
Spencer G. Park

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by

SPENCER G. PARK*

Introduction

"Equal Justice Under Law" stands firmly engraved over the pil- lared entrance to the Supreme Court. The federal courts aspire to heed that directive despite heavy dockets, increased jurisdiction, and a complex legal system which requires the aid of expensive attorneys. In particular, litigation involving pro se litigants poses distinct challenges to the equal administration of justice in federal courts.

"Pro se" or "in pro per" litigation refers to litigation where a litigating party proceeds in an action without the aid of counsel. The litigant handles all case matters and often faces great difficulty navigating the intricacies of the judicial system. Specifically, pro se litigants often neglect time limits, miss simple court deadlines, and fail to understand the procedural and substantive law of the federal courts. Furthermore, pro se litigants many times have problems applying basic, yet crucial, legal concepts such as precedent and determining the relevancy of facts. Often, the litigant will require and ultimately re-

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1. The term means “for himself” or “in one’s own behalf” in Latin.

[821]
ceive assistance from the court. Such demands threaten the court's neutrality and place the court in an awkward position.\footnote{Although some courts have experimented with pro se litigation clinics at law schools, the primary source of assistance to the pro se litigant is the judge, the judge's staff, and other officers of the court. See Proposed Long Range Plan for the Federal Courts, Committee on Long Range Planning, Judicial Conference of the United States, Recommendation 93 (Mar. 1995) [hereinafter Long Range Plan].}

In recent years, the press, politicians, and legal scholars have publicly decried the so-called litigation explosion.\footnote{See, e.g., President's Council on Competitiveness, Agenda for Civil Justice Reform in America 1 (1991).} Although statistical studies later deflated those concerns with evidence that the courts were able to handle the growth in litigation,\footnote{See, e.g., Some Boast "Rocket Dockets," Others Fizzle But Overall ... Justice Proceeds Apace in Federal District Courts, RAND Res. Rev. Fall 1990, at 11; see generally Marc Galanter, Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society, 31 U.C.L.A. L. Rev. 4 (1983).} the "sharp and steady increase"\footnote{William W Schwarzer, Viewpoint: Let's Try a Small Claims Calendar for the U.S. Courts, Judicature, Mar.-Apr. 1995, at 221.} in pro se litigation is one sector of the overall growth that continues to receive attention.\footnote{The biggest boom in pro se filings has occurred in prisoner pro se petitions. In fact, 1,233 prisoner pro se petitions were filed in 1993 in the Northern District of California. This study, however, specifically excludes prisoner pro se filings and instead focuses only on non-prisoner pro se litigation. For a study of prisoner pro se proceedings, see Task Force on Prisoner Remedy Proc., Effective Prisoner Remedy Procedures: Report to the Judicial Council of the Ninth Circuit (1995).} An efficient response to the increase in pro se litigation requires solutions beyond mere docket management.

While anecdotal accounts of burdensome pro se litigation abound, the availability of statistics and other empirical data illuminating the subject is limited. In fact, the 1995 Judicial Conference's Committee on Long Range Planning specifically emphasizes the importance of gathering statistics and data on the recent growth in pro se litigation.\footnote{See Long Range Plan, supra note 3, Recommendation 35.} This Note seeks to put some numbers behind the anecdotes.

The purpose of this Note is to present the results of a statistical study of non-prisoner pro se litigation in the United States District Court for the Northern District of California in San Francisco. First, the key findings of this statistical study are summarized below. The second part of this Note will explain how the sample was selected, how the study was conducted, and what parameters were measured and recorded. The third part discusses the results of the study. Fourth, this Note briefly addresses the implications of the results upon judicial policymaking decisions designed to meet the needs of pro se
litigation. Suggestions for further study and improvements are presented in the last part.

I. Key Findings

The key findings of the study are summarized as follows:

- Almost 52% of the pro se litigants in the sample were plaintiffs.
- Around 27.3% of the cases included a government entity as a litigant (as either plaintiff or defendant).
- Only 21.1% of the sample were cases brought by pro se plaintiffs against a government agency or entity.
- Seventy percent of pro se litigants did not even apply to proceed *in forma pauperis* under 28 U.S.C. § 1915 (statute for proceeding *in forma pauperis*).
- Only around 8.5% of pro se litigants filed a request for appointment of counsel.
- Approximately 12% of pro se cases were referred to a magistrate judge or special master.
- The most common type of claim involving a pro se litigant was the “Other” type of claim. These claims were predominantly disbarment proceedings and comprised 36% of the sample.
- The largest substantive and second most popular type of claim involving pro se litigants were civil rights claims which comprised a little under 30% of the sample.
- There was a strong correlation between pro se plaintiffs and civil rights claims.
- Among pro se cases involving a government entity, civil rights claims far outnumbered other types of claims.
- Over half of the indigent (proceeding *in forma pauperis*) pro se parties in the sample brought civil rights claims.
- More pro se civil rights claimants requested and ultimately received appointed counsel than pro se litigants with other types of claims.
- Twenty-six percent of civil rights claims brought by pro se parties were appealed.
- More than half of the claims involving a pro se litigant were dismissed under a preliminary motion such as a motion to dismiss for a failure to state a claim.
- The parties reached a settlement in a little over 15% of the cases.
- With pro se litigants, settlements were most often reached in employment discrimination, tort, and labor cases.
- Pro se defendants were disproportionately represented among settled claims.
- Only one case reached a trial on the merits.
- Bankruptcy, labor and civil rights claims tended to be the most burdensome types of pro se claims in terms of time and demand upon court resources.
- Half of the pro se cases were terminated within ten months. Two-thirds of the cases took a year to terminate.
Ninety-five percent of the cases required forty-five or fewer docket entries.

II. Procedure

This Part explains how the statistical study was conducted. The first section discusses the sampling method. The second section explains the parameters of the study. Potential sources of bias and problems with the selected parameters are discussed in Part III.9

A. The Sample

The sample source was a pool of actions filed in the United States District Court in San Francisco10 where at least one party initially proceeded pro se or became pro se during the course of the litigation. The study pool was limited to cases filed in 1993. Furthermore, the pool included only cases terminated as of February 1996. The total pool included 683 actions.11

Of the 683 actions, approximately one-third were chosen for the sample. To adjust for seasonal differences during the year, the sample included every third action selected in the order in which they were filed with the court. As a result, the sample contained 227 cases, each of which involved one or more litigants proceeding pro se at some point during the litigation.

B. Data and Parameters Measured

After selecting the sample, the relevant data for each action was recorded from the docket. The following parameters were recorded:

(1) Case number

This number was recorded for tracking purposes and may prove useful in future case-specific studies.

(2) Plaintiff, Defendant, or Other

This parameter identifies the status of the pro se litigant in the action as “Plaintiff,” “Defendant,” or “Other.” “Other” indicates that the pro se party could be classified as neither plaintiff nor defendant. Often these cases involved litigation such as disbarment proceedings

9. See infra Part III.C.
10. Cases filed and litigated in the Oakland and San Jose federal district courts were not included.
11. In fact, 725 non-prisoner pro se filings were made in 1993. Therefore, 42 cases were still pending as of February 1996.
or bankruptcy appeals.\textsuperscript{12} Furthermore, a few actions involved pro se litigants on both sides of the litigation and the data so indicates.

(3) \textit{Government party to litigation}

Government agency or entity (local, state, or federal) involvement in the litigation is reflected in this parameter. A "yes" response was recorded for government participation on either side of the litigation (plaintiff or defendant). The determinations for this parameter were based upon the names of the parties.

(4) \textit{Claim}

This parameter indicates the type of claim as it was characterized by the party filing the action. The study consolidates many specific categories of claims into larger, more general categories for convenience. The categories are as follows:

\begin{itemize}
\item (1) contract,
\item (2) real property,
\item (3) torts (including personal injury, personal property, and fraud),
\item (4) civil rights (including employment discrimination, housing, and other civil rights claims),
\item (5) labor,
\item (6) bankruptcy,
\item (7) property rights (including intellectual property),
\item (8) social security,
\item (9) tax,
\item (10) statutory (constitutional, environmental, banking, Freedom of Information Act, and securities acts claims), and
\item (11) other (predominantly disbarment proceedings and unspecified statutory claims).
\end{itemize}

(5) \textit{In forma pauperis (IFP)}\textsuperscript{13}

This data was recorded as either "yes," "no," or "applied." A "yes" indicates that the court granted IFP status to the litigant. "No" indicates that the litigant did not apply for IFP status. "Applied" means that the pro se litigant applied for IFP status, and either the

\textsuperscript{12} This category includes cases where the court classified pro se litigants as respondents, petitioners, or "in re." While most disbarment proceedings classified the attorney proceeding pro se as "in re," a number of such proceedings inexplicably labeled the pro se party as plaintiffs or defendants. In order to maintain consistency, these entries were nevertheless recorded as "Other" despite the court's classification on the docket.

\textsuperscript{13} "In forma pauperis" status (literally meaning "in the character or manner of a pauper" (\textit{BLACK'S LAW DICTIONARY} 779 (6th ed. 1990)) is authorized by 28 U.S.C. § 1915, which allows plaintiffs to proceed without paying filing costs and requires the court to direct service by the officers of the court. 28 \textit{U.S.C.A.} § 1915(a)-(b), (d) (West Supp. 1997). To qualify for this status, litigants must apply to the court and provide financial and other income data to prove indigency. \textit{Id.}
application was denied, or the docket did not record the outcome of the application.

(6) Counsel Requested

This parameter simply records whether or not the pro se litigant sought court-appointed counsel. Application was made by both plaintiff and defendant pro se litigants within the sample.

(7) Counsel Appointed

"Yes" indicates that counsel was ultimately appointed in the litigation for the pro se litigant. The data does not, however, distinguish between counsel appointed as a result of the court's order and counsel appointed as a result of the individual pro se litigant's own efforts. On the other hand, "no" means that the application for appointment of counsel was denied by the court and that counsel was never found.

(8) Reference to Magistrate Judge or Special Master

This parameter indicates whether or not the case was referred to a magistrate judge or special master during any part of the litigation. This includes reference for settlement negotiations, discovery and consent to ultimate adjudication.

(9) Outcome of the Dispute

Seven different possible outcomes were recorded:

(1) dismissal upon request by the pro se litigant ("da1");
(2) dismissal by the court due to failure to prosecute or abandonment by the pro se litigant ("da2");
(3) dismissal by the court under a motion to dismiss ("dc1");

14. The statute authorizing appointment of counsel follows in relevant part:
The court may request an attorney to represent any such person unable to afford counsel. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the allegation of poverty is untrue; or the action or appeal is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief.
28 U.S.C.A. § 1915(e) (West Supp. 1997). Three factors should be considered in evaluating a request for appointment of counsel: financial resources, pro se litigant's efforts to obtain counsel, and the merits of the claim. Bradshaw v. Zoological Soc. of San Diego, 662 F.2d 1301, 1318 (9th Cir. 1981) (citing Caston v. Sears Roebuck & Co., 556 F.2d 1305, 1308-10 (5th Cir. 1977)).
15. These cases were kept within the sample despite the subsequent appointment of counsel during the course of the litigation.
16. In addition to the Federal Rules of Civil Procedure ("FRCP") 12(b)(6) motion, this type of disposition includes any preliminary motion to dismiss brought by an opposing party short of a FRCP 56 summary judgment.
(4) dismissal by the court under a motion for summary judgment ("dc2");
(5) settlement ("se")17;
(6) trial on the merits ("tm"); and
(7) remand to lower tribunal or other transfer to another venue ("re").

(10) Judgment

Judgment was recorded as either "for" the pro se litigant, "against" the pro se litigant, or "not applicable." The last category usually indicates that the case resulted in either a settlement or a remand.

(11) Appeal

This parameter signals whether or not the case was appealed.

(12) Docket and Time

In order to measure the demand on court resources, the study recorded two separate measurements. "Docket" attempts to capture the relative burden of the action upon court staff and resources through the total number of docket entries recorded on the case file.18 "Time" simply records the number of days between filing and termination of the case.

(13) Docket-Time factor

This figure multiplies the "time" measurement by the "docket" measurement to provide an index of the burden upon the court's resources.19 The resulting unit is a "days-docket entry" indicator. The higher the number, the greater the combined burden upon the court.

The two figures are used in combination because the two indicators measure burdens in different ways. While the "days" parameter captures the burden of time, the "docket" figure reflects the relative complexity of certain cases. For example, many pro se cases may take a long time but may not in fact burden the court very much because of the low level of activity and lack of rigorous pursuit by the pro se litigant. On the other hand, some actions may be resolved in a shorter

17. The outcome of a settlement between the parties includes cases where the docket explicitly referred to the parties' settlement and cases that were dismissed under an "Order of Dismissal pursuant to Stipulation."
18. The study recognizes that not every action in a docket entry requires the same amount of court resources. An entry listing a summary judgment order reflects much more court time than recording minutes from a hearing. Future studies may consider assigning weighted values to different types of docket entries in order to accurately reflect such disparities.
19. This figure has been further divided by 100 for numerical convenience.
period of time but nevertheless require substantial involvement from the court in the resolution of the dispute, which would be reflected in a greater number of docket entries.

The time-docket index spreads out the sample along a spectrum of court involvement. Cases with fewer docket entries requiring fewer days should place lower on the spectrum than those cases which last a long time and demand more docket entries. The other cases should fall somewhere in between.

III. Results

This Part of the Note presents the results of the study. First, relevant percentages and figures for the entire sample are presented by parameter. Thereafter, the Note analyzes the parameter results for separate sub-samples. The third section discusses potential bias in the data.

A. General Results

The parameters of the study are designed to answer three questions regarding pro se litigation in the federal courts: (1) What kind of litigant is the pro se litigant?; (2) How does pro se litigation proceed and ultimately terminate?; and (3) What is the burden upon the courts? The results of the study are discussed in light of these questions.

(1) What kind of litigant is the pro se litigant?

The first four parameters provide a picture of the pro se litigant. The typical pro se party is a plaintiff, who does not file against the government and does not apply to proceed in forma pauperis. As for the type of claim, the majority of pro se cases involve civil rights claims or disbarment proceedings.

The Plaintiff/Defendant parameter did not produce particularly surprising results:
1. **Plaintiff/Defendant**

![Pie chart showing the distribution of Plaintiff, Defendant, and Other categories.]

As could be expected, a little over half, 52.4%, of the pro se litigants were plaintiffs. This result confirms the experience of most who are familiar with pro se litigation. Only 14% of the pro se litigants in the sample were classified as defendants.

What is, perhaps, more interesting is the fact that over one-third, 33.6%, of the pro se litigants in the sample fell into the “Other” category implying that they were neither plaintiff nor defendant. Most of these actions appear to involve either appeals from the bankruptcy court or disbarment proceedings where the lawyer facing disbarment chooses to go unrepresented.\(^\text{20}\) If these cases are removed and only actions where there is a plaintiff and a defendant are considered, the number of pro se plaintiffs outnumber pro se defendants nearly four to one.\(^\text{21}\)

The results for government participation in pro se litigation are unexpectedly low. Only approximately 27% of the pro se cases filed involved a government entity (local, state, or federal). While it is generally perceived that pro se litigation is mostly filed against government agencies, that generalization may in fact be heavily influenced by prisoner pro se litigation. The result here tends to show that non-prisoner pro se litigation is, perhaps, more diverse than commonly perceived. It should be emphasized that this figure reflects govern-

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\(^{20}\) In disbarment proceedings, the local bar has usually disbarred the attorney from state practice and the federal court may consequently issue an “Order to Show Cause.” Thereafter, the attorney is permitted to make his or her case to the court as to why the attorney should not be disbarred from practice in federal court. The proceeding tends to be a formality and few are seriously contested.

\(^{21}\) If the 77 claims with an “Other” pro se litigant are removed, the remaining 120 pro se plaintiffs would comprise around 79% of the remaining sample; correspondingly, 32 defendants would constitute 21% of the remaining sample.
ment participation on either side of the litigation and does not distinguish between the government entity acting as plaintiff or defendant. For example, for purposes of this parameter no distinction is made between cases where the government acts as a defendant to an employment discrimination claim and cases where the government engages in civil prosecution.

2. Government Party to Litigation?

![Pie chart showing 27.3% Yes and 72.7% No]

The *in forma pauperis* parameter also produced surprising results. While the common perception of the pro se litigant is that of an indigent party, the study shows that only 30% of the pro se litigants applied for the status. By implication, 70% of pro se litigants do not even apply for IFP status. One plausible explanation for the low number of applicants may be the lack of information regarding the IFP application. Although explanatory documents and materials are provided to pro se litigants with social security and Title VII claims (along with preprinted complaint and application forms), similar materials are not made available for other claims in general.

22. For further analysis of this sub-sample, see infra Part III.B.5.
3. In Forma Pauperis

When pro se litigants do apply, however, the court grants the status three out of five times. Despite this apparently high success rate, the overwhelming majority of pro se litigants, 72%, were not legally "indigent" (as defined under the standards of 28 U.S.C. § 1915) yet were still unable to afford counsel or were unable to convince counsel to take their case on a contingency basis.

Finally, pro se litigants in the sample were involved in a diverse range of claims. Almost every major category of claim was represented:

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24. This includes all cases in the sample regardless of the pro se litigant's status as plaintiff or defendant.
4. Pro Se Claims

As is generally perceived, civil rights (including Title VII employment discrimination and housing cases) compose a large bulk of the claims. In fact, these claims place second in greatest percentage (nearly 30%) after the “Other” category of claims.

The “Other” category comprises 36% of the sample. Many of the claims in this category are disbarment proceedings where lawyers are ordered to show cause why they should not be disbarred. Although these actions are not generally thought of as pro se cases, the profile falls under the strict definition of pro se—a party proceeding in litigation unrepresented by counsel. It is, nevertheless, debatable whether or not such claims should properly be included in a survey of non-prisoner pro se litigation.

The following pie charts compare the percentage outcomes realized when the “Other” group of actions is removed from the sample.

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25. The study identified 73 disbarment proceedings out of the 82 cases in the “Other” claims classification. The exact nature of the remaining non-disbarment claims included in this “Other” category is unclear as it is marked as “Other statutory” on the filing sheet. By exclusion, however, one can determine that those statutory actions included under the “Statutory” category are not part of this category. See infra Part II.B.4.
5. Pro Se Claims Comparison
With and Without “Other” Claims

While civil rights claims comprise nearly 30% of pro se claims in the entire sample, that figure increases to almost 46% when the “Other” category is removed from the sample. It would nevertheless be unwise to ignore the fact that close to one third of the pro se cases were disbarment proceedings. The demand these cases make upon the courts should not go unaddressed.

(2) How does pro se litigation proceed and ultimately terminate?

The results here indicate that most cases brought by pro se litigants result in dismissal by the court as a result of a preliminary motion brought by the opposing party. Furthermore, less than a tenth of pro se litigants in the sample sought the court’s assistance in procuring counsel and a smaller portion were actually appointed counsel at some point during the course of the litigation. Finally, pro se litigants overwhelmingly find themselves on the losing side of the judicial outcome regardless of their status as plaintiff or defendant.

Perceptions of hapless pro se litigants seeking assistance from the court in finding counsel appear unfounded. Only a little over 8% of pro se litigants even file a request for appointment of counsel. Similar to the IFP situation, the low figure may be due to a lack of information regarding the application rather than any lack of interest.

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26. “Smaller claims” combines the smaller categories (bankruptcy, 3.4%; property rights, 1.4%; real property, 1.4%; social security, 7.6%; tax, 4.1%; and statutory, 4.8%) for visual convenience (percentages pertain to chart on right).

27. The sample did not exclude cases where counsel was subsequently appointed.
Furthermore, a little under 8% eventually found counsel during the course of the litigation. It is, however, unclear whether the appointment resulted from the court’s order in concert with local pro bono assistance or continued efforts made by the individual litigant.

Another concern regarding the handling of pro se cases is the perception that many pro se claims are routinely referred to Magistrate Judges or Special Masters. Some may argue that such court officials are better suited to give more time and attention to individual pro se cases due to lighter caseloads. On the other hand, such a practice could create a perception of a mechanized screening process where federal judges do not treat all cases equally. In fact, the results show that only a small percentage, approximately 12%, of pro se cases are referred to a magistrate judge or special master. The statistic perhaps even suggests a contrary conclusion: federal judges are reluctant to refer pro se cases to magistrate judges and prefer to handle them themselves.28

The results from the judgment parameter are unsurprisingly one-sided against the pro se litigant regardless of the litigant’s status as plaintiff or defendant.

6. Judgment

28. Nevertheless, the issue may ultimately prove moot in the Northern District of California as pro se and non-pro se cases alike, in addition to being referred, are now directly assigned to magistrate judges off the assignment wheel with a rebuttable presumption of consent.
Nevertheless, a significant number, over 20%, of pro se litigants avoided an unfavorable ruling in federal court by either settling the dispute out of court or submitting to a remand to another tribunal.²⁹

How the dispute was disposed ranged from early dismissal to full trial on the merits.³⁰ The dispositions of claims are presented below:

7. Disposition of Claims

![Disposition of Claims Diagram]

By far, most cases, 56%, were unable to survive a preliminary motion to dismiss.³¹ While that figure may not be unexpected, the second most prevalent outcome was settlement by the parties, comprising 15.4% of the sample. It is surprising to see so many settlements among pro se litigants without the aid of counsel, when the presence of counsel is usually thought to be instrumental to successful and ef-

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²⁹ A “Remand” outcome includes transfers of venue, remand to state courts for actions improperly removed, and remanded bankruptcy appeals.

³⁰ Unfortunately, similar statistics for all (including non-pro se) civil filings in the Northern District of California were not readily available. Such statistics could, however, prove very useful for comparative purposes.

³¹ This figure includes proceedings that resulted in the disbarment of the pro se litigant under a motion to dismiss upon the failure to show cause. If the 73 disbarment proceedings were removed from the sample, most of them would come out of this category. As a result, approximately 54 “dc1” cases would comprise 35% of the dispositions in the remaining sample.
effective negotiations. Unfortunately, the quality and fairness of these settlements are quantitatively immeasurable and not represented in these statistics.

Also noteworthy is the low number of cases abandoned by pro se litigants (7%). This figure is captured in the “da2” parameter. Most were recorded on the docket as dismissals by the court sua sponte as a result of the pro se litigant’s failure to pursue the claim further.

8. Appeals

Finally, the data shows that a little over 11% of the pro se cases in the sample were appealed. It is difficult to find comparable statistics regarding the rate of appeal for the general population of civil cases in the Northern District of California. The closest measurement, perhaps, is to look at the rate of appeal for the Ninth Circuit as a whole. Two plausible rates of appeal can be calculated from available statistics: 18.5% and 21.5%. These figures are markedly higher than the rate of appeal from the sample of cases in San Francisco. One expla-

32. Not all of these cases, however, were settled without aid of counsel because the sample did not exclude the cases where counsel was subsequently appointed. In fact, 11 of the 35 settled cases were cases where counsel was subsequently appointed.

33. The 18.5% figure was calculated by dividing 7,157, the number of appeals filed in the Ninth Circuit in 1993 (twelve month period ending March 31, 1994), by 38,696, the number of terminations in the Ninth Circuit in 1993 (twelve month period ending September 30, 1993). Using the staggered time periods allows for a six month time delay between termination in the district court and filing of the appeal. Alternatively, the 21.5% figure was calculated by dividing 8,337, the number of appeals filed for the twelve month period ending September 30, 1996, by 38,696, the number of terminations for the same period. The latter percentage makes no attempt to reconcile actual terminations with concomitant
nation is that these higher figures include criminal appeals which are likely to raise the average rate of appeal above the average for civil appeals.\textsuperscript{34}

\textbf{(3) What is the burden upon the courts?}

The following table presents the summary data for the docket, time, and time-docket index parameters which reflect the burden of pro se cases upon the courts.

<table>
<thead>
<tr>
<th></th>
<th>Docket (Number of entries)</th>
<th>Time (Number of days)</th>
<th>Time-Docket</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average</td>
<td>19.76</td>
<td>183.46</td>
<td>63.78</td>
</tr>
<tr>
<td>Minimum</td>
<td>2</td>
<td>2</td>
<td>0.08</td>
</tr>
<tr>
<td>Maximum</td>
<td>151</td>
<td>888</td>
<td>387.84</td>
</tr>
<tr>
<td>Standard Deviation</td>
<td>24.48</td>
<td>185.04</td>
<td>116.02</td>
</tr>
</tbody>
</table>

The average non-prisoner pro se action lasts approximately six months from the date of filing to termination and requires about 20 entries on the docket. The standard deviation figure provides an indication of how the sample spread out around the average and can be used to determine useful figures. For example, the standard deviation for time reveals that half of the cases were terminated within 313 days, or approximately ten months. Over two-thirds of the cases were finished within a year and it took over a year and a half to close out 95% of the cases in the sample.\textsuperscript{35} In comparison, the median time for disposition of all civil cases (pro se and non-pro se alike) in the Northern District of California was only seven months.\textsuperscript{36}

Some claims tend to be more burdensome than others. The following charts match up the type of claim with the average time for disposition and average number of docket entries.
9. Claims and Average Docket

<table>
<thead>
<tr>
<th>Type of Claim</th>
<th>Average Docket</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>19.8</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>36.5</td>
</tr>
<tr>
<td>Civil Rights</td>
<td>38.8</td>
</tr>
<tr>
<td>Contract</td>
<td>12.9</td>
</tr>
<tr>
<td>Other</td>
<td>4.1</td>
</tr>
<tr>
<td>Labor</td>
<td>18.2</td>
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<tr>
<td>SS</td>
<td>19.4</td>
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<tr>
<td>Statutory</td>
<td>22.7</td>
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<tr>
<td>Tax</td>
<td>22.5</td>
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<tr>
<td>Torts</td>
<td></td>
</tr>
</tbody>
</table>

10. Claims and Average Time

<table>
<thead>
<tr>
<th>Type of Claim</th>
<th>Time in Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>183.5</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>365.6</td>
</tr>
<tr>
<td>Civil Rights</td>
<td>250.2</td>
</tr>
<tr>
<td>Contract</td>
<td>212.6</td>
</tr>
<tr>
<td>Other</td>
<td>276.1</td>
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<tr>
<td>Labor</td>
<td>323.5</td>
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<tr>
<td>SS</td>
<td>296.9</td>
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<tr>
<td>Statutory</td>
<td>199.5</td>
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<tr>
<td>Tax</td>
<td>201.4</td>
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<tr>
<td>Torts</td>
<td></td>
</tr>
</tbody>
</table>
The charts highlight the disparity in termination time and docket burden across the different types of claims. In particular, even though disbarment proceedings make up the largest portion of non-prisoner pro se cases, they do not tend to burden the court heavily on a case-by-case basis. Labor claims, in contrast, tend to be quite intense, requiring an average of almost 39 docket entries despite lasting typically only 276 days.

The time-docket index compares the relative average combined burden for each type of claim. The range varied from 0.08 to 387.84. The following chart provides the average index figures for each type of claim.37

11. Claims and Time-Docket Index

It is apparent that bankruptcy, labor, and civil rights claims tend to take up the most time and require greater court involvement on average. Unfortunately, this data does not provide an idea of the relative burden of pro se litigation as compared to general civil litigation in federal courts. In order to make such a comparison, similar figures would have to be calculated on the district level.

37. See supra Part II.B.13 for an explanation of this parameter.
B. Cross-Referencing the Results

This section examines the data in sub-samples. First, the results for civil rights claims are analyzed in isolation to better understand how to handle these claims when a pro se litigant is involved. Second, this study focuses upon cases that were ultimately settled in order to observe how the parameters differ within one type of disposition. Third, the study takes a brief look at the sub-samples of claims that are appealed. Fourth, it examines claims involving an *in forma pauperis* litigant or applicant. Fifth, the sample is whittled down to include only actions involving a government participant. Finally, the groups of claims where the plaintiff is pro se are examined.

(1) By Claim—Civil Rights Claims

Of the 227 cases selected in the sample, 65 actions were filed as civil rights claims (including employment discrimination and housing claims). When this sub-sample was further examined, the resulting parameters diverged significantly from the remainder of the sample in many aspects.

First, as could be expected, pro se litigants with civil rights claims were overwhelmingly participating as plaintiffs. Only one civil rights case had a pro se defendant.

Furthermore, a greater percentage of pro se litigants either applied for or received *in forma pauperis* status in civil rights cases than in other types of cases. In chart 12, the left-hand chart repeats the data for the entire sample while the right-hand chart reflects results from only the civil rights claims sub-sample. The comparison reveals that *in forma pauperis* applicants are concentrated in civil rights actions.
12. **Comparison of *In Forma Pauperis* Applications**

*General Sample v. Civil Rights Sample*

Second, the summary figures for the civil rights sub-sample indicate that pro se civil rights litigation tends to be relatively more burdensome than other types of claims. While the average number of docket entries for the entire sample is slightly above 19, the average for the civil rights sub-sample is over 35. While the average pro se case lasted 183 days, the civil-rights sub-sample average is over one-third longer, at almost 250 days. Finally, comparing the time-docket index parameters reveals that the average for civil rights claims, 116, is almost twice the average for pro se claims in general, 63.8.

Fifteen of the sixty-five cases, or 23%, included a Request for Appointment of Counsel. This figure is much higher than the figure for the general pro se population which filed Requests for Appointment of Counsel in only 8% of the cases surveyed. Appointments of counsel were also concentrated within these claims. Over 15% of the pro se litigants with civil rights claims received counsel at some point during the litigation.

One parameter, however, did not vary much with the general sample results. Note that the patterns in the data presented in Charts 13 and 14 are similar. Chart 14 reflects the different types of dispositions for the civil rights sub-sample while Chart 13 presents the same for the general sample. In fact, the rate of settlement among civil rights claims in the sub-sample, 15.4%, was nearly identical to the rate in the general sample.38

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38. Interestingly, all ten of the settled claims were employment discrimination claims. None were 42 U.S.C. § 1983 or housing claims.
13. Dispositions for General Sample

Legend
- Dismissal by request (da1)
- Abandonment (da2)
- Preliminary dismissal (dc1)
- Summary Judgment (dc2)
- Remand (re)
- Settlement (se)
- Trial on the Merits (tm)

14. Dispositions for Sub-Sample

Legend
- Dismissal by request (da1)
- Abandonment (da2)
- Preliminary dismissal (dc1)
- Summary Judgment (dc2)
- Remand (re)
- Settlement (se)
- Trial on the Merits (tm)
Finally, pro se civil rights actions are appealed more often than other pro se claims on average. Twenty-six percent of the civil rights cases in the sample were appealed. This compares to the rate of slightly over 11% for the general sample.

(2) By Disposition—Cases that Settled

Within the sample, 35 out of the 227 cases in the general sample ended in a settlement between the parties. Although this number is not high, it is nonetheless significant and calls for further inquiry. A closer examination may provide insights to the court as to what types of cases are more likely to settle when a pro se litigant is involved.

The results suggest that settlement is more likely to occur when the pro se litigant is the defendant. Pro se defendants are disproportionately represented within this sub-sample as compared to their representation in the general sample. Of the 35 actions that settled, 15 cases, or 43%, involved pro se defendants. This may, perhaps, reflect inferior bargaining power, but a reliable determination cannot be made without deeper inquiry into the individual terms of the various settlements.

Furthermore, a comparatively large percentage of settled cases, 40%, were referred to a magistrate judge or special master at some point during the litigation. As cases are often referred for the purpose of settlement, this result is not surprising.

In contrast, the indigency of the litigant does not appear to correspond with either predisposition or resistance to settlement. Twenty percent of the settled cases involved a pro se litigant proceeding in forma pauperis. This figure does not vary greatly with the 18% of pro se litigants granted in forma pauperis status in the larger sample.

Finally, analysis of the type of claims that are settled leads to some interesting results. Employment discrimination and tort claims together dominate the sub-sample. Both claims together comprise over half (54%) of the claims that reached settlement. Labor claims constitute 20%. Other types of claims represented include bankruptcy, contract, property rights, and tax.

(3) Cases Appealed

An examination of which cases tend to be appealed may provide the appellate courts with insight about pro se litigants. Most appeals were made by pro se plaintiffs. Of the 26 actions appealed, 22 involved pro se plaintiffs.

Pro se litigants who appeal their cases are largely indigent and often have been granted in forma pauperis status. Almost 54% of the cases appealed involved a pro se litigant proceeding in forma pauperis. The waiver of filing fees is a plausible explanation for this trend. Ap-
pellate filing fees serve as an initial deterrent to frivolous appellate filings. If fees are waived for indigent litigants, the deterrent effect is muted.

Furthermore, cases involving government agencies or entities also make up a significant percentage of the appeals. Over 42% of claims that are appealed involve a government litigant on either side. This result is greater than the 27% figure for the same parameter in the overall sample.

(4) Cases with In Forma Pauperis Status Applicants and Grantees

Seventy cases constitute the sub-sample of in forma pauperis status applicants and grantees. The results from two parameters stand out. The first result supports an earlier finding. The type of claims most often brought by in forma pauperis applicants are civil rights claims for employment discrimination, housing discrimination, and other civil rights actions. Almost 56% of this sub-sample filed civil rights claims. This result further confirms the strong correlation between pro se litigation and civil rights actions.

Another unsurprising result is the comparatively higher number of requests for appointment of counsel made by in forma pauperis applicants. Twenty percent of in forma pauperis applicants requested counsel, as opposed to the 8% application rate in the general sample. In addition, success in obtaining counsel was slightly higher in the sub-sample (10%) than in the general sample (around 8%).

Finally, the rate of referral to magistrate judges or special masters does not deviate greatly from the findings in the larger sample. Seventeen percent of in forma pauperis applicants have their cases referred to a magistrate judge or special master, while 12% of pro se cases in the larger sample are referred. This result may serve to undermine perceptions that poor and often illiterate pro se litigants are received unequally by the courts and relegated to appear before special masters and magistrate judges instead of District Court judges.

(5) Cases with a Government Litigant

Sixty-two cases from the sample involved a government litigant. Within this sub-sample 78% of the actions were brought by pro se plaintiffs against a government entity. The remaining 22% of the sub-sample appear to be civil prosecutorial actions brought by the government against pro se defendants.

Chart 15 shows the distribution of the sub-sample across the various types of claims.

Unsurprisingly, the greatest number of claims involving a government entity are civil rights actions. Most of these actions are likely to be 42 U.S.C. section 1983 claims for discrimination under color of law. Social security claims are the second most prevalent.

(6) Cases with Pro Se Plaintiffs

Limiting the sample to only pro se plaintiffs focuses the analysis upon the group most commonly thought to represent pro se litigation. Of the overall sample, 116 cases form this sub-sample. Two parameters, type of claim and disposition, are charted below.
16. Plaintiffs and Type of Claim

Again, civil rights claims appear to share a strong correlation with pro se plaintiffs. The remaining types of claims do not appear to stand out significantly. Chart 17 resembles its more general counterpart.40

17. Plaintiffs and Dispositions

40. See supra Chart 7.
The greatest number of dispositions occurs under a motion to dismiss brought by the opposing party. This appears consistent with the general perception that many pro se plaintiffs bring meritless claims and face great difficulty following procedural rules. In addition, the settlement rate of 17% is higher than one might expect from pro se plaintiffs. This figure may work to dispel the stereotype of the recalcitrant, uncompromising pro se plaintiff. Nevertheless, further research must be done, particularly into the type of settlements reached, in order to fully support such a conclusion.

C. Potential Bias and Error

As with every statistical study, there are potential sources of bias that should be kept in mind when reviewing these results. While it is difficult to precisely define parameters and classify data that is often highly qualitative, this study attempts to capture the relevant characteristics of non-prisoner pro se litigation. It is important, however, to discuss the limitations of the data.

The first source of bias is chance error. Such error derives from the fact that the study does not include data for the entire population of pro se litigants and instead makes inferences based upon a sample. Chance error is unavoidable with any sample and simply recognizes that not every sample will be purely random and representative of the general population. The approximate level of error for a sample of the size used here ranges between 3% and 5% error. Consequently, extrapolation of the results from this sample to form conclusions regarding all pro se litigants in San Francisco must be made with this correction factor in mind.

In addition, selection bias requires further unquantifiable correction for inferences made regarding pro se litigation nationwide. On a national level, selection bias first occurs due to the inclusion of only cases filed in San Francisco. The character and parameters of pro se litigation are likely to vary across regions. General litigation in federal courts varies considerably across different states and circuits. Therefore, pro se litigation probably varies as well.

Other selection bias is also inevitable. In selecting the sample, approximately one-third of all the pro se cases in San Francisco were chosen in chronological order. A sample should be selected randomly to allow the law of averages to dictate generate representation. The order of filing is random as long as chronology bears no significant relationship to the parameters defined. Here, choosing every third action filed insures representation throughout the year and adjusts for seasonal irregularities (such as a large corporate layoff causing a spurt of labor or employment-related claims).
Another potential source of selection bias may be the decision to include only terminated cases in the study. The year 1993 was chosen to balance relative proximity in years (two years) against potential bias where the population pool would tend to include cases which finish more quickly (within two years). At least two full years elapsed between the date of filing and the time of the study which allowed most cases to terminate naturally. The sample may, however, be inevitably biased toward cases that terminate earlier. In particular, the low showing for cases that proceeded to trial on the merits or reached settlement may be explained by this bias. It is, therefore, likely that these figures are misleadingly deflated but by how much is unclear. The time parameter is also inevitably distorted by such a bias, as longer cases were necessarily excluded from the sample because they had not yet terminated at the time the study was conducted.

Finally, a ubiquitous source of bias is human error. Compiling the data often required close judgment calls and individual interpretations of qualitative data. Furthermore, the raw data compilation also depends upon judgments made by others. For example, the type of claim factor relies heavily upon the party filing the action to correctly characterize his or her claims when filing. This study assumes the correct characterization for all claims filed, although it is unrealistic to do so. Also, the selection of the sample relied upon the initial list of pro se litigants provided by the court and assumes that all the non-prisoner pro se cases were successfully identified and included. These factors must be assumed to have been correctly executed despite the probability of error along the way.

IV. Analysis and Conclusions

Three general conclusions may be drawn from this study subject to further statistical support. First, non-prisoner pro se litigation tends to involve predominantly civil rights claims (disregarding disbarment proceedings), which substantially burden the court in terms of time and activity. Second, the belief that pro se litigants are generally adverse to settlement may be unfounded. Third, most pro se litigants

41. Altogether, 725 non-prisoner pro se cases were filed in 1993. As of February 1996, 683 of these cases had been terminated and consequently considered for inclusion in the sample. Forty-two cases which had not yet been terminated were excluded from consideration although they were filed in 1993.

42. Because disbarment proceedings place a relatively low burden upon the court per proceeding and usually appear only to require an exercise in formality, the implication of these proceedings upon judicial administration is not addressed in this paper. Nevertheless, if the number of proceedings proves burdensome, reconsideration is deserved. The results here do not suggest that the absolute number of disbarment proceedings, approximately 73 in the sample (estimated 210 to 220 in the population), presents any significant administrative problem to federal courts.
are not indigent (not eligible for *in forma pauperis* status as defined by 29 U.S.C. § 1915) and proceed pro se because they are simply unable to afford counsel.

The first conclusion, that civil rights claims dominate non-prisoner pro se litigation, actually confirms the anecdotal experiences of most who have had dealt with pro se litigation. This study provides hard numbers to work with and hopefully guide judicial efforts to meet the challenge of the rising tide of civil rights pro se litigation. The creation of a federal small claims calendar for pro se litigants,\(^4\) for example, might prove a plausible solution if these calendars could be adjusted to take into account the average length of time required to resolve housing discrimination, employment discrimination, and other civil rights claims efficiently and effectively. Because these claims tend to take relatively longer, scheduling a pro se calendar would require a substantial commitment from federal judges. Furthermore, it would be important to avoid creating an overly mechanized process to review civil rights claims which often carry highly emotional overtones.

In addition, the substantial settlement rate among pro se litigants in this study causes one to question the general perception that pro se litigants are recalcitrant and inflexible with their claims. Alternative dispute resolution (ADR) programs are often considered unviable with pro se cases because of this perception. If, as the results from this study suggest, pro se litigants are more willing to settle than previously believed (especially in light of the high settlement rate among employment discrimination cases), ADR options could be flexibly applied and used to help meet the demand of rising pro se litigation. Assuming that federal magistrate judges or special masters facilitate fair and fruitful negotiation and settlement talks, federal judges should accordingly be encouraged to refer cases to magistrate judges or special masters more often. While there are inevitably cases with negligible settlement possibilities, the results here tend to show that the decision to settle may be more related to other factors (such as the type of claim) than to whether or not a litigant proceeds pro se.

Finally, the high number of pro se litigants who never apply for *in forma pauperis* status (plus those who are denied such status) implies that the possibility of pursuing a claim in federal court with the aid of counsel is financially out of reach for many people, including those who are not poor. The rising number of pro se litigants supports this conclusion. To assure equal access to justice, the courts must face the growth of pro se litigation in light of its broader implications. With lawyers' fees rising, the federal courts face a rising tide of pro se litigants and must seek solutions either to make the courts more naviga-

\(^4\) See Schwarzer, *supra* note 6, at 221.
ble to these parties or to help provide better avenues for procuring counsel.

V. Suggestions for Further Study

The need for further statistical study of the pro se phenomenon is necessary to better understand how to meet the unique challenges that it poses. This part proposes other possible approaches and some suggestions to modify this study for future examination.

One next step would be to conduct a study of different time periods to map trends in pro se litigation across time. The study here only provides a snapshot of pro se litigation in one district in one year. Especially when charting the types of claims that are filed by pro se litigants, it is important to account for not only seasonal variation, but also changes in political and social temperament and the law.

Furthermore, a larger sample should be selected. It would be useful to include data from other courts as volume and composition of filings vary across districts. This study focused upon filings in San Francisco. The character of pro se filings in Boise, Idaho, for example, would probably differ significantly. A comparison with state and local pro se filings could also prove insightful.

One of the limitations of this study is the incompatibility between the parameters measured here and those available for federal litigation overall. A statistical study of pro se litigation that uses similarly defined parameters of measurement as those used by the Administrative Office of the Courts to compile Federal Judicial Workload Statistics would be helpful for comparative purposes. Such a study would be especially useful to place pro se litigation in the larger overall context of federal judicial management.

Finding counsel for pro se litigants is another challenge that should be studied further. While this study only examined whether the pro se litigant requested appointment of counsel and whether one was ultimately found, the courts' process of finding and seeking counsel on behalf of pro se litigants could be improved. Statistics on the success rate of pro bono bar association efforts may be useful in this regard. Such a study may require more qualitative than statistical analysis.

Finally, the burden of pro se litigation upon the appellate courts should be studied. An examination of appellate level pro se filings may be useful to create a larger picture of pro se litigation for the entire circuit. Further, the challenge posed by pro se litigation for appellate courts differs significantly from the difficulties faced by the district courts where there is more face-to-face interaction between the court and the pro se litigant.