EXHIBITS

to

CIVIL JUSTICE REFORM ACT

ADVISORY GROUP REPORT

for the

DISTRICT OF SOUTH CAROLINA

Exhibit 1

UNUSED

Exhibit 2

DISTRICT OF SOUTH CAROLINA
POPULATION, LABOR FORCE & INCOME

NOTE: Available statistical data did not allow for concurrent year figures in the three columns

Division Counties	Total Population[1] (1990)	Civilian Labor Force[2] (1985)	Per Capita Income[3] (1988)
Charleston Division 1			
1. Berkeley	128,776	12,612	$ 11,106
2. Charleston	295,039	95,643	13,252
3. Clarendon	28,450	5,413	9,090
4. Colleton	34,377	7,118	10,083
5. Dorchester	83,060	12,030	12,150
6. Georgetown	46,302	11,886	11,199
Division Totals	616,004	144,702	
Columbia Division 1			
1. Kershaw	43,599	13,368	$ 12,756
2. Lee	18,437	2,171	8,436
3. Lexington	167,611	35,189	14,953
4. Richland	285,720	110,590	14,621
5. Sumter	102,637	23,884	10,643
Division Totals	618,004	185,202	
Florence Division 1			
1. Chesterfield	38,577	10,271	$ 11,168
2. Darlington	61,851	17,018	10,786
3. Dillon	29,114	6,351	8,989
4. Florence	114,344	37,541	12,094
5. Horry	144,053	45,176	12,927
6. Marion	33,899	9,166	9,831
7. Marlboro	29,361	6,928	8,766
8. Williamsburg	36,815	6,370	9,055
Division Totals	488,014	138,191	

Aiken Division

1. Aiken	120,940	36,021	$ 13,682
2. Allendale	11,722	1,835	10,077
3. Barnwell	20,293	5,149	11,879
4. Hampton	18,191	4,085	10,748
Division Totals	171,146	47,090	

Orangeburg Division

1. Bamberg	16,902	3,131	$ 9,078
2. Calhoun	12,753	1,067	11,485
3. Orangeburg	84,803	21,507	10,628
Division Totals	114,458	25,705	

Greenville Division

1. Greenville	320,167	179,351	$ 15,411
2. Laurens	58,092	13,492	12,765
Division Totals	378,259	192,843	

Rock Hill Division

1. Chester	32,170	9,641	$ 10,676
2. Fairfield	22,295	4,525	11,530
3. Lancaster	54,516	16,028	11,508
4. York	131,497	32,008	14,567
Division Totals	240,478	62,202	

Greenwood Division

1. Abbeville	23,862	4,836	$ 11,032
2. Edgefield	18,375	3,528	10,296
3. Greenwood	59,567	22,429	13,365
4. McCormick	8,868	920	11,071
5. Newberry	33,172	9,117	12,607
6. Saluda	16,357	3,009	10,955
Division Totals	160,201	43,839	

Anderson Division

1. Anderson	145,196	42,211	$ 12,559
2. Oconee	57,494	13,458	13,638
3. Pickens	93,894	24,119	12,937
Division Totals	296,584	79,788	

Spartanburg Division

1. Cherokee	44,506	14,064	$ 13,745
2. Spartanburg	226,800	80,503	14,129
3. Union	30,337	8,523	10,676
Division Totals	301,643	103,090	

Beaufort Division

1. Beaufort	86,425	21,125	$ 15,376
2. Jasper	15,487	2,493	10,056
Division Totals	101,912	23,618	

[1] Per 1990 Census of Population and Housing, Bureau of the Census, U. S. Government Printing Office.

[2] Per 1985 Private Nonfarm establishment figures found in U. S. Bureau of the Census, County and City Data Book, 1988.

[3] South Carolina Division of Research and Statistical Services, South Carolina Statistical Abstract, 1991, p. 262.

DISTRICT OF SOUTH CAROLINA
CIVILIAN LABOR FORCE BY CATEGORY OF EMPLOYMENT

SOURCE: U. S. Bureau of the Census,
County and City Data Book, 1988,
U. S. Government Printing Office: 1988

Figures are for 1985

	Manufacturing	Retail	Finance	Service
Charleston Division 1				
1. Berkeley	4,793	2,725	344	1,413
2. Charleston	11,879	25,147	6,186	26,996
3. Clarendon	1,688	1,181	138	787
4. Colleton	2,411	1,682	518	1,020
5. Dorchester	3,037	3,093	423	2,805
6. Georgetown	4,200	2,772	457	2,210
Division Totals	28,008	36,600	8,066	35,231
Columbia Division 1				
1. Kershaw	8,188	2,097	306	1,229
2. Lee	1,044	438	45	344
3. Lexington	11,874	7,781	989	5,978
4. Richland	15,728	22,746	15,514	30,973
5. Sumter	9,670	4,953	983	4,067
Division Totals	46,504	38,015	17,837	42,591
Florence Division 1				
1. Chesterfield	6,644	1,578	245	875
2. Darlington	7,099	2,584	448	3,358
3. Dillon	2,918	1,468	190	969
4. Florence	12,133	8,192	1,846	7,834
5. Horry	6,690	14,628	3,803	11,412
6. Marion	5,647	1,376	335	856
7. Marlboro	4,547	893	131	691
8. Williamsburg	3,194	1,102	233	604
Division Totals	58,872	31,821	7,231	26,599

Aiken Division				
1. Aiken	20,041	5,984	975	4,605
2. Allendale	1,110	259	33	163
3. Barnwell	3,132	646	98	648
4. Hampton	1,688	825	179	532
Division Total	25,951	7,714	1,285	5,948
Orangeburg Division				
1. Bamberg	1,459	648	117	481
2. Calhoun	297	191	52	114
3. Orangeburg	9,279	4,730	966	3,349
Division Totals	11,035	5,569	1,135	3,944
Greenville Division				
1. Greenville	50,422	27,680	9,054	31,756
2. Laurens	8,095	2,080	419	1,692
Division Totals	58,517	29,760	9,473	33,448
Rock Hill Division				
1. Chester	6,474	1,117	156	630
2. Fairfield	2,389	495	76	(250-499)
3. Lancaster	9,754	2,465	485	1,561
4. York	11,107	6,412	1,183	5,779
Division Totals	29,724	10,489	1,900	7,970
Greenwood Division				
1. Abbeville	3,462	529	153	392
2. Edgefield	2,202	507	67	347
3. Greenwood	11,791	4,322	873	2,558
4. McCormick	480	132	(0-19)	136
5. Newberry	4,826	1,589	222	1,118
6. Saluda	1,631	450	42	321
Division Totals	24,392	7,529	1,357	4,872

Anderson Division				
1. Anderson	19,993	8,567	1,275	6,603
2. Oconee	6,932	2,087	584	2,341
3. Pickens	12,971	4,746	651	3,083
Division Totals	39,896	15,400	2,510	12,027
Spartanburg Division				
1. Cherokee	7,985	2,368	247	1,642
2. Spartanburg	36,559	14,105	2,527	14,898
3. Union	5,869	1,229	191	732
Division Totals	50,413	16,473	2,965	17,272
Beaufort Division				
1. Beaufort	1,074	6,271	2,841	6,158
2. Jasper	89	900	50	889
Division Totals	1,163	7,171	2,891	7,047

FARMS, FARMING INCOME
STATISTICAL ABSTRACT
(Dollar Figures are in 1,000's)

SOURCE: South Carolina Division of Research and Statistical Sources, South Carolina Statistical Abstract 1991

Figures are for 1989

	# Farms 1987	Total Cash Receipts	Government Payments	Total Farm Products
Charleston Division 1				
1. Berkeley	350	$ 10,873	$ 566	
2. Charleston	202	31,313	397	
3. Clarendon	419	39,840	4,869	
4. Colleton	481	16,609	1,869	
5. Dorchester	362	13,586	992	
6. Georgetown	678	9,578	370	
Division Total	2,492	$121,799	$9,629	$131,428
Columbia Division 1				
1. Kershaw	254	$ 23,423	$ 474	
2. Lee	262	33,275	5,209	
3. Lexington	702	53,347	1,187	
4. Richland	326	11,924	61	
5. Sumter	488	57,988	4,080	
Division Total	2,032	$179,957	$ 11,011	$190,968
Florence Division 1				
1. Chesterfield	429	$ 38,706	$ 695	
2. Darlington	440	50,376	3,131	
3. Dillon	362	40,098	2,212	
4. Florence	962	65,702	3,187	
5. Horry	1,177	72,079	931	
6. Marion	337	28,309	1,242	
7. Marlboro	182	24,111	3,563	
8. Williamsburg	833	44,570	3,431	
Division Total	4,722	$363,951	$18,392	$382,343

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Aiken Division				
1. Aiken	604	$39,463	$1,081	
2. Allendale	107	$15,554	2,225	
3. Barnwell	242	17,614	2,071	
4. Hampton	232	22,463	1,990	
Division Total	1,185	$95,094	$7,367	$102,461
Orangeburg Division				
1. Bamberg	220	$ 20,570	$ 1,865	
2. Calhoun	242	16,405	3,369	
3. Orangeburg	961	73,677	8,693	
Division Total	1,423	$110,652	$13,927	$124,579
Greenville Division				
1. Greenville	678	$20,475	$335	
2. Laurens	647	17,765	599	
Division Total	1,325	$38,240	$934	$39,174
Rock Hill Division				
1. Chester	350	$ 9,485	$ 558	
2. Fairfield	186	4,471	268	
3. Lancaster	647	10,681	170	
4. York	620	27,287	575	
Division Total	1,803	$51,924	$1,571	$53,495
Greenwood Division				
1. Abbeville	457	$ 10,907	$ 430	
2. Edgefield	244	28,078	2,395	
3. Greenwood	365	16,386	228	
4. McCormick	86	3,940	75	
5. Newberry	541	45,082	436	
6. Saluda	559	42,894	1,362	
Division Total	2,252	$147,287	$4,926	$152,213

Anderson Division				
1. Anderson	1,038	$30,724	$1,799	
2. Oconee	588	18,651	689	
3. Pickens	490	11,924	61	
Division Total	2,116	$61,299	$2,549	$63,848
Spartanburg Division				
1. Cherokee	412	$15,160	$ 262	
2. Spartanburg	1,010	39,500	1,581	
3. Union	257	3,765	56	
Division Total	1,679	$58,425	$1,899	$60,324
Beaufort Division				
1. Beaufort	125	12,581	249	
2. Jasper	150	3,595	283	
Division Totals	275	$16,176	$532	$16,708

Exhibit 3

How Caseload Statistics Deceive

Prepared by John Shapard, Federal Judicial Center

August 9, 1991

(NOTE: A draft of this paper dated May 2, 1991, contained an error in the parenthetical at the end of the first paragraph on page 3: the word "divided" should have been "multiplied". The only difference between this version and that of May 2 is correction of that error.)

How Caseload Statistics Deceive

Despite the various adages concerning statistics and lies, statistics don't lie. Instead, we often mislead ourselves by misinterpreting statistics. Court caseload statistics present numerous opportunities for this sort of self-deception. Obvious ways of looking at caseload data and obvious nostrums about assessing a court's caseload are sometimes just simply wrong. Their flaws are unappreciated not because they are hard to grasp, but because we are conditioned to think about statistics using apples-and-oranges or dice-throwing examples. Because significant time elapses over the life of many court cases, the better statistical analogy is that of human populations. Failure to appreciate how the lifespans of cases affect caseload statistics causes numerous misunderstandings. The purpose of this paper is to illustrate three closely related misunderstandings about caseload statistics, in the hope that a basic understanding of the problem can help prevent mistakes on the part of the various parties charged under the Civil Justice Reform Act with trying to improve the condition of court dockets .

Here is an example, to illustrate the problem. The standard index of case duration in a district is the median time from filing to disposition for cases disposed of in the most recent year. Suppose that the judges of a district , responding to increases in this median time index, decide to improve the situation by working especially hard to clean up the backlog of older pending cases. The judges begin working overtime trying cases that have been awaiting trial, expediting or dismissing cases that have languished too long in the pretrial process, and generally moving along or moving out all cases that they deem overdue for some such movement. The effort and its results are impressive: annual case dispositions increase, the number of cases pending decreases, and the median time from filing to disposition goes way **up**! The key indicator of the court's "speed" indicates that it has gotten slower than ever. The reason is not hard to see. Exactly as it intended, the court disposed of a lot more old cases last year than it had in previous years. Because the cases terminated last year include an unusually large number of old cases, but only the usual number of young cases, the median age of terminated cases went up. The statistics are not lying. We are deceiving ourselves in thinking that the median age of terminated cases is a reliable indicator of average case duration.

1. Statistics based on terminated cases do not tell us about current caseloads.

The basic flaw in our thinking is this: **terminated cases are not representative of the court's caseload.** The reason can be seen by considering the analogy to human populations. In human populations as well as court caseloads, the life expectancy of newborns or of newly filed cases is not necessarily the same as the average age at death of persons who died last year or of cases disposed of last year. There is a connection, but it is diffused, sometimes greatly, by the passage of time between birth and death or filing and disposition.

Consider a district that has for many years enjoyed a very stable caseload: each year 2000 cases are filed, 2000 cases are terminated, and 2000 cases remain pending at the end of the year. The median time from filing to disposition has long been 8 months. The

average[1] time from filing to disposition has long been 12 months, and cases reaching trial account for 10% of all cases terminated. Suddenly, in 1991, the case filing rate jumps to 3000 per year, the average age at termination drops to 10 months, and the percent of cases reaching trial drops to 8%. It seems likely that the 1000 "new" case filings must have been composed mainly of cases that are "faster" and "easier" than average. But that is wrong. The truth is that nothing has changed except filing rate: the 3000 cases filed in 1991 will average one year from filing to disposition, and 10% of them will reach trial. The average age and trial rate statistics, which for many years told us the truth, are now lying.

The reason is not hard to understand. The 1000 additional case filings produce a major increase in the number of young cases in the pending caseload (a "baby boom" of sorts). Since the pending caseload is the supply of cases from which case terminations arise, and since most cases are disposed of relatively quickly, the number of cases disposed of at an early age increases dramatically. But there is no corresponding increase in the supply of old cases, which arose when annual filings were just 2000 per year, so the number of old case dispositions remains what it was in past years. Hence the average age at termination drops. Similarly, because few young cases reach trial, the number of cases disposed of after trial has not yet changed much. But the total number of case terminations has increased due to the increased number of young-case dispositions, so the percentage of cases disposed of after trial drops.

If our hypothetical court's filings rate either stayed at 3000 per year, or dropped back to 2000 per year and stayed there, the statistical distortions would eventually disappear. After a few years, the statistics would be back to normal, again showing the historic one-year average age at termination and ten percent trial rate. But reality is not so kind. Filing rates change, and in the long term trend they are often either increasing or decreasing. When filing rates are continuously increasing, the median time from filing to disposition will be constantly distorted downward, as will the trial rate, due to the constant relative oversupply of young cases in the pending caseload. Conversely, decreasing filing rates cause an upward distortion in both median age and trial rate.

2. How can you tell if a district is "staying abreast" of new case filings?

An oft-repeated nostrum is that to keep abreast of its caseload, a court must each year dispose of as many cases as are filed Although that advice seems to make sense, the unfortunate truth is that it is correct only under circumstances when it is too obvious to be worth saying. If a court continues year after year to receive 2000 case filings and to dispose of only 1800, there is obviously a problem. As can be seen from the example used in the preceding section, an abrupt increase in case filings does not lead to a comparable increase in case terminations, even when a court is staying fully abreast of its caseload in the sense that it is maintaining a constant average age at termination. Conversely, when filings are decreasing, saying abreast will yield annual case terminations that exceed annual filings.

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[1] Average is used here to represent the arithmetic average, or mean--the sum of the ages of terminated cases divided by the number of cases. Annual reports from the Administrative Office of the U.S. Courts usually report the median--half of all cases are terminated at an age that is at or below the median, and half at an age that is at or above the median. The average age of terminated cases is usually about 50% greater than the median.

If the nostrum is false, how can you tell whether a court is "staying abreast?" The answer is to track the ratio of pending cases to annual case terminations. If that ratio stays constant, the court is staying abreast; if it decreases, the court is gaining ground--disposing of cases faster--and if it increases, the court is falling behind. The ratio of pending cases to annual case terminations is a good **estimate** of the true average duration (or life expectancy) of a court's cases (the ratio gives average case duration in years; if multiplied by 12 the result is average case duration in months).

It is useful to understand why the ratio of pending to terminated cases is a good estimate of average case duration. The key point is that there is an absolute, albeit rough arithmetic relationship between pending caseload and average case duration. To see that relationship, consider a very simple example of a court that handles a single type of case, each of which lasts exactly one year. Suppose the court receives exactly one case per month, filed on the first of each month. This court must have exactly 12 cases pending at any time (the case filed on the first of this month and those filed on the first of the preceding 11 months). If instead each case lasts exactly six months, then the court will have exactly six cases pending at any time. Although it is not intuitively obvious, the same relationship exists--and can be mathematically proven--in respect to **average** case duration. Provided that the mix of cases of varying durations remains constant and case filings are continuous (i.e., they are not all filed in January, but are filed in roughly equal numbers throughout the year), the pending caseload will equal average case duration (in years) multiplied by annual case terminations. This point is key to the next and final topic.

3. The "momentum" of court caseloads.

Suppose a court that now has an average case duration of 24 months adopts a plan for expediting case dispositions, with the goal of reducing average case duration to 12 months. What will this require? Consider the relationship explained in the previous section. If average case duration is approximately equal to the ratio of pending cases to annual case terminations, and if average case duration is 2 years, then the pending caseload must include about twice as many cases as are annually terminated. To reduce average duration to 1 year, the pending caseload must be cut in half. To accomplish that in the next year, the court must dispose next year of twice as many cases as it did last year (provided that annual filings do not change). To do it in two years requires that case terminations be maintained for two years at a pace fifty per cent higher than current pace.

Are such accomplishments really possible? Probably not, although the answer depends on how an increased pace of case terminations can be achieved. If it can be done by methods that impose little additional demand on court resources, then it might be possible to halve the pending caseload in a year or two. If instead the necessary methods require a drastic increase in trials or other activities that place major demands on court resources, then the pending caseload cannot be quickly cut in half without a major increase in those resources.

Caseloads have momentum. The pending caseload is a heavy weight, and a court can only be as fast as that weight will allow. To get faster, the court must shed weight. Prescriptions and decisions about dieting will lead to disappointment if they are not based on realistic goals and timetables.

Exhibit 4

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

February 1991

Prepared for the United States District Court for the District of South Carolina

Table of Contents

Guidance to Advisory Groups

Introduction

This document provides guidance to the advisory groups appointed pursuant to the Civil Justice Reform Act of 1990 (see Appendix A). The Act seeks reductions in the cost and delay of civil litigation in the U.S. district courts through "significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch" (28 U.S.C. § 102.3). The Act thus contemplates a community effort, and it requires each district court to develop and adopt a civil justice expense and delay reduction plan as the primary means of mobilizing that effort. The purpose of each plan must be "to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes" (28 U.S.C. § 471). The advisory group has been appointed to assist in developing this plan.

Each advisory group is required initially to conduct a prompt assessment of the court's workload and then to prepare a report recommending adoption of specified measures, rules, and programs that would constitute the court's plan or adoption of a model plan (to be developed by the Judicial Conference of the United States). The Act does not specify when the advisory group is to submit its report to the court, but it does require the group to "promptly complete" its assessment of the docket (§ 472(c)(1)). Although the court must consider the group's recommendations, the plan will be determined by the court itself. Copies of the court's plan are to be distributed to the judicial council of the circuit, all chief district judges in the circuit, and the director of the Administrative Office of the U.S. Courts. The chief district judges and the chief judge of the circuit then serve as a committee to review each court's plan and suggest revisions. Each plan must be reviewed by the Judicial Conference, which may request the district court to make additional revisions.

The following materials have been prepared to meet the Act's March 1, 1991, deadline for appointment of advisory groups. The Judicial Conference, Federal Judicial Center, and Administrative Office expect to provide further assistance to the advisory groups and to respond to specific requests for assistance.

Implementation of the Act

The Act imposes implementation duties on the courts, the Judicial Conference, the Administrative Office, and the Federal Judicial Center. Implementation duties in some districts will be different from those in others. Districts that develop and implement a plan by Dec. 31, 1991, will be designated by the Judicial Conference as early implementation districts (§ 103(c)). If funds for implementation of the Act are appropriated by Congress, these districts will become eligible to apply for additional resources necessary to implement the court's plan, such as technological and personnel support. In addition, the Act requires the Judicial Conference to conduct a pilot program in ten districts to be designated by the Conference (§ 105). The ten pilot districts must implement plans by Dec. 31, 1991, and must include in their plans the six principles of litigation management and cost and delay reduction set forth in § 473(a) of the Act. All other courts must implement plans by Dec. 1, 1993.

The Act also designates five district courts as demonstration districts (§ 104). The Western District of Michigan and the Northern District of Ohio are to experiment with assignment of cases to appropriate processing tracks. The Northern District of California, the Northern District of West Virginia, and the Western District of Missouri must experiment with various methods of reducing cost and delay, including alternative dispute resolution procedures. These five courts may become early implementation districts if they elect.

The Act requires that an independent organization with expertise in the area of federal court management compare the results from the ten pilot courts with those from ten comparable districts that were not required to adhere to the six litigation management principles specified in § 473(a). The Judicial Conference must present the results of this independent study to Congress by Dec. 31, 1995, along with recommendations whether some or all courts should be required to incorporate the six principles. If the principles do not prove effective, the Judicial Conference must adopt and implement alternative cost and delay reduction programs.

Although the Act is silent on whether it is intended to apply to bankruptcy courts, the Report of the Senate Judiciary Committee states that it is not (S. Rep. No. 101-416 on S. 2648, Aug. 3, 1990, Senate Report, p. 51).

Overview of Advisory Group Functions

The group's statutory functions fall into these general categories:

- assess the court's docket, the litigation practices and procedures in the district, and the impact of new legislation, in order to identify causes of cost and delay in civil litigation (§ 472(c));
- prepare a report recommending the adoption of a civil justice expense and delay reduction plan, which should include measures, rules, and programs to reduce cost and delay and which should state the basis for the recommendations (§ 472(b)); and
- consult with the court in the annual post-plan assessment of the civil and criminal dockets (§ 475).

These are daunting tasks—nothing on this scale has ever been attempted in the federal court system. Congress has made it clear that the courts and their advisory groups should carry them out in a meaningful manner to try to achieve concrete results, and it is in the interests of the courts and the public that this be done. Because the time and resources available are limited, the tasks must also be carried out in a practical and realistic manner so that they may be accomplished within those limits. Below is a brief introduction to each of the major functions of the advisory group.

A. Assessing the court's civil and criminal dockets (§ 472(c))

A starting point for determining the condition of the court's dockets is an analysis of court statistics. No one statistical formula can determine whether a district is "good" (or "not so good") in litigation management. Therefore, an analysis will incorporate several statistical methods and will take into consideration the particular circumstances of the district, such as unusual case mix, judgeship vacancies, use of senior or visiting judges, and so on. Section II of these materials is provided to assist the group in this analysis.

To identify trends in case filings and in the demands being placed on the court's resources, the group may use court statistics not only to review general trend data, but also to identify categories of cases creating special burdens (e.g., death penalty, asbestos, prisoner, complex crimi-

nal, and RICO cases). The advisory group may also want to explore the causes underlying filing trends, such as conditions giving rise to particular kinds of civil litigation or charging decisions by the U.S. Attorney. The Senate Report notes that this would also include a determination of whether the court lacks sufficient resources, including judicial personnel and administrative staff or space, facilities, and equipment (Senate Report at p. 52.). Section II includes an outline that may be helpful in assessing trends in the relationship between demand and resources.

B. Identifying the principal causes of costs and delay

In performing its assessment, the advisory group is required to identify the principal causes of cost and delay in civil litigation. In so doing, it must consider such potential causes as court procedures and the way litigants and attorneys approach and conduct litigation. It will be difficult for the groups to accomplish this task with precision. However, they might undertake a broad review of litigation practices and procedures both in and out of court with a view toward learning how these practices could be modified to reduce cost and delay. To assist the group with this review, Section III presents a list of some of the practices and procedures in civil litigation.

C. Examining the impact of new legislation on the court

The Act also looks to the advisory group to examine the impact of new legislation on the courts. Thus it addresses a role for Congress in reducing civil delay and expense. Among the topics the group might address are procedural reforms that encumber the courts and encourage litigation, failures of Congress to express its intent clearly or to enact legislation that would ease the burden on courts, and the impact of legislation on court dockets. The group should also consider steps that individual courts or the judicial branch as a whole can take to improve their ability to adapt to new legislation. A discussion of this topic can be found in Section IV.

D. Recommendations to the court

The Act requires that the advisory group, in developing its recommendations, "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys" (§ 472(c)(2)). Thus, the recommendations of the group should be more than generalized findings and conclusions. The advisory group's report should state with specificity the assessments made by the group, the findings on which it bases its recommendations, the particular circumstances of the district that affect cost and delay, and recommended changes in litigation procedures, rules, and methods. Section V addresses this advisory group duty.

The discussions, tables, outlines, and other aids presented below are intended to assist the group with its monumental tasks, not by supplying solutions, but by providing starting points for inquiry. This document does not undertake to tell groups what to do or how to do it, nor does it offer normative judgments. Advisory group members will have been selected for their competence, experience, and judgment, and they can be expected to bring these to bear on the task at hand. When they have completed their work, the court will be able to make decisions about its plan and the implementation of a constructive, workable program for the administration of civil justice.

I. Obtaining Guidance from the Court Regarding the Role of Advisory Groups

As the groups prepare to undertake the analyses required by the Civil Justice Reform Act, they may wish to seek further guidance from the court. Following are some questions a group may wish to ask.

1. Does the court wish to be an early implementation district, or has it been designated a pilot or a demonstration district? If either is so, the court must implement an expense and delay reduction plan by Dec. 31, 1991.

2. If the court is neither a pilot nor an early implementation district, what is the deadline by which the court wishes the advisory group to submit its report? The outside limit set by the statute for implementation of a plan is three years from the date of enactment, i.e., Dec. 1, 1993.

3. If a reporter has been appointed, what is to be the reporter's role?

4. Does the court wish to establish any ground rules for the advisory group with respect to such matters as interviewing members of the bar, government officials, or others?

5. What kind of access will the advisory group have to the court? Will the court permit interviews with judges, magistrate judges, and staff? What court records may be consulted by the advisory group? Will the advisory group be expected or permitted to examine the caseload at the level of individual judges?

6. What resources, monetary and otherwise (e.g, assistance from the court through its clerk or clerk's office staff), will be provided to the advisory group?

7. Will the advisory group be expected or permitted to call on experts, such as statisticians or pollsters? Can names be recommended to the group? What resources will be available for this purpose?

8. What role will the advisory group play in the annual review of the plan and the dockets required by the Act?

9. What are the terms of the current advisory group members? How will future appointments to the group be made?

II. Assessing the Court's Dockets (§ 472(c)(1))

Each district compiles certain statistics on workload and case processing. These statistics conform to a uniform national reporting system, maintained by the Administrative Office, and provide certain basic information about the state of a court's dockets. This information is the necessary starting point for any analysis and is presented here for your use. However, because the national reporting system was not specifically designed for identifying and analyzing causes of cost and delay, the advisory groups will find it necessary to seek and analyze supplemental information.

In Section A we present some of the routinely collected statistics along with several additional measures for assessing the condition of the dockets and for analyzing trends in case filings. (Note that all measures presented in Section A are specific to your district.) In Section B we list some measures the group may wish to seek or develop to aid its assessment of trends in the demands placed on court resources.

A. Determining the condition of the civil and criminal dockets and identifying trends in case filings (§ 472(c)(1)(A) & (1)(B))

A major source of information about the caseloads of the district courts is the statistical data regularly collected and published in the *Federal Court Management Statistics (MgmtRep)*, which provides a six-year picture for each district, and in the *Annual Report of the Director of the Administrative Office of the United States Courts (AORep)*.

The published tables are prepared from individual case data regularly reported to the Administrative Office by the courts. A report is provided when a case is filed, with a follow-up when the case is terminated. As in any massive reporting process, there are many opportunities for error and inconsistency to enter the system, but there is no reason to expect systematic error that would affect specific locations or specific activities.

The published data are the basis of the assessments of court activity that are currently made by the courts, by the judicial system, and by Congress. Consequently, a thorough grasp of those data will be helpful for understanding the assessments others will be making and for communications both among the advisory group, the courts, and the Judicial Conference and among advisory groups.

1. Measures for Determining the Condition of the Civil Docket

a. Caseload volume. *MgmtRep* for 1990 shows the number of civil and criminal cases filed, terminated, and pending for statistical years (years ended June 30) 1985-1990. A copy of the table for the District of South Carolina appears on the following page. The table also shows the number of authorized judgeships and the months of judgeship vacancy. The authorized judgeships—not the available judge power—is used in calculating the number of actions per judgeship reported in this table.

The table does not report the number of actions per magistrate judge. In some districts, these judicial officers handle a substantial volume of pretrial proceedings in civil cases. In most districts, magistrate judges also have responsibility for misdemeanor cases and for preliminary proceedings in felony cases. Statistics on the workload of magistrate judges may be obtained from the Magistrates' Division of the Administrative Office.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	SOUTH CAROLINA		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1990	1989	1988	1987	1986	1985		
OVERALL WORKLOAD STATISTICS	Filings*		3,494	4,004	3,895	3,875	3,824	3,813		
	Terminations		3,643	3,993	3,841	3,699	4,034	3,965		
	Pending		2,866	2,990	2,980	2,927	2,750	2,960		
	Percent Change In Total Filings Current Year	Over Last Year...		-12.7					74	5
		Over Earlier Years...			-10.3	-9.8	-8.6	-8.4	31	3
	Number of Judgeships		8	8	8	8	8	8		
	Vacant Judgeship Months		1.9	.0	.0	3.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	437	501	487	484	478	477	46	4
		Civil	372	444	447	451	443	452	45	3
		Criminal Felony	65	57	40	33	35	25	32	7
	Pending Cases		358	374	373	366	344	370	66	6
	Weighted Filings**		380	421	379	382	362	362	61	5
	Terminations		455	499	480	462	504	496	34	3
	Trials Completed		39	39	31	27	28	34	34	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.5	5.8	4.1	4.6	4.6	4.1	77	8
		Civil	8	7	8	7	7	8	15	2
	From Issue to Trial (Civil Only)		8	8	8	10	8	9	5	2
OTHER	Number (and %) of Civil Cases Over 3 Years Old		32 1.3	57 2.1	50 1.8	40 1.4	55 2.1	23 .8	4	2
	Triable Defendants** in Pending Criminal Cases Number (and %)		239 (43.5)	105 (27.3)	92 (30.0)	69 (34.3)	134 (48.7)	55 (28.8)		
	Jurors**	Avg. Present for Jury Selection	11.16	11.54	9.96	10.81	8.97	10.47	1	1
		Percent Not Selected or Challenged	9.4	14.7	8.8	17.1	12.6	20.0	6	3

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

1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2977	119	138	310	70	604	159	557	615	45	216	3	141
Criminal*	509	1	36	69	4	51	21	69	39	129	6	15	69

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 167.

Key To Table At Left

Weighted filings

To assess how much work a case will impose on the court, the Judicial Conference uses a system of case weights based on measurements of judge time. The weighted filings figures presented in the table are based on weights developed from the 1979 Time Study conducted by the Federal Judicial Center. A detailed discussion of that project can be found in the *1979 Federal District Court Time Study*, published by the Center in October 1980. Also, a historical statement about weighted caseload studies completed in the U.S. district courts appears in the 1980 *AORep*, pages 290 through 298.

Civil median time

Civil median times shown for all six years on the profile pages exclude not only land condemnation, prisoner petitions, and deportation reviews, but also all recovery of overpayments and enforcement of judgments cases. The large number of these recovery/enforcement cases (primarily student loan and VA overpayments) are quickly processed by the courts and their inclusion would shorten the median times in most courts. Excluding these cases gives a more accurate picture of the time it takes for a case to be processed in the federal courts.

Triable felony defendants in pending criminal cases

Triable defendants include defendants in all pending felony cases who were available for plea or trial on June 30, as well as those who were in certain periods of excludable delay under the Speedy Trial Act. Excluded from this figure are defendants who were fugitives on June 30, awaiting sentence after conviction, committed for observation and study, awaiting trial on state or other federal charges, or mentally incompetent to stand trial, as well as defendants for whom the U.S. Attorney had requested an authorization of dismissal from the Department of Justice.

Key to nature of suit and offense

Civil Cases	Criminal Cases
A Social Security	A Immigration
B Recovery of Overpayments and Enforcement of Judgments	B Embezzlement
C Prisoner Petitions	C Weapons and Firearms
D Forfeitures and Penalties and Tax Suits	D Escape
E Real Property	E Burglary and Larceny
F Labor Suits	F Marijuana and Controlled Substances
G Contracts	G Narcotics
H Torts	H Forgery and Counterfeiting
I Copyright, Patent, and Trademark	I Fraud
J Civil Rights	J Homicide and Assault
K Antitrust	K Robbery
L All Other Civil	L All Other Criminal Felony Cases

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY88-90

District of South Carolina

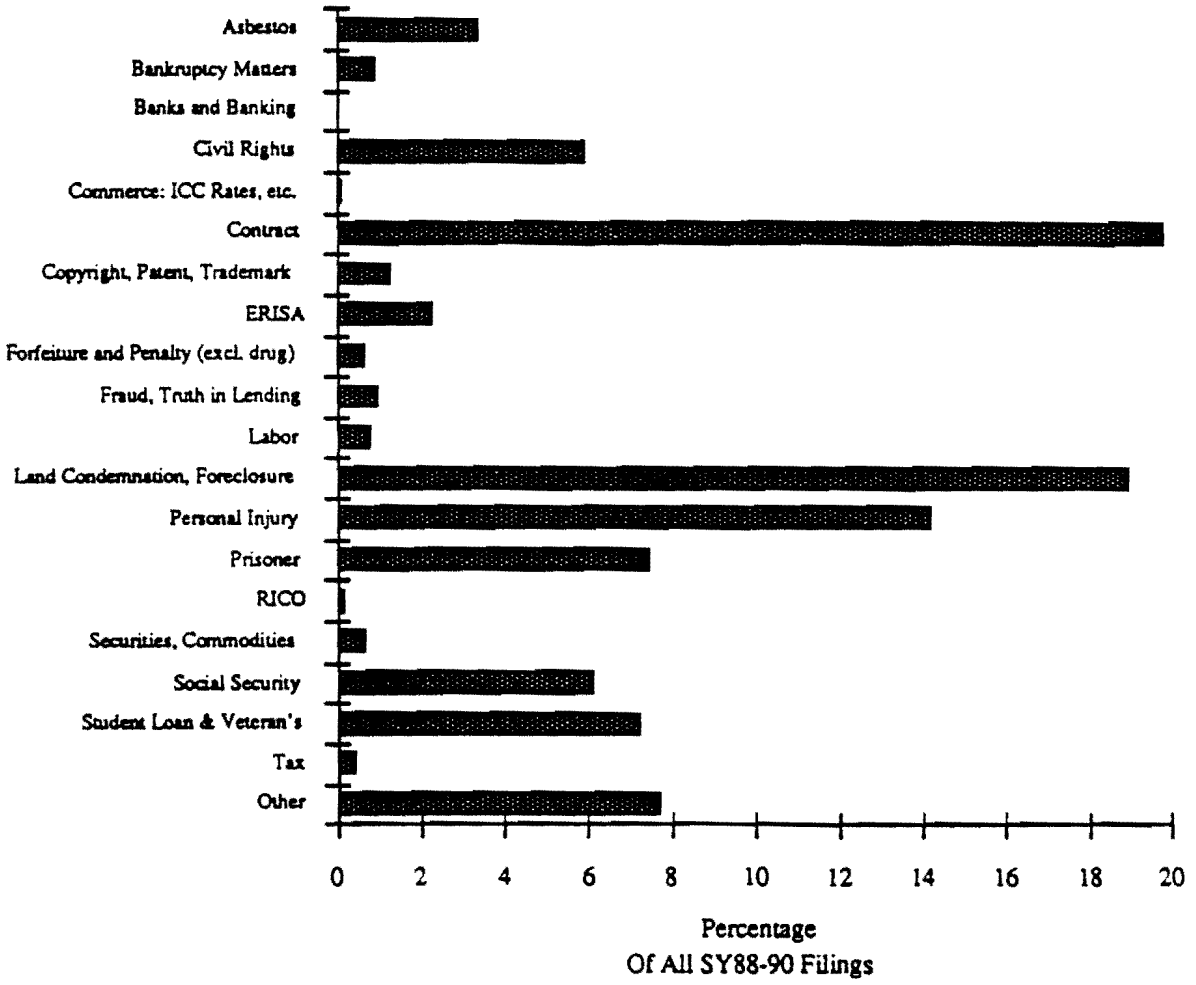


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

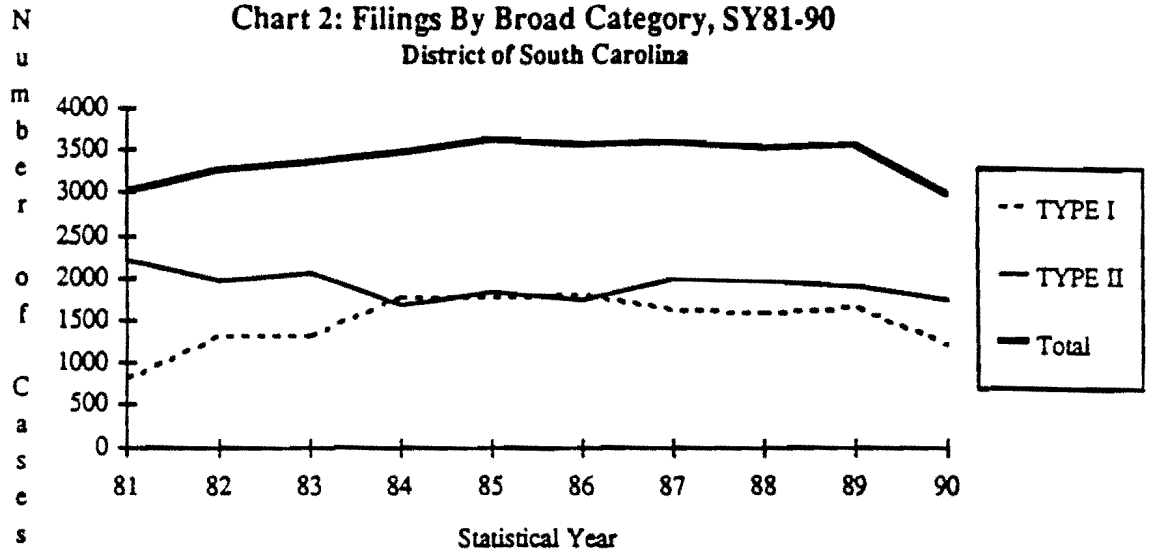


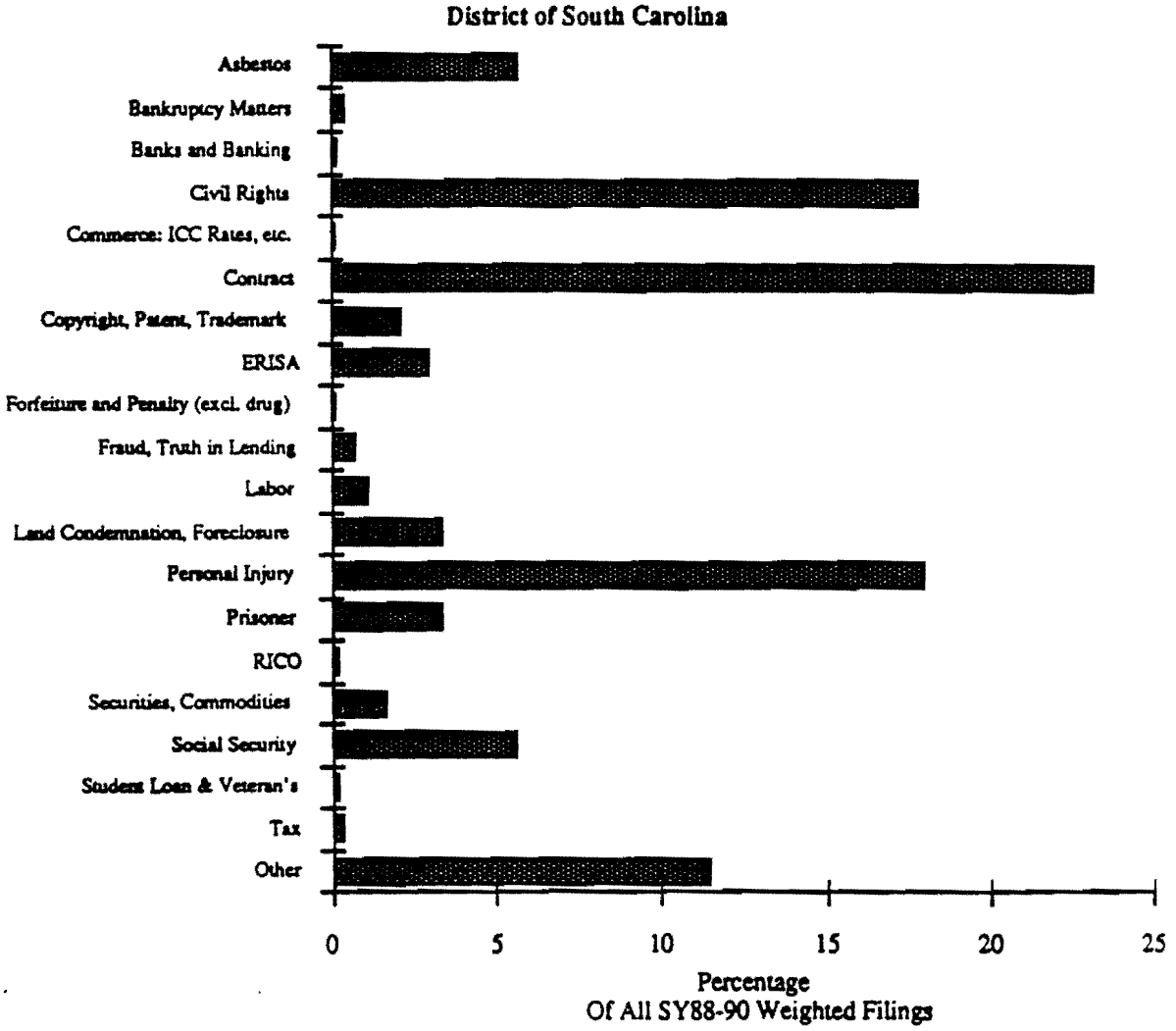
Table 1: Filings by Case Types, SY81-90

District of South Carolina

	81	82	83	84	85	86	87	88	89	90
Asbestos	3	29	52	30	88	89	54	119	132	94
Bankruptcy Matters	2	17	28	18	28	24	20	21	33	43
Banks and Banking	8	10	5	0	1	6	2	0	3	4
Civil Rights	167	183	209	208	167	174	180	163	223	215
Commerce: ICC Rates, etc.	7	6	5	5	4	11	14	9	2	6
Contract	550	587	742	646	675	652	725	791	657	552
Copyright, Patent, Trademark	31	40	54	49	42	34	47	43	45	45
ERISA	2	3	2	5	10	9	11	31	78	125
Forfeiture and Penalty (excl. drug)	27	25	46	49	68	16	10	27	19	27
Fraud, Truth in Lending	64	50	75	45	48	33	18	23	43	35
Labor	36	56	37	21	23	18	37	25	22	34
Land Condemnation, Foreclosure	300	385	299	596	516	574	548	590	746	584
Personal Injury	669	567	608	444	537	520	521	483	498	457
Prisoner	153	152	158	144	222	254	279	221	252	288
RICO	0	0	0	0	0	2	3	6	4	11
Securities, Commodities	9	15	25	11	24	14	49	38	15	16
Social Security	362	411	497	645	449	285	350	311	190	119
Student Loan and Veteran's	0	314	274	354	486	589	369	334	305	96
Tax	13	7	25	24	24	6	6	13	20	13
All Other	614	409	209	186	223	247	369	303	273	212
All Civil Cases	3017	3266	3350	3480	3635	3557	3612	3551	3560	2976

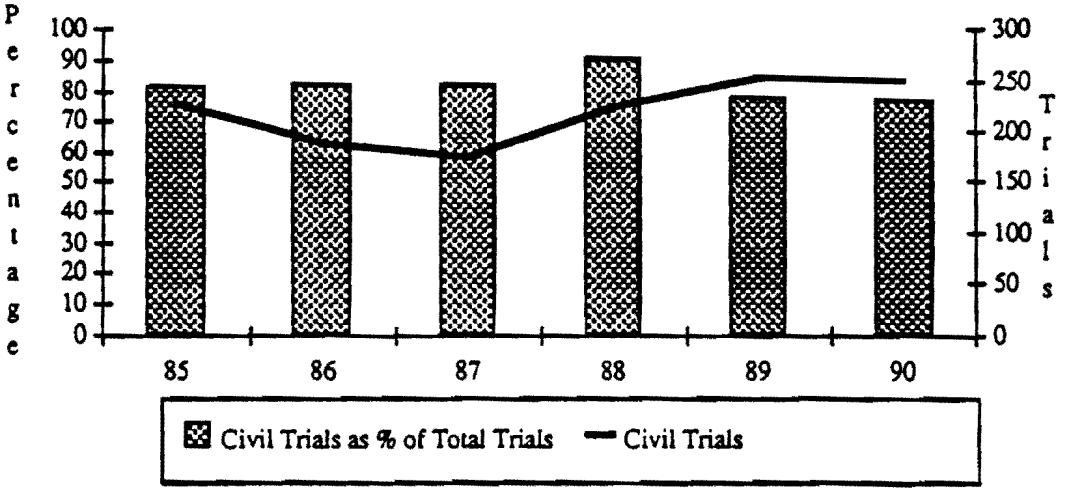
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

Chart 3: Distribution of Weighted Civil Case Filings, SY88-90



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY85-90
District of South Carolina



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY81-90

District of South Carolina

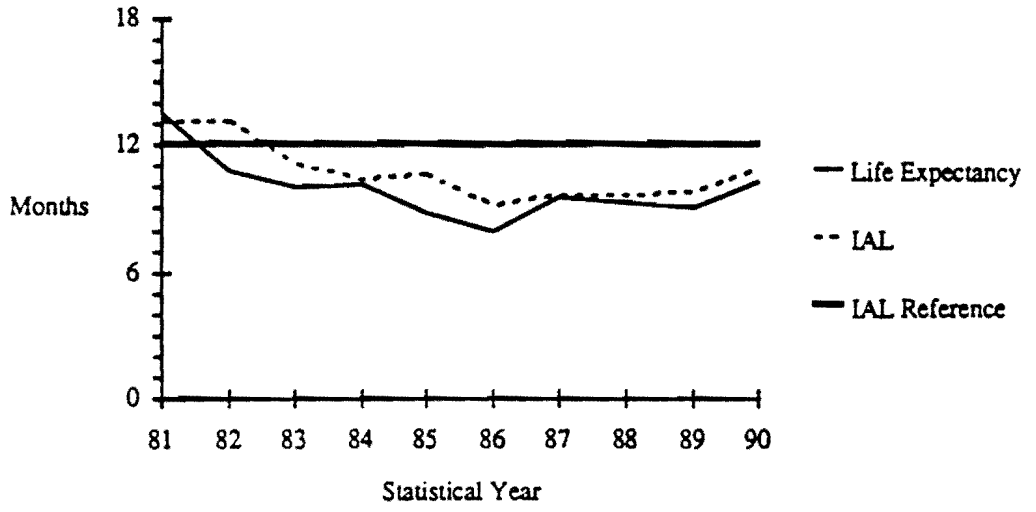
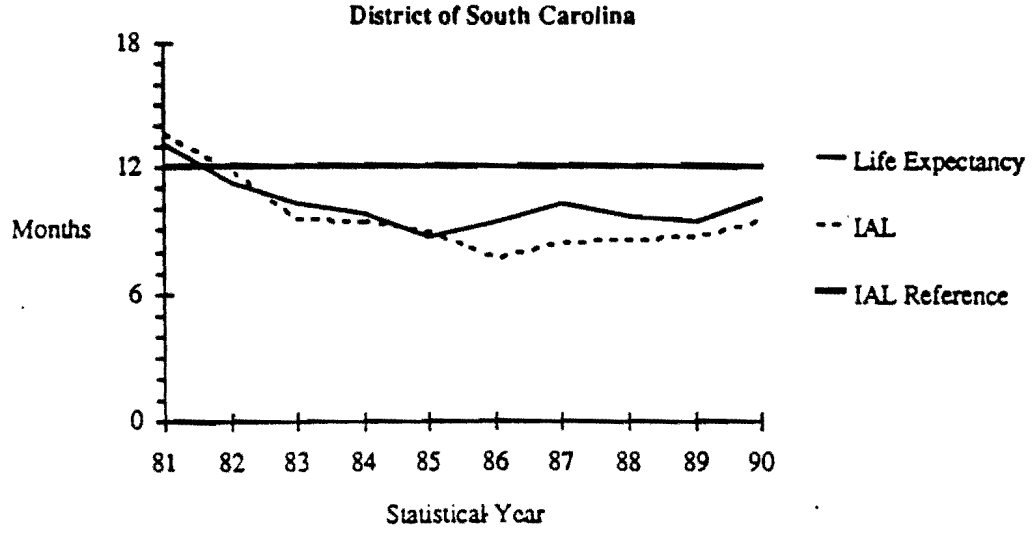


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY81-90

District of South Carolina



e. Three-year-old cases. The *MgmtRep* table shows the number and percentage of pending cases that were over three years old at the indicated reporting dates. We have prepared Charts 7 and 8 to provide some additional information on these cases.

Chart 7 shows the distribution of case terminations among a selection of termination stages and shows within each stage the percentage of cases that were three years old or more at termination.

Chart 7: Cases Terminated in SY88-90, By Termination Category and Age

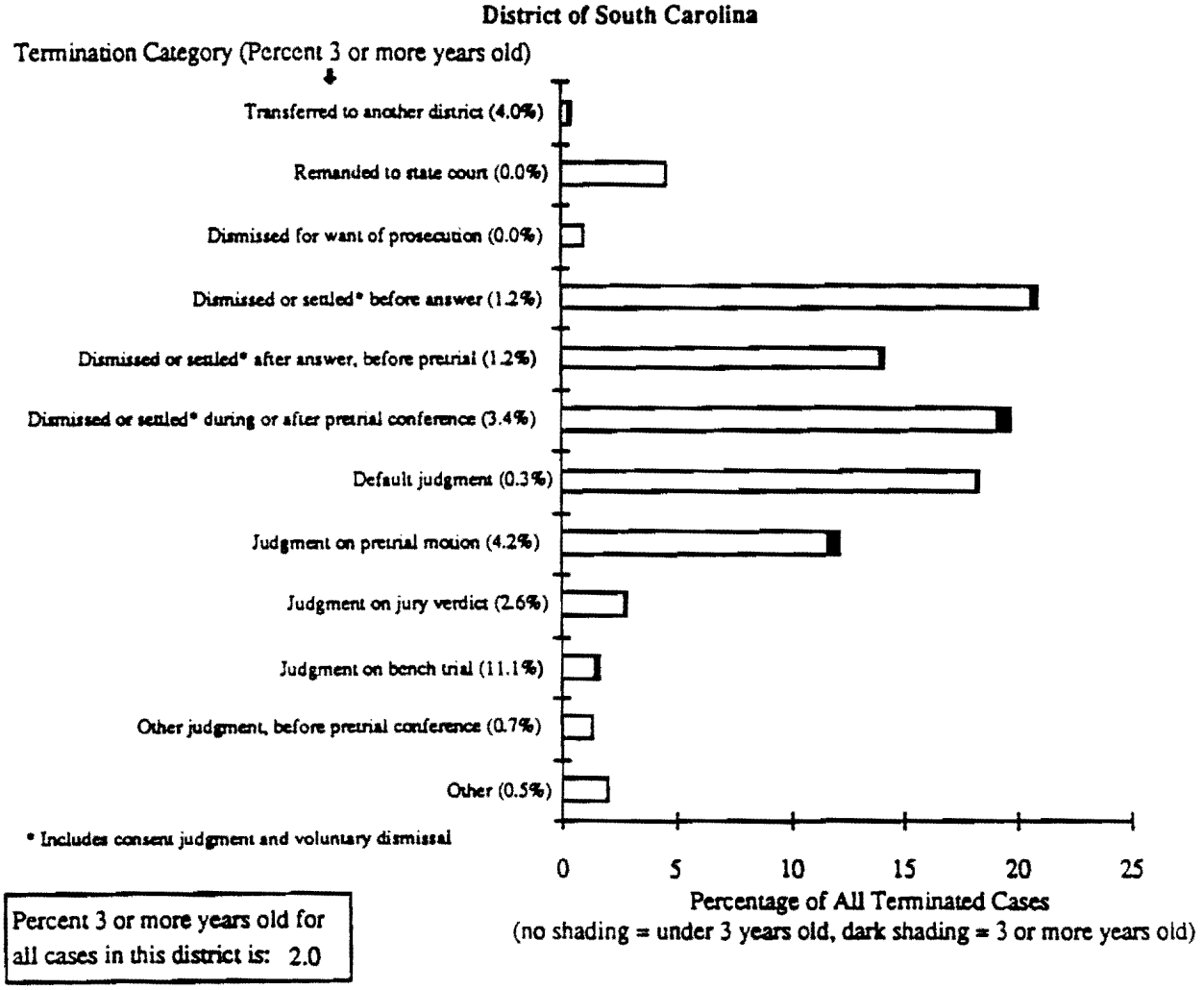
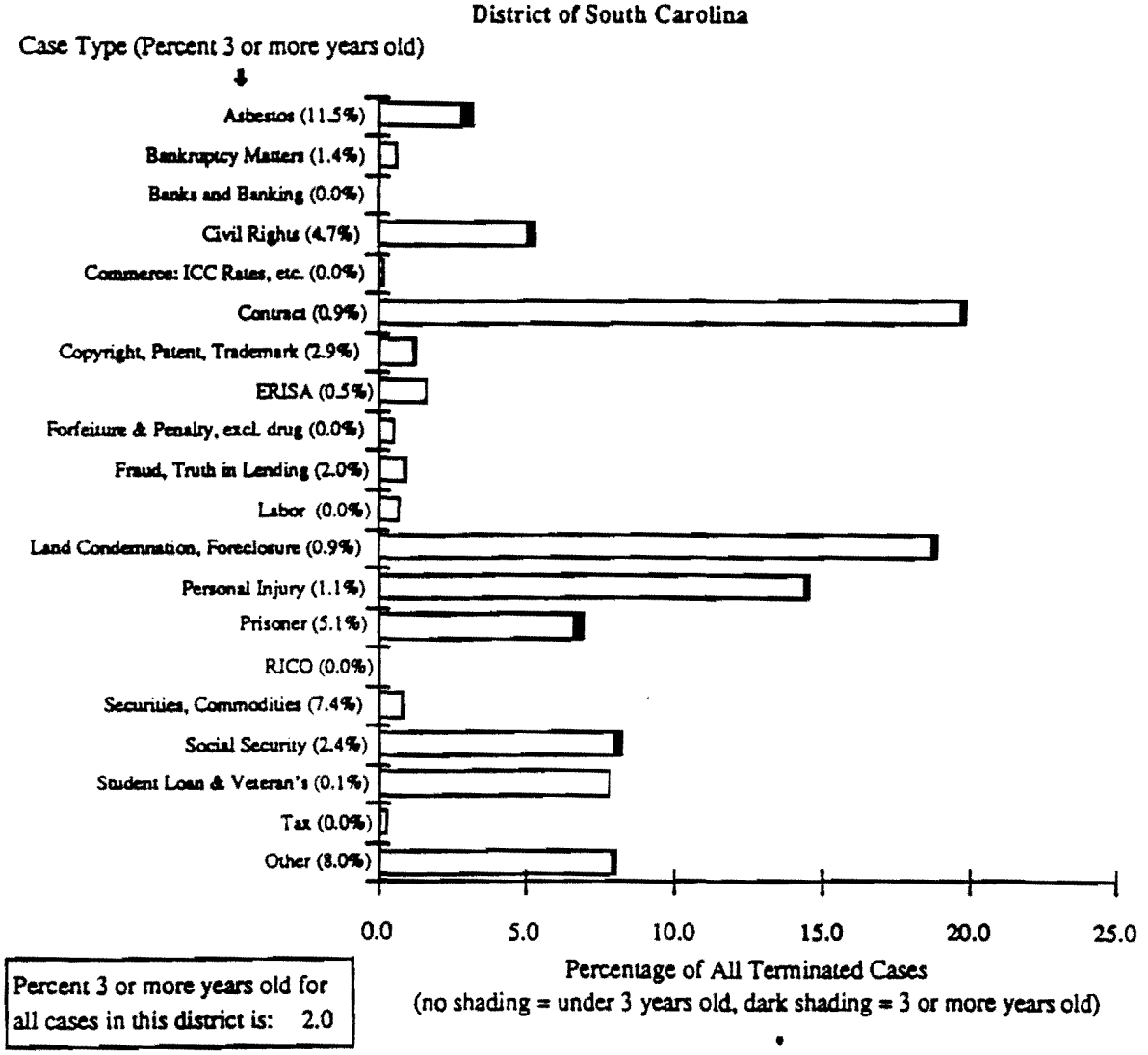


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY88-90, By Case Type and Age



f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 × 1.2). This will overstate the workload of the active judges if

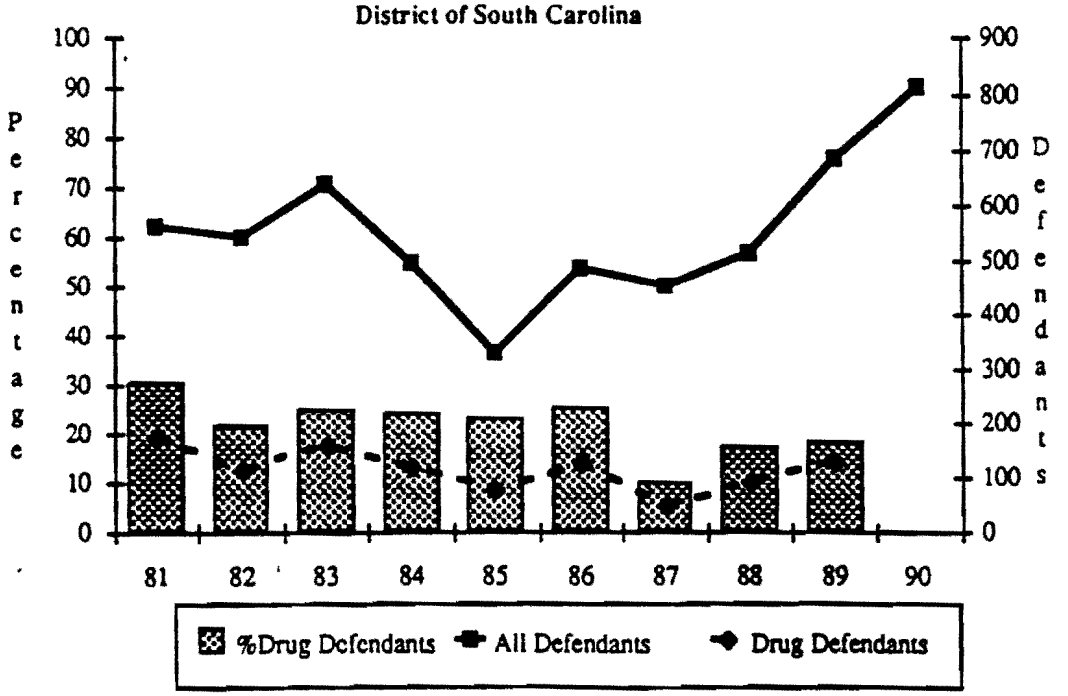
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

a. The impact of criminal prosecutions. In calling on the advisory group to consider the state of the criminal docket, Congress recognized that the criminal caseload limits the resources available for the court's civil caseload. It is important to recognize that the Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (FTS/633-6094).

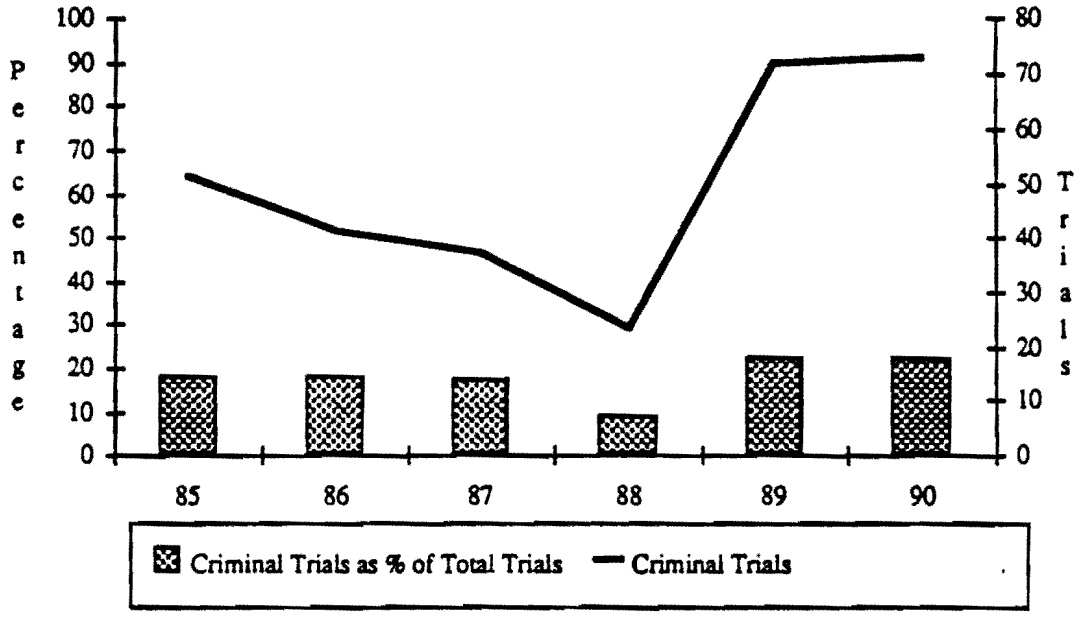
Chart 9: Criminal Defendant Filings SY81-90, With Number and Percentage Accounted for by Drug Defendants, SY81-89
(Drug filings data not available for SY90)
District of South Carolina



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY85-90

District of South Carolina



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

B. Identifying trends in the demands placed on the court's resources (§ 472(c)(1)(B))

While courts maintain some data reflecting trends in the demands on their resources (e.g., the case filing information presented above), these data generally do not provide information about the state of the resources themselves and how these resources relate to demand. The advisory group will want to try to develop information reflecting trends in the relationship between demand and resources. In this section, we suggest some key indicators that may be helpful. Some may be quantifiable. Others will be based on non-numerical information gathered from court personnel.

Court resources may be divided into four categories:

- judicial officers
- supporting personnel
- buildings and facilities
- automation and other technical support.

The following sections provide an outline for assessing trends in the relationship between demand and resources, for each category listed above.

1. Judicial Officers

(a) Article III Judges

The group may want to examine trends over a significant period (five years or more) in the following areas:

- filings and terminations per judgeship and per active judge
- weighted filings per judgeship and per active judge
- raw caseloads per judgeship and per active judge
- weighted caseloads per judgeship and per active judge
- criminal filings and terminations per judgeship and per active judge
- vacant judgeship months
- civil and criminal trials per judge
- participation of senior judges
- participation of visiting judges
- other relevant information

(b) Magistrate Judges

Information may be developed for a similar period in the following areas:

- civil and criminal caseloads per magistrate judge
- civil trials per magistrate judge
- volume of criminal calendars
- vacant magistrate judgeship months
- other relevant information

2. Supporting Personnel

(a) Clerk's Office

Information may be developed for a similar period in the following areas:

- personnel strength and deficiencies in the clerk's office, e.g., percentage of authorized positions permitted to be filled; percentage of positions filled; rate of employee turnover, etc.
- ratio of staff to filings and caseloads
- staff participation in duties related to case management
- other relevant information

(b) Probation/pretrial services department

Information may be developed in the following areas for a period that should take into account the impact of the sentencing guidelines implemented in November 1987:

- personnel strength/deficiencies in the department, e.g., percentage of authorized positions filled, rate of turnover, etc.
- caseloads per officer
- ratio of officers to criminal filings
- other relevant information

3. Buildings and Facilities

Information may be developed for a significant period (five years or more) concerning the adequacy of:

- courtroom facilities
- jury facilities
- prisoner facilities
- library facilities
- support staff facilities

4. Automation and other technical support

Information may be developed for a similar period concerning the adequacy of:

- automation facilities and services
- courtroom reporting services

III. Identifying the Principal Causes of Cost and Delay in Civil Litigation (§ 472(c)(1)(C))

Legislation cannot alter the fact that civil litigation necessarily takes time and costs money. The implementation of the Act can, however, identify causes of avoidable cost and delay, and this is the task on which the group should focus. The group should attempt to arrive at a common understanding of the sense in which it will use those terms. Thus the Act does not specify cost to whom (e.g., the court, the parties, the public) or how much time constitutes delay. The group should define what it means when it uses those terms. So too the group should define other terms and concepts it uses and ensure that its analysis will be as meaningful as possible to the reader. By way of example, to report that "ERISA cases have delayed the resolution of other civil cases" is entirely different from reporting: "As the percentage of ERISA cases on the court's pending civil caseload has grown from __ % in 1986 to __ % in 1990, the life expectancy of all civil cases has grown from __ months to __ months. Six of the seven judges on the court attribute this growth to demands of ERISA cases on their dockets." While the group members' experience and judgment will lend weight to their conclusion, specificity and reference to objective indicia will add greatly to the utility of their report.

The group may begin with a review and analysis of the statistical data assembled in assessing the court's docket and resources (Part II, above). For example (and by way of illustration only), the group may identify a mismatch of demands and resources, illustrated by the emergence of categories of litigation imposing new and substantial burdens on the court's docket, an increasing number of vacant judgeship months, and a decline in the clerk's office personnel. Or the group may find the court's docket to be in a satisfactory state in the sense that it reflects no avoidable cost or delay. Findings such as these should be specific and should not be made in generalities.

Having made its assessment under Part II, the group should proceed to analyze possible causes of cost and delay in "court procedures and the ways in which litigants and their attorneys approach and conduct litigation" (§ 472(c)(1)(C)). The following sections list numerous procedures and practices in civil litigation, although the listing is not intended to be exhaustive. The question to be considered is whether the presence, absence, or application of any such procedures or practices appear to cause avoidable cost or delay in civil litigation.

A. Analysis of court procedures to identify problems of cost and delay

The term "court procedures" may refer to court-wide procedures, i.e., those followed by the court as a whole, whether by rule, order, or custom. It may also refer to the procedures or practices followed by individual judges. For example, assignment of cases typically is a court-wide practice—there is no place for individual variation. On the other hand, the conduct of Rule 16 conferences is essentially a matter for individual judges, even though rules or general orders may be in effect. Some procedures may relate to both categories, e.g., calendaring practices and

jury management practices. In making its study, the group should recognize this distinction and make as clear as possible in its analysis and report which category of procedure it is addressing.

1. Assignment procedures
   a. Methods for assigning cases at filing
   b. Methods of reassigning cases (to new judges, recusal, disqualification, related cases, illness/disability, backlog, protracted/complex cases)
2. Time limits
   a. Monitoring service of process
   b. Monitoring timing of responses to complaint
   c. Enforcing time limits in rules and orders
   d. Practices regarding extensions of time
3. Rule 16 conferences
   a. Exemptions for categories of cases
   b. Format of conference
   c. Development of scheduling orders (See Rule 16(b))
   d. Timing of conferences
   e. Subject matters of conferences (See Rule 16(c))
   f. Use of magistrate judges
4. Discovery procedures
   a. Use and enforcement of cutoff dates
   b. Control of scope and volume of discovery
   c. Use of Rule 26(f) conferences
   d. Use of voluntary exchanges and disclosure and other alternatives to traditional discovery
   e. Procedures used for resolving discovery disputes
   f. Use of sanctions for discovery abuse
   g. Use of magistrate judges
5. Motion practice
   a. Scheduling of motions
   b. Monitoring the filing of motions, responses, and briefs
   c. Hearing and calendaring practices
   d. Method of ruling on motions
   e. Timing of rulings
   f. Use of proposed orders
   g. Use of magistrate judges
6. Final pretrial conferences
   a. Narrowing issues and limiting trial evidence
   b. Controlling length of trials
   c. Structuring sequence of trial issues
   d. Exploring settlement possibilities
7. Jury trials
   a. Method of selection of the venire
   b. Conduct of voir dire
   c. Use of jury selection aids (e.g., pre-screening questionnaires)

d. Use of juror comprehension aids (e.g., encouraging use of visual aids)
e. Use of jury deliberation aids (e.g., written instructions and verdict forms)
f. Assessment of juror costs for late settlement

8. Trial setting
   a. Methods for scheduling trial (e.g., date certain, trailing, combination, etc.)
   b. Timing of setting date for trial
   c. Adherence to trial dates
   d. Priorities (Speedy Trial Act and civil case scheduling--28 U.S.C. § 1657)
   e. Back-ups for multiple settings
   f. System for "clearing the calendar" (e.g., joint trial calendar)
9. Review and dismissal of inactive cases
10. Use of magistrate judges
    a. Pretrial and discovery stages
    b. Settlement conferences
    c. Consent trials
    d. Use as special masters
11. Use of senior and visiting judges
12. Use of courtroom deputy clerks and other personnel to assist judge
    a. Scheduling
    b. Monitoring deadlines
    c. Liaison with attorneys
    d. Preparation of internal statistical reports
    e. Administrative and other functions
13. Use of alternative dispute resolution
    a. Arbitration (voluntary and involuntary)
    b. Early neutral evaluation
    c. Mediation
    d. Mini-trials
    e. Settlement conferences (judicial officer-hosted)
    f. Summary jury trials
    g. Judicial incentives/disincentives to use ADR
14. Efficacy/deficiencies of local rules
    a. Use/non-use of local rules
    b. Alternatives to local rules (e.g., standing orders)
    c. Page limits on briefs
    d. Discovery limits
    e. Time limits
    f. Rules regarding non-filing of discovery materials
    g. Rules on other items from this checklist
15. Use of sanctions
    a. Timing and treatment of motions
    b. Hearings
    c. Control of collateral proceedings
    d. Form and timing of rulings

16. Handling of attorneys' fee petitions
    a. Methods and procedures for setting fees
    b. Hearings, findings, orders
17. Communication and coordination among judges' chambers, magistrate judges' chambers, and clerk's office
18. Other relevant practices of the court or judges

B. Analysis of litigant and attorney practices—privately represented litigants

1. Pre-filing practices—screening cases
    a. Assessing time available for a case
    b. Screening cases for merit
    c. Prefiling investigation of law and fact
    d. Interviewing fact witnesses
    e. Consulting with expert witnesses
    f. Checking documentary evidence
    g. Contacting opposing party
    h. Evaluating the case
    i. Advising client about availability of ADR procedures
2. Pleading practices
    a. Limiting theories and claims in complaint and answer
    b. Amending to remove unfounded claims or defenses
3. Discovery practices
    a. Voluntary exchange of information
    b. Use of admissions and stipulations
    c. Limiting discovery
    d. Resolving discovery issues with counsel
    e. Use of discovery motions
    f. Compliance with rulings
4. Motion practice
    a. Limiting volume of motions
    b. Use of stipulations or consent
    c. Length of pleadings and briefs
    d. Requests for hearings
    e. Conduct of hearings
5. Trial practice
    a. Preparing and organizing evidence
    b. Narrowing claims
    c. Stipulating facts
    d. Estimating time
    e. Complying with time limits
    f. Jury practices—voir dire, selection

6. Sanctions practice
   a. Timing
   b. Circumstances and reasons for requesting sanctions
   c. Frequency of use
   d. Effects on litigation
7. Private attorneys' fees
   a. Effect of local billing and charging practices as incentives/disincentives to litigate
   b. Asymmetries between defense and plaintiff incentives/disincentives
8. Court-awarded attorneys' fees
   a. Class action practices—incentives/disincentives
   b. Statutory fees—incentives/disincentives
9. Settlement practices
   a. Evaluation and ongoing reevaluation of case
   b. Timing of initial discussions
   c. Plaintiff/defendant practices and asymmetries
   d. Resort to court/judge provided procedures—incentives/disincentives
   e. Timing of settlements
10. Use of alternative dispute resolution methods
   a. Incentives/disincentives for plaintiffs and defendants
   b. Use of binding alternatives
   c. Requests for trial de novo
   d. Demand for alternative programs
   e. Resources to implement alternatives
11. Compliance with time limits and local rules at all stages of the litigation
12. Appeals practices
   a. Interlocutory appeals
   b. Appeals on merits
13. Client participation in litigation events and decision making
   a. Impact of presence/absence of client
   b. Fixing client responsibility

C. Analysis of special problems relating to pro se litigation

1. Control of filing of pro se litigation
   a. Review by magistrate judge or judge (28 U.S.C § 1915(d))
   b. Assessing partial filing fees
   c. Orders controlling repeated filings
   d. Certification of grievance procedures by district court (28 U.S.C. § 1997(e))
2. Use of court resources
   a. Delegation to magistrate judges
   b. Use of pro se law clerks

3. Control of hearings
   a. Screening of claims (e.g., at prison)
   b. Narrowing issues
4. Appointment of counsel
   a. Available resources and procedures
   b. Judicial practices

D. Analysis of special problems relating to U.S. litigation

1. Criminal practices
   a. Charging practices (numbers of charges and defendants, separate incidents combined within single indictment, prosecution of offenses in state jurisdiction, etc.)
   b. Plea negotiation practices
   c. Timing of delivery of Jencks Act statements
   d. Discovery practices (e.g., open file; contested)
   e. Length of trials
   f. Use of cross-designations of state prosecutors
2. Civil practices
   a. Selection of cases
   b. Use of removal from state courts
   c. Exercise of settlement authority
   d. Use of alternative, non-adjudicatory procedures
   e. Other practices as listed under Section B above

E. Analysis of special problems relating to state and local government litigation

1. Procedures and practices used by district/states attorneys in habeas corpus litigation
2. Procedures and practices used by district/states attorneys in other prisoner litigation (including use of non-adjudicatory procedures, resort to grievance procedures, etc.)
3. Others

F. Analysis of special problems relating to complex cases

1. Coordination among court, bar, and litigants
2. Pretrial procedures
3. Discovery procedures
4. Motions practice
5. Trial scheduling

IV. Examining the Impact of New Legislation on the Court (§ 472(c)(1)(D))

The Act directs the advisory groups 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" (§ 472(c)(1)(D)). One approach to making this assessment is to examine the impact of recent legislation on the courts. Another is to consider the lack of legislation that could have improved the civil litigation process. For illustrative purposes only, here are examples of legislative action, or inaction, the group may wish to consider:

A. Criminal legislation

1. Adoption of guideline sentencing and impact of particular aspects of the sentencing guidelines
2. Mandatory minimum sentencing statutes
3. New statutory drug and gun offenses
4. Expansions of federal criminal jurisdiction

B. Civil legislation

1. RICO—civil and criminal sanctions
2. ERISA
3. Financial recoveries from federally insured financial institutions (savings and loans, banks, etc.)
4. Civil rights acts, including the Americans with Disabilities Act of 1990
5. Superfund and other environmental legislation
6. Federal Debt Collection Procedures Act
7. Immigration Act of 1990

C. Legislative inaction

1. Implied causes of action in regulatory statutes
2. Statutes of limitations unspecified
3. Choice of law issues
4. Federal common law
5. Multi-party, multi-forum jurisdiction and procedure
6. Legislative reconciliation of demands and resources (e.g., asymmetry between "authorization" and "appropriation" for responsibilities placed on judiciary such as this Act)
7. Approval of nominees for judicial vacancies

V. Making Recommendations to the Court (§ 472(b))

After making its assessments under § 472(c)(1), the group must submit to the court a report with "its recommendation that the district court develop a plan or select a model plan" (§ 472 (b)(2)). Model plans developed by the Judicial Conference are not expected to be available before the second half of 1992. Moreover, as each plan is to be responsive to local needs and circumstances, it is not likely that a model plan will satisfy the needs of a district.

A. Contents of report

The Act states that the group's report shall:

- include "recommended measures, rules and programs" (§ 472(b)(3));
- include "the basis for its recommendation" (§ 472(b)(2));
- explain "the manner in which the recommended plan complies with section 473" (§ 472(b)(4));
- "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys" (§ 472(c)(2)); and
- "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" (§ 472(c)(3)).

In making its recommendations, Congress did not intend to displace or restrict judicial discretion. The House Judiciary Committee said that it was "unwilling to impose the Congress' view of proper case management upon an unwilling judiciary" (House Report, p. 14). Advisory groups (other than those in pilot districts, addressed below) have the discretion to recommend any or all of the principles, guidelines, or techniques of § 473(a) and (b). They must, however, state the reasons for their choices. Specifically, a group must show:

- that it has "consider[ed] . . . the . . . principles and guidelines of litigation management and cost and delay reduction" set out in § 473(a) and (b); and
- that it has included in its recommended measures, rules, and programs those of the Act's principles, guidelines, and techniques that, for the reasons stated in the group's report, are considered appropriate for the needs and circumstances of the district.

While the Act does not require a plan to incorporate specific provisions (except in pilot districts), Congress clearly expects them to reflect a significant commitment to cost and delay reduction. Recommended actions are to "include significant contributions to be made [not only] by the court, [but also] by the litigants, and the litigants' attorneys" (§ 472(c)(3)). They need not be limited to the means set forth in the Act to reduce cost and delay. Nor need they be limited to matters touching directly on the processing of litigation. A plan might, for example, call upon the bar to sponsor advocacy training programs for federal litigators or to provide greater *pro bono* representation to indigent litigants who would otherwise proceed *pro se*.

Implementation of a plan will not necessarily require a court to change current methods and techniques. Where existing methods and techniques are found to be effective in controlling cost and delay, the plan should incorporate them to ensure that they remain part of the court's procedure.

The group should report on problems of cost and delay regardless of whether those problems might be remedied by the Act's principles and guidelines. Problems beyond the control of courts, litigants, and attorneys should be identified, but this material does not address how the group should treat them.

B. Format of report

The Judicial Conference must review all district reports (§ 474(b)(1)) and prepare a report to Congress (§ 479). The Conference will find it helpful if the reports generally conform to a pattern permitting comparison across districts. Such reports will also facilitate research on the administration of justice in federal courts. To be helpful to the court and to the Judicial Conference, reports should, where possible, correlate particular identified problems with particular recommendations. Recommendations should be specific; they may, for example, take the form of a suggested rule, order, or procedure. The Conference, in consultation with the Federal Judicial Center and the Administrative Office, will be working with all the courts to explore appropriate formats.

C. Pilot districts

Plans implemented by the ten pilot districts "shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a)" (§ 105(b)). The following considerations may be helpful to groups in pilot districts:

- If the group finds that the state of the court's docket is satisfactory and there are no discernible causes of avoidable cost and delay, it may recommend measures that incorporate the court's existing practices and procedures, adapted to reflect the six principles and guidelines in a manner that will not disrupt an existing satisfactory operation.
- If the group finds the existence of causes of avoidable cost and delay to which some of the stated principles and guidelines may be relevant, it should recommend their adaptation to "the needs and circumstances" of the court in a pragmatic manner, keeping in mind that the objective is to aid, not impair, the administration of justice. For example, a court already straining under its criminal caseload should not be subjected to procedures imposing additional burdens and demands unless their impact will demonstrably improve the overall ability of that court to process its dockets.

While these considerations are especially relevant to the pilot districts, advisory groups in all districts will want to keep them in mind as they develop their reports and recommendations to the court.

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October 30, 1991

MEMORANDUM TO: Chief Judges, Clerks, and Civil Justice Reform Act Advisory Group Chairs, United States District Courts

SUBJECT: 1991 Update for District Court Caseload Data

Last March we sent you a memorandum entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990." The memorandum included court-specific caseload data through Statistical Year (SY) 1990.

At this time we are pleased to provide an update to the caseload data sent last March. Enclosed you will find tables and charts reporting the SY 1991 caseload data for your district. These tables and charts may be used to replace or supplement the corresponding ones in the March memorandum. The tables and charts were prepared by John Shapard of the Judicial Center's Research Division. Please call Mr. Shapard at (202) 633-6326 if you have questions or comments.

Note that the court need not distribute the memorandum to the advisory group, as it is being sent directly to the chair of that group. We have also sent copies to the chief judges of the courts of appeals, the circuit executives, and the district executives.

If we at the Center or the Administrative Office may assist you in any other way, please let us know.

Sincerely yours,

William W Schwarzer

Enclosures

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY91 Statistics Supplement

October 1991

Prepared for the United States District Court for the District of South Carolina

NOTES:

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1991 (the twelve months ended June 30, 1991). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 (page 12) may show slightly different counts of case filings for recent years (e.g., SY88-90) than were shown in Table 1 of the original document. The variations arise from two sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing counts.

2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been replaced in this update with a chart entitled "Chart 6 Corrected," which is based on all Type II cases. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.

3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this update.

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY89-91

District of South Carolina

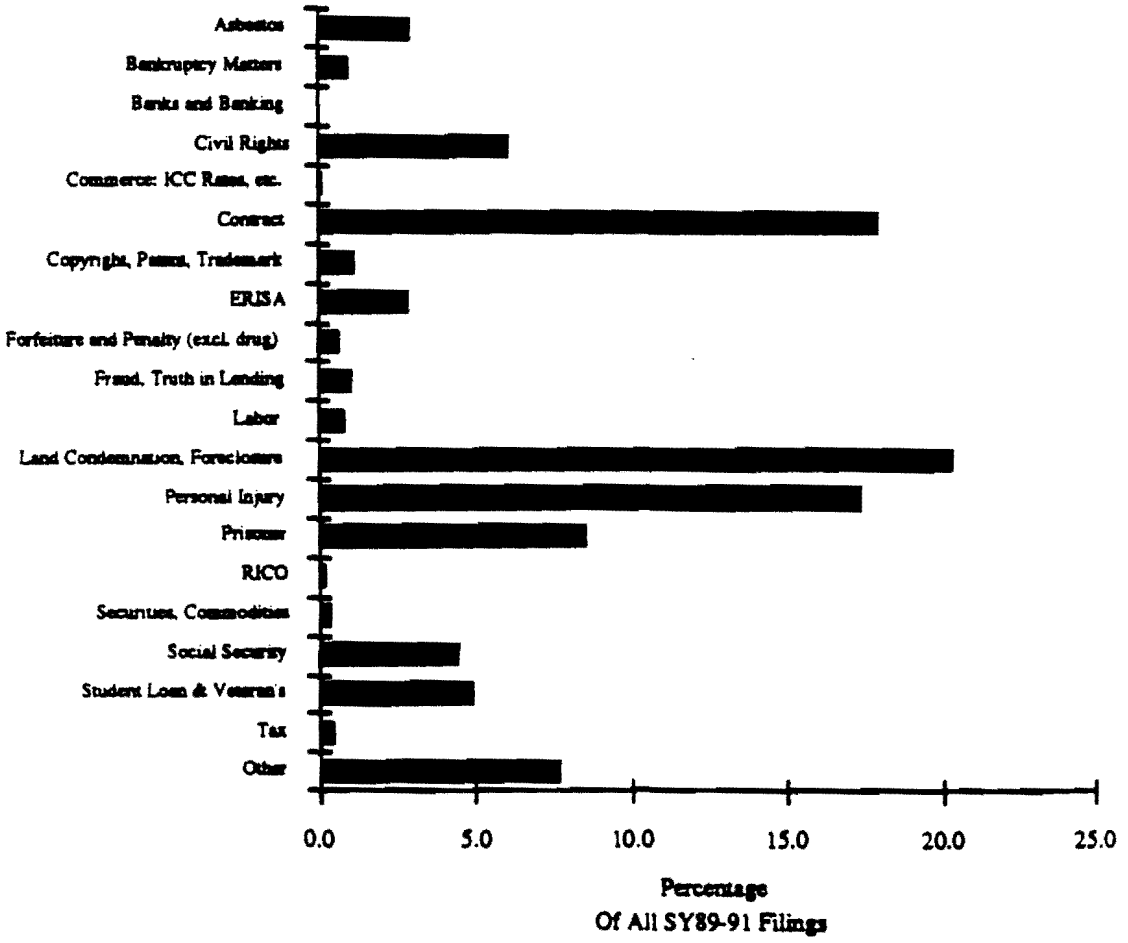


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY82-91
District of South Carolina

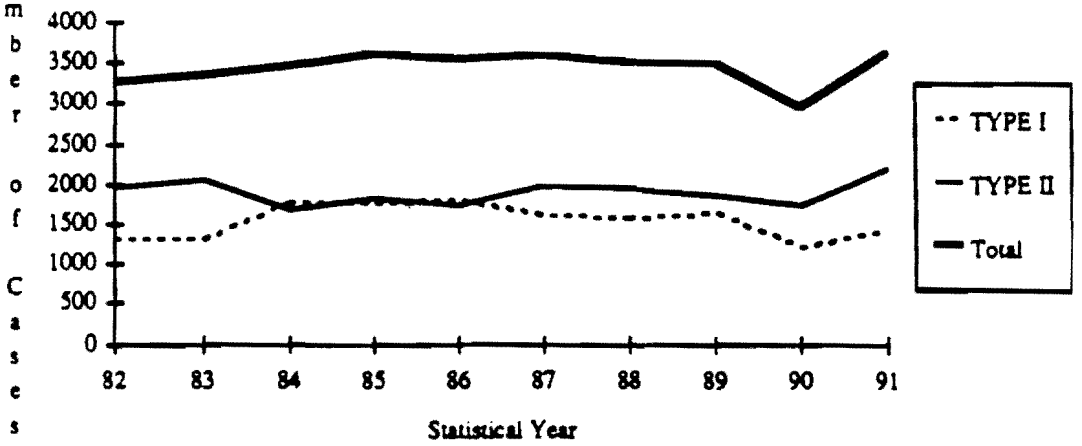


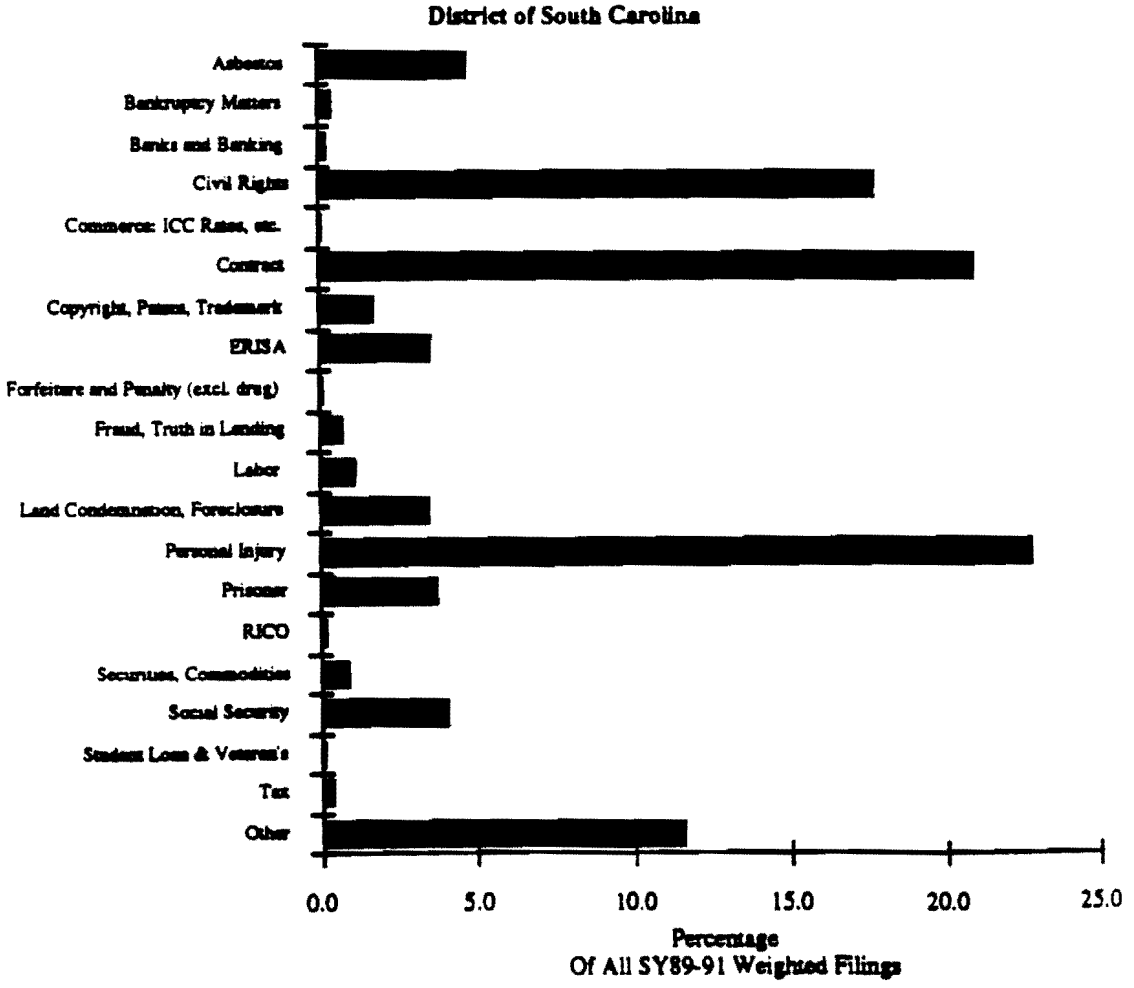
Table 1: Filings by Case Types, SY82-91

District of South Carolina

	82	83	84	85	86	87	88	89	90	91
Asbestos	29	52	30	88	89	54	120	131	93	79
Bankruptcy Matters	17	28	18	28	24	20	21	32	43	32
Banks and Banking	10	5	0	1	6	2	0	3	4	3
Civil Rights	183	209	208	167	176	180	163	221	216	192
Commerce: ICC Rates, etc.	6	5	5	4	11	14	9	2	6	12
Contract	587	742	646	675	652	727	789	648	553	627
Copyright, Patent, Trademark	40	54	49	42	34	47	42	45	44	35
ERISA	3	2	5	10	9	11	31	78	126	91
Forfeiture and Penalty (excl. drug)	25	46	49	68	16	10	27	19	27	26
Fraud, Truth in Lending	50	75	45	48	33	18	23	43	35	35
Labor	56	37	21	23	18	37	24	22	33	31
Land Condemnation, Foreclosure	385	299	597	516	574	548	588	744	584	745
Personal Injury	567	608	444	537	520	520	483	490	461	822
Prisoner	152	158	144	222	254	279	221	252	286	334
RICO	0	0	0	0	2	3	6	4	12	11
Securities, Commodities	15	25	11	24	14	49	38	15	16	9
Social Security	411	497	645	449	285	351	311	188	119	148
Student Loan and Veteran's	314	274	354	486	589	369	334	305	96	106
Tax	7	25	24	24	6	6	13	20	14	16
All Other	409	209	186	223	247	370	303	272	213	298
All Civil Cases	3266	3350	3481	3635	3559	3615	3546	3534	2981	3652

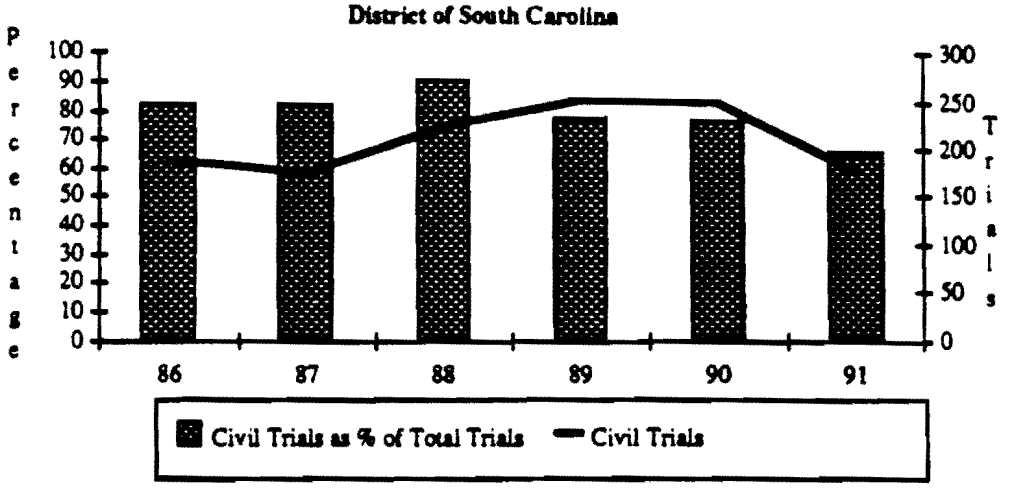
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

Chart 3: Distribution of Weighted Civil Case Filings, SY89-91



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY86-91
District of South Carolina



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY82-91

District of South Carolina

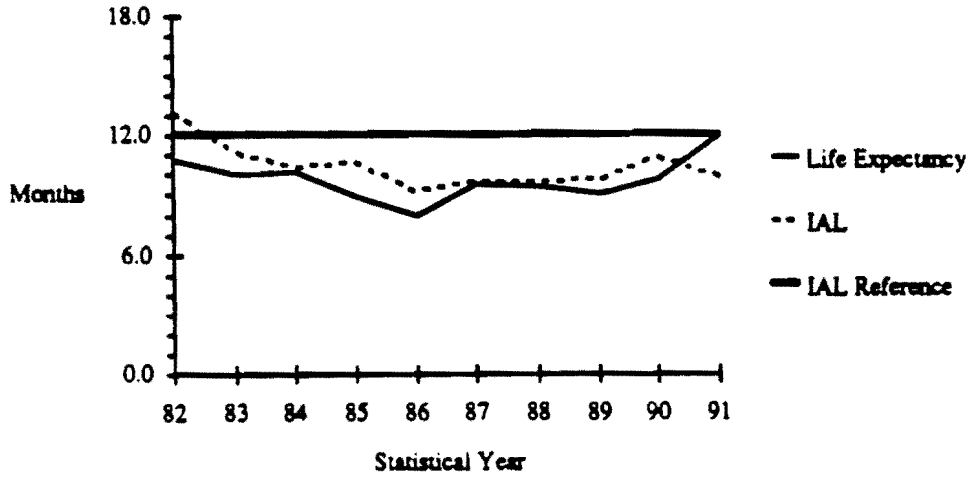
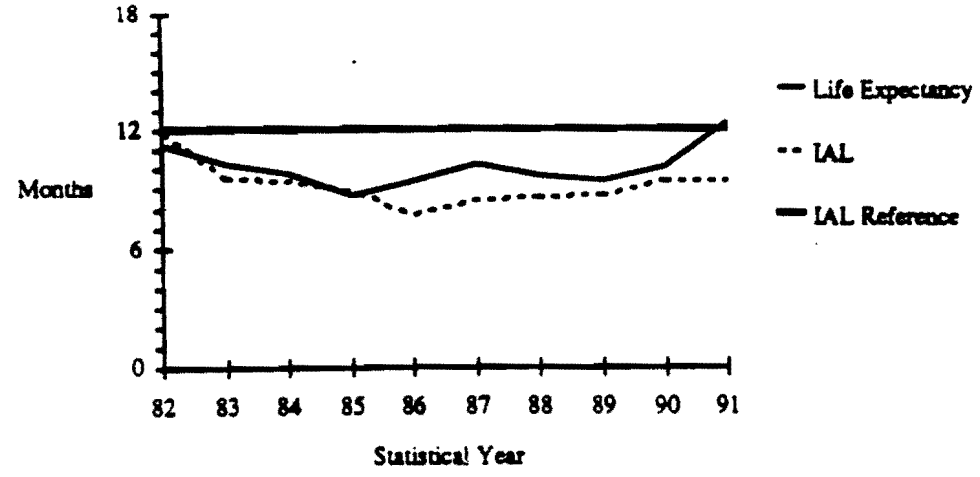


Chart 6 Corrected: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY82-91

District of South Carolina



e. Three-year-old cases. The *MgmtRep* table shows the number and percentage of pending cases that were over three years old at the indicated reporting dates. We have prepared Charts 7 and 8 to provide some additional information on these cases.

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Chart 7: Cases Terminated in SY89-91, By Termination Category and Age

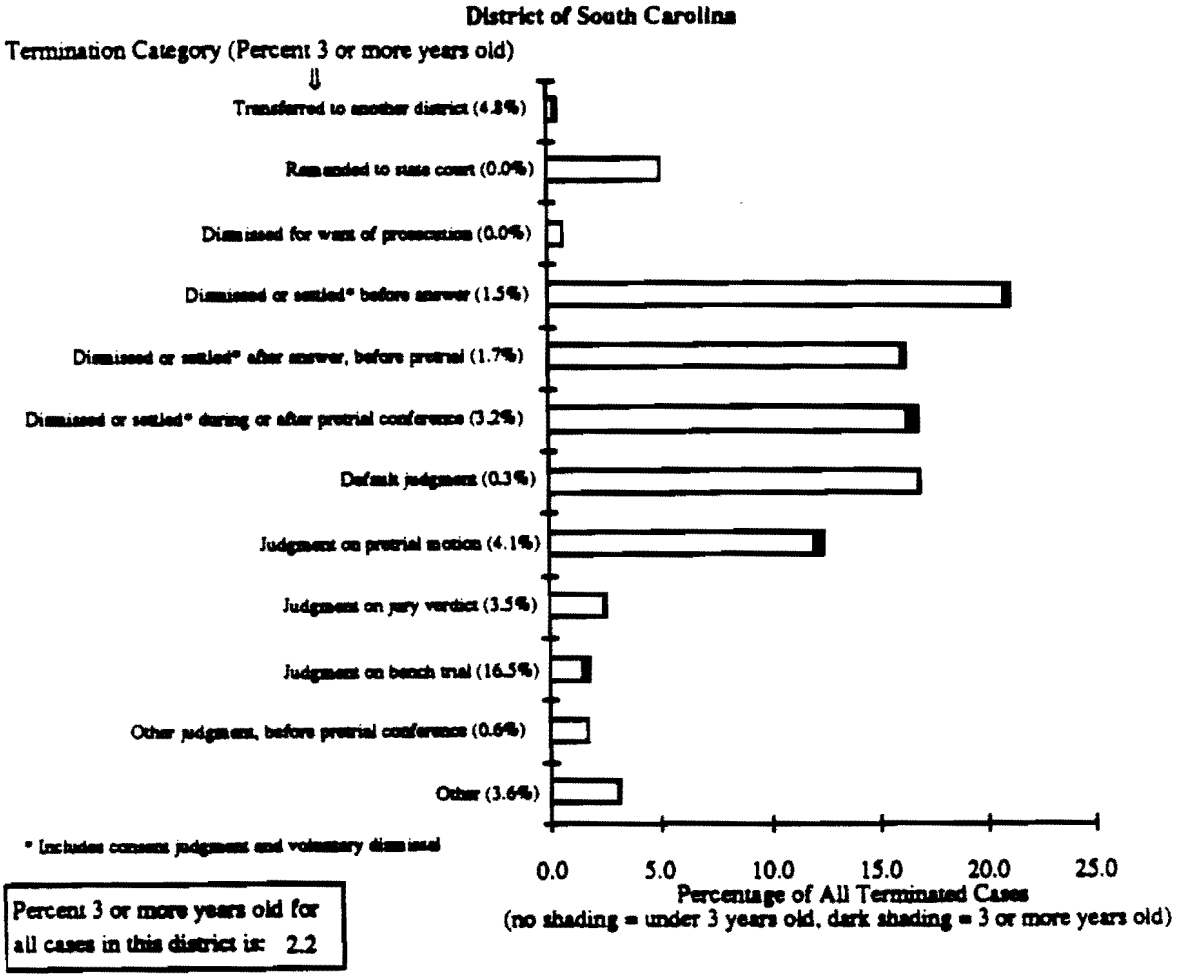
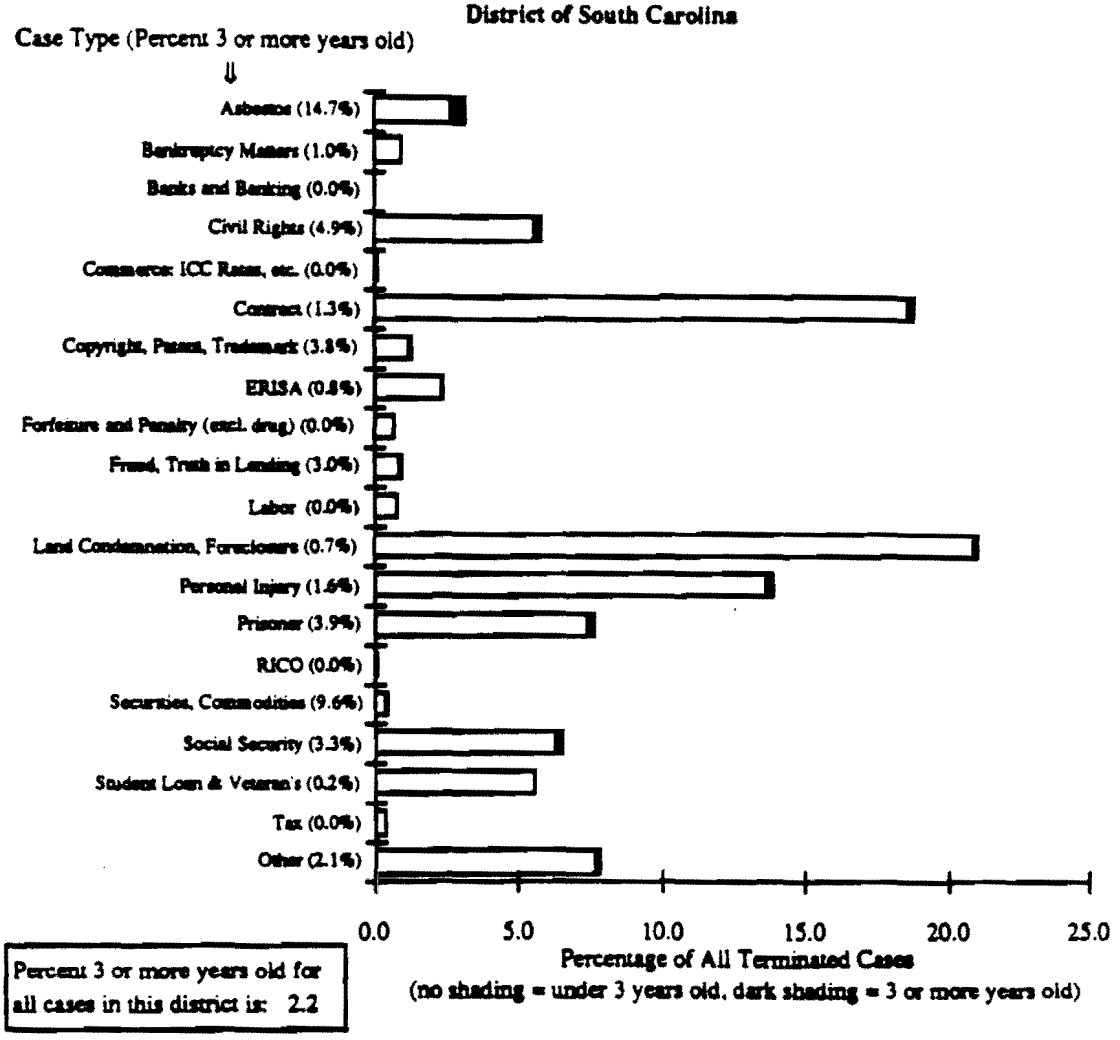


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY89-91, By Case Type and Age



f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 x 1.2). This will overstate the workload of the active judges if

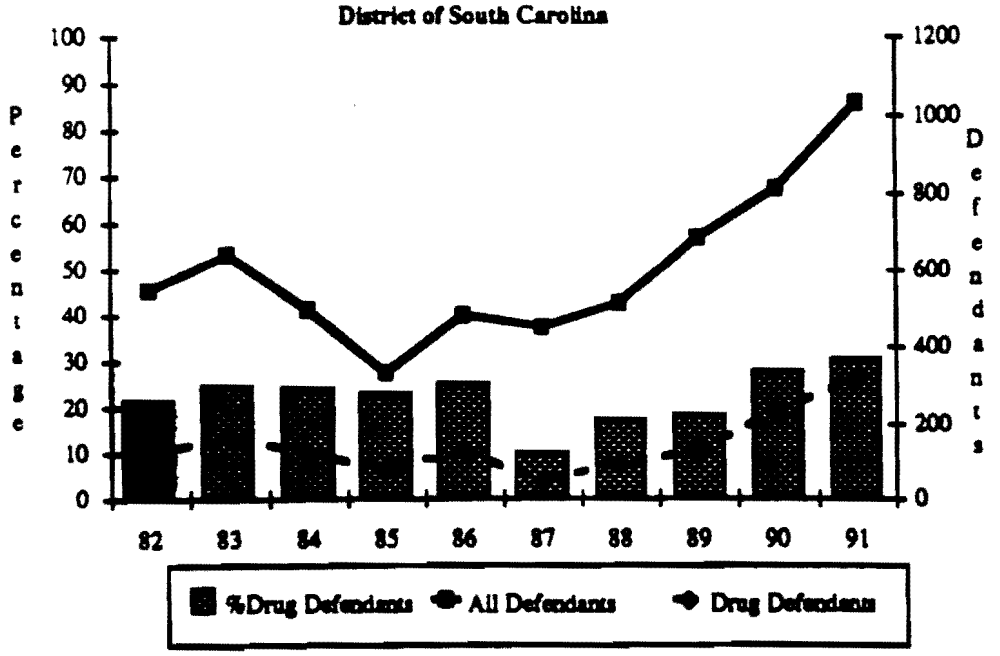
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

a. The impact of criminal prosecutions. In calling on the advisory group to consider the state of the criminal docket, Congress recognized that the criminal caseload limits the resources available for the court's civil caseload. It is important to recognize that the Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (FTS/633-6094).

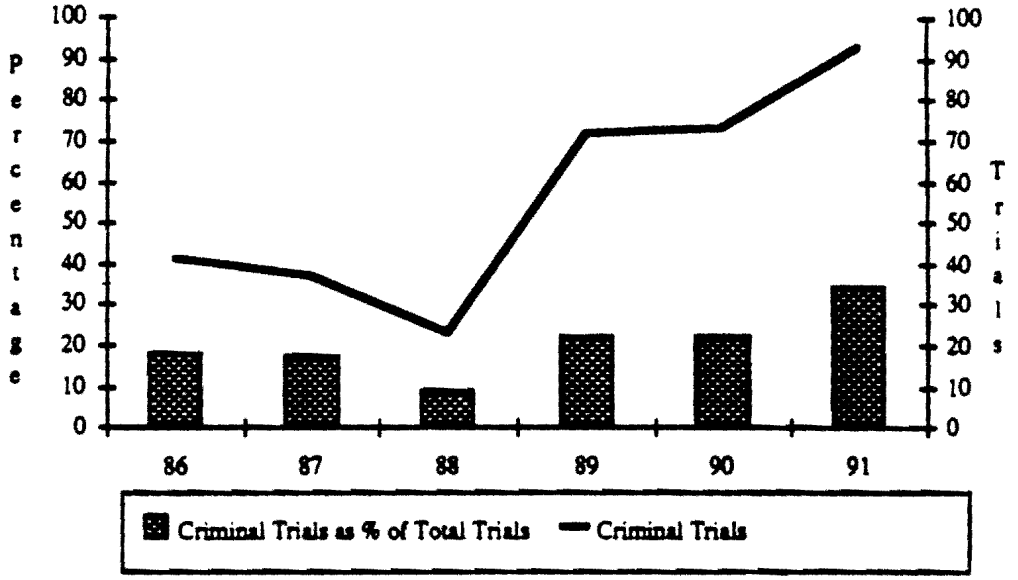
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY82-91



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91

District of South Carolina



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	SOUTH CAROLINA		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1991	1990	1989	1988	1987	1986		
OVERALL WORKLOAD STATISTICS	Filings*		4,238	3,494	4,004	3,895	3,875	3,824		
	Terminations		3,330	3,643	3,993	3,841	3,699	4,034		
	Pending		3,740	2,866	2,990	2,980	2,927	2,750		
	Percent Change In Total Filings Current Year	Over Last Year. . .		21.3					2	1
		Over Earlier Years. . .			5.8	8.8	9.4	10.8	9	2
	Number of Judgeships		9	8	8	8	8	8		
	Vacant Judgeship Months		12.4	1.9	.0	.0	3.7	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	471	437	501	487	484	478	9	1
		Civil	406	372	444	447	451	443	9	1
		Criminal Felony	65	65	57	40	33	35	26	6
	Pending Cases		416	358	374	373	366	344	37	2
	Weighted Filings**		425	380	421	379	382	362	19	2
	Terminations		370	455	499	480	462	504	42	5
	Trials Completed		25	39	39	31	27	28	68	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	7.1	6.5	5.8	4.1	4.6	4.6	76	7
		Civil**	7	8	7	8	7	7	10	2
	From Issue to Trial (Civil Only)		9	8	8	8	10	8	7	2
OTHER	Number (and %) of Civil Cases Over 3 Years Old		49 1.5	32 1.3	57 2.1	50 1.8	40 1.4	55 2.1	7	3
	Average Number of Felony Defendants Filed per Case		1.7	1.4	1.4	1.5	1.5	1.6		
	Jurors	Avg. Present for Jury Selection	14.45	11.16	11.54	9.96	10.81	8.97	2	1
		Percent Not Selected or Challenged	16.9	9.4	14.7	8.8	17.1	12.6	16	4

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

1991 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3655	147	123	359	69	863	123	631	962	35	194	5	144
Criminal*	564	1	42	76	6	45	27	83	47	82	3	40	112

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 167.

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY92 Statistics Supplement

September 1992

Prepared for the District of South Carolina

NOTES:

(Except for the update to 1992 data and this parenthetical, this document is identical to the one entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 SY91 Statistics Supplement, October 1991.")

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1992 (the twelve months ended June 30, 1992). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 (page 12) may show slightly different counts of case filings for recent years (e.g., SY88-90) than were shown in Table 1 of the original document. The variations arise from two sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing counts.

2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been replaced in this update with a chart entitled "Chart 6 Corrected," which is based on all Type II cases. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.

3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this update.

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY90-92
District of South Carolina

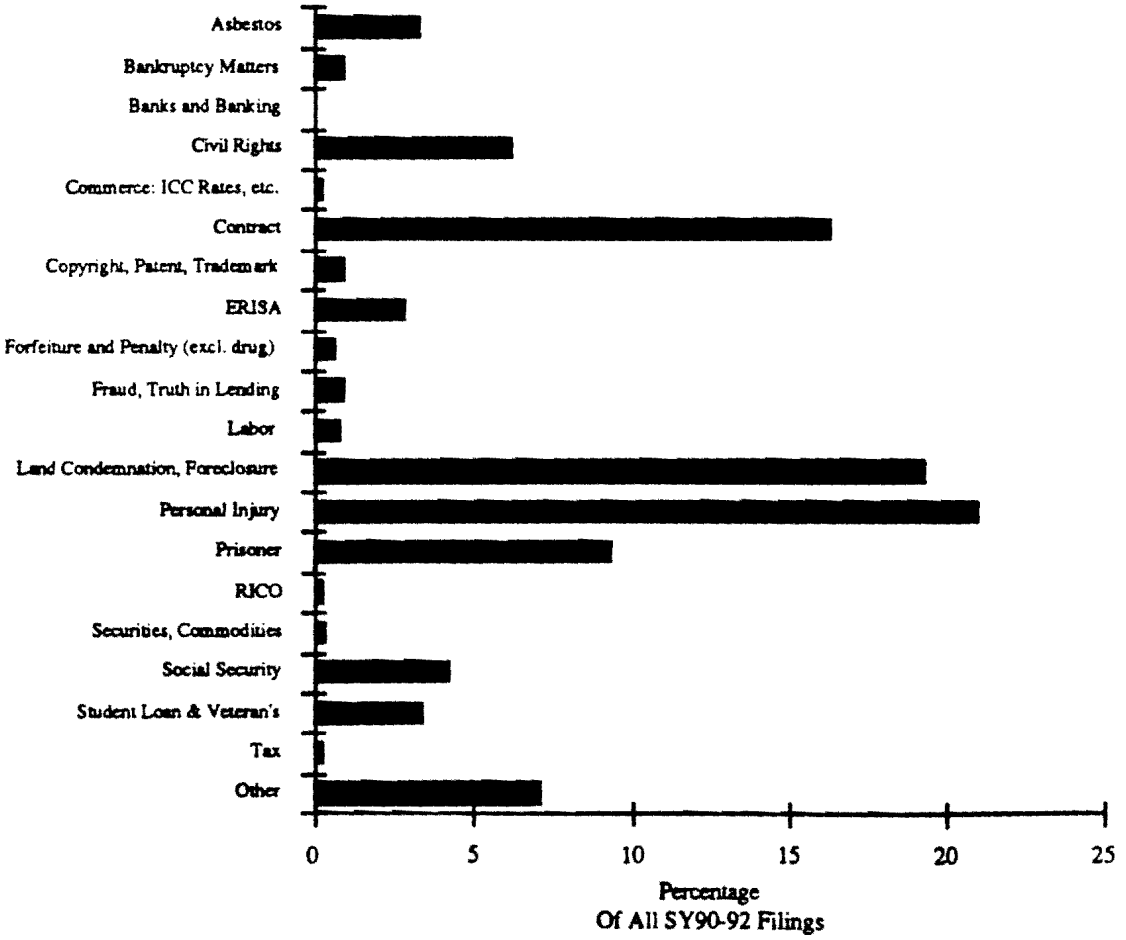


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY83-92
District of South Carolina

Table 1: Filings by Case Types, SY83-92

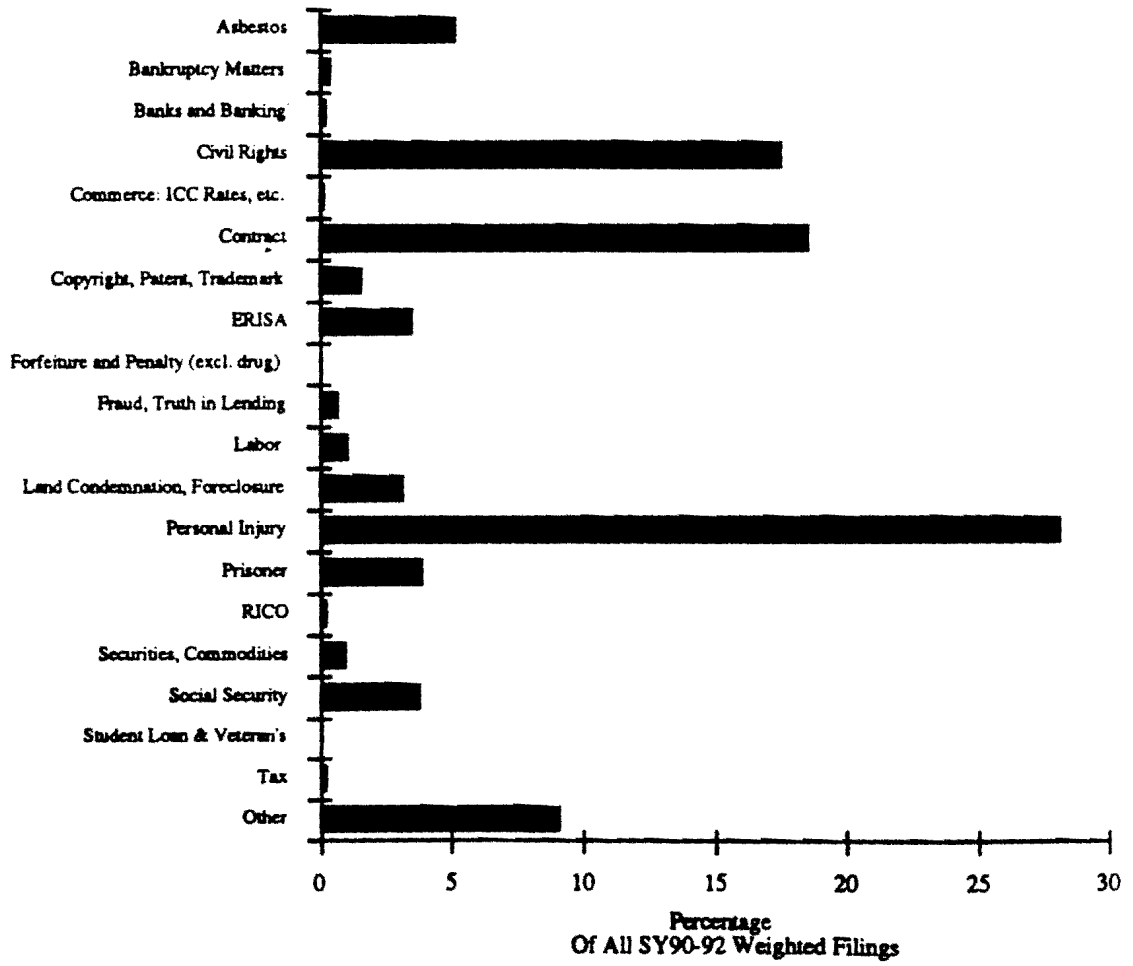
District of South Carolina

	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	52	30	88	89	54	120	126	90	78	185
Bankruptcy Matters	28	18	28	24	20	21	32	43	33	33
Banks and Banking	5	0	1	6	2	0	3	4	4	3
Civil Rights	209	208	167	175	180	163	220	218	187	259
Commerce: ICC Rates, etc.	5	5	4	11	14	9	2	6	12	12
Contract	742	646	675	652	727	788	645	548	611	566
Copyright, Patent, Trademark	54	49	42	34	47	42	44	43	35	32
ERISA	2	5	10	9	11	31	78	126	89	94
Forfeiture and Penalty (excl. drug)	46	49	68	16	10	27	18	27	27	24
Fraud, Truth in Lending	75	45	48	33	18	23	43	35	36	35
Labor	37	21	23	18	37	24	22	33	32	24
Land Condemnation, Foreclosure	299	596	516	574	548	588	743	581	740	719
Personal Injury	608	444	537	520	520	481	490	457	819	940
Prisoner	158	144	222	254	279	221	251	285	327	382
RICO	0	0	0	2	3	7	4	12	11	7
Securities, Commodities	25	11	24	14	49	38	15	16	9	20
Social Security	497	645	449	285	351	311	186	114	153	187
Student Loan and Veteran's	274	354	486	589	369	334	305	95	104	167
Tax	25	24	24	6	6	13	20	14	16	5
All Other	209	186	223	247	370	303	271	209	295	254
All Civil Cases	3350	3480	3635	3558	3615	3544	3518	2956	3618	3948

c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

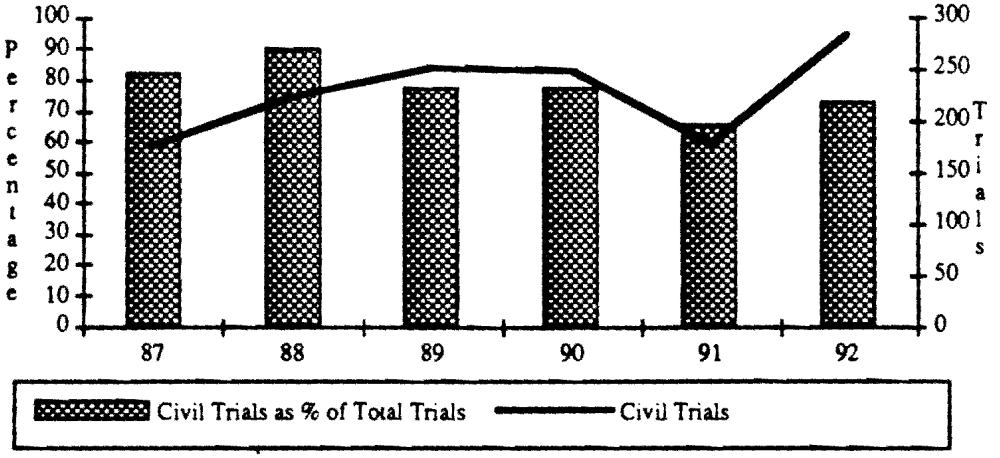
Chart 3: Distribution of Weighted Civil Case Filings, SY90-92

District of South Carolina



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY87-92
District of South Carolina



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92
District of South Carolina

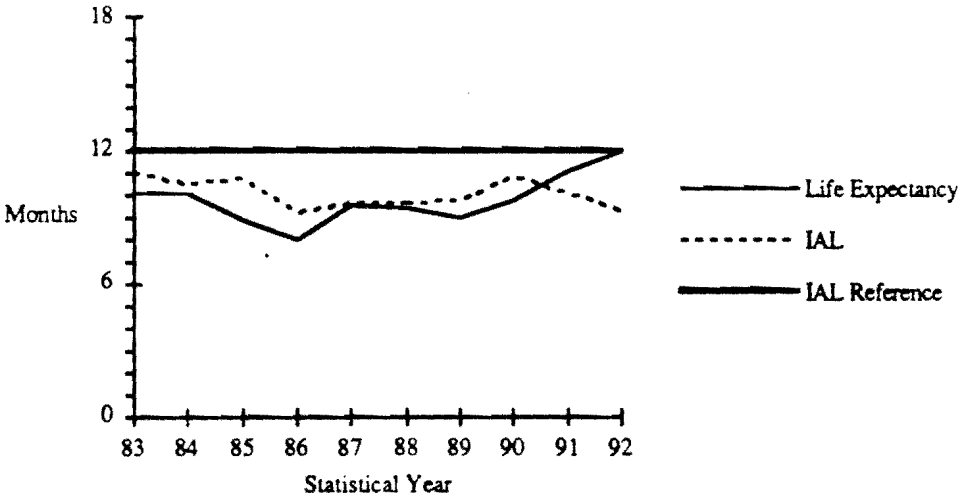
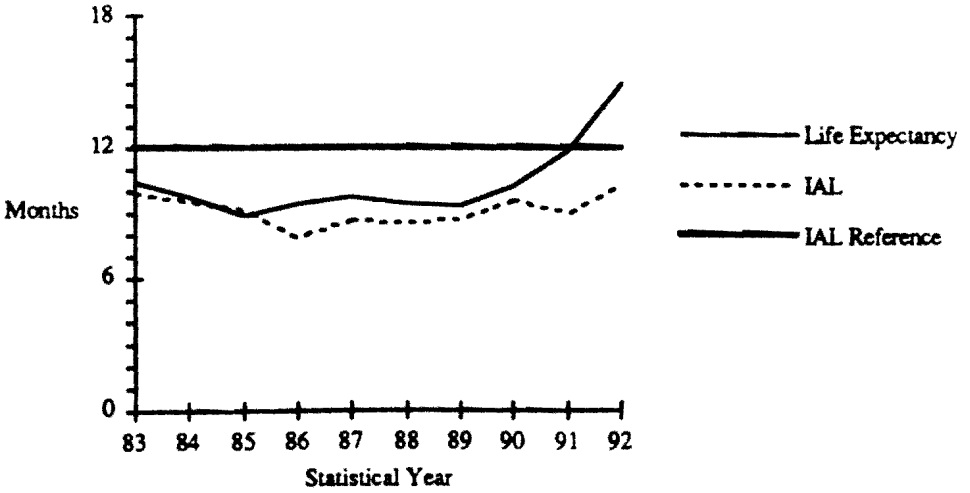


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92
District of South Carolina



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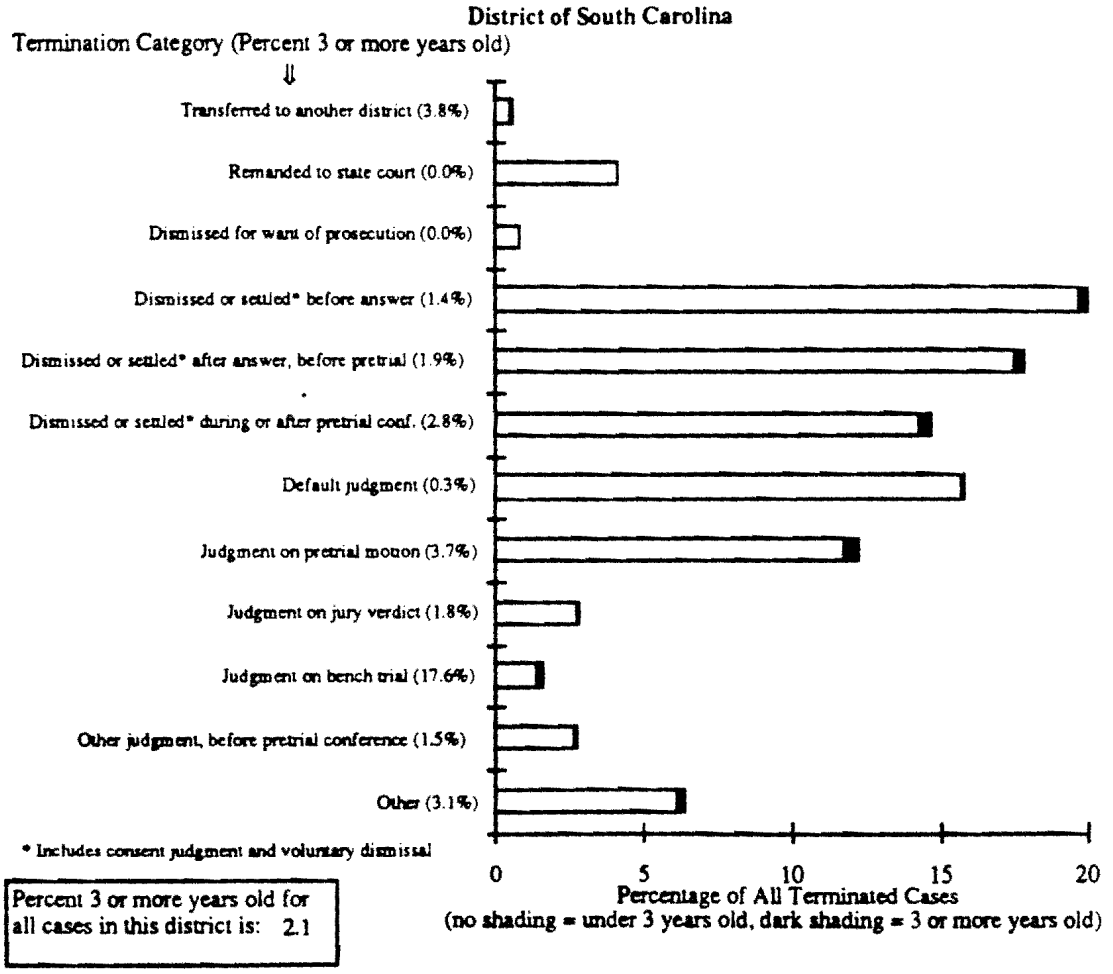

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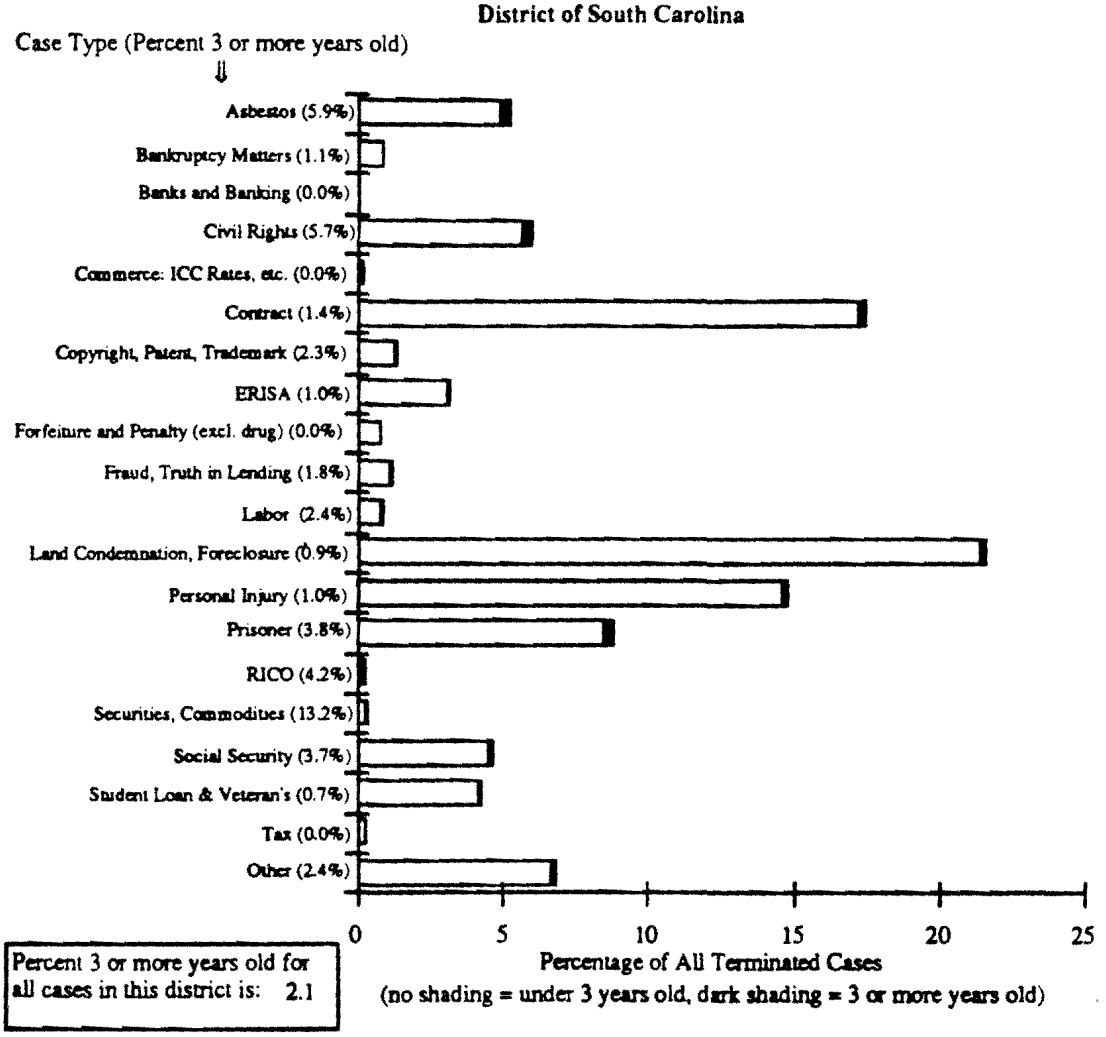
District of South Carolina



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there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

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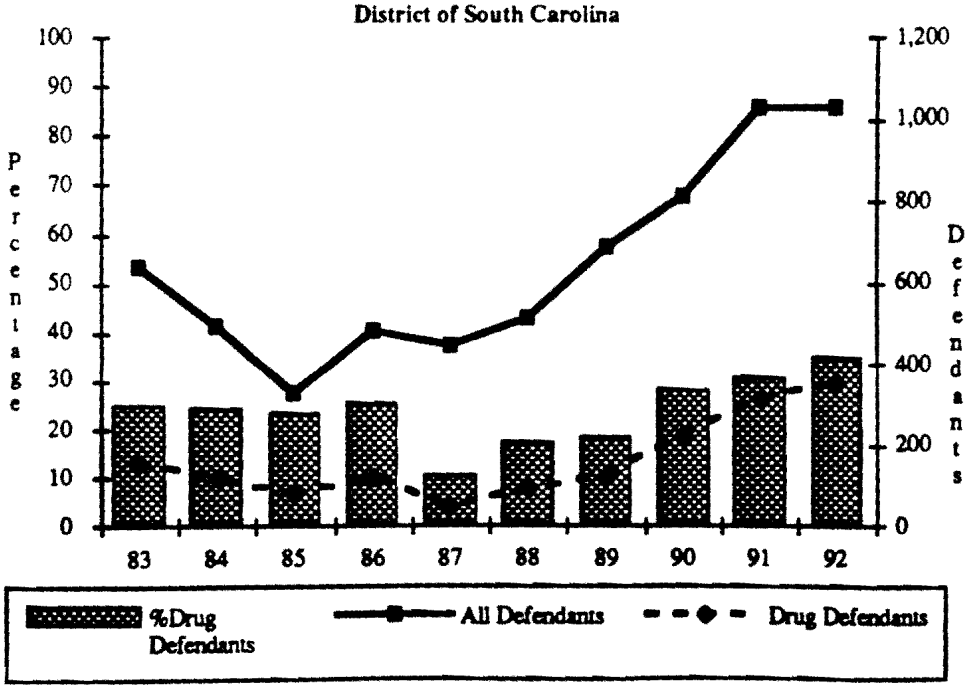
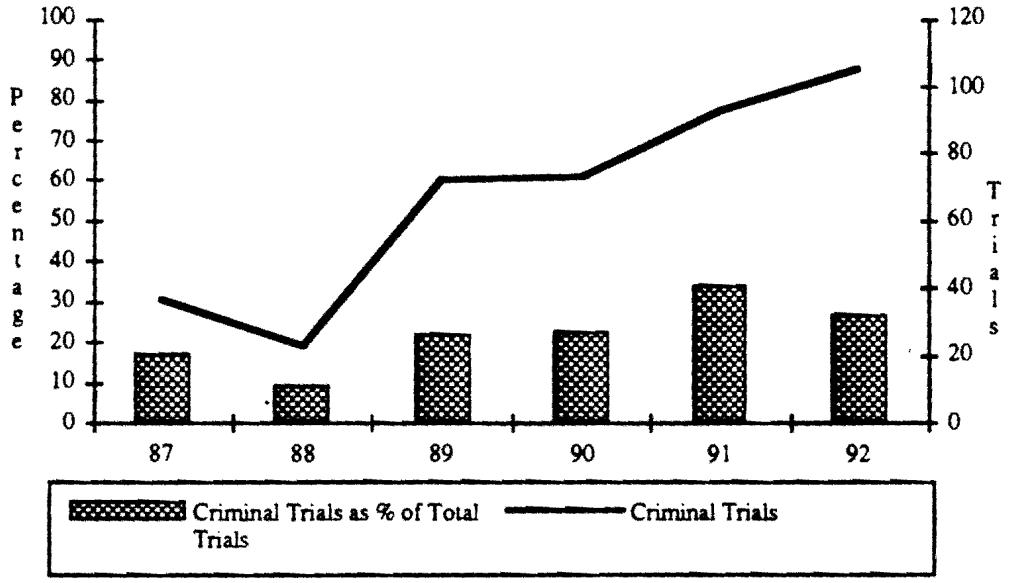
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY83-92



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91

District of South Carolina



For more information on caseload issues

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U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	SOUTH CAROLINA		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		4,535	4,238	3,494	4,004	3,895	3,875		
	Terminations		4,035	3,330	3,643	3,993	3,841	3,699		
	Pending		4,145	3,740	2,866	2,990	2,980	2,927		
	Percent Change In Total Filings Current Year	Over Last Year...		7.0					47	6
		Over Earlier Years...			29.8	13.3	16.4	17.0	11	2
	Number of Judgeships		9	9	8	8	8	8		
	Vacant Judgeship Months		7.6	12.4	1.9	.0	.0	3.7		
ACTIONS PER JUDGESHIP	FILINGS	Total	504	471	437	501	487	484	10	1
		Civil	440	406	372	444	447	451	9	1
		Criminal Felony	64	65	65	57	40	33	30	8
	Pending Cases		461	416	358	374	373	366	22	1
	Weighted Filings**		466	425	380	421	379	382	15	2
	Terminations		448	370	455	499	480	462	27	4
	Trials Completed		31	25	39	39	31	27	45	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	8.2	7.1	6.5	5.8	4.1	4.6	87	9
		Civil**	7	7	8	7	8	7	7	1
	From Issue to Trial (Civil Only)		11	9	8	8	8	10	14	3
OTHER	Number (and %) of Civil Cases Over 3 Years Old		33 .9	49 1.5	32 1.3	57 2.1	50 1.8	40 1.4	5	1
	Average Number of Felony Defendants Filed per Case		1.7	1.7	1.4	1.4	1.5	1.5		
	Jurors	Avg. Present for Jury Selection	13.68	14.45	11.16	11.54	9.96	10.81	1	1
		Percent Not Selected or Challenged	15.6	16.9	9.4	14.7	8.8	17.1	10	3

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

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3963	192	205	418	54	763	118	567	1207	32	259	2	146
Criminal*	558	4	33	85	5	39	33	96	31	102	6	42	82

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 167.

Exhibit 5

THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

RESEARCH DIVISION

Writer's Direct Dial Number:
202 633-6326

April 29, 1992

Virginia L. Vroegop
CJRA Advisory Group for the
District of South Carolina
P.O. Box 340
Charleston, SC 29402

Dear Ms. Vroegop,

Please pardon my delay in responding to your letter of April 15. I respond to the questions you pose in the order they appear in your letter.

1. I was able readily to obtain data on time spent in "trial" only for statistical years 88-91. They are reflected in the table that follows.

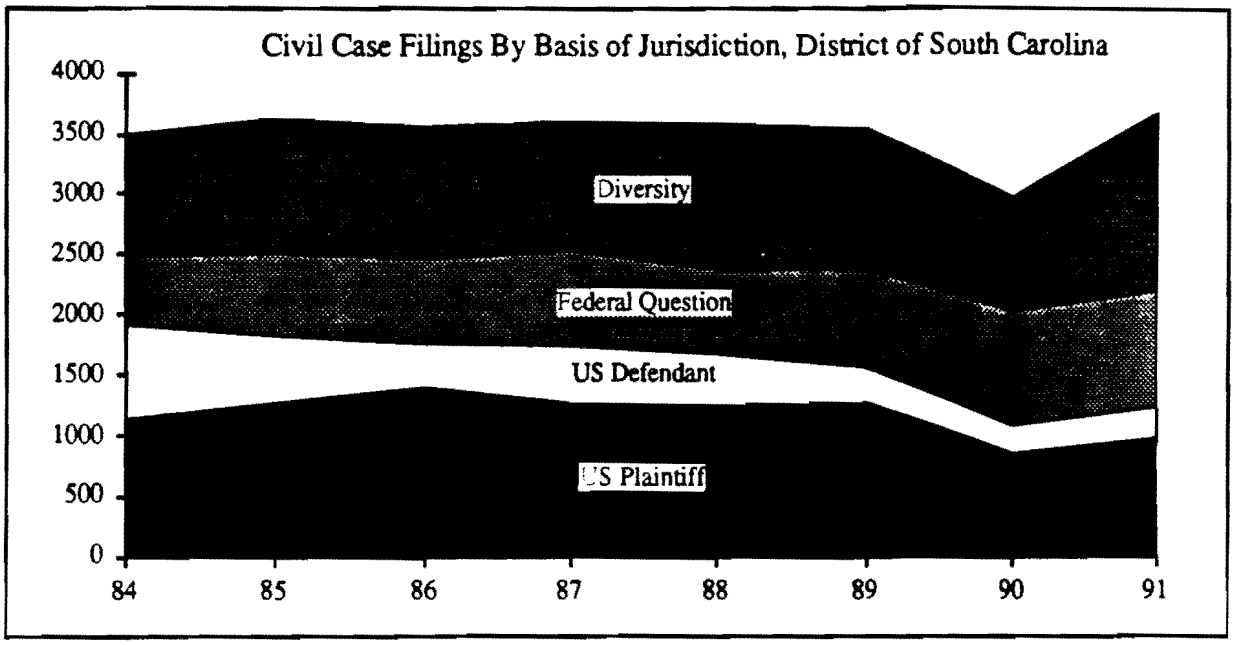
District of South Carolina "Trial" Hours from A.O. JS-10 Data Tapes

Statistical Year	Civil	Criminal	Total	Civil-Jury	Civil-Other	Criminal-Jury	Criminal-Other
88	**2696**	**290**	**2985**	1930	766	279	11
89	**2582**	**783**	**3364**	1702	880	729	54
90	**2289**	**830**	**3118**	1713	576	750	80
91	**1767**	**1361**	**3128**	1478	289	1280	81

I might note that the JS-10 reports from which the table is derived report both the days and hours spent on the bench in each trial. The average in South Carolina is about 4.5 hours per trial day, which does not necessarily represent a short work day as much as it does accurate reporting of time actually spent on the bench (taking into account that some "trials" are evidentiary hearings that may last an hour or less). Observing that total trial hours averages roughly 3200 per year, one can estimate that the 8 judges in the district average about 90 days per year in which they have some trial activity. Needless to say, the apparent pattern over the past four years is an increase in criminal trial time, offset by a decrease in civil trial time.

2. Enclosed are three copies of a graph that illustrates the trend of estimated life expectancy for various categories of cases in your district for the past decade. The chart is in color because it would otherwise be especially difficult to read (I tried to format it so that black-and-white photocopies would not be **impossible** to read, but that may be the best that can be said of such copies). I also enclose a floppy disk containing a lotus-compatible spreadsheet containing the data from which the chart was derived, so that you can prepare your own analyses should you be so inclined.

3. Also included on the enclosed diskette is a spreadsheet file named DSCBYJUR.WK1, which contains caseload statistics for 1984-91 by the "basis of jurisdiction" of civil actions, a code indicating whether jurisdiction is based on (1) US as plaintiff, (2) US as defendant, (3) federal question, or (4) diversity. The chart that follows shows the filing trends for these four types of civil actions. Note that the values in the chart are "stacked" atop one another, so that the top line represents total civil filings, and the **width** of each band represents the number of filings in that category.

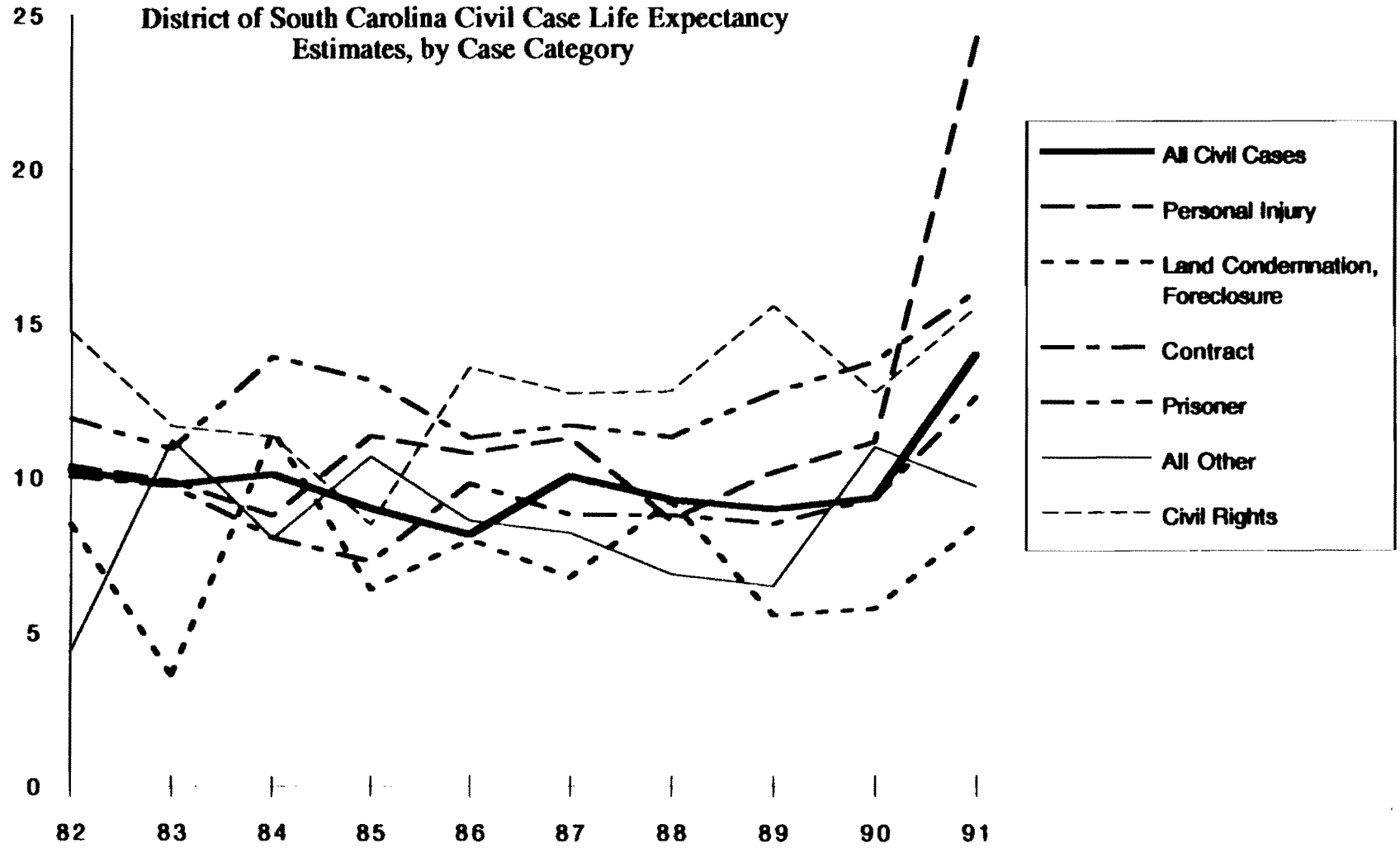


4. The 54 hour figure in the table from my January 27 letter is the total time reported spent on the bench in sentencings by all SC judges in statistical year 91 (I did not segregate sentencing time in the table on the previous page of this letter because sentencing time was not separately reported until SY90). Unfortunately, there are no statistics available to show the amount of time judges spend in chambers on sentencing matters, or on any other matters.

I hope this is helpful. Please don't hesitate to call if I can offer more help. Your request will not lead me to urge that South Carolina secede. However, please let me know if the idea gains any steam, because I'd most likely want to go with y'all.

Sincerely,

John E. Shapard


District of South Carolina Civil Case Life Expectancy Estimates, by Case Category
25
20
15
10
5
0
82
83
84
85
86
87
88
89
90
91
All Civil Cases
Personal Injury
Land Condemnation, Foreclosure
Contract
Prisoner
All Other
Civil Rights

	Year	US Plaintiff	US Defendant	Federal Question	Diversity	Total
Filings	84	1125	786	585	994	3490
"	85	1256	584	660	1124	3624
"	86	1386	386	690	1089	3551
"	87	1261	487	772	1081	3601
"	88	1248	440	688	1203	3579
"	89	1258	300	815	1161	3534
"	90	849	243	940	945	2977
"	91	973	268	970	1445	3656
Terminations	84	858	692	630	1235	3415
"	85	1188	767	666	1084	3705
"	86	1301	818	647	1000	3766
"	87	1374	231	682	1082	3369
"	88	1198	445	734	1234	3611
"	89	1327	415	725	1143	3610
"	90	988	334	853	1016	3191
"	91	835	220	789	995	2839
Pending	84	554	865	568	879	2866
"	85	622	682	562	919	2785
"	86	707	250	605	1008	2570
"	87	594	506	695	1007	2802
"	88	644	501	649	976	2770
"	89	575	386	739	994	2694
"	90	436	295	826	923	2480
"	91	574	343	1007	1373	3297

Life Expectancy*	Year	US Plaintiff	US Defendant	Federal Question	Diversity	Total
	84	7.7	15.0	10.8	8.5	10.1
" "	85	6.3	10.7	10.1	10.2	9.0
" "	86	6.5	3.7	11.2	12.1	8.2
" "	87	5.2	26.3	12.2	11.2	10.0
" "	88	6.5	13.5	10.6	9.5	9.2
" "	89	5.2	11.2	12.2	10.4	9.0
" "	90	5.3	10.6	11.6	10.9	9.3
" "	91	8.2	18.7	15.3	16.6	13.9

	Year	All Civil Cases	Pers. Inj.	Land Condemn/ Forecl.	Contract	Prisoner	All Other	Civil Rights	Social Security	Student Loan & Veterans	ERISA	Asbestos	Copyright, Patent, Trademark	Fr ud, Tru th in Lending	Bkrptcy Matters	Labor	Forfeiture & Penalty (excl. drug)	Tax	Commerce: ICC rates, etc.	RICO	Securities, Commodities	Banks and Banking
Life Expectancy	82	10.2	10.4	8.5	10.0	11.9	4.3	14.7	20.1	6.5	36.8	0.0	13.8	6.6	7.4	9.3	7.6	19.5	18.8	0.0	20.4	36.0
" "	83	9.8	9.9	3.6	9.7	10.9	11.2	11.7	18.1	1.4	8.0	0.0	6.9	9.6	13.4	16.9	13.2	5.5	3.0	0.0	24.0	13.5
" "	84	10.1	8.8	11.5	8.0	13.9	8.0	11.3	17.4	3.1	16.0	27.1	9.7	5.6	9.1	7.7	8.5	4.0	9.0	0.0	8.3	1.5
" "	85	9.0	11.3	6.4	7.3	13.1	10.7	8.5	10.1	4.5	16.0	59.6	5.2	5.7	25.7	5.6	13.8	14	4	16.0	0.0	24.9	12.0
" "	86	8.1	10.8	8.0	9.8	11.3	8.6	13.6	2.7	3.9	17.1	261.6	6.8	7.9	3.8	5.7	3.6	4.0	24.0	0.0	10.4	9.0
" "	87	10.0	11.3	6.8	8.8	11.7	8.2	12.7	39.4	3.1	16.0	19.7	14.3	11.4	3.8	15.4	5.3	8.6	10.2	18.0	23.5	8.0
" "	88	9.3	8.6	9.2	8.8	11.3	6.9	12.8	14.1	3.4	10.4	13.7	14.3	7.1	12.9	15.8	20.3	15.0	6.5	42.0	6.1	12.0
" "	89	8.9	10.1	5.5	8.5	12.7	6.5	15.5	10.0	4.5	25.9	23.3	12.0	12.4	7.4	7.7	11.4	12.0	1.5	10.0	8.6	12.0
" "	90	9.3	11.1	5.7	9.3	13.7	11.0	12.7	8.8	2.5	6.1	19.8	6.9	6.1	10.9	11.6	5.6	8.5	4.8	28.8	17.1	24.0
" "	91	14.0	24.2	8.4	12.6	16.0	9.7	15.5	21.5	8.9	12.3	16.0	13.1	12.4	6.8	13.3	11.4	25.3	4.8	34.0	14.8	30.0
Filed	82	3266	567	385	587	152	409	183	411	314	3	29	40	50	17	56	25	7	6	0	15	10
"	83	3350	608	299	742	158	209	209	497	274	2	52	54	75	28	37	46	25	5	0	25	5
"	84	3481	444	597	646	144	186	200	645	354	5	30	49	45	18	21	49	14	5	0	11	0
"	85	3635	537	516	675	222	223	167	449	486	10	88	42	48	28	23	68	4	4	0	24	1
"	86	3559	520	574	652	254	247	176	285	589	9	89	34	33	24	18	16	6	11	2	14	6
"	87	3615	520	548	727	279	370	180	351	369	11	54	47	18	20	37	18	6	14	3	49	2
"	88	3546	483	588	789	221	303	163	311	334	31	120	42	25	21	24	27	3	9	6	38	0
"	89	3534	490	744	648	252	272	221	188	305	78	131	45	43	32	22	19	20	2	4	15	3
"	90	2981	461	584	553	286	213	216	119	96	126	93	44	35	43	33	27	14	6	12	16	4
"	91	3652	822	745	627	334	298	192	148	106	91	79	35	35	32	31	26	16	12	11	9	3
Pending	82	2877	635	294	517	138	197	205	555	110	3	32	39	35	8	45	17	13	5	0	17	12
"	83	2793	561	137	563	141	196	204	632	39	2	84	34	49	19	48	33	12	2	0	28	9
"	84	2866	424	359	485	153	153	200	755	81	4	79	37	30	16	27	34	9	3	0	16	1
"	85	2785	467	304	438	196	177	152	551	155	8	139	26	25	30	16	53	18	4	0	27	1
"	86	2565	467	351	490	218	177	174	154	182	10	218	21	23	13	11	16	6	10	2	19	3
"	87	2812	478	324	514	245	222	182	387	113	12	169	37	20	8	27	8	5	11	3	45	2
"	88	2770	401	396	550	226	191	178	377	99	20	154	43	16	15	29	22	10	7	7	28	1
"	89	2692	408	360	496	246	162	225	257	110	67	188	44	30	18	20	20	15	1	5	18	2
"	90	2479	418	305	458	284	179	227	159	35	65	175	32	22	29	26	15	12	2	12	20	4
"	91	3297	829	433	555	353	213	236	197	60	79	145	35	29	22	30	20	19	4	17	16	5

Terminated	82	3378	734	415	619	139	544	167	331	204	1	0	34	13	58	27	8	6	0	10	4
"	83	3434	682	456	696	155	210	210	420	345	3	0	59	17	34	30	26	8	0	14	8
"	84	3408	581	375	724	132	229	212	522	312	3	35	46	21	42	48	27	4	0	23	8
"	85	3716	494	571	722	179	199	215	653	412	6	28	55	14	34	49	15	3	0	13	1
"	86	3779	520	527	600	232	247	154	682	562	7	10	37	41	23	53	18	5	0	22	4
"	87	3568	509	575	703	252	325	172	118	438	9	103	31	25	21	18	7	13	2	23	3
"	88	3588	560	516	753	240	334	167	321	348	23	135	36	14	22	13	8	13	2	55	1
"	89	3612	483	780	702	232	301	174	308	294	31	97	44	29	31	21	15	8	6	25	2
"	90	3194	451	639	591	248	196	214	217	171	128	106	56	32	27	32	17	5	5	14	2
"	91	2834	411	617	530	265	264	183	110	81	77	109	32	39	27	21	9	10	6	13	2

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RESEARCH DIVISION

Writer's Direct Dial Number:
FTS/202 633-6326

January 27, 1992

Marvin D. Infinger, Esq.
Sinkler & Boyd
160 East Bay St.
Charleston, SC 29401

Dear Mr. Infinger:

I enjoyed discussing CJRA matters with you last Tuesday. This letter provides what I hope is all of the additional information I agreed to provide you during our meeting.

1. The following table shows the values for the "Indexed Average Lifespan" statistic for South Carolina, for both Type I cases (all civil) and Type II cases.

Statistical Year:	82	83	84	85	86	87	88	89	90	91
Type I	13.1	11.1	10.5	10.7	9.2	9.7	9.6	9.8	10.9	10.0
Type II	12.0	9.5	9.4	9.0	7.6	8.4	8.5	8.7	9.4	9.5

2. The following table shows the percentage of cases reaching trial,both nationally and in the District of South Carolina, for the last two years and for selected types of cases. Among the categories of cases that are fairly numerous in most districts, the six shown below seem to me most likely to represent much the same type of caseload, from district to district and year to year. The table suggests with remarkable consistency that cases reach trial more frequently in South Carolina than they do in the "average" district. Note that the cases counted as "reaching" trial include cases that were disposed of after trial began, not just those reaching verdict.

	Statistical Year 91		Statistical Year 90	
Type of Case	National	South Carolina	National	South Carolina
Contract: Insurance	5.8%	7.3%	6.8%	11.5%
Contract: Other	4.6%	10.8%	4.6%	8.8%
Motor Vehicle Personal Injury	8.0%	8.9%	8.0%	11.5%
Other Personal Injury	9.4%	9.5%	9.2%	20.2%
Civil Rights: Employment	7.5%	19.6%	8.2%	14.8%
Civil Rights: Other	10.5%	12.8%	10.6%	15.7%
All Above	7.0%	10.7%	7.1%	12.6%

3. Our computerized directory of court personnel shows the following numbers of district court judicial personnel, in the nation as a whole and in South Carolina. There are now, I believe, 645 district court judgeships nationwide. I do not know how many authorized positions there are for full and part-time magistrates.

	National	South Carolina
ACTIVE JUDGE	544	8
MAGISTRATE JUDGE	336	4
PART-TIME MAGISTRATE JUDGE	154	2
SENIOR JUDGE	234	2

4. The following table shows the total number of "trial" hours reported on the JS-10 form for statistical year 91, for the nation as a whole and for the district of South Carolina. The totals for bench (non-jury) and jury trials relates to real trials. The hours of "sentencing" are supposed to pertain to "Evidentiary hearings involving disputed factors which relate to sentencing under the Sentencing Guidelines." The "Other" category includes all other contested hearings in which evidence is introduced. This table reports only time spent by Article III judges; time spent by magistrate judges is not reported on the JS-10 form. Oddly, these data suggest that South Carolina judges spend slightly fewer hours on the bench than does the "average" district judge, which contrast s with the higher average incidence of trials revealed under item 2, above. The contrast is explained in part by the JS-10 data, which suggest that the average time taken by a civil jury trial nationally is about 22 hours, but only about 11 hours in South Carolina. Criminal jury trials average 23 hours nationally, and 18 hours in the District of South Carolina.

	National			South Carolina			SC as % of National (8/645 jdgshps = 1.24%)		
	Criminal	Civil	Total	Crim.	Civil	Total	Crim.	Civil	Total
Total hrs	139,488	162,353	301,840	1,361	1,767	3,128	0.98%	1.09%	1.04%
Bench Trial	3,420	47,485	50,905	3	253	256	0.09%	0.53%	0.50%
Jury Trial	124,108	105,427	229,534	1,280	1,478	2,758	1.03%	1.40%	1.20%
Sentencing	4,335	0	4,335	54	0	54	1.25%		1.25%
Other	7,626	9,441	17,067	24	36	60	0.31%	0.38%	0.35%

I hope this is helpful. Please don't hesitate to call if I can be of further assistance.

Sincerely,

John Shapard
Program Director

II. H.

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RESEARCH DIVISION

Writer's Direct Dial Number:
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November 19, 1991

Virginia L. Vroegop
1426 Main St., Suite 1200
P.O. Box 11889
Columbia SC 29211-1889

Dear Ms. Vroegop:

Please accept my apologies for delay in responding to your letter of October 29. I made the stupid mistake of assuming that your letter was one of many I receive from attorneys concerning a survey we are conducting, and so did not open your letter until yesterday. That is not an excuse, only an explanation that the delay was borne of ignorance, not knowing neglect. I did the same thing with a letter I received from Mr. Infinger, and so am quite embarrassed at the sad track record I have established with your Advisory Group.

I have asked my colleague, Donna Stienstra, to respond to your inquiries regarding tracking and alternative dispute resolution. I have undertaken here to respond to your questions regarding removal cases, non-jury cases, and the general breakdown of caseload by cause of action.

I examined records for cases filed and terminated in the twelve months ending 6/30/91 (the most recent "Statistical Year"), both nationally and for the District of South Carolina. Among cases filed during that period, the percentage arising by removal from state court was 20% for the District of South Carolina, versus 12% nationally. The data available to me permit a distinction between jury and non-jury cases only in respect to cases that actually reach trial (i.e., I can't tell whether a case disposed of short of trial would or could have been tried by jury had it reached trial). I can provide two measures that might help: (a) the percentage of non-jury verdicts among cases disposed of by trial verdict, which was 36% for South Carolina and 49% nationally; and (b) the percentage of non-jury trials among all cases reaching trial (some of which terminate by settlement or other means before trial is completed or verdict rendered), which was again 49% nationally but 30% for the District of South Carolina. The difference between the 36% and 30% figures implies that jury trials in South Carolina are more likely to end short of verdict than are non-jury trials.

Not knowing what level of detail you seek in response to your third question, I have opted to respond with the complete details, as embodied in the enclosed tables. Both tables show, for each of the 87 "Nature-of-suit" codes employed by the Administrative Office of the U.S. Courts, the number filed both nationally and in South Carolina, and the percentage each represents of total filings. To help focus the data, I have organized the two tables differently. The first table is separated into two groupings. The first group includes only those types of cases that individually account for at least one percent of either national or South Carolina filings. The second group

includes all the categories that individually account for less than one percent of both national and South Carolina filings. The second table is organized in a more conventional manner, with subtotals shown for various broad categories.

I hope this is helpful. Please don't hesitate to call if I can provide further assistance. (I have obviously given you reason to hesitate to *write*, but I assure you that I will no longer set aside any letters I receive with South Carolina postmarks.)

Sincerely,

John Shapard
Program Director

cc: Donna Stienstra

CIVIL CASE FILINGS, 7/1/90-6/30/91

Nature-of-suit Code	Description	National Filings Number	National Filings Percent	S. Carolina Filings Number	S. Carolina Filings Percent
All	All Civil Cases	207680	100.0%	3656	100.0%
Group 1: Cases accounting for at least 1% of National or South Carolina Filings					
110	Contract: Insurance	7394	3.6%	218	6.0%
120	Contract: Marine	3158	1.5%	49	1.3%
130	Contract: Miller Act	1197	0.6%	49	1.3%
140	Contract: Negotiable Instrument	3097	1.5%	36	1.0%
152	Recovery of defaulted student loans	3700	1.8%	76	2.1%
153	Recovery of veterans benefit overpayment	3674	1.8%	30	0.8%
190	Other Contract	19011	9.2%	259	7.1%
220	Foreclosure	7321	3.5%	742	20.3%
240	Torts to Land	456	0.2%	102	2.8%
330	Federal Employers Liability	2511	1.2%	10	0.3%
340	Marine Personal Injury	2892	1.4%	21	0.6%
350	Motor Vehicle	5819	2.8%	201	5.5%
360	"Other" Personal Injury	7532	3.6%	124	3.4%
365	Personal Injury Product Liability	4508	2.2%	440	12.0%
368	Asbestos	7142	3.4%	79	2.2%
422	Bankruptcy Appeals Rule 801	4284	2.1%	26	0.7%
440	Civil Rights: Other	10430	5.0%	115	3.1%
442	Civil Rights: Jobs	8144	3.9%	69	1.9%
510	Vacate Sentence	3328	1.6%	25	0.7%
530	Habeas Corpus	12365	6.0%	142	3.9%
550	Civil Rights: Prisoner	26063	12.5%	189	5.2%
625	Drug-related property forfeiture	2199	1.1%	27	0.7%
690	Miscellaneous Forfeiture and Penalty	2537	1.2%	3	0.1%
720	Labor Management Relations	2033	1.0%	8	0.2%
791	ERISA	9594	4.6%	92	2.5%
840	Trademark	2223	1.1%	14	0.4%
850	Securities, Commodities Exchange	2245	1.1%	9	0.2%
863	Social Security-DIWC	5368	2.6%	124	3.4%
870	Taxes	2427	1.2%	10	0.3%
890	Other Statutory Actions	6997	3.4%	57	1.6%
	Subtotal:	207680	86.5%	3656	91.5%
Group 2: All other cases					
150	Contract: Recovery, Enforcement	441	0.2%	17	0.5%
151	Contract: Medicare Recovery	117	0.1%	0	0.0%
160	Contract: Stockholder Suits	253	0.1%	4	0.1%
195	Contract Product Liability	354	0.2%	16	0.4%
210	Land Condemnation	538	0.3%	3	0.1%
230	Rent, Lease, and Ejectment	369	0.2%	4	0.1%
245	Real Property Product Liability	52	0.0%	1	0.0%
290	All Other Real Property	1059	0.5%	11	0.3%
310	Airplane Personal Injury	907	0.4%	2	0.1%
315	Airplane Product Liability	132	0.1%	1	0.0%

320	Assault, Libel and Slander	640	0.3%	11	0.3%
345	Marine Product Liability	69	0.0%	0	0.0%
355	Motor Vehicle Product Liability	548	0.3%	6	0.2%
362	Medical Malpractice	1307	0.6%	17	0.5%
370	Fraud; Truth in Lending	1429	0.7%	32	0.9%
371	Truth in lending	165	0.1%	4	0.1%
380	Other Personal Property Damage	1318	0.6%	8	0.2%
385	Property Damage-Product Liability	368	0.2%	6	0.2%
400	State reapportionment	9	0.0%	0	0.0%
410	Antitrust	682	0.3%	5	0.1%
423	Withdrawal (bankruptcy)	729	0.4%	6	0.2%
430	Banks and Banking	744	0.4%	3	0.1%
441	Civil Rights: Voting	197	0.1%	6	0.2%
443	Civil Rights: Accommodations	434	0.2%	4	0.1%
444	Civil Rights: Welfare	132	0.1%	0	0.0%
450	Commerce: ICC Rates, etc.	1556	0.7%	12	0.3%
460	Deportation	63	0.0%	0	0.0%
470	RICO	966	0.5%	11	0.3%
535	Death penalty habeas corpus	74	0.0%	0	0.0%
540	Mandamus and Other: Prisoner	646	0.3%	3	0.1%
610	Forfeiture and Penalty: Agriculture	101	0.0%	2	0.1%
620	Forfeiture and Penalty: Food and Drug	605	0.3%	21	0.6%
630	Forfeiture and Penalty: Liquor	3	0.0%	0	0.0%
640	Forfeiture and Penalty: Railroad and Truck	21	0.0%	0	0.0%
650	Air Line Regulations	41	0.0%	0	0.0%
660	Occupational Safety/Health	74	0.0%	0	0.0%
710	Fair Labor Standards Act	1289	0.6%	17	0.5%
730	Labor Mgmt Reporting and Disclosure	143	0.1%	1	0.0%
740	Railway Labor Act	185	0.1%	0	0.0%
790	Other Labor Litigation	1440	0.7%	5	0.1%
810	Selective Service	12	0.0%	0	0.0%
820	Copyright	1830	0.9%	18	0.5%
830	Patent	1178	0.6%	3	0.1%
861	Social Security-HIA	125	0.1%	0	0.0%
862	Social Security-Black Lung	20	0.0%	0	0.0%
864	Social Security-SSID	1908	0.9%	22	0.6%
865	Social Security-RSI	274	0.1%	2	0.1%
871	Internal Revenue Service-Third Party	212	0.1%	6	0.2%
875	Tax Challenge	28	0.0%	0	0.0%
891	Agricultural Acts	387	0.2%	5	0.1%
892	Economic Stabilization Act	9	0.0%	0	0.0%
893	All Environmental Matters	1075	0.5%	9	0.2%
894	Energy Allocation Act	5	0.0%	1	0.0%
895	Freedom of Information Act	363	0.2%	0	0.0%
910	Local Question: Domestic Relations	3	0.0%	0	0.0%
950	Constitutionality of State Statutes	278	0.1%	5	0.1%
990	Miscellaneous Local Matters	124	0.1%	0	0.0%
	Subtotal:	28031	13.5%	310	8.5%

CIVIL CASE FILINGS, 7/1/90-6/30/91

Nature-of-suit Code	Description	National Filings Number	National Filings Percent	S. Carolina Filings Number	S. Carolina Filings Percent
All	All Civil Cases	207680	100.0%	3656	100.0%
	Contract	42396	20.4%	754	20.6%
110	Contract: Insurance	7394	3.6%	218	6.0%
120	Contract: Marine	3158	1.5%	49	1.3%
130	Contract: Miller Act	1197	0.6%	49	1.3%
140	Contract: Negotiable Instrument	3097	1.5%	36	1.0%
150	Contract: Recovery, Enforcement	441	0.2%	17	0.5%
151	Contract: Medicare Recovery	117	0.1%	0	0.0%
152	Recovery of defaulted student loans	3700	1.8%	76	2.1%
153	Recovery of veterans benefit overpayment	3674	1.8%	30	0.8%
160	Contract: Stockholder Suits	253	0.1%	4	0.1%
190	Other Contract	19011	9.2%	259	7.1%
195	Contract Product Liability	354	0.2%	16	0.4%
	Real Property	9795	4.7%	863	23.6%
210	Land Condemnation	538	0.3%	3	0.1%
220	Foreclosure	7321	3.5%	742	20.3%
230	Rent, Lease, and Ejectment	369	0.2%	4	0.1%
240	Torts to Land	456	0.2%	102	2.8%
245	Real Property Product Liability	52	0.0%	1	0.0%
290	All Other Real Property	1059	0.5%	11	0.3%
	Tort	37287	18.0%	962	26.3%
310	Airplane Personal Injury	907	0.4%	2	0.1%
315	Airplane Product Liability	132	0.1%	1	0.0%
320	Assault, Libel and Slander	640	0.3%	11	0.3%
330	Federal Employers Liability	2511	1.2%	10	0.3%
340	Marine Personal Injury	2892	1.4%	21	0.6%
345	Marine Product Liability	69	0.0%	0	0.0%
350	Motor Vehicle	5819	2.8%	201	5.5%
355	Motor Vehicle Product Liability	548	0.3%	6	0.2%
360	"Other" Personal Injury	7532	3.6%	124	3.4%
362	Medical Malpractice	1307	0.6%	17	0.5%
365	Personal Injury Product Liability	4508	2.2%	440	12.0%
368	Asbestos	7142	3.4%	79	2.2%
370	Fraud; Truth in Lending	1429	0.7%	32	0.9%
371	Truth in lending	165	0.1%	4	0.1%
380	Other Personal Property Damage	1318	0.6%	8	0.2%
385	Property Damage-Product Liability	368	0.2%	6	0.2%
	Civil Rights (Except Prisoner)	19337	9.3%	194	5.3%
440	Civil Rights: Other	10430	5.0%	115	3.1%
441	Civil Rights: Voting	197	0.1%	6	0.2%
442	Civil Rights: Jobs	8144	3.9%	69	1.9%
443	Civil Rights: Accommodations	434	0.2%	4	0.1%
444	Civil Rights: Welfare	132	0.1%	0	0.0%

	Prisoner Cases	42476	20.5%	359	9.8%
510	Vacate Sentence	3328	1.6%	25	0.7%
530	Habeas Corpus	12365	6.0%	142	3.9%
535	Death penalty habeas corpus	74	0.0%	0	0.0%
540	Mandamus and Other: Prisoner	646	0.3%	3	0.1%
550	Civil Rights: Prisoner	26063	12.5%	189	5.2%
	Forfeiture and Penalty Actions	5581	2.7%	53	1.4%
610	Forfeiture and Penalty: Agriculture	101	0.0%	2	0.1%
620	Forfeiture and Penalty: Food and Drug	605	0.3%	21	0.6%
625	Drug-related property forfeiture	2199	1.1%	27	0.7%
630	Forfeiture and Penalty: Liquor	3	0.0%	0	0.0%
640	Forfeiture and Penalty: Railroad and Truck	21	0.0%	0	0.0%
650	Air Line Regulations	41	0.0%	0	0.0%
660	Occupational Safety/Health	74	0.0%	0	0.0%
690	Miscellaneous Forfeiture and Penalty	2537	1.2%	3	0.1%
	Labor	14684	7.1%	123	3.4%
710	Fair Labor Standards Act	1289	0.6%	17	0.5%
720	Labor Management Relations	2033	1.0%	8	0.2%
730	Labor Mgmt Reporting and Disclosure	143	0.1%	1	0.0%
740	Railway Labor Act	185	0.1%	0	0.0%
790	Other Labor Litigation	1440	0.7%	5	0.1%
791	ERISA	9594	4.6%	92	2.5%
	Intellectual Property	5231	2.5%	35	1.0%
820	Copyright	1830	0.9%	18	0.5%
830	Patent	1178	0.6%	3	0.1%
840	Trademark	2223	1.1%	14	0.4%
850	Securities, Commodities Exchange	2245	1.1%	9	0.2%
	Social Security	7695	3.7%	148	4.0%
861	Social Security-HIA	125	0.1%	0	0.0%
862	Social Security-Black Lung	20	0.0%	0	0.0%
863	Social Security-DIWC	5368	2.6%	124	3.4%
864	Social Security-SSID	1908	0.9%	22	0.6%
865	Social Security-RSI	274	0.1%	2	0.1%
	Miscellaneous	20953	10.1%	156	4.3%
400	State reapportionment	9	0.0%	0	0.0%
410	Antitrust	682	0.3%	5	0.1%
422	Bankruptcy Appeals Rule 801	4284	2.1%	26	0.7%
423	Withdrawal (bankruptcy)	729	0.4%	6	0.2%
430	Banks and Banking	744	0.4%	3	0.1%
450	Commerce: ICC Rates, etc.	1556	0.7%	12	0.3%
460	Deportation	63	0.0%	0	0.0%
470	RICO	966	0.5%	11	0.3%
810	Selective Service	12	0.0%	0	0.0%
870	Taxes	2427	1.2%	10	0.3%
871	Internal Revenue Service-Third Party	212	0.1%	6	0.2%
875	Tax Challenge	28	0.0%	0	0.0%
890	Other Statutory Actions	6997	3.4%	57	1.6%

891	Agricultural Acts	387	0.2%	5	0.1%
892	Economic Stabilization Act	9	0.0%	0	0.0%
893	All Environmental Matters	1075	0.5%	9	0.2%
894	Energy Allocation Act	5	0.0%	1	0.0%
895	Freedom of Information Act	363	0.2%	0	0.0%
910	Local Question: Domestic Relations	3	0.0%	0	0.0%
950	Constitutionality of State Statutes	278	0.1%	5	0.1%
990	Miscellaneous Local Matters	124	0.1%	0	0.0%

Exhibit 6

Summary of Jury Demand Reports

Jury Demands for Filings Dated 4/1/88-12/31/88		
	Both	89
	Defendant	69
	Plaintiff	656
	Total	814
Total Cases Filed During Period		2,598
Percent demanding jury		31.3%
Jury Demands for Filings Dated 1/1/89-12/31/89		
	Both	123
	Defendant	46
	Plaintiff	991
	Total	1,160
Total Cases Filed During Period		3,090
Percent demanding jury		37.5%
Jury Demands for Filings Dated 1/1/90-12/31/90		
	Both	241
	Defendant	55
	Plaintiff	995
	Total	1,291
Total Cases Filed During Period		3,076
Percent demanding jury		41.9%
Jury Demands for Filings Dated 1/1/91-12/31/91		
	Both	398
	Defendant	76
	Plaintiff	627
	Total	1,101
Total Cases Filed During Period		2,434
Percent demanding jury		45.2%

ATTORNEY SURVEYS

INTRODUCTION

This exhibit is arranged as follows: (I) Quantifiable survey results; (II) Comments and non-quantifiable results; (III) Blank Survey Form; and (IV) Description of Survey Methodology.

The following summary represents a compilation of the results of our attorney surveys. One hundred and fifty-nine cases (approximately ten each from sixteen categories of cases) were surveyed. Survey forms were mailed to all counsel of record. Survey responses were received from slightly less than one half of the attorneys. Further discussion of the survey methodology is presented in Section IV to this exhibit.

I. QUANTIFIABLE SURVEY RESULTS

The number immediately following each possible answer to a given question represents the number of survey forms providing that response. The parenthetical number gives the percentage of returned surveys giving the specified response. Due to rounding, percentages may not add up exactly to 100%.

A. MANAGEMENT OF THIS LITIGATION

Question 1:

"Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

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

Responses:

Intensive	5 (3%)	Moderate	57 (38%)	Minimal	17 (11%)	I'm not sure	3 (2%)
High	32 (21%)	Low	28 (19%)	None	6 (4%)	No Response	1 (<1%)

Question 2:

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

Responses:

	Was Taken	Was Not Taken	Not Sure	Not Applicable	No Response
Hold pretrial activities to a firm schedule.	66 (44%)	47 (32%)	12 (8%)	22 (15%)	2 (1%)
Set and enforce time limits on allowable discovery.	73 (49%)	45 (30%)	5 (3%)	25 (17%)	1 (<1%)
Narrow issues through conference or other methods.	44 (30%)	58 (39%)	3 (2%)	43 (29%)	1 (<1%)
Rule promptly on pretrial motions.	69 (46%)	24 (16%)	9 (6%)	45 (30%)	2 (1%)

	Was Taken	Was Not Taken	Not Sure	Not Applicable	No Response
Refer the case to alternative dispute resolution, such as mediation or arbitration.	3 (2%)	88 (59%)	1 (<1%)	56 (38%)	1 (<1%)
Set an early and firm trial date.	41 (28%)	64 (43%)	7 (5%)	34 (23%)	3 (2%)
Conduct or facilitate settlement discussions.	33 (22%)	72 (48%)	3 (2%)	38 (26%)	2 (1%)
Exert firm control over trial.	38 (26%)	20 (13%)	4 (3%)	85 (57%)	2 (1%)
Other (please specify):	3 (2%)	2 (1%)	1 (<1%)	12 (8%)	131 (88%)

B. TIMELINESS OF LITIGATION IN THIS CASE

[RESPONSES TO QUESTIONS 3 & 4 WERE NOT DIRECTLY QUANTIFIABLE -- THE FOLLOWING GENERAL VIEWS OF TIMELINESS OF THE CASES SURVEYED WERE, HOWEVER, DERIVED FROM THE RESPONSES]

Of the 149 survey responses received;

OPINION INDICATED	NO.	PERCENT
CASE TOOK TOO LONG*	42	28%
TIME WAS ABOUT RIGHT	63	42%
NO INDICATION	44	30%

* Eight of these cases indicated that the case should have been resolved only one to four months sooner than it was. The remainder indicated delays as long as several years. Causes noted were, however, beyond the court's control in a number of instances (e.g. bankruptcy of a party or interlocutory appeals).

Question 5:

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

Responses:

a.	Excessive case management by the court.	1 (<1%)
b.	Inadequate case management by the court.	9 (6%)
c.	Dilatory actions by counsel.	7 (5%)
d.	Dilatory actions by the litigants.	7 (5%)
e.	Court's failure to rule promptly on motions.	1 (<1%)
f.	Backlog of cases on court's calendar.	20 (13%)
g.	Other. (please specify)	11 (7%)
h.	No Response.	93 (62%)

[RESPONSES TO QUESTIONS 6 & 7 WERE NOT QUANTIFIABLE -- SEE COMMENTS SECTION]

Question 8:

What type of fee arrangements did you have in this case? (circle one)

Responses:

Hourly rate.	65 (44%)	Contingency.	41 (28%)
Hourly rate with a maximum.	3 (2%)	Other. (please describe)	20 (13%)
Set fee.	3 (2%)	No answer.	17 (11%)

Question 9:

Were the fees and costs incurred in this case by your client (circle one)

Responses:

much too high.	10 (7%)	slightly too low.	1 (<1%)
slightly too high.	9 (6%)	much too low.	0 (0%)
about right.	100 (67%)	no answer.	39 (26%)

Question 10:

If costs associated with civil litigation in this district are too high, what suggestions or comments do you have for reducing for costs?

[RESPONSES TO QUESTION 10 WERE NOT QUANTIFIABLE -- SEE COMMENTS SECTION]

II. ATTORNEY SURVEY COMMENTS AND NON QUANTIFIABLE RESULTS

Comment	Number of Surveys expressing comment
Delay not a problem	17
Cost not a problem	3
Use ADR/mediation	3
Early/more settlement conferences	3
Involve all parties in settlement conferences	1
Control discovery more effectively	
Limit/Control Requests for Production	1
General comments suggesting more control	1
Limit types availability/times for completion	6
Allow less expensive alternatives (tapes, informal notes, video without court reporter, telephone depositions)	4
Increase use of pre/post trial dispositive motions	
Increase control over excessive verdicts, make post trial motions worth making	1
More timely rulings on motions	1
Greater utilization of SJ/other dispositive motions	3
Fees/greater costs to prevailing party	2
Use magistrate more effectively.	
Discovery and settlement conferences	2
Mediation	1
For jury trials	1
Cases sometimes move too quickly	
Problem is speed, not delay	1
Comments that specific cases were effectively handled by allowing more time, rather than less	5
Jury selection method unduly costly (all attorneys appear at same time for five hours -- may have to do several times)	3
Control attorneys obstructionist tactics	1
More judges/magis judge/courtrooms	5
Reduce filing fees	
In general	1
For social security applicants	1

Eliminate local counsel requirement	1
Set firm scheduling orders & trial dates	1
Take judicial notice of discount rate for present value calculations	1
Make plaintiff clarify/specify issues early	1
Tracking: Identify complex cases early and establish scheduling orders, assign a discovery judge and give intensive pretrial management	2

Miscellaneous Comments:

Didn't like "quality" of judges	1
Inadequate case management by S.S. Administration	1
Raised concern: federal courts may not enforce prior state court rulings requiring sanctions for refiling.	1

IV. SURVEY METHODOLOGY

Surveys were sent to counsel of record in one hundred and fifty-nine cases. Over three hundred surveys were mailed. One hundred and forty-nine (149) responses were received. The cases surveyed were selected at random by Federal Judicial Center personnel from the sixteen categories of cases listed in figure __ below. The number of cases surveyed per category ranged from 9 to 11 as shown in figure ___.

Many categories of cases received little or no response (e.g. Bankruptcy appeals), others received a surprisingly large response rate (e.g. Products Liability). Overall, responses were received on somewhat less than half of the surveys sent. Responses were received from almost as many plaintiffs' attorneys as defense attorneys.

The chart below was prepared from comparative data compiled before the last few survey responses were received. The total number (141) is, therefore, slightly lower than indicated in section I above (149 responses received).

Figure ___.

Case Category	Number of Cases Surveyed	Responses Received[1] From Plaintiffs Attorney	From Defense Attorney	Total
Bankruptcy Appeals	10	1	1	2
Social Security Appeals	10	4	3	7
Student Loans	9	2	4	6
Foreclosures	9	0	1	1
Civil Rights (Employee)	10	7	5	12
Other Civil Rights	10	3	5	8
Labor	10	4	6	10
Asbestos	10	3	2	5
Medical Malpractice	9	3	6	9
Motor Vehicle P.I.	10	4	7	11
Product Liability	11	7	10	17
Other Tort Actions	11	6	3	9
Contract, Insur.	10	5	5	10
Other Contract	10	5	8	13
Complex Cases	10	5	5	10
All others	10	6	5	11
TOTALS	159	65	76	141

[1] To help test the validity of survey results, we attempted to determine whether responses were received from plaintiffs' or defense counsel. In the case of bankruptcy appeals we treated claimants as plaintiffs and the trustee as the defendant. This breakdown often required a "best guess" based on factors such as signature legibility and the type of fee arrangement. It is, therefore, inexact. Nonetheless, it is presented to allow the reader to determine whether results were skewed by overrepresentation of either side. Likewise, the reader may consider whether the number of responses per case category skewed the results.

Exhibit 8

THE IMPACT OF CRIMINAL CASES ON THE CIVIL DOCKET

E. BART DANIEL
UNITED STATES ATTORNEY
DISTRICT OF SOUTH CAROLINA

In the District of South Carolina, the criminal court system provides considerable influence on the civil court docket. Numerous factors compel this result, including such statutory provisions as the Sentencing Reform Act of 1984 and the Speedy Trial Act. Other grounds of influence include the addition of several assistant United States attorney positions in this district, coupled with the recent creation of new federal grand juries.

I. THE SENTENCING REFORM ACT OF 1984

A bipartisan majority of the Congress passed the Sentencing Reform Act of 1984 in an attempt to create a more equitable federal sentencing formula. This legislation created the United States Sentencing Commission, which promulgated sentencing guidelines for the courts to follow in federal criminal matters. These guidelines developed a series of sentencing ranges for all federal offenses and apply to all offenses committed after November 1, 1987.

Sentencing pursuant to the federal guidelines appears to have impacted our court system in several particulars. Initially, some individuals contend that the guidelines goal of sentencing for the actual offense conduct as opposed to the charge itself results in a greater number of trials. The theory behind this reasoning follows from the idea that defendants have nothing to lose by proceeding to trial since the sentence will not be lessened with the exception of a minimal reduction for acceptance of

responsibility.

This purported increase in trials does not appear significant, if indeed such an increase occurred in our district. This conclusion is reached, however, absent data from this district reflecting the number of trials versus guilty pleas both pre and post-guideline prosecutions. Moreover, any increase in the number of criminal trials in our district may be related to factors other than the sentencing guidelines. For example, mandatory sentencing under statutes such as 18 U.S.C. § 924(c), which requires a five (5) year sentence for certain firearms related offenses, may be responsible for a greater number of trials. It should also be noted that pursuant to express Department of Justice policy, prosecutors may not plea bargain section 924(c) offenses.

The greatest impact of the sentencing guidelines on the docket results from the increased time needed for sentencing hearings. Under the guideline sentencing procedure, the United States Probation Office completes a presentence investigation and report on each defendant in every case, after which the attorneys for the government and the defense submit any objections to the report. Following these objections, the court conducts a sentencing hearing whereby all contested issues must be resolved. These sentencing hearings impact the court system and the civil docket through lengthier hearings than those prior to the guidelines.

II. THE SPEEDY TRIAL ACT

Pursuant to the Speedy Trial Act, codified at 18 U.S.C. § 3161, criminal defendants in federal court must be tried within

seventy (70) days of the defendant's initial appearance in the district. This statutory requirement necessitates that criminal trials receive priority in the court calendar.

III. ADDITIONAL PROSECUTORS IN OUR DISTRICT

Since my appointment as United States Attorney on May 1, 1989, the number of assistant United States attorneys in our office has increased approximately fifty percent. We now employ forty-two (42) attorneys as compared to the twenty-nine (29) lawyers in the district some two and a half years ago. These additional positions have resulted in a greater number of criminal prosecutions and correspondingly more court time required for the disposition of these matters. In addition, several of the federal agencies have also received more investigators, thus referrring more cases to our office for prosecution. Finally, our office has undertaken the investigation and prosecution of more sophisticated criminal matters which often result in greater court time. For example, Operation Lost Trust and prosecution in the environmental, securities and defense contract fields involve more complex cases necessitating increased court time.

IV. ADDITIONAL GRAND JURIES

Closely related to the addition of new prosecutors and more sophisticated criminal matters is the empaneling of two new federal grand juries in our district. In the past eighteen months, federal grand juries in Charleston and Greenville have been empaneled to consider the institution of criminal cases. These entities, coupled with the increase of federal prosecutors, result in a

greater criminal caseload.

V. CONCLUSION

The United States Attorney's Office has attempted to vigorously prosecute criminal cases in our state, with a priority on public corruption, environmental and illegal narcotics matters. These prosecutions have resulted in an increased number of aggressive attorneys and more resources for our state, including the new grand juries. These factors provide a substantial impact on the civil docket together with such legislation as the Sentencing Reform Act and the Speedy Trial Act.

Exhibit 9

JUDGE INTERVIEW
SUMMARIZED RESPONSES

A. Civil Case Processing

1. Time Limits.

(a) What is your practice regarding monitoring service of process?

Eight of the judges rely wholly on the clerk's office and take action only after they are notified by the clerk's office. Two judges take a more direct role in monitoring whether service of process has occurred.

(b) What is your practice regarding extensions of time to respond to complaints or motions?

The judges varied in their responses but generally will allow extensions with consent of counsel if reasonable. They also grant extensions without consent in certain circumstances. The limitations were expressed as follows: (1) the rule of reason; (2) granted unless there is some substantial objection; (3) denied if the court feels it will result in abuse; (4) attorneys must show they have been diligent in efforts to move the case; (5) granted in the absence of unusual and overriding circumstances; (6) looks for merit and grants only such time as is needed; and (7) deny only if party or attorney has been dilatory.

(c) What procedures have you found most effective in enforcing time limits?

The judges vary between those actively involved in enforcing time limits (5) and those who take action only if requested to do so by counsel (5). Four of the judges who indicated that they rarely sanctioned lawyers for missing time deadlines also acknowledged that more frequent sanctions for disregarding the rules governing discovery may be appropriate.

2. Rule 16 Conferences.

(a) Do you hold Rule 16 conferences?

The judges varied in their responses to this question with nine (9) indicating that they generally do not hold such conferences relying instead on Local Rule 7 and occasionally on telephone conferences where time requested in the local rule interrogatories seems excessive. At least one judge sends a separate order directing the attorneys to supply information necessary to establish deadlines. One article three judge and one magistrate do hold Rule 16 conferences and a third will do so if requested.

(b) What is the format of your conference?

Of the judges utilizing a Rule 16 conference, no single format was followed. One judge follows the outline in Rule 16 and attempts to establish a pretrial schedule, begin settlement discussions and also holds a follow-up conference. A second judge determines issues that can be agreed upon by the parties and the amount and scope of discovery. A third judge indicated that he generally follows Rule 16 and does not normally grant a second conference.

(c) Do you use a scheduling order? (If so, obtain copy of order).

All judges utilized scheduling orders.

(d) Do you allow the lawyers to submit proposed scheduling orders? If not, would this practice be helpful?

The judges split about evenly on whether they requested input for scheduling orders. One judge who does not use such proposed orders nonetheless feels it might be helpful to do so. Another allows requested changes after his order is issued.

(e) Are any types of cases exempted from Rule 16 conferences?

The judges uniformally exempted for Rule 16 conferences (or Local Rule 7 interrogatory responses) those cases listed under Local Rule 7.03.

(f) Do you find the conferences effective? If so, why or why not?

One judge who utilizes the conferences finds them to be effective because they facilitate settlement and require accountability on the part of the attorneys and the court for progress of the case. One judge felt the timing is premature and, therefore, not helpful. Several hold such conferences only in complex cases when the time and expense is justified. The remainder do not utilize such conferences and do not see the need for them.

(g) Describe your use of magistrate judges in your Rule 16 conferences.

With the exception of one judge, the judges do not utilize magistrates for Rule 16 conferences (except in those cases automatically referred to magistrates under the local rules).

3. Discovery Procedures.

(a) Do you set cut-off dates for discovery? (If so, obtain copy of any scheduling order).

All of the judges issue scheduling orders which establish cut-off dates for discovery.

(b) Do you allow the lawyers to propose cut-off dates for discovery? If not, would it be helpful to do so?

Generally the judges allow lawyers to propose cut-off dates. One judge indicated that he does not allow such input. Another judge indicated that he allows such input in both the more complex cases, where longer times are needed, and in those cases where shorter than normal times are reasonable.

(c) Describe your procedures and practices regarding controlling the scope and volume of discovery.

Generally the judges do not intervene in the discovery process unless a party moves for a protective order or a motion to compel. Several judges indicate that they enforce the limits set force in the local rules as to scope and volume of discovery absent a reason to expand these limits.

(d) Do you encourage the lawyer to propose limits on the scope and volume of discovery? If not, would it be helpful to do so?

Three judges indicated that they do not currently encourage the lawyers to propose limits but that it might be helpful to do so. One judge indicated that he did not and did not feel it would be helpful. Two indicated that they encourage the lawyers to help establish limits although one did so only if discovery concerns are brought to his attention. One judge indicated simply that he complies with the local rules limits.

(e) Do you use a Rule 26(f) discovery conference? If so, describe the scope of the conference.

Generally the judges do not use such conferences. One judge indicated he would on rare occasions. One magistrate conducts such conferences in the nature of a status conference.

(f) Describe your use of magistrate judges for resolving discovery disputes.

The judges varied widely in their use of magistrates for resolving discovery disputes. One judge refers such disputes fairly automatically. Six indicated that they seldom use magistrates or use magistrates only in complex litigation. Two other judges indicated that they refer some matters to the magistrate. To some degree responses indicated a lack of availability of magistrates as a reason for non-referral. A number of judges indicated that they preferred to handle most discovery disputes themselves in order to remain familiar with the cases and keep discovery moving.

4. Motion Practice.

(a) Describe your practice regarding requests for oral argument.

Six judges indicated that they automatically allowed oral arguments or allowed them in all but the most routine matters. The other judges indicated that they might not grant oral argument in certain cases as when no opposition is filed within allowable time limits or if the motions related to simple matters such as discovery or amendment of pleadings, otherwise oral arguments were granted. One judge

indicated that he makes an independent determination whether he needs to hear oral arguments.

(b) What is your criteria for granting oral argument?

See responses to 4(a). The judge who indicated he makes an independent determination stated that after studying the motions he would grant argument if he felt it would clarify or narrow the issues.

(c) Describe your procedure for monitoring the filing of motions, responses and briefs.

The judges varied substantially in their procedures for monitoring motions. Their answers are, therefore, set out fully below.

Judge 1: A listing of all pending motions, with the date of filing of the motion and the date of the filing of any opposition memorandum, is kept by my secretary. This listing is periodically reviewed. Files containing motions not opposed and non-dispositive motions with opposition are placed in my desk for review. Hearings on non-dispositive motions requiring a hearing and dispositive motions are then set for oral argument as quickly as time allows. Judge Carr, of course, has done this since June 1990 and often hears all non-dispositive motions in connection with status conferences.

Judge 2: Motions are listed in the computer by my secretary. This listing shows the date of filing, the date a response thereto is due, and whether such a response has been filed. On a weekly basis a list of pending motions is supplied to me from the computer. From that list the status of the motion can be determined and whether or not they are ready for disposition.

Judge 3: All cases with motions pending are set for hearings by the Clerk at predetermined time tables.

Judge 4: I rely on the clerks to monitor the filing of motions, responses and briefs.

Judge 5: A Motion is entered into the computer maintained in my office with its filing date. The response date is determined and inserted. The list of pending motions is regularly and routinely reviewed so as to determine when each motion is ready for disposition. Each is then set for disposition as soon as possible.

Judge 6: Some motions such as, motions to compel and motions for TROs, need to be disposed of without delay, and I instruct the clerk's office to send them to me immediately. In most cases, however, I ask the clerk's office to monitor the filing of briefs and not to send motions to me until briefs have been filed or the time for filing the same has expired. When motions are received in my office, I am the first person to look at them. I will immediately dispose of the simpler ones. In most cases, however, I will send them back to my law clerks with either a verbal or written notation, and they will then keep me advised as to the status of the motion and the need for scheduling. We pay particular attention to motions to dismiss filed in lieu of answer. Every time we have a scheduled term of civil court we endeavor to schedule all pending motions for disposition.

Judges 7-10: The clerk's office is responsible for monitoring the filing of motions in this district. The judges depend upon the clerk's office to provide them with a list of their pending motions on a regular basis. Some of the judges thought it would be desirable to set motion dockets on a scheduled basis (i.e., a block of three days per month), but indicated it would not be practical to do so. In their opinion, the schedules of lawyers and litigants would too often conflict with this rigid approach. Most judges simply schedule motion terms on a regular basis, but attempt to accommodate the schedules of lawyers and litigants when they conflict with the hearing date and time set by the court.

(d) Do you use proposed orders from attorneys?

The judges varied widely in their use of proposed orders. Responses varied from two who indicated that they would utilize or accept proposed orders to those who indicated they would only use such orders on rare occasions and then only in trivial matters. Some indicated they would never use proposed orders as to the merits of motions. Others indicated they might request proposed orders but would analyze them carefully and probably adopt only portions of them.

(e) Is it desireable to set motion dockets on a scheduled basis? i.e. - a block of 3 days per months, etc.?

The judges split about evenly between those who did not feel it was appropriate to have a scheduled motions docket to several who thought it was the best way to handle motions. Those not following the scheduled basis approach tended to use a weekly printout in order to schedule motions in the time available between other scheduled matters. By contrast one of the "scheduled basis" judges accumulates motions until there are a sufficient number to consume a full day of the court's time. This judge noted that this results in there being a motions day approximately every forty-five days.

(f) Do you make oral rulings on motions? If so, describe frequency, type of case, effectiveness, etc.

Virtually all the judges indicated they try to make oral rulings, at least on non-dispositive motions, whenever possible. The judges indicated they felt this was a very effective means and saves substantial court time. Some judges also utilize a method of stamping motions granted or denied.

(g) Describe your internal policies for handling motions which are ready for ruling - (i.e., priority of ruling, policies for written opinions, policies regarding published opinions).

Although internal policies varied, the judges generally handled motions in the order of receipt absent an indication from counsel that there was a particular reason to hear a motion more quickly. Most of the judges do not publish their opinions or do so only when unique or novel issues are involved. As noted in earlier responses, the judges tended to rely on oral orders or the record whenever possible.

5. Final Pretrial Conferences.

(a) Do you use final pretrial conferences? If so, describe your procedures regarding final pretrial conferences.

One judge indicated he does not hold such conferences and two judges indicated they did so only if requested. The remainder (seven judges) indicated that they normally do hold pretrial

conferences. There were no set procedures utilized by any of the judges although they tended to cover general status of the case, and settlement posture. They also attempt to narrow the issues and dispose of evidentiary questions. Several judges using these conferences indicated that they defer to the parties as to what matters needed to be addressed.

(b) Do you send out a pretrial conference order? (If so, attach copy)

None of the judges sent out pretrial orders.

(c) How do you structure the sequence of trial issues, i.e., do you bifurcate trials and under what conditions?

Judges varied as to whether they bifurcate trials. Two judges indicates that they rarely bifurcate trials or have not had occasion to do so. Four judges indicated that they occasionally bifurcated trials with one of these stating that he was unlikely to do so in a jury trial case. Not all judges responded to this question.

(d) Describe your rule in exploring settlement possibilities.

One judge indicated that he does not take an active rule and does not feel it is desirable for a judge to do so. One judge indicated that he would take such a role if asked. The remainder indicated that they normally take some role in settlement discussions. This role ranged from getting the attorneys together to talk settlement to one judge who invited both parties to confidentially advise the court of the best offer followed by the court's review to determine if settlement is possible. A number of the judges emphasized that they do not press litigants to settle the case and that they would explore settlement only when it was totally fair to all parties for them to do so.

(e) Is it desirable for the judge to be active in exploring settlement opportunities?

Most of the judges felt it was desirable for the judges to take part in settlement negotiations. One indicated that he did not feel it was appropriate. Another indicated that he felt the judge's role should only extend to getting the attorneys

together. These responses lined up with each of the judges indication of the role he takes.

6. Setting Trial.

(a) Describe your method for scheduling trials (i.e., date certain, training, etc.)

The judges varied greatly in their response to this question. Their responses are set out below.

Judge 1: At such time as it appears that a civil jury term is feasible, the Clerk of Court issues a roster of those cases in posture for trial and a roster meeting is set. Day certain trials are granted in extreme circumstances; day certains are more likely to be given in cases of anticipated lengthy trial time and in cases where experts or other witnesses need advance notice. Cases not having day certain trial dates are called in numerical order, excepting that cases having duplicate jurors usually are not called back-to-back and we attempt to set cases so that we will not carry a jury over the weekend. Thus, we are not always able to follow in strict numerical order. Judge Carr gives a day certain for trial as soon as the case is ready.

As to non-jury, we attempt to keep a 10-case roster ready for trial on short notice.

Previously, our courtroom schedule in Charleston allowed for each judge to have one month of jury trials and one month of non-jury trials per quarter, with no courtroom available the third month.

Judge 2: A "calendar" is issued containing a list of all of the pending causes. The calendar order sets a bar meeting where all counsel appear. Based on the explanations of the status of the cases, scheduling conflicts of the attorneys, and any other issue bearing upon the availability of the matter for trial disposition at the term scheduled, I select cases in number a few more than juries can be drawn in one day, approximately 20. These cases are then listed on an amended calendar which is then used as the trial schedule calendar on the opening day of court on which juries are drawn for all cases pending.

A request for a "day certain" is seldom granted.

Judge 3: Each case is given a date certain at a monthly roster meeting, if dates are available.

Judge 4: Normally I will schedule the trials at a calendar call and do not generally give date certain for cases unless it is an exceptional case requiring out-of-state witnesses and attorneys. I have found that more cases are moved through by not giving date certain to the cases on the docket.

Judge 5: Six weeks before the commencement of a jury term all attorneys involved in cases on the calendar are advised of a roster meeting. At this roster meeting requests for protection by counsel are heard, requests for day certain are heard, the status of the matters are generally determined and from this calendar a list of cases is prepared. Letters are addressed thereafter to counsel in those cases where pretrial conferences will be held. At the opening of the term jurors are drawn for all cases pending for trial and the cases are set, no more than one case per day. In the event of the disposition of a jury case, non-jury cases are then called as they are available for disposition.

With each summons to the juror a ten page questionnaire is sent. These are returned to the Clerk's office in Columbia by the individual jurors. These responses are then transmitted to me in Charleston. I arrange for the duplication of these responses by a voluntary attorney. All other attorneys can obtain copies of these questionnaires from this volunteer by paying the cost thereof.

Judge 6: We, of course, work off of a trial roster and theoretically try one case as the one before it is disposed of. We very rarely grant day certains until after we have selected juries and see what the total picture of the term is. As the term progresses, I give my clerks specific instructions as to which attorneys to contact and what to tell them about the time when their case will be coming up for trial. I try to time this process in such a way that they will have one last opportunity to settle the case before it is actually reached for trial. I find that the best way to keep trying cases constantly during the term and avoid having cases settle on the morning of trial and having to waste a day until we can get another jury in.

Judges 7-10: Most judges attempt to accommodate lawyers and litigants by setting as many day-certain trials as

possible. This probably happens in approximately 50% of the cases that go to trial. In the trials that are not set for a day certain, the judges generally give the litigants two to three day's prior notice. In this district, trial dates are usually discussed and set during roster meetings held before each term of court. Lawyers are free to ask for protection during a portion of the trial term because of conflicts, and the judges attempt to accommodate the schedules of lawyers and litigants as much as possible.

(b) Describe procedures you have found to be most effective in scheduling trials.

Each judge indicated that the system he was utilizing was the one he had found to be most effective.

(c) Do you have individual control over setting dockets? Does this depend on whether the docket is jury vs. non-jury?

Responses generally indicated that the judges felt they had individual control regardless of whether the case was jury or non-jury. In certain divisions, a master schedule is prepared at the beginning of each year in conjunction with the clerk's office to insure availability of court personnel. The judges generally adhere to this master schedule. A judge from another division indicated that juries were automatically ordered for each judge every third month. Criminal case assignments in this division are based on which judge has a jury coming in within the speedy trial time. Criminal cases take precedence with the judge then having individual control over his civil docket.

7. Alternative Dispute Resolution

(a) What are your opinions of the effectiveness of alternative forms of dispute resolution.

The judges varied widely in their view of alternative dispute resolution. Three indicated a fairly firm conviction that ADR was not effective with one stating specifically that ADR should not be binding and should not deprive litigants of the right to trial by jury. Two judges indicated that they had no experience with ADR and could not express an opinion. One judge indicated he felt

that ADR could be effective while three indicated that they were open of use of ADR although they had rarely utilized it. One judge indicated that he had held several summary jury trials two of which had resulted in settlement.

(b) Have you ever used any forms of alternative dispute resolution, and if so, what forms?

Only two judges have utilized any form of ADR. Both judges had tried summary jury trials.

(c) Would alternative dispute resolution be more useful in a non-jury setting than a jury setting?

The judges were fairly unanimous in the view that the jury vs. non-jury setting would not make a difference. One judge, however, felt it was most likely to be useful in a non-jury setting.

8. Impact of Criminal Caseload

(a) How do criminal cases impact the processing of civil cases?

Every judge indicated that the criminal caseload had a major impact on the processing of civil cases. a number of judges also indicated concern regarding a trend towards rising criminal case loads. As one judge put it: "If the criminal cases continue to increase, we are going to be in trouble."

(b) What criminal cases should or should not be handled by the U.S. Attorney (i.e. are there categories or types of cases by group or size which should not be handled by the U.S. Attorney in the District Court?)

The judges generally indicated that they either did not understand the question or that they were not aware of any particular categories of cases which should not be handled by the U.S. Attorney. One judge indicated that cases should be handled by local attorneys where they were willing and had jurisdiction to prosecute.

(c) What can the U.S. Attorney do to expedite the handling of criminal cases?

Suggestions included staying in close contact with the judges' chambers, pretrial services, probation officers and the clerk of court, and being prepared and ready for trial. Some judges indicated that they were not aware of anything the U.S. Attorney

could do to expedite handling. One judge indicated that a greater number of assistant U.S. Attorneys would be helpful.

9. General Comments

(a) Do you think civil cases take too long in this District? If so, are there certain types of cases which take longer than others.

Almost without exception the judges indicated that they felt civil cases did not generally take too long in this district. One judge indicated that he thought that "maybe" the time cases were pending was too long in this district. Two others indicated that some cases or complicated cases may take too long.

(b) Do you think it costs too much to litigate civil cases in this District? If so, what can be done to decrease the costs of litigation?

Two judges indicated that they did not feel the cost of litigation in this district was excessive. Four indicated that they did not feel litigation in this district was too expensive relative to other districts but that litigation in general was too expensive. Three judges indicated that they felt the cost to litigate was excessive. The greatest single contributor to cost cited by the judges was the cost of discovery and related motions. One judge also indicated that quick resolution of motions and moving cases to trial quickly would reduce costs. Another indicated that effective use of Rule 11 to discourage the filing of meaningless pleadings and motions would reduce costs.

(c) What, in your opinion, is the most effective tool or process to expedite civil cases?

The judges indicated the following as effective tools in expediting civil cases: (1) prompt completion of discovery, maintaining discovery deadlines, and promptly resolving discovery disputes including taxing costs more liberally; (2) referral of cases to magistrates with consent of the parties; (3) cooperation of the attorneys; (4) active involvement by the judge including prompt ruling on pending motions, maintaining contact with counsel and issuing and enforcing scheduling orders; (5) setting firm trial dates; (6) requiring clients'

consent to continue a case which has been continued previously.

(d) What difficulties have you encountered in moving your civil case docket?

A number of the judges indicated that there were no particular difficulties. One indicated the encroachment of the criminal caseload as a major cause of delay. Two judges indicated that failure to complete discovery within the discovery deadlines was a contributing factor. One judge indicated that the greatest difficulty he had encountered related to cases already pending when they were assigned. Another judge indicated delays were caused by conflicts which the attorneys had with other cases/courts.

(e) What other recommendations or suggestions do you have for addressing the cost of delay of civil cases?

Particular suggestions included: (1) more courteous exchange between opposing counsel; (2) better preparation by attorneys; (3) timely rulings by judges on pending motions; (4) availability of the judge for telephone conferences as discovery disputes arise; (5) requiring attorneys to adhere to scheduling deadlines; and (6) consideration of increased taxing of attorneys' fees or adoption of the English rule (to awarding fees to the prevailing party).

(f) Should more control be given to the lawyer to set a "realistic" discovery and trial schedule with an eye toward holding them to the schedule in the absence of extreme good cause?

Only one judge indicated that he felt this would be workable. A second judge indicated that he liked to have attorneys' input as to discovery and trial schedules. The remainder indicated that they did not feel the procedure would be workable or that they felt it would not have the desired result.

(g) Litigation has become expert intensive. It is the custom in this district for lawyers to take depositions of all experts and many times this escalates into the appointment of counter-expert upon counter-expert. Should thought be given to enforcing FRCP 26, which generally requires the identity of the expert, a description of his

opinion, and the facts and other bases upon which the opinion is based?

The judges varied in their response to this question. Most felt that the current practice within this district, by which the attorneys agree to depositions of opposing experts, did not pose a problem. Several indicated that enforcement of FRCP 26 would result in waste of the litigants' and the court's time since what is now done by deposition would necessarily be done at trial. Nonetheless, several judges indicated either that they would or do enforce Rule 26(b)(4)(A)(i) on a case by case basis or that they felt it may become necessary to do so in the future.

Exhibit 10

UNITED STATES DISTRICT COURT
PRO-SE FILINGS

	1989	1990	1991
Prisoner	267	385	381
Non-Prisoner	70	81	227
Landmark			1047

EXHIBIT 11

PENDING MOTIONS DATA

Tables A1-A3 in this exhibit reflect the number of pending motions by judge.[1] These are broken down by the age of the motions. Tables B1-B3 reflect, by judge, the number of cases with pending motions in a given age category ("motions cases"). The latter table reflects, by percentage, the age distribution of each judge's motions cases.[2]

Tables were prepared in these two formats since any given case may have multiple motions pending at any given time. The purpose for which the reader considers the data would determine which set of tables is more useful.[3] For purposes of comparison between months, this report focuses on the number of cases with pending motions in a given age category. Though the choice is somewhat

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[1] For purposes of these tables, each judge was assigned a letter which was used consistently for that judge for each month surveyed. This is intended to demonstrate whether and to what extent there are differences between the judges' motions dockets and differences over time for a given judge.

[2] The "total cases" figures on these tables are slightly higher than the true number of cases with pending motions. This is because a given case may have pending motions in more than one age category resulting in it being counted more than once in the total column. A case is counted only once per age category (regardless of the number of pending motions in that category). The slight distortion caused by the occasional double counting should be kept in mind but should not impair the usefulness of these tables as a general picture of the state of the motions docket.

[3] For instance, for purposes of understanding the motions workload on the court, the number of pending motions may be the more revealing figure. On the other hand, the impact on the overall state of the docket may be more effected by the number of cases with unresolved motions.

arbitrary, we believe it is a better indication of the impact of undecided motions on the overall progress of cases towards resolution. These figures and percentages relate only to cases with pending motions (referred to herein as "motions cases"). See also note 2 supra (explaining numerical anomaly). Cases on the court's docket for which no motions are pending are not considered in any way in this section.

No attempt was made to determine why any given motion was pending. For instance, a motion may be left pending based on a stay of the underlying case or agreement of the parties to defer resolution. It cannot, therefore, be assumed that the court has been remiss in deciding a motion simply because it appears in one of the "older" columns. Nonetheless, the tables can be considered as a general indication of the time required for resolution of motions. The tables also are some indication of possible variances between judges, although differences in type caseload and the judge's status (senior, chief, or newly appointed) may well have an impact.[4] Therefore, these figures should be compared cautiously.

The state of the motions docket has been followed from April 1992 through June 1992, with monthly compilation of the data. Certain changes in the motions tracking methods account for much

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[4] For instance, a judge handling consolidated multidistrict litigation would likely have a significantly increased number of pending motions.

of the apparent increase in pending motions between April and May.[5] Due to these changes, data for April and later months cannot fairly be compared for any trends. The statistics for these months do, however, independently give some idea of the state of the motions docket.

The overall percentage of motions cases over three months old (measured from filing date) was approximately fifty-nine percent (59%) in April and fifty-seven (57%) in May and June.[6] The individual judges' percentages of motions cases with motions over three months old ranged from eight to one hundred percent (8-100%) in April. This extreme level of difference between judges may well relate to the tracking methods in place in April since the May figures are far less disparate, ranging from thirty-nine to seventy-two percent (39-72%). The June figures ranged from thirty-five to sixty-nine percent (35-69%).

The overall percentage of motions cases with motions pending for over six months, was approximately forty percent (40%) in April, thirty-eight percent (38%) in May, and thirty-seven percent (37%) in June. Thus, for each month at least sixty percent (60%) of motions cases were <u>under</u> six months old. The differences

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[5] Prior to the May report, motions referred to magistrates did not appear on the district judge's report. Since the April report, all such motions are included on the report of the responsible district judge.

[6] Note that these are percentages of total cases with pending motions ("motions cases"), not of total cases pending before a given judge. Percentages were rounded to the nearest whole number resulting in minor inaccuracies in the percentages noted.

between judges were, however, far more disparate. Individual judges ranged from five to seventy-four percent (5-74%) in April, eighteen to fifty-five percent (18-55%) in May, and sixteen to ninety-three percent (16-93%) in June.[7]

On the other end of the scale, motions cases over twelve months old, the overall percentages were as follows: April and May, thirteen percent (13%); and June fourteen percent (14%). Individual judges ranged from one to twenty-five percent (1-25%) in April, from five to nineteen percent (5-19%) in May, and from six to twenty-two percent (6-22%) in June.

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[7] The individual judge percentages are, however, deceptive. This is particularly true for the April figures. For instance, the judge with 74% of his motions cases with pending motions over 6 months old (April), had only 11 such motions. The same judge in May had only 36% of motions cases in these categories but the number of cases had nearly tripled (to 30). This underscores the need to consider such statistical data with a critical eye and to consider all relevant factors: raw numbers; percentage changes in tracking methods; and possible influencing factors such as specialized case load.

Table A1

APRIL 1992

NUMBER OF MOTIONS PENDING

	LESS THAN 3	3-6	6-9	9-12	12-18	MORE THAN 18	TOTAL
JUDGE A	95 (40%)	17 (7%)	39 (16%)	14 (6%)	36 (15%)	37 (16%)	**238**
JUDGE B	39 (67%)	12 (21%)	4 (7%)	2 (3%)	1 (2%)	0 (0%)	**58**
JUDGE C	141 (69%)	21 (10%)	15 (7%)	9 (4%)	11 (5%)	6 (3%)	**203**
JUDGE D	150 (57%)	38 (14%)	26 (10%)	24 (9%)	19 (7%)	8 (3%)	**265**
JUDGE E	2 (3%)	33 (44%)	20 (27%)	4 (5%)	11 (15%)	5 (7%)	**75**
JUDGE F	85 (90%)	2 (2%)	3 (3%)	3 (3%)	0 (0%)	1 (1%)	**94**
JUDGE G	115 (74%)	18 (12%)	6 (4%)	1 (1%)	3 (2%)	13 (8%)	**156**
JUDGE H (Sr. Judge)	41 (19%)	20 (9%)	45 (21%)	74 (35%)	3 (1%)	28 (13%)	**211**
JUDGE I (Sr. Judge)	58 (59%)	19 (19%)	8 (8%)	11 (11%)	0 (0%)	2 (2%)	**98**
JUDGE J	0 (0%)	5 (25%)	5 (25%)	6 (30%)	2 (10%)	2 (10%)	**20**
JUDGE K (L-Tryptophan)	95 (18%)	127 (24%)	105 (20%)	103 (19%)	84 (16%)	16 (3%)	**530**
TOTAL	**821** (42%)	**312** (16%)	**276** (14%)	**251** (13%)	**170** (9%)	**118** (6%)	**1948**

Table A2

MAY 1992

NUMBER OF MOTIONS PENDING

	LESS THAN 3	3-6	6-9	9-12	12-18	MORE THAN 18	TOTAL
JUDGE A	137 (42%)	46 (14%)	31 (9%)	32 (10%)	34 (10%)	47 (14%)	**327**
JUDGE B	55 (60%)	25 (27%)	5 (5%)	3 (3%)	3 (3%)	0 (0%)	**91**
JUDGE C	185 (60%)	40 (13%)	21 (7%)	17 (6%)	21 (7%)	24 (8%)	**308**
JUDGE D	168 (47%)	38 (11%)	63 (18%)	42 (12%)	38 (11%)	7 (2%)	**356**
JUDGE E	138 (46%)	63 (21%)	48 (16%)	24 (8%)	26 (9%)	4 (1%)	**303**
JUDGE F	89 (57%)	28 (18%)	5 (3%)	11 (7%)	20 (13%)	2 (1%)	**155**
JUDGE G	108 (54%)	51 (26%)	5 (3%)	8 (4%)	9 (5%)	19 (10%)	**200**
JUDGE H (Sr. Judge)	50 (20%)	25 (10%)	23 (9%)	88 (35%)	27 (11%)	36 (14%)	**249**
JUDGE I (Sr. Judge)	99 (58%)	32 (19%)	18 (10%)	14 (8%)	8 (5%)	1 (1%)	**172**
JUDGE J	43 (38%)	30 (27%)	19 (17%)	9 (8%)	8 (7%)	4 (4%)	**113**
JUDGE K (L-Tryptophan)	183 (29%)	113 (18%)	122 (19%)	105 (16%)	99 (16%)	16 (3%)	**638**
TOTAL	**1255** (43%)	**491** (17%)	**360** (12%)	**353** (12%)	**293** (10%)	**160** (5%)	**2912**

Table A3

JUNE 1992

NUMBER OF MOTIONS PENDING

	LESS THAN 3	3-6	6-9	9-12	12-18	MORE THAN 18	TOTAL
JUDGE A	135 (41%)	47 (14%)	31 (9%)	29 (9%)	33 (10%)	56 (17%)	**331**
JUDGE B	44 (66%)	12 (18%)	5 (7%)	3 (4%)	3 (4%)	0 (0%)	**67**
JUDGE C	310 (71%)	41 (9%)	21 (5%)	19 (4%)	25 (6%)	23 (5%)	**439**
JUDGE D	186 (50%)	62 (17%)	47 (13%)	37 (10%)	35 (9%)	3 (1%)	**370**
JUDGE E	147 (44%)	78 (23%)	55 (17%)	19 (6%)	26 (8%)	7 (2%)	**332**
JUDGE F	83 (57%)	26 (18%)	8 (5%)	5 (3%)	24 (16%)	0 (0%)	**146**
JUDGE G	89 (53%)	45 (27%)	11 (7%)	7 (4%)	8 (5%)	8 (5%)	**168**
JUDGE H (Sr. Judge)	67 (47%)	24 (17%)	10 (7%)	2 (1%)	17 (12%)	23 (16%)	**143**
JUDGE I (Sr. Judge)	133 (62%)	31 (14%)	20 (9%)	11 (5%)	11 (5%)	8 (4%)	**214**
JUDGE J	59 (44%)	34 (26%)	15 (11%)	13 (10%)	9 (7%)	3 (2%)	**133**
JUDGE K (L-(Tryptophan)	264 (35%)	112 (15%)	140 (18%)	93 (12%)	130 (17%)	19 (3%)	**758**
TOTAL	**1517** (49%)	**512** (17%)	**363** (12%)	**238** (8%)	**321** (10%)	**150** (5%)	**3101**

Table B1

APRIL 1992

CASES FOR WHICH MOTIONS ARE PENDING

	LESS THAN 3	3-6	6-9	9-12	12-18	MORE THAN 18	TOTAL
JUDGE A	**53** (43%)	**14** (11%)	**16** (13%)	**9** (7%)	**15** (12%)	**16** (13%)	**123**
JUDGE B	**27** (73%)	**5** (14%)	**3** (8%)	**1** (3%)	**1** (3%)	**0** (0%)	**37**
JUDGE C	**25** (42%)	**13** (22%)	**7** (12%)	**5** (8%)	**7** (12%)	**3** (5%)	**60**
JUDGE D	**70** (52%)	**20** (15%)	**19** (14%)	**11** (8%)	**9** (7%)	**6** (4%)	**135**
JUDGE E	**2** (5%)	**18** (42%)	**14** (33%)	**3** (7%)	**5** (12%)	**1** (2%)	**43**
JUDGE F	**63** (91%)	**2** (3%)	**1** (1%)	**2** (3%)	**0** (0%)	**1** (1%)	**69**
JUDGE G	**59** (72%)	**10** (12%)	**3** (4%)	**1** (1%)	**3** (4%)	**6** (7%)	**82**
JUDGE H (Sr. Judge)	**23** (37%)	**14** (23%)	**11** (18%)	**8** (13%)	**3** (5%)	**3** (5%)	**62**
JUDGE I (Sr. Judge)	**43** (60%)	**15** (21%)	**5** (7%)	**7** (10%)	**0** (0%)	**2** (3%)	**72**
JUDGE J	**0** (0%)	**4** (27%)	**4** (27%)	**4** (27%)	**2** (13%)	**1** (7%)	**15**
JUDGE K (L-Tryptophan)	**69** (20%)	**81** (23%)	**72** (21%)	**70** (20%)	**47** (14%)	**8** (2%)	**347**
TOTAL	**434** (42%)	**196** (19%)	**155** (15%)	**121** (12%)	**92** (9%)	**47** (4%)	**1,045**
TOTAL without Judge K	**365** (52%)	**115** (16%)	**83** (12%)	**51** (7%)	**45** (6%)	**39** (6%)	**698**

Percentages may not total exactly to 100% due to rounding to the nearest whole number. Percentages reflect the percentage of cases with pending motions in each age category for a given judge. A case with several motions pending within the age category (i.e. less than 3 or 3-6) is counted only once. Cases with motions pending in more than one category are counted once for each age category. The true number of cases with pending motions is, therefore, somewhat lower than the total shown in the last column.

Table B2

MAY 1992

CASES FOR WHICH MOTIONS ARE PENDING

	LESS THAN 3	3-6	6-9	9-12	12-18	MORE THAN 18	TOTAL
JUDGE A	**81** (47%)	**27** (16%)	**18** (10%)	**15** (9%)	**16** (9%)	**17** (10%)	**174**
JUDGE B	**39** (62%)	**13** (21%)	**5** (8%)	**3** (5%)	**3** (5%)	**0** (0%)	**63**
JUDGE C	**43** (44%)	**24** (25%)	**13** (13%)	**5** (5%)	**8** (8%)	**4** (4%)	**97**
JUDGE D	**88** (46%)	**30** (16%)	**32** (17%)	**23** (12%)	**14** (7%)	**5** (3%)	**192**
JUDGE E	**82** (45%)	**40** (22%)	**27** (15%)	**14** (8%)	**15** (8%)	**3** (2%)	**181**
JUDGE F	**62** (59%)	**21** (20%)	**5** (5%)	**9** (9%)	**7** (7%)	**1** (1%)	**105**
JUDGE G	**56** (54%)	**23** (22%)	**4** (4%)	**6** (6%)	**6** (6%)	**8** (8%)	**103**
JUDGE H (Sr. Judge)	**27** (35%)	**15** (19%)	**15** (19%)	**8** (10%)	**7** (9%)	**5** (6%)	**77**
JUDGE I (Sr. Judge)	**63** (57%)	**23** (21%)	**10** (9%)	**9** (8%)	**4** (4%)	**1** (1%)	**110**
JUDGE J	**31** (37%)	**22** (27%)	**15** (18%)	**6** (7%)	**6** (7%)	**3** (4%)	**83**
JUDGE K (L-Tryptophan)	**125** (28%)	**76** (17%)	**86** (20%)	**79** (18%)	**64** (15%)	**10** (2%)	**440**
TOTAL	**697** (43%)	**314** (19%)	**230** (14%)	**177** (11%)	**150** (9%)	**57** (4%)	**1,625**
TOTAL without Judge K	**572** (48%)	**238** (20%)	**144** (12%)	**98** (8%)	**86** (7%)	**47** (4%)	**1,185**

Percentages may not total exactly to 100% due to rounding to the nearest whole number. Percentages reflect the percentage of cases with pending motions in each age category for a given judge. A case with several motions pending within the age category (i.e. less than 3 or 3-6) is counted only once. Cases with motions pending in more than one category are counted once for each age category. The true number of cases with pending motions is, therefore, somewhat lower than the total shown in the last column.

Table B3

JUNE 1992

CASES FOR WHICH MOTIONS ARE PENDING

	LESS THAN 3	3-6	6-9	9-12	12-18	MORE THAN 18	TOTAL
JUDGE A	**70** (41%)	**29** (17%)	**21** (12%)	**12** (7%)	**17** (10%)	**21** (12%)	**170**
JUDGE B	**31** (65%)	**9** (19%)	**3** (6%)	**2** (4%)	**3** (6%)	**0** (0%)	**48**
JUDGE C	**37** (41%)	**22** (24%)	**14** (16%)	**5** (6%)	**8** (9%)	**4** (4%)	**90**
JUDGE D	**95** (49%)	**41** (21%)	**23** (12%)	**21** (11%)	**12** (6%)	**3** (2%)	**195**
JUDGE E	**85** (45%)	**48** (25%)	**29** (15%)	**11** (6%)	**14** (7%)	**4** (2%)	**191**
JUDGE F	**47** (53%)	**21** (24%)	**5** (6%)	**4** (5%)	**11** (13%)	**0** (0%)	**88**
JUDGE G	**49** (50%)	**25** (26%)	**7** (7%)	**5** (5%)	**7** (7%)	**5** (5%)	**98**
JUDGE H (Sr. Judge)	**39** (53%)	**15** (21%)	**95** (12%)	**2** (3%)	**4** (5%)	**4** (5%)	**73**
JUDGE I (Sr. Judge)	**73** (60%)	**19** (16%)	**13** (11%)	**7** (6%)	**7** (6%)	**2** (2%)	**121**
JUDGE J	**38** (41%)	**26** (28%)	**11** (12%)	**9** (10%)	**5** (5%)	**3** (3%)	**92**
JUDGE K (L-Tryptophan)	**147** (30%)	**77** (16%)	**94** (19%)	**69** (14%)	**83** (17%)	**14** (3%)	**484**
TOTAL	**711** (43%)	**332** (20%)	**229** (14%)	**147** (9%)	**171** (10%)	**60** (4%)	**1,650**
TOTAL without Judge K	**564** (48%)	**255** (20%)	**135** (12%)	**78** (8%)	**88** (7%)	**46** (4%)	**1,166**

Percentages may not total exactly to 100% due to rounding to the nearest whole number. Percentages reflect the percentage of cases with pending motions in each age category for a given judge. A case with several motions pending within the age category (i.e. less than 3 or 3-6) is counted only once. Cases with motions pending in more than one category are counted once for each age category. The true number of cases with pending motions is, therefore, somewhat lower than the total shown in the last column.

EXH. 11 TABLE C	Motions* less than 65 days from filing	Motions* 65-124 days from filing (approx. 2 -4mo)	Motions* 125-184 days from filing (approx. 4 -6mo)	Motions* over 185 days from filing (approx. 6mo)	TOTAL
JUDGE					
A	57 *(31%)*	37 *(20%)*	17 *(9%)*	70 *(39%)*	181
B	36 *(52%)*	19 *(28%)*	6 *(9%)*	8 *(12%)*	69
C	80 *(37%)*	39 *(18%)*	33 *(15%)*	62 *(29%)*	214
D	57 *(41%)*	45 *(32%)*	18 *(13%)*	19 *(14%)*	139
E	81 *(33%)*	49 *(20%)*	47 *(19%)*	72 *(29%)*	249
F	42 *(36%)*	38 *(32%)*	17 *(15%)*	20 *(17%)*	117
G	26 *(27%)*	26 *(27%)*	24 *(25%)*	21 *(22%)*	97
H	34 *(33%)*	22 *(22%)*	19 *(19%)*	27 *(26%)*	102
I	44 *(31%)*	53 *(37%)*	19 *(13%)*	26 *(18%)*	142
J	36 *(32%)*	30 *(26%)*	14 *(12%)*	34 *(30%)*	114
K	71 *(9%)*	92 *(12%)*	91 *(12%)*	512 *(67%)*	766

Motions*: All Motions filed together on a given day were counted as one motion for purposes of this analysis as such motions are generally disposed of as a unit.

Percentages: Numbers shown in parentheticals are percentages of that judges total motions*. Percentages are rounded to the nearest whole number.

C:\6177\1\18TABLE.VLV 08/06/93 19:11

Exhibit 12

United States District Court

District of South Carolina
1845 Assembly Street
Columbia, South Carolina 29201

Joseph F. Anderson, Jr.
United States District Judge

(803) 765-5136
FTS 677-5136

May 1, 1992

MEMORANDUM TO: All Counsel With Civil Cases Pending on the Docket of Judge Joseph F. Anderson, Jr.

RE: Settlement Week

FROM: Joseph F. Anderson, Jr.

In an effort to experiment with different methods of alternative dispute resolution in the federal courts, I am considering conducting a "settlement week" for cases now pending on my civil docket. The settlement week would be patterned after similar proceedings conducted with reasonable success in state court in Richland and Charleston Counties.

The procedure for settlement week, as presently envisioned, would be as follows: Participation would be strictly voluntary. That is to say, both sides would have to agree to participate. If both sides agree, the case would be set for mediation before an impartial mediator during early June. The mediator would be a South Carolina lawyer who has received special training in mediation. Both sides would be required to bring their client, or someone with settlement authority, to the mediation conference, which would be held in the United States District Court courtroom in Columbia. The mediator would be authorized to discuss the value of the case, generally, with both sides, and then to conduct "one on one" discussions with the plaintiff (with counsel) and the defendant (with counsel) in an effort to point out weaknesses, if any, in each side's case. If the case does not settle, nothing said during the mediation conference is admissible at trial. The conferences normally do not take more than one hour.

Recent experience in South Carolina and elsewhere has demonstrated that such a procedure can be an effective catalyst for settlement, especially if the clients are involved in an honest discussion of the merits of the case, in a courtroom setting.

This memorandum is being sent to all counsel of record with civil cases pending on my docket. I would request that counsel for both sides confer and decide if you wish for your case to be included on the settlement week list. No one should feel compelled to participate — I am simply making the procedure available. If both sides want to participate, then plaintiff's counsel should send me a letter by May 18. If both sides do not agree to participate, then no response is necessary. Those who elect to participate will receive more information about the process in late May.

It is not my intention to coerce any litigant to mediate a dispute. Obviously, not all cases are suitable for mediation. Nevertheless, I respectfully suggest that all counsel at least give some thought to whether your clients may benefit from participating.

April 12, 1993

Ms. Virginia Vroegop
Sinkler & Boyd
Post Office Box 11889
Columbia, South Carolina 29211

RE: Mediation Statistics

Dear Virginia:

I am sorry for the delay in getting this information to you. I have finally had an opportunity to compile the various results. If for some reason you need the data compiled another way please don't hesitate to contact me.

Judge Houck was enthusiastic about your interest in our results as he, Judges Hawkins, Norton, Blatt, and Traxler were all pleased with the Settlement Weeks in Charleston and Florence. Judge Houck did ask that you include something in your report to the effect that all of the parties, even those whose cases did not settle, reported substantial movement in their cases. In addition, we are continuing to monitor the cases that were mediated for further results in coming months.

You originally asked for four categories: before, during, 2-3 weeks after mediation, and now. Unfortunately the judges' law clerks met one week after mediation to compare results and then I did not follow up again until your phone call. To that extent my results differ from those you asked for.

FLORENCE MEDIATION

Total Number of Cases Recommended for Mediation:	67
Total Number of Cases Mediated to Date:	44
1) Number of Cases Settled Before/Without Mediation:	5
2) Number of Cases Settled During Mediation Week:	9
3) Number of Cases Settled 1 Week after Mediation:	2
4) Number of Cases Settled Between 1 week and present:	3
Total Number of Cases which settled:	19 (43%)

CHARLESTON MEDIATION

Total Number of Cases Recommended for Mediation:	159
Total Number of Cases Mediated to Date:	89
1) Number of Cases Settled Before/Without Mediation:	12
2) Number of Cases Settled During Mediation Week:	10
3) Number of Cases Settled 1 Week after Mediation:	2
4) Number of Cases Settling Between 1 week and present:	11
Total Number of Cases which settled:	35 (39%)

I hope this information is useful. We will be looking forward to seeing a draft once the final is complete. Please do not hesitate to call if I can give you any other information.

With kind regards, I am

Sincerely yours,

Jack Barnes
Law Clerk to
C. Weston Houck,
United States District Judge

Exhibit 13

McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

NCNB TOWER / 1301 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS
POST OFFICE BOX 11390
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE 803/799-9800
FACSIMILE 803/799-9804

CHARLESTON OFFICE
140 EAST BAY STREET
POST OFFICE BOX 1431
CHARLESTON SC 29402
TELEPHONE 803/723-7831
FACSIMILE 803/722 3227

GEORGETOWN OFFICE
121 SCREVEN STREET
POST OFFICE DRAWER 418
GEORGETOWN SC 29442
TELEPHONE 803/546-6102
FACSIMILE 803/546-0096

GREENVILLE OFFICE
NCNB PLAZA
SUITE 801
7 NORTH LAURENS STREET
GREENVILLE SC 29601
TELEPHONE 803/271-4940
FACSIMILE 803/271-4015

HILTON HEAD ISLAND OFFICE
McNAIR LAW BUILDING
10 POPE AVENUE EXECUTIVE PARK
POST OFFICE DRAWER 7787
HILTON HEAD ISLAND SC 29938
TELEPHONE 803/785-5169
FACSIMILE 803/785-3029

RALEIGH OFFICE
RALEIGH FEDERAL BUILDING
ONE EXCHANGE PLAZA
SUITE 810
POST OFFICE BOX 2447
RALEIGH NC 27602
TELEPHONE 919/890-4190
FACSIMILE 919/890-4180

WASHINGTON OFFICE
MADISON OFFICE BUILDING
SUITE 400
1155 FIFTEENTH STREET NORTHWEST
WASHINGTON DC 20005
TELEPHONE 202/659-3900
FACSIMILE 202/659-5763

December 20, 1991

Marvin D. Infinger, Esquire
Sinkler & Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29402

Re: Citizens Advisory Group

Dear Marvin:

Enclosed please find a copy of the Richland County Settlement Week final statistics that I have received from Eve Stacey at the Bar. I will be glad to report these at the next meeting if you desire.

With kind regards, I remain,

Sincerely yours,

Julianne Farnsworth

Julianne Farnsworth
Typed and signed in my absence

JF/pkj
Enclosure

RICHLAND COUNTY SETTLEMENT WEEK
SEPTEMBER 30 - OCTOBER 4, 1991
(Final Statistics after 5 Weeks)
11/11/91

Cases scheduled for Settlement Week: 143

Cases in which settlement conferences took place (or at least one party appeared for conference): 117

Cases settled through mediation during Settlement Week: 30
(26% of 117 cases mediated)

Cases settled or otherwise disposed by end of Settlement Week: 48
(33% of 143 cases scheduled)
(41% of 117 cases mediated)

Cases settled or otherwise disposed by 11/11/91 (5 weeks after Settlement Week): 65
(45% of 143 cases scheduled)
(56% of 117 cases mediated)

Settlement conferences where one party not present/available:
plaintiff 8
defendant/insurance company 24

Cases in which discovery was not complete:
plaintiff 30
defendant 32

Settlement conferences during which the mediator felt there were no meaningful discussions: 16

Cases which the mediator felt to be at an impasse and ready for trial: 21

The Circuit Court of South Carolina
Ninth Judicial Circuit

WILLIAM L. HOWARD
JUDGE

CHARLESTON COUNTY
BERKELEY COUNTY

2144 MELBOURNE AVENUE
ROOM 220
NORTH CHARLESTON, SC 29405

TEL (803) 740-5741

May 8, 1992

Marvin Infinger
160 East Bay Street
Charleston, SC 29401

Dear Mr. Infinger: Marvin

I want to thank you for your participation as a mediator in Settlement Week. As you know, this process was brand-new to the Charleston Bar, as well as to me. Thanks to your hard work, it was a big success.

I can report to you that the results are remarkable, and the final tally is not even in yet. As of this writing we have settled 169 cases of the 290 cases that were docketed for mediation. That is 58%. Many of these matters were complex in nature. We expect additional settlements growing out of mediation within the next few weeks.

I am told that these statistics are incredibly good for any mediation week process. Apparently the average is thirty percent. Obviously our success is far in excess of that and will get better in the coming weeks. I truly believe that the success of this experiment is due to the optimism and open minded attitudes that were brought to the settlement table by the attorneys and parties who participated. I'm sure that your efforts as a mediator are what fostered these attitudes.

I have now been advised that you are entitled to 7 CLE credits for the mediation course, with one hour attributable to ethics. Attendance information has been provided to the S. C. Bar.

As you know, we are not stopping with this one week. Every member of the Bar who has participated in the program has asked that we continue it, both on a regular basis, and again for a one week block in the Fall of this year. Court Administration has agreed that we can hold our Settlement Week during the week of October 6.

In order to be prepared for future Settlement Weeks, and to learn as much as we can from this last time around, I would ask that you please take a moment and complete the enclosed mediator survey.

You and the other volunteer mediators have done a magnificent job and have performed a real service to your community. I can not thank you enough for your efforts. In direct mediation hours alone, you and your fellow volunteers contributed almost 300 hours to this experiment. I'm sure there were an additional 800-1000 hours in preparation and training. I hope you will consider further mediation in the future. I'm told that the more you do it, the better you get. Please accept my thanks, again, for your efforts.

With warmest personal regards, I remain

Very truly yours,

Bill

William L. Howard

Enclosure

McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

NCNB TOWER / 1301 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS
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CHARLESTON, SC 29402
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FACSIMILE 803/722-3227

GEORGETOWN OFFICE
121 SCREVEN STREET
POST OFFICE DRAWER 418
GEORGETOWN, SC 29442
TELEPHONE 803/546-8102
FACSIMILE 803/546-0096

GREENVILLE OFFICE
NCNB PLAZA
SUITE 601
7 NORTH LAURENS STREET
GREENVILLE, SC 29601
TELEPHONE 803/271-4940
FACSIMILE 803/271-4015

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1155 FIFTEENTH STREET, NORTHWEST
WASHINGTON, DC 20005
TELEPHONE 202/659-3900
FACSIMILE 202/659-5763

May 14, 1992

Marvin D. Infinger, Esquire
Sinkler & Boyd, P.A.
Post Office Box 340
Charleston, South Carolina 29402

Re: Citizens Advisory Group

Dear Marvin:

Enclosed, as you requested, is the follow-up information regarding the Richland County Settlement Week that I have received from Eve Stacey at the Bar. I will be glad to report on this at the next meeting if you desire.

With kind regards, I remain,

Sincerely yours,

Julianne Farnsworth

Julianne Farnsworth

JF/pkj
Enclosure

SOUTH CAROLINA BAR

950 Taylor Street/P.O. Box 608
Columbia, South Carolina 29202-0608
(803) 799-6653
Fax 799-4118

May 8, 1992

Julianne Farnsworth, Esquire
Post Office Box 11390
Columbia, SC 29211

RE: Settlement Week

Dear Julianne:

I was really excited about the news that Judge Anderson wants to hold a settlement week in federal court. I received a copy of Judge Anderson's order today. It has been a long time coming, but things are really starting to jump in the area of ADR in South Carolina.

You asked me some questions about what had been done to organize for settlement week in Columbia and Charleston. You asked about who had done the mediator training. In Columbia, we brought in Harold Paddock from Columbus, Ohio. Harold is a referee in the Ohio court system. Part of his responsibilities include mediating cases. He helped organize some of the earliest settlement weeks in the country. He has written a book on organizing settlement week and he travels around the country consulting and conducting mediator training for settlement week. I can recommend Harold for mediator training.

The ADR Committee of the South Carolina Bar obtained a grant from the South Carolina Bar Foundation to get Harold here; we paid him $1,900 plus expenses to conduct two one-day training programs. In Charleston, they used Zena Zumeta from Ann Arbor, Michigan. She was already in town for an intensive domestic mediation training program, so there were cost savings realized in using her rather than arranging for someone else to come in. I understand that she did a fine job.

It is generally agreed among those who know mediation and mediation techniques that one day of training - including role playing so that every participant gets to "play" mediator - is about the absolute minimum that anyone should receive before acting as a mediator in any kind of significant setting. (Some think that it should not be done with fewer than 40 hours

training.) Also, it seems to be the practice for settlement weeks around the country that since these mediators are not professional mediators who use their mediation skills regularly, training ought to be offered prior to every settlement week. There are obviously those who would not choose to participate in the training more than one time if it is not mandatory.

You asked about the case selection process. In Columbia and in Charleston, a case nomination form was distributed widely. Counsel of record in any case on the common pleas docket could nominate a case; a committee was appointed to review case nomination forms and select those to be scheduled for settlement week. A copy of the form used in Charleston - which is the one used in Columbia with some improvements - is enclosed. If a nominated case looked to be a reasonable case for mediation, it was scheduled, without regard to whether the opposing side nominated it, as well. Also, the judge retained the authority to select cases from the docket to be scheduled for mediation. If a party notified the judge or the scheduling committee saying that mediation is pointless or premature, some cases were deleted from the schedule, depending upon the reason for not wanting to participate; many agreed that just getting the parties and their attorneys together was beneficial, even though they may have felt origiannly that there was no point.

As for training or "brush-up" training for attorneys who might be mediators for the federal court settlement week, in light of the time frame, I will suggest Cotton Harness in Charleston. Arriving at the point of having local, or at least in-state, people who can doing training is a goal of the ADR Committee. Cotton - who you may know is an attorney with the Coastal Council - has been doing mediation in the Charleston area for several years. He focuses on domestic mediation, but does other mediation as well. I believe that Cotton could do training for settlement week mediators, if needed.

I hope that I have addressed your most immediate questions. Please do not hesitate to call me if I can provide further information. I would be delighted to help in any way that I can in getting this project rolling in federal court.

Sincerely yours,

Eve Moredock Stacey
Public Services Director

enclosure

cc: Lee M. Robinson, Esquire

_____ Case No._____

Plaintiff(s)

vs. Date Filed_____

_____ Type of Case_____

Defendant(s)

NOMINATION FOR SETTLEMENT WEEK

Trial date, if any_____ Name of Insurance carrier, if any_____

The undersigned counsel nominates this case for Settlement Week mediation and certifies that all parties are served and represented by counsel and that: *(Circle those appropriate)*

Discovery Is:	Not Needed	Sufficient for Evaluation	Will be done before Settlement Week	Done
Depositions Of Parties Are:		Not needed	Set before Settlement Week	Done
Depositions of Experts Are:		Not needed	Set before Settlement Week	Done
Independent Medical Exam/ Expert's Report Is:		Not needed/applicable	Set before Settlement Week	Done
Liability Is:		Seriously disputed	Disputed	Admitted or not disputed
Motions To Dismiss or For Summary Judgment Are:	Filed and pending	To be filed	Not applicable	Ruled upon
In my opinion, the matters at issue in this case are:		Complex	Moderately complex	Simple

Briefly describe the facts of the case:_____

_____

_____

I understand that nomination of this case DOES NOT mean that it will be automatically scheduled for Settlement Week.

Respectfully submitted,

_____

Attorney for Firm Name

_____

Address and Suite Number City and Zip Code Phone Number

Other counsel of record are: *(Use reverse side if additional space is needed.)*

_____

Attorney for: Plaintiff or Defendant Firm Name

_____

Attorney for: Plaintiff or Defendant Firm Name

Return form by February 14, 1992 to:
The Honorable William L. Howard, Post Office Box 70219, North Charleston, South Carolina 29415

** NOTE: PLEASE print clearly or type information.

Settlement Week
March 30 - April 3, 1992
Fact Sheet

What is Settlement Week?

Settlement Week is a week of scheduled court-ordered mediation conferences. It is a pilot project in the Charleston County Court of Common Pleas to be held the week of March 30, 1992. It is sponsored by the South Carolina Bar and its Alternative Dispute Resolution Committee and the Charleston County Bar Association. There are no court costs involved. No circuit court is scheduled in the state during that week, so conflicts will be minimal.

During a Settlement Week conference, parties, their attorneys and insurance company representatives will meet with a neutral, non-decision-making third party to resolve a dispute. The role of that third party, the mediator, is not to decide or adjudicate the dispute, but to help the parties reach a satisfactory resolution. Settlement Week has been used successfully to reduce civil case backlogs in Georgia, Ohio, Illinois, Texas and other states.

All parties and insurance company representatives must be present so that if a settlement is reached, all necessary persons are present to finalize it. If your case is nominated for Settlement Week, you may be ordered to participate in a mediation conference. Up to one hour will be allocated per mediation conference. If a settlement is not reached in that time, the parties can continue talking if they feel that settlement is possible, or they can agree to meet again to continue the mediation. If a settlement seems improbable, parties walk away with a better understanding of the strengths and weaknesses of their own cases, improving the likelihood of settlement later. If no settlement is reached, the case remains on the trial roster.

How are cases selected for settlement week?

Judge William L. Howard and a committee of the Charleston County Bar Association will screen cases pending in the Charleston County Court of Common Pleas and, based upon pre-designated criteria, cases will be selected to be mediated during Settlement Week. Additionally, any attorney with a case pending in the court may nominate a case for mediation. A nomination form is attached to this notice and should be completed and mailed to Judge Howard's office.

If a case is nominated by an attorney, it will not necessarily be scheduled for mediation. However, once a mediation roster is prepared, there will be no indication whether a case appears because of its nomination by a participating attorney or because of its selection by Judge Howard and the Bar Committee.

Once a case is selected for mediation, Judge Howard will issue an order compelling that event.

What's in it for my client?

The client gets his or her dispute resolved without further delay or the additional expenses of litigation. Because Settlement Week is part of the judicial system, taking place in the Judicial Center, a Settlement Week mediation conference can take the place of a client's "day in court." The result is more likely to be "win-win," leaving both clients satisfied.

What will be required of me?

Attorneys should prepare their cases as though they were going to trial, except that there are no witnesses and no formal introduction of evidence. Attorneys will be asked to explain their clients' positions; discussion will follow.

Who will mediate?

Volunteer attorneys--most from the Charleston area--will serve as mediators. These attorneys are representative of both the plaintiff and the defense bars. They will receive special mediator training prior to Settlement Week.

CHARLESTON COUNTY SETTLEMENT WEEK
March 30 - April 3, 1992

(_____ Plaintiff(s)

vs.

_____ Defendant(s)

Case No._____

Date Filed_____

Type of Case_____

NOMINATION FOR SETTLEMENT WEEK

Trial date, if any_____ Name of Insurance carrier, if any_____

The undersigned counsel nominates this case for Settlement Week mediation and certifies that all parties are served and represented by counsel and that: *(Circle those appropriate)*

Discovery is:	Not Needed	Sufficient for Evaluation	Will be done before Settlement Week	Done
Depositions Of Parties Are:		Not needed	Set before Settlement Week	Done
Depositions of Experts Are:		Not needed	Set before Settlement Week	Done
Independent Medical Exam/ Expert's Report is:		Not needed/applicable	Set before Settlement Week	Done
Liability is:		Seriously disputed	Disputed	Admitted or not disputed
(ons To Dismiss or For Summery Judgment Are:	Filed and pending	To be filed	Not applicable	Ruled upon
In my opinion, the matters at issue in this case are:		Complex	Moderately complex	Simple

Briefly describe the facts of the case:_____

_____

_____

I understand that nomination of this case DOES NOT mean that it will be automatically scheduled for Settlement Week.

Respectfully submitted,

_____

Attorney for Firm Name

_____

Address and Suite Number City and Zip Code Phone Number

Other counsel of record are: *(Use reverse side if additional space is needed.)*

_____

Attorney for: Plaintiff or Defendant Firm Name

_____

Attorney for: Plaintiff or Defendant Firm Name

Return form by February 14, 1992 to:
The Honorable William L. Howard, Post Office Box [redacted], Charleston, South Carolina [redacted]

** NOTE: PLEASE print clearly or type information.

CPR LEGAL PROGRAM

TO DEVELOP ALTERNATIVES TO LITIGATION

May 8, 1992

The Honorable Falcon B. Hawkins
Chief Judge
United States District Court
P.O. Box 835
Charleston, SC 29402

Dear Chief Judge Hawkins:

I am writing to alert the court, and the district's Civil Justice Reform Act Advisory Group, to the ADR training now available from the Center for Public Resources (CPR) Legal Program. We are currently assisting other federal districts to develop and implement ADR programs under the Civil Justice Reform Act. Our Training Program should be a valuable addition to the ADR resources available to your court.

As you may know, the CPR Legal Program is a nonprofit alliance of over 450 general counsel of major corporations, partners of leading law firms, prominent legal academics and federal judges working to encourage ADR use in business and public disputes. Established in 1979, the CPR Legal Program is today a recognized authority on private and judicial uses of ADR.

Our Judicial Project, organized in 1985 and directed by federal judges, leading law professors and counsel, has been instrumental in developing judicial uses of ADR, particularly in the federal courts. With passage of the Civil Justice Reform Act, the Judicial Project's mission has been to provide federal courts with quality information, technical assistance and training on judicial ADR. We hope that you will take full advantage of these public services, which are outlined below.

CPR TRAINING PROGRAM

The CPR Training Program provides comprehensive and sophisticated ADR training for the federal courts. Our training approach is generally two-pronged: to train lawyers or court officers to act as neutrals in ADR processes offered by the court; and to introduce judges, court administrators, and lawyers to the ADR approaches selected by the court.

Training assignments are tailored to each court's needs and involve nationally recognized ADR trainers. A description of the **CPR Training Program**, as well as a Sample ADR Training Agenda and Fee Schedule, is enclosed.

CENTER FOR PUBLIC RESOURCES, INC.
366 Madison Avenue
New York, NY 10017
Tel (212) 949-6490
Fax (212) 949-8859

CPR JUDICIAL PROJECT

In addition to our training service, the CPR Judicial Project offers key ADR publications and technical assistance *gratis* to courts and to Advisory Groups planning or implementing court ADR programs. CPR also assists individual judges and litigants to apply ADR in major disputes and to identify highly-qualified neutrals. A listing of the Judicial Project's Advisory Council is enclosed.

To date, over sixty districts have requested and received CPR's comprehensive resource package on judicial ADR, consisting of: *Alternatives Special Issue: ADR in the Courts (July 1991)*, a concise primer on court ADR; CPR's *ADR and the Courts: A Manual for Judges and Lawyers* (Butterworth Legal Publishers, 1987), a guide to key judicial ADR processes written by federal judges who pioneered their use; and its supplement, *CPR Practice Guide on ADR Use in Federal and State Courts* (1990). Additionally, CPR staff attorneys consult with courts and Advisory Groups about developing and implementing ADR programs in their districts.

We hope CPR's training and information services can assist the court during this critical period of ADR definition and organization. For more information on CPR's Training Program, please call CPR's Director of Training, Catherine Cronin-Harris. For information about CPR's Judicial Project more generally, please call Elizabeth Plapinger, Director of the CPR Judicial Project. Additionally, if your court has not received the CPR judicial ADR resources mentioned above, please return the enclosed request form.

Sincerely,

James F. Henry
President

JFH/mb
Enclosures
cc: Mr. Marvin I. Infinger
Chair, Advisory Group

CENTER FOR PUBLIC RESOURCES
ADR TRAINING PROGRAM

CIVIL JUSTICE REFORM ACT INITIATIVES: THE NEED FOR ADR TRAINING

The need for state-of-the-art ADR training has arisen as a direct result of the Civil Justice Reform Act of 1990. Under the Act, local District Court Advisory Groups have spawned Expense and Delay Reduction Plans throughout the country. ADR programs figure prominently among the proposed reforms. Consequently, courts are currently examining ways to conduct ADR training for court personnel and volunteers who will serve in ADR processes.

What profile should this training have?

Are adequate resources available?

SUGGESTED ADR TRAINING PROFILE

A successful ADR training program for court-related ADR programs should focus on two goals: training participants who will preside in ADR processes; and orienting judicial personnel to the program and its goals.

Participant Training Agenda:

Optimally, participant training should:

i. advance participants' command of ADR;

ii. allow participants to experience the processes in role-plays with skilled feedback, especially when learning a non-adjudicatory process such as mediation;

iii. teach participants new skills in facilitating negotiation that differ from familiar adjudicatory skills; and

iv. explain how the ADR processes mesh with normal court processes.

Judicial Personnel Orientation Agenda:

Experience has taught that judicial understanding and encouragement of ADR programs is a key element to bar and litigant acceptance. A brief orientation for judges, magistrate judges, and key court personnel on the following topics can enhance the overall success and use of any ADR program:

i. explanation of the court's unique ADR program and its administration;

ii. exploration, examples, and differentiation of the ADR processes to be used; and

iii. development of key issues affecting judicial personnel such as persuading litigants to use ADR, selecting appropriate cases, and assuring the appropriate relationship of ADR processes to the court processes (e.g., confidentiality).

Interactive Teaching Methods:

A training program is most effective if it can afford participants opportunity to apply the processes in role-plays and receive skilled feedback to heighten command, illustrate difficulties, and discuss ways to overcome them. The length of training sessions, however, will depend on the processes being taught, number of participants to be trained, numbers of trainers and number of days authorized for training by the court.

Highlighting Subtle Differences:

Lawyers' training and practice are oriented to the adjudicatory culture of litigation. Arguments and proof are submitted; a third party decides. The newer non-binding ADR processes aim to facilitate settlement and employ techniques quite different from adjudication. Trainers need to stress not only facilitative techniques but underscore and mitigate lawyer's subtle tendencies to employ familiar adjudicatory patterns when facilitation is required.

CENTER FOR PUBLIC RESOURCES, INC.
366 Madison Avenue New York, NY 10017-3122 Tel (212) 949 6490 Fax (212) 949 8859

CENTER FOR PUBLIC RESOURCES ADR TRAINING PROGRAM

This emerging need for high quality ADR training led CPR to establish its **National ADR Training Corps:** a body of skilled ADR trainers who can offer thorough, interactive and sophisticated ADR training suited to each court's unique ADR program.

Who Are the Trainers?

CPR's training corps members are among the most highly regarded and nationally recognized trainers in ADR today. Each has had extensive experience in practicing and training in the ADR field. Their professional credentials include authorship of seminal books on ADR, professorships at many of the most prestigious law schools in the country and repeated engagement as ADR consultants.

Where Are The Trainers Located?

CPR has intentionally selected its trainers from different regions throughout the U.S. to minimize the costs of conducting training for organizations using CPR's training services. Trainers' proximity to the training sites will minimize the travel and lodging expenditures that the organization would ordinarily incur.

WHY CONSIDER CPR'S TRAINING SERVICES?

CPR is a non-profit corporation dedicated to integrating the use of ADR into the mainstream of legal practice in the business, public and judicial sectors of the legal community. Since 1979, CPR's national coalition of general counsel from major business and prominent law firms has generated greater use of ADR through its extensive publications program, through counselling services about ADR, by providing neutrals of distinguished caliber to serve in major commercial and public disputes and by developing new ADR procedures for use in resolving a wide range of complex commercial and legal disputes.

Recognizing the import of judicial adoption of ADR, CPR established its Judicial Project in 1985. The Judicial Project has published seminal books in the field of court-related ADR, advised Congress on the role of ADR in the Federal Courts, and has been actively supplying material and consultation services regarding the ADR components of Expense and Delay Reduction Plans to Advisory Groups in federal courts throughout the nation.

CPR now stands poised to offer the training needed to assure effective and high quality ADR training for courts on the brink of adopting ADR initiatives.

CHARGES

CPR manages the training program including selection of trainers, tailoring of the program with trainers, scheduling, provision of materials and billing.

Charges for the training program are geared to the fiscal restraints of public institutions and include:

Trainer's Fees: daily fees for trainers or teams of trainers,

Travel and Lodging: if the trainer must travel to the locale of the court,

Materials Fees: fees for materials provided to trainees are charged at costs, and

Preparation Fees: Trainers are prepared to conduct training in a wide variety of ADR topics of interest to the courts such as ADR overviews, mediation, early neutral evaluation and other judicial ADR processes. Where the trainer must devote significant time in preparing a more specialized session or materials, hourly charges for such preparation will be added to the above fees.

Training fees vary depending on the number of trainers and days required for the program.

Greater detail regarding charges and reductions for multi-day training is available by calling CPR.

A sample training agenda with representative fees is attached.

SAMPLE TRAINING AGENDA AND FEES: PROPOSED COURT MEDIATION PROGRAM

MEDIATOR TRAINING

CPR suggests a two-day training model to best advance the goal of preparing attorneys who are relatively unfamiliar with mediation to serve as mediators proficiently and effectively. This training would entail:

i. an explanation of the process of mediation, its phases, and goals;

ii. exploration of the mediator's various roles in facilitating communication, enhancing perception, generating settlement options, acting as an agent of reality, and overcoming impasse;

iii. the use of principled negotiation approaches during mediation;

iv. a focus on techniques that maximize effectiveness and encourage the search for "win-win" solutions; and,

v. discussion of the relationship of mediation to the court process, confidentiality requirements, and ethical considerations.

Interactive Model of Training:

We suggest an interactive training methodology centering on a combination of lecture, demonstration, discussion, and participant involvement in role-plays with skilled feed-back by trainers. Role-plays immerse participants in the process, explore solutions to problems, and individualize the training so proposed mediators gain confidence in their new roles.

Number of Trainers & Participants

This two-day highly interactive model would require two trainers and accommodate a maximum of 24 participants.

JUDICIAL ORIENTATION

A one and a-half hour lecture and discussion session with one trainer will acquaint judges with their role and key issues in the mediation process such as confidentiality and selection of cases.

REPRESENTATIVE FEES FOR SAMPLE TRAINING AGENDA

Mediation: Two-day interactive mediation training would accommodate 24 trainees and would require two trainers. Suggested costs; $8,500 (significant reductions for multiple rounds of training apply).

Judicial Orientation: 1 1/2 hours.
Suggested costs: $1,000.

Additional Costs:

Travel and lodging for trainers (if necessary)
Materials for participants (provided at costs)
Preparation fees if trainer must engage in specialized preparation (normal hourly rate).

HOW TO INITIATE YOUR TRAINING PROGRAM?

A simple call to the Center for Public Resources can initiate the process to select an appropriate trainer from CPR's National ADR Training Corps, tailor the training to your program needs and funding, arrange the training session, and manage the details to bring your training to fruition.

Please call CPR: (212) 949-6490 or (800) 322-6490

Cathy Cronin-Harris, Esq.,Director of Training

or, if she is unavailable,

Elizabeth Plapinger, Esq.,Director of the Judicial Project

CENTER FOR PUBLIC RESOURCES
REQUEST FOR JUDICIAL ADR RESOURCES

The following resources are available *gratis* to courts and advisory groups from the Center for Public Resources. If your court or Advisory Group has not yet received this material, please return this request form. Please note that only one set of materials is available per district.

- *Alternatives Special Issue: ADR in the Courts* (July 1991). This 24-page handbook provides a concise catalogue of court ADR processes; a guide to key statutes and cases; and a primer on critical ADR policy issues.

- CPR's *ADR and the Courts: A Handbook for Judges and Lawyers* (Butterworth Legal Publishers, 1987). Program descriptions and procedural orders for major court-based ADR programs written by federal judges who pioneered their use.

- *CPR Practice Guide: ADR Use in Federal and State Courts* (1990). A compendium of judicial ADR, containing key analyses, case histories and forms.

****

NAME: _____

COURT AFFILIATION: _____

TITLE: _____

ADDRESS: _____

_____

TELEPHONE: _____

If you require overnight delivery, please include your Federal Express number:

_____

PLEASE RETURN TO:

Elizabeth Plapinger, Esq.
Director, CPR Judicial Project
Center for Public Resources
366 Madison Avenue
New York, NY 10017
Phone: (212) 949-6490
Fax: (212) 949-8859

May, 1992

CPR LEGAL PROGRAM
TO DEVELOP ALTERNATIVES TO LITIGATION

CPR JUDICIAL PROJECT
ADVISORY COUNCIL

HOWARD J. AIBEL
ITT Corporation

THE HON. MARVIN E. ASPEN
Northern District of Illinois

THE HON. WAYNE D. BRAZIL
Northern District of California

THE HON. WILLIAM D. BROWNING
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PROF. PAUL D. CARRINGTON
Duke University School of Law

THE HON. DICKINSON R. DEBEVOISE
District of New Jersey

KENNETH R. FEINBERG
Kaye, Scholer, Fierman, Hays & Handler

THE HON. SHERMAN G. FINESILVER
District of Colorado

LINDA J. FINKELSTEIN
District of Columbia Court of Appeals

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Eastern District of New York

DEBORAH R. HENSLER
Rand Institute for Civil Justice

R. LEE HOLZ
ALCOA

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Administrative Office of the
U.S. Courts

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Gable & Gotwals

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Ninth Circuit Court of Appeals

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ROBERT D. RAVEN
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CHARLES B. RENFREW
Chevron Corporation

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Columbia University School of Law

PROF. FRANK E.A. SANDER
Harvard Law School

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Southern District of New York

EDWIN J. WESELY
Winthrop, Stimson, Putnam & Roberts

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Western District of Oklahoma

CLIFFORD L. WHITEHILL
General Mills

GERALD R. WILLIAMS
Brigham Young University
J. Reuben Clark Law School

JEROME T. WOLF
Spencer, Fane, Britt & Browne

May, 1992

CENTER FOR PUBLIC RESOURCES, INC.
366 Madison Avenue New York, NY 10017-3122 Tel (212) 949 6490 Fax (212) 949 8859

Exhibit 14

PROPOSED LOCAL RULES
[MODELED ON SOUTHERN DISTRICT OF FLORIDA RULES]

MEDIATION

X.01 GENERAL PROVISIONS

(a) Definitions. Mediation is a supervised settlement conference presided over by a qualified, certified and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action. There is no binding result absent agreement of the parties.

The mediator is an attorney, certified by the chief judge in accordance with these rules, who possesses the skills and training to facilitate the mediation process including the ability to suggest alternatives, analyze issues, questions perceptions, use logic, conduct private caucuses, stimulate negotiations and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law or render any decision in the case. After holding a mediation conference, the mediator will report to the responsible judge, as to whether the case settled (in whole or in part), was adjourned for further mediation (by agreement of the parties) or that the mediator declared an impasse.

(b) Purpose. It is the purpose of this District, through adoption and implementation of this rule, to provide and encourage use of an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to the litigants and the Court. This is to be achieved without sacrificing the quality of justice to be rendered or the right to a full trial in the event of an impasse following mediation.

X.02 CERTIFICATION: QUALIFICATION AND COMPENSATION OF MEDIATORS

(a) Certification of Mediators. The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any mediator at any time. The chief judge may empanel one or more advisory committees to make recommendations as to certification or decertification for the district or specific divisions, which panel should consist of no less than one

district or magistrate judge and two members of the local bar who regularly practice in the division(s) at issue.]

(b) Lists of Certified Mediators. Lists of certified mediators shall be maintained in each division of the Court, and shall be made available to counsel and the public upon request.

(c) Qualifications as Mediator. An individual may be certified to serve as a mediator if:

(1) He or she has been a member of The South Carolina Bar for at least ten (10) years and is currently admitted to the Bar of this Court; or

(2) He or she has been a member of The South Carolina Bar for at least (10) years and is a former judicial officer of either the state or federal system.

In addition, an applicant for certification must have completed a minimum of 8 hours CLE credit in mediation training course approved by the South Carolina Bar and be found qualified by the chief judge to perform mediation duties.

[NOTE TO COMMITTEE: Two different training courses were used in Richland and Charleston Counties for their settlement weeks. Eve Stacey of the Bar indicated that these were not so much formal named courses as experienced individuals. See Exhibit [13] Stacey letter dated 5/8/92. The Bar is considering "local talent" for future training. There is, therefore, no one recommended mediation short course. The Center for Public Resources (CPR) also offers assistance in implementing ADR programs. This assistance includes training programs which are offered on a fee basis. See Exhibit [13] CPR letter dated 5/8/92]

(d) Disqualification of a Mediator. Any person selected as a mediator may be disqualified for bias or prejudice.

(e) Mediators to Serve without Compensation. Service of mediators shall be on a voluntary basis and shall be without compensation. In agreeing to serve, mediators will commit to serve no less than __ hours per year.

(f) Mediators as Counsel in Other Cases. Certification and designation as a mediator pursuant to these rules shall not be a reason for disqualification from appearing and acting as counsel in any other case pending before the Court.

X.03 TYPES OF CASES SUBJECT TO MEDIATION; FREQUENCY; WITHDRAWAL

(a) Court Referral. Upon order by the presiding judge, any civil action or claim not specifically excluded below may be referred by the Court to a mediation conference, providing the action or claim has not previously been referred to mediation or arbitration. The following categories may not be referred:

(1) Appeals from rulings of administrative agencies;

(2) Habeas corpus or other extraordinary writs;

(3) Forfeitures of seized property;

(4) Bankruptcy appeals;

(5) Government foreclosure cases;

(6) Three-judge court cases;

(7) Condemnation cases;

(8) Petitions to quash IRS summons;

(9) Veterans Administration Recoveries;

(10) Social Security Cases;

(11) Cases in which any pro se litigant is involved.

(b) Stipulation of Counsel. Any action or claim may be referred to a mediation conference upon the stipulation of all counsel of record or upon nomination by any party with the concurrence of the presiding judge. Stipulation or nomination shall be accomplished by submitting the form shown at _____ **[model on Charleston County form shown at exhibit [13]]**.

(c) Frequency of Mediation. To maximize the benefit of mediation and to minimize scheduling conflicts, judges within a division are encouraged to consider holding a mass mediation week at least once per year for all cases within the division which are to be referred to mediation. Alternatively, each judge in the district not participating in an annual mediation week shall examine

his or her existing caseload and select appropriate cases for referral to mediation.

(c) Withdrawal from Mediation. Any civil action or claim referred to mediation pursuant to this rule may be exempted or withdrawn from mediation at any time, before or after reference, upon a determination by the presiding judge that the case is not suitable for mediation.

Rule X.04 PROCEDURES TO REFER A CASE OR CLAIM TO MEDIATION

(a) Order of Referral. In every case in which the court determines that referral to mediation is appropriate pursuant to Rule X.03, the Court shall enter an order of referral which shall:

(1) designate the mediator;

(2) define the time frame within which the mediation conference shall be conducted or setting a specific date;

(3) designate an attorney of one of the parties as the coordinating counsel, who shall be responsible for coordinating a specific date for mediation if none is set by the court and for coordinating any necessary rescheduling;

(4) specify the contact person at the court for coordination of location for the mediation.
[CREATE FORM ORDER]

RULE X.05 SCHEDULING THE MEDIATION CONFERENCE

(a) Place of Mediation. The mediation conference shall be conducted in the United States Courthouse or such other place as is deemed appropriate by the presiding judge.

(b) Party Attendance Required. Unless otherwise excused by the presiding judge, in writing, each party shall provide a representative to be present at the Mediation Conference. This representative must have full authority to negotiate a settlement.

(c) Continuance of Mediation Conference Date. Every effort should be made to conduct the mediation at the time originally scheduled. The mediator may, however, with the consent of all parties and counsel, reschedule the mediation conference to a date certain.

RULE X.06 MEDIATION REPORT; NOTICE OF SETTLEMENT; JUDGMENT.

(a) Mediation Report. Within five (5) days following the conclusion of the mediation conference, the mediator shall file a Mediation Report utilizing the format shown at _____, indicating whether all required parties were present. The report shall also indicate whether the case settled in whole or in part, was continued with the consent of the parties, or whether the mediator declared an impasse.

(b) Notice of Settlement. In the event that the parties reach an agreement to settle the case or claim, in whole or in part, coordinating counsel shall promptly notify the Court of the settlement by the filing of a settlement agreement signed by the parties within ten (10) days of the mediation conference, and the Clerk shall enter judgment accordingly.

RULE X.07 TRIAL UPON IMPASSE

(a) Trial upon Impasse. If the mediation conference ends in an impasse or remains only partially settled, the case will be tried as originally scheduled.

(b) Restrictions on the Use of Information Derived During the Mediation Conference. All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission. A party is not bound by anything said or done at the conference unless a settlement is reached. In the event of a partial settlement, the party is bound only to the extent of the issues settled. Neither the fact that partial settlement was reached nor the nature of the partial settlement shall be introduced at trial absent agreement of all parties or to the extent that the partial settlement includes stipulations specifically intended to be used at trial.

Exhibit 14A

UNITED STATES DISTRICT COURT MEDIATION WEEK

DATE:_____

_____ Case No._____

Plaintiff(s)

Date Filed_____

_____ Type of Case_____

Defendant(s)

Ruling Sought_____

NOMINATION FOR MEDIATION WEEK

Trial date, if any_____ Name of Insurance carrier, if any_____

The undersigned counsel nominates this case for mediation and certifies that all parties are served and represented by counsel and that: *(Circle those appropriate)*

Discovery Is:	Not Needed	Sufficient for Evaluation	Will be done before Mediation Week	Done
Depositions Of Parties Are:		Sufficient for Evaluation	Set before Mediation Week	Done
Depositions of Experts Are:		Sufficient for Evaluation	Set before Mediation Week	Done
Independent Medical Exam/ Expert's Report Is:		Not needed/applicable	Set before Mediation Week	Done
Liability Is:		Seriously disputed	Disputed	Admitted or not disputed
Motions To Dismiss or For Summary Judgment Are:	Filed and pending	To be filed	Not applicable	Ruled upon
In my opinion, the matters at issue in this case are:		Complex	Moderately complex	Simple

Briefly describe the facts of the case:_____

_____

_____

I understand that nomination of this case DOES NOT mean that it will be automatically scheduled for Mediation Week.

Respectfully submitted,

_____

Attorney for Firm Name

_____

Address and Suite Number City and Zip Code Phone Number

Other counsel of record are: (Use reverse side if additional space is needed.)

_____

Attorney for: Plaintiff or Defendant Firm Name

_____

Attorney for: Plaintiff or Defendant Firm Name

Return form by _____ to: _____

****NOTE:** PLEASE print clearly or type information

C:\6177\1\46USDC.MED 08/05/93 16:15

Exhibit 15

LITIGANT SURVEYS

Litigant Questionnaires were sent out in each of the 159 cases in the attorney survey. These questionnaires were sent to the surveyed attorneys with instructions to forward to their clients. A copy of the survey form is attached.

Responses were only received from twenty-two (22) plaintiffs and thirty-two (32) defendants for a total of fifty-four (54). This is a relatively small percentage response to the 159 cases surveyed since well over 300 litigants were involved. Further, not all respondents answered all of the inquiries. The results should, therefore, be considered in light of the strong possibility that the respondents do not fully reflect the general "litigant population." Nonetheless, the responses covered a broad range of views and should hardly be dismissed out of hand.

The following summarizes the quantifiable responses:

Figure [7].

LITIGANT SURVEY RESPONSES

	Number of responses	Percentage of responses[1]
TYPE FEE AGREEMENT		
hourly rate	22	42%
hourly rate with cap	1	2%
set fee	6	11%
contingency	12	23%
other (incl. in-house & pro se)	12	23%
TOTAL	53	
BELIEVE ATTORNEY RECEIVED FAIR FEE		
yes	28	62%
no	7	16%
do not know	9	20%
not applicable	1	2%
TOTAL	45	

[1] Percentages may not total exactly to 100% due to rounding to the nearest whole number.

REASONABLENESS OF COSTS		
much too high	15	30%
slightly too high	6	12%
about right	25	50%
slightly too low	0	-
much too low	0	-
no response or "N/A"	4	8%
TOTAL	50	
OPINION AS TO TIME		
much too long	29	57%
slightly too long	7	14%
about right	15	29%
slightly too short	0	-
much too short	0	-
TOTAL	51	
WAS ARBITRATION OR MEDIATION TRIED?		
no	42	86%
yes	7	14%
TOTAL	49	

While most litigants (62%) felt their attorney received a fair fee, the percentage who felt otherwise (16%) is still significant. In one case where the litigant felt the fee was unfair, she specifically noted that the attorney did not receive a fair fee because he or she lost a contingency matter. In other words, the litigant felt the attorney did not get enough to be fairly compensated for the time invested.

A more substantial percentage thought that "costs" were "much too high" (30%) or "too high" (12%). Although the question was intended to inquire into costs other than attorneys fees, the question may not have been read this way by litigants. Some comments indicate that litigants may have distinguished between this question and the reasonableness of attorneys fees question by reading the costs question as a more generic "did it cost more to litigate than it should have." The attorney's fees question, by contrast, may have been read as "was my attorney fair with me."

This may, in part, explain the disparity in responses between the two questions.

Well over half of the litigants felt the matter took "much too long" (57%) or "slightly too long" to resolve (14%). Slightly less than a third felt the time was "about right" (29%).

Very few (14%) reported any form of arbitration or mediation being used. A number of those reporting the use of such methods considered attorney-attorney settlement conferences to be arbitration or mediation.

In comments regarding reasonableness of fees and expenses, three litigants indicated their fee was reasonable from the perspective of time expended but felt better case management by the court would have reduced these expenses. One of the three felt the matter should have been referred to a different tribunal (bankruptcy court). Two other litigants felt their attorneys had not done as instructed in handling the case (one believed he/she had only hired the attorney to write a letter, the other felt the attorney had continued to litigate after the cost had become excessive).

While a number of litigants expressed dissatisfaction with delays without indicating specific suggestions, many useful suggestions were made. The most common specific suggestion was to set firm deadlines and trial dates -- eight (8) respondents. Similarly, six (6) respondents suggested earlier rulings on motions (dispositive or otherwise). One of these encouraged early grants of partial summary judgment, as when punitive damages are sought but not supportable. Another felt that the plaintiff's attorney was allowed too much time to develop a case which was without

merit. Presumably, summary judgment would be the method for dealing with such meritless claims.

The usefulness of mediation and informal settlement negotiations were referenced in several responses. Two suggested mediation should be made available or encouraged while another felt the court should encourage "settlement attempts." Another litigant noted that its case was resolved quickly and inexpensively as a result of good faith negotiations. In response to a related inquiry, a litigant expressed the converse problem -- time was wasted on "forced negotiations that were irrelevant and inappropriate."

Balanced against the one litigant who did not see why he "had to have" an attorney (since he was clearly in the right), was the litigant who felt the expensive defense of a frivolous suit was important for precedential reasons. Another litigant expressed dissatisfaction, not with the federal court system, but with the federal defendant.

Suggestions as to cost reduction ranged from only allowing a (plaintiff's) attorney to receive actual costs if the matter settles before trial to requiring pro se plaintiffs to post a bond to repay costs of vexatious suits. A similar comment suggested requiring plaintiffs to pay defendant's costs if the suit proves meritless.[2] On the flip side, one respondent felt that a successful plaintiff should receive reimbursement of fees.

---

[2] One survey respondent who had been a pro se plaintiff apparently had been required to pay his opponent's fees. Not surprisingly, he found the entire system unjust, especially in its refusal to award him a multimillion dollar verdict.

Several respondents felt the costs of discovery, depositions and related travel were too high or that unnecessary discovery was taken. At least one of these based the belief that discovery was unnecessary on the fact that the deposition itself was not relied on at trial. Another respondent felt the rules on interrogatories should be "tightened." One suggested changes in the procedures for punitive damage claims (without any specifics). Two litigants suggested greater availability and referral to mediation. Another suggested shorter time to trial. One litigant felt the filing fee was the primary problem with excess cost.

Two litigants suggested both sides be made aware of the costs before litigation commences. Another suggested that there be caps placed on costs and fees and that the court control the cost of experts.

One party noted that the lack of a firm trial date caused his counsel to have to select a jury on three occasions. This, obviously, contributed to unnecessary costs and litigant frustration with the system.

A few suggestions which did not fall into the above groups, and which may be beyond the scope of the CJRA, included: (1) prohibit pro se plaintiffs; (2) better define substantive federal policy so the courts will not have to grapple with it; and (3) curtail manipulative litigant tactics geared toward delay. While some of these survey comments may strike those who regularly deal with the judicial system as unrealistic, they do indicate some litigants' frustration with the system.

General comments ranged from an outpouring of total disenchantment (fortunately only a few)[3] to more constructive comments. Of the latter, one noted that the bill-by-the-hour nature of most defense work created a disincentive to brevity and efficiency. A number, as in response to other questions, suggested increased use of summary judgment or other partially dispositive motions to pare down cases. Several also suggested earlier rulings on motions.

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[3] One litigant not only felt summary judgment was "a joke" but opined that large companies could buy anyone off, including the judiciary. Another noted a low public opinion of lawyers, coupled this to skyrocketing medical and insurance costs, and concluded that these surveys would have no impact on the problems. A third stated that the system was "self-perpetuating and self-profiting . . . and seldom benefits the injured party."

QUESTIONS FOR LITIGANTS

I. Were you the plaintiff or defendant in the case noted above? (circle one)

A. plaintiff
B. defendant _____(name if more than one defendant in case.)

II. Please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the total cost only.

A.	Attorneys' Fees	_____
B.	Attorneys' Expenses (photocopying, postage, travel expenses, etc.)	_____
C.	Consultants	_____
D.	Expert Witnesses	_____
E.	Other (please describe)	
		_____
F.	Total Cost of Litigation	_____

III. Please estimate the amount of money which was at stake in this case.

$_____

IV. What type of fee arrangement did you have with your attorney? (circle one)

A. hourly rate
B. hourly rate with a maximum
C. set fee
D. contingency
E. Other - please describe:

V. Did this arrangement in your opinion result in reasonable fees being paid to your attorney? (circle one)

A. yes
B. no
C. do not know

Comments:

VI. Were the costs incurred by you on this matter (circle one)

A. Much too high
B. Slightly too high
C. About right
D. Slightly too low
E. Much too low

VII. If you believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the cost of this matter?

VII. Was the time that it took to resolve this matter (circle one)

A. Much too long
B. Slightly too long
C. About right
D. Slightly too short
E. Much too short

IX. If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly?

X. Was arbitration or mediation used in your case? (circle one)

A. No
B. Yes

If arbitration or mediation was used, please describe the results.

XI. If you are a corporation, was in-house counsel involved in the suit?

XII. Did you have guidelines under which attorneys were to obtain special permission to conduct discovery, to make motions, or to conduct any other aspect of the litigation?

A. Describe.

XIII. What, if anything, did you consider to be unnecessarily expensive and time-consuming in preparing your case?

XIV. Please add any comments or suggestions regarding the time and cost of litigation in the federal courts.

Thank you for your time and comments. If you have any questions, please call Virginia L. Vroegop, (803) 779-3080. Please return in the enclosed envelope within 2 weeks of receipt.

Exhibit 16

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

December 31, 1991

1. Civil Trials before Magistrate Judges

The authority of magistrate judges to conduct civil trials is conditioned by statute on the consent of the parties.[78] Certain safeguards are included in the statute to prevent parties from being pressured into consenting. The notice to parties of their right to consent to trial before a magistrate judge is sent by the Clerk of Court and the decision by the parties is communicated to the Clerk.[79] After the parties have communicated their decision to the Clerk, "either the district court judge or the magistrate may again advise the parties of the availability of the magistrate," but there is an obligation in doing so to inform the parties that "they are free to withhold consent without adverse substantive consequences."[80]

Historically, few civil litigants in the Western District have consented to trial before magistrate judges. In our judgment, this historical reluctance has nothing to do with the quality of civil justice available in proceedings before magistrate judges. Instead, a principal reason is the substantial docket backlog in several of our divisions. Defendants in civil actions recognize that if they consent to trial before a magistrate judge, they are likely to receive a more prompt trial. Many defendants simply do not want a more prompt trial and thus withhold their consent. In those divisions where the district judge has no backlog on his docket, there is no advantage to consenting to trial before a magistrate judge.

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[78]28 U.S.C. § 636(c)(1).

[79]28 U.S.C. § 636(c)(2).

[80]*Id.*

We perceive two distinct advantages to be gained by adopting procedures that would encourage civil litigants to consent to trial before magistrate judges. First, increased use of magistrate judges in appropriate cases would help relieve pressure on the dockets of our district judges. Second, increasing the opportunity for magistrate judges to try civil cases would add diversity to their workload and prestige to their office. The Advisory Group thus encourages lawyers and litigants to consider the availability of magistrate judges as an alternative means of trial. District judges should also encourage litigants, in an appropriate manner, to consent to trial before magistrate judges. One means of doing so would be to also assign a magistrate judge to each case when the case is assigned to a district judge. This would enable the parties to evaluate whether to consent based on more complete information about their choice.

We have no illusion that either our encouragement or that of the district judges will dramatically increase consents to trial before magistrate judges. But we do believe that consents would likely increase if parties were provided a meaningful incentive to consent to trial before a magistrate judge. We thus recommend that the Western District create a "rocket docket" and assign that rocket docket to the full-time magistrate judges. For those attorneys and litigants who believe that practice in federal court is unduly burdensome because of judicial interference in pretrial preparations, the rocket docket should offer several benefits. We recommend that no Rule 16 scheduling orders be issued in rocket docket cases. This would simply require amending Local Rule CV-16(b) to add rocket dockets cases as an additional

exemption from the scheduling order requirement of Rule 16.[81] We also recommend that the Court excuse parties who consent to being placed on the rocket docket from filing pretrial orders. Instead, parties on the rocket docket would simply supply proposed findings and conclusions in nonjury cases and proposed instructions for a general charge in jury cases.

For those attorneys and litigants who believe that motion practice in federal court often creates undue expense because of excessive briefing requirements, the rocket docket should offer the benefit of oral hearings with whatever limited briefing the parties agree to submit on nondispositive motions. For those attorneys and litigants who believe that mandatory alternative dispute resolution would interfere with a litigant's right to traditional trial, the rocket docket should offer the benefit of exemption from proposed Local Rule CV-88. And most importantly, for those litigants and attorneys who want their dispute promptly resolved, the rocket docket should offer the guarantee of a trial within four months of consent. If the magistrate judge cannot guarantee a trial within four months, the magistrate judge should promptly notify the parties of the earliest available firm trial setting. Any party should be permitted to withdraw its consent to placement on the rocket docket at that point if that party so elects. The sole condition to being placed on the rocket docket and achieving these benefits should be that the parties consent to trial before a magistrate judge.

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[81]We note that Rule 16 expressly authorizes individual districts to exempt appropriate categories of cases from the scheduling order requirement.

To implement the proposed rocket docket, we recommend that the Western District adopt the following addition to Local Rule CV-16:

> (e) **Election of Accelerated Trial.** By written stipulation filed within thirty days after the filing of all responses to the complaint, all parties to any civil action may jointly consent to the action being assigned to the Accelerated Trial Docket. The stipulation shall include the express consent of all parties to trial before a magistrate judge, a joint estimate of the time required to complete a trial, and suggested dates for trial, with an explanation of any extraordinary scheduling conflicts that would preclude trial on certain dates. Upon receipt of this written stipulation, the Court shall assign the action to a magistrate judge who shall then promptly schedule a firm trial date no later than four months from the date of the stipulation. In no event shall the magistrate judge schedule a trial date sooner than three months from the date of stipulation except upon consent of all parties.
>
> The magistrate judge may, within thirty days of filing of the stipulation, refuse a stipulated election of accelerated trial if the magistrate judge (i) is unable to provide the parties a firm trial setting within four months from the date of stipulation, or (ii) the action is not appropriate for accelerated trial based on such factors as its complexity and the time required for trial. In the event the magistrate judge cannot provide the parties a firm trial date within four months from the date of stipulation, the magistrate judge may inform the parties of the earliest available firm trial date. Any party may then elect to withdraw consent to assignment to the Accelerated Trial Docket. If no party withdraws consent, the case will remain on the Accelerated Trial Docket with the later trial date.
>
> Actions assigned to the Accelerated Trial Docket shall be excused from all scheduling order requirements, shall be exempt from the alternative dispute resolution requirements of Local Rule CV-88, and shall be excused from filing a pretrial order, except that the Court may require the parties to file proposed findings and conclusions and jury instructions. Parties who elect assignment to the Accelerated Trial Docket shall restrict to the extent possible the filing of pretrial motions with the Court. No brief is required in Accelerated Trial Docket cases for any motion filed pursuant to Rules 26, 29, or 37 of the Federal Rules of Civil Procedure. Any such motion as well as any other motion within

the scope of Local Rule CV-7(a) shall be promptly determined following a hearing before the Court.

An increase in civil trials before magistrate judges will require that they receive additional support. In addition to upgrading the inadequate courtroom facilities currently used by magistrate judges and discussed earlier in our report, additional court reporters will likely be needed. Presently, only two electronic equipment operators (reporters) are assigned for the seven magistrate judge courts. We recommend that the Court seek additional funding to secure necessary support for increased utilization of magistrate judges.

This proposal is designed, in part, to encourage civil litigants to consent to trial before magistrate judges. But it is designed to achieve another goal as well -- that of offering an inexpensive but traditional dispute resolution alternative for those cases that can be quickly prepared for trial. We believe that offering such an alternative would further achieve the "systematic, differential treatment of cases" recommended by the Act.[82]

2. Use of Magistrate Judges to Resolve Nondispositive Motions

We encourage district judges to increase the use of magistrate judges to resolve nondispositive pretrial motions in civil actions. The parties can appeal magistrate judge determinations to the district court resulting in a duplication of work and a waste of resources. But the experience in districts that make extensive use of

[82]*See* 28 U.S.C. § 473(a)(1).

Exhibit 17

MEDIATION SURVEY AND FOLLOW-UP

In order to evaluate the public perception of mediation and its effectiveness in resolving litigation, the Advisory Group proposes that the courts survey litigants and attorneys who have participated in mediation. Sample survey forms and cover letter are attached. The forms could be distributed at mediation or through the attorney after mediation.

The results would be compiled by mediation format (e.g. opt in/opt out) and compared to purely numerical information regarding the number participating and percentages settling. Comparison and review of these two types of information (survey results and numerical results) should enable the court to evaluate the relative merits of the different methods of referring cases to mediation. It should also enable them to determine the public perception of mediation.

To insure candid responses, the forms themselves should not seek or contain information which would identify the case or responding party. Some code number could, however, be utilized to match all litigants and counsel responding on the same matter. Such information would be helpful in determining the degree of variance between opposing parties in the same mediation session. If used, however, proper steps should be taken to insure the code numbers cannot be matched back against any identifying list.

Responsibility for follow up on these forms could be sought from volunteer members of the Advisory Group or the South Carolina Bar Association if personnel are not available from the court.

MEDIATION
LITIGANT AND ATTORNEY SURVEY FORMS
AND COVER LETTERS

Proposed Letter To Litigants

Dear Litigant:

The above referenced matter was recently referred for mediation. Mediation is a nonbinding form of alternative dispute resolution being tried in our district. Various formats are being used.

We would like your input to determine the best way to implement this program. Please take a few moments to complete the attached survey.

Your responses will be released only in compilation with other results. The code number on the form allows us to match all responses from the same case but does not enable anyone to identify the specific case or parties responding.

Thank you for taking the time to complete this survey.

Proposed Letter to Counsel

Dear Counsellor:

The above referenced matter was recently referred for mediation. By way of the enclosed survey(s), we are seeking input from attorneys and litigants as to their views on mediation.

Please complete the enclosed attorney survey form [and forward the litigant form to your client]. Completing the form should take only a few minutes. The results will be of great assistance to the court in determining the best way to implement mediation and the extent to which it should be utilized.

Thank you for taking the time to complete the survey.

Code No. _____

LITIGANT SURVEY

PLEASE CIRCLE THE MOST APPROPRIATE RESPONSE TO EACH QUESTION.

1. My part in this suit is as:

   A. Plaintiff B. Defendant C. Other (explain) _____

2. My initial reaction to mediation was

   A. that it is just another burdensome step
   B. curiosity, but no real expectations
   C. curiosity and some expectation it might help
   D. pleased and hopeful
   E. great expectations

3. Rating my initial reaction from negative (A) to positive (E), I would give it a

Negative				Positive
A	B	C	D	E

4. My reaction after participating in this mediation was that, generally speaking, this procedure is

   A. just another burdensome step
   B. an "okay idea" - but not great
   C. a good idea
   D. a great idea
   E. probably the best thing to happen to our court system

5. Rating my post mediation reaction to the idea of mediation from negative (A) to positive (E), I would give it a

Negative				Positive
A	B	C	D	E

6. In my case in particular, mediation

   A. was just another burdensome step
   B. was of some benefit but did not result in any concrete moves towards resolution
   C. resulted in moderate progress towards resolution of some or all issues
   D. resulted in substantial progress towards resolution of the case
   E. resulted in resolution of the case

7. Rating my reaction to the benefit of mediation in my particular case from negative (A) to positive (E), I would give it a

Negative				Positive
A	B	C	D	E

AS TO QUESTIONS 8-11, PRIOR TO THIS MATTER BEING REFERRED TO MEDIATION:

8. Were you familiar with the idea of mediation? Y N

9. Had you discussed mediation or other means of resolving the suit (dispute) outside of court with your attorney? Y N

10. Had you suggested trying some form of alternative dispute resolution ("ADR")?

11. If so, what form? _____

    A. Mediation
    B. Arbitration
    C. Other (explain _____)

12. Had your attorney suggested trying some form of alternative dispute resolution ("ADR")? Y N

13. In your opinion, did the mediation in your case

    A. Come too early in litigation
    B. Come at about the right time
    C. Come too late

14. Were you* personally present during mediation? (not just represented by counsel) Y N

15. Was the opposing party* present? (not just represented by counsel) Y N

    ***If either party is a corporation, was some officer present?**

16. Assuming this case will proceed (or would have proceeded) to trial, how near completion would you estimate it was, at the time of mediation, in terms of <u>time</u>?

    A. Less than 20%
    B. At least 20%, but less than 40% complete
    C. At least 40%, but less than 60% complete
    D. At least 60%, but less than 80% complete

E. 80% or more complete

17. How near completion would you estimate the case was in terms of <u>legal fees and costs</u>?

A. Less than 20%
B. At least 20%, but less than 40% complete
C. At least 40%, but less than 60% complete
D. At least 60%, but less than 80% complete
E. 80% or more complete
F. I cannot answer this question because the case was on a fixed fee or contingent basis

18. If involved in litigation in the future, would you want to utilize mediation? Y N

19. If you know, how was your case referred to mediation?

A. The court (or someone) simply told us we had been referred (OPT-OUT)
B. My attorney and opposing counsel agreed to try mediation (OPT-IN)
C. I have no idea
D. Other _____

20. Did you feel your rights were in any way hurt by trying mediation? Y N

If so, please explain how you feel your rights were impaired.

_____
_____
_____.

YOUR COMMENTS: _____
_____
_____
_____

ATTORNEY SURVEY

PLEASE CIRCLE THE MOST APPROPRIATE RESPONSE TO EACH QUESTION.

1. Counting this mediation, I have participated in the following number of mediations:

   1 2 3 4 5 or more

2. The prior mediations which I participated in were in

   A. State Court
   B. Federal Court
   C. Both
   D. Other
   E. No prior mediations

3. My part in this suit is as:

   A. Plaintiff's Counsel
   B. Defendant's Counsel
   C. Other (explain) _____

4. Before participating in my first mediation my reaction to the concept was

   A. that it is just another burdensome step
   B. curiosity, but no real expectations
   C. curiosity and some expectation it might help
   D. pleased and hopeful
   E. great expectations

5. Rating my initial reaction from negative (A) to positive (E), I would give it a

   Negative Positive
   A B C D E

6. My current opinion of mediation is that, generally speaking, this procedure is

   A. just another burdensome step
   B. an "okay idea" - but not great
   C. a good idea
   D. a great idea
   E. probably the best thing to happen to our court system

7. Rating my current opinion of mediation from negative (A) to positive (E), I would give it a

Negative				Positive
A	B	C	D	E

8. In this case in particular, mediation

   A. was just another burdensome step
   B. was of some benefit but did not result in any concrete moves towards resolution
   C. resulted in moderate progress towards resolution of some or all issues
   D. resulted in substantial progress towards resolution of the case
   E. resulted in resolution of the case

9. Rating my reaction to the benefit of mediation in this particular case from negative (A) to positive (E), I would give it a

Negative				Positive
A	B	C	D	E

AS TO QUESTIONS 10-14, PRIOR TO THIS MATTER BEING REFERRED TO MEDIATION:

10. Were you familiar with the idea of mediation? Y N

11. Had you discussed mediation or other means of resolving the suit (dispute) outside of court with your client? Y N

12. Had you suggested trying some form of alternative dispute resolution ("ADR")?

13. If so, what form? _____

   A. Mediation
   B. Arbitration
   C. Other (explain _____)

14. Had your client suggested trying some form of alternative dispute resolution ("ADR")? Y N

15. In your opinion, did the mediation in your case

A. Come too early in litigation
B. Come at about the right time
C. Come too late

16. Was your client (or representative with authority to settle) personally present during mediation? (not just represented by counsel) Y N

17. Was the opposing party (or representative with authority to settle) present? (not just represented by counsel) Y N

18. Circle the response which best describes the stage of your case at the time of mediation.

A. Newly filed, little or no discovery completed.
B. Filed, answered and in the early stages of discovery.
C. About mid way to a trial ready state.
D. Discovery was three quarters or more completed.
E. Most discovery and necessary motions were complete.
F. The case was ready for trial.

Realizing the following is only a rough guess, please circle the percentage of total legal fees* and litigation costs expended by the completion of mediation relative to what you believe total fees and costs would be through trial. That is, the difference between the circled percentage and 100% is what your client would save on fees and expenses if mediation was successful.

A	B	C	D	E
10%	25%	50%	75%	90% or more

***If on a contingent or flat fee basis, estimate based on your time and litigation costs.**

19. How was this matter referred to mediation?

A. OPT OUT -- the court advised us we were to mediate
B. OPT IN -- the parties agreed to mediate
C. Other (explain _____)

20. Please rate your impression of <u>your</u> <u>client's</u> initial reaction to going to mediation from negative (A) to positive (B):

Negative				Positive
A	B	C	D	E

21. Please rate your impression of your client's post mediation view of the mediation process from negative (A) to positive (B):

Negative				Positive
A	B	C	D	E

YOUR COMMENTS: _____

_____

_____

_____

Exhibit 18

District of South Carolina

Senior Judge Percentage of Assignments and Dispositions

Twelve Month Period Ending June 30, 1991

Total filings for Senior Judges	459	
Total cases closed by Senior Judges	468	
Total filings in district	3557	
Total cases closed in district	2888	
Senior Judges' percentages of cases filed		12.9%
Senior Judges' percentages of cases closed		16.2%

S. Roberson, Office of the Clerk of Court, DSC.

IN THE UNITED STATES DISTRICT COURT
for the
DISTRICT OF SOUTH CAROLINA

MAGISTRATE JUDGE CIVIL MONTHLY REPORT

The purpose of this report is to provide an analysis of the civil work before the magistrate judges in the District on a monthly basis. The report is divided into two sections: cases and motions.

The Magistrate Judge Case Management Report

The Magistrate Judge Case Management Report provides data for each magistrate judge according to the category[1] and the status of each case. This report provides each magistrate judge with the number of cases pending at the beginning of the month (1ST MO), the number of new cases referred during the month (ASSN), the number of cases reopened during the month (REOP), the number of cases reassigned from one referred area to another (+REAS), the number of reassigned cases no longer referred (-REAS), the number of cases terminated during the month or no longer referred (CLOSED), and the number of cases pending as of the last day of the month (PENDING).

The Magistrate Judge Motion Report

The Magistrate Judge Motion Report provides each magistrate judge with the number of motions pending at the beginning of the month (1ST MO), the number of motions referred during the month (ASSN), the number of motions no longer referred or terminated during the month (CLOSED), and the number of motions pending as of the last day of the month (PENDING).

These reports provide a monthly assessment as well as a summation of the work for the magistrate judges.

---

[1] The categories are Social Security, Prisoner, Title VII, Pro Se, Pretrial Reference, Consent, and Post Judgment.

MAGISTRATE JUDGE CASE MANAGEMENT REPORT FOR FEBRUARY 1993

	1ST MO	ASSN	REOP	+ REAS	- REAS	CLOSED	PENDING
MAG. JUDGE CARR							
Social Security	46	6	0	0	0	4	48
Prisoner	58	7	0	0	0	20	45
Title VII	18	0	0	0	0	0	18
Pro Se	12	2	0	0	0	1	13
Pretrial Ref	68	10	0	0	0	10	68
Consent	18	1	0	1	0	2	18
Post Judgment	3	0	0	0	0	2	1
TOTALS	223	26	0	1	0	39	211
MAG. JUDGE CATOE							
Social Security	54	4	0	0	0	5	53
Prisoner	58	7	0	0	0	4	61
Title VII	18	1	0	0	0	1	18
Pro Se	11	3	0	0	0	3	11
Pretrial Ref	0	1	0	0	0	0	1
Consent	25	0	0	2	0	5	22
Post Judgment	3	3	0	0	0	2	4
TOTALS	169	19	0	2	0	20	170
MAG. JUDGE McCROREY							
Social Security	67	6	0	0	0	2	71
Prisoner	82	11	0	0	0	13	80
Title VII	23	1	0	0	0	1	23
Pro Se	15	2	0	0	0	7	10
Pretrial Ref	5	2	0	0	0	3	4
Consent	13	0	0	0	0	1	12
Post Judgment	3	0	0	0	0	1	2
TOTALS	208	22	0	0	0	28	202
MAG. JUDGE MARCHANT							
Social Security	63	6	0	0	0	0	69
Prisoner	88	9	0	0	0	6	91
Title VII	34	2	0	0	0	3	33
Pro Se	7	1	0	0	0	0	8
Pretrial Ref	1	0	0	0	0	0	1
Consent	11	0	0	0	0	0	11
Post Judgment	1	0	0	0	0	0	1
TOTALS	205	18	0	0	0	9	214
MAG. JUDGE SWEARINGEN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	10	0	0	0	0	0	10
Pro Se	5	1	0	0	0	0	6
Pretrial Ref	1	0	0	0	0	1	0
Consent	1	0	0	0	0	0	1
Post Judgment	0	0	0	0	0	0	0
TOTALS	17	1	0	0	0	1	17
MAG. JUDGE BUCHANAN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	0	0	0	0	0	0	0
Pro Se	0	0	0	0	0	0	0
Pretrial Ref	0	0	0	0	0	0	0
Consent	0	0	0	0	0	0	0
Post Judgment	0	0	0	0	0	0	0
TOTALS	0	0	0	0	0	0	0
TOTALS	822	86	0	3	0	97	814

MAGISTRATE JUDGE MOTION REPORT FOR FEBRUARY 1993

	1ST MO	ASSN	CLOSED	PENDING
MAG. JUDGE CARR	188	60	100	148
MAG. JUDGE CATOE	119	37	28	128
MAG. JUDGE McCROREY	395	97	141	351
MAG. JUDGE MARCHANT	199	34	27	206
MAG. JUDGE SWEARINGEN	103	17	17	103
MAG. JUDGE BUCHANAN	0	0	0	0
TOTALS	1004	245	313	936

MAGISTRATE JUDGE CASE MANAGEMENT REPORT FOR MARCH 1993

	1ST MO	ASSN	REOP	+ REAS	- REAS	CLOSED	PENDING
MAG. JUDGE CARR							
Social Security	48	6	0	0	0	1	53
Prisoner	45	8	0	0	0	7	46
Title VII	18	0	0	0	0	0	18
Pro Se	13	2	0	0	0	1	14
Pretrial Ref	68	8	0	0	0	10	66
Consent	18	3	0	2	0	2	21
Post Judgment	1	1	0	1	0	1	2
TOTALS	211	28	0	3	0	22	220
MAG. JUDGE CATOE							
Social Security	53	7	1	0	0	7	54
Prisoner	61	11	0	0	0	13	59
Title VII	18	4	0	0	0	1	21
Pro Se	11	3	0	0	0	4	10
Pretrial Ref	1	1	0	0	0	1	1
Consent	22	1	0	0	0	3	20
Post Judgment	4	0	3	0	0	3	4
TOTALS	170	27	4	0	0	32	169
MAG. JUDGE McCROREY							
Social Security	71	6	0	0	0	2	75
Prisoner	80	9	0	0	0	12	77
Title VII	23	1	0	0	0	1	23
Pro Se	10	1	0	0	0	4	7
Pretrial Ref	4	2	0	0	0	1	5
Consent	12	0	0	0	0	1	11
Post Judgment	2	0	0	0	0	2	0
TOTALS	202	19	0	0	0	23	198
MAG. JUDGE MARCHANT							
Social Security	69	6	0	0	0	0	75
Prisoner	91	15	1	0	0	8	99
Title VII	33	2	0	0	0	2	33
Pro Se	8	1	0	0	0	1	8
Pretrial Ref	1	0	0	0	0	0	1
Consent	11	1	0	2	0	0	14
Post Judgment	1	0	0	0	0	1	0
TOTALS	214	25	1	2	0	12	230
MAG. JUDGE SWEARINGEN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	10	0	0	0	0	0	10
Pro Se	6	0	0	0	0	0	6
Pretrial Ref	0	0	0	0	0	0	0
Consent	1	2	0	0	0	3	0
Post Judgment	0	0	0	0	0	0	0
TOTALS	17	2	0	0	0	3	16
MAG. JUDGE BUCHANAN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	0	0	0	0	0	0	0
Pro Se	0	0	0	0	0	0	0
Pretrial Ref	0	0	0	0	0	0	0
Consent	0	0	0	0	0	0	0
Post Judgment	0	0	0	0	0	0	0
TOTALS	0	0	0	0	0	0	0
TOTALS	814	101	5	5	0	92	833

MAGISTRATE JUDGE MOTION REPORT FOR MARCH 1993

	1ST MO	ASSN	CLOSED	PENDING
MAG. JUDGE CARR	148	78	77	149
MAG. JUDGE CATOE	128	54	78	104
MAG. JUDGE McCRORREY	351	105	142	314
MAG. JUDGE MARCHANT	206	42	62	186
MAG. JUDGE SWEARINGEN	103	10	15	98
MAG. JUDGE BUCHANAN	0	0	0	0
TOTALS	936	289	374	851

MAGISTRATE JUDGE CASE MANAGEMENT REPORT FOR APRIL 1993

	1ST MO	ASSN	REOP	+ REAS	- REAS	CLOSED	PENDING
MAG. JUDGE CARR							
Social Security	53	5	0	0	0	4	54
Prisoner	46	11	2	1	0	11	49
Title VII	18	4	0	0	0	0	22
Pro Se	14	0	0	0	0	0	14
Pretrial Ref	66	4	0	0	0	1	69
Consent	21	6	1	1	0	5	24
Post Judgment	2	0	0	0	0	0	2
TOTALS	220	30	3	2	0	21	234
MAG. JUDGE CATOE							
Social Security	54	4	0	0	0	3	55
Prisoner	59	11	0	0	0	7	63
Title VII	21	7	0	0	0	2	26
Pro Se	10	5	0	0	0	2	13
Pretrial Ref	1	0	0	0	0	0	1
Consent	20	2	0	2	0	4	20
Post Judgment	4	0	0	0	0	0	4
TOTALS	169	29	0	2	0	18	182
MAG. JUDGE McCROREY							
Social Security	75	4	0	0	0	1	78
Prisoner	77	7	2	0	2	3	81
Title VII	23	0	3	1	0	2	25
Pro Se	7	1	0	0	0	1	7
Pretrial Ref	5	2	0	0	0	2	5
Consent	11	2	0	0	0	0	13
Post Judgment	0	0	0	0	0	0	0
TOTALS	198	16	5	1	2	9	209
MAG. JUDGE MARCHANT							
Social Security	75	4	0	0	0	0	79
Prisoner	99	7	1	1	1	3	104
Title VII	33	0	1	0	1	1	32
Pro Se	8	1	0	0	0	1	8
Pretrial Ref	1	0	0	0	0	0	1
Consent	14	2	0	0	0	1	15
Post Judgment	0	0	0	0	0	0	0
TOTALS	230	14	2	1	2	6	239
MAG. JUDGE SWEARINGEN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	10	0	0	0	0	1	9
Pro Se	6	1	0	0	0	2	5
Pretrial Ref	0	0	0	0	0	0	0
Consent	0	1	0	0	0	0	1
Post Judgment	0	0	0	0	0	0	0
TOTALS	16	2	0	0	0	3	15
MAG. JUDGE BUCHANAN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	0	0	0	0	0	0	0
Pro Se	0	0	0	0	0	0	0
Pretrial Ref	0	0	0	0	0	0	0
Consent	0	0	0	0	0	0	0
Post Judgment	0	0	0	0	0	0	0
TOTALS	0	0	0	0	0	0	0
TOTALS	833	91	10	6	4	57	879

MAGISTRATE JUDGE CASE MANAGEMENT REPORT FOR MAY 1993

	1ST MO	ASSN	REOP	+ REAS	- REAS	CLOSED	PENDING
MAG. JUDGE CARR							
Social Security	54	6	0	0	0	2	58
Prisoner	49	4	2	0	0	3	52
Title VII	22	4	0	0	0	3	23
Pro Se	14	5	0	0	0	1	18
Pretrial Ref	69	6	0	0	2	6	67
Consent	24	0	0	2	0	2	24
Post Judgment	2	0	0	0	0	0	2
TOTALS	234	25	2	2	2	17	244
MAG. JUDGE CATOE							
Social Security	55	8	0	0	1	3	59
Prisoner	63	7	0	0	0	2	68
Title VII	26	4	0	0	0	0	30
Pro Se	13	5	0	0	0	2	16
Pretrial Ref	1	0	0	0	0	0	1
Consent	20	2	0	1	0	4	19
Post Judgment	4	0	0	0	0	0	4
TOTALS	182	26	0	1	1	11	197
MAG. JUDGE McCROREY							
Social Security	78	7	0	0	1	7	77
Prisoner	81	7	1	0	0	6	83
Title VII	25	1	0	0	0	1	25
Pro Se	7	1	0	0	0	2	6
Pretrial Ref	5	0	0	0	0	0	5
Consent	13	0	0	1	0	0	14
Post Judgment	0	0	0	0	0	0	0
TOTALS	209	16	1	1	1	16	210
MAG. JUDGE MARCHANT							
Social Security	79	9	0	0	3	0	85
Prisoner	104	8	0	0	0	4	108
Title VII	32	3	0	0	0	1	34
Pro Se	8	2	0	0	0	2	8
Pretrial Ref	1	0	0	0	0	0	1
Consent	15	0	0	3	0	2	16
Post Judgment	0	0	0	0	0	0	0
TOTALS	239	22	0	3	3	9	252
MAG. JUDGE SWEARINGEN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	9	1	0	0	0	0	10
Pro Se	5	0	0	0	0	0	5
Pretrial Ref	0	0	0	0	0	0	0
Consent	1	0	0	0	0	0	1
Post Judgment	0	0	0	0	0	0	0
TOTALS	15	1	0	0	0	0	16
MAG. JUDGE BUCHANAN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	0	0	0	0	0	0	0
Pro Se	0	0	0	0	0	0	0
Pretrial Ref	0	0	0	0	0	0	0
Consent	0	0	0	0	0	0	0
Post Judgment	0	0	0	0	0	0	0
TOTALS	0	0	0	0	0	0	0
TOTALS	**879**	**90**	**3**	**7**	**7**	**53**	**919**

MAGISTRATE JUDGE CASE MANAGEMENT REPORT FOR JUNE 1993

	1ST MO	ASSN	REOP	+ REAB	- REAB	CLOSED	PENDING
MAG. JUDGE CARR							
Social Security	58	10	0	0	1	3	64
Prisoner	52	12	2	0	1	8	57
Title VII	23	2	2	0	0	1	26
Pro Se	18	3	0	0	0	3	18
Pretrial Ref	67	11	0	0	2	11	65
Consent	24	0	0	7	0	1	30
Post Judgment	2	0	0	0	0	1	1
TOTALS	244	38	4	7	4	28	261
MAG. JUDGE CATOE							
Social Security	59	11	0	0	1	1	68
Prisoner	68	13	0	1	0	16	66
Title VII	30	6	0	0	1	3	32
Pro Se	16	2	0	0	0	1	17
Pretrial Ref	1	0	0	0	0	1	0
Consent	19	1	0	2	0	1	21
Post Judgment	4	0	0	0	0	0	4
TOTALS	197	33	0	3	2	23	208
MAG. JUDGE McCROREY							
Social Security	77	11	0	0	0	6	82
Prisoner	83	9	0	0	0	10	82
Title VII	25	1	0	1	0	1	26
Pro Se	6	2	0	0	0	0	8
Pretrial Ref	5	0	0	0	0	0	5
Consent	14	2	0	1	0	1	16
Post Judgment	0	0	0	0	0	0	0
TOTALS	210	25	0	2	0	18	219
MAG. JUDGE MARCHANT							
Social Security	85	10	2	0	1	2	94
Prisoner	108	8	4	0	0	5	115
Title VII	34	3	0	0	1	2	34
Pro Se	8	0	0	0	0	0	8
Pretrial Ref	1	0	0	0	0	0	1
Consent	16	3	1	0	0	0	20
Post Judgment	0	0	0	0	0	0	0
TOTALS	252	24	7	0	2	9	272
MAG. JUDGE SWEARINGEN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	10	3	0	0	0	1	12
Pro Se	5	2	0	0	0	1	6
Pretrial Ref	0	0	0	0	0	0	0
Consent	1	0	0	0	0	0	1
Post Judgment	0	0	0	0	0	0	0
TOTALS	16	5	0	0	0	2	19
MAG. JUDGE BUCHANAN							
Social Security	0	0	0	0	0	0	0
Prisoner	0	0	0	0	0	0	0
Title VII	0	0	0	0	0	0	0
Pro Se	0	0	0	0	0	0	0
Pretrial Ref	0	0	0	0	0	0	0
Consent	0	0	0	0	0	0	0
Post Judgment	0	0	0	0	0	0	0
TOTALS	0	0	0	0	0	0	0
TOTALS	919	125	11	12	8	80	979

Exhibit 20

THE INHERENT INJUSTICE OF PROTECTIVE ORDERS IN PRODUCTS CASES

Report of the Discovery Committee of the
South Carolina Civil Justice Reform Act Advisory Group
by
J. Kendall Few and Barney O. Smith, Jr.
Greenville, South Carolina
April 12, 1993

CONTENTS

A. COMMITTEE PROPOSAL

The Discovery Committee recommends that the District Court adopt the following Local Rule:

> *In all products liability actions in which the plaintiff seeks to recover for personal injury or property damage alleged to have resulted from a design or formulation defect in a mass production product, no confidentiality or protective order will be issued prohibiting or restricting the disclosure of information or documents obtained through the process of pretrial discovery unless the court finds as a fact specifically with respect to each such item of information or document as to which confidentiality or protection is sought:*
>
> *(a) That it contains a bona fide trade secret, the disclosure of which would cause serious competitive harm, or that it contains other confidential research, development, or commercial information within the meaning of F.R.C.P. Rule 26(c)(7), and*
>
> *(b) That the need for confidentiality is not outweighed by the interest of other affected persons to free access to the truth of the matters contained therein, and*
>
> *(c) That such order will not prevent the disclosure of information which is relevant to the protection of public health and safety, and*
>
> *(d) That justice requires the issuance of such order to protect a party or person from annoyance, embarrassment, oppression, or other burden or expense within the meaning of F.R.C.P. Rule 26(c).*

Subparagraphs (a) and (d) of the proposed Local Rule are based on Rule 26(c) of the Federal Rules of Civil Procedure. Subparagraph (b) adopts the spirit of the Florida Sunshine Law and Local Rules of the Texas Supreme Court and San Diego Superior Court as they relate to products liability actions. Subparagraph (c) is patterned on the Open Court Records Act of 1993 proposed by Senator Herbert Kohl of Wisconsin [see § F on pp. 8-9 below].

B. STATEMENT OF THE ISSUE IN QUESTION

In a case involving the alleged defective design or formulation of a mass production product, the injured victim will usually begin the discovery process by requesting the production of documents containing the product manufacturer's design criteria, performance specifications, testing results and data relating to the performance safety of the product. When many victims are injured as a result of a common design or formulation effect, these documents are often equally relevant in all cases. Notwithstanding this common relevance, product manufacturers invariably resist production of relevant documents unless the product victim agrees to the entry of a "protective order" which typically characterizes all documents produced as containing confidential "trade secrets" regardless of their content. Their motive is not to shield these documents from the covetous eyes of their competitors, but to prevent other product victims injured in essentially the same manner from gaining access to them. Why?

Because the product victim is unaware of the existence of specific documents in the possession of the product manufacturer, his request for the production of relevant documents is necessarily stated in general terms. In response, F.R.C.P. Rule 34 allows a party to either produce documents "as they are kept in the usual course of business" or to "organize and label them to correspond with the categories in the request." Because there may be many documents which come within a particular category and because documents coming within a particular category may be kept in multiple locations "in the usual course of business," product manufacturers frequently respond to such requests simply by designating the location

of a warehouse full of documents, casting the burden on the product victim to ferret out the relevant ones for himself.

In many cases, the product victim may not have artfully drafted his request with the precision necessary to dislodge the key documents from the clutches of the product manufacturer. In many other cases, the product victim may overlook or fail to appreciate the significance of a key document in the middle of a warehouse full of paper. As a consequence, he may be forced to the trial or settlement table without the benefit of "the smoking gun" which another similarly situated victim has found, appreciated and used to his advantage.

The issue, then, is whether the insistence by product manufacturers on blanket protective orders shall continue to be condoned in this district or whether the court shall require litigants in products cases to comply with the letter and spirit of F.R.C.P. Rule 26(c). The Discovery Committee believes that the failure to adopt the proposed rule will perpetuate the intolerable injustice, unnecessary duplication and endless delays that are the inevitable result of this reprehensible practice.

C. POSITION OF THE PRODUCT VICTIM

In a recent book by plaintiffs' lawyers Francis H. Hare, Jr., James L. Gilbert and William H. ReMine entitled, Confidentiality Orders (Wiley Law Publications 1988), the position of the product victim is succinctly stated:

> *. . . Motions for protective orders have become so much a part of the tactics of product litigation . . . that veteran counsel have come to expect them routinely. Although other grounds are occasionally asserted, manufacturers typically seek protective orders on claims that the documents sought by the plaintiff contain trade secrets. Sometimes there is genuinely confidential information to be protected. More commonly, however, the underlying purpose is to prevent the plaintiff's lawyer from effectively communicating with other lawyers handling similar cases.*
>
> * * *
>
> *The net result is that the manufacturer retains the benefit of a highly coordinated nationwide defense effort, while a similar coordinated effort is impaired or prevented for the plaintiffs. The full range of discovery must be repeated anew in every case, the resources of the courts are expended in hearing the same discovery disputes, and trial preparation is made more difficult and expensive. . . . [ix].*
>
> * * *
>
> *Discovery in products cases can be extremely expensive. This has a disproportionate impact on the plaintiff who is lacking in economic resources. The major costs include depositions, expert witness fees, travel expenses, charges for copies of documents, administrative cost to organize and analyze the material gathered, and preparation of trial exhibits. . . .*
>
> *Discovery in product litigation can also be a protracted process. In some cases, it may take several years to complete. The plaintiff must obtain and assimilate a large number of corporate documents, which is time consuming in itself, and in the course of doing so may be interrupted and delayed by a multiplicity of defense motions challenging discovery requests or attempting to impose secrecy on the documents that are produced. . . .*
>
> * * *

Other features of the discovery process also have a negative impact on justice. Stonewalling by defendant manufacturers, the concealment or non-disclosure of information, has become more than a rare occurrence. It is difficult or impossible to detect and can be crippling to the plaintiff's case. . . . It deprives the plaintiff and the trier of fact of access to vital evidence. Protective orders of the type sought by the defendant manufacturers serve to perpetuate these problems. Such orders would go beyond preventing the disclosure of discovery material to the defendant's competitors or even to the media and would forbid communications with other plaintiffs' lawyers who have cases against the same defendant. The net effect is to cut off exchanges of information relevant to the collective cases and thus to make each isolated case more costly and more time-consuming. By cutting off exchanges of information, such orders also take away the primary means by which plaintiffs' lawyers can cross-check the manufacturer's discovery responses in order to combat stonewalling. [pp. 14-15].

This position of the product victim is also supported by decisions in a number of cases of which the following are typical. In Ward v. Ford Motor Co., 93 F.R.D. 579, 580 (D. Colo. 1982), the court stated:

In this era of ever expanding litigation expense, any means of minimizing discovery costs improves the accessibility and economy of justice. If, as asserted, a single design defect is the cause of hundreds of injuries, then the evidentiary facts to prove it must be identical, or nearly so, in all cases. Each plaintiff should not have to undertake to discover anew the basic evidence that other plaintiffs have uncovered.

Likewise, in Brandimarti v. Caterpillar of Delaware, Inc., 134 Pitt. Legal J. 35 (1986), the Court of Common Pleas for Allegheny County, Pennsylvania, stated:

If one party has been able to show that the product is defective, a second party's success should not depend upon whether he or she is able to repeat the first party's discovery. When courts prevent successful litigants from sharing information obtained through discovery, the controlling issue is frequently not whether the product is defective but whether a party has sufficient resources and competence to discover the defect.

From this, it is clear that the true motive of product manufacturers and their trial attorneys in seeking protective orders is not to prevent the disclosure of trade secrets or other "confidential, proprietary business information" to their competitors. The true motive behind substantially all protective orders in products cases is to prevent sensitive and admittedly relevant evidence from being disseminated to other product victims who have been injured as a result of the same or similar design defects. It is also clear that the desired result of these actions is to give product manufacturers "a leg up" on the opposition by denying the injured victim's access to relevant evidence.

E. TYPICAL PROTECTIVE ORDER

Distilled to its essence, the typical "protective order" advocated by product manufacturers and their attorneys, provides as follows:

> *IT IS HEREBY ORDERED that all documents which the defendant in its sole discretion shall designate as "confidential" shall not be disclosed in any manner to any person, or copies thereof be provided to any person, other than the following:*
>
> *1. The plaintiff and his current counsel.*
>
> *2. Expert witnesses employed by the plaintiff.*
>
> *Before being given access to any protected document, each expert witness for the plaintiff shall agree in writing to be bound by the terms of this document. All such documents and any copies thereof shall be returned to the defendant at the close of this case.*

F. REVIEW OF RECENT DEVELOPMENTS IN OTHER JURISDICTIONS

The Florida Sunshine in Litigation Act, which took effect on July 1, 1990, prohibits protective orders which conceal a "public hazard" or information about a public hazard. A public hazard is defined as a "device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure or product that has caused and is likely to cause injury."

Also effective July 1, 1990, the San Diego County Superior Court adopted a policy on protective orders that states that such practices are disfavored and should only be allowed when it is shown that there is a recognized right to secrecy, that disclosure would cause harm, and that secrecy is in the public interest.

Effective September 1, 1990, the Texas Supreme Court adopted amendments to the Texas Rules of Civil Procedure which recognized a "presumption of openness" for all court records, which could be overcome only after a showing that a specific, serious and substantial interest in sealing records outweighs any adverse effect on the public health and safety, and that no less restrictive means than sealing would protect such interest.

On February 4, 1991, the New York State's Administrative Board of Courts adopted a new rule on sealing of court records in civil actions which prohibits the sealing of records without a specific finding of good cause. The rule directs the court to consider the interests of the public as well as the interests of the parties in determining whether good cause has been shown.

In addition, the BNA Product Safety and Liability Reporter (Vol. 20, No. 47, Part 2, November 27, 1992), published a 53-page Special Report entitled, "Study Finds Web of

Conflicts, Activity in Protective Order Issue." According to the report, "BNA editors and reporters researched the topic and interviewed hundreds of professionals--association leaders, consumer advocates, corporation counsel, judges, legislators, litigators, and lobbyists." In BNA's 50-state survey, they found that legislative and court rules proposals on the issue of protective orders were expected in at least 15 states in 1992. BNA also reports that Senator Herbert Kohl of Wisconsin is expected to introduce "a comprehensive measure on protective orders" this congressional session entitled, "The Open Court Records Act of 1993" which would amend F.R.C.P. Rule 26(c) by allowing judges to enter protective orders "only after making particularized findings of fact that such order would not prevent the disclosure of information which is relevant to the protection of public health and safety."

confidential information will be disclosed and how disclosure would damage or injure the party, the motion for protective order will be denied. Haseotes v. Abacab Int'l Computers, Inc., *120 F.R.D. 12, 15 (D.Mass. 1988);* United States v. Hooker Chemicals and Plastics Corp., *90 F.R.D. 421, 425 (W.D.N.Y. 1981).*

Many courts have held that sharing of discovery information with plaintiffs with similar cases is entirely consistent with the Federal Rules of Civil Procedure. In Williams v. Johnson & Johnson, *50 F.R.D. 31 (S.D.N.Y. 1970), the court discussed the issue as follows:*

> *In this situation, it is at least theoretically advantageous to the attorneys for plaintiffs in the various suits to share the fruits of discovery. They thus reduce the time and money which must be expended to prepare for trial and are probably able to provide more effective, speedy and efficient representation to their clients. . . . If this approach leads to the consolidation of cases, it will save judicial time and effort as well. On its face, such collaboration comes squarely within the aims laid out in the first and fundamental rule of the Federal Rules of Civil Procedure: "these rules . . . shall be construed to secure the just, speedy and inexpensive determination of every action." Rule 1, Fed.*

---

that disclosure of allegedly confidential information will work a clearly defined and very serious injury to his business.'") (emphasis in original); Waelde v. Merck, Sharp & Dohme, *94 F.R.D. 27, 28 (E.D.Mich. 1981) ("To obtain a protective order under Fed.R.Civ.P. 26(c)(7), the movant must show...that disclosure would 'work a clearly defined and very serious injury.'" "The movant must ... come forth with 'specific examples' of competitive harm.");* Parsons v. General Motors Corp., *85 F.R.D. 724, 726 (N.D.Ga. 1980) ("The party seeking the protective order must demonstrate that the material sought to be protected is confidential and that disclosure will create a competitive disadvantage for the party.");* Citicorp v. Interbank Card Association, *478 F.Supp. 756, 765 (S.D.N.Y. 1979) (A party "seek[ing] to avoid disclosure of commercial information by a protective order under Rule 26(c) ... bears a heavy burden of demonstrating that disclosure will work a clearly defined and very serious injury.");* United States v. International Business Machines Corp., *67 F.R.D. 40, 46 (S.D.N.Y. 1975) ("Good cause is shown when the party seeking protection demonstrates that disclosure of the documentary evidence at issue will result in a clearly defined, serious injury to the person or corporation whose records are involved.");* Essex Wire Corp. v. Eastern Electric Sales Co., *48 F.R.D. 308, 310 (E.D.Pa. 1969) (Party seeking order must show "that if this information were disclosed, the moving party would suffer great competitive disadvantage and irreparable harm.")*

R. Civ. P. Thus, there is no merit to the all-encompassing contention that the fruits of discovery in one case are to be used in that case only.

50 F.R.D. at 32.

In Patterson v. Ford Motor Co., 85 F.R.D. 152 (W.D.Tex. 1980), the defendant sought a protective order on the grounds that the plaintiff's attorneys would likely share information with other plaintiffs. The court refused to grant the Protective Order on those grounds, commenting that:

> *Such collaboration among plaintiffs' attorneys would come squarely within the aims of the Federal Rules of Civil Procedure - to secure the just, speedy, and inexpensive determination of every action. Rule 1, F.R.C.P. [citing Williams, supra,.] There is nothing inherently culpable about sharing information obtained through discovery. The availability of the discovery information may reduce time and money which must be expended in similar proceedings and may allow for effective, speedy, and efficient representation. [citation omitted] Unless it can be shown that the discovering party is exploiting the instant litigation solely to assist litigation in a foreign forum, federal courts allow full use of the information in other forums.*

85 F.R.D. at 153-54.

As the court noted in Burlington City Board of Education v. The United States Mineral Products Co., Inc., 115 F.R.D. 188 (M.D.N.C. 1987),

> *The sharing of information between even diverse plaintiffs promotes speedy, efficient, and inexpensive litigation by facilitating the dissemination of discovery material necessary to analyze one's case and prepare for trial. It reduces repetitive requests and depositions, thereby conserving even defendant's time and expense in having to respond or attend the deposition. It conserves judicial resources by reducing the number of discovery motions and disputes. Permitting plaintiffs to share information helps counter-balance the effect uneven financial resources between parties might otherwise have on the discovery process, thereby protecting economically modest plaintiffs faced with financially well off defendants and improving accessibility to justice. [citation omitted.] Defendants will not be heard to complain that sharing information will burden their defending similar type lawsuits. [citation omitted.] To some extent, that result is both a desired and expected consequence of the expediting and evening process which sharing produces. "[C]ollaboration among plaintiffs' attorneys . . . comes squarely within the purposes of the Federal Rules of Civil*

Procedure." [citing U.S. v. Hooker Chemicals and Plastics Corp., 90 F.R.D. 421, 426 (W.D.N.Y. 1981).]

115 F.R.D. at 190.

In Wilk v. American Medical Ass'n, 635 F.2d 1295 (7th Cir. 1980), the court cited Grady, supra, for the proposition that pre-trial discovery must take place in the public "unless compelling reasons exist for denying the public access to the proceedings." 635 F.2d at 1299. The court went on to state that:

> *This presumption should operate with all the more force when litigants seek to use discovery in aid of collateral litigation on similar issues, for in addition to the abstract virtues of sunlight as a disinfectant, access in such cases materially eases the tasks of courts and litigants and speeds up what may otherwise be a lengthy process.*

Id.[3]

In summary, blanket protective orders in products cases violate the letter and spirit of F.R.C.P. Rule 26(c) and subvert the due administration of our civil justice system.

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[3] *See also Wilson v. American Motors Corp., 759 F.2d 1568 (11th Cir. 1985) (District Court sealed trial transcript as part of settlement agreement. Plaintiff's counsel in other similar cases petitioned Georgia District Court to unseal the record. The 11th Circuit reversed the District Court's refusal to do so.); DeFord v. Schmid Products Co., 120 F.R.D. 648, 654 (D.Md. 1987) (The sharing of discovery with other Plaintiffs "is an appropriate goal under the Federal Rules of Civil Procedure, which are intended to secure the just, speedy, and inexpensive determination of every action."); Parsons v. General Motors Corp., 85 F.R.D. 724, 726, n.1 (N.D.Ga. 1980) (The possible sharing of discovery by Plaintiffs in similar cases does not justify a protective order.); Johnson Foils, Inc. v. Huyck, 61 F.R.D. 405, 410 (N.D.N.Y. 1973) ("Federal courts do allow full use of the information in other forums."); United States v. Hooker Chemicals & Plastics Corp., 90 F.R.D. 421, 426 (W.D.N.Y. 1981) ("Use of the discovery fruits disclosed in one lawsuit in connection with other litigation, and even collaboration among plaintiffs' attorneys, comes squarely within the purposes of the Federal Rules of Civil Procedure."); Graham v. Wyeth Laboratories, 118 F.R.D. 511, 513 (D. Kans. 1988); Ward v. Ford Motor Co., 93 F.R.D. 579, 580 (D.Colo. 1982); Waelde v. Merck, Sharp & Dohme, 94 F.R.D. 27-30 (E.D.Mich. 1981); Carter-Wallace, Inc. v. Hartz Mountain Industries, Inc., 92 F.R.D. 67, 69-70 (S.D.N.Y. 1981); American Honda v. Dibrell, 736 S.W.2d 257, 258-59 (Tex. 1987); Garcia v. Peeples, 734 S.W.2d 343, 348 (Tex. 1987).*

PRODUCTS LIABILITY ADVISORY BULLETIN

Issue No. 54 (June, 1993)

PROTECTIVE ORDERS AND AGREEMENTS CONCEALING PUBLIC HAZARDS PROHIBITED IN WASHINGTON

The Washington legislature has passed, and on April 12th Governor Lowry signed into law, Senate Bill 5362 providing that information regarding the existence of public hazards may not be sealed by court order nor concealed by private contract or agreement. "Public hazard" is defined as any instrumentality, including but not limited to, any device, instrument, procedure, or product, that presents a real and substantial potential for repetition of the harm or that involves a single incident which affected or was likely to affect many people. Courts may not enter any order or judgment which has the purpose or effect of concealing a public hazard, or any information that is relevant to the public's knowledge or understanding of a public hazard. Any provision of a contract or agreement that has the purpose or effect of concealing such information is void and contrary to public policy. A party to the contract or agreement may bring a declaratory action to determine whether an agreement or contract conceals a public hazard. A party may also seek a temporary order restraining disclosure of information; upon good cause shown the court must examine in camera the information and may in its discretion issue such a temporary order, judgment, or a dismissal. The order must, however, terminate upon entry of a final order, judgment, or a dismissal.

The Act also extends to third parties, including the news media, standing to contest a motion, order, or agreement that allegedly conceals a public hazard. Such a third-party challenge may be by intervention in the action or by declaratory action; the third party must establish the existence of a public hazard, that the hazard was the subject of the order or agreement, and that the third party has a basis for reasonable belief that the order or agreement is in violation of the Act. Upon this showing, the court will make an in camera inspection and issue an order regarding dissemination.

Any person who attempts to condition an agreement upon another party's consent to conceal an instrumentality which the party knows or reasonably should know is a public hazard, and any party who enters into such an agreement, will be in violation of the state consumer protection act. Insurance companies are subject to additional sanctions. Any person who violates an order either publishing or sealing information will be in contempt of court and liable for attorneys' fees and costs. Any action for declaratory relief or other action pursuant to the Act must be brought within three years from the date of the order, judgment, or agreement. The Bill becomes effective July 25, 1993.

Exhibit 21

DISSENT FROM PROPOSED
LIMITATION ON PROTECTIVE ORDERS

With one exception, this advisory group has reached unanimous agreement on the contents of this report. That one exception is the Discovery Section Proposal (the "Proposal") limiting the right of individual litigants to enter protective orders restricting use of materials obtained in discovery. Section VII.B.5. While the ends sought to be advanced by such a proposal are laudatory, we believe that the actual impact will be negative and substantial. Moreover, we believe that the goals purportedly advanced are not within the province of our court system.

With very limited exceptions, the proposal allows free public access to information relating to product safety and development once such information has been obtained in any discovery in any federal court litigation. This includes release under circumstances in which both plaintiff and defendant wish to keep the information private. From the debate surrounding this proposal, it seems its proponents hope to: (1) remove this "bargaining chip" from settlement negotiations; (2) prevent excessive, repetitive and costly discovery disputes; and (3) improve consumer access to safety related information thereby reducing the frequency and severity of injuries.

The opponents of the Proposal, however, believe that these goals will only be marginally satisfied and, in some cases, will be thwarted by the Proposal. Our concerns and objections are set forth briefly below.

1. ARTICLE III LIMITATIONS:

The jurisdiction of the federal courts is limited to an actual "case or controversy." This limitation is violated by injecting general consumer and potential litigant population interests into any given dispute.

2. SEPARATION OF POWERS CONCERNS:

The federal government has specific regulatory agencies established to oversee consumer safety, in areas such as drugs, medical devices and transportation. The proposal at issue places the courts into such regulatory roles, thereby overstepping the courts' authority as well as assuming another burden the courts are not funded to address.

As the Proposal would extend the court's power, it should, at the very least, be addressed by Congress. As noted in the proponents' memo (Exhibit [20]), some such Congressional proposals are currently being considered. The Congressional route will insure uniformity nationwide, thus preventing jurisdictional battles based on substantial differences between districts in their

discovery rules.[1] Moreover, this would allow Congress to determine the proper forum for deciding which documents purportedly impacting public safety should be made public and which deserve continued protection as private corporate papers. The same process could determine potential costs, appropriate funds and establish repositories. The ultimate forum might be an administrative agency, an administrative court or the Article III courts (assuming constitutional authority exists). Finally, and perhaps most importantly, a Congressional solution would allow input of the electorate and provide some measure of accountability.

3. IMPAIRMENT OF PRIVATE LITIGANT'S RIGHTS:

Absent the present proposal, each litigant has the freedom to enter the best settlement possible. The proposal limits these rights in favor of parties not before the court.

a. Under the present system, a defendant is encouraged to settle not only by the belief that doing so reduces the risk of a greater judgment and reduction of litigation costs, but also by a belief that doing so will not encourage additional suits. Critically here, defendants may pay settlements based on these considerations in suits where they do not, in fact, believe themselves to be a fault.

b. Settling plaintiffs, on the other hand, have the advantage of a known, certain recovery. The pending proposal will effectively force plaintiffs to gamble before a jury for the protection of other potential litigants. Just as a jury is admonished to consider only the parties before them in deciding issues of liability and damages, the courts should be prohibited from interposing the interests of non-parties into the approval of settlement terms, at the expense of the actual litigants before the court.

4. DISCOURAGEMENT OF SETTLEMENT AND COMPROMISE AND RESULTING ADVERSE IMPACT ON JUDICIAL ECONOMY:

Settlement and compromise is actually discouraged by the proposal. Despite the desire of the parties, materials gained through discovery in any given case will be freely available to circulate among attorneys (and the general public for that matter),

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[1] The Proposal would apply only to this district. It might, therefore, encourage an influx of products liability actions which would not otherwise be brought in South Carolina and may have very tenuous connection to the State. As a result, much time would be consumed in jurisdictional and venue battles. Even if an influx of new cases is not created (perhaps because plaintiffs do <u>not</u> want their hands tied in settlement and discovery), defendants facing discovery rules in this district that vary substantially from those in other districts will be compelled to challenge jurisdiction and venue if there is any arguable basis for doing so.

thus encouraging multiple me-too suits--many of which may be of questionable merit.[2] Concern over such results will discourage not only ultimate settlement but also voluntary disclosure of documents and any compromise regarding proper protection of trade information. We believe the net effect will be a significant increase, not a decrease, in the burden on the courts and the litigants.

As written, the proposal would not be limited to consent orders entered upon settlement of a case. The proposal would also preclude the type orders routinely entered voluntarily to enable discovery. Under the proposal, parties who might otherwise have allowed their opponents to review developmental and other internal data with the understanding that it would be used only for purposes of the pending litigation will be forced to seek judicial intervention as to each document sought in discovery in order to preclude their documents becoming the property of the general public. The court, under the proposal, will then have to make a page by page determination of the degree of protection to afford these private corporate documents.

5. DISCOURAGEMENT OF PROPER RECORD KEEPING AND TESTING:

The protective order proposal may ultimately result in discouraging the type of communication necessary to develop safer products. Knowing that every memorandum or note ever written will not only be discoverable in litigation but may also become information available to the general public may discourage written documentation of problems.[3] The availability of discovery itself would, of course, already have an impact on decisions regarding what to put in writing. Realization that such information not only becomes available to litigants claiming injury but becomes the property of the general public would effectively mean that

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[2] While not every such suit would lack merit, neither would each be meritorious. Perhaps the discovered materials would be damning, encouraging many suits with questionable causation or damages.

[3] Similar competing concerns have led to various privileges and rules of evidence. For instance, the work product privilege protects the research and notes of opposing counsel even though it would be very helpful to one side in litigation to know what research and information the other has amassed and, given the often disparate resources, it might seem only fair to require such "sharing." The rationale for the rule is to encourage proper preparation. The desire for such preparation is allowed to outweigh the rule's possible adverse impact on truth finding. Similarly, the subsequent-remedial-measures rule balances the desire to encourage repairs or improvement against their often probative value on issues of liability. Various privileges are allowed because of similar competing concerns -- for instances priest-penitent; husband-wife; and attorney-client.

virtually all developmental materials become presumptively public with a corresponding chilling effect. Documents which formerly enjoyed a presumption of privacy -- being protected except for limited use in actual cases where the plaintiff's need for the information outweighed the right of privacy -- would essentially become public property.[4]

6. OTHER MECHANISMS EXIST FOR SATISFYING THE CONCERNS OF THE PROPONENTS OF THE PROPOSAL

A. CLASS ACTIONS AND CONSOLIDATED SUITS.

There are already procedures in place to bring together, for purposes of discovery, all or portions of cases that involve similar circumstances. Class actions and consolidated (multidistrict) litigation provide two such methods of insuring that each consumer injured by the same product does not have to fight the discovery battle alone. If procedures for class actions and multidistrict litigation need modification to allow their more effective use for these purposes then such modifications should be addressed as a less draconian means of reducing discovery costs.

B. DISCLOSURE OF PRIOR RELEASE OF DOCUMENTS

A further means of reducing relitigation of previously fought discovery battles is to require disclosure of what documents have previously been produced, in what litigation, and under what limitations. By requiring this information of the defendant, there is no violation of previously entered agreements that prior plaintiffs will not disclose information gained in discovery. At the same time, it would insure that questionable litigation is not encouraged by circulating

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[4] To the extent it is advisable for certain types of documents to be public information, the administrative branch and its regulatory agencies should decide which documents and how they shall be maintained. For instance, if the public is to have a right to review crash tests on all cars marketed in the United States, the National Highway and Transportation Safety Administration could require filing of such documents. The Federal Drug Administration already requires filing of information regarding drug testing and reports of product failures.

information banks.[5] Such disclosure should not require any modification of present rules.

C. SANCTIONS

The proponents of the protective order proposal presented a compelling tale of a defendant who made evidence available in one case, then destroyed it before the next. In the subsequent case this defendant denied the evidence ever existed. By the good fortune of inadvertent error, the former plaintiff's attorney had kept a copy of this key document. The proponents also present tales of large producers of consumer products who falsely deny the existence of key documents or unconscionably delay production.

The tactics these stories address are deplorable. When encountered they should be dealt with swiftly and severely by the courts using their contempt powers, their power to punish discovery abuse, their Rule 11 power and their power to refer perjury charges (or ethics violations) for prosecution. That such tactics may be employed in a few severe cases is not, however, sufficient reason to modify the whole system in a manner that raises the concerns here noted.

The truth is, that an entity or individual that would destroy evidence and lie about it will simply learn to do so earlier if the proposed limitations on protective orders are put in place. Some defendants lie. Some plaintiffs lie. Such behavior is wrong. It should be punished severely. Procedural changes will not, however, preclude such deplorable behavior.

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[5] Under the current system, the degree of injury, strength of proof of causation as well as the cost of litigation serve as balances to deter filing weak cases. Under the proposed limitation on protective orders, it is easy to foresee circulating banks of discovery that encourage individuals to rely on juror anger at the documents to overcome lack of proof of causation or to file suit in hopes of snagging the brass ring of punitive damages despite limited injury. While such actions may serve the interest of those individual plaintiffs (and their counsel) they do not advance the public good. It is this "public good" that the proponents of the Proposal rely on to justify this drastic procedural change.

D. PRESUMPTION OF NEGATIVE IMPACT.

The rules of evidence also allow for a presumption that missing documents previously in the control of a party would have been adverse to that party. When documents are "lost" between litigations, such a presumption works some measure of compensation for the party denied access.

7. INCREASED MOTION LITIGATION BECAUSE OF THE PROPOSED RULE CHANGE.

The rule change proposed only applies to "mass-produced" products liability actions where a defect in "design or formulation" is alleged to exist. It allows court sanctioning of voluntary confidentiality agreements only where the "public safety" is not affected. Interpretation of these terms will itself promote substantial motion litigation.

8. PRIVACY CONCERNS.

The ultimate impact of the Proposal is to turn presumptively private documents into presumptively public documents. This was never the intent of the discovery rules. See Seattle Times Co. v. Rhinehart, 467 U.S. 20, 32-35 (1985) (noting: that discovery is not a public component of a civil trial; the potential for discovery abuse; and the resulting risk of injury to reputation and privacy). Rather, discovery balances one litigant's need for information against the other litigant's right to privacy.

CONCLUSION

The protective order limitation proposal contained in this report represents a drastic change in discovery. It expands the role of the courts into the administrative arena. It impairs both the right of private litigants to settle and the presumed privacy of corporate documents. We believe its adoption would turn many requests for production into major discovery battles, would encourage questionable litigation, would discourage settlement, ignores currently available procedures, overreacts to limited problem areas and would probably discourage making written record of noted concerns. We strongly oppose its adoption.

Exhibit 22.

POTENTIAL CONFLICTS
BETWEEN THE ADVISORY GROUP REPORT
AND AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

This appendix outlines areas of potential conflict between this Advisory Group Report and the amendments to the Federal Rules of Civil Procedure which are slated to go into effect on December 1, 1993. The ultimate plan adopted by this district will need to consider these conflicts. The following chart notes the nature of the rule changes and what impact, if any, the change may have on the Advisory Group Report.

	AMENDED RULE	SECTION AND CONTENT OF REPORT
1	Adds wording so that Rules are both construed and administered to satisfy their expressed purpose.	No anticipated impact.
4	Modifies rules related to summons including waiver of service rules which would give added time to answer when service is waived.	Addressed in Sections V.C. and VIII.D. & E. to Report which suggest even greater extensions of time to answer.
4.1	Service of Other Process	No anticipated impact.
5	Service and Filing of Pleadings and other Papers. Modifies wording related to facsimile/electronic filing.	No anticipated impact. But see related comment in Section VIII.F.
11	Signing of Pleadings . . . Representations to Court. Modifies procedures to follow when seeking sanctions and modifies the scope of representations	No anticipated impact. **[Although the changes are rather controversial, 146 F.R.D. 522-26 & 583-92, they are not expected to impact the CJRA Plan.]**

AMENDED RULE		SECTION AND CONTENT OF REPORT
12	Defenses and Objections. Incorporates extension of time to answer rule when service is waived.	Addressed in Sections V.C. and VIII.D & E to Report which suggest even greater extensions of time to answer.
15	Amended and Supplemental Pleadings. (minor change in cross referencing).	No anticipated impact.
16	Pretrial Conferences. Deletes reference to setting time to hear motions. Requires order to be issued within 90 days of appearance of defendant and 120 days of service on defendant. Allows modification of order if authorized by local rule. Adds various matters the court may consider, Rule 16(c)(4)-(6), (9) & (13)-(15). Allowing the court to require the presence (by telephone) of a party representative.	Must be considered in relation to Report Sections IV. (Differential treatment), V. (Early Judicial Involvement) and VI. (Discovery) and all local rules related to such conferences.
26	Discovery and Duty of Disclosure. Requires automatic disclosure of certain information and documentary evidence as well as expert testimony reports. Some disclosures are required within 10 days after the required discovery conference, Rule 26 (a)(1), others are to be as directed by the court but at least 90 days before trial, Rule 26(a)(2). Additional pretrial disclosures are required 30 days before trial. Rule 26(a)(3). Additional discovery is allowed but may be limited by local rule. Rule 26(b)(1)-(2). Expert depositions may be taken. Rule 26(b)(4).	Substantial impact on or conflict with Section VI. of the Report. (Discovery)

AMENDED RULE		SECTION AND CONTENT OF REPORT
	Requires express claim of privilege with specific detail as to documents involved. Rule 26(b)(5). Requires a certification of consultation before seeking a protective order. Rule 26(c). Requires conference between parties before seeking any discovery. Rule 26(d) & (f). Imposes increased duty to supplement responses to discovery. Rule 26(e). Modifies signing requirements. 26(g).	
28	Persons Before Whom Deposition may be taken.	No anticipated impact.
29	Stipulations Regarding Discovery Procedure.	No anticipated impact.
30	Depositions Upon Oral Examination. Requires court approval for depositions of anyone in prison or if more than 10 depositions are taken by side or if it is before the required conference (Rule 26 (d) & (f). Allows broader means of recording depositions. Requires brief objections and allows courts to limit time for depositions by local rule. Allows for sanctions for improper delay of depositions. Modifies rules for signing of depositions.	Contrary in some respects to recommendations is Section VI. to the Report (Discovery). Must be reconciled with current local rules.
31	Depositions Upon Written Questions. Limitations similar to depositions on oral examination.	See comments re Rule 30 above.
32	Use of Depositions in Court Proceedings. Limits parties against	No anticipated impact.

AMENDED RULE		SECTION AND CONTENT OF REPORT
	whom a deposition may be used and allows use of testimony recorded by nonstenographic means.	
33	Interrogatories to Parties. Limits number to 25 and precludes serving before discovery conference required by Rule 26(d)&(f). Requires objections to be specific and complete.	Conflicts with current local rule and Section VI of Report (Discovery).
34	Production of Documents and Things. Prohibits request before required discovery conference.	No anticipated impact.
36	Requests for Admission. prohibits request before required discovery conference. No limitations placed on number.	No anticipated impact.
37	Failure to Make Disclosure or Cooperate in Discovery. Allows motion for failure to give automatic disclosure and requires good faith consultation before any motion to compel. Authorizes sanctions including prohibiting trial use of undisclosed evidence.	Conflicts only to extent it refers to automatic disclosure requirements which were rejected in Report.
38	Jury Trial of Right. Clarifies requirement to file demand.	No anticipated impact.
50) 52) 53)	Technical Amendments	No anticipated impact.
54	Costs & Attorneys' Fees. Sets rules for attorneys' fees demands.	No anticipated impact.

AMENDED RULE		SECTION AND CONTENT OF REPORT
58	Entry of Judgment. Clarifies effect of request for costs or attorneys' fees.	No anticipated impact.
71A	Condemnation of Property. Change to incorporate other rule changes.	No anticipated impact.
72	Magistrate Judges. Minor wording change.	No anticipated impact.
73	Magistrate Judges, Trial by Consent. Allows court to advise of the availability of referral if also advises they are free to withhold consent. Prohibits advising judge of party's response to clerk's notification of right to referral.	May have minor impact on Section VII. of Report (ADR).
74) 75) 76)	Technical Changes	No anticipated impact.