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An Assessment of Orange County Civil Courts

NCJRS

FEB 22 1995

ACQUISITIONS

May, 1994

Submitted to
Orange County, Florida

INSTITUTE FOR LAW & POLICY PLANNING

I L P P

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April, 29 1994

Hon. Linda Chapin
Chairman
Orange County
201 S. Rosalind Ave.
Administration Building
Orlando, FL 32801

Dear Chairman Chapin:

ILPP is pleased to present its final report assessing the needs and practices of Orange County's civil courts. We hope that this report will aid local decision makers in planning to make the best, most efficient use of the new courthouse.

Overall, Orange County's civil courts are to be commended for a strong work ethic, which is evidenced by minimal backlog despite large caseloads. This efficiency is made possible partly by the county's expansive use of non-traditional means of resolving disputes. Orange County stands out not only among its counterparts in Florida, but nationwide, in the effective application of mediation and other techniques.

Major changes in state policy and local practice over the past few years carry the potential to fundamentally alter the courts' role and consequently, their use of space. This report highlights these issues in an attempt to enhance the county's ability to construct a new courthouse that will be accessible, efficient and enduring into the next century.

Finally, I would like to thank you and the many other participants in the public and private sectors for your participation and insight in making this a relevant and useful effort.

Sincerely,

Alan Kalmanof
Executive Director

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I.

Introduction

I. Introduction

A. BACKGROUND

The Institute for Law & Policy Planning (ILPP) was retained by the Orange County Board of Commissioners to study the civil side of the Orange County courts.

In October 1993, ILPP completed a comprehensive assessment of the Orange County criminal justice system. The review of the **criminal courts** as a part of the larger assessment resulted in a series of findings and recommendations which will have an impact on how quickly and in what way space in the new courthouse will be needed. ILPP found that growth in criminal court filings is occurring at a substantially slower rate than was projected previously. In addition, recommendations to house a criminal judge at the jail and to standardize case management procedures to encourage uniformity will change to some degree the need for and use of courthouse space.

The current effort attempts to examine analogous implications of the **civil courts**. ILPP undertook to identify the salient factors affecting local civil court efficiency and make recommendations to improve court efficiency and effectiveness.

B. CRIMINAL VS. CIVIL COURT EVALUATION ISSUES

Evaluating civil court efficiency differs substantively from evaluating criminal court delay. The most obvious feature is that in a civil dispute, there is no defendant in custody whose right to a speedy trial creates certain pressures on scheduling and processing. Second, delaying trial may be a *desirable* outcome if the parties involved have more time to resolve disputes outside of a (resource intensive) courtroom.

These are only two of the myriad aspects which make the civil court process a unique dynamic. This study has attempted to guide its evaluation of non-criminal divisions by recognizing the varied goals, measures and purposes of the civil court process versus the criminal one. In sum, this evaluation was guided loosely by the following parameters:

- "Early and continuous court control" is the factor with the strongest correlation to faster disposition times for civil and criminal courts.¹
- Increases in the number and complexity of criminal court cases can exacerbate the displacement of the civil caseload from traditional courtroom processing.
- Complex civil cases, with extensive discovery, expert witnesses and lengthy trials increases pressure to more efficiently and creatively process simple civil cases.
- Perhaps more than the criminal divisions, the civil court is the most likely arena to expose the "average citizen" to the judicial process, and the basis on which perceptions of justice are formed. Thus public access, both physical and procedural, are important considerations of a civil court's effectiveness and efficiency.

- Partly as a result of the above, as well as from the increased involvement of the courts in addressing social problems, the courts are undergoing a significant transformation, requiring that any evaluation take into account not simply what exists today, but what will exist (and be needed) tomorrow.

The change in court operations and mission is manifested most acutely in the non-criminal divisions where much innovation is now taking place. This includes high use of alternative dispute resolution techniques, expansion of court administration programs, and changing jurisdiction of the circuit and county benches.

C. SCOPE AND PURPOSE

This project has emerged from development of the new county courthouse and study of the criminal courts of Orange County. It seeks to supplement previous study to create an overall understanding of the Ninth Circuit's characteristics, growth and needs, allowing local decision makers to design intelligent transition and long-term use plans for the new courthouse and all of its occupants.

Specifically, this evaluation looks at the non-adult criminal divisions of the county and circuit benches: circuit civil, county civil, juvenile, probate/mental health, domestic relations, and county traffic. As a convention, ILPP refers to these divisions as the *civil side* of the court. Following a brief operational description of these divisions, functional issues which may affect efficiency, and potentially court growth, are reviewed. Projections of judges for civil divisions has been prepared and are presented with ILPP's projection of criminal judges along with the projections completed as a part of the new courthouse planning phase.

The scope of this project does not include specific architectural analysis of the implications of any findings.

D. SUMMARY

The civil courts of Orange County compare favorably both state-wide and nationally in the expansive and committed use of alternative dispute resolution techniques, disposition times and backlog. The courts have taken a leadership role in the use mediation that many other jurisdictions might want to emulate. Use of mediation accounts for the ability of Orange County judges to both take on large caseloads and process them quickly. Trial dates are not difficult to get for any circuit civil division.

The potential to increase efficiency and effectiveness even more may lie in expanded use of hearing officers (for certain traffic cases), active court management of civil cases from the moment they are filed, and continued emphasis on diverse means of dispute resolution.

Finally, the courts in Florida are undergoing major change, particularly in the area of family law. This transformation coupled with changes initiated locally in the area of juvenile justice and use of alternative dispute resolution are certain to alter the long-term operational and physical needs of the court since the courthouse master plan was approved. Implementation of the courthouse master plan, specifically the completion of interior space, should be carefully and regularly monitored so as to ensure both a cost effective approach to construction and the development of a building that will best meet the needs of the public and the courts for the decades to come.

II.

System Description

II. System Description

A. COURT ADMINISTRATION

Court Administration is operated under the direction of the Chief Judge of the Circuit and managed by a Court Administrator for the entire circuit which includes Orange and Osceola Counties. The office oversees a staff of 79 county employees and ten state employees within Orange County. All budget, personnel and other administrative and support matters relating to the court are managed by court administration. According to the 1992-93 budget for the county, the office's general fund budget was \$5.7 million; this does not include management of considerable state funding or grants. In addition to direct court and judicial support the office of the court administrator manages several additional programs such as conventional and electronic court reporters, automation, jury and witness management, and the mediation program. In other words, the office inevitably plays a major role in non-traditional means of dispute resolution.

B. COURT DIVISIONS

All of the following discussion is limited to the judges assigned to Orange County. The circuit is divided into the upper (Circuit) and lower (County) courts. The Circuit Court has five divisions: Probate/Mental Health, Civil, Domestic Relations, Juvenile, and lastly Criminal (felony), which is not further discussed. The County Court has Civil, Traffic, and Criminal (misdemeanor) departments. Court staffing is limited to the judges themselves plus a judicial assistant for each. All other court personnel are assigned to the Court Administrator or the Clerk of the Court, or are private contractors.

(Note: The term "division" is used by the Ninth Circuit both to designate individual judgeships and the functional divisions listed above.)

1. Probate/Mental Health

The Chief Judge, in addition to administrative duties, handles probate, guardianship, and mental health, including Baker and Myers Act cases, with probate accounting for some 60 percent of the total. The number of filings has been low and relatively constant at about 600 each calendar quarter for the past several years. The active caseload is primarily uncontested cases, and only 15 to 25 percent of cases exceed the disposition time guidelines.

2. Circuit Civil

The Circuit Civil Court handles all civil cases involving more than \$15,000. This limit was \$10,000 from 1990 to 1992, and \$5,000 prior to 1990. Nine categories of filings are tracked by the Clerk, with the most numerous being real property and mortgage foreclosures; contracts and indebtedness; and automotive negligence.²

At present there are seven judges assigned to circuit civil functions, with two more to come in January 1995. Civil filings have actually decreased a little since 1990 and currently run at about 2,000 per quarter. However there has been a slight upward trend in the fraction of cases above the disposition time standards. Only fifty to a hundred jury trials are held each year, a low number considering the total number of cases.

3. Domestic Relations

Domestic Relations was separated from Circuit Civil in 1986. Four domestic relations judges handle 3,500 filings each calendar quarter, and this number has been rising over the last several years. Six types of case are tracked: dissolutions (simple and regular), child support, URESA, domestic violence, and other.³ Filings appear to have a weak seasonal component, being consistently higher in the spring and summer. Most of the running caseload is in contested cases, and about 40 percent of both contested and uncontested cases are over the time standard. In the last two quarters of 1993 the percent of uncontested cases over the standard rose dramatically. On rare occasions a domestic case will go to a jury trial.

4. Juvenile

The juvenile filings are broken into two types of cases. Most are juvenile delinquency, which are in general criminal cases, and status offenses such as truancy and running away. The percent of delinquency filings rose from 85 percent in 1989 to 95 percent in 1993, and shows no sign of decline in early 1994. They amounted to over 8,000 cases in 1993.

The balance of the juvenile cases are dependency, meaning abuse or neglect. While delinquency has been rising, dependency fell from 890 in 1989 to 430 in 1992. A small rise in 1993 does not yet signal a reversal of the trend.

There are three juvenile court judges. Despite the large number of filings (1,500 to 2,000 a quarter) the active caseload remains at only about 800. The percent of these over time standards fluctuates much more than in any other Circuit Court department. While there are no actual trials, there are 200 to 300 hearings conducted each month.

5. Family Court Division

The state of Florida is in the process of fundamentally altering court and social service practices, particularly in the area of families and children. Most recently the state Supreme Court's Commission on Family Courts has mandated the creation of Family Court divisions in all judicial circuits. In accordance with this mandate the Chief Judge drafted an administrative order which creates this division and assigns an administrative judge to manage it. (See Appendix C.)

It is not yet certain how this division will manifest itself among the others. The stated goal of the Supreme Court is establishment of the "unified family concept" which will provide "a comprehensive approach coordinating all judicial efforts in cases affecting the same family" (Supreme Court of Florida, *In Re: Report of the Commission on Family Courts*, March 10, 1994). The duties of the division shall include monitoring what is currently the jurisdiction of the

Domestic Relations and Juvenile divisions. These pre-existing divisions will not be dissolved, but rather it is likely that the new Family Court division will act as the coordinating office, which would conceivably include administration of an intake center which would "be available to help and direct families at the point of initial contact with the judicial system to the appropriate judge, and/or to the appropriate judicial or community-based service" (*In Re: Report of the Commission on Family Courts*).

While it is impossible to know how the new division and approach to family matters will affect the court, it is clear that there will be a substantial impact on the functional, operational/staffing and physical needs of the court over the long run.

6. County Civil

The County Civil Court is assigned those cases involving \$15,000 or less. A large number of the cases are evictions, followed by small claims and other civil matters. This caseload is handled by two judges. The number of County Civil filings peaked at 21,000 in 1986 and has remained more or less steady since that time. There were no noticeable increases in 1990 and 1992 when the Circuit Court filing limits were raised. The County Civil Court conducts a handful of jury trials, perhaps three or four a year.

7. County Traffic

In the sheer volume of filings this department deals with more cases than all others combined, about a quarter of a million annually. Obviously most of these are settled with a fine and do not involve court time, but the six judges assigned to the division each conduct a dozen or two jury trials a year. About 85 percent of the cases are civil infractions, with the rest being criminal violations and DUI. Traffic filings peaked in the period 1988 - 1991 and have fallen steeply in the last two years.

C. CLERK OF THE COURT

The Clerk of the Court is an elected constitutional officer with a staff of 364. Forty are in administrative and support positions; 43 are trial clerks; 110 support the Circuit Court; and 121 serve the Orlando County Court, for a total of 314 in Orlando. There are another 50 assigned to the county courts in Apopka, Ocoee, and Winter Park.

The Clerk's office maintains all the official records for both court levels in Orange County. (Osceola County has its own Clerk's office.) The Clerk has a few other important but smaller duties such as the issuance of marriage licenses and recording of wills and deeds which do not relate directly to court activities. The workload of the Clerk's Office is determined by the demand for services and is not under the Clerk's control. In 1983 there were 25,000 circuit court filings, 27,000 civil and criminal filings in the County Court, and 157,000 traffic filings. By 1993 these numbers were 44,000, 40,000, and 208,000, respectively. However the growth in the number of filings since 1990 has slowed considerably.

The Clerk's funding is derived entirely from commissions, fees, and other types of service charges. Its budget in FY 1992-93 was over \$13 million. More than half of this (nearly \$8 million) was charges to the county and thus derived ultimately from the General Fund.

III.

Functional Issues

III. Functional Issues

A. CASELOAD TYPE & VOLUME

The Clerk of the Court maintains certain statistical information which can be used to comment on the efficiency of the court system in Orange County. For example, the number of cases going to trial is an important measure of a court's procedural efficiency since trials take time and are expensive compared to other forms of resolution. Also, the number of trials set suggests the proportion of active cases on a given docket. The growth of caseloads and caseload agings indicate how well the court system carries its cases through to disposition.

1. Trials

Few civil cases go to trial in Orange County. For 1990 to 1992 the circuit civil cases going to jury trials were well below one percent of total filings, though this rose to one percent in 1993. For comparison, in 1987 the average jury trial rate for 26 major jurisdictions was three percent (*Examining Court Delay*, National Center for State Courts, 1989), and only one of them had a rate below one percent. Practically no domestic or county civil cases go to jury trial in Orange County. There are, however, several hundred non-jury county civil trials. Only about one of every 2000 traffic cases is tried.

ILPP has obtained figures for the number of cases tried to jury verdict per circuit civil judge between 1991 and 1993.⁴ (This analysis is prepared by the Court Administrator's office.) A significant difference among courtrooms with regard to trials might indicate the degree to which alternative dispute resolution methods (e.g. mediation) are used or not used.

Circuit civil court judges try an average of 15 cases a year to jury verdicts. The numbers of trials conducted by the different judges in a particular year varies by a factor of more than two, but there is no obvious pattern; the judge with the most trials in 1991 and 1993, had the fewest in 1992, for example. On the basis of only a small number of trials and a short time period it does not appear that the differences in numbers of trials among judges are due to anything more than chance.

Of course the lengths of trials vary also. One long trial may require as much courtroom time as several short ones. The number of days in trial was available for 1993 only. In that year judge "A" had the most trials, and judge "B" the least.⁵ Not surprisingly, judge "A" spent far more days in trial, and judge "B" far fewer, than the others. Of the remaining four judges, two had half as many trials as the other two, but spent nearly twice as much time in each. The circuit civil judges as a whole spent an average of 62 days in trial in 1993.

These records of trials per judge, as mentioned, were compiled by the Court Administrator. Annual totals for 1991, 1992, and 1993 were 88, 88, and 92 cases tried to verdict. Independently, the Clerk prepares a monthly summary of court activities which includes the number of cases by mode of disposition (not broken out by individual judge.) Adding the twelve months' cases disposed by jury trial in the Clerk's report gives annual totals for 1991, 1992,

and 1993 of 53, 52, and 91. While the 1993 figures are very close, the discrepancy between Clerk and Administrator in the 1991 and 1992 totals remains unexplained.

There are so few Domestic Relations or County Civil jury trials that any analysis of trials per judge would not be statistically meaningful.

The Court Administrator also compiles the number of trials per traffic court judge. Those tried to verdicts total to 104, 127, and 111 in 1991, 1992, and 1993. The other types of outcomes (mistrial, in-court settlement, etc.) seem to be more numerous in traffic than civil court: there were 150 trials of all sorts in 1993. Data on other outcomes for 1991 and 1992 was not available so year to year comparisons are not made.

The traffic court judges average about 20 trials to verdict in a year. Again there is not much of a pattern when the trials are viewed by individual judge except that one judge conducted the most trials in all three years (1991-93). In 1993 that judge's trials were twice the number of the next highest. One striking observation was that the total number of traffic trials in 1993 decreased significantly in the latter half of the year. From an average of over 16 trials of all sorts in the first six months the number fell steadily to just two in December. Two judges conducted no trials after September, and only one judge held any at all in December.

As might be expected, the judge who conducted the most trials during 1991 - 93 had the greatest number of days in trial.

Figure 1 below shows the total number of jury and non-jury trials among all civil divisions for the years 1990 through 1993.⁶ Data on number of jury traffic trials for 1990 was unavailable. Figure 2 displays the same data on an adjusted scale to compare growth trends between use of jury and non-jury trials. For the brief period shown, it appears that there is an upward trend in the number of jury trials and a downward trend in the number of non-jury trials. Figures 3 and 4 display a similar pattern for the Circuit Civil and County Civil divisions, respectively. However, non-jury trials still substantially outnumber jury trials in every court division.

Although there are virtually no jury trials in Domestic Court (only one occurred during 1990 - 1993), there have been about 90 non-jury trials since 1991. The decline in the number of jury trials in the County Civil division (Figure 4) is quite marked, from over a thousand in 1990 to just over 400 in 1993.

Figure 1
Jury vs. Non-jury Trials (All Civil Divisions)

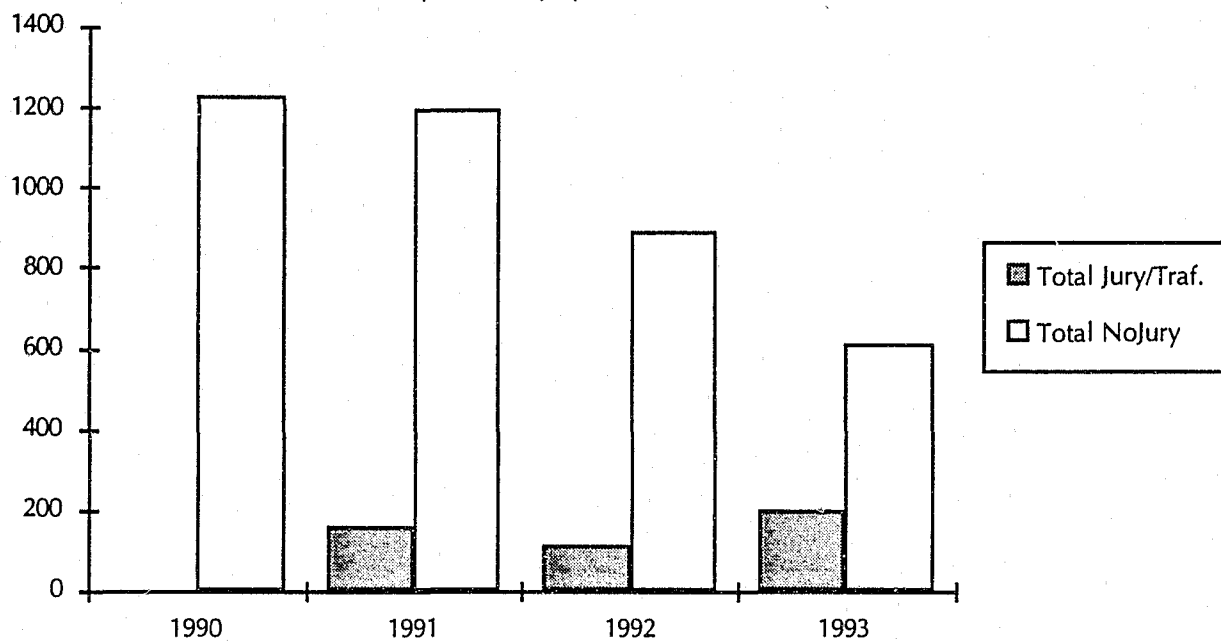


Figure 2
Jury vs. Non-jury Trials (All Civil Divisions), Adjusted Scale

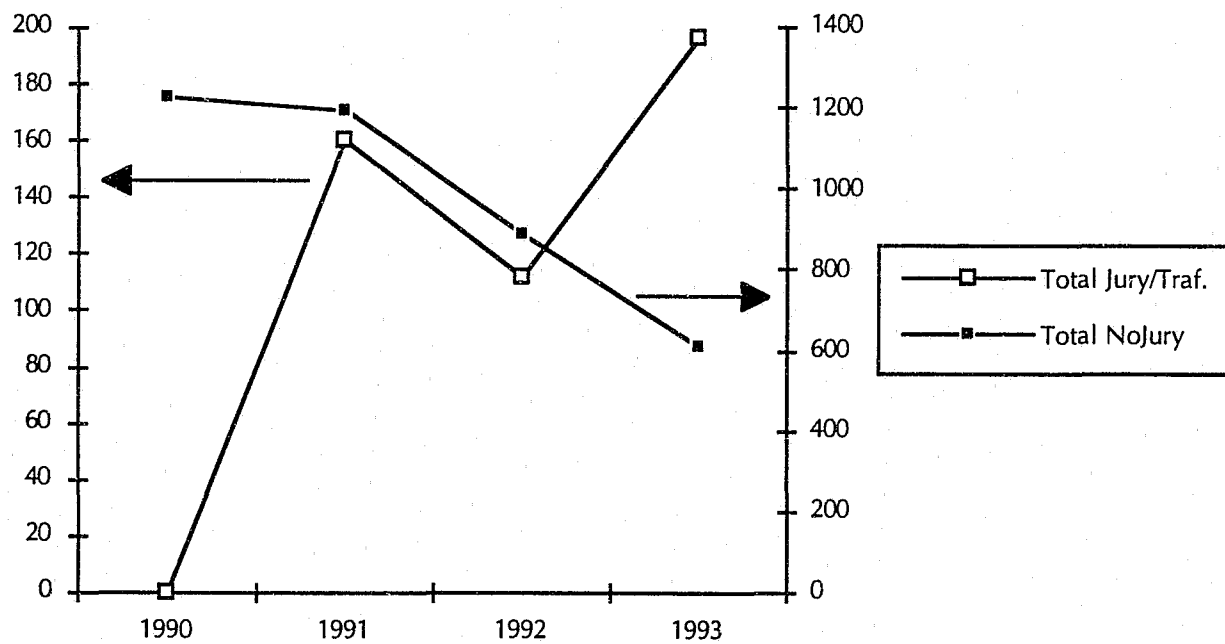


Figure 3
Jury vs. Non-jury Trials, Circuit Civil

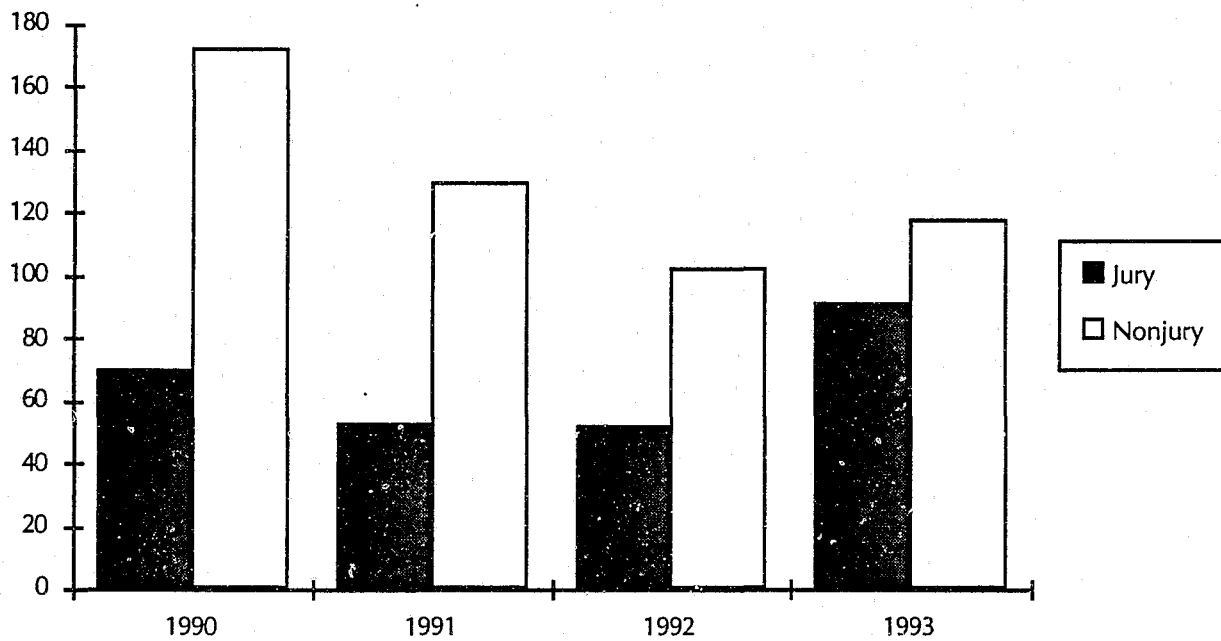
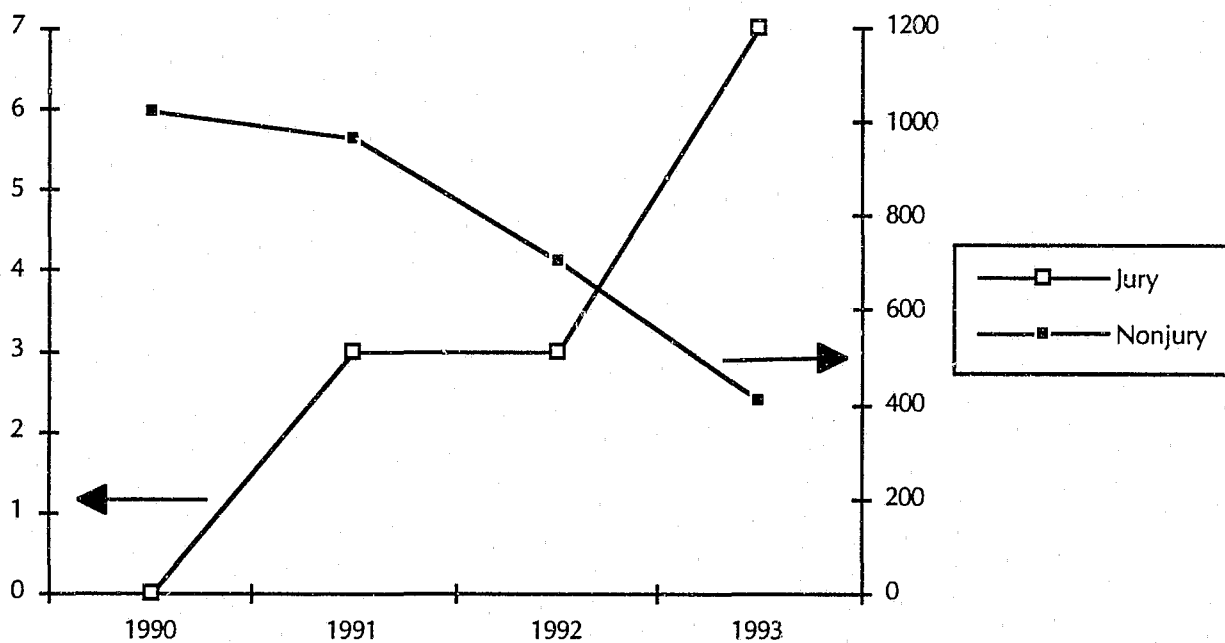


Figure 4
Jury vs. Non-jury Trials, County Civil, Adjusted Scale



2. Caseloads and Time Standards

The Clerk prepares a quarterly report of the active caseload and the number of pending cases below and above time guidelines for each Circuit Court department (civil, domestic, juvenile, probate/mental health). The guidelines differ among departments and also depend on whether a case is contested or uncontested (domestic and probate), jury or non-jury (civil), and delinquency or dependency (juvenile). The reports for the four years 1990 through 1993 were made available for this study.

Active caseloads and filings are shown in Figures 5 - 8. For Circuit Civil, Domestic Relations, and Probate there has not been much of a change over time. There is a large backlog in Circuit Civil (caseload exceeds filings) but only a small backlog in Domestic Relations. Juvenile court filings are shown on the right-hand axis so that their large numbers will not mask the substantial growth in the juvenile delinquency caseload.

Figure 5
Circuit Civil Court: Total Active Caseload

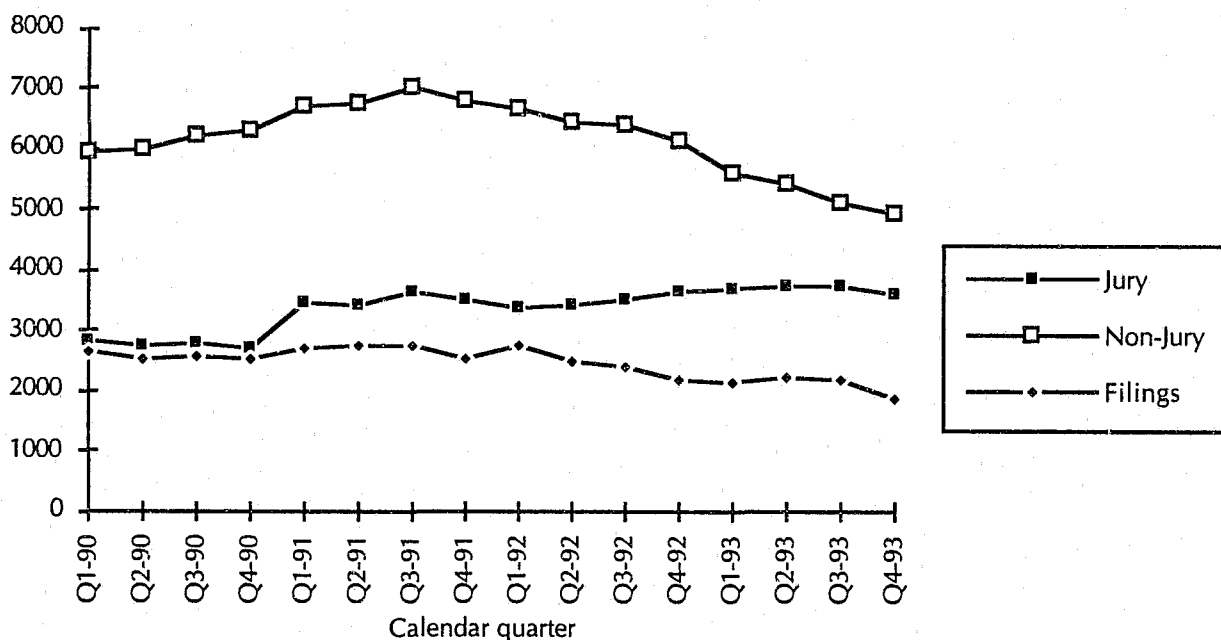


Figure 6
Domestic Relations Court: Total Active Caseload

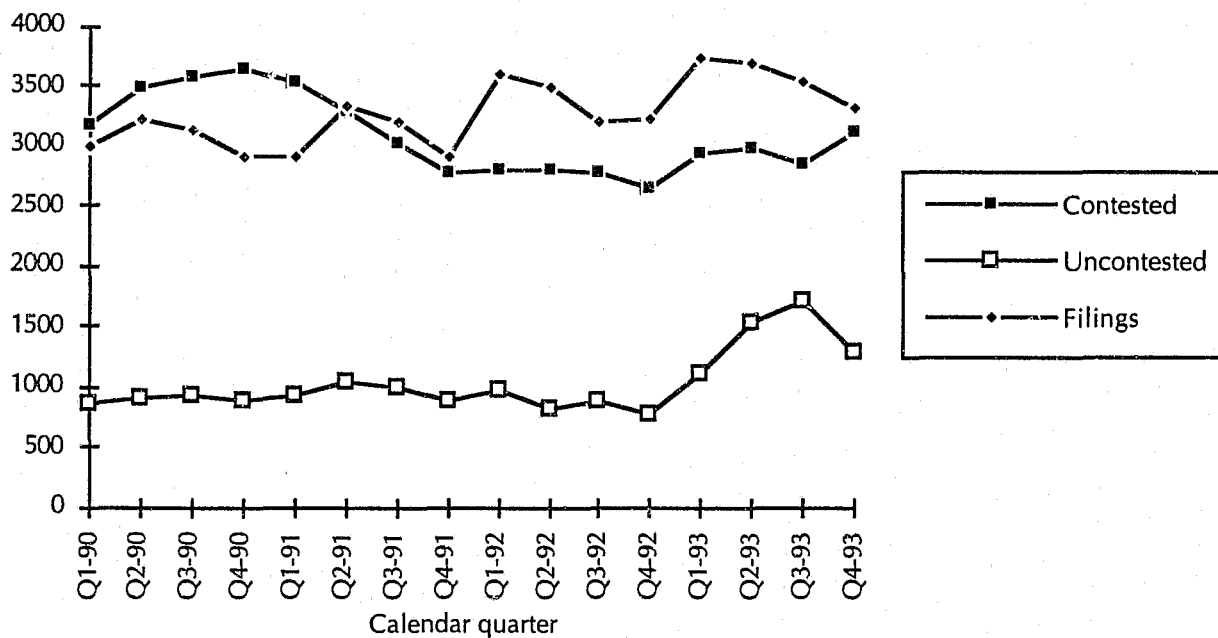


Figure 7
Probate/Mental Health Court: Total Active Caseload

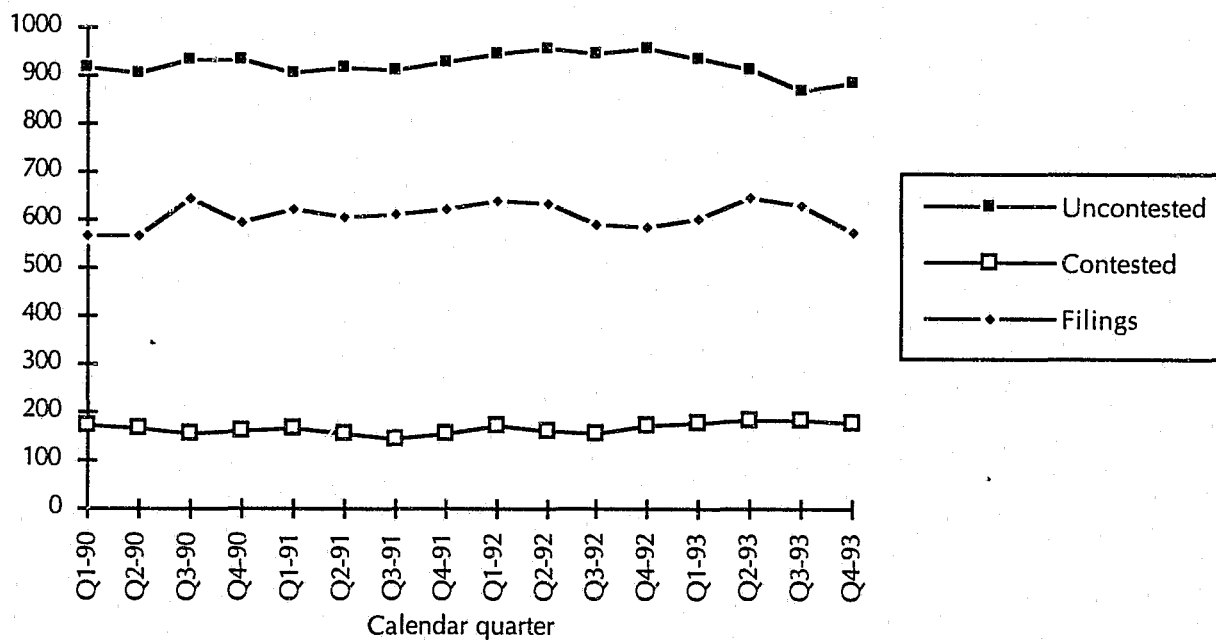
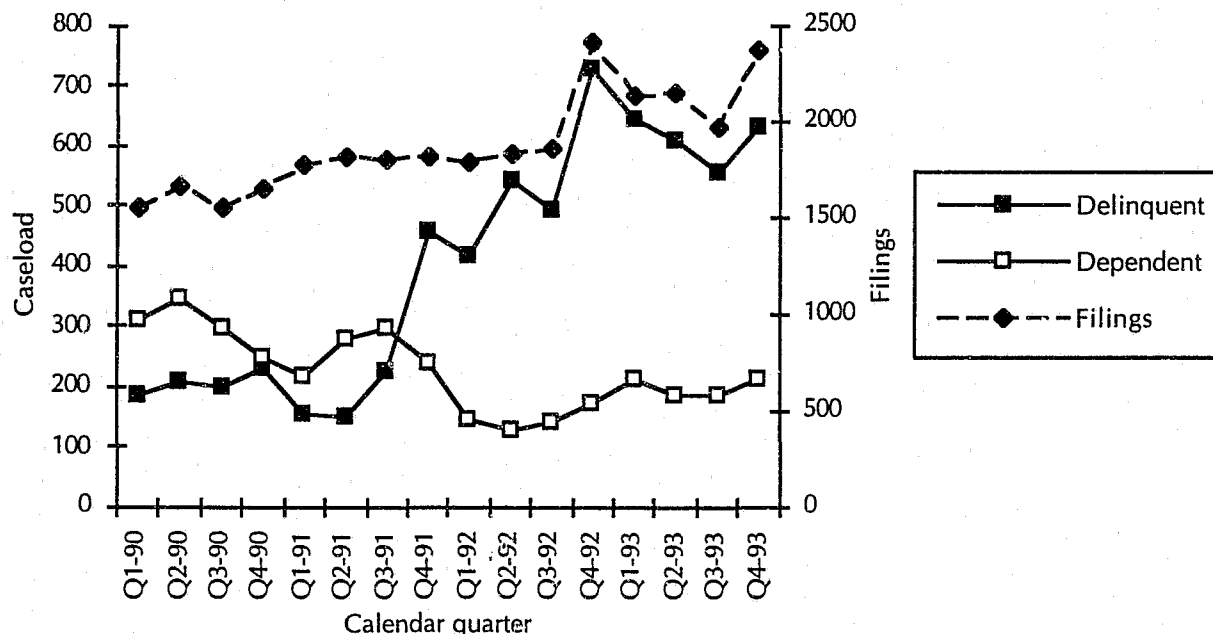


Figure 8
Juvenile Court: Total Active Caseload



For nearly all quarters since 1990 the majority of cases have remained within the time guidelines. Caseload delay for circuit civil divisions is shown in Figures 9 - 14. Some have risen over this time (civil, uncontested probate, and juvenile delinquency) and others have fallen (contested probate, juvenile dependency). In late 1993 the fraction of over standard uncontested domestic cases rose sharply and approached two-thirds of the caseload in the last quarter, yet contested domestic cases have fluctuated with no clear trend. Juvenile delinquency over standard cases seem to be on the rise.

Figure 9
Circuit Civil Court: Caseload Delay

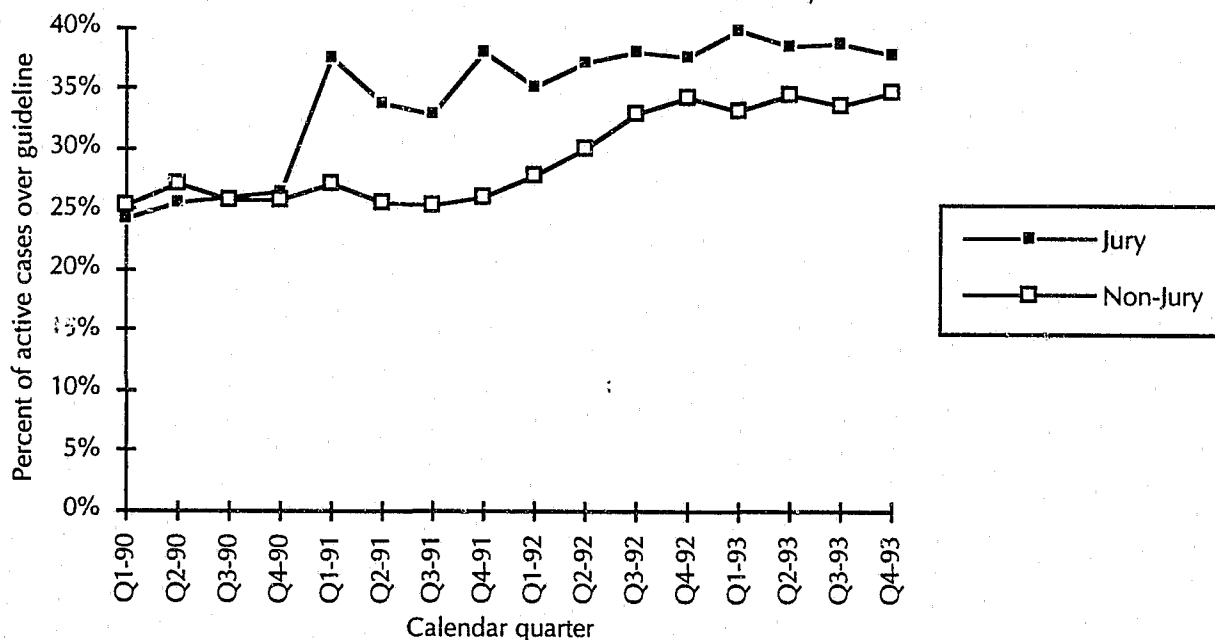


Figure 10
Domestic Relations Court: Caseload Delay

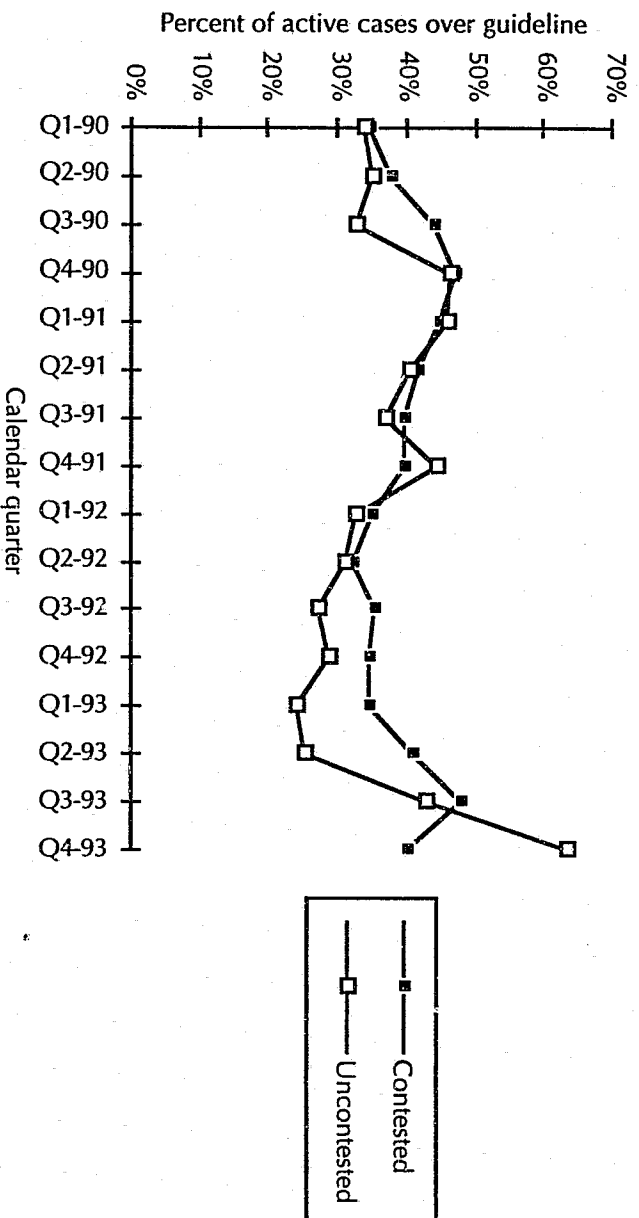


Figure 11
Probate Court: Caseload Delay

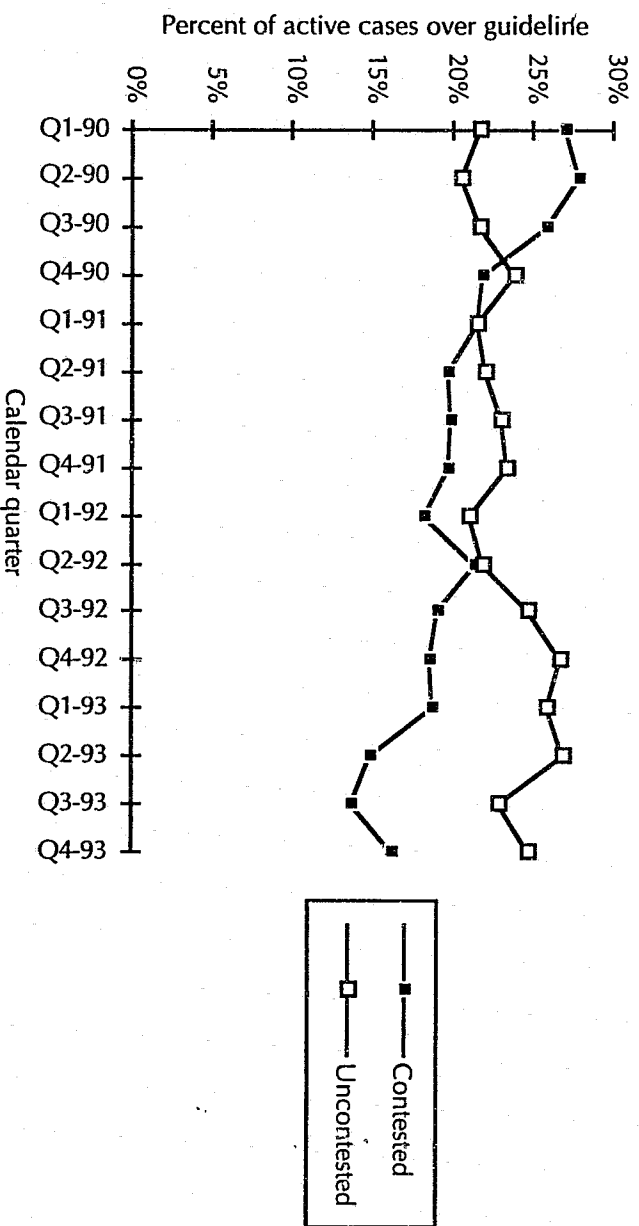
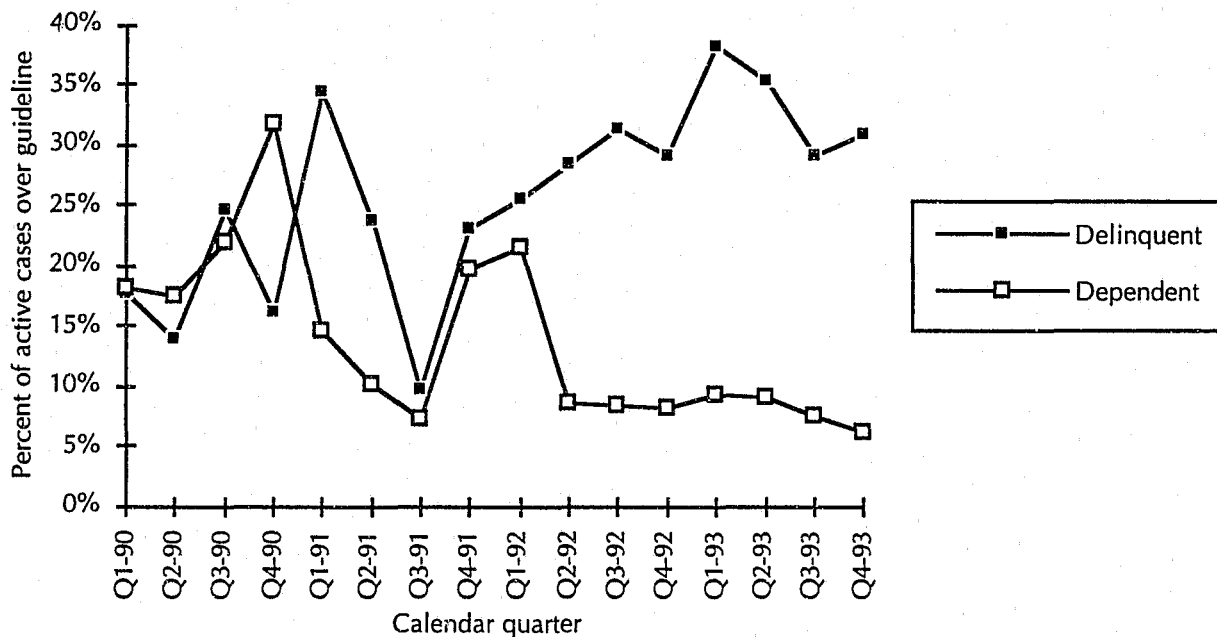


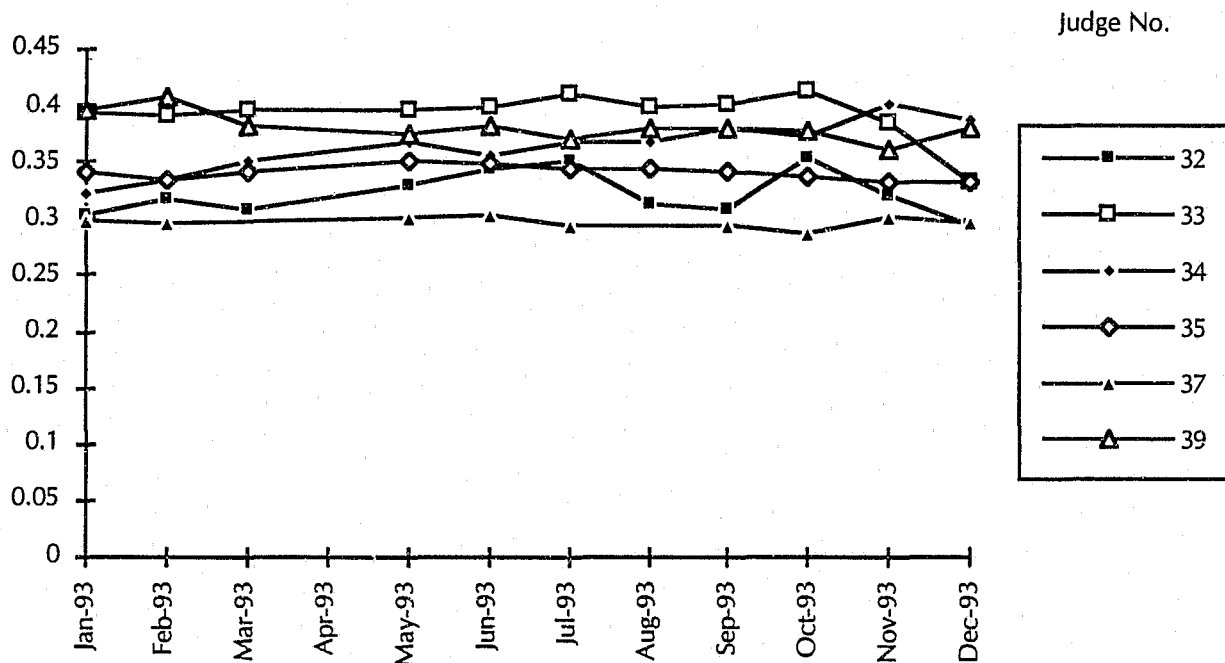
Figure 12
Juvenile Court: Caseload Delay



Also reviewed was the pending caseload per judge in the Circuit Civil and Domestic Relations divisions for all months in 1993 but April. For March only the cases were further broken down by jury/non-jury (civil) or contested/uncontested (domestic), and inactive cases were shown as well. Large differences in the number of total or over standard cases would suggest that some judges manage their workloads more efficiently than others.

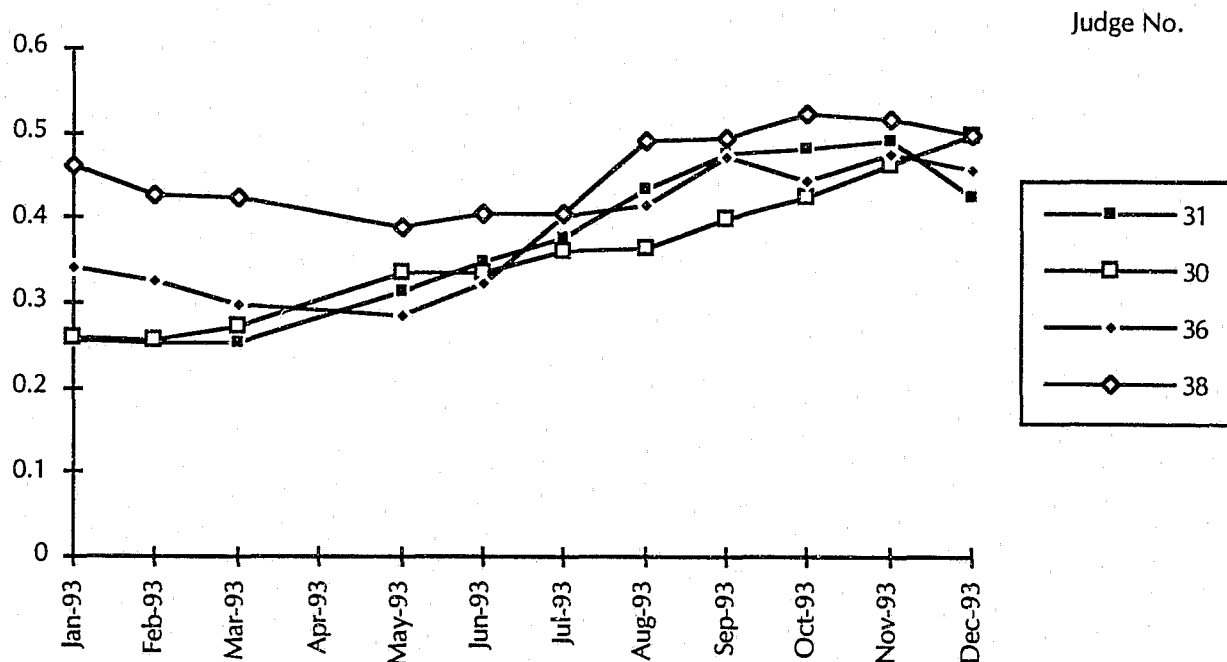
For cases within standards in the civil court, the caseload was remarkably uniform among the judges and fell slowly throughout the year. Over standard cases also declined, so that by the end of the year their percentage was very close to what it had been at the beginning. About 35 percent of cases were over standard at any time, and no judge diverged much from this except one who was consistently lower at 30 percent. (Figure 13)

Figure 13
Circuit Civil Courts Percent of Cases Over Standard



For cases within standards in the Domestic Relations division there was little variation among judges or during the course of the year, though the caseload dropped off a little at the end. However the cases exceeding standard grew substantially during the year, rising from 298 in January (34 percent of the total caseload) to 516 in December (47 percent). One courtroom shows a high number of over-standard cases throughout the year – 40 to 50 percent – and the other three rose gradually toward that level. (Figure 14)

Figure 14
Domestic Relations Court Percent of Cases Over Standard



3. Conclusions

The Orange County segment of the Ninth Judicial Circuit conducts a very small number of jury trials in view of the size of the jurisdiction and numbers of filings. For civil cases the time standards correspond to those adopted by the Conference of State Court Administrators and the Conference of Chief Justices in 1984.

In *Examining Court Delay* the median disposition times of 18 urban jurisdictions in 1987 are presented and discussed. They ranged from 356 to 1694 days for civil jury cases. Only four counties fell below the 18-month standard. While it is not possible to translate median disposition times into the measure used in Orange County (active caseload below and above standard), the fact that the majority of civil cases in the Orange County courts consistently fell below the standards indicates that they were outperforming the average court in that national study.

Trial and caseload comparisons among judges indicate that the circuit level workload is well balanced, and no judge stands out in being a better or worse case manager than the others. The differences among them fluctuate with time and appear to be due more to the luck of the draw in cases received than in judicial efficiency.

B. MANAGEMENT PRACTICES

1. Discussion

A case starts with the filing of a complaint with the Clerk's office, which assigns it in random rotational order to a particular judge. Orange County uses an individual calendar system in which the judge who is assigned a given case handles all matters relating to that case through disposition. The plaintiff (complainant) serves the defendant being sued, who must file a responsive pleading (e.g., file an answer to the complaint, file a demurrer, etc.), generally about 30 days within service of the complaint.

In Orange County, as in most Florida jurisdictions, the case then sits on file with no active involvement by the court until one party asks that it be set for trial. Discovery progress is not routinely reported to judges. If neither side requests a trial, most judges will review it when it has been on file for one year, and at that time send out a notice saying that if neither side requests a trial, the judge will dismiss the case. But there has traditionally been no set practice.⁷

Most plaintiffs ask for a trial date within about six months after a responsive pleading is filed by defendants. The trial date then set depends on the particular judge's calendar. Some set the case for trial in as quickly as 60 days later, and some Orange County judges will set it six months out. This variation is due to how effectively judges handle their individual dockets. However, these time frames would be the envy of courts in most urban American jurisdictions, which typically set trials in a range from five months to five years from request.

The setting of a trial date does not necessarily mean a trial will be held on that date; its real significance is in triggering a series of procedural events. First, most judges will issue a pre-trial order telling the parties what is expected in that courtroom: basic rules governing completion of discovery; deadlines for filing pretrial motions to dismiss, summarily decide or settle certain issues in the case; often an order that mediation be attempted with a report back to the court; and other procedural rules the judge follows in his or her courtroom. Unlike most urban trial courts, there is no standard procedure followed from courtroom to courtroom; each judge has rules which apply only to that particular courtroom. However, Orange County Circuit judges have in the past attempted to arrive at a uniform pretrial order, and though failing to achieve complete agreement, most follow very similar procedures.⁸

Most judges' pretrial orders include an order for mediation, and if that fails to resolve the case, a settlement conference is set, usually a week or two before the scheduled trial date.

If the case does not settle, it then goes to trial, docket permitting. Civil judges hold trials every other two weeks, called the trial period. In one Orange County courtroom observed, perhaps 30 cases will be set for trial during the two-week trial period. Five will settle during the weeks before the pretrial hearing, which is held about ten days before the scheduled trial. Another 15 will settle around the time of the pretrial conference. By the time the docket is called, there will be only about five cases left for actual trial. Any case not completed during the two-week trial period will go to the top of the docket in the next trial period.

The circuit civil judges reserve an hour each morning for ex parte matters, which allows quick scheduling for problems which need immediate resolution or resolution of simple matters on a walk-in basis. Often, these matters are held in a hearing room, which is usually located adjacent to the judges' chambers. Regular ex parte keeps dockets clear for more complicated matters and generally streamlines the total process.

Few complaints were heard from attorneys and judges about abuse of continuances. This may be due to the requirement of Florida law that a client personally sign all requests for continuances, encouraging clearer communication between attorney and client and discouraging use of continuances in lieu of case management.

2. Findings & Recommendations

This court is in very good condition by comparison with similar jurisdictions. It has developed effective procedures for disposing of cases: it has advanced procedures for alternate dispute resolution; it has some good features in its use of technology and a very good foundation for expansion to meet future technology needs; its disposition times and times to trial would be the envy of most courts of comparable size. With only modest reforms, it should be able to fulfill its functions well into the next decade without major resource shortages.

Recommendation: The Civil Division should initiate a case management conference between the judge and the attorneys for the parties approximately 60 days after the filing of a responsive pleading.

Orange County Circuit Court judges are able to schedule cases for trial within two to six months after request. This remarkable response time, however, follows an indeterminate period between the filing of an answer (or other responsive pleading) and the request that a trial date be set, which is governed only by the initiative of the party asking for a trial date. Cases in the interlude between answer and trial setting are unmonitored by the court, except that some judges review the case after a year of inactivity and will send out notices of impending dismissal. Many courts nationally have adopted procedures in recent years to require the court to actively manage cases from the earliest point of inception, and to move cases quickly to resolution after a trial setting is requested.

Elements of an order requiring use of a case management conference should include:

- a discovery schedule for the exchange of information and evidence;
- a date to cut off discovery;
- a date to cut off pretrial motions;
- the setting of a pretrial conference and a trial date; and
- a due date for mediation reports.

The case management conference creates a tool for judges to both monitor and manage individual case progress, with the goal of having a realistic and timely sense of trial needs. Because trial dates occur relatively rapidly in Orange County, speeding up dates to trial is not as crucial as managing cases before they get to this stage and diverting appropriate cases out of the trial track.

Recommendation: Publish rules of court and develop a uniform pretrial order.

The Circuit Court does not codify or publish its rules, except for an occasional administrative order. The act of publishing rules serves a function apart from notifying the litigants of what the rules are. The process of going through the practices of judges, compiling them in a written form and publishing them causes a rethinking and rationalization of procedures which benefits the entire court.

In actual practice, the judges of the circuit civil side substantially conform to a common pretrial procedure for notifying parties of what steps must be followed between the time a case is set for trial and its eventual resolution. But the final step of publishing this common practice as a uniform pretrial order has foundered on perceptions of judicial independence or individual preferences. A "uniform" pretrial administrative order need not be identical in every case in every courtroom. It should be reasonably adaptable to meet the needs of a particular case or the preferences of a judge, but it should reflect the consensus of the court. It is clear that the judges serving on the Circuit Civil court have a consensus in how pretrial proceed-

ings ought to be handled, and that consensus should be communicated through publication of a uniform order. The local rules of court should be published for all circuit and county court divisions.

Most federal and state courts comparable to Orange County in size and complexity of litigation publish codified local rules of court which articulate local procedures and practices. These codes do not supplant general statutes and rules governing civil litigation, but operate within the framework of a Code of Civil Procedure and state or federal Rules of Civil Procedure. In Florida, the requirement to submit local rules to the Supreme Court for review and approval hinders implementation. Thus ILPP recommends that the essential elements necessary to ensure reasonable uniformity across courtrooms be captured in an administrative order, thereby circumventing both a violation of Supreme Court mandates and a lengthy, cumbersome review.

The absence of local rules gathered into an administrative order does not mean they do not exist; all courts have informal practices and procedures which dictate such matters as when dockets will be heard, the format and timing of pleadings and which courtroom will handle what kinds of issues. Compilation and publication of these rules makes them equally available to all litigants and their attorneys. Citizens acting on their own behalf and attorneys who are new, from out-of-town or who simply do not have a primary practice in a particular division of the court are put on a level playing field with attorneys who practice there every day.

Many judges and attorneys interviewed noted that there have been several attempts to create a uniform order in the past, but without much success in implementation. Recently, the courts have again taken on this task and state that consensus is strong enough to raise hopes that there will soon be success in this area. ILPP recognizes these efforts and includes this recommendation to support the current effort and reiterate the importance of such orders on the civil side.

Recommendation: Assign responsibility for automating the scheduling of routine events to the Clerk or Court Administrator.

Recent research on approaches to judicial administration suggest that the best technique for managing cases is placing individual responsibility for management of cases from beginning to end upon a single judge. This is the system followed on the Ninth Circuit. This does not mean that certain ministerial tasks should not be performed by others. When those tasks are well-suited to automation, the Court Clerk or Court Administrator should assume responsibility for them, working under general rules of the court or particular instructions from the judge to whom the case is assigned.

Issuing notices of intent to dismiss cases pending longer than 180 days without action or notices to schedule case management conferences, should the court adopt that procedure, are examples in Orange County where the Clerk or Court Administrator could be more effective than individual judges. Issuance of a pretrial order upon request that a trial be set is another example. The court should review its procedures and identify which notices or actions could be routinely scheduled by each of these offices over the court's automated networks.

Recommendation: *Distribute monthly reports describing workload status to all judges and how it compares with other divisions.*

Circuit Civil judges presently receive monthly reports of new filings and dispositions in each department. That report should be expanded to include the number of jury and court trials, the number and percentage of cases pending longer than 150 and 180 days and the number of cases resolved by mediation. This information helps a judge focus attention on specific elements of workload and to take timely remedial action. A well-formatted monthly report which permits each judge to review the previous month's work in relation to others is a very effective tool for maintaining control of workload. This would also provide a monitoring tool to the administrative and chief judges.

C. MEDIATION

1. General

Over the last four or five years, mediation has become a major feature of Orange County's civil courts. All circuit and county civil judges now routinely include a mediation requirement as part of their pretrial orders. Judges interviewed estimated that 80 to 90 percent of cases are sent to mediation before the pretrial conference. Mediation is rarely ordered before one of the parties asks for a trial date. It therefore would normally occur at any time from two to 12 months after the filing of a responsive pleading.

Mediators are attorneys who are trained for at least 40 hours in mediation techniques, and at least for the civil cases from Circuit Court, usually have many years' experience in civil litigation. Mediation has become tremendously popular in Orange County. Some of those reasons identified in interviews of judges and attorneys included generally better results, greater satisfaction of litigants with their outcome, a reduction in appeals and problems with enforcing the settlement, reduction in court workload, and enhanced job satisfaction of attorneys as mediators rather than as litigators.

Many law firms are developing specialized branches of attorneys who do almost exclusively mediation. In a typical private mediation office, the litigants will show up with their attorneys and spend up to an hour sitting around a table outlining the facts of the case, the issues and the problems facing the other side. The mediator will steer the discussion away from unimportant or side issues, and will attempt to focus on the key issues. Then the parties are separated, with one side taking a coffee break while the mediator meets with the other side. The mediator then alternates between sides, resolving issues and taking offers back and forth, proposing his or her own experience and views on the best way to resolve the case. If documents are missing, the records are faxed. If a witness or expert is needed, they can be reached by phone. A strong effort is made to resolve the matter then and there. Even if the case is not immediately resolved by some form of agreement, certain issues may be settled, avoiding later litigation of them. And many cases initially unresolved either come back for further mediation, or are settled on the basis of an earlier mediation.

The advent of mediation as implemented in Orange County has had a major impact on the courts. In the words of one prominent attorney, it has "... wiped out a lot of cases." There is

no question that the rapid transformation to a mediation-based civil justice system has had and will continue to have many consequences. Because it is reported that the parties are generally more satisfied with a mediated result than with an arbitrated or litigated decision, appeals in these major civil cases may decline. The need for active and extensive involvement by judges in most cases has declined, and in many cases has almost disappeared.

It should be noted that all information regarding the impact of mediation (and other alternative dispute resolution techniques) was obtained anecdotally. Although the majority of interviewees perceived mediation to be having a measurable impact on efficient case management, there is currently no means of substantiating this through analysis of available court data. Reports on use of mediation are used for individual cases. These forms describe whether mediation was used and what the outcome was. However, no one tracks this information in these aggregate.

Although the data exists, tracking the impact of mediation on court workload is not occurring.

Orange County has taken a leadership role in the use of alternative dispute resolution (ADR) mechanisms in Florida, particularly court sponsored and private services. The county is continuing to explore and grow in the area of non-traditional case management. As it enters the new courthouse and the next century, serious planning can anticipate future ADR needs and potential system problems. At the moment, mediation services are an informally organized, but effectively executed system: the private bar has for profit services; pro bono time is optimally used to perform volunteer mediation; the court itself has a domestic relations mediator. There is no central coordinator of all of these activities, however, because management of these private and public resources overall is not assigned to a single person, office or coalition. Instead, problems are identified anecdotally and when consensus builds, change may occur.

The Ninth Circuit could use the current opportunity of slowing overall case filing growth and imminent construction of the new courthouse to develop a management plan for mediation services.

Recommendation: Centralize mediation administration and use through an administrative order which clarifies use for different case types and in assigning the court administrator responsibility for managing and coordinating court and non-court mediation services as an intake function.

Such a plan could inventory existing services, identify the need for additional services or workload capacity and set targets for use.

Recommendation: Investigate non-mediation ADR methods and implement those which would aid Orange County civil case management. Include these methods in an inventory of mediation services to present a "menu" of non-traditional court services.

A listing of non-traditional court services is attached as an appendix to this report. This "menu" is taken from the Hillsborough County court system which also makes great use of ADR in both its civil and criminal divisions. Based on the review of caseload filings and volume, Domestic Relations and Juvenile stand out as case intensive areas which could benefit from even more innovation. The Ninth Circuit has already partially addressed the former area in consideration of requiring post-judgment mediation. (See discussion below.) Some

methods listed in the appendix include Teen Court for lesser juvenile delinquency offenders, Summary Jury Trials, and binding arbitration.

2. Domestic Relations

The only court-financed mediation program is for Domestic Relations disputes. The court has its own staff mediator for these cases, who is a Ph.D./psychologist. The mediator accepts cases, often involving child custody issues, from parents whose combined income does not exceed \$50,000. Parents whose incomes exceed that level can be referred or ordered to go to private mediation, but judges are inconsistent about doing so. One judge estimates that three out of four cases are sent to mediation; another rarely uses mediation. Of those cases sent to mediation, an estimated 70 percent settle.

The court mediator does not receive the enthusiastic support of the Domestic Relations Division judges or the attorneys who regularly work there. It is difficult to ascertain the reasons for the dissatisfaction. There are complaints that only two cases are heard per day and that property issues are not addressed as a matter of policy. There is a move afoot to reduce the court mediator's jurisdiction to \$40,000 combined income, perhaps supported by private mediators who feel those in the \$40,000 to \$50,000 income range can afford their services.

Mediation in the family law area is especially important. Generally, issues involving the emotional relationship drive disputes over the legal issues involved in dividing property or awarding support. Mediation can provide a constructive outlet to work through hostility and then facilitate the willingness of the parties to focus on equitably dissolving the marriage.

Recommendation: Work with the Domestic Relations bench to expand and reorganize use of mediation in this division.

Due to the inconsistency with which mediation is used in the Domestic Relations Division, the full benefits of mediation are not being received in family law cases. Several changes would improve the utilization of mediation in family law cases. First, all judges should be regularly using mediation in the great majority of contested cases, both for child custody and property division issues. The Chief Judge notes that post-judgment mediation will soon be required in the Domestic Relations Division. ILPP suggests that if this administrative order reflects consensus of the bench, it will have a greater potential for being implemented. Thus if, as has been proposed, all post-judgment issues will be required to first go to mediation (custody, property, spousal and child support, etc.) seeking the input of the Domestic Relations bench on anticipated problems will pre-empt resistance to the order's actual use.

Second, the array of mediation services should be reorganized, with private services encouraged to accept at least some low-income cases for a nominal or sliding scale fee and private, non-profit groups encouraged to provide services for all income levels. Mediation orders should allow the parties a reasonable period of time to pick their own mediator, regardless of income, with the judge ordering a mediator from a rotating list of court-approved mediators if they cannot agree.

Recommendation: Review the policies of the court administered mediation program for family law cases. Clarify guidelines regarding caseload and case eligibility. Institute some monitoring and outcome effectiveness measure to manage this program. Include coordination of this and all other mediation/ADR services within the recommended intake unit.

D. COUNTY TRAFFIC MATTERS

Traffic infractions, sometimes called non criminal traffic offenses which include basic rule violations, failure to yield the right of way, failure to stop, and failure to obtain insurance or show financial responsibility, are civil in nature. This means the only sanction that can be imposed for traffic infractions is a fine, in contrast to criminal traffic, such as driving under the influence, where sanctions can include a fine as well as a jail sentence. The large volume of these cases in sheer numbers and as a proportion of total non-criminal caseload make them – and how they are handled – a primary determinant of county civil court efficiencies.

1. Clerk of the Court Role

The Clerk of the Courts has primary initial responsibility for disposing of traffic infractions. Through its Traffic Violations Bureau, the Clerk can accept payment of fines, either through the mail or in person.

An offender who wants to contest the infraction must request a hearing within thirty days of receiving the ticket. The Traffic Violations Bureau is also responsible for calendaring court hearing dates, but there are some variations in how these dates are set. Most of the judges assigned to the county court traffic division provide the Clerk with forms in which the hearing date has already been filled in; this form is given to the offender at the time a hearing is requested. The judicial assistants for the other judges will send a notice to the requesting party when a date has been set. The time frame between a request for a hearing and the date set can range from six weeks to six months. With the recent enactment of a six-month speedy trial rule for traffic infractions, this time frame will probably become shorter.

2. County Court Role

The county court has six judges assigned to the Traffic Division, which has jurisdiction over both infractions and criminal traffic violations. The focus of this study is on the court's handling of traffic infractions. (Criminal traffic offenses, including driving under the influence of alcohol, were addressed in the earlier study of Orange County's criminal justice system.)

The traffic calendar is based on a six-week cycle: three trial weeks, one week for rotation to the outlying courts (Ocoee, Winter Park and Apopka), one week for arraignments and one open week. In Orlando, infractions are heard during the open week, which also includes hearings for motions, VOPs and other traffic matters. In the outlying courts, afternoons are devoted to infractions. Overall, each traffic division judge spends approximately four to five days each month hearing infractions. The amount of court time required to dispose of infractions is thus very substantial: The total time spent hearing traffic infractions is enough to fill a minimum of one full-time judicial position.

Hearing infractions requires not only a substantial amount of court time, but also the commitment of other system resources. A hearing to contest an infraction is essentially a non jury trial. Witnesses, including the arresting officer and any witnesses listed on the arrest report or notice to appear, are subpoenaed by the Clerk to testify at the hearing.

3. Driving While License Suspended (DWLS)

One of the anomalies of the statutory scheme for disposition of traffic infractions is that a civil violation can result in criminal sanctions through the failure to pay a traffic fine, complete traffic school or request a hearing date within thirty days after receiving a notice to appear or ticket. Such failure will result in the suspension of the driver's license, and driving with a suspended license (DWLS) is a criminal traffic violation (misdemeanor). If the person is stopped for another traffic infraction, he is subject to arrest for DWLS and subsequent booking at the county jail. This arrest requires the commitment of the county's criminal justice resources to enforce what began as a simple traffic infraction. Given the volume of traffic infractions, the impact on the criminal justice system is great: Judges interviewed estimate that over one-half of all DWLS cases in Orange County are due to a non-criminal failure to pay a fine.⁹

When a person cited for a traffic infraction fails to pay the fine or request a hearing within the required time, the computer system in the Clerk's office automatically prints a "D-6" (notice to the Florida Department of Motor Vehicles to suspend the license), which is sent to Tallahassee. After a driver's license has been suspended, the Clerk's office can reinstate the license only if a traffic infraction is involved, the violation appears on the person's traffic record and the violation occurred in Orange County.¹⁰

In contrast to the ease with which licenses are suspended, problems with providing notice of license suspensions further aggravate the enforcement problem. The current practice of the Department of Motor Vehicles (DMV) is to send the notice of license suspension to the person's last known address, even though the correct address is provided on the traffic citation.¹¹ Of the cases which eventually end up in County Court for DWLS, one judge estimated that in 95 percent, the driver moved and the notice was not forwarded; 80 percent probably didn't know they were DWLS; and virtually 100 percent claim ignorance, without fear of contradiction.

Orange County's procedures for collecting traffic fines are obsolete and inadequate. There is no procedure to accepting credit card payments, either through the mail or over the phone, although credit cards are used. There is no provision for structuring the payment of fines into periodic payments.

There is no uniform policy for granting extensions to pay traffic fines.

If a driver requires an extension of time to pay the fine, the Clerk has no guidelines, procedure or authority to issue an extension beyond the original 30 days. Such requests currently go to the judge, adding to an already significant paper workload.

The combined effect of these procedures is to greatly reduce revenue from fully collecting traffic fines, and to convert the cases which are not collected into ones which must be processed repeatedly through the criminal justice system, increasing court workload and requir-

ing the use of jail resources. The effect of these outdated procedures is further magnified by the presence of large numbers of tourists in Orange County, who find it difficult or confusing to comply with the law regarding their traffic offenses.

Orange County still uses exclusively judicial personnel for hearing traffic cases, an anomaly among counties its size.

Recommendation: Continue to aggressively pursue procedures for collecting and processing traffic fines that maximize revenue collection and minimize the possibility that these cases turn into criminal ones.

Orange County could and should initiate different procedures within existing state law to increase the flow of collected fines and reduce the number of DWLS cases generated by the system. Among the innovations which should be considered are:

- Payment of fines over the phone, through the mail and any other appropriate means with credit cards. Broward County, for example, has kiosks where traffic tickets can be paid by credit card. The county claims that the time to process a payment has been cut from half an hour to only a few minutes.
- Payment through the mail by check.
- Clerk authorization, based on judicial design, to set up payment plans for fines.
- Clerk authorization to extend the time for payment of a fine. Currently, the Clerk is authorized via administrative order to allow an extension upon the offender's request, but only for court imposed fines and only if the fine has not yet become delinquent.

The Clerk has already developed, in conjunction with the courts, some sophisticated mechanisms to maximize fine collection and prevent civil infractions from becoming criminal violations. The Clerk has recently been allowed to accept credit card payments of fines when the defendant pays in person, although use could be expanded as noted above. In addition, the Clerk's Office and the courts are examining the concept of using Clerk personnel a "credit counselors" who would be able to set up payment plans and act as a collection agent on fines as recommended.

Recommendation: Notification procedures in all cases where a person has failed to pay a fine or request a court appearance should be revised to minimize the incidence of DWLS.

Improvement in the ways notice is provided to drivers whose licenses will or have been suspended can reduce the incidence of DWLS and the subsequent impact of these cases on the county's criminal justice system.

- The Clerk's office should work with the DMV to resolve problems with incorrect addresses in DMV records.
- The Clerk's office should expand its "courtesy" notice to traffic infraction cases. The office presently sends a notice after ten days to persons cited for criminal traffic violations. The courtesy notice could be used in conjunction with or in lieu of an automatic

extension. The Clerk is now looking into providing notices warning of an impending license suspension for non-criminal cases.

Recommendation: *All civil traffic and parking ticket infractions should be handled by a hearing officer.*

Hearing officers conserve judicial resources. A hearing officer position, even if funded rather than volunteer, can cost about one-third of the judicial position required to do the same work. State law has recently been amended to explicitly allow use of hearing officers in lieu of judges for parking tickets. This will support the county's own identified interest in using non-judicial personnel for these matters. In a review of the county's Parking Violations Ordinance, it was noted that over \$250,000 in violation revenues went uncollected due to the absence of a hearing process for contested violations and an enforcement process for ignored citations.

The county traffic divisions are characterized by a high volume of cases; six of the twelve county judges are assigned to these divisions. The high volume has resulted in time restrictions to handle matters such as motions, which could be dispositive of a case and lead to early disposition. The week in which traffic judges can hear motions, however, must also be used to hear traffic infractions. The transfer of traffic infractions to hearing officers can free judge time to handle their criminal caseloads. Traffic judges presently are often required to work beyond normal business hours simply to complete their dockets for a given day, particularly in the outlying courts. The use of hearing officers may therefore lead to cost savings over the long run through avoidance of overtime payments to court support staff.

E. COUNTY COURT CIVIL MATTERS

The county court, like the circuit court, is divided into divisions; these are traffic, criminal and civil. Of the twelve county court judges, six are assigned to the traffic division and two are assigned to handle all civil cases, which include small claims, landlord/tenant and other civil matters.

The procedural and docketing systems in place for the circuit court are generally followed by the county civil court judges. Both of the county civil judges set aside time at least four days each week to hear ex parte matters, which can be uncontested or short matters. Motions are heard in the mornings and trials are held in the afternoons. Jury trials are rarely requested.

Despite an average of over 9200 filings per year per judge, trials can be set within two to four weeks after the filing of an issue memorandum or request to set a trial date. There is some pressure on the judges' caseload management from landlord/tenant cases, for which state law requires shorter time frames for trial setting, usually within five days of a request.

The county civil court is characterized by good accessibility to the judges for both litigants and attorneys. The judges not only make themselves available in the mornings for resolution of matters informally with attorneys, but the county civil bench has actively developed alternative dispute resolution programs, such as volunteer mediation and arbitration. Unlike the circuit court where mediation is done primarily by private mediation firms, the county court

administers a mediation program staffed by non attorney volunteers. All small claims are ordered to the mediation program; a large portion of civil cases, such as bad checks and replevin actions, are also sent to the mediation. The mediation program, based on a Palm Beach model, is fully supported by fees; \$5 is charged per case, of which \$1 is allocated to the Florida Supreme Court. The county bench was also instrumental in establishing an arbitration program, also staffed by volunteers. Cases where mediation has been unsuccessful may be sent to arbitration, but both parties must agree to binding arbitration first.

The county civil judges are both amenable to allowing witness and attorney appearances by telephone. This procedure has worked well and should be formalized by written policy to facilitate court access.

Recommendation: Review mediation data on small claims cases to determine whether a hearing officer can be used effectively to handle such cases either before or after mediation.

Given the high number of county civil filings, a tremendous amount of paperwork is generated that must be reviewed and handled by two judges. The volunteer mediation program has been successful in reducing caseloads, and concomitantly related paperwork, but some cases, such as small claims, still require judicial time and resources when mediation is unsuccessful. Urban courts in jurisdictions of the same size as Orange County have implemented special small claims divisions headed by hearing officers or commissioners. The same cost considerations that support the use of hearing officers in traffic matters would also apply to small claims cases. A special committee, charged with investigating this issue, could identify other areas of cases that could be effectively handled by a hearing officer. While landlord/tenant cases can be heard within five days, approximately 700 cases involving evictions were filed each month in 1993. Very few of these cases are sent to mediation. Such cases may be another area where hearing officers could be used to expedite resolution and to reduce the county civil judges caseload.

Recommendation: Transfer certain administrative matters through administrative order to the Clerk's Office that are currently handled by judges.

As at the circuit level, the county civil judges have already been working with the Clerk's Office to identify administrative matters that can be effectively and efficiently done by that office rather than by the judges themselves. These matters include sending out forms to parties entitled to receive funds deposited into the court registry and review of pleadings to determine they are properly filed or completed.

Closely related to the issue of identifying administrative functions that can be easily handled by the Clerk's Office is the need to find ways to reduce the amount of paperwork that must be reviewed by judges.

Recommendation: Establish and locate mediation rooms in the new courthouse that are accessible to the public and reinforce the public perception that mediation is an integral part of the civil litigation.

Orange County is in an excellent position to plan the use of its courthouse space that will enhance use of its facilities and public perception of the justice process. The volunteer media-

tion program represents an admirable effort on the part of the county bench but the present facilities are inadequate: Mediation takes place in the court buildings, but the rooms used depend on what is available: Some rooms may be near the county courts, but participants must sometimes be sent to the circuit court if no rooms are available. This "catch as catch can" situation involves inconvenience to both the litigants and the mediator. A formal and convenient configuration for mediation rooms would be consistent with the county court's efforts to incorporate mediation, as well as arbitration, as integral components of the litigation process.

F. TECHNOLOGY

The application of a variety of new business technologies to court business deserves serious attention as Orange County makes plans to move into a new courthouse. Orange County government is well situated to provide new services to users of courts, to develop innovative use of technology in court practices and to achieve significant economies by doing so. Technological advances in the courts will be especially useful to Orange County when these advances can bridge or make meaningless physical obstacles. For example, juvenile and domestic relations matters which now must be coordinated under a single division, are physically located at different sites. While future space planning should take this into account, in the interim development of existing plans should maximize use of technology that will facilitate coordination and overcome physical obstacles.

1. Computer Networks

Orange County has a well established base of computer networks. While individual systems are stronger or weaker, the systems of wide and local area networks linking the county's computers together is particularly well done and the county's expertise in providing network services is demonstrated. The court system's computers have recently been greatly expanded and linked together, so that judges and judicial personnel now have access to electronic mail, good word processing, and some database information, such as case information and some information from the Clerk's office. Most judges now have terminals available in their chambers, though not on the bench or in the hearing rooms. Their judicial assistants rely heavily on desktop workstations. At the time this study was being prepared, the courts had just purchased and were trying out new legal research software on CD-ROM, which makes case and statutory law immediately available on any connected computer screen without the expense of on-line charges.

This strength in computer networking will serve the county well as it decides what information service serving the court system should become automated, and in what order.

2. Electronic Access to Case Information

Certain information about civil cases is now available through the Clerk's Office, such as the date a case is filed and certain landmark events as the case progresses. Through Tele-Clerk, the public (primarily attorneys) can obtain automated access to public domain case information. More detailed information is available about that case in each judicial assistant's computer in the courtroom to which the case has been assigned.

3. Docketing, Calendars and Scheduling

As the Clerk's Office or court administrator assumes greater responsibility for routine decisions involving docketing, calendaring and scheduling of steps in the legal process, this information should be made available electronically, much in the same way that legislative calendars are now publicly available for Congress and many states via the Internet and some commercial information services. An attorney, a litigant, court personnel or citizens should be able to simply download the schedule for a particular day or time to see what matters are pending.

4. Bulletin Boards

The civil courts could almost immediately make an electronic bulletin board available to users of the courts. Most appellate courts in the United States now do this, and a rapidly increasing number of trial courts have found this a good way to make court information available to the public. Users can have their computers call in to the court's number and obtain information about a wide variety of matters, including recent notices, court rules, tentative rulings by judges on certain matters and even daily dockets. This is a simple, inexpensive way of making information available to those who need it, freeing up judge time, especially in the county court.

Alternately, tentative rulings can easily be put on telephone tape recordings. This would be particularly useful in relieving some of the pressure on county court judges who commented in interviews that much time is spent on motions, paperwork and attorney "drop-in" meetings. A tentative ruling recording could include reasons for a motion denial and if the court wants a hearing or needs additional information. Local rules require moving party to submit a proposed order on the motion. If a party wants to oppose the tentative ruling, the court and the other side must be contacted at least one day in advance of the hearing.

5. Legal Research/Library

Legal research in the courthouse has traditionally been done by judges in their chambers, attorneys or litigants in the courthouse library or research clerks in their offices. For more than a decade, WestLaw and Lexis/Nexis services have offered electronic access to a vast array of legal materials through fast, computerized searches in time frames impossible by traditional manual research. The twin disadvantages of high cost and the significant expertise needed to perform the searches has slowed the spread of this kind of legal research to those willing to learn the techniques and pay the price.

A number of legal publishing houses have developed legal research products during the last two years which will significantly change the face of legal research in the near future. The cases and statutes for a particular jurisdiction, like Florida, can be reduced to a CD-ROM disk containing a whole jurisdiction's basic law. These disks can be searched using several different simple but efficient search techniques. The disks cost less than the books which they will eventually displace, and they are easier and faster to use. A few of these disks can replace literally hundreds of books which have to be laboriously updated with pocket parts each year; to update the disks, the old is simply swapped for the new. The disks can be kept in a

tower of CD-ROM disk players, which can be programmed to be accessible to many users simultaneously over a network of connected computers. The implications of this new technology will have a dramatic effect on space use, especially library needs and a high technology building infrastructure.

6. Speakerphones

All circuit civil judges had speakerphones in their chambers and hearing rooms. Many permitted the use of speakerphones for certain matters, including the appearance of attorneys and witnesses from out-of-town. Some used speakerphones for witnesses who probably could not otherwise afford to attend a hearing.

Judges, however, complained about the characteristic of their speakerphones which permitted the person on the other end of the line to continue speaking unless a much louder noise was made in the room to "toggle" the telephone transmission in the other direction. This permits a speaker to dominate the proceedings, and makes it difficult for the judge to control courtroom or hearing proceedings in the normal fashion.

Speakerphones can be an effective tool for courts if properly managed. Attorneys both locally and those from out-of-town can make appearances on routine matters without the time and expense of traveling to the courthouse. Witnesses or parties can appear, attend or monitor a hearing or other proceeding from remote locations. Traffic within the courthouse can be reduced, and parking facility needs better managed. Courts are now even permitting the use of telephone testimony at trials, depending on the nature of the testimony.

Speakerphones can be effective for resolving discovery disputes when they occur. For example, in taking a deposition where a witness consistently refuses to answer or attorney persistently objects on trivial matters, federal court allows attorneys to call the court during the event to get an order. This avoids forced rescheduling of the deposition or requiring attorneys (at great cost to efficient judicial time management) to go to court for resolution.

Newer speakerphone technology permits far more natural, two-way conversations to occur, permitting judges to control proceedings in ordinary fashion. Without question, this procedure would be used by judges more frequently if the speakerphones were updated to permit the judge and court personnel better control over the conversations. Orange County should install the more modern speakerphones in judges' chambers, hearing rooms and courtrooms in the new courthouse.

7. Fiber Optic Cabling

Fiber optic cable connections – in judges' chambers, hearing room, several locations in the courtroom, the offices of appropriate judicial personnel, and other locations throughout the building should be thoughtfully considered. Installation of these networks during construction is significantly less costly than performing a retrofit. Fiber optic cabling permits the very high speed transmission of electronic information, especially graphic, video and image data. It will permit the flexible and evolving use of computer networks, both inside the building and externally to connect with other county information networks, on-line legal research ser-

vices and, as it is developed, the nation's "information superhighway." It will permit the use of much better telephone technology, including videophones, and can pave the way for electronic filing of legal papers.

Recommendation: Cable the new courthouse with fiber optics.

8. Electronic Recording

The relatively new Juvenile Division courthouse makes very effective use of electronic recording of proceedings. Each courtroom is wired for recording devices and microphones are placed at the bench, the witness stand, the counsel tables and other locations where support personnel provide assistance. Beyond major advances in tape recording of oral proceedings, emerging digital technology now permits a computer to record proceedings and preserve them as both sound files and written transcripts which are electronically indexable and searchable.

Hearing rooms and courtrooms in the new courthouse should be equipped to permit the efficiencies and advantages of electronic recording.

Recommendation: Equip the new courthouse with electronic recording capability.

9. Electronic Filing of Legal Documents

A number of courts and national or regional court organizations around the country are experimenting with the electronic filing of legal documents, including basic legal pleadings like the complaint, answer and various motions in civil cases. The federal government has recently adopted authentication protocols and the implementation of computer networks and communications systems now permits full implementation of this approach to legal documentation. Pilot projects to do so are common nationally.

Electronic filing of court documents offers advantages in reducing paper storage needs and permitting the simple electronic access from anywhere on a network to the document. Physical files are greatly reduced in volume, and critical documents need not be transported when access is needed — they are simply called up to the screen. Access to public records is greatly simplified, and personnel costs in handling, moving and storing large quantities of paper files are presumably reduced.

Orange County, with its excellent system of computer networks, is well situated to embark upon development of an electronic filing system. Many of the issues involved in accomplishing this goal have already been resolved in Orange County. Indeed, the question is less whether electronic filing is coming, but when. Most jurisdictions will not be ready to allow significant electronic filings for another five or ten years; Orange County could probably start within a year of a decision to undertake the project.

IV.

Projections of Filings & Judges

IV. Projections Of Filings & Judges

A. INTRODUCTION

Estimates of the space needs of a court system have traditionally been based on the number of court divisions. Each judge has a courtroom, and the judge and supporting staff have their offices and other space. The number of judges is projected from the numbers of cases filed, which in turn grow with the population. Population is thus the engine that drives all of the other growth. The Florida Supreme Court has developed guidelines which use the number of filings to signal the need for new judicial positions. It is up to the court circuit itself to allocate new judges between the civil and criminal functions.

B. METHODOLOGY

Population growth is the most stable and predictable factor in making projections. In the very long run, the growth of any public institution will either follow population growth or lag behind it, since obviously no government can permanently grow faster than the population it serves. If a function grows faster over a short period there must be some temporary accelerating factors other than population. The analyst who makes the projection must identify and examine these factors and estimate how long they will remain in effect.

On the other hand, if a government function grows more slowly than population there can be two explanations: either there is an analogous temporary decelerating factor, or the function is obsolescent and will eventually disappear altogether. Absent any such accelerating or decelerating factors it is reasonable to project growth at the population rate, i.e., constant per capita operations. This is the guiding principle used in ILPP's projection of judgeships.

A not infrequent method for developing projections is using a linear regression of filings or other quantities against time. While regression is a well-established and mathematically elegant technique, it is no more than a mechanical method of fitting a line to a given set of points. It does not take into account any changes in the underlying causal factors of the process being measured. When the data are not linear over time the regression line becomes very sensitive to the starting and ending dates. If a period of steep growth is used as the basis that rate of growth will be projected regardless of whatever changes may occur subsequently, and may lead to improbable results if extended far enough. For example, the Orange County corrections master plan took the jail population in the middle 1980s - a period of unprecedented rapid growth - and projected between 5,000 and 18,000 inmates in 2000. (The actual population in 1993 was 3,200, already well below the preferred master plan projection of 4,100.)

Projections created by any methodology, however, are still at best simply reasonable estimates. This point should not be underestimated given that projections support major capital outlay and other important decisions. The only way to ensure accuracy is to periodically review previous projections and adjust them in response to actual numbers. ILPP's projections attempt to include a number of current and historical factors which influence growth

and are followed by a comparison with the projections prepared as a part of the courthouse master plan. Neither of these forecasts can be taken as inviolate fact: instead they should be reviewed as an estimation of trends which could change in light of unforeseen circumstances.

C. HISTORICAL FILINGS AND INFLUENCING FACTORS

Several types of court function are discussed here. In the Circuit Court there are "ordinary" civil cases (contracts, torts, eminent domain, etc.), domestic relations, juvenile dependency and delinquency, and the group consisting of probate, mental health, and guardianship cases. In County Court there are civil cases, including small claims, and civil traffic. Adult criminal cases are excluded, though it is not always possible to separate civil from criminal traffic.

Several factors in Orange County could have affected the *population:filings:courtrooms* equation. First is the growth in mediation and other nontraditional means of dispute resolution as a means of resolving disputes. A second trend has been the shift in jurisdiction over some types of cases from the Circuit to the County Courts. The third factor is the explosive growth in juvenile delinquency cases. Finally, there is a continuing improvement in automation and other technology which eases the burden on judicial and county staff.

Information on the numbers and types of filings was obtained from the annual reports of the Ninth Court Circuit, and from the Office of the Clerk for more recent years. The 1989 annual report merely summarized filings since 1978. A detailed breakdown is available only for the years since 1989. ILPP's planning team conducted numerous interviews which aided an explanation of the current and expected filing and workload trends.

Figure 15 shows the historical filing data. Circuit civil and domestic cases were not tracked separately until 1986, and are combined in the figure. Traffic is scaled on the right-hand axis as it is much larger than all other types of filings combined. Filings other than probate have grown, as has the county's population. Figure 16 shows the same data expressed in per capita terms (filings per 100,000 county residents). Except for juvenile since 1982 the per capita filings have shown no consistent pattern of growth.

Figure 17 shows the per capita circuit civil and domestic filings separately since 1988. The combined per capita filings rose from 1984 to 1990 and have since declined slightly, but the decrease is all in civil, as domestic filings have continued to grow. County civil per capita filings have decreased steadily since 1986 (Figure 16).

Figure 15
Court Filings

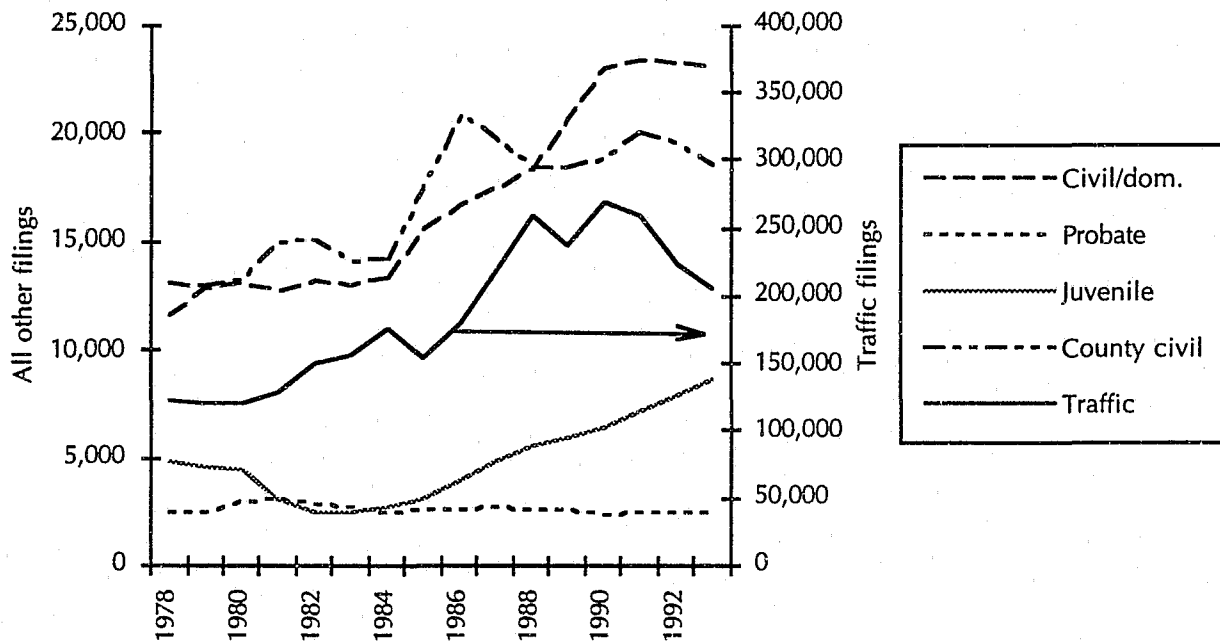


Figure 16
Per Capita Court Filings

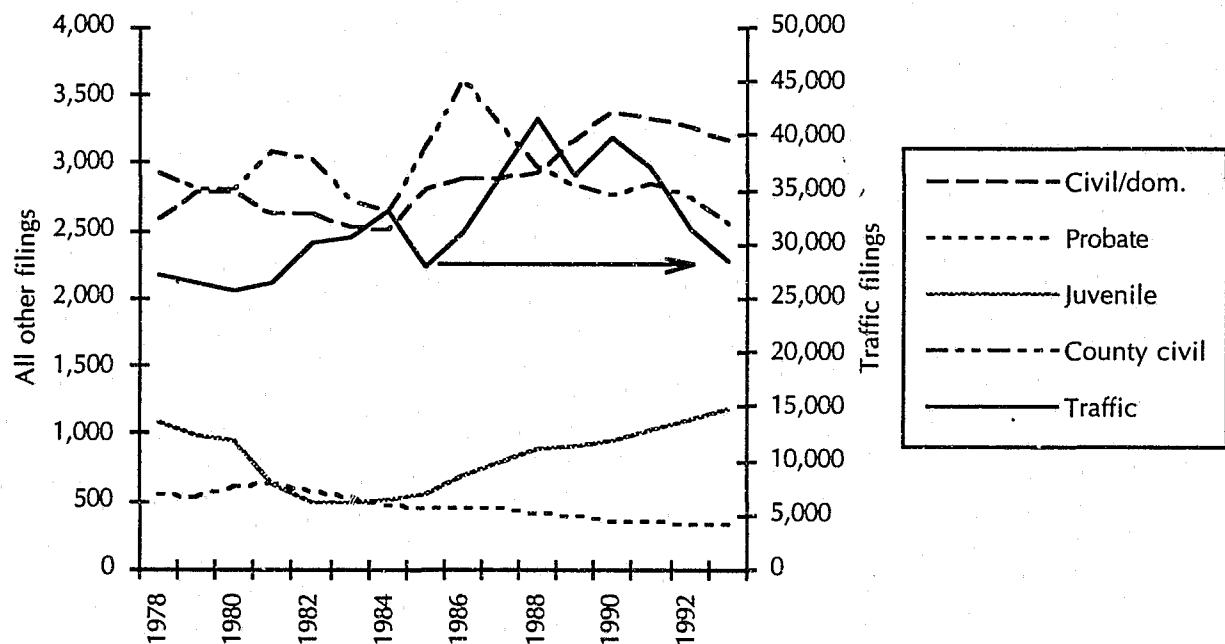
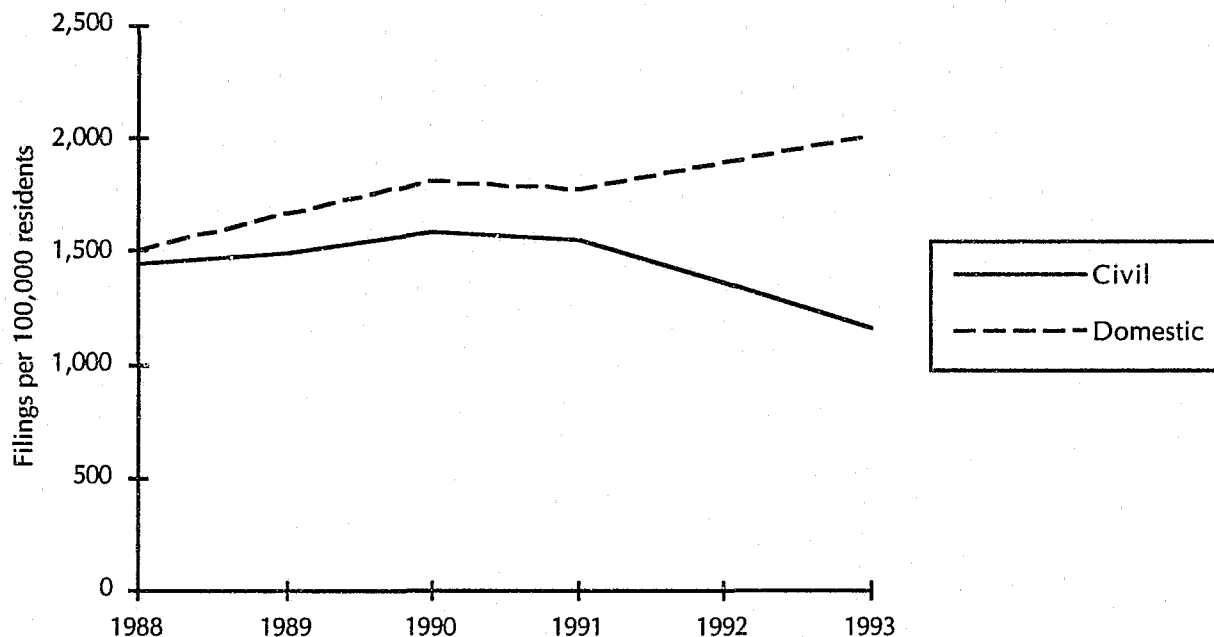


Figure 17
Circuit Civil and Domestic Court: Per Capita Filings



Mediation may have been a factor in the decline of civil case backlog and processing time over the last few years. Interviews with many judges and other officials have established that the impact of mediation on civil proceedings at both the circuit and the county level has been substantial. The great majority of civil cases are referred to mediation. Some are sent to mediation rather than being filed at all, but the major effect is that mediation can greatly reduce the amount of judicial time and, even more, of courtroom time. In other words, the demand on the courts has gone down more than would be indicated by the level of filings.

Mediation has so far been less used in domestic relations matters. Expansion of mediation could result in a large reduction in demand for judicial time and courtroom space even though it would probably not have much of an effect on the number of filings. Here the increased use of mediation promises a greater reduction of workload than in civil cases.

During the 1980s any case involving more than \$5,000 was directed to Circuit Court. This level was raised to \$10,000 in 1990 and to \$15,000 in 1992, but the change did not cause a visible decline in circuit filings or a concomitant increase in county filings overall: the number of filings for breach of contract, indebtedness, and promissory notes fell in both courts from 1991 to 1993. The level could increase again in the next few years to \$25,000 or \$30,000, and some real estate equity cases may also move to County Court. If the earlier changes are a guide the increase in jurisdictional limits will not have a major impact on the numbers of filings.

From 1991 to 1993 there were substantial decreases in categories of civil filings such as breach of contract, lien foreclosures, and indebtedness at both the Circuit and the County Court levels. Cases of these types would be expected to decrease during a general slowdown in business activity and might then grow as the economy rebounds. However the decrease might also indicate that more disputes have come to be settled by mediation or other informal means before filing.

Probate, guardianship, and mental health is a low-volume, low-impact function of the Circuit Court. Probate, which generally involves the estates of older persons, might be expected to follow the growth of the elderly rather than the total population. However probate constitutes only about 60 percent of the filings in this group, and per capita filings in the entire group have decreased steadily since 1981 despite an increase in the elderly population over this time.

Traffic filings fluctuate, presumably reflecting changes in the enforcement level. ILPP has been able to obtain a breakdown between civil and criminal traffic filings only since 1989. Civil infractions constitute about 84 percent of the total, though they require less judicial time per case. While it may be expected that total filings will increase, there are substantial improvements that could be made in the handling of traffic tickets which would greatly reduce the workload for both the Clerk and for the misdemeanor criminal court (DWLS).

The juvenile division is the major exception to filings growth at or below the population rate. Per capita juvenile filings fell dramatically from 1978 to 1983 and have since rebounded to an even higher level. On this basis the per capita (total county population) filings in 1993 were nearly two and one half times what they were in 1983. The recent growth is even more striking if per capita filings are based on the number of youth under the age of 18. In other words, juvenile delinquency filings relative to the size of the age group in the general population are rising more quickly than the growth of this age cohort.

All of the growth has been in juvenile delinquency; total delinquency filings rose from 5,000 in 1989 to 8,100 in 1993 while dependency fell from 890 to 470. If the arrested juveniles are assumed to be aged 15 - 17 the actual delinquency filing rate in 1993 would be 320 per thousand, and would be even higher if only males were considered. The reason for this increase is not clear. Juvenile arrests do not show such a trend over that period,¹² and delinquency filings consistently outnumber arrests by as much as two to one.

Nevertheless the amount of time spent on dependency is more than represented by its meager share in filing, since many delinquency cases are diverted.

In early 1993 ILPP completed an evaluation of the Orange County criminal justice system. Part of that study examined the automated data system. ILPP has not looked at the data system with specific reference to the civil courts, but some of the conclusions should still apply if there have not been major changes in the interim. The Clerk of the Court and the Court Administrator each have a large "minicomputer" system. Internally the offices are heavily automated and the systems appear to meet their owners' needs. Improvements are occurring; for example, on-line entry of court proceedings is being introduced and should

both speed up processing and eliminate an unnecessary stage of data recording. ILPP expects a continuing increase in operating efficiency and thus in the circuit's ability to handle an increasing workload with existing resources.

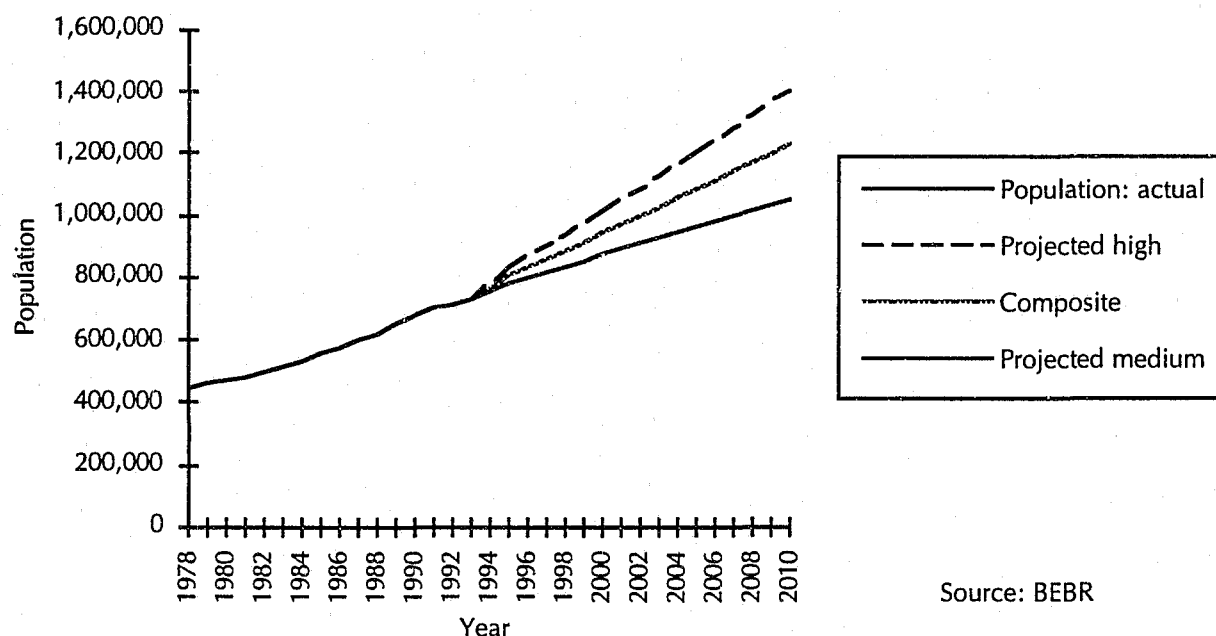
However the architectures of the two systems differ both in hardware and in software, and this introduces some complications. The systems are interconnected, but ILPP heard complaints that it was not always easy to obtain data in a useful form from another department. While there is a positive commitment at the executive level to continue developing information exchange (a great advance over the situation half a dozen years ago), there remains more to be done. Continued improvement in information exchange between the courts and the Clerk should be yet another factor increasing the efficiency of the judicial process.

D. PROJECTIONS OF FILINGS AND JUDGESHIPS

The projections methodology is based on ILPP's interpretation of the filings history and the interviews. At various points in the discussion reference is made to the courts master plan prepared for the county in 1990 by Hansen Lind Meyer. Under subcontract to HLM, Justice Planning Associates, Inc. (JPA) made filings projections using data for the period 1978 - 1986. Their projections are discussed in light of the actual values obtained in the ensuing years and are shown later in the projections of total filings.

The filings projections are constructed by applying modified per capita filing rates to the expected county population. For this it is necessary to identify a reliable population projection. ILPP used two of the population series produced by the University of Florida at Gainesville (Bureau of Economic and Business Research, or BEBR). The first is BEBR's "medium" or preferred projection, and the second is an average of BEBR's "medium" and "high" projections, this latter also having been used as an alternate in ILPP's criminal justice study at the suggestion of Orange County analysts. The medium projection shows Orange County having 1,048,318 residents in 2010, while the medium/high average gives 1,226,309 for that same year. (Figure 18)

Figure 18
Projected Population: Orange County



Terminology becomes inescapably complex at this point. The BEBR filing projections are called (their terms) "medium" and "high." The average of medium and high is here designated as the "composite" population projection (ILPP's term).¹³ The filings projections by ILPP based on the medium population projection is called the "lower" projection, and is used in most of the discussion unless otherwise specified. Filings based on the composite population series are called the "upper" series. The table may clarify these:

Table 1
Definition of Upper and Lower Projection Ranges

<u>BEBR population projection</u>	<u>ILPP filings projection</u>
Medium	Lower
Composite = average of medium and high	Upper

In Figures 19 to 27 only the "lower" projections are displayed.

1. Civil and Domestic Filings

Per capita civil filings, including domestic, have remained in the vicinity of 3000 per 100,000 population in both circuit and county court for more than a decade. (Figure 16) The circuit figures were a little higher in the late 1980s but have since dropped slightly.

From 1990 to 1993 the total circuit civil filings declined, but the total masks a decrease in true civil and a growth in domestic relations; the latter now accounts for about two-thirds of the total. (Figure 17) ILPP believes that the decrease in the level of civil filings in the last several

years is partially due to the growth of mediation, and that this effect has gone about as far as it can. In addition the economy finally shows signs of turning around. A conservative estimate, therefore, is to project filings remaining constant for another two years and then beginning to grow at the same rate as population. This model is applied to both circuit and county filings.

The JPA circuit civil/domestic relations filings were a little below the actual values for 1989 - 1992, but the 1993 figure is fairly close as the total filings have remained nearly constant. JPA's County Court projections, on the other hand, were substantially too high, exceeding the actual by about 10,000 in 1993.

Domestic relations filings have grown faster. ILPP believes that mediation will begin to have an impact on case processing times, however, in the next few years. Filings are projected to follow the current (increasing) per capita trend for another two years, remain constant for four years, and finally return to the population rate of growth.

The historical and projected filings, including JPA's earlier estimates, are shown in Figures 19 and 20. Figures 21 and 22 show ILPP's expected per capita figures.

Figure 19
Circuit Civil Filings

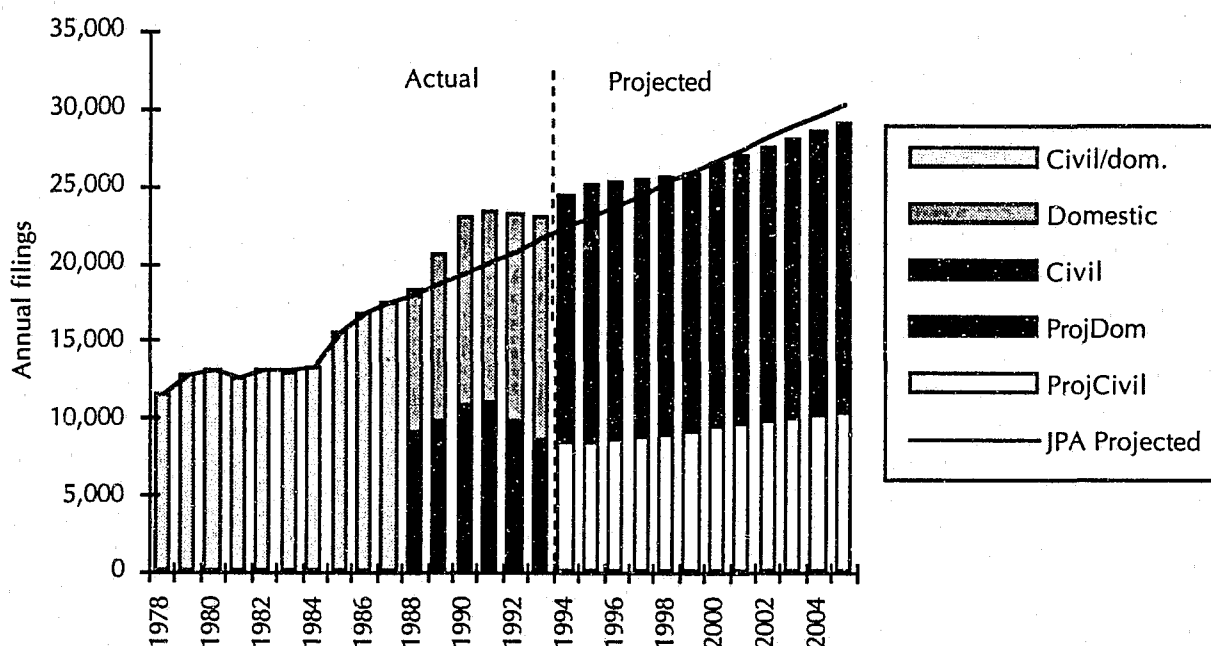


Figure 20
County Civil Filings

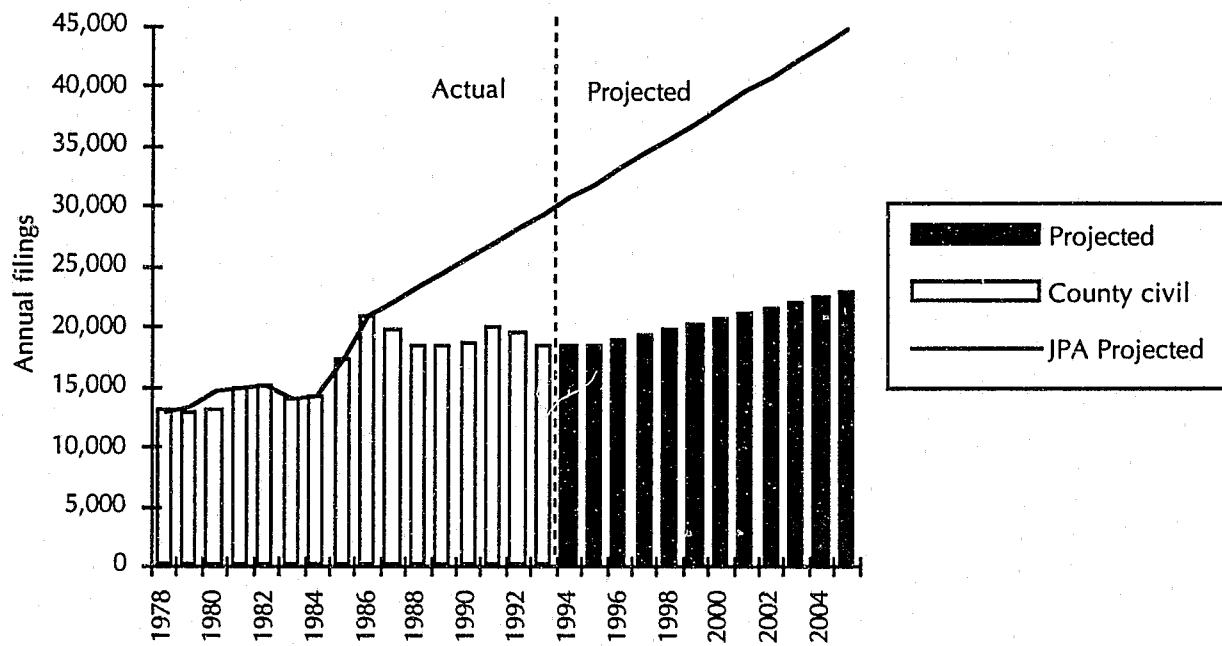


Figure 21
Circuit Civil/Domestic Per Capita Filings
Historical and Projected

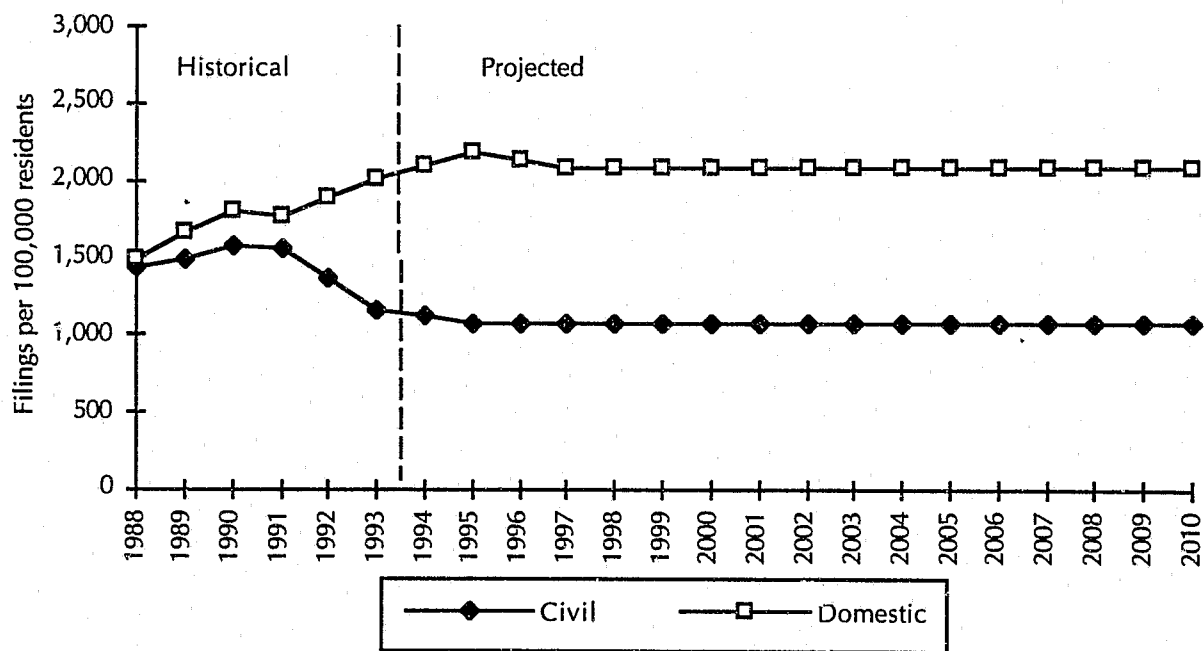
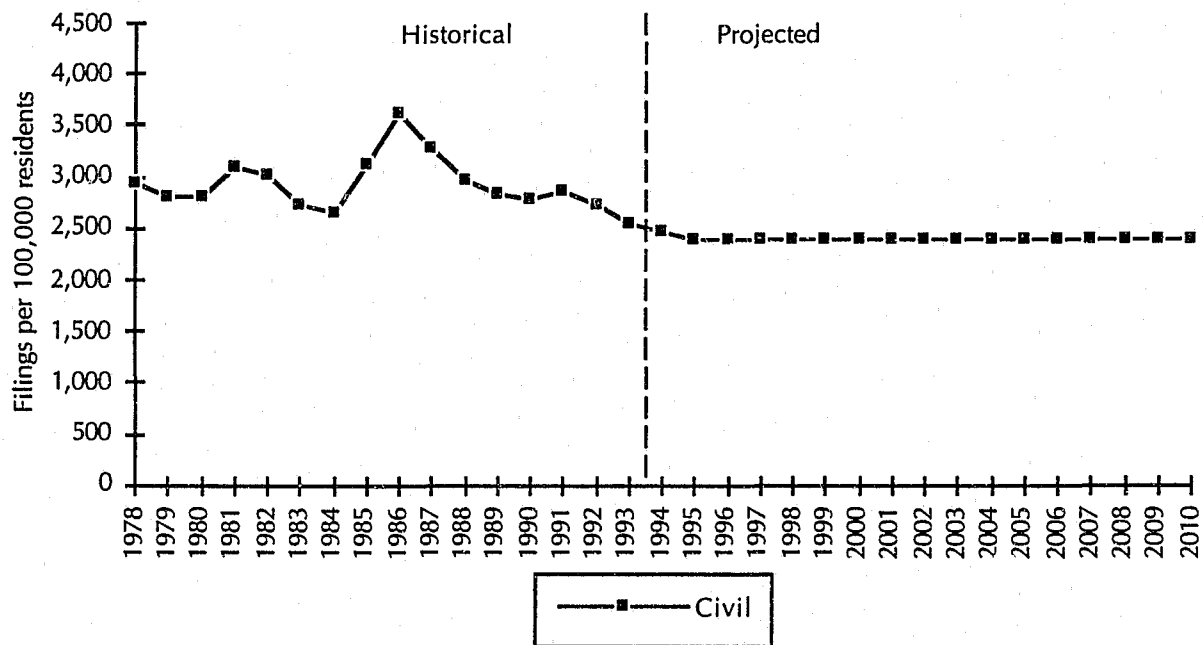


Figure 22
County Civil Per Capita Filings
Historical and Projected



2. Traffic

Traffic filings fluctuate around a steady population rate. ILPP therefore projects these to continue to mirror population growth, but with the admonition that traffic has proven to be more volatile than other types of cases, and the numbers should be taken only as a long-term average. The JPA estimates could not follow this erratic behavior; they were too low in 1987 - 1991, but then the actual filings headed downward while the projections continued to increase. They crossed in 1992 and continued in different directions in 1993. Civil traffic has been a relatively constant percent of the total throughout the period 1989-1993 and presumably will remain so. (Figures 23 and 24)

Figure 23
Traffic Filings

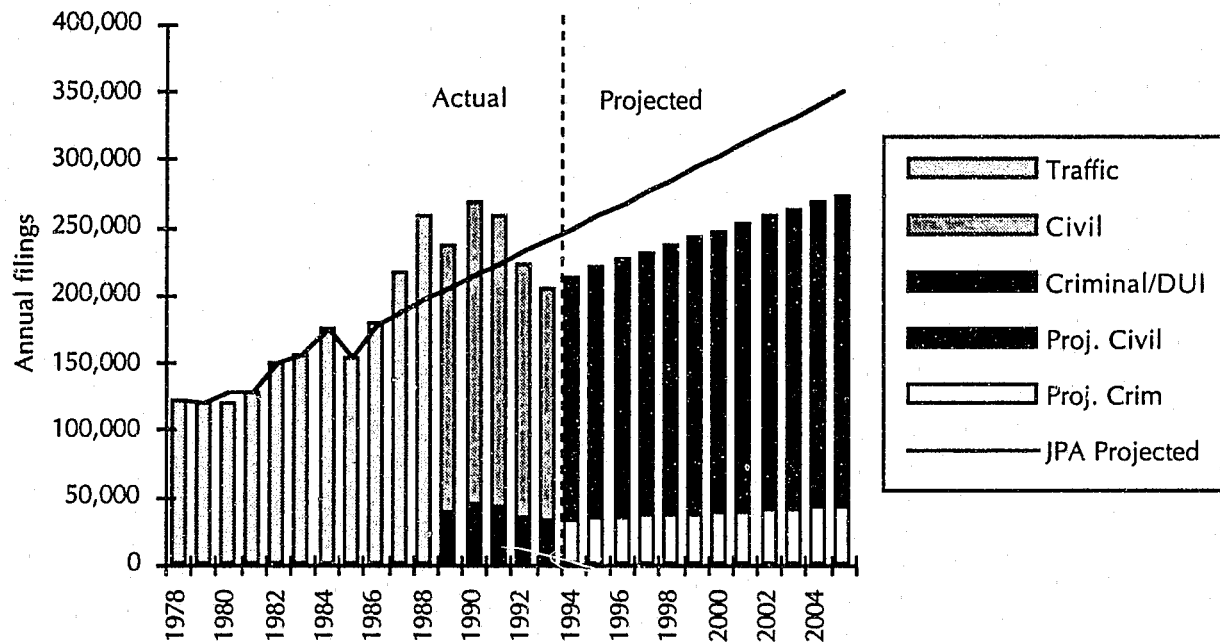
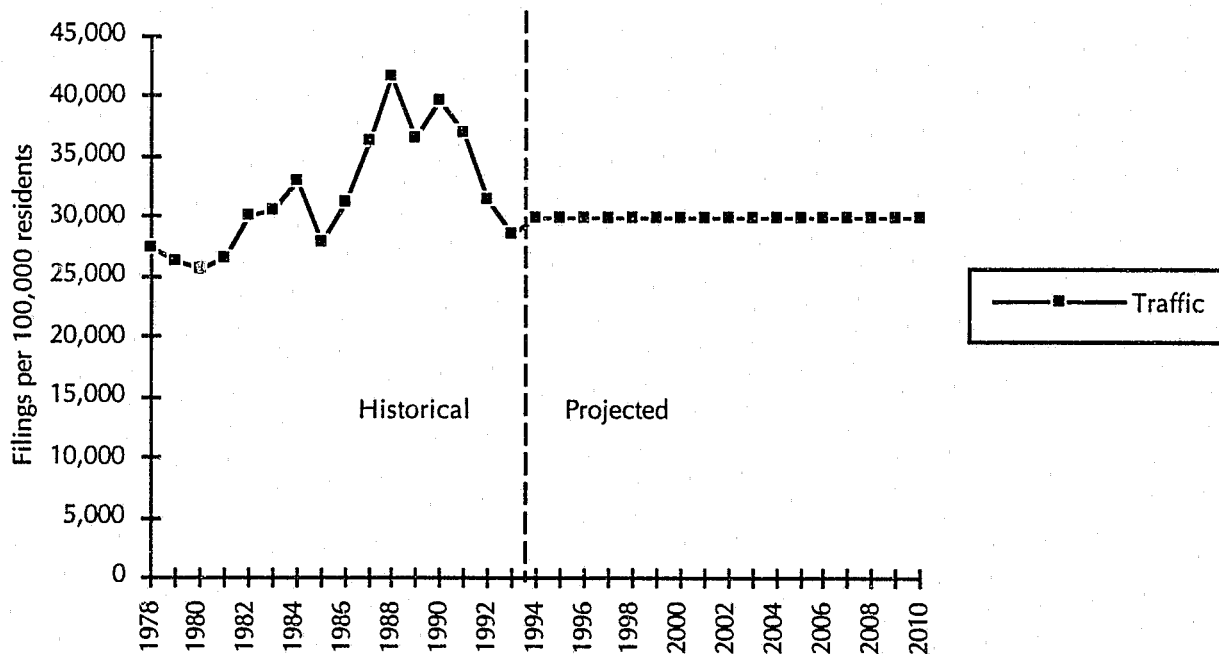


Figure 24
Traffic Per Capita Filings
Historical and Projected



3. Probate and Juvenile

Probate filings have decreased, but ILPP projects that they will level out since this is by no means an obsolete function. The volume of probate filings is in any case not large enough to affect the overall court workload. (JPA greatly overestimated the volume of probate filings.)

Juvenile filings are the most problematic. JPA greatly underestimated the actual number of juvenile filings.¹⁴ Delinquency filings are rising sharply and dependency filings are falling at a similar rate, though their absolute numbers are much smaller. Yet delinquency must at some point level off and dependency cannot decrease at the current rate much longer before it disappears altogether. In fact the low point of dependencies was in 1992, so perhaps the leveling-off has already taken place. No such moderation is apparent in delinquencies, however, and there is no good model for the time or magnitude of leveling off.

ILPP, with some reservations, uses the following assumptions: The juvenile per capita filing rate, which is dominated by delinquencies, will round off by 1998 and follow the juvenile population growth after that point. As with all projections these should be checked every year or so and modified whenever necessary. (Figures 25 to 27)

Figure 25
Probate Filings

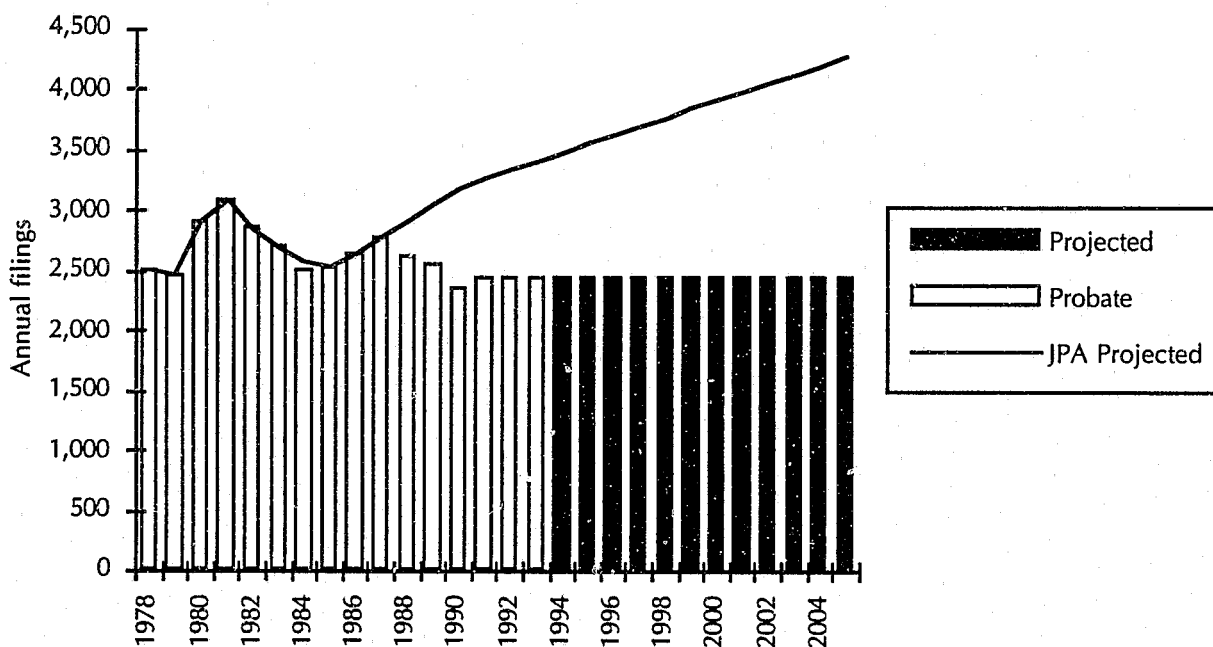


Figure 26
Juvenile Filings

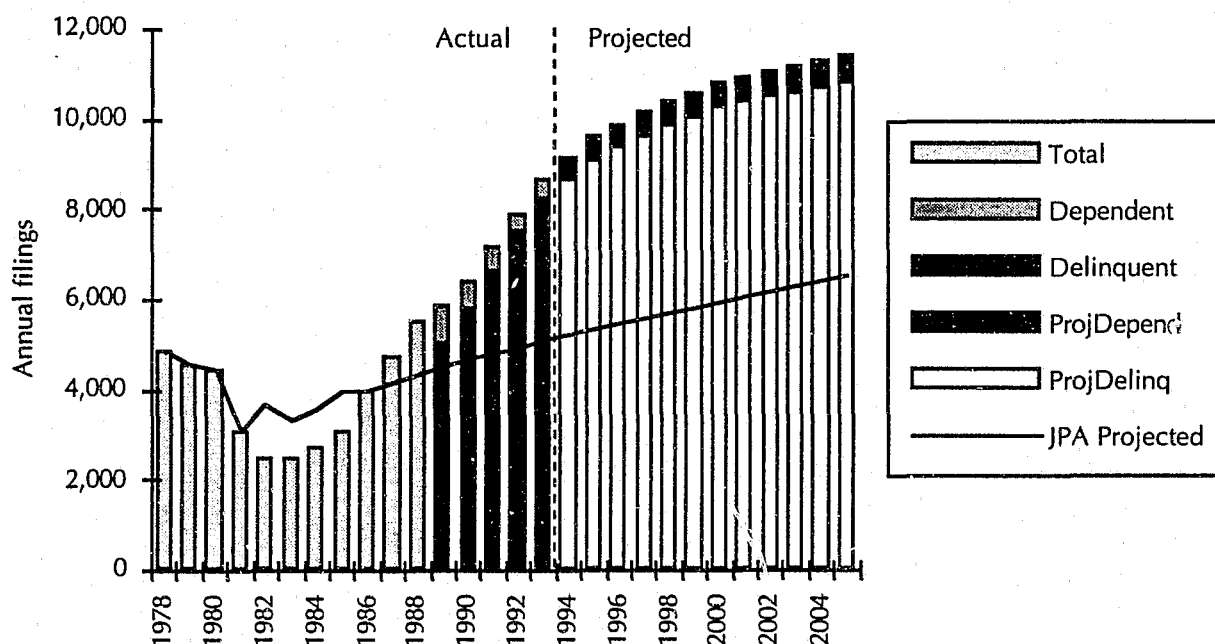
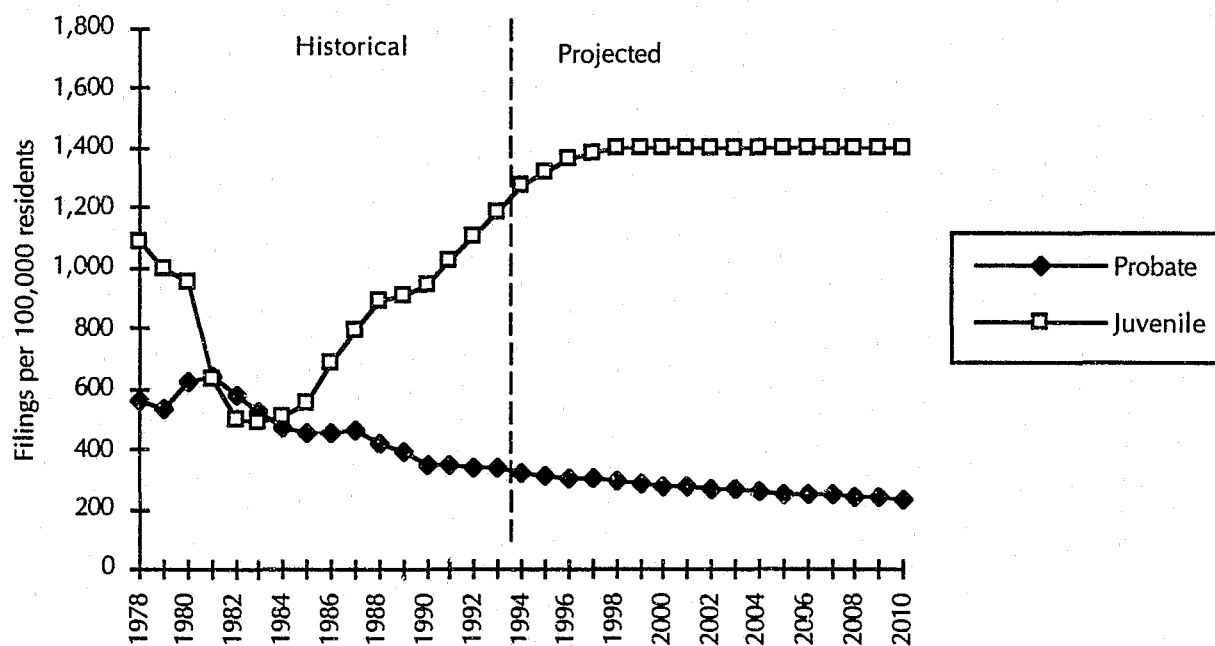


Figure 27
Juvenile/Probate Per Capita Filings
Historical and Projected



4. Commentary on the JPA Projections

The JPA projections were quite accurate with circuit civil filings but went wide of the mark on juvenile, probate, and county civil filings, and were perhaps only fortuitously correct with traffic. This should be seen less as a criticism of JPA's forecasting ability than as an affirmation of the advice that projections should be constantly revisited and adjusted to changing conditions.

E. PROJECTIONS OF ADDITIONAL JUDGESHIPS

Although this study is concerned only with the civil court functions, any additional judgeships are authorized by the Supreme Court for the entire circuit; it is up to the circuit itself to allocate new judges between civil and criminal duties. The Supreme Court has established guidelines: 1,865 filings per circuit court judge and 6,100 filings per county court judge, exclusive of civil traffic. Above these there is a presumptive need for another judicial position.

However these levels are not fixed. They may be adjusted up or down because of special circumstances in the circuit which affect the workload in ways not obvious from the mere level of filings. One factor which will cause the levels to rise is the use of mediation and other forms of alternative dispute resolution. Each circuit's request for additional positions is decided on its own merits, not by formula. Thus it is impossible to say exactly how much the availability of mediation in Orange County will delay the addition of new judges. The calculations sketched below assume that the guidelines are strictly followed and therefore almost certainly overestimate the authorization of additional judges in the coming decade.

Because it is the entire court which is considered in making judicial assignments it became necessary to include the criminal filings also. Criminal filings were not projected in ILPP's earlier criminal justice system study, but arrests and bookings were assumed to grow approximately with population. This population proportionality was assumed for criminal filings also, except that a small accelerating factor (0.4% annually) was superimposed on the population growth to allow for the possibility that filings will grow faster than population, though in fact they have been decreasing over the last few years.

Judicial positions are based on the numbers of filings per judge. The actual filings per judge in 1993 are shown below. It can be seen that there is a wide disparity among the functions. The domestic, probate, juvenile, and county civil judges are operating far above the guidelines. Nevertheless it is ILPP's observation that these judges are handling their workloads with unusual efficiency and that certain procedural reforms could further lighten their burdens.

Table 2
Filings per Judicial Position (1993)

<u>Function</u>	<u>No. of judges</u>	<u>Filings per judge</u>
Circuit criminal	8	1,280
Circuit civil	6	1,407
Domestic	4	3,379
Probate	1	2,447
Juvenile	3	2,882
Average Circuit Filings per Judge		2,019
County criminal	4	5,449
County civil	2	9,293
Criminal traffic*	6	5,434
Average County Filings per Judge		6,082

* The same traffic judges also handle the much more numerous civil traffic offenses, but those are not counted in the guidelines.

The average filings for all circuit judges is 2,019, and for county court, 6,082. According to the guidelines there should be 24 circuit judges and 12 county judges. The actual figures in 1993 were 22 and 12. (For 1994 two more circuit positions were approved and funded.)

The nominal number of judicial positions projections shown in Table 3 is based strictly on the state guidelines: when filings exceed 1,865 per circuit court judge or 6,100 per county court judge, another position is added. The nominal numbers of 1993 and projected judicial positions are shown below. Both the "lower" and "upper" filings projections were considered.

Table 3
Nominal Judicial Positions, Upper and Lower Possibilities

	<u>1993</u>	<u>1995</u>	<u>2000</u>	<u>2005</u>	<u>2010</u>
Circuit Court, lower	24	27	30	33	35
County Court, lower	12	14	16	18	19
Circuit Court, upper	24	28	32	36	41
County Court, upper	12	14	16	18	21

There would be a total of 51 or 54 judges in 2005. The master plan based on JPA projections calls for 57.

However as has been shown at several places in this study the judicial process in Orange County works quickly. The guidelines appear to have been constructed to meet the needs of much less efficient systems. If the current Orange Circuit Court caseload of 2,019 per judge is taken as a workable level, then the need for Circuit Court judges in 2005 would drop from 33 to 30. Even this number might be more than needed, as there is still room for efficiency

improvements, in the domestic and juvenile departments especially. Similarly, ILPP recommends procedural modifications in the handling of traffic cases at the county level. These would both improve the traffic case flow and reduce county criminal cases by lowering the incidence of DWLS.

F. SUPPORT STAFF AND SPACE USE

Though it falls just beyond the scope of the present study, the projections of judicial positions have obvious implications for the use of current and proposed courthouse space. In particular it is relevant to the new courthouse under development in Orlando. The branch courts (Apopka, Ocoee, Winter Park) are implicitly included in the filings and judgeship projections but not in the space considerations.

Each new judge will require chambers and an increase in the support staff. Traditionally also each judge is assigned his or her own courtroom, but as is noted at several places in this report low jury trial activity may allow the sharing of civil courtrooms in some cases. The total number of jury trial in 1993 was 91 in Circuit Civil Court and seven in County Civil Court (Clerk's data), but no jury trials in Domestic Relations. There were 111 traffic trials (Court Administrator). The total of all of these is thus just over 200 for the year, excluding mistrials and any resolved after the trial began. If each judge has a separate courtroom, and if the average trial requires as much as five working days, the courtrooms each have a trial capacity of 52 cases a year. The average actual annual numbers of trials per judge were 15 in Circuit Civil, 19 in Traffic, and negligible for the others. Building a full courtroom for each civil judicial position may be excessive. This scenario does not pertain to criminal courtrooms.

The support staff for civil functions consists of the judicial assistants and the offices of the Clerk of the Court and the Court Administrator. For criminal court there are also the offices of the State Attorney, the Public Defender, and various correctional alternatives, but they are not considered here. (The criminal court agencies would, however, be logical candidates for any unused space in the new courthouse.)

Staffing of these offices will increase as new judges are added. It is standard procedure for each judge to have a judicial assistant, and there is no reason to think that the judges will wish to compromise on this prerogative. Each new judge will have an assistant.

The Clerk's office at present has 364 employees, of whom 314 are assigned to the central facilities in Orlando. Although there are continual improvements in automation and thus in each employee's workload handling ability, maintaining the ratio of employees to filings in the courtroom, circuit and county units would increase the total number to 413 in 2005, excluding the branch courts. This would, however, be a far faster rate of growth than has occurred in the last several years (seven employees in four years). The Clerk's funding comes entirely from fees and other charges. If the filings really do increase as projected, the Clerk may be able to sustain the corresponding rate of growth in staff.

The Court Administrator's office has at present 79 county-funded staff members (excluding those in Osceola County), plus ten who are state-funded. About half of the staff are conventional or electronic court reporters, whose numbers are expected to increase with the number of trials. Other units have administrative and coordinating duties which normally do not require a proportionate increase. Overall, the growth of this office has been moderate over the past few years, but it may accelerate briefly in response to state mandates regarding a Family Court Division.

However it is clear the Court Administrator will not be able to add ten or even five persons annually over a long period unless the state continually imposes heavy new mandates. Judging by the recent history, a more typical figure would be one to two new employees a year, punctuated by occasional faster growth.

V.

Conclusion

V. Conclusion

A. SUMMARY

The Orange County civil courts at both the circuit and county levels are efficient, innovative and hardworking. For all of these reasons in addition to the slowing growth of the local population, the civil side of the courts are growing overall less rapidly as was assumed by the county's courthouse master plan, which is currently under construction. The civil courts in Orange County have reached an important crossroads: construction of a new courthouse is underway and use of alternative dispute resolution is realizing substantial efficiencies without yet creating major management problems. This is an important moment to consider not simply how well operations flow today, but to plan for how these will adapt to the long-term needs of the county as it enters the next century and beyond.

Because projections are at best only reasonable guesses, a major recommendation of this report is to carefully monitor case filing growth and remain responsive to changes by division. The aggressive use of alternative dispute resolution techniques has enhanced the efficiency of the civil judges and should be included in calculations of future judgeships requested. In addition to possibly slowing growth in the need for additional judges, mediation and other methods have qualitative implications for determining the kind of space that will be needed in the new courthouse. Regular and active participation of the civil judges and court administration in the process of completing interior construction in the courthouse will ensure that this, too, remains responsive to actual need.

B. SPACE PLANNING IMPLICATIONS

The aim of this report is to provide Orange County with the tools to best understand and plan for the local court system's operational and physical needs. This document is not a detailed architectural review of existing plans. However, there are many areas in which identified changes in practice and policy will affect the need for space. The following areas summarize key space planning implications identified throughout this report.

1. Operational Efficiency vs. Construction Efficiency

The cost of a building derives both from all of the costs associated with constructing it and all of the costs related to operating it. This latter area traditionally receives little attention, although over the life of a building, operating costs far outweigh construction costs. Operation includes building maintenance, security, and related staffing needs. While plans to develop the interior of the courthouse into alternating levels of courtrooms and judicial/office space are complete, the added cost of redesigning courtroom floors would produce substantial savings in long-term operational efficiency if it improves the ability of the building to better meet the actual need of its users (judges, the public, etc.).

2. Mix and Impact of Different Space Types

The wide use of mediation and the possibility of expanding use and taking advantage of other non-traditional means of dispute resolution can reduce the time spent in trial courtrooms. Judges in Orange County already rely on their chambers and hearing rooms to conduct many matters such as ex parte hearings and non-jury trials. Use of a larger courtroom for these matters would generally be less efficient and certainly create a more "formal" atmosphere which is not always conducive to a speedy and effective outcome.

The new courthouse under construction provides for a total of 52 courtrooms. Floor plans taken from the HLM master plan are presented in Appendix B. These show the mix between courtrooms, hearing rooms, conference space and chambers. In all civil divisions (Circuit and County Courts) during 1993, there were less than 200 jury trials but three times as many non-jury trials. Expectations for how intensively the planned courtrooms would actually be used should be considered along with the possibility of having judges share courtrooms. Currently the HLM master plan calls for about a one-to-one ratio of judges to courtrooms, but only one hearing room for every two judges. Less courtroom intensive space use might justify reversing these ratios so that all judges had a hearing room, but shared a courtroom (e.g., one courtroom per two judges or two courtrooms per three judges). The current individual calendar method has been previously identified in this report as an effective system, and courtroom-to-judge mixes should take into account the impact of this scheduling style.

3. Future Changes Affecting the Courts

The most apparent change facing the courts is the impact of handling family law issues. Currently, juvenile cases and domestic relations cases are handled in two different facilities. Development of the new courthouse should be sensitive to the state mandate to adopt a uniform family court concept. This might require emphasis on ensuring electronic and technological equipment which will allow effective communication among the various personnel at the two sites.

4. Court Growth

ILPP's projections of filings and judges are lower than those on which the current courthouse master plan is based. While the difference between these growth estimates may not mandate reduction of the courthouse's size, they do indicate the need to reassess which divisions will need how much space and when. Filings are declining generally among all divisions, with the notable exception of juvenile delinquency. The general easing of workload pressure may continue to be facilitated by use of mediation and other techniques. All of these issues should be monitored and considered in making the final layout decisions for the courthouse project.

These categories raise some of the general issues which taken together create a holistic picture of the Orange County civil courts. This picture shows an environment very much in a state of change: The courts and related offices are responding to workloads with creativity, energy and new perspectives on the role of the courts. The most immediate challenge facing the courts is to anticipate what direction this change will take and what impact it will therefore have on long-term space use and need.

NOTES

- 1 In a study of 26 medium to large urban court systems, the National Center for State Courts quantitatively supported this finding, although a survey of key court officials found that court administrators and presiding judges of the slowest courts studied felt that "insufficient number of judges" was the "serious" problem. John Goerd, Examining Court Delay, The Pace of Litigation in 26 Urban Trial Courts, 1987, National Center for State Courts, 1989.
- 2 In fact there are several times as many types of case distinguished in the clerk's automated files, but nine types are reported to the Supreme Court.
- 3 Repeat violence cases are filed in Circuit Civil Court but are appended to the reports for Domestic Relations.
- 4 There are a few other types of trial outcome - those settled, continued, with a directed verdict, or mistried - but they are far fewer in number and are not included since they are available only for 1993.
- 5 Letters have been randomly assigned to divisions for illustrative purposes.
- 6 Traffic data report did not specify whether trials were jury or non-jury, but court administration personnel report that these are jury trials.
- 7 A recent review of judicial caseloads revealed a substantial number from one division which had not been dismissed for as long as five years, skewing caseload backlog statistics. These cases have since been purged and a procedure developed to have the Clerk automatically purge inactive cases.
- 8 The court reports that development of a uniform pretrial order will soon be underway.
- 9 The proportion of DWLS for failure to pay a traffic infraction fine could be much higher, since there are a variety of situations where a license can be suspended. In addition to a conviction for DUI, a license can be suspended for failure to pay child support or for criminal offenses involving a vehicle, such as prostitution or drugs.
- 10 About 25 to 30 licenses per day are reinstated. License reinstatement requires the payment of a fee, as well as payment of the fine.
- 11 DMV license suspension is not limited to instances where it receives a D-6. If an insurance company or driver makes a typographical error in reporting an insurance policy number to the DMV, so that the two numbers do not match, the DMV will suspend the driver's license for failure to comply with the state's mandatory vehicle insurance law. Notice is given in the same way, and if the DMV has an incorrect address for the driver, the driver is unknowingly driving with a suspended license.
- 12 According to the Uniform Crime Reports, juvenile arrests in Orange County dropped by 14 percent between 1990 and 1992 while delinquency filings were rising by 30 percent. In 1992 there were 3,968 juvenile arrests and 7,471 delinquency filings.
- 13 BEBR does not use this composite series and bears no responsibility for either the name or the numbers. BEBR does produce a "low" series, but the numbers are so unrealistic for Orange County that they are not used in this study.
- 14 There are some discrepancies in the filings numbers from 1982 to 1985 which account for much of the error in the projection; although both the Clerk's and JPA's data came from the Clerk of the Court, the Clerk's staff has not been able to explain the anomaly.