

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

**Annual Report of the Advisory Group  
of the United States District Court  
for the  
Northern District of New York  
*appointed under the*  
Civil Justice Reform Act of 1990**

April 12, 1995



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**ANNUAL REPORT OF THE ADVISORY GROUP  
OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK  
APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990**

April 12, 1995

**I N T R O D U C T I O N**

The Civil Justice Reform Act of 1990 required each United States district court that has promulgated a civil justice delay and expense reduction plan to reassess the state of the docket annually. This review is intended to lead to further action where appropriate, all in the interest of reducing "cost and delay in civil litigation."<sup>1</sup> The statute provides that in "performing such assessment, the court shall consult" with the advisory group appointed under Title 28, U.S.C. Section 478.

This report has been completed by the advisory group and the court according to the statutory mandate.

The advisory committee issued its original report and recommendations to the court on April 27, 1993. The court reviewed and considered the recommendations of the advisory committee and a final plan was drafted and approved by the court on May 14, 1993.

The advisory group and the court considered it appropriate to allow one full year of operation under the Plan before attempting to complete any assessment of how it was working and what impact, if any, it was having on the caseload. The Civil Justice Reform Act Plan called for many changes to the operations of the court including major modifications to the local rules of practice. Although the CJRA operating plan was adopted on May 14, 1993 and the court immediately began to operate under the provisions of the plan, it was not formally published to the bar and public until the new local rules were distributed in July of 1994.

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<sup>1</sup>Title 28 United States Code, Section 475

In preparing this first assessment of the plan the court relied on the advice of the Advisory Committee in reviewing and assessing the operations of the court. At the Advisory Committee meeting the members of the advisory group reviewed statistical data and questioned court officers about the functioning of the court and CJRA Plan since its approval in May of 1993. The empirical data contained in this report reflects how the court is operating from a statistical standpoint alone. It is important to note however that statistical data can be somewhat misleading when viewed with respect to the number of judicial vacancies present in this district.

The annual report examines the present state of the court docket, changes enacted over the last year, and plans of the Advisory Group and the court for the immediate future.

### **I. THE NORTHERN DISTRICT OF NEW YORK CJRA OPERATING PLAN**

The Northern District having adopted an Expense and Delay Reduction Plan on May 14, 1993 immediately began to set into motion the various components of the plan. First and foremost was the complete rewriting of the court's local rules. The purpose of this project was to consolidate the general orders enacted by the court to meet the requirements of the Civil Justice Reform Act Expense and Delay Reduction Plan, and to codify the requirements of the plan into one document for ease of reference and use. To accomplish this task the court appointed a Local Rules subcommittee to review, consolidate and rewrite the local rules of this district. The new local rules were also renumbered to coincide with the numbering system of the Federal Rules of Civil and Criminal Procedure for ease of reference by the bar and the public.

The rule project was completed on July 1, 1994 with adoption of the new local rules for the Northern District of New York. The Expense and Delay Reduction Plan was published under cover of the new local rules.

## **II. SOURCES OF INFORMATION**

The Advisory Group was provided with a detailed statistical profile of the district from the Clerk of Court, George A. Ray and his staff. He and his staff provided the committee members with statistics that were relevant to the disposition (filings and terminations) of both civil and criminal cases in the Northern District of New York. The committee reviewed the median times from filing to disposition and from filing to trial for the last two statistical years.

The information provided by the Clerk has proved invaluable to the Advisory Committee in its efforts to keep informed on the statistical situation in the district.

Second, the Advisory Group had the benefit of having significant input from the members of the committee themselves based on their personal experiences and what they had learned from other colleagues with cases operating under the Civil Justice Expense and Delay Reduction Plan.

Finally, the Advisory Group had the benefit of participation from the judges and magistrate judges on their experiences with the operating plan over the last year. The committee is well represented by Chief Judge Thomas J. McAvoy and Magistrate Judge Ralph W. Smith who have kept an active role in the application of the Expense and Delay Reduction Plan of this district.

## **III. STATE OF THE DOCKET**

### **A. The general picture**

#### **1. The 1993 Data**

When reviewing data two of the most significant figures in assessing the state of the civil docket are the median time from filing to disposition and the median time from filing to trial. We begin with statistical<sup>2</sup> year 1993. The median time from filing to disposition in Northern New York was 13 months. The median time from filing to trial was 22 months, down four months from the previous statistical year.

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<sup>2</sup> Statistical year runs from October 1st > September 30th.

The median time from filing to disposition of criminal cases in 1993 was seven months, up 1.2 months from the previous year. The increase in disposition time for criminal cases places the district 2nd best within the circuit and does not represent a cause for concern.

In statistical year 1993<sup>3</sup> the Northern District had 1752 civil filings and 209 criminal felony filings. Total filings for the district, civil and criminal, represented an increase of 9.3% over the previous year. Civil terminations in the district again out-paced filings in 1993. Terminations out-paced filings in 1993 with a total of 1845 civil terminations, 143 of the civil cases terminated were on consent before the district's U.S. Magistrate Judges. Settlements represented 41.19% of the terminations in 1993 with 35.19% disposed of by motion. The percentages by category type of termination for magistrate judges on civil consent cases were very similar with 39.86% terminated by settlement and 23.78% disposed of by motion.

## **2. Cases Pending for Three Years or More**

A major concern of the bench, litigants and lawyers are cases that remain pending in the district for several years. The Civil Justice Reform Act of 1990<sup>4</sup> requires the Director of the Administrative Office to make public twice a year the number of and names of all civil cases that have been pending for three years or more from their filing dates. The federal courts have reported cases pending for three years or more for several years, what the statute added was the identification of the judge before whom the three year old cases are pending.

When reviewing the three years pending cases report, the Northern District of New York has had great success in terminating cases pending for three years or more. For the statistical year ended 1993 the Northern District had 473 cases or 18.9% of the civil docket pending for three years or more. This represents a decrease of 2.7% over the previous year and 12.1% over the 1990 figures. The reduction can only be attributed to the aggressive case management of the court at a time when the court was operating at only two of its five authorized district judgeships.

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<sup>3</sup> Attached as Exhibit A are spreadsheets and graphs representing civil and criminal filings and terminations for statistical year 1993.

<sup>4</sup> 28 U.S.C. Section 476(a)(3)

### **3. Pending Motions and Bench Trial Decisions**

In addition to cases pending for three years or more, the Civil Justice Reform Act of 1990<sup>5</sup> requires the Director of the Administrative Office to make public twice a year the number and names of all motions and bench trial decisions pending before the judicial officers of each court. The federal courts have reported on pending motions for several years although the statute changed the way that motions are reported by calculating the time frame (six months or more) from the filing of the motion instead of the date by which all papers were submitted and all hearings held which was the criterion under the older reporting system. The new report format also reflects the actual number of separate motions pending in each case, ie: if a plaintiff moves for summary judgment, disclosure of materials, appointment of counsel and sanctions the court must report each motion separately - four motions. The report for the period ended September 30, 1993 shows that the Northern District had 423 motions pending for six months or more up 82 motions from the previous report filed on March 31, 1993. Again the committee and the court feel that this large number of pending motions is attributable to failure of congress to timely fill judicial vacancies in this district. Throughout this period of time the district was operating with only two of its full complement of five district court judges.

### **4. The 1994 Data**

We again review two of the most significant figures in assessing the state of the civil docket, median time from filing to disposition and median time from filing to trial. The district improved on the median time from filing to disposition by decreasing the time from 13 months in 1993 to 11 months in 1994. The committee and the court feel that this is attributable to the differentiated case management system put into place by the Expense and Delay Reduction Plan of this district, with emphasis on the required in-person conferences before U.S. Magistrate Judges early in the litigation cycle.

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<sup>5</sup> 28 U.S.C. Section 476(a)(1)&(2)



However, the court did not fair so well on the time from filing to trial as the statistics reflect an overall increase of 10 months from the previous year's average of 22 months to a high for 1994 of 32 months. When reviewing the time from filing to disposition the committee and the court are acutely aware of the fact that this figure is often skewed by the fact that the court is continuing to dispose of cases three years old or older and cases approaching the three years old mark. An obvious example of this problem arises in a year when a court terminates an unusually small portion of its oldest cases. The average median time both from filing to disposition and from filing to trial will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of the cases terminated in that year may suggest that the court is losing ground rather than gaining. In 1994 several of the civil trials completed were cases pending for several years. The fact that the court has continued to place a preference on the older cases on its civil trial docket has effected the median time from filing to trial and will continue to do so until the backlog of pending cases is addressed. The committee and the court are also aware that until all of the judicial vacancies are filled in this district and for some time after that the large number of pending civil cases will continue to burden this court with statistical figures that are somewhat misleading.<sup>6</sup>

In statistical year 1994<sup>7</sup> the Northern District had 1696 civil filings and 266 criminal felony filings. Total filings for the district, civil and criminal, represented only a slight increase of .1% over the previous year. The district terminated 1608 civil cases in 1994 which was down 237 cases from the previous year. Cases disposed of by consent before the U.S. Magistrate Judges rose from 143 in 1993 to 179 in 1994.

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<sup>6</sup> Statistical Profile of U.S. District Courts are based on the authorized number of judgeships and not by the actual number of judgeships performing full time service for a court. The Northern District had 3 judicial vacancies until the appointment of Judge Pooler in September of 1994. As of the date of this report the district continues to have 2 judicial vacancies.

<sup>7</sup> Attached as Exhibit B are spreadsheets and graphs representing civil and criminal filings and terminations for statistical year 1994.

When reviewing terminations for 1994 the committee noted a substantial increase in the percentage of cases voluntarily dismissed. In 1993 8.58% of the terminated cases were disposed of by voluntary dismissal, in contrast the figure for 1994 increased to 14.42%. The committee and the court believe that the increase is attributable to the in-person conferences conducted by U.S. Magistrate Judges and the review of all civil cases at an early stage by the court.

The median time from filing to disposition of criminal cases rose from seven months in 1993 to 7.3 months in 1994. It is noted that the national average also increased from 6.3 months in 1993 to 6.5 months in 1994. The number of criminal felony filings increased from 209 cases in 1993 to 266 felony filing in 1994. More importantly is the increase in the number of defendants per-case. In 1993 the average number of defendants was 1.3 per case (325 felony defendants) in comparison the 1994 figures reflect 1.9 defendants per-case (510 felony defendants). In addition to the increase in total defendants, the percentage of drug defendants, which has a dramatic affect on the demands of the court, increased from just over 20% in 1993 to over 40% in 1994.

### **5. Cases Pending for Three Years of More**

The district continued to decrease its backlog of cases pending for three years or more. At the end of statistical year 1993 the court had 473 cases pending for three years or more representing 18.9% percent of the pending caseload. For statistical year 1994 the court had 466 cases pending for three years or more representing 17.3% of the pending caseload.

Total pending cases in the district increased in 1994 to 2,894, some 245 cases more than were pending in 1993. The committee reviewed several causes for the increase and determined that the increase in criminal filings and the work associated with handling felony matters was the major factor influencing the increase in pending civil cases in this district. When reviewing how district court judges<sup>8</sup> spent their time on the bench in 1994 compared to 1993 we see a dramatic increase in the time spent on criminal proceedings by the two full time district court judges. In 1993 the two full time district court judges averaged 17.08% of their in-court time on criminal proceedings, however in 1994 they spent 34.40% of their in-court time on criminal proceedings.

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<sup>8</sup> Attached as Exhibit C are spreadsheets and graphs representing court activity for the two authorized district judges for 1993 and 1994.

## **6. Pending Motions and Bench Trial Decisions**

The report for the period ended September 30, 1994 shows that the Northern District had 601 motions pending for six months or more, up 178 motions from the previous year's report. Again the committee reviewed the possible reasons for the delay in issuing decisions on motions in the district and attributes much of the delay to the failure to timely fill the judicial vacancies. It was not until September 1994 that the third of the five authorized judgeships was filled.

To help with the backlog of pending motions in the district Second Circuit Chief Judge Newman and Southern District Chief Judge Griesa assigned the services of six new southern district judges to the Northern District. Chief Judge McAvoy assigned more than 70 case files to the southern district judges to help alleviate the backlog of pending motions in the district.

During the Civil Justice Reform Act Advisory Council annual assessment meeting the committee discussed at length the new motion filing procedure which was adopted by the court under General Order #41. It was the consensus of the committee that the procedures for filing under General Order #41 add to the delay in filing and disposition of motions before this court.

The court is in the process of revising the general order to make it more "user friendly" and understandable. The court feels that the procedure under General Order #41<sup>9</sup> which is intended for dispositive motions only, allows counsel to set a realistic return date for motions when both parties will be available for argument, and in some cases may result in the narrowing of issues or withdrawal of requested relief. The court also finds beneficial the requirement that the motion papers and opposition papers be filed as a "package." This allows the court to immediately begin working on the motion without the delay of waiting for opposition papers to be filed. The court has also noticed a substantial reduction in the number of necessary adjournments of dispositive motions because all papers are filed at one time. The court will amend the Uniform Pretrial Scheduling Order to make clear the filing deadlines for dispositive motions under General Order #41.

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<sup>9</sup> Exhibit D - General Order #41 as amended on April 6th, 1995.

**B. Alternative Dispute Resolution Programs<sup>10</sup>**

The Northern District is one of 20 pilot courts utilizing Court Annexed Arbitration. Among the 20 pilot courts Northern New York is one of the 10 voluntary arbitration courts.

Although the court has vigorously promoted its arbitration program, it has had little success in convincing litigants to consent into the program. Since the program's inception the court has noticed the opportunity to consent in more than 3,000 civil actions. Of the cases noticed only four cases have consented into the program. In addition to the notice given to the litigants at the initial filing, the magistrate judges and district judges also encourage litigants to avail themselves of the program. Because the program is a truly "voluntary" program, before the case can be referred into arbitration all parties must consent to proceed.

Another available method of ADR in the district over the last two years has been the availability of the magistrate judges and district judges to conduct settlement conferences upon the request of the parties. As noted in the statistical profile for 1993 and 1994 the district has had great success in terminating cases by reason of settlement. The involvement of our magistrate judges at the early stages of civil litigation has resulted in an increase of civil consents before the magistrate judges. Consents in the district are by stipulation of all parties. A trial before a magistrate judge often results in a speedier resolution due to the congested criminal dockets pending before the district judges.

Chief Judge Thomas J. McAvoy appointed an ADR subcommittee in 1993.

The committee conducted a survey<sup>11</sup> of members of the bar on various ADR alternatives that could be made available to litigants in this court. The results of the survey were presented to the Advisory Group at the annual assessment meeting. Based on the results of the survey the subcommittee will consider development of: a mediation program; an early neutral evaluation program; a settlement week program, and also maintain and look for ways to improve the utilization of the arbitration program.

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<sup>10</sup> 28 U.S.C. Section 473(a)(6) Authorizes District Courts to Implement ADR Procedures.

<sup>11</sup> Attached as Exhibit E is a copy of the form survey used by the ADR committee.

**C. Continuing Study of Prisoner Civil Rights Litigation**

The committee discussed at length the problems associated with managing prisoner litigation in the Northern District of New York. The statistical profile shows that in 1993 four-hundred sixty-one-prisoner cases were filed in the district representing 26.31% of the total filings. In 1994 five-hundred ten-prisoner cases were filed in the district representing 30.07% of the total filings. The Expense and Delay Reduction Plan called for a specialized tracking system for prisoner litigation. Because of the impending judicial emergency faced by the Northern District, the tracking system has not been put into effect. A meeting between the court's Pro Se Staff Attorney, Civil Justice Reform Act Attorney, Chief Deputy Clerk and New York State Attorney General's Office was conducted to address the concerns of the committee and the court. The scope of the meeting included implementation of the CJRA plan's requirements, methods for improving case management techniques used by the district and available alternatives and methods used elsewhere. The clerk's office will provide additional statistical information to the subcommittee for review before making a formal report to the Advisory Committee.

**IV. AUTOMATION AND COMPLETED CJRA PROJECTS**

Over the last year the clerk's office has completed several major automation projects in the district. In May of 1993 the court implemented CHASER, "Chambers Access to Selected Court Electronic Records. The CHASER program provides an access link to the clerk's office computer system for each judge's and magistrate judge's chambers. Chambers can now immediately determine the status of all cases pending before a particular judge. The system also provides chambers with updated pending motion reports that can be used to help manage the motion calendar. In June of 1994 the court's automated criminal docket program was implemented.

In addition to tracking docket entries, the program offers information on case status, speedy trial and pending motions and all case related deadlines. The court introduced PACER "Public Access to Court Electronic Records" to the bar and public in August of 1994. The PACER program allows access to the court's docket program via a modem from any P.C.. For a nominal charge of .75\$ per-minute, PACER users can search court files, check deadlines, determine if the court has issued an order on a pending motion and print court docket sheets from their office or home P.C.

The court is also in the final development stages of a new Criminal Justice Act / Pro Bono database<sup>12</sup> that will assist the court in selecting qualified and available attorneys for CJA appointments and Pro Bono appointments. The clerk's office anticipates that the program will be operational by July of this year.

A continuing goal of the clerk's office and court is to enhance the jury program. Jurors perform a vital role in the justice system. The protection of our rights and liberties is largely achieved through the teamwork of the judge and jury. The jury in a very important way, actually becomes part of the court itself. Last year the court processed more than 18,000 jurors, because this area of "public" contact represents an area where the general public has the most contact with court it is vital that the entire process be as efficient as possible. The goal of the clerk's office is to make the process efficient and cost effective, providing the best possible to service to the jurors, litigants, and the court. Five years ago the Northern District was 92nd out of the 94 district courts in juror utilization, today we are 21st of 94 courts with juror utilization statistics of less than 22%. This figure is 8% under the goal of 30% established by the Judicial Conference of the United States. The clerk's office recently began an undertaking to automate and further refine the jury process in Northern New York. Automation of the jury program will be completed by June 1 of this year. The project will eliminate the outsourcing needs for maintenance of the jury wheel, and will virtually eliminate the paper intensive duties associated with processing juror questionnaires and summons. When reviewing the jury program every aspect of the program has been reviewed and improved upon, including instructions provided to the jurors at the summons stage, orientation of jurors when they report, and the use of exit questionnaires so that the jury administrator can continue to monitor our progress and to look for additional ways to improve our service to the public.

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<sup>12</sup> Exhibit F - Criminal Justice Act / Pro Bono Application Form

## **V. JUDICIAL AND CLERK'S OFFICE RESOURCES**

### **A. Judicial Resources**

The Advisory Group in its original report and recommendations to the court focused on judicial vacancies and the failure by Congress to fill the authorized judgeships in a timely manner. The failure to fill authorized judgeships continues to be the most pressing problem faced by the Northern District of New York. Until September of 1994 when Judge Rosemary Pooler was appointed to the bench in Northern New York, the district had three vacancies out of the five authorized judicial positions. The district has the highest relative impact of judicial vacancies of any circuit or district court in the United States. As of the date of this report the district continues to operate with only three of the authorized five judicial officers. The judicial vacancies represent more than 42 Vacant Judgeship Months in the district.

The court is not in position to speed the process of selecting and confirming new judges, but only too more effectively manage the resources at hand. The court feels that the Expense and Delay Reduction Plan has had a major impact on streamlining the litigation process in Northern New York. The continued vigilance of the court has resulted in the court being able to keep pace with the filings over the last two years. However, the backlog of pending cases<sup>13</sup> continues to loom over the district and will continue to do so until the district has sufficient judicial resources to address the problem.

Credit for the success over the last two years must be given to the senior judges for their continuing contribution. The work performed by our two senior judges makes it possible for the court to keep abreast of its workload and to avoid speedy trial problems with criminal cases. The committee also felt that in large part, the roles of the magistrate judges have allowed the district to achieve a balance in managing cases through the reliance upon the magistrate judges to conduct civil trials by consent and to supervise the management of the civil docket. The Northern District had respectable figures from filing to disposition for both civil and criminal cases in the circuit placing 2nd best in the circuit with disposition of criminal cases and 3rd in the circuit with the disposition of civil cases.

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<sup>13</sup> Workload statistics for Northern New York as of September 30, 1994 show 2,894 pending actions.

**B. Clerk's Office Resources**

The clerk's office continues to operate at 84% of staffing under the Administrative Office work-measure formula. The clerk's office provides the administrative support to the court which is an indispensable element in performing technical and managerial tasks of operating a United States District Court. The limitation on clerk's office staffing has resulted in large amounts of uncompensated overtime by the management and staff of the clerk's office. In order to carry out the mandate of the Expense and Delay Reduction Plan the office of the clerk must receive its full complement of staff. The committee again recommends that the office of the clerk be staffed at 100% of the formula.

**VI. CONCLUSION**

The committee felt that the court on whole, was operating very successfully under the Expense and Delay Reduction Plan adopted by the court. The Advisory Group finds no need to recommend amendment to the plan at this time.



**ADVISORY COMMITTEE FINDINGS**

- 1) It is appropriate, however, to again recommend that the judicial vacancies be filled as expeditiously as possible. Judicial vacancies left unfilled serves only to increase cost and delay in civil litigation.
  
- 2) That the clerk's office be staffed at 100% of the work-measurement formula.
  
- 3) That the court continue with the study of various resolution procedures for handling prisoner actions in the Northern District. General Order #25 is to be amended to include Rule 16 conferences for prisoner cases where the prisoner is represented by counsel at the time of filing the complaint.
  
- 4) That the ADR subcommittee continue with the development of additional Alternative Dispute Resolution Programs. Continue with the development of a training program designed to educate the judges, attorneys, and litigants about the various ADR options available in the Northern District.
  
- 5) That the court continue to study, review and refine the processing and disposition of motions in the district.
  
- 6) That the court enforce the provisions of the Expense and Delay Reduction Plan in reference to the Advancement or Acceleration<sup>14</sup> of Trial Dates.

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<sup>14</sup> See Civil Justice Reform Act Expense and Delay Reduction Plan at Page #19

## EXHIBITS

<b><u>EXHIBIT</u></b>	<b><u>EXHIBIT DESCRIPTION</u></b>
<i>A (Six Pages)</i>	<i>Spreadsheets and Graphs representing Civil &amp; Criminal Filings and Terminations for Statistical Year 1993.</i>
<i>B (Eight Pages)</i>	<i>Spreadsheets and Graphs representing Civil &amp; Criminal Filings and Terminations for Statistical Year 1994.</i>
<i>C (Four Pages)</i>	<i>Trial and Other Court Activity - Criminal<sup>15</sup> Court Activity Time by the two authorized district judges in Statistical Years 1993 and 1994.</i>
<i>D</i>	<i>General Order #41 - Dispositive Motion Practice (As amended on April 6, 1995)</i>
<i>E</i>	<i>Alternative Dispute Resolution Survey Form</i>
<i>F</i>	<i>New Criminal Justice Act / Pro Bono Application Form.</i>

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<sup>15</sup> Note the Honorable Frederick J. Scullin, Jr. was the United States Attorney for the Northern District of New York before joining the bench in March of 1992. Judge Scullin had to recuse himself from several criminal assignments during statistical year 1993 due to his previous involvement with the underlying prosecutions as the U.S. Attorney.

# ***EXHIBIT A***

***STATISTICAL YEAR 1993***

***SPREADSHEET AND GRAPH***

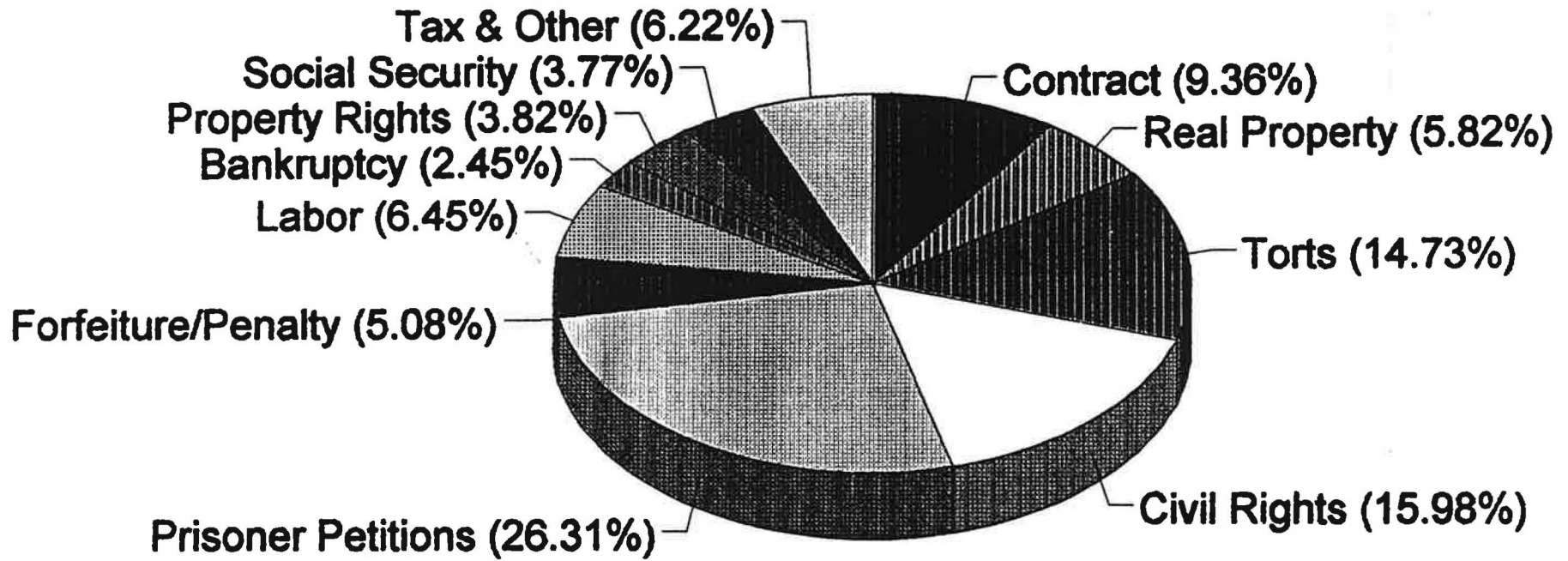
***CIVIL & CRIMINAL CASE FILINGS & TERMINATIONS***

## ***Category Totals for 1993 Civil Case Assignments***

	October	November	December	January	February	March	April	May	June	July	August	September	District Totals
Contract	15	16	8	17	9	19	22	14	12	12	7	13	164
Real Property	9	3	12	5	12	11	3	8	10	17	7	5	102
Torts	23	21	18	26	12	18	31	24	20	27	20	18	258
Civil Rights	23	20	27	21	29	27	20	20	30	25	20	18	280
Prisoner Petitions	39	43	41	63	30	32	32	34	52	33	31	31	461
Forfeiture/Penalty	9	6	8	5	10	6	3	9	11	7	9	6	89
Labor	10	8	10	11	5	13	11	4	20	3	8	10	113
Bankruptcy	2	2	3	5	3	4	9	3	2	6	2	2	43
Property Rights	12	4	3	2	2	5	10	4	3	6	11	5	67
Social Security	8	7	5	3	2	5	7	9	8	5	3	4	66
Tax & Other	13	10	9	6	9	12	8	4	10	13	8	7	109
<b>Total Assignments</b>	<b>163</b>	<b>140</b>	<b>144</b>	<b>164</b>	<b>123</b>	<b>152</b>	<b>156</b>	<b>133</b>	<b>178</b>	<b>154</b>	<b>126</b>	<b>119</b>	<b>1752</b>

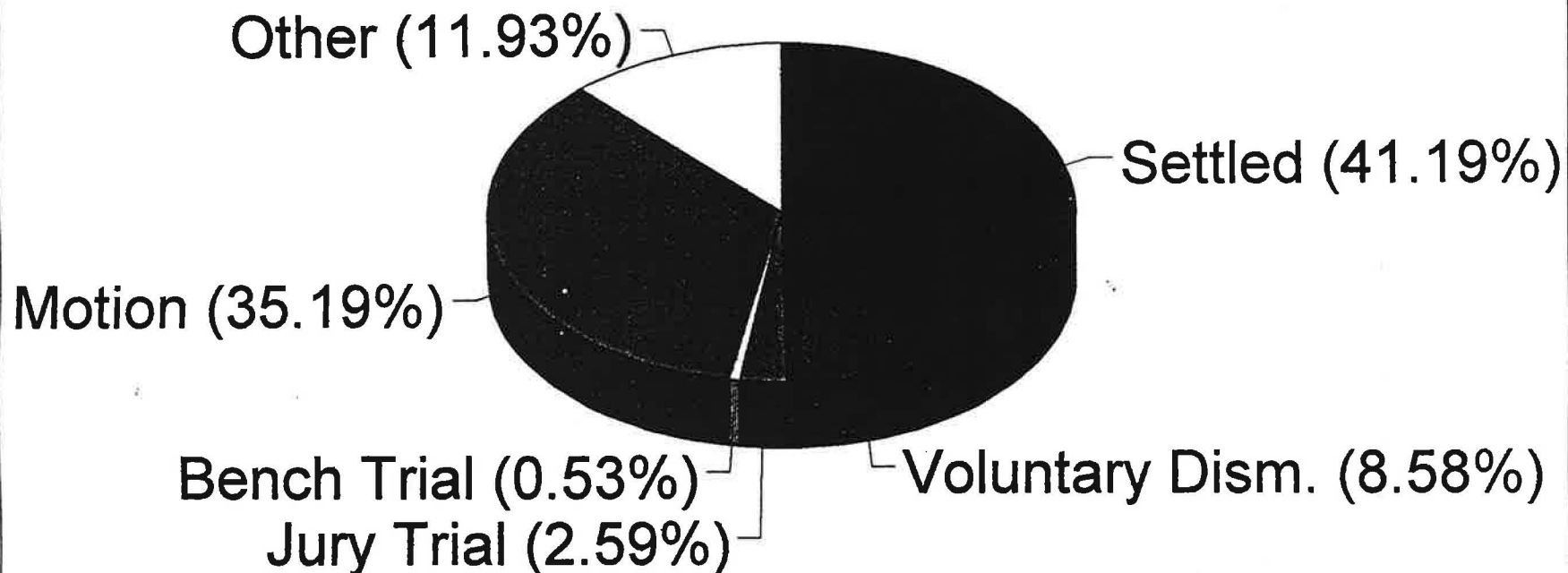
# 1993 DISTRICT COURT FILINGS

## Major Case Categories



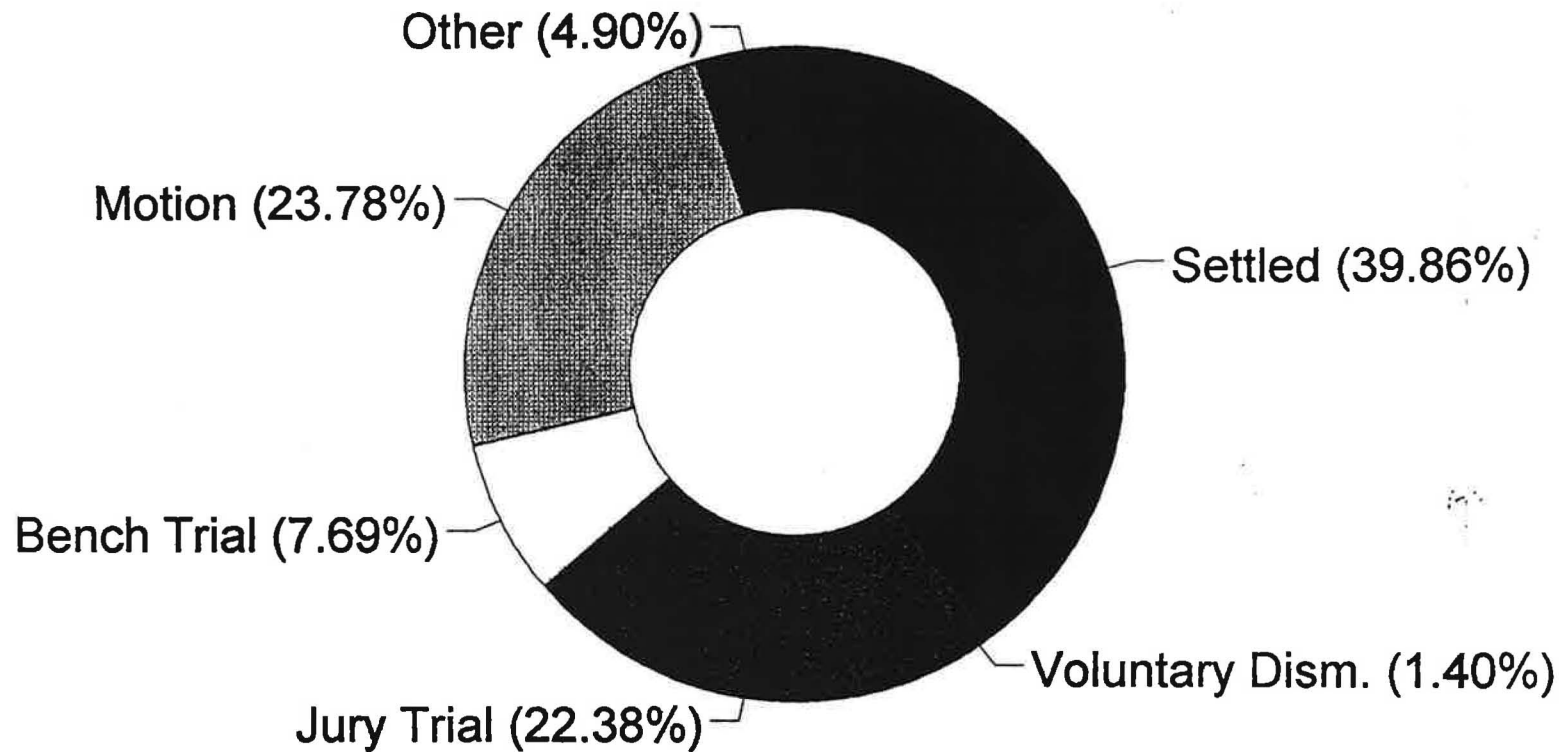
# **CIVIL - 1993**

## **TERMINATIONS**



# **CIVIL - 1993**

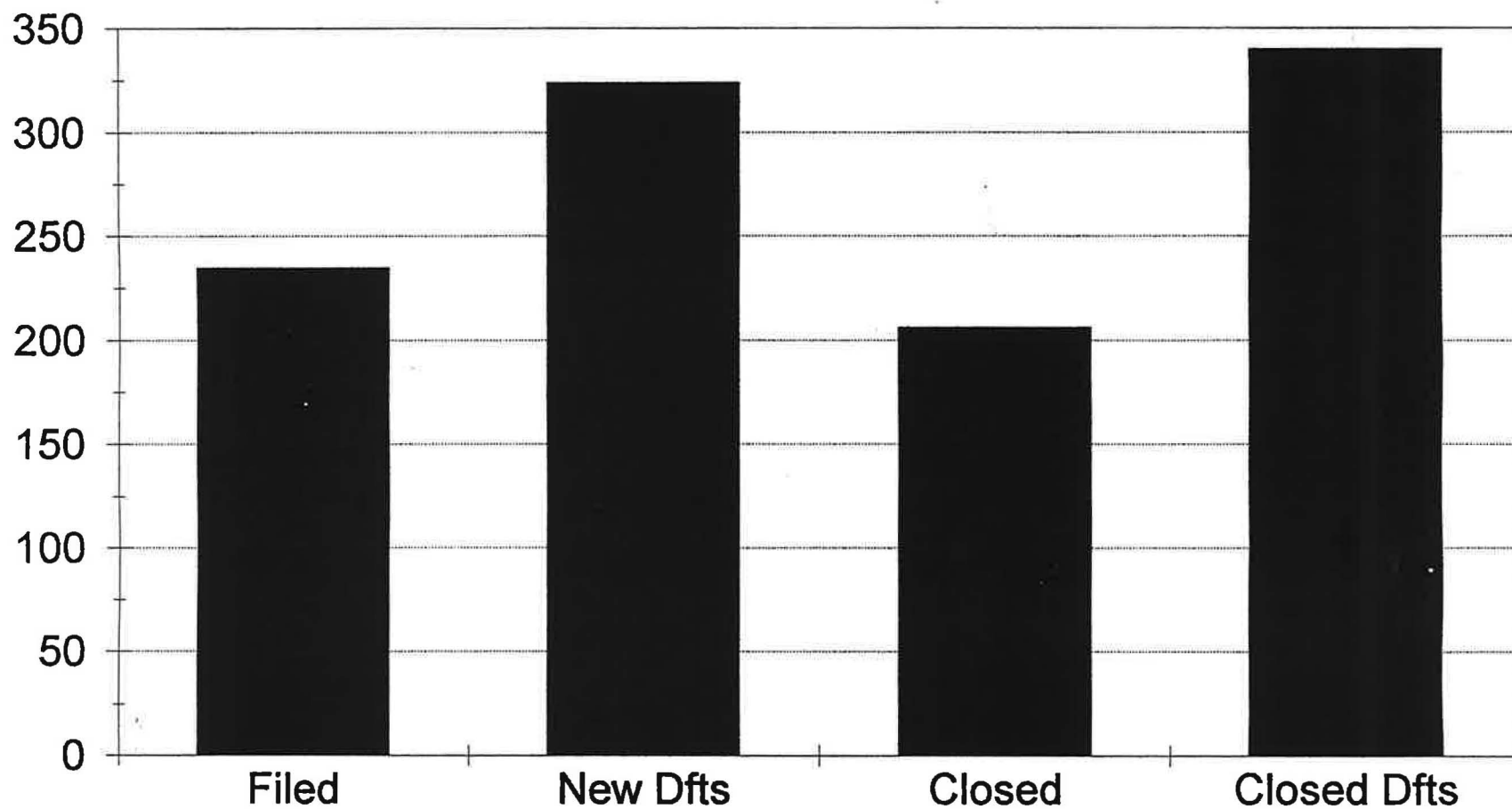
## **TERMINATIONS**



**DISTRICT COURT JUDGE - COMBINED CRIMINAL REPORT**

# **CRIMINAL**

Statistical Year - 1993

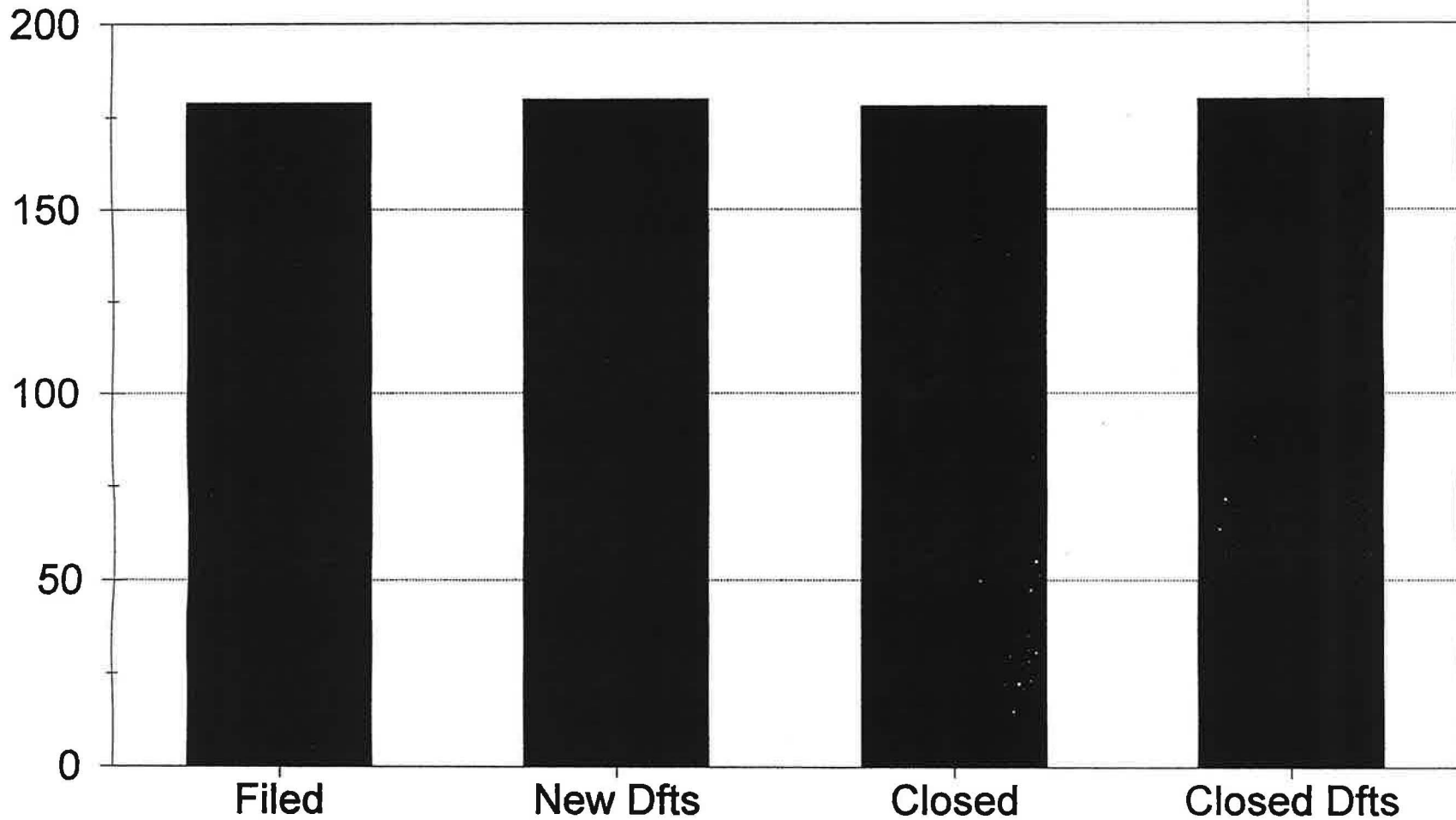




**MAGISTRATE JUDGE - COMBINED CRIMINAL REPORT ON INFORMATIONS**

# **CRIMINAL INFORMATIONS**

Statistical Year - 1993



# ***EXHIBIT B***

***STATISTICAL YEAR 1994***

***SPREADSHEET AND GRAPHS***

***CIVIL & CRIMINAL CASE FILINGS & TERMINATIONS***

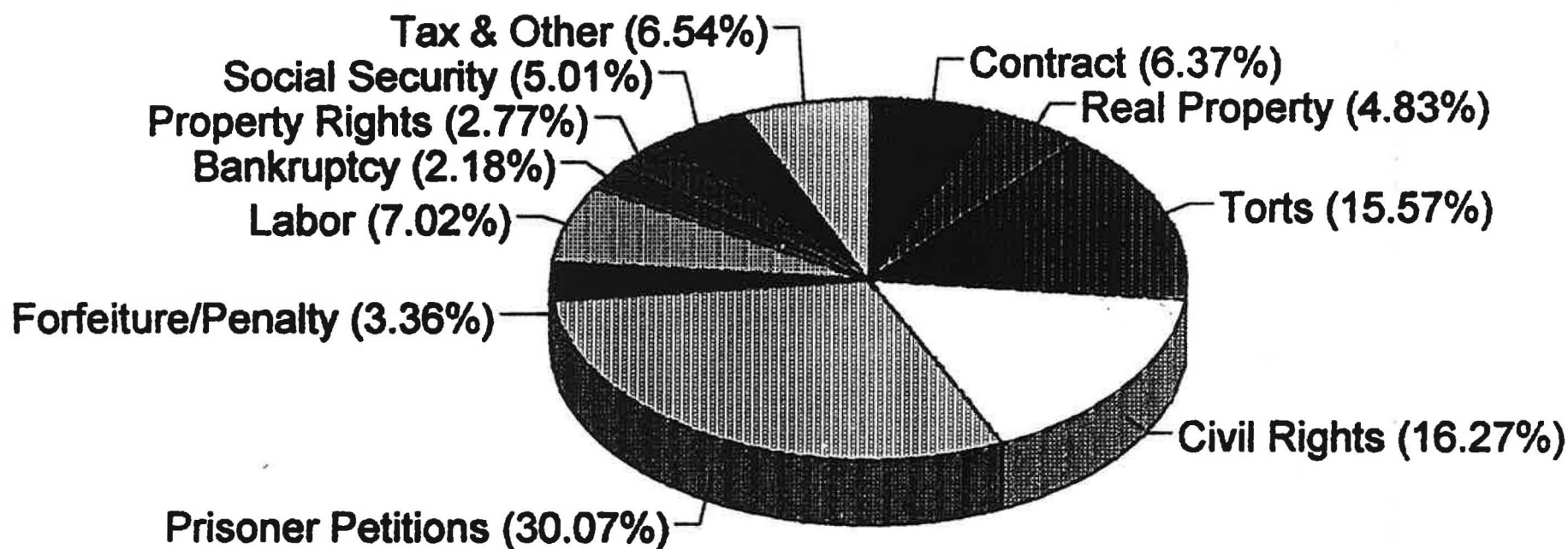
## Category Totals for 1994 Civil Case Assignments

	October	November	December	January	February	March	April	May	June	July	August	September	District Total
													0
Contract	14	10	8	9	6	13	10	7	10	6	8	7	108
Real Property	17	10	7	8	2	11	3	4	3	4	7	6	82
Torts	21	26	21	18	19	31	22	24	16	23	22	21	264
Civil Rights	14	20	22	19	20	27	17	23	27	26	31	30	276
Prisoner Petitions	22	37	37	33	41	59	42	49	45	34	47	64	510
Forfeiture/Penalty	8	3	2	2	2	9	7	5	1	5	5	8	57
Labor	10	9	2	21	11	11	11	17	4	6	9	8	119
Bankruptcy	4	3	4	1	2	4	2	9	2	2	1	3	37
Property Rights	5	1	1	3	3	9	3	2	4	1	6	9	47
Social Security	9	5	5	2	9	7	5	9	5	8	11	10	85
Tax & Other	7	7	6	10	6	12	11	10	14	10	9	9	111
													0
<b>Total Assignments</b>	<b>131</b>	<b>131</b>	<b>115</b>	<b>126</b>	<b>121</b>	<b>193</b>	<b>133</b>	<b>159</b>	<b>131</b>	<b>125</b>	<b>156</b>	<b>175</b>	<b>1696</b>

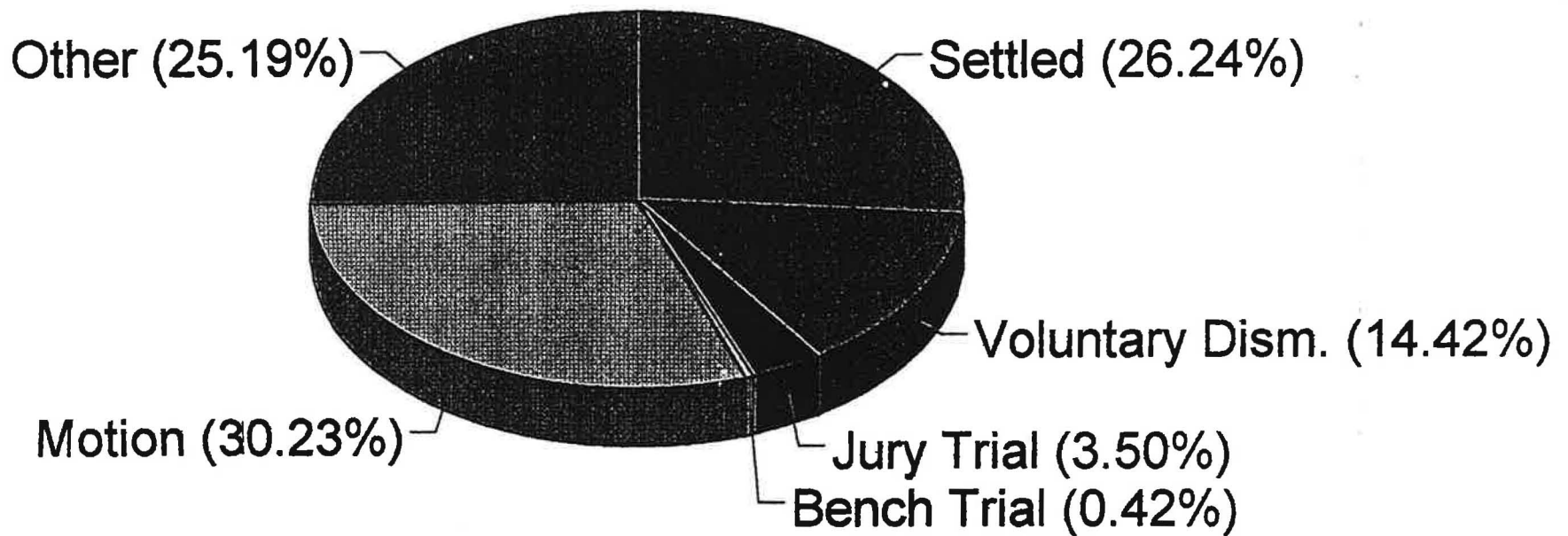
D. District Court Judges - Statistical Year 1995

# 1994 DISTRICT COURT FILINGS

## Major Case Categories

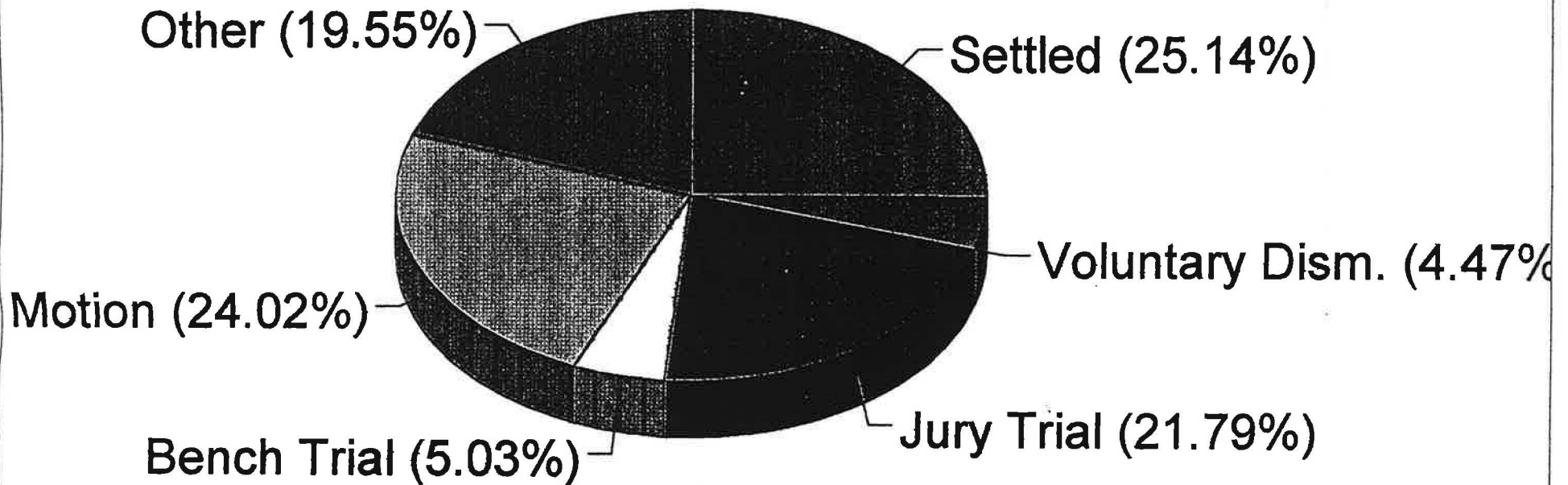


# **CIVIL - 1994 TERMINATIONS**



# **CIVIL - 1994**

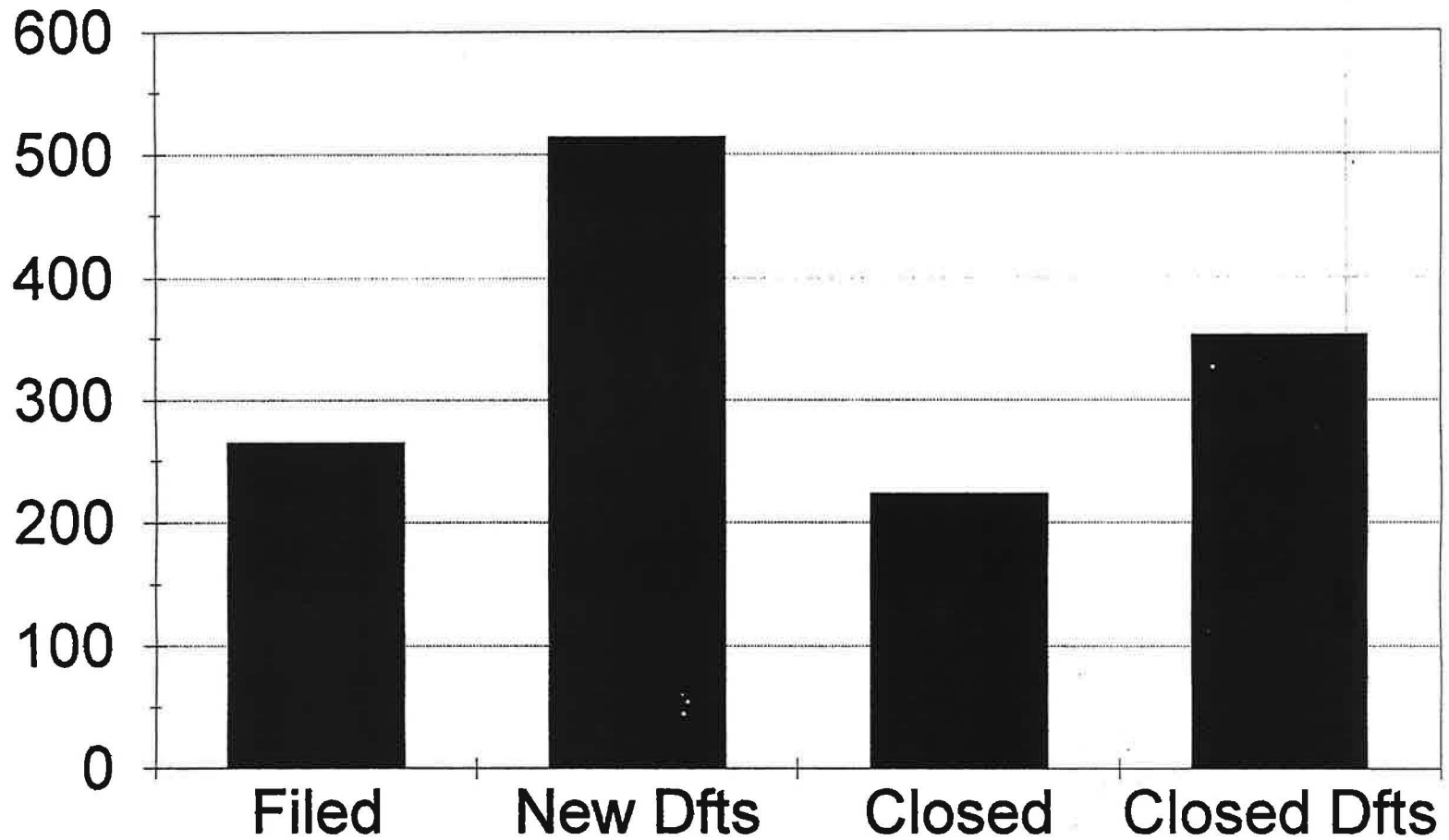
## **TERMINATIONS**



**DISTRICT COURT JUDGE - COMBINED CRIMINAL REPORT**

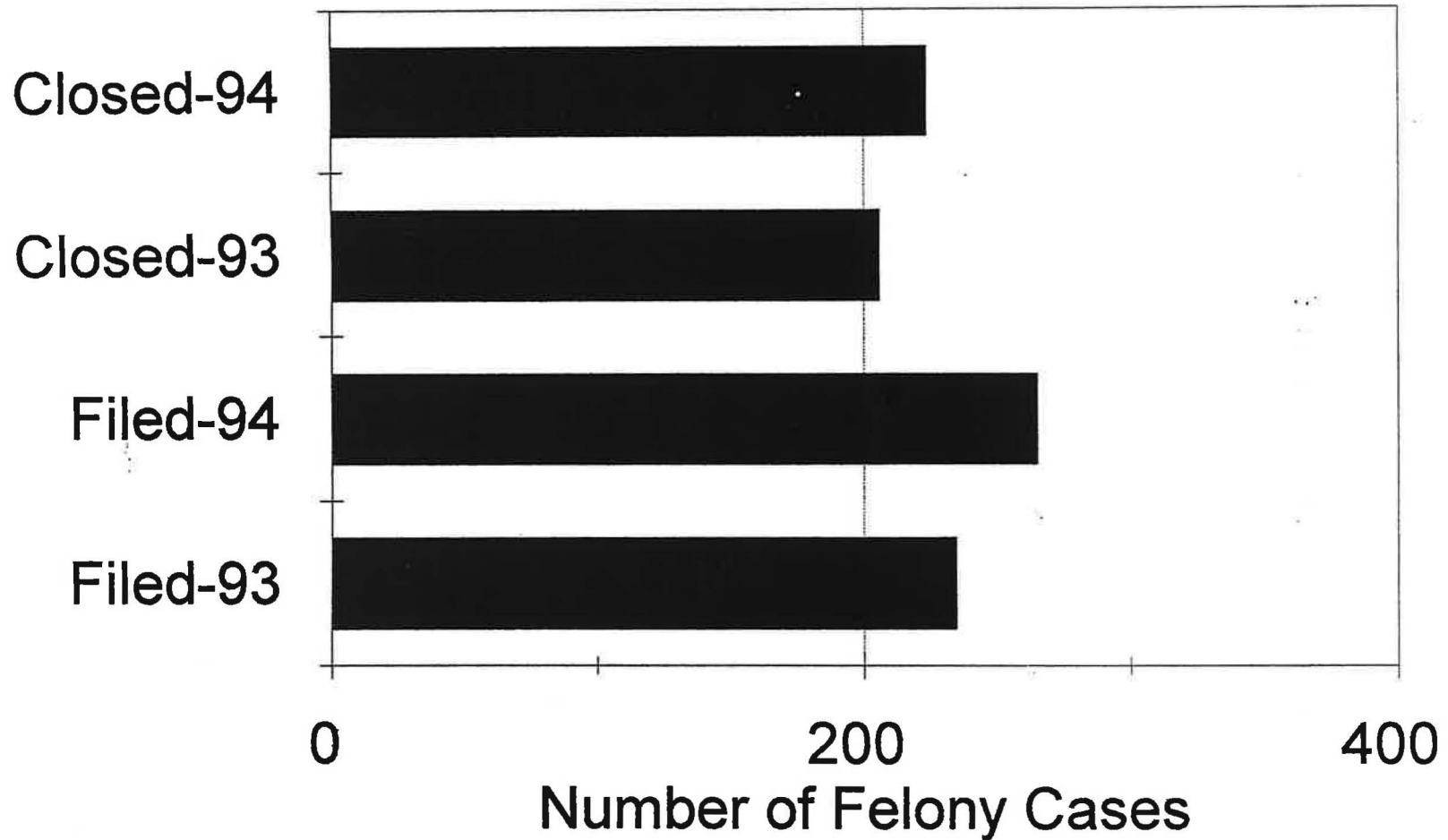
# **CRIMINAL**

## **Statistical Year - 1994**



# CRIMINAL FELONY CASES

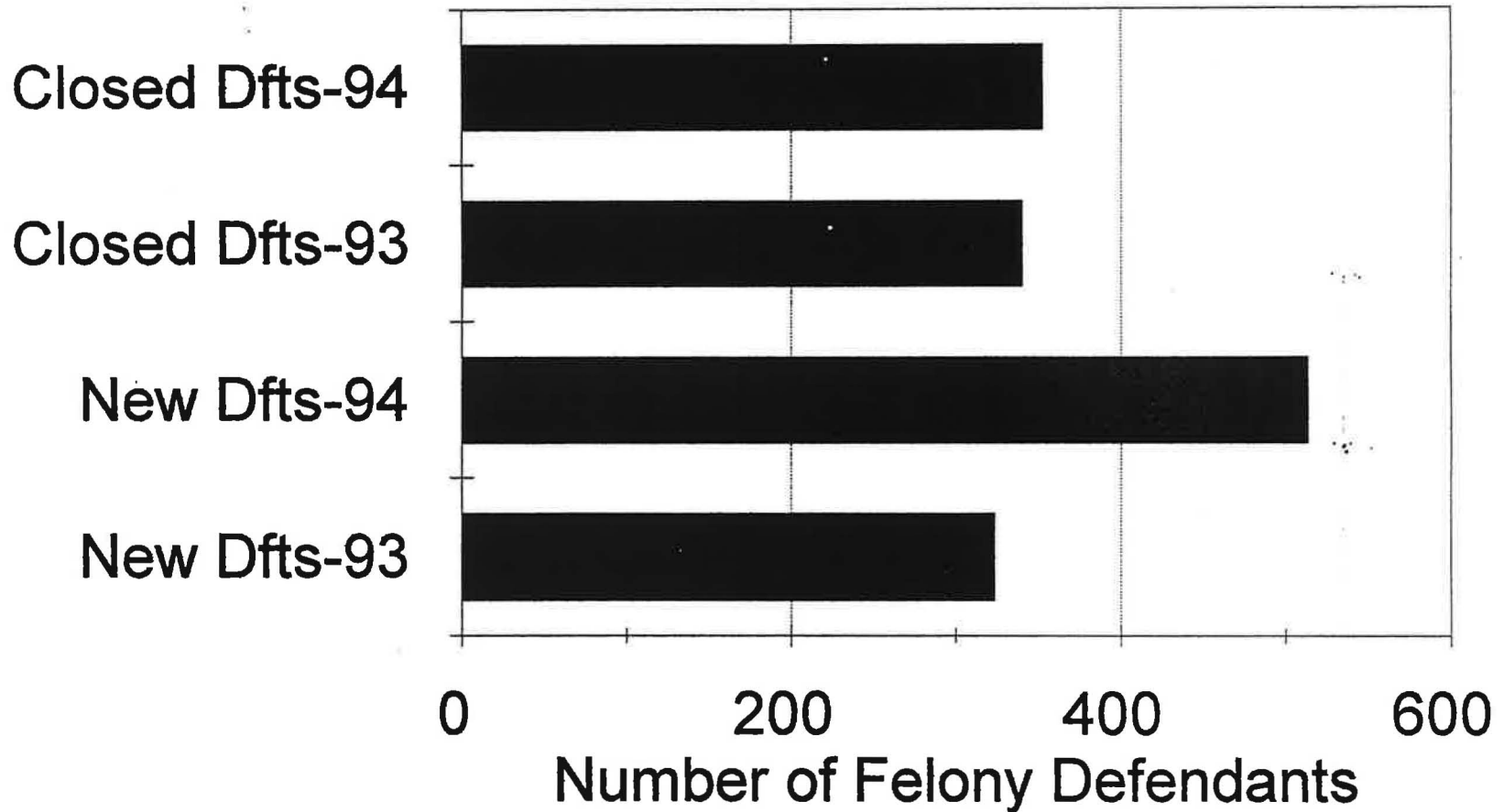
Statistical Years - 1993 > 1994





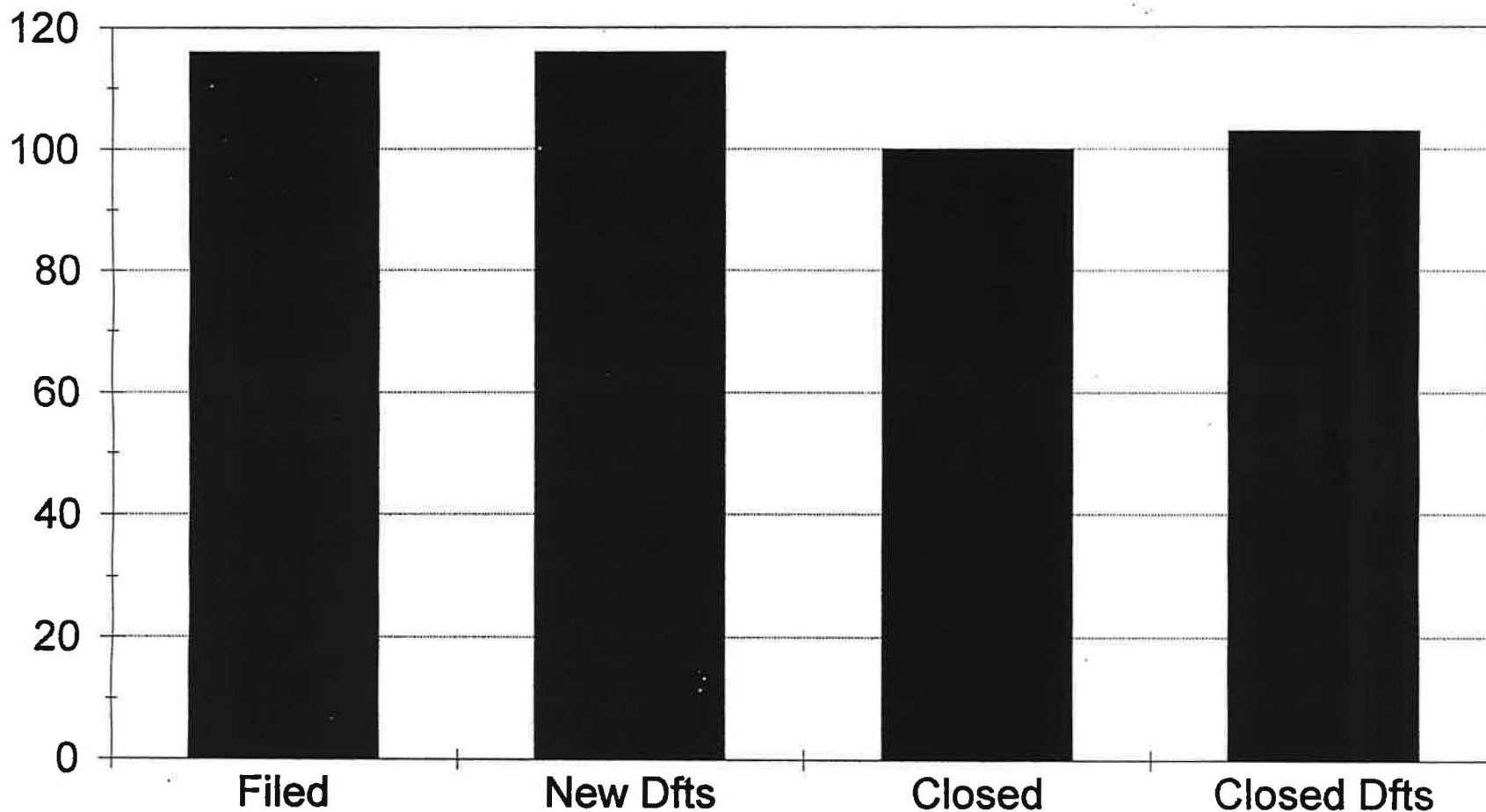
# CRIMINAL FELONY CASES

Statistical Years - 1993 > 1994



# **CRIMINAL INFORMATIONS**

Statistical Year - 1994

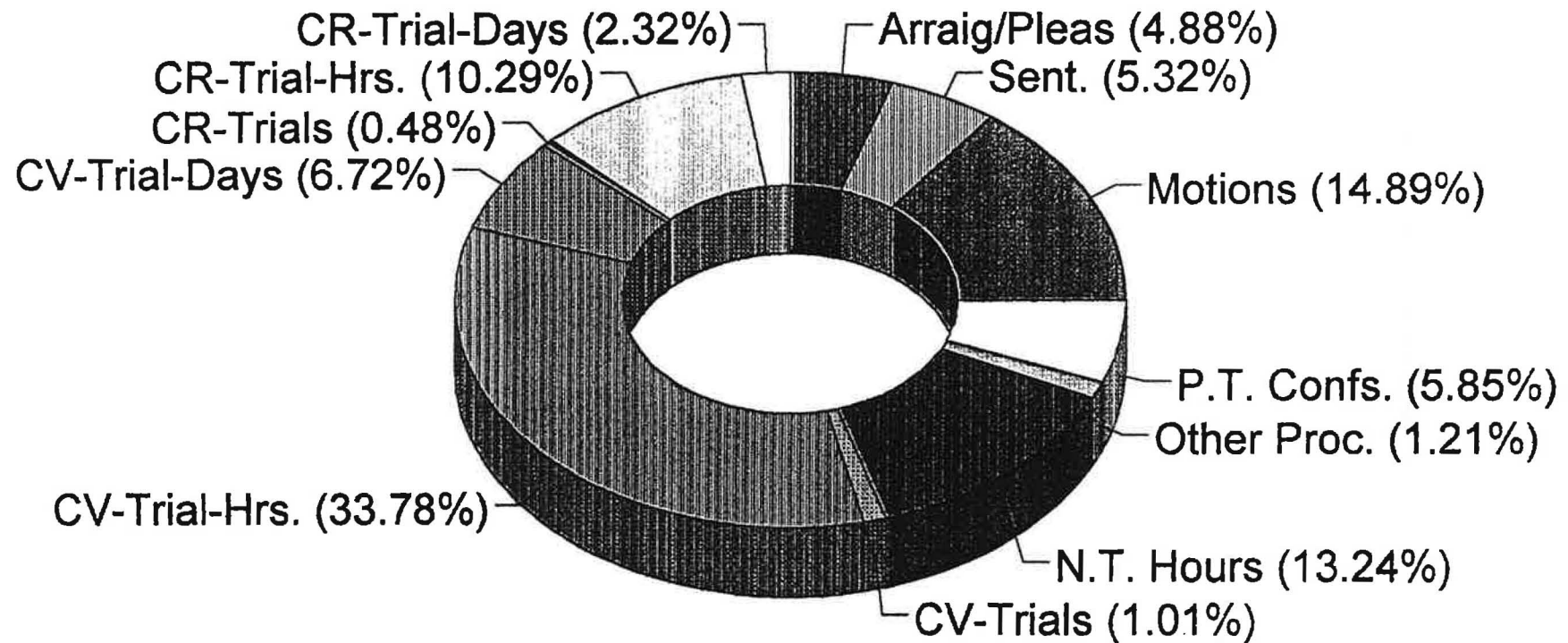


# ***EXHIBIT C***

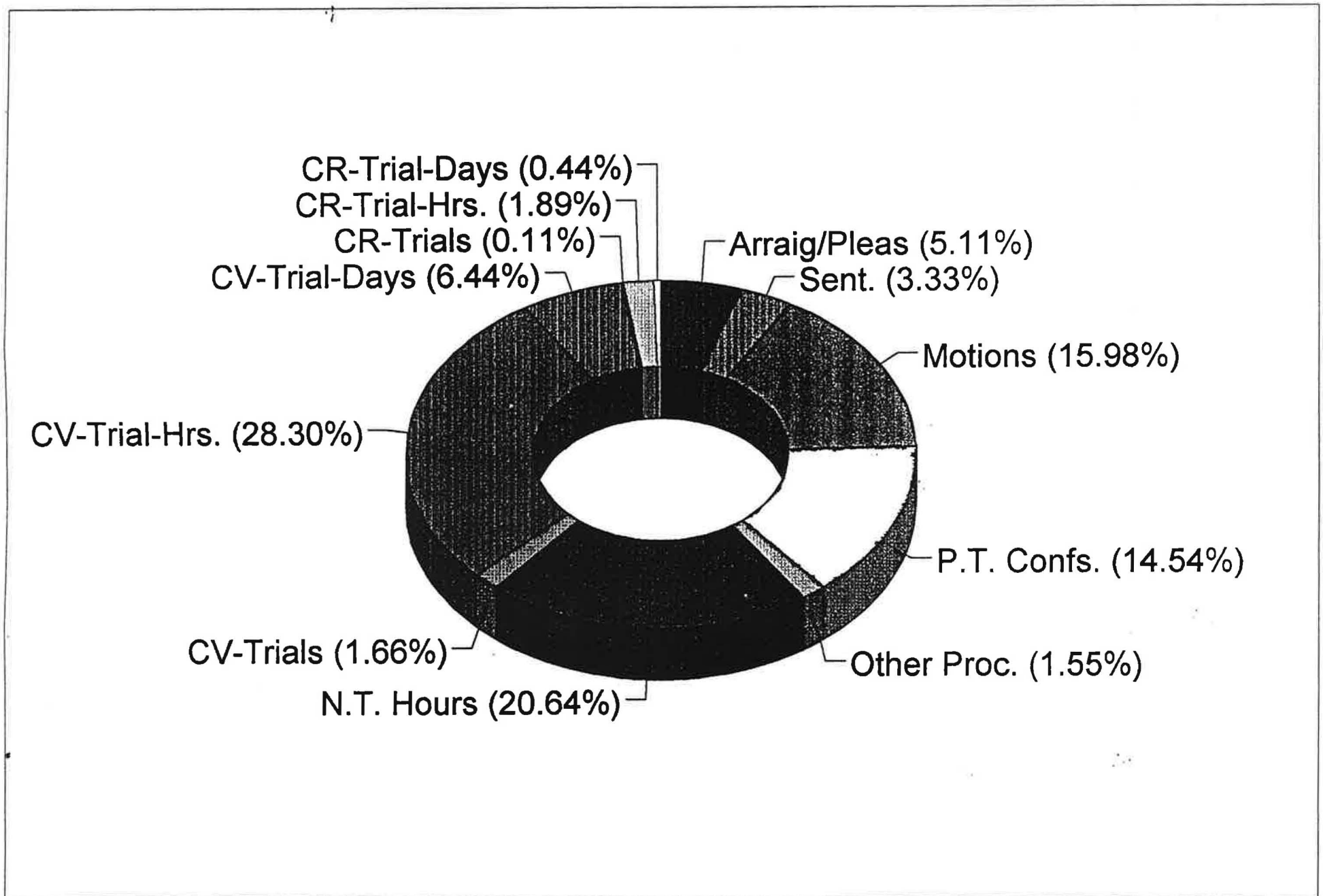
## ***STATISTICAL YEAR 1993 & 1994***

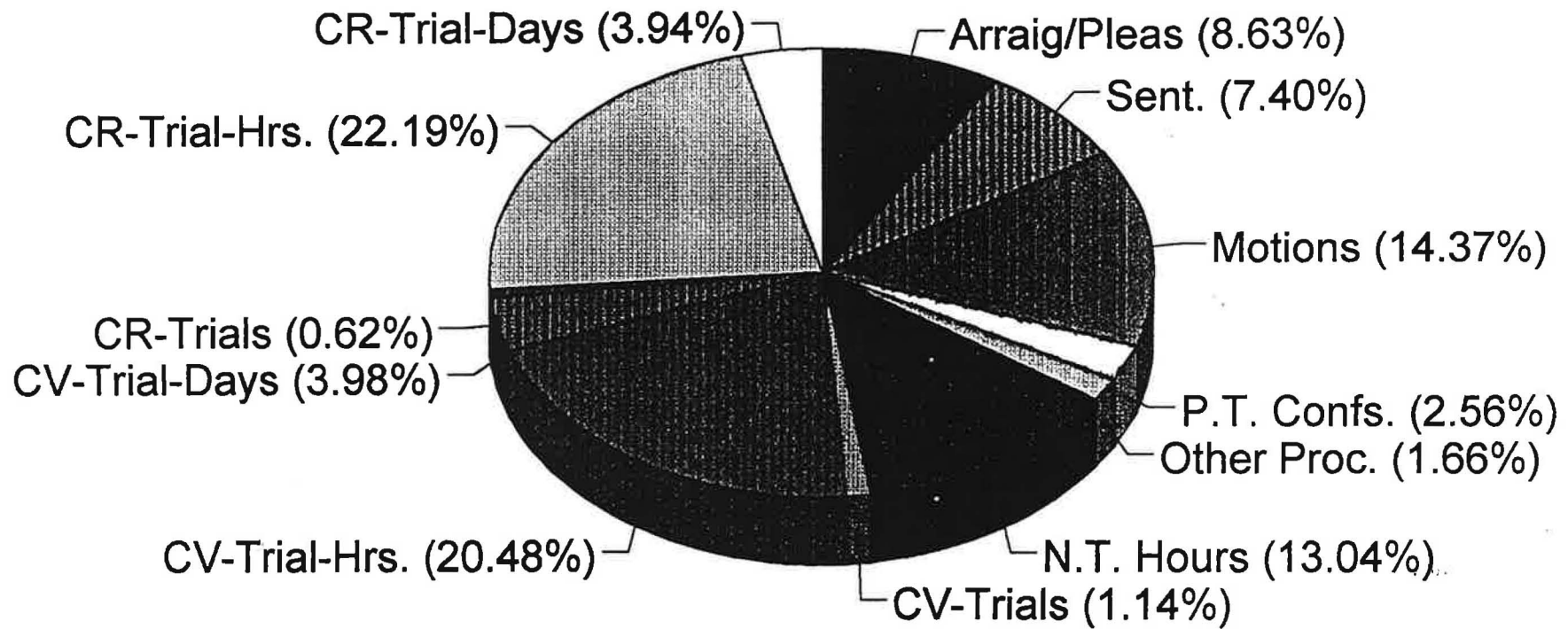
***Graphs of Court and Trial Activity Showing the  
Increase in Criminal Case Activity from 1993 to 1994***

*Chief Judge Thomas J. McAvoy*

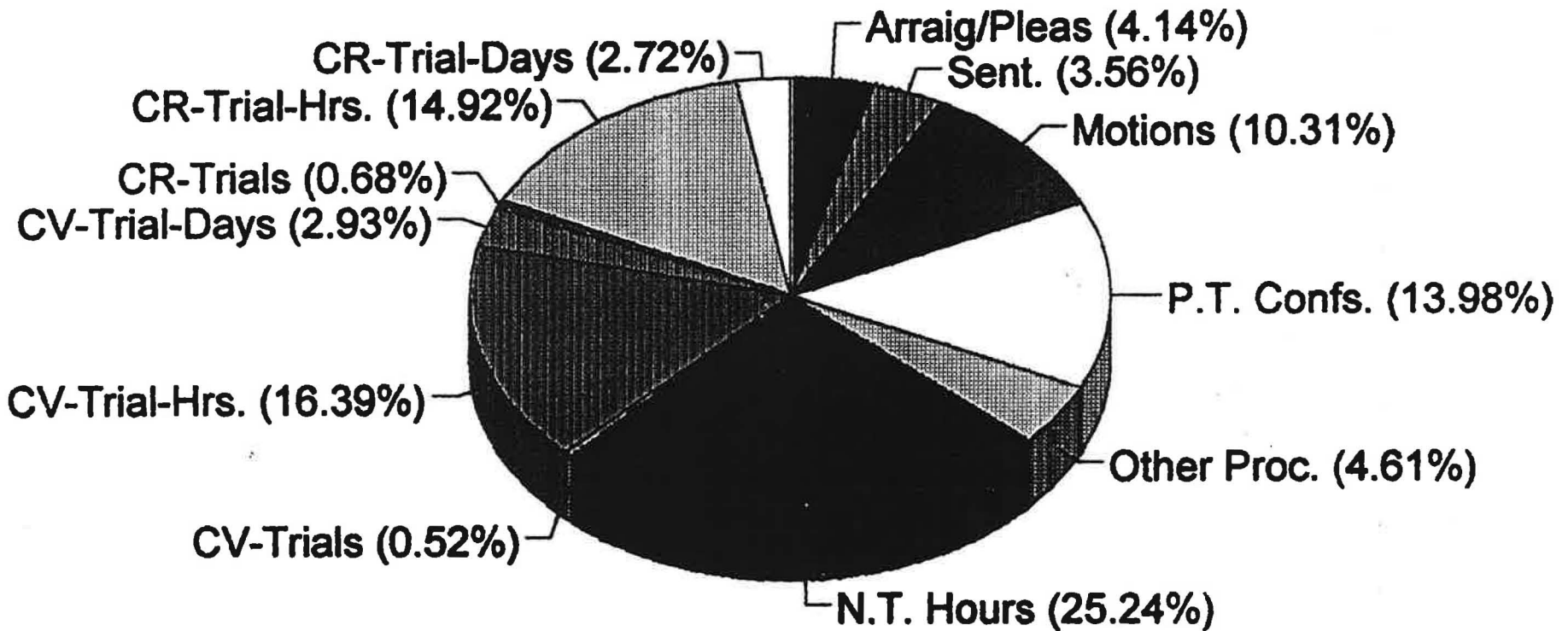


*Category Percentages for Trial and Other Court Activity - Statistical Year 1993*





*Judge Frederick J. Scullin Jr.*



*Category Percentages for Trial and Other Court Activity - Statistical Year - 1994*

# ***EXHIBIT D***

## ***GENERAL ORDER #41***

### ***DISPOSTIVE MOTION PRACTICE***

***As Amended on April 6, 1995***



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

THOMAS J. McAVOY  
CHIEF JUDGE

GEORGE A. RAY  
CLERK OF COURT

100 S. CLINTON STREET  
P.O. BOX 7367  
SYRACUSE, NEW YORK 13261-7367  
(315) 448-0507

The following is a summary of the substantive changes that have recently been adopted by the Court regarding General Order No. 41, Second Amendment ("General Order # 41")

The effective date of General Order # 41 is April 10, 1995.

- ▶ General Order # 41 now explicitly states that it only applies to pre-trial dispositive motions/cross-motions.
- ▶ General Order # 41 now explicitly states that the filing of a cover letter with the Clerk's Office regarding the preparation of papers pursuant to General Order # 41 does not satisfy pre-trial deadlines; a motion is not considered filed until the "package" of all of the motion papers has been filed with the Court and a return date has been selected for the motion.
- ▶ The number of days that a party opposing a motion has to prepare opposition papers has been increased from 14 to 21 days. Parties may still agree to a reasonable extension of time in which to serve such papers.
- ▶ General Order # 41 now explicitly states that a dispositive cross-motion may not be prepared in response to a non-dispositive motion.
- ▶ The number of days that a party preparing reply papers has to prepare such papers has been increased from 7 to 14 days. Parties may agree to a reasonable extension of time in which to serve such papers.
- ▶ General Order # 41 now explicitly states that the time period for the preparation of papers under General Order # 41 is subject to Fed.R.Civ.P. 6(e).
- ▶ The return date selected for the motion after briefing has been completed in accordance with the terms of General Order # 41 must now be 21 (calendar) days from the date of filing; it is no longer 16 business days.
- ▶ The cover letter that is prepared when the motion "package" is sent to the Clerk's Office for filing shall contain the return date selected. A copy of this letter shall be sent to all other parties to the action.
- ▶ General Order # 41 now explicitly provides for a procedure to be utilized where a party has failed to comply with the terms of General Order # 41.



A party filing documents in an action/motion that is exempt from the terms of this Amended General Order shall specifically state in its cover letter enclosing the documents for filing that such action/motion is exempted from this Amended General Order.

### **Preparation of Moving Papers**

The moving party will prepare its notice of motion, memorandum of law, affidavits and other supporting documentation as required by the Local Rules of this District. The notice of motion shall not contain a return date. A copy of these papers shall be served on all other parties. A cover letter **ONLY** is to be sent, for filing, to the courtroom deputy.<sup>1</sup> A copy of such letter shall be sent to the chambers of the judicial officer that will rule upon the motion. Such cover letter shall state the type of motion that is being prepared by the party and specifically refer to this Amended General Order.<sup>2</sup>

**THE FILING OF SUCH COVER LETTER DOES NOT SATISFY ANY PRE-TRIAL DEADLINES IMPOSED IN AN ACTION REGARDING THE FILING OF MOTIONS. A MOTION IS NOT CONSIDERED FILED UNTIL ALL OF THE PAPERS RELATING TO SUCH MOTION HAVE BEEN FILED WITH THE COURT IN ACCORDANCE WITH THE TERMS OF THIS AMENDED GENERAL ORDER.**

If the motion filing deadline of an action has expired, a party may **NOT** file a motion under the terms of this Amended General Order unless the Court has previously approved of such party's request for an extension of time regarding the filing of any such motion.

### **Preparation of Opposition Papers**

If the opposition papers cannot be prepared and served on the moving party within a twenty-one day period from the date on which the motion papers were served by the moving party, the parties may agree to a reasonable extension of time in which to serve opposition papers. If the parties cannot so agree, then the opposition papers **SHALL** be prepared and served on the moving party within a

---

<sup>1</sup> "Courtroom deputy," as used throughout this Amended General Order, shall mean the courtroom deputy clerk of the judicial officer that is to rule upon the subject motion.

<sup>2</sup> The service of such a letter will operate as an automatic extension of time for such party to file a responsive pleading (e.g. an answer) pursuant to Fed.R.Civ.P. 12(a) and (b).

twenty-one day period from the date on which the motion papers were served by the moving party.

If a party opposing a motion wishes to file a cross-motion, such party shall prepare its notice of cross-motion, brief, affidavits and other supporting documentation as required by Local Rule 7.1. The notice of cross-motion shall not contain a return date. However, no dispositive cross-motion shall be prepared by a party in response to a non-dispositive motion that has already been filed with the Court pursuant to Local Rule 7.1.

An original and one copy of opposition papers (including any cross-motions) are to be served on the "original" moving party;<sup>3</sup> a copy of such papers shall be served on all other parties to the action. A cover letter **ONLY** is to be sent, for filing, to the courtroom deputy. A copy of such letter shall be sent to the chambers of the judicial officer that will rule upon the motion. Such cover letter shall notify the clerk of the preparation of such papers and specifically refer to this Amended General Order.

#### Preparation of Reply Papers

A party may serve a reply brief with supporting papers as to any motion or cross-motion without leave of Court. If the reply papers cannot be prepared and served on the moving party within a fourteen period from the date on which the opposition papers were served by the opposing party, the parties may agree to a reasonable extension of time in which to serve reply papers. If the parties cannot so agree, then the reply papers **SHALL** be prepared and served on the opposing party within a fourteen day period from the date on which the opposition papers were served by the opposing party. Reply briefs shall not exceed ten pages in length, exclusive of exhibits.

If reply papers are submitted in response to a cross-motion, the original set of such papers is to be forwarded to the "original" moving party. One copy of the reply papers is to be served on all parties. A cover letter **ONLY** is to be sent, for filing, to the courtroom deputy. A copy of such letter shall be sent to the chambers of the judicial officer that will rule upon the motion. Such cover letter shall notify the clerk of the preparation of such papers and specifically refer to this Amended General Order.

No surreply papers may be submitted under the terms of this Amended General Order.

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<sup>3</sup> As used throughout this Amended General Order, "original" moving party refers to the party that prepared the initial motion papers; a cross-movant is not the "original" moving party.

### Time for preparation of papers where service is by mail

If a party that wishes to serve responsive papers (i.e., opposition or reply papers) was served its papers by mail, such party shall have an additional three days within which to serve its responsive papers on all other parties. Fed.R.Civ.P. 6(e).

### Notification of Court if Motion has been resolved

If, at any time, the parties determine that they do not wish to proceed with the subject motion(s), the "original" moving party shall send a letter to the courtroom deputy informing the Court of the motion(s) that have been resolved, and that Court intervention is not necessary as to such motions. Such letter, which shall be filed with the Court, shall specifically refer to this Amended General Order. A copy of such letter shall be sent to all parties to the action.

### Selection of Return Date

Once the motion has been fully briefed as described above and is ready for filing with the Court, the "original" moving party shall place a return date on the notice of motion. Such return date shall be the next regularly scheduled motion day for the assigned judge that is at least **TWENTY-ONE DAYS** from the date of filing, unless the parties agree to a later date.

Cross-motions, if any, shall be given the same return date as the "original" motion.

### Filing of Papers

**All** original papers, including those relating to cross-motions, are to be served by the "original" moving party on the Clerk's Office for filing, together with a cover letter.<sup>4</sup> Such cover letter, which shall be filed with the Court, shall specifically refer to this Amended General Order and list separately **each** document (brief, affidavit, etc.) submitted for filing. This cover letter shall also state the return date that has been selected for the motion. A copy of this cover letter shall be sent to all other parties to the action.

---

<sup>4</sup> No briefs shall be submitted to the Court that are in excess of twenty-five (25) pages in length unless prior written approval of the Court has been obtained by such party.

**Failure of Party to timely comply with terms of this Amended General Order**

If any party has failed to timely provide any other party to the action with papers that are necessary to proceed with any motion/cross-motion, the party that has not received such papers shall so inform the courtroom deputy, in writing, with a copy of such letter being sent to all other parties. Such letter shall be accompanied by all papers relevant to the motion that are in such party's possession and shall specify in detail (i) the date on which the papers that have not been received were due; (ii) the efforts that have been made by the party to obtain the subject papers and (iii) the relief now requested of the Court.

**A PARTY THAT FAILS TO TIMELY SUBMIT RESPONSIVE PAPERS PURSUANT TO THE TERMS OF THIS AMENDED GENERAL ORDER SHALL, UNLESS GOOD CAUSE IS SHOWN, BE DEEMED TO HAVE CONSENTED TO THE RELIEF SOUGHT BY THE OTHER PARTY/PARTIES.**

**NOTE:** This Amended General Order supersedes Amended General Order # 41 that was issued by the Court on May 20, 1994.

IT IS SO ORDERED.

Dated: April 6, 1995  
at: Binghamton, NY

  
\_\_\_\_\_  
Thomas J. McAvoy  
Chief Judge

## ATTACHMENT # 1 <sup>5</sup>

The following types of actions/motions are hereby exempt from the provisions of Amended General Order # 41:

- (1) All actions assigned to Senior Judges Neal P. McCurn and Howard G. Munson.
- (2) All actions in which a party who is not an attorney is appearing *pro se*.
- (3) Multi-district litigation actions.
- (4) Complex or multi-party actions (only upon application made to and specifically granted by the Court).
- (5) Orders to show cause.
- (6) Motions seeking injunctive relief.
- (7) Appeals from rulings issued by governmental agencies.
- (8) Motions for attorneys' fees.
- (9) Motions for a default judgment.
- (10) Actions commenced by a party who is incarcerated.
- (11) Motions for reconsideration, for relief from a judgment or order, or to alter any judgment or order.
- (12) Forfeiture/Penalty Actions (indicated on the civil cover sheet by nos. 610-690).
- (13) Bankruptcy Actions (indicated on the civil cover sheet by nos. 422-423).
- (14) Social Security actions (indicated on the civil cover sheet by nos. 861-865).
- (15) Contract actions by the federal government seeking recovery of overpayment and enforcement of judgments; actions brought under the Medicare Act; actions for recovery of defaulted student loans and actions for recovery of overpayment of Veteran's benefits (indicated on the civil cover sheet by nos. 150-153).
- (16) Contract actions by the federal government that involve the collection of debts owed to the United States or that involve the foreclosure of real property (indicated on the civil cover sheet by no. 220).
- (17) Appeals of fee determinations under the Equal Access to Justice Act (indicated on the civil cover sheet by no. 900).
- (18) Motions to change venue.
- (19) Motions to remand an action to state court.
- (20) Motions in limine.
- (21) Motions filed in state court before the removal of such action to this District.

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<sup>5</sup> All actions or motions that are exempt from the terms of this Amended General Order must be filed in accordance with the terms of Local Rule 7.1 of this District.

# ***EXHIBIT E***

## ***ALTERNATIVE DISPUTE RESOLUTION SURVEY FORM***



**ALTERNATIVE DISPUTE RESOLUTION SURVEY  
FOR THE  
NORTHERN DISTRICT OF NEW YORK**

**NOTE:** A brief description of various types of Alternative Dispute Resolution (ADR) programs is included with this survey. Please familiarize yourself with these ADR programs prior to completing this survey.

**I. General Instructions**

If the question asks you to provide a numerical response, please indicate your response on the line provided for that question.

If a Yes or No question is asked, please provide the appropriate answer and explanation, if applicable.

If the question provides a scale from 0 through 10, please circle the appropriate number on the grid corresponding to the question asked.

Thank you in advance for responding to this survey.

**II. Your law practice and experience with ADR**

- (a) What is your name and N.D. of N.Y. Bar Roll Number (if known)?

Name: \_\_\_\_\_ Number: \_\_\_\_\_  
(Your name and bar roll number will be kept confidential).

- (b) How many attorneys practice law at your firm or organization? (include only offices located in the Northern District of New York)

\_\_\_\_\_

- (c) In the last three years, approximately how many cases have you personally litigated in the Northern District, and what percentage of your total individual caseload over this same period would you estimate involved actions that were litigated in the Northern District?

\_\_\_\_\_

# of cases

\_\_\_\_\_

% of caseload

- (d) What percentage of your typical federal caseload would you estimate is based upon diversity (rather than federal question or admiralty) jurisdiction?

\_\_\_\_\_

(0 - 100)

(e) Have you ever participated in an ADR program, in either state or federal court?

            
YES

            
NO

If Yes:

Please indicate:

(i) Was this in Federal Court?

            
YES -- Please indicate District(s):

            
NO

\_\_\_\_\_

(ii) Was this in State Court?

            
YES -- Please indicate State(s):

            
NO

\_\_\_\_\_

(iii) What type of ADR program was it? (Check all that apply)

- a. Early Neutral Evaluation
- b. Mediation
- c. Settlement Week
- d. Attorney Trial Referee
- e. Court-annexed Arbitration
- f. Summary Jury Trial
- g. Other (please specify on the lines below):

\_\_\_\_\_

\_\_\_\_\_

(iv) Please discuss your impressions about such programs (feel free to attach additional sheets as needed).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**III. ADR Programs for the Northern District**

In which of the following programs do you believe you / your client(s) would be interested in participating if offered in this District (either current or future cases that you may have)? Please circle an answer for each program listed.

(a) Early Neutral Evaluation

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

(b) Mediation

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

(c) Settlement Week

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

(d) Attorney Trial Referee

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

(e) Court-annexed Arbitration (currently available in the District)

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

(f) Summary Jury Trial

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

(g) Other (please specify):

0....1....2....3....4....5....6....7....8....9....10  
Very Unlikely Very Likely

## **ADR programs -- a brief description**

### **(a) Early neutral evaluation**

Early neutral evaluation is an ADR process that brings all parties and their counsel together in the early stages of the litigation. Counsel present summaries of their cases to either experienced, neutral attorneys with expertise in the subject area, or to Judges / Magistrate Judges. The evaluator provides case planning guidance and, if requested by the parties, settlement assistance.

### **(b) Mediation**

Mediation is a confidential, informal process in which a neutral third-party, the mediator, hears brief presentations by both parties and then attempts to reach a negotiated settlement of the dispute. Mediators undergo a training program wherein they are trained in various techniques of dispute resolution.

### **(c) Settlement Week**

A settlement week is an ADR process wherein numerous attorneys with expertise in different subject areas agree to come to court during a certain week designated by the Court for settlement of pending cases. Parties and their counsel provide the neutral attorney with a brief written summary of their respective positions, and then make a short oral presentation to such attorney. This attorney then informs the parties and their counsel as to what he or she believes is the value and merits of the particular case.

### **(d) Attorney Trial Referee**

Attorney trial referees (ATRs) are attorneys with expertise in different subject areas that volunteer their time to hear cases of litigants much like a judicial officer. Parties typically choose the ATR from a list of prospective attorneys maintained by the Court, and the trial is conducted in a manner similar to a "bench" trial. The written findings of fact and conclusions of law issued by the ATR are typically shorter than those issued by judicial officers.

### **(e) Court-annexed Arbitration**

Court-annexed (court sponsored or approved) arbitration is used most frequently in contract and tort cases. In the Northern District, the parties choose the arbitrator whom they want to hear their case. The arbitrator presides over an expedited, adversarial hearing and thereafter issues a non-binding decision that addresses the disputed legal issues regarding the action. Either party may reject the non-binding ruling and request a trial *de novo* in district court. In our District, as in others, a party that appeals an arbitrator's decision and obtains a less favorable outcome after the trial *de novo* must pay certain costs associated with the arbitration and trial.

### **(f) Summary Jury Trial**

The summary jury trial (SJT) is a flexible, nonbinding ADR process that is designed to promote settlement in trial-ready cases that would otherwise result in protracted jury trials. In a SJT, litigants are afforded a short hearing (one or two hours per side) in which evidence is presented by counsel in summary form. Brief opening and closing statements are allowed. After closing arguments, the Judge gives a summary charge to the jury; the jury then issues a non-binding verdict that is used by the parties as a basis for settlement negotiations. If the jury cannot bring back a unanimous verdict, some courts allow individual verdicts to be reported.

**NOTE:** Whether the findings in an adversarial ADR process are binding or not, and the standard of review to be afforded to such findings (ex. *de novo*, arbitrary and capricious, etc.) are issues that the Bar and the Court may discuss in developing these programs.

# ***EXHIBIT F***

***NEW CRIMINAL JUSTICE ACT PANEL / PRO BONO  
PANEL APPLICATION FORM***



**11) Experience: (Identify Federal or State and the number of trials in the last two years)**

**A) CRIMINAL TRIAL EXPERIENCE:**

1) Felony: \_\_\_\_\_ Federal: \_\_\_\_\_ #of Trials: \_\_\_\_\_ State: \_\_\_\_\_ #of Trials : \_\_\_\_\_

2) Misdemeanor: \_\_\_\_\_ Federal: \_\_\_\_\_ #of Trials: \_\_\_\_\_ State: \_\_\_\_\_ #of Trials: \_\_\_\_\_

**B) CIVIL TRIAL EXPERIENCE:**

1) Federal: \_\_\_\_\_ #of Trials: \_\_\_\_\_ State: \_\_\_\_\_ #of Trials: \_\_\_\_\_

**C) APPELLATE EXPERIENCE:**

1) Federal: \_\_\_\_\_ #of Appeals: \_\_\_\_\_ State: \_\_\_\_\_ #of Appeals: \_\_\_\_\_

**D) Other Relevant Training or Experience:** \_\_\_\_\_

**12) Please list any other pertinent data such as primary area of practice, public positions etc.**

\_\_\_\_\_

**13) Have you completed any courses on the Sentencing Guidelines? \_\_\_\_\_ Date: \_\_\_\_\_**

**Have you completed any courses on the Bail Reform Act? \_\_\_\_\_ Date: \_\_\_\_\_**

**) I would prefer assignment of cases in the:**

A) \_\_\_ Albany Area; B) \_\_\_ Binghamton Area, C) \_\_\_ Syracuse Area,

D) \_\_\_ Utica Area, E) \_\_\_ Watertown Area F) No Preference \_\_\_

**15) I am fluent in a foreign language(s): \_\_\_\_\_ Specify: \_\_\_\_\_**

**16) The Local Rules of the NDNY require all CJA members to also participate on the Pro Bono Panel. You may, however, elect to be only a member of the Pro Bono Panel.**

1) I do not wish to be placed on the CJA Panel, this application is submitted only as an application for the Pro Bono Panel: \_\_\_\_\_ (Initial ONLY if you do not wish to serve on the CJA Panel)

2) I am willing to serve as support counsel for another attorney in a Pro Bono Civil assignment:  
Yes: \_\_\_\_\_ No: \_\_\_\_\_, and I request support counsel be appointed to assist me when assigned a Pro Bono Civil case: Yes: \_\_\_\_\_ No: \_\_\_\_\_

**APPROVED:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

\_\_\_\_\_ **UNITED STATES DISTRICT COURT JUDGE**

\_\_\_\_\_ **UNITED STATES MAGISTRATE JUDGE**