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**CJRA**  
**ANNUAL ASSESSMENT**  
**OF THE UNITED STATES DISTRICT COURT**  
**FOR THE**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
pursuant to section 475 of P.L. 101-650



March 1994

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## INTRODUCTION

Pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-482, § 475, requires a periodic assessment "of the court's civil and criminal dockets with a view toward determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court."

### I. MAJOR PROCEDURAL CHANGES

The U.S. District Court for the Southern District of California implemented several major procedural changes, which were meant to reduce cost and delay and increase the effectiveness of litigation management in the district. The primary procedural changes made were the implementation of an Early Neutral Evaluation Conference handled by a magistrate judge early in every civil case, and the establishment of pre and post motion hearing settlement conferences in criminal cases handled by designated district court judges. A number of other case management procedures were also established.

### II. STATUS OF PLAN IMPLEMENTATION

Most paragraphs of the Plan have been implemented. Paragraph A, the rotation of judges, has been placed on hold until the court's judicial vacancies are filled. Paragraph N.14, the debriefing by the judicial officer, has not been implemented due to the high workload being experienced by the judicial officers. A paragraph

regarding the Alternative Dispute Resolution (ADR) methods of arbitration and mediation has been broadened via general order, yet the techniques are not being utilized on a regular basis. There were a total of thirteen cases sent to non-binding ADR in 1992. Two cases were sent in 1993, one to mediation, and the other to arbitration. The reason for the low rate of utilization is due to the success of the ENE conferences. The attorneys and parties become familiar with the magistrate judge as the case manager and do not wish to look elsewhere for assistance.

### III. STATUS OF CIVIL CASELOAD

The statistics point to improvement in the management of the civil caseload. The Judicial Workload Profile (Chart A) shows that as of September 30, 1992<sup>1</sup>, the number and percent of civil cases over three years old had gone down to 9.0% of the caseload from 13% in the previous year. This occurred even though there was a growth in the filings per judgeship from 236 to 267. A study of cases terminated in calendar year 1993 resulted in a finding that out of 276 which had ENE conferences, 53 settled at the ENE (Chart B). The average time from answer to termination was 12.41 months for all civil cases terminated in 1993. The median time was 8.70 months. This compares to an average of 7.89 months and a median of 7.30 months for cases with an ENE held.

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<sup>1</sup>The National Comparison for Statistical Year 1993 was not available at the time of publication of this report.

The median time from answer to termination has gone from 9 months in 1992 to 10 months in 1993 (Chart C). A breakdown comparison of the age of these cases at termination between 1991, 1992, and 1993 shows that more cases three years old or older were terminated in 1992 than in 1991, 13% vs. 7% of the total (Chart D). The percentage increased even more, to 22%, in 1993. This is consistent with the summary of motions pending and bench trials submitted reported by the judges pursuant to CJRA. This data shows that the number of civil cases pending three years or more has steadily fallen from 268 as of September 30, 1991 to a recent 86 as of September 30, 1993 (Chart E.) It should be noted that because older cases are being terminated at a higher rate, the median time from answer to termination has increased rather than decreased. Therefore, the increase in the median figures could be considered an indicator of success rather than failure of the civil case management techniques.

An additional chart which demonstrates the civil experience of the court is the number of civil matters as reported by the magistrate judges. This summary shows a jump of 36% from 2743 to 3730 from 1991 to 1992, reflecting the additional responsibilities set forth by the CJRA plan. For 1993, the number has stayed stable at 3714 matters (Chart F.)

There has also been an increase in the number of cases sent to magistrate judges by consent (Chart M). There was an increase from

16 cases to 44 between 1991 and 1992. For 1993, the number of cases sent is 56, an increase of 27% over 1992. The number of consent cases terminated by the magistrate judges has fluctuated within a range of 29 to 48 from 1989 to 1993, with a drop of 35% from 1991 to 1992, and a subsequent increase of 118% (22 to 48 cases terminated) from 1992 to 1993. This increase was entirely a result of cases terminated without trial, with jury and non-jury trials actually decreasing.

A detailed comparison of 1991, 1992, and 1993 civil activity by nature of suit shows that overall civil filings decreased 1% from 1992 to 1993 after increasing 7% from 1991 to 1992. Terminations decreased by 3% in 1993 after increasing by 5% from 1991 to 1992. The pending caseload continues to drop, recording the second annual 8% decrease. This chart also identifies several other trends which may be of significance, including a 264% increase in prisoner civil rights petitions from 1991 to 1992, a 40% increase in other types of prisoner petitions from 1991 to 1992, and a 36% increase from 1992 to 1993 in the same category. If this trend continues, this will be the largest category of civil suits in the court, followed by other civil rights, and personal injury cases (Chart G.) The civil rights group was indeed the highest weighted category of case filings in statistical years 1991 through 1993, as charted by the Administrative Office of the Courts (Attachment A, p. 11).

#### IV. STATUS OF CRIMINAL CASELOAD

The application of CJRA in this district has, of course, not been limited to civil cases. The district court judges have actively participated in a criminal case settlement program established pursuant to the requirements set forth in the CJRA Plan and Report. A study of court calendar activity in 1992 cases (Chart I.) shows that out of the 1514 defendants which were tracked in the study, 864 (57%) had settled as of April 30, 1993. Of the 864 which settled, 33% settled at the Pre-Motions Hearing (Pre-MH) settlement conference, and 7% settled at the Post-Motions Hearing (Post-MH) settlement conference. In addition to the 40% settling at one of the settlement conferences, 19% of the cases which had settlement conferences scheduled or held were settled at the Motions Hearing or Disposition Hearing. The remaining 41% of the cases settled at other points in the process without the benefit of a settlement conference. The 40% settlement rate for the conferences can be deemed successful when you consider that the average time from first appearance to guilty plea came down by 27% in the district from 107.07 days in 1991 to 78 days in 1992. This was followed by another decrease of 17%, down to 65 days, for cases filed and plead in 1993 (Chart J.). This is confirmed by a drop in the median time from first appearance to guilty plea from 70 days in 1992 to 58 days in 1993. This is found to be even more impressive when you consider that the district is still experiencing vacancy in judgeships, and had the highest weighted filings per judgeship in the last six years (Chart K.)



The number of criminal case filings increased 47% from 1185 to 1743 from 1991 to 1992. This was followed by a 13% increase from 1992 to 1993, up to 1977 cases (Chart N-1). The case filings by defendant also rose 39% from 1991 to 1992. This was followed by a 5% increase from 1992 to 1993 (Chart N-2). The increase in the number of felony cases and felony defendants was similar to that recorded for criminal cases overall (Charts N-3 and N-4). This can be attributable to changes in leadership and policy taking place at the U.S. Attorney's office during the period.

There was a considerable decline in the number of trials from 1992 to 1993, from 192 to 143 (Chart H). This was even below the 1991 level of 182 trials. The largest portion of this decline resulted from the 37% drop in criminal trials, from 137 to 95. This drop occurred concurrent to the aggressive pursuit of settlement through application of the CJRA techniques by both the district court judges and the magistrate judges.

#### V. COMPARISON TO NATIONAL CASELOAD

A comparison to national figures shows that the district stacks up well against the national averages. The nation on the whole lowered its number of three year old civil cases by 19%, while this district lowered that same group by 35%. The nation stood still on its issue to trial time at 15 months while this district dropped by 10% from 21 months to 19. These decreases occurred even though the district was burdened with two judicial vacancies, the highest

criminal filings per judgeship in the country, and greater growth rate in actions per judgeship than the nation overall (Chart L.)

#### VI. QUESTIONNAIRE FINDINGS

The CJRA Plan required one other large undertaking, which has actually turned into two. That is the development of a civil questionnaire to be distributed to the parties and their counsel at the close of each civil case filed after January 1, 1992. To this was added a criminal questionnaire which is being distributed to the attorneys at the close of the criminal cases. During calendar year 1993, a total of 228 attorneys responded to the criminal questionnaire out of approximately 1449 distributed. Three hundred and twelve attorneys and parties responded to the civil questionnaires out of approximately 2182 distributed during calendar year 1993. While the rates of return are not the most desirable, a number of worthwhile suggestions were received on the questionnaires and considered in the implementation of revised procedures. Attachments B and C contain reports on the results. The court has improved the distribution methods in recent months in the hope of increasing the number of responses. Preliminary indications are that the improvements are resulting in a higher response rate; however, the reduction of questionnaire distribution to a sample may be warranted based upon the need for resource savings and the sufficiency of comments received. The civil questionnaire comments show that the overall opinions are mixed on the effectiveness of the civil CJRA procedures of this court. The

answers to the questionnaires reflect the fact that the court is not utilizing arbitration and summary jury trials to a large extent. More positive opinions were expressed about the Early Neutral Evaluation than about the Case Management Conference and pretrial conferences. Whereas the opinions expressed on the questionnaires were mixed regarding the civil CJRA procedures, there seemed to be a strong feeling in favor of the effectiveness of the criminal settlement conferences. A number of suggestions were offered for further changes in the procedures in order to facilitate settlement.

#### VII. SUMMARY

In summary, it appears that the recommendations of the Plan, as implemented, have had a positive effect upon the case administration of the court. Many of the critical numbers have turned in the right direction, or are relatively stable. Several provisions of the plan have not been fully implemented, and hopefully full judicial staffing is around the corner to enable their implementation. The addition of the new magistrate judges will assist in managing the growth in civil matters resulting from the CJRA plan, and hopefully open up some time to devote to the debriefing of parties and counsel, as required by the last paragraph of the Plan. Should the efforts to obtain full judicial staffing continue to be hampered, the court should increase its effort to apply the ADR provisions of the plan comprised of arbitration, mediation, mini-trial, and summary jury trial.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

CALIFORNIA SOUTHERN		TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
		1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*	3,524	2,914	2,637	2,819	2,898	3,068		
	Terminations	3,227	2,931	2,931	2,765	2,774	2,873		
	Pending	4,263	3,959	3,968	4,348	4,283	4,051		
	Percent Change In Total Filings Current Year	Over Last Year . . .	20.9						[11] [2] [22] [6]
Number of Judgeships		8	8	7	7	7	7		
Vacant Judgeship Months**		22.8	32.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	441	364	377	403	414	438	[29] [6]
		Civil	267	236	266	281	294	283	[75] [10]
		Criminal Felony	174	128	111	122	120	155	[1] [1]
	Pending Cases		533	495	567	621	612	579	[11] [3]
	Weighted Filings**		471	391	427	400	386	443	[19] [4]
	Terminations		403	366	419	395	396	410	[42] [8]
	Trials Completed		56	46	59	62	43	48	[4] [2]
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.1	5.8	6.3	6.2	5.2	4.3	[52] [8]
		Civil**	9	10	12	13	11	11	[36] [5]
	From Issue to Trial (Civil Only)		19	21	16	18	23	22	[61] [8]
OTHER	Number (and %) of Civil Cases Over 3 Years Old		180 9.0	276 13.0	279 12.2	397 14.9	373 13.8	201 8.1	[76] [12]
	Average Number of Felony Defendants Filed per Case		1.5	1.5	1.6	1.7	1.6	1.4	
	Jurors	Avg. Present for Jury Selection**	35.91	51.07	47.07	48.10	40.03	38.95	[53] [5]
		Percent Not Selected or Challenged**	33.0	45.2	40.4	40.9	34.9	36.6	[52] [9]

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

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2137	74	131	278	251	69	87	357	279	74	319	9	209
Criminal*	1371	201	7	37	46	28	567	279	20	56	15	62	53

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

**CHART B.**

**ENE TIME ANALYSIS**  
**ALL CIVIL CASES TERMINATED, CALENDAR YEAR 1993**

	ENE HELD - NOT SETTLED AT ENE	SETTLED AT ENE	TOTAL CASES WITH ENE HELD	ENE SCHEDULED, NOT HELD	TOTAL	CIVIL CASES TERMINATED IN 1993 (WITH ANSWERS)
NUMBER OF CASES	223	53	276	64	340	926
PERCENT OF TOTAL	80.80%	19.20%	100.00%	18.82%	100.00%	100.00%
<b>FILINGS TO TERMINATION</b>						
AVERAGE MONTHS	10.42	7.34	9.83	8.07	9.50	15.8
MEDIAN MONTHS	10.03	6.23	9.28	6.62	9.00	11.8
<b>ANSWER TO TERMINATION</b>						
AVERAGE MONTHS	8.45	5.51	7.89	6.17	7.56	12.41
MEDIAN MONTHS	7.83	4.90	7.30	4.68	6.87	8.70
<b>ENE DATE TO TERMINATION</b>						
AVERAGE MONTHS	5.92	2.19	5.21	3.52	4.89	NA
MEDIAN MONTHS	5.07	1.43	4.13	1.75	3.90	NA

\* note: The above statistics were based upon the data available through ICMS. Indications are that there were more cases with ENE's held than reported.

**CHART C.**

**U.S. DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA  
ANSWER TO TERMINATION DATA**

<b>PERIOD OF MEASUREMENT</b>	<b>MONTHS FROM ANS TO TERM</b>		<b>CASES TERMED</b>
	<b>MEDIAN</b>	<b>AVERAGE</b>	
Jan. 1, 1991 through Dec. 31, 1991	10	10	1014
Jan. 1, 1992 through Dec. 31, 1992	9	12	1312
Jan. 1, 1993 through Dec. 31, 1993	10	12	918

source: ICMS system

**CHART D.****U.S. DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA  
ANSWER TO TERMINATION DATA  
DISTRIBUTION BY YEAR OF CASE****Cases Terminated from Jan. 1, 1993 through Dec. 31, 1993**

YEAR (AGE OF CASE)	NUMBER TERMED	PERCENT OF TOTAL
1986 (7 - 8 years)	1	0%
1987 (6 - 7 years)	10	1%
1988 (5 - 6 years)	25	2%
1989 (4 - 5 years)	113	8%
1990 (3 - 4 years)	151	11%
1991 (2 - 3 years)	268	19%
1992 (1 - 2 years)	552	39%
1993 (0 - 1 years)	280	20%
Total	1400	100%

**Cases Terminated from Jan. 1, 1992 through Dec. 31, 1992**

YEAR (AGE OF CASE)	NUMBER TERMED	PERCENT OF TOTAL
1986 (6 - 7 years)	1	0%
1987 (5 - 6 years)	18	1%
1988 (4 - 5 years)	43	3%
1989 (3 - 4 years)	120	9%
1990 (2 - 3 years)	265	20%
1991 (1 - 2 years)	577	44%
1992 (0 - 1 years)	288	22%
Total	1312	100%

**Cases Terminated from Jan. 1, 1991 through Dec. 31, 1991**

YEAR (AGE OF CASE)	NUMBER TERMED	PERCENT OF TOTAL
1986 (5 - 6 years)	8	1%
1987 (4 - 5 years)	17	2%
1988 (3 - 4 years)	41	4%
1989 (2 - 3 years)	239	24%
1990 (1 - 2 years)	501	49%
1991 (0 - 1 years)	208	21%
Total	1014	100%

**CHART E.**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
MOTIONS PENDING AND BENCH TRIALS SUBMITTED  
OVER 6 MONTHS  
CIVIL CASES PENDING 3 YEARS OR MORE**

DATE	MOTIONS PENDING OVER 180 DAYS	BENCH TRIALS SUBMITTED OVER 6 MONTHS	CIVIL CASES PENDING 3 YEARS OR MORE
9/30/91	1	0	268
3/31/92	0	0	165
9/30/92	23	0	173
3/31/93	24	0	146
9/30/93	27	0	86

source: JS56



**CHART F.**

**U.S. DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA  
SUMMARY OF MAGISTRATE JUDGE CIVIL ACTIVITY**

<b>PERIOD OF MEASUREMENT</b>	<b>Civil Matters</b>	<b>Percent Change</b>
Jan. 1, 1991 through Dec. 31, 1991	2743	
Jan. 1, 1992 through Dec. 31, 1992	3730	+36%
Jan. 1, 1993 through Dec. 31, 1993	3714	+0%

source: JS43 reports

**CHART G.**

**U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
COMPARISON OF CIVIL CASE ACTIVITY BY NATURE OF SUIT  
CALENDAR YEARS 1991, 1992, AND 1993**

**OPENINGS**

	PRISONER							TORTS								
	SOCIAL SECUR	CIVIL RIGHTS	OTHER	OTH CIV RIGHTS	STUDENT/ VA LOAN	OTHER CONT	PROPTY RIGHTS	REAL PROP.	PER INJURY	PER PROP.	BK APP.	TAX SUITS	LABOR SUITS	FORFEIT PENALTY	ALL OTHER	TOTAL
1991	82	36	137	292	303	177	68	55	221	33	30	18	88	249	176	1965
1992	74	131	192	303	259	162	72	70	242	48	30	17	82	222	205	2109
CHANGE '91 TO '92	-10%	264%	40%	4%	-15%	-8%	6%	27%	10%	45%	0%	-6%	-7%	-11%	16%	7%
1993	58	110	262	354	186	154	98	71	271	48	16	11	89	210	145	2083
CHANGE '92 TO '93	-22%	-16%	36%	17%	-28%	-5%	36%	1%	12%	0%	-47%	-35%	9%	-5%	-29%	-1%

**TERMINATIONS**

	PRISONER							TORTS								
	SOCIAL SECUR	CIVIL RIGHTS	OTHER	OTH CIV RIGHTS	STUDENT/ VA LOAN	OTHER CONT	PROPTY RIGHTS	REAL PROP.	PER INJURY	PER PROP.	BK APP.	TAX SUITS	LABOR SUITS	FORFEIT PENALTY	ALL OTHER	TOTAL
1991	82	40	127	252	355	190	89	60	241	36	43	26	83	288	241	2153
1992	80	93	154	307	289	227	77	84	238	51	83	22	98	294	174	2271
CHANGE '91 TO '92	-2%	133%	21%	22%	-19%	19%	-13%	40%	-1%	42%	93%	-15%	18%	2%	-28%	5%
1993	71	107	266	306	234	171	92	71	285	56	24	23	94	226	175	2201
CHANGE '92 TO '93	-11%	15%	73%	0%	-19%	-25%	19%	-15%	20%	10%	-71%	5%	-4%	-23%	1%	-3%

**PENDINGS**

	PRISONER							TORTS								
	SOCIAL SECUR	CIVIL RIGHTS	OTHER	OTH CIV RIGHTS	STUDENT/ VA LOAN	OTHER CONT	PROPTY RIGHTS	REAL PROP.	PER INJURY	PER PROP.	BK APP.	TAX SUITS	LABOR SUITS	FORFEIT PENALTY	ALL OTHER	TOTAL
1991	67	37	113	252	240	238	83	76	235	44	90	27	101	251	231	2085
1992	60	74	152	249	210	173	78	62	238	41	37	22	84	178	262	1920
CHANGE '91 TO '92	-10%	100%	35%	-1%	-13%	-27%	-6%	-18%	1%	-7%	-59%	-19%	-17%	-29%	13%	-8%
1993	47	74	142	290	158	155	84	60	222	33	29	11	78	156	224	1763
CHANGE '92 TO '93	-22%	0%	-7%	16%	-25%	-10%	8%	-3%	-7%	-20%	-22%	-50%	-7%	-12%	-15%	-8%

**CHART II.**

U.S. District Court - Southern District of California

**TRIALS: 1991, 1992, AND 1993**

YEAR	CRIMINAL	% CHANGE	CIVIL	% CHANGE	TOTAL	% CHANGE
1991	142		40		182	
1992	137	-4%	55	38%	192	5%
1993	95	-31%	48	-13%	143	-26%

\* Source: JS-10 Monthly Report of Trials and Other Court Activity

**CHART I.**

U.S. DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA  
**CRIMINAL SETTLEMENT CONFERENCE SUMMARY SHEET**  
**CALENDAR ACTIVITY ON 1992 CASES**  
 THROUGH APRIL 30, 1993

	Number	Percent
Defendants Tracked*	1514	100%
Total Number Settled	864	57%
Defendants Tracked	1514	100%
PRE-MH Settlement Conferences Scheduled	873	58%
POST-MH Settlement Conferences Scheduled	216	14%
Settled at the Motions Setting	7	1%
Settled at the PRE-MH Settlement Conference	281	33%
Settled at the Motions Hearing - No Settlement Conf	62	7%
Settled at the Motions Hearing - Set Conf Scheduled/	49	6%
Settled at POST-MH Conference	61	7%
Settled at DISPO HEARING - Pre Set Conf Held	74	9%
Settled at DISPO HEARING - Post Set Conf Held	34	4%
Settled at DISPO HEARING - No Conf Scheduled	197	23%
Settled: other (arraignment, trial, etc.)	99	11%
Total Number Settled	864	100%

source: courtroom calendars

\* Total number of defendants for which calendars were reviewed.

The A.O. reports 2004 criminal felony filings, by defendant in 1992. Some cases were not sent into the settlement conference program or into the study during the course of the year.

**CHART J.****U.S. DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA  
AVERAGE & MEDIAN TIME FROM FIRST APPEARANCE TO GUILTY PLEA**

<b>YEAR OF CASE FILING AND OF GUILTY PLEA</b>	<b>AVERAGE NUMBER OF DAYS</b>	<b>PERCENT CHANGE</b>	<b>MEDIAN NUMBER OF DAYS</b>	<b>PERCENT CHANGE</b>	<b>NUMBER OF CASES</b>
Jan. 1, 1990 through Dec. 31, 1990	88				
Jan. 1, 1991 through Dec. 31, 1991	107	22%			
Jan. 1, 1992 through Dec. 31, 1992	78	-27%	70	na	1080
Jan. 1, 1993 through Dec. 31, 1993	65	-17%	58	-17%	1203

sources: 1990 and 1991 data, AO reports  
1992 and 1993 data, ICMS

**CHART K.**

**U.S. DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA  
JUDGESHIPS AND VACANT JUDGESHIP MONTHS\***

YEAR	1992	1991	1990	1989	1988	1987
JUDGESHIPS	8	8	7	7	7	7
VACANT JUDGESHIP MONTHS	22.8	32	0	0	0	0
WEIGHTED FILINGS/JUDGESHIP	471	391	427	400	386	443

\* For the twelve month period ended September 30

\*\*Average weighted filings per judgeship in 1992, all district courts = 416

source: 1992 Federal Court Management Statistics

**CHART L.**

U.S. DISTRICT COURT - JUDICIAL WORKLOAD PROFILE  
COMPARISON OF CALIFORNIA SOUTHERN TO NATIONAL  
12 MONTH PERIOD ENDED SEPTEMBER 30TH

		CALIFORNIA SOUTHERN			ALL DISTRICT COURTS		
		% CHANGE	1992	1991	% CHANGE	1992	1991
OVERALL WORKLOAD STATISTICS	Filings	21%	3,524	2,914	9%	265,612.00	244,790.00
	Terminations	10%	3,227	2,931	5%	263,034.00	250,615.00
	Pending	8%	4,263	3,959	1%	263,805.00	260,095.00
	Number of Judgeships	0%	8	8	0%	649.00	649.00
	Vacant Judgeship Months	-29%	23	32	7%	1,313.40	1,227.60
ACTIONS PER JUDGESHIP	Total	21%	441	364	8%	409	377
	Civil	13%	267	236	9%	355	325
	Criminal Felony	36%	174	128	4%	54	52
	Pending Cases	8%	533	495	1%	405	401
	Weighted Filings	20%	471	391	8%	416	384
	Terminations	10%	403	366	5%	405	386
	Trials Completed	22%	56	46	3%	32	31
MEDIAN TIMES (MONTHS)	From Filings to Disposition						
	Criminal Felony	5%	6.1	5.8	2%	5.9	5.8
	Civil	-10%	9	10	-10%	9	10
	From Issue to Trial (Civil Only)	-10%	19	21	0%	15	15
OTHER	Number (and %) of Civil Cases Over 3 Years Old	-35%	180	276	-19%	17249	21252
			9.00%	13.00%		7.70%	9.40%
	Average Number of Felony Defendants Filed per Case	0%	1.50	1.50	7%	1.60	1.50
	Jurors	Avg. Present for Jury Selection **	-30%	35.91	51.07	1%	37.64
Percent Not Selected or Challenged **			33.00%	45.20%		34.10%	34.30%

source: 1992 Federal Court Management Statistics

**CHART M.**

**CONSENT CASES UNDER 28 U.S.C. Section 636(c)**

**Cases Sent to Magistrate Judge**

Year Ordered	1991	1992 % change		1993 % change	
Number Sent	16	44	175%	56	27%

source: ICMS system

**Cases Terminated**

	1989	1990 % change		1991 % change		1992 % change		1993 % change	
Without Trial	20	20	0	27	35%	10	-63%	41	310%
Jury Trial	1	1	0%	1	0%	5	400%	1	-80%
Nonjury Trial	16	8	-50%	6	-25%	7	17%	6	-14%
Total	37	29	-22%	34	17%	22	-35%	48	118%

source: JS-43 - Magistrates Monthly Report



U.S. District Court - Southern District of California

**TOTAL CRIMINAL CASE FILINGS  
1990 THROUGH 1993**

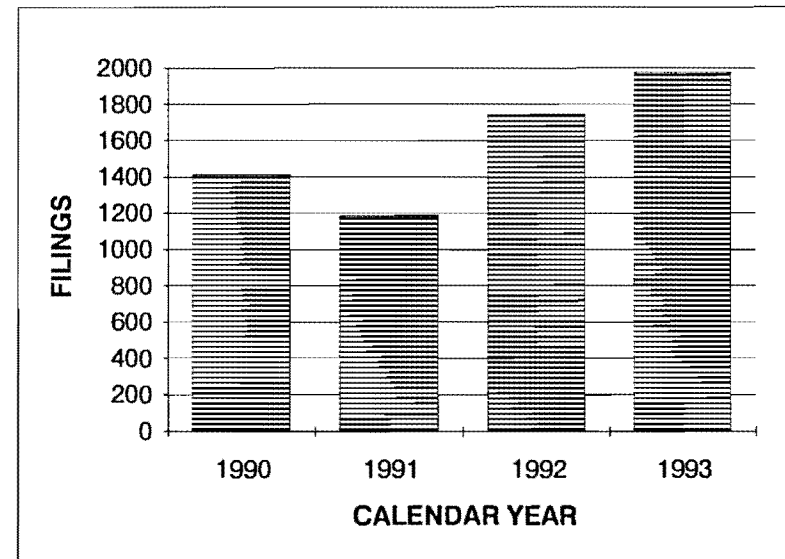
YEAR	TOTAL	ANNUAL% CHANGE
1990	1412	
1991	1185	-16%
1992	1743	47%
1993	1977	13%

\* Criminal Cases recorded with a JS-2 (felonies and misdemeanors)

1990, 1991, and 1992 data obtained from Workload Statistics Table D

1993 data: JS-1 report from ICMS system

**CHART N-1**



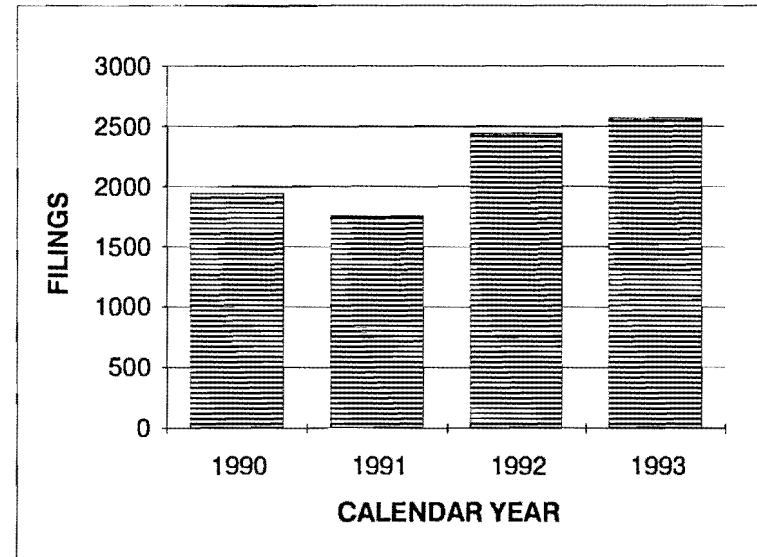
## CHART N-2

U.S. District Court - Southern District of California

### TOTAL CRIMINAL CASE FILINGS, BY DEFENDANT 1990 THROUGH 1993\*

YEAR	TOTAL	ANNUAL% CHANGE
1990	1943	
1991	1755	-10%
1992	2445	39%
1993	2573	5%

\* Criminal Cases recorded with a JS-2 (felonies and misdemeanors)  
1990, 1991 and 1992 data obtained from Workload Statistics Table D  
1993 data: JS-1 report from ICMS system

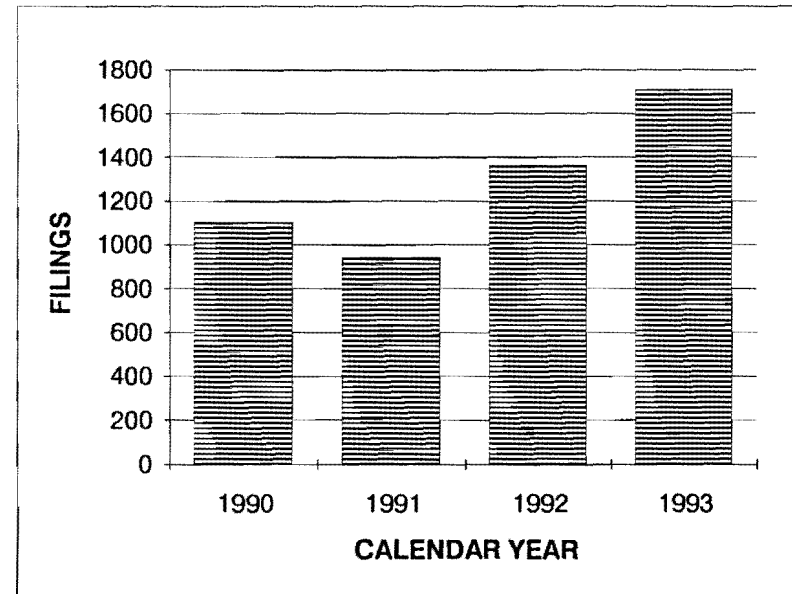


**CHART N-3**

U.S. District Court - Southern District of California

**CRIMINAL FELONY CASE FILINGS  
1990 THROUGH 1993**

YEAR	TOTAL	ANNUAL% CHANGE
1990	1102	
1991	940	-15%
1992	1363	45%
1993	1707	25%



\* 1990, 1991, and 1992 data obtained from Workload Statistics Table D-1

1993 data, JS-1 report from ICMS system

\*\* 853 divided by 9 and multiplied by 12 = projection of 1137

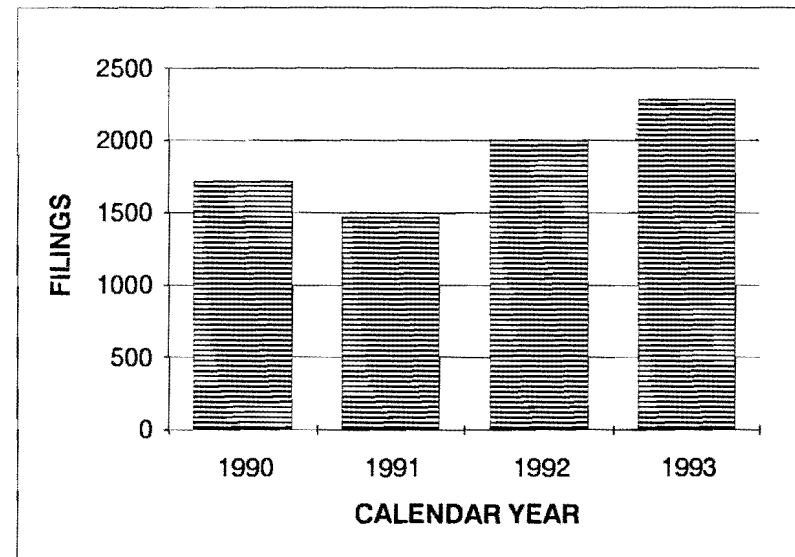
### CHART N-4

U.S. District Court - Southern District of California

#### CRIMINAL FELONY FILINGS, BY DEFENDANT 1990 THROUGH 1993

YEAR	TOTAL	ANNUAL% CHANGE
1990	1717	
1991	1468	-15%
1992	2004	37%
1993	2285	14%

\* 1990, 1991 and 1992 data obtained from Workload Statistics Table D-1  
1993 data: JS-1 report from ICMS system



**ATTACHMENT A.**

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

**SY93 Statistics Supplement**

**September 1993**



Prepared for the Southern District of California

**NOTES:**

**(Except for the update to 1993 data, the next paragraph, and this parenthetical, this document is identical to the one entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 SY92 Statistics Supplement, September 1992.")**

**In August, 1993, the Subcommittee on Judicial Statistics accepted provisionally a new set of case weights based on a time study begun in 1987. These new weights were employed to prepare Chart 3 (page 13), which may result in this edition of Chart 3 looking significantly different from previous editions.**

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1993 (the twelve months ended June 30, 1993). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 (page 12) may show slightly different counts of case filings for recent years (e.g., SY89-92) than were shown in Table 1 of the original document. The variations arise from two sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing counts.
2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been replaced in this update with a chart entitled "Chart 6 Corrected," which is based on all Type II cases. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.
3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this update.

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

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

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

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

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

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

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

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

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

**Chart 1: Distribution of Case Filings, SY91-93**  
Southern District of California

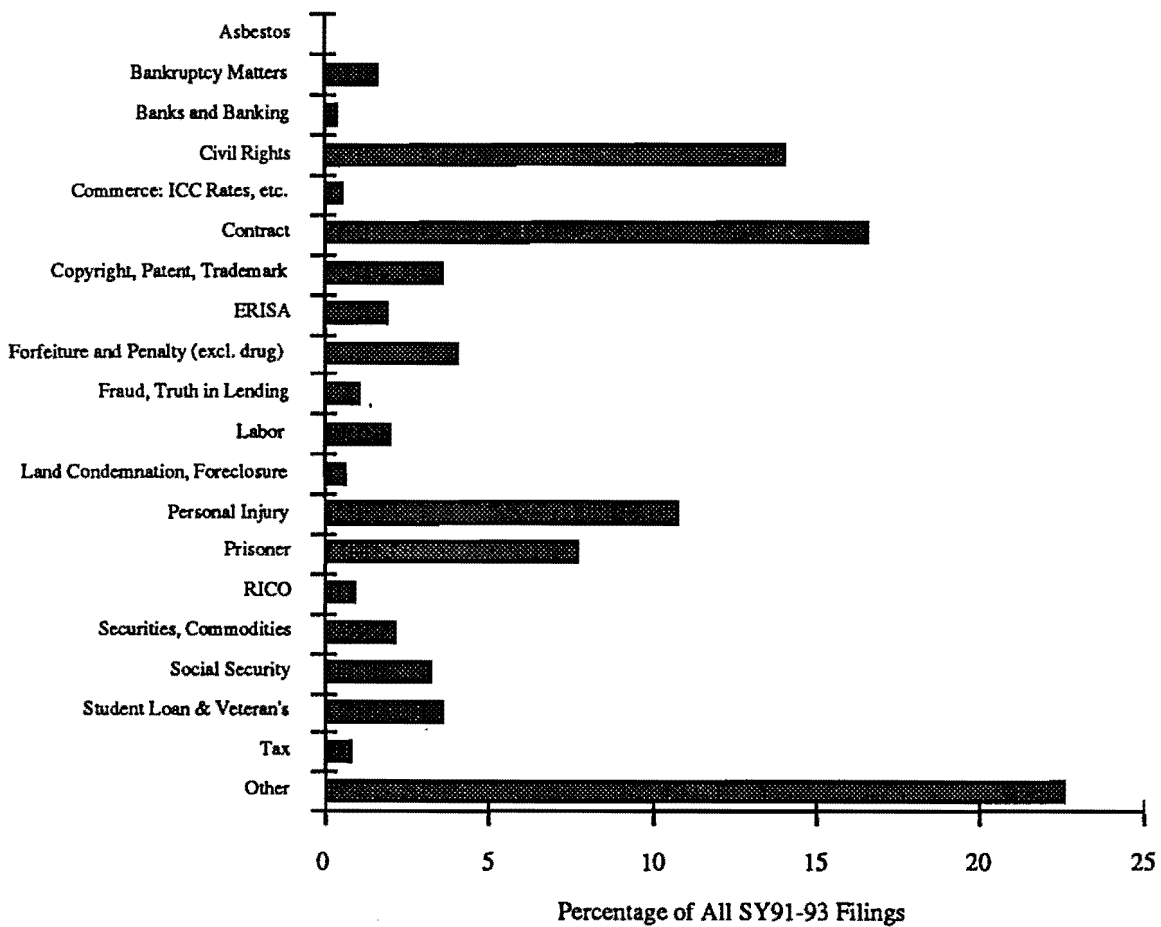
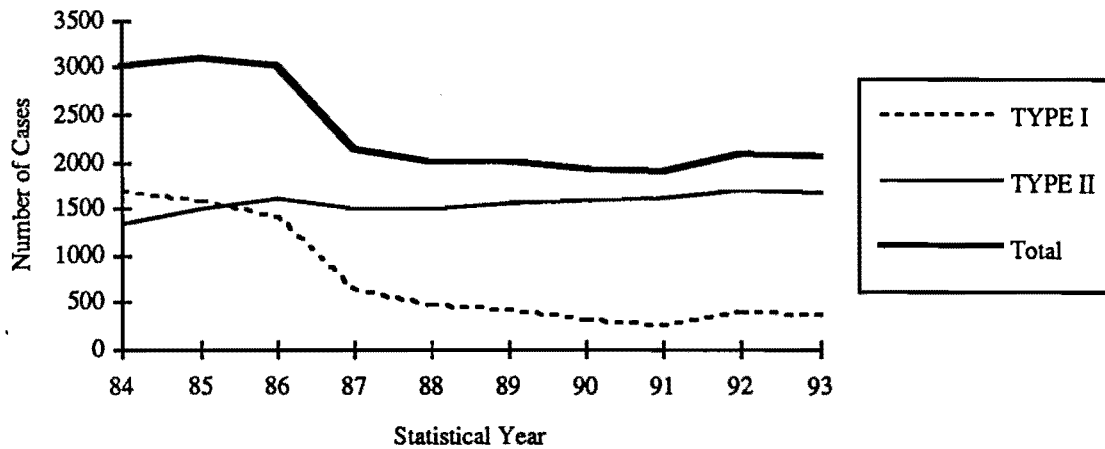




Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

**Chart 2: Filings By Broad Category, SY84-93**  
Southern District of California

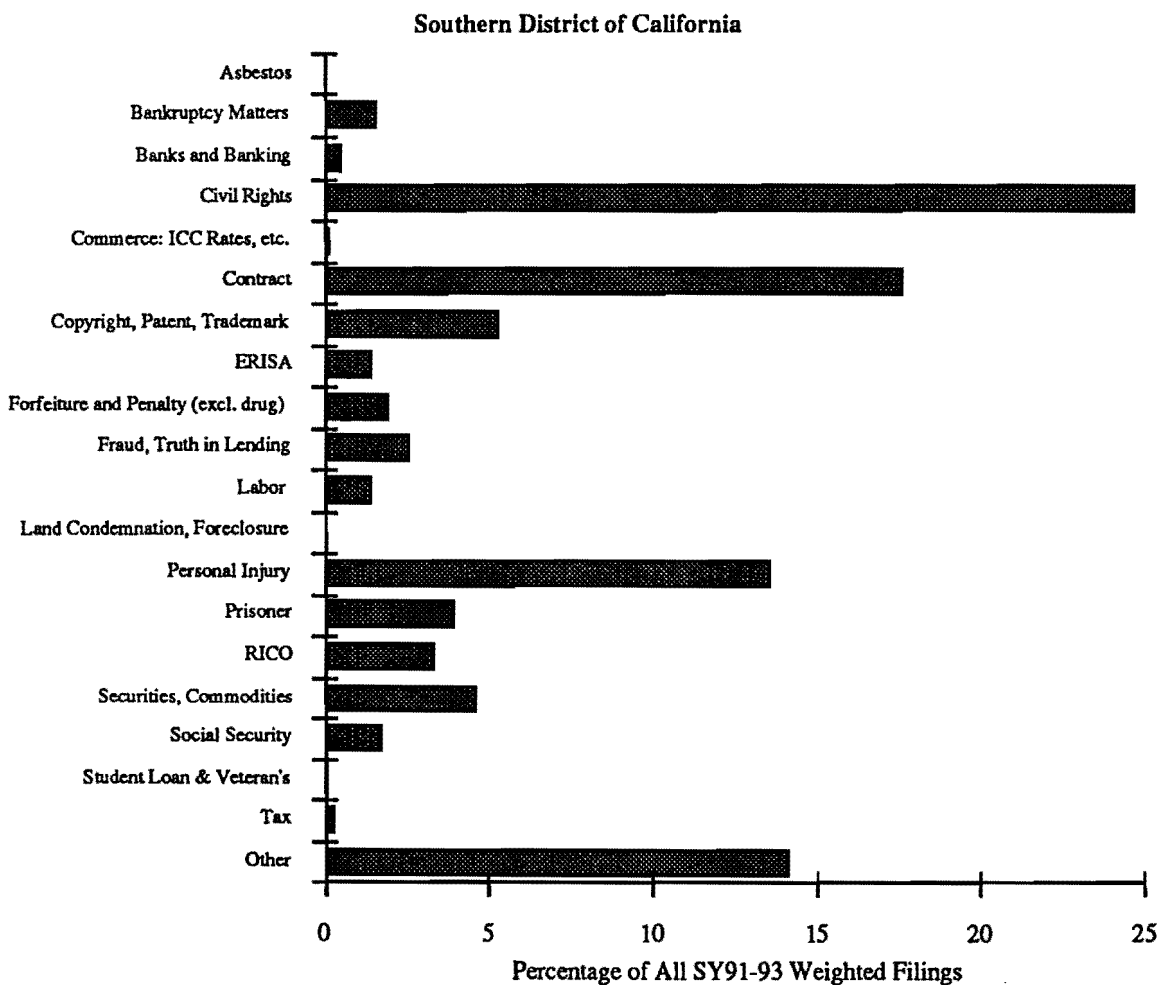


**Table 1: Filings by Case Type, SY84-93**

Southern District of California	YEAR									
	84	85	86	87	88	89	90	91	92	93
Asbestos	1	0	0	0	3	1	2	0	0	1
Bankruptcy Matters	63	188	99	43	40	77	43	48	32	23
Banks and Banking	0	0	1	3	5	3	9	7	3	17
Civil Rights	149	127	154	158	134	140	229	259	306	283
Commerce: ICC Rates, etc.	8	6	4	4	9	11	12	18	11	9
Contract	298	359	422	468	406	476	388	352	365	281
Copyright, Patent, Trademark	47	42	39	77	62	65	98	71	74	74
ERISA	13	30	40	41	55	41	29	41	41	38
Forfeiture and Penalty (excl. drug)	264	244	237	191	298	300	127	79	66	105
Fraud, Truth in Lending	13	19	20	20	22	16	10	19	21	31
Labor	71	68	84	69	70	48	49	35	42	48
Land Condemnation, Foreclosure	2	2	2	28	11	8	5	10	15	18
Personal Injury	224	279	313	218	217	187	178	190	218	242
Prisoner	85	65	64	95	162	144	101	101	148	219
RICO	0	0	2	9	6	15	21	20	24	17
Securities, Commodities	45	106	55	54	42	62	45	30	45	60
Social Security	214	186	105	89	117	59	75	67	68	62
Student Loan and Veteran's	1312	1153	1141	376	150	145	92	36	131	55
Tax	25	24	15	28	28	30	29	22	19	10
All Other	184	196	216	164	141	172	362	466	447	442
All Civil Cases	3018	3094	3013	2135	1978	2000	1904	1871	2076	2035

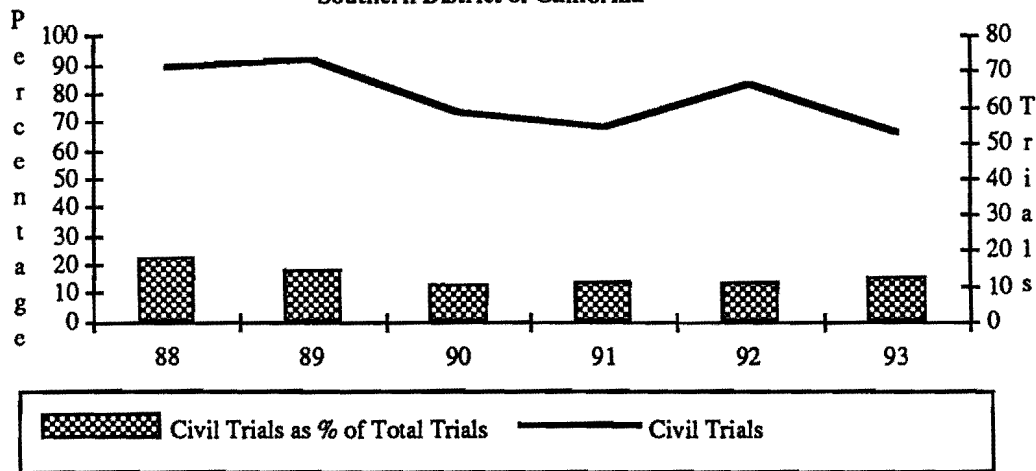
**c. Burden.** While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights (revised in August, 1993) to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

**Chart 3: Distribution of Weighted Civil Case Filings, SY91-93**



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

**Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY88-93**  
Southern District of California



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

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

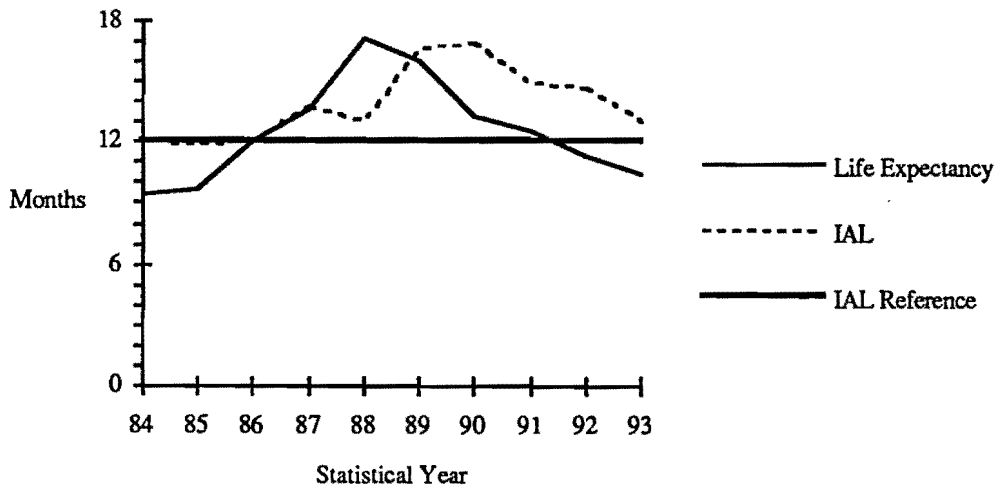
Since age of cases terminated in the most recent years is not a reliable predictor of next year’s prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: “How long is a newborn likely to live?” Life expectancy can be applied to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

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

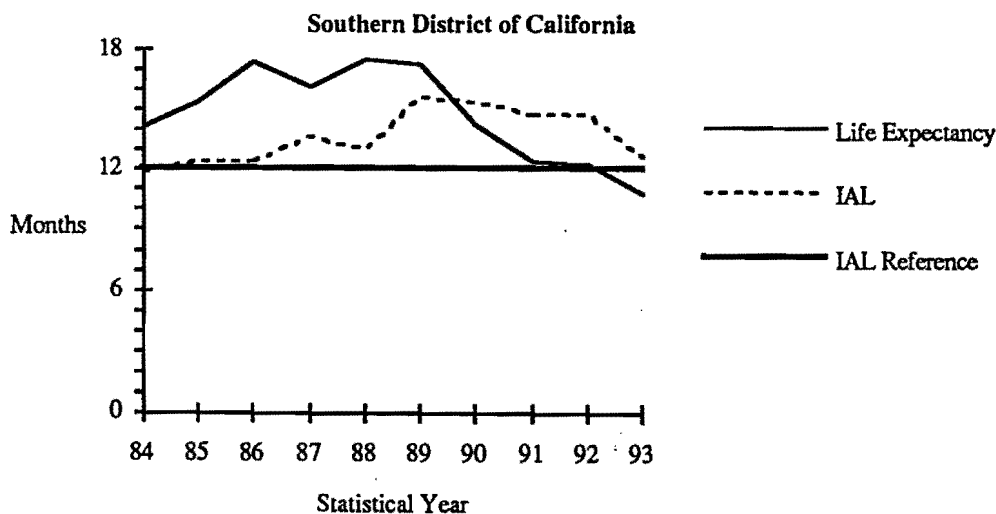
indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

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

**Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY84-93**  
Southern District of California



**Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY84-93**  
Southern District of California



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

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

**Chart 7: Cases Terminated in SY91-93, By Termination Category and Age**

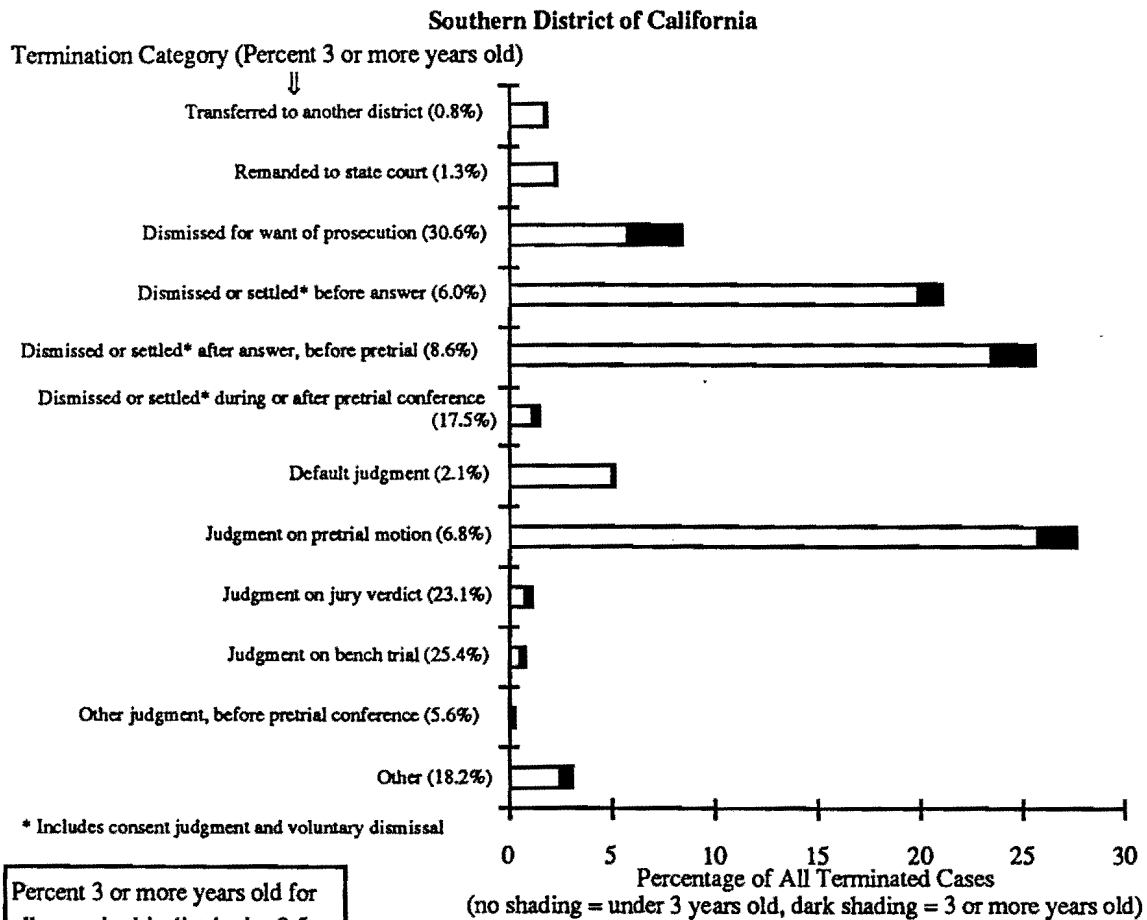
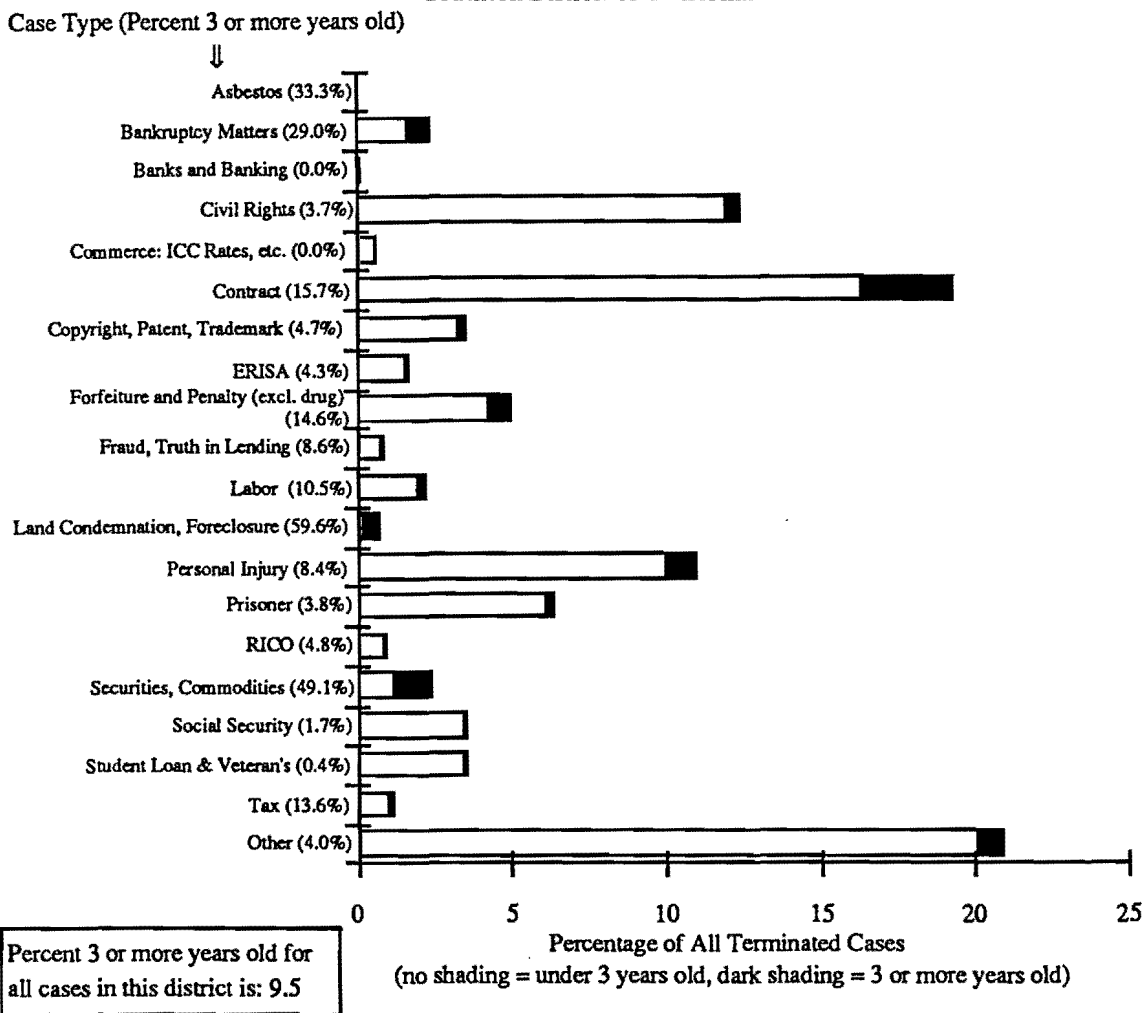


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

**Chart 8: Cases Terminated in SY91-93, By Case Type and Age**  
Southern District of California



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

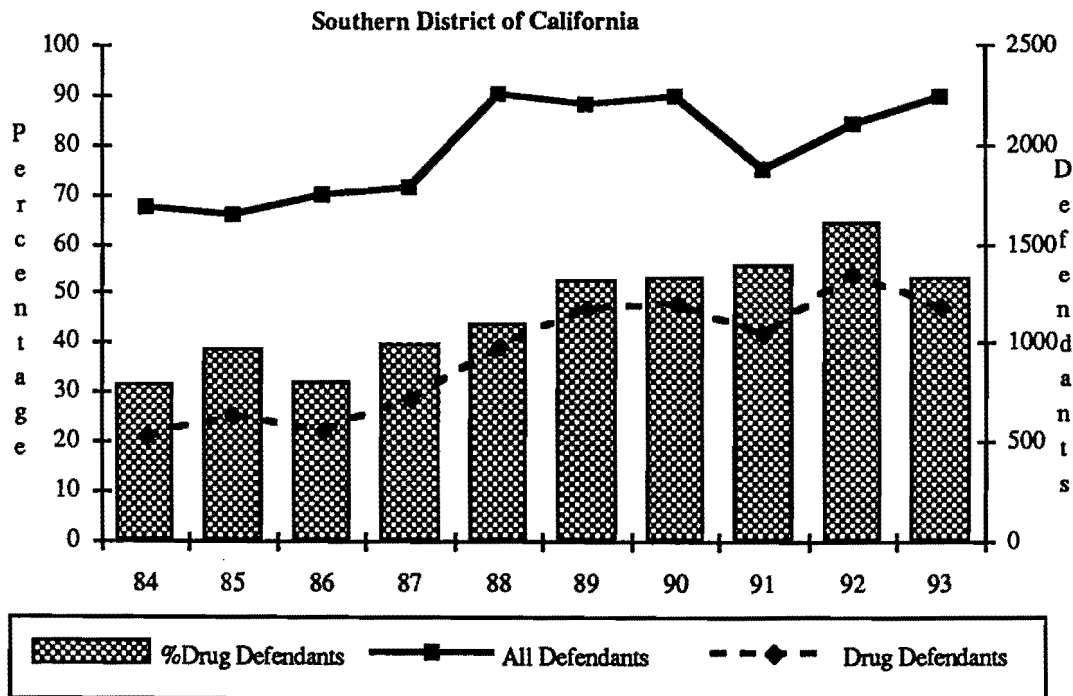
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

## 2. The Criminal Docket

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

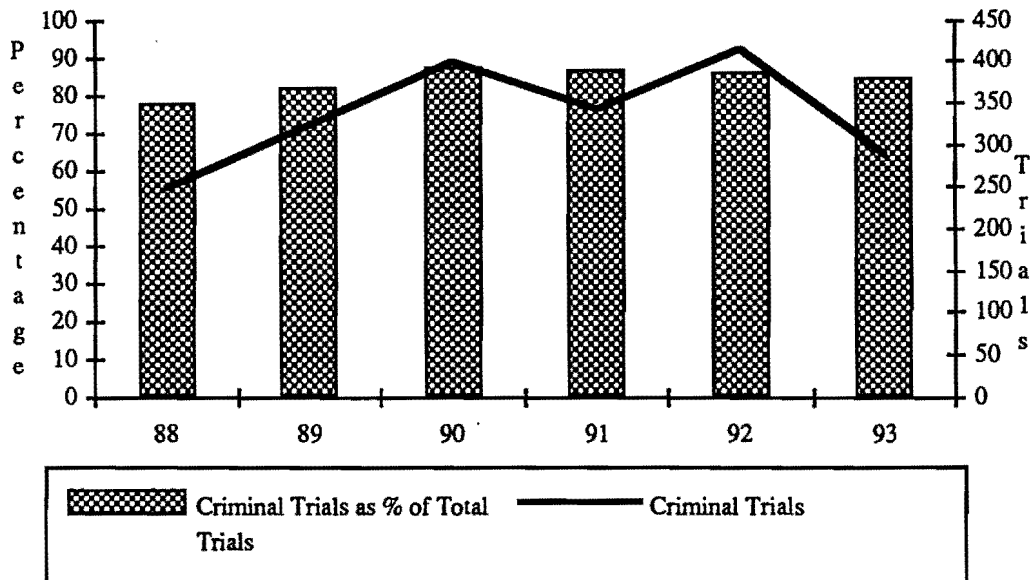
The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (202-273-2290).

**Chart 9: Criminal Defendant Filings with Number and Percentage Accounted for by Drug Defendants, SY84-93**



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

**Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY88-93**  
Southern District of California



**For more information on caseload issues**

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (202) 273-4070 or Mr. Cook at (202) 273-2240.



**U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CIVIL JUSTICE REFORM ACT EXIT QUESTIONNAIRE RESPONSES**

(Approximately 2182 questionnaires were distributed during calendar year 1993. Three hundred and twelve attorneys and parties returned the civil questionnaire and/or cover sheet between January 1, 1993 through December 31, 1993. Thirty four responded that their case did not have an ENE scheduled or that the time from filing to termination was less than sixty days. The remaining two hundred and seventy eight responded to the questionnaire. Note that the number of respondents varies per question.)

1. Stage of the proceedings the case was settled/resolved.

Response	Number of Respondents	% of Total	Cumulative %
After complaint filed	6	2.35%	2.35%
No ENE or less than 60 days from filing to termination	34	6.67%	13.33%
Before ENE	17	6.67%	22.35%
At ENE	20	7.84%	30.20%
After ENE (from shortly thereafter to 3 months)	34	13.33%	43.53%
After ENE (from 4 months to 2 years)	9	3.53%	47.06%
Arbitration	2	.78%	47.84%
At or after CMC	8	3.14%	50.98%
On or About MSC	16	6.27%	57.25%
Prior to or at settlement Conference	4	1.57%	58.82%
6 months after settlement conference	2	.78%	59.61%
Dismissed	14	5.49%	65.10%
Default judgement	4	1.57%	66.67%
Summary judgement or Cross-motions for summary judgement	18	7.06%	73.73%
Pretrial conference	2	.78%	74.51%
Immediately Prior to Trial	2	.78%	75.29%
Trial	3	1.18%	76.47%
Sub-Total	195	76.47%	76.47%
Other/Miscellaneous	60	23.53%	23.53%
All Respondents	255	100.00%	100.00%

## ROLE IN CASE

2.	a.	Party/Plaintiff =	22 - 8%
	b.	Party/Defendant =	16 - 6%
	c.	Attorney for Plaintiff =	90 - 32%
	d.	Attorney for Defendant =	143 - 51%
		<u>No response to Question =</u>	<u>7 - 3%</u>
		Total	278 - 100%

## EARLY NEUTRAL EVALUATION

3. The Early Neutral Evaluation Conference (ENE) is currently scheduled within 45 days of the answer being filed. Is this:

a. Too soon to be effective? = 57 - 24%  
If so, how much time would you suggest?

44 respondents suggested a time ranging from 60 to 120 days:

	all respondents	party/ plaintiff	party/ defendant	attorney for plaintiff	attorney for defendant
median	90	90	60	90	90
average	84	90	70	89	81

b. About the right time? = 138 - 58%

c. No opinion. = 42 - 18%

Total 237 - 100%

4. Was the ENE conference effective in reducing costs in the case?

a. Yes = 97 - 54%

b. No = 84 - 46%

Total 181 - 100%

### Those who answer yes explained:

- Led to settlement before discovery undertaken - avoided those costs ... insure parties receive ample notice of conference - particularly out of state parties - if you are going to require personal appearance - so parties can defray travel costs.
- The ENE helped define the issues and moved the case toward settlement, reducing

various costs, including discovery.

- *The fact that the ENE was scheduled caused the case to settle.*

**Those who answered no explained:**

- *Do not have it so early; my client had no notice and therefore had no knowledge of the of the claim - we needed time to investigate and we needed discovery.*

- *I am not sure what this conference does that a settlement conference would not.*

- *No, pro per plaintiff made it impossible to rationally settle case.*

- *The magistrate must be more forceful and must get more deeply into the case. Our ENE was a waste of time. It could have been done by a law clerk.*

- *The magistrate was too busy to spend more than two minutes with us. Would have been more effective if he had more time to work with us.*

- *This was a civil rights case filed by a prison inmate. An ENE is not effective in the majority of the cases.*

5. Was settlement reached at the ENE conference?

a.	Yes =	44 - 23%
b.	No =	151 - 77%
Total		195 - 100%

6. Was your case referred to:

a.	Non-binding arbitration =	7 - 3.5%
b.	Non-binding mediation =	3 - 1.5%
c.	Not referred to arbitration/mediation =	191 - 95%
Total		201 - 100%

*If you answered a or b to question 6, please answer the following questions. If c, SKIP to question 14.*

## ARBITRATION AND MEDIATION

7. Arbitration/mediation was:

a.	Ordered by the Judicial Officer =	9 - 69%
b.	<u>Consented to by the Parties =</u>	<u>4</u> - 31%
Total responding		13 - 100%

8. Did you select your arbitrator/mediator?

a.	Yes:	9	Before the ENE =	2
			At the ENE =	6
b.	<u>No =</u>	<u>7</u>		
Total responding		16		

9. How many sessions of arbitration/mediation took place?      4 respondents = 1  
4 respondents = 2  
1 respondent = 3

10. Total length of all arbitration/mediation sessions:

Ten respondents listed a range of from zero to twelve hours. The average was six hours and the median six hours.

11. Was settlement reached at the conclusion of arbitration/mediation?

a.     Yes=	5
b. <u>No =</u>	<u>7</u>
Total responding	12

12. Did participation in arbitration/mediation effectively reduce costs and/or delay in this case?

a.     Yes =	6
b. <u>No =</u>	<u>6</u>
Total responding	12

**Those who responded yes explained:**

- *Litigation costs for plaintiff and defendants would have been substantial*
- *Obviously less expensive than trial.*
- *Without settlement, case would have continued for many more months - perhaps longer.*

**Those who responded no explained:**

- *Each litigant must prepare to participate effectively. That preparation is time consuming and expensive.*
- *Non-binding arbitration cost almost as much as going to trial - and is useless, would have been meaningful if it had been binding.*
- *Plaintiff refused all arbitrators on the list so no arbitration took place.*

13. Do you have suggestions to make arbitration/mediation more effective in reducing costs and delay?

- *Appoint three arbitrators, two rights of affidavit only.*
- *Make it "binding" or skip-it*
- *Stipulate to limitations for time/witness/briefs*

**CASE MANAGEMENT CONFERENCE**

## CASE MANAGEMENT CONFERENCE

14. How soon after the Early Neutral Evaluation (ENE) conference was your case set for a Case Management Conference?

Fifty-five respondents reported that a CMC was set an average of fifty-five days after the ENE, with a median of forty-five days.

15. Do you think the Case Management conference was scheduled:

a. Too soon after the ENE conference =	14 - 18%
b. Too late after the ENE conference =	2 - 2%
c. <u>In an appropriate amount of time after the ENE conference =</u>	<u>63 - 80%</u>
Total Responding	79 - 100%

16. Were any of the parties present via telephonic conference?

a. Yes =	23 - 23%
b. No =	<u>78 - 77%</u>
Total Responding	101 - 100%

17. Local Rule 16.1.d.(1-5), provides for a number of procedural steps aimed toward settlement of the case. (For example: informal writings from both parties detailing issues of the case; identifying principal witnesses, expert and percipient witnesses; discuss ADR alternatives; etc.).

In your opinion, did the parties utilize the provisions of the rule to the fullest extent possible?

a. Yes =	44 - 46%
b. No =	51 - 54%
Total	95 - 100%

Suggestions for making Local Rule 16.1.d. more effective:

**Party/Plaintiff**

- *Emphasis should be placed on informal writings from the parties*

**Attorney for Plaintiff**

- *None of these steps were necessary. This was a liability case where settlement was only delayed by time necessary to put together an economic analysis.*

**Party/Defendant**

- Provide copies of local rules.

**Attorneys for Defendants**

- Leave as is, enforce non-compliance stricter
- The guidelines were helpful, but we didn't take them that seriously. We were already trying to settle and it was almost busywork at that point.
- This rule does not seem appropriate for civil rights cases where plaintiff is incarcerated.

18. Did the case management conference help to reduce cost and delay for this case?

a. Yes =	39 - 46%
b. No =	45 - 54%
Total responding	84 - 100%

**Suggestions for making the CMC more effective:**

- By not pushing arbitrary deadlines the cost of discovery was almost completely avoided.
- By setting off further pre-trial dates until defendant's motion for summary judgment could be heard by the district court.
- Continued use of telephonic appearances by non-local counsel.
- Our Magistrate was well versed as to issue; that is what made it effective.

**SCHEDULING**

19. Did your side ever move to continue any of the scheduled court appearances?

a. Yes =	45 - 20%
----------	----------

**Reasons:**

*Bring in new defendant*

- Calendar conflict
- Case settled, paper work being completed
- December - I was out of the country
- Delay in getting medical reports
- Hearing continued by stipulation to allow for settlement discussions

b. No =	181 - 80%
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Total	226 - 100%
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20.	Did the other parties ever move for a continuance?	
a.	Yes =	65 - 31%
	<i>Reasons:</i>	
	- <i>Calendar conflicts</i>	
	- <i>In order to complete discovery</i>	
	- <i>Plaintiff died; question of authority to act for estate existed</i>	
	- <i>To delay the inevitable</i>	
	- <i>Tried to move mediation hearing until after deposition taken, neither plaintiff or court would allow</i>	
b.	<u>No =</u>	<u>142- 69%</u>
	Total	207 - 100%

21.	Were any continuances granted?	
a.	Yes =	82 - 44%
	Seventy-six respondents listed a range of one to seven continuances. The average was two and the median one.	
b.	No =	104 - 56%
	Total	186 - 100%

## MANDATORY SETTLEMENT CONFERENCE

22.	Was your case set for a mandatory settlement conference?	
a.	Yes =	69 - 35%
b.	No (excused) =	130 - 65%
	Total	199 - 100%
23.	Was your case settled at the Mandatory Settlement Conference?	
a.	Yes =	25 - 38%
b.	<u>No =</u>	<u>40 - 62%</u>
	Total responding	65 - 100%

## PRETRIAL

24.	Did the pretrial conference help to reduce cost and delay for this case?	
a.	Yes =	10 - 29%
b.	<u>No =</u>	<u>25 - 71%</u>
	Total responding	35 - 100%

25. The pretrial conference was set before a:

a. District Court Judge =	11 - 46%
b. <u>Magistrate Judge =</u>	<u>13</u> - 54%
Total responding	24 - 100%

26. Was it difficult for the parties to agree upon the pretrial order?

a. Yes =	2
b. <u>No =</u>	<u>16</u>
Total responding	18

27. How would you rate the cooperative effort of drafting a pretrial order?

a. Effective =	14
b. <u>Ineffective =</u>	<u>2</u>
Total responding	16

## CONTINUANCE

28. Was the pretrial conference postponed?

a. Yes =	10 (26%)	By stipulation <u>6</u>	By motion <u>1</u>
b. <u>No =</u>	<u>29</u> (74%)		
Total responding =	39 (100%)		

## ALTERNATIVE SETTLEMENT PROCEDURES

29. Was your case ordered to a non-binding mini-trial or summary jury trial?

a. Yes =	2 - 1%
b. No =	154 - 99%
Total	156 - 100%

*If you answered yes to question 29, please answer the following questions. If no, SKIP to question 34 .*

30. What was the duration of the non-binding mini-trial or summary jury trial?  
Total responding = 0

31. The order was a result of:

a. A stipulation between parties =	0
b. The judicial officer found this case to be a qualified case (potential judgement did not exceed \$250,000 and high probability of resolution) =	<u>0</u>
Total responding	0



32. Did any of the parties object to the order for a non-binding mini-trial or summary jury trial?
- a. Yes = 0  
**b. No = 1**  
 Total responding = 1
33. Was the non-binding mini-trial or summary jury trial an effective process for the disposition of the case?
- a. Yes = 0  
**b. No = 2**  
 Total responding = 2

## TRIAL

34. Did the case go to trial?
- |          |            |
|----------|------------|
| a. Yes = | 5 - 2%     |
| b. No =  | 205 - 98%  |
| Total    | 210 - 100% |

*If you answered yes to question 34, continue. If no, SKIP to question 38.*

35. The judicial officer presiding over the trial was:
- a. a Magistrate Judge - 0  
 b. a District Judge - 4 (100%)  
 Total responding = 4 (100%)
36. Was there a stipulation that the judicial officer handling settlement could try the case?
- a. Yes - 1  
 b. No - 6  
 Total responding = 7
37. Type and duration of trial:
- a. Jury: One response, duration 8 days  
 b. Bench: Three responses, durations 5, 7, and 12 days  
 Total responding = 4

## MISCELLANEOUS

38. Were any sanctions imposed upon your side at any time during the case?

a.	Yes =	1 - 0.5%
b.	No =	222 - 99.5%
Total		223 - 100%

39. Suggestions on how the court can further reduce costs and delay in civil actions:

- *Settlement from voluntary, informal meetings. The original ENE set the tone for settlement.*
- *A joint written review, without requiring appearances, to the court of what's been completed, what's left if it looks like there is delay without reason, have parties appear to report.*
- *Allow the United States to collect attorneys fees when the opposing party is clearly unreasonable.*
- *Better access/scheduling availability for motions. We had to wait over four months for hearing on motion for summary judgment.*
- *Conferences in matter that should be disposed by motion are counter productive. Motion should be heard and then have conferences.*
- *Forget non-binding arbitration and be more forceful.*
- *Try to avoid multiple CMC hearings.*

**U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**CRIMINAL CASE SETTLEMENT QUESTIONNAIRE RESPONSES**

(An estimated 1449 criminal questionnaires were distributed during calendar year 1993. Two hundred and twenty eight attorneys returned the questionnaires and/or cover sheets between January 1, 1993 and December 31, 1993. Fifty nine responded that their case did not have a criminal settlement conference scheduled or held in the case. The remaining one hundred and sixty nine responded to the questionnaire. Note that the number of respondents varies per question.)

1. At what point was the case resolved/settled?

prior to motions hearing =	31	21.83%
on date of motions hearing =	3	2.11%
at motions hearing =	23	16.20%
settlement conference (on or about) =	32	22.54%
pre-trial conference =	2	1.41%
before trial =	10	7.04%
day of trial =	4	2.82%
after trial =	11	7.75%
<u>miscellaneous points =</u>	<u>26</u>	<u>18.31%</u>
Total	142	100%
total responding to question	142	70.65%
<u>no settlement conference scheduled or held</u>	<u>59</u>	<u>29.35%</u>
Total	201	100%

**ATTORNEYS**

2. I was the:

a. Attorney for Plaintiff =	61	38.36%
<u>b. Attorney for Defendant =</u>	<u>98</u>	<u>61.64%</u>
Total responding to question	159	100%

3. For this case only, please circle the settlement conference sessions you chose to participate in:

a.	Prior to motions filing =	61	38.61%
b.	After motions filing =	48	30.38%
c.	Both =	20	12.66%
d.	<u>None =</u>	<u>29</u>	<u>18.35%</u>
Total		158	100%

4. Is a settlement conference prior to motions filing too soon to be effective?

a.	Yes =	33	22.92%
b.	<u>No =</u>	<u>111</u>	<u>77.08%</u>
Total		144	100%

A sample of respondent explanations to question number 4:

**Defense (No):**

- Not if prosecution and defense have had time to become familiar with the facts
- As long as initial discovery is provided in a timely manner
- It saves time and money

**Plaintiff (No):**

- Parties generally know enough about the case pre-motions to settle it
- Ideally, case should be settled before time is expended on motions - - however, I believe counsel are usually reluctant to settle before they've done a motion hearing for their client
- Sometimes provides defendant's attorney with leverage to convince client.
- The key to resolution of the case is the status of discovery. The AUSA should also be given a chance to review the defense motions in cases with unusual fact patterns.

**Defense (Yes):**

- Government generally provides no or little discovery prior to motions filing
- Often times little, if any, discovery has been provided at this point which affects the defense attorney's ability to adequately evaluate the case.

**Plaintiff (Yes):**

- Especially in unique cases, where parties need to become more familiar with the case

5. Does the settlement conference procedure facilitate the case to settle earlier?

a. Yes =	125	87.41%
b. <u>No =</u>	<u>18</u>	<u>12.59%</u>
Total responding	143	100.00%

A sample of respondent explanations to question number 5:

**Plaintiff (Yes):**

- For lazy or busy attorneys, it forces them to look at the case prior to the week before trial.
- It encourages the attorneys to review the case and check the applicable guidelines sooner.
- Guidelines and mandatory minimums restrict ability of court to facilitate settlements.

**Defense (Yes):**

- It provides an independent party to act as an arbitrator, usually to the benefit of the defendant.
- It encourages counsel to meet and confer in presence of an authority figure (judges acting as a mediator).
- The most important issue is the judge. For example I have found that Judge X does not follow the recommendations. Thus, I did not utilize a settlement recommendation for this case.
- Only if there is room to negotiate guidelines ranges.

**Plaintiff (No):**

- Not really. It forces me to organize a settlement offer for the case, but nonetheless, the case settled at the last possible time.
- There were too many defendants (11) to have a settlement conference be effective

**Defense (No):**

- no pressure on government

6. If you chose not to participate in either settlement conference session, in your opinion, was it because of:

a. the specific facts of the case =	24	85.71%
b. <u>the procedural aspects of the settlement conference</u>	<u>4</u>	<u>14.29%</u>
Total responding	28	100%

7. In spite of the settlement conference procedure, would the case have settled anyway?

a. Yes =	93	80.17%
b. <u>No =</u>	<u>23</u>	<u>19.83%</u>
Total	116	100%

A sample of respondent explanations to question 7:

**Defense (Yes):**

- Good attorneys who put thought to their respective cases can settle without the need for a formal conference.
- Agreement worked out with prosecutor was fair without necessity of court's intervention.
- Probably, but the timing would have been different. Also, the settling of my case persuaded the other defendants to take a fresh look at their positions.
- There was an offer to provide cooperation in this matter; form for settlement judge brought it to fruition.
- The AUSA and I had all but settled the case, however with the judge's recommendation the AUSA offered a cap.

**Plaintiff (Yes):**

- I've been lucky to prosecute almost exclusively complex cases which are multi-defendant and usually settle due to potential penalties.

**Defense (No):**

- U.S. Attorney only offered me the plea agreement that I wanted after the first trial resulted in a hung jury.

**Plaintiff (No):**

- Defendant was not interested in any disposition.

8. Is the settlement conference an effective process for the disposition of the case?

a.	Yes =	113	86.26%
b.	No =	18	13.74%
Total		131	100%

Some suggestions for making the case settlement process more effective:

**Plaintiff (Yes):**

- Attorneys should have to meet with judge instead of just telling clerk to take the matter off calendar.
- Make settlement conference mandatory after motions filing.

**Defense (Yes):**

- Make certain that, absent new facts, sentencing judge follows recommendations of settlement judge.
- The more active the settlement judge, the more effective.
- The settlement conference should be handled much as it is in a civil case. That is, a short brief submitted by each attorney to the judge and opposing counsel setting out the respective positions as they related to the facts.
- The judges need to be more active in moving the Government. In fact, it might be more appropriate to have U.S. Magistrates meet with the parties and attempt to resolve the cases.
- Do it like Judge Gilliam does. Fast, quick.

- Encourage the U.S. Attorney to make it office policy to actively participate in the settlement conference. (Some AUSA's refuse to negotiate).
- Have a record of comments and indications by judge placed in court file.
- Encourage U.S. to sever defendants when some want to plead and others don't.

**Plaintiff (No):**

- Have defense counsel come into a settlement process with what it is the client's will plea to. The chip away, chip away approach is not conducive to a settlement.
- I would rather meet and confer with assigned judge rather than mass pretrial with single judge.

**Defense (No):**

- Pressure the government occasionally.
- Have settlement conference after government has provided discovery.

9. Other suggestions for facilitating settlement:

**Plaintiff:**

- Get rid of minimum mandatories.
- In large defendant cases (#), perhaps individual settlement conferences (or meeting individually) would be more helpful.

**Defense:**

- Has the court considered creating a non-judicial position of e.g. criminal case mediator.
- Adhering to the plea agreement, no matter what probation recommends. It is essential so far as talking to clients in future cases.
- Conduct them in chambers, one case at a time. Use a staggered time calendar...
- Abolish mandatory minimum sentences!
- For these to work, judge needs to put pressure on both sides - not just defense...
- They are working best when court meets with parties than when all sides linger outside with little guidance.
- Offer wine and hors d'oeuvres

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