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EXPLORING METHODS TO IMPROVE MANAGEMENT AND FAIRNESS IN PRO SE CASES: A STUDY OF THE PRO SE DOCKET IN THE SOUTHERN DISTRICT OF NEW YORK

Jonathan D. Rosenbloom[*]

INTRODUCTION

Lost in the world of legal procedure and substantive case law, the pro se litigant[1] often finds herself confused and overwhelmed, if not frustrated and bitter.[2] Throughout their litigation, pro se litigants are confronted with numerous difficulties including complying with procedural rules,[3] understanding substantive legal concepts,

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1. The term "pro se" is Latin for "for oneself" or "on one's own behalf." BLACK'S LAW DICTIONARY 1236 (7th ed. 1999). The term is typically used to define someone who is party to a legal action and proceeds without the aid of counsel. *Id.* at 1237.

2. *See* JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 53 (1998) [hereinafter MEETING THE CHALLENGE] ("[J]udges variously describe the feelings on the part of self-represented litigants . . . as a belief that 'the system is fixed,' a 'feeling of isolation,' and a 'sense of unfairness, helplessness, and futility.'"); Dianne Molvig, *Violence and the Judicial System: Stemming the Tide of Violence in Our Courthouses*, 70 WIS. LAW., July 1997, at 10, 13 (describing pro se litigants as "frightened, confused and need[ing] help through the legal system"); Vernetta L. Walker, *Legal Needs of the Public in the Future*, 71 FLA. B.J., May 1997, at 42, 44 (describing pro se litigants as "confused"); Marc Perkel, *Representing Yourself in Court (Pro Se) Pros and Cons, at* http://www.perkel.com/pbl/prose.html (last visited Oct. 12, 2002) ("The first thing you need to know when representing yourself is the . . . system is designed to screw you over.").

3. *See* McKaskle v. Wiggins, 465 U.S. 168, 183-84 (1984) ("A defendant does not

articulating relevant factual allegations, and simply knowing how to proceed with their action. Despite the liberal reading granted to pro se litigant pleadings,[4] pro se litigants are almost unanimously ill equipped to encounter the complexities of the judicial system.

In wrestling with these complexities, pro se litigants often turn to the court for guidance.[5] Judges and court staff, restricted in their ability to assist the litigants,[6] find themselves feeling frustrated by the pro se litigant's inability to grasp legal concepts or to comply with the rules of civil procedure.[7] In order to respond effectively to pro se

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have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. Nor does the Constitution require judges to take over chores for a pro se defendant that would normally be attended to by trained counsel as a matter of course."); Faretta v. Cal., 422 U.S. 806, 835 n.46 (1975) ("[T]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law."); Boddie v. Conn., 401 U.S. 371, 391 (1971) (Black, J., dissenting) ("There is consequently no necessity, no reason, why government should in civil trials be hampered or handicapped by the strict and rigid due process rules the Constitution has provided to protect people charged with crime."). *But see* Merritt v. Faulkner, 697 F.2d 761, 769 (7th Cir. 1983) (Posner, J., concurring in part and dissenting in part) ("It is unfair to deny a litigant a lawyer and then trip him up on [procedural] technicalities.").

4. *See* Estelle v. Gamble, 429 U.S. 97, 106 (1976).

> As the Court unanimously held in Haines v. Kerner, 404 U.S. 519 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Id. (quoting Haines v. Kerner, 404 U.S. 519 (1972)); *see also* McPherson v. Coombe, 174 F.3d 276, 280 (2d Cir. 1999) (explaining that courts "read the pleadings of a pro se plaintiff liberally and interpret them 'to raise the strongest arguments that they suggest.'") (quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)).

5. *See* COMM. ON LONG RANGE PLANNING, JUDICIAL CONFERENCE OF THE U.S., PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS, Recommendation 93 (1995) [hereinafter PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS]; MEETING THE CHALLENGE, *supra* note 2, at 3.

6. *See infra* notes 11-12 and accompanying text (setting forth restrictions on the ability of the court staff to give advice).

7. *See, e.g.*, PRESIDENT'S COUNCIL ON COMPETITIVENESS, AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA 1 (1991); James B. McLindon, *Lawyer Referral Services and the Pro Se Litigant*, 40 JUDGES' J. 28 (2001) ("Courts are doubly frustrated by" pro se litigation). As one judge bluntly stated:

> No one likes pro se litigants—the jury does not have much sympathy for them at all—they put a real burden on the court staff, especially the clerk, post verdict. They tend to think they are 'unique' and frequently call and pester staff long after the case is concluded.

Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13, 19 (1998); *see also* Junda Woo, *More People Represent Themselves in Court, But is*

litigant inquiries, the court staff is required to have not only a thorough understanding of the legal issues, but also the ability to describe the issues in an easily accessible manner. This is not an easy task, especially when the litigant is enraged, frustrated, and has a limited education and/or English language ability.[8]

Court personnel, accustomed to experienced counsel, are rarely trained to address the anger, fear, frustration, and communication barriers that are common hurdles when working with pro se litigants. Most court employees may have some legal knowledge, however, they rarely have any formal training in working with pro se litigants, the non-legal issues that arise, and the complexities of describing the law in an easily accessible manner.[9] New employees learn by observing other employees' interaction with the litigants for several weeks, but do not receive any formal training from professionals on

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Justice Served?, WALL ST. J., Aug. 17, 1993, at A1 ("[N]umbers are exploding.... As these hordes of non-lawyers stumble along, they clog systems that aren't designed to accommodate amateurs, creating a host of new challenges for court administrators."). A 1998 survey of state court judges found that the number one problem facing judges in pro se cases is delays, followed by maintaining impartiality, attendance, attorney impatience, feelings of resentment by the litigant, and enforcing procedural rules. *See* MEETING THE CHALLENGE, *supra* note 2, at 118; Russell Engler, *And Justice For All—Including The Unrepresented Poor: Revisiting The Roles of The Judges, Mediators, And Clerks*, 67 FORDHAM L. REV. 1987, 2056 n.308 (1999) ("Judges and other courtroom personnel frequently 'devote significant court time to explaining the intricacies of the bankruptcy system to confused pro se debtors.... Judicial proceedings involving pro se debtors may be time consuming and frustrating for all concerned.'"); Sean Munger, *Bill Clinton Bugged My Brain!: Delusional Claims in Federal Courts*, 72 TUL. L. REV. 1809, 1820 (1998) (noting that pro se litigants often try the patience of court staff).

8. I have found from my own experiences at the Pro Se Office that a significant portion of the time I spend working with litigants is devoted to trying to communicate with the litigants, and to focus them on their litigation. *See also* Lurana S. Snow, *Prisoners in the Federal Courts*, 9 ST. THOMAS L. REV. 295, 301 (describing "[m]any [pro se litigants as] illiterate, most are unschooled in the law, and some are in need of mental health counseling." (quoting conference members at JUDICIAL CONFERENCE OF THE U.S., LONG RANGE PLAN FOR THE FEDERAL COURTS 65 (1995))); PRESIDENT'S COUNCIL ON COMPETITIVENESS, *supra* note 7, at 1.

9. The Pro Se Office in the United States District Court for the Southern District of New York, which has one of the most progressive and largest pro se offices in the country, is no exception to this. The Office has eight attorneys and seven writ clerks, several of whom speak Spanish, assisting the fifty judges of the Court and processing over 2,000 pro se cases per year. The Office also provides numerous services to pro se litigants including a public walk-up window where pro se litigants can ask procedural advice from a writ clerk or an attorney. The employees, however, do not receive formal training on how to communicate with pro se litigants. *See also* Engler, *supra* note 7, at 1994 (quoting a staff attorney in the Western District of Louisiana: "We have been told here... not to give 'legal advice' but I have never heard this term defined so I do struggle with what to tell [pro se litigants]." (citation omitted)).

how to communicate with pro se litigants and address their issues.

Communicating with pro se litigants is made even more difficult because the law governing what advice, if any, can be given to assist pro se litigants is decidedly difficult to comprehend. If a pro se litigant is fortunate enough to have access to a member of the court,[10] her questions will often go unanswered as she is introduced to the standard maxim that court personnel can provide: "procedural but not substantive advice."[11] While the difference between procedural and substantive advice may be instinctively ascertainable by some attorneys, it is not only difficult to explain to a lay person but, more importantly, it is almost never understood by pro se litigants—thus adding to their frustration.[12]

The unique issues raised by pro se litigants are also prevalent in pro se litigant pleadings. Court personnel reviewing pro se pleadings are charged with the responsibility of deciphering why the submission was filed, what the litigant is seeking, and what claims she may be making. This task is particularly difficult because the submission may be rambling and illogical, if not completely illegible. While it is not uncommon to encounter completely frivolous, if not delusional, pro se complaints, it is essential and fundamental that the court reviews each complaint for any possible claim.[13] This, again, is a task

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10. While the Southern District of New York has at least one attorney and one writ clerk assisting the public every day, as well as several Spanish-speaking employees on staff, most courts do not provide these services. *See also* MEETING THE CHALLENGE, *supra* note 2, at 3.

11. *See also* Engler, *supra* note 7, at 1992-93 n.25 (citing *In re* Amends. to the Fla. Small Claims Rules, 601 So. 2d 1201, 1216 (Fla. 1992) ("'The clerk is not authorized to practice law and therefore cannot give you legal advice on how to prove your case.'"); State v. Walters, 411 S.E.2d 688, 691 (W. Va. 1991) (stating that no magistrate clerk may act as an attorney for any party); Standing Comm. on the Delivery of Legal Servs., AM. BAR ASS'N, RESPONDING TO THE NEEDS OF THE SELF-REPRESENTED DIVORCE LITIGANT 24-25 (1994) ('[I]t is important that court clerks not practice law by giving substantive legal advice.'"); John Greacen, *'No Legal Advice From Court Personnel' What Does That Mean?*, 34 JUDGES' J., Winter 1995, at 10. ("Members shall not give legal advice unless specifically required to do so as part of their office position." (quoting THE NAT'L ASS'N FOR CT. MGMT., MODEL CODE OF CONDUCT art. II (B))).

12. In the numerous times I have witnessed an exchange containing this phrase, I have never seen either party benefit. Usually, the court employee, the pro se litigant, or both become agitated, further impeding the litigant's chances of a successful or satisfying experience with the court. *See* MEETING THE CHALLENGE, *supra* note 2, at 34-35.

13. *See* Estelle v. Gamble, 429 U.S. 97, 106 (citing Haines v. Kerner, 404 U.S. 519 (1972)); *see also* McPherson v. Coombe, 174 F.3d 276, 280 (2d Cir. 1999) (quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)).

requiring extensive time and patience.[14]

The reality is that an overburdened court does not always have the time and patience to fully weigh each allegation and to review every claim no matter how meritorious. With the perceived increase in pro se cases,[15] courts are forced to fashion methods to resolve cases quickly. The result is that pro se cases, which often require more of the court's time and patience than cases represented by trained counsel, may be given cursory or inadequate assistance[16]—making it extremely difficult for the pro se litigant to prosecute her case, frustrating the litigant's right of access to the courts,[17] and risking the possibility that a meritorious claim will be improperly dismissed.[18]

Faced with these issues and experiencing my own frustrations,[19] I did some preliminary research into what measures, if any, other

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14. *See* Bill Brooks, *Working Group Has Pro Se Litigation Action Plan*, 43 RES GESTAE, May 2000, at 12 (quoting Indiana State Court Judge David H. Coleman, "A great deal of time is spent in court and by staff members dealing with pro se litigants.... They don't understand the process; they're not given good instructions for getting through the system.").

15. Most reports indicate that pro se cases are on the rise. *See* MEETING THE CHALLENGE, *supra* note 2, at 3, 9; Goldschmidt, *supra* note 7, at 13; McLindon, *supra* note 7, at 28; Hon. John M. Stanoch, *Working with Pro Se Litigants: The Minnesota Experience*, 24 WM. MITCHELL L. REV. 297, 297 (1998); *see also* Michael A. Cooper, *Providing Help to the "Self-Represented,"* 14 44TH STREET NOTES, Mar. 1999, at 1; Engler, *supra* note 7, at 1987 n.1. The number of pro se cases filed in the Southern District of New York, however, has remained relatively consistent for the past five years (2,256 cases in 1995; 2,293 cases in 1996; 2,251 cases in 1997; 1,765 cases in 1998; 2,049 cases in 1999). General data on pro se cases collected by the Pro Se Office for the years 1995-1999 (on file with Pro Se Office).

16. *See* Brooks, *supra* note 14, at 12; *see also* MEETING THE CHALLENGE, *supra* note 2, at 34-38; Munger, *supra* note 7, at 1812.

17. The right of access to the courts is born out of several constitutional provisions. *See* Cal. Motor Transp. Co. v. Trucking Unltd., 404 U.S. 508, 510 (1972) (finding right of access in the First Amendment right to petition the government for the redress of grievances (*see* U.S. CONST. amend. I)); Boddie v. Conn., 401 U.S. 371, 377-78 (1971) (finding right of access in Due Process Clause (*see* U.S. CONST. amend. XIV, § 1)); Chambers v. Balt. & Ohio Ry. Co., 207 U.S. 142, 142 (1907) (finding right of access in Privileges and Immunities Clause (*see* U.S. CONST. art. 4, § 2))).

18. *See* Munger, *supra* note 7, at 1812; *see also* Michael Zachary, *Dismissal of Federal Actions and Appeals Under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), 42 U.S.C. § 1997e(c) and the Inherent Authority of the Federal Courts: (A) Procedures for Screening and Dismissing Cases, (B) Special Problems Posed by the "Delusional" or "Wholly Incredible" Complaint*, 43 N.Y.L. SCH. L. REV. 975, 1048 (1999-2000).

19. During the past three years as a staff attorney in the Pro Se Office, I have frequently wrestled with my own frustrations while working with pro se litigants. No matter whether I was trying to work with an enraged, erratic, or an uneducated litigant, I dealt with a constant sense of frustration because I knew that the litigant was unprepared for an extremely difficult, if not insurmountable, task.

courts and court staff have implemented to address the issues raised by pro se litigants. I quickly discovered that there were very few guides or studies on pro se litigation. While there was a sizeable amount of commentary and anecdotal information, there was only one study that compiled actual data on federal pro se cases.[20] The study, however, was performed in the Northern District of California in San Francisco in 1993, prior to the enactment of the Prison Litigation Reform Act ("PLRA") on April 26, 1996,[21] which significantly altered the processing and adjudicating of pro se cases.[22] Furthermore, that study only included cases filed during 1993, and did not include pro se cases filed by inmates, which amount to more than 60% of pro se cases.[23] There were no other studies examining pro se dockets in federal court, and I was unable to find any other data that tracked, detailed, or analyzed the actual filing and litigating of pro se cases.

I also discovered that while several district courts had developed responses to address the pro se anomaly, these responses were done in a vacuum with little or no statistical data reviewing actual pro se cases.[24] Similarly, little or no statistical data was reported setting forth which, if any, of the responses have been effective.[25] Moreover, each

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20. *See* Spencer G. Park, Note, *Providing Equal Access to Equal Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 HASTINGS L.J. 821, 832 (1997) (presenting results from a study on non-prisoner pro se litigation in the U.S. District Court for the Northern District of California in San Francisco).

21. Prison Litigation Reform Act, Pub. L. No. 104-134, Title VIII, § 804(a), (c)-(e), 110 Stat. 1321-73, 1321-74, 1321-75 (1996).

22. For a discussion of the prominent changes the PLRA had on pro se litigation, see *infra* notes 31-35 and accompanying text.

23. *See infra* note 40; *see also* Lois Bloom & Helen Hershkoff, *Federal Courts, Magistrate Judges, and the Pro Se Plaintiff*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 475, 479 (2002) (citing David Rauma & Charles Sutelan, *Analysis of Pro Se Case Filings in Ten U.S. District Courts Yields New Information*, 9 FJC DIRECTIONS 6, 6 (1996) (reporting that 21% of all case filings in ten districts in the period of 1991-1994 involved pro se litigants, and that prisoner petitions constituted 63% of these filings)).

24. *See* MEETING THE CHALLENGE, *supra* note 2, at 3, 9; PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS, *supra* note 5, at Recommendation 35; Snow, *supra* note 8, at 301 (calling for a "broad-based study . . . to evaluate the impact of pro se litigation and recommend changes." (quoting JUDICIAL CONFERENCE OF THE U.S., *supra* note 8, at 64)); *infra* note 30 (detailing the lack of relevant sources studying pro se litigation).

25. *See* MEETING THE CHALLENGE, *supra* note 2, at 3, 9; PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS, *supra* note 5, at Recommendation 35; Snow, *supra* note 8, at 301 (calling for a "broad-based study . . . to evaluate the impact of pro se litigation and recommend changes.") (quoting JUDICIAL CONFERENCE OF THE U.S.,

district court's response had been constructed in the absence of a cohesive overall plan or any communication among the district courts.[26]

In an effort to fill this void, this Article begins with a statistical study of non-habeas corpus, non-bankruptcy pro se litigation in the United States District Court for the Southern District of New York. The goal is to collect and organize critical data previously unavailable and to report the data in a usable format.

Part I begins by thoroughly reviewing the current lack of data on pro se dockets in federal district courts. Part I continues by setting forth the parameters used for this Study, designed to respond to the lack of existing data and the inability to access pertinent information. Part II analyzes the results of the study in order to present information previously unavailable, such as what aspects of pro se litigation are most troubling for the court, and what the prototypical pro se case is, if there is one. Part II seeks to determine where innovative programs should be directed to best assist the litigant and alleviate the burdens on the court. It also examines how the PLRA has affected pro se litigation. Part III builds on this analysis by suggesting a cohesive plan to enable the courts to function more smoothly. The primary focus in making these suggestions is two-fold: to provide the litigant with the necessary means to fairly prosecute her case, and to increase court efficiency. These goals can work together, in that the more efficiently the system works, the more time the court has to review meritorious cases and assist pro se litigants, thereby giving the litigant her "day in court."

This Article should not be understood, however, to be advocating pro se litigation. While the Article does explore the tension between encouraging pro se litigation and increasing the efficiency of the courts, I believe the best solution to the issues raised by pro se litigation is to obtain legal counsel.[27] Obtaining legal counsel not only protects the litigant's rights, but it also assists the court by allowing

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supra note 8, at 64); *infra* note 30 (detailing the lack of relevant sources studying pro se litigation).

26. *See* MEETING THE CHALLENGE, *supra* note 2, at 19 ("The responses discussed to this point are interesting in that they denote a clear lack of uniformity across courts and judges with respect to the handling of pro se litigants, raising questions about the consistency and quality of justice administered to them.").

27. *See infra* Part III; *see also* Darrell W. Ringer, *Pro Se Litigants*, W. VA. LAW., Mar. 2000, *available at* http://www.wvbar.org/barinfo/lawyer/2000/march00/coverpg.htm (arguing that the best way to assist pro se litigants is to find them legal representation).

attorneys to screen out frivolous claims prior to filing. Since obtaining legal counsel is not always possible, alternatives are set forth which explore a variety of programs aimed at encouraging assistance in pro se litigation, treating pro se litigants with dignity, and effectively and judiciously addressing the present and growing issues raised by pro se litigation. Finally, while the Article refers to and often discusses numbers and percentages, it is essential to remember that pro se litigants are people who believe they have been wronged, and are entitled to access to the courts and due process under the law.

I. THE STUDY

Who files a case pro se? What are their lawsuits about? What issues do they raise? How are their complaints processed and resolved? These are all questions this Article addresses by performing a statistical study unlike previous studies on pro se litigation. This Part begins by reviewing the current shortage of, and need for, data on federal pro se litigation. The Section continues by presenting the parameters used for the study, which were designed to address the current lack of data on federal pro se litigation.

A. Existing Data

The common perception of pro se litigants as being abusive[28] and creating a burden on the court system[29] is not a well-documented perception.[30] There has been little statistical evidence from this

28. Munger, *supra* note 7, at 1813 (describing the delusional and frivolous claims of pro se litigants, files "solely for the harassment value they have on opponents or courts or . . . by persons who are well-meaning but mentally ill.").

29. Gender Comm., *Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts*, 1997 ANN. SURV. AM. L. 117, 299-300 (1997) (stating that the large number of pro se cases presents a problem of judicial management); John Gibeaut, *Turning Pro Se*, 85 A.B.A. J. 28, 28 (1999) (indicating that the increase in pro se litigants has resulted in a greater burden on district court personnel, especially clerks, who are called upon to render unofficial assistance for unrepresented litigants lacking understanding of basic court procedure); *see also* Jay Carlisle, *Second Circuit 1999-2000 Res Judicata Developments*, 20 QUINNIPIAC L. REV. 75, 88 (2000); Mark Hansen, *Courts Saving Time and Trees*, 85 A.B.A. J. 20, 20 (1999) (noting that new electronic filing systems must be made accessible to pro se litigants, resulting in increased training and access costs); Marie Higgins Williams, *Criminal Defendant, Standby Counsel, and the Judge, A Proposal for Better Defined Roles*, 71 U. COLO. L. REV. 789, 816 (2000) (citing reasons pro se litigators choose self-representation).

30. MEETING THE CHALLENGE, *supra* note 2, at 3; Gibeaut, *supra* note 29, at 28;

district, or any other, analyzing who the pro se litigant is, what claims she raises, and how the claims are resolved. As stated above, there is currently no study relying on actual data recording the processing and resolution of federal pro se litigation after the enactment of the PLRA on April 26, 1996. The absence of data on pro se cases after the enactment of the PLRA is critical because the PLRA potentially affected the majority of pro se cases by curtailing prisoner litigation and litigants seeking to waive the filing fee.[31] Although the PLRA is rather complex, the six most relevant provisions affecting pro se litigation are:

1. Inmates and detainees are the only group of individuals who are required to pay the $150 filing fee, regardless of the outcome of their case or whether they have sufficient funds in their prison account. 28 U.S.C. § 1915(b);[32]
2. Regardless of whether the filing fee has been paid, there is now a mandatory dismissal of actions "if the court determines that . . . (B) the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2);[33]
3. Inmates and detainees are prohibited from filing actions without the filing fee if they have three or more actions already dismissed as frivolous or malicious. They are also prohibited from filing actions without the filing fee if they fail to state a claim, unless there is a showing that the inmate or detainee is in imminent danger or serious physical injury. 28 U.S.C. § 1915(g);[34]
4. Inmates and detainees must now exhaust their administrative remedies prior to filing an action challenging their prison conditions. 42 U.S.C. § 1997e(a);[35]

Munger, *supra* note 7, at 1813 (stating that "until recently, statistical or broad information about all pro se cases was limited at best.").

31. *See* 28 U.S.C. §§ 1915, 1915A (1994); 42 U.S.C. § 1997e (1994).

32. Upheld in Nicholas v. Tucker, 114 F.3d 17, 21 (2d Cir. 1997); *see also* Whitfield v. Scully, 241 F.3d 264, 273-74 (2d Cir. 2001).

33. *See* Fitzgerald v. First E. Seventh St. Tenants Corp., 221 F.3d 362, 364 (2d Cir. 2000) ("[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee. . . .").

34. Upheld in Snidel v. Melindez, 199 F.3d 108, 109-10 (2d Cir. 1999); Wilson v. Yaklich, 148 F.3d 596, 599-600 (6th Cir. 1998); Rivera v. Allin, 144 F.3d 719, 723-29 (11th Cir. 1998); *see also* Welch v. Galie, 207 F.3d 130, 132 (2d Cir. 2000) (holding that a lawsuit dismissed prior to enactment of PLRA may be counted as previously dismissed frivolous action for purposes of barring inmate from future filings under this provision).

35. Porter v. Nussle, 534 U.S. 516, 520 (2002); Booth v. Churner, 532 U.S. 731, 731-32 (2001) (holding that the PLRA requires exhaustion even where the grievance process does not permit award of monetary damages and prisoner seeks only

5. Inmates are no longer entitled to damages for mental anguish. 42 U.S.C. § 1997e(e);[36] and
6. Courts are limited in their ability to enter consent decrees ("prospective relief") unless the court finds: 1) the violation involves a federal right; and 2) the relief is narrowly drawn and least intrusive means to correct the violation of the federal right. 18 U.S.C. § 3626(b)(2).[37]

While the PLRA was broadly designed and intended to have a profound effect on prisoner and pro se litigation,[38] its exact effects have not been documented. There are no studies reviewing actual pro se cases in federal court since the enactment of the PLRA on April 24, 1996.

There are three contemporary studies on pro se litigation, however, that are worth reviewing. The first is the 1993 study of 227 cases from the Northern District of California in San Francisco mentioned above.[39] While informative, this study does not include pro se cases filed by prisoners. Therefore, the analysis of pro se cases gives an inaccurate depiction of the current status of pro se cases because prisoners file more pro se cases than any other group of plaintiffs.[40] Furthermore, the study was confined to cases filed prior to the enactment of the PLRA and during only one year, 1993.[41]

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monetary damages).

36. Upheld in Davis v. D.C., 158 F.3d 1342, 1349 (D.C. Cir. 1998); Ford v. McGinnis, No. 00 Civ. 3437, 2000 WL 1808729, at *1 n.2 (S.D.N.Y. Dec. 11, 2000); Wright v. Miller, 973 F. Supp. 390, 396 (S.D.N.Y. 1997); Harris v. Lord, 957 F. Supp. 471, 474 (S.D.N.Y. 1997); *see also* Jenkins v. Haubert, 179 F.3d 19, 28-29 (2d Cir. 1999).

37. Upheld in Benjamin v. Jacobson, 172 F.3d 144, 183-84 (2d Cir. 1999).

38. *See, e.g.*, 141 CONG. REC. S7524, S7525 (daily ed. May 25, 1995) (statement of Sen. Dole) ("If enacted, [the PLRA] . . . would go a long way to curtail frivolous prisoner litigation."); *id.* at S7526 (statement of Sen. Kyl):

> [The PLRA] will deter frivolous inmate lawsuits . . . . Legislation is needed because of the large and growing number of prisoner civil rights complaints, the burden that disposing of meritless complaints imposes on efficient judicial administration, and the need to discourage prisoners from filing frivolous complaints as a means of gaining a "short sabbatical in the nearest Federal courthouse."

(quoting Cruz v. Beto, 405 U.S. 319, 327 (1972) (Rehnquist, J., dissenting) (citations omitted)); *id.* at S14611-01, S14626-27 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch) (stating that the PLRA "will help bring relief to a civil justice system overburdened by frivolous prisoner lawsuits. . . . The crushing burden of these frivolous suits makes it difficult for the courts to consider meritorious claims.").

39. Park, *supra* note 20, at 821.

40. For example, just over 60% of the 10,614 pro se cases filed in the Southern District of New York from 1995-1999 were filed by prisoners.

41. The study's findings, which included pro se plaintiffs and defendants, also

In Search of Meritorious Claims: A Study of the Processing of Prisoner Civil Rights Cases in a Federal District Court,[42] is the second relevant study. That study sets forth an informative and systematic statistical breakdown of prisoner civil rights cases filed in the United States District Court for the District of Arizona. The study, however, was performed during only one year, 1994, and prior to the enactment of the PLRA. Furthermore, the study examined only prisoner civil rights cases and included cases where the prisoner had legal representation.[43]

Finally, in 1998, *Meeting the Challenge of Pro Se Litigation*,[44] was published focusing on state court pro se litigation. The study provided a thorough explanation of the current status of pro se litigation in state court by conducting a survey of 612 state court judges,[45] and 237 state court administrators.[46] The survey covered a variety of subjects and centered on the perspectives, experiences, and opinions of judges and administrators in working with pro se cases. It did not examine actual cases or provide any raw statistical data with which to compare the judges' and administrators' opinions. Thus, while the study provided insight into the current perception of pro se cases, it did not provide an actual accounting of pro se cases.

In addition to the lack of legal scholarship examining pro se litigation, there is also no government organization that documents pro se litigation in the federal district courts.[47] The Administrative

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sharply contrasted with the findings of this Study in several areas. For example, the 1993 study found that pro se litigants applied for *in forma pauperis* (waiver of the filing fee) status in only 30% of the cases. *Id.* at 830. The instant study finds that number to be closer to 95%. *See infra* Tbls. IV & V. Similarly, the 1993 study found that 27.3% of the cases included a government entity, *see* Park, *supra* note 20, at 823, while the instant Study again found that number to be significantly higher, at 79.1%. *See infra* Tbl. II. These discrepancies are likely due to the absence of prisoner filings in the 1993 study.

42. Henry F. Fradella, *In Search of Meritorious Claims: A Study of the Processing of Prisoner Civil Rights Cases in a Federal District Court*, 21 JUST. SYS. J. 23, 28 (1999).

43. *Id.*

44. MEETING THE CHALLENGE, *supra* note 2.

45. 133 of the 612 judges responded to the survey. *Id.*

46. 98 of the 237 administrators responded to the survey. *Id.*

47. While individual pro se offices, like the one in the Southern District of New York, may record their own data, the data is limited to general filings and is not readily available to other districts. In addition, the 1999 Annual Report to Congress on the Optimal Utilization of Judicial Resources did not once mention pro se litigation or the burdens it has on the courts. *See* LEONIDAS RALPH MECHAM, REPORT TO CONGRESS ON THE OPTIMAL UTILIZATION OF JUDICIAL RESOURCES 1-23 (1999), *available at* http://www.uscourts.gov/publications.html.

Office of the United States Courts, the federal governmental body that maintains and reports the number and type of cases filed each year,[48] does not publish data on whether a party files pro se, in which cases, and the burdens pro se litigation presents to the court.[49] The only "official" numbers I was able to find pertaining to pro se litigation were general statistics kept by the Southern District of New York's Pro Se Office. Those numbers consisted solely of the number and category of cases that were filed pro se.

In sum, the existing data failed to provide a sufficient and accurate picture of pro se litigation in the federal district courts. There was neither a contemporary study examining pro se litigation in federal district courts following the enactment of the PLRA, nor a study that included both prisoner and non-prisoner litigation.

B. Procedures Used to Conduct the Study

This Study was designed to respond to the absence of data on federal pro se cases. Specifically, the Study presents previously unavailable data by examining the actual filing and processing of pro se cases in a useful way to present recommendations creatively. The Study begins by asking three questions. First, what information would be most beneficial in identifying who files pro se and what type of case she files? Second, how do pro se filings proceed and how are they resolved in the federal district court? Third, what burdens do pro se cases present to the courts?

1. Initial Case Selection

The selection of cases for this Study was shaped by the lack of existing data examining pro se cases filed after the enactment of the PLRA. As stated above, there is currently no study examining federal pro se cases after the enactment of the PLRA.[50] In order to fill this gap, cases were selected from 1997, one year after April 26, 1996, the date the PLRA was enacted. Next, the Study was expanded to cover several years to include at least one full year before the 1995 enactment of the PLRA, in order to provide a comparison and review of the effects of the PLRA. Finally, because a specific category of cases may drastically increase or decrease based on new legislation

48. ADMIN. OFFICE OF THE U.S. COURTS, FEDERAL JUDICIAL CASELOAD STATISTICS, app. tbls. C-3 & D-3 (2001).

49. *Id.*

50. *See supra* text accompanying note 30.

and case law,[51] the Study was expanded to predict future filings of pro se cases more accurately and to compensate for any irregularities presented by new legislation (1995-1999). Unlike any previous study, the results of this Study include cases filed before and after the enactment of the PLRA, and span several years.

Once the years for this Study were chosen, the categories of cases selected for the Study were slightly narrowed. The three limitations were the exclusion of habeas corpus petitions,[52] bankruptcy petitions, and cases where the defendant was proceeding pro se. Habeas corpus petitions were eliminated from the Study due to the hybrid nature of habeas corpus petitions between criminal and civil,[53] the unique civil procedure rules that dictate habeas corpus petitions,[54] and the unique remedy available in habeas corpus petitions (i.e., release from custody).[55] Similarly, due to the unique nature of bankruptcy petitions and the status of the district court petition as an appeal from the bankruptcy court, bankruptcy petitions were excluded.

The following is a graph of the total number of civil cases, pro se cases, and non-habeas pro se cases filed in the Southern District of New York between 1995 and 1999.

TOTAL CIVIL CASES				
1		Total Civil Cases Filed	Pro Se Cases	Non Habeas Pro Se Cases
2	1995	10,273	2,256	1,843
3	1996	10,542	2,293	1,735
4	1997	10,271	2,251	1,379
5	1998	9,870	1,765	1,270
6	1999	13,773	2,049	1,434
7	TOTAL (% OF TOTAL)	54,729	10,614 (19.4%)	7,661 (14%)

As seen in the seventh row of the above graph, non-habeas corpus pro se civil cases amounted to 7,661 cases from 1995-1999.

51. *See, e.g.*, *infra* Tbls. I & II and accompanying text (indicating a significant decrease in prisoner filings after the enactment of the PLRA).

52. Habeas corpus petitions filed under 28 U.S.C. §§ 2241, 2254-2255 (2002), were excluded from the Study.

53. While habeas corpus petitions generally challenge state and federal criminal convictions, they are processed as civil cases and assigned a civil docket number.

54. Habeas corpus petitions filed pursuant to §§ 2254 and 2255 have separate rules of civil procedure. *See* 28 U.S.C. §§ 2254-2255 (setting forth rules governing habeas corpus cases and rules on motion attacking sentence).

55. *See id.*

Approximately 10% of these cases (765) were selected for the study by collecting every tenth case in the order in which it was filed.[56]

2. *Data Calculated*

Once the cases were selected, the question became: what information should be extracted from each case? Starting with the court file, each document was reviewed and recorded including:

1. Case Categories;
2. General information on the parties;
3. *In forma pauperis* application filed;[57]
4. Type of remedy sought;
5. Documents filed with the court;
6. Filing and disposition of request for counsel;[58]
7. Final disposition of the case; and
8. Reason for dismissal.

The above information was then cross-referenced with the court's docket sheet. In addition, the following information was extracted from the docket sheet:

9. Appeals; and
10. Prior case filings in the court.

Next, data from the court files and docket sheets was gathered in an attempt to calculate the length and burden of pro se cases, and which cases are the most burdensome. In addition, the Pro Se Office's records detailing mailed correspondences with litigants were reviewed to record how often the Pro Se Office corresponded with each litigant. The following data was collected:

11(a) Number of days the case was pending with the court;59

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56. Ten percent of the cases provided a sufficiently large sample to maintain an adequate level of reliability for the individual pieces of data collected. As the "rate of occurrence" (the frequency within which an event occurs) varied among the different data collected, so too did the reliability and "confidence level." By choosing 10% of the cases, the study yielded an approximate chance of error from 1-4%, and a "confidence level" of 95-99%, depending on the piece of data collected. *See* COLLECTING AND ANALYZING COURT STATISTICS: A HANDBOOK PREPARED FOR THE NEW HAMPSHIRE JUDICIAL COUNCIL, CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT 23-26, Tbls. A-H (1977).

57. An *in forma pauperis* application is a request to the court to waive the $150 filing fee. *See* 28 U.S.C. § 1914 (setting civil action fee rate at $150); 28 U.S.C. § 1915 (stating that filing fee may be waived upon affidavit stating that plaintiff is unable to pay such fees).

58. Appointment of counsel in civil cases is authorized by 28 U.S.C. § 1915(e). *See* Hendricks v. Coughlin, 114 F.3d 390, 391 n.1 (2d Cir. 1997).

59. The number of days was calculated from the date the complaint was received

11(b) Number of docket entries in each case; and
11(c) Number of communications each litigant had with Pro Se Office.

Unlike any previous research done on pro se litigation, the instant research examined pro se litigation from the initial pleadings through the court proceedings and concluded with the appeals.

C. The Raw Results[60]

The raw data is reported in an Appendix, and is analyzed and reorganized in a usable fashion in the following section. The data in the Appendix is laid out in the order it was recorded, and is separated by groupings that correspond to the numbers and subjects listed above (i.e., Case Categories, *In Forma Pauperis* Application, etc.). Within each grouping the data is reported in five separate graphs per grouping. Each graph contains the data collected from one of the five years covered in the study (1995-1999). Finally, each graph in the Appendix is structured with the category of case (i.e., civil rights, employment discrimination, social security, etc.) across the top and information specific to that grouping along the left side.

II. READING THE DATA

How can the raw data be constructively interpreted to shed light on pro se litigation? The following three Sections address this question in three separate areas: 1) Characteristics of Pro Se Complaints; 2) Processing and Resolving of Pro Se Litigation; and 3) Burdens that Pro Se Cases Have on the Court. A fourth Section summarizes the three prior sections in search of patterns or other predictable challenges presented by pro se litigation to present possible prototypical pro se cases. The analysis' emphasis is on isolating the most problematic issues that pro se litigants and the court encounter.

A. Characteristics of Pro Se Complaints

The following four sub-sections analyze the data pertaining to pro

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by the Court's Pro Se Office until the date it was closed.

60. As the Study is confined solely to the Southern District of New York, the results may not be applicable to all United States District Courts. The Study may, however, serve as a model for other district courts to perform similar and expanded studies and devise appropriate responses. It should also be noted that because this is a manually performed statistical study, there are possibilities of error. These possibilities were considered and an attempt to control them was made.

se complaints.[61] The four sub-sections, 1) Case Category; 2) Parties Involved; 3) Characteristics of the *In Forma Pauperis* Application; and 4) Type of Remedy Sought, are particularly informative not only because the complaint is the first official communication between the litigant and the court, but also because it initiates the lawsuit, and is often the only document the court reviews prior to dismissal.[62]

1. Case Categories[63]

The most common complaint selected for the Study was a civil rights action.[64] As seen in the seventh row of Table I, civil rights actions amounted to 59% (451 of 765) of the cases selected. The next two most frequently selected actions were employment discrimination (18%) and social security (12%) cases. Combined, these three categories of cases amount to 89% of the pro se cases selected for the Study (680 of 765).

TABLE I
MAJOR CASE CATEGORIES

1		Civil Rights	Employ. Discrim.	Social Security	Inmate Plaintiff[65]
2	1995 (% of cases by year)	123 (67%)	36 (20%)	9 (5%)	122 (67%)
3	1996 (% of cases by year)	109 (63%)	28 (16%)	19 (11%)	101 (57%)
4	1997 (% of cases by year)	71 (51%)	28 (20%)	24 (17%)	61 (44%)
5	1998 (% of cases by year)	62 (49%)	21 (17%)	27 (21%)	56 (44%)
6	1999 (% of cases by year)	86 (60%)	23 (16%)	14 (10%)	68 (48%)
7	TOTALS (% OF TOTAL CASES STUDIED)	451 (59%)	136 (18%)	93 (12%)	408 (53.1%)

61. The four sub-sections correspond to the data reported in the first four groupings of graphs in the Appendix. *See infra* App. §§ 1-4.

62. For a discussion on *sua sponte* dismissals based solely on allegations in the complaint, see *infra* note 82.

63. For the raw data corresponding to this section, see *infra* App. § 1.

64. For purposes of this Article, "civil rights" actions refer to those cases filed pursuant to 42 U.S.C. §§ 1981, 1983, & 1985 (2002), and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), the federal analogy to 42 U.S.C. § 1983. *See* Butz v. Economou, 438 U.S. 478, 498-99 (1978); Barbera v. Smith, 654 F. Supp. 386, 390 n.2 (S.D.N.Y. 1987).

65. Although inmate-filed cases are not a subject matter such as civil rights or employment discrimination, they are included as a separate category throughout the Study because they are so prevalent. Thus, each inmate-filed case is accounted for twice: once under the inmate-filed case category, and once under the subject matter of the case.

As seen in Table I, while civil rights cases remained the most frequently selected cases throughout the Study, they also experienced the largest decrease in cases filed. As seen in the second row of Table I, in 1995, the last full year prior to the enactment of the PLRA, civil rights cases equaled 67% (123 of 184) of the cases selected. Two years later, in 1997, the first full year after the enactment of the PLRA, civil rights cases dropped to 51% of the cases (fourth row), and to 49% in 1998 (fifth row). Although in 1999 civil rights cases regained some ground, increasing to 60% of the cases selected (sixth row), the decrease in cases during 1997 and 1998 is most likely due to the implementation of the PLRA and its restrictions on pro se cases.[66]

While civil rights cases experienced the largest decrease in cases filed, cases challenging social security benefits experienced the largest increase. While comprising only 5% of the cases selected in 1995 (second row), social security cases rose to 17% in 1997 (fourth row), and 21% in 1998 (fifth row), before dipping to 10% in 1999 (sixth row).[67] The only other category of cases that consistently amounted to at least 5% of the cases selected for the Study was employment discrimination cases. Over the course of the Study, employment discrimination cases experienced only small fluctuations, amounting to 16-20% of the cases studied per year.

Other categories of cases that had more than one case filed and are discussed throughout the Study are cases concerning: labor (ten cases); diversity (eight cases); housing (six cases); Freedom of Information Act ("FOIA") (four cases); and family law (three cases). The remaining fifty-four cases are categorized under an "others" category.

2. *Parties*[68]

The data from this sub-section examines what, if any, common characteristics exist among the parties to a pro se lawsuit. The Study

66. The Study's findings that civil rights cases decreased from 1995 to 1998, and then increased in 1999, accurately reflect the number of civil rights cases filed in the entire pro se caseload, during those years. In 1995 civil rights cases made up 56% of the caseload compared to 48% in 1996; 37% in 1997; 38% in 1998; and 42% in 1999. General data on pro se cases collected by the Pro Se Office for the years 1995-1999 (on file with Pro Se Office).

67. These numbers accurately reflect the rise in social security cases in the entire pro se caseload—3% in 1995; 7% in 1996; 10% in 1997; 16% in 1998; 9% in 1999. General data on pro se cases was collected by the Pro Se Office for the years 1995-1999 (on file with Pro Se Office).

68. For the raw data corresponding to this section, see *infra* App. § 2.

revealed that the three most defining party characteristics are: 1) an inmate as a plaintiff; 2) more than one defendant named in the complaint; and 3) at least one government individual or agency named as a defendant. First, as seen in the fifth column in Table II, inmates filed over 53% (408 of 765) of the pro se cases selected for the Study. As seen in the second row of column five, in exclusively civil rights actions, the percentage of cases filed by inmates rose to 87.6% (395 of 451). Thus, out of 408 inmate-filed cases, 395 (96.8%) were civil rights actions; or, in other words, inmates filed a non-civil rights action in only 13 of the 408 (3.2%) cases they filed.[69]

The number of inmate-filed cases sharply decreased following the enactment of the PLRA. One full year prior to the enactment of the PLRA, inmate-filed cases decreased from 67% in 1995 (second row), to 44% in 1997 (fourth row), as shown in Table I. Although inmate-filed cases increased to 48% in 1999 (sixth row), they are not near the level they were in 1995. The latter trend exhibits the profound effect the PLRA has had on pro se litigation.

As seen in the eleventh row of Table II, in 80.9% of the cases filed by inmates, the inmate named multiple defendants (330 of 408). Furthermore, over 60% of the pro se plaintiffs overall filed against multiple defendants (twelfth row), including one in every three plaintiffs in employment discrimination cases (third row).[70] The Study did not conclusively show, however, that a plaintiff in a specific type of case was more likely to name more multiple defendants per complaint than in another type of case. For example, plaintiffs filing civil rights actions with multiple defendants averaged 5, 4.8, 4.9, 7.9, and 8 defendants per complaint from 1995 through 1999, respectively, while employment discrimination complaints averaged 4, 6.2, 3.7, 2.8, and 7.7 defendants per complaint, respectively, over the same period.[71]

TABLE II

PARTIES BY CASE TYPE

1		Multiple Plaintiffs (% of case type)	Multiple Defendants (% of case type)	Gov't Defendant (% of case type)	Inmate Plaintiff (% of case type)	TOTAL CASES BY TYPE

69. The Study did not contain an employment discrimination case filed by an inmate.

70. Only 2.6% of pro se cases surveyed filed with multiple plaintiffs.

71. *See infra* App. § 2.

2	Civil Rights	9 (2%)	370 (82%)	417 (92.4%)	395 (87.6%)	451
3	Employ. Discrim.	3 (2%)	45 (33.1%)	52 (38.2%)	0 (0%)	136
4	Social Security	1 (1.1%)	8 (8.6%)	93 (100%)	2 (.5%)	93
5	Diversity	1 (2%)	3 (37.5%)	1 (12.5%)	1 (.2%)	8
6	FOIA	1 (25%)	3 (75%)	4 (100%)	2 (.5%)	4
7	Housing	1 (16.7%)	5 (83.3%)	2 (33.3%)	0 (0%)	6
8	Family	1 (33.3%)	2 (66.7%)	1 (33.3%)	0 (0%)	3
9	Labor	2 (20%)	8 (80%)	3 (30%)	0 (0%)	10
10	Others	3 (3.7%)	25 (46.3%)	33 (61.1%)	8 (2%)	54
11	Inmate Plaintiff	9 (2.2%)	330 (80.9%)	377 (92.1%)	408 (100%)	408
12	TOTALS (% OF CASES)	20 (2.6%)	469 (61.2%)	606 (79.1%)	408 (53.3%)	765

Government defendants were common in pro se cases. Almost four out of every five pro se cases were filed against at least one government defendant. While it was not surprising that 92.4% of the civil rights cases and 100% of the social security cases were filed against a government defendant (second and fourth rows),[72] over one in three employment discrimination cases (38.2%) were filed against a government defendant, as seen in the third row of Table II.

In sum, and as seen in the second and eleventh row of Table II, inmates were most likely to file civil rights actions (87.6%), and to file against multiple defendants (80.9%), at least one government defendant (92.4%).[73] Based on the numbers in Table II, it is not surprising that pro se cases filed by an inmate and/or against multiple defendants and/or a government defendant, fluctuated with

72. Courts require that a defendant in a civil rights action commit the alleged constitutional deprivation as a state actor. *See* Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614, 620 (1991) (requiring that defendant in civil rights action commit the alleged constitutional deprivation as a state actor); West v. Atkins, 487 U.S. 42, 48 (1988) (stating that alleged deprivation must be "committed by a person acting under color of state law."); Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982) (requiring that defendant in civil rights action commit the alleged constitutional deprivation as a state actor).

73. While the number of total civil rights claims dropped after the enactment of the PLRA (from 1017 in 1995, to 602 in 1999), so too did the percentage of inmate filings within civil rights claims. In 1995 inmates filed 95% of the civil rights cases surveyed, and 66% of the total cases surveyed. Those numbers dropped to 79% and 47% in 1999. General data on pro se cases collected by the Pro Se Office for the years 1995-1999 (on file with Pro Se Office).

approximately the same regularity from year to year. As seen in Table III, the number of inmate plaintiffs, multiple defendants, and government defendants decreased from 1995 to 1998, and then rose in 1999.

TABLE III
PARTIES BY YEAR

1		Multiple Defendants	Government Defendant	Inmate Plaintiff
2	1995	124	151	122
3	1996	115	134	101
4	1997	75	110	61
5	1998	66	102	56
6	1999	89	109	68
7	TOTALS (% OF CASES)	469 (61.2%)	606 (79.1%)	408 (53.1%)

Other highlights involving the parties to a pro se lawsuit were:

- Social security plaintiffs rarely filed against multiple defendants (8.6%) (see Table II, row four).
- Diversity cases were filed against multiple defendants in only a little over one-third of the cases (see Table II, row five).
- Housing cases were filed against government officials in only one-third of the cases (see Table II, row seven).

3. In Forma Pauperis *Application*[74]

Although not part of the complaint, the payment of the filing fee is a prerequisite to initiating an action in the court. The *in forma pauperis* application is the method in which a litigant requests waiver of the $150 filing fee based on indigence. The results of the Study revealed that regardless of the year or category of case, pro se plaintiffs almost unanimously filed an *in forma pauperis* application, and were almost unanimously granted those applications. As seen in Table IV (setting forth *in forma pauperis* results by case type) and Table V (setting forth *in forma pauperis* results by year), pro se plaintiffs filed an *in forma pauperis* application in 94.9% of the cases (twelfth row in Table IV and seventh row in Table V), with percentages varying from 87.5% to 100% depending on the category

74. For the raw data corresponding to this Section, see *infra* App. § 3.

of case and year. *In forma pauperis* applications were granted 99.4% of the time (twelfth row in Table IV and seventh row in Table V), including 440 of the 441 applications filed in civil rights cases, and all of the applications filed by inmates. Only four of the 726 applications were denied. The denied applications were: one in a civil rights action, two in employment discrimination actions, and one in a diversity action.

TABLE IV
IN FORMA PAUPERIS BY CASE TYPE

1		*In Forma Pauperis* request made (% of case type)	Granted (% of applications)	Denied (% of applications)
2	Civil Rights	441 (97.8%)	440 (99.8%)	1 (0.2%)
3	Employ. Discrim.	120 (88.2%)	118 (98.3%)	2 (1.7%)
4	Social Security	89 (95.7%)	89 (100%)	0 (0%)
5	Housing	6 (100%)	6 (100%)	0 (0%)
6	Family	3 (100%)	3 (100%)	0 (0%)
7	Diversity	7 (87.5%)	6 (85.7%)	1 (14.3%)
8	FOIA	4 (100%)	4 (100%)	0 (0%)
9	Labor	9 (90%)	9 (100%)	0 (0%)
10	Others	47 (87%)	47 (100%)	0 (0%)
11	Inmate Filing	444 (98.4%)	444 (100%)	0 (0%)
12	TOTALS	726 (94.9%)	722 (99.4%)	4 (0.6%)

TABLE V
IN FORMA PAUPERIS BY YEAR

1		*In Forma Pauperis* request made (% of yearly cases)	Granted (% of applications)	Denied (% of applications)
2	1995	176 (95.6%)	174 (98.9%)	2 (1.1%)
3	1996	166 (95.4%)	166 (100 %)	0 (0%)
4	1997	131 (94.9%)	131 (100%)	0 (0%)
5	1998	121 (96%)	121 (100%)	0 (0%)
6	1999	132 (92.3%)	130 (98.5%)	2 (1.5%)
7	TOTALS	726 (94.9%)	722 (99.4%)	4 (0.6%)

While the PLRA was likely responsible for the decrease in the

number of cases filed by inmates,[75] the results of the Study indicate that the PLRA did not affect whether an inmate chose to file an *in forma pauperis* application. As stated above, pursuant to the PLRA, inmates must now pay the filing fee regardless of their ability to do so.[76] Despite this change, the rate inmates filed *in forma pauperis* applications did not change after the enactment of the PLRA. Approximately 95% of inmates filed an *in forma pauperis* application before and after the PLRA (see rows two and four of column two). Similarly, approximately 99% of the applications were granted both before and after the PLRA (compare rows two with four, five and six of column three). Thus, once an inmate decided to file a complaint in the district court, the PLRA had no effect on whether the inmate chose to file an *in forma pauperis* application, or on the merits of that application.

4. *Type of Remedy Sought*[77]

Based on the results of the Study, pro se plaintiffs almost always requested some form of monetary relief. As seen in the second and third rows of Table VI, plaintiffs requested solely monetary relief in 69.3% of the cases, and solely equitable relief in only 3.5% of the cases. When factoring in that 27.2% of plaintiffs requested both monetary and equitable relief (fourth row), the total number of plaintiffs requesting some monetary relief increases to 96.5%, as seen in the sixth row.

TABLE VI
TOTALS RELIEF REQUESTED

		ALL CASES	Civil Rights	Employ. Discrim.	Social Security	Inmates
2	Monetary Only	530 (69.3%)	286 (63.4%)	109 (80.1%)	92 (98.9%)	261 (64%)
3	Equitable Only	27 (3.5%)	10 (2.2%)	1 (.7%)	0	13 (3.2%)
4	Both Monetary and Equitable	208 (27.2%)	155 (34.4%)	26 (19.1%)	1 (1.1%)	134 (32.8%)
5						
6	Some Monetary	738 (96.5%)	441 (97.8%)	135 (99.3%)	93 (100%)	395 (96.8%)

75. *See supra* Tbl. I and accompanying text.
76. *See supra* note 32 and accompanying text.
77. For the raw data corresponding to this section, see *infra* App. § 4.

7	Some Equitable	235 (30.7%)	165 (36.6%)	27 (19.9%)	1 (1.1%)	147 (36%)
8	TOTAL CASES FILED	765	451	136	93	408

Although the percentage of monetary and equitable relief did not greatly fluctuate among the different case types, there were some fluctuations. First, while 69.3% of all the plaintiffs requested exclusively monetary relief (second row of Table VI), that number jumped to 98.9% (second row of Table VI) for plaintiffs requesting exclusively monetary relief in social security cases. The propensity of pro se litigants to request monetary relief in social security cases is likely due to the fact that the underlying issue in most social security cases is the denial of monetary benefits, and the nature of the suit is, therefore, to receive those benefits.

Other fluctuations included:

- Plaintiffs in the civil rights cases were almost twice as likely as other plaintiffs to take a broader approach to requesting relief by seeking both monetary and equitable relief in 34.4% of the cases (fourth row of Table VI), compared to 16.9% in all other cases. The number 16.9% is derived from subtracting the number of civil rights cases getting both monetary and equitable relief (155) from the total number of cases getting both monetary and equitable relief (208), and taking the percentage of that number.
- Only one plaintiff in 136 employment discrimination cases sought solely equitable relief and only 19.8% of the plaintiffs asked for any equitable relief. (third and fourth rows of Table VI) Thus, less than one in five employment discrimination plaintiffs sought any injunctive relief, such as reemployment, raise, or promotion.
- Over one-third of inmates (36%) sought some equitable relief. (seventh row of Table VI).

Some of the smaller samples of cases selected also showed some trends:

- All eight plaintiffs in diversity cases sought exclusively monetary relief.
- All three plaintiffs in family cases sought some form of equitable relief.
- While some plaintiffs in labor cases requested equitable relief, all the plaintiffs requested some monetary relief.

Finally, in 1995, one year prior to the PLRA, 13 plaintiffs sought solely equitable relief (7.1%).[78] During the three years following the

78. *See infra* App. § 4.

PLRA (1997-1999), only twelve plaintiffs sought solely equitable relief (2.9%).[79] It is possible that the decrease in plaintiffs requesting equitable relief is due to the provisions in the PLRA, such as requiring exhaustion of remedies for conditions of confinement claims, which involve and/or resolve equitable relief claims.

B. Processing and Resolving Pro Se Litigation

The following five sub-sections analyze the data pertaining to how pro se cases proceed through the court. The five sub-sections[80] are:

1. Court filings post-complaint;
2. Processing of requests for counsel;
3. Final disposition of pro se cases;
4. Reason for dismissal of pro se cases; and
5. Processing of pro se appeals.

1. Court Filings Post-Complaint[81]

The court filings submitted after the complaint was filed varied widely depending on the category of the case and at what stage the case was closed. While cases dismissed *sua sponte*[82] consistently

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79. *See infra* App. § 4.

80. *See infra* App. §§ 5-9.

81. For the raw data corresponding to this section, see *infra* App. § 5.

82. *Sua sponte* dismissals are made "[w]ithout prompting or suggestion" and "on [the court's] own motion." BLACK'S LAW DICTIONARY 1437 (7th ed. 1999). Each pro se complaint, whether fee-paid or not, that enters the Southern District of New York is substantively screened and, if appropriate, dismissed *sua sponte* pursuant to 28 U.S.C. §§ 1915, 1915A (2000) & 42 U.S.C. § 1997(e) (2000) solely on the allegations set forth in the complaint. The relevant provisions from these three statutes are:

28 U.S.C. § 1915(e)(2):

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that –
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal –
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915A:

> (a) Screening. The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) Grounds for dismissal. On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the

contained the same filed documents,[83] once a case proceeded beyond a *sua sponte* review, the filed documents became much more diverse. The five most common filings submitted after the complaint was filed, as listed in Table VII, were: 1) a motion to dismiss (194 cases);[84] 2) a discovery motion or request (176 cases); 3) an extension of time (172 cases); 4) an amended complaint (145 cases); and 5) a sixty-day order directing the litigant to provide the court with additional information (116 cases).[85] As seen in the second row of Table VII, 340 cases were not dismissed *sua sponte*.[86] Most, if not all, of the motions to dismiss and discovery motions were filed in these 340 cases.

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complaint

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

42 U.S.C. § 1997e(c):

(c) Dismissal –

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

83. Court files in *sua sponte* dismissed cases generally consisted of the complaint, *in forma pauperis* application, cover sheet, summons, and order of dismissal.

84. Defendants seeking to dismiss pro se complaints pursuant to Federal Rules of Civil Procedure Rules 12(b) & 56 filed almost all of these motions.

85. Other frequently filed documents included: a motion for reconsideration (thirty-two cases); an order to show cause (twenty-eight cases); and a motion for default judgment (sixteen cases).

86. *See infra* Part II.B.3 (showing the complete results on the final resolution of the cases); *see also supra* note 82 (describing *sua sponte* dismissals).

TABLE VII
SELECTED FILINGS IN PRO SE CASES

1		ALL CASES	Civil Rights	Employ. Discrim.	Social Security	Inmate Filing
2	Cases Not Dismissed *Sua Sponte*	340 (44.4%)	139 (30.8%)	100 (73.5%)	74 (79.6%)	138 (33.8%)
3	Motion to Dismiss (% of cases)	194 (25.4%)	76 (16.9%)	61 (44.9%)	42 (45.2%)	70 (17.2%)
4	Discovery Motions	176 (23%)	92 (20.4%)	59 (43.4%)	13 (14%)	87 (21.3%)
5	Extension of Time	172 (22.5%)	63 (14%)	28 (20.6%)	72 (77.4%)	59 (14.5%)
6	Amended Complaint	145 (19%)	87 (19.3%)	37 (27.2%)	9 (9.7%)	78 (19.1%)
7	60-Day Order	116 (15.2%)	73 (16.2%)	15 (11%)	17 (18.3%)	62 (15.2%)
8	TOTAL CASES	765	451	136	93	408

One of the most time consuming motions to adjudicate, the motion to dismiss, was the one most often filed. As seen in the third row of Table VII, a motion to dismiss was filed in over one-quarter of all the cases reviewed, and in roughly three-fifths of the cases that survived a *sua sponte* review. Whether a motion to dismiss was filed varied significantly depending on the type of case. Pro se social security cases (motions to dismiss were filed in 45.2%), and employment discrimination cases (motions to dismiss were filed in 44.9%) were roughly twice as likely to have a motion to dismiss filed, than civil rights cases (motions to dismiss were filed in 16.9%). The disparity among the category of cases in which a motion to dismiss was filed is due to the higher rate of *sua sponte* dismissals in civil rights actions than in the other cases.[87] In *sua sponte* dismissed actions, a motion to dismiss is unnecessary because the case has already been terminated on the court's own motion. While a motion to dismiss is least likely to be filed in civil rights cases, the number of motions to dismiss per civil rights case, once it proceeded beyond a *sua sponte* review, was often higher than other cases. As seen in the third row of Table VII, a motion to dismiss was filed in 76 of the civil rights cases. However, of the 451 civil rights cases, 312 were dismissed *sua sponte*.[88] Thus, a motion to dismiss was filed in 54.7% of the 139 civil rights cases that survived a *sua sponte* review.

87. *See infra* Tbl. XII (finding that 69% of the civil rights cases were dismissed *sua sponte*, while only 26.5% of the employment discrimination cases, and 20.4% of social security cases were dismissed *sua sponte*).

88. *See infra* Tbl. XII.

The next most common filing was a discovery motion. The filings of discovery motions mirrored that of motions to dismiss, with one significant exception. As seen in the third and fourth rows of Table VII, while motions to dismiss were filed most often in social security cases (45.2%), discovery motions were filed the least often in social security cases (14%). One explanation for this disparity is that social security cases are either resolved on a motion to dismiss, or upon a settlement (often to remand to the Social Security Administration) after *sua sponte* review, but prior to discovery.[89]

While an extension of time was filed in almost one-fourth of the total cases studied, an extension of time was filed in social security cases 77.4% of the time, as seen in the fifth row of Table VII. The number of extensions of time filed in social security cases amounts to the filing of an extension in one in every 1.29 social security complaints, compared to one in every seven civil rights complaints. The government filed the majority of the extensions of time in social security cases after service was effected. It was also common to find that the government was granted two or three extensions of time in each social security case.

The final two most common filings, as set forth in rows six and seven of Table VII, are amended complaints and sixty-day orders. Sixty-day orders, which often direct the plaintiff to file an amended complaint, were issued in 15.2% of the complaints selected for the Study. Thus, almost one out of every seven pro se complaints reviewed was filed with insufficient information. Since most sixty-day orders direct the plaintiff to file an amended complaint, the percentage of cases in which an amended complaint was filed was logically higher than that of the sixty-day orders (19%). There were a few deviations, however, that require more investigation. Employment discrimination cases experienced the lowest sixty-day order rate (11%), yet they had the highest amended complaint rate (27.2%). Therefore, while the court may not request additional information, litigants in employment discrimination cases, nonetheless, supplemented or altered their original complaints. This raises a number of questions. Does this mean that the form complaints used for employment discrimination cases are inadequate in terms of allowing the litigant to voice her concerns? Does it mean that a pro se plaintiff in an employment discrimination case is more

89. Based upon personal experience, I have found that pro se litigants in employment discrimination cases most often ask questions relating to the discovery process.

likely to obtain counsel, who then files an amended complaint on her own volition, and not upon the direction of a sixty-day order? Does it mean that additional claims, such as retaliation, arise more often in employment discrimination cases, and therefore, require an amended complaint?

Social security cases were somewhat more problematic. They had one of the highest rates of sixty-day orders (18.3%), but the lowest rate of amended complaints (9.7%). This, too, raises a number of questions. Why do plaintiffs in social security cases fail to respond to the court's sixty-day orders? Are the orders excessively confusing? Does the litigant need translation assistance or legal assistance in answering the order?[90] Are the cases settled before the plaintiff responds to the sixty-day order?[91]

2. *Processing of Applications for Counsel*[92]

Although there is no constitutional right to have an attorney in a civil case,[93] pro se plaintiffs may make an application to have the court appoint pro bono counsel.[94] In less than one in every four of the cases surveyed (172 of 765 or 22.5%) pro se plaintiffs made an application for counsel. As seen in the second row of Table VIII, depending on the category of case in which the application was filed, the number of applications for counsel fluctuated from 15.1% to 39.7%. For example, pro se plaintiffs filed an application for counsel in 15.1% of the social security cases and 20.8% of the civil rights cases, compared to 39.7% of the employment discrimination cases. However, as seen in the third row of Table VIII, when only the cases that survived a *sua sponte* review are considered, the percentage of applications filed drastically changes. Applications for counsel in civil rights cases rose to 65.5% in cases that survived *sua sponte* review, surpassing employment discrimination cases, which rose to 54%. Thus, while plaintiffs in civil rights cases (and inmate-filed cases) were less likely overall to file an application for counsel, they were more likely to file

90. Based on my own experience, I have found plaintiffs in social security cases to have the most difficulties in understanding a court directive, such as a sixty-day order.

91. *See infra* Tbl. XV (demonstrating that social security cases have one of the highest rates of dismissal for failure to respond to a sixty-day order).

92. For the raw data corresponding to this Section, see *infra* App. § 6.

93. *See* Lassiter v. Dep't of Soc. Servs. of Durham County, 452 U.S. 18, 26-27 (1981).

94. *See supra* note 58 (setting forth the standard for granting application for counsel).

an application once their case survived a *sua sponte* review. The Study also revealed that plaintiffs in social security cases were least likely to file an application for counsel either before or after *sua sponte* review. Furthermore, the percentage of applications filed in social security cases rose slightly in non-*sua sponte* dismissed cases, but remained by far the lowest.

TABLE VIII
TOTAL APPLICATIONS FOR APPOINTMENT OF COUNSEL

1		All Cases	Civil Rights	Employ. Discrim.	Social Security	Inmates
2	Application Made All Cases Included	172 of 765 (22.5%)	91 of 451 (20.8%)	54 of 139 (39.7%)	14 of 93 (15.1%)	83 of 408 (20.3%)
3	Applications Made Excluding *Sua Sponte* Cases	172 of 340 (50.6)	91 of 139 (65.5%)	54 of 100 (54%)	14 of 74 (18.9%)	83 of 139 (59.7%)

While the frequency of applications for counsel varied among the different categories of cases, the rate at which the applications were granted remained consistent. As seen in the third row of Table IX, applications for counsel were granted in 21.5% of the cases varying slightly from 18.5% in employment discrimination cases to 28.6% in social security cases. Thus, while the frequency of filed applications may have fluctuated by the category of the case, the likelihood that the application would be granted remained relatively consistent.

TABLE IX
APPLICATIONS GRANTED BY CASE TYPE

1		All Cases	Civil Rights	Employ. Discrim.	Social Security	Inmates
2	Applications Filed	172 (22.5%)	91 (20.8%)	54 (39.7%)	14 (15.1%)	83 (20.3%)
3	Applications Granted	37 of 172 (21.5%)	21 of 91 (23.1%)	10 of 54 (18.5%)	4 of 14 (28.6%)	21 of 83 (25.3%)
4	Applications Denied	135 of 172 (78.5%)	70 of 91 (74.7%)	44 of 54 (81.5%)	10 of 14 (71.4%)	62 of 83 (74.7%)

Fifty-four of the 765 cases that were surveyed received some form of assistance from counsel. This amounted to 15.8% of the cases that survived a *sua sponte* review.[95] Of these fifty-four, only twenty-four received assistance from counsel through the court and an application

95. Cases that do not survive a *sua sponte* review are dismissed after the filing of the complaint, and therefore, have no legal representation.

for counsel (twenty-four of 172 applications filed or 14%). Thus, as seen in the third row of Table X, of the thirty-seven applications granted, twenty-four actually received representation through the application process.[96] The remaining thirty plaintiffs obtained counsel on their own (fourth row of Table X).

TABLE X
ASSIGNMENT OF COUNSEL

1		ALL CASES	Civil Rights	Employ. Discrim.	Social Security	Inmate Filing
2	Applications Granted	37 of 172 (21.5%)	21 of 91 (23.1%)	10 of 54 (18.5%)	4 of 14 (28.6%)	21 of 83 (25.3%)
3	Counsel Obtained Through Application	24 of 37 (64.9%)	15 of 21 (71.4%)	5 of 10 (50%)	2 of 4 (50%)	13 of 21 (61.9%)
4	Counsel Obtained on Own	30	3	14	11	4

Plaintiffs in civil rights and inmate-filed cases received assistance of counsel through the application process much more frequently than plaintiffs in employment discrimination and social security cases. Conversely, plaintiffs in employment discrimination and social security cases obtained counsel without the assistance of the court much more frequently than plaintiffs in civil rights cases or inmate-filed cases did. These statistics raise a number of questions. Are the attorneys who are accepting pro bono cases primarily concerned with civil rights and prisoner issues, rather than social security and employment issues? Is the opposite true for attorneys not performing pro bono representation for the court, but representing pro se plaintiffs? And why are only 64.9% of the granted applications receiving counsel?

It is possible to review the effects that the PLRA has had on pro se litigation from the preceding tables. Table XI sets forth the number of applications filed per year, and the rate in which they were granted. As seen in the third row, in 1995, one year prior to the PLRA, 44.4% (eight of eighteen) of the applications in civil rights cases were granted. The percentage of applications granted in civil rights cases decreased to 22% (nine of forty-eight) in the three years following

96. The granting of an application for counsel does not guarantee that counsel will be assigned. *See supra* note 58 and accompanying text (setting forth the procedure for obtaining counsel through the application process in the Southern District of New York). As of the writing of this article, there were fifty-six applications granted and awaiting counsel in the Southern District of New York.

the PLRA (1997-1999). One could conclude that overall the cases filed after the PLRA have had less merit to warrant granting an application for counsel, than did those cases filed prior to the PLRA. If the merits of an application for counsel can be used to partially gauge the merits of a complaint, than one could argue that the PLRA has deterred not only frivolous prisoner complaints, but also meritorious prisoner complaints, or at least complaints that satisfied the request for counsel standard.[97] In other words, if the PLRA deterred strictly frivolous prisoner litigation, one would assume that the rate of applications for which counsel are granted would rise, or at the least remain constant because a higher percentage of the cases would be meritorious. However, the opposite has occurred. The percentage of granted/meritorious applications has decreased, implying that the PLRA has deterred not only frivolous cases, but also cases with enough merit to warrant the granting of counsel.

TABLE XI
GRANTED APPLICATIONS BY YEAR

1		ALL CASES	Civil Rights	Employ. Discrim.	Social Security	Inmate Filing
2	TOTAL APPLICATIONS GRANTED	37 of 172 (21.5%)	21 of 91 (23.1%)	10 of 54 (18.5%)	4 of 14 (28.6%)	21 of 83 (25.3%)
3	1995	11 of 38 (28.9%)	8 of 18 (44.4%)	1 of 14 (7.1%)	0 of 2 (0%)	8 of 18 (44.4%)
4	1996	9 of 42 (21.4%)	4 of 25 (16%)	5 of 14 (35.7%)	0 of 1 (0%)	4 of 24 (16.7%)
5	1997	7 of 34 (20.6%)	3 of 14 (21.4%)	2 of 14 (14.3%)	2 of 4 (50%)	3 of 12 (25%)
6	1998	6 of 30 (20%)	3 of 16 (18.8%)	2 of 7 (28.6%)	1 of 5 (20%)	3 of 12 (25%)
7	1999	4 of 28 (14.3%)	3 of 18 (16.7%)	0 of 5 (0%)	1 of 2 (50%)	3 of 17 (17.6%)

3. *Final Disposition*[98]

This sub-section looks at the stage in which each case was resolved. As seen in the top right-hand corner of Table XII, the majority of the cases reviewed for the Study were terminated pursuant to *sua sponte* orders of dismissal (55.6%; 425 of 765). The frequency of *sua sponte* dismissals varied widely depending on the category of the case. As seen in the second row of Table XII, cases classified under "other" were dismissed *sua sponte* most often (74.1%), followed by civil rights

97. *See* Hendricks v. Coughlin, 114 F.3d 390, 392-95 (2d Cir. 1997) (explaining relevant factors in evaluating a request for counsel).

98. For the raw data corresponding to this Section, see *infra* App. § 7.

cases (69.2%), and then inmate-filed cases (66.2%).[99] There was a large discrepancy between the frequency with which these cases were dismissed *sua sponte*, and the cases that were least likely to be dismissed *sua sponte*. Social security and employment discrimination cases, with *sua sponte* dismissal rates of 20.4% and 26.5%, respectively, were between three and four times less likely to be dismissed *sua sponte* than civil rights or inmate-filed cases (second row of Table XII). While more than two-thirds of the civil rights and inmate-filed actions were dismissed *sua sponte*, only one-fifth and one-forth of social security and employment discrimination cases, respectively, were dismissed *sua sponte*.

TABLE XII
TOTALS FINAL DISPOSITION

1		Civil Rights	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Labor	Oth.	TOTALS	Inmate Filing
2	*Sua Sponte* Dismissed	312 (69.2%)	36 (26.5%)	19 (20.4%)	4 (66.7%)	2 (66.7%)	5 (62.5%)	3 (75%)	4 (40%)	40 (74.1%)	425 (55.6%)	270 (66.2%)
3	Dismissed on M/T/D or S.J.	33 (7.3%)	39 (28.7%)	28 (30.1%)	0 (0%)	0 (0%)	1 (12.5%)	1 (25%)	4 (40%)	4 (7.4%)	110 (14.4%)	32 (7.8%)
4	Voluntary Dismissal	16 (3.5%)	7 (5.1%)	1 (1.1%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (20%)	1 (1.9%)	27 (3.5%)	15 (3.7%)
5	Defendant Trial Verdict	3 (0.7%)	1 (0.7%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	4 (0.5%)	3 (0.7%)
6	Plaintiff Trial Verdict	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
7	Settlement or stip.	35 (7.7%)	30 (22.1%)	40 (43%)	0 (0%)	1 (33.3%)	2 (25%)	0 (0%)	0 (0%)	5 (9.3%)	113 (14.8%)	37 (9.1%)
8	Remand to Agency	0 (0%)	0 (0%)	48 (51.6%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	48 (6.3%)	0 (0%)
9	Still Pending	52 (16.7%)	23 (16.9%)	5 (5.4%)	2 (33.3%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	4 (7.4%)	86 (11.2%)	50 (12.3%)
10	TOTAL CASES	451	136	93	6	3	8	4	10	54	765	408

Settlements or stipulations were the second most common manner in which the pro se cases surveyed were resolved, as seen in the seventh row of Table XII (14.8% of the total cases). Although it was the second most common disposition of the cases, a settlement or stipulation was significantly less common than *sua sponte* dismissals, which occurred 55.6% of the time. While at an initial glance 14.8% may appear quite high, it is somewhat misleading. Social security cases were resolved by settlement 43% of the time, significantly more than any other type of case. As seen in the seventh and eighth rows of Table XII, forty of the forty-eight social security cases that settled, stipulated to a remand to the Social Security Administration for

99. Three of the four cases filed under FOIA were also dismissed *sua sponte*.

further review or reconsideration. This is not only a common practice, but also it provides no guarantee that the litigation will not continue, and that the parties will not reappear before the court at a later date. A more informative number of settled pro se cases is 10.3%, which is arrived at by subtracting the thirty-eight cases remanded from both the total cases filed, and the total number of settled cases, resulting in seventy-five of 727. After social security cases, the most common cases that were resolved by settlement were the employment discrimination cases (22.1%),[100] while the least likely to be resolved by settlement were the civil rights cases (7.7%) and inmate-filed cases (9.1%).

Having counsel greatly improved a litigant's chances of settling her case. Of the seventy-five cases that settled and did not involve a social security remand, eighteen (24.7%) had representation at the time of settlement. This amounted to 43.9% (eighteen of forty-one) of the counseled cases. Thus, while almost half of the pro se cases that received assistance of counsel settled, less than one-twelfth of the non-represented cases settled.

The Study dispelled several myths pertaining to the amount of money granted to pro se litigants. Not only do pro se plaintiffs rarely secure any compensation,[101] but if they do, the amount of compensation is relatively small, and is generally a fraction of the litigation costs. Of the seventy-five non-remanded cases that settled, thirty-one reported the amount of money involved in the settlement. Of these thirty-one, only two were above $15,000, with most ranging from $5,000-8,000.[102]

As shown in the third row of Table XII, the third most common resolution of pro se cases surveyed was upon a motion to dismiss or summary judgment motion.[103] While the overall average of pro se cases dismissed pursuant to a motion to dismiss or summary judgment was 14.4%, employment discrimination and social security cases were dismissed at much higher rates of 28.7% and 30.1%, respectively. This is likely the result of having relatively few employment discrimination and social security cases dismissed *sua sponte*, as

100. Diversity and family cases also had high settlement rates. Because only eleven cases fall within these headings, however, a larger study is warranted.

101. *See infra* Tbl. XIII (finding that, excluding settlements, not one pro se inmate plaintiff out of 408 won their case).

102. *See infra* App. § 7.

103. *See supra* Tbl. XII (illustrating that the total percentage of cases dismissed on motion to dismiss or summary judgment is 14.4%).

shown in the second row of Table XII, and therefore, more cases reaching the motion to dismiss phase.

Cases that were pending on the court's docket when the Study was completed were the only other final disposition of the cases that amounted to more than 10%. As shown in the ninth row of Table XII, 11.2% of the total cases surveyed were still pending when the Study was concluded. The highest percentages of cases that remained on the court's docket were 16.9% of the employment discrimination cases and 16.7% of the civil rights cases. Furthermore, although only four cases surveyed from 1995 were still pending, all four were civil rights cases filed by inmates.

Overall, there were some identifiable characteristics of how pro se cases were resolved. First, civil rights and inmate-filed cases were generally dismissed *sua sponte* at the beginning of the case. Because there was a high volume of *sua sponte* dismissals in civil rights and inmate-filed cases, it is not surprising that relatively few of the cases were dismissed pursuant to a motion to dismiss, or on summary judgment motion, which only arises if the case survives a *sua sponte* review. Second, the plurality of employment discrimination cases was dismissed pursuant to a motion to dismiss or a summary judgment motion, requiring lengthy motion practice. Although social security cases had a high rate of dismissal pursuant to motions to dismiss or summary judgment (30.1%), they had an even higher rate of settlement (43%) and remand to the Social Security Administration (51.6%). Few social security cases, however, were pending (five of ninety-three; 5.4%), implying that they are generally resolved quickly.

Part of understanding how pro se cases are resolved is determining at what stage different categories of cases are dismissed. As stated above, civil rights cases are dismissed most frequently at the first stage, *sua sponte* (second row of Table XII). Although employment discrimination and social security cases were more likely to be dismissed on a motion to dismiss or a summary judgment motion (third row of Table XII), they were less likely to be dismissed after *sua sponte* review, motions to dismiss, or summary judgment motions were filed (55.2% and 49.4%, respectively), than civil rights cases (76.5% of the civil rights cases were dismissed). It is not surprising then that employment discrimination cases settled at a higher rate than civil rights and inmate-filed actions. If more employment discrimination cases survived a *sua sponte* review and motions to dismiss, then more employment discrimination cases would be

available to settle.[104] Interestingly, while civil rights and inmate-filed cases were the most likely to be dismissed *sua sponte,* they were more likely to be pending at the conclusion of the Study (16.7% and 12.3%, respectively), than dismissed on a motion to dismiss (7.3% and 7.8%, respectively). One conclusion is that while civil rights and inmate-filed cases generally fail to state a claim upon a *sua sponte* review, once a civil rights or inmate-filed case satisfies that review, the case is generally time consuming, does not settle quickly, and remains on the court's docket for a substantial amount of time.

It appears that the PLRA affected the stage in which pro se cases are resolved. As seen in the second row of Table XIII, in 1995, one year prior to the enactment of the PLRA, 72.4% of the inmate-filed cases were dismissed *sua sponte.* This percentage dropped to 53.6% in 1998 and to 50% in 1999, as seen in rows five and six. One could argue that the decrease in *sua sponte* dismissed cases is due to the PLRA. The argument is that by requiring all inmates to pay the $150 filing fee regardless of their ability to do so, the PLRA compels inmates to be more selective in choosing which cases to file. Thus, inmates screen out the identifiable frivolous complaints that would otherwise be dismissed *sua sponte.*

A further indication that the PLRA affected the stage in which cases were resolved is the increase in the number of settled cases. If the PLRA deterred inmates from filing frivolous claims, one would expect a rise in settled cases or plaintiff victories. As seen in the fifth column of Table XII, from 1995 to 1997 there was a slight rise in the percentage of cases settled. With a sizable amount of cases still pending, the cases in 1998 experienced a significant rise in settled cases, increasing to 14.3%. One could argue that this rise in settled cases is another indication that the PLRA is deterring frivolous inmate claims. Although settled cases dropped in 1999, 42.6% of the cases were still pending.

TABLE XIII
INMATE-FILED CASES DISMISSALS BY YEAR

1		TOTAL INMATE-FILED CASES	*Sua Sponte* Dismissed	Dismissed on M/T/D or S.J.	105 Settled	Pending	Non-settled plaintiff victories
2	1995	122	89 (72.4%)	9 (7.3%)	11 (8.9%)	4 (3.3%)	1 (default judgment)

104. Almost every social security settlement to remand occurred after a *sua sponte* review, but before either a motion to dismiss or summary judgment motion was filed.

105. The number of settled cases does not include settlements to remand the case to the Social Security Administration.

3	1996	101	71 (72.3%)	12 (11.9%)	11 (10.9%)	4 (2.3%)	0
4	1997	61	45 (73.8%)	4 (6.6%)	6 (9.8%)	4 (6.6%)	0
5	1998	56	30 (53.6%)	3 (5.4%)	8 (14.3%)	11 (19.6%)	0
6	1999	68	33 (50%)	4 (5.9%)	1 (1.5%)	29 (42.6%)	0
7	TOTALS	408	268 (66.2%)	32 (7.8%)	37 (9.1%)	52 (12.5%)	1

The results set forth in Tables XII and XIII raise numerous questions. For example, why are civil rights and inmate-filed cases most frequently dismissed *sua sponte*? And why at rates significantly higher than employment discrimination and social security cases? Is *sua sponte* review a fair and expeditious method of adjudicating cases? Are civil rights and inmate-filed cases subjected to a more rigorous review process? If so, why? If not, why are so many civil rights and inmate-filed cases frivolous? If the success rate among the different categories of cases is comparable, is there any way to expedite employment discrimination and social security cases to avoid lengthy motions? Why are employment discrimination cases most likely to be pending? Why are social security cases least likely to be pending?

Finally, one glaring question is: why do so few pro se litigants win? Pro se plaintiffs did not have a single judgment entered in their favor in the 652 non-settled cases. All four pro se cases that went to trial resulted in verdicts for the defendants and the sole pro se non-settled victory was the result of an uncontested default judgment. Do the most meritorious cases result in settlement, therefore reducing the likelihood that a formidable pro se case will proceed to trial? If so, is it possible to identify these cases shortly after they are filed and to bring them to a quick resolution? Or if not, do pro se plaintiffs file less meritorious claims? Or is the system so heavily weighed against pro se litigants that a victory is highly improbable?

4. Reason for Dismissal[106]

This Section reviews the reason each case was dismissed. As seen in the seventh row of the Table, 535 of the 765 cases surveyed were dismissed *sua sponte*, upon a motion to dismiss, or upon a summary judgment motion—only these 535 cases contributed to this portion of the Study.[107]

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106. For the raw data corresponding to this Section, see *infra* App. § 8.

107. The remaining 230 cases were either settled (113 cases), still pending (eighty-six cases), voluntarily dismissed (twenty-seven cases), or concluded in jury verdicts

TABLE XIV
SUA SPONTE, MOTION TO DISMISS AND SUMMARY JUDGMENT DISMISSALS BY YEAR

1		Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
2	1995	100	26	9	2	0	2	1	0	7	147	98
3	1996	91	17	11	0	1	1	1	5	9	136	83
4	1997	60	12	18	1	1	0	0	1	9	102	49
5	1998	41	8	6	0	0	1	1	2	7	66	33
6	1999	53	12	3	1	0	2	1	0	12	84	37
7	TOTALS	345	75	47	4	2	6	4	8	44	535	300

Each of these 535 cases was individually reviewed to determine the reason for dismissal. Table XV contains the results of the dismissed cases and the reasons for dismissal separated by case type.

TABLE XV
REASON FOR DISMISSAL

1		Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
2	Failure to Serve[108]	28	11	1	0	0	0	0	0	1	41	25
3	Failure to State a Claim[109]	75	20	15	0	0	0	2	4	14	130	73
4	Statute of Limitations[110]	14	11	0	0	0	0	0	3	1	29	10
5	Subject Matter Jurisdiction[111]	20	4	0	1	2	4	0	0	9	40	14
6	Failure to Respond to 60-day Order[112]	31	3	6	2	0	0	0	0	0	42	29

(four cases).

108. Cases dismissed for failure to serve the summons and complaint pursuant to FED. R. CIV. P. 4.

109. For a discussion of these cases, see *infra* notes 117-119 and accompanying text.

110. The applicable statute of limitations depended on the type of case. For example, most civil rights actions in New York are subject to a three-year statute of limitations. *See* 42 U.S.C. § 1988 (2000); Wilson v. Garcia, 471 U.S. 261, 280 (1985); *see also* Owens v. Okure, 488 U.S. 235, 249-51 (1989). In contrast, social security cases were required to be filed in the district court no more than sixty days after the plaintiff received the Appeals Council letter from the Social Security Administration denying him benefits. *See* 42 U.S.C. § 405(g).

111. Cases dismissed finding no jurisdiction pursuant to 28 U.S.C. §§ 1331-1332 (2000).

112. Plaintiffs were directed to file amended complaints within sixty days and

TABLE XV
REASON FOR DISMISSAL

7	Failure to Prosecute	10	10	5	0	0	0	0	0	0	25	9
8	Transfer (venue)[113]	50	2	1	0	0	1	1	0	3	58	43
9	Immunity[114]	28	1	0	0	0	1	0	0	3	33	22
10	*Neitzke* or *Denton*[115]	32	2	0	0	0	0	0	1	6	41	24
11	Duplicate[116]	8	2	1	0	0	0	0	0	3	14	9
12	Not a State Actor[117]	27	0	0	0	0	0	0	0	0	27	22
13	Exhaustion[118]	6	5	9	1	0	0	1	0	3	25	5
14	Personal Involvement[119]	11	0	0	0	0	0	0	0	0	11	11
15	Res Judicata[120]	1	2	0	0	0	0	0	0	0	3	1
16	Moot	1	0	0	0	0	0	0	0	1	2	2
17	Conclusory[121]	1	0	0	0	0	0	0	0	0	1	1

failed to do so.

113. Cases transferred pursuant to 28 U.S.C. §§ 1391(b), 1406(a).

114. After the enactment of the PLRA, these cases were dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

115. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (ruling that claims that are "delusional" or "wholly incredible" may be dismissed as factually baseless); Neitzke v. Williams, 490 U.S. 319, 327-38 (1989) (holding that claims with clearly baseless factual contentions may be dismissed).

116. Cases dismissed as duplicates of pending cases.

117. *See* West v. Atkins, 487 U.S. 42, 48 (1988) (holding that alleged deprivation must be "committed by a person acting under color of state law."); Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982) (requiring that defendant in § 1983 suit commit the alleged constitutional deprivation as a state actor).

118. *See* 28 U.S.C. § 1915e(e) (requiring exhaustion of administrative remedies in civil rights cases); 42 U.S.C. § 405(g) (2000) (requiring exhaustion of administrative remedies in social security cases); 42 U.S.C. § 2000e-5(b),(e),(f) (requiring exhaustion of administrative remedies in employment discrimination cases); 20 C.F.R. § 422.210 (1996) (same); *see also* Weinberger v. Salfi, 422 U.S. 749, 763-67 (1975) (requiring same under prior agency Department of Health & Human Services).

119. *See* Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994) (holding that defendant must be personally liable in § 1983 action); *see also* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978) (holding that liability for damages in § 1983 action may not be based on *respondeat superior* or vicarious liability doctrines).

120. *See* Harborside Refrigerated Servs., Inc. v. Vogel, 959 F.2d 368, 372 (2d Cir. 1992) ("[W]hen a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound '. . . as to every matter which was offered and received to sustain or defeat the claim.'") (citation omitted).

121. *See, e.g.*, Boddie v. Schnieder, 105 F.3d 857, 862 (2d Cir. 1997) (dismissing prisoner's retaliation claim in part because retaliation claims were "unsupported, speculative, and conclusory."); Polur v. Raffe, 912 F.2d 52, 56 (2d Cir. 1990) (holding that complaint must rely on overt acts and not "vague, prolix allegations of a

TABLE XV
REASON FOR DISMISSAL

18	M-120[122]	2	2	0	0	0	0	0	0	0	4	2
19	Remand[123]	0	0	8	0	0	0	0	0	0	8	0
20	TOTAL CASES	345	75	46	4	2	6	4	8	44	534	300

While pro se cases were dismissed for a variety of reasons, some reasons arose more frequently than others. The following is a list of the ten most frequent bases for dismissal:

1. Failure to State a Claim;
2. Improper Venue;
3. Failure to Respond to a sixty-day Order;
4. Tie - Failure to Serve;
5. Tie - Neitzke or Denton;
6. Lack of Subject Matter Jurisdiction;
7. Immunity of Defendants;
8. Statute of Limitations;
9. Defendant is Not a State Actor;
10. Tie - Failure to Prosecute; and
10. Tie - Failure to Exhaust Administrative Remedies.

As seen in the third row of Table XV, almost one quarter of the cases were dismissed for the ubiquitous "failure to state a claim." Because "failure to state a claim" generally implies that the allegations set forth in the complaint have been reviewed and fail to satisfy the substantive legal standards to set forth a cause of action, it is not surprising that dismissal for failure to state a claim affected all categories of cases during all years at fairly regular levels. Of the 345 civil rights cases dismissed for failure to state a claim, the most frequently cited cases were *Heck v. Humphrey*,[124] *Estelle v. Gamble*,[125]

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conspiracy") (citations omitted).

122. Cases dismissed because the plaintiff was barred from filing future complaints without seeking leave to file pursuant to 28 U.S.C. § 1915(g) (preventing a prisoner from bringing a civil action or appealing a judgment in a civil action or proceeding if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury).

123. All remands were pursuant to a motion to dismiss or summary judgment motion and were remanded to the Social Security Administration.

124. 512 U.S. 477, 484-87 (1994) (holding that plaintiff cannot sustain an action under 42 U.S.C. § 1983 for false arrest and wrongful prosecution if he was convicted of the offense for which he was arrested).

125. 429 U.S. 97, 106 (1976) (holding that in order to successfully assert an Eighth

and *Sandin v. Conner*.[126]

The next most common basis for dismissing a pro se complaint was improper venue. As seen in the eighth row of Table XV, in more than 10% of the pro se cases dismissed, the court found that the litigant filed the complaint in the improper United States District Court. This was especially true in civil rights and inmate-filed cases, which were 86.2% (fifty of fifty-eight) and 74.1% (forty-three of fifty-eight) of the transferred cases, respectively.[127]

In addition to improper venue, three other often-cited reasons for dismissing civil rights actions (second column) and inmate-filed actions (twelfth column) were that the defendants were immune from suit (84.8% in civil rights actions (twenty-eight of thirty-three); 66.7% in inmate-filed actions (twenty-two of thirty-three)), the defendants were not state actors (100% in civil rights actions (twenty-seven of twenty-seven); 81.5% in inmate-filed actions (twenty-two of twenty-seven)), and the defendants were not personally involved with the alleged constitutional deprivations (100% in civil rights actions (eleven of eleven); 100% in inmate-filed actions (eleven of eleven)). The requirements that the defendants be state actors and personally involved are mandated by statute[128] and case law[129] in civil rights cases. Because these prerequisites are not applicable to other types of actions, dismissal for failure to comply with them was found exclusively in civil rights cases. Likewise, a high percentage of the civil rights cases were dismissed on the grounds that the defendant was immune. Because immunity is almost exclusively applied to state actors,[130] dismissal on the grounds of immunity was almost exclusively applied to civil rights cases.

As seen in the thirteenth row of Table XV, employment

Amendment claim based upon inadequate medical care, plaintiff must allege that the defendant was deliberately indifferent to plaintiff's serious medical needs).

126. 515 U.S. 472, 484 (1995) (holding that the Due Process Clause only prohibits confinement that "while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.").

127. Civil rights cases amounted to 64.6% of the total cases dismissed, significantly lower than the 86.2% of the cases transferred.

128. 42 U.S.C. § 1983.

129. Wright v. Smith, 21 F.3d 496, 501 (holding that defendant must be personally liable in § 1983 action); *see also* Monell v. Dept. of Soc. Servs., 436 U.S. 658, 691 (holding that liability for damages in § 1983 action may not be based on *respondeat superior* or vicarious liability doctrines).

130. *See, e.g.*, Richardson v. McKnight, 521 U.S. 399, 403 (1997).

discrimination and social security cases were the ones most frequently dismissed for failure to exhaust. These two categories of cases have statutory requirements that the litigant exhaust administrative remedies with the Equal Employment Opportunity Commission ("EEOC") in employment discrimination cases[131] and with the Social Security Administration in social security cases.[132] Thus, it is not surprising that these two categories of cases had higher rates of dismissals for failure to exhaust—36% in social security cases and 20% in employment discrimination cases—than other categories of cases.

While some patterns, such as dismissal for failure to exhaust, are clear and logical due to applicable legal standards, others are somewhat more perplexing. For example:

- Civil rights cases had a high tendency to be dismissed for failure to comply with sixty-day orders (73.8%; thirty-one of forty-two), and failure to serve the complaint (68.3%; twenty-eight of forty-one).
- Employment discrimination cases, which amounted to 14% of the cases dismissed, had a high tendency to be dismissed for failure to prosecute (40%; ten of twenty-five), failure to comply with the statute of limitations (37.9%; eleven of twenty-nine), and failure to serve the complaint (26.8%; eleven of forty-one).
- Social security cases, which amounted to 8.6% of the cases dismissed, also had unique patterns, including high rates of failure to prosecute (20%; five of twenty-five) and failure to comply with sixty-day orders (14.3%; six of forty-two).

These results raise an infinite amount of questions. For example, why do civil rights cases frequently get filed in the wrong jurisdiction? Why are plaintiffs in employment discrimination cases more often hampered by the statute of limitations than other plaintiffs? Is the nature of an employment discrimination case too complex for the litigants to grasp before the statute of limitations expires? Is the complexity of employment discrimination cases also the reason why the cases are frequently dismissed for failure to prosecute? Why are inmate-filed cases and social security cases more likely to be dismissed for failure to respond to a sixty-day order than other cases? Do plaintiffs in social security cases experience more difficulty in understanding the orders? Can litigants be better informed of the

131. *See* 42 U.S.C. § 2000e-5(b), (e)-(f) (requiring exhaustion of administrative remedies in employment discrimination cases); 20 C.F.R. § 422.210 (1996) (same).

132. 42 U.S.C. § 405(g) (requiring exhaustion of administrative remedies in social security cases).

clear statutory requirements of venue, exhaustion, and proper defendants prior to filing their action? Can this be done in a manner consistent with a neutral and impartial adjudicator?

While recording the justification for each dismissal, I found that a substantial amount of cases were being dismissed pursuant to *Denton v. Hernandez*.[133] In *Denton*, the United States Supreme Court held claims that are "delusional" or "wholly incredible" may be dismissed as factually baseless.[134] In considering the cases dismissed pursuant to *Denton*, I decided to combine them with cases filed by individuals claiming to be housed in a mental facility. Although rudimentary, the following table sets forth a somewhat disturbing amount of cases where the plaintiff was housed in a mental facility, or where the dismissal was based on facts found to be "delusional" pursuant to *Denton*.

TABLE XVI
CASES WHERE PLAINTIFF WAS HOUSED IN A MENTAL FACILITY OR WHERE DISMISSAL WAS BASED ON *DENTON*

1		Civil Rights	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Diver.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
2	1995	5	0	0	0	0	0	0	0	0	5	5
3	1996	19	0	0	0	0	0	0	0	0	19	14
4	1997	19	0	0	0	0	0	0	0	1	20	16
5	1998	0	0	0	0	0	0	0	0	1	1	0
6	1999	12	0	0	0	0	0	0	0	0	12	9
7	TOTALS	55	0	0	0	0	0	0	0	2	57	44

As shown in the second column in Table XVI, almost all of the cases where the plaintiff was housed in a mental facility or where dismissal was based on *Denton* were civil rights actions (96.5%). This amounted to 12.2% (fifty-five of 451) of all civil rights actions, and 10.8% (forty-four of 408) of all inmate-filed actions. With over one in every ten civil rights actions involving some issue concerning the litigant's psychological status, this issue should be addressed or at least discussed. Currently, however, these cases, and the litigants who file them, are not provided with any form of additional or alternative programs or assistance. Furthermore, prior to the filing of the case, during the pendency of the case, and once the case is dismissed, there

133. 504 U.S. 25 (1992).
134. *Id.* at 32-33.

is no special consideration of the litigant's psychological status, or the best method to assist the litigant's actual needs.[135]

What effects, if any, the PLRA has had on the reasons pro se cases are dismissed is inconclusive. As seen in Table XVII, some of the percentages of reasons for dismissal remained consistent over the course of the Study. One would expect, however, that if the PLRA deterred inmates from filing frivolous actions, then the number of clearly dismissible claims would be reduced. This, however, does not appear to be the case. While some easily identifiable and dismissible claims were decreased, there was an increase in the number of fairly common and correctable, but substantively deadly mistakes, such as the failure to name a state actor (from 3.4% to 8.3%), or the naming of a defendant who was immune (from 7.5% to 10.7%).

TABLE XVII
REASON FOR DISMISSAL BY YEAR

1		1995	1996	1997	1998	1999	TOTALS
2	Failure to Serve	14 (9.6%)	7 (5.1%)	8 (7.8%)	8 (12.1%)	4 (4.8%)	41 (7.7%)
3	Failure to State a Claim	45 (30.8%)	39 (28.7%)	18 (17.6%)	14 (21.2%)	14 (16.7%)	130 (24.3%)
4	Statute of Limitations	8 (5.5%)	5 (3.7%)	10 (9.8%)	3 (4.5%)	3 (3.6%)	29 (5.4%)
5	Subject Matter Jurisdiction	11 (7.5%)	9 (6.6%)	7 (6.9%)	5 (7.6%)	8 (9.5%)	40 (7.5%)
6	Failure to Respond to 60-day Order	12 (8.2%)	2 (1.5%)	12 (11.8%)	4 (6.1%)	12 (14.3%)	42 (7.9%)
7	Failure to Prosecute	2 (1.4%)	10 (7.4%)	8 (7.8%)	5 (7.6%)	0 (0%)	25 (4.7%)
8	Transfer (venue)	17 (11.6%)	10 (7.4%)	14 (13.7%)	9 (13.6%)	8 (9.5%)	58 (10.9%)
9	Immunity	11 (7.5%)	5 (3.7%)	4 (3.9%)	4 (6.1%)	9 (10.7%)	33 (6.2%)

135. *See* Munger, *supra* note 7, at 1812 (arguing that courts often wrongly assume the litigant's psychosociological status and do not correctly handle possibly delusional claims).

10	*Neitzke* or *Denton*	5 (3.4%)	23 (16.9%)	5 (4.9%)	2 (3%)	6 (7.1%)	41 (7.7%)
11	Duplicate	2 (1.4%)	3 (2.2%)	3 (2.9%)	1 (1.5%)	5 (6%)	14 (2.6%)
12	Not a State Actor	5 (3.4%)	10 (7.4%)	2 (2%)	3 (4.5%)	7 (8.3%)	27 (5.1%)
13	Exhaustion	6 (4.1%)	7 (5.1%)	3 (2.9%)	4 (6.1%)	5 (6%)	25 (4.9%)
14	Personal Involvement	5 (3.4%)	5 (3.7%)	1 (1%)	0 (0%)	0 (0%)	11 (2.1%)
15	Res Judicata	1 (7.5%)	0 (0%)	0 (0%)	1 (1.5%)	1 (1.2%)	3 (.6%)
16	M-120	2 (1.4%)	1 (.7%)	0 (0%)	1 (1.5%)	0 (0%)	4 (.4%)
17	Conclusory	0 (0%)	0 (0%)	1 (1%)	0 (0%)	0 (0%)	1 (.2%)
18	Moot	0 (0%)	0 (0%)	1 (1%)	0 (0%)	1 (1.2%)	2 (.7%)
19	TOTAL CASES	146	136	97	64	83	526

5. *Processing of Appeals*[136]

Although few pro se litigants were victorious at the district court level, only 16.2% of the litigants appealed to the United States Court of Appeals for the Second Circuit. As seen in the second and third rows of Table XVIII, the rate at which pro se plaintiffs appealed and the rate at which those appeals were denied remained relatively consistent among the largest case categories and inmate-filed cases.

136. For the raw data corresponding to this Section, see *infra* App. § 9.

TABLE XVIII
APPEALS BY CASE TYPE

1		ALL CASES	Civil Rights	Employ. Discrim.	Social Security	Inmate Filing
2	Appeal Filed	124 of 765 (16.2%)	66 of 451 (14.6%)	26 of 136 (19.1%)	9 of 93 (9.7%)	53 of 408 (13%)
3	Appeal Denied	115 of 124 (92.7%)	61 of 66 (92.4%)	25 of 26 (96.2%)	7 of 9 (77.8%)	50 of 53 (94.3%)
4	Appeal Granted	7 of 124 (5.6%)	3 of 66 (4.5%)	1 of 26 (3.8%)	2 of 9 (22.2%)	2 of 53 (3.8%)
5	Appeal Pending	2 of 124 (1.6%)	2 of 66 (3%)	0 of 26 (0%)	0 of 9 (0%)	1 of 53 (1.9%)

As seen in the second row of Table XVIII, social security cases had the lowest rate of appeals filed. This is possibly due to the high rate of settlement, making an appeal unnecessary. Interestingly, social security cases also had the lowest rate of dismissal on appeal at 77.8%, as seen in the third row. Pro se appeals were denied at an average rate of 92.7% (115 of 124). As seen in the fourth row of Table XVIII, only seven of the 124 appeals were granted (5.6%) and two of the seven were in social security cases. Thus, even though social security cases made up only 9.7% of the appeals filed, they amounted to 28.6% of the appeals granted. Two of the 124 appeals were pending. Both pending appeals were civil rights cases and were from 1995 and 1996, respectively.

As seen in Table XIX, the percentage of cases where an appeal was filed and denied remained consistent, ranging from 13.3% to 19% and 85.7% to 100%, respectively. The only variation to the yearly consistencies appeared in the overall rate of *in forma pauperis* requests at the appellate level, which dipped 30% in 1997.[137] Although it coincides with the enactment of the PLRA, the reason for this dip is unclear. As seen in Table XX, the PLRA did not appear to have an effect on inmate filings by year or whether the plaintiff requested *in forma pauperis* status—both remained consistent over the course of the Study.[138]

137. *See* FED. R. APP. P. 24 (setting forth *in forma pauperis* for appeal to United States Circuit Courts).

138. There was, however, an overall decrease in appellate *in forma pauperis* filings in 1997, as seen in Tbl. XIX.

TABLE XIX
APPEAL BY YEAR

1		1995	1996	1997	1998	1999	TOTALS
2	Appeal filed	29 (15.8%)	33 (19%)	21 (15.2%)	22 (17.5%)	19 (13.3%)	124 of 765 (16.2%)
3	Appeal denied	27 (93.1%)	30 (90.9%)	18 (85.7%)	21 (95.5%)	19 (100%)	115 of 124 (92.7%)
4	Appeal granted	1 (3.4%)	3 (9.1%)	2 (9.5%)	1 (4.5%)	0 (0%)	7 of 124 (5.6%)
5	Appeal pending	1 (3.4%)	0 (0%)	1 (4.8%)	0 (0%)	0 (0%)	2 of 124 (1.6%)
6	IFP requested	25 (86.2%)	28 (84.8%)	11 (52.4%)	18 (81.8%)	17 (89.5%)	99 of 124 (79.8%)
7	Motion for recon. granted[139]	3	1	5	2	2	13
8	TOTAL CASES	184	174	138	126	143	765

TABLE XX
INMATE APPEALS BY YEAR

1		1995	1996	1997	1998	1999	TOTALS
2	Appeal filed	13	14	7	10	9	53 of 408 (13%)
3	Appeal denied	12	13	6	10	9	50 of 53 (94.3%)
4	Appeal granted	1	1	0	0	0	2 of 53 (3.8%)
5	Appeal pending	0	0	1	0	0	1 of 53 (1.9%)
6	IFP requested	12	12	7	9	7	47 of 53 (88.7%)
7	Motion for recon. granted	2	1	1	1	1	6

Finally, thirteen motions for reconsideration were granted out of the thirty-two that were filed.[140] Of these thirteen motions, six were granted following the dismissal of the action for failure to serve the summons and complaint. This raises the question of whether it is possible to rectify any service issues prior to dismissal of the action, motion for reconsideration, or reopening.

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139. The majority of these motions were filed pursuant to FED. R. CIV. P. 59-60.
140. For the raw data on motions for reconsideration, see *infra* App. § 9.

C. Burdens Pro Se Cases Have on the Court

This final Section concerns the burdens pro se cases impose on the court. The analysis is reported in two sub-sections corresponding to groupings ten and eleven in the Appendix.[141] The two sub-sections use different methods to gauge the time and resources used in adjudicating pro se cases. The first sub-section, "Prior Case Filings in the Court," synthesizes the data regarding how often pro se litigants file multiple complaints, how many complaints they file, and whether or not they are warned or barred from filing future complaints with the court.[142] The second sub-section, "Time and Docket Entries in the Court," examines how long each case was pending in the court and how many docket entries each case had before it was closed.

1. Prior Case Filings in the Court[143]

As seen in the seventh row of Table XXI, almost half of the pro se plaintiffs surveyed had previously filed a complaint in the Southern District of New York.[144] As seen in the bottom right-hand corner of Table XXI, 45% (344 of 765) of all the plaintiffs surveyed filed at least one prior complaint in the Southern District of New York.

TABLE XXI
NUMBER OF CASES REVIEWED WHERE PLAINTIFF HAD PRIOR CASE IN THE COURT

1		Civil Rights	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
2	1995	60	12	2	0	1	1	0	0	6	82	58
3	1996	55	8	3	0	0	1	0	3	7	77	51
4	1997	39	4	6	1	0	0	0	0	6	56	32
5	1998	36	8	4	0	0	0	0	2	7	57	31
6	1999	45	12	3	3	0	0	1	0	8	72	45

141. *See infra* App. §§ 10-11.

142. For purposes of this Article, a "bar order" is an order prohibiting a pro se plaintiff from filing future complaints with the Court unless she first seeks leave to file the complaint. *See* 28 U.S.C. § 1915(g) (2000).

143. For the raw data corresponding to this Section, see *infra* App. § 10.

144. The search for prior complaints was limited to the Southern District of New York and from the years 1983-1999.

TABLE XXI
NUMBER OF CASES REVIEWED WHERE PLAINTIFF HAD PRIOR CASE IN THE COURT

7	TOTAL % OF CASES FILED)	235 (52.1 %)	44 (32.4 %)	18 (19.4 %)	4 (66.7 %)	1 (33.3 %)	2 (25 %)	1 (25 %)	5 (50 %)	34 (63 %)	344 (45%)	217 (53.2 %)
8	TOTAL CASES FILED	451	136	93	6	3	8	4	10	54	765	408

Although the frequency of repeat filers[145] varied among the different categories of cases, repeat filers were not limited to a particular category of case or a particular year. As shown in the seventh row, the frequency of repeat filers varied from 63% in the "others" category (thirty-four of fifty-four) to 19.4% in social security cases (eighteen of ninety-three). Other notable results were:

- Over one-half, 53.2% (217 of 408), of inmate plaintiffs filed a prior complaint with the court.
- 52.1% (235 of 451) of civil rights plaintiffs filed a prior complaint with the court.
- Almost one-third of plaintiffs in employment discrimination cases 32.4% (forty-four of 136) had a prior complaint in the court.
- Although the studies were small, 66.7% (four of six) and 50% (five of ten) of plaintiffs in housing and labor cases, respectively, filed a prior complaint in the court.

The amount of inmate repeat filers decreased following the enactment of the PLRA.[146] The decrease corresponded to the amount of pro se cases filed overall. As the amount of inmate-filed cases decreased, so too did the number of repeat filers. From 1995 to 1998, the total non-habeas, pro se cases decreased 31.1% from 1,843 to 1,270. In 1999, pro se cases increased 12.9% to 1,434. This decrease and subsequent increase corresponded to the number of repeat filers during the same years. As seen in rows two through five in Table XXI, from 1995 to 1998 repeat filers dropped from eighty-two to fifty-seven —a decrease of 30.5% —and then, increased to seventy-two in 1999—an increase of 26.3%—as seen in row six of Table XXI. Thus, while the PLRA may have reduced the number of complaints overall, and has a specific provision to address repeat filers, it did not

145. For purposes of this Article, "repeat filers" refers to litigants who previously filed at least one complaint in the court.

146. *Compare* rows 2-3, *with* 4-6 in Tbl. XXI.

specifically affect those who may be most prone to repeat filing.

TABLE XXII
PRIORS BY YEAR

		1995	1996	1997	1998	1999	TOTALS
2	Repeat filers	82	77	56	57	72	344
3	Average of priors	5.3	4.15	4.29	4.33	8.5	-
4	Bar orders	11	9	9	1	11	41
5	Bar warnings	1	0	0	3	7	11
6	Average of complaints filed after bar order	11	3.67	1.11	.67	4.64	-

The average number of previously filed complaints per repeat filer fluctuated among the different categories of cases.[147] In civil rights cases, the average number of complaints previously filed per repeat filer varied slightly from year to year, from 4.5 to seven complaints. In employment discrimination cases, the average number of prior complaints filed per plaintiff varied widely from 1.5 to thirteen prior complaints. Thus, while civil rights plaintiffs were more likely to average a higher number of previously filed complaints per repeat filer than employment discrimination plaintiffs, employment discrimination plaintiffs were more likely to include an aberrant plaintiff who filed an exorbitant amount of complaints.[148]

As seen in the fourth row of Table XXII, the total number of bar orders entered was forty-one (5.4% of the total cases). Of these forty-one, thirty-six were entered against a pro se plaintiff in a civil rights action (8% of the civil rights cases overall). Only three of the bar orders were entered against a plaintiff in an employment discrimination case (2.2% of the employment discrimination cases overall).[149] The remaining two bar orders were entered against plaintiffs in the "other" category. Bar orders were entered against inmates in twenty cases (4.9% of the total inmate-filed cases). Inmate-filed plaintiffs were less likely than pro se plaintiffs overall, and significantly less likely than the plaintiffs in civil rights, non-

147. For the raw data on the number of complaints filed per litigant, see *infra* App. § 10.

148. One litigant filed fifty-seven complaints in one year—all but two were dismissed *sua sponte*. A bar order was entered against him in an employment discrimination case.

149. *See, e.g., supra* note 148.

inmate filed cases, to have a bar order entered against them.

While bar orders appeared to reduce the amount of complaints filed by repeat filers, the orders did not always stop the filing of complaints. This was particularly true in employment discrimination cases where the aberrant litigant continued to file numerous complaints after he was barred.

2. *Time and Docket Entries in the Court*[150]

This final sub-section examines the time and resources used in adjudicating pro se cases.[151] Table XXIII contains the average number of days each case was pending. The Table is separated by case type and year. As seen in rows two, six, ten, fourteen, and eighteen of Table XXIII, cases dismissed *sua sponte* were pending in the court the least amount of time. This is particularly important because, as shown in sub-section six above, *sua sponte* dismissals were the most common method of terminating cases (55.6% of the cases). Furthermore, all *sua sponte* dismissed cases were pending on the court's docket for significantly less time than the average case in the court.[152] Thus, the majority of pro se cases—cases dismissed *sua sponte*—spent the least amount of time in the court.

As seen in rows two, six, ten, fourteen, and eighteen, *sua sponte* dismissed civil rights, inmate-filed, FOIA, and diversity cases were consistently the quickest cases to be dismissed. These cases remained on the court's docket for less than six months. Conversely, employment discrimination and housing cases that were dismissed *sua sponte* were pending on the court's docket almost always over six months.

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150. For the raw data corresponding to this Section, see *infra* App. § 11.

151. While this sub-section does examine the docket entries and time pro se cases are pending, there are some considerations of time and resources not quantifiable. For example, a significant amount of time and resources are devoted to interpreting pro se pleadings and elaborating on courtroom procedures, which are very difficult to quantify.

152. *Compare* Tbl. XXIII, *with* the average time all cases were pending in the Southern District of New York: 1995—300 days; 1996—270 days; 1997—300 days; 1998—270 days; 1999—270 days, *and* across the nation: 1995—270 days; 1996—240 days; 1997—270 days; 1998—270 days; 1999—270 days. U.S. CTS.: SECOND CIRCUIT REPORT 1999, at 155, Tbl. 11 (2000); U.S. CTS.: SECOND CIRCUIT REPORT 1997 "Statistics," Tbl. 11 (1998); U.S. CTS.: SECOND CIRCUIT REPORT 1996, at 15, Tbl. 11 (1997).

TABLE XXIII
DAYS PENDING IN COURT BY YEAR[153]

1		Civil Rights	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	Inmate Filing
2	1995 Days pending in *sua sponte* dis.	157. 36	357. 72	159	260	0	135	70	0	128.33	146.26
3	1995 Days pending for others	575. 90	587. 50	500	300	320	960	0	0	100	592.18
4	1995 Days pending with app. counsel	1235	953.33	0	0	0	1670	0	0	0	1452.5
5											
6	1996 Days pending in *sua sponte* dis.	165. 13	190.83	76. 67	0	60	0	125	116.25	139.38	173.73
7	1996 Days pending for others	808. 97	663.33	445.63	0	0	535	0	370	600	791.43
8	1996 Days pending with app. counsel	831	1056.67	675	0	0	0	0	0	840	831
9											
10	1997 Days pending in *sua sponte* dis.	178. 70	359.17	265	235	110	0	0	0	166.88	165.63
11	1997 Days pending for others	591. 36	525.94	502.78	0	0	0	0	740	573.33	557.89
12	1997 Days pending with app. counsel	390	948.33	0	0	0	0	0	0	0	390
13											
14	1998 Days pending in *sua sponte* dis.	179.34	301.67	730	0	0	360	115	0	114	178.33
15	1998 Days pending for others	496. 92	378.57	424.4	0	0	0	0	442.5	452	468.92
16	1998 Days pending with app. counsel	577.5	0	345	0	0	0	0	0	0	577.5
17											
18	1999 Days pending in *sua sponte* dis.	162. 17	174.09	236.67	315	0	142.5	0	0	130.42	173.94
19	1999 Days pending for others	385	317	268.75	0	0	0	525	0	0	385
20	1999 Days pending with app. counsel	555	0	0	0	0	0	0	0	0	555

153. A "0" for docket entries signifies that there were no cases of that type selected during that particular year. To enhance readability, Rows five, nine, thirteen and seventeen have been purposely left vacant.

There was a significant difference in the amount of time cases dismissed *sua sponte* were pending on the court's docket compared with those cases not dismissed *sua sponte*. As seen in rows three, seven, eleven, fifteen, and nineteen in Table XXIII, cases not dismissed *sua sponte* were often pending on the court's docket three to six times longer than those dismissed *sua sponte*. The cases not dismissed *sua sponte* that were pending the longest were the civil rights, inmate-filed, and diversity cases, while the social security cases not dismissed *sua sponte* were pending the least amount of time.

The length of time *sua sponte* dismissals and non-*sua sponte* dismissals were pending varied by the category of the case. For example, as seen in rows two, six, ten, fourteen, and eighteen, the civil rights and inmate-filed cases were consistently dismissed *sua sponte* (157-179 days) in less time than the other cases. When civil rights and inmate-filed cases were not dismissed *sua sponte* (rows three, seven, eleven, fifteen, and nineteen), however, they were some of the longest pending cases (385-809 days). In contrast, employment discrimination cases, which were consistently pending on the court's docket longer than the other *sua sponte* dismissals (174-359 days), were closed in less time than the other non-*sua sponte* cases (317-663 days). In sum, while civil rights cases were dismissed most often and most quickly *sua sponte*, when they survived a *sua sponte* review, they were pending the longest. Conversely, employment discrimination cases, which often took the longest amount of time to dismiss *sua sponte*, often took the least amount of time to dismiss after a *sua sponte* review.

TABLE XXIV
NUMBER OF DOCKET ENTRIES BY YEAR[154]

1		Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Labor	Oth.	Inmate Filing
2	1995 Docket entries in *sua sponte* dis.	7.07	16.36	8.17	6	0	10	6	0	7.5	6.60

154. A "0" for docket entries signifies that there were no cases of that type selected during that particular year. To enhance readability, Rows five, nine, thirteen and seventeen have been purposely left vacant.

3	1995 Docket entries for others	29.66	27.24	17	7	35	26	0	0	6	29.15
4	1995 Docket entries with app. counsel	53.17	39	0	0	0	35	0	0	0	53.17
5											
6	1996 Docket entries in *sua sponte* dis.	8.33	8.5	7.67	0	6	0	6	10.75	7.75	8.35
7	1996 Docket entries for others	32.79	22.05	17	0	0	48	0	18	19.5	33.8
8	1996 Docket entries with app. counsel	47.8	29.33	26.5	0	0	0	0	0	28	47.8
9											
10	1997 Docket entries in *sua sponte* dis.	9.32	15.33	10. 67	6	16	0	0	0	7.44	28.09
11	1997 Docket entries for others	23.8	21.81	12. 33	0	0	0	0	35	19.5	17
12	1997 Docket entries with app. counsel	23	38.67	0	0	0	0	0	0	0	23
13											
14	1998 Docket entries in *sua sponte* dis.	9.66	10.17	7	0	0	8	11	0	5.8	9.72
15	1998 Docket entries for others	19.36	17.86	14.6	0	0	0	0	24.75	25.4	20.36
16	1998 Docket entries with app. counsel	29.5	0	16	0	0	0	0	0	0	29.5
17											
18	1999 Docket entries in *sua sponte* dis.	7.69	9.09	7	7	0	6	0	0	7.55	7.14

19	1999 Docket entries for others	20.57	19.8	11.13	0	0	0	20	0	0	20.57
20	1999 Docket entries with app. counsel	33	0	0	0	0	0	0	0	0	33

The number of docket entries in each case was not directly proportional to the amount of time a case was pending on the court's docket. Rather the number of docket entries appeared to fluctuate by case type and how the case was resolved. For example, as seen in rows two, six, ten, fourteen, and eighteen of Table XXIV, most *sua sponte* dismissed cases varied only slightly in the number of docket entries, usually ranging from seven to ten entries. The most probable reason for this is that the cases were dismissed at the same stage regardless of case type. The sole exception in *sua sponte* dismissed cases was employment discrimination cases. As seen in the third column of Table XXIV, employment discrimination cases often had the highest amount of docket entries per *sua sponte* dismissal, ranging from nine to sixteen. Thus, not only were employment discrimination cases pending on the court's docket the longest of all the *sua sponte* cases, but also they required the most docket entries.

The number of docket entries per case increased significantly once a case survived a *sua sponte* review. Cases not dismissed *sua sponte* had two to four times as many docket entries as cases dismissed *sua sponte*.[155] In particular, civil rights and inmate-filed cases experienced a large increase in docket entries after a *sua sponte* review—increasing from seven to ten entries in *sua sponte* dismissals, to nineteen to thirty three in non-*sua sponte* dismissals. Social security cases were not only the *sua sponte* cases most quickly dismissed, but also they experienced the least amount of docket entries in non-*sua sponte* dismissed cases. On average, social security cases consisted of one-half of the number of docket entries as in other cases. Another indication of the complexity of employment discrimination cases is that, in several instances, the number of docket entries for a *sua sponte* dismissal in employment discrimination cases (nine to sixteen entries) exceeded the number of docket entries in non-*sua sponte* dismissed social security cases (eleven to seventeen entries).

Of all the cases surveyed, the cases that were the most time

155. *Compare* rows 2, 6, 10, 14, 18, *with* 3, 7, 11, 15, 19 in Tbl. XXIV.

consuming and had the most docket entries were those where the litigant had some legal representation. As seen in rows four, eight, twelve, sixteen, and twenty in Tables XXIII and XXIV, counseled cases were pending on the court's docket 70-80% longer than non-counseled cases. Furthermore, counseled cases generally consisted of 50% more docket entries than non-counseled cases.

Finally, Table XXV sets forth the number of cases surveyed where the Pro Se Office had some form of written communication with the litigant and the average number of communications per case. As seen in the seventh row, plaintiffs in civil rights actions were by far the most likely to be in communication with the Pro Se Office, with 203 of the 451 plaintiffs (45%) having some written communication with the Office. Inmates also had frequent communication with the Pro Se Office, with 163 out of 408 (40%) inmates having some communication with the Office.

TABLE XXV
BURDEN ON COURT 1995 CASES

1		Civil Rights	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
2	1995 Cases corresponding with Pro Se Off.	45 (ave. 1.64)	8 (ave. 1)	0	0	0	1 (ave.1)	0	0	0	54	37 (ave. 2.19)
3	1996 Cases corresponding with Pro Se Off.	36 (ave. 3.31)	5 (ave. 1.4)	4 (ave. 2)	0	0	0	0	0	0	45	32 (ave. 3.44)
4	1997 Cases corresponding with Pro Se Off.	36 (ave. 1.72)	4 (ave. 1.75)	1 (ave. 1)	0	0	0	0	0	1 (ave. 1)	42	26 (ave. 1.08)
5	1998 Cases corresponding with Pro Se Off.	42 (ave. 1.62)	4 (ave. 1.25)	6 (ave. 1.33)	0	0	0	0	0	0	52	37 (ave. 2)
6	1999 Cases corresponding with Pro Se Off.	44 (ave. 2.61)	5 (ave. 2)	2 (ave. 1.5)	0	0	0	0	0	0	51	31 (ave. 1.81)
7	TOTALS	203	26	13	0	0	1	0	0	1	244	163

D. Summation of Pro Se Litigation Characteristics

An enormous amount of information can be extracted from this Study. I have set forth above some of the most prominent and telling characteristics of pro se litigation based on the Study. This Section combines those characteristics to paint an overall picture of pro se litigation, and to set forth what are statistically the prototypical pro se

cases. The hope is that from the final results we will have a better understanding of pro se litigation and will be able to identify the best methods to address it.

As stated above, 89% of the cases surveyed were civil rights, employment discrimination, and social security cases.[156] Of these three, social security cases experienced the largest increase in the number of cases filed during the five years covered in the Study.[157] While civil rights actions experienced the largest decrease, the majority of the decrease occurred in the two and one-half years following the enactment of the PLRA.[158] In 1999, the final year of the Study, the number of civil rights cases increased, but still remained below their 1995 levels.[159]

While most of the surveyed characteristics fluctuated based on the category of the case, some characteristics were applicable to all cases. For example, almost all pro se plaintiffs, regardless of case type or year of filing, submitted an *in forma pauperis* application to waive the filing fee.[160] Furthermore, those applications were almost always granted.[161] Pro se plaintiffs almost always filed a complaint seeking monetary relief.[162] The majority of the complaints were dismissed *sua sponte*,[163] usually for failure to state a claim.[164] Excluding cases that settled, a pro se plaintiff almost never received a judgment in his favor.[165] Despite this, few pro se plaintiffs appealed and most appeals were dismissed.[166] The cases that did settle were generally settled for small amounts of money,[167] and/or with an attorney representing the pro se party.[168]

As stated above, specific characteristics were more applicable to some case categories than to others. Table XXVI sets forth the most common characteristics of inmate-filed, civil rights, employment discrimination, and social security cases. While some precautions

156. *See supra* Tbl. I and accompanying text.
157. *See supra* note 62 and accompanying text.
158. *See supra* Tbl. I and accompanying text.
159. *See supra* Tbl. I and accompanying text.
160. *See supra* Tbls. IV & V and accompanying text.
161. *See supra* Tbl. IV and accompanying text.
162. *See supra* Tbl. VI and accompanying text.
163. *See supra* Tbl. XII and accompanying text.
164. *See supra* Tbl. XV and accompanying text.
165. *See supra* Tbl. XIII and accompanying text
166. *See supra* Tbl. XVIII and accompanying text.
167. *See supra* text accompanying notes 99-101.
168. *See supra* text accompanying notes 98-99.

must be taken when making generalizations such as these, they do begin to give some concrete notions about pro se litigation.

TABLE XXVI
CHARACTERISTICS OF PRO SE LITIGATION

CIVIL RIGHTS	EMPLOY. DISCRIM.	SOC. SEC.	INMATE-FILED CASES
• Inmate-filed • Multiple defendants named • At least one government defendant named • IFP made and granted • Request monetary relief • 1/3 request equitable relief • Many plaintiffs housed in Psychiatric Facility or complaints dismissed based on *Denton* • *Sua sponte* dismissed • Dismissed for failure to state a claim; improper venue; immunity; no state action; no personal involvement • Most spend a short time on the docket because they are *sua sponte* dismissed • When not *sua sponte* dismissed spend the longest time on the docket • When not dismissed *sua sponte* high rate of application for counsel • Most likely to actually get counsel once application is granted	• 1/3 of cases had multiple defendants • 1/3 of cases had at least one government defendant • IFP made and granted • Few request equitable relief • Many file amended complaints • Most are dismissed on motions to dismiss • Dismissed for failure to exhaust; failure to prosecute; failure to comply with statute of limitations • Spend significant amounts of time on the docket because dismissed on motion • Dismissal on motion is fewer days than civil rights dismissal on motion • The few that are dismissed *sua sponte* spend longer on the docket than other *sua sponte* dismissals • Just as likely to be settled than to be dismissed *sua sponte* • Only ½ dismissed *sua sponte* or by motion • More likely to get counsel on own than through court	• Government defendant • IFP made and granted • Request monetary relief • Government frequently requests extension of time to file answer • 60-day order is often entered • Few amended complaints • Few applications for counsel • Most are dismissed on motions to dismiss • Dismissed for failure to exhaust; failure to prosecute; failure to comply with 60-day order • Spend less time on docket than other motions to dismiss • docket than some *sua sponte* dismissals • Few *sua sponte* dismissals • Settled often • Settlement is almost always to remand to Social Security Administration • Low appeal rate	• Multiple defendants named • At least one government defendant named • IFP made and granted • Request monetary relief • 1/3 request equitable relief • Many plaintiffs housed in Psychiatric Facility or complaints dismissed based on *Denton* • *Sua sponte* dismissed • Dismissed for failure to state a claim; improper venue; immunity; no state action; no personal involvement • Most spend a short time on the docket because they are *sua sponte* dismissed • When not *sua sponte* dismissed spend the longest time on the docket • When not dismissed *sua sponte* high rate of application for counsel • Most likely to actually get counsel once application is granted

III. SUGGESTED INITIATIVES

The principal objectives of the following suggestions are two-fold. First, the suggestions are designed to provide the litigant with a

meaningful opportunity to have her claims adjudicated in a fair and dignified manner. Second, the suggestions seek to reduce the burden pro se cases have on the court, while not sacrificing the court's impartiality. The hope is that the litigant will feel as though she has been afforded due process, the court will be able to allocate more time adjudicating meritorious claims,[169] and the judges' caseload will be reduced.[170]

In an effort to provide pro se litigants with their "day in court," the following suggestions are ultimately designed to make available the assistance of trained counsel.[171] As shown above, only fifty-four of the 765 cases reviewed received some assistance of counsel. Furthermore, only twenty-four of the fifty-four received that assistance via the court. Currently, in order to receive assistance of counsel through the court in the Southern District of New York, a pro se litigant must make an application for counsel (thus, implying that the litigant must be aware that this procedure is available to her). If the application is granted, there is no guarantee that the litigant will receive any legal assistance. Volunteer attorneys agreeing to accept pro se cases pro bono review cases where an application has been granted. If the volunteer attorney is willing to accept one of the cases, then the attorney contacts the litigant.

I believe the current system fails to harness the willingness of some attorneys to accept pro bono cases and fails to provide a service to the court. Therefore, the following suggestions seek to obtain legal counsel for pro se litigants not only in order to protect the litigant's rights, but also to provide the court with an invaluable service of substantively screening out frivolous complaints. If a litigant is able

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169. Brooks, *supra* note 14, at 13 ("the more efficiently judges work with pro se cases, the more time is left for more significant cases.").

170. Consideration has also been given to the possibility that providing too many services to pro se litigants may actually provide a disservice, in that it may actually promote pro se litigation. As one judge stated, "I would not suggest any rule changes which would only encourage more pro se activity and the added burdens attached thereto." Goldschmidt, *supra* note 7, at 19. Some in the private bar may also argue that assisting pro se litigants would take away potential clients. Pro se cases, however, are cases that "lawyers aren't getting . . . anyway." Brooks, *supra* note 14, at 13; *see also* Gibeaut, *supra* note 29, at 28 ("the trend isn't going to rob lawyers of business, because most people who don't hire attorneys either can't afford them or don't trust them.").

171. Obtaining pro bono counsel without the court's assistance was made significantly more difficult in 1996 when Congress restricted the financial resources of the Federal Office of Legal Services, which was created to assist and fund pro bono legal services. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321.

to receive legal representation, the litigant may be discouraged from filing a clearly frivolous complaint or at least from filing a complaint in the improper court. The suggestions also consider that some attorneys, while willing to provide some pro bono services, are unable, due to time and resources, to fully represent a litigant. Therefore, the suggestions contain numerous limited representation options for attorneys to assist pro se litigants.[172]

I also suggest that if volunteer pro bono services are not forthcoming, the court should consider requiring mandatory pro bono activity as part of being admitted to the Southern District of New York.[173] Currently, New York State does not have a mandatory pro bono minimum that attorneys must complete each year.[174] The court could require larger firms with several members admitted to the court to accept a case pro bono, or provide some of the limited services suggested below.[175]

As stated above, I believe the best method of providing pro se litigants with their day in court is to grant them legal assistance,[176] however, this is not always a viable option. Securing legal counsel for pro se litigants has been hampered by monetary constraints, lack of court initiatives, and a failure of the bar to structure a system where legal representation is always an option. Therefore, the following

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172. Advertisement of the following suggestions will have to be carefully considered, so that the suggestions provide a service to the litigants and the court.

173. *See generally* Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1879 ("Pro bono legal service efforts have barely made a dent in the hugely unmet need for legal representation among the poor.").

174. The only state I was able to find that had a mandatory pro bono hourly minimum was Florida. *See also* Patricia R. Gleason, *Government Lawyers Making a Difference: Pro Bono and Public Service*, 73 FLA. B. J. 47, 48 (1999). While Florida set its mandatory minimum at twenty hours per year the ABA Model Rules of Professional Conduct, Rule 6.1 has recommended a minimum of fifty pro bono hours per year, per attorney. MODEL RULES OF PROF'L CONDUCT R. 6.1 (1990).

175. Alternatively, the court should consider restructuring its pro bono attorney services. As mentioned above, currently, a pro se case may have an application for counsel granted, but no attorney ever assigned. In addition, an attorney may be listed as a volunteer pro bono attorney with the court (often used as a promotional piece in firm brochures), but fail to accept any pro se cases. I recommend that all attorneys and firms wishing to be named by the court as pro bono list attorneys be placed on a list. The court should simply proceed down the list assigning counsel to every new case where an application is granted.

176. "The adage that 'a lawyer who represents himself has a fool for a client' is the product of years of experience by seasoned litigators." Kay v. Ehrler, 499 U.S. 432, 437-38 (1991).

suggestions are also designed to empower litigants to constitutionally prosecute their claims when assistance of counsel is not forthcoming. The suggestions take a systematic approach from the drafting phase of the complaint through to the resolution of the case. The suggestions are presented in the following five sub-sections corresponding to the basic framework of pro se litigation: 1) Pre-filing and Drafting of the Complaint; 2) Post-filing and Judicial Review of the Complaint; 3) Evaluation of Case for Alternative Dispute Resolution ("ADR"); 4) Discovery Process; and 5) Judicial Intervention.

A. Pre-filing and Drafting of the Complaint

The first critical point in providing legal assistance to pro se litigants occurs during the drafting phase of the complaint. This stage is the first, and often the only, communication the litigant has with the court. As shown in the second row of Table XII, over one-half of all pro se complaints are dismissed *sua sponte*. While civil rights actions, the majority of the cases dismissed *sua sponte* generally did not absorb a significant amount of the court's time and resources,[177] the accumulated result of dismissing hundreds of cases *sua sponte* each year places a significant burden on the court. Furthermore, as shown in Table XV, a considerable number of cases were dismissed for clearly identifiable and correctable reasons such as improper venue. Providing quality legal advice prior to the filing of the complaint is specifically intended to address this issue. The hope is that providing assistance prior to the filing of the complaint will reduce the number of frivolous complaints. Furthermore, clearer and more legible papers will be submitted to the court. This, in turn, will increase the amount of time and resources the court will have to allocate to meritorious pro se cases.

The following three programs are designed to provide assistance to pro se litigants during the drafting of the complaint.[178] The first program is envisioned as a collaboration between the Pro Se Office

177. *See supra* Tbls. XXIII & XXIV (setting forth time and docket entries for *sua sponte* dismissed cases).

178. I recognize that these three programs, similar to all the programs suggested, involve monetary concerns. The funding for the programs has to be carefully considered to maximize the court's limited resources. The hope is that the money invested in the programs will be recouped by increasing the efficiency of the court. In addition, a large portion of the services rendered through the programs is envisioned to be met through volunteer work.

and the private bar. The Pro Se Office could serve as a self-help center of information for people considering whether to file pro se.[179] Condensing all the relevant and available information in one office would streamline the litigation, alleviate some of the court's burden, and allow the litigant to have a clearer idea of where to access information. The information available from the Pro Se Office could include:

PROPER FORMS FOR FILING. The forms must be simple, written in plain language without any legalese, updated on regular basis, and accessible to the public for review. The forms could be centralized and circulated to the applicable federal district courts in a computerized format so that each district court could alter the forms accordingly. This would reduce the work each district court would be required to do in updating the forms.[180]

BROCHURES ON SUBSTANTIVE AREAS OF LAW. Similar to the forms, the brochures must be written in plain language and updated on a regular basis. The brochures should include educational material on the court process and substantive areas of law. They should also be designed in conjunction with the forms, so that explanation of a substantive area of law could easily be applied to the proper form.

SELF-HELP LIBRARY OF BOOKS AND VIDEOS. Whether the litigant is able to obtain counsel or not, she must be able to educate herself to prepare to prosecute her case. This includes reviewing available books on how to file pro se. The books should be maintained and carefully monitored by the Pro Se Office to ensure that they are accurate and applicable to federal litigation.[181] Similarly, the Pro Se Office could maintain a library of videos accessible to the public particularly in the areas of civil rights, employment discrimination, and social security. The videos could contain substantive and procedural advice. Having videos would also serve the purpose of

179. The Superior Court of Maricopa County, Arizona, is at the forefront of the "self-service" center. For a description of the "self-service" center in Maricopa County, see MEETING THE CHALLENGE, *supra* note 2, at 73-75.

180. Responsibility for updating brochures and forms could rotate among the district courts, thereby reducing the workload of all the courts and creating some consistency among district courts.

181. By maintaining a library, the court implicitly validates the book. Therefore, in addition to the Pro Se Office carefully maintaining the books, an agreement should be worked out with the publishers and authors to update the books in return for the court's "seal of approval." In addition, litigants must be made aware that the books are not the adopted opinion of the court or the Pro Se Office.

assisting any litigant who is functionally illiterate.[182]

INTERNET SERVICES. In this age of ever increasing access to the Internet, the court should avail itself of the Internet's benefits.[183] The Pro Se Office should make the website easy to use. The site should have access to court forms, brochures, and answers to common questions. In addition, the website should contain an index of useful websites reviewed by the Pro Se Office and books on pro se litigation.[184] This may also require the court to have computers with access to the Internet available for public use.

PERSONAL INTERACTION. Prior to the filing of a complaint, the pro se litigant should have access to a writ clerk/paralegal, who could provide the litigant with procedural advice.

LIST OF PRO BONO SERVICES OR ATTORNEYS. The Pro Se Office should maintain an updated list of pro bono services, including law school clinics and attorneys that are available for advice and assistance in drafting the complaint as well as possible referral services.

While the Pro Se Office would provide the much needed self-help and procedural advice, the private bar could provide a special program designed to complement the Pro Se Office in the area of substantive advice. First, the private bar could set up a kiosk in the court where pleadings could be accepted for substantive review prior to filing. The attorneys working in the kiosk would be separate from those in the Pro Se Office and could advise the litigant as to the appropriate action. It would be made clear to the litigants that the attorneys are not representing them, but are there to provide limited

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182. *See, e.g.*, Constance G. Evans, *Enhancing Citizen Understanding of and Access to the Probate Process at D.C. Superior Court*, (SJI-93-12A-A-258) (State Justice Inst.) (providing an illustration of a video containing substantive and procedural advice).

183. *See, e.g.*, Ariz. Sup. Ct.'s Self Service Center, *available at* http://www.supreme.state.az.us/selfserv/ (last visited Oct. 10, 2002); *see also* the Florida State Court's pro se assistance web site, *available at* http://www.flcourts.org/ (last visited Oct. 10, 2002).

184. Some United States District Courts have useful Pro Se Handbooks on the Internet. *See, e.g.*, Pro Se Handbook: United States District Court for the Northern District of New York, *at* http://www.nynd.uscourts.gov/pdf/prosehb.pdf (last visited Oct. 20, 2002); Le Parker, *The Manual for the Litigant Filing Without Counsel* (2d ed. 1997), *in* U.S. DIST. CT. FOR THE DIST. OF IDAHO, PRO SE HANDBOOK, *available at* http://www.id.uscourts.gov/pro-se.htm (last visited Oct. 20, 2002); Lisa Mesler, *Necessity of Exhausting Available Remedies* (Lisa Mesler et al. eds., 1995), *in* U.S. DIST. CT. FOR THE DIST. OF IDAHO, supra note 184, *available at* http://www.id.uscourts.gov/pro-se.htm (last visited Oct. 20, 2002).

advice pertaining to the complaint.[185] In addition, the attorneys should be insulated from malpractice suits.[186] While the court should assist in providing some of the physical services, the private bar and the Pro Se Office would be responsible for ensuring that the kiosk is staffed during the stated hours of operation. Thus, the Pro Se Office would provide the procedural advice it now provides, and volunteer attorneys would provide the substantive advice currently unavailable to pro se litigants.

In the second program, the Pro Se Office and the private bar accept unofficial statements of the facts prior to officially filing the complaint with the court. Pro bono attorneys review the statements and do one of two things, depending on the commitment the attorney is willing to make. If the attorney is only willing to offer limited assistance, she could substantively review and discuss the statement with the litigant. Alternatively, the attorney could accept the case for representation.[187] Potential plaintiffs participating in this program would have to be made aware of any statute of limitations issues and there should be a maximum number of days a statement can be pending in the program. If the litigant is not contacted within the set period of time, the case is automatically withdrawn from the program.

In the third program, bar associations and/or their committees assume responsibilities for updating the brochures and videos. In addition, the bar associations (or law school professors) take on the responsibility of providing the necessary training for court personnel. Not only would the training include information on substantive and procedural standards, but it would also be focused on communicating with and listening to pro se litigants.[188] Specifically, the court

185. The New York City Bar Association has established a program to provide the public with free advice on a limited basis. The program is operated out of the Bar Association and operates once a week for a couple of hours. For further information on these programs, see the Bar Associations website, *at* http://www.abcny.org. (last visited Oct. 20, 2002).

186. This program is designed to address the disservice the Pro Se Office is currently forced to serve the litigant and the court. Numerous times, I have seen a litigant come to the Pro Se Office with a clearly frivolous complaint. Due to the restriction on giving substantive advice, I was unable to discuss the substance of the complaint with the litigant, who proceeds to file the action, which is dismissed *sua sponte* shortly thereafter.

187. While some attorneys prefer to accept pro bono cases later in the litigation, this program would allow interested attorneys to be involved before the complaint is filed.

188. *See* Brooks, *supra* note 14, at 12 (quoting Indiana State Court Judge Gregory J. Donat as stating, "the citizens deal with the person at the front desk, who is usually a new hire with the least ability to answer their questions.").

personnel should be trained in speaking with pro se litigants and dealing with a variety of emotions that may arise.

These programs are designed to work together to reduce the amount of frivolous complaints filed and sixty-day orders seeking additional facts. By providing litigants with representation or assistance prior to the filing of the complaint, the facts would be clarified and the issues clearly framed. Settling the facts and issues early in the litigation process would allow the case to run more smoothly and ensure that the meritorious claims are identified and given their rightful review.

B. Post-filing and Judicial Review of the Complaint

Once a complaint is filed, it should be routed to the Pro Se Office for an initial screening prior to the issuance of a docket number and summons.[189] Several attorneys perform the screening after thoroughly reviewing the factual allegations set forth in the complaint. The attorneys search for any possible claim that may be made based on the allegations. The attorneys then make an initial determination as to whether the facts set forth any claim, whether more information is needed or whether the case should be dismissed *sua sponte*. The focus during the screening process is on factual allegations and not the litigant's knowledge of legal precedent or the form of the complaint.[190]

By screening and, if warranted, dismissing the case prior to issuing a docket number and summons, the court avoids unnecessarily issuing a summons, the litigant avoids unnecessarily serving the complaint, and the defendant avoids unnecessarily drafting an answer. The screening process should be expeditious because the assistance mentioned in the first sub-section should produce fewer complaints overall and more legible and colorable complaints. Furthermore, time consuming orders and communications, such as sixty-day orders and amended complaints, should be reduced, as should some easily identifiable dismissals, such as improper venue.

The Pro Se Office's screening of complaints and drafting of *sua sponte* and sixty-day orders should be supervised by a United States magistrate judge. The magistrate judge would review any order

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189. This suggestion proceeds on the assumption that the litigant sought *in forma pauperis* status to waive the filing fee. *See supra* Tbl. IV (finding that 94.9% of pro se cases were filed with an *in forma pauperis* application and displaying a modified version of what is currently practiced in the Southern District of New York).

190. The obvious exception to this is when the pleadings are completely illegible.

drafted by the Pro Se Office and make a determination as to how, and if, the case should proceed. Currently, some district courts employ full-time magistrate judges to oversee pro se litigation.[191] While this is an important step in assisting, expediting, and centralizing pro se litigation, it is a daunting task for one magistrate judge in a large district court, such as the Southern District of New York. Instead, I suggest the drafting of orders be supervised by a panel of magistrate judges with one magistrate judge serving in the position at all times. The position could rotate every several months, similar to a magistrate judge who sits on arraignments, depending on the caseload of the court. Having a small panel of magistrate judges oversee pro se litigation centralizes pro se litigation under a few magistrate judges rather than dispersing it among the fifty district court judges in the Southern District of New York. The cases that the magistrate judge would oversee would be any pro se case that was filed in the court during that judge's tenure as the revolving judge. The sole exception to this would be repeat filers. As stated in Table XXI, 41% of pro se litigants had previously filed a complaint in the court. It would be more expeditious if concise records were maintained detailing the litigant's prior filings and if any subsequent filing was assigned to the same magistrate judge. By being familiar with the litigant, the magistrate judge would be able to avoid any relitigation of issues and keep a tight rein on the litigant's abuse of the system.

Once the complaint survives a *sua sponte* review and is issued a docket number, the Pro Se Office and the private bar can continue to perform several meaningful tasks. The Pro Se Office could continue to provide the litigant with useful procedural advice. Similar to the program set forth above, the private bar could assist pro se litigants after the filing of the complaint by setting up a kiosk on specific days to provide substantive advice. This would be a separate function than that discussed during the complaint phase, although usage of the space and volunteers could be the same. Not only would the assistance of private attorneys provide the litigants with a needed service (i.e., substantive advice) and help the court function more efficiently, but it would also satisfy some lawyers' desire to perform pro bono work. In addition, it would provide the volunteer lawyer with a valuable "hands-on" experience and an introduction to the

191. The United States District Court for the Eastern District of New York has recently created a magistrate judge's position to oversee pro se litigation. The Pro Bono Plan for the Eastern District, *available at* http://www.nyed.uscourts.gov/probono/Plan/plan.html (last visited Oct. 10, 2002).

court.[192]

If the private bar is unable to provide substantive advice, then the Pro Se Office should provide this service. The Pro Se Office could provide this service by splitting into two distinct parts—one to provide procedural advice and screen complaints and the other to provide substantive advice.[193] In order to allow the Pro Se Office to provide substantive advice, the distinction between substantive and procedural advice would have to be eliminated.[194] The distinction between procedural and substantive advice "derives from restrictions that prohibit clerks from practicing law and require clerks to remain impartial."[195] As John Greacen stated in an article entitled, *'No Legal Advice From Court Personnel' What Does That Mean?*, "Giving legal advice .... has no inherent meaning, or even core meaning, and that its current use by courts has serious negative consequences for the ability of courts to provide full and consistent public service."[196] Greacen goes on to state:

> The consequences of a fuzzy definition of "giving legal advice" is to vest unguided discretion in the deputy clerk to answer what he or she wishes to answer and feels comfortable answering, and to refuse to answer any question he or she decides not to answer. The result, as with all unconstrained discretion, is the potential for abuse, favoritism, and undesired consequences .... Many [pro se litigants]

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192. *See* M-10-468 (Oct. 1, 1997 S.D.N.Y.). Although somewhat contrary to the general theory of pro bono services, the Southern District of New York has made it somewhat more palpable for some attorneys to assist pro bono by setting up a reimbursement fund for pro bono attorneys, where the maximum reimbursement is set at $2,000.

193. A magistrate judge could oversee the screening and *sua sponte* review of complaints, while a Senior Staff Attorney could oversee the rest of the Pro Se Office.

194. *See generally* Greacen, *supra* note 11, at 10-15 (providing a thoughtful discussion of the use and misuse of the distinction between procedural and substantive advice).

195. Engler, *supra* note 7, at 1993 (footnotes omitted); *id.* at 1992-93 n. 25 (citing *In re* Amendments to the Fla. Small Claims Rules, 601 So. 2d 1201, 1216 (Fla. 1992) ("The clerk is not authorized to practice law and therefore cannot give you legal advice on how to prove your case."); State v. Walters, 411 S.E.2d 688, 691 (W. Va. 1991) (stating that no magistrate clerk may act as an attorney for any party); Standing Comm. on the Delivery of Legal Servs., Am. Bar Ass'n, Responding to the Needs of the Self-Represented Divorce Litigant 24-25 (1994) ("[I]t is important that court clerks not practice law by giving substantive legal advice"); Greacen, *supra* note 11, at 10 ("Members shall not give legal advice unless specifically required to do so as part of their office position.") (quoting THE NAT'L ASS'N FOR CT. MGMT., Model Code of Conduct art. II(B)).

196. Greacen, *supra* note 11, at 10; *see also* Engler *supra* note 7, at 2036 ("unleash court clerks") (citation omitted).

> do not trust lawyers, or the legal system, and it is very hard for deputy clerks to deal with them. They will challenge information given .... They often demand services the staff does not usually provide. An easy way to "get rid of" such persons ... is to cut the questions short with the useful phrase, "I am not allowed to give legal advice. What you are asking me involves legal advice."[197]

Greacen has also noted that the phrase is "an easy way to 'get rid of' an unrepresented litigant seeking assistance."[198] In my own practice, I have too often seen this phrase irritate and confuse litigants, while hampering, rather than assisting, the efficiency of the court and the litigants' ability to prosecute their cases. Therefore, I recommend that if the private bar is unable to provide the needed pro bono substantive advice, as set forth above or in some other capacity, the distinction between procedural and substantive advice should be eliminated, and the Pro Se Office should be able to assist litigants with procedural and substantive advice.[199]

C. Evaluation of Case for Alternative Dispute Resolution

Once a complaint survives a *sua sponte* review, I recommend that an early evaluation meeting be held between the litigant and a pro se staff attorney.[200] The purpose of this meeting is three-fold: (1) to clarify the litigant's goals in the litigation and to "temper[] the adversariness of an inherently adversarial situation";[201] (2) to introduce the litigant to ADR;[202] and (3) to evaluate the suitability of

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197. Greacen, *supra* note 11, at 12; *see* Engler, *supra* note 7, at 1994 (quoting staff attorney in the Western District of Louisiana: "We have been told here ... not to give 'legal advice' but I have never heard this term defined so I do struggle with what to tell [pro se litigants] ... because sometimes this can be a fine line.") (citation omitted).

198. Greacen, *supra* note 11, at 12.

199. It is somewhat counterintuitive, if not hypocritical and unconstitutional, to reduce access to legal services, require litigants to comply with strict legal standards and deny them access to substantive advice. This is particularly true when dismissal of the complaint is based on technical, yet curable, legal grounds.

200. For obvious reasons, including security and transportation, this program is only available for non-inmates. An alternative for inmates is discussed below. *See infra* notes 212-216 and accompanying text.

201. Morell E. Mullins, *Alternative Dispute Resolution and the Occupational Safety and Health Review Commission: Settlement Judges and Simplified Proceedings*, 5 ADMIN. L.J. 555, 652 (1991) (discussing pro se proceedings at the Occupational Health and Safety Administration ("OSHA")). I have found this to be particularly true in pro se cases.

202. In three years at the Pro Se Office, a pro se litigant has never sought my advice concerning ADR on her own initiative. Generally, requests for information

the case for ADR.[203] By the time the litigant reaches the evaluation meeting, he has ideally spoken to an attorney at least once in formulating her complaint, and has had her complaint substantively reviewed during the *sua sponte* review process.

As shown in Tables XXIII and XXIV, cases that survive a *sua sponte* review are generally pending in the court the longest and have the most docket entries. Furthermore, as shown in Table XII, pro se litigants are not adverse to settlement. Settlement was the second most common disposition, at 14.8% of the cases. While the previously mentioned programs were designed to address the most common disposition of pro se cases—*sua sponte* dismissals—the programs in this sub-section address the second most common disposition—settlements and other forms of ADR.

The object of the evaluation meeting is to ascertain whether any of the cases that survived *sua sponte* review might be ripe for some form of early resolution.[204] The evaluation meeting also serves to identify and articulate any possible claims and defenses that the litigant may have. If there is a possibility that the case is ripe for ADR, the staff attorney, with the litigant's consent, could report to the judge or magistrate judge as to the appropriateness of some form of ADR.[205] The judge, as discussed in more detail below, would then be presented not only with a clearer idea of what the case involves, but also with the litigant's willingness to pursue ADR. If the case were not ripe for ADR, then it would simply continue on its normal course.[206] The district court judge and magistrate judge would not have any participation in the evaluation meeting, thereby maintaining

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pertaining to ADR originate from the judge or the opposing counsel.

203. Whether the evaluation meeting should be limited to substantive advice or substantive opinions is left open. Also left open are the specifics on how to conduct the meeting. Certain time and other restrictions would have to be made clear prior to the meeting. As there are many litigants, the evaluation meeting must be done in a manner consistent with the fact that personnel cannot meet with one litigant all day. I note, however, that the amount of cases that reach this stage is approximately one quarter—one-half of the cases are inmate-filed cases and many others are dismissed *sua sponte*. *See infra* Tbls. XIII, XIII & XIV.

204. The Alternative Dispute Resolution Act of 1998, Pub. L. No. 105-315, 112 Stat. 2993, 2993-3004 (1998) (codified at 28 U.S.C. §§ 651-658. *See* 28 U.S.C. § 652(a)) (requiring district courts to offer some form of Alternative Dispute Resolution in all civil actions). *But see* 28 U.S.C. § 652(b) (allowing each district court to exempt specific cases or categories of cases from § 652(a)). Several courts have excluded pro se cases from ADR.

205. In some cases, where appropriate, the judge could order mandatory ADR.

206. All communications during the evaluation meeting would be confidential. *See* N.D.N.Y., Local Rules, § X, 83.12-8 (2000).

the judges' neutrality in future proceedings.

The evaluation meeting also serves to allow the litigant to be heard by the court and feel as though he has had an opportunity to voice her concerns. In addition, it identifies and expedites those cases that are prone to ADR. If the court is quickly made aware of the litigant's concerns and is able to gauge the feasibility of ADR, the court can begin the ADR process immediately, saving time and resources.

Because it is often difficult for attorneys to find the time and resources to accept an entire case pro bono, the following two recommendations are designed to allow attorneys to assist on a limited basis and to encourage pro bono participation. The following recommendations are also designed and tailored to address two of the most common pro se cases: civil rights and employment discrimination cases in the context of ADR.

The first program, an employment discrimination mediation program, has already been instituted in the Southern District of New York.[207] The program begins when the results of the evaluation meeting indicate that the case is ripe for mediation. A request for mediation is then made to the parties. Either party has the right to veto the request for mediation. If both parties consent, then the pro se litigant is assigned counsel solely for the purposes of mediation.

The program seeks to accomplish several goals. As shown in Tables XXIII and XXIV, on average, employment discrimination cases are pending on the court's docket for the longest period of time. Furthermore, as shown in Table XII, employment discrimination cases are one of the more likely case categories to be settled and one of the least likely to be dismissed *sua sponte*. This program seeks to address the unique processing of employment discrimination cases by identifying which cases are open to settlement early in the proceedings. By quickly identifying cases open to settlement, the court avoids lengthy motion practice, which opens up additional time to spend on the cases that will not settle. In addition, the program introduces the litigant to the possibility of mediation, and may result in a decision more expeditiously.

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207. Harold Baer, Jr., *History, Process, and A Role for Judges in Mediating Their Own Cases*, 58 N.Y.U. ANN. SURV. AM. L. 131, 149 (2001) ("The . . . [Southern District of New York] has initiated a new program which offers mediation to pro se litigants (especially in employment discrimination cases) by helping them to secure counsel for the mediation proceeding."). Historically, pro se cases were excluded from the court's mediation program. In order to participate, pro se employment discrimination cases have started to be assigned counsel solely for the purposes of mediation, when both parties consent.

The more effective the *sua sponte* review of the complaints and the subsequent evaluation meeting are, the more effective the employment discrimination mediation program will be. If the Pro Se Office is able to weed out frivolous complaints, and the evaluation meeting is able to identify which of the remaining complaints are suitable for mediation, then resolving these cases expeditiously and amicably through mediation is a viable option. The evaluation meeting is vital because if there is no real possibility that the case may settle, unsuccessful mediation will only absorb, rather than save, the court's time.

Prior to entering mediation the judge must ensure that the litigant is willing to participate in the program voluntarily and that the litigant is knowingly waiving her rights.[208] I also suggest that the judge have the opportunity to limit the amount of time the case may be mediated. This will force the parties to push forward with mediation if they are serious about it. It will allow the case to return expeditiously to the court's docket if mediation is not working.[209]

The mediator in this program must have some experience not only in mediation, but also in employment discrimination. Furthermore, the mediator should not be the judge. That way, the mediator is in a position to expand the repertoire of tools may use to resolve the case. For example, the mediator is not limited by *ex parte* communications and off-the-record discussions. The mediator can also be quite frank as to the merits of the case without jeopardizing the court's neutrality.[210] The mediator should be granted qualified immunity and should not be able to be called as a witness in future proceedings. Furthermore, all communications during mediation should be totally confidential and not admissible at trial or subsequent hearings. In short, the mediator should have broad-based authority to be creative in fashioning a resolution for the case, including terminating mediation at any time.

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208. *See generally* Engler, *supra* note 7, at 2033 n.214 (citing Harry T. Edwards, *Alternative Dispute Resolution: Panacea or Anathema?*, 99 HARV. L. REV. 668, 671 (1986)) ("expressing concern that ADR may 'result in an abandonment of our constitutional system in which the 'rule of law' is created and principally enforced by . . . government.'").

209. The judge could extend the time limitation upon request of the parties and/or the mediator. *See* Michael J. Yelnosky, *Title VII, Mediation and Collective Action*, 1999 U. ILL. L. REV. 583, 604 (explaining that after an unsuccessful mediation, the case will continue with more formal regulatory measures).

210. Whether the mediators' role should be to evaluate or to facilitate, and how frank they should be, is a disputed topic that I leave open.

As for civil rights cases, I present two programs for discussion. As shown in Tables II and XII, the majority of civil rights complaints were filed by inmates and were dismissed *sua sponte*. While *sua sponte* dismissal of civil rights complaints were pending the least amount of time on the court's docket, those not dismissed *sua sponte* were pending the longest.

As shown in Table XII, 312 of the 451 civil rights cases were dismissed *sua sponte*. Of the 139 that were not dismissed *sua sponte*, fifty-two were pending on the court's docket, sixteen were voluntarily dismissed, and three were decided by jury verdicts for the defendants. The remaining sixty-eight were split, with almost half being settled and half being dismissed on a motion to dismiss or summary judgment. The following final two programs address these sixty-eight cases.[211]

In the first program, the court could hold hearings at prison facilities to expedite the proceedings and save time, money, and resources.[212] Essentially, the program would require a magistrate judge, possibly the rotating pro se magistrate judge discussed above, to spend one day in a particular facility holding pre-trial and other hearings. The court would save time and money by holding all the hearings in one day. The court could also order mandatory discovery to occur during the hearing.[213] Providing the litigant with mandatory discovery before the judge would reduce discovery issues, in particular, disputes over whether the litigant actually received the discovery.[214] Furthermore, the litigant would have a better understanding of the procedures because hearings such as these, which are often done by telephonic conference, often leave the litigant with numerous open questions that the judge would be able to clarify immediately. This program would also save the defense attorney time and money by requiring him to be in one place at one time to argue several cases. As shown in Table II, the defendant is

211. The program also indirectly addresses the majority of the fifty-two pending cases, which will either be settled or dismissed on motion. *See supra* Tbl. XII.

212. The Southern District of New York has jurisdiction over numerous state facilities in eight counties. *See* 28 U.S.C. § 112(b) (2000). Based on my experience, the majority of the inmate cases come from two of these facilities—Sing Sing Correctional Facility and Green Haven Correctional Facility. A pilot program could begin with these two facilities and then spread to other facilities depending on the need.

213. *See infra* Part III.D, for a discussion of mandatory discovery.

214. Based on my own observations at the Pro Se Office, one of the most common inmate complaints during litigation is that the facility mail service is tampering with the inmate's mail and denying them discovery.

almost always a government defendant and therefore, the attorney general of the State. It would also save the State time and money by reducing the costs associated with transporting defendants from prisons to the courthouse.

As previously discussed, prisoner complaints would be unsuitable for the ADR program as laid out above. Therefore, identifying the prisoner complaints that are suitable for ADR is the focus of the second program. This could be done in a three-step process that requires relatively little time and resources, but which carefully considers the litigants' claims. First, the Pro Se Office could mail a carefully drafted questionnaire focusing on the facts, requested relief, and the litigant's willingness to pursue ADR to each inmate whose complaint survives a *sua sponte* review. Depending on the litigant's responses to the questionnaire, the judge could recommend the second step, having the prisoner appear before the magistrate judge holding hearings at the facility. The magistrate judge could then make a full assessment of the case and its suitability for ADR. Furthermore, the magistrate judge could verify the litigant's willingness to pursue ADR. If the magistrate judge finds that the case is suitable for ADR and both parties agree, then the magistrate judge could hold an ADR conference—the third step.

The third step in the prisoner ADR program could be designed to mirror the employment discrimination meditation program. As shown in Table X, the majority of pro bono counsels assigned by the court accepted civil rights cases. The court could foster this by requesting pro bono counsel in prisoner cases to be appointed solely for the purposes of mediation in prisoner cases.[215] Assigned counsel could accompany the magistrate judge to the facility and could mediate several cases in one day.[216]

D. Discovery Process

If the case is not resolved through ADR and once the complaint has been served, the case will enter the discovery period. As stated in

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215. The attorney would be required to prepare prior to the assigned day of mediation.

216. A similar program that should also be open to discussion is a program loosely based on the Northern District of New York's Early Neutral Evaluation. *See* N.D.N.Y., Local Rules, § X, 83.12-1 to -10 (2000). In the Early Neutral Evaluation program "parties obtain from an experienced neutral [evaluator] . . . a nonbinding, reasoned, oral evaluation of the merits of the case." *Id.* § X, 83.12-1. In pro se cases, statements of the case could be submitted to an evaluator who would then evaluate the possibilities of settlement and the overall value of the case.

Table VII, discovery motions were the second most frequently filed motions in pro se cases. Discovery, while generally performed between the parties, is one of the principal reasons pro se cases absorb a considerable amount of the court's resources. In order to reduce the amount of motions filed and court involvement in discovery, I suggest implementing automatic, standardized discovery.[217] This would simplify the proceedings and minimize court involvement. Based on a pro se litigant's minimal knowledge of the proceedings and inability to concisely formulate discovery requests, I suggest that represented parties affirmatively seek protective orders when they object to any required discovery. The alternative, forcing pro se litigants to file motions to compel, would only revert back to the current system and increase the amount of time and resources the court spends on discovery. Rather than having the litigant file a myriad of motions to get several documents, the defendants would be required to file one motion containing all discovery issues in dispute.

I also suggest that the magistrate judge hold a discovery conference informing both parties of their obligations under the mandatory discovery rules. At the conference the magistrate judge should clearly inform the pro se litigant not only of her rights under the mandatory discovery rules, but also her obligations. In addition, the Pro Se Office or the private bar should draft clear written instructions detailing the litigant's rights and obligations under the mandatory discovery rules. Alternatively, if mandatory discovery is not possible, I suggest the Pro Se Office compile standard interrogatories and document request forms to make available to pro se litigants.[218]

E. Judicial Intervention

The following suggestions, pertaining to the judge's role in adjudicating pro se cases, are consistent with the above theory that a pro se litigant's rights are better protected when pro bono counsel represents her. However, if counsel is not available, the judge is placed in a position where she must employ several mechanisms to ensure that the litigant's rights are protected, while not sacrificing her

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217. Although on December 1, 2000, the Federal Rules of Civil Procedure were amended to include mandatory disclosure without an opt-out option, *see* FED. R. CIV. P. 26(a)(1), there are several exceptions. Two of those exceptions are habeas corpus petitions, FED. R. CIV. P. 26(a)(1)(E)(ii), and "an action brought without counsel by a person in custody of the United States, a state, or a state subdivision." FED. R. CIV. P. 26(a)(1)(E)(iii).

218. The court could also take initiative by ordering automatic discovery.

neutral position. In order to assist the judge in this task, I suggest that uniform procedures or recommendations to judges on managing pro se cases be drafted.[219] I recommend that the private bar, the Pro Se Office and members of the judiciary join together to draft recommendations to judges on dealing with pro se issues. Some of these recommendations should include an increased judicial role in pro se cases.

One increased role the judge could play pertains to the evaluation of the case for ADR. As shown in Table XII, the second most frequent resolution of pro se cases is through settlement. Judges could expedite the settlement process by reviewing the report from the evaluation meeting and determining whether the case is ripe for settlement or some other form of ADR. If the judge decides that the case is a candidate for ADR, than the judge should take an active role in eliciting facts, claims, and defenses from the litigant that were not already identified during the evaluation meeting.[220] Eliciting the litigant's arguments is critical because as stated above, pro se cases that received legal assistance are six times more likely to settle than those without legal assistance.[221] In addition, it would provide a quicker resolution to those cases prone to ADR.

Next, judges should familiarize themselves with pro se forms and be relaxed about any deficiencies in the complaints that can be easily overcome.[222] Again, this would primarily be necessary if some of the programs stated above that provide the litigant with legal assistance do not come to fruition. In addition, judges, like Pro Se Office employees, should be educated in dealing with pro se litigants. Judges should be clear with the litigants in what the court expects and why things are done in a particular manner.[223]

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219. Ninety-one percent of judges in a prior survey stated that "their courts had no general policy addressing the manner in which pro se litigants should be handled in the courtroom or in the litigation process generally." Goldschmidt, *supra* note 7, at 19.

220. Engler, *supra* note 7, at 2029.

221. *See supra* Part II.B.7.

222. *See generally* COMM'N ON TRIAL COURT PERFORMANCE STANDARDS, NAT'L CTR. FOR STATE COURT AND THE BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY (1990), Standard 1 ("Trial courts should be open and accessible .... Accessibility is required not only for those who are guided by an attorney but also for all litigants ...."); *id.* at Standard 1.3 ("All who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience.").

223. The court should also look into establishing connections with City and State social service agencies. The agencies, which may operate out of the court, could

If the litigant is unable to get assistance from other sources, the judge should not be prohibited from making suggestions as to how the case should move forward. In particular, judges should feel free to recommend ways in which litigants can obtain legal representation. The judges and the court should be more active in establishing initiatives with the bar and law schools to seek legal representation for pro se litigants. As shown in Tables IX and X, only 3.1% of pro se cases actually received legal assistance through the court.[224] Furthermore, the Southern District of New York currently has fifty-six cases pending where applications for counsel were granted, but no counsel has yet been assigned.[225] Judges should make it more attractive to assist pro bono by making special accommodations for attorneys representing parties pro bono.[226] For example, one suggestion has been to "give priority at calendar or docket calls to volunteer lawyers . . . [L]awyers take cases knowing that their days will not be spent waiting for a case to be called."[227] Furthermore, the court should attempt to set up a dialogue with and among the attorneys. In particular, the court should solicit information as to the best methods to promote pro bono activities and to share relevant information among the attorneys.

The court should also work with law school clinics in an effort to provide pro bono counsel. Periodically, in the Southern District of New York, the Pro Se Office has a clinic seeking to assist a pro se litigant. There is not, however, a systematic program designed to

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assist the litigant on difficult social issues that often arise in pro se cases.

224. As shown in Tbl. X, more pro se litigants were able to receive counsel on their own than through the court.

225. General data on pro se cases collected by the Pro Se Office for the years 1995-1999.

226. While this article is primarily focused on the court's role in pro se litigation, there is no question the private bar must also take an initiative to promote pro bono counsel. *See* Steven C. Krane, *Re-Focus on Pro Bono and Bar Activities*, N.Y.L.J., Apr. 9, 2001, at S7 (reporting that President-elect of New York State Bar Association argues for more pro bono activity on behalf of lawyers). As shown in Tbl. X, only 21.5% of applications were granted. If the screening process and evaluation meeting are established as set forth above, frivolous complaints will get weeded out prior to the filing of an application for counsel and presumably those cases that did make it through the process will have at least some merit. Therefore, it is also possible that the application process for the assignment of pro bono counsel could be relaxed. The court could inject some payment scale in which litigants who can pay some amount towards pro bono counsel do so. The system could be set-up on a sliding scale based on the litigant's financial situation.

227. Robert M. Paolini, *Pro Bono Is Better Than Pro Se*, 24 VT. B.J. & L. DIG. 7, 7 (1998).

encourage or ensure that law schools enter the court with the intention of assisting a pro se litigant on a regular basis.[228]

As to the bar associations, they could promote pro bono activity by providing accolades for and recognition of those who perform pro bono activity by printing pro bono services in a bar association or court-run publication.[229] This may also improve the public's image of the profession and give accolades where they are due.[230]

None of the above suggestions would run contrary to the judge's and the court's duty of impartiality. It has been said that a "court may need to provide more help to one side than to the other to maintain the impartiality of the proceedings."[231] The argument is that a pro se party is at such a disadvantage[232] when opposing a represented party that judicial intervention may be warranted to maintain a level playing field.[233]

CONCLUSION

The challenges presented by pro se litigation are as profound as they are real and regular. In this time of ever increasing legal costs and complexity of litigation, the pro se litigant is at an insurmountable disadvantage. Even the most eager and intelligent layperson cannot be expected to learn and understand procedural and substantive law in a short amount of time. As more and more litigants turn pro se, courts around the country must fashion methods to protect the fundamental constitutional rights of pro se litigants and to ensure that each litigant gets "his day in court."[234]

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228. For a discussion on pro se law school clinics, see Barry, *supra* note 173, at 1926.

229. Paolini, *supra* note 227, at 7.

230. *Id.*

231. Engler, *supra* note 7, at 2023 n.171 (citing Ellen E. Sward, *Values, Ideology, and the Evolution of the Adversary System*, 64 IND. L.J. 301, 321 n.96 (1989) ("A judge can be impartial but very active in developing the case.... Impartiality is a requirement for fair adjudication, but judicial passivity is not.")).

232. *See supra* Tbl. XII and accompanying text (finding that excluding settled cases not a single pro se litigants in 652 pro se litigants was victorious).

233. *See* Engler, *supra* note 7, at 2022-23.

234. *See* Moore v. Price, 914 S.W.2d 318, 323 (Ark. 1996) (Mayfield, J., dissenting).

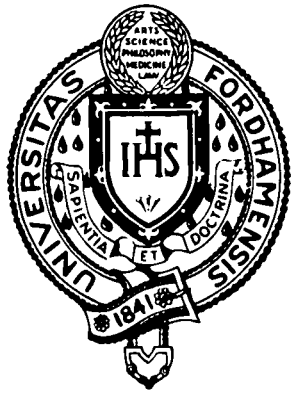
> Lest the citizenry lose faith in the substance of the system and the procedures we use to administer it, we can ill afford to confront them with a government dominated by forms and mysterious rituals and then tell them they lose because they did not know how to play the game or should not have taken us at our word.

Id. (Mayfield, J., dissenting).

Experiencing first hand the frustrations and difficulties pro se litigants encounter on a daily basis, I began to look into what, if anything, other courts and court staff have done to alleviate the pressures of pro se litigation. I quickly discovered that there was very little information or guides on pro se litigation. I, therefore, sought to develop some usable research to examine who files pro se and under what circumstances. While the Study is by no means exhaustive, it reveals that pro se litigation is complex and diverse in both its subject matter and procedural history. To address these complexities I suggest several methods to maximize the court's resources and to provide the pro se litigant with a "level playing field." The suggestions attempt to strike a balance between encouraging pro se litigation and increasing the efficiency of the courts. The suggestions are also meant to initiate a dialogue and to promote each district court to fashion a pro se program that best suits its specific docket.

Finally, pro se litigants are often described as "pest[s]," "nut[s]," "an increasing problem," "clogging our judicial system," and "no one likes [them]."[235] However, they are not only entitled to their constitutional rights, they are also not going away. The judicial system cannot afford to alienate almost one-fourth of its caseload, and must be prepared to handle the increase of pro se cases. In light of the absence of legal services, the burden to protect pro se litigants' rights falls on the court. The court, however, cannot and should not do it alone. Members of the bar, bar associations and law schools must assist the courts in taking the lead to address pro se litigation. This Article suggests some methods in which they can assist, whether they choose to do so and in what capacity is unclear. What is clear is that pro se litigation is and will continue to be an integral and growing part of the judicial system.

235. MEETING THE CHALLENGE, *supra* note 2, at 121 (quoting state court judges).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APPENDIX

1. TYPE OF CASE

TYPE OF CASE										
	Civil Rights	Employ. Discrim.	Soc. Sec.	Hous.	Family	Divers.	FOIA	Labor	Others	TOTALS
1995	123	36	9	2	1	4	1	0	8	184
1996	109	28	19	0	1	1	1	5	10	174
1997	71	28	24	1	1	0	0	1	12	138
1998	62	21	27	0	0	1	1	4	10	126
1999	86	23	14	3	0	2	1	0	14	143
TOTALS	451	136	93	6	3	8	4	10	54	765

2. PARTIES

PARTIES—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Multiple Plaintiffs	4 (ave. 3.5)	1 at 2	0	0	0	0	0	0	1 at 2	6	4
Multiple Defendants	102 (ave. 5)	13 (ave. 4)	2 (ave. 2)	2 (ave. 2.5)	0	1 at 2	0	0	4 (ave. 5)	124	99 (ave. 5.1)
Government Defendant	118	17	9	0	0	1	1	0	5	151	115
Inmate Plaintiff	117	0	0	0	0	1	1	0	3	122	122
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

PARTIES—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Multiple Plaintiffs	2 (ave. 3.5)	0	0	0	1 at 2	1 at 2	0	0	0	4	2 (ave. 3.5)
Multiple Defendants	91 (ave. 4.8)	9 (ave. 6.2)	2 at 3	0	1 at 5	1 at 7	1 at 9	5 (ave. 3)	5 (ave. 3.6)	115	82 (ave. 4.8)
Government Defendant	95	11	19	0	1	0	1	1	6	134	89
Inmate Plaintiff	97	0	2	0	0	0	1	0	1	101	101
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

PARTIES—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Multiple Plaintiffs	1 at 2	1 at 3	0	0	0	0	0	0	1 at 3	3	0
Multiple Defendants	56 (ave. 4.9)	12 (ave. 3.7)	1 at 2	1 at 2	1 at 3	0	0	0	4 (ave. 3.7)	75	46 (ave. 5)

PARTIES—1997 CASES											
Government Defendant	68	9	24	1	0	0	0	0	8	110	59
Inmate Plaintiff	59	0	0	0	0	0	0	0	2	61	61
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

PARTIES—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Multiple Plaintiffs	0	0	0	0	0	0	0	2 (ave. 2)	1 at 2	3	1 at 2
Multiple Defendants	52 (ave. 7.9)	5 (ave. 2.8)	1 at 7	0	0	0	1 at 6	3 (ave. 6.3)	4 (ave. 5.3)	66	45 (ave. 8.1)
Government Defendant	59	7	27	0	0	0	1	2	6	102	55
Inmate Plaintiff	54	0	0	0	0	0	0	0	2	56	56
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

PARTIES—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Multiple Plaintiffs	2 (ave. 5)	1 at 2	0	1 at 2	0	0	0	0	0	4	2 (ave. 5)
Multiple Defendants	69 (ave. 8)	6 (ave. 7.7)	1 at 2	2 (ave. 14.5)	0	1 at 3	1 at 2	0	9 (ave. 4.1)	89	58 (ave. 7.4)
Government Defendant	77	8	14	1	0	0	1	0	8	109	61
Inmate Plaintiff	68	0	0	0	0	0	0	0	0	68	68
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

3. IN FORMA PAUPERIS APPLICATION

IN FORMA PAUPERIS APPLICATION—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Request for IFP	121	32	7	2	1	4	1	0	8	176	120
Granted	121	31	7	2	1	3	1	0	8	174	120
Denied	0	1	0	0	0	1	0	0	0	2	0
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

IN FORMA PAUPERIS APPLICATION—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Request for IFP	107	25	18	0	1	1	1	5	8	166	101
Granted	107	25	18	0	1	1	1	5	8	166	101
Denied	0	0	0	0	0	0	0	0	0	0	0
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

IN FORMA PAUPERIS APPLICATION—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Request for IFP	68	25	24	1	1	0	0	1	11	130	58
Granted	68	25	24	1	1	0	0	1	11	130	58
Denied	0	0	0	0	0	0	0	0	0	0	0
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

IN FORMA PAUPERIS APPLICATION—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Request for IFP	62	18	27	0	0	1	1	3	9	121	56
Granted	62	18	27	0	0	1	1	3	9	121	56
Denied	0	0	0	0	0	0	0	0	0	0	0
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

IN FORMA PAUPERIS APPLICATION—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Request for IFP	83	20	13	3	0	1	1	0	11	132	67
Granted	82	19	13	3	0	1	1	0	11	130	67
Denied	1	1	0	0	0	0	0	0	0	2	0
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

4. TYPE OF REMEDY SOUGHT

TYPE OF REMEDY SOUGHT—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Monetary Only	72	28	8	1	0	4	0	0	4	117	72
Equitable Only	6	1	0	1	0	0	1	0	4	13	8
Monetary and Equitable	45	7	1	0	1	0	0	0	0	54	42
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

TYPE OF REMEDY SOUGHT—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Monetary Only	78	24	19	0	0	1	0	1	6	129	70
Equitable Only	1	0	0	0	1	0	0	0	0	2	2
Monetary and Equitable	30	4	0	0	0	0	1	4	4	43	29
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

TYPE OF REMEDY SOUGHT—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Monetary Only	36	20	24	0	0	0	0	1	8	89	28
Equitable Only	2	0	0	1	0	0	0	0	3	6	2
Monetary and Equitable	33	8	0	0	1	0	0	0	1	43	31
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

TYPE OF REMEDY SOUGHT—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Monetary Only	41	18	27	0	0	1	0	2	5	94	38
Equitable Only	0	0	0	0	0	0	1	0	0	1	0
Monetary and Equitable	21	3	0	0	0	0	0	2	5	31	18
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

TYPE OF REMEDY SOUGHT—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Monetary Only	59	19	14	0	0	2	0	0	7	101	53
Equitable Only	1	0	0	0	0	0	1	0	3	5	1
Monetary and Equitable	26	4	0	3	0	0	0	0	4	37	14
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

5. DOCUMENTS FILED WITH THE COURT

FILINGS—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
OSC	4	0	0	0	1	0	0	0	0	5	4
60-day Order	22	5	3	0	0	1	0	0	0	31	22
Amend. Com.	21	8	1	0	0	1	0	0	0	31	21
Extension of Time Request	8	8	1	0	1	0	0	0	0	18	8
M/T/D or S.J.	18	20	3	0	0	0	0	0	0	41	17
Discov. Mot.	19	13	1	0	1	1	0	0	0	35	19
Default Judgment	5	1	0	0	1	0	0	0	0	7	5
Motion for Recon.	5	4	0	0	1	0	0	0	0	10	4
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

FILINGS—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
OSC	4	0	0	0	0	0	0	1	0	5	4
60-day Order	8	2	3	0	0	1	1	0	1	16	6

FILINGS—1996 CASES											
Amend. Com.	17	9	1	0	0	0	0	1	1	29	16
Extension of Time Request	19	5	15	0	0	0	0	0	0	39	18
M/T/D or S.J.	23	14	12	0	0	1	0	1	1	52	23
Discov. Mot.	23	13	1	0	0	0	0	0	1	38	21
Default Judgment	3	0	0	0	0	0	0	0	0	3	3
Motion for Recon.	2	0	0	0	0	0	0	2	1	5	2
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

FILINGS—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
OSC	3	1	0	0	0	0	0	0	0	4	3
60-day Order	14	0	5	0	0	0	0	0	1	20	12
Amend. Com.	11	9	2	0	0	0	0	0	1	23	8
Extension of Time Request	6	8	20	0	0	0	0	0	1	35	5
M/T/D or S.J.	13	10	16	0	0	0	0	1	3	43	10
Discov. Mot.	14	16	4	0	0	0	0	1	1	36	12
Default Judgment	1	1	0	0	0	0	0	1	0	3	0
Motion for Recon.	4	2	0	0	1	0	0	0	0	7	2
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

FILINGS—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
OSC	3	1	0	0	0	0	0	1	0	5	2
60-day Order	10	3	3	0	0	1	0	1	1	19	7
Amend. Com.	14	5	4	0	0	1	0	2	2	28	12
Extension of Time Request	15	4	25	0	0	0	0	1	4	49	16
M/T/D or S.J.	8	8	9	0	0	0	0	4	2	31	7
Discov. Mot.	18	12	5	0	0	0	0	2	2	39	18
Default Judgment	2	0	1	0	0	0	0	0	0	3	2
Motion for Recon.	3	2	1	0	0	0	0	0	1	7	3
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

FILINGS—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
OSC	3	5	0	1	0	0	0	0	0	9	3
60-day Order	19	5	3	3	0	0	0	0	0	30	15

FILINGS—1999 CASES											
Amend. Com.	24	6	1	2	0	0	0	0	1	34	21
Extension of Time Request	15	3	11	0	0	0	1	0	1	31	12
M/T/D or S.J.	14	9	2	0	0	0	1	0	1	27	13
Discov. Mot.	18	5	2	1	0	0	0	0	2	28	17
Default Judgment	0	0	0	0	0	0	0	0	0	0	0
Motion for Recon.	1	2	0	0	0	0	0	0	0	3	1
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

6. FILING AND DISPOSITION OF REQUEST FOR COUNSEL

REQUEST FOR COUNSEL—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Requested	18	14	2	0	1	2	0	0	1	38	18
Denied	10	13	2	0	0	1	0	0	1	27	10
Granted	8	1	0	0	1	1	0	0	0	11	8
Appearance Made	7 - W; 1 - W/O	0 3 - W/O	0 0	0 0	1 – W ;0	1 - W; 0	0 0	0 0	0 0	9 - W; 4 - W/O	6 - W; 1 - W/O
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

REQUEST FOR COUNSEL—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Requested	25	14	1	0	0	0	0	1	1	42	24
Denied	21	9	1	0	0	0	0	1	1	33	20
Granted	4	5	0	0	0	0	0	0	0	9	4
Appearance Made	3 - W; 2 - W/O	4 - W; 1 - W/O	0 5 - W/O	0 0	0 0	0 0	0 0	0 0	0 1 - W/O	7 - W; 9 - W/O	3 - W; 2 - W/O
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

REQUEST FOR COUNSEL—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Requested	14	14	4	0	0	0	0	0	2	34	12
Denied	11	12	2	0	0	0	0	0	2	27	9
Granted	3	2	2	0	0	0	0	0	0	7	3
Appearance Made	1 - W; 0	0 6 - W/O	0 3 - W/O	0 0	0 0	0 0	0 0	0 0	0 0	1 - W; 9 - W/O	0 1 - W/O
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

REQUEST FOR COUNSEL—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Requested	16	7	5	0	0	0	0	2	0	30	12
Denied	13	5	4	0	0	0	0	2	0	24	9
Granted	3	2	1	0	0	0	0	0	0	6	3

REQUEST FOR COUNSEL—1998 CASES											
Appearance Made	3 - W; 0	1 - W; 4 - W/O	1 - W; 3 - W/O	0 0	0 0	0 0	0 0	0 1 - W/O	0 0	5 - W; 8 - W/O	3 - W; 0
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

REQUEST FOR COUNSEL—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Requested	18	5	2	2	0	0	1	0	0	28	17
Denied	15	5	1	2	0	0	1	0	0	24	14
Granted	3	0	1	0	0	0	0	0	0	4	3
Appearance Made	1 - W; 0	0 0	1 - W; 0	0 0	0 0	0 0	0 0	0 0	0 0	2 - W; 0	1 - W; 0
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

7. FINAL DISPOSITION OF THE CASE

FINAL DISPOSITION—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Sua Sponte Dismissed	90	11	5	2	0	2	1	0	7	119	89
Dismissed on M/T/D or S.J.	9	15 (2 with attn.)	4	0	0	0	0	0	0	27	9
Voluntary Dismissal	6	2	0	0	0	0	0	0	1	9	6
Defendant Trial Verdict	2 (1 with attn.)	1	0	0	0	0	0	0	0	3	2 (1 with attn.)
Plaintiff Trial Verdict	1 (default for plaintiff)	0	0	0	0	0	0	0	0	1	1 (default for plaintiff)
Settlement	11 (6 by attn.) ($6,808 ave. of 5 known)	7 (1 with attn.)	0	0	1	2 (1 at 10,000 with attn.)	0	0	0	21	11 (6 by attn.) ($7,768 ave. of 6 known)
Remand to Agency	0	0	1	0	0	0	0	0	0	1	0
Still Pending	4	0	0	0	0	0	0	0	0	4	4
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

FINAL DISPOSITION—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Sua Sponte Dismissed	78	6	4	0	1	0	1	4	8	102	73
Dismissed on M/T/D or S.J.	13	11 (1 with attn.)	7 (1 with attn.; 1 remand; 1 - for plaintiff)	0	0	1	0	1	1 (with attn.)	34	12
Voluntary Dismissal	3	2	1	0	0	0	0	0	0	6	2
Defendant Trial Verdict	1 (with attn.)	0	0	0	0	0	0	0	0	1	1 (with attn.)

FINAL DISPOSITION—1996 CASES											
Plaintiff Trial Verdict	0	0	0	0	0	0	0	0	0	0	0
Settlement	12 (4 with attn.) ($6,544.29 ave. of 7 known)	8 (1 by attn.) (ave. of 4 known $13,625)	6 (all remands - 1 with $4,700 costs) (2 with attn.)	0	0	0	0	0	1	27	11 (4 with attn.) ($7,551.67 ave. of 6 known)
Remand to Agency	0	0	7 (2 with attn.)	0	0	0	0	0	0	-	0
Still Pending	2	1 (with attn)	1	0	0	0	0	0	0	4	2
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

FINAL DISPOSITION—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Sua Sponte Dismissed	56	6	7	1	1	0	0	0	7	78	45
Dismissed on M/T/D or S.J.	4	6 (2 with attn.)	11 (5 remands)	0	0	0	0	1	2	24	4
Voluntary Dismissal	2	2	0	0	0	0	0	0	0	4	2
Defendant Trial Verdict	0	0	0	0	0	0	0	0	0	0	0
Plaintiff Trial Verdict	0	0	0	0	0	0	0	0	0	0	0
Settlement	5 (1 with attn.) ($5,333.33 ave. of 3 known)	9 (1 with attn.; $45,000 of 2 known)	6 (6 remands)	0	0	0	0	0	2	22	6
Remand to Agency	0	0	11	0	0	0	0	0	0	-	0
Still Pending	4 (1 with attn.) (ave. 1235 days; 47.7 entries)	5 (ave. 1220 days; 24.6 entries)	0	0	0	0	0	0	1	10	4
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

FINAL DISPOSITION—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Sua Sponte Dismissed	38	6	1	0	0	1	1	0	6	53	30
Dismissed on M/T/D or S.J.	3	2	5 (2 remands)	0	0	0	0	2	1	13	3
Voluntary Dismissal	4	0	0	0	0	0	0	2	0	6	4
Defendant Trial Verdict	0	0	0	0	0	0	0	0	0	0	0
Plaintiff Trial Verdict	0	0	0	0	0	0	0	0	0	0	0

FINAL DISPOSITION—1998 CASES											
Settlement	6 ($15,320 ave. of 4 known) (1 with attn.)	5 ($4,000 of 1 known)(1 - transfer by attn.)	20 (19 - remands; 1 attn.; 1 transfer)	0	0	0	0	0	2 ($1,650. 80 ave. of 2 known)	33	8 ($10,543.2 0 ave. of 6 known)
Remand to Agency	0	0	21	0	0	0	0	0	0	-	0
Still Pending	11 (ave. 705.9 days; 21.6 entries; 1 attn.)	8 (ave. 780 days; 30.4 entries)	1 (690 days; 11 entries)	0	0	0	0	0	1 (705 days; 12 entries)	21	11
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

FINAL DISPOSITION—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Sua Sponte Dismissed	49	7	2	1	0	2	0	0	12	73	34
Dismissed on M/T/D or S.J.	4	5	1 (remand)	0	0	0	1	0	0	11	4
Voluntary Dismissal	1	1	0	0	0	0	0	0	0	2	1
Defendant Trial Verdict	0	0	0	0	0	0	0	0	0	0	0
Plaintiff Trial Verdict	0	0	0	0	0	0	0	0	0	0	0
Settlement	1 with attn.	1	8 (7 remands)	0	0	0	0	0	0	10	1 with attn.
Remand to Agency	0	0	8	0	0	0	0	0	0	-	0
Still Pending	31 (ave. 379.5 days; 14.5 entries)	9 (ave. 375 days; 14.2 entries)	3 (ave. 490 days; 9 entries)	2 (ave. 457.5 days; 9.5 entries)	0	0	0	0	2 (ave. 412.5 days; 19.5 entries)	47	29 (ave. 383.3 days; 14.5 entries)
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

8. REASON FOR DISMISSAL

REASON FOR DISMISSAL—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Failure to Serve	10	3	1	0	0	0	0	0	0	14	8
Failure to State a Claim	29	9	3	0	0	0	0	0	4	45	32
Statute of Limitations	1	7	0	0	0	0	0	0	0	8	1
Subject Matter Jurisdiction	7	0	0	1	0	2	0	0	1	11	4
Failure to Respond to 60-day Order	10	0	1	1	0	0	0	0	0	12	10
Failure to Prosecute	0	2	0	0	0	0	0	0	0	2	0

REASON FOR DISMISSAL—1995 CASES											
Transfer (venue)	15	0	0	0	0	0	1	0	1	17	16
Immunity	11	0	0	0	0	0	0	0	0	11	10
Neitzke or Denton	5	0	0	0	0	0	0	0	0	5	5
Duplicate	2	0	0	0	0	0	0	0	0	2	2
Not a State Actor	5	0	0	0	0	0	0	0	0	5	5
Exhaustion	0	2	3	0	0	0	0	0	1	6	0
Personal Involvement	5	0	0	0	0	0	0	0	0	5	5
Res Judicata	0	1	0	0	0	0	0	0	0	1	0
M-120	0	2	0	0	0	0	0	0	0	2	0
TOTAL CASES	100	26	8	2	0	2	1	0	7	146	98

REASON FOR DISMISSAL—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Failure to Serve	6	1	0.	0	0	0	0	0	0	7	5
Failure to State a Claim	23 (6 H; 5 S; 2 E)	4	6	0	0	0	1	3	2	39	21
Statute of Limitations	3	1	0	0	0	0	0	1	0	5	3
Subject Matter Jurisdiction	4	1	0	0	1	1	0	0	2	9	4
Failure to Respond to 60-day Order	2	0	0	0	0	0	0	0	0	2	2
Failure to Prosecute	3	6	1	0	0	0	0	0	0	10	3
Transfer (venue)	9	0	0	0	0	0	0	0	1	10	8
Immunity	3	1	0	0	0	0	0	0	1	5	2
Neitzke or Denton	19	1	0	0	0	0	0	1	2	23	14
Duplicate	1	0	1	0	0	0	0	0	1	3	2
Not a State Actor	10	0	0	0	0	0	0	0	0	10	9
Exhaustion	2	2	3	0	0	0	0	0	0	7	4
Personal Involvement	5	0	0	0	0	0	0	0	0	5	5
Res Judicata	0	0	0	0	0	0	0	0	0	0	0
M-120	1	0	0	0	0	0	0	0	0	1	1
Total Cases	91	17	11	0	1	1	1	5	9	136	83

REASON FOR DISMISSAL—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Failure to Serve	4	3	0	0	0	0	0	0	1	8	4

REASON FOR DISMISSAL—1997 CASES											
Failure to State a Claim	7 (1 Y; 1 H; 1 E)	4	5	0	0	0	0	0	2	18	6 (1 Y; 1 H; 1 E)
Statute of Limitations	7	2	0	0	0	0	0	1	0	10	2
Subject Matter Jurisdiction	2	1	0	0	1	0	0	0	3	7	1
Failure to Respond to 60-day Order	9	0	3	0	0	0	0	0	0	12	9
Failure to Prosecute	4	1	3	0	0	0	0	0	0	8	3
Transfer (venue)	13	0	0	0	0	0	0	0	1	14	10
Immunity	4	0	0	0	0	0	0	0	0	4	4
Neitzke or Denton	4	0	0	0	0	0	0	0	1	5	3
Duplicate	2	1	0	0	0	0	0	0	0	3	2
Not a State Actor	2	0	0	0	0	0	0	0	0	2	2
Exhaustion	0	0	2	1	0	0	0	0	0	3	0
Personal Involvement	1	0	0	0	0	0	0	0	0	1	1
Res Judicata	0	0	0	0	0	0	0	0	0	0	0
M-120	0	0	0	0	0	0	0	0	0	0	0
Conclusory	1	0	0	0	0	0	0	0	0	1	1
Moot	0	0	0	0	0	0	0	0	1	1	1
TOTAL CASES	60	12	18	1	1	0	0	1	9	102	49

REASON FOR DISMISSAL—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Failure to Serve	6	2	0	0	0	0	0	0	0	8	6
Failure to State a Claim	7 (2 H; 1 M)	2	1	0	0	0	0	1	3	14	6 (2 H; 1 M)
Statute of Limitations	1	0	0	0	0	0	0	1	1	3	1
Subject Matter Jurisdiction	2	1	0	0	0	1	0	0	1	5	1
Failure to Respond to 60-day Order	3	1	0	0	0	0	0	0	0	4	2
Failure to Prosecute	3	1	1	0	0	0	0	0	0	5	3
Transfer (venue)	7	1 - by attn.	1	0	0	0	0	0	0	9	6
Immunity	4	0	0	0	0	0	0	0	0	4	4
Neitzke or Denton	1	0	0	0	0	0	0	0	1	2	0
Duplicate	0	0	0	0	0	0	0	0	1	1	0
Not a State Actor	3	0	0	0	0	0	0	0	0	3	2
Exhaustion	2 - FTCA	0	1	0	0	0	1	0	0	4	0

REASON FOR DISMISSAL—1998 CASES											
Personal Involvement	0	0	0	0	0	0	0	0	0	0	0
Res Judicata	1	0	0	0	0	0	0	0	0	1	1
M-120	1	0	0	0	0	0	0	0	0	1	1
Total Cases	41	8	6	0	0	1	1	2	7	66	33

REASON FOR DISMISSAL—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Failure to Serve	2	2	0	0	0	0	0	0	0	4	2
Failure to State a Claim	9 (2 H; 2 E; 1 S)	1	0	0	0	0	1	0	3	14	8 (2 H; 2 E; 1 S)
Statute of Limitations	2	1	0	0	0	0	0	0	0	3	2
Subject Matter Jurisdiction	5	1	0	0	0	0	0	0	2	8	3
Failure to Respond to 60-day Order	7	2	2	1	0	0	0	0	0	12	6
Failure to Prosecute	0	0	0	0	0	0	0	0	0	0	0
Transfer (venue)	6	1	0	0	0	1	0	0	0	8	3
Immunity	6	0	0	0	0	1	0	0	2	9	2
Neitzke or Denton	3	1	0	0	0	0	0	0	2	6	2
Duplicate	3	1	0	0	0	0	0	0	1	5	3
Not a State Actor	7	0	0	0	0	0	0	0	0	7	4
Moot	1	0	0	0	0	0	0	0	0	1	1
Exhaustion	2	1	0	0	0	0	0	0	2	5	1
Res Judicata	0	1	0	0	0	0	0	0	0	1	0
TOTAL CASES	53	12	3	1	0	2	1	0	12	84	37

9. APPEALS

APPEALS—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Appeal filed	14	9	2	0	0	1	0	0	3	29	13
Appeal denied	13	9	2	0	0	0	0	0	3	27	12
Appeal granted	0	0	0	0	0	1	0	0	0	1	1
Appeal pending	1	0	0	0	0	0	0	0	0	1	0
IFP requested	12	7	2	0	0	1	0	0	3	25	12
Motion for recon. granted	2	1	0	0	0	0	0	0	0	3	2
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

APPEALS—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Appeal filed	17	5	1	0	0	1	1	3	5	33	14
Appeal denied	16	4	0	0	0	1	1	3	5	30	13
Appeal granted	1	1	1	0	0	0	0	0	0	3	1
Appeal pending	0	0	0	0	0	0	0	0	0	0	0
IFP requested	14	4	1	0	0	1	1	3	4	28	12
Motion for recon. granted	1	0	0	0	0	0	0	0	0	1	1
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

APPEALS—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Appeal filed	11	4	3	0	1	0	0	0	2	21	7
Appeal denied	9	4	2	0	1	0	0	0	2	18	6
Appeal granted	1	0	1	0	0	0	0	0	0	2	0
Appeal pending	1	0	0	0	0	0	0	0	0	1	1
IFP requested	7	2	2	0	0	0	0	0	0	11	7
Motion for recon. granted	3	2	0	0	0	0	0	0	0	5	1
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

APPEALS—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Appeal filed	13	3	3	0	0	0	0	1	2	22	10
Appeal denied	12	3	3	0	0	0	0	1	2	21	10
Appeal granted	1	0	0	0	0	0	0	0	0	1	0
Appeal pending	0	0	0	0	0	0	0	0	0	0	0
IFP requested	9	3	3	0	0	0	0	1	2	18	9
Motion for recon. granted	1	0	1	0	0	0	0	0	0	2	1
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

APPEALS—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Appeal filed	11	5	0	0	0	0	0	0	3	19	9
Appeal denied	11	5	0	0	0	0	0	0	3	19	9
Appeal granted	0	0	0	0	0	0	0	0	0	0	0
Appeal pending	0	0	0	0	0	0	0	0	0	0	0
IFP requested	9	5	0	0	0	0	0	0	3	17	7
Motion for recon. granted	1	1	0	0	0	0	0	0	0	2	1
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

10. PRIOR CASE FILINGS IN THE COURT

PRIOR CASE FILINGS—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Plaintiffs with prior complaints	60	12	2	0	1	1	0	0	6	82	58
Average of priors	5.35	7.25	3	0	3	2	0	0	2.67	5.3	5.48
Bar orders	10	1	0	0	0	0	0	0	0	11	8
Bar warnings	0	0	0	0	0	0	0	0	1	1	0
Average of complaints filed after bar order	3	14	0	0	0	0	0	0	0	11	3.25
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

PRIOR CASE FILINGS—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Plaintiffs with prior complaints	55	8	3	0	0	1	0	3	7	77	51
Average of priors	4.53	1.63	11.67	0	0	4	0	1.33	2	4.15	4.59
Bar orders	9	0	0	0	0	0	0	0	0	9	6
Bar warnings	0	0	0	0	0	0	0	0	0	0	0
Average of complaints filed after bar order	3.67	0	0	0	0	0	0	0	0	3.67	5.33
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

PRIOR CASE FILINGS—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Plaintiffs with prior complaints	39	4	6	1	0	0	0	0	6	56	32
Average of priors	5.18	1.5	2.5	1	0	0	0	0	2.67	4.29	2.27
Bar orders	9	0	0	0	0	0	0	0	0	9	3
Bar warnings	0	0	0	0	0	0	0	0	0	0	0
Average of complaints filed after bar order	1.11	0	0	0	0	0	0	0	0	1.11	1.67
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

PRIOR CASE FILINGS—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Plaintiffs with prior complaints	36	8	4	0	0	0	0	2	7	57	31
Average of priors	5	1.75	5.5	0	0	0	0	2.5	3.71	4.33	3.77
Bar orders	1	0	0	0	0	0	0	0	0	1	1
Bar warnings	1	0	0	0	0	0	0	0	2	3	0

PRIOR CASE FILINGS—1998 CASES											
Average of complaints filed after bar order	2	0	0	0	0	0	0	0	0	.67	2
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

PRIOR CASE FILINGS—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Plaintiffs with prior complaints	45	12	3	3	0	0	1	0	8	72	45
Average of priors	6.93	12.67	2.67	3	0	0	1	0	16.25	8.5	3.77
Bar orders	7	2	0	0	0	0	0	0	2	11	2
Bar warnings	6	1	0	0	0	0	0	0	0	7	4
Average of complaints filed after bar order	4.43	4	0	0	0	0	0	0	6.	4.64	1
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68

11. BURDEN ON COURT

BURDEN ON COURT—1995 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Days pending in *sua sponte* dis.	157.36	357.72	159	260	0	135	70	0	128.33		146.26
Days pending for others	575.90	587.50	500	300	320	960	0	0	100		592.18
Days pending with app. counsel	1235	953.33	0	0	0	1670	0	0	0		1452.5
Docket entries in *sua sponte* dis.	7.07	16.36	8.17	6	0	10	6	0	7.5		6.60
Docket entries for others	29.66	27.24	17	7	35	26	0	0	6		29.15
Docket entries with app. counsel	53.17	39	0	0	0	35	0	0	0		53.17
Cases correspond. with pro se off.	45 (1.64 ave.)	8 (ave. 1)	0	0	0	1 (ave. 1)	0	0	0		37 (2.19 ave.)
TOTAL CASES	123	36	9	2	1	4	1	0	8	184	122

BURDEN ON COURT—1996 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Days pending in *sua sponte* dis.	165.13	190.83	76.67	0	60	0	125	116. 25	139. 38		173.73
Days pending for others	808.97	663.33	445. 63	0	0	535	0	370	600		791.43
Days pending with app. counsel	831	1056.67	675	0	0	0	0	0	840		831
Docket entries in *sua sponte* dis.	8.33	8.5	7.67	0	6	0	6	10.75	7.75		8.35
Docket entries for others	32.79	22.05	17	0	0	48	0	18	19.5		33.8
Docket entries with app. counsel	47.8	29.33	26.5	0	0	0	0	0	28		47.8

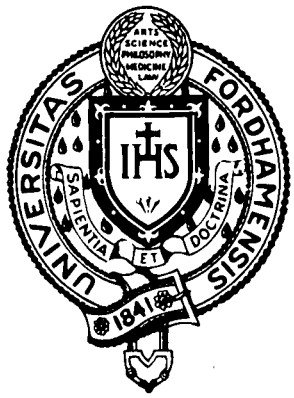
BURDEN ON COURT—1996 CASES											
Cases correspond. with pro se off.	36 (ave. 3.31)	5 (ave. 1.4)	4 (ave. 2)	0	0	0	0	0	0		32 (ave. 3.44)
TOTAL CASES	109	28	19	0	1	1	1	5	10	174	101

BURDEN ON COURT—1997 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Days pending in *sua sponte* dis.	178.70	359.17	265	235	110	0	0	0	166. 88		165.63
Days pending for others	591.36	525.94	502. 78	0	0	0	0	740	573. 33		557.89
Days pending with app. counsel	390	948.33	0	0	0	0	0	0	0		390
Docket entries in *sua sponte* dis.	9.32	15.33	10.67	6	16	0	0	0	7.44		28.09
Docket entries for others	23.8	21.81	12.33	0	0	0	0	35	19.5		17
Docket entries with app. counsel	23	38.67	0	0	0	0	0	0	0		23
Cases correspond. with pro se off.	36 (ave. 1.72)	4 (ave. 1.75)	1 (ave. 1)	0	0	0	0	0	1 (ave. 1)		26 (ave. 1.08)
TOTAL CASES	71	28	24	1	1	0	0	1	12	138	61

BURDEN ON COURT—1998 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Days pending in *sua sponte* dis.	179.34	301.67	730	0	0	360	115	0	114		178.33
Days pending for others	496.92	378.57	424.4	0	0	0	0	442.5	452		468.92
Days pending with app. counsel	577.5	0	345	0	0	0	0	0	0		577.5
Docket entries in *sua sponte* dis.	9.66	10.17	7	0	0	8	11	0	5.8		9.72
Docket entries for others	19.36	17.86	14.6	0	0	0	0	24.75	25.4		20.36
Docket entries with app. counsel	29.5	0	16	0	0	0	0	0	0		29.5
Cases correspond. with pro se off.	42 (ave. 1.62)	4 (ave. 1.25)	6 (ave. 1.33)	0	0	0	0	0	0		37 (ave. 2)
TOTAL CASES	62	21	27	0	0	1	1	4	10	126	56

BURDEN ON COURT—1999 CASES											
	Civ. Right.	Employ. Discrim.	Soc. Sec.	Hous.	Fam.	Divers.	FOIA	Lab.	Oth.	TOTALS	Inmate Filing
Days pending in *sua sponte* dis.	162.17	174.09	236. 67	315	0	142.5	0	0	130. 42		173.94
Days pending for others	385	317	268. 75	0	0	0	525	0	0		385
Days pending with app. counsel	555	0	0	0	0	0	0	0	0		555

BURDEN ON COURT—1999 CASES											
Docket entries in *sua sponte* dis.	7.69	9.09	7	7	0	6	0	0	7.55		7.14
Docket entries for others	20.57	19.8	11.13	0	0	0	20	0	0		20.57
Docket entries with app. counsel	33	0	0	0	0	0	0	0	0		33
Cases correspond. with pro se off.	44 (ave. 2.61)	5 (ave. 2)	2 (ave. 1.5)	0	0	0	0	0	0		31 (ave. 1.81)
TOTAL CASES	86	23	14	3	0	2	1	0	14	143	68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