

**Delaware Public Administration Institute, Graduate College of Urban Affairs & Public Policy
University of Delaware**



Civil Justice in Delaware: Civil Case Processing in Superior Court

by
Danilo Yanich
and
Brian Sullivan

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Preface

The processing of cases, whether criminal or civil, is, at its core, a delicate balancing act. On the one hand, the court is charged with the delivery of justice; the real justice that is guaranteed by the Constitution. That is the overriding concern, as it must be. On the other hand, though, the court is asked to deliver justice, but to deliver it quickly. The axiom that justice delayed is justice denied has powerful meaning. And, it is particularly critical for a criminal case. But, the justice in civil actions, too, is seriously questioned when resolution is not timely.

There are differences between criminal and civil cases that affect the pursuit of both goals. In a civil case, unlike a criminal one, where the activities and stages are relatively fixed, many things can happen all along the way. Further, in a criminal case, the state (in this instance Superior Court), has a well-defined interest in justice because one institution of the state acts as the accuser (the prosecutor) and the court's function is protect the due process rights of the accused *and* the public safety. In a civil case, the state's interest in justice is no less real or vital, but it is manifest more in the role of referee, rather than impartial participant. The dispute is between two or more parties where one side claims to be aggrieved by the actions of the other. In this instance, the state, generally, is not the accuser and is seen as the remedy of last resort when the parties cannot reach some accommodation. As such, then, civil cases are more the creatures of the attorneys representing the parties than they are creatures of the court.

The court, however, is charged with dispensing justice in a civil action with the same safeguards that apply to criminal cases. Justice must be delivered and it must be delivered in a timely manner. These concepts are not in contradiction to each other. In fact, they are both fundamental to our system of laws. However, at times, the achievement of one may necessarily detract from the other. And therein lay the rub. How does the court organize its work to meet the demands of both principles? How does it attempt to insure that justice is not only delivered, but delivered without undue delay? In short, how does it strike the balance?

The Research Project

In general terms, this research project was organized around the very questions we posed above. The specific research questions (discussed in Chapter III: Methodology) were designed to elicit information about the court's civil case processing activity.

The project was funded by a grant from the State Justice Institute and was administered by the Delaware Administrative Office of the Courts. Our task was to examine the civil case processing of the Superior Court. The obvious question was how to accomplish that. We took several steps. Our first one was to enlist the expertise of the persons who have special knowledge about civil case processing in the state. In the first instance, that meant establishing an Advisory Committee for the project whose members came from several quarters, such as members of the judiciary, court administration, members of the private bar and persons with knowledge about the justice system (a list of the members of the Advisory Committee appears on the inside front cover of this report). The second step we took was to cast the research question as a comparison of the case processing activities of the court before and after the imposition of the Civil Administrative Order on June 1, 1991. The Order (discussed at length in Chapter I) was issued by the Superior Court to improve both the quality and the timeliness of the civil justice that was delivered by the court. It set out specific criteria by which that performance could be measured.

At the time we conducted this research, the Civil Administrative Order was essentially in its early stages. However, the Advisory Committee, quite rightly, was most interested in a comparison of case processing activity before and after the Order. It was the most obvious and appropriate question. As a result, this project examined the case mix, tracking assignments, dispositions and time required to complete several phases in the life of a case for complaints that were filed before and after the imposition of the Civil Administrative Order.

Acknowledgements

Conducting sound policy research is a difficult task and it requires the dedication and expertise of many people. In that regard, this project was extremely fortunate.

First, the members of the Advisory Committee played the pivotal role throughout the research. The committee served as the ultimate "reality check" for the project staff. That is, they made sure, through numerous phone calls, meetings, and faxes, that the research was designed to capture the reality of civil case processing. President Judge Henry duPont Ridgely was a very earlier advocate of the research. Judge Vincent Bifferato and Judge T. Henley Graves immediately agreed to serve on the committee and gave us the picture of civil justice from the bench. Tom Ralston, Administrator of Superior Court, and Mike McLaughlin, Deputy Director of the Administrative Office of the Courts, always made sure that the project was focused not only on the requirements of the research questions, but also on the contractual responsibilities to the funding source. There was always the phone call from Mike that began with; "I know you know this, but the quarterly report to SJI is due in two weeks...just a reminder." Attorneys Bob Katzenstein and Bob Beste brought vast experience from the bar to the committee and offered a special point of view. Dr. Marsha Miller provided the committee with the expertise of an experienced researcher of criminal justice issues.

Two members of the Advisory Committee almost served as quasi staff members. Felicia Jones, Deputy Court Administrator for Superior Court, and Sharon Agnew, New Castle County Prothonotary, worked very closely with the project staff to develop the model for the research. They worked tirelessly to identify and confirm the data that was needed to conduct the research. Their contribution was critical.

It should be noted here that the Advisory Committee functioned as a working and active resource for the project. No task was carried out without their comment; the final model for the research was used only with their approval. To quote some obscure football coach, they worked "just the way it was drawn in the playbook". We thank them for their generosity and diligent support.

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Professor Edward Ratledge of the College of Urban Affairs and Public Policy was responsible for translating the raw data that we received from the Judicial Information Center and constructing the data files on which this research is based. The quality of his work is not always evident in any report because it is an instrumental step. But, if his work were not accomplished with precision, the research simply could not have been conducted. We appreciate his effort.

F. Thomas Lynch, a graduate student in the College's Masters in Public Administration Program, conducted many tasks for the project, from interviewing court personnel to searching for specific literature. He was always eager and enthusiastic about the project and that was evident in his work.

The raw data for the project was derived from the files of the Judicial Information Center. Don Hudgins and John Galancey provided the project staff with the appropriate information for the analysis. We thank them for their assistance.

We would also like to thank the staff at the State Justice Institute for their support throughout the process. Of course, the funding that **SJI** provided was essential for the project. But, it was the nature of their assistance that was really important for the research. Dick van Duizend (Deputy Director) patiently answered many questions during the proposal phase. Janice Munsterman was the perfect project monitor, always responding with professionalism and valuable advice. It was great to work with them.

The project also received assistance and support from our colleagues in the Delaware Public Administration Institute. Dr. Audrey Helfman offered crucial advice on the structure and design of the report. Dr. Jerome Lewis, Director of the Institute, provided the project with the intellectual and organizational support that was invaluable to the research. We extend our deep appreciation to them.

Chapter 2: Civil Case Processing in Superior Court

On June 1, 1991, the Delaware Superior Court took steps to expedite the pace of civil litigation by implementing its Civil Administrative Order. This action was necessitated by the dramatic increase in the number of civil cases coming before the court for processing. The Civil Administrative Order establishes time standards for civil case disposition, multi-judge case processing teams, and a program of differentiated case management. These actions were designed to give the court early and firm control over civil case processing. A review of the literature on court delay shows that this control is a crucial element in developing a local legal culture that is supportive of faster case processing. The purpose of this research is to examine the performance of Superior Court and to determine, during these preliminary stages, whether the Civil Administrative Order has made a difference in the pace of civil litigation.

Civil Case Processing in Superior Court

This research examines the Superior Court's disposition of civil cases. The disposition of civil cases in Superior Court is the result of a series of activities undertaken by plaintiffs, defendants, and their attorneys, judges, and other Superior Court personnel. This section briefly describes the processing of a "typical" civil case from the filing of the complaint to the final disposition.

Overview of Superior Court

As established by Delaware's constitution, the Superior Court is Delaware's trial court of general jurisdiction. It has statewide original jurisdiction over criminal and civil (except equity) cases. The civil cases the court hears are primarily complaints for damages which include personal injury, libel and slander, contract claims, and medical and legal malpractice cases. Also heard are mortgage foreclosures, mechanics liens, condemnations, and involuntary commitments of the mentally ill to the Delaware State Hospital. The authority of the court to award damages is not subject to a monetary maximum (Administrative Office of the Court, 1992: 47). At the time this research was undertaken there were 15 judges on the Superior Court bench. These judges were distributed among Delaware's three counties: eleven judges served in New Castle County and two judges sat in both Kent and Sussex Counties. Between July 1, 1991 and June 30, 1993, the time period

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during which we followed civil cases, New Castle County had the equivalent of a single judgeship vacant for the seven months between February 1, 1992 and August 31, 1992.

Superior Court Civil Rules

The Superior Court Civil Rules and the Civil Administrative Order set forth the process by which civil cases are disposed. The goal of this process is the just, speedy, and efficient (inexpensive) determination of civil actions before the court. The disposition of these civil actions is the sole responsibility of Superior Court (and counsel): the formal entry of civil actions does not depend on the Attorney General's Office and the actions have no appearances or initial or preliminary hearings in the courts of limited jurisdiction, the Court of Common Pleas and the Justice of the Peace courts.

Pleadings: Case Filing, Return, and Answer

Civil actions begin when the plaintiff files a complaint with the Prothonotary (Rule 3, Superior Court Civil Rules). The complaint, or first pleading, sets forth the factual basis for the plaintiff's claims for relief against the defendant and a demand for a judgement for this relief (Rule 8, Superior Court Civil Rules). At the time the complaint is filed, the Prothonotary issues a writ notifying the defendant of the plaintiff's action and the time within which the defendant is required to appear (in court) and present a defense. This writ (process) is given to the sheriff for service. The sheriff has 20 days to deliver the writ to the defendant and to notify the court (by return) that the writ was delivered (Rule 4, Superior Court Civil Rules). The defendant is required to provide an answer within 20 days of receiving the writ. The answer is the defendant's response to the plaintiff's claims: it contains denials (or admissions) of each of the allegations and any affirmative defenses or counter claims (Rule 12, Superior Court Civil Rules). After these responsive pleadings are completed the case is either referred to compulsory arbitration or scheduled for trial.

Compulsory Arbitration

Arbitration is a less formal proceeding than trial in which the parties agree to submit their dispute to a third party who will make a decision after hearing arguments--basically a trial without a judge. In Superior Court, all civil cases in which (1) a trial is available, (2) the monetary damages being

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sought are less than \$100,000, and (3) the nonmonetary claims are insubstantial, are subject to compulsory pretrial arbitration. On June 1, 1992, the ceiling on monetary damages was raised from \$50,000 to \$100,000. All arbitration cases are to be referred to arbitration within 10 days of the filing of all initial responsive pleadings and/or motions. The appointment of an arbitrator to hear the case is to be done within a maximum of 40 days after the case is referred to arbitration. The arbitration hearing is to be scheduled and held within 40 days of the appointment of the arbitrator. At the conclusion of the hearing, the arbitrator has five days to issue a written order of judgement. Within 20 days of the filing of this order, any party may demand a trial de novo in Superior Court (Rule 16.1, Superior Court Civil Rules).

Scheduling Order

Those cases not referred to arbitration are scheduled for trial. Demand for a jury trial must be made within 10 days of the service of the last pleading (Rule 38, Superior Court Civil Rules). A judge will issue a scheduling order no more than 90 days after the filing of the complaint (before the Civil Administrative Order this was to be done within 120 days of filing). This order will limit the times to join other parties or amend pleadings; to file and hear motions; to complete discovery; and set dates for any pretrial conferences and the trial (Rule 16, Superior Court Civil Rules). Until the Civil Administrative Order there were no time standards for the scheduling of trials or civil case disposition.

Motions

Case dispositive motions are pretrial motions that either party can make, essentially, at any time after the pleadings are closed. These motions, which include judgement on the pleadings, summary judgement, default judgement, and motion to dismiss, are made to speedily dispose of issues without resorting to a trial. The motions are made when one or both parties feel that there are no issues of fact presented or in dispute, a defendant does not present a defense, or the case should not or cannot be heard (jurisdictional issues) by the court (Rule 12, Superior Court Civil Rules and Gifis, 1984: 303, 463). More than ninety percent of the cases observed for this research had no case dispositive motions filed.

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Disposition The final disposition of a civil case may come at trial, arbitration, or by settlement. At trial or in arbitration an order is entered favoring one of the parties. The settlement is mutually agreed to by both parties.

Civil Administrative Order

The Civil Administrative Order was implemented to eliminate unnecessary delay in the processing of civil cases in Superior Court. Delay is "any elapsed time other than reasonably required for pleadings, discovery, and court events ..." (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 1). Both the court and counsel have the responsibility to eliminate unnecessary delay. By policy, "... the Superior Court shall control the pace of litigation" (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 1). Court control is to be exercised through time standards, multi-judge case processing teams, and a program of differentiated case management. As officers of the court, counsel are expected to eliminate delay as part of their ethical obligation to their clients. This order applies only to those civil cases in which (1) trial is available, (2) money damages are sought, and (3) the nonmonetary damages are insubstantial (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 1).

Time Standards Time standards for the disposition of civil cases were established by the Civil Administrative Order. Ninety percent of all civil cases are to be settled, tried, or otherwise concluded within 365 days of the date of case filing. Ninety-eight percent of all civil cases are to be settled, tried, or otherwise concluded within 550 days of the date of case filing. The remaining two percent of cases should be settled, tried, or otherwise concluded within 730 days of case filing unless exceptional circumstances exist (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 1).

Multi-Judge Case Processing Team

The achievement of these time standards rests with a multi-judge case processing team (calendar system) and its advisory committee. Each county has a civil division directed by a Division Chief. Judges are assigned to the civil division on a rotating basis by the President Judge. The

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Advisory Committee is appointed by the Division Chief and consists of at least one judge from the division and several members of the Delaware Bar who practice before the division. This advisory committee assists the court in "identifying and eliminating causes of unnecessary delay within each division so that timely dispositions consistent with the time standards ... may be assured" (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 2).

On Track: Differentiated Case Management System

The differentiated case management program assigns cases having different degrees of complexity to one of three different tracks, expedited, standard, or complex, for discovery and trial. A case is assigned to the expedited track "if it appears that by its nature it can be promptly tried with minimal pretrial discovery and other pretrial proceedings." Expedited cases also include all commercial matters in which liquidated damages are sought up to \$100,000; appeals de novo from a Justice of the Peace Court; and appeals de novo from compulsory arbitration. Actions not assigned to either the expedited or the complex track are assigned to the standard track. The complex track is for an action that will likely "require a disproportionate expenditure of court and litigant resources in its preparation for trial." Reasons for this assignment include the number of parties involved, the number of claims and defenses, the legal difficulty of the issues, the factual difficulty of the subject matter, or any combination of the above. At the time the complaint is filed, the plaintiff's counsel requests the assignment of the case to a particular track. Only division chiefs, or designees, can approve the assignment of a case to the complex track (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 2-3).

Time Standards for Case Scheduling

Changes in case scheduling are also established by the Civil Administrative Order. A scheduling order is entered after the court considers "the complexity of the action and the time reasonably necessary to prepare the case for trial" (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 3-5). In non-arbitration cases, a scheduling order is proposed by the court "as soon as practicable but no more than 90 days after the filing of the complaint" (Civil

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Administrative Order, Superior Court of Delaware, April 11, 1991: 3-5). For cases subject to arbitration, a scheduling order is proposed within 20 days of the filing of a demand for a trial de novo. The scheduling order designates the track assignment and provides dates for the filing of motions, the completion of discovery, and the filing of case dispositive motions. An order for a case assigned to the expedited track also contains dates for a final pretrial conference, a civil trial conference, and the trial. For standard and complex track cases, the order specifies that a "Request for Trial Date" be submitted to a case scheduling officer within 14 days after the deadline for filing case dispositive motions (or their denial by the court) or earlier, if the case is ready for trial. The proposed trial dates should be consistent with the time standards specified in the Civil Administrative Order. The case scheduling officer will consider a variety of factors and select a trial date within 10 days of receiving the "Request for Trial Date" (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 3-5).

Calendar Conference, Pending Case Inventory, and Sanctions

A civil trial calendar conference, pending case inventory, and sanctions are also part of the Civil Administrative Order. Counsel assigned to try a case are required to attend a civil trial calendar conference and be "prepared to discuss any matter necessary to ensure that the case is adjudicated or otherwise concluded on the scheduled trial date. Any potential for resolution ... by settlement should be pursued and exhausted by the parties prior to or at this conference." At the end of each quarter, the Prothonotary of each county prepares a pending case inventory report that highlights each case that has not been adjudicated or otherwise concluded within 365 days of filing. Cases highlighted in this report receive, based on age of case, priority status for trial. Extensions of time limits or continuances may still be granted but only upon a showing of good cause. They cannot be solely based on mutual agreement of the parties involved. The court may impose sanctions for failure to appear for a conference or trial or not allow any discovery, motions, or joinder after the cut-off dates established in the scheduling order (Civil Administrative Order, Superior Court of Delaware, April 11, 1991: 7-9).

**Court Control, Local Legal
Culture, and Delay
Reduction**

A review of the court delay literature indicates that the key to reducing court delay is the court's early and firm control of the pace of litigation. This control is vital because delay is attributed to the jurisdiction's local legal culture (defined as the "established expectations, practices, and informal rules of behavior of judges and attorneys", Church, et al., 1978: 54), not the structure of the legal system or the amount of resources this system has available for processing cases. Superior Court, through the Civil Administrative Order, expects to obtain this early and firm control of the pace of litigation by establishing time standards, implementing an individual calendaring system, and monitoring the scheduling of cases. Studies of criminal case disposition in Superior Court (discussed later in this chapter) have found case processing to be affected by local legal culture factors.

***Courts Should Control Case
Processing***

If civil delay is to be reduced, courts, not attorneys, should control case processing. Mahoney found that slower courts either leave the pace of litigation up to the attorneys or become involved in case management when the attorneys indicate their readiness for trial (Mahoney, et al., 1988: 194). Civil case processing time cannot be reduced as long as attorneys control pretrial proceedings. The control attorneys exercise in most courts is the power to delay or postpone civil litigation; for example, case preparation can be adjusted to fit attorney priorities as undesirable or non-lucrative cases can be put on a "back burner" (Church, et al., 1978: 66). Since the pace of civil litigation is largely controlled by attorneys, its chief determinant is the jurisdiction's local legal culture. The similarity of the pace of civil case processing in state and federal courts within the same city provides strong support for the existence and influence of this local legal culture (Church, et al., 1978: 62, 54).

***Three Local Legal Cultures in
Delaware***

Differences in the pace of case processing among Delaware's three counties are attributed to the differing numbers of cases in these counties and the apparent differences in their local legal cultures. (The numbers of cases and their percentage increases will be presented in the next chapter.) A panel examining the Delaware court system used these factors to explain delay in New Castle County " ... the number of criminal and civil filings in New Castle County is

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so large ...[that]...As a result, a culture has developed in New Castle [County] that tolerates and expects delay. In Kent and Sussex counties persons involved in the legal process expect that matters will be disposed of promptly and efficiently. These are self-fulfilling prophecies. Judges in New Castle County must be furnished the means to change the local legal culture. Those involved in the system must come to expect that matters will be tried when scheduled and that cases will move promptly" (Delaware Courts 2000, 1994: 21).

Local Legal Culture: The "New Conventional Wisdom"

The influence of the local legal culture is part of the "new conventional wisdom" or new model of court delay. Studies by Church, et al. (1978), Mahoney, et al. (1988), and Goerdt, et al. (1989) show that the factors underlying the "old conventional wisdom" or "traditional model" of delay do not directly affect the pace of civil case processing. These factors, the structures and resources of the courts, include the size of the jurisdiction (from the overall population of citizens to the number of full-time judges), the number of total civil filings (and the number of total civil filings per judge), the percentage of jury trials, the settlement intensity of the court, and the mix (number of complex and simple) of civil cases. The "new conventional wisdom" recognizes that these factors operate through the complex system of practitioner expectations, attitudes, and informal rules of behavior--the local legal culture (Mahoney, et al., 1988: 45).

Changing the Local Legal Culture with Case Management

The reduction of delay in the processing of civil cases will require changing the local legal culture of the court. As Church concludes, no infusion of judicial resources or decrease in caseload will change the expectations or behaviors of those practicing in the court without judicial concern for reducing delay, a long-term commitment by the court to expedite processing, and the readiness of judges to take an active role in case management (Church et al., 1978: 81). Minimum case management functions in speedier courts include checking to see if an answer was filed, assessing case complexity, determining case eligibility for referral to an alternative dispute resolution program, and using a conference at the initial case screening for scheduling future case events (Mahoney, et al., 1988).

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The Montgomery County Court of Common Pleas in Dayton, Ohio, a court similar to Delaware's Superior Court, has a successful case management program. When a complaint is filed the court takes on the responsibility to monitor case progress, ensure that the case does not lie dormant, set schedules for case completion, and collect case information (judges review all civil case files 45 to 75 days after the complaint was filed) (Mahoney, et al., 1988: 78, 119). In general, the case management factors most likely to reduce civil case processing times are early court control of case events, the establishment of civil case disposition time standards, and the use of individual calendar systems (Goerdt, et al., 1989: 36). These are the factors found in the Civil Administrative Order.

Faster Case Processing with Time Standards

Time standards are associated with a faster pace of civil case processing. In 1985, Mahoney, et al. (1988) found that five of the six courts that expeditiously dealt with their civil caseloads had some type of time standards in place. Goerdt, et al. (1989) found time standards moderately related to shorter disposition times for civil cases. In general, time standards, when implemented and taken seriously, express the concepts that there are outside limits to case processing times and that timely disposition is the responsibility of the judiciary. Further, they provide benchmarks and goals for practitioners to achieve, and lead directly to the development of management systems for monitoring case progress and caseload status (Mahoney, et al., 1988: 63, 199).

Faster Case Processing with Individual Calendar Systems

There is evidence that individual calendar systems for assigning cases to judges expedites case processing. Individual calendar systems assign cases to judges at filing, and these judges handle all events associated with their cases. Master calendars assign cases to judges based on judge availability or event specialization (e.g., pretrial, motions, etc.). There is also a hybrid system combining elements of both systems. While all three types of systems can produce speedy processing times, courts with faster civil processing times tend to use an individual calendar system while the slower ones use a master calendar system (Goerdt, et al., 1989: 30). Church, et al. (1978) find the mean tort disposition time for individual calendar courts to be over 200

days faster than the mean tort disposition time for master calendar courts (Church, et al., 1978: 36). In theory, the individual calendar system entails greater accountability, provides information for monitoring the pace of a judge's caseload, and enables judges to get control of the case earlier (at or shortly after case filing) (Goerdt, et al., 1989: 30 and Mahoney, et al., 1988: 75). The Delaware Courts 2000 Commission recommends a hybrid approach to calendaring be used in Superior Court so as to get the benefits of individual and master (team) calendar systems (Delaware Courts 2000, 1994: 24).

Faster Case Processing with Early Court Control

Judicial control of case scheduling at or shortly after case filing is essential to speedier disposition times. Goerdt found that three of the fastest five courts he studied established control and scheduled case events within 120 days of case filing (Goerdt, et al., 1989: 33). Under the Superior Court's Civil Administrative Order, case events are to be scheduled within 90 days of case filing. Once case event dates have been scheduled they need to be kept. Faster courts emphasize their ability to ensure that trials and other events occur as scheduled. Continuances are granted only for "good cause," not attorney stipulations (Mahoney, et al., 1988: 194). This too is in the Superior Court's Civil Administrative Order. Restrictions on continuances can create the expectation that events will proceed as scheduled and may result in early settlements, an alleviation of attorney complaints about the uncertainty and inconvenience of changing event dates, and continuing judicial control over civil case processing (Church, et al., 1978: 69-70).

Faster Case Processing with Management Information

The collection and use of management information is essential to the monitoring of case progress and the identification of potential problems and possible solutions. Mahoney found that the courts with the fastest civil case processing times collected information on cases pending for more than a specified period of time (e.g., 120 days or more). This data was collected monthly in the six fastest courts. The use of an automated or manual system to gather this data had no impact on the speed of case processing (Mahoney, et al., 1988: 84). The Montgomery County Court of Common Pleas in Dayton, Ohio, regularly collects

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data on case processing effectiveness. Key indicators are the size and age of pending caseloads, the age of cases at disposition, and the numbers of continuances requested and granted. This information is discussed by judges at regular meetings and used by the presiding judge and court administrator. They regard a caseload of over 450 cases for a judge as an indication of developing problems (Mahoney, et al., 1988: 120). The Civil Administrative Order calls for the production of a quarterly pending case inventory.

Case Processing and Differentiated Case Management

These studies of court delay do not have much to say about differentiated case management programs for civil cases. Goerdts, et al. (1989) caution that the concentration of resources on one particular case type may draw resources from the processing of other case types and their pace of disposition may be reduced.

Studies of Court Delay in Delaware

Research examining criminal court delay in Delaware's Superior Court shows that local legal culture does affect case processing and provides a model for the study of civil delay in Superior Court. This research is summarized below.

Local Legal Culture Factors Influence Decisions in Delaware

In "Local Legal Culture, Personality Traits and the Administration of Justice in the Superior Court of Delaware" by Bryan Sullivan, local legal culture factors and personality traits were shown to influence the criminal case evaluation decisions made by prosecutors, public defenders, and private attorneys practicing in Delaware's Superior Court. The extent of the influence of these factors and traits was not uniform across all evaluation decisions. The administration of justice and the evaluation and disposition of criminal cases in Superior Court is a human process. The Court's local legal culture does not totally remove the influence individual attorneys may have on decision making. Each attorney contributes in some way to the creation and perpetuation of the local legal culture. Today's criminal case disposition decisions are the legacies of previous decision makers and their decisions. In effect, the local legal culture reflects the individual decision makers and is the "personality" of the jurisdiction. The implications for policy makers are that extra-legal factors influence different decisions and that

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policy makers can affect particular case processing decisions by targeting these factors. This study was an extension of the research on criminal court delay directed by Danilo Yanich.

Reducing Delay in Delaware

From 1989 through 1992, the General Assembly funded a project directed by Danilo Yanich to analyze the criminal case processing activity of Superior Court. This project was supported by President Judge Henry duPont Ridgely and the judges of Superior Court. The database created for this project contained information on all 37,890 indicted criminal cases filed in Superior Court between July 1, 1987 and June 30, 1992. A total of four reports were produced including "The Pace of Justice: Processing Criminal Cases in Delaware" by Danilo Yanich and Bryan Sullivan. Between Fiscal Year 1988 and Fiscal Year 1991, the time required to process 90 percent of the indicted criminal cases from filing to disposition decreased by nine percent on a statewide basis. The extent of this reduction in delay differed for each county. New Castle County had the highest case processing time throughout the period--above 300 days--and the smallest rate of decline in this processing time. Kent and Sussex Counties had processing times that were thirty percent shorter than New Castle County's and their rates of delay reduction were five times larger than those in New Castle County. In each fiscal year, cases disposed by trial had the longest processing time, as we might expect. Trials is the disposition of *last* resort. For New Castle and Sussex Counties the fastest dispositions were pleas. Dismissals were the fastest dispositions in Kent County. In the counties, no consistent patterns of processing times were found for the offense types.

The criminal court delay project was the model for examining civil case processing. It established the relationships between the researchers and the Delaware court system that were essential for the study.

Chapter 3: Methodology

The overall methodology for this project was based on survey research. The project was designed in two phases, a pilot phase and an analysis phase. This chapter specifies the aspects of the research design and the research questions.

Project Phases

In order to achieve the best approach to the analysis, the project was divided into two distinct phases, a pilot phase and an analysis phase. This approach was adopted in order to give the project as much input as possible from the policy makers who make the system run. That was achieved in an institutional way by the activity of the Advisory Committee.

The Pilot Phase

During the pilot phase, various approaches to the research were tested. Numerous meetings and working sessions with members of the Advisory Committee were held to determine the nature of the Delaware civil justice system and how it might be examined. The questions were wide-ranging: What do we want to know about the system? What features would we examine? What data would we need to conduct the analysis? Are the data available? Although the proposal for the project stated these issues, the Advisory Committee opened them all to discussion again. It was clear from the beginning that the Advisory Committee was fundamentally concerned with exploring a basic question: "What effect, if any, does the Civil Administrative Order have on civil case processing in Delaware's Superior Court?". Subsequent questions about research design had to address that concern. That was an extremely important first step because it set the parameters of the research, particularly the articulation of the research questions. The product of the first phase (which occupied the first four months of the project period) was a blueprint of the research plan and model for the analysis that was informed and sanctioned by the Advisory Committee.

The Analysis Phase

The analysis phase of the project was devoted to conducting the research that was outlined in the blueprint of the pilot phase. It included the tasks that scientific research requires including stating the research questions, gathering data and verifying the data, conducting the analysis and preparing the project report of the findings.

The Research Questions

The research questions for the project are based on the information that the Administrative Office of the Courts and the Superior Court wanted to learn about civil case processing. The fundamental question asks whether there is a difference in the performance of Superior Court as a result of the Civil Administrative Order that was issued in April 1991 to take effect on June 1, 1991. The Civil Administrative Order is designed to improve case processing in the court. It specifies procedural and management changes in case processing. As a result, the Advisory Committee decided that a comparison of the court's activity before and after the issuance of the Order was the most informative approach to the analysis. Therefore, the following research questions were applied to each period (pre-Order and post-Order) in order to compare the civil case processing between the pre and post-Order time periods.

- 1. What was the nature of the civil suits (complaint type) filed in Superior Court for each time period?**
- 2. What were the dispositions of those cases for each time period?**
- 3. How were complaint type and disposition associated for each time period?**
- 4. How long did it take cases to move through the system for each time period?**

The Data Base and Model

Based on the findings to these questions, we could make a comparison of the Superior Court's civil case processing activity between the pre-Order and post-Order time periods.

The Data Base

The specification of the population for analysis is a crucial aspect of research. For this project, the Advisory Committee indicated that the project should focus only on the court's case processing activity for **complaints** cases. The reason for the committee's position was obvious. The complaints occupy over two-thirds of the cases filed in Superior Court and, as a result, they require the vast majority of the court's time and effort. Consequently, cases identified as Mortgages and Liens, Appeals, Involuntary Commitments and Miscellaneous were not included in the analysis.

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The data for this research were derived from the electronic data files of the Delaware Judicial Information Center (JIC). The project received an electronic "dump" of ALL of the COMPLAINT cases in the system, numbering over 20,000 cases, through June 30, 1993. Therefore, this project had access to the **universe** of complaints cases in the system. No sample of complaints cases had to be drawn, thereby eliminating the possibility of some sampling bias.

The data from JIC reflect information that was entered into the electronic record-keeping system by the staff of the Office of the Prothonotary. These data consisted of two very important files for the project. The Cases file contained the general information (date of complaint, disposition, status, etc.) for each of the 20,000 cases. The Events file contained information regarding the specific activity (event) that occurred in the 20,000 cases. Each event on the docket of a civil case has a predetermined keyword that specifies the event. For example, the answer to the complaint is indicated in the event file as *answer*. Other types of answers are shown with other keywords. For example, an answer that was an "answer and crossclaim" is designated by the keyword *axcl*. Essentially, the Events file serves as the docket for the case. It indicates, using a system of predetermined keywords, what civil case processing events occurred in a case and how it made its way through the system. Obviously, each of the 20,000 cases in the Case file specified multiple events in the Events file. For the 20,000 cases in the complaint universe, over 327,000 events were recorded in the Events file. The data in the Cases file and the Events file then served as the data base from which the project staff had to build the model for the analysis.

The Model

The construction of the model began with a basic question: What information did we need from the data base to answer the research questions as they were stated? That is, what events in case processing were necessary to the research and what were the keywords in the data base that reflected activity for those events? In order to answer that question, the project staff obtained the invaluable assistance of the Deputy Administrator of Superior Court and the New Castle County Prothonotary. They met numerous times with the project staff to identify every keyword that was used to identify every event in case processing that was important for the analysis. This

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information was critical because, as described earlier (the "answer" and "answer and crossclaim" example), the various events of case processing were identified by many keywords depending on the exact nature of the event. For example, a required step in a civil case is service of the notice of the complaint on the defendant and the return of that service to the court. For the purpose of that model, that event was called "return of service". In the data base, however, there were ten separate keywords to indicate that the "return of service" had occurred. The individual keywords specified various types of return of service. The task of the model was to capture each of these keywords so as not to miss any data regarding the return of service. As one might expect, each of the case processing events that was crucial to examining the research questions was represented by multiple keywords.

The task of identifying the events and the keywords that were attached to them required looking at the JIC data in a way that the court had never utilized. The project staff produced a computer analysis that showed the distribution of each of the 227 keywords that were then used to describe the events. We then met with the representatives of the court to determine precisely what each keyword meant and to which event it was attached. In that way, we were sure to match the appropriate keyword with the event that was important to the model. In the course of those meetings, however, it was clear that some of the keywords as understood by the court were slightly different than those reported by the JIC data. Some of the keywords were now no longer used and some were used incorrectly. Until this analysis was produced, the Deputy Administrator of Superior Court and the Prothonotary had no way to examine the performance of the data-entry staff in the Office of the Prothonotary regarding the consistency of the keywords. An examination of the distribution of the keywords showed the court where some of the confusion lay. As a result, the court administrators went back and changed the activity of the staff of the Office of the Prothonotary and JIC in order to establish a more consistent data-entry process. The project staff then ran another distribution of the keywords to analyze the performance. The result of this approach was an accurate accounting of the keywords and their specification of the events. This iterative process provided a benefit to the court that was unforeseen when the project began. The court had a way to evaluate the performance of the data-entry operation

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that it never had previously and that resulted in changes in that system to increase its accuracy and consistency.

From this process, the project staff, with the final approval of the Advisory Committee constructed a model in which every keyword that was applicable to the events was properly identified. The model appears in Appendix B.

The Populations

The project's fundamental research question is based on a comparison of the civil case processing activity of the Superior Court before and after the introduction of the Civil Administrative Order on June 1, 1991. Therefore, the populations to be analyzed for the project are identified by time periods, i.e., pre-Order and post-Order. The JIC data base posed a potential problem for the comparison because there was an insufficient number of cases whose processing activity occurred before June 1, 1991. However, discussions with the Advisory Committee made it clear that the introduction of the Civil Administrative Order on June 1, 1991 did not result in an immediate change in the local legal culture around civil justice in Superior Court. That is, the Advisory Committee indicated that the local legal culture required about six months to understand and to function in accordance with the provisions of the Civil Administrative Order. That position is confirmed by earlier research. (For more information regarding local legal culture, see Danilo Yanich and Bryan Sullivan, *The Pace of Justice: Processing Criminal Cases in Delaware*, College of Urban Affairs and Public Policy, University of Delaware, Newark, Delaware, 1990 and Bryan Sullivan, *Local Legal Culture, Personality Traits and the Administration of Justice in the Superior Court of Delaware*, doctoral dissertation, College of Urban Affairs and Public Policy, University of Delaware, Newark, Delaware, 1993.) Given that consideration, it was reasonable to identify a pre-Order time period that was **chronologically after** the issuance of the Civil Administrative Order, but **operationally before** the order took effect. Therefore, the project staff identified two six-month time periods for the filing of cases whose populations would serve as the basis for the research. They are described below.

***The Time Periods for the
Filing of Cases***

Time Period 1, Pre-Order : *Filing Period--July 1 through December 31, 1991.*

Time Period 2, Post-Order: *Filing Period--January 1 through June 30, 1992.*

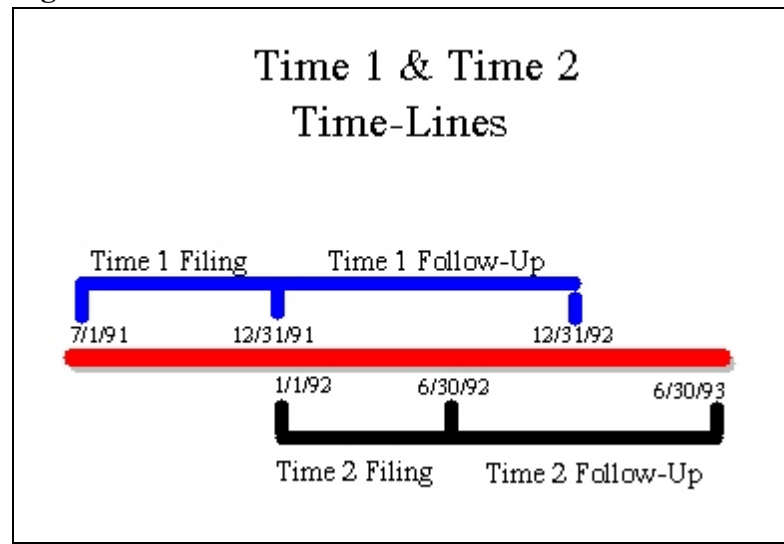
These time periods for filing meant that **every** complaint case that was filed in Superior Court during each of the six-month periods was included in the population for that time period. Again, we state that these populations consist of the universe of cases that were filed in each time period. They are not samples of the cases. They include every complaint case.

In Time Period 1, the Pre-Order period, 2,100 complaint cases were filed between July 1 and December 31, 1991. In Time Period 2, the Post-Order period, 2,164 complaint cases were filed between January 1 and June 30, 1992. As a result, the populations for Time 1 and Time 2 were 2,100 and 2,164 complaint cases, respectively. These were the cases that formed the data base for the research project.

***The Time Periods and the
Periods at Risk***

The filing periods for Time 1 and Time 2 were six-month blocks of time. However, in order to determine the experience of the cases in Superior Court, it was necessary to follow the filed cases for twelve months after the end of the filing period. Essentially, we had to give the cases a chance to be processed by the court. That was done for each of the time periods to equalize the period at risk for all of the cases. Operationally that meant that the cases in each time period were at risk for up to eighteen months. Time 1 then included the filing period (July 1 through December 31, 1991) and the twelve-month follow-up period (January 1 through December 31, 1992). Time 2 was then defined as the filing period (January 1 through June 30, 1992) and the follow-up period (July 1, 1992 through June 30, 1993). For each time period, the date of the end of observation period (EOP) was the last day of the follow-up period: for Time 1, that date was December 31, 1992 and for Time 2, the date was June 30, 1993. Figure 1 indicates the time-lines for each of the time periods.

Figure 2



Defining Closed and Pending Cases

The most obvious grouping of cases was based on their status as a closed or open case. That determination was rather straight-forward. A *closed* case was defined as a case in which a disposition date was entered by the Office of the Prothonotary during the eighteen-month time period in which it was filed and at risk. A *pending* case was defined as a case for which **no** disposition date was entered by the Office of the Prothonotary during the eighteen-month time period in which it was filed and at risk. That is, no disposition date was filed as of the end of the observation period.

Using these definitions for closed and pending cases, the following statewide distributions obtained for Time 1 and Time 2. Of the 2,100 cases in Time 1, fifty percent (1,065) were closed cases and fifty percent (1,035) were pending cases. That distribution changed for Time 2 where, of the 2,164 cases, fifty-seven percent (1,229) were closed cases and forty-three percent (935) were pending cases.

The information above is applied to the state and it should be noted that New Castle County accounts for a significant majority of all cases. The following two charts show that prominence for the closed and pending populations. For closed cases, about seven out of ten cases for Time 1 and 2 were in New Castle County (NCC) while Sussex County was

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less than half of the NCC portion and Kent County was again less than half of the Sussex total (Figure 2). There was an even more pronounced difference among the distribution of cases across the counties for the pending cases (Figure 3). NCC accounted for about eight out of ten pending cases.

Figure 3

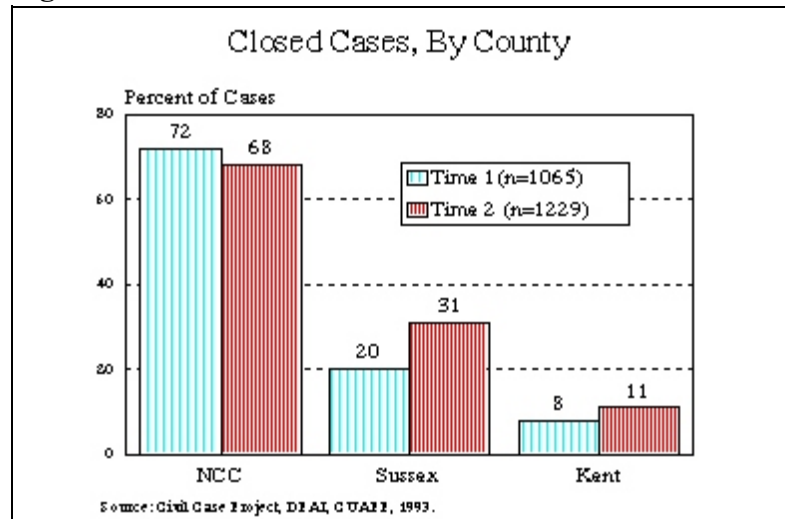
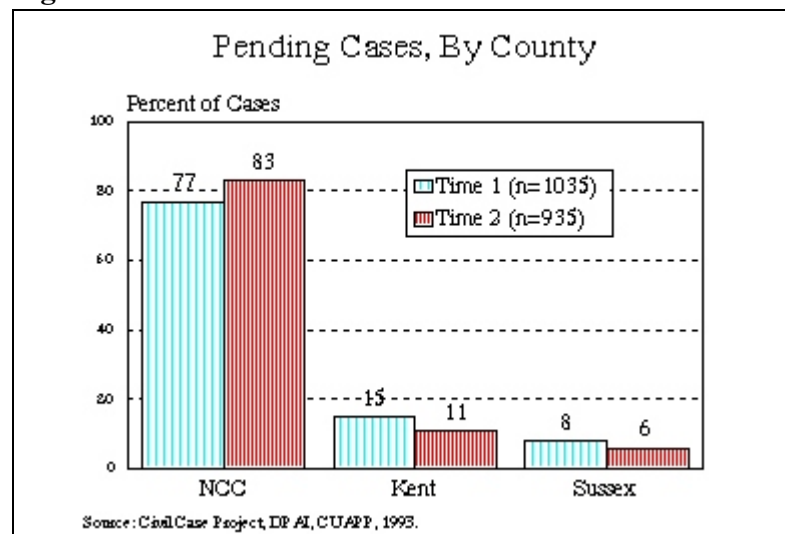


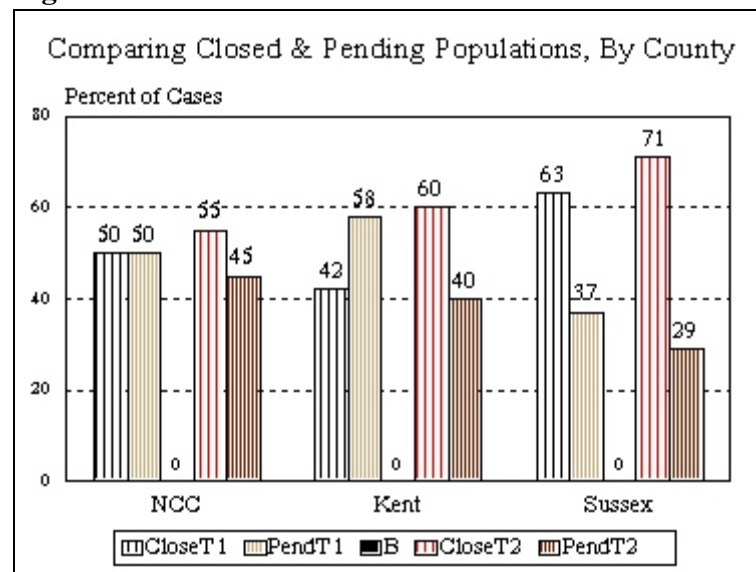
Figure 4



Comparing Closed and Pending Populations by County

A comparison of the closed and pending populations by county for Time 1 and Time 2 reveals interesting information. There was an improvement (as measured by a closed to pending ratio) in each of the counties from Time 1 to Time 2 (Figure 4). In NCC, the exactly equal distribution in Time 1 (50%-50%) changed to a 10 percent difference in closed and pending cases in Time 2 (55% closed and 45% pending). Kent County had a more dramatic change. In Time 1 there were more cases pending than closed (42% closed and 58% pending). Time 2 saw a reversal to 60 percent closed and 40 percent pending. Sussex County also improved markedly.

Figure 5



The Organization of the Report

The findings of this research are presented along certain dimensions that were suggested by the Advisory Committee. Given that the basic research question is a comparison of the Superior Court's civil case processing activity between two time periods, the first organizing principle for the presentation of the findings is by time period, Time 1 and Time 2. The second organizing principle is a break-down of the information by county. The findings for all of the factors that were examined by the research are reported for each county separately, except for those variables for which there was an insufficient number of cases at the county level. Third, the findings were also separated by closed and pending cases.

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The chapters that present the findings are as follows: Chapter 4 examines the distribution of complaint types for both the closed and pending populations; Chapter 5 presents information regarding the dispositions that were reached for the closed population (Clearly, the pending population did not reach a disposition.); Chapter 6 examines how complaint type and disposition were associated for the closed population; Chapter 7 looks at the distribution of the two most prominent (accounting for over 96 percent of cases) case processing tracks; Chapter 8 presents information regarding the performance of the case processing activities as measured against the criterion articulated in the Civil Administrative Order; Chapter 9 examines the cases as they move through three phases of case processing; Chapter 10 is a conclusion.

Chapter 4: What Complaints Were Filed?

In looking at the civil case processing of Superior Court, the first question we asked concerned the nature of the cases that made their way to the court. Just as the mix of cases on the criminal calendar has an effect on the criminal case process, so does the complaint type influence the civil calendar.

Defining Complaint Type

In our first examination of the populations for both time periods, we found that the Superior Court identified twenty-three complaint categories that covered all complaints. Analysis revealed that the complaints could be grouped into four major categories. They were:

- 1. Personal Injury/Auto**
- 2. Debt/Breach of Contract**
- 3. Personal Injury**
- 4. Other**

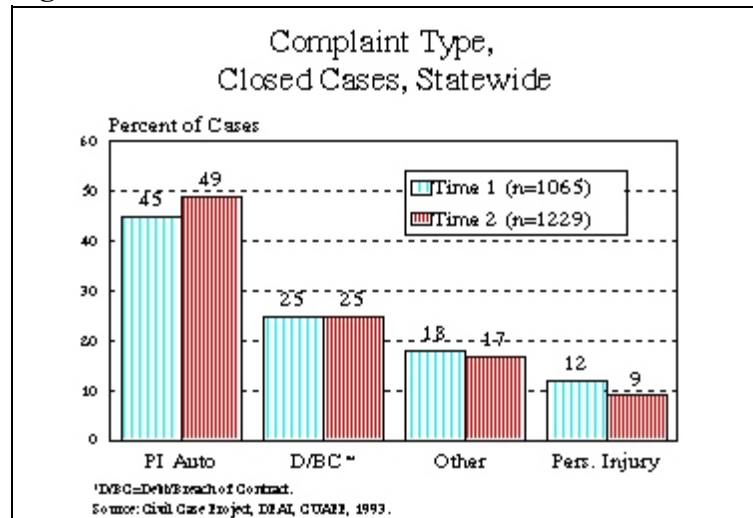
The Other category of complaints included those types of cases that were less numerous in the data; cases such as asbestos, defamation, transfer, libel, among others.

Complaint Type for the Closed Population

For purposes of clarity, this chapter separates the information regarding complaint type for the closed and pending populations. The findings for the closed population are presented first. The information for the pending population follows. In both cases the findings are shown for the state as a whole and then as a break-down of the distribution of the complaint type for each county.

There was a relatively consistent pattern between Time 1 and Time 2 in the types of complaints that were filed (Figure 5). For the closed population, the Personal Injury/Auto (PI/A) accounted for almost half of the cases that are filed in Superior Court. One-quarter of the complaints were Debt/Breach of Contract (D/BC) in each time period. The Other category only changed by one percent from Time 1 to Time 2 and Personal Injury (PI) dropped by three percent. The findings indicated that there was no significant difference in the mix of cases as to complaint type between Times 1 and 2. Therefore any difference in performance cannot be attributed to a different case mix.

Figure 5



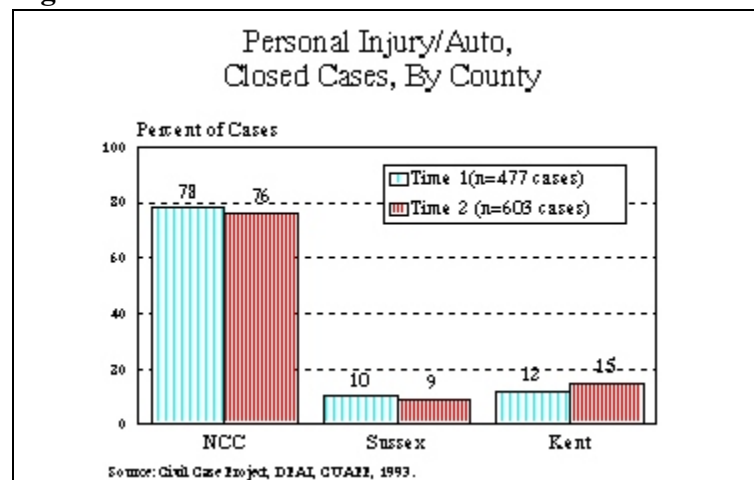
***Closed Population Complaint
Type by County***

The findings revealed a consistent pattern of the distribution of the complaint types across the counties. Specifically, New Castle County accounted for the significant majority of the cases, as we might expect. Figures 6 through 9 portray that information.

**Personal Injury/Auto
Complaints**

New Castle County (NCC) accounted for over seventy-five percent of the Personal Injury/Auto (PI/A) cases across the counties in both time periods (Figure 6). In Sussex County the percentage dropped slightly while the proportion of cases rose from twelve percent in Time 1 to fifteen percent in Time 2 in Kent County.

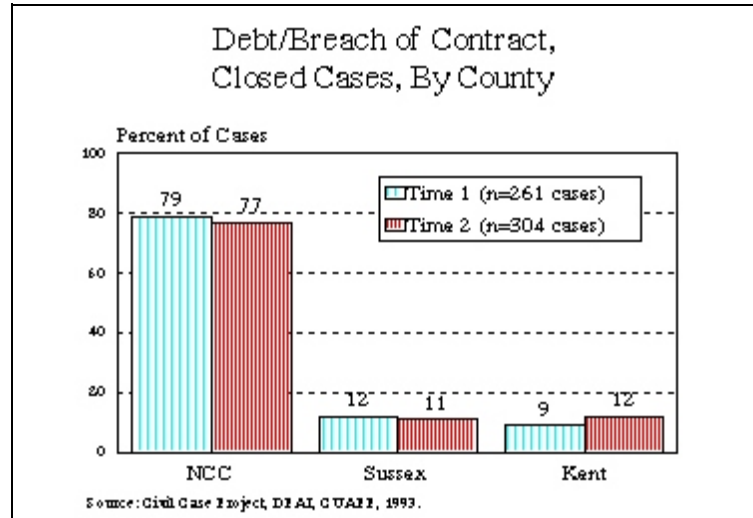
Figure 6



Debt/Breach of Contract Complaints

The distribution of the Debt/Breach of Contract (D/BC) cases (Figure 7) followed a pattern similar to that of the Personal Injury/Auto cases. The significant majority appeared in New Castle County with relatively equal proportions in Kent and Sussex counties.

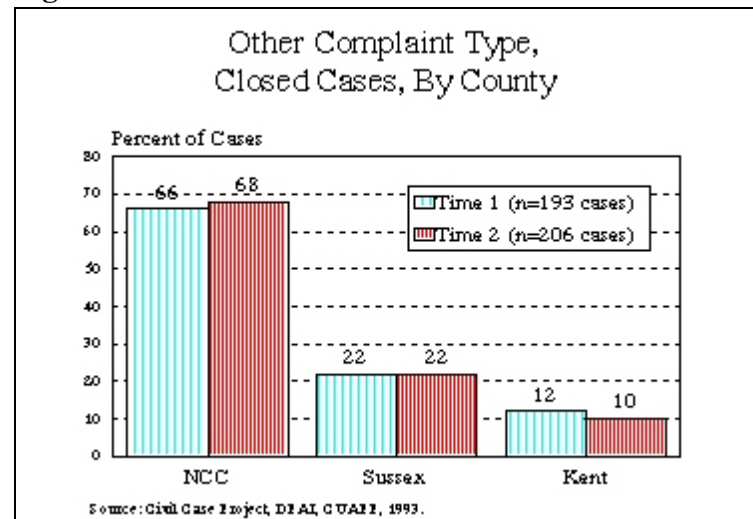
Figure 7



Other Complaints

In Figure 8 the distribution of the Other complaint type of cases is presented. While New Castle County maintained the prominent percentage of cases, Sussex County's share of the Other cases rose to just under a quarter of the cases (22 percent in both time periods).

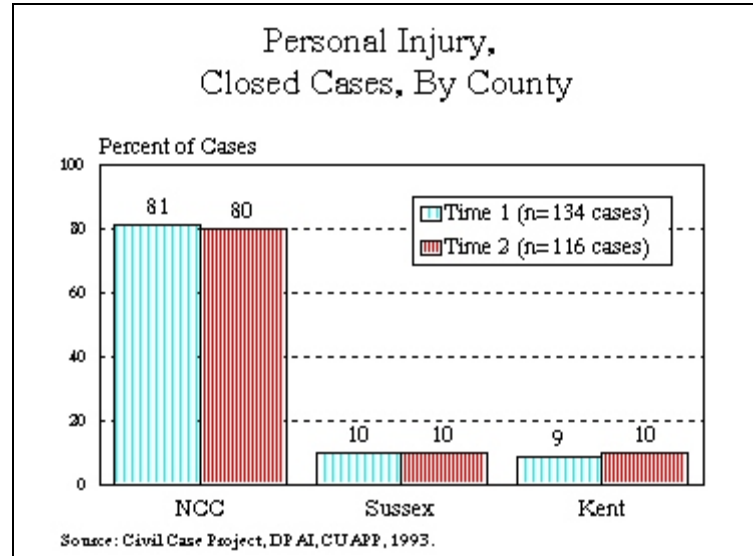
Figure 8



Personal Injury Complaints

Over eighty percent of the Personal Injury cases (PI) were filed in New Castle County and the southern counties accounted for about equal proportions (Figure 9).

Figure 9



Summary

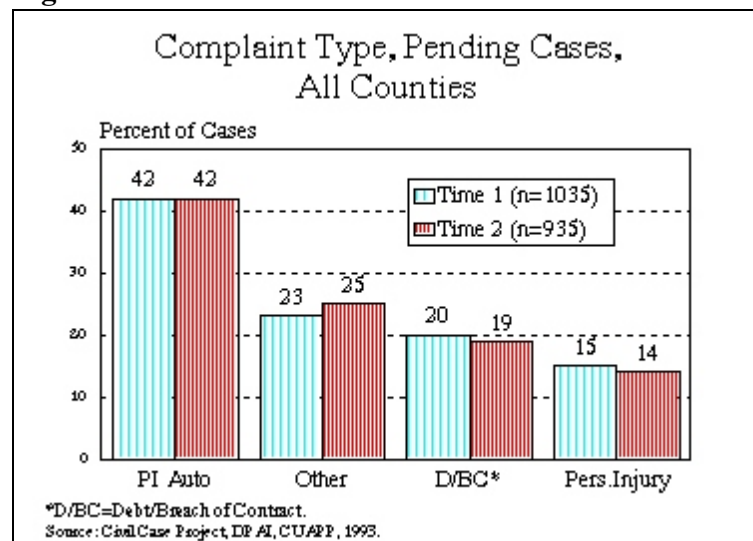
The most important feature about the distribution of the complaint types for the closed cases is the patterns of consistency that were revealed. First, the proportion of complaint types did not significantly vary for any single complaint between Time 1 and Time 2. That is, Time 1 and Time 2 were not different in terms of case mix as defined by complaint type. Second, there was no variation in the proportion of cases across the counties. Essentially, New Castle County consistently had the highest proportion of cases across the time periods. The proportion of cases was also constant for the southern counties. These are important findings given that the basic research question for the project is a comparison of case processing activity between the time periods. It is clear that any differences that appear in case processing between Time 1 and Time 2 are not the result of changes in the case mix.

Complaint Type for the Pending Population

The distribution of complaint types for the pending population across the state (Figure 10) showed that over forty percent of the complaints were Personal Injury/Auto (PI/A) cases in both time periods. That proportion was

smaller than the percentage of PI/A cases for the closed cases (See Figure 5). In addition, the Other and Debt/Breach of Contract (D/BC) proportions switched positions in the closed and pending populations. Specifically, about one-quarter of the cases in the pending population were in the Other complaint type, the second highest group of cases. The D/BC cases accounted for about twenty percent of the pending cases making it the third most numerous group. Those positions were reversed in the closed population (See Figure 5). However, there was an important attribute of the distribution of the complaint types for both populations. There was essentially no significant difference in the case mix as measured by complaint type between the two time periods.

Figure 10

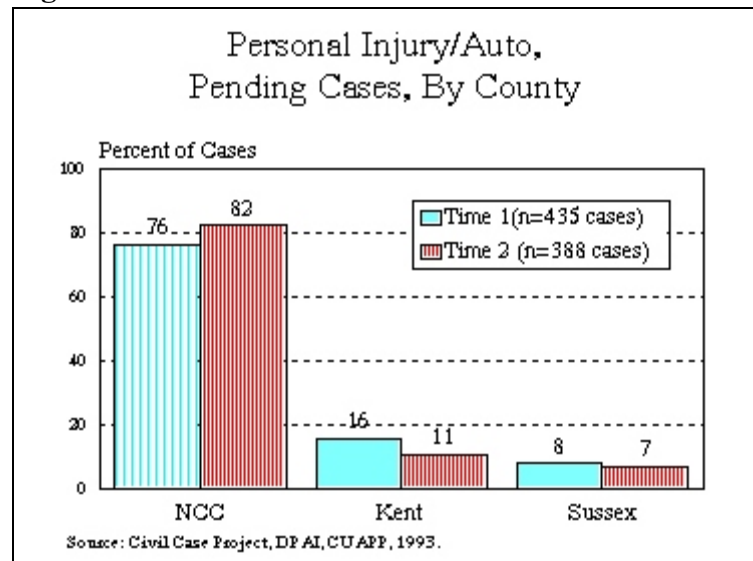


Pending Population Complaint Type by County

Personal Injury/Auto Complaints

We now look at the distribution of the complaint types across the counties. Personal Injury/Auto (PI/A) cases accounted for the significant majority of them and New Castle County had most of the PI/A cases (Figure 11). There was an increase in the proportion of cases between Times 1 and 2 for New Castle County (76% to 86%). That trend was reversed for the southern counties. The proportion of PI/A complaints decreased between Time 1 and Time 2 for Kent (16% to 11%) and Sussex (8% to 7%) counties.

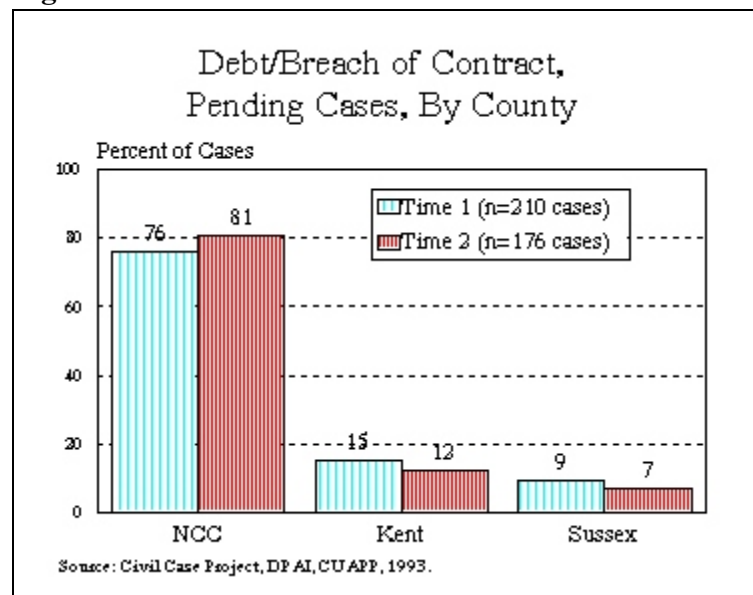
Figure 11



Debt/Breach of Contract Complaints

The general pattern of complaint types among the PI/A cases was also seen in the Debt/Breach of Contract cases (Figure 12). The significant majority of D/BC complaints and an increase in their proportion from Time 1 and Time 2 (76% to 81%) occurred in New Castle County. Both Kent and Sussex counties experienced decreases in the proportion of D/BC cases from Time 1 to Time 2.

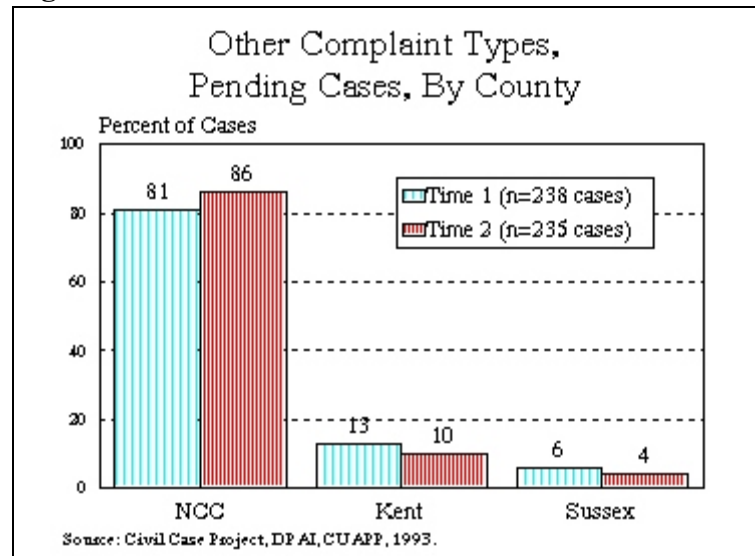
Figure 12



Other Complaints

In the Other complaint category, New Castle County again had the highest percentage of cases and an increase in that proportion between Times 1 and 2 (Figure 13). Kent and Sussex counties again saw decreases in the portion of the Other complaint cases across both time periods.

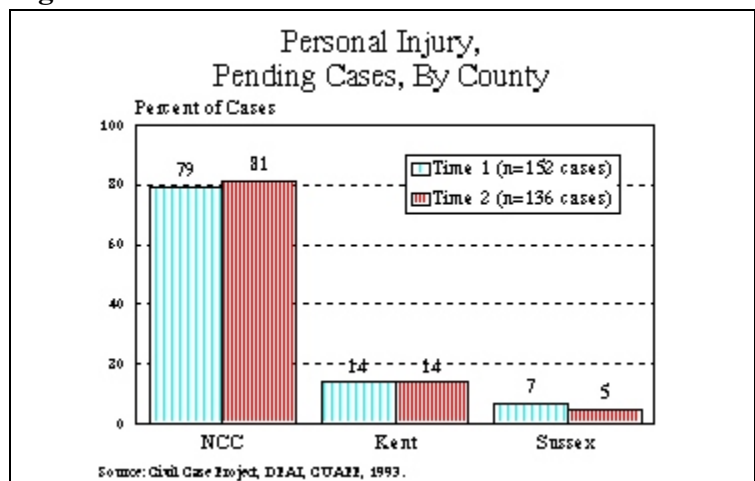
Figure 13



Personal Injury Complaints

New Castle County had about eight out of ten Personal Injury (PI) cases in both time periods (Figure 14). In Kent County the percentage remained exactly the same for Time 1 and Time 2 (14%). In Sussex County there was a decrease in the small percentage of PI cases across the time periods.

Figure 14



Summary The distribution of the complaint types for the pending population showed a similar pattern to that of the closed population. There was no significant difference in the proportion of complaint types between Times 1 and 2. Again, the finding is important because it indicates that there was no difference in the case mix for the pending population across the time periods.

Chapter 5: What Dispositions Did the Cases Reach?

In the previous chapter we looked at what the nature of the complaints were for the cases that were processed by Superior Court. Now we examine what happened to them; how were they disposed?

Defining Disposition Type

The Superior Court identified eight separate dispositions that were used for the disposition of civil cases. Analysis revealed that we could group them into four categories that were approved by the Advisory Committee. The categories of disposition follow:

1. **Dismissals: Includes Dismissals, Court Dismissal and Trial Dismissal**
2. **Stip/NJ/Ref: Includes Stipulations, Non-Jury and Referrals. The separate categories in this group were represented by small percentages of cases. This grouping was constructed in this manner because it provided the project with a more reasonable proportion of cases for analysis. Second, these dispositions logically could not be included in the NoDisp or Arbitration dispositions that are described below.**
3. **NoDisp: Includes those cases for which no disposition *type* was specified in the data. A disposition *date* was indicated for these cases, consequently they indeed reached a disposition during the period, but we do not know the *type* of disposition.**
4. **Arbitration (Arb): Includes those cases that were disposed through arbitration.**

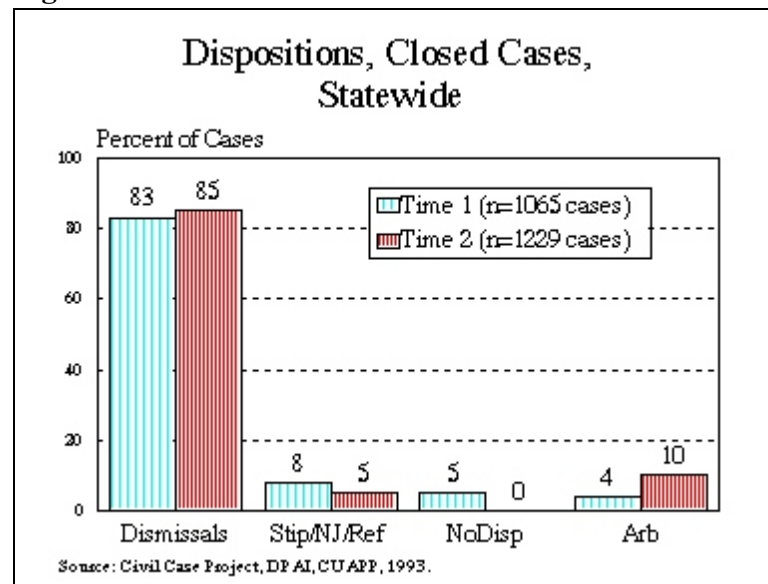
Dispositions Statewide

By definition, this look at dispositions applies only to the population of closed cases. The pending cases are just that, pending. They did not reach a disposition during the time period in which they were processed. In Time 1 the closed population consisted of 1,065 cases; in Time 2 there were 1,229 closed cases.

The distribution of the dispositions for the closed cases statewide was dominated by dismissals (Figure 15). Dismissals accounted for over eighty percent of the

dispositions in both time periods. The proportion of Stip/NJ/Ref dispositions dropped from eight to five percent between Time 1 and Time 2. The decrease in the percentage of NoDisp dispositions from five percent in Time 1 to none in Time 2 is a comment on the improved record-keeping capacity of the court in Time 2 rather than any change in case processing efficiency. Arbitration dispositions increased significantly from Time 1 to Time 2. That was due, in part, to the fact that Superior Court has encouraged arbitration as a disposition mechanism and it has operationalized that commitment by increasing the ceiling for arbitration from \$50,000 to \$100,000. Consequently, more cases were amenable to the arbitration solution.

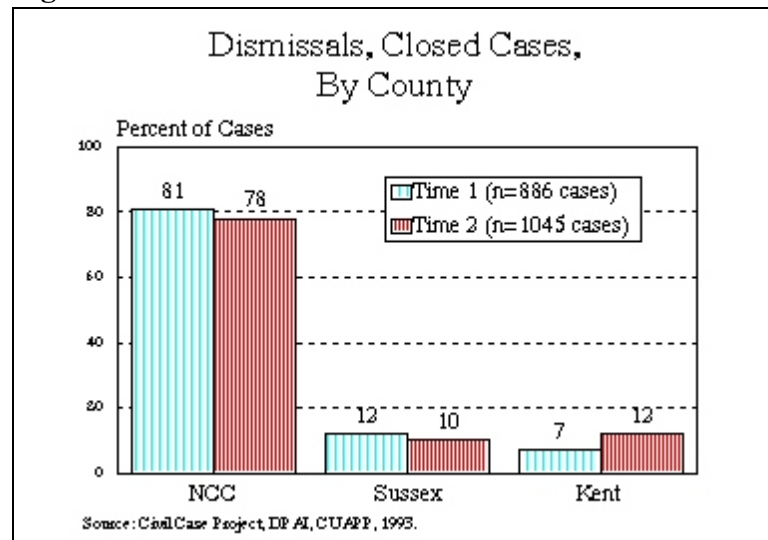
Figure 15



Disposition by County

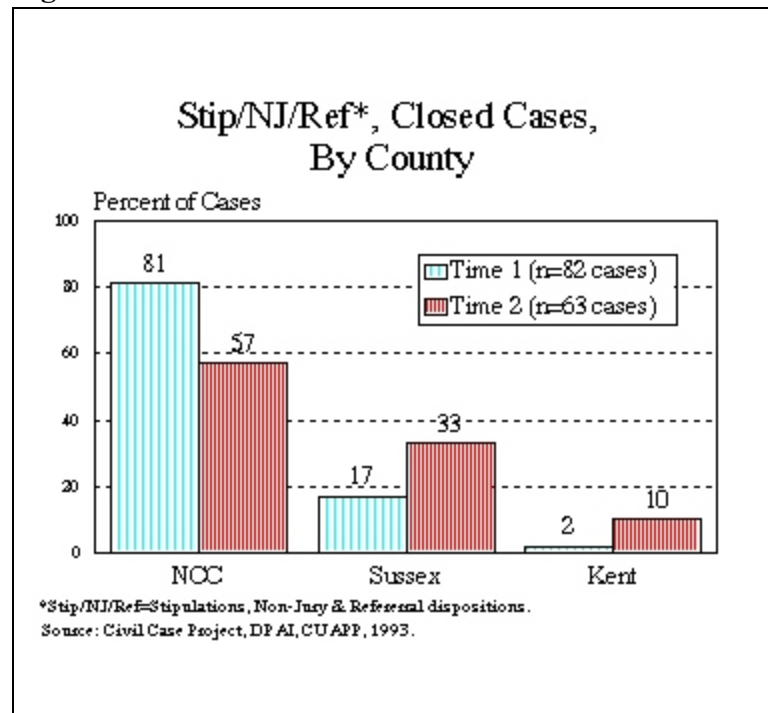
Dismissals

As we indicated above, dismissals were the most prominent disposition type and we begin by looking at their distribution across the counties (Figure 16). New Castle County accounted for about eighty percent of the dismissals in each time period. In Sussex County the percentage of dismissals dropped from Time 1 to Time 2 (12% to 10%, respectively). In Kent County the proportion of dismissals increased across the time periods (7% to 12% respectively), the only county where that occurred.

Figure 16

Stipulation/Non-Jury/Referral Dispositions

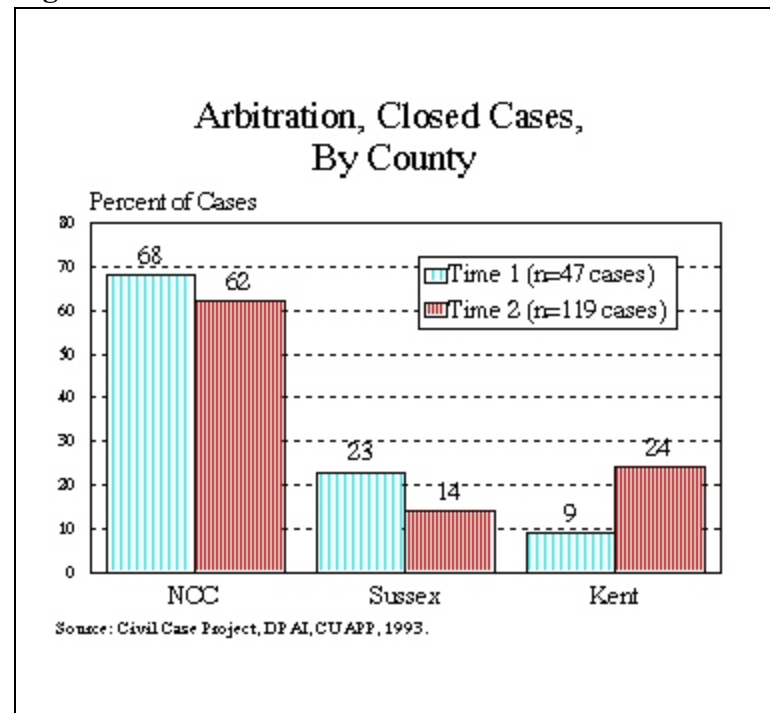
There were not many Stip/NJ/Ref dispositions across the counties (Figure 17). In Time 1 only 82 cases were disposed in that manner; in Time 2 the number was lower at 63 cases. We make this point because small numbers of cases in any category yield fluctuations in percentages that may not be sustained with a larger sample of cases. Such is the case with the findings for Stip/NJ/Ref dispositions. For example, while New Castle County still had the highest proportion of these dispositions, the difference between Time 1 and Time 2 (81% to 57%, respectively) is not as reliable as we would prefer simply because it is based on a small number of cases. That is certainly also true for Sussex and Kent counties where the percentages of Stip/NJ/Ref dispositions from Time 1 to Time 2 increased two-fold and five-fold respectively. Given these caveats, however, the findings for the Stip/NJ/Ref dispositions yield information about the outcomes of cases.

Figure 17

Arbitration Dispositions

The precautions that we employ concerning the Stip/NJ/Ref disposition findings also apply to those for the arbitration disposition. In Time 1 only 47 cases were disposed by arbitration. In Time 2 that number increased to 119 cases (Figure 18). The findings from small samples should always be viewed carefully. However, having said that, it is reasonable to conclude from the increase in arbitration dispositions between the time periods that Superior Court's encouragement of that solution to civil cases had some effect. Again, New Castle County accounted for the significant majority of arbitration dispositions for both time periods (68% and 62% respectively). Arbitration dispositions fell in Sussex County across the time periods, while Kent County experienced an increase in arbitration decisions.

Figure 18



Summary

The disposition of the closed population was dominated by dismissals, and there was not a significant difference in the proportion of dismissals across the time periods. But it would be a mistake to conclude that there was no difference in dispositions *per se* from Time 1 to Time 2. Remember that the percentage of closed cases increased and the proportion of pending cases decreased across the counties from Time 1 to Time 2 (See Figure 4). What seems not to have changed (the increase in arbitration dispositions notwithstanding) is the manner in which the dispositions occurred. That is, Superior Court's disposition "mix" from Time 1 to Time 2 remained relatively stable.

Chapter 6: How Did Complaints and Dispositions Relate?

Now that we have examined separately the complaint types and the dispositions of the cases in both Time 1 and Time 2, the logical next step is to look at how the two factors relate, if at all. That is, what was the complaint type "mix" for each of the dispositions and how did they compare across the time periods? Again, logic dictates that these findings only refer to the population of closed cases because they reached disposition.

Dismissals and Complaint Types

This chapter is organized by disposition. The distribution of complaint types (from highest to lowest proportion) for Time 1 and Time 2 is presented for each disposition separately. In order to make our information more clearly understood, we use bullets to indicate the findings for each complaint type.

Stipulation/Non-Jury/Referrals and Complaint Types

As we reported earlier, dismissals accounted for the significant majority of dispositions for the cases; statewide over eighty percent (See Chapter 5, Figure 15). Consequently, the distribution of complaint types for this disposition was very important. They are listed below.

1. ***Personal Injury/Auto (PI/A)***: We found that about half of the dismissals in both time periods consisted of PI/A cases.
2. ***Debt/Breach of Contract (D/BC)***: About one-quarter of the dismissals in each time period were D/BC cases.
3. ***Other***: The Other complaint category accounted for about seventeen percent of the dismissals in both time periods.
4. ***Personal Injury (PI)***: Fewer than fifteen percent of the dismissals were PI cases in each time period.

This disposition category was constructed by the project staff, with the agreement of the Advisory Committee, to alleviate the problem of disposition categories with populations too small for analysis. Even with that accommodation, this disposition category accounted for only

eight percent of the dispositions in Time 1 and five percent in Time 2 (See Chapter 5, Figure 15).

1. **Other:** About one-third of the dispositions in Time 1 were Stip/NJ/Ref cases in Time 1. In Time 2, however, they accounted for about one-half of the complaints.
2. **Debt/Breach of Contract (D/BC):** In Time 1 about one-third of the cases were D/BC cases while that percentage fell to about twenty-five percent in Time 2.
3. **Personal Injury/Auto (PI/A):** One-quarter of the Stip/NJ/Ref dispositions were PI/A complaints in Time 1. About one-fifth of the dispositions were PI/A cases in Time 2.
4. **Personal Injury (PI):** Personal Injury complaints accounted for only about seven percent in both time periods.

Arbitration and Complaint Types

Superior Court has encouraged the use of arbitration as a means to settle civil cases. We saw the initial effect of that effort (even with the small number of cases) in this research as arbitration dispositions more than doubled between Time 1 and Time 2 (See Figure 15). We should still remember that these findings for the arbitration disposition must be seen in light of that small sample.

1. **Personal Injury/Auto (PI/A):** Just under half of the arbitration dispositions (47%) in Time 1 were PI/A complaints. In Time 2, that proportion increased to over six out of ten arbitration dispositions.
2. **Personal Injury (PI):** One-quarter of the arbitration dispositions were PI cases in Time 1; fifteen percent were PI complaints in Time 2.
3. **Debt/Breach of Contract (D/BC):** D/BC complaints accounted for under twenty percent of the arbitration dispositions in both time periods.
4. **Other:** Fewer than ten percent of the arbitration dispositions were in the Other complaint category in each of the time periods.

Summary

The findings revealed that there was some variation in the way dispositions and complaint types related to each other across the time periods. That variation was more pronounced in the dispositions other than dismissal. That variation is explained to a considerable degree by the relatively small numbers of cases that reached those dispositions. In the dismissal disposition category, by far the most prominent disposition, there was not a significant variation in complaint type between Time 1 and Time 2. Again, we found that the outcomes for Time 1 and Time 2 did not imply that there was a difference in the performance of the cases between the time periods. But, these findings only refer to the "mix" of the association between complaint types and dispositions. As we said earlier, it is clear that Superior Court disposed of more cases (on a percentage basis) in Time 1 than in Time 2 (See Chapter I, Figure 4). The findings in this chapter reveal that the court did not change the mix of dispositions and complaints in the course of accomplishing that task.

Chapter 7: What Case Processing Tracks Did the Cases Follow?

In addition to examining the processing of cases by complaint type and disposition, it was important to consider the tracks that the cases took through the system. The designation of track is an appropriate name for the practice because its image is one of moving a case along. But civil case processing is not as linear an affair as the track analogy would have us believe. That is not an indictment of the tracking process. Quite the contrary, the tracking process is one mechanism the court uses to enhance the delivery of justice to citizens. It is simply a recognition that in a civil case, unlike a criminal case where the stages are relatively fixed, many things can happen all along the way. Further, in a criminal case, the state, in this instance Superior Court, has a well-defined interest in justice because one institution of the state acts as the accuser (the prosecutor) and the court's function is to protect the due process rights of the accused *and* the public safety. In a civil case, the state's interest in justice is no less real or vital, but it is manifest more in the role of referee, rather than impartial participant. The dispute is between two or more parties where one side claims to be aggrieved by the activities of the other. Consequently, a civil case is more the creature of the lawyers representing the parties than the court. (There is growing evidence that a more active court would have significant effects on case processing.)

Tracks Identified by Superior Court

The court has adopted case processing methods to improve its handling of cases. Specifically, the court has established a system in which cases are placed on a track that is appropriate to its characteristics. The tracks, as indicated by Superior Court, are:

1. **Complex**
2. **State**
3. **Expedited**
4. **Standard**

Defining Tracks for the Project

Although the court uses all of the tracks in its assignment of cases, our analysis revealed that the **expedited** and **standard** tracks accounted for over ninety-nine percent of the case tracking assignments for the populations that we studied. We confirmed that finding with the court to insure that our populations were consistent with their practice. Given these facts, it was clear that the number of cases in the complex and

state tracks were insufficient for meaningful analysis. As a result of this finding, we defined tracks for this project as **expedited** and **standard**. It is important to note that the tracking assignment practice at Superior Court is to place every case automatically in the **expedited** track as a first order decision (the default assignment). If the case then has characteristics that make it more appropriate for the **standard** track, it is moved there. The tracks identified for the project were:

1. **Expedited**
2. **Standard**

Questions About Track

In this chapter we look at five questions regarding track assignments.

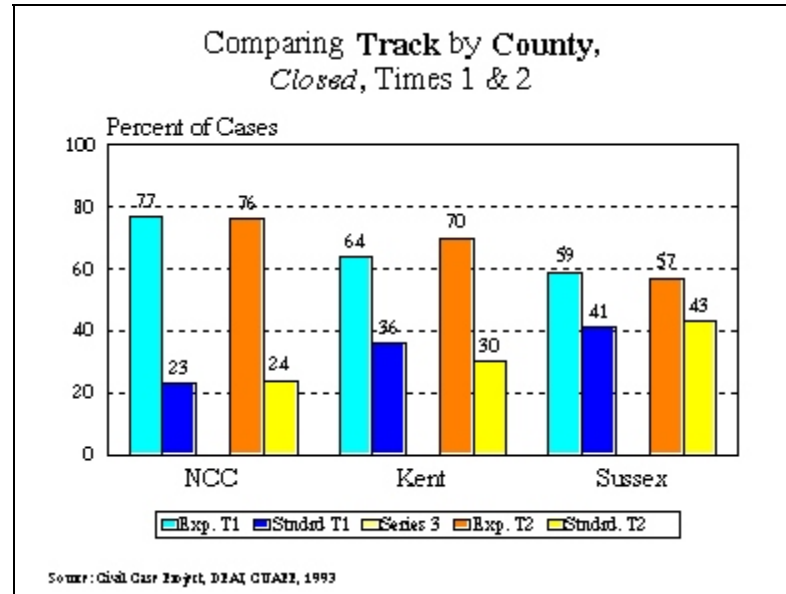
1. **What was the distribution of the expedited and standard tracks between Time 1 and Time 2? (Was there a difference?)**
2. **What was that track distribution among the counties? (Was there a difference?).**
3. **What was the track distribution by complaint type for both populations across Time 1 and Time 2?**
4. **What was the track distribution by type of disposition for the closed population for both time periods?**
5. **How did the tracks compare between Time 1 and Time 2 in reaching the case performance criterion of the Civil Administrative Order?**

Comparing Tracks by County for the Closed Population

In general, more cases were assigned to the expedited track than the standard track for the closed population across all the counties in both time periods (Figure 19). In New Castle County the ratio of expedited cases to standard cases remained about three to one in both time periods. In Kent County the percentage of expedited cases rose from sixty-four percent in Time 1 to seventy percent in Time 2, with a concomitant decrease in the proportion of standard cases. Although the difference between expedited and standard assignment of cases was smaller in Sussex County for both time periods (about 60 percent expedited and about 40 percent standard cases for

Times 1 and 2, respectively), assignment to the expedited track was still the rule.

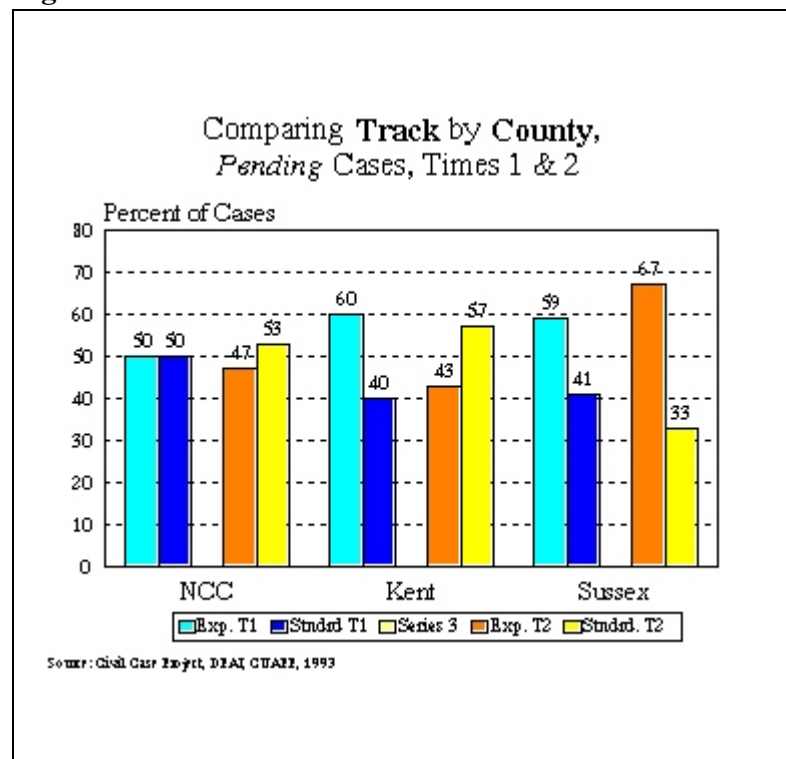
Figure 19



Comparing Tracks by County for the *Pending* Population

The track distribution for the pending population was remarkably different than that of the closed population (Figure 20). That difference was most noticeable in New Castle County where the assignment of cases to the expedited and standard tracks was exactly evenly split in Time 1 (50 percent for each). In Time 2, however, the standard cases exceeded the expedited cases (47 percent to 53 percent), a reversal of the distribution for the closed population. The distribution of track saw a similar change in Kent County from Time 1 to Time 2. In Time 1, the majority of cases (six out of ten) were assigned to the expedited track. However, in Time 2, the majority of cases were *standard* track assignments (57 percent). Only in Sussex County did the majority of cases remain expedited track assignments in both time periods. In fact, the proportion of expedited cases rose from Time 1 (59 percent) to over two-thirds (67 percent) in Time 2.

Figure 20

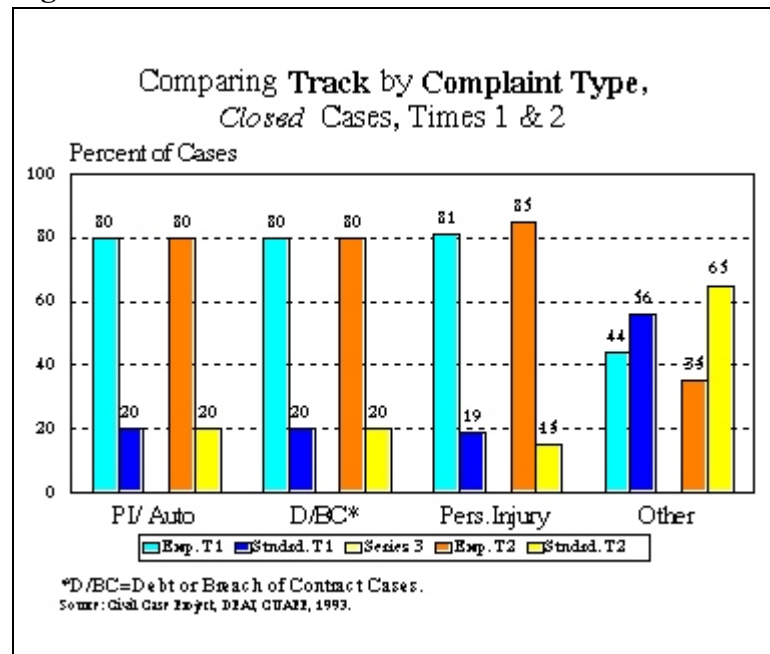


Comparing Track by Complaint Type for the Closed Population

There were some consistencies and inconsistencies in the distribution of the track assignments for the complaint types for the closed population (Figure 21). First, it was clear that the overwhelming majority (at least 80 percent) of the closed cases were expedited cases in both time periods for three complaint types, Personal Injury/Auto, Debt/Breach of Contract and Personal Injury. In the Other category of complaint type, the proportions of expedited and standard track assignments changed dramatically. In both time periods, standard track assignments for cases exceeded expedited track cases. In fact, the percentage of standard track cases even increased from Time 1 to Time 2 (56 percent to 65 percent respectively).

It is important to remember that the Other category of complaints is a compilation of cases that includes asbestos, defamation, and libel, among others. It seems reasonable to conclude that these cases were seen by the court as having characteristics more appropriate for assignment to the standard track.

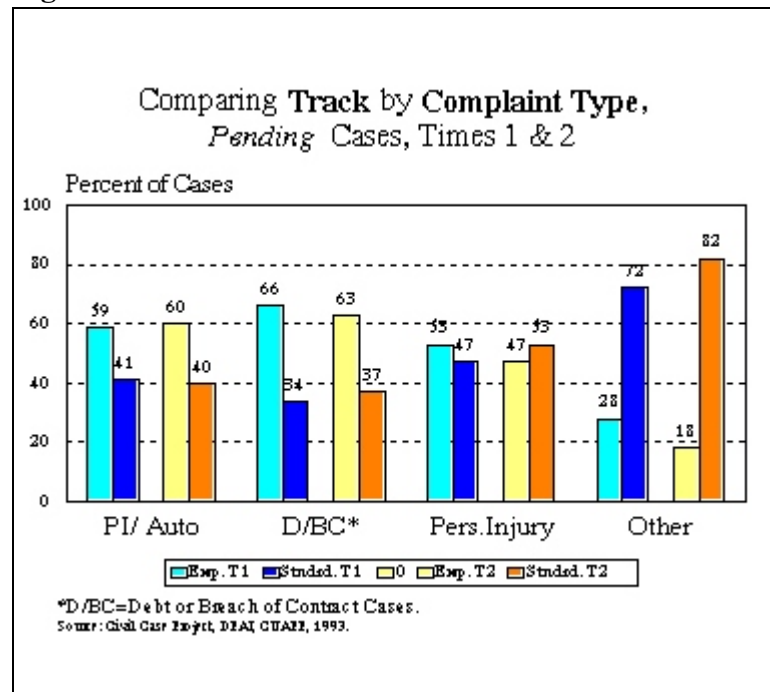
Figure 21



Comparing Track by Complaint Type for the Pending Population

The distribution of the track assignments for the pending population was quite different from that of the closed population across the complaint types (Figure 22). For Personal Injury/Auto and Debt/Breach of Contract expedited cases accounted for about sixty percent of the cases in both time periods. In fact, in Time 1, the D/BC expedited cases approached two-thirds (66 percent) of the track assignments. The track distribution for the Personal Injury cases was a mirror image of itself across the time periods. That is, the same percentages obtained, but in Time 1, expedited cases were the majority (53 percent to 47 percent) and in Time 2, standard cases assumed the same majority (53 percent to 47 percent). For the Other complaint type, the difference in the assignment of track was very pronounced. First, standard cases accounted for the vast majority of cases and, second, that proportion increased from Time 1 to Time 2 (82 percent in Time 2).

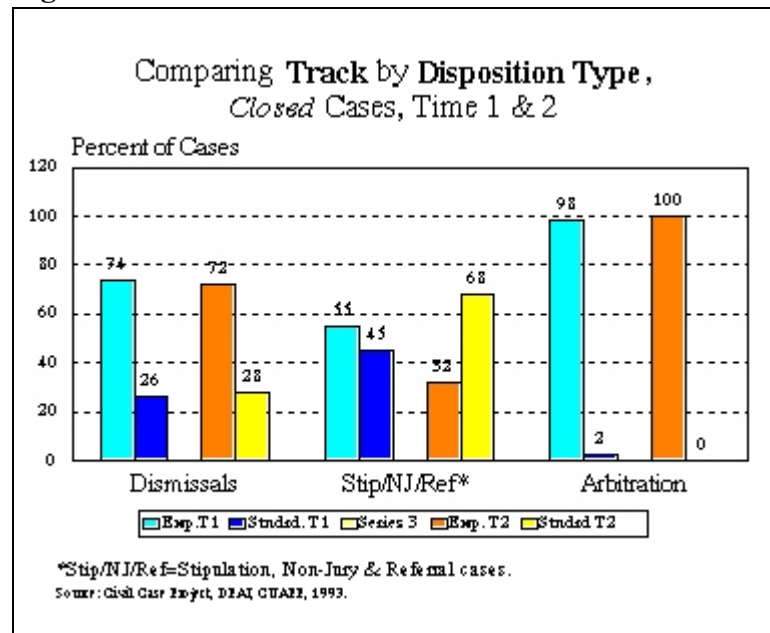
Figure 22



Comparing Track by Disposition Type for the Closed Population

The distribution of the track assignments across the disposition types, quite logically, were examined only for the closed population. We should also keep in mind that Dismissals accounted for over eighty percent of the dispositions in both time periods (See Figure 15). Consequently, the track assignments for the Dismissals were seen as most indicative of the practices of the court. The track assignments for the Dismissal disposition were essentially constant from Time 1 to Time 2 as the expedited track accounted for about three-quarters of the cases (Figure 23). The Stipulation/Non-Jury/Referral disposition's track assignments were more varied across the time periods. In Time 1, expedited cases accounted for the majority (55 percent). In Time 2, over two-thirds of the cases (68 percent) were assigned to the standard track. The Arbitration disposition, as we might expect, had the highest proportion of expedited cases for both time periods. Virtually all (100 percent) of the arbitration cases in Time 2 were assigned to the expedited track.

Figure 23



Comparing Case Processing by Track for the Closed Population

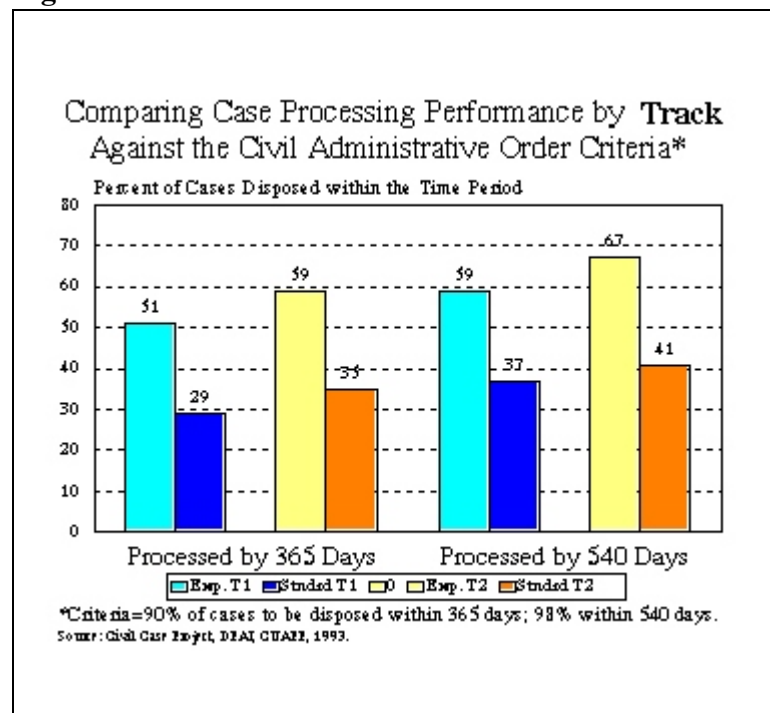
Now that we looked at how track assignments took place across the counties, the complaint types and the disposition types, it is reasonable to examine how the cases in the two tracks performed against the standards set in the Civil Administrative Order of June 1, 1991. As we explained previously, the Civil Administrative Order (CAO) not only establishes new case processing mechanisms, it also defines new performance standards for the court. Specifically, the CAO indicates that ninety percent of the complaints should reach disposition within 365 days of the filing of the complaint. Further, the CAO states that ninety-eight percent of the cases should reach disposition within eighteen months. (For this research that criterion was 540 days.)

Our findings revealed that the civil case processing of the Superior Court fell far short of the CAO performance criteria for time (Figure 24). In general, there was a clear difference between the performances of the expedited and standard cases, but neither approached compliance with the criteria. For example, just over half (51 percent) of the expedited cases in Time 1 reached disposition within 365 days, as compared to under three out of ten (29 percent) of the standard cases. In Time 2, that performance did improve markedly as almost six out of ten (59 percent) of the expedited cases reached

disposition within the CAO criterion of 365 days. There was a similar improvement in Time 2 for the standard cases as over one-third (35 percent) met the CAO yardstick.

When measured against the criterion that calls for ninety-eight percent of the cases to reach disposition within 540 days, the court had similar difficulty (Figure 24). As we might expect, expedited cases performed better than standard cases. In Time 1, only about six out of ten (59 percent) of the expedited cases met the criterion, while just over one-third (37 percent) of the standard cases did so. There was an improvement in that performance in Time 2 where over two-thirds (67 percent) of the expedited cases and four out of ten (41 percent) of the standard cases were disposed within 540 days.

Figure 24



Although we found that the court's disposition rate was below the performance standards of the Civil Administrative Order, it is clear that the expedited track of cases moved faster through the system than those on the standard track. Further, the performance improved from Time 1 to Time 2, perhaps due to the changes initiated by the Order.

Summary

The assignment of track is an important attribute for civil case processing in Superior Court and we found both differences and similarities in the distributions among the cases. For the most part, the differences occurred between the *populations*, closed and pending. That is, the closed population had a higher proportion of expedited cases than the pending population. Further, differences in the "mix" of expedited and standard cases occurred across the *counties* for the closed population (See Figure 19).

The similarities showed up when we looked at the distribution of the assignment to track across the time periods. In general, for the closed population, the relative proportions of assignments to the expedited and standard tracks among the counties did not vary greatly from Time 1 to Time 2 (See Figure 19). However, there was marked variation in those distributions among the counties for the pending population (See Figure 20).

Measuring the performance of the civil case processing by track against the criteria of the Civil Administrative Order, we found that track specification made a difference in meeting the standards. It is clear that the Superior Court has some distance to cover to fully meet the guidelines of the CAO. However, the designation of track and the attendant case processing mechanisms that accompany that specification have yielded some progress toward compliance with the criteria.

Chapter 8: Measuring Case Processing Performance

Fundamental to any examination of the case processing activity of Superior Court is a look at how long it took for cases to move through the system. For this project we had very specific criteria against which to measure that performance. The Civil Administrative Order (CAO) that went into effect on June 1, 1991 established performance criteria for civil case processing and the members of the Advisory Committee indicated that the CAO criteria were important to them. Therefore, our analysis of time required for civil case processing is based on an application of the CAO performance criteria to the populations in Time and Time 2.

The Criteria of the Civil Administrative Order

The Civil Administrative Order established performance criteria for the processing of civil cases. They are based on the prescribed percentage of cases that the court should process within specified time periods. The criteria, as stated verbatim in the Order, are as follows:

- 1. 90 percent of all civil cases should be settled, tried, or otherwise concluded within 365 days of the date of the case filing;**
- 2. 98 percent of all civil cases should be settled, tried, or otherwise concluded within 550 days of such filing;**
- 3. The remainder of all civil cases should be settled, tried, or otherwise concluded within 730 days of such filing except for individual cases in which the Court determines exceptional circumstances and for which a continuing review should occur.**

For this project, we measured the case processing performance of the Superior Court against the first two criteria. We designed the research expressly to accommodate an analysis of the 365-day (12 months) and 550-day (18 months) time periods.

Questions Regarding Civil Case Processing Performance

Now that we know what the performance criteria are for case processing, the question is how did the populations in Times 1 and 2 measure up to them. In this chapter we present the findings regarding the questions about civil case processing that guided our analysis. In order to give a complete accounting of the information, we separated our findings for each of the criteria. The case processing performance information as measured against the 365-day criterion appears first, followed by the performance against the 550-day criterion. The specific questions we examined appear below:

1. **How did the cases compare against the performance criteria of the Civil Administrative Order by *Complaint Type* for the *state* in both time periods?**
2. **How did the cases compare against the performance criteria of the Civil Administrative Order by *Complaint Type* across the *counties* in both time periods?**
3. **How did the *closed* cases compare against the performance criteria of the Civil Administrative Order by *Disposition Type* for the *state* in both time periods?**
4. **How did the *closed* cases compare against the performance criteria of the Civil Administrative Order by *Disposition Type* across the *counties* in both time periods?**

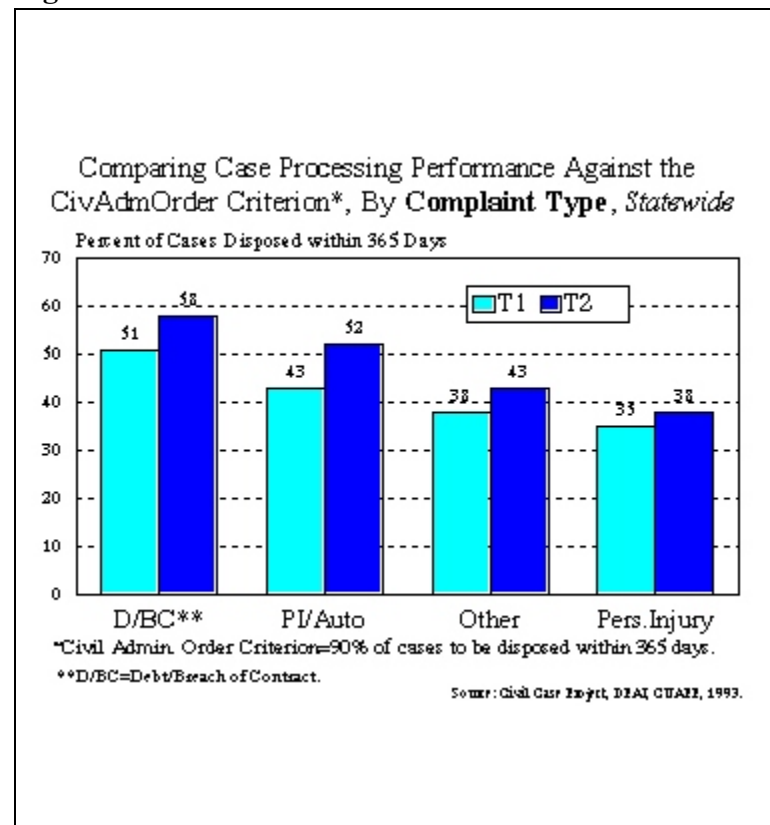
Comparing Performance Against the CAO (365 Days), by *Complaint Type*, Statewide

In general, the case processing performance of the Superior Court fell short of the criteria established by the Civil Administrative Order. The first criterion against which we measured that performance was the standard that called for the resolution of ninety percent of the cases within 365 days of the filing of the case. None of the cases in any of the categories of complaint types approached compliance with the criterion (Figure 25). That having been said, it is important to note that the resolution of cases in each of the complaint types improved from Time 1 to Time 2. The Debt/Breach of Contract (D/BC) cases enjoyed the most success against the criteria in both time periods with just over half of the cases reaching disposition within 365 days. That performance

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improved markedly in Time 2 as just under six out of ten cases (58 percent) reached disposition with the CAO criterion. The Personal Injury/Auto cases (PI/A) met the criterion for only forty-three percent of the cases in Time 1, but the performance improved significantly in Time 2 to just over half of the cases (52 percent) in compliance with the standard. For cases in the Other and Personal Injury complaint types, compliance with the criterion remained difficult. Although there was an improvement for both complaint categories from Time 1 to Time 2, their highest percentage of dispositions within the 365-day standard was only forty-three percent in Time 2 for the Other complaint category.

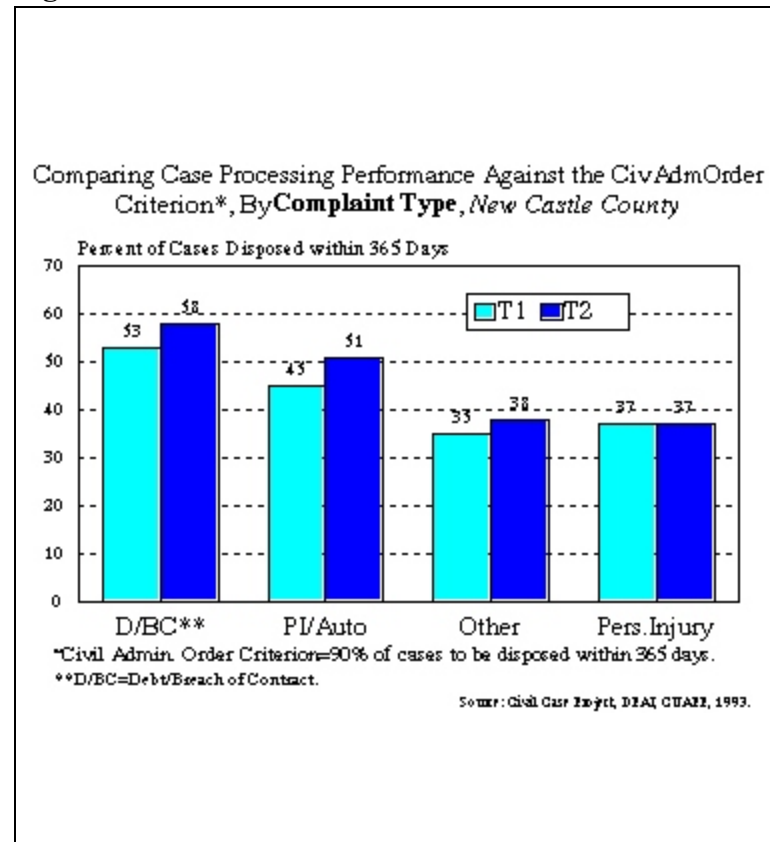
Figure 25



**Comparing Performance
Against the CAO, By
Complaint Type, *New Castle
County***

As we indicated throughout this report, the significant majority of cases in the state were filed in New Castle County. Therefore, it was reasonable to expect that the case processing performance of the county would closely mirror the performance of the state. That is precisely what we found (Figure 26). For three of the four Complaint Type categories there was an improvement in the case processing from Time 1 to Time 2 as measured against the CAO's 365-day criterion. The Debt/Breach of Contract cases (D/BC) reached a disposition rate of almost six out of ten cases (58 percent) in Time 2. The Personal Injury (PI) complaints, however, registered no improvement across the time periods, remaining at over one-third of cases (37 percent) reaching disposition with 365 days.

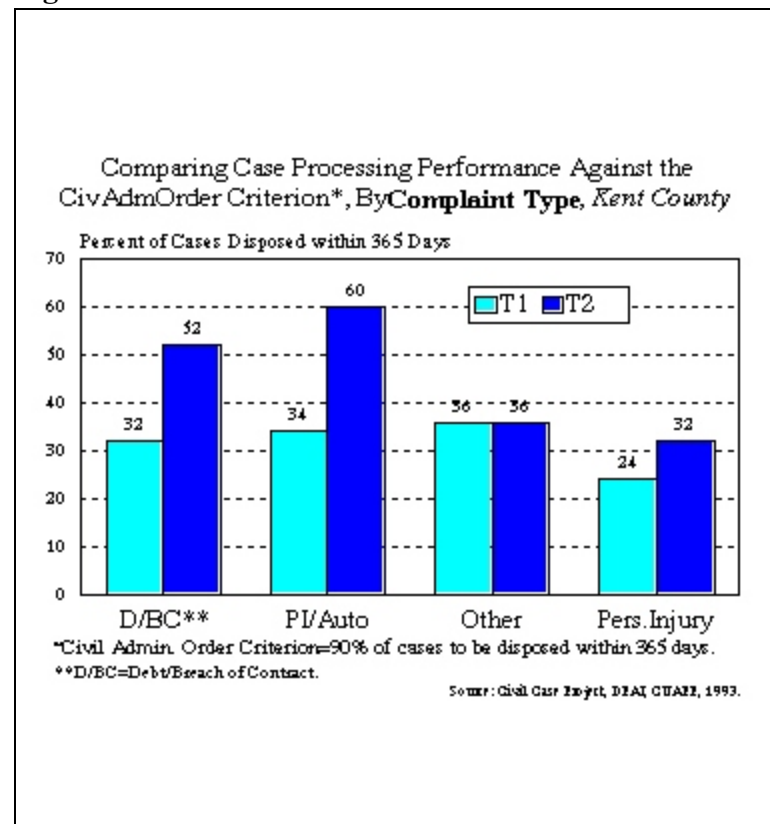
Figure 26



**Comparing Performance
Against the CAO, By
Complaint Type, Kent County**

In Kent County there were significant differences in case processing performance across the complaint types and between Time 1 and Time 2 (Figure 27). In part, some of the differences can be attributed to relatively small numbers of cases in both Kent and Sussex counties, and with larger numbers of cases the magnitude of difference between Times 1 and 2 would not be as large. However, the findings do indicate, at the very least, that case processing performance improved across the time periods. That improvement was most noticeable in the Debt/Breach of Contract (D/BC) and Personal Injury/Auto (PI/A) cases with differences of twenty and twenty-six percent, respectively. For cases in the Other complaint category, the proportion of cases resolved within 365 days remained just over one-third (36 percent) for both time periods. The Personal Injury cases (PI) saw an improvement of eight percentage points.

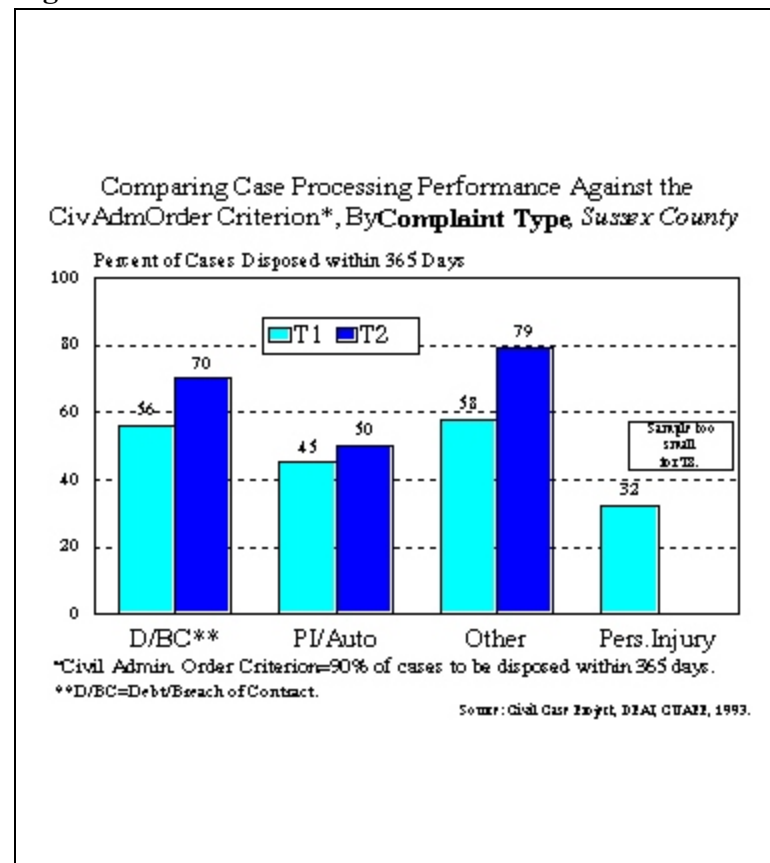
Figure 27



**Comparing Performance
Against the CAO, By
Complaint Type, *Sussex
County***

The case processing in Sussex County as measured against the ninetypercent/365-day criterion had quite different results than either New Castle or Kent counties. The Debt/Breach of Contract cases (D/BC) and the Other complaint type of cases enjoyed the most success (Figure 28). In fact, in Time 2, seven out of ten and almost eight of ten D/BC and Other cases, respectively, met the 365-day criterion. Again, we must use caution with these findings because the population of cases in Sussex County is relatively small. But, it is clear that some improvement in case processing occurred. We should note that we did not report the performance of Personal Injury cases (PI) for Time 2 because the sample was too small to yield reliable results.

Figure 28



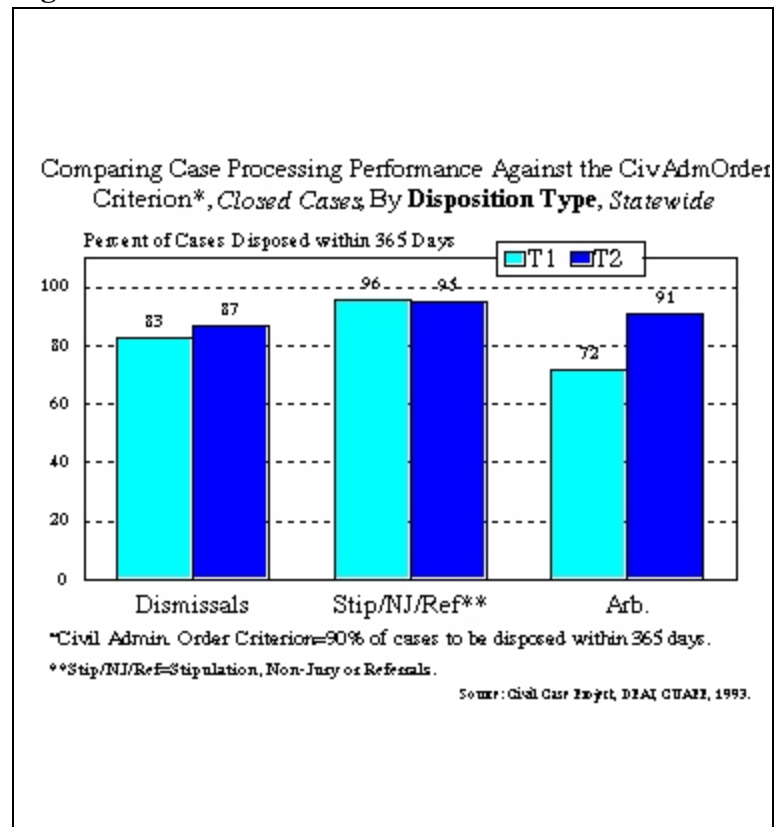
**Comparing Performance
Against the CAO, *Closed*
Cases, By *Disposition Type*,
Statewide**

An obvious question about case processing performance is whether there were any differences among the disposition types in reaching the ninety percent/365-day criterion established by the Civil Administrative Order. Before going further, it is important to note that these findings were, by definition, applied only to the closed cases. So, a more appropriate statement of the question would be what percentage of the *closed* cases reached disposition within the CAO criterion. The focus on closed cases predisposes the findings toward high percentages of cases that met the criterion. After all, these cases were those that reached a disposition during the time periods at risk. However, it was still important to examine their performance as measured by the CAO criterion. The questions were essentially two comparisons: (1) Was there a difference in the case processing performance among the disposition types? (2) Was there a difference in case processing performance between Times 1 and 2?

We found that all three of the disposition types enjoyed high percentages of cases that reached disposition within 365 days (Figure 29). Perhaps, the most revealing findings were those of the cases that were disposed by Dismissal. Remember, over eighty percent of the closed cases were resolved by Dismissal across the state. Therefore, these findings represented a substantial number of cases. We found that over eight out of ten of the Dismissal cases reached resolution within 365 days in Time 1. That percentage improved to almost nine out of ten cases (87 percent) in Time 2. Cases disposed through Arbitration also improved between Times 1 and 2 (72 percent to 91 percent, respectively).

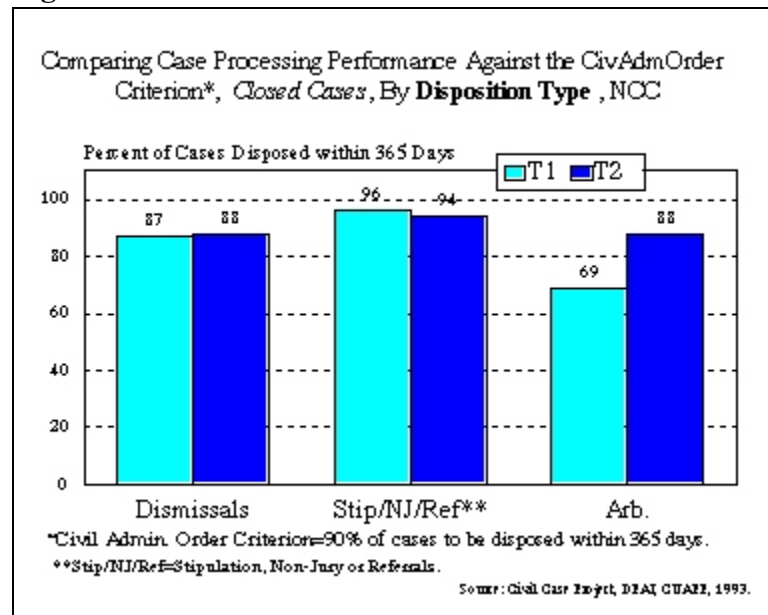
Again, we emphasize that these findings must be viewed with some caution. Yes, the proportion of cases resolved within 365 days approached the ninety percent criterion of the CAO. But, these findings represent the *closed* cases. Remember, in Time 1 fifty percent of the cases were pending at the end of the observation period. In Time 2, the pending cases accounted for forty-three percent of the cases. The findings presented earlier by Complaint Type take into account *all* of the cases, closed and pending. Therefore, the compliance rate reported there is a more reliable picture of the performance of the court.

Figure 29



**Comparing Performance
Against the CAO, Closed
Cases, By Disposition Type,
New Castle County**

New Castle County accounted for over eighty percent of the cases filed in the state. As a result, we were able to examine the case processing performance of a substantial number of *closed* cases by disposition type within the county. As with the findings for the state, the performance of the court essentially reached the criterion established by the CAO (Figure 30). Almost nine out of ten cases that were resolved by Dismissal reached that disposition within 365 days for both time periods. There was also substantial improvement in the performance of cases that were resolved through arbitration (72 percent in Time 1 and 91 percent in Time 2). The Stipulation/Non-Jury/Referral disposition type exceeded the CAO criterion in both time periods.

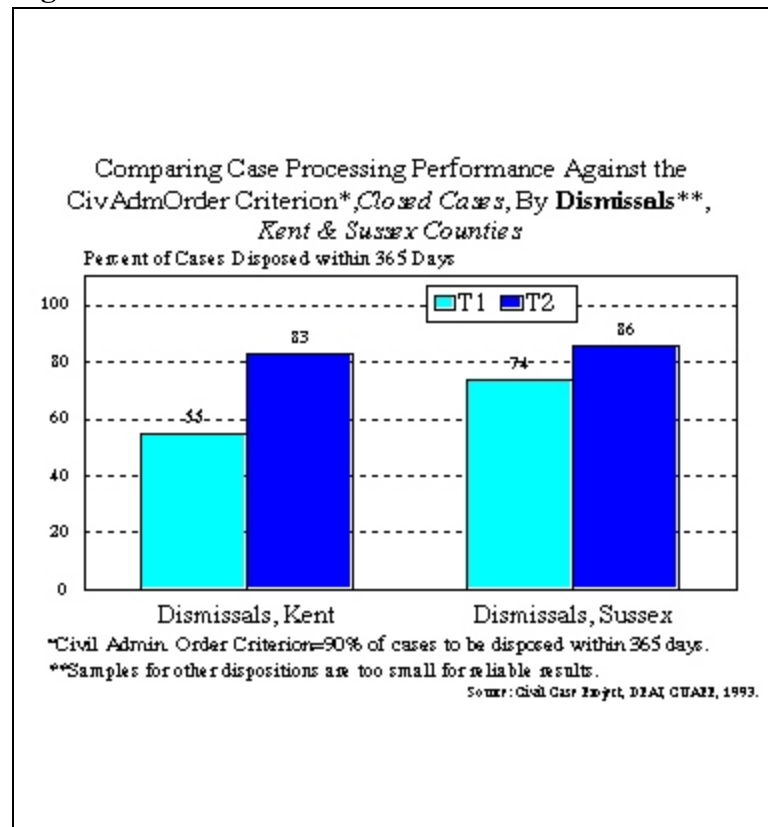
Figure 30

**Comparing Performance
Against the CAO, Closed
Cases, Dismissals, *Kent &
Sussex Counties***

Because New Castle County accounted for the significant majority of the case filings and, therefore, a large population on which to base our findings, we presented the case processing performance for each of the disposition types in Figure 30. The southern two counties, however, had smaller numbers of case filings. As a result, when we looked at the case processing performance by disposition, it was clear that Dismissals was the only disposition type that had sufficient numbers of cases to make the findings reliable. Therefore, in Kent and Sussex counties, we focused our attention, for the purposes of the report, on the case processing performance of the cases resolved by Dismissal (Figure 31).

In both counties there was a substantial improvement in case processing performance between Time 1 and Time 2 as measured against the CAO ninety percent/365-day criterion. In Kent County, just over half of the dismissals (53 percent) were disposed within 365 days in Time 1. That percentage rose significantly to over eight out of ten (83 percent) in Time 2. The improvement in Sussex County was less dramatic (74 percent to 86 percent in Times 1 and 2, respectively) but, nonetheless, it was there.

Figure 31



**Comparing Performance
Against the CAO, (550 Days)
By Complaint Type, *Statewide***

The second criterion that the Civil Administrative Order articulated for measuring civil case processing stated that ninety-eight percent of all civil cases should be resolved within 550 days of the filing date. We took that criterion and applied it to the case processing activity of our populations in Time 1 and Time 2. We found that, even with the added period in which to resolve cases, the processing performance did not improve dramatically from the effort measured against the 365-day criterion (Figure 32).

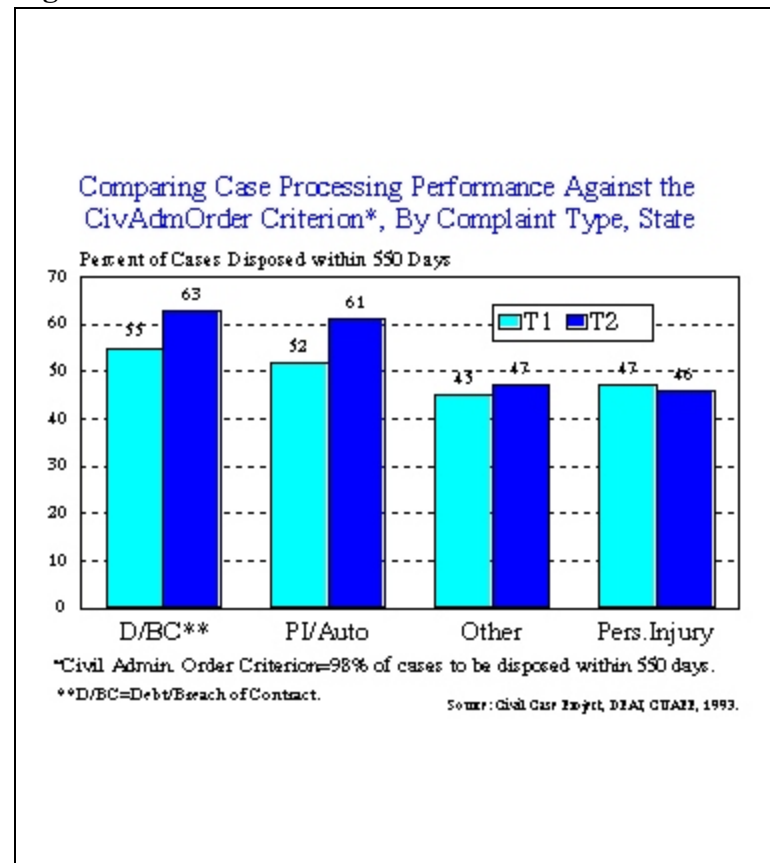
The Debt/Breach of Contract (D/BC) and the Personal Injury (PI/A) cases again were more successful in reaching the 550-day standard than the cases in the Other and Personal Injury complaint categories. In Time 2 each had improved to over sixty percent of cases reaching disposition within the 550-day criterion. That represented an increase in the compliance rate over the 365-day criterion of five percent for the D/BC cases and nine percent for the PI/A cases (See Figure 25). Even with the improvement, however, the case processing performance of the court was well below the ninety-eight

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percent standard that was stated in the Civil Administrative Order.

The case processing performance of the cases in the Other and the Personal Injury (PI) complaint types remained relatively constant through both time periods, staying just below fifty percent of cases that complied with the 550-day standard.

Figure 32

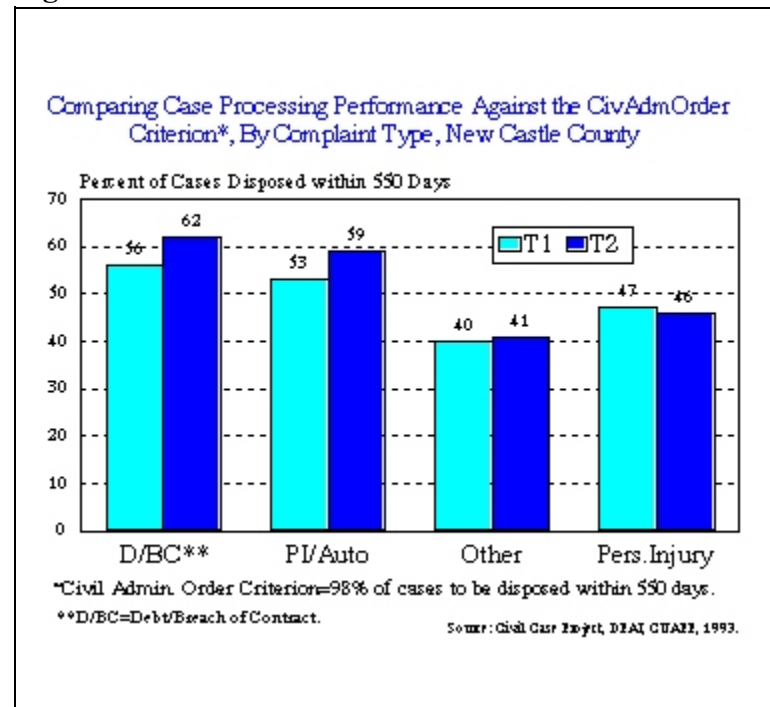


**Comparing Performance
Against the CAO, By
Complaint Type, *New Castle
County***

The pattern of case processing activity that we saw for the state was reflected in the performance in New Castle County, as we expected (Figure 33). The Debt/Breach of Contract (D/BC) and the Personal Injury/Auto (PI/A) cases achieved a compliance rate with the 550-day criterion of about sixty percent in Time 2 (62 percent and 59 percent, respectively). Cases in the Other complaint category were processed at a rate that only about four out of ten reached disposition within the standard in both time periods. The Personal Injury (PI) cases hovered just below fifty percent for Times 1 and 2.

It is possible to speculate from these findings that early action on a case is very important to its disposition. That is, the findings show that the proportion of cases that met the 550-day criterion was not a dramatic improvement over the percentage of cases that were disposed within 365 days. At most, the improvement was ten percent (PI cases in Time 1 went from 37 percent compliance at 365 days to 47 percent compliance at 550 days).

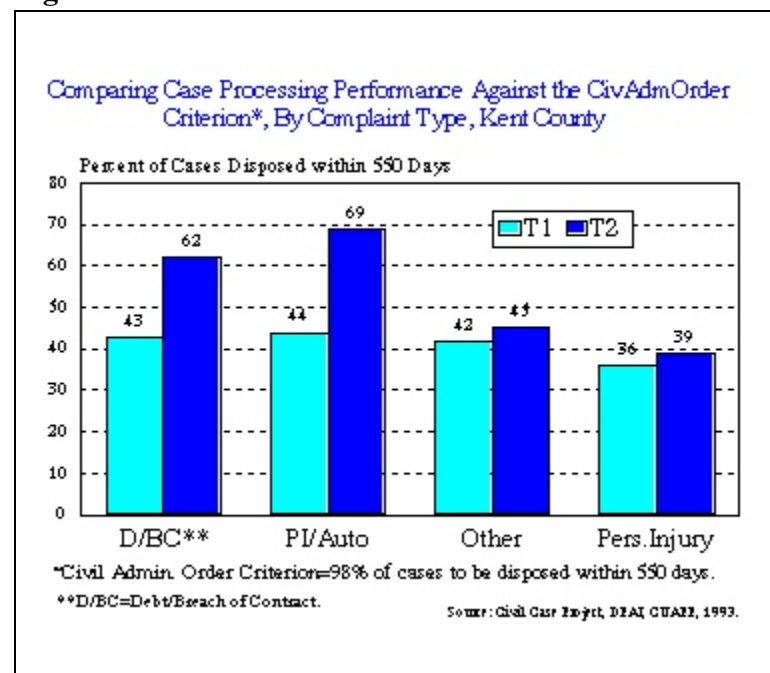
Figure 33



**Comparing Performance
Against the CAO, By
Complaint Type, Kent County**

In Kent County there were substantial differences in the case processing performances between Times 1 and 2 in meeting the 550-day criterion (Figure 34). These patterns mirrored those of the compliance rate with the 365-day standard (See Figure 27). The proportion of Debt/Breach of Contract (D/BC) complaints that met the 550-day criterion jumped nineteen percent from Time 1 to Time 2. For the Personal Injury/Auto cases (PI/A), that increase was twenty-five percent (44 percent in Time 1 to 69% in Time 2). Again, as we saw in New Castle County, the Other complaint category remained below fifty percent compliance for both time periods. The Personal Injury (PI) complaints registered the lowest percentage of cases meeting the standard with fewer than four cases out of ten reaching disposition within 550 days in both time periods. Again, we must use caution in interpreting these findings. The number of cases in Kent County was significantly smaller than New Castle County (See Figures 2 & 3). Therefore, changes in the case processing performance of a relatively small absolute number of cases would have significant impact on the percentages of cases reaching the criterion. That being said, however, it is clear that there was improvement from Time 1 to Time 2.

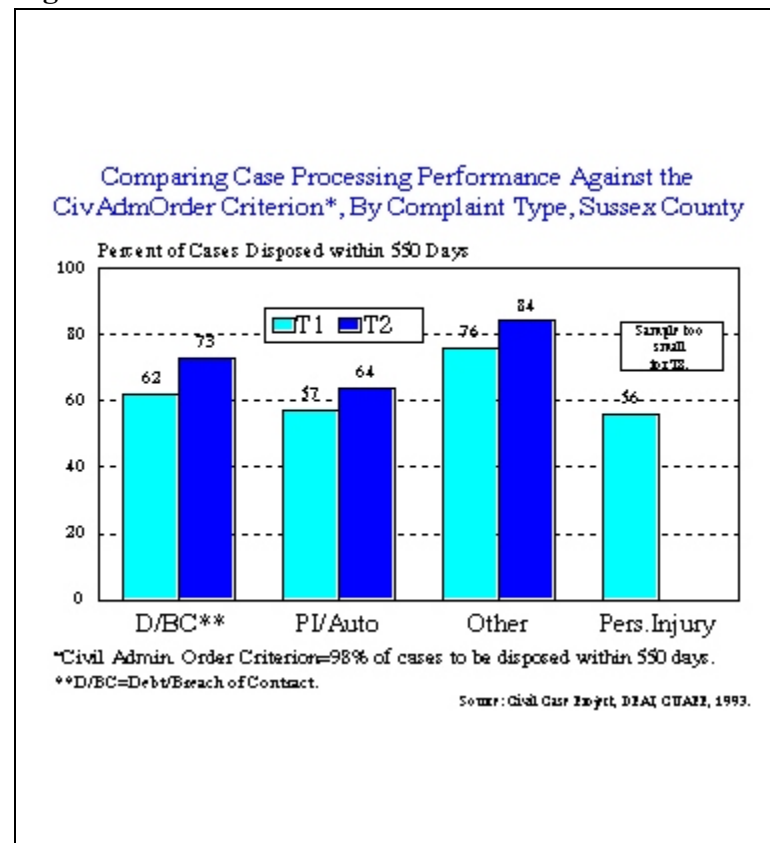
Figure 34



**Comparing Performance
Against the CAO, By
Complaint Type, Sussex
County**

In Sussex County, the case processing performance as measured by the 550-day criterion had quite a different pattern than the performance in either of its northern neighbors (Figure 35). The Debt/Breach of Contract (D/BC) cases experienced an increase from Time to Time 2 (62 percent to 73 percent, respectively). However, unlike the performance in New Castle or Kent counties, cases in the Other complaint category were the most successful complaint type in reaching the 550-day criterion (76 percent in Time 1 and 84 percent in Time 2). The Personal Injury/Auto (PI/A) cases were less successful in meeting the criterion. There was insufficient data for the Personal Injury (PI) cases in Time 2 to produce any findings. Given these results, however, the same caution regarding small numbers of cases must also be applied to the findings for Sussex County as we applied to Kent County's information.

Figure 35



Summary

Our findings show that the civil case processing performance of the Superior Court does not meet the criteria established by the Civil Administrative Order. But it would be a mistake to conclude that the court's efforts are failing. Indeed, we must remember that the CAO's criteria were only recently instituted (June 1, 1991). And, we must understand that the court is a system with attributes such as constitutional guarantees and an adversarial relationship among the parties that affect case processing speed. Further, as we mentioned earlier, much of the activity in a civil case is left to the attorneys representing the parties to the case. As such, the local legal culture must catch up to the performance criteria that the CAO has set. But even with these caveats, it is clear that the case processing performance of the court did improve between Time 1 and Time 2. The percentage of cases that met the 365-day criterion, particularly for the Debt/Breach of Contract and Personal Injury/Auto cases, did increase between the time periods. These findings suggest that the court functioned more efficiently in Time 2 than in Time 1 as defined by compliance with the CAO criteria. But, can not say with certainty that the imposition of the Civil Administrative Order during Time 2 was the causal factor in that improvement. However, neither case mix (defined by complaint type) nor disposition type nor tracking assignments changed significantly between the time periods. Yet, the case processing performance improved from Time 1 to Time 2.

Chapter 9: The Phases of Case Processing

The processing of cases, whether civil or criminal, is, at its core, a delicate balancing act. On the one hand, the court is charged with the delivery of justice; the real justice that is guaranteed by the Constitution. That is its overriding concern, as it must be. On the other hand, though, the court is asked to deliver justice, but to deliver it quickly. The axiom that justice delayed is justice denied has powerful meaning. And, it is particularly critical for a criminal case. But the justice in civil actions, too, is seriously questioned when resolution is not timely. These concepts are not in contradiction to each other. In fact, they are both fundamental to our system of laws. However, at times, the achievement of one may necessarily detract from the other. And therein lay the rub. How does the court organize its work to meet the demands of both principles? How does it attempt to insure that justice is not only delivered, but delivered without undue delay? What process is used to move cases through the system?

The Phases of Case Processing

In order to understand how civil cases were processed by the court, we defined and examined the phases through which the cases moved. The definition of the phases was the result of extensive discussions with the Advisory Committee (the definition of the phases was particularly important during first meeting of the committee). The phases of civil case processing for this research are presented below:

1. ***File to Return Time:*** Period from the date of the Filing of the complaint TO the date of the first Return of Service.
2. ***Return to Answer Time:*** Period from the date of the first Return of Service TO the date of the filing of the first Answer to the complaint.
3. ***Answer to Disposition/EOP Time:*** Period from the date of the filing of the first Answer to the complaint TO the date of Disposition (for the Closed population) or the date of the End of the Observation Period (for the Pending population) in each time period. It is in this phase when most of the activity for a civil case occurs and where the court has more direct influence on the case.

These phases represent the common denominators through which all civil cases moved. Therefore, we were able to compare all the cases along these dimensions.

Clearly, however, there was another phase that we would have liked to examine as a separate entity, i.e., the Discovery phase. That is, the period during which the activities of discovery occur. The questions with which the Advisory Committee and the project staff wrestled were: (1) When did discovery begin? (2) When did it end? And, if we could answer the first two questions, (3) Did we have the data to examine the issue? On its face, the task of defining the discovery phase seemed like a simple one. However, as the Advisory Committee was quick to point out, it was not. For example, we could reasonably determine when the discovery phase began for the purposes of the research (after the date of the first Answer to the complaint). Surely, for some cases discovery would begin earlier, but the committee determined that the date of the filing of the first Answer was a reasonable starting date. Now the question was when did the discovery phase end. The members of the committee suggested that, in their experience, the discovery activities of a case were, for the most part, completed at the time of the pre-trial conference. With further discussion, however, it became clear that even with official dates (from a scheduling order) for the discovery phase, discovery activities sometimes occurred even up to the day of trial. The accommodations that the attorneys for both parties extended to each other were part of the local legal culture. In sum, then, it became difficult to specify with precision a date for the end of discovery. To overcome that issue, the project staff and the committee decided to examine the date of the pre-trial conference as a possible facsimile for the end of the discovery phase. However, the data base from the Judicial Information Center, on which the research was based, had pre-trial conference dates for only a fraction of the cases. The result was that we could not examine discovery as a separate phase of civil case processing. The Advisory Committee and the project staff have suggested to the Superior Court that some clear indication regarding the end of the discovery phase should be added to the data that it gathers.

The Questions About the Phases

The questions that we examine in this chapter focus on the time required for the cases to move through the phases of the civil process. In this way, we learned where most of the activity of case processing took place. It should be noted that this break-down by phase was the first time that the state of Delaware was able to examine the activity of its civil justice system in such a detailed a fashion and it provided the court with essential information.

We drew comparisons for the closed and pending populations across the time periods for each county by track assignment, by complaint type and by disposition type (for the closed population). The times required to move through the phases were reported as the median number of days for each phase. The median represents that value that rests in the middle of the distribution of the days required to move through the phase. That is, fifty percent of the cases took longer to complete the phase and fifty percent of the cases required less time to move through the phase. The median is preferred to the mean (average) because the median, by definition, is not affected by extreme values.

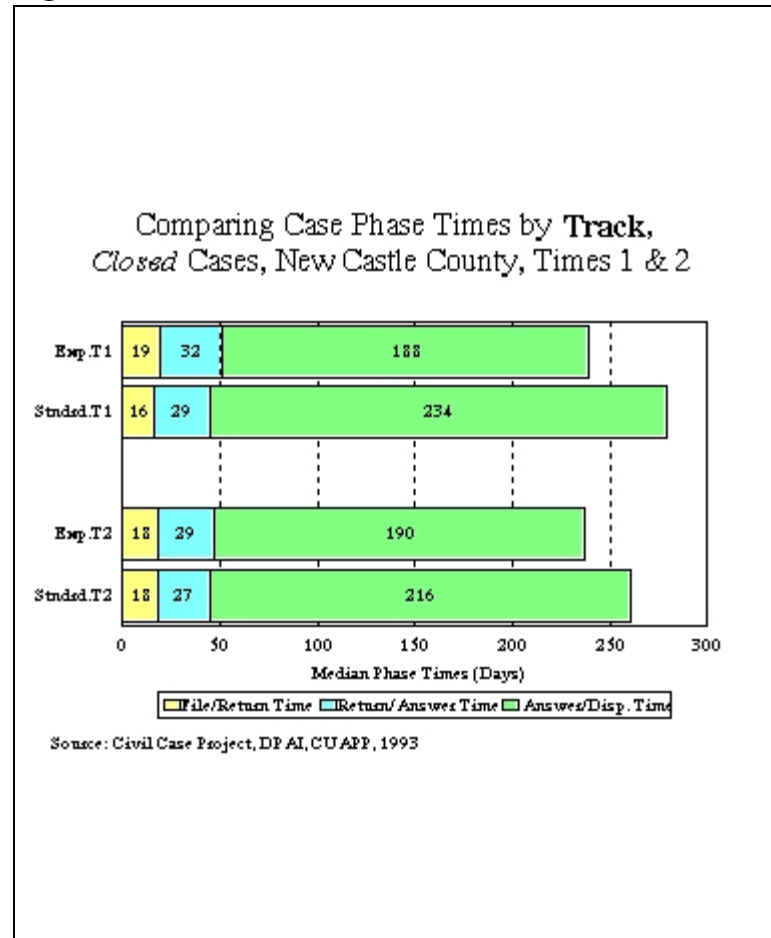
The Questions:

- 1. How did the phase times for the populations across the counties compare by *tracking assignment* from Time 1 to Time 2?**
- 2. How did the phase times for the populations statewide compare by *complaint type* from Time 1 to Time 2?**
- 3. How did the phase times for the closed population statewide compare by *disposition type* from Time 1 to Time 2?**

**Comparing Phase Times, by
Track, Closed Cases, New
Castle County**

In the closed population for New Castle County we found that the phase times for the File/Return and Return/Answer phases did not change significantly between Times 1 and 2 (Figure 36). Further, the Expedited and Standard cases required about the same amount of time. The difference occurred in the Answer/Disposition phase. In both time periods the Expedited cases completed the Answer/Disposition phase significantly faster than the Standard cases (188 days to 234 days, respectively in Time 1 and 190 days to 216 days, respectively in Time 2). The reduction for the Standard cases in Time 2 to 216 days also represented an eight percent improvement.

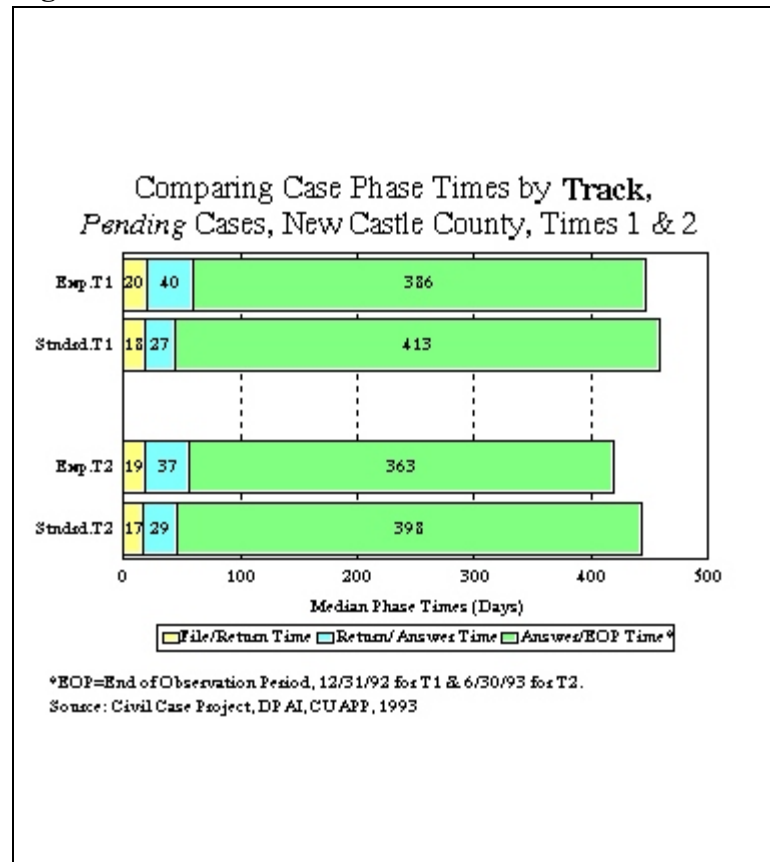
Figure 36



**Comparing Phase Times, by
Track, Pending Population,
New Castle County**

The phase times for the Pending population in New Castle County were longer than those of the Closed population. The largest difference occurred in the Answer/EOP phase, as we expected. After all, the Pending population did not complete the phase. They were still unresolved at the end of the observation period. Consequently, the times that we report here will only rise as the cases reach disposition. Even with this caveat, we found that, in general, the time required for the Pending population cases to move through the phases decreased between Times 1 and 2 (Figure 37). The Expedited cases were swifter than the Standard cases in the Answer/EOP phase (386 days to 413 days, respectively in Time 1 and 363 days to 398 days, respectively in Time 2). And, while these cases are all in violation of the performance criterion of the Civil Administrative Order, there was improvement between the time periods.

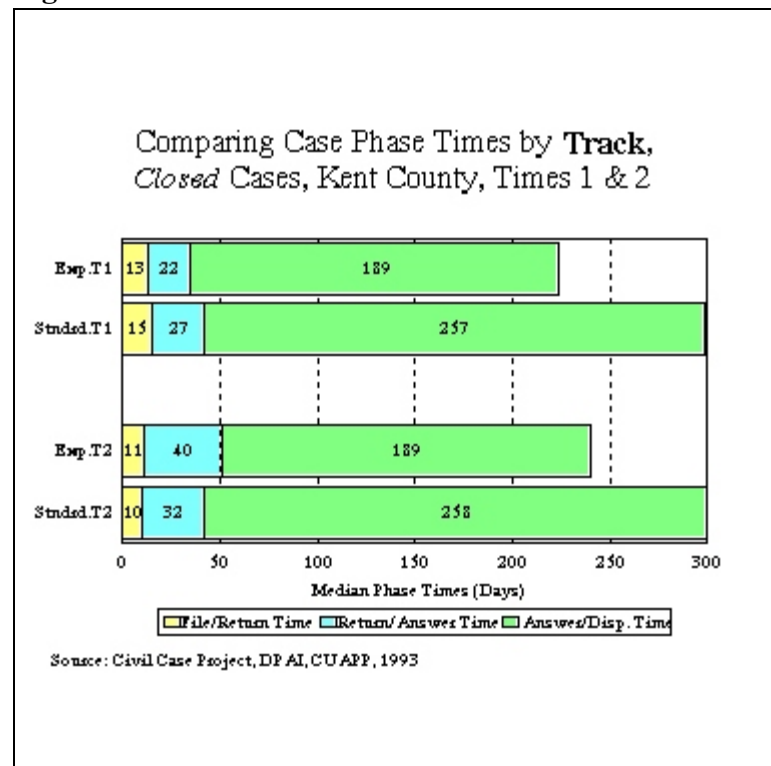
Figure 37



**Comparing Phase Times, by
Track, Closed Cases,
Kent County**

Unlike New Castle County, the changes in the phase times that occurred in Kent County did so during the first two phases (Figure 38). The changes also went in opposite directions. Between Times 1 and 2 the median times for completion of the File/Return phase decreased for both the Expedited and the Standard cases. Expedited cases dropped from a median of 13 days in Time 1 to a median of 11 days in Time 2. Standard cases experienced a one-third decrease in the amount of time required to complete the phase (15 days to 10 days between Times 1 and 2, respectively). The trend was reversed for the Return/Answer phase. In Time 2, both Expedited and Standard cases took longer to complete the phase than in Time 1 (22 days to 40 days for the Expedited cases and 27 days to 32 days for the Standard cases). During the longest phase of case processing, Answer/Disposition, there was virtually no change between Times 1 and 2, although the Expedited cases moved through the phase significantly quicker than the Standard cases (189 days to 257 or 258 days). These findings suggest that the Expedited track is just that...expedited.

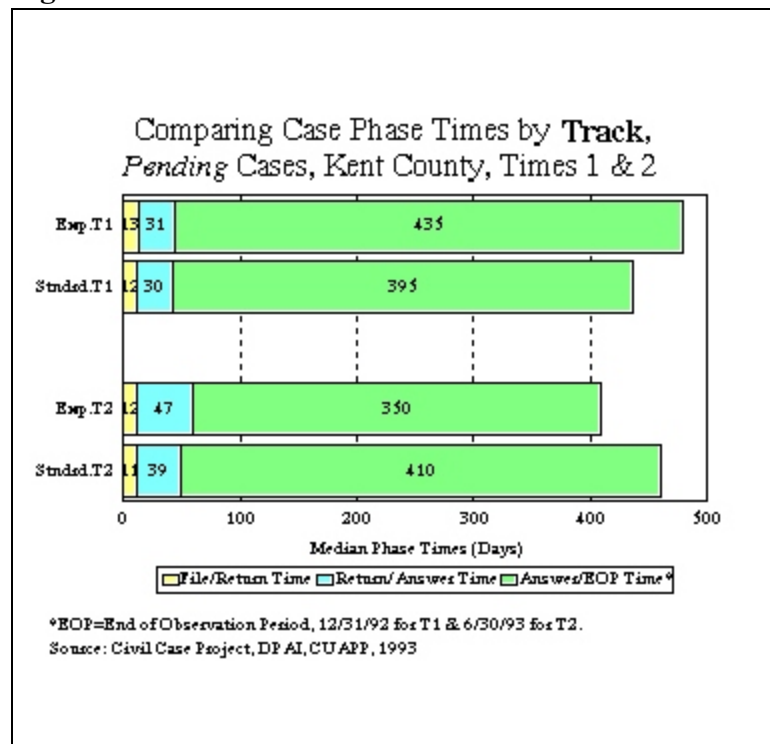
Figure 38



**Comparing Phase Times, by
Track, Pending Population,
Kent County**

The phase times for the Pending population in Kent County were significantly longer for the last two phases than the phase times for the Closed population (Figure 39). But more revealing was the substantial increase in the median time to complete the Return/Answer phase for cases in either track from Time 1 to Time 2. The median phase time for the Expedited cases increased from 31 days in Time 1 to 47 days in Time 2. The Standard cases experienced an increase from 30 days to 39 days in Times 1 and 2, respectively. The performance of the cases in the Answer/EOP phase was mixed. In Time 1, the Expedited cases were pending for a longer period than the Standard cases (435 days to 395 days, respectively). That trend was reversed in Time 2 as the Expedited cases were pending for a much shorter period than the Standard cases (350 days to 410 days, respectively). Again, we caution that these cases are all in violation of the 365-day performance criterion of the Civil Administrative Order.

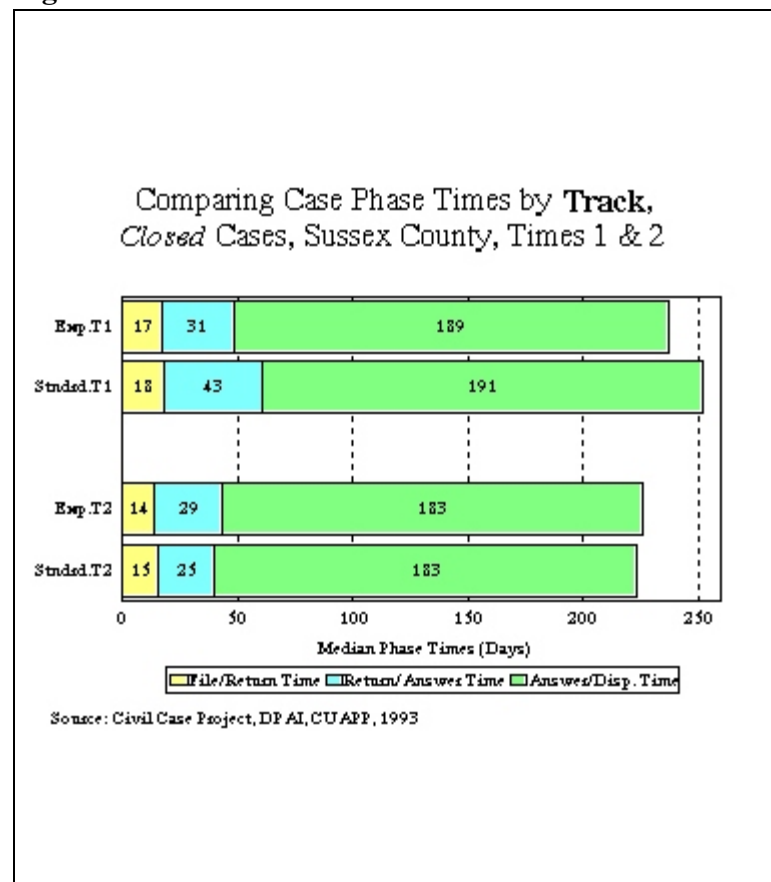
Figure 39



**Comparing Phase Times, by
Track, Closed Population,
Sussex County**

In Sussex County the median phase times for each of the track assignment categories decreased from Time 1 to Time 2 (Figure 40). The most dramatic decrease occurred for the Standard cases in the Return/Answer phase with a median time of 43 days in Time 1 and a median time of 25 days in Time 2. Like its two northern neighbors, there was a general improvement in the performance of the Sussex County closed cases between the time periods. However, unlike its northern neighbors, there were not dramatic differences between the cases by track assignment in the Answer/Disposition phase. That is, Sussex County was relatively successful in moving cases through that phase, regardless of tracking assignment. Specifically, in Time 1, there was only a difference of two days in the median times to complete the phase between the tracks (189 days for the Expedited cases and 191 days for the Standard cases). In Time 2, the median time to complete the Answer/Disposition phase was virtually the same (183 days).

Figure 40



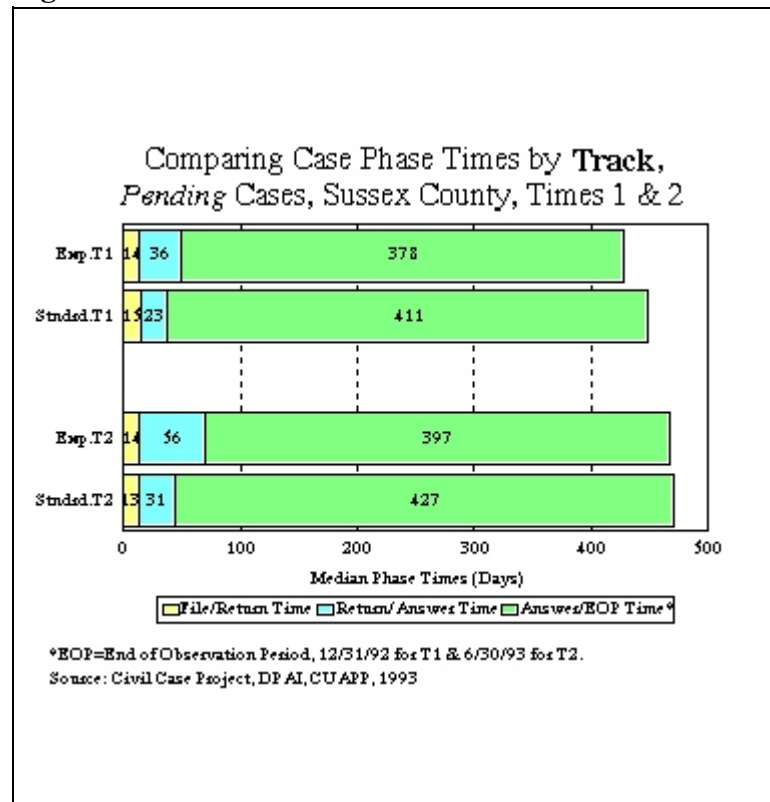
Civil Justice in Delaware

In discussions with the Advisory Committee (a member of which is a judge from Sussex County), we learned that the judges in Sussex County use a case processing approach that is a de facto special assignment system. That is, a judge is essentially assigned to the case for its duration. To a certain extent, that may be a product of the size of the overall operation in Sussex County. But, it is more than that. The judges, as a part of their management of cases, meet with the attorneys in every case very early in the proceedings. In short, the court takes a very active role from the beginning of the case. This approach to case processing is very nearly the equivalent to a case management system that is termed "special assignment" of judges. In operation, this system assigns a judge to each case at the beginning of the proceedings. The rationale behind this approach is the idea that the judge is involved in and knows the history of the case in much more detail than would occur otherwise. By extension, then, the judge is in a better position to use the mechanisms of the court to bring the case to a just and timely conclusion. That is the theory. In practice, the special assignment of judges can accomplish what its proponents claim. Left unsaid, however, is the approach's significant reliance on what is, essentially, the operation of the local legal culture. Civil cases, for all the court's power, are still the province of the attorneys. And, the local legal culture is that set of expectations, norms, values and experience that the members of the legal community bring to the administration of justice in any jurisdiction. The special assignment of judges in a civil case seeks to utilize the positive aspects of that local legal culture. As judges become intimately familiar with a case, their capacity to make demands on the local legal culture increases. Such, it seems, may be the case in Sussex County. The results that we saw for the phase time performance of the closed cases in Sussex County may have been our first peek into the efficacy of such an approach.

Civil Justice in Delaware

The success that Sussex County displayed for the Closed population was not extended to the Pending cases. In fact, for the Return/Answer and the Answer/EOP phases, Sussex County's performance, as measured by median phase times, deteriorated between Times 1 and 2 (Figure 41). For the Return/Answer phase, the Expedited cases took substantially longer than the Standard cases in both time periods. Further, the median time for the Expedited cases to complete the phase jumped dramatically from 36 days in Time 1 to 56 days in Time 2. During the Answer/EOP phase, the Expedited cases were unresolved for a shorter time than the Standard cases, but that median time for both tracks increased in Time 2 (from 378 days to 397 days for Expedited cases and from 411 days to 427 days for Standard cases). While these phase times for the Pending cases were not very different for the phase times of the Pending populations in the northern counties, they were a significant departure (as compared to the same activity for New Castle and Kent counties) from the performance of the Closed cases.

Figure 41



**Comparing Phase Times, by
Complaint Type, Closed Cases,
Statewide**

We now look at how the closed cases moved through the phases in each time period based on **Complaint Type**. For the purposes of clarity, we present these findings in two separate figures. The first one (Figure 42) shows the results for the Personal Injury/Auto (PI/A) and the Debt/Breach of Contract (D/BC) cases. The second figure (Figure 43) indicates the findings for the Personal Injury (PI) and the Other cases. The phase time performance of the complaint type in each time period is represented by a bar. The upper bar is Time 1; Time 2 is represented by the lower bar for each complaint type.

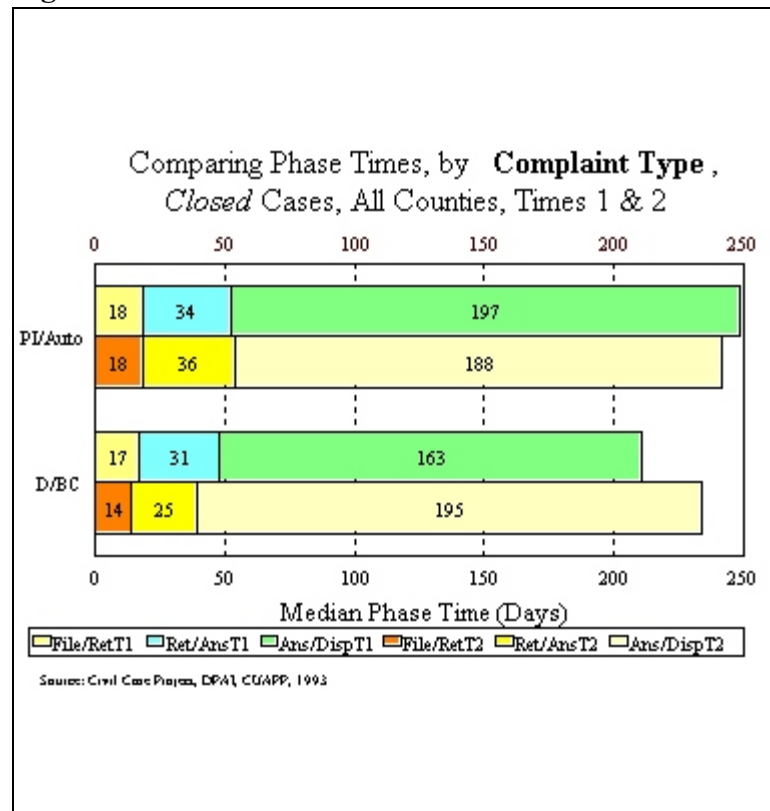
Personal Injury/Auto

For the Personal Injury/Auto (PI/A) cases in the Closed population, the median times for the completion of the first two phases was stable from Time 1 to Time 2 (Figure 42). In fact, the median time to pass through the File/Return phase was virtually the same (18 days). There was a slight improvement across the time periods for the Answer/Disposition phase (197 days in Time 1 to 188 days in Time 2).

Debt/Breach of Contract

The Debt/Breach of Contract (D/BC) complaint type posted two trends that moved in opposite directions (Figure 42). The first trend showed that the D/BC complaints moved more quickly through the File/Return and Return/Answer phases in Time 2 than in Time 1. Specifically, the case processing performance in the File/Return phase improved from a median time of 17 days in Time 1 to a median time of 14 days in Time 2. The improvement in the Return/Answer phase was more significant (a median time of 31 days to a median time of 25 days in Times 1 and 2, respectively). However, in the Answer/Disposition phase the trend was reversed. The median time to complete this phase increased significantly from 163 days in Time 1 to 195 days in Time 2. In short, the court's case processing performance for this phase was better in Time 1 than in Time 2.

Figure 42

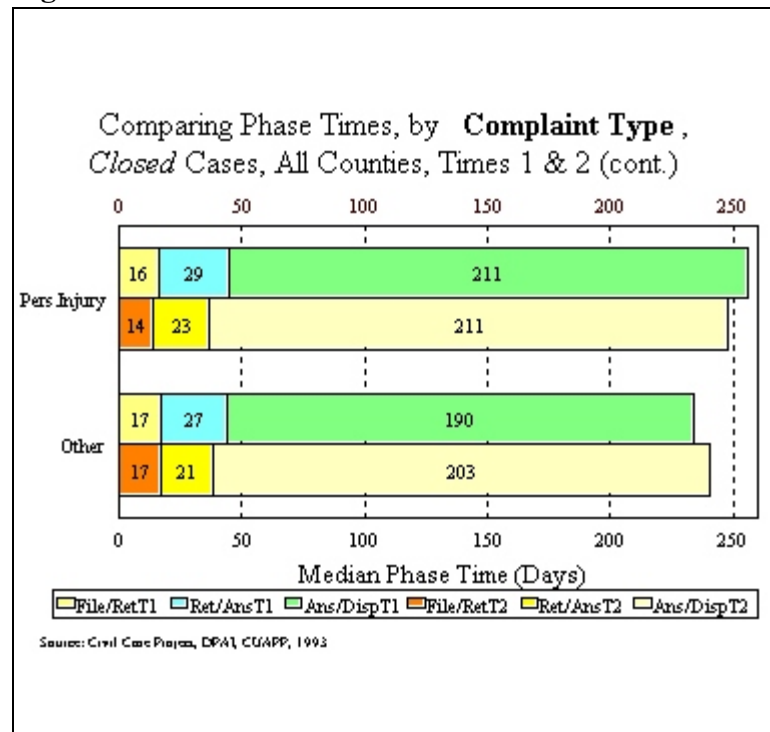
***Personal Injury***

The Personal Injury (PI) complaint type registered modest changes in median phase times between Times 1 and 2 for the File/Return and Return/Answer phases (Figure 43). The median times for the File/Return phase decreased from 16 days in Time 1 to 14 days in Time 2. The performance for Return/Answer phase also improved from medians of 29 days to 23 days for Times 1 and 2, respectively. There was virtually no change for the Answer/Disposition phase across the time periods.

Other

The Other complaint category showed patterns that were similar to those of the Debt/Breach of Contract (D/BC) cases. That is, there was some improvement and some back-sliding among the phases between Times 1 and 2. The improvement occurred in the Return/Answer phase with median times for Times 1 and 2 of 27 days to 21 days, respectively. However, the median phase times for the Answer/Disposition phase increased from 190 days in Time 1 to 203 days in Time 2.

Figure 43



Summary for the Closed Population

In summary, we found that the phase time performance of the Closed population varied across the complaint types. In general, that variation increased as the cases moved through the system. For example, the median times for the File/Return phase was the most consistent. That was obviously the product of the rules governing the return of service. The Return/Answer phase had more variation; the highest median of 36 days for Personal Injury/Auto cases in Time 2 (See Figure 42) to the lowest median of 21 days for the Other complaint type (See Figure 43). It was during the Answer/Disposition phase where the most variation occurred, both across the complaint types and from Time 1 to Time 2. Most of the activity in a civil case occurs during this phase and we would then expect the variation. However, in only one of the complaint types (Personal Injury/Auto) was there an improvement in the median phase time between Times 1 and 2 (See Figure 42). For two of the complaint types (Debt/Breach of Contract and Other), the median times to complete the Answer/Disposition phase increased from Time 1 to Time 2. The median phase times of the Personal Injury complaints remained steady during the time periods.

**Comparing Phase Times, by
Complaint Type, Pending
Cases, Statewide**

Just as we examined the phase times for the Closed population, we did so for the Pending population. The findings are presented in the following two figures, Figures 44 and 45. This population, by definition, did not reach disposition. Therefore, the date that was used to mark the end of the third phase was the last day of each time period, i.e., the End of the Observation Period (EOP). For Time 1 (EOPT1), that date was December 31, 1992; for Time 2 (EOPT2), it was June 30, 1993. The figures show the third phase as either Answer/EOPT1 or Answer/EOPT2, depending on the time period. As we would have expected, the median phase times for this third phase for the Pending population were substantially longer than those of the third phase for the Closed population. Essentially, the Answer/EOP phase times indicate the median number of days that the cases were still pending during that phase. And the caution that we stated earlier also applies here. These cases are already in violation of the 365-day performance criterion of the Civil Administrative Order. The analysis of the phase time performance of the Pending population was conducted in order to make the comparison between Closed and Pending cases.

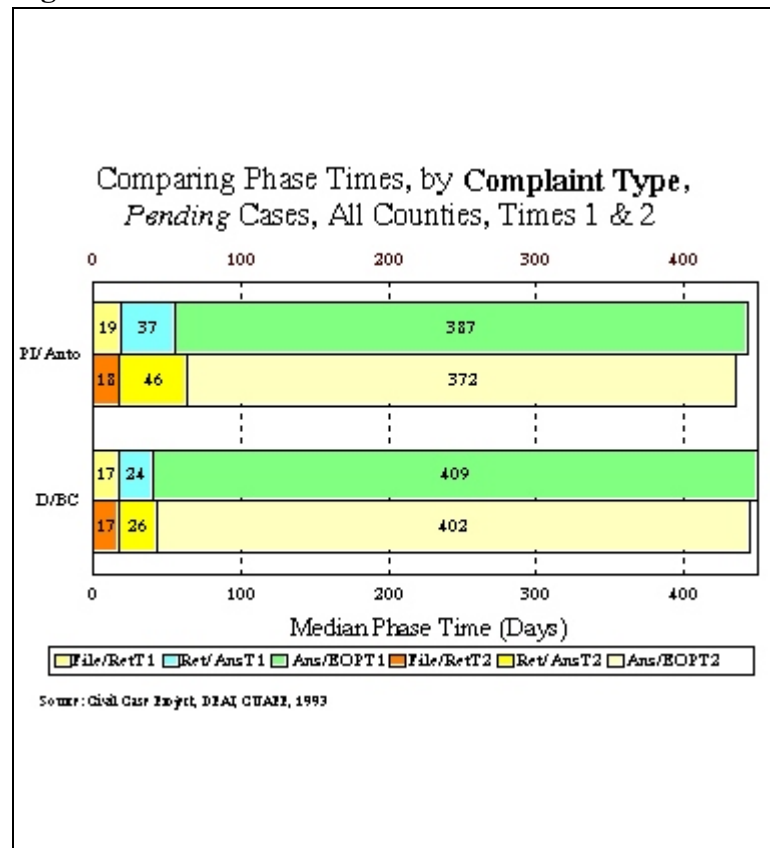
Personal Injury/Auto

The phase times for the Personal Injury/Auto (PI/A) cases were varied between Times 1 and 2 (Figure 44). That was particularly the case for the Return/Answer phase (a median of 37 days in Time 1 to a median of 46 days in Time 2) where there was some falling-off in performance between Times 1 and 2. There was, however, improvement in the Answer/EOP phase from a medians of 387 days in Time 1 to 372 days in Time 2.

Debt/Breach of Contract

The median phase times for the Debt/Breach of Contract (D/BC) cases were relatively consistent across the time periods (Figure 44). Their performance during the Return/Answer phase (medians of 24 and 26 days for Times 1 and 2, respectively) was markedly better than that of the PI/A cases. However, they spent a much longer time in the Answer/EOP phase (medians of 409 days and 407 days for Times 1 and 2, respectively).

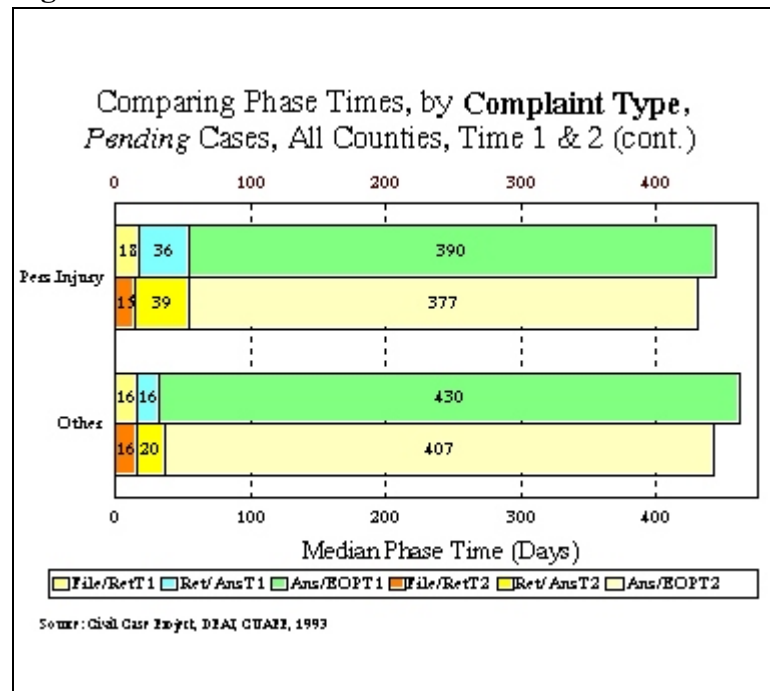
Figure 44

***Personal Injury***

The median phase times for the Personal Injury (PI) cases improved in two of the three phases across the time periods (Figure 45). For the File/Return phase, the PI cases improved from a median of 18 days in Time 1 to a median of 15 days in Time 2. However, the median phase times for the Return/Answer phase increased between the time periods (36 days to 39 days in Times 1 and 2, respectively). The performance of the PI complaints improved during the Answer/EOP phase from Time 1 to Time 2 with a reduction in the median time from 390 days to 377 days. However, the decrease is relatively small in the general scheme of the case process.

Other The phase time performance of the Other complaint type mirrored that of the PI cases (Figure 45). That is, their performance improved and fell off for the same phases across the time periods. During the Return/Answer phase, the Other complaint cases lost some ground as the median phase times increased from 16 days in Time 1 to 20 days in Time 2. That was followed, however, by an improvement during the Answer/EOP phase. The median time for Time 1 was 430 days and that was reduced for Time 2 to a median of 407 days. The caveat in all of these findings, however, is that these cases were all in non-compliance with the Civil Administrative Order's 365-day criterion.

Figure 45



Summary for the Pending Population

The phase time performance of the Pending cases for each complaint type was uniformly longer than the Closed population, as we might expect. Perhaps of most concern was the finding that the median time spent just during Answer/EOP phase was already beyond the 365-day performance criterion of the Civil Administrative Order. And, further, there was no significant difference across the complaint types in this regard. In short, then, case mix, as measured by complaint type, did not affect the phase times for the Pending population.

**Comparing Phase Times, by
Disposition Type, Closed
Population, Statewide**

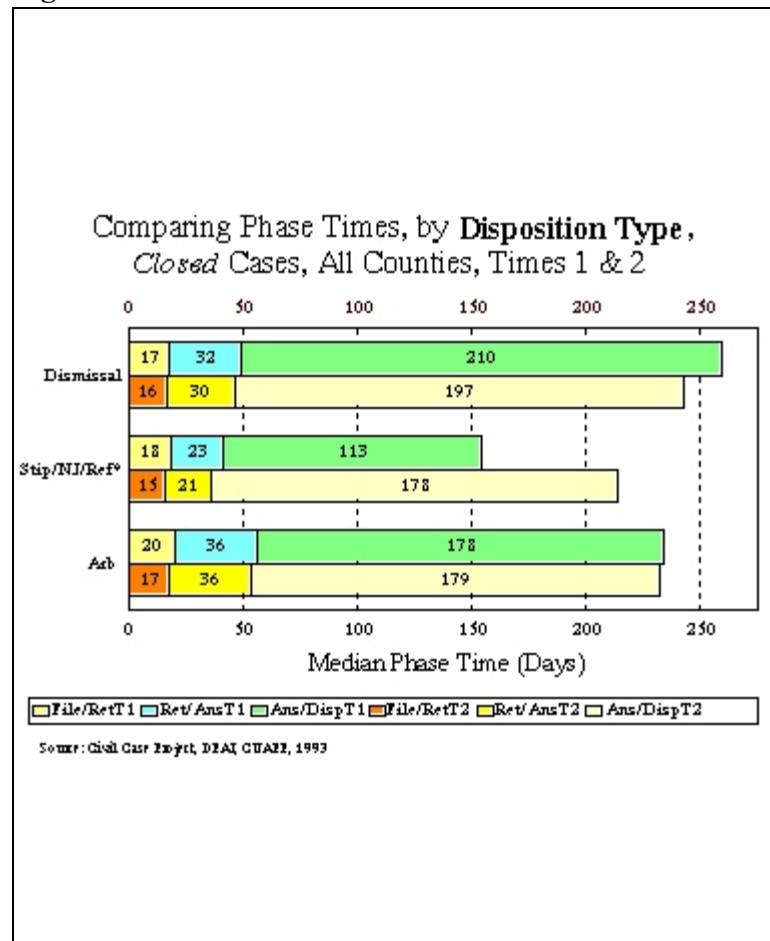
We now turn our attention to the performance of the Closed cases by Disposition type as they moved through the phases of case processing for both time periods. By definition, of course, this analysis was applied only to the Closed population because that population reached disposition. Like the figures for the phase times for Complaint type, the activity for Time 1 is represented by the upper bar and the lower bar indicates the phase movement for Time 2 for each disposition type. We are careful to note here that over eighty percent of the Closed cases were resolved by the Dismissal disposition. Consequently, the phase times for that disposition were most indicative of the case processing activity of the court.

Our findings revealed that the performance during the first phase, File/Return, was relatively consistent across the disposition types and across the time periods (Figure 46). For example, the range in median times for the completion of that phase was between a low of 15 days for the Stipulation/Non-Jury/Referral (Stip/NJ/Ref) disposition in Time 2 and a high of 20 days for the Arbitration (Arb) disposition type in Time 1. There was, however, wide variation in the median times for the second phase among the disposition types. During the Return/Answer phase there was only minor improvement for the Dismissal and Stip/NJ/Ref dispositions from Time 1 to Time 2. The Stip/NJ/Ref disposition cases registered the lowest median time during this phase in Time 2 (21 days). The phase times for the Arbitration cases for the second phase was virtually the same for both time periods (median of 36 days) and they required the most time to complete the Return/Answer phase.

The median times for the Answer/Disposition phase showed even wider variation among the disposition types than those of the second phase. The cases resolved by Dismissal showed improvement during this phase across the time periods (medians of 210 days and 197 days for Times 1 and 2, respectively). The cases that fell in the Stip/NJ/Ref disposition type posted a significant increase in the time to complete the phase between the time periods (from a median of 113 days in Time 1 to 178 days in Time 2). We must view these findings with some caution because there were not many cases that reached disposition in this category and the small number of cases can produce fluctuations in the data. The cases disposed through Arbitration moved through the

Answer/Disposition phase with consistency from Time 1 to Time 2 (median times of 178 days and 179 days, respectively). In fact, the Arbitration cases were very steady through all the phases for each time period. Again, the Arbitration cases accounted for a relatively small percentage of dispositions and the findings should be viewed with some caution. However, unlike the Stip/NJ/Ref cases, they exhibited some consistency in case processing performance.

Figure 46



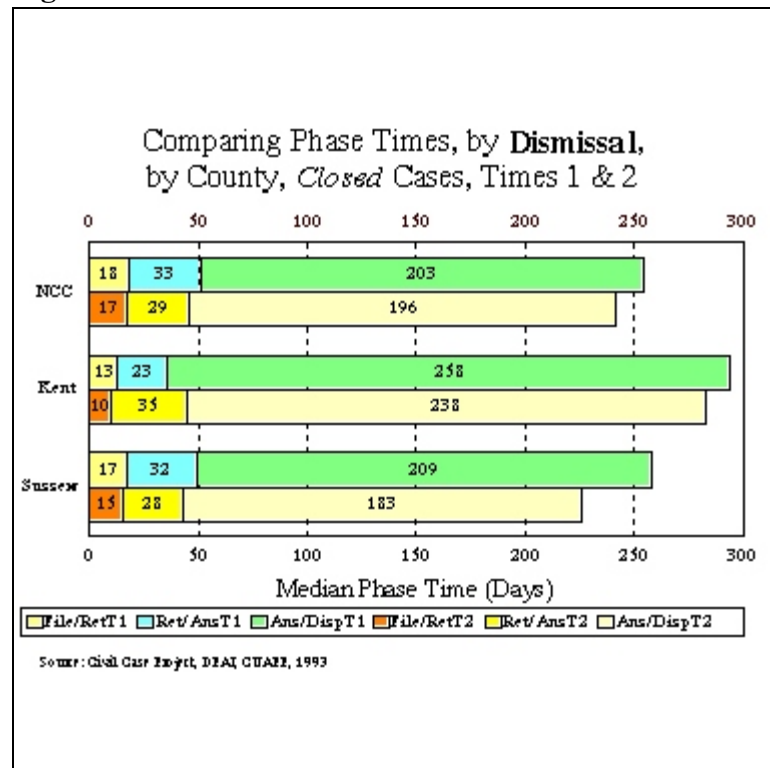
**Comparing Phase Times, by
Disposition Type, Closed
Population, by County**

As we indicated earlier, the Dismissal disposition type accounted for the vast majority of the resolution of cases; eighty-three percent in Time 1 and eighty-five percent in Time 2 (See Figure 15). Clearly, they represented the bulk of the disposition activity of the court and a sizable number of cases. Therefore, we were able to examine the phase time activity of these cases **by county**.

We found interesting performances for the phases across the counties (Figure 47). The activity in the File/Return phase was relatively consistent in all the counties for both time periods (the median times ranged from a low of 13 days in Kent County in Time 1 to a high of 18 days in New Castle County during the same time period). There was variation among the counties for the Return/Answer phase. The median times for the completion of the phase were reduced in New Castle and Sussex counties between Times 1 and 2 (33 days to 29 days in NCC and 32 days to 28 days in Sussex County, respectively). In Kent County, however, the trend was reversed. In Time 1, Kent County had the lowest median time for the phase (23 days). However, by Time 2, the county registered the highest median time for the completion of the phase (35 days).

During the Answer/Disposition phase, each of the counties improved their performance from Time 1 to Time 2. In New Castle County that meant a decrease in the median time for the completion of the phase from 203 days to 196 days. It was not a large decrease, but NCC also accommodated over eighty percent of the cases and the trend was positive. In Kent County the median time required to move through the Answer/Disposition phase fell by 20 days between Times 1 and 2 (258 days to 238 days, respectively). That, in some ways, neutralized the significant increase in the median time required to complete the previous phase. Sussex County registered the largest improvement in the median time of the Answer/Disposition phase between the time periods (209 days in Time 1 to 183 days in Time 2). Like NCC, Sussex County improved its performance in each phase between Times 1 and 2. But, its improvement was more substantial, particularly during the Answer/Disposition phase where the court can exert most of its influence on the case.

Figure 47



Summary

The examination of the time required to move through the phases of case processing showed us that track assignment, complaint type and disposition type influenced the movement of cases through the system, particularly during the Answer/Disposition phase, as defined by population and not by time period. That is, the differences in the median phase times were visible when the comparison between the **Closed** and **Pending** populations were examined. While track assignment, complaint type and disposition type were factors between the phase time performances of the **Closed** and **Pending** populations, there were no significant changes in the phase times from Time 1 to Time 2, regardless of track assignment, complaint type, or disposition type.

Chapter 10: Conclusion

In the beginning of this report we asked a series of questions about the civil case processing of the Superior Court. They were designed to give us information about the efficacy of the Civil Administrative Order that took effect on June 1, 1991. Simply stated, we wanted to know whether the imposition of the Order made a difference in the processing of civil cases. The short answer to that question is that it appears that the Order is having the effect that the court intended. That is, measured against the performance criterion of the Civil Administrative Order (90% of cases to be resolved within 365 days of filing), civil cases moved through the system more quickly after the Order than before it was imposed. And we came to that conclusion, to use one of the court's terms, by a preponderance of the evidence. Specifically, the findings that we derived for our research questions (See Chapter III) led us to that position. But before we consider each question, let us indicate the reasons for our conclusion that the civil case processing improved.

Comparing Case Processing against the Civil Administrative Order

The CAO criteria specify that ninety percent of the cases should be resolved within 365 days of filing and that ninety-eight percent of cases should be resolved within 550 days of filing. When we measured the civil case processing of the Superior Court against the criterion established by the Civil Administrative Order (CAO), we found that the performance had improved from Time 1 to Time 2. To be sure, Superior Court's civil case processing effort did not meet the criteria. For example, the Debt/Breach of Contract cases among the complaint types, registered the highest proportion of cases that met the 365-day criterion and that was only fifty-eight percent in Time 2. But, that was an improvement from the fifty-one percent that met the criterion in Time 1. For each Complaint type, there were improvements from Time 1 to Time 2. In general, there were also improvements among the Disposition types. Given these findings, it was reasonable to conclude that the civil case processing of the Superior Court improved as measured against the performance criteria established by the court in its Civil Administrative Order. The obvious question, then, was what differences, if any, occurred in the mixes of complaint type, disposition type and tracking assignment between Times 1 and 2 that could account for the improvement. We reiterate our findings for each issue below.

What were the complaint types in each time period?

This question was concerned with the "case mix" that occurred in both time periods. We looked for any pattern in the case mix either between Time 1 and Time 2 or between the Closed and Pending populations. Was the distribution of complaints different in Time 1 than in Time 2? Was there a difference in that distribution between the Closed and Pending populations. Our findings revealed that there were no significant differences in either of those distributions. In other words, the court processed the same types of cases in both time periods. Consequently, any change in the case processing time could not be explained by a change in the case mix. That was an important finding because it meant that the court was functioning normally as far as complaint type was concerned and the research did not study an anomaly.

What dispositions did the cases reach in each time period?

Like the question regarding complaint type, this question was concerned with the "mix" of dispositions that the court employed in Times 1 and 2. We examined the patterns of the distribution of disposition types for the Closed population for both time periods. We learned two very important things. First, **Dismissals** accounted for the overwhelming majority of dispositions (above 80%). Second, that pattern was consistent through both time periods. To be sure, the use of the **Arbitration** disposition increased from Time 1 to Time 2 (a promising sign), but that accounted for a small fraction of the cases. As a result, any change in the performance of the court's case processing performance as measured by compliance with the 90%/365-day criterion was not due to a change in the pattern of disposition types between the time periods.

*How were Complaint Type
and Disposition associated
for each time period?*

As we stated above, **Dismissals** accounted for the significant majority of dispositions for both time periods. Consequently, we were especially interested in the association of that disposition with the complaint types. We found that the distribution of the complaint types for the dismissal disposition was very consistent for both time periods. In Times 1 and 2, Personal Injury/Auto cases accounted for about half of the dismissals and Debt/Breach of Contract complaints were another twenty-five percent. Consequently, the court's disposition and complaint type activity was consistent across the time periods, and, by extension, was not responsible for any change in compliance with the 90%/365-day criterion.

*How were the cases
assigned to tracks for each
time period?*

As we found for the **Complaint** and **Disposition** type, the distribution of the tracking assignments was not significantly different between Times 1 and 2. There were substantial differences, however, between the **Closed** and **Pending** populations. By percentage, many more *closed* than *pending* cases were in the **expedited** track rather than the **standard** track in both time periods. But, again, that was consistent across Times 1 and 2, that is before and after the effective operation of the Civil Administrative Order.

Our Conclusion

We found that there were no significant differences in the mixes of complaint type, disposition type and tracking assignments between Times 1 and 2. But, the Superior Court improved its civil case processing performance between those times periods. This is not to suggest that the performance of the court was in compliance with the standards that the CAO has established. There is still work to be done. Yet, the improvement occurred. And, we are left with only one change in the case processing activity of the court between Times 1 and 2---the imposition of the Civil Administrative Order. But, we can not say with statistical certainty that the Order "caused" the change in case processing at the Court. We can say, however, that the improvement we found is ***not inconsistent*** with the consequences that we might expect from the practices that the Order put in place. In short, it is quite possible that the imposition of the Order changed the local legal culture in civil case processing. That is, the raw material (the cases, as identified by complaint type, disposition type and tracking assignment) with which the court wrestled, did not change from Time 1 to Time 2. However, maybe the way of doing things, i.e., the expectations and the norms---the local legal culture---surrounding them **had** changed.

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