its two capital cases. These were the only two homicide trials held in Elizabeth during the sampling period, so they cannot be compared against a noncapital homicide in that court. A significant portion of the trial time for these two cases (46% and 76%) can be attributed to jury selection, which contrasts dramatically with the typically expeditious voir

⁵In fact, when the eight capital cases are included, median time calculations change only by a few minutes. Calculations at the 95th percentile, however, increase dramatically for Elizabeth and Oakland.

dire in New Jersey trials. Although individual, sequestered voir dire is the procedure in both states for capital cases, voir dire time in both Elizabeth trials was substantially longer — 72% longer than the longest voir dire in a capital case in Oakland. Capital cases appear to be more routine in Oakland. It can be said that the Oakland court handled its capital cases far more expeditiously than the Elizabeth court and that shorter voir dire time is the principal reason. This, of course, does not diminish the fact that Elizabeth criminal trials are shorter than the other eight courts (even if these very extended capital trials are included for all courts).

These differences in capital cases do not influence the criminal trial time diversity found in the nine project courts. Some of this diversity in overall median trial time can be attributed to the caseload composition of the cases actually tried in each court. Variation persists, however, even when we control for civil or criminal case type. Further exploration into the complexity of trials is necessary.

2. Case Complexity

What accounts for the different trial lengths for the same case types? Does the complexity of a motor vehicle tort in Oakland justify a trial length that is twice as long as in Colorado or New Jersey? To compare complexity, we selected the following as readily measurable indicators: number of parties, number of claims or charges, number and type of attorneys, number and time for witnesses, and number of exhibits. Of the indicators we examined, witness and exhibit characteristics vary significantly.

a. *Civil Jury Trials*

California and Colorado trials have more witnesses and more exhibits than do New Jersey trials. (Table 13) This suggests a positive relationship between trial length and the quantity of witnesses and exhibits, which is reinforced by the fact that Oakland civil trials, the longest among the nine courts, involve more witnesses and exhibits than are used in any other court.

The relationship is neither guaranteed nor without exceptions, however. In Marin County and Monterey, witness/exhibit usage is virtually identical, yet these courts have different civil trial lengths. Closer examination reveals that Marin County trials typically had more plaintiffs and defendants involved — there were fewer cases with only one plaintiff and/or one defendant. Marin County also had only one motor vehicle tort trial included in the data, although it was a long trial for that case type. These facts, combined with the longer average testimony time for a civil trial witness in Marin County (Table 15, *infra*), enhance the explanation of additional trial length in Marin County.

TABLE 13
How Many Witnesses and Exhibits Were Involved
in Civil Jury Trials in Each Court?^a

Court	Wits. for Plaintiff	Wits. for Defendant	Exhibits ^b
CALIFORNIA			
Oakland	8	4	39
Marin Co.	6	3	16
Monterey	7	3	17
COLORADO			
Denver	7.5	3	24
Colorado Springs	7	2	11
Golden	5	3	24
NEW JERSEY			
Jersey City	3	2	7
Paterson	3	2	10.5
Elizabeth	3	2	7

^a Median number.

^b Some exhibits were jointly introduced by plaintiff and defendant.

With due regard for case type variation, the apparent relationship between trial length and the quantity of evidence deserves careful consideration. The three New Jersey courts have identical median number of witness appearances and similar exhibit practices. In a civil jury trial, a New Jersey plaintiff customarily will call three witnesses (one expert and two lay witnesses). The defense customarily will call one expert and one lay witness. New Jersey plaintiff's lawyers call one fewer witness (expert and lay) than attorneys in the other courts. Also, New Jersey attorneys offer a median of seven-to-ten exhibits in civil jury trials, which is substantially fewer than every court except Colorado Springs.

It is useful to note that both Colorado Springs and Golden, Colorado try a large number of motor vehicle tort cases and yet plaintiff's lawyers there typically call many more witnesses than those in New Jersey. This suggests that case type is not the prime determinant of witness use. To some extent the use of fewer witnesses and exhibits reflects the large number of motor vehicle torts being tried in New Jersey, and to some extent it is due to differing attorney strategies, customs, or habits. Table 14 illustrates the relationship between trial time and quantity of evidence for motor vehicle tort trials. For trials of a similar case type the variation is striking.

TABLE 14
How Many Witnesses and Exhibits Were Involved
in Motor Vehicle Tort Trials in Each Court?^a

Court^b		Average Number	Avg. MV Tort Trial Time
Jersey City, NJ			
Witnesses	..... W	5	8:27
Exhibits	..... E	6	
Paterson, NJ			
Witnesses	..... W	6	9:15
Exhibits	..... E	15	
Elizabeth, NJ			
Witnesses	..... W	6	10:01
Exhibits	..... E	10	
Colorado Springs, CO			
Witnesses	..... W	12	12:19
Exhibits	..... E	14	
Golden, CO			
Witnesses	..... W	11	14:26
Exhibits	..... E	16	
Monterey, CA			
Witnesses	..... W	9	16:51
Exhibits	..... E	34	
Denver, CO			
Witnesses	..... W	12	18:40
Exhibits	..... E	25	
Oakland, CA			
Witnesses	..... W	11	21:30
Exhibits	..... E	25	

^a Calculated from completed motor vehicle trials.

^b Courts are listed from shortest to longest by civil median trial time. No calculation appears for Marin County since only one motor vehicle tort jury trial was completed during the sample period.

In the search for explanations of variations in trial times we also discovered considerable differences across the courts in the average length of witness testimony. The length of testimony mirrors trial time variation to a great extent and suggests a relationship between witness time and overall trial time. Table 15 presents the average witness testimony length for all nine courts. In Oakland, plaintiff and defense witnesses testify for longer periods than those in Marin or Monterey; Denver witnesses take more time than those in Colorado Springs or Golden; and New Jersey witness time is strikingly uniform, with Jersey City witnesses taking

TABLE 15
How Long Did Witnesses Testify
in Civil Jury Trials in Each Court?*

	Average Testimony Time (hrs:mins)	Median Civil Trial Time (hrs:mins)
All nine courts		13:30
Plaintiff witnesses	1:27	
Defense witnesses	1:09	
Jersey City, NJ		9:48
Plaintiff witnesses	1:21	
Defense witnesses	1:06	
Paterson, NJ		10:02
Plaintiff witnesses	1:34	
Defense witnesses	1:06	
Elizabeth, NJ		11:06
Plaintiff witnesses	1:31	
Defense witnesses	1:26	
Colorado Springs, CO		14:08
Plaintiff witnesses	:45	
Defense witnesses	:34	
Golden, CO		14:11
Plaintiff witnesses	1:11	
Defense witnesses	:51	
Monterey, CA		14:26
Plaintiff witnesses	1:08	
Defense witnesses	:49	
Marin Co., CA		17:33
Plaintiff witnesses	1:33	
Defense witnesses	1:06	
Denver, CO		17:36
Plaintiff witnesses	1:23	
Defense witnesses	:52	
Oakland, CA		30:48
Plaintiff witnesses	1:56	
Defense witnesses	1:37	

*Average time/witness for completed trials. Figure includes both expert and lay witnesses.

slightly less time than those in Paterson or Elizabeth. While Colorado witnesses testify for an average amount of time that is shorter than some courts with shorter median trial lengths, Colorado attorneys call *more* witnesses in civil jury trials, thus explaining the anomaly. Further research is needed to explore the impact and implications of other factors, such as trial strategy and local custom.

In summary, case types and complexity within case types seem to account for some of the variation in civil jury trial lengths. Courts with a higher percentage of "long trial" case types have longer median trials and there is a strong relationship between overall trial time and (1) the number of witnesses, (2) the length of witness testimony, and (3) the number of exhibits. Among the questions for further research is whether longer trials involving similar case types are longer in some courts than others because this type of case is typically more complex in some courts, requiring more and longer evidence. Or is the variation in length more attributable to repetitive or unnecessary testimony and exhibits and toleration of these practices in the courts with longer trials?

b. *Criminal Jury Trials*

Why is there a wide range of trial times between courts for similar criminal offenses? Average variation by case type between courts ranges from a difference of 8 hours for burglary trials to a difference in excess of 43 hours for narcotics trials. This 35-hour difference translates into perhaps seven to ten extra trial days per case in the court with the longer trials. Does the complexity of a robbery case in Oakland justify a trial that is two or three times longer than a robbery trial in Monterey, a court in the same state?

To compare complexity we selected the following as readily measurable indicators: number of defendants, number and type of attorneys, number of and time for witnesses, and quantity of exhibits. Similar to civil trials, the quantity of witness and exhibit evidence varies significantly among the courts. (Table 16)

California trials are more complex, measured by the average number of witnesses and exhibits. A typical prosecution case in Oakland or Marin County involved at least one expert witness. The prosecution in other courts does not typically use experts, with the exception of Denver. The prosecution in California typically called three officials as witnesses (e.g. police, coroner). In Colorado and New Jersey, only two officials were called. Lay witnesses for both prosecution and defense were also slightly more numerous in California.

TABLE 16
How Many Witnesses and Exhibits Were Involved
in Criminal Jury Trials For Each Court?^a

	Wits. for Prosecution	Wits. for Defense	Exhibits ^b
California			
Oakland	8	2	15
Marin County	5	2	14
Monterey	6	3	5.5
Colorado			
Denver	6	1	11.5
Colorado Springs	6	3	7
Golden	7	1	12
New Jersey			
Jersey City	4	1.5	9
Paterson	3	1	4
Elizabeth	4	1	5

^a Median number for completed trials.

^b Some exhibits were jointly introduced.

While the criminal trials in California involve more witnesses, these witnesses did not testify longer than elsewhere. (This contrasts with longer time on the stand for witnesses in California civil cases.) Average time for prosecution witnesses was longest in Jersey City, followed by Marin County and Oakland. (Table 17)

Average time for defense witnesses was longest in Marin County, followed by Oakland and Jersey City. These three courts had the longest median criminal trial times, so it is not surprising that witnesses testified longer. Criminal witness testimony was shortest, but overall trial length was not shortest in Colorado. This is in part because *more* witnesses testified in a typical Colorado criminal trial compared to New Jersey. (The same phenomenon occurred in civil trials.)

Also, more exhibits were entered in criminal trials in Oakland, Marin County, Denver, and Jersey City, which correlates with the longer trial times for these courts. Paterson, Elizabeth, and Monterey had fewer exhibits entered, which correlates with their shorter criminal trial times.

Case complexity is a rich prospect for future and more refined research. One of the many questions that exists is whether more witnesses or exhibits are "needed" in some cases or whether the greater quantity of evidence in one court compared to another merely reflects judicial tolerance of repetitive testimony or cumulative documentation. Perhaps

TABLE 17
How Long Did Witnesses Testify
in Criminal Jury Trials in Each Court?*

	Average Testimony Time (hrs:mins)	Median Criminal Trial Time (hrs:mins)
All nine courts		11:07
Plaintiff witnesses	:50	
Defense witnesses	:49	
Elizabeth, NJ		6:20
Plaintiff witnesses	:48	
Defense witnesses	:38	
Paterson, NJ		7:24
Plaintiff witnesses	:49	
Defense witnesses	:39	
Golden, CO		8:10
Plaintiff witnesses	:38	
Defense witnesses	:41	
Monterey, CA		9:27
Plaintiff witnesses	:30	
Defense witnesses	:27	
Denver, CO		10:50
Plaintiff witnesses	:46	
Defense witnesses	:44	
Colorado Springs, CO		10:54
Plaintiff witnesses	:31	
Defense witnesses	:28	
Jersey City, NJ		12:09
Plaintiff witnesses	1:24	
Defense witnesses	:57	
Marin County, CA		17:44
Plaintiff witnesses	1:14	
Defense witnesses	1:36	
Oakland, CA		23:16
Plaintiff witnesses	1:02	
Defense witnesses	1:14	

*Average time/witness for completed trials. Figure includes expert, official, and lay witnesses.

longer testimony or more exhibits reflect different perceptions about fairness among judges or lawyers. Or, perhaps there is a "big city" approach to trying cases that applies, for example, in Oakland and Denver. Very little is really known about the factors that influence attorney preparation for trial, their choice of the types and numbers of witnesses, or the impact that various types of witnesses have on judge or jury decisionmaking. Further investigation is needed on such issues. For present purposes, however, our information suggests that, just as in civil trials, the type of criminal case and case complexity appear to produce variations in trial length.

B. JURY SELECTION

As reviewed earlier and illustrated here in Table 18, the amount of trial time devoted to jury selection varied across the courts. For civil trials in California, the range was 15 to 17%; in Colorado, the range was 11 to 18%; and in New Jersey, jury selection consumed only 9% of the total average jury trial time. In New Jersey both civil jury trials and jury selection are comparatively short, and jury selection consumes a smaller proportionate amount of each trial than in Colorado or California.

Jury selection accounts for a significantly larger share of criminal trial time than civil trial time in the same court. This is especially true for Paterson and Oakland, where jury selection consumes 20% more of the total trial time in criminal trials than civil. (Table 18)

TABLE 18
What Percentage of a Trial Is Consumed by Jury Selection?^a

Court ^b	Civil	Criminal	Court ^b
	Jury Selection	Jury Selection	
Jersey City	9%	20%	Elizabeth
Paterson	9	30	Paterson
Elizabeth	9	24	Golden
Colorado Springs	18	29	Monterey
Golden	12	27	Denver
Monterey	16	31	Colorado Springs
Marin County	15	21	Jersey City
Denver	11	23	Marin County
Oakland	17	37	Oakland

^a These percentages are based on the total average length of the trial without jury deliberation.

^b Courts are listed from shortest to longest by median trial time.

There are important differences in the methods used to select a jury, both within and across states, and these differences affect trial time. Some of these differences are structural, due to court rules or statewide law, and some are related more to the "style" customarily used in a court or the preferences of the judge and/or attorneys involved. Seven jury selection differences are examined for the effect they may have on jury selection, and therefore trial time.

1. Jury Size

First, the number of jurors in a civil case differs from state to state. In California, there are twelve jurors in a civil case. In both Colorado and New Jersey there are six jurors. While each state's law allows for a lesser number by stipulation, in no cases in our sample did this occur.

Juries in criminal trials consisted of twelve jurors in all nine courts, except that six-person juries heard 30% of the criminal trials in Golden, Colorado.

2. Operational Differences

The two main methods for selecting jurors are the "struck-jury" and the "strike-and-replace" systems. Under the first, a large number of jurors are questioned as a group. Challenges are exercised and the first twelve (or six) remaining jurors serve; the remainder are dismissed. This system is used in Colorado. By contrast, the "strike-and-replace" method calls for individually questioning no more than twelve prospective jurors at a time. As individuals are excused, they are replaced; questioning commences anew for the replacement. This system was found most commonly in the California courts. New Jersey appears to use a combination of the two: a large panel will be initially questioned by the judge for the most obvious "cause" challenges, then eight people will be placed in the jury box and questioned further. Individual juror replacements for cause or peremptory challenges are asked "if they have heard the other questions" and whether they have any specific responses to the questions they have heard that need discussion. They are not automatically asked all prior questions.

Generally, the strike-and-replace system is perceived to be more time-consuming than the struck-jury system.⁶ This perception is confirmed by the time spent on jury selection among our nine courts. The courts with the shorter median times, New Jersey and Colorado, tend to use the struck-jury approach or a modified version of it. In California, the individual strike-and-replace system is customary. It is difficult to

⁶See American Bar Association *Standards Relating to Juror Use and Management* (1982). Standard 9, having to do with peremptory challenges, recommends use of the struck-jury method.

draw conclusions based upon jury selection operational methods and resulting time consumed in civil cases since California law calls for twelve-person juries, and the other two states use six-person juries. Both the quantitative and interview data suggest, however, that use of the strike-and-replace system lengthens jury selection time.

3. Questioning Potential Jurors

Voir dire is the courtroom examination of prospective jurors for the purpose of ascertaining their fitness to serve on the jury. The New Jersey courts use judge-conducted voir dire. Under New Jersey law, attorneys may submit voir dire questions in writing for the judge to ask in addition to the judge's standard questions, or may request permission to ask questions themselves. Either of these supplements to judge-conducted voir dire is within the discretion of the trial judge.

Whether attorneys participate in voir dire in New Jersey may reflect either the preference of the trial judge or the preference of the attorneys. One New Jersey judge, for example, indicated that in his courtroom it is unusual for attorneys to submit voir dire questions, and they are usually content with the questions posed by the judge. This attitude is borne out by our data which show attorneys participated in civil-trial voir dire 23% of the time in Jersey City, 4% of the time in Elizabeth, and never in Paterson. In criminal trials, attorneys directly questioned prospective jurors in 32% of trials in Jersey City,⁷ 14% in Paterson, and 12% in Elizabeth.

Judges and lawyers observed that in "more serious" cases, lawyers are more likely to want to question prospective jurors and judges are more likely to allow it. Some interviews revealed, however, that occasionally attorneys in New Jersey believe that they are improperly denied an opportunity to participate in voir dire.

Attorneys were asked in the attitude survey to state whether any segment of a trial is "too long" or "too short" in their jurisdiction. In New Jersey, nearly one-third of the civil-lawyer respondents noted that jury selection is too short. Respondents from Paterson were most dissatisfied, with almost half of them asserting jury selection is too short. The greater attorney dissatisfaction there may reflect their lack of participation in voir dire more than the length of voir dire, since jury selection time for Paterson civil trials is comparable to the time in the other two New Jersey sites. Most criminal attorneys in New Jersey find no fault with the length of jury selection in criminal trials; however, 27% of the

⁷Median jury selection time in Jersey City was considerably longer than the other New Jersey courts, which may reflect the attorney questioning, the higher number of homicide trials, or some other factor such as different judicial practices in that court.

survey responses stated jury selection is too short while 20% asserted it is too long. Not surprisingly, these critical responses are grouped by the type of criminal attorney responding. Forty seven of the 49 criminal lawyers who reported that voir dire in their court was too long were prosecutors. Of the 44 lawyers who thought voir dire was too short, 29 were defense attorneys. The New Jersey lawyers who responded that voir dire is too short came from all three courts. More Jersey City prosecutors reported excessive voir dire length. (Jury selection takes significantly longer in that court compared to Paterson or Elizabeth.)

Voir dire in Colorado is conducted by judges and lawyers, but questioning by attorneys is closely monitored by the trial judge under a Colorado Supreme Court rule that allows a judge to "limit or terminate" examination if questioning is "repetitious, irrelevant, unreasonable, lengthy, abusive, or otherwise improper."⁸ In addition, a judge "may reasonably limit the time available to the parties or their counsel" in order to eliminate undue delay. Use of these procedures is within the discretion of the individual judge and appears to vary from courtroom to courtroom. Nonetheless, both procedures are widely relied upon in Colorado, particularly by the new members of the bench. A time limit of 30 to 45 minutes per side was mentioned routinely by judges in Colorado.

In survey responses, 12% of Colorado civil lawyers believed that jury selection is "too short," while 7% believed it to be "too long." Most of the dissatisfaction was expressed by Colorado Springs lawyers.

For criminal trials, 36% of Colorado attorneys (predominantly defense attorneys in Denver) responded that jury selection is too short; 19% believe the process is too long (all prosecutors). While most Colorado lawyers interviewed indicated that they do not particularly like time limits, especially when they seem arbitrary or inflexible, they do not believe time limits prejudice case outcome. They feel that if time is limited, judges must be careful to conduct a suitable voir dire before the allotted attorney time commences.

In California, civil voir dire is also conducted by judges and lawyers. Most judges indicate that they discourage repetitious questions. Time limits on voir dire are not officially sanctioned, although neither are they forbidden. Generally, civil voir dire is not perceived by lawyers to be a problem in California. The attitude survey revealed that 12% of civil lawyers feel that jury selection is too short, and 12% believe it is too long. Attorneys in Oakland were somewhat less content than those in Marin County or Monterey. In interviews, both judges and lawyers described jury selection for civil cases as reasonably expeditious, at least by com-

⁸See Colorado Rules of Criminal Procedure For All Courts of Record in Colorado, Rule 24(a), and the Colorado Rules of Civil Procedure, Rule 47(a).

parison to criminal case voir dire, which is widely believed by everybody except criminal defense lawyers to be a "horrible perversion of the justice system." Even though civil voir dire is believed to be reasonably expeditious in California, it is still cited as the most "abused" stage of civil trial, and as a stage that is very appropriate for judicial intervention. But there is no consensus about what constitutes an acceptable level of intervention. Some lawyers feel it is appropriate only for judges to guide inexperienced lawyers who need monitoring. Others believe that all civil lawyers overestimate the importance of voir dire and waste time trying to "educate" jurors.⁹ These lawyers also tend to believe that civil lawyers do not really know what they are looking for in a potential juror other than to eliminate those who most obviously do not fit their stereotype of the ideal juror for the particular issues or strategy of a case.

In California, 32% of criminal lawyers stated in survey responses that the process takes too long. (Most are prosecutors in Oakland and Marin.) Typical of California prosecutor views are the following remarks: jury selection is "laboriously slow, boring, and demeaning to jurors, including unnecessarily invading their privacy;" the process is "insane" and jurors are "put on the psychiatric couch." Several prosecutors reported that the longer voir dire progresses, the less effective it is in its most important purpose of revealing hidden prejudices. Lengthy voir dire allows listening potential jurors to "sanitize" their responses in order to come up with the "right answers" during their turn.

In order to circumvent this problem, some California criminal defense attorneys suggest that the "cocktail party" voir dire is a better way to reveal bias. Instead of the one-at-a-time voir dire, they question a panel all at once, by selecting different jurors for different questions, eventually covering all desired questions with all jurors. They believe this method ensures that jurors pay attention and minimizes the extent to which a juror may be able to sanitize responses. They admit that this approach may be quite time-consuming.

In California, very few criminal attorneys believe voir dire is too short. (All who do are defense attorneys) The highest rate of attorney satisfaction in California was in Monterey, with only 10% complaining of excessive length and 10% complaining of brevity. This is particularly interesting since there is an informal policy in Monterey that no individual questions should be asked of prospective jurors unless really necessary. This policy distinguishes Monterey from the other two California courts. One Monterey attorney called voir dire in that court "more like the fed-

⁹This is consistent with a recent survey in the state of Washington in which 80 of 100 responding superior court judges believe lawyers use voir dire to establish rapport with individual jurors. Seventy five of 100 also believe lawyers try to impart, not just obtain, information.

eral system," and said that attorneys comply since they "do not want to be admonished by the judge." More importantly, the atmosphere is such that lawyers feel the judges "will be fair to both sides and that genuine problems in voir dire will be accommodated."

In New Jersey and Colorado, there is clear-cut legal authority for the judge's role in controlling voir dire. By comparison, in California we were frequently told that a "wide open" voir dire, even if only for the express purpose of exercising peremptories, is compelled by case law. In *People v. Williams*, 29 Cal. 3d 392, 628 P.2d 869 (1981), the California Supreme Court held that counsel must be afforded reasonable opportunity to conduct voir dire for the purpose of making peremptory challenges and that counsel should be permitted to ask questions on subjects that arouse strong feelings that may fall short of the definition of actual legal bias. However, the *Williams* decision itself suggests that this standard is prevailing in most other jurisdictions as well. So it would appear that the use of the *Williams* decision as the reason for lengthy voir dire in California is fallacious. This decision seems more to "acknowledge the failure of long-standing precedent to secure a workable, pragmatic standard which trial courts could administer uniformly,"¹⁰ rather than widen the scope of voir dire. Reasonableness continues to be the test; how this translates into actual voir dire practices from courtroom to courtroom in California is unknown.

Divergent judicial approaches to voir dire were cited by civil lawyers in California, and to a much lesser extent in Colorado and New Jersey. However, unless there is a real issue of fairness, lawyers conform and adhere to the latitude allowed by the trial judge, since they "want to win cases, not argue with judges."

Attorney satisfaction with jury selection in Colorado (with time limits) was virtually identical to satisfaction in California (without time limits). At the median, civil jury selection time in Colorado is very similar to that in Marin County and Monterey, even though the civil trials in California involve selecting twelve jurors rather than six. Oakland times for jury selection are dramatically longer. The same is true for criminal trials, except that Marin County jury selection time lengthens somewhat. However, for longer trials, jury selection is longer in all three California courts compared to courts in Colorado. The impact of voir dire time limits on overall trial length appears most noticeable for the "longer" case types and more complex trials. Again, our data permit us only to document the pattern; identifying the cause is left for the future.

¹⁰Debra K. Buteyn, "People v. Williams: Expansion of the Permissible Scope of Voir Dire in California Courts," 15 *Loy. L.A.L. Rev.* 381 (Spring, 1982).

In the search for explanations underlying varying trial lengths, size of juries and attorney-conducted voir dire cannot be ignored. California's commitment to twelve person juries plus generally unlimited attorney voir dire seems to influence the length of its trials. That commitment is challenged by trial length in New Jersey, with its six-person civil juries and highly restricted examination of jurors by attorneys, and to a lesser degree by Colorado, which has six-person civil juries with judicially monitored attorney examination subject to time limits. The seriousness of these challenges is underscored by the fact that most of the New Jersey attorneys who responded to our survey were comfortable with the length and process of voir dire, and the responding attorneys in Colorado expressed as much satisfaction with voir dire as did their California counterparts.

Identifying practices and procedures that expedite trials without impairing fairness is one purpose of this research. When applied to jury selection, it is clear that judge-conducted voir dire in New Jersey produces shorter jury selection time without apparent impairment of fairness. In general, many, but not most, New Jersey attorneys expressed the opinion that jury selection is too short, but none indicated — either during interviews or on the survey questionnaires — that legal rights were being compromised in the jury selection process. Nor were we referred to any legal attacks upon the process based on its length. Attorney opinion seems to follow expected cultural biases. Civil defense attorneys and prosecutors want shorter voir dire, and civil plaintiffs and criminal defense attorneys want longer voir dire. This is an appropriate area for further exploration, but at this point, we are persuaded that judicial involvement and limitations on attorney questioning expedite jury selection and do so with no more serious consequence than running counter to predictable attorney preferences. Even these attorney preferences might be moderated by judicial sensitivity to the fairness issue in those courts where attorneys are concerned that jury selection proceeds too quickly.

We cannot rule out the possibility that voir dire is longer in general in Oakland and for longer trials in Monterey and Marin County in part because cases are more complex and may require more juror examination. As discussed above, however, the jury selection times from Colorado and New Jersey challenge the California judiciary to justify its approach to voir dire. Perhaps the simple justification is that the measure of fairness in California is different than that in its sister states. While possible, this explanation raises doubts about its basis and also might lead some to wonder if the cost of this additional "fairness" is not too high — in both dollar terms and in societal attitudes toward the value of the jury system.

4. Peremptory Challenges

A peremptory challenge is an objection to a juror for which no reason need be given.¹¹ There are differences in the number of peremptory challenges available in the three project states, and the number actually used differs among courts within a state. For civil trials in California and New Jersey, each *party* is entitled to six peremptory challenges. In Colorado, each *side* receives four peremptories, and they *must* be used because of their struck-jury system. Additional peremptories are provided in all three states for additional parties.¹²

For the civil trials we sampled, there was a median of four to seven peremptories actually available to plaintiff or defense in the nine courts. (Table 19) (The number actually available in a specific trial will vary depending on the number of additional parties in the litigation.) Colorado lawyers had available and used four (as required by law). In the other two states, while all peremptories may have been exercised by a party in some cases, median usage reveals that New Jersey lawyers had six available and used from 42% to 67% of them and California lawyers had six or seven peremptories available and used 43% to 83% of them.

For single-defendant criminal trials, the laws of the three project states authorize peremptory challenges as follows:¹³

	<u>Non-Capital</u>		<u>Life/Capital</u>	
	<i>Prosecution</i>	<i>Defense</i>	<i>Prosecution</i>	<i>Defense</i>
New Jersey	10	12	12	20
Colorado	5	5	10	10
California	10	10	26	26

More peremptories are authorized in each state for multiple-defendant and alternate juror proceedings. It is useful to compare the

¹¹Except if the use of peremptory challenge is shown to be based on racial considerations, see *Batson v. Kentucky*, 106 S. Ct. 1712 (1986).

¹²See *Standards Relating to Juror Use and Management*, *supra*. Standard 9 calls for no more than three peremptory challenges per side when selecting juries of twelve persons, no more than two per side for juries of less than twelve. The number of peremptory challenges available in all three states in this study exceed this recommended standard.

¹³American Bar Association Standard 9 calls for: 10 peremptories per side in cases where a death sentence may be imposed upon conviction; five per side when a sentence of imprisonment for more than six months may be imposed upon conviction; and three per side when a sentence of incarceration of six months or fewer, or no incarceration. It appears that Colorado law generally conforms to this standard; New Jersey and California law authorize more peremptory challenges than the standard recommends.

TABLE 19
How Many Peremptory Challenges Were Available and Used in Civil Trials?^a

Court	Civil Trial Length Median (Rank)	Plaintiff Challenges			Defense Challenges		
		Available ^a	Used ^b	% Used	Available ^a	Used ^b	% Used
CALIFORNIA		6	5	83%	6	4	67%
Oakland	(9)	6.5	5	77%	6	5	83%
Marin County	(7)	7	4	57%	7	3	43%
Monterey	(6)	6	5	83%	6	4	67%
COLORADO		4	4	100% ^c	4	4	100% ^c
Denver	(8)	4	4	100%	4	4	100%
Colorado Springs	(4)	4	4	100%	4	4	100%
Golden	(5)	4	4	100%	4	4	100%
NEW JERSEY		6	3.5	58%	6	3	50%
Jersey City	(1)	6	3.5	58%	6	2.5	42%
Paterson	(2)	6	3	50%	6	3	50%
Elizabeth	(3)	6	4	67%	6	3	50%

^a Reflects the median number available for the completed civil trials in our sample.

^b Reflects the median number actually used in the completed trials sampled.

^c Colorado law requires that both sides exercise all four challenges.

median number of peremptory challenges available¹⁴ for all criminal trials begun in a particular court against the median number of peremptory challenges actually used. (Table 20) Prosecutors in California and New Jersey had very similar numbers of peremptory challenges available; prosecutors in Oakland and Marin County used a higher percentage of them than in Monterey or New Jersey. While all peremptories may have been exercised by a party in some cases, median usage reveals that in no court did attorneys consistently use them all. Colorado prosecutors had only half the number of peremptory challenges available by comparison to the other two states, but likewise did not use all of them. Median peremptory challenges exercised by prosecutors ranged from two to seven-and-one-half across the nine courts, with more typically being used in longer trials.

Although the median number of peremptory challenges exercised by the defense was higher, defense attorneys, like prosecutors, did not routinely exercise all that were available. New Jersey defense attorneys had the most available, Colorado the least. The median number of peremp-

¹⁴"Available" means the actual number available at the median for the trials in our sample, and thus will reflect not only the statutory guidelines, but the seriousness and complexity of the crimes tried in each court and state.

tory challenges exercised by defense attorneys ranged from three to nine across the sites, with the Denver, Elizabeth, and Oakland courts regularly using a higher percentage of them than the other courts.

TABLE 20
How Many Peremptory Challenges Were Available and
Used in Criminal Trials?

Court	Crim. Trial Length Median (Rank)	Plaintiff Challenges			Defense Challenges		
		Available ^a	Used ^b	% Used	Available ^a	Used ^b	% Used
CALIFORNIA							
Oakland	(9)	12	6	50%	12	8	66%
Marin County	(8)	11	7.5	68%	11	6	55%
Monterey	(4)	10	3	30%	10	5	50%
COLORADO							
Denver	(6)	6	5	83%	6	5	83%
Colorado Springs	(5)	5	3	60%	5	3	60%
Golden	(3)	5	2	40%	5	3	60%
NEW JERSEY							
Jersey City	(7)	12	4	33%	20	9	45%
Paterson	(2)	12	2	17%	20	7	35%
Elizabeth	(1)	10	4	40%	10	7	70%

^a Reflects the median number available for the completed criminal trials in our sample.

^b Reflects the median number actually used in the completed trials sampled.

The question posed by the peremptory challenge procedures is whether the number available causes jury selection time to vary. It is difficult to compare the courts in these three states since the voir dire practices prior to exercise of the challenges are so different. For instance, in Colorado civil trials the judge and lawyers question potential jurors, and each lawyer must exercise all four peremptories to a struck panel of fourteen potential jurors, yielding a civil jury of six. In New Jersey, attorneys exercise their challenges after the judge conducts the questioning. In California, peremptories are exercised after questions by judge and attorneys.

Nevertheless, in an examination of the factors tending to shorten or prolong trial time, the project data indicate that neither the number of peremptory challenges available nor the number actually used has a direct causal relationship to trial time differences between these

courts. The true issue seems to be voir dire method and permissible scope of examination rather than the number of peremptories available or used.

5. Challenges for Cause

Challenges for cause allow the court to eliminate from the panel those jurors who are unable to be impartial, due either to actual or implied prejudice. The court can also use these challenges to eliminate jurors for whom service would be a hardship, such as mothers of small children or persons with medical problems. Also, each state has its own list of categories of people who can request to be excused or exempted from serving on a jury.

Those courts hearing and granting more challenges for cause have the potential for a more protracted jury selection process. In civil trials, challenges granted for cause are virtually nonexistent in Colorado. In New Jersey, the parties' requests to excuse jurors for cause are not typically made or granted, but two challenges for cause are likely to be made in each trial on the court's own motion. In California, one challenge for cause is likely to be granted per trial at the request of a party, but none typically is initiated by the court. However, in Marin County a few cases reported an unusually high number of challenges for cause granted for a party or on the court's own motion. If this phenomenon occurs periodically it could impact the size of the panel needed for voir dire (and appears to have had this effect for our sample).

For civil trials, therefore, the median number of challenges for cause does not vary widely among the nine courts and so does not appear to have a significant causal relationship to trial time. The same is true for criminal challenges for cause. The median total number of challenges for cause granted in a criminal trial in Elizabeth, New Jersey, the court with the shortest trial lengths, was seven. The median number in Oakland, California, the court with the longest trial lengths, was three. In two courts (Paterson and Golden) there were no challenges for cause. The most reported for a court was a median of eleven (Jersey City), with most originating with the judge rather than after motion by a party. This occurrence appears to influence panel size for that court and might contribute to the longer median selection time there. But the more serious case types tried in Jersey City are an equally plausible explanation.¹⁵

¹⁵Cause and effect are difficult to sort out in this area. Perhaps the cases that take longer to try also involve more circumstances that would cause a judge to grant a "cause" excuse. Or more jurors may have a problem sitting on longer trials, so judges grant more "cause" excuses to avoid irritating citizens with limited time available to serve.

Overall, challenges for cause do not vary widely between courts and so do not appear to have a causal relationship to trial time.

6. Panel Size

The size of the panel of prospective jurors from which a civil jury is drawn varies among courts and states. For the civil trials in our sample, the median panel size reported by the project courts ranged from 18 to 23.5 in Colorado, 22 to 33 in New Jersey, and 30 to 50 in California. The panel size of prospective jurors from which a criminal jury is drawn also varies among and within states. For the trials in our sample, the median panel size reported by the project courts ranged from 29 to 32 in Colorado, 46 to 58 in New Jersey, and 40 to 59.5 in California. The court with the shortest criminal trials (Elizabeth) tended to have a larger jury panel than the court with the longest trials (Oakland). Panel size variation, rather than causing civil and criminal trial time to vary, seems more to reflect considerations discussed above, such as ultimate jury size, number of juror challenges available, or the voir dire method typically used.

7. Juror Questionnaires

Finally, juror questionnaires were used as a jury selection tool in some courts. There did not appear to be any courtwide or statewide policies about the use of questionnaires — their use was based upon the preference of the judge or lawyers. Three kinds of questionnaires were in use in one or more of the project courtrooms:

- general voir dire — occupation, spouse, age, children, other issues;
- specific type of cases — drug-related problems, victim of crime, length of trial issues;
- specific case — questions on case, witnesses to be called, knowledge of case, similar experience, opinions.

In New Jersey, at least one judge attached a large sheet of standard questions to a blackboard and advised the jury panel to be prepared to answer them. This “oral questionnaire” covered the most standard juror inquiries: knowledge of the case, prior jury service, criminal conviction of self, relatives, or friends, and so on. In other courts, questionnaires were used in some particularly celebrated or complicated trials. In Marin County, for one case that received widespread pretrial publicity, the judge used a combination of a juror questionnaire prepared by both counsel and approved by the court and individual sequestered voir

dire prescheduled in twenty-minute intervals, "like a dentist's office." While the judge was not sure that the system saved much time for the court, he was sure it had saved a tremendous amount of time for the jurors.

In general, most judges and lawyers said that in a typical trial, questionnaires at best offer a minimal opportunity for saving time. They questioned the wisdom of expending valuable clerical time to coordinate the effort, especially if lawyers are permitted to repeat written questions in their oral voir dire. This response was frequently expressed in Oakland and Marin County, where several people indicated that "the furor over time spent on voir dire has nothing to do with the types of questions one can pose in a questionnaire." The issue is to what extent lawyers should be permitted to "educate, indoctrinate, and ingratiate themselves to the jury." Questionnaires may be time saving, however, where voir dire is limited to inquiries that can be easily answered in a questionnaire format.

8. Summary of Jury Selection Variation

Median jury selection time varied in completed civil jury trials from 44 minutes in one court to 4 hours and 49 minutes in another (an increase of almost 550%). In criminal trials the variation was from 1 hour and 10 minutes to 8 hours and 17 minutes (an increase of almost 600%). Jury selection laws and procedures, and particularly a court's voir dire process, contribute substantially to explaining this variation. Trials are expedited when the court assumes greater control over jury selection. In those courts assuming such control, fairness is not reported to suffer.

C. VARIATION BY JUDGE

We now shift from the jury to the judge and ask whether variation in trial time can be attributed to differences in the ways judges deal with trials. This discussion stems from the attitude survey and site interviews, rather than from the quantitative data. While this more qualitative information does not establish facts in the research sense, both the survey responses and site observations furnish important impressions regarding potential explanations for variability, particularly when focussed on the judge.

1. Civil Attorney Attitude

In response to the attitude survey question, "How much do trial lengths vary by judge?," civil attorneys indicated that time varies "con-

siderably" or "somewhat" in all but one court. Three of these four courts are the most urban, and have more judges on the bench. The fourth, Marin County, has only six judges, but attorneys there reported one or two exceptionally fast judges and one or two very slow ones, which may explain attorney perceptions of unusual variations in trial length among judges. Table 21 shows that perceived variation by judge was strongest among attorneys in Oakland, Denver, Marin County, and Jersey City.

TABLE 21
How Much Do Civil Trial Lengths Vary by Judge?

Court	(n) ^a	Considerably	Somewhat	Not Much/ Not At All
CALIFORNIA				
Oakland	(16)	69% ^b	31%	—
Marin County	(11)	46%	46%	9%
Monterey	(15)	33%	13%	53%
COLORADO				
Denver	(13)	54%	31%	16%
Colorado Springs	(15)	21%	43%	36%
Golden	(15)	20%	33%	47%
NEW JERSEY				
Jersey City	(17)	47%	41%	12%
Paterson	(15)	13%	67%	20%
Elizabeth	(13)	14%	64%	21%

^a Reflects the number of civil attorneys responding to this attitude survey question by court location.

^b Reflects the percentage of attorneys from each court who offered this response.

Trial time variation by judge was noted least in Monterey and Golden, the two smallest courts aside from Marin County. In Monterey, civil attorneys reported that one judge was somewhat faster than the others, and one was somewhat slower, but that overall the bench was very unified, hard-working, and proud of their work, always striving to match or surpass prior levels of performance. In survey responses, civil attorneys in both Monterey and Golden made it a point to praise the court as the "best in the state."¹⁶ For no other court was this mentioned.

The survey also asked civil lawyers to identify the most important judge characteristic that influences trial time. Lawyers in all three states mentioned a judge's personal qualities, particularly the "decisive-

¹⁶Questionnaire responses were anonymous, so attorneys in these two courts could not be trying to curry favor with the judges by these responses.

ness" of a judge, more than any other trait. Other characteristics mentioned frequently were: the extent to which a judge exercises control over the trial,¹⁷ whether other docket matters are allowed to interrupt a trial, a judge's work habits, including punctuality and minimizing of trial recesses, and a judge's knowledge of the law.

It is difficult to compare these attitudes to our trial times by judge. When comparing civil and criminal trial time averages by judge, the number of trials in many instances causes the calculation to be statistically insignificant. For instance, average civil trial length for 43 of the 69 judges during our ten-month sample period is based on five trials or less. Only 14 judges reported data for ten or more civil jury trials during the ten-month reporting period — ten of these were in a New Jersey court, three were in Colorado, and one in California. Any attempt to compare trial time by judge, therefore, becomes impossible, especially since the few trials that can be compared involve different case types and complexities.

It is interesting that New Jersey courts reported so many more civil trials than the other states. This is consistent with the fact that New Jersey trials are shorter. *Shorter* trials mean judges are available to hear *more* trials. Overall, for the sample period the 40 New Jersey judges reported 387 civil trials (jury and nonjury), or better than nine trials per judge. The 31 Colorado judges reported 267 civil trials, about eight trials per judge. The 40 California judges reported 173 civil trials, about 4.3 trials per judge. Aside from trial length, this variation reflects the different levels of trial reporting for the project,¹⁸ the high settlement rate during civil trials in progress in New Jersey,¹⁹ and the criminal trial emphasis in Oakland, which has been pursuing a "war on drugs" that appears to have reduced the number of civil trials held.

2. Criminal Attorney Attitude

Prosecutors and defense attorneys had very different responses to the survey question, "How much do trial lengths vary by judge?" In California, prosecutors from Oakland and Marin County report considerable or some variation; prosecutors in Monterey report much less. (Table 22) Criminal defense attorneys in Oakland reported extensive

¹⁷The characteristic of judicial control in the courtroom is discussed in Chapter 4.

¹⁸An independent audit of court records revealed the following additional civil jury or nonjury trials were held in the courts studied: New Jersey - 120 jury, 4 nonjury; Colorado - 313 jury, 230 nonjury; California - 41 jury, 32 nonjury. See explanation in Appendix A.

¹⁹A very large number of New Jersey civil trials settled before or during the presentation of the plaintiff's case — up to 46% of motor vehicle tort trials in Paterson. See discussion in Chapter 3, sec. D.

trial time variation by judge, while very little is reported by defense counsel in the other two, smaller California courts.

Prosecutors and defense attorneys throughout Colorado, reported considerable or some variation among judges, although somewhat less was reported in Golden, the smallest court. In New Jersey, both prosecutors and defense attorneys reported significant variation among judges, particularly defense attorneys in Paterson and Elizabeth.

TABLE 22
How Much Do Criminal Trial Lengths Vary by Judge?

Court	(n) ^a	Considerably	Somewhat	Not Much/ Not At All
	Def./Pros.	Def./Pros. ^b	Def./Pros.	Def./Pros.
CALIFORNIA				
Oakland	(10/26)	40%/65%	50%/27%	10%/ 8%
Marin County	(12/10)	8%/--	33%/88%	59%/11%
Monterey	(13/ 7)	33%/14%	8%/43%	58%/43%
COLORADO				
Denver	(18/11)	69%/70%	31%/20%	--/10%
Colorado Springs	(5/11)	40%/64%	60%/27%	--/19%
Golden	(7/12)	29%/42%	43%/50%	29%/ 8%
NEW JERSEY				
Jersey City	(9/12)	44%/75%	56%/25%	--/--
Paterson	(6/ 9)	100%/56%	--/33%	--/11%
Elizabeth	(3/16)	100%/62%	--/19%	--/19%

^a Represents the number of defense attorneys and prosecutors responding to the survey.

^b Represents the percentage of defense attorneys and prosecutors from each court who offered this response.

Other survey responses shed light on these attorney appraisals of trial length variation by judge. Criminal lawyers also were asked, "What is the most important judge characteristic that influences the length of a trial?" In both California and Colorado, the extent to which a judge "controls" the trial, particularly the voir dire, was cited by a majority of criminal lawyers. Judicial control was an important factor in New Jersey as well, but a judge's personal characteristics were cited slightly more often. Other variables impacting trial length cited with frequency by attorneys in all nine courts were the extent to which judges permit other court business to interrupt a trial, a judge's work habits, including punctuality, and a judge's knowledge of the law. Judicial control is reported to be more important for criminal cases than civil. (Recall that civil lawyers reported a judge's personal characteristics, particularly

“decisiveness,” as the most important characteristic influencing trial length.)

The composite picture that emerges from these collective attorney assessments is that trial length varies from judge to judge, with the level of judicial control playing an important part, followed by several other characteristics and practices of the trial judge. Unfortunately we were thwarted, as we were with civil trials, in our attempts to match these perceptions with the data applicable to individual judges, due to the small number of trials per judge. Of the 97 judges reporting criminal jury trials, only nine heard ten or more trials; 27 judges reported only one criminal jury trial during the sample period. There simply are too few cases for statistically reliable analysis.

The impact of shorter trials and more nonjury trials can be illustrated by comparing the judge-completed-trial ratio for criminal jury trials in our sample.²⁰ The 36 California judges heard 262 criminal trials, or an average of about seven trials per judge. The 31 Colorado judges heard 180 trials, about six trials per judge. The 40 New Jersey judges heard 184 trials or 4.6 trials per judge. This is surprising information. Since trials are longer in California (except Monterey), we anticipated fewer completed trials. Aside from trial length, however, these data also reflect the different levels of trial reporting. Further, it appears that the California courts are devoting more of their judge time to criminal rather than to civil trials.

3. Judicial Selection Methods

Several lawyers and court administrators speculated about a relationship between judicial selection methods and overall trial time. In particular, it was suggested that the way in which a judge is selected or retained may affect a judge's *incentive* to manage a trial.

In New Jersey, judges are appointed to the Superior Court by the Governor for seven years, at which time they are reevaluated. If reappointed, they have virtual life tenure. It was suggested that this system results in a more confident and management-oriented bench that is willing to be less yielding to attorney pressure. In both Colorado and California, judges are subject to the electoral process (in a possibly contested election in California and a retention election in Colorado), which some think makes them more vulnerable to attorney pressure. In fact, in Colorado very few judges have not been retained in recent memory. In California, judicial retention is less predictable, even though most judges are retained even if challenged. Bar polls were mentioned

²⁰Not all criminal cases were captured in all courts; the sample was less complete in Colorado and New Jersey. See explanation in Appendix A.

as a component of this phenomenon. Some judges are perceived to be more sensitive to attorney opinion (especially in a retention-election year), and this may result in slower trials in order to accommodate perceived attorney preference.

Also related is the issue of the quality of a bench. Particularly in Colorado, it was suggested that low judicial pay does not attract and keep seasoned civil litigators on the bench. This was cited as leading to inexperienced, "indecisive" judges and therefore longer trials.

D. VARIATION BY LAWYER

1. Level of Variation

To what extent does trial time vary by lawyer, through differences in strategy, style, or competence? Although the trial data offers no information on this subject, the attitude survey and interviews offer significant insight. Half of the judges in the project courts expressed their views by answering the survey question, "How much do trial lengths vary by attorney?" Table 23 shows that 80% of California judges believe the variation is *considerable*. Colorado judges are split between the belief that it is considerable and that it varies only somewhat. Only 15% of New Jersey judges believe there is a considerable variation; 65% believe time varies somewhat, and the remaining 20% believe there is not much variation between attorneys. While the implications of these responses are not clear-cut, it is notable that New Jersey again appears to be the most uniform. In the state with shorter trials, fewer judges believe trial times vary much by attorney. By comparison, judges in California, with its lengthier trials, overwhelmingly responded that the attorneys trying a case can cause trial time to vary considerably. Colorado judicial perceptions fell between the other two states, as does trial time.

2. Explanations of Variation

In order to identify the reasons for a perceived variation by lawyer, another question on the survey asked, "What is the most important lawyer characteristic that influences the length of a trial?" The characteristic cited most often in all three states was preparation. The ability, knowledge, and skill of a lawyer were also widely cited in all courts. Beyond these responses, 25% of the responding California judges cited differences in *voir dire* technique, and another 25% mentioned personal or personality traits such as an attorney's confidence, concern about malpractice allegations, and style. Additional answers in Colorado and New Jersey were somewhat less personal, focusing on general "repetition" in the presentation of a case.

TABLE 23
How Much Do Trial Lengths Vary by Attorney?

Court	(n) ^a	Considerably	Somewhat	Not Much/ Not At All
CALIFORNIA				
Oakland	(12)	83% ^b	17%	—
Marin County	(5)	80%	20%	—
Monterey	(3)	67%	33%	—
COLORADO				
Denver	(8)	50%	38%	12%
Colorado Springs	(6)	33%	50%	17%
Golden	(3)	33%	33%	33%
NEW JERSEY				
Jersey City	(5)	—	80%	20%
Paterson	(6)	17%	83%	—
Elizabeth	(9)	22%	44%	33%

^a Reflects the number of judges responding to the survey from each court. We cannot identify these responses as being applicable more to civil or criminal attorneys or equally to both.

^b Reflects the percentage of judges from each court who offered this response.

Taken together, the responses to these two questions about the degree and reasons for trial time variation by lawyer suggest that it is more likely to be seen as due to differences in individuals in California and as due to institutional or procedural differences in New Jersey and Colorado. Variation was believed to be considerable in California and less significant in Colorado and New Jersey. A lawyer's *voir dire* approach which might cause trial time to vary by lawyer, was not an issue outside of California. This reinforces both the trial time data and interview responses about *voir dire* time.

The "considerable" variation reported by judges for California lawyers suggests that California judges are not managing the lawyers in the courtroom as much as judges in Colorado and New Jersey. In at least partial defense, many California judges do not feel *authorized* to manage lawyers in the courtroom to the same extent as do judges in the other states, lacking the others' clear authorization for judge-only *voir dire* or time limits on attorney *voir dire*.

3. Economic Incentive in Civil Trials

A lawyer-related issue is whether some *civil* lawyers have an economic incentive to hasten or slow the pace of a trial. In all three states, most plaintiffs' lawyers work on a contingent fee basis and most defense lawyers work for an hourly rate. Judges and lawyers in all nine courts in-

dicated that while plaintiffs' lawyers usually are anxious to get to trial and defendant's lawyers are not, once the trial has begun, the method of payment is not an issue. "My ego takes over; I want to win the case and that is the only thing on my mind," remarked one lawyer.

The data from New Jersey suggest, however, that there might be an economic incentive in that state for attorneys to *begin* a civil trial. All three New Jersey courts registered a very high settlement outcome during trial; for example 46% of motor vehicle torts in Paterson settled during trial. These rates were many times higher than courts in the other states and suggest that something different is happening in New Jersey. Further investigation revealed that the cases being settled during trial are not the longer case types, but are motor vehicle tort, slip and fall, and miscellaneous negligence cases. Most of them settle during or just after the presentation of the plaintiff's case. We can only speculate why these cases are not settled before trial, but in interviews with judges and calendar clerks we were told that there may be an economic incentive for defense attorneys to begin the trial. It was suggested that the relatively new arbitration system in New Jersey has worked to the economic detriment of some defense lawyers, so some defense firms may be trying to recoup this loss by starting more trials. A variety of other explanations were also offered, however, including the suggestion that one or both attorneys want to see how the plaintiff will "come across" as a witness, due either to their own preference or the policies of the insurance carrier. It was also suggested by judges and court staff that since there are no mandatory pretrial settlement conferences in New Jersey, the parties do not fully negotiate settlements until the day of or after the start of trial.

Aside from the in-trial settlement phenomenon in New Jersey, there appears to be universal agreement that trial time is not affected by the economic positions of the lawyers.

4. Competence of Counsel in Criminal Trials

In interviews, we asked judges whether attorney competence was a factor in trial time. In both Colorado and New Jersey, judges indicated that in both civil and criminal cases the most competent and experienced attorneys got to the point quickly and had expeditious trials. Oakland and Marin County judges had a different perspective. Many indicated that the most seasoned *criminal* attorneys were more likely to prolong trials with line-by-line police report comparisons on cross-examination and other techniques in their search for "reasonable doubt," while less experienced lawyers had shorter, more perfunctory trials. This type of difference might contribute to the variation in trial length in these two California courts.

Some trial data offer additional information on this topic. We tracked the type of legal representation of defendants in each criminal trial: public defender, assigned counsel, privately retained lawyer, or self-representation. (Table 24) Differences in representation and their possible effect on trial time are only speculative but should be mentioned.

TABLE 24
What Type of Counsel Represented Criminal Defendants in Each Court?

Court*	Public Defender	Assigned Counsel	Privately Retained	Not Represented
Elizabeth, NJ	60%	19%	16%	2%
Paterson, NJ	74%	14%	11%	2%
Golden, CO	48%	43%	9%	0%
Monterey, CA	39%	26%	31%	4%
Colorado Springs, CO	37%	37%	24%	2%
Denver, CO	64%	25%	8%	4%
Jersey City, NJ	44%	44%	9%	3%
Marin County, CA	46%	29%	25%	0%
Oakland, CA	56%	24%	19%	1%
State				
NEW JERSEY	63%	21%	13%	2%
COLORADO	52%	32%	14%	2%
CALIFORNIA	51%	25%	23%	2%

*Listed from shortest to longest by median criminal jury trial length.

The two courts with the shortest trials had more public defenders and fewer assigned or privately retained counsel than the courts with the longest trials. While this might suggest that public defender involvement expedites trial time, any such conclusion would be suspect if based solely upon these data. Other courts with shorter trial times, Monterey and Colorado Springs for example, had the fewest public defender trials.

To gain further insights, we asked lawyers and judges in interviews about the relationship, if any, between the type of attorney and criminal trial time. The following general observations were made in response; most apply to all nine courts:

- Public defender offices offer a high level of service to indigent defendants.

- Public defender offices are often in a less secure funding posture than prosecutor offices, which may affect the level of case investigation. For example, an inability to locate and produce witnesses leads to shorter trials.
- Public defender trials are the same as or slightly more expeditious than trials by assigned or private counsel.
- The best and worst criminal defense lawyers are in private practice.
- While private counsel tend to generate more motions, their trials will not necessarily be longer.
- There is no real incentive for assigned counsel to have slow trials — the hourly rate differential between trial and nontrial time is minimal.
- Individual lawyers' experience and style are better predictors of trial time than institutional versus private status.

Good camaraderie between the prosecutor and public defender offices was cited as a situation that leads to expeditious trials. In New Jersey, both offices are seen as "good" places to work and the average tenure of employees was rather long.

The temptation is strong somehow to link trial time to the type of representation. If it were proven that trial time could be expedited by furnishing private versus public defense, or the reverse, the solution for at least part of the delay in trials would be practically mechanical. That temptation must be resisted, however. Based upon the data available to us and the observations of both attorneys and judges, it is impossible to conclude with confidence that the type of representation shortens or lengthens trial time. To those who nonetheless would pursue this conclusion, we can only suggest that they commence by attempting to reconcile these facts: (1) public defenders conducted 60% of the trials in Elizabeth, the court with the shortest median trial length, and (2) 56% of the trials in Oakland, the court with the longest median time, involved public defenders.

Public defenders in smaller courts (Monterey, Golden) did not seem to have a better overall relationship with prosecutors than did those in larger courts (Oakland, Jersey City). The lawyers of all these offices tended to make very individual assessments of their opposing counsel. As one observed, "There are some you can trust and some you cannot."

Also, the way the public defender and prosecutor offices assign lawyers to criminal cases was suggested as a possible factor in trial length. Some believe that a "team" system of prosecutors and public defenders assigned to one judge and working together for several months pro-

notes both calendaring and courtroom efficiencies, in particular more continuous trials. (See Chapter 4.) Under this system, the assignments rotate every few months to keep relationships "fresh." The New Jersey and Colorado courts use some type of team assignment system. By comparison, in California courts, felonies are prosecuted and defended using a system that matches an attorney to a case rather than a courtroom. Some California lawyers and judges were very uncomfortable with the idea of a team system, worrying that attorneys might "sacrifice" outcome in one case for a more "important" one to come.

5. Summary of Lawyer Variation

The judges from these nine courts believe, not surprisingly, that trial time varies depending on the preparation, experience, and style of the litigators involved. Variation is believed to be more significant in California, less of a factor in Colorado, and less still in New Jersey. Judges generally do not believe that trial length varies either due to an economic incentive of the attorney (for civil trials) or based upon the type of representation (for criminal trials). Differing judicial attitudes about trial time variation by lawyer suggests the need to further explore the extent to which variation reflects the individual trial management styles of the judges.

E. OTHER VARIABLES

Before concluding our discussion on variation, we want to acknowledge and make brief reference to potentially fruitful areas of research that were beyond the scope of this undertaking. These involve potential relationships between the length of trials and (1) the characteristics of communities served by a court, (2) the local legal community, and (3) differences between states and localities in both substantive and procedural law. While we have not been able to pursue examination of these relationships, we endorse them for further research.

1. General Community Characteristics

Criminal lawyers in Oakland suggested that it takes more time to conduct voir dire of a jury panel that contains a wide spectrum of racial and ethnic background than it does to question a demographically homogeneous panel. A New Jersey prosecutor said that his community was primarily a "conservative" ethnic population of "Italian, Irish, and Jewish" people who are more inclined to "believe anything a police officer might say in court, unlike people in California." Similar perceptions

were echoed throughout the interview process and suggest that characteristics of the community being served by a court may affect trial time.

2. Legal Community Characteristics

Research conducted over the last decade has concluded that the informal attitudes, concerns, and practices of all members of a local legal community are important determinants of case-processing speed. Interviews with judges, lawyers, and court administrators for this project give us every reason to believe that the local legal culture is a determinant of trial time as well. Differences in legal community, such as the size of the bench and bar, can shape the way judges interact with other judges and lawyers and the way lawyers interact with each other. These differences are widely believed to affect the way a trial is conducted by the judge and tried by the lawyer, and thus to affect trial time overall.

3. Applicable Law

The laws, rules, and legal precedents vary somewhat among these three states and such differences, we were advised, are possible contributors to trial time variation. For instance, interviews with judges and lawyers in all three states reveal that the criminal law is believed to be more defense-oriented in California. By way of example, criminal defense is undiscoverable in California. This is not the case in either Colorado or New Jersey. This difference could affect overall trial time, or at least the length of different trial segments. For example, California prosecutors may more often ask for in-trial continuances in order to deal with surprise alibi witnesses or other unforeseen circumstances generated by the defense's evidence at trial that directly impact the substance of the prosecution's case. This might lead to a loss of trial momentum and lengthen overall time in California.

The law of a particular state, or policies of a particular court, might also affect the types of cases proceeding to trial. For example, the charging and plea bargaining policies of a prosecutor, changes in statewide sentencing guidelines or monetary limits on exemplary damages, could encourage or discourage trial, and thereby impact a court's trial time. We do not examine these differences; the results of such an analysis would be speculative with respect to the cases we sampled. However, future research should find this to be a rich area for comparison.

If there is a dominant theme from our findings it is diversity. No two courts try the same types of cases, use the exact same jury selection methods, or evidence a uniform philosophy about trial time. There are, however, a number of policies and techniques that appear to be used in courts with shorter trial times, including identifying and dispensing with matters not truly in dispute, preventing repetitive testimony, imposing time limits on the time allowed for certain segments of trial, and enhancing the continuity of trials in progress. In general, attorneys appear to welcome a court's efforts to expedite trials, as long as such efforts are consistent, predictable, and sufficiently flexible to allow for exceptional circumstances.

Chapter 4

CAN TRIAL LENGTH BE CONTROLLED?

There are techniques and policies, large and small, that appear to expedite the conduct of trials. This chapter is devoted to them. To avoid any suggestion of speed for the sake of speed we also report, when available, interview or survey assessments of these approaches by the trial participants with an emphasis upon levels of satisfaction. These assessments are not reported to prove that facts or circumstances exist. They are, however, relied upon as true and accurate reflections of attitudes held by those judges and lawyers actually responding and can be relied upon, with varying degrees of confidence, to reflect the views of their colleagues.¹

It should be acknowledged that there are both discretionary and non-discretionary constraints on the use of courtroom time in any court, and therefore the extent to which the use of time can be controlled. We have not attempted to focus on this distinction in large part because one court's "non-discretionary" may be another court's "discretionary" for any given item of comparison. It is not at all clear where the line between the discretionary and non-discretionary use of time falls. In fact, seemingly non-discretionary factors, such as the types of cases that reach the courtroom or the laws under which cases are litigated, may be susceptible, at least in part, to some modification. For example, specified categories of cases may be judicially referred to alternative dispute resolution programs or the court may actively encourage waiver of selected procedural steps by stipulation. Rather than attempt to diagnose and compare these factors on a court-by-court or state-by-state basis, we present a discussion that is more time-oriented

¹Survey return rates varied from 21% to 83% by respondent category by court. See Appendix A for exact figures and an explanation of the survey methodology.

and chronological in nature and suggest that each court would benefit by a review of what factors appear to be beyond their power to control and what appears to be amenable to judicial modification.

A. JUDICIAL MANAGEMENT

Our research suggests that all parts of a trial are susceptible to judicial management. Moreover, trial management is consistent with standards endorsed by both judges and attorneys:

From the commencement of litigation to its resolution, whether by trial or settlement, 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. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.²

We have attempted to gauge both judge and attorney attitudes about judicial management in our nine courts by asking them in the survey: (1) whether they think trials in their court are too long or too short; (2) how appropriate they believe it is for judges to control the pace of the trial and, therefore, trial length; and (3) whether the present level of control in their court is appropriate, or if they would like more or less. We can report the following general responses from 57 judges, 131 civil attorneys, and 197 criminal attorneys:

Trial Time Attitudes

- Both judges and lawyers are more likely to report that trial time is too long in those courts where median trial times are longest;
- Both judges and lawyers are more likely to report that trial time is "O.K." in those courts where median trial times are shortest;
- Only criminal defense lawyers reported trials to be too short — and then only small numbers of them in five of the nine courts.

Judge Attitudes

- Judges virtually everywhere overwhelmingly believe it is appropriate for judges to control trial length;

²American Bar Association, *Standards Relating to Court Delay Reduction*, Sec. 2.50 — Caseflow Management and Delay Reduction: General Principle (1985).

- Almost all judges believe the present level of control they are exercising to be at least "appropriate"; those from the courts with longer median trials believe *more* control should be exercised.

Civil Lawyer Attitudes

- A majority of civil attorneys in all nine courts believe it is appropriate for judges to control trial length — those from the courts with the longest median trials reported this belief more strongly;
- Most civil attorneys are satisfied with the level of judicial control in their courts, but the level of satisfaction drops for courts with longer trial times.

Criminal Lawyer Attitudes

- Prosecutors everywhere believe it is appropriate for judges to control trial length; a majority of them would like judges to be exercising more control over trials;
- A majority of criminal defense attorneys in eight of the nine courts believe it is *not* appropriate for judges to control trial length — attorneys from Elizabeth, New Jersey, the court reporting the shortest median criminal trials, see control as appropriate.
- Most criminal defense attorneys are either satisfied with the status quo or would like to see less judicial control over trials, but a significant number of them in the courts with longer criminal trials would like to see more.

To this should be added the report in Chapter 3 that criminal lawyers believe the most important judge characteristic that influences the length of trial is the extent to which the judge manages it. This factor was also mentioned by many civil lawyers.

When lawyers and judges refer to judicial "management" or "control" of a trial, what do they mean? What, in particular, can a judge do to manage a trial? On the attitude survey, judges and lawyers were asked, "In what ways do you [or do the judges] attempt to control the length of trials? When does this occur?"

From a range of options, three primary techniques emerged: (1) preventing repetitive questioning during trial; (2) defining areas of dispute, either at a pretrial conference or immediately before trial; and (3) setting time limits during trial. A few judges mentioned the following additional techniques to control trial length: starting trials promptly, limiting breaks, and carefully scheduling witnesses.

Across and within the three states judicial practices vary widely, supporting the notion that utilization of these techniques is primarily a matter of individual judge discretion. The techniques used, and when they are used, also vary depending upon whether the trial is civil or criminal. Judges are slightly more inclined to "define areas of dispute" before trial in a civil case and "prevent repetitive questioning" during trial in a criminal case. Some reported being "more cautious" in limiting or directing a criminal trial. Also, judges are more inclined to "exert more pressure" and specify trial direction in nonjury trials, which are reported to be "more informal."

While our survey responses elicited information regarding several specific techniques for expediting trials we would like to emphasize the general message at this point. The fact that lawyers from courts with longer trial times seek shorter trials and more judicial management suggests a mandate from the trial participants who are best able to evaluate. It constitutes, in our judgment, endorsement of judicial control and increased judicial monitoring of trial time. This, as noted above, also is supported by recently adopted American Bar Association standards. Clearly, some judges are going to be better managers than others. But with training and information skills can be improved; judges should be encouraged in this endeavor.

B. SPECIFIC TECHNIQUES

In Chapter 3 we discussed major variation measured by overall trial time and the more time-consuming segments of trials without regard to the sequence of trial events. Now we explore step-by-step opportunities in the trial process for expediting trials with references, where appropriate, to particularly pertinent time variations among courts.

The time required for several segments of a trial are fairly small. Both the opportunities to save time and the advantage of doing so may not seem worth the effort to some. But we know from studies of management of the *pretrial* process that saving a few days or weeks in several segments of the *pretrial* process quickly begins to add up to discernible and significant savings of time. Similarly, within the context of a three-day trial, saving 15-30 minutes in each of several fairly short segments of a trial soon could save half a day of trial time. Although we do not dwell on these potentially smaller time savings in the discussion that follows, the potential is worthy of attention as part of any trial management program.

1. Pretrial Motions

There is variation in the amount of time a judge will devote to motions in limine or other matters before trial. In most courtrooms an in-chambers conference is routinely held between the judge and attorneys immediately prior to a civil or criminal trial. The conference is devoted to jury instructions, evidentiary issues, stipulations, or premarking of exhibits. Some judges prefer very short conferences, deferring motions in limine until later in the trial, after evidence pertinent to the issue has been received. Other judges are more willing to expend more pretrial time, especially if a motion in limine has the potential for being dispositive of some or all of the issues. Finally, some judges strongly assert that motions should be subject to a cut-off date prior to trial with no last-minute motions permitted on the day of trial. Even if there are legal guidelines controlling this issue, some judges attempt to impose their own preferences. One Colorado Springs judge remarked, "The attorneys who appear in my court know that I like to hear these [motions] ahead of time."

While we did not attempt to capture the amount of pretrial time devoted to these matters, the strong suggestion in interviews was that a judge's preference in this area affects trial time, but not necessarily the overall expenditure of judicial time. Trials may be shorter if motions are heard pretrial, but the amount of judge time required may be similar. However, resolution of some motions pretrial may lead to more non-trial dispositions. Even if not dispositive, motions heard during trial that could have been heard pretrial impose on juror and witness time and interrupt trial momentum.

2. Jury Selection

Earlier in the report we noted the procedural differences and time variation that exists among the courts for this trial segment. We concluded that neither jury size nor attorney-conducted voir dire should be overlooked in either explaining trial length variation or expediting trials. In New Jersey and Colorado, judicial involvement in and limitations on attorney questioning expedite jury selection, without appearing to compromise trial fairness.

3. Opening Statements

In civil jury trials, attorneys make opening statements in virtually all cases, ranging in time from an average of 13 to 43 minutes for plaintiffs and 12 to 49 minutes for defense statements. (Appendix C) The time for this segment relates directly to a court's overall civil jury trial length. Plaintiffs' lawyers in Jersey City make the shortest opening remarks; Marin County and Oakland plaintiffs' lawyers make the longest.

However, opening-statement variation is relatively small, and aside from occasional lawyer observations that the importance of opening-statements is overrated, the opportunities for improvement here seem limited.

In criminal jury trials, prosecutors made opening remarks in every case, ranging in average time from 10 to 19 minutes. Criminal defense attorneys always made opening remarks in New Jersey and almost always made them in Colorado. In California, the defense waived this presentation in one-third of the trials in Oakland, one-quarter of the trials in Marin County, and one-fifth of the trials in Monterey. The average time for a criminal defense opening statement ranged from 8 to 16 minutes for all courts. Yet, even small variation when repeated trial after trial can utilize valuable court time. Even though the overall range of variation is only about 30 minutes, it should not go unnoticed that a comparison of court averages indicates the longest opening statement is four times longer than the shortest. This may reflect case type and complexity, but many practitioner interviews confirmed that local custom guides lawyer practice in this area.

Other than time limits, no expediting techniques emerge. In some courts time limits are said to be in use occasionally and perceptions of fairness have not suffered as a result. However, time limits on opening statements are not specifically sanctioned by appellate law or rule in any of the three states. Those judges imposing them are primarily doing so on a cooperative basis with lawyers. In lieu of time limits, several judges indicate they will ask lawyers the planned duration of opening statements in order to facilitate arranging witness appearances; this leads to informal commitments to abide by these estimated limits.

4. Presentation of Case

Earlier in this report we concluded that there is a direct relationship between median trial length and the number of witnesses, length of testimony, and the number of exhibits. We also reported that controlling the trial through techniques such as defining areas of dispute, preventing repetitive testimony, and imposing time limits are presently being used by a significant number of judges, but by no means all.

Regarding the scheduling of witnesses, in the New Jersey courts the availability of medical witnesses was cited as the biggest obstacle to the continuity of a civil trial. To address this problem, some judges indicate that they personally will call doctors to work out a time for their testimony. During trial, judges report encouraging or even ordering hearing witnesses out of order while waiting for a doctor to arrive at the courthouse. Some judges were even inclined to order the defense to begin

while waiting for a plaintiff's doctor, but this was considered undesirable by others.

We suggest that the techniques reported are all viable and should be considered for application in every trial in order to reduce unnecessary and repetitive evidence or trial interruptions. As reported earlier, there is a dramatic difference in the time it takes for the presentation of evidence in some courts, particularly Marin County and Oakland. While differences in case types and case complexity may contribute to some time difference, data suggest that local custom may govern practices, needlessly adding time to trials. With a greater focus on trial efficiency and management, these unnecessary time expenditures can be reduced without a loss in the quality of adjudication.

5. Motions for Directed Verdict

A motion for directed verdict in a civil jury trial following the close of the plaintiff's case occurs most frequently in the Colorado courts, 66% of the time compared to 43% in New Jersey and 31% in California. Courts within the same state are quite uniform in this practice, implying that statewide law and/or custom control. The directed verdict/dismissal rate for civil jury trials is insignificant in all three states (about 4%). The average time for this motion ranges between six and 17 minutes, except for Paterson, where they take an average of 43 minutes, with several extending from one to two hours.

Motions for directed verdict following close of the prosecution's case in criminal trials are even more frequent in Colorado, occurring in 92% of the jury trials. This motion occurred in about half of the New Jersey trials, but only in 19% of the California trials. In actual time, they accounted for two to 16 minutes on average.

Second motions for directed verdicts following the close of all evidence are much less frequent in all courts and take only a few minutes of the court's time. Again, for both civil and criminal trials, Colorado attorneys are more likely and California attorneys are least likely to make a second motion for directed verdict.

Why these motions are so much more frequent in Colorado cannot be answered at this point. This is not a matter of great concern in this research, however, since these motions are quickly made and decided. Although change would offer comparatively little in expediting trials, this issue is worthy of investigation.

6. Rebuttal

California attorneys are most likely to offer rebuttal testimony in either a civil or criminal case, but rebuttal occurs in fewer than half of all trials, takes less than 30 minutes in all courts, and in most courts it takes

less than 10 minutes. This offers little opportunity for saving trial time. The only and very dramatic exception to this general observation is in Marin County where in criminal trials rebuttal evidence is offered in a majority of cases and consumes far more time than in trials elsewhere. This may be another example of the more highly-charged adversarial nature of criminal litigation in Marin County.

7. Closing Statements

Closing statements are offered in virtually all civil and criminal jury trials. In both Colorado and California, the plaintiff or prosecutor's closing statement is in two parts, sandwiched around the defense closing statement. In New Jersey, the defense offers a closing statement, followed by the plaintiff/prosecutor.

In both civil and criminal cases, closing statements by the plaintiff/prosecutor or defense lawyer each tend to take about 30 minutes in both Colorado and New Jersey. In California they take more time, from 40 to 50 minutes in Monterey to a range of 60 to 110 minutes in Marin County and Oakland. The fact that closing statements in Monterey, although the shortest among the California courts, are longer than in New Jersey or Colorado suggests that more elaborate closing statements are a custom in California. Trials in Monterey are not more complex than in Denver, and yet 10 to 20 additional minutes are used for closing statements in both civil and criminal jury trials in Monterey.

The interstate difference probably is attributable to the fact that imposition of reasonable time limits on closing argument are not unusual in Colorado and New Jersey where this matter is within the trial judge's discretion. Time limits require attorneys to focus their comments. There were no reports of unfairness by judges or attorneys in those two states regarding this practice. There appears to be an opportunity to explore time-saving in this segment in California. Elimination of the plaintiff/prosecutor's "second" closing statement in Colorado and California may reduce the potential for repetition in this portion of the trial.

8. Selecting Jury Instructions

The time expended selecting jury instructions appears to vary greatly among the courts and furnishes evidence that trial time for this portion of a trial can profitably be streamlined. The average time for selecting civil jury instructions ranges from 12 minutes in Jersey City to almost three hours in Oakland. (Appendix C) In New Jersey the range is 12 to 23 minutes; in Colorado and California the range is one to three hours. Average time consumed for selecting instructions in a criminal

trial ranges from six to 20 minutes in New Jersey, 30 minutes to two hours in California, and is about an hour in the Colorado courts.

In both California and Colorado, almost all trials reported time for this segment. In New Jersey, trial time for selecting instructions is more frequent in civil cases than in criminal, but in no court did more than two-thirds of the trials report any amount of time for selecting jury instructions; in only about one-fourth of the Elizabeth criminal trials was courtroom time spent on this activity. While the case types tried in New Jersey are arguably less "complex" or serious, the dramatic time difference between that state and the others led us to search for other explanations.

We found that all three states have pattern jury instructions available for use by the trial courts. Attorneys may also submit special instructions for consideration. The major time difference seems to stem from the requirement in both Colorado and New Jersey that proposed jury instructions be submitted to the court prior to the start of the trial. However, enforcement of this rule is within the discretion of each judge; in Colorado the rule is reported to be widely unenforced.

Interviews revealed that there is an issue of trial strategy, and perhaps fairness, associated with the practice of submitting jury instructions to the court before the trial. While lawyers in New Jersey did not complain, criminal defense lawyers in both Colorado and California oppose this practice. They do not want to reveal their theory of defense to *either* the prosecutor *or* the judge prior to trial. (It should be remembered that there is no criminal defense case discovery in California; there is some discovery in Colorado and full discovery in New Jersey.)

The time impact of the New Jersey practice is substantial. Both civil and criminal lawyers and some judges indicate that there is not usually much discussion of instructions; the standard instructions are customarily offered and given. The situation in both Colorado and California appears to be very different.

9. Charging the Jury

Charging the jury is a purely judicial function. Colorado judges do it in half the time that it takes judges in New Jersey and California. This trial segment invariably follows a set "script" developed for statewide use. We are unable to identify the factors that contribute to shorter jury charges in Colorado.

As an aside, in Colorado the jury charge is rendered prior to closing statements. This practice is followed occasionally in the other two states. Several judges expressed the view that this streamlines the closing statements by focusing attorney remarks and enabling attorneys to comment on the charge during their final statements.

10. Jury Deliberation

Since courtroom time is not affected, this segment of a trial has generally been omitted from our consideration of trial time, but we did measure the duration of jury deliberations. Median jury deliberation time was very consistent within New Jersey and Colorado. For a civil or criminal trial, median time ranged from 1¼ to 2½ hours in New Jersey, and from 2½ to 3 in Colorado. California times, mirroring all other trial segments, were more diverse, ranging from 2 to 4¼ hours for a civil trial and from 2¾ to 5½ hours for a criminal trial. Just as for the other segments, there appears to be a connection between a court's overall trial time and the jury deliberation time. It is not known whether this is due to case complexity or other local court factors, whether trial presentation time impacts juror expectations of how long they are to deliberate, or whether other explanations exist.

Our interviews revealed that almost all judges in New Jersey and Colorado indicate their availability to begin another trial as soon as a jury commences deliberating. In California, some judges were hesitant to do this because of the possible need for repeat instructions or other attention to a deliberating jury. While this practice does not affect trial time, it does affect overall calendar productivity.

California trial court administrators confirm that there are "unwritten rules" in this area. Judges tend to seek a respite from tension between trials; administrators try to push them back into the courtroom immediately.

Median jury deliberation time in a civil or criminal trial in California ranges between two and five-plus hours. Multiplied by the number of trials heard each year in the court, this time lost to trying cases assumes great proportions. While the end of the courtroom portion of a jury trial is a time for the judge to feel some relief, especially when the trial has been a protracted one, delaying the beginning of the next scheduled case is an expensive preference. Many trials do not warrant judicial "depressurization" before commencing another trial.

C. GENERAL TECHNIQUES

1. Pretrial Atmosphere

For more than a decade, empirical research in both federal and state courts has provided information about case processing time across a broad spectrum of courts, has led to revision of conventional wisdom about the causes of delay, and has suggested remedies that have stimulated a number of efforts to address problems of court delay.

While this study does not focus on the pretrial expeditiousness of these nine courts, this important area should not be overlooked. A well-known civil defense attorney was interviewed in California for this project to explore his views of trial time in both Oakland and Marin County. He suggested that by far the most important factor contributing to lengthy trial segments and trials in these courts is lack of management of the case in the *pretrial* period. In his opinion a pretrial period without strong judicial direction and judges who are willing to make tough decisions results in endless, expensive discovery of nonissues and a lack of real settlement negotiations. Under these circumstances, he believes that both plaintiff and defendant commence trial with false hopes and the trial is burdened with many time-consuming issues that should have been resolved prior to trial.

These comments led us to explore, in general, pretrial litigation management in the three states participating in this research. The initial question was whether each state's dedication to improved case processing could be assessed. We found one measure in a recent national survey conducted by the Conference of State Court Administrators.³ The survey reveals that the New Jersey judiciary believes that the problem of delay in their courts is "very serious," by comparison to both Colorado and California, where it was called "moderately serious." The New Jersey judiciary has administratively adopted a statewide delay reduction plan. Colorado reports the adoption of preliminary time standards that are being tested in four trial courts. California had no statewide plan at the time of this study.⁴

In general, the New Jersey judiciary has a reputation for expediting case processing. The New Jersey Administrative Office of the Courts is very involved in promoting efficiency. Almost without exception, judges, administrators, and lawyers interviewed in New Jersey at some point made mention of the judiciary's goals of annual "calendar clearance" (defined as each court disposing at least as many cases as are filed each year) and referred to a strong statewide interest in favorable statistics as a reflection of judicial efficiency. By comparison, while judicial administrators and judges in Colorado and California are no doubt very interested in court efficiency, this interest has not, until recently, taken the form of local or statewide programs to reduce court delay. We cannot statistically compare the pretrial and caseload practices of a court and state with our trial time data. We can, however, state that the "climate"

³Howard P. Schwartz, "Delay Reduction Efforts" (March 1987).

⁴The California legislature enacted legislation that became effective January 1, 1987 to reduce court delay. Pursuant to that statute the California Judicial Council adopted interim statewide time processing standards effective July 1, 1987 to June 30, 1988. The American Bar Association's national standards will become effective July 1, 1991.

in New Jersey is one that encourages case disposition, which inclines us to conclude that it contributes to shorter trial times.

We asked ourselves, "Which trial management techniques (other than judge-controlled *voir dire*) are New Jersey judges using that California and Colorado judges are not using that explains New Jersey's shorter trial times?" The answer is that there are no readily discernible specific techniques that distinguish New Jersey's approach to trials. The principal distinguishing factor seems to be the general emphasis on delay reduction at both the state and local level and the attitude toward expeditious handling of disputes that this emphasis seems to create — which extends into the trial itself even if special management techniques are not employed by the trial judge.

We also return to the judges' opinions expressed in our attitude survey about how much of the variation in trial time is attributable to the trial attorneys. (See Chapter 3, sec. D) New Jersey's judges indicated the lowest level of belief that different attorneys affect trial time; California's judges saw attorney differences having a great influence on trial time. When court control of trials and the litigation process generally is established and recognized, differences among attorneys will have less perceived and actual impact on trial time. When judges are less management oriented in their attitude toward litigation generally and trials specifically, attorney differences will be more apparent and in fact have a greater impact on trial time. The differences in the responses to this question are most consistent with a pro-management perspective among judges in New Jersey. This perspective seems to relate directly to the length of trials.

We cannot document statistically this belief that overall attention to case processing time affects trial time, but we have reached two conclusions: (1) there is a strong indication apparent from both the data and our interviews that attention to total case processing time and case management by judges reduces trial as well as pretrial time, and (2) the possibility of this relationship is important enough to warrant further testing and study of the hypotheses.

2. Trial Continuity and Length of Trial Day

Jury trials exhibit a higher degree of continuity than do nonjury trials. In most courts jury trials are given priority over other matters. Once they start, they continue until they are completed. We see the highest degree of continuity in civil and criminal jury trials in Colorado. Oakland and Marin County have the lowest.

Criminal nonjury trials are relatively rare in the courts we studied, but from our analysis it is clear that in most courts criminal nonjury trials are given high priority. They tend to be short — many last only one

day. Civil nonjury trials are fitted into court schedules as time becomes available for them. They are the least continuous type of trial.

Interview and questionnaire responses indicate that trial interruptions, either through nonsequential or short trial days, tend to lengthen the total time needed to complete a trial. We tested this belief statistically, asking whether there is a relationship between ability to sustain trial momentum and overall trial length.

a. *Day-to-Day Momentum*

There are two primary patterns for scheduling trial time in our three states. One method is to begin most trials early in the week, start early each morning, continue through late afternoon, and reserve Fridays for miscellaneous matters such as civil motions and criminal sentencing. The second method is to schedule and conduct trials every day, fitting miscellaneous matters in early in the morning and late in the afternoon.

There are advantages and disadvantages to both these methods of scheduling. For example, trials in the Oakland court are scheduled according to the first method, with Fridays being reserved for non-trial matters. The court in Monterey uses this same method for scheduling, but most trials begun on Monday are over by Thursday afternoon, so setting aside Friday for other proceedings does not usually disrupt trials. By contrast, most trials in Oakland last longer than a week, so by setting Friday aside, when the trial reconvenes on a Monday the jury must be reminded not only of events on the preceding Thursday, but events earlier in the week. This requires repetition and consumes time. Further, over a three-day break lawyers can think of new questions, new lines of questioning, or new witnesses to call, all of which tends to extend a trial. On the other hand, during the sample period the Marin County court was fitting short hearings around trial time each day, yielding short trial days, but Fridays were available for trial. (They have subsequently changed their practice. All motions now are heard by two law and motion judges; other judges hear trials all day, every day.) Both methods have problems, both can work. It appears that the practice chosen should be matched to the court after determining court size, typical trial length, size of motion docket, and so on.

To assess judge and attorney views about trial continuity, they were asked on the attitude survey if interruptions were "a problem" for jury or nonjury trials in their court. A great majority of judges in Jersey City, Colorado Springs, and Denver responded yes. In contrast, a significant number of judges from six of the nine courts reported that interruptions in civil jury trials "help" the overall caseload. This was not the view of

the civil lawyers, however, who responded in great numbers that trial interruptions are a problem — more than 80% of responding civil lawyers in Oakland, Marin County, and Denver. Most lawyers in the courts with the shortest median trials also held this view. Protecting the day-to-day momentum of a trial in progress is widely believed by all trial participants to enhance prospects for a more expeditious trial. Our data corroborate this belief.

All of this points to a connection between trial continuity and trial length. Colorado and New Jersey trials were more continuous day-to-day than California trials; we also know they are shorter. This led to consideration of whether the system of trial assignment bears on trial continuity.

All of the courts we sampled use a master calendar system of trial assignment except for individual calendars in Denver and Colorado Springs (for both civil and criminal cases) and Jersey City and Paterson (for criminal cases). On the surface, master calendar courts should be better able to provide trial continuity, since a central judge and calendaring department can protect those courts with trials in progress. However, the individual calendar courts in Colorado use a “team system” to enhance case continuity. The system is reported to be very successful in Colorado Springs and Golden, less so in Denver. Very generally, under this system judges are “teamed” to protect the continuity of trials in progress (usually by courtroom proximity) and back each other up when possible. If the team member is unavailable, the court administrator is contacted to find an available judge. In Golden, where the court uses a master calendar, the “team” consists of all eight district court judges, and assistance is sought from the limited jurisdiction court judges when necessary. It appears that the trial assignment system does not necessarily bear any relationship to continuity; it is possible to protect continuity under either a master or individual system.

b. *Length of Trial Day*

Shorter trial days also were examined to determine whether they may have the effect of fragmenting trial continuity and reducing momentum as well. We began by checking perceptions of the length of trial days. Most judges and attorneys at every court reported that the amount of time available for trial is close to or exceeds five hours per day. To check this estimate against actual time we divided the total length of each trial by the number of days actually used, excluding jury deliberations. (Table 25)

TABLE 25
How Long Is a Jury Trial Day in Each Court?^a

Court	Estimated Length of Trial Day ^b			Actual Average Trial Day ^c	
	Judge	Attorney		Civil	Criminal
		Civil	Criminal		
California					
Oakland	4:54	4:55	4:48	3:45	3:10
Marin County	5:12	5:17	4:17	3:39	3:19
Monterey	4:42	5:45	5:51	4:10	3:45
COLORADO					
Denver	4:56	6:18	5:12	4:26	3:31
Colorado Springs	5:08	6:42	6:22	4:09	3:45
Golden	5:02	6:18	6:41	4:26	4:00
NEW JERSEY					
Jersey City	3:36	5:05	5:47	2:53	2:41
Paterson	4:42	5:13	5:57	2:48	2:51
Elizabeth	5:30	6:01	5:54	3:29	3:01

^a Average hours:mins.

^b From Attitude Survey (Appendix A).

^c Table may understate actual average trial-day length since the first and last days of trial, which may each have been less than a full day long, were included in the calculations as if they were full days. This understatement will be most pronounced in those courts having shorter trials and less pronounced in courts having longer trials.

Few of the average trial day figures come close to the estimated length of the trial day reported by judges and attorneys. Both attorneys and judges overestimated the actual length of the trial day; attorney overestimates in seven of the nine courts exceeded those of the judges' overestimates.

The courts in Colorado come the closest to meeting the estimated five-hour trial day. Judges in Colorado report that their day begins by 8:30 a.m., they break for lunch at noon, resume at 1:30, and continue until after 5:00. In Colorado the court takes a 15-to-20 minute break every two hours for the benefit of the court reporter. This usually works out to one break in the morning and one in the afternoon. Occasionally a judge is able to arrange a trial so that some portion can continue during the reporter's break (hearing motions related to the case in chambers, discussing jury instructions, etc.).

The actual average trial day was shortest in New Jersey. Judges there reported that, in general, they begin their day around 9:00, take one hour for lunch, and continue until 4:00. There are no regular breaks scheduled, but some informal breaks occur during the course of the day

due to matters unrelated to the ongoing trial or necessitated in the interest of justice, as when a witness is delayed. If judges in New Jersey followed the same time schedule that Colorado judges do, they could probably add at least an hour to the length of their average trial day, thereby reducing the number of days needed for each trial.

It should not go unnoticed that the courts having the shortest trial times (New Jersey) also have the shortest average trial day. We are not inclined to find this inverse relationship provocative. Instead, we believe it reflects data limitations. As noted on Table 25, data encoding and computer programming prevented crediting courts in which the first or last day of trial were only partial days. For purposes of our calculations we were compelled to treat every day on which trial was conducted as a full day, even if less than a full day was consumed. This results in an understatement of the average-length-of-trial-day calculation in all courts, but particularly in New Jersey where trials take fewer days to complete.

In an attempt to overcome and quantify the extent of our data limitations, we individually examined civil trials completed in Paterson, New Jersey and Marin County, California. Table 25 indicates that the court in Paterson had the shortest actual average trial day: 2 hours and 48 minutes. A manual review of 34 of Paterson's civil jury trials showed that the average trial in that court was conducted over the course of four different days. If the trial time for the first and last days are excluded (since a trial could have begun during an afternoon, or finished before the end of the final trial day), the typical Paterson civil trial averaged 3 hours and 35 minutes per day. This is up significantly from the 2 hours and 48 minutes reported in Table 25, but remains considerably under five hours. Looked at another way, we discovered that, for the 34 trials examined, 15% of all the trial days met or exceeded the five-hour estimate (four days exceeded six trial hours), while 43% of the trial days lasted three hours or less.

In Table 25, the Marin County court is shown to have a civil jury trial day average length of 3 hours and 39 minutes. A manual review of 17 completed jury trials indicates that a typical trial spread over more than seven days. Their average trial day was 4 hours and 20 minutes long, after excluding first and last trial days. For these 17 trials, 17% of the trial days met or exceeded the five-hour estimate; 30% lasted three hours or less.

This information tells us that all courts might be able to improve individual trial time, and therefore overall calendar productivity, by utilizing judge time in a way that maximizes the number of hours per day in an ongoing trial. For instance, many judges, including those in New Jersey, reported that at the beginning and end of each day they like to take

time to organize the next day's events and that this time investment is well worth the intrusion into time that could otherwise be spent in trial. We have no basis upon which to evaluate this practice. It appears to be a useful management technique, but suspect it is best when used sparingly so that trial day lengths are not unduly shortened.

Finally, some judges and lawyers expressed the view that a five-hour day burdens jurors. Among the reasons frequently advanced are that jurors lose their concentration and desire shorter days in order to avoid rush-hour traffic. We question this view for two reasons. The first is juror responses to an exit survey conducted in Marin County, which revealed a juror preference for longer and fewer trial days. The second is the opinion frequently expressed in interviews that the practice of shorter trial days developed to suit the preference of the lawyers and the demand of crowded court calendars and not in response to juror preference.

Our data and other information lead to the conclusion that consecutive and longer trial days lead to the ability to conduct trials in fewer total hours.

3. Measuring Trial Time

A decade ago courts did not know how long it took their cases to proceed from initiation to final disposition; most did not even perceive the need for this information. Today, most courts do not know the length of their trials.⁵

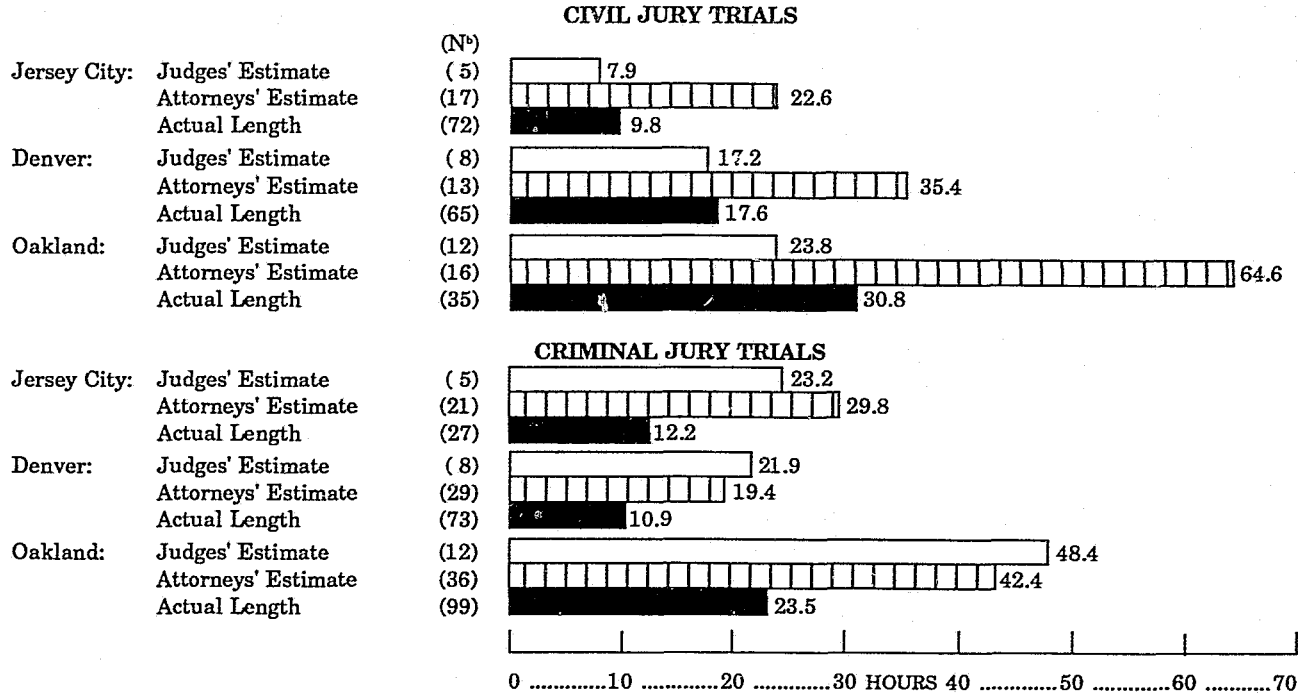
Judges and lawyers were asked to estimate the length of their court's trials in the attitude survey conducted early in this project. Their estimates have been compared to actual median trial time for civil and criminal trials. As shown in Figure 7, attorneys overall, and some judges, are not attuned to actual trial times in their court. Their sense of the amount of time consumed is greatly exaggerated.

Speculation about why lawyers or judges were good or bad estimators is beyond the scope of this report. The implications of bad estimates are worth pondering, however. In particular, we must ask whether a lawyer's expectation that a trial will be much longer than it actually is *contributes* to longer trials.

As an interesting comparison, in some of the trials tracked, attorneys estimated trial time just prior to trial, which was recorded as a part of our data gathering. Despite the fact that attorney perceptions of av-

⁵There is an overstatement and anomaly in this assertion. Most jury clerks know how long jury trials take, either through statistics they keep or a good "feel," but often this information does not get to the court's administrator or presiding or chief judge in a management report. In none of the nine courts participating in this project were the data reported here — even the overall length of trials — known at the start of our study.

FIGURE 7
Trial Time Estimates and Actual Lengths*



* Compare estimate averages from attitude survey to median trial time. Lengths do not include day-of-trial pretrial motions or jury deliberation.

^b N=Number of judges responding, number of attorneys responding, or number of trials used to calculate the median.

erage trial length for "generic" cases are longer than reality, attorneys' estimates in the specific trials we *actually sampled* were fairly good. Whether over or under, most of the estimates were within 20% of actual trial time. This compares favorably to the "generic trial" estimating, where attorneys normally gave estimates that were twice as long as the actual trials in our samples.

There is a wealth of information that becomes available when trial time is measured. We suggest that every court could profit from regularly collecting trial time information, by case type, and noting at least the most pertinent case characteristic information, for instance the number of witnesses and exhibits. This should not be a burdensome task. Among the many lessons from this research is that trial time data are relatively easy to collect. Courtroom clerks, who mainly completed our data forms, advised that they have sufficient time during the course of a trial both to track time and event data as well as to capture case characteristic information. (See forms in Appendix A.)

This information is useful for both immediate and long-term purposes. In the short run it will tell judges *and* lawyers what is "typical." Particularly in larger courts, each judge speculates about the average duration of his or her trials, usually settling for a rough approximation with many qualifications. They are even less familiar with trial time of their colleagues. By tracking each trial, or a sample, this information can be verified and made specific. This detailed information can lead to the development of a courtwide expectation that in a particular type of case with a particular set of issues, trial can be expected to conclude in a particular amount of time.

This information can be used to establish weighted schemes to schedule trial dates. Rather than scheduling the same number of cases for trial every day, courts can develop case weights — a product liability case would have a higher weight than a motor vehicle tort, and a homicide a higher weight than a theft — and schedule a certain number of total case weighting points for trial each day. This weighting scheme could also include an indication of the likelihood that the case would not be disposed before trial. Courts already use this type of system in differentiating between jury and nonjury trials. This information could directly impact a court's ability to maintain firm trial dates, recognized as a cornerstone of any delay reduction program.

CONCLUSION

The time has arrived for judicial management of all phases of trial. Judicial control is the single factor that distinguishes courts in which similar cases are tried more expeditiously than elsewhere. Attorneys desire, and may in the foreseeable future demand, more judicial control of the trial process. The following statement is in our judgment a fair reflection of current citizen expectation:

Nobody wants summary justice. That, however, need not be the alternative. The alternative should be reasonable dispatch, without dilatory tactics and self-indulgence by lawyers, and with judges who are able — and want to — keep things moving. Why is that too much to ask for? It ought to be taken for granted.¹

Our endorsement of trial management by judges rests first upon the demonstrated effectiveness of judicial management in expediting case processing at both the pretrial and trial stages and the fact that all steps in the trial process are amenable to some judicial control. The conclusion is further supported by the favorable effect upon time consumed in trial when courts protect trial continuity; define areas of dispute in advance of the trial; conduct the examination of prospective jurors; set reasonable time limits; and prohibit evidence that is repetitive, cumulative, unnecessary, or needlessly lengthy. And greater judicial control does not appear in fact or perception to impair the fairness of trials.

If attorneys or the judiciary spurn greater judicial management of trials they must defend the following conditions and facts confirmed for the first time by this research:

¹Edwin Newman, "The Law's Delay," *San Francisco Chronicle*, June 3, 1987.

- The length of trials varies from state to state and from court to court within the same state, with trials in similar civil or criminal cases taking three times as long in some courts.
- These variations become more exaggerated from court to court as the length of trial increases.
- While it is true that courts with more trials involving serious crimes or substantial civil claims have longer median trial times, these same courts take longer to try every kind of case whether simple or complex.
- In the courts with longer trials there is generally more of everything in every type of case (examination of jurors, number of witnesses, length of testimony, number of exhibits) than in courts which try the same type of case in much less time.
- In jury selection, the area of greatest actual and potential judicial involvement, trial time expended by courts with high levels of judge control is one-eighth to one-half the time consumed by courts in which attorneys control jury selection.

Even if judicial policymakers do not embrace judicial trial management, we endorse expanded knowledge regarding trials. It is not difficult to measure and tabulate the length and other characteristics of trials. It should not be difficult to measure the impact of increased judicial involvement or other attempts to expedite unduly long trials. With such information everyone concerned with assuring and improving the delivery of justice can better assess improvement of the trial process and begin to answer the questions that remain unanswered.

APPENDICES

These Appendices are a summary of the most pertinent methodology and data used in the project. A complete set of Appendices is available from the Publications Service of the National Center for State Courts.

Appendix A
METHODOLOGY AND
DATA COLLECTION FORMS

Methodology for the On Trial Report

1. Site Selection

Nine courts were selected for study, three each in three different states. A number of factors were considered when identifying the states and the courts within each state to be studied. We wanted to select general jurisdiction courts that would provide variation in trial utilization (as indicated by preliminary data), trial length, overall case processing times, and trial procedures and practices. In addition, we thought that the states selected should be geographically dispersed and that the courts selected within each should include a mixture of types of communities such as major cities, surrounding areas, and rural centers. At the same time it was necessary to exclude courts that were expected to hold fewer than 100 civil and 100 criminal trials per year.

Early in the project schedule, teams of project staff visited each court to learn more about calendaring and trial procedures in place and the approximate number of cases filed and trials conducted for a recent year. This information is contained in Tables AA and BB.

2. Sources of Data

The project was designed to collect quantitative data from two primary sources. One set of data was to be collected in the courtroom from ongoing trials. The data collector would "watch the clock", recording when each segment of the trial started and stopped, and would supply additional information, such as the type of case and the number and types of witnesses called for each trial observed. An additional set of data was to be collected from trial transcripts prepared for appellate proceedings.

After the initial site visits were made, it became clear that it would be possible to collect data from most, if not all, ongoing trials in each site during the data collection period. At the same time, our initial investigation of trial transcripts indicated that data collected from transcripts would be biased in favor of more complex cases, that the transcripts were not complete, and that estimates of trial length based on the transcripts would contain much error. Since we believed that we would be able to obtain sufficient high quality information from ongoing trials at each study site, we concentrated on collecting and analyzing this first-hand data and did not collect the second-hand, transcript-based data.

TABLE AA
Preliminary Civil Case Information on Study Courts (1985)

	# filed	# dispo	# trials	# jury	# nonjury	# judges	calendar
CALIFORNIA							
Oakland	13,934	7,962	968	N/A	N/A	6 + PJ	Master
Marin Co.	3,305	1,991	256	N/A	N/A	6 + comm ^a	Master
Monterey	3,863	2,526	352	N/A	N/A	7 ^a	Master
COLORADO							
Denver	14,657	12,174	498	184	314	8	Individual
Colo Springs	3,911	3,435	146	64	82	10 ^a	Individual
Golden	3,710	3,167	182	48	134	8 ^a	Master
NEW JERSEY							
Jersey City	4,639	4,903	229	147	82	5	Master
Paterson	4,882	5,016	129	114	15	5(+3 vacant)	Master
Elizabeth	4,140	4,105	183	102	81	8	Master

N/A = Not available.

^a Judges hear both civil and criminal cases in this court. 6+commissioner in Marin County, 7 in Monterey, 10 in Colorado Springs, 8 in Golden.

Sources of information: California caseload and trial data were taken from the *1986 Judicial Council Report*. New Jersey caseload and trial data for FY 1985 were supplied by the Administrative Office of the Courts. All other information was supplied by the administrator of each court.

TABLE BB
Preliminary Criminal Case Information on Study Courts (1985)

	# filed	# dispo	# trials	# jury	# nonjury	# judges	calendar
CALIFORNIA							
Oakland	4,143	3,370	264	168	96	11	Master
Marin Co.	350	242	69	39	30	6 + comm ^a	Master
Monterey	1,215	1,290	173	51	122	7 ^a	Master
COLORADO							
Denver	2,834	3,066	168	162	6	6	Individual
Cojo Springs	3,009 ^c	3,435	146	64	16	10 ^a	Individual
Golden	1,340	1,107	40	38	2	8 ^a	Master
NEW JERSEY							
Jersey City	2,383	2,456	88	75	13	7	Individual
Paterson	1,758	1,800	260	253	7	7	Individual
Elizabeth	2,324	2,223	214	212	2	6 + PJ	Master

N/A = Not available.

^a Judges hear both civil and criminal cases in this court. 6+commissioner in Marin County, 7 in Monterey, 10 in Colorado Springs, 8 in Golden.

^b Includes preliminary hearings.

Sources of information: California caseload and trial data were taken from the *1986 Judicial Council Report*. New Jersey caseload and trial data for FY 1985 were supplied by the Administrative Office of the Courts. All other information was supplied by the administrator of each court.

The attitude surveys, described below, were substituted for the trial transcript data collection specified in the proposal.

a. *Data from Ongoing Trials.* Two forms were designed for collecting data from ongoing civil and criminal trials. (See copies of the forms at the end of this Appendix.) The data gathering effort was introduced to courtroom clerks (judges in two Colorado courts) in an initial orientation meeting. At this time, the data gatherers were trained in the use of the form. A brief description of the project's methods and goals was offered for comment. In many instances, some good suggestions about the form were made by the clerks, particularly having to do with quality control.

Data from ongoing trials were collected for approximately ten months at each court, from March 1986 through January 1987. A contact person at each court collected the completed forms and sent them to project staff periodically. Once received, each form was reviewed, the length of each portion of the trial was calculated, and all the information was entered into a computer for analysis.

When data collection was nearly complete, we asked the administration of each court to send us a list of all qualifying civil and criminal cases that had gone to trial during our data collection period. We matched the contents of each list to the completed forms we received. Table CC indicates the extent of our coverage for each court.

In Colorado, the low coverage rate is primarily due to the poor rate achieved for nonjury trials. Apparently, many of the judges forgot that nonjury trials were to be included in the sample. In addition, there were judges from each of the Colorado courts who chose not to participate in the project. We have not been able to separate out their trials in calculating the Colorado coverage rate, so it is too low. We have no information that indicates that trials held, but not reported, were missed on anything but a random basis.

b. *Attitude Surveys.* Three separate surveys were designed: one each for civil attorneys, criminal attorneys, and judges. (A copy of the survey to judges is provided at the end of this Appendix. The attorney surveys were virtually identical.) The survey had two major purposes:

- to provide estimates by members of the local legal community of the lengths of each trial segment before data collection began in each court; and
- to give an initial indication of the attitudes of the legal community toward the existing trial length, the reasons for trial length,

TABLE CC
Trial Coverage Rate and Number of Trials Conducted by Non-Regular Judges by Court

	Oakland	Marin Co.	Monterey	Denver	Colorado Springs	Golden	Jersey City	Paterson	Elizabeth
1. # Regular Judges hearing civil and/or criminal cases	23	6	7	16	9	6	14	12	14
2. # Senior, pro tem, or visiting judges	6	4	2	0	2	0	0	0	0
3. # Trials in sample heard by judges in 2, above ...	7	9	3	0	2	0	0	0	0
4 a. # civil trials in sample ...	48/26 ^a	26/23	36/14	84/99	34/26	15/9	126/22	70/12	134/23
b. # civil trials held but not reported ...	8	0/0	0/20	72/221 ^b	28/63 ^b	31/128 ^b	unknown	79	unknown
c. civil coverage rate ...	90%	100%	71%	42%	40%	13%	unknown	51%	unknown
5 a. # criminal trials in sample ...	148/12	28/2	53/19	83/2	62/8	23/2	34/3	64/0	82/1
b. # criminal trials held but not reported ...	32	0/0	1/12	73/12	51/12	58/6	27/3	15	unknown
c. criminal coverage rate	83%	100%	85%	50%	53%	28%	55%	81%	unknown

^a Figures reported ___/___ are data for jury/nonjury trials. They are reported separately where available.

^b Many of these trials were held by judges not participating in the project. All judges participated in the other two states.

and their attitudes towards judicial control over the length of trials.

Surveys were mailed to all judges, and a sample of civil plaintiffs' and civil defense attorneys, criminal prosecutors, public defenders, and private criminal defense attorneys at each court. We received completed surveys from 57 judges (50% return rate), 131 civil attorneys (38%), and 197 criminal attorneys (47%).

c. *Site Interviews.* Project staff interviewed the presiding judge and a representative of the court administrative staff during an initial site visit to acquaint them with the project, and get their estimates of trial length and their perceptions about the pace of trials. Subsequently, project staff returned to each court several times to interview litigation participants on topics such as local jury and evidentiary practices and to gather opinions about trial length and judicial management.

All interviewers worked from the same set of questions (Table DD). In all courts, the following number of interviews were conducted: the presiding judge, four to six additional judges, three to five prosecutors, three to five public defenders, one or two private criminal defense lawyers, two or three civil plaintiff's lawyers, two or three civil defense lawyers, the trial court administrator, and the civil and criminal calendar clerks. The assistant trial court administrator, jury coordinator and other staff were interviewed in some courts if necessary to understand the court's operations.

d. *Literature Review.* A title search of approximately 1,300 articles, reports and other publications was undertaken, primarily from a list generated from the Legaltrac database, which is an online equivalent of the Current Law Index and the Legal Resource Index. A select bibliography is included with the report.

TABLE DD
Interview Topics and Sample Questions

- | | |
|-------------------------------|---|
| 1. <i>ELAPSED TIME</i> | <ul style="list-style-type: none"> a. Is any trial stage conducted at a pace that is too slow or fast to be fair? b. What are the reasons for comparative speed or delays in this jurisdiction? c. Are there benefits from speed or delay? |
| 2. <i>LOCAL PRACTICES</i> | <ul style="list-style-type: none"> a. Are there local practices that speed or slow conduct trials? |
| 3. <i>EXPEDITING TRIALS</i> | <ul style="list-style-type: none"> a. Are there stages that could be expedited? b. Have any stages been expedited by innovative techniques? c. What techniques should be considered to expedite? |
| 4. <i>JUDICIAL MANAGEMENT</i> | <ul style="list-style-type: none"> a. Should there be more or less management of trials by the judge? b. Is competence of lawyers or judges a barrier to more judicial management? c. What incentives or disincentives are there for more judicial management? |
| 5. <i>PRETRIAL PRACTICES</i> | <ul style="list-style-type: none"> a. Are there any pretrial practices that speed or delay the conduct of trials (examples: pre-trial conferences to speed trial time)? b. If so, which ones and how? |
| 6. <i>NATURE OF CASE</i> | <ul style="list-style-type: none"> a. Are there any case characteristics that speed or slow trials (examples: substantive law involved, multiple parties, complex facts)? b. If so, which ones and how? |
| 7. <i>JURIES</i> | <ul style="list-style-type: none"> a. Is the speed of trial a factor in selecting a bench versus jury trial? b. What are the voir dire practices and do they speed (or slow) trial progress? c. Is background information re prospective jurors available prior to voir dire. d. Would the speed of trial be affected if juries were larger or smaller? |
| 8. <i>TRIAL EVENTS</i> | <ul style="list-style-type: none"> a. Is the pace of trials affected on a regular basis by any specific trial events (examples: daily commencement time, lawyer estimates of length, last minute pretrial motions, or trial interruptions)? b. If so, please explain. |
| 9. <i>EVIDENCE</i> | <ul style="list-style-type: none"> a. Is the pace of trials affected on a regular basis by practices regarding evidence (examples: stipulations, expert testimony, or limitations on certain types of evidence)? b. If so, please explain. |
| 10. <i>ATTORNEYS</i> | <ul style="list-style-type: none"> a. Is attorney competence a factor that speeds or delays trials? b. Are economic incentives or disincentives for attorneys to speed or slow trials? |

NATIONAL CENTER FOR STATE COURTS ANALYZING TRIAL TIME PROJECT		CIVIL CASE DATA			SITE		
1. CASE IDENTIFICATION PLAINTIFF vs DEFENDANT		CASE NUMBER		PERSON COMPLETING FORM			
		CASE IDENTIFICATION		JUDGE			
TYPE OF TRIAL: <input type="checkbox"/> 1. JURY <input type="checkbox"/> 2. NON JURY		ESTIMATED TRIAL LENGTH:					
2. TIME INTERVALS		DATE START	TIME START	TIME END		<input type="checkbox"/>	
JURY TRIAL ONLY	a. Call of the case:				a.		
	b. Jury Selection:				b.		
ALL CASES	c. Opening statement for plaintiff(s):				c.	<input type="checkbox"/>	
	d. Opening statement for defendant(s):				d.	<input type="checkbox"/>	
	e. Plaintiff's case:					e.	
						e.	
						e.	
						e.	<input type="checkbox"/>
	f. Motion for directed verdict or dismissal:				f.	<input type="checkbox"/>	
	g. Defendant's case:					g.	
						g.	
						g.	<input type="checkbox"/>
	h. Rebuttal:				h.	<input type="checkbox"/>	
i. Motion for directed verdict or dismissal:				i.	<input type="checkbox"/>		
j. Closing argument for plaintiff(s):				j.	<input type="checkbox"/>		
k. Closing argument for defendant(s):					k.		
					k.	<input type="checkbox"/>	
NON JURY	l. Submission of case to judge:				l.	<input type="checkbox"/>	
JURY TRIAL ONLY	m. Joint consideration by lawyers and judge of jury instructions:				m.		
					m.	<input type="checkbox"/>	
	n. Charging of the jury:					n.	
						n.	<input type="checkbox"/>
	o. Jury deliberation:					o.	
					o.		
					o.		
					o.	<input type="checkbox"/>	
p. Trial was terminated by: (CHECK ONLY ONE) <input type="checkbox"/> JURY VERDICT <input type="checkbox"/> JUDGE DECISION <input type="checkbox"/> DISMISSAL OR <input type="checkbox"/> HUNG JURY <input type="checkbox"/> SETTLEMENT DIRECTED <input type="checkbox"/> OTHER _____ <input type="checkbox"/> MISTRIAL VERDICT					p.		

CHECK IF ITEM IS CONTINUED

CIVIL CASE DATA—CONTINUED		CASE NUMBER			
3. Case characteristics:					
ALL CASES	a. Case type: (CHECK ALL THAT APPLY) <input type="checkbox"/> 1. Motor vehicle tort <input type="checkbox"/> 2. Product liability tort <input type="checkbox"/> 3. Professional Malpractice <input type="checkbox"/> 4. Contract <input type="checkbox"/> 5. Appeal, trial de novo <input type="checkbox"/> 9. Other: _____				a.
	b. Dollar-amount demand:	\$ _____			b.
	c. Other relief:				c.
	d. Number of parties:	PLAINTIFF	DEFENDANT	3RD PARTY	d.
	e. Number of lawyers for:	PLAINTIFF	DEFENDANT	3RD PARTY	e.
	f. Number of claims:	CLAIMS	CROSS CLAIMS	COUNTER CLAIMS	f.
JURY TRIALS ONLY	g. Number in jury panel:				g.
	h. Who conducted voir dire?	JUDGE ONLY 1. _____	ATTORNEYS ONLY 2. _____	JUDGE AND ATTORNEYS 3. _____	h.
	i. Number of challenges for cause accepted for:	PLAINTIFF(S)		DEFENDANT(S)	i.
	j. Number of peremptory challenges: AVAILABLE USED	PLAINTIFF(S)		DEFENDANT(S)	j.
k. Jury size:	REGULARS		ALTERNATES	k.	
ALL CASES	l. Number of witnesses called: LAY EXPERT	PLAINTIFF(S)		DEFENDANTS(S)	l.
		PLAINTIFF(S)		DEFENDANT(S)	
	m. Number of exhibits entered:	YES		NO	m.
	n. Were any of the following used? Depositions read into the record Testimony by stipulation Videotaped testimony Interpreters Jury site visit	YES		NO	n.

NATIONAL CENTER FOR STATE COURTS ANALYZING TRIAL TIME PROJECT		CRIMINAL CASE DATA		SITE	
1. CASE IDENTIFICATION PLAINTIFF vs DEFENDANT		CASE NUMBER		PERSON COMPLETING FORM	
		CASE IDENTIFICATION		JUDGE	
TYPE OF TRIAL: <input type="checkbox"/> 1. JURY <input type="checkbox"/> 2. NON JURY		ESTIMATED TRIAL LENGTH:			
2. TIME INTERVALS		DATE START	TIME START	TIME END	<input type="checkbox"/>
JURY TRIALS ONLY	a. Call of the case:				a. <input type="checkbox"/>
	b. Jury Selection:				b. <input type="checkbox"/>
					b. <input type="checkbox"/>
					b. <input type="checkbox"/>
					b. <input type="checkbox"/>
ALL CASES	c. Opening statement for prosecutor:				c. <input type="checkbox"/>
	d. Opening statement for defendant:				d. <input type="checkbox"/>
	e. Prosecutor's case:				e. <input type="checkbox"/>
					e. <input type="checkbox"/>
					e. <input type="checkbox"/>
					e. <input type="checkbox"/>
	f. Motion for directed verdict or dismissal:				f. <input type="checkbox"/>
	g. Defendant's case:				g. <input type="checkbox"/>
					g. <input type="checkbox"/>
					g. <input type="checkbox"/>
					g. <input type="checkbox"/>
h. Rebuttal:				h. <input type="checkbox"/>	
i. Motion for directed verdict or dismissal:				i. <input type="checkbox"/>	
j. Closing argument for prosecutor:				j. <input type="checkbox"/>	
				j. <input type="checkbox"/>	
k. Closing argument for defendant:				k. <input type="checkbox"/>	
				k. <input type="checkbox"/>	
NON JURY	l. Submission of case to judge:				l. <input type="checkbox"/>
JURY TRIALS ONLY	m. Joint consideration by lawyers and judge of jury instructions:				m. <input type="checkbox"/>
					m. <input type="checkbox"/>
	n. Charging of the jury:				n. <input type="checkbox"/>
					n. <input type="checkbox"/>
o. Jury deliberation:				o. <input type="checkbox"/>	
				o. <input type="checkbox"/>	
				o. <input type="checkbox"/>	
p. Trial was terminated by: (CHECK ONLY ONE) <input type="checkbox"/> JURY VERDICT <input type="checkbox"/> JUDGE DECISION <input type="checkbox"/> DISMISSAL OR <input type="checkbox"/> HUNG JURY <input type="checkbox"/> GUILTY PLEA DIRECTED <input type="checkbox"/> OTHER _____ <input type="checkbox"/> MISTRIAL VERDICT					p. <input type="checkbox"/>

✓ CHECK IF ITEM IS CONTINUED

CRIMINAL CASE DATA—CONTINUED		CASE NUMBER			
3. Case characteristics:					
ALL CASES	a. Case type: <input type="checkbox"/> 1. Homicide <input type="checkbox"/> 2. Rape <input type="checkbox"/> 3. Robbery <input type="checkbox"/> 4. Aggravated assault <input type="checkbox"/> 5. Burglary <input type="checkbox"/> 6. Narcotics <input type="checkbox"/> 9. Other _____	a.			
	b. Number of defendants:	b.			
	c. Number of lawyers at trial for:	PROSECUTION	DEFENDANT(S)	c.	
	d. Type of defense attorney: <input type="checkbox"/> 1. Public Defender <input type="checkbox"/> 2. Retained counsel <input type="checkbox"/> 3. Assigned Counsel <input type="checkbox"/> 4. Mixed <input type="checkbox"/> 5. Not represented	d.			
JURY TRIALS ONLY	e. Number of jurors in panel:	e.			
	f. Who conducted voir dire?	JUDGE ONLY 1.	ATTORNEYS ONLY 2.	JUDGE AND ATTORNEYS 3.	f.
	g. Number of challenges for cause accepted for:	PROSECUTOR	DEFENDANT(S)		g.
	h. Number of peremptory challenges used by:	AVAILABLE USED	PROSECUTOR	DEFENDANT(S)	h.
	i. Jury size:	REGULARS	ALTERNATES		i.
	j. Number of witnesses called by:	EXPERT OFFICIALS LAY	PROSECUTOR	DEFENDANT(S)		j.
ALL CASES	k. Number of exhibits entered for:	PROSECUTOR	DEFENDANT(S)		k.
	l. Were any of the following used? Depositions read into the record Grand jury evidence read into the record Testimony by stipulation Videotaped testimony Interpreters Jury site visit	YES	NO		l.

CRIMINAL CASE DATA—CONTINUED	CASE NUMBER					
4. Case Outcome:						
a. What was the outcome of the case? (X ONE FOR EACH DEFENDANT)						
	DEF 1.		DEF 2.		DEF 3.	
Guilty judgment any charge	1	1	1	1	1	1
Guilty Plea	2	2	2	2	2	2
Aquitted/directed verdict, all charges	3	3	3	3	3	3
Hung jury	4	4	4	4	4	4
Mistrial	5	5	5	5	5	5
All charges dismissed	6	6	6	6	6	6
Other _____	9	9	9	9	9	9
b. Most serious offense convicted of:						
	DEF 1.		DEF 2.		DEF 3.	
Homicide	1	1	1	1	1	1
Rape	2	2	2	2	2	2
Robbery	3	3	3	3	3	3
Aggravated assault	4	4	4	4	4	4
Burglary	5	5	5	5	5	5
Narcotics	6	6	6	6	6	6
Other _____	8	8	8	8	8	8
Not applicable _____	9	9	9	9	9	9
c. Date sentenced:						
d. Was any defendant in custody immediately prior to disposition?						
	YES	NO	YES	NO	YES	NO

ANALYZING TRIAL TIME

Questionnaire for Judges

1. a. Are you now or have you ever been a presiding/administrative/assignment judge? Yes No
- b. How long have you been a judge? _____ years.
- c. Before becoming a judge which of these positions did you hold? (check all that apply.)

<input type="checkbox"/> Private Practitioner	<input type="checkbox"/> Public Defender
<input type="checkbox"/> Corporate Counsel	<input type="checkbox"/> Legal Aid Attorney
<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Law Professor
<input type="checkbox"/> Other _____	
- d. How long did you practice law prior to becoming a judge? _____ years
2. Approximately how many trials do you hear each month?

_____ Civil jury trials	_____ Criminal jury trials
_____ Civil nonjury trials	_____ Criminal nonjury trials
3. a. What are normal business hours in your court?

Morning: _____ to _____ a.m. Afternoon: _____ to _____
- b. In your courtroom on a typical day, how many hours are devoted to hearing a trial in progress and how many hours are devoted to other court business (arraignments, other hearings, in chambers work)?

_____ hours in trial _____ hours other business
4. What *types* of cases do you generally hear? (Check all that apply) What do you think is the typical length of the trials in your courtroom for these types of cases?

	<u>Jury Trial</u>	<u>Bench Trial</u>
<input type="checkbox"/> Motor vehicle tort	_____ days	_____ days
<input type="checkbox"/> Professional malpractice	_____ days	_____ days
<input type="checkbox"/> Product liability tort	_____ days	_____ days
<input type="checkbox"/> Other torts	_____ days	_____ days
<input type="checkbox"/> Breach of contract	_____ days	_____ days
<input type="checkbox"/> Other civil _____	_____ days	_____ days
<input type="checkbox"/> Capital felony	_____ days	_____ days
<input type="checkbox"/> Felony	_____ days	_____ days
<input type="checkbox"/> Other _____	_____ days	_____ days
5. In your opinion, the typical trial time for the cases you hear is:

a. <i>Civil</i>	<input type="checkbox"/> Much too long <input type="checkbox"/> Too long <input type="checkbox"/> About right	<input type="checkbox"/> Too short <input type="checkbox"/> Much too short <input type="checkbox"/> I don't hear civil cases
b. <i>Felony</i>	<input type="checkbox"/> Much too long <input type="checkbox"/> Too long <input type="checkbox"/> About right	<input type="checkbox"/> Too short <input type="checkbox"/> Much too short <input type="checkbox"/> I don't hear felony cases
6. a. How much do trial lengths vary by attorney?

Considerably Somewhat Not much Not at all
- b. Why or why not? What is the most important *lawyer characteristic* that influences the length of a trial?

7. From your experience, how long do the following trial segments take, on average? Do you think any of these trial segments take too much time, or that they are too short? (Check boxes to the right.)

a. Civil cases: No experience with civil trials. (Go to part b.)

	<u>Jury Trial</u>	<u>Bench Trial</u>	<u>Too Long</u>	<u>Too Short</u>
Day of trial motions	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Jury selection	_____ hours		<input type="checkbox"/>	<input type="checkbox"/>
Plaintiff's case	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Defendant's case	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Closing statements	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Selecting jury instructions	_____ hours		<input type="checkbox"/>	<input type="checkbox"/>
Charging the jury	_____ hours		<input type="checkbox"/>	<input type="checkbox"/>
In-trial motions	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>

b. Felony cases: No experience with felony trials. (Go to part c.)

	<u>Jury Trial</u>	<u>Bench Trial</u>	<u>Too Long</u>	<u>Too Short</u>
Day of trial motions	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Jury selection	_____ hours		<input type="checkbox"/>	<input type="checkbox"/>
Prosecutor's case	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Defendant's case	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Closing statements	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>
Selecting jury instructions	_____ hours		<input type="checkbox"/>	<input type="checkbox"/>
Charging the jury	_____ hours		<input type="checkbox"/>	<input type="checkbox"/>
In-trial motions	_____ hours	_____ hours	<input type="checkbox"/>	<input type="checkbox"/>

c. If you indicated that any of the above trial segments take too much or too little time, how do you think this could be remedied? (Address each segment you wish to comment on and continue on final page if more space is needed.)

8. Are non-case-related interruptions (those taken by the court to handle matters not related to the instant trial) a problem in your court?

	Yes, a big problem. 1	Yes, but not a big problem. 2	No, they do not hurt the instant trial. 3	No, they actually help the court process all its caseload efficiently. 4	This type of trial has priority and is not interrupted. 5	I have no experience with this type of trial. NA
Civil Jury Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Civil Non-Jury Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Felony Jury Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Felony Non-Jury Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. In what ways do you attempt to control the length of trials? When does this occur? (Check all that apply.)

a. Civil jury trials:

	When?		
	During pretrial conf.	Immediately before trial	During trial
Define areas of dispute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Limit the number of witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prevent repetitive questioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Set time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b. Criminal felony jury trials:

	When?		
	During pretrial conf.	Immediately before trial	During trial
Define areas of dispute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Limit the number of witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prevent repetitive questioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Set time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c. Do your practices differ significantly for civil or criminal *nonjury* trials? No Yes
If yes, please explain.

10. a. How appropriate is it for a judge to attempt to control trial length?

	Very appropriate 1	Somewhat appropriate 2	Neutral 3	Somewhat Inappropriate 4	Very Inappropriate 5
In Civil Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In Felony Trials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b. Do you think that the level of control you exercise is appropriate, or should you do more?
 I should do much more.
 I should do some more.
 The level is appropriate.
 I should do less.
 I should do much less.

11. Other comments: (Please feel free to give us further views on trial time in your courtroom.)

Appendix B
CIVIL AND CRIMINAL TRIAL LENGTH DATA
(MEDIAN)

Total Time for Completed Civil Jury Trials (not including jury deliberation) (Median/Hrs:mins)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	183:41	64:54	67:28	76:09	31:55	42:25	30:40	34:56	62:49
95%	160:35	*	47:13	57:48	28:39	*	22:14	27:35	32:54
75%	47:04	33:30	24:37	26:56	19:37	18:23	13:56	16:55	16:03
50%	30:48	17:33	14:26	17:36	14:08	14:11	9:48	10:02	11:06
25%	19:55	12:57	10:21	12:32	8:48	10:48	5:48	5:15	6:45
5%	8:35	*	6:11	6:58	4:55	*	3:23	3:14	2:48
minimum	5:29	6:52	4:54	5:42	4:30	4:48	1:35	2:17	1:29
Jury Selection Time for Completed Civil Trials (Median/Hrs:mins)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	35:57	8:43	9:10	8:56	6:50	3:45	5:05	5:14	7:30
95%	31:51	*	7:28	4:24	5:50	*	3:11	4:24	2:28
75%	7:36	5:45	3:29	2:41	2:56	2:19	1:00	1:11	1:21
50%	4:49	2:34	2:17	2:10	2:32	1:50	:45	:44	1:00
25%	3:24	1:55	1:30	1:40	1:50	1:23	:30	:30	:30
5%	1:33	*	:45	1:17	1:21	*	:15	:12	:15
minimum	1:07	1:07	:40	1:10	1:19	1:00	:15	:10	:07
Total Time for Plaintiff for Completed Civil Jury Trials (Median/Hrs:mins) (Plaintiff's time includes opening, case-in-chief, rebuttal, and closing)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	131:33	41:15	17:25	42:57	16:54	24:20	15:15	18:41	32:00
95%	92:18	*	22:21	28:22	15:09	*	13:27	14:52	16:26
75%	27:32	16:18	10:05	13:48	8:52	10:52	7:04	7:44	8:30
50%	15:04	10:27	7:18	9:24	5:23	6:34	4:20	4:18	5:05
25%	10:48	5:01	4:10	5:54	3:34	4:15	2:26	2:18	2:48
5%	3:57	*	2:08	2:34	1:46	*	:58	1:01	:54
minimum	2:30	2:32	1:28	1:48	1:33	1:48	:35	:20	:06

*too few data points to calculate

Total Time for Defense for Completed Civil Jury Trials (Median/Hrs:mins) (Defense's time includes opening, case-in-chief, and closing.)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	31:22	16:47	20:28	22:50	6:13	10:10	11:00	12:15	27:16
95%	30:38	*	14:20	20:30	5:43	*	6:58	9:14	10:56
75%	13:45	8:43	2:54	5:00	2:30	4:16	3:30	3:51	4:14
50%	6:17	3:26	2:15	2:39	1:39	2:36	2:00	2:10	2:31
25%	4:29	2:44	1:16	1:06	:56	1:20	:55	:40	1:15
5%	:57	*	:17	:13	:12	*	:14	:05	:22
minimum	:51	1:05	:15	:07	:08	:08	:05	:02	:06
Total Jury Deliberation Time for Completed Civil Trials (Median/Hrs:mins)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	17:06	11:22	15:25	5:30	18:20	7:20	11:33	14:48	9:05
95%	15:57	*	10:14	7:51	14:18	*	4:22	6:40	4:31
75%	6:26	6:35	3:28	4:54	3:42	3:21	2:12	2:18	2:11
50%	4:12	3:15	1:57	3:05	2:38	2:00	1:15	1:19	1:15
25%	1:55	2:08	:32	2:00	1:46	1:31	:46	:57	:44
5%	:22	*	:11	1:00	1:02	*	:30	:09	:16
minimum	:20	1:20	:10	:50	1:00	:47	:25	:07	:13

*too few data points to calculate

Total Time for Completed Criminal Jury Trials (not including jury deliberation) (Median/Hrs:mins)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	160:46	190:11	65:52	41:13	26:56	49:40	66:40	97:59	126:30
95%	58:22	186:54	45:30	38:54	22:54	*	58:05	71:24	20:52
75%	35:42	34:34	13:43	18:12	13:56	12:19	27:07	10:35	9:56
50%	23:16	17:44	9:27	10:50	10:54	8:10	12:09	7:24	6:20
25%	16:18	13:50	5:06	7:53	7:30	6:49	6:50	5:14	4:28
5%	9:52	7:15	2:28	5:13	4:58	*	2:43	3:21	3:13
minimum	7:15	7:13	1:28	3:32	3:07	3:25	2:23	3:14	2:49
Jury Selection Time for Completed Criminal Trials (Median/Hrs:mins)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	55:07	50:36	10:55	13:00	7:45	5:55	36:05	46:30	23:30
95%	26:41	50:34	5:40	6:55	7:17	*	24:07	40:09	4:06
75%	12:37	6:59	3:50	4:55	4:15	3:15	4:51	2:25	2:22
50%	8:17	4:37	2:38	3:10	3:24	2:15	1:58	1:05	1:10
25%	6:00	3:34	1:22	2:32	2:16	2:04	1:20	:41	:51
5%	3:08	2:22	:46	1:33	1:42	*	:42	:30	:32
minimum	1:42	2:22	:25	1:15	1:15	1:15	:40	:23	:29
Total Time for Prosecutor for Completed Criminal Jury Trials (Median/Hrs:mins) (Prosecutor's case includes opening, case-in-chief, rebuttal, and closing.)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	52:56	71:06	45:17	22:43	14:08	40:40	32:03	54:23	92:45
95%	23:38	69:58	21:45	19:40	12:04	*	31:20	25:59	15:30
75%	13:05	14:20	5:49	8:18	6:06	4:49	16:00	6:10	4:24
50%	8:16	7:56	3:36	4:54	3:40	4:05	5:56	3:40	2:42
25%	5:06	4:15	1:59	2:44	2:33	2:11	2:39	1:51	1:44
5%	2:43	2:00	:47	1:46	:57	*	:56	1:03	1:06
minimum	2:13	2:00	:34	1:20	:28	1:15	:48	:55	:31

*too few data points to calculate

Total Time for Defense for Completed Criminal Jury Trials (Median/Hrs:mins) (Defense's case includes opening, case-in-chief, and closing.)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	46:30	61:00	19:10	10:20	7:31	6:20	20:16	9:00	5:28
95%	15:43	59:20	6:10	7:26	5:22	*	17:14	5:48	4:26
75%	7:24	6:54	3:45	3:09	2:37	2:10	4:45	2:23	2:18
50%	3:21	4:07	1:52	1:10	1:26	1:05	2:03	1:26	1:16
25%	1:23	1:24	:45	:35	:41	:25	:59	:56	:47
5%	:33	:40	:10	:14	:19	*	:25	:30	:22
minimum	:11	:40	:05	:00	:10	:07	:24	:24	:11
Jury Deliberation Time for Completed Criminal Trials (Median/Hrs:mins)									
	California			Colorado			New Jersey		
Site:	Oak	Mar	Mont	Den	ColSpg	Gold	JC	Pat	Eliz
maximum	30:45	42:30	17:18	12:55	8:18	10:30	8:00	9:58	11:12
95%	19:43	41:41	13:45	11:21	7:54	*	6:50	8:46	6:41
75%	9:05	16:06	5:18	4:42	4:18	3:56	3:19	3:31	3:22
50%	5:26	5:37	2:52	2:58	2:28	2:21	2:25	2:11	1:33
25%	2:43	2:58	1:31	1:31	1:21	1:40	:50	1:03	:53
5%	1:25	1:51	:21	:20	:31	*	:11	:18	:17
minimum	:15	1:50	:06	:17	:13	:50	:09	:15	:14

*too few data points to calculate

Appendix C
CIVIL AND CRIMINAL TRIAL LENGTH DATA
(AVERAGE)

COMPLETED CIVIL JURY TRIAL INTERVALS^a

	California			Colorado			New Jersey		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	5:00	100%	5:00	2:23	100%	2:23	1:03	100%	1:03
Plaintiff's opening ^c	:32	100%	:32	:19	100%	:19	:15	100%	:15
Defense's opening	:29	95%	:27	:16	100%	:16	:14	100%	:14
Plaintiff's case ^c	14:00	100%	14:00	9:08	100%	9:08	5:22	100%	5:22
Motion for directed verdict	:25	31%	:08	:19	65%	:12	:39	43%	:17
Defense's case ^c	5:12	100%	5:12	3:15	97%	3:09	2:57	98%	2:53
Rebuttal	:48	37%	:17	:38	27%	:10	:26	17%	:04
2nd motion for directed verdict	:24	17%	:04	:16	49%	:08	:24	28%	:07
Plaintiff's closing ^c	1:28	98%	1:25	:40	100%	:40	:27	99%	:26
Defense's closing ^c	1:05	99%	1:04	:32	100%	:32	:28	99%	:28
Selecting jury instructions ^c	2:10	91%	1:59	2:11	96%	2:06	:26	57%	:15
Charging jury ^c	:32	100%	:32	:21	100%	:21	:37	100%	:37
Jury deliberation ^c	4:00	100%	4:00	3:28	100%	3:28	1:49	100%	1:49
Miscellaneous motions	1:58	5%	:06	1:28	6%	:05	:45	3%	:02
Total			34:46			22:57			13:52
Number of trials	81			103			208		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (h:m).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CIVIL JURY TRIAL INTERVALS — CALIFORNIA SITES^a

	California			Oakland			Marin Co.			Monterey		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	5:00	100%	5:00	7:32	100%	7:32	3:39	100%	3:39	2:48	100%	2:48
Plaintiff's opening ^c	:32	100%	:32	:43	100%	:43	:29	100%	:29	:21	100%	:21
Defense's opening	:29	95%	:27	:41	97%	:49	:19	87%	:16	:19	97%	:19
Plaintiff's case ^c	14:00	100%	14:00	21:10	100%	21:10	10:37	100%	10:37	7:34	100%	7:34
Motion for directed verdict	:25	31%	:08	:24	31%	:07	:16	40%	:06	:33	26%	:08
Defense's case ^c	5:12	100%	5:12	7:36	100%	7:36	4:11	100%	4:11	3:00	100%	3:00
Rebuttal	:48	37%	:17	1:05	34%	:22	:58	40%	:23	:26	39%	:10
2nd motion for directed verdict	:24	17%	:04	:21	26%	:05	:46	20%	:09	:08	06%	<:01
Plaintiff's closing ^c	1:28	98%	1:25	1:51	97%	1:48	1:30	100%	1:30	:59	97%	:58
Defense's closing ^c	1:05	99%	1:04	1:17	97%	1:15	1:05	100%	1:05	:51	100%	:51
Selecting jury instructions ^c	2:10	91%	1:59	3:14	89%	2:52	1:55	87%	1:40	1:10	97%	1:08
Charging jury ^c	:32	100%	:32	:34	100%	:34	:33	100%	:33	:28	100%	:28
Jury deliberation ^c	4:00	100%	4:00	5:05	100%	5:05	4:26	100%	4:26	1:33	100%	1:33
Miscellaneous motions	1:58	5%	:06	5:10	3%	:09	:05	7%	:00	1:18	6%	:05
Total			34:46			50:03			29:04			19:23
Number of trials	81			35			15			31		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (h:m).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CIVIL JURY TRIAL INTERVALS — COLORADO SITES^a

	Colorado			Denver			Colorado Springs			Golden		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	2:23	100%	2:23	2:23	100%	2:23	2:35	100%	2:35	1:56	100%	1:56
Plaintiff's opening ^c	:19	100%	:19	:20	100%	:20	:17	100%	:17	:16	100%	:16
Defense's opening	:16	100%	:16	:18	100%	:18	:13	100%	:13	:13	100%	:13
Plaintiff's case ^c	9:08	100%	9:08	10:36	100%	10:36	6:09	100%	6:09	7:42	100%	7:42
Motion for directed verdict	:19	65%	:12	:22	65%	:14	:12	65%	:08	:16	67%	:11
Defense's case ^c	3:15	97%	3:09	3:56	95%	3:45	1:41	100%	1:41	3:03	100%	3:03
Rebuttal	:38	27%	:10	:38	32%	:12	:29	19%	:06	:55	17%	:09
2nd motion for directed verdict	:16	49%	:08	:19	57%	:11	:06	38%	:02	:13	25%	:03
Plaintiff's closing ^c	:40	100%	:40	:43	100%	:43	:35	100%	:35	:36	100%	:36
Defense's closing ^c	:32	100%	:32	:35	100%	:35	:27	100%	:27	:32	100%	:32
Selecting jury instructions ^c	2:11	96%	2:06	2:34	95%	2:27	1:35	100%	1:35	1:26	92%	1:19
Charging jury ^c	:21	100%	:21	:22	100%	:22	:18	100%	:18	:24	100%	:24
Jury deliberation ^c	3:28	100%	3:28	3:39	100%	3:39	3:23	100%	3:23	2:37	100%	2:37
Miscellaneous motions	1:28	6%	:05	2:08	5%	:06	:49	12%	:06	:00	0%	:00
Total			22:57			25:51			17:35			19:01
Number of trials	103			65			26			12		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (h:m).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CIVIL JURY TRIAL INTERVALS — NEW JERSEY SITES^a

	New Jersey			Jersey City			Paterson			Elizabeth		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	1:03	100%	1:03	:58	100%	:58	1:03	100%	1:03	1:07	100%	1:07
Plaintiff's opening ^c	:15	100%	:15	:13	100%	:13	:13	100%	:13	:17	100%	:17
Defense's opening	:14	100%	:14	:13	100%	:13	:12	100%	:12	:14	100%	:14
Plaintiff's case ^c	5:22	100%	5:22	4:50	100%	4:50	5:02	100%	5:02	5:54	100%	5:54
Motion for directed verdict	:39	43%	:17	:20	47%	:10	1:20	48%	:43	:28	38%	:11
Defense's case ^c	2:57	98%	2:53	2:23	97%	2:19	2:57	95%	2:48	3:23	98%	3:21
Rebuttal	:26	17%	:04	:12	14%	:02	:43	14%	:06	:27	21%	:06
2nd motion for directed verdict	:24	28%	:07	:30	25%	:08	:24	38%	:09	:19	27%	:05
Plaintiff's closing ^c	:27	99%	:26	:25	99%	:25	:26	98%	:26	:28	99%	:27
Defense's closing ^c	:28	99%	:28	:28	99%	:28	:29	100%	:29	:28	99%	:28
Selecting jury instructions ^c	:26	57%	:15	:19	62%	:12	:39	60%	2:35	:25	51%	:13
Charging jury ^c	:37	100%	:37	:38	100%	:38	:38	100%	:38	:36	100%	:36
Jury deliberation ^c	1:49	100%	1:49	1:48	100%	1:48	2:08	100%	2:08	1:41	100%	1:41
Miscellaneous motions	:45	3%	:02	1:50	1%	:02	:20	10%	:02	1:05	2%	:01
Total			13:52			12:26			14:22			14:41
Number of trials	208			72			42			94		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (h:m).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CRIMINAL JURY TRIAL TIME INTERVALS^a

	California			Colorado			New Jersey		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	8:36	100%	8:36	3:32	100%	3:32	3:05	100%	3:05
Prosecutor's opening ^c	:15	100%	:15	:14	100%	:14	:11	100%	:11
Defense's opening	:13	70%	:09	:11	91%	:10	:12	100%	:12
Prosecutor's case ^c	8:05	100%	8:05	4:56	100%	4:56	5:44	100%	5:44
Motion for directed verdict ^c	:20	18%	:04	:10	92%	:09	:24	51%	:12
Defense's case ^c	4:17	90%	3:52	1:45	80%	1:24	1:26	91%	1:18
Rebuttal ^c	:56	46%	:25	:23	29%	:06	:18	15%	:04
2nd motion for directed verdict	:09	7%	:01	:06	50%	:03	:07	15%	:01
Prosecutor's closing ^c	1:00	99%	1:00	:31	100%	:31	:26	99%	:26
Defense's closing ^c	1:00	99%	:59	:27	99%	:26	:36	99%	:36
Selecting jury instructions ^c	1:26	96%	1:22	1:03	96%	1:00	:24	42%	:10
Charging jury ^c	:38	100%	:38	:16	100%	:16	:39	100%	:39
Jury deliberation ^c	6:29	100%	6:29	3:16	100%	3:16	2:31	100%	2:31
Miscellaneous motions ^c	2:27	3%	:05	:56	10%	:05	1:03	3%	:07
Total			32:00			16:08			15:11
Number of trials	157			143			144		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (h:m).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CRIMINAL JURY TRIAL INTERVALS — CALIFORNIA SITES^a

	California			Oakland			Marin Co.			Monterey		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	8:36	100%	8:36	10:43	100%	10:43	10:41	100%	10:41	2:50	100%	2:50
Prosecutor's opening ^c	:15	100%	:15	:15	100%	:15	:19	100%	:19	:12	100%	:12
Defense's opening	:13	70%	:09	:12	64%	:07	:12	75%	:09	:16	81%	:13
Prosecutor's case ^c	8:05	100%	8:05	8:43	100%	8:43	12:31	100%	12:31	4:32	100%	4:32
Motion for directed verdict ^c	:20	18%	:04	:22	22%	:05	:20	10%	:02	:14	12%	:02
Defense's case ^c	4:17	90%	3:52	4:40	88%	4:08	7:50	90%	7:03	1:53	93%	1:47
Rebuttal	:56	46%	:25	:58	40%	:23	1:16	75%	:57	:37	48%	:17
2nd motion for directed verdict	:09	7%	:01	:11	8%	:01	:04	10%	<:01	:05	2%	<:01
Prosecutor's closing ^c	1:00	99%	1:00	1:03	99%	1:03	1:32	100%	1:32	:38	100%	:38
Defense's closing ^c	1:00	99%	:59	1:04	99%	1:03	1:24	100%	1:24	:40	100%	:40
Selecting jury instructions ^c	1:26	96%	1:22	1:42	96%	1:48	2:06	95%	1:59	:30	95%	:28
Charging jury ^c	:38	100%	:38	:44	100%	:44	:40	100%	:40	:25	100%	:25
Jury deliberation ^c	6:47	100%	6:47	6:57	100%	6:57	9:59	100%	9:59	3:40	100%	3:44
Miscellaneous motions ^c	2:27	3%	:05	2:27	5%	:08	:00	0%	:00	:00	0%	:00
Total			32:00			36:08			47:16			15:48
Number of trials	157			95			20			42		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (hm).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CRIMINAL JURY TRIAL TIME INTERVALS — COLORADO SITES^a

	Colorado			Denver			Colorado Springs			Golden		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	3:32	100%	3:32	3:46	100%	3:46	3:33	100%	3:33	2:40	100%	2:40
Prosecutor's opening ^c	:14	100%	:14	:17	100%	:17	:10	100%	:10	:09	100%	:09
Defense's opening	:11	91%	:10	:13	94%	:13	:08	88%	:07	:07	84%	:06
Prosecutor's case ^c	4:56	100%	4:56	5:42	100%	5:42	3:50	100%	3:50	5:00	100%	5:00
Motion for directed verdict ^c	:10	92%	:09	:12	93%	:11	:08	88%	:07	:10	95%	:09
Defense's case ^c	1:45	80%	1:24	2:03	75%	1:32	1:32	86%	1:19	1:17	84%	1:05
Rebuttal	:23	29%	:06	:33	28%	:09	:14	38%	:05	:05	5%	<:01
2nd motion for directed verdict	:06	50%	:03	:06	69%	:04	:06	27%	:02	:06	37%	:02
Prosecutor's closing ^c	:31	100%	:31	:34	100%	:34	:27	100%	:27	:27	100%	:27
Defense's closing ^c	:27	99%	:26	:29	97%	:28	:24	100%	:24	:25	100%	:25
Selecting jury instructions ^c	1:03	96%	1:00	1:01	97%	:59	1:12	92%	1:06	:49	100%	:49
Charging jury ^c	:16	100%	:16	:17	99%	:17	:16	100%	:16	:17	100%	:17
Jury deliberation ^c	3:16	100%	3:16	3:33	99%	3:31	2:59	100%	2:59	3:08	100%	3:08
Miscellaneous motions ^c	:56	10%	:05	:57	12%	:07	:54	10%	:05	:00	0%	:00
Total			16:08			17:30			14:30			14:17
Number of trials	143			72			52			19		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (hm).

^c These trial segments were significantly different between states with a probability value of less than .05.

COMPLETED CRIMINAL JURY TRIAL TIME INTERVALS — NEW JERSEY SITES^a

	New Jersey			Jersey City			Paterson			Elizabeth		
	Length ^b	%	Weighted ^b Length	Length	%	Weighted Length	Length	%	Weighted Length	Length	%	Weighted Length
Selecting Jury ^c	3:05	100%	3:05	3:52	100%	3:52	4:18	100%	4:18	1:55	100%	1:55
Prosecutor's opening ^c	:11	100%	:11	:12	100%	:12	:13	100%	:13	:09	100%	:09
Defense's opening	:12	100%	:12	:16	100%	:16	:15	100%	:15	:08	100%	:08
Prosecutor's case ^c	5:44	100%	5:44	8:45	100%	8:45	5:49	100%	5:49	4:30	100%	4:30
Motion for directed verdict ^c	:24	51%	:12	:57	26%	:15	:30	54%	:16	:14	58%	:08
Defense's case ^c	1:26	91%	1:18	2:44	89%	2:26	1:14	94%	1:10	1:04	90%	:58
Rebuttal ^c	:18	15%	:04	:14	11%	:01	:24	12%	:03	:16	19%	:06
2nd motion for directed verdict	:07	15%	:01	:22	7%	:02	:13	6%	:01	:04	25%	:01
Prosecutor's closing ^c	:26	99%	:26	:29	100%	:29	:29	98%	:29	:22	100%	:22
Defense's closing ^c	:36	99%	:36	:51	100%	:51	:33	98%	:33	:31	100%	:31
Selecting jury instructions ^c	:24	42%	:10	:22	52%	:11	:32	62%	:20	:10	25%	:02
Charging jury ^c	:39	100%	:39	:43	100%	:43	:42	100%	:42	:36	100%	:36
Jury deliberation ^c	2:31	100%	2:31	2:29	100%	2:29	2:42	100%	2:42	2:25	99%	2:24
Miscellaneous motions ^c	1:03	3%	:02	1:13	4%	:03	1:15	4%	:03	:30	1%	<:01
Total			15:11			20:35			16:54			11:50
Number of trials	144			27			48			69		

^a All cases included in these figures were either tried to verdict or resulted in a hung jury.

^b Length and weighted length are given in hours and minutes (h:m).

^c These trial segments were significantly different between states with a probability value of less than .05.

Appendix D
BIBLIOGRAPHY

Bibliography

- Anderson, Debra L. (1984) "Trial Court Utilization: Multnomah County 1972-1982; Multnomah County 1982; Columbia County 1982," Multnomah County Circuit Court, Oregon.
- Briefcase, *Los Angeles Daily Journal*, May 15, 1987, p. 18.
- Burke, Jay (1984) "Voir Dire — As a 'Game,' As a 'Procedure,' and As 'Intimacy,'" *Personal Injury Deskbook* 984.
- Buteyn, Debra K. (1982) "People v. Williams: Expansion of the Permissible Scope of Voir Dire in California Courts, 15 *Loyola of Los Angeles Law Review* 381.
- Center For Jury Studies News (1986) 13 *Report* 3.
- Church, Thomas A., et al. (1978). *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (National Center for State Courts).
- Constantino, Mark A. (1982) "Abolish Lawyers' Voir Dire of Juries," 8 *American Bar Association Journal* 5.
- Daniels, Stephen (1985) "Continuity And Change In Patterns Of Case Handling: A Case Study of Two Rural Counties," 19 *Law & Society Review* 381.
- Dombroff, Mark A. (1982) "Innovation Needed to Narrow Issues for Litigation," *Legal Times*, March 15, 1982, p. 15.
- Duncan, Roderic (1987) "Putting a cap on voir dire," *California Lawyer*, March, 1987, p. 14.
- Feller, Richard L. (1981) "California a Different Scene For Lawyer Used to New York," *New York Law Journal*, October 16, 1981, p. 118.
- Finlay, Belva (1987) "Giving it the best shot," *California Lawyer*, March, 1987, p. 12.
- Friedman, Sheldon E. (1981) "The Motion In Limine," *The Colorado Lawyer*, September, 1981, p. 2287.
- Girdner, Bill (1987) "Big Headaches, Big Money Come With 'Big Cases,'" *Los Angeles Daily Journal*, May 26, 1987, p. 1.
- Hans, Valerie (1986) "The Conduct of Voir Dire: A Psychological Analysis," 11 *Justice System Journal* 40.
- Kuzins, Rebecca (1987) "Going Country," 7 *California Lawyer* 21.
- Levit, William H., Dorothy W. Nelson, Vaughn C. Ball, and Richard Chernick (1971) "Expediting Voir Dire: An Empirical Study," 44 *Southern California Law Review* 916.
- Mahoney, Barry, et al. (1985) *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts* (National Center for State Courts).

- Neubauer, David W. and John Paul Ryan (1982) "Criminal Courts and The Delivery Of Speedy Justice: The Influence Of Case And Defendant Characteristics," 7 *Justice System Journal* 44.
- Nordenberg, Mark A. and William V. Luneburg (1982) "Decisionmaking in complex civil cases: two alternatives to the traditional jury," 65 *Judicature* 420.
- Ordover, Abraham P. (1986) "Persuasion and the Opening Statement," 12 *American Bar Association Journal* 12.
- Parnas, Raymond I. (1980) "Empirical Data, Tentative Conclusions, and Difficult Questions About Plea Bargaining in Three California Counties," 44 *Federal Probation* 12.
- Richey, Charles R. (1983) "A Modern Management Technique For Trial Courts to Improve the Quality of Justice: Requiring Direct Testimony to be Submitted in Written Form Prior to Trial," 72 *Georgetown Law Journal* 73.
- Ring, Leonard (1984) "Should judges or lawyers conduct voir dire?" *Chicago Daily Law Bulletin*, December 13, 1984.
- Roper, Robert T. and Victor E. Flango (1983) "Trials Before Judges and Juries," 8 *Justice System Journal* 186.
- Schulman, Jay and Charles Winick (1986) "Some Aspects of Sequestration in Jury Trials: Does it aid the defense or the prosecution?" 23 *Court Review* 16.
- Sipes, Larry L., et al. (1980) *Managing To Reduce Delay* (National Center for State Courts).
- Turley, Windle (1982) "Voir Dire: Preparation and Execution," 8 *American Bar Association Journal* 19.
- Uelman, Gerald F. (1983) "The Death Penalty Costs Too Much," *Los Angeles Times*, July 27, 1983.
- Wachtler, Sol (1985) "Individual Calendar System Needed To Expedite Handling of Litigation," *New York Law Journal*, January 23, 1985.
- Wasiczko, Donna (1987) "Picking the jury is most important part of trial," *Recorder*, June 12, 1987.
- Will, Hubert L. (1985) "Judicial Independence and Voir Dire," 11 *American Bar Association Journal* 5.
- Wise, Daniel (1984) "Study by Legal Aid Supports Lawyer—Conducted Voir Dire" *New York Law Journal*, March 2, 1984.
- Wiseman, Jr., Thomas A. (1985) "Lawyer Voir Dire," 11 *American Bar Association Journal* 5.
- Zeisel, Hans et al. (1959) *Delay in the Court*. Boston: Little, Brown.