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# Report and Plan of the Advisory Group of the District Court of the Virgin Islands Appointed Under the Civil Justice Reform Act of 1990

An Early Implementation District

December 23, 1991

# ADVISORY GROUP

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*Magistrate Judge, Vice-Chairman*

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# PART I

# THE REPORT

# Introduction

The Civil Justice Reform Act of 1990[1] requires the 94 federal districts in the nation to develop plans to reduce cost and delay in civil litigation. Ten of those districts are designated as Pilot Courts and are required to have their plans developed by December 31, 1991. Other courts may choose to qualify as Early Implementation Districts (EID's) with the result that such courts must also have their plans in place by December 31, 1991.

Pursuant to the Act, the Honorable Stanley S. Brotman, Acting Chief Judge for the District Court of the Virgin Islands, convened an advisory group by an order entered on January 28, 1991.[2] In his order Judge Brotman asked the Advisory Group to examine the dockets of the District Court of the Virgin Islands and to identify trends and causes of delay and recommend a plan to reduce costs and delay as required by the Act.

The make-up of the Advisory Group appointed by Judge Brotman included a balanced range of practitioners representing the various interests which appear before the court. The Advisory Group also included non-lawyer members, representatives of the Virgin Islands Territorial Government and the Territorial Court of the Virgin Islands as well as the United States Attorney and the Clerk of the District Court. Jeffrey L. Resnick, Magistrate Judge was designated Chairman and Geoffrey W. Barnard, Magistrate Judge Vice-Chairman. William K. Slate, II, President, Justice Research Institute was designated Reporter to the Advisory Group[3].

In the interest of expediting the benefits to be received from the implementation of a cost and delay reduction plan, Acting Chief Judge Brotman directed that the group proceed on a schedule in order to allow the District Court to qualify as an Early Implementation District. Additionally, in anticipation of the enactment of new local rules in furtherance of a cost and delay reduction plan, Judge Brotman directed the Reporter and the Advisory Group to review, edit and recodify the local rules of the District Court of the Virgin Islands.

The Advisory Group convened for its first meeting on April 15, 1991. The report which follows reflects the advisory group's collegial yet intensive dedication to purpose. It is also noted with sincere gratitude that the report benefited immeasurably from the able and professional contributions of Orinn Arnold, the Clerk of the Court, and from the very competent coordination and reporter services rendered by Royette Valmond Smith.

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[1]The Civil Justice Reform Act of 1990 is the short title of Title I of the Judicial Improvements Act of 1990, Pub. L. No. 101-650 (1990), codified at 28 U.S.C. §§ 471 - 482. In this report the statute will be referred to as the Act.

[2]This order was amended on the 19th day of February 1991 to add additional members and provide added specificity to the role of the advisory group.

[3]Biographical sketches for the Advisory Group are in the appendix.

# Methodology of the Advisory Group

In fidelity to its mandate, the Advisory Group determined to employ the broadest range of inquiry possible under the time constraints faced by an Early Implementation District. Commencing with its April 15 meeting, the Advisory Group met seven times thereafter with its last meeting being held on December 11, 1991. The Advisory Group established four working subcommittees. The subcommittees and their chairpersons were as follows: Alternative Dispute Resolutions Subcommittee chaired by Adriane J. Dudley, the Territorial Court and District Court Relations Subcommittee chaired by Joel W. Marsh, the Discovery Subcommittee chaired by Britain H. Bryant, and the Subcommittee on Management of Various Classes of Actions chaired by Bernard VanSluytman. In the production of four working drafts of its report and plan, the Advisory Group received helpful input from the Administrative Office of United States Courts and the Federal Judicial Center, as well as independent research and analysis provided by staff members and principals associated with the Justice Research Institute including Charles Braxmeier, Steven G. Gallagher, Fernando A. Gallard, Samuel F. Harahan, and Sharon Ordway.

## Cost of Litigation Survey and Data Collection Project

In addition, the Advisory Group with the assistance of its Reporter, William K. Slate, II, developed its own data through the use of a Cost of Litigation Survey mailed to the practicing members of the Virgin Islands Bar who appear in federal court. That survey resulted in a better than 50% response rate and contributed substantially to the advisory group's analysis of where the cost of litigation bulges during the progress of a civil case in federal court. An important finding from the survey was the cost related to the use of expert witnesses in the Virgin Islands, and resulted in a new local rule recommended in the District Court Plan.

The Advisory Group also developed a civil case data collection instrument which examined docket sheets from 250 closed cases for the statistical years 1989, 90 and 91. The focus of this inquiry was to examine the elapsed time between major key events in the life of a civil case for the purpose of ascertaining where delays typically arise. Notable among the data collection project findings were the amount of time which discovery added to civil case disposition time, and the need for a local rule to address the response to a motion for summary judgement.

Both the data collection instrument and a summary of the results of the analysis of the referenced closed case docket sheets are set out in the appendices to this report.

Additionally, in anticipation of the plan to be recommended to address matters of cost and delay in civil litigation, Acting Chief Judge Brotman asked that the local rules of the District Court of the Virgin Islands be studied, edited, and recodified in conformity with the model rules of the Judicial Conference of the United States.

All of the referenced work was accomplished by virtue of the dedication, and commitment of time and energy by the members of the Advisory Group. Each of those individuals served without compensation while committing untold hours to preparation, travel, subcommittee and committee deliberations.

Lastly, note is made of the many tireless contributions of Acting Chief Judge Brotman. Though not a member of the Advisory Group, he met with it often and contributed his perspectives, and also made himself readily available for questions.

# Profile of the District Court of the Virgin Islands

## An Assessment of the Court's Criminal and Civil Dockets and Trends

### Introduction

In most respects the workload of the District Court is inextricably linked to its continuing judgeship vacancies. A court with two authorized judgeships has had neither filled for a protracted, inexcusable period of years. Only the industry and imagination of its acting chief judge, the commitment and constancy of its magistrate judges and the court staff, along with the cooperation, contributions and flexibility of the Virgin Islands bar and the Territorial Court of the Virgin Islands have enabled the court to function at all. Yet, many obstacles notwithstanding including a rising caseload, inadequate facilities and the destruction wrought by hurricane Hugo, the District Court has managed its caseloads well, in some instances bringing it circuitwide and national distinction.

### Overall Workload[4]

Five year trends indicate that total filings in the Virgin Islands are increasing by approximately 1% annually. This is a marked difference from the 3% rate of decline nationally. Termination rates increased noticeably in statistical year 1991 as compared to the previous year. However, when the rates are viewed as a trend they remain virtually unchanged over the preceding five years. The five year trend of pending cases exhibit an increase of about 4% annually. In order for the number of pending cases to decline, terminations will have to increase at an even greater rate than the present rate in the district.

### Criminal Docket

The Virgin Islands has one of the highest number of criminal filings per judgeship in the Federal Court System. Figures for the statistical year ending on June 30, 1991 show that the district is ranked

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[4]Supporting graphs depicting all aspects of the civil and criminal dockets are found in the attachments to this report.

third out of the 94 districts courts in criminal filings per judgeship. The Virgin Islands have been very efficient in processing these cases, being ranked first in the Third Circuit and twelfth in the U.S. District Court System in median time from filing to disposition. However, it is invariably the case that the time available for the civil docket is adversely impacted by a district required to concentrate so heavily on a massive criminal docket.

The United States Department of Justice expects a growth of 300% to 400% in available federal investigative agents in the Virgin Islands in the next 12 months. In addition, the U.S. Attorney's staff has grown from 10 lawyers in 1987 to a total of 18 lawyers in 1991. The expectation is that the office will increase its investigation and prosecution of drug related and public corruption crimes. It is also noteworthy that the current make-up of the drug caseload has begun tilting toward multi-kilogram cases involving multiple defendants and drug organizations. These cases take a considerable amount of Grand Jury time and ultimately will consume large blocks of the time of the District Court.

In examining criminal case filings for statistical year 1991, the single largest category of cases filed was in the category for narcotics (43 cases) followed by homicide and assault (39 cases) and fraud (35 cases). This would tend to suggest that, once the territorial court assumes jurisdiction over most criminal matters, significant numbers of cases, at least in terms of raw numbers, will be transferred to the territorial court.

Although legislation has been passed which would transfer to the territorial courts jurisdiction for "non-federal" criminal cases, it appears that the transfer of that jurisdiction will not occur for the next one to two years.

In summary, with respect to the criminal docket, it is clear that the cases filed in the future will take longer to bring to court, but once they arrive they will take longer at trial and will involve many more multi-defendant trials. It is also clear that the addition of new federal agents will have a long term net effect of substantially increasing criminal case filings.

## Civil Docket

The District is ranked 89th nationally and sixth in the Third Circuit in taking civil cases from issue to trial. The median time in months from issue to trial in 1991 was 32. This exhibits a substantial improvement from the 38 months median time of 1990. This decline is even more remarkable in light of the vacancy of all active judgeships in the Virgin Islands and reflects the leadership and commitments referenced in the introduction along with a helpful cadre of visiting judges. New civil case filings exhibited a marked increase in 1991 over 1990 (from 283 per judgeship in 1990 to 393 in 1991). Actually the figure from 1991 appears to be more in line with numbers from 1986 to 1989. The sharp decline of new civil filings in 1990 appears to be an aberration, possibly caused by the disruption of normal conditions caused by the destructive forces of Hurricane Hugo.

The number and percent of civil cases that are over three years old, trended downward from 1985 through 1988. However, this trend reversed in 1989 and the increase accelerated in 1990. Over 11% of pending civil cases on the court docket were in excess of three years old. The Virgin Islands District

Court made substantial progress in 1991 by reducing these types of cases to under 10% of the current civil court docket. This progress deserves to be noted, especially in light of the vacant judgeship months resulting from the death of Judge O'Brien and the retirement of Judge Christian, as well as the attention required by the criminal docket. Once again the work of Acting Chief Judge Brotman and visiting judges from the Third Circuit should be recognized. The District now ranks fifth in the Third Circuit and 63rd in the nation in number and percentage of civil cases over three years old.

One unknown element is the degree to which the filing of new civil cases will be reduced by jurisdictional changes effective October 1, 1991, which direct categories of "non-federal" civil cases to the Territorial Court of the Virgin Islands.

## Appeals From the Territorial Court

Among the distinguishing features of the District Court of the Virgin Islands is the jurisdictional responsibility to hear certain appeals from the Territorial Court. That appellate caseload is not overwhelming in its numbers, however, it is a steady factor contributing to the caseload demands placed upon the court.

For the statistical year ending June 30, 1991, there were 71 civil appeals filed, and 13 criminal appeals filed from the Territorial Court.

## Judgeships and Caseload

The Virgin Islands are currently authorized to have two active judgeships. Both have been vacant for nearly two years and the work has been managed by Acting Chief Judge Brotman from the District of New Jersey and a host of visiting judges from the Third Circuit and other districts. The Virgin Islands judgeships were asked to handle 519 filings per judgeship in statistical 1991. This number is far higher than the national average of 372 filings per judgeship.

## Magistrate Judges

As noted elsewhere in this report, the Virgin Islands District Court has in many respects had to be preoccupied with its heavy criminal docket. The extent to which the court may call upon its magistrate judges to assist in civil litigation duties is very clearly related to the volume of duties they are called upon to perform in criminal cases. It is accepted wisdom nationally that, in districts where magistrate judges are required to be heavily utilized in criminal cases, they do not have the time to assist significantly in civil cases. Recall that the Virgin Islands is the number three district in the nation in criminal case filings per judge. In further contemplating the participation of magistrate judges it is significant to note that the court's median time of disposition of its criminal cases in 1991 was 4.4 months. This ranks the district 12th in the nation. By contrast the district median time for disposal of its civil cases is 25 months. This ranks the court 94th in the nation. It thus appears that magistrate judges are heavily utilized in criminal matters and contribute substantially to the commendable time frame within which such cases are concluded. At the same time, on the civil side, the statistics bear

out the fact that since two full time magistrate judges have been on board, the number of civil uncontested non-dispositive civil actions disposed of by magistrate judges have soared. Other areas where magistrate judge utilization has increased substantially include felony uncontested non-dispositive actions, civil initial pre-trial conferences, civil discovery conferences and civil settlement conferences. Thus, while clearly there are finite limitations to the volume of work which two magistrate judges can accomplish, at present they have increased out-put in both civil and criminal caseload areas.

## Demands Placed on the Court

### Physical Plant

The physical plant in both divisions has been inadequate for an extended time.

St. Croix Division

In the St. Croix division, the courthouse is located in a 17th Century building that is dilapidated and lacks the space needed for an efficient administrative operation. There is no jury assembly room, witness room, or attorney conference room. At the same time, the Clerk's Office space is wholly inadequate and is incapable of accommodating even one more employee. The Deputy Clerks work under poor conditions with repairs needed to the floors, windows, bathrooms and walls.

A new courthouse is scheduled to be completed in late spring of 1992. The new facility will have adequate space for the near term and if completed as planned will have the amenities for an efficient operation.

St. Thomas Division

Like its sister division, St. Thomas also has physical plant problems. The Clerk's Office is entirely too crowded and precludes the most efficient of operations. There is no room for expansion nor is there space to house new computer equipment.

The magistrate is required to occupy Third Circuit chambers and still the building does not provide adequate space and facilities for the magistrate and his staff.

Deficiencies of the St. Thomas court facilities will be addressed in some measure when an annex courthouse is completed. The new building is presently being designed and construction is scheduled to commence in fiscal year 1993. Upon completion, it will house two chambers and two courtrooms as well as the Clerk's Office.

### Court Reporter Services

The St. Croix division has only one reporter assigned to it. This deficiency has been singled out as one of the most pressing for the district. With a heavy criminal calendar and most every defendant requesting an appeal, the reporter is unable to keep up with the workload. As a result, the progress of both civil and criminal cases suffers as a result with cases having to be postponed or continued because

needed transcripts are behind schedule.

Both divisions of the court require additional court reporter services to eliminate instances reported such as cases being postponed for two years awaiting a transcript.

## Library Facilities

The library facilities will be upgraded in both divisions but there is a need for a professional librarian on staff to bring the library service to the bench and bar up to standards enjoyed elsewhere.

## Technology

The District Court of the Virgin Islands is far behind other courts in computerizing the various functions of the court. A recent breakthrough has been the employment of a full time systems administrator who has begun to teach the staff the computers and their applications in court settings. The new building in both divisions will have state of the art computers networked with each other. The longer term goal is to be able to docket cases electronically ultimately permitting access to the docket by the courts and thereafter the public.

## Local Rules of Court

The local rules of court include rules formally enacted along with standing orders and various memoranda and letters from the district judges and magistrate judges. Presently a complete codified set of local rules does not exist. The collection of documents comprising the rules do not reference any method of alternative dispute resolution including mediation or court annexed arbitration. The assembling and recodification of the local rules of District Court of the Virgin Islands has been commissioned and will be prepared as a part of the project in implementation of a Civil Justice Reform Act plan.

## Bankruptcy Court

Cases filed nationally in the U.S. Bankruptcy Courts continued to grow at an alarming rate during 1990 in response to the current recession. There were 782,960 cases filed during that year representing a 15% increase over the previous year. The number of pending cases nationally reached 1,033,230 as of December 31, 1990. In calendar year 1990, the Virgin Islands had 27 new filings, 10 terminations and the pending caseload grew from 209 to 226 cases -- a percentage change of 8.1%. During the same period, three new adversary proceedings were filed and none were terminated bringing the pending number of adversary proceedings as of December 31, 1990, to 20 cases.

In calendar year 1991, as of November 30, new case filings numbered 43. Of these, 22 were Chapter 7 cases, 15 were Chapter 11 cases, and 6 were Chapter 13 cases.

The calender year 1991 filings (43) represent a significant increase since 27 cases were filed in 1990 and 22 cases were filed in 1989.

It is important to note that in the Virgin Islands, unlike many other parts of the country, there is

a preponderance of Chapter 11 cases and these cases take longer to close.

The records of the court show that since January 1, 1991, 298 cases have been closed. Thus as of November 30, 1991, just 63 bankruptcy cases were pending, 11 of which were Chapter 7 cases, 43 were Chapter 11 cases and 9 were Chapter 13 cases. The 1991 case closing effort may modestly be labeled herculean by any standard of measurement.

The Virgin Islands Bankruptcy Court has been without the benefit of a published set of local rules, however, a draft set of local rules, developed by Chief Judge William H. Ginden from the District Court of New Jersey, is presently in circulation for comments.

There is no statutorily authorized position for a bankruptcy judge in the Virgin Islands (as is true in other territorial courts) and the District's needs are being largely served by Chief Judge Ginden from the District of New Jersey. Additional assistance will be required for the future. Although the Bankruptcy Court's caseload is not per se contemplated within, nor a factor under, the Civil Justice Reform Act, it is likely that the district judges in the Virgin Islands will be called upon with increasing frequency to assist in reducing the growing backlog of bankruptcy cases.

## The Impact of New Legislation on Costs and Delays

The Act directs each advisory group to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."[5] We began our examination by recalling that the Report of the Federal Courts Study Committee published in April of 1990 noted that 195 statutes enacted by the Congress in the past four decades have substantially impacted upon the workload of the federal courts. All of these statutes were promulgated without the benefit of a judicial impact assessment and many of them were replete with open or unanswered questions regarding issues such as the statute of limitations, or whether state and federal courts shared concurrent jurisdiction. Stated in a summary way, the drafting defects in much of the legislation affecting the federal courts breed excessive and unnecessary litigation.

It is, therefore, our assessment that cost and delay in the federal trial courts are clearly affected in a negative way by both the absence of a process to evaluate the impact of new legislation from the standpoint of resources required within the apparatus of the federal courts, and by the number of cases generated due to unanswered questions in new laws. This advisory group, therefore, encourages the Congress to consider both the resource allocation question and the opportunity afforded in pending legislation to employ the use of a judicial impact statement and legislative check list in reviewing new legislation before it is enacted into law.

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[5]28 U.S.C § 472(c)(1)(D).

# Findings and Recommendations

The Act requires the Advisory Group to "identify the principal causes of cost and delay in civil litigation."[6] Thus the Act presumes that in every district there will, in fact, be identifiable cost and delay in civil litigation. The Advisory Group believes, however, that it is important to place our findings on those issues in the context of our conclusion that this district has done an extraordinary job of managing its dockets, particularly in light of the continued vacancies of both district judgeships. Therefore, we would begin by expressing our considered judgment that the principal cause of delay in the progress of civil cases in the District Court of the Virgin Islands is the lack of judicial resources. The Advisory Group is powerless to address this issue and can only appeal to the Administration and the Congress to fill this need. We note again that we have been ably served by the presence of our Acting Chief Judge and a host of visiting judges from throughout the United States, however, the principal harm done by inadequate on-site judges is to render trial dates less than firm and consequently less that credible. The Act recognizes the importance of firm, credible trial dates in reducing both cost and delay.

Second only to vacant judgeships in impacting on the cost and delay in civil litigation is the overwhelming and growing criminal caseload faced by this district court. As reported earlier, the Virgin Islands is ranked third out of 94 district courts in the nation in the highest number of criminal filings per judgeship. Additionally, the largest single category of criminal cases is for narcotics cases which frequently involve multiple defendants, complex issues, and lengthy trials. Adherence to the time requirements of the Speedy Trial Act leaves increasingly less time available to court personnel for the civil docket.

In turning to those areas where the advisory group believes that it can make recommendations to address cost and delay, five discrete aspects of civil litigation have been identified. They are the present local rules, alternative dispute resolution, discovery, expert witnesses, and the education of the bar. The substantive rationale which led to the identifiable sources of cost and delay was developed in the analysis of the civil and criminal dockets and the resource needs of the court, the cost of litigation survey and its analysis, and the case data collection and analysis project. Therefore, the findings and recommendations respecting cost and delay will be stated in a summary manner and are as follows:

1. **Finding** - The present local rules respecting civil case management are in most respects adequate and responsive to issues of cost and delay.
   **Recommendation** - The local rules which exist should be more stringently enforced, and

[6] 28 U.S.C. § 472(c)(1)(C).

modified where appropriate to accommodate the additional recommendations of the Advisory Group including a local rule on summary judgment motions.

2. **Finding** - The District Court of the Virgin Islands does not presently have in place rules or practices which encourage or require the parties in civil litigation to explore alternative dispute resolution (ADR) mechanisms. The advisory group has considered a number of ADR options and accepts the findings that ADR tends to reduce cost and has the potential to expedite cases to a final disposition.
   **Recommendation** - A local rule providing for court annexed mediation should be adopted.

3. **Finding** - The discovery process is a source of both potential and inordinate expense and delay in civil litigation.
   **Recommendation** - A local rule should be enacted which encourages cooperative discovery between the parties, reducing the need for court orders, and one which also limits the time for taking depositions, and the number of attorneys who may question the deponent.

4. **Finding** - The use and unavailability of certain experts resident in the Virgin Islands is a source of both excessive cost and frequent delay. Though this problem is not unique to the Virgin Islands it is certainly exacerbated by the realities of geography.
   **Recommendation** - The videotaping of witnesses is encouraged. It is also recommended that a local rule be enacted advising parties and experts that an expert is bound by the report which addresses his/her findings and that such a report must be made available to opposing parties before the expert is deposed. The payment for expert witness depositions should also be clarified.

5. **Finding** - In order for the members of the Virgin Islands Bar to be knowledgeable about the background and the basis for the establishment of the Advisory Group and the focused attention on cost and delay in civil litigation, as well as the new rules enacted to address those issues it is believed that early educational sessions are required.
   **Recommendation** - Once the early implementation district plan is filed, it is suggested that an educational program on the Civil Justice Reform Act, the Report and Plan be held on St. Thomas and St. Croix.

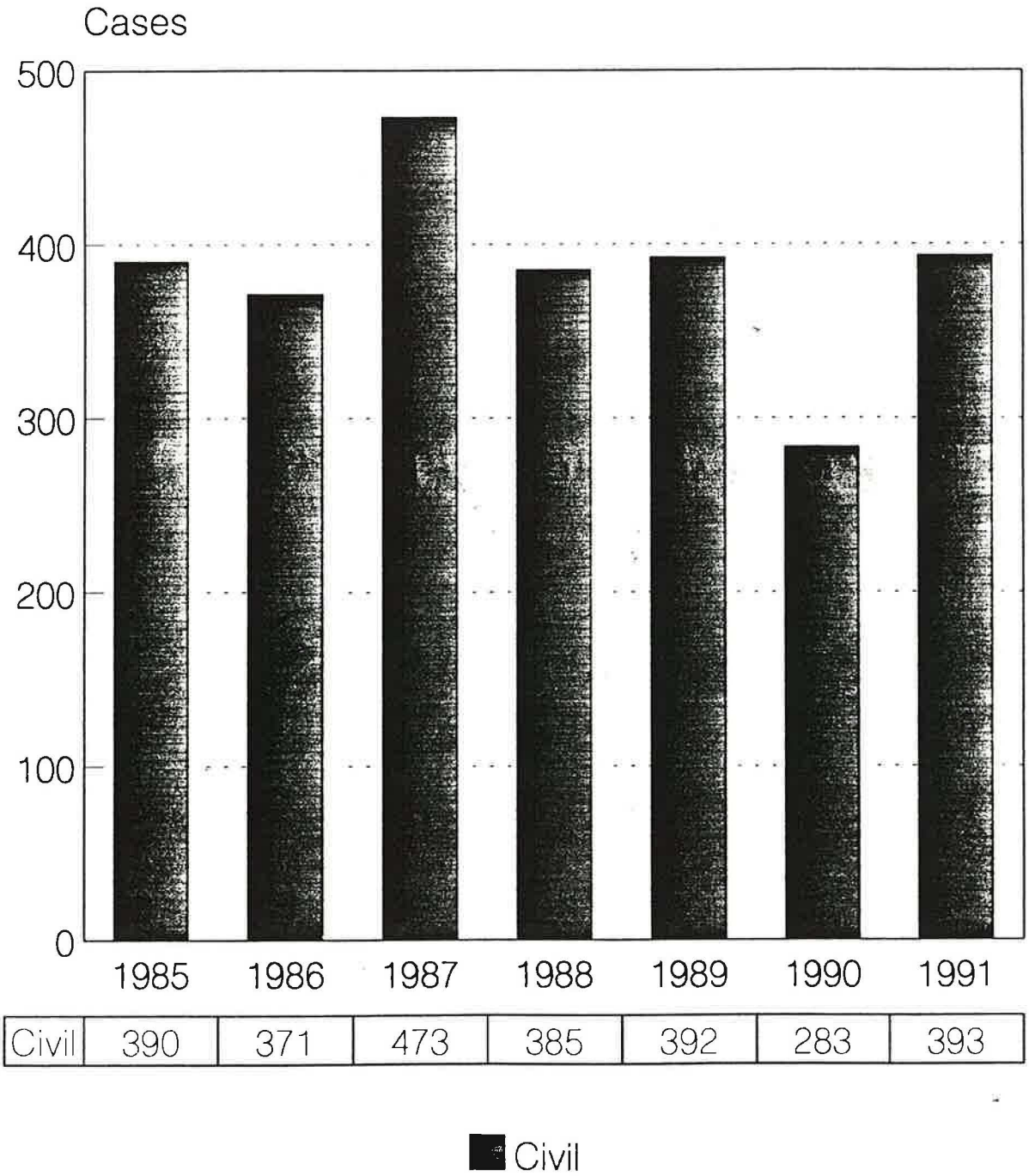
# Attachments

## Charts and Graphs
## Depicting Workload and Trends

# Virgin Islands

## Civil Filings

### Actions per Judgeship

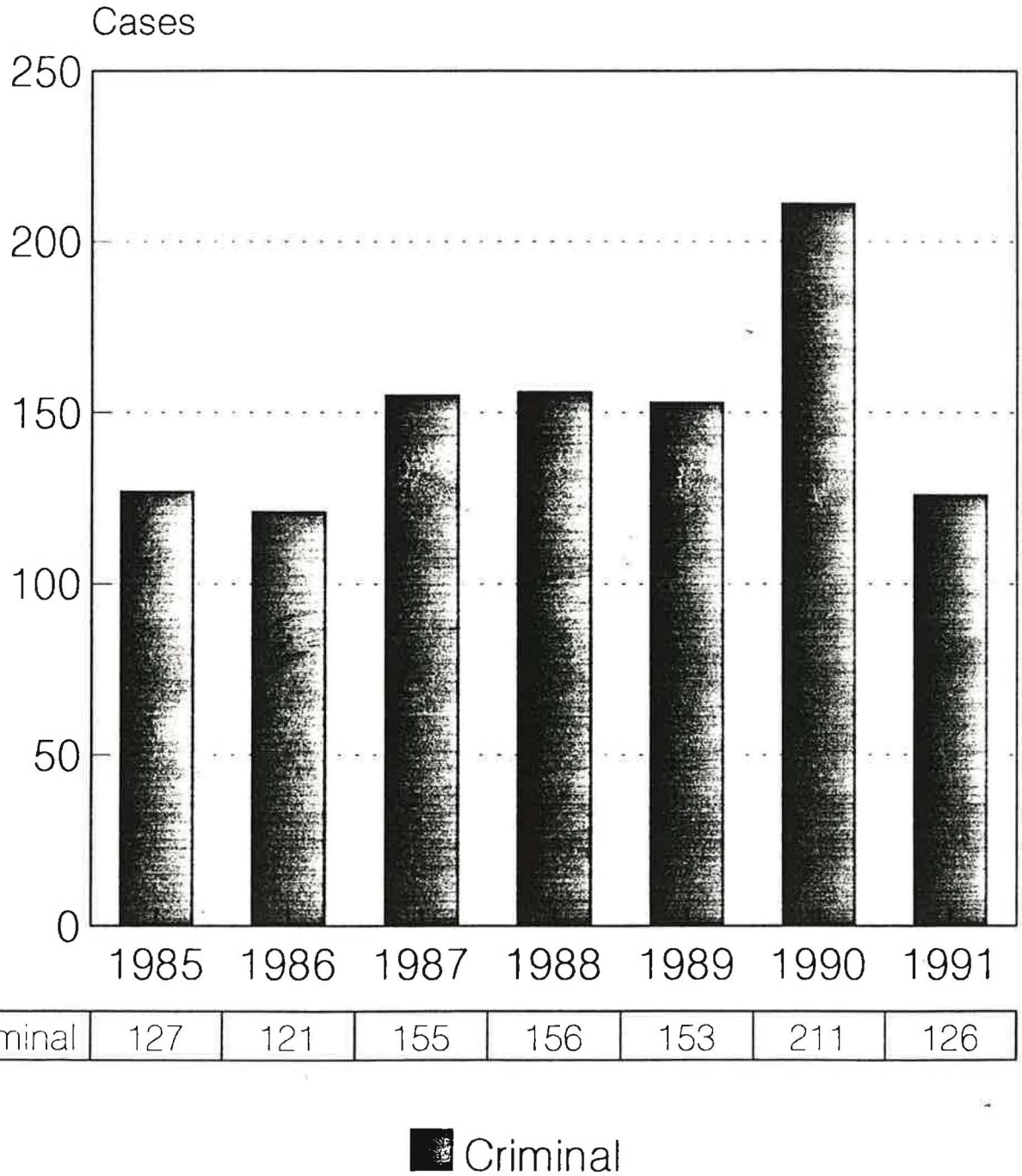



| | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 |
|---|---|---|---|---|---|---|---|
| Civil | 390 | 371 | 473 | 385 | 392 | 283 | 393 |

# Virgin Islands

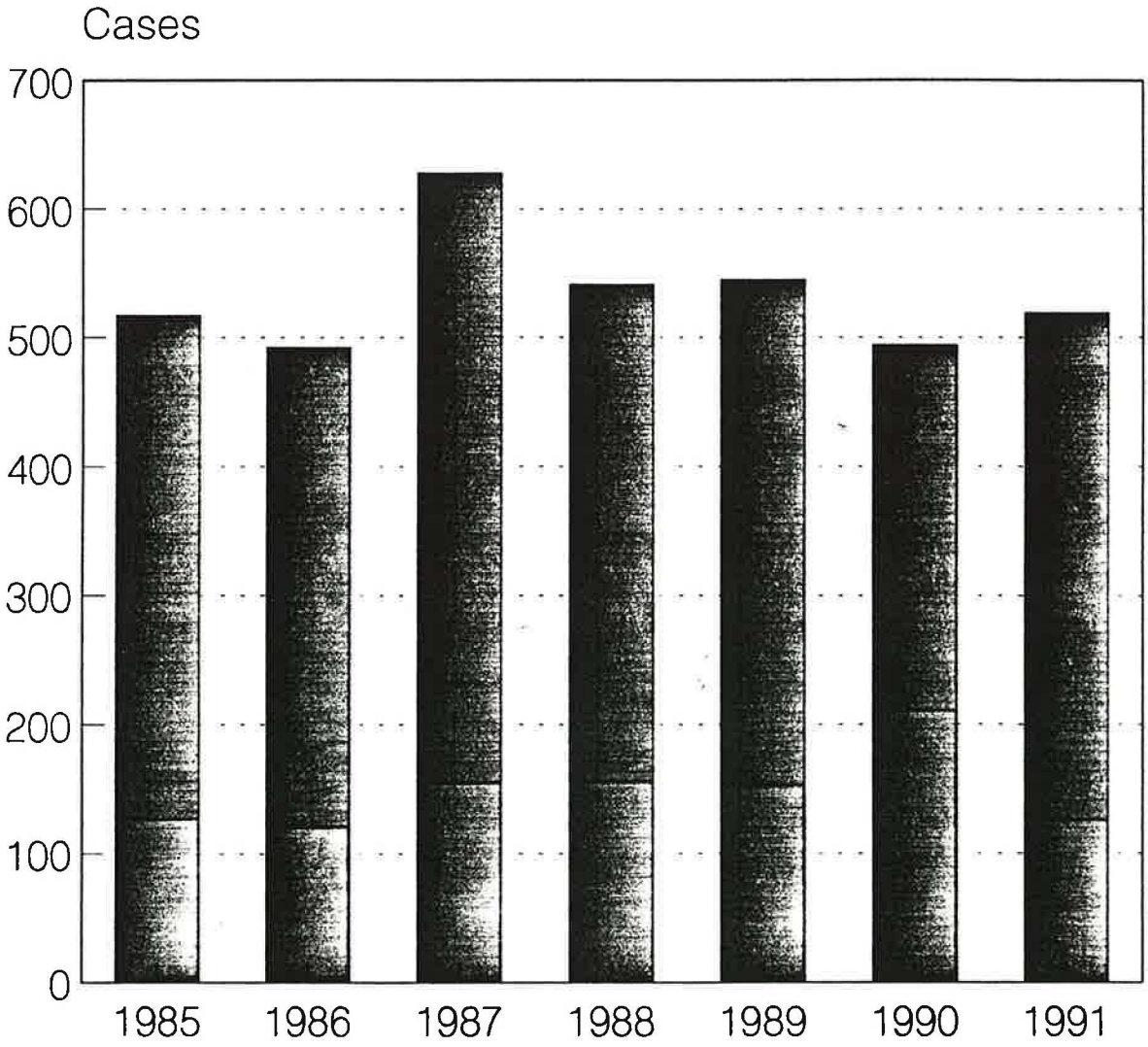
## Criminal Filings

### Actions per Judgeship



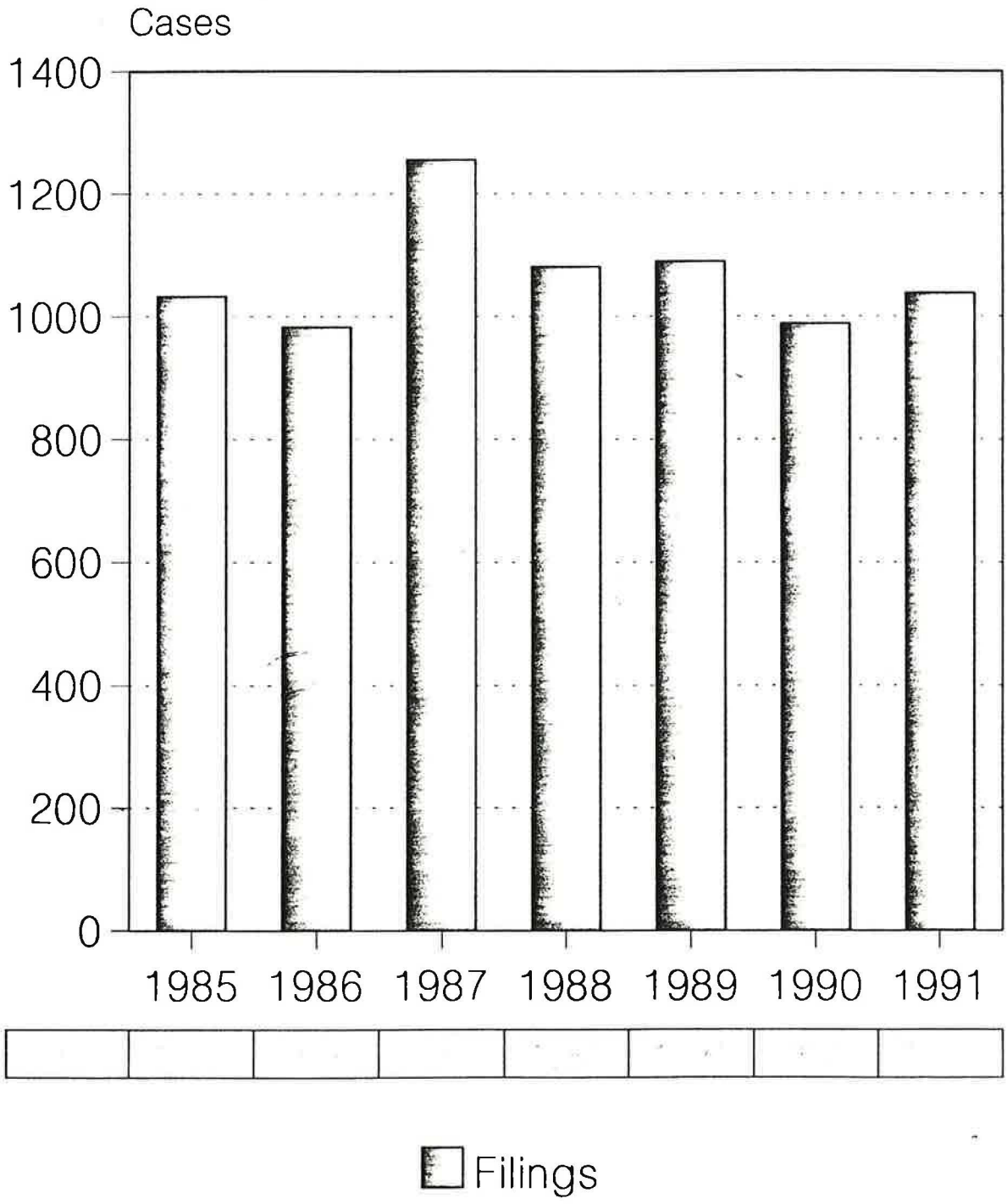

| | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 |
|---|---|---|---|---|---|---|---|
| Criminal | 127 | 121 | 155 | 156 | 153 | 211 | 126 |

# Virgin Islands
## Total Civil and Criminal Filings

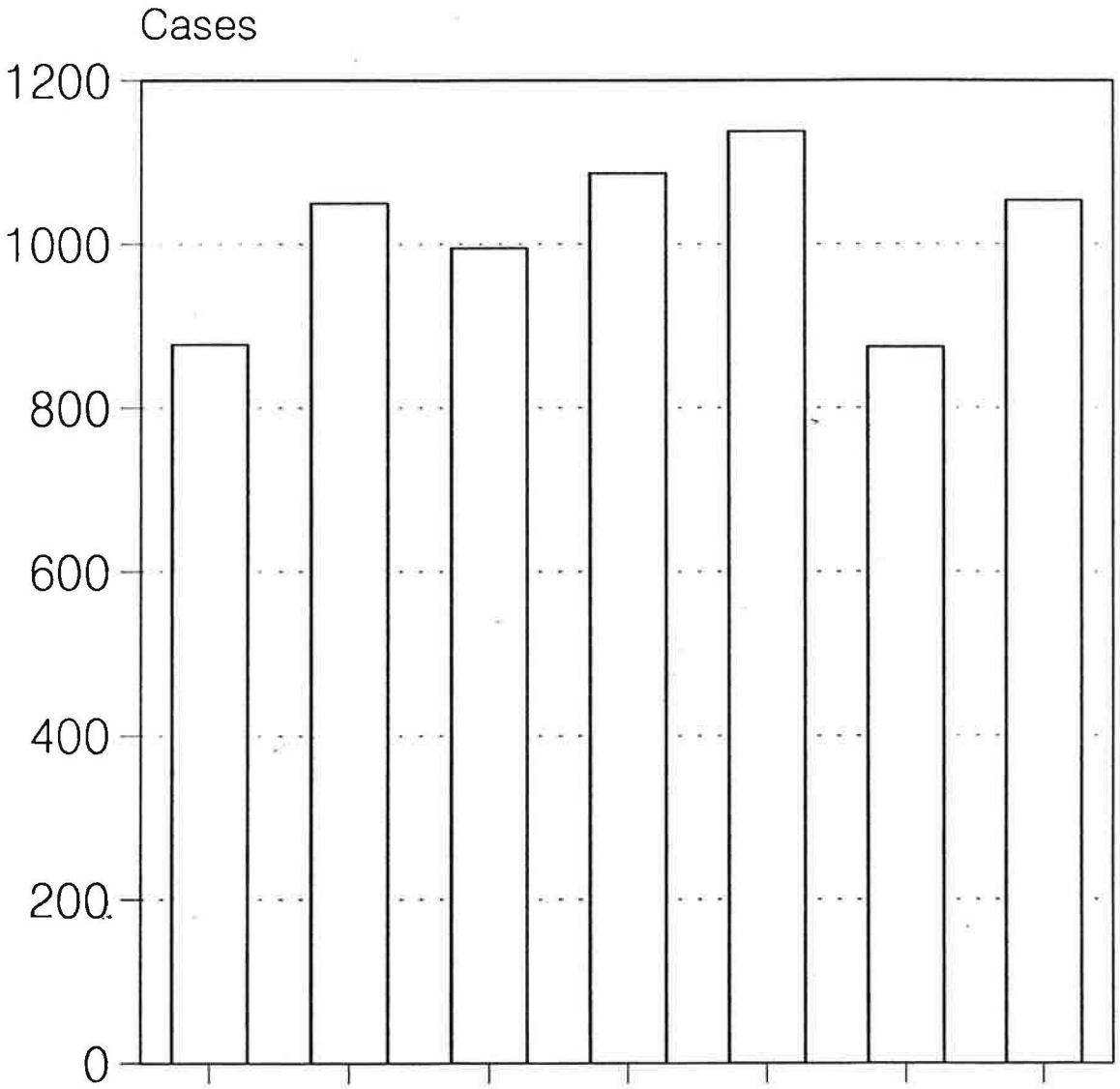



| | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 |
|---|---|---|---|---|---|---|---|
| Total | 517 | 492 | 628 | 541 | 545 | 494 | 519 |
| Civil | 390 | 371 | 473 | 385 | 392 | 283 | 393 |
| Criminal | 127 | 121 | 155 | 156 | 153 | 211 | 126 |

# Virgin Islands
## Total Filings



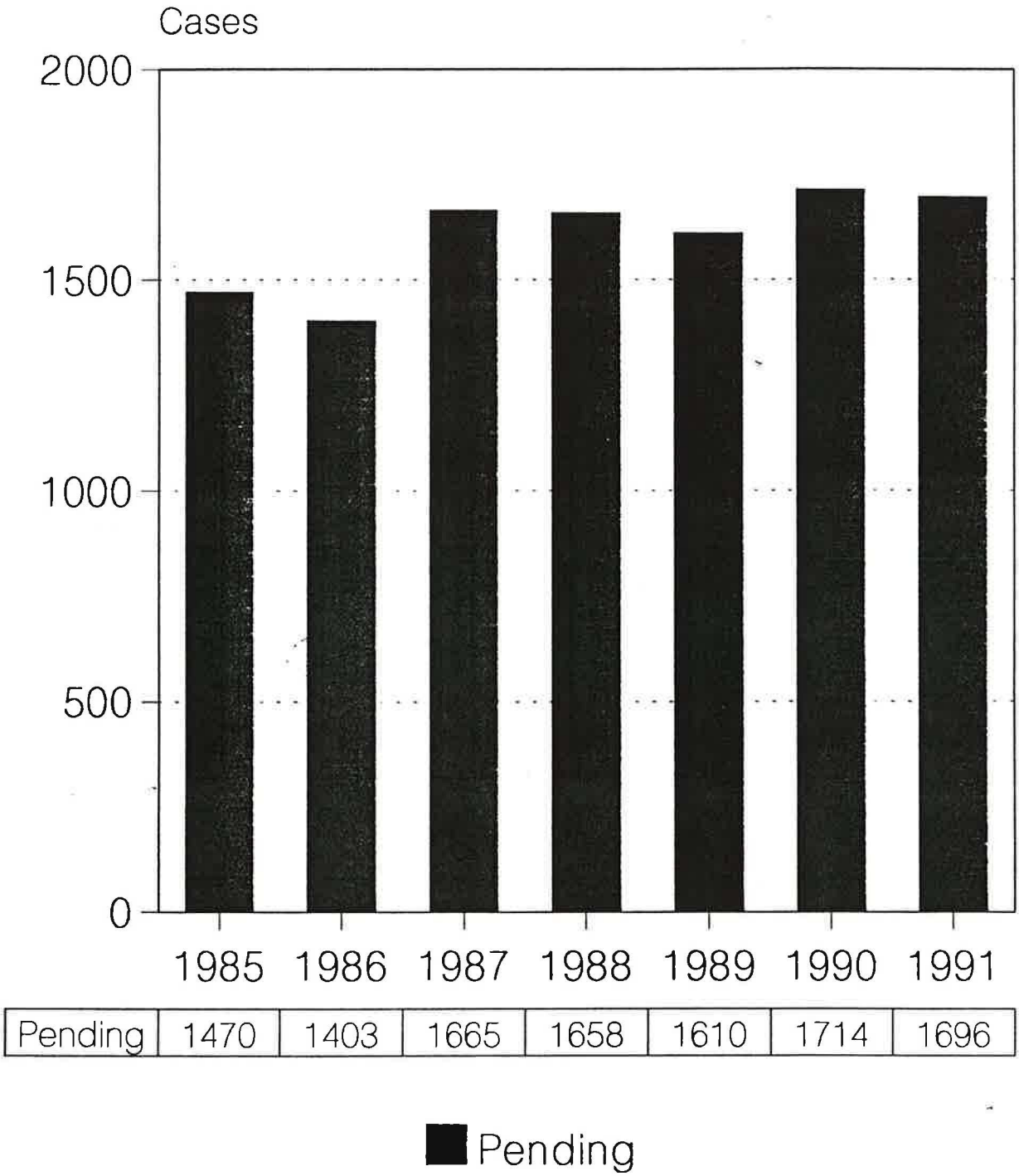
# Virgin Islands
## Total Terminations




| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Terminations | 877 | 1050 | 995 | 1087 | 1138 | 874 | 1054 |

☐ Terminations

# Virgin Islands
## Total Pending

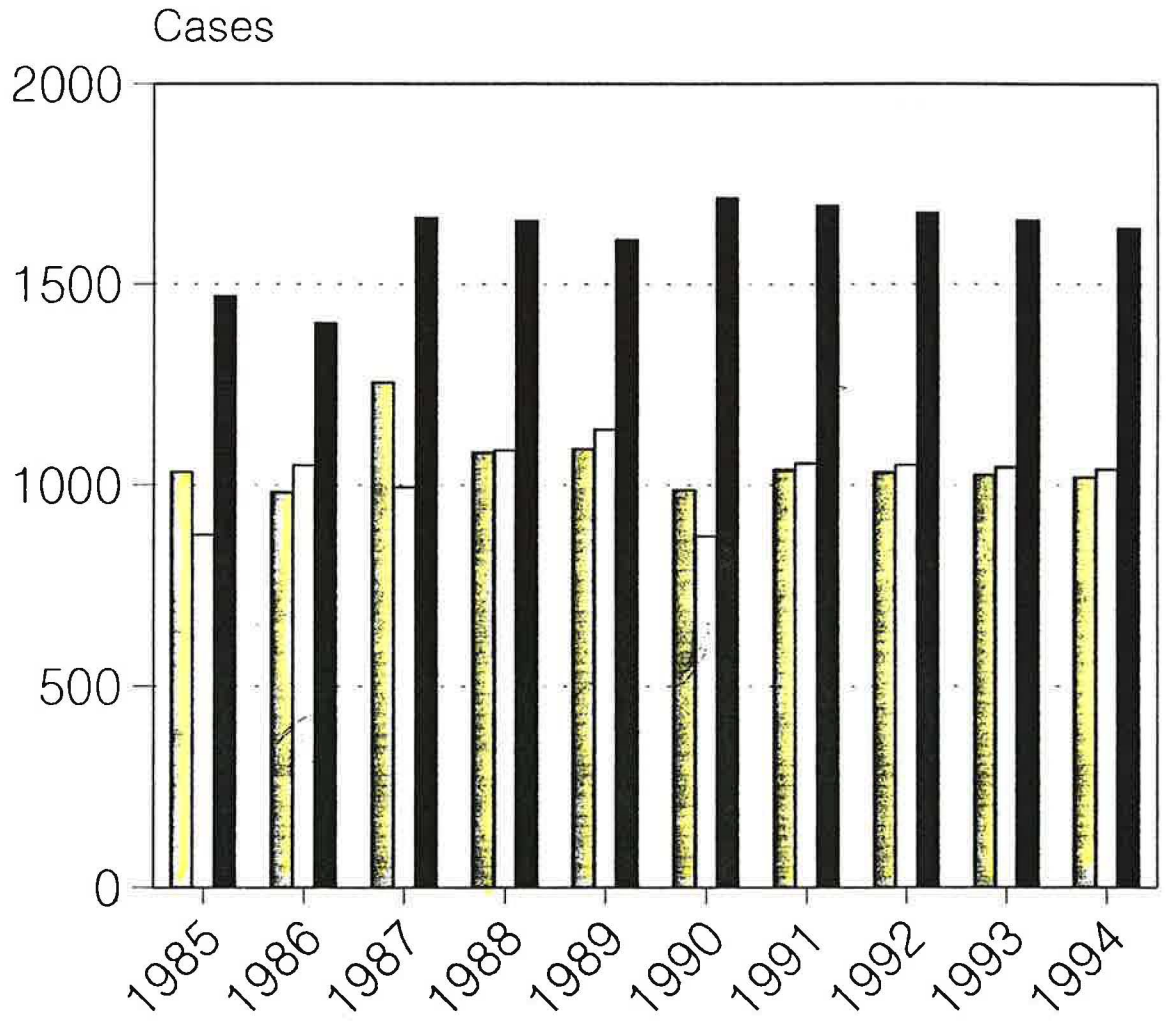



| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Pending | 1470 | 1403 | 1665 | 1658 | 1610 | 1714 | 1696 |

# Virgin Islands

## Filings, Terminations, Pending

1992 - 1994 are Projected Trends



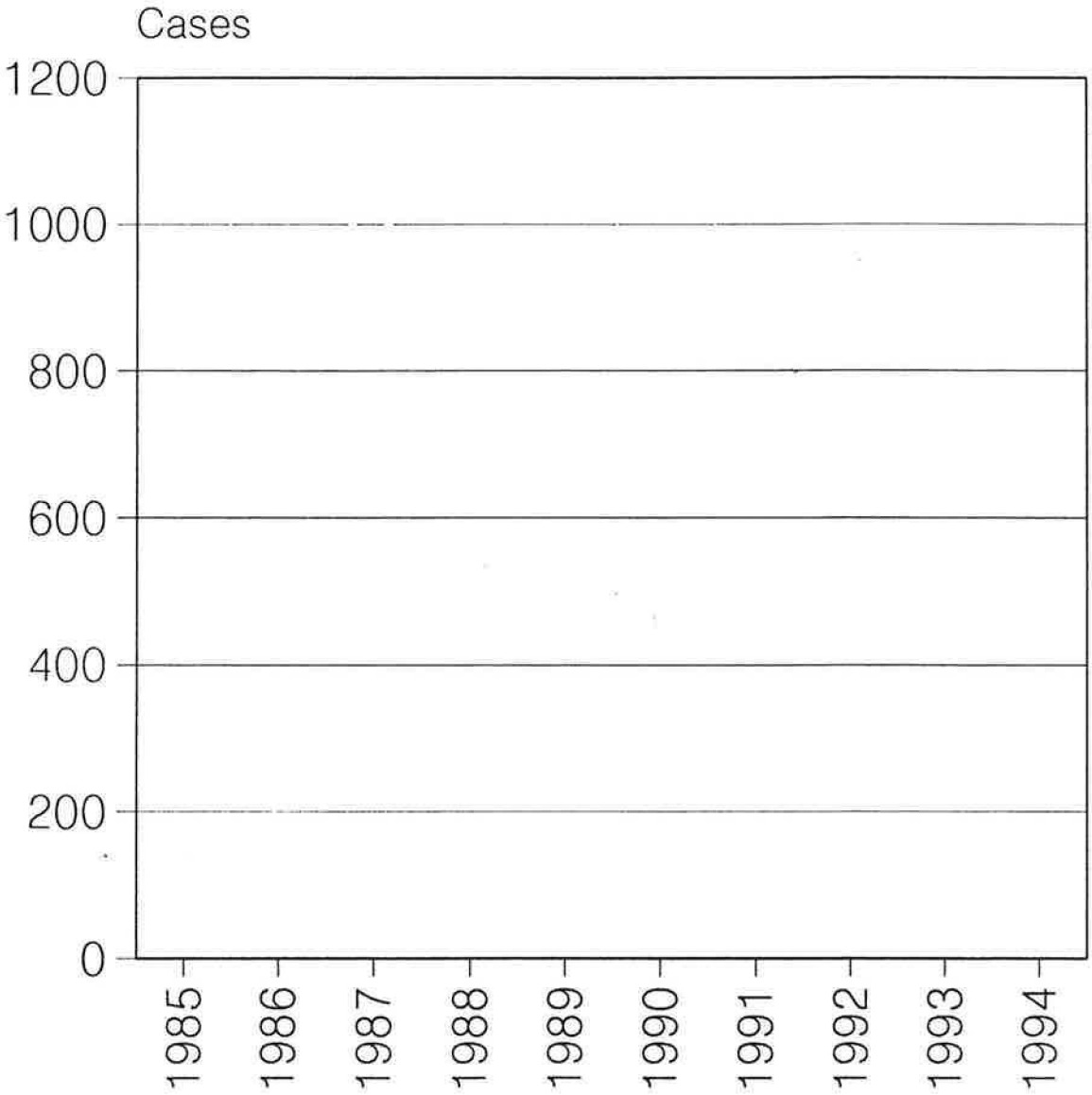

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Filings | 1033 | 983 | 1256 | 1081 | 1090 | 988 | 1038 | 1032 | 1026 | 1020 |
| Terminations | 877 | 1050 | 995 | 1087 | 1138 | 874 | 1054 | 1050 | 1045 | 1040 |
| Pending | 1470 | 1403 | 1665 | 1658 | 1610 | 1714 | 1696 | 1678 | 1659 | 1639 |

Filings Terminations Pending

# Virgin Islands

## Total Terminations

1992 - 1994 are Projected Trends



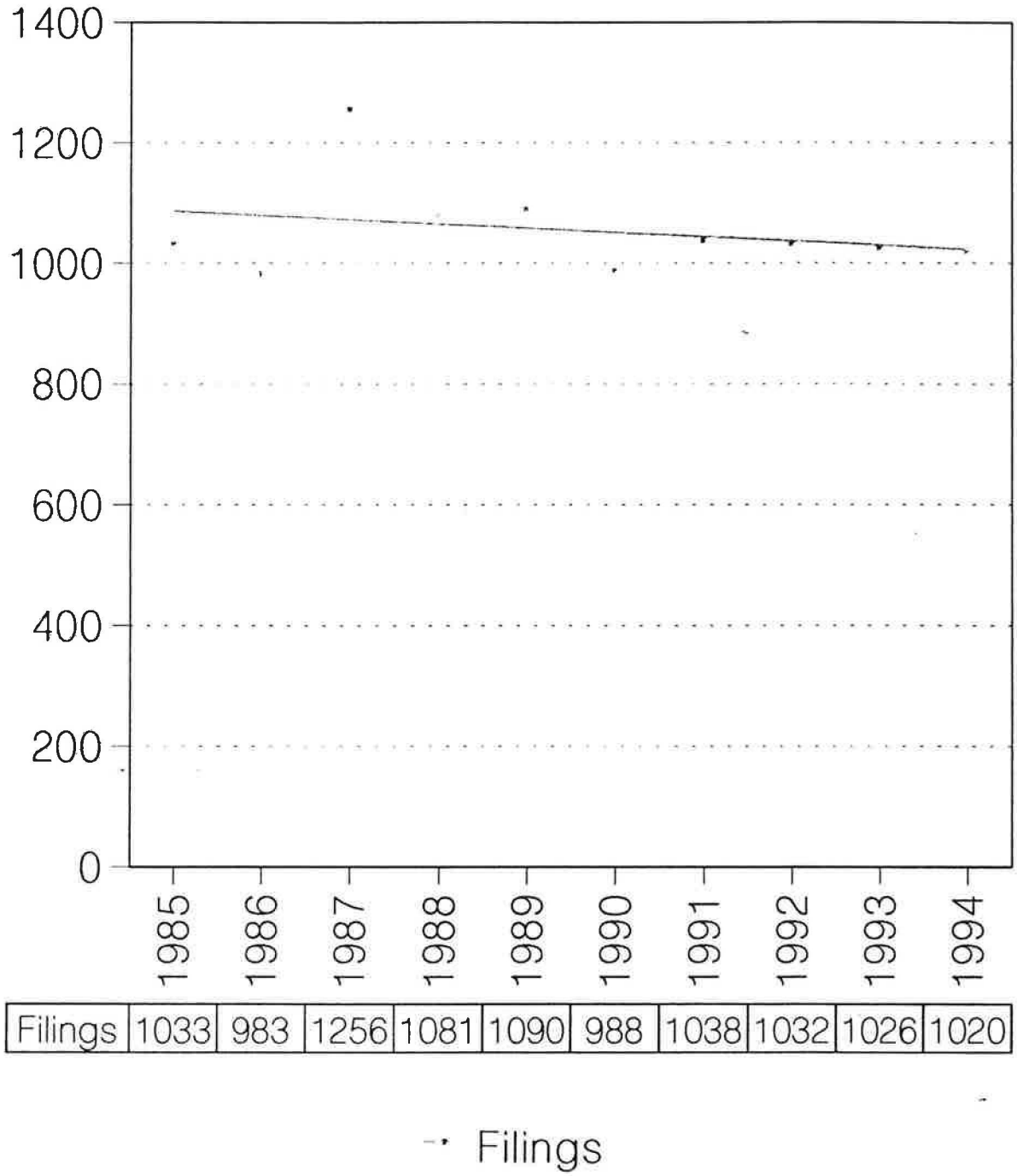

| Terminations | 877 | 1050 | 995 | 1087 | 1138 | 874 | 1054 | 1050 | 1045 | 1040 |
|---|---|---|---|---|---|---|---|---|---|---|

Terminations

# Virgin Islands

## Total Filings

1992 - 1994 are Projected Trends



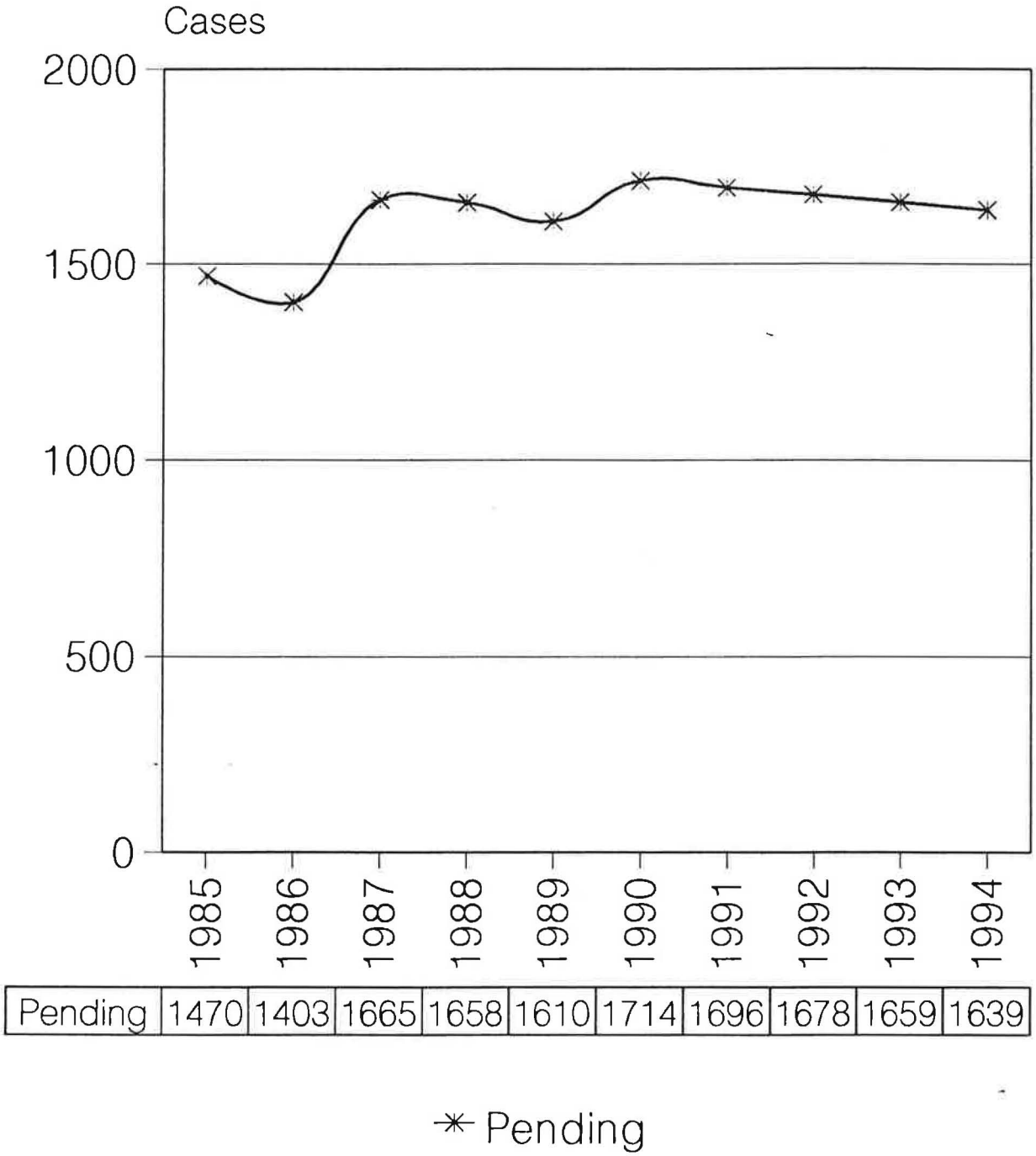

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Filings | 1033 | 983 | 1256 | 1081 | 1090 | 988 | 1038 | 1032 | 1026 | 1020 |

Filings

# Virgin Islands

## Total Pending

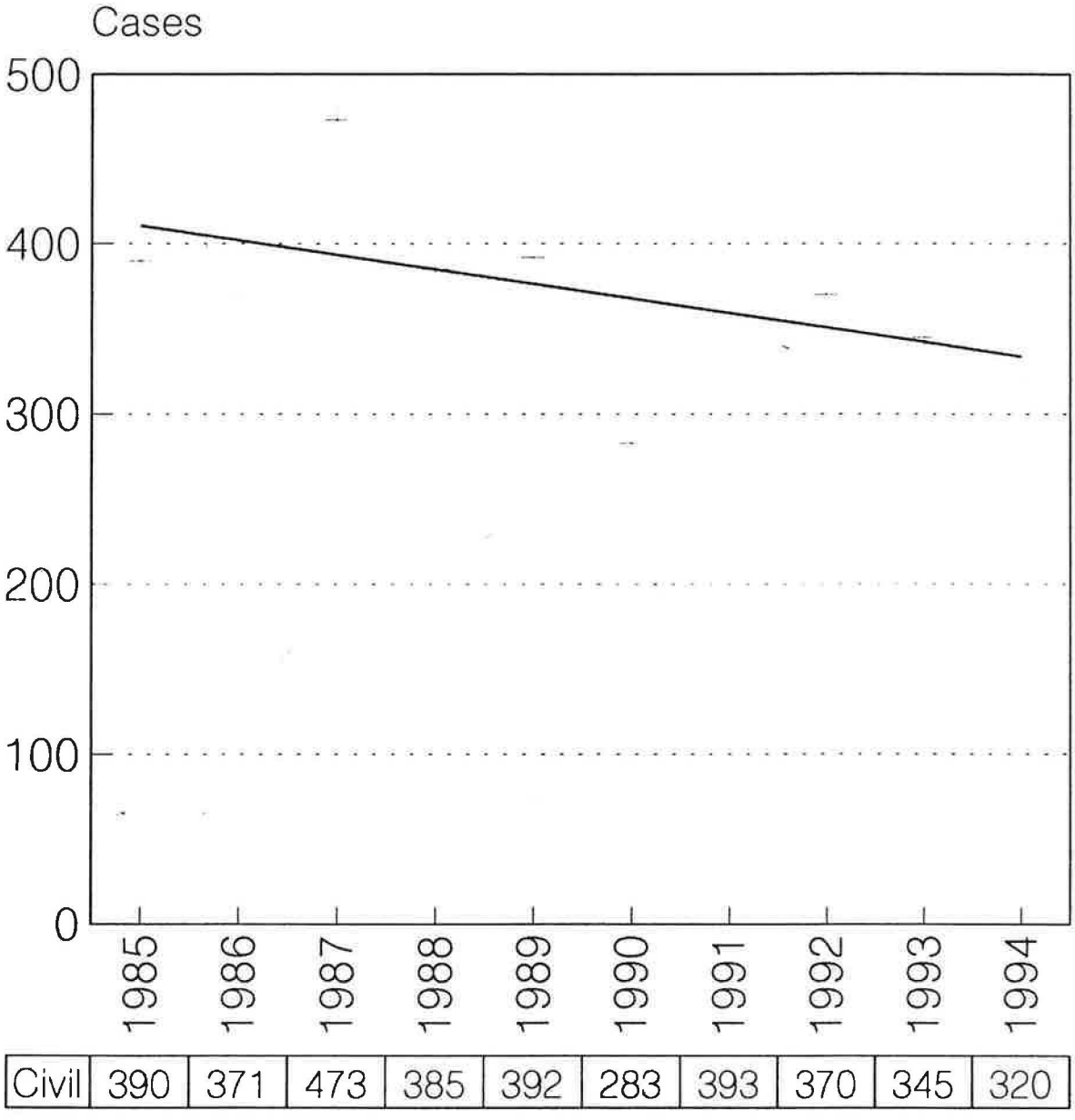
1992 - 1994 are Projected Trends



# Virgin Islands

## Civil Filings

### Actions per Judgeship

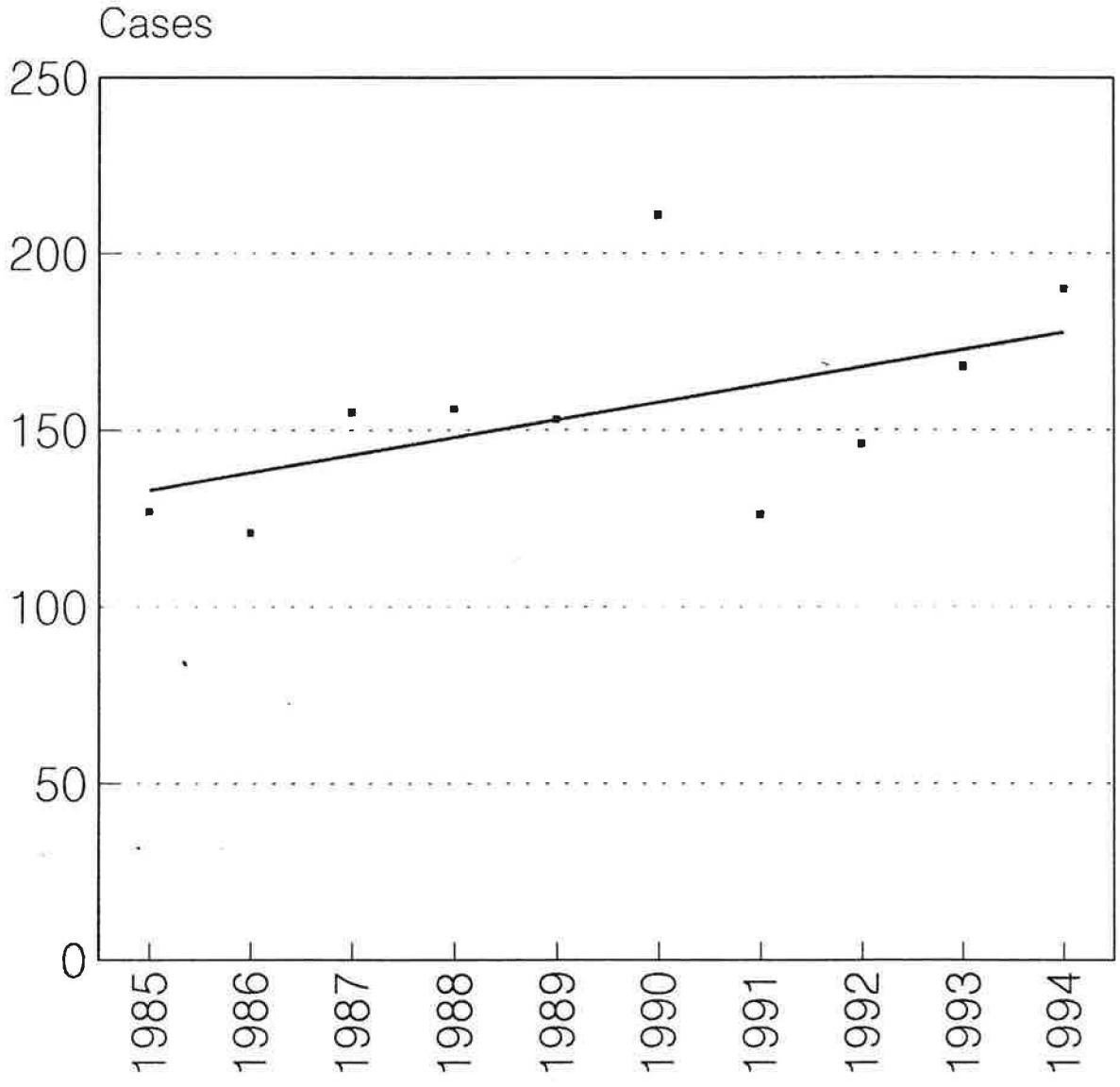



| | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|
| Civil | 390 | 371 | 473 | 385 | 392 | 283 | 393 | 370 | 345 | 320 |

— Civil

1992 - 1994 are Projected Trends

# Virgin Islands
## Criminal Filings
### Actions per Judgeship




| | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|
| Criminal | 127 | 121 | 155 | 156 | 153 | 211 | 126 | 146 | 168 | 190 |

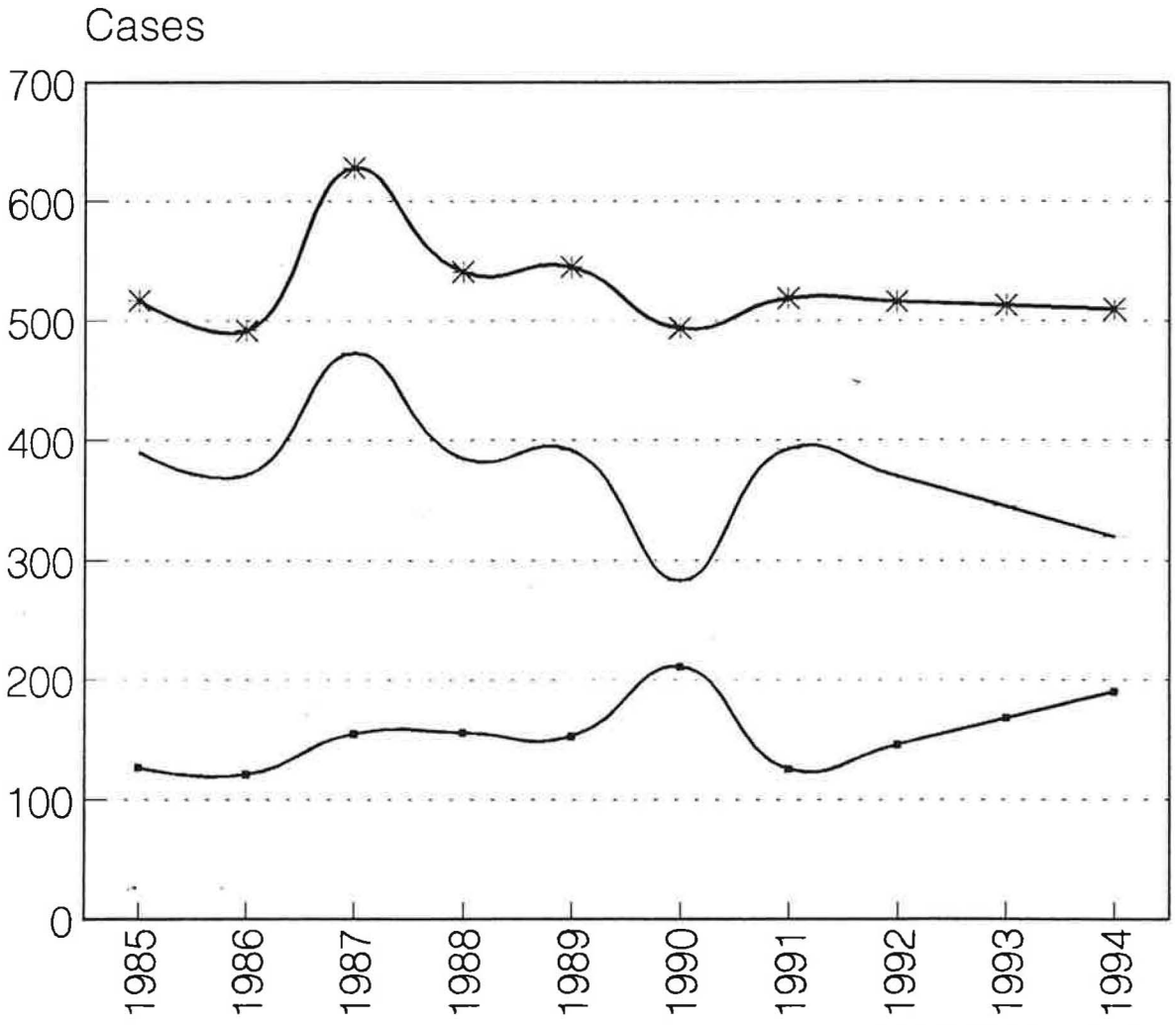
Criminal

1992 - 1994 are Projected Trends

# Virgin Islands

## Total Civil and Criminal Filings

### Actions per Judgeship




| | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|
| Criminal | 127 | 121 | 155 | 156 | 153 | 211 | 126 | 146 | 168 | 190 |
| Civil | 390 | 371 | 473 | 385 | 392 | 283 | 393 | 370 | 345 | 320 |
| Total | 517 | 492 | 628 | 541 | 545 | 494 | 519 | 516 | 513 | 510 |

Criminal — Civil — Total

1992 - 1994 are Projected Trends

# PART II

# CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

# Introduction

The Civil Justice Reform Act of 1990[7] requires that "there shall be implemented by each United States District Court in accordance with this title a Civil Justice Expense and Delay Reduction Plan . . . "[8] The Act goes on to provide an option for each district to either develop its own plan or to await a model plan to be developed at a later time by the Judicial Conference of the United States. Because the District Court of the Virgin Islands is an Early Implementation District, and it is the sense of the Advisory Group that a plan which is cognizant of the particular needs of the Virgin Islands is most desirable, the Advisory Group has determined to develop its own Expense and Delay Reduction Plan. This plan has been developed in response to the analysis of the needs of the District Court of the Virgin Islands as articulated in the report of the Advisory Group dated December 23, 1991.[9]

# Principles and Guidelines of Litigation Management and Costs and Delay Reduction

The Act requires that each district court, in consultation with its Advisory Group, "shall consider and may include six principles and guidelines of litigation management and costs and delay reduction".[10] The Advisory Group has considered and discussed each of the principles. The Plan will discuss here in a summary fashion the Advisory Group's conclusion with respect to each of those principles and guidelines.

**(1) Systematic Differential Treatment of Civil Cases.**

The Advisory Group agrees with the concept underlying this principle, however, it is currently the practice of the magistrate judges and the district judges to tailor orders in conformity with the levels of complexity of civil cases. Thus it is believed that the spirit and import of this recommendation are presently in place.

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[7]28 U.S.C. § 471.

[8]Ibid.

[9]The findings and recommendations which are the basis for the Expense and Delay Reduction Plan commence on page 10 of the Report.

[10]28 U.S.C. § 473(a).

**(2) Early and Ongoing Control of the Pre-trial Process Through Involvement of a Judicial Officer.**

The Judicial Officers in the Virgin Islands issue necessary orders and convene the parties at an early time and continue to monitor the progress of cases. Trial dates are set and discovery is frequently adjusted to the exigencies of particular cases.

As reflected in the Advisory Group's report, it was concluded that the extent of discovery could be controlled beyond its present levels. As a result the action section of this plan will address with more specificity the limits of discovery practices through the enactment of a new local rule.

**(3) Discovery Case Management Conference in Complex and Other Appropriate Cases.**

The judicial officers in the Virgin Islands already conduct discovery case management conferences in complex and other appropriate cases.

**(4) Cost Effective Discovery Through Voluntary Exchanges.**

The opportunity to address discovery in a cost effective manner through the voluntary exchange of information is viewed with favor by the Advisory Group and will be addressed in the action section of this plan by the promulgations of a new local rule.

**(5) Conservation of Judicial Resources in the Consideration of Discovery Motions.**

The existing rules and practices of the District Court of the Virgin Islands now require parties submitting discovery motions to certify that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matter set forth in the motion.

**(6) Authorization to Refer Appropriate Cases to Alternative Dispute and Resolution Programs.**

The Advisory Group, for reasons articulated in its report, views with favor the opportunity to refer appropriate cases to an alternative dispute resolution program (ADR). The action section of this plan recommends a local rule in the nature of court annexed mediation.

# Litigation Management and Cost and Delay Reduction Techniques

The Act also enumerates a number of cost and delay reduction techniques that each district "...shall consider and may include..."[11] in the formulation of its civil justice expense and delay reduction plan. The Advisory Group has considered and discussed each of the litigation management and cost and delay reduction techniques. The Plan will discuss here in a summary fashion the Advisory Group's

[11]28 U.S.C. § 473(b)(1) - (6).

conclusions with respect to each of those cost and delay reduction techniques.

**(1) The requirement for each party to jointly present a discovery-case management plan.**

It is the considered judgment of the Advisory Group that such a requirement would increase rather than reduce costs if applied to cases across-the-board. Indeed, it would very likely increase the costs for litigants with simple cases. In complex cases, the judicial officers in the Virgin Islands already employ the practice of bringing the parties together for a joint approach to discovery. Also, the court welcomes the joint voluntary submission of discovery-case management plans by the parties.

**(2) Binding authority of attorneys in pre-trial conferences.**

It is presently the practice in the Virgin Islands for attorneys to be present at pre-trial conferences with the authority to bind their clients respecting all matters previously identified by the court for discussion.

**(3) Party signature to requests for extension of discovery deadline or trial date.**

The Advisory Group has considered the proposal and recommends strongly against it. We believe that an attorney's signature alone is sufficient to request an extension or continuance, and any rule to the contrary may suggest distrust of the attorney-client relationship. In conclusion, we find no basis for such a suggestion nor do we find that cost and delay issues will be advanced by the promulgation of such a rule.

**(4) Neutral evaluation programs.**

The principal difference between our proposed mediation program and an early neutral evaluation program is that the latter calls for an evaluator with expertise in the particular area of litigation. This expertise is necessary because the program calls for an impartial assessment by a knowledgeable neutral. Although we think this is an attractive ADR option, we believe the limitations of the geography and the population size of the Virgin Islands preclude its effective use in this district court.

**(5) Representatives with authority to settle.**

It is presently the practice in the District Court of the Virgin Islands to have attorneys come to conferences with the authority to settle, or, in appropriate cases, to bring clients to such a conference or have them available by telephone during any settlement conference.

**(6) Additional features the Advisory Group may choose to recommend.**

In the interest of expediting the attention given to motions for summary judgment, the Advisory Group in its action plan recommends a new local rule which addresses the manner in which the response to a motion for summary judgment will be processed and considered by the court.

# Action Plan

In furtherance of the Act's directives, and the findings recommended in the Report of the Advisory Group, the following changes to civil practice and procedure in the District Court of the Virgin Islands are enacted:

(1) Response to motion for summary judgment.
(2) Court-annexed mediation plan.
(3) Discovery rule.
(4) Expert witness rule.
(5) Education program for Virgin Islands Bar.

# Detailed Description of Plan Components

1. Response to Motion for Summary Judgment. [A New Local Rule]

Any party adverse to a motion for summary judgment shall respond within twenty (20) days after filing of the motion, or within the same twenty (20) day period move for additional time to respond. In the absence of timely response, the court may render an appropriate judgment on the merits.

2. Court-Annexed Mediation. [A New Local Rule]

1."Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

2.(a)Referral by Presiding Judge. Except as hereinafter provided, the presiding judge may order any contested civil matter or selected issues to be referred to mediation, upon agreement of the parties. The parties to any contested civil matter may file a written stipulation to mediate any issue between them at any time. Such stipulation shall be incorporated into the order of referral.

(1)Conference or Hearing Date. Unless otherwise ordered by the Court, the first mediation conference shall be held within 60 days of the order of referral.

(2)Role of counsel. Unless otherwise ordered by the Court, counsel to the parties shall not participate in, interfere with, or attend any portion of the mediation conference. The role of counsel shall be limited to general consultation pursuant to the rules governing the attorney-client privilege.

(3)Notice. Within 10 days after the order of referral, the Court or its designee, who may be the mediator, shall notify the parties in writing of the date, time, and place of the conference.

(4)A mediator is authorized to change the date and time for the mediation conference, provided the conference takes place within 15 days of the date set forth in (a) (1). Any continuance of the conference beyond this 15 day period must be approved by the judge to whom the case is assigned.

(5)The mediation conference shall take place in a courtroom designated by the Court or any other place designated by the Court.

(b)Motion to Dispense with Mediation. A party may move, within 15 days after the order of referral, to dispense with mediation if:

(1)The issue to be considered has been previously mediated between the same parties;

(2)The issue presents a question of law only;

(3)The order violates the exclusions rule, pursuant to 5 V.I.C. App 5 R---(b) [exclusions of mediation]; or

(4)Other good cause is shown.

(c)Selection of Mediator.

(1)Certification of Mediators. The Court shall certify as many mediators as it determines to be necessary.

(2)Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28, U.S.C. Section 453 before serving as a mediator.

(3)A list of all persons certified as mediators shall be maintained with the Court.

3.(a)The mediator has a duty to define and describe the process of mediation and its costs during an orientation session with the parties before the mediation conference begins. The orientation should include the following:

(1)Mediation procedures;

(2)The differences between mediation and other forms of conflict resolution, including therapy and counseling;

(3)The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(4)The confidentiality provision as provided for by Title 5, Section 854 of the Virgin Islands Code;

(5)The duties and responsibilities of the mediator and the parties;

(6)The fact that any agreement reached must be reached by mutual consent of the parties;

(7)The information necessary for defining the disputed issues.

(b)The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on their possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28, U.S.C. Section 144 and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. Section 455 to disqualify themselves if they were a judge or magistrate.

(c)A mediator appointed by the Court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

(d)Disqualification of a Mediator. Any party may move the Court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the Court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

4.(a)Completion of Mediation. Mediation shall be completed within 45 days of the first mediation conference unless extended by order of the Court or by stipulation of the parties, but in any event the process shall not exceed 90 calendar days.

(b)Exclusions from Mediation. The following actions shall not be referred to mediation:

(1)Criminal actions;

(2)Appeals from rulings of administrative agencies;

(3)Forfeitures of seized property;

(4)Habeas corpus and extraordinary writ;

(5)Declaratory relief;

(6)Any case assigned by the court to a multidistrict tribunal;

(8)Any litigation expedited by statute or rule, except issues of parental responsibility; or

(9)Other matters as may be specified by order of the presiding judge in the district.

(c)Discovery. Discovery may continue throughout mediation. Such discovery may be delayed or deferred upon agreement of the parties or by order of the Court.

(d)Disclosure privilege. Each party involved in a court-ordered mediation conference has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing communications made during such proceeding.

(e)Inadmissibility of mediation proceedings. Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

5.(a)Interim or Emergency Relief. A mediator may apply to the Court for interim or emergency relief at any time, at the initiation of the mediator upon consultation with the parties, or at the parties' request. Mediation shall continue while such a motion is pending absent a contrary order of the Court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

(b)Sanctions for Failure to Appear. If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion shall impose sanctions, including an award of mediator and attorney fees and other costs, against the party failing to appear. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

(1)The party or its representative having full authority to settle without further consultation; and

(2)A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

(c)Adjournments. The mediator may adjourn the mediation conference at any time and may set a date and a time for reconvening the adjourned conference, provided the mediation conference takes place within 15 days of the date set pursuant to App 5 R--(a) (1) [Conference or Hearing Date]. Any continuance beyond this 15 day period must be approved by the presiding judge to whom the case is assigned. No further notification is required for parties present at the adjourned conference.

(d)Role of Counsel. Mediation will proceed in the absence of counsel, unless otherwise ordered by the Court. Counsel shall only be permitted to communicate privately with their clients, when the parties are not attending scheduled mediation proceedings.

(e)Communication with Parties. The mediator may meet and consult with the parties or their counsel, on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with the parties or their counsel, the mediator must inform all parties to the mediation of the location and subject matter of such meeting. The mediator can consult with any party or their counsel, only upon agreement of all parties. The mediator shall keep a written record of any and all meetings conducted with the parties or their counsel, and such record shall be made available to the parties.

(f)Appointment of the Mediator.

(1)Within 10 days of the order of referral, the parties may agree upon a stipulation with the Court designating:

(i)A certified mediator; or

(ii)A mediator who does not meet the certification requirements of the rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(2)If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so notify the Court within 10 days of the expiration of the period to agree on a mediator, and the Court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the judge in the district in which the action is pending.

(g)Compensation of the Mediator. The mediator shall be compensated by the parties. The presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. Each party shall pay one half or such other proportionate share of the total charges of the mediator as may be agreed upon, unless the mediator and/or the court determines that one party has not mediated in good faith.

6.(a)No Agreement. If the parties do not reach any agreement as to any matter as a result of mediation, or if the mediator determines that no settlement is likely to result from the mediation, the mediator shall report the lack of an agreement to the Court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(b)Agreement. If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. If the agreement is not filed, a joint stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the Court.

(c)Imposition of Sanctions. In the event of any breach or failure to perform under the agreement, the Court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgement on the agreement.

7.(a)Certification of Mediators. For certification, a mediator:

(1)Must complete a minimum of 20 hours in a training program approved by the District Court; and

(2)Must observe a minimum of four district or other mediation conferences conducted by a certified mediator and conduct four district court mediation conferences under the supervision and observation of a Court certified mediator;

(3)Standing: A mediator must also meet one of the following minimal requirements:

(i)The mediator may be a member in good standing of the Virgin Islands Bar with at least five years of Virgin Islands practice, and be an active member of the Virgin Islands Bar within one year of application for certification; or

(ii)Paragraph (i) notwithstanding, the chief judge, upon written request setting forth reasonable and sufficient grounds, may certify as a district Court mediator a retired judge who was a member of the bar in the state in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought and must meet the training requirements of subsection (a) (1); or

(iii)The mediator may be the holder of a master's degree and be a member in good standing in his or her professional field with at least five years of practice in the Virgin Islands; and

(4)Notwithstanding the foregoing procedures which are the preferred method of certification, the Court may, in the absence of an available pool of certified mediators, appoint as a mediator a qualified person acceptable to the Court and the parties. Also, a person certified as a mediator by the American Arbitration Association, or any other national organization approved by the District Court shall be deemed to qualify under this section as a District Court Mediator.

3. Discovery. [A New Local Rule]

(a)Depositions.

Time and participation limits.

(1)One hour for the direct examination and one hour for cross-examination per party of non-party witnesses; and three hours direct for party and expert witnesses and an equal amount of time for each party for cross.

(2)No more than one attorney for each party may question the deponent, except as extended by stipulation of the parties or upon order of the court.

(b)Cooperative Discovery Devices.

(1)Cooperative discovery arrangements in the interest of reducing delay and expenses are encouraged.

(2)The parties may, by stipulation, extend the scope of the obligation for self-executing discovery.

(c)Discovery - Duty of Self-Executing Disclosure.

(1)Required disclosures.

(A)Unless otherwise directed by the court, each party shall, without awaiting a discovery request, disclose, produce or make available for

inspection to all other parties:

(i)The name and last known address of each person reasonably likely to have information that bears significantly on the claims and defenses, identifying the subjects of the information;

(ii)A general description, including location, of all documents, data, compilations, the existence and contents of medical records, claims, and tangible things in the possession, custody, or control of that party that are likely to bear significantly on the claims and defenses;

(iii)The existence and contents of any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of the judgment that may be entered in the action, or indemnify or reimburse for payment made to satisfy the judgement, making available such agreement for inspection and copying, as well as reports or documents bearing on reservation of rights or denial of coverage;

(iv)Unless the court otherwise directs, these disclosures shall be made (1) by each plaintiff within thirty (30) days after service of an answer to its complaint; (2) by each defendant within thirty (30) days after serving its answer to the complaint; and, in any event (3) by any party that has appeared in the case within thirty (30) days after receiving from another party a written demand for early disclosure accompanied by the demanding party's disclosures. A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosure, or, except with respect to the obligation under clause (3), because another party has not made its disclosures.

(2)Supplementation of Disclosures -- A party who has made a disclosure under subdivision (1) is under a duty to reasonably supplement or correct its disclosures if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

(3)Signing of Disclosures -- Every disclosure or supplement made pursuant to subdivision (a) or (c) by a party represented by an attorney shall be signed by at

least one attorney of record and the party. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes the certification under, and is consequently governed by, the provisions of the Federal Rules of Civil Procedure, and, in addition, constitutes a certification that the signer has read the disclosure, and to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

(4)Duplicative Disclosure -- At the time the duty to disclose arises it may cover matters already fully disclosed in the same civil action pursuant to an order of the court, to a requirement of law or otherwise. In that event duplicative disclosure is not required and a statement that disclosure has already been made discharges the obligation imposed under this section.

4. Expert Witness. [A New Local Rule]

(a)Written Report of Experts.

At least thirty (30) days prior to any party's expert deposition, the opposing party shall be entitled to have a written report encompassing all of the criteria detailed in Rule 26(b)(4) of the Federal Rules of Civil Procedure.

(b)Testimony and the Experts' Written Report/Deposition.

The testimony of an expert witness at trial shall be based upon the opinions advanced in the written report and/or the expert's deposition referenced in section (a). Experts shall not be permitted to testify on matters beyond the scope of the subjects and the opinions expressed in the referenced written report and the depositions, absent extenuating circumstances based upon newly discovered evidence, all of which is subject to the Court's judicial discretion in regard to trial testimony. In the exercise of its discretion, the Court shall consider timely notice and prejudice to the parties.

(c)Video Taping of Expert Testimony.

(1)The video taping of the testimony of expert witnesses is encouraged.

(2)Absent good cause shown, if a firm trial date has been set at least forty-five (45) days in advance of trial, and the testimony of an expert witness has not been video taped, and the witness is unavailable for the trial, the parties will be required to proceed at trial without the benefit of the expert's testimony.

(d)Payment for Expert Witness Deposition.

(1)The attorney noticing the expert's deposition shall be responsible for the expert's reasonable charges for the time spent in the deposition unless the parties

or their attorneys have agreed to the contrary in writing. The noticing party shall have a reasonable time to pay the expert's fees. However, upon receipt of a proposed bill indicating the expert's charges, the reasonableness of the charges shall be subject to the review of the Court. If the deposing party intends to object to the charges and their reasonableness, an application shall be made before the deposition to the Court to obtain a ruling on the reasonableness of the charges.

(2)To the extent an expert demands payment in advance of the deposition date, then absent agreement, the party who has noticed the expert for deposition must advance or otherwise secure such sums.

5. Education Program for Virgin Islands Bar.

In order for the members of the Virgin Islands Bar to understand the import of the Act, the Report, the Plan and its accompanying rules changes, an educational program for the bar should be conducted on St. Thomas and St. Croix at an early time. Such a program can also be a vehicle to discuss the draft of the local rules governing practice and procedure in civil cases.

## Continuing Membership of Advisory Group

Facilitating access to justice, and reducing delay and expense in civil litigation is a continuing process and the Act recognizes this. Periodic reassessment of the condition of the Court's docket is required,[12] and the Advisory Groups are created as continuing bodies with individual memberships limited to four years, except the United States Attorney, who is a permanent member.[13]

[12]28 U.S.C. § 475 (calling for annual reassessment).

[13]28 U.S.C. § 478(c) - (d).

# PART III

## IMPLEMENTATION ORDER

# DISTRICT COURT OF THE VIRGIN ISLANDS

IN RE: )
)
ORDER ADOPTING CIVIL )
JUSTICE EXPENSE AND )
DELAY REDUCTION PLAN )
)

O R D E R

This 23th day of December 1991, it is hereby

ORDERED that the attached Civil Justice Expense and Delay Reduction Plan is hereby adopted, effective December 31, 1991, and shall apply to all civil action cases filed on or after that date and may, in the discretion of the court, apply to civil action cases pending on that date; it is further

ORDERED, that the Civil Justice Expense and Delay Reduction Plan is promulgated by this court pursuant to Title 28, United States Code, Sections 471 and 472, and this Plan, as it may be amended from time to time, shall be maintained on file in the office of the clerk of court for public inspection; it is further

ORDERED that the Civil Justice Expense and Delay Reduction Plan shall be published by the Clerk of Court to inform members of the bar and public of its adoption and to afford opportunity for public notice and comment.

ENTER:

Dated: December 23, 1991

Stanley S. Brotman
Acting Chief Judge

A T T E S T:
ORINN ARNOLD
Clerk of Court

By:_____
Deputy Clerk

# APPENDIX A

# CIVIL JUSTICE REFORM ACT OF 1990

Public Law 101-650
101st Congress

# An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990
[H.R. 5316]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Judicial Improvements Act of 1990".

Judicial Improvements Act of 1990.
Courts.
28 USC 1 note.

# TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Civil Justice Reform Act of 1990.

SEC. 101. SHORT TITLE.

28 USC 1 note.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

28 USC 471 note.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

49-139 O - 90 (650)

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

**"§ 473. Content of civil justice expense and delay reduction plans**

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

**"§ 474. Review of district court action**

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

**"§ 475. Periodic district court assessment**

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

**"§ 476. Enhancement of judicial information dissemination**

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer— Reports.

**"§ 479. Information on litigation management and cost and delay reduction**

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives. Reports.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual. Government publications.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

**"§ 480. Training programs**

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

**"§ 481. Automated case information**

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

SEC. 104. DEMONSTRATION PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

# APPENDIX B

## COST OF LITIGATION SURVEY INSTRUMENT

# COST OF LITIGATION SURVEY

All questions in this survey pertain to civil cases filed in Federal District Court. In the first section questions are designed to address the "average" case - not the unusual at either end of the spectrum of possibilities. 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. GENERAL INFORMATION.

**Question #1.**

In your opinion what aspect of civil litigation is the most costly?

_____

_____

**Question #2.**

Please quantify the percentage of time (in terms of the totality of time expended on the average civil case) in the area identified in question #1.

_____

**Question #3.**

What might the court do to address the cost of litigation in this or other areas?

_____

_____

**Question #4.**

Is the use of expert witnesses a significant cost in civil cases?

Yes _____ No _____

If yes, what is the average dollar amount expended for expert witnesses? $_____

**Question #5.**

What party do you generally represent?

Plaintiff _____ Defendant _____

**Question #6.**

The typical fee arrangement in civil litigation is:

Contention Fee:____ Flat Fee: ____ Hourly Fee: ____

Billable Hourly Rate: _____

Contingent Rate: _____

## II. SETTLED CASE.

This section addresses a recent civil case that was settled without trial.

**Question #1.**

What was the percentage of time spent on:

Pleadings:_____ Research: _____

Discovery:_____ Hearings: _____

Conferences:_____ Other: _____
(please describe)

_____

**Question #2.**

When was the case disposed of:

After hearing: _____ After Conference: _____

Other:_____
(please describe)

## III. TRIED CASE.

This section addresses a recent civil case that was concluded by a trial before a judge and/or jury.

**Question #1.**

What was the percentage of time spent on:

Research: _____ Pleadings: _____

Discovery: _____ Hearings: _____

Conferences: _____ Trial: _____

Other: _____
(please describe)

**Question #2.**

When was the case disposed of?

During Trial: _____

At the Conclusion of Trial: _____

**Question #3.**

If the case was a jury trial, how much time was spent on jury selection? _____

**Question #4.**

How much time was spent on the following forms of alternative dispute resolution:

Mediation: _____ Arbitration: _____

Other: _____
(please describe)

* * * *

If there are any additional comments you wish to make, please do so. You can either use the back of the survey or attach a separate sheet.

Thank you for completing this instrument. Your answers will contribute substantially to efforts to improve the civil justice system in the federal courts.

# APPENDIX C

# COST OF LITIGATION SURVEY RESULTS

# Cost of Litigation Survey Results

The following data was compiled from the 17 surveys returned out of 32 mailed to attorneys. While 17 replies (or a 53% response) are not sufficient to be considered scientific, there are trends in many of the answers which are deserving of note.

In response to *Question 1* of the General Information Section, nine attorneys felt that the discovery process was the most costly aspect of civil litigation. Six attorneys pointed to expert witnesses as most expensive, and one courageous individual felt that attorney fees were the most costly aspect.

*Question 2* asked the attorney to quantify the amount of time expended in the area identified in question one. The range of time devoted to this area varied from 10% - 90%. The average was 45%, while the median percentage was 60%.

*Question 3* asked for suggestions for the court in reducing the cost of litigation. The area of discovery drew the most attention as six attorneys mentioned the rationalization of this process in one way or the other. In the only other area to draw multiple responses, four attorneys felt that limiting the use of expert witnesses would be useful.

*Question 4* asked the attorneys if expert witness fees constituted a significant cost in civil cases. All but one attorney felt that expert witness fees were significant. The individual who felt that the cost was not significant explained that it was not significant in relation to the value contributed by such testimony. The average expert witness fee reported in the survey was $8,286. The median cost may be more representative because of the wide range. The median cost of expert testimony was $5,000. The range reported by attorneys for this service was $700 - $50,000. It should be noted that some attorneys reported a range of payments for expert testimony. The lower limit was used in all cases. Therefore, the average and median stated above may be understated.

In response to *Question 5*, eleven attorneys report that they generally represent defendants while four attorneys generally represent plaintiffs, two attorneys stated that they represent both plaintiff and defendant.

*Question 6* asks attorneys for the typical fee arrangement in civil litigation. The eleven attorneys who stated that they generally represent defendants all reported that they bill at an hourly rate. The range of the rates reported was $140 - $190 per hour. The average of the reported rates was $157 per hour. The median rate was $150 per hour. The four attorneys who stated that they generally represent plaintiffs report that they typically work for a contingent rate of between %40 - %33.

**Part II** of the questionnaire dealt with SETTLED CASES.

*Question 1* asked for an estimate of the percentage of time spent on settled cases. The following table represents an average of the responses:

| | |
|---|---|
| Pleading | 13% |
| Discovery | 50% |
| Conferences | 11% |
| Research | 16% |
| Hearings | 06% |
| Other | 04% |

*Question 2* asked when the case was disposed of. Thirteen attorneys reported that cases were settled after pre-trial conferences. Four attorneys reported that the case was settled just before trial. One attorney reported that the case was settled after a summary judgment issued upon the completion of the discovery process. {Does not add to 17 due to a multiple response on one survey}.

**Part III** of the questionnaire asked for information on TRIED CASES.

*Question 1* asked for an estimate of the percentage of time spent on civil cases that were concluded by a trial before a judge and/or jury. The following table represents an average of the responses:

| | |
|---|---|
| Research | 16% |
| Discovery | 38% |
| Conferences | 12% |
| Pleading | 09% |
| Hearings | 04% |
| Trial | 18% |

| | |
|---|---|
| Other | 03% |

The major difference to be noted between the tables for settled cases and tried cases is the difference between the amount of time spent on the discovery process. Approximately twelve percent less time is spent on discovery. This time plus an additional six percent (taken in very small amounts from various other categories) is instead spent at trial.

*Question 2* asked when the case was disposed of. In all but two cases, tried cases were disposed of at the conclusion of the trial. Only two cases were disposed of during the trial. No explanation was given about this disposition.

*Question 3* attempted to find out the amount of time spent on the jury selection process. The range given by the attorneys varied widely from 1 - 16 hours. The average time reported was 7.2 hours. As noted previously, because of the wide range reported, the median time may be a better indicator of the time spent in jury selection. This median time was 5 hours.

*Question 4* asked for information on time spent in alternative dispute resolution. Only four attorneys reported any attempt at alternative dispute resolution. One attorney reported spending 30 minutes at a settlement conference. Another attorney reports spending time on both arbitration (10%) and a judicial settlement conference (5%). The third attorney reports that five hours were spent in a settlement conference. Finally, the fourth attorney reported spending 5% of case time on pre-trial conference ADR.

Two additional findings from the survey results should be noted. First, as to the average dollar amount expended, they range from lows of $3,000 to highs of $100,000 per case in complex cases. Interestingly, it would appear from the responses of those who identified themselves that the plaintiffs paid far less than the defendants for experts. The plaintiffs' fees actually ranged from as low as $700 to $20,000, but the defendants' from $2,000 to $100,000. Second, several attorneys indicated that two things would greatly improve the system. One would be a declared trial date set at an early time to rule out a last minute flurry of discovery when a trial setting is dropped on the parties. Schedule the trial date long enough ahead to get the discovery done, but announce the date shortly after the complaint is filed.

# Appendix D

# Closed Case Data Collection Survey Instrument

DISTRICT COURT OF THE VIRGIN ISLANDS
CIVIL ADVISORY COMMITTEE
CASE DATA COLLECTION INSTRUMENT

A. Case # _____

FROM CIVIL COVER SHEET

B. Basis of Jurisdiction (circle One)

1-US Govt Plaintiff
2-US Govt Defendant
3-Federal Question
4-Diversity
5-Local Question
6-Appeal from Terr. Ct.
7-Writ of Review
8-Other Civil Action

C. Nature of Suit _____

Enter 3 digit code from Cover sheet or 999 if unknown

D. Origin

1-Original Proceeding
2-Appeal from Terr. Ct.
3-Remand from Appel. Ct.
4-Reinstated or Reopened
5-Transfer
6-Unknown

FROM DOCKET SHEET/FILES
All dates entered with 6 digits
Enter 0 if date unknown or N/A (N/Mo/Day/Year)

E. Date Complaint Filed _____

F. Date of Completion of Last Service _____

G. Date of Last Answer Filed _____

H. Date of Scheduling Order _____

I. Date Prescribed End of Discovery (from Sched. Order or Pretrial order) _____

J. Start of Discovery _____

K. Date Actual End of Discovery _____

L. Date Case Dispositive Motion Filed _____

M. Date Dispositive Motion Decided _____

N. Date of Final Pre-Trial Conference _____

O. Date of Trial (Set or Held) _____

P. Type of Disposition

1-Dismissed as settled
2-Judgment-Default
3-Judgment-Jury Verdict
4-Judgment-Court Trial
5-Dismissed on Motion
6-Transferred to Terr. Ct.
7-Other
8-Unknown
9-Judgment-Briefs Only

Q. Date of Disposition

# Appendix E

# Closed Case Data Collection Project Summary

# CLOSED CIVIL CASE DATA COLLECTION PROJECT

## SUMMARY

The purpose of this project was to examine 250 docket sheets for closed civil cases. The docket sheets were randomly selected for statistical years 1989, 1990, and 1991. One hundred cases were drawn from statistical year 89, one hundred cases from statistical year 90, and fifty cases from statistical year 91. Since the two clerks' offices do not retain duplicate dockets, one half of the closed docket sheets were drawn from St. Thomas and the other half from St. Croix.

The purpose of the examination of the closed docket sheets was to tabulate the elapsed time between major key events in the life of a civil case. Those events are detailed on the data collection instrument which precedes this report.

Regretfully, time did not permit a secondary level of research into 80 of the 250 cases, however, we believe that this is a highly appropriate inquiry for the continuing work of the Advisory Group. A detailed examination of a representative number of cases through an in-depth analysis of the actual case files could more thoroughly investigate a range of case processing questions and further facilitate a detailed understanding of the civil docket.

Among the findings made for the 250 civil cases sampled, spanning the three statistical years were:

1) The average or mean time from opening to closing of the civil cases sampled was 330 days. However, for statistical year 91 only, the average time was 186 days.

2) The average or mean number of days from the beginning to the end of discovery was 224 days.

3) Though all civil cases averaged 330 days from opening to closing, the 108 cases which involved discovery averaged 456 days from opening to closing.

4) The average time for the Court to rule upon case dispositive motions was 61 days.

The above findings focused the Advisory Group's attention on discovery practices, and the need to encourage enforcement of the district court's existing rules. It also supported the development of a local rule which would more readily bring to cloture motions for summary judgment.

# Appendix F

## Biographical Sketches of Advisory Group

# BIOGRAPHICAL SKETCHES OF THE ADVISORY GROUP

HONORABLE JEFFREY L. RESNICK, CHAIR

B.A. University of Connecticut, 1964; L.L.B. University of Connecticut School of Law, 1967; Assistant Attorney General, U.S. Virgin Islands, 1969 - 1973; U.S. Magistrate Judge, St. Croix, U.S. Virgin Islands.

HONORABLE GEOFFREY W. BARNARD, VICE-CHAIR

B.A. Allegheny College, J.D. Cornell University, U.S. Magistrate Judge, St. Thomas, U.S. Virgin Islands.

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B.A. New York University, 1972; J.D. Rutgers University School of Law, 1975; Assistant Attorney General U.S. Virgin Islands, 1986; Deputy Attorney General Virgin Islands Department of Justice, St. Thomas, U.S. Virgin Islands.

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B.A. Virginia Polytechnic Institute and State University, 1980; J.D., cum laude, Southern Illinois University, 1984; private practitioner, St. Thomas, U.S. Virgin Islands.

JULIO A. BRADY

B.A. Catholic University of Puerto Rico, 1964; J.D. New York Law School, 1969; Assistant U.S. Attorney, U.S. Virgin Islands, 1971 - 73; U.S. Attorney for District of Virgin Islands, 1973 -78, Lieutenant Governor, U.S. Virgin Islands, 1983 - 87; private practitioner, St. Croix, U.S. Virgin Islands.

BRITAIN H. BRYANT

B.S.L. University of Louisville, 1962; J.D. University of Louisville School of Law, 1964; Senator, 10th, 11th and 12th Legislatures of the Virgin Islands, 1973 - 1979; private practitioner, St. Croix, U.S. Virgin Islands.

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B.A. cum laude New York University, 1966; J.D. Howard University School of Law, 1970; Director of Community Development, Harlem Legal Services, New York, 1972 - 73; Assistant U.S. Attorney, U.S. Virgin Islands.

ADRIANE J. DUDLEY

B.S. Simmons College, 1969; J.D. Northeastern University School of Law, 1972; Assistant U.S. Attorney, U.S. Virgin Islands, 1976 - 78; Assistant Attorney General, U.S. Virgin Islands, 1975 - 76; President, Virgin Islands Bar Association, 1980; President, Board of Directors, St. Thomas/St. John Chamber of Commerce, 1989; private practitioner, St. Thomas, U.S. Virgin Islands.

TERRY M. HALPERN

B.A. New York University, 1968; J.D. Brooklyn Law School, 1971; First Assistant United States Attorney, District of the Virgin Islands, 1983 - 87; Assistant United States Attorney, District of the Virgin Islands, 1979 - 83; Assistant Attorney General, District of the Virgin Islands, 1978; Assistant District Attorney, Westchester County, White Plains, New York, 1972 - 77; United States Attorney, District of the Virgin Islands.

MARIA T. HODGE

A.B. University of California at Santa Cruz, 1968; J.D. University of California, Berkeley, 1971; Assistant Attorney General, District of the Virgin Islands, 1974; private practitioner, St. Thomas, U.S. Virgin Islands.

JOEL H. HOLT

B.A. Washington and Lee , 1973; J.D. University of Richmond, T.C. Williams School of Law, 1977; Chairman Virgin Islands Law Revision Commission, 1989; private practitioner, St. Croix, U.S. Virgin Islands.

JAMES L. HYMES, III

B.A. Ponona College, 1965; J.D. University of Maryland, 1968; President, Virgin Islands Bar Association, 1987; private practitioner, St. Thomas, U.S. Virgin Islands.

LEON KENDALL

B.A. Howard University, 1969; J.D. Howard University School of Lae, 1973; Chairman of the U.S. Virgin Islands Law Revision Commission; General Counsel, Territorial Court of the Virgin Islands.

JOEL W. MARSH

B.A. George Washington University, 1970; J.D. Law School, University of Denver, 1973; private practitioner, St. Thomas, U.S. Virgin Islands.

EDGAR D. ROSS

B.A. Lincoln University, 1965; J.D. Howard University School of Law, 1970; Senior Sitting Judge, Territorial Court of the Virgin Islands, January 1983 - August 1984; Judge, Territorial Court of the Virgin Islands, December 1980 - June 1982; Judge, sitting by designation, District Court of the Virgin Islands, 1981 - 1982; Attorney General, Government of the Virgin Islands, 1977 - 1978; private practitioner, St. Croix, U.S. Virgin Islands.

ALICIA TORRES-JAMES

University of the Virgin Islands Business Administration; Former member of the Virgin Islands Legislature; Prime Sponsor - To create the Law Reform Commission 17th Legislature of the Virgin Islands; President/General Manager Crawford's Travel, Inc., St. Croix, U.S. Virgin Islands.

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B.A. Howard University, 1968; J.D. Howard University School of Law, 1973; private practitioner, St. Thomas, U.S. Virgin Islands.

CALVIN H. WHEATLEY

Graduate Charlotte Amalie High School, 1944 and selected courses Citibank and Wharton College; Executive Assistant to the Governor, 1979 - 1984; business consultant and real estate agent, The West Indian Company Ltd.

## Ex-Officio Members

ORINN ARNOLD, CLERK OF COURT

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B.A. Wake Forest University, 1965; J.D. University of Richmond T.C. Williams School of Law, 1968; Graduate Fellow Institute for Court Management, 1976; S.M.G. Harvard University, 1984; M.B.A. Wharton School of the University of Pennsylvania, 1990. President, Justice Research Institute, Philadelphia, Pennsylvania.