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REPORT

of the

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

of the

UNITED STATES DISTRICT COURT

for the

DISTRICT OF NEW MEXICO

The Honorable Juan G. Burciaga
Chairman

Jesse Casaus
Reporter

Submitted to the Court and the Public
Pursuant to Title 28, Section 472(b),
of the United States Code.
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INTRODUCTION

The United States District Court for the District of New Mexico has always taken pride that it is an effective court which has continually accomplished its responsibilities with fairness and efficiency. In spite of its large geographical area (fifth largest state in United States) and its relatively small number of judges, the Court has made its judicial services available to all litigants throughout the State of New Mexico with dispatch, including when necessary, taking the court to those places of holding court closest to the parties, lawyers and witnesses, in order to assure access to fair, equal and prompt justice to all persons and entities under its jurisdiction.

In the last few years, the Court has not been able to dispose of its civil cases as quickly as it had in the recent past when it was held in high esteem as one of the models of the judicial system for early case dispositions. Of late, the Court has received exceptional increases in criminal cases to the extent that the handling of civil cases has had to receive lesser priority attention because of the statutory time requirements mandated by the Speedy Trial Act for trying criminal defendants.

Although its current civil case disposition rate is not a travesty of justice by any means, the Court, nevertheless welcomed the Civil Justice Reform Act of 1990, as a means by which it could seek assistance from outside experts who could help it return to disposing of civil cases more rapidly. And so, on February 28, 1991, it appointed an Advisory Group to assist in improving procedures and recommending innovative ones to attain the goals and objectives set forth by Congress of reducing costs and delays with civil litigation. In this regard, Congress

has required that each Advisory Group:

. . ."(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". . .

To accomplish the above mandate, the Court established task forces from its Advisory Group to assure that the essential areas as outlined in the Civil Justice Reform Act would be considered. Thus, it established the following subcommittees with the understanding that all members regardless of subcommittee assignments would work as members of the main Advisory Group as a committee of the whole in reaching the desired objectives:

a. Criminal Justice Issues Subcommittee

b. Civil Discovery Issues Subcommittee

c. Court Procedures Issues Subcommittee

d. Pro Se Litigation Issues Subcommittee

e. Cost and Delays Issues Subcommittee

f. Assessments of Conditions Within the District Subcommittee

Each subcommittee prepared its own written report, however, as expected, many of the issues and specific topics covered by one subcommittee overlapped into those covered by others.

Nevertheless, we have consolidated the findings, conclusions and recommendations of the various subcommittees into one Advisory Group Report with the subcommittee reports as appendices. Where there were divergent or single views, such have been so identified and the Advisory Group leaves it to the Court to decide which position, if any, it wishes to adopt for its Implementation Plan.

The Report is divided into four parts and appendices. Part I is a description of the United States District Court for the District of New Mexico with its historical background, organization, resources and general factors which impact on court operations. Part II constitutes an assessment of conditions of the district dealing primarily with an overview of its past, current and trends in filings, terminations and pending caseloads. Part III identifies the problems and other factors affecting costs and delays of civil litigation as revealed through specific case reviews, questionnaires, interviews and as perceived and analyzed by the Advisory Group subcommittees. Part IV contains the specific recommendations by the Advisory Group for the Court's consideration in adopting its Implementation Plan to improve or eliminate those circumstances and/or problems which contribute to excessive costs and delays with civil litigation.

A listing of the Advisory Group members appointed by the Court on February 28, 1991, is included as Appendix A to this Report. The members of the Advisory Group Subcommittees appointed by the Court on August 9, 1991, are included as Appendix B. The other appendices contain data on specific research, data to support reported findings and copies of the subcommittee reports.

PART I: DESCRIPTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

A. Historical Background

1. Judicial Appointments

a. The District of New Mexico was established on January 6, 1912, on the same date when the Territory of New Mexico became the 47th state of the Union. As the District was formed, the state had a population of between 327,350 (1910 census) and 360,350 (1920 census) with a total land area of approximately 121,364.5 square miles. The 1990 census reflected that New Mexico had a total population of 1,515,069 or an average of 12.5 persons per square mile.

b. The first district judge for the District of New Mexico was William Pope who was appointed on January 11, 1910, as a "circuit rider judge" covering the Territory of New Mexico. Judge Pope served until September 13, 1916, and he was followed by the appointment of Colin Neblett on February 5, 1917, who served until his retirement on July 6, 1948.

c. The District of New Mexico received its "second judgeship" when Orie L. Phillips was appointed on March 3, 1923, as a temporary district judge and served in the District until 1929, when he was appointed a circuit judge. Circuit Judge Phillips received temporary assignments as a district judge so that, in effect, New Mexico had only one permanent district judge, the Honorable Colin Neblett, who served from 1917 as a replacement for Judge Pope until Judge Neblett retired in 1948. U. S. Senator Carl A. Hatch was appointed district judge on January 21, 1949. The next judicial appointment was Waldo H. Rogers on May 15,

1954, the second authorized federal judgeship for New Mexico. District Judge Hatch retired on April 5, 1963, and was followed with the appointment on the same date of New Mexico State District Judge H. Vearle Payne. District Judge Waldo H. Rogers passed away on January 12, 1964, and he was replaced by the appointment of Howard C. Bratton on March 3, 1964.

d. New Mexico's third judgeship commenced with the appointment of U.S. Senator Edwin L. Mechem on November 21, 1970. New Mexico's fourth judgeship went to State District Judge Santiago E. Campos on July 20, 1978. While awaiting the appointment of Judge Campos, Chief Judge H. Vearle Payne took senior status on April 6, 1978, and he was followed on the bench with the appointment of his first law clerk, Juan G. Burciaga, on November 9, 1979. District Judge Edwin L. Mechem took senior status on July 3, 1982, and his position was filled with the appointment of Bobby R. Baldock on June 17, 1983. District Judge Baldock was subsequently appointed on January 24, 1986, as a circuit judge at the 10th Circuit, U. S. Court of Appeals, and his district judgeship position was filled with the appointment of John E. Conway on July 3, 1986. Chief Judge Howard Bratton took senior status on February 4, 1987, and he was followed with the appointment of James A. Parker on November 13, 1987.

e. On December 1, 1990, the District of New Mexico was authorized its fifth judgeship, however, todate, the nominee, Leroy Hansen, has not been confirmed by the Senate. Thus, the Court is presently authorized five active judgeships, four full-time magistrate judges and five part-time magistrate judges. In addition, it has two senior district judges. (NOTE: The Honorable LeRoy E. Hansen was sworn in as the District of New Mexico's fifth district judge on October 5, 1992.)

B. Location

1. Headquarters

a. The original headquarters for the United States District Court for the District of New Mexico was in Santa Fe at the same site where a divisional office of the court is presently located. The building in Santa Fe was originally designed to be the legislative building for the Territory of New Mexico, however, shortly before its completion, it was converted to the U. S. Courthouse with facilities for a district judge, the clerk of court, U. S. Attorney's Office and the U. S. Marshal.

b. The district judges commuted to Albuquerque from Santa Fe when trials in Albuquerque were more convenient for the parties. Trials in Albuquerque were held in the old U. S. Post Office building at 4th and Gold Streets until the U. S. Courthouse and Federal Building was constructed at 421 Gold Avenue in 1931. The headquarters of the U. S. District Court was moved from Santa Fe to Albuquerque in 1949, to the 421 Gold Avenue SW building and remained there until 1966, when it was moved to its present location at 500 Gold Southwest, now known as the Dennis Chavez U. S. Courthouse and Federal Building.

2. Divisional Offices

a. After the headquarters was relocated to Albuquerque, the Santa Fe U. S. Courthouse remained as an unmanned facility used periodically by the Albuquerque district or other visiting judges from time to time. With the appointment of District Judge Campos on July 20, 1978, Santa Fe became the first manned divisional office of the court with a district judge in residence and a minimal number of deputy clerks permanently assigned to the Santa Fe

office. A probation officer has served in that location since the appointment of District Judge Campos.

b. The current Las Cruces facility at 200 E. Griggs was used on an as-needed basis by District Judges from Albuquerque and Santa Fe since its dedication on June 14, 1974. It was also used for office space for the part-time U. S. Magistrate in Las Cruces and his clerk and a minimal U. S. Probation Office staff who covered the entire southeastern and southwestern portion of the state. Prior to this date, the court used the old Post Office building across from the present facility on an as-needed basis since its construction in approximately 1926. On February 4, 1987, Chief Judge Bratton assumed senior status and on November 9, 1987, he took up residence in Las Cruces. This latter move resulted in the installation of a full time divisional Clerk's office as well as the part-time magistrate judge and full time Probation and Pretrial divisional offices.

c. The current U. S. Courthouse and Federal Building in Roswell was completed in 1966. The facility has been used primarily for hearings and trials for visiting District and Bankruptcy Judges. A full-time Probation Officer was in office at that location from September 22, 1980, until November 19, 1987, and his probation clerk was authorized to accept district court filings during that period. The Roswell divisional office has been closed since that date and remains unmanned for the U. S. District Court except when visiting District and Bankruptcy Judges hold sessions at that location. However, U. S. Circuit Judge Bobby R. Baldock has been in residence at the Roswell facility since January 24, 1986.

d. In 1975, two probation officer assistants were assigned to Shiprock to assist with the Indian country clients. In 1979, one of the positions was converted to full-time

probation officer status and for the first time a Native American was assigned as a probation officer for the District of New Mexico and the office was moved to Farmington.

C. Court Resources

1. District Judges

a. The District of New Mexico is currently authorized five judgeships. The Chief Judge and two other District Judges are located in Albuquerque. A District Judge resides in Santa Fe. The fifth judgeship has been vacant since it was recommended by the Judicial Conference of the United States and approved by Congress on December 1, 1990. (NOTE: The fifth judgeship was filled on October 5, 1992, and the appointed District Judge will reside in Albuquerque.)

b. There are two Senior Districts Judges who still carry a substantial caseload. Senior Judge E. L. Mechem is in residence in Albuquerque and carries the same civil caseload as the active judges. He does not handle criminal matters. Senior Judge Bratton is in residence in Las Cruces and handles the civil matters filed for that region which number approximately one hundred cases per year, or one-third of the civil caseload of each of the active judges. He also handles approximately thirty percent of the criminal cases to be tried in Las Cruces.

2. Magistrate Judges

a. There are four full-time magistrate judges authorized for the District of New Mexico. Chief Magistrate Judge Sumner Buell passed away on March 25, 1992, and Magistrate Judge William W. Deaton was appointed Chief Magistrate. The other full time magistrate in Albuquerque is Magistrate Judge Robert W. McCoy. Former State District and

Appeals Judge Lorenzo F. Garcia was selected as replacement for the late Magistrate Judge Buell and was duly sworn in as U. S. Magistrate Judge on November 9, 1992. Magistrate Judge Joe H. Galvan is located in Las Cruces.

b. There are five part-time magistrates judges authorized for the District of New Mexico. These are: part-time Magistrate Judges Ann Yalman at Santa Fe, Reed Frost at Farmington, Robert Ionta at Gallup, Fred Tharp at Clovis and Wayne Jordan at Alamogordo.

3. Court Divisions

a. Clerk's Office

The Clerk's Office is composed of the Clerk, 38 deputy clerks and two systems administrators with its headquarters in Albuquerque and divisional offices in Santa Fe and in Las Cruces. A copy of the Clerk's Office organizational structure is included as Appendix C.

b. Probation Office

The main headquarters for the U. S. Probation and Parole Office for the District of New Mexico is located in Albuquerque with divisional offices in Santa Fe, Las Cruces and in Farmington with a total of 26 probation officers, 20 clerks and two systems personnel. A copy of its organizational chart is included as Appendix D.

c. Pretrial Services Office

Headquarters for the Pretrial Services Offices is located in Albuquerque with a divisional office in Las Cruces. The organization has 10 pretrial services officers and 5.5 clerks. Its organizational chart is attached as Appendix E.

D. Special Statutory Status

The Court does not have any special statutory status such as Pilot, Early Implementation nor Demonstration Court.

E. Factors Affecting Court Operations

1. There are four principal characteristics which affect the amount and type of case loads handled by the U. S. District Court for the District of New Mexico. These are:

a. Geographic and Demographic Factors

b. Economic Development

c. Concentration of Federal Reservations

d. Growth of Prisoner Population

F. Geographic and Demographic Factors

1. The State of New Mexico is located in the Southwestern United States in an area with considerable natural resources and a diverse geography with climate and land differences from desert lands to high mountain ranges. Its population in 1970 was 1,017,000 and grew to 1,303,000 in 1980, an increase of 2.5% per year. In 1990, the population increased to 1,515,069, an annual increase of 1.2% and substantially higher than the population growth of .9% for the United States as a whole during the same period.

2. The population is located primarily in the central Rio Grande corridor which includes the major metropolitan areas of Albuquerque, Las Cruces and Santa Fe. The 1990 census reflected that these three cities accounted for 48% of the state's population with the rest of the state less densely populated in smaller cities and towns. According to the 1990 census, the state had a population density of 12.5 persons per square mile, ranking it as the 37th state

in terms of population but fifth in geographical size. The Rio Grande corridor continues as one of the fastest growing areas in the state, especially in the southern Rio Grande valley area where Las Cruces has overtaken Santa Fe as the second largest city in the state. This population increase will, no doubt, continue as demographic data reflect that this area contains a relatively young population and this fact plus the forthcoming international border crossing points will probably result in increases of economic activities and population in this area. The distance of 225 miles from Las Cruces to Albuquerque creates a travel burden on the court. Currently approximately half of the criminal case load is in Las Cruces and in 1991 the active judges spent over 20% of their bench time in Las Cruces.

3. Other aspects of the geographic and demographic factors which impact on the court's caseload is that the state has five large wilderness areas, eight national forests, ten national monuments and three national parks with visitations of over two million in 1991. Additionally, the state has a demographic breakdown as per the 1990 census of 50.44% White, 38.23% Hispanic, 8.45% Native American, 1.82% Black, 0.83% Asian and 0.22% Other. The foregoing percentages may explain why the civil rights case filings were 17% of the total civil filings for statistical year (SY) 1991 compared to a U. S. average of 9% for that year.

G. Economic Development

1. The State of New Mexico experienced rapid employment growth throughout the 1970s primarily from the heavy extractive industries of uranium, coal, petroleum, molybdenum, potash, copper and governmental employment. However, due to changes in the energy and international markets, employment growth within the state in the 1980s dropped dramatically. In 1980, mining accounted for almost 6% of all employment, however, by 1989,

these activities accounted for only 2.5% of all jobs. The bankruptcy filings for the District of New Mexico for SY 1986 were 2,201 cases but such filings increased 103.5% to 4,479 filings for SY 1991. The number of pending bankruptcy cases increased from 3,568 for SY 1986 to 6117 cases for SY 1991, an increase 11.2% for each of the five year period, for a total increase of 70 percent.

2. Government employment has held a relatively constant share of about 25% of those employed within the state of New Mexico. The federal government with its military reservations, research facilities and regional offices continues to be one of the largest employers in the state. New Mexico was able to gain military assignees while other states began to lose them as "cold-war" demilitarization commenced. Likewise, the high technology laboratories within the state have been able to go into research and other spin-off activities from their previous military applications roles, thus preserving many of these positions at their previous levels. This new technology has also resulted in additional employment for New Mexico with the concentration of "clean" electronics plants within the state. Thus, in the overall, New Mexico employment statistics reflect a very favorable annual growth of 2.4% compared to 1.7% for the United States from 1980 to 1990.

3. Another area of economic activity which impacts on the District of New Mexico is the international trade which occurs between Mexico and the United States through its present two border crossing points in the state. A third border crossing point is expected to be authorized in the very near future at Santa Teresa which is close to the El Paso-Juarez crossing point and could divert some of the export-import trade occurring at the latter to the New Mexico crossing point because of the already high volume traffic between El Paso and

Juarez. The only air international port of entry in New Mexico is Albuquerque where during 1991, the value of imports was over 29 million dollars with exports of about 21 million dollars. Lastly, we do not know when (or if) the North American Free Trade Agreement will go into effect, however, if it does, we know that any resultant litigation involving New Mexican firms could very likely come into the District of New Mexico's jurisdiction. Perhaps the most important factor of the over 200 miles of international border between Mexico and New Mexico is the dramatic increase in criminal cases in the last seven years in the District of New Mexico, mostly due to drug trafficking cases. Apparently, such trafficking is now being diverted from the previous Florida entry route to the California-Texas-Arizona-New Mexico common borders with Mexico.

H. Concentration of Federal Reservations

1. A large portion of the land in New Mexico is publicly owned with ownership distributed as follows: federal land, 34%; Indian land, 9.4%; state and local government land, 12.1% and privately owned, 44%.

2. As indicated above, New Mexico has a substantial number of military reservations within the jurisdiction of this District of New Mexico. At present, New Mexico has an Air Force installation at Albuquerque, at Clovis and at Alamogordo with a total of approximately 15,359 military staff and 6,247 civilian employees assigned. In addition, The U. S. Army maintains 1,027 military and 4,513 civilians at White Sands Missile Testing Range with other military personnel also assigned at McGregor Range near the New Mexico-Texas border. Unlike other states where demilitarization is taking place, New Mexico has recently received additional military personnel and construction of new facilities to accommodate the

added staff. It would appear that the District of New Mexico will have a large number of military personnel assigned within the state for the foreseeable future.

3. There are also 22 Indian reservations within the State of New Mexico with a residing Native American population of over 125,000. This high number of Native Americans living on the reservations continues to be a significant source of criminal felony cases under the jurisdiction of this court. For example, from January 1991 to date in August 1992, 18% of all grand jury indictments returned by the Albuquerque grand juries involved "crime on an Indian reservation" which for the most part can be assumed to include Native Americans as defendants, albeit this ethnic group constitutes 8.45% of the state's population. This high number of Indian reservations also constitute a basis for civil cases which often times involve prolonged and complex litigation such as water rights, land condemnations, land grants and other equally complex cases where little precedence exists and the cases remain pending an inordinate length of time.

I. Growth in Prisoner Population

1. The prisoner population in the state of New Mexico has continued to increase since the infamous riots of 1980. At that time, the penitentiaries of the state held 1,199 inmates serving sentences over one year. Since that date, the average annual growth to 1990 has been 9.3% per year with a total population of 2,879 inmates serving sentences of over one year in New Mexico as of 1990.[1] Comparison with the neighboring states of Arizona, Colorado, Kansas and Nevada reflects that these states have many more inmates than New Mexico. See Table I. In these states as well as in Utah and Wyoming, the annual percentage increase of

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[1] Correctional Populations, U. S. Statistical Abstract and Department of Justice

inmates serving sentences of over one year ranges from 7% to 11% per year. The average annual increase in the number of inmates for these states was approximately 10.6% It should be pointed out that New Mexico does not seem to have more inmates incarcerated per 100,000 residents than do the other regional states. New Mexico, actually, had a smaller average increase of 7.5% in number of inmates per 100,000 in population compared to neighboring regional states which had an approximate annual average increase of 8.25% in number of inmates per 100,000 in population during the 10 year period of 1980-1990.

2. From 1982 to 1992, the number of prisoner petitions filed in the U. S. District Court increased from 139 to 274, an average annual increase of over 7%. These 274 cases represented over 14% of the total filings for the court for SY 1991 and 24% of the total pending cases for the court for SY 1992. The peak year for prisoner petition filings was in SY 1989 with 280 petitions, followed by a decrease at the end of SY 1990 and a slight increase in filings in SY 1991, with total filings in SY 1992 of 274, for an increase of 33% over SY 1991. The total pending prisoner petition cases of 274 at the end of SY 1992 made up 22% of the Court's total pending caseload of 1830 cases. Since the number of inmates did not increase in similar percentages, this dramatic increase in filings of prisoner cases is in part due to a change in court policy which directed that each submission to the court by an inmate of correspondence or documentation purporting to initiate a new case be filed as a new case regardless of patent deficiencies of the purported action.

Table I

PRISONERS WITH SENTENCE EXCEEDING ONE YEAR								
YEAR	New Mexico	Arizona	Colorado	Kansas	Nevada	Utah	Wyoming	Total
1980	1,199	4,360	2,609	2,494	1,839	928	534	13,963
1981*	1,347	5,016	2,777	2,847	2,162	1,030	576	15,754
1982*	1,513	5,771	2,955	3,251	2,541	1,143	622	17,795
1983*	1,699	6,639	3,145	3,712	2,986	1,268	671	20,120
1984	1,908	7,638	3,347	4,238	3,510	1,407	724	22,772
1985	2,112	8,273	3,369	4,732	3,771	1,623	758	24,638
1986	2,545	9,038	3,673	5,425	4,505	1,817	865	27,868
1987	2,626	10,558	4,808	5,781	4,434	1,858	916	30,981
1988	2,723	11,578	5,765	5,817	4,881	1,944	945	33,653
1989	2,759	12,726	6,908	5,616	5,112	2,368	1,016	36,505
1990	2,879	13,781	7,018	5,777	5,322	2,482	1,110	38,369
annual growth	9.15%	12.20%	10.40%	8.76%	11.21%	10.34%	7.59%	10.64%
* estimated								
Source: U.S. Statistical Abstract and Department of Justice "Correctional Populations" various years								

PART II. ASSESSMENTS OF CONDITIONS IN THE DISTRICT

A. Overview of the Docket

1. Calendar System

a. As far as it is generally known, the District of New Mexico has operated on an individual judge calendar system for most of its history. Under this system, each case, civil or criminal, is assigned to a specific judge at the time of initial filing and the case remains with that judge until final disposition. More recently, specific magistrate judges are also being assigned for civil cases as the case is filed and assigned to a district judge. If there are reasons why the district judge or magistrate judge should recuse himself, the clerk's office is so notified and the case is transferred to another district or magistrate judge.

b. The individual calendar system seems to provide the judges' with the appropriate controls and incentives to permit effective handling of dockets and the Advisory Group does not believe that a master calendar or a combination master-individual system would necessarily improve the times for disposing of cases. The individual calendar system in the District of New Mexico provides enough flexibility so that district judges and magistrate judges can assist each other as may be required.

2. Total Case Filings, Terminations and Pending Caseloads

a. For the statistical year (SY) ended June 30, 1992, there were 1,985 civil and criminal cases filed in the United States District Court for the District of New Mexico. For the ten-year period 1982 to 1992, statistics reflect a steady increase in annual filings from 1982 to 1988 when they peaked at 2,161 total filings for the latter year. Since 1988, there has been a gradual decrease in total filings. For SY 1992, New Mexico was in the middle of all

federal district courts in total filings. This information and total case load statistics are reported in Table II. The District ranked 49th among the 94 federal district courts as regards total raw filings for each of New Mexico's five authorized judgeships, however, the District ranked 32nd when comparing total weighted case filings per judgeship. Additional graphs and supporting information are included in Appendix F.

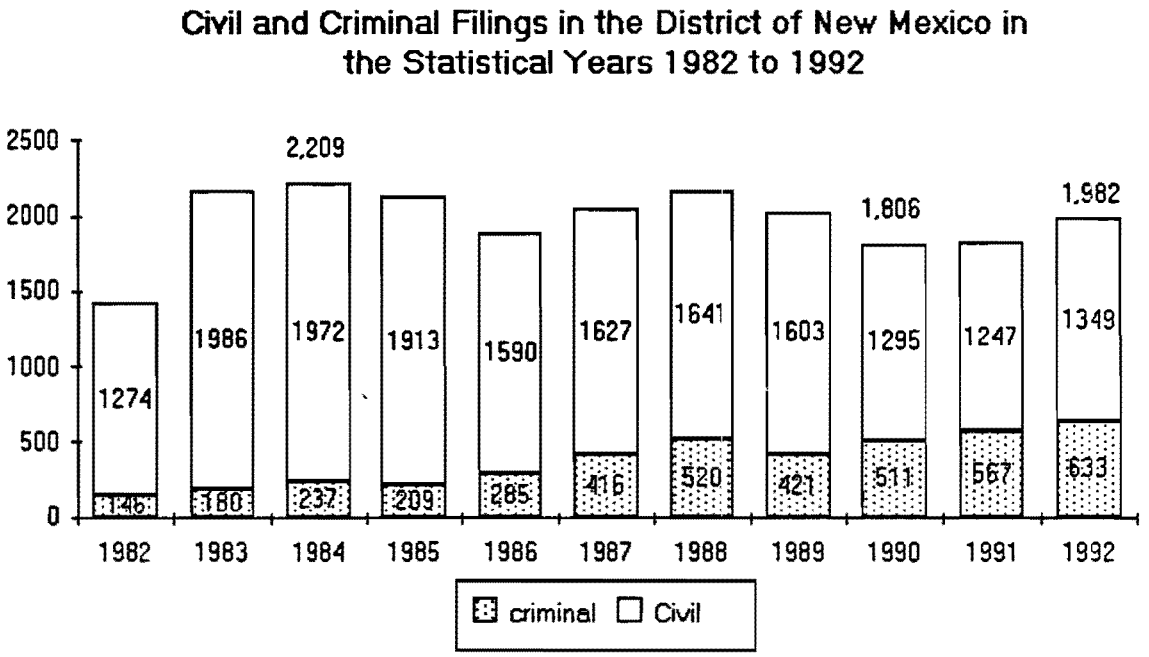
b. Total filings do not tell the entire story of the District's docket condition and its ability to deal specifically with civil cases. This is exemplified by the dramatic increases in criminal felony filings from SY 1986 to SY 1992. Filings increased 122% from SY 1986 with 285 filings to 633 filings at the end of SY 1992. SYs 1987 and 1988, also experienced large increases of 46% and 25%, respectively. There was a decrease in SY 1989 of 19% followed by increases of 22% and 11% in 1990 and 1991, respectively. Criminal filings again increased by approximately 12% in 1992.

c. The increase in criminal cases during the above years gave the District of New Mexico a substantially different mix of criminal and civil filings, as reflected in Graph 1, compared to other districts. Concurrent with the increases in criminal filings, there were decreases in civil case filings making the criminal case load a larger percent of total filings. Following the national trend, civil case filings in New Mexico have decreased 22% over the past five years. At the period ended June 30, 1991, the District received 1,233 total civil filings, the lowest since 1982. The dramatic increase in criminal filings and decrease in civil filings has resulted in the District receiving 32% of its total filings as criminal filings, while for the SY 1991, criminal cases in the Tenth Circuit and in the rest of the 94 federal courts constituted from 14 to 15% of their total filings. This high increase in criminal filings has resulted in New

Table II

	SUMMARY OF TOTAL CASE LOAD IN THE DISTRICT OF NEW MEXICO SY 1981 TO SY 1992										
	Total Number of Cases						Per Authorized Judgeship				
	Filings				Ratio	Number	Filings				
	Weighted	Raw	Closures	Pending	Pend/Close	of Trials	Weighted	Raw Filings	Closures	Pending	Trials
1981	1,326	1,227	1,184	1,025	0.87	177	332	307	296	256	44
1982	1,356	1,420	1,281	1,147	0.90	187	339	355	320	287	47
1983	1,559	2,166	1,762	1,540	0.87	184	390	542	441	385	46
1984	1,736	2,209	2,082	1,634	0.78	215	434	552	521	409	54
1985	1,602	2,122	2,137	1,751	0.82	134	400	531	534	438	34
1986	1,710	1,875	1,748	1,855	1.06	156	427	469	437	464	39
1987	2,095	2,043	1,869	2,011	1.08	186	524	511	467	503	47
1988	2,173	2,161	1,973	2,165	1.10	223	543	540	493	541	56
1989	2,012	2,024	2,029	2,142	1.06	280	503	506	507	536	70
1990	1,850	1,806	1,733	2,202	1.27	279	462	452	433	551	70
1991	1,890	1,814	1,651	2,363	1.43	311	473	454	413	591	62
1992	2,064	1,982	1,961	2,314	1.18	315	516	496	490	579	63

Graph 1



Mexico's SY 1992 ranking per authorized judgeship as fifth in the nation for criminal filings and 73rd for civil filings. This ranking is, in realty, higher when it is considered that the District was without its fifth authorized judgeship from December 1990 to October 1992. Within the Tenth Circuit district courts, New Mexico ranks first in the number of criminal filings per active judgeship.

d. The dramatic increase in criminal cases for the District has resulted in equally dramatic increases in total pending cases. Our statistics reflect that in every year from SY 1981 through SY 1991, the number of total pending cases has increased appreciably. For example, for SY 1981, New Mexico had a total pending caseload of 1,025 cases and for SY

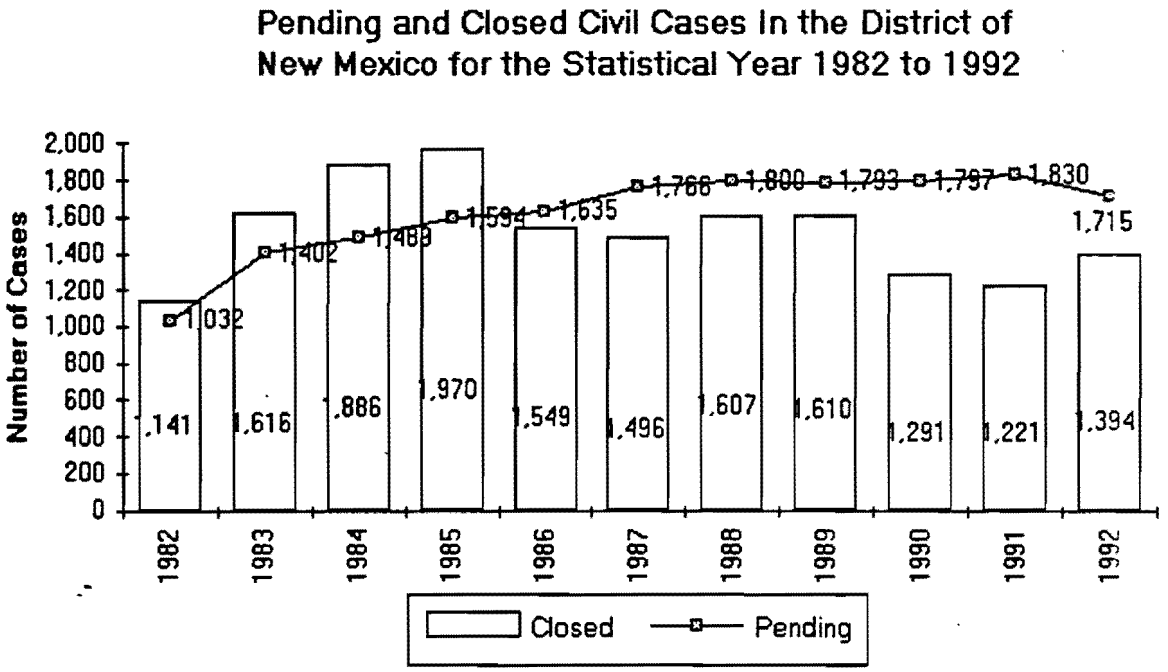
1991, the total pending cases were 2,334, an increase of almost 131 percent. In the SY ended June 30, 1986, the total pending caseload was 1,855 cases compared with the 2,364 pending in SY 1991, an increase of 23.74% during this five year period. Criminal cases pending in the district more than doubled from 1986 to 1991, 220 versus 534, respectively, for an increase of 142.7%.

e. The impact upon civil cases caused by the increased criminal filings can be measured in several ways. In 1981, only 2.4% of the pending civil cases were over 3 years old. In 1992, the percentage of civil cases pending for over 3 years had increased to 9.9%. Likewise, the median time it took the District of New Mexico to dispose of a civil case in 1986 was nine months. By 1990, the median time to dispose of a civil case had increased to twelve months. The median age declined slightly to eleven months in SY 1992. The median time for the disposition of civil cases within the 10th Circuit was approximately 9 months, equal to the median time for disposition of a case in the 94 district courts of the entire system.

f. The ratio of pending to terminated cases is another measure of a court's ability to dispose of its cases. This ratio of the number of pending civil cases to the number of terminated civil cases has increased steadily from 0.89% in 1981 to 1.53% in 1991. This is depicted in Graph 2.

g. The increases in pending cases, median disposition times and ratios of pending to terminated cases are not necessarily explained by the lack of judicial activity as statistics published by the Administrative Office of the U. S. Courts and the District of New Mexico reflect that the total number of trials completed in the District has increased steadily. The average number of trials completed per active judgeship for the District of New Mexico for

Graph 2



the SY ended June 30, 1992, were 63 per judgeship, which placed New Mexico first in the 10th Circuit district courts where the average per judgeship was 40, and first in the nation where the average was 31 trials per judgeship.

3. The Civil Docket

a. A summary of the raw and weighted civil case filings, pending civil cases, percentage of civil cases over three years old, ratio of closing to pending civil cases, median age of civil case filing-to-disposition times in months and the number of civil trials is included in Table III. Table IIIA separates filings by category to reflect the unusual increases in civil filings which occurred in the early and mid-1980s due to large numbers of filings of civil actions to recover student loans. If these student civil loan cases are excluded from the Court's

Table III & Table IIIA

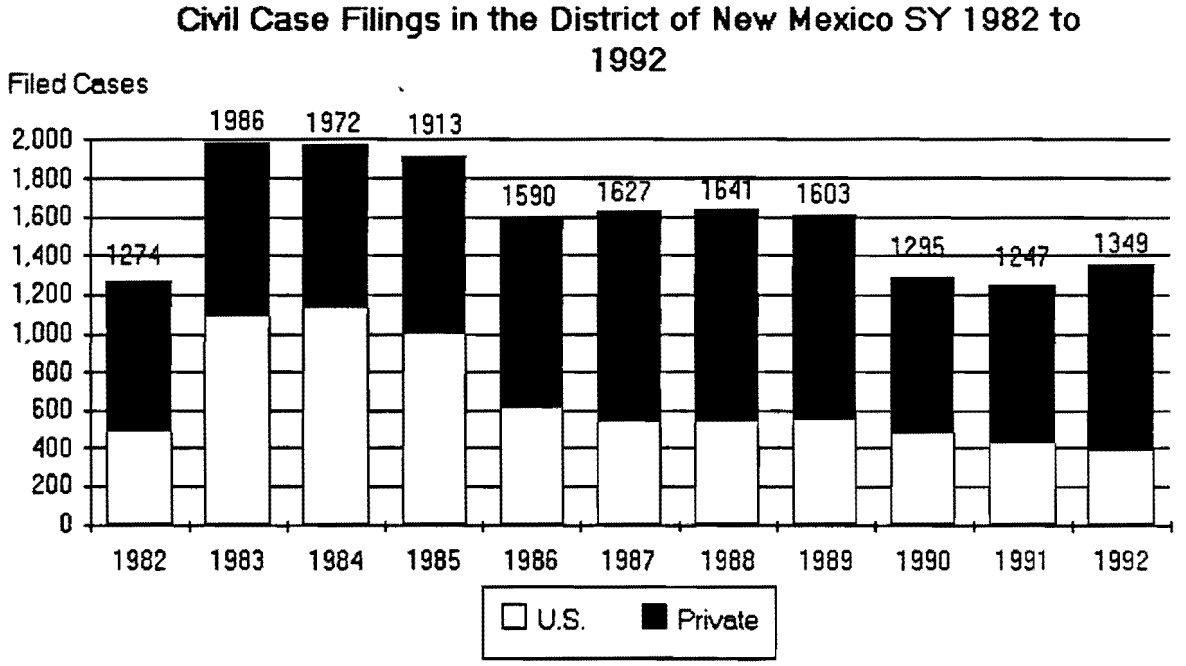
SUMMARY OF CIVIL CASE LOAD IN THE DISTRICT OF NEW MEXICO
SY 1981 TO SY 1992

	Cases filed				Number of Cases		% of cases over 3 years old	Ratio of Pending/ Closed	Median age Filing to Dispositio	Number of Trials
	by Jurisdiction		In Total							
	U.S.	Private	Weighted	Raw	Closed	Pending				
1981	389	657	1,094	1,046	1,006	899	2.4%	0.89	NA	109
1982	491	783	1,194	1,274	1,141	1,032	2.2%	0.90	NA	139
1983	1,096	890	1,347	1,986	1,616	1,402	2.7%	0.87	NA	127
1984	1,136	836	1,456	1,972	1,886	1,489	2.6%	0.79	7	130
1985	1,010	903	1,369	1,913	1,970	1,594	2.6%	0.81	9	102
1986	621	969	1,418	1,590	1,549	1,635	4.3%	1.06	9	93
1987	542	1,085	1,635	1,627	1,496	1,766	4.3%	1.18	10	107
1988	548	1,093	1,677	1,641	1,607	1,800	4.1%	1.12	10	95
1989	552	1,051	1,543	1,603	1,610	1,793	5.7%	1.11	11	110
1990	481	814	1,323	1,295	1,291	1,797	8.7%	1.39	11	101
1991	434	813	1,343	1,247	1,221	1,830	9.3%	1.50	12	92
1992	397	952	1,453	1,349	1,394	1,715	9.4%	1.23	12	74

YEAR	CON-TRACT	CIVIL RIGHTS	PRISONER PETITIONS	PERSONAL INJURY	SUB TOTAL	STUDENT LOAN & S.S.	ALL OTHER CASES	TOTAL
81	236	126	110	176	648	27	398	1,046
82	210	151	129	154	644	217	413	1,274
83	251	143	189	157	740	883	363	1,986
84	243	186	122	185	736	858	378	1,972
85	271	156	198	200	825	783	305	1,913
86	296	169	202	222	889	363	338	1,590
87	299	215	217	231	962	242	423	1,627
88	330	245	219	205	999	252	390	1,641
89	321	162	253	240	976	189	438	1,603
90	225	168	161	181	735	91	469	1,295
91	245	207	206	164	822	60	365	1,247
92	187	226	279	219	911	72	366	1,349

statistics, the result is a very gradual increase of civil filings, from 1981 to 1989, to 1484 filings, and from that year, a gradual yearly decrease to 1231 filings for 1991. In SY 1992, New Mexico experienced an 8 percent increase in civil filings to 1,349. This information is depicted in Graph 3.

Graph 3



b. There are six categories of civil cases which constitute 85% of such filings for SY 1991: contracts, civil rights, prisoner petitions, personal injuries, forfeiture and seizure and a general category of "other" (antitrust, environmental, constitutional questions and libel). During the last ten year period, there have been changes in the categories of cases which constitute the larger percentages. For example, the number of civil rights, prisoner petitions and forfeiture and seizures cases have increased more rapidly than the other categories, including the

"others" which have decreased dramatically. The forfeiture/seizure case increases are, no doubt, related to the large increase of criminal drug cases which the District has experienced in the last few years.

c. As indicated in this report, the number of trials completed by the judges of the district have increased dramatically. Such increases have been primarily in criminal trials as the number of civil trials have decreased from 109 in 1981 to 71 in 1991, a decrease of 35% with the resultant increase in median time from six months from filing to disposition of civil cases in 1984 to more than twelve months in SY 1991, an increase of 100% in median disposition time.[2]

d. Efforts to compare the efficiency of courts can be problematic. Using the median age, from filing to disposition, can be misleading since one court may have a large number of complex cases that necessarily take longer to resolve. One way to account for these difference is to use the Indexed Average Lifespan (IAL). This measure uses the average time it takes to resolve different categories of cases. It then calculates the average time to resolve all cases in a court for their particular mix of cases. For convenience, a period of 12 months is used as an index value for the U. S. average. When a court is resolving cases faster than the average, it will have an IAL of less than 12.

e. To account for changes in the time needed to dispose of cases on a year to year basis, another measure, life expectancy is calculated. In any given year, the median age from filing to disposition, can increase if the court closes a large number of old cases. Again, this is not a good representation of how efficient the court has actually resolved cases. To

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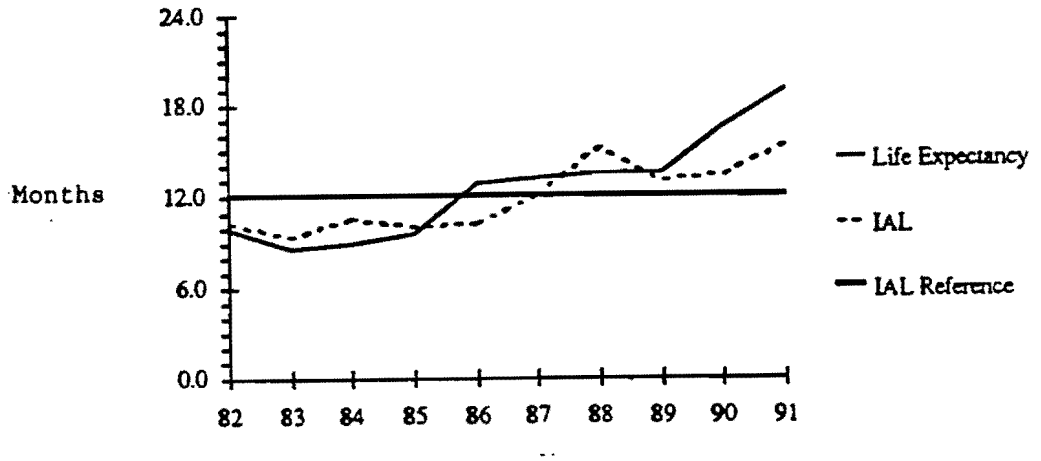
[2] Judicial Workload Profiles of the United States Courts, Administrative Office of the U. S. Courts, 1981

account for this problem, expected lifetime is calculated based on the time it is likely to take to resolve different types of cases. While IAL is based on the mix of terminated cases, the life expectancy is based on filings and how long, it can be expected to resolve these various cases. This allows a comparison from year to year of any court's caseload. Graph 4 illustrates the life expectancies and IAL for New Mexico. As indicated by Graph 4, the average time it takes the District of New Mexico to resolve a case has been above the expected time since 1986. Prior to that time the district was resolving cases faster than expected.

Graph 4

Life Expectancy and IAL, All Civil Cases SY82-91



f. The Assessment of Conditions within the District Subcommittee has estimated that the current four active district judges can devote no more than two months out of the year to resolution of civil case matters. This conclusion was reached after reviewing the docket sheets of randomly selected civil cases, questionnaires completed by attorneys, interviews with district judges and magistrate judges and from interviews with attorneys who try civil cases

Table IVA & IVB

CRIMINAL FELONY CASES

	Weighted Filings	Filed	Closed	Pending	Pending/ Closed	MEDIAN AGE	% DRUG CASES	Number of "Trials"*
1981	232	181	178	126	0.71	3	23%	68
1982	162	146	140	115	0.82	2.8	13%	48
1983	212	180	146	138	0.95	2.9	14%	57
1984	280	237	196	145	0.74	3.1	25%	85
1985	233	209	167	157	0.94	2.7	19%	32
1986	292	285	199	220	1.11	3.2	18%	63
1987	460	416	373	245	0.66	3.2	21%	79
1988	496	520	366	365	1.00	4.1	31%	128
1989	469	421	419	349	0.83	4.8	48%	170
1990	527	511	442	405	0.92	5.2	47%	178
1991	547	567	430	533	1.24	5.5	49%	219
1992	611	633	567	599	1.06	5.9	48%	241

* Any hearing where evidence is presented is counted as a trial i.e evidentiary hearings

CRIMINAL FELONY DEFENDANTS

SY	Defendants per Case	Openings	Disposed	Pending	Ratio Pend./Disp.	Trials as % Dispositions	% DRUG Filings	Number of Trials**
1981	1.55	280	285	157	0.55	15%	37%	42
1982	1.78	260	213	185	0.87	14%	16%	30
1983	1.47	265	220	195	0.89	25%	21%	54
1984	1.40	331	291	182	0.63	22%	33%	64
1985	1.54	321	249	211	0.85	13%	27%	33
1986	1.75	498	406	290	0.71	10%	26%	39
1988	1.42	737	540	536	0.99	13%	38%	69
1989	1.51	634	583	512	0.88	11%	55%	64
1990	1.42	724	652	544	0.83	13%	56%	84
1991	1.38	780	606	700	1.16	13%	56%	76
1992	1.41	891	753	798	1.06	0%		

** These trials represent only trials that result in disposition of the case

Table IVC & IVD

FELONY DRUG CASES BY TYPE

	TOTAL CASES	Number of Cases			% of Total Cases	Total Defendants	Number of Defendants			% of Total Defendants
		Marijuana	Narcotics	Controlled			Marijuana	Narcotics	Controlled	
1981	183	10	23	9	23%	284	29	62	15	37%
1982	199	6	15	5	13%	314	11	27	13	16%
1983	223	6	22	4	14%	313	23	35	8	21%
1984	281	8	56	5	25%	377	15	100	8	33%
1985	271	16	28	8	19%	384	32	60	13	27%
1986	348	22	33	7	18%	498	42	76	10	26%
1987	417	43	33	11	21%	570	90	67	23	32%
1988	520	83	59	18	31%	737	129	116	32	38%
1989	421	138	45	19	48%	654	244	83	32	55%
1990	514	170	52	18	47%	728	287	87	34	56%
1991	572	207	50	22	49%	785	295	103	41	56%
1992	633	226	67	13	48%					

DISPOSITION OF CRIMINAL DEFENDANTS IN THE U.S. DISTRICT OF NEW MEXICO SY 1980 to 1991

	NUMBER OF DEFENDANTS					% OF DEFENDANTS			
				BY TRIAL				BY TRIAL	
YEAR	TOTAL	DISMISSED	PLEA	COURT	JURY	DISMISSED	PLEA	COURT	JURY
1980	227	57	136	6	28	25%	60%	3%	12%
1981	348	73	233	4	38	21%	67%	1%	11%
1982	268	64	174	1	29	24%	65%	0%	11%
1983	284	39	191	21	33	14%	67%	7%	12%
1984	368	65	239	2	62	18%	65%	1%	17%
1985	323	78	212	4	29	24%	66%	1%	9%
1986	406	122	245	4	35	30%	60%	1%	9%
1987	526	127	348	4	47	24%	66%	1%	9%
1988	584	128	387	1	68	22%	66%	0%	12%
1989	611	147	400	2	62	24%	65%	0%	10%
1990	680	130	466	1	83	19%	69%	0%	12%
1991	645	116	453	3	73	18%	70%	0%	11%
1992									

in federal court. These interviews and reviews reflect that the district judges are restricted in the amount of time which they can dedicate to civil cases because of the demands which they have from their criminal dockets.

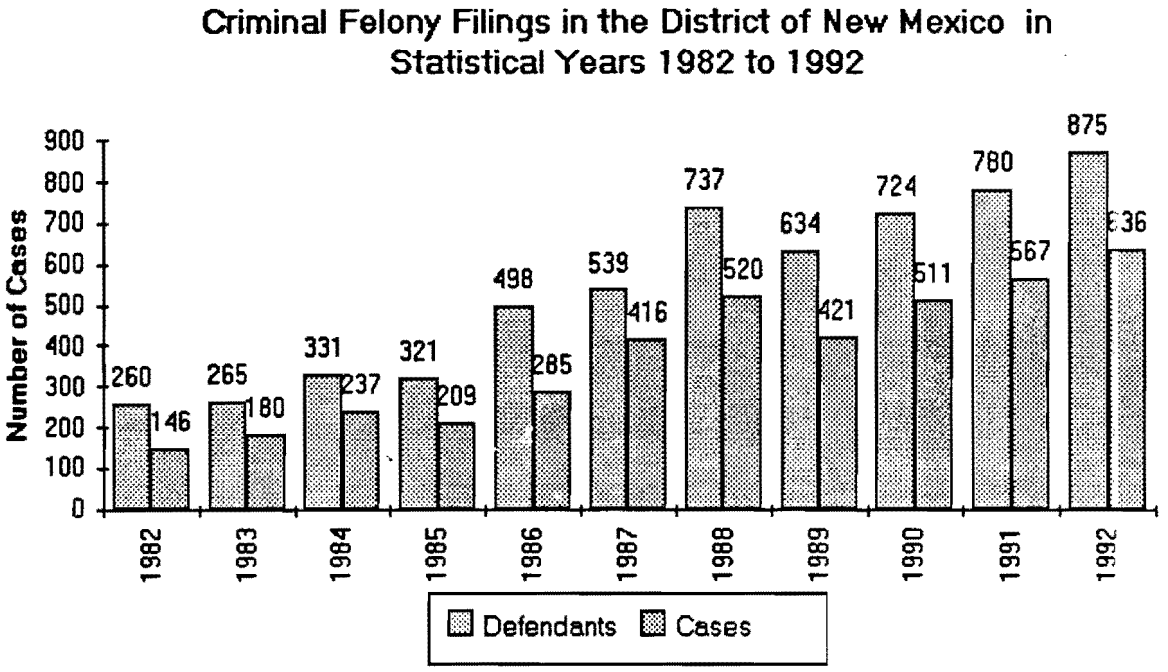
4. The Criminal Docket

a. As has already been indicated, the number of criminal filings for the District of New Mexico has increased dramatically. Tables IVA to IVD reflect that from 1981 to 1991, the total number of criminal filings tripled from 181 to 567. The percentage of cases which were drug-related has increased from 23% in 1981 to 49% of the total criminal felony filings during SY 1991. The statistics further reflect, as shown in Graph 5, that the number of criminal defendants has increased three-fold during the same period. Following this trend, the number of criminal trials increased from 68 to 241 in the same period.

b. The Speedy Trial Act of 1978 (18 U.S.C. § 3161) requires that the trial of criminal cases take precedence over civil cases. Thus, the court, in keeping with the requirements for a speedy trial within the time limits imposed, has kept pace with the increase in criminal case filings by resolving criminal cases at the same rate as their filings. The large increase in the number of pending criminal cases is only a reflection of the increased filings. The median age for criminal cases, from filing to disposition, has increased from three months in 1981 to 5.5 months in 1991. Although this is an increase in the median time of 2.5 months, this increase is not of significant docket concern as the maximum times established by the Speedy Trial Act are not being exceeded.

c. It was generally assumed that the introduction of the sentencing guidelines (18 U.S.C. § 3553) would result in fewer plea bargains and that a higher proportion

Graph 5



of cases would have to be tried. However, in reviewing the statistics for the types of dispositions according to Table IVD, the percentages of defendants going to trial have remained relatively constant over the period 1981 to 1991. The U. S. Sentencing Commission has also arrived at the same conclusions that the Guidelines have not affected the number of plea bargains.[3]

[3] The Federal Sentencing Guidelines: A Report on the Operations of the Guidelines System and Short Term Impacts on Disparity in Sentencing, Use of Incarceration and Prosecutorial Discretion and Plea Bargaining, U. S. Sentencing Commission, December 1991.

d. There have been other effects from the sentencing guidelines as sentencings have become more complex and hearings on these and on release and detention orders have increased not only for the district judges but for the magistrate judges as well.

B. Civil Case Management

1. Automated Case Management

a. A major resource for case management was put into effect on December 17, 1990, when the District of New Mexico went into automated case management for civil cases with the installation of the Integrated Case Management System (ICMS) developed centrally by the Administrative Office of the U. S. Courts and the Federal Judicial Center. The entire process of converting from the manual docketing system to an automated one was completed in eight weeks. The ICMS-CIVIL provides the district with the ability to implement tracking, status determination, management and statistical programs for civil cases.

b. A similar ICMS program was installed on August 10, 1992, for criminal cases. This system, however, is still in the transitional phase and the current Statistical Information and Reporting System (SIRS) is being operated in parallel until ICMS-CRIMINAL is completely reliable and all cases are transferred to the new system.

c. PACER is a public access automated program which allows attorneys and other members of the public to have access to the District of New Mexico court dockets 23 hours each day through modem telephone services.

2. Case Management Procedures

a. Initial Procedures

(1) Presently, the four active judges and the two senior judges handle civil cases. Senior District Judge Mechem carries a full civil caseload but does not handle criminal matters. Senior Judge Bratton handles the Las Cruces civil caseload, about 100 cases a year, and a significant number, approximately one third, of criminal cases at the Las Cruces division office. It is difficult to provide an exact description of civil case management procedures as each district judge, magistrate judge and their staffs handle their cases differently. However, the following is a general description of how civil cases move through the system, the main events and the interactions between the personnel involved in case management.

(2) For the purpose of tracking cases and case management, cases are classified as four basic categories:

(a) Regular Civil (Excludes b, c, d and e)

(b) Social Security Reviews

(c) Bankruptcy Appeals

(d) Pro Se Cases (Prisoner and non-prisoner)

(e) VA Student Loan Cases

(3) When a civil case is filed, the intake deputy clerk assigns the case in rotational order to a district judge and a magistrate judge and the attorney or party filing the case is given the name of the assigned district judge, name of the magistrate judge, and if appropriate, a consent form to permit a magistrate judge to try the case, and a blank Initial Pretrial Report (IPTR) form.[4]

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[4] Judges Campos and Bratton give the IPTR when the case is at issue. Senior Judge Mechem uses a status letter rather than the IPTR.

(4) The case papers are then placed in a folder and sent to the docketing deputy clerk for entry into the ICMS system. After the initial docket entries are made, usually within 24 hours and not later than 48 hours after the initial filing, the case file jacket, which contains the original of the complaint and related documents, is sent to the courtroom deputy clerk of the assigned judge for his initial review of the case. Copies of the docket sheet are sent to the courtroom deputy, magistrate judge's secretary and to the district judges' secretaries desiring a copy.

(5) The courtroom deputy clerk "tickles" the case to monitor for service of process and answer. In cases where an Initial Pre-Trial Report (IPTR) form was given, the appropriate magistrate judge's secretary will monitor the case to assure that it is at issue before the IPTR must be completed. When the IPTR is due or the case is at issue, the magistrate judge will set the case for a Rule 16 scheduling conference. The purpose of the conference is to have the magistrate judge evaluate the case, schedule discovery as may be appropriate and to discuss settlement possibilities. Attorneys who will conduct the trial on the merits for each party are required to be present at the conference with authority to negotiate settlement. The parties or the appropriate insurance claims officials are required to appear personally at the conference, unless prior permission to be absent is granted. If permitted to be absent, the parties must be available by telephone during the conference.

b. Discovery

(1) Since the case is evaluated beforehand by the magistrate judge, discovery times are tailored for each case. The discovery deadlines are entered by the magistrate judge and the IPTR is reviewed and approved by the assigned district judge. An

exception here is that Senior Judge Mechem handles pre-trial conferences and sets discovery deadlines for his "regular civil cases" as defined above.

(2) As discovery continues, the magistrate judges handle discovery matters and other non-dispositive motions. The assigned district judges will handle the ruling on dispositive motions. The non-dispositive and dispositive motions are be tracked by the magistrate judge secretary and district judge courtroom deputy, respectively, so that these can be brought to the attention of the appropriate judicial officer for rulings.

C. Operational Changes and Improvements Accomplished Todate

Since the start of the review and research efforts of the Advisory Group, several changes have taken place within the District of New Mexico which seem to be having a salutary effect in reducing case delays. Some of these changes are as follows:

1. Although local Rule 73.1 authorized full-time magistrate judges to conduct any or all proceedings in any civil case filed in the court, including a jury or non-jury trial, in those civil cases where the parties voluntarily consent to such handling by the magistrate judges, it was not until April 1992, that a procedure was instituted to give written notice to this effect to all parties in civil actions.

2. The magistrate judges at the suggestion of the Chief Judge have now established a policy that continuances and extensions will not be granted unless good cause is shown. Such should result in fewer delays in the discovery process where requests for extensions were extensively routine as reflected in case surveys conducted of pre-selected cases.

3. The magistrate judges are now routinely holding scheduling/settlement conferences as soon as the cases are at issue prior to the completion of the initial pretrial reports and after good faith efforts to settle the cases. Parties or an official authorized to settle are encouraged to attend such conferences with counsel where the possibilities of settlement are discussed. Magistrate judges are limiting the scope of discovery by specifying some limited or specific discovery take place before completing the dates for the specific phases of the case are set forth in the initial pretrial report and order. The magistrate judges are also advising parties of ADR mechanisms available which may be suitable to specific cases.

4. One of the district judges has now initiated a procedure where he holds a conference at the start of discovery, another conference midway through discovery and a third conference after discovery is completed and before the final pretrial order is entered. Alternative dispute resolutions are explored during these conferences and the district judge keeps a tight reign on the timely completion of discovery. Two weeks after the PTO is entered, there is a settlement conference held with the magistrate judge.

5. Two of the district judges are now holding oral arguments on motions when they deem such to be required to rule on the motions. The judges have indicated that oral hearings may also expedite the disposition of motions.

6. The Clerk's Office has updated its Guidelines for Attorneys handout which contains valuable information to assist attorneys and pro se litigants to process their cases more rapidly. The Guidelines contain information on telephone numbers, address, procedures for filing a case, time limits, how to perform service of process, how to handle special matters such as motions for temporary restraining orders, preliminary injunctions, writs of execution, formats for initial and pretrial orders and instructions on how to complete them, individual judge requirements for jury instructions, etc.

D. Trends and Projections for Case Filings

1. Civil Litigation

To forecast civil filings, it is essential to review the historical trends for several specific types of cases and determine the factors which drive the filings of these cases. For example, occurrences which cause increases in civil rights cases are substantially different than those which lead to personal injury filings. Four major categories of case filings which account for 70% of all case filings in the district, namely, prisoner petitions, civil rights (non-inmate), contracts and personal injury, were reviewed and forecasted for the next five years.

a. Prisoner Petitions

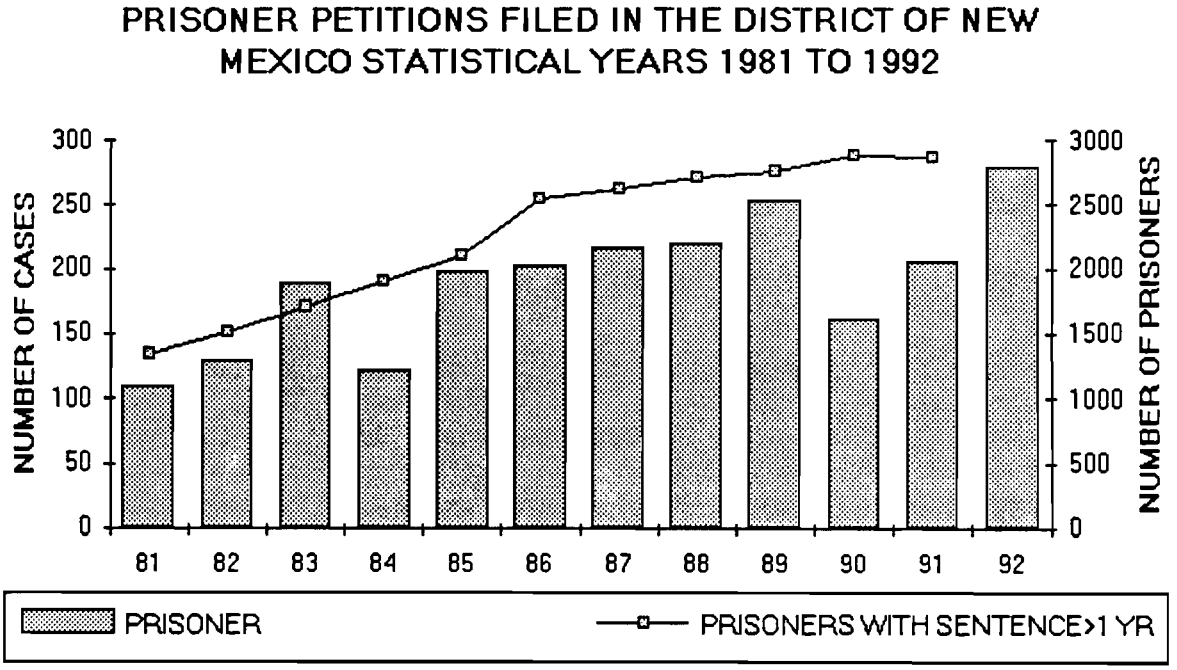
(1) Historical Trends

Prisoner petition filings increased from 110 in SY 1981 to 279 in SY 1992. This represents a 154% increase or an annual average increase 8.8%. During this same period, the number of prisoners in New Mexico with sentences exceeding one year increased at an annual rate of over 9%.

(2) Recent Filings

The number of prisoner petition filings during SY 1992 increased 35% from 279 filings compared to a total of 206 filings in SY 1991. This increase was, in part, due to the recent change to Rule 5 of the Federal Rules of Civil Procedure which requires that the clerk of court accept documents which are presented as new case filings albeit such doculments may not be complete. Graph 6 compares the number of prisoner petitions filed to the number of prisoners with sentences exceeding one year.

Graph 6



(3) Projections

(a) Preliminary statistics for the number of prisoners in the State of New Mexico with sentences of over one year reflect a small decline, indicative that the number of prisoners will probably not continue to increase at the rates experienced in the 1980s. Consequently, the forecast for prisoner petitions is based on a simple long run trend resulting in a forecasted increase of approximately 6.5% per year, similar to the average annual growth experienced from 1981 to 1991. The projection for prisoner petitions is reported with the other categories of cases in Table VII and Graph 9.

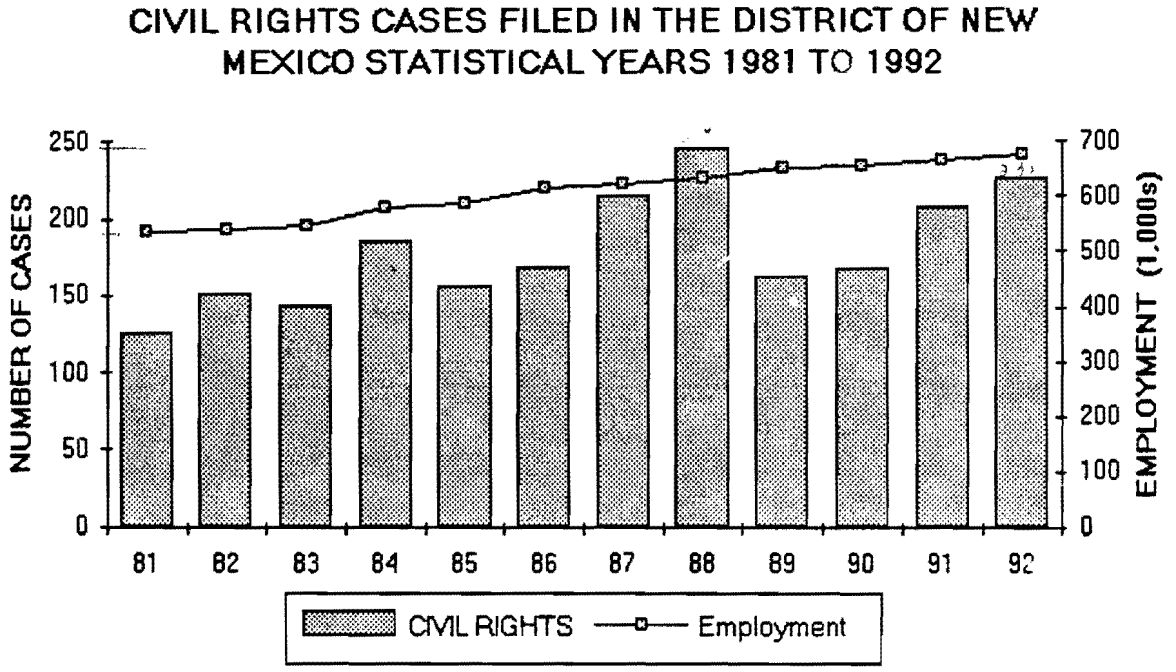
b. Civil Rights

(1) The number of civil rights (non-prisoner) cases consistently increased through the period 1981 to 1991 at over 5 percent a year. This growth exceeds the employment growth in New Mexico during this period, reflecting the increases in the portion of the labor force which is included as a "protected group". The majority of these civil rights cases are related to employment discrimination and it is likely that they will continue to constitute a significant source of all civil rights cases and may make up a larger proportion of this category of cases in the future.

(2) Following the enactment of the original Civil Rights Act, the majority of employment discrimination suits were aimed at obtaining access to the job market. In the past ten years, the nature of these cases has changed as the majority of these cases are

now related to wrongful terminations. One result is that there now is a component of these filings that is cyclical and such filings will vary with the unemployment rate[5].

Graph 7



(3) Projections

The number of civil rights cases will probably continue to increase as a function of increased employment and the increases of "protected groups". In addition, the Civil Rights Act of 1991 has a provision which allows for recovery which exceeds wages in wrongful termination cases. Thus, this increase in potential stakes is likely to increase

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[5] Ferguson, Tim, "Rain of Job Suits: Shelter Under Big Top of Regulation?", Wall street Journal, October 22,1991, pp a21.

"Civil Rights Employment", Stanford Law Review, April 1991

the number of filings. Also, the recent enactment of the American Disabilities Act will undoubtedly result in a new array of civil rights filings involving violations of the Act. The long run trend of an average 5.4% annual increase from 1981 to 1992 reflects projections of all civil rights case filings and is depicted in Graph 9 and Table VII.

c. Contracts

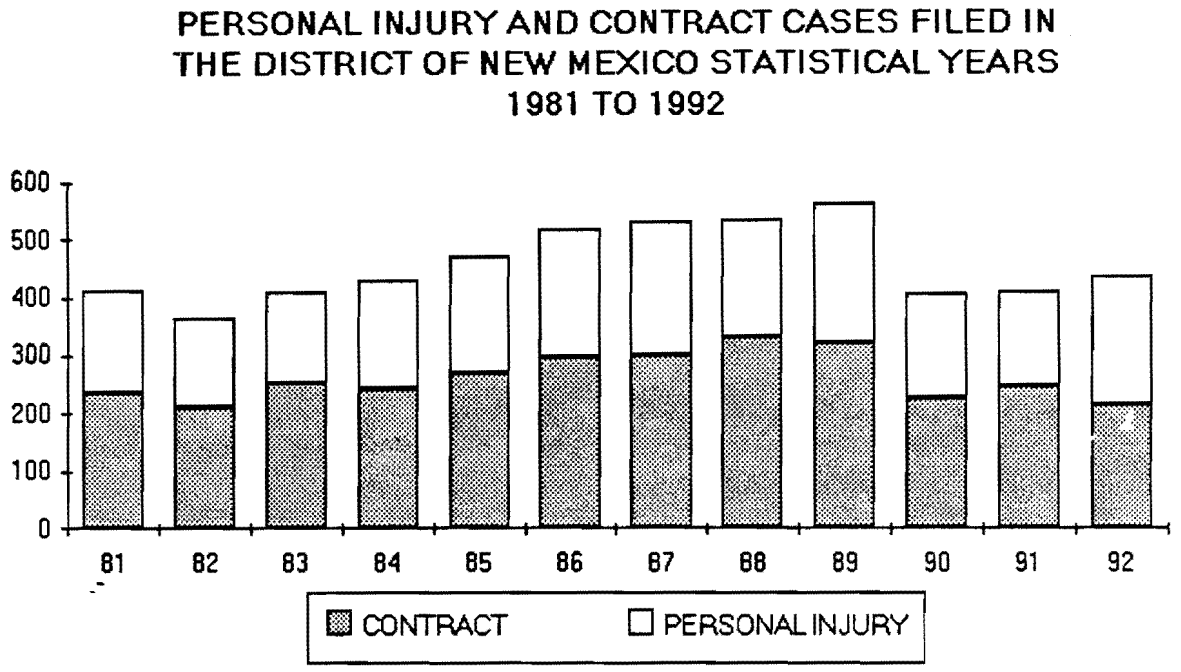
(1) Historical Trends

The number of contract cases increased slowly from 1981 to 1992, and reached a peak in 1989. A large decline occurred in SY 1990 when the minimum amount required to file a diversity case in federal court changed from $10,000 to $50,000. The general trend in the number of cases filed from 1981 to 1989 was relatively constant at an average of 4% a year. This trend is somewhat greater than the annual increase in economic activity or employment of about 2.5% a year. Graph 8 illustrates these filings in combination with personal injury cases, with both types of cases showing much the same trend.

(2) Projections

There are no apparent proposed changes in laws or rules which will dramatically affect the number of contract cases filed in the federal courts. There was an effort introduced to reduce the ability to access the federal courts through diversity of citizenship with the passage of the Access to Justice Act of 1992. It is possible that the minimum damages required to file will again increase, however, it is unlikely that the impact on filings would be as severe as the 1989 change. Given these observations the annual increase of 4% per year that occured in the period SY 1981 to SY 1991 was used to forecast the number of contract cases. These projections are shown in Graph 9 and Table VII which detail the number of filings for

Graph 8



the major category of cases and the total civil caseload for the district.

d. Personal Injury

(1) Historical Trends

The number of personal injury cases filed during the period 1981 to 1992 reflected an annual increase of less than 1% during the period. As with contract cases, there was a decline in the number of cases filed in 1989 reflecting the increased damages required to file a diversity case. There was a rapid increase in filings in 1992, as a result of the filing of cases related to silicone breast implants. In SY 1992, there were approximately 50 such cases filed, with an additional 40 filed in the months of July and August of 1992.

(2) Projections

In general, the number of personal injury filings is due to several factors, i. e., employment, disasters, increased transportation, etc. On a year-to-year basis, the number of filings can change dramatically with events such as silicone breast implants, asbestos disabilities and radiation claims. Such are impossible to forecast, thus, the long run trend from 1981 to 1989, in essence, removes the decline caused by the changes in diversity filings. Results are shown in Graph 9 and as part of Table VII.

e. Other Cases

The remaining categories of cases include antitrust, social security, student loan, patents and copyrights, etc. From 1981 to 1992, these cases increased dramatically at mid-point with high numbers of VA student loan cases, however, they began to decrease as dramatically as they increased. In SY 1982, there were 398 filings of "other cases" and in SY 1992, there were 409 such filings. These "other case" filings will probably remain constant, however, unusual situations could cause these filings to change in modest degrees in either direction.

2. Criminal Cases

a. Trends

(1) From 1987 to 1990, the number of total net filings of criminal felony cases and number of defendants have increased by a compound annual rate of approximately 7% and a 40% increase in the five year period. This growth is attributed to the dramatic increase of drug cases in the District of New Mexico. In 1987, drug cases accounted for 22% of the total criminal cases, however, by 1991, these types of cases accounted for nearly 50% of all criminal cases. The number of criminal defendants has followed a similar trend as

drug case defendants accounted for 36% of all defendants in 1987, but the number of such defendants had increased to 56% of all criminal cases in 1991. During this period of 1987 to 1991, the number of drug cases tripled at a compound rate of 25% per year.

(2) Another category of criminal case which experienced increases and has a potential for continued growth is the immigration violations case. The number of such cases filed in 1992 was similar to the number of filings for 1986, but there was a decline in filings in 1989 as the amnesty program became effective. Since then, the number of immigration violation cases has increased at approximately 14% a year.

(3) The other categories of criminal cases have not shown any particular trend as they have remained relatively constant or have had slight increases and decreases with no identifiable causative factors. This information is summarized in Table V.

Table V
Criminal Case filings 1987 to 1992 by Category

	1987	1988	1989	1990	1991	1992(est.)	Average Annual %
DRUGS	93	161	202	240	279	325	28.4%
IMMIGRATION	71	88	55	60	75	82	4.9%
ALL OTHER	253	271	164	214	218	218	-2.9%
TOTAL	417	520	421	514	572	633	8.7%
% Increase		24.70	-19.04	22.09	11.28	10.66	

b. Projections

(1) It can be generally assumed that the effort to stem the flow of drugs will not be reduced in the near future. Thus, it is quite likely that the number of drug cases will continue increasing. Given the prospects of a new border crossing at Santa Teresa,

we may experience larger increases in drug cases. For the forecast, we assume that the growth rate of 16% of the period from 1989 to 1991 will continue, which will be less than the average annual growth of 28% experienced from 1987 through 1992.

(2) Immigration is assumed to grow at 9% a year. This is less than its average annual growth for the past three years of 15%, but is the rate of growth experienced in both 1990 and 1992.

(3) The remaining cases are expected to stay at the same level of filings as experienced in 1992. This is near the average for the period 1987-1992. Since there was no trend in these filings, we feel that this is a reasonable projection.

(4) Given these assumptions, the criminal case load will grow at a compound rate of approximately 10% a year for all cases. This represents a smaller increase, and is similar to what the court experienced in 1991 and 1992, and is a relatively conservative estimate of how the criminal case load will increase. Drug cases will continue to increase their share of the total case load. Under this scenario, by 1997, drug cases would comprise 66% of all criminal cases. Immigration will make up 13.5%, an increase from a low of 10% in 1990. This forecast is presented in Table VI.

Table VI

	Forecast of Criminal Filings in U.S. District of New Mexico						Annual
	1992	1993	1994	1995	1996	1997	Growth
DRUGS	325	377	437	507	588	682	16%
IMMIGRATION	90	98	107	117	128	140	9%
ALL OTHER	218	218	218	218	218	218	0%
TOTAL CASES	633	693	762	842	934	1,040	10%

3. Projections of Total and Weighted Case Loads

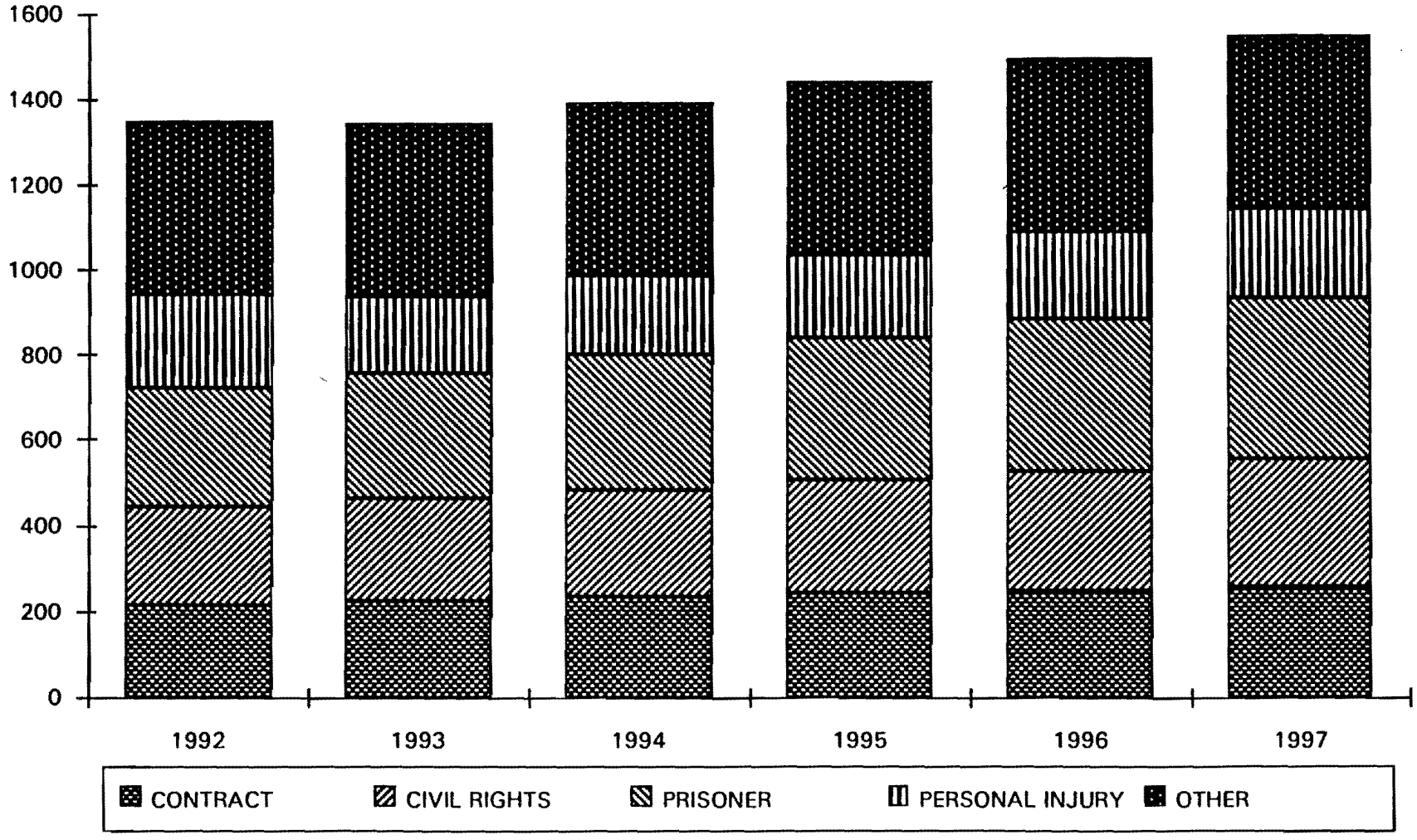
The projections of the civil and criminal case filings are summarized in Table VII. In addition, a calculation was made of the caseload per judge, assuming that the court will have 5 judges. The weighted case load estimates were based on the comparison of weighted to raw case filings in SY 1991. The total weighted caseload will grow at an annual rate of 5% a year, and by 1997 will be 532, which is close to the court's peak weighted filings of 1988.

Table VII
Forecasts of Criminal and Civil Case Filings 1993 to 1997

							AVG ANNUAL
CATEGORY	1992	1993	1994	1995	1996	1997	% CHANGE
CONTRACT	216	224	233	242	251	261	3.86%
CIVIL RIGHTS	226	238	251	265	279	294	5.40%
PRISONER	279	297	316	336	358	381	6.43%
PERSONAL INJURY	219	178	185	192	200	208	3.97%
OTHER	409	409	409	409	409	409	0.00%
TOTAL CIVIL	1,349	1,346	1,394	1,444	1,497	1,553	2.86%
CIVIL WEIGHTED	1,453	1,495	1,538	1,582	1,627	1,673	2.86%
CRIMINAL CASES	625	684	752	831	922	1,026	10.42%
CRIMINAL WEIGHTED	602	659	725	801	889	989	10.42%
TOTAL WEIGHTED CASES	2,055	2,154	2,263	2,383	2,516	2,662	5.31%
PER JUDGE	411	431	453	477	503	532	5.31%
CRIMINAL DEFENDANTS	891	975	1,072	1,185	1,314	1,463	10.42%
DEFENDANTS/JUDGE	178	195	214	237	263	293	10.42%

Graph 9

FORECAST OF CIVIL CASE FILINGS 1993-1997



PART III: IDENTIFICATION AND ANALYSES OF PRINCIPAL CAUSES OF EXCESSIVE COSTS AND DELAYS IN CIVIL LITIGATION IN THE DISTRICT OF NEW MEXICO

A. Research Efforts by the Advisory Group

1. Review of Specific Cases

a. A detailed review of 156 civil cases, terminated between April 1990 and May 1991 and randomly selected by the Federal Judicial Center were reviewed by the Advisory Group. The review included analyses of the docket sheets of each case for the setting and meeting of deadlines, amount and type of discovery, number of motions filed and times taken to rule on them. The review included sending a questionnaire to the attorneys and litigants of such cases inquiring as to costs, timeliness, disposition and their perception of whether delays did or did not occur.

b. The Advisory Group members reviewed the data collected and added their comments as to costs and time taken to dispose of the cases. Summaries of the case reviews, questionnaires and details on responses are included as Appendix G. However, a brief resume of the findings is indicated below:

(1) Out of the 156 cases, there was no discovery effort indicated on the docket sheets for 38 cases. The deadlines for those cases with discovery were met in 32 cases and exceeded in 73 cases. In half of those cases exceeding the discovery deadline, the deadline was exceeded by 250 or more days.

(2) There were 305 dispositive motions filed in 100 of the 156 cases reviewed. Of these 305 motions, 64 were ruled on only by closure of the case. Of those cases with rulings on motions, the times taken to rule on the motions were as follows:

(a) Under 55 days: 25% of the cases

(b) Under 155 days: 50% of the cases

(c) Over 405 days: 25% of the cases

(3) There were 967 non-dispositive motions in 106 cases. The maximum number of such motions in one case was 40, with an average of 9 non-dispositive motions per case. The average number of non-dispositive motions for plaintiffs was 3.6 while the average for defendants was 4.8.

(4) After the docket sheets for the 156 randomly selected cases were tabulated, Advisory Group attorney members reviewed the results and concluded the following as to the amount of time taken to resolve the cases which each member reviewed:

(a) Much too long: 19% of the cases

(b) Moderately too long: 29% of the cases

(c) About right: 52% of the cases

2. Attorney Questionnaires

a. As indicated above, questionnaires were sent to the attorneys of record in the above 156 randomly selected cases to obtain their opinions concerning issues bearing on costs and delays in their respective cases. Responses are summarized and included in Appendix H.

b. The following is a brief resume of the attorney responses:

(1) Generally, attorneys concluded that case management by the court was moderate and appropriate.

(2) Less than 25% of the attorneys felt that the case management was not intensive enough.

(3) Attorneys believed that the problems with costs and delays could be reduced if the court had:

(a) Narrowed issues through conferences.
(b) Ruled timely on dispositive motions.
(c) Had not changed initial trial dates.
(d) Used settlement conferences more extensively.

(4) Summary of other responses:

(a) ADR was favored for settlement evaluation but not for preliminary fact finding nor narrowing the scope of the issues.

(b) About 70% of plaintiff attorneys were on contingency, while the majority of defense attorneys were salaried. Generally, the attorneys believed the costs in their case were reasonable.

(c) The forum preferences were:

[1] Federal Court: 68%
[2] State Court: 19%
[3] No preference: 18%

(d) Reasons for federal court:

[1] quality of judges: 35%
[2] speed of resolution: 27%
[3] quality of jury: 22%
[4] rules: 14%

(e) Reasons for state court:

[1] quality of judges: 14%
[2] quality of jury: 22%
[3] speed of resolution: 14%

[4] cost: 29%

3. Public Interviews

In an effort to obtain as much cross-sectional information as possible on cost and delay problems, the Advisory Group interviewed a U. S. Circuit Judge, a U. S. Circuit Judge-designee, four U. S. District Judges, two U. S. Senior District Judges, four full-time U. S. Magistrate Judges, two part-time U. S. Magistrate Judges, one U. S. Senator, two U. S. Congressmen and private and public sector attorneys and other citizens.

4. Presentation to the New Mexico State Bar Association

At the annual convention of the New Mexico State Bar Convention held at the Inn of the Mountain Gods, Mescalero, New Mexico, on September 23-26, 1992, a copy of the findings, conclusions and recommendations of the Advisory Group was placed in the packet for attendees. A survey questionnaire and preaddressed envelope was also included for such attendees to give their comments and suggestions. An oral presentation on the work of the Advisory Group was also scheduled for September 24, 1992, at the Bar convention to solicit comments and suggestions on the findings and recommendations of the Advisory Group. A copy of the notice published in the State Bar Bulletin is included as Appendix O to this report.

B. Results of Research and Interviews

1. The information obtained from the above generally gave a consistent picture of what is perceived are the major sources of costs and delays in civil litigation in the U. S. District Court for the District of New Mexico.

2. The following is a general listing of the problems which were disclosed either in the detailed review of the randomly selected cases and/or from the information furnished by the

interviewees. Specific details on the findings are discussed in more detail in this Report in that section setting forth the findings of the specific Advisory Group sub-committees.

a. Dispositive motions are not ruled on promptly.

b. Trial date settings are not firm.

c. Failure to narrow issues at earlier stages.

d. Routine extensions granted for most motions.

e. Need for more and improved settlement conferences.

f. Routine unbridled abuse of discovery by attorneys.

g. Excessive expert witness costs.

h. Inconsistent case management.

i. Need for early judicial officer intervention.

j. Priority of criminal cases over civil litigation.

k. Necessity to fill Article III judgeships and magistrate judge vacancies as soon as possible.

m. Need for training of inexperienced attorneys in both civil and criminal matters with the use of experienced federal court litigators to act as mentors to inexperienced attorneys.

n. Use magistrate judges for rulings on dispositive as well as non-dispositive motions.

o. Appropriate funds for attorneys for indigent civil rights plaintiffs or eliminate statutory language which states if plaintiff is unable to afford an attorney, the court will appoint one for discrimination cases.

p. Need for improved reporting from Clerk's Office to District Judges for more useful analyses of cases.

q. Necessity to hold more oral arguments for rulings from the bench.

r. Need for "back-up" system for District and Magistrate Judges to assure set hearing and trial dates are met.

s. Necessity for more "open file" discovery.

t. Part-time U. S. Magistrate Judges and special masters should be used more often to assist in reducing civil case discovery backlogs.

u. The court should use case managers to assure that case are promptly and properly processed through the system as appropriate to each specific case.

v. Promote the use of impact statements on the federal judiciary as new legislation is considered to assure that new laws do not overload the system without prior support provisions.

w. Certificates of frivolity, when appropriate, on interlocutory and other appeals should be considered more extensively by both the district and appeals courts to avoid prolonged delays in the appeals process.

C. Subcommittee Reports

As indicated in the Introduction to this Report, the Advisory Group was divided into task forces which dealt into specific areas dealing with the causes of excessive costs and delays in civil litigation.

Each task force subcommittee report is summarized below, but when it is particularly significant or material is not included elsewhere, a subcommittee's report is quoted to the extent necessary to support a point with full texts of the subcommittee reports included as appendices to this Report.

Recommendations emanating from each subcommittee have been categorized and placed in summary form in Part IV of this report for the Court's consideration for possible incorporation into its mandated Implementation Plan.

1. Subcommittee for Assessment of Conditions Within the District

a. Assessments of Conditions Within the District

(1) A large portion of the assessment of the docket information contained in Part II of this Report came from this Subcommittee's report which is included in full text as Appendix I.

(2) The last two paragraphs of the Subcommittee's report are reproduced verbatim below because of the significance of their content:

b. Dispositive Motions, Trial Settings, Lack of Motion Tracking

"...Aside from the need for early and meaningful case assessment, attorneys and judges alike stress the failure to rule upon dispositive motions and the lack of a trial setting with integrity as the primary cause of delays in the movement of the civil docket. Aside from whatever tracking is imposed by the individual judge, his courtroom deputy and law clerks, there is no tracking of dispositive motions. Magistrates who meet with the parties to resolve discovery motions and conduct settlement conferences do not communicate with the district judges concerning the necessity for rulings on dispositive motions even though the magistrates may be aware that long-pending motions have impeded trial preparations or meaningful settlement negotiations. The magistrates are aware of the demands placed upon the district judges and, knowing these demands, have neither the assignment nor inclination to "track" the disposition of these motions. In the civil cases reviewed by the Advisory Group, there was an average of three dispositive motions filed in each case; in many, motions had been pending for over six months, in some, well over a year...".

c. Lack of Coordination in Case Management

"...It is the conclusion of the Assessments Subcommittee that tracking of the progress of civil cases is inconsistent as a result of ineffective communication and coordination among district judges, magistrate judges, their staffs and the parties' attorneys. There is no assigned responsibility for tracking of the individual case except as that occurs by the efforts of the district judge, his courtroom deputy and staff. Without effective tracking of the progress of the case, case management is sporadic and ineffective...".

2. Subcommittee on Discovery Issues

a. Oral Arguments

The Subcommittee concluded that oral arguments should be held by district judges for dispositive motions and where feasible, rulings should be made from the bench. It was noted that this was the single most often mentioned issue among the persons interviewed.

b. Proposed Amendments, Rule 26, Fed. Rules of Civ. Procedures.

(1) The recent proposals to amend Rule 26 of the Federal Rules of Civil Procedures will require automatic disclosure of certain discovery information despite objections from both civil plaintiff and defendant lawyer groups.

(2) The Subcommittee on Discovery Issues contends that the Rule 26 amendments will increase discovery disputes and not decrease them as believed. The Subcommittee, therefore, is of the firm belief that the U. S. District Court for the District of New Mexico should not adopt automatic discovery, if there is a choice, in order not to increase present discovery delays.

c. "Hands-on" Case Management

There is no question that more "hands-on" case management is necessary in the District of New Mexico. This is particularly important when considering discovery in order to narrow issues and provide guidance to lawyers regarding what future rulings might be.

d. Initial Status Conferences and Confidentiality

The Subcommittee feels that initial status conferences with district judges are essential to initiate a cooperative discovery attitude by both sides. Additionally, guidance should be developed by each district and magistrate judge in order to resolve confidentiality issues as soon as possible.

e. Phasing of discovery should be initiated within 90 to 120 days after filing of the complaint. Initial conferences should set the discovery deadline areas which could lead to settlement. If settlement is not possible, discovery should be phased as follows:

(1) Document production
(2) Fact discovery
(3) Discovery concerning expert opinion
(4) Damages

f. Mediation

A mediation conference should be set after initial discovery to discuss settlement possibilities.

g. The report by the Subcommittee on Delays is included as Appendix J.

3. Subcommittee on Costs and Delays

a. Overview and Perspectives of What Constitute "Costs and Delays" Within the Meaning of Section 472 (c) (1) (C) of the Act (Criminal Justice Reform Act).

(1) The legislative history of the meaning of costs under the Civil Justice Reform Act of 1990 would indicate that a definition of costs should be in the context of time limits from the filing of a civil complaint to a firm trial date.

(2) The above time limits would appear to be no longer than eighteen months from the filing of the complaint to its trial date unless the complexity of the case warrants a longer time or the criminal case situation prohibits meeting such a time limit maximum.

b. Identification of Principal Causes of Delays in Civil Litigation

(1) "...(T)he lack of Article III judge time for civil litigation which can only be handled by a district judge is the primary cause of delay in the New Mexico District [because of the number of criminal cases which they must handle]. However, increasing the effect of this cause is a lack of any coordination system among the District Judges, Senior District Judges, Magistrate Judges and the Clerk of the Court. When an organization is overtaxed in demand for services--in this case Article III judges handling dispositive motions on trials on the merits--then all services rendered by that organization must be efficiently coordinated with a communication system that maximizes the time available for district judges to handle those matters in the civil area which only they can handle...".

c. Identification of Principal Causes of Undue Costs in Civil Litigation

(1) The Subcommittee on Costs and Delays contends that excessive costs in civil litigation are driven by undue delay and meeting of a firm trial date. A firm trial date setting increases the probability of settlement and minimizes costs in expert witness and attorneys fees. In a plaintiff contingency fee case, setting and resetting of trials in a case can move the case from one which is economical to one which is uneconomical even if there is an adequate award. This puts a chilling effect on acceptance of contingent fee cases to the detriment of those who can hire an attorney only on that basis.

(2) Other causes for undue costs are identified by the Subcommittee as:

(a) Lack of a "differentiated case management" system in the Clerk's Office.

(b) Need to assign a "back-up" magistrate judge to handle settlement conferences in addition to the assignment of first magistrate judge to handle discovery matters or to try consent cases.

(c) Dispositive motions should be set for argument within a short, reasonable time after briefing is complete. Dispositive motions taken under advisement or subject of written opinions should be the exception and not the rule.

(d) The use of the Initial Pretrial Report for pretrial narrowing of issues and discovery control completed by the parties within a few months from the "at-issue" date is ineffective. Consensual time limits for the preparation of the IPTR after an initial conference with the assigned magistrate judge whereby logical phase-in discovery is agreed upon

and approved by the attorneys and the magistrate judge is the logical method of pretrial issue narrowing and discovery control.

(e) The failure to fill the pending Article III judgeship vacancy is compounding the problem of the increased criminal caseloads for the District. It is essential this position be filled as soon as possible and that forthcoming vacancies not undergo the same delay.

(f) It is impossible for Article III judges to keep up with all required actions of their cases. There is a great need for case managers to bring essential matters such as dispositive motions to their attention as soon as possible. In addition, case managers are required to be in contact with the assigned magistrate judges and the attorneys for positive follow-up actions on settlement possibilities and for assisting in keeping firm trial dates, by obtaining outside circuit or district judges or by promoting consent trials by the experienced magistrate judges in New Mexico.

(g) A large number of the drug cases tried in the District of New Mexico are marijuana cases. The U. S. Attorney can assist in decreasing the time spent by Article III judge on criminal cases by deferring to the state judicial system all marijuana case prosecution except those determined "major" by some pre-determined jurisdiction.

(h) It should be made very clear that the problem in costs and delays in civil cases in the District of New Mexico is not the civil lawyer, the magistrate judge nor is it the district judge. It is the creation of a plethora of new federal criminal cases, irrational minimum sentences, an over-complicated set of sentencing guidelines and an over zealous United States Department of Justice which "believes" that its members do not have to abide by the same Canons of Ethics that other lawyers do. As generally perceived, this is all

done in the name of "war on crime", with almost no consideration, little money and virtually no action to cure the social problems giving rise to those crimes. Thus, in effect, the criminal case docket and the criminal case trials, virtually all of which must be handled by Article III judges, have overwhelmed the District of New Mexico so that civil cases cannot be tried without unreasonable delay and cost.

d. The complete report by the Subcommittee on Cost and Delays is included as Appendix K.

4. Subcommittee on Court Procedures

a. The Subcommittee has made a series of observations, comments and recommendations which are included as Appendix L to this report. These are summarized as follows:

(1) Judicial Management

(a) There should be an increase in the use of Article III judges' involvement in case management and tracking, face-to-face initial conferences with counsel and litigants and in settlement conferences at an early date and on an on-going manner.

(b) There should be early <u>firm</u> trial dates established anywhere from 9 to 18 months from the initial status conference and such dates should be known and adhered to by all counsel and parties. In order to achieve the substantial savings of time and money possible from firm trial dates, such dates should be conditioned upon the consent of the parties to a trial before a "back-up" magistrate judge in the event the district judge is forced off the case through his criminal docket, or initially as an alternative to the Article III judge.

(c) The Subcommittee has proposed the use of interim and early status and pretrial report forms which with the proper conferences would require counsel to be prepared, research the case, be knowledgeable of the weaknesses of the case, know the witnesses who will be able to prove the facts, law and the case.

(2) Differential Case Management

(a) The Subcommittee has determined that a screening process be developed for three or four different "tracks" for different cases depending on the complexity and variances inherent in each case. The Subcommittee proposes that the assigned district judge with the assistance of counsel be involved in determining which track and category of management and review plan a specific case should be assigned.

(b) The Subcommittee furthermore offers detailed procedures for assuring that categorized cases include early and on-going involvement and control through a judicial officer by specifically tailoring the required conferences, reports, discovery actions, deadlines, alternative dispute resolutions, etc., to the individual cases. ADR possibilities include investigation of joint mediation/facilitation with the state court system.

(3) Pretrial Motions

(a) The Subcommittee recommends motion days with limited oral argument. Time limits and procedures are proposed for rulings by the court on all motions, particularly dispositive motions.

(b) The Subcommittee emphasizes strongly how much delay and inordinate cost are involved in the failure of the court to rule on dispositive motions and that

most attorneys are generally in agreement on this major problem which is not always perceived as such by the Article III judges.

(4) Phasing and Limitations of Discovery

(a) The controversy on discovery matters is considered by the Subcommittee as the eternal confrontational problem which depends on whether such are being viewed through the eyes of a attorney for a plaintiff or for a defendant.

(b) No matter the view, "...it is clear that discovery must be controlled through bar orders, and it is equally clear that a magistrate should, early in the case, establish:

> (i) the extent to which discovery is necessary;
>
> (ii) a phasing or timing of discovery, limiting the time period to one that will be reasonable, yet will also impose fairly strict phases within which the discovery is to be completed;
>
> (iii) that certain discovery be obtained through less formal contact, statements and agreed upon facts (stipulations of fact and non-contested matters);
>
> (iv) an order or list of production of documents and things which are to be furnished to opposing counsel without the need for depositions, interrogatories, demand for admissions and production of documents (see Exhibit F); and
>
> (v) limiting and creating strict but reasonable limitations on expert evidence, testimony, reports and redundancy...". See Exhibit G.

(c) In Exhibit F, the Subcommittee includes options on mandatory disclosure. The court may want to consider the drafting of a local rule to require mandatory disclosure of certain types of documents.

(5) Alternative Dispute Resolution

(a) The Subcommittee reviewed the various ADR devices and made the following recommendations:

(i) Arbitration

Even when properly adopted, it increases costs and delays. It may help with settlement. It must be consensual, thus, the Subcommittee does not have much regard for arbitration except in unusual cases. It does recommend that procedures and a local rule concerning its use should be available.

(ii) Mediation

The Subcommittee believes that mediation is an effective ADR, but the mediators must be trained. Its timing and repeated efforts are important. Not all cases should be mediated, although when considered as an adjunct to a settlement facilitation, it can become effective in many cases. It should not be adopted as a substitute for fact finding.

(iii) Court Annexed Settlement Conferences
These procedures are often productive and a local rule establishing assignment of cases for settlement facilitation may be productive.

(iv) Mini-Trials, Summary Trials and Reference to a Special Master

There is some potential in referrals to a special master in some cases, and it should be developed under local rule. It is by current rule more of a fact-finding procedure and may well be limited to areas of complex scientific evidence and determinations. Whether it can be of value in cases involving expert evidence, which is voluminous, is an interesting question: it, in effect, bifurcates the fact finding in a case which is, unquestionably, a problem, at least in jury trials.

(b) The use of ADR is largely dependent upon an early pressure by the court to go through one, or more, ADR procedures. This is particularly true for settlement conferences and mediation. However, there are many cases which, because of the nature of the controversy and the patterns of the parties' views, are not amenable to ADR. See Exhibit H. It should not be forced-fed in those situations, as it only increases costs and delays. There are parties and circumstances where one side may wish to delay the case for several presumed legitimate reasons. The use of ADR in those circumstances may literally play into the hands of that counsel and in turn increase costs and extend the delays. In plain terms, ADR is not always a useful tool, and the Subcommittee suggests that the court carefully limit the circumstances where it is employed and made a part of the local rules.

5. Subcommittee on Criminal Justice Issues

a. In view of the heavy criminal caseloads being handled by the judges of this court, the Subcommittee has made the following recommendation to reduce the number of criminal cases brought to the court, reduce the amount of time required of the judges for criminal courts and the amount of time spent by attorneys and parties on discovery and other attendant necessities of criminal cases.

(1) Plea Bargains

(a) "...All Judges in the District [should] consider accepting Rule ll(e)(A) or (C) [of the Federal Rules of Criminal Procedures] binding plea bargains in appropriate cases...".

(b) "...All Judges in the District [should] consider accepting binding stipulations relating to various provisions in the Sentencing Guidelines, specifically, (a)

acceptance of responsibility; (b) minimal or minor role; (c) relevant conduct; (d) specific guideline sentences with caps or specific lengths...".

(2) Omnibus Hearing Report

(a) "...Committee members Deaton and Hollander recommend that the Judges in the District Prepare a new Omnibus Report attempting to resolve as many pre-trial issues as possible. Committee member Svet recommends that the Omnibus Report be abolished...".

(3) Discovery

(a) "...All Judges [should] consider imposing Rule 16 deadlines in criminal cases...".

(b) "...The U.S. Attorney's Office should consider formulating a full or partial open file policy...".

(c) "...All Judges [should] consider appointing attorneys in civil rights cases involving prisoners...".

(4) Reduction in Criminal Case Filings

(a) "...Committee members Deaton and Hollander recommend that the United States attorney's Office consider formulating a policy declining to prosecute some drug cases that could be prosecuted in state court. Committee Svet opposes this recommendation...".

(5) Sentencings

Committee members Deaton and Hollander recommend that Congress should repeal mandatory minimum sentence provisions, whereby the United States Sentencing Commission should reconsider the guidelines applicable to the affected offenses. Committee member Svet opposes this recommendation...".

b. The report by the Subcommittee of Criminal Justice Issues is attached as Appendix M.

6. Subcommittee on Pro Se Litigation Issues

a. Prisoner Pro Se Litigation

The typical pro se litigant submits either a petition for writ of habeas corpus or a civil rights complaint. Both prisoner and non-prisoner pro se litigation are usually filed in forma pauperis. Prisoner and non-prisoner cases are summarized and discussed separately in the Subcommittee's report which is included as Appendix N .

(1) Prisoner Habeas Corpus Petitions

(a) Although usually handled promptly in the District of New Mexico, there has been delay in the full processing of habeas corpus petitions in the court to the extent that such resulted in action by the Tenth Circuit, U. S. Court of Appeals. This concern arose from habeas cases which were initially dismissed summarily without requiring an answer to such petitions. As this continued in the court, such cases began to accumulate as unacceptable backlogs.

(b) Habeas corpus petitioners, however, are eligible for appointment of counsel under the Criminal Justice act. The court usually appoints counsel after the petition has been answered. Hence, habeas cases tend not to remain pro se throughout their life and in the final stages of the case both sides are represented by counsel which tends to move reduce the delay often precipitated by pro se representation.

(2) Prisoner Civil Rights Complaints

(a) The majority of problems involving prisoner pro se litigants have been with civil rights cases. When such complaints are received by the court, they are initially reviewed by the pro se law clerk and pro se legal assistant. Substantive screening is performed, but assistance to the pro se litigants is limited to procedural guidance. The members of the pro se law staff perform legal research in conjunction with the assigned magistrate judge.

(b) Prisoner civil rights are initially screened as to level of merit, sorting claims raised in complaints by "reading between the lines" to distinguish meritorious versus non-meritorious pleadings. The pro se staff recommends to the magistrate judge an appropriate course of action and advise pro se litigants of deficiencies in forms and other pleadings requiring corrections.

(c) After preliminary screening and appropriate recommendation, the magistrate judge approves the proposed action or returns it to the pro se staff for appropriate changes. When the complaint is clearly without merit and after the litigant has been afforded a reasonable opportunity to cure procedural defects, a memorandum and order is entered by the court dismissing the case, with or without prejudice.

(d) If it survives the initial screening and the litigant continues to pursue the matter, the case is set for appropriate pretrial conferences and/or hearings. The problem with these types of cases has been that meritorious cases sometimes tend to languish and wither from lack of attention because the pro se litigant is unaware or disinterested in advocating his claim.

b. Non-Prisoner Pro Se Litigants

(1) As with prisoner litigation, the majority of non-prisoner litigants file complaints in forma pauperis. Most of these complaints allege violations of civil rights or claim some form of discrimination in hiring or termination of employment. Non-prisoner pro se litigation constitutes about ten percent of all pro se litigation filed in the district. The pro se law clerk and magistrate judge review the complaint with a procedure similar to that used in reviewing prisoner petitions. The non-prisoner pro se cases also tend to remain inactive on the court's docket, either from the pro se litigant's lack of interest in pursuing the case or because of lack of understanding on how to prosecute his case as is the usual case when non-lawyers, unfamiliar with rules of procedures, rules of the court, motion practice, etc., attempt to pursue their own litigation.

c. Outlook

As indicated, the pro se filings for 1992 have out paced the filings for 1991. The reason for this, however, is probably the requirement that all pro se documentation purporting to initiate a new case be docketed as such regardless of pleading deficiencies or

returns for corrections. The increase could also indicate that the low level for 1990 may now be reflecting increases on their own. On the other hand, there could result a decrease in filings if procedures included in 42 U.S.C. § 1997e are complied with by which exhaustion of remedies are used for grounds of dismissal of inmate civil rights cases. Other provisions appear to be surfacing such as recent Supreme Court decisions which will impact on the survival of dubious in forma pauperis litigation, inmate or non-inmate.

d. Subcommittee Recommendations

(1) Pro Se Law Clerk Staff

The Subcommittee recommends that at least one permanent pro se law clerk be authorized for the District of New Mexico to oversee the pro se litigation caseload. Furthermore, it is recommended that a pro se paralegal be authorized to be the main contact with the pro se litigants in order to avoid the delays which have traditionally occurred with such claims.

(2) Pro Bono Panel

It is recommended that an annual federal bar fee be established for all federal bar practitioners in the District of New Mexico and that the proceeds of such fees be used to establish and pay a panel of pro bono attorneys a minimum of $500 to handle each pro se case to which they are appointed. Additionally, it is recommended that such attorneys receive a maximum of $250 for legal services in conjunction with such appointments. Should the pro se litigant prevail on a case and be awarded attorney fees or costs by the court, the amount advanced for the case would be reimbursed in full to the court by the attorney.

e. Alternative Dispute Resolutions

(1) Mediation

The Subcommittee recommends that magistrate judges or appropriately trained attorneys be used as mediators in pro se cases. Mediation at an early stage should be explored in all pro se cases except those subject to early dismissal as clearly non-meritorious.

(2) Inmate Grievance Procedures

The Subcommittee that the court encourage the Department of Corrections of the State of New Mexico to adopt an approved prisoner grievance procedure as contemplated by 42 U.S.C. § 1997e.

f. Other

(1) Orientation/Reference Manuals

The Subcommittee recommends the development and distribution of reference manuals for pro se litigants and orientation materials for pro bono attorneys.

(2) Training for Pro Bono Attorneys

Pro Bono Panel attorneys should receive training in the handling of pro se litigation in the district. Attorneys should be required to attend appropriate training sessions before they can qualify as members of the Pro Bono Panel.

(3) Internal Reference Manual

The Clerk of Court should assure that an appropriate internal operations manual should be developed for use by pro se law clerks and other staff members working on pro se litigation for the court.

PART IV: RECOMMENDATIONS FOR THE COURT'S CONSIDERATION FOR ADOPTING ITS CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN REQUIRED BY SECTION 471 OF TITLE 28, UNITED STATES CODE

A. In accordance with Section 472 (b) of Title 28 of the United States Code, the Advisory Group for the United States District Court for the District of New Mexico hereby submits its Report which contains:

1. An assessment of the matters included in Subsection (c)(1) of 28 U.S.C. § 472;

2. The basis for its recommendations that the District adopt an Implementation Plan incorporating the recommendations of the Advisory Group;

3. Recommended measures, rules, programs, and

4. An explanation of the manner in which the recommended plan complies with Section 473 of Title 28, United States Code.

B. The specific recommendations of the Advisory Group and the bases for same are as follows:

1. CASE ASSIGNMENT PROCEDURES

a. District and Magistrate Judge Assignments

Civil case assignments were done through a manual ledger on a rotational basis among the district judges and the senior judges, as appropriate, however, the system is now automated. At the time that the district judge is assigned, a magistrate judge is also assigned on a rotational basis, except for the magistrate judge located in Las Cruces who receives assignments for all of the Las Cruces civil cases plus an equitable number of inmate civil rights and habeas corpus and social security cases similar to the other magistrates.

b. Automated Case Assignment

(1) At the present time, the Clerk's Office is using an automated case assignment system to accomplish rotational assignment of civil cases on an equitable basis for all active judges and one senior district judge. The Advisory Group believes that a case assignment system using the case weights or values developed by the Federal Judicial Center, based on studies on how much magistrate and district judge time each category of case requires from filing to disposition, would result in more equitable workload distribution among the district judges. A review of the cases pending for each district judge as of October 30, 1992, reflects that applying the weights assigned to each category of civil case, there is a significant deviation, almost 25% spread, for one district judge from the average weight value of the total pending cases.

(2) Thus, with limited programming, the present automated system can be converted from a system which assigns cases randomly and equitably by number of cases to a system which would assign cases on a workload basis, thus, preventing judges from getting more than their share of heavy weighted cases, i. e., anti-trust category is weighted 5.35 while social security cases are weighted .26. A listing of the number of civil cases pending for each judge as of October 30, 1992, and a listing of the weighted value for each case category and for each judge's caseload are included in Appendix O.

RECOMMENDATION ONE:

THE ADVISORY GROUP RECOMMENDS THAT THE AUTOMATED CASE ASSIGNMENT SYSTEM IN THE DISTRICT OF NEW MEXICO FOR CIVIL CASES

SHOULD BE ACCOMPLISHED BY USING A CASE WEIGHTED SYSTEM TO ASSIGN AND DISTRIBUTE CASES AMONG THE JUDGES RANDOMLY, FAIRLY AND EQUITABLY BY WORKLOAD AND NOT ONLY BY EQUAL NUMBER OF CASES, UNLESS OTHER ARRANGEMENTS PREVAIL. FURTHERMORE, AS CIVIL CASES ARE ASSIGNED, IN ADDITION TO ASSIGNING A DISCOVERY MAGISTRATE JUDGE, A SECOND MAGISTRATE JUDGE SHOULD BE ASSIGNED TO ACT AS MEDIATOR FOR POSSIBLE SETTLEMENT NEGOTIATIONS AND AS "BACK-UP" MAGISTRATE JUDGE TO TRY CONSENT CASES SHOULD THE ASSIGNED DISTRICT JUDGE NOT BE AVAILABLE AT A PREVIOUSLY SET TRIAL DATE.

(3) A procedure for implementing the above recommendation is included as Appendix O. The "back-up" magistrate judge assignment is recommended to permit the Court to stick with firm trial dates to hold the attorneys' "feet to the fire" and thus, channel more cases sooner into the settlement mode.

2. SERVICE OF PROCESS

a. Rule 4(m) of the Federal Rules of Civil Procedures requires that service of process of a summons and complaint, by whatever means permitted, be accomplished within a period of 120 days from the day of filing of the complaint, unless good cause is shown to the contrary.

b. Local Rule 41.1 of the United States District Court for the District of New Mexico provides that a civil action not at issue pending in the court without proceedings or manifest interest in its prosecution and development for a period of ninety days, may be dismissed. Prior to dismissal, written notice shall be given by the Clerk to the attorneys of

record and to each of the parties whose addresses are shown in the record, that the action will be dismissed within thirty days after the date of the notice unless good cause for retention of the action is shown.

c. The Advisory Group recognizes that not much reduction of time would result directly from the action recommended, however, it believes that counsel would probably effect quicker service of process if they recognize that the Court will dismiss actions for want of prosecution.

RECOMMENDATION TWO:

TO ENCOURAGE REDUCTION IN THE TIME FOR SERVICE OF PROCESS OF THE SUMMONS AND COMPLAINTS BUT STILL ALLOW THE MAXIMUM TIME PERMITTED BY RULE 4(m) OF THE FEDERAL RULES OF CIVIL PROCEDURE, IT IS RECOMMENDED THAT A POLICY OF IMPLEMENTING THE PROVISIONS OF LOCAL RULE 41.1 BE FOLLOWED IF SERVICE OF PROCESS IS NOT ACCOMPLISHED FOR NEW CASE FILINGS WITHIN NINETY DAYS, ABSENT GOOD CAUSE SHOWN WITHIN A PERIOD OF THIRTY DAYS AS TO WHY THE ACTION SHOULD NOT BE DISMISSED WITHOUT PREJUDICE AGAINST THE DEFENDANT NOT SERVED WITHIN THE NINETY DAY PERIOD.

3. CASE MANAGEMENT PROCEDURES

a. Section 473(a) of Title 28, United States Code, sets forth certain principles and guidelines for judges to use in handling their civil dockets. These specify that judges should discriminate carefully and systematically from the start of the litigation between complex cases requiring early and intensive judicial monitoring and case management and those more routine cases which can be assigned to less intensively controlled pretrial tracks. In essence, judges are asked to take early, continuing control of the pretrial process, tailoring discovery and litigant cooperation to the needs of the case, proactively scheduling motions and setting an early firm date for trial or other disposition.

b. In order to accomplish the above, the Advisory Group believes that it is essential that the court have a case management plan which must operate within written, defined procedures to assure that each aspect of the required "tracking", monitoring, attention and judicial intervention can be applied at the right time to each specific case according to the case characteristics, i. e., complexity, numbers and locations of parties, special issues, problems, discovery needs, etc., in order to move it to its final resolution as soon as practical. Suggested criteria are included in Appendix P to assist the judicial officer as to what "track" a specific case should be designated. Furthermore, a suggested initial pretrial status report and a suggested scheduling and case management order are attached as Appendix Q to this report.

RECOMMENDATION THREE:

THE ADVISORY GROUP RECOMMENDS THAT THE COURT BY LOCAL RULE ADOPT A CASE DIFFERENTIAL AND MANAGEMENT PLAN TO CATEGORIZE EACH CASE AS SOON AS POSSIBLE AFTER IT IS AT ISSUE IN

ORDER TO PLACE IT IN ONE OF FOUR "TRACKS" ACCORDING TO ITS SPECIFIC CHARACTERISTICS TO ASSURE PROPER AND TIMELY MONITORING, HANDLING, SHEPARDING AND DIRECTION TO A FIRM DATE FOR TRIAL OR OTHER DISPOSITION ACCORDING TO ITS PARTICULAR NEEDS. THE DIFFERENTIATED CASE TRACKING SYSTEM SHOULD HAVE FOUR DEFINED "TRACKS" CLASSIFIED AS FOLLOWS FOR EACH CIVIL CASE FILED IN THE COURT:

(1). EXPEDITED CASES

(a) Disposed of within 9 months after case is at issue.

(b) Initial conference with parties present is set with magistrate judge or district judge within 60 days after case is at issue for scheduling and management plan and firm trial date.

(c) Discovery cut-off date is set no later than 100 days after the filing of the scheduling order.

(d) Periodic conferences and status reports thereafter as determined by the assigned magistrate and/or district judge.

(2) STANDARD CASES

(a) Disposed of in 12 months or less after case is at issue.

(b) Initial conference with parties present is set with magistrate judge or district judge within 60 days after case is at issue for scheduling and management plan and firm trial date.

(c) Discovery cut-off date is set no later than 200 days after filing of the scheduling order.

(d) Periodic conferences and status reports thereafter as determined by assigned magistrate and/or district judge.

(3) COMPLEX CASES

(a) Disposed of in 18 months or less after case is at issue, unless the complexity of the case requires otherwise.

(b) As soon as case is at issue, the assigned magistrate or district judge holds an initial conference with parties present whereby the judicial officer:

(i) Explores the receptivity of settlement or proceeding with the litigation;

(ii) Identifies and formulates the principal issues in contention, provides for staged resolution or bifurcation of issues consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(iii) Prepares a discovery schedule and plan consistent with the time limits set by the court for completion of discovery and with any procedures the court develops, and,

(iv) Sets earliest practicable motions timing.

(4). ADMINISTRATIVE CASES

(a) These are cases which based on the court's prior experience are likely to result in default or consent judgment, resolved or dismissed on the pleadings or by motion.

(b) Cases are referred directly by Clerk's Office to a magistrate judge for preparation of a report and recommendation unless the matter deals with a motions for a temporary restraining order or temporary injunction in which occasion, the Clerks shall refer such matters immediately to the assigned district judge.

(c) Generally, there will be no discovery for this track without prior leave of court.

c. If the Court adopts the above or a similar case differential management plan, a continuing monitoring system will be required to be performed by the Clerk's Office to

assure that the required follow-up, discussions with attorneys, obtaining and preparing periodic status reports and briefing of the assigned magistrate and district judges are accomplished on a timely basis.

d. The chief deputy clerk, chief of the operations division or an experienced high level deputy clerk from the Clerk's Office should act as the overall **court case manager** for oversight of all case management functions for all cases on the court's civil docket. The court case manager should meet as frequently as necessary with a **case management team** developed to monitor and tracking each judge's civil caseload. The team should be composed as a minimum of the courtroom deputy clerk, civil docketing deputy clerk and the assigned magistrate judge courtroom deputy clerk to ensure a complete link in communication, coordination and interface for proper review, monitoring and follow-up on all cases assigned to that team's district judge. The day-to-day supervision and contacts with attorneys of each case assigned to each district judge should continue to be the duty of the courtroom deputy clerk assigned to that judge. If a case is pro se, the case management team should also include the pro se litigation law clerk.

4. CASE MANAGEMENT TEAM

RECOMMENDATION FOUR:

IF THE COURT ADOPTS THE ABOVE OR A SIMILAR CASE DIFFERENTIAL MANAGEMENT PLAN, THE ADVISORY GROUP RECOMMENDS THAT A SENIOR COURT CASE MANAGER BE APPOINTED BY THE COURT AND THAT CASE MANAGEMENT TEAMS BE ESTABLISHED FOR EACH DISTRICT AND SENIOR

JUDGE FOR A MEANINGFUL CONTINUING SURVEILLANCE, MONITORING, COORDINATION AND FOLLOW-UP SYSTEM FOR EACH CIVIL CASE ASSIGNED THAT JUDGE'S CIVIL DOCKET. THE ADVISORY GROUP FURTHER RECOMMENDS THAT THE CLERK OF COURT ASSURE THAT WRITTEN PROCEDURES ARE PREPARED FOR THE COURT CASE MANAGER AND CASE MANAGEMENT TEAMS TO ASSURE AN EFFECTIVE, CONTINUED AND UNIFORM CASE MANAGEMENT AND CONTROL PROGRAM.

THE CHIEF DEPUTY CLERK, CHIEF OF THE OPERATIONS DIVISION OR OTHER HIGHLY QUALIFIED DEPUTY CLERK FROM THE CLERK'S OFFICE SHOULD ACT AS THE OVERALL COURT CASE MANAGER FOR OVERSIGHT OF ALL CASE MANAGEMENT FUNCTIONS FOR ALL CIVIL CASES ON THE COURT'S DOCKET. THE COURT CASE MANAGER SHOULD MEET AS FREQUENTLY AS NECESSARY WITH THE CASE MANAGEMENT TEAM WHICH SHOULD BE COMPOSED AS A MINIMUM OF THE JUDGE'S COURTROOM DEPUTY CLERK, CIVIL DOCKETING DEPUTY CLERK AND THE ASSIGNED MAGISTRATE JUDGE COURTROOM DEPUTY CLERK TO ASSURE THAT THERE IS COMPLETE COMMUNICATION, COORDINATION AND INTERFACE FOR PROPER REVIEW, MONITORING AND FOLLOW-UP ON ALL CIVIL CASES ASSIGNED TO EACH DISTRICT JUDGE. THE DAY-TO-DAY CASE SUPERVISION AND CONTROL FUNCTIONS AND THE CONTACTS WITH ATTORNEYS OF EACH CASE ASSIGNED TO EACH DISTRICT JUDGE SHOULD BE THE RESPONSIBILITY OF THE COURTROOM DEPUTY CLERK ASSIGNED TO THAT JUDGE. THE COURT CASE

MANAGER SHOULD DETERMINE WHEN THE CASE MANAGEMENT TEAM SHOULD ALSO MEET WITH THE ASSIGNED MAGISTRATE OR DISTRICT JUDGE WHEN DEEMED APPROPRIATE. IF A CASE IS PRO SE, THE CASE MANAGEMENT TEAM SHOULD INCLUDE THE PRO SE LITIGATION SUPERVISOR.

5. MEET AND CONFER SESSIONS

a. The research and interviews conducted by the Advisory Group revealed that there is very little early case assessment being done by attorneys and there is almost a total absence of pretrial case management of any sort between counsel representing plaintiffs and defendants.

b. There is general agreement that early judicial officer intervention for development of an appropriate discovery schedule, establish deadlines, pursue possibilities of settlement, outline possible alternative dispute resolutions and to set a firm trial date is the essence of proper case management. However, given the time limitations which our judicial officers face, consideration should be given to Section 473(b)(1) of Title 28 of the U. S. Code, which suggests 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"...

c. In order to involve counsel in the early stages of civil litigation, some courts have reported successful results with "Meet and Confer" sessions by lead counsel of each party. These are conducted no later than 100 days after the complaint was filed and lead counsel meet in a face-to-face meeting to discuss the following for inclusion in a case management statement:

(1) Principal Issues and Evidence

(a) Identify the principal factual and legal issues that the parties dispute.

(b) Discuss the principal evidentiary bases for claims and defenses.

(2) Alternative Dispute Resolutions

Discuss utilization of ADR procedures.

(3) Jurisdiction by a Magistrate Judge

Discuss whether all parties will consent to jurisdiction by a magistrate judge under 28 U.S.C. § 636(c).

(4) Disclosure

Discuss whether additional disclosure of documents or other information can be made and, if so, when

(5) Motions

Identify any motions whose early resolution would likely have a significant effect on the scope of discovery or other aspects of the litigation.

(6) Discovery

(a) Plan at least the first phase of discovery, specifically identifying areas of agreement and disagreement about how discovery should proceed.

(b) Recommend limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time period to which discovery should be confined.

(7) Scheduling

(a) Recommend dates by which discovery should be completed, expert witnesses disclosed, motions directed to the merits of all or part of the case filed, the papers required for the final pretrial conference filed, the final pretrial conference held, and the trial commenced.

(b) Recommend the dates or intervals for supplementation of disclosures.

(8) Settlement Possibilities

Discuss the possibilities of settlement as well as what is interfering with possible settlement.

(9) Case Track Recommendation
Counsel should recommend to the Court which track the case should be assigned on the case management plan or status report, whatever is adopted at the first pretrial conference before the judicial officer at that conference.

RECOMMENDATION FIVE:

IT IS RECOMMENDED THAT THE COURT ADOPT A LOCAL RULE TO REQUIRE "MEET AND CONFER" SESSIONS BY LEAD COUNSEL OUTSIDE OF THE COURT SETTING FOR CASES FALLING IN THE STANDARD AND COMPLEX "TRACK" CATEGORIES AND THAT A CASE STATUS AND SCHEDULING-MANAGEMENT PLAN FORM BE DEVELOPED BY THE COURT FOR COUNSEL TO COMPLETE PRIOR TO THE INITIAL PRETRIAL CONFERENCE FOR USE BY THE MAGISTRATE OR DISTRICT JUDGE HOLDING SUCH CONFERENCE. THE JUDICIAL OFFICER SHOULD DETERMINE THE ACTUAL "TRACK" THE CASE SHOULD BE PLACED ON FROM RECOMMENDATIONS MADE BY COUNSEL AND OTHER INDIVIDUAL CASE CHARACTERISTICS. THE JUDICIAL OFFICER WILL ALSO DETERMINE THE SCHEDULING, PHASING, DISCOVERY DEADLINES AND, IN COORDINATION WITH THE TRIAL JUDGE, THE TRIAL DATE FOR EACH CASE.

6. PHASING OF DISCOVERY

a. In the initial discovery conference, a discovery deadline should be established in areas which could lead to settlement. If settlement is not accomplished, discovery should be phased as follows unless otherwise ordered by the judicial officer:

(1) Document Production

(2) Fact Discovery

(3) Discovery concerning expert opinion

(4) Damages

RECOMMENDATION SIX:

IT IS RECOMMENDED THAT THE COURT ADOPT A POLICY OF PHASING OF DISCOVERY ACCORDING TO THE CHARACTERISTICS OF THE CASE IN CONJUNCTION WITH THE TRACK TO WHICH IT HAS BEEN ASSIGNED. THE PHASING IN SHOULD BE DETERMINED BY THE JUDICIAL OFFICER DURING THE INITIAL PRETRIAL CONFERENCE WHICH SETS THE DEADLINES AND SCHEDULES FOR DISCOVERY. THE GUIDELINES AND RULES FOR BURDEN OF PROOF FOR CONFIDENTIALITY OF DOCUMENTS AND ASSERTIONS OF CLAIMS OF PRIVILEGE OR WORK PRODUCT SHOULD BE DETERMINED BY THE DISTRICT JUDGE OR MAGISTRATE JUDGE AT THE APPROPRIATE PRETRIAL CONFERENCE.

7. CONTROL OF EXPERT WITNESS COSTS

Another observation which was brought to the Advisory Group's attention was that the cost for expert witnesses has become exceedingly exorbitant to the point that it practically becomes prohibitive to some parties. Continued emphasis was made to relay to the

Court that it should undertake appropriate actions to control these escalating costs of expert witnesses.

RECOMMENDATION SEVEN:

IT IS RECOMMENDED THAT THE COURT ADOPT A POLICY OF DETERMINING AS SOON AS POSSIBLE THE AMOUNT OF EXPERT WITNESS DISCOVERY WHICH WILL BE REQUIRED AND THAT LIMITATION OF SUCH BE ESTABLISHED AS DETERMINED BY THE MAGISTRATE OR DISTRICT JUDGE DURING THE INITIAL OR SUBSEQUENT PRETRIAL CONFERENCES.

8. HEARINGS AND RULINGS ON DISPOSITIVE MOTIONS

a. From testimony and other research conducted, the Advisory Group ascertained that attorneys would prefer that judges set hearing days at the discretion of the judges and that the length of time for such hearings should not exceed 30 minutes unless varied by the judge. Further, it was suggested that five days before the scheduled hearing, the judges should issue a tentative ruling with a short statement of the basis. Oral argument may be requested by the losing party.

b. One of the most consistent complaints from interviewees was that rulings on dispositive motions were taking too long or were not ruled on at all. The attorneys contend that waiting for such rulings is causing prolonged and sometimes unnecessary discovery, thereby extending the costs and delays of civil litigation in general. The Advisory Group firmly believes and hopes that the judges will seriously consider the following recommendation because of the strong emphasis which was made for the judicial action recommended.

RECOMMENDATION EIGHT:

IT IS RECOMMENDED THAT EACH JUDGE CONSIDER ADOPTING A MOTIONS HEARING DAY FOR ORAL ARGUMENT AND THAT A LOCAL RULE BE ADOPTED REQUIRING THAT DISPOSITIVE MOTIONS BE RULED ON AND ORDER ENTERED WITHIN 60 DAYS FOLLOWING ORAL ARGUMENT OR AFTER THE REPLY OR THE DEADLINE FOR FILING SUCH REPLY, UNLESS THE COURT DETERMINES THAT ADDITIONAL TIME IS NECESSARY FOR CONSIDERATION OF THE MOTION.

9. POLICY ON FIRM TRIAL SETTINGS

a. It is generally accepted by most judicial officers and attorneys that the single most effective tool in resolving cases quickly is to have a firm trial date set as early as possible. Trial dates may be set on the initial pretrial scheduling order for expedited and standard cases and during pretrial conferences with complex cases. Firm trial dates play a very significant role because they force attorneys to focus their attention on the deadlines which they face for trial. With early, firm trial dates, attorneys and litigants know that they must realistically evaluate the risks they will face with an upcoming firm trial date and such will force them to consider settlement more seriously.

b. As with complaints by attorneys that dispositive motions should be ruled on as soon as possible, the benefits of having firm trial dates were extolled frequently by attorneys interviewed by the Advisory Group because of the cost savings possible when lawyers need to prepare for trial only once and not several times as happens often in the indefinite

trailing calendar system. Such savings are significant when one considers the heavy expenses of having expert witnesses awaiting a trial which may or may not get started on a specific date.

c. The Advisory Group recognizes that setting and keeping firm trial dates may present difficulties for the judges and there will be occasions when flexibility may be necessary. However, the Advisory Group hopes that with "back-up" judicial officers, i.e., other district judges, magistrate judges for consent cases, circuit judges, etc., will still permit the keeping of the previously set trial dates. If such is still not feasible, the setting of two cases "back-to-back" for the same date may still provide the necessary impetus for keeping the attorneys' " feet-to-the-fire" for seriously considering settlement.

RECOMMENDATION NINE:

IT IS RECOMMENDED THAT THE COURT SET A POLICY OF MAKING AND KEEPING FIRM TRIAL DATES. IF THE ASSIGNED TRIAL JUDGE IS UNABLE TO MEET A FIRM TRIAL DATE, ARRANGEMENTS SHOULD BE MADE TO HAVE THE "BACK-UP" OR OTHER MAGISTRATE JUDGE (IF THE PARTIES CONSENT), OR ANY OTHER AVAILABLE DISTRICT JUDGE, KEEP THE FIRM TRIAL DATE. IF SUCH MAGISTRATE OR DISTRICT JUDGES ARE NOT AVAILABLE IN THE DISTRICT OF NEW MEXICO, THE CHIEF JUDGE SHOULD BE NOTIFIED SO THAT HE CAN ADVISE THE CHIEF JUDGE OF THE TENTH CIRCUIT TO ASCERTAIN THE AVAILABILITY OF ANY DISTRICT OR CIRCUIT WITHIN THE TENTH CIRCUIT TO HANDLE THE SET TRIAL. IF TENTH CIRCUIT JUDGES ARE NOT AVAILABLE, IT IS RECOMMENDED THAT THE CHIEF JUDGE OF THE DISTRICT OF NEW MEXICO SUBMIT A CERTIFICATE OF NECESSITY TO THE CHIEF

JUSTICE IN ACCORDANCE WITH 28 U.S.C. § 292(d) FOR DESIGNATION OF A DISTRICT JUDGE FROM OUTSIDE OF THE TENTH CIRCUIT SO THAT THE FIRM TRIAL DATE CAN BE MAINTAINED.

10. ALTERNATIVE DISPUTE RESOLUTIONS

The Advisory Group has determined that even when properly adopted, arbitration increases costs and delays, however, it does sometimes help to reach settlement. In the opinion of the Advisory Group, if arbitration is used, it must be voluntary and therefore cannot be binding. Thus, the Advisory Group concludes that all possibilities of voluntary ADR be explored if such will expedite the disposition of civil litigation. In order to have these options available to litigants, it will be necessary for the Court, through the clerk, to establish panels of arbitrators, mediators and facilitators and to assure, periodically, that such are properly trained.

RECOMMENDATION TEN:

AS REGARDS ALTERNATIVE DISPUTE RESOLUTION, THE ADVISORY GROUP RECOMMENDS THAT THE DISTRICT AND MAGISTRATE JUDGES, AS SOON AS PRACTICAL IN THEIR DISCRETION AT PRETRIAL CONFERENCES, OFFER PARTIES THE OPPORTUNITY FOR CONSENSUAL ARBITRATION AS WELL AS OTHER MECHANISMS WHICH MAY LEAD TO SETTLEMENT, I.E., MEDIATION, CONCILIATION, MINI-TRIALS, SUMMARY JURY TRIALS, SETTLEMENT CONFERENCES, ETC. THE ADVISORY GROUP, FURTHERMORE,

RECOMMENDS THAT THE COURT THROUGH THE CLERK ESTABLISH ITS OWN PANEL OF ARBITRATORS, MEDIATORS AND FACILITATORS FOR USE AS AN ASSIST TO THE COURT. HOWEVER, APPROPRIATE TRAINING FOR SUCH ATTORNEYS SHOULD BE SCHEDULED THROUGH THE CLERK PERIODICALLY AS REQUIRED. PROCEDURES FOR SELECTION AND TRAINING OF SUCH ARBITRATORS, MEDIATORS, CONCILIATORS AND FACILITATORS SHOULD BE DEVELOPED BY THE CLERK IN CONJUNCTION WITH THE DISTRICT AND MAGISTRATE JUDGES. UNTIL SUCH PANELS ARE ESTABLISHED, IT IS RECOMMENDED THAT THE COURT MAKE USE OF THE TRAINED ARBITRATORS, MEDIATORS AND FACILITATORS OF THE SECOND JUDICIAL DISTRICT COURT.

11. USE OF ATTORNEY FACILITATORS FOR PILOT SETTLEMENT WEEK

The First, Second and other Judicial District Courts of the State of New Mexico court system have had exceptional success in case settlements through the use of trained and experienced attorney facilitators acting as case mediators. This practice usually takes place once a year for one week, however, they can be used more often, if deemed appropriate.

RECOMMENDATION ELEVEN:

IT IS RECOMMENDED THAT THE COURT ESTABLISH A PILOT SETTLEMENT WEEK PROGRAM USING VOLUNTEER ATTORNEY FACILITATORS. A POOL OF ATTORNEY FACILITATORS SHOULD BE ESTABLISHED FROM QUALIFIED VOLUNTEER ATTORNEYS WHO HAVE HAD TEN OR MORE YEARS

OF FEDERAL PRACTICE, HAVE EXPERIENCE AS A FACILITATOR OR HAVE COMPLETED APPROPRIATE COURSES IN THIS REGARD. IN ADDITION TO ESTABLISHING THE POOL AND PROCEDURES FOR THE PILOT SETTLEMENT WEEK, IT IS RECOMMENDED THAT TRAINING COURSES FOR ATTORNEYS IN MEDIATION TECHNIQUES BE OBTAINED THROUGH THE NEW MEXICO STATE BAR CONTINUING LEGAL EDUCATION SECTION.

12. PRO BONO PANEL

The Advisory Group opines that the assignment of attorneys for pro se litigants is a need which must be addressed by the court. Litigation handled by pro se parties results in prolonged and unnecessary discovery which takes up considerable time of the court in trying to assure that individual rights are safeguarded. The Advisory Group believes it is time that the court face this problem squarely by establishing a panel of pro bono attorneys to assist in moving more effectively pro se litigation to a more timely and fair disposition.

RECOMMENDATION TWELVE:

IT IS RECOMMENDED THAT THE COURT ESTABLISH A PRO BONO PANEL OF ATTORNEYS APPOINTED TO REPRESENT PRO SE LITIGANTS AND THAT SUCH PRO BONO ATTORNEY RECEIVE $500. TO HANDLE EACH PRO SE CASE AND $250 SHOULD ALLOCATED FOR EACH PRO SE LITIGANT'S PARALEGAL, SERVICES OR OTHER ATTENDANT COSTS. IT IS FURTHER RECOMMENDED THAT FUNDING FOR THE PRO BONO PANEL COME FROM AN ANNUAL FEDERAL

BAR FEE TO BE CHARGED TO ALL MEMBERS OF THE FEDERAL BAR IN THE DISTRICT.

13. PRO SE LAW CLERK

RECOMMENDATION THIRTEEN:

IT IS RECOMMENDED THAT AT LEAST ONE PERMANENT PRO SE LAW CLERK POSITION BE ESTABLISHED FOR THE DISTRICT OF NEW MEXICO.

14. MEDIATION IN PRO SE CASES

RECOMMENDATION FOURTEEN:

IT IS RECOMMENDED THAT MAGISTRATE JUDGES OR APPROPRIATELY TRAINED ATTORNEYS BE ENCOURAGED TO SERVE AS MEDIATORS IN PRO SE CASES. MEDIATION AT AN EARLY STAGE SHOULD BE EXPLORED IN ALL PRO SE CASES EXCEPT THOSE SUBJECT TO EARLY DISMISSAL AS CLEARLY NON-MERITORIOUS.

15. ADOPTION OF INMATE GRIEVANCE PROCEDURES

RECOMMENDATION FIFTEEN:

THE ADVISORY GROUP RECOMMENDS THAT THE COURT THROUGH THE CHIEF JUDGE ENCOURAGE THE NEW MEXICO DEPARTMENT OF CORRECTIONS TO ADOPT AN APPROVED PRISONER GRIEVANCE PROCEDURE AS

CONTEMPLATED BY SECTION 1997e OF TITLE 42 OF THE UNITED STATES CODE.

16. PRO SE REFERENCE MANUAL

RECOMMENDATION SIXTEEN:

IT IS RECOMMENDED THAT THE PRO SE STAFF ATTORNEY PREPARE A REFERENCE MANUAL FOR PRO SE LITIGANTS AND PRO BONO ATTORNEYS.

17. TRAINING OF PRO BONO PANEL ATTORNEYS

RECOMMENDATION SEVENTEEN:

IT IS RECOMMENDED THAT PRO BONO ATTORNEYS RECEIVE TRAINING IN THE HANDLING OF PRO SE LITIGATION IN THE DISTRICT. TO QUALIFY FOR THE PRO BONO PANEL RECOMMENDED ABOVE, THE ATTORNEYS SHOULD BE REQUIRED TO ATTEND A TRAINING SESSION PREPARED BY THE PRO SE LAW CLERK AND OTHER STAFF OR EXPERIENCED ATTORNEYS.

18. PRO SE INTERNAL PROCEDURES MANUAL

RECOMMENDATION EIGHTEEN:

IT IS RECOMMENDED THAT AN INTERNAL REFERENCE MANUAL AND/OR GUIDELINES HANDBOOK BE ESTABLISHED BY THE PRO SE LAW CLERK AND OTHER PRO SE STAFF TO SERVE AS A GUIDELINE FOR FUTURE STAFF MEMBERS AND ATTORNEYS WORKING ON PRO SE LITIGATION FOR THE FEDERAL DISTRICT COURT.

19. ACCEPTANCE OF BINDING PLEA BARGAINS

RECOMMENDATION NINETEEN:

IT IS RECOMMENDED THAT IN CRIMINAL CASES ALL JUDGES CONSIDER ACCEPTING FEDERAL RULE 11(e)(A) OR (C) BINDING PLEA BARGAINS IN APPROPRIATE CASES WITHIN CONSTITUTIONAL CONSTRAINTS.

20. ACCEPTANCE OF BINDING STIPULATIONS

RECOMMENDATION TWENTY:

IT IS RECOMMENDED THAT IN CRIMINAL CASES ALL JUDGES IN THE DISTRICT CONSIDER ACCEPTING BINDING STIPULATIONS RELATING TO VARIOUS PROVISIONS IN THE SENTENCING GUIDELINES, SPECIFICALLY, (A) ACCEPTANCE OF RESPONSIBILITY; (B) MINIMAL OR MINOR ROLE; (C) RELEVANT CONDUCT; AND (D) SPECIFIC GUIDELINE SENTENCES WITH CAPS OR SPECIFIC LENGTHS.

21. PREPARATION OF NEW OMNIBUS REPORT

The Advisory Group has learned that the Omnibus Hearing Report used in criminal cases does not serve a very useful purpose. It would appear that the form should be worded in such a manner that it accomplishes its initial intent of Rule 16 of the Federal Rules of Criminal Procedure permitting greater disclosure to defendants and to the government. The last revision of the form was on December 5, 1979 and portions of the form are no longer consistent with Rule 16 of the Federal Rules of Criminal Procedure. There is no question that

the court should undertake a revision of the form to serve as a proper vehicle to reduce costs and delays in criminal cases.

RECOMMENDATION TWENTY-ONE:

IT IS RECOMMENDED THAT A NEW OMNIBUS REPORT BE PREPARED IN AN ATTEMPT TO RESOLVE AS MANY PRE-TRIAL ISSUES AS IS POSSIBLE IN CRIMINAL CASES.

22. IMPOSING RULE 16 DEADLINES

RECOMMENDATION TWENTY-TWO:

IT IS RECOMMENDED THAT ALL JUDGES IN THE DISTRICT CONSIDER IMPOSING RULE 16 DEADLINES IN CRIMINAL CASES.

23. OPEN FILE POLICY

RECOMMENDATION TWENTY-THREE:

THE ADVISORY GROUP RECOMMENDS THAT THE UNITED STATES ATTORNEY'S OFFICE CONSIDER FORMULATING A MEANINGFUL OPEN FILE POLICY WHICH IS PRACTICAL, USEFUL AND WITHIN THE AUTHORIZED LIMITATIONS OF THE UNITED STATES ATTORNEY'S OFFICE.

24. STATE COURT TRIALS FOR DUAL JURISDICTION MATTERS

RECOMMENDATION TWENTY-FOUR:

TO PERMIT DISTRICT JUDGES MORE TIME TO DEDICATE TO THEIR CIVIL CASES, IT IS RECOMMENDED THAT THE UNITED STATES ATTORNEY'S OFFICE CONSIDER FORMULATING A POLICY DECLINING TO PROSECUTE CERTAIN DRUG CASES WHICH CAN BE TRIED IN STATE COURT.

25. TRAINING FOR NEW CJA ATTORNEYS

RECOMMENDATION TWENTY-FIVE:

IT IS RECOMMENDED THAT THE SUBCOMMITTEE ON CRIMINAL JUSTICE ISSUES IN CONJUNCTION WITH THE FEDERAL PUBLIC DEFENDER INSTITUTE A TRAINING PROGRAM FOR INEXPERIENCED CRIMINAL TRIAL LAWYERS DESIRING TO BE PLACED ON THE CJA PANEL.

26. USE OF MENTORS FROM INNS OF COURT

RECOMMENDATION TWENTY-SIX:

IT IS RECOMMENDED THAT THE COURT USE EXPERIENCED TRIAL LAWYERS FROM THE H. VEARLE PAYNE INNS OF COURT PROGRAM TO SERVE AS MENTORS AND INSTRUCTORS TO INEXPERIENCED ATTORNEYS.

27. IMPROVED REPORTING AND FEEDBACK FROM CLERK'S OFFICE TO JUDICIAL OFFICERS

RECOMMENDATION TWENTY-SEVEN:

IT IS RECOMMENDED THAT THE CLERK'S OFFICE CONDUCT APPROPRIATE RESEARCH WITH THE ADMINISTRATIVE OFFICE, FEDERAL

JUDICIAL CENTER AND OTHER COURTS TO DEVELOP MORE USEFUL CASE INFORMATION TO ASSIST JUDICIAL OFFICERS WITH, CONTROL AND INTERVENTION TO AVOID DELAY IN THEIR CASELOADS.

28. FILLING JUDGESHIP VACANCIES

RECOMMENDATION TWENTY-EIGHT:

THE ADVISORY GROUP RECOMMENDS THAT THE JUDICIAL CONFERENCE OF THE UNITED STATES NOTIFY THE EXECUTIVE AND LEGISLATIVE BRANCHES THAT THE FILLING OF VACANT ARTICLE III JUDGESHIPS ARE TAKING AN INORDINATE AMOUNT OF TIME. THESE DELAYS SEVERELY IMPACT THE COURT'S ABILITY TO RESOLVE CASES MORE TIMELY AND AT LESS COST.

29. USE OF JUDICIAL IMPACT STATEMENTS WITH NEW LEGISLATION

RECOMMENDATION TWENTY-NINE:

THE ADVISORY GROUP RECOMMENDS THAT THE JUDICIAL CONFERENCE OF THE UNITED STATES CONTINUE TO HAVE THE ADMINISTRATIVE OFFICE PREPARE AND DISSEMINATE JUDICIAL IMPACT STATEMENTS ON CONTEMPLATED LEGISLATION AFFECTING THE FEDERAL COURTS. FURTHER, IT IS RECOMMENDED THAT THE JUDICIAL CONFERENCE CONSIDER APPROVING A RESOLUTION ASKING CONGRESS TO INCLUDE LANGUAGE IN EACH NEW LEGISLATIVE BILL AFFECTING THE FEDERAL

COURTS THAT AN APPROPRIATE JUDICIAL IMPACT STATEMENT HAS BEEN TAKEN INTO CONSIDERATION AND THAT PROPER FUNDING WILL BE APPROPRIATED TO PERMIT THE JUDICIARY TO ACCOMPLISH ITS RESPONSIBILITIES WITH THE NEW LEGISLATION.

30. ADEQUATE JUDICIAL BUDGET

RECOMMENDATION THIRTY:

THE ADVISORY GROUP RECOMMENDS THAT THE JUDICIAL CONFERENCE OF THE UNITED STATES PROPOSE TO THE CONGRESS OF THE UNITED STATES THAT THE FEDERAL COURTS RECEIVE ADEQUATE FUNDING TO CARRY OUT ITS RESPONSIBILITIES EFFECTIVELY AND THAT SUCH FUNDING BE A REASONABLE PROPORTION OF THE NATIONAL BUDGET AS AN APPROPRIATE BUDGET FOR THE JUDICIAL BRANCH. (THE PERCENTAGE OF THE NATIONAL BUDGET FOR THE U. S. JUDICIAL BRANCH FOR FISCAL YEAR 1992, NOT INCLUDING THE SUPREME COURT NOR THE U. S. SENTENCING COMMISSION, WAS ONLY .1621 PER CENT OF THE NATIONAL BUDGET. THE PROCEDURE OF ALLOCATING A FIXED ADEQUATE PERCENTAGE OF THE NATIONAL BUDGET FOR THE JUDICIAL BRANCH IS USED SUCCESSFULLY AND EFFECTIVELY BY OTHER COUNTRIES AS IT AVOIDS THE "FEAST OR FAMINE" EPISODES BY PERMITING THE JUDICIAL BRANCH TO ENGAGE IN MEANINGFUL AND PRODUCTIVE LONG RANGE PLANNING FOR ESSENTIAL JUDICIAL SERVICES TO THE CITIZENRY.)

31. REPEAL MINIMUM SENTENCE PROVISIONS OF THE SENTENCING GUIDELINES

RECOMMENDATION THIRTY-ONE:

IT IS RECOMMENDED THAT THE JUDICIAL CONFERENCE OF THE UNITED STATES RECOMMEND THAT CONGRESS REPEAL MANDATORY MINIMUM CRIMINAL SENTENCE PROVISIONS SO THAT THE UNITED STATES SENTENCING COMMISSION CAN RECONSIDER THE GUIDELINES APPLICABLE TO THE AFFECTED OFFENSES.

32. CERTIFICATES OF FRIVOLOUS APPEALS

RECOMMENDATION THIRTY-TWO:

THE ADVISORY GROUP RECOMMENDS TO THE TENTH CIRCUIT, U. S. COURT OF APPEALS, THAT IT APPLY MORE CAUTIOUS REVIEW OF A DISTRICT COURT'S CERTIFICATE OF NON-GOOD FAITH IN IN FORMA PAUPERIS APPLICATIONS AND IN NON-MERITORIOUS APPEALS IN THAT PRUDENT CONSIDERATION OF THESE WOULD RESULT IN TIME AND COST SAVINGS FOR THE COURTS AS WELL AS LITIGANTS.

33. RECOMMENDATION FOR PERMANENT CJRA STAFF

RECOMMENDATION THIRTY-THREE:

THE ADVISORY GROUP RECOMMENDS THAT THE COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT RECOMMEND TO THE JUDICIAL CONFERENCE OF THE UNITED STATES THAT THE DISTRICT OF NEW

MEXICO BE ALLOCATED TWO PERMANENT POSITIONS TO PROVIDE THE CAPABILITY AND SUPPORT TO ACCOMPLISH THE CJRA RESPONSIBILITIES EFFECTIVELY AS OUTLINED THE COURT'S CIVIL JUSTICE COST AND DELAY REDUCTION PLAN IN COMPLIANCE WITH 28 U.S.C. § 471, et seq.

The Advisory Group, in developing the recommendations contained in this Report, diligently pursued the compliance requirements of 28 U.S.C. § 473 to consider and include, if appropriate, the principles and guidelines of litigation management and cost delay reduction as included in the legislation.

In submitting this report, the Advisory Group recommends that the Court consider the preparation of its own Implementation Plan rather than the use of the model plan. This recommendation is made on the basis that the District of New Mexico has its own very unique and distinct characteristics such as its very high proportion of criminal drug cases compared to other courts and its exceptionally high average number of trials per active judgeship. The June 1992 Federal Court Management Statistics Profile reflects that the District of New Mexico was first in the 10th Circuit and fifth in the nation in criminal felony filings per active judgeship. The Profile further reflects New Mexico as first in the Circuit and first in the nation on trials completed per active judgeship. Thus, the Advisory Group is submitting a recommended Civil Justice Cost and Delay Reduction Plan based on its extensive findings and recommendations included in this Report. The Court can accept or change the recommended Plan in any way the Court deems appropriate.

The Advisory Group hereby submits the foregoing report to the United States District Court of the District of New Mexico in compliance with 28 U.S.C. § 472. The Group, furthermore, hereby submits a proposed Civil Justice Expense and Delay Reduction Plan for the Court's consideration for compliance with 28 U.S.C. § 473.

DATED at Albuquerque this 20th day of November 1992.

Hon. Juan G. Burciaga
Chair, Advisory Group
Civil Justice Reform Act

Jesse Casaus
Reporter, Advisory Group
Civil Justice Reform Act

APPENDIX A

ADVISORY GROUP

The Honorable Juan G. Burciaga, Chairman

Members

Paul A. Kastler, Esq.
Don J. Svet, Esq.
Jerry Wertheim, Esq.
William E. Snead, Esq.
Phillip B. Davis, Esq.
Karen C. Kennedy, Esq.
Frank Kleinhenz
Nancy Hollander, Esq.
Bruce D. Hall, Esq.
Hon. William W. Deaton
John R. Cooney, Esq.
James A. Branch, Jr., Esq.

Ex-Officio/Non-Voting Members

The Honorable John E. Conway (Non-Voting)
The Honorable James A. Parker (Non-Voting)
Robert M. March (Ex-Officio)

Jesse Casaus, Reporter

Jacques Blair, Administrative Analyst

Kathryn Rael Garcia, Secretary

Mary Lou Scott, Secretary

APPENDIX B

SUB-COMMITTEES

CRIMINAL JUSTICE ISSUES

Nancy Hollander, Chair
Hon. William W. Deaton
Don J. Svet

CIVIL DISCOVERY ISSUES

William E. Snead, Chair
James A. Branch, Jr.
Phillip B. Davis
John R. Cooney

COURT PROCEDURES ISSUES

Paul A. Kastler, Chair
Karen C. Kennedy
John R. Cooney
Jerry Wertheim

PRO SE LITIGATION ISSUES

James A. Branch, Jr., Chair
Phillip B. Davis
Bruce D. Hall
Frank Kleinhenz

COSTS AND DELAYS ISSUES

Jerry Wertheim, Chair
Karen Kennedy
Frank Kleinhenz
Robert M. March

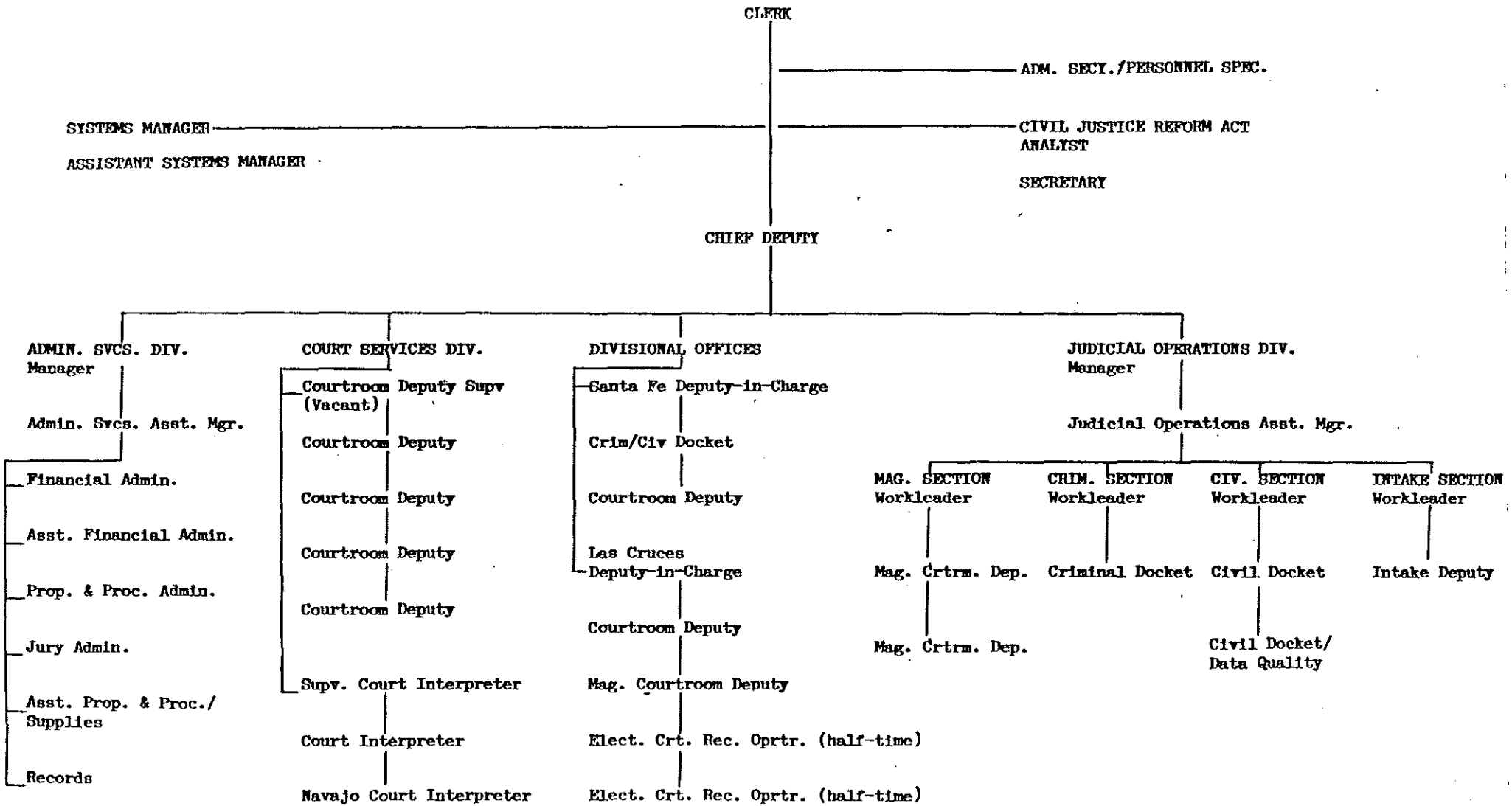
ASSESSMENTS OF CONDITIONS WITHIN THE DISTRICT

Bruce D. Hall, Chair
Paul A. Kastler
William E. Snead
Nancy Hollander

APPENDIX C

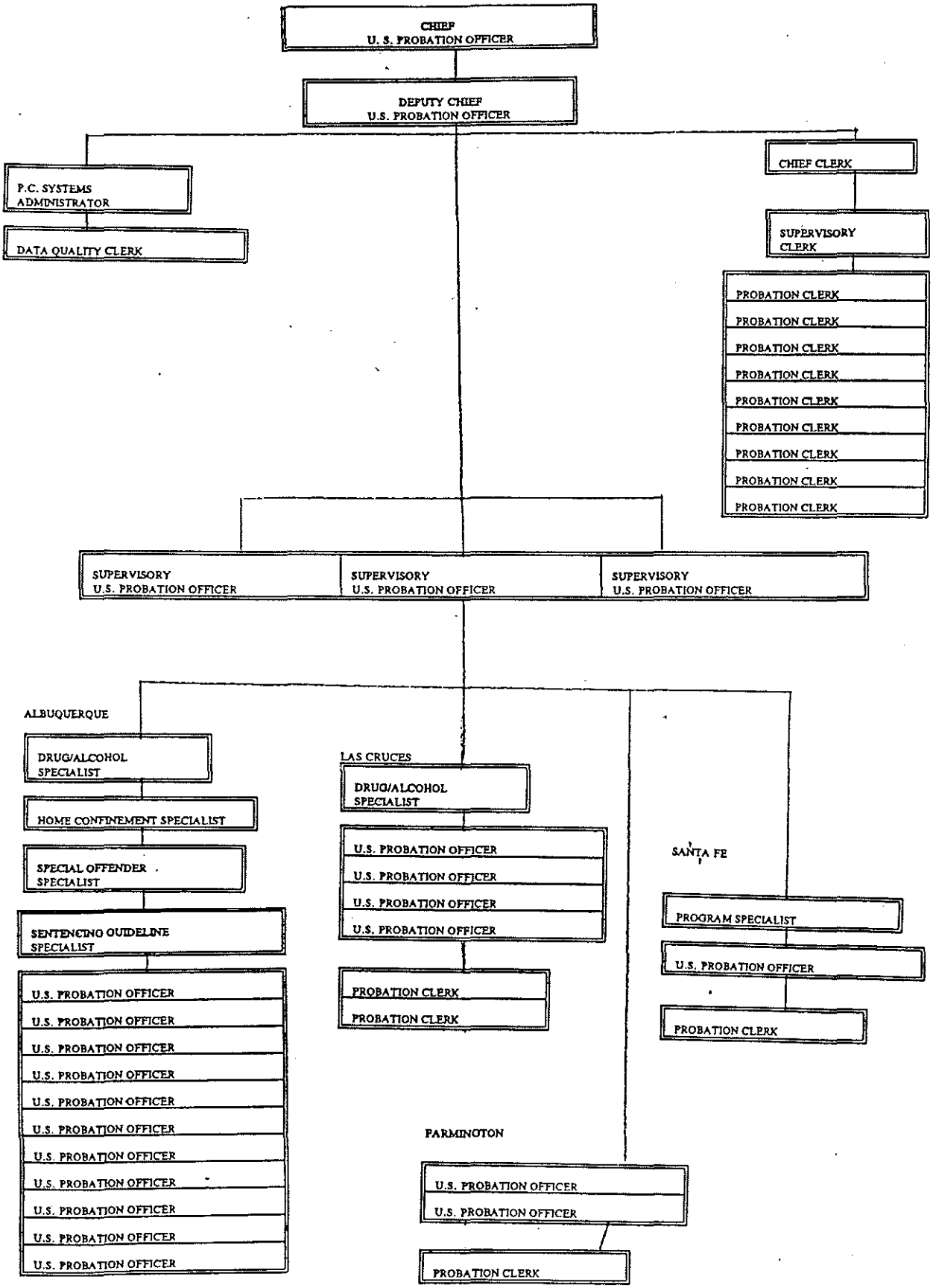
UNITED STATES DISTRICT CLERK'S OFFICE
DISTRICT OF NEW MEXICO

ORGANIZATIONAL CHART



APPENDIX D

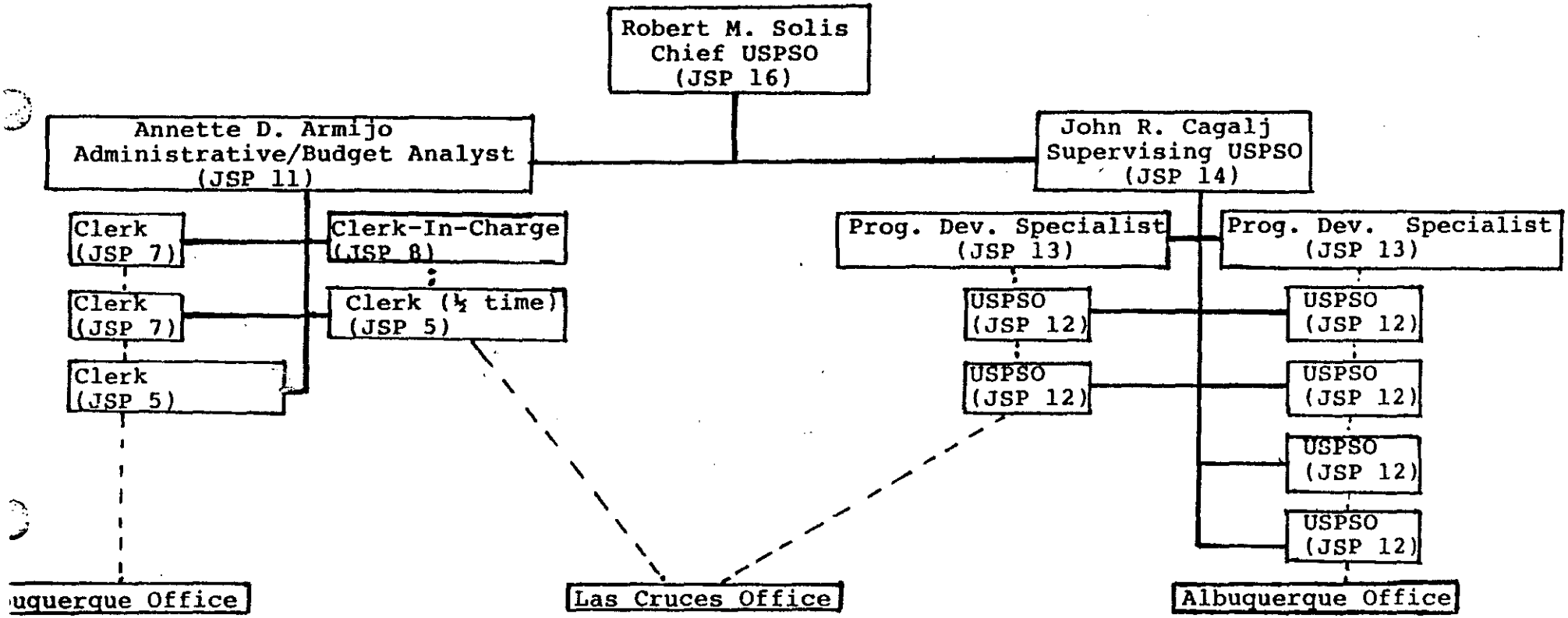
ORGANIZATIONAL CHART
UNITED STATES PROBATION OFFICE
DISTRICT OF NEW MEXICO



APPENDIX E

UNITED STATES PRETRIAL SERVICES OFFICE
DISTRICT OF NEW MEXICO

ORGANIZATIONAL CHART



APPENDIX F

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	NEW MEXICO		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		1,970	1,815	1,814	2,027	2,166	2,054		
	Terminations		1,903	1,616	1,754	2,033	2,012	1,897		
	Pending		2,489	2,366	2,202	2,159	2,165	2,011		
	Percent Change In Total Filings Current Year	Over Last Year...		8.5					44	6
		Over Earlier Years...			8.6	-2.8	-9.1	-4.1	60	5
	Number of Judgeships		5	5	4	4	4	4		
	Vacant Judgeship Months		12.0	7.0	.0	.0	4.4	4.7		
ACTIONS PER JUDGESHIP	FILINGS	Total	394	363	454	507	542	514	49	4
		Civil	267	247	324	401	410	407	73	6
		Criminal Felony	127	116	130	106	132	107	5	1
	Pending Cases		498	473	551	540	541	503	15	1
	Weighted Filings**		423	376	464	503	543	524	32	3
	Terminations		381	323	439	508	503	474	54	3
	Trials Completed		63	62	70	70	56	47	1	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.9	5.5	5.2	4.8	4.1	3.2	44	7
		Civil**	11	12	12	11	11	10	61	6
	From Issue to Trial (Civil Only)		11	17	18	14	12	12	14	4
OTHER	Number (and %) of Civil Cases Over 3 Years Old		190 9.9	170 9.3	157 8.7	104 5.7	74 4.1	76 4.3	74	8
	Average Number of Felony Defendants Filed per Case		1.4	1.4	1.4	1.5	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	24.45	24.52	24.27	24.00	26.00	21.26	12	3
		Percent Not Selected or Challenged	17.2	13.4	17.6	18.6	19.6	11.0	15	3

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

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1334	70	31	276	48	89	55	184	236	11	228	3	103
Criminal*	633	80	25	46	13	13	237	67	7	27	34	21	63

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

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

OKLAHOMA NORTHERN

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1991	1990	1989	1988	1987	1986		
OVERALL WORKLOAD STATISTICS	Filings*		1,139	1,274	1,790	1,417	1,296	1,346		
	Terminations		1,228	1,233	1,402	1,250	1,361	1,166		
	Pending		1,611	1,730	1,705	1,318	1,151	1,217		
	Percent Change In Total Filings Current Year	Over Last Year		-10.6					77	6
		Over Earlier Years			-36.4	-19.6	-12.1	-15.4	51	4
	Number of Judgeships		3.67	2.67	2.40	2.40	2.40	2.40		
	Vacant Judgeship Months		7.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	310	477	746	590	540	561	76	6
		Civil	269	425	685	519	459	494	71	5
		Criminal Felony	41	52	61	71	81	67	60	5
	Pending Cases		439	648	710	549	480	507	33	2
	Weighted Filings**		312	482	854	619	584	592	73	6
	Terminations		335	462	584	521	567	486	61	5
	Trials Completed		33	53	53	45	61	71	37	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.1	5.4	5.3	4.2	3.9	4.3	24	5
		Civil**	10	9	9	9	9	8	46	5
	From Issue to Trial (Civil Only)		11	12	12	15	11	12	13	4
OTHER	Number (and %) of Civil Cases Over 3 Years Old		105 7.0	50 3.1	59 3.7	61 5.0	53 5.0	55 4.9	51	6
	Average Number of Felony Defendants Filed per Case		1.6	1.5	1.8	1.5	1.4	1.5		
	Jurors	Avg. Present for Jury Selection	31.56	36.19	30.25	26.31	26.56	27.51	38	7
		Percent Not Selected or Challenged	35.7	31.3	31.5	18.8	21.1	31.1	65	7

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	986	51	15	133	30	148	49	196	145	18	82	1	118
Criminal*	148	-	13	10	1	9	9	8	8	59	1	6	24

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

NUMBER OF CIVIL CASES FILED
FOR THE STATISTICAL YEARS 81 TO 91
BY CATEGORY OF CASE

Category	81	82	83	84	85	86	87	88	89	90	91
CONTRACT	236	210	251	243	271	296	299	330	321	225	245
CIVIL RIGHTS	126	151	143	186	156	169	215	245	162	168	207
PRISONER	110	129	189	122	198	202	217	219	253	161	206
PERSONAL INJURY	176	154	157	185	200	222	231	205	240	181	164
CONDEMNATION	83	37	59	62	62	68	103	98	121	128	106
OTHER	264	224	163	121	130	134	156	132	140	139	104
SOCIAL SECURITY	26	24	100	190	125	53	55	75	68	44	58
LABOR	34	23	20	29	22	21	30	26	22	22	45
BANKRUPTCY	17	49	31	25	24	15	28	33	39	17	20
ASBESTOS	5	0	2	0	0	0	6	4	12	37	17
FORFEITURE	10	10	18	22	15	17	13	17	28	57	14
SECURITIES	12	8	7	9	10	10	8	10	12	4	14
TAX	18	9	16	24	17	15	7	12	7	10	12
COPYRIGHT	13	12	20	15	12	24	10	21	15	16	8
FRAUD	25	33	21	34	8	16	22	17	11	15	4
COMMERCE	8	4	7	11	5	3	1	6	3	2	4
STUDENT LOAN	1	193	783	668	658	310	187	177	121	47	2
BANKING	0	1	2	3	1	4	4	4	16	4	2
RICO	0	0	0	0	0	1	4	5	5	5	1
ERISA	0	0	4	7	4	3	5	4	9	11	0
TOTAL	1,164	1,271	1,993	1,956	1,918	1,583	1,601	1,640	1,605	1,293	1,233
EXCLUDING*	1,049	1,017	1,049	1,036	1,073	1,152	1,250	1,286	1,283	1,037	1,050
% NOT EXCLUDED	90%	80%	53%	53%	56%	73%	78%	78%	80%	80%	85%

* EXCLUDES: CONDEMNATION, SOCIAL SECURITY,STUDENT LOAN, ASBESTOS

Detailed Information on Hours Spent in Court for All District Court Judges in 1991

	Court time spent on hearings other than trial							
	Number events or hearings							
	Pleas	Sentence	Motion	Pretrial	Grand Jury	Other	total	total hours
	517	561	257	131	3	141	1610	769

Detail of Trial Time

	CIVIL			CRIMINAL		
	Cases	Hours	Avg. Hours	Cases	Hours	Avg. Hours
Jury*	37	544	14.7	88	630.3	7.2
Non-jury**	39	265.5	6.8	16	48.0	3.0
Preliminary**	17	40.5	2.4	0	0.0	
All Other	8	14.5	1.8	133	232.0	1.7
Summary Jury Trial	1	4.5	4.5			
Sentencing Hearings				7	10.5	1.5
Subtotal	102	869	8.5	237	910.3	3.8
From previous month	13	220.5	17.0	26	168.5	6.5
Grand Total	102	1089.5	10.7	237	1078.75	4.6

Status of Trials at Termination

status	CIVIL	CRIMINAL
Completed by court or jury	87	221
mistrial	0	5
hung jury	0	3
directed verdict	2	0
settled/plead	10	14
continued	8	4
jury selection	7	16
settled/before evidence	1	0
Total Number of cases	115	263

*Cases disposed of after jury trial was 17 other 20 were settled ,continued or only include jury selection

**"Non-jury" trials may include pretrial conferences/settlement conference

*** Preliminary injunctions and TRO

Hours Spent in Court for All District Court Judges in 1985

Court time spent on hearings other than trial							
Number events or hearings							
pleas	sentence	motion	pretrial	gjury	other	total	total hours
127	223	147	53	9	187	746	439.5

Detail of Trial Time

	CIVIL			CRIMINAL		
	Cases	Hours	Avg. Hours	Cases	Hours	Avg. Hours
Jury*	45	759	16.9	25	307.0	12.3
Non-jury**	47	469	10.0	9	35.0	3.9
Preliminary**	4	11.5	2.9	1	0.0	
All Other	3	31.5	10.5	14	53.0	3.8
Summary Jury Trial	0	0				
Sentencing Hearings				0	0.0	
Subtotal	99	1271	12.8	49	395.0	8.1
From previous month	0	0		0	2.5	
Grand Total	99	1271	12.8	49	397.5	8.1

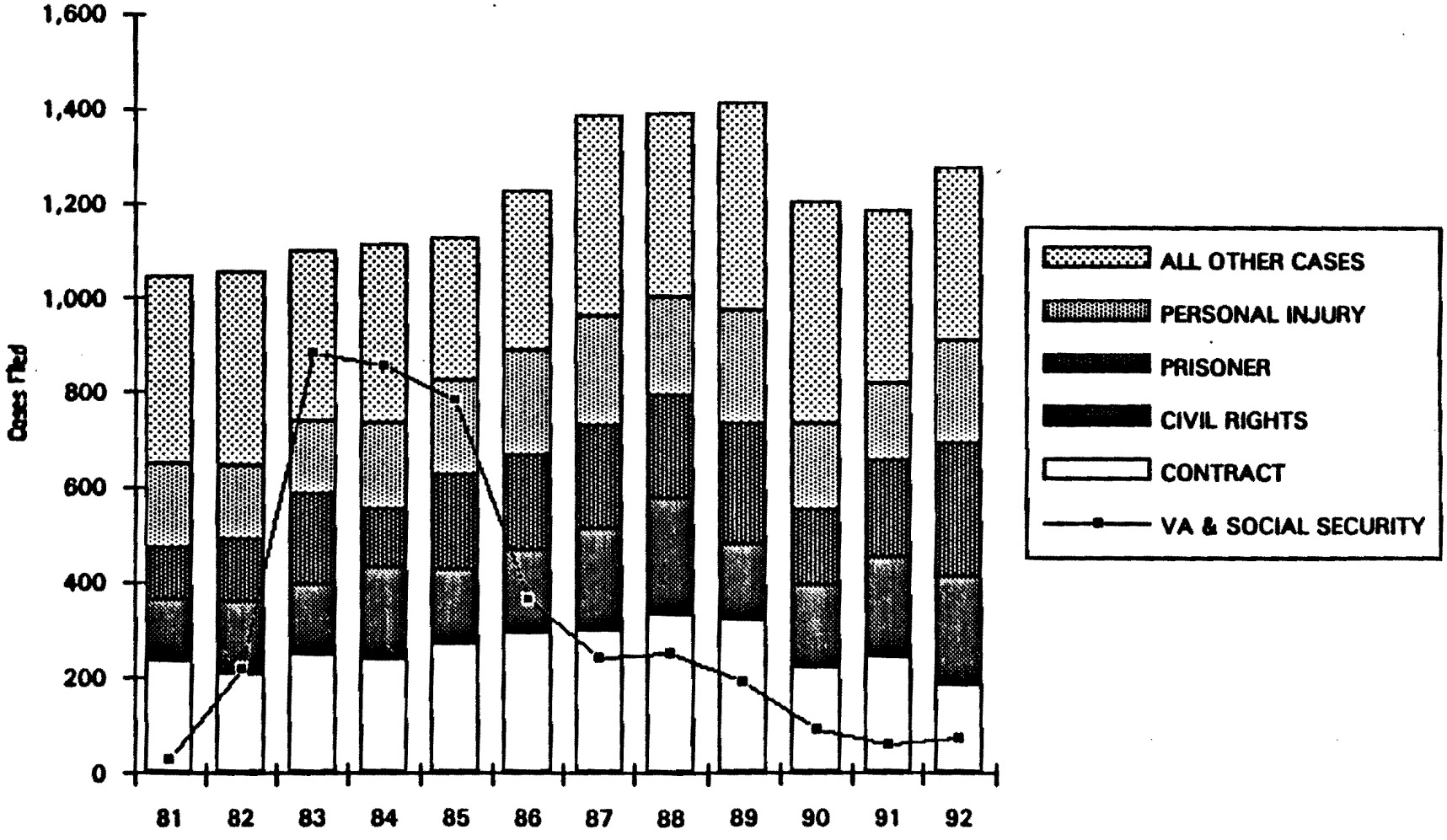
Status of Trials at Termination

status	CIVIL	CRIMINAL
Completed by court or jury	79	36
mistrial	1	1
hung jury	2	2
directed verdict	0	2
settled/plead	6	5
continued	5	1
jury selection	5	2
settled/before evidence	1	0
Total Number of cases	99	49

Civil Cases in U.S. District of New Mexico
Percentages of Cases by Category
for the Statistical Years 1981, 85 and 91

Category	81	85	91
CONTRACT	20.27%	14.13%	19.87%
CIVIL RIGHTS	10.82%	8.13%	16.79%
PRISONER	9.45%	10.32%	16.71%
PERSONAL INJURY	15.12%	10.43%	13.30%
CONDEMNATION	7.13%	3.23%	8.60%
OTHER	22.68%	6.78%	8.43%
SOCIAL SECURITY	2.23%	6.52%	4.70%
LABOR	2.92%	1.15%	3.65%
BANKRUPTCY	1.46%	1.25%	1.62%
ASBESTOS	0.43%	0.00%	1.38%
FORFEITURE	0.86%	0.78%	1.14%
SECURITIES	1.03%	0.52%	1.14%
TAX	1.55%	0.89%	0.97%
COPYRIGHT	1.12%	0.63%	0.65%
FRAUD	2.15%	0.42%	0.32%
COMMERCE	0.69%	0.26%	0.32%
STUDENT LOAN	0.09%	34.31%	0.16%
BANKING	0.00%	0.05%	0.16%
RICO	0.00%	0.00%	0.08%
ERISA	0.00%	0.21%	0.00%
TOTAL	100.00%	100.00%	100.00%

Civil Cases Filed in SY 1981 to 1992 by Category



Comparisons of Workload Statistics
For New Mexico, the Tenth Circuit Courts and U.S.

	New Mexico		10th Circuit		All U.S. Courts	
	1990	1991	1990	1991	1990	1991
Number of Judgships	4	5	31	37	575	649
Vacant Judgship Months	0	7	20.4	46.9	540.1	988.7
Pending Cases/Judge	551	473	406	322	474	422
Weighted Filings /Judge	464	376	427	330	448	386
Terminations/Judge	439	323	427	345	423	371
Trials Completed/Judge	70	62	40	33	36	31
Median Age(civil cases)						
from Filing to Disposition	12	12	71	75	9	9
from Issue to Trial	18	17	107	110	14	15
Median Age of Criminal Felony Cases						
from filing to disposition	5.2	5.5	4.6	4.5	5.3	5.7
Cases over three years old						
number of cases	157	170	715	697	25,207	28,421
% of cases	8.7%	9.3%	6.3%	6.6%	10.4%	11.8%
Ratio Pending/Dispositions	1.26	1.46	0.95	0.93	1.12	1.14

	Workload Statistics for SY 1990 for the Tenth Circuit								
	CO	KS	NM	OK.N	OKE	OKW	UT	WY	Total
Number of Judgships	7	5	4	2.67	1.33	5	4	2	31
Vacant Judgship Months	15.1	5.3	0	0	0	0	0	0	20
Pending Cases/Judge	331	435	551	648	311	287	481	189	406
Weighted Filings /Judge	423	401	464	482	546	444	405	285	427
Terminations/Judge	378	472	439	462	437	544	351	274	427
Trials Completed/Judge	31	36	70	53	37	34	30	46	40
Median Age(civil cases)									0
from Filing to Disposition	9	11	12	9	6	7	11	8	71
from Issue to Trial	17	20	18	12	7	11	14	9	107
Median Age of Criminal Felony									0
from filing to disposition	3.8	5.6	5.2	5.4	2.9	3.5	5.3	5.1	5
Cases over three years old									0
number of cases	138	89	157	50	6	43	218	14	715
% of cases	7%	5%	9%	3%	2%	3%	12%	4%	6%
Ratio Pending/Dispositions	0.88	0.92	1.26	1.40	0.71	0.53	1.37	0.69	0.95

	Workload Statistics for SY 1991 for the Tenth Circuit								
	CO	KS	NM	OK.N	OKE	OKW	UT	WY	Total
Number of Judgships	7	6	5	3.67	1.33	6	5	3	37
Vacant Judgship Months	0	14.5	7	7	0	4.4	7	7	47
Pending Cases/Judge	290	366	473	439	287	211	340	125	322
Weighted Filings /Judge	371	314	376	312	449	340	307	183	330
Terminations/Judge	381	342	323	335	599	391	315	161	345
Trials Completed/Judge	38	31	62	33	41	23	19	22	33
Median Age(civil cases)									
from Filing to Disposition	8	12	12	10	6	7	12	8	75
from Issue to Trial	18	19	17	11	7	9	20	8	110
Median Age of Criminal Felony									
from filing to disposition	4.2	5.7	5.5	5.1	3.5	3	5.5	5	5
Cases over three years old									
number of cases	108	89	170	105	5	35	168	17	697
% of cases	6.0%	4.4%	9.3%	7.0%	1.4%	2.9%	10.8%	5.3%	6.6%
Ratio Pending/Dispositions	0.76	1.07	1.46	1.31	0.48	0.54	1.08	0.78	0.93

APPENDIX G

Summary of attorney questionnaire

The response to the attorney questionnaire was generally quite good. From our list of 156 cases we received at least one response to 84 of the cases, with an additional 52 additional responses. Of these attorneys 60% were the defense on this case. This was expected since there were many cases with multiple defendants.

The following gives an overview of the responses to the questionnaire.

Case Management and Disposition of case

In general attorneys felt that case management was generally moderate and that the level of management was appropriate for the case. Less than 1/4th of the attorneys felt that the management was not intensive enough and only 1 felt it was too intensive. The majority of respondents felt that scheduling and discovery limitations were established by the court, but a majority felt the court did not make use of methods to narrow the issues at trial. Of the respondents who felt it was applicable they were split evenly on whether the judge ruled promptly on pretrial and dispositive motions. The magistrates fared better with a vast majority of the applicable respondents feeling they ruled promptly on discovery and pretrial motions. They were split on whether settlement was facilitated. Of the respondents who trial was an issue, they felt that firm control was issued, 50/50 on the setting of an early trial date, and they were not held to the initial trial date (2 to 1). 50% of the attorneys felt the time for discovery and the case were about right for this case.

Viewing these responses it appears that the attorneys feel that the court currently is not:

1) Narrowing issues through conference.
2) Ruling in a timely manner on dispositive motions.
3) Holding parties to initial trial date.
4) Making extensive use of settlement conferences.[1]

Regarding the use of ADR, the responding attorneys had mixed views; nearly half of the attorneys would approve of the use of a lawyer for settlement evaluation, but 60% disapprove of the use of a lawyer for making preliminary factual findings.

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[1] Use of the magistrate in cases did indicate more use of settlement conference. This opinion may change since the use of magistrates in becoming more common.

Alternative Dispute resolution

When asked about the use of trained lawyers for pretrial settlement evaluation and conferences for initial factual determinations, The attorneys responded in the following way.

	YES	NO	UNCERTAIN
SETTLEMENT EVALUATION	46%	39%	15%
PRELIMINARY FACT FINDING	26%	59%	16%

Generally they favor the use of arbitrators for settlement evaluation, but not for preliminary fact finding and setting scope.

Costs of litigation and Attorney Profile

Of the lawyers 120 were defense and 88 were plaintiffs attorneys. 82 worked for an hourly wage 2 with a maximum number of hours, 30 worked on contingency basis with 3 of these also employing an hourly charge. In total 14 of the attorneys worked for the government, or were salaried employees. Breaking this down between plaintiffs and defense, we find that 75% of the plaintiffs attorneys worked on a contingency basis. Defense attorneys were 85% hourly and 15% salaried or government.
The attorneys overwhelming believe that the costs of the case were reasonable[2], we found that the stakes exceeded the costs by an average of $500,000.

Court jurisdiction and choice of court

The preference of lawyers in these cases, was to hear this case in federal court (68%). Only 19% would have preferred State court and 18% had no preference. Given this information we found that the reasons for choosing federal court were judge (35%), speed(27%), jury(22%) and rules(18%). The reasons for having preferred state court were lower cost (29%), jury (22%), speed (14%) and judge(14%). No attorney made there decision based on the delaying of case resolution as an answer.
On the answers we obtained on diversity, 19 of 34 reponded that diversity, and speedy litigation was the reason for using the federal vs. the state or loacal courts.

Delays and length of time For case

Half of the attorneys felt that the time from disposition to filing was reasonable, but 38% felt it was too long. Not one attorney felt it was to short...
Of the attorneys who felt the case took to long the court was the "guilty" party in 56% of the answers (backlog 16%). Dilatory actions by counsel or the parties accounted for 27% of the responses. Most common response, was that the court failed to rule promptly on motions. On discovery 65% of the attorneys felt the length of time was reasonable, only 27% felt it was too long. They felt the court was responsible about 40 % of the time. Inefficient discovery was the major reason for delay.

[2] Evaluating the information obtained on the stakes of the case, and the total costs we found that the stakes exceeded attorneys

fees in over 95% of the cases. A number of the cases did not report either the fees, or the stakes of the case. This information is consistent with other studies on the costs of litigation; see for instance Trubeck et. al. , "The Costs of Ordinary Litigation," 31 U.C.L.A. Law Review 72, October 1983.

SUMMARY OF QUESTIONNAIRE ANSWERS

	WAS TAKEN	NOT TAKEN	NOT SURE	N. A.
1. Pretrial activities held to firm schedule	50%	26%	13%	11%
2. Limits set on discovery	48%	24%	9%	18%
3. Issues narrowed through conference or other method	26%	50%	6%	18%
4. Magistrate ruled promptly on motions and discovery.	34%	18%	10%	37%
5. Judge ruled promptly on pretrial and dispositive motions	33%	34%	10%	23%
6. Judge allowed sufficient time for appeals of magis. rulings	11%	7%	8%	74%
7. Case referred to ADR	6%	44%	4%	46%
8. Early trial date set	33%	34%	6%	27%
9. Held parties to initial trial date.	18%	29%	8%	46%
10. Conducted or facilitated settlement conferences	36%	31%	7%	27%
11. Exerted firm control over trial	21%	7%	5%	67%
12. Other Responses	13%	0%	4%	83%

Attorney Profile 10.34 years

COST OF CASE
Attorneys felt the cost in this cases was:

too high	15%
slightly too high	15%
About right	66%
slightly low	2%
Much too low	3%

If the costs were too high the reason was:

Excessive Management	0	0%
Inadequate case Management	7	13%
Failure to rule on Motions	10	18%
Actions other than failure to rule	3	5%
Dilatory actions by counsel	11	20%
Dilatory action by parties	13	23%
Backlog of other cases	4	7%
Other reason	8	14%
Total	56	100%

Length of case

	reason-able	too long	too short	uncertain
TIME FOR DISCOVERY	64%	24%	0%	12%
TIME FOR CASE	50%	38%	0%	12%

When case took to long the reason was:

	number	percent
Excessive Management	1	1%
Inadequate case Management	16	16%
Failure to rule on Motions	21	21%
Actions other than failure to rule	2	2%
Dilatory actions by counsel	15	15%
Dilatory action by parties	7	7%
Backlog of other cases	20	20%
Other reasons	16	16%

Total	98	100%

When Discovery took to long the reason was:

I undertook to much discovery	2	3%
Opposing counsel undertook to much	7	10%
I was inefficient	8	12%
Opposition was inefficient	13	19%
No early cutoff date set	6	9%
Didn't adhere to cut-off date	8	12%
Scope was not limited	12	17%
Other Reasons	13	19%
Total	69	100%

TYPE OF COURT

federal	state	no preference
63%	19%	18%

Choice of Federal vs. State court

	judge	jury	speed	delay	cost	rules	other	total
Federal Court	35	20	27	0	4	18	27	131
	27%	15%	21%	0%	3%	14%	21%	100%
State Court	7	11	7	0	14	3	7	49
	14%	22%	14%	0%	29%	6%	14%	100%
State+Federal	42	31	34	0	18	21	34	180
	23%	17%	19%	0%	10%	12%	19%	100%
No Preference	2	3	1	0	0	1	3	10
	20%	30%	10%	0%	0%	10%	30%	100%

Diversity

other jurisdictional basis	13	38%
dispute over diversity	2	6%

diversity led to speedy resolution	19	56%
Total	34	100%

APPENDIX H

REVIEW OF DATABASE USED FOR ANALYSIS OF 156 CASES

The database that John Shappard of the Federal Judicial Center extracted for us contains 156 cases out of an original (source) database of 1178 cases. This source database consists of cases that were disposed of in New Mexico District Court between april 1990 and March 1991. The cases were chosen randomly- from a subgroup of cases that are more likely to be complex and have delays. The 156 case extracted are clearly different in the age from filing to disposition of the cases: the median age of the source data is 360 days, while the review groups median age is 775 days. The review database has 11 % of its cases over 3 years compared to 8 % in the source. The cases are distributed between categories in a similar manner, with a larger portion personal injury cases in the review group. More of the cases in the review database were disposed of by trial; 11% vs 4%. Another substantive difference between the groups is the jurisdiction of the case: far fewer of the cases in the review group involved a U.S. plaintiff or defendant.
The attached appendix gives a more detailed description of the two databases.

Review of Docket Sheets for 156 Cases

The docket sheet for each of the 156 cases was reviewed giving us information on the general nature of cases, discovery, delays and final disposition of cases. These reviews along with the docket sheets and attorney questionnaires were then reviewed by members of the advisory group. The following is a summary and review of the questionnaire and the information gathered on the cases.

Scheduling and discovery

From our review it was difficult to ascertain whether a pretrial conference was actually held- we only had an actual entry in the docket sheet for three. We were able to determine whether a pre-trial order was filed and the degree to which discovery deadlines are met. In general, ignoring prisoner cases, we were able to deduce the following:

There was no discovery in 38 cases. The deadlines for discovery were met in 32 cases and exceeded in 73 cases, with half of these exceeding the discovery deadline by 250 days.

Dispositive motions

We found that 305 dispositive motions were filed in 100 of the 156 cases. If a dispositive motion is filed it is more likely to be filed by the defense. The length of time it takes to rule on dispositive motions varies widely. Some are quickly ruled on, such as a plaintiffs motion to dismiss, but of the 305 motions 64 were ruled on only by the closure of the case.

In summary we found that dispositive motions were ruled on:

In under 55 days in 25% of the cases
In under 155 days in 50% of the cases
in over 405 days in 25% of the cases

Non Dispositive Motions

There were 967 non-dispositive motions in 106 cases, the maximum was 40 in one case with an average on 9 per case. The average for the defense is over 4.8 and under 3.6 for the plaintiff.
In general we found that if one side used discovery devices such as interrogatories, depositions, or requests for production the other side is also likely to file. Rescheduling and requests for admission seem to be independent of the other sides use of those devices.

Table V
Summary of Motions
Motions per case in [ ]

	Total # Motions	made by Plaintiff	made by Joint	made by Defense
Dispositive	305 [3.1]	51 [<1]	8 [<1]	246 [2.5]
Non-dispositive	967 [9.1]	384 [3.6]	71 [<1]	511 [4.8]

Other discovery devices

	By Plaintiff Number	Per Case	By Defendant Number	Per Case	By Both Parties Number	Per Case	By Total Number
Interrogatories	76	[7]	74	[2]	57	[4]	90
Production	74	[2]	55	[2]	45	[4]	84
Admission	24	[2]	24	[2]	7	[3]	41
Depositions	63	[8]	72	[8]	48	[17]	87
rescheduling	32	[7]	42	[4]	19	[12]	55

In preliminary analysis of the data in conjunction with the attorneys answers, we found that the number of discovery devices used was correlated with the stakes in the case. Interestingly enough we did not find a direct relationship between the stakes and the length of the cases.

Review of Cases by Advisory group

Of the 156 cases, advisory group members reviewed 73. Many of the cases not reviewed were cases that were quickly disposed of and had little if anything to comment on. Of the cases reviewed we got the following responses to the general comments:

1. Based upon your review of the copy of the docket sheet for this case, do you believe that the time it took to resolve this matter was:

Much too long	14	19%
Moderately too long	21	29%
About right	38	52%
Too fast	0	0%
Moderately fast	0	0%
Total	73	100%

The verbatim responses from the members are included in an appendix.

APPENDIX
DETAILED INFORMATION
ON REVIEW DATA

TABLE I

AGE PROFILE OF 156 CASES REVIEWED FOR PROJECT

	NUMBER OF CASES	UNDER 1		1 TO 2		2 TO 3		OVER 3	
TYPE OF CASE									
CONTRACT	36	9	25%	4	11%	12	33%	11	31%
REAL PROPERTY	4	0	0%	1	25%	2	50%	1	25%
PERSONAL INJURY	45	2	4%	23	51%	16	36%	4	9%
PERSONAL PROPERTY	3	1	33%	0	0%	1	33%	1	33%
CIVIL RIGHTS	24	2	8%	5	21%	9	38%	8	33%
PRISONER PETITIONS	12	4	33%	0	0%	5	42%	3	25%
FORFEITURE/PENALTY	3	2	67%	0	0%	1	33%	0	0%
LABOR	3	2	67%	0	0%	0	0%	1	33%
PROPERTY RIGHTS	3	2	67%	0	0%	0	0%	1	33%
OTHER STATUTES	23	3	13%	3	13%	5	22%	12	52%
TOTAL	156	27	17%	36	23%	51	33%	42	27%

PROFILE OF 1178 CASES SOURCE OF 156 CASES

	NUMBER OF CASES	UNDER 1		1 TO 2		2 TO 3		OVER 3	
TYPE OF CASE									
CONTRACT	231	106	46%	71	31%	30	13%	24	10%
REAL PROPERTY	13	6	46%	3	23%	2	15%	2	15%
PERSONAL INJURY	205	77	38%	98	48%	19	9%	11	5%
PERSONAL PROPERTY	24	12	50%	9	38%	2	8%	1	4%
CIVIL RIGHTS	185	74	40%	64	35%	33	18%	14	8%
PRISONER PETITIONS	105	65	62%	18	17%	11	10%	11	10%
FORFEITURE/PENALTY	56	51	91%	2	4%	2	4%	1	2%
LABOR	32	15	47%	10	31%	4	13%	3	9%
PROPERTY RIGHTS	15	11	73%	3	20%	0	0%	1	7%
OTHER STATUTES	98	50	51%	23	23%	11	11%	14	14%
EXCLUDED	214	130	61%	64	30%	13	6%	7	3%
TOTAL	1178	597	51%	365	31%	127	11%	89	8%

TABLE II

CATEGORIES OF CASE FOR EACH GROUP

	SOURCE 1178 CASES	REVIEW 156 CASES
CONTRACT	20%	23%
REAL PROPERTY	1%	3%
PERSONAL INJURY	17%	29%
PERSONAL PROPERTY	2%	2%
CIVIL RIGHTS	16%	15%
PRISONER PETITIONS	9%	8%
FORFEITURE/PENALTY	5%	2%
LABOR	3%	2%
PROPERTY RIGHTS	1%	2%
OTHER STATUTES	8%	15%
EXCLUDED	18%	0%

TABLE III
COMPARISON OF DISPOSITION OF CASES
REVIEWED FOR STUDY TO SOURCE DATA

DISPOSITION	REVIEW DATA		SOURCE DATA	
TRANSFER	0	0%	8	1%
REMAND TO STATE	0	0%	19	2%
WANT OF PROSECUTION	6	4%	27	2%
LACK OF JURIS.	11	7%	51	4%
DEFAULT	3	2%	94	8%
CONSENT	5	3%	98	8%
MOTION	20	13%	161	14%
JURY TRIAL	8	5%	29	2%
DIRECTED VERDICT	1	1%	3	0%
COURT TRIAL	8	5%	28	2%
REMANDED TO STATE	0	0%	1	0%
REMANDED TO US AG			0	0%
VOLUNTARILY DISMISSAL			13	8%
SETTLED	62	40%	354	30%
OTHER	12	8%	93	8%
ARBITRATION AWARD	0	0%	0	0%
TRIAL DE NOVO	0	0%	0	0%
OTHER	3	2%	25	2%
STATISTICAL	4	3%	14	1%
UNKNOWN				
TOTAL	156	100%	1178	100%

27	2%			
142	12%			
4				

TABLE IV

JURISDICTION

	REVIEW DATA		SOURCE DATA	
FEDERAL DEFENDANT	9	6%	242	21%
FEDERAL PLAINTIFF	19	12%	172	15%
FEDERAL QUESTION	65	42%	450	38%
DIVERSITY	63	40%	314	27%
TOTAL	156	100%	1178	100%

APPENDIX I

REPORT OF THE SUBCOMMITTEE FOR ASSESSMENT OF CONDITIONS WITHIN THE DISTRICT

CONDITION OF THE DOCKET

An Overview

For the year ended June 30, 1991, there were 1,815 cases filed, civil and criminal, in the United States District Court for the District of New Mexico. For the ten-year period 1981 to 1991, statistics show a steady increase in annual filings from 1981 to 1988 peaking at 2,166 in 1988. Since that date there has been a slight decrease in total filings. The 1991 filing statistics place New Mexico near the middle of all federal district courts in total filings. On the basis of actions filed per New Mexico's five authorized judgeships, the District ranks 50 out of the 94 U.S. District Courts.

Total filings do not tell the story of the district's changing docket and the central fact which impairs the ability to process civil cases: a dramatic increase in criminal filings over the 1986 through 1991 interval. Criminal filings increased 28 percent in 1986, 29 percent in 1987 and 27 percent in 1988. This trend was interrupted with a decrease in criminal filings in 1989, followed, by a 19 percent increase in criminal filings in 1990 and a 15 percent increase for the 12 month period ended June 30, 1991. Graph 1 illustrates this change.

This dramatic increase has given the U.S. District Court for New Mexico a substantially different mix of civil and criminal cases compared to other districts. Concurrent with the increase in criminal cases, New Mexico experienced, in the same period, a decrease in civil case filings. Following the national trend, as shown by Graph 2,

over the past five years civil filings have decreased by 22%. Civil filings reached their lowest level in 1991 with 1,233 filings, Table 1. At the present time criminal cases make up 32 percent of the total filings in New Mexico and only 14-15 percent in the Tenth Circuit and all U.S. courts. New Mexico's unusual case mix is reflected in the numerical ranking of the district in civil and criminal cases; ranked 5th among 94 judicial districts in criminal filings but 76th in civil filings. This ranking is based upon filings per authorized judgeship. New Mexico's rank of 5th in the nation for criminal filings per judgeship would be even higher if determined by active judgeships. The district has been operating with a vacant district judgeship for over a year. Within the districts of the Tenth Circuit, New Mexico ranks No. 1 in the average number of criminal filings per active judgeship.

As dramatic as the increase in criminal filings is the increase in pending cases. For every year from 1981 to 1991 the number of pending cases in the district increased. In 1986, New Mexico had a total pending caseload of 1,855 cases; five years later, in 1991, the total pending cases were 2,364, an increase of almost 37 percent. This increase is reflected in both civil and criminal filings, Graphs 1 and 2. In the five year period 1986-1991, pending civil cases increased from 1,635 to 1,830. Criminal cases pending in the district have more than doubled, increasing from 236 in 1986 to 549 in 1991.

The adverse impact upon civil cases caused by increased criminal filings can be measured by many means. In 1981 only 2.4 percent of pending civil cases had been on the court docket over three years. In 1991, 9.3 percent of the civil cases were over three years

old. The increase in pending cases also reflects in the median time that it takes the district to dispose of civil lawsuits. In 1986, the median time to dispose of a civil case in New Mexico was nine months. By 1991, the median time to dispose of a civil case had increased to 12 months. This compares to a median time for disposition throughout the Tenth Circuit of 9.3 months and a long-term national median time for disposition of nine months. Clearly the district is losing the battle of moving its civil docket.

As another statistical measure of the ability of a court to dispose of its cases, the ratio of pending to terminated cases should be examined. Here too, the impact of the rising tide of criminal filings is apparent. The ratio of pending to terminated matters has steadily increased from 0.89 in 1981 to 1.53 in 1991.

The total increase in pending cases, the increased time to disposition and the increasing ratio of pending to terminated matters is not explainable by a lack of judicial productivity. As can be noted in Graph 3, the number of trials completed in the district has steadily increased. Taking into account all contested proceedings before a court or jury in which evidence is presented, ten year statistics show a 34 percent increase in completed trials. As per 1991 Federal Court Management Statistics prepared by the Administrative Office of the United States Courts, New Mexico maintains a ranking of third in the nation in civil and criminal trials completed per judgeship (again, with one judgeship position vacant). The high number of trials per judgeship in New Mexico is partly explainable by the

statistic that 6.2 percent of the district's civil docket reaches trial while the Tenth Circuit average is 4.8 percent and the national average is 4.0 percent.

The Civil Docket

Table 2 of this Assessment provides a summary of the civil case load in the District of New Mexico for the years 1981-1991. From 1980 to 1990 the increase in total filings is modest, an increase of 21 percent. The rather large increase in filings in the mid 1980s is primarily due to the increase in actions to recover student loans. These cases require minimal use of judicial resources. When the student loan cases are excluded and the major categories of civil cases are considered (Table 3) there is a decline in civil filings after 1989 corresponding to the increase in the jurisdictional amount required for actions based upon diversity of citizenship.

Six categories of cases make up the largest number of civil filings: contracts, civil rights, prisoner petitions, personal injury, "other" and forfeiture/seizure. Cases in these categories made up 85 percent of the case filings in both 1981 and 1991. The mix has changed, with civil rights, prisoner petitions and forfeiture/seizures growing more rapidly than any of the other categories. The number of cases in the "other" category declined dramatically. This category includes a variety of cases including: antitrust, environmental, constitutional questions and libel. Evaluation of the impact of criminal activities upon the

resources of the district should also consider that the fastest growing component of the forfeiture/seizure category of civil cases represents drug seizures.

This report has already noted the productivity of the judges of the district in the number of trials completed annually. Unfortunately for the movement of the civil docket, this productivity is directed to criminal filings. The number of civil trials has generally declined as the median age of civil cases from filing to disposition has increased. It has been estimated for the Assessments Subcommittee that the four active judges in the district can devote no more than two out of 12 months to the resolution of civil case matters. The advisory group's review of the docket sheets of randomly selected civil cases, questionnaires completed by the attorneys of record in those cases and interviews with judges, magistrates and civil case attorneys, confirm that the judges have been unable, due to the demands of the criminal docket, to set firm trial dates for civil cases.

The Criminal Docket

The increase in this docket has been noted. As tables 5 and 6 reflect, from 1981 to 1991 the number of criminal cases filed tripled, from 181 to 567. According to the weighting system used by the Administrative Office, there is a decrease in the complexity of the cases. The majority are marijuana cases and are assigned a weight of 1 or less than 1 by the Administrative Office. The weights were created in 1980 and reflect the complexity of cases as of that time. It is unclear that they would still be assigned the same weight if the study

were performed today. The percentage of drug cases comprising the criminal felony filings has increased from 23% in 1981 to 49% of the felony docket in 1991, Table 5. From the three-fold increase in the number of defendants, it is concluded that criminal cases are requiring more time per disposition.

Due to speedy trial requirements, criminal cases take precedence over civil cases and, unlike the civil case load, the number of closures has kept pace with increases in filings, Table 5. The large increase in the absolute number of pending criminal cases is only a reflection of increased activity. The median age of a criminal case from filing to disposition and the ratio of pending to closed cases have increased, but this does not appear to be the major docket concern. Again, it is the civil docket which has been impacted most severely by criminal case demands.

It has been hypothesized that the introduction of the sentencing guidelines would result in fewer plea bargains and a higher proportion of cases going to trial. This does not seem to have happened in the district. Reviewing the number of defendants and their disposition, there has been little change in the makeup of the dispositions, Table 7. The percentage of defendants and the percentage of cases going to trial has remained constant over the period.

The sentencing guidelines have had other effects on the workloads of the district's judges. Sentencing has become more complex and hearings are more frequent. This is

demonstrated by the number of "trials" (hearings with evidence presented) per defendant. The number of trials per defendant has increased, particularly since 1987 when the guidelines took effect.

Civil Case Management

A major resource for civil case management was put in place on December 17, 1990 when the District of New Mexico went to automated case management for civil cases with the ICMS Civil program. The entire process of converting from a manual based docketing system to an automated one was completed in a period of eight weeks. This change provides the district with the system, if not the personnel, to implement judicial case tracking units and a case management team concept for civil cases.

Presently, six judges handle the civil docket of the district: active Judges Campos, Burciaga, Conway and Parker and Senior Judges Mechem and Bratton. Judge Mechem carries a full civil case load, with no criminal cases. Judge Bratton carries a one-third civil case load and a significant number of criminal cases at the Las Cruces divisional office and courthouse.

The processing of a civil case can be generally described although differences exist between district judges, magistrate judges and their staffs. With the filing of a regular civil case (excluding social security review, bankruptcy appeals, pro se, VA and student loan

cases) a case number, district judge and magistrate are assigned. Implementing a change which grew out of the advisory group's review, a notice of consent to waive trial before an Article Three Judge is now provided to the attorneys so the parties may consider consenting to trial by the assigned Magistrate Judge. For half of the judges handling civil cases an initial pre-trial report is provided at the time of filing for the purpose of setting deadlines for amendments to pleadings, motions, completion of discovery and development and filing of the pre-trial order. Two judges supply the initial pre-trial report when the case is at issue; one judge provides deadlines by a status letter initiating a status report filed by the lawyers and a subsequent order setting deadlines and a month of trial.

In the process of providing this report, the advisory group sent out questionnaires to attorneys who have an active federal civil practice and interviewed a number of these lawyers. A frequent comment was the inadequacy of early case management. In many cases reviewed, discovery deadlines had been established by use of the initial pre-trial report without the benefit of a scheduling conference before the magistrate or the district judge. The advisory group's review of the docket sheets for 156 randomly selected civil cases revealed a number of instances in which deadlines were changed upon motions of the parties often, more than once. Attorney questionnaires stated that the deadlines imposed were, in many instances, unrealistic for the needs of the case.

From the questionnaires, interviews with attorneys, the district judges and magistrate judges, a consensus has emerged that civil cases must be evaluated early and discovery

deadlines established after meaningful scheduling conferences. With one exception, the magistrates routinely handle discovery and settlement conferences. As a result of the advisory group's discussions with the district judges and the magistrates, magistrates are now holding scheduling conferences upon the return of the initial pre-trial report and deadlines are established on the basis of the evaluation made at that conference. Magistrates are also using the initial scheduling conference to discuss settlement. For the purpose of case management, one district judge has established a civil case schedule which requires three conferences with the district judge from the time of filing to the time the pre-trial order is filed. It is believed that with more conferences and greater hands-on management, the judges will reduce the frequent requests for relief from deadlines which were replete in the civil cases reviewed.

Aside from the need for early and meaningful case assessment, attorneys and judges alike stress the failure to rule upon dispositive motions and the lack of a trial setting with integrity as the primary cause of delays in the movement of the civil docket. Aside from whatever tracking is imposed by the individual judge, his courtroom deputy and law clerks, there is no tracking of dispositive motions. Magistrates who meet with the parties to resolve discovery motions and conduct settlement conferences do not communicate with the district judges concerning the necessity for rulings on dispositive motions even though the magistrates may be aware that long-pending motions have impeded trial preparations or meaningful settlement negotiations. The magistrates are aware of the demands placed upon the district judges and, knowing these demands, have neither the assignment nor inclination

to "track" the disposition of these motions. In the civil cases reviewed by the advisory group, there were an average of three dispositive motions filed in each case; in many, motions had been pending for over six months, in some, well over a year.

It is the conclusion of the Assessments Subcommittee that tracking of the progress of civil cases is inconsistent as a result of ineffective communication and coordination among district judges, magistrate judges, their staffs and the parties' attorneys. There is no assigned responsibility for tracking of the individual case except as that occurs by the efforts of the district judge, his courtroom deputy and staff. Without effective tracking of the progress of the case, case management is sporadic and ineffective.

Table 1

SUMMARY OF TOTAL CASE LOAD IN THE DISTRICT OF NEW MEXICO
SY 1981 TO SY 1991

	Total Number of Cases						Per Authorized Judgeship				
	Filings				Ratio	Number	Filings				
	Weighted	Raw	Closures	Pending	Pend/Close	of Trials	Weighted	Raw Filings	Closures	Pending	Trials
1981	1,326	1,227	1,184	1,025	0.87	232	332	307	296	256	58
1982	1,356	1,420	1,281	1,147	0.90	247	339	355	320	287	62
1983	1,559	2,166	1,762	1,540	0.87	218	390	542	441	385	55
1984	1,736	2,209	2,082	1,634	0.78	210	434	552	521	409	53
1985	1,602	2,122	1,975	1,751	0.89	135	400	531	494	438	34
1986	1,710	1,875	1,748	1,855	1.06	154	427	469	437	464	39
1987	2,095	2,043	1,869	2,011	1.08	189	524	511	467	503	47
1988	2,173	2,161	1,973	2,165	1.10	222	543	540	493	541	56
1989	2,012	2,024	2,012	2,159	1.07	229	503	506	503	540	57
1990	1,850	1,806	1,733	2,202	1.27	279	462	452	433	551	70
1991	1,875	1,800	1,630	2,364	1.45	311	469	450	408	591	62

Table 2

SUMMARY OF CIVIL CASE LOAD IN THE DISTRICT OF NEW MEXICO
SY 1981 TO SY 1991

	Cases filed				Number of Cases		% of cases	Ratio of	Median age	
	by Jurisdiction		In Total				over 3	Pending/	Filing to	Number
	U.S.	Private	Weighted	Raw	Closed	Pending	years old	Closed	Disposition	of Trials
1981	389	657	1,094	1,046	1,006	899	2.4%	0.89	NA	164
1982	491	783	1,194	1,274	1,141	1,032	2.2%	0.90	NA	199
1983	1,096	890	1,347	1,986	1,616	1,402	2.7%	0.87	NA	161
1984	1,136	836	1,456	1,972	1,886	1,489	2.6%	0.79	7	125
1985	1,010	903	1,369	1,913	1,808	1,594	2.6%	0.88	9	103
1986	621	969	1,418	1,590	1,549	1,635	4.3%	1.06	9	91
1987	542	1,085	1,635	1,627	1,496	1,766	4.3%	1.18	10	110
1988	548	1,093	1,677	1,641	1,607	1,800	4.1%	1.12	10	94
1989	552	1,051	1,543	1,603	1,593	1,810	5.7%	1.14	11	59
1990	481	814	1,323	1,295	1,291	1,797	8.7%	1.39	11	101
1991	434	799	1,328	1,233	1,200	1,830	9.3%	1.53	12	92

Table 1A

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

NEW MEXICO

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1991	1990	1989	1988	1987	1986		
OVERALL WORKLOAD STATISTICS	Filings*		1,815	1,814	2,027	2,166	2,054	1,880		
	Terminations		1,616	1,754	2,033	2,012	1,897	1,776		
	Pending		2,366	2,202	2,159	2,165	2,011	1,855		
	Percent Change In Total Filings Current Year	Over Last Year	.1						36	1
		Over Earlier Years	-10.5		-16.2	-11.6		-3.5	30	1
	Number of Judgeships		5	4	4	4	4	4		
	Vacant Judgeship Months		7.0	.0	.0	4.4	4.7	5.1		
ACTIONS PER JUDGESHIP	FILINGS	Total	363	454	507	542	514	470	50	2
		Civil	247	324	401	410	407	398	76	6
		Criminal Felony	116	130	106	132	107	72	5	1
	Pending Cases		473	551	540	541	503	464	23	1
	Weighted Filings**		376	464	503	543	524	437	40	2
	Terminations		323	439	508	503	474	444	67	6
	Trials Completed		62	70	70	56	47	39	3	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.5	5.2	4.8	4.1	3.2	3.2	37	6
		Civil**	12	12	11	11	10	9	71	6
	From Issue to Trial (Civil Only)		17	18	14	12	12	10	49	5
OTHER	Number (and %) of Civil Cases Over 3 Years Old		170 9.3	157 8.7	104 5.7	74 4.1	76 4.3	71 4.3	62	7
	Average Number of Felony Defendants Filed per Case		1.4	1.4	1.5	1.4	1.4	1.5		
	Jurors	Avg. Present for Jury Selection	24.52	24.27	24.00	26.00	21.26	22.94	15	3
		Percent Not Selected or Challenged	13.4	17.6	18.6	19.6	11.0	16.8	7	3

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	1233	58	41	206	58	106	45	206	198	8	207	2	98
Criminal*	572	75	14	29	14	12	229	50	10	48	34	15	42

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

Table 3

NUMBER OF CIVIL CASES FILED
FOR THE STATISTICAL YEARS 81 TO 91
BY CATEGORY OF CASE

Category	81	82	83	84	85	86	87	88	89	90	91
CONTRACT	236	210	251	243	271	296	299	330	321	225	245
CIVIL RIGHTS	126	151	143	186	156	169	215	245	162	168	207
PRISONER	110	129	189	122	198	202	217	219	253	161	206
PERSONAL INJURY	176	154	157	185	200	222	231	205	240	181	164
CONDEMNATION	83	37	59	62	62	68	103	98	121	128	106
OTHER	264	224	163	121	130	134	156	132	140	139	104
SOCIAL SECURITY	26	24	100	190	125	53	55	75	68	44	58
LABOR	34	23	20	29	22	21	30	26	22	22	45
BANKRUPTCY	17	49	31	25	24	15	28	33	39	17	20
ASBESTOS	5	0	2	0	0	0	6	4	12	37	17
FORFEITURE	10	10	18	22	15	17	13	17	28	57	14
SECURITIES	12	8	7	9	10	10	8	10	12	4	14
TAX	18	9	16	24	17	15	7	12	7	10	12
COPYRIGHT	13	12	20	15	12	24	10	21	15	16	8
FRAUD	25	33	21	34	8	16	22	17	11	15	4
COMMERCE	8	4	7	11	5	3	1	6	3	2	4
STUDENT LOAN	1	193	783	668	658	310	187	177	121	47	2
BANKING	0	1	2	3	1	4	4	4	16	4	2
RICO	0	0	0	0	0	1	4	5	5	5	1
ERISA	0	0	4	7	4	3	5	4	9	11	0
TOTAL	1,164	1,271	1,993	1,956	1,918	1,583	1,601	1,640	1,605	1,293	1,233
		1071	1210	1288	1260	1273	1414	1453	1480	1296	1231
EXCLUDING*	1,049	1,017	1,049	1,036	1,073	1,152	1,250	1,286	1,283	1,037	1,050
% NOT EXCLUDED	90%	80%	53%	53%	56%	73%	78%	78%	80%	80%	85%

* EXCLUDES: CONDEMNATION, SOCIAL SECURITY,STUDENT LOAN, ASBESTOS

Table 4

Comparisons of Civil Case Filings and Ranks for Selected Years for the U.S. District of New Mexico									
CATEGORY OF CASE	1981 Cases Filed	Rank	1985 Cases Filed	Rank	1990 Cases Filed	Rank	1991 Cases Filed	Rank	Percentage Increase 81-91
CONTRACT	236	2	271	1	225	1	245	1	4%
CIVIL RIGHTS	126	4	156	4	168	3	207	2	64%
PRISONER	110	5	198	3	161	4	206	3	87%
PERSONAL INJURY	176	3	200	2	181	2	164	4	-7%
CONDEMNATION	83	6	62	6	128	6	137	5	65%
OTHER	264	1	130	5	139	5	73	6	-72%
Sub Total for Group	995		1017		1002		1032		4%
Group % of Total	85%		53%		77%		84%		
TOTAL All CASES	1164		1918		1293		1233		6%
	95%		95%		97%		98%		
TOTAL -EXCLUDED	1049		1073		1037		1050		0%
* EXCLUDED: CONDEMNATION, SOCIAL SECURITY,STUDENT LOAN, ASBESTOS									

Table 5

CRIMINAL FELONY CASES								
	Weighted Filings	Filed	Closed	Pending	Pending/ Closed	MEDIAN AGE	% DRUG CASES	Number of Trials
1981	232	181	178	126	0.71	3	23%	68
1982	162	146	140	115	0.82	2.8	13%	48
1983	212	180	146	138	0.95	2.9	14%	57
1984	280	237	196	145	0.74	3.1	25%	85
1985	233	209	167	157	0.94	2.7	19%	32
1986	292	285	199	220	1.11	3.2	18%	63
1987	460	416	373	245	0.66	3.2	21%	79
1988	496	520	366	365	1.00	4.1	31%	128
1989	469	421	419	349	0.83	4.8	48%	170
1990	527	511	442	405	0.92	5.2	47%	178
1991	547	567	430	534	1.24	5.5	49%	219

Table 6

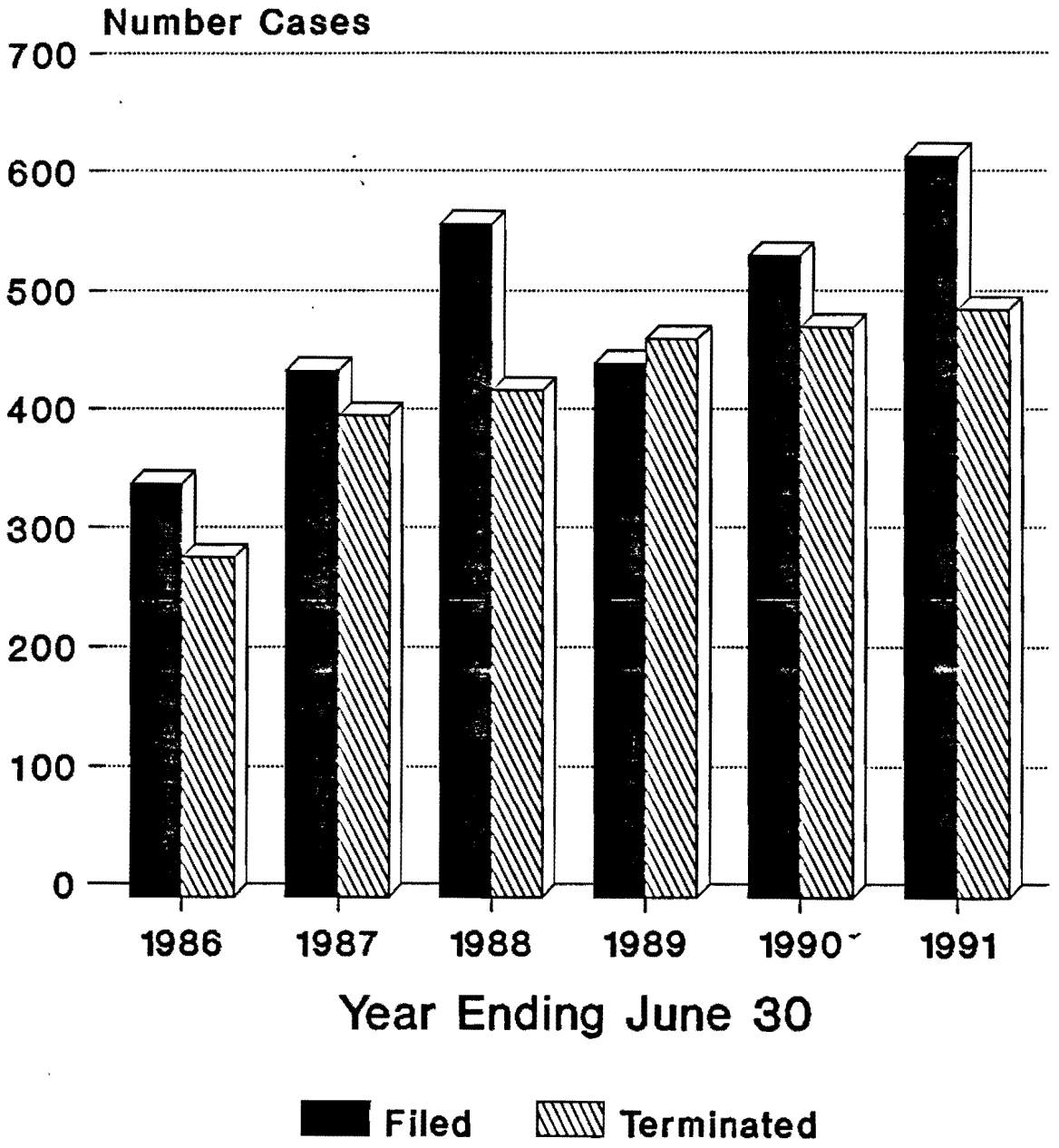
CRIMINAL FELONY DEFENDANTS								
SY	Defendants per Case	Openings	Disposed	Pending	Ratio Pend./Disp.	rials as % o Dispositions	% DRUG Filings	Number of Trials
1981	1.55	280	285	157	0.55	24%	37%	68
1982	1.78	260	213	185	0.87	23%	16%	48
1983	1.47	265	220	195	0.89	26%	21%	57
1984	1.40	331	291	182	0.63	29%	33%	85
1985	1.54	321	249	211	0.85	13%	27%	32
1986	1.75	498	406	290	0.71	16%	26%	63
1987	1.30	539	516	339	0.66	15%	32%	79
1988	1.42	737	540	536	0.99	24%	38%	128
1989	1.51	634	583	512	0.88	29%	55%	170
1990	1.42	724	652	544	0.83	27%	56%	178
1991	1.38	780	606	700	1.16	36%	56%	219

Table 7

DISPOSITION OF CRIMINAL DEFENDANTS IN THE U.S. DISTRICT OF NEW MEXICO
SY 1980 TO 1991

	NUMBER OF DEFENDANTS					% OF DEFENDANTS			
				BY TRIAL				BY TRIAL	
YEAR	TOTAL	ISMISSE	PLEA	COURT	JURY	ISMISSE	PLEA	COURT	JURY
1980	227	57	136	6	28	25%	60%	3%	12%
1981	348	73	233	4	38	21%	67%	1%	11%
1982	268	64	174	1	29	24%	65%	0%	11%
1983	284	39	191	21	33	14%	67%	7%	12%
1984	368	65	239	2	62	18%	65%	1%	17%
1985	323	78	212	4	29	24%	66%	1%	9%
1986	406	122	245	4	35	30%	60%	1%	9%
1987	526	127	348	4	47	24%	66%	1%	9%
1988	584	128	387	1	68	22%	66%	0%	12%
1989	611	147	400	2	62	24%	65%	0%	10%
1990	680	130	466	1	83	19%	69%	0%	12%
1991	645	116	453	3	73	18%	70%	0%	11%

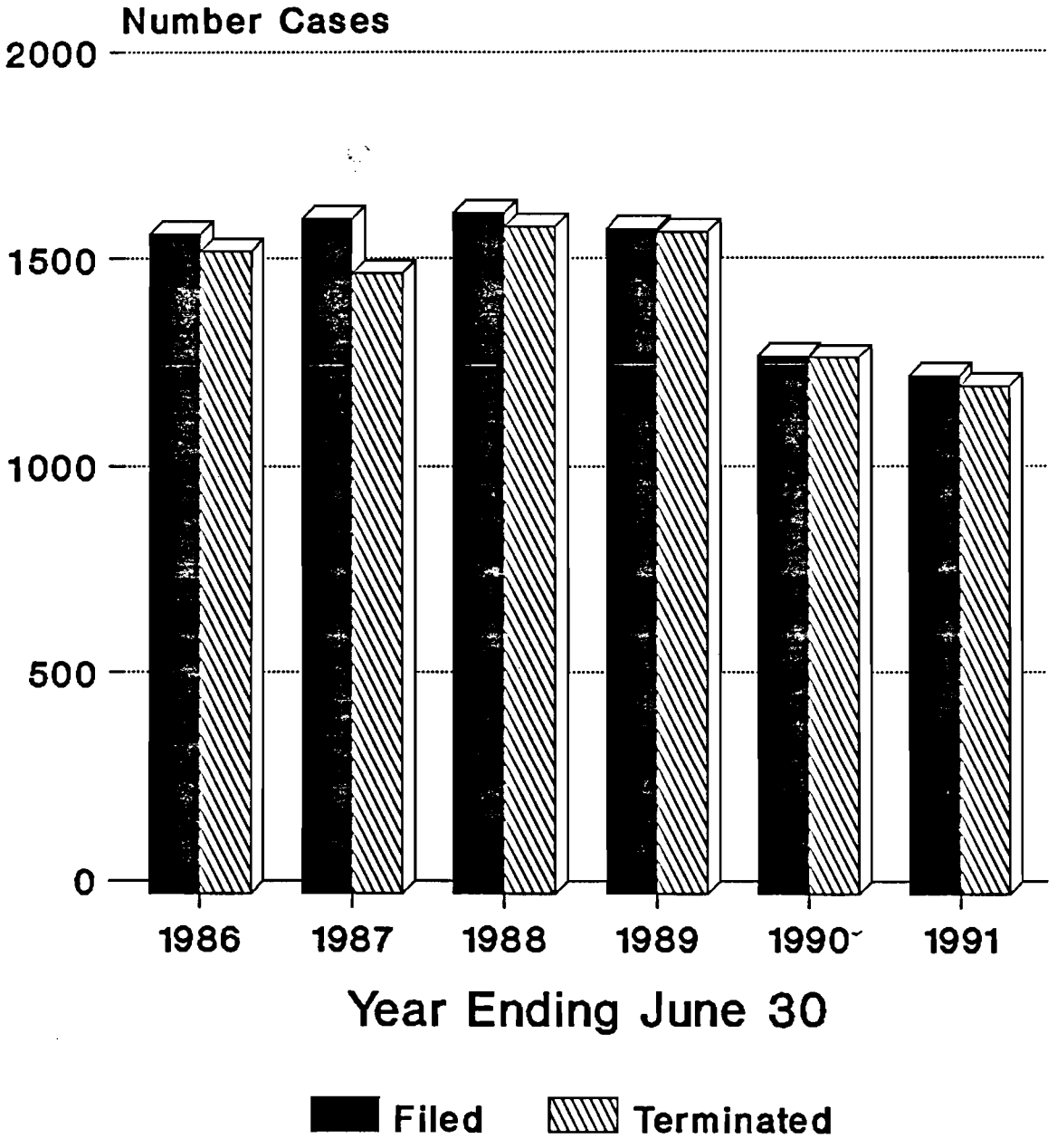
District of New Mexico
Criminal Cases Filed & Terminated



Filings Increase by 79%
Terminations Increase by 73%

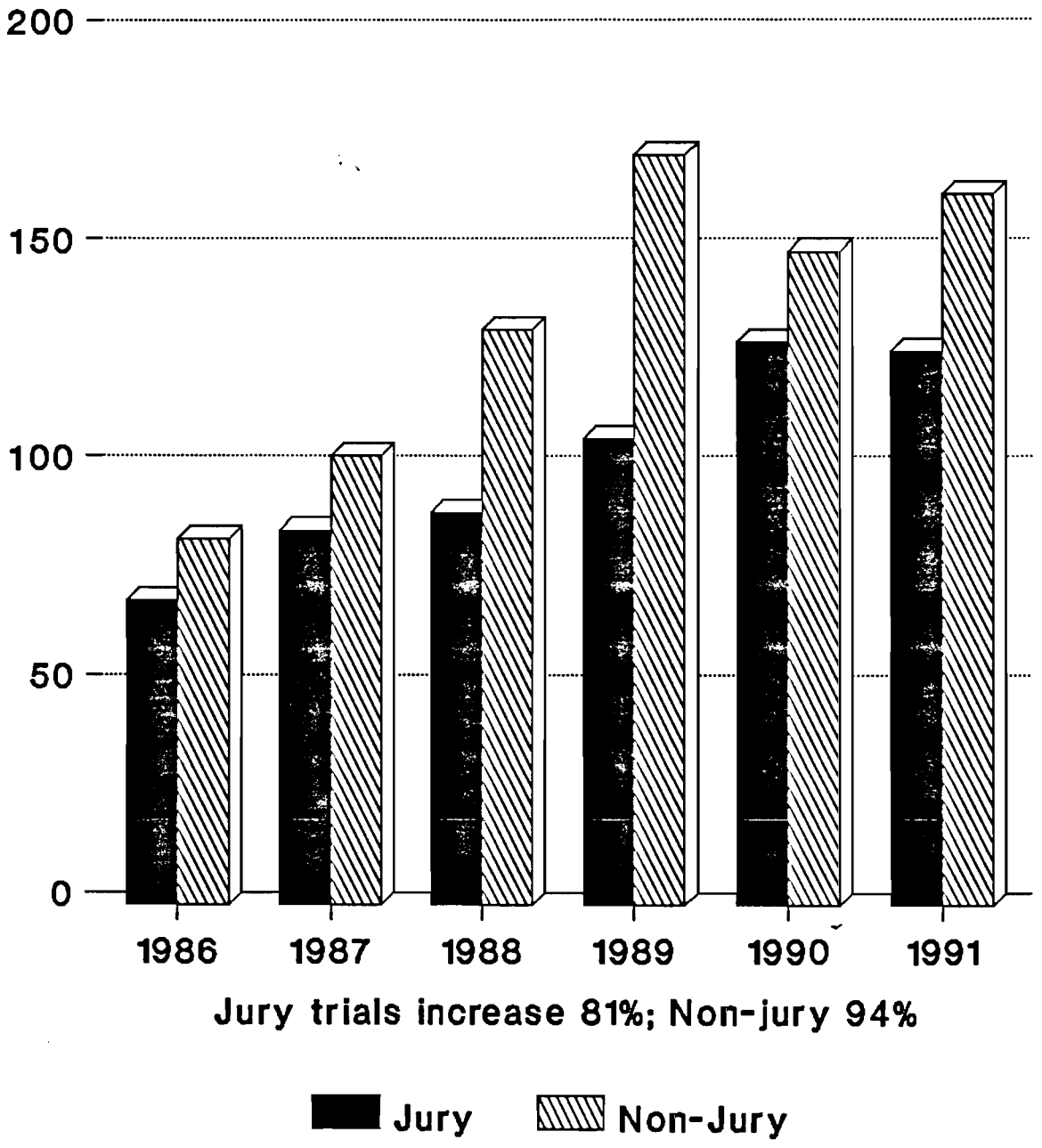
Graph 1

District of New Mexico
Civil Cases Filed & Terminated '86-'91



Filings Decrease by 22%
Terminations Decrease by 20%

Trials & Hearings Completed
Historical Data Period Ending June 30



Source: Annual Report of Director of
the Administrative Office of U.S. Courts

APPENDIX J

DRAFT

Discovery Committee's Report to the New Mexico District Committee on the Civil Justice Reform Act:

At our meeting on Friday, August 14, 1992 our committee approved the following recommendations.

I. Oral Arguments should be held by the district judge for dispositive motions, and where feasible rulings should be made from the bench.

A. This was the single most often mentioned issue among persons interviewed.

II. Amendments to Federal Rules of Procedure

A. Discovery: It appears that the United States House of Representatives is going to recommend the automatic discovery provisions despite objections from both civil plaintiffs and defense lawyer groups.

B. Our Civil Justice Reform Act Committee should recommend that these provisions will only increase, not decrease, discovery disputes.

C. Our district should not adopt automatic discovery provision if there is a choice.

III. Areas of improvement in the district court in New Mexico.

A. More strict, early, hands on management of discovery would be beneficial.

1. Early hands on management will resolve many problems by giving guidance to all of the lawyers involved about what future rulings might be.

B. Initial status conference.

1. The committee feels that an initial status conference with the district judge would be helpful.

2. One or more judges in the New Mexico district have been successful in getting better discovery cooperation by using an initial status conference to set the tone for discovery.

3. Some of the questions which should be answered at that early meeting are "Who are you deposing and why?"; discovery should not be used as a weapon; mandated cooperative scheduling of discovery should be involved.

4. Guidelines should be developed to control

assertions of confidentiality.

a. An index of the documents for which privilege is asserted should be required.

b. There is a question concerning whether confidentiality assertions should be decided "mutually" (i.e. both plaintiff and defendant confidentiality should be decided at the same time). This has been suggested particularly in large commercial cases where all parties may be claiming confidentiality.

c. Guidelines should be published by each district judge or magistrate concerning the rules about the burden of proof on confidentiality.

d. Confidentiality issues should be resolved early.

IV. Phasing of discovery.

A. Within 90 to 120 days of filing the complaint, the discovery should be limited as follows:

1. In the initial discovery conference, a discovery deadline should be established in areas which could lead to settlement.

2. If settlement is not accomplished, discovery should phased as follows:

a. Document production;

b. Fact discovery;

c. Discovery concerning expert opinion;

d. Damages.

B. A. Mediation conference should be set after initial discovery to discuss settlement possibilities.

Snead

APPENDIX K

DRAFT
8-21-92

1. Overview and Perspectives of What Constitute "Costs and Delays" Within the Meaning of Section 472 (c) (1) (C) of the Act.

The meaning of costs under the Civil Justice Reform Act of 1990 (C.J.R.A.) is best stated in its legislative history. There it is "defined as the total costs incurred by all parties to civil litigation, excluding any ultimate liability or settlement." 8 U.S. Cong. News '90 Bd. Vol. 6809. The C.J.R.A., itself, provides the basis for defining delay. Section 473(a)(2)(B) puts the time limit for a firm trial date no longer than eighteen months from the filing of the complaint unless the complexity of the case warrants a longer time or the number or complexity of criminal cases will not allow meeting that time limit. Thus, "delay" under the Act would appear to be trying the case on the merits more than eighteen months after the filing of the complaint.

2. Identification of Principal Causes of Delays in Civil Litigation.

The large number of criminal cases on the docket of United States District Court for the District of New Mexico (sometimes "The District") causes an unreasonable delay in setting firm trial dates for civil litigation. In 1991, out of 94 federal districts in the United States, the District ranked

5th in the nation in criminal filings and 76th in civil filings. Furthermore, in that same year, the District ranked 3rd in the United States in the number of trials completed.[1] Even with this high ranking in trials, the number of civil trials has declined through the 1980s. For 1991, the civil caseload in New Mexico, per judgeship, ranked 76th out of the 94 districts. Yet the time required to dispose of a civil case was longer than 70 of the 94 districts.

From 1981 to 1991, the number of criminal cases filed has almost tripled. In 1991, forty per cent of the criminal cases handled in the district constituted marijuana cases, generally rated less complex on the applicable rating system. Due to the criminal procedure requirements, the number of closures of criminal cases has kept up with the increase in filings.

On the other hand, in the same period, 1981 to 1991, the number of civil cases filed has exceeded the number of civil cases closed. The increase in the civil case backlog is further demonstrated by median age of civil cases in the New Mexico District. In 1984, the median age of a civil case from

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[1]The number of trials completed includes all contested proceedings before a court including jury trials. It includes suppression hearings, sentencing hearings, hearings for temporary restraining orders and preliminary injunctions as well as trials on the merits.

filing to disposition was 7 months. In 1991, that median age was 12 months. For the United States, as a whole, the median age has remained constant at 9 months for the same period.

From those numbers, one can only conclude that the increased delay in disposition of civil cases during the 1980s was caused by the District Judges' handling of the greatly increased criminal caseload.

The increased criminal caseload, because it is criminal in nature, requires that only a District Judge judicially act after a person is indicted. The effect of the U.S. Sentencing Guidelines in New Mexico with the increased criminal caseload has so increased the trials occurring before and after[2] the trial on the merits that the New Mexico District has moved to number 3 in the nation in trials. Each of these trials occurring in the criminal caseload requires the time of an Article III judge. These tasks cannot be delegated.[3]

The lack of Article III judge time for civil litigation which can only be handled by a district judge is the primary cause of delay in the New Mexico District. However, increasing the effect of this cause is a lack of any coordination system

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[2]See U.S. v. Acosta, C.A.2d, No. 91-1527, May 13, 1992, 60 Law Week 2768 for the extent to which sentencing trials can go.

[3]This contrasts to civil cases where virtually all pre-trial matters, except dispositive motions, are initially handled by Magistrate Judges.

among the District Judges, Senior District Judges, Magistrate Judges and the Clerk of the Court. When an organization is overtaxed in demand for services--in this case Article III judges handling dispositive motions and trials on the merits--then all services rendered by that organization must be efficiently coordinated with a communication system that maximizes the time available for district judges to handle those matters in the civil area which only they can handle.

3. Identification of Principal Causes of Undue Costs in Civil Litigation.

Undue costs in civil litigation are driven by undue delay in fixing and meeting a firm trial date. Professor E. Donald Elliott, Yale Law School, explains:

> Perhaps the most important single element of effective managerial judging is to set a firm trial date. * * * This creates incentives for attorneys to establish priorities and "narrow the areas of inquiry and advocacy to those they believe are truly relevant and material" and to "reduce the amount of resources invested in litigation." [Citation omitted.]
>
> 8 U.S. Cong. News '90 Bd. Vol. 6822.

Moreover, a firm trial setting increases the probability of settlement and also minimizes costs in expert witness and attorneys fees. Having to get a case ready for trial time and again is probably the biggest factor in causing both expert witness fees and attorneys fees to increase dramatically. Furthermore, on the plaintiff's side of a

contingent fee case, the setting and resetting of trials in a case can move the case from one which would be economical to one which is uneconomical even in the event of what otherwise would be an adequate award. This, in turn, puts a chilling effect on acceptance of contingent fee cases to the detriment of those persons who can hire an attorney only on that basis.

4. Recommendations and Their Bases.

A. The clerk's office should be staffed and equipped to implement a "Differentiated Case Management" system. This system should use a three case track method. Track One is for expedited cases and is designed to accommodate the special needs of cases that can be processed quickly. Track Two is for complex cases which require more intensive judicial intervention and control. Track Three is for standard cases, not falling in the other two categories. 8 U.S. Cong. News '90 Bd. Vol. 6828. This tracking will not only assist both the District Judges and Magistrate Judges, but also the case managers discussed below.

Also upon filing a case, it should be assigned a District Judge and a Magistrate Judge for handling all pre-trial matters except settlement conferences. The Magistrate Judge handling pre-trial matters would also handle the trial on the merits if the parties consent and the District Judge cannot try the case on the firm date later set. Also at the time of filing, a second Magistrate Judge should be

assigned for handling settlement conferences. Each Magistrate Judge assigned to handle settlement conferences should have had formal training in that function.

At the time of filing the complaint and first appearance of other parties for Track One and Track Three cases, each party should be given a form for consenting to trial of the case by the first Magistrate Judge assigned.

B. As previously discussed, lack of district judge time also causes undue delay in the New Mexico District in deciding dispositive motions. This delay can waste significant money for parties having to spend expert witness fees and attorneys fees on issues which may never be tried on the merits. As at least two of the New Mexico District Judges are doing, dispositive motions should be set for oral hearings and decided from the bench. It should be the exception, and not the rule, that a dispositive motion is taken under advisement and is the subject of a written opinion. Dispositive motions should be set for argument within a short, reasonable time after briefing is complete.

All motions except dispositive motions should be handled initially by Magistrate Judges. Experience in the District shows that few of these decisions are appealed to the district judge.

C. The District currently uses the Initial Pre-Trial Report for pre-trial narrowing of issues and discovery

control. This report is completed by the parties within a few months from the date that the case is at issue. Both judges and attorneys, almost unanimously, agree that it is ineffective.

One Magistrate Judge in the District is utilizing a method where he requires a conference with all attorneys for the parties within a few months after the case is at issue. There he obtains a consensual narrowing of issues, identification of discovery the parties believe necessary and why, identification of type of expert witness needed and why. In obtaining this information, he attempts to see that the parties identify the discovery which will best lead to settlement and then persuade the parties that such discovery be completed first. Once this conference is complete, he gets consensual time limits on the preparation of a Pre-Trial Order which incorporates that which has been accomplished at the conference and will then be approved by all attorneys. After completion, approval by attorneys and the Magistrate Judge, the Pre-Trial Order is forwarded to the District Judge for entry. This method of pre-trial issue narrowing and discovery control should be adopted in the District.

D. Delay in filling a district judge position has compounded the problem brought by the increased criminal caseload. Even though a fifth district judge was authorized by legislation enacted in 1990, a person to fill that position was not nominated until March, 1992 and did not appear before the

U.S. Senate Judiciary Committee until August, 1992. One might say that this is now "water under the bridge" except that one District Judge in the District will go on senior status in 1993 making another district judge appointment available, and further appointments will naturally occur in the future. Therefore, it is recommended that this delay in appointment and confirmation be avoided in the future. Moreover, this delay problem should be communicated to the appropriate office with the President and U.S. Senate.

E. Besides the effect of the swollen criminal docket in the New Mexico District, the other significant cause of undue delay and costs in civil litigation is the lack of any coordinating system among the district judges and magistrate judges and the inability of the district judges to know what is in each case needing attention.

The New Mexico District has been fortunate that it has had two very active Senior Judges. One handles only civil cases. Without them, the delay and cost problem would be significantly worsened.

The goal should be to utilize most efficiently all available Article III judge time for doing only those jobs in civil cases which require that quality of time. This means that the system must utilize the magistrate judges to the maximum in doing all other functions in civil cases. One District Judge in the District has suggested, and it has

further become apparent as the delay and cost problem in the District has been investigated, that case managers are necessary.

This case manager should be an attorney who has had substantial litigation experience. He should be administratively attached to the Chief Judge of the District. His job will be to keep up with the status of each civil case once it has been assigned to the appropriate track. He will see that the assigned magistrate judge has held the initial conference and that the attorneys have met their commitments made at that conference. He will be in contact with the attorneys from early in the case exploring whether a settlement conference with the assigned magistrate judge would be helpful. It was determined in the investigation that the attorneys must believe that the case and the parties are ready for meaningful settlement discussions before such conference can be effective. It was further found in the investigation that the attorneys generally want as early a resolution of their cases as practical. From the contingent fee plaintiff's position, this is driven by economics. For the hourly fee attorney, clients are demanding it to try to bring costs and expenses in control. And, failure to get them in control can cause loss of clients.

At a reasonable time after entry of the Pre-Trial Order, the case manager would see that the case has been set on a firm trial date based on the track the case was on and on the

parties' readiness to try the case. Once the case was set, he would remain aware of the assigned district judge's time availability on that firm date. He would keep the assigned district judge aware of the need to hold arguments on dispositive motions early so as to keep issues as narrow as the case warrants.

Moreover, if the parties have consented to trial by a magistrate judge, he will keep that magistrate judge aware of the likelihood that he may try the case because the district judge does not have time available on the date that the trial is set. He will further promote the use of the magistrate judge in these situations, particularly where the case is appropriate for it, depending on its track. In the New Mexico District, the case manager may not have to do much promotion. When the newest designated magistrate judge is formally seated, three of the four Magistrate Judges will be experienced, well regarded former state trial judges.

If a case does not have consensual trial of the case by a magistrate judge, and the assigned District Judge does not have time available to try the case on the firm date set, then the case manager will attempt to arrange for another Article III judge to try the case on the firm date. He will first explore the availability in the District itself. If none is available, he will then explore the availability of the Circuit Judges from New Mexico. As somewhat an aside, both of the active Circuit Judges from New Mexico have expressed their

willingness to perform such tasks if their own workload permits. If these avenues fail, the case manager will then be in contact with the chief judge for obtaining a certificate of necessity for presentation to the Chief Justice for assignment of an Article III judge from outside the District who has time available on the date on which the trial is set. 28 U.S.C., §292.

F. To repeat, the primary problem in the District of New Mexico is unavailability of Article III judge time because of the heavy criminal caseload. Forty per cent of that caseload is marijuana cases. The majority of the marijuana caes arise in the southern part of the state where the state caseload is significantly lighter than in the First and Second Judicial Districts. From investigation of the problem, it appears that the United States Attorney's office in the District has exercised discretion to defer to the state judicial system where an act is subject to both federal and state jurisdiction. Therefore, in the short run, it is suggested that the United States Attorney defer to the state judicial system all marijuana case prosecution except those determined "major" by some pre-determined standard. In the long run, Congress should be persuaded to eliminate marijuana activity as one for federal criminal jurisdiction. In the interview of certain of the Congressional delegation, it would appear that the Advisory Group would get their cooperation.

APPENDIX L

CIVIL JUSTICE REFORM ACT OF 1990

Report of Procedures Committee - August 20, 1992

The Procedures Committee submits to the Chief Judge its Report. As the "procedures" for reductions of expense and delay are effectively the mandate of the entire and various other committees, there will be overlap in areas of concern and recommendation. But we view this as beneficial and not at all cumulative. Given the complexity of the federal adjudicatory process it is advantageous to have others in the advisory group with different contextual approaches addressing the same subject.

I. PURPOSE, SCOPE and FOCUS

The Civil Justice Reform Act of 1990 ["CJRA"][1] requires this District to develop and formulate a plan to promote the reduction of expense and delay in civil litigation and to ensure just, speedy and inexpensive resolutions of civil disputes.[2] Congress even provided a broad "roadmap" of the assignment, that is to establish a series of principles and guidelines, using the concept of "differential treatment" [i.e., substitute tracking] for cases of differing complexity; with early and ongoing control of the pretrial process through involvement of a judicial officer; [3]

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1. Pub. L 101-650, codified as 28 U.S.C. s. 471 et seq.

2. 28 U.S.C. s. 471.

3. Not necessarily an Art. III Judge.

and limitations on discovery. [4]

Our focus is not to attempt suggestions to Congress as to future legislation to limit expense and delay. Those suggestions will surely come from the final advisory group "Plan". But, as a committee, we view that effort as an ineffective and wasteful-of-resources expenditure of time. Other advisory groups will, cumulatively, produce recommendations of legislation that Congress, if it wishes, may consider. We felt it more productive to suggest to this District specific ways in which this District's procedures might save delay and expense in civil litigation.

It soon became apparent in our hearings, investigation of problems, review of the enormous data provided by Jesse and Jacques and committee meetings that many attorneys viewed this process as an essential conflict between protecting the courts by procedures that would save the judicial resource time and the presumed rights of litigants to have a deliberate factual adjudication without a diminishment of their "rights". However one views this essentially philosophic debate and depending upon where one's sympathies lie [5] we felt that we did not have the luxury of solving all [or even,

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[4]. 28 U.S.C. s. 473(a). Congress states its mandate of purpose that the "Plan" is 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.

[5]. There is no question but that many of the opposing views presented in our hearings derive from, for example, plaintiff's attorneys as contrasted to defendant's attorneys. This was more obvious in the various thoughts of reduction or limitation on discovery than in any other procedural arena. We have tried to take into account the legitimacy of these often disparate views and hope not to have ignored justified concerns.

"any"] of the presumed conflicts: we had to address the means for the most efficient utilization of judicial resources, to effectuate a savings of delay and cost to litigants, even at the expense of some [presumed] "rights". We do this with some discomfort, though, as most lawyers view the federal court system as the bastion of individual rights.

We therefore place before you our thoughts and recommendations, intending to devise methods of savings of judicial resources to more efficiently effectuate limitations on delay and cost for litigants. We hope the process does not also diminish individual "rights".

II. OUTLINE OF PROCEDURES PLAN

The general areas to be implemented in the Plan are:

1. **Judicial Management**

The recommendation is for an increase in the use of Article III judges' involvement in settlement and case management tracking, including face to face initial conferences with counsel and litigants. And, at any early date...and in an ongoing manner.

There is no doubt but that federal litigation counsel are a sophisticated [some might use other appellations, such as "tough", "hard" "experienced" - - and others not reportable here] group of lawyers. Thus, these lawyers are not easily persuaded to adopt procedures that do not appear to them to advance their client's case. Although we have in this District extremely able and experienced magistrate judges, who have been given somewhat

expanded authority [6] counsel do not easily bend to magistrate's persuasion. Not when they know their legal rights. But, the Art. III judge may employ his substantial authority to persuade and order in procedural matters, including consent jurisdiction to trial by a magistrate judges as an alternative when the Art. III judge is forced off the trial date by the criminal docket. [7]

We strongly suggest the adoption of an early firm trial date. For a variety of reasons, which we will not go into, cost limitations and the engine of the pretrial procedures and of settlement/mediation is run by a firm trial date. If that date is set at an early time, for an early [from 9 to 18 months from the initial status conference] trial date **and the date is known to be firm by all counsel and parties, then there will be substantial savings of time and money.** The firm date is in turn conditioned upon the consent of the parties to trial to a backup magistrate judge in the event the Art. III Judge is forced off the case through his criminal docket, or initially as an alternative to the Art. III judge.

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[6]. But who are still limited by the Constitution as to their authority. See the Report of the Federal Courts Study Committee, page 80. And See Pub. L. No. 90-578, sec.101, 82 Stat.1108 (1968), as amended by Pub, L. 94-577, sec. 1 (1976); Pub. L. 96-82, sec. 2 (1979).

[7]. We do not intend to take the time in this report to comment on the obvious: that the criminal docket, as it may be further expanded by Congress, has singularly created most of the delay problems in the federal court civil docket. We view that as a political matter over which we have no control and very little input.

We are not so obtuse as to fail to recognize that the more conferences with the court and the more status or pretrial reports, the more the expense to the parties in an already costly process and the more the Art. III judge's time is taken. But, the use of conferences and requirements of interim and early status and pretrial reports requires counsel to be prepared, research his or her case, be knowledgeable as to the weaknesses in the case, determine who and what witnesses will be able to prove the case and know both the facts and the law. In the end we believe that this will be a much greater savings of time and of cost. See Exhibit A.

2. **Differential Case Management**

This contemplates that there will be different "tracks" for different case, depending upon the complexity and variances inherent in different cases. The case should be early assigned by the Art. III judge to a track and monitored thereafter on that track.

We do not contemplate that there will be more than three, possibly four, tracks. We do believe that the Art. III judge is in the best position to assign that track. With the help of counsel, of course. We do recognize the potential of abuse by counsel: it will become a challenge to draft pleadings, outside of the simplified "notice" type, in order to fit within a certain, presumed by counsel to be more attractive track.

We are uncertain whether there should be a delineation of those tracks for all of the judges, or whether each judge should develop his own "track" system.

The use of detailed, time-engineered status reports, to commence at an early date, should be adopted by local Rule. See Exhibits B, C, and D.

3. Pretrial Motions

We recommend that there be:

a. Motion days, with limited oral argument.

b. Filing deadlines, established by local rule with limited variances and then only upon a showing of need or acceptable excuse.

c. A time limitation on the court for rulings on all motions, and particularly on Art. III judges in ruling on dispositive motions. As is hereafter discussed in this report, we believe that this will engender as much heated rebuttal, explanation and possibly even simple refusal to abide, by the Art. III judges, as anything in this CJRA advisory group reports.

d. Page limitations on filings.

e. Requirement of counsel conferences on each motion prior to filing and certification of good faith attempts to resolve the motion; sanctions and costs for unsubstantiated or poorly conceived motions; telephonic arguments; and party conciliation and certification.

4. Motions Rulings Additional Comment

The most consistent complaint (or suggestion for change) from counsel in litigation was the theme from counsel throughout the state that there appears to be substantial time-delay and inordinate cost involved in delay in rulings by the district judges

on dispositive motions. Time after time litigation counsel described, with specific case examples, how delays in rulings on dispositive motions caused substantial wasted effort and substantial increase in cost in preparation for trial, when, had the rulings been made within a " short" period of time [the timing is an additional difficulty]. It is obvious that something needs to be done in this area. It is interesting to note that the district judges, for the most part, do not believe they delay rulings, and expressed some pride in their early rulings. Candidly speaking, if the problem is not to be addressed here, in this forum and at this time, it may not be addressed at all. In the opinion of some of the counsel-witnesses, this is singular in importance as an effective tool to reduce cost and delay.

There is little question but that this is a sensitive area for recommended change. It involves more than the district judge's pride and authority, it does reasonably involve the complexity of some dispositive motions, to the general effect that no time-restrictive rule can be enforced. Obviously, no counsel in any specific case will challenge the district judge to rule more quickly or complain. See Exhibit E.

5. **Phased, and Limitations of, Discovery**

There is much controversy as to the effect of our present Rules of Discovery on delays and costs. It is also in this area that the most vocal confrontation between plaintiffs and defendants attorneys occurred. Whether one appreciates the perceived abuses and the suggested remedies in discovery most often depends on

whether you view the problem through the eyes of a plaintiff's attorney or a defendant's attorney. Moreover, there is a stark contrast between the two views in personal injury and civil rights litigation.

No matter the view, it is clear that discovery must be controlled through bar orders, and it is equally clear that a magistrate should, early in the case, establish: [1] the extent to which discovery is necessary; [2] a phasing or timing of discovery, limiting the time period to one that will be reasonable, yet will also impose fairly strict phases within which the discovery is to be completed; [3] that certain discovery be obtained through less formal contact, statements and agreed upon facts (stipulations of fact and non-contested matters); [4] an order or list of production of documents and things which are to be furnished to opposing counsel without the need for depositions, interrogatories, demand for admissions and production of documents (See Exhibit F); and [5] limiting and creating strict but reasonable limitations on expert evidence, testimony, reports and redundancy. See Exhibit G.

The entire subject of expert witnesses, although encompassing more than the discovery issues, should be explored with an eye to creating binding limitations on the use of experts. We believe that local Rules might be used to accommodate this problem. See Exhibit G.

A local Rule should be drafted to require mandatory disclosure of certain types of documents and revealing of what has been reluctantly divulged in the past, theories [this may not work

well in all cases and it may be particularly difficult in multi-party, multi-issue, so called "complex" litigation] such as witnesses, insurance agreements, liability and damage theories and damages specificity, plain contentions, and exhibit lists and production of exhibits. It is in this area that the court should consider the use of sanctions in the way of costs and fees, for failure to produce, list etc.[8] See Exhibit F.

6. **Alternative Dispute Resolution**

The ADR devices that should be explored and applied, as needed, are:

a. Arbitration: Even when properly adopted it increases costs and delays. It may help with settlement. Must be consensual. Thus we do not have much regard for this ADR except in unusual cases. Nevertheless, the procedure and Rule delineation should be available. See Exhibit I.

b. Mediation. An effective device. We do believe that the mediators must be trained, such as is now done in the Second Judicial District. Mediation timing and repeated efforts are important. Not all cases should be mediated, although when considered as an adjunct to a settlement facilitation, it can become effective in many cases. It should not be adopted as a substitute for fact finding, when the case appears to have reached

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[8]. Uniformly, the Judges in this District were reluctant to impose sanctions, except on a case-by-case basis. That is not only understandable, it is required. But, if there are Rules which initially require such sanctions for failure of discovery and which place the burden on the failing party to overcome the presumption of costs and fees to opposing counsel, much will have been accomplished.

that stage, due to the limitation of issues and the non-amenability of counsel.

c. Court annexed settlement conferences. These proceedings are often productive and a local Rule establishing assignment of cases for settlement facilitation may be quite productive.

d. mini-trials, summary trials and reference to a special master. There is some potential in references to a special master in some cases, and it should be developed under local rule. It is by current rule more of a fact finding procedure and may well be limited to areas of complex scientific evidence and determinations. Whether it can be of value in cases involving expert evidence that is voluminous is an interesting question: it in effect bifurcates the fact finding in a case, which is unquestionably a problem, at least in jury cases.

The use of ADR is largely dependent upon an early pressure by the court to go through one [or more] ADR procedures. This is particularly true for settlement conferences and mediation. However, there are many cases which, because of the nature of the controversy and the patterns of the parties' views, are not amenable to ADR. See Exhibit H. It should not be forced-fed in those situations, as it only increases costs and delays. There are parties and circumstances where one side may wish to delay the case for several [presumed to be legitimate] reasons. The use of ADR in those circumstances may literally play into the hands of that counsel and in turn increase costs and extend the delays. In plain

terms, ADR is not **always** a useful tool, and we suggest that the court carefully limit the circumstances under which it is employed and made a part of the local rules.

Respectfully submitted,

Procedures Sub-Committee

By: _____
Paul A. Kastler, Chair

EXHIBIT A

. . . . . **PROPOSED - STATUS REPORT**

(Proposed Form)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

---,
Plaintiff,

-vs- No. Civ 92 - -

---,
Defendant.

STATUS REPORT

Date of Conference: _____ 19 ____.

Appearing for Plaintiff:_____

Appearing for Defendant:_____

JURY TRIAL DEMANDED_____ NONJURY TRIAL _____

I. BRIEF PRELIMINARY STATEMENT. State summarily the facts and positions of the parties. (Suitable for use as the statement of the case in jury selection)

II. JURISDICTION and PARTIES. The basis on which the jurisdiction of the court is invoked and information on parties, missing and

indispensable parties.

III. STIPULATED FACTS. (delete in the initial status report) List stipulations as to all facts that are not disputed or reasonably disputable, including jurisdictional facts.

Examples: a. All parties are properly before the court.
b. The Court has jurisdiction of the parties and of the subject matter.
c. All parties have been correctly designated.
d. etc.

IV. DISPUTED FACTS (delete in the initial status report?). Those facts not stipulated to in III above and which are legitimately in dispute and as to which counsel expects to present contrary evidence at trial or genuinely challenges on credibility grounds.

(Comment: The Court may wish to set a sanction warning at this point and require counsel to adhere to his or her duty to the court. Quaere:feasibility of enforcing such a warning and sanctions)

Examples:

a. Was plaintiff injured and damaged by the acts or negligence of the defendant?

b. What amount, if any, is plaintiff entitled to receive as compensatory damages.

c. etc.

(Comment: Some additional wording as to conclusory fact disputes rather than breaking down the case into many sub-issues of facts may be in order.)

IV. CONTEMPLATED DISPOSITIVE MOTIONS.

V. LEGAL ISSUES. State separately and by party each disputed legal issue and the authority relied upon.

VI. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER REMEDIES SOUGHT.

Plaintiff:

a. As to liability

b. As to damages

c. etc

Defendant:

a. As to liability

b. As to damages

c. etc.

VII. DOCUMENTS which are relevant to the case and which are to be given opposing counsel.

Plaintiff:

Number	Title Description	Federal Rule of Evidence relied on
1.		
2.		

Comment: There will undoubtedly be a number of documents not known at this juncture of the case, but counsel should be required to list what they do know of.....and under another rule, share the documents without discovery from opposing counsel. We believe that this may be one of the few "discovery" changes which will have a material effect on the costs in the case. Note that this refers to "documents" not "exhibits". We contemplate that all documents which are relevant and not privileged be identified and in most instances, given opposing counsel. There are obvious problems with corporate or government files which may or may not contain relevant documents, but which are not known even to corporate counsel. This exception must be addressed in some fashion in this Rule. One answer may be to list documents known and require supplementation. In some form, this Committee needs to address the question of non-privileged documentation in corporate or governmental files.)

Defendant:

VIII. WITNESSES. (Those known at this time. In the later status reports some sort of exclusionary language may be advisable: " No unlisted witness will be permitted to testify as a witness in chief except by leave of Court when justified by exceptional circumstances or when such witness(es) are discovered during discovery and within 35 days prior to the bar date of discovery.)

Plaintiff:

Name	Address	Proposed testimony

Defendant:

IX. ESTIMATED TRIAL TIME: For Liability_____For damages____

XI. POSSIBILITY OF SETTLEMENT:

Good_____ Fair_____ Poor_____

XII. CASE MANAGEMENT

a) Mediation (Possibility of Court-Annexed mediation - Local Rule __

b) Settlement Conference Date:_____

c) Other ADR Procedures:_____

_____

Include a statement as to the eligibility of this case for mediation and/or other ADR procedures and whether you will consent to ADR procedures under Local Rule _____

_____

_____.

Comment: There will be a need of some control over counsel as to the statement of damages, particularly under some rule of sanction.

b) Mediation Requested? Yes _____ No _____

c) Parties consent to trial by Magistrate Judge. Yes___No___

d) Management Plan Standard_____ Specialized____

Track A:_____

Track B:_____

Track C:_____

Special Track:_____

_____

All parties approve this order and understand and agree that this order supersedes all pleadings, shall govern the conduct of the trial and shall not be amended except by order of the Court.

_____
Counsel for Plaintiff

_____
Counsel for Defendant

APPROVED and ORDERED this ___ day of _____ 19__.

_____
United States District Judge

EXHIBIT B

SCHEDULING ORDER

(Caption and entitlement of case)

Date:_____Time_____ To_____

Judge_____Clerk_____

Jury Trial Demanded_____ **Nonjury trial**_____ Trial docket____

Appearing for Plaintiff:_____

Appearing for Defendant:_____

THE FOLLOWING DEADLINES ARE SET BY THE COURT

(May not be extended except by Order of the Court)

1. Motions to join additional parties to be filed by_____.

2. Motions to amend pleadings to be filed by _____.

3. Plaintiff to submit to defendant final list of witnesses in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed_____.

Comment: Some statement should be made that this is to be done by letter between counsel with a copy of the submittal to the Clerk of the Court, and that no other witness in chief shall be allowed for either party.

Submission of Expert Witnesses:

_____

4. Defendant to submit to plaintiff final list of witnesses in chief, together with addresses and brief summary of expected testimony where witness has not already been deposed._____

Comment: Same as above.

Submission of expert witnesses:

_____

5. Plaintiff to submit to defendant final exhibit list (if exhibit is non-documentary, a photograph or brief description thereof sufficient to advise defendant of what is intended will suffice. _____.

6. Defendant to submit party's final exhibit list etc...._____ _____.

Comment: There should be a statement advising the parties that: The exchange should be by letter with a copy to the Clerk of the court. If no objection is made within 10 days to an exhibit or the list, the other party is deemed to have waived exhibit objections. If there is objection to an exhibit it is to be spelled out in detail or by way of a brief. Moreover, in the Final PreTrial Order, both parties are to state the rule(s) they rely on for their exhibit objections.

7. Discovery to be completed by _____.

Comment: If possible, a local rule might be adopted to limit discovery in some cases. One needs to take a deep breath and do some research before this is implemented, however. If effective, it could save significant time and cost.

8. Plaintiff's final contentions to be submitted to defendant's counsel by _____.

9. Defendant's final contentions to be submitted to plaintiff's counsel by _____.

10. All dispositive motions to be filed by_____

11. All Stipulations to be filed by_____.

12. Motions in limine to be filed by _____.

13. Requested jury instructions to be filed on or before_____

_

14. Joint statement of the case to be filed on or before_____

15. Requested Voir dire to be submitted by _____

16. Trial Briefs to be filed by _____.

17. (NONJURY CASES ONLY) Requested Findings of Fact and conclusions of law to be submitted no later than _____

18. Any party's objections to the other party's instructions or findings and conclusions to be submitted within five days after service of the same.

19. Final PreTrial Order approved by all counsel to be submitted to the Court by _____. Plaintiff's counsel to initiate per rule).

20. Plaintiff's counsel is directed to initiate settlement discussions with defendant's counsel by _____.

21. (Where applicable) Supplemental Status Conference set for _

_____.

22. Final PreTrial set for _____.

23. This case is hereby set for **Special Management Track**_____.

Comment: There should be an extensive special local rule which sets out the topics of a special management plan, such as lead counsel, liaison counsel, responsibilities, confidentiality, description and sequence of discovery, class action subjects, briefing, dispositive motions, additions of parties, etc.

24. MEDIATION. This case is referred to mediation under local Rule_____.

25. SETTLEMENT. This case is referred to Settlement Facilitation under local rule _____.

Comment: This may or may not be useful to a Judge. Some courts use it with great effect, almost (one might say) as a bludgeon. If used, a local rule might be helpful. In particular, the parties themselves should be there, not just counsel.

26. Other ADR assignment:

Mini-Trial:_____

Summary Jury Trial:_____

Fact Finding:_____

Moderated Settlement Conference:_____

27. ARBITRATION _____

28. The parties consent to trial by a magistrate judge._____.

The parties consent to trial by a magistrate judge in the event the District Judge cannot attend the trial date._____

29. IT IS ORDERED that all exhibits intended to be offered herein be premarked at least _____ days before the commencement of the trial and that all counsel have copies of those exhibits which are documentary or have examined exhibits which are constructed or mechanical.

30. All expert's reports are to be submitted in writing to opposing counsel: Plaintiff to defendant prior to -_____ and defendant to plaintiff prior to -_____.

31. OTHER _____

_____

_____

BY ORDER OF THE COURT.

_____

Deputy Clerk

Date Issued:_____

EXHIBIT C

I. General Recommendations for Management Plan

1. If within budgetary constraints, the court should develop a systematic differential treatment of civil cases that tailors the district judge' involvement in each case to the (1) complexity of the case and (2) the need for involvement at the district judge level. A screening process should be developed which utilizes a non-judicial officer to review the cases after the judicial officer has ssigned each to its category of management and review. The non-judicial officer must, at frequent periodic intervals with each district judge, review the status of each case. The criteria for categorizing cases may be such factors as case complexity, time reasonable need to prepare the case for trial, level of discovery, ADR potential and the recognition of early judicial involvement in the case tract. Separate tracts should be developed. We believe that not more than three to four such tracts may be necessary.

2. There should be early and on going involvement and control of the pretrial process through a judicial officer. A change recommended is to place stringent, early, requirements on counsel to submit detailed and quite inclusive informational sheets, which are reviewed by a magistrate within 20 to 30 days of the case being of issue. Counsel should not be left to their own agreements and management: the reports are prepared by counsel, in concert and separately, but are subject to at least one judicial conference at

the district court level and other such conferences at the magistrate level at which the case management is then laid out.

2.1 Preliminary discovery orders and recognition of discovery problems and progress should be made and enforced..

2.2 Pre-Trial reports and conferences are set. Some should involve the parties. All require presence of counsel before the judicial officer. An early conference is inordinately more valuable than one 4 to 8 months down the line. In our hearings, however, we were soon apprised by defense counsel that although plaintiff's counsel can be expected to know their case immediately, probably before filing, that defense counsel need substantial time (and discovery opportunity) to be able to be in the same informational position as plaintiff's counsel on the case, witnesses, defenses, discovery and other parts of the case. There is sense to this. Thus, any plan which requires early intervention will have to accommodate to the knowledge gained in the investigation and discovery phases of the case.

2.3 The court, within 60 days, set the matter for a firm trial date. We recognize the difficulty with the firm trial dates, but it is at this juncture that the district judge may need to be involved, to try to obtain agreement of the parties to a back-up trial judge (magistrate) if the district judge is forced off into the criminal docket. Dependent on the tract assigned, the trial should be set within nine to eighteen months from the first

status conference. And, one cannot understate the importance of that trial date being a **firm** and unyielding date. All of the other bar dates, discovery and pretrial dates are determined by and within this schedule. The district judge's **early involvement** and firm influence and direction in arranging and pursuading as to these alternates and obtaining the written consent of the parties to trial by a magistrate in the event the district judge is taken by a priority docket item on that trial date in the case, [or a direct assignment to the magistrate - - with consent of the parties] is essential. The district court may wish to set a day long review of the cases, every three to four weeks, and make the assignments and scheduling orders.

3. For all cases that a judicial officer determines are **complex** and other appropriate cases, a careful and deliberate monitoring through a discovery case management conference(s) where the judicial officer -

3.1 Explores the parties receptivity to, and the propriety of, settlement or proceeding with the litigation;

3.2 Identifies and formulates the principal issues in contention, provides for staged resolution or bifurcation of issues consistent with Rule 42(b) of Federal Rules of Civil Procedure.

3.3 Prepares a discovery schedule and

plan consistent with the times limits set by the court for completion of discovery and with any procedures the court develops as to (i) identifying and limiting the volume of discovery and (ii) phase discovery into two or more stages.

3.4 Set earliest practicable motions timing.

4. At the first judicial conference, the parties should be encouraged to a complete statement of discovery, should be required to defend that discovery breadth and depth, and should be encouraged to consider cost and time effective limitations on discovery procedures. We recognize that there are definite limits within which discovery can be restrained, but we believe that the courts can and must impose restrictions that are reasonable and cost effective. One such area is the expert witness area. Another is limitation of Interrogatories to Parties, Rule 33. Another is Rule 34 Demand for Production, but this one in particular require a specific case by case analysis.

5. Require certification of attempts and good faith effort to reach agreement with opposing counsel on the matters set forth in discovery motions before the motion is heard.

6. Establish alternate dispute resolution (ADR) requirements for certain, defined, cases. This may include assigned facilitation, mediation, as well as other ADR procedures such as arbitration, mini trials or summary trials (in limited cases). We suggest investigating the potential of a joint mediation/facilitation procedure with the New Mexico Supreme Court and the Second Judicial District as has been successful in Michigan. Trained mediators/facilitators are an essential. Paid mediators may also be made available, at the cost of the parties.

EXHIBIT D

OPTIONS ON CASE MANAGEMENT PLAN

1 Scheduling Conference set within 40 days of filing of answer or 120 days from filing of the complaint with Art. III judge. Ten to fifteen minutes. Face to face or telephonic.

2 Parties to file a detailed status report (See Tab) not less than five days before Scheduling conference.

3 Ten days after scheduling conference the parties are to submit their requested detailed discovery schedule.

A detailed **Discovery Order** is entered with time sequences and limitations to discovery stated.

4 There may be a second status conference limited to discovery problems, timing and limitations.

5 (a) Within 90 days of filing of the lawsuit the parties are to exchange all documents referred to in the pleadings.
(b) Court to delineate "core" documents to be exchanged and produced.

6. A scheduling order is entered within 20 days of the submission by the parties of their detailed discovery schedule. Judge determines reasonableness of discovery and sets limits:

[a] Case set on management or monitored track

[b] No more than three tracks suggested; with a fourth for complex litigation. The first three are by form. The latter is by case-by-case determination.

7. Attorneys required to confer prior to first scheduling conference and prior to all discovery or status conferences, to attempt to work out problem areas, define issues and resolve disputed matters to the extent possible. Certification of good faith attempts to be filed.

8 Consent documents sent by Court to parties to verify the consent given to trial by backup magistrate judge, or consent to trial by a magistrate judge.

9 A status conference with magistrate judge 3 months prior to trial date. A final pretrial conference date under Rule 16 with Reports and Order entered 30 days prior to trial.

10 Assignment to:

[a] Mediation. And the date, procedure (Rule) and mediators assigned.

[b] Settlement facilitation: Date, procedure (Rule) and facilitator assigned.

[c] Other ADR procedure, as applicable or determined.

EXHIBIT E

OPTIONS FOR MOTIONS PRACTICE

1 A hearing scheduled within 60 days of the filing of dispositive motions. Argument at discretion of court.

2 A hearing date set by court. Court should have monthly hearing days. Length of time, not to exceed 30 minutes unless varied by judge.

3 If court determines no hearing necessary, so determined and parties advised. If objection, hearing allowed?

4 Five days before the scheduled hearing the judge must issue a tentative ruling with a short statement of the basis. Oral argument optional for the losing party.

5 Ruling on motions required within 45 days of scheduled hearing date on dispositive motions and within 20 days for non-dispositive motions. Or, within 45 days of briefing if no argument is allowed or needed on dispositive motions and 10 days on non-dispositive motions.

6 Deadlines set for filing of motions in the initial scheduling Order. All motions, including dispositive.

7 Parties required to confer and advise court on all motions other than dispositive motions. Certificate to court.

8 Sanctions to be assessed on motions not well grounded in fact or law. Burden on losing party to convince court not to apply sanctions.

9 All proceedings, and particularly discovery, to be tolled or stayed if court has not ruled on motion within the designated time limit. Extended time limits to remaining schedule, i.e. to resume schedule upon ruling.

10 Schedule and statement of motions to be heard by magistrate. E.g., discovery motions and problems. Others?

EXHIBIT F

OPTIONS ON MANDATORY DISCLOSURE

1 Documents and Tangible Evidence:

[a] Insurance agreements.

[b] A documents or instrument upon which the cause of action or the defense is based.

[c] A contracts bearing on the issues.

[d] All exhibits known or then in existence.

[e] Core documents. Definition?

[f] Mandatory response to Interrogatories developed by the Court.

[g] (A general description) or (Production) of documents or tangible evidence in the possession, custody and control of the party which are reasonably likely to bear (significantly) (substantially) on the claims or defenses asserted.

[h] Where applicable, relevant medical documents and relevant employment documents.

[i] Documents relied upon by the parties in preparing their case or documents and things that are expected to be used to support allegations.

2 All materials bearing on the nature and extent of injuries or damages.

3 Factual basis of every claim or defense advanced by the disclosing party. Legal basis of every claim or defense with citations,

4 Claims and damage theories including computations.

5 Timing of mandatory disclosure: ___ days for plaintiff; ___ days for defendant. Measured from filing of primary pleading addressing the issues.

6 The identity of any expert witness whom the party intends to call, together with qualifications, a statement of the substance of the testimony and a summary of the grounds for the expert's opinions.

7 The identity of all other witnesses expected to be called, subject matter of testimony, etc.

8 Timing and sequencing of the witness disclosures.

9 Identification of other persons likely to have information that bears significantly on any claim or defense, identifying the subjects of the information and a brief, bare summary of the substance of the information.

EXHIBIT G

OPTIONS ON EXPERT WITNESS TESTIMONY

1 Expert witnesses to be listed, named and subject of their testimony revealed within ___days, or as ordered by the court on a case by case basis.

2 A scheduling chart of discovery procedures of expert witnesses fashioned by the parties and determined by the court. No variance from the schedule without court order, for good cause shown.

3 All expert's reports, in writing, submitted under a schedule allowing for depositions or restricting depositions.

4 Direct examination of experts to be submitted and exchanged in narrative form ten days prior to second status or pretrial conference.

5 Specific conference for expert witness problems and scheduling.

6 In all trials: Parties to submit objections to expert narrative statements prior to the status conference on experts. Court rulings on objections. In Bench trials, the narrative report will be the expert witness testimony, given live or by reading. Cross examination not restricted.

7 In complex litigation the court, with counsel, to fashion limitations and scheduling of expert witnesses.

8 At final pretrial the judicial officer may consider limiting expert testimony at variance with the written statements or deposition testimony. May also consider any other rulings on expert testimony.

9 Require written objections to qualifications or basis of expert witness testimony at second (or specific expert witness) conference.

EXHIBIT H

Alternate Dispute Resolutions

According to the information supplied by Reporter Jesse Casaus the vast majority of cases filed in the District of New Mexico were disposed of prior to trial. (Appendix ___). It is felt that ADR procedures can further help in this process and also save both time and money in the resolution process if made an early part of the case management. See Exhibit J.

A settlement conference may be the most effective ADR tool. But, we feel that a properly arranged mediation may also be significant. Voluntary Mediation should also be established by local rule. This involves some experimenting as well as training and selection of mediation panels.

Arbitration procedures may be instituted for limited cases. Voluntary only. (We have problems with arbitration in many cases, as it tends to increase the cost, not decrease it, unless the award is accepted by both parties. Some other pilot districts have varying views of its effectiveness.)

Mini-trials, Fact-Finding and summary trials may be most appropriately used, in uncommon instances and with complex cases. The local rule on these ADR procedures should be made quite flexible.

All ADR procedures should be on an accelerated track.

EXHIBIT I

ARBITRATION HANDBOOK

Court-Annexed Arbitration

In the United States District Court for the

Western District of Oklahoma

United States District Court
Western District of Oklahoma

COURT-ANNEXED ARBITRATION

I. INTRODUCTION:

The court-annexed arbitration program for the Western District of Oklahoma is the first of its particular kind in the state of Oklahoma. Established by Local Rule in 1985 as one of the original ten federal pilot courts providing this service, and now with recent congressional authorization from the Judicial Improvements and Access to Justice Act, codified as 28 U.S.C. §651 et seq., Local Rule 43 continues mandatory referral of certain civil cases not involving more than $100,000 to non-binding arbitration. It also permits consensual non-binding arbitration as well for cases involving any subject matter or amount in controversy by written consent of the parties and referral from the assigned judge.

Although court-annexed arbitration is to be distinguished from other private contractual forms of arbitration which are usually voluntary and binding, the parties may waive their rights to a trial de novo, proceed as in voluntary arbitration and have the award entered as a final judgment in the matter. (See Local Rule 43(L)).

Court-annexed or court-supervised arbitration in the Western District of Oklahoma does what it is designed to do -- provide an alternative process for early case disposition and an incentive for the just, efficient, and economical resolution of disputes by informal procedures while preserving the right to a full trial on demand. It is an informal adjudicatory process before a neutral third party arbitrator(s) who renders a decision on the merits of the case. The intended and anticipated result is settlement of the case. Full right to trial is preserved.

More than 80% of all lawyers, litigants, and arbitrators surveyed after the first year of implementation approved of and endorsed this program and consider it a fair process to assist in case resolution. See B. Meierhoefer, Court-Annexed Arbitration in the Western District of Oklahoma, 20-55 (Federal Judicial Center, 1988). Since that time, the program has grown even more in popularity and usefulness, and now parties often ask for and consent to use the procedure.

Many advantages can be gained by using this process including reduced time to final disposition, streamlined and less costly discovery, more effective case management, increased confidentiality, early and direct communication among the parties of the central issues on each side of the dispute, preservation of ongoing party relations when arbitration ends in settlement, and, of course, the savings in costly trial expenses. It is the hope of the judges of our Court that our arbitration program will reduce the cost of federal litigation and, at the same time, improve

the delivery of justice by providing litigants in our district with a more expedient dispute resolution forum.

II. PRELIMINARY MATTERS:

Referral to arbitration. Except for administrative reviews, prisoner cases or cases based on an alleged violation of the constitution or 28 U.S.C. §1343 jurisdiction, any civil case involving damages of $100,000 or less where primarily money damage relief is sought is referred to mandatory arbitration at the initial pretrial scheduling conference before the assigned judge or designated magistrate pursuant to certification of damages required in all civil Status Reports filed in accordance with Local Rule 17. For cases where Status Reports indicate a willingness to consent to the process, notice and consent forms are given counsel at the pretrial conference for return within 10 days for final referral by the assigned judge if counsel and parties do decide to consent. Since the case is at issue at this stage, counsel are better able to determine damage amounts, counterclaim or cross-claim issues whether additional parties are anticipated, and what discovery needs are so that an efficient trial and arbitration schedule can be set.

Selection of the arbitrator(s). A list of ten proposed arbitrator candidates (selected from a jury wheel of all panel members) is filed in each case whether consensual or mandatory. Counsel then are able to select an arbitrator or panel of three arbitrators of their own choice. The Ranking List of counsel chosen should be filed with the Court by the initial pretrial conference or no later than ten days after receipt.

Selection of the arbitration hearing date. Also at the initial pretrial scheduling conference, counsel with the assistance of the assigned judge or designated magistrate and the arbitration staff, select the arbitration hearing date that is convenient to them and their clients yet integrate into the Court's trial schedule. This date is usually prior to the final, full discovery cut-off date. Depending on the preference of the assigned judge, cases can be set for arbitration anywhere from midway through the discovery process, usually no more than 180 days from the date of the last answer filed, and in no event within 30 days of the scheduled trial date. The initial pretrial conference is the opportune time for counsel to discuss the appropriateness of arbitration or any other court or extra judicial procedure to resolve the dispute. (See Federal Rule 16(c)3).

Motion filing and case management. If certain dispositive motions are filed prior to the initial pretrial conference, arbitration proceedings may be deferred pending the result. However, such motions filed after referral do not stay the procedure without order of the Court. Please note that referral to arbitration does not divest the assigned district judge of responsibility for exercising overall

management control of the case. Arbitration never interferes with the deadlines set at the scheduling conference. Any issue relating to the arbitration of the case, such as any need for continuing the hearing, relief from referral, or other appropriate motions are within the province of the assigned judge. It is recommended, however, that counsel notify the arbitration staff regarding these motions and should always notify the arbitration staff as well as that of the assigned judge should a case scheduled for arbitration settle.

III. PREPARATION FOR THE ARBITRATION HEARING:

Discovery. Planning your discovery with an early arbitration hearing date in mind can be one of the most useful cost savings aspects of this process. The Court recommends that you focus on the necessary or critical discovery first. Then the hearing itself along with your joint stipulations can guide you to what further discovery may be needed, if any. The judges of the Court believe an effective arbitration hearing can be held without the expense of full and extensive discovery as would be needed for the full trial of the case. Consider the discovery costs in light of the case value.

Arbitration Joint Stipulations[1] and the Arbitration Summary. The Court's Arbitration Advisory Committee composed of several members of the local bar who are also court appointed arbitrators recommended that we include for submission to the arbitrators these arbitration joint stipulations along with the summary of each side's position to assist counsel to focus and narrow the issues for the hearing as well as to assist in the resolution of the dispute. Both are due to the arbitrator(s) 10 days prior to the hearing with copies to the Court and opposing counsel. Summaries are to be no longer than five pages in length similar to the Settlement Conference Statement. Neither the stipulations nor the summaries are to be part of the case file -- for arbitration and settlement purposes only. Stipulations should indicate to the arbitrator all areas where you can agree factually and legally and exactly where you disagree as well as any issues you wish to stipulate to for purposes of this hearing only that might facilitate settlement. Summaries include your position and requested damages or expenses. Copies of contracts, etc. are appropriate to attach as exhibits.

Skills helpful to attorneys for arbitration hearings. Each court-supervised or extra judicial alternative dispute resolution (ADR) procedure that is encountered in your practice today requires certain skills of attorneys. Of course, preparing the client for the hearing is certainly required as to their "job" in evaluating their own case in light of actually seeing it presented in a mini-trial fashion.

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[1] Please entitle this "Arbitration Joint Stipulations" so that your copy to the court clerk, arbitration deputy, will not get filed in the case.

For court-annexed arbitration you should consider that your decision maker is an attorney or panel of lawyers, and you should pay attention to legal issues as they need to be persuaded with appropriate discussion of legal authority and citation. Show them how the facts apply to the law. Remember, too, that they will bring their own experiences with them and will assess the case in light of what their experience indicates a jury will do. So, your presentation must include arguments as to how a jury would react, but you do not actually make a jury argument.

Proficiency with summarization is the key necessary to a good presentation at the hearing. Drawing on lawyers's ability to synthesize or boil down information provides clear and concise summaries of the facts of your case and the evidence and legal theories in support and is most effective. Since we do not normally allow live witnesses as a cost savings measure, the ability to properly summarize these witnesses's depositional examinations and cross-examinations for credibility or other purposes is extremely important.

Keep in mind the settlement purpose of this ADR procedure and use all information and insights learned through the process towards obtaining the goal of settlement. Vigorous representation of your client is important, but inappropriate adversariness during preparation and presentation at the hearing is contrary to the program's purpose.

Negotiation skills are always important. Negotiations between the parties should occur prior to the hearing. The majority of cases slated for arbitration hearings do settle just prior to the hearing. Often the hearing room itself will be the first opportunity for direct communication with all the players with settlement authority present. Take advantage of it. Arbitrator(s) are happy to wait for you to resolve the dispute among yourselves.

IV. THE ARBITRATION HEARING:

Overview of the hearing process.

- The Arbitration Hearing Order is issued as directed by the assigned judge setting the case for hearing before the selected arbitrator(s) on the date and time selected by the parties. Hearings are normally held in a room in the federal courthouse or federal building complex (neutral ground and emphasizing the court-annexed nature of the procedure). Please read the order as to room assignment and other requirements.

- In additional to lead counsel who will try the case, a person with actual or full settlement authority must be present at the hearing.

This includes insurers and indemnifiers. Only the assigned judge may excuse attendance. Our Court has determined legally and as a practical matter that the parties can be required to attend and are a necessary ingredient in any of our settlement procedures.

- Arbitrator(s), counsel, and parties should report to the assigned hearing room shortly before the noticed time. If assistance is required in locating the assigned room, please inquire at the clerk's office or with one of the security guards.

- The court file of the case is always available in the hearing room for review at least 30 minutes prior to the hearing.

- The arbitration staff, either the staff attorney (law clerk assigned to arbitration) or the Arbitration Coordinator is always available in the hearing room to answer questions prior to the commencement of the hearing.

- Introductions are made and the arbitrator(s) usually makes a brief statement concerning procedure, rules, and scope of the hearing.

- Presentation by counsel -- up to one hour each by plaintiff then defendant. Plaintiff may reserve time for a brief rebuttal. If there are multiple parties, the arbitrator(s) may set appropriate time limitations.

- Regarding evidence, the hearings shall be conducted informally. All evidence shall be presented through counsel who may incorporate argument on such evidence in his or her presentation. The Federal Rules of Evidence shall be a guide, but shall not be binding. Counsel may present factual representations, supportable by reference to discovery materials, including depositions, stipulations, signed statements of witnesses, or other documents or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports, and depositions may be read from, but not at undue length. Physical evidence, including documents, may be exhibited during a presentation. In a general sense, the Court envisions this presentation process to be somewhat similar to a combination of opening and closing arguments together with a summary of the evidence and law supporting such argument. Presentation of evidence need not be formalized as for trial.

- Attorneys fees and costs are not to be offered at the arbitration hearing. The hearing should deal primarily with the merits of the case. However, arbitrators are asked to state clearly on which cause of action the award is based so that proper determination of attorneys fees can be made if the award goes to judgment and so that settlement of the case is facilitated. Occasionally, arbitrators make findings as to prejudgment interest. If not, and if that is relevant to your case and you would otherwise accept the award, application for prejudgment interest may be made along with application for attorneys fees and costs following entry of judgment. (See Local Rule 6).

- The arbitrator(s) usually asks questions and may make comments at the conclusion of the presentations. Occasionally, the arbitrator(s) requires further information to be submitted before he/she makes the formal award. Then the hearing is adjourned and the arbitrator(s) renders his award.

- Arbitrators are to submit the award and the payment voucher to the clerk's office promptly after the hearing or no later than 10 days following the hearing. The clerk then mails copies of the award to the parties and seals the award.

- Arbitrators are not required to make findings of fact or conclusions of law, although some do. If you would like to talk to the arbitrator(s) after the award is rendered, in an effort towards settling the case, the Court will permit such discussion if the arbitrator(s) has no objection.

- If the award rendered is accepted by the parties, it may go to judgment and have the same force and effect as any judgment in a civil action. (Your only appeal is your demand for trail de novo.)

- If any party is not satisfied with the award, the "appeal" process is the filing of a demand for trial de novo within 30 days of the filing of the award. This must be accompanied by a deposit with the court clerk of an amount equal to the fees for each arbitrator(s) $150 each. The case then is restored to the docket of the assigned judge and resumes its place on the court calendar as if it had not been referred to arbitration.

Quality arbitrator(s). Arbitrators in the Western District are appointed by all the judges from interested and qualified applicants who meet the Court's criteria for selection and receive the requisite training. Thus you are provided qualified,

trained, and impartial neutrals to hear your case, and you have had a role in their selection. Therefore, the Court expects counsel and parties to consider fully and completely the award rendered by the arbitrator(s).

V. POST HEARING ACTIVITIES AND RESPONSIBILITIES:

The award. The award rendered in each case is the arbitrator's decision based on the facts and evidence presented and the applicable law. It is not intended to be a settlement/compromise figure. You may ask your arbitrator(s) to give you his settlement suggestion independently of the award, if you desire.

For our program, it makes no difference whether the case was referred to mandatory arbitration or whether the parties consented to use the program. Arbitrators are trained to award damages according to the evidence offered. Thus, if punitive damages are in order, the award should so state. Awards are also to be clear as to multiple claims and multiple parties.

Immediately upon the receipt of the award by the Arbitration Coordinator, it is filed, final de novo date affixed, mailed to counsel of record or pro se parties and then sealed and filed under seal. For purposes of confidentiality and fairness in later decisions to be made by the assigned judge, the contents of the award are not to be made known until the district court has entered final judgment in the action or the action has been otherwise terminated, except for statutory reporting requirements. After 30 days, it may be entered as judgment if no de novo trial demand is made.

Demands for trial de novo. Counsel and litigants are given a full 30 days to consider the award. The Court expects a risk analysis and complete evaluation of the case to be made before a demand for trial de novo is made. Since mandatory arbitration is designed to get at the heart of the less complex and lower dollar case, the evaluation period allows counsel and clients to work toward a solution at a cost more commensurate with the value of the case. This 30 day period also affords those who participated by consent the same opportunity for full analysis of the risk of going forward.

Our non-binding program, while strongly encouraging settlement, always allows litigants the right to full trial on the merits.[2] If any party feels the result of

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[2] See Kimbrough v. Holiday Inn, 478 F.Supp. 566 (E.D. Pa. 1979) holding compulsory non-binding arbitration pursuant to local rule not violative of the right to jury trial guaranteed by the Seventh Amendment or the Equal Protection Clause, not inconsistent with the Federal Rules of Civil Procedure or the statutes conferring rulemaking authority on the federal courts.

the arbitration is inequitable, you regain your place for trial as if there were no arbitration. Intelligent counsel do, however, recognize the value of the proceedings as a predictive tool and utilize the award results as well as all information learned at the hearing to their best advantage before incurring any further costs for their clients.

VI. CONCLUSION:

Further benefits of the process. It is the wish of the Court that the spirit of cooperation engendered at the initial pretrial settlement conference along with the planning of discovery and the working together to select the arbitrator(s) and the arbitration hearing date should continue throughout the process to assist counsel in conflict management and early case resolution for their clients.

Arbitration thus provides counsel and litigants with an accelerated docket for the lower dollar and less complex lawsuit. This then allows counsel to provide more efficient and effective service to both "small" as well as "large" clients, speedier conclusion for smaller claims and more time to concentrate on the more complex. This can and does increase good will for the legal profession as a whole, and it is hoped it will generate satisfied "customers."

Pursuing this particular dispute resolution procedure allows both the lawyer and the client at an early time in the case processing to systematically confront the realities of the litigation -- to see the case as a whole and see your own position in context of the opponent's -- a reality check. This opportunity to assess your strength and weaknesses is expected to enhance your ability to settle. This informal, but mini-trial-like procedure can allow your client to feel he has had his day in court. Then he can be more amenable to settlement discussions. The procedure narrows issues and provides various avenues for negotiations. Because arbitration was chosen due to its adjudicative nature, you should consider the cost of arbitration, a fair and virtually free forum, versus the more costly full trial in federal court. You are encouraged to take advantage of this early focus on settlement and this innovative approach to resolving conflict.

Any questions, comments or suggestions regarding the Arbitration Program under Local Rule 43, please call:

Alternative Dispute Resolution Staff:

Ann Dudley Marshall, ADR Administrator and Law Clerk
(405) 231-5821

Kari Butler, Arbitration Coordinator, Deputy Court Clerk
(405) 231-4263

EXHIBIT J

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

HANDBOOK FOR MEDIATION

WHAT IS MEDIATION. Mediation is a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement.

Characteristically, mediation is assisted negotiation. The trained mediator keeps order in the session and is an advocate for settlement. He or she acts as a catalyst for dispute resolution by asking questions, helping define issues, opening channels of communication, and assisting in the generation and evaluation of alternative settlement proposals or solutions. The mediator is not a judge or arbitrator and has no authority to render any decision or to force a settlement.

Working with the mediator, counsel, in their role as negotiators, advise, support, and protect their client in negotiating and problem solving. By emphasizing the long term interests of the parties, the process allows the parties to retain control over their own dispute. The parties themselves are responsible for and participate in the resolution of their dispute.

PURPOSE OF MEDIATION IN THE WESTERN DISTRICT OF OKLAHOMA. As recommended by this Court's Civil Justice Reform Act Advisory Group composed of local members of the bar and lay persons, the Court adopted a Civil Justice Expense and Delay Reduction Plan which added a mediation program to augment the Court's existing ADR procedures. Although available at any stage in the litigation, it was recommended to be and is intended to be a mechanism for the especially early resolution of civil cases.

In our Court, mediation is available for virtually any case or any portion of a case. It should be held at "the earliest practical time" when sufficient discovery has been completed that would permit accurate case evaluation but certainly long before the discovery needed to prepare for trial. It is a cost reduction measure. Local Court Rule 46, the Court's Expense and Delay Reduction Plan and Standing Order Regarding Mediators govern this program.

The Court currently offers four ADR choices. For early and less expensive case resolution, the Court offers mediation and non-binding arbitration. The goals of the arbitration program are more clearly set out in Local Court Rule 43 and the Arbitration Handbook. These are two distinct processes with mediation offering a facilitated negotiation where the parties themselves make final

settlement decisions and arbitration offering an adjudicative process where the neutral arbitrator renders a non-binding decision/award based on the law and the facts from which the parties can evaluate their case. Near the end of the litigation process, the Court makes available the summary jury trial for a few select cases (an adjudicatory process with an advisory jury result) and the settlement conference for any case that is set on a published trial docket. Although the Settlement Magistrate Judge does hear some cases at an earlier time, in our Court the "judge-hosted settlement conference" is typically utilized just before trial. It is a form of "assisted negotiation" but it is distinct from our mediation program in function and purpose because it allows for the input and evaluation of an experienced and respected judge after discovery is completed and the case is entering the final trial preparation stage.

REFERRAL TO MEDIATION. Any party may request mediation in their Status Report filed pursuant to Local Court Rule 17 or at the Status/Scheduling Conference itself. Additionally, counsel may request it at any time and the Court may order it as well. When a case is referred, the accompanying Order of Referral will set a window of time in which the mediation session is to be held (see Appendix V, Local Rules of the Western District of Oklahoma, number 25 of the Court's general Scheduling Order). Please note that any referral to mediation shall not delay or stay any other deadline or proceeding unless the Court so orders.

The "window" allows parties and the mediator some flexibility for finding a convenient date and is intended to assist counsel with achieving a discovery plan appropriate for completing that early discovery necessary for all parties to evaluate the merits of the case.

WHO ARE THE MEDIATORS. Mediators on our panel have been certified by the Judges of the Court after review and recommendation of a three member panel appointed by the Court. The mediators are attorneys and professionals who satisfy the training and experience requirements and are approved by the Court.

SELECTING THE MEDIATOR. At the Status/Scheduling Conference a list of the panel of mediators will be available. If counsel wish to know more about a prospective mediator, a book/file with each mediator's qualifications (areas of experience, short resume, references and fee schedule) will be available from the ADR staff in the Court Clerk's office.

Counsel are expected at the time of the Scheduling Conference or within 10 days of the Order of Referral to select a mediator of their choice and make arrangements for the mediation session with the chosen mediator. An alternate choice may be needed in the event of a conflict of interest. Mediators are trained neutrals and should ask for names of all counsel, parties, their insurers, etc. to ensure no conflict of interest or any bias or prejudice.

If no such selection is made within the necessary time, the mediation clerk shall make the selection.

SCHEDULING THE MEDIATION SESSION. Once the referral is made, the mediator selected by the parties with a convenient date, place and time agreed to by the parties and the mediator and that information submitted to the Court Clerk (Mediation) on the appropriate form, an Order will issue appointing the mediator and setting the mediation session. **It is the responsibility of both counsel to select the mediator, arrange for the mediation and timely (10 days of the Order of Referral) submit the Selection and Order form to the Clerk's Office.**

Sessions may be held at any suitable location agreeable to the mediator and the parties or held in available court space. Typically sessions will be held in the office of the mediator or of one of the counsel or other convenient location with consideration given to cost and time of travel involved.

The Court expects counsel and parties to be mindful of the mediator's schedule. Since mediators are busy attorneys and professionals, it is suggested that any cancellation or continuance of a session be one of necessity. Mediators may only continue cases within the time window ordered by the Court. Any other requests beyond that time must be to the Court. Any request for withdrawal from mediation must be at least 10 days prior to the scheduled session to give the mediator adequate notice. Any settlement prior to a scheduled session must be immediately reported to the mediator and the Court. The mediation clerk should receive copies of any such requests and notice of any settlement.

COMPENSATION OF MEDIATORS. Mediators may set reasonable fees as determined by the mediator and the parties. Fee schedules are available in the Clerk's Office or by calling the mediator. These fees are to be born equally by all the parties unless otherwise agreed to by counsel. The Court is mindful of the need for pro bono mediation in some cases and would encourage the discussion of reduced fees in appropriate cases and authorizes such discourse between counsel and mediators.

The Court expects the mediator to be paid promptly and appropriately with respect to each mediation session held. The Court has reserved the right to review the reasonableness of fees if that should ever be necessary and, if settlement is not accomplished by mediation and the case is later concluded by trial or otherwise, the prevailing party, upon motion, may recover as costs the fees paid to the mediator.

ATTENDANCE REQUIREMENTS. As with all our other dispute resolution programs, attendance at the mediation session is required of lead counsel and the parties or representatives of the party with full settlement authority. This includes corporate representatives and necessary claims professionals. Resolution through mediation can

only be effective if the appropriate players with full settlement authority are present. Parties are to participate in good faith until a settlement is reached or an impasse is declared by the mediator.

THE MEDIATION SESSION. Two (2) days prior to the session, each party is to provide the mediator and all other parties a memorandum for mediation stating the name and role of each person expected to attend, identity of each person with full settlement authority and a concise 5 page summary of the parties' claims/defenses/counter-claims, etc., relief sought and contentions concerning liability and damages. This is not filed in the case but only intended to identify issues and educate the mediator.

The mediation process itself in intended to be informal in nature with the actual ebb and flow of the process structured by the mediator. During the process private rooms or offices are available for individual caucuses and conferences. Although mediation is an inherently flexible process, expect the mediator to hold a joint session to lay the ground rules and hear statements of the case by each party then break out into separate caucuses. Mediation is private and confidential, a settlement procedure, and the caucus concept assists attorneys in managing the risk of disclosure yet allows the mediator to explore the strengths and weaknesses of each side and permits parties to ventilate or express private views they are not comfortable in disclosing directly to the other party. The legal as well as the business, economic, political and personal interests of the parties can be explored and a variety of alternative solutions and options can be examined. Ultimately the mediator guides the parties in formalizing a specific settlement agreement. There is no specific time allowed for a mediation - they take as long as necessary or until the mediator declares an impasse.

CONCLUSION OF THE MEDIATION PROCESS. If the case settles at the mediation, counsel are required promptly to notify the Court (assigned judge as well as the mediation clerk) and prepare and file the necessary closing papers. If certain issues or claims are settled and trial will not be necessary on those issues, counsel are expected to file the appropriate pleading. The mediator then submits a report to the mediation clerk indicating whether the case settled, settled in part or did not settle. For purposes of evaluation, participants in the mediation program may later be given evaluation forms.

ADVANTAGES OF MEDIATION.

For the Court: The dispute is resolved early, not on the eve of trial, allowing the Court to schedule other cases in the allotted time. Voluntary settlements usually do not need post trial enforcement or appeal and can resolve all outstanding issues between the parties. Docket management is better controlled. Even if a case is not fully settled, issues are narrowed and a better

trial ensues. Attorneys and citizens are more satisfied with "the system."

For Attorneys: The process facilitates negotiation and creates an event at which both sides must negotiate in good faith. It assists a settlement which may be more favorable than expected trial results. It can accomplish the goal of the client without a disproportionate expenditure of costs and fees. Using mediation can provide more effective use of attorney's time (not hung up in expensive discovery procedures) and, if the case is not resolved, the mediator can assist in focusing the remaining discovery. Finally, it can increase the client's satisfaction with their attorney.

For Clients and Litigants: The process allows them some management control over the resolution of their dispute and the ability to exert some informed direct influence over the outcome of their dispute after observing the other attorney and other party. They can bargain through counsel for certain key elements, trade others, and make decisions that a court or jury could not. Business relationships can be maintained. The best offer of each party is usually on the table at some point and decisions can be made to stop expenditure of time and money so that life or further business pursuits can be resumed.

Any questions, comments or suggestions regarding the Mediation Program under Local Court Rule 46, please call:

Ann Dudley Marshall, Alternative Dispute Resolution Administrator and Law Clerk to Magistrate Judge Pat Irwin
(405) 231-5821

Kari Butler and Janis Ricks, ADR Staff for Arbitration and Mediation
(405) 231-4263 or 231-4396

(Prepared for use in the United States District Court for the Western District of Oklahoma by Ann Dudley Marshall, 4/92)

APPENDIX M

SUPPLEMENTAL REPORT OF THE CRIMINAL JUSTICE ISSUES SUBCOMMITTEE

Subcommittee Members:
Nancy Hollander, Esq.
Don Svet, Esq.
Judge William Deaton

THE SUBCOMMITTEE RECOMMENDS THE FOLLOWING:

1. All Judges in the District consider accepting Rule 11(e)(A) or (C) binding plea bargains in appropriate cases.

Rationale: Although the federal judges are constrained by statutory sentencing, including the numerous mandatory minimum sentences and the Federal Sentencing Guidelines, judges do retain some discretion in sentencing. Binding agreements would increase the number of pleas, particularly in those cases where the defendant proceeds to trial because the government is not offering any viable alternative upon which the defendant can rely. The court could agree to accept the plea agreement after consideration of the pre-sentence report, thus permitting the defendant to withdraw the plea at that time if the court decided not to accept the agreement. This will permit the court to insure that the agreement is fair and appropriate.

2. All Judges in the District consider accepting binding stipulations relating to various provisions in the Sentencing Guidelines, specifically, (A) acceptance of responsibility; (B) minimal or minor role; (C) relevant conduct; (D) specific guideline sentences with caps or specific lengths.

Rationale: Binding stipulations would serve the same general purpose as binding plea agreements. These stipulations would be more specific, however, allowing even more cases to plead because the defendant and the government will know the outcome. Under the Federal Sentencing Guidelines, all evidentiary questions must be resolved at a hearing. These hearings, and the motions and memoranda which lead up to the hearings are extremely time consuming for the court. These stipulations will save many hours of evidentiary hearing time in addition to resulting in more pleas. Therefore, the rationale here is two fold, save trial time and same time during the sentencing phase of the trial.

3. Committee members Deaton and Hollander recommend that the Judges in the District prepare a new Omnibus Report which will attempt to resolve as many pre-trial issues as is possible. Committee member Svet recommends that the Omnibus Report be abolished.

Rationale: Two committee members believe that the Omnibus form serves a useful purpose because it forces prosecutors and defense counsel to meet early in the case. This is a good time for possible pleas and other negotiations. It also saves court time because the attorneys can exchange non-controversial discovery at this time, avoiding unnecessary hearings and court time for these motions.

4. All Judges in the District consider imposing Rule 16 deadlines in criminal cases.

Rationale: Rule 16 governs discovery in federal criminal cases. Imposing deadlines would speed cases along and again result in avoiding unnecessary litigation concerning the need for continuances due to late discovery. Every motion or hearing that is avoided saves the court's time for more substantive work on the criminal and the civil dockets.

5. The District consider appointing attorneys in civil rights cases involving prisoners.

Rationale: The overwhelming number of civil rights cases are not appropriate for litigation. Appointing a lawyer to communicate with the plaintiff, explain the law and advise the course of action would save the court hundreds of hours of staff time.

6. All Judges in the District consider holding pre-trial hearings in habeas cases.

Rationale: The rationale for #6 is essentially the same as for # 5 above. Early court intervention in these cases will save much court time later in the process.

7. The United States Attorney's office consider formulating a full or partial open file policy.

Rationale: Some United States Attorneys offices have open file policies and some do not. The federal rules of procedure do not require the government to make its files available, beyond that information required to be produced by Rule 16 and other constitutional requirements. In some instances, early open discovery will convince defendants of the fruitlessness of proceeding to trial and therefore make a plea more likely.

Additionally, producing ***Jencks*** material in advance of trial rather than during trial avoids the trial time necessary to allow defense counsel the time necessary to read and evaluate the material before beginning cross-examination of government witnesses.

8. Committee members Deaton and Hollander recommend that the United States Attorney's office consider formulating a policy declining to prosecute some drug cases that could be prosecuted in state court. Committee member Svet opposes this recommendation.

Rationale: As a result of the increased sentences under the federal minimum mandatory sentences and the Federal Sentencing Guidelines, many cases which had previously been prosecuted in state courts are now begin prosecuted in federal courts. In one recent case, a state prosecutor testified that he wanted to keep the case within state jurisdiction but the state police officer informed him that the police would rather prosecute the case in federal court. Entered into evidence in that case was a large computer-generated sign from a state prosecutor's office which read "Go Federal." This onslaught of minor drug cases into the federal courts has overwhelmed the federal dockets and interfered with the already backlogged civil docket. The United States Attorney could advance a policy declining the prosecution of minor drug cases and other cases which could reasonably be prosecuted in state court, e.g., cases which began as state court investigations, etc.

9. Committee members Deaton and Hollander recommend that the Congress should repeal mandatory minimum sentence provisions, whereupon the United States Sentencing Commission should reconsider the guidelines applicable to the affected offenses. Committee member Svet opposes this recommendation.

Rationale: As a result of the numerous mandatory minimum sentences, particularly in drug cases, the country is spending vast amounts of money to build new jails to keep up with the flow of new prisoners serving longer and longer sentences. The Department of Justice has predicted that in 1992 the United States will need to build 2000 additional cells per week. The average cost per bed is $50,000, or approximately $100 million per week, or $5.2 billion per year.

The mandatory minimun sentences deprive the court of all discretion (except in the cases of defendants who successfully assist the government in another's prosecution). Therefore, first offenders facing mandatory sentences have little chioce but to proceed to trial.

Additionally, the sentencing guidelines take little account of first offenders. The guidelines fail to provide for probation and other alternatives to sentencing in cases where these alternatives would save money and better protect society by rehabilitating, rather than warehousing, the defendant.

APPENDIX N

REPORT OF THE SUBCOMMITTEE ON *PRO SE* LITIGATION

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

James A. Branch, Jr., Esq., Chair

June 1992

APPENDIX . . . . . (Separate Volume)

Magistrate Courtroom Deputy Ruth Willett to Robert M. March, Clerk of Court, with Exhibits)

L. Sample Materials for Proposed Reference Manual/Guidelines Handbook

M. Relevant Statutes and Opinions

N. Miscellaneous Correspondence

I. INTRODUCTION

This report of the *Pro Se* Litigation Subcommittee of the Advisory Group for the United States District Court for the District of New Mexico is a joint effort by the various members of the subcommittee. The members of the subcommittee are: James A. Branch, Jr., chairman; Mr. Jesse Casaus, reporter for the Advisory Group; attorney Dennis Montoya, supervising *pro se* law clerk for the District of New Mexico; the Honorable William Deaton, Chief United States Magistrate Judge; Mr. Jacques Blair, analyst for the advisory group; attorney Bruce Hall; attorney Phil Davis; and Mr. Frank Kleinhenz. The report was prepared and submitted following numerous meetings of the Advisory Group and the subcommittee.

The Advisory Group interviewed numerous witnesses, members of the public, United States Senators and Congressmen, judges, magistrates, and others with respect to specific topics of concern. At each of these meetings the chairperson of the relevant subcommittee was present and conducted the interview. After the interviews, the subcommittees met to review the material made available. In addition, the *pro se* litigation subcommittee invited various other parties to attend its meetings to help it better analyze and understand the problems unique to *pro se* litigation in the District of New Mexico. For example, the Director of Corrections for the State of New Mexico and his attorney and the Director of Risk Management were invited to subcommittee meetings.

Mr. Jesse Casaus, advisory group reporter, and Mr. Jacques Blair, advisory group administrative analyst, supplied the subcommittee with statistical data enabling the subcommittee to analyze the depth of the *pro se* litigation problems in the district. It was from all of this information, the analysis of the data supplied, and the insight and wisdom of the various

subcommittee members, that this report was prepared. The report will contain the following discussions:

I. Introduction;

II. Overview of *Pro Se* Litigation in the United States District Court for the District of New Mexico: A Statement of the Problem;

III. Statistical Review of Prisoner Petitions in the United States District Court for the District of New Mexico;

IV. Brief History and Overview of the *Pro Se* Division, United States District Court, District of New Mexico;

V. Recommendations of the *Pro Se* Litigation Subcommittee;

VI. Compliance with Section 473 of the Civil Justice Reform Act; and

VII. Conclusion;

VIII. Appendix[1]

Without the able assistance of Mr. Dennis Montoya and Mr. Jacques Blair this report could not have been completed.

[1] *Statistical data in the form of graphs, charts and tables, case law, and other information from which this report has been prepared is available in the Appendix to the report. Because of the voluminous nature of the Appendix, it has not been attached directly to this report in order to shorten the report and put it in a useable form. The Appendix is available, however, at the Advisory Group Reporter's Office for review at any time.*

II. OVERVIEW OF *PRO SE* LITIGATION IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO: A STATEMENT OF THE PROBLEM

A. PRISONER *PRO SE* LITIGATION

Generally, *pro se* prisoner litigants submit one of two types of complaints in the United States District Court: either a Petition for Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. §2254[2], or a civil rights complaint filed pursuant to 42 U.S.C. §1983. The vast majority of prisoner litigation, like non-prisoner *pro se* litigation, is filed *in forma pauperis* or "as an indigent."[3] Distinct problems and considerations are presented by the two types of litigation, warranting separate treatment in this report.

1. Prisoner *Habeas Corpus* Petitions

Although usually handled in an expeditious manner by the United States District Court for the District of New Mexico, excessive delay in the processing of *habeas corpus* petitions has occasionally caused concern and even resulted in the granting of writs of *mandamus* or issuance of "show cause" orders by the United States Court of Appeals for the Tenth Circuit. Such delay has usually resulted from a case being screened initially as summarily dismissible so that

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[2] *Habeas relief may also be sought under 28 U.S.C. §2241, which is a "general authority" habeas corpus statute. This type of habeas petition most frequently challenges a federal, as opposed to state, confinement, and is much less frequently filed than challenges to state confinements under §2254. In addition, 28 U.S.C. §2255 provides a vehicle for challenging federal court sentences. Section 2255 petitions must be filed in the federal court that imposed sentence, while venue for §2241 petitions lies in the district where the prisoner is incarcerated. Section 2255 petitions are treated as a part of the underlying criminal case, although the petition receives a separate civil docket number. Section 2255 petitions, both pro se and with counsel, are filed with some frequency in the District of New Mexico. However, considerably less pro se staff time has been devoted to processing §2241 and §2255 petitions as compared to §2254 habeas and prisoner civil rights cases.*

[3] *The fact that pro se litigation is most frequently filed in forma pauperis pursuant to 28 U.S.C. §1915(d) is a recurrent theme in the literature and case law concerning these types of cases, as will be reflected in this report. In addition to excusing the litigant from payment of the filing fee (see 28 U.S.C. §1915(a) and certain other costs (e.g., the cost of service of process, see 28 U.S.C. §1915(c)), in forma pauperis status carries with it additional authority under which the Court may appoint counsel to represent the indigent claimant and dismiss clearly "frivolous or malicious" cases, including those bringing claims which are "clearly fantastic or delusional." See 28 U.S.C. §1915(d); see also Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728 (60 U.S.L.W. 4346, decided May 4, 1992); Neitzke v. Williams, 490 U.S. 319, 324 (1989).*

requiring an answer to the petition was not justified.[4] Where the United States Magistrate Judge assigned to the case has failed to act promptly to dispose of the petition, however, the Tenth Circuit has on occasion initiated action on an inmate's petition for a writ of *mandamus* directing the District Court to move forward with the case.[5]

While *habeas* remains primarily a vehicle of "last ditch appeal" from a criminal conviction, in an increasing number of *habeas* proceedings the inmate raises an allegation of inappropriate credit for "good time" served, violation of due process in the imposition of administrative or disciplinary segregation, or where the petition involves parole and/or probation issues. Despite occasional problems, there have not been great delays or costs involved in the processing and disposition of *habeas* proceedings filed by prisoners. This may, in large part, be attributable to the fact that *habeas* petitioners are eligible for the appointment of counsel under the Criminal Justice Act. See 18 U.S.C. §3006A. If the petition survives screening for summary dismissal, the Court usually appoints counsel after the petition has been answered. Hence, *habeas* cases tend not to remain "*pro se*" throughout their lifetime, but in the final stages are managed by competent counsel on both sides. By far, the greater number of problems have been caused by prisoner civil rights complaints.

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[4] See 28 U.S.C. §2254, Appendix, "Rules Governing Section 2254 Cases in the United States District Courts," (Hereinafter "Habeas Rules," see Appendix A to this report), Rule 3(b) ("The filing of the petition shall not require the respondent to answer the petition or otherwise move with respect to it unless so ordered by the court.")

[5] The subcommittee's research suggests that these delays resulted from a failure to follow through on the cases after initial screening. Prior to the hiring of the pro se law clerk, a magistrate judge's law clerk had been somewhat specialized in pro se matters. Upon the departure of this law clerk, many cases initially screened for summary dismissal were not given subsequent attention, i.e., were not actually dismissed, and instead grew old on the court's docket. This experience illustrates the importance of continuity in the pro se law clerk position.

2. Prisoner Civil Rights Complaints

The majority of cases (and problems) involving prisoner *pro se* litigants have been in the area of civil rights complaints filed pursuant to 42 U.S.C. § 1983. When such a complaint is received by the clerk's office, it is assigned to the *pro se* law clerk, who is presently Dennis Montoya. Mr. Montoya works closely with an associate *pro se* law clerk ("*pro se* legal assistant"), Ted Martínez, whose principal duties include the initial procedural screening of all *pro se* filings. Substantive screening (i.e., screening of the legal merits of a complaint or petition) is performed by Mr. Montoya with the assistance of Mr. Martínez. Donna Snyder, the Court's additional *pro se* law clerk, performs legal research and writing in connection with the Court's *pro se* case backlog. Examples of *pro se* law clerk legal research and writing appear in Appendix C.

Prisoner civil rights cases are initially screened into one of three categories: a) cases with some merit[6]; b) cases that are clearly not meritorious[7]; and c) cases in which it is impossible to determine the merits[8]. *Pro se* cases with some merit frequently present procedural

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[6] *"Merit," for purposes of this report, may be defined generally as factual allegations adequate to withstand initial screening for summary dismissal, given the nature of the case and the applicable law. This means cases in which the cause of action is not barred by doctrines of immunity, where the facts alleged do not clearly fall short of stating a cause of action under the applicable law, and where the pro se litigant's statement of facts, after he or she is afforded "liberal construction" of pleadings, see, e.g., Neitzke v. Williams, 490 U.S. 319, 324 (1989), is not so vague or conclusory as to preclude meaningful adjudication. Many (if not most) pro se cases manifesting "merit" in the foregoing sense are not "meritorious" in the sense of being likely ultimately (after full development of the case) to result in judgment in favor of the pro se litigant.*

[7] *In the case of in forma pauperis litigants (i.e., those who are excused from the payment of a filing fee by reason of the Court's finding of indigence), federal courts are authorized to summarily dismiss claims that are clearly "frivolous or malicious." See 28 U.S.C. §1915(d). See also Neitzke v. Williams, 490 U.S. 319, 324 (1989). A recent Supreme Court decision establishes abuse of judicial discretion as the standard of appellate review for such dismissals. Denton v. Hernandez, ____ U.S. _____, 112 S.Ct. 1728 (60 U.S.L.W. 4346, decided May 4, 1992).*

[8] *Pro Se cases in which it is "impossible to determine" the merits at an initial screening may be categorized as either: a) so vague, conclusory or verbose as to preclude effective analysis and b) appearing to state a claim, depending upon certain facts not clearly alleged, so that additional information is required for the Court to reach a determination. The former category of case may be the subject of an order directing the litigant to amend his pleadings to state his jurisdictional and factual allegations*
(continued...)

irregularities and deficiencies, such as the complaint not being in appropriate form. It may take the *pro se* staff numerous hours of careful reading to determine whether a particular case has merit, or what court action would be appropriate. The initial screening process involves attempts to sort out the various claims raised in a complaint and to "read between the lines" to determine whether the prisoner's complaint has merit. Many *pro se* litigants file lengthy, rambling, and poorly drafted hand-written pleadings setting forth allegations in no particular order, and failing to address fundamental inquiries such as the basis for jurisdiction. Thus, the task of the *pro se* staff may border on divination in attempting to distinguish meritorious from non-meritorious pleading.[9] Having examined the *pro se* litigant's pleadings, however, the *pro se* staff is in a position to advise the Court as to an appropriate course of action, and to advise the *pro se* litigant of deficiencies in his pleadings requiring correction. Correspondence with *pro se* litigants, which is usually initiated by the *pro se* legal assistant under the supervision of the *pro se* law clerk, serves two important functions:

1. The correspondence advises the litigant of specific procedural errors in the pleadings submitted, thereby affording an early opportunity for the litigant to correct the procedural posture of the case by amending pleadings, completing necessary forms (for example, Marshal's Service of Process forms and

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[8](...continued)
more clearly and concisely. See Fed.R.Civ.P. 8(a) (Requirement of a "short and plain" statement). The latter category may, where otherwise appropriate, be the subject of an order directing one or more defendants to provide a "Martinez Report" addressing the allegations raised by the litigant. See Hall v. Bellmon, 935 F.2d 1106 (10th Cir.1991); Martinez v. Aaron, 570 F.2d 317 (10th Cir.1978); Martinez v. Chavez, 574 F.2d 1043 (10th Cir. 1978); and Robinson v. Benton, 579 F.2d 70 (10th Cir.1978).

[9] *"[I]f the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir.1991).*

summonses) or taking other necessary action;

2. The correspondence represents a "triggering event" for possible procedural dismissal, in that letters sent to litigants warn them that, in the event they fail to remedy pleading deficiencies or take other required action within forty-five (45) days, their cases may be dismissed (without prejudice) for failure to prosecute as authorized by Federal Rule of Civil Procedures 41 and Local Rule 41.

Upon completion of preliminary screening, the case is referred, with a recommendation (usually in the form of a proposed memorandum opinion and order) to the assigned United States Magistrate Judge for review. The magistrate judge reviews the *pro se* law clerk's work and either approves the proposed action or returns it to the *pro se* law clerk for editorial or other changes. Upon approval by the magistrate judge, the recommendation and proposal is transmitted to the United States District Judge assigned to the case. The District Judge then reviews the matter and may direct additional changes or approve the proposed memorandum opinion and order. Where a complaint is clearly without merit, and after the litigant has been afforded reasonable opportunity to cure procedural defects and to amend the pleadings, the memorandum opinion and order entered is usually one dismissing the case, either with or without prejudice. There is considerable case law concerning the review process and criteria for dismissing such *pro se* prisoner complaints.[10]

Meritorious claimants are encouraged to put their pleading in appropriate form, if possible.

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[10] *See, e.g., "Vexatious and Abusive" Pro Se Litigation in the Federal Courts (Case law outline presented to the Seminar for Pro Se Law Clerks of the 5th, 7th, 8th, 9th and 10th Circuits, San Diego, California, July 24-26, 1991), Appendix B.*

The case then proceeds through reviews by the *pro se* law clerk and magistrate judge. If the *pro se* litigant wishes to conduct discovery, file motions, or take other interim action, he is supplied with information on where to find the appropriate rules of procedure and reference materials to assist him.

As an agency of the Court, the clerk's office, and the *pro se* law clerk, must remain neutral and non-adversarial, and will not attempt to become involved as the *pro se* litigant's attorney. In maintaining the necessary neutrality, the *pro se* law clerk will not offer legal advice to *pro se* litigants or answer questions concerning the substantive merits of a claim. Assistance from the court's *pro se* staff is therefore limited to giving general procedural information, providing appropriate court-approved forms, and directing the *pro se* litigant to the appropriate libraries, rules of civil procedure, etc.

Ultimately, assuming the *pro se* litigant continues to pursue the matter, the case is set for appropriate pre-trial conferences, and eventually trial. The problem has been that such meritorious cases tend to be "placed on the back burner" and wither from lack of attention because the *pro se* litigant does not appreciate how to advocate his claim or has lost interest. At the same time, the magistrates and district judges may be reticent to dismiss *pro se* litigants' complaints on procedural technicalities because the litigant is not represented by an attorney.[11]

Since these prisoner *pro se* civil rights petitions make up the bulk of the *pro se* litigation problems in the District of New Mexico, they will be addressed in the recommendations at some length. Since these petitions tend to have longer tenure on the court's docket than other cases, many of the recommendations will address this problem.

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[11] *See footnote 9.*

B. NON-PRISONER *PRO SE* LITIGANTS.

As with prisoner litigation, the majority of non-prisoner *pro se* litigants are parties who have filed a complaint *in forma pauperis* (as an indigent). Most of these *in forma pauperis* petitions allege violations of civil rights (usually under 42 U.S.C. § 1983) or claim some form of employment discrimination in hiring or termination of employment. Non-prisoner *pro se* litigation constitutes about one-third of all *pro se* litigation filed in the District of New Mexico. Once the clerk of the court receives the complaint, it is assigned a docket number and assigned to a district and magistrate judge. In addition, the *pro se* law clerk and magistrate judge review the petition in a procedure similar to the process of reviewing prisoner *pro se* complaints discussed above.

Like prisoner *pro se* complaints, other *pro se* complaints tend also to "wither on the vine" from lack of attention. Again, the problem is related to the *pro se* litigant's lack of understanding on how to move a case along, as well as other problems that are inherent when non-lawyers, unfamiliar with rules of procedures, motion practice, etc., attempt to pursue their own litigation.

III. STATISTICAL REVIEW OF PRISONER PETITIONS IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

A. STATISTICAL OVERVIEW

From 1981 to 1991[12], the number of prisoner petitions filed in the United States District Court for the District of New Mexico increased from 110 to 206, an average annual increase

[12] *Unless otherwise specified, reference is to the statistical year, i.e., July 1 through June 30. (E.g., July 1, 1989, through June 30, 1990, is "statistical year" 1990.*

of over 6%. These 206 cases represented over 11% of the total filings in the court.[13] The peak year for filings was 1989, with 280 petitions. In 1991, the only categories of cases exceeding prisoner petitions in number were torts (206) and [non-prisoner] civil rights (207).[14] This and other data covered in this section appears in Appendix D.

In the latter half of the 1980s the number of cases disposed of did not keep up with the rate of prisoner petition filing. From 1986 to 1991, a total of 1,365 cases were filed. Only 1,173 cases were closed during the same period, resulting in an increase of nearly 200 pending prisoner petitions in the court's caseload. This increase in the pending caseload, coupled with an increased filing rate, has placed a heavy burden on the Court. As of the end of 1991, the 411 pending prisoner cases made up 22% of the Court's total pending caseload of 1,830.

The relatively high number of filings in statistical year 1989 resulted in the appointment of one temporary *pro se* law clerk in July 1990. Concern over the aging backlog of inmate cases resulted in the allocation of discretionary Tenth Circuit funds in 1992, which allowed the hiring of one additional *pro se* law clerk and one *pro se* legal assistant, both on temporary status. The *pro se* staff has worked closely with the office of the clerk and the United States magistrate Judges. Together they have succeeded in reducing the average age of the pending inmate case backlog. Procedures for handling inmate and other *pro se* petitions have been streamlined, resulting in a rapid increase in the rate of disposition of pending *pro se* cases.

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[13] *In 1991, the total number of filings in the United States District Court for the District of New Mexico was 1,239.*

[14] *The "civil rights" category excludes "prisoner petitions," but includes non prisoner pro se civil rights cases.*

B. STATISTICAL OUTLOOK

1. Recent Occurrences

From July, 1991, to the end of May, 1992, the number of prisoner petitions filed was 244. This exceeds the 206 cases filed for statistical year 1991. The rate of filing for the first five (5) months of calendar year 1992 extrapolates to a projected total of more than 300 *pro se* prisoner petitions for this calendar year. The causes of the increase in the number of filings are unknown. One cause may be an administrative order entered January, 1991 directing that each submission to the court that purports to initiate a new case be docketed as a new case, regardless of pleading deficiencies.[15] The increase in total filings may also indicate a "rebound" from the relatively low filing rate in 1990, reflecting increased expectations on the part of *pro se* litigants that their cases will be processed by the court in a timely fashion.

2. Longer Term

Acting on the hypothesis that the rate of prisoner petition filing may bear some direct relationship to the number of prisoners within the district, we compiled information on the number of prisoners in New Mexico and surrounding states for comparison. Results indicate that increase in the number of prisoner petitions filed closely parallels growth of inmate population. Prison population increased at an annual rate of 10% for those states surveyed, with the rate of inmate petition filing showing an increase of 9% during the same period. This

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[15] *Effective January 1, 1991, any document received that purports to be a case is filed and counted as a case. If there are pleading deficiencies (i.e., filing fee not received, in forma pauperis application not properly executed or not in court-approved form, original signature missing, complaint or petition not in court-approved form, etc.), directions are sent by the Pro Se Legal Assistant to the filing party, who is allowed 45 days to correct any such deficiencies. Cases in which deficiencies are not corrected within the time allotted are dismissed by the Clerk of Court without prejudice pursuant to the Court's Local Rule 41.1 and Federal Rule of Civil Procedure Rule 41. Prior to the institution of this procedure, deficient filings received a miscellaneous number, but were not docketed as cases in the Court. The earlier practice was viewed as resulting in deceptively low statistical showings as regarded the rate of pro se case filings, and as creating difficulty in the tracking and management of pro se cases in the Court.*

relationship held true for all states except Wyoming.[16]

Trends suggest that the prison population in New Mexico will continue to increase. If it increases at the same rate through the 1990s as it did in the 1980s, it will again more than double by the end of the century. If New Mexico continues to experience an increase of about 6% per year in the rate of filing of prisoner petitions, the rate of filings would increase to more than 400 filings per year by the year 2000. If we use the more modest projections of a linear trend, there would be 340 to 350 filings annually by the end of the decade. The current level of filings for 1992 indicates that the number of prisoner *pro se* filings in calendar year 1992 and statistical year 1993 will both exceed 300. Given these trends, 350 to 400 annual filings can be expected to occur, unless the underlying causes for prisoner petition filings change substantially.

Prisoner civil rights filings tend generally to reflect prison conditions and prisoners' reaction to those conditions. The filing of a civil rights action in federal court is only one of several possible avenues of redress of prisoner grievances. Changes in prison administrative grievance procedures could act to diminish the rate of increase in prisoner petition filing. In addition, 42 U.S.C. §1997e establishes an "exhaustion of remedies" ground for dismissal of prisoner petitions that originate in prison facilities with a duly-approved administrative grievance procedure. An overall reduction in the rate of inmate civil rights cases filed should result if the administrative grievance procedure is implemented successfully. This result is anticipated as it becomes known to the inmate population that failure to exhaust the administrative remedy available will result in summary dismissal of civil rights cases filed in the federal district court.

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[16] *Wyoming experienced a decline in petitions filed, even as the prisoner population grew. The decline in filing rate may be in part attributable to the adoption and approval of administrative grievance procedures by the state's penal institutions. See 42 U.S.C. §1997e., "Exhaustion of remedies."*

Other factors may facilitate the control and limitation of both inmate and non-inmate *pro se* litigation. Proposed changes in federal law would establish limitations on the filing of *habeas corpus* petitions.[17] Recent Supreme Court rulings have already instituted some of the changes proposed by this legislation.[18] Other Supreme Court rulings impact on the survivability of dubious *in forma pauperis* litigation, whether inmate or non-inmate, in the federal courts.[19]

IV. BRIEF HISTORY OF THE PRO SE DIVISION IN THE DISTRICT OF NEW MEXICO

A. HISTORICAL OVERVIEW

The Administrative Office of the United States Courts (AO) has authorized funding for *pro se* law clerks at the district court level since the 1970s, although the position was not widely utilized until the 1980s. About 50 federal district courts now have one or more *pro se* law clerks. The position description promulgated by the AO establishes the *pro se* law clerk as an attorney position with a maximum grade of JSP 14, under the direct supervision of the clerk of court. Job duties include screening, legal research and drafting recommended orders and opinions on *pro se* cases filed with the court. (See Appendix E, "*Pro Se* Law Clerk Job Description.") The *pro se* law clerk's duties also include tabulation of statistics and generation of reports regarding *pro se* filings in the district. (See id.)

Prior to July 1990, the District of New Mexico was not allocated a *pro se* law clerk. Processing of *pro se* cases was carried out by magistrate judge law clerks and magistrate

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[17] *The Violent Crimes Control Act of 1991, passed by the Senate, proposed a number of changes in rules applying to Habeas Corpus petitions. These include: a one-year limitation following conviction and sentencing on access to federal court for habeas relief; a two-year statute of limitations for collateral relief; deference to state courts on matters "fully and fairly adjudicated" in state proceedings; exclusive authority to the Circuit Courts of Appeal to issue certificates of probable cause for habeas petitions; and limitations on successive habeas petitions.*

[18] *See, e.g., Keene v. Tamayo-Reyes, ___ U.S. ___, 112 S.Ct. 1715 (60 U.S.L.W. 4339, decided May 4, 1992).*

[19] *See, e.g., Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (60 U.S.L.W. 4346, decided May 4, 1992).*

courtroom deputy clerks. From time to time, one or more magistrate law clerks were assigned "specialized" duties with respect to *pro se* cases. These duties were generally limited to legal research and writing, and did not include direct interaction with *pro se* litigants. Much of the direct interaction phase of processing *pro se* cases was handled by the clerk and chief deputy clerk, as well as magistrate courtroom deputies.

The AO staffing formula for *pro se* law clerks requires that a court experience a minimum of three hundred (300) prisoner *pro se* filings each year in order to allocate funding for a *pro se* law clerk. Allocation of funds for a *pro se* law clerk position includes allocation of additional funds for one half-time clerical assistant. The District of New Mexico has experienced over the past ten (10) years an average filing of 205 prisoner *pro se* cases each year. In statistical year 1989, however, the number of prisoner *pro se* filings rose to about 285. (See Appendix D.) The average annual increase in prisoner *pro se* filings between 1982 and 1991 was approximately six percent (6%).

Based upon the increase in prisoner filings and projections of future increases, the AO allocated funding for a temporary (one year and one day) *pro se* law clerk for the District of New Mexico in June 1990. A former state court of appeals staff attorney, criminal defense attorney and prosecutor was hired to fill the position. The *pro se* law clerk assumed his duties on July 2, 1990. At that time, this was the Court's only *pro se* staff position. The *pro se* law clerk assumed responsibility for screening all inmate and other *pro se* correspondence, providing court-approved forms to *pro se* litigants as requested, corresponding with *pro se* litigants concerning deficiencies in pleadings, performing legal research on issues raised in *pro se* petitions, and drafting of proposed orders and opinions for district and magistrate judge's

signatures in *pro se* cases. The *pro se* law clerk was also assigned duties by the clerk of the court in connection with administration of the Criminal Justice Act, drafting of Clerk's Orders Settling Costs in civil cases, drafting of a grievance and adverse action personnel protocol for the Court, revising the Court's Local Rules, and other "staff attorney" duties. (See Appendix F for a detailed review of the *pro se* law clerk's initial workload.) Although addressing important needs of the Court, these "additional duties" tended to interfere with the primary duties of the position. A clear need was thereby demonstrated for a "general counsel" position to serve as legal adviser to the clerk of court.

In January of 1991 the Court performed an initial assessment of the number of pending prisoner cases. Preliminary indication was that some 500 *pro se* cases (inmate and non-inmate) were pending. Many of these cases were over three years old.

Responding to increasing concern over the backlog of cases, the clerk of court, with strong support from Chief Judge Juan G. Burciaga, initiated a request to the Tenth Circuit in June of 1991 for special funding for one (1) additional *pro se* law clerk and one (1) *pro se* legal assistant. The Tenth Circuit allocated discretionary funds for this purpose. In September 1991 two attorneys with fifteen years experience between them filled these positions. One attorney is "overfilling" the *pro se* legal assistant position. His duties center around screening of *pro se* filings, telephone and in-person interfacing with *pro se* litigants, providing court-approved forms, and overseeing the referral of *pro se* cases to the appropriate channels in the initial phases.

The second *pro se* law clerk, an experienced legal aid lawyer and former assistant general counsel to a New Mexico state agency, has been assigned duties limited to legal research and

writing directed at expediting the disposition of backlog cases, defined as those cases two (2) years old and older. The senior *pro se* law clerk supervises the second *pro se* law clerk and *pro se* legal assistant, interfaces with the Civil Justice Reform Act Advisory Group, Subcommittee on Pro Se Litigation, performs more complex legal research and writing in connection with newer *pro se* cases, and also performs legal research and writing on "backlog" cases. Increased staffing and specialization of the *pro se* staff is evidenced by an increase in the rate of disposition of *pro se* cases. (See Appendix D.)

In December 1991, the Court received notice from the AO that the number of prisoner *pro se* filings experienced by the Court (approximately 205 from September 1990 through September 1991) did not justify the continuation of the temporary *pro se* law clerk position. Despite appeals to the AO from Chief Judge Burciaga, the position was eliminated, effective February 1992.[20] The Tenth Circuit Court of Appeals authorized additional temporary, discretionary funds in order to avoid a lay-off of one *pro se* law clerk, thereby enabling the Court to continue with its current *pro se* staffing through February 1993. Officially (as viewed by the Administrative Office of the United States Courts), however, the District of New Mexico has lost its *pro se* law clerk position. As of June, 1992, all of the Court's *pro se* staff are funded through discretionary funds allocated by the Tenth Circuit.

A newly-proposed staffing formula would reduce the number of prisoner *pro se* filings required for one *pro se* law clerk position to 209 such cases per year. The proposed formula

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[20] *The Administrative Office's staffing formula for Pro Se Law Clerks does not include credit for non-prisoner pro se cases, which currently comprise about one-third of the District of New Mexico's pro se caseload. Non-prisoner pro se litigation consists primarily of civil rights and employment discrimination cases. Judge Burciaga's letter to L. Ralph Mecham, Director of the Administrative Office, dated December 18, 1991, calls the Director's attention to the fact that non-prisoner pro se litigation may be more demanding of the Court's limited resources than cases filed by incarcerated individuals. See Appendix G.*

has been approved by the AO, and now must meet the approval of the Judicial Conference and receive congressional funding. A "best case" scenario is that the new *pro se* staffing formula would be implemented effective October of 1992. Prisoner *pro se* filings for statistical year 1992 were 246, with 30 days remaining in the statistical year. If there are 25 cases filed in June, 1992, *pro se* prisoner petitions will have exhibited an increase of 31% over the previous year.

B. INTAKE/SCREENING/CASE MANAGEMENT

1. Intake/Initial Screening

The rate of inmate case filings has shown an increase of greater than 25% over the 1991 rate during the first quarter of 1992. (See Appendix D.) Most new cases arrive via the mail. An estimated 15% to 20% of new filings are made by "walk up" transaction at the clerk's office front counter.

The *pro se* legal assistant performs initial screening of all newly-filed *pro se* (both inmate and non-inmate) cases, and provides basic procedural assistance, including the appropriate court-approved forms and instructions, to *pro se* litigants. Many *pro se* initial pleadings are filed on other than the court-approved forms. An important function performed by the *pro se* legal assistant is to review such pleadings to determine the nature of the legal issues presented, then to speak to or correspond with the litigant, providing guidance and assistance to him or her on how to proceed with proper filing.

Most correspondence mailed to *pro se* litigants includes a "45 day warning" notice directing the litigant to comply within the time allowed, or run the risk of dismissal of the case pursuant to local rule 41.1. Deficiencies in initial filings include failure to pay a filing fee or submit an

in forma pauperis application, failure to sign pleadings, and failure to submit completed summons sheets and sufficient copies of the complaint to enable the clerk's office to arrange for service of process by the U.S. Marshal. Failure to cure deficiencies within the time allowed may result in "administrative dismissal" of the case pursuant to the Court's local rule 41.1. "Pleading deficiencies" at the initial stage includes not only failure to submit an initial filing on the court-approved form, but such fundamental omissions as failure to sign the pleading, failure to pay a filing fee or submit an *in forma pauperis* application, failure to submit completed summons sheets and sufficient copies of the complaint to enable the clerk's office to arrange for service of process by the U.S. Marshal.

In *habeas corpus* cases filed under 28 U.S.C. §2254, the *pro se* legal assistant screens the petition for "Rule 9" sufficiency. Under *Habeas* Rule 9, petitions may be dismissed if the petition is found to be a successive petition (i.e., the petitioner has filed previous §2254 petitions in this court raising the same issues), if there is undue delay between the state court conviction and the filing of the *habeas* petition such that the state is prejudiced in its ability to respond to the petition, or if the petitioner's failure to assert new grounds in a previous *habeas corpus* petition constitutes "abuse of the writ." See Appendix A, *Habeas* Rule 9.

2. Case Management – Las Cruces Cases

In April 1992, a policy directive by the Chief District Judge resulted in the redistribution of all civil cases, including *pro se* cases, among the four (4) United States Magistrate Judges. Because one magistrate judge sits in Las Cruces[21], there was concern that transfer of

[21] *The Honorable Joe H. Galván is the United States Magistrate Judge assigned to the Las Cruces Division. It is significant that the Las Cruces Division currently processes about 50% of all criminal cases filed in the District of New Mexico. A larger proportion of Judge Galván's time is therefore consumed in conducting initial matters (first appearances, arraignments, preliminary hearings, bond hearings, etc.) in connection with the Las Cruces criminal caseload.*

approximately 25% of the *pro se* case files to a location some 200 miles distant from the location of the *pro se* staff might result in delay and inconsistency in the processing of this group of cases.

After meetings with magistrate courtroom deputies, the clerk of court, and the United States Magistrate Judge in Las Cruces, it was agreed that the *pro se* legal assistant would undertake magistrate courtroom deputy duties, including maintenance of the physical case files, for all *pro se* cases assigned to the Las Cruces magistrate judge. This system was implemented in April 1992. The *pro se* legal assistant is responsible for drafting standard orders (e.g., for service of process, appointment of counsel for a *habeas* petitioner, preparation and filing of the record proper by the state Attorney General) for the magistrate judge's signature on *habeas* cases. When counsel is appointed to a *pro se* litigant, the case file is transferred to Las Cruces magistrate judge. Most *habeas* petitioners whose cases survive initial screening are appointed counsel. With respect to civil rights cases, where counsel is rarely appointed, it is anticipated that case management will remain with the *pro se* staff throughout the case.

To present Magistrate Judge Galván with an accurate picture of the *pro se* cases transferred to him and to enable rapid and thorough assessment of that caseload, a complete case inventory of all inmate cases transferred was prepared by the supervising *pro se* law clerk and the *pro se* legal assistant. See Appendix H. Each case file was visually examined and the contents indexed. Brief descriptions and recommendations were included for each case. Inmate cases in which counsel had been appointed were assessed, brief recommendations were made, and the case file transferred to Las Cruces for further proceedings. All *pro se* files were retained in Albuquerque. Deadlines for *pro se* staff action were set on many of these cases.

B. SUBSTANTIVE SCREENING/RECOMMENDED DISPOSITIONS

Substantive screening of *pro se* cases is performed by the supervising *pro se* law clerk and the *pro se* law clerk. Actions recommended by the *pro se* law clerks fall loosely into five categories:

1. Emergency Injunctive Relief

In some civil rights cases, the nature of the relief requested and the facts alleged justifies immediate action by the Court, in the form of granting of a Temporary Restraining Order or setting a hearing on a motion for preliminary injunction. Screening and recommendations on such cases are performed primarily by the Supervising *pro se* law clerk, as cases raising this type of issue are new cases. In May 1992, the Chief Judge issued a policy memorandum concerning the processing of prisoner *pro se* cases raising claims for injunctive relief where the plaintiff was a member of the Duran Consent Decree class.[22] Prior to May 1992, **Duran** prisoner cases raising "mixed" claims (where both injunctive and monetary relief was sought) were disposed of in the district court, while all such cases seeking only injunctive relief were dismissed and referred to the Duran Special Master. As of May 1992, all prisoner *pro se* claims are screened to determine whether the litigant is a **Duran** class member, and whether

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[22] *Duran v. King, No. CIV 77-721 JB, was filed in the United States District Court for the District of New Mexico by Dwight Duran, a pro se inmate proceeding under 42 U.S.C. §1983. The case involved challenges to conditions of confinement within the New Mexico State Penitentiary. Counsel was eventually appointed a class (inmates in New Mexico medium and maximum security state facilities) certified. The case was negotiated to partial settlement, which involved entry of the Consent Decree and appointment of a special master to oversee the operation of New Mexico Department of Corrections medium and maximum security facilities. The Duran Consent Decree governs all requests for injunctive relief made by members of the inmate class. Such injunctive relief requests are handled by the special master. Complaints seeking monetary damages fall outside the scope of the decree.*

injunctive (and certain types of declaratory relief) relief is sought. The flow chart appearing in Appendix I shows the current process for screening and bifurcation of issues employed for this type of case.

2. Dismissal Under 28 U.S.C. §1915

The Court is authorized to dismiss *pro se* cases that have no merit, if filed *in forma pauperis*, under 28 U.S.C. §1915(d). Many of the Court's older cases have ultimately been deemed meritless under this standard. Considerable care is required in application of the standard, which has been ruled to be more restrictive than that required for dismissal under Fed.R.Civ.P. 12(b)(6). See Neitzke v. Williams, 490 U.S. 319, 329, 109 S.Ct. 1827, 1834, 109 S.Ct. 1827 (1989). A recent Supreme Court opinion, however, clarifies the appellate standard of review for §1915(d) dismissals (abuse of discretion) and sets criteria for the district courts to consider in determining whether an *in forma pauperis* case should be dismissed as frivolous. See Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728 (60 U.S.L.W. 4346, decided May 4, 1992) (holding, *inter alia*, that "clearly fantastic or delusional" factual allegations justify §1915(d) dismissal, regardless whether the district court can take judicial notice of facts contradicting the allegations.)

3. Dismissal Pursuant to Substantive Motions

The *pro se* law clerks evaluate and prepare recommended disposition of all dispositive motions in *pro se* cases. Motions to dismiss pursuant to Fed.R.Civ.P.

12(b)(6) and motions for summary judgment are among the most common. Many such motions result in dismissal or partial dismissal of the action.

4. Further Factual Development ("Martínez Reports")

When the factual allegations raised by a *pro se* litigant state colorable claims, but factual development is likely to be of benefit to the Court in selecting a course of action, Martínez Reports may be ordered.[23] A Martínez Report is typically prepared by a defendant or defendants in a *pro se* action and summarizes the evidence that relates to the *pro se* litigant's claims. In essence, the Martínez Report is an expedited discovery mechanism. Martínez Reports may be treated as motions for summary judgment, unless facts stated in the report are contested by a *pro se* litigant.

5. Discovery and Trial Tracking

Pro se cases in which some or all of the issues survive screening for summary dismissal are referred to the magistrate judges for discovery proceedings and trial tracking. Because of the expertise of the magistrate judges in control of discovery proceedings, and given the numerous other duties of the *pro se* staff, it is not recommended that *pro se* staff be assigned responsibilities in connection with discovery or trial preparation, except for the evaluation of Martínez reports.

V. RECOMMENDATIONS OF THE *PRO SE* LITIGATION SUBCOMMITTEE FOR HANDLING *PRO SE* LITIGATION IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

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[23] *See Hall v. Bellmon, 935 F.2d 1106 (10th Cir.1991); Martinez v. Aaron, 570 F.2d 317 (10th Cir.1978); Martinez v. Chavez, 574 F.2d 1043 (10th Cir. 1978); and Robinson v. Benton, 579 F.2d 70 (10th Cir.1978).*

V. RECOMMENDATIONS OF THE *PRO SE* LITIGATION SUBCOMMITTEE FOR HANDLING *PRO SE* LITIGATION IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

The subcommittee, based on its review and analysis of the *pro se* litigation problem in New Mexico, makes the following recommendations concerning the handling of *pro se* cases in the District. Except as otherwise indicated, these recommendations are intended to apply to all types of *pro se* litigation in New Mexico. That is, the recommendations are felt to be equally applicable to prisoner as well as non-prisoner *pro se* matters.

RECOMMENDATION NO. 1: *Pro Se* Staffing: We recommend that at least one *pro se* law clerk position be made permanent in the United States District Court for the District of New Mexico, and that the title be changed from "*pro se* law clerk" to *pro se* staff attorney. This change is suggested to make clear that *pro se* petitions are reviewed by an attorney in the first instance, and that the *pro se* staff attorney is a member of the Court's staff. Further, it is recommended that the career *pro se* staff attorneys be granted pay and benefits equal to those of career law clerks assigned elsewhere in the federal judiciary.[24] Because *pro se* work is a "specialty" area in which training is not readily available outside a judicial setting, effectiveness in performing the duties of *pro se* staff attorney is a function of length of tenure in the position. Parity of pay and benefits with

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[24] *At present, Pro Se Law Clerk positions are not permitted to exceed a grade of JSP 14, regardless of length of tenure in the position. In contrast, "career" (generally defined as those individuals remaining in the position five (5) years or more) law clerks elsewhere in the federal judiciary may attain grades of JSP 15 and JSP 16. Lack of parity in salary expectation has been a "rallying point" for the Association of Pro Se Law Clerks. (See Letter from Mr. James K. McKay, Pro Se Law Clerk, District of Arizona, dated March 2, 1992, Appendix J.) Lack of parity in salary expectation is estimated to be a contributing factor in Pro Se Law Clerk attrition.*

other law clerk positions is therefore justified to enhance the Court's efficiency and effectiveness in dealing with *pro se* litigation.

There is some question whether the *pro se* staff attorney should remain under the auspices of the clerk's office or be transferred to the Chief Judge. We take no position on this question. What is important is that the main obligation of the position lies with the Court's *pro se* caseload. The clerk of court's need for the assistance of "house counsel" is recognized as legitimate, however, and it is recommended that a separate "staff counsel" position be established to work closely with the clerk of court.

We further recommend maintenance of a *pro se* paralegal (*pro se* legal assistant) position on a permanent, full-time basis. It is envisioned that this person would assist the *pro se* staff attorney in reviewing the various *pro se* complaints filed, to prepare reports for the magistrate judges, and would serve as the Court's primary liaison with *pro se* litigants.[25]

Finally, the subcommittee recommends that the Court establish an appropriate case file manager (records manager) position specializing in *pro se* case files. Much *pro se* staff attorney time, at substantially higher salary, is otherwise consumed in performing clerical tasks not warranting an attorney's attention. As with other aspects of the *pro se* staff work, case file/records management in this area presents problems distinct from and in addition to those associated with the

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[25] *The Pro Se Legal Assistant position is presently funded at a JSP 11 level and occupied by a licensed attorney. Either an attorney or a skilled and experienced paralegal would be suitable for this position.*

court's general clerical work. For example, the types of form orders used with *pro se* cases (e.g., orders of reference, orders requiring filing of the record proper in *habeas* cases, orders appointing counsel, and others), are generally limited in their application to this type of case. More importantly, keeping track of the status of *pro se* cases, insuring that pleadings are properly filed in the case file, and "tracking" *pro se* case deadlines are functions requiring specialized familiarity and aptitude for dealing with cases that do not "behave," in a general sense, like "ordinary" cases filed with the Court. Paperwork associated with *pro se* cases comprises a substantial and separate workload not warranting legal expertise as such, but requiring skill, patience, and specialized knowledge in the clerical area. A case file/records manager position dedicated to *pro se* cases is therefore warranted in order to leave the *pro se* staff attorney and *pro se* legal assistant free to perform their specialized law-related functions.

The subcommittee recognizes that funding for this position may be problematic, and unfortunately is unable to make a recommendation as to how to establish or fund such a position. A position roughly comparable in grade and salary range to that of magistrate courtroom deputy[26] (Grade Range JSP 9 through 11) is contemplated. The specialized clerical/records management functions contemplated for this position are currently provided by the magistrate courtroom deputies, except for the Las Cruces magistrate judge *pro se* caseload,

[26] Although carrying the official designation "magistrate courtroom deputy clerk," these positions do not function in a manner entirely equivalent to the courtroom deputy positions assigned to the district judges. Magistrate courtroom deputy clerks are under direct supervisory control of the clerk's office, and do not function as magistrate judge chambers staff. Historically in the District of New Mexico magistrate courtroom deputies operated under more direct judicial supervision.

for which the duties are carried out by the *pro se* legal assistant. Difficulties arise in connection with delegating these duties to positions already burdened with many other demanding tasks. In the case of magistrate courtroom deputies, priorities tend to be assigned to multiple duties not associated with *pro se* litigation. Until recently, the court had one magistrate courtroom deputy specializing in management of *pro se* cases. A description of the job duties involved appears in Appendix K. In the event that funding for an additional position is not feasible, assignment of an existing magistrate courtroom deputy to this specialized function is recommended.

RECOMMENDATION NO. 2: Pro Bono Panel: We recommend establishment of a *pro bono* panel of attorneys in the district to represent *pro se* litigants. *Pro se* litigants could benefit greatly from representation by qualified attorneys. *Pro se* litigants could be required to have such representation unless they actually refuse the representation, in which case, the *pro bono* attorney would merely serve as "stand by" counsel to the litigant, similar to such appointments in the public defender's office. It is felt that such a *pro bono* panel would greatly expedite *pro se* complaints and assure that they are not placed on the "back burner" in the future. Such representation will assure that *pro se* litigants are provided appropriate due process and that their claims do not become stale. Each *pro bono* attorney may be awarded $500.00 to handle a *pro se* case. In addition, it is recommended that $250 per case be set aside for each *pro se* litigant for the

cost of paralegal services.[27]

To fund the *pro bono* panel, it is recommended that an annual Federal Bar Fee be charged to all members of the Federal Bar in the District of New Mexico. Such fees should be used for discretionary funding purposes for the Federal District Court in New Mexico. Also, it is recommended that a portion of such bar fees be set aside for use to fund *pro bono* attorneys' handling of *pro se* litigation. Should the *pro se* litigant prevail on a case and be awarded attorney fees or costs by the court, the amount advanced for the case would be reimbursed in full to the court by the attorney. Any balance of court-awarded fees should be left to the assigned *pro bono* attorney as attorney fees.

It is estimated that, at $500 to $750 per case (for reimbursement of costs), all of the *pro se* litigation in New Mexico could be handled for $40,000 to $50,000 a year. If a Federal Bar fee were charged for members admitted to the federal district court in New Mexico, it is anticipated that the Court would have adequate funding help promote *pro bono* work by offsetting some of the out-of-pocket costs that attorneys frequently incur in handling such cases. The cost and time commitments for *pro bono* work can to be an especially onerous burden on small firms and solo practitioners.

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[27] It is contemplated that the contract use of paralegals or "Legal Assistants" by the members of the pro bono panel will help to reduce the costs of representation in these cases by allowing the assigned attorney to delegate less complex representational duties, not requiring an attorney, to the contracted Legal Assistant.

RECOMMENDATION NO. 3: Alternative Dispute Resolution:

A. Mediation: It is recommended that magistrate judges or appropriately trained attorneys be encouraged to mediate *pro se* cases. After preliminary screening for frivolous cases, mediation at an early stage could be helpful in many *pro se* cases.

In keeping with the spirit of the Civil Justice Reform Act and its suggestions concerning use of alternative dispute resolution mechanisms, the subcommittee believes that mediation is the best available alternative dispute resolution mechanism for handling *pro se* litigation, and that the magistrate judges would be well suited to mediate these cases. By mediating, the magistrate judge would meet the *pro se* litigant's expectation of having a fair and unbiased hearing officer review his or her claim. We believe that many *pro se* claims could be resolved by such mediation.

In prisoner *pro se* litigation, the magistrate judges could mediate at the prisons on a scheduled basis, in order to avoid the transporting of prisoners. It is anticipated that mediation of non-prisoner *pro se* cases will occur once each month at an appropriate federal court facility in the district. Once the process is established and the *pro se* litigants are made aware that the Court may offer them a fair and unbiased mediation, it is hoped that mediation will become the preferred mode of resolving *pro se* matters.

B. Inmate Grievance Procedures: We recommend that the Court encourage the New Mexico Department of Corrections to adopt an approved prisoner grievance procedure as contemplated by 42 U.S.C. §1997e.

RECOMMENDATION NO. 4: Orientation/Reference Manuals: The sub-committee recommends that the *pro se* law clerk (*pro se* staff attorney) and his aides prepare an appropriate reference manual or manuals for use by *pro se* litigants, attorneys, or others.

RECOMMENDATION NO. 5 Training for *Pro Bono* Attorneys: It is recommended that, to the extent appropriate, all *pro bono* attorneys receive training in the handling of *pro se* litigation in the district. To qualify for the "*pro bono* panel" recommended above, the attorneys should be required to attend a training session prepared by the *pro se* law clerk and other staff or experienced attorneys. The training program would be similar to, and perhaps presented in conjunction with, the present Criminal Justice Act training program provided in the district.

RECOMMENDATION NO. 6: Internal Reference Manual: It is recommended that an Internal Reference Manual and/or Guidelines Handbook be established by the *pro se* law clerk (*pro se* staff attorney) and other *pro se* staff to serve as a guideline for future staff members and attorneys working on *pro se* litigation for the federal district court. It is hoped that such a manual will provide needed continuity and uniformity in the processing of *pro se* cases by documenting court protocols and procedures addressing this caseload. Samples of material for such a Reference Manual/Guidelines Handbook appear in Appendix L.

VI. COMPLIANCE WITH SECTION 473 OF THE CIVIL JUSTICE REFORM ACT

The subcommittee has considered the guidelines and principles of §473(a) and the techniques described in 28 U.S.C. §473(b) in making its recommendations for reducing costs and delays in *pro se* litigation in the United States District Court for the District of New Mexico. The following explains which principles are incorporated in the subcommittee's recommendations. Two of the principles, detailed control of the discovery process, and the "good faith conference" prerequisite to discovery motions, were felt to be inapplicable to *pro se* litigation, except to the extent that these goals would be served by the appointment of *pro bono* counsel.

A. PRINCIPLE 1: SYSTEMATIC DIFFERENTIAL TREATMENT:

Prisoner petitions and *pro se* litigation represent one of the case "tracks" for differential case management. The cases are screened upon filing, and are treated differently due to the unique nature of these cases. Continuation of a *pro se* law clerk and staff will assure that this function continues.

B. PRINCIPLE 2: EARLY AND ONGOING CONTROL OF THE PRE TRIAL PROCESS

The *pro se* staff provide early screening and guidance for cases. Given the nature of *pro se* cases, early assignment of trial dates may not be feasible or desirable. Adoption of these recommendations, however, should result in those pro se cases that are ultimately scheduled for trial being in more presentable form, with issues narrowed and focused. The initiation of the recommended pro bono panel should result in few, if any, pro se cases going to hearing or trial without counsel to represent the plaintiff or petitioner.

C. PRINCIPLE 3: COST EFFECTIVE DISCOVERY

Effective screening results in the dismissal of many cases before service and discovery proceeds, thereby saving the parties and the Court time and money. Cases that survive initial screening may benefit from "Martínez Reports." Where full discovery is allowed only after a thorough initial screening of the case and consideration of the value of a Martínez Report in the particular instance, a significant reduction in the amount of discovery that would otherwise occur in *pro se* cases can be realized.

D. PRINCIPLE 4: ALTERNATIVE DISPUTE RESOLUTION

The use of Magistrate Judges for settlement/mediation hearings at the prisons should help settle many of these cases. In addition, in-person communication with a judicial officer at a mediation conference can encourage *pro se* litigants to abandon meritless claims, thereby narrowing and focusing the issues in *pro se* cases to those that are more suitable for adjudication.

In another significant area, the adoption of an approved administrative grievance procedure by the New Mexico Department of Corrections would represent a significant step towards reducing the volume of prisoner litigation in the New Mexico federal court. In addition to providing an "exhaustion of remedies" grounds for dismissal of prisoner cases, the adoption of the proposed grievance procedure should act to effectively redress valid prisoner complaints outside of a court setting.

E. COST AND DELAY REDUCTION TECHNIQUES (§473(b) 1 - 6)

The management techniques in this section were reviewed for incorporation into the recommendations of this subcommittee. In general these techniques are aimed at attorneys and would not work effectively in solving the unique cost and delay problems associated with prisoner petitions and general *pro se* litigation. The *pro se* law clerk's (*pro se* staff attorney's) role meets the goals of neutral evaluation (section 4) in their function of review and screening cases. The use of Alternative Dispute Resolution techniques in the form of mediation conferences, as described in paragraph D., and the use of Martínez Reports, as described in paragraph C., provide additional means of diminishing cost and delay in the processing and disposition of *pro se* litigation.

VII. CONCLUSION

Analysis of the problems of *pro se* litigation in the United States District for the District of New Mexico and the recommendations of the subcommittee on *pro se* litigation should be helpful to the resolution of the present *pro se* problems in the District.

It is hoped that the Court will pursue the recommendations made by the subcommittee. After conducting our detailed study of the problem, we strongly believe that adoption of our recommendations will alleviate the backlog of *pro se* litigation in the District and resolve the problems of cost and delay of *pro se* claims in the United States District Court for the District of New Mexico.

The Chairman of the subcommittee expresses his appreciation to the members of the subcommittee for their valuable input into this report. He also especially thanks Jesse Casaus,

the Advisory Group Reporter, for his insight and help with the report's preparation. Special thanks also go to Dennis Montoya, the *pro se* law clerk, and Jacques Blair, the advisory group analyst, for their valuable input and insight in assisting the subcommittee to understand the *pro se* problems in New Mexico, and how best to address them.

Respectfully submitted,

James A. Branch, Jr.
Chairman, Pro Se Litigation Subcommittee,
Advisory Group,
Civil Justice Reform Act of 1990
United States District Court
for the District of New Mexico

APPENDIX O

UNITED STATES GOVERNMENT

memorandum

Date: October 22, 1992

To: Jesse Casaus, Reporter CJRA

From: Jacques Blair, Administrative Analyst CJRA

Subject: Weighted Case Assignment

Through conversation with Steve Levenson at the AO I found out how to use the courts computerized case assignment system to assign cases based on weights or other differential basis. I explained the methodology to Rose Hart and it fit with her understanding of the current system. The system is quite intuitive and should work quite well. The following describes the system and how it can be adjusted to assign cases from within categories.

Methodology for Weighting Cases

Currently the system uses one "deck" of cards to a assign judges to a case. There are an equal number of cards in the deck for each judge, and the computer randomly pulls these cards until none are left, assuring that each judge is given the same number of cases. If one judge, say a senior judge, is to get fewer cases he would be given fewer cards in the deck. The deck of cards is automatically refilled as the cards run out. For this reason the size of the deck is not important, you can put in 50 cards, ten per judge, and it will refill the deck after 50 cases are assigned- 10 to each of five judges. To assign cases from different categories of cases all that is needed is a deck of cards to represent each category of cases. These different categories will represent differing dificulties or types of cases.

I have provided a categorization of cases based on the weights established by the FJC in 1979. I believe that these categorizations are simple yet represent a breakdown of cases that takes account of current administrative differences and will distribute cases fairly.

The next step is to decide on the size of the deck for each of the categories of cases. I have compiled a listing of the categories along with the number of cases filed in each of these categories for SY 1983 to SY 1992.

It must be remembered, that as these cases are assigned to judges from the different decks, they are getting "credit" for the types of cases that are drawn out of that deck. If we have a difficult

case deck, a judge will get credit for having a "difficult" case and will not be assigned another "difficult" case. The problem is that although nature of suit is a guideline, there will be different degrees of difficulty with in that nature of suit. It is possible that a judge will get a difficult case, that was assigned to him out of the "easy" deck. In this case it may be desirous to have a way to either put the case back in the system and randomly reassigned, or just to reassign the case to the judge giving him credit for a "difficult" case. This shouldn't be much of a problem, but administratively a method should be set up so judges don't feel they are getting assigned difficult cases out of the "easy" deck.

CASES FILED IN DISTRICT OF NEW MEXICO BY CATEGORY OF CASE SY83 TO SY92

CATEGORY	SY83 TO92	PERCENT	SY 1992	PERCENT
REGULAR	7752	48.03	713	57.78
SOCIAL SECURITY	838	5.19	70	5.67
RECOVERY	3107	19.25	31	2.51
PRISONER PETITIONS	2169	13.44	276	22.37
CIVIL RIGHTS	1869	11.58	228	18.48
POTENTIALLY COMPLEX	404	2.50	16	1.30
TOTAL	16,139		1,334	

From this information it is clear that the number of "complex" cases is limited and the size of the deck will need to be small to assure a relatively equal assignment of cases.

The attachments contain the detailed information on the nature of suits contained in each category and the weights established by the FJC.

CATEGORIZATION OF CASES FOR WEIGHTED CASE ASSIGNMENT

NATURE OF SUIT		CATEGORY
440	Civil Rights: Other	CIVIL RIGHTS
441	Civil Rights: Voting	CIVIL RIGHTS
442	Civil Rights: Jobs	CIVIL RIGHTS
443	Civil Rights: Accommodation	CIVIL RIGHTS
444	Civil Rights: Welfare	CIVIL RIGHTS
195	Contract Product Liability	POTENTIALLY COMPLEX
245	Tort Product Liability	POTENTIALLY COMPLEX
310	P.I.: Airplane	POTENTIALLY COMPLEX
315	P.I.: Plane Product Liability	POTENTIALLY COMPLEX
320	P.I.: Assault, Libel & Slander	POTENTIALLY COMPLEX
410	Anti-trust	POTENTIALLY COMPLEX
730	Labor: Reporting/Disclosure	POTENTIALLY COMPLEX
830	Property Rights: Patent	POTENTIALLY COMPLEX
892	Economic Stabilization Act	POTENTIALLY COMPLEX
893	Environmental Matters	POTENTIALLY COMPLEX
894	Energy Allocation Act	POTENTIALLY COMPLEX
900	Equal Acces To Justice ...	POTENTIALLY COMPLEX
950	Constitutional - State Statute	POTENTIALLY COMPLEX
970	NARA	POTENTIALLY COMPLEX
510	Prisoner: Vacate Sentence	PRISONER PETITIONS
520	Parole Board Review	PRISONER PETITIONS
530	Prisoner: Habeas Corpus	PRISONER PETITIONS
540	Prisoner: Mandamus & Other	PRISONER PETITIONS
550	Prisoner: Civil Rights	PRISONER PETITIONS
150	Recovery of Overpayment	RECOVERY
151	Contract: Recovery Medical	RECOVERY
152	Contract:Recovery Student Loan	RECOVERY
153	Contract:Recovery Veteran Benef	RECOVERY
110	Contract: Insurance	REGULAR
120	Contract: Marine	REGULAR
130	Contract: Miller Act	REGULAR
140	Contract: Negotiable Instrum.	REGULAR
160	Contract: Stockholder Suits	REGULAR
190	Contract: Other	REGULAR
210	Real Property: Condemnation	REGULAR
220	Real Property: Foreclose	REGULAR
230	Real Property: Lease/Ejection	REGULAR
240	Real Property: Torts to Land	REGULAR
290	Real Property: Other	REGULAR
330	P.I.: Fed. Employers Liability	REGULAR
340	P.I.: Marine	REGULAR
345	P.I.: Marine Product Liability	REGULAR
350	P.I.: Motor Vehicle	REGULAR
355	P.I.: Motor Veh. Product	REGULAR
360	P.I.: Other	REGULAR
362	P.I.: Medical Malpractice	REGULAR
365	P.I.: Product Liability	REGULAR

WEIGHTS FROM JUDGE TIME STUDY (1980)

JURISDICTION		NAT_SUIT	NO. OF CASES	FJC WEIGHT	COMPLEX IF WEIGHT > 3
3	FEDERAL QUESTION	110	6	1.87	
4	DIVERSITY	110	48	0.96	
1	US PLAINTIFF	130	4	1.00	
3	FEDERAL QUESTION	130	28	0.82	
1	US PLAINTIFF	140	9	0.20	
4	DIVERSITY	140	6	0.91	
1	US PLAINTIFF	150	2	0.03	
1	US PLAINTIFF	151	1	0.38	
3	FEDERAL QUESTION	151	1	1.00	
1	US PLAINTIFF	152	2	0.03	
1	US PLAINTIFF	153	35	0.03	
4	DIVERSITY	160	1	1.00	
1	US PLAINTIFF	190	19	0.17	
2	US DEFENDANT	190	9	1.11	
3	FEDERAL QUESTION	190	3	0.23	
4	DIVERSITY	190	72	1.40	
4	DIVERSITY	195	1	3.84	COMPLEX
1	US PLAINTIFF	210	10	0.37	
3	FEDERAL QUESTION	210	1	0.01	
1	US PLAINTIFF	220	68	0.09	
2	US DEFENDANT	220	2	1.00	
3	FEDERAL QUESTION	220	9	0.00	
4	DIVERSITY	220	4	0.97	
1	US PLAINTIFF	230	1	0.14	
2	US DEFENDANT	230	1	0.14	
1	US PLAINTIFF	290	3	0.46	
2	US DEFENDANT	290	3	1.34	
3	FEDERAL QUESTION	290	2	1.96	
4	DIVERSITY	290	2	1.54	
4	DIVERSITY	310	4	3.03	COMPLEX
4	DIVERSITY	315	1	3.03	COMPLEX
2	US DEFENDANT	320	1	3.84	COMPLEX
3	FEDERAL QUESTION	320	2	0.84	
2	US DEFENDANT	330	1	1.00	
3	FEDERAL QUESTION	330	7	0.95	
4	DIVERSITY	340	1	1.03	
2	US DEFENDANT	350	5	0.85	
	FEDERAL QUESTION	350	2	0.82	
4	DIVERSITY	350	38	0.89	
4	DIVERSITY	355	5	0.72	
2	US DEFENDANT	360	7	2.58	
3	FEDERAL QUESTION	360	1	0.82	
4	DIVERSITY	360	47	1.12	
2	US DEFENDANT	362	10	0.11	
3	FEDERAL QUESTION	362	1	1.00	
4	DIVERSITY	362	10	0.45	
4	DIVERSITY	365	21	1.51	

WEIGHTS FROM JUDGE TIME STUDY (1980)

JURISDICTION		NAT_SUIT	NO. OF CASES	FJC WEIGHT	COMPLEX IF WEIGHT > 3
4	DIVERSITY	368	17	1.51	
2	US DEFENDANT	370	2	0.99	
3	FEDERAL QUESTION	370	1	0.43	
4	DIVERSITY	370	1	1.80	
3	FEDERAL QUESTION	371	6	0.43	
2	US DEFENDANT	380	1	0.21	
3	FEDERAL QUESTION	380	2	0.82	
4	DIVERSITY	380	4	0.88	
3	FEDERAL QUESTION	410	2	5.35	COMPLEX
3	FEDERAL QUESTION	422	18	0.44	
3	FEDERAL QUESTION	423	2	0.44	
2	US DEFENDANT	430	1	2.98	
3	FEDERAL QUESTION	430	1	2.98	
2	US DEFENDANT	440	2	2.40	CIVIL RIGHTS
	FEDERAL QUESTION	440	117	2.52	CIVIL RIGHTS
3	FEDERAL QUESTION	441	1	2.84	CIVIL RIGHTS
1	US PLAINTIFF	442	9	1.20	CIVIL RIGHTS
	US DEFENDANT	442	9	3.38	CIVIL RIGHTS
3	FEDERAL QUESTION	442	66	2.63	CIVIL RIGHTS
1	US PLAINTIFF	443	2	1.20	CIVIL RIGHTS
	FEDERAL QUESTION	443	1	1.39	CIVIL RIGHTS
3	FEDERAL QUESTION	450	4	0.93	
3	FEDERAL QUESTION	470	1	1.00	
2	US DEFENDANT	510	36	0.58	
2	US DEFENDANT	530	11	0.18	
3	FEDERAL QUESTION	530	54	0.34	
3	FEDERAL QUESTION	540	1	0.24	
2	US DEFENDANT	550	17	0.71	
3	FEDERAL QUESTION	550	87	0.41	
1	US PLAINTIFF	610	1	0.29	
1	US PLAINTIFF	620	8	0.16	
1	US PLAINTIFF	625	32	0.29	
1	US PLAINTIFF	690	4	0.29	
2	US DEFENDANT	690	1	1.00	
1	US PLAINTIFF	710	8	0.91	
3	FEDERAL QUESTION	710	9	1.10	
3	FEDERAL QUESTION	720	4	0.86	
1	US PLAINTIFF	730	1	3.84	COMPLEX
1	US PLAINTIFF	740	1	1.85	
3	FEDERAL QUESTION	740	1	1.85	
1	US PLAINTIFF	790	2	1.26	
3	FEDERAL QUESTION	790	6	1.83	
3	FEDERAL QUESTION	791	13	1.12	
3	FEDERAL QUESTION	820	4	0.53	
3	FEDERAL QUESTION	830	1	3.00	COMPLEX
3	FEDERAL QUESTION	840	3	1.36	
1	US PLAINTIFF	850	1	1.02	

WEIGHTS FROM JUDGE TIME STUDY (1980)

JURISDICTION		NAT_SUIT	NO. OF CASES	FJC WEIGHT	COMPLEX IF WEIGHT > 3
3	FEDERAL QUESTION	850	13	2.33	
2	US DEFENDANT	862	1	0.26	
2	US DEFENDANT	863	44	0.26	
2	US DEFENDANT	864	11	0.26	
2	US DEFENDANT	865	2	0.26	
1	US PLAINTIFF	870	2	0.51	
2	US DEFENDANT	870	8	0.67	
2	US DEFENDANT	871	2	1.09	
1	US PLAINTIFF	890	12	1.43	
2	US DEFENDANT	890	6	1.10	
3	FEDERAL QUESTION	890	32	1.55	
3	FEDERAL QUESTION	891	2	0.94	
2	US DEFENDANT	893	3	4.95	COMPLEX
2	US DEFENDANT	895	1	1.58	
3	FEDERAL QUESTION	895	1	1.00	

APPENDIX P

Assignment of Cases to Tracks

The Advisory Group has anticipated 4 tracks for cases (Described in more detail in report.):

1. EXPEDITED CASES
Disposed of within 9 months after case is at issue with discovery cut-off date set no later than 100 days after the filing of the scheduling order.

2. STANDARD CASES
Disposed of in 12 months or less after case is at issue with discovery cut-off date is set no later than 200 days after filing of the scheduling order.

c. COMPLEX CASES
Disposed of in 18 months or less after case is at issue, unless the complexity of the case requires otherwise. Length of discovery is determined by a schedule and plan consistent with the time limits set by the court for completion of discovery.

d. ADMINISTRATIVE CASES
These are cases which based on the court's prior experience are likely to result in default or consent judgment, resolved or dismissed on the pleadings or by motion. No discovery will take place without leave of court.

A case will be assigned a track, as listed below, based on its nature of suit. Cases exempted, by local rule 16, from the filing of a schduling order amd scheduling conference are still expected to meet the scheduling implied by a track.

Information obtained from the initial pre-trial status report will give the magistrate judge enough information to determine if that track is indeed correct. A case originally assigned to the standard track based on its nature of suit, could be moved to another track based on the information obtained in review of the case.

Existence of these tracks is intended as a guide, and the magistrate judge or district judge may tailor discovery in any case to meet the needs of that particular case.

The following attachment gives a proposed tracking of cases based on nature of suit.

POTENTIAL TRACKS

EXPIDITED

210 Real Property: Condemnation
220 Real Property: Foreclose
230 Real Property: Lease/Ejection
371 Truth in Lending
380 Personal Property: Other
620 Forfeit/Penalty: Food & Drug
625 Drug related seizure
630 Liquor Laws
640 R. R. And Truck
650 Forfeit/Penalty: Airline
660 Occupational Safety & Health
690 Forfeit/Penalty: Other
710 Labor: Fair Standards
870 Tax Suits: Taxes
871 Tax Suits: IRS-Third Party
875 Tax Challenge
510 Prisoner: Vacate Sentence
520 Parole Board Review
530 Prisoner: Habeas Corpus
540 Prisoner: Mandamus & Other
240 Real Property: Torts to Land

STANDARD

110 Contract: Insurance
120 Contract: Marine
130 Contract: Miller Act
140 Contract: Negotiable Instrum.
160 Contract: Stockholder Suits
190 Contract: Other
195 Contract Product Liability
245 Tort Product Liability
290 Real Property: Other
310 P.I.: Airplane
315 P.I.: Plane Product Liability
320 P.I.: Assault, Libel & Slander
330 P.I.: Fed. Employers Liability
340 P.I.: Marine
345 P.I.: Marine Product Liability
350 P.I.: Motor Vehicle
355 P.I.: Motor Veh. Product
360 P.I.: Other
362 P.I.: Medical Malpractice
365 P.I.: Product Liability
368 P.I.: Asbestos
370 Personal Property: Fraud
385 Property Damage Product Liabili
400 State Reapportionment
430 Banks & Banking

STANDARD

440 CIVIL RIGHTS: Other
441 CIVIL RIGHTS: Voting
442 CIVIL RIGHTS: Jobs
443 CIVIL RIGHTS: Accommodation
444 CIVIL RIGHTS: Welfare
450 Commerce/ICC Rates etc.
460 Deportation
470 Racketeer/Corrupt Organization
550 Prisoner: CIVIL RIGHTS
610 Agriculture
720 Labor: Labor/Mgt. Relation
730 Labor: Reporting/Disclosure
740 Labor: Railway Labor Act
790 Labor: Other
791 Labor: E.R.I.S.A.
810 Selective Service
820 Property Rights: Copyright
840 Property Rights: Trademark
890 Other Statutory Actions
891 Agriculture Acts
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
895 Freedom of Information Act
900 Equal Acces To Justice ...
950 Constitutional - State Statute
990 Misc. Local Matters

COMPLEX

850 Securities Commodities Exchg.
410 Anti-trust
830 Property Rights: Patent

ADMINISTRATIVE

150 Recovery of Overpayment
151 Contract: Recovery Medical
152 Contract:Recovery Student Loan
153 Contract:Recovery Veteran Benef
420 Bankruptcy Trustee
421 Bankruptcy Transfer
422 Bankruptcy Appeal (801)
423 Bankruptcy Transfer
860 Social Security- General
861 Social Security: HIA
862 Social Security- Black Lung
863 Social Security: DIWC/DIWW
864 Social Security: SSID
865 Social Security: RSI Tax Suit
970 NARA

APPENDIX Q

DRAFT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Plaintiffs,

VS. No. 92-CV-____

Defendants.

INITIAL PRE-TRIAL STATUS REPORT

It is the courts intention that counsel in this suit meet and confer for the purpose of completing this report. **Plaintiff's** counsel or **removing** counsel is responsible for initiating this "meet and confer" conference, for completion and also for the filing of this initial status report.

Within 30 days of receiving this report the court shall hold a status/scheduling conference to discuss this report, evaluate the case and determine the scheduling for this case.

APPEARANCES BY COUNSEL

1. List individually the parties and the lead counsel who will appear for each of the parties in this case.

Jurisdiction and Venue

2. State if there is a jury demand in this case.

3. State the jurisdictional basis (statutory or otherwise) for this cause of action and any challenges to the jurisdictional basis of this case.

NATURE OF THE CASE

4. Give a statement of the nature of the case, including the contentions of the parties.

5. List any amendments to the pleadings contemplated by the parties. This should include possible additional parties and third-party complaints.

6. List all affirmative defenses and/or counterclaims as to each and every defendent and set forth the factual basis for any such defense.

STIPULATIONS

7. List the facts and law governing the case that the parties stipulate to.

RELATED CASES

8. List pending and/or previously adjudicated cases related to this case. Include both style and action number.

DISCOVERY

9. List the discovery contemplated in this case to include: (a) who will be discoverd and method, (b) what will be discovered and why and c)Time and place where the discovery will take place.

10. Indicate the minimum discovery, from above, needed to evaluate and possibly settle this case.

11. Estimate the time needed for discovery, and reasons for this duration.

12. Identify witnesses and experts, to include addresses and what is expected to be proved by them.

MOTIONS

13. List any pending or contemplated dispositive motions in this case. Also give times or stage in case when these motions are likely to be filed

TRIAL BY MAGISTRATE

14. State whether the parties will consent to trial by a U. S. Magistrate Judge.

SETTLEMENT

15. Describe the potential for settlement.
    a. Chances for settlement before discovery.
    b. Chances for settlement after initial stages of discovery.
    c. Chances for settlement after discovery.

ADDITIONAL MATTERS

16. Are there any matters that could require a conference with the assigned district judge and/or magistrate judge?

17. Any other matters relevant to the status and disposition of this case.

Any differences between counsel as to any of the above items must be set forth in this report in detail.

APPROVED:
(Subject to exceptions noted above)

_____
For Plaintiff

_____
For Defendant

_____
Other Party

PROPOSED SCHEDULING ORDER FOR DISTRICT OF NEW MEXICO

The folowing Scheduling order is adopted from Magistrate Judge Galvans' scheduling order. Changes are noted in *italics*.

Changes were minor and are related to assignment to a "track", the assignment of a trial magistrate, if consented to, listing of additional conferences to be held before the magistrate, or trial judge and setting of a "firm" trial date.

DRAFT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

Plaintiff,

v. Civ. No. __ ___ ___

Defendant.

SCHEDULING ORDER

THIS MATTER having come on for a scheduling conference set by the Court and counsel having consulted with United States Magistrate_____,

IT IS HEREBY ORDERED that the parties shall adhere to the following:

DISCOVERY

This case has been assigned to the Expedited___, Standard___, Complex___ track. Given this assignment the termination date for discovery is _____, and discovery shall not be reopened, except by order of the Court upon a showing of good cause. This deadline shall be construed to require that discovery be completed before the above date. Service of interrogatories or requests for production shall be considered timely only if the responses are due prior to the deadline. A notice to take deposition shall be considered timely only if the

deposition takes place prior to the deadline. The pendency of dispositive motions shall not stay discovery.

MOTIONS ON DISCOVERY

Motions relating to discovery (including but not limited to motions to compel and motions for protective order) shall be filed no later than _____. This deadline shall not be construed to extend the twenty-day limit in D.N.M.L.R.-CV 33.2, 24.1 and 36.1.

OTHER PRE-TRIAL CONFERENCES

Given the above schedule for discovery the following conferences are hereby scheduled before the assigned Magistrate and/or District Judge.

OTHER PRE-TRIAL MOTIONS

Pre-Trial motions, other than discovery motions, shall be filed on or before _____. Any pre-trial motions, other than discovery motions, filed after the above date, may be subject to summary denial in the discretion of the Court.

EXPERT WITNESSES

Plaintiff shall identify to all parties in writing any expert witness to be used by Plaintiff at trial no later than _____. All other parties shall identify in writing any expert witness to be used by such parties at trial no later than _____.

"Identity" of expert witnesses shall include the name of the expert, address, qualifications, area of expertise, and a brief summary of expert testimony.

OTHER MATTERS

By agreement of the parties the following are the issues remaining in the case:

Plaintiff - (Itemize causes of action)

Defendant- (Itemize causes of action)

Plaintiff withdraws the following causes of action:

Defendant withdraws the following defenses:

PRETRIAL ORDER

Counsel are directed to file a consolidated Pre-Trial Order as follows: Plaintiff to Defendants on or before _____; Defendants to the Court on or before _____. In jury cases, the Pre-Trial Order shall require jury instructions and requested voir dire to be delivered to the Court five (5) working days prior to the trial date.

In non-jury actions, requested findings of fact and conclusions of law shall be delivered to the Court no later than five (5) working days prior to trial date.

Counsel are directed that the Pre-Trial Order will provide that no witnesses except rebuttal witnesses whose testimony cannot be anticipated will be permitted to testify unless the name of the witness is furnished to the Court and opposing counsel no later than thirty (30) days prior to trial date. Any exceptions thereto must be upon Order of the Court for good cause shown.

If documents are attached as exhibits to motions, affidavits or briefs, those parts of the exhibits that counsel want to bring to the attention of the Court shall be highlighted in yellow on all copies which are filed or delivered to the Court or served on other counsel.

ESTIMATED TRIAL TIME AND DATE OF TRIAL

The parties estimate trial will require _____ days, including jury selection.

The parties have consented to trial by magistrate and the trial magistrate shall be United States Magistrate Judge _____.

SETTLEMENT

The possibility of settlement in this case is considered:

Poor ____ Fair ____ Good ____ (check one)

EXCEPTIONS

(Where counsel cannot agree to any recitation herein, exceptions shall be listed.)

APPROVED:
(Subject to exceptions noted above)

_____
For Plaintiff

_____
For Defendant

_____
Other Party

APPROVAL RECOMMENDED:

_____
JOE H. GALVAN
UNITED STATES MAGISTRATE JUDGE

APPROVED AND ADOPTED AS THE ORDER OF THE COURT:

_____
UNITED STATES DISTRICT JUDGE

TRIAL DATE SET FOR

_____