REPORT OF THE CIVIL JUSTICE REFORM ACT

ADVISORY COMMITTEE

FOR THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

SEPTEMBER 1993

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INTRODUCTION

This report represents the efforts of the Advisory Group for the Central District of Illinois (CDIL) over a twenty-seven (27) month period. The Advisory Group gathered information regarding the volume, procedural treatment and disposition of civil cases within the District, and acquired an understanding of how the system is perceived by those who work within it and have been affected by it. The report also contains the refinement and synthesis of that information into the specific recommendations which follow.

This report is divided into four distinct chapters. The first describes the Committee's mandate, the philosophic approach used in responding to that mandate, an executive summary of its work and specific recommendations to improve access and reduce cost and delay within the District. It also briefly describes the future mission of the Committee and contains an acknowledgment of appreciation to those non-committee members who have generously assisted in the project.

The last three chapters contain the actual sub-committee reports from which the recommendations are derived. These represent the great bulk of the Committee's efforts and involve the following subjects and individuals:

PROCEDURES

The procedures sub-committee was given the charge of determining the demographics, personnel and procedures utilized in the movement of cases within the CDIL. Its active and contributing members are:

Harlan Heller, Chair
Charlene A. Quigley
David B. Mueller

STATISTICAL ANALYSIS

The statistical analysis sub-committee worked to analyze data regarding the volume, type and time from filing to disposition of civil suits. It did so by utilizing information available from the Administrative Office of the United States Courts as well as direct case review through examination of pending and closed files. Its members are:

Anne L. Draznin, Chair
John M. Waters
Shawn W. Denney
Jeffrey A. Gustafson

PERCEPTIONS

The perceptions sub-committee undertook to gather information concerning the attitudes and opinions of those within the system, those who have been directly affected by it and observers, such as representatives of the media. It functioned by the formulation, submission and analysis of multiple comprehensive surveys. The members of this sub-committee are:

Susan C. Stone, Chair
Michael J. Meyer
James A. Lewis

As chairman I had the benign task of encouraging where little encouragement was necessary, editing a product which was already refined and focused, and shaping the thoughts of a singularly fecund group into a comprehensive report. It has been a sincere pleasure.

DAVID B. MUELLER,
Chairman

CHAPTER I - OVERVIEW

I - PREFACE

Of necessity, any consideration of civil justice reform presupposes both an appreciation of what is commonly called "justice" and an understanding of the role which the courts play in its administration. Unfortunately, the two have not always been considered as compatible. Nor are they so viewed by many today. An apparent conflict exists between the role of the court in its resolution of disputes and the obligation to achieve or at least facilitate a just outcome. The former considers the mission of the judiciary as administrative. The latter gives priority to justice. As the following language from Dean Roscoe Pound's famous address to the 1906 meeting of the American Bar Association indicates the conflict between the legal system's obligation to produce a "just result", as opposed to "just a result" is not only historic but ongoing.

> "In periods of absolute or generally received moral systems, the contrast between legal results and strict ethical requirements will appeal only to individuals. In periods of free individual thought in morals and ethics, and especially in an age of social and industrial transition, this contrast is greatly intensified and appeals to large classes of society. Justice, which is the end of law, is the ideal compromise between the activities of each and the activities of all in a crowded world. The law seeks to harmonize these activities and to adjust the relations of every man with his fellow so as to accord with the moral sense of the community. When the community is at one in its ideas of justice, this is possible. When the community is divided and diversified, in groups and classes and interests, understanding each other none too well, have conflicting ideas of justice, the task is extremely difficult. It is impossible that legal and ethical ideas should be in entire accord in such a society. The individual looks at cases one by one and measures them by his individual sense of right and wrong. The lawyer must look at cases in gross, and must

> measure them largely by an artificial standard. He must apply the ethics of the community, not his own. If discretion is given him, his view will be that of the class from which he comes. If his hands are tied by law, he must apply the ethics of the past as formulated in common law and legislation. In either event, judicial and individual ethical standards will diverge. And this divergence between the ethical and the legal, as each individual sees it, makes him say with Luther, 'Good jurist, bad Christian.'" 35 FRD 273, 276.

This Committee views the fundamental role of the Civil Justice System as that of producing a "just result" with due recognition that justice at a premium or with undue delay is "justice denied". The following report considers the adjudicatory handling of civil disputes within the Central District of Illinois. It focuses in trifurcated fashion upon the organization and procedural rules employed by the courts, the statistical handling of various classes of cases, and the perceptions of the courts, lawyers and the public.

II - EXECUTIVE SUMMARY

A - PRESENT STATE OF THE DOCKET

Seventy-nine percent of civil cases filed in the CDIL are concluded within eighteen (18) months. As of September 23, 1992 only six percent (6%) of the pending civil case load was three (3) or more years old. This compares favorably to a national average of approximately ten percent (10%). The number of hours spent on criminal matters has increased exponentially. This is an ongoing phenomenon which is reason for concern unless the number of magistrate judges is increased. Any perceptible increase in civil case filings has the potential to create significant backlogs and delays in the court's civil docket.

Control of the docket is of paramount importance if civil cases are to proceed from

filing to disposition with minimal delay and expense. By facilitating the movement of litigated matters it is believed that costs will decline and increased access will be afforded. These are the salutary objectives of the Civil Justice Reform Act of 1990 (28 U.S.C. Section 471 et seq).

B - CIVIL JUSTICE REFORM ACT OF 1990

On December 1, 1990 the Civil Justice Reform Act of 1990 was adopted. Chief among its stated goals was the reduction of cost and delay in civil litigation in the United States District Courts through the identification, development and implementation of specific recommendations for that purpose. To accomplish these objectives, Congress mandated that each Federal District appoint an advisory group to assess the administration of civil justice within its boundaries, and thereafter to propose "measures, rules and programs" which would expedite the resolution of civil disputes, while at the same time minimizing expenses incurred in the process. Procedurally, each advisory group was given three tasks. The first involved an investigation of the various divisions within the District through an examination of their respective dockets and the trends in case filings and dispositions. Thereafter, consideration was to be given to whether undue cost and delay were present and if so, to their cause or causes. Finally, each advisory committee was required to prepare a report for its District which: (1) contains its findings and (2) details recommendations for the reduction of cost and delay.

With due recognition of the fact that each District has separate geographic and demographic characteristics, the Act contemplates findings and recommendations which embody those distinguishing qualities. In this regard advisory groups are directed to consider

the rules, orders and practices of the court, and to assess the practices of lawyers and clients from pleading through trial, including discovery and motion practice. Within this cradle to grave framework particular attention is to be paid to cooperation and civility between lawyers and the court, and lawyers inter se, with recognition that the voluntary exchange of information mitigates against excessive discovery and reduces the number of motions which may be filed during the pendency of a case. The fact that litigants are result oriented also requires consideration of various alternative dispute resolution (ADR) techniques which either bypass or short-circuit the formal adjudicatory process.

The Act requires consideration of six (6) specific principles or guidelines. A summary of each and the Committee's recommendations in these and other areas follow:

Differential Case Management

It is well recognized that cases vary in complexity for numerous reasons. Consequently, certain classes of disputes require more "litigation events" including discovery and motions. Differential case management involves the exercise of judicial discretion in classifying each case in the context of the resources and time anticipated for its proper preparation and disposition. Through an early evaluation of filings the court can both regulate and schedule critical "litigation events" from the outset. The Committee finds that civil cases are classified at an early stage within the Central District. However, it is recommended that consideration be specifically given to prisoner petitions, tort cases and civil rights claims which seem to have a disproportionate longevity. Of these the latter two are generally more complex due to the issues involved, the potential for joinder of additional parties and the possibility of interlocutory appeals. A more intensive early analysis of this

type of litigation can result in a narrowing of issues and the establishment of realistic deadlines for critical pretrial events, including discovery.

Early and Ongoing Judicial Intervention

Various types of cases require more judicial attention than others. Following initial differential assessment the court can supervise the progress of the litigation in a fashion which is tailored to the needs of the particular case. This can involve an initial calendar which sets a timetable for various "litigation events" as well as periodic conferences involving counsel inter se or counsel and the court. The orderly management of civil litigation requires adequate judicial personnel. The Committee views as its highest priority the addition of a full-time magistrate judge for Danville - Urbana. The Committee further recommends that uniform procedures be established between the respective divisions of the CDIL which will include periodic status hearings on a regular basis. The district's current video conferencing project is also encouraged as a means of facilitating the resolution of inmate cases.

Setting Early and Firm Trial Dates

As cases are classified according to complexity it is possible to set a trial date which reflects anticipated "litigation events". The Act contemplates that trial should occur within eighteen (18) months after filing unless the court certifies that the matter is of such complexity as to make that timetable "incompatible with serving the ends of justice". In this regard it is important to recognize that the court's criminal docket has a priority and therefore "firm trial dates" are subservient to the exigencies of that calendar. With the

expansion of the court's criminal docket and the precedential treatment to be accorded under the Speedy Trial Act the Committee believes it is imperative to provide as much certainty as possible in the scheduling of civil cases. With this in mind the Committee recommends that trial before magistrate judges be encouraged wherever possible. In addition a so-called "short notice" calendar should be adopted for cases which are ready for trial and can be tried in less than three (3) days. This will permit the judges to fill in their calendars as pleas are made in criminal cases and prior civil cases are settled.

Control of Discovery

The Act requires the court to consider controls over the extent of discovery and the time for its completion. This is to be effected in accordance with established trial dates. However, in cases of undue complexity a "discovery schedule and plan" may be appropriate to limit both the quality and quantity of discovery, as well as encouraging the voluntary cooperation of the litigants through the consensual exchange of information. This guideline also encourages the "conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion." The Committee finds that there is a high level of civility and cooperation by civil trial counsel within the district. The court has recently adopted revised discovery rules which are working well. Consequently, it is recommended that the present local rules be retained without change, subject to ongoing review as exigencies arise.

Controlling Motion Practice

Congress identified as a problem undue delay which is often associated with the filing of unnecessary motions or the failure to file appropriate dispositive motions at proper times. To address these problems the plan is to consider a case management plan which includes a schedule that enumerates various forms of motions and sets deadlines for their filing. The Committee believes that judicial time and resources can best be expended by limiting personal appearances for the argument of motions to those instances where the court has questions. Substantive motions can and should be entertained on written submission. Summary judgment motions should be heard only by district judges, as this would eliminate the "two step" procedure which invariably follows magistrate decisions.

Alternative Means of Dispute Resolution, Including Settlement

Use of various forms of ADR may materially shorten the dispute resolution process. The Act requires the court to consider alternative dispute resolution (ADR) options such as arbitration, mediation, mini-trials and summary jury trials. As a means of encouraging settlement, consideration is to be given to a "neutral evaluation program", involving a court-selected representative who will conduct a non-binding conference "early in the litigation". There are many advantages to litigants as well as the court in having alternative methods of resolving disputes available. Judges in many State and Federal courts have found making ADR options available often serves the interests of civil justice. The Committee believes that voluntary ADR in the form of arbitration and mediation would be a valuable tool in the expeditious resolution of civil disputes. Toward this end it is recommended that the ongoing work of the Committee include the creation of a sub-committee to specifically prepare an

ADR format including: options, selection procedure, training of arbitrators and educational materials. The Committee also recommends the creation of an additional position within the CDIL of ADR coordinator to facilitate implementation and thereafter afford oversight and management of the program.

Additional Recommendations

The Committee is not limited in its advisory prerogatives to areas specifically mandated by the Act. Nor is it constrained to restrict its recommendations to matters which may be implemented by the CDIL. The following are suggestions which facilitate statistical analysis, access to the system and legislation.

In performing its work the sub-committee on statistical analysis concluded that data might be better retrieved and analyzed by modifications to the record keeping system of the CDIL including the use of specific pretrial and trial "events which can be statistically tracked.

The Committee also believes that access should be afforded to indigent litigants through volunteer or subsidized legal service. Among the suggestions in this regard are the funding of legal service corporations and the promotion of pro bono activity through State and Federal Bar Associations.

Recommendations To Congress

The Committee believes that the congressional mandate of the Civil Justice Reform Act encompasses not only matters which can be controlled within the district but also those which thoughtful legislation can effect. In fact, Congress has the authority to do more to encourage access to the system and at the same time reduce expense and delay than the

bench and bar can effect within the District. At a minimum, the judiciary and judicial staffs should be at full complement. Moreover, legislation creating civil jurisdiction should be specific as to both the cause of action created and the remedies afforded. In the area of criminal law, minor offenses should be relegated to the state courts, thereby leaving more room in the federal courts for the resolution of civil disputes.

III - DETAILED RECOMMENDATIONS

The Committee's charge was to investigate, evaluate and make recommendations regarding the handling of civil cases within the Central District of Illinois. The most difficult and time consuming aspect of the task lay in gathering and refining data involving (1) the nature, volume and manner of disposition of civil cases within the district and (2) the perception of those who are or have been involved in the system. From this voluminous information conclusions were drawn and the recommendations which follow were made. Proceeding from the guidestar of justice as the sine qua non of civil dispute resolution, the Committee considered access, reduction of delay and minimizing expense as integral components of an optimal system. It is our considered opinion that, on the whole, civil cases in the Central District progress from filing to conclusion fairly, expeditiously and without undue cost. Consequently, we have no significant criticism of present procedures. Nor do we suggest remaking the judicial wheel. However, the following recommendations are proposed to "fine tune" and enhance a system which already performs well, given the fiscal and legislatively imposed constraints under which it functions.

A - SYSTEMATIC, DIFFERENTIAL CASE MANAGEMENT OF CIVIL CASES

Among the six "principles and guidelines of litigation management and cost and delay reduction" the Act mandates that each Advisory Group and District Court consider a system early of differential case management.[1] The operative terms are "differential" and "management". Generally, as with individuals, cases have their own personalities, activities, and life expectancies. However, as general statistics demonstrate, and as the Committee has found, it is possible to identify various types of litigation as more likely to involve cost and delay. A number of benchmarks are available for that purpose, including, complexity of the case, the number of parties likely to be involved, and the possibility of interlocutory appeals. Conversely, many cases progress expeditiously from filing to conclusion with minimal litigation events and ergo little expense. In the middle are average cases of moderate complexity and litigious involvement. Early recognition of the generic characteristics of cases facilitates the movement of slower, more cost intensive actions to resolution. It also permits the creation or adaptation of management procedures, including the encouragement of settlement and alternative dispute resolution techniques in all cases.

The Advisory Group finds that the Central District has in place a functioning case management system within each of its divisions. Following a preliminary jurisdictional review, civil cases are assigned to a magistrate who thereafter handles pretrial matters of a non-dispositive nature. These include Rule 16 pretrial conferences for the purpose of

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[1] 28 U.S.C. Sec. 473(a) provides for "systematic differential treatment of civil cases that tailors the level of individualized and case-specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case."

scheduling and case management. These conferences are generally held shortly after a responsive pleading or motion is filed. At that time preliminary motions are heard and a scheduling order is entered. In Danville, Peoria, and Rock Island a further status conference is set when the Magistrate will again review the progress of the litigation with the parties. In Springfield the initial Rule 16 conference results in a scheduling order which contains a trial date which is generally 12 - 18 months thereafter. No interim status conferences are scheduled and further judicial involvement arises only in the setting of pretrial motions.

"Differential" case management exists in two respects in the Central District. First, certain types of litigation, such as prisoner cases, including habeas corpus petitions, bankruptcy appeals, administrative reviews, and Internal Revenue summons proceedings are accorded separate treatment. Second, differentiation takes place on an ad hoc basis at the initial scheduling conference as the Magistrate and the parties review the issues involved and attempt to establish a framework for the completion of discovery, the joinder of additional parties, and the resolution of dispositive motions, if any. In Springfield more complex cases are given later trial dates. In Danville, Peoria, and Rock Island, the differentiation process is ongoing in the sense that further status conferences are held at 60 - 90 day intervals.

The Committee finds that despite a difference of preliminary procedures between the respective divisions, cases move at approximately the same pace from filing to conclusion, whether in Danville, Peoria, Rock Island, or Springfield. Differences in longevity are not attributable to procedures, but rather to the type of cases which predominate. For example, more older files were found in Danville which was the venue for prisoner petitions, as well as a majority of asbestos cases.

Statistics demonstrate that over forty percent of the cases were considered closed within six months of filing, of which seventy percent were settled, dismissed, or withdrawn within four months. It is therefore apparent that the existing initial management system facilitates the disposition of a substantial percentage of the filings. The great majority of the remaining cases were then resolved between 12 and 24 months. (See Chapter 3, Chart 17.)

The older cases are those which took longer than 24 months to terminate. These fell within three major categories: (1) prisoner petitions; (2) tort cases, and (3) civil rights claims. The prisoner petitions are the subject of separate Committee recommendations. However, tort and civil rights cases involve substantial delays which are generally attributable to: (1) complexity of product liability claims; (2) the potential for the joinder of multiple parties following commencement of the case, and (3) the possibility of interlocutory appeals. In the advisory Group's opinion the number of these cases is not excessive and, except on an individual case basis, does not produce appreciable cost and delay within the system.

By survey, the perception of those involved in the dispute resolution process is that current case management in the Central District is appropriate. This is particularly true in considering scheduling, discovery regulation, and ruling on motions. However, there was some sentiment in favor of differential management in the areas of narrowing issues, facilitation of settlement, and the encouragement of consent to trials by magistrate judges.

The Advisory Group believes that case management procedures within the Central District function well in the great majority of cases. However, with respect to a distinct minority of complex claims, particularly in the tort and civil rights areas, early differential treatment would likely reduce the number of litigation events and thereby the delays and costs which inevitably follow. The differential process in cases of this sort would include: (1)

early issue focus and narrowing; (2) deadlines for pleading amendment; (3) deadlines for the joinder of additional parties; (4) a specific discovery order, including timing for the disclosure of expert witnesses, and (5) a schedule for dispositive motions. The Committee also recognizes that far more cases are settled than are tried. With this in mind settlement should be encouraged at the earliest stage in the litigation process. In this regard differential case management might profitably include a discussion of alternative dispute resolution (ADR) procedures which are available, with and without court involvement.

B - EARLY & ONGOING JUDICIAL INTERVENTION

This district has enjoyed early and ongoing judicial involvement in civil cases for many years. Judicial involvement assures that motions are heard on a timely basis, minor disputes between the parties are quickly resolved, the cases can proceed through discovery expeditiously, and the judge can become familiar with the facts and the attorneys and have a feel for when or if the case can be settled. The Committee's survey suggests that nearly 90% of all of those surveyed feel that the court has an appropriate level of case management at the present time. (See Table A, Chapter 4.)

Local Rule 2.10 requires all civil cases, with few listed exceptions, to be set for an initial pre-trial conference with a magistrate judge within 60 days after the appearance of the defendant in the case. Unless impractical, these hearings are conducted by telephone to save time and expense. The local rule incorporates Federal Rule 16, which sets forth goals of the initial pre-trial conference, including setting discovery schedules and calendars, setting deadlines for filing dispositive motions, and dealing with all pending matters.

Cases heard in Peoria, Danville, and Rock Island are set for status conference every 90 days or as the parties request. These conferences are heard by the magistrate judge and are by telephone. All pending matters such as discovery motions are handled at each status conference. Cases in Springfield are set for status only at the request of a party or by the court for a specific purpose.

The majority of pre-trial matters are handled by magistrate judges. Additional responsibilities in the area of management of discovery will be placed with the magistrate judges if the proposed amendments to the Rules of Civil Procedure are adopted. Additional responsibilities in the area of settlement and ADR are being proposed by this Committee. Criminal matters will continue to occupy substantial amounts of time from all of the magistrate judges. The Committee recognizes that the two full-time magistrate judges in the district have full calendars now, and that the part-time magistrate is limited by the judicial conference to a 10% workload, which is fully satisfied by his current criminal case assignments. Fuller utilization of the existing magistrate judges will only add to their already crowded calendars.

The court has been presented with a unique opportunity to pioneer the use of video-conferencing in civil procedures. The Committee sees this system as especially useful in ongoing judicial involvement in inmate cases. As the use of video-conferencing becomes more wide-spread in the private sector, the court may have the opportunity to expand the system to include more of the bar in the video-conferencing process.

The Committee recommends:

1. A full-time magistrate judge should be authorized for Danville-Urbana. The Committee views this as its highest priority finding in order to adequately

implement the other recommendations contained in this report and thereby expedite the resolution of civil cases within the CDIL. Therefore, the court should take all necessary steps to secure authorization and funding for this position.

2. While our review disclosed no problems arising from lack of uniformity in practices and procedures within the District, there is a perception, primarily among counsel, that uniformity would be beneficial. We recommend that the court review differences in practices and procedures among divisions in order to determine whether a greater degree of uniformity might be achieved.

3. The overall efficiency of the court depends upon the proper allocation of judicial resources. The Committee believes that to the greatest extent possible, the district judges should devote their time to those dispositive matters which are exclusively within their jurisdiction. It is therefore recommended that all pretrial hearings should be set before a magistrate judge unless there is a good reason for proceeding before a district judge. This recommendation permits the district judges to conduct trials in both civil and criminal cases. It also embodies the firm opinion of the Committee that another magistrate judge is required.

4. All cases should be set for periodic status hearings on a regular basis and all pending matters should be dealt with at the status hearing.

5. The court should have as many hearings by telephoneconference as is practicable, thus reducing the expense of travel.

6. The court should continue to develop the use of video-conferencing for pretrial procedures in inmate cases.

7. If the current initial video-conferencing project is successful, the court should expand the use of this tool as funding allows. Recognizing its ongoing responsibilities, this Committee is prepared to investigate possible funding sources outside the normal federal budget process.

8. At the initial pretrial conference and at the final pretrial conference, the presiding judge should explain and explore settlement conferences and summary jury trials as options.

C - EARLY & FIRM TRIAL DATES

The goal of setting early and firm trial dates is seen as a way of reducing the time from the filing of a case to its conclusion. Nationwide, about 3% of all civil cases are decided by a jury trial. The same seems to hold true in this district. Setting an early trial date is not the only way to resolve cases expeditiously.

The Springfield division sets a trial date at the Rule 16 hearing in every civil case. Springfield also uses a "trailing calendar" by which cases are successively reached for trial as those lawsuits which are ahead on the list are settled or tried.

The other divisions set a trial date when the case is announced ready for trial at the conclusion of the final pre-trial conference. There appears to be little, if any, statistical difference in the age of cases across the district. This would tend to imply that neither method of setting cases for trial is "better" or results in a case coming to trial more quickly.

The major factors preventing firm civil trial dates are the crush of the criminal docket and the requirements of the Speedy Trial Act, which mandate that precedence be given to all criminal matters. In all of the divisions, criminal cases are set for trial within 70 days of the defendant's arraignment. Each criminal case is given a firm date for trial, and is usually tried on or very near that date. In Springfield, criminal cases are first on the trailing calendar, followed by civil cases. In other divisions criminal cases are set as needed, with civil cases accordingly being "bumped" as necessary.

The committee concludes that while an early and firm trial date in every civil case is a worthwhile goal, the condition of the criminal docket prevents any realistic firm trial dates, regardless of the time or manner by which they are scheduled. It appears that the criminal docket will not decrease, and very likely may increase. While the district may be able to get the majority of litigated matters ready for trial within 12 to 18 months, cases then will sit "ready for trial" awaiting slackening in the criminal docket.

The size and breadth of the district dictate that each judge must hear both civil and criminal cases. The committee also recognizes the inviolate right to a jury trial and the right to a trial by a district judge. With this preface in mind, the committee makes the following recommendations:

1. At the final pre-trial conference for each case the presiding judge should explore with counsel:

   (a) the possibility of waiving jury and proceeding with a bench trial before the court sitting without a jury, and

   (b) the possibility of trial before a magistrate judge. Magistrate judges have courtroom space available and do not have the press of criminal cases. Usually a magistrate judge can give the parties a firm trial date.

2. Some cases can be tried on short notice. These may involve only local parties or testimony primarily by deposition. Many trials last less than three days. At the final pre-trial conference the presiding judge should ask whether the case could be placed on a "short notice" calendar, that is could be ready for trial in less than a week and take one to three days to finish. This would help fill in the gaps when other matters come off the calendar at the last minute, whether by pleas in criminal cases or settlement in calendared civil cases.

3. As circumstances permit the district judges should explore the possibility of re-assigning cases ready for trial to a judge with available court time.

D - PROCEDURES TO CONTROL DISCOVERY

Discovery has been called the boon and the bane of litigants. Without a doubt there have been inexcusable abuses of the process. Litigation has progressed from a game of "fox and geese" to the relentless pursuit of every minute shred of evidence which could conceivably bear on the issues of a claim to be litigated. On the other hand, discovery has led to a just result in a great majority of the cases that are litigated in the federal system.

The Central District of Illinois for the most part has escaped the excesses of other districts as evidenced by the response to a questionnaire circulated among lawyers and parties who have filed litigation in the Central District of Illinois. More than 80% of those responding to the questionnaire stated that they saw no need for changes in the local rules.

The local rules regarding discovery are brief and few. Rule 2.6 entitled "Filing of Discovery Material" speaks to the issue of non-filing, service of discovery, motions relating

to discovery, and discovery material that must accompany a pretrial motion or a motion for a final order.

Rule 2.7 (Limit On Number Of Interrogatories) limits interrogatories to 20 including sub-parts unless otherwise agreed by the parties or with leave of court. That rule also prescribes the form for the answers or objections to the interrogatories.

Rule 2.8 is titled "Motions Involving Discovery". This rule details the requirements for bringing to the court's attention disputes regarding discovery.

These rules, together with the federal rules of civil procedure have produced a workable framework for the conduct of discovery and disposition of disputes that arise regarding discovery. The paucity of the rules attest to the civility of the bar of this district and the genuine effort that litigants make to resolve differences without the court's intervention.

In its report to the membership at the 1993 spring meeting of the American College of Trial Lawyers, the College reported that all 34 pilot and early implementation courts adopted the use of the "discovery/case management conferences" recommended in 28 U.S.C. Sec. 473(a)(3). Such a conference has been standard procedure in the Central District for a substantial period of time.

Numerous amendments to the Federal Rules of Civil Procedure are presently under consideration. The existing rules of the Central District Court of Illinois as supplemented by the Federal Rules of Civil Procedure as likely to be amended on December 1, 1993, appear to provide a sufficient and workable plan for the control of discovery. There seems to be little reason and virtually no demand to tamper with an existing system that has

worked well. Changes in local rules would probably duplicate the changes in the Federal Rules of Civil Procedure that are likely to become effective December 1, 1993.

The proposed Rule 26 of the Federal Rules of Civil Procedure provides in part as follows:

> "(1) Initial Disclosures. §Except to the extent other-wise stipulated or directed by order or local rule, a party shall, without awaiting a discovery request, provide to the other parties: ***" (emphasis ours)

This new rule contains a comprehensive plan for discovery management which we feel will satisfy any need for change. In its transmittal of the proposed amendments to the Federal Rules of Civil Procedure, the committee on Rules of Practice and Procedure of the Judicial Conference of the United States reported regarding Rule 26 as follows:

> "However the proposed rule is written in a manner that permits the district court during the period of experimentation to depart from the national standards and determine whether and to what extent pre-discovery disclosure should be required."

We suggest that our present local rules be retained without change. With the permissive experimentation as authorized by new Rule 26, we too, can experiment with required disclosure and fine tune a system that has heretofore served us well. We don't find that our system is broken. There would seem to be no need to fix it.

In short, we find that the procedures that are in force in the Central District of Illinois together with the Federal Rules of Civil Procedure, as likely to be amended on December 1, 1993, and as controlled by the discretion of the court, will continue to produce a plan that serves the needs of the litigants, is workable and acceptable to the lawyers and produces satisfactory results without undue expense or delay.

E - ALTERNATE DISPUTE RESOLUTION (ADR)

The Committee supports the ongoing use of the Summary Jury Trial and Pre-Trial Settlement Conference efforts by the judges to effect dispute resolution without trial. These alternatives should be included with case management options in the plan. In addition, the Committee recommends that the court adopt a non-judicial ADR option including rules that would allow litigants to have the ability to resolve their dispute through alternative dispute resolution processes without harming the status of their judicial claims. Although many courts have embraced different kinds of mandatory alternative dispute resolution (ADR) options as a means of alleviating docket backlog or disposing of spurious claims, there does not appear to be a need for similar actions for the CDIL. The lack of significant docket overcrowding and case delay as well as the broad geographical area covered by the CDIL support a decision not to incorporate a mandatory ADR program in the final plan. However, as a service to the litigants, and as a means of encouraging expedited case processing and settlement after filing in federal court as well as before, the inclusion of a voluntary ADR option in the court's rules is deemed appropriate.

The voluntary ADR program would offer litigants several mediation and arbitration options at any time prior to the start of trial, as described in Chart A. These options would be initiated upon the mutual petition of the parties but according to rules and procedures approved by the court. The Committee recommends that ADR proceedings would be administered by and conducted under the auspices of the American Arbitration Association.[2] Specific reference explaining the existence of the voluntary ADR option

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[2] The American Arbitration Association is the oldest not-for-profit organization specializing in training and administration of alternative dispute resolution procedures, particularly arbitration and

would be included in the Rules of Civil Procedure of the CDIL. It is recommended that the arbitration rules of the US District Court for the Western District of Missouri serve as possible guidelines as a point of departure in this regard. The actual rules for the ADR processes and their manner of administration will be developed in conjunction with the AAA and approved by the court prior to implementation of the ADR option.

To develop the specific procedural rules for the court's adoption and to work with the AAA in developing a workable set of ADR procedures, time limits and charges, it is recommended that an ADR Advisory Sub-Committee be formed immediately following the adoption of the plan. The ADR Advisory Sub-Committee would be charged with developing the procedural and administrative guidelines for the ADR program subject to final approval by the court. The ADR Committee would be made up of different persons than currently serve on the CJRA Advisory Sub-Committee. It would report to the CJRA Committee and the Chair of the ADR Sub-Committee would act as liaison with the CJRA Committee. After the development and approval of the voluntary ADR program, the ADR Sub-Committee would work on developing appropriate educational materials and programs for the court and its bar to introduce them to the ADR concept and the particular CDIL ADR program.

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mediation. It is specifically mentioned in the Illinois Insurance Code and handles a broad range of subjects in both arbitration and mediation. Counsel in the CDIL's geographic area are more likely to be familiar with AAA processes than those of the myriad newer, for profit entities engaging in specialized administration.

The AAA is experienced at developing rules specific to particular constituencies. They regularly do this for a wide range of industry and association representatives. Their activities include developing guidelines for the qualification and training of neutrals and the maintenance of special lists of persons eligible to serve in such capacity for a given program or set of rules. Preliminary contacts with Robert Coulson, President of the AAA and with David Scott Carfello, Regional Vice President for the AAA Chicago Region indicates their willingness to work with the court and its advisory committee(s) to structure and administer such a program.

Success in the use of voluntary ADR options will depend in large part on the extent to which the court personnel, counsel and their clients understand that the options are available, what it would entail, how it would work and the manner in which it is administered. In order to coordinate the anticipated ADR program for the broad geographic spread of the CDIL, an additional position of ADR Coordinator should be established within the Clerk's office. This position would serve as liaison between the court. The ADR Sub-Committee will provide administrative oversight, ongoing development and personnel management of overall form and structure of the ADR Program.

Education in the form of hand out materials for attorneys and their clients will be needed. In addition, training programs for neutrals, advocates and court personnel and full explanatory information for local bars throughout the district will be particularly important to the success of such a program. The ADR Sub-Committee will be charged with the initial development and, following court approval, implementation of this educational effort.

The program recommended here is both unique and innovative because it 1) develops a means of offering litigants a full service voluntary ADR option handled by experienced personnel without the court incurring additional administrative expenses, 2) recognizes the need for specific training in ADR practices as well as the importance of ongoing communication about ADR as an essential part of the educational effort of the clients, their counsel and court personnel, and 3) creates a prototype of a cooperative program with a recognized not-for-profit ADR organization that can be adopted and duplicated by other courts around the country. This program is particularly suited as a means of implementing ADR in a decentralized judicial district such as the CDIL. Other non-urban courts may find it similarly attractive and advantageous.

For these reasons, the CJRA Committee believes the court should adopt the following recommendations:

1. Create a sub-committee that reports to the CJRA Committee;
2. Representatives of sub-committee would consider and develop a program that incorporates:
    a. ADR options, program, availability and structure;
    b. Selection procedures and neutral qualifications;
    c. Training of judges, lawyers and staff, and
    d. Educational materials and forms.

Alternative Dispute Resolution options and characteristics

	Role of Neutral?	Requirements? Hearing?	Outcome sought? (Goal?)	Formality?	Finality?
MEDIATION	Chosen by parties facilitator & go between witness to agreement	Voluntary caususes/ no hearing	Agreement between parties outlining future relationship over disputed matter	Little	Resultant contract enforceable as a contract
CONCILIATION	Chosen by parties facilitator & go between	Voluntary caususes/ no hearing	Resume (or reinstate) status quo	Little	None
FACT FINDING	Hearing examiner: investigator & evaluator chosen by parties	Voluntary by agreement or statutorily mandated option investigatory hearings	Determination of what happened with recommendation for action to resolve	Some	Advisory
MINI TRIALS	Quasi-judicial chosen by parties (often ret'd judges)	Voluntary partial hearing—similar to judicial pre-trials with clients present	Estimate of possible/likely outcome at trial	Some	Advisory
ARBITRATION	Quasi-judicial chosen by parties	Voluntary full evidentiary hearing (with some modifications)	Decision on matters in dispute ID by parties	Varies: considerable to some—relaxed rules of evidence	Final, binding & limited appealability
COURT	Assigned judicial	Mandatory full evidentiary hearing	Decision on matters in dispute ID by parties and required by law	Very formal full rules of evidence	Final, binding & full appealability

F - CONTROL OF MOTION PRACTICE

In all of the divisions the court sets all hearings and controls the calendar. The CIVIL docketing system allows reports of all pending motions for each judge and each division to be generated on request. Motions are set for hearing in the Peoria, Rock Island, and Danville divisions. Motions are largely decided on the briefs without a hearing in the Springfield division. Local Rule 2.9 establishes response times and other procedures for the filing of any motion.

From the Committee's survey of user perceptions it appears that most attorneys do not complain that the court is slow to rule on motions. (See Table B, Chapter 4.) Even though methods differ from judge to judge, the turnover time does not appear to vary significantly. Although there is no data from which to conclude that there is a back log of undecided motions in any division, or that motions are decided more quickly in one division or another, statistics suggest that an appreciable amount of court time is devoted to oral argument. The Committee believes that some efficiencies in the amount of court and counsel time involved in hearings may be effected. With this in mind it is recommended that the court consider:

1. Methods be developed that would better utilize judicial time including:

   (a) setting motion hearings only when the briefs are unclear or incomplete or when the court has questions;

   (b) setting a goal to rule on all motions within a fixed period (e.g. 60 days) of their ripeness for decision (the filing of a response or holding of a hearing);

   (c) ruling on pending discovery or miscellaneous non-dispositive motions during the next set status conference, and

(d) entertaining oral emergency discovery motions by telephone where all parties agree.

2. Summary judgment motions should be heard only by district judges. The frequency of objections and de novo review by the district judge makes referral of such motions to the magistrate judges inefficient.

G - RECOMMENDATIONS TO CONGRESS

The committee has studied the civil and criminal dockets of the Central District of Illinois, has surveyed a representative sample of the practicing bar, litigants and the court staff and has discussed the results and their implications. While there are some recommendations to avoid delays and costs in civil litigation that can be implemented on the local level, there are some solutions that can be implemented only by Congress.

After carefully considering the results of our two-year study, the committee makes the following recommendations:

1. The Administration and the Senate should strive to fill all judicial vacancies expeditiously.

2. Congress should consider a broader mandate for Legal Services Corporation and make additional funding available for Legal Services Corporation and other similar projects to make competent counsel more available to indigent plaintiffs and defendants in civil cases.

3. Legislation which creates federal civil jurisdiction should be specific in describing the gravaman of any cause of action created and the remedies contemplated. It should also address with clarity the procedures which apply, including the right to jury trial, statutes of limitation, retroactive application and the relationship, if any, to other legislation.

4. Congress should consider the impact on the district courts of the continuing federalization of the criminal law. As more federal crimes are created, additional court staff and judges should be authorized and funded. The failure to do so will inevitably result in unacceptable delay in the handling of civil cases.

5. Congress should consider making the provisions of 42 U.S.C. Section 1997e mandatory, requiring states to develop formal administrative review procedures for complaints from state prisoners regarding conditions of confinement.

6. The Congress should assure that the district courts are fully staffed and funded. Adequate funding for support personnel such as magistrate judges, staff attorneys, additional law clerks, additional clerk staff and automation will have a greater impact on case management and delay reduction than will appointing new district judges. Essential functions such as juries should be without a cap.

H - OTHER RECOMMENDATIONS

In order to better monitor the movement of civil cases for the purpose of statistical analysis a number of significant litigation developments should be tracked. This can be accomplished by adoption of the following procedures:

1. The creation and utilization of the following statistical events:

   Jury Trial Began
   Jury Trial Ended
   Bench Trial Began
   Bench Trial Ended

   These events would automatically fill in the "Trial Beginning Date" and the "Trial Ending Date" fields of the Cases record at the time they are used (ideally, on the dates the trials began and ended). Currently, these fields are not filled until case closing time.

2. The creation and utilization of a "Ready for Trial" event or case flag to mark those cases which are completely ready for trial and are merely awaiting the time of the judge or magistrate to proceed.

3. The "Final Pre-Trial Conference Date" of the Cases record should be entered on the day that the FPTC was actually held, not at case closing time (as occurs now).

4. Codes for the "Method of Case Disposition" need to be entered uniformly throughout the district.

5. Codes indicating "Jury Demand" need to be entered uniformly throughout the district.

6. Increase access to the system for indigent civil litigants by encouraging Pro Bono representatives through:

   a. Bar Association promotion of pro bono service as a professional obligation.

   b. Development of a supervised program where law school students would be available for advice or legal research.

IV - FUTURE MISSION

Recognizing the Advisory Group's ongoing responsibilities under the Civil Justice Reform Act, and in addition to the statutory mandates for continued monitoring of the civil docket and implementation of the court's plan, the following are adopted as goals for the Committee's future work:

1. Assist the court in exploring alternative dispute resolution options and procedures, including voluntary arbitration, mediation and early neutral evaluation. In this regard the Committee welcomes the opportunity to assist in implementing such ADR recommendations as the court may adopt in its Plan.

2. Assist the court in developing a training program for inmates and attorneys involved in Section 1983 civil rights litigation.

3. Assist the court in developing a training program for the Federal Civil Bar in local rules, ADR, amendments to the Rules of Civil Procedure, Inns of Court, pro bono work and criminal procedures.

4. Assist the court in exploring funding sources for video-conferencing equipment and in developing and expanding the uses of such equipment by the bar and the court.

5. Assist the court in developing a functioning pro bono panel of attorneys to keep the courts accessible to indigent litigants.

6. Continue its evaluation of the inmate docket and develop recommendations to more efficiently manage these cases.

V - ACKNOWLEDGMENTS

The Committee wishes to express its appreciation to a number of volunteers who gave generously of their time and advice. Without these individuals neither the analyses contained in Chapters 2 - 4 nor the recommendations which they yielded would have been possible. In a number of instances credit is given in the body of the report. However, the Committee wants to further acknowledge the efforts of those who contributed and in so doing again express its appreciation.

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CHAPTER 2

OVERVIEW AND PROCEDURES

I. OVERVIEW OF THE COURT

The Central District of Illinois encompasses 46 counties in the center of Illinois, stretching from Indiana on the east to Iowa and Missouri on the west, from Kankakee, Bureau and Rock Island counties on the north the Edgar, Montgomery and Pike counties on the south. The major urban areas are Rock Island (Quad Cities), Peoria, Springfield, Urbana\Champaign, Bloomington and Danville. The population of the district is 2,183,948 according to most recent census information.

The statutory places of holding court in the district are Rock Island, Peoria, Springfield, Danville, Quincy and Urbana/Champaign. With the completion of the new federal building in Urbana in 1994, there will be modern, full court facilities in each city, except Quincy.

While there is no statutory intra-district venue, Local Rule 1.5 establishes divisions of the court. Cases which arise within a division are heard by the judge(s) assigned to that division. Chief Judge Michael Mihm and Judge Joe McDade sit in Peoria, and also hear cases in the Rock Island Division, Judge Richard Mills and Magistrate Judge Charles Evans sit in Springfield, Judge Harold Baker sits in Danville, Magistrate Judge Robert Kauffman sits in Peoria, and also hears cases in Danville and Rock Island.

A. COURT PERSONNEL

As of December 13, 1991, the district has four district judges, one retired senior district judge, two full-time magistrate judges and one limited part-time magistrate judge. There are no judicial vacancies. Each judge and his staff have available state-of-the-art computers for drafting, record keeping and research. Desk-top computer assisted legal research (LEXIS, WESTLAW, etc.) is available to each judge in chambers.

The district maintains a fully-staffed clerk's office in each division. Each office handles all of the cases filed in that division. There are no current vacancies in the clerk's office.

B. GENERAL PROCEDURES USED IN CIVIL CASES

The clerk's office has been fully automated on CIVIL since November 1989 and on CRIMINAL since April 1993. These programs are part of a nation-wide docketing system developed by the Administrative Office of United States Courts. All docketing is now done electronically. All of the deputy clerks are fully trained on the docket systems.

The goal of the clerk's office is to docket every document the same day it is received. That goal is almost always met. This contrasts sharply with some districts where docketing runs up to 120 days behind. The CIVIL and CRIMINAL programs provide data bases from which reports of pending cases, pending motions and deadlines are generated, usually at the beginning of each month. These reports are provided to the judges and greatly facilitate case management.

Procedures in the clerk's offices are generally standard throughout the district. When a civil case is filed it is docketed and assigned to a magistrate judge for all pre-trial proceedings. Local Rule 2.10 requires that a scheduling conference be set in all civil cases, with a few listed exceptions, within 120 days of the filing of the complaint. These conferences are set with the magistrate judges and usually conducted by telephone. Dates for completion of discovery, filing of dispositive motions and further status calls are set and a scheduling order is filed.

In Danville, Peoria and Rock Island pending motions are heard at the next set status conference or by special setting. Motions are heard by either the district judge or the magistrate judge. (See infra for a more detailed description of the utilization of magistrate judges.) Final pre-trial conferences are usually held by the magistrate judge after dispositive motions are decided. A trial date is set after the pre-trial conference on a case-by-case basis.

In Springfield, motions are usually decided without oral argument and are decided by the district judge. The district judge conducts final pre-trial conferences as well, which are set at the initial scheduling conference. Trial dates are set at the initial scheduling conference and are set on a trailing calendar along with criminal trials. Criminal trials are given statutory priority and civil trials are heard as the cases ahead are tried or settle.

There are no local rules or formal procedures for encouraging settlement of cases. The judges have adopted a local rule authorizing the use of summary trials and settlement conferences. When used in the district these procedures have met with significant success.

For years all of the judges have used telephone conferences for scheduling conferences, status hearings, motion hearings, emergency matters and some final pre-trial conferences. This has saved considerable time and money for the court and for the litigants.

Personal appearances are reserved for some motion hearings and most final pre-trial conferences, as well as jury selection and trials.

C. VIDEO-CONFERENCING

This district has been offered a unique opportunity to develop and participate in a special project with Illinois Bell/Ameritech (Bell) targeting inmate cases. After discussions with court personnel, Bell has offered to loan equipment and software to the court, the Illinois Department of Corrections and the Illinois Attorney General for a three-month trial. The trial is expected to begin in October 1993. This equipment contains audio, video, computer and fax functions. It will allow real-time transmission of data and picture to remote locations.

The project will link one district court location, one Illinois prison and one Illinois Attorney General's office, allowing full participation in a court hearing from three locations. This will obviate the need for travel for the inmates and the attorney general and for heightened security for the court.

The project has been approved by the Administrative Office for United States Courts and is being developed and implemented by local court officers.

II - UNITED STATES MAGISTRATE JUDGES

Magistrate judges serve as adjuncts to the district court and not as Article I judges. Congress has clearly indicated that a magistrate judge's role is to assist Article III judges rather than serve as a substitute judge or lower tier court. The Judicial Conference of the

United States has stated that Congress should establish all causes of action in the district court and avoid mandating the reference of particular types of cases or proceedings to magistrate judges.

The Central District of Illinois is authorized two full-time and one limited part-time magistrate judges. Judge Charles Evans sits full-time in Springfield. Judge Robert Kauffman sits full-time in Peoria/Danville/Rock Island. Judge Robert Boeye sits part-time in Rock Island.

Pursuant to Local Rule CDIL-LR 1.4, all of the magistrate judges in this district are given authority to exercise the full powers conferred by statute, 28 U.S.C. §636. By custom and practice, only the full-time magistrate judges exercise jurisdiction over civil matters. All of the magistrate judges are authorized to perform their duties in the entire district.

A. CRIMINAL DOCKET

While this report's primary focus is the court's civil docket, one cannot fully understand the workload of the magistrate judges without some explanation of their duties and responsibilities on the criminal side of the docket. Traditionally, magistrate judges have concentrated their assistance to the district court in criminal cases. In large districts, they do no civil work at all. In this district the magistrate judges do almost all of the preliminary work in criminal cases through the arraignment.

The tables contained in this chapter of the report were prepared from the magistrate judges' monthly reports for 1992. Similar statistics are not easily available prior to 1992. In mid-1991 the reports drastically changed. Events that were tracked and counted prior to 1991 were left off and new events were tracked and counted.

Table 1 shows the pre-charge work of the magistrate judges in the Central District of Illinois in 1992, as compiled from their monthly reports. This is the work done prior to the filing of an indictment or information. While the district judges do some of these things occasionally, they report that probably 95% of this work is done by the magistrate judges. Judge Evans estimates that approximately 50% of his time is spent on criminal matters, Judge Kauffman estimates approximately 25%, and Judge Boeye 100%.

Many of these functions assist in the investigative stage of criminal proceedings, such as search warrants, pen registers and tracking devices. All of these proceedings are done in person, with the magistrate judge meeting the investigating officers and Assistant United States Attorneys (AUSA's) in charge of the cases. There is statutory authority for telephone warrants, but the procedure is so cumbersome and the distances relatively short that they are used infrequently. With the general availability of computers and fax machines, the judge can have a written complaint or application for warrant before him in a matter of minutes. The judges agree that the investigating agencies and the AUSA's make good use of these devices and of everyone's time.

TABLE 1

Magistrate Judge Usage
in Pre-Charge Criminal Matters
Central District of Illinois - 1992

AUTHORIZED POWER	EVANS	KAUFF.	BOEYE
Issue Search Warrants	31	15	1
Accept Criminal Complaints*	YES	YES	YES
Issue Arrest Warrants**	30	16	5
Issue Seizure Warrants in Forfeiture cases	9	YES	2
Issue Bench Warrants for failure to appear, etc.***	YES	YES	YES
Authorize Pen Registers ****	YES	15	NO
Authorize Mobile Tracking Devices *****	YES	YES	NO

* Most criminal complaints, that is felony charges not brought before a grand jury, are brought to the magistrate judges. Most result in the issuance of an arrest warrant. However, separate statistics are not kept on criminal complaints.

** Not all arrest warrants are the product of a criminal complaint, but most are.

*** All of the magistrate judges have issued bench warrants in the past. The current practice is for the clerk of the court to issue the arrest warrant on the order of the court. Any judge may still sign an arrest warrant. Central Violations Bureau cases (traffic offenses on federal reservations, VA, Chanute, Arsenal) are not filed with the clerk, so any summons or warrants are signed by the magistrate judge.

**** Pen registers allow law enforcement officers to record the numbers called and received from a particular telephone. There are no conversations overheard or recorded.

***** Mobile Tracking Devices or "Beepers" are installed pursuant to a warrant on moving objects or vehicles. Law enforcement officers can track the object or vehicle by radio.

Table 2 shows the post-charge work of the magistrate judges. The magistrate judges do almost all of the initial pre-trial work in criminal cases. They conduct initial appearances and preliminary hearings to establish probable cause in cases not yet indicted. They conduct arraignments on indicted cases and appoint counsel for indigent defendants. They conduct bond/detention hearings on most cases. They order competency hearings at the request of a party, and determine issues of competency. All of these hearings are in person and in open court. After the initial stages of criminal cases, the district judges take over, conduct almost all of the pre-trial motions in criminal cases, including motions to suppress evidence or to dismiss indictments. The district judges also conduct their own pre-trial conferences in criminal cases. The few such cases handled by the magistrate judges are usually done on an emergency or ad hoc basis when the district judge is unavailable.

As shown in Table 2, one of the biggest statistical areas is that of the trial of misdemeanors and infractions. Any offense occurring on a federal reservation is usually tried in federal court. A few reservations have jurisdiction concurrent with the state, but most do not. This district has several such exclusive reservations, the Arsenal in Rock Island, Chanute Air Force Base[3] and the VA Medical Center in Danville, and several wildlife preserves throughout the district. Only civilians are charged in the civil courts. The military deals with its personnel in military courts. Any traffic offense or violation of a federal regulation occurring on these properties comes to federal court, and are called CVB (Central Violations Bureau) cases. Regulations protecting migratory and endangered birds apply everywhere, not just on federal reservations. In addition, a new federal prison is being built in Pekin. While there will not be exclusive jurisdiction over the property, there will be a number of regulation violations brought to federal court.

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[3] Chanute is scheduled for closing in September, 1993.

CVB offenses are usually infractions, offenses which carry only a fine. With the consent of the defendant, the magistrate judges handle these cases from beginning to end, including sentencing and any post-sentencing hearings or proceedings. While most of these cases are not complex, the vast majority being traffic or parking violations, they are time-consuming. Judge Boeye spends two days each month hearing CVB cases at Rock Island. Judge Kauffman spends one day each month hearing CVB cases at Danville. Judge Evans hears CVB cases as necessary.

Criminal cases need little locally imposed case management. The federal Speedy Trial Act, 18 U.S.C. §3161 et seq., 1984, imposes strict time limits between charge and trial. The Act is further implemented by local rules of this court, CDIL-LR 3.2 and 3.3 establishing other time limits before trial and between finding of guilty and sentencing. These limits are quite inflexible and may be extended only by an order of the court making specific findings allowed under the Act. Any extension of time must be "in the interests of justice". The "penalty" for exceeding the speedy trial limits is dismissal of the indictment, with prejudice.

Obviously, criminal matters must take precedence with the district judges. The magistrate judges appear to be doing all they can in the criminal area to assist the district judges and to allow the district judges more time to devote to matters only they can handle. All of the magistrate judges opine that they are well used in the criminal area. Any attempt to have the magistrate judges hear criminal motions would not save time, because the magistrate judge would be required to write a report and recommendation on the motions to the district judge, who would review the motions de novo and make his own ruling. The district judge can rule on all criminal motions from the bench with or without a written order. Because of the statutory time limits, that would appear to be the better practice.

Any ruling made by the magistrate judge on bond or detention, on competency, on appointment of counsel or the final order in a consent criminal case is appealable to the district judge. In non-consent cases the review is de novo. In consent cases, (CVB) the district judge reviews as a court of appeals for plain error or clearly erroneous findings. Few matters are appealed to the district judges. The most common appeals deal with denial of bond and orders of detention. Each division reports one or two such appeals a year.

TABLE 2

Magistrate Judge Usage
in Post-Charge Criminal Matters
Central District of Illinois - 1992

AUTHORIZED POWER	EVANS	KAUFF.	BOEYE
Accept Grand Jury Returns*	4		
Initial Appearance**	112	55	7
Appoint Counsel	22	25	1
Preliminary Hearing	14	17	3
Detention/Bond Hearing	99	27	5
Extradition/Removal Hearing**	YES	YES	YES
Arraignment	100	77	25
Pre-Trial Conference***	3	YES	NO
Suppression Hearing***	NO	NO	NO
Competency Hearing	4	1	2
Issue Writs/Material Witness	7	YES	YES
Handle Misdemeanors and Infractions with Consent of the Parties	22	142	381
Accept Verdict in absence of District Judge****	YES	YES	NO

* The Grand Jury meets only in Springfield.

** The statistics for removal/extradition are reported with initial appearances. Both Judges Evans and Kauffman do several of these hearings each year.

*** As a rule the district judges hold all pre-trial conferences in criminal cases, where all motions are resolved.

**** This has been done only in cases of emergency, when the District Judge is unavailable, and the parties consent to the procedure.

B. CIVIL DOCKET

Both full-time magistrate judges, Evans and Kauffman, participate in the civil docket on a regular basis. Judge Boeye has no civil duties. Judge Evans assists Judge Mills in Springfield; Judge Kauffman assists Judge Baker in Danville and Judges Mihm and McDade in Peoria and Rock Island.

The judges in this district have been involved in active case management for a number of years. The local rules of this court reflect that activity. Rule 2.10 mandates a scheduling conference in all but a few civil cases. Rule 2.11 establishes pre-trial procedures in all civil cases, including status conferences, motion hearings, settlement options and final preparations for trial. For example, Rule 2.11(F) sets forth the requirements of a final pre-trial order, including the preparation of jury instructions. This rule has been in effect district -wide since at least 1980.

The magistrate judges are responsible for the vast majority of pre-trial case management in this district. When a case is filed, it is immediately referred to a magistrate judge, unless there is a request for immediate injunction hearing or other activity which the magistrate judge cannot do. The cases remain referred to the magistrate judge until after the final pre-trial conference is held. This means that the magistrate judges have responsibility for approximately 90% of the civil caseload at any one time.

Table 3 summarizes the authorized duties of the magistrate judges in civil cases and the number of matters handled in 1992.

TABLE 3
Magistrate Judge Usage
in Civil Cases
Central District of Illinois - 1992

AUTHORIZED POWER	EVANS	KAUFFMAN
CIVIL CASES REFERRED AS OF 12/31/92	202	618
Percentage of civil cases	81%	66%
NON-DISPOSITIVE MOTIONS *		
Motions to Amend Pleadings	YES	YES
Motions to Intervene	YES	YES
Motions to Strike	YES	YES
Motions to Proceed IFP**	NO	110 plus
Protective Orders	YES	YES
CASE MANAGEMENT		
Rule 16 Hearings	215	99
Discovery Conference	9	109
Status Hearings	37	322
Final Pre-Trial Conferences	1	39
DISPOSITIVE MOTIONS *	39	90
Remand	NO	YES
Transfer Venue (Inter-District)	NO	YES
Dismiss	YES	YES
Judgment on the Pleadings	NO	YES
Summary Judgment	NO	YES****
Consent Cases *****	9	24
Social Security Appeals	11	9
§1983 Prisoner Cases ******	31	378
Habeas Corpus	NONE	NONE
Closed Settled Cases (Vol. Dism.)	NO	YES

OTHER		
Post-Judgment Citations	7	9
Special Master	NO	2
Accept Verdict	YES	YES
Naturalization	YES	1
Jury Trial (Consent Cases)	0	7
Bench Trial (Consent Cases)	0	3
Civil Jury Selection (With Consent)	10	YES
"ADR"		
Settlement Conference	7	24
Summary Jury/Bench Trial	NO	1

* All non-dispositive motions are lumped together in reports. Judges Evans and Kauffman rule on at least 500 such motions a year.

** A magistrate judge can allow a motion to proceed IFP. A district judge must deny such a motion.

*** Dispositive motions to remand, transfer, dismiss and for judgment are lumped together for reporting purposes. This number reflects a total number for 1992.

**** Judge Kauffman handles summary judgment motions in Danville only.

***** Separate motions are not counted for reporting purposes in consent cases.

****** For reporting purposes these numbers include all kinds of hearings in prisoner cases, initial pretrials, discovery conferences, status conferences, motion hearings and final pre-trial conferences. These are in addition to the numbers reported in the case management section, which are limited to "regular" civil cases.

1. TOTAL CASES REFERRED

As noted above nearly all civil cases are initially referred to the magistrate judge upon filing. In Springfield, the reference is only removed when the matter is ready for trial. Judge Evans handles initial Rule 16 hearings, but does not hear or rule on motions to dismiss or for judgment. Judge Mills rules on those motions, but for docketing purposes the reference stays with Judge Evans. Therefore, the number of cases referred does not truly reflect the number of cases for which Judge Evans is responsible.

In Danville, all matters are initially referred and the reference stays in until after final pre-trial unless there is a report and recommendation on a dispositive motion. In that case, the reference is taken out when the report is filed. When the district judge rules on the report, the case is re-referred to the magistrate judge for further proceedings.

In Peoria, all matters are initially referred and the reference stays in until after final pre-trial or until a report and recommendation is filed or until a motion for judgment is filed. Judges Mihm and McDade hear and decide all motions for summary judgment or judgment on the pleadings. If the motion is denied and the case continues, it is referred back to the magistrate judge. In Peoria the same case may be referred to the magistrate judge a number of times during its lifetime.

2. CASE MANAGEMENT

As the table shows, the magistrate judges are very active in case management in this district. After the initial responsive pleading is filed, be it an answer or motion, the case is set for a Rule 16 scheduling hearing, or a motion hearing, before a magistrate judge. The only exceptions are listed in local rule 2.10, and injunction hearings.

Judge Evans does not hear motions to dismiss, but he will settle initial discovery disputes or other initial matters. He sets a discovery calendar with a firm date for the completion of discovery, a date for filing of dispositive motions, and a trial date some 12-18 months after the conference. These conferences are set by telephone for the convenience of the attorneys. Judge Mills sets a final pre-trial conference 10-14 days before the trial date. As noted in the chart, Judge Evans does not hold many status conferences or other discovery conferences. All motions, whether they involve discovery or are directed to the merits are handled by Judge Mills, usually without hearing.

Judge Kauffman hears all pending motions at the initial Rule 16 hearing. From rough statistics it appears that he hears approximately 95% of all the initial motions to dismiss or to strike filed in Danville, Peoria and Rock Island non-prisoner cases. Some of the motions to dismiss are settled by agreement of the plaintiff to replead or by the defendant to withdraw the motion, so many of the motions he deals with do not show up in the monthly statistics. Only those motions on which a report and recommendation is written are actually counted in monthly statistics.

If an answer is filed Judge Kauffman establishes a discovery calendar and sets the matter for a further status conference in about 90 days. If the case is a simple one he may set it for filing of dispositive motions or for final pre-trial conference. At the status conference he checks the progress of discovery and handles any pending motions, usually relating to discovery. When it appears that discovery is or should be nearly complete, he sets the matter for final pre-trial conference or for filing of dispositive motions and motion hearing. Judge Kauffman hears summary judgment motions in Danville, but not in Peoria or Rock Island.

Final pre-trial conferences are set when discovery is completed and dispositive motions are denied or the time for filing such motions is past. Judge Mills holds all final pre-trial conferences in Springfield; Judge Kauffman holds nearly all of the conferences in Danville, Peoria and Rock Island. Pursuant to local rule, CDIL-LR 2.11(D) the attorneys who will try the case must appear at the conference. The attorneys must present a proposed final pre-trial order setting forth the contested and uncontested issues in the case, witness and exhibit lists, and proposed jury instructions. The parties are expected to be ready for trial at the close of the conference. When there is a long period of time between the final pre-trial conference and the actual trial of the case, the district judge may hold a supplemental conference to update the pre-trial order and to deal with any last minute motions or problems.

3. NON-DISPOSITIVE MOTIONS

Pursuant to 28 U.S.C. §636(a) a magistrate judge may hear and rule on any non-dispositive pre-trial motion. In this district these types of motions are usually ruled on without hearing on the basis of the pleadings only. Any agreed motion is ruled on without hearing, usually by the magistrate judge. As noted in the chart, there are hundreds of such motions filed each year.

4. DISPOSITIVE MOTIONS

As noted above there is a difference in procedure in referring dispositive motions to the magistrate judge throughout the district, reflecting a long-standing dispute within the entire federal judiciary over the best use of magistrate judges when faced with dispositive motions. Magistrate judges may not rule directly on any case-dispositive motion. The

motion must be dealt with in a report and recommendation. Usually the report contains an analysis of the facts and the law.

One faction favors reference of all such motions to the magistrate judge for hearing, report and recommendation pursuant to 28 U.S.C. §636(b)(1)(B). They argue that some motions, especially motions to dismiss or to strike, for remand or to transfer venue, can be "finessed" by the magistrate judge, that is, the affected party can be talked into amending pleadings or withdrawing an obviously meritless motion. This will save time for the district judge as the motion will never get that far.

If the magistrate judge does write a report and recommendation, the parties have ten days to file objections to the report. If no objections are filed, they are waived on appeal, Fed. R. Civ. P. 72. If there are no objections, the district judge may approve the report and order the recommended relief without further review of the motions. There are no formal statistics kept on the number of reports and recommendations to which objections are filed, however, an informal review of dockets in Peoria, Rock Island and Danville reveal that for 1991 and 1992 approximately 60% of the reports had no objections (118 out of 196). Out of the remaining 78 cases, the district judge approved the recommendation over the objection in 52 of the cases.

Finally, the argument is made that even if there are objections, often the report and recommendation of the magistrate judge reviews the record and substantially narrows and focuses the issues in the case, thus assisting the litigants and the district judge in the final disposition of the motions or the case. Judge Kauffman reports that he has written recommendations giving specific instructions to the litigants as to additional evidence to submit to the district judge or as to how a complaint could be properly pleaded. This is done to prompt the litigants to move in the right direction, saving time for all involved.

On the other side of the argument are those who contend that even if a magistrate judge reviews the case and writes a report and recommendation, the district judge must still conduct a de novo review of the record in at least some cases. There is no way to know which cases will end at the recommendation and which will require substantial time from the district judge.

In addition, a district judge may issue an oral ruling from the bench at the close of an argument without writing an opinion in many cases. Only the grant of a motion for judgment requires a written opinion in this circuit.

There are valid points on both sides. Judge Mills handles all of his own dispositive motions. Judges Mihm and McDade refer all motions except motions for summary judgment or judgment on the pleadings, which they handle themselves. Judge Baker refers all motions to the magistrate judge.

5. CONSENT CASES

Pursuant to 28 U.S.C. §636(c) the parties may consent to have their case heard to judgment by a magistrate judge. When a case is filed the clerk's office sends a notification of this procedure to all of the parties involved. All of the parties in the case must sign a consent form, which is also signed by the district judge. If a party does not appear, or if a single party refuses to sign, there can be no consent. If a consent is entered, the magistrate judge makes final appealable orders on all motions and conducts all phases of the bench or jury trial. Appeals are usually taken to the Court of Appeals, although the parties may elect to take a first appeal to the district judge.

In 1991 the Rules of Civil Procedure were amended to make it easier for the district judge or the magistrate judge to talk with the parties about consenting. Prior to 1991 the

judges were prohibited from discussing the issue with the parties. The major advantage to consenting in this district is the relative availability of the magistrate judges to give a firm trial date. Since the magistrate judges do not hear felony cases, criminal trials will not "bump" a magistrate judge's civil trial. Springfield and Peoria have available courtroom space for the magistrate judge. Danville and Rock Island have space available from the Bankruptcy Court.

6. SOCIAL SECURITY APPEALS

One of the areas traditionally given to the magistrate judges is the review of administrative appeals filed in Social Security cases. Many districts refer all such cases to the magistrate judges. In this district, Judge Evans reviews almost all of the Springfield social security appeals on consent. Those without consent go to Judge Mills. In Peoria and Rock Island, Judge Mihm does all of his, and beginning in January 1993 Judge McDade has referred his to Judge Kauffman for report and recommendation. Judge Baker has always referred all of his to Judge Kauffman.

The primary argument for such referrals is that the magistrate judge can develop an expertise in reviewing social security decisions and can be more efficient. This is especially true if the parties file a consent. The counter argument is that if there is no consent, the district judge still must review the report and recommendation if there are objections. There is no real case management in these cases, as the schedule for answer and briefing is set forth in the local rules, CDIL-LR 2.3.

7. §1983 INMATE CASES

All inmate cases filed pursuant to 42 U.S.C. §1983 are referred to the magistrate judges. If the complaints survive initial review, the case is set for an initial pre-trial conference with the magistrate judge. If there is a motion to dismiss, the motion is handled by the district judge. The magistrate judge sets a discovery calendar in each case and sets deadlines for filing of dispositive motions. If the cases survive dispositive motions, they are set for final pre-trial in accordance with local practice. These cases make up a large portion of the civil docket and are time-consuming. Over 95% of the plaintiffs in these cases appear pro se.

8. HABEAS CORPUS

While some districts refer cases filed by state prisoners pursuant to 28 U.S.C. §2254 to magistrate judges, this district does not, and never has. These cases involve federal constitutional challenges to state criminal convictions. They are almost exclusively records reviews and rarely involve personal appearances.

9. OTHER

The magistrate judges conduct post-judgment debtor examinations under Illinois law for both the district court and the bankruptcy court. They may issue turn-over orders and otherwise assist in the enforcement of judgments. They may not issue final garnishment orders issued to non-parties. The magistrate judges conduct naturalization ceremonies and may accept verdicts in civil cases, but may not direct the entry of a judgment on the verdict. Pursuant to the Gomez decision, a magistrate judge cannot conduct civil jury selection absent the consent of the parties.

10. ALTERNATIVE DISPUTE RESOLUTION

Over the past few years the judges in this district have become more interested in settlement assistance. Judge Baker has conducted settlement conferences for years on an ad hoc basis. There is no formal procedure for settlement conferences in the local rules, but the district judges have expressed interest in having the magistrate judges do more to explore settlement. Judge Evans has recently conducted conferences set up by Judge Mills. Judge Kauffman offers to conduct a settlement conference at any time during the pre-trial phase, either at the request of a party or on his own initiative when the case appears to be one likely to settle.

Settlement conferences are set for personal appearance by counsel, with someone with full settlement authority either present or immediately available by telephone. Parties are invited and often attend. Conferences have been held before the start of formal discovery, before dispositive motions are filed or after the final pre-trial conference. Judge Kauffman states that only the parties can tell him when they are ready to talk settlement.

Judge Kauffman has conducted 12 summary jury trials and one summary bench trial. Of those, 11 settled before trial and the two that went to trial had the same result as the summary jury. Summary trials are conducted at the request of the parties and the results are purely advisory. They are limited in time to one day. A jury of 6 to 12 is selected from the regular jury panel. Each side gives a one-hour summation of the evidence it will present at trial. Each side is allowed a brief closing argument. Jury instructions are brief and are targeted to the disputed issues. The jury is allowed to deliberate to a unanimous verdict or two hours, whichever comes first. If the verdict is not unanimous, each juror writes his or her individual verdict and all are presented to the parties.

The Seventh Circuit Court of Appeals has ruled that the district court has no authority to order submission to a summary trial. The district court may strongly urge the use of a summary proceeding, but in this circuit may not compel it.

Judge Kauffman and Judge Baker opine that a summary trial is appropriate if the trial will take three days or longer. Anything shorter doesn't save enough time to make the procedure really worth while. Some cases are tried summarily as to liability only or as to damages only. Some are tried as to both. Some are tried without contribution parties; some are tried between contribution parties. Each is tailored to the real factual disputes that would be most important to a trial jury.

C. CONCLUSION

Magistrate judges are an important part of the civil and criminal dockets in this district. They are used to their fullest potential in the criminal area, saving countless hours of time for the district judges. They are used in varying degrees in the civil area. There are areas that could be improved and areas that may need further study.

III - INMATE CASES FILED PURSUANT TO 42 U.S.C.§1983

One of the major areas of concern in the civil docket of the Central District of Illinois is inmate cases. These cases are filed by incarcerated persons alleging civil rights violations by prison officials under 42 U.S.C. §1983.

As with all civil cases, the goal of the court should not be the elimination of as many inmate civil rights cases as possible, but the elimination of the non-meritorious cases from the system as soon as possible, making the system more accessible and more efficient for the meritorious claims. There have been significant verdicts in favor of inmate plaintiffs in this district, and changes in Department of Corrections (DOC) policies because of federal litigation.

Factual claims range the field from cold toilet seats and radio transmitters in molars, to allegations of allowing street gangs to dictate prison policy and discipline, to allegations of beatings, intentional neglect and wrongful death. Neither this committee nor the court should view the merits of these cases as any less important or less worthy of the court's time than any other civil case on the docket.

A. TYPES OF CASES

There are two major types of cases filed by pro se inmate plaintiffs, petitions for habeas corpus under 28 U.S.C. §2254 and civil rights suits under 42 U.S.C. §1983. Habeas cases, while gathering a lot of publicity and Congressional attention, account for less than 1% of the caseload of the District Courts across the nation. That percentage runs true in this district. While the habeas cases are time-consuming and fraught with procedural hurdles, none of the judges have expressed concern. Habeas cases attack the fact or

duration of confinement. Habeas cases do not involve discovery and rarely get past the initial review stage. Few are set for evidentiary hearing.

By far the larger concern is for the pro se inmate cases filed under §1983. Filings for the past five years are as follows:

1988	1989	1990	1991	1992
250	237	274	332	401

The percentage of all civil filings for the past five years:

1988	1989	1990	1991	1992
19.8%	21.7%	24.5%	27.7%	28.4%

At any given time there are approximately 300-350 such cases pending in the district.

One of the major factors in the number of filings is that the Central District is home to thirteen (13) of the state's twenty-four (24) adult correctional facilities. The facilities by division are as follows:

DANVILLE	SPRINGFIELD	PEORIA	ROCK ISLAND
Danville	Graham	Dixon	East Moline
Pontiac*	Jacksonville	Dwight*	
Dwight*	Lincoln	Hill	
	Logan	(Galesburg)	
	Taylorville	Ill. River	
	Western Ill.	(Canton)	
	(Mt. Sterling)	Pontiac*	

* Pontiac and Dwight were in the Danville Division until January 1, 1992.

There are eight institutions in the Southern District of Illinois and three in the Northern District. A small percentage of §1983 cases are brought against county jails for alleged violation of rights of pre-trial detainees or short-term post-trial detainees. County jails in Illinois house convicted persons who have sentences of less than one year.

Civil rights cases attack the conditions of confinement. Most cases fall into five broad categories;

1. Basic conditions of confinement, including provision of heat and food; cleanliness; access to exercise; access to programs; medical care. (8th Amendment claims)

2. Excessive use of force by corrections officers (8th Amendment claims)

3. Religion, privacy, mail, association, retaliation (1st Amendment claims)

4. Unfair or inadequate disciplinary proceedings (14th Amendment claims)

5. Failure to protect inmates from physical attacks by other inmates. (8th Amendment claims)

In most of these areas there is a well-developed body of law from the Supreme Court and the Seventh Circuit Court of Appeals. The primary task in the litigation of these cases is fact finding. Once the facts are brought to light, few cases survive summary judgment motions.

B. REPRESENTATION

The vast majority of these cases are filed and conducted by pro se plaintiffs. Many file requests for appointment of counsel, but few such requests are granted. Requests for appointed counsel are assessed on a case-by-case basis.

If the case survives dispositive motions and proceeds to final pre-trial conference, the presiding judge makes an assessment of the ability of the plaintiff to present the case to a jury. If there is no jury demand an attorney is rarely, if ever, appointed. The judges assist the plaintiffs in presenting a case to the court and developing a record. However, assisting the plaintiff is not acceptable in a jury trial. If the presiding judge finds some merit to the plaintiff's claims and finds that the plaintiff could not present a case to a jury, appointment of counsel is considered.

If the plaintiff prevails at trial, counsel can request fees and costs from the defendant under 42 U.S.C §1988. There is no fund available to advance any costs or fees to appointed counsel, such as deposition fees, travel and witness expenses. Representing inmates at trial is not a sought after assignment. There are no legal clinics in this district. There are no law school programs for assisting indigents in this district. There is a reluctance on the part of the bar, including the recognized pro bono bar, to accept these kinds of appointments. Some members of the Court of Appeals have opined that the "market" will take care of all litigants who have meritorious claims, that is private attorneys will take all of the cases that have merit. The experience in this court strongly challenges that opinion.

Defendants who are employees of the State of Illinois are represented by the Illinois Attorney General. Each individual defendant must request representation, and is free to hire private counsel. Defendants not employed by the State of Illinois are represented by States Attorneys or private insurance counsel.

C. FILINGS

The filing fee for a civil case in federal court is $120 ($60 until June 1986). Local Rule 2.1 requires that the fee be paid upon the filing of the complaint. Title 28 U.S.C.

§1915 allows an indigent plaintiff to petition the court for pauper status, ifp. If the plaintiff can satisfy the court that he or she cannot pay the full filing fee, the court may allow the plaintiff to proceed without prepayment. In this circuit, the court may refuse ifp status if the complaint is "frivolous". A "frivolous" complaint is one that fails to state any conceivable claim against any of the named defendants. Nearly all of the inmate plaintiffs seek to file ifp.

In 1984 the court adopted a procedure, first introduced in Ohio, requiring partial pre-payment of filing fees from inmates before ifp status was granted. This procedure, described in Local Rule 2.12(B), requires the inmate to submit an application to file ifp along with ledger sheets showing receipts and disbursements from his prison account for the preceding six months. The filing fee is established as 50% of the inmate's average monthly income for the preceding six months. The theory is that this partial fee will discourage the filing of nuisance suits. This procedure has been followed throughout the district. As noted above, once ifp status has been granted on payment of a partial fee, the court may not dismiss the complaint under the "frivolous" standard.

In 1980 the district adopted standard complaint forms for use by inmates in §1983 suits. Local Rules required that any inmate complaint be on the court-approved forms. Statement of the claim was limited to two double-spaced pages. Complaints that did not comply with this rule were rejected and not filed. In 1991 Congress amended F.R.Civ.P. 5, which now specifically prohibits the rejection of any pleading for "technical" violations of the federal rules or local rules. This has been interpreted to mean that the court cannot reject any pleading for filing. The judge may strike the pleading later, but it must be filed on receipt.

The court still sends complaint forms to inmates and expresses a strong preference for their use. Most inmates use the forms, or now have access to word processing equipment in the institutions, making reading the complaints much easier. Few complaints are submitted on toilet paper, napkins or backs of envelopes.

Pursuant to Local Rule 2.12(D) the State of Illinois is allowed 60 days to plead to an inmate complaint. Local Rule 2.12 also requires the defendants to file an answer to the complaint, not a motion. An answer with defenses brings the case to issue and allows discovery to progress.

D. PRE-TRIAL PROCEDURES

When the complaint is filed a scheduling order is entered. The scheduling order establishes the answer time and sets the case for an initial Rule 16 conference. These conferences are held by the magistrate judges by telephone. The conference is set at least 70 days from the date of filing of the complaint, as the magistrates' calendars will allow.

At the Rule 16 initial pre-trial conference, the magistrate judges explain discovery procedures to plaintiffs unfamiliar with the federal rules. A discovery deadline is established, usually 60 to 90 days from the conference. A deadline for filing dispositive motions is set and a final pre-trial date is set. The case is usually set for at least one status conference by telephone before the discovery deadline.

If not disposed of by motion, every inmate case is set for a final pre-trial conference by personal appearance. The magistrate judges conduct most of these conferences. At the time of the conference discovery should be complete, all motions should have been filed and the case should be ready for trial. At the final pre-trial conference the parties are expected to discuss the trial and prepare a final pre-trial order to be signed at the conference. Local

Rule 2.12(H)(2) & (3) sets the procedure. The parties are required to have an agreed statement of uncontested facts, issues of law to be decided, completed witness and exhibit lists and proposed jury instructions. Inmates who request non-parties as witnesses must inform the court in writing what the witness will testify to and why he or she is necessary to the plaintiff's case. A new procedure was adopted in the 1991 version of the local rules. Parties to final pre-trial conferences are supposed to come to the conference with a prepared final pre-trial order and are not supposed to leave the courthouse without a final order signed by the judge. In surveying the judges, none have resorted to keeping the parties in the courthouse, although all report unprepared parties and incomplete conferences. The signed pre-trial order takes the place of all the pleadings, and sets the issues for trial. When the final pre-trial order is signed and docketed, the case is put on the "Ready for Trial" list.

E. TRIAL

Inmate cases ready for trial are placed on the general civil calendar. There is no separate inmate trial calendar. Cases are reached for trial in the order they are ready for trial, as time permits. Most inmate trials, bench or jury, last one to two days. Most end with full or partial directed verdicts in favor of the defendants. There have also been substantial verdicts in favor of plaintiffs.

F. PROBLEM AREAS

There appear to be five major problem areas in handling inmate cases.

1. Frivolous cases. The partial pre-payment system undoubtedly deters some frivolous cases from proceeding. However, many inmates do pay the fee for cases that have

absolutely no merit. Current case law severely restricts the court's ability to screen and dismiss cases on the basis of "frivolousness" when the partial fee is paid.

2. Non-meritorious cases. These are the cases in which the complaint states a colorable claim, but the facts do not amount to a constitutional violation. These can be dealt with only by motions and supporting documents. The court cannot, sua sponte, bring these cases to a conclusion because usually there is insufficient information filed with the court. The court files no discovery unless it is filed as an exhibit to a summary judgment motion. These are the kinds of cases that result in directed verdicts for the defendants, usually at the close of the plaintiff's case.

3. Timeliness of pleadings. The majority of pleadings, discovery and dispositive motions are not filed within the court-set time limits. This is a problem of both plaintiffs and defendants. Not allowing discovery or the filing of dispositive motions leads to trial of non-meritorious cases. Allowing filing of the motions encourages the continuation of the practice. Forcing defendants to trial, which they will win anyway because the plaintiff has no case, is an avoidable waste of judicial resources.

4. Security. Bringing inmates to trial, or for any personal appearance creates security problems for the court and the DOC. This is the major reason why most inmate hearings are done by telephone and why most motions are not set for hearing. Whenever an inmate is brought to court, two corrections officers must accompany. If the inmate is a security risk, is in protective custody, is on death row or has other special status, more officers must travel. If an inmate wants other inmates for trial, this same procedure applies. In addition, there is a problem keeping several state prisoners in the holding areas in the courts. They may not stay over night and there is no provision to feed them. Often inmates must travel more than four hours one way to get to court.

5. Counsel. Many meritorious cases come to trial without counsel. While the trial judge attempts to keep the trial fair, he cannot do what a trained advocate could do. Many pre-trial problems with discovery and motions could be avoided or lessened if counsel were involved on behalf of the plaintiff. The court is very reluctant to appoint counsel to every case. The attorney resources are not available and many cases have no merit. There is no fund to advance any fees for discovery or travel, and the plaintiffs cannot advance these fees either.

Organizations funded by the Legal Services Corporation, such as Land of Lincoln and Prairie State Legal Services, cannot represent inmate plaintiffs in §1983 cases. The court must depend exclusively on the private bar to provide these services. The United States Supreme Court has held that the district court may not force unwilling attorneys to represent indigent plaintiffs under 28 U.S.C. §1915. It left open the question whether the court has "inherent power" to require pro bono service and to appoint unwilling counsel. Judges in this district take the position that they do have such inherent power, and relieve appointed counsel only on a showing of exceptional circumstances.

The Iowa state bar has a state-wide mandatory pro bono requirement, and the federal courts use local attorneys in §1983 cases. The bar has established a fund to advance fees in these cases. If the plaintiff prevails, those fees can be recovered and repaid into the fund.

The Illinois bar has recently established the Illinois Pro Bono Center. This is to be a state-wide legal services network with a very broad mission, providing legal services to the economically disadvantaged. While the Center is in its infancy, perhaps it will address the need for legal services for incarcerated plaintiffs. The Center is located in Champaign. It hopes to tap into the University of Illinois School of Law students and faculty.

6. NEW DEVELOPMENTS

While the State of Illinois does not anticipate opening any new prisons in our district in the near future[4], the Federal Bureau of Prisons does. A medium security prison is being built in Pekin (Peoria division). It is scheduled to open in spring 1994. It will house up to 700 inmates and a staff of unannounced numbers, likely upwards of 1000 all tolled. Federal inmates may bring suits under the Federal Tort Claims Act for negligent and intentional acts, under the Freedom of Information Act for access to their files, for violations of federal regulations, and directly under the Constitution for violations of the first, fifth, sixth and eighth amendments. This facility will also generate some number of non-inmate civil suits.

7. CONCLUSION

Civil cases filed by incarcerated inmates alleging constitutional violations as to the conditions of their confinement represent a significant portion of the docket of the court in the Central District of Illinois. These numbers will continue to grow, with the growth in the Illinois prison population and the new federal facility in Pekin. Any reduction in the time the court spends on these cases will impact the rest of the civil docket.

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[4] However, the legislature recently approved the planning phase for a new "highest security" state prison. The location has not been selected.

IV. ASBESTOS LITIGATION

Asbestos litigation represents a significant portion of the civil filings in terms of cases and numbers of parties over the last few years. In 1992 the Panel on Multi-District Litigation for the United States Courts accepted asbestos cases for multi-district treatment. All of the asbestos cases filed in this court have been transferred to the Eastern District of Pennsylvania for inclusion in the multi-district docket. While the judges in this district no longer are responsible for these cases, and they show as "terminated" cases, all of the docketing is still done by the clerk's office here.

CHAPTER 3

STATISTICAL ANALYSIS

The Statistical Subcommittee of the CJRA Committee for the U.S. District Court for the Central District of Illinois had two primary goals: to provide a basic analysis of the court's past activities that would serve the Committee as a foundation for a) understanding how the court actually functions prior to recommending changes, and b) providing insight into areas where delay may be occurring and/or costs could be reduced. The subcommittee performed an extensive analysis of the information available from the Administrative Office of the United States Courts (hereinafter AOUSC) for the USDCIL as well as the court's own records. The review progressed into direct case file review and data analysis. Preliminary results from this review were reported periodically as it progressed. This chapter includes both findings, conclusions and recommendations of the Statistics Subcommittee.

I - COURT CHARACTERISTICS

Before describing how the data was collected and analyzed, it is important to recognize particular characteristics of this court which affect that data and the conclusions we drew from it.

1. The geographic distribution of the judges in separate cities, and the wide diversity of subjects handled by the court, forces all judges to be generalists.
2. The cases used in this study are civil cases unless identified otherwise. The primary data base for statistical sampling was of civil cases. We suggest that civil cases would reflect any difficulties or delay factors in case processing

affecting the court. Criminal cases, by law, have priority and must be tried first. The criminal case dockets are beginning to be computerized.

3. Most federal courts of a size similar to that of this court have one primary physical location with smaller, branch offices as necessary. In other similar federal courts, the headquarters office is not only larger, almost all of the judges and staff are physically situated there. The offices of the Central District of Illinois (hereinafter CDIL) are not arranged in this way. Rather than one large headquarters, there are three primary offices, three of which have a large complement of staff and one or two judges (Danville, Springfield and Peoria). The remaining office has two staffers and no resident judge (Rock Island). These offices are physically separated between 50 and 120 miles from each other in a jagged east/west line from one side of the state to the other. Each division of the court represents a separate geographic area both for the court as well as for the area from which it draws its caseload. This physical separateness affects sharing and transferability of matters between judges, and how cases are initially assigned and processed and how work loads are allocated between judges.

The distinct and separate location of the four divisions makes random assignment and judicial interchangeability much more difficult, if not impossible, than in a geographically unified district. The geographic separation ignores the travel/time factors which work against uniform resource allocation, particularly with respect to magistrate judges. Geographic distances and different county populations of the four internal divisions make any description of work load that treats the court as one centralized entity unrealistic and statistically inaccurate.

4. There are not sufficient court rooms available at all of the locations any given time to accommodate all of the cases ready to be tried even if there were sufficient judges available. Lack of court room space in Danville, and to a certain extent in Peoria since it has two judges, affects the ability of the court to hold trials. Although it may appear on paper that a court room is available,the available room may not be where the judge or magistrate and/or counsel are who want to make use of it. Geographic separation makes shifting the trials unreasonable for all concerned.

5. Allocation of magistrate judges according to the number of judges as if they all had equal access and use of magistrate services is not practicable. The availability of magistrate judges is not equal for each division due to the different locations of the judges as well as of the magistrate judges. The CDIL operates now with 2.1 magistrates. One is physically located in Springfield and one is physically located in Peoria but spends two days per week in Danville (a two hour drive distance in good weather). In addition, one person, serving on a part-time basis, spends approximately two days a month in the Rock Island office handling petty criminal offenses from the federal Rock Island Arsenal. For this reason, the workload of the magistrate judges differ between magistrate judges and by location.

6. A fifth division for the CDIL is expected to open in the next eighteen months. This division will be located in Urbana, Illinois, as soon as the construction of the new courthouse is complete. There is no plan for an increase in the CDIL staff size, however. The same number of judges and staff spread out over a fifth division will make additional changes in how cases are allocated and processed.

7. Information which may help this District understand where its particular area of focus should be in addressing delay or cost considerations may not be evident from the material because the system was not set up to serve as an internal statistical check. The current court statistics are

   - 1) requested by the AOUSC for different statistical purposes and uses,
   - 2) incomplete with respect to older cases in many instances,
   - 3) reflect variations in identification of events by judges and court staff, and
   - 4) reflect case opening information which is dependent upon cover sheet forms submitted by counsel which are not always complete and accurate.

   The last point is of particular note: the data here represent the transcription of docket information into a computer. The data do not totally reflect what is in the case files because only summary information, not the actual pleading, reside on the system. The case files are available for perusal to get the full information not included in the computer data base.

8. The CDIL uses a docketing system. It is not a computerized case file system. A docket is a very brief, chronologically-formatted history of a case. It is a representation of the case file and an indication of the file's contents. The

civil docketing system does not explicitly relate information which would help to determine:

- a) the extent to which cases handled predominantly by magistrate judges are faster or slower than other cases;

- b) the differences in length of time prior to trial, during trial and after trial for cases in which there were juries and cases in which there were not juries; or

- c) motion practice and reasons for case disposition prior to trial.

Counting numbers of events which occur in the life of any given trial, even if the events were grouped, would offer little illuminating information. There is no specific event used by the CDIL to indicate that a jury trial actually was begun unless the jury is allowed to render a verdict. The events are simultaneously too specific and too subject to various interpretation, both by the docketing staff and by the judges. The data alone are not sufficient to answer many questions, such as whether concerns about possible attorney churning or displacement of civil trials because of criminal case activity are justified. For these reasons, there is less information concerning the timing and progress of cases through the system and the trials than might otherwise have been expected. Additionally, these structural factors limited the ability of the subcommittee to draw conclusions regarding the differences in judicial case management styles in the different divisions of the CDIL.

II - HISTORY AND METHODOLOGY

In order to fully appreciate the statistical findings and analysis, it is necessary to review the options before the Subcommittee, the processes it used, how it decided to approach the materials it had available to it and why. The historical description of the committee's methodology provides both an explanation and rationale for the Subcommittee's approach.

The Subcommittee pursued simultaneously a statistical analysis of the court's civil work load and a case-by-case review of the "older" cases, ie., those over three years old. The case-by-case review was directed toward answering specific questions about the nature and characteristics of the older cases which could only be determined from the minute records in the case files. The "older" case study was done by reviewing the docket sheets of each case to identify potential anomalies. These cases are assessed in the section entitled "older cases," infra.

The statistical review was conducted on the information maintained in the court's computerized records. The court began computerized case docketing on October 1, 1989. Cases opened and closed prior to that date were not placed into the computer, but remained on paper dockets. Cases opened prior to that date and not yet closed were included in the computerized records. Basic case information was entered into the computer along with all party and attorney information. Events which occurred in cases opened prior to October 1, 1989 (but not closed prior to that date) were NOT included in the data base.[5] For those events, the paper docket would have to be examined. To the extent that the information was not already in the computer, the subcommittee did not go back to the paper case files.

The subcommittee believed that going back to the paper case files was time consuming, and it would not produce any additional information from the computerized files. In addition, such an exercise could defeat a primary purpose of the statistical study: to learn the extent of the existing computerized information, and determine what kinds of changes the court would need to make in its record keeping to be able to provide more statistically useful information in the future.

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[5]. An event in the computerized docketing system is an occurrence in a case. Any and all occurrences are considered events. Each event is recorded separately. Pleadings, orders, etc. are events. Examples include: motion by plaintiff for summary judgment; order by judge denying defendant's motion to extent time for discovery; withdrawal or substitution of counsel, etc.

First, the annual reports provided by the AOUSC for 1990 and 1991 entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990" were examined. Many other courts, whose reports we received, relied solely on AOUSC data for their analyses. The statistical analysis provided in these reports and the figures they gave regarding the CDIL operations were carefully reviewed. The information provided in these reports were basic descriptive summaries: numbers of cases filed, numbers of cases terminated and average operating times. Jeff Gustafson, Systems Manager for the CDIL, worked with the numbers to see what, if anything, they could show us. From the figures he developed histographs depicting the division and criminal/civil comparative information that was available from the AOUSC data. (See, Charts 15 and 16.)

It was determined that, for a number of reasons, the AOUSC figures did not give a clear enough picture of the CDIL's actual work load or operations to identify areas of possible problems. The AOUSC data were set forth in relation to other courts in the nation. However, the AOUSC information did not tell what was really happening with the CDIL cases. Part of the reason was that the AOUSC used weighted indices to measure case longevity as a relational factor rather than actual numbers.[6]

Moreover, the AOUSC figures treated the CDIL as if it were one, centrally- located, physically-static, court with three judges and two magistrate judges in 1990 and four judges and two magistrate judges in 1991. Thus, the fact that Judge McDade was not actually sworn in until December, 1991, severely detracted from the usefulness of much of the

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[6]. "[T]he Judicial Conferences uses a system of case weights based on measurements of judge time. The weighted filings figures . . . 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 US district courts appears in the 1980 AORep, pages 290 through 298." Taken from "Guidance to Advisory Groups Memo, Feb. 29, 1991" , Administrative Office of the United States Courts, Prepared for the US District Court for the Central District of Illinois, at page 9.

AOUSC data. The effect was to credit the court with what it should have had in terms of personnel and resources, not with what it did have. Thus, AOUSC information undervalued the workloads and production of the court personnel Moreover, the "per judge" factors were totals divided by the numbers of authorized persons, without regard to location or actual caseload. While this data may be useful in a general comparison with other districts, for this court's internal purposes, it ignores the physical diversity of the four divisions, their separateness and the different case management systems employed in each. For these reasons, we decided not to rely primarily on AOUSC data.

Second, the Statistics Sub-Committee identified questions which could be useful to the Advisory Committee's report. We determined where to look for or how to develop such information if it was not otherwise available.

The information sought fell into five basic areas:

- 1. differences between divisions that would reflect both the geographic and personnel resource allocation discrepancies and, perhaps, case processing differences;
- 2. effects of magistrate judge assistance on judicial workloads, availability, and processing delays;
- 3. areas where delay in case processing occurs and probable sources of such delay, from the case subject matter to attorney churning;
- 4. influences caused by changes in legislative requirements, particularly in the criminal area, on case processing and court operations; and
- 5. needs for and appropriate types of alternative dispute resolution mechanisms which the court could adopt in the future.

These five areas were translated into questions for statistical analysis in an initial memorandum. The Subcommittee initially believed that the records maintained by the court would be comparable without additional processing and would be responsive to these questions. The Subcommittee reviewed the information and materials which the court regularly maintains about its own cases with this underlying premise. The information sources reviewed were: the docket sheets, the judicial activity reports, and the case processing "events" information, among other documents. This data explained some of the existing relationships between cases and judicial workloads. Jeff Gustafson developed pie chart graphs depicting the information initially apparent from this review. (See, Charts 8 through 14). Following this review, it was agreed that although the court did not have on hand the kind of information which could be useful to answer the Subcommittee's basic questions, a good part of that information could be generated by subjecting the data the court keeps to statistical processing and analysis.

Bill Rogers, Director, Academic Computing, Sangamon State University, Springfield, IL provided technical assistance in the statistical analysis program development and actual data processing operations. His services were invaluable and were offered without regard to the Committee's ability to find monies with which to pay for them. Without his assistance and use of the SSU computer facilities and support services the following analysis could not have been performed. In addition, Dr. Steven Puro, Professor of Political Science, St. Louis University, St. Louis, MO provided advice on how to assess the results from the processed data and made helpful suggestions as to its presentation. His assistance was given gratuitously and his suggestions were both helpful and appreciated.

An initial SPSS program (a statistical package for computer data processing) was developed, and the data variables available for analysis were identified and appropriately

coded. A pilot run of an initial data base of cases filed within the 1991 statistical[7] year was run. The initial report gave some flavor of the possibilities which a larger data set would produce.

The initial pilot report also identified problem areas which a larger data set would exacerbate rather than cure. For example, approximately 2% of the cases were labeled "Statistically Closed", i.e., taken out of active case docket because they were stayed pending action in another forum. The practice of labeling cases statistically closed relates primarily to matters which were stayed because of pending bankruptcy appeals. Rather than carry the case as open while the other matter was processed, it was classified as statistically closed for data maintenance purposes. This procedure allowed the court to have a comparatively accurate count of the cases on which events may occur. Because these cases are waiting for other cases to be processed they were not listed as Stayed Pending Decision as were the MDL or Multi-District Litigation cases. However, the MDL or statistically closed cases are still docketed in the CDIL and take considerable processing time and personnel resources. The existence of MDL transfer cases also indicates probable discrepancies in other numbers when internal district comparisons are run.[8]

Every filed case is automatically assigned to a judge and referred to a magistrate judge for initial processing. The case will only show a magistrate judge's name as the presiding judge, however, when both parties have consented to have the magistrate judge

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[7] The AOUSC collects data on the basis of a statistical year that differs from the federal government's fiscal year. The statistical year runs from July 1 through the following June 30. Because of the AOUSC requirements, all of the CDIL data is collected by statistical year. The Subcommittee's analysis is expressed in statistical year bases for that reason.

[8] The AOUSC counts these cases as part of the case load for the MDL. The CDIL cannot consider them active cases, but does all of the work on them. This is one of the reasons for case number discrepancies in this area.

handle the matter through final judgment. In all other instances, although the magistrate judge may handle different events in the case, AO reporting methods give credit to the district judge. For this reason, the data records of the district judge to whom a case is assigned do not provide accurate information on either the district judges' workload or the magistrate judges' workload.

Other information, such as jury demands, amount demanded in the complaint, amount finally awarded, etc. were found to be available within the computer, but some of these are entered at case opening and others not until case closing. As a result, efforts to extract non-recorded file information were not repeated with the larger data base.

The initial computer runs gave us a good idea of the kind of data available. This information was used to revise the information goals from the remaining larger group of data. By the end of September, 1992, an ASCII flat file with all relevant categories of available information was constructed and put on tape for transmittal to the main SSU computer for processing. This data set included significant CDIL case information from October, 1989 through September 23, 1992, the date the data was extracted. A series of revised programs were developed in the ensuing months. Events occur during the life of a case at different times; each time an event occurred, it was entered separately. The result was an enormous amount of repetitious or null fields which the computer had to read to get to a countable factor. The structure of the data file proved too cumbersome. It was broken into two separate files, one with the relevant events information and limited identification categories, and another with primary case identification but limited to only the first event in the case. Using the smaller files, an initial run on the full set of data covering the whole time period was completed. Initial findings were reported to the Advisory Committee at its January, 1993 meeting.

Thereafter, the program was revised to separate the cases by statistical year, and additional comparisons were completed. Thus, after the initial test of one year's worth of data, four different computer runs were completed with the larger three year data base. Cross tabs, frequencies and basic correlations were run for the data base as a whole and then again for each of the three statistical years included in that base.

Two major analyses were made of the data base as a whole: 1) a survival chart showing the age of the cases when closed and 2) a subject matter chart showing the numbers of cases, by type, filed in each CDIL division. The Case Survival regression, Charts 17 and 18, gave a good idea of how long cases took to close and provided a solid foundation for understanding the anomalies found in the Older Case study. The subject matter chart gave a break down of cases filed by division by statistical year for each of the major types of case categories listed on the docket sheet. (Table 17). The figures were then depicted in a series of histographs, Charts 1 through 7, to allow a visual comparison to be made.

While Anne Draznin worked with the computer data bases provided by Jeff Gustafson and Jeff developed charts from Anne's findings, Shawn Denny reviewed and analyzed all cases over three years old as of September, 1992 to determine if there were any trends or identifiable processing causes for case age. Simultaneously, Jack Waters reviewed all of the criminal case docket information which was not included in the computer data. Using the AOUSC information and CDIL records, he compiled criminal case comparisons for a seven year period which are reported in the section entitled "Criminal Cases." These two sections were reviewed separately by the Subcommittee and incorporated into its draft report for the first time in March, 1993. Following receipt of commentary and recommendations from the Committee and Dr. Puro, the Subcommittee's final report was completed and submitted in June, 1993.

Two final caveats should be noted. First, because of the time limits legislatively required in criminal cases, it was agreed that if there was a problem with case processing it would show in the age of the civil cases. The analysis of the civil case docket and case survival (age) indicated that the CDIL did not have major docket problems with old cases. For this reason, the criminal docket information was not computerized and no in depth comparisons were made. Second, no analysis was made of the events that happened in the life of a civil case, their frequencies, or the differences according to type of case or final disposition. This was due in part to the questionable comparative validity of the events data. With different divisions recording similar events under different categories, the lack of uniformity of coding makes the resultant information questionable. The event codes are very specific. So specific, and so numerous in fact (there are over 150), they would have to be amalgamated into broader more general categories for analysis. Even then major questions would remain unanswerable from the data. For example, there is no event that indicates that a matter actually had a jury trial. For these, reasons, a separate analysis of the events portion of the data base was not attempted. This is one of the areas, however, in which additional work is anticipated in the future.

Finally, a word about the Conclusions and Recommendations section. The data provided some interesting insights into the workings of the court. These observations and analyses are included after the presentation of the data from which a specific understanding was derived. The Subcommittee discussed at length what should be incorporated into the conclusions section. It was agreed that final recommendations as to possible processing changes for the court or directions it should take in the future should be left up to the Advisory Committee as a whole. In addition, we determined that possible additional data collections and analyses and/or changes in processing that would assist in this area required

further study and could not adeuately be assessed for inclusion in this report. The Subcommittee's conclusions therefore are general by intent. It will continue to work on ongoing data collection needs and ways in which to develop more and better information for the court from its civil and criminal case files in the future.

III - DATA ANALYSIS - CIVIL CASES

Following is a description of what was found by the different statistical and archival analyses described above and how these studies contributed to a better understanding of the CDIL operations and needs.

As a review of the findings of the data analyses indicates, several different sets of data were used to produce the information discussed. The criminal case information was developed separately, by hand, by Jack Waters and reflects a six year period from July 1, 1986 through June 30, 1992. The analysis of cases of "excessive age" was done by hand by reviewing docket sheets of 76 cases filed prior to June, 1988.

The civil case data was analyzed via computer. This data base consisted of all of the cases which were entered into the computerized record keeping system from its inception, October, 1989 through September 23, 1991. The total database contained 3719 cases filed between October, 1989 and Sept. 23, 1992. It was broken down by statistical year (July 1 through the following June 30) for purposes of analysis.

The relevant included statistical years were identified as follows:

SY 1990 = 1 = July 1, 1989 thru June 30, 1990.[9]

SY 1991 = 2 = July 1, 1990 thru June 30, 1991.

SY 1992 = 3 = July 1, 1991 thru June 30, 1992.

Any case which did not fall within one of the three identified statistical years was made to equal 9. This included cases filed on or after July 1, 1992, and prior to June 30, 1989. Cases filed between June 30, 1989 and October 1, 1989 which were closed prior to October 1, 1989 are not included in this data base. Cases filed prior to October 1, 1989 which were open as of the date the computer system was initiated were included into the data base at whatever stage they were at that time. In other words, events which occurred on theses cases prior to the initiation of the computer data base were not individually recorded as they were thereafter. In some instances, when it was deemed important to indicate the distribution for the full data base, cases which did not fall into the SY designations, ie. those filed prior to July 1, 1989 and those filed after June 30, 1992, are listed in a separate column as "other." In some instances the totals are slightly different. We attribute this to data collection discrepancies. In no instance were such inconsistencies found to cause problems with the analyses performed.

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[9] Because the computerization of the data began in October of 1989, four months after the start of the statistical year, the information regarding the case totals or events for this year are not comparable with those of other statistical years. The information is accurate as far as age of case, disposition, county of origin, judge assigned, etc. It has been included for this reason. The data is <u>not</u> limited for those analyses when dealing with the data file as a whole where statistical years are not relevant.

A. Distribution by Judge

How many cases does each Judge handle? Over the full three year period, the breakdown of numbers of cases assigned to the various judges are comparatively consistent on a year by year basis:

TABLE 1[10]

JUDGE	SY 90	SY 91	SY 92	OTHER
BAKER	486	422	509	211
MIHM	384	303	274	189
MILLS	234	228	229	103
McDADE			14	3

During most of the period here noted Judge Baker served as Chief Judge. This is reflected in his slightly higher totals. Judge McDade was sworn in December 13, 1991. Thereafter a number of cases were transferred to him, however, their dockets were completed when the cases were filed and thus reflected the original judicial assignment. Although not completely accurate as far as the numbers of cases actually handled by each judge per year, these figures do indicate that despite the geographical allocation of cases, all of the judges carry a consistent share of the workload and the geographical divisions are comparatively accurate with respect to the case filings in the district as a whole.

Because of the way cases are assigned to full district judges and the way the records are kept, statistical data does not reflect the extent of current magistrate judge use.

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[10] The value of the Table is in the apparent relationship between the numbers of cases assigned to each judge per year. It has been included for that reason, despite some apparent numerical discrepancies. This chart reflects a total of 111 less cases than the total data base number of cases. About thirty of these were cases which had bene filed prior to October, 1989, when the data base was begun. Some of the remaining 78 cases were listed as assigned to a magistrate rather than a district judge. Others were cases that were transferred to another judge or were not reflected in the assignment category. The missing cases would not significantly alter the numbers to detract from the conclusion drawn.

However, the addition of a fourth district judge, the opening of a fifth divisional office, the geographic dispersion of divisional offices and increased criminal and civil filings indicate an ongoing dilution of magistrate judge resources in the district.

B. Distribution by Division

Because of the cases are divided between four judges and two magistrates in four divisions, the assignment of cases by judge cannot accurately reflect where the cases are filed or which area appears to be generating more federal cases than the others. A review of how cases are filed by division shows this. The divisions in order according to the case filings for the full three year period are:

TABLE 2

Division	Total	Percent	SY 1	SY 2	SY 3
Danville	1384	37.2%	425	356	398
Peoria	1186	31.9%	344	274	408
Springfield	834	22.4%	247	241	237
Rock Island	315	8.5%	95	82	73
TOTALS	3719	100%	1111	953	1116

The shift in case totals prior to 1992 and after 1992 are believed to reflect reallocation of counties to the various divisions with no significance to the cases themselves.[11] Danville's higher totals reflect the larger number of prisoner petitions and the fact that Judge Baker was chief judge during this period of time. Since the Rock Island cases are handled by the Peoria based judges and magistrates, the case filings appear to be consistent with the manpower currently allocated to each division. The anticipated addition of an Urbana based jurist combined with the upcoming senior status of Judge Baker should even out whatever discrepancies in workload these figures represent. Table 2 includes 539 cases which were filed either prior to or after the fiscal years for which we are concerned here. For this reason, the total for the statistical year comparison is 3180.

C. Distribution by County.

The court's caseload by division is determined according to which counties are assigned to which division. For this reason, it is important to note which counties account for the greatest number of cases. Over the three year period of time, Peoria County accounted for the largest number of cases with 12.1% or 451 of the case filings. In order of numerical importance were cases from:

[11] In January, 1992 changes were made in the counties assigned to the various divisions. The advent of a new judge in Peoria allowed shifting the McLean and Livingston county cases from Springfield and Danville respectively to Peoria. This shift amounted to a difference of 124 cases from January to the end of the statistical year six months later (cases that were already pending were not shifted).

TABLE 3

NO.	COUNTY	CASE NO.	%	1/92 Div. Shift
1	Peoria	451	12.1%	
2	Livingston	362	9.7%	Danville to Peoria
3	Counties out of District	355	9.5%	
4	Vermilion	206	5.5%	
5	Sangamon	194	5.2%	
6	Champaign	192	5.2%	
7	Tazewell	158	4.2%	
8	Knox	156	4.2%	
9	Macon	122	3.3%	
10	McLean	120	3.2%	Springfield to Peoria
11	Fulton	110	3.0%	

All other counties filed less than 100 cases over the full time period.

D. REFERRAL

Of the 3719 cases in the total data base, 3597 stayed with the judge to whom they were originally assigned. Only 3.3% or 122 cases were transferred from one judge to another. There is a potential for inaccuracy in this data so no further processing of it was completed. Finally, the pilot run brought out record keeping discrepancies which directly affect the usefulness of the data. For example, when a civil case is transferred intradistrict, between

one division and another within the Central District, the case is given a new number upon transfer.[12]

The criminal cases are not renumbered, however. If a criminal case is transferred to a different judge or to or from a magistrate judge in the same division, the docket number remains unchanged.

E. JURISDICTION

Where the cases come from geographically may determine actual numbers of cases but the reason the case is in federal court often indicates the extent to which the court is being used. A review of jurisdiction responds to the question "what basis" do the litigants claim access to federal court. If the court showed it was severely understaffed and overloaded with cases, this would be one of the first places to look to see if there were major discrepancies in federal court access.

Four possible types of jurisdictional claims were tallied during the full three year period:

TABLE 4

JURISDICTIONAL CLAIMS	TOTAL	%	SY 90	SY 91	SY 92	OTHER
1. US Gov't as Plaintiff	409	11.0%	113	134	131	31
2. US Gov't as Defendant	287	7.7%	96	60	83	48
3. Federal Question	2012	54.1%	632	487	585	308
4. Diversity	1011	27.2%	270	272	317	152
TOTALS	3719		1111	953	1116	539

[12] If cases are counted according to case filings in the district within a given quarter or half year, it is possible that the same case may be counted twice. The Multi District cases count for only 2.4% of the CDIL's total caseload. The CDIL data records these cases as closed. The AOUSC does not.

The data indicates that in less than one-fifth of the cases was the federal government involved either as a plaintiff or defendant. This is lower than the Subcommittee expected. It indicates fewer agency originated or directed cases than believed to exist. The distribution of jurisdictional claims appears to have remained constant over the three year period. Less than one-third of the cases depended on diversity of citizenship for jurisdictional bases. This indicates that there is not a great deal of claim for federal court services when state courts are available. Diversity access limitations may also be reflected here. The large number of federal claims needs further analysis, however, since the type of claim often determines the amount of time it entails.

F. SUBJECT MATTER

Further analysis of the jurisdictional claims can be seen in a review of the distribution of kinds of subject matter of the various law suits. The number of claims in the top ten types of cases, ordered by subject matter (Nature of Suit), over the three year record keeping period were:

TABLE 5

Rank	Line	Nature of Suit	Total Cases	%
1	550	Prisoner Petitions "other"	778	20.9%
2	368	Asbestos PI Product, Liability	482	13.0%
3	440	Civil Rights - "other"	254	6.8%
4	190	Contract - "other"	196	5.3%
5	791	ERISA	195	5.2%
6	442	Civil Rights - Employment	174	4.7%
7	220	Real Property - Foreclosure	156	4.2%
8	530	Prisoner Petitions - General	132	3.5%
9	360	Personal Injury - "other"	125	3.4%
10	422	Bankruptcy Appeal (28 USC 158)	106	2.9%

Each line item identified above falls into a larger grouping on the docketing information sheet. Because of the differences in extent to which each group is broken into line item subparts, the top ten subject matter groups are not the same as the line item top ten. The top ten line items show precisely the kinds of cases most often filed with the court. The top ten subject matter groups indicate the type of matters with which the court is most concerned. There were less than 100 in each line item category of all other types of cases filed during the period.

Fiscal year breakdowns for these most often filed line item cases without the "other" category are:

TABLE 6

LINE	KIND OF SUIT	SY 90[13]	SY 91	SY 92
550	Prisoner Petitions "other"	214	203	246
791	ERISA	67	46	58
440	Civil Rights "other"	91	66	51
368	Asbestos PI Prod. Liab.	111	130	210
360	Personal Injury "other"	46	25	26
190	Contract "other"	48	68	48
220	Foreclosure	33	58	52
442	Civil Rights Employment	74	27	36
422	Bankruptcy Appeal (28 USC 158)	32	29	34
530	Prisoner Petitions General	36	31	46

Charts 1 through 7 and Table 17 visually illustrate the case breakdown detailed above on a division by division basis. Together Tables 5 and 6 and Charts 1 through 7 indicate:

- Although Prisoner Petitions are high in all divisions except Rock Island, Danville had three times as many as Springfield and Peoria in SY 90. However, by SY 91, the ratio was only half and by SY 92, Danville was only approximately 14% than Peoria in such filings.

- Peoria had one third more ERISA cases in SY 92 (41) than its closest rival division, Springfield (20). This was up from SY 91 where Peoria topped Danville by only 13 cases (20P/12D) although it had twice as many as Springfield (10). The actual surge in ERISA filings in Peoria appeared to have occurred in SY 90 where Peoria reflected 50 cases in comparison with Springfield's 10 and Danville's 8. The jump in ERISA cases in SY 90 may be due to the odd records for that statistical year, but that does not explain the large

[13] The figures for SY 90 are inflated because all of the cases which did not fit wihtin the statistical year limits for 91 and 92 were reported as Sy 90.

gap in numbers between the divisions. A discrepancy such as this could indicate a change in the laws was showing up in the court filings.

- Similar large discrepancies for cases filed in Peoria over other Divisions in SY 90 versus other SYs is seen in the Intellectual Property cases. (Docket Sheet Lines 820, 830 and 840 combined.)

- In SY 90 there was a surge of civil rights voting cases in all divisions which have not reappeared since.

- In SY 90 Danville had a far greater total number of civil rights case filings than any other division. Its overall predominance has maintained although both Peoria and Springfield have shown over 20 cases in this subject matter category in the succeeding years.

- In SY 92 Peoria had a renewed surge in Social Security cases and federal question cases citing other statutes, in each case reflecting almost half again as many cases as any other division. Since many of the federal agency offices, with the exception of the IRS (Springfield), are located in Peoria, this surge may be reflective of greater administrative law challenges than occurred in prior years. Comparisons with national figures would be interesting in this regard.

- Asbestos litigation has increased and it continues to be reflected as a large part of the CDIL docket even though the trials are handled elsewhere via the MDL program. These cases do represent some court processing time and should not be totally discounted for that reason.

- Prisoner petitions constitute a very large portion of the CDIL caseload. The shift of Livingston County from Danville to Peoria in January 92 is reflected in the totals.

In the subject matter groupings, the largest groupings were not the ones in which the largest lines of itemized suits appeared. In order by percent of cases they were:

TABLE 7

SUBJECT MATTER GROUP	TOTAL	Peoria	Danville	Springfield	RI	%
Prisoner Petitions	948	226	496	176	50	25.5%
Personal Injury	841	316	344	131	49	22.6%
Civil Rights	437	86	175	110	68	11.8%
Contract	374	87	122	109	55	10.1%
Labor	301	171	50	78	12	8.1%
Real Property	175	56	4[illegible]	66	7	4.7%
Other Statutes	143	56	41	32	14	3.9%
Social Security	140	56	33	20	31	3.8%
Bankruptcy Appeals	115	38	35	36	7	3.1%
Forfeiture/Penalty	79	25	12	32	10	2.1%
Personal Property	66	44	11	11	4	1.8%
Property Rights	50	19	8	14	9	1.3%
Federal Tax	46	5	11	28	2	1.2%

The Other Statutes category includes the following separate statutes (the number of cases per statute): Antitrust (7); Banking (8); Interstate Commerce Commission (10); RICO (17); SEC (12); Agriculture Acts (6); Environmental Acts (9) Constitutionality of State Statute (1) and Other (73). Each of the 73 other statutes represents one suit per named statute.

From this break in Table 7, it appears that the greatest category of cases the court deals with, after prisoner petitions, are personal injury/tort cases. The bulk of prisoner petitions are handled by Danville although it is anticipated that a shift to the Peoria Division will be seen now that Livingston County cases go to that division. Personal injury cases are split between Peoria and Danville primarily. Civil rights cases are the fourth most common

category of cases, although there are only half as many civil rights matters filed as there are personal injury cases. Contract cases follow as the next most common case type.

G. PENDING CASES

Charts 8 through 14 depict the cases pending at the beginning of SY 91 in the district by division and by kind of case. From these charts it appears that the court processes to completion just about as many cases as it takes in during the year. This trend has been consistent from year to year. It is a significant observation because if there were any time lags in particular types of matters or divisions that could be attributed to an historical anomaly it would have been reflected in a discrepancy in one year's case turn over rates.

H. DISPOSITION

The records of case disposition are maintained according to the check off options presented on the AOUSC Disposition form, JS-6. There are 18 possible modes of disposition that may be coded including five reasons for dismissal: want of prosecution, lack of jurisdiction, voluntarily, settled, other; four transfer options: Transfer to Other District, MDL (multidistrict litigation) Transfer, Remanded to State Court or Remanded to US Agency; eight possible reasons for judgment: Default; Consent; Motion Before Trial; Award of Arbitrator; Trial De Novo After Arbitration; Jury Verdict; Directed Verdict; Court Trial; and two options for non-conforming cases: Other and Statistical Closing. Because CDIL does not have arbitration currently available, that type of judgment possibility would not appear in this court.

What is interesting, however, is the change in mix of civil and criminal cases being filed and processed in the district. This shows most clearly when we look at the changes in criminal cases work load.

I. PRO SE

About 13.2% of the cases were filed pro se, that is approximately 490 of 3719 cases over the past three years. The vast majority of these cases are prisoner petitions. This is not a sufficient number of cases to raise concerns of court time misuse. It is, however, a basis from which to consider other ways of handling these matters. In addition, other districts have shown that inclusion of an alternative dispute resolution option may rapidly lower the number of pro se cases.

J. OLD CASES

1. Age

The age of cases, or how long they "survive" before termination in the CDIL, is illustrated in the line graph and accompanying listing, [**Chart 17**] shows how old the cases were when they were closed. **Table 18** gives the numerical breakdown as the numbers of cases closed. The information shown on the chart is largely substantiated by a review of all closed cases in the data base over two years old.

The chart shows that over 40% of the cases, 1133 in number, were closed within six months of being filed; 28% or 799 cases were settled, dismissed or withdrawn within the first four months from filing. Thus, the initial steps involved with determining parties and joining the issue must be instrumental in assisting in case settlement or withdrawal. Most civil cases are disposed of within twelve to twenty-four months, a reasonable length of time. Sixty three percent of the civil cases are terminated within the first 12 months from filing and 87% are terminated within 24 months of filing. There is a precipitous drop-off of cases within the initial months after filing, but those cases which survive for 36 months or more can last for between four and five years total. At the end of 36 months, 174 cases of the original 2721

continued to survive. Of those cases less than one half, 72 cases, were closed by the end of 44 months. The older the case, the more it appears to hang on and continue to use court time.

Three hundred seventy-one cases closed which took longer than 24 months to terminate. Of these cases, 132 were diversity cases (35.6%), 203 (54.7%) raised a federal question and the U.S. government was a party plaintiff or defendant in 36 cases (9.7%). Only eight of those diversity cases were removed to the district from state court; seven of the diversity cases were transfers from other districts.

Most of these older cases were to be found assigned to Danville: 186 (50.1%). Peoria had 89 (24%), Springfield had 52 (14%) and Rock Island had 44 (11.9%). This compares with the total cases assigned that division out of this data base: 37.2% Danville, 31.9% Peoria, 22.4% Springfield and 11.9% Rock Island. Danville has substantially more older cases than its division average while the other divisions had a smaller or almost equal percentage of older cases than their division average. It appears that the greater amount of prisoner petitions in Danville account for most of the differences. In this instance, since the largest subject matter of the older cases is asbestos p.i. cases (12.1% or 45 cases), of which 26 were Danville cases, 16 were Peoria and three were Springfield, the percentage discrepancies do not appear to be significant. All asbestos cases are now transferred to MDL.

The largest category of older cases were prisoner petitions "other" of which 62 occurred in Danville, compared with seven for Peoria, four for Springfield and two for Rock Island. Clearly, the prisoner petitions have a large effect on the case backlog in this court.

The only other category of note (over single-digit percentage) were civil rights "other" and employment cases. Danville again led with 24 "other" and 17 employment, with Springfield carrying 11 "other" to Peoria's seven and Rock Island's two. Rock Island had the next largest group of older employment cases with ten, followed by Peoria with six and Springfield with four. There were 44 total civil rights "other" older cases (11.9%) and 37 civil rights employment cases (10%).

B. CAUSES OF EXCESSIVE AGE

In the course of this review, we manually looked at all cases pending in the Central District of Illinois which were more than three years old at the time the CJRA Committee began its work. These cases were filed on or before June 30, 1988. All 76 case docket sheets were reviewed for incidents of delay. Out of a total of 76 cases, 19 were tort cases, 17 were civil rights cases, 15 were in a miscellaneous category, 13 involved prisoner petitions, five were contract cases, three were labor cases, two were tax cases, and two were property cases.

Of the older cases, 34 (44.7%) were pending in Danville, 18 (23.7%) were pending in Peoria, 13 (17.1%) were pending in Springfield, and 11 (14.5%) were pending in Rock Island. Case volume figures for the earlier period were not compared with these percentages, but the breakdown for SY's 90-92, set forth at Table 2, supra. shows similarities. (The breakdown of filings for that later period by division is 37.2% Danville, 31.9% Peoria, 22.4% Springfield, and 8.5% Rock Island.) Given the trend in modification of percentage ratio brought about by a change in the division boundaries for Danville and Peoria (occasioning the assignment of more prisoner petitions to Peoria), it appears that percentages of old cases are related to the volume of cases filed in the various divisions.

Largest categories of old cases in Danville were prisoner petitions, in which there were 11 (14.5% of total district, 32.3% of division), tort, in which there were nine (11.8% of total district, 26% of division), and civil rights, in which there were seven (9.2% of total district, 20.6% of division).

Largest categories of old cases in Peoria were tort, in which there were five (6.6% of total district, 27.8% of division), and miscellaneous (including antitrust, RICO and securities) in which there were eight (10.5% of total District, 44.4% of Division).

The largest category of old cases in Springfield was civil rights, in which there were five (6.6% of total district, 38.5% of division).

In Rock Island, there were four tort cases (5.3% of total district, 36.4% of division) and three civil rights cases (3.9% of total district, 27.3% of division).

Thirty-one (40.8%) of the cases reviewed were filed in 1988, 23 (30.3%) were filed in 1987, 15 (19.7%) were filed in 1986, five (6.6%) were filed in 1985, and two (2.6%) were filed in 1984. Seven cases, nearly 10% of the total, had been closed and reopened. The majority of those cases had initially been closed within two years of filing.

There were a variety of occurrences or factors contributing to the age of some of the cases reviewed. Appeals, both interlocutory and post-judgment, contributed to the age of 15 (19.7%) of the 76 cases reviewed. One of the oldest cases, Rutan v. Republican Party of Illinois, 85-2369, filed on July 1, 1985, was initially disposed of by the Court a few days after the first anniversary of its filing. The matter was appealed and eventually was decided by the United States Supreme Court. The appellate process consumed nearly four and one-half years of the seven year total life of the case before it came back to the District for enforcement processing.

Nine other cases, 11.8% of the total, were stayed pending the resolution of other proceedings. Two of those cases were stayed pending the United States Supreme Court's decision in State of Illinois v. Panhandle Eastern Pipeline Company and have since been concluded. Three matters were stayed or delayed due to bankruptcy proceedings. Three matters were stayed pending conclusion of state court litigation, and one matter was stayed pending resolution of other federal court litigation.

Obtaining service on defendants was a cause for delay in three pending RICO cases. These three matters involved the same defendants and consisted of 75% of the RICO cases in the older case category.

One 1987 case had been settled after one year and eight months but was reopened in 1991 for enforcement of the consent decree.

At least 29 (38.2%) of the 76 cases reviewed have now been resolved. The average life of the 29 concluded cases was four years and eight months, with period of pendency ranging from three years and eight months to six years and six months.

Delay in prisoner petitions is attributable to a variety of factors. Appeals were involved in some cases, and some were stayed pending exhaustion of state remedies or conclusion of state litigation. Plaintiffs, whom one would expect to have the paramount interest in moving the cases, are ill-equipped to do so, and are sometimes difficult to keep track of. Transfer of the plaintiffs among correctional institutions was a cause for delay in more than one matter. Changes in pro bono counsel, where it is provided, seem to be frequent. The defense, as is not uncommon in most litigation, does not have interests motivating early resolution of these matters.

IV - DATA ANALYSIS - CRIMINAL CASES

An examination of criminal filings during statistical years ending June 30, 1986 through June 30, 1992, reveals a 77% increase in criminal defendants prosecuted over that seven year period, from 230 to 406. (See, Table 8).

During the seven year time period, the distribution of criminal cases has been as follows: Springfield - 38%; Danville - 24%; Peoria - 23%, Rock Island - 15%. A large increase in criminal defendants filed occurred in SY 89 with a slight decrease in SY 90 and increases to a record high number of criminal defendants in SY 92. The increase in criminal filings in SY 89 coincides with the Justice Department initiative of strenuous prosecution of drug offenses. **[See Charts 15 & 16]**. It appears from the charts that drug related cases take considerably longer than non-drug cases from filing to completion. There is almost a two to one greater number of defendants per case in drug cases as there are in non-drug criminal prosecutions.

Table 8

CRIMINAL DEFENDANTS PROSECUTED

STATISTICAL YEARS ENDING 6/30/86 THRU 6/30/92

	86	87	88	89	90	91	92	Total Division	Percent of District Total
PEORIA	27	55	47	127	65	118	90	529	23%
ROCK ISLAND	40	40	40	33	53	72	69	347	15%
DANVILLE	74	74	41	92	98	77	87	543	24%
SPRINGFIELD	89	108	139	139	120	122	160	877	38%
TOTALS	230	277	267	391	336	389	406		
DISTRICT TOTAL FOR 7-YEAR PERIOD - 2296									

Offenses which occurred after November 1, 1987 were subject to sentencing guidelines under the Sentencing Reform Act of 1984. This Act has two major implications which impact this Court's time demands. 1) The limited sentencing discretion available to the Court makes defendants more likely to go to trial rather than entering into plea agreements. 2) Sentencing hearings of convicted individuals have become much more time consuming.

The following tables reflect the changes which have occurred in Court Activity for District Judges from SY 86 through SY 92.

Table 9

SUMMARY OF IN COURT ACTIVITY
YEAR ENDING 6-30-86

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	129.5	372.5	14	35	1404*	75	466.5
Rock Is.	5.0	114.0	4	12	230	12	73.5
Danville	214.0	235.5	32	40	241	163	269.0
Spfld.	306.5	284.5	28	98	67	155	297.0
Total	655.0	1006.5	78	185	1942	405	1106.0

* This large number results from a reporting problem and does not accurately reflect the number of Motion Hearings held during SY 86.

Table 10

YEAR ENDING 6-30-87

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	143.0	432.0	10	37	242	149	396.0
Rock Is.	48.5	81.5	2	10	64	38	100.5
Danville	124.0	240.5	15	57	225	162	336.5
Spfld.	233.5	529.5	11	66	41	86	264.5
Total	549.0	1283.5	38	170	572	435	1097.5

Table 11

YEAR ENDING 6-30-88

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	122.0	168.5	31	70	234	146	500.5
Rock Is.	50.0	67.0	2	6	44	17	61.0
Danville	176.0	226.5	20	56	213	298	352.0
Spfld.	199.5	462.0	8	83	34	86	248.0
Total	547.5	924.0	61	215	525	547	1161.5

Table 12

YEAR ENDING 6-30-89

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	298.0	210.5	28	61	273	185	559.0
Rock Is.	57.0	0.0	10	12	45	27	89.5
Danville	152.0	85.0	70	84	192	328	429.0
Spfld.	278.0	368.5	25	97	36	85	305.5
Total	785.0	664.0	133	254	546	625	1383.0

Table 13

YEAR ENDING 6-30-90

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	261.5	116.0	95	58	215	314	397.0
Rock Is.	111.5	74.5	17	15	36	44	93.0
Danville	184.5	261.0	94	52	197	328	370.5
Spfld.	573.5	240.0	77	121	36	73	234.0
Total	1131.0	691.5	283	246	484	759	1094.5

Table 14

YEAR ENDING 6-30-91

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	277.0	139.0	111	33	394	190	495.5
Rock Is.	84.5	56.0	37	20	65	36	128.0
Danville	271.5	456.0	70	50	167	230	290.5
Spfld.	273.5	411.5	76	95	37	75	236.5
Total	906.5	1062.5	294	198	663	531	1150.5

Table 15

YEAR ENDING 6-30-92

DIVISION	CRIMINAL TRIALS	CIVIL TRIALS	PLEAS ARRANMTS	SENTENC-INGS	MOTION HEARINGS	PRE-TRIALS	NON-TRIAL HOURS
	Hours	Hours	Number	Number	Number	Number	Hours
Peoria	433.5	146.5	107	73	351	314	559.5
Rock Is.	109.0	17.0	23	30	39	27	95.5
Danville	258.0	273.5	69	30	144	162	219.5
Spfld.	268.0	248.0	93	157	60	53	234.5
Total	1068.5	685.0	292	290	594	556	1109.0[14]

From SY 86 through SY 88 the district judges of the court devoted 3214 hours (65% of trial time) to civil trials and 1751.5 hours (35% of trial time) to criminal trials. From SY 89 through SY 92 3103 hours (44% of trial time) was devoted to civil cases, while 3891 hours (56% of trial time) was consumed by criminal cases. The average number of trial hours for civil cases decreased from an average of 1071 per year for SY 86-88 to an average of 776 hours per year for SY 89-92. The average number of trial hours for criminal cases increased from an average of 584 for SY 86-88 to an average of 973 for SY 89-92.

14 The numbers listed as total in the last column, Non-tiral Hours, consist of the total of the number of hours set forth in each of the preceding four columns: Pleas/Arranmts, Sentencing, Motion Hearings, and Pre-Trials.

It is notable that total trial time increased from an average of 1655 hours per year for SY's 86 through 88 to 1748.5 hours per year for SY's 89 through 92.

The average number of sentencing hearings has increased from an average of 190 per year for SY 86 through 88 to an average of 247 for SY's 89 through 92. The average number of pleas and arraignments likewise has increased, from 59 for SY 86-88 to 250 for SY 89-92.[15] However, the ratio of pleas/arranmts to criminal trial hours has markedly decreased. Whereas in 86-88 pleas/arrnmts represented 26.3% of the hours, in 89-92 it represented only 10.1% of the hours. The advent of magistrate judge use is evident here.

Table 16

SUMMARY OF CRIMINAL ACTIVITY

Statistical Years	Criminal Trial Hours	Civil Trial Hours	Pleas Arraignments	Sentencings
86-88	1751.5 - 35%	3214 - 65%	177	570
Average Per Year	584	1071	59	190
89-92	3891 - 56%	3103 - 44%	1002	988
Average Per Year	973	776	250	247

A experience based staff estimate of 30 minutes per arraignment or plea and 30 minutes per sentencing for SY 86-88 results in an average of 125 hours per year of non-trial court hours required for these criminal proceedings. An estimate of 30 minutes per arraignment or plea and 60 minutes per sentencing for SY 89-92 results in an average of 372 hours per year for these processes. The net increase in hours consumed by pleas,

15 It should be noted that please and arraignments are grouped together here. For this reason, the apparent increase does not in fact contradict the implications noted earlier with respect to the effect of the sentencing guidelines.

arraignments and sentencing is 370 hours for SY 89-92 over SY 86-88. Although the number of non-trial court hours has remained relatively constant over the seven-year period, it is obvious that with the significant increase in pleas, arraignments, and sentencing a much greater portion of those non-trial court hours is being devoted to criminal matters. Table 16 reflects a large shift in workload time spent between civil and criminal trials. Seven years ago almost twice as many hours were spent in civil trials as were spent in criminal trials. Today, there are almost 20% more criminal trial hours worked by the court than civil trial hours. This represents an approximately 70% change in the activities spent on a per hour basis. To a certain extent, this reflects the increased use of magistrates for initial criminal processing. However, the shift is significant enough to merit consideration as a basis for workload allocation in the future.

V - CONCLUSIONS AND RECOMMENDATIONS

A. GENERAL

The conclusions that follow emphasize future record keeping abilities and requirements.

A statistical review of excessively old and closed older cases indicate that individual case characteristics, not specific activities by a given judge or magistrate judge or office processing method, contributes to the age of any given case.

Certain types of cases, specifically prisoner petitions and civil rights matters, could be helped by the availability of alternative processing methods, be it directed toward the hearing as with prisoner cases or toward alternative methods of disposition (ADR) in the civil rights areas. The possible correlation between pro se cases and the large number of older prisoner petitions also may be a fruitful area for further consideration of processing changes.

The number of hours spent on criminal matters has increased exponentially. Some of this is due to the increased use of magistrate judges. However, the shift in time spent is so dramatic, it indicates the need for another magistrate judge, at least, in the very near future. Any perceptible increase in civil case filings in the next few years has the potential to cause considerable civil case backlogs unless additional magistrate judge assistance is obtained for the growing criminal docket.

The information from these studies indicates that the format of information currently available from the court's data base was not in all instances readily adaptable to the needs of the Sub-committee. The recommendations should include specific record keeping and data development methodology to enable the court to have the greatest and best use of the information which it collects. Specifically, it is important to know when jury trials take place, the kinds of cases necessitating such trials by jurisdictional claim as well as type of matter, and the length of time between when such a case is ready for trial and when it is actually tried. There is a perception expressed by staff that lack of court room space and time delay civil jury trials and, for this reason, matters which are ready for trial languish in the system much longer than counsel or judges would like. It would be very useful to determine the validity of this perception.

At any given chronological time, we appear to see fairly even processing of cases by division and by judge without regard to the differences in case management styles. A comparison of the data and of the perceptions and procedures sub-committees should be made to round out the study prior to making final its recommendations.

B. SPECIFIC

An analysis of the criminal workload of the court shows a significant increase in that workload, particularly over the past four statistical years. That increase has had a

significant impact on the trial time available for civil matters and upon the court time available for non-trial civil proceedings. Delay or the extension of length of time in bringing older civil cases (filed on or before June 30, 1988) to a conclusion is attributable more to the characteristics of individual cases than to any other factor. Delay does not seem to be the result of any act or failure to act on the part of the court or its personnel. From the complexities of antitrust, securities, products liability and RICO litigation to problems inherent in the prisoner petition area, individual case characteristics seem to govern the length of their pendency.

Some of the antitrust, multidistrict securities and other cases reviewed involve many parties, fluidity in the parties and issues which defy resolution on a strict timetable. In almost every circumstance, it is the nature of the case which appears to have given rise to delay and not the system.

Finally, it should be noted that there has not been a significant increase in either court personnel or budget allocation for the CDIL of the past few years. Increases in numbers of hours spent in criminal trials and increases in cases in general and pro se cases in particular, among other noted factors, have not been reflected in commensurate support staff or budgetary increases. Without a careful analysis of possible discrepancies it is difficult to say anything specific, however, it appears to us that the court is working up to its capacity at this time. Any drastic increase in case load or work allocation requiring staff time or money may cause difficulties or delays due to lack of funds or personnel.

TABLE 17

Numbers of Cases by Type, Statistical Year, and Division												
Type of Case	Stat Year 90				Stat Year 91				Stat Year 92			
	Peo	Dnv	Spi	RI	Peo	Dnv	Spi	RI	Peo	Dnv	Spi	RI
Contract	27	32	23	14	19	39	48	18	25	37	29	13
Foreclosure	12	14	10	0	20	16	20	2	15	9	26	2
Personal Injury	35	36	40	23	26	26	36	7	22	31	19	4
Asbestos P.I.	56	52	3	0	54	62	14	0	101	94	15	0
Personal Property	13	3	0	1	11	2	2	1	11	2	6	2
Antitrust	1	0	0	0	1	0	0	0	0	0	1	0
Bankruptcy Appeal	11	11	10	1	14	7	9	2	10	13	12	3
Banks	0	0	0	1	0	0	0	0	0	1	1	0
Cv Rts Voting	20	39	27	5	0	0	0	0	0	0	0	0
Cv Rts Employment	8	33	21	12	5	8	9	5	4	16	6	10
Cv Rts Other	0	3	0	0	11	28	16	12	16	13	13	10
ICC	2	0	0	0	1	0	3	0	2	0	0	1
RICO	0	3	2	1	1	2	0	0	3	1	0	0
Prisoner Petitions	42	157	46	7	56	123	50	17	105	134	52	13
Forfeiture	8	4	12	0	4	1	9	0	4	1	4	0
Forfeiture Drugs	0	0	0	8	1	1	1	1	5	3	3	0
FLRA	6	0	3	1	5	1	0	0	2	3	0	0
Labor/Mgmt Rel	14	5	6	3	5	4	3	1	9	6	8	1
ERISA	50	7	10	0	20	13	10	3	31	6	20	1
Intellectual Prop	41	2	4	5	5	8	2	7	5	4	7	2
SEC	1	0	0	1	2	2	0	1	2	2	0	0
Social Security	17	10	6	10	7	6	5	8	21	12	5	9
Federal Tax	3	3	9	0	1	4	9	1	1	2	6	1
Environment	2	1	2	1	0	1	0	0	0	2	0	0
Other Statutes	11	8	4	1	0	1	2	0	10	5	4	1
Real Property	0	0	0	0	3	0	0	0	2	1	0	0

Numbers of Cases by Type

SY 90 (7-1-89 to 6-30-90)

N = 1136

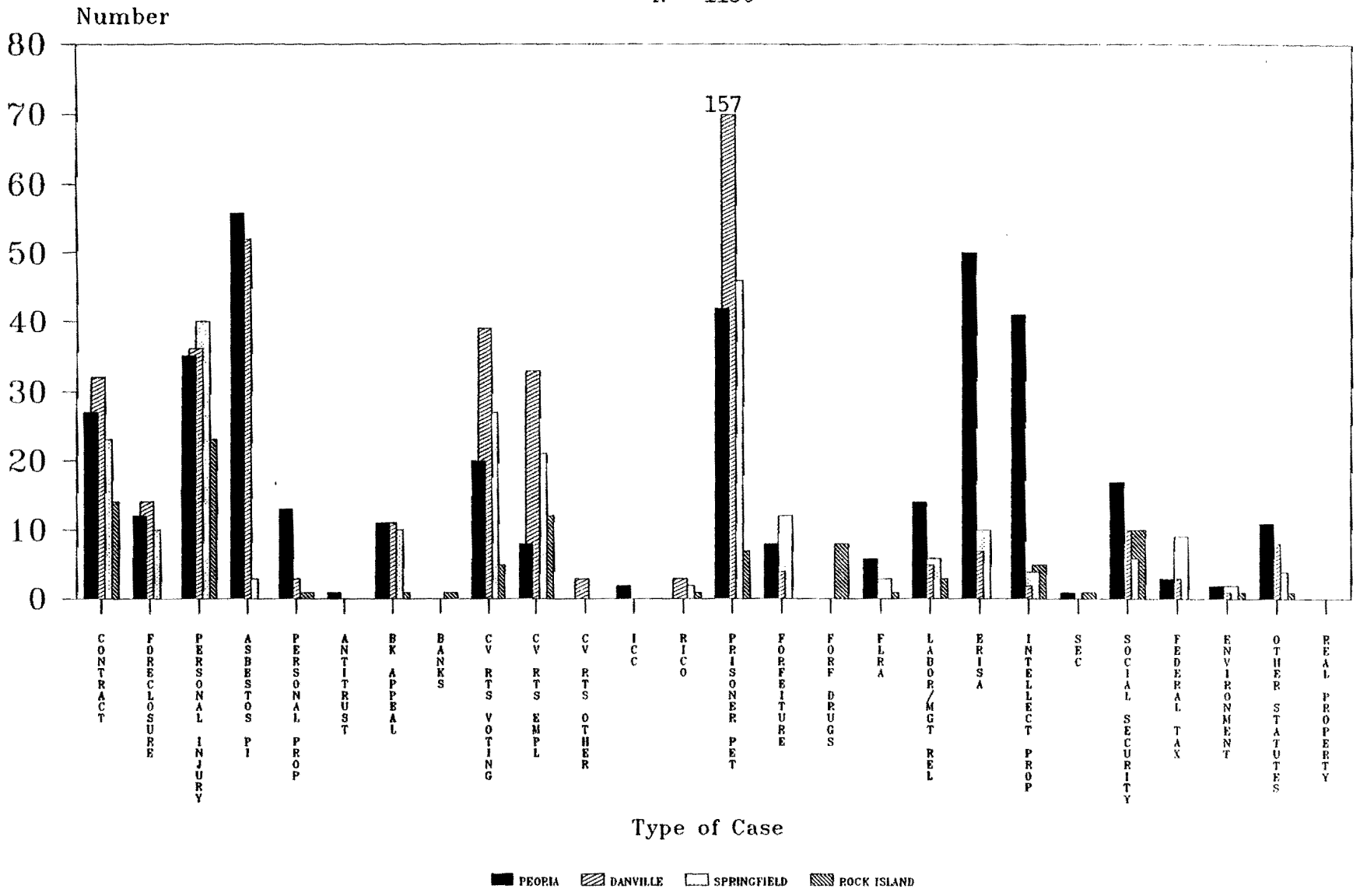


Chart 1

CSTYP90.CHT

Numbers of Cases by Type

SY 91 (7-1-90 to 6-30-91)

N = 971

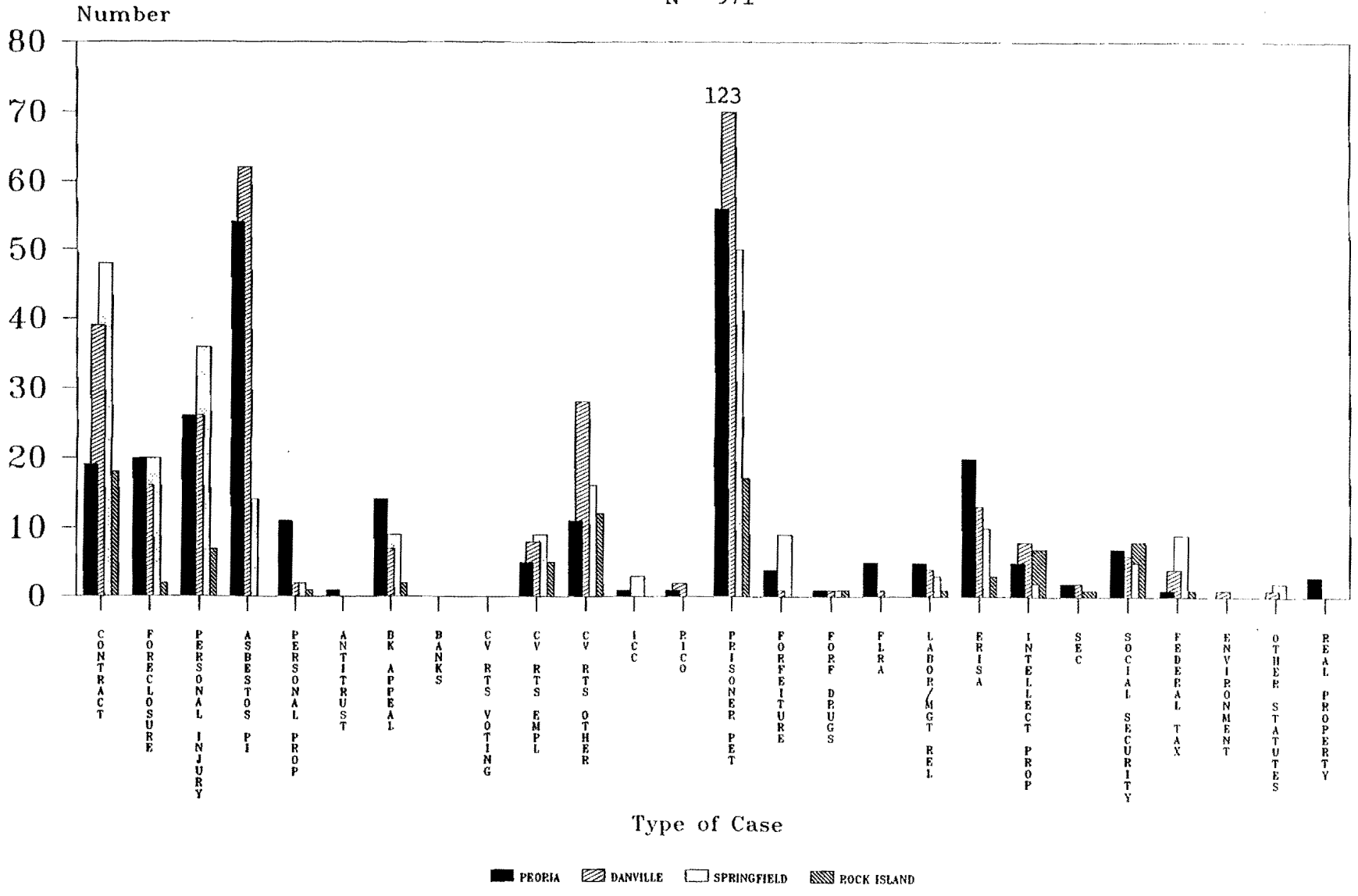


Chart 2

Numbers of Cases by Type

SY 92 (7-1-91 to 6-30-92)

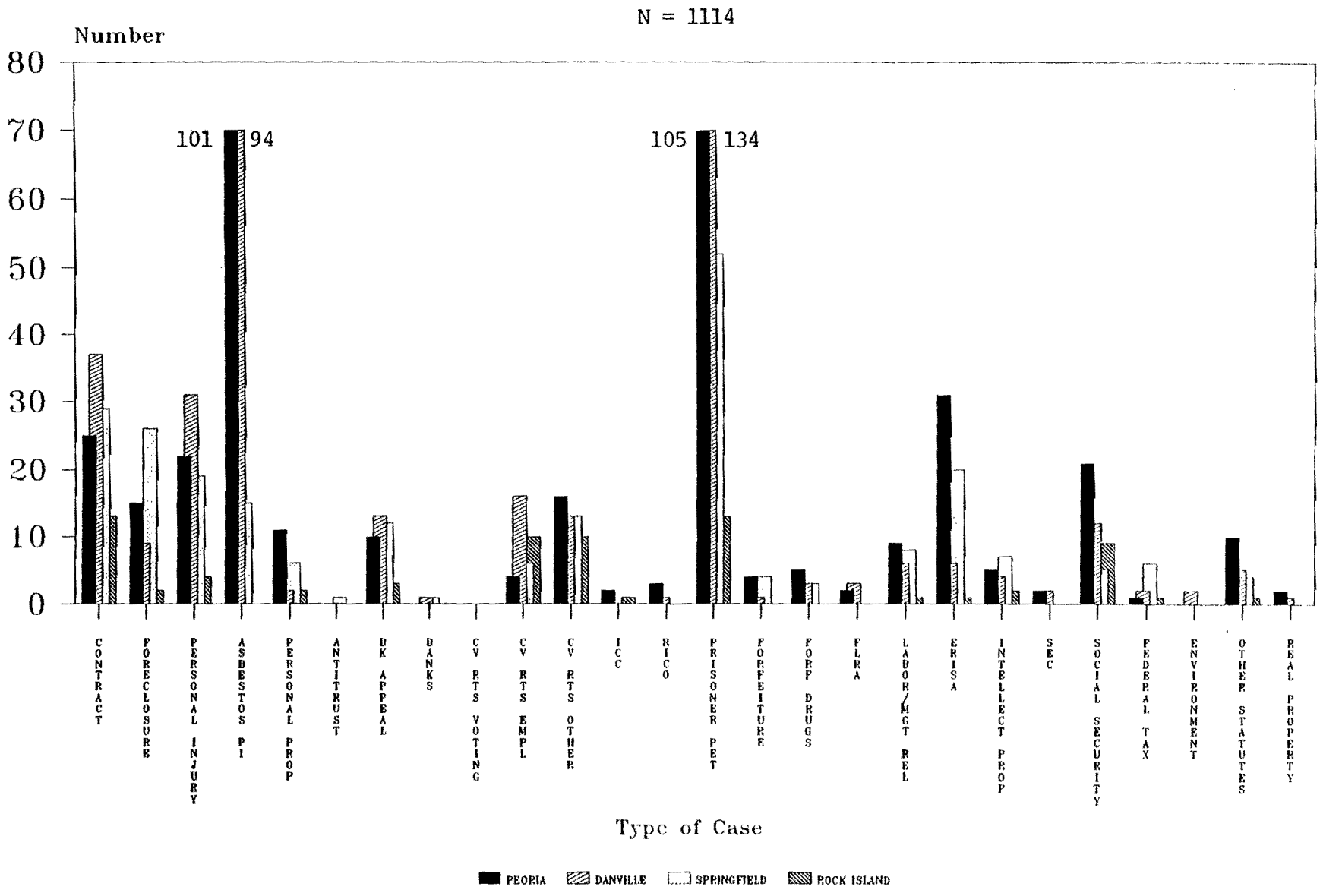


Chart 3

CSTYP92.CHT

Numbers of Cases by Type

Peoria Division

N = 1053

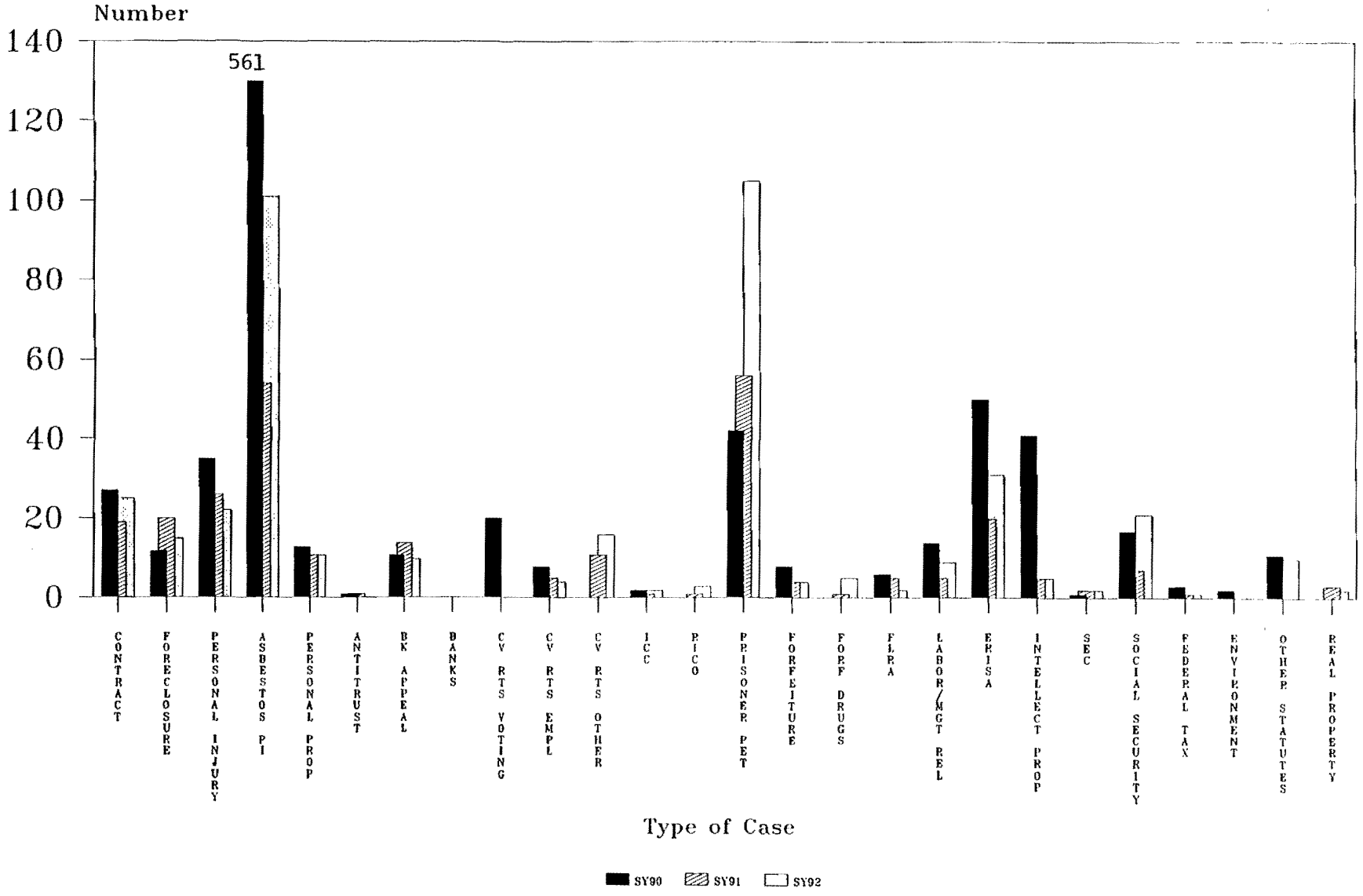


Chart 4

Numbers of Cases by Type

Danville Division

N = 1176

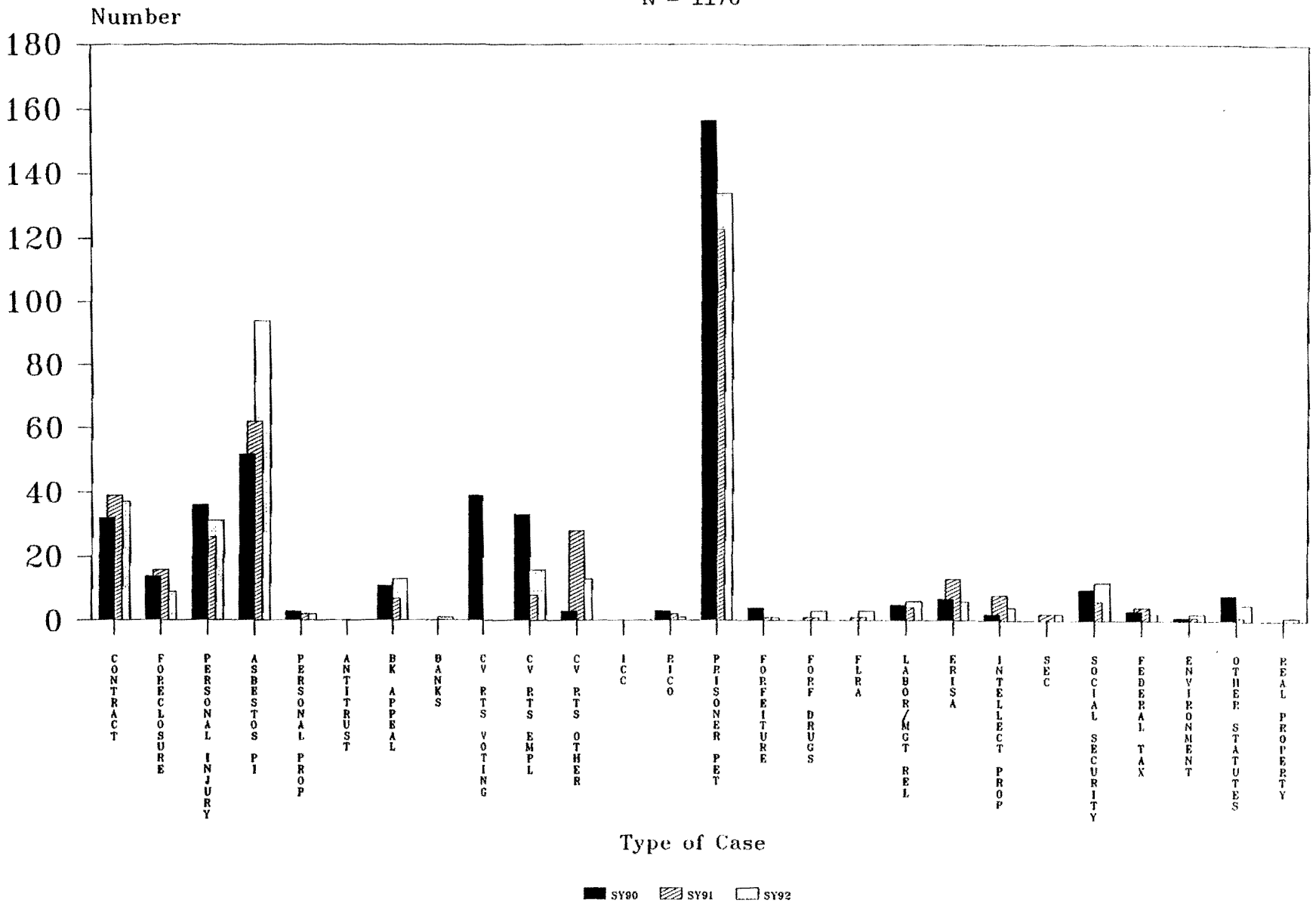


Chart 5

CSTYP2.CHT

Numbers of Cases by Type

Springfield Division

N = 723

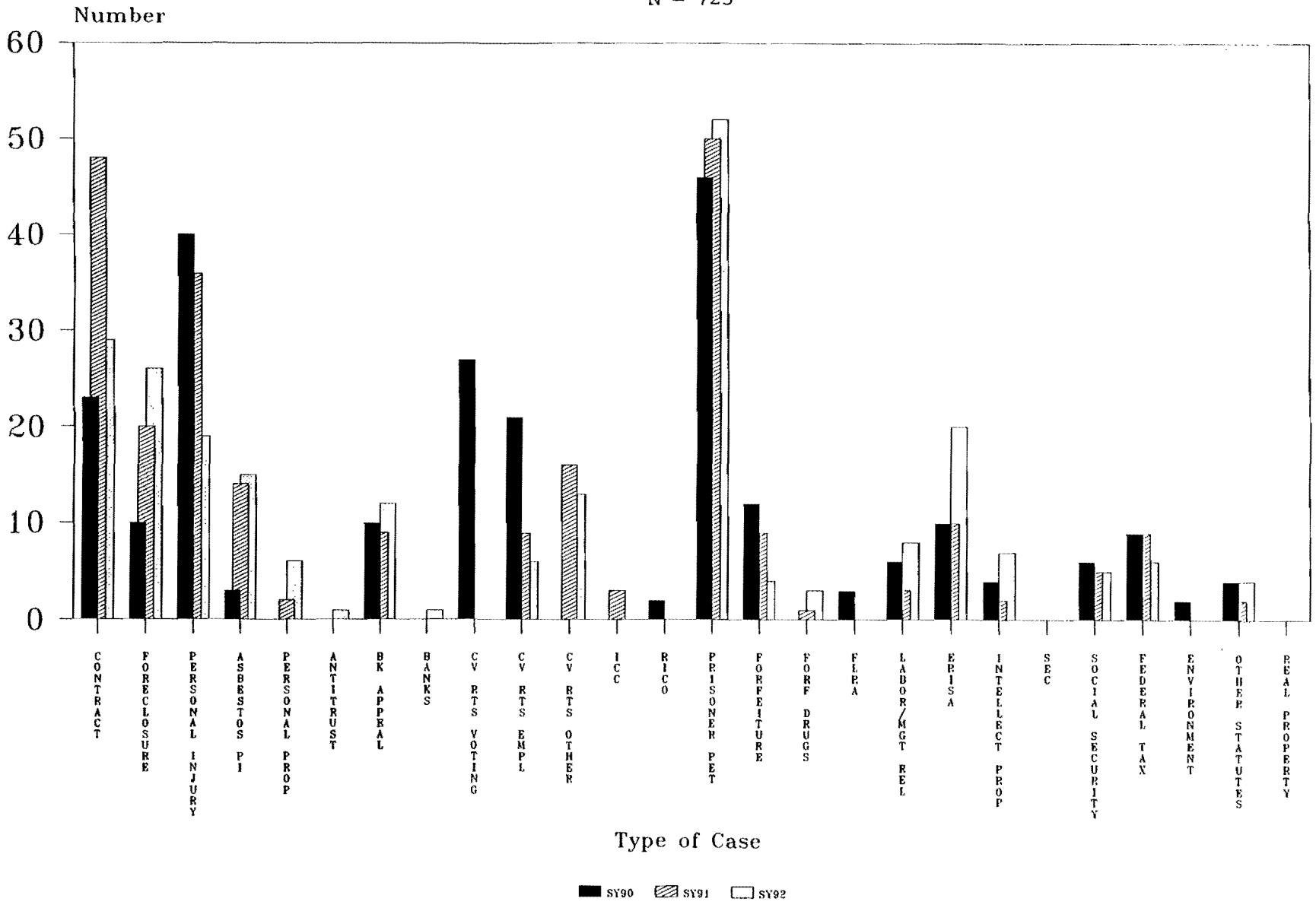


Chart 6

Numbers of Cases by Type

Rock Island Division

N = 254

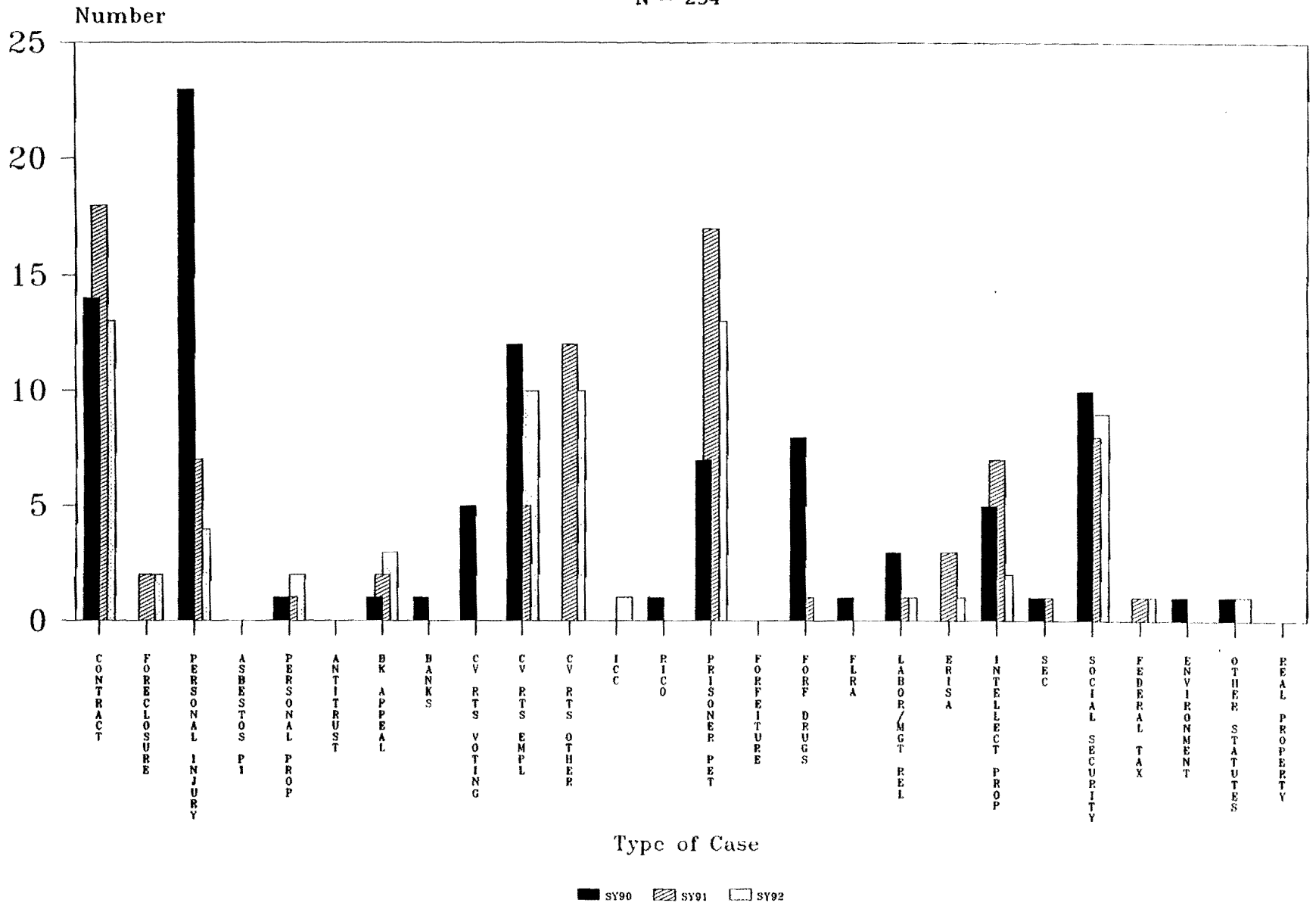


Chart 7

CSTYP4.CHT

Average Pending Civil Caseload SY91
By Divisional Office
Average of Total is 1263 Cases

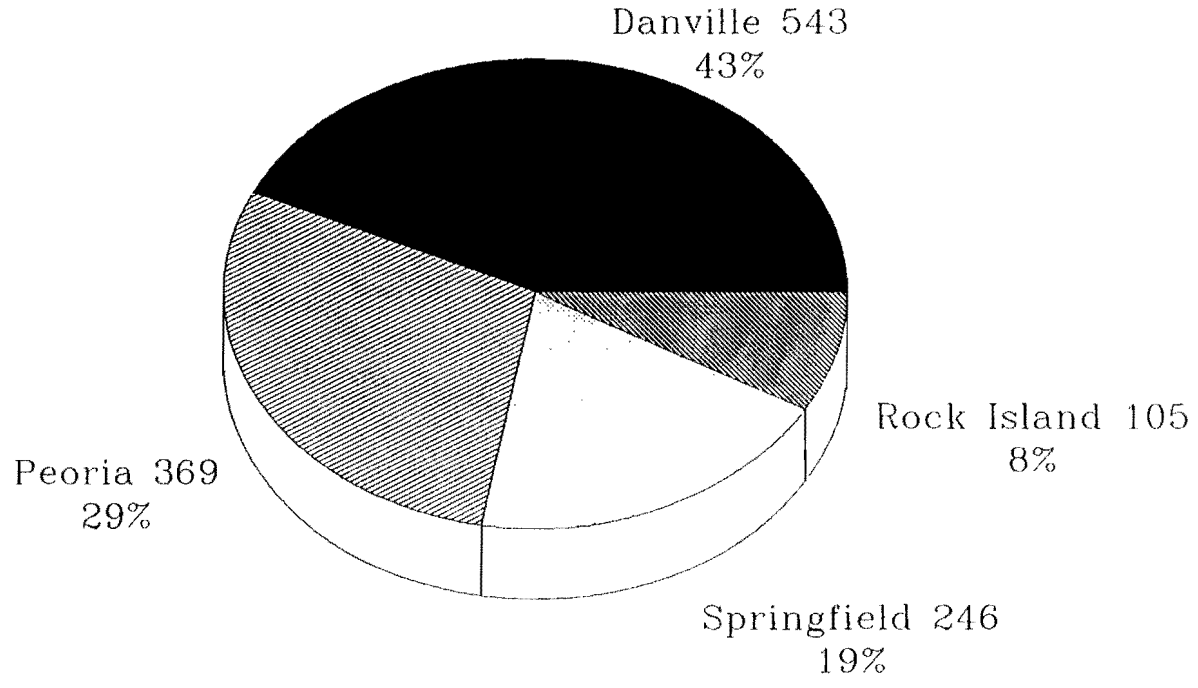


Chart 8

Based on Monthly Pending Case Reports
Compiled by Chief Deputy Kay A. Clark
File: AGPCD.CHT

Civil Cases Pending at Beginning of SY91
District Totals by Natures of Suit
Total of 1262 Pending Cases

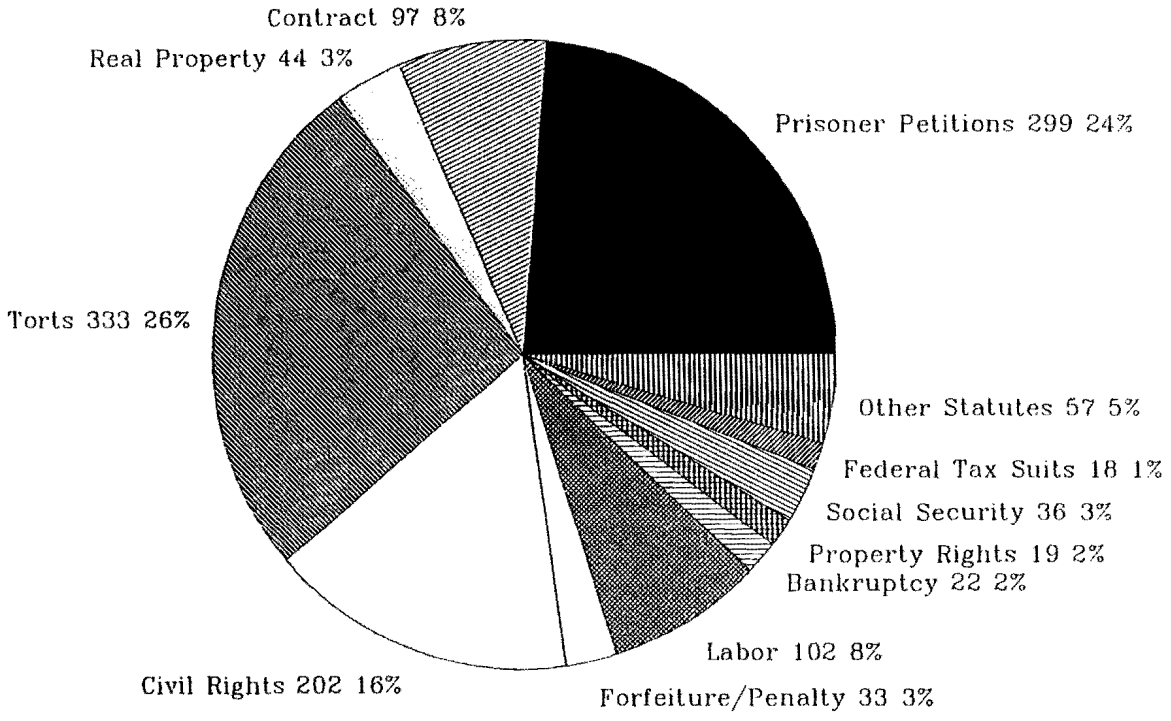


Chart 9

Refer to AO JS-44 for Natures of Suit.
SY91 Began 7-1-90, Ended 6-30-91.
File: AGNOSPIE.CHT

Civil Cases Pending at Beginning of SY91
By Divisional Office
Total of 1262 Pending Cases

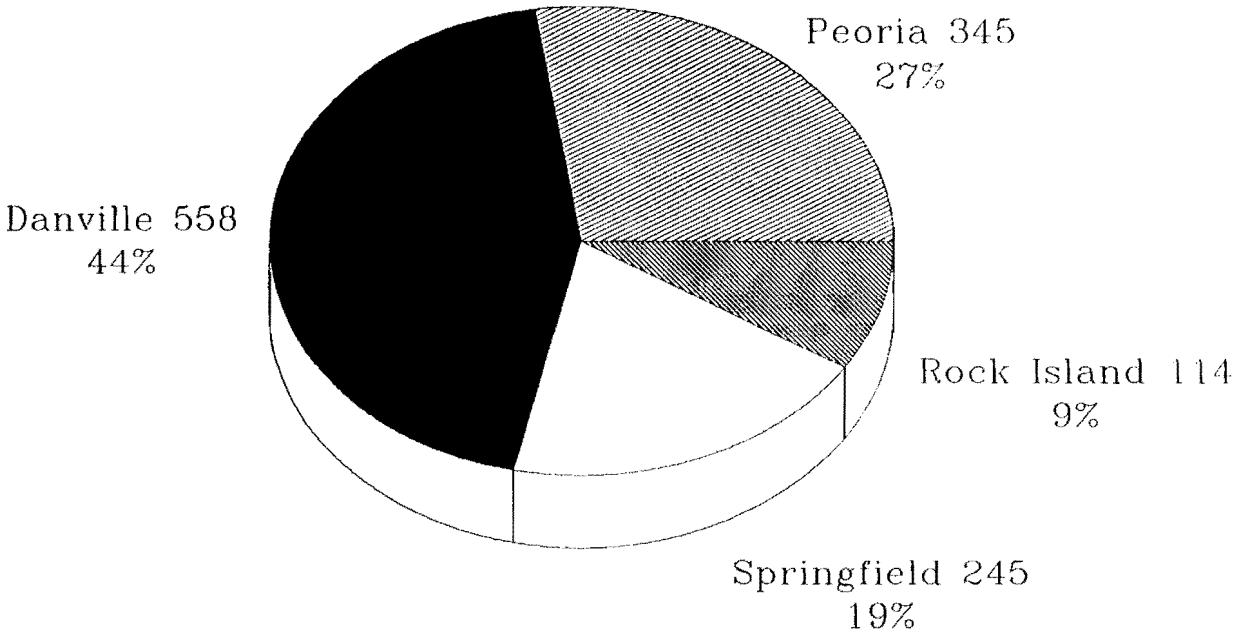


Chart 10

File: AGPCDIV.CHT

Civil Cases Pending at Beginning of SY91
Peoria Totals by Natures of Suit
Total of 345 Pending Cases

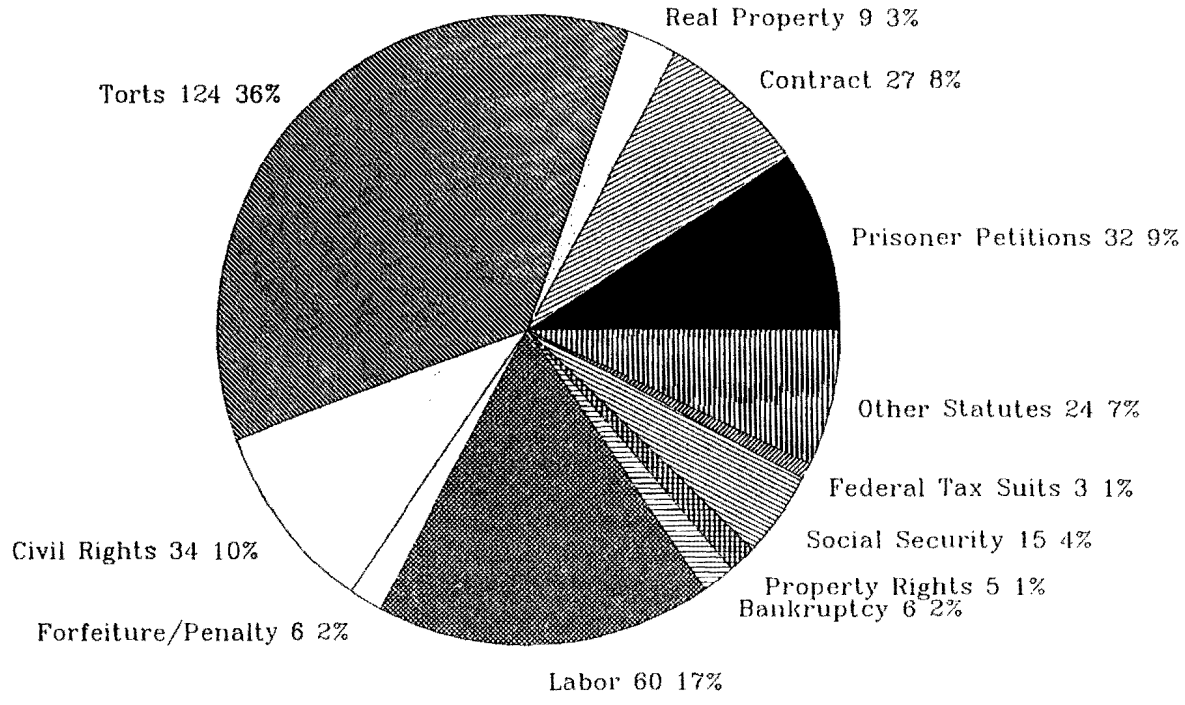


Chart 11

Refer to AO JS-44 for Natures of Suit.
SY91 Began 7-1-90, Ended 6-30-91.
File: AGNOSPIA.CHT

Civil Cases Pending at Beginning of SY91
Danville Totals by Natures of Suit
Total of 558 Pending Cases

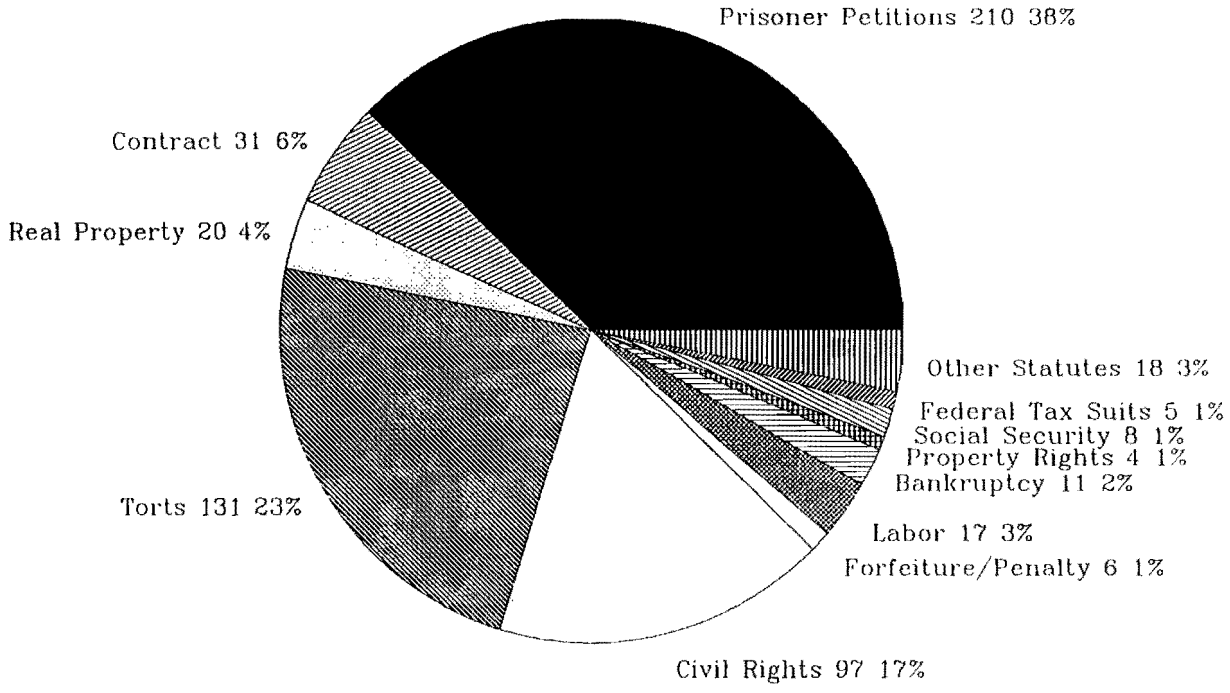


Chart 12

Refer to AO JS-44 for Natures of Suit.
SY91 Began 7-1-90, Ended 6-30-91.
File: AGNOSDNV.CHT

Civil Cases Pending at Beginning of SY91
Springfield Totals by Natures of Suit
Total of 245 Pending Cases

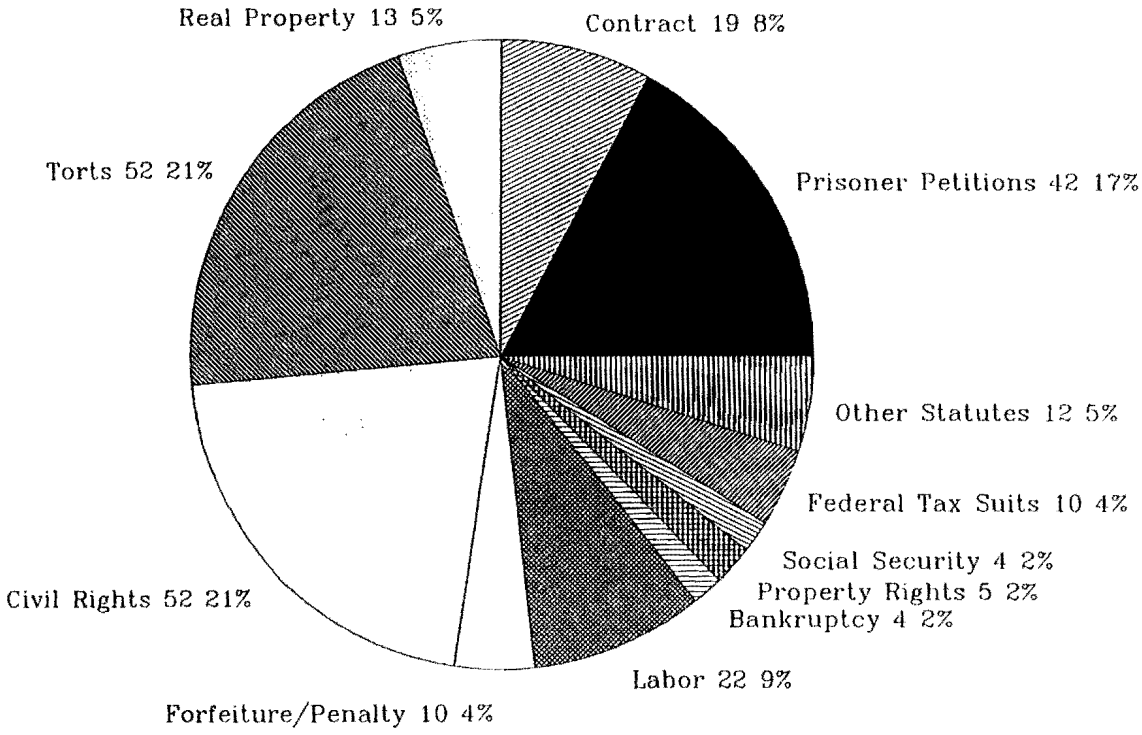
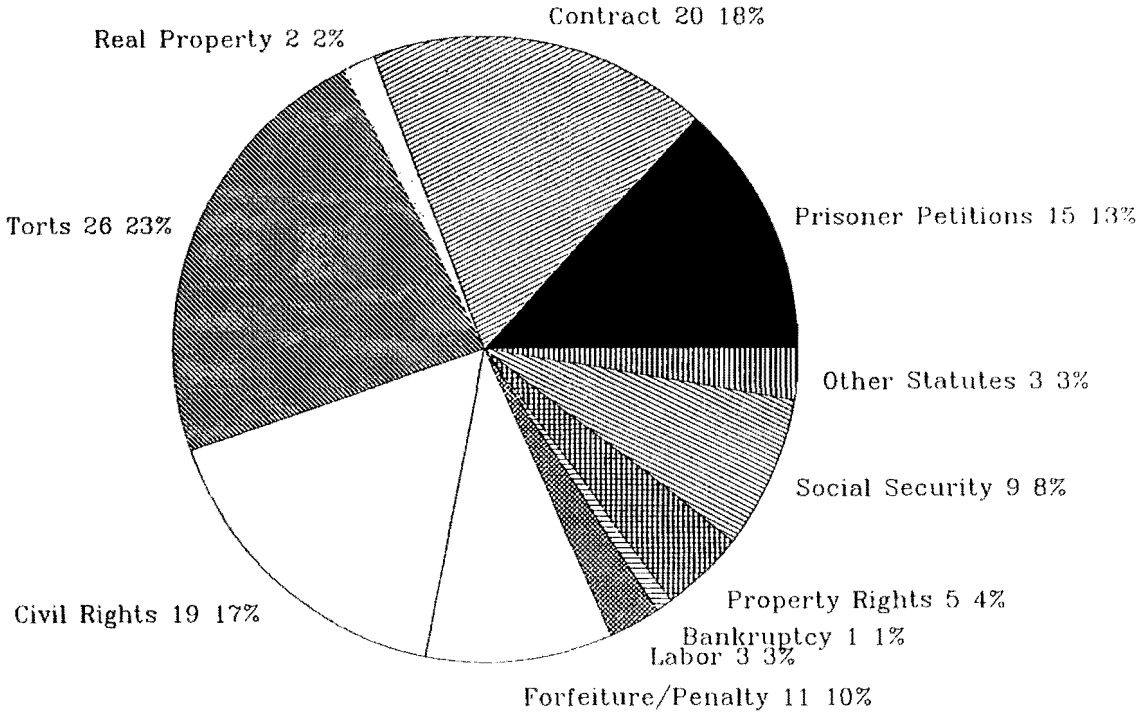


Chart 13

Refer to AO JS-44 for Natures of Suit.
SY91 Began 7-1-90, Ended 6-30-91.
File: AGNOSSPI.CHT

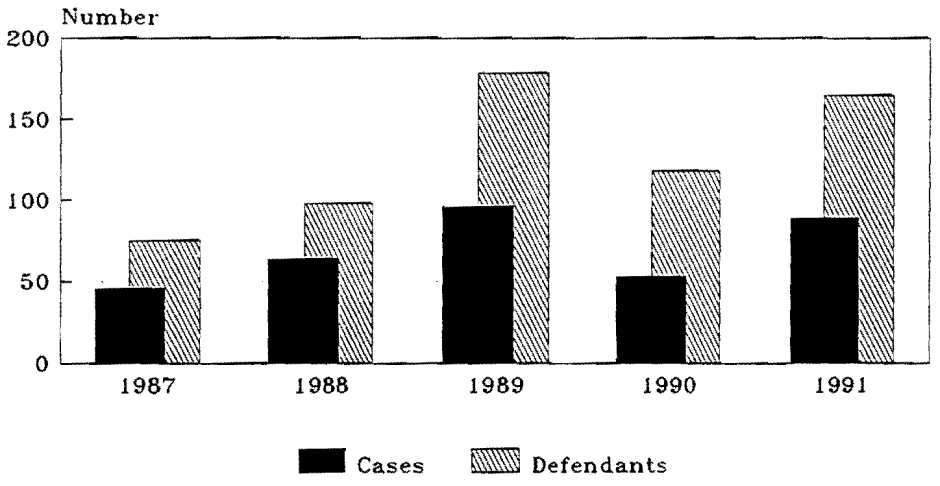
Civil Cases Pending at Beginning of SY91
Rock Island Totals by Natures of Suit
Total of 114 Pending Cases



Refer to AO JS-44 for Natures of Suit.
SY91 Began 7-1-90, Ended 6-30-91.
File: AGNOSRI.CHT

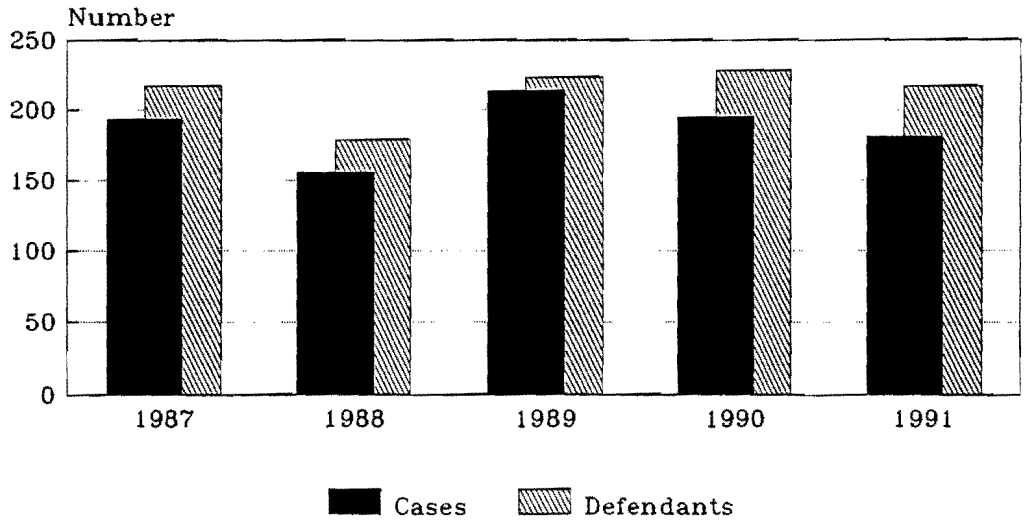
Chart 14

Criminal Cases/Defendants
Drug Offenses
SY87 through SY91



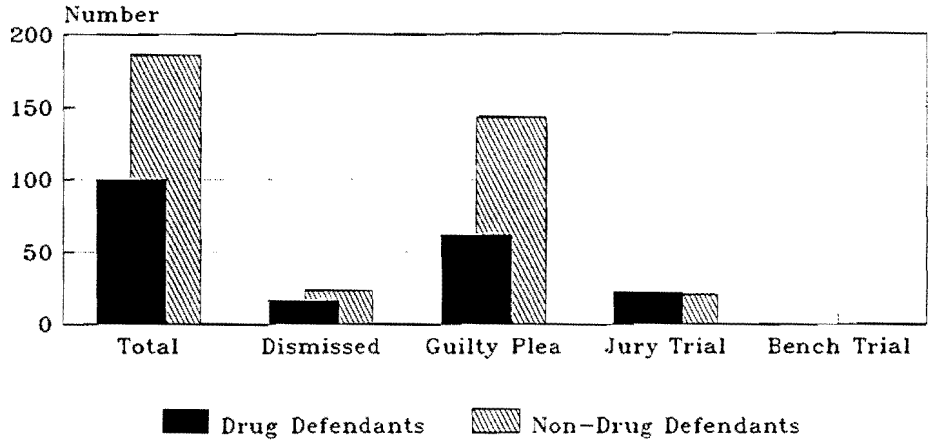
From AO Case Mgmt Stats
Provided by the Statistics Division
File: AGCRCSDD.CHT

Criminal Cases/Defendants
Non-Drug Offenses
SY87 through SY91



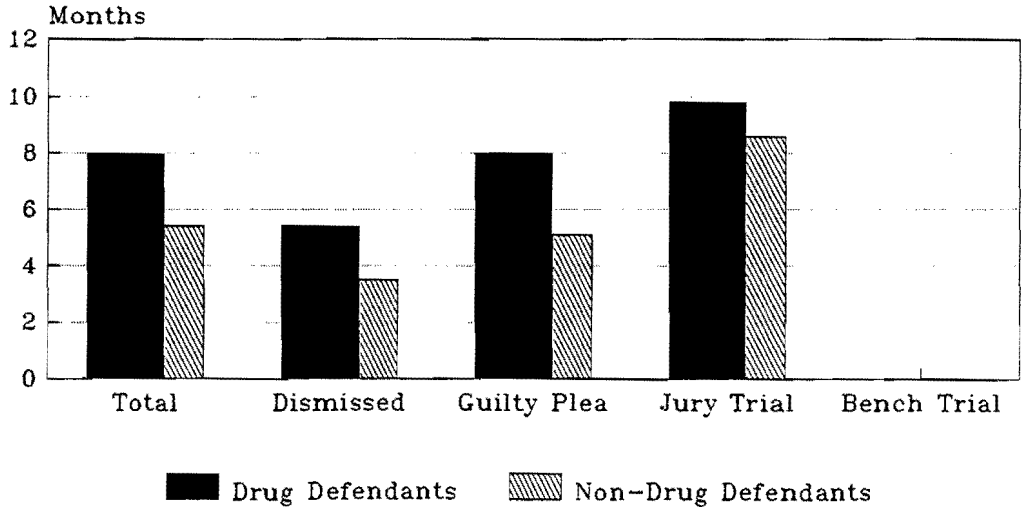
From AO Case Mgmt Stats
Provided by the Statistics Division
File: AGCRCSDN.CHT

Criminal Defendants SY91
Numbers by Disposition Method
Drug and Non-Drug Related



From AO Case Mgmt Stats
Table D-6
File: AGNCD91.CHT

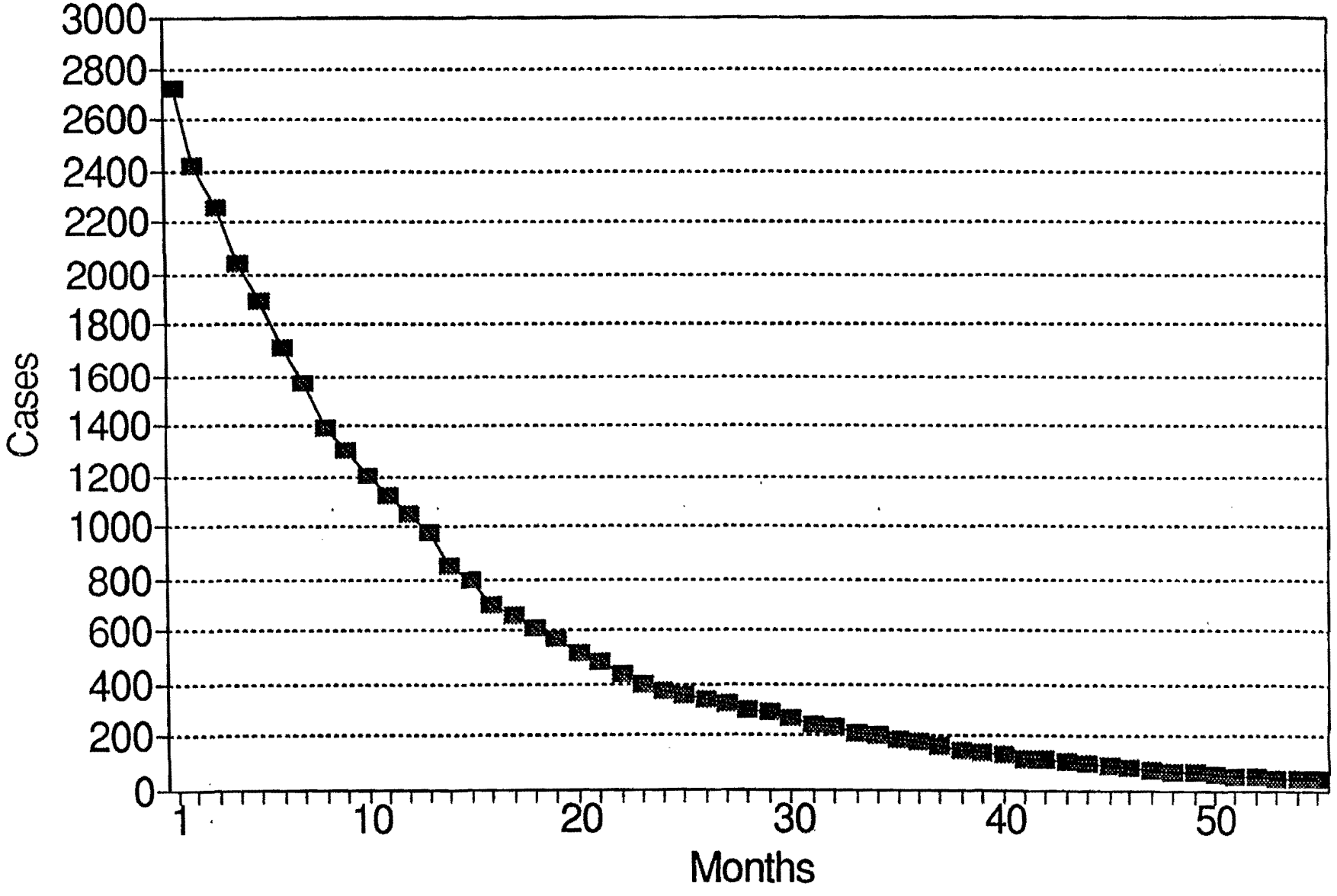
Criminal Defendants SY91
Median Months from Filing to Disposition
Drug and Non-Drug Related by Disp Method



From AO Case Mgmt Stats
Table D-6
File: AGMCD91.CHT

Case Survival - September 23, 1992

U.S.D.C. - Central Illinois



DATA ON WHICH
CHART 17 IS BASED

months	cases end	cum case	% cum	Survival
1	125	125	4%	2721
2	296	421	15%	2425
3	166	587	21%	2259
4	212	799	28%	2047
5	158	957	34%	1889
6	176	1133	40%	1713
7	147	1280	45%	1566
8	171	1451	51%	1395
9	87	1538	54%	1308
10	102	1640	58%	1206
11	80	1720	60%	1126
12	76	1796	63%	1050
13	73	1869	66%	977
14	125	1994	70%	852
15	53	2047	72%	799
16	105	2152	76%	694
17	42	2194	77%	652
18	45	2239	79%	607
19	39	2278	80%	568
20	52	2330	82%	516
21	37	2367	83%	479
22	48	2415	85%	431
23	37	2452	86%	394
24	23	2475	87%	371
25	18	2493	88%	353
26	17	2510	88%	336
27	15	2525	89%	321
28	20	2545	89%	301
29	13	2558	90%	288
30	20	2578	91%	268
31	25	2603	91%	243
32	14	2617	92%	229
33	16	2633	93%	213
34	15	2648	93%	198
35	16	2664	94%	182
36	8	2672	94%	174
37	12	2684	94%	162
38	13	2697	95%	149
39	11	2708	95%	138
40	10	2718	96%	128
41	9	2727	96%	119
42	9	2736	96%	110
43	8	2744	96%	102
44	1	2745	96%	101

JS 44
(Rev. 07/89)

EXHIBIT 1

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

DEFENDANTS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med Malpractice
- ☐ 365 Personal Injury—Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Other

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23

DEMAND $

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

CHAPTER 4

PERCEPTIONS SURVEY RESULTS

I - EXECUTIVE SUMMARY

Introduction

The Perceptions Subcommittee (the "PSC"), an arm of the C.J.R.A. Advisory Committee, collected information on attitudes and opinions of users and observers of the federal court system in this district regarding, essentially: (1) whether problems with litigation delays and costs exist; (2) ways to reduce any such problems; and (3) exploration of alternative dispute resolution techniques, while assuring full and fair access to the courts.

Methodology

Because the PSC found no existing information or insights specific to the Central District, the subcommittee designed and conducted its own surveys. Five groups were targeted: (1) attorneys (in 100 randomly selected, closed cases); (2) the litigants in those specific cases; (3) 100 randomly selected attorneys among those appearing most frequently in the CDIL; (4) all of the judges and selected court staff; and (5) print media located in the CDIL.

It is important to note that the figures presented in this report are not, and were not intended to be, statistically rigorous. Rather, the purpose of the surveys was to gather and present general perceptions of federal court users and observers.

Nearly 400 surveys were sent out; 234 usable, completed responses were received--an overall response rate of 58.8 percent, considered very high. The questionnaires focussed on eight key issues: (1) current litigation management and supervision; (2) timeliness of case

disposition; (3) costs of litigation; (4) potential for other case management techniques; (5) federal jurisdiction issues; (6) access to the federal courts; (7) differences across divisions within the CDIL; and (8) respondent profiles.

Current Litigation Management and Supervision

Most respondents find the level of court supervision to be moderate or high and most are satisfied with current litigation management, seeing no need for new or amended local rules. Most respondents believe that the court: (1) sets firm pretrial schedules; (2) enforces limits on discovery; (3) rules promptly on motions and exerts firm control over trials. There is, however, wide agreement that the court generally does not suggest bench trials or refer cases for alternative dispute resolution.

Many respondents want the court to push harder for settlement, where appropriate. A minority of respondents consider summary jury trials to be a useful tool. Setting a firm trial date at the outset of a case is not popular among attorneys. Many of those who favor firm trial dates emphasize that the date should be realistic, yet flexible. Nearly everyone deems the current number of status conferences appropriate.

The majority of attorneys find the court's current limits on interrogatories too restrictive, while most court respondents believe the limitation is reasonable. Most respondents are uncertain about the advisability of setting limits on either the number or length of depositions. A substantial majority in all groups favors automatic disclosure of basic information at the outset of a case.

The respondents widely disagree as to whether Rule 11 should be modified. Only a minority of attorneys and court staff advocate rule modifications, finding that Rule 11 gives the court appropriate sanction authority. A large percent are "not sure." Timeliness of Case

Disposition

Most attorney respondents believe that the time from filing to resolution of cases is reasonable. Most case-specific attorneys experienced few or no problems with delay in their cases. However, about half of the court respondents think cases take too long. Litigants were equally divided between feeling that the time to resolve their case was "about right" or "much too long".

Where delay is perceived to be a problem, four major causes are cited: (1) the court's slowness to rule on pending motions, (2) counsel's inadequate preparation and over-reliance on continuances, (3) the backlog of civil cases, coupled with pre-emption by criminal cases, and (4) excess discovery. (Most attorney and court respondents, however, thought that the time taken for discovery is reasonable.)

Financial Considerations

Money was at stake in all of the sampled cases, but non-monetary concerns were also at issue in nearly 25 percent of the cases. While most attorneys think that costs, including attorney's fees, are "about right," only about one-half of litigant and court respondents agree. Among those who thought that costs are too high, unnecessary or inefficient discovery was cited most often as the culprit. Many thought that while litigation is potentially expensive, costs cannot be controlled by the players.

Potential for Other Case Management Techniques

A substantial percentage of all groups favors consideration of case management techniques not currently used in this district on a regular basis. However, a majority favor use of any of the proposed techniques on a voluntary, non-binding basis. About half of all respondents support early factual determination and/or settlement by a specially trained, neutral lawyer. Fewer than half of the case-specific attorneys favor mediation; about half

of the court respondents and general attorneys and 60 percent of the litigants favor mediation. Nearly half of all groups except case-specific lawyers find arbitration acceptable, with only one-quarter of case-specific attorneys favoring this technique. One-third to one-half of the respondents approve of judicial mini-trials and of sorting the various types of cases into different "tracks" upon filing, each track with its own deadlines and procedures.

A plurality favor establishment of a committee to recommend procedures for alternative dispute resolution. Nevertheless, there remains a high percentage of "not sures" among all groups. This may be because, despite capsule definitions in the questionnaires, many respondents are unaware of the nuances of the terms. An overwhelming majority of court respondents thought that magistrate judges could be used more effectively in this district.

Federal Jurisdiction Issues

Only the attorneys were asked whether they preferred state or federal court. More often than not, they indicated that they prefer federal court. While the responses did not yield a single, dominant reason for the inclination, a generally higher respect for federal judges was reflected in the answers. Many also believe that the Federal Rules of Civil Procedure are better than state rules.

More than half of the attorneys in both attorney respondent groups think federal diversity jurisdiction should be retained in its present form. In contrast, two-thirds of the court respondents favor modifying the statute. Most of those favoring change think that the minimum dollar amount in controversy required to qualify for diversity jurisdiction should be raised.

A clear majority of all respondent groups believe that the congressionally-mandated priority given to criminal cases causes undue delays and costs for civil cases. Many decry the

continuing "federalization" of crimes traditionally left to the states for prosecution. Others think Congress should consider the impact on the courts when contemplating new legislation.

Access to the Federal Courts

A substantial number in all respondent groups favor providing greater access to the federal courts. At the same time, a significant number express uncertainty about, or opposition to, making it easier to get a case heard in federal court. When presented with several possible methods for increasing access, the most popular options were: (1) reassigning trial-ready cases to a judge with time available; (2) increasing the number of judges and magistrate judges; (3) utilizing magistrate judges more fully in pretrial matters.

All groups support the enactment of measures to assure availability of legal services to indigent litigants in civil cases. There is also substantial agreement that lawyers should be required to handle some pro bono cases, although many attorneys are not receptive to **mandatory** pro bono work. Among pro se plaintiff respondents, lack of an attorney was thought to be detrimental to their cases.

Differences Across the Divisions Within the CDIL

The respondents generally agree that each judge in this district has his own individual approach to case management. The preponderance of all attorney respondents favors adoption of uniform procedures among all judicial officers of the CDIL. However, there is no clear consensus as to which of the various case management styles are preferable.

Conclusion

In sum, despite some problems and dissatisfaction, a large majority of all user groups appears to be reasonably satisfied with practices and procedures in the Central District of Illinois, although few consider that Nirvana has arrived in the Central District. Many, if not a majority, express a cautious willingness to explore new methods of case management and dispute resolution.

II - PERCEPTIONS SUBCOMMITTEE METHODOLOGY

The Perceptions Subcommittee's initial inquiry included a literature review of all of the published materials distributed to the Committee members, some of the sources referred to therein, earlier national studies on the public image of courts, and other published legal and popular literature pertaining in any way to delays, costs, and public perceptions thereof. Additionally, the PSC retrieved from Westlaw (a computer-assisted legal research database) a sampling of law review articles addressing the topic. Those materials almost unanimously lamented problems in the civil justice system and identified many specifics. However, the materials provided little information as to whether and, if so, to what extent, problems of costs and delays cited in other jurisdictions are perceived to exist in the Central District of Illinois.

The PSC also reviewed at least a dozen reports and survey questionnaires from judicially designated Early Implementation Districts. The PSC found no surveys or sources with information or insights specific to the Central District of Illinois. Therefore, the PSC deemed it necessary to conduct a survey to determine whether any consensus exists on the perceived need for, and the specifics of, procedural reform in this district. While several of the questionnaires used elsewhere contained useful and adaptable portions, no questionnaire fully met the PSC's needs. Accordingly, the PSC developed its own survey instruments.

To sample an adequate group and fairly assess perceptions of the whole system. the PSC: (1) identified six key groups of "players" and observers; (2) developed questionnaires for each of those identified groups; (3) decided which individuals to survey and how (whether "randomly" or otherwise); (4) administered the questionnaires; (5) collected, tabulated, analyzed and correlated responses; and (6) reports (herewith) the PSC's findings to the Committee as a whole.

From the beginning of the process of developing and administering the questionnaires, the PSC obtained considerable assistance from the Federal Judicial Center [hereinafter, the "FJC"] in Washington, D.C. (notably, John Shapard and Donna Stienstra). Through a contractual agreement, Diane O'Rourke, Project Coordinator and Coordinator of Research Programs at the University of Illinois Survey Research Laboratory (SRL), served as consultant and provided valuable, continuing technical assistance. The consultants supplied advice in such areas as the wording, formatting and sequencing of questions; the sample makeup and size; the mailing and follow-up of the questionnaires and cover letters to assure maximum response; and the tabulation of both narrative and objective responses.

A. SAMPLE SELECTION

The PSC's first task was to identify appropriate groups to be surveyed and adequate samples within each group. The PSC drew upon the efforts of CJRA committees in other jurisdictions, combined with consultation with the FJC and SRL and input from the Advisory Committee as a whole. Initially, the PSC planned to survey each of the following six groups of "players" and observers: (1) attorneys in private practice and in government and "public interest" agencies; (2) litigants; (3) the judges (100 percent sample); (4) the court's support staff; (5) the media; and (6) academe. The PSC quickly ruled out academe because there is only one law school located in the Central District of Illinois, with only a small number of faculty focussing on federal civil procedure. The Committee further deliberated the value of surveying the media as a surrogate to represent "the public;" the PSC decided to include the media on a limited basis. Thus, the final groupings were as follows:

1. Attorneys (case-specific)
2. Litigants (case-specific)
3. Attorneys (not case-specific)
4. Judges (100%) and Court Staff (selected)
5. Media (print only)

1. Case-Specific Questionnaires (Attorneys and Litigants)

Upon the advice of the Survey Research Laboratory, the PSC decided to send case-specific questionnaires to the attorneys and litigants in 100 randomly selected, closed cases. Only closed cases were used for two reasons: (1) To encourage the parties to feel free to be candid, since the matter had been resolved; and (2) the PSC could refer to the court's computer docket as an objective reality check on the parties' perceptions. Additionally, the inquiry was limited to recently closed cases to enhance the likelihood of locating the respondents and to help ensure that the parties' memories of the cases remained clear. The Federal Judicial Center examined the CDIL's case statistics (which the courts regularly report to Washington) and provided a condensation of the 66 categories of federal civil cases into 12 case types of similar substance and similar characteristic age. Combining further, the PSC reduced the types of cases to the following five categories, which encompass the bulk of the most time-consuming cases in the CDIL:

1) **Contract** (e.g., a lawsuit regarding the breach of a written agreement),

2) **Tort** (e.g., a citizen of one state suing the citizen of another state following a car accident),

3) **Civil Rights--Jobs** (e.g., a lawsuit alleging failure to promote due to employee's race) and **"Other" Civil Rights** (for example, a police brutality suit),

4) Cases which are typically brought pro se (that is, the plaintiff is not represented by a lawyer): **Prisoner Civil Rights** (e.g., a suit regarding conditions of confinement), **Habeas Corpus** (prisoner suing to be released from custody), **Social Security** (lawsuit regarding denial of disability benefits), and

5) **"Potentially Complex"**, as defined by the FJC (including statutory actions not included in other categories, securities, RICO, copyright, patent, trademark, banking, environmental, antitrust and airline regulation cases).

The CDIL's Systems Manager (responsible for overseeing the courts' computer docketing), generated lists, by cause of action, of all cases closed at the district level between

July 31, 1991, and February 25, 1992. The PSC then selected, on a random basis, 100 cases. The FJC suggested that, in order to investigate the reasons why certain cases took longer to resolve than others, the PSC focus its inquiry on those cases that lasted a relatively long time. Accordingly, the PSC randomly selected twenty cases of each of the five types described above, choosing 10 (or half) from the oldest 20 percent of each type and 10 (or half) from those representing the middle 60 percent of the age range.

On the FJC's advice, certain cases were excluded: the 20 percent of each case type resolved most quickly, as well as categories in which virtually all cases are disposed of rapidly, such as the foreclosure and student loan categories. Additionally, the PSC rejected cases which were on appeal, or those where the same lawyer or litigant was a party in another case previously selected for the survey sample. Moreover, the PSC ruled out certain types of cases which were not actually "closed," (for example, asbestos actions, which simply have been transferred to a multi-district litigation panel; cases which had been re-opened in the district court; cases which had been refiled in state court).

So that each case would have equal weight, the PSC chose the "main" attorney for each side and the "main" litigant on each side (that is, one plaintiff and one plaintiff's attorney; one defendant and one defendant's attorney for each case selected). The PSC obtained the attorneys' addresses from the court's docket, then contacted the attorneys or looked in the court files and telephone directories to obtain addresses for all the litigants. For certain cases, fewer than four questionnaires were mailed out (e.g., where a party was not represented by counsel, or where a party was an entity that would have no knowledge regarding the case--large federal agencies, such as the Internal Revenue Service, or habeas actions, where the prison warden generally isn't even aware the suit has been filed, unless the petitioner prevails).

2. Attorneys (Non-Case-Specific)

The PSC also decided to send non-case-specific questionnaires to randomly selected attorneys who have practiced before a court in this district regarding their general perceptions of and satisfaction with the federal court procedures as they operate in the Central District of Illinois. The principal purpose of surveying this group was to compare and contrast general perceptions among the legal profession with opinions pertaining to specific cases. Furthermore, the PSC hoped to widen its inquiry to encompass attorneys whose cases might not have fallen into the case-specific sample. (Although the PSC had hoped to hear from more legal aid-type lawyers, the Subcommittee learned that public interest agencies have only minimal exposure in the federal courts.)

The CDIL Systems Manager generated a list of the 200 attorneys whose names appear most frequently on the courts' dockets. The PSC randomly chose 100 lawyers, eliminating anyone who was slated to receive a case-specific questionnaire.

3. Court

Surveys were sent to all of the judges and magistrate judges, as well as selected court staff (those who would be most likely to know about the entire court process, as well as delays and costs). These included the Clerk of the Court, the deputy clerk in charge of each division, and the law clerks. The population of court personnel queried was twenty-two individuals. The usable response rate among judges was 100 percent and among current court personnel was 88 percent.

4. Media

The CJRA Advisory Committee debated at length the value of surveying the media. While the PSC considered dropping the media survey, the Subcommittee ultimately decided that the media (despite the necessarily rather general questionnaires they would require, and

despite the limitations on their technical legal knowledge) represented the best available surrogate for the general public. As a group with some direct knowledge of and experience with the court system, the media appeared to be the best indicators of perceptions generally held in this district by those not in the legal profession or having any direct role in the court system. Furthermore, no one among the entire CJRA Committee was able to propose an alternative surrogate group.

The PSC first obtained a list of the major news media for the 10 metropolitan areas in the CDIL (Rock Island, Moline, Peoria, Bloomington, Kankakee, Champaign-Urbana, Springfield, Danville, Quincy, and Decatur). After conferring with several media sources, it became apparent that very few journalists in this district have continuing contact with the federal courts. The PSC was advised by media practitioners that radio and television stations in the area report almost exclusively on criminal cases, covering civil suits only when a large dollar amount is involved. Even in those cases which they do follow, their focus is on the filing of the action and its outcome, not on the interim activities. The television and radio reporters therefore have a very shallow knowledge of what transpires between the initiation and conclusion of civil cases. As a result, the PSC decided to eliminate television and radio, and to focus only on the print medium.

The PSC therefore narrowed the target population to the 10 daily newspapers of the metropolitan areas within the district, all of which have one or more reporters regularly assigned to court coverage:

1. The Rock Island Argus,
2. The Moline Daily Dispatch,
3. The Peoria Journal Star,
4. The Bloomington Pantagraph,
5. The Kankakee Daily Journal
6. The Champaign-Urbana News-Gazette,
7. The Springfield Journal-Register,
8. The Danville Commercial News,
9. The Quincy Herald Whig, and
10. The Decatur Herald & Review.

Pursuant to feedback from a limited pretest, the PSC simplified and shortened the questionnaire. The usefulness of the journalists' responses turned out to be minimal. Although the six responses equalled 60 percent of those queried, and represented all four CDIL divisions, most of the questionnaires contained numerous "don't know" and blank responses. Thus, the media provided no consensus and few useful insights into public perceptions. Moreover, the media's responses were at such variance with patterns of the other respondents' answers that, rather than contributing valid viewpoints, they merely reflected an honest lack of knowledge. Nevertheless, the limited survey of the newspaper medium represented a sincere effort on the part of the Perceptions Subcommittee to cast its net more widely.

B. QUESTIONNAIRE DEVELOPMENT

After identifying the sample populations to be queried, the Perceptions Subcommittee formulated the survey instruments. Questionnaires used by several other jurisdictions were reviewed, and useful components were adapted. After the questionnaires were drafted and revised, they were critiqued by the Federal Judicial Center and Diane O'Rourke of the U.I. Survey Research Laboratory. As a form of limited pre-testing, initial drafts were circulated among the full CJRA Advisory Committee and to certain individuals in the media and academe for comments and suggestions. The questionnaires underwent at least ten revisions for format, content and clarity among the instruments. The full CJRA Advisory Committee gave its final approval of the questionnaires and their distribution in May, 1992 (a nine-month period of gestation!).

In sum, it should be noted that the PSC never intended these surveys to be "pure", orthodox, and statistically valid. The limits of human and fiscal resources available to the PSC did not permit this. For example, sample size had to be limited and, where a sizable

number of respondents had no firm opinion on a question, our study did not allow follow-up inquiry. However, we believe that our surveys satisfied the PSC's overall objective: to develop user-friendly instruments addressing priority issues, and to query samples of sufficient size and randomness, especially among attorneys and litigants, so as to produce reliable insights into perceptions and preferences among the prime users of the federal, civil judicial system.

C. SURVEY DISTRIBUTION

The consultants stressed the critical importance of the cover letter accompanying the questionnaires. The cover letter explained the purpose of the study, assured all the respondents that their responses would remain confidential, that no legally sensitive information was at issue, and that no names would be released, even to the judges. The cover letters were co-signed by CDIL Chief Judge Michael Mihm and CJRA Chairperson David Mueller. The cover letters included the name and telephone number of a member of the court staff to whom any questions could be directed. Approximately 50 such inquiries were received and answered. [Copies of each questionnaire, as well as the initial and follow-up cover letters, are available upon request.]

The Perceptions Subcommittee began mailing the questionnaires to all groups of respondents in July, 1992. The questionnaires were coded so that the responses could be tracked, and a master log of IDs and recipients was created before the questionnaires were addressed and mailed. A follow-up reminder letter, accompanied by another copy of the questionnaire, was mailed to all non-respondents three weeks after the first mailing. Receipt of completed questionnaires for tabulation purposes was cut off effective September 14, 1992.

D. SURVEY RESPONSE

Three hundred ninety-eight surveys were sent out; 234 usable, completed responses were received, for an overall response rate of 58.8 percent. One hundred percent of the judges replied; 88 percent of court staff; 71 percent of case-specific attorneys; 59 percent of attorneys non-case-specific; 43 percent of litigants; and 60 percent of media respondents. (For a full profile of responses, see Schedule 1, "Disposition of Survey Sample", next page.) By objective experience, this percentage of respondents is considered high, particularly in view of the length and complexity of the questionnaires. According to the SRL advisor, such a response rate lends greater statistical significance, value and reliability to the results.

Schedule 1

Disposition of Survey Sample

	Attorneys Case-Specific		Attorneys Not Case-Specific		Litigants		Court Personnel		Media		Total	
Final Disposition	n	%	n	%	n	%	n	%	n	%	n	%
Total Sent Out	135	-	97	-	134	-	22	-	10	-	398	-
Ineligible	2	-	0	-	1	-	0	-	0	-	3	-
Deceased	0	-	0	-	1	-	0	-	0	-	1	-
No Longer in Position	2	-	0	-	0	-	0	-	0	-	2	-
Eligible	133	100	97	100	133	100	22	100	10	100	395	100
Completed Questionnaire	94	70.7	57	58.8	57	42.8	20	90.9	6	60.0	234	58.8
Refused / Returned Incomplete	17	12.8	8	8.2	7	5.3	0	0	0	0	32	8.1
Not Forwardable	6	4.5	1	1.0	17	12.8	0	0	0	0	24	6.1
Not Returned (or Returned After Deadline)	16	12.0	31	32.0	52	39.1	2	9.9	4	40.0	105	26.6

E. DATA REDUCTION

Upon receipt of returned questionnaires, the responses were reviewed to make sure the information was usable, and to keep track of who had and had not responded. The answers then were coded for tallying purposes (e.g., non-answers were stricken, decisions were made where multiple boxes were checked, etc.). The responses which could be reduced to numbers then were tallied, and the narrative responses were recorded by respondent group and subject category.

III - SURVEY RESULTS AND FINDINGS

In general, the questionnaires for every respondent group addressed eight key subject matter areas:

(1) current litigation management and supervision
(2) timeliness of case disposition
(3) costs of litigation
(4) potential for other case management techniques
(5) federal jurisdiction issues
(6) access to the federal courts
(7) differences across divisions within the CDIL
(8) respondent profiles.

To the extent possible, responses of the several groups are shown in parallel columns in a series of tables. This information is supplemented with narrative analysis, including a selection of direct quotes of respondents.

In reading the tables, please be aware of the following: (1) all responses are shown as **percentages**; (2) "n", however, always equals the total number of responses to a particular question from a particular surveyed group; (3) percentages and "n" have been calculated after "not sure" and "not applicable" responses were subtracted, except where those responses represented such a substantial portion of the "n" pool (approximately 20 percent

or more) that to omit them would be to distort the findings, and where this occurs it is so indicated in the text; (4) survey recipients queried about a specific case (e.g., Attorneys -- Case Specific) were usually asked to comment only about that case; other respondents (e.g., Attorneys -- General) were asked about their total federal court experience.

A. CURRENT LITIGATION MANAGEMENT AND SUPERVISION

Regardless of whether the respondents found the level of case management to be "high" or "moderate", they exhibited general satisfaction with current litigation management. Few considered the level to be low. Interestingly, however, the court considered its level of supervision to be much higher than did the other respondents. The immense majority of respondents in each group (between 80 and 90 percent) saw no need for the implementation of new or amended local rules.

Table A Level of Case Management			
	Attorneys *Case-Specific*	**Attorneys** *Not Case Specific*	**Courts**
High	41	51	76
Moderate	40	46	24
Low	17	3	0
None	2	0	0
	n=91	n=57	n=17
Appropriate	89	87	89
Too Intensive	4	10	0
Not Intensive Enough	7	3	11
	n=94	n=55	n=18

The surveys asked whether, in a specific case or generally, the court took each of a number of itemized case management actions. There was general agreement that the court sets firm pretrial schedules, enforces limits on discovery, rules promptly on motions and exerts firm control over trials. (The judges and court staff were unanimous as to prompt ruling and trial control.) There was less agreement as to whether the court encourages consent to decision by a magistrate judge, narrows issues, facilitates settlement, and sets and enforces an early trial date. There was wide agreement that the court generally does not suggest bench trials or refer cases for alternative dispute resolution.

Table B Case Management Techniques in Use			
	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*	**Courts**
Firm Pretrial Schedule	77	87	89
Limits on Discovery	75	76	76
Narrowed Issues	45	51	63
Prompt Ruling on Motion	85	77	100
Encouraged Consent to Disposition by Magistrate	63	50	67
Referred to ADR	2	4	0
Early Trial Date	54	48	33
Firm Trial Date	42	51	33
Helped Settlement	44	46	58
Firm Control of Trial	64	98	100
Suggested Bench Trial	8	6	7
	n=23 to 82*	n=17 to 56	n=15 to 20

*In tables where multiple questions were asked and the number of respondents to subcategories of questions varied, a range of "n's" was presented as a single line item. The PSC, in consultation with the SRL, found this approach far more readable and manageable than displaying separate "n's" for each subcategory. Furthermore, in a survey that is admittedly not statistically rigorous, presenting the "n's" in this format does not sacrifice overall accuracy.

The questionnaires asked whether the court should use such case management techniques more or less frequently. Case-specific responding attorneys were generally satisfied with the techniques that had been used in their case. However, a significant minority (15 to 44 percent) of attorneys, judges and court staff favored consideration of greater use of case management techniques. Few (3 to 19 percent) favored reduced use of

the techniques currently used. Nevertheless, one respondent observed: "It makes no sense to keep such tight reins on attorneys until the final pre-trial conference, only to wait a year or more for a trial date." Another respondent complained that while "plenty of perfunctory status conferences are held, they seem to accomplish little."

1. Settlement Conferences

Of the specific techniques currently implemented in the CDIL, nearly half of the case-specific attorneys and nearly all of the general attorneys say that they typically consider settlement. A settlement conference takes place in about half the cases in which it is considered. Case-specific attorneys reported that, when actually held, settlement conferences were usually effective in helping to reach resolution.

It is not clear why more settlement conferences are not held, since most respondents believed that the courts should push harder for settlement in certain cases. Most attorneys thought that the court does not encourage conferences, while a majority of the court respondents who offered an opinion thought that the attorneys and their clients are not interested in settling. Forty percent of court respondents, however, gave no explanation. This suggests a communication gap between the court on the one hand and the parties and their attorneys on the other. Of the specific cases where no settlement conference was held, many attorneys reported that there was no need for such a conference (because the case was resolved by a dispositive motion, for example, or the parties agreed to settle without a formal conference). Several litigants reported that they were unaware of the option of settlement conferences.[16]

16 For that matter, a number of litigants indicated a lack of knowledge as to ADR and case management techniques, as well as federal court procedures in general. In fact, in response to a question about preferences between state and federal court, one litigant responded: "Our attorney didn't tell us much. I didn't even know this case was in federal court until I got your questionnaire."

Comments by attorneys and members of the court favoring greater reliance on settlement conferences included:

> Following the close of discovery, I would favor mandatory settlement conferences, presided over by a magistrate judge or other judicial officer who will not preside over the trial.
>
> More settlement pressure would be appropriate.
>
> Require principals (not subordinates) to appear at settlement conferences.
>
> Mandatory settlement conferences force the lawyers to focus on issues and require parties at least to consider the options available.

2. Summary Jury Trials

Only a minority of respondents, including court personnel, consider summary jury trials to be a viable option; consequently, few such trials are held. Most respondents evidently do not consider summary jury trials to be appropriate in most cases. However, one or more judges favor summary jury trials under select circumstances.

Table C

Summary Jury Trial

	Attorneys Case-Specific	Attorneys Not Case-Specific	Court
Considered	12	32	25
Took Place	1	4	--
	n=90 to 92	n=50 to 53	n=16

Table D Reasons Why Summary Jury Trial Not Held / Not Considered			
	Attorneys Case-Specific	Attorneys Not Case-Specific	Court
Attys Believe SJT Not Viable Option	41	22	17
Court Believes SJT Not Viable Option	--	33	44
	n=97	n=63	n=18

3. Firm Trial Dates

According to respondents, firm trial dates are scheduled at the outset in about 25 percent of the cases (mostly in the Springfield Division, currently). While only one-quarter of all responding attorneys thought that a firm trial date should be set at that stage, one-half of the court respondents thought that this should occur. One judge noted: "Everyone works best within the context of firm deadlines."

The consensus seemed to be that the decision whether to set a firm trial date at an early stage of the proceedings must be made on a case-by-case basis, depending on the complexity of the case and other factors. One attorney stated: "For trials with limited scope, a firm and quick trial date will push litigants to try or to settle the case expeditiously." Other respondents, however, believe that the trial date should be set after the case is well into discovery, when a more realistic date can be set, thus avoiding continuances. One typical remark against firm trial dates was:

> I am generally involved in complex multi-party cases which do not lend themselves to rigid initial trial dates. Early conference to narrow issues and the use of dispositive motions is preferable.

Others stated that so-called "firm" trial dates waste resources since the dates usually fall through. One judge found the "trailing calendar"[17] to be the court's most effective tool in expediting the civil docket, but remarked that settlements "on the eve of trial destroy the court's calendaring." Another respondent commented:

> The questions imply that not holding parties to firm dates is bad. Not necessarily. Justice requires some scheduling flexibility. The Central District is sensitive to proper scheduling considerations. I would hate to see the results of this survey used by judges to begin imposing arbitrary quick dates, using no consideration in enforcing those dates.

Table E

Firm Trial Date Set At The Outset

	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*	**Court**
Should Be Set	29	25	50
	n=85	n=52	n=20

4. Status Conferences

There is almost unanimous agreement that the court holds an appropriate number of status conferences. One respondent recognized that frequent telephone conferences are a "big help" in moving cases forward.

17 Under the trailing calendar system, the court schedules several cases for trial on a given date. Then, as priority hearings are vacated (cases are settled or dismissed or criminal cases end in plea agreements) the court moves down the list of cases set for the day.

5. Dispositive Motions

Dispositive motions were filed in almost half of the specific cases (42 percent). Of those attorneys who did not file such motions, 80 percent believed they would not have eliminated the need for a trial. On the other hand, close to 90 percent of attorneys-at-large said that they generally file such motions.

6. Limits on Discovery

Currently, the CDIL's Local Rules limit only the number of interrogatories. The majority of the attorneys found that the limit to 20 interrogatories is too restrictive, while most court respondents believed the number to be reasonable. (No one commented as to whether requests to exceed the number are routinely filed or whether, when filed, such motions generally are allowed or denied.) Only a small minority of attorneys favored limiting either the number or the length of depositions, while a substantial percent expressed uncertainty. One rationale for not imposing limits: "A party can always ask for a protective order if someone abuses the discovery process." To a greater degree, judges and court staff favored new limits. One respondent suggested greater use of depositions upon written questions rather than personal depositions, particularly for witnesses with questionable or limited knowledge: "This would eliminate much expense and would eliminate scheduling delays, costs in both time and travel, and unnecessary depositions."

A substantial majority of attorneys and court staff concurred, almost to the same extent, that automatic disclosure of basic information is desirable. One respondent noted, however: "I think in many cases this runs up the very costs that courts are concerned about." Another favored automatic disclosure only "so long as a reasonable or good faith failure to produce or disclose doesn't unfairly foreclose future aspects of the case. Everything can't be known at the beginning." (No one raised a frequent criticism of automatic disclosure,

which is that such a rule places small businesses and small law firms at an undue disadvantage.)

Approximately 60 percent of the court respondents believed that Rule 11 of the Federal Rules of Civil Procedures is employed appropriately, a view not shared by the majority of attorneys. As to whether Rule 11's provisions regarding sanctions should or should not be modified, there was great ambivalence among all groups. Only a minority of the attorneys and court staff (and none of the judges) advocated rule modifications, finding that Rule 11 gives the court appropriate sanction authority. Nevertheless, a large percent were "not sure."

The questions concerning Rule 11 sanctions evoked extensive comment, with broad disagreement. One of the judges believes that there is adequate safety from abuse because "the district judge can control the motions for sanctions and the Court of Appeals can control the district judge." One attorney agreed that the "rule itself is fine. Everyone occasionally objects to the way it's implemented. I think in general judges in this district exercise their discretion well."

A court staffer believes sanctions are not imposed often enough: "So many times attorneys get a verbal warning that 'if this happens again, you will be sanctioned.' Why next time and not now?" Also: "I only wish this rule were used more willingly by the court." Another respondent thought that sanctions are not sought often enough by the parties: "I feel that the 'live-and-let-live' practice may reward or encourage unprofessional practices by some lawyers."

At the other end of the spectrum, some attorneys made the following observations:

> Rule 11 is becoming one of the most abused rules and should be significantly restricted.

I think the subjective test was better. The present objective test has resulted in sanctions being used as a shield, not a sword.

It has an undue chilling effect.

Too often used as a threat by parties with more money against those with less. The poor cannot afford to sue the rich.

Rule 11 sanctions should be reserved solely for judge's discretion [as opposed to parties moving for sanctions].

Table F

Limits on Discovery

	Attorneys Case-Specific	Attorneys Not Case-Specific	Court
Twenty Interrogs is Appropriate Limit	45	38	81
Favor Limit on Number of Depositions	22	9	45
Favor Limit on Length of Depositions	27	19	30
Favor Automatic Disclosure of Basic Information	68	66	68
Rule 11 Used Properly	40	35	60
Rule 11 Should be Modified	34	39	15
	n=90 to 94	n=50 to 55	n=19 to 20

B. TIMELINESS OF CASE DISPOSITION

Approximately three-quarters of the attorney respondents believed that the time from filing to resolution of the case was reasonable. Attorneys with specific cases said that they found delay to be a problem in few (34%) or none (58%) of their cases. In contrast, about

half of the court respondents thought that the duration of cases was overly prolonged. Litigants were equally divided between feeling that the time to resolve their case was "about right" (42%) or "much too long" (42%). The opinion of many respondents was best expressed in the following two attorney observations:

> I really don't think we have a problem handling the civil docket, and "if it ain't broke, don't fix it." The only problem is imposed by the Criminal Speedy Trial Act, which none of us can control.
>
> I do not believe that delay is as serious a problem as is generally perceived. There is some delay, of course, but I attribute that simply to the mandated work load of the federal courts. This, in my opinion, is a structural problem of the federal courts that cannot be, nor should be, remedied by arbitrary imposition of trial dates or arbitrary enforcement of discovery cut-off rules. The latter two devices are desirable as tools for moving cases, but ultimately they are not comprehensive solutions, nor should they be. There has to be some application of balanced and reasoned judgment.

Of those respondents who found delays to be a problem, Table G reflects the various reasons identified as responsible. It should be noted that most members of the court attributed delays to three major causes: (1) the court's own slowness to rule on motions; (2) counsel's inadequate preparation and over-reliance on continuances; (3) the backlog of civil cases and their pre-emption by criminal cases.

Among the litigants who felt that it took too long to resolve their case, the causes most frequently cited were: frivolous or unnecessary motions by the opposing attorney (26 percent) and continuances sought by the opposing attorney (19 percent). The questionnaires treated discovery as a cause of delay as a separate matter. (See following section.)

Table G Reasons for Delay			
	Attorneys Case-Specific	Attorneys Not Case-Specific	Court
Excessive Control by Court	0	9	0
Inadequate Control by Court	13	9	33
Court Slow to Rule on Motions	19	73	78
Other Court Delay	19	0	22
Delay by Counsel	63	45	100
Inadequate Preparation	13	36	
Delay by Clients	13	18	11
Preemption by Criminal Cases	62	100	78
Backlog of Civil Cases	25	100	78
Other	19	0	11
	n=16	n=11	n=9

Respondents' suggestions of ways in which attorneys could reduce delays included:

Don't use delay as a strategy.

More cooperation.

Read and abide by local rules.

Upgrade the quality of briefs so that the court does not have to do your work for you.

One judge considered the "reluctance of lawyers to get the case to trial" to be the single biggest difficulty in moving the civil docket.

Other respondents had suggestions for the litigants. One example: "Parties should keep informed about progress of case and keep counsel accountable for actions/inaction taken and the time frame in which taken." Not surprisingly, some defendants maintained that not just delays, but the whole case should have been avoided as the lawsuit was groundless; conversely, some plaintiffs contended that the defendant(s) should have conceded liability before the case was filed, or once the action was commenced.

The judges were asked what they thought were their most effective tools to expedite the civil docket. One judge acknowledged that the CDIL employs "very good personnel" and is constantly developing its already "excellent technology." Another judge said that the best approach is simply to "set case for trial and push." Other judges praised the "trailing calendar," early scheduling orders, and prompt resolution of discovery disputes and all motions (both dispositive and otherwise).

1. Discovery

About 80 percent of the attorneys and 63 percent of the court respondents thought that the time taken for discovery is reasonable. Fifty-four percent of the litigant respondents thought that it took too long to resolve their case. Among that group many thought that the delay was the result of too much discovery by their attorney (32 percent) or by opposing counsel (39 percent). Of those attorney and court respondents who advanced reasons for discovery delays, Table H shows the assignment of causes for those delays. It should be noted, however, that 34 percent of case-specific attorneys offered no explanation for discovery delays.

Table H

Reasons for Delay in Discovery

	Attorneys *Case Specific*	Attorneys *Not Case Specific*	Court
I took too much	7	0	43
They took too much	53	25	43
I wasn't efficient	13	50	57
They weren't efficient	33	75	57
Not enough cooperation	20	100	---
My client caused delay	20	50	---
Their client caused delay	40	50	---
Court set long period	7	25	29
Court didn't enforce cutoff	20	75	71
Court didn't limit scope	7	50	43
Other	27	50	0
	n=15	n=4	n=7

C. FINANCIAL CONSIDERATIONS

1. Reasons for Litigation

In 100 percent of the cases polled, money was at stake. In about one-quarter of the cases, relatively modest amounts (under $50,000) were involved; in about one-quarter of the cases, more than $500,000 was at stake. In addition to financial stakes, nearly one-quarter of the respondents mentioned each of the following reasons for the lawsuit: to obtain (or to contest) injunctive relief, to avoid (or to influence) future litigation, and to punish the defendant.

2. Costs of Litigation

When asked whether costs, including attorney's fees, were or were not appropriate, three-quarters of the attorneys, not surprisingly, thought that costs were "about right." Only about one-half of the court respondents and 35 percent of litigants felt that way, while 28 percent of litigants found costs to be "slightly too high" or "much too high." It must be noted that another 35 percent of responding litigants did not indicate their feelings about costs.

Among those who found costs to be excessive, no single, overriding reason emerged as the principal culprit. However, unnecessary or inefficient discovery was cited most often. One litigant said: "Attorneys should become more efficient and not use an army to tackle every issue." A number of respondents urged judges and magistrate judges to help contain costs by controlling discovery abuses. Court personnel also voiced their opinion that attorneys and clients should be more cooperative in the discovery process. One attorney suggested that status conferences be held by telephone rather than by personal appearance if the attorneys have to travel more than an hour to get to court.

Others, while conceding that litigation is potentially expensive, suggested that many costs are outside the control of the players in the judicial process:

> I do not think the answer lies in any particular devices imposed by the court. For example, expert witness fees are a large part of litigation, but that is primarily due to the fact that highly qualified expert witnesses are in demand, which simply raises the market value of their services.

One judge expressed the following opinion: "Costs aren't the problem. Time available is the problem."

Table I

Reasons for Excessive Costs

	Attorneys *Case Specific*	Attorneys *Not Case Specific*	Court
Excessive Attorney Fees	6	17	57
Excessive Use of Experts	6	25	43
Excessive Case Control by Court	6	8	14
Inadequate Case Control by Court	0	17	14
Court Didn't Rule Promptly on Motion	17	42	43
Other Court Delay	28	25	0
Counsel's Delay	28	33	29
Inadequate Preparation	17	8	57
Client's Delay	17	17	0
Unnecessary Discovery	44	67	71
Inadequate Cooperation	11	17	71
Backlog of Cases	6	50	71
Rescheduling Court Dates	17	33	57
Other	33	17	14
	n=18	n=12	n=7

D. POTENTIAL FOR OTHER CASE MANAGEMENT TECHNIQUES

The surveys asked a series of questions about possible use of a number of case management techniques not typically employed in this district. Across the several respondent groups, a substantial percentage favored consideration of most of the options presented. One judge stated: "Any of the techniques could be employed if a particular case warranted it." Among litigants, at least half said that they would have considered one or more of the options had they known of their availability.

However, a majority of the respondents thought that any of the proposed techniques should be exercised on a voluntary basis. One respondent who doubted the value of mandatory ADR stated: "Unwilling participants don't do a good job. They are never satisfied with the results."

Moreover, the preference was largely for the options not to be binding:

> No procedure should take away the ultimate ability to litigate if lawyers are going to agree to this. However, responsible counsel will take the outcome of these alternative methods to heart in attempting to resolve a case.

> Mandatory techniques should not be binding. Otherwise, litigants would lose their "day in court." Only if the parties agree should the ADR technique be binding.

Nevertheless, more than one respondent wondered whether voluntary, non-binding ADR would simply add another layer to the litigation. To curb total disregard of ADR results, one respondent suggested:

> I think we need a modified English system in which the party who eschews alternative dispute resolution is faced with the possibility of paying the prevailing party's costs and some part of their fees.

It may be that hesitation to embrace new ADR techniques stems from unfamiliarity with those procedures. According to one judge:

Lack of experience with these techniques and how they can assist the disposition of cases is an impediment to their wider acceptance.

Respondents were asked to choose among four options for implementing any of the proposed dispute resolution techniques: (1) mandatory and binding, (2) mandatory but not binding, (3) voluntary and binding, (4) voluntary but not binding. As Table J shows, the vast majority favor voluntary use of most techniques and non-binding decisions.

Table J

Voluntary / Non-Binding Preference

	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*	**Courts**
Early Neutral Evaluation	63 / 84	62 / 77	53 / 74
Mediation	82 / 78	69 / 72	81 / 56
Arbitration	92 / 60	78 / 51	87 / 40
Mini-Trial	95 / 65	72 / 77	83 / 92
	n=60 to 68	n=39 to 43	n=12 to 19

1. Reactions to Specific ADR Techniques

About half of all respondents supported early factual determination and/or settlement evaluation by a specially trained, neutral lawyer. Respondents made the following remarks concerning this technique:

So long as the fact finding is not preclusive if the case doesn't settle.

No. We as lawyers are hired by our clients to do that.
There may be specially trained lawyers, but I question whether anyone is "neutral".

Fewer than half of the case-specific attorneys favored mediation. One respondent commented: "Mediation seems more of a compromise procedure and some cases shouldn't be compromised." However, about half of the court respondents and general attorneys and 60 percent of the litigants thought that mediation should be given serious consideration.

The option of arbitration was accepted by nearly half of all respondent groups except for the case-specific lawyers, among whom only one-quarter favored this technique. One respondent said: "Because there is no appeal, arbitration places parties at great risk if the arbitrator makes errors." Several litigants stated that they had indicated their willingness to submit to mediation or arbitration in their case, but that the other side was not open to that technique. As noted supra, other litigants stated that they had not been made aware of alternatives to a full trial.

One-third to one-half of the respondents gave their approval to judicial mini-trials and to the sorting of the various types of cases into different "tracks" upon filing, each track with its own deadlines and procedures. One litigant speculated: "A mini-trial might have convinced our opponent that this case was insupportable, which would have saved time and money had the technique been available." Among court respondents, there was both uncertainty and a degree of receptivity to case tracking. One judicial officer thought: "We already do this informally by setting pretrial schedules on a case-by-case basis." Some of the attorney respondents appeared to find case-tracking acceptable only if given assurance that the court would be willing to change schedules should it become necessary or appropriate to do so as the case progressed.

The surveys asked whether the respondents thought that this district should establish a committee to recommend proposed procedures for alternative dispute resolution. A plurality of court respondents and attorneys from both groups favored formation of such a

committee, although only one judicial officer clearly favored this approach. There was a high percentage of "not sure" responses from all groups. One judge "would be interested in knowing the organized bar's feelings about ADR techniques. To be successful, their enthusiastic support of the idea would be needed." One judge, opposed to the organization of a committee to explore additional ADR techniques, offered: "I believe our needs can be met if all judges put more emphasis on using the tools we now have--settlement conferences and summary jury trials, for example." A representative attorney comment was:

> The judge needs to devote the time and effort necessary to resolve issues which may arise as the case proceeds, not merely leaving all matters for trial. Such decisions not to decide hinder early settlement of cases.

As noted supra, both attorneys and court respondents favor greater use of settlement conferences, yet each group perceives reluctance on the part of the other to engage in such conferences. Consensus appears to exist for greater use of this technique with judicial leadership.

The respondents also recommended several case management suggestions not specified in the questionnaires:

> Bifurcation of the issues in a case;
>
> Immediate telephone hearing for ruling on discovery disputes;
>
> Dispositive ruling on motions and issues in the pretrial stages, rather than lumping together everything for trial;
>
> Development of an administrative prison grievance process, exhaustion of which would be required as a prerequisite to filing suit.

Some respondents also advised curtailing certain inefficient practices as well as introducing new case management techniques. Several court and attorney respondents suggested that oral arguments on motions usually are a waste of time, maintaining that the court should make its ruling based on the written pleadings.

The overwhelming majority (over 80 percent) of court respondents thought that magistrate judges could be used more effectively in this district. Several respondents expressed the feeling that magistrates currently have sufficient time available so that they would not be overburdened if additional duties were assigned to them. On the other hand, at least one judge believes that magistrate judges cannot be used more effectively "with the present [statutory] restrictions on magistrate judge power." Various respondents suggested that magistrate judges preside over settlement conferences and other pretrial matters to avoid judge conflicts at trial.

Table K

Those Favoring Alternative Techniques

	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*	**Court**	**Litigants**
Early Neutral Evaluation	49	47	50	*
Mediation	40	53	48	60
Arbitration	26	42	48	49
Mini-Trial	37	53	48	40
Case Tracks	47	46	32	*
ADR Committee	46	65	37	*
Court-Assisted Settlement Discussions	*	*	*	62
	n=86 to 89	n=54 to 55	n=19	n=45

*Question not asked of respondent group

E. FEDERAL JURISDICTION ISSUES

Only the attorneys were asked whether they preferred state or federal court. More often than not, they indicated that they preferred federal court. Almost one-third of the case-specific attorneys related that their case could have been heard only in federal court.

Table L
Preference for Federal or State Court

	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*
Preferred Federal Court	46	42
Preferred State Court	16	35
No Preference	9	23
Case Had to Be in Federal Court	29	---
	n=94	n=57

Of those respondents who preferred federal court, their responses as a whole did not reveal any single, dominant reason for the inclination. However, the responses reflected a generally higher respect for federal judges, particularly in this district, as well as the belief that filing in federal court would result in a speedier resolution of the case. Fully 96 percent of the general attorney respondents believed that the Federal Rules of Civil Procedure are better than state rules.

Some of the reasons expressed for federal preference included the following:

Federal judges are better at federal law.

No wild cards in federal court, whereas we have very good state court judges and very bad ones.

> There is generally more predictability under the Federal Rules of Civil Procedure than the state code.
>
> Good trial lawyers prefer federal court because the court is run the way a court should be--no politics.

Some litigants preferred to file in federal court due to fear of "home-towning," a concern that a local court would favor a local company; other respondents sensed that a "good ole' boy" network exists in the state courts. One media observer believes that attorneys and litigants sometimes choose the forum based on political party lines (i.e., in a given area where a suit is to be filed, a party's decision whether to file in state or federal court [or to remove the case] may depend on the political affiliations of the respective judges).

Some respondents indicated that they vastly prefer state court. Some of the reasons for electing state court when possible were:

> State court is less formal and lawyers in this jurisdiction are able to monitor and move cases toward disposition in an efficient and timely manner.
>
> State court judges seem more attuned to the practical aspects of handling a suit, and to the fact that most lawyers have many more cases to handle than the one before the judge.

1. Diversity Jurisdiction

Over half of the attorneys in both respondent groups thought that diversity jurisdiction should be retained in its present form. In contrast, only one-third of the court respondents thought that the status quo should be preserved, with the largest number advocating raising the minimum amount in controversy to qualify for federal diversity jurisdiction. One opponent of diversity jurisdiction stated: "The justification no longer exists or is, at least, substantially weaker." A minority thought that diversity jurisdiction should be abolished or severely limited. The responses reflected no consensus over which civil cases, if any, should be eliminated from eligibility for diversity treatment.

Table M Diversity Jurisdiction Preferences*			
	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*	**Court**
Should Be Retained As Is	53	51	35
Amount Should Be Raised	27	16	41
Amount Should Be Lowered	6	4	0
Used Only By Out-of-State Party	15	14	18
Should Be Abolished	9	21	18
	n=94	n=57	n=17

*Percentages do not total 100 because multiple responses were allowed.

2. Delay Caused by Criminal Cases

A clear majority of all respondent groups (58 to 69 percent) believed that the congressionally-mandated priority given to criminal cases causes undue delays and costs for civil cases. Many respondents decried the trend toward federalization of crimes traditionally left to the states for prosecution, whether due to statutory or prosecutorial actions. When asked whether certain categories of crimes should be eliminated from federal jurisdiction, 54 percent of non-case-specific attorney respondents were "not sure" or left the question blank, as was the case with 41 percent of case-specific attorneys and 30 percent of court respondents.

Some of the comments regarding federal criminal prosecutions included: "Most criminal drug cases belong in state court;" "if federal criminal law continues to grow there simply will be no room for civil cases." One court respondent predicted: "The continued

federalization of crimes sounds the death knell for federal civil litigation." Another observed: "Political pressures will not yield to judicial realities." There was some opinion expressed that the U.S. Attorney's Office filed many "insignificant" criminal cases for the purpose of generating statistics and publicity. Other respondents noted that the U.S. Attorney's Office is "generally prepared and prompt" and that "cases are handled expeditiously."

3. What Congress Can Do to Reduce Delays and Costs

Besides "defederalizing" criminal laws, many respondents argued that Congress must consider the impact of contemplated civil legislation.

> It seems to me Congress doesn't spend enough time considering the broad application that will be given to legislation--the intent of Congress is not clear.
>
> I believe RICO laws are often times used in totally inappropriate cases. The threat of RICO drives up attorney fees, etc.
>
> It is simple. More legislation leads to more litigation.

Many respondents complained that Congress has produced a bottleneck result in litigation by failing to provide funding for the enforcement of new laws:

> Congress seems oblivious to the impact--more cops and prosecutors--no more judges or jails.
>
> Congress increases federal programs with private rights of action and rights to jury trials with no new judicial resources.
>
> Increases in Justice Department investigators and prosecutors have not translated into similar increases in judiciary and support staff. This results in delay which in many cases translates into costs.

Others attributed the proliferation of civil lawsuits to "judge-made" laws. In the words of one respondent: "Costs and delays increase whenever judges 'create' rights or causes of action not plainly contained in the legislation or the Constitution." Another respondent asserted: "'Liberal' judges are the primary cause of the federal court morass."

Various respondents maintained that Congress should fund new judgeships or magistrate judge positions. A few respondents proposed adoption of the "English rule" or a modification thereof, i.e., if a suit is unsuccessful, the plaintiff must pay the defendant's legal fees.

F. ACCESS TO THE FEDERAL COURTS

A substantial number in all respondent groups, including litigants, favored providing greater access to the federal courts. Among attorneys and litigants, the proponents represented 41 to 65 percent of those responding. However, a significant number of attorneys and litigants expressed uncertainty about increasing access opportunities (for example, 75 percent of the litigants were "not sure" or left the question blank). Only among the court respondents did the greatest number (50 percent) oppose making it easier to get a case heard in federal court.

1. Measures to Increase Access

For those who favored greater access to the federal courts, the questionnaires offered four possible methods: increasing the number of district court judges; increasing the number of magistrate judges; increasing the authority of magistrate judges; and reassigning trial-ready cases to a judge with time available on his or her calendar.

As Table N shows, case-specific attorneys preferred the option of reassigning trial-ready cases, while general attorneys preferred increasing the number of judges or magistrate judges. Litigants most often selected increasing the number of judges or reassigning cases; however, 47 percent did not specify any options. Court personnel chose all of the options except for reassigning cases.

Table N Ways to Increase Access to Federal Court				
	Attorneys *Case Specific*	**Attorneys** *Not Case Specific*	**Litigants**	**Court**
More District Judges	76	76	50	50
More Magistrates	68	62	23	50
More Magistrate Authority	47	48	27	67
Reassign Cases to Available Judge	82	29	53	33
	n=38	n=21	n=30	n=6

2. Provision of Legal Services

There was consensus among all respondent groups in support of measures to assure the provision of legal services to indigent litigants in civil cases before the federal courts. Also, there is substantial agreement that lawyers should be required to handle some pro bono cases. Additionally, the court and litigant respondents generally favored development of measures to assure assistance to pro se litigants. One judge found:

> It greatly assists the court when counsel is appointed for a pro se litigant. Counsel can move the case along faster and clarify the issues for the court and generally increase the chance of a just resolution of a case.

Among lawyers, there was not as much enthusiasm for assuring assistance to pro se litigants.

The greatest disagreement was over how to assure the provision of such legal services. Many respondents asserted that more resources should be available than now exist. Various suggested options to consider included:

--Better funding of legal service corporations and non-profit organizations. (Of course, funding is not the province of federal courts.)

--Granting Continuing Legal Education credits for volunteer work or some other incentive to volunteer.

--Development of a program to make [supervised] law school students available for advice or legal research.
--The bar association should require pro bono service as part of continued membership and should assist courts in locating lawyers with experience in specific areas needed such as habeas corpus or ERISA.

A considerable number of respondents believed that lawyers should be encouraged, but not required, to handle some pro bono cases. However, one proponent of mandatory pro bono legal services stated:

> I strongly believe in mandatory service. I didn't 15 years ago when I began practicing, but I sure do now. There's a tremendous amount of need, yet law firms are pressed economically and put pro bono as a low priority. They don't do it voluntarily so make them give something back to a system they've profited from. P.S. Please note: I am a partner in a law firm. I know of what I speak. I am appalled by some of my partners' attitudes on this.

Nevertheless, many attorneys vehemently opposed mandatory pro bono work:

> Slavery was abolished by the 13th Amendment. Voluntary pro bono representation should be encouraged but it should never be made mandatory.

One respondent, an apparent believer in the "market theory," expressed in some Seventh Circuit appellate decisions, stated: "I believe there are enough lawyers willing to take contingency fee cases for individuals with decent cases to have representation." Other respondents noted that individuals in other professions are not required to offer goods or services for free:

> Society subsidized medical care and low-cost housing through general taxation. If society determines that the poor should have legal representation, the cost should not be borne by attorneys alone.

Numerous respondents emphasized that counsel should be appointed only in legitimate cases, rather than in all cases in which the plaintiff was unable to retain an attorney.

It should be noted that the perceptions of various plaintiff respondents--particularly pro se plaintiffs--appeared to have been colored by whether they had won or lost their case. They evidently believed that they were treated unfairly because of their pro se status, or that they might have been more successful had they been represented by an attorney. Prisoner litigants complained of court bias and obstacles to court access which contributed toward delay. Many litigant respondents, particularly defendants represented by an attorney, appeared not to be aware of or understand the legal proceedings.

G. DIFFERENCES ACROSS DIVISIONS WITHIN THE CDIL

At least among the case-specific attorneys, the distribution of responses closely paralleled the proportionate caseload of each division. The respondents generally agreed that each judge in this district has his own individual approach to case management. However, there was no clear concurrence as to which of the various case management techniques contribute to or reduce costs and delays. According to one respondent: "There are definitely differences but none that negatively impact on caseload management." Some attorneys preferred the method of one court over another, while others felt just the opposite.

The preponderance of all attorney respondents believed that uniformity of procedures among all judicial officers of the CDIL would improve the litigation process, while there was considerable variance of opinion among court personnel. As many judges and magistrate judges were unsure of the desirability of uniformity as either favored or opposed it. In sum, although a majority of attorneys were united in favoring uniformity of procedures, attorneys disagreed as to which practices and procedures were preferable.

Table O Should CDIL Adopt Uniform Procedures?			
	Attorneys Case-Specific	Attorneys Not Case-Specific	Court
Yes	73	65	32
No	24	25	37
Not Sure	3	10	32
	n=91	n=52	n=19

H. RESPONDENT PROFILES

The questionnaires asked each respondent group a series of questions to obtain a synthesized profile of each respondent's experience in the federal arena. The median number of years practicing law was 11 to 20 years for both groups of attorneys. All of the judges had more than 20 years of legal experience. Almost all of the attorneys were in group practice and typically devoted 11 to 25 percent of their practice to federal district court litigation.

I - CONCLUSION

Following are several summary observations by respondents:

> I don't really perceive delay to be a problem in the Central District. I believe that efforts at litigation management should not confuse increased burdens upon the litigants as necessarily equating to a prompter, more economical conclusion. The one tool which moves cases to a final conclusion is a firm trial date. Most of the other so-called litigation management tools simply add to the burdens and costs of litigation without materially advancing the cases to conclusion.

> This District strikes me as well-run. At least you cared enough to send out a survey.

A number of respondents have questioned, at various points in their answers, the basis for much of the congressional legislation that has increasingly burdened the courts and delayed civil litigation. For example, one respondent commented:

> Avoid tinkering with the Federal Rules of Civil Procedure. We are in danger of reimposing common law pleading with too many procedural devices that get in the way of the merits of the dispute. This questionnaire is a good example of over-bureaucratization of courts.

In this light, perhaps we should at least question even the Biden Bill itself (called by one respondent a "'red herring' to cover up the effects of Congress's refusal to appoint more Article III judges"), since the law's mandates have led to expenditures of time and money by a very large number of people.

On the other hand, serious self-examination by the users of the ninety-four district courts throughout the United States has undoubtedly helped some of those courts to identify shortcomings and reach for better alternatives. In the Central District of Illinois, we have found that despite a number of problems and dissatisfactions, a large majority of all user groups appear to be reasonably satisfied, and an overwhelming majority of lawyers and court staff see no need to promulgate any new or amended local rules to reduce delays or costs of litigation. At the same time, the opportunity to consider techniques and mechanisms not currently in wide use in this district has revealed a cautious willingness on the part of many, if not most, to explore some new methods of case management and dispute resolution.