

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

AR

OFFICE OF THE CLERK
800 UNITED STATES COURTHOUSE
NASHVILLE, TENNESSEE 37203

May 15, 1995

Mr. Abel Mattos
CJRA Plan Director for the AO
Court Administration Division
Administrative Office of the
United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Mr. Mattos:

Enclosed is one copy of the Civil Justice Reform Act Annual Assessment prepared by the Advisory Group for the Middle District of Tennessee. Please let me if you need any additional copies.

Sincerely,



Patricia Farmer, CJRA Analyst

Enclosure

**CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**REPORT TO THE COURT:
ANNUAL ASSESSMENT**

MAY 1995

INTRODUCTION

This Court adopted a Cost and Delay Reduction Plan in December 1993 in accordance with 28 U.S.C. § 471, *et seq.* The Plan, along with a number of associated new and revised local rules, went into effect March 1, 1994. Pursuant to 28 U.S.C. § 475, the Court is required to "assess annually the condition of the Court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court." In performing this assessment, the Court is to consult with its Advisory Group.

According to the Court Administration and Case Management Committee of the Judicial Conference, the annual assessment should be prepared as a written document and be submitted to the Administrative Office and the Federal Judicial Center. In addition to the analysis of the dockets required by the statute, that Committee has requested an examination of the Plan's impact on other elements of importance to the Court including the Court's budget, litigation costs, and attorney, client and judge satisfaction.

On April 17, 1995, the Advisory Group met to consider the condition of the docket and the effect of the Cost and Delay Reduction Plan during its first year of implementation. A majority of the members attended along with the former Advisory Group Reporter, Magistrate Judge Griffin, the Clerk of the Court, Roger Milam, and Patty Farmer of the Clerk's staff. This Report contains the findings and recommendations that emerged from that meeting, and is being submitted to assist the Court in performing its annual assessment.

The Advisory Group began by reviewing the condition of the docket as it existed during the data gathering phase of the Advisory Group's work, which led to the recommendations made in its November 1993 Final Report. At that time it was believed that the docket was generally in good shape as evaluated by all available statistical measures and that many problems that existed in other districts were not issues here. There was, however, concern that the criminal docket was growing rapidly, requiring an increase in the number of criminal trials and in-court time spent on criminal matters and a concomitant reduction of civil trials and in-court time spent on civil matters. The Advisory Group also reviewed the findings it had previously made on the causes of cost and delay in this District and the essential features of the Cost and Delay Reduction Plan adopted by the Court.

THE CURRENT CONDITION OF THE DOCKET

To evaluate the current condition of the Court's docket, the Advisory Group considered data from several sources. Certain charts appended to the November 1993 Final Report had been updated to include information for the years 1993 and 1994¹. These showed that total case filings, civil case filings, and criminal felony filings had remained relatively constant for the last several years. The four largest categories of cases in this district in terms of case filings continue to be prisoner rights, civil rights, tort, and contract. Certain trends were noted. The number of prisoner cases continues to climb as does the number of civil rights cases. The latter is a particular cause of concern as civil rights cases are believed to require a greater than average amount of the Court's time. On the other hand, the number of contract cases has declined.

Researchers at the Federal Judicial Center suggest that developing ratios of pending cases to terminated cases and of terminated cases to filed cases provides measurements of the effectiveness of a court in keeping its docket current and preventing the buildup of a backlog. Ratios prepared for the Advisory Group demonstrate that the Court has been consistently effective in closing cases relative to new filings and keeping its docket current.² Information contained in the most recent Judicial Workload Profile supported that conclusion.³ The median time from filing to disposition in civil cases has remained fairly constant at nine months. This is an average performance among district courts, and this District ranks fourth within the Circuit and forty-fourth within the nation. Surprisingly, the median times from issue to trial in civil cases has increased markedly from 15 months in 1992 to 23 months in 1994. The Advisory Group believed this statistic may only indicate that more older cases were terminated in 1994 than normal, and not that the life span of the average case was increasing. This conclusion is

¹ See Attachment 1, "Appendix F (Revised to include 1993 and 1994)."

² Id., Exhibits 5-6.

³ See Attachment 2, "U.S. District Court -- Judicial Workload Profile." The Administrative Office which prepared this profile, has changed to a September 30 statistical year. Attachment 2 was custom-made for the Advisory Group using a June 30 statistical year so the information could be compared to that collected in the earlier phase of the Advisory Group's work.

bolstered by data concerning trends in the number and percentage of civil cases over three years old. While these numbers more than doubled from 1989 to 1993, some improvement occurred in 1994 showing that a larger number of older cases had been closed.

Two other factors that may affect the docket in 1995 were broached by Mr. Milam. First, an unusually large number of cases were filed in the first quarter, and if that trend were to continue the filings for 1995 could reach 1,800. Second, Judge Wiseman will take senior status in November 1995, and when his replacement takes office, there will be two senior judges in addition to four active district judges in this district.

Information comparing the civil docket and criminal dockets contained welcome news. Charts 4 and 10 in a document prepared jointly by the Administrative Office and the Federal Judicial Center indicated a reversal of the previously observed trend concerning civil and criminal trials.⁴ The number of civil trials and civil trials as a percentage of total trials increased significantly from 1992 to 1994. Likewise, the number of criminal trials and criminal trials as a percentage of total trials had declined from 1992 to 1994. Charts prepared for the Advisory Group showing the number of criminal and civil trials and the amount of in-court time spent on civil and criminal matters for 1993 and 1994 confirmed that the encroachment of the criminal docket on the civil docket has subsided, at least for the moment.⁵ These charts also show that total in-court time for the four district judges for all matters has increased almost 700 hours from 1991 to 1994, which may be in large part attributable to the addition of the fourth district judge in mid-1992. At the same time, the in-court hours spent on criminal matters increased very little since 1992, so the expanded judicial in-court time was available for the civil docket. While this was seen as a very positive development, it was suggested that the number of criminal case filings in 1993-94 was lower

⁴ See Attachment 3, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, SY94 Statistics Supplement".

⁵ See Attachment 4, charts entitled "Total Number of Civil and Criminal Trials 1985-1994" and "In-Court Time 1985-1994."

than in 1991-92,⁶ and the situation could easily change due to prosecutorial activity over which the Court may have little control.

From this review of the docket, the Advisory Group concluded that the condition of the docket is relatively unchanged from several years ago in terms of the number and types of case filings. The Court continues to be effective in keeping the docket current, and there are indications that the Court has been disposing of more older cases than usual. There has been an increase in the number of civil trials and a significant increase in the amount of in-court time devoted to civil matters, while the amount of in-court time spent on criminal matters is relatively unchanged and the number of criminal trials has actually gone down.

THE IMPACT OF THE COST AND DELAY REDUCTION PLAN

The Advisory Group next considered the impact of the Cost and Delay Reduction Plan during its first year of implementation. It was the consensus that it is too soon to make an accurate assessment of the effectiveness of the Plan, particularly the customized case management system that was established. The Advisory Group observed that there are a number of variations in the practices of individual judges under the customized case management system. Some members expressed concerns about individual practices, but no one voiced criticism of the fact that there were variations among the judges.

Early statistical information appears to indicate that the customized case management system is achieving its goals. The Advisory Group reviewed a study prepared by Ms. Farmer, which involved a comparison of cases filed in the first six months after implementation with cases filed in the six months prior to implementation.⁷ This study revealed that under customized case management the number of cases terminating within six months of filing has increased, that dispositive motions are being filed substantially earlier in cases resulting in earlier case terminations, and that dispositive motions are being resolved more quickly.

⁶ See Attachment 1, Exhibit 4.

⁷ See Attachment 5, "Report On Impact Of Cost And Delay Reduction Plan, March 1995."

Only one district judge has continued the practice of referring dispositive motions to magistrate judges for report and recommendations, and data has not been developed to indicate whether those motions were filed as early and resolved as quickly in those cases as in the cases assigned to the other district judges. Initial case management conferences are being held within 45 days of filing in the majority of cases. A significant number were held within 90 days of filing, at least partially due to one district judge's specific policy of scheduling conferences 90 days after the complaint is filed. Early indications are that fifty percent more case management cases than pre-case management cases are terminating within the first two months after filing. It is believed that such terminations occur simply because a face-to-face case management conference with a judicial officer is scheduled to occur during the early stage of the case.

Advisory Group members continued to have different views on the efficacy of staying discovery in the period before the initial case management conference is held. One view is that the stay causes a complete halt to the case for 45 days. The contrary view is that the discovery that emerges from the initial case management conference is more focused, is more cost effective, and gets produced more quickly.

The question arose whether Local Rule 11's pre-conference requirements of counsel are sufficiently clear. The Advisory Group generally agreed that this process has no more problems than any other system in that respect, noting that if there are good lawyers on both sides of the case who want the system to work, it will work. Any sloppiness in the lawyers' handling of the pre-conference requirements gets "washed out" under customized case management more quickly than had been the case under the former scheduling order procedure. There were no complaints about the way conferences are conducted, the orders that result from conferences, or the need to obtain the case manager's approval of modifications of case management orders. The Advisory Group did not believe Local Rule 11 should be changed to allow stipulated modifications without court approval pursuant to Federal Rule of Civil Procedure 29. It is believed that discovery is being staged for the different needs of each case, including the needs for settlement, dispositive motions, and for trial. The court's decision to opt out of Federal Rule of Civil Procedure 26(a)(1) was overwhelmingly applauded. No complaints were voiced about the stay of discovery during the pendency of dispositive motions as provided in Local Rule 11.

Turning to Alternative Dispute Resolution, the Advisory Group observed that the Court had appointed a committee to advise it on developments in ADR, which has awaited the action of the Tennessee Supreme Court before recommending or implementing any additional ADR procedures. No data was available to the Advisory Group to evaluate the effectiveness of formalizing the settlement conference procedures in Local Rule 20.

With respect to scheduling civil trial dates, the data indicated that all but one of the district judges are following the portion of the Cost and Delay Reduction Plan that provides that cases not be set for trial in the early stages to prevent the trial calendar from being artificially clogged with cases not ready for trial or not needing a trial. As previously noted, more civil cases were tried during 1994, but a correlation between that fact and the Court's docketing practices could not be documented at this time. On the other hand, case management cases have not yet progressed to the point to which they are ready to be set for trial pursuant to the "Civil Trial Week" mechanism in any significant way, so the impact of that feature of the Plan could not be evaluated.

In the Cost and Delay Reduction Plan, the Court amended Local Rule 12(c)(6)(C) to make optional the preparation and use of an expert witness statement as the expert's direct testimony at trial. It was noted, however, that one district judge makes the Rule 12(c)(6)(C) statement mandatory and does not permit depositions of trial experts. Some members expressed the view that the Rule 12(c)(6)(C) statement is not an adequate or effective substitute for a deposition of an expert in preparing for cross-examination at trial.

Finally, the Advisory Group considered a proposal to adopt Local Rule 11(A) on final pretrial procedures, which would govern the exchange of witness lists, exhibit lists, deposition designations, and other final pretrial matters. While repealed Local Rule 11 contained such provisions, they were not incorporated into new Local Rule 11. Initially it was noted that several features of proposed Local Rule 11(A) conflict with the time requirements and the waiver of objections features set forth in Federal Rule of Civil Procedure 26(a)(3). However, the Advisory Group ultimately believed that the proposed Local Rule 11(A) was not necessary as these final pretrial procedures were being adequately addressed through the customized case management process.

TYPE AND NUMBER OF CIVIL CASE FILINGS

Statistical Year 1984 - 1994 (Revised)

Year	Social Security	Recovery of Overpayments	Prisoner	Forfeitures and Tax	Real Property	Labor	Contracts	Torts	Copyright, Patent, and Trademark	Civil Rights	Antitrust	Other	Total
1994	77	31	532	48	10	78	116	199	33	224	2	100	1450
1993	84	64	476	75	8	66	140	175	28	201	1	140	1458
1992	55	110	429	67	16	77	162	165	28	221	5	133	1468
1991	66	32	524	69	32	33	151	182	33	158	7	92	1390
1990	49	67	518	68	20	55	187	242	30	165	1	98	1500
1989	92	106	411	52	26	52	233	188	35	140	2	107	1444
1988	42	77	375	25	26	43	223	581	26	134	3	111	1666
1987	85	53	367	39	25	39	257	181	35	128	6	109	1324
1986	109	203	446	59	20	32	231	176	30	131	6	115	1558
1985	101	457	390	70	30	36	235	205	19	128	3	130	1804
1984	230	346	271	66	8	39	202	127	20	177	6	119	1611

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

TENNESSEE MIDDLE		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1994	1993	1992	1991	1990	1989			
OVERALL WORKLOAD STATISTICS	Filings*	1,647	1,617	1,669	1,633	1,707	1,645			
	Terminations	1,654	1,606	1,651	1,478	1,921	1,612			
	Pending	1,411	1,432	1,461	1,418	1,349	1,588			
	Percent Change In Total Filings Current Year	Over Last Year . . .	1.9						[35]	[3]
	Over Earlier Years . . .		-1.3		.9	-3.5	.1	[42]	[3]	
	Number of Judgeships	4	4	4	4	3	3			
	Vacant Judgeship Months**	.0	.0	9.6	7.0	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	412	404	417	408	569	548	[40]	[4]
		Civil	363	365	367	348	500	481	[40]	[4]
		Criminal Felony	49	39	50	60	69	67	[37]	[4]
	Pending Cases	353	358	365	355	450	529	[47]	[5]	
	Weighted Filings**	380	360	381	354	499	496	[54]	[5]	
	95% Confidence	Upper	405	393	383	405	375	532		
		Lower	356	344	336	358	332	466		
	Terminations	414	402	413	370	640	537	[37]	[4]	
	Trials Completed	31	32	31	26	35	33	[38]	[2]	
	MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.5	8.0	7.0	6.5	5.7	5.4	[54]
Civil**			9	9	8	8	12	8	[44]	[4]
From Issue to Trial (Civil Only)		23	14	15	13	11	11	[65]	[7]	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	90	102	90	77	54	46			
		7.0	7.8	6.8	6.2	4.5	3.1	[71]	[8]	
	Average Number of Felony Defendants Filed per Case	1.5	1.4	1.4	1.4	1.5	1.5			
	Jurors	Avg. Present for Jury Selection**	26.79	24.83	26.85	27.60	30.23	39.04	[24]	[3]
Percent Not Selected or Challenged**		21.8	16.2	18.0	26.9	32.3	46.1	[25]	[1]	

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

1994 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	1450	77	21	532	48	10	78	126	199	33	224	2	100
Criminal*	193	1	10	20	3	21	9	19	7	61	4	19	19

* 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
SY94 Statistics Supplement

Research Division
202-273-4070



memorandum

DATE: November 8, 1994
TO:

Juliet Griffin
United States District Court
800 U.S. Courthouse
801 Broadway
Nashville, TN 37203

RECEIVED
IN CLERK'S OFFICE

NOV 14 1994

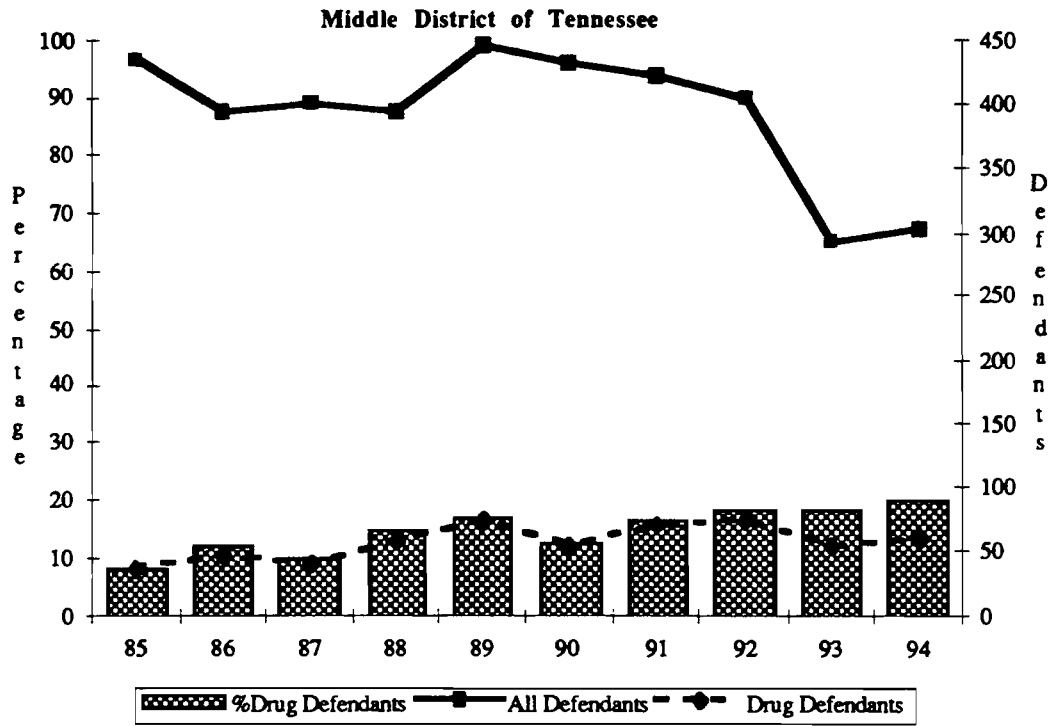
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

FROM: John Shapard
SUBJECT: 1994 Statistical Supplement for CJRA Advisory Groups

I made an error in the computations for one of charts in the 1994 Statistical Supplement for CJRA Advisory groups, which I recently sent to you with a memorandum dated October 30, 1994. The error occurs in Chart 9 (page 16), and may have falsely suggested a notable decrease in criminal filings for SY94. The corrected chart appears on the back of this memorandum.

Please accept my apologies for any confusion this error may have occasioned.

Chart 9: Criminal Defendant Filings with Number and Percentage Accounted for by Drug Defendants, SY85-94





memorandum

DATE: October 30, 1994
TO:

Juliet Griffin
United States District Court
800 U.S. Courthouse
801 Broadway
Nashville, TN 37203

FROM: John Shapard
SUBJECT: 1994 Statistical Supplement for CJRA Advisory Groups

Enclosed is a copy of the 1994 Statistical Supplement for CJRA Advisory groups, an overview of caseload statistics for the Middle District of Tennessee. At the request of court and advisory group personnel, we have provided this update each year since 1991, when these materials appeared in a larger report, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990."

I hope you find the enclosure to be useful.

This memorandum and the report for your district were also sent to:

Honorable John T. Nixon
R. Dale Grimes

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

SY94 Statistics Supplement

October 1994



Prepared for the Middle District of Tennessee

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 1994 (the twelve months ended June 30, 1994). 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 and all charts except charts 4 and 10 may show slight variations even for prior years, owing to retroactive changes in caseload data. The variations arise from at least three 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 and termination counts. Finally, significant discrepancies are occasionally discovered between the true status of a district's caseload and A.O. caseload data for that district, which may be corrected by a significant one-time change in the district data (e.g. a statistical adjustment that decreases pending cases by 300).
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 corrected in this and previous updates. 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 and previous updates.
4. In December, 1993, the Subcommittee on Judicial Statistics accepted a new set of case weights based on a time study begun in 1987. These new weights were employed to prepare Chart 3 (page 13), which may result in updates of Chart 3 for 1993 and later years looking significantly different from previous editions.

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, SY92-94
Middle District of Tennessee**

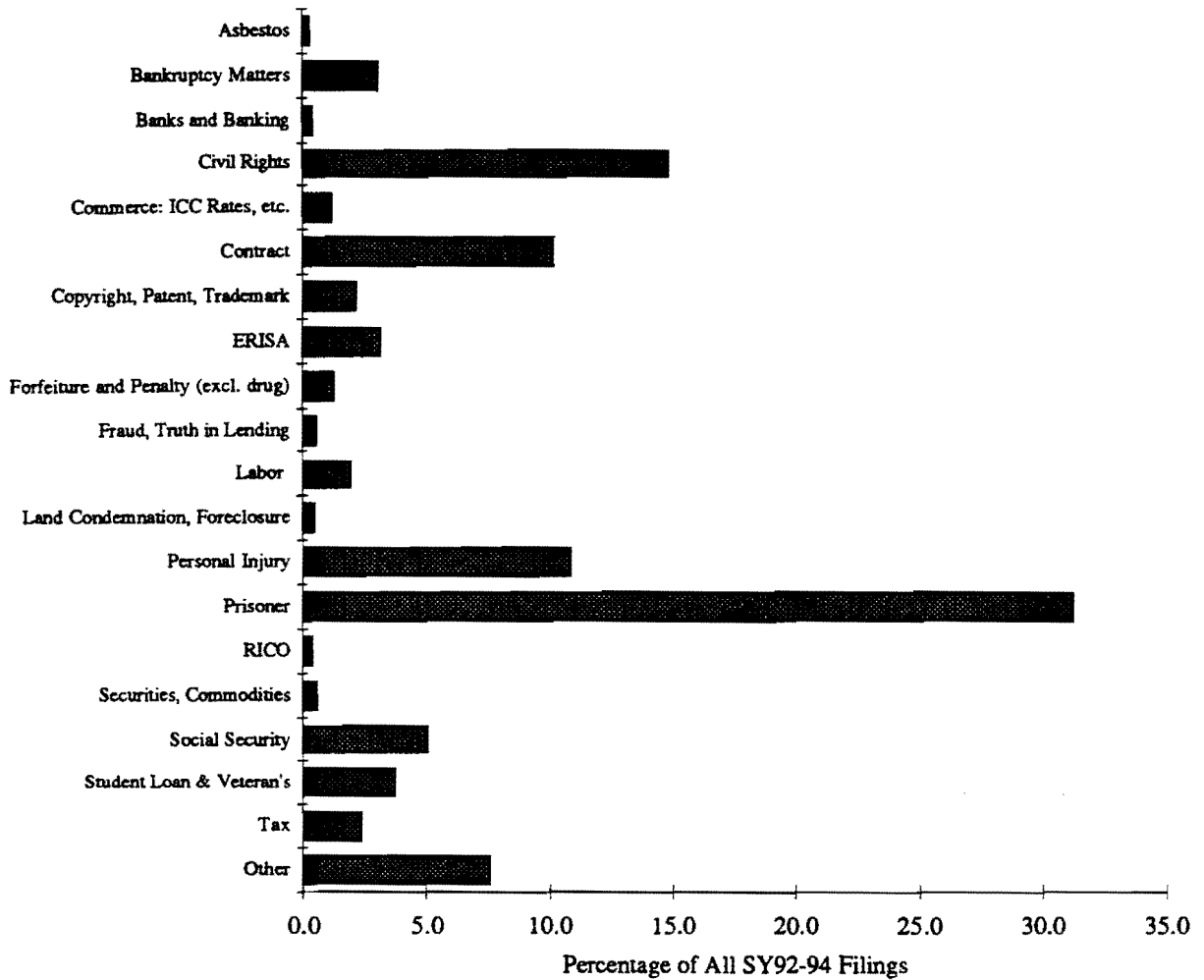


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY85-94
Middle District of Tennessee

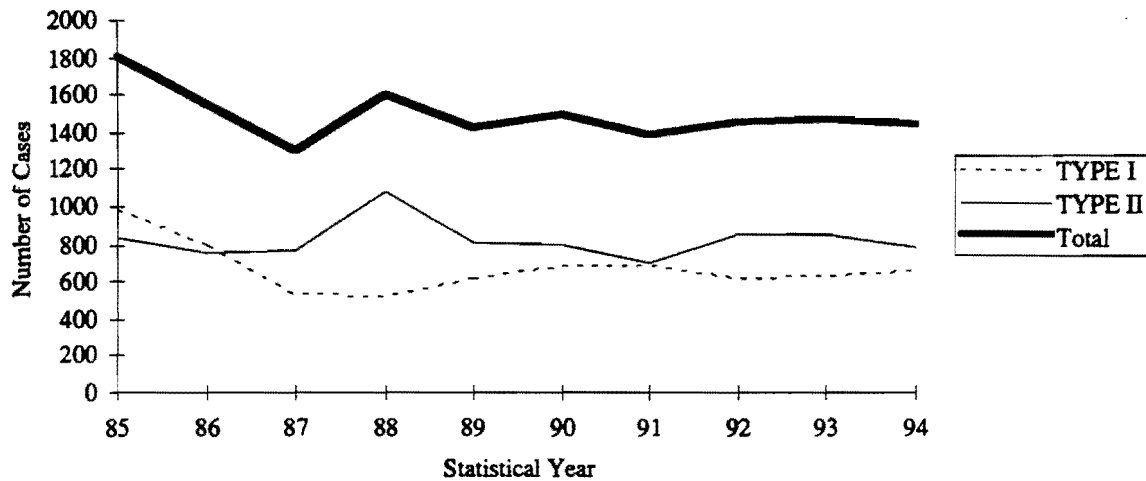
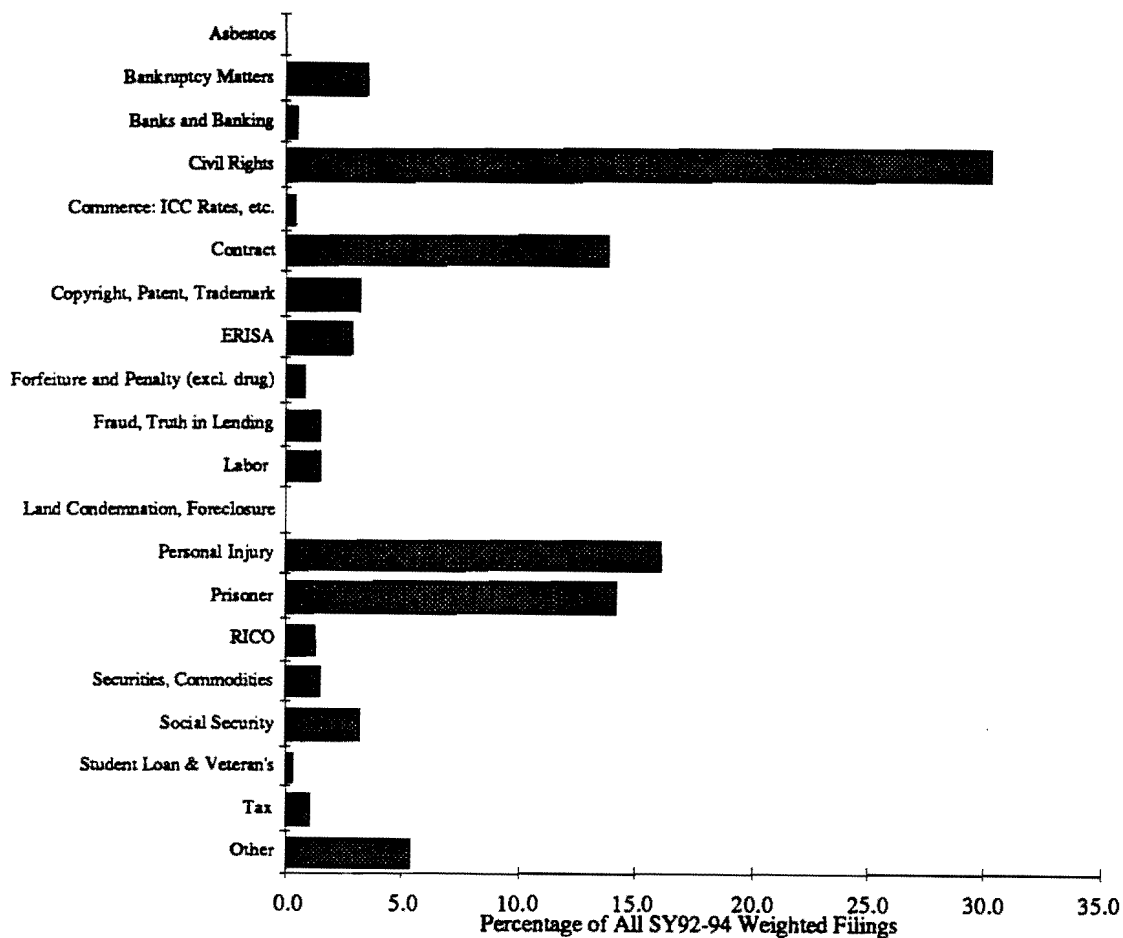


Table 1: Filings by Case Type, SY85-94

Middle District of Tennessee	YEAR									
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Asbestos	10	8	11	40	5	39	23	1	0	9
Bankruptcy Matters	44	36	25	20	34	39	32	43	53	37
Banks and Banking	14	7	3	3	3	1	2	3	6	2
Civil Rights	128	131	127	128	140	166	154	218	205	223
Commerce: ICC Rates, etc.	1	1	7	13	8	3	2	20	22	4
Contract	236	227	251	210	231	181	149	158	160	124
Copyright, Patent, Trademark	20	30	34	24	35	31	33	28	30	33
ERISA	12	8	15	15	20	25	19	47	41	49
Forfeiture and Penalty (excl. drug)	16	34	12	10	21	35	24	16	21	15
Fraud, Truth in Lending	11	16	18	16	10	30	14	7	8	8
Labor	24	24	24	27	31	30	25	30	25	29
Land Condemnation, Foreclosure	4	10	15	17	6	13	25	7	4	5
Personal Injury	170	144	135	503	154	157	128	141	165	167
Prisoner	380	438	354	341	386	493	512	404	444	516
RICO	0	2	3	6	2	7	4	4	6	4
Securities, Commodities	14	19	21	21	16	11	9	9	9	6
Social Security	99	109	86	31	86	49	67	55	85	77
Student Loan and Veteran's	447	197	50	67	98	57	25	103	40	19
Tax	55	26	24	10	31	30	32	33	42	25
All Other	130	86	88	101	103	90	104	130	104	92
All Civil Cases	1815	1553	1303	1603	1420	1487	1383	1457	1470	1444

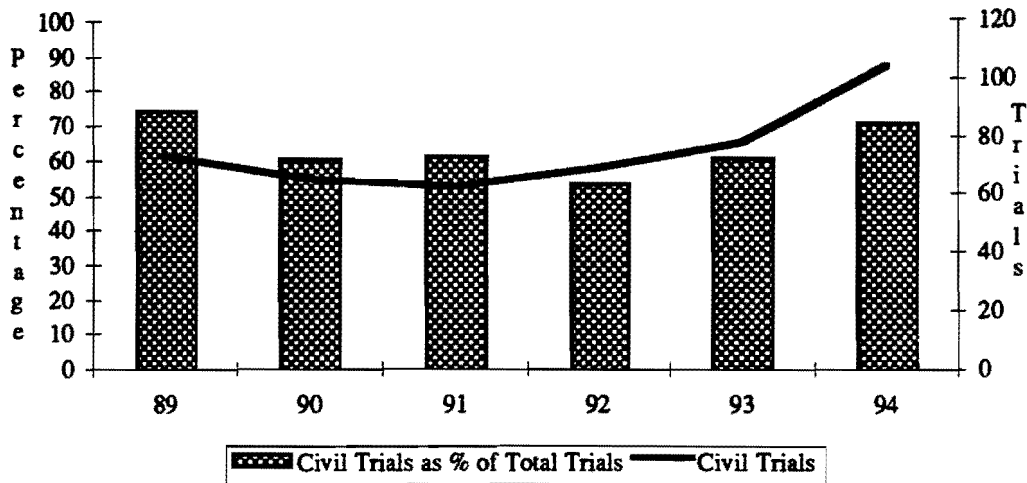
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights (revised in August, 1993) 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, SY92-94
Middle District of Tennessee**



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, SY89-94
Middle District of Tennessee**



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.

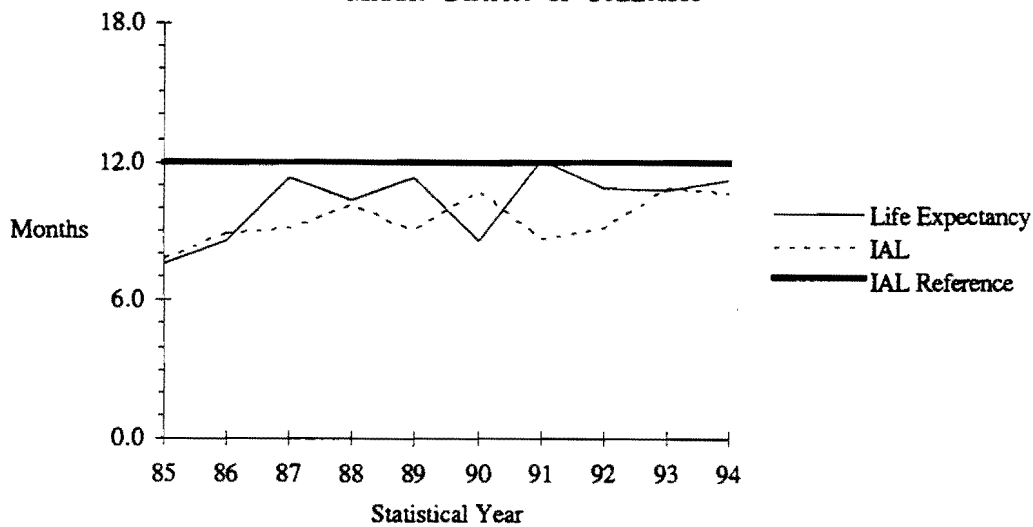
Since age of cases terminated in the most recent years is not a reliable predictor of next year’s prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: “How long is a newborn likely to live?” Life expectancy can be applied to 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

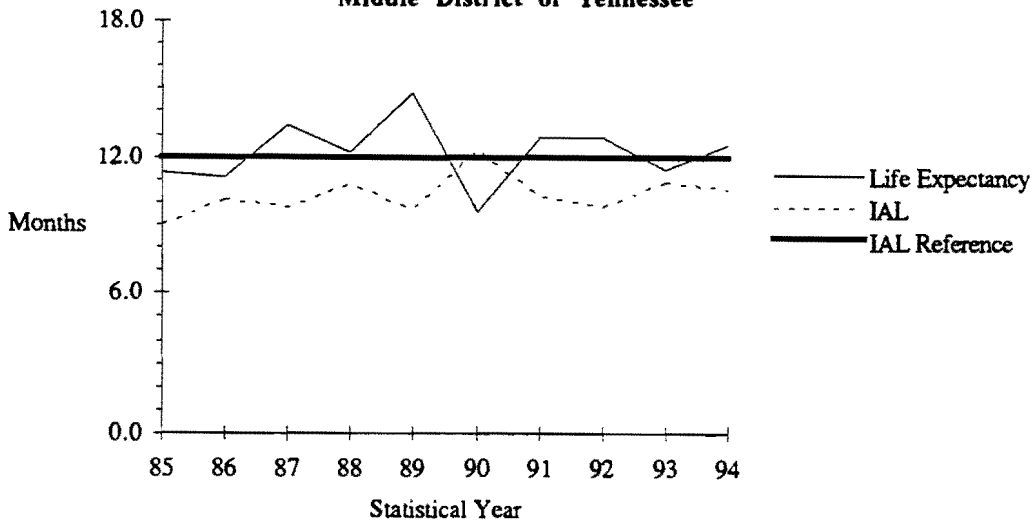
indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

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 SY85-94
Middle District of Tennessee**



**Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY85-94
Middle District of Tennessee**



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 SY92-94, By Termination Category and Age
Middle District of Tennessee
Termination Category (Percent 3 or more years old)

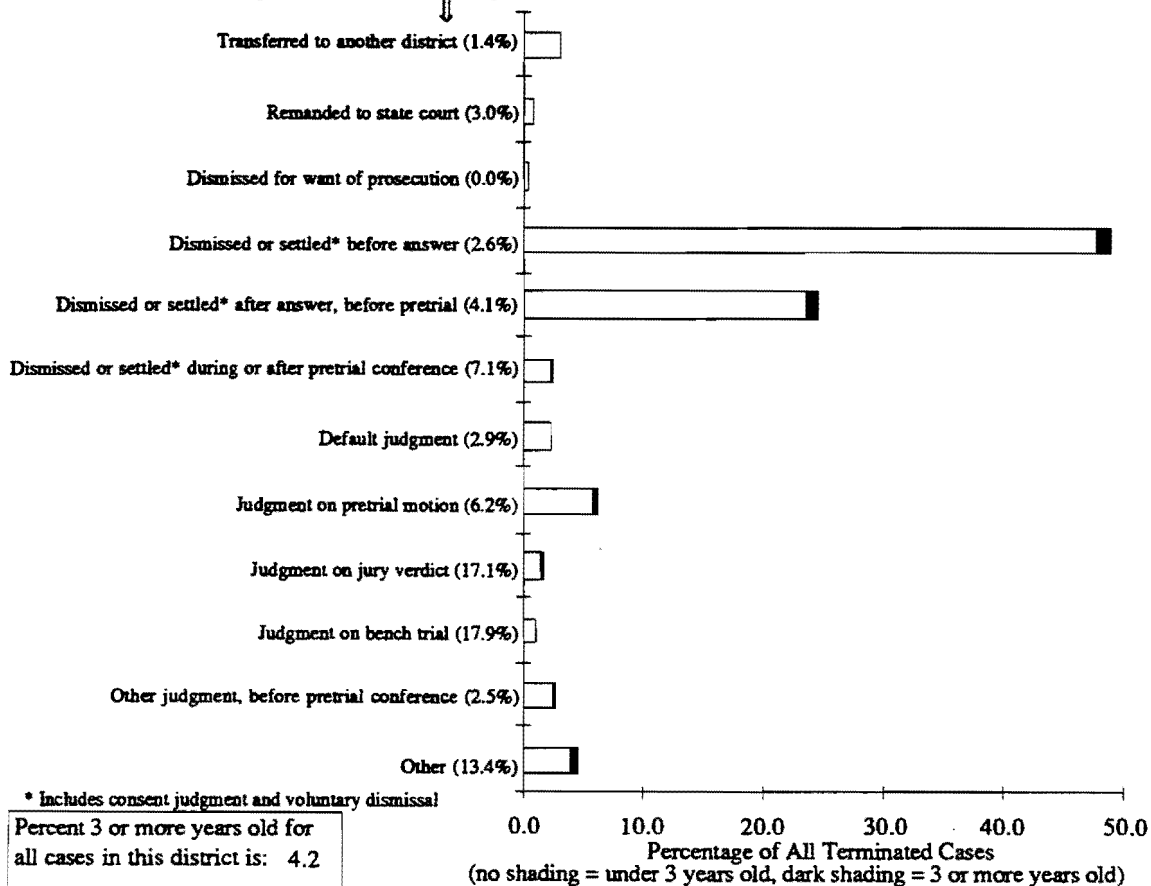
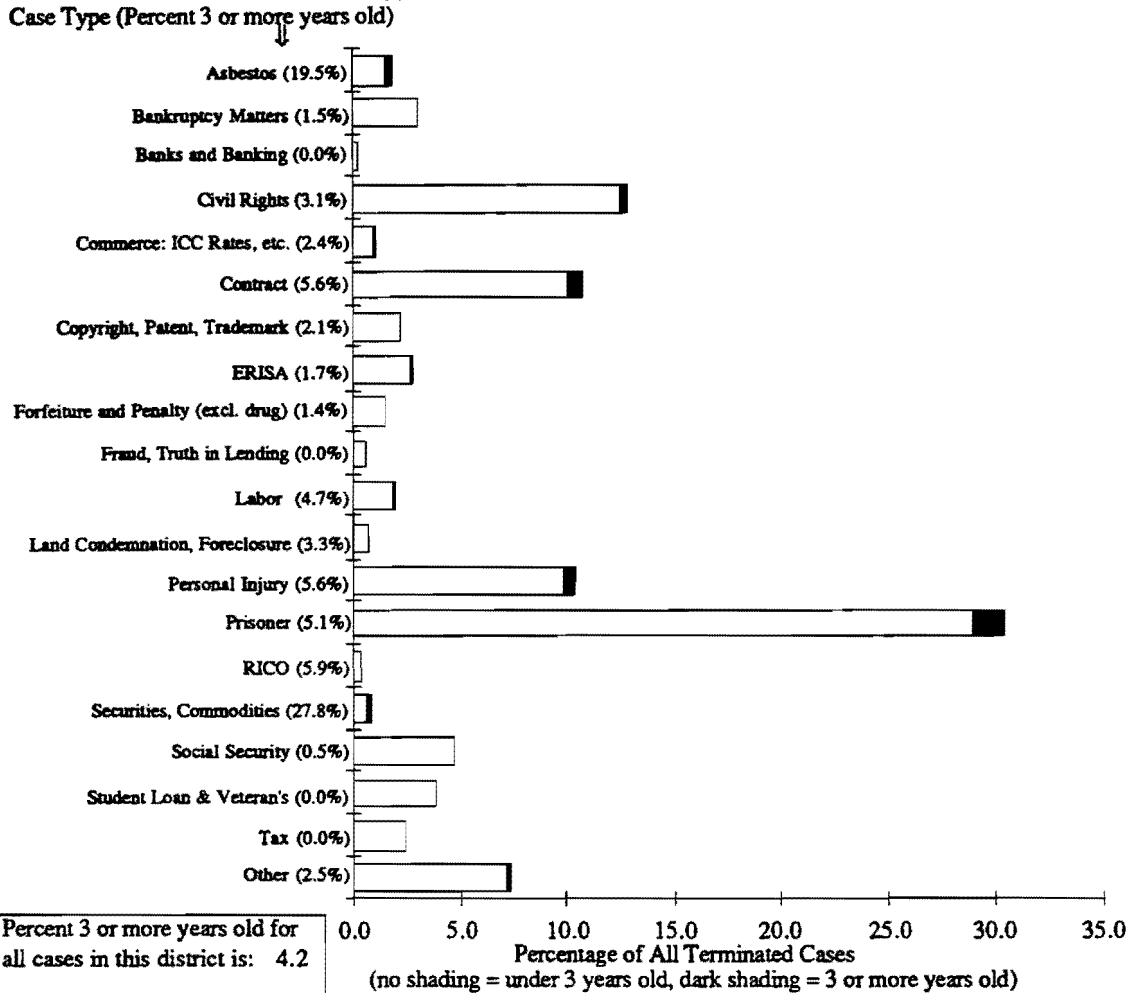


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY92-94, By Case Type and Age
Middle District of Tennessee



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

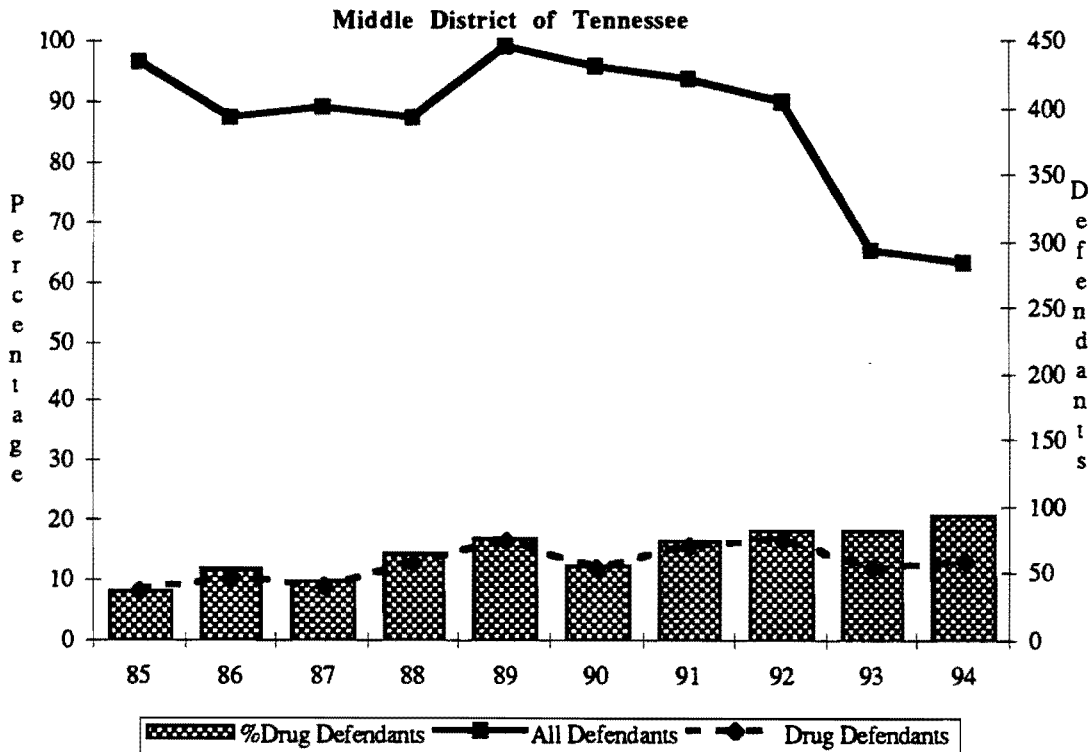
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

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.

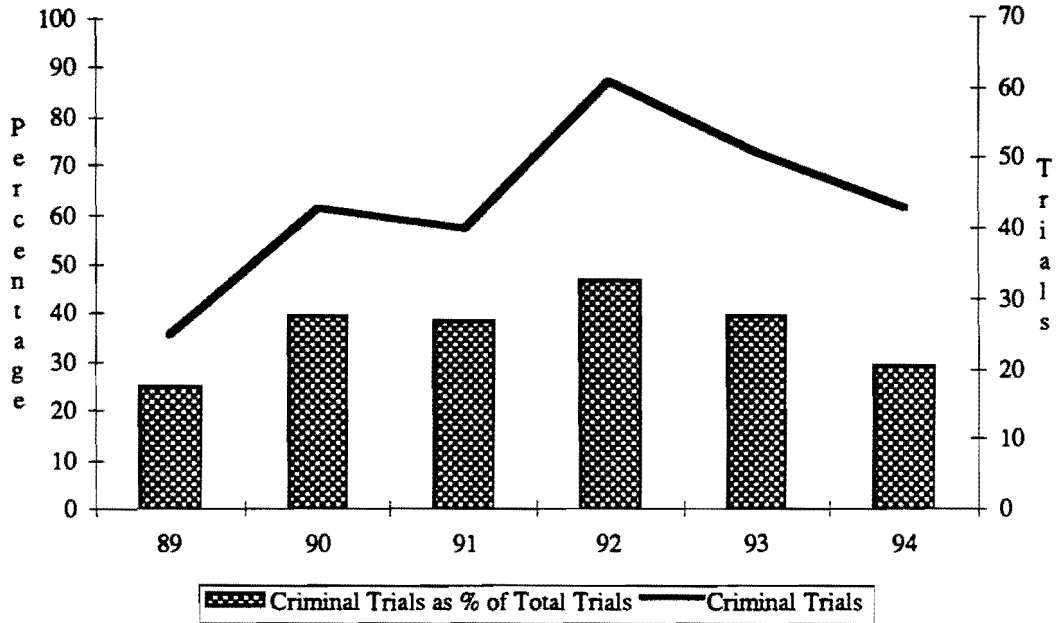
The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions 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 (202-273-2290).

Chart 9: Criminal Defendant Filings with Number and Percentage Accounted for by Drug Defendants, SY85-94



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, SY89-94
Middle District of Tennessee**



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from 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 (202) 273-4070.

Charts:

Total Number of Civil and Criminal Trials, 1985 - 1994

In-Court Time, 1985 - 1994

TOTAL NUMBER OF CIVIL AND CRIMINAL TRIALS

1985 - 1994

Year	TRIALS		
	Civil	Criminal	Total
1985	58	17	75
1986	51	10	61
1987	61	15	76
1988	63	13	76
1989	47	21	68
1990	51	21	72
1991	30	36	66
1992	46	32	78
1993	49	25	74
1994	65	20	85

IN-COURT TIME

1985 - 1994

RECAP FOR ALL JUDGES								
Year	Criminal Hours				Civil Hours			Total Hours
	Trial	Plea/ Sentencing Hearings	Other	Total	Trial	Other	Total	Administrative Time Included
1985	335.5	220.7	92.4	649.6	976.6	845.7	1822.4	2486.0
1986	146.7	209.1	147.5*	503.2	856.8	743.1	1545.5	2062.0
1987	374.5*	186.2	116.8*	623.0	820.4	315.2	1135.6	1828.0
1988	178.0	292.4	132.1	602.5	870.7	367.6	1227.2	1839.5
1989	475.8	287.5	117.9	881.2	766.9	502.1	1269.0	2163.0
1990	435.7	278.1	154.6	868.4	593.2	384.8	978.0	1855.5
1991	584.3	341.1	157.2	1082.5	527.5	481.4	1008.9	2106.5
1992**	709.0	268.7	186.2	1163.9	692.3	533.5	1225.7	2408.0
1993	513.0	302.9	208.8	1024.7	871.4	475.2	1346.7	2393.0
1994	734.58	306.15	155.55	1196.28	1067.27	503.83	1571.10	2790.5

* Includes 39.33 Other Criminal hours in 1986, and 157.5 Trial hours and 10.0 Other Criminal hours in 1987 for Judge Higgins in the Eastern District of Tennessee

** Includes Judge Echols' total time from April 20, 1992

ATTACHMENT 5

**REPORT ON IMPACT OF
COST & DELAY REDUCTION PLAN**

I. CASES

I. Case Filings.

A list is attached which tracks cases filed under customized case management (CCM) for the 6 months following adoption of Amended Local Rule 11, and another list tracks cases filed during the 6 months immediately prior to enactment of case management (Pre-CCM).

(a) CUSTOMIZED CASE MANAGEMENT (CCM) FILINGS:

702 cases have been filed in the Middle District from March 1, 1994, through August 31, 1994.

247 of these cases were subject to customized case management (CCM) under Rule 11 (amended). This number includes 3 pre-March 1, 1994, cases converted to CCM.

Of the 247 cases, 118 have been terminated and 129 are still pending as of February 1, 1995.

(b) PRE-CCM FILINGS:

679 cases were filed in this district from September 1, 1993, through February 28, 1994.

278 of these cases would have qualified for CCM had it been enacted. Three (3) of these cases were converted to case management, leaving 275 in the test group.

Of the 275 cases, 169 have been terminated and 106 are pending as of February 1, 1995.

(c) AGE OF CASE AT TERMINATION:

The following chart is a time-line for terminated cases in the customized case management and pre-March 30, 1994, cases included in these study lists:

Age at Termination	CCM (oldest case is 12 mo.)	Pre- CCM (oldest case is 18 mo.)
0 - 1 month	7	6
1 - 2 months	26	16
2 - 3 months	12	11
3 - 4 months	20	17
4 - 5 months	20	14
5 - 6 months	8	12
6 - 7 months	6	10
7 - 8 months	10	18
8 - 9 months	7	17
9 - 10 months	1	18
10 - 11 months	0	8
11 - 12 months	0	10
12 - 13 months	*1	4
13 - 14 months		3
14 - 15 months		4
15 - 16 months		1
16 - 17 months		0
17 - 18 months		0
TOTALS:	118	169

The starred (*) case was actually filed prior to adoption of Amended Rule 11 but is being managed under customized case management.

II. DISPOSITIVE MOTIONS

1. Age of Case at Filing of Dispositive Motions.

- (a) 145 dispositive motions were filed in 102 of the 247 CCM study cases from March 1, 1994, through February 1, 1995.
- (b) 158 dispositive motions were filed in 101 of the 275 Pre-CCM study cases filed from September 1, 1993, through February 28, 1994.

The ages of the CCM and pre CCM cases at the time the motions were filed are charted as follows:

Age of case at time Dispositive Motion was filed	CCM	Pre- CCM
0 - 1 month	26	22
1 - 2 months	29	21
2 - 3 months	27	17
3 - 4 months	15	9
4 - 5 months	16	8
5 - 6 months	9	14
6 - 7 months	9	18
7 - 8 months	2	7
8 - 9 months	10	8
9 - 10 months	1	12
10 - 11 months	1	8
11 - 12 months		6
12 - 13 months		2
13 - 14 months		2
14 - 15 months		1
15 - 16 months		1
16 - 17 months		2
17 - 18 months		0
TOTAL MOTIONS:	145	158

2. Age of Case at Termination due to Ruling on Dispositive Motion.

(a) CCM terminations.

22 CCM cases were terminated as a result of rulings on 25 dispositive motions filed within the study period.

(b) Pre-CCM terminations.

27 Pre-CCM cases were terminated as a result of rulings on 28 dispositive motions filed with the study period.

	CCM Cases		PRE-CCM Cases	
	Age of Case at Time Dispositive Motion Filed	Age of Case at Termination due to ruling on Dispositive Motion	Age of Case at Time Dispositive Motion was filed	Age of Case at Termination due to ruling on dispositive motion
Less than 30 days	6	0	5	0
1 month	7	4	4	0
2 months	7	6	6	2
3 months	2	3	2	2
4 months	1	4	0	3
5 months	0	1	3	4
6 months	1	0	2	2
7 months	1	2	2	7
8 months	0	2	0	2
9 months			1	2
10 months			0	1
11 months			2	0
12 months			0	0
13 months			1	0
14 months				1
15 months				1
16 months				

3. **Age of Resolved Dispositive Motions at time of Filing.**

(a) 90 of the 145 motions filed in CCM cases tracked above were resolved by Court Order. 45 of the 145 motions filed in CCM cases were unresolved as of the compiling of these statistics. 10 motions were terminated without resolution when the case was settled or non-suited.

(b) 84 of the 158 motions filed in Pre-CCM cases tracked above were resolved by Court Order. 38 of the 158 motions filed in Pre-CCM cases were unresolved.

The ages of these motions at resolution are charted below:

Age of Motion at time of resolution	CCM	Pre-CCM
0 - 1 month	30	13
1 - 2 months	33	27
2 - 3 months	13	13
3 - 4 months	5	8
4 - 5 months	7	6
5 - 6 months	1	3
6 - 7 months	1	8
7 - 8 months	0	2
8 - 9 months	0	2
9 - 10 months	0	1
10 - 11 months	0	1
11 - 12 months	0	0
12 - 13 months		0
13 - 14 months		0
14 - 15 months		0
15 - 16 months		0
16 - 17 months		0
17 - 18 months		0
TOTAL MOTIONS:	90	84

4. Age of Pending Dispositive Motions.

Age	CCM	Pre-CCM
over 30 days	24	4
over 60 days	9	4
over 90 days	12	30
TOTALS:	45	38

III. REFERRALS TO MAGISTRATE JUDGE

1. **DISPOSITIVE MOTIONS REFERRED TO MAGISTRATE JUDGES:**
 - (a) **CCM Referrals:**
 - (1) **Title VII Referrals:**

2 dispositive motions in Title VII cases were referred to the Magistrate Judge for report & recommendation by Judge Higgins.

Judge Wiseman referred 1 Title VII case to a Magistrate Judge.
 - (2) **Other CCM Cases:**

14 dispositive motions and 1 non-dispositive motion filed in the CCM study cases were referred to a Magistrate Judge for report and recommendation by Judge Higgins.

Judge Nixon, Judge Wiseman and Judge Echols referred no motions in other CCM cases.
 - (b) **Pre-CCM Referrals:**
 - (1) **Title VII Referrals:**

4 Title VII referrals were made by Judge Wiseman, which included one summary judgment motion filed in a case referred for disposition of all pretrial matters.

Judge Echols referred one Title VII case, which included no dispositive motions.
 - (2) **Other Cases:**

Judge Nixon referred 4 cases for disposition of all pretrial matters, and 2 motions to compel. He referred no dispositive motions.

12 dispositive motions filed in the pre-CCM study cases were referred to a Magistrate Judge for report and recommendation by Judge Higgins.

IV. CASE MANAGEMENT

1. Initial Case Management Conferences.

Of the 247 cases in customized case management, 3 were filed prior to adoption of the Amended Local Rule 11 and later converted to CCM. The initial case management conference for these converted cases was held 5, 6, and 17 months after the case was filed.

For the 244 cases filed after March 1, 1994, and subject to CCM:

ICMC was held within 45 days of filing in 136 cases;
ICMC was held within 90 days of filing in 48 cases;
ICMC was held over 90 days after filing in 17 cases.

In addition, in 6 cases one of the parties did not appear at the ICMC; 35 cases were terminated prior to the scheduled ICMC date; 1 ICMC was continued indefinitely, and 1 case was removed from CCM. (History of 5 ICMCs unknown)

2. Pending Dispositive Motions Reportable under Plan.

The Cost and Delay Reduction Plan adopted by the Court requires that a list of dispositive motions pending for over 30, 60, and 90 days be prepared on a monthly basis for circulation within the Court. Under the Plan, "a motion will be considered pending as soon as the last response or brief is filed."

(a) The following chart reflects motions pending as defined under the Plan.

**PENDING DISPOSITIVE MOTIONS REPORT
UNDER CUSTOMIZED CASE MANAGEMENT PLAN**

Month/Year	Number of Cases In Case Management	Case Management Cases Closed	Number of Unresolved Motions	Number of Reportable Pending Motions	Age of Reportable Motions		
					over 30 days	over 60 days	over 90 days
April, 1994				0			
May, 1994				0			
June, 1994				2	2	0	
July, 1994				2	2	0	
August, 1994				1	1	0	
September, 1994				3	2	1	
October, 1994				9	6	3	
November, 1994	331	101	57	17	10	5	2
December, 1994	383	133	72	16	4	7	5
January, 1995	432	163	65	12	7	1	4

- (b) Responses were filed to 88 motions in CCM cases within the following time-frame:

Responses to Dispositive Motions within	CCM
0 - 15 days	31
15 - 30 days	30
30 - 60 days	22
60 - 90 days	3
90 or more days	2

- (c) Hearings on dispositive motions were held in 13 CCM cases, although only 3 rulings were made after the hearings were held.

TIME	Less than 30 days	30 days	60 days	90 days	120 days	150 days
From motion filing to hearing	3	2	4	2	1	1
From hearing to ruling	2	1				

FAX

TO: DALE GRIMES
 FROM: PATTY FARMER
 DATE: March 10, 1995

I have enclosed a report the new clerk asked me to do about the impact of CCM. In working on a response, I drew some conclusions based on the materials sent to you earlier which I thought were interesting. I'm hopeful the conclusions are correct.

Since the report is a narrative and has alot of numbers in it, I am sharing with you my outline (cleaned up, of course) so you can look at a comparison of the raw data without all the words. I've added columns which refer you to which page of the CJRA meeting materials (attached with my scribblings on them) I used so you can easily see where the data came from, and which paragraph of the report to look at.

OUTLINE

No of ¶ in Report	CCM Study	Pre-CCM Study	Description	Page
I	247	275	case filings	1
II	145	158	dispositive motions	3
III	84%	58%	filed within six months	3
IV	62%	53%	motions resolved by Court	5
IV	99%	83%	resolved within six months	5
V & VI	19%	16%	cases termed by dispositive mtn	2 & 4
V & VI	82%	48%	termed within six months	2 & 4
VII	45	38	motions pending	6
VII	27%	79%	pending more than 90 days	6

I have used a 6-month cut-off in measuring motions resolved by the Court and cases termed by dispositive motions because both study groups had a history at that time. Actually, to be accurate I believe I should continue to track the CCM list for six months (through July, 1995) to make comparisons based on an even amount of time.

I'm sending this to Juliet too.

TO: Roger Milam
FROM: Patty Farmer
DATE: March 10, 1995
RE: CJRA REPORT

As requested, this is a report on implementation of the Civil Justice Reform Act Cost & Delay Reduction Plan and its impact on the docket:

¶I Customized case management (CCM) was implemented on March 1, 1994. In order to assess the effectiveness of CCM, two study groups were compiled. One group consisted of cases filed from September 1, 1993 through February 28, 1994 (Pre-CCM), and another group was made up of cases filed from March 1, 1994 through August 31, 1994 (CCM). Only those cases eligible for CCM were compared.¹ 275 such cases were filed pre-CCM. 247 cases were filed under CCM.

¶II As of February, 1995, there were 158 dispositive motions filed in 101 of the 275 Pre-CCM cases. There were 145 dispositive motions filed in 102 of the 247 CCM cases as of February, 1995.²

Even with this uneven comparison, dispositive motions were filed in 37% of all Pre-CCM cases. During the CCM phase, with its shorter period, dispositive motions were filed in 41% of all cases.

¶III Of the 158 Pre-CCM dispositive motions, 58% were filed by lawyers within 6 months of the filing of the case. Of the 145 CCM dispositive motions, 84% were filed within 6 months of the filing of the case.

¶IV Of the 158 Pre-CCM dispositive motions filed, 84 (53%) were resolved by Court order as of February, 1995. Of the 145 CCM dispositive motions filed, 90 (62%) were resolved by Court order as of February, 1995. 70 of the 84 (83%) Pre-CCM motions were resolved within 6 months of filing. 89 of the 90 (99%) CCM motions were resolved within 6 months of filing.

¶V Of the 275 cases in the Pre-CCM study, 169 had been terminated as of February, 1995. 27 Pre-CCM cases (16% of all terminated Pre-CCM cases) were terminated by the granting of dispositive motions. 13 of those 27 Pre-CCM cases (48%) were less than 6 months old at termination.

¹ There were additional cases filed during each period that were not compared because they were not subject to CCM: Total filing Pre-CCM were 679; total filings for CCM were 702.

² Dispositive motions were measured as of February, 1995. Consequently, the opportunity to file dispositive motions in the Pre-CCM group was longer than in the CCM group.

¶VI 118 of the 247 CCM study cases had been terminated as of February, 1995. 22 CCM cases (19% of all terminated CCM cases) were terminated by the granting of dispositive motions. 18 of those 22 CCM cases (82%) were less than 6 months old at termination.

¶VII There were a total of 38 unresolved Pre-CCM dispositive motions and 45 CCM dispositive motions as of February, 1995. 30 of the Pre-CCM motions (79%) were pending for more than 90 days compared to 12 or 27% of the CCM cases pending for over 90 days.

It may be too soon after implementation to accurately assess the effectiveness of CCM. However, based on this brief study, it appears that lawyers are filing dispositive motions more frequently and earlier in the life of the case, motions are being ruled on faster, and more cases are being resolved earlier on dispositive motion. It also seems that long term pending motions are decreasing.

You also asked me about the civil case load. Looking at statistics for the Article III Judges, cases assigned for 1994 total 1490, which is 30 more than last year. The AO may want more in-depth statistics, which Billie Jo will have.