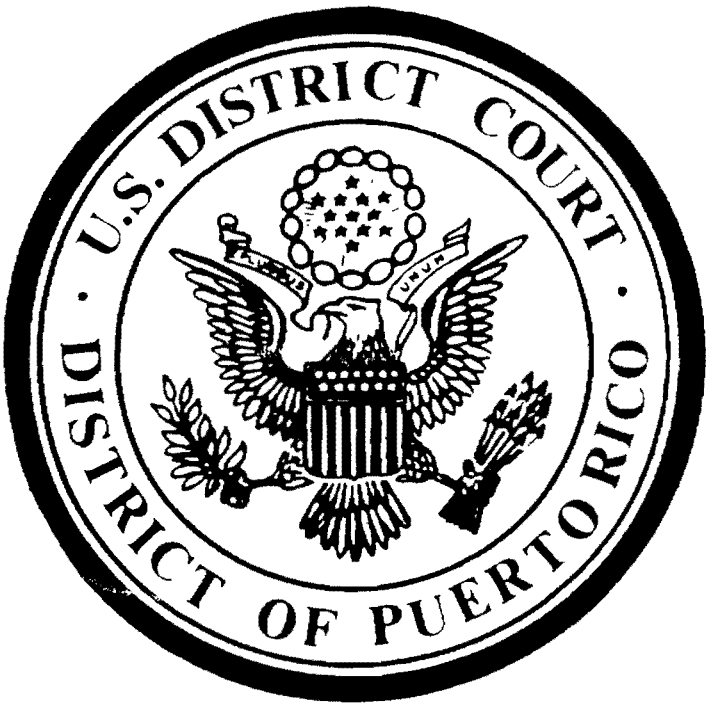
CIVIL JUSTICE ADVISORY GROUP



REPORT OF THE ADVISORY GROUP
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

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UNITED STATES DISTRICT COURT

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March 12, 1993

CIVIL JUSTICE ADVISORY GROUP

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Honorable Jaime Pieras, Jr., **Judicial Chairman**

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PART I

INTRODUCTION

REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

I. INTRODUCTION

This is the Report of the Advisory Group for the United States District Court for the District of Puerto Rico appointed pursuant to the Civil Justice Reform Act of 1990, Public Law No. 101-650.[1]

The purpose of this Report is to assist the District Court in developing and adopting a civil justice expense and delay reduction plan. The initial members of the Advisory Group were appointed by an Order dated February 28, 1991. (Appendix 1).

A. Methodology

Beginning in April of 1991, the Advisory Group held monthly meetings and divided the work to be done among committees (Appendix 2). After receipt of the committee reports, an executive committee developed a draft and submitted it to the Advisory Group,[2] which reviewed and revised it several times. Before presenting its final version of the report, the Group held public hearings.

B. Description of the Island of Puerto Rico

Puerto Rico is an island located on the northern margin of the Caribbean Sea. It is 35 miles wide and 100 miles long. It lies 1,040 miles southeast of Miami, Florida and 450 miles from the countries of Colombia and Venezuela.

Puerto Rico was discovered on November 19, 1493 by Christopher Columbus on his second voyage of discovery for Spain. Juan Ponce de León established the first Spanish settlement on the island in 1508 and the city of San Juan was founded in 1521. The island remained a Spanish possession until 1898, when Spain ceded Puerto Rico to the United States as a result of the Spanish-American war.

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[1] 28 U.S.C. §§471-482.

[2] The Advisory Group was expanded in December of 1991 (Appendix 3).

In 1917, Congress granted US citizenship to the island's inhabitants. The Commonwealth of Puerto Rico was inaugurated in 1952 and acquired considerable self-government, although most US laws and regulations are applicable and the federal government retains the powers of military defense and foreign affairs for the island.

According to the latest federal census, the population of Puerto Rico is estimated to be 3.6 million inhabitants. Sixty-two percent of the population is considered to have an income below the poverty level according to United States standards. The rate of unemployment is high and economic conditions are often reflected in the number of a suits filed in the US District Court for the District of Puerto Rico relating to veterans' benefits, social security disability and housing foreclosures.

Crime here, as on the mainland, has increased significantly. Moreover, due to its topography and proximity to South America, Puerto Rico has served as a transhipment point throughout history and continues to be so used today for the narcotics trade. Due also to location, the US District Court sees a significant number of cases involving illegal aliens.

The predominant language is Spanish; however, English is also spoken. In the US District Court, located in Hato Rey (the heart of metropolitan San Juan's banking area), all proceedings are conducted in English.

PART II

ASSESSMENT OF THE DOCKET:

CONDITION AND TRENDS

II. ASSESSMENT OF THE DOCKET: CONDITION AND TRENDS

A. Introduction

The first task undertaken by the Advisory Group was to gather information in order to assess the Court's docket, concentrating on the civil side, but also taking into account the effect of criminal cases on the civil docket. As a starting point, the Group used statistics prepared by the Administrative Office of the United States Courts and the Federal Judicial Center, and made available as part of a memorandum entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990". (The charts used in this report are taken from this memorandum.) The Group then appointed various committees, several of which gathered data relevant to the assessment of the docket.

The largest such committee was charged with the task of reviewing a random sample of approximately 450 files of civil cases closed during the period April 1, 1990 to March 1, 1991.[3]

The committee analyzed the cases, selected those which evidenced unreasonable delay, interviewed the judges involved and submitted a report. In addition, a questionnaire was sent to the attorneys for the parties in the selected cases to ascertain their views as to possible excessive costs and delay. A copy of the attorney questionnaire and an evaluation of its results are attached as Appendix 5. Comments were also solicited from the judges of the Court as to their views concerning the condition of the docket.

Next, the deans and faculty of the three law schools in Puerto Rico, the Chief Justice of the Supreme Court of Puerto Rico, the Secretary of Justice of the Commonwealth of Puerto Rico, the Colegio de Abogados de Puerto Rico (Puerto Rico

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[3] Prior to the review of the files by members of the Advisory Group, student research assistants filled out a questionnaire on each case. The questionnaire was prepared by one of the members of the group with advice and comments from other members. The data from the questionnaires were then computerized and analyzed using a commercially available database program. The questionnaire is attached as Appendix 4.

Bar Association) and the Federal Bar Association, were given the opportunity to make observations regarding cost and delay reduction in civil cases in the Federal Court.

Finally, notices of public hearings were circulated in two widely-read newspapers in Puerto Rico, to the effect that hearings would be held in connection with the Civil Justice Reform Act to obtain the comments of litigants as to any excessive costs or delays encountered. No suggestions or comments on the state of the Court's docket were obtained, either in person or in writing, as a result of these hearings.

B. Judicial Workload Profile for the District of Puerto Rico

The District's Judicial Workload Profile for the last ten statistical years--filings, terminations and pending cases--is set out in Table 1 below:

Table 1

Trends in Case Filings - Includes Civil and Criminal

Year	Total Filings	Terminations	Pending
1992	2,123	2,016	2,301
1991	2,101	1,943	2,259
1990	2,210	2,190	2,127
1989	2,347	2,632	2,136
1988[4]	3,133	2,855	2,424
1987	2,388	2,500	2,146
1986	2,819	3,124	2,258
1985	3,536	3,587	2,563
1984	3,809	3,396	2,614
1983	3,429	3,196	2,201
1982	3,296	3,338	1,968
1981	2,756	2,849	2,010

[4] The apparent imbalance in the numbers of cases filed, pending and terminated after 1987, compared to the prior years, is due to a change in policy regarding the manner in which pending and terminated cases were recorded statistically by the Administrative Office of the US Courts.

C. Condition of the Civil Docket

1. In General

All case filings increased on the national level in SY1991 by two percent, after declining for two consecutive statistical years, in SY1989-1990[5]. The overall workload of the District of Puerto Rico, on the other hand, has declined steadily over the decade, with the exception of the year 1988, when new filings increased by 31.2 percent over the previous year.

Looking again at the national picture, civil cases filings for SY91 were up three percent. On the other hand, in the District of Puerto Rico, filings declined in SY91 by 4.9 percent and were about equal to SY90. They were up again slightly--by one percent--in SY92. Compared to SY83 and SY84, civil filings had declined substantially by SY91 and SY92.

2. Median Time from Filing to Disposition

The median time from filing to disposition in civil cases has remained relatively constant at between seven and eight months since 1986; from issue to trial, the median time dropped to 10 months in SY92 after highs of 12 months in 1991, 14 months in 1990, 13 in 1989 and 18 months in 1988.[6]

3. Filings per Judgeship

The number of both civil and criminal filings per judgeship, which stood at 303 for SY92, has continued on the downward path started in SY85, when the seventh of the District's judges was appointed. (The sole detour occurred in SY88, when the number of total filings per judgeship increased to 448.) The decline locally contrasts with the picture nationally, where the number of total filings per judgeship rose in

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[5] The numbers referred to in this report, unless otherwise indicated, are from the Federal Court Management Statistics "Judicial Workload Profile". The statistical year runs from July 1 to June 30.

[6] Although the numbers show a decrease in the median time to disposition, a conclusion that cases are being processed more rapidly would be inaccurate. When the proportion of older cases terminated decreases, as has occurred in the District of Puerto Rico [see C(4) below], both average and median time to disposition show a decrease.

SY91 after a significant drop in SY89 and SY90. On the other hand, pending actions per judgeship showed an increase since SY89 and stood at 329 for SY92.

4. Civil Cases Over Three Years Old

Nationally, pending cases over three years old have dropped by nine percent. In Puerto Rico, however, they increased to 20.6 percent of the District's judicial workload in SY92 from 6.1 percent in SY87.

This relatively high percentage of cases three years and older for SY92 could be misleading because it includes not only 274 cases arising from the San Juan Dupont Plaza Hotel fire[7], but also the case of Carlos Morales Feliciano, et. al. v. Rafael Hernández Colón, et. al., Civil No. 79-4, a prisoner civil rights action, which is comprised of more than 50 consolidated cases.

5. Caseload Profile Charts

Chart 1a shows the caseload profile for the District from SY87 to SY92. Charts 1b to 1d reflect the condition of the docket over the past eleven years. Chart 2a indicates the distribution of case terminations within each stage and the percentage of cases that were three years old or more and Chart 2b represents the distribution of terminations among the major case types and shows within each type, the percentage of cases that were three years old or more at termination. Chart 3 represents the number of civil and criminal filings per judgeship over the last eleven years.

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[7] **While the major part of the San Juan Dupont Plaza Hotel fire litigation was concluded during 1991, the cases remained on the docket and are reflected in the statistics for SY92.**

Chart 1a

U.S. District Court -- Judicial Workload Profile

	Puerto Rico		Twelve Month Period Ended June 30						Numerical Standing Within U.S. Circuit***	
			1992	1991	1990	1989	1988	1987		
Overall Workload Statistics	Filings*		2,123	2,101	2,210	2,347	3,133	2,388		
	Terminations		2,016	1,943	2,190	2,632	2,855	2,500		
	Pending		2,301	2,259	2,127	2,136	2,424	2,146		
	Percent Change in Total Filings Current Year		Over Last Year	1.0 Over Earlier Years	-3.9	-9.6	-32.2	-11.1	73	4
									69	4
	Number of Judgeships		7	7	7	7	7	7		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
Actions Per Judgeship	FILINGS	Total	303	300	316	335	448	341	80	3
		Civil	254	237	254	275	348	277	78	3
		Criminal Felony	49	63	62	60	100	64	50	2
	Pending Cases		329	323	304	305	346	307	67	2
	Weighted Filings**		243	266	257	258	312	285	86	5
	Terminations		288	278	313	376	408	357	81	3
	Trials Completed		19	26	22	23	24	26	83	5
Median Times (Months)	From Filing to Disposition	Criminal Felony	6.3	4.3	2.9	4.8	3.4	4.1	57	3
		Civil**	8	7	8	7	7	7	15	1
	From Issue to Trial (Civil Only)		10	12	14	13	18	12	11	2
Other	Number (and %) of Civil Cases Over 3 Years Old		428 20.6	427 21.1	250 12.8	186 9.4	154 6.9	120 6.1	90	5
	Average Number of Felony Defendants Filed Per Case		1.8	1.5	1.3	1.4	1.3	1.6		
	Jurors	Avg. Present for Jury Selection	51.35	50.97	59.18	51.94	40.30	47.13	86	5
		Percent Not Selected or Challenged	46.3	42.4	52.5	54.1	32.7	42.7	87	5

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
TYPE OF	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1,775	221	80	71	35	516	36	230	266	41	143	4	132
Criminal*	346	96	7	20	5	10	9	107	11	37	5	11	28

*Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

*** There are 94 US District Courts nationwide and 5 District Courts in our Circuit.

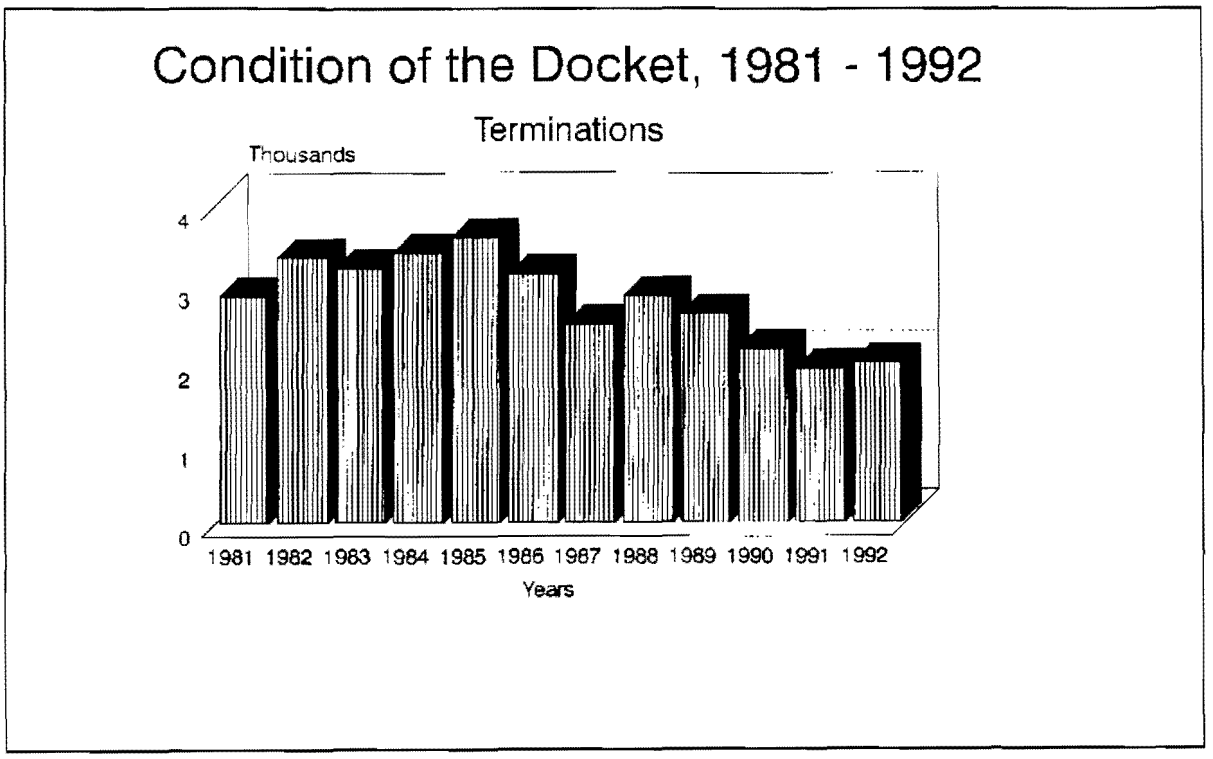


Chart 1b

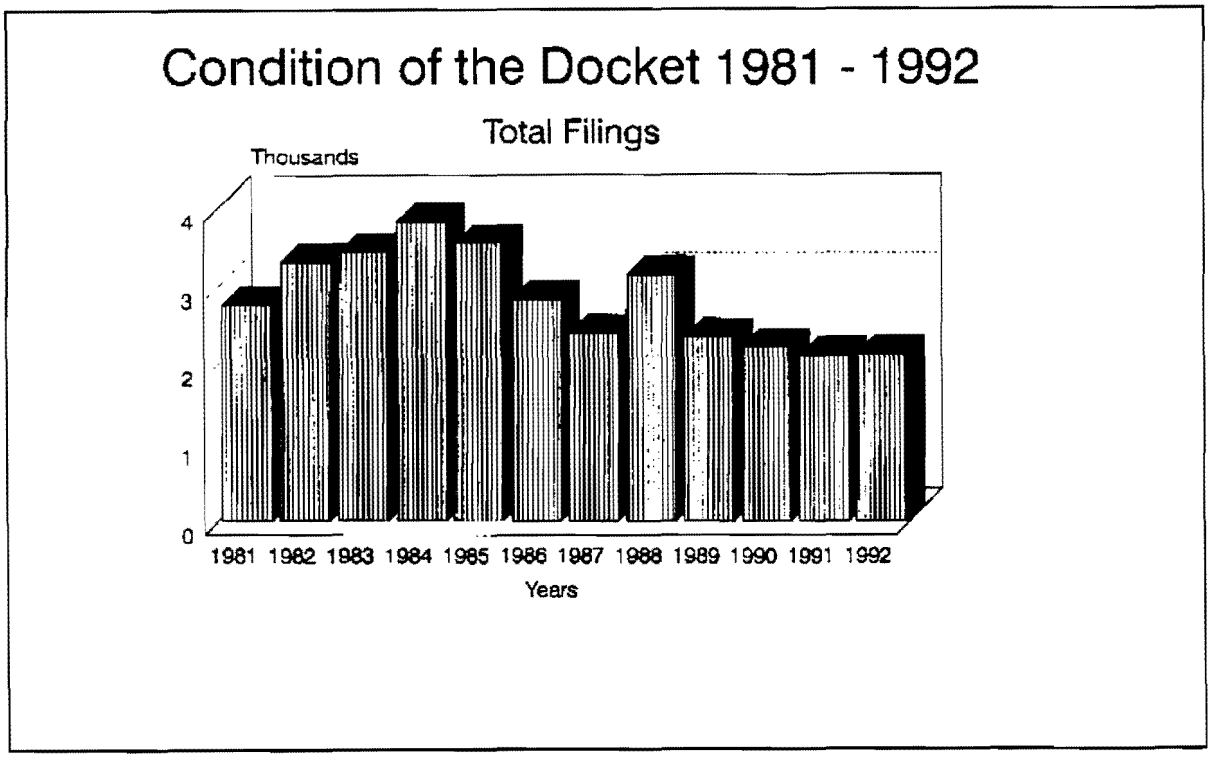


Chart 1c

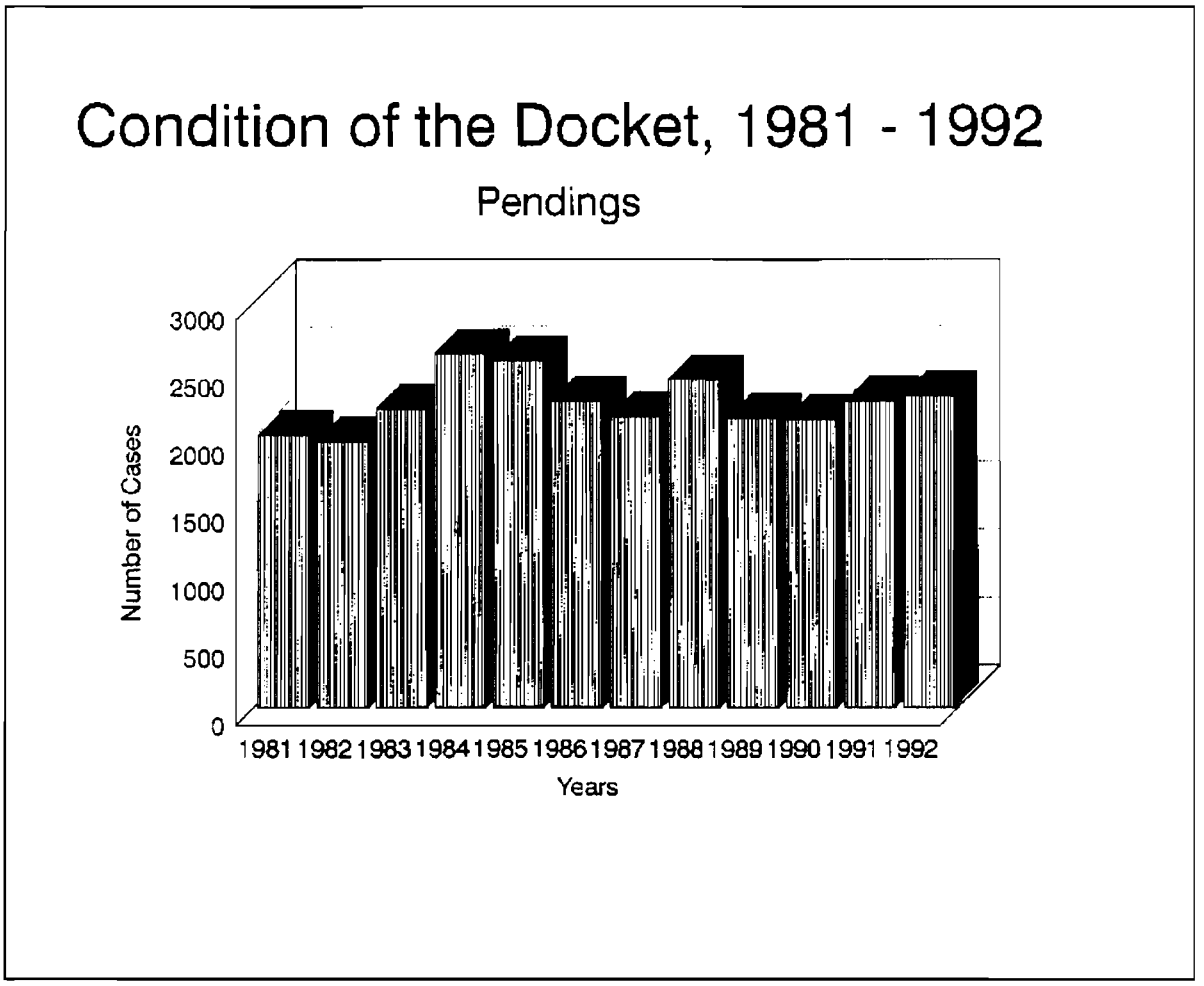

Condition of the Docket, 1981 - 1992
Pendings
Number of Cases
3000
2500
2000
1500
1000
500
0
1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992
Years

Chart 1d

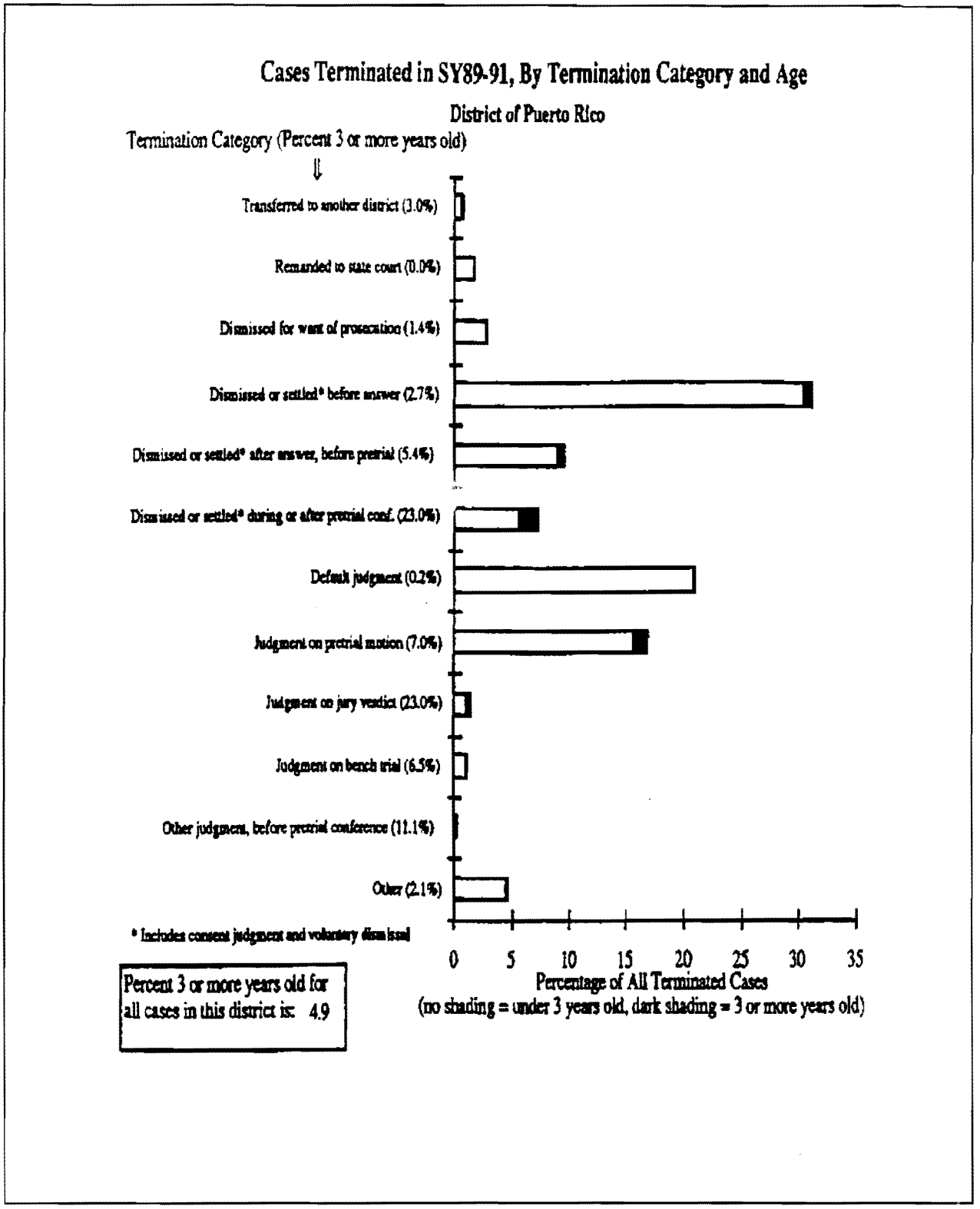

Cases Terminated in SY89-91, By Termination Category and Age
District of Puerto Rico
Termination Category (Percent 3 or more years old)
Transferred to another district (3.0%)
Remanded to state court (0.0%)
Dismissed for want of prosecution (1.4%)
Dismissed or settled* before answer (2.7%)
Dismissed or settled* after answer, before pretrial (5.4%)
Dismissed or settled* during or after pretrial conf. (23.0%)
Default judgment (0.2%)
Judgment on pretrial motion (7.0%)
Judgment on jury verdict (23.0%)
Judgment on bench trial (6.5%)
Other judgment, before pretrial conference (11.1%)
Other (2.1%)
* Includes consent judgment and voluntary dismissal
0 5 10 15 20 25 30 35
Percentage of All Terminated Cases
(no shading = under 3 years old, dark shading = 3 or more years old)
Percent 3 or more years old for all cases in this district is: 4.9

Chart 2a

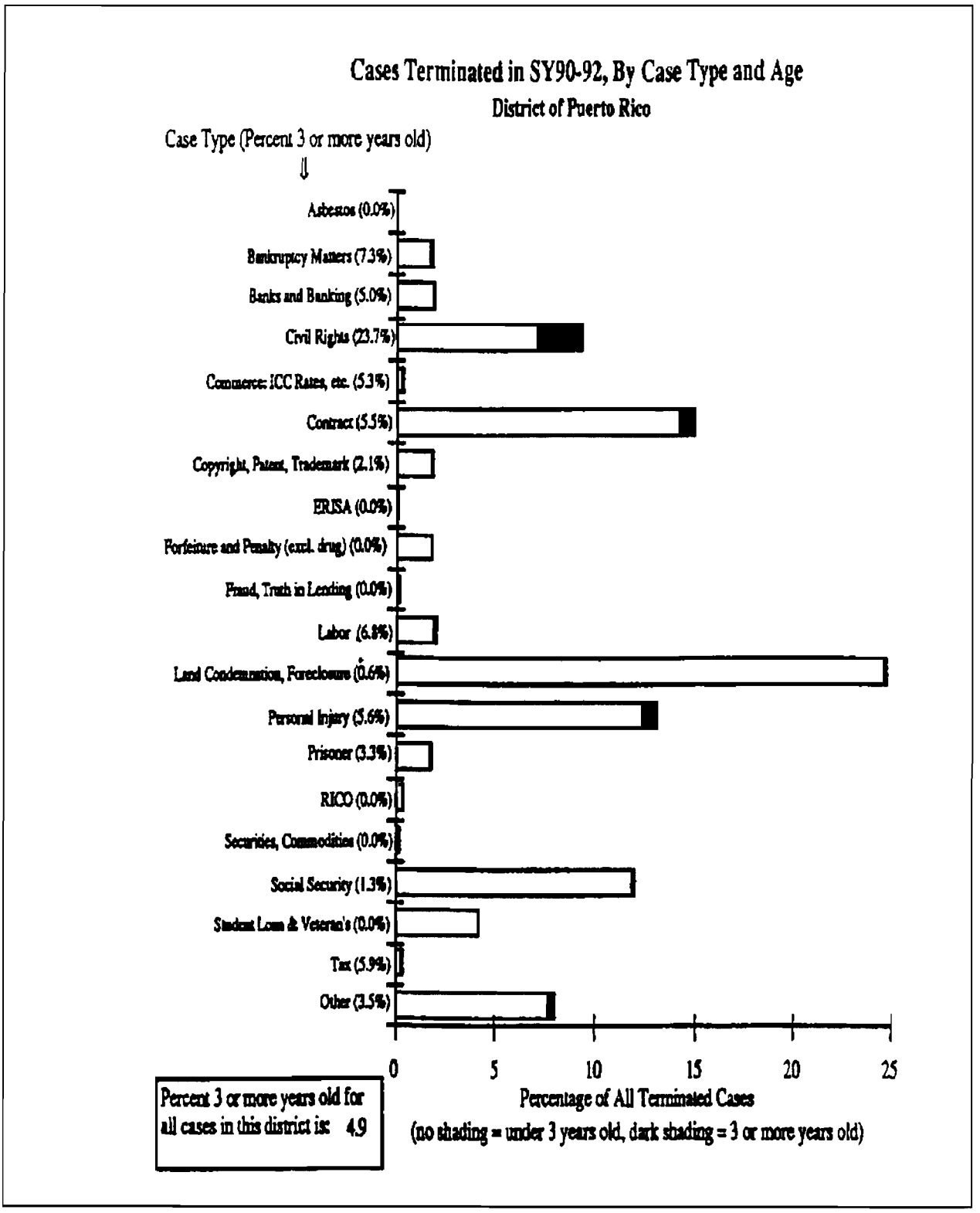
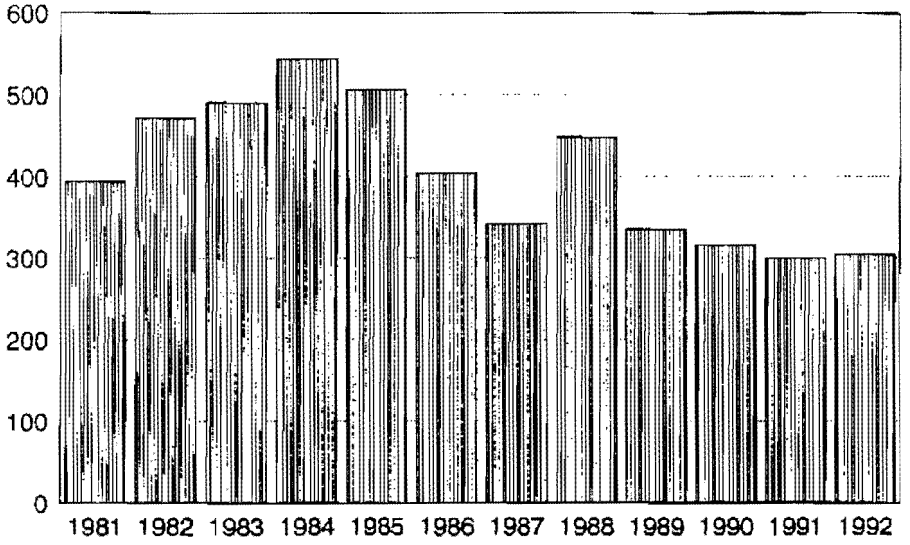

Cases Terminated in SY90-92, By Case Type and Age
District of Puerto Rico
Case Type (Percent 3 or more years old)
Asbestos (0.0%)
Bankruptcy Matters (7.3%)
Banks and Banking (5.0%)
Civil Rights (23.7%)
Commerce: ICC Rates, etc. (5.3%)
Contract (5.5%)
Copyright, Patent, Trademark (2.1%)
ERISA (0.0%)
Forfeiture and Penalty (excl. drug) (0.0%)
Fraud, Truth in Lending (0.0%)
Labor (6.8%)
Land Condemnation, Foreclosure (0.6%)
Personal Injury (5.6%)
Prisoner (3.3%)
RICO (0.0%)
Securities, Commodities (0.0%)
Social Security (1.3%)
Student Loan & Veteran's (0.0%)
Tax (5.9%)
Other (3.5%)
0
5
10
15
20
25
Percentage of All Terminated Cases
(no shading = under 3 years old, dark shading = 3 or more years old)
Percent 3 or more years old for all cases in this district is: 4.9

Chart 2b

Civil and Criminal Filings per Judgeship



1988 - Dupont Case

Chart 3

D. Trends in Civil Filings

1. Type I Cases

Type I cases have, over the past ten years, accounted for approximately 40 to 45 percent of the District's civil filings. These cases reached a peak in 1984 with 2600 filings. After falling to 600, in SY91, the number of Type I filings rose to 800 in SY92. Type I cases include:

*student loan collection cases

*cases seeking recovery of overpayment of veterans' benefits

*appeals of Social Security Administration benefit denials

*condition-of-confinement cases brought by state prisoners

*habeas corpus petitions

*appeals from bankruptcy court decisions

*land condemnation cases

The largest single category of civil cases on the District's docket is that of Land Condemnation and Foreclosure. The next sizeable categories of cases are: Social Security, 11 percent and Student Loan and Veterans' Benefits, 5.5 percent.

2. Type II Cases

Type II cases are more complex, requiring more judge-time, extended discovery and a larger number of witnesses and experts. They may have multiple parties as well. The number of Type II case filings has remained steady for most of the decade, accounting for between 1,000 and 1,100 filings. Examples of Type II cases are:

*Civil Rights

*Contracts

*Personal Injury

Chart 4a shows the trend of case filings for the past ten years for both categories. Charts 4b and 4c illustrate the three largest types of cases in each category.

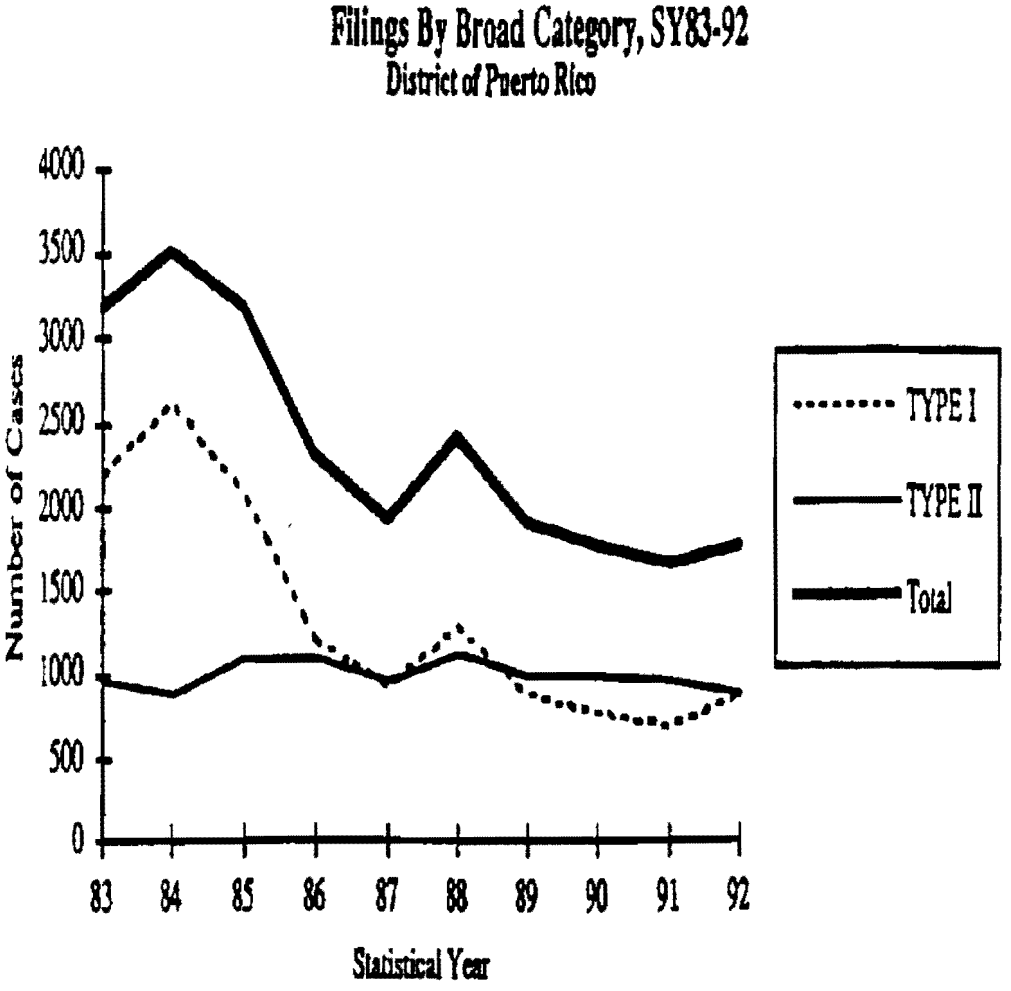

Filings By Broad Category, SY83-92
District of Puerto Rico
Number of Cases
4000
3500
3000
2500
2000
1500
1000
500
0
83
84
85
86
87
88
89
90
91
92
Statistical Year
TYPE I
TYPE II
Total

Chart 4a

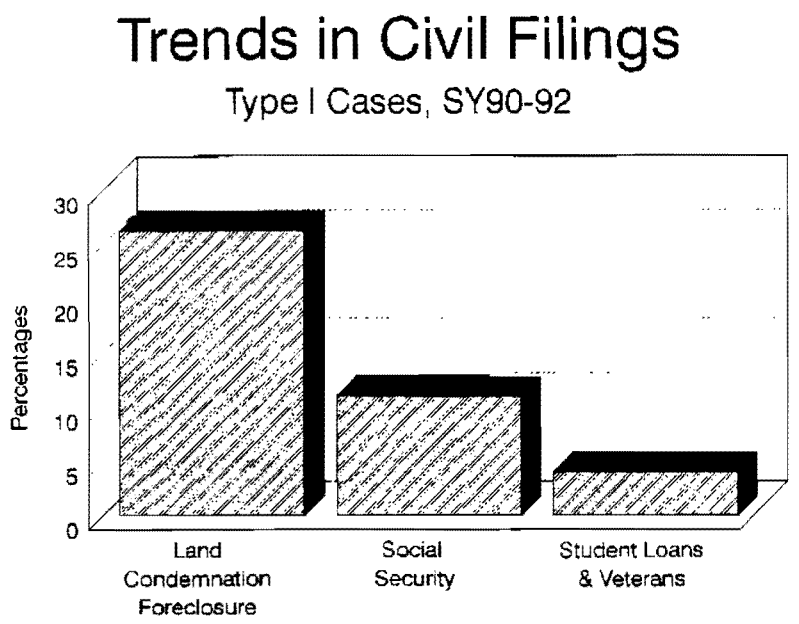


Chart 4b

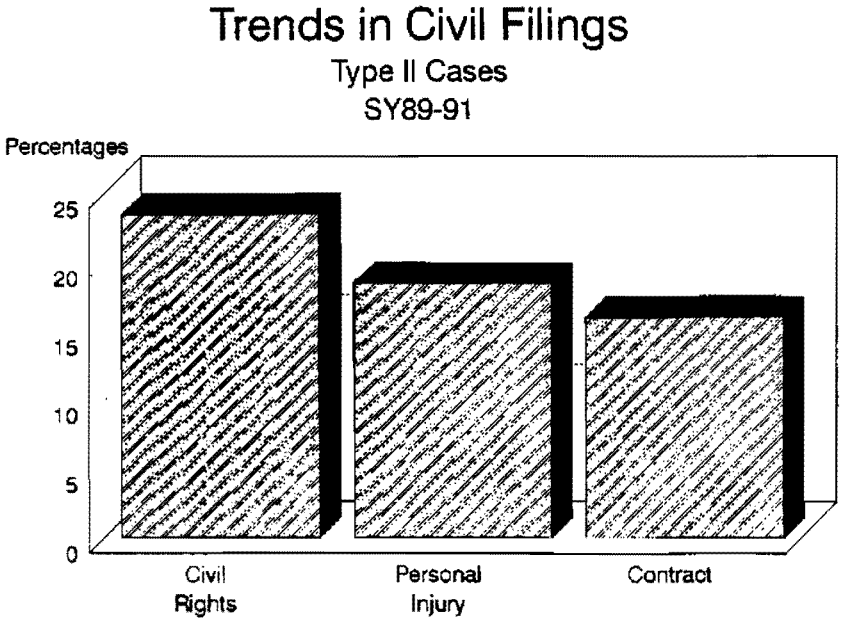


Chart 4c

Table 2 shows filing trends for a more detailed taxonomy of case types. Some trends can be discerned, such as the decline in the number of social security cases, contrary to the national trend. They are down from highs of 1342 in SY84 to 218 in SY92. Land condemnation and foreclosure cases are down to 498 in SY92 from 1333 in SY83.

Table 2

Filings by Case Types, SY83-92

District of Puerto Rico	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	0	0	0	0	0	0	0	2	0	6
Bankruptcy Matters	43	35	42	58	44	33	16	36	39	50
Banks and Banking	4	5	7	6	16	11	17	45	47	40
Civil Rights	83	77	187	321	196	116	144	157	130	143
Commerce: ICC Rates, etc.	30	3	3	1	0	1	2	3	15	0
Contract	446	282	323	306	288	279	302	264	258	225
Copyright, Patent, Trademark	13	14	12	10	14	32	36	32	37	41
ERISA	1	4	2	3	8	4	2	2	9	2
Forfeiture and Penalty (excl. drug)	29	38	20	16	19	41	43	41	38	31
Fraud, Truth in Lending	2	8	1	5	2	3	4	1	5	5
Labor	60	42	43	49	56	38	32	35	42	34
Land Condemnation, Foreclosure	1333	1035	1091	652	428	761	492	393	442	498
Personal Injury	164	173	192	180	234	407	250	221	237	239
Prisoner	79	49	40	19	42	29	33	37	30	36
RICO	0	0	0	1	4	3	5	10	7	7
Securities, Commodities	4	3	9	5	2	5	8	6	2	2
Social Security	570	1342	877	459	377	387	185	197	166	218
Student Loan and Veteran's	179	171	26	10	56	87	153	108	21	77
Tax	10	1	8	11	15	17	9	4	8	3
All Other	129	224	291	178	109	159	151	161	125	106
All Civil Cases	3179	3506	3174	2290	1910	2413	1884	1755	1658	1763

Civil Rights cases have remained at approximately the same level during the last four years, as have contract cases. Charts 4d and 4e show the percentage distribution among types of civil cases filed in the district for the past three years and the distribution of weighted cases based on demands of judge time which are calculated using a formula developed by the Judicial Conference.

Chart 4d

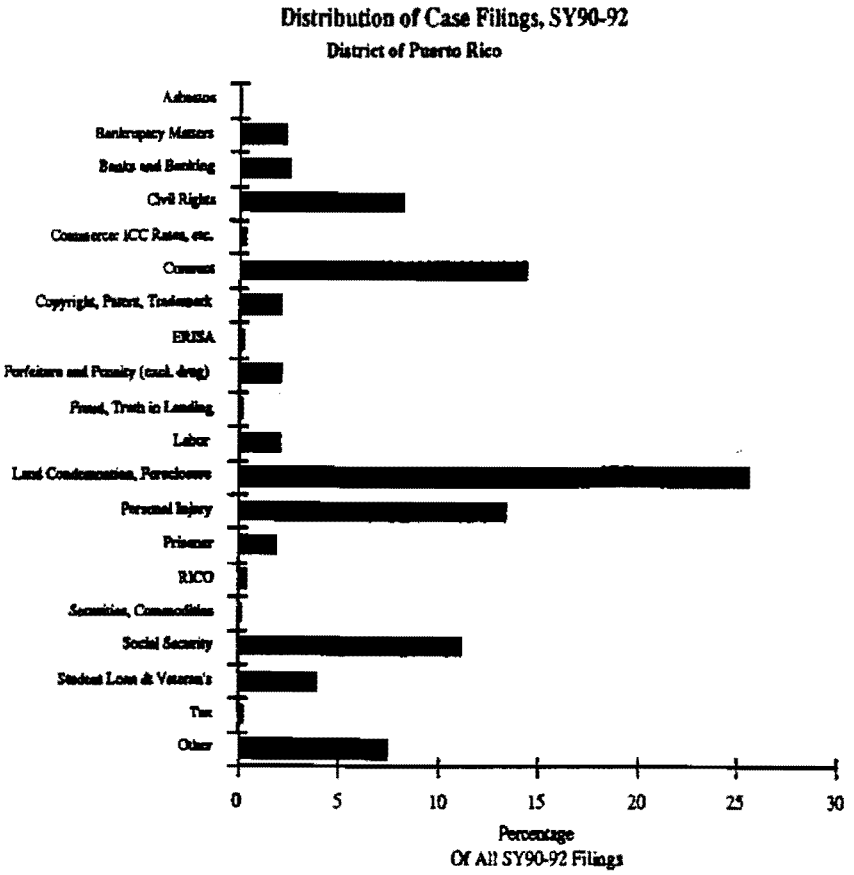
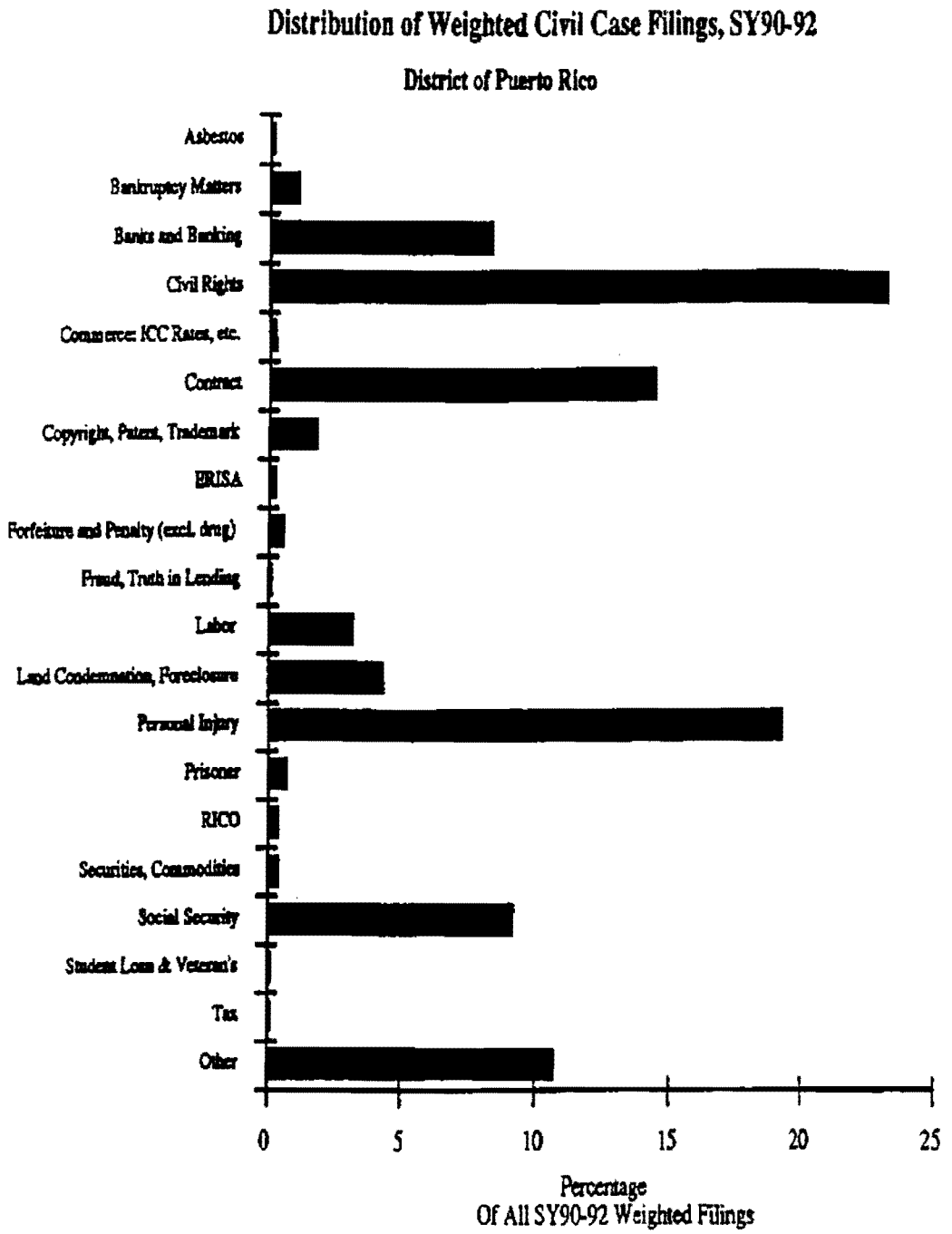


Chart 4e


Distribution of Weighted Civil Case Filings, SY90-92
District of Puerto Rico
Asbestos
Bankruptcy Matters
Banks and Banking
Civil Rights
Commerce: ICC Rates, etc.
Contract
Copyright, Patent, Trademark
ERISA
Forfeiture and Penalty (excl. drug)
Fraud, Truth in Lending
Labor
Land Condemnation, Foreclosure
Personal Injury
Prisoner
RICO
Securities, Commodities
Social Security
Student Loan & Veteran's
Tax
Other
0
5
10
15
20
25
Percentage
Of All SY90-92 Weighted Filings

E. Civil Trials

The number of civil trials increased in SY91 from 95 to 98. Of these, 77 were non-jury and 21 were jury trials. According to statistics for the last two calendar years (1991 and the first half of 1992), kept by the Court's jury administrator, civil trials, on the average, have taken between three and six days to try. In SY91, the majority lasted one day; however, in the case of 21 of these lawsuits, trial took from four to nine days. In SY90, only 13 civil trials required that amount of the Court's time; however, in SY89, as in SY91, 21 cases also took between four and nine days to complete. Thus, any conclusion that the length of civil jury trials is increasing would be mere conjecture.

F. Institutional Reform and Mass Tort Cases

There are two massive institutional reform cases pending in this District. The case of Carlos Morales Feliciano, et al. v. Rafael Hernández Colón, et. al., Civil #79-4, involving conditions of confinement in the island's prisons, has been pending for twelve years. Some 60 lawsuits have been consolidated with this case and an excess of 1,500 pleadings and motions have been entered. There have been fourteen published opinions from the District Court and one from the Court of Appeals. Fines amounting to more than $138 million have been collected. Two court-appointed monitors, one law clerk and personnel from the Clerk's Office have devoted substantial amounts of time to the case. Nevertheless, the Advisory Group found that this case has been diligently managed and has not delayed other civil matters pending before the same judge.

Roberto Navarro Ayala, et al. v. Rafael Hernández Colón involves conditions in psychiatric institutions administered by the Government of the Commonwealth of Puerto Rico. In the management of this case--which shares many of the characteristics of Morales Feliciano, supra.--the judge has the assistance of a court-appointed master. As with the former case, the Advisory Group found that it has been handled diligently, so as not to cause delay in the civil docket of the presiding judge. The Advisory Group recommends, on the suggestion of the two judges

handling these cases, that court-appointed monitors or special masters be considered for all such cases in the future. See Part IX.

In Re San Juan Dupont Plaza Hotel Litigation, MDL-721, a mammoth personal-injury action, consumed the better part of five years of one of the District judges and his staff. The case was managed efficiently, following the guidelines suggested in the Manual for Complex Litigation, Second, and using other measures developed by the presiding District judge. Because of the demands of MDL-721, the District judge was relieved of many cases pending on his docket and no newly-filed cases were assigned to him for a period of time. Those cases were then distributed among the other District judges.

Some of the judges and attorneys interviewed suggested that, in the future, a judge burdened by similar mass tort litigation be relieved of new cases, but not of pending cases, since disposition of civil cases which had been on the docket for months was delayed by their transfer to other judges.

A committee designated by the Advisory Group studied the problem and, after interviews with judges, magistrate judges and the Clerk of the Court, proposed certain measures to be taken in the event that the Court were faced with mass litigation in the future. See Part IX, "Institutional Reform and Mass Tort Cases".

G. Bankruptcy Appeals

A committee appointed by the Advisory Group studied twenty cases closed during the last three years (SY89-SY91), which had commenced in the Bankruptcy Court. Seventeen were appeals and three were cases referred to the District Court.

Although no generalized problem of delay was identified, the length of time which had elapsed between the date of the Notice of Appeal and the date of receipt of the record in the District Court was excessive in some of the cases reviewed. The lapse of time ranged from 55 to 460 days. The procedure has been revised and the record is now received in the Clerk's Office within 14 to 45 days.

Another source of delay was the failure of parties to file briefs on time, perhaps because of unfamiliarity with the time periods established in Bankruptcy Rules, 11 USC §§8001 et seq.

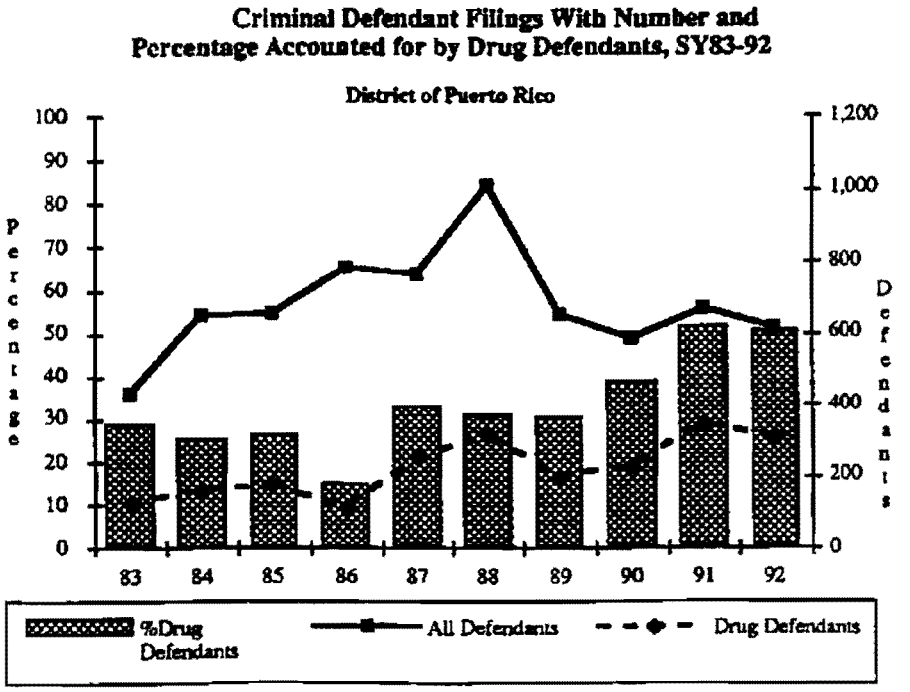
H. Condition of the Criminal Docket

A study of trends in civil case filings could not be complete without an examination of criminal filings, for the number of criminal cases being filed and going to trial have a significant impact on the Court's civil calendar.

After a 4.1 percent increase in criminal filings in SY91 to 441, they declined to 346 in SY92. (The increase in SY91 was not mirrored in the trend nationally, where criminal case filings declined by one percent and are holding stable after substantial increases during the middle and late eighties.)

Chart 5 shows how criminal-defendant filings, and drug defendants, as a percentage of the total, have risen in recent years. Studies have indicated that the time burden of a criminal case is proportional to the number of defendants.

Chart 5



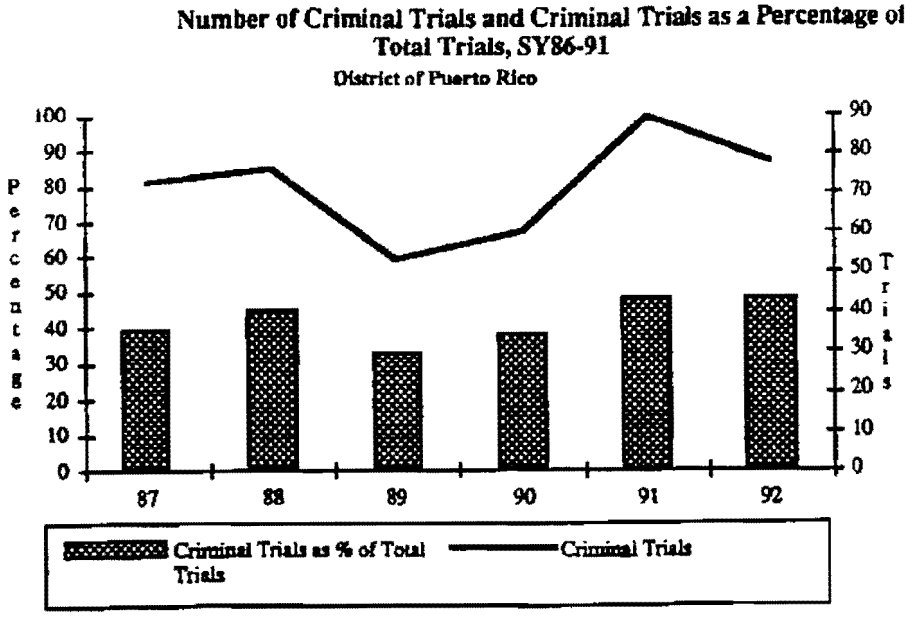
A committee, appointed by the Advisory Group to study the impact of criminal cases on the civil dockets of the judges, found that those judges who were presiding over criminal cases involving a dozen or more defendants, complained that criminal cases seriously affected their civil docket, while those judges who were not handling such cases stated that criminal cases had not delayed or seriously affected their civil docket.

1. Criminal Trials In General

The rise in criminal filings also leads to an increase in the number of criminal trials being held in the District: In SY89, 52 trials were held; in SY90, there were 61 and in SY91, the number of trials held jumped to 95. In SY92, there were 78 criminal trials, which now account for almost 50 percent of all trials held in the District. A corresponding increase is seen in criminal filings per judgeship which have risen by increments of one or two, over the last three statistical years.

Chart 6a shows the number of criminal trials and the percentage of all trials they have accounted for during the last six years.

Chart 6a



a. Criminal Jury Trials

With the surge in the number of criminal case filings, the number of criminal jury trials being held has also climbed. In SY89, there were 52 criminal trials; none were non-jury. Two non-jury trials were held in SY90, two in SY91 and none in SY92.

In sum, there were a total of 208 criminal trials in the District between SY89 and SY91, of which only four were non-jury. It should be noted, in light of the Department of Justice's policy regarding the strict enforcement of the Sentencing Guidelines and the apparent decline in plea agreements, that there were only four criminal trials already in progress in the District for the three statistical years under review, where the defendants then decided to plead guilty.[8]

b. Pleas

Moreover, the number of pleas has seen a downturn as well, although not a significant one, from the levels of SY90. It may be argued that the Sentencing Guidelines, coupled with mandatory minimum sentences, have made plea agreements less attractive to a defendant. In addition, the Bush Administration's instructions to the US Attorney's Office to take a more aggressive stance regarding plea agreements has, apparently, reduced the number of plea agreements being accepted by the US Government. In the SY89 pre-guideline cases for the District, out of a total of 263 convictions, 255 or 96.7 percent were the result of plea agreements. Out of 159 guidelines cases for the same period, 83.7 percent (133 cases) were concluded by plea agreements. It is clear that the decrease in guilty pleas has been substantial.[9]

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[8] The number of criminal trials cited in the Report was taken from Table C-7, Appendix 1: Annual Report of the Director of the Administrative Office of the U.S. Courts, SY89, 90 and 91. The number of criminal jury and non-jury trials was taken from the JS-10 form, which is a "Monthly Report of Trials and Other Court Activity", which is sent by each of the seven courtroom deputies to the Administrative Office.

[9] See Table IV of the United States Sentencing Commission's Annual Report of 1989.

2. Criminal Cases by Category

a. Drug Cases

The largest upward movement in any one category of criminal filings is in drug case filings--marijuana and controlled substances and narcotics--which in SY90 represented 25 percent of the Court's criminal filings. In SY91, narcotics cases have risen by 33.5 percent, constituting 39 percent of all criminal filings versus 26 percent on the national level. (Charts 6b and 6c)

b. Operation Triggerlock

Also showing a rise in filings are Operation Triggerlock cases. Under this program, begun in March of 1991, the US Attorney may bring state cases into federal courts by using federal laws which prohibit the use of firearms to commit violent crimes. Operation Triggerlock involves cases where state career criminals are found in possession of a firearm or where a person commits a crime triable in federal court while possessing a firearm. Also, in federal offenses where a firearm is used, an additional count may be included for the possession of the firearm in order to obtain a mandatory consecutive sentence. The program is still very new, but there were 27 of these cases filed during calendar year 1991, compared to two for all of calendar year 1990. The increase on the national level was 27 percent. This upward trend will doubtless continue for the foreseeable future.

c. Multiple Defendants

The average number of felony defendants per case--1.8--has also risen steadily since SY87. According to statistics compiled for the US Attorney's Office, during calendar year 1991, out of 411 cases, there were 28 cases with multiple defendants. The average duration of a criminal trial was from one to four days, with one trial going over 21 days. (Chart 6d).

Chart 6b

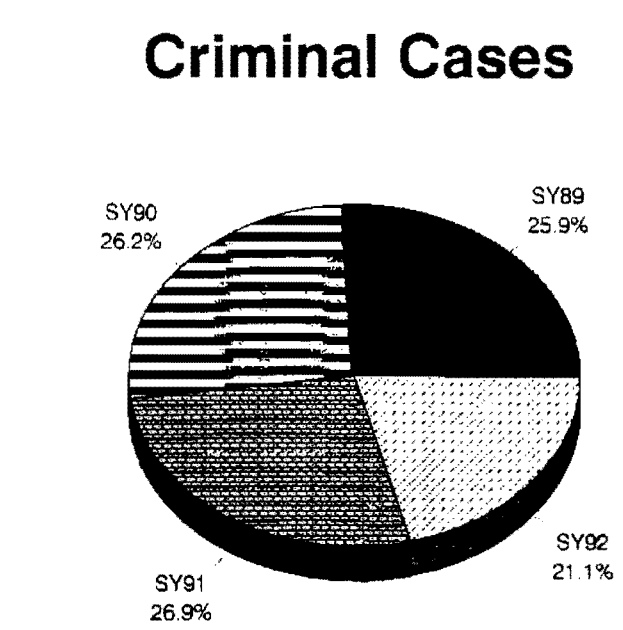


Chart 6c

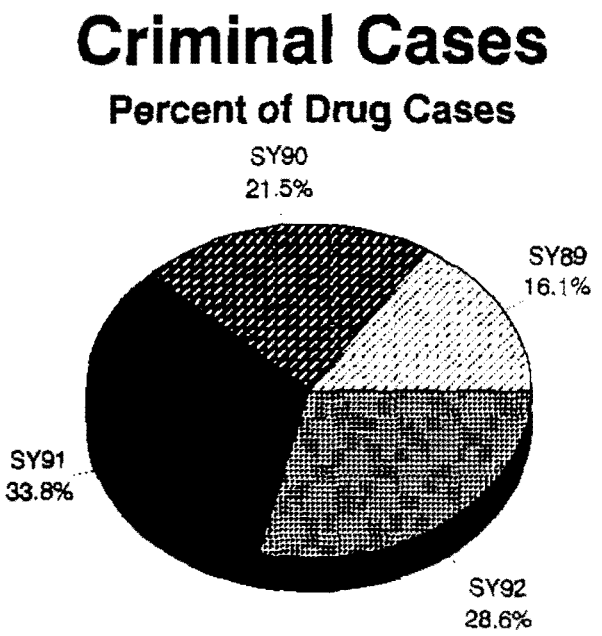
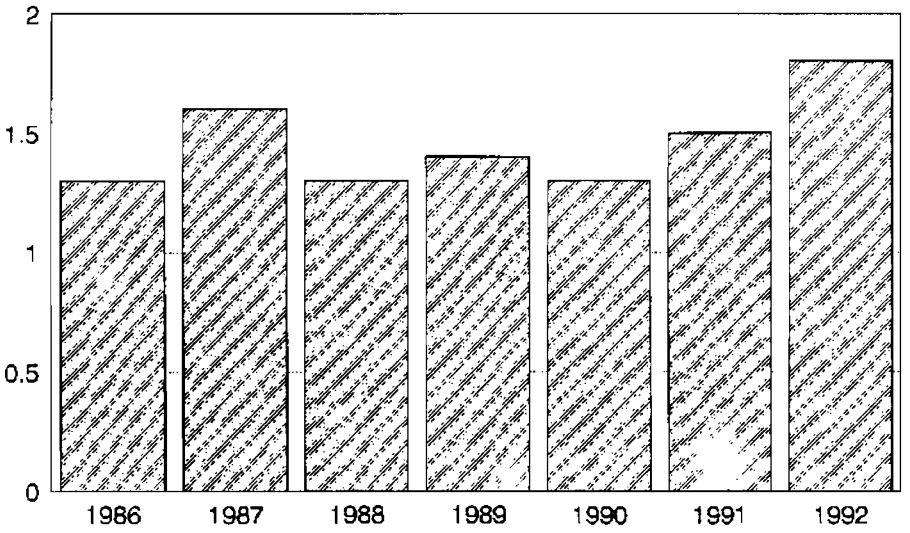


Chart 6d

Multiple Defendants Average



PART III

TRENDS IN DEMANDS ON COURT RESOURCES: JUDICIARY, STAFFING, TRAINING AND AUTOMATION

III. TRENDS IN DEMANDS ON COURT RESOURCES: JUDICIARY, STAFFING, TRAINING AND AUTOMATION

A. Introduction

28 USC §472(c)(1)(B) requires the CJRA Advisory Group to identify trends in the demands being placed on the Court's resources.

B. Demands on Court Resources

1. Judgeships

The number of judgeships increased from three to seven in the early to mid-1980s. There are no pending requests for additional authorized judgeships; however, it is expected that three judges will take senior status within the next eighteen months.

It is assumed by the Advisory Group that these senior judges will continue to receive civil assignments exclusively, albeit at a reduced level of no less than 30% of their former caseload.

Depending on the timing, the number of judges taking senior status could well have an adverse impact on the availability of judicial resources, assuming that there is a delay by the President and Congress in filling the vacant judgeships. An increase in the average duration or life expectancy of civil cases is to be expected with fewer active judges in the District.

2. Cases Over Three Years Old

There were unusual demands placed on the Court's resources arising from the number of civil cases over three years old remaining on the Court's docket. The percentage of these cases grew from 1986 to 1992. In 1990, there were 250 cases, accounting for 12.8% of the Court's civil caseload. In 1991, the number had risen to 427 or 21.1% of the total civil cases pending at year's end. That number had risen slightly to 428 by the end of SY92. As mentioned previously, these figures are deceiving [see Part II(C)(4) "Civil Cases Over Three Years Old" and Charts 7a and 7b].

Chart 7a

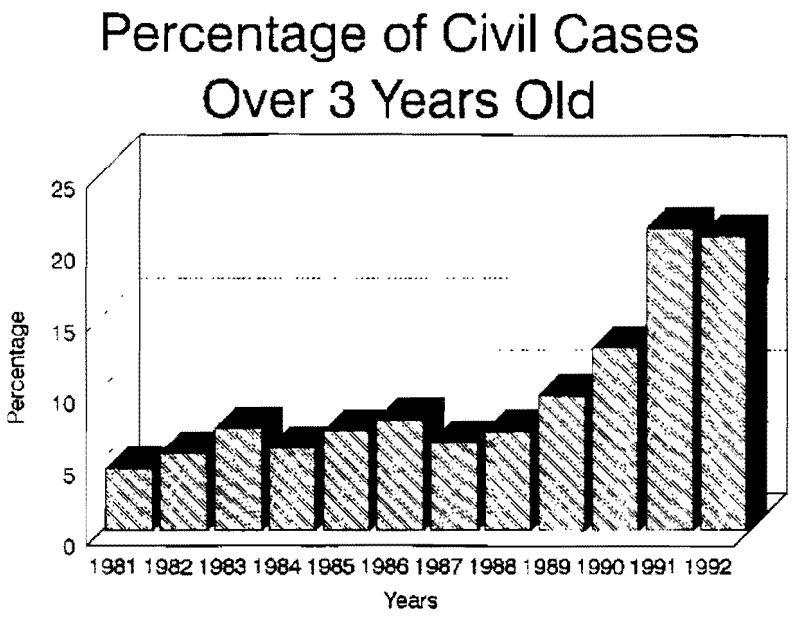
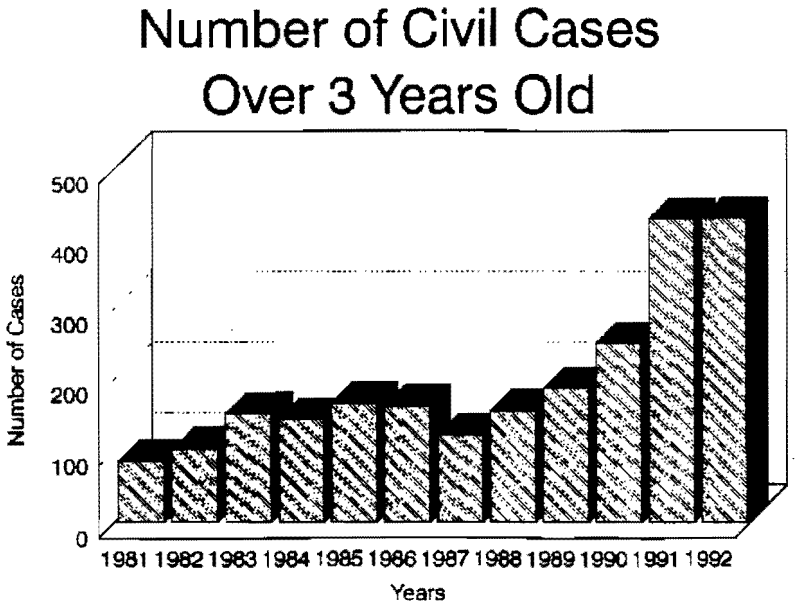


Chart 7b



3. Visiting Judges

Visiting judges have also provided invaluable service in clearing the Court's backlog of cases. Generally, they are assigned cases ready for trial or ripe for settlement. On occasion, they have been invited to sit in the District when a conflict of interest arises in a case which results in one or more of the judges having to recuse him or herself.

Notwithstanding their inherent value, the visiting judges must also be provided with support--courtroom deputies, secretarial services, a courtroom. Often, the Clerk's Office provides follow-up for the cases the judges have heard. This places an additional burden on the Court's resources. The Advisory Group believes, however, that their support outweighs the burden and recommends the practice of utilizing visiting judges continue, particularly if there is delay in replacing judges who retire or take senior status during the next few years.

4. Magistrate Judges

The Court has three full-time magistrate judges. They are presently attending to every duty enumerated under 28 USC §636 of the Federal Magistrates' Act. Each is allocated one law clerk and one secretary. The utilization of magistrates will also be covered in greater detail later in this report in Part VIII.

5. Physical Plant

The US District Court with the judges, staff and Clerk's Office and the Criminal Division of the US Attorney's Office, was relocated from Old San Juan, where it had been since 1900, to Hato Rey's Federal Building in December 1990. The move was made for both security and space purposes.

While there is now more space, unfortunately, at the present time, there is none to house the three judges who will be assuming senior status over the next few years. They will need offices for their staff and files, especially if, as anticipated, they will continue to handle at least 30% of their current case load. It is conceivable that this deficiency will be overcome by locating the senior judges in the former courthouse in Old San Juan, which presents the added problem of having court operations at two different locations. This, by itself, will be a further burden on existing resources.

Currently, there are 50 agencies located in the Federal Building. The Probation Office is split between two floors. The Court will have to consider, in the near future, how and where it will expand its operations.

The Advisory Group also notes that the First Circuit's excellent satellite library, with space allocated for four offices, takes up a large section on the first floor. It is currently not open to members of the bar. The Advisory Group recommends that the library be made available to attorneys who appear in the District Court.

Finally, the Advisory Group has observed with considerable interest, Senate bill 2070, the Judicial Space and Facilities Management Act, which will give the judiciary control of space determinations and allocations to be used in managing the Court's own physical resources. The Advisory Group believes that this bill, which failed to pass the Senate before adjournment of the 102nd Congress, would reduce some of the delay associated with the constant need to seek approval of the General Services Administration and the Office of Management and Budget.

C. Demands on Resources of the Clerk's Office

1. Staffing Demands

The Clerk's Office provides the Court with support in the areas of finance, operations and automation. To carry out its responsibilities, the Clerk's Office should be staffed at 100%. Presently the Office has 30 employees and seven interpreters (who do not enter into the staffing formula).

From time to time, severe personnel shortages have arisen which require additional assistance. The Clerk's Office was in serious difficulties prior to and following the resignation of its Clerk in August 31, 1990; however, these problems have been overcome for the most part by the efforts of the new Clerk and her staff.

For example, in the last year the automation staff has been increased to four people. They deal with a number of systems, some of which are already functional and others which the Office is in the process of installing. The Clerk's Office has a Unisys (Unix-based) minicomputer with over 30 terminal lines and 50 users. There are twelve major software applications running in Unix. Additionally, there are 4 Novell Networks and several stand-alone PCs running multiple office-automation

programs. Additional systems are being evaluated for installation during the next 18 months.

The Administrative Office has determined that the maximum ratio of PCs per PC Support positions should be 65; however, a single PC Systems Administrator supports 150 PCs, in addition to holding other automation-related responsibilities. The Advisory Group notes that automation brings greater efficiency and organization, but it requires support.

In another effort to become more efficient in carrying out its responsibilities, the Clerk's Office has extended its hours of service. Traditionally, it closed for lunch, but this is no longer the case. At this time, the Filing and Intake section is open at noontime. The Advisory Group endorses this practice and recommends its continuance. Regrettably, due to personnel shortages, the Records and Reproduction section has had to close to the public between the hours of 8:30 to 11:30 a.m.

The seven court interpreters are not counted among the total Clerk's Office staff; a work study of the interpreters' use of time has led the Clerk to assign each interpreter additional duties. For example, they are involved with coordinating training programs, keeping the staff informed of personnel programs and assisting the Systems unit, among their other duties and functions.

2. Demands by CJRA

In addition, the Clerk's Office has assumed more responsibilities to cope with the demands of the Civil Justice Reform Act. A full-time staff attorney has been hired to serve as a liaison between the Advisory Group and the Court and to assist in drafting portions of the CJRA Report. Since the role of the Advisory Group is seen by the Act as a continuous one, clearly the duties implied by that requirement will continue to involve the Clerk's Office and will place more demands on its resources.

One example of how the CJRA has impacted on the functions of the Office is the implementation of a Differentiated Case Management plan, such as the one recommended by the Advisory Group in a subsequent section. This methodology will almost certainly require the hiring and training of one or more additional staff people.

3. Training and Education Demands

The institutionalized training of the staff of the Clerk's Office also requires time and funds, but it is the single most important factor in producing a more efficient office. It gives the Office the means of perfecting those skills required to perform one's regular duties. In fact, the greatest weakness observed by the Advisory Group in the Clerk's Office, was the problem of acquiring proper training for a new employee and ongoing training for the older ones.

Another perceived area of weakness which has shown considerable improvement, but where proper training is a necessity, is that of docketing. No longer does each judge have a docket clerk assigned to him or her. This stemmed from a lack of personnel; nevertheless, from a management standpoint, this change from individual docket clerks for individual judges to "digit docketing" (where clerks are assigned in a group to civil cases ending either in "0-4" or in "5-9") has resulted in up-to-date docketing and more timely entries. It also appears to offer better control by supervisors and more satisfactory service overall. Furthermore, if a case-management system were to be implemented, the Clerk's Office would need additional support in the docketing area.

A pool of fully-trained docket clerks is essential to the smooth operation of a judge's case load; nevertheless, it is noted that there is only one temporary clerk who can be called upon to assist during periods of vacation and illness.

It is foreseen by the Advisory Group that the transition period to electronic docketing using ICMS while still continuing with the old paper method will, in the short term, increase the need for more efficiency and consequently, the training and education of docket clerks in order to increase their productivity, should be high on the list of priorities. Therefore, the Advisory Group recommends that more of an effort be made to hire and train people in the Court's docketing procedures and that the Administrative Office be prepared to provide more funds for these endeavors.

It is also apparent to the Advisory Group that greater flexibility is needed on the part of the Administrative Office in allowing critical exceptions to the work management formula by which people can be hired. While not advocating a whole

scale lifting of hiring restrictions, it is evident that a more streamlined hiring process is needed for the unique demands facing this District Court Clerk's Office.

D. Automation

1. CIVIL

CIVIL, an automated case management and docketing system, was developed by the Federal Judicial Center and designed for the United States District Courts. The system is flexible enough so that it may be adapted to the local rules and practices of the Court. The data base structure and associated processing software are known as ICMS (Integrated Case Management System). The key feature of this automation plan is its high degree of decentralization as computers are located in the Court, rather than in Washington, D.C. The system is then run by trained members of the Clerk's staff.

The Clerk's Office installed ICMS on October 1, 1991 and it went on line on December 1, 1991. ICMS automates the production and maintenance of the docket sheet, notices, orders and case and party indexes. It will provide case status, document and deadline tracking.

2. PACER & CHASER

Another automated system, PACER, is being considered for installation sometime in 1993. PACER is a public access program, which will be located in the Clerk's Office and will allow attorneys and other members of the public access to the Court dockets during the workday. The Advisory Group was also informed that CHASER, a courthouse access system, is being planned for the District of Puerto Rico and will be installed in the near future. This system will provide case management data directly to the judges and their staffs in chambers.

3. CRIMINAL

The Court's civil caseload is fully automated. The Clerk's Office will begin an on-line criminal docketing program called CRIMINAL in September 1993.

4. Automation Support

It must be pointed out, however, that in the opinion of some in the Clerk's Office, while there has been a significant increase in the amount of automation-related

positions allocated to the Administrative Office in Washington, D.C., this needs to translate into an increase in the quality of automation products/support and problem-solving assistance delivered to the Court.

Further, it should be noted that formulas to allocate automation support positions should not be based on a court's caseload, since the caseload could be decreasing while automation efforts are increasing.

E. Conclusion

The Advisory Group recommends that more funds for staff training, education and hiring be made available to the Clerk's Office, as the trends discussed here show a marked increase in the demands made by the public, press and attorneys on the Court's resources. Moreover, the efforts required to implement the automation necessary to carry out these duties and the other new Court programs, will be to no avail if things continue as they are now, with the Office overworked, understaffed and out of space to expand its operations.

PART IV

CASE MANAGEMENT TECHNIQUES

CURRENTLY USED

IV. CASE MANAGEMENT TECHNIQUES CURRENTLY USED

A. Introduction

Most of the judges use some sort of case management method, although there is no uniformity. The principal methods used are case differentiation, scheduling conferences and orders, pretrial conferences, and settlement conferences. Use of magistrates in civil case management also varies from judge to judge.

B. Case Differentiation

Most judges have adopted an informal case differentiation method. Thus, social security and student loan cases, are placed on a "fast track" by most judges, since they require relatively little of their time. The Advisory Group recommends a formal tracking system described in Part VI(B).

C. CJRA Litigation Principles and Guidelines Presently Used

1. Counsels' Filing of Discovery Motions

Local rule 311.11 covers the fifth principle enunciated in the §473(5) of the Act, which directs the Court to consider, in consultation with its Advisory Group, the prohibition of discovery motions unless accompanied by certification by the moving party that a good faith effort was made to reach agreement with opposing counsel. Rule 311.11 states that, prior to filing motions or objections relating to discovery, counsel for movant shall arrange for a conference and that each of the parties concerned shall confer in advance of the filing in a good-faith effort to eliminate as many of the disputes between the parties as possible, or to eliminate the necessity of filing such motion or objection.

Rule 311.11 further provides that the Court will not entertain any motion relating to discovery unless moving counsel shall first advise the Court, in writing, that counsel for the parties have been unable to resolve their differences or reach an agreement after holding a conference or that counsel for respondent has refused to confer or has delayed the conference without good cause.[10]

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[10] In addition, Local Rule 311.13 provides that the parties may be subject to the imposition of costs and/or attorneys' fees for the presentation to the Court of unnecessary motions and unwarranted opposition to motions.

2. Counsels' Duty of Diligence

Other matters relating to case management are set out in Local Rules 312 and 314. Local Rule 312 provides that "All counsel shall proceed with reasonable diligence to take all steps necessary to bring an action to issue and readiness for pretrial conference and trial".

Scheduling conferences and orders, pretrial conferences are in use in this District. (Local Rule 314.1, .2 and .3.)

3. Counsels' Authority to Bind Parties

The pretrial conference, in accordance with Local Rule 314.3, "shall be attended by the attorneys who will try the case and who are authorized to make binding stipulations for the parties, as well as enter into settlement discussions". The local rule goes on to provide that if the party or the party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the Judge may impose sanctions pursuant to FRCP, Rule 37(b)(2)(B), (C) and (D) or otherwise impose expenses and attorney's fees.

D. Pretrial Case Management

1. Civil

Several judges have adopted a formal pretrial case management method whereby they issue a case management order in civil cases (other than "fast track" cases such as social security or land foreclosure cases).

The order, which is issued either after a conference with the attorneys for the parties or without such a conference, depending on the judge, sets forth discovery deadlines, limits on discovery, deadlines for dispositive motions and a firm pretrial date. After meeting with the attorneys, the judge's order may also state the factual and legal theories of the parties, disputed and undisputed facts and fix a firm trial date. Further, it may establish specific dates for depositions. An added benefit to the case management conference is that the conferences can be used as opportunities to discuss settlement.

The Advisory Group found that the judges who most consistently and frequently use the case management methods described in Part VI(C) have the smallest number of pending cases on their dockets.[11] Accordingly, the Advisory Committee recommends the formal case management system described in Part VI(C), "Pretrial Case Management".

2. Criminal

There are no uniform pretrial criminal case management methods in use in this District. However, this Committee has concluded that the civil docket is affected frequently by the scheduling of criminal cases.

While criminal case management is outside the scope of our task, the Advisory Group strongly recommends that the court look into the matter of establishing criminal case management procedures to attempt to minimize their impact on the civil calendar.

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[11] As of September 10, 1992, pending civil cases per judgeship ranged from a high of 294 on the docket of one judge to 195 on the docket of another. The Case Evaluation Committee, in their in-depth study of closed civil cases, found unreasonable delay in 52 cases. While delays may be due to the other factors as well, the committee found that the judges with the highest numbers of these cases on their dockets were those not using, or least likely to use, case management techniques.

PART V

CAUSES OF COSTS AND DELAY

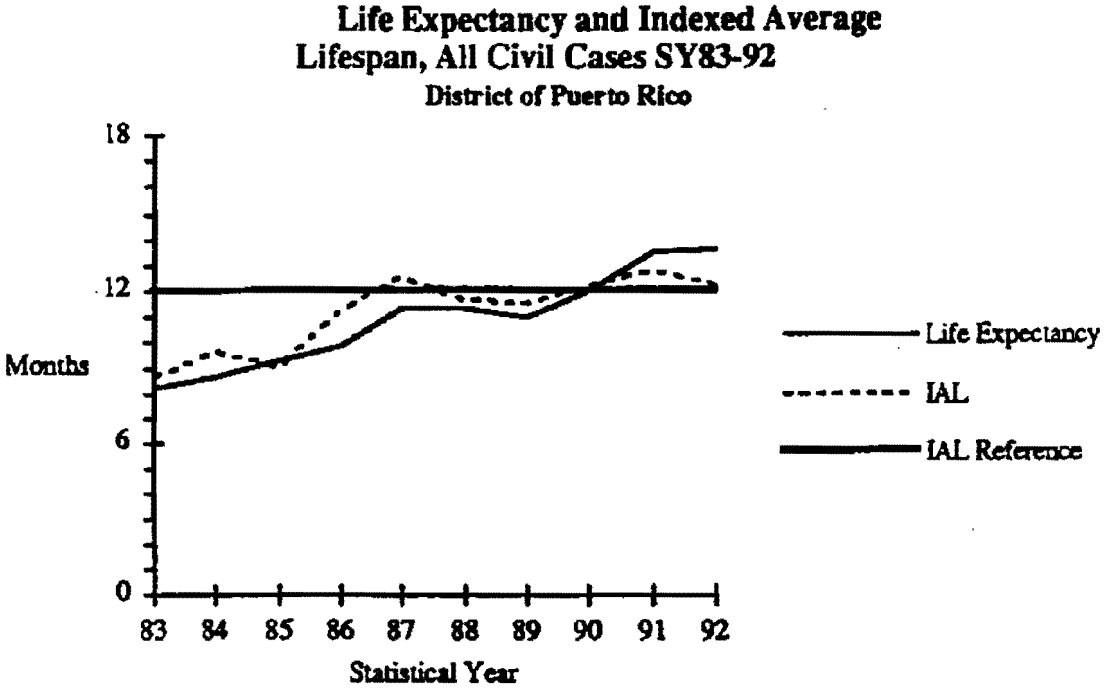
V. CAUSES OF COSTS AND DELAY

A. Introduction

As can be gleaned from the statistics discussed in Part II(B) above, the number of civil filings in this District does not by itself signal any excessive or unusual cost[12] and delay. However, the life expectancy of civil cases in this District has slowly but consistently increased above the national average. See Charts 8a and 8b.

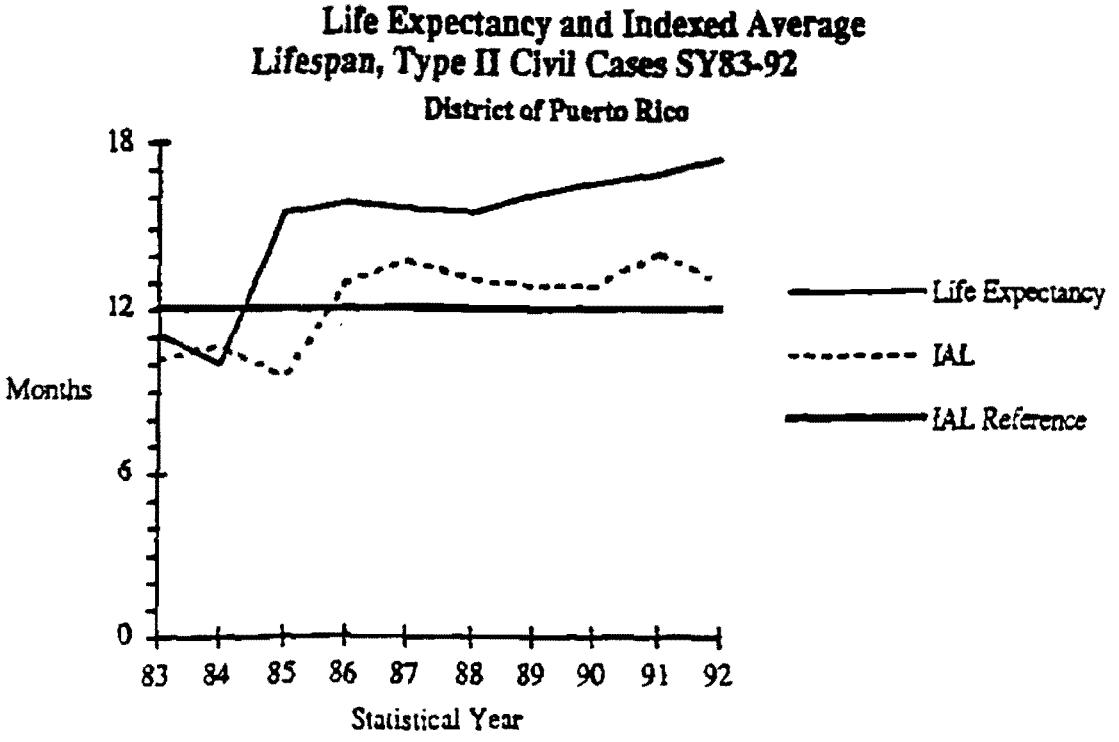
The Advisory Group considers this tendency a cause for concern. When considered together with other findings discussed below, it is an indicator of increased delay and costs in a significant minority of civil cases.

Chart 8a



[12] A significant area of unacceptable costs in many districts is that of contingent fees; however, the law of Puerto Rico, applicable in diversity tort cases, caps those fees at 25 percent if the client is a minor or mentally retarded and 33 percent if any other client. 4 L.P.R.A. §742.

Chart 8b



B. Cost and Delay-Causing Factors

Judges, magistrates and civil practitioners interviewed on behalf of the Advisory Group have pointed to several possible causes for this phenomenon of increased life expectancy for the District's civil cases. Some of those interviewed have identified as the probable cause, the civil suits arising from the San Juan Dupont Plaza Hotel Fire. Others have pointed to one or more "institutional reform" cases as factors which may have affected the statistical profile. As mentioned before, however, the major part of the Dupont Hotel fire litigation has been concluded and, while the institutional reform cases continue to make demands on judge time, they are being handled in an efficient manner without significantly affecting the docket of the corresponding judges.

Preferential treatment given to criminal trials due to Speedy Trial Act concerns is another major cause of delay, according to some District judges interviewed. The sentencing guidelines and mandatory minimum sentences have increased the percentage of criminal cases that go to trial. These factors, together with the increased complexity of some criminal cases and the consequent length of trials have placed increased demands on judges' time, with inevitable adverse consequences for the civil dockets of the judges so burdened. Interviews with judges handling multi-defendant criminal cases indicate that such actions do indeed cause some delay in the resolution of civil cases.

Another possible cause, according to some of those interviewed, is the fact that a number of political discrimination cases were filed in this District, particularly after the elections of 1984, when the administration of the government of the Commonwealth of Puerto Rico changed hands. One peculiarity of those cases is that certain interlocutory decisions of the District Court are immediately appealable to the Court of Appeals. In many cases, the decision of the Court of Appeals does not bring an end to the litigation, so that the case is merely stayed during the appellate process. For statistical purposes, it remains on the docket of the District Court while the appellate process runs its course, the case returns to the District Court and is concluded.

These comments are supported by some of the data gathered by the Advisory Group. For example, a snapshot of the District's civil docket as of September 10, 1992, showed that out of the civil cases pending for more than three years, almost a quarter were civil rights actions.[13]

The nature and complexity of civil rights cases, moreover, demand more judge time than most other civil cases. This is also reflected in the data collected by the Advisory Group. An analysis of 380 civil cases terminated between April 1, 1990 and March 1, 1991 show that, even excluding time during which the cases were on

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[13] It should be noted that judges who consistently use some of the case management methods described in Part VI of this report had a significantly lower number of civil cases pending for three years or more.

appeal or otherwise stayed, civil rights cases lasted an average of 692 days as compared to an average length of 429 for all civil cases.[14]

At least one of the judges interviewed predicts that the trend towards long delays in cases involving political discrimination cases will not continue because the Court of Appeals has been clearing up areas of doubt and establishing guidelines for the district courts in such cases.[15] More certainty in the legal standards to be applied will lead to prompter disposition of the cases in this judge's view.

These comments, however, do not provide a full explanation for the general increase in the life expectancy of civil cases. The findings of the Case Evaluation Committee, summarized below, provide additional answers.

C. Case Evaluation Committee

The Advisory Group appointed a Case Evaluation Committee composed of eleven attorneys who practice regularly in the District Court to study a sample of recently terminated civil cases in an attempt to determine causes of unnecessary costs and delay.

1. Methodology

Under the direction of the Advisory Group, and with the assistance of the Administrative Office of the United States Courts, two groups of files, totalling 450 cases, were assigned to the Committee. The selection was made at random from cases which were officially closed.

Of the total 450 cases initially selected at random (including bankruptcy appeals) 154 were excluded before the Committee commenced to work, on the grounds that they had been brought to conclusion in less than one year after filing of the complaint; 24 cases were subtracted for reassignment to the Bankruptcy Case Evaluation Committee member.

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[14] Student loan cases, for example, lasted an average of 81 days. Civil rights cases had the longest average length.

[15] This thesis will be tested as to its correctness in a matter of time, because, as a result of the Puerto Rico elections, a political party was installed in office in January 1993.

Certain cases were not reviewed for other reasons--e.g., an institutional case that took approximately 165 days to resolution was excluded, cases involving pending motions or appeals were also eliminated. Thus, the cases which were reviewed by the Committee total 237.

Before the files were reviewed by the attorneys, however, law students were assigned to "code" the files and fill out questionnaires. The information reflected in those questionnaires was intended to assist the attorneys in the review of the files, as well as to facilitate a computerized analysis.

To standardize the review process and the results of each attorney's work product, an evaluation form was developed by the Advisory Group's Executive Committee, which asks the reviewing attorney to respond to the following questions:

1. Nature of the Case;
2. Date Commenced;
3. Date Terminated;
4. How Terminated;
5. Was There Unreasonable Delay?
6. Explain Probable Cause of Delay;
7. Recommendation; and,
8. Miscellaneous Comments (Optional).

One evaluation form was filled out for each case file reviewed. Attorneys were provided space in the federal courthouse, where they were able to review the files and the dockets at their convenience. After the attorneys examined their assigned cases, the completed evaluation forms were submitted to the Case Evaluation Committee's chairman for purposes of preparation of a report to the Advisory Group. (Appendix 4)

2. Findings

From the completed evaluation forms, it was possible to make a relatively well-founded assessment of certain docket conditions and trends.

The reviewing attorneys were also asked to determine whether particular cases required interviewing judges or counsel in order to determine the reasons for delay. Generally, the reviewers limited the cases in which interviews were recommended to those in which the causes of undue delay were not discernible from the files or dockets. Out of the total number of cases evaluated, the reviewing attorneys

recommended interviewing the judge in only 8.44% of the cases. Interviews with the attorneys were considered necessary in only 4.64% of the cases.[16]

Civil rights cases received the largest percentage of recommendations for interviews with judges (50.0%) or attorneys (27.3%). It is reasonable, therefore, to conclude that the dockets do not reflect clearly the causes of delay in civil rights cases.

3. Cases in Which Unreasonable Delay Was Found

Chart 9 shows, by case type or category, all cases where the reviewing attorneys found there were unreasonable delays from commencement of the case to conclusion. The reviewers considered, in their determination of whether a case had been unreasonably delayed, numerous factors based on their judgment, experience and the specific circumstances revealed by the file, including the number and location of the parties involved, complexity of the litigation and the extent of case management by the judge or magistrate. (See Appendix 6 for additional charts.)

The study shows that 21.94% of the total number of cases actually reviewed were deemed to show unreasonable delay. As may be noted, civil rights cases constitute the majority of cases in which unreasonable delay was found (42.3%), followed by tort cases (21.2%), social security cases (11.5%), labor cases (7.7%) and others in lesser percentages, as shown in the chart.

Conversely, out of the total number of cases actually reviewed, 78.06% were deemed not to have involved any unreasonable delay. The majority of cases falling in that category were tort cases (27.0%), followed by civil rights cases (17.8%), and ranging down in various percentages to banking (2.2%) and securities cases (1.6%).

As stated previously, because the cases with a life span of less than one year were excluded from the study, the total percentage of cases in which there was unreasonable delay should be smaller than the 21.94% reflected in the chart. For the same reason, the percentage of cases from the total original sample where there was

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[16] Instead of conducting personal interviews of the attorneys, written questionnaires were sent to the lawyers involved.

no unreasonable delay should be higher than 78.06%. Based on an expanded sample of 391 cases, composed of the 237 cases which were actually reviewed plus the 154 cases originally excluded because they were resolved in less than one year, only 13.30% of the cases involved unreasonable delay. This computation assumes that none of those 154 cases presented an unreasonable delay. Based on the same assumption, a large percentage of the cases originally designated to constitute the sample (86.7%) may not be considered as having been delayed unreasonably.

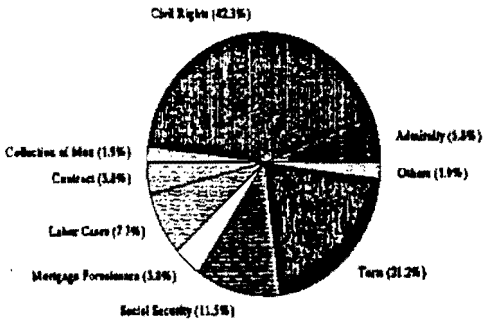
Chart 9

CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE DISTRICT OF PUERTO RICO

Report of Case Evaluation Committee

Cases in which Reviewing Attorneys Found there was Unreasonable Delay: *
(By Case Category)

Admiralty	3
Banking	
Civil Rights	22
Collection of Monies	1
Contract	2
Habeas Corpus	
Labor Cases	4
Mortgage Foreclosure	2
Securities	
Social Security	6
Torts	11
Others	1
Total	52



Percentage of Total Cases Reviewed: 13.30%

* *Based on expanded sample of 391 cases, composed of 237 cases actually reviewed plus 154 originally excluded for having been resolved in less than one year. Computation assumes none of these 154 cases presented unreasonable delay.*

4. The Causes of Delay

The committee's analysis found various principal causes of delay. Of the 52 cases in which the reviewing attorneys found there was unreasonable delay, 11 cases were deemed to be delayed because the Court took too long to rule on dispositive motions. Cases thought to be delayed for this reason represent 21.15% of the total number of cases considered to have evidenced undue delay.

In a number of cases, the reviewers found that the delay resulted from the Court's failure to establish and enforce discovery and other deadlines or by the Court's permissiveness in consenting to requests for postponement. Thirteen of the 52 cases reviewed were considered to have been delayed for those reasons. In other words, in 25% of the cases, the delays were attributed in large part to the Court's

own tolerance. In other cases, the delay was connected to lack of diligence or incompetence on the part of plaintiffs' attorneys in prosecuting their case or otherwise properly taking steps to perfect jurisdiction or to move their cases forward. Five cases, representing 9.6% of the total thought to have been delayed, were considered to involve that type of conduct by plaintiffs or their counsel.

It was not only plaintiffs' attorneys who produced unwarranted delays. In five of the cases (9.6%), defendants or their attorneys were considered to be responsible for the delay, because of their dilatory tactics, excessive motion practice or similar conduct.

Other cases, particularly civil rights cases, were delayed when they were stayed pending the resolution by the Court of Appeals of issues in similar actions which were considered by the parties and/or by the Court to be dispositive.[17] In four of the cases, representing 7.7% of the group of cases which were considered to have taken more time than acceptable to disposition, the delay resulted from that type of stay. The reviewing attorneys found that civil rights cases, particularly those involving allegations of political discrimination, take longer than normal to disposition because, in addition to the delay caused by interlocutory appeals:

- the Government of Puerto Rico takes some time to decide whether it will assume the defense of government officials;
- the Government's settlement approval process is cumbersome; and
- there is a high turnover rate in the federal litigation division of Puerto Rico's Department of Justice.

The Court also must take some responsibility for delays. Three of the 52 cases--representing 5.8% of the total--were deemed to have taken more time than appropriate to resolution because the Court simply took no action for extended periods of time, allowing the cases to remain unsupervised.

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[17] One judge who was interviewed opined that a very important appeal involving dispositive issues relating to political discrimination cases was pending for almost two years and that many civil rights cases were stayed pending the outcome of that appeal.

Among the various other reasons found by the reviewing attorneys to have contributed to delays are the complexity of issues and multiplicity of parties, lawyers' motions to withdraw from the cases, unexplained tardiness in filing answers or serving process, or inadequacy of dispositive motions that had to be supplemented. Noticeably, in only two of the cases was the delay expressly attributed to a conflicting criminal trial. It is to be expected, however, that many of the cases in which there was inaction on the part of the Court or delays, may have been affected by the judges' criminal dockets. In many instances, nevertheless, the case files and dockets are not clearly indicative that this last is one of the main reasons for delay.

5. Conclusions

It is the Advisory Group's opinion that the docket trends in the District of Puerto Rico, as reflected in the sample of cases analyzed, do not reflect a widespread pattern of undue delay, that only a minority of the cases have resulted in unjustified protraction and that, in a significant number of those cases, the delays may have been justified.

Notwithstanding the foregoing, it seems clear to the Advisory Group that a good number of the cases could have been resolved more promptly if the Court had taken a more aggressive stance towards deadline-driven timetables, if the Court had been less liberal in acceding to requests for postponements and if it had demonstrated less tolerance towards the tendency by some litigants to abuse the judicial process.

Generally, cases where early conferences were held and strict timetables and deadlines were established and zealously enforced, tended to be brought to conclusion within more reasonable time spans.

In sum, the files studied reflect that, for the most part, cases are managed efficiently and that there exists no widespread pattern of undue delay; however, there is no question that in a minority of cases, the lack of case management gives cause for concern. The Advisory Group is of the opinion that certain corrective measures should improve the situation substantially and reduce even further the number of cases that are taking longer than normal to be resolved. Those measures will be set forth in more detail later in this report.

D. Attorney Questionnaires

The response to attorney questionnaires (See Appendix 6) reflect the opinions of members of the bar as to causes of excessive costs and delay in civil litigation in this District. The causes most often mentioned were:

1. Excessive and unfocused discovery, including depositions outside of Puerto Rico. On the other hand, attorneys criticized indiscriminate orders compelling defense witnesses to travel to Puerto Rico to be deposed.

2. Excessive fees charged by experts.

3. Failure to rule promptly on dispositive motions.

4. "Bumping" of civil cases set for trial by a subsequent criminal case.

5. High translation costs.

E. General Conclusions

1. There is no widespread problem of unreasonable cost or delay in this District.

2. The Advisory Group is nevertheless concerned about the number of civil cases pending for more than three years in this District and the increase in the life expectancy of some civil cases.

3. There is a clear correspondence between the consistent use of case management methods of the type described in Part VI, "Recommendations on Reducing Cost and Delay", and shortened life expectancy of civil cases.

4. Civil rights cases alleging job discrimination on political and other grounds have made up a substantial portion of civil cases pending for three years or more.

5. Clearer legal standards established by the Court of Appeals and the Supreme Court of the United States should help accelerate the disposition of civil rights cases based on allegations of job discrimination.

6. Three of the District's judges are expected to take senior status or retire within the next eighteen months. If their replacements are not appointed and confirmed promptly, the District's docket probably will be seriously affected.

7. Several of the judges identify multi-defendant criminal cases as having an adverse impact on their civil docket.

PART VI

RECOMMENDATIONS FOR REDUCING COST AND DELAY

VI. RECOMMENDATIONS FOR REDUCING COST AND DELAY

A. Introduction - Principles and Guidelines of Litigation Management

The Advisory Group appointed a committee to study methods of pretrial case management in light of the findings of the other committees. The recommendations of the committee are intended to comply with the Civil Justice Reform Act, Pub. L. 101-650, 104 Stat. 5089 (Dec. 1, 1990), whose purpose is to achieve civil justice reform in the courts of the United States. The Act, which provides specific guidelines for reform, is intended to promote efficiency and economy in the conduct of both courts and litigants. In enacting this broad and ambitious legislation, Congress sought to improve procedures and the attitude of the Bar and the courts in all types of cases, even those in which the statistics disclosed a relatively good record of efficiency. The Act does not mandate specific procedures to be used by courts in effectuating a system of case management; however, section 473 of the Act lists six principles and six techniques of litigation management and cost and delay reduction which the courts and their advisory groups must consider and may include in the development of their reform plans. The first principle involves "a systematic differential treatment of civil cases that tailors the level of individualized and case specific management" to such criteria as case complexity, amount of pretrial time needed, and availability of judicial resources.

The second principle directs that a judicial officer must plan the progress of the case by setting firm trial dates, to occur within 18 months of the filing of the complaint, unless the officer makes a certification that the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice, or the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases.

The third principle provides that if a judicial officer determines a case to be complex, he or she shall conduct one or more discovery case management conferences to (i) explore settlement, (ii) identify issues, (iii) prepare a discovery

schedule and attempt to limit discovery and (iv) set early deadlines for motions and a framework for their disposition.

The fourth and fifth principles encourage the parties to voluntarily exchange information through the use of cooperative discovery devices and the preclusion of discovery motions unless the movant certifies that he or she has made a reasonable good faith effort to reach an agreement with opposing counsel on the matters set forth in the motion. (Local Rule 311.11 already covers the fifth principle.)

The sixth principle directs that appropriate cases be referred to alternative dispute resolution programs such as arbitration, mediation, mini-trial, or summary jury trial.

The Act also provides that when formulating case management plans each court, in consultation with its advisory group, must consider and may include in its plan six suggested techniques for litigation management. These include: (i) the requirement that counsel for each party submit a case management plan at the initial pretrial conference; (ii) the requirement that each party be represented at the pretrial conference by an attorney who has authority to bind that party regarding all matters previously identified by the court for discussion at the conference; (iii) the requirement that all requests for extension of discovery or trial deadlines be signed by the attorney and the party making the request; (iv) the establishment of a neutral evaluation program for presentation of the legal and factual basis of a case to a neutral court representative; (v) the requirement that a representative of the parties with binding authority be present or available by telephone during any settlement conference; and (vi) any other features that the court considers appropriate.

B. Needs and Circumstances of the Court, the Attorneys and the Litigants

In the few years since is passage, the statute has encouraged all participants in the judicial process to consider techniques for making court procedures uniform and for reducing the costs of litigation, both in terms of time and money. If litigation becomes less expensive and protracted, the courts will become more accessible to many *bona fide* plaintiffs whose rights may have languished unattended in the past.

As part of its efforts to consider the needs and circumstances of litigants, the Advisory Group included among its members, the Vice President of the biggest supermarket chain on the island and the President of one of Puerto Rico's major banks. Both entities are frequent litigants in this district. In addition, as noted earlier, the Group held public hearings expressly for the purpose of providing litigants and their attorneys with the opportunity to present their needs and views in an open forum.

Accordingly, in crafting some of its recommendations, the Advisory Group recognized the special concerns of litigants. For example, travel to Puerto Rico for depositions is time-consuming and costly. In an effort to decrease these expenses, videotaped depositions are recommended.

Further, by setting early dates, then moving cases toward trial, the Court can meet its basic obligation to litigants seeking relief in the federal court system.

Many judges in this District and elsewhere have experimented with various methods to improve case management techniques. After reviewing many of these methods, the Advisory Group is prepared to set forth a series of recommendations for the judges of this District as to which techniques have proven most successful. In many ways, an individual judge's method must be tailored to his or her own opinions regarding the method of intervention which may be most advisable.

The Advisory Group has therefore sought to present a variety of techniques which should be employed in improving case management which will be to the benefit of the court, the attorneys and the litigants. The Group has concluded, however, that one crucial principle must govern any attempt to effectuate a case management method. This principle is that early intervention by the court into each case, judicially-monitored discovery, and the prompt setting of a trial date are <u>essential</u> to effective case management.

The case management technique to be employed in any particular case may also vary depending on the facts and issues presented. Many cases present relatively straightforward disputes which can be disposed of without allowing the parties to

indulge in extended and costly discovery. On the other hand, certain cases involve complex factual and legal disputes which require significant discovery and pretrial rulings by the Court. The Advisory Group has identified three separate types of case management techniques that should be employed under the various circumstances which may be presented. These recommendations are aimed at solving the problems identified in Part V, "Causes of Costs and Delay", which describes a tendency, in a minority of cases, towards a longer life span for civil cases.

C. Differential Treatment of Civil Cases

As noted in Part V(C), a review of the docket of the United States District Court for the District of Puerto Rico demonstrates that there are wide differences in the length of litigation, depending on the nature of the case. Cases differ, with respect to the time required for a just and timely disposition. A student loan case which takes a year of the Court's time may well be an example of "undue" delay, whereas a two-year civil rights case may not be. Any analysis of delay has to be tailored to this reality. The Advisory Group has concluded that the implementation of a case tracking system, known as differentiated case management (DCM), based on case complexity would be a significant step towards maintaining better controls on delay in litigation. In consideration of a system adequate to the needs of the District Court in Puerto Rico, the Advisory Group reviewed DCM proposals from a number of Early-Implementation Districts, as well as literature with respect to tracking systems, concluding that the most apt system for our District would be a three-track system. Such a system would distinguish among simple cases, standard cases and complex cases.

A study of the Court's docket of pending cases as of May 19, 1992, revealed that the largest groups of cases are the 233 foreclosure and the 110 social security cases. Student loan cases total 60. Generally, these categories of cases require little judicial time and involvement, and are thus well-suited to an expedited track. By placing such matters on such a fast track, the Court will be able to assure rapid disposition and avoid undue delay.

On the other hand, more complex cases, such as some multi-party matters and certain civil rights cases, may be better suited to a complex track, taking into account the need to provide sufficient time and opportunity to develop the issues involved and to effectuate discovery.

The remaining cases, which require neither additional time nor are appropriate for expedited treatment, would be placed on the standard track.

The Advisory Group recognizes the importance of training court personnel in the implementation of a DCM system. It is anticipated that an initial orientation program for judges, magistrate judges and court staff would be required. The Advisory Group also recommends that the DCM program be instituted prospectively, with respect to all cases filed after a certain date. As to previously filed cases, the District judge would have the option of moving the case onto the tracking system, with adequate notice to all parties.

The three-track system is set forth below.

1. **Expedited Track**: The expedited track would involve relatively simple cases, such as student loans, foreclosures and social security. Such cases would normally be completed within nine months of filing.

2. **Standard Track**: The great majority of the cases would be on this track, with an expected date of termination of no more than 18 months.

3. **Complex**: The goal for completion of these cases would be 36 months.

It is also important to note that some exceptional cases would be removed from ordinary tracking and handled separately. These would include institutional reform cases, mass tort litigation comparable to the San Juan Dupont Hotel fire litigation, and certain cases involving immediate requests for equitable relief.

D. Pretrial Case Management

1. Expedited Track

If, after reviewing the complaint, the Court determines that the case presents a simple dispute which can be quickly resolved, the Court will issue an order directing the defendant to state whether the material facts are in dispute. Examples might

include: (i) ordering the defendant to state whether money is owing in a bank foreclosure case; (ii) ordering the defendant to state whether he possesses any evidence to contravene the government's scientific tests in embargo cases brought by the Food and Drug Administration; and (iii) ordering the defendant to state whether cargo was damaged in a Carriage of Goods by Sea Act case.

If the defendant's response does not effectively dispose of the case, the Court must then proceed to set discovery, pretrial and trial dates, recognizing that the proceedings may likely be streamlined given the simplicity of the case. A typical order in such a case might read as follows:

SCHEDULING ORDER

This is a simple debt case or a case based on a predetermined scientific fact. Under Rule 16 of the Federal Rules of Civil Procedure, as amended, the Court is empowered to schedule and plan the course of litigation in order to achieve a just, speedy, and inexpensive determination of this simple action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the Court advises litigants that we firmly believe in the interplay of Rules 7, 11, 16, and 26, as amended in 1983.

Service of process will be carried out forthwith and the same should be concluded and/or perfected by return of service of process and/or service by publication on or before _____.

In the event that the defendants fail to plead or otherwise defend as required by law, upon expiration of the time for the filing of the responsive pleading, the plaintiff will move for judgment by default or otherwise on or before _____ [5 working days after the expiration of the mentioned period of time]. If a responsive pleading is entered by the defendants, the plaintiff will immediately request a status conference, so that counsel and the Court can plan the future course of this simple litigation, and will serve copy of this Order on the defendant(s). Open-file discovery will be immediately provided to the appearing defendants, who shall be furnished access to every document which might be used at trial to prove the debt or scientific fact. Materiality of any documents will be discussed at trial. A notice attesting to the fact that open-file discovery has been provided should be filed forthwith. If a disagreement among the parties results in the need to file discovery motions, no such motion will be reviewed unless

it contains a statement by the movant, pursuant to Local Rule 311.11, that a good faith effort was made with opposing counsel to reach an agreement on the matters set forth in the motion.

In the event that a status conference is held, the parties must appear prepared to discuss settlement, and with plans for the payment of the debt or acceptance of the scientific fact or other alternatives to put an end to the litigation.

Failure on the part of the plaintiff to comply with the terms and conditions of this order will result in an immediate dismissal for lack of diligent prosecution. Fed. R. Civ. P. 41(b).

In a simple debt action, any defendant who denies the averments of the complaint must state within twenty (20) days what amount is owed and what amount is not owed (with a particularized statement of account). In any action in which the defendant challenges scientific data, defendant must state what data is objected to and file an attesting report of an expert.

2. Court-Directed Method

This technique may be used in a case that requires discovery. Upon receiving an answer to the complaint, the Court sets an Initial Scheduling Conference (or Case Management Conference). In the Order setting the Conference date, the Court (i) orders that all defendants who have not yet filed an answer do so within 10 days, (ii) orders the parties to prepare and file memoranda discussing their factual and legal contentions, listing their potential witnesses and documentary evidence, and itemizing all proposed discovery.

During the Conference, the Court first establishes areas in which the parties can enter into stipulations of fact. The parties thereafter enter into such stipulations. They are also required to summarize the legal theories which they believe control the facts of the case. The Court then reviews the lists of witnesses and documents prepared by the parties to establish which items are necessary and sets a comprehensive discovery schedule, including setting specific dates for depositions, for the filing of interrogatories and requests for documents, and for filing dispositive motions and amended pleadings. Further, the court shall consider and take appropriate action on the need for adopting special procedures for the management

of potentially difficult or protracted actions on the complex track that may involve complicated issues, multiple parties, difficult legal questions or unusual proof problems. A date for Pretrial and Trial is set by the Court and instructions issued to the parties on what is required to be prepared for these proceedings. A typical order might read as follows:

INITIAL SCHEDULING CONFERENCE CALL

Under Rule 16 of the Federal Rules of Civil Procedure, as amended, the Court is required to schedule and plan the course of litigation, in order to achieve a just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the Court advises litigants that we firmly believe in the interplay of Rules 7, 11, 16, and 26 of the Federal Rules, as amended in 1983. These Rules require increased lawyer responsibility coupled with a mandate to the Court to increase the level of judicial management and control of litigation. All documents filed in this case will be read as if containing a warranty certificate as to quality and content. Fed. R. Civ. P. 11. The filings must be prepared to the best of the lawyer's knowledge, information, and belief, formed after reasonable inquiry. Accordingly, it is ORDERED by the Court as follows:

1. Unless already filed, answers to the complaint will be filed within ten (10) days of this date. Any such filing will not be deemed a waiver of any previously filed motions.

2. Counsel will meet with the Court in chambers on _____, at _____, for the following purposes:

a) informing the Court of their contentions, which will include (i) disclosing all material and pertinent facts, (ii) stating their theories of the case, with citations to statutes and case law (see Erff v. Markhon Industries, Inc., 781 F.2d 613, 617 (7th Cir. 1986); Rodrígues v. Ripley Industries, Inc., 507 F.2d 782, 786-87 (1st Cir. 1974); see also Awilda Ramírez Pomales v. Becton Dickinson & Co., S.A., 839 F.2d 1, 3-6 (1st Cir. 1988)), and (iii) entering into stipulations of fact and applicable law;

b) bringing forth evidence to show such facts;

c) assessing any damages claimed;

d) announcing all documentary evidence;

e) announcing all witnesses, including experts, for whom the parties must supply a curriculum vitae and, in case the plaintiffs, an expert report;

f) discussing settlement.

This conference will also serve the purposes of guiding and setting discovery procedure and scheduling this case for Pretrial and Trial.

3. All counsel should anticipate a trial date within ninety (90) days of this date. Once a trial has been set with the concurrence of counsel, no continuance will be granted. Trial will not be continued solely because counsel have agreed to recommend a settlement. A trial date will be passed only if a settlement has been firmly bound.

4. All counsel are admonished to expedite discovery. Interrogatories shall be limited to no more than (number) questions.

5. The parties are each ORDERED to file, two days prior to the conference, a memorandum discussing their factual and legal contentions, listing their witnesses (fact and expert) and documentary evidence, and itemizing all the discovery (including interrogatories, requests for admissions, requests for production, and depositions) which they wish to conduct. Where plaintiff announces expert witnesses, the plaintiff must provide a curriculum vitae and report containing a discussion of elements of cause and effect, diagnosis, and prognosis. The defendant will be required to file similar documents if expert witnesses are to be used to rebut plaintiff's allegations. The memoranda may also include any other matter deemed appropriate. Courtesy copies of the ISC memos must be delivered to the Judge's chambers at least two days before the Initial Scheduling Conference.

6. The objective of the conference scheduled herein is to simplify the issues and to reach agreements as to uncontroverted facts and accepted principles of law applicable to the case. Therefore, counsel attending are expected to be conversant enough with the facts and the law to enter into such agreements. Counsel should be ready to respond to such queries as the Court may deem appropriate, and be prepared to discuss settlement. As required by Rule 16(c), '[a]t least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make

admissions regarding all matters that the participants may reasonably anticipate may be discussed.' Counsel are reminded that failure to participate in good faith, or participating while being substantially unprepared, are noncompliant acts under Fed. R. Civ. P. 16(f) and 41(b), that may result in sanctions, including the payment of reasonable expenses incurred by the noncompliance or fines levied upon attorneys personally; dismissal of the complaint; the prohibition of certain witness' testimony and the admission of facts. See Boettcher v. Hartford Insurance Co., 927 F.2d 23 (1st Cir. 1991); Vakalis v. Shawmut Corp., 925 F.2d 34, 36 (1st Cir. 1991). Furthermore, sanctions may also be imposed pursuant to Federal Rule of Civil Procedure 11 for filing of complaints not well-founded in fact.

The Court will issue an Initial Scheduling Conference Order (or Case Management Order) following the Conference which summarizes the information covered during the Conference. A typical order might read as follows:

INITIAL SCHEDULING CONFERENCE ORDER

The parties met with the Court on _____, for an Initial Scheduling Conference, represented by counsel: _____ for plaintiff; _____ for defendant.

[A brief summary of the case is provided. Thereafter, where necessary, the Court sets forth Orders made by the Court during the Conference which are required due to the peculiar or special nature of the case. For example, in a case to determine only damages, the Court might order plaintiff to file a detailed summary of his calculation of alleged damages which defendants may use to guide their discovery.]

I. Agreement of the Parties

The parties stipulated to the following facts:

[listed]

II. Controverted Facts and Issues

[listed]

III. Legal Theories

[listed]

IV. Witnesses

[listed]

Additional witnesses will not be allowed because this will create undue prejudice to the opposing party. If any party wishes to use any additional witnesses, it will be discretionary with the Court, provided that the parties state in writing on or before _____ the following information regarding each additional witness: name and address with a short statement as to the subject matter of their testimony, and proof that the names of these witnesses, or the fact that their testimony was decidedly material, was not known at the time of this Initial Scheduling Conference, and the reason why they were not known. In the case of a proposed expert witness, the party requesting leave to amend the witness list shall also provide a copy of the proposed expert's curriculum vitae and a report summarizing his or her findings and opinions and the grounds for each.

Noncompliance with this Order will result in such witnesses not being allowed to testify at trial. The party informing new witnesses must produce them at its own cost for depositions to be scheduled by the other party, to be taken within two weeks if it desires and the Court approves.

V. Documentary Evidence

[listed]

Additional documentary evidence will not be admitted into evidence without leave of Court, which is to be obtained at least 30 days before trial. If any party wishes to use any document not listed herein, it must serve the document on all other parties and notify the Court of its intent to use the document, explaining its relevance and why its existence or materiality was not known at the time of this Conference. The Court expressly reserves its decision as to whether any document not specifically listed in this Order will be admitted.

VI. Discovery

The parties have agreed that they will conduct only the following discovery:

A. Plaintiff

1. Interrogatories [listed]
2. Depositions [listed]

B. Defendant

1. Interrogatories [listed]
2. Depositions [listed]

All discovery the parties are to conduct has been scheduled herein in accordance with their request. All the depositions are to be taken within the deadline, from day to day until completed, and they are not to be postponed. No further discovery is to be allowed without leave of the Court, and if leave is granted, the rules as herein stated apply to this further discovery. Moreover, no discovery motions will be allowed unless the movant certifies that he or she has made a good faith effort to reach an agreement with opposing counsel on the matters set forth in the motion. Any additional discovery allowed by the Court must be completed by _____. By this deadline, all additional interrogatories and requests for admissions must be answered and all depositions and examinations taken. This means that interrogatories and requests for admissions must be served at least 30 days prior to the deadline and notice of depositions given within a reasonable time of the deadline.

VII. Schedule with the Court

Pretrial is SET for _____, at ____ p.m. While at the Pretrial Conference, the attorneys are ORDERED to have their clients available by phone, under penalty of fine. Trial is SET for _____, at 9:00 a.m.

Five working days prior to the date of trial, the parties shall:

1) submit proposed jury instructions, if any, together with citations of authorities in support of the proposed instructions;

2) meet and mark all exhibits to be offered at trial, for identification.

Failure to comply with this Order is at the risk of the proponent of the evidence not submitted in accordance with the above requirements.

> Any motions for joinder of parties, for amendment of pleadings or third-party complaints must be filed on or before _____. In addition, the Court GRANTS until _____ for the filing of any and all dispositive motions; if not filed by said date, the arguments thereunder shall be deemed waived. Responses shall be filed within ten days as provided for in the Rules. Non-compliance with any Order herein may result in the imposition of sanctions on the non-complying party, attorney, or both, which may include the imposition of a fine.
>
> The dates specified herein were agreed to or otherwise ordered by the Court at the Conference and the parties have been informed by the Court that they have to comply with such schedule regardless of the fact that this Order, in its written form, may not be entered before the event. These dates shall not be changed. If changed, the same is at the risk of the party interested in the information or discovery and in no event shall affect the subsequent course of the action as scheduled herein. Fed. R. Civ. P. Rule 16.

The Advisory Group suggests that the court-directed method be employed whenever possible, since experience has shown that it most effectively achieves the goals of civil justice reform.

By bringing the parties together with the Court at an early stage in the litigation, all the participants in the case are required to familiarize themselves with the contours of the case. The plaintiff is compelled to establish the facts which it seeks to prove, instead of embarking on a fishing expedition. The defendant is then promptly put in a position to review the plaintiff's claims and prepare a comprehensive defense strategy. The Court, too, is afforded the opportunity to achieve a broad understanding of the interests and concerns of the parties, which puts it in a better position to rule on discovery disputes and to consider the propriety of any extrajudicial resolution of the case.

While the court-directed method may require a greater commitment of judicial time and effort, it often results in a savings of time and effort, where facts and issues are streamlined. Of course, the court-directed method is an ideal. When presented with constraints of time or with a factual dispute that does not require a full-blown discovery schedule, other methods may be used adequately.

3. Court-Ordered Method

This technique can also be employed in any case requiring discovery. Upon receiving an answer to the complaint, the Court orders the parties to proceed, setting forth a series of deadlines. The Court first orders the parties to exchange memoranda, copies of which must be filed with the Court, summarizing factual and legal contentions, witnesses, documents, and prospective discovery--similar to the memoranda filed with the Court under the court-directed method. The Court then sets deadlines for (i) filing additional or amended pleadings, (ii) conducting discovery and (iii) filing dispositive motions. Pretrial and trial dates are set and the parties are directed to prepare a Pretrial Order, which must contain (i) a summary of the admitted and disputed facts of the case, (ii) summaries of the legal theories of the parties, (iii) lists of witnesses, (iv) lists of exhibits and other relevant information. The Court may also order the parties to conduct some form of settlement discussions. Further, the court shall consider and take appropriate action on the need for adopting special procedures for the management of potentially difficult or protracted actions, which are assigned to the complex track and which may involve complicated issues, multiple parties, difficult legal questions or unusual proof problems. A typical order might read as follows:

SCHEDULING ORDER

> Under Rule 16 of the Federal Rules of Civil Procedure, as amended, the Court is required to schedule and plan the course of litigation, in order to achieve a just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the Court advises litigants that we firmly believe in the interplay of Rules 7, 11, 16, and 26, as amended in 1983. These rules require increased lawyer responsibility coupled with a mandate to the Court to increase the level of judicial management and control of litigation. All documents filed in this case will be read as if containing a warranty certificate as to quality and content. The filings must be done to the best of the lawyer's knowledge, information, and belief, formed after reasonable inquiry. Accordingly, it is ORDERED by the Court as follows:

1. All outstanding pleadings should be filed on or before ___ _____. Any motion to amend pleadings and/or to add parties shall be filed not later than September 11, 1992. In any event, the pleadings' stage should be concluded by _____. Further amendments will only be allowed for good cause shown.

2. Within 20 days of the issuance of this Order, the parties must exchange memoranda setting forth their factual and legal contentions, listing their witnesses (fact and expert) and documentary evidence, and itemizing all the discovery (including interrogatories, requests for admissions, requests for production, and depositions) which they wish to conduct. Where plaintiff announces expert witnesses, the plaintiff must provide a curriculum vitae and report containing a discussion of elements of cause and effect, diagnosis, and prognosis. The defendant will be required to file similar documents if expert witnesses are to be used to rebut plaintiff's allegations. The memoranda may also include any other matter deemed appropriate. Courtesy copies of the memoranda must be filed with the Court.

3. All discovery shall be completed on or before _____. Counsel should become familiar with J. Shapard & C. Seron, Attorneys Views of Local Rules Limiting Interrogatories (Federal Judicial Center 1986). Rather than imposing an arbitrary limit to the number of questions to be included in an interrogatory, the Court urges litigants to realize that we will impose such limitation on interrogatories and requests for admissions on a case-by-case basis if moved by the opposing party based on solid procedural grounds. Discovery by any method should be tailored to the scope and spirit of the rules and nothing else.

4. Any dispositive motion, e.g., motions to dismiss, for judgment on the pleadings, and/or for summary judgment, shall be filed not later than _____. Oppositions to the dispositive motions shall be filed within the term provided to that effect by the Rules of this Court. If a given issue is mature for summary disposition, we expect the parties to file a motion under Rule 56 as soon as the issue ripens.

5. The Pretrial Conference is hereby SET for _____ at _____. The Trial of this cause is hereby SET for _____ at____. The parties will file a Proposed Pretrial Order which will be the product of their joint work. Counsel are directed to meet at least ten (10) days prior to the date of the pretrial to discuss, not only the contents of the Proposed Pretrial Order, but also the possibility of the extrajudicial determination of the action. If settlement cannot be agreed to, the

parties will cover during said meeting the designation and marking of exhibits and depositions, as well as the proposed voir dire and jury instructions in the event that the matter is to be tried before a jury.

The Proposed Pretrial Order shall contain the complete caption of the case and shall set forth the following:

I.

NATURE OF THE CASE

The parties should attempt to agree on the description to be given under the title "Nature of the Case". Issues of jurisdiction shall be included herein. In the event that the parties cannot agree on the content under this subsection, each party should give its version of the nature of the case duly identified as plaintiff's statement of the nature of the case, defendant's statement of the nature of the case, etc.

II.

THEORY OF THE PARTIES

Each party will be identified fully and its theory of the case, including citations of statutes and/or case law, when applicable, will be given. In this respect, be mindful of Erff v. Markhon Industries, Inc., 781 F.2d 613, 617 (7th Cir. 1986), and Rodrígues v. Ripley Industries, Inc., 507 F.2d 782, 786-87 (1st Cir. 1974). See also Awilda Ramírez Pomales v. Becton Dickinson & Co., S.A., 839 F.2d 1, 3-6 (1st Cir. 1988). Attorneys at the pretrial conference must make a full and fair disclosure of their views as to what the real issues of the trial will be, inasmuch as the pretrial order will supersede the pleadings in establishing the issues to be considered at trial.

III.

THE ADMITTED FACTS

The parties are directed to fully stipulate all matters which can be the object of admission and/or stipulation. Whenever it is appropriate, a reference to documents which will be submitted in evidence shall be made in each particular stipulation and/or factual admission.

IV.

THE ULTIMATE FACTS WHICH WILL BE DISPUTED

The parties should attempt to agree on which will be the ultimate facts to be disputed. In the event that they cannot reach said agreement, each party should designate what, in its opinion, are the ultimate facts which the Court will have to pass upon to resolve the controversy.

V.

LIST OF EXHIBITS AND TRANSLATION OF SAME

Not later than ten (10) working days before the date scheduled for the trial, the parties will meet, after having requested the appropriate appointment, with the Courtroom Deputy Clerk assigned to the presiding judge to mark those pieces of documentary and/or real evidence which will be admitted into evidence, as well as those pieces of documentary and/or real evidence over which there is objection, in which case they will be marked as documents for identification.

In this respect, the parties are warned that this process cannot be *pro forma*. If at trial the presiding judge becomes aware of the fact that the parties did not engage in a meaningful marking of exhibits' process in light of the Federal Rules of Evidence, appropriate sanctions will be taken against counsel. See Fed. R. Civ. P. 1 and 28 U.S.C. § 1927.

The Proposed Pretrial Order, under the heading "List of Exhibits and Translation of Same," shall include a list of the exhibits of each party numbered and/or marked in the same fashion as they will be delivered to the Clerk, with an indication as to which are being admitted without objection by opposing counsel.

The parties are aware of the fact that the proceedings in this court are held in English. That means that particular attention should be given to the Clerk's Notice to Counsel 90-4, dated April 20, 1990, on the subject of translations and interpreters. Members of the bar are reminded of the provisions of Local Rule 108 which, in essence, do not allow for the filing of documents in Spanish unless duly translated by court interpreters.

VI.

DEPOSITIONS

The parties will list each deposition intended to be used at trial, with designation of portions to be used by the party first offering the same. Objections to the use of depositions or to any designated portion not made at the time of the preparation of the Proposed Pretrial Order will be deemed waived.

VII.

THE POINTS OF LAW TO BE PASSED UPON BY THE COURT

As in other items which could be the object of agreement, the parties are directed to attempt to agree on points of law to be passed upon by the Court. In the event that this is not possible, each party shall state what, in its opinion, are the points of law to be passed upon by the Court. Adequate citations to statutes and/or case law should be given when appropriate.

VIII.

PROPOSED VOIR DIRE AND JURY INSTRUCTIONS

The Proposed Pretrial Order shall incorporate the parties' agreement as to proposed voir dire and proposed jury instructions, both general and specific, related to the particular case in issue. There is no need to propose routine instructions, often referred to as boilerplate instructions. In the event that the parties cannot agree on this subject, each party shall make a part of the Proposed Pretrial Order, under item VIII, its proposed voir dire questions to the jury and all suggested standard or general instructions, as well as specific instructions to be given to the jury. The parties are advised that the Court prefers references to Devitt & Blackmar, Federal Jury Practice and Instructions, and/or Pattern Jury Instructions, 5th, 7th, 9th, and 11th Circuits, and/or Federal Judicial Center Publications.

IX.

TECHNICAL WORDS

A list, in alphabetical order, of technical words that could be used during the trial, must be made a part of the Proposed Pretrial Order. This request is for the benefit of Court personnel, specifically the court reporter and the court interpreter.

X.

WITNESSES

The Proposed Pretrial Order shall contain a list of the potential witnesses to be called by each party, with a brief description of the purpose and/or content of their testimony.

XI.

EXPERT WITNESSES

In the event that expert witnesses are to be utilized by the parties, the Proposed Pretrial Order shall contain written stipulations or statements setting forth the qualifications of the expert witnesses to be called by each party. A brief description of the purpose of the expert testimony will be given as it pertains to each expert witness. The parties should be aware of the fact that Fed. R. Evid. 706 allows the Court to appoint experts on its own motion and/or on motion of any party.

XII.

ITEMIZED STATEMENT OF SPECIAL DAMAGES

In the event that issues of special damages are to be passed upon at trial, an itemized statement of special damages shall be incorporated into the Proposed Pretrial Order. The party or parties not in agreement with the proposed statement of special damages shall include the reasons in opposition under this part of the Proposed Pretrial Order.

XIII.

ESTIMATED LENGTH OF TRIAL

The parties will make an estimate of the probable length of trial.

XIV.

Settlement

The Proposed Pretrial Order must contain the statement that "Possibility of settlement of this case was considered".

RESERVATIONS

6. Unless otherwise disposed of by the Court, each party is limited to a maximum of three (3) expert witnesses. The Court reserves to each party the right to offer rebuttal testimony at trial if necessary. The Court also reserves to each party the right to further supplement the list of witnesses upon application to the Court for good cause shown.

7. The Proposed Pretrial Order may only be modified to prevent manifest injustice. Such modification may be made either on application of counsel for the parties or on motion of the Court.

8. The parties are reserved the right to supplement their request for jury instructions during trial as it pertains to matters that could not be reasonably anticipated.

9. The Proposed Pretrial Order shall contain the full caption of the case, making reference to appropriate name of each party to the controversy as the same stands for trial purposes.

10. The Proposed Pretrial Order shall be filed on or before ___ _____.

11. At the time of pretrial, the parties should be prepared to discuss the possibility of bifurcating liability from damages. This applies both to bench and jury trials. The parties are also instructed to prepare and file with their Proposed Pretrial Order their proposed findings of fact and conclusions of law. This last applies to bench trials.

> 12. If any party has any serious objection to the deadline imposed herein, said party should inform the Court not later than _____ _____. Otherwise, the Court will assume that the deadlines are agreeable to all parties. If a disagreement among the parties results in the need to file discovery motions, no such motion will be reviewed unless it contains a statement by the movant, pursuant to Local Rule 311.11, that a good faith effort was made with opposing counsel to reach an agreement on the matters set forth in the motion. Unless by order of the Court, the provisions set hereinabove are binding on the parties and on counsel to the parties.

The Advisory Group has considered the principles and techniques of litigation management discussed in the statute and has attempted to translate these principles and techniques into workable procedures. These procedures have been tested in this District and other districts throughout the nation and have proven themselves satisfactory.

The Group notes that there are widely-differing case management techniques currently in use in the District Court for the District of Puerto Rico. Presently, each of the seven judges in the District has his or her own individualized orders concerning pretrial case management. Some judges hold initial scheduling conferences or case management conferences and regularly schedule settlement conferences, while others do not. Some have already instituted case management techniques applicable to certain categories of cases, in effect creating a *de facto* tracking system. Still, the role of the judges with respect to early case management varies widely, as does the role of the magistrate judges in this endeavor.

The Advisory Group is concerned about the detrimental effect this lack of uniformity in case management practices has on litigation before the courts. This broad range of practices takes a toll on litigants, who must adjust goals and expectations to the random assignment of district judges and magistrate judges to their cases.

In view of the need for greater uniformity, the Advisory Group suggests that the District judges adopt, by local rules, standardized forms for use in pretrial matters and recommends as models the forms set forth above. If the standardized forms are adopted, litigants would have the benefit of knowing the course to be pursued as to

all cases, beginning with track assignment, continuing through an initial court conference yielding a Case Management Order (or Initial Scheduling Conference Order), and then on through the pretrial management as set forth in the CMO.

In making these suggestions, the Group is not calling into question the discretion of the judges and their ability to tailor orders to the particular needs of cases, but rather promoting a degree of predictability that will be of benefit not only to litigants but also to the Court itself.

E. Setting of Early Trial Dates

The Advisory Group has concluded that the setting of firm early trial (or final pretrial) dates will have a beneficial effect in terms of reducing cost and delay. Both statistical and anecdotal evidence demonstrates the effectiveness of a firm trial (or final pretrial) date in motivating the parties toward serious settlement discussions and prompt conclusion of discovery.

All too often, the parties engage in hours of trial preparation, involving costly and time-consuming document preparation, translation of documents and the issuance of subpoenas and payments of witness fees, only to have the case settle on the eve of trial. If the parties were subject to a firm trial (or final pretrial) date, established in the early stages of the litigation, many of these costs could be avoided, to the benefit of all litigants.

The setting of a firm trial or final pretrial date alone, however, means little if the Court does not stick to it. The key is assuring that the trial or final pretrial date is indeed "firm". In cases where it is impractical to fix a firm trial date at an early stage, a firm pretrial conference date should be set. The parties should be on notice that trial will be held within two months of the pretrial date. The credibility of the entire case management system, and its ability to promote settlement, will depend upon the "firmness" of these dates.

F. Control of Discovery and Motion Practices

The Act requires each district court to consider "controlling the extent of discovery and the time for completion of discovery and ensuring compliance with appropriate requested discovery in a timely fashion" [Sec. 473(a)(2)(C)]. In addition,

the Act requires the Court to consider "setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition." [Sec. 473(a)(2)(D), 3(D)].

In light of this mandate, the Advisory Group considered the role played by discovery and other pretrial practices in increasing both cost and delay of cases in this District, concluding that measures should be implemented in order to streamline pretrial practice before this Court. Both practitioners and judges expressed the view that excessive discovery, as well as inordinate disputes concerning discovery, have served to increase cost and to delay cases before the District Court.

In attempting to reach a consensus regarding a recommendation on codifying limits on discovery and motion practice, however, the Advisory Group encountered great difficulty. There is an inherent tension between limiting discovery or motion practice and achieving fairness in the proceedings. What one litigant may consider onerous is simply effective probing for another. Thus, the Group decided against suggesting measures such as arbitrary limits on the number of questions included in interrogatories or on the number of depositions to be taken. Each judge, in his case management order, may set such limits as may be appropriate for the individual cases.[18]

G. Deadlines for Discovery and for Dispositive Motions

It is recommended that deadlines for discovery and for dispositive motions be set at an early stage in the litigation, as part of the Case Management Order. Such deadlines should be strictly enforced, subject to modification only upon application to the Court, with just cause. The Group further recommends that, in the ordinary course of events, dispositive motions be consolidated into no more than one Motion to Dismiss and one Motion for Summary Judgment, eliminating the practice of piecemeal presentation of theories which potentially could dispose of the case.

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[18] Proposed amendments to the Federal Rules of Civil Procedure have included limits on discovery, including the number of interrogatories that a party may propound and the number of depositions each party may take, as well as the length of each deposition. At this writing, the fate of the proposed amendments is uncertain.

District judges, moreover, are encouraged to rule quickly on discovery disputes, as well as on dispositive motions. Inordinate delay on such rulings leads not only to increased cost and delay, but to unacceptable uncertainty in litigation.

H. Disclosure of Core Information

The Advisory Group also recommends the institution of prompt disclosure of core information, requiring the exchange of basic information without the need for a request by opposing counsel. The requirements for such exchange could be set forth in the Case Management Order and would require the provision of names of witnesses, documentary evidence and names of experts to opposing counsel on or before a date certain. A proposed rule governing such disclosure is appended as Exhibit 1.

I. Videotaped Depositions

The Advisory Group recommends that, in order to reduce the costs involved in compelling witnesses from outside of Puerto Rico to travel to Puerto Rico for depositions or trial, as well as to reduce the costs of depositions outside of Puerto Rico, the Court adopt a local rule allowing videotaped depositions as a matter of course in all such circumstances. A proposed version of that rule is included as Exhibit 2 of this Plan.

J. Complex Track

The Advisory Group spent a significant amount of time discussing complex actions, especially civil rights and political cases which, according to our studies, evidenced serious delays. Case management orders, tighter control over the discovery process and deadlines and special procedures should aid the court with these cases. In addition, while the techniques described above for the Standard Track may be used in complex cases, it is clear that the latter often require a number of pretrial conferences and tailor-made provisions for stages of discovery, bifurcated trials and other methods covered in detail in the Manual for Complex Litigation-Second. It was decided that rather than attempt to duplicate the provisions of the Manual, the Advisory Group would encourage the parties and the Court to refer to it for guidance in complex cases.

K. Contributions by Litigants and Litigants' Attorneys

Certain requirements of the CJRA Act were considered by the Advisory Group. The Group weighed their benefits against the possibility of increasing rather than decreasing cost and delay and made the following determinations:

1. In recommending a proposed local rule regarding mandatory disclosure of core information, the Advisory Group is aware that the rule obliges the litigants to make significant initial disclosures and produce key medical and other records early as a means of reducing cost and delay. This should not be a burdensome obligation on the part of litigants when measured against the potential savings in time and expense.

2. The Advisory Group considered, but declines to recommend, a requirement that all requests for extension of discovery deadlines or for postponement of trial be signed by the attorney and the party. This requirement is viewed as impractical, as well as undesirable, due the fact that a substantial number of civil cases filed in this district have parties who reside outside the jurisdiction. Not only that, but, in some case, attorneys are unable to communicate with the clients because of the non-availability of telephones. Thus, the Group concluded that rather than reduce costs and delay, the adoption of this requirement would only serve to increase them.

3. The Advisory Group also considered, but chooses not to recommend, a requirement that each party be represented at each pretrial conference by an attorney with authority to bind that party to all matters previously identified by the court for discussion at the conference.[19] The Group does not believe it would be appropriate to require that the parties or their representatives be present since this conference deals for the most part with technical matters and generally last no longer

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[19] Local Rule 314.3 already provides that "The parties' pretrial conference shall be attended by the attorneys who will try the case and who are authorized to make binding stipulations for the parties, as well as enter into settlement discussions.

than 20-30 minutes. The judicial officer, however, may require their presence if he or she believes it to be beneficial.

4. The Act further requires the Advisory Group to consider, upon notice by the court, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement conferences. The presence of parties or their representatives at the settlement conference was considered, but was found to increase costs of litigation due again to the fact that a sizeable number of parties to civil cases are located off the island. Having parties readily available by telephone, however, would be a useful and relatively inexpensive means to ensure the availability of parties at the settlement conference and the Advisory Group recommends this device be adopted.

5. Lastly, the various programs, if adopted by the Court, could be subject to periodic review and consultation with litigants to determine their level of satisfaction. The Early Neutral Evaluation technique would especially lend itself to such an assessment.

PART VII

ALTERNATIVE DISPUTE RESOLUTION/ NEUTRAL CASE EVALUATION

VII. ALTERNATIVE DISPUTE RESOLUTION/ NEUTRAL CASE EVALUATION

Following the mandate of the CJRA that the Advisory Group look into the possibility of adopting one or more Alternate Dispute Resolution ("ADR") programs, 28 USC §473(a)(6), a committee appointed by the Group considered several alternatives. The committee reviewed considerable literature on the subject and arrived at the conclusion that the form of ADR most suitable to our District is an Early Neutral Evaluation (ENE) program. 28 USC §473 (b)(4). The Advisory Group agrees with the conclusion.

Such a program would allow litigants to obtain from an experienced neutral evaluator, a non-binding, reasoned evaluation of their case on the merits, after having provided the Evaluator with essential information concerning their case, including position statements, legal theories and factual versions.

A. Eligible Cases

Any civil case which is not on the differentiated case management expedited track will be referred to ENE. (The Group notes that the Act provides for referral of "appropriate cases to alternative dispute resolution programs"[20] and not all civil cases. In view of that directive, the Group finds that putting expedited-track cases on ENE would only serve to slow down, rather than speed up, the process of moving these cases through the judicial system and thus drive up costs as well.)

B. ENE Procedures

The Advisory Group suggests that the ENE procedure be undertaken at an early stage of the litigation, within thirty (30) days of the Case Management Order. The parties would be required to present their theories and factual versions to the Evaluator, who would be selected from a list prepared by the Court. Parties would be provided a list of candidates representing one more than the number of parties involved. Each party would have the right to strike one candidate, leaving one which is acceptable to all concerned.

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[20] 28 U.S.C. §473(a)(6)(A) and (B).

C. ENE Conference

The parties would be required to submit certain basic information for the benefit of the ENE process. The Evaluator would then schedule a short session, designed to identify the principal areas in dispute, the strengths and weaknesses of the positions put forth by the parties, their underlying interests, as well as the possibilities for settlement. Having finished the session or sessions, the Evaluator would offer his/her opinion about the merits of the case and about the settlement value thereof.

D. ENE Evaluator

The Evaluator, who must be admitted to practice before the US District Court of Puerto Rico, would function as a facilitator, engaging the parties in meaningful analysis and discussions of their cases and the possibilities for settlement. He/she would have the authority to cite the parties for additional sessions, in the event that such sessions might be helpful in resolution of the case.

E. Confidentiality

This process, although mandatory, would have to take place in the strictest confidentiality. No oral or written reports would be submitted by the Evaluator. Moreover, the ordinary court procedures, including discovery, motion practice and the like, would continue.

A proposed rule governing the ENE process is appended as Exhibit 3 of this plan.

PART VIII

UTILIZATION OF MAGISTRATE JUDGES

VIII. UTILIZATION OF MAGISTRATE JUDGES

A. Introduction

The District Court of Puerto Rico has three full-time magistrates judges. They are presently attending to every duty enumerated under 28 USC §636 of the Federal Magistrates' Act. Each is allocated a courtroom deputy, a secretary and one law clerk.

Generally, magistrate judges' weeks are divided in the following manner: One week is designated the duty week; the second week is used to attend to court matters and the third week is planned as the conference week. The Grand Jury is called one day a week.

Preliminary proceedings in felony cases are handled by magistrate judges on a weekly rotational basis. These take up almost all of the time of the "criminal duty" magistrate judge. They also have repercussions for the following "court week", because the motions in felony cases are referred on a selective basis to the magistrate judge who handled the preliminary proceedings.

B. Caseload

In statistical year 1991,[21] the magistrate judges handled a total of 1,064 civil and criminal proceedings and cases matters. This is up significantly from 827 in SY90 by 237; however, the numbers have not reached the heights of SY89--1,401 or of SY88--5,368.[22]

Taking a closer look at individual statistics, the total number of criminal matters handled by the magistrate judges in SY91--387--showed a slight increase when compared to the 377 criminal matters handled in SY90. This apparent rebound in criminal matters in SY91 appears to stem from an increase in the number of

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[21] All figures used in this section, unless otherwise noted, are taken from Appendix 1, Detailed Statistical Tables: Annual Report of the Director of the Administrative Office of the U.S. Courts Twelve Month Period.

[22] The AO report for SY92 is in the process of being finalized. Preliminary figures point to a substantial increase in the total number of criminal and civil matters being handled by the magistrate judges.

evidentiary and suppression of evidence hearings held and the quantity of search and arrest warrants issued. On the civil side, the number disposed of by the magistrates increased by 56%, from 343 in SY90 to 611 in SY91.

C. Utilization

1. Assignment Arrangements

In the District, if a civil or criminal matter is referred to the magistrate judges, it is assigned to one of the three magistrate judges according to the last digit of the case. Numbers 1-3 constitute one group, 4-6 another, 7-9 a third and 0 is divided randomly among the three.

Social Security appeals and federal and Commonwealth of Puerto Rico habeas corpus petitions may be sent to the magistrates; however, this action is discretionary with the judge. In this District, some judges prefer to retain control of social security and habeas corpus matters; others assign the cases to the magistrate judges for a report and recommendation.

2. Role of Magistrate Judges

The judges' approach to the use of magistrate judges depends, by and large, on each judge's style and attitude towards case management. Some districts utilize the magistrate judges as additional judges or as specialists in a particular area. Other districts employ them more as team players, where the magistrates are pretrial judicial officers, hearing all pretrial matters on a regular or selective basis.[23]

In this District, the seven judges have differing techniques for pretrial practices and the magistrate judges have had to develop different roles to fit each judge's needs and style; consequently, the roles they play will depend on the particular judge who is making the assignment.

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[23] See Seron, C., The Roles of Magistrates: Nine Case Studies, Federal Judicial Center, 1985.

3. Consent Jurisdiction

The Judicial Improvements Act of 1990 amended Section 636 of the Magistrates Act to allow the magistrate judge or the district judge to communicate to the parties the availability of the Magistrate Judge to try the case upon their consent. The number of consent cases disposed of by magistrate judges increased from 6 in SY86 to 33 in SY90; however, the number declined to 20 in SY91. Consent trials allow the district judges to devote more time to other matters, and diversifies the work load of the magistrate judges.

D. Observations

Magistrate judges are not utilized in a uniform manner. There is a reluctance by some judges to delegate pretrial matters to the magistrate judges because they perceive that such actions may contribute to delays in the resolution of civil cases. The Advisory Group has reviewed cases where delegation of pretrial matters, particularly delegation of dispositive motions for a report and recommendation by the magistrate judge, has indeed added to the cost and delay.

Nevertheless, in answer to a question used in the CJRA attorney questionnaire concerning delays in the District, some of the attorneys responded that they wished to see an increased utilization of the magistrate judges. Many commented that trial before a magistrate judge was a faster, more efficient and less costly method of dispensing justice. Consent trials before magistrate judges are a cause of concern for some judges, however, who believe that the handling of consent cases will interfere with other statutory responsibilities of the magistrate judges.

E. Recommendations

In light of the foregoing observations, the Advisory Group believes that better utilization of magistrate judges requires: (a) improved contact and communication between judges and magistrate judges with the goal being one of increased uniformity in the utilization of the magistrate judges; (b) more effective use of magistrate judge resources and (c) greater efforts to educate the practicing bar about the work that magistrates may perform.

1. Improved Contact and Communication

a. Formal and Informal Communication

The magistrate judges, on occasion, operate without the benefit of being included in the administration and management of the Court. Therefore, the Advisory Group recommends that the Court develop formal or informal channels for the exchange of ideas on both internal operating procedures and external relations with the bar. Additionally, this could advance the goal of increased uniformity in the utilization of the magistrate judges.

Here, it should be noted that the Chief Judge does hold a staff meeting with the three on a monthly basis; however, informal or formal contact with the other six judges would also be beneficial. Such an exchange is likely to reduce delays that may arise through a lack of contact and communication between the judges and the magistrate judges.

b. Uniformity of Standing Orders

Another problem area concerns the Standing Orders issued by the individual judges. In some cases, these may be inconsistent with the District's Local Rules, leaving both the magistrate judges and counsel in a quandary as to what the judge requires. The Advisory Group notes that more uniformity in Standing Orders, and preferably their incorporation as standard Local Rules would alleviate the confusion and ensuing delay in ascertaining which rule to follow.

c. Circulation of Opinions and Resolutions

Moreover, another avenue of assistance which could be followed with little inconvenience is for the magistrate judge to be advised as to whether his report and recommendation was adopted by the judge, or if not adopted, the reasons for disagreeing with it. This would go far towards eliminating the frustrations of the bar when conflicting decisions are issued on what are essentially similar cases. The circulation of opinions and resolutions of the judges and magistrate judges among all members of the Court would also accomplish these ends.

2. More Effective Use of Magistrate Judge Resources

a. Telephone Conferences

Magistrates judges are responsible for handling many pretrial procedures. Therefore, the Advisory Group recommends that they may also decide by telephone if circumstances warrant: (1) an extension of time to answer the complaint; (2) an extension of time to answer discovery requests and (3) an immediate hearing and decision on any other minor discovery matter, i.e., disputes arising during depositions or questions of an urgent nature. A minute entry will be made for the record and recorded on the docket sheet.

b. Statistical Compilations

While the disposition of such matters is not being included by the Administrative Office of the US Courts in the statistical compilations, the Advisory Group recommends that such telephone conferences count in the statistics kept by the AO of the matters disposed of by magistrate judges pursuant to §636 (b)(1)(A). This would help to encourage the use of such conferences.

c. Motions for Extension of Time

On the subject of motions for extension of time, it is also recommended that the District's Local Rule 311.14 be amended to include a provision that counsel certify to the Court whether the motion for extension of time is agreeable to opposing counsel. If the motion is unopposed, this will assist greatly in expediting the granting of motions of this nature.

d. Pro Se Law Clerk

The magistrate judges are responsible for handling the major share of social security cases and federal and state habeas corpus petitions, which in SY91, totaled 100. They take up a considerable portion of their law clerks' time, as well. The Advisory Group, therefore, recommends that either a *pro se* law clerk or as an alternative, a law clerk at-large, be employed by the Court to assist all three magistrate judges with these cases.

3. Greater Effort at Educating the Practicing Bar

Both the magistrate judges themselves and the respondents to the attorney questionnaires underscored the need to acquaint the members of the bar with the many and varied duties performed by the magistrate judges, including the availability of consent jurisdiction. Better utilization of magistrate judges can only be accomplished when the practicing bar understands the role of the magistrate judges in the Court.

To this end, the Advisory Group recommends that the subject of more effective use of the magistrate judges be included in any seminar that the Court sponsors in the future and that attorneys be made aware, through a routine communication from the Clerk of the Court, that parties may consent to trial before a magistrate judge.

PART IX

INSTITUTIONAL REFORM

AND

MASS TORT CASES

IX. INSTITUTIONAL REFORM AND MASS TORT CASES

A. Court Recommendations

1. Paralegal and Legal Assistance

The judges of the District who have been faced with complex institutional reform and mass tort litigation have recommended that additional paralegal and legal help be assigned to the judge handling the case.

2. Special Master

Specifically, with institutional reform cases, appointment of a Special Master, pursuant to Rule 53 F.R.C.P., a special monitor or similar official, seems a necessity if the judge is to maintain a current civil docket.

3. Visiting Judges

Moreover, visiting judges should be requested periodically in order to handle the civil or criminal calendar backlog of judges who are presiding over institutional reform or mass tort litigation, particularly if any litigation coincides with a period when there are one or more vacancies in the District.

4. Reassignment of New Cases

In extreme cases, the judge handling institutional reform or mass tort litigation should be relieved from new assignments for a period; however, the reassignment of cases already pending before the judge for a lengthy interval was described by some judges and attorneys as a cause for increased cost and delay.

B. Advisory Group Recommendations

The Advisory Group endorses the Court's recommendations set forth above.

PART X

BANKRUPTCY APPEALS

X. BANKRUPTCY APPEALS

The district judges were asked their views as to whether bankruptcy appeals presented a problem of excessive costs or delay. While none of the district judges identified any serious problems with bankruptcy appeals, the bankruptcy judges themselves were unanimous in their recommendation that rulings on bankruptcy appeals be circulated among the judges to promote more uniformity, as oftentimes, more than one district judge must rule on appeals taken in the same bankruptcy case.

The Advisory Group endorses this recommendation for greater uniformity, with the added observation that the circulation of decisions may assist the judges in avoiding contradictory rulings in a single bankruptcy action.

PART XI

METHODS TO REDUCE

COSTS AND DELAY

INVOLVING JURY PROCEEDINGS

XI. METHODS TO REDUCE COSTS AND DELAY INVOLVING JURY PROCEEDINGS

A. Jury Proceedings

In SY92, the District was ranked 87th in the number of jurors not selected or challenged (or 46.3 percent of those called to serve on juries, keeping in mind that the target rate fixed by the Judicial Conference of the United States[24] is thirty percent). The District also ranks 86th out of 94 District Courts in the average number of petit jurors reporting to the Court for jury selection. (Charts 10a and 10b).

By way of explanation, the District Court of Puerto Rico uses a unique three-step procedure for qualifying prospective jurors. This includes an "oral interrogation" to determine the jurors' ability to understand English. For reporting purposes, all these jurors are shown as "not selected, serving or challenged". This inclusion penalizes our District juror utilization rate. The Administrative Office is aware of this situation and starting in December 1992, the report will contain a footnote stating:

> "The District of Puerto Rico qualifies prospective jurors in a separate proceeding to determine their ability to understand English. These jurors are included in the number of jurors not selected, serving or challenged."

B. Specific Methods to Reduce Cost and Delay

Obviously, there are costs and delays implicit in this percentage of jurors not serving, selected or challenged. Several of the recommended methods to reduce these costs and delays are detailed below.

1. Multiple Voir Dire

The Advisory Group notes the use of Multiple Voir Dire in some United States District Courts. A sufficient number of jurors are randomly drawn for the first panel and the first jury is selected. Next, a second panel is randomly picked and the second jury is selected and so on until all the juries scheduled for selection on that day are

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[24] Report of the Proceedings of the Judicial Conference of the United States, March 1984, pp. 34-35.

Chart 10a

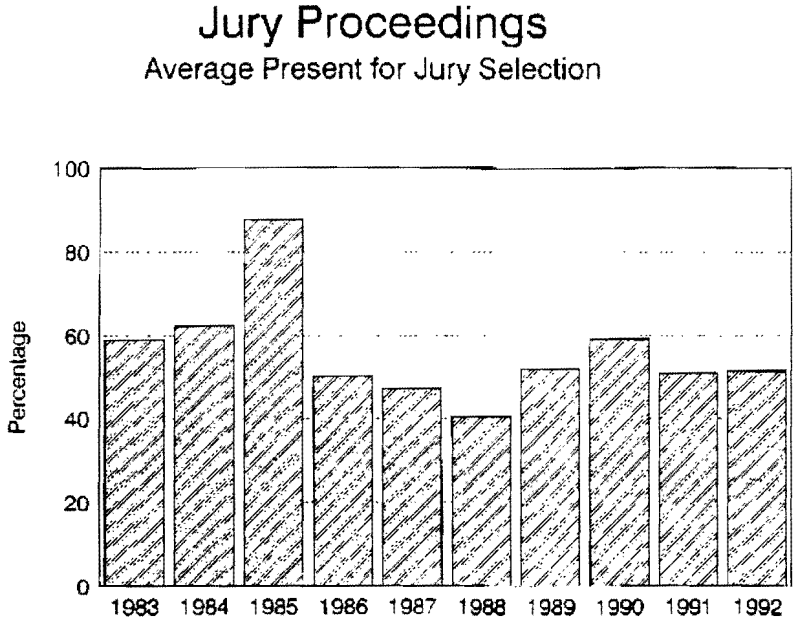
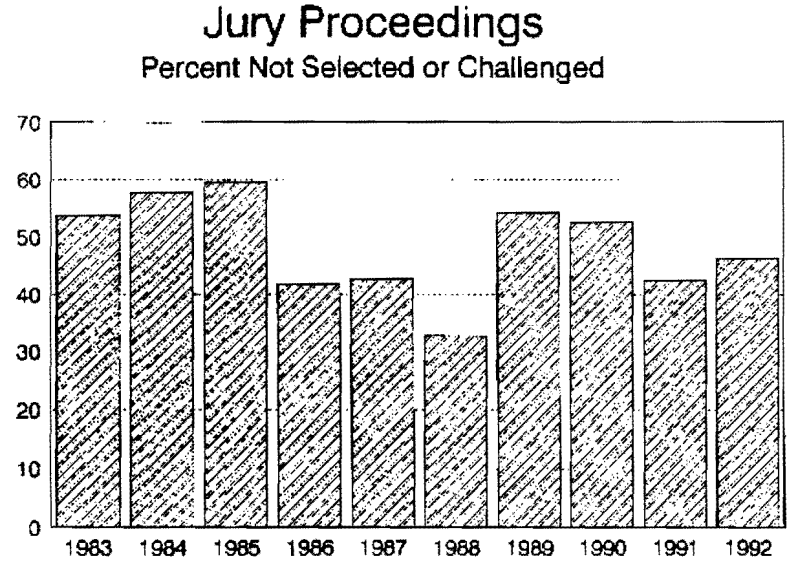


Chart 10b



drawn. In sum, voir dire means that a judge selects--on one day--all the juries needed for trials scheduled for an upcoming period.

Multiple voir dire has been used in the District in civil cases by one of the judges with some success; nevertheless, it is not employed by all seven. This results in a situation where one, two or three complete jury wheels must be called and it obviously means increased costs and probable delays for the Court and the parties. With multiple voir dire, however, judges can increase efficiency by placing jurors eliminated from one trial in a jury panel for another. It can speed a trial calendar and also economize on the need for jurors.

2. Pooling

Further, there are other methods which have been tried and have met with success in other District Courts. One alternative is the use of pooling with staggered voir dire times. It would work, as an example, in the following manner: 100 jurors would be called on a certain day. One or two judges would begin voir dire at 9:00 am; two others would begin at 10:30 am. Each of the two judges would select six to eight jurors and return those not selected to the jury pool. The jury administrator could then use those returned plus new people to create pools for the 10:30 voir dire. In larger courts, this has been found to be very effective.

3. Use of Magistrates

Magistrates may also be used for multiple voir dire. That has the benefit of being an efficient way of utilizing the judges' time as well as the jurors. Rule 506.6 of the District's Local Rules allows for the magistrates to select juries in civil cases and the U.S. Supreme Court has recently held that magistrates may conduct voir dire in felony proceedings with the consent of the litigants. Peretz v. U.S, 111 S. Ct. 2661 (1991).

4. Recommendations for Reducing Cost and Delay

Accordingly, the Advisory Group recommends that the Court adopt the use of multiple voir dire or pooling with staggered voir dire as a way of expediting trial schedules and economizing on jury costs.

5. Jury Assessment Costs

The Advisory Group also notes that when a civil case is settled in advance of the actual trial or settled at trial in advance of the verdict, Local Rule 323 provides that, except for good cause shown, jury costs may be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court. This Rule is seldom enforced; however, the Group considers it a useful tool in the Court's arsenal as a means of curbing its own costs and those of the parties.

Moreover, it is noted that frequently, as a litigation tactic, attorneys will wait until the last possible moments before trial to settle. Clearly, this tactic succeeds in driving up costs to litigants. Therefore, the Advisory Group recommends that Rule 323 be more strictly enforced.

PART XII

IMPACT OF FEDERAL LEGISLATION

XII. IMPACT OF FEDERAL LEGISLATION

The Advisory Group is required to examine the extent to which cost and delay could be reduced by better assessment of the impact of legislation. 28 USC §472(c)(1)(D). The Advisory Group has, throughout this Report, noted the impact of federal legislation upon the civil docket and has the following observations and recommendations.

A. Diversity and the Jurisdictional Amount

It is unclear whether the imposition of the $50,000 statutory amount for damages in a diversity action has made much of a difference in the number of these cases filed in the District.

One possible explanation why the increase in the jurisdictional amount from $10,000 to $50,000 in 1989 has not caused a significant reduction in the number of diversity cases being filed in the District is that there are no jury trials in civil actions in Puerto Rico Commonwealth courts. Thus, attorneys representing personal-injury plaintiffs in cases where damages could be substantial would rather file in Federal Court, so as to be able to bring their cases before a jury. The assumption is that a jury will grant a larger award than can be obtained in a bench trial in a Commonwealth court. The increase in the jurisdictional amount would not affect cases where the damages claimed would in any event exceed $50,000.

There is some evidence, however, that more borderline cases are dismissed now because the facts alleged cannot support the $50,000 jurisdictional amount. Prior to the amendment, almost any alleged injury could conceivably justify an award of $10,000, while the $50,000 threshold will sift out some of the cases involving slight injuries.

B. Sentencing Guidelines

The Sentencing Guidelines and minimum mandatory sentencing have had a decided impact in the number of guilty pleas. The latter have decreased and the number of criminal trials has increased. See Part II(H)(1).

Accordingly, the Advisory Group recommends action by Congress to amend the statutes to restore some judicial sentencing discretion to the judges.

C. Speedy Trial Act

A number of judges, magistrates and civil practitioners interviewed on behalf of the Advisory Group mentioned the preferential treatment given to criminal trials pursuant to the Speedy Trial Act as one major cause of delay. The Advisory Group recommends Congressional action to relax the strictures of the Speedy Trial Act as a means of reducing costs and delay in civil cases.

PART XIII

PLAN FOR REDUCTION

OF

COST AND DELAY

XIII. PROPOSED PLAN FOR REDUCTION OF COST AND DELAY

After considerable discussion on the merits of the Model Plan, which was developed by the Judicial Conference of the United States versus the formation of its own plan, the Advisory Group concluded that a plan which is responsive to the local needs and circumstances of the District of Puerto Rico, was the most suitable choice.

It must also be pointed out that the Model Plan was received after most of the provisions of the Advisory Group's proposed plan had been discussed and the decision made to recommend them to the district; nonetheless, the Advisory Group did review the Model and certain of its provisions are incorporated, in part, in the Group's proposed plan.

Accordingly, the Advisory Group recommends that the Court adopt a plan to reduce costs and delay in civil cases, following the recommendations set forth in this Report. A draft of such a plan shall be presented to the Court under separate cover.

APPENDICES

1. Initial Members of Advisory Group 2/28/91
2. Committees of CJRA
3. Expanded CJRA Advisory Group
4. Student Questionnaire for Evaluating Closed Civil Cases
5. Attorney Questionnaire
6. Case Evaluation Graphs

APPENDICES

Initial Members of Advisory Group 2/28/91

Committees of CJRA

Expanded CJRA Advisory Group

Student Questionnaire for Evaluating Closed Civil Cases

Attorney Questionnaire

Case Evaluation Graphs

APPENDIX 1

LIST OF INITIAL CJRA ADVISORY GROUP MEMBERS

APPENDIX 1

LIST OF INITIAL CJRA ADVISORY GROUP MEMBERS

Hon. Juan M. Pérez-Giménez

Hon. Jaime Pieras, Jr.

Salvador Antonetti-Zequeira

Judith Berkan

Daniel R. Domínguez-Hernández

José Fernández-Sein

William A. Graffam

Lydia Pelegrín

Pedro J. Santa-Sánchez

Dennis Simonpietri-Monefeldt

José R. Gaztambide-Añeses

David M. Helfeld

Gabriel Hernández-Rivera

Daniel F. López-Romo

Ruben T. Nigaglioni

Ignacio Rivera

María T. Sandoval

Manuel San Juan

APPENDIX 2

CJRA COMMITTEES

APPENDIX 2

CJRA COMMITTEES

1. ADR
2. Bankruptcy Appeals
3. Case Evaluation
4. Case Management
5. Cases Three Years and Older
6. DCM/Electronic Docketing
7. Dupont-Litigation Impact
8. Executive Order
9. Impact of Criminal Docket on Civil Docket
10. Institutional Reform Cases
11. Principal Causes of Cost and Delay
12. Utilization of Magistrates

APPENDIX 3

LIST OF EXPANDED

CJRA ADVISORY GROUP MEMBERS

APPENDIX 3

LIST OF EXPANDED CJRA ADVISORY GROUP MEMBERS

Hon. Gilberto Gierbolini
Hon. Jaime Pieras, Jr.
Hon. Jesús A. Castellanos
Lydia Pelegrín
Cynthia J. Thomas
Angel Alvarez-Pérez
Salvador Antonetti-Zequeira
Judith Berkan
Rafael F. Castro-Lang
Esther Castro-Schmidt
Kenneth Colón
María Luisa Contreras
Iván Díaz de Aldrey
Daniel R. Domínguez-Hernández
Iván M. Fernández
José Fernández-Sein
José R. Gaztambide-Añeses
William A. Graffam
Manuel A. Guzmán
Gabriel Hernández-Rivera
Daniel F. López-Romo
José A. Lugo
Agustín Mangual-Hernández
Hon. Ramón Negrón Soto
Rubén T. Nigaglioni
Vicente Ortiz-Colón
Abelardo Ruiz-Suria
Manuel San Juan
María T. Sandoval
Pedro J. Santa-Sánchez
Dennis Simonpietri-Monefeldt
Miguel A. Velázquez-Rivera

APPENDIX 4

DOCKET QUESTIONNAIRES

DOCKET QUESTIONNAIRE

Please select the type of case whose docket and pleadings you are examining. Doubts regarding the type of case should be resolved by examining the cover sheet submitted by plaintiff(s) or petitioner(s)

Admiralty (Ad) _____

Asbestos (Asb) _____

Antitrust (Ant) _____

Bankruptcy appeals (Bkrpty.) _____

Banking or Banks (Ban) _____

Civil Rights (CR) _____

Commerce: ICC (ICC) _____

Contract (K) _____

Copyright, Patent or Trademark (Cpy., Pat., Trd.) _____

ERISA (ERI) _____

Forfeiture, including drug forfeitures (Forf.) _____

Fraud, Truth In Lending (FR & TIL) _____

Labor (Lab) _____

Land Condemnation (Cond.) _____

Personal Injury (PI) _____

Prisoners Rights (PR) _____

RICO (RICO) _____

Securities and Commodities (Sec & Com.) _____

Social Security (SS) _____

Student Loan Defaults (St. Loan) _____

Tax (Tax) _____

Veterans Appeals (Vet. App.) _____

* All other civil cases (Other) _____

Specify type _____

1. Name of examiner _____

2. Date of review of record _____

COMMENCEMENT OF ACTION

3. The Complaint(s)/Petition(s)

were filed on the following date(s) _____

4. The first answer or Response was filed on _____

by _____

The second answer or Response was filed on _____

by _____

The third Answer or Response was filed on _____

by _____

The fourth Answer or Response was filed on _____

by _____

The fifth Answer or Response was filed on _____

by _____

5. Service of the Summons(es) were

executed on the following date(s) _____

by _____

on _____

by _____

on _____

by _____

6. The case was originally assigned to Judge _____ on _____.

7. The case was reassigned to Judge _____ on _____.

8. The case was reassigned to Judge _____, a third judge, on _____.

9. The case was never reassigned _____.

10. Reason(s) for first reassignment:

_____ Recusal

_____ Administrative

_____ Illness

_____ Unclear

11. Reason(s) for second reassignment

_____ Recusal

12. Reason(s) for third reassignment

_____ Recusal

_____ Administrative

_____ Illness

INITIAL SCHEDULING, DISCOVERY STATUS AND SETTLEMENT CONFERENCES

13. An Initial Scheduling Conference (ISC) was celebrated in this case.

_____ Yes _____ No

14. The ISC occurred on _____.

15. At the ISC, the date specified as the final date for completion of discovery was

_____.

16. Was the date referred to in 15 altered? ____ Yes ____ No

17. If so, how many additional days were granted to the parties? _____ (days)

18. State reason for extension of time:

_____

_____

INITIATION OF DISCOVERY

DISCOVERY CONFERENCES

19. Were any Discovery Conferences held in this case?

____ Yes ____ No

20. Date of first Discovery Conference _____.

____ Judge ____ Magistrate

21. Were discovery deadlines imposed at this first conference?

____ Yes ____ No

22. What was date set for completion of discovery at first conference? _____.

23. Was the date referred to in 22 altered? ___ Yes ___ No

24. If so, how many additional days were granted to the parties? _____ (days)

25. State reason for extension of time:

_____

_____

26. Date of second Discovery Conference _____.

____ Judge ____ Magistrate

27. Were discovery deadlines imposed at second conference?

____ Yes ____ No

28. What was date set for completion of discovery at second conference? _____.

29. Was the date referred to in 28 altered? ____ Yes ____ No

30. If so, how many additonal days were granted to the parties? _____ (days)

31. State reason for extension of time:

_____

_____

32. In this case, _____ plaintiff _____ defendant was the first party to initiate discovery.

(If parties initiated discovery within five days of one another, mark both.)

33. The first formal discovery request filed by plaintiff occurred on _____.

34. The first formal discovery request filed by defendant occurred on _____.

STATUS CONFERENCES

35. Were any Status Conferences held in this case?

____ Yes ____ No

36. Date of first Status Conference _____.

____ Judge ____ Magistrate

37. Were discovery deadlines imposed at first Status Conference?

____ Yes ____ No

38. What was date set for completion of discovery at first Status Conference? _____.

39. Was the date referred to in 38 altered? ____ Yes ____ No

40. If so, how many additional days were granted to the parties? _____ (days)

41. State reason for extension of time:

_____

_____

42. Date of second Status Conference _____.

____ Judge ____ Magistrate

43. Were discovery deadlines imposed at second Status Conferences?

____ Yes ____ No

44. What was date set for completion of discovery on second Status Conference? _____.

45. Was the date referred to in 44 altered? ___ Yes ___ No

46. If so, how many additional days were granted to the parties? _____ (days)

47. State reason for extension of time:

_____

_____

SETTLEMENT CONFERENCES

48. Were any Settlement Conferences held in this case?

____ Yes ____ No

49. Date of first Settlement Conference _____.

____ Judge ____ Magistrate

50. Date of second Settlement Conference _____.

____ Judge ____ Magistrate

DISCOVERY DISPUTES

51. Motions relating to discovery disputes such as Motions To Compel or for sanctions were filed in this case.

____ Yes ____ No

52. Number of motions referred to in number 36 filed by

_____ plaintiff(s)

_____ defendant(s)

_____ third party(ies)

53. When was first motion referred to in number 36 filed by any party?

_____ date _____ filing party _____ prevailing party

Resolved by _____ Judge _____ Magistrate

Appeal taken to district court? ____ Yes ____ No

(P = Plaintiff; D = Defendant; T = Third Party)

54. When was second motion referred to in number 36 filed by any party? _____ date

_____ filing party _____ prevailing party

Resolved by _____ Judge _____ Magistrate

Appeal taken to district court? ____ Yes ____ No

55. When was third motion referred to in number 36 filed by any party? _____ date

_____ filing party _____ prevailing party

Resolved by ____ Judge ____ Magistrate

Appeal taken to district court? ____ Yes ____ No

56. When was fourth motion referred to in number 36 filed by any party? _____ date

_____ filing party _____ prevailing party

Resolved by ____ Judge ____ Magistrate

Appeal taken to district court? ____ Yes ____ No

CONSOLIDATION OF CLAIMS, PARTIES AND CASES

CROSS CLAIMS

57. Were cross claims filed in this case?

____ Yes ____ No

58. When was first cross claim filed? _____.

59. When was second cross claim filed? _____.

60. When was third cross claim filed? _____.

COUNTERCLAIMS

61. Were counterclaims filed in this case?

____ Yes ____ No

62. When was the first counterclaim filed? _____.

63. When was the second counterclaim filed? _____.

64. When was the third counterclaim filed? _____.

JOINER OF PARTIES OR IMPLEADER

65. Were any parties joined or impleaded in this case?

____ Yes ____ No

66. When was first Motion For Joiner of Parties or to Implead filed? _____ (Circle "Joinder" or "Implead" in numbers 50 through 53. Circle both if applicable.)

67. When was second Motion For Joiner of Parties or to Implead filed?

_____

68. When was third Motion For Joiner of Parties or to Implead filed?

_____

JOINDER OF CLAIMS

69. Were clamis joined in this case?

_____ Yes _____ No

70. When was first Motion for Joinder of Claims filed?

_____

71. When was second Motion for Joinder of Claims filed?

_____

72. When was third Motion for Joinder of Claims filed?

_____

CONSOLIDATION

73. Was this case consolidated with another case or cases?

_____ Yes _____ No

74. When was this case consolidated? _____.

HEARINGS

75. Were hearings held in relation to this Complaint or Petition?

_____ Yes _____ No

76. What kind of hearing(s) were held?

_____ discovery

_____ preliminary injuction

_____ permanent injuction

_____ summary judgment

_____ dismissal

_____ sanctions

_____ order to show cause

_____ other, specify (for example,

_____ conflict of interest, etc.)

_____

DISPOSITIVE MOTIONS

77. How many dispositive motions were filed by all parties pursuant to Fed. R. Civ. Proc. 12 and 56? _____

78. With respect to every dispositive motion filed, specify the following facts.

A. First Dispositive Motion

_____ date filed

_____ plaintiff(s)

_____ defendant(s)

_____ third party(ies)

_____ date resolved by court

Resolved by _____ Judge _____ Magistrate

_____ prevailing party

Appeal taken to district court? _____ Yes _____ No

B. Second Dispositive Motion

_____ date filed

_____ plaintiff(s)

_____ defendant(s)

_____ third party(ies)

_____ date resolved by court

Resolved by _____ Judge _____ Magistrate

_____ prevailing party

Appeal taken to district court? _____ Yes _____ No

C. Third Dispositive Motion

_____ date filed

_____ plaintiff(s)

_____ defendant(s)

_____ third party(ies)

_____ date resolved by court

Resolved by _____ Judge _____ Magistrate

_____ prevailing party

Appeal taken to district court? _____ Yes _____ No

D. Fourth Dispositive Motion

_____ date filed

_____ plaintiff(s)

_____ defendant(s)

_____ third party(ies)

_____ date resolved by court

Resolved by _____ Judge _____ Magistrate

_____ prevailing party

Appeal taken to district court? _____ Yes _____ No

PRE-TRIAL CONFERENCE

79. Was a Pre-Trial Conference celebrated in this case?

_____ Yes _____ No

80. Date of first Pre-Trial Conference _____.

81. Date of second Pre-Trial Conference _____.

82. Date action set for Trial _____.

TERMINATION OF CASE

83. This case terminated in the following way:

_____ dismissal

_____ summary judgment

_____ default

_____ settlement

_____ verdict (bench or jury)

_____ remand (from removal)

_____ other

84. In whose favor did this action terminate? (More than one can be marked)

_____ plaintiff(s)

_____ defendant(s)

_____ third party(ies)

85. This case terminated for plaintiff(s) or petitioner(s) in the following way:

For first plaintiff or petitioner on _____.

(Circle plaintiff or petitioner.)

For second plaintiff or petitioner on _____.

For third plaintiff or petitioner on _____.

86a. This case terminated for defendant(s) or respondent(s):

(Circle defendant or respondent.)

For first defendant or petitioner on _____.

For second defendant or petitioner on _____.

For third defendant or petitioner on _____.

86b. How much time elapsed between the filing of a dispositive motion (i.e., to dismiss/summary judgment) and the settlement or termination of the case? _____.

POST JUDGMENT MOTIONS PROCEEDINGS

87. Was an appeal initiated to the Court of Appeals?

_____ Yes _____ No

88. Appeal filed on _____.

89. The appelate judgment was:

_____ affirmance of dismissal

_____ affirmance of summary judgment

_____ complete reversal

_____ partial reversal

_____ modification

90. The result for the district court was:

_____ retrial of all claims or petitions

_____ partial retrial

_____ settlement

_____ other (Please explain.)

_____

_____

91. Were post verdict motions filed?

_____ Yes _____ No

92. What type of post verdict motions were filed?

_____ NOV

_____ new trial

_____ to alter or amend judgment

_____ addittitur

_____ remittitur

_____ attorneys fees

_____ other (Please explain.)

_____

TRIAL

93. Was a trial celebrated in this case?

_____ Yes _____ No

94. Bench Trial?

_____ Yes _____ No

95. Jury Trial?

_____ Yes _____ No

_____ Judge _____ Magistrate

96. Length of Trial? _____ (days)

97. Length specified in Pre-Trial Order _____.

98. Was the trial of this case celebrated simultaneously with the trial of a second related matter?

_____ Yes _____ No

99. Was the trial interrupted for more than half a day at any time?

_____ Yes _____ No

Reason(s): _____

_____

SUPPLEMENTARY DOCKET QUESTIONNAIRE

100. How many motions for extension of time were filed in this case for any reason? _____

101. How many of these requests for extensions of time were granted by the Magistrate of Judge and how much total time was granted? _____

EXAMINER: _____

REPORT ON (Insert case name, docket number and Judge's Initials):

1. NATURE OF THE CASE:

2. DATE COMMENCED:

3. DATE TERMINATED:

4. HOW TERMINATED:

( ) Settlement

( ) Summary Judgment

( ) Trial: ( ) Jury ( ) Non-Jury

( ) Other - Specify

5. WAS THERE UNREASONABLE DELAY?

( ) Yes

( ) No

If "yes", describe nature of delay:

6. EXPLAIN PROBABLE CAUSE OF DELAY:

7. RECOMMENDATION:

(a) Interview Judge ( ) Yes ( ) No

Purpose:

(b) Interview Litigants' Counsel ( ) Yes ( ) No

Purpose:

(c) Other (identify and state purpose)

8. MISCELLANEOUS COMMENTS (optional)

DATE: _____ _____

EXAMINER

APPENDIX 5

ATTORNEY QUESTIONNAIRE

WITH STATISTICAL GRAPHS

QUESTIONNAIRE ON COST AND DELAY FOR THE U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

All questions in this survey pertain to civil cases filed in the U.S. District Court for the District of Puerto Rico. Answers to the questions will enable the court to develop an understanding of the cost of litigation within the district as required by the Civil Justice Reform Act of 1990.

I. ATTORNEY PROFILE

QUESTION #1.

What percentage of your practice has been devoted to federal district court litigation during the past five years (or during the time you have been in practice, if less than five years)?

_____ % of my practice

QUESTION #2.

How many years have you been engaged in the practice of law?

_____ years

QUESTION #3.

What party do you generally represent?

A. Plaintiff _____

B. Defendant _____

QUESTION #4.

Approximately how many cases have you handled or been substantially involved in that were pending in the U.S. District Court for the District of Puerto Rico for any period of time within the past five years? _____

QUESTION #5.

What types of cases do you usually handle in federal court (circle as many as applicable)?

A. Admiralty
B. Asbestos
C. Antitrust
D. Bankruptcy Appeals
E. Banking or Banks
F. Civil Rights
G. Commerce: ICC
H. Contract
I. Copyright, Patent or Trademark
J. ERISA
K. Forfeiture, including drug forfeiture
L. Fraud, Truth in Lending
M. Labor
N. Land Condemnation
O. Personal Injury
P. Prisoners Rights
Q. RICO
R. Securities and Commodities
S. Social Security
T. Student Loan Defaults
U. Tax
V. Veterans Appeals
W. Others (specify type)

II. MANAGEMENT OF LITIGATION

All questions in sections II through IV refer to

Civil Case:
Number:

Case management refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases do not need to be managed as much, with the pace and course of litigation left to counsel and with court intervention only when requested.

QUESTION #6.

How would you characterize the level of case management by the court in this case? Please circle one.

A. Intensive
B. High
C. Moderate
D. Low
E. Minimal
F. None
G. I am not sure

QUESTION #7.

Listed below are several case management actions that could have been taken by the court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the court took such action in this case.

	Was Taken	Was Not Taken	Not Sure	Not Applicable
A. Hold pretrial activities to a firm schedule	1	2	3	4
B. Set and enforce time limits on allowable discovery	1	2	3	4
C. Narrow issues through conferences or other methods	1	2	3	4
D. Rule promptly on pre-trial motions	1	2	3	4
E. Set an early and firm trial date	1	2	3	4
F. Conduct or facilitate settlement discussions	1	2	3	4
G. Exert firm control over trial	1	2	3	4
H. Other	1	2	3	4

III. TIMELINESS OF LITIGATION IN THIS CASE

QUESTION #8.

Our records indicate that your case took a year or more from filing date to disposition date. Please circle the letter corresponding to the one answer below that reflects the duration of the case for your client.

A. The duration given above is correct for my client.

B. The duration given above is not correct for my client. After filing the complaint, my client was in this case for approximately _____ months.

C. I don't recall the duration of this case for my client.

QUESTION #9.

A. How long should this case have taken from filing to disposition under circumstances in which the court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the court.

B. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay: (circle one or more)

1. Excessive case management by the court.
2. Inadequate case management by the court.
3. Dilatory actions by counsel.
4. Dilatory actions by the litigants.
5. Court's failure to rule promptly on motions.
6. Backlog of civil cases on court's calendar.
7. Backlog of criminal cases on court's calendar.
8. Other. (please specify)

C. Was the time from filing to disposition too short?

D. If the answer is Yes, please explain.

QUESTION #10.

If delay is a problem in this district for disposing of civil cases, what suggestions or comments do you have for reducing those delays.

IV. COSTS OF LITIGATION IN THIS CASE

QUESTION #11.

What type of fee arrangement did you have in this case? (Circle the letter which corresponds to the best answer)

A. Hourly rate

B. Hourly rate with a maximum

C. Set fees

D. Contingency

E. Statutory fees

QUESTION #12.

Please estimate the amount of money at stake in this case. (circle one)

A. $50-100,000

B. $100,000-500,000

C. $500,000-1 million

D. $l million to $5 million

E. Over $5 million

QUESTION #13.

Keeping in mind your response to Question #12, were the fees and costs incurred in this case by your client:
(circle one)

A. Much too high

B. Slightly too high

C. About right

D. Slightly too low

E. Much too low

QUESTION #14.

If your answer to question #13 is much too high or slightly too high, to what do you attribute the high costs and fees? (circle as many as you believe applicable)

A. Discovery costs
   1. Excessive use of interrogatories.
   2. Excessive use of requests for production.
   3. Excessive number and /or duration of depositions.
   4. Attorneys' failure to resolve discovery disputes without judicial involvement.

B. Expert witness fees

C. Management and scheduling by judges
   1. Insufficient use of settlement/mediation/alternative dispute resolution techniques during early stages of litigation.
   2. Insufficient use of or lack of emphasis on settlement/mediation/ alternative dispute resolution proceedings throughout later stages of litigation.
   3. Insufficient use of bifurcated trials to facilitate settlement.
   4. Inadequate management/scheduling of discovery by attorneys.
   5. Inadequate management/scheduling of discovery by judges.

QUESTION #15.

If costs associated with civil litigation in this district are too high, what suggestions or comments do you have for reducing the costs? You can either use the back of the survey or attach a separate sheet with your response.

THANK YOU

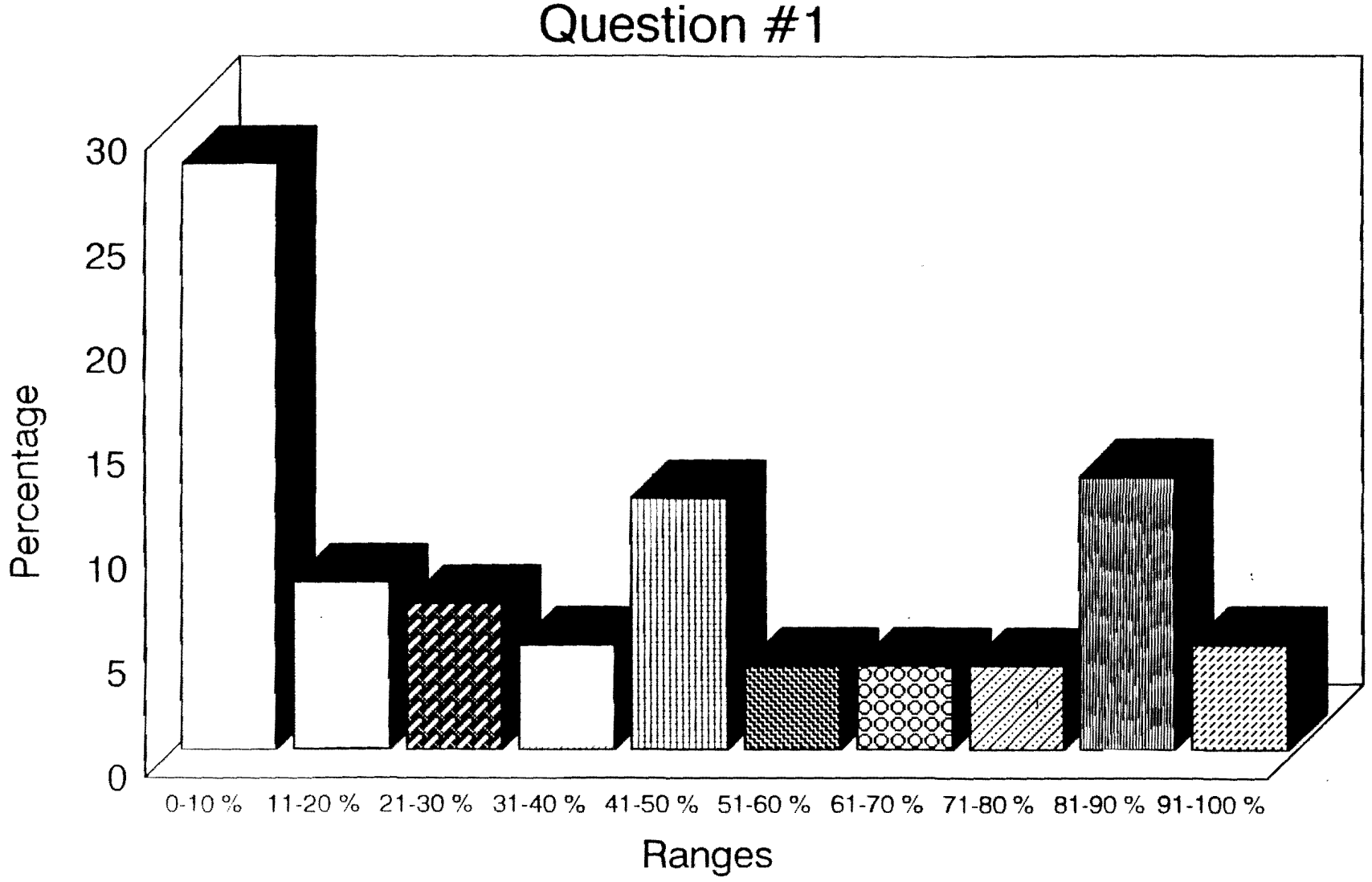
Please return by June 22nd in the enclosed envelope to:

Cynthia J. Thomas, Esq.
CJRA Office
Room 150 - Federal Building
Hato Rey, PR 00918-1767

Tel: (809) 766-5744
FAX: (809) 766-5693

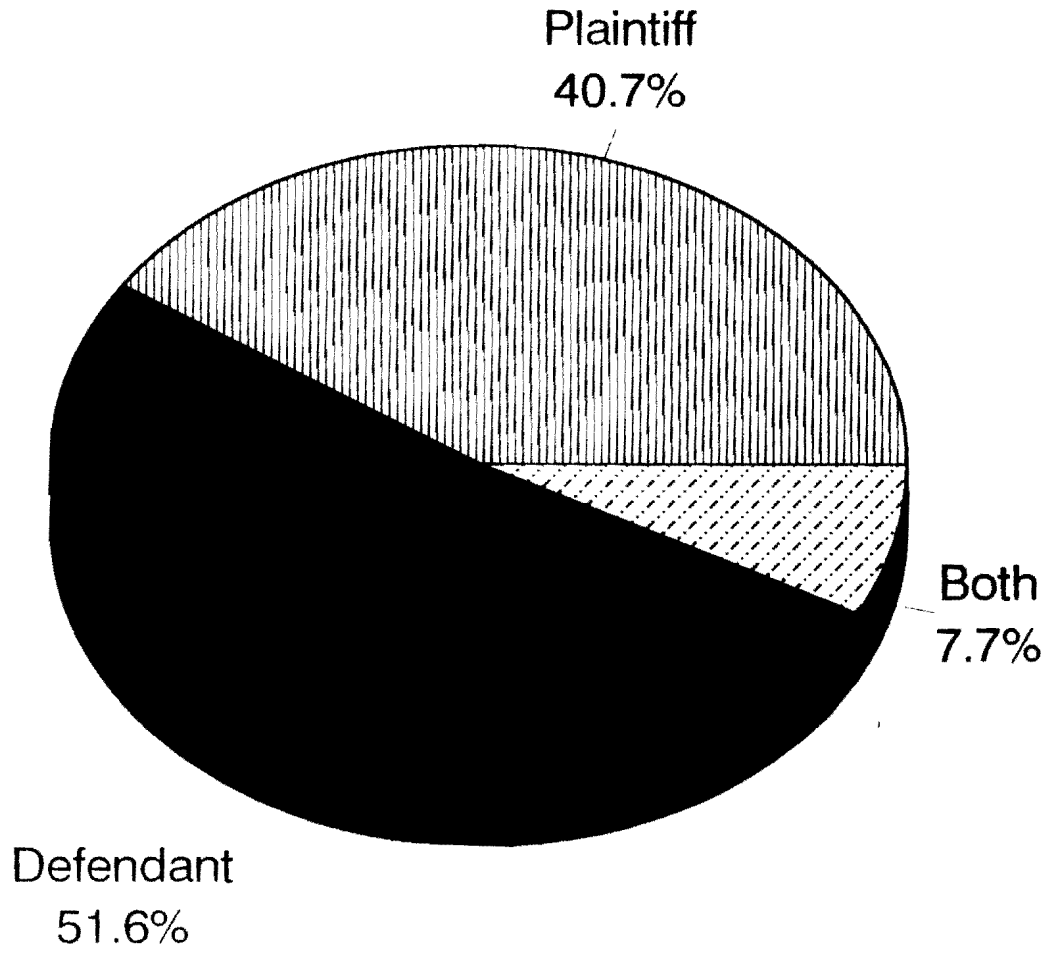
We appreciate your completing this questionnaire. Your answers will contribute substantially to efforts to improve the civil justice system in this Court. You can rest assured that your responses will be kept confidential.

Percentage of Practice Devoted to Federal Litigation



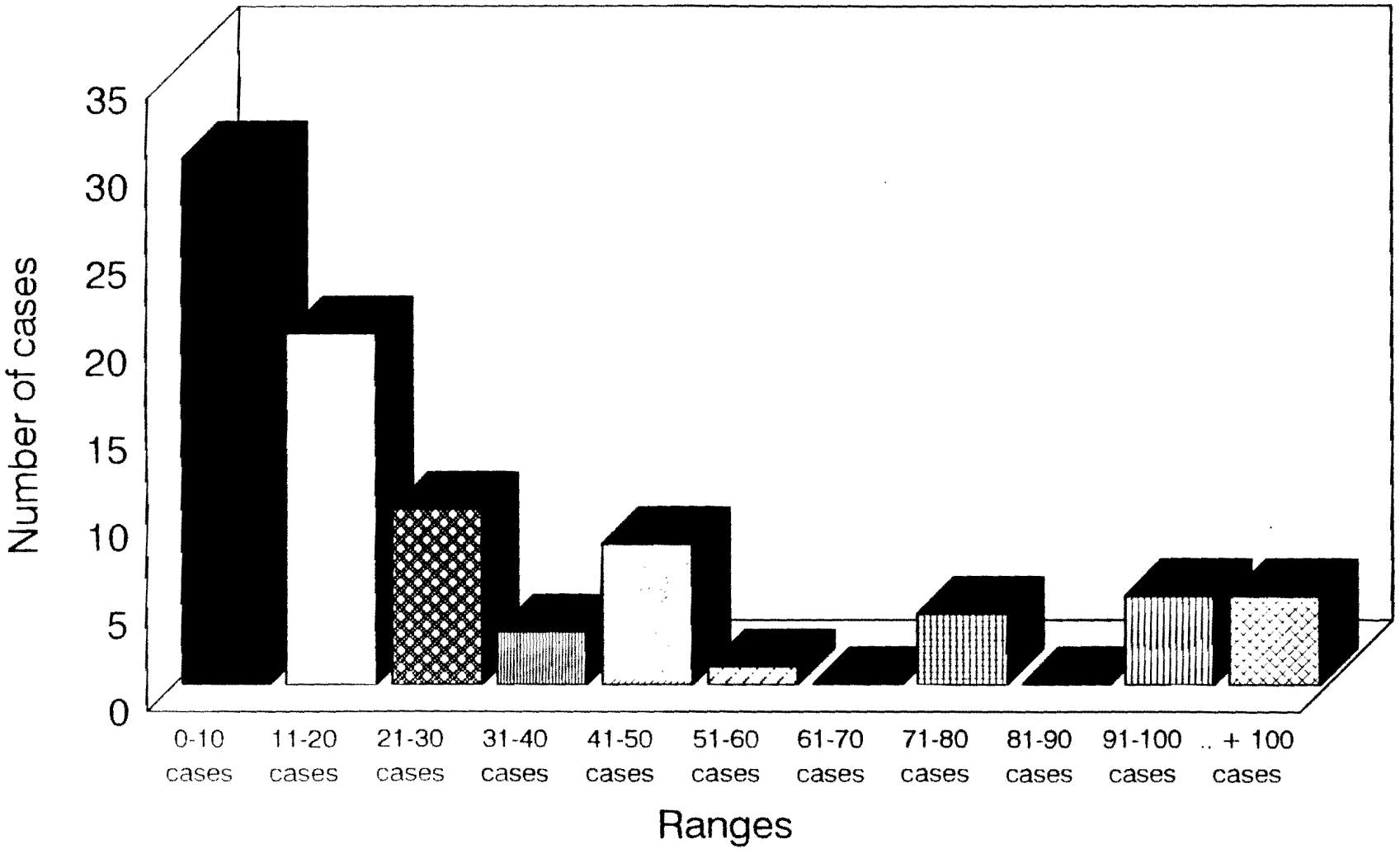
Party Generally Represented

Question #3



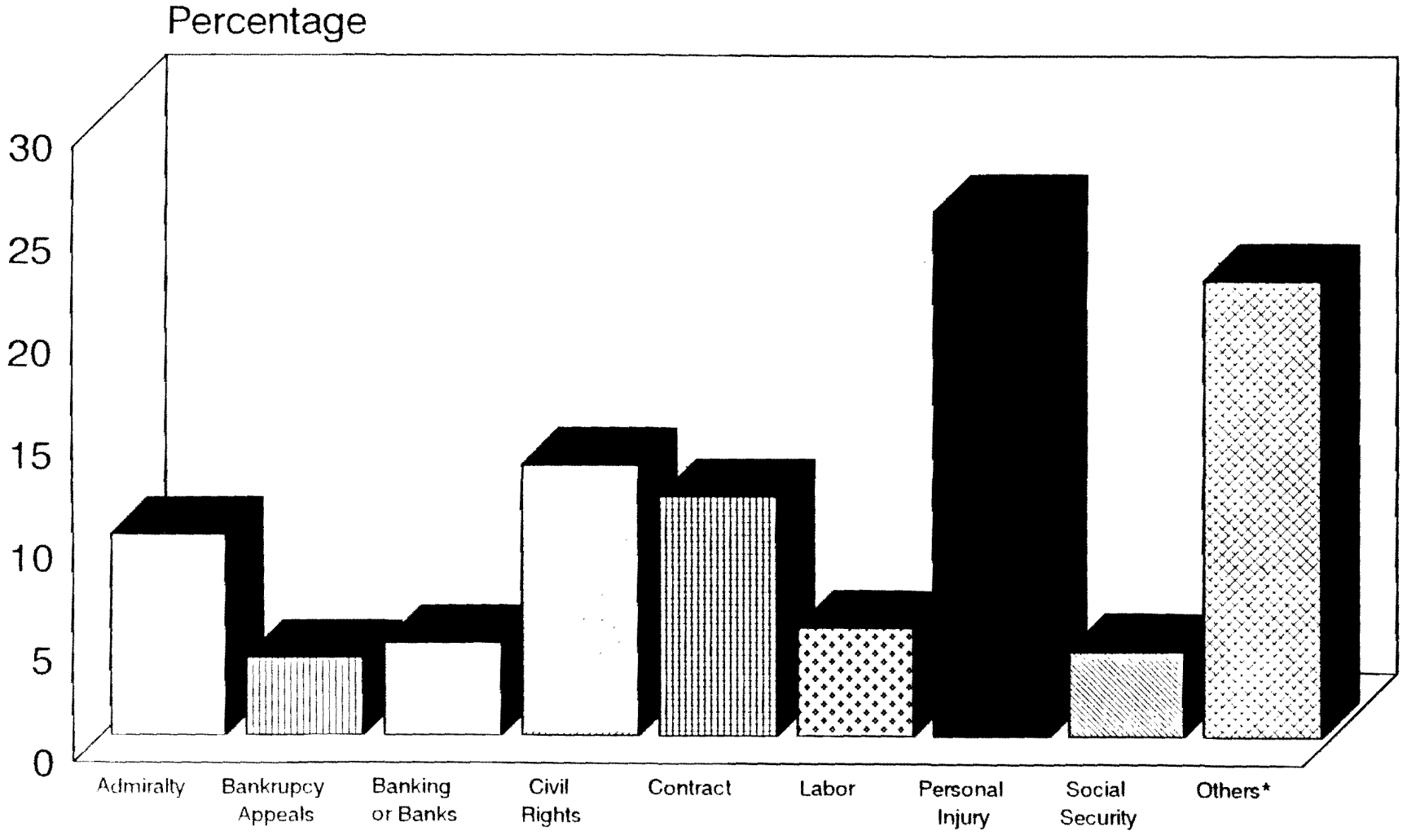
Number of Cases Pending in the last 5 Years

Question #4

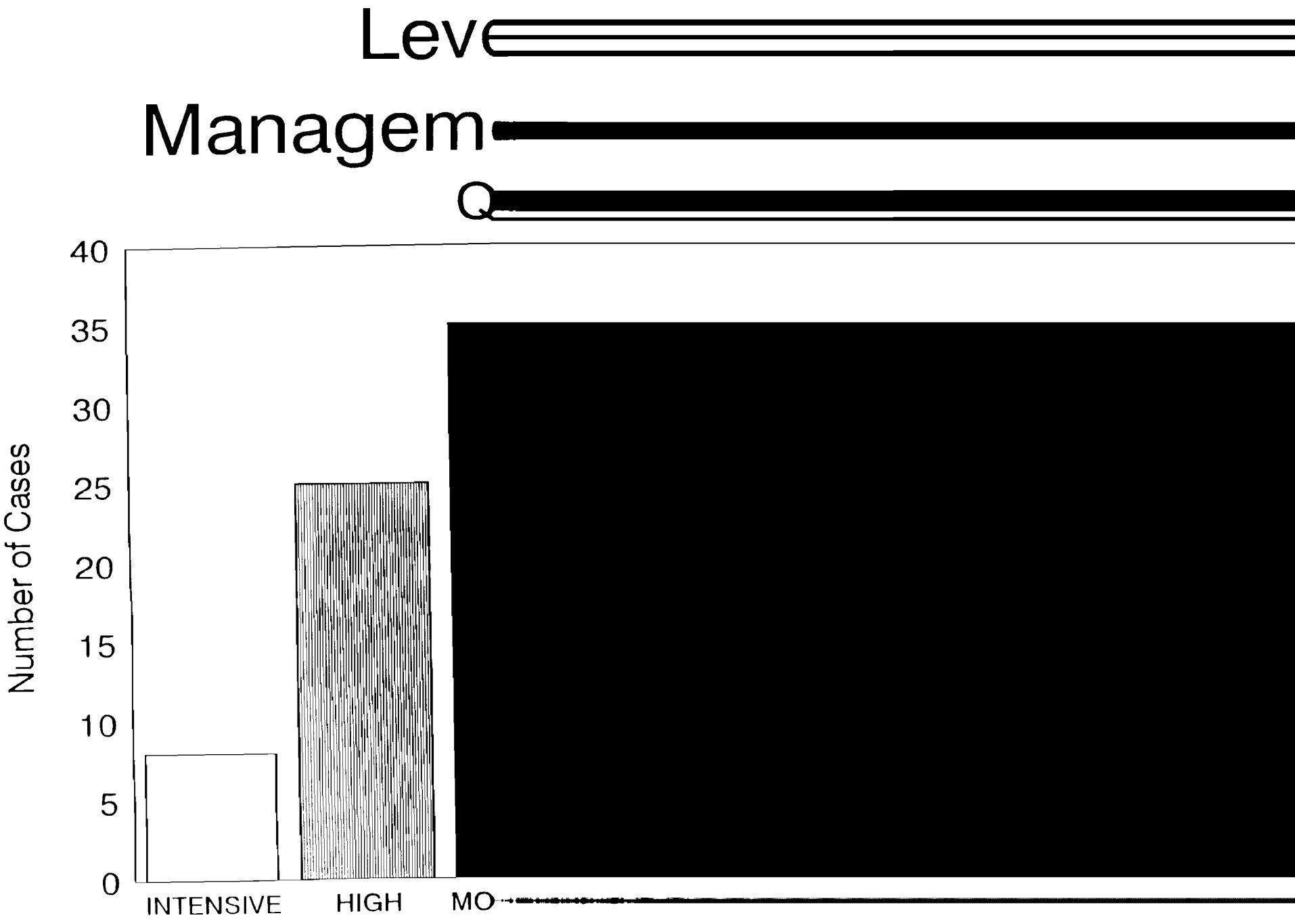


Type of Cases

Question #5



* Others includes Asbestos, Antitrust, Commerce, Copyright, ERISA, Forfeiture, Fraud, Land Condemnation, Prisoners Rights, RICO, Securities and Commodities, Student Loan Defaults, Tax and Veteran Appeals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Number of Cases
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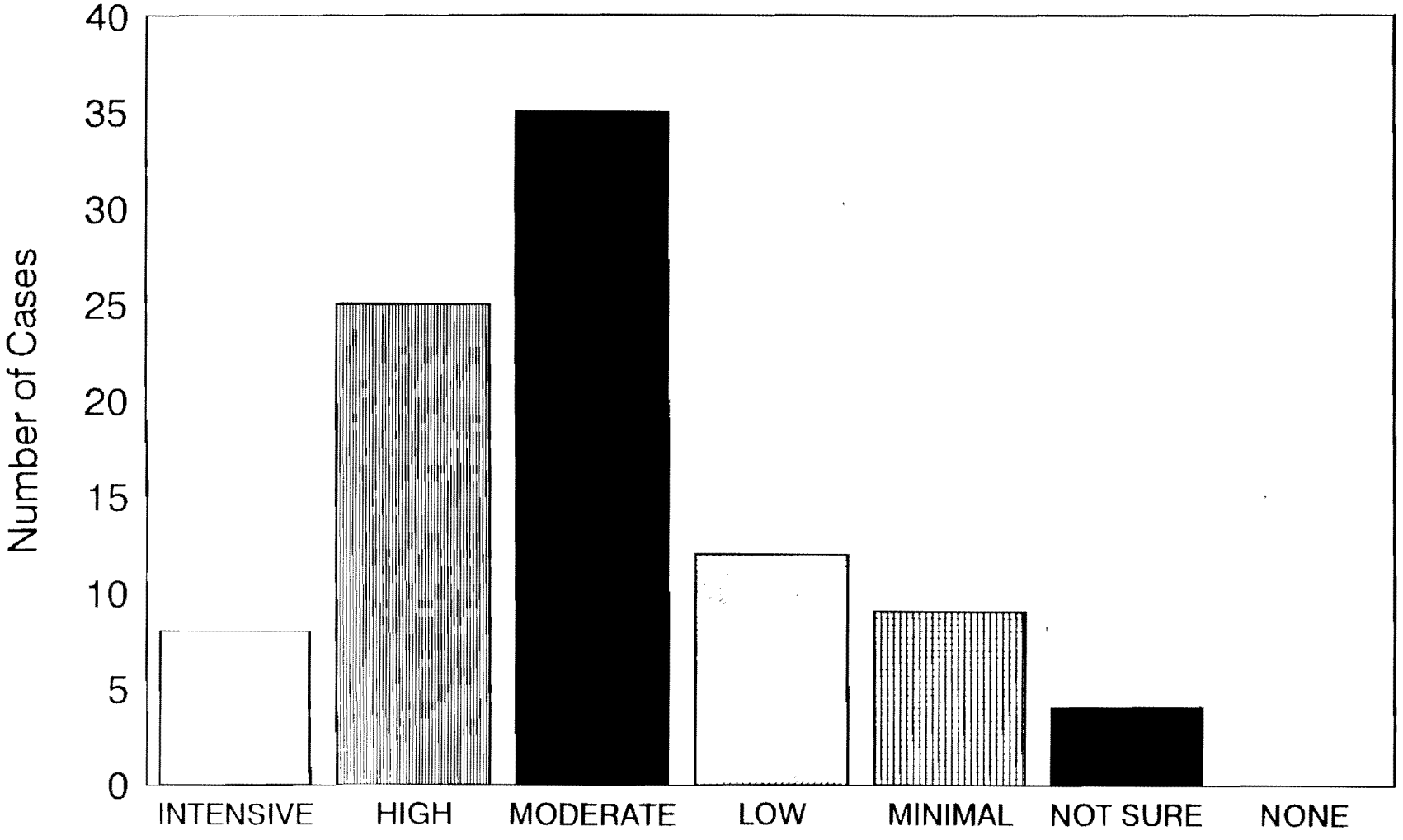
HIGH
MO

Level of Case Management by the Court

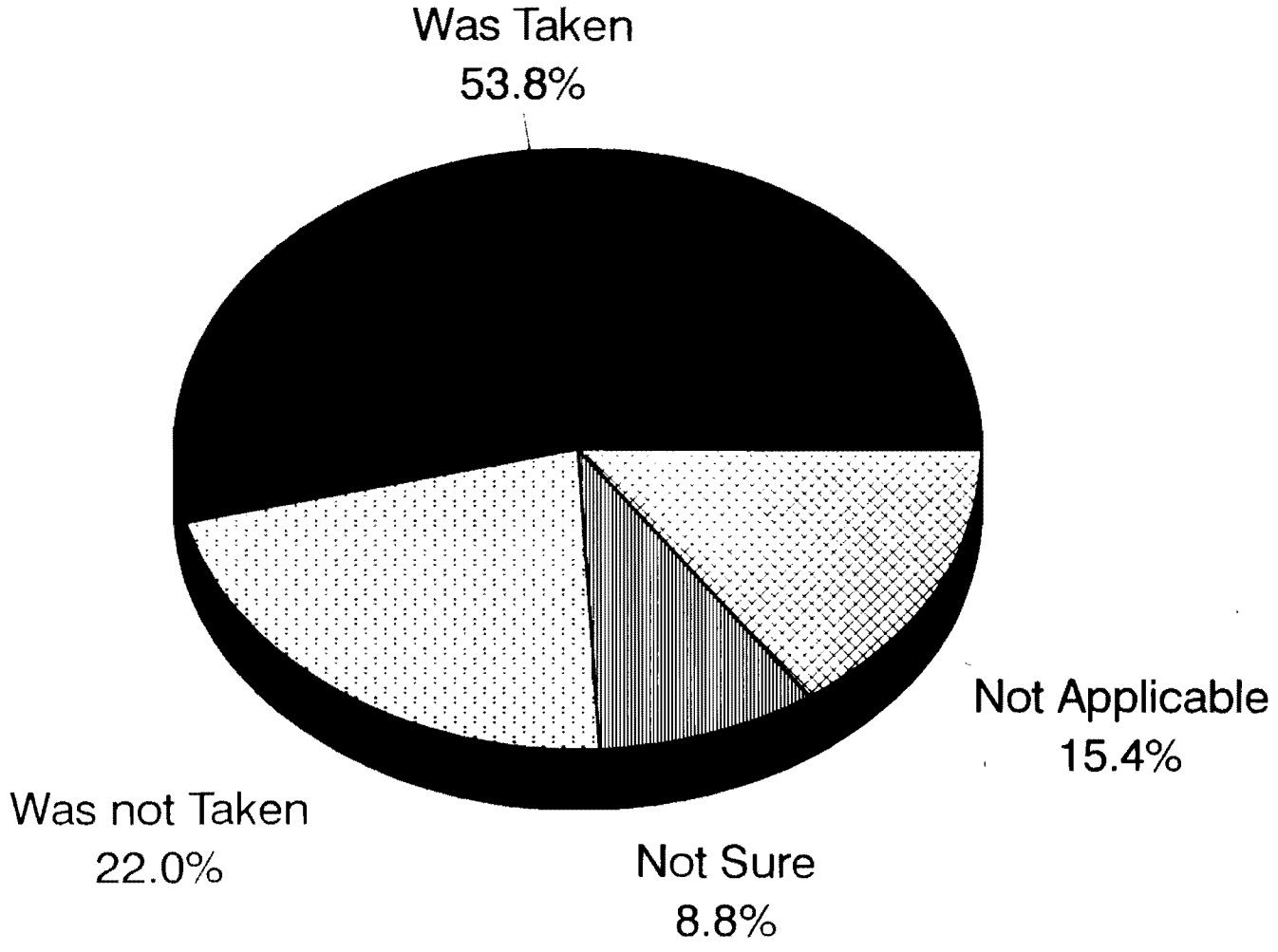
Question #6



Case Management Actions by the Court

Narrow issues through conferences or other methods

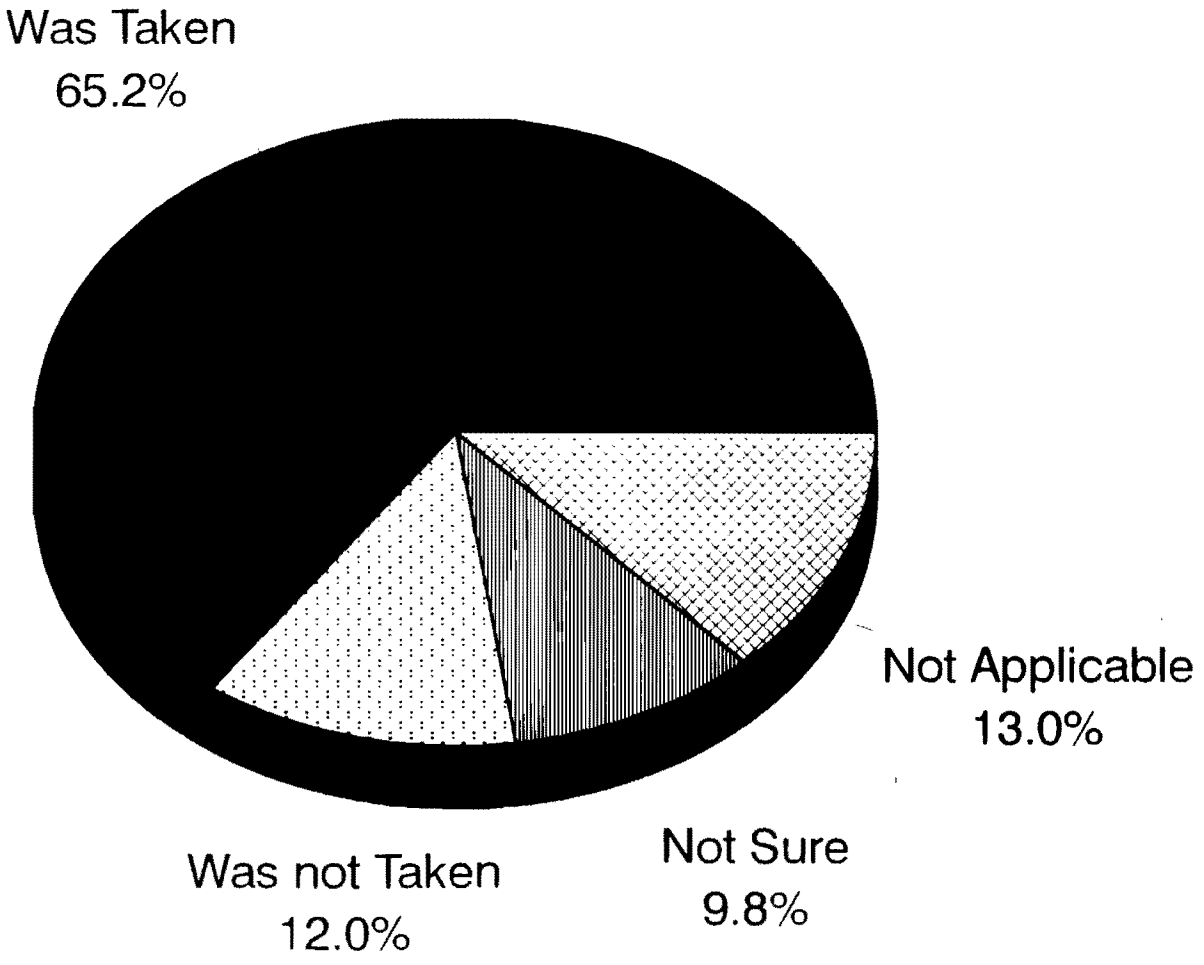
Question #7



Case Management Actions by the Court

Hold Pretrial Activities to a firm Schedule

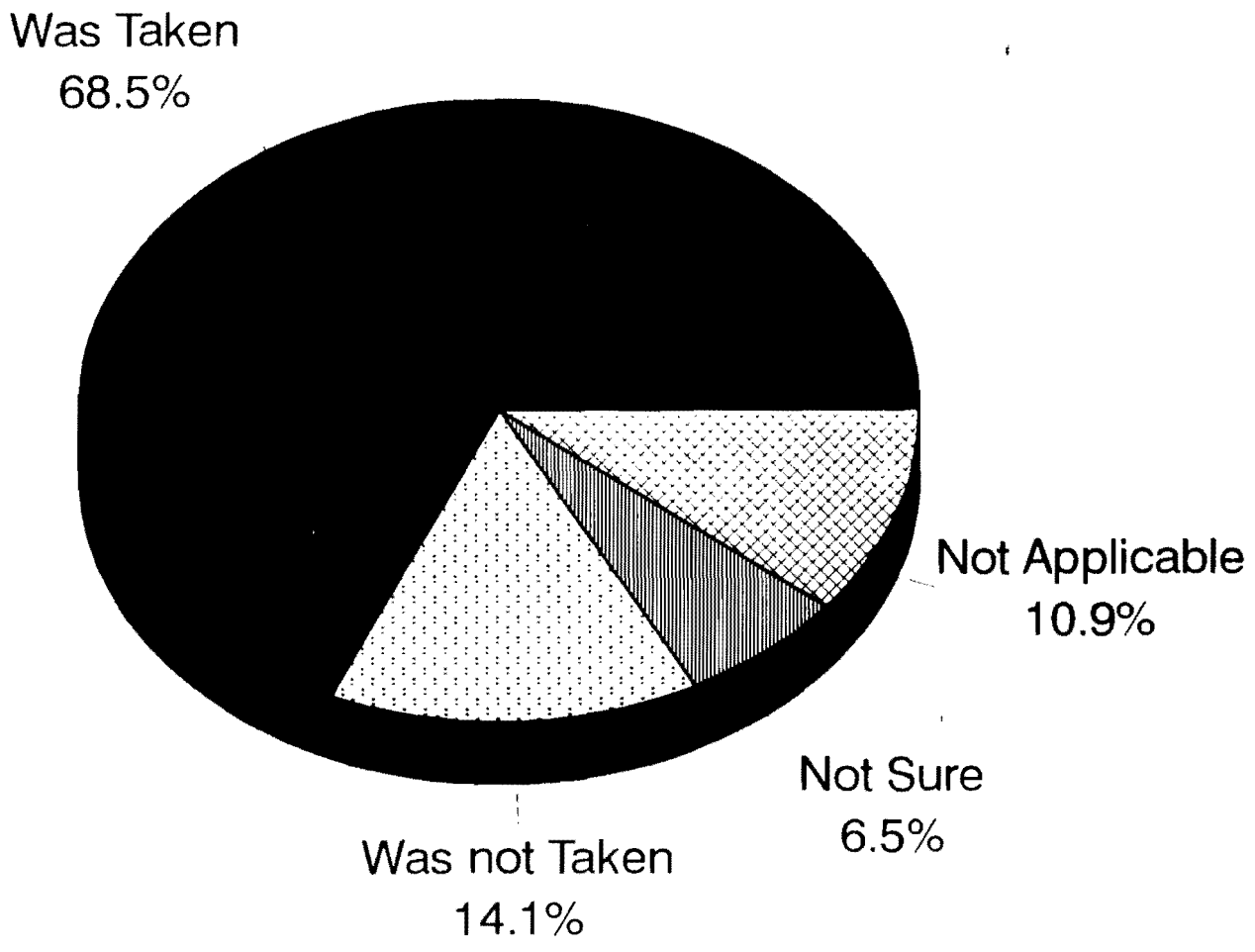
Question #7



Case Management Actions by the Court

Set and enforce time limits on allowable discovery

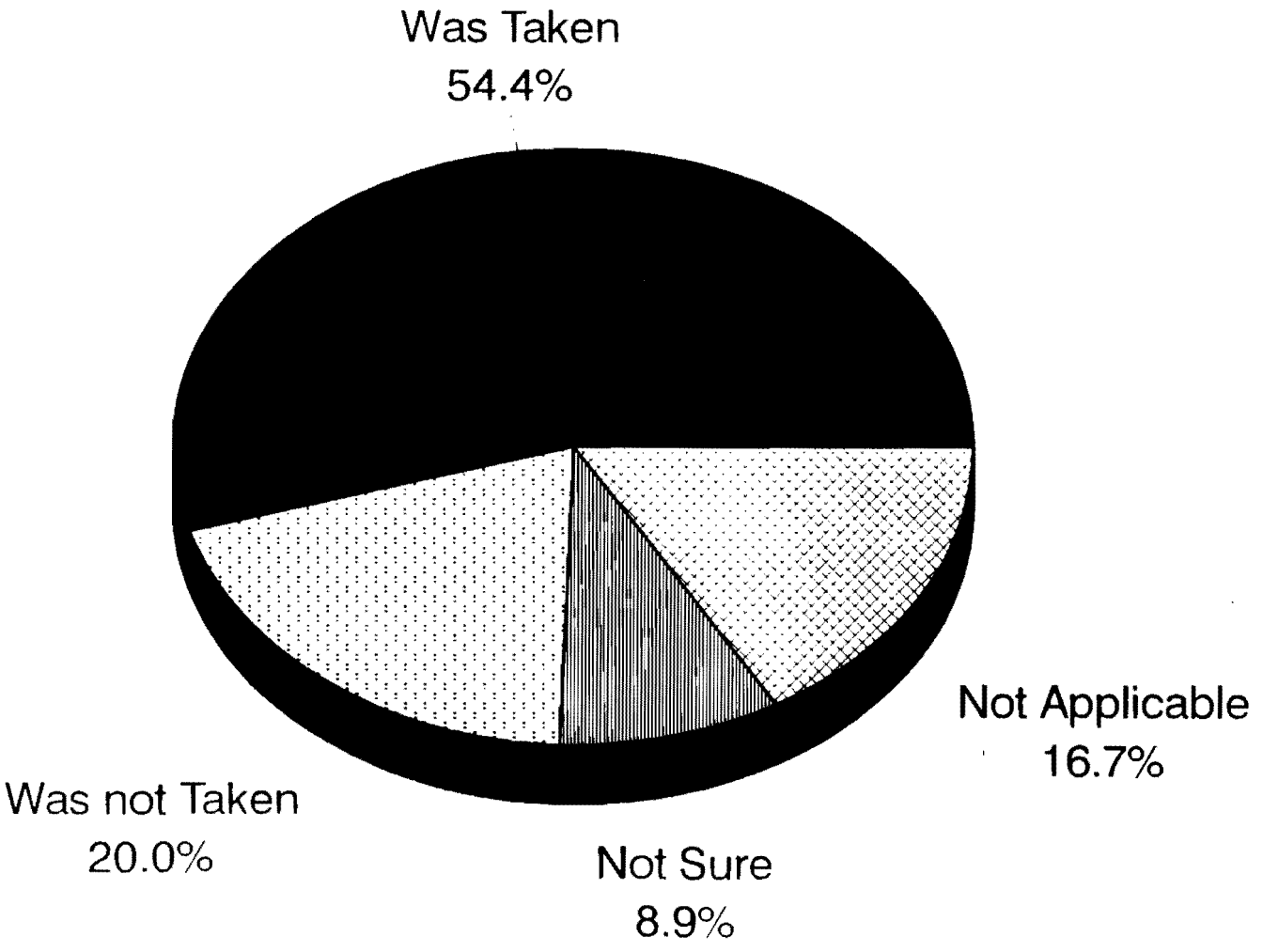
Question #7



Case Management Actions by the Court

Rule promptly on Pretrial Motions

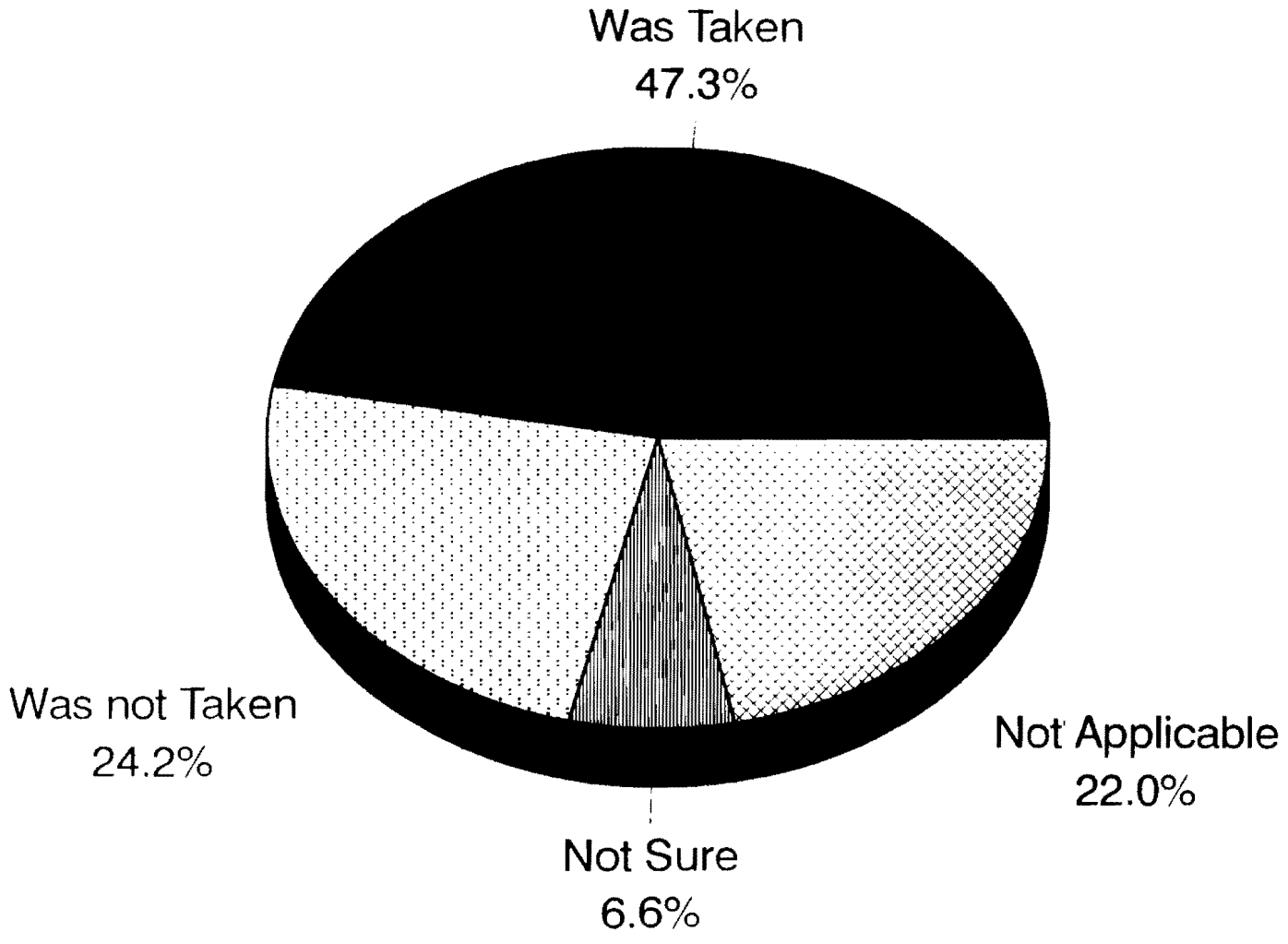
Question #7



Case Management Actions by the Court

Set an early and firm trial date

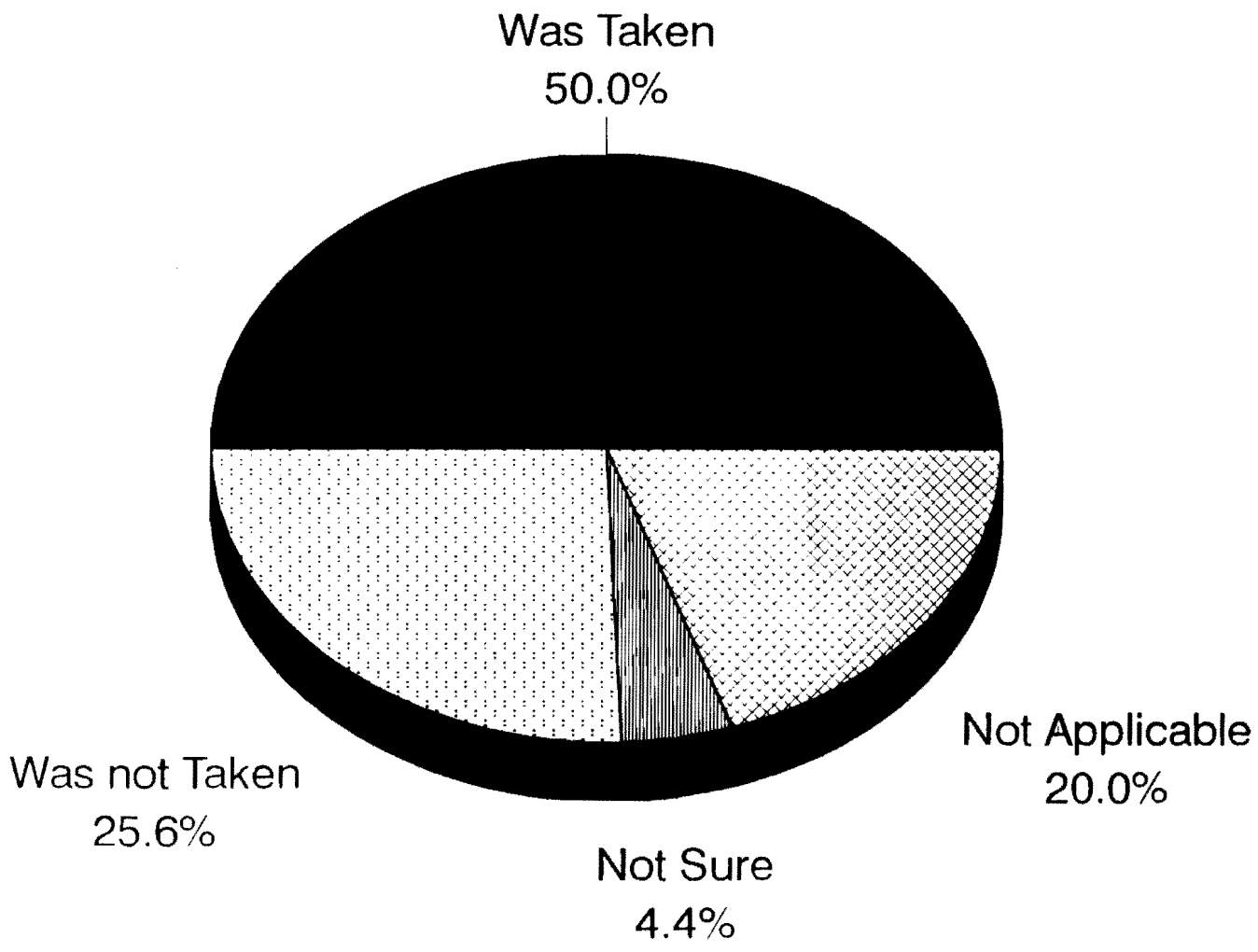
Question #7



Case Management Actions by the Court

Conduct and facilitate settlement discussions

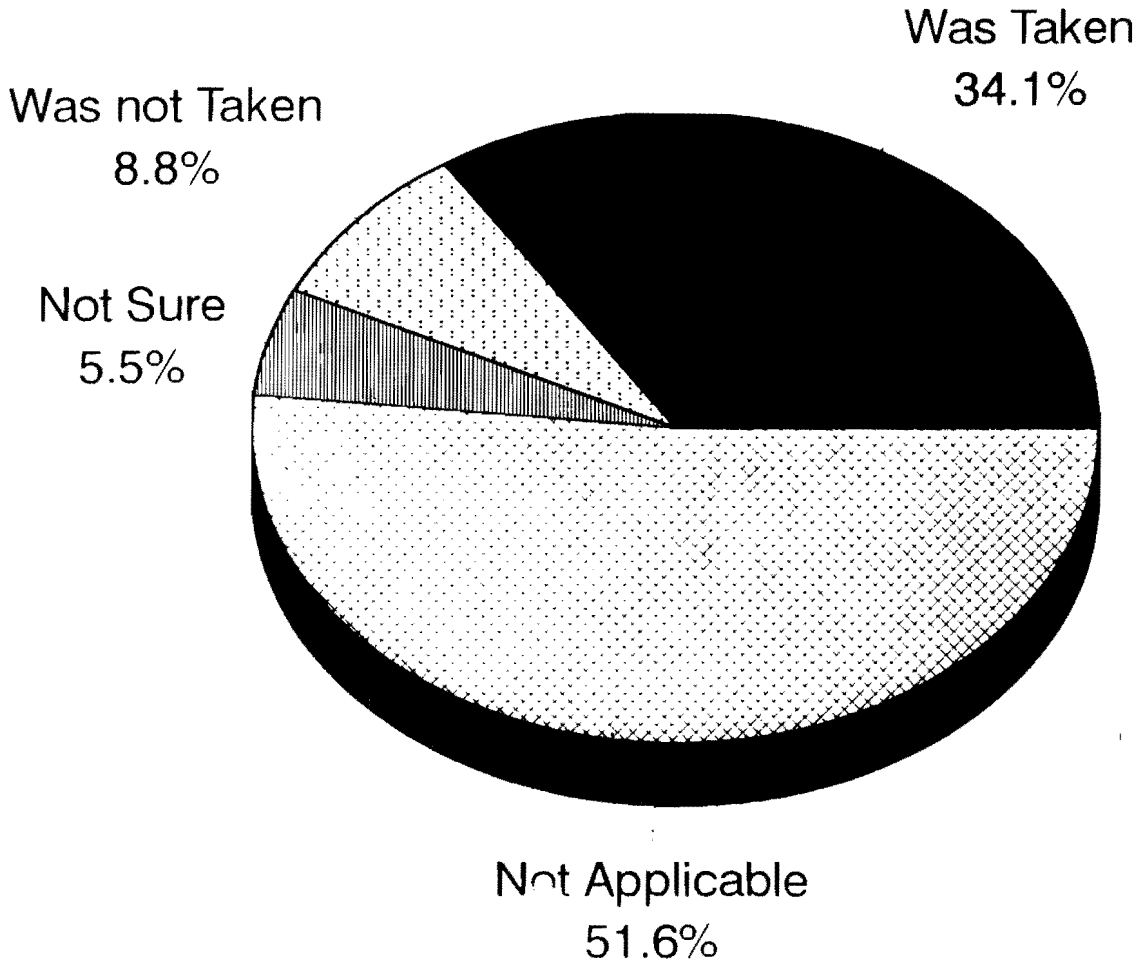
Question #7



Case Management Actions by the Court

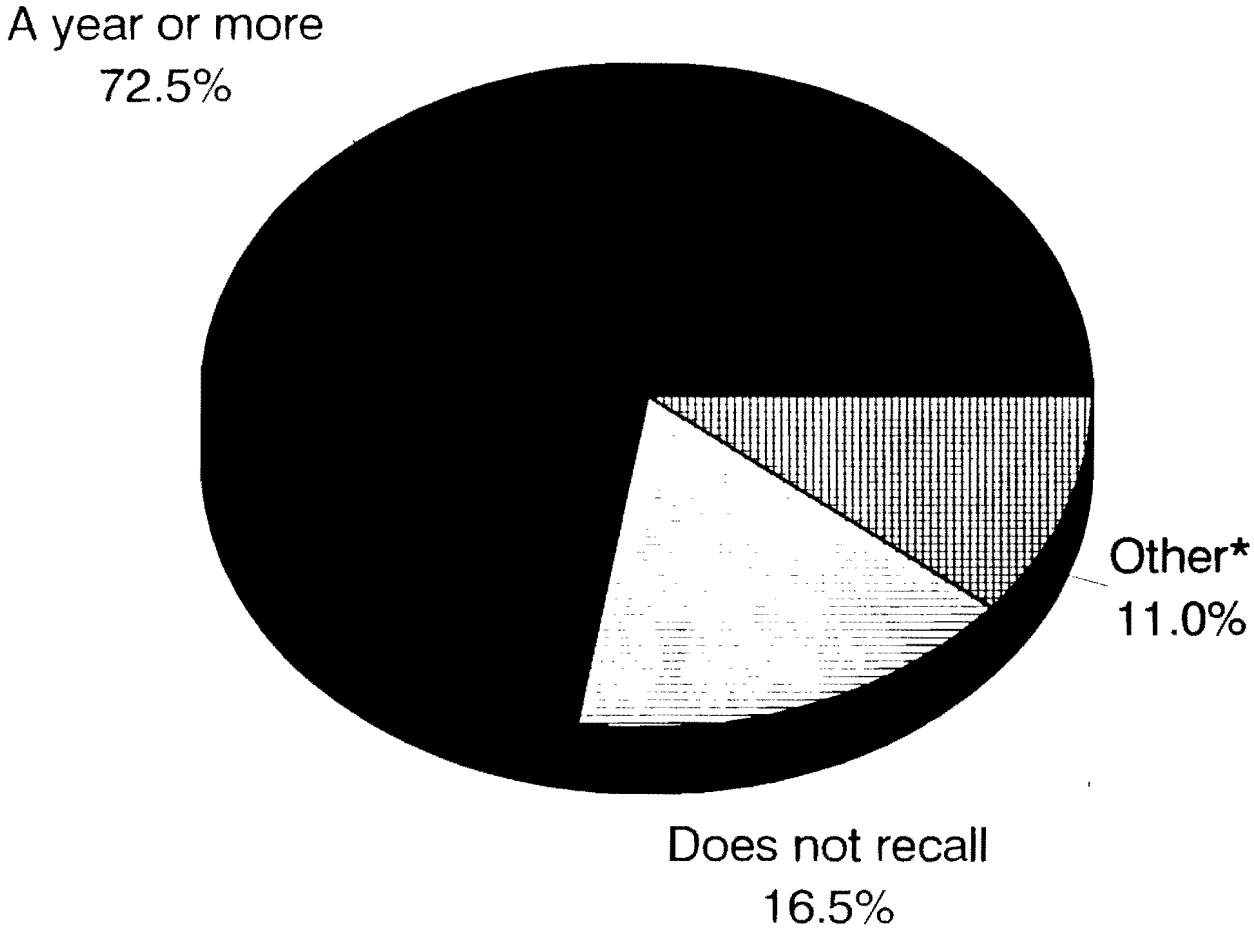
Exert Firm Control Over Trial

Question #7



Duration of Case for Client

Question #8

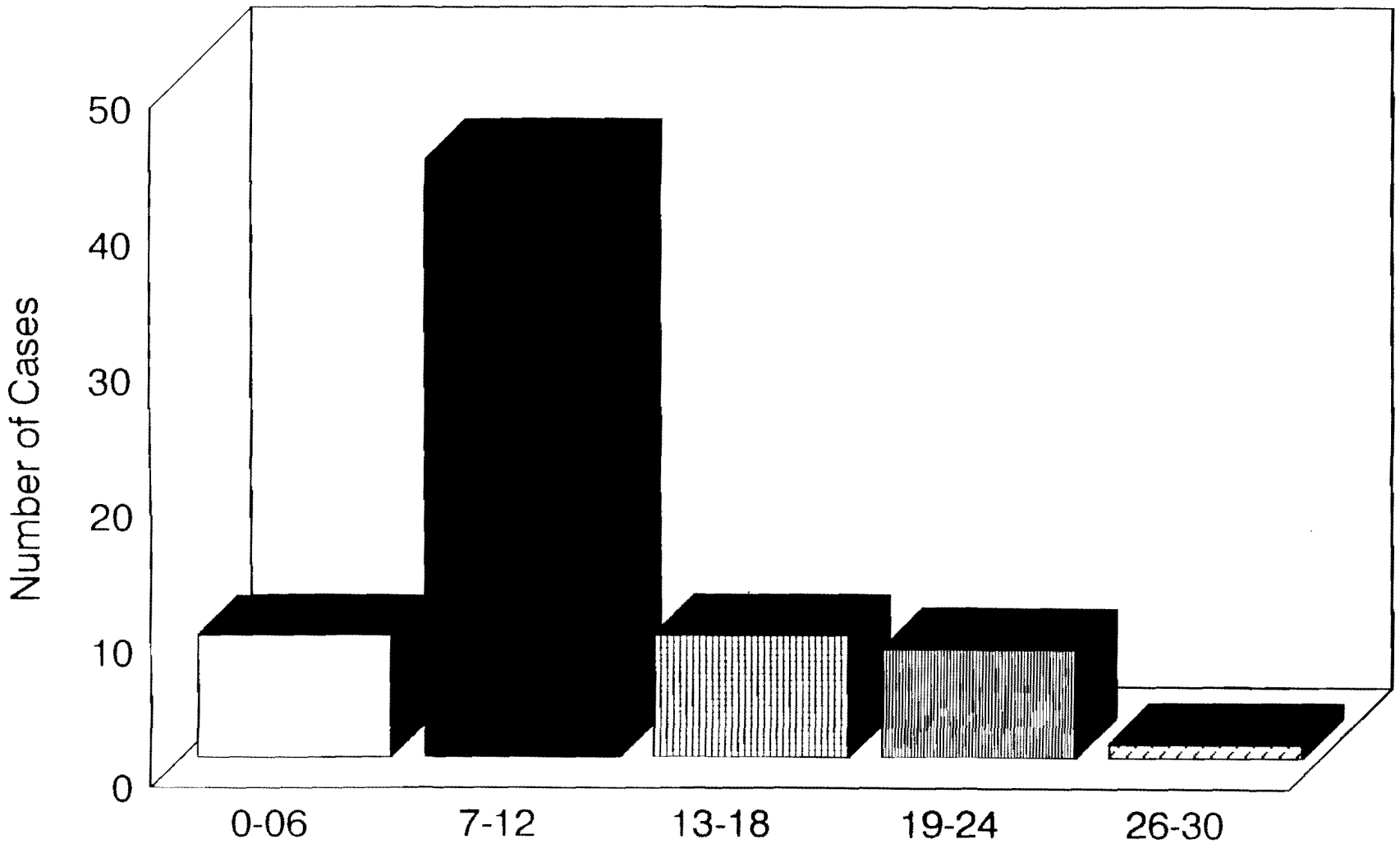


* Less than a year or more than two years

Reasonable Duration

of Case for Client in Months

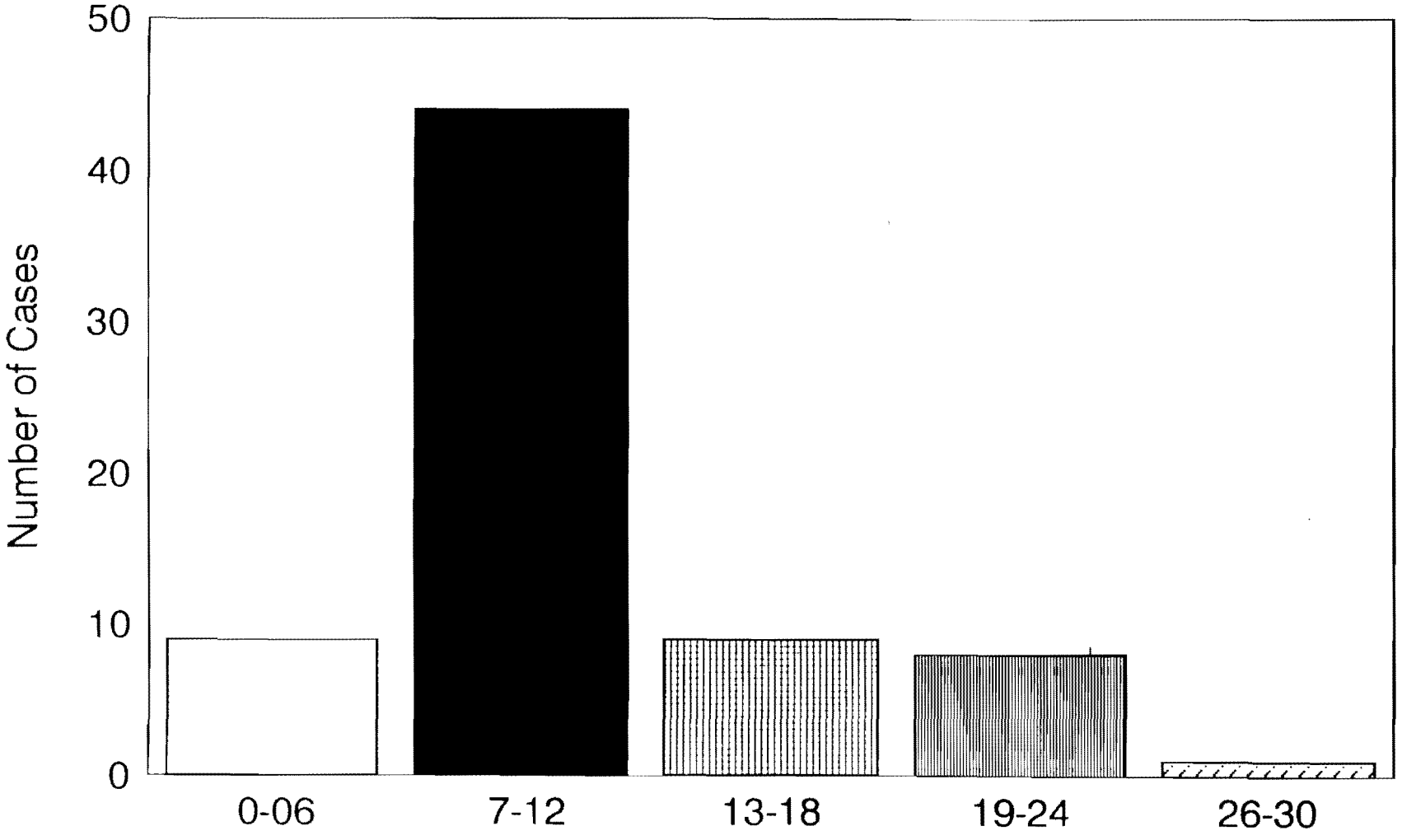
Question 9A



Reasonable Duration

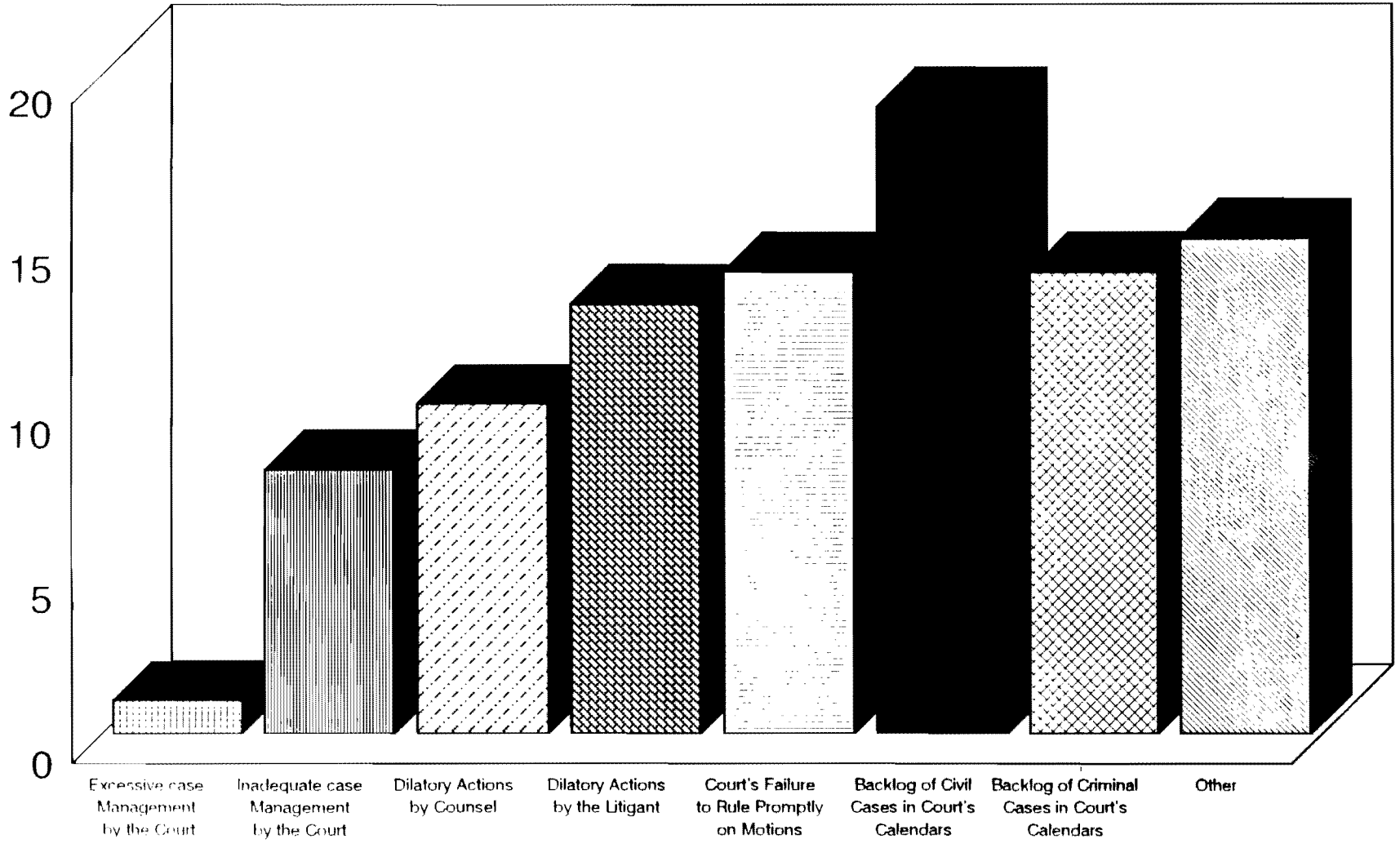
of Case for Client in Months

Question 9A



Delay Factors

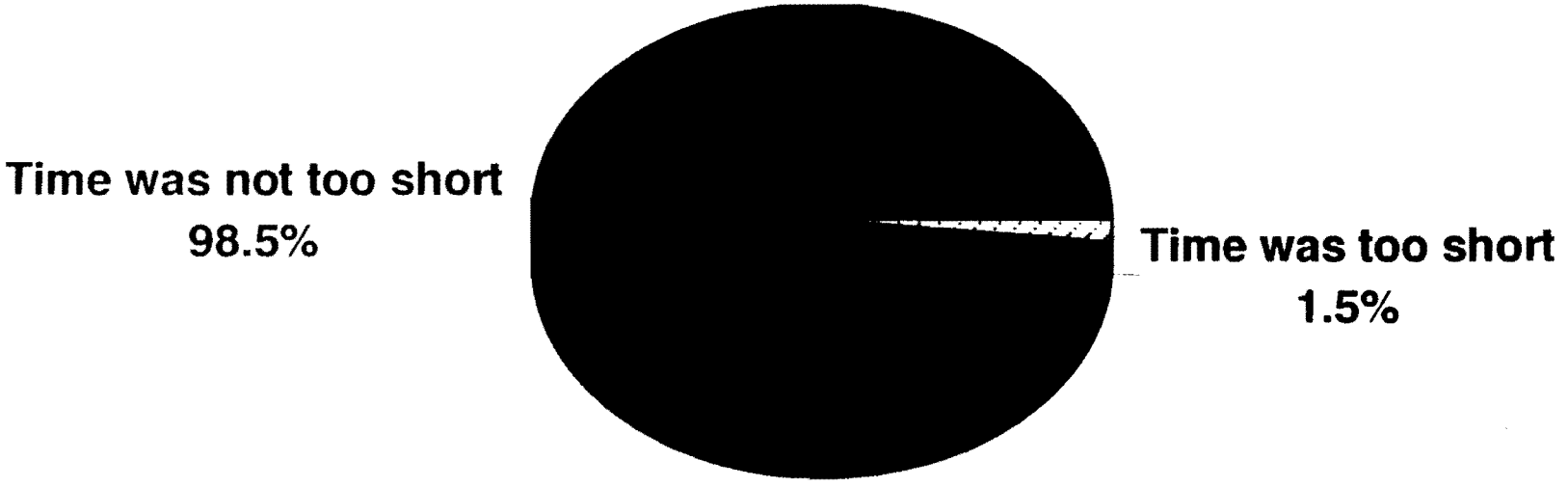
Question #9B



* Change in Legal Representation, Plaintiff Failed to Serve Defendant, Attorneys Carry Heavy Case Load, Interlocutory Appeals, Case Stayed Pending - Exhaustion of Administrative Procedures, Case Stayed Pending for Court of Appeal Decision on Similar Case

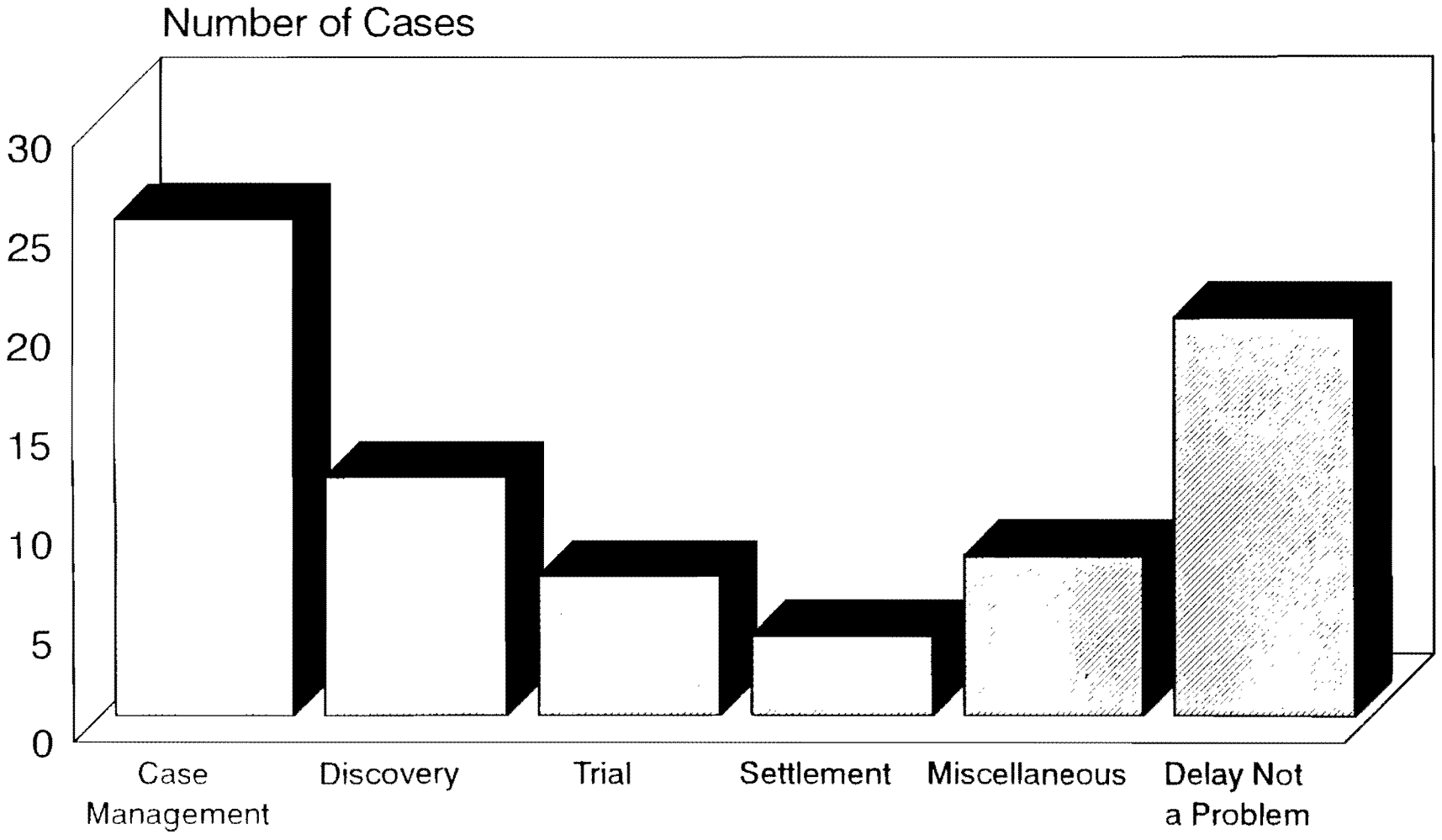
Time from Filing to Disposition

Question #9C



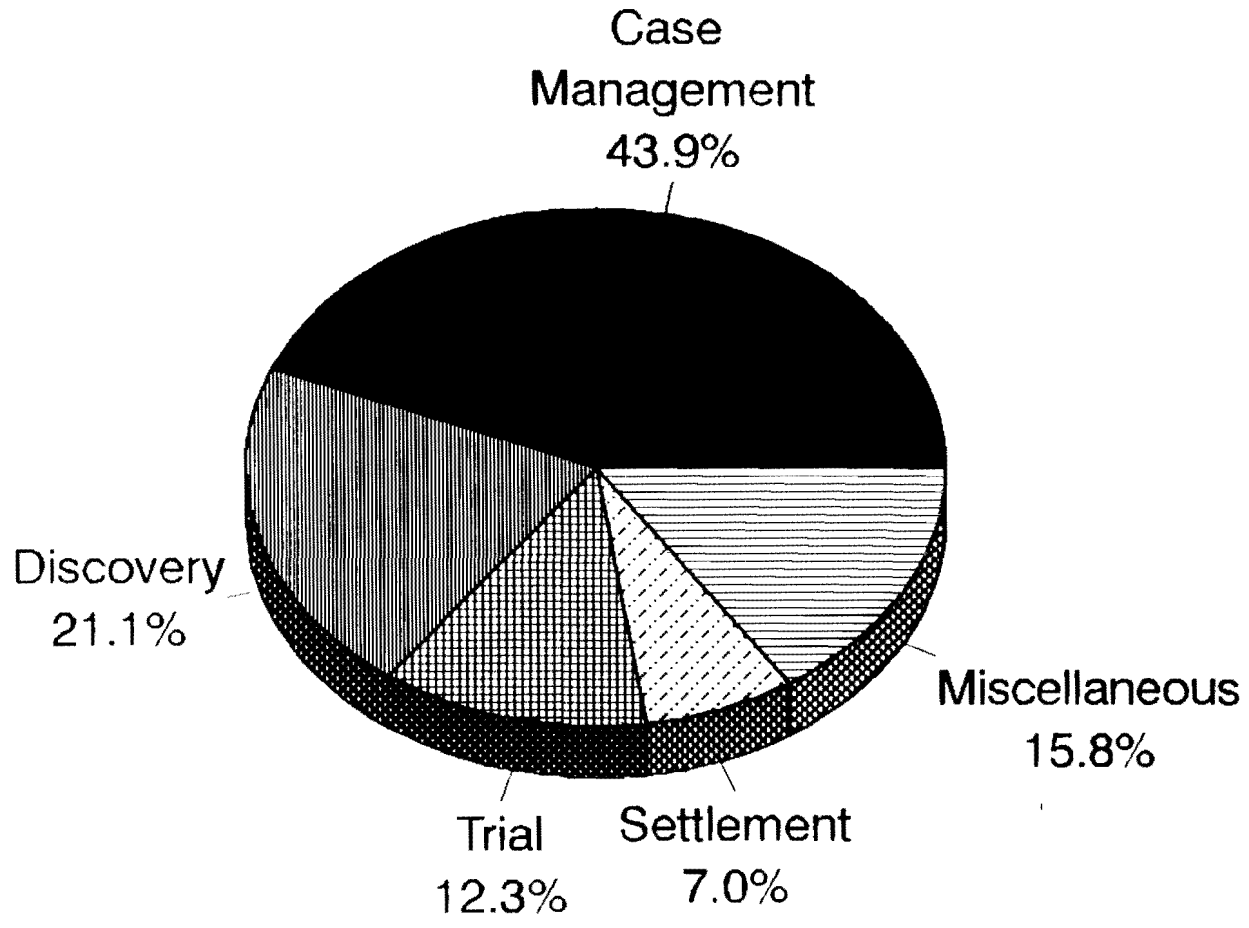
Delay Problems in Court

Question #10



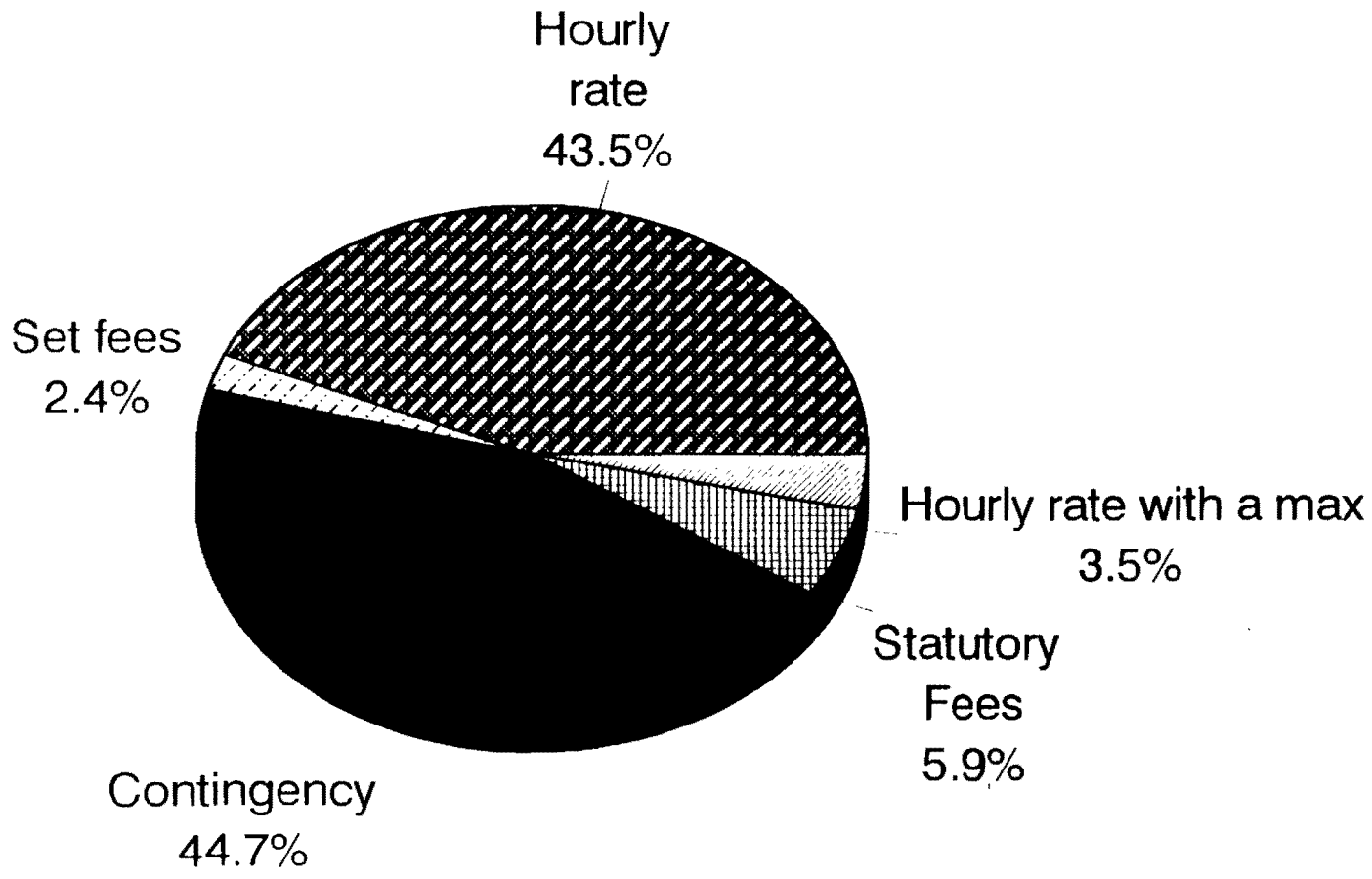
Areas with Delay Problems

Question #10



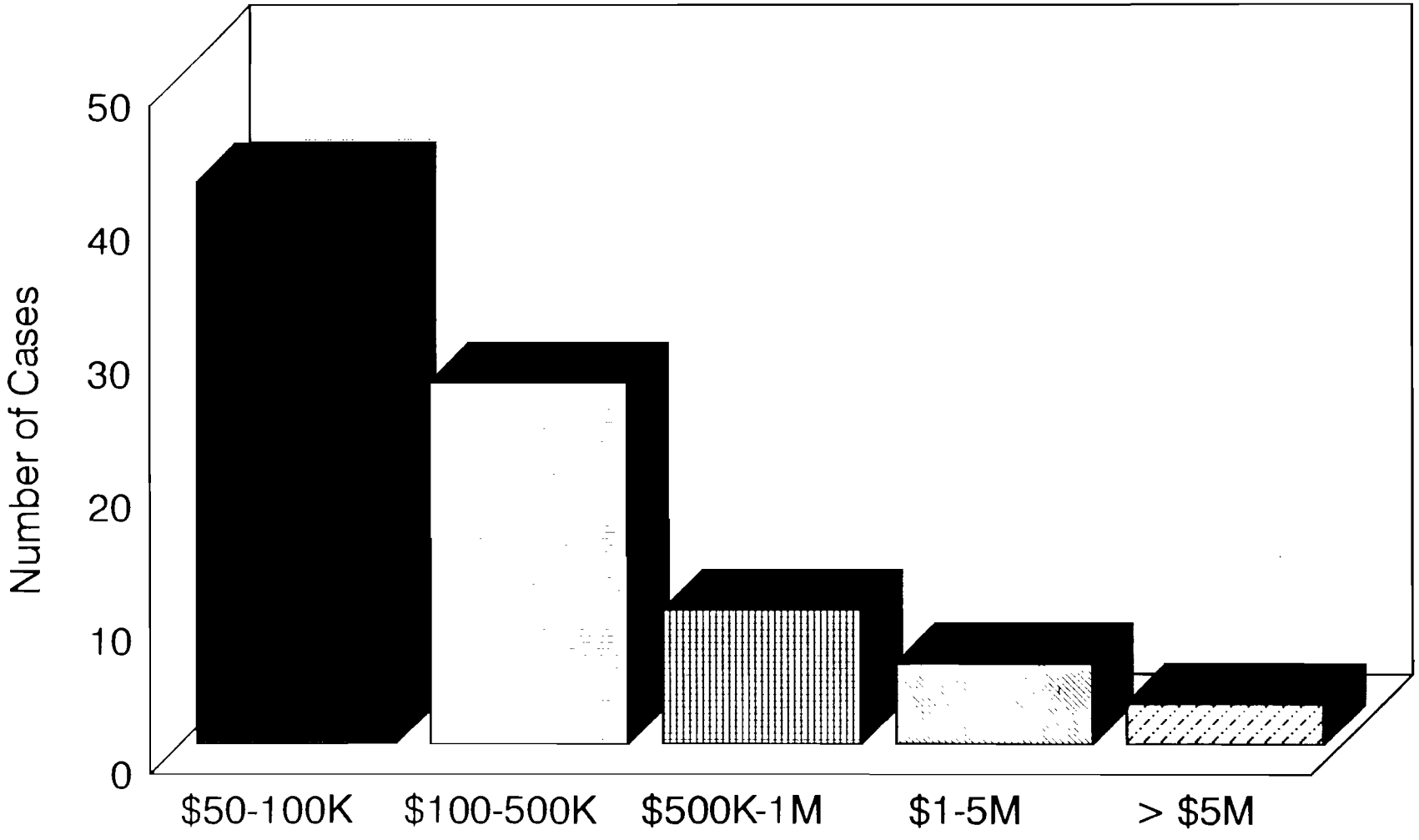
Type of Fee Arrangement

Question #11



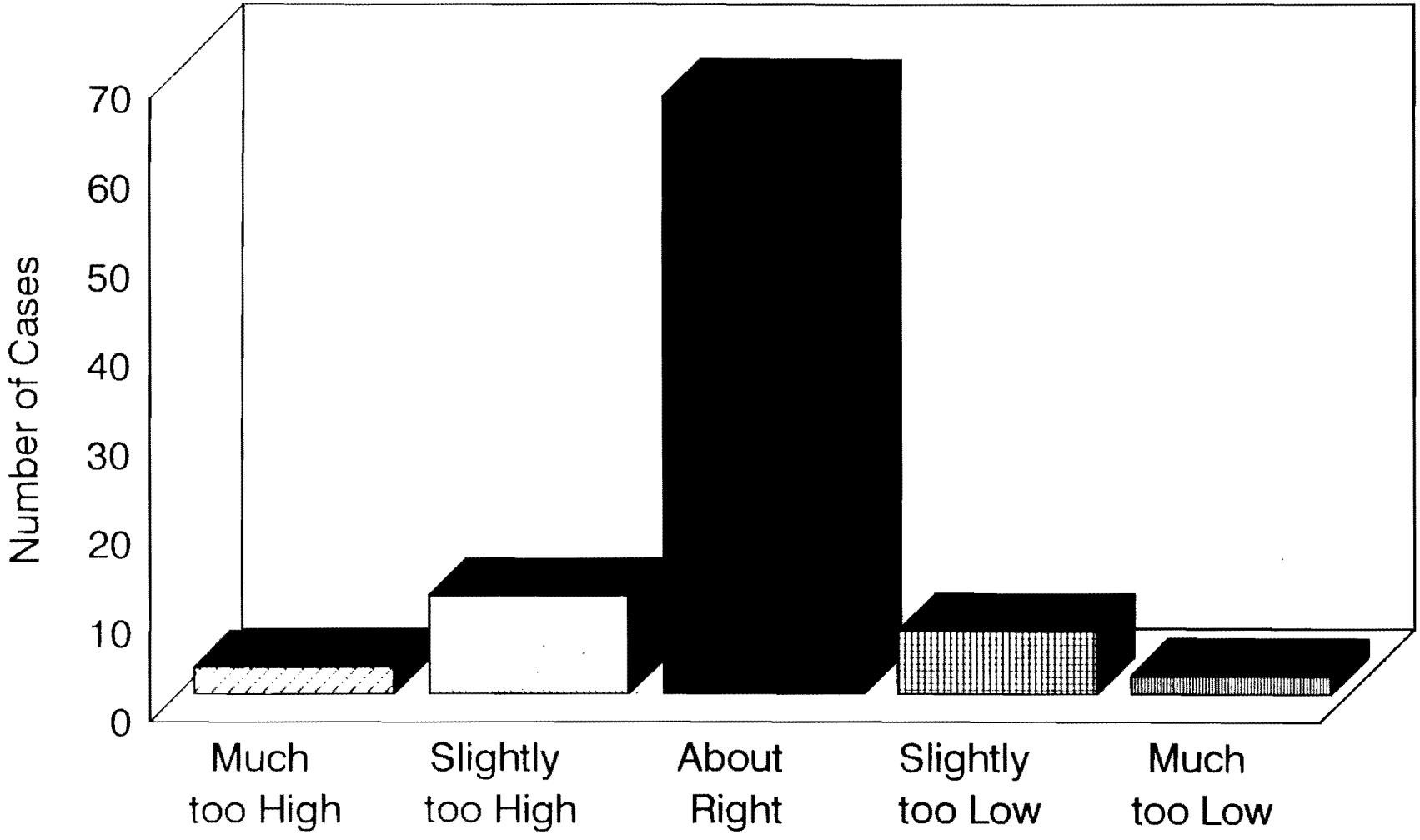
Amount of Money at Stake

Question #12



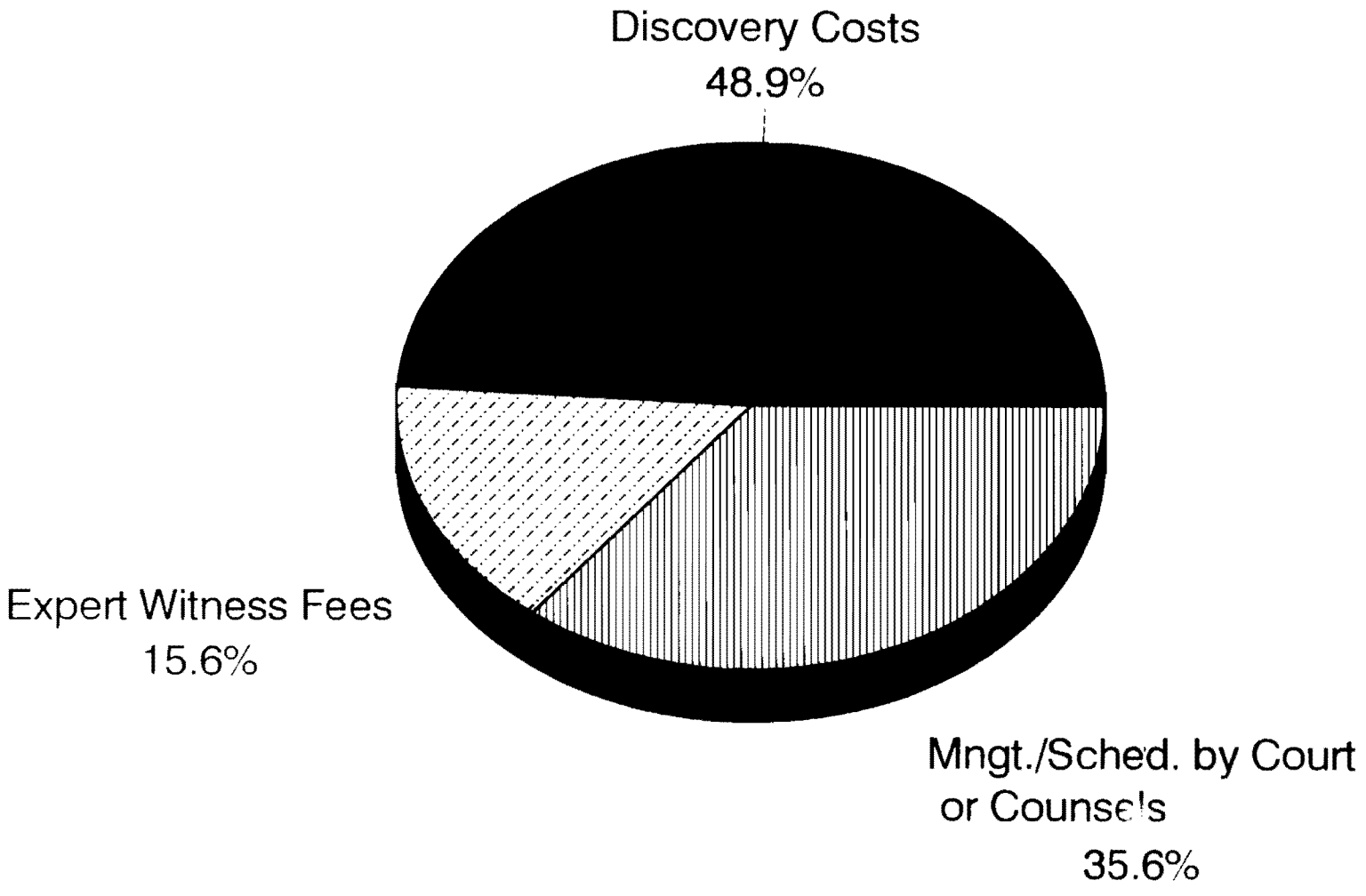
Fees and Costs Descriptions

Question #13



Reasons for High Costs

Question #14



APPENDIX 6

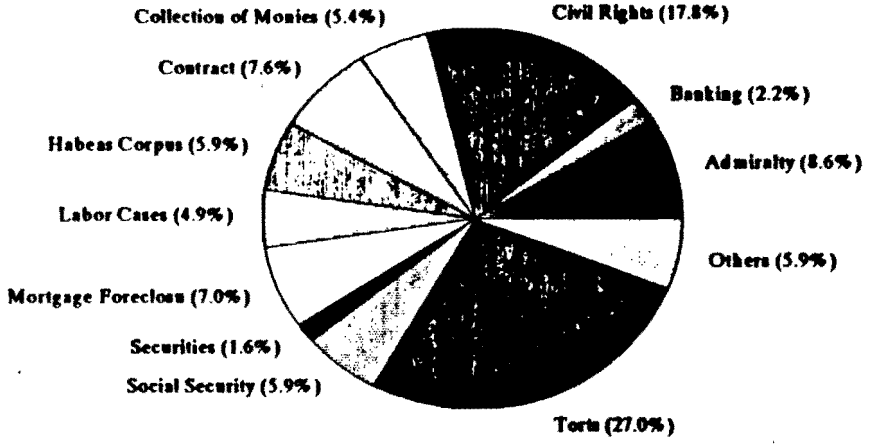
CASE EVALUATION GRAPHS

CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE DISTRICT OF PUERTO RICO

Report of Case Evaluation Committee

Cases in which Reviewing Attorneys Found there was No Unreasonable Delay:
(By Case Category)

Admiralty	16
Banking	4
Civil Rights	33
Collection of Monies	10
Contract	14
Habeas Corpus	11
Labor Cases	9
Mortgage Foreclosure	13
Securities	3
Social Security	11
Torts	50
Others	11
Total	185



Percentage of Total Cases Reviewed: 78.06%

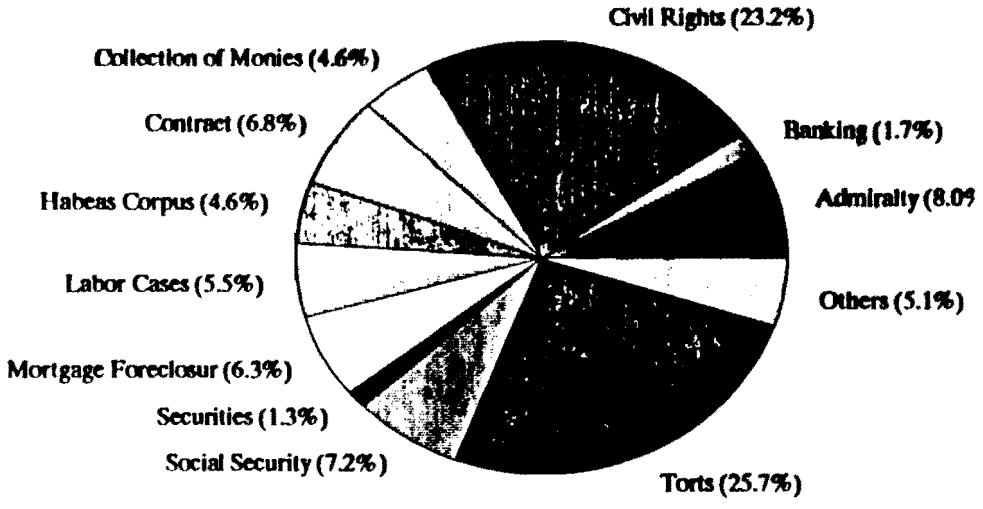
CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE DISTRICT OF PUERTO RICO

Report of Case Evaluation Committee

Categories of Cases Reviewed:

Admiralty	19
Banking	4
Civil Rights	55
Collection of Monies	11
Contract	16
Habeas Corpus	11
Labor Cases	13
Mortgage Foreclosure	15
Securities	3
Social Security	17
Torts	61
Others	12
Total	**237**

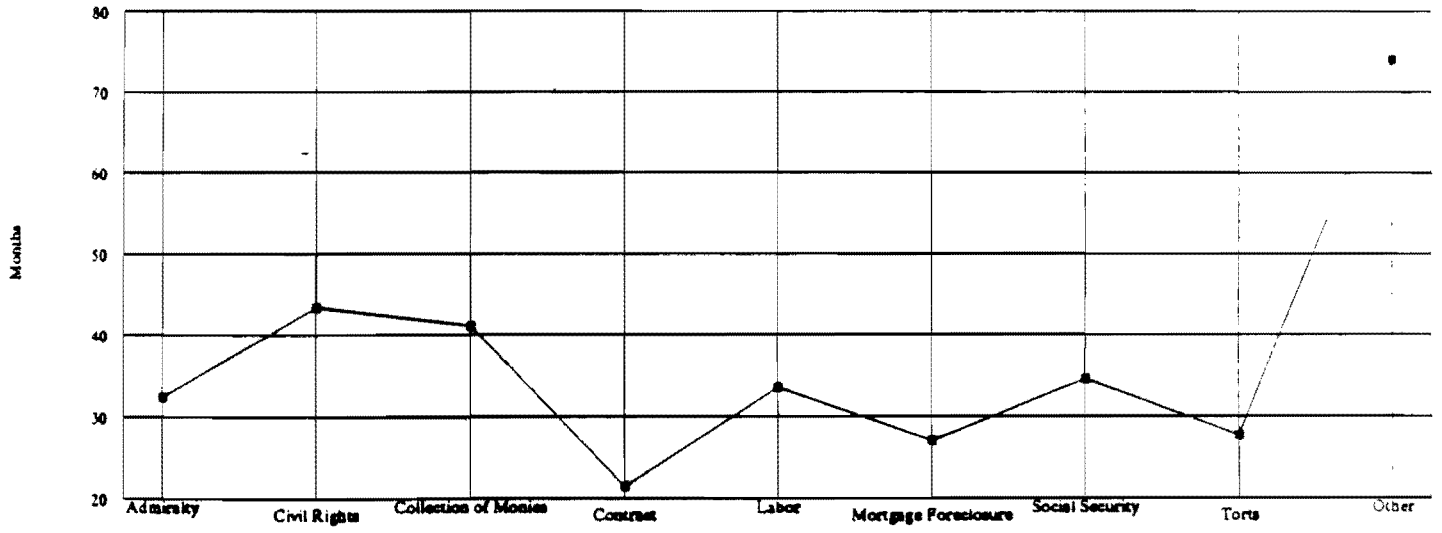
Percentage of Cases 100.00%



CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE
FOR THE DISTRICT OF PUERTO RICO
Report of Case Evaluation Committee

Cases with Unreasonable Delays – Average Time to Conclusion (Months):
(By Case Category)

Admiralty	*Civil Rights*	*Collection of Monies*	*Contract*	*Labor*	*Mortgage Foreclosure*	*Social Security*	*Torts*	*Other*
28	25	41	21	39	21	30	18	74
37	19		22	34	33	35	25	
32	54			32		20	42	
	50			29		60	28	
	52					16	34	
	52					46	23	
	29						29	
	30						25	
	40						34	
	57						17	
	19						29	
	71							
	60							
	62							
	30							
	37							
	60							
	33							
	47							
	51							
	57							
	17							
32.33	**43.27**	**41.00**	**21.50**	**33.50**	**27.00**	**34.50**	**27.64**	74.00



CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE
FOR THE DISTRICT OF PUERTO RICO
Report of Case Evaluation Committee

Cases with No Unreasonable Delays – Average Time to Conclusion (Months):
(By Case Category)

Admiralty	*Banking*	*Civil Rights*	*Collection of Monies*	*Contract*	*Habeas Corpus*	*Labor*	*Mortgage Foreclosure*	*Others*	*Securities*	*Social Security*	*Torts*
35	4	55	4	15	20	51	4	29	8	26	16
27	4	57	7	9	3	53	20	19	29	24	20
28	5	7	11	18	36	4	8	9	17	10	24
8	20	13	2	8	26	15	1	15		10	24
14		36	62	22	26	8	3	12		28	23
8		37	7	5	11	5	3	25		11	39
20		32	3	2	8	13	12	17		17	7
86		7	12	26	2	12	32	18		16	28
22		18	18	35	16	14	8	17		39	17
14		57	12	12	27		26	12		44	27
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10		32		18			12				19
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21.69	**8.25**	**28.46**	**13.86**	**15.86**	**16.09**	**19.44**	**13.86**	**17.09**	**18.00**	**22.84**	**20.52**