

Memorandum



Subject

Date

Summary of Significant Legislation
Impacting Court Congestion

May 29, 1991

To

Members of the Advisory
Group-Civil Justice
Reform Act of 1990

From

Recent Legislation
Subcommittee
Joe D. Whitley, Chairman

I. Introduction

The initial role of the Advisory Group is to determine whether a real problem exists in the areas of cost and delay of civil litigation in the Northern District of Georgia. Of course, the creation of new legislation has relatively little impact upon the cost of litigation except to the extent that any delay in the time taken to dispose of litigation will be likely to also increase the overall cost. However, there are some statistics which tend to indicate that over the last five years there has not been a dramatic increase in the amount of time consumed in disposing of civil litigation in the Northern District of Georgia as opposed to other districts. During this period the median time from the filing of a civil matter to disposition has grown from 9 to 10 months and the time from framing of the issues to actual trial has grown from 16 to 19 months. (See Attachment 4).

It is also significant to point out that for the Statistical Years 1981-90 the Indexed Average Lifespan (IAL) for all civil cases in this district court was consistently below the Index Average Lifespan Reference of 12 months, except for the SY 1987

when the IAL was 14 months. This statistic indicates that, except for SY 1987, this court disposed of all civil cases faster than the national average of 12 months for all other district courts. (See Chart 5, attached as Attachment 3). Also, a review of similar data for Type II Civil Cases for SY 1981-90 reveals that again, except for SY 1987, this court disposed of Type II Civil Cases faster than the national average of 12 months. Type II case types include: (a) contract actions other than student loan, veterans' benefits, and collection of judgment cases; (b) personal injury cases other than asbestos; (c) non-prisoner civil rights cases; patent and copyright cases; (d) ERISA cases; (e) labor law cases; and (f) tax cases. (See Chart 6, attached as Attachment 3).

Nonetheless, the Recent Legislation Subcommittee has compiled an overview of relatively recent criminal and civil legislation which is believed, rightly or wrongly, to either have a present or a likely future impact upon the docket of courts in this district.

II. Criminal Legislation Issues

A. Speedy Trial Act

In an effort to protect criminal defendants against prejudicial delay in criminal proceedings, Congress enacted the Speedy Trial Act of 1974. The Act established certain specific time limitations required for completion of key stages of a federal criminal prosecution. For example, the Act requires that a criminal indictment or information be filed within thirty (30) days of arrest or service of a summons on the defendant in connection

with criminal charges. 18 U.S.C. § 3161(b). Additionally, a criminal trial must commence not more than seventy (70) days from the date of the filing of the information or indictment, or from the date of the defendant's initial appearance, whichever is later. 18 U.S.C. § 3161(c)(1). The only exceptions to this 70-day trial requirement are certain periods of "excludable time," which by statute are deemed permissible periods of delay and are excluded from the computation of the Act's time limits. 18 U.S.C. § 3161(h). If a defendant is not indicted within the 30-day time limitation, the charges must be dropped. 18 U.S.C. § 3162(a)(1). Likewise, if a defendant is not tried within the 70-day time limitation, he may move to have the indictment dismissed. 18 U.S.C. § 3162(a)(2).

The Speedy Trial Act has had no overall impact on the number of matters handled by the Court. Rather, the impact that is experienced by civil litigants is a prioritization of criminal matters as a result of the constraints placed upon the Court by the Act. Hence, the result is that trial calendars are issued and civil cases placed on calendars which contain criminal cases may never be reached by the Court during the duration of a particular jury calendar as a result of the amount of time consumed by criminal cases.

B. Sentencing Guidelines

Through the enactment of the Sentencing Reform Act of 1984, and the establishment of the United States Sentencing Commission, Congress created a sentencing guideline system which went into

effect on November 1, 1987. In essence, the Sentencing Commission has developed guidelines to be used by the district courts in sentencing federal criminal defendants. The Sentencing Guidelines, which are contained in the Federal Sentencing Guidelines Manual, describe a step-by-step process to be followed in calculating a determinate sentence, taking into consideration various pertinent factors including the nature of the offense, the defendant's role in the offense, any prior criminal record and whether the defendant has accepted responsibility for his or her conduct. With input from the United States Probation Office, the defendant and the prosecution, the district court determines the sentence within the applicable guideline range, subject to certain authorized departures. Both the defendant and the prosecution are authorized to appeal the Guidelines sentence.

The Sentencing Guidelines have greatly complicated the sentencing process by requiring the Court to consider and, where appropriate, hold evidentiary hearings on specific factual details which figure into the guideline computations. The result has been that considerably more time is spent on the sentencing phase of the case than was spent prior to the existence of these guidelines. This is particularly true in the early years of the utilization of Sentencing Guidelines since there is not nearly as significant a body of case law which may dispose of particular issues raised by either the defense or the prosecution.

C. Firearms Prosecutions

Attorney General Thornburgh has stressed the importance of the

Justice Department's "war on drugs" and the use of firearms relating to violent crimes. These initiatives track Congress' emphasis on firearms prosecutions which is evidenced by the enactment of several statutes providing for mandatory minimum sentences for weapons possession. Section 924(c) of Title 18 of the United States Code provides for a mandatory minimum sentence of five (5) years without parole for any person who uses or carries a firearm in connection with a crime of violence or a drug-trafficking offense. A second or subsequent conviction under this section carries a minimum mandatory sentence of twenty (20) years without parole. Similarly, Section 924(e) of Title 18, the Armed Career Criminal Statute, provides that a felon in possession of a firearm, who has three previous convictions for violent felonies or serious drug offenses, faces a minimum mandatory sentence of fifteen (15) years without parole and a maximum sentence of life without parole.

In recent years these legislative efforts to "get tough" on individuals who utilize firearms while committing crimes has created a more predictable, and in many cases, much stiffer sentence. The result of such anticipated sentencing has been to provide a considerable disincentive for defendants to plead guilty rather than take their chances at trial with the hope that a jury will acquit them entirely or, at a minimum, acquit them of the particular firearms charges which carry the severe penalties. This impact, as well as the impact of recent drug legislation (discussed below), may well have contributed to the rising percentage of

trials which are criminal rather than civil (See Chart 10, reproduced as Attachment 5).

The State of Georgia has also experienced a very substantial problem of overcrowding in state penal facilities and jail sentences for many firearms related offenses have decreased. This problem has manifested itself in substantial publicity identifying the Atlanta area as one of the nation's most violent cities. As a result, the U.S. Attorney's Office in the Northern District of Georgia has undertaken initiatives, such as the present operation "Triggerlock," to ensure that violent criminals do not go free as a result of jail overcrowding problems which the state is experiencing. As a result of these overcrowding problems, and the availability of much harsher sentences under the federal system, the United States Attorney's Office has made and will continue to make a concerted effort to prosecute firearms offenses which historically have been left to the state to pursue. It is anticipated that these initiatives will also increase the caseload of judges in this district and, more particularly, the trial calendars of such judges.

D. Drug Prosecutions

The Justice Department's "war on drugs" has been enhanced through the potential sentences for drug offenders established by Congress within the past decade with the enactment of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986. Distribution of more than 100 grams of heroin, 500 grams of cocaine or 5 grams of "crack" cocaine carries a mandatory

minimum sentence of five (5) years and a maximum of forty (40) years, without parole. A subsequent similar drug offense carries a mandatory minimum of ten (10) non-paroleable years and a maximum of life imprisonment without parole. 21 U.S.C. § 841(b)(1)(B). Other factors such as the distribution of larger quantities of drugs, organized criminal activity and the involvement of minors also enhance the potential available penalty.

Similar to the impact of harsher penalties for firearms violations, the imposition of mandatory minimum sentences based upon the amount of controlled substances involved in a particular drug transaction or other factors has created a substantial disincentive for drug defendants to plead guilty. The use of "related conduct" in the Sentencing Guidelines, computations which considers the drug activities of co-conspirators, has also resulted in much longer sentences and a higher incidence of defendants choosing to take their chances with a jury's verdict. Hence, a case which may have previously resulted in a plea, particularly in the case of first offenders in drug cases, will now result in a trial which will occupy a more substantial portion of the court's time period.

III. Civil Legislation Issues

A. ERISA

The Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, is a comprehensive federal scheme for regulating pension and other employee benefit plans. In addition

to preempting states laws regulating benefits plans, ERISA sets standards for reporting and disclosure, participation and vesting, funding and fiduciary responsibility. Congress in enacting ERISA declared that the policy of the statute was:

to protect ... the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts. (Emphasis added).

28 U.S.C. § 1001(b).

This Congressional mandate of ready accessibility to the Federal courts has provided civil litigants with a vehicle which, initially, would appear to have had some impact on the district court. For example, this type of civil case filing increased more than six times for statistical years 1981-90 (from 15 cases in SY 1981 to 92 cases in SY 1990). (See Table 1, attached as Attachment 1). Also, for SYs 1988 to 1990, this type of civil case filing increased by 155%. Nevertheless, for this same time period, a review of the weighted civil case filings indicates that only 3% of judge time was required to handle ERISA filings in this district. (See Chart 3, attached as Attachment 2). Accordingly, based on the information available, it appears that ERISA has not had significant impact on the district court.

B. RICO

In 1970, Congress enacted the Organized Crime Control Act,

Title IX of which is known as the Racketeer Influenced and Corrupt Organization Act (RICO). RICO sets forth "standards" of "unlawful" conduct, which are enforced through "criminal" and "civil" sanctions. Section 1963, Title 18, United States Code, sets out the criminal remedies; and Section 1964 of this Title and Code sets out the civil remedies under RICO. Moreover, RICO's civil remedies are available to the government and other parties, based on a showing of a preponderance of the evidence. The criminal enforcement mechanism of RICO provides for imprisonment, fines and criminal forfeiture. The civil enforcement mechanism of RICO provides for injunctions, treble damages and counsel fees. RICO creates a private enforcement mechanism that deters violators and provides ample compensation to victims.

In this district, the number of RICO civil case filings have decreased from a high mark of 47 in SY 1985 to 30 in SY 1990. (See Table 1, attached as Attachment 1). Also, the amount of judge time devoted to this type of case in this district for SY 1988-90 was 1%. (See Chart 3, attached as Attachment 2). The information currently available suggests that this legislation has not had a great impact on this district court.

C. CERCLA OR SUPERFUND

Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund), 42 U.S.C. §§ 9601-9675 (1988), to address the problems of past contamination of the environment. Congress gave the federal government the power and an \$8.5 billion fund to clean up hazardous

waste sites. Superfund gives the federal government (and sometimes others) the ability to recover from parties defined as liable under the statute (potentially responsible parties or PRP's) all of the costs necessary to evaluate and cleanup a contaminated site. Additionally, the federal government can order the PRP's themselves to perform site investigations and cleanups.

Congress drafted a very broad definition of PRP's to facilitate implementation of Superfund: (1) the owner(s) or operator(s) of the facility at the time the environmental problem was created; (2) the current owner(s) or operator(s) (regardless of whether they had anything to do with creating the contamination); (3) companies that transported waste to the facility; and (4) the companies that generated the waste. See 42 U.S.C. § 9607(a) (1988). In the civil context, strict liability applies under Superfund, negligence or fault is not required. Also, liability is joint and severable, meaning any one party can be liable for the entire cleanup, unless the liability is clearly divisible among the parties.

The number of sites potentially subject to Superfund cleanup is significant: over one thousand sites are presently on the federal Superfund National Priorities List (cleanup list), and more than thirty thousand additional sites are undergoing evaluation for possible inclusion.

The statistics currently available for this district do not provide a specific case type designation for Superfund or other environmental cases; therefore, it is impossible, at this time, to

assess the impact of this legislation on the district court.

D. FIRREA

On August 9, 1989, President Bush signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183 (1989). This legislation significantly affects all financial institutions, including banks, thrift--savings and loan--institutions, and federal credit unions. However, FIRREA primarily responds to the deteriorating state of the nation's thrift industry.

Congress recognized the existence and magnitude of the thrift industry's financial crisis. When over twenty-five percent of all federally insured thrifts were reported to be insolvent or troubled as of December 31, 1988, the need for legislation was clear. FIRREA may be the most significant and comprehensive piece of legislation to impact the regulation of financial institutions since the 1930's.

The primary purposes of FIRREA are to provide and administer funding necessary to resolve failed thrifts and dispose of these institutions' assets, to establish a distinction between the regulatory and insurance functions of the thrift industry, to establish stronger capital standards for thrifts and to enhance the enforcement powers of the regulatory agencies to protect against fraud and insider abuse.

The current impact of this legislation on the district court, however, does not appear to be significant. A review of the two categories of civil case types that this legislation would possibly

come within: Bank and Banking; and Fraud, Truth in Lending, indicate that these two categories combined only take up a little more than 2% of judge time in this district. (See Chart 3, attached as Attachment 2).

E. OTHER CONSIDERATIONS--CIVIL RIGHTS, CONTRACTS AND PERSONAL INJURY

While not directly attributable to any identifiable new legislation, it is clear that the civil case types of Civil Rights, Contracts and Personal Injury take up a significant amount of judge time in this district court. More specifically, the demands for judge time for these civil case types are Civil Rights-28%; Contracts-20%; and Personal Injury-14%. (See Chart 3, attached as Attachment 2). Any assessment of the extent to which costs and delays could be reduced in the civil litigation process in this district will necessarily have to focus on these three case types.

IV. Other Considerations

A. Additional Staffing of Prosecutors and Investigators

Much of the legislation described above also resulted in appropriations for additional prosecutors in the areas of bank fraud and drug prosecutions, additional civil AUSAs to pursue forfeiture proceedings resulting from narcotics investigations, and additional investigators with agencies such as the Drug Enforcement Administration and the Federal Bureau of Investigation to pursue investigations in these various areas. Many of these additional resources are only very recently coming on-line. It is possible that the influx of these additional resources will result in more

filings from both the criminal and civil sides of the United States Attorney's Office which could result in a decrease in court time available to dispose of civil litigation involving private parties.

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

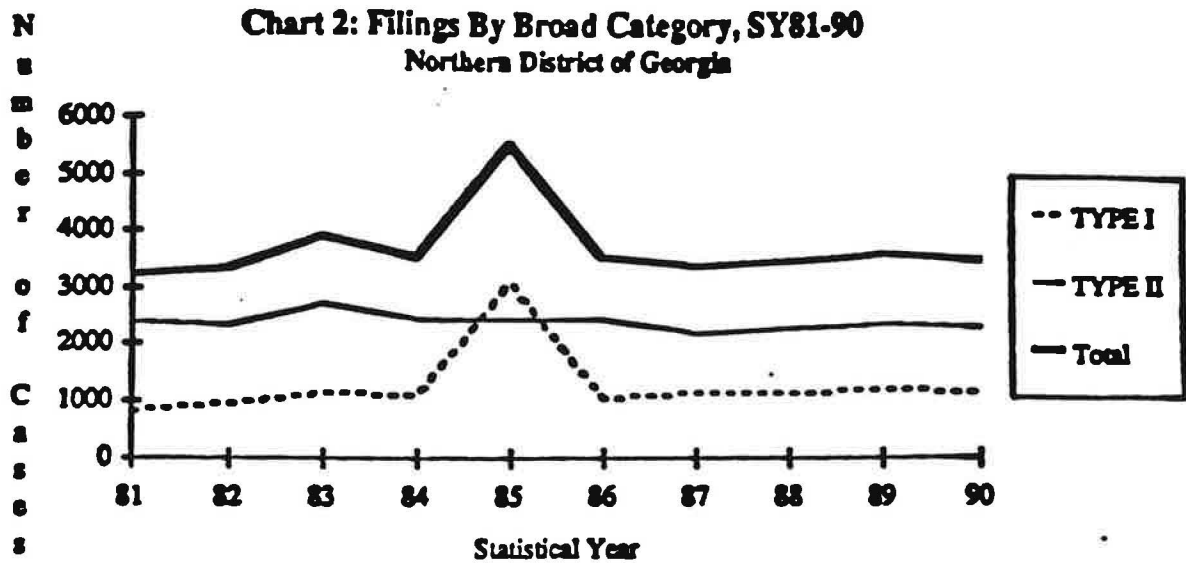


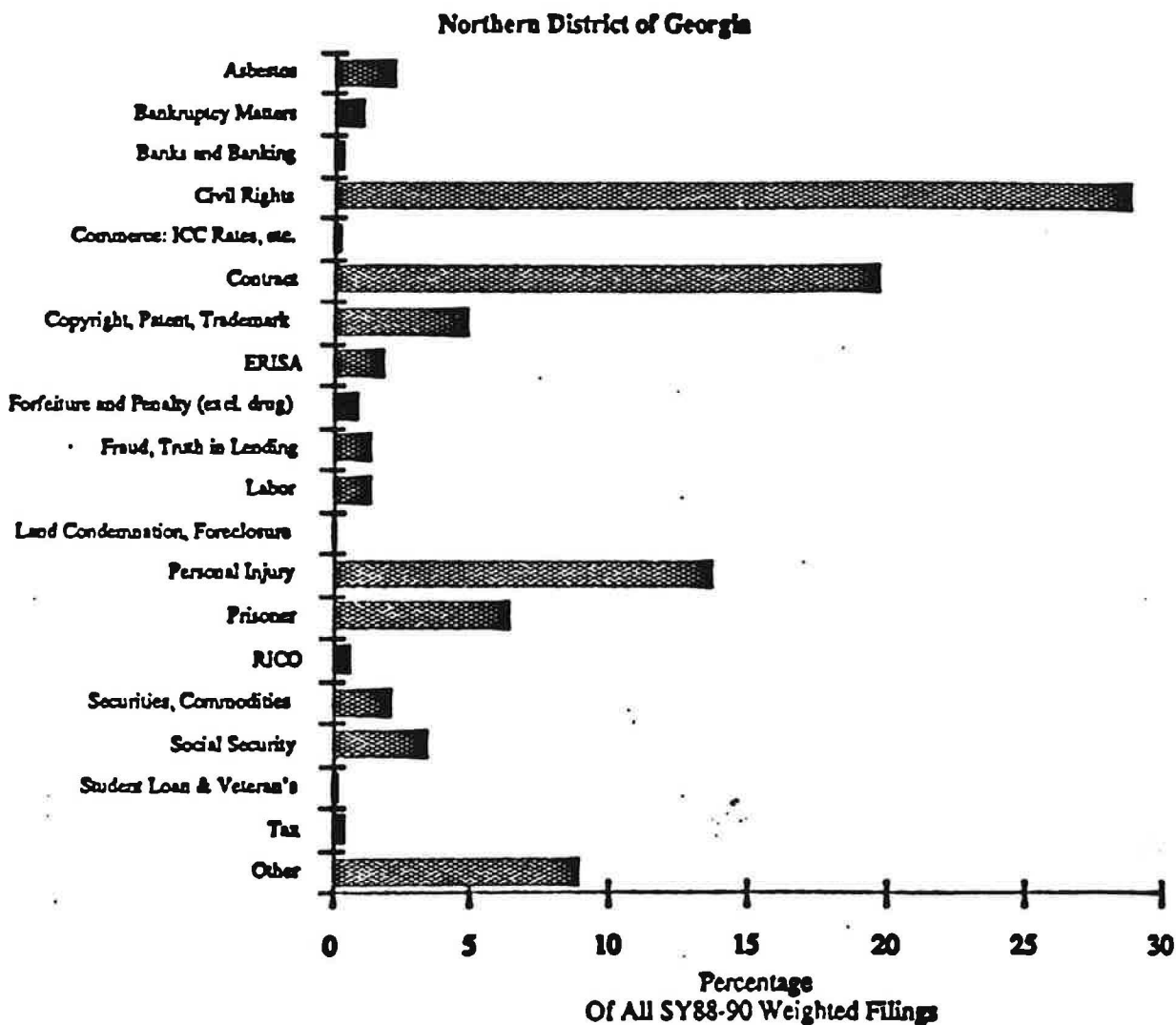
Table 1: Filings by Case Types, SY81-90

Northern District of Georgia

	81	82	83	84	85	86	87	88	89	90
Asbestos	0	1	6	11	51	40	152	15	48	110
Bankruptcy Matters	48	91	133	135	93	62	61	71	130	85
Banks and Banking	6	7	2	3	2	2	1	2	1	14
Civil Rights	385	398	428	472	486	390	377	372	441	455
Commerce: ICC Rates, etc.	15	11	2	5	7	5	15	10	8	20
Contract	637	941	1042	825	752	831	718	754	673	606
Copyright, Patent, Trademark	64	72	68	64	104	96	81	126	138	115
ERISA	15	20	23	30	45	30	35	36	57	92
Forfeiture and Penalty (excl. drug)	29	27	35	89	56	78	98	104	96	167
Fraud, Truth in Lending	345	132	82	70	94	73	86	70	64	106
Labor	74	73	56	60	54	62	60	42	50	48
Land Condemnation, Foreclosure	51	30	14	19	36	49	5	35	40	48
Personal Injury	358	310	617	436	466	473	378	412	510	371
Prisoner	535	577	487	372	2148	443	567	610	603	534
RICO	0	0	0	0	0	47	59	28	16	30
Securities, Commodities	39	42	46	56	78	53	31	41	33	38
Social Security	181	199	364	409	313	219	226	208	130	128
Student Loan and Veteran's	0	57	156	124	419	237	144	216	249	221
Tax	42	34	44	52	49	51	56	41	26	23
All Other	402	285	261	253	257	260	230	252	233	221
All Civil Cases	3226	3307	3866	3485	5510	3501	3380	3445	3546	3432

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

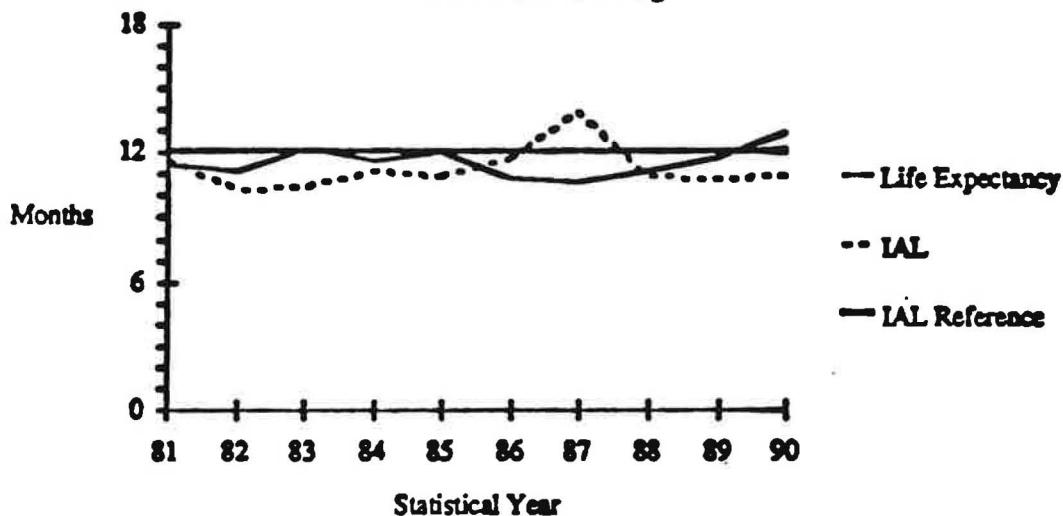
Chart 3: Distribution of Weighted Civil Case Filings, SY88-90



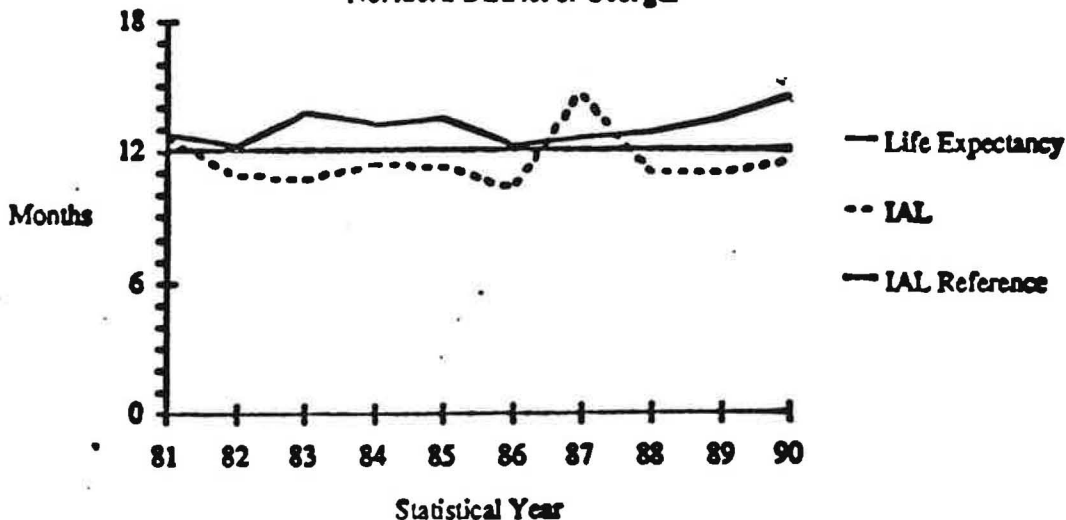
indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

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

**Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY81-90
Northern District of Georgia**



**Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY81-90
Northern District of Georgia**



U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

GEORGIA NORTHERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
		1990	1989	1988	1987	1986	1985		
OVERALL WORKLOAD STATISTICS	Filings*	3,813	4,085	3,949	3,988	4,008	5,869	[50] [6] [81] [9]	
	Terminations	3,707	3,884	3,776	4,229	5,495	4,169		
	Pending	3,853	3,870	3,669	3,494	3,738	5,222		
	Percent Change in Total Filings Current Year Over Last Year, Over Earlier Years...		-6.7	-3.5	-4.4	-4.8	-35.0		
Number of Judgeships		11	11	11	11	11	11		
Vacant Judgeship Months		.0	.0	4.8	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	347	371	359	363	364	534	[77] [9]
		Civil	312	322	314	319	320	499	[70] [9]
		Criminal Felony	35	49	45	44	44	35	[79] [8]
	Pending Cases		350	352	334	318	340	475	[68] [9]
	Weighted Filings**		379	396	379	385	392	435	[63] [8]
	Terminations		337	353	343	384	500	379	[78] [9]
	Trials Completed		32	32	33	30	39	38	[53] [9]
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.9	5.3	4.7	4.4	3.7	3.5	[85] [9]
		Civil	10	9	9	10	9	9	[45] [6]
	From Issue to Trial (Civil Only)		19	18	18	15	15	16	[63] [8]
OTHER	Number (and %) of Civil Cases Over 3 Years Old		138 4.0	104 3.0	88 2.6	80 2.5	329 9.4	105 2.1	[30] [5]
	Triable Defendants** in Pending Criminal Cases Number (and %)		507 (72.7)	328 (48.4)	243 (49.5)	278 (77.1)	247 (57.6)	195 (56.4)	
	Jurors**	Avg. Present for Jury Selection	31.02	33.55	27.68	27.82	25.77	30.08	[40] [5]
		Percent Not Selected or Challenged	25.6	31.3	25.6	25.0	23.1	31.6	[36] [5]

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

1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3432	128	225	586	193	65	140	608	626	115	455	12	278
Criminal*	377	7	19	27	18	47	18	75	15	82	6	23	40

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

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

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

