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## PREFACE

In the Civil Justice Reform Act of 1990<sup>1</sup> (SEE Appendix [A]), Congress sought to address costs and delay in civil litigation in the federal district courts. In accordance with the Act, each district court is directed to develop and implement a plan, with the assistance of an Advisory Group<sup>2</sup> *"to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management and ensure just, speedy, and inexpensive resolution of civil disputes."* 28 U.S.C. §§ 471, 472.

After initial review of the Act, the Chief Judge determined that the court wished to be an early implementation district, which in turn required the implementation of a plan by December 31, 1991.

Because of these self-imposed time constraints, some aspects of the evaluation process were limited. Assuming the availability of future funding, further review will be possible as the court, the litigants, and the litigators experience the implications of our recommendations and the court's plan.

In accordance with the provisions of the Act, the following report of the Advisory Group is presented to the court in order to meet the statutory objectives and requirements of the Act.

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<sup>1</sup> The Civil Justice Reform Act of 1990 is the short title of Title I of the Judicial Improvements Act of 1990, Pub. L. No. 101-650 (1990), 104 Stat. 5090, and subsequently codified at 28 U.S.C. §§ 471-482. Throughout this document, this statute will be referred to as the Act.

<sup>2</sup> The statute is very specific as to the time, manner and constitution of the Advisory Group. SEE 28 U.S.C. § 478. The Advisory Group for the District of Oregon was formed and charged in strict compliance to Section 478. The members are listed in Appendix (B) of this report.

## I. INTRODUCTION

The District of Oregon's Advisory Group was established to assist the court in developing a Civil Justice Expense and Delay Reduction Plan. In accordance with 28 U.S.C. § 472, the charge of the group was to conduct an assessment of the court's civil and criminal dockets in order to:

- Determine the condition of the civil and criminal dockets, identifying filing trends and demands on the court's resources;
- Identify principal causes of cost and delay;
- Evaluate the impact of legislative and executive policies on the work of the courts;
- Examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

As part of this process, the Advisory Group attempted to focus on the circumstances and needs of those involved in civil litigation in the District of Oregon. 28 USC § 472(c)(2).

Of some concern to this group has been the difficulty in establishing any workable definition for the terms *cost* and *delay*. Notwithstanding this problem, we based our findings and recommendations on the knowledge that given finite judicial resources, any action taken to achieve cost and delay savings in one area may necessarily result in an increase in costs and delays in still other areas. In short, we found that the "relationship" between delay and cost is not nearly as direct as the context of the statute seems to suggest.

Not surprisingly, we also found that to facilitate a just, speedy and inexpensive adjudication of each case, there must be sufficient time and flexibility to enable the court, the litigants, and the litigators to perform their appropriate functions.

## II. FINDINGS

After completing an assessment of the civil and criminal dockets and court's case management practices, the Advisory Group confirmed the following:

(A) THE CURRENCY OF THE OREGON'S DOCKET IS JEOPARDY: Oregon's civil and criminal dockets (particularly when measured against the "national average") are in remarkably current condition (SEE Appendix [C] for statistical table comparisons). Both civil and criminal cases are being disposed of faster than the "national average" while costs and delays appear to be minimized to the greatest extent possible.

As a result of our assessment, we attribute this success to effective case management practices, the certainty of firm scheduling and trial dates, and a comparatively small, yet proficient federal bar. However, the currency of the court's overall docket may now be in jeopardy.

*cause*  
Because of increases in criminal filings and the statutory priority mandated for criminal proceedings, Oregon's Article III judges must preempt civil matters in favor of criminal trials. Additionally, the sentencing process is necessarily more lengthy because of the revised federal sentencing guidelines. As a result, the practice of establishing firm trial dates for civil cases appears to be in jeopardy.

*cause*  
(b) INCREASES IN CRIMINAL PROSECUTIONS: Recent increases in criminal prosecutions have resulted in less time for Article III judges to devote to civil matters.

(c) DELAYS IN THE JUDICIAL APPOINTMENT PROCESS: All of these problems are further exacerbated by delays in the authorization and appointment of required judges and magistrate judges. When these delays occur, as they have in Oregon, the press of the criminal docket results in increased costs and delays being passed along to the civil litigants.

(d) MAGISTRATE JUDGES: Oregon's use of magistrate judges is the most efficient and optimum method for employing these valuable judicial resources.

### III RECOMMENDATIONS

- (a) Magistrate judges should be authorized two law clerks.
- (b) The court should continue the current Case Management and Case Assignment Plans (SEE Appendix [D]).
- (c) The court should continue the use of existing scheduling orders to regulate and control discovery.
- (d) The court should continue the use of court directed status conferences (when deemed appropriate by the assigned judge, or when requested by a party).
- (e) The court should continue its present programs of alternate dispute resolution (ADR), e.g. mediation, settlement conferences, etc.. At the same time, the court should monitor and evaluate other ADR programs in existence throughout the nation to assess their potential benefits to the district.
- (f) The court should continue present case management and motions management practices, pretrial conference programs, and trial setting procedures.
- (g) The Federal Rules of Civil Procedure should be amended to increase the court's authority to regulate, limit, and control discovery.
- (h) The court should continue the existence and operation of the Civil Justice Reform Act Advisory Group, with an eye towards assisting in the re-writing of local plans, rules, and other docket management procedures.



#### IV. DESCRIPTION OF THE DISTRICT

(a) DEMOGRAPHICS: The District of Oregon encompasses 96,003 square miles with 300 miles of sea coast extending from the California to Washington borders, and a population of 2,842,321 in 1990.

The state's three main population centers (Portland, 437,319; Eugene, 112,669; Salem, 99,860) are located in the Willamette Valley along Interstate 5 (I-5). Population throughout the state continues to grow at a disproportionate rate compared with the rest of the nation, with major increases in most cities along the I-5 north/south corridor. The explosive growth in drug-related activity throughout the state has been linked to the accessibility of Oregon's coast line and to the I-5 Drug Corridor which transits Oregon from the California to the Washington borders.

Much of the state is occupied by federal enclaves, including:

- INDIAN RESERVATIONS: Burns Paiute, Siletz, Warm Springs, Umatilla and Grand Ronde.
- NATIONAL FORESTS: Deschutes; Fremont; Malheur; Mt. Hood; Ochoco; Rogue River; Siskiyou; Suislaw; Umatilla; Umpqua; Wallowa/Whittman; Willamette and Winema National Forests.
- NATIONAL PARK: Crater Lake National Park; Oregon Caves National Monument; John Day Fossil Beds National Monument; and Fort Clatsop National Memorial.
- NATIONAL RECREATIONAL AND SCENIC AREAS: Hells Canyon and the Oregon Dunes National Recreational Areas; and the Columbia River Gorge National Scenic Area.
- NATIONAL WILDLIFE REFUGES: Cold Springs; Heart Mountain; Klamath Forest; Malheur; Upper Klamath.

- BUREAU OF LAND MANAGEMENT RECREATIONAL AREAS: There are 41 BLM recreation areas located throughout the State.
- FEDERAL CORRECTIONAL INSTITUTIONS: Sheridan Federal Correctional Institution. X

The economy of the state is diversified and in transition, with timber, forest products, agriculture, and high-tech "silicone valley" industries dominating the economy. During the past few years, Oregon has experienced significant reductions in timber and forest products activities. In order to offset this loss, and to diversify its economy, Oregon has recently developed strong economic ties to numerous countries throughout the Pacific Rim. X

*Concern*

(b) IMPACT OF STATE BUDGETARY PROBLEMS: Another *demographic* factor that impacts the business of the court may at first glance seem altogether unrelated, however, Oregon's recent property tax limitation measure (approved by Oregon voters in November of 1990) has created an atmosphere of uncertainty about future funding throughout the state. Concerns about funding for current and future jail space, as well as possible overall reductions in general law enforcement and prosecutorial services, has resulted in an increase in federal criminal prosecutions of the type historically found in our state court system. X

(c) THE COURT: Oregon is "one judicial district" with six places of holding court including, Portland, Eugene, Medford, Pendleton, Coquille and Klamath Falls.

Portland is the principal division of the court and is located at the Gus J. Solomon Federal Courthouse. This building has six district judge courtrooms and two magistrate courtrooms (only one of which accommodates jury trials). A new courthouse is in the planning stage with anticipated occupancy scheduled for

sometime in late calendar year 1996. When the new courthouse is built, the Gus J. Solomon Courthouse will house the United States Bankruptcy Court and its support agencies.

The court has six authorized Article III positions. In Portland, there are five active district judges, two senior district judges (who regularly accept case assignments) and three magistrate judges. In Eugene there is one district judge and one magistrate judge.

In Oregon, magistrate judges are fully integrated into the court's civil case management practices. Under the Oregon model, magistrate judges are randomly assigned civil cases at the time of filing. Thereafter, the court actively encourages written "consents" pursuant to Federal Rules of Civil Procedure 73(b). Magistrate judges perform the full range of case management activities on all assigned cases and routinely receive consents to exercise full dispositive authority, to include trial.

Within the district, all judicial officers and their direct and supporting staffs have access to computer and word processing technology. However, restrictions on the allotment of funds for "*externs*", and others who work for individual judges on a volunteer basis, hampers the usefulness of these individuals. Although not specifically the focus of this report, the group recommends that action be taken at the national level to provide greater funding support for these "volunteer" resources.

## VI. ASSESSMENT OF DOCKET TRENDS

The Administrative Office of the United States Courts, The Federal Judicial Center, and the clerk's office provided substantial assistance in assessing the state of this district's docket (SEE Appendix [C]). Although, we recognize the limitations inherent in using statistics, we have found the information to be helpful.

As noted earlier, the status of the court's docket has been remarkably current. The experiences of the members of this group, the antidotal information obtained from other practicing attorneys, and the statistical information all confirm that civil cases are tried or otherwise resolved in a reasonably short period of time. This historical trend has continued, notwithstanding the fact that weighted criminal and civil filings per judgeship have exceeded the national average since 1985. This accomplishment is even more remarkable when considered in light of Oregon's 12.2 months of vacant judgeship time during the past two years, and the 1990 biannual judgeship survey findings that confirm the necessity of still another Article III judgeship in Oregon.

Notwithstanding these accomplishments, the problems facing this District have begun to take their toll on the civil docket. During the twelve month period ending June 30, 1991, terminations per judgeship were down almost 14%, while the time from issue to trial in civil cases increased from 11 to 12 months and the number of trials completed per judgeship dropped from 50 to 39 (the lowest number in the past several years). The drop in these "key indicators" is a significant concern.

In addition to the problems noted above, the group took special note of the following statistical trends as evidence of the status of the court's docket:

(a) Published annually by the Administrative Office of the United States Courts, the 1991 Federal Court Management Statistics provides a statistical profile of the district and circuit courts. Oregon's profile confirms the excellent condition of the civil and criminal dockets (SEE Appendix [C-1]).

(b) The number of civil trials and their percentage of the number of total trials have fallen since 1987 (SEE Appendix [C-2]).

(c) The medium time from issue to trial fell from 17 months in 1982 to 9 months in 1988 and has increased to 11 months in 1991 (SEE Appendix [C-3]).

(d) The life expectancy and indexed average life span of all Oregon cases is under 11 months and below the national average (SEE Appendix [C-4]).

(e) Oregon's medium time from filing to disposition of civil cases shows a relatively stable trend (SEE Appendix [C-5]).

(f) Raw civil filings have decreased during the past few years. Notwithstanding this fact, Oregon's weighted civil filings per judgeship continues to exceed the national average (SEE Appendix [C-6]).

(g) Raw criminal filings, numbers of defendants, and weighted criminal filings per judgeship have increased since 1982 (SEE Appendix [C-8]).

(h) The number of criminal trials and their percentage of the total trials have increased since 1987 (SEE Appendix [C-7]).

(i) *The time from filing to disposition in criminal cases* has increased (SEE Appendix [C-9]).

(j) The opening of the Federal Correctional Institution at Sheridan, Oregon, has resulted in increased "prisoner civil rights" cases being filed in this district.

## VII. CAUSES OF COSTS AND DELAY

The statute charges the advisory group to "*identify the principal causes of cost and delay in civil litigation. . .*"<sup>3</sup>, however, such a mandate necessarily presumes that causes can be identified and attributed to particular activities.

As indicated earlier, the advisory group had difficulty with those terms (particularly given Oregon's remarkably current civil and criminal dockets). Not suprisingly, the group also found the process of identifying *causes of cost and delay* to be equally difficult. Instead, the group found it to be more useful to identify events, activities, or circumstances that have had an impact (and in some a significant impact) on the process of civil litigation. Therefore, the following factors are identified as potential causes or contributors to increasing costs and delay within the District of Oregon:

(a) IMPACT OF NEW LEGISLATION: Those who practice in this court have become increasingly aware of the impact of legislation on civil litigation. Regardless of whether new legislation is directed at criminal cases (i.e. the speedy trial act, mandatory sentences, or emphasis on additional crimes, etc.), or the creation or enlargement of existing civil remedies, the net result is the same. Federal court have been stretched to capacity, and unless Congress considers the consequences of future legislation on the judiciary, the certainty of increasing costs and delays is inevitable. When considering new legislation, Congress must consider

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<sup>3</sup> 28 U.S.C. § 472(c)(1)(C) requires the advisory group to "*identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation. . .*".

the potential impact on the federal judiciary and must also provide the judiciary with adequate resources to administer the civil and criminal dockets.

(b) IMPACT OF EXISTING LEGISLATION: The advisory group also took note of the impact of existing legislation on civil litigation. Of particular importance to Oregon has been the Endangered Species Act. Whether they involve questions about the allocation of salmon runs in the Columbia river, or habitat for the spotted owl, cases arising from this statute continue to present complex legal and economic issues that effect the economy of the entire Pacific Northwest.

In addition to these "northwest specific" cases, the recently passed Americans With Disabilities Act (ADA) will result in substantial numbers of complex civil filings; and because these cases are not amenable to alternative dispute resolution procedures, they will consume an increasingly disproportionate share of Oregon's finite judicial resources.

(c) NEED FOR EARLY JUDICIAL INTERVENTION IN SELECTED CIVIL CASES: There was general consensus that Oregon's current case management practices<sup>4</sup> are adequate to permit most parties to commence discovery and to proceed to resolution in a timely and cost effective fashion, often times without major judicial intervention. This is made possible because of early and periodic judicial review of cases, combined with case management procedures that monitor deadlines, thereby

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<sup>4</sup> Random assignment of each civil case to a district or magistrate judge at the time of filing; the entry of a pretrial and discovery scheduling order that establishes discovery and motions filing deadlines, pretrial and trial dates; and early and periodic judicial review of cases.



enabling the court to intervene only when required by the parties to resolve specific matters or disputes, or when deadlines or schedules appear to be in jeopardy.

Some members of the advisory group felt that early judicial involvement with the parties present may facilitate the early disposition of selected civil matters. With respect to this issue, the advisory group took note that some members of the court are already experimenting with this approach and we commend those efforts.

(c) FIRM AND REALISTIC TRIAL DATES: Firm and realistic trial dates are the cornerstone to successful case disposition rates here in Oregon. However, given the press of the court's current docket, fewer civil cases are assigned "trial certain dates". Instead, civil cases are typically "trailed" behind priority scheduled criminal proceedings.

Although acknowledged as a compromise, Oregon's use of the "trailing calendars" still permits civil cases to retain a "degree of certainty" (albeit that certainty may now be "week certain" instead of the former "day certain"). Every effort appears to be made to ensure that civil cases are prioritized on the trailing calendar, and when the assigned judge is unable to reach a particular civil case, another district or magistrate judge is sought to try the case. Notwithstanding these efforts, however, this lack of certainty is recognized as a factor which increases the cost and delay of civil litigation.

(d) USE OF MAGISTRATE JUDGES: Oregon's use of magistrate judges to adjudicate civil cases is an indispensable component of the civil litigation process (SEE Appendix [C-29]). To the extent that lawyers and litigants do not take advantage of Oregon's exceptional magistrate judges, additional civil litigation

burdens are assumed by Oregon's Article III judicial officers. In light of the effectiveness of Oregon's magistrate judges, every action should be taken to encourage consents in civil proceedings, thereby freeing up valuable Article III judicial resources to resolve other civil and criminal cases.

(e) STAFFING LEVELS FOR MAGISTRATE JUDGES: For the reasons noted in the preceding paragraph, magistrate judges directly reduce costs and delays in the civil litigation process here in Oregon. However, such success cannot be maintained by a system that allocates only one law clerk to the magistrate judge. An additional law clerk is required if these valuable judicial resources are to continue to maintain their level of effectiveness.

(f) COMPLIANCE WITH THE RULES: Oregon Rules of Civil Procedure differ significantly from the Federal Rules of Civil Procedure. For example, Oregon's discovery rules are limited, which in turn results in far less judicial involvement throughout the life of a state court case, thereby minimizing overall costs of litigation. In contrast, the Federal Rules of Civil Procedure afford nearly full disclosure and often involve significant judicial intervention throughout the pretrial and discovery phases of litigation, thereby impacting costs and delay.

As a result this difference in practice, many lawyers avoid federal court and resist the rules when they find themselves in Federal court. This in turn results in further delay and lack of certainty in many federal cases.

Lawyers experienced with federal practice agree that failure to hold lawyers accountable for their compliance with the federal rules affects costs and delay for the parties and the court. It is also generally agreed that the existing rules are

sufficient to control abuses of the rules process and that the rules should be more uniformly and consistently enforced by the court.

(g) ALTERNATIVE DISPUTE RESOLUTION: Local Rules of this court provide for alternative dispute resolution (ADR) through the use of settlement judges (Local Rule 240-1) and voluntary mediation (Local Rule 240-2). Experience with these programs has been positive and the court continues to evaluate additional ADR programs from around the country. The group supports the application of ADR approaches in order to help reduce cost and delay in the civil litigation process.

(h) DELAYS IN THE JUDICIAL APPOINTMENT PROCESS: For the reasons noted previously, delays in the nomination and appointment process for district and magistrate judges is a direct cause of increasing costs and delays in civil litigation.

## VIII. RECOMMENDATIONS

(a) STREAMLINE THE JUDICIAL APPOINTMENT PROCESS: The process for identifying additional judicial requirements, and more importantly the nomination and confirmation process, needs be streamlined in order to insure the timely appointment of required judicial officers.

(b) ADDITIONAL MAGISTRATE LAW CLERKS: Action should be immediately taken to allocate an additional law clerk to each magistrate judge. The advisory group finds that an additional law clerk will substantially increase the ability of magistrate judges to perform the full range of civil adjudication functions, while continuing to assist on the criminal docket.

(c) RECOMMENDED APPROACH TO CIVIL CASE MANAGEMENT: The following are recommendations to case management which incorporate existing local rules, court procedures, and practices of many (if not all) of the judges. The advisory group has elected to list them as "recommendations" as an affirmation of the current case management process here in Oregon.

- (1) Continue to assign cases pursuant to the existing case assignment plan. The advisory group found that the plan provides differential case management for appropriate classes of civil cases.
- (2) Continue to re-assign cases where appropriate or practical, in order to maximize judicial resources and to assist the parties in resolving the dispute in a just, speedy, and inexpensive manner.
- (3) Continue to control discovery through the use of the present pretrial scheduling order and by judicial intervention as required.

- (4) To the extent possible, deadlines established in the pretrial scheduling order should remain firm. Parties should be encouraged to confer and resolve discovery and pretrial related issues on their own, and only after that, should they be permitted to request modifications to the deadlines for good cause shown.
- (5) Early judicial review of each new civil filing is recommended. Such a process affords the assigned judge an opportunity to identify those limited numbers of cases which may require scheduling of an early pretrial or status conference. The court should also modify its pretrial scheduling order to notify the parties that they may request an early judicial conference when they feel that there is any aspect of the case of which the court should be made aware.
- (6) The use of telephone conferences should be continued in order to minimize costs to civil litigants.
- (7) The court's alternative dispute resolution programs<sup>5</sup> should be continued. In appropriate cases, the court should also consider using local mediation or settlement services.
- (8) The court should monitor ADR programs in use in other district courts. The group asks that the court pay particular attention to early arbitration programs, however, it is not recommended that a mandatory arbitration program be adopted at this time.
- (9) Current motions management practices (Local Rule 220), and procedures for setting of pretrial conferences and trials (Local Rule 235) should be continued.
- (10) Parties should be held accountable for meeting all order or local rule imposed deadlines or schedules. Requests for extensions or continuances must be made in a timely manner, and then only after a good faith effort has been made by the parties to resolve the matter within the existing time limits.

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<sup>5</sup> Settlement conferences (L.R. 240-1) and voluntary mediation (L.R. 240-2).

- (11) The advisory group rejects any specific limits on discovery, however, we strongly recommend that the Federal Rules of Civil Procedure be modified to expand the court's discretion to tailor discovery rules to the needs of the particular case and the parties.
- (12) Stipulated resolutions to pretrial and discovery disputes should be encouraged by the court.
- (13) We recommend the continuation of the advisory group until 1995, (the period specified by the statute), to assist the court and litigants in meeting the statutory mandates of the act.

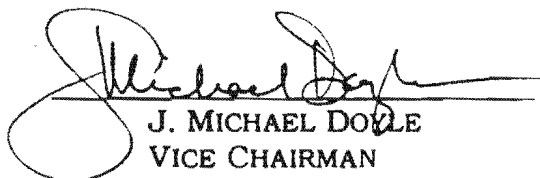
## CONCLUSION

The inter-action and ongoing communication that has historically existed between the court, the lawyers, and the litigants of this district has made the advisory group's task simpler. In point of fact, many of the findings and recommendations set forth in this Report are the results of discussions, comments, committee meetings, and suggestions implemented before the passage of the Civil Justice Reform Act of 1990.

It is our hope that the findings and recommendations set forth in this Report will assist the Court in codifying the required Civil Justice Delay Reduction Plan. In that regard, we believe that such a plan will largely be a formalized statement of existing practices and procedures. We believe that the focus of such a plan should continue to strive to avoid or minimize unreasonable costs or delay from the court's standpoint, while at the same time encouraging cooperation among the parties to minimize costs and delays from their perspective as well.



DON MCEWEN  
CHAIRMAN



J. MICHAEL DOYLE  
VICE CHAIRMAN

**APPENDIX (A)**  
**CIVIL JUSTICE REFORM ACT OF 1990**



**APPENDIX (B)**  
**ADVISORY GROUP**

**APPENDIX (C)**  
**STATISTICS**

**APPENDIX (D)**

**CASE MANAGEMENT AND CASE ASSIGNMENT PLANS**

**APPENDIX (A)**

**CIVIL JUSTICE REFORM ACT OF 1990**

Public Law 101-650  
101st Congress

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990  
[H.R. 5316]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".*

Judicial  
Improvements  
Act of 1990.  
Courts.  
28 USC 1 note.  
Civil Justice  
Reform Act of  
1990.

**TITLE I—CIVIL JUSTICE EXPENSE AND  
DELAY REDUCTION PLANS**

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

28 USC 1 note.

SEC. 102. FINDINGS.

28 USC 471 note.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

• SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

“CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

“Sec.

- “471. Requirement for a district court civil justice expense and delay reduction plan.
- “472. Development and implementation of a civil justice expense and delay reduction plan.
- “473. Content of civil justice expense and delay reduction plans.
- “474. Review of district court action.
- “475. Periodic district court assessment.
- “476. Enhancement of judicial information dissemination.
- “477. Model civil justice expense and delay reduction plan.
- “478. Advisory groups.
- “479. Information on litigation management and cost and delay reduction.
- “480. Training programs.
- “481. Automated case information.
- “482. Definitions.

“§ 471. Requirement for a district court civil justice expense and delay reduction plan

“There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

“§ 472. Development and implementation of a civil justice expense and delay reduction plan

“(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

“(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

- “(1) an assessment of the matters referred to in subsection (c)(1);
- “(2) the basis for its recommendation that the district court develop a plan or select a model plan;
- “(3) recommended measures, rules and programs; and

Reports.

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

#### "§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) 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;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) 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; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference, and, all reasonably related matters;



“(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

“(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

“(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

“(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

“(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

#### “§ 474. Review of district court action

“(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

“(A) review each plan and report submitted pursuant to section 472(d) of this title; and

“(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

“(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

“(b) The Judicial Conference of the United States—

“(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

“(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

#### “§ 475. Periodic district court assessment

“After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

#### “§ 476. Enhancement of judicial information dissemination

“(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

• Reports.

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semi-annual report prepared under subsection (a).

#### "§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

#### "§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

Reports.

**“§ 479. Information on litigation management and cost and delay reduction**

“(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

Reports.

“(b) The Judicial Conference of the United States shall, on a continuing basis—

“(1) study ways to improve litigation management and dispute resolution services in the district courts; and

“(2) make recommendations to the district courts on ways to improve such services.

“(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

Government publications.

“(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

“(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

**“§ 480. Training programs**

“The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

**“§ 481. Automated case information**

“(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

“(b)(1) In carrying out subsection (a), the Director shall prescribe—

“(A) the information to be recorded in district court automated systems; and

“(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

“(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

Records.

“(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

“§ 482. Definitions

“As used in this chapter, the term ‘judicial officer’ means a United States district court judge or a United States magistrate.”.

28 USC 471 note.

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

28 USC 471 note.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

Reports.

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

“23. Civil justice expense and delay reduction plans..... 471”.

## SEC. 104. DEMONSTRATION PROGRAM.

28 USC 471 note.

(a) **IN GENERAL.**—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) **PROGRAM REQUIREMENT.**—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) **STUDY OF RESULTS.**—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) **REPORT.**—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

## SEC. 105. PILOT PROGRAM.

28 USC 471 note.

(a) **IN GENERAL.**—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) **PROGRAM REQUIREMENTS.**—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) **PROGRAM STUDY REPORT.**—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

#### SEC. 106. AUTHORIZATION.

(a) **EARLY IMPLEMENTATION DISTRICT COURTS.**—There is authorized to be appropriated not more than \$15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) **IMPLEMENTATION OF CHAPTER 23.**—There is authorized to be appropriated not more than \$5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) **DEMONSTRATION PROGRAM.**—There is authorized to be appropriated not more than \$5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

**APPENDIX (B)**

**ADVISORY GROUP**



CIVIL JUSTICE REFORM ACT OF 1990

ADVISORY GROUP

**DONALD W. McEWEN, Chairman**  
Attorney  
McEwen, Gisvold, Lankin and Stewart  
Portland, Oregon

**MICHAEL J. DOYLE, Vice Chairman**  
Assistant Multnomah County Counsel  
Portland, Oregon

**HONORABLE JAMES A. REDDEN**  
Chief Judge  
United States District Court  
for the District of Oregon

**HONORABLE MALCOLM F. MARSH**  
United States District Judge  
United States District Court  
for the District of Oregon

**CHARLES TURNER**  
United States Attorney  
for the District of Oregon

**CHARLES STUCKEY**  
Assistant United States Attorney  
for the District of Oregon

**JAMES F. LIGHT, Esquire** ✓  
Corporate Counsel  
Portland, Oregon

**SPENCER M. NEAL, Esquire**  
Attorney, Ginsburg, Gomez and Neal  
Portland, Oregon

**DANIEL O'LEARY, Esquire**  
Attorney, Pozzi, Wilson, et. al.  
Portland, Oregon

**NORMAN SEPENUK, Esquire**  
Criminal Defense Counsel  
Portland, Oregon

**RICHARD DONAHUE** ✓  
Vice President, NIKE Corporation  
Beaverton, Oregon

**DONALD M. CINNAMOND**  
Clerk of Court  
United States District Court  
for the District of Oregon



**APPENDIX (C)**

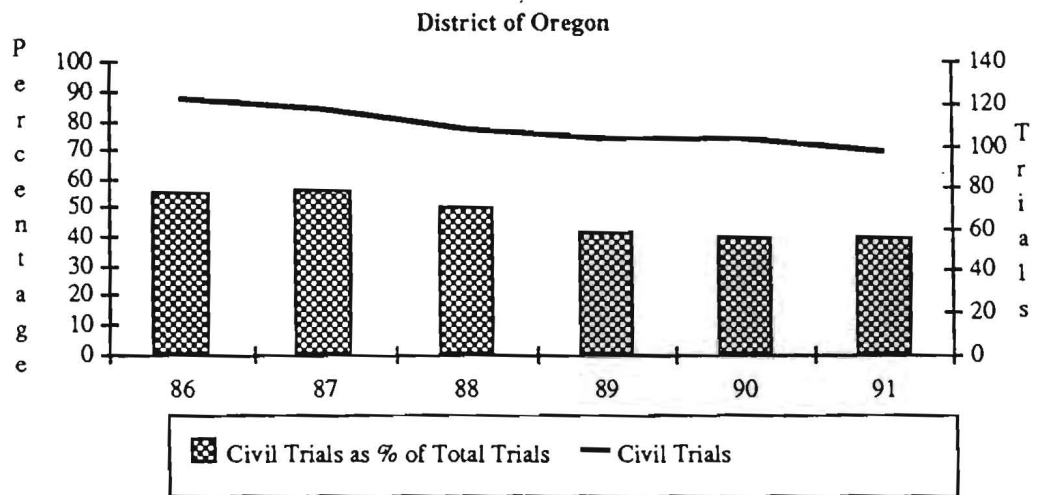
**STATISTICS**

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

OREGON		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1991	1990	1989	1988	1987	1986			
OVERALL WORKLOAD STATISTICS	Filings*	2,491	2,355	2,500	2,558	2,625	2,917			
	Terminations	2,408	2,325	2,418	2,220	2,630	3,121			
	Pending	2,007	1,999	2,273	2,186	1,903	1,908			
	Percent Change In Total Filings Current Year	Over Last Year	5.8						19	5
	Over Earlier Years			- .4	-2.6	-5.1	-14.6		49	7
	Number of Judgeships	6	5	5	5	5	5			
	Vacant Judgeship Months	7.0	5.2	.0	.0	.2	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	415	471	500	512	525	583	21	3
		Civil	325	393	421	438	462	513	43	5
		Criminal Felony	90	78	79	74	63	70	11	5
	Pending Cases	335	400	455	437	381	382	66	13	
	Weighted Filings**	454	493	522	514	532	547	10	2	
	Terminations	401	465	484	444	526	624	25	4	
	Trials Completed	39	50	49	45	41	43	20	4	
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.6	5.7	5.4	4.7	4.0	4.1	41	7
		Civil**	8	8	8	8	7	8	19	2
	From Issue to Trial (Civil Only)	12	11	10	9	10	13	18	2	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	39 2.5	44 2.6	40 2.0	13 .7	16 1.1	17 1.0	16	1	
	Average Number of Felony Defendants Filed per Case	1.4	1.4	1.3	1.6	1.4	1.4			
	Jurors	Avg. Present for Jury Selection	41.69	41.91	41.38	32.98	29.73	28.86	74	9
Percent Not Selected or Challenged		10.1	33.3	46.9	43.8	35.8	34.5	4	1	

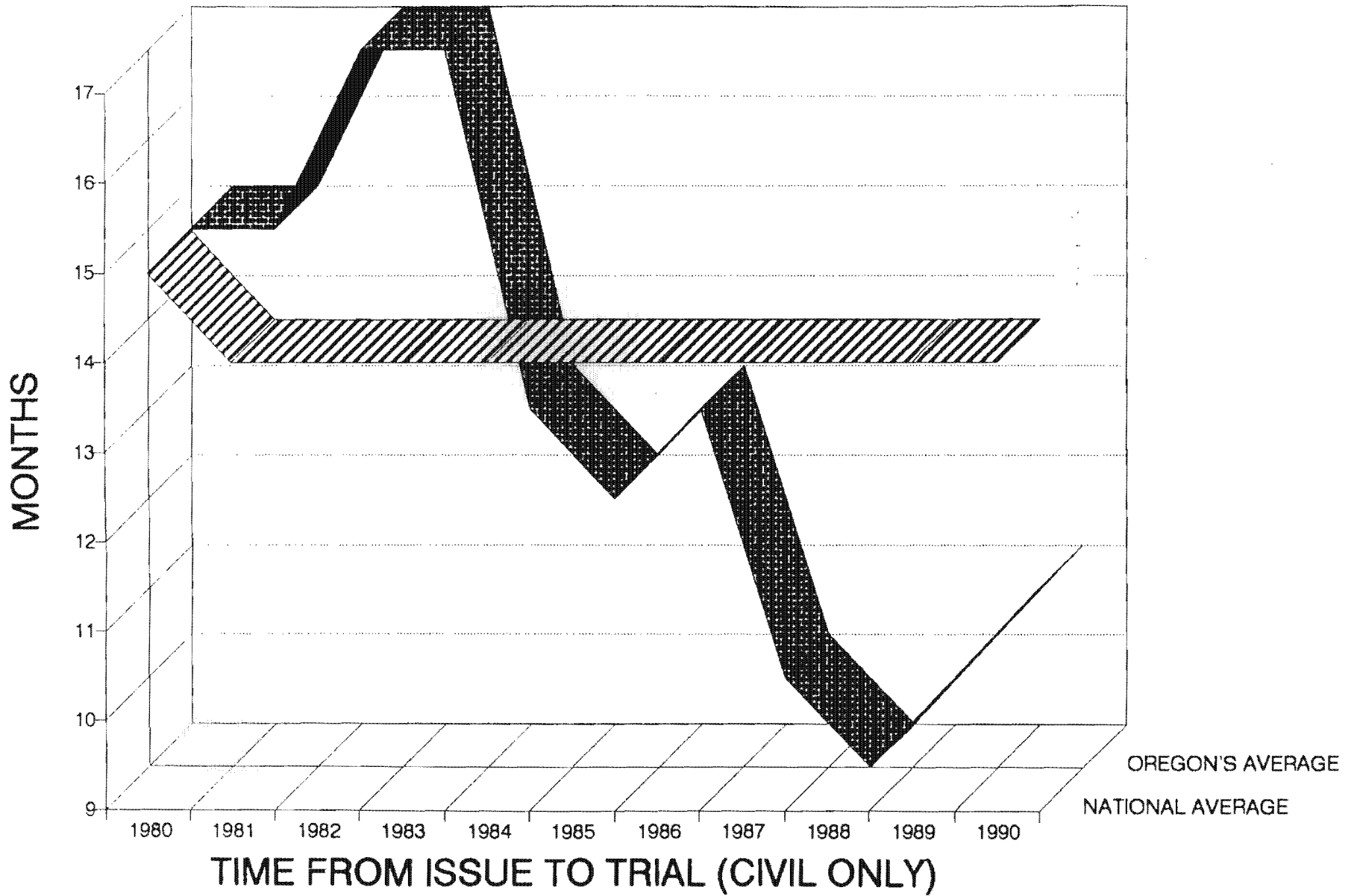
FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER

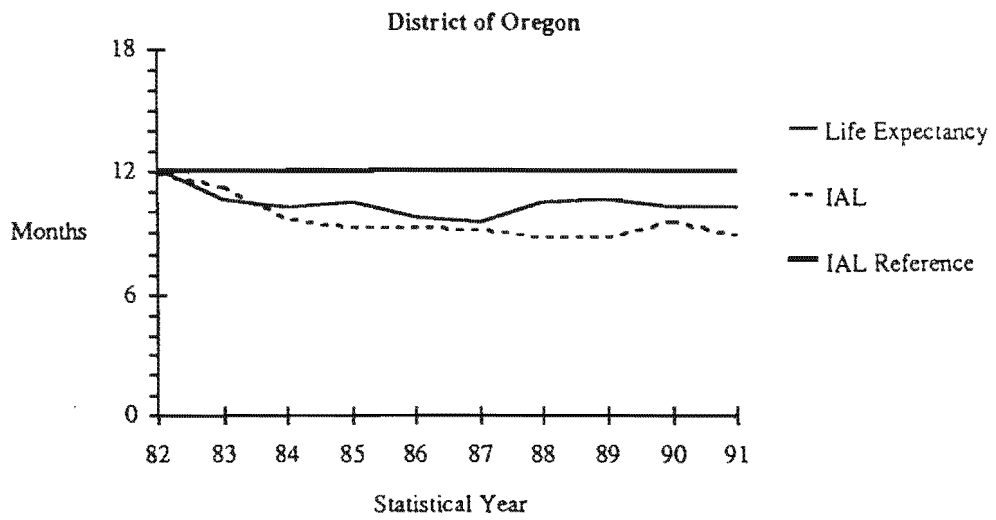
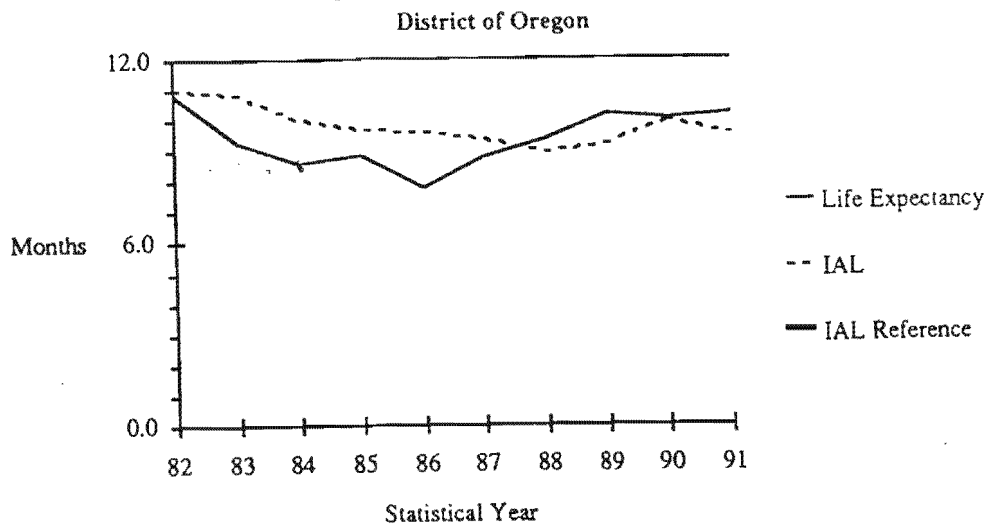
1991 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1948	93	27	435	122	52	152	371	240	41	215	8	192
Criminal*	540	64	9	63	14	24	85	122	8	48	7	68	28

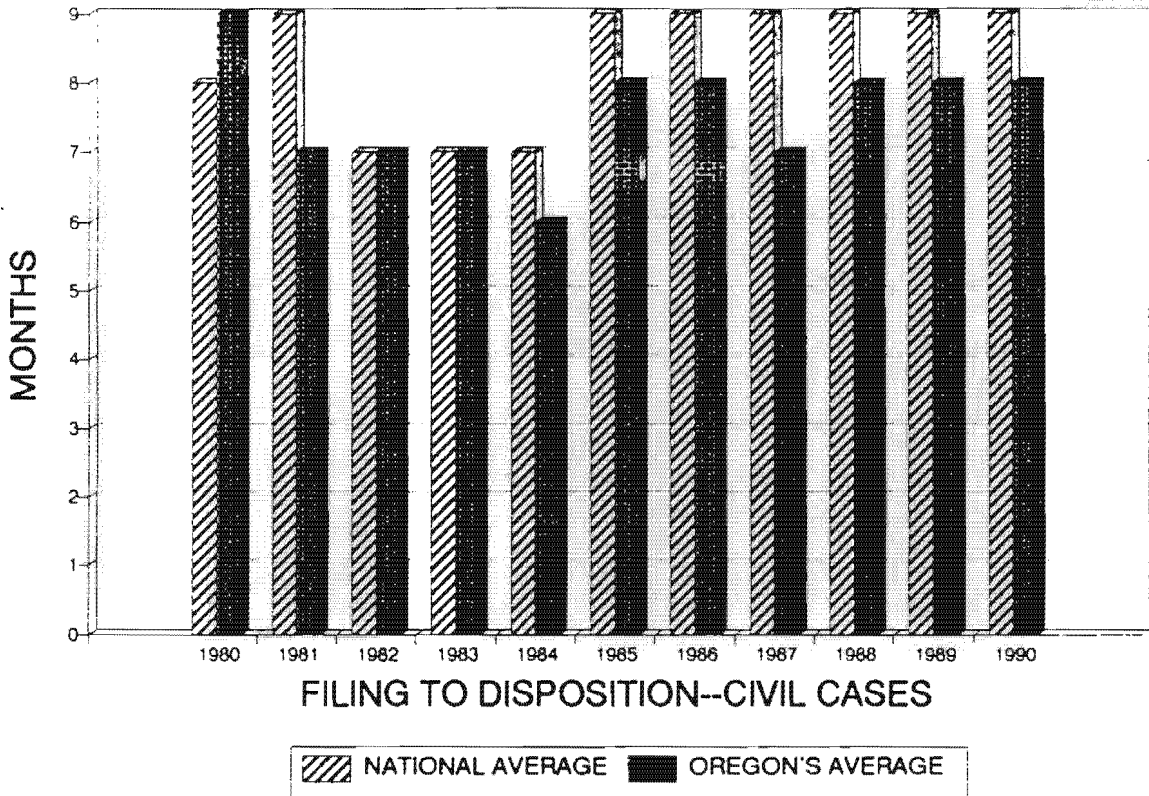


## APPENDIX C-2

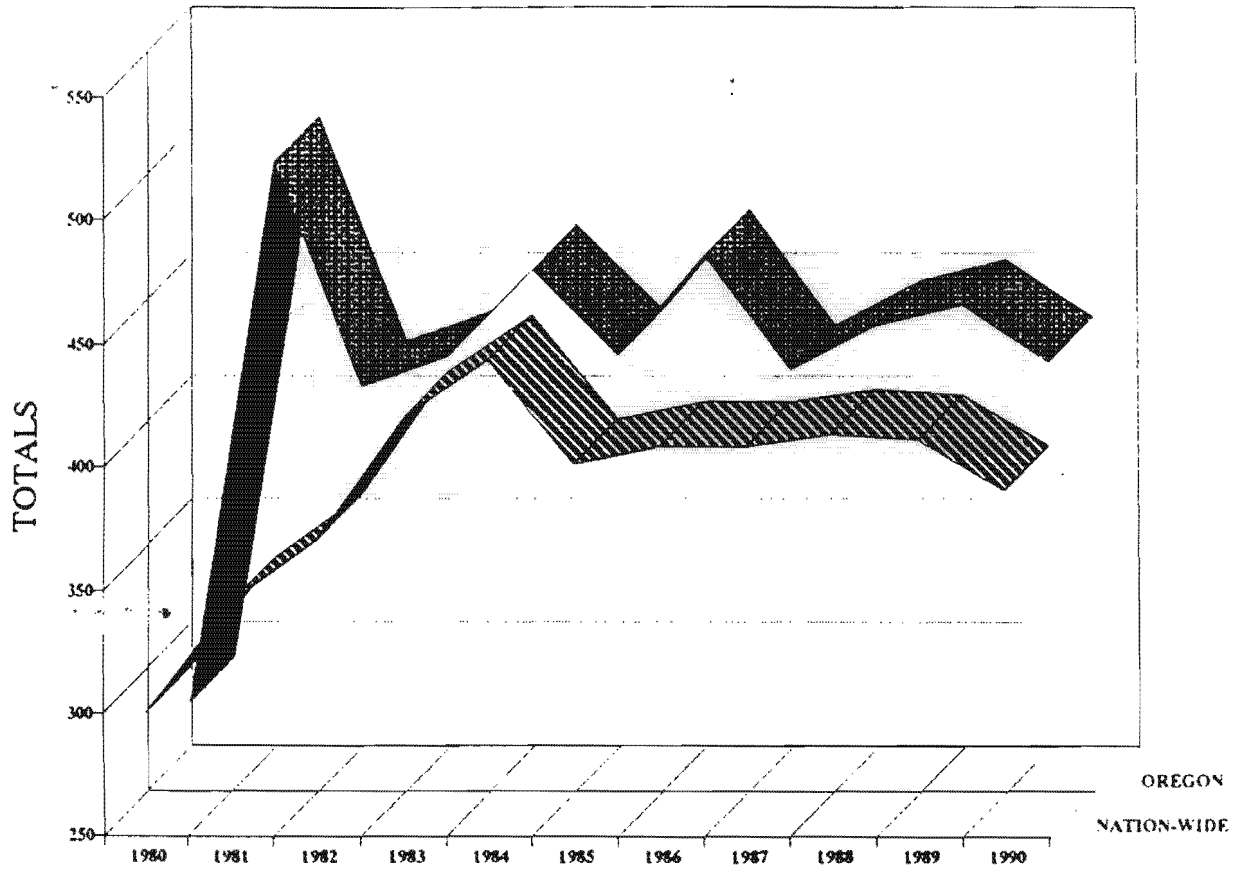
# U.S. DISTRICT COURT--DISTRICT OF OREGON MEDIAN TIME STATISTICS

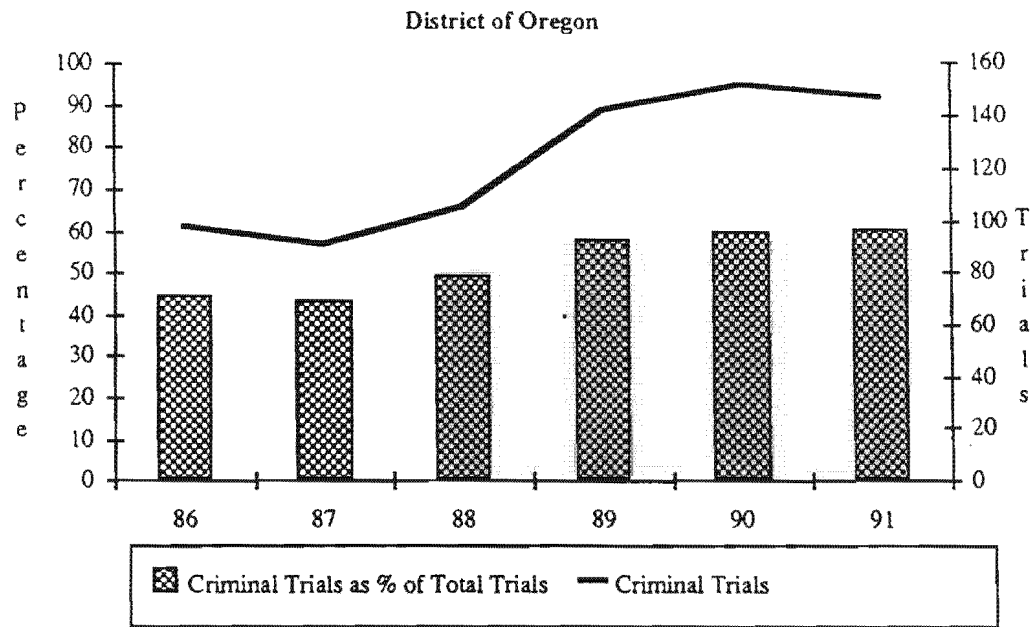






CIVIL WEIGHTED FILINGS PER JUDGESHIP



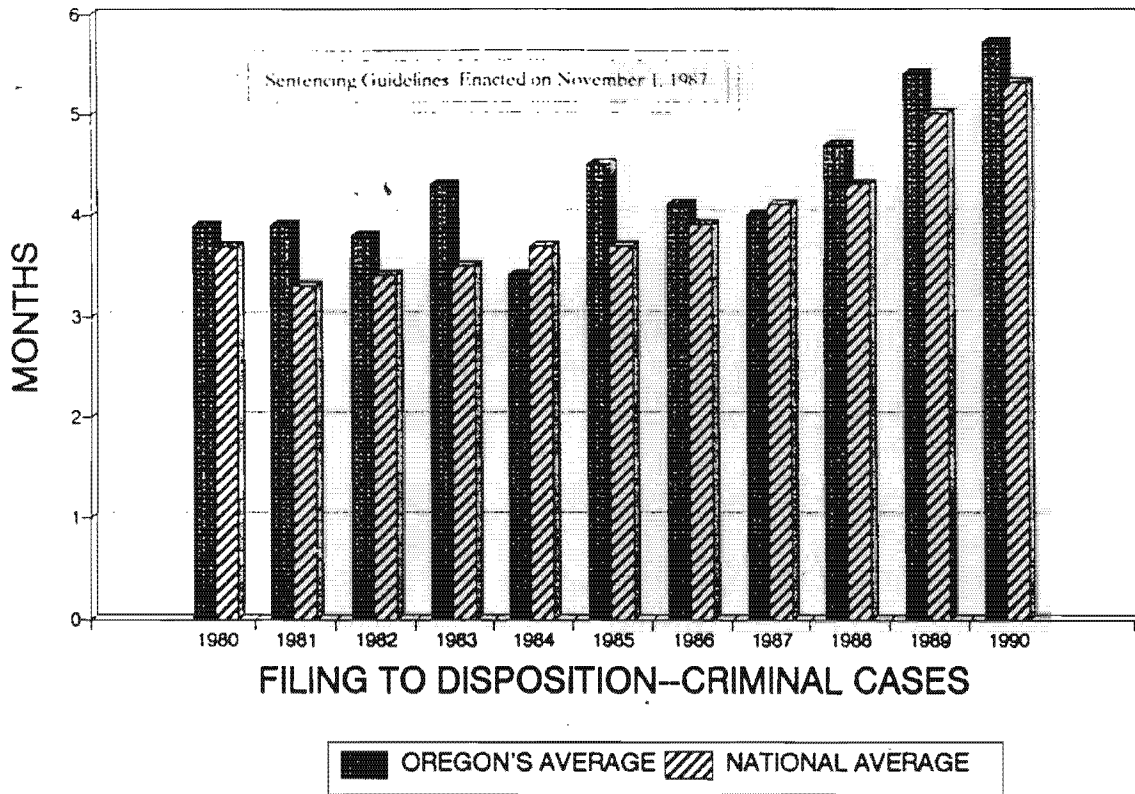




# U.S. DISTRICT COURT--DISTRICT OF OREGON CRIMINAL WEIGHTED FILINGS PER JUDGESHIP



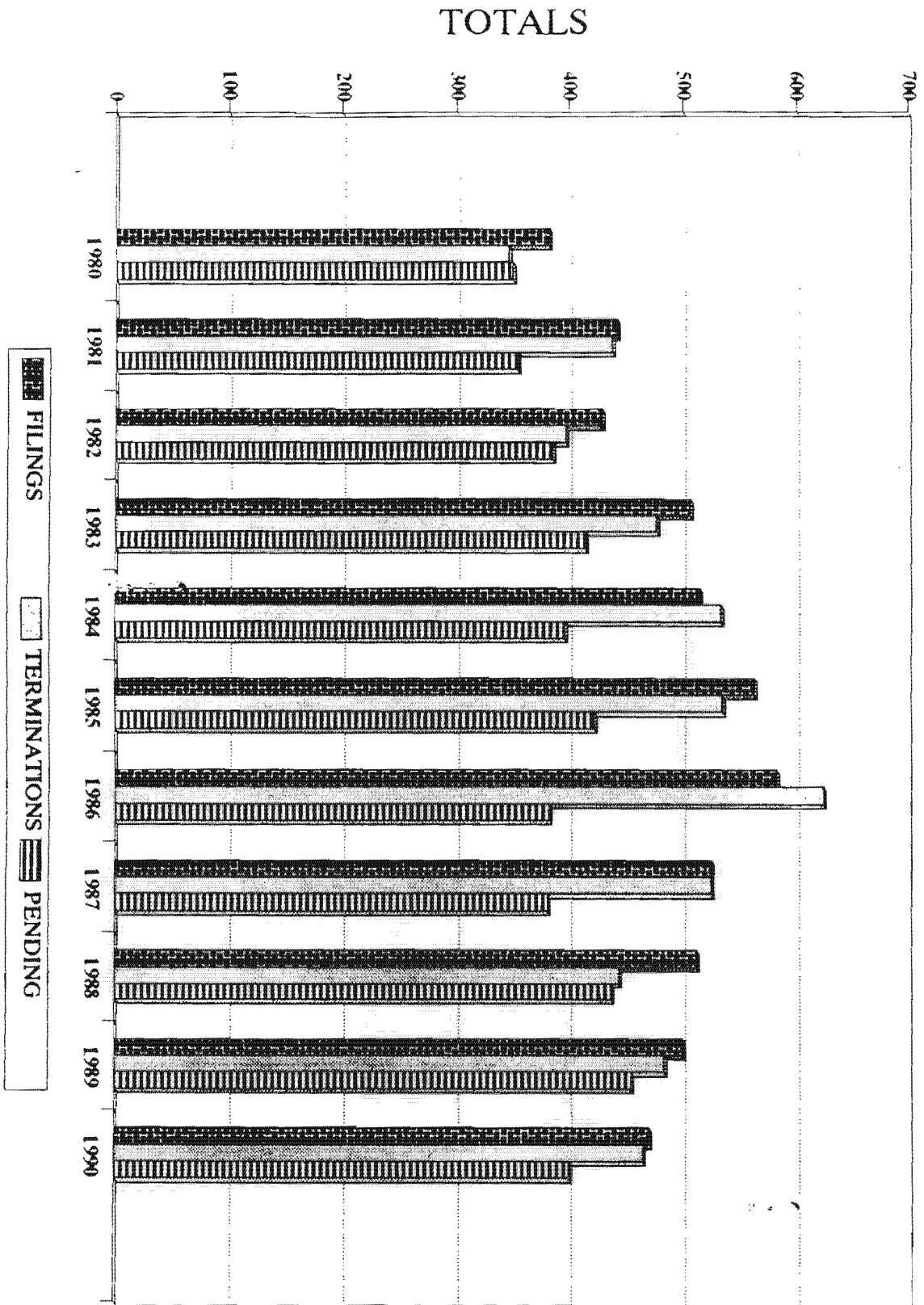
# MEDIAN TIME STATISTICS



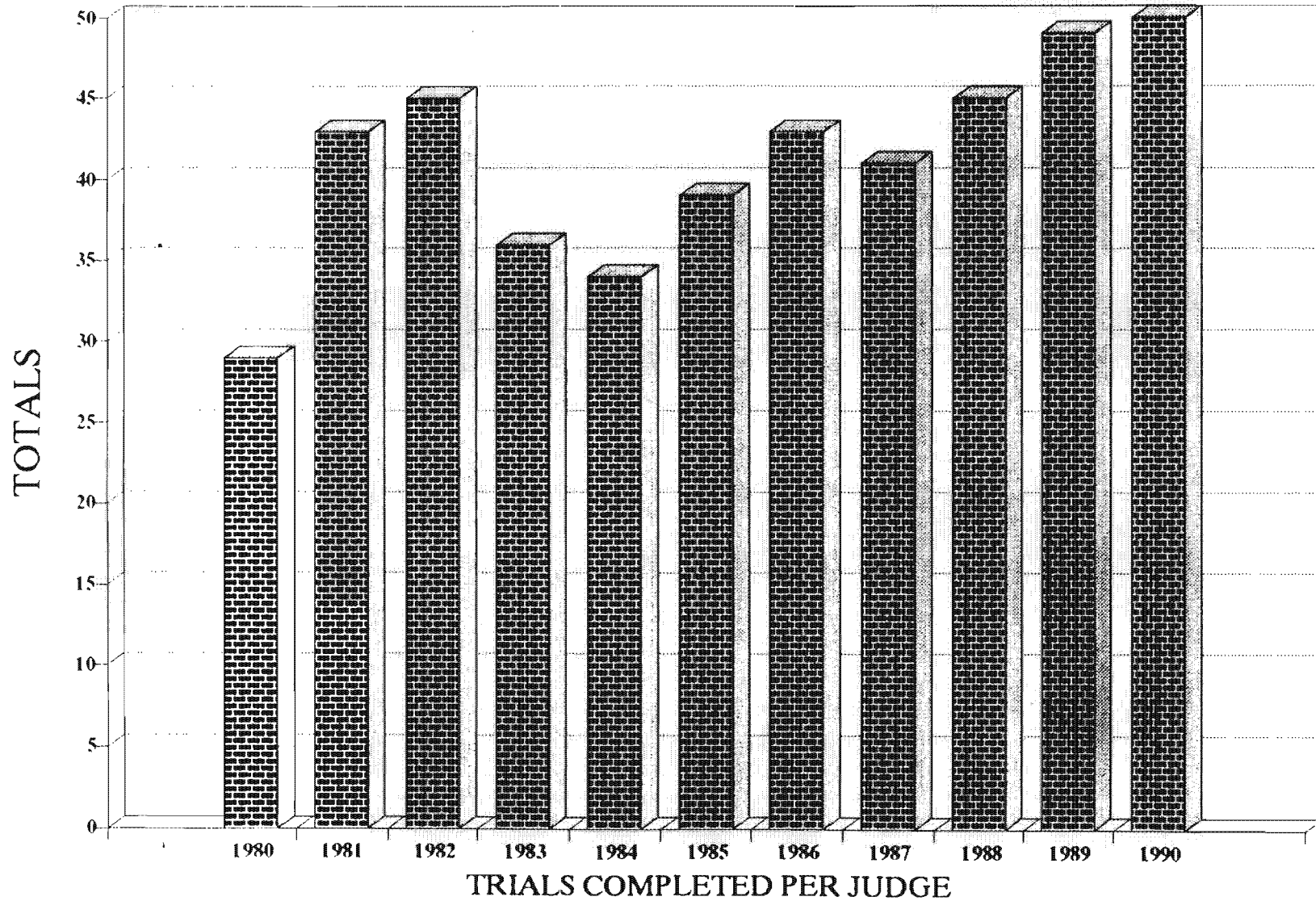
# U.S. DISTRICT COURT--DISTRICT OF OREGON TOTAL WEIGHTED FILINGS PER JUDGESHIP



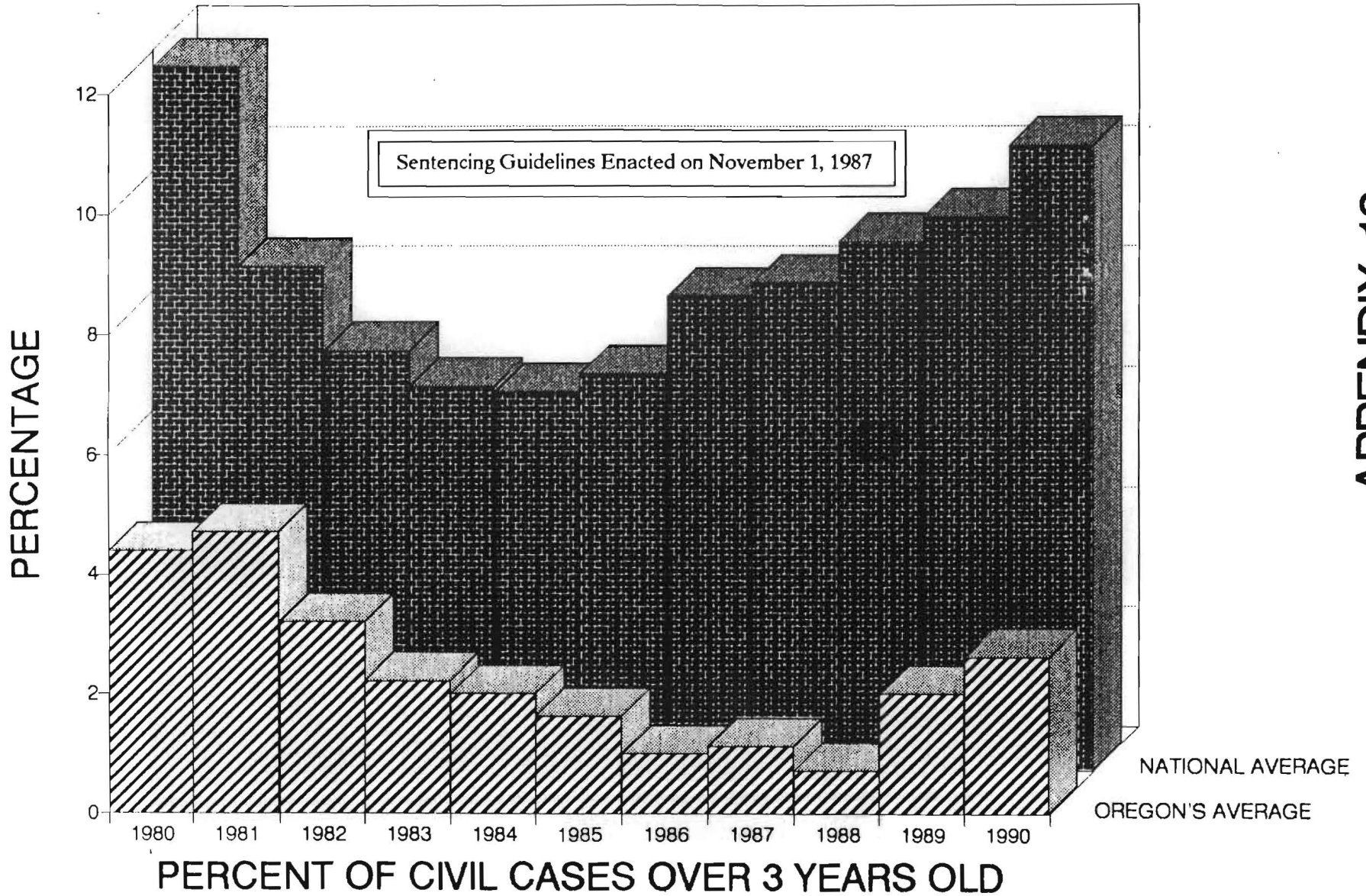
U.S. DISTRICT COURT--DISTRICT OF OREGON  
 PER JUDGE SHIP STATISTICS



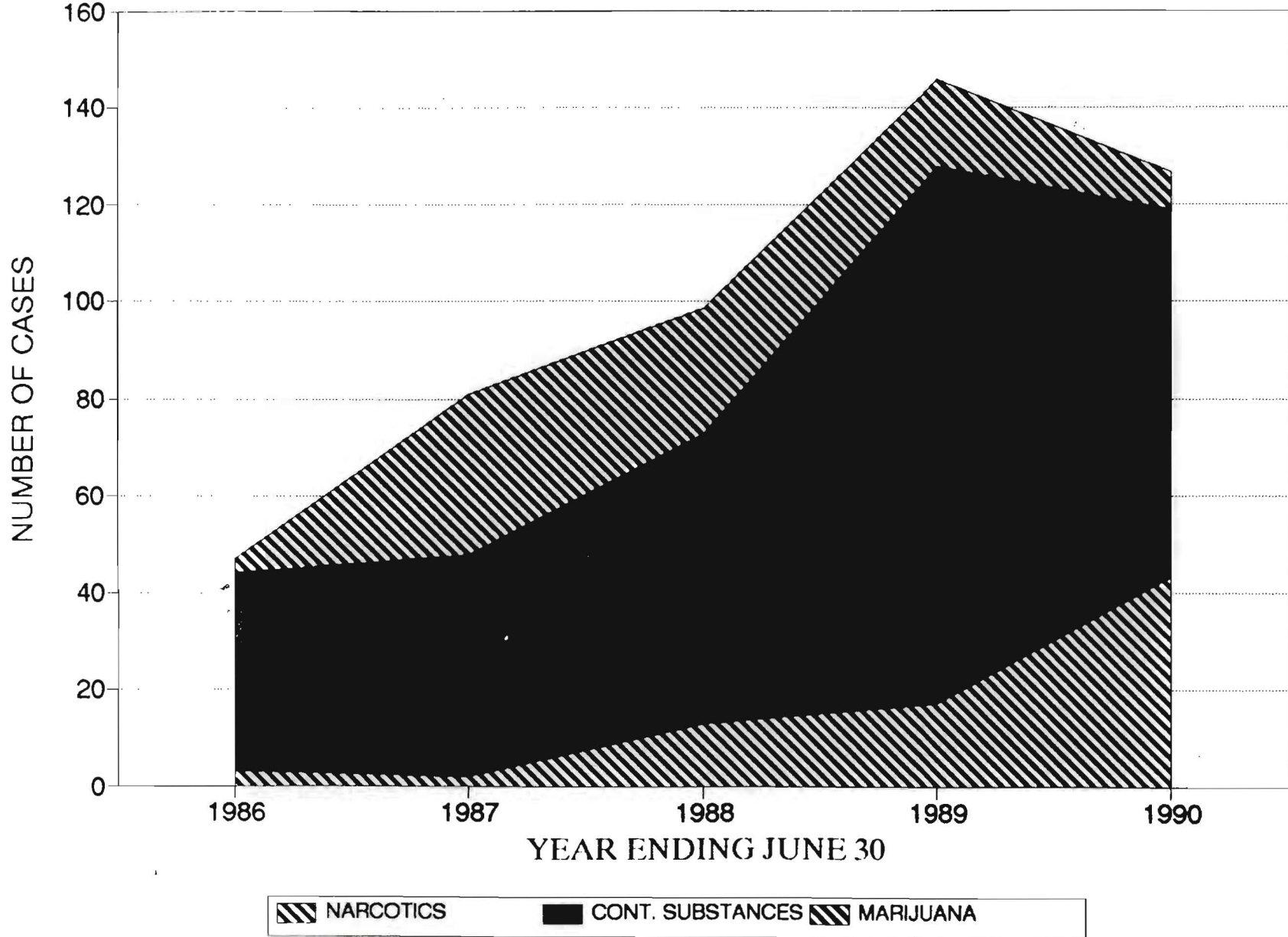
U.S. DISTRICT COURT--DISTRICT OF OREGON  
PER JUDGESHIP STATISTICS



# U.S. DISTRICT COURT--DISTRICT OF OREGON MEDIAN TIME STATISTICS

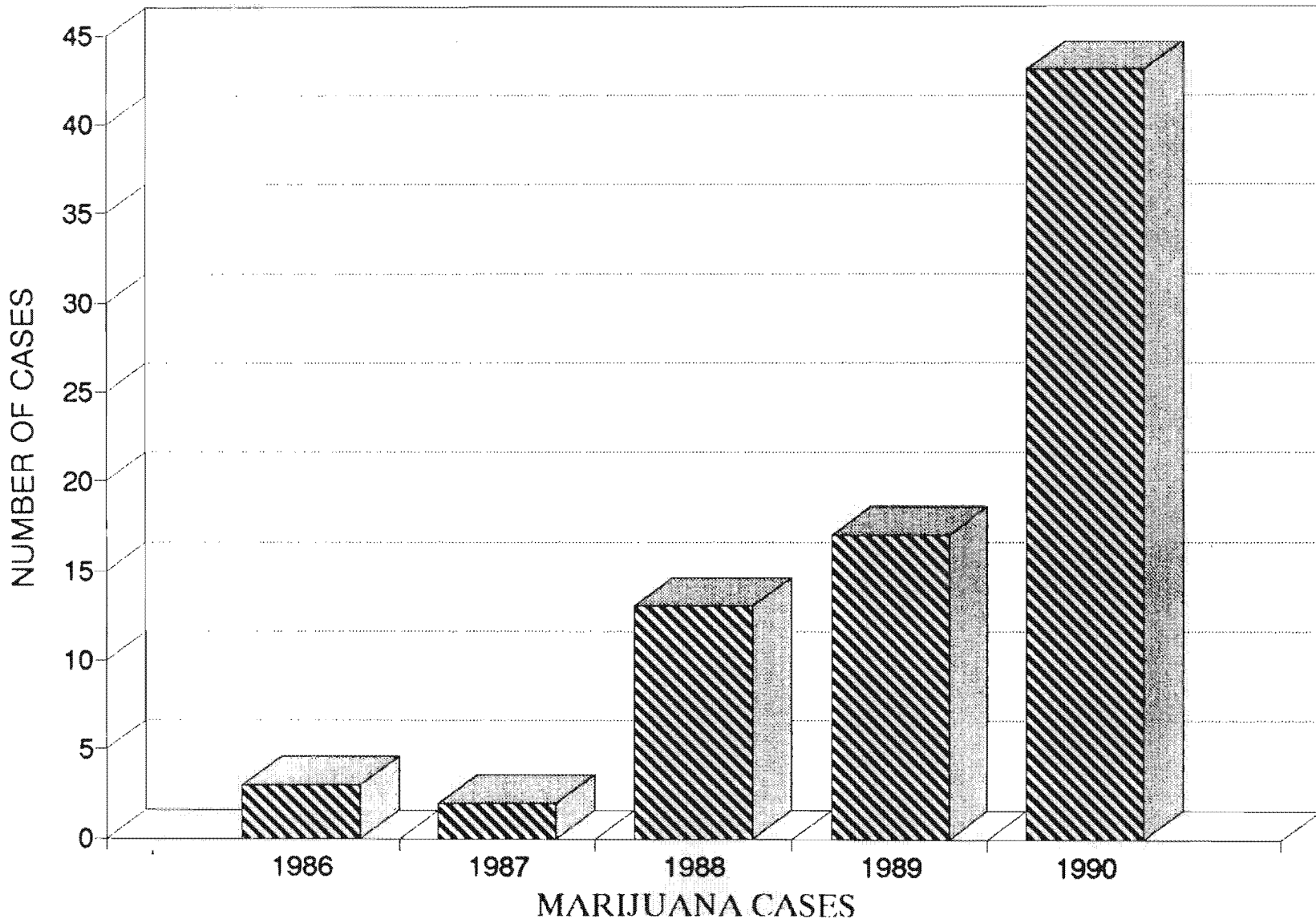


U.S. DISTRICT COURT--DISTRICT OF OREGON  
FELONY CRIMINAL CASE FILINGS



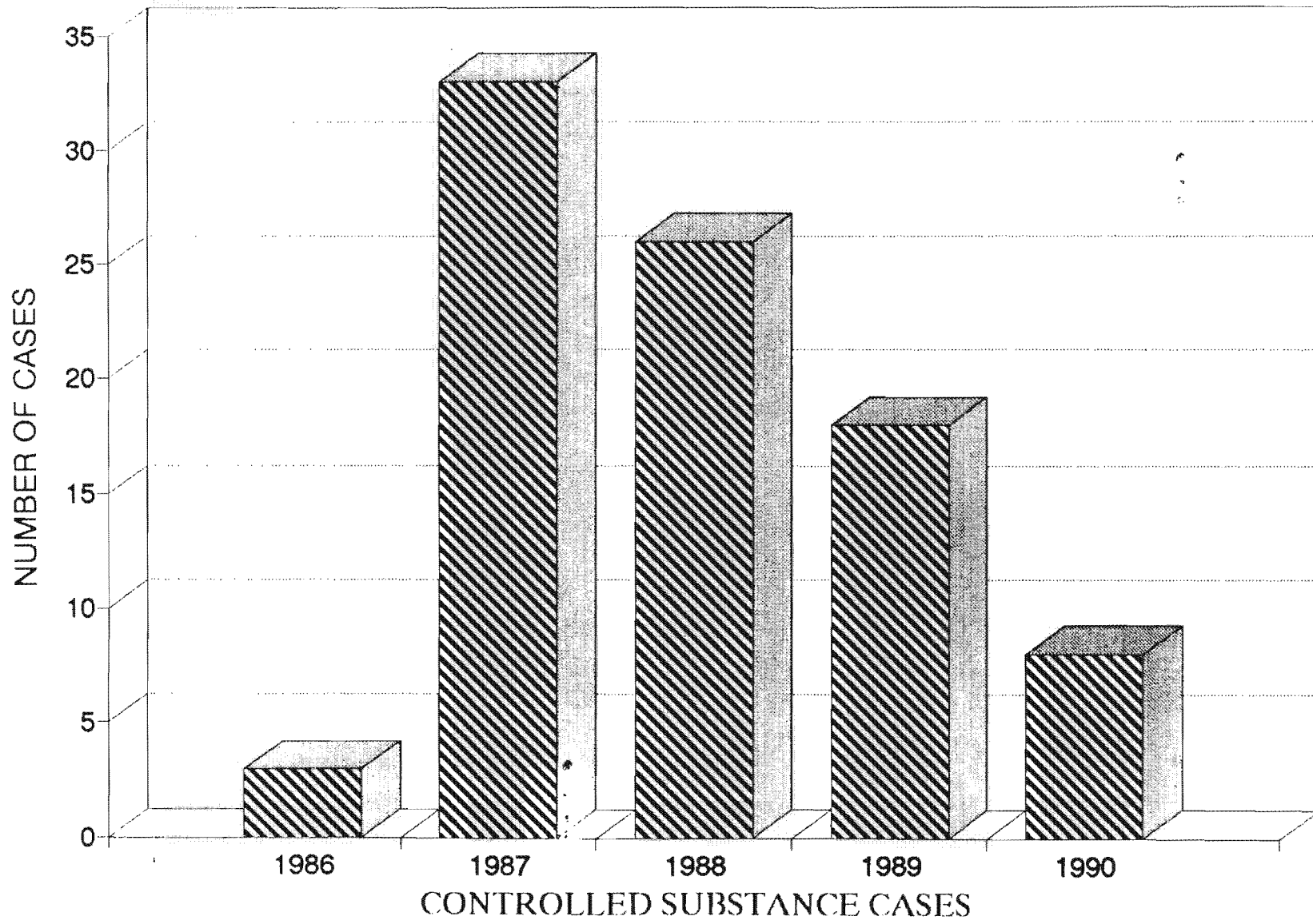
APPENDIX C-14

U.S. DISTRICT COURT--DISTRICT OF OREGON  
Categories of Criminal Cases

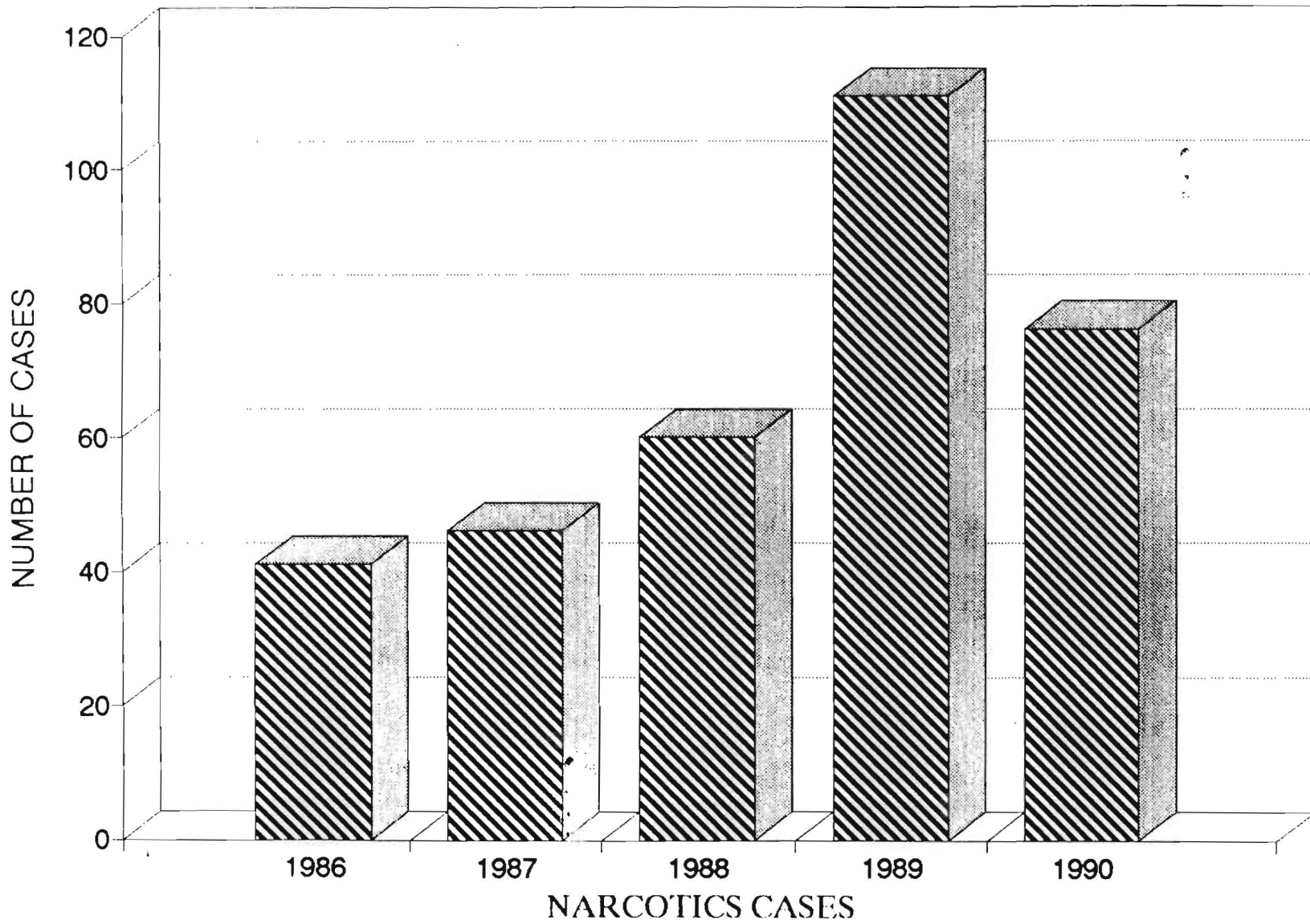




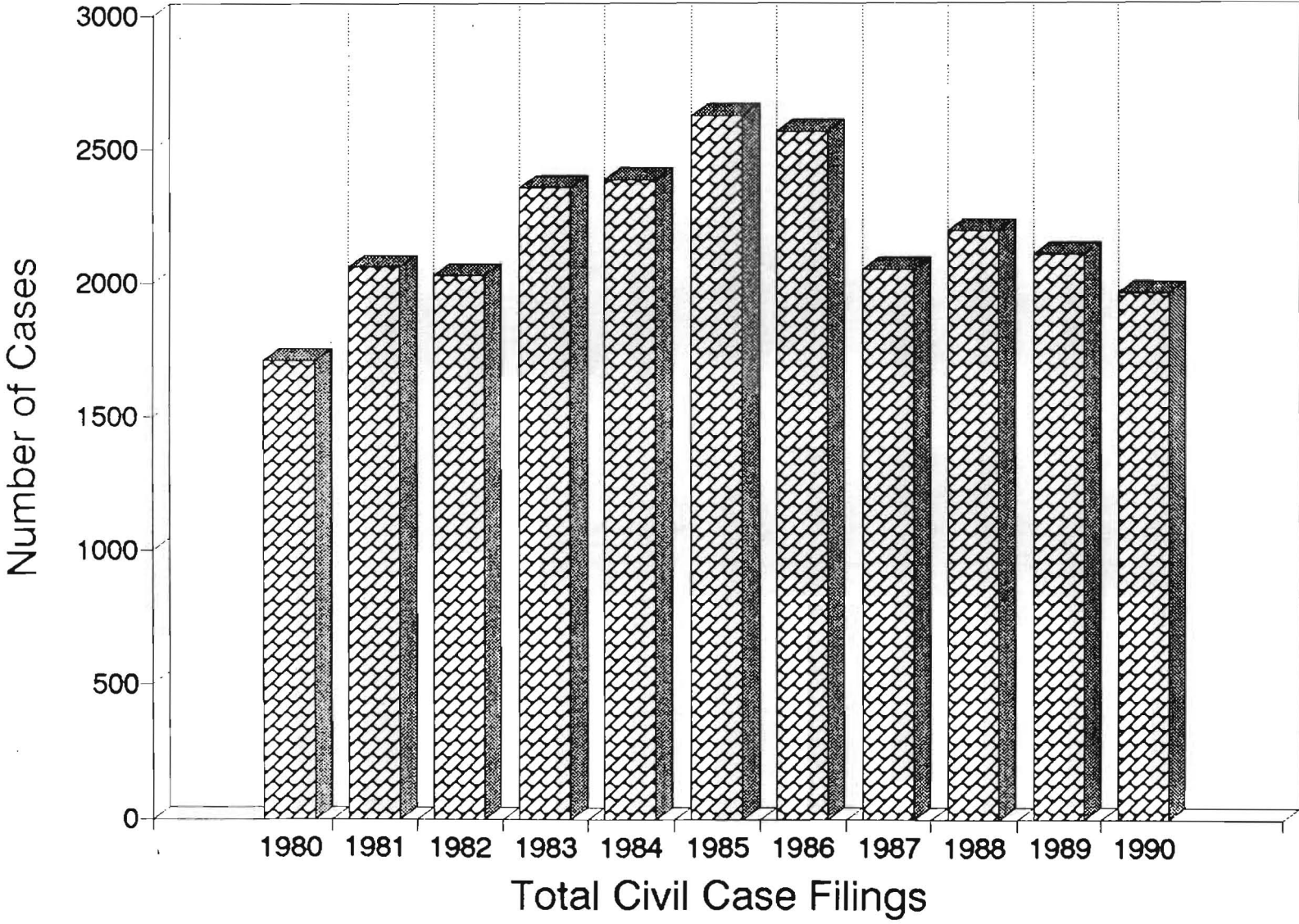
U.S. DISTRICT COURT--DISTRICT OF OREGON  
Categories of Criminal Cases



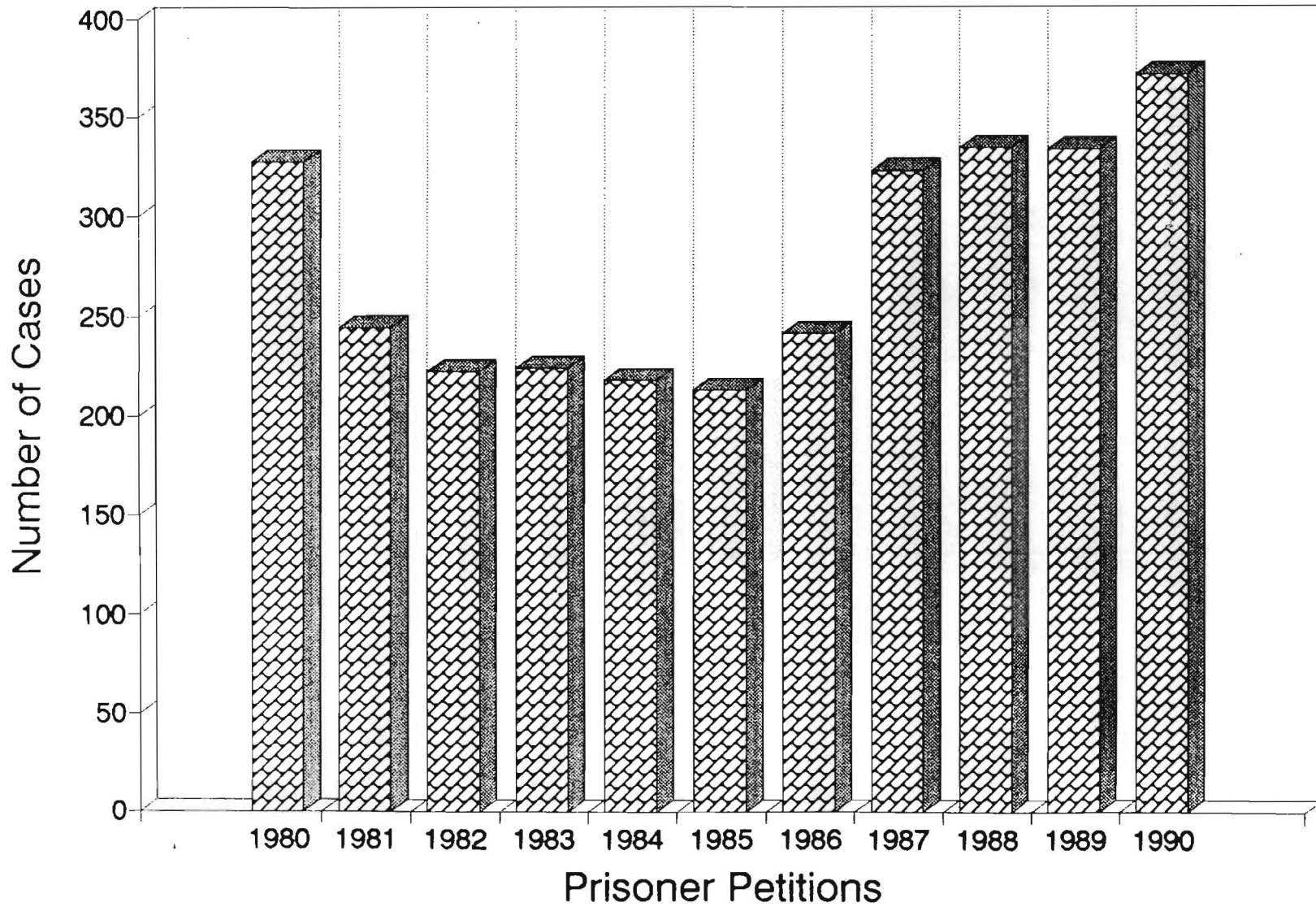
U.S. DISTRICT COURT--DISTRICT OF OREGON  
Categories of Criminal Cases



U.S. DISTRICT COURT--DISTRICT OF OREGON  
Categories of Civil Cases



U.S. DISTRICT COURT--DISTRICT OF OREGON  
Categories of Civil Cases



# U.S. DISTRICT COURT--OREGON

## Weighted v. Unweighted Case Filings Per Judgeship

Table X-1--Annual Report of the Director  
For the 12 Month Period Ending June 30th of Each Year

CATEGORY	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Weighted CV	414	426	461	427	467	421	439	447	424	374
Weighted CR	27	34	38	41	84	61	77	77	69	84
<b>Total Weighted</b>	<b>441</b>	<b>460</b>	<b>499</b>	<b>468</b>	<b>551</b>	<b>482</b>	<b>516</b>	<b>524</b>	<b>493</b>	<b>458</b>
UnWeighted CV	405	472	477	524	513	410	438	421	393	325
UnWeighted CR	26	35	39	41	72	66	74	79	75	95
<b>Total UnWeighted</b>	<b>431</b>	<b>507</b>	<b>516</b>	<b>565</b>	<b>585</b>	<b>476</b>	<b>512</b>	<b>500</b>	<b>468</b>	<b>420</b>
(Stored as f:\group\clerk\cjra\wtdata.xls)										

# U.S. DISTRICT COURT--OREGON

Criminal Case Filing Data

Court Management Statistics Report

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Immigration	1	2	5	12	7	19	13	19	38	64
Embezzlement	13	24	8	16	25	13	11	15	11	9
Auto Theft	1	1	0	0	0	1	1	0	31	63
Weapons and Firearms	5	6	9	11	24	24	23	34	8	14
Escape	5	6	9	7	2	12	14	10	28	24
Burgulary and Larceny	9	15	18	14	24	21	28	9	51	85
Marijuana and Controlled Substances	6	6	6	7	10	35	39	35	76	122
Narcotics	6	7	23	15	41	45	60	111	9	8
Forgery and Counterfeiting	2	9	7	11	15	14	9	7	48	48
Fraud	14	36	26	24	105	32	56	35	5	7
Homicide, Robbery and Assault	34	41	48	50	61	66	69	85	49	68
All Other Criminal Felonies	10	6	8	13	17	18	22	16	23	28
<b>TOTAL</b>	<b>106</b>	<b>159</b>	<b>167</b>	<b>180</b>	<b>331</b>	<b>366</b>	<b>343</b>	<b>376</b>	<b>377</b>	<b>540</b>

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# U.S. DISTRICT COURT--OREGON

Status of Felony Criminal Defendants

Table D-10--Annual Report of the Director

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
<b>Total Pending</b>	<b>161</b>	<b>161</b>	<b>169</b>	<b>172</b>	<b>308</b>	<b>269</b>	<b>410</b>	<b>411</b>	<b>491</b>	<b>638</b>
Non-triable Fugitive	96	84	71	51	99	75	147	146	161	169
Non-Triable--Other	1	1	0	0	1	1	1	0	0	0
Tried and Awaiting Sentencing	6	14	25	20	53	2	86	80	98	102
Tried and Fugitive After Trial	1	0	0	3	0	0	3	2	1	4
<b>Awaiting Trial</b>	<b>47</b>	<b>60</b>	<b>71</b>	<b>96</b>	<b>155</b>	<b>191</b>	<b>173</b>	<b>183</b>	<b>231</b>	<b>358</b>
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APPENDIX C-22

# U.S. DISTRICT COURT--OREGON

## Median Times to Disposition in Criminal Cases

### Table D-6--Annual Report of the Director

### For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Total Defendants	183	213	229	264	351	437	411	508	452	571
Median Months	5.4	5.6	4.9	4.2	4.1	3.8	4.5	5.4	5.6	5.4
Dismissed	30	37	24	44	32	46	58	76	57	52
Median Months	8.6	8	9	12.5	4.7	5.5	5.3	5	6.3	6.9
Plea of Guilty	114	136	174	176	258	364	312	382	352	481
Median Months	4.6	4.8	4.05	3.8	3.4	3.6	4.4	5	5.2	4.9
Court Trial	10	8	4	12	18	4	8	11	4	9
Median Months	8.2	N/A	N/A	5.4	4.3	N/A	N/A	7.9	N/A	N/A
Jury Trial	29	32	27	32	43	23	33	39	39	29
Median Months	6.5	7.2	7	4.9	5.6	5.9	6.1	7.2	11.9	10.6
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APPENDIX C-23



# U.S. DISTRICT COURT--OREGON

Criminal Defendant Disposition Table

Table D-7--Annual Report of the Director

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
<b>Total Defendants</b>	183	213	229	264	351	450	411	508	452	572
<b>Total Not Convicted</b>	35	41	32	50	42	59	66	79	63	56
Dismissed	30	37	24	44	32	59	58	76	57	53
Acquitted	5	4	8	6	10	0	8	3	6	3
<b>Total Convicted and Sentenced</b>	148	172	197	214	309	391	345	429	389	516
Plea of Guilty	112	134	172	175	258	364	311	378	357	478
Nolo Contendre	2	2	2	1	0	0	1	4	1	3
Court Conviction	9	8	4	9	12	4	7	10	1	7
Jury Conviction	25	28	19	29	39	23	26	37	36	28
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# U.S. DISTRICT COURT--OREGON

## Civil Case Filing Data

### Court Management Statistics Report

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Social Security	150	212	216	196	188	148	186	86	83	93
Recovery of Overpayments	250	497	369	779	525	187	183	184	123	27
Prisoner Petitions	222	224	218	213	242	323	335	334	372	435
Forfeitures, Penalties and Tax Suits	123	90	73	63	83	70	64	84	133	122
Real Property	60	66	77	84	71	67	64	84	133	52
Labor Suits	152	187	136	140	174	159	166	195	173	152
Contracts	425	415	477	426	486	400	425	472	323	371
Torts	252	253	340	273	285	258	288	257	291	240
Copyright, Patents, and Trademark	36	46	38	49	73	41	52	46	32	41
Civil Rights	210	162	200	224	198	199	177	199	195	215
Antitrust	13	26	12	13	15	17	5	7	5	8
All Other Civil	132	179	228	162	225	180	247	181	189	192
<b>TOTAL</b>	<b>2025</b>	<b>2357</b>	<b>2384</b>	<b>2622</b>	<b>2565</b>	<b>2049</b>	<b>2192</b>	<b>2106</b>	<b>1964</b>	<b>1948</b>

(Stored as f:\group\clerk\cjra\cvcases.xls)

# U.S. DISTRICT COURT--OREGON

Civil Cases Commenced--U.S. v. Private Litigation

Table C-3--Annual Report of the Director

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Total All Civil Cases	2,025	2,359	2,384	2,662	2,565	2,049	2,192	2,106	1,964	1,948
Total U.S. Civil	690	990	869	1,292	1,071	614	630	591	596	586
Total Private Civil	1,335	1,369	1,515	1,330	1,494	1,435	1,562	1,515	1,368	1,362
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# U.S. DISTRICT COURT--OREGON

## Median Times to Disposition in Civil Cases

Table C-5--Annual Report of the Director

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Total Cases	1,615	1,968	2,273	2,262	2,595	1,987	1,649	1,734	1,654	1,600
Median Months	7	7	6	7	6	7	7	7	8	8
No Court Action	1,160	1,451	1,663	1,708	1,985	1,481	1,281	779	672	605
Median Months	6	5	5	5	5	6	6	7	8	8
Before Pretrial	292	278	393	323	410	285	198	832	862	902
Median Months	9	8	10	9	9	9	9	6	6	6
During or After Pretrial	48	113	98	107	94	116	77	37	38	27
Median Months	19	15	17	15	14	17	14	17	14	17
Trial	115	126	119	124	106	105	93	86	82	66
Median Months	23	20	17	17	16	15	15	14	15	16
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# U.S. DISTRICT COURT--OREGON

Juror Utilization Information

Tables J-2 or J-3--Annual Report of the Director

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Total Number of Jurors Present for Juror Selection or Orientation	4,067	2,512	2,161	2,268	2,799	2,349	2,968	3,683	3,856	3,627
Percent Selected	60.00%	30.50%	31.60%	30.80%	31.50%	29.50%	25.90%	24.10%	23.50%	23.00%
Percent Challenged	18.30%	33.80%	38.50%	34.00%	34.00%	34.70%	30.30%	28.90%	43.20%	66.90%
Not Selected, Serving or Challenged	20.10%	35.70%	29.90%	34.50%	34.50%	35.80%	43.80%	46.90%	33.30%	10.10%
(Stored as f:\group\clerk\cjra\jury.xls)										

APPENDIX C-28

# U.S. DISTRICT COURT--OREGON

Terminations by District and Magistrate Judges

Tables C-7, D-7, and M-5--Annual Report of the Director

For the 12 Month Period Ending June 30th of Each Year

Category	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
<b>DISTRICT JUDGE -- Civil Terminations</b>										
Total Terminations	1,835	2,205	2,483	2,491	2,845	2,278	1,921	2,053	1,985	2,025
Jury Trials	46	68	62	58	58	49	63	50	50	46
Non-jury Trials	75	63	60	69	51	61	35	40	32	30
<b>DISTRICT JUDGE -- Criminal Defendant Terminations</b>										
Not Convicted	35	41	32	50	42	59	66	79	63	N/A
Plea Convictions	112	134	172	175	258	364	311	378	351	N/A
Non-court Trials	9	8	4	9	12	4	7	10	1	N/A
Jury Trials	25	28	19	29	39	23	26	37	36	N/A
<b>MAGISTRATE JUDGE -- Civil Case Consent Terminations</b>										
Total Civil Case Terminations	116	163	182	104	110	745	1,228	806	487	365
Jury Trials	24	33	20	17	3	75	49	23	16	19
Non-Jury Trials	18	16	25	12	12	10	11	13	5	8
Terminated Without Trial	74	114	137	75	95	660	1,168	770	466	338
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APPENDIX C-29

**APPENDIX (D)**

**CASE MANAGEMENT AND CASE ASSIGNMENT PLANS**



# **CASE MANAGEMENT PLAN**

**Published December 30, 1991**



# CHAPTER ONE

## INTRODUCTION

### SECTION 1.01 INTRODUCTION

In accordance with the Civil Justice Reform Act of 1990<sup>1</sup>, the court appointed a Civil Justice Reform Act Advisory Group and charged them with responsibility for conducting an assessment of the court's dockets pursuant 28 U.S.C. § 472. The results of the group's assessment and recommendations are codified in the Report of the Civil Justice Reform Act Advisory Group<sup>2</sup>.

In accordance with 28 U.S.C. §473, the following Civil Justice Expense and Delay Reduction Plan (hereinafter referred to as the "plan") is developed by the United States District Court for the District of Oregon. The plan is not intended to be a codification of all case management practices throughout the district, rather it is intended to supplement the court's Case Assignment Plan and the Local Rules of Civil Practice (amended and republished on January 1, 1991).

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<sup>1</sup> The Civil Justice Reform Act of 1990 is the short title of Title I of the Judicial Improvements Act of 1990, Pub. L. No. 101-650 (1990), 104 Stat. 5090, and subsequently codified at 28 U.S.C. §§ 471-482. Throughout this plan, this statute will be referred to as the Act.

<sup>2</sup> Report of the Civil Justice Reform Act Advisory Group to the United States District Court for the District of Oregon (December 30, 1991). Throughout this plan, the advisory group's report will be referred to as the Report.

## SECTION 1.02 STATEMENT OF PURPOSE

The case management procedures described in this plan, the Case Assignment Plan and the Local Rules of Civil Practice, are designed to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.<sup>3</sup>

## SECTION 1.03 OBJECTIVES

The guidelines and procedures already operating within the District of Oregon include the following principles and guidelines of litigation management and cost and delay reduction:

- Differentiated case management based upon complexity, pretrial management requirements and available judicial resources.<sup>4</sup>
- Early and ongoing judicial intervention of the pretrial process.<sup>5</sup>
- Setting early and firm trial dates.<sup>6</sup>
- Control of the discovery process.<sup>7</sup>
- Controlling the motion practice.<sup>8</sup>

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<sup>3</sup> 28 U.S.C. § 471.

<sup>4</sup> 28 U.S.C. § 473(a)(1).

<sup>5</sup> 28 U.S.C. § 473(a)(2)(A).

<sup>6</sup> 28 U.S.C. § 473(a)(2)(B).

<sup>7</sup> 28 U.S.C. § 473(a)(2)-(5).

<sup>8</sup> 28 U.S.C. § 473(a)(2)(D), (3)(D).

- Establishing and promoting alternative means of dispute resolution, including settlement.<sup>9</sup>
- Establishing final pretrial conference procedures.

#### SECTION 1.04 APPLICATION

*Swing down*

Although consistency and uniformity in the management and administration of civil and criminal cases throughout the District is the desired goal, nothing in this plan should be construed to limit or abrogate a judicial officer's authority to tailor pretrial and trial procedures in any case pending before that judicial officer.

*72*

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<sup>9</sup> 28 U.S.C. § 473(a)(3)(A),(a)(6).

## CHAPTER TWO

### CASE MANAGEMENT

#### SECTION 2.01 CASE MANAGEMENT -- Generally

As noted in the previous chapter, "consistency and uniformity in the management of civil and criminal cases is the desired goal. . ."<sup>10</sup>. Notwithstanding this goal, it is neither possible nor desirable to force all cases into a single "case management model". In point of fact, differential management of individual civil and criminal cases has always been the hallmark of case management within this district.

Within the District of Oregon, cases are managed from filing through disposition with minimal judicial intervention, **except** for the early implementation and regulation of firm discovery schedules and trial dates. Experience has shown that the establishment of realistic and firm discovery schedules and trial dates have proven to be the single most successful elements of an effective case management system. Experience has also demonstrated that this approach optimizes limited judicial resources by permitting the court to focus on real problem cases rather than spreading finite judicial resources over all of the cases.

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<sup>10</sup> Section 1.04.

Finally, Oregon's case management system is designed to recognize the unique case management styles of each district and magistrate judge. Notwithstanding differences in "style", fundamental case management principles are, as a rule, uniformly applied by the district and magistrate judges of the Court.

## SECTION 2.02 CASE MANAGEMENT PROCEDURES

It is the ultimate goal of the court to afford every civil litigant a trial within one year from the date of filing. To accomplish this goal, the court recognizes the need for effective case management procedures, to include the following:

(a) Initial Case Assignments: All new cases are directly assigned to a district or magistrate judge at the time of filing in accordance with the Case Assignment Plan (SEE Appendix [A]).

### COMMENTS ON THE CIVIL JUSTICE REFORM ACT OF 1990

Although essentially a "random draw" case assignment system, many of the principles of *differential case management* are initially fulfilled by the procedures set forth in the Case Assignment Plan.

Various "direct assignment" and "re-assignment" procedures of the plan are intended to help "make an early assessment of each case filed in terms of the nature and extent of judicial and other resources required for preparation and disposition of the cases." Implementation of the Civil Justice Reform Act of 1990, Federal Judicial Center (January 18, 1991), p. 13.

(b) Early Judicial Intervention Through the Establishment of Pretrial and Discovery Deadlines: Firm pretrial and discovery deadlines are established for all cases immediately at the time of filing (SEE Chapter Three).

(c) Soliciting Consents to Magistrate Judges: Magistrate judge consent forms are issued at the time of filing and the consent issue is discussed at subsequent status conferences and the final pretrial conference. It is important to note that as felony criminal caseloads increase for the district judges (magistrate judges cannot handle felony cases), less time is available for Article III judges to conduct civil trials.

(d) Early Judicial Review and Conference: Once a case is filed and docketed, the assigned district or magistrate judge reviews the case to ascertain whether the case has (or has the potential to have) complex factual or legal issues, or whether it involves "numerous parties". As a result of that early review process, if the case appears to warrant "early judicial intervention" beyond the normal scheduling order, the assigned judge will consider one of the following options:

Option (1) Entry of an order preventing default judgement and ordering plaintiff's attorney to advise the court when all defendants have either filed an appearance, or have indicated their intent to appear. As soon as that information is obtained, the judge should order a status conference.

Option (2) Order a status conference within 30 days of filing.

Option (3) At any such status conference, entry of a "full" scheduling order for the case including discovery deadlines, motion deadlines, pretrial order lodging dates, pretrial conference and trial dates at any status conference.

Option (4) Entry of any special orders deemed necessary for the specific case.

Option (5) Coordinate the option to permit the attorneys to proceed without court guidance until the filing of the pretrial order, at which time a status conference will be held to set a pretrial conference and trial date. Failure to lodge a pretrial order at the directed time will result in an order to show cause why the case should not be dismissed.

(e) Telephone Conferences to Regulate and Maintain Pretrial Deadlines and

Schedules: The assigned judge should arrange for an immediate telephone conference whenever any of the events listed below occur.

- Any application or stipulation for extension of time to complete discovery.
- Evidence of repeated discovery squabbles.
- Suggestion of an overly active motions practice.
- Any motion to extend the pretrial order lodging date.

At the conclusion of the telephone conference, the judge should set a "full" schedule for the remainder of the case to include any revised discovery deadlines, motions deadlines, pretrial order lodging date, pretrial conference date, and most importantly, a firm trial date.

Attorneys will be expected to respond to calls for telephone status conferences on short notice before and after office hours, as well as during the lunch hour.

(f) Availability of Alternate Dispute Resolution: Throughout the pretrial process, the judge should apprise counsel of alternate dispute resolution options, e.g. possibility of a settlement judge (L.R. 240-1); use of the court's voluntary mediation program (L.R. 240-2); or the use of other local mediation or settlement services.

(g) **Status Conferences:** The court will schedule status conferences as often as may be needed to expedite cases and assist in case management. In addition, attorneys have an affirmative duty to ask for scheduling and status conferences to help resolve disputes (including discovery disputes) **after** conscientious efforts have been made by all parties to resolve such disputes.

(g) **Establish and Maintain a Firm Trial Date for Each Case:** Firm trial dates will be set. Counsel and the court must expect to set and keep trial dates, and although emergencies do arise (including potential delays of trials caused by cases assigned statutory priority, e.g. criminal cases, preliminary injunctions, etc.), the court will do everything in its power to find another active, senior or visiting district, or magistrate judge to try the case as scheduled. In order to maintain these firm trial dates, attorneys, parties and witnesses should be prepared for extended trials days. Counsel are advised to have witnesses on standby and readily available each trial day.

(h) **Clerk's Office Responsibility:** The Clerk's Office shall supply such support as is needed to assure the expeditious handling of cases including statistical data advising the judges of the status of their cases.



**CHAPTER THREE**  
**CONTROLLING DISCOVERY AND PRETRIAL ACTIVITIES**

**SECTION 3.01 CONTROLLING DISCOVERY**

(a) **Scheduling Order**: Except as provided in paragraph (b) below, the clerk shall issue a Discovery and Pretrial Scheduling Order at the time of filing of each new civil action (SEE Appendix [B])<sup>11</sup>. The order shall fix the time for filing all pleadings and motions; join all parties and claims; complete all discovery<sup>12</sup>; and lodge a joint pretrial order.

(b) **Differential Management of Discovery and Pretrial in Selected Cases**: The court finds that systematic and differential treatment<sup>13</sup> of the following categories of cases is appropriate:

- Social Security cases (SEE Section 3.02[a])
- Habeas corpus cases (SEE Section 3.02[b]-[d])
- Bankruptcy appeals or withdrawals (SEE Section 3.02[e])
- Asbestosis personal injury (SEE Section 3.02[f])
- Government collection cases (SEE Section 3.02[g])
- IRS summons enforcement cases (SEE Section 3.02[h])

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<sup>11</sup> Fed.R.Civ.P. 16(b).

<sup>12</sup> For the purposes of this order, "completion of discovery" is defined in L.R. 205(b).

<sup>13</sup> 28 U.S.C. § 473(a)(1).

**COMMENTS ON THE  
CIVIL JUSTICE REFORM ACT OF 1990**

**SECTIONS 3.02(A) AND (B)**

Use of the Discovery and Pretrial Scheduling Order, coupled with the differential treatment of selected classes of cases, accomplishes many of the management principles set forth in the Civil Justice Reform Act of 1990, including:

**Differential Case Management**

- Establishes an events oriented case management system which monitors "key" events or schedules in every case.
- Incorporates methods for supervising and controlling case management intervals to make them more predictable and adaptable for every case.

**Early and Ongoing Judicial Intervention**

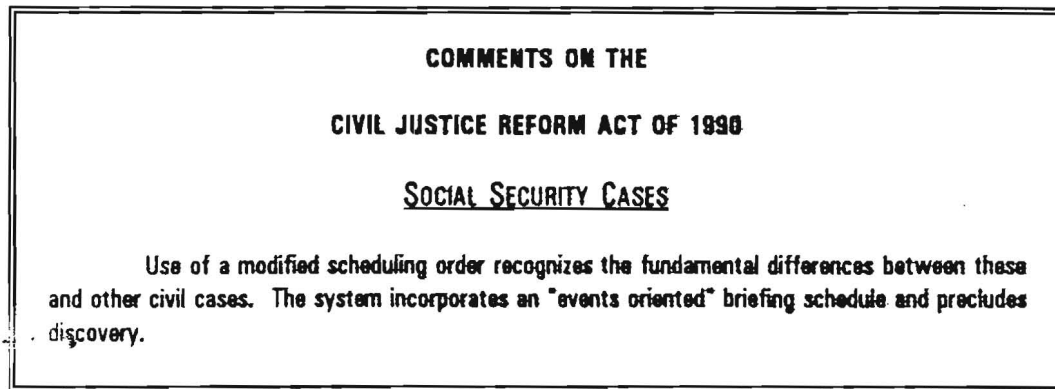
- Creates a "management by exception" philosophy which balances the requirement for early judicial intervention with the reality of finite judicial resources. Under the Oregon model, a judicial officer need only become involved in the early phase of litigation when a case falls "outside of the time limits" established by the order.
- Establishes firm cutoff dates for amendments to pleadings, filing of all motions, joinder of parties, and completion of discovery.

**Control of Discovery**

- In conjunction with L.R. Rules 120-4, 220, 230 and 235, the order establishes the time framed for initiation and completion of discovery.
- Discovery and litigation management deadlines are established at the commencement of every case. These deadlines have been refined over time to fit the vast majority of civil cases, placing the burden upon counsel to show "good cause" why additional time should be granted.

## SECTION 3.02 DIFFERENTIAL CASE MANAGEMENT

(a) Social Security Cases: Upon filing, the clerk is directed to issue the Procedural Order for Social Security Review Cases<sup>14</sup> in lieu of the scheduling order referenced in Section 3.01(a).



(b) Habeas Corpus Cases Filed Pursuant to 28 U.S.C. § 2241: Typically, these cases are filed by federal pro se prisoners incarcerated at the Sheridan Federal Correctional Institution. To assist these petitioners in framing the issues, the clerk is directed to require that all such actions be presented on the form petition approved by the court.<sup>15</sup> Thereafter, the clerk is directed to issue the 28 U.S.C. § 2241 Scheduling Order<sup>16</sup> in lieu of the scheduling order referenced in Section 3.01(a).

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<sup>14</sup> SEE Appendix (C).

<sup>15</sup> SEE Appendix (D).

<sup>16</sup> SEE Appendix (E).

(c) Habeas Corpus Cases Filed Pursuant to 28 U.S.C. § 2255: Typically, these cases are filed by federal pro se prisoners who challenge various aspects of their sentence. To assist these petitioners in framing the issues, the clerk is directed to require that all such actions be presented on the form petition approved by the court.<sup>17</sup> Thereafter, the case will be directly assigned to the original sentencing judge for scheduling and disposition.

(d) Habeas Corpus Cases Filed Pursuant to 28 U.S.C. § 2254: Typically, these cases are filed by state pro se prisoners incarcerated at various state correctional institutions. To assist these petitioners in framing the issues, the clerk is directed to require that all such actions be presented on the form petition approved by the court.<sup>18</sup> Thereafter, the clerk is directed to issue the 28 U.S.C. § 2254 Scheduling Order<sup>19</sup> in lieu of the scheduling order referenced in Section 3.01(a).

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<sup>17</sup> SEE Appendix (F).

<sup>18</sup> SEE Appendix (G).

<sup>19</sup> SEE Appendix (H).

**COMMENTS ON THE  
CIVIL JUSTICE REFORM ACT OF 1990**

**§§ 2241, 2255 AND 2254 HABEAS CORPUS CASES**

Use of pre-printed and pre-approved petition forms has helped to accomplish the following goals contemplated by the Act:

**Economy of Limited Judicial Resources**

Standardized petition forms have streamlined the entire habeas corpus process. Petitioners are now able to more clearly articulate their cause of action, thus reducing the substantial amounts of time previously required of judicial officers in reviewing and helping the petitioner frame the issues.

**Control of Discovery**

Standardized petition forms also recognize the more liberal pleading standards which apply to pro se prisoner litigants. The forms have been designed to focus each claim, which in turn helps to narrow the scope of ultimate discovery.

**Judicial Economy**

At present, only 42 U.S.C. § 1983 prisoner civil rights actions and a very few § 2254 habeas corpus cases are being referred to the court's pro se law clerk in Eugene. Although we need an additional pro se law clerk to administer the § 2241 and § 2255 cases arising from the Sheridan Federal Correctional Institution, the current Judicial Conference pro se law clerk "staffing formula" does not provide for more than this single law clerk to handle these specialized cases.

Experience has demonstrated that these cases are most effectively administered by a single law clerk working for the entire court. The problem here is that Sheridan is less than two years old, and the growth in federal prisoner litigation is only now being felt in the Portland division. Because of the labor intensive nature of these cases, it is clear that the court needs to secure the appointment of a second full-time pro se law clerk to handle the Sheridan cases. However, until that and happens, the press of civil and criminal business in Portland precludes the centralized administration of these cases before any district or magistrate judge.

(e) **Bankruptcy Appeals and Withdrawals:** Cases appealed from the bankruptcy court (28 U.S.C. § 158), or motions to withdraw the reference to the bankruptcy court (28 U.S.C. § 157), shall be assigned, scheduled, and administered in accordance with the provision of Section 2.05 of the Case Assignment Plan.

**COMMENTS ON THE  
CIVIL JUSTICE REFORM ACT OF 1990  
BANKRUPTCY APPEALS  
AND MOTIONS TO WITHDRAW REFERENCE**

These cases are fundamentally different from most other civil cases. On the one hand, appeals from final orders of the bankruptcy court involve cases that have already been adjudicated, thus no discovery scheduling order is required in this court.

Motions to withdraw reference of a bankruptcy case, on the other hand, involve "preliminary considerations" by this court. If the motion is granted, the case will be transferred to this court, at which time the assigned judge will set all required discovery schedules. If the motion is denied, the case is returned to the bankruptcy court for adjudication.

(f) Asbestosis Personal Injury Cases: Until otherwise directed by the Calendar Management Committee, Section 2.03(a) provides for the direct assignment and administration of all such cases to a single judicial officer.

**COMMENTS ON THE**

**CIVIL JUSTICE REFORM ACT OF 1990**

**ASBESTOSIS PERSONAL INJURY CASES**

Direct assignment for "centralized" administration and management is appropriate because of the complexities and similarities involved in the discovery process.

Consolidating these cases under one judge permits that court to more effectively monitor "re-occurring issues"; standardize discovery across sub-classes of cases; coordinate the calendars of a limited number of lawyers involved in these cases; and facilitate settlement and/or disposition of cases.

(g) Government Collection Cases: Section 2.03(b) and (e) of the Case Assignment Plan provides for the direct assignment of all government collection cases (including forfeiture actions, VA overpayment claims, student loan cases, etc.) to a senior district judge.

**COMMENTS ON THE  
CIVIL JUSTICE REFORM ACT OF 1990**

**GOVERNMENT COLLECTION CASES**

Direct assignment of all student loan, VA overpayment, and other government forfeiture/collection cases is appropriate because they typically involve little or no discovery and very little judicial management in order to reach a timely disposition.

Consolidating these cases under one judge permits the court to more effectively monitor "re-occurring issues"; standardize discovery across classes of cases; coordinate the calendars of a limited number of lawyers involved in these cases; and facilitate settlement and/or disposition of cases.



(h) **IRS Summons Enforcement Action:** Sections 2.03(c) and 2.04(b) provide for the assignment and disposition of these cases, and because these cases are usually decided upon the initial papers and motion, the clerk is directed not to issue the scheduling order contemplated in Section 3.01(a).

**COMMENTS ON THE**

**CIVIL JUSTICE REFORM ACT OF 1990**

**IRS SUMMONS ENFORCEMENT ACTIONS**

These cases are typically decided on the initial papers and motion. They are usually short lived in duration and virtually no discovery is required. Therefore, it is inappropriate for the clerk to issue the standard discovery order at the commencement of the action.

**CHAPTER FOUR**  
**CALENDARING RESPONSIBILITIES AND PRIORITIES**

**SECTION 4.01 CALENDARING RESPONSIBILITIES**

(a) **Motions Practice:** Unless otherwise allowed by the assigned judge, civil and criminal motions practice shall be governed by the provisions of L.R. 220.

(b) **Pretrial Conference and Trial Setting:** Unless provided for by the assigned judge, the conduct of the any required pretrial conference, and the establishment of a firm trial date, shall be governed by the provisions of L.R. 235.

(c) **Policy Regarding Stipulations for Continuance:** Limitations on stipulations for extensions of time and/or continuances shall be governed by L.R. 230-4.

## SECTION 4.02 MEDIATION AND SETTLEMENT CONFERENCES

(a) **Mediation:** Unless stipulated to by the parties, or as otherwise directed by the assigned judge, the mediation process in any particular case shall be governed by the provisions of L.R. 240-2.

(b) **Settlement Conferences:** Unless otherwise stipulated to by the parties, or as otherwise directed by the assigned judge, scheduling of a settlement conference before a judicial officer in any particular case shall be governed by the provisions of L.R. 240-1. As a matter of policy, given the press of other calendar related matters, parties will be encouraged to first pursue mediation as a first approach to settlement and, if that fails, the parties will be permitted to re-apply for the appointment of a settlement judge.

## SECTION 4.03 TRIAL SETTING PRIORITIES

As a matter of law, the court is required to afford first priority in trial settings to criminal cases facing "speedy-trial problems". Nonetheless, the court is committed to establishing firm and realistic trial dates for all cases, civil as well as criminal.

To accomplish this goal, the court encourages all civil litigants to file written "consents" to Magistrate Judges pursuant to Fed.R.Civ.P. 73(b). In the event that parties will not consent to a Magistrate Judge conducting the trial, most judges employ a "trailing calendar" concept in which cases are set to a "day certain", but in the event of trial conflicts with criminal cases, civil litigants will often be informed to "be available" later in the day or week to begin their trial.



# CASE ASSIGNMENT PLAN

Revised December 30, 1991

CASE ASSIGNMENT PLAN  
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*Appendix A*

CHAPTER ONE

GENERAL ASSIGNMENT POLICIES

SECTION 1.01: APPLICATION

Unless otherwise directed by the court's Calendar Management Committee, the following case assignment procedures shall apply to all civil, criminal and miscellaneous cases filed in the District of Oregon.

SECTION 1.02: OBJECTIVES

The case assignment procedures outlined in this Plan are designed to ensure that:

(a) All cases are assigned on an impartial basis, and that every case assignment shall be free from actual or potential influence or manipulation by any litigant, counsel, or member of the court family.

(b) All full-time United States magistrate judges in the District of Oregon are incorporated into the civil case assignment system on a co-equal basis with the district judges.

(c) The judicial business of the District of Oregon is equitably allocated among the judicial officers of the court.

**SECTION 1.03:    CASE ASSIGNMENT DIVISIONS**

For purposes of implementing the provisions of this Plan, the District of Oregon shall be divided into the Northern and Southern Divisions pursuant to L.R. 105-2.

**SECTION 1.04:    AMENDMENTS**

Changes, amendments, or modifications to the Case Assignment Plan shall be made only with the approval of the court.

CHAPTER TWO  
CIVIL CASE ASSIGNMENTS

SECTION 2.01: TIME OF ASSIGNMENT

Unless otherwise provided for in this plan, the clerk shall assign all civil cases at the time of the filing of the initial complaint.

SECTION 2.02: RANDOM CASE ASSIGNMENTS

Unless otherwise provided in this Plan, civil cases will be randomly assigned to the pool of district and magistrate judges as indicated below:

(a) Northern Division Assignments: Civil cases filed in the Northern Division shall be assigned to the active district and magistrate judges then resident at the United States Courthouse in Portland.

(b) Southern Division Assignments: Civil cases filed in the Southern Division shall be assigned to the active district and magistrate judge then resident at the United States Courthouse in Eugene.

SECTION 2.03      DIRECT ASSIGNMENT—Northern Division Cases

Within the northern division the following direct case assignments shall be made without going through the random draw procedures mandated by Section 2.01 of this plan.

(a)      Asbestosis Personal Injury Cases: Asbestosis personal injury cases<sup>3</sup> shall be directly assigned at the time of filing to Judge Panner.

*Special Instruction:* The clerk is directed to credit Judge Panner for each direct assignment of an asbestosis personal injury case during subsequent refillings of the random draw system.

(b)      Government Forfeiture Cases: All government fine or forfeiture cases shall be directly assigned to Judge Belloni.

(c)      IRS Summons Enforcement Proceedings: Petitions and orders to show cause to enforce an IRS summons or subpoena shall first be assigned a miscellaneous case number and then referred to the Civil Duty Judge for consideration.

*Special Instruction:* At the point in time that the Civil Duty Judge determines that the matter rises to the status of a "contested proceeding," the duty judge shall notify the clerk of this changed status and the clerk shall randomly assign the case in accordance with Section 2.01 of this plan.

(d)      Pendleton Cases: Upon approval of a motion for trial and/or other proceedings in Pendleton pursuant to L.R. 105-2(d), the clerk shall reassign the case from the docket of the previously assigned judicial officer to Judge Panner.

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<sup>3</sup> As distinguished from asbestosis property damage cases filed with a similar nature of suit code (NSC 368).



(e) **Recovery of Defaulted Student Loans and Veteran Benefit Overpayments:**

All cases to recover defaulted student loans or veteran benefit overpayments<sup>4</sup> shall be directly assigned to Judge Belloni.

(f) **Southern Division Cases:** Upon approval of a motion for trial or other proceedings in Eugene, Klamath Falls, Medford or Coquille pursuant to L.R. 105-2(d), the clerk shall transfer the case to the Eugene Division for reassignment pursuant Section 2.01(b) of this plan.

(g) **Recovery of Federal Tuition Payments Made to Physicians Who Contracted to Provide Medical Services in Exchange for Tuition:** If identifiable at that the time of filing, the clerk shall directly assign to Judge Frye all cases involving physicians who contracted with the federal government to provide medical services in exchange for tuition assistance.

(h) **Related Cases:**

(1) **Contemporaneous Filing of Related Cases:** If obviously related cases are presented for filing at the same time, the clerk shall select the first case presented for filing and shall randomly assign that case in accordance with Section 2.01 of this plan. Thereafter, all other **contemporaneously filed and obviously related cases** shall be directly assigned to the judge or magistrate previously assigned the lower numbered case.

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<sup>4</sup> *Nature of Suit Code (NSC) 152 or 153.*

- (2) **Subsequent Filing of Related Cases:** If a related case is filed subsequent in time to a previously filed case, the clerk **shall not** directly assign the subsequent related case to the judge previously assigned the low numbered case; instead, the clerk shall randomly assign the case in accordance with Section 2.01 of this plan.

***Special Instructions:** If the "relatedness" can be determined at the time of filing, the clerk shall bring the case to the Calendar Management Committee for reassignment consideration; otherwise, the judge assigned the higher numbered case may request that the case be reassigned to the judge handling the lower numbered case.*

(i) **Remanded Proceedings:** Cases remanded to this court shall be returned to the judicial officer who entered the final judgment or order from which the appeal was taken.

(j) **Social Security Cases:**

- (1) **Initial Filings:** All social security cases presented for filing shall be randomly assigned to the active district and magistrate judges on a 2:1 ratio in accordance with Section 2.01 of this plan.
- (2) **Motions to Re-open a Social Security Case:** Upon the filing of a motion to re-open a social security case, the clerk shall submit the motion and case to the judicial officer responsible for entry of the remand order.

(k) Temporary Restraining Orders (TRO's) and/or Preliminary Injunctions:

If a motion for temporary restraining order or motion for preliminary injunction is filed in any case initially assigned to a magistrate judge, and if consents to trial by a magistrate judge have not been filed by all parties, then the clerk shall assign the case a backup district judge.

*Special Instructions: Upon reassignment, the clerk shall credit the assignment to the backup district judge during the next refilling of the random case assignment system.*

(l) Trial Ready Cases Without Magistrate Consent: Whenever a magistrate judge determines that a previously assigned case is ready for trial and that full consent will not be obtained, the magistrate judge will notify the clerk's office, and the clerk will automatically reassign the case a backup district judge.

(m) Unavailability of Previously Assigned Judicial Officer: Whenever a previously assigned judicial officer is unavailable for reassignment or return of any remanded or re-opened case, the clerk shall randomly reassign the case in accordance with Section 2.01 of this plan.

**SECTION 2.04      DIRECT ASSIGNMENT—Southern Division Cases**

Within the southern division the following direct case assignments shall be made without going through the random draw procedures mandated by Section 2.01 of this plan.

(a)    **Pendleton Cases:** Upon approval of a motion for trial and/or other proceedings in Pendleton pursuant to L.R. 105-2(d), the clerk shall transfer the case from the presiding judicial officer to the Northern Division for reassignment pursuant to Section 2.03(d).

(b)    **Petitions to Enforce IRS Summons:** Petitions to enforce an IRS summons shall be assigned to the Southern Division district judge.

(c)    **Trial Ready Cases Without Magistrate Judge Consent:** Whenever a magistrate judge determines that a previously assigned case is ready for trial and that full consent will not be obtained, the magistrate judge shall notify the clerk's office, and the clerk shall automatically reassign the case to the Southern Division district judge.

SECTION 2.05      BANKRUPTCY MATTERS

(a)      Appeals from Final Orders/Judgments of the Bankruptcy Court: When a notice of appeal from a bankruptcy final judgment or order is filed, it shall be the responsibility of that court to establish a briefing schedule, assemble the record on appeal, and when all the necessary briefs have been filed, transmit the record to this court for random assignment to an district judge in the appropriate division.

(b)      Motion for Leave to Appeal: The bankruptcy court shall file and docket any motion for leave to appeal a preliminary matter and shall transmit the motion and relevant portions of the bankruptcy record to this court; upon receipt, the clerk shall refer the motion to the Civil Duty Judge for resolution.

*Special Instructions: Sometimes, the filing party is uncertain whether the appeal is from a final judgment or order or merely from some interlocutory proceeding or order. In such a case, the filing party may also file a notice of appeal contemporaneously with the motion for leave to appeal. When that happens, both instruments shall be referred to the Civil Duty Judge for review. If the Civil Duty Judge determines that the appeal is actually from a final order or judgment, the clerk shall return the documents to the bankruptcy court, who, in turn, will prepare the appellate record for transmission and assignment in accordance with the provisions described in paragraph (a) above.*

(c) Motion to Dismiss a Pending Bankruptcy Appeal: If a motion to dismiss an appeal is filed in the bankruptcy court prior to the completion of the briefing schedule and transfer of the record on appeal to the district court, the clerk of the bankruptcy court shall promptly transmit the motion and relevant papers to this court. Upon receipt, the clerk shall refer the motion and papers to the Civil Duty Judge for disposition.

(d) Signature Requirements on Certain Orders and Judgments from the Bankruptcy Court: Certain orders and judgments require the signature of a district judge. In such cases, the clerk of the bankruptcy court shall transmit the documents to this court and shall note on the transmittal memorandum that "*Only a district judge's signature is required.*" These documents shall be referred to the Civil Duty Judge for signature.

(e) Motion for Withdrawal of Reference: If a motion for withdrawal of reference is filed in the bankruptcy court, copies of the motion and supporting documents shall be promptly transferred to this court and the clerk shall refer the motion to the Civil Duty Judge for resolution. If the motion for withdrawal of reference is approved, the clerk shall randomly assign the case to a district judge in accordance Section 2.01 of this plan.

(f) Jury Trials in Bankruptcy Cases: Whenever a bankruptcy case or proceeding is transferred to this court for trial by a district judge, the clerk shall assign the case to a district judge in accordance with the random draw procedures set forth Section 2.01 of this plan.

**SECTION 2.06      RECUSALS**

In addition to the recusal guidelines set forth in 28 U.S.C. § 455, the court's Calendar Management Committee shall have authority to exclude or exempt any judge or magistrate judge from the assignment of a particular case, or group of cases, or from the random case assignment system.

**SECTION 2.07      CIVIL DUTY JUDGE**

(a)    **Duty Judge—Northern Division:** With the exception of the Chief Judge, the active district judges resident in the United States Courthouse in Portland shall serve on a one-month rotating basis as the Civil Duty Judge.

(b)    **Duty Judge—Southern Division:** The active district judge resident in the United States Courthouse in Eugene shall serve as the Civil Duty Judge. Whenever a matter requiring the attention of the Civil Duty Judge is presented for filing, and the clerk determines that the Civil Duty Judge is unavailable, the clerk shall refer the matter to the Southern Division magistrate judge. In the event that the Southern Division magistrate judge is unable to dispose of the matter, or is otherwise unavailable, then the clerk shall refer the matter to the Northern Division's Civil Duty Judge for disposition.

(c)    **Responsibilities of the Civil Duty Judge:** In addition to other matters referred to the Civil Duty Judge by other provisions of this Plan, the Civil Duty Judge shall be responsible for handling *ex parte* applications and/or proceedings that require expedited judicial attention.

(d) **Motions For Disqualification:** When a motion for disqualification of a judge or magistrate judge is filed, the clerk shall refer the motion to the other resident judicial officer in Eugene, who shall review the motion and rule upon the sufficiency of the affidavit pursuant to 28 U.S.C. § 144. If the affidavit is found to be insufficient, the motion will be denied and the matter referred back to the accused judge for determination pursuant to 28 U.S.C. § 455. If the reviewing judicial officer finds that the affidavit meets the statutory grounds, he shall proceed to make a factual determination as to whether or not the motion should be allowed.

**SECTION 2.08      PREJUDGMENT ARRESTS, ATTACHMENTS AND SEIZURES IN  
in rem ACTIONS**

(a) **Initial Proceedings:** All applications for arrest, attachment and/or seizure, filed pursuant to the Supplemental Rules of Certain Admiralty and Maritime Claims, or as otherwise provided for by law or statute, shall be referred to any available magistrate judge for review and due process consideration. In the event that a magistrate judge is unavailable, the matter shall be referred to the Civil Duty Judge.

(b) **Objections to a Magistrate Judge's Rulings:** Objections to an order of arrest, attachment and/or seizure issued by the magistrate judge shall be referred to the assigned district judge or backup district judge as appropriate. In the latter case, upon resolution of the objection by the backup district judge, the case shall be returned to the assigned magistrate judge for all further proceedings.



CHAPTER THREE  
CRIMINAL CASE ASSIGNMENTS

SECTION 3.01 FELONY CRIMINAL CASE ASSIGNMENTS—Northern Division

(a) Type of Cases Assigned: Unless otherwise provided for in this Plan or by the Calendar Management Committee, the following categories of criminal cases will be assigned to the active district judges then resident in the United States Courthouse in Portland:

- (1) Felony cases initiated by either indictment or information.
- (2) Misdemeanor and/or petty offense cases in which no consent to trial by a magistrate judge is obtained.
- (3) Appeals from convictions imposed by a magistrate judge in misdemeanor and/or petty offense cases.

(b) Criminal Case Assignment Lists: The clerk shall maintain a continuing list of the active district judges then resident in the United States Courthouse in Portland, ranked in seniority order and shall assign each case identified in paragraph (a) above in sequential order from this list. Cases shall be assigned in the order that they are presented for filing.

(c) Sequestration and Security of the Criminal Case Assignment Lists: The clerk shall secure the criminal case assignment list from access or inspection by litigants, counsel, or unauthorized members of the court family.

(d) **Fugitive Defendants:** Fugitive defendants need not be reported on the assigned judge's list of pending cases and, absent direction from the Calendar Management Committee, no adjustments need be made to the sequential criminal case assignment procedures set forth in paragraph (b) above.

(e) **Related Case Assignments:** The clerk shall assign all criminal cases in accordance with the sequential case assignment system described in paragraph (b) above.

***Special Instructions:** Related cases shall be assigned via the sequential case assignment method. Counsel seeking to reassign a case or group of cases to the low-numbered judge should be instructed to file an appropriate motion to reassign or consolidate the case or cases.*

(g) **Remanded Proceedings:** Cases remanded to this court shall be returned to the judicial officer who entered the final judgment or order from which the appeal was taken.

**SECTION 3.02      FELONY CRIMINAL CASE ASSIGNMENTS—Southern Division**

(a)    **Type of Cases Assigned:** Unless otherwise provided for in this Plan or by the Calendar Management Committee, the following categories of criminal cases will be assigned to the active district judge then resident in the United States Courthouse in Eugene:

- (1)    Felony cases initiated by either indictment or information.
- (2)    Misdemeanor and/or petty offense cases in which no consent to trial by a magistrate judge is obtained.
- (3)    Appeals from convictions imposed by a magistrate judge in misdemeanor and/or petty offense cases.

(b)    **Remanded Proceedings:** Cases remanded to this court shall be returned to the judicial officer who entered the final judgment or order from which the appeal was taken, and if that judge is unavailable, the case shall be reassigned to the district judge then resident in the Eugene office.

**SECTION 3.03      CRIMINAL DUTY JUDGE RESPONSIBILITIES**

(a)    **Duty Judge Roster—Northern Division:** Except for the Chief Judge, the active district judges resident in the United States Courthouse in Portland shall serve on a one-month rotating basis as the Criminal Duty Judge.

(b) **Duty Judge--Southern Division:** The active district judge resident in the United States Courthouse in Eugene shall serve as the Criminal Duty Judge. When a matter requiring the attention of the Criminal Duty Judge is filed and the clerk determines that the Criminal Duty Judge is unavailable, the clerk shall refer the matter to the Southern Division magistrate judge. In the event the magistrate judge is unable to dispose of the matter, or is otherwise unavailable, the clerk shall refer the matter to the Northern Division's Criminal Duty Judge for disposition.

- (1) Guilty pleas and sentences when the assigned judge is unavailable.
- (2) Grand jury matters, e.g. grants of immunity, recalcitrant witnesses, etc.
- (3) Proceedings pursuant to Fed. R. Crim. P. 20.
- (4) Waivers of indictment.

#### SECTION 3.04 **CRIMINAL MOTIONS PRACTICE**

(a) **Pretrial and Discovery Motions:** As a general rule, pretrial and discovery motions are calendared and decided by the assigned judge. Notwithstanding the general rule, the assigned judge may refer any motion to a magistrate judge for appropriate action or disposition.

(b) Motions Filed Pursuant to 28 U.S.C. § 2255: Motions filed pursuant to 28 U.S.C. § 2255 will be automatically referred to the district judge who sentenced the defendant. When the previously assigned judge is unavailable, the clerk shall assign the motion via the sequential assignment method described in Section 3.01(b).