

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

OFFICE OF THE CLERK

JESSE E. CLARK
CLERK

September 24, 1991


Mr. Jim McCormick
Court Administration Division
Administrative Office
Washington, D.C. 20544

Dear Mr. McCormick:

I am attaching a copy of "Findings and Recommendations of Subcommittee on Court Resources" for your review.

Please feel free to call me if you have any questions.

Very truly yours,


Jesse E. Clark, Clerk

JEC:mk

Attach.

FINDINGS AND RECOMMENDATIONS
OF
SUBCOMMITTEE ON COURT RESOURCES

The Subcommittee endorses the concept of differential case management. Differential case management is defined in general as the process of determining the appropriate level of court and attorney attention that will move a case to disposition in a just and efficient manner. It involves the creation of a predictable system that sets expectations and helps assure that required action is taken to bring an early and just disposition. In doing so, the ultimate goal of reducing delay and expense will be met. The fundamental elements of an effective case management system are as follows:

1. Court supervision of case progress: This includes the early examination of cases and determination of an appropriate case management track followed by continued supervision and adjustment in the case progress. This allows early court cognizance of each case and a screening for complexity based on established criteria.

2. Judicial leadership and commitment: The adoption of a case management plan by the judges of the court and the commitment to follow that plan will result in the development of a case management process which is both understood and accepted by the principal parties.

3. Development of communication with the Bar and specifically the attorneys in charge of a case: This communication is an important source of information regarding case management problems and delay in the process. Being able to identify such problems early will permit steady case movement. Such communication will allow the application and enforcement of time standards and operational goals as it creates the potential for reduced motion practice.
4. The development of an effective case flow information system which will generate the necessary reports to allow judicial evaluation of each case on the docket: Such a system will permit continuous court monitoring of case progress and deadline adherence.
5. Accurate scheduling of trials with date certainty: This is primarily a case management requirement which ensures court supervision and the control of continuances for the purpose of delay. Such scheduling should include event and time standards associated with each case management track.

The coordination of the court process to move cases timely from filing to disposition is largely a resource requirement. The trial judge decides issues in dispute as a case progresses to a final and just disposition. Having the necessary support staff to manage, administer and perform the fundamental ministerial functions in effective case flow management is essential. The best developed plans for effective case management are worthless without the resources to implement and execute. The Subcommittee on Court Resources identified those requirements

and offers the attached flow charts as a contrast of the existing system and the proposed enhanced system.

1. Staff Attorneys.

Observation: Currently the Southern District of Texas operates a program known as Pro Se Attorney Program. These two attorneys and their secretary are a part of the Clerk's staff used solely to support the court in the management for civil litigation filed by prisoners. The unit, under direction of the court, designs, implements and expedites the procedures used to screen and file the prisoners' cases. The unit is helpful to the court by clarifying the factual and jurisdictional basis for each complaint or petition to enable the court to take prompt and appropriate action. The initial screening, contact with the pro se litigant and recommendation to the court results in 85% of all such matters finding disposition before pretrial hearings. The effectiveness of the pro se effort may be noted in the attached reports which reflect not only the workload but a docket which is now under control and well-managed.

Recommendation: This concept is recommended for expansion, an inclusion into the Civil Justice Reform Act Plan. Three staff attorneys are needed for initial review of case filings leading to the efficient disposition of certain categories of cases; i.e., removed cases, social security, bankruptcy appeals, pro se plaintiffs, certain agency actions and jurisdictional designations. The staff attorneys would be located in the Houston Division, but would handle the entire district. It should be noted that the staff attorneys, though located in the Clerk's

Office and administratively supervised by the Clerk, will serve the judges to whom the individual cases are assigned.

The three staff attorneys would have two legal secretaries to assist and facilitate needed paperwork for disposition of cases through the writing of proposed orders. The legal secretaries would also serve as an overload secretarial pool for utilization by the judges as needed and would have flexible working hours as determined by the District Clerk to meet the needs of the court. It is contemplated that one of the secretaries would have flexible working hours to accommodate court needs.

Justification: The attached statistics, revealing the effectiveness of the current staff attorneys (pro se) in managing prisoner filings, document the potential for effectiveness of an expanded staff attorney program. There are additional categories of filings which lend themselves to effective management through the focus of the staff attorney team. Some of those categories and their filing numbers for the year July 1, 1990 thru June 30, 1991, are as follows:

-Bankruptcy Appeals	156
-Social Security Appeals	59
-Pro Se Filings Other Than Prisoner (as plaintiffs)	226
-Prisoner Pro Se Filings	817
-FDIC, FSLIC, RTC	609
-Removals From State Court	1466

assigned magistrate judge for pretrial responsibility and, if the parties consent, through trial. A systematic program of referral should build the confidence of the legal community in magistrate judges, and bring about an awareness of a vehicle by which litigation cost and delay can be alleviated. The total workload of each magistrate judge - the criminal docket, the number of civil trials, scheduling conferences, and other tasks assigned to the magistrate judge - must be considered, but the standard for proper utilization should be that each magistrate judge at all times maintain approximately 50 civil cases under his/her management.

Justification: Full utilization of magistrate judges in the Houston Division has not historically been a reality; however, in recent months, the trend to more fully utilize magistrate judges in the management of civil cases has developed and is producing good results. The magistrate judges in Houston are now being routinely referred pretrial matters and have disposed of 48 consent civil cases as compared to 15 for the similar period in 1988. We realize that the assignment of additional magistrate judges on the promise of more effective utilization is not a pragmatic likelihood. However, by the adoption of the above described plan, it is expected to produce significant results in the reduction of delay and expense and will furnish clear justification for the additional positions. If this enhanced utilization can reduce the additional requirement for Article III Judges, not only is a monetary savings realized, but the judicial work force can be adjusted at the conclusion of 8-year terms as opposed to lifetime appointments.

3. Courtroom Attendants.

Observation: Of all the fundamental elements of an effective case management program, consultation and communication with the Bar is essential. Knowing when a case runs into procedural difficulty (such as discovery disputes) is essential in providing an opportunity for early judicial intervention and resolution of the problem. Of the complaints most often heard from the Bar, a desire for greater communication with the court in the management of a case has been foremost. Presently, only one courtroom deputy is assigned to each judge. That single employee is expected to manage and calendar cases, ensure that motions and petitions to the court are processed efficiently, perform all the support functions within the courtroom, and maintain a liaison with the attorneys of record in the cases assigned to the judge's docket. A busy trial judge must either choose to have sufficient support in the courtroom during trial or to allow the courtroom deputy to leave in order to perform all of the administrative out-of-court functions. The result is that neither the court nor the Bar is able to maintain an effective liaison through this individual.

Recommendation: Each judge (18) would have a deputy district clerk serving as a ✓
courtroom attendant performing courtroom support functions and thereby relieving the case manager from these responsibilities. The case managers could then concentrate on integrating the economic, efficient movement of the civil cases within the constraining, superseding criminal caseload requirements. For the district judges, the courtroom attendants would be additional personnel. For the magistrates, existing personnel can perform these functions. However, three ✓

case managers would have to be added for utilization of the magistrates throughout the district.
These additional case managers would be located in Houston and would be employed in a pooled concept to manage the magistrates' civil dockets.

Justification: In January 1985, the Administrative Office selected this court and three others to pilot a program which allowed courtroom attendants (at reduced grades) to perform all the traditional courtroom support functions including swearing of witnesses, management of jurors, recording of the minute orders and receipt of exhibits. The case manager was permitted the opportunity to monitor the progress of cases, prepare reports for the court, and stay in constant contact with the attorneys in each of the cases in order to enforce that case's management plan. In this fashion, this district closed an unprecedented number of cases and managed at least two complete judgeless dockets that were left by the resignation of one judge and the death of another. Monitoring and enforcing deadlines, identifying case management snags in individual cases, and reporting changes in the case management process to the court will ensure that the fundamental elements of court supervision and judicial leadership will occur. All the benefits of the program were proven and in November of 1985, Ralph Mecham, Director of the Administrative Office, proposed Conference action expanding the program nationwide. Unfortunately, the severe constraints of the Gramm/Rudman Bill killed the program. This principle has been effectively proven in this district through management of huge bankruptcy dockets by the teaming of courtroom attendant and case manager. Under this principle, this district has been one of the top five case closing performers in what was previously considered an impossible docket. The additional case managers requested for the magistrate judges will

allow a central case management system with the effective utilization of the courtroom attendant concept mentioned above.

4. **An Additional Third Law Clerk or Secretarial Staff for District Courts.**

Observation: A careful examination of the docket and interview with the judges produces a clear indication that the effectiveness of trial judges would be greatly enhanced by the addition of a third law clerk or a secretary. Some judges manage their law clerks in such a fashion that generates work requiring increased secretarial support while others use their law clerks more in the less formal briefing of cases.

Recommendation: It is recommended that each judge should have the discretion of deciding which type of support best fits his managerial style. The Subcommittee realizes that such action will require congressional approval, but feels strongly that such legislation should be proposed.

Justification: The Attorney Questionnaire indicates a need for prompt rulings on motions. The number of pending motions on the dockets of the judges clearly justifies the additional staffing.

5. ADR Clerks.

Observation: One of the most promising aspects of case management has been the designation and development of the ADR program. That Subcommittee will provide that report, but must be supported by additional resources. It is contemplated that ADR will not only involve normal case management requirements but will need support similar to that which is performed for either a magistrate judge or district judge.

Recommendation: With the implementation of a formal ADR program, the Clerk's Office will need to add staff to facilitate the ADR program. The ADR-provider list, ADR response information, and other clerical functions contemplated by the ADR program require the additional staff. It is recommended that two ADR clerks be hired to serve district-wide, ✓ located in Houston.

Justification: In addition to individual case management, it is also contemplated that ongoing evaluation of the ADR program will be performed. This will include the preparation, distribution, and evaluation of a questionnaire at the conclusion of the process. These results will be both published and maintained for inspection by other candidates or interested parties as an incentive to expand the ADR option.

6. Electronic Court Reporters.

Observation: The Judicial Resources Committee has recognized a need to increase the number of civil trials heard before the magistrate judges. Throughout the nation court reporters are provided on a basis of one to each U. S. District Judge; however, with the expansion of magistrate judges' jurisdiction, very little provision has been made to provide for the preservation of the record before magistrate judges. Most of their statutory duties are recorded electronically by staff personnel not fully trained in the use of electronic recording equipment and also distracted by other responsibilities in the courtroom. When a trial or a hearing on the record is conducted, the Clerk must assign a district court reporter to a magistrate judge or attempt to find a contract reporter in the community. This is an expensive and perplexing undertaking in view of the availability of "contract reporters." The Judicial Conference has endorsed, following extensive study, the use of electronic recording equipment as an alternative method of taking the record. It is less expensive and greatly reduces delay in the production of transcripts. This district has exclusively used this system with great success for the extremely busy bankruptcy courts since 1979. However, it is well established that an accurate and quality record depends upon the training and qualifications of the operator. For that reason, trained operators must be provided for the magistrate judges as they become courts of record and accomplish the goals set forth in the Civil Justice Reform Act.

Recommendation: Recommend the addition of five Electronic Recording Operators to serve the magistrate judges in this district. ✓

Justification: The Judicial Conference has provided funding for only one electronic recording operator to provide service for what is now twelve magistrate judges. That ratio is totally unacceptable and should be increased to one electronic recording operator for each two magistrate judges. This will increase the current complement of authorized electronic recording operators by five, for a total of 6. This ratio, though not ideal, will permit the comfortable scheduling of civil cases without the delay often caused by attempting to locate a contract court reporter with either electronic or traditional training.

7. **Other Supporting Personnel.**

Observation: The United States Probation and Parole Department and the United States Pretrial Services Office are integral parts of the court's resources. Personnel strengths or deficiencies in these agencies have a direct bearing on the court's ability to handle the criminal docket and thus an indirect bearing on the court's ability to meet the demands of the civil docket.

After conferring with the Chiefs of these agencies, it appears that their personnel resources are currently adequate, but this is true in part because of the significant decrease in the number of criminal filings in this district during fiscal year 1991. It is interesting to note that there is a problem when the reverse is true, i.e., when criminal filings are significantly increasing. The problem is the long time between identifying the need for, and the actual starting date of, new employees. The allocation process, the selection process, and the full field

F.B.I. background investigation can take thirty months. And then, after entry on duty, a new officer may require up to a year of training to be fully productive.

8. **Facilities:** It is noted that the physical facilities throughout the district are presently adequate, and changes are underway that will accommodate the additional judges that have been authorized.

9. The Subcommittee on Resources has recognized a problem area which has the potential of retarding the development of resources to meet the objectives of the Civil Justice Reform Act. While civil filings have been relatively stable in filing patterns throughout the previous years, there have been periodic fluctuations in criminal filings. During the past year, criminal filings have dropped 33% overall. The most dramatic reductions are in the border divisions where civil case filings are the least in number.

This dramatic drop in criminal filings is attributable directly to a change in prosecution policy by the newly appointed U. S. Attorney. The prosecution philosophy has shifted from "zero tolerance" to the prosecution of more serious crimes in order to conserve and focus the resources of the U. S. Attorney and the Courts. The temporary pause in shifting prosecution emphasis as well as providing for alternative management of the smaller cases has magnified the filing reductions.

SOUTHERN DISTRICT OF TEXAS
CRIMINAL DEFENDANTS
Statistical Year Ending June 30

Month	1990 SY				1991 SY			
	Filings	Closings	Pending Fugitive	Pending Non-Fugitive	Filings	Closings	Pending Fugitive	Pending Non-Fugitive
July	296	302	1435	1768	208	348	1431	2193
August	429	396	1467	1765	346	357	1469	2140
September	348	342	1477	1763	246	312	1490	2054
October	508	289	1479	1963	346	355	1504	2043
November	367	235	1488	2112	215	233	1479	2023
December	281	325	1497	1936	262	269	1494	2020
January	340	448	1467	1968	267	274	1511	1994
February	378	265	1484	2064	267	275	1500	2005
March	266	323	419	3467	187	274	1478	1940
April	326	323	1478	1992	235	335	1477	1841
May	425	316	1468	2136	229	288	1521	1738
June	372	221	1458	2295	197	266	3190	-----
Total	4,336	3,785	3753		3,005	3,586	3190	

SOUTHERN DISTRICT OF TEXAS CRIMINAL CASE ACTIVITY

Statistical Year Ending June 30

Month	1990 SY			1991 SY		
	Filings	Closings	Pending	Filings	Closings	Pending
July	232	245	2420	157	249	2671
August	313	280	2454	233	243	2656
September	244	264	2435	180	226	2610
October	379	216	2594	251	255	2606
November	272	186	2678	157	164	2584
December	218	234	2662	187	164	2608
January	262	330	2574	186	183	2609
February	260	218	2616	167	194	2589
March	192	225	2574	142	179	2552
April	263	225	2612	153	230	2475
May	292	215	2697	145	212	2408
June	223	170	2752	166	182	2342
Total	3,150	2,808	2752	2,124	2,481	2342

**SOUTHERN DISTRICT OF TEXAS
CIVIL CASE ACTIVITY**

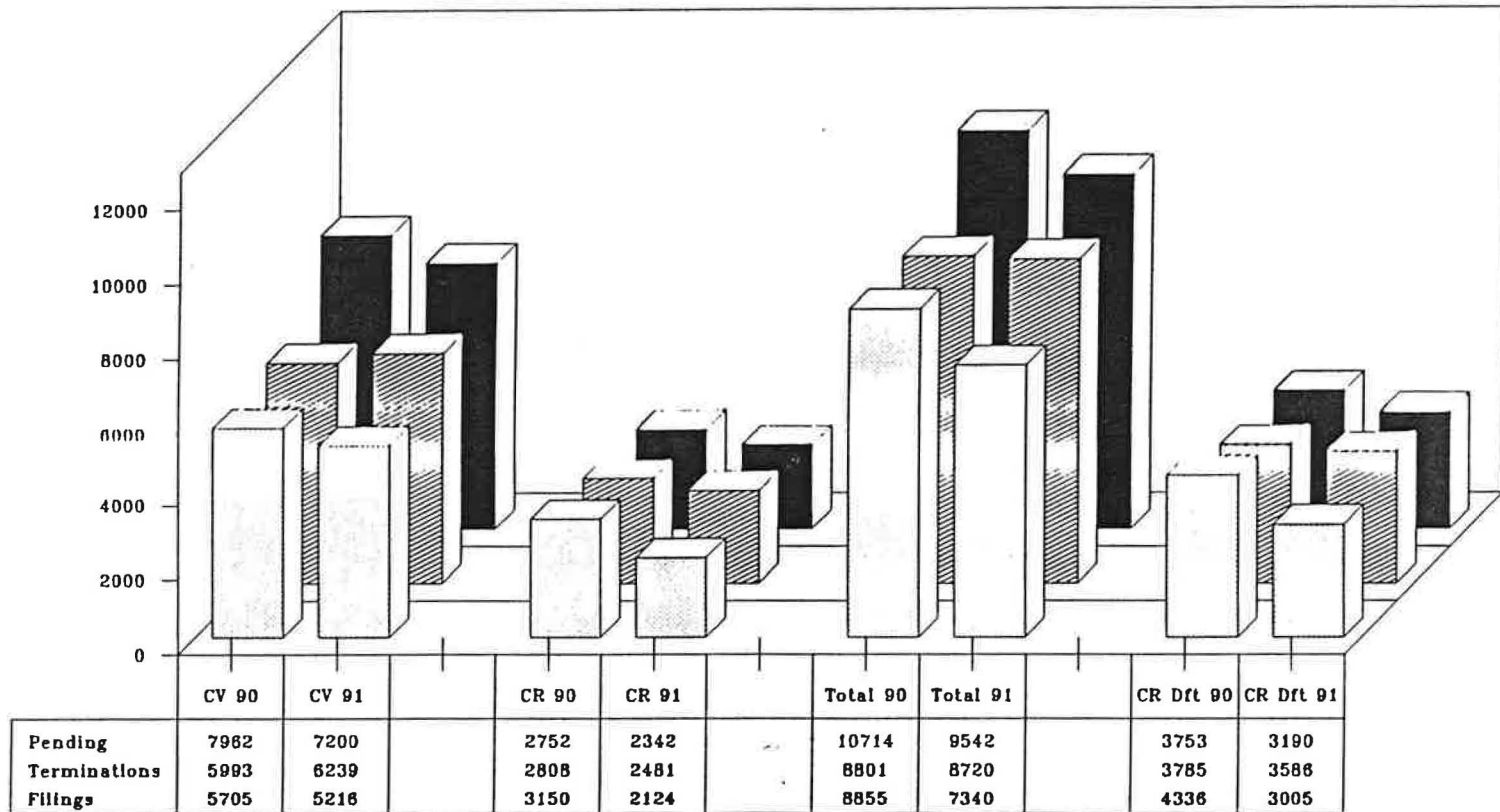
Statistical Year Ending June 30

Month	1990 SY			1991 SY		
	Filings	Closings	Pending	Filings	Closings	Pending
July	437	453	8012	451	460	7994
August	504	462	8071	490	527	7946
September	498	494	8095	441	450	7977
October	431	430	8141	414	573	7842
November	547	381	8318	383	370	7851
December	516	392	8450	458	504	7808
January	450	533	8396	431	538	7731
February	487	537	8363	340	433	7671
March	482	693	8160	418	688	7396
April	416	622	7985	453	619	7260
May	461	588	7880	514	559	7273
June	476	408	7962	423	518	7200
TOTAL	5,705	5,993	7962	5,216	6,239	7200

Case Activity

Southern District of Texas

Statistical Year Ending June 30



Filings
 Terminations
 Pending

**TOTAL ACTIVITIES FOR YEAR ENDING APRIL 30, 1991
BEFORE UNITED STATES MAGISTRATE JUDGES
SOUTHERN DISTRICT OF TEXAS**

Type	Platter	Botley	Kelt	Stacy	Pecht	Mallet	de Ases	Notzon	Garza	Guerra
Petty Offenses	9	15	19	50	71	1668	10	575	1058	558
Preliminary Felony	655	1049	1388	1122	1123	2535	1866	1742	1274	1052
Felony Matters	25	25	43	17	71	581	462	32	528	223
Prisoner Cases	148	822	283	244	144	25	80	47	31	0
Civil Duties*	121	498	444	1309	152	208	426	410	482	1
Civil Consent Cases Tried	0	3	12	3	6	0	3	0	1	0
Other Civil Consent Terminations	1	4	0	16	5	0	2	0	1	0
Civil Consent Motions/Conferences	0	10	151	80	39	0	1	0	8	0
Total All Criminal Matters	689	1,089	1,450	1,189	1,265	4,784	2,338	2,349	2,860	1,833
Total All Civil Matters	270	1,337	890	1,652	346	233	512	457	523	1

* Contested and uncontested nondispositive motions, dispositive motions, hearings and conferences referred from Article III docket.

SOUTHERN DISTRICT OF TEXAS
STAFF ATTORNEY (2) ACTIVITY- 1987 - 1991

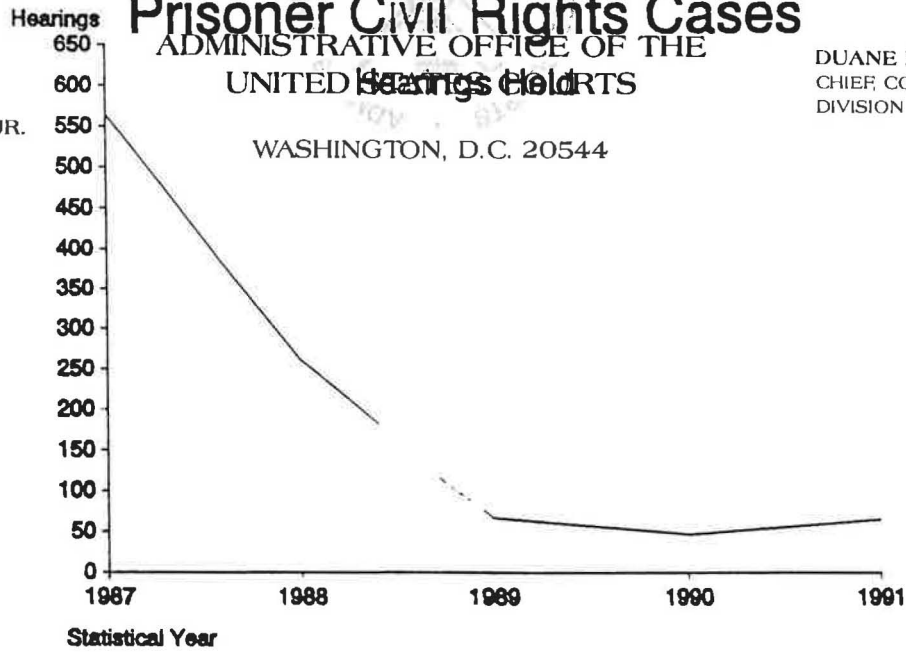
Prisoner Civil Rights Cases
HEARINGS HELD

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

DUANE REX LEE
CHIEF, COURT ADMINISTRATION
DIVISION



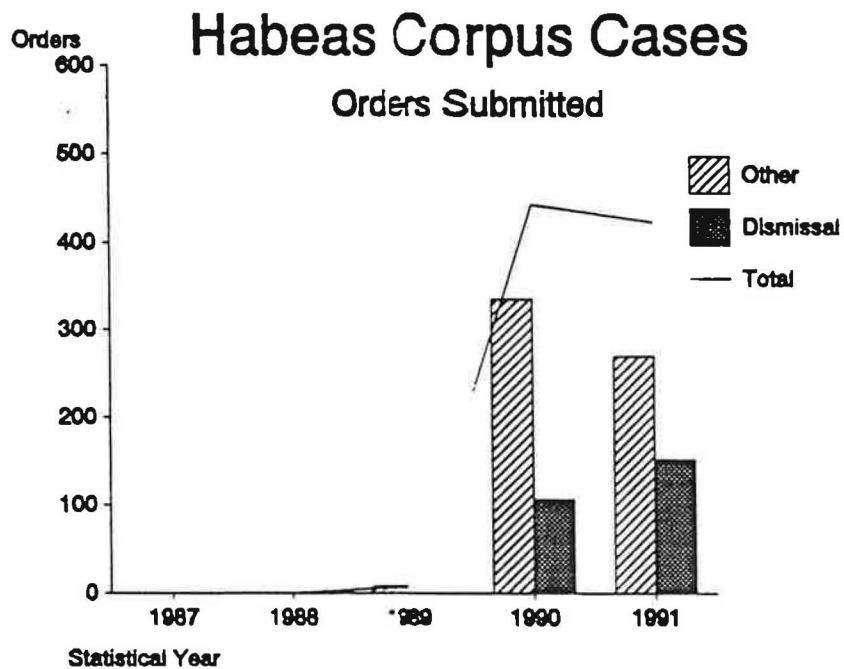
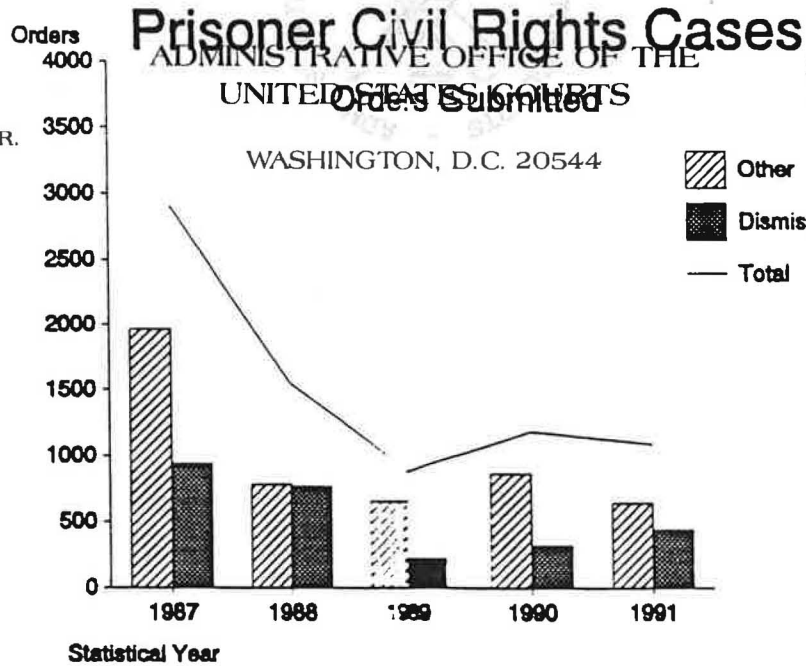
Source: Staff Attorney Monthly Reports for January, 1986 through June, 1991.

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

SOUTHERN DISTRICT OF TEXAS
STAFF ATTORNEY 2) ACTIVITY- 1987 - 1991

L. RALPH MECHAM
 DIRECTOR
 JAMES E. MACKLIN, JR.
 DEPUTY DIRECTOR

DUANE REX LEE
 CHIEF COURT ADMINISTRATION
 DIVISION



Source: Staff Attorney Monthly Reports for January, 1986 through June, 1991.

**Southern District of Texas
Prisoner Cases Filings and Dispositions- 1987-1991**

	Filed		Closed		Pending	
	Habeas	Civil Rights	Habeas	Civil Rights	Habeas	Civil Rights
1987	310	635	307	879	450	883
1988	271	547	236	867	485	563
1989	230	389	258	343	460	601
1990	326	429	286	339	497	681
1991	277	373	398	504	360	563

DUANE REX LEE
CHIEF, COURT ADMINISTRATION
DIVISION

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

Source: Appendix I, Detailed Statistical Tables, Annual Report of the Director of the Administrative Office of the U.S. Courts, Twelve Month Period Ended June 30, 1983-1990.

JS9 Statistical Report for July 1, 1990 through June 30, 1991, for Nature of Suit Codes 530, 540 and 550.

L. RALPH MECHAM
DIRECTOR

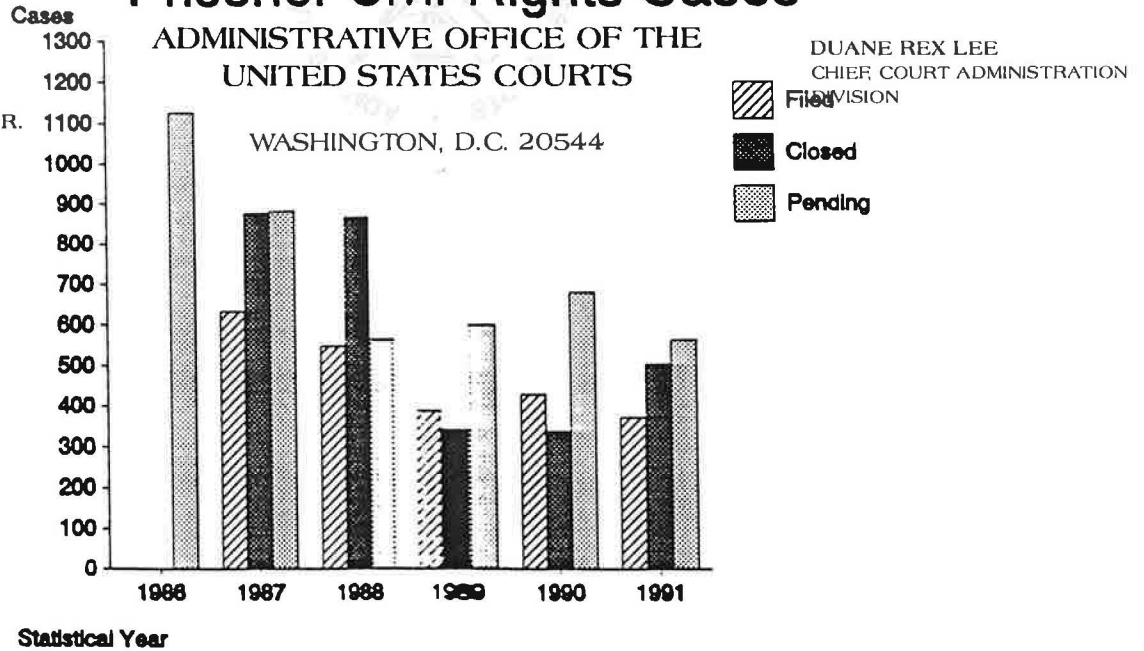
JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

SOUTHERN DISTRICT OF TEXAS
PRISONER CASE FILING AND DISPOSITIONS- 1987 - 1991

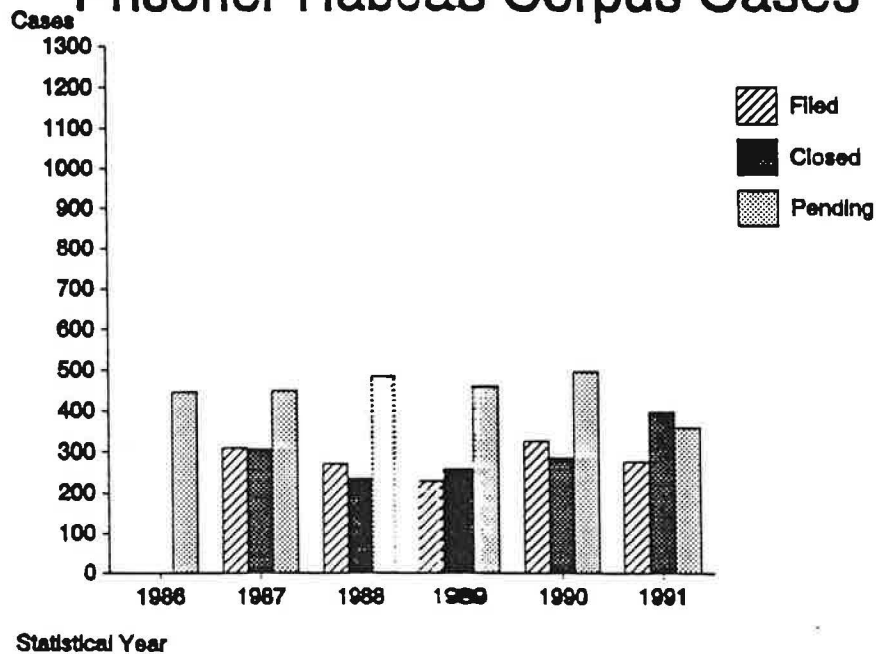
Prisoner Civil Rights Cases

L. RALPH MECHAM
 DIRECTOR

JAMES E. MACKLIN, JR.
 DEPUTY DIRECTOR



Prisoner Habeas Corpus Cases



Source: Appendix I, Detailed Statistical Tables, Annual Report of the Director of the Administrative Office of the U.S. Courts, Twelve Month Period Ended June 30, 1983-1990.

JS9 Statistical Report for July 1, 1990 through June 30, 1991, for Nature of Suit Codes 530, 540 and 550.

**Southern District of Texas
Staff Attorney Activity¹**

Date	Civil Rights Cases Handled				Habeas Corpus Cases Handled		
	Other Orders	Dismissal Orders	Total Orders	Hearings Held	Other Orders	Dismissal Orders	Total Orders
Totals²							
SY1987	1965	939	2904	564	0	0	0
SY1988	782	766	1548	261	0	0	0
SY1989	653	222	875	67	8	0	8
SY1990	865	320	1185	47	336	107	443
SY1991	642	443	1085	65	270	153	423

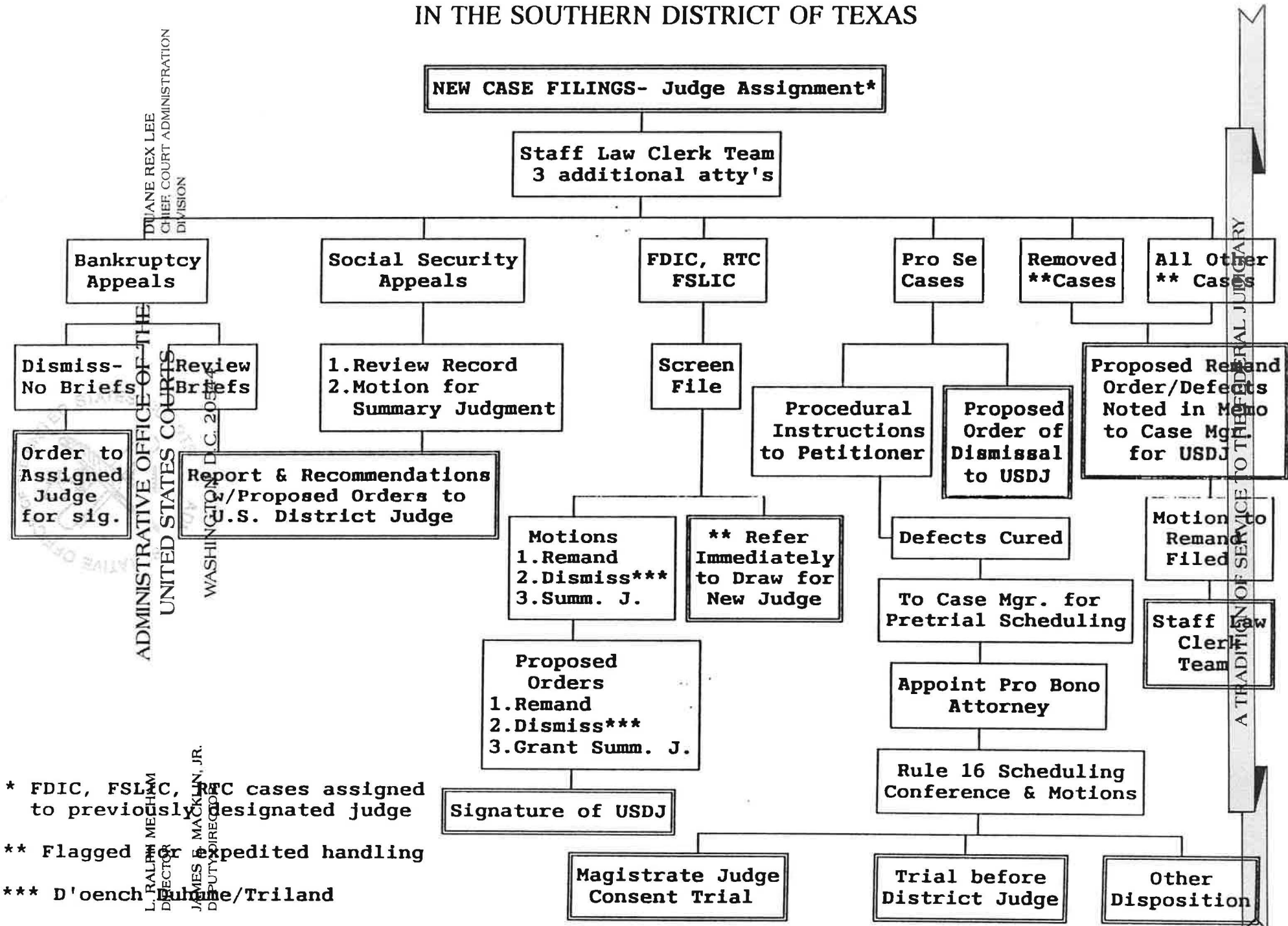
¹ Two (2) staff attorneys.

² Statistical Years (SY) are used here for ease of comparison with other reports. The Administrative Office statistical year begins on July 1, and ends on June 30.

Source: Staff Attorney Monthly Reports
 L. RALPH MECHAM
 DIRECTOR
 JAMES E. MACKLIN, JR.
 DEPUTY DIRECTOR

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PROPOSED ADDITIONAL DIFFERENTIAL CASE MANAGEMENT PRACTICES IN THE SOUTHERN DISTRICT OF TEXAS



* FDIC, FSLIC, RTC cases assigned to previously designated judge

** Flagged for expedited handling

*** D'oench, Duane/Triland

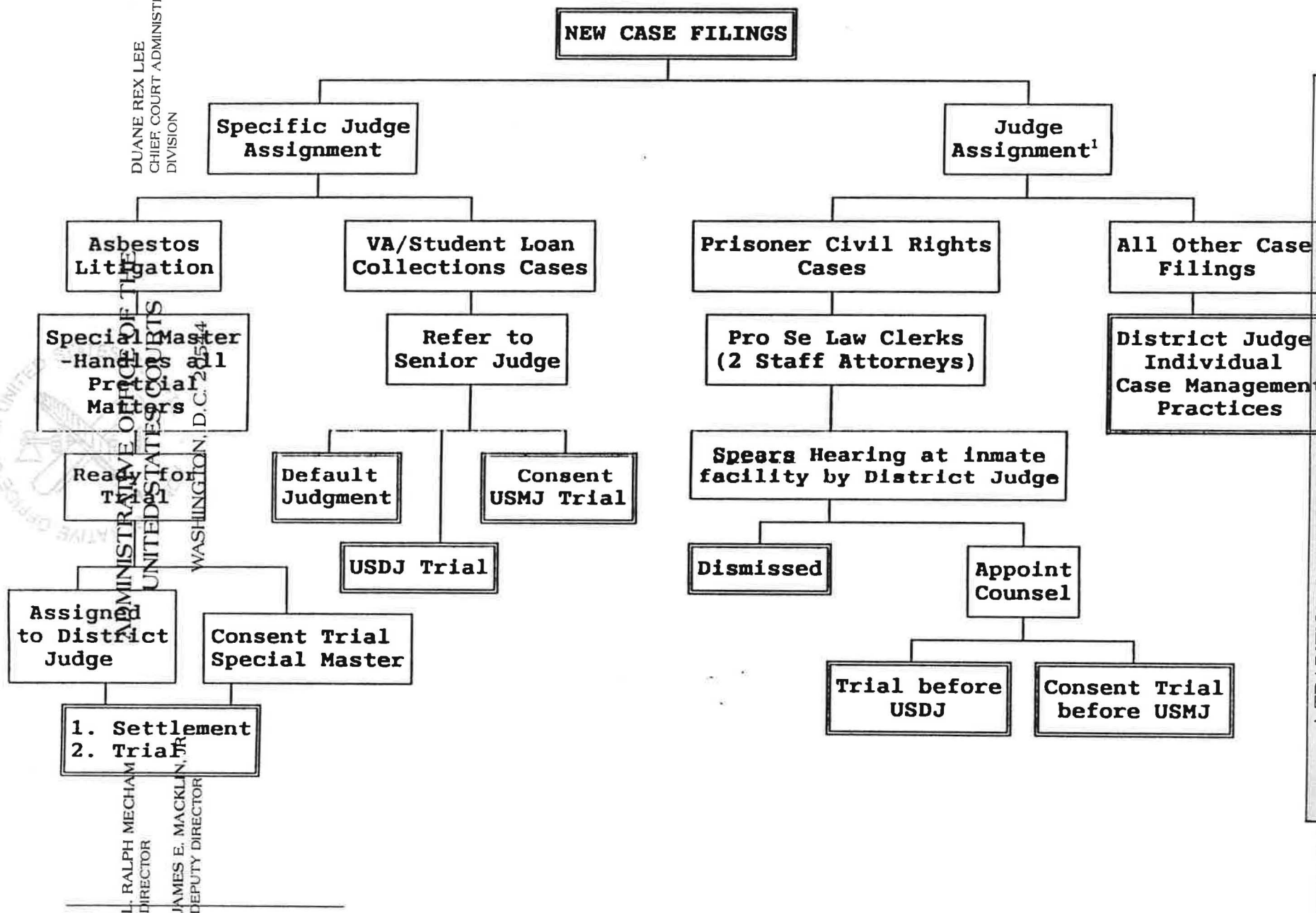
DUANE REX LEE
CHIEF COURT ADMINISTRATION
DIVISION

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

L. RALPH MEEHAM
DIRECTOR
JAMES B. MACKIN, JR.
DEPUTY DIRECTOR

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CURRENT DIFFERENTIAL CASE MANAGEMENT PRACTICE IN THE SOUTHERN DISTRICT OF TEXAS



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¹ Houston Division random draw among 10 judges.