

#13

Box 116

**1995 Annual Assessment of the
Condition of the Court's Civil and Criminal Dockets**

**United States District Court
for the
District of New Mexico**



**Prepared in accordance with the
Civil Justice Reform Act of 1990**

**Honorable James A. Parker, Chairman
Jesse Casaus, Reporter**

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I. Introduction

The Civil Justice Reform Act (CJRA) Advisory Group for the District of New Mexico was established in February 1991. Although the District of New Mexico was not designated an early implementation district, the district's CJRA Advisory Group's recommendations were made in November 1992, and the court's CJRA Plan, "Civil Justice Expense and Delay Reduction Plan," was adopted January 1, 1993. The CJRA Plan, and the 1993 amendments to the Federal Rules of Civil Procedure together have altered the manner in which cases are disposed of in the District of New Mexico.

In accordance with *28 U.S.C. §475*, the Court is providing this annual assessment of the condition of the District's civil and criminal dockets. The Committees of the Advisory Group were consolidated in 1995, merging six groups into three: the Case Management Advisory Committee, the Litigant Activities Committee, and the Committee on Criminal Justice Issues. These three groups prepared 1995 status reports and made recommendations to reduce cost and delay in the district further. Reports are appended as Attachments A, B, and C.

II. Status of CJRA Plan

A. Case Management

There is a consensus that adherence to this District's Plan has resulted in the fairly expeditious and orderly disposition of civil cases. Therefore, the Case Management Advisory Committee recommended no significant amendments to the present Plan. The modifications submitted by the committee are designed to allow greater flexibility in implementing the Plan and to relax the perceived strictness with which the Plan is sometimes enforced.

B. Litigant Activities

Because of the Plan's recommendation for additional training of attorneys practicing in this district, a bar association for the district was formed in 1995. The initial CJRA Advisory Group formed the nucleus of the association. It is believed The Bar Association of the United States District Court for the District of New Mexico will improve communication between the bench and the bar and provide the avenue for envisioned training.

C. Criminal Justice

The substantial criminal caseload of this district continues to pose problems for the judges in both civil and criminal case management. To expedite criminal case resolutions, the committee examined methods to review and formulate more effective internal policies and procedures.

III. Judicial Officers

In 1995, vacant judgeship positions continued to exacerbate problems associated with the management of this district's judicial caseload. With the untimely death of Senior Judge Burciaga in March 1995, the remaining four active Article III judges' caseloads immediately increased by 30%. According to the Administrative Office of the United States Courts, New Mexico is currently ranked eighth in the nation in weighted case filings, and fourth in criminal felony filings per judgeship position. Although substantial, these rankings are actually low as the figures assumed five filled judgeship positions when, in fact, there were only four. Judge Black, the district's fifth active Article III judge, was not sworn in until January of 1996, fourteen months after the position became vacant. Because of New Mexico's criminal felony and weighted filings, the Judicial Conference has recommended two additional judgeship positions, one full-time and another temporary.

In addition, New Mexico is a unique district in that, due to the immense criminal workload, there are more designated magistrate judges than district judges. With the appointment of Magistrate Judge Puglisi in January 1996, this district now has seven magistrate judges--six permanent and one temporary.

All recognize the years it takes to approve and fill a recommended judgeship. New Mexico has averaged seven vacant judgeship months each year for the last five years. Therefore, New Mexico has come to rely on not only its three senior Judges, but also on a Court of Appeals judge, several visiting district judges, and the district's magistrate judges to adjudicate cases. In spite of the vacant judgeship months and the increasing workload, New Mexico continues to terminate more civil cases than are filed. The number and percentage of civil cases over three years old have decreased since 1990. Cases over three years old declined from 9.3% of the active caseload in 1990, to 5.2% in 1995.

IV. Evaluation of the Plan

A. Statistical Review

Isolating the impact of the Plan on the civil and criminal dockets of the court is difficult given the amendments to the federal rules, the increase of judicial officers, and the automation efforts of the district. New Mexico began automated civil docketing in 1991 and criminal docketing one year later. Much of the improvement and reduction in the backlog of cases may be due to these factors, as well as, to the implementation of the Plan.

Several statistics show the success of the court in reducing the backlog of cases and the time taken to dispose of cases. The number of civil case terminations increased from 1,256 in 1990 to 1,552 in 1995, an increase of

24%. Likewise, the median age of civil case terminations declined from 12 months in 1990 to 9 months in 1995. Data from the Administrative Office of the U.S. Courts reflect that civil cases dismissed or settled before, during, or after the pretrial conference increased from approximately 38% of the total case terminations in 1990 to 48% of total terminations in 1995. This occurred during a time when this district experienced a 32% growth in civil filings and a 48% increase in criminal defendant filings.

B. Views of Judges, Attorneys, and Court Personnel

In compiling this assessment, the CJRA Advisory Group personally interviewed all district court judges in the District of New Mexico, including the three senior status judges; Judge Paul J. Kelly, 10th Circuit Court of Appeals Judge; the magistrate judges; a selected group of experienced federal court litigators; and the attorney members of the initial CJRA Advisory Group. In addition, written questionnaires were submitted to 122 lawyers selected to represent the diversity of federal practitioners based on years' of experience, type of practice, geographic location, gender, ethnicity, and size of law firm. There was a 66% response by this group. The information obtained through the interviews, and through the review of the completed and returned questionnaires, serves as the basis for the report and recommendations.

As a general proposition, it appears that both the interviewees and respondents to the questionnaires overall are satisfied with the Plan as it exists. However, interviewees and respondents identified several areas in which, within the framework of the existing Plan, measures could be considered to improve the performance of the district. This led to the following recommendations.

V. Recommendations

A. INCREASE THE NUMBER OF ARTICLE III AND MAGISTRATE JUDGES.

Increasing caseloads, especially criminal cases, were routinely cited by the interviewees as the single largest problem in the district. The district's growing criminal caseload necessarily affects the court's ability to manage, process, and expeditiously dispose of civil cases. The Speedy Trial Act compels the court to give priority to the criminal docket. Moreover mandatory sentencing guidelines often reduce the likelihood of negotiated pleas and result in more trials. Increasing the number of authorized Article III and magistrate judge positions was recommended by lawyers and judges as a necessary solution to the growing caseload problem.

B. THE DISTRICT SHOULD PLAN FOR A SUFFICIENT NUMBER OF COURTROOMS AS ARTICLE III AND MAGISTRATE JUDGES ARE ADDED.

Due to the increases in judicial officers, both Article III and magistrate judges, and the increased use of visiting judges to help this district in resolving its increased civil and criminal workload, the availability of courtrooms has become an expanding complication. Fortunately, ground breaking for a new courthouse in Albuquerque is scheduled for 1996 with construction completion anticipated in 1998. Albuquerque now has four district judge size courtrooms; upon completion of the new courthouse, there will be ten. This district has also requested an expansion of the Las Cruces Divisional Office to include additional visiting judges' courtrooms. Unfortunately, the Administrative Office has deferred this request until 1999. Adding a second courtroom at the Santa Fe Divisional Office is under consideration.

C. APPLICATION OF CASE MANAGEMENT PROCEDURES SHOULD BE FLEXIBLE AND MORE INDIVIDUALIZED.

More emphasis should be placed on developing individual case management plans tailored to a particular case rather than trying to force a predetermined case management plan on all cases. Several respondents suggested that judges should avoid shoehorning cases into set categories such as complex or standard which might not fit a particular case. It was suggested magistrate judges should work more closely with the attorneys in fashioning scheduling and discovery plans which, while expeditious, better fit the particular case.

D. THE DISTRICT JUDGES SHOULD BE APPRISED OF THE BAR'S PERCEPTION OF DELAY IN RULING ON DISPOSITIVE MOTIONS.

Lawyers reported significant delay in obtaining rulings on dispositive motions. The federal practitioners' perception, however, is at odds with that of the judiciary on this issue. Most lawyers interviewed believed there were excessive delays in rulings on dispositive motions; judges, on the other hand, believed the majority of dispositive motions were being handled in a timely fashion and within the 60-day time limit contemplated by the Plan. Judicial interviewees concurred that during 1995, unusual delays were encountered in dealing with dispositive motions because of the untimely death of Judge Juan Burciaga and the prolonged delay in filling the position. In addition, data developed for the Group show disposition time for dispositive motions has improved dramatically from 1991, when the average disposition time was 160 days, to 1995, when the average time was 66 days. In 1995 the district judges, therefore, were very close to the 60-day goal contemplated by the Plan. The CJRA Advisory Group, however, recommends that the district's judges be apprised of the bar's perception of significant delay in the

handling of dispositive motions and urges judges to follow the time limits presently included in the Plan.

E. MAGISTRATE JUDGES SHOULD REVIEW DISCOVERY PLANS TO CURB DISCOVERY ABUSE.

Despite modifications in the Rules of Civil Procedure, discovery abuses continued to be a problem and contribute to delay and increased costs. Magistrate judges should carefully review attorneys' discovery plans and ensure that the proposed discovery is necessary and not being pursued for any improper purpose.

F. ADOPTION OF A LOCAL RULE PROVIDING FOR EXPEDITED RESOLUTION OF DISCOVERY DISPUTES BY THE USE OF TELEPHONIC HEARINGS, AND IN APPROPRIATE INSTANCES, WITHOUT WRITTEN BRIEFING.

Discovery disputes could be resolved more expeditiously and inexpensively by increased use of telephone conferencing without written briefing. With one exception, all district judges, magistrate judges, and practitioners interviewed supported this idea. All the district judges use telephone conferencing and all expressed a willingness to expand the use of telephone conferencing to include expedited resolution of discovery motions. The use of telephone conference calls for dispositive motions was not viewed as particularly beneficial or productive, except in unusual cases where extensive travel, inclement weather, road conditions, or other exceptional circumstances warrant telephonic hearings.

G. USE OF EARLY, FIRM TRIAL SETTINGS, TO THE EXTENT PRACTICABLE.

Some practitioners believed that while the judges imposed stringent case management deadlines and pushed the parties to complete discovery and motion practice in relatively short time frames, the judges delayed scheduling a trial. Judges are encouraged to give early, firm trial settings, which are viewed as important steps in expediting the disposition of cases.

H. TO MAXIMIZE EFFECTIVENESS, THE STATUS CONFERENCE WITH A DISTRICT JUDGE SHOULD NOT BE SCHEDULED TOO SOON AFTER THE RULE 16 CASE MANAGEMENT CONFERENCE.

Many federal practitioners noted that district judges conduct status conferences shortly after the parties meet with the magistrate judge for a Rule 16 case management conference. The district judges who conduct the status conferences viewed them as beneficial. The district judges felt they learned more

about the issues in the case and often were able to narrow issues further and reduce disputes between counsel. The judges reported these conferences often resulted in negotiated settlements. Lawyers, on the other hand, while recognizing the value of a face-to-face meeting with opposing counsel and the district judge, commented that often these meetings were redundant. The Group recommends that district judges continue to hold status conferences, but that the conferences not be conducted soon after the magistrate judge's Rule 16 case management conference.

I. USE MAGISTRATE JUDGES TO PRESIDE OVER TRIALS.

Several interviewees agreed that magistrate judges should be involved more in deciding remand and dispositive motions, and in trying cases. There also was some sentiment for increased use of magistrate judges as *backup judges* on the district judges' trial dockets. Some suggested that magistrate judges should be included in the rotation for assignment of civil cases on an *opt-out* basis. Under this scheme, the a magistrate judge would be identified as the trial judge, and the parties would be deemed to have consented to the magistrate judge trying the case unless a party chooses to *opt-out*.

J. MONITOR THE EFFECT ON MAGISTRATE JUDGE WORKLOADS OF INCREASES IN MAGISTRATE JUDGE CIVIL CASE ASSIGNMENTS THROUGH THE PROPOSED "OPT OUT" PROCEDURE.

Considering the already heavy workload borne by this district's magistrate judges, the Advisory Group urges careful monitoring of the impact of increased trial assignments on the workload of the magistrate judges.

K. MAGISTRATE JUDGES SHOULD EACH HAVE TWO LAW CLERKS.

Due to increased workloads being assigned to magistrate judges, lawyers and judges agreed that additional support staff would assist the court in case processing. Accordingly, it is recommended that an additional law clerk be assigned to each magistrate judge.

L. ACCEPTANCE OF BINDING PLEA BARGAINS AND STIPULATIONS.

It is recommended that in criminal cases all judges consider accepting *Federal Rule of Criminal Procedure 11(e)(1)(A) or (C)* binding plea agreements in appropriate cases within constitutional constraints. Judicial Officers are also urged to consider accepting binding stipulations relating to various provisions in

the Sentencing Guidelines in criminal cases such as adjustments for (A) acceptance of responsibility, (B) minimal or minor role, or (C) relevant conduct.

M. OPEN FILE POLICY.

~~The United States Attorney's Office should consider formulating a meaningful open file policy which is practical, useful and within the authorized limitations of that office.~~

N. IMPROVEMENT OF THE MANAGEMENT OF THE CRIMINAL CASELOAD IN LAS CRUCES.

Because 51% of the criminal caseload originates at the Las Cruces Divisional Office, the group recommends enforcement of the pretrial deadline for the acceptance of plea agreements; the referral of felony plea hearings to United States magistrate judges; and, better coordination of courtroom scheduling in Las Cruces among the district judges.

O. THE CHIEF JUDGE SHOULD ADDRESS THE MEMBERS OF THE BAR AT THE ANNUAL BAR CONVENTION.

The Group recommends that the Chief Judge, or a district judge selected by the Chief Judge, make a presentation at the Annual State Bar Convention. Many members of the Bar are not familiar with federal court procedures and are unaware of the many changes occurring within the federal judiciary and in federal practice. It would be useful for the Bar to hear from the federal judiciary about such things as judicial workload, facility construction plans, automation innovations, time and cost reduction plans, and attorney compliance problems. Such a presentation would enhance relations between the Bar and the federal judiciary, and would foster an understanding by the Bar of the district's increased workload and responsibilities.

APPENDIX A

Report of the Case Management Advisory Committee

REPORT OF THE
CASE MANAGEMENT ADVISORY COMMITTEE

I. INTRODUCTION

Practice in federal court in the District of New Mexico has changed dramatically over the past several years. Adoption of the Civil Justice Reform Act of 1990, the 1993 amendments to the Federal Rules of Civil Procedure, and the formulation of an Expense and Delay Reduction Plan all have combined to alter the manner in which cases are disposed of in federal court. In general, however, both the bench and bar consider that these alterations have been effective. In particular, there is a consensus of opinion that adherence to this District's Plan has resulted in the fairly expeditious and orderly disposition of civil cases, generally in a timely manner. For this reason -- although modifications in the way in which the Plan is followed would be beneficial -- the Advisory Group does not recommend any significant amendment to the provisions of the present Plan. The modifications discussed below are designed both to allow greater flexibility in implementing the Plan and to relax the perceived strictness with which the Plan sometimes is enforced. The Committee's recommendations follow this introduction. The final part of the Committee's Report contains four attachments which include data furnished by the Clerk's Office, and the Administrative Office of the U.S. Courts, and statistical and narrative summaries of the Attorney Survey responses.

In compiling this report, the Advisory Group on the Civil Justice Reform Act has interviewed all of the District Court Judges in the United States District Court for the District of New Mexico, including the three senior status judges. In addition, the Committee interviewed Judge Paul J. Kelly, of the 10th Circuit Court of Appeals, whose

chambers are in Santa Fe, New Mexico. Judge Kelly has been handling cases on the District Court's civil trial docket in Santa Fe. The interviewed each of the six Magistrate Judges, a selected group of Court litigators, and the attorney members of the first CJRA Advisor the Advisory Group has compiled and sent questionnaires to 122 lawyers selected to represent the diversity of Federal practitioners in terms of years of experience, type of practice, geographic location, gender, ethnicity and size of law firm. Eighty-one of these questionnaires (66%) were completed and returned by the lawyers. The information obtained through these interviews, and through the review of the completed and returned questionnaires, serves as the basis for this report. As a general proposition, it appears that both the interviewees and respondents to the questionnaire are, on the whole, satisfied with the Plan as it exists today. However, the interviewees and respondents did identify several areas in which, within the framework of the existing Plan, measures may be considered to improve the performance of the District.

The major factors identified as affecting cost and efficiency in the District are the size of the criminal docket, the failure to rule on a timely basis on dispositive motions, discovery abuses by attorneys, and the availability of courtrooms both in Santa Fe (for the Judges who sit there and for the Magistrate Judges who occasionally are prepared to hold court there), and in Albuquerque and Las Cruces for Judges and Magistrate Judges from one of the other cities within the District who need a courtroom for their proceedings.

Increasing caseloads, especially criminal cases, were routinely cited by the interviewees as one of the largest problems in the district. The district's growing criminal

caseload necessarily affects the court's ability to manage, process and expeditiously dispose of civil cases. A study of the district's per judge criminal filings for a six-year period, 1990-1995, shows that the district had more than twice the national average criminal caseload.¹ Attachment 1. The Speedy Trial Act compels the court to give priority to the criminal docket. Moreover, mandatory sentencing guidelines often reduce the likelihood of negotiated pleas and compel more trials. At present, nearly sixty percent of each Article III judge's bench time is used to hear criminal matters.

In addition to the growing criminal docket, civil case filings also are increasing. Between 1990 and 1995, the district experienced a thirty-two percent growth in civil filings.² Increasing the number of authorized Article III and Magistrate Judge positions was recommended by lawyers and judges as a necessary solution to the growing caseload problem.

Lawyers reported significant delay in obtaining rulings on dispositive motions and in waiting for trial dates. The federal practitioners' perception, however, is at odds with that of the judiciary on this issue. Virtually all lawyers interviewed believed there were excessive delays in obtaining rulings on dispositive motions; judges, on the other hand, believed that the majority of dispositive motions were being handled in a timely fashion and within the 60-day time limit contemplated by the Plan. Judicial interviewees concurred that, in 1995, unusual delays were encountered in dealing with dispositive

¹ Federal Court Management Statistics, June 1995 Edition, Administrative Office of the United States Courts; 1994-1995 Annual Report, United States District Court, District of New Mexico, graph 1, page 1.

² Federal Court Management Statistics, June 1995 Edition, Administrative Office of the United States Courts; 1994-1995 Annual Report, United States District Court, District of New Mexico, graph 2, page 2.

motions as a result of the untimely death of Judge Juan Burciaga and the prolonged delay in filling the position. As a result of the vacancy, cases previously assigned to Judge Burciaga were reassigned to the remaining judges who already had high caseloads, and delays in handling the newly assigned cases were common. Because the vacancy has now been filled, this situation hopefully will be eased. In addition, data developed for the Advisory Group indicates that disposition time for dispositive motions has improved dramatically from 1991 (average days for disposition 160) to 1995 (average days 66). The 1995 figures also indicate that the District Judges are very close to the 60-day dispositive time contemplated by the Plan. Attachment 1, p.9. All interviewees agreed that this 60-day time limit was reasonable. No modifications in the Plan were deemed necessary in regard to the motion practice. However, the Advisory Group recommends that the District's Judges be apprised of the bar's perception of significant delay in the handling of dispositive motions and urges judges to adhere to the time limits presently included in the Plan.

Discovery also was identified as a continuing problem in civil cases. Notwithstanding modifications in the rules of civil procedure, discovery abuses continue to be a problem and contribute to delay and increased costs. Magistrate Judges should carefully review attorneys' discovery plans and ensure that the proposed discovery is necessary and not being pursued for any improper purpose.

Discovery disputes could be resolved more expeditiously and inexpensively by increased use of telephone conferencing. With one singular exception, all Judges, Magistrate Judges, and practitioners interviewed supported this idea, along with quick

resolution of those disputes without briefs. While no specific telephone conferencing procedures for discovery disputes are included in the district's local rules, all of the District's Judges are telephone conferencing and all expressed a willingness to expand the use of telephone conferencing to handle routine matters, including discovery motions. The use of telephone conference calls for dispositive motions was not viewed as particularly beneficial or productive, except in unusual cases where extensive travel, inclement weather, road conditions, or unusual circumstances warranted telephonic hearings.

In addition, there is some controversy over the amount and degree of judicial management now exercised by Judges and Magistrate Judges under the plan. The comments on this issue range from one person who felt that the biggest problem in the District was incompetent attorneys and that the Judges need to take greater control over the progress of discovery and litigation in general, to individuals who indicated that they thought that the judges were "micro-managing" litigation in Federal Court, that the rules in Federal Court are now too technical and that the judges should focus on deciding cases rather than managing them. Some suggest that this criticism is at odds with the "hands-on" policy toward case management espoused by the Civil Justice Reform Act and the recent amendments to the Federal Rules of Civil Procedure. But, in any event, somewhere in the middle are those who feel that the rules are operating correctly, and that the court exerts the right amount of judicial control over cases.

Several respondents indicated that Judges should avoid "shoehorning" cases into set categories such as "complex" or "standard" which might generally be appropriate, but might not fit particular cases. Rather, it was suggested that Magistrate Judges should work with

the attorneys in fashioning schedules and discovery plans which, while expeditious, fit the particular case. Some attorneys commented that there was often some aspect of "hurry-up-and-wait" in the way that cases are managed. That is, that the court imposes very short deadlines for discovery and the filing of dispositive motions, but then months go by before a trial is set and before dispositive motions are decided. Others commented that under new Fed. R. Civ. P. 26, prompt identification of experts not only is often difficult, but is extremely costly early in the litigation.

Respondents and interviewees suggested solutions to some of these problems, and commented positively on a number of practices currently under way in the District. Rule 16 and settlement conferences were virtually unanimously considered to be effective and valuable tools for saving time and money in litigation. Some individuals commented that it sometimes seemed duplicative for the District Judges to schedule their case management or status conferences shortly after the Magistrate Judges convened the Rule 16 conferences. However, some of the District Judges indicated that it was valuable for them to get a sense of what was going on in the case, and that on some occasions, they actually settled cases during the case management or status conferences. However, the value of a face-to-face meeting with the District Court is enhanced when an appropriate interval has elapsed between the parties' last conference with the Magistrate Judge, and the status conference with the District Judge.

Several interviewees agreed that Magistrate Judges should be involved more in deciding dispositive motions, remand motions, and in trying cases. There also was some sentiment for increased use of Magistrate Judges as "backup judges" on the District Judges'

trial dockets. Some suggested that Magistrate Judges should be included in the rotation for assignment of civil cases on an "opt-out" rather than a "consent" basis. Under this scheme, the Magistrate Judge would be identified as the trial judge, and one of the parties would have to "opt out" of using the Magistrate Judge in favor of a District Judge.

At the same time, however, significant concern was expressed regarding whether the Magistrate Judges have the time to handle any significant increase in their case duties, including dispositive motions, remand motions or trials. There was unanimity that the Magistrate Judges in New Mexico are uniquely qualified to handle these types of matters, but a strong concern was stated that they already are fully occupied with the tasks they presently perform.

The Advisory Group understands that the District Court Judges have decided to establish a plan under which every seventh case will be randomly assigned to one of the six Magistrate Judges. Under this arrangement each of the six Magistrate Judges will potentially have one-sixth (1/6) of the civil caseload of a District Court Judge. It is anticipated that the Chief Judge soon will issue an administrative Order adopting this plan. Under this proposed plan, parties would have to "opt out" of the assignment of the Magistrate Judge; otherwise the parties will be expected to execute a written consent to transfer the case to the Magistrate Judge under 28 USC §636.

As noted above, there was support for this idea among those interviewed. However, in light of the already heavy work load borne by the Magistrate Judges, the Advisory Group urges careful monitoring of the impact of increased trial assignments on the work load of the Magistrate Judges. If some or all of the Magistrates become overloaded, the Court may

wish to consider expanded use of practitioners as mediators. The state district courts in Santa Fe, Bernalillo and Dona Ana counties have had great success with the use of practitioners as mediators in their settlement weeks and throughout the year. Consequently, there is a sizeable cadre of experienced and successful mediators among the bar throughout the state. Moreover, the Attorney Survey conducted by the Advisory Group shows substantial support for the use of practitioners as mediators in appropriate circumstances. Attachment 3, p.4.

Several of the interviewees suggested that there should be more systematic use of visiting judges; others were strongly opposed to this option.

The Committee notes the significant contribution made to the efficient administration of justice in the District of New Mexico by the three Senior Status Judges, and by Judge Kelly of the 10th Circuit Court of Appeals, whose chambers are in Santa Fe. All three of the Senior Status Judges handle substantial civil case loads, and two of them handle criminal cases as well. Judge Kelly has been taking, and continues to take many of the older cases on the civil trial docket in Santa Fe. His voluntary assumption of this extra workload has been of great assistance to the District in Santa Fe, and overall.

In January, 1996 Judge Black was sworn in as the successor to Judge Burciaga, whose position had been vacant for some time. It is generally the view of those interviewed, and of the Committee, that the Court's efficiency will improve as a result. However, with the continued increase in the Court's criminal docket, continuous Congressional expansion of, and wider use of federal question jurisdiction, and the substantial level of dependence on Senior Status Judges and Judge Kelly, there also was

a good deal of concern expressed about the long-term prospects for the civil docket in the district of New Mexico.

Finally, with respect to the increased workloads of the Magistrate Judges, including those new tasks discussed above, as well as social security appeals and bankruptcy appeals, the Committee and interviewees agree that additional staff would assist the Magistrates.

The Magistrate Judge workload also might possibly be eased in the area of military justice. Currently, the Magistrate Judges handle some cases involving United States Army military personnel at White Sands Missile Range. These cases are primarily traffic offenses under the Central Violations Bureau. These matters are handled in Las Cruces, and require two to four days per month of the Magistrate's time. Additionally, the Las Cruces Deputy Clerk staff spends from seven to ten days per month in preparing these matters, adjusting calendars, completing paperwork, and accepting fine payments.

Unlike the United States Army, the United States Air Force (Canon Air Force Base, Holoman Air Force Base and Kirtland Air Force Base) handles these matters internally through the Air Force military authorities under Article 15, Summary Courts Martial and General Courts Martial provisions of the Uniform Code of Military Justice. It is recommended that the United States Army Judge Advocate officials be contacted by the District Court to suggest that the Army officials accept the same responsibility for trial of these matters in the same manner as handled by the United States Air Force. The authority for the United States Army to undertake these matters rests with Article 14 of the Uniform Code of Military Justice. If implemented, significant Magistrate Court time would be available for other matters, such as civil trials.

Finally, the Committee recommends that the Chief Judge (or a District Judge selected by the Chief Judge) make a presentation at the Annual State Bar Convention. Many of the rank and file members of the Bar are not familiar with Federal Court procedure, and are not familiar with many of the changes which are occurring within the Federal Judiciary or the changes in the federal practice. It would be useful for the Bar to hear from the Federal Judiciary about such things as judicial workload, facility construction plans, automation innovations, time and cost reduction plans and compliance problems by the Bar. Such a presentation would also enhance relations between the Bar and the Federal Judiciary, and foster an understanding by the Bar of the Federal Judiciary's increased workload and responsibilities.

II. COMMITTEE RECOMMENDATIONS

These recommendations are based on the discussion set forth in .

- INCREASE THE NUMBER OF ARTICLE III AND MAGISTRATE JUDGES.
- THE DISTRICT SHOULD MONITOR AND PLAN FOR THE NUMBER OF COURTROOMS AS ADDITIONAL ARTICLE III AND MAGISTRATE JUDGES ARE ADDED
- CASE MANAGEMENT PROCEDURES SHOULD BE FLEXIBLE AND MORE INDIVIDUALIZED.
- THE DISTRICT JUDGES SHOULD BE APPRISED OF THE BAR'S PERCEPTION OF DELAY IN RULING ON DISPOSITIVE MOTIONS.
- MAGISTRATE JUDGES SHOULD REVIEW DISCOVERY PLANS TO CURB DISCOVERY ABUSE.
- ADOPTION OF A LOCAL RULE PROVIDING FOR EXPEDITED RESOLUTION OF DISCOVERY DISPUTES BY THE USE OF TELEPHONIC HEARINGS, AND IN APPROPRIATE INSTANCES, WITHOUT BRIEFS. SEVERAL DISTRICT COURTS AROUND THE COUNTRY HAVE ADOPTED SUCH RULES, INCLUDING THE DISTRICT OF HAWAII.
- USE OF EARLY, FIRM TRIAL SETTINGS, TO THE EXTENT PRACTICABLE.
- TO MAXIMIZE EFFECTIVENESS, THE STATUS CONFERENCE WITH THE DISTRICT JUDGES SHOULD NOT BE SCHEDULED TOO CLOSE IN TIME TO THE RULE 16 CASE MANAGEMENT CONFERENCE.
- MAGISTRATE JUDGES SHOULD EACH HAVE TWO LAW CLERKS.
- THE MILITARY BASES SHOULD BE ENCOURAGED TO HANDLE THEIR PETTY AND MISDEMEANOR CHARGES IN THE MILITARY JUDICIAL SYSTEM.
- USE MAGISTRATE JUDGES TO PRESIDE OVER TRIALS.
- MONITOR THE EFFECT ON MAGISTRATE JUDGE WORKLOADS OF INCREASES IN MAGISTRATE JUDGE CIVIL CASE ASSIGNMENTS THROUGH THE PROPOSED "OPT OUT" PROCEDURE.

- **THE CHIEF JUDGE SHOULD ADDRESS THE MEMBERS OF THE BAR AT THE ANNUAL BAR CONVENTION.**

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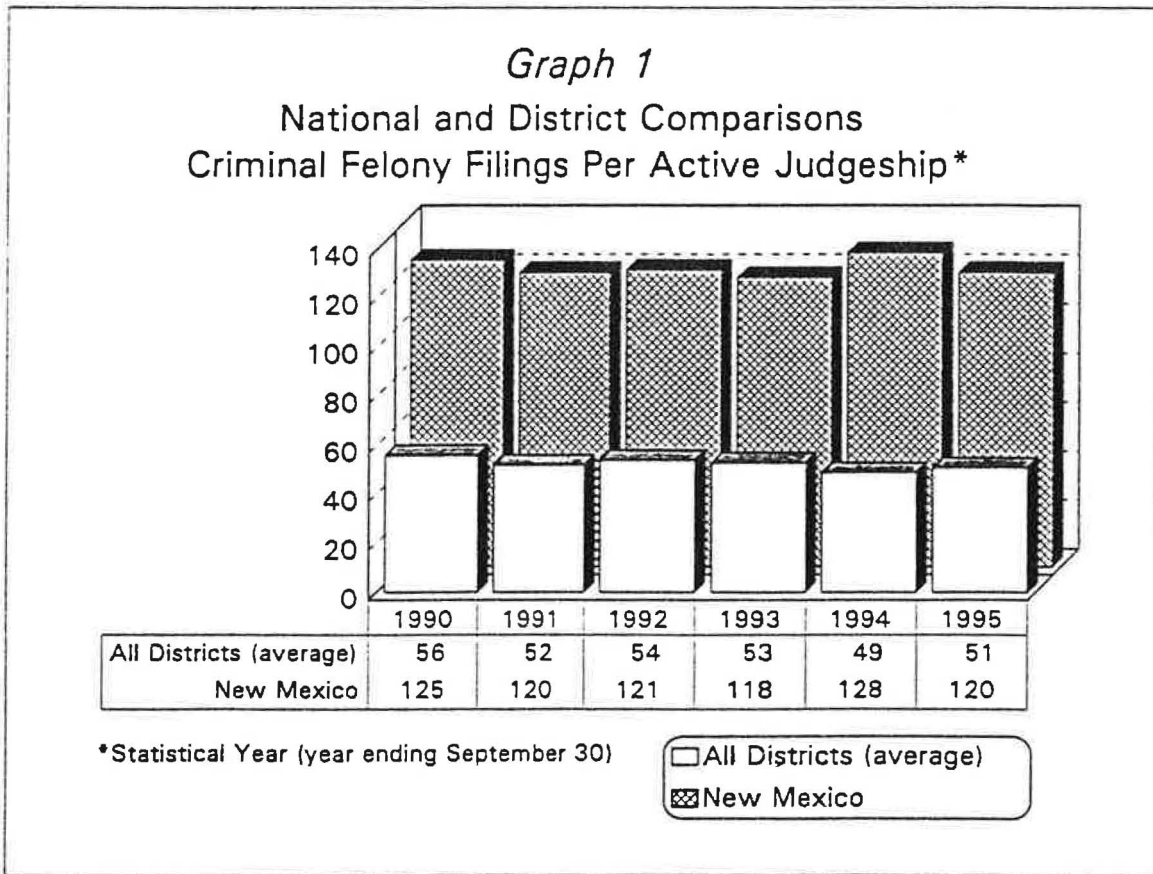
ATTACHMENT 1

Statistical and narrative information from data furnished by the Clerk's Office, United States District Court, District of New Mexico

OVERALL JUDICIAL WORKLOAD

During the past fifteen years, the District of New Mexico has experienced a rapid growth in caseload, particularly with the criminal workload. In 1980, criminal cases comprised 15% of the Court's cases with its then three judgeships. During 1994 and 1995, criminal filings averaged 28% of all case filings, however, in reality, the average was 41% when one considers the number of individual defendants rather than total cases. The Administrative Office of the United States Courts consider each criminal defendant as an individual case filing.

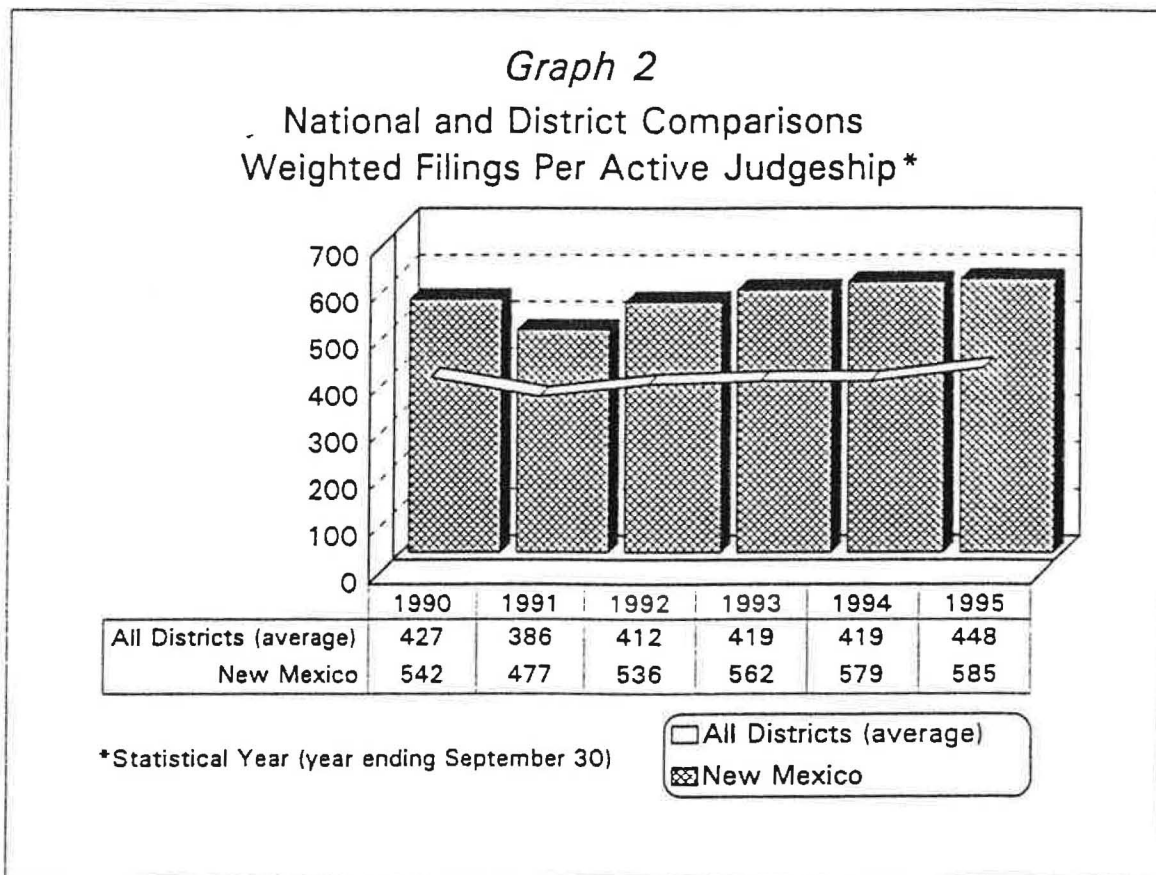
Graph I below presents a comparison of New Mexico's criminal filings per active judgeship in relation to the national average for the past six years. As can be seen, New Mexico criminal filings per judgeship have been more than double the national average for the years reflected in the graph.



There are other factors which impact significantly on New Mexico's criminal caseload. Felony drug cases have increased from 37% of the total criminal case filings in 1981 to an average of 53% of the total criminal filings in recent years. Furthermore, over half of the district judge bench time now involves hearing criminal matters. An added factor is that over half of the criminal case filings are in Las Cruces

resulting in all of the active judges traveling over 450 miles to handle such criminal matters.

Complexity of cases is another factor which relates to the workload faced by a district judge. The extra time and effort of complex cases are measured by the Administrative Office of the United States Courts by assigning specific weights to cases according to their complexity. New Mexico is currently ranked 8th in the Nation with 585 weighted filings per active judgeship. New Mexico's average is well above the national average of 448 as per Graph II below. The 585 average for New Mexico increases to an actual average of 731 as New Mexico had an active judgeship vacancy for the entire statistical year of 1995.



In spite of the increasing workload, New Mexico continues to terminate more cases than are filed. The number and percent of cases over 3 years old has decreased since 1990. Cases over 3 years old declined from 9.3% of the active caseload in 1990 to 5.2% in 1995. Likewise, the median age of civil case terminations declined from 12 months in 1990 to 9 months in 1995. (See Table I, next page)

Table 1
Ages of Civil Cases

Year Ending 9/30	Median Age of Terminated Cases	# of Cases Pending Over 3 Yr	% of Cases Pending Over 3 Yr
1990	12 months	165	9.3%
1991	13 months	163	8.7%
1992	12 months	172	9.8%
1993	9 months	129	8.1%
1994	9 months	98	6.2%
1995	9 months	90	5.2%

TOTAL TRIALS

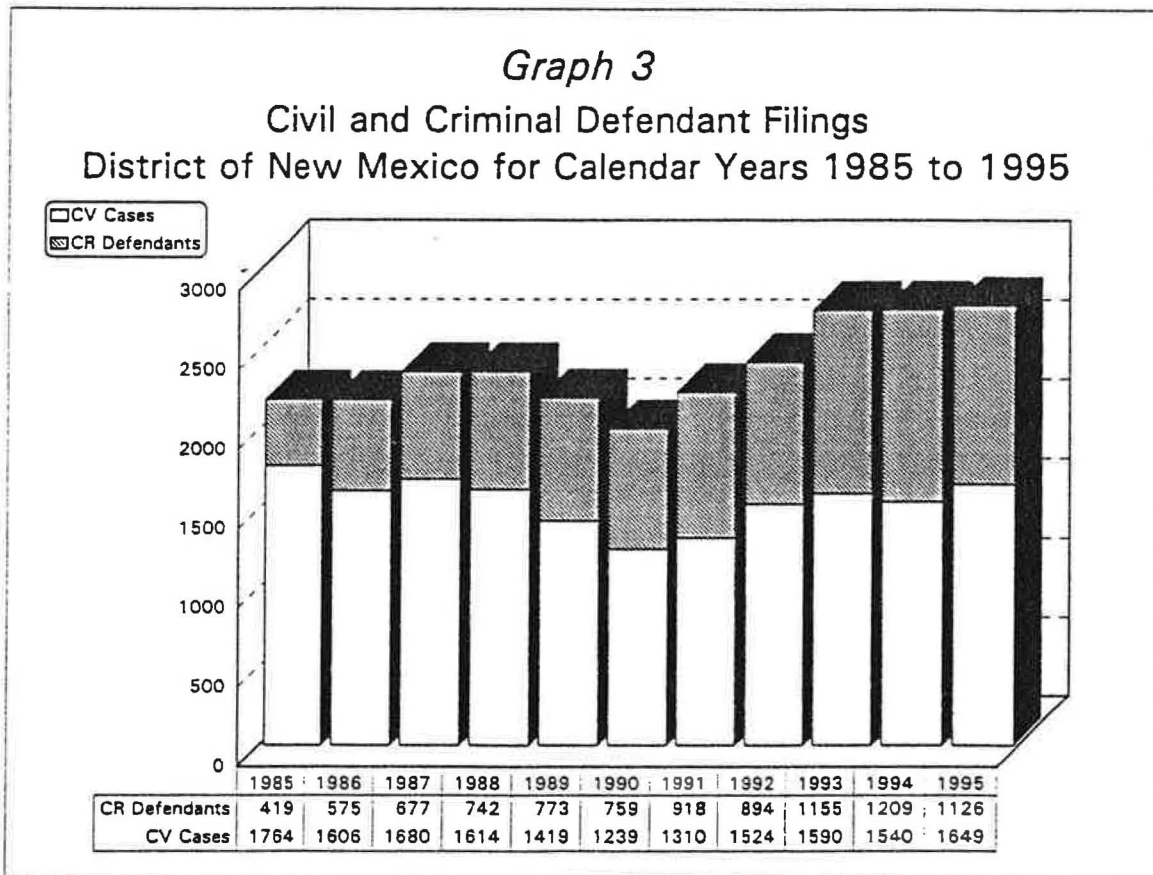
As reflected in Table 2 below, the percentage of cases which go to trial has been diminishing since 1990. With 25% of all trials being civil and 75% criminal, the data reflects that in 1990, 17% of all cases went to trial. In 1995, the number of cases tried was reduced to 10%.

Table 2
Total Trials Completed and Terminations
Statistical Years 1990 through 1995

Year Ending 9/30	1990	1991	1992	1993	1994	1995
Terminations	1,676	2,205	2,080	2,370	2,060	2,000
Trials Completed	292	310	330	275	195	190
% of terms going to trial	17%	14%	16%	12%	10%	10%

CRIMINAL FILINGS

Graph 3 vividly reflects the increasing number of criminal defendant filings each year from 1985 through 1995. In 1985, there were 419 criminal defendants with 1125 for 1995, increase of almost 170%.

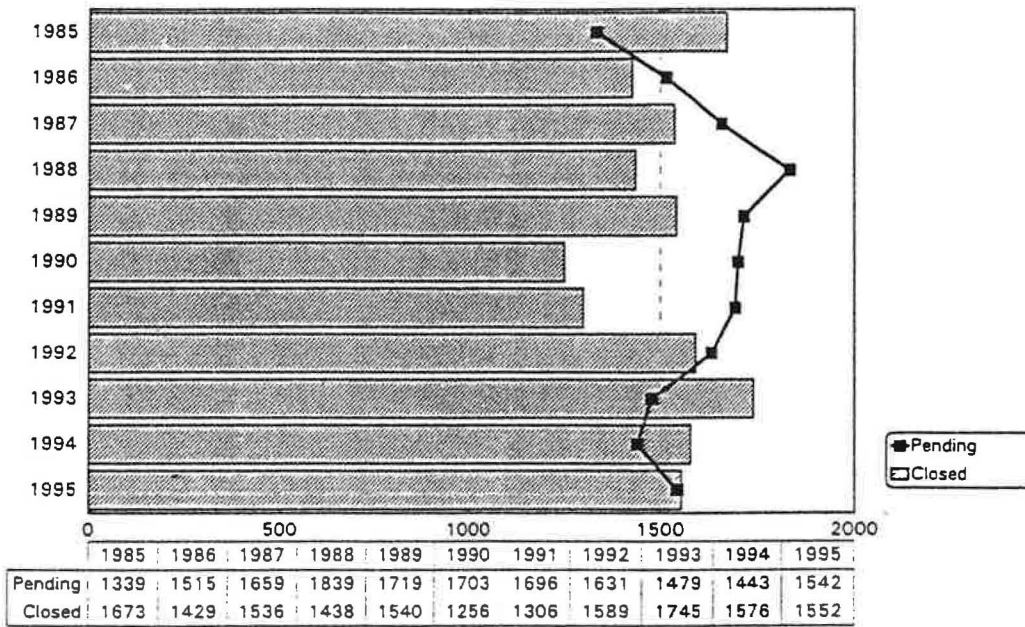


CIVIL CASES

The number of civil case terminations as shown in Graph 4 on the following page, increased from 1256 in 1990 to 1552 in 1995, an increase of 24%. Statistics from the Administrative Office of the U. S. Courts reflect that civil cases dismissed or settled before, during or after the pretrial conference increased from approximately 38% of the total case terminations in 1990 to 48% of total terminations in 1995.

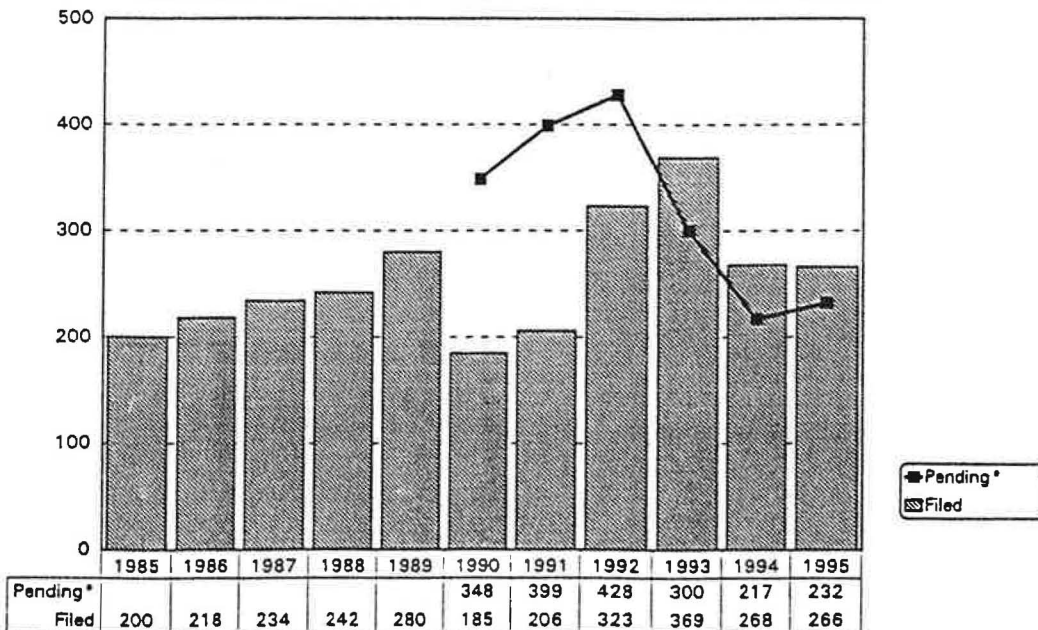
Graph 4

Pending and Closed Civil Cases
District of New Mexico for Calendar Years 1985 to 1995



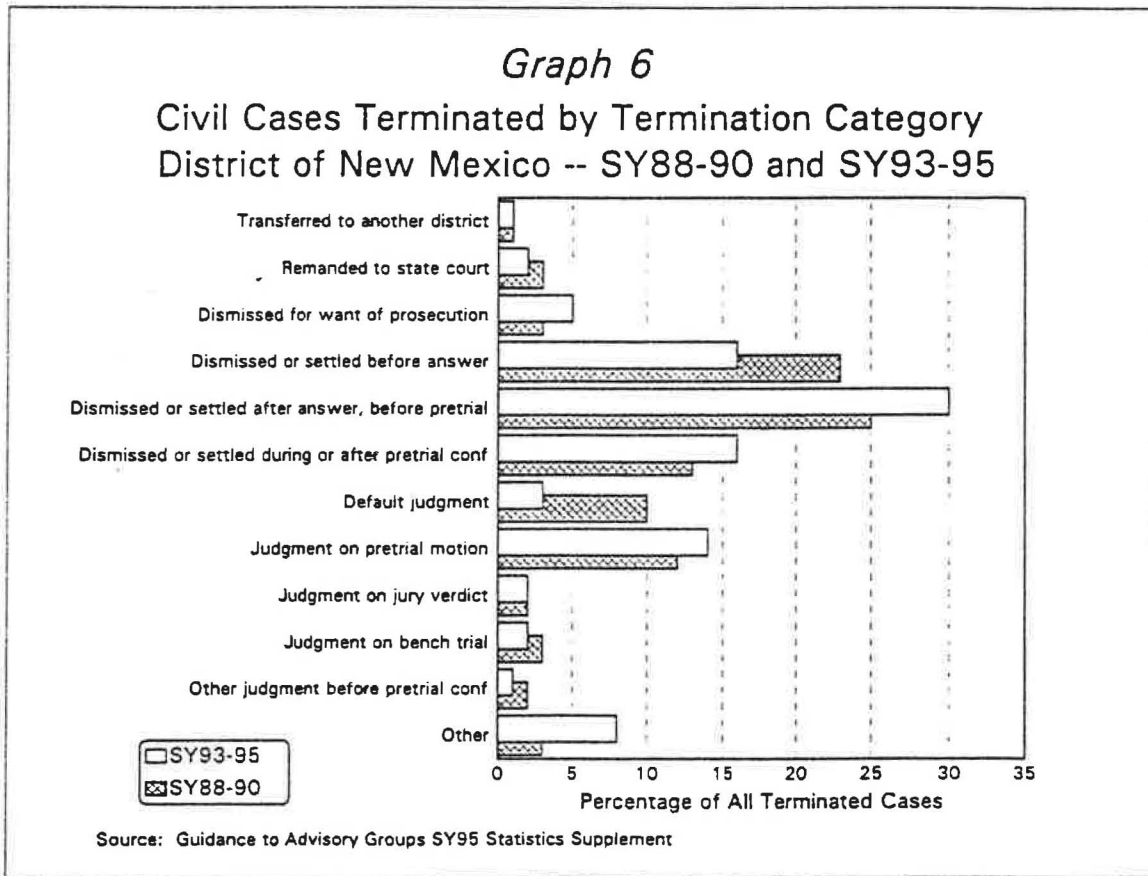
Graph 5

Prisoner Petitions Filed and Pending
District of New Mexico -- SY 1985 to 1995



* Pending data not available for Statistical Years 1985 through 1989

Graph 5 reflects that the number of Prisoner Petitions filed have increased from 185 in 1990 to 266 in 1995, an increase of 44%. However, the increased terminations of prisoner petitions is reflected in the decreased number of pending petitions. In 1990, there were 348 pending petitions which were reduced to 232 in 1995.



Graph 6 reflects there have some variations in the termination categories between Statistical Years 88-90 and SY 93-95. Some obvious conclusions are:

1. Less dismissals or settlement before answer in SY 93-95.
2. More dismissals or settlement after answer before and after pretrial conference in SY 93-95.
3. Less default judgments in SY 93-95.
4. More judgment on pretrial motion in SY 93-95.

Table 3
Review and Trend Forecast of Civil Case Filings
SY 1992 to 2002

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Avg Annual % Change
Contract	188	180	179	170	161	152	144	136	129	122	115	-5.44%
Civil Rights	236	283	409	374	417	465	518	578	644	718	800	11.48%
Prisoner	237	347	207	228	240	252	265	278	292	307	323	5.10%
Personal Injury	221	291	249	168	167	165	164	163	162	160	159	-0.78%
Other	489	510	668	506	494	481	469	458	447	436	425	-2.47%
Total Civil	1371	1611	1712	1446	1439	1433	1427	1420	1414	1407	1401	-0.45%

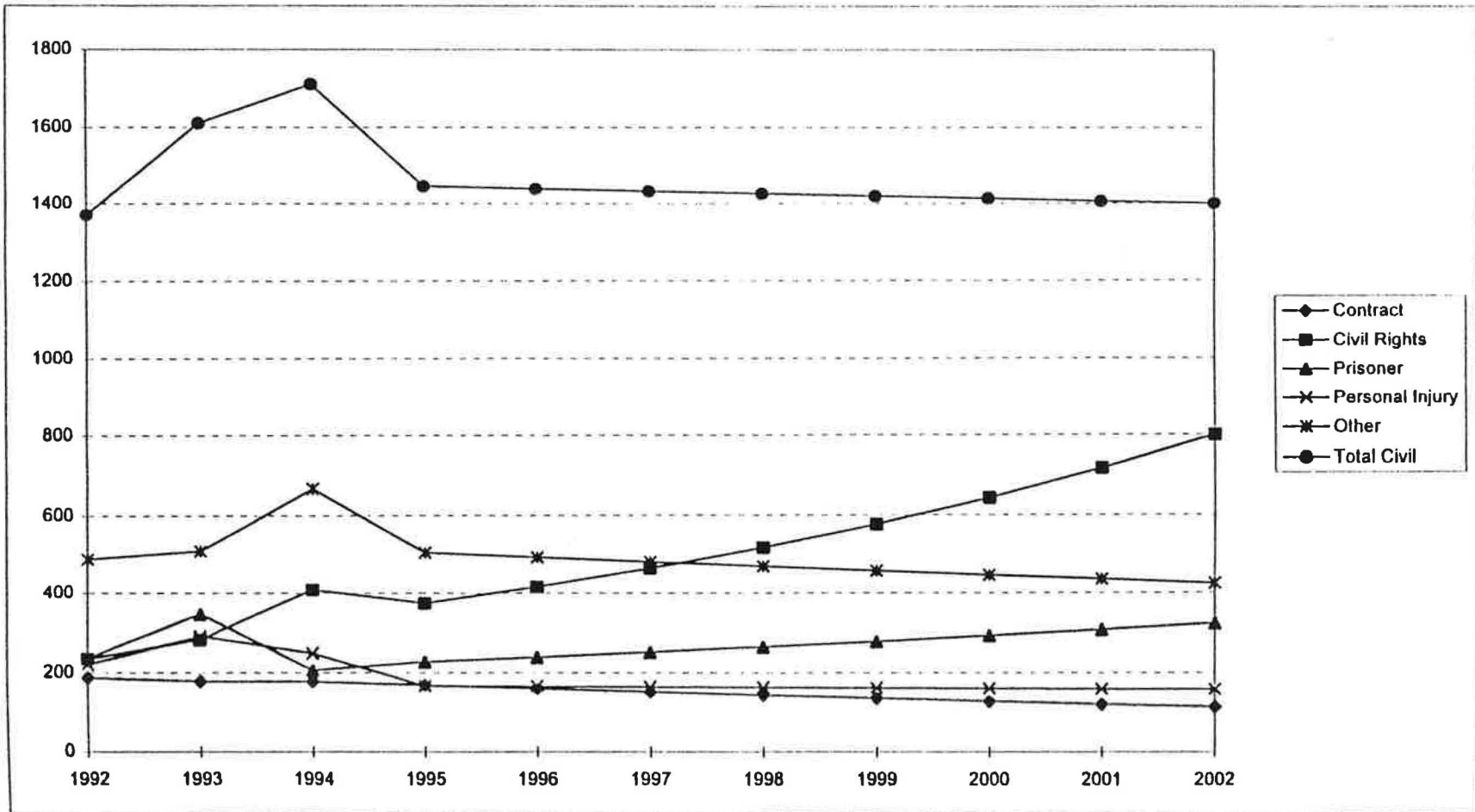
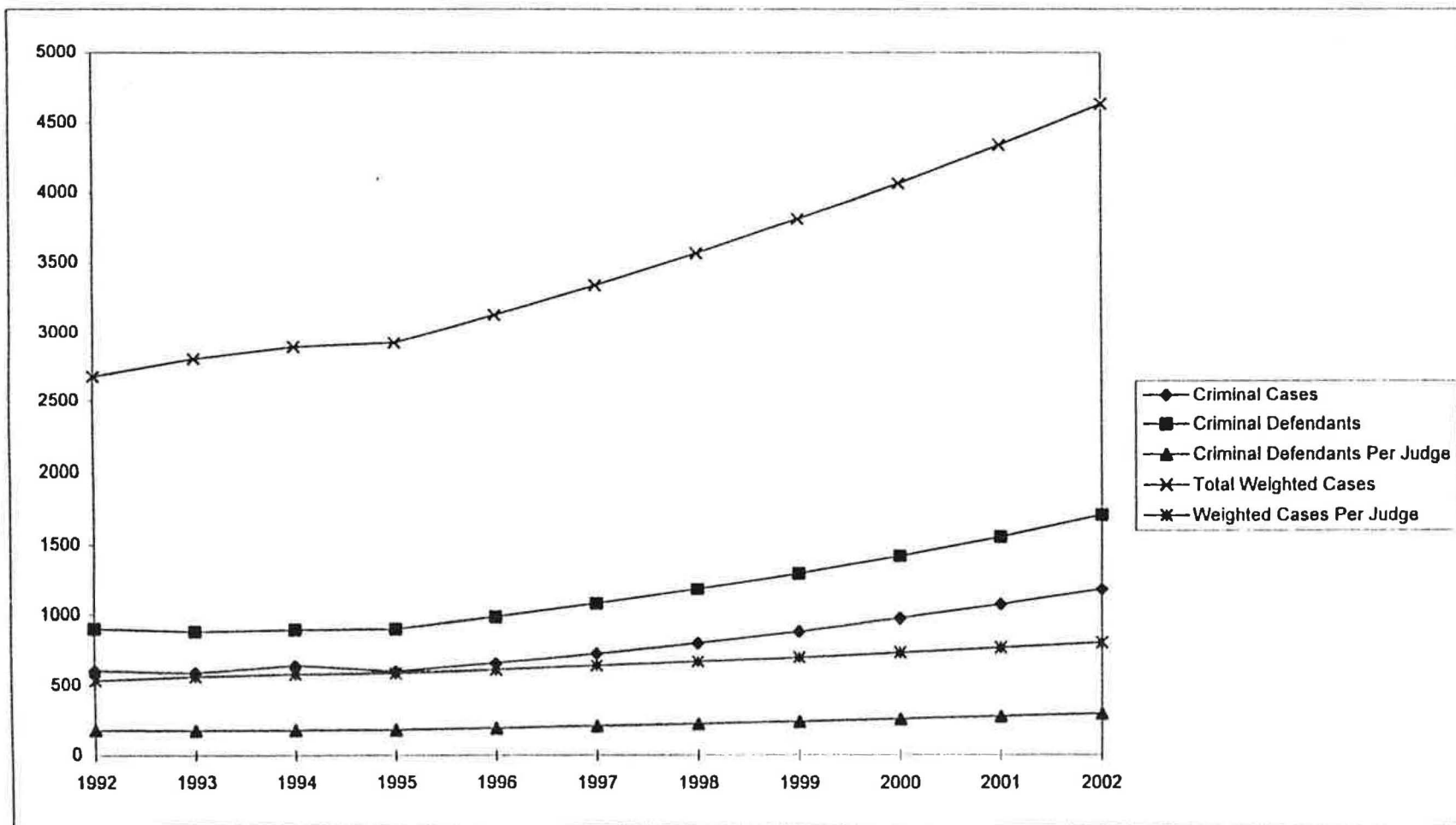


Table 4
Review and Trend Forecast of Criminal and Weighted Case Filings
SY 1992 to 2002

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Avg Annual % Change
Criminal Cases	605	590	640	600	660	727	800	880	969	1066	1173	10.06%
Criminal Defendants	908	885	896	900	985	1078	1180	1292	1414	1547	1694	9.45%
Criminal Defendants Per Judge	182	177	179	180	193	206	220	236	252	270	289	6.97%
Total Weighted Cases	2680	2810	2895	2925	3124	3336	3563	3805	4064	4340	4635	6.80%
Weighted Cases Per Judge	536	562	579	585	612	639	668	699	731	764	799	4.55%



Tables 3 and 4 represent a trend forecast of civil, criminal, and weighted case filings from Statistical Year 1992 to Statistical Year 2002. Total weighted cases are forecast at an annual percentage change of 6.80%. Civil cases reflect a decrease of .45% annual change while criminal cases are reflected at an annual percentage increase of 10.06%. A significant increase is the annual percentage change of 11.48% for civil rights cases. It is pointed out that the weighted case filings per active judgeship in New Mexico is forecast to be 799. Inasmuch as the Judicial Conference of the United States has established a weighted caseload average of 500 per active judgeship, the forecast statistic can be interpreted to mean that by Statistical Year 2002, New Mexico should be entitled to a total of 9 Article III Judges.

MOTION FILINGS

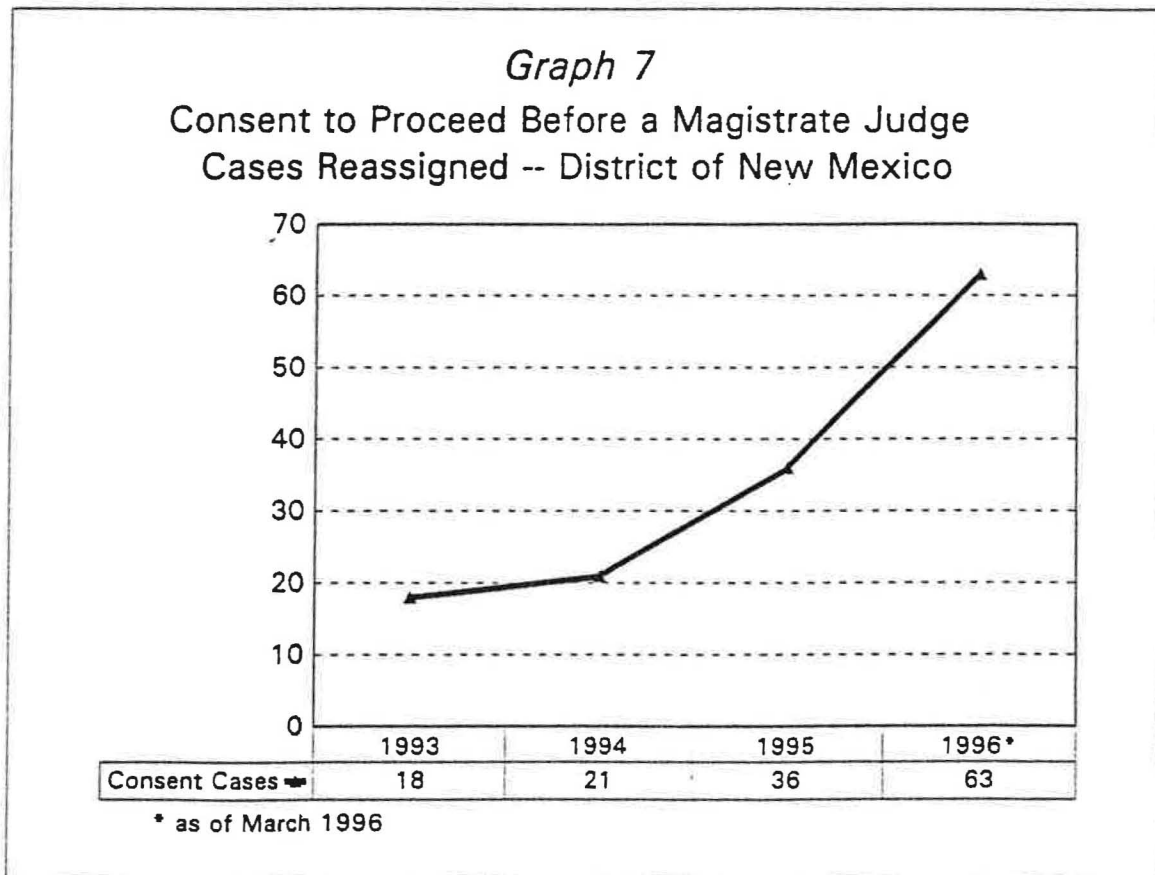
As can be seen from Table 4, the total average amount of days to rule on dispositive motions dropped from 160 days in 1991 to 66 days in 1995. However, the total number of dispositive motions filed rose from 1,593 motions in 1991 to 2,497. This is an indication that the district judges are ruling on more dispositive motions in considerably less time. Also, the total number of motions filed in 1991 was 8,868; in 1995, the number dropped to 7,820. Therefore, the overall number of motions filed has declined, but dispositive motions filings have increased.

Table 4
Motions Filed in the District of New Mexico
1991 and 1995

	1991	1995
Total number dispositive motions filed without stays	1,529	1,797
Average days to rule on dispositive motions	160	66
Median days to rule on dispositive motions	73	38
Total number of dispositive motions filed	1,593	2,497
Dispositive motions not yet ruled on, pending over 6 months		140
Dispositive motions not yet ruled on, pending under 6 months		349
Total motions filed	8,868	7,820
Percent filed dispositive	17.96%	31.93%

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE FILINGS

Graph 7 below clearly illustrates that attorneys filing cases in the District of New Mexico are electing to have their cases adjudicated by Magistrate Judges. In 1993 there were 18 such cases and to date (March 1996) this number has increased to 63, a growth of 250%.



ATTACHMENT 2

Statistical summary of attorney survey responses

Management of Litigation

Total Completed Questionnaires Received 81 122 mailed 66% return rate

"Case management" refers to litigation oversight and supervision by a judge or magistrate judge. This management includes scheduling orders, pretrial conferences, case monitoring of motions practice or other forms of rapid progress to trial

1. How would you characterize the level of civil case management in this district?

	Number	%of Ans	%of Total
a. Intensive	11	14%	14%
b. High	45	58%	56%
c. Moderate	18	23%	22%
d. Low	1	1%	1%
e. Minimal		0%	0%
f. None		0%	0%
g. Not sure	3	4%	4%
Total	78		96%

2. Do you believe that the level of civil case management in this district is:

	Number	%of Ans	%of Total
a. Generally appropriate	61	78%	75%
b. Too intensive	12	15%	15%
c. Not intensive enough	5	6%	6%
Total	78		96%

Management of Litigation

3. Listed below are several case management actions. For each listed action, circle one number to indicate whether or not the federal judges in this district generally take such action in civil cases.

	Taken	% of Ans	% of Total	Not Taken	% of Ans	% of Total	N/A	% of Ans	% of Total	Not Sure	% of Ans	% of Total	Total Ans
a. Hold pretrial activities to a firm schedule	70	91%	86%	7	9%	9%	0	0%	0%	0	0%	0%	77
b. Set and enforce limits on allowable discovery	62	83%	77%	12	16%	15%	0	0%	0%	1	1%	1%	75
c. Narrow issues through conferences or other methods	43	57%	53%	29	39%	36%	0	0%	0%	3	4%	4%	75
d. Rule promptly on pretrial motions	23	29%	28%	50	64%	62%	0	0%	0%	5	6%	6%	78
e. Allow sufficient time for appeals from rulings of magistrates	32	41%	40%	6	8%	7%	8	10%	10%	32	41%	40%	78
f. Refer cases to alternative dispute resolution, such as mediation or arbitration	52	66%	64%	15	19%	19%	2	3%	2%	10	13%	12%	79
g. Set an early trial date	36	49%	44%	32	43%	40%	0	0%	0%	6	8%	7%	74
h. Hold parties to initial trial date	38	50%	47%	20	26%	25%	2	3%	2%	16	21%	20%	76
i. Conduct or facilitate settlement discussions	67	87%	83%	8	10%	10%	0	0%	0%	2	3%	2%	77
j. Exert firm control over trial	70	91%	86%	1	1%	1%	1	1%	1%	5	6%	6%	77

4. Are there case management techniques you believe the federal judges in this district should use in civil cases that they are not now using?

Management of Litigation

a.	Yes	40	59%	49%
b.	No	28	41%	35%
	Total	68		84%

5. Are there case management techniques that the federal judges in this district are now using in civil cases that you believe they should not use?

a.	Yes	18	26%	22%
b.	No	51	74%	63%
	Total	69		85%

6. With regard to "meet and confer" conferences, I find these:

a.	Helpful in all cases	18	23%	22%
b.	Helpful in a portion of the	48	61%	59%
c.	Ineffective	13	16%	16%
	Total	79		98%

7. Have you considered use of a Federal Magistrate as a trial judge?

a.	Yes	64	81%	79%
b.	No	15	19%	19%
	Total	79		98%

8. In some courts, cases are referred to lawyers for pretrial settlement evaluation and conferences or for initial factual determinations. The lawyers utilized in these programs have been specially trained and are experienced in the subject area of the cases that are referred to them

a. If such referrals were an option in the District of New Mexico, would you seriously consider requesting that a case be

Management of Litigation

referred to a lawyer who was not a judge nor magistrate for settlement evaluation and discussions with counsel?

Yes, in all cases	5	6%	6%
Yes, in appropriate cases	51	65%	63%
No	19	24%	23%
I am not sure	3	4%	4%
Total	78		96%

b. If such referrals were an option in the District of New Mexico, would you seriously consider requesting that a case be referred to a lawyer who was not a judge for the purpose of making preliminary factual findings which would be appealable to the judge?

Yes, in all cases	0	0%	0%
Yes, in appropriate cases	31	39%	38%
No	37	46%	46%
I am not sure	12	15%	15%
Total	80		99%

Timeliness of Disposition

Total Completed Questionnaires

81

9. Please consider the time that generally elapses from filing of the complaint to disposition in this district compared to what it might be under ideal circumstances

		Number	% of Ans	% of Total
a.	Generally reasonable	45	57%	56%
b.	Generally too long	29	37%	36%
c.	Generally too short	2	3%	2%
d.	I cannot say	3	4%	4%
	Total	79		98%

10. If you believe the time from filing to disposition is generally too long in this district (you circled answer "b" to question 9, please indicate the reason(s) for the delay by circling each of the following reasons that apply

a.	Excessive case management by the court	3	10%
b.	Inadequate case management by the court	3	10%
c.	The court's failure to rule promptly on motions	23	79%
d.	Actions by the court, other than failure to rule promptly on motions	1	3%
e.	Dilatory actions by counsel	10	34%
f.	Dilatory actions by the parties	20	69%
g.	Backlog of other cases on the court's docket	2	7%

Timeliness of Disposition

11. Please consider the time that discovery generally takes in this district compared to the time that it might take under ideal circumstances.

The time taken by discovery is --

	Number	% of Ans	% of Total
a. Generally reasonable	52	67%	64%
b. Generally too long	4	5%	5%
c. Generally too short	19	24%	23%
d. I cannot say	3	4%	4%
Total	78		96%

12. If you believe that discovery takes too long in this district (you circled answer "b" to question 11, please indicate the reason(s) for the delay by circling each of the following reasons that apply

I undertake too much discovery	1	25%
Opposing counsel undertake too much discovery	5	125%
The discovery that I undertake is not as efficient as it should be	2	50%
The discovery undertaken by opposing counsel is not as efficient as it should be	2	50%
The court does not set as early discovery cut-off dates as it should	1	25%
The court does not require adherence to the discovery cut-off dates that it initially sets	0	0%
The court does not limit the scope of discovery to the extent that it should	4	100%

Costs of Litigation

Total Completed Questionnaires Received

81

14. Do you believe that the total litigation fees and costs (including but not limited to attorneys' fees to litigate a case in this district are:

		Number	%of Ans	%of Total
a.	Much too high	18	23%	22%
b.	Slightly too hig	27	34%	33%
c.	About right	35	44%	43%
d.	Slightly too low	0	0%	0%
e.	Much too low	0	0%	0%
	Total	80		99%

15. If you believe the total litigation costs in this district are too high (you circled answers 14(a) or 14(b), please circle each of the following reasons for the excessive costs

a.	Excessive case management by the court	6	13%
b.	Inadequate case management by the court	2	4%
c.	The court's failure to rule promptly on motions	22	49%
d.	Actions by the court, other than failure to rule promptly on motions	5	11%
e.	Dilatory actions by counsel	23	51%
f.	Dilatory actions by the parties	11	24%
g.	Backlog of other cases on the court's docket	17	38%
h.	Unnecessary discovery	19	42%
i.	Inefficient discovery	21	47%
j.	Excessive costs for experts	24	53%
k.	Other	4	9%

Alternative Dispute Resolution

Total Completed Questionnaires Returned

81

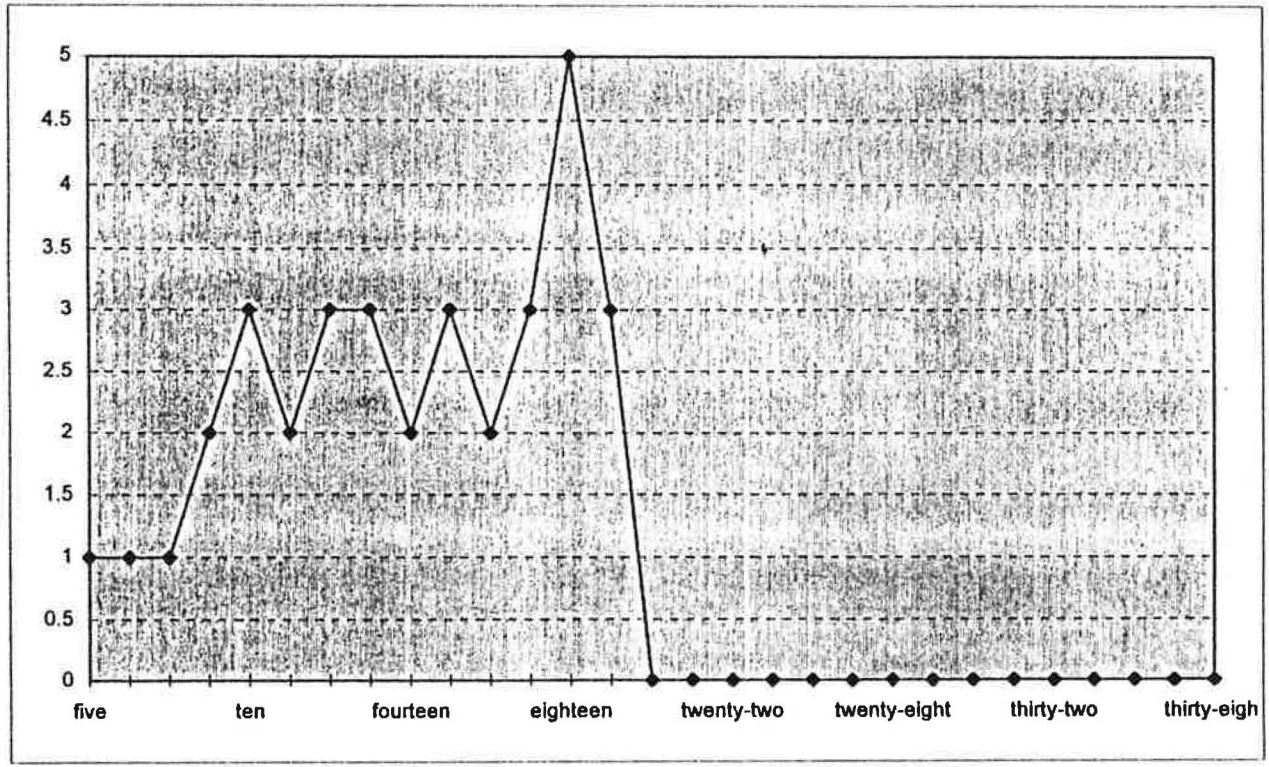
17. Several of our New Mexico judicial district courts are using the "Settlement Week" system as another method of alternative dispute resolution. Do you believe this system can also be used effectively in this U.S. District Court?

	Number	% of Ans	% of Total
Yes, in all cases	10	13%	12%
Yes, in appropriate case	54	69%	67%
No	9	12%	11%
I am not sure	5	6%	6%
Total	78		96%

Attorney Profile

19. How many years have you been engaged in the practice of law?

- 5 five 1
- 7 seven 1
- 8 eight 1
- 9 nine 2
- 9 ten 3
- 10 eleven 2
- 10 twelve 3
- 10 thirteen 3
- 11 fourteen 2
- 11 fifteen 3
- 12 sixteen 2
- 12 seventeen 3
- 12 eighteen 5
- 13 nineteen 3
- 13 twenty 0
- 13 twenty-one 0
- 14 twenty-two 0
- 14 twenty-three 0
- 15 twenty-four 0
- 15 twenty-five 0
- 15 twenty-eight 0
- 16 twenty-nine 0
- 16 thirty 0
- 17 thirty-one 0
- 17 thirty-two 0
- 17 thirty-four 0
- 18 thirty-five 0
- 18 thirty-six 0
- 18 thirty-eight 0
- 18
- 19
- 19

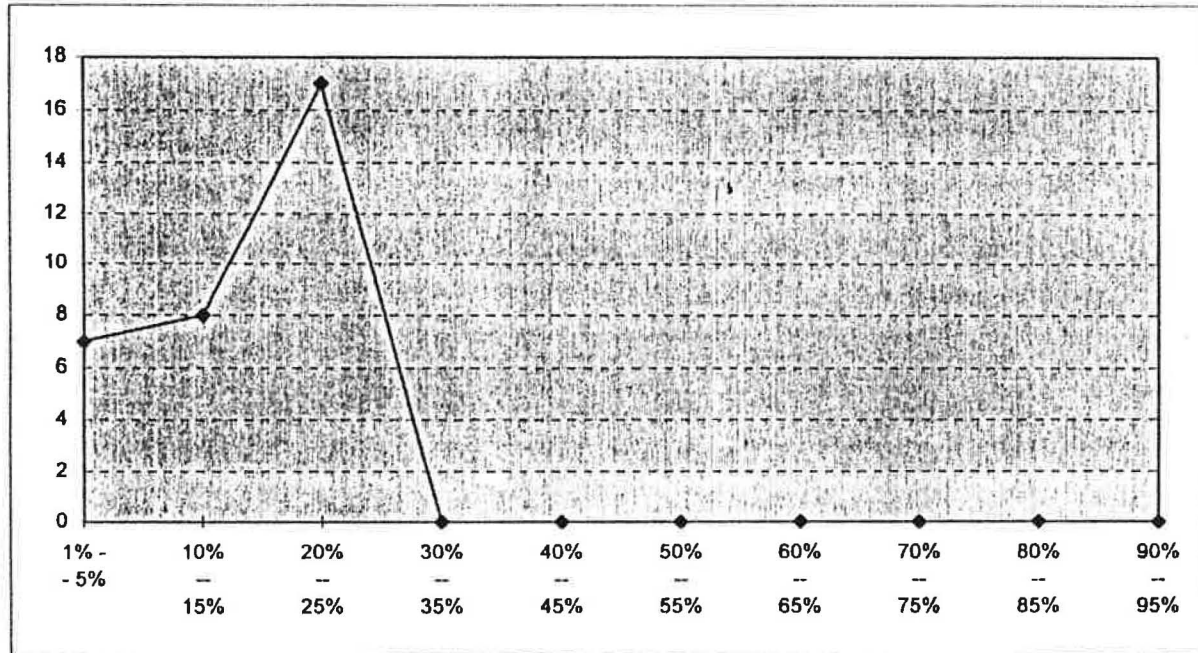


13.8 average
14 median

Attorney Profile

21. What percentage of your practice has been devoted to federal district court litigation during the past five years or during the time you have been in practice, if less than five years?

2	1% – 5%	7
2	10% – 15%	8
3	20% – 25%	17
5	30% – 35%	0
5	40% – 45%	0
5	50% – 55%	0
5	60% – 65%	0
10	70% – 75%	0
10	80% – 85%	0
10	90% – 95%	0
10	respondent	32
15	average	36%
15	< 50%	32
20	> 50%	0
20		
20		
20		
20		
20		
20		
20		
20		
25		
25		
25		
25		



Attorney Profile

22. Of the amount of your practice devoted to federal district court litigation during the past five years: percent has involved

criminal cases	civil federal question case	civil diversity cases	other federal cases		avg %age	# responses	% of respondents
0	40	40	20	respondents		22	
0	90	5	5	criminal	6	7	17%
0	50	50	0	cv fed question	42	28	68%
0	0	0	100	cv diversity	46	35	85%
0	0	100	0	other federal	6	6	15%
0	60	40	0				
0	0	95	5				
0	50	50	0				
0	75	25	0				
0	0	100	0				
0	95	5	0				
0	0	100	0				
0	0	100	0				
50	49	1	0				
0	95	5	0				
0	0	100	0				
50	25	25	0				
0	50	50	0				
0	50	50	0				
30	0	70	0				
2	95	3	0				
0	100	0	0				

23. Concerning your civil federal district court cases:

a. The great majority of my federal civil cases are in the District of New Mexico

74

b. The great majority of my federal civil cases are in a federal court other than the District of New Mexico

0

c. I litigate civil cases in a number of federal district courts including the District of New Mexico

6

d. Other

0

ATTACHMENT 3

Pertinent comments from Attorney Survey Questionnaires

PERTINENT COMMENTS FROM ATTORNEY SURVEY QUESTIONNAIRES

1. Greater flexibility should be given experienced counsel. The lawsuit still belongs to the parties, not the Court.

2. Less time should be spent by the judges on scheduling orders, pretrial conferences and monitoring and more time should be spent by them on ruling on motions.

3. Strict time limits are imposed on counsel, yet, the Court does not rule promptly on dispositive motions.

4. Sanctions should be imposed with obstructionist discovery tactics.

5. The number and length of time for depositions should be limited by the Court.

6. The Court should employ a full time case manager. It is a waste of the magistrate's time to micro-manage litigation.

7. Preparation of a provisional discovery plan is wasteful as these are generally not used and are ignored by the magistrate at the initial scheduling conference.

8. Magistrates should try consent trials because they are all fully qualified and would in all probability give earlier trial settings. It takes too long to get trial settings from district judges.

9. Settlement evaluations, facilitation and negotiations are best handled by facilitators who are judges rather than outside lawyers without institutional clout.

10. The new Rule 26 requirements are very costly to satisfy. For example, costly expert reports are required before meaningful discovery is performed.

ATTACHMENT 4

Statistical and narrative information from data furnished by the Administrative Office of the U.S. Courts

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

Chart 1: Distribution of Civil Case Filings, SY93-95
District of New Mexico

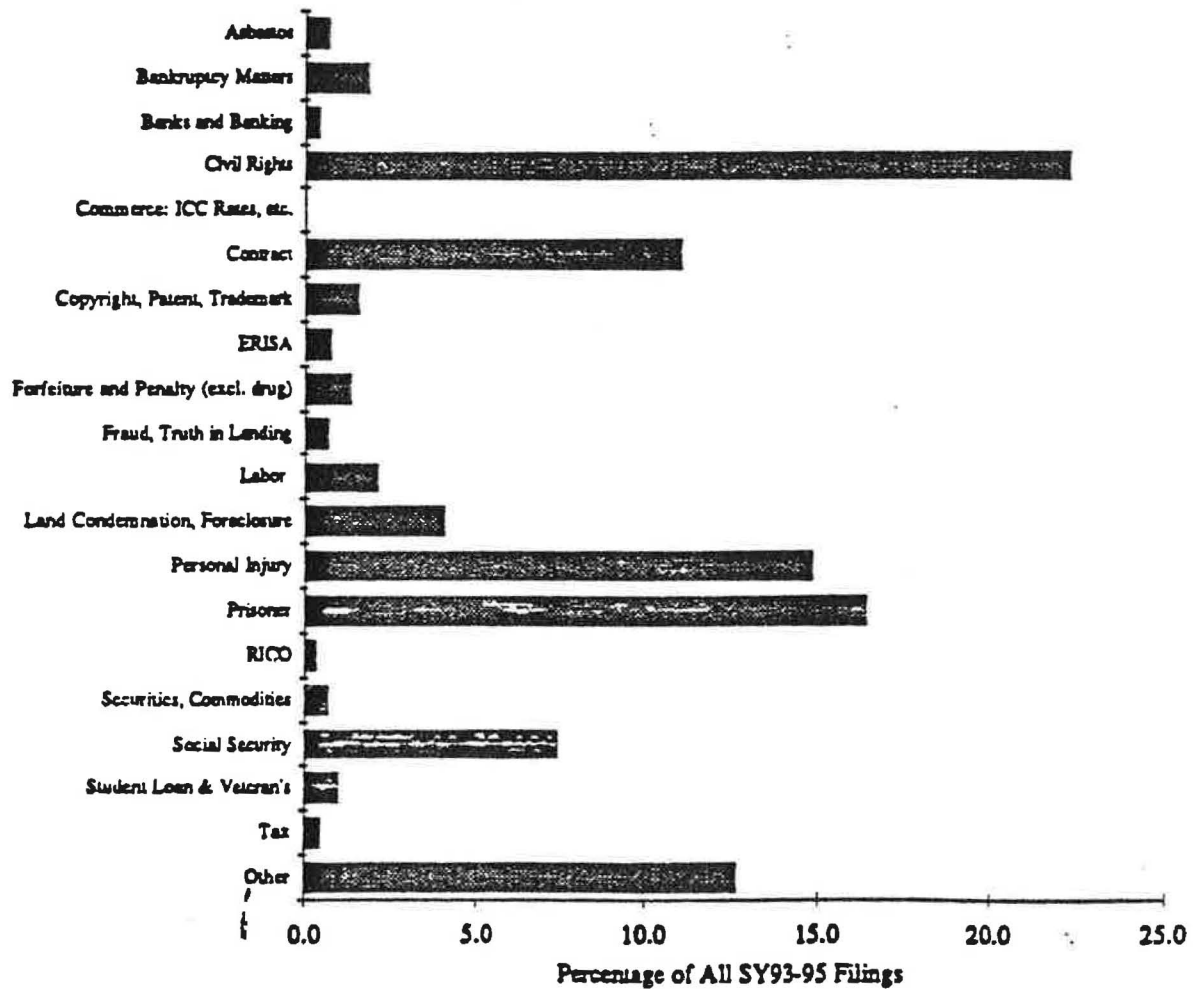


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY86-95
District of New Mexico

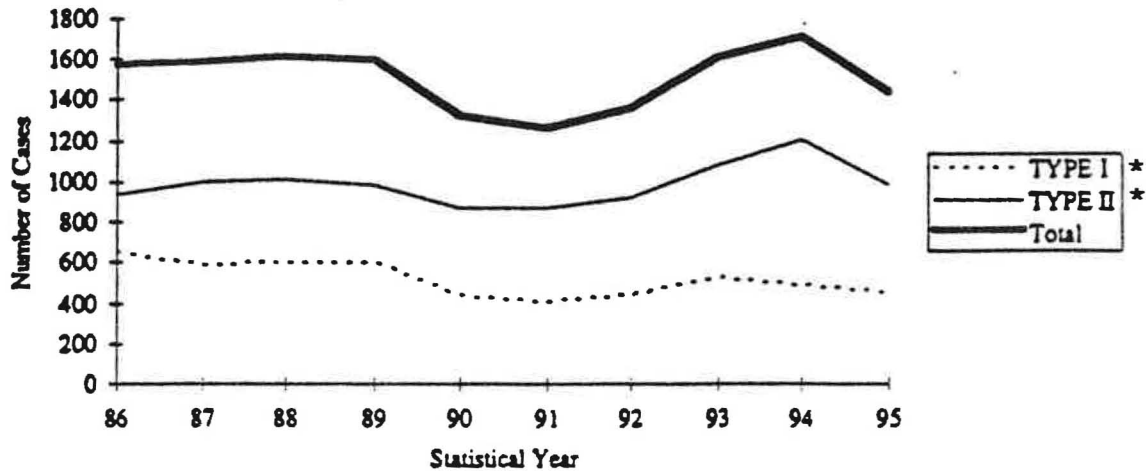


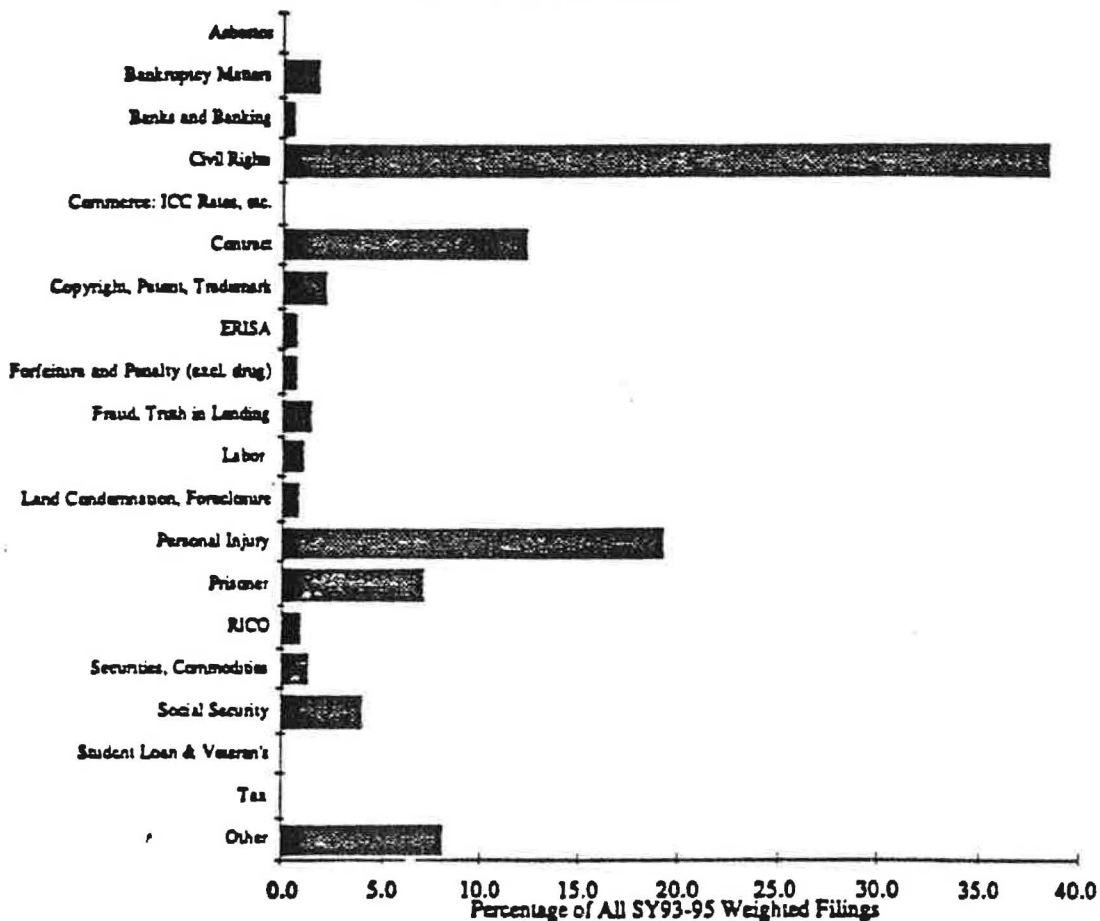
Table 1: Filings by Case Type, SY86-95

District of New Mexico	YEAR									
	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Asbestos	0	6	4	13	37	17	1	11	7	12
Bankruptcy Matters	15	28	32	39	18	20	26	42	32	12
Banks and Banking	4	4	5	16	4	3	4	10	6	2
Civil Rights	168	215	236	164	167	213	236	283	409	374
Commerce: ICC Rates, etc.	3	1	6	3	2	4	0	1	1	0
Contract	296	299	323	326	234	213	138	180	179	170
Copyright, Patent, Trademark	24	10	21	15	16	10	11	20	35	18
ERISA	3	5	4	9	11	14	20	11	13	11
Forfeiture and Penalty (excl. drug)	17	13	17	27	58	15	19	31	18	14
Fraud, Truth in Lending	16	22	17	11	16	10	7	8	6	16
Labor	21	30	26	22	24	34	36	35	37	26
Land Condemnation, Foreclosure	68	103	98	123	137	97	78	48	95	48
Personal Injury	222	230	204	238	186	171	221	291	249	168
Prisoner	203	216	218	250	165	174	237	347	207	228
RICO	1	4	5	5	5	1	1	4	6	2
Securities, Commodities Tax -- Co	10	8	9	12	4	16	4	14	5	10
Social Security	53	55	74	65	45	59	69	75	132	147
Student Loan and Veteran's	310	185	174	120	47	36	30	9	26	8
Tax	15	7	12	7	10	12	13	8	9	4
All Other	133	154	124	136	142	154	170	183	240	176
All Civil Cases	1582	1595	1609	1601	1328	1273	1371	1611	1712	1446

*See page 10, Guidance to Advisory Groups Memo, dated February 28, 1991, for a description of Type I and II cases.

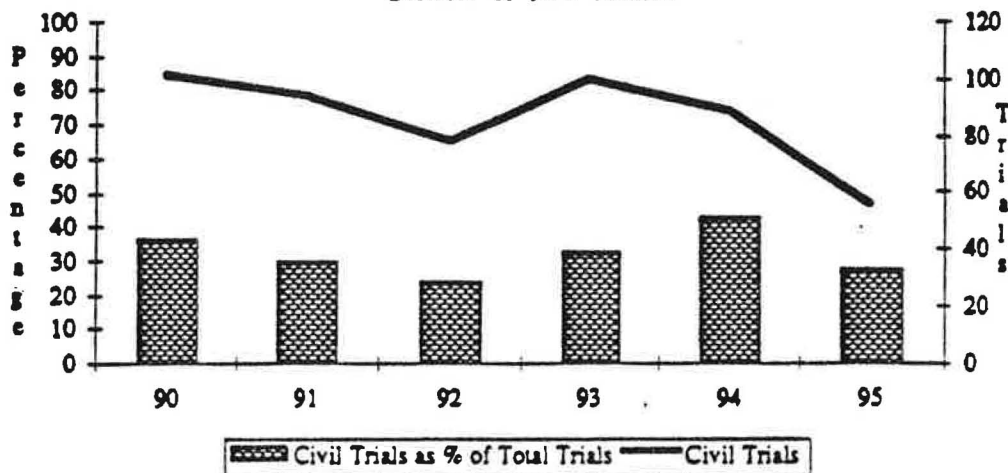
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases.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

**Chart 3: Distribution of Weighted Civil Case Filings, SY93-95
District of New Mexico**



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

**Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY90-95
District of New Mexico**



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

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

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

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

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

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

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY86-95
District of New Mexico

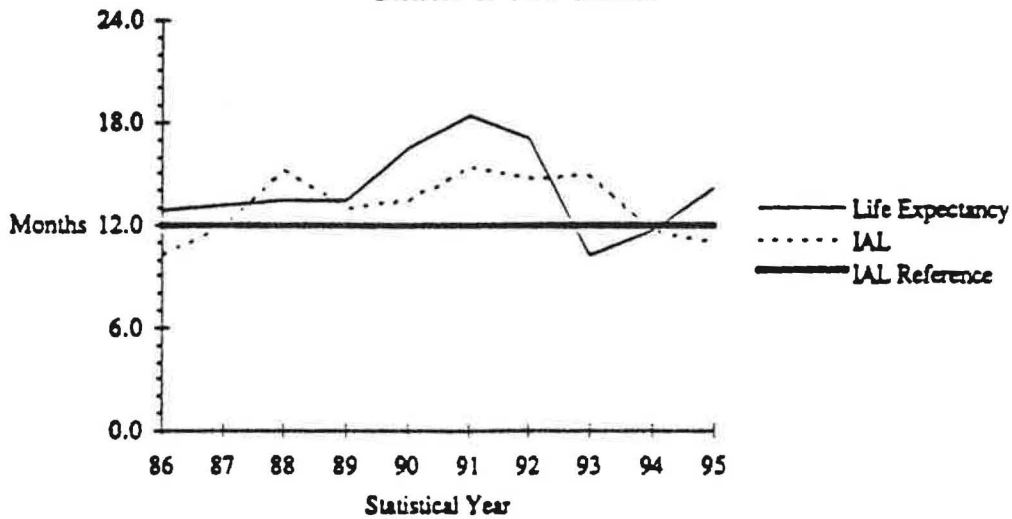
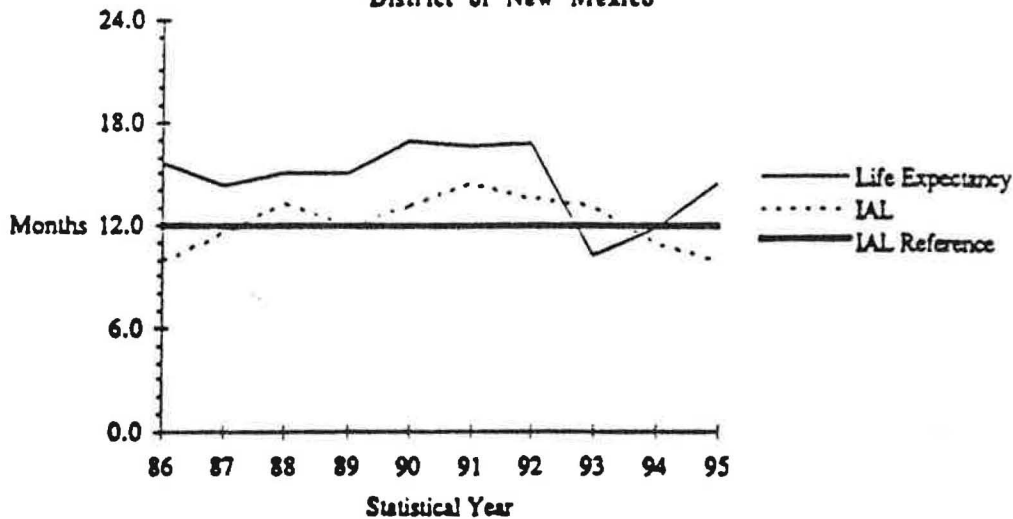


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY86-95
District of New Mexico



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

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

Chart 7: Cases Terminated in SY93-95, By Termination Category and Age

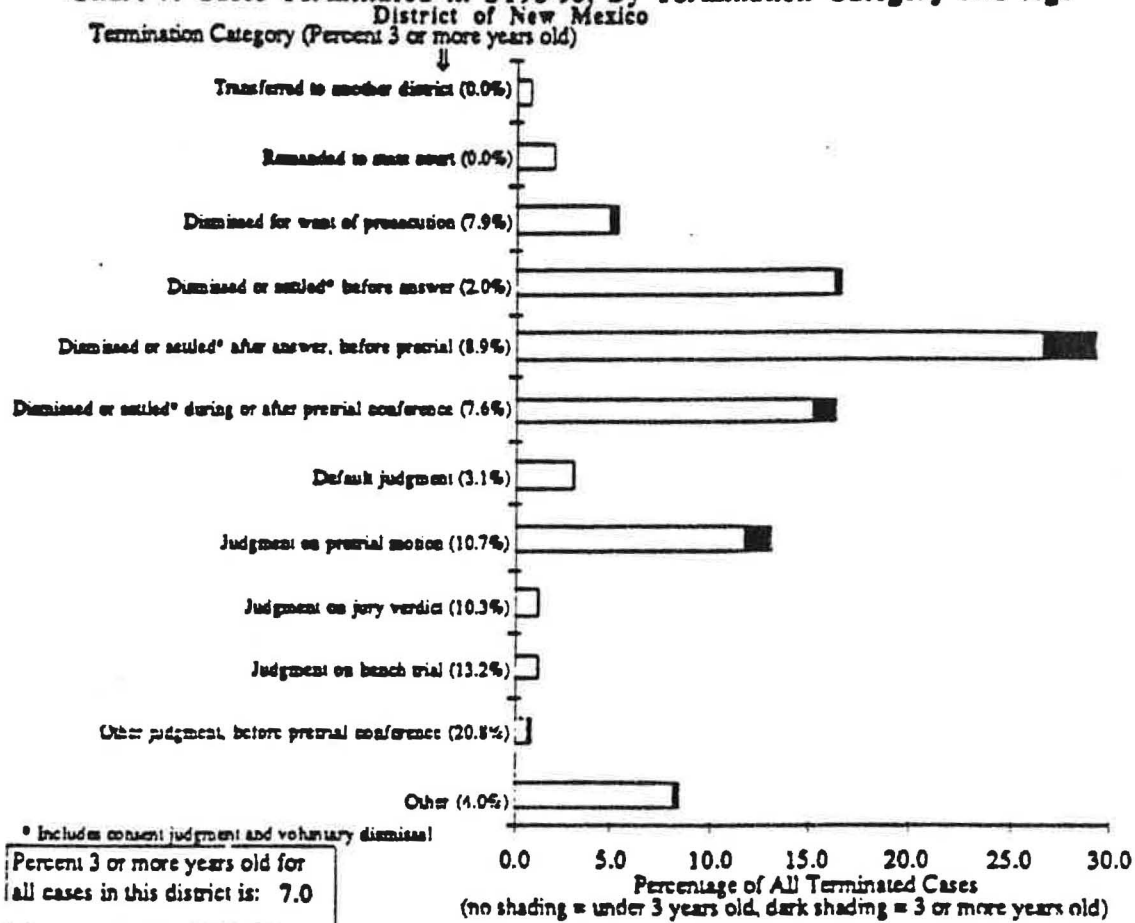
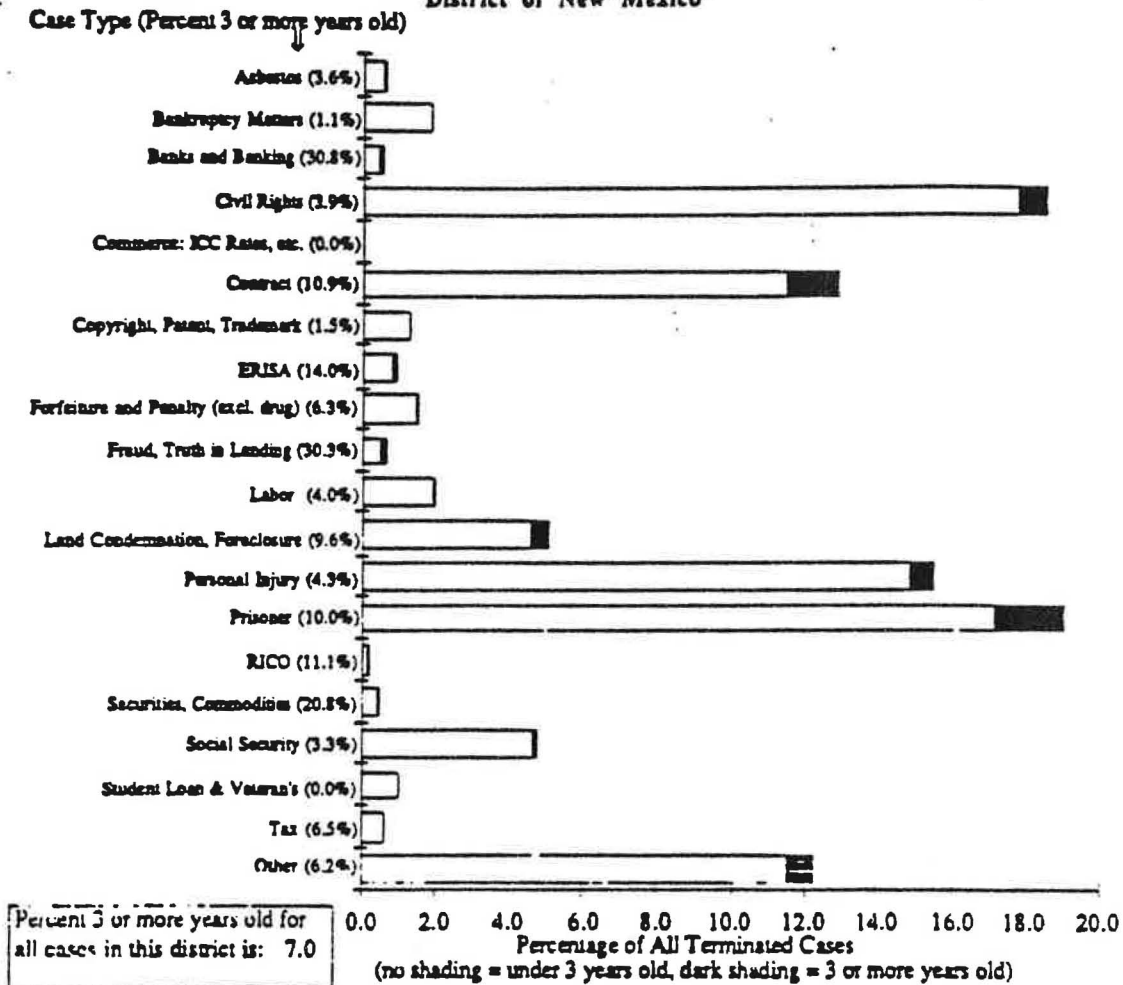


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY93-95, By Case Type and Age
District of New Mexico



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

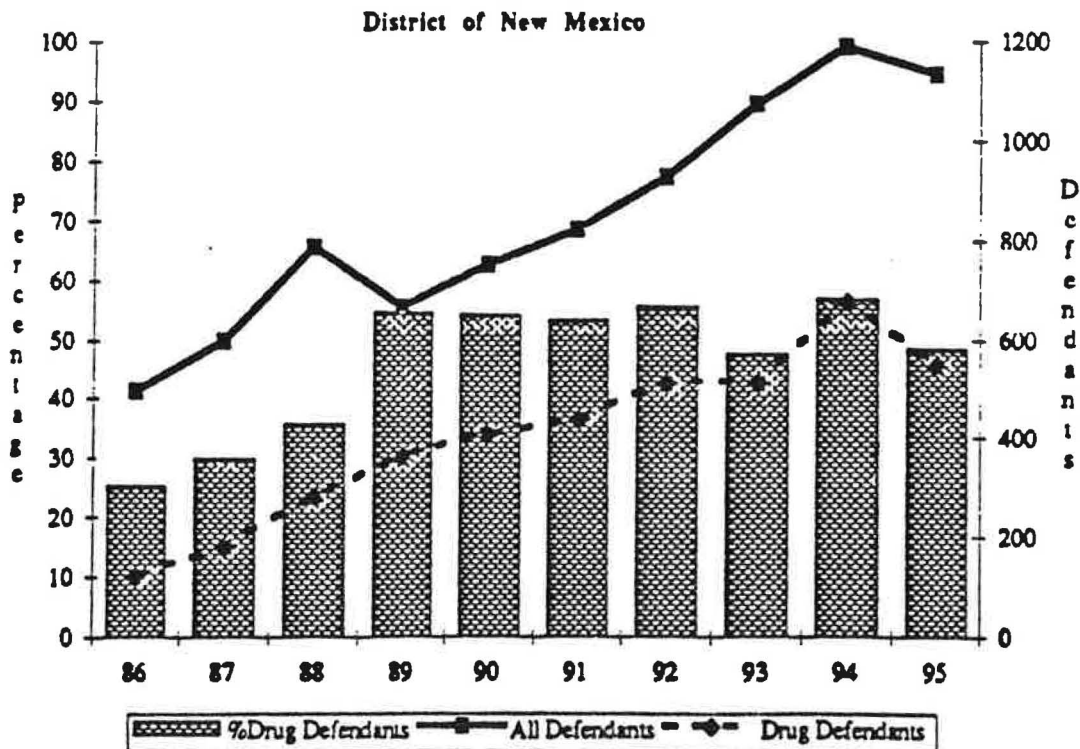
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

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

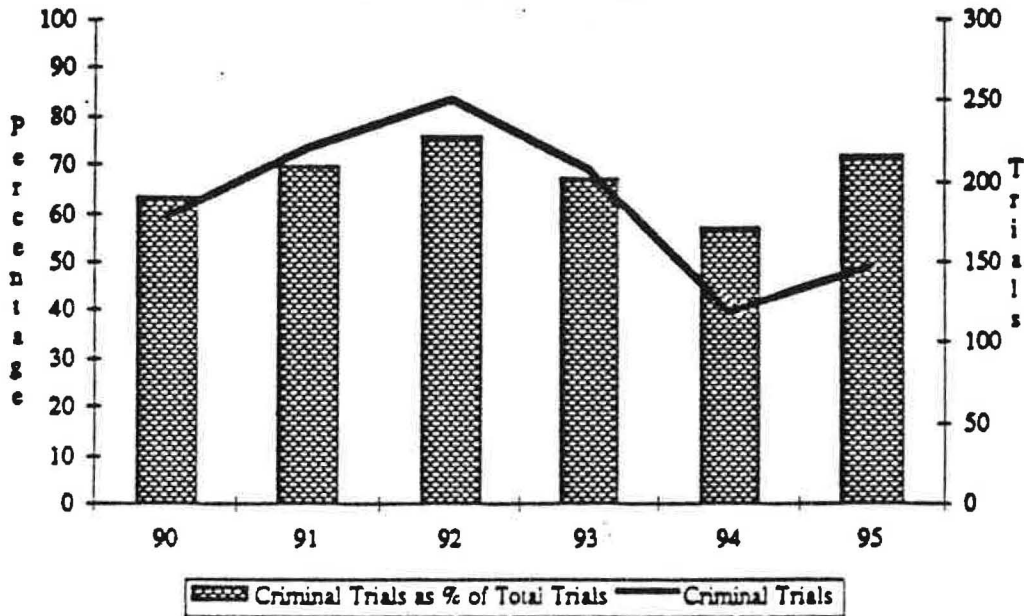
The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions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

Chart 9: Criminal Defendant Filings with Number and Percentage Accounted for by Drug Defendants, SY86-95



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

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY90-95
District of New Mexico



For more information on caseload issues

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

APPENDIX B

Litigant Activities Committee Evaluation Report

**ADVISORY GROUP , CIVIL JUSTICE REFORM ACT
UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO**

**Litigant Activities Committee, Draft Evaluation Report
February 23, 1996**

The 1994 Annual Assessment of the Condition of the Court's Civil and Criminal Dockets for the United States District Court, District of New Mexico pointed out a need for additional training of attorneys practicing in this district (§ IV.B 8). It recommended the formation of a district bar association to improve communications between the bench and the bar and provide an avenue for training attorneys, and that the Advisory Group members whose terms expire February 28, 1995, would form the nucleus of the Bar Association (§ V.A).

The following steps have been taken to establish a District Bar Association:

1. Articles of Association for the Bar Association of the United States District Court for the District of New Mexico and Rules and Regulations of the Association were prepared.
2. On October 4, 1995, the U.S. District Court entered an Order approving and adopting the Articles of Association for the Bar Association of the United States District Court for the District of New Mexico and Rules and Regulations of the Association.
3. The Articles and Rules were executed by the twenty member Initial Management Committee of the Association and its Organizational Meeting held on November 17, 1995.
4. On December 18, 1995, a letter signed by Judges Conway, Parker, Hansen and Vasquez was sent to every attorney admitted to practice in the United States District Court for the District of New Mexico inviting their participation in the Bar Association, and explaining the purposes of the Bar Association. Enclosed in the letter was an application form for membership.
5. Three thousand five hundred letters and applications were mailed to prospective members. As of February 22, 1995, 210 were returned unanswered and 845 were returned with applications completed. Second notices have not been sent.
6. At the Initial Organizational Meeting, Jerry Wertheim was elected president by the members of the Initial Management Committee and

John Kelly was elected secretary. President Wertheim will soon send notice of a second meeting of the Management Committee to be held April 4, 1996, at noon in the Clerk's training room. Judge James Parker and Chief Judge John Conway plan to attend that meeting. It is anticipated that the inaugural meeting of the membership of the Bar Association will be held the summer of 1996. At that time the method of election and terms of office for the Management Committee, dues structure, if any, and the creation of standing committees to carry out the work of the Association will be addressed.

It is anticipated that there will be four main standing committees; to wit:

1. Continuing Legal Education Committee. One of the first tasks of this Committee will be to plan and organize CLE events. One of the first such events should be on proper use of Rule 26 of the Federal Rules of Civil Procedure.
2. Civil Rights/Pro Se Committee. This Committee will address the issue of pro se litigants who file civil rights/Title 7 claims. Some method of evaluating these claims and obtaining representation for meritorious claims should be found.
3. A Bench/Bar Relations Committee. The purpose of this Committee would be to promote communications between the bench and the bar regarding problems both are having and how they might be addressed.
4. Mentorship Committee. The purpose of this Committee would be to establish a list of mentors available to advise young/less experienced practitioners, and to make the availability of mentors known to practitioners.

The other main activity of the Litigant Activities Committee has been to recommend that the Lawyers' Creed of Professionalism of the State Bar of New Mexico be adopted as the standard of conduct for lawyers appearing in the District Court for the District of New Mexico, and that it be incorporated into the local rules for the District.

APPENDIX C

Committee on Criminal Justice Issues Report

PETER SCHOENBURG
NM Board of Legal Specialization
Recognized Specialist in Criminal Law

TEL: 505/243-1443
FAX: 505/242-7845

April 22, 1996

Jesse Casaus, Reporter
United States District Court,
District of New Mexico
Advisory Group Civil Justice Reform Act
P.O. Box 566
421 Gold Ave., SW
Albuquerque, NM 87103

HAND-DELIVERED

Re: Committee on Criminal Justice Issues -
Report

Dear Mr. Casaus:

The Criminal Justice Issues Committee has met to evaluate the recommendations contained in the report of the Civil Justice Reform Act Advisory Group of the United States Court for the District of New Mexico. As a result of that meeting, the following will be our report.

A. The Committee revisited the following recommendations that relate to criminal issues:

1. **Recommendation 19. Acceptance of Binding Plea Bargains.**

It is recommended that in criminal cases all judges consider accepting Federal Rule 11(e)(A) or (C) binding plea bargain in appropriate cases within constitutional constraints.

Committee Report: In order to facilitate the aims of this recommendation committee member and United States Attorney John Kelly has agreed to meet with the defense bar to address and explain the policies of the U.S. Attorneys office regarding Fed. R. Crim. P. 11(e)(1)(C) binding plea bargains and binding sentencing stipulations. The purpose of the meeting will include the clarification of the authority of individual Assistant United States Attorneys and the internal procedures that apply to the approval of 11(e)(1)(C) agreements.

2. **Recommendation 20. Acceptance of Binding Stipulations.**
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 guidelines sentence with caps or specific lengths.

Committee Report: John Kelly's proposed meeting with the defense bar should address this issue as well. (See above).

3. **Recommendation 23. Open File Policy.**
It is recommended 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.

Committee Report: The committee agreed to undertake an examination of ways to obtain reliable data on the efficacy of the current open file policy. The examination would hopefully identify missed opportunities for open file (as well as 11(e)(1)(C) agreements) by examining a randomly chosen cross section of criminal cases closed over the past year. Examination would include interviews with both prosecutors and defense lawyers in an effort to gain a better understanding of the ways open file policies might assist in the earlier resolution of cases. The committee plans to establish a Planning Group to design a method to examine these issues in a reliable and creative way.

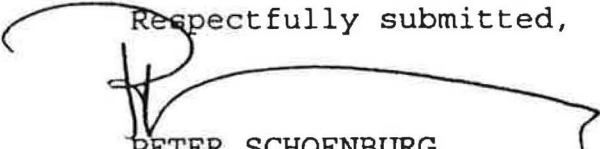
Jesse Casaus will assist in obtaining the assistance of the District Court Clerk's office to obtain a random selection of 30 criminal case over the past year. It is the committee's intention to have a Planning Group in place by June 1, 1996 and the entire review process completed in time for inclusion in the 1996 CJRA report (next year's report).

- B. The committee had also been asked by Judge Parker to look at recommendations to improve the management of the criminal case load in Las Cruces. The following are the recommendations from our committee:

Page 3
Esse Casaus
Re: Criminal Justice Issues - Draft Evaluation Report
April 22, 1996

1. Enforce the pre-trial deadline for the acceptance of plea agreements.
2. Refer criminal plea hearings to United States Magistrates.
3. Better coordinate the court room scheduling in Las Cruces among the district judges.

Respectfully submitted,



PETER SCHOENBURG
Chair - Committee on
Criminal Justice Issues

PS/pdr

cc: Honorable James P. Parker, U.S. District Court Judge
Honorable Lorenzo F. Garcia, U.S. Magistrate Court Judge
John J. Kelly, Esq., United States Attorney
Rose Hart, CJRA Analyst
All Other Members of the Advisory Group