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**NEEDS ASSESSMENT FOR
ALTERNATIVE DISPUTE RESOLUTION
IN THE PHILIPPINES**

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EXECUTIVE SUMMARY

Relentless growth of population in a finite space, constant migration of people from the rural to the urban area, greater invasion of individual rights, growing regulatory legislation, differing needs, wants, aspirations, and abilities of their acquisition inevitably give rise to conflict among individuals, among groups, among the government and private entities that is multiplying in number and variety. Disputes are attendant to progress and to the coming together of diverse people in a limited area of space. Order is necessary to avoid chaos. And so, since time immemorial, a system of law and order is necessary to maintain peace and harmonious living conditions in every society. Laws that provide possible collaborative bills are passed by the legislative; are reformed by the executive; which are applied to disputes by the judiciary.

Analysis of judicial data shows its decreasing efficiency in dispensing justice and resolving disputes that, it has been a growing lament that "one cannot get justice in one's lifetime" anymore. Thus, alternatives to resolving disputes have been studied, introduced and eventually applied by the government in various sectors in the country. Still, much needs to be done as statistics will show that there are constant additions to the court dockets every year. This only proves the dire need to find ways and means to alleviate this alarming problem.

This study illustrates the necessity to reinforce existing modes of alternative dispute resolution and to seek new avenues that would lead to a multi-door justice system in response to the reality that, given the numerous cases that have accumulated in our dockets, the fresh cases filed every year and with their performance record, our courts can never cope much less immediately attend to the solution of this problem.

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ALTERNATIVE DISPUTE RESOLUTION

I. Introduction: Maintaining Order in Society¹

The Philippines, like all other nations, is a society composed of individuals who, by voluntary choice or by force of circumstances, are bound to live together within the confines of its national territory. Each one of its estimated present population of some 56 million people, has basic needs to be met, desires to be fulfilled and aspirations to be attained. The variety of these wants is infinite. They range from the mundane urge to secure the basic necessities of life, such as food, clothing and shelter, to the spiritual desire to achieve heavenly bliss. The unceasing pursuit to satisfy these wants, brings home the undeniable: "basic condition of human existence," that is, that people live in an interdependent world. No individual, not even a family, can exist as a self-sufficient unit. They cannot individually or collectively possibly grow, produce or manufacture everything they need even for mere survival alone. This fact of human interdependence is made even more self-evident in the pursuit to satisfy wants and desires that go beyond mere existence, such as the thirst for wealth and power, the desire for respect, and the need for love and companionship.

Differing priorities and abilities or power to satisfy the foregoing varied wants of individuals, inevitably produce conflict in such interdependent human relationship. This problem is complicated by a rapidly growing population living in a more or less fixed geographical territory. Without some sort of arrangement as to how members of society -- from the smallest community to the nation itself - are to conduct themselves in relation to each other, the weak will be down-trodden and oppressed by the more powerful while the innocent and gullible will be taken advantage of by the crafty. Valuable time and energy that may be more beneficially put to better use, is wasted in a self-help effort for individual protection and avoidance of oppression and exploitation. Under such conditions, no individual can realize his full potential, anarchy will prevail and society itself cannot long endure.

In general, substantive arrangements for societal living seeks the safety and security of the life, liberty and property of individuals by restricting the free use of violence, proscribing deceit and directing compliance with promises made. In addition to prohibiting undesirable conduct, such societal arrangements also set forth the kinds of affirmative conduct, such as rendition of military service, that are required of each community member as his due contribution to the common interest and welfare.

In traditional societies, as in Pre-Hispanic Philippines, such substantive arrangements are inferred from customary patterns of behavior. As society modernizes, such implied understandings are made explicit in provisions of statutes enacted by the legislature in representation of the people.

¹ See Hart and Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, "Introductory Note on the Principle of Institutional Settlement", 1-6 (1958). Cited in Tadiar and Pe, *Katarungang Pambarangay: Dynamics of Compulsory Conciliation*, 1979.

II. Modes of Social Order

There are various modes by which order is sought to be created in a society in which, being composed of human beings, conflict is an inevitable component of daily living. It is a point that needs no longer be belabored that the various human relationships in society must be brought into a workable and productive order if that society is not only to survive but to endure. Development, progress and greatness of a nation depend upon first attaining this basic precondition of societal order.

Order may be created by laying down rules of conduct or by custom which necessitates individual strict compliance in order to realize the aim or goal which such rules seek to attain. These rules are both procedural and substantive. For instance, rules require the procurement of licenses to conduct businesses; or that one must be of a certain age to get married without parental consent because then, he or she is presumably able to handle the responsibilities attached to marriage; or that an individual who borrows money must promise to pay his debt. If one's actions comply with these rules, conflict may be avoided because the rules validate such actions.

Even if non-compliance, however, results to conflicts, there are established customary and legal modes of conflict resolution. These may be classified into formal or legal, on the one hand, and informal or extra-legal, on the other. These are not alternative modes that are exclusive of each other but rather, complementary ones.

Legislative enactments directly seeking to resolve a conflict, is a mode having a wide impact and long lasting effect in modern societies. An example is the land reform law that attempts to resolve the classic conflict of the landlord and the landless tenant in agriculture. They have the same function of prescribing acceptable norms, an individual can only own a limited parcel of land up to a certain area and if this limit is exceeded, the government intervenes by providing sanctions.

A second form of social ordering at the city level is what may be called administrative direction-giving.³ What has been laid down by law is carried out in detail by the executive through the prescription of standards.

At the individual or personal level, negotiations to settle a dispute may result in some contractual agreement to govern the future relationship of the parties. A collective bargaining agreement between an employer and a labor union is a good example of this mode. Lawyers who undertake to draft the terms and conditions of such a contract in effect engage in what has been called "private law-making".⁴ This is indeed an accurate observation for it is a well-known legal doctrine that a contract is the law between the parties. This, then, is another form of social ordering.

² See Tadiar and Pe, *Katarungang Pambarangay: Dynamics of Compulsory Conciliation*, pp. 145-148, (1979).

³ Fuller, "Mediation", 44 *Southern California Law Review*, 305 (1971). Cited in Tadiar and Pe.

⁴ Fuller, *The Morality of Law*, (Rev. Ed., 1971).

A. Formal/Legal – Court Justice System

Under the theory of legal ordering of society, the courts are meant to be the forum for the final, authoritative resolution of disputes that have earlier failed efforts for private solution or adjustment. The colonial rules of Spain and, subsequently, the United States, introduced their own systems of justice to the Philippines. Continued exposure through education and communication helped further develop the court justice system in the country. Lamentably, the people eventually looked to the courts as the initial rather than the last place of dispute settlement.

The judicial function of resolving disputes is undertaken by the method of adjudication. Because of the lawyer's professional bias, this is the device that is generally over stressed. This is a perfectly understandable human failing as the technicalities of complex trial procedure makes the legal assistance of lawyers indispensable for the successful conduct of formal litigation. In this arena, the lawyer's comprehensive grasp of technical rules, his analytical powers and persuasive skills, may well spell the difference between victory and defeat.

It is important to note that adjudication, as a formal method of resolving disputes, is not exclusive to the courts. Officials exercising quasi-judicial functions, such as government prosecutors conducting preliminary investigations, likewise use this method. So do arbitrators of labor disputes and hearing officers of administrative agencies.

1. *The adversarial justice system*⁵

A source of dissatisfaction with judicial adjudication is the lack of meaningful personal confrontation between the disputants. Unspoken is the desire of the parties to directly ventilate grievances and give explanations or reasons for their actions. It thus appears desirable to cut off the right of advocacy given to the legal profession.

Lawyers are essentially contentious and combative. This arises from a legal training that prepares them for an adversary system of justice before the courts and other adjudicative official agencies. In contrast, the success of conciliation lies in the efforts to discover commonalities and mutuality of interests of the disputants rather than to stress their divergence.

Further, adjudication is based on finding out "who did what to whom." Accuracy of fact-finding is essential to this process. Lawyers are thus trained to master rules that are designed to assure accuracy. The noticeable tendency of lawyers to be formalistic and technical about procedural rules is thus obstructive, rather than facilitative of a mutually beneficial resolution of a conflict.

⁵ Tadiar and Pe, *op.cit.*

2. Popular dissatisfaction with judicial adjudication of disputes⁶

But even at a less grand level than the national scale, common people are increasingly growing dissatisfied with the judicial adjudication of their everyday conflicts. Such popular grievances may be grouped into delay, high costs, failure to comprehend the legal process, and unsuitability of adjudication for the resolution of minor disputes.

Delay. A pervasive problem generally confronting many legal systems is that of judicial delays. While many factors could be pointed to as causing delay, they may be classified for our purpose into two, namely, those arising from the human factor and those caused by the nature of the judicial systems. The first refers to failings and weaknesses of the men administering the judicial system such as judges, lawyers, court personnel, prosecutors, sheriffs, and other officials. These factors may be plain inefficiency, sloth or laziness, corruption, or other evil motives or delay. These reasons, however, are recruitment problems that are common to any enterprise manned by mortal beings, be it the judicial system or otherwise.

The other category of factors causing judicial delay refers to those arising from the adversary nature of judicial proceedings. Thus, in criminal cases, the complaint of a victim is subjected to a series of screenings as to its merit. This is accomplished through police investigations and preliminary hearings conducted by prosecutors or magistrates. The screening process is generally imposed as a condition to the filing of the criminal action in court. These precautionary measures are undertaken by reason of the State's concern for the protection of innocent citizens from hasty and malicious prosecutions.

In both civil and criminal actions, concern with procedural legality requires set periods for notices and the preparation of pleadings for the litigants. These periods are often extended many times, thereby causing further delay. It is also required that judicial decisions must be based on findings of fact and that an elaboration of reasons in support of the decision must be made. It is thus understandable that a somewhat lengthy period is given to reach a sound decision. Three months is set for the trial courts to render judgment. Appeals and review by higher courts are given 12 months to decide a case and 24 months for the CA and the SC respectively add to the total length of judicial proceedings. (*Art. VIII, Sec. 15 (1), 1987 Constitution*).

A third category of causes for judicial delay is court docket congestion. This simply means that there are far too many cases waiting to be processed by the courts. A look into the Supreme Court Report of Statistics on Cases will reveal that for the 10-year period covering fiscal years 1984 to 1993, the Municipal Circuit Trial Courts have managed only a 78.49% efficiency rate in 1984 and has since maintained a rise and fall rate not higher than 73.94%. In 1993, its performance dropped to an all time low of 67.25%. A graphed case flow would illustrate the difference/distance between the cases filed and the cases decided. This consistently low performance output has steadily contributed to previous backlogs and within

⁶ Tadiar, op.cit., p.7

the same 10-year period alone, the Municipal Circuit Trial Courts have accumulated a total of 100,390 cases pending action. *See Annex I.*

The Metropolitan Trial Courts' performance on the other hand proved to be no better. Except for its best in 1984 with 78.14%, its performance has since fluctuated between 57.30% and 72.49%, its lowest being in 1993. The bar and line graphs too, clearly illustrate the sharp rise of accumulated case backlogs which posted a staggering sum of 189,253 cases. Among the selected five trial courts, the Metropolitan Trial Courts have the poorest efficiency rate with an average of 65.22% within the 10-year period. *See Annex II.*

The Municipal Trial Courts' performance could be likened to that of the Municipal Circuit Trial Courts. With an average efficiency rate of 70.48% for the same period. Its accumulated backlog has amounted to 163,086 cases for the same period. However, its two highest performance rates posted an 83.% in 1984 and 72.57% in 1990 compared to the MCTC's 78.49% in 1984 and 73.94% in 1985. *See Annex III.*

The more efficient courts are the Municipal Trial Courts in Cities and the Regional Trial Courts which have respective averages of 74.13% and 75.22% for the same period. The former posted an accumulated backlog of 107,171 (*See Annex IV*) cases while the latter posted 357,350 cases (*See Annex V*). It is very important to note that these figures cover a 10-year period only which means that they are yet to be added to the court dockets of previous years.

These data provide only a glimpse of the ever increasing backlog in our court dockets. The efficiency rate alone shows that every year, twenty five percent of the total number of cases filed are left yet to be tackled.

Cases of increasing litigation

However, there are several reasons that could be attributed for this: First, this is a natural accompaniment of population increase. More people mean more conflicts and consequently, more litigation. Secondly, better education gives greater awareness of legal rights and more assertiveness for their protection and enforcement. Generally, this should be commended rather than condemned for it reflects vigor and vitality of democratic process. Thirdly, development and urbanization are accompanied by more regulatory laws, infractions of which inevitably lead to conflict and litigation.

A corollary reason for docket congestion is what has been termed "litigiousness". By this is meant the filing of petty and trivial cases in court. This is an unfortunate consequence of modernization which has somehow weakened the traditional avenues or social institutions for the informal resolution of disputes. These are the family, the school, the church, and neighborhood organizations. With their unavailability, the courts are now becoming burdened and even overloaded with the task of resolving minor disputes.

The use of the term "minor" to describe a class of disputes relating to common or everyday conflicts may be misleading. For to the disputants personally involved, the subject matter, no matter how inconsequential to others or society, is certainly far from being minor,

petty or trivial. Even though the dispute may only involve in the last analysis, merely hurt pride from a perceived slight, yet to the parties it is of serious importance. It is minor then only in the sense that, by itself, it does not have much social significance.

Partly to blame for the so-called "litigiousness," is the lack of access to any other forum for the settlement of these "minor disputes." The alternative modes to dispute resolution provide the appropriate mechanism; they answer the need for alternative processes to resolve this class of disputes.

All of the foregoing causes have contributed to the ever lengthening time before a dispute is finally resolved by the courts and administrative tribunals. There are cases in the Philippines where an entire lifetime has been consumed by the litigation process. And it is greatly disturbing to note that the incidence of such lengthy protraction of judicial proceedings is no longer uncommon. This has led to the pejorative use of the term "inter-generational justice" as meaning the inability to secure justice in one's own lifetime.

High Costs. Another grievance of disputants against formal litigation is that it is too costly. Cost here includes not only financial expenses but the equally important expenditure of time and convenience, including the embittered relationship that results from litigation.

Lawyer's fees, docket or filing fees, costs of stenographic notes, sheriff's fees, and other expenses of litigation often mount to a level that could be ill-afforded by many disputants. But even if they could bear the high financial costs, would-be litigants are deterred by time-cost considerations as well. Meetings with lawyers for legal consultations and personal attendance for numerous court hearings take away much of that precious time that is especially dear to the average working man. And with the delays and postponements inevitably encountered in litigation, judicial proceedings become even costlier.

3. Popular incomprehensibility of the judicial process?

Use of Foreign Language. In the Philippines, the prevailing official language for the judicial systems is English. Historically, English and before that, Spanish, was imposed by the colonizing power to facilitate communication with a people divided by diverse languages and dialects. But even with the development of Filipino as the national language, English continues to prevail as the language of the formal legal system.

Several reasons account for this use of a foreign language. Law school training is almost exclusively conducted in the English language. There has been no serious effort to undertake translation of primarily English legal concepts and terminology into Filipino equivalents. Stenography for the national language has not been fully developed. And that which has been developed is not yet extensively practiced. Also, not many stenographers have been trained for Filipino stenography.

⁷ Ibid., p.10. Cited in Tadiar and Pe.

foregoing situation requires widespread use of bilingual personnel and official court trials. For the record, questions are first asked in English and translated to the language the witness is conversant with. The answer in the dialect is then translated and recorded. It is thus apparent that this situation further contributes to the delay in an already lengthy legal proceedings.

Importantly, such use of borrowed language contributes to the incomprehension and confusion of lay litigants about the legal process. They also contribute to an attitude of suspicion and distrust of lawyers, in particular, and against the legal system in general. Additionally, loose interpretation may distort the picture presented to the court and the candor of witnesses is often squelched. All these may contribute to possible cases of denial of justice.

The foregoing situation is similarly the case with other former colonies of Western Europe, such as India, Pakistan, Bangladesh, Sri Lanka, Singapore, Malaysia, Hong Kong, and many others, have experienced the same problem in varying degrees.

objection." The judicial and other adjudicative modes of resolving disputes are based on technical rules of procedure and evidence. In general, it may be said that such rules are formulated to ensure both the accuracy of the fact-finding process and the impartiality of the judge as a neutral, impartial and disinterested decision-maker. Violation of such rules, such as leading questions propounded to a witness or by the answer given by the latter, are grounds for objection during the trial. The grounds for such objections are generally compressed into technical terms that only lawyers can understand. Such grounds as "leading," "misleading," "immaterial," "irrelevant and impertinent," "incompetent," and other technical objections, are incomprehensible to most non-lawyers.

To understand why he cannot tell his story, or his version of the controverted facts in his own words, a litigant becomes frustrated and vexed, if not angry at all legal proceedings. Suspicion and distrust against lawyers and judges are further engendered by such technical objections.

The difficulty to understand the legal process is a common experience even in countries where the litigant speaks the same language as that spoken in judicial proceedings. This is so because, like physicians, and other professionals, have developed a jargon or technical language that facilitate communication among members of the legal profession. The delay on this point, as with the other issues of delay and high cost, is a major complaint.

The legal process, because it is based on established rules and procedures, requires specific questions and answers and particular modes of conduct. Conflicts are reduced to black and white and parties cannot go beyond these issues. Counsels are not allowed to explore alternative options for mutual gain. It's always a right-wrong situation with a win-

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4. *Unsuitability of adjudication for minor disputes*⁸

In the main, adjudication is concerned with the issue that has been stated as "who did what to whom." It is thus characterized as "backward-looking" since it focuses on what was done in the past. Why the act was done - the motives for doing the act complained of - are considered irrelevant to the act-orientation of the judicial process. Thus, the cause or the root of the problem cannot be inquired into. Only the symptoms are recognized but not the cause of the malady.

Judicial trials are conducted through the intervention of lawyers who act as the representative and spokesman of the disputants. There is accordingly no personal confrontation in the popular sense of a face-to-face encounter and the freedom to air grievances and give reasons.

Further, the judicial process is punitive-oriented. The nature of adjudication requires that a judgment be made relating to a right and the performance of the obligation correlative of that right. This entails upholding one party as the "winner" and condemning the other disputant as the "loser." The consequence of such condemnation is the imposition of a penalty in the form of a jail sentence or payment of a fine in criminal cases, and the payment of damages in civil cases.

Many times, however, a complainant is not really interested in having the respondent jailed or pay a fine. This is true in disputes involving close relatives, neighbors, friends, or others with whom the complainant has some kind of relationship, such as that of an employer and employee. In these cases, the parties must continue with their relations with each other notwithstanding the fact that such relationship has been marred by the dispute. The parties must return to live in the same home or neighborhood or to work in the same company. In these cases, what the complainant is really interested in, is an opportunity to ventilate his grievance, explore the cause of the problem, get an assurance that the offending conduct will no longer be repeated and thereby restore the disrupted relationship.

The imposition of a penalty in the foregoing situation, damages the relationship of the disputants beyond repair. The moral condemnation implied from penalty-imposition, entails a "loss of face," a loss of pride and dignity that *amor proprio*, so important to a Filipino, cannot accept. As a result, the rift between the disputants is widened to a chasm that can no longer be bridged.⁹ Thus, this and other considerations earlier cited, paved the way for the exploration and eventual implementation of new avenues for dispute resolution.

B. Informal/Extralegal- Alternative Modes of Dispute Resolution

In a society where family ties and kinship are highly valued, conflicts and disputes are resolved first, within the family if strictly involving family matters; and second, within the

⁸ *Ibid.*, p. 11

⁹ Alfredo Tadiar, PD 1508 Annotated, pp.6-12,(1978).

traditionally established community mechanism of conciliation wherein a third person of authority brings together the disputants and attempts to arrive at an amicable settlement.¹⁰ Another is the mechanism of mediation whereby "parties to a pending case are enjoined by the court to submit their controversy to a neutral third party . . . to reach a settlement of their dispute."¹¹ Still another form of alternative dispute resolution is arbitration whereby the disputing parties submit their case to an arbitrator or a group of arbitrators whose imposed decisions are generally permanent. These mechanisms grow out of the need to maintain peace within the community by preserving harmonious relations among the people. This predisposition for traditional dispute settlement methods seems to be culturally ingrained, so that the imposition of a foreign system only serves to reinforce it.

A significant number of disputes are settled by the making of tacit accommodations required by customs and traditions. Historians have noted the time-honored custom of bringing disputes to the barangay or tribal chief, or before some respected elder for amicable settlement of differences.

Today, that custom of seeking mediation of conflicts, survives not only among the remote rural population where the formal mode of dispute resolution is a "luxury" they can ill afford in both time and financial resources, but also in the small communities of the urban sector. This custom illustrates another form of social ordering that is availed of to stave off the destructive forces of conflict in human relationship.

Although exposure to western ideas changed the social structure of the country and diluted the kinship system, particularly in urban areas, in rural areas where community ties remained strong, informal conciliation under a "folk legal system" was resorted to as a matter of course. Hence, formal and informal legal systems co-existed in some parts of the country.

Alternative Dispute Resolution Procedures

Alternative Dispute Resolution or ADR is the collective name given to those processes of resolving disputes outside the formal court system. The recognition of conciliation, mediation and arbitration as various methods of resolving disputes without the necessity of court litigation has paved the way for the establishment and institutionalization of agencies which are mainly concerned with the creation and implementation of various ADR programs.

ADR methods principally consist of:

- mediation
- arbitration
- med/arb (mediation/arbitration)
- mini-trial
- private judging

¹⁰ Tadiar and Pe, op.cit., p.3

¹¹ See Court Referred Mediation: An Experiment in Alternative Dispute Resolution, U.P. Office of Legal Aid, 1993, p.2

- in-house mediation and
- fact-finding

These different methods may be explored at different stages of the intervention or for different aspects of the conflict. They need not be mutually exclusive of each other. Some modes may be used in combination with other methods sequentially.

The Concept of Mediation

Mediation is usually a private, voluntary and informal process where a party-selected neutral person assists disputants to reach a mutually acceptable agreement¹². The Katarungang Pambarangay Rule promulgated by the Secretary of Justice defines mediation as a mutually interchangeable term with conciliation "whereby disputants are persuaded by the Punong Barangay or Pangkat to amicably settle their disputes." A third party called the mediator brings the disputing parties together to promote amicable negotiations. He arranges private meetings with each disputant thereby gaining knowledge of the terms and proposals that the disputants could possibly settle or agree upon.

The mediator may also take on an active role in helping to resolve the problem. He may offer advice, suggestions and submit compromise proposals for acceptance by the parties in order to restore their marred relations. Such proposals however, shall not be considered binding without the acceptance by both parties.

Successful mediation ends with an amicable settlement in which both parties yield what is considered lesser in value in exchange for what is more valuable under the prevailing circumstances¹³. An agreement arising out of mediation does not go into the matter of determining which party is right or wrong but only states what the parties will do and when in order to solve the problem at hand¹⁴. The mediation proceedings are held in strict confidence. Information acquired during the mediation proceedings cannot be used in court and the mediator cannot be compelled to testify in court with regard to such information.

Although mediation in its strictest sense differs from conciliation, in practice these terms are interchangeably used and are usually considered synonymous. Conciliation and mediation as alternative modes of dispute resolution have no less than the Constitution as their legal basis. Article 13, Section 3 of the 1987 Constitution provides:

"The State shall promote ...the preferential use of voluntary modes of settling disputes including conciliation and shall ensure mutual compliance by the parties thereof in order to foster industrial peace."

¹² Paulson, Alternative Dispute Resolution: An ADR Primer.

¹³ Geronimo Quadra. The Administration, Adjudication and Enforcement of Labor Justice in the Philippines, p. 8 (1979).

¹⁴ Enclosed pamphlet, Council For The Non-Court Resolution of Disputes (Concord) Foundation, Inc.

A similar provision is embodied in the Declaration of Policy (Article 211 (a)) of the Labor Code, as amended.

The Concept of Arbitration

The Katarungang Pambarangay Implementing Rules defines arbitration as a "process of adjudication of disputes by which the parties agree to be bound by the decision of a tribunal person or body in place of a required organized tribunal." It is intended to avoid the formalities, the delay, the expense and the confusion, on the part of non-lawyers, that are inherent in ordinary litigation¹⁵.

The award of the arbitrator is considered to have the force and effect of a court judgment between the parties under the Katarungang Pambarangay Law. In the rules promulgated by the Construction Industry Arbitration Commission with regard to arbitration in the construction industry, no appeal may be made from an award or a decision handed down by the arbitrator except on questions of law which are appealable to the Supreme Court. The parties submit their respective evidence, positions and arguments to the arbitrator/s. These will then be the basis of the arbitrator's decision.

The arbitrator's role is considered passive compared to the mediator. He cannot make his own proposals and meet privately with the parties. His judgment must strictly be based upon the issues and evidence presented by the parties and ideally should be in keeping with their variant needs and desires. His authority emanates from the agreement of the parties to submit their dispute to arbitration¹⁶.

III. Civil Code Provisions on alternative dispute processing

The Civil Code, approved by Congress on 18 June 1949, included a new Title XIV containing two separate chapters - one on Compromises and another on Arbitration.

A. Compromises

Article 2028 defines a compromise as a contract that is made by making reciprocal concessions. A compromise, therefore, presupposes the existence of a conflict that may or may not have already reached the litigation stage. In the former case, a compromise is intended to prevent a litigation from arising. In the latter case, it is intended to put an end to litigation already commenced. Accordingly, compromises may be classified into two - extrajudicial or judicial.

In a pre-litigation extrajudicial compromise, where the party obliged thereunder fails or refuses to comply with the terms thereof, the aggrieved party has only one course of action -

¹⁵ Curtis-Castle Arbitration, 42 Am. St., Rep. 200 at Construction Arbitration Primer, p.1 (1993).
¹⁶ Quadra, loc. cit.

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judicial relief. He must file an action for breach of contract or an action based on the original source of obligation. An example is a compromise agreement concerning a vehicular accident injuring a pedestrian. Where the motor vehicle driver or operator reneges on the agreed upon compensation for injuries sustained, the complainant pedestrian has a choice of suing upon a breach of the compromise agreement as a contract or to sue upon the original quasi-delict.

For pending judicial cases, the court is mandated by Article 2029 "to persuade the litigants in civil cases to agree upon some fair compromise". For this purpose, judicial proceedings are suspended to afford the parties sufficient time to formulate the terms thereof. If the efforts to this end is successful, the compromise agreement is submitted to the court for approval. Judicial approval is necessary to ensure that what was agreed upon does not contravene the law, public policy or good customs. Upon approval, judgment upon a compromise is rendered which is immediately executory. It is not appealable (*De los Reyes v. De Ugarte, 75 Phil. 505*)

Like any contract, a compromise may be nullified for any cause that vitiates free and informed consent, namely, "mistake, fraud, violence, intimidation, undue influence or falsity of documents." Unless a compromise agreement is nullified for this reason, it is not appealable (*De los Reyes, supra*) but a decision refusing annulment may be appealed.

It is important to distinguish between process and product. A compromise agreement is the product of a process that may either be direct negotiation between the parties or a third party intervention by conciliation or mediation. This is impliedly recognized by Article 2029 which provides for the appointment of "amicable compounders" whose duties shall be provided for in the appropriate Rules of Court that the Supreme shall promulgate. It is unfortunate that the challenge has not been met as up to this date, almost half a century later, no such Rules of Court has been promulgated.

B. Arbitration

There are only five short articles on the subject in the similarly brief chapter on Arbitration. Two of them make the provisions on compromises equally applicable to arbitration. A third article recognizes as valid any stipulation that the arbitrator's award shall be final. A fourth one, however, invalidates any agreement giving one of the parties the power to choose more arbitrators than the other. This would be contrary to the principle of equal protection, as well as concepts of fairness and justice.

The last provision, Article 2046, again misplaced its reliance on the Supreme Court to promulgate such rules of court as may be necessary to govern the procedure for arbitration and the appointment of arbitrators. Again, as in the case of amiable compounders to facilitate the compromise of disputes and conflict, no such rules have been promulgated up to the present time.

Four years after enacting the Civil Code, and, perhaps frustrated by the inaction on the matter by the Supreme Court, Congress enacted Republic Act No.876, entitled AN ACT TO AUTHORIZE THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS,

TO BE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES AND OTHER PURPOSES.

C. The arbitration process under Republic Act No. 876

I. Routes to the Arbitration Process

There are two ways by which a dispute may be resolved through the process of arbitration.

A. *By contractual stipulation*

The *first* is where the parties to a contract, with the express exception of an employment contract,¹⁷ in anticipation of an honest or dishonest dispute that may arise therefrom, such as the valuation or appraisal of goods for future delivery, and being aware of the advantages of arbitration over formal litigation as a mode of resolving disputes, expressly stipulate in their contract that any dispute arising therefrom or any particular issue thereof, shall be resolved and settled by said mode.¹⁸ Such a contractual stipulation is now increasingly being made, particularly in the construction industry. The contractual stipulation shall provide that the dispute may be resolved by a single arbitrator to be agreed upon by both parties or by a panel of three (3) arbitrators. In the latter case, each party shall name one arbitrator and the two thus named must agree upon a third arbitrator.¹⁹ The stipulation may also provide a maximum period for the arbitration hearings to be completed, as well as the deadline for rendering an arbitration award. The parties may further agree to require a unanimous vote of all the arbitrators to the award or only a majority vote.²⁰

B. *By Submission Agreement*

The *second* route is when a dispute has already arisen between the parties but no formal suit has yet been commenced. It is supposed in this situation that the aggrieved party will propose and the other party will agree in writing, to submit their controversy for resolution through the arbitral mode. A good example of this route is that provided for under the *Katarungang Pambarangay Law* in the Local Government Code. At any time during the barangay conciliation proceedings, the parties may, upon the suggestion of the Punong Barangay or the Pangkat ng Tagapagkasundo, agree in writing to authorize any of said officials to resolve their conflict through arbitration. Said agreement to arbitrate must also contain an undertaking to be bound by the arbitration award that will be made by the authorized official. Said agreement and undertaking shall be signed by the parties and sworn to by them before any of said officials. It must be pointed out, however, that said undertaking and the requirement of an oath are not provided for by the Arbitration Law.

¹⁷ Section 3, RA 876.

¹⁸ Section 2, *ibid.*

¹⁹ Section 5, *ibid.* Cited in Marcos, 1981.

²⁰ Section 14, *ibid.* Cited in Marcos, 1981.

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in the arbitration law been commenced in court where the parties may desire to have their dispute be arbitrated. It is supposed that in this situation, the parties could move the court to suspend the judicial proceedings during the pendency of the arbitration process. In an experimental project undertaken by the Office of Legal Aid with the approval of the Supreme Court and assisted by The Asia Foundation, selected RTC and MTC Judges in the pilot sites persuaded the parties to a pending civil or criminal case, to submit their dispute to a trained mediator. Given the Constitutional policy to promote non-judicial settlement of disputes, perhaps the experiment could be extended to include the arbitral mode.

The second route to arbitration, i.e., by a submission agreement, is hardly utilized. Perhaps, this could be due to lack of awareness of the many advantages of this mode of dispute resolution, as well as the dearth of trained and respected arbitrators. Information dissemination and professionalization of arbitration having an updated schedule of professional fees rather than the straight P50.00 per day mandated since 1953, could do much to popularize this mode of dispute processing. This would greatly alleviate the pressing problem of perennially clogged court dockets.

2. Initiatory Proceedings for Arbitration

A. For contractually stipulated arbitration

Under the first route, i.e., by contractual stipulation, the aggrieved party must make a written demand upon the defaulting party to implement the arbitration agreement. If a single arbitrator was agreed upon, the demand should submit a list of names proposed with a request for the other party to select one from among them. As a practical measure, prior consent of those proposed to serve as arbitrator must have been earlier secured. If a panel of three arbitrators has been stipulated, the demand must name the arbitrator chosen by the aggrieved party and request the other party to name the second arbitrator within 15 days from receipt of said demand, and to promptly advise the first party of such selection. The two chosen arbitrators must then agree upon the third arbitrator within ten days from notice of their appointment.²¹

Stress must be made that an arbitrator named by each party to a panel of 3 arbitrators is not intended to act as the champion or advocate of the interests of the party who named him.²² The privilege of naming an arbitrator simply means that the party reposes trust in his integrity and impartiality.

Should the defaulting party ignore or refuse to comply with the demand of the aggrieved party to implement their arbitration agreement, the latter must file a petition for specific performance with the Regional Trial Court of proper venue to enforce said agreement. The complaining party has the choice of filing the petition either in the place of his own residence or that of the opposing party.²³ A true copy of the contract containing said

²¹ Section 5, id
²² Section 10, id
²³ Section 5 (b), in relation to Section 2 (b), Rule 5, Rules of Court

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stipulation for arbitration must be attached to the petition. The court shall summarily hear issues that may be raised by the defaulting party relating to causes that he may claim had vitiated his free and informed consent to the arbitration agreement.²⁴

Should the court decide to enforce the agreement to arbitrate, it shall proceed to appoint the arbitrator or arbitrators in any of the following situation: if the parties are unable to agree on the sole arbitrator or the two arbitrators named by the parties cannot agree on the third arbitrator, or the arbitrator chosen refuses to serve or declines the appointment.²⁵

On the other hand, if the aggrieved party should ignore the arbitration agreement by proceeding to sue the defaulting party directly in court, the latter may move to dismiss or suspend the civil action until an arbitration decision has been made.²⁶

B. For submission agreements

The second route, i.e., by submission agreement, can be availed of only if prior agreement of the parties to utilize this mode of dispute processing had been secured. This avenue could not be traveled without this "submission". The initiatory proceedings for arbitration discussed for contractually stipulated arbitration are equally applicable to this route.

3. Qualifications and Oath of Arbitrators

Since there is no existing list of qualified arbitrators, except those in the Construction Industry List of Arbitrators and the List of Accredited Voluntary Arbitrators for labor disputes, the choice of arbitrators under the arbitration law would generally be based on public reputation for probity and integrity.

The barest legal qualifications for arbitrator are required, namely, that he must be of legal age, in full enjoyment of his civil rights and able to read and write.²⁷ The grounds for judicial disqualification under Rule 137 of the Rules of Court, equally applies to arbitrators, namely, (1) relationship by blood or marriage within the sixth degree to either disputing party, or up to second cousins;²⁸ (2) financial, fiduciary or other interest in the subject matter of the controversy; or (3) personal bias that might prejudice the right to a fair and impartial award. The arbitrator is duty bound to make a disclosure of these disqualifying circumstances, if any exist. Despite such disclosure, however, the parties may agree in writing to waive the presumptive disqualification²⁹ presumably because of their strong faith in the arbitrator's integrity and capability to be impartial.

Any party may challenge the right of an arbitrator to act as such by reason of any of the foregoing disqualifications. If the challenged arbitrator refuse to yield, the issue may by

²⁴ Section 6, *ibid*

²⁵ Section 8, *ibid*

²⁶ Section 7, *ibid*

²⁷ Section 10, *ibid*

²⁸ Note that relationship to counsel is not prohibited under RA 876, unlike Rule 137 for judicial officers.

²⁹ Section 10 (a), *ibid*

shall be suspended until a decision is made on the issue of disqualification.³⁰

Before assuming his duties, the arbitrator shall take an oath to faithfully and fairly hear the matter in controversy and make a just award according to the best of his ability and understanding.³¹

4. The Arbitration Proceedings³²

It must be noted that the Arbitration Law, unlike the Judiciary Reorganization Act of 1980, does not provide for a definitive and fixed place for conducting arbitration proceedings. The sole arbitrator or the panel of arbitrators is/are thus accorded the advantage of freedom and flexibility to locate the session place as may be necessary or convenient to him/them, the parties or the witnesses. What is only required, in the interest of procedural due process, is an advance notice of the time and place for conducting the proceedings. Advance agreement of all concerned may, however, be secured for this purpose.

The Arbitration Law also does not expressly provide for a set order in the presentation of evidence, unlike court cases where the order of trial is set by the Rules of Court requiring the complaining party to present his evidence ahead of the party being complained against. Accordingly, a reverse order of evidence presentation may beneficially be required depending on the particular circumstances of each case.

A scheduled hearing may proceed despite the absence of one party who had been duly notified thereof and who had not timely moved for a deferment of hearing on that date. However, no arbitration award may be made solely by reason of such absence but only upon evidence properly adduced.

Since arbitration proceedings are designed to be non-technical where the evidentiary rules in judicial proceedings need not be followed, parties are not required to be assisted by counsel. Should a party so desire, however, he is required to notify the other party that he will be assisted by counsel at least five days before the hearing.³³

Stenographic notes of the proceedings may officially be taken only if the parties request it and undertakes to assume the cost thereof.³⁴

Like judicial trials, witnesses are required to be sworn to tell the truth and nothing but the truth. For this purpose, the law empowers the arbitrator to administer said oath to a witness before he is called upon to give his testimony.³⁵ In order to prevent collusion, other witnesses of the same proponent may be ordered excluded from the hearing while one is testifying.

³⁰ Section 11, *ibid*

³¹ Section 13, *ibid*

³² Section 12, *ibid*

³³ Section 12, par. 3, *ibid*.

³⁴ Section 12, par. 4, *ibid*.

³⁵ Section 13, *ibid*.

An opening statement may be made at the commencement of the hearing wherein each party may outline the issues and the evidence he will present to support his version or theory of the case. Ocular inspection of the premises may also be made by the arbitrator/s but only in the presence of the parties.³⁶

At the close of the hearings, and within 15 days therefrom, the parties may submit their briefs containing their respective arguments for an award in their favor. A reply brief may also be submitted. Thereafter, the arbitrator/s must render an award within 30 days from the date that the hearing was declared closed.

5. Judicial Confirmation of the Arbitration Award³⁷

If the party obliged voluntarily complies with the terms of the arbitration award, as he had committed to do either in the contractual stipulation for arbitration or in the submission agreement, the problem is terminated and nothing more remains to be done. However, if said party fails or refuses to comply with what the award obliges him to do, the problem of enforcement commences. Compulsion by the State is the only remedy since "self-help" devices are not allowed under our legal system.

Anticipating such failure or refusal, the party favored by the award would want to enlist the force of the State in the enforcement thereof in the event of such contingency. This is done by filing a "Motion to Confirm Award" in the Regional Trial Court where the prevailing party or the losing party resides, at the option of the former. Where an earlier petition for specific performance of an arbitration agreement had been filed, said court shall be the same one where the motion to confirm the award should be filed, as a continuing incident thereof. Said motion must be filed within one month after receipt of the arbitration award, giving notice thereof to the losing party who may oppose such confirmation by alleging that the award should instead be vacated to corruption, fraud, undue pressure to make the award, failure to disclose a ground for disqualification as an arbitrator, or other similar causes. Modification or disqualification as an arbitrator, or correction of an award may be made on grounds of evident mistake or miscalculation, or on a matter of form not affecting the matter decided.

The order confirming the award shall be docketed and entered as a court judgment. Accordingly, the same may be appealed but only on a question of law.

Upon finality of the order confirming the arbitration award, it may be enforced by a writ of execution in the same manner as any judicial decision under Rule 39 of the Rules of Court.

³⁶ Section 15, *ibid.*

³⁷ Sections 23, 26, & 28, *ibid.*

The process for settling disputes under the Arbitration Law is hardly resorted to. Many reasons could be ascribed to the apparent lack of popularity of this law.

Already mentioned is the absence of a professionalized organization of arbitrators whose integrity and capability have been certified to by an official body, such as the Construction Industry Arbitration Commission (CIAC) or the Philippine Association of Voluntary Arbitrators (PAVA). Such a body is necessary to provide the requisite training for competence in arbitration, to screen those accredited for good moral character and to assure the public of high ethical standards of conduct in the performance of arbitration functions.

Another reason is the outdated straight daily compensation of arbitrators still rigidly fixed to the 1953 rate of P50.00 per day. This is now so absurdly low, even lower than the current minimum wage of unskilled workers, that no self-respecting arbitrator would accept his appointment as said. A more attractive remuneration should be based on a flexible schedule of professional fees dependent upon the amount or value in controversy, as is currently being done in other arbitration cases.

A further reason for the unpopularity of this law relates to a structural defect, i.e., the unenforceability of the arbitration award that is made thereunder. The necessity of undergoing the cumbersome process of having the award judicially confirmed before it could be effectively enforced against a recalcitrant party, understandably leads to the conclusion of the inutility of the process. This conclusion has undoubtedly driven disputants away from said arbitration process. As a matter of fact, parties who submit to the jurisdiction of the Construction Industry Arbitration Commission expressly waive the provisions of this law and agree to be bound by the rules of procedure promulgated by that.

To induce disputants to resort to this otherwise beneficial law, amendatory legislation must be passed to address these basic flaws. Unless this is done, it will continue to remain a dead letter law.

IV. Existing Forms of Alternative Dispute Resolution

A. Katarungang Pambarangay Law (KPL)- The Rationale of Compulsory Conciliation³⁸

The promulgation by President Ferdinand E. Marcos on June 11, 1978 of Presidential Decree No. 1508, otherwise known as the Katarungang Pambarangay Law, which became effective on December 11, 1978, is a milestone in the history of the Philippines. As its title proclaims, it establishes a system of amicably settling disputes at the barangay level. Its motivation and aspirations are articulated in its preamble quoted below -

³⁸ Tadiar and Pe, op. cit., pp.3-6

the and of the time-honored tradition of settling disputes among family and barangay members at the barangay level without judicial recourse would promote the speedy administration of justice and implement the constitutional mandate to preserve and develop Filipino culture and to strengthen the family as a basic social institution;

Whereas, the indiscriminate filing of cases in the courts of justice contributes heavily and unjustifiably to the congestion of court dockets, thus causing a deterioration in the quality of justice;

Whereas, in order to help relieve the courts of such docket congestion and thereby enhance the quality of justice dispensed by the courts, it is deemed desirable to formally organize and institutionalize a system of amicably settling disputes at the barangay level."

PD 1508, therefore, does not claim to introduce in the Philippines the idea, practice or system of amicable settlement of disputes. It recognizes the historical fact that "amicably settling disputes among family and barangay members at the barangay level without judicial recourse" is a time-honored tradition in the Philippines and is at the root of Filipino culture. What it seeks to accomplish is "the perpetuation and official recognition" of this tradition and to formally organize and institutionalize a system," based on this tradition, "of amicably settling disputes at the barangay level."

The barangay system of conciliation is envisioned as a means of strengthening the family as a basic social institution. The amicable settlement of disputes among the members of the family at the barangay level is considered a means of promoting peace and unity among them.

A system of amicable settlement of disputes is expected to "promote the speedy administration of justice" and "enhance the quality of justice dispensed by the courts." The basic assumption of PD 1508 is that there exists a congestion of court dockets, that the indiscriminate filing of cases in the courts of justice contributes heavily and unjustifiably to this congestion, and that the consequence is "a deterioration in the quality of justice."

Indeed, the courts of the land cannot cope with the volume of cases indiscriminately filed by litigants. A case must, generally, take its place far down the long line of cases and wait a long time before it may be heard, studied and disposed of by the court, since those ahead of it in the line of cases should be attended to first. The court needs time to study, hear, and decide each case. Because more cases are filed than disposed of, or the input exceeds the output, the cases pending in our courts of justice keep piling up. The situation is similar to a traffic jam. There is an excess of vehicles on the road and there is a bottleneck ahead. The slowness in the movement of cases spells delay for each. And since the court must hurry up the disposition of cases to reduce delay, it is not able to give to each case the time necessary for it to produce a quality decision. Thus, the quality of justice suffers.

The institutionalization of the Katarungang Pambarangay system has helped ease up the problem of court dockets congestion. Minor disputes which would have otherwise unnecessarily reached the courts are intercepted and resolved by this system. A charted efficiency rate of the Katarungang Pambarangay for the period covering 1980 to 1994 shows an 89.3 percent average of settling disputes for the whole period which resulted to an estimated accumulated government savings of P3,647,719,700.00 for the same period. In fact, a line graph clearly shows very little discrepancy between the disputes settled and disputes filed as the former closely follows the rise and fall of the latter. The graph shows another line referring to disputes referred to court. Except for slight rises in the years 1987 and 1991 this line more or less consistently follows a relatively straight line indicating a consistently controlled and low percentage of unsettled cases.(see Annex VI, KPL Graphs)

The success of the Katarungang Pambarangay system can be attributed to a number of factors perceived as more advantageous than resorting to court litigation. These factors are : 1. the absence of lawyers; 2. non-expenditure of money; 3. speedy settlement; 4. familiarity with residents, public relations; 5. fair judgment; 6. respect for KP officials; 7. realization of hardship in court; 8. cooperation of KP officials; 9. accessibility; 10. flexible hearing schedule; 11. personal approach; 12. sincerity of KP officials; 13. "compadre system"; and the 14. use of the vernacular.

Absence of Lawyers and Non-expenditure. Foremost reasons given for the attributing effectiveness of the Katarungang Pambarangay are the absence of lawyers and non-expenditure of money. Although ostensibly different, they are in fact complementary, if not similar to each other. Absence of lawyers also means that there is no professional or attorney's fees to be paid. This is the single most expensive item incurred by a party in litigation.

Use of the Vernacular. Barangay conciliation, as an alternative to the judicial resolution of disputes, is intended to positively respond to the shortcomings of formal litigation. These are delay, high costs, inappropriateness of court proceedings for resolving petty or minor disputes and popular incomprehensibility of judicial process. The first two grievances against court proceedings have been responded to by speedier settlement and lack of costs in barangay conciliation.

The "use of the vernacular" responds to complaints of incomprehensibility of litigation which arise from the use of a foreign language and technical jargon. It relates to the need of parties to comprehend the proceedings by which their disputes are processed.

Personal Approach. "Personal approach" responds to the grievance of unsuitability of judicial trials where the parties are in effect prevented from personally airing their stories in their own words and manner. Doing away with a lawyer's intervention, enables the parties to do so. "Flexible hearing schedules" must also be correlated to still another shortcoming of judicial litigation. By holding trials only at the designated courtroom and at fixed hours of the day, the judicial process adds further costs to the litigants by subtracting from their own effective working time. Travel time to and from the court which is generally located at the centers of population and which are distant to the rural populace, still adds to the

afternoon or early evening in variable places easily accessible to the parties, positively responds to this particular grievance and thereby enhances effectively of the conciliation system.

It must be noted that the foregoing discussions are equally applicable to the new Katarungang Pambarangay Law now incorporated as Chapter 7 of the Local Government Law which expressly repeals P.D. 1508.

B. The National Conciliation and Mediation Board (NCMB)

The National Conciliation and Mediation Board (NCMB) was created by Executive Order No. 126 promulgated on January 30, 1987 as amended on July 25, 1987 by Executive Order No. 251 reorganizing the Department of Labor and Employment and its attached agencies. It seeks to implement the Constitutional mandate for the "...preferential use of voluntary modes of settling disputes including conciliation..."

The NCMB is tasked with the formulation of policies, the development of plans and programs and setting of standards and procedures relative to mediation of labor disputes, administration of the voluntary arbitration program, and the promotion of other cooperative, non-adversarial and voluntary modes of labor dispute settlement. It also facilitates the settlement of labor disputes through preventive mediation, conciliation and voluntary arbitration through its fourteen Regional Branches³⁹.

The Board, through its labor-management cooperation programs, also facilitates the setting up of functional mechanisms for information sharing, effective consultation and group problem-solving whereby labor and management can jointly and voluntarily discuss matters not covered by their collective agreements which task necessitates the rendition of advisory and counseling services on various aspects of labor-management relations⁴⁰. These various tasks assigned to the NCMB are effected through the different regional branches, departments and divisions by the administrator, deputy administrators, executive conciliators/mediators, and technical staff. (*See Organizational Chart, Annex VII*)

1. PLANS AND PROGRAMS

1.A. On Conciliation and Mediation

In its initial stage, the NCMB had for its objective the strengthening of the conciliation and mediation system. Consistent with the over-all objective of promoting a stable and harmonious relationships, efforts were directed towards adopting preventive approaches to labor disputes and at institutionalizing such preventive methods⁴¹. Conciliation as a process was also optimized and used as an opportunity to reach parties and help them adopt ways of achieving healthier labor-management relations.

³⁹ First Annual Report, National Conciliation and Mediation Board, p.5 (1988).

⁴⁰ Ibid.

⁴¹ Ibid., p.7.

Professionalization of the conciliation and mediation service through the improvement of the systems, procedures and techniques on conciliation and mediation in order to meet the needs of the clientele was also a major concern of the NCMB during its initial development stage.

I.B. On Labor-Management Cooperation

With regard to labor-management cooperation, the promotion and strengthening of such program through the development, promotion and facilitation of voluntary labor-management mechanisms which will provide joint information-sharing specifically on company decision-making processes through joint consultation, regular dialogues and group problem solving with the end view of improving relations was the initial goals and objectives sought to be attained by the Board⁴². In order to promote the acceptability of the joint mechanisms, a core of competent facilitators and educators was developed.

I.C. On Voluntary Arbitration

To promulgate the state policy of promoting the preferential use of voluntary modes of dispute settlement, the NCMB's five-year plan involved the generation of increased acceptability and utilization of voluntary arbitration in resolving labor-management disputes as against compulsory modes of settling such disputes through the establishment of clearer policies and a legal and procedural framework within which the program will operate⁴³. Competent, credible and professionally-trained arbitrators whose services are immediately accessible is to be maintained.

C. The Philippine Association on Voluntary Arbitration, Inc. (PAVA)⁴⁴

As a response to the unanimous Resolution passed by the First National Convention of Accredited Voluntary Arbitrators calling for the establishment of a strong national organization of volunteer arbitrators, the Philippines Association on Voluntary Arbitration, Inc. (PAVA) was created and duly registered with the Securities and Exchange Commission.

1. Organizational Structure

The Association is governed by a Board of Directors consisting of fifteen members. They elect the President, an Executive Vice-President, three Vice-Presidents representing Luzon, Visayas and Mindanao, a Secretary, a Treasurer, an Auditor, and a Public Relations Officer as executive officers. An Executive Committee composed of the President, Executive Vice-President and three members chosen by the president from among the Board, manage the internal affairs between Board meetings.

⁴² Ibid., p.9.

⁴³ Ibid., p.11.

⁴⁴ See PAVA pamphlet.

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President, Executive Vice-President and three members from among the Board Members and
to be chosen by the President.

2. Membership

Membership to PAVA is open to persons of good moral character and noted for impartiality, probity and honesty. Applications for membership may be filed with the Manila and Regional Offices of the PAVA, the NCMB, DOLE, or any of its Regional Branches. Membership to PAVA are categorized into three:

1. Charter Members - accredited voluntary arbitrators who attended the First National Convention of Accredited Voluntary Arbitrators
2. Regular Members - accredited voluntary arbitrators who are subsequently admitted under PAVA By-laws
3. Sustaining Members - composed of industrial establishments and institutions who believing the value of, and support voluntary arbitration as a preferred mode of dispute settlement

3. Objectives

PAVA was created with the following as its objectives⁴⁵:

1. To promote voluntary arbitration as the preferred mode of dispute settlement in the country;
2. To institutionalize and professionalize voluntary arbitration in the Philippines;
3. To undertake a continuing program for training and development of voluntary arbitrators and for the study and understanding of the voluntary arbitration system;
4. To develop among its members high ideals of ethical conduct, competence, civic consciousness, and social responsibility;
5. To cultivate linkages with different sectors of society; and
6. To undertake other programs and activities consistent with the above.

In order to realize the above-quoted objectives, PAVA dialogues with major organizations, groups, trade unions, employees' confederations, legal and management and personnel managers regarding the promotion of arbitration information and advocacy activities with the assistance of the National Conciliation and Mediation Board.

PAVA likewise advocates the adoption of peaceful means of settling industrial disputes and as such cooperates, supports and assists other organizations veered towards the same goal.

⁴⁵ Directly quoted from the PAVA pamphlet.

A of task is the and of programs for the orientation of would-be arbitrators as well as post-accreditation programs aimed at upgrading and updating arbitrators on recent developments in law and jurisprudence on labor law and labor relations. In undertaking an annual convention of accredited voluntary arbitrators, PAVA coordinates with the NCMB and Department of Labor and Employment.

D. Voluntary Arbitration in Labor

1. Historical background of labor dispute processing

During the 1935 Philippine Commonwealth, relations between workers and employers was governed by compulsory arbitration. The Court of Industrial Relations was established in 1936 under Commonwealth Act No. 103 with an institutionalized authority "to consider, investigate, decide, and settle all questions, matters, controversies on disputes arising or affecting employers and employees or laborers." The right of workers to form labor organizations and unions and to collective bargaining was also established through Commonwealth Act. No. 213. Thus, from 1936 to 1953, labor and industrial relations policy was dominated by the system of compulsory arbitration until the enactment of the Industrial Peace Act or RA 875 also known as the Magna Carta of Labor.⁴⁶ Under this law, the CIR had delineated powers and jurisdiction. The promulgation of P.D. 21 which established the Adhoc National Labor Relations Commission and, thereafter, the amended Labor Code which institutionalized such Commission under Art. 213, dissolved the Court of Industrial Relations and substituted the NLRC as the venue for hearing labor disputes.

The adjudication of labor and industrial relations disputes has undergone salient changes since the promulgation of P.D. 442 otherwise known as the Labor Code of the Philippines. Among such changes are the amalgamation of mandatory voluntary arbitration and compulsory arbitration as a system of settlement of disputes arising between workers and employers.⁴⁷ Thus, in disputes arising from labor relations, there are three established mechanisms of resolution namely the mandatory voluntary arbitration, the mandatory grievance proceedings embodied in collective bargaining agreements⁴⁸ and conciliation and mediation⁴⁹ expressly provided for in Book V of the Labor Code. The enforcement and administration of these systems are within the authority of the Labor Relations Divisions of the Regional Offices of the Department of Labor, the Bureau of Labor Relations and the National Labor Relations Commission.

2. Voluntary Arbitration of Labor-Management Disputes

On 21 March 1989, R.A. 6715 became effective. One principal purpose of said law, as expressly stated in its title is to "promote the preferential use of voluntary modes of settling

⁴⁶ Geronimo, Quadra, *The Administration, Adjudication and Enforcement of Labor Justice in the Philippines*, p.3, (1979).

⁴⁷ *Ibid.*, p.1.

⁴⁸ Art. 261-262, Labor Code.

⁴⁹ Art. 226, Labor Code.

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said law makes plain that the legislators utilized as a model for drafting its provisions, The Arbitration Law (R.A. 876) that was earlier discussed. This conclusion is inescapable given that the later law follows the general contours of the earlier one.

3. Routes to voluntary labor arbitration

The to availment of voluntary arbitration as the mode of processing labor disputes may, as in The Arbitration Law, also be either through contractual stipulation *in advance* of the dispute or through a submission agreement *after* the dispute has commenced.

The *first* route makes several assumptions before it can be traveled, namely, (1) that the work force of an industrial or commercial establishment has been duly organized into a labor union that management recognizes and deals with; (2) that labor and management has entered into a collective bargaining agreement (CBA) to govern their working relationship; and (3) that the CBA includes a provision stipulating that disputes arising from the interpretation and application of its provisions and those arising from the interpretation and enforcement of company personnel policies shall be processed and settled by voluntary arbitration.⁵⁰

The CBA provision on voluntary arbitration may already name therein the particular individual voluntary arbitrator or panel of voluntary arbitrators that will process the dispute if and when it arises. However, instead of pre-selecting individual arbitrators, the parties may simply provide in their CBA the specific procedure for selecting the arbitrators after the dispute has already arisen. In this later situation, the law urges the selection to be made from the list of voluntary arbitrators duly accredited by the National Conciliation and Mediation Board (NCMB) established under Executive Order Number 126.⁵¹

The *second* route to voluntary arbitration in labor disputes is through a submission agreement signed by both parties. This route assumes the absence of a CBA provision on voluntary arbitration. Said submission document must specify the particular dispute or issue being submitted for resolution and the name of the arbitrator or names of the panel of arbitrators who will resolve said dispute/issue. Further, said submission must contain an undertaking by the parties to abide by the arbitration award that shall be made of the submitted dispute.⁵²

A *third* route is by referral of the dispute for voluntary arbitration by the National Labor Relations Commission (NLRC) and its Regional Branches, or the Regional Directors of the Department of Labor and Employment (DOLE) or with the National Conciliation and Mediation Board (NCMB) and its branches, with any of whom the dispute within the original and exclusive jurisdiction of voluntary arbitrators had earlier been erroneously filed.⁵³ This

⁵⁰ Article 260, R.A. 6715

⁵¹ Paragraph 3, Article 260, *ibid.*

⁵² Section 4, Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings.

⁵³ Last paragraph, Section 1, Rule IV, Procedural Guidelines

referral mode is also expressly recognized by Article 217 which mandates the Labor Arbiter to make said referral in the same situation.

4. Jurisdiction of voluntary arbitration

Section 1, Rule IV of the Procedural Guidelines in relation to Article 261 of R.A. 6715 spells out the exclusive original jurisdiction of voluntary arbitrators as follows:

- "1) All unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement after exhaustion of the grievance procedure."
- "2) All unresolved grievances arising from the implementation or enforcement of company personnel policies."

Section 2 of the same rule construes Article 262 as conferring upon voluntary arbitrators "concurrent jurisdiction" of all other labor disputes, including unfair labor practice and bargaining deadlocks" where the parties so agree at any time "before or at the stage of the compulsory arbitration process."

5. Comments on the system of voluntary arbitration

Judicial experience has shown that so much trouble and the consequent wastage of judicial time had been caused by the provision on concurrent jurisdiction between various courts in the judicial hierarchy, particularly between the Municipal Trial Courts and the Regional Trial Courts. It is for this reason that B.P. 129 reorganizing the judicial system abolished the concurrent jurisdiction of courts.

Apparently, the foregoing lesson from the judicial experience was not learned in the case of voluntary arbitration. Thus, the Labor Arbiters have criticized what they claim as the illegal encroachment by voluntary arbitrators into their exclusive jurisdiction particularly over illegal termination cases, including disputes involving wages, rates of pay, hours of work and other terms and conditions of employment. On the other hand, the voluntary arbitrator claims that such dispute arising from the employment relation necessarily involve interpretation and application of company personnel policies, including its disciplinary rules. Illegal termination cases, therefore, fall within the exclusive jurisdiction of voluntary arbitrators. Thus, a survey of cases decided by voluntary arbitration shows decisions or awards that have been made in termination of employment cases.

This tug-of-war over jurisdiction between the voluntary arbitrator and the labor arbiter has a hidden agenda - namely, a movement to abolish compulsory arbitration of labor disputes. Justification for this movement is the claimed widespread reputation of the labor arbiters for rampant graft and corruption. Anecdotal evidence of labor practitioners abound detailing personal experiences of such blatant corruption. It is claimed that since the corruption has become endemic, there is no other remedy than to excise the whole institution itself.

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A review of published materials on voluntary arbitration would indicate that the system, under the able leadership of the National Conciliation and Mediation Board (NCMB) and the Philippines Association of Voluntary Arbitrators (PAVA), has sufficiently developed to give assurance that it could competently take over the settlement of all labor disputes. A plan for the professional development of accredited voluntary arbitrators has been formulated. Detailed sections on the job description of an arbitrator, his ideal competencies, performance standards for evaluation of his work, the system of accreditation to assure professional competence and moral integrity, incentive schemes toward greater efficiency in work, and a training program for basic courses up to specialized courses have been formulated and presumably are now in place. A Code of Professional Responsibility for Accredited Voluntary Arbitrators of Labor-Management Disputes has already been adopted.

The only remaining obstacle to more widespread use of voluntary arbitration would seem to be the cost and expense of the system. The arbitration would seem to be the cost and expense of the system. The professional fees for the voluntary arbitrator is beyond the reach of the worker. If indeed the phase-out of the Labor Arbiter will be realized, the savings from their salaries could be utilized to pay the arbitrators' fees.

E. Commercial Arbitration

Modern advances in transportation and communication makes interaction among people more frequent. This is especially true in the business world where complex business transactions, domestic or international, are entered into by the parties. With such complex interaction, conflicts or disputes inevitably arise. And since commercial disputes, to the businessman, would mean a probability of profit loss because of the halting of business or reconsideration of otherwise closed business deals, businessmen are therefore inclined to a more expeditious, effective and less expensive way of resolving these disputes rather than going through the courts of justice with the concomitant delays and expenses incident to judicial proceedings.⁵⁴

Arbitration as a vehicle for the settlement of commercial disputes is slowly gaining acceptance. Businessmen would, as much as possible, like to have their disputes resolved quickly, with little legal formality and privately by experts in their trade. And lately, the heavy preponderance of appointments to the judiciary of those who had not had experience or practice in commercial law leads to a position where commercial disputes have to be resolved not merely by lawyers as distinct from experts in the trade but also by lawyers with little commercial experience.⁵⁵ The key factors of speed and efficiency and freedom from cumbersome and time-wasting procedures make commercial arbitration more preferable to businessmen than formal court litigation.

Proof of the tremendous interest in arbitration as a means of resolving commercial disputes is the various international agreements pertaining to rules, procedures, and

⁵⁴ Mariano Marcos, "Concept, Legal Basis and Scope of Commercial Arbitration", Commercial Arbitration, p.1, (1981).

⁵⁵ Ibid.

enforcement of arbitral awards. The International Chamber of Commerce, among other trade organizations, had been and is actively promoting resort to arbitration to resolve commercial disputes.⁵⁶

"Commercial arbitration" in its broadest connotation, is a process for hearing and resolving controversies of economic consequences arising between the parties; it starts with and is dependent upon an agreement of the parties to submit their claims to one or more persons chosen by them to act as their arbitrators - a judge of their own choice.⁵⁷ It is thus a mode, a vehicle, a method of settling commercial disputes in which the parties create their own forum, pick their own judges, waive all but limited right of review and appeal, dispense with the rules of evidence, and leave the issues to be determined in accordance with the sense of justice and equity they believe their self-chosen judges possess.⁵⁸

For businessmen and merchants commercial arbitration has proved to be more advantageous than court litigation. Some advantages in referring their disputes to arbitration rather than filing an action in courts are :⁵⁹

(a) The arbitrators are familiar with the technical matters which may be involved in the commercial dispute because most of them come from the same field and therefore have the necessary knowledge and experience with regard to the customs and practices of the trade;

(b) The dispute is resolved more speedily when submitted to arbitration rather than resorting to court litigation because the arbitrators are not bound by the strict rules and process of the courts;

(c) Arbitration costs are much less than litigation costs;

(d) Trade contracts between the parties are usually restored or maintained in arbitration;

(e) Arbitration is private;

(f) The arbitration proceedings are not bound by the strict rules of evidence and is therefore flexible, the finality of the award is assured;

(g) Arbitration is impartial;

(h) The arbitration may be set at any reasonable time convenient to both parties;

⁵⁶ Ibid., p.2.

⁵⁷ Sturgis, *Arbitration - What is it?*, 35 N.Y.U.L. REV. 1031 (1960); Ambion, B., *Commercial Arbitration Facilities and Procedure*, 3 PHIL. INT'L. L.J. 8 (1964).

⁵⁸ *Re Spectrum Fabrics Corp.*, 139 N.Y.S. 2d 612, aff'd 309 N.Y. 709, 128 N.E. 2d 35 (Statute).

⁵⁹ *Marcos*, op. cit., pp.8-9.

(l) Parties have a sense of autonomy and control because the dispute is resolved by persons in the same field or trade.

However, when the dispute involves difficult or intricate questions of law, it may be more advisable for the parties to institute an action in the courts rather than go into arbitration because arbitration is designed mainly to resolve disputes based on differences of opinion on the issues of fact.⁶⁰

F. Construction Industry Arbitration⁶¹

The Construction Industry Arbitration may be considered an offshoot of commercial arbitration. Because the construction industry is one of the main providers of employment to a large segment of the labor force and a leading contributor to the country's gross national product, it is essential that its operation should not be hampered by problems arising from contractual claims and delays and losses incurred in the implementation of construction projects because of unsettled disputes.

It is precisely to meet this problem that the Philippine Domestic Construction Board (PDCB), an implementing arm of the Construction Industry Authority (CIAP) was established under Presidential Decree No. 1746. The PDCB is authorized to "adjudicate and settle claims and disputes in the implementation of public construction contracts" and "to formulate and recommend rules and procedures for the adjudication and settlement of claims and disputes in the implementation of contracts in private construction."⁶²

To provide the industry with the necessary facilities for the speedy and equitable settlement of disputes arising from or connected with construction contracts in the country, the PDCB found the need to create the Construction Industry Arbitration Commission (CIAC) under Executive Order No. 1008.⁶³ Among its functions are to create awareness of construction arbitration as a mode for dispute settlement, to formulate rules and criteria for accreditation of arbitrators and to draw up rules of procedure governing construction arbitration as well as the simplified rules for mediation and conciliation⁶⁴. Aside from its main function of dispute settlement, the Commission is also actively involved in the formulation of fair standard general conditions of contract for public and private construction and in the drafting of a fair contracts law for the industry.⁶⁵

Arbitration in the construction industry is a more reasonable alternative to judicial litigation due to a number of factors⁶⁶. These are :

⁶⁰ Ibid.

⁶¹ Construction Industry Information Bulletin, July-Sept., 1994.

⁶² Sections 6b(3) and 6b(5) of PD 1746

⁶³ Primer, Construction Arbitration, p.1, (1993).

⁶⁴ Op.Cit., January-March, 1994.

⁶⁵ Ibid.

⁶⁶ These enumerated factors are quoted directly from the CIAC Primer, *ibid.*

1. Arbitrators have technical expertise

Since disputes in the construction industry involve technical matters, the arbitrator (s) with the requisite technical knowledge can settle disputes as efficiently and equitably as possible.

2. Parties choose the arbitrators

Since the parties are given the opportunity to choose the arbitrator (s) , they can designate those whom they deem to be qualified to conduct the proceeding.

3. Parties choose the terms of reference

Parties to a contract may specify the scope or nature of the dispute. They can choose from either broad or limited arbitration and stipulate the terms under which the proceedings shall be conducted.

4. Proceedings are simple, faster and less expensive

Disputes can be resolved through arbitration much faster, simpler and less expensive than it would take if the parties resort to court action.

Being contractual in nature, arbitration permits the parties to specify the time and place for hearings. No special form is required in presenting a demand for arbitration or in responding thereto. The workload of the courts correspondingly decreases.

5. Proceedings are confidential

Arbitration is held in private. Pleadings are confidential except to the parties themselves. Awards are unpublished.

6. Arbitrator's decision is final

The arbitrator or arbitral tribunal is vested with the authority to decide, and such decision is binding on the parties. No appeal may be made from an award or a decision handed down by the arbitrator except on questions of law which are appealable to the Supreme Court.

7. A single forum may be convened for all the parties

One attractive feature of arbitration is the possibility of bringing together in one proceeding all the parties that may be involved.

8. Choice of counsel is not limited to lawyers

License to practice law is not required for counsel to appear before an arbitrator or arbitral tribunal. The parties, consequently, are not limited in the range of choice of who should represent them in arbitration.

9. Work on a contract may continue as arbitration proceeds

Since some construction projects cover large expenses and employ many people, it is often important to add in the contract a provision that work shall continue while arbitration proceeds. Such stipulation may not be effective when the parties resort to regular court hearings.

10. Arbitration preserves friendly relations

Arbitration proceedings are less formal, less adversarial and more speedy than court proceedings, thus helping to preserve a friendly relationship between disputants.

The statistical report of the CIAC for the period covering January 1989 to September 15, 1994 shows that of the total number of 59 cases filed, 30 contractual disputes were resolved or settled (11 cases pertaining to government contracts and 19 arising from private construction projects) the total sum in dispute amounting to P 225, 053, 453. 91. Fourteen cases were dismissed and three were withdrawn. There are at present twelve pending cases (five involving public construction and seven pertaining to private construction projects) with a total sum in dispute of P 861, 660, 520.05. (*see Annex VIII, CIAC Statistics*)

V. Sample of Successful ADR Case

A. Construction Industry Arbitration Commission Case No. 10-91⁶⁷

CASE PROFILE

Nature : Government contract
 Type : Contractor v. Owner
 Mode of Arbitration : Arbitral Tribunal
 Sum in Dispute : P6,199,416.35
 Time from Filing to Award : 1 year, 1 month, 21 days
 Gross Award : P2,422,990.24
 Net Award : P2,422,990.24

BRIEF BACKGROUND :

On 5 October 1988, Owner (O) bidded out the contract for the apron scouring protection works of its spillway project (the "Project").

⁶⁷Op.Cit., July-Sept., 1994 pp. 3-6.

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Contractor (C) won the bidding. On 18 May, 1989, the contract was signed and works started. On 30 September 1991, O accepted the Project as substantially complete. On 10 July 1992, C filed with CIAC 14 claims against O as follows:

- a) Claim Nos. 1,2,4,5,7,9,& 12 for damages arising from force majeure and rainy weather. C claims that the Project was extraordinary as the work was located at the foot of the spillway and, on three occasions, water spilled and caused damages to its work. Further, C claims that since the contract award and project commencement was only on 18 May 1989, the work was affected by the rainy season, typhoons, earthquakes, slides and acute shortage of cement. O argues that these events are foreseeable and the costs arising therefrom should have been taken into account by C in making his bid. That, if at all, C is entitled to time extension only;
- b) Claim No. 3 for labor and equipment standby overhead during non-operation due to acute shortage of cement;
- c) Claim No. 6 for extra premium payments on bonds due to time extension;
- d) Claim No. 8 for reimbursement of the purchase cost of Bentonite since, even if it was not used by O, its purchase was made pursuant to the Specifications;
- e) Claim No. 10 for differential from an erroneous computation of recoupment of the advance payment;
- f) Claim No. 11 for the cost of excessive cement usage as directed in the design mix of O;
- g) Claim No 13 for unrealized profit on expected work accomplishment; and
- h) Claim No. 14 for payments of differential and of escalation of estimates on the increase of unit prices and interest on late payment as a result of the late approval of the updating in unit prices.

O contends that C's claims arising from natural calamities are part of its risks and that the rest of C's claims are incidental to the performance of its obligations under the contract.

SUMMARY OF AWARD

1ST ISSUE : Whether C is entitled to damages arising from force majeure and rainy weather (Claims Nos. 1,2,3,4,5,7,9, and 12).

FINDINGS : No.

REASONS :

1. The contract provides that the only relief to which C is entitled on account of the occurrence of natural disasters is an extension of the contract time to complete the project. All expenses, damages and costs incurred on account of natural calamities, therefore, are for the exclusive account of C.

2. The risks attendant to natural calamities are foreseeable. Thus, the costs arising from their occurrence are deemed to have been taken into account by C in making his bid. It is for this reason that the bid documents required the bidder "to have knowledge of all conditions, local or otherwise, affecting the carrying out of the work" and "failure to do so shall be at the prospective bidder's risk.

3. Industry practice supports the above reasons.

2ND ISSUE : Whether C is entitled to labor and equipment standby overhead during the non-operation due to acute shortage of cement (Claim No. 3)

FINDINGS : C is entitled to only 1/2 of the amount found justifiable by the Tribunal (P412,271) from its recomputation of C's claim of P1,287,985.64.

REASONS:

1. If materials like cement are not available in the market through no fault of C but because of market forces and delayed intervention of the Government, the C is justified in claiming for the costs of maintaining a skeletal work force and equipment standby costs during non-operation due to such shortage of materials.

2. The Tribunal recomputed Claim No. 3 resulting in a scaled-down justified claim of P412,271 due to the following:

a. Only 28 days can be considered as affected by the lack of cement (dated of pouring excluded since clearly, cement was available on those days)

b. Since C could not have maintained a full labor force knowing that no work could be done due to lack of cement, the award for the item was limited to the costs of a skeletal force based on C's average payroll during the construction period.

3. Only half of the justified claim computed by the Tribunal is awarded to C because O extended assistance to C during that period and granted time extension to complete the Project.

3RD ISSUE : Whether C is entitled to extra premium payments on bonds due to time extension (Claim No. 6)

FINDINGS : Yes.

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REASONS :

1. Since work was suspended by O, it became necessary for C to extend correspondingly the coverage of its Performance and Surety Bonds resulting in an increase of premiums.

2. The extension of the Performance and Surety Bonds correspond to the approved time extensions covering the suspension of work. Besides, O is the direct beneficiary of the extension of the bonds because these guaranteed work completion and making good any or all works under the contract.

4TH ISSUE : Whether C is entitled to reimbursement of the purchase cost of Bentonite, even if the same was not utilized by O (Claim No. 8)

FINDINGS : C is entitled to 1/2 of the amount claimed.

REASONS :

1. Bentonite material was needed in the grouting operations which C was contracted to do. It was also a pay item in the Bill of Quantities. It is mixed with the grout used in pressure grouting to fill the fissures inside the rock foundation of the spillway and has to be available at the site as required and directed by O. Hence, C had it stocked at the site.

2. Only 1/2 of the required volume should have been stocked, however, since the material is available in the local market in Manila.

5TH ISSUE : Whether C is entitled to price escalation differential due to alleged errors in recoupment computation by O (Claim No. 10)

FINDINGS : No.

REASONS :

1. O was correct in using the Gross Amount of Work Accomplished, instead of the Gross Amount of Advance Payment, as the divisor in computing the recoupment of the advance payment which is to be deducted from the amount due for escalation.

2. Such is the correct computation under Cl. 11 (par.10) of the Implementing Rules and Regulations of Presidential Decree No. 1594 (IRR of PD 1594) which provides that "no price escalation shall be made for that portion of work accomplished during the period corresponding to the amount of recoupment."

6TH ISSUE : Whether C is entitled to the cost of the excessive cement used as directed in the design mix of O (Claim No. 11)

FINDINGS : No.

REASONS :

1. The use of 7.8 and 9.0 bags per cubic meter for 3,000 psi design mix is not excessive. In the American Cement Institute (ACI) Code, it is normal to add a "coefficient of variation" of 10 to 15% and use 320 kg. of cement (8 bags of 40 kg) per cubic meter for designing a 3,000 psi concrete mix especially for volumetric mixing of concrete where control is poor.

2. Industry practice does not allow the contractor to be reimbursed for cost of the cement if the compressive strength obtained go beyond the design because he is expected to test the given mix himself to ensure that he produces concrete that meets the required strengths.

3. If the strength obtained from C's samples were beyond the 3,000 psi strength requirement, it was because the tests were done beyond 28 days. Test results for cement "aged" beyond 28 days normally yield strengths of 3,000 psi to 4,000 psi.

7TH ISSUE : Whether C is entitled to unrealized profit on expected work accomplishment (Claim No. 13)

FINDINGS : C is entitled to P19, 723.26 of its claim of P131,404.84.

REASONS :

1. O approved the additional works to be undertaken by C. O's takeover of these work items deprived C of the profit it would have realized if it was allowed to undertake such.

2. O's argument that the work accomplished by C was already more than 100% of the original contract when these additional works were approved is irrelevant because in works of this nature, the quantities in the Bid Schedule are just estimates and the actual usually exceeds the estimated quantities, hence, it is normal for the original contract amount to be exceeded.

3. C's claims for 15% unrealized profit is valid only for the two items of work approved and taken over by O.

8TH ISSUE : Whether C is entitled to payment of differential, escalation of estimates (billings) on the increase of unit prices, and interest on late payment as a result of the late approval of the updating in unit prices (Claim No. 14)

FINDINGS : C is entitled to its full claim of P2.058 M for differential due to increase in unit prices; P33, 213.32 of its P3.7M claim for escalation of estimates; and P1.9M claim for interest.

REASONS :

1. Section 12.1 (par 5) of the IRR of PD 1594 provides: "For on-going contracts and contracts bid out but yet unawarded as of 31 December 1990, the unit prices for the remaining balance of work based on the approved/revised construction schedule, including any time extension granted, shall be updated using the current parametric formula to January 1991 prices with the original unit prices multiplied by the fluctuation factors without the 5% deduction. Such updated unit prices as of January 1991." The intent of the law is to update the unit prices of the remaining balance of work as of 31 December 1990 and to grant price escalation after 1 January 1991. Since C's claim for differential pertains to work accomplished during the period 12 February 1991 to 22 July 1992, it is entitled to the difference between the updated unit prices as of 1 January 1991 and the original unit prices.

2. Escalation was also granted for two of C's billings which were subjected to escalation during the period 12 February 1991 to 22 July 1992.

3. On the basis of evidence submitted by C on loans it incurred pending the updating of unit prices, interest was also granted at the legal rate of 6% provided for under Article 2209 of the Civil Code and reckoned from the filing by C of this claim with CIAC to the date of award.

CASE STATUS

Neither party appealed. Parties complied with the award after the issuance of a Writ of Execution.⁶⁸

VI. Problems with/Obstacles to the Widespread Application of ADR

Given the popular dissatisfaction with the court justice system, the search for alternative modes to dispute resolution is fast gaining momentum and acceptance as one of the possible solutions to the problems with the system of court adjudication of disputes. However, such attraction and acceptance is not without its counterpart oppositions and apprehensions.

⁶⁸ Ibid.

A. Creation of a Two-Tier Justice System

One such apprehension is the creation of a two-tier system of justice.⁶⁹ Alternative dispute resolution modes are either court-annexed, like the KPL and voluntary arbitration in labor, or privately-administered by special agencies particularly in commercial arbitration. It is feared that ADR may impair equal access to justice. This apprehension is premised on the assumption that privately-administered ADR charge higher fees and thus open only to those who have the resources.

However, this problem has been foreseen by proponents of ADR. To resolve this problem, arbitration fees substantially less than what one would spend in court litigation expenses has been agreed upon and it is such less expenditure which has given ADR popular attraction and acceptance.

B. Competence of Individuals

As regards court-annexed ADR, the apprehension has to do with the limitations on the quality of justice in such ADR programs. With limited funding, the concern for a second-class justice may be legitimate because it would be hard to employ competent individuals as arbitrators. The programs may utilize volunteers who do not have the competence, basic legal information and experience.

Again, this problem has been solved by providing a skills training program for would-be arbitrators. All ADR programs come with a special training skills program to ensure that arbitrators have the necessary competence. Also, the parties who agree to submit their case to arbitration are free to choose their own "judge". Thus, the parties are free to review the arbitrator's profile and may refuse an arbitrator whom they deem to be lacking in competence. This also solves the problem of a possible inherent bias and suspicion of prejudice and arbitrariness or abuse of the arbitrator.

C. Cost

ADR inevitably requires some amount of expenditure for implementation but its cost would definitely be comparatively less than the cost of formal dispute settlements. In the Katarungang Pambarangay for example, expenses come in the form of training for the would-be *lupon ng tagapagpayapa*. However, their future services are voluntary. Their compensations come in the form of public recognition usually given by higher government offices or public service groups such as the Rotary Club or the Lions Club. Most of the *lupon* members cherish these awards more as they consider these prestigious and fulfilling. While costs involving construction industry arbitration may have little difference with that involving the formal justice system, it is important to note the speed with which the cases are conducted and settled thus incurring minimal losses on the parties.

⁶⁹ Leonard Ring, Esq., Private Dispute Resolution --What's Wrong With It?, p.1.

D. Privacy

Another opposition to ADR is with regard to the privacy of the process. The primary function of the courts to interpret and give force to social values embodied in laws, statutes and the Constitution is said to be lost in ADR.⁷⁰ "The absence of public proceedings, binding rule making, and articulated findings would be a loss which all those who are concerned about these issues would share." Disputes would be resolved privately and the outcome of the arbitration would be confidential. Thus, possible court reforms which may be gathered from the decision will not be addressed, leaving the judicial system without the impetus and the ability to engage in effective reform.⁷¹

Also, it is said that some disputes belong to the public domain and that the result of arbitration proceedings may have a bearing on or will affect the public's general health, welfare and civil rights. The diversion from the public justice system could frustrate the development, determination and articulation of public rights and values which are viewed as central to formal adjudication.⁷²

However, not all disputes or cases may be submitted for arbitration. ADR programs meet this problem by providing specific instances when the parties may submit their case for arbitration. Each alternative dispute resolution mechanism cites the specific cases or instances under which arbitration may be called. Thus, there is a system of qualification and ADR programs do not admit cases which are deemed to be within the scope of the formal courts' jurisdiction.

Thus, the apprehensions against ADR may be legitimate but the system is not left without the means to solve or eliminate these apprehensions. The solutions to these problems will lie within the system itself. The effectivity of an alternative dispute resolution mechanism is dependent on its accessibility and the promptness in reaching a resolution which presuppose a degree of foresight with regard to apprehensions and possible problems that may be encountered in its implementation.

E. Ignorance of ADR

Alternative dispute resolution has been suffering anonymity since its birth which has hampered its widespread application. In the construction industry for example, most parties enter into a contract without stipulating a clause that would submit both parties to arbitration in an event where disputes should arise. This may be attributed to the fact that very few companies are aware of the existence of the Construction Industry Arbitration Commission which may be considered as a "super highway" in settling disputes based on its track record since it opened in 1989.

Dissatisfaction with the court system of adjudication of disputes has reached a high level and this is proven by the fact that alternatives to court adjudication are continuously

⁷⁰ Michele G. Herman, "The Dangers of ADR: A Three-Tiered System of Justice", Private Dispute Resolution Systems: Advancing Justice or Hindering It?, American Bar Association 1989 Annual Meeting, P.3, (1989).

⁷¹ Ring, p.2

⁷² Herman, *ibid.*

being explored and experimented with. Litigation can be and has been effectively capsulized when necessary. Thus, mechanisms designed to get disputes expeditiously resolved outside the normal court system at vastly reduced cost has gained ground as alternatives to the court justice system.

VII. Recommendations

Given the foregoing situation, the constant migration from the rural to the urban areas, constant changes and additions to existing laws, the urbanization of people and societies which give rise to disputes and the problems that have ubiquitously accompanied the legal procedures to resolve these disputes, it is very much doubtful that the courts, with their record performance, could possibly cope much less, solve the ever increasing docket congestion. This report only served to highlight this fact. The researchers have therefore come up with the following recommendations which may shed some light to this concern.

1. There should be an expressed and active support of the existing modes of alternative dispute resolution. Some concrete suggestions of action are as follows:

a. Embark on an effort to promote these modes through information campaigns in different levels and in all fields. It could take the form of the popular tri-media advertising or through less costly but equally efficient forms such as posters, fliers, brochures and comics, depending on the target audience.

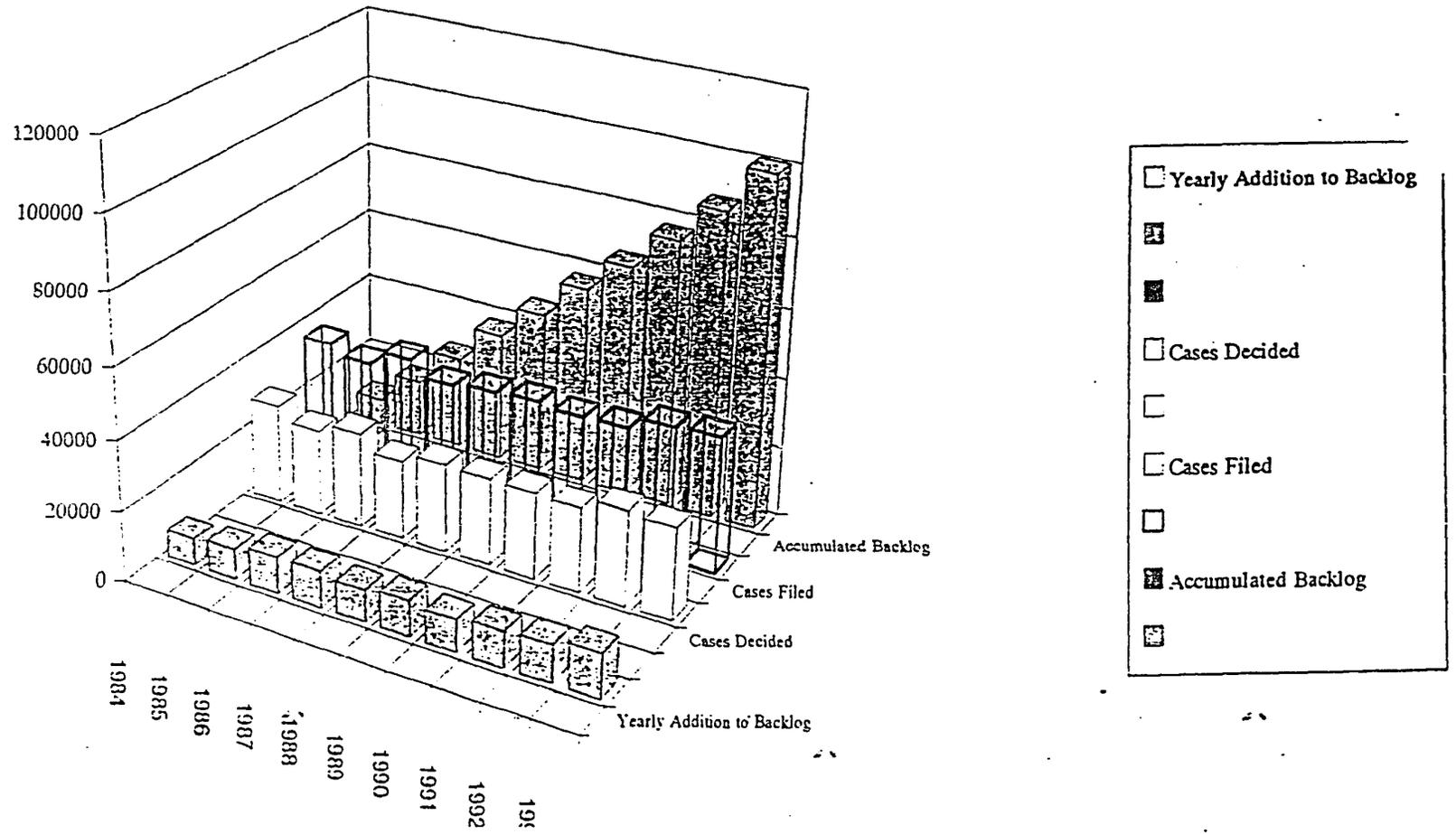
b. Continue to study and improve the existing modes of alternative dispute resolution in search of new avenues for growth or expansion. Changes must be applied whenever called for and whenever possible. Observations, suggestions, and feedback must be encouraged and gathered for study and consideration.

2. Seek other modes of alternative dispute resolution by looking in to other countries' or societies' models. These may well be adapted or revised/ adjusted to suit the peculiarities of our society.

MUNICIPAL CIRCUIT TRIAL COURTS

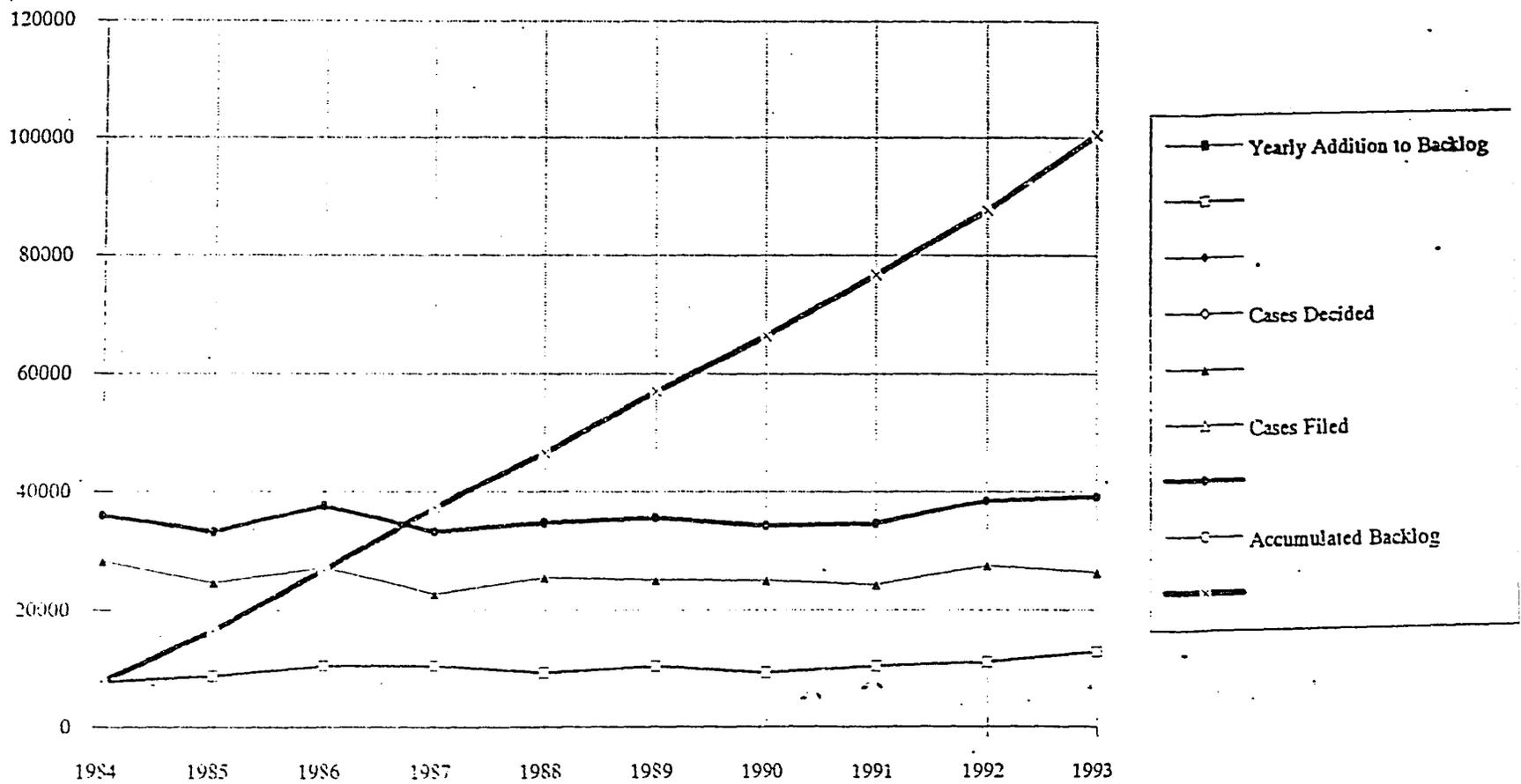
**Case Flow Charts
Courts Efficiency Rates**

Municipal Circuit Trial Courts Case Flow



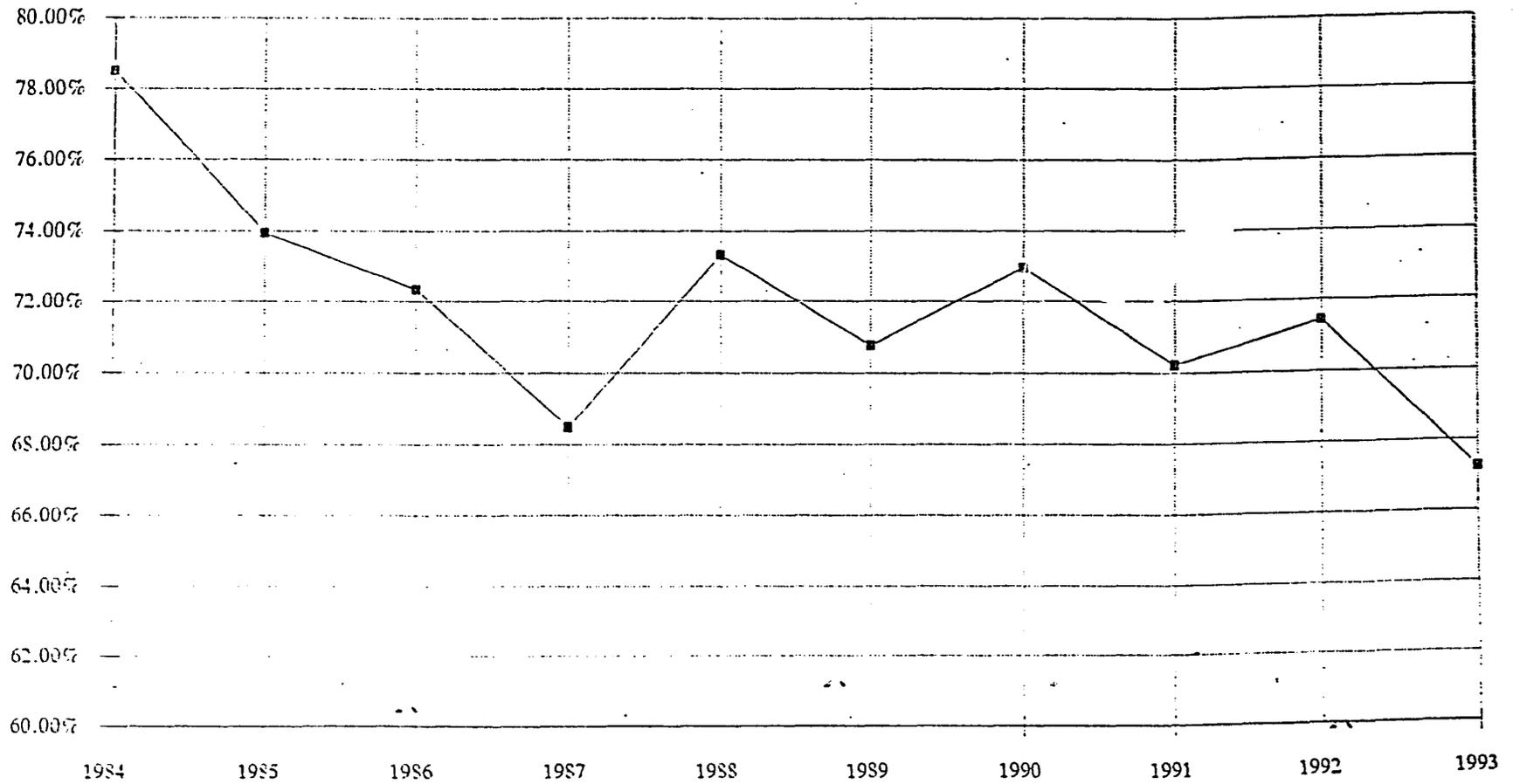
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Municipal Circuit Trial Courts Case Flow



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Municipal Circuit Trial Courts Efficiency Rate

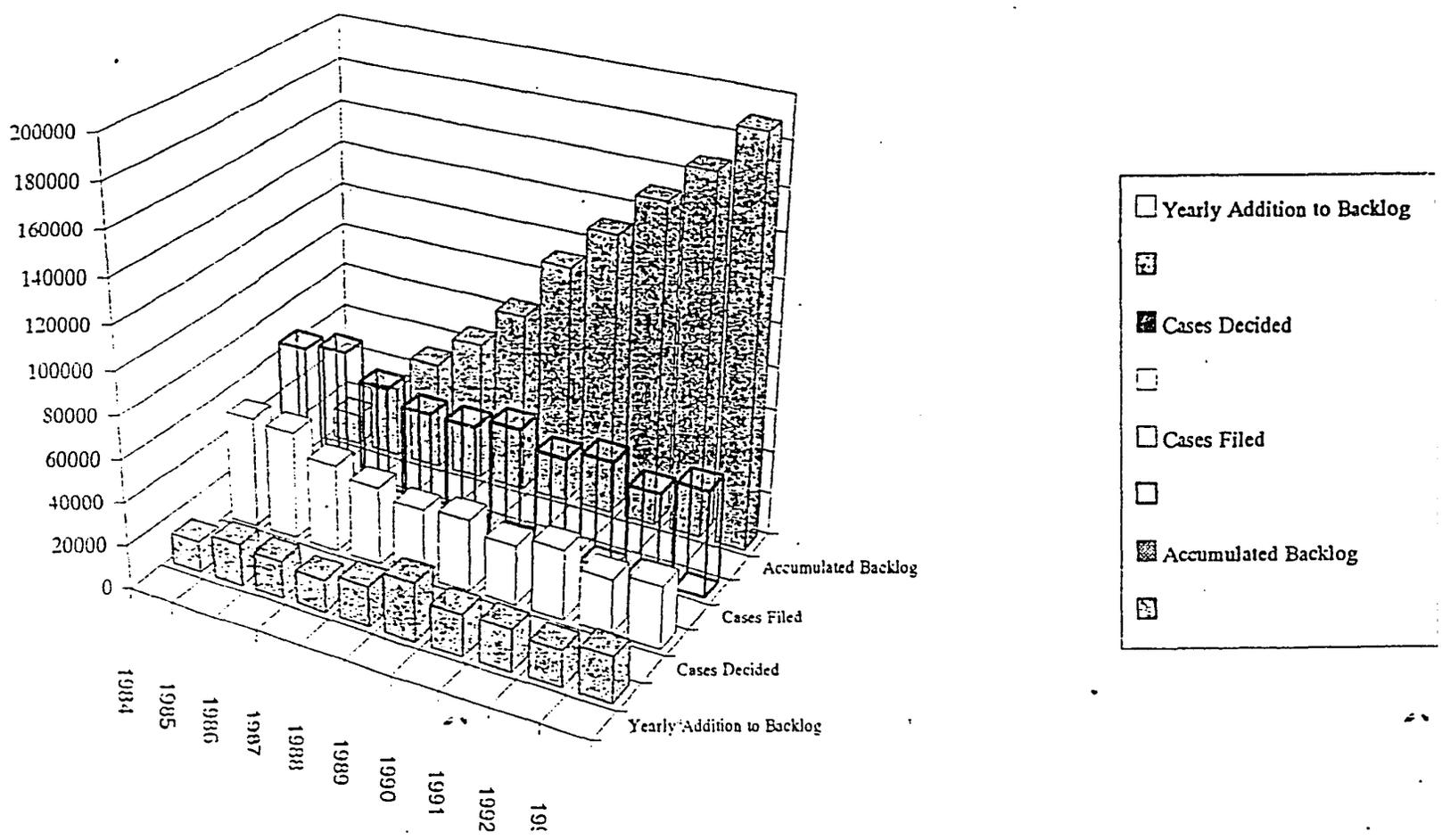


METROPOLITAN TRIAL COURTS

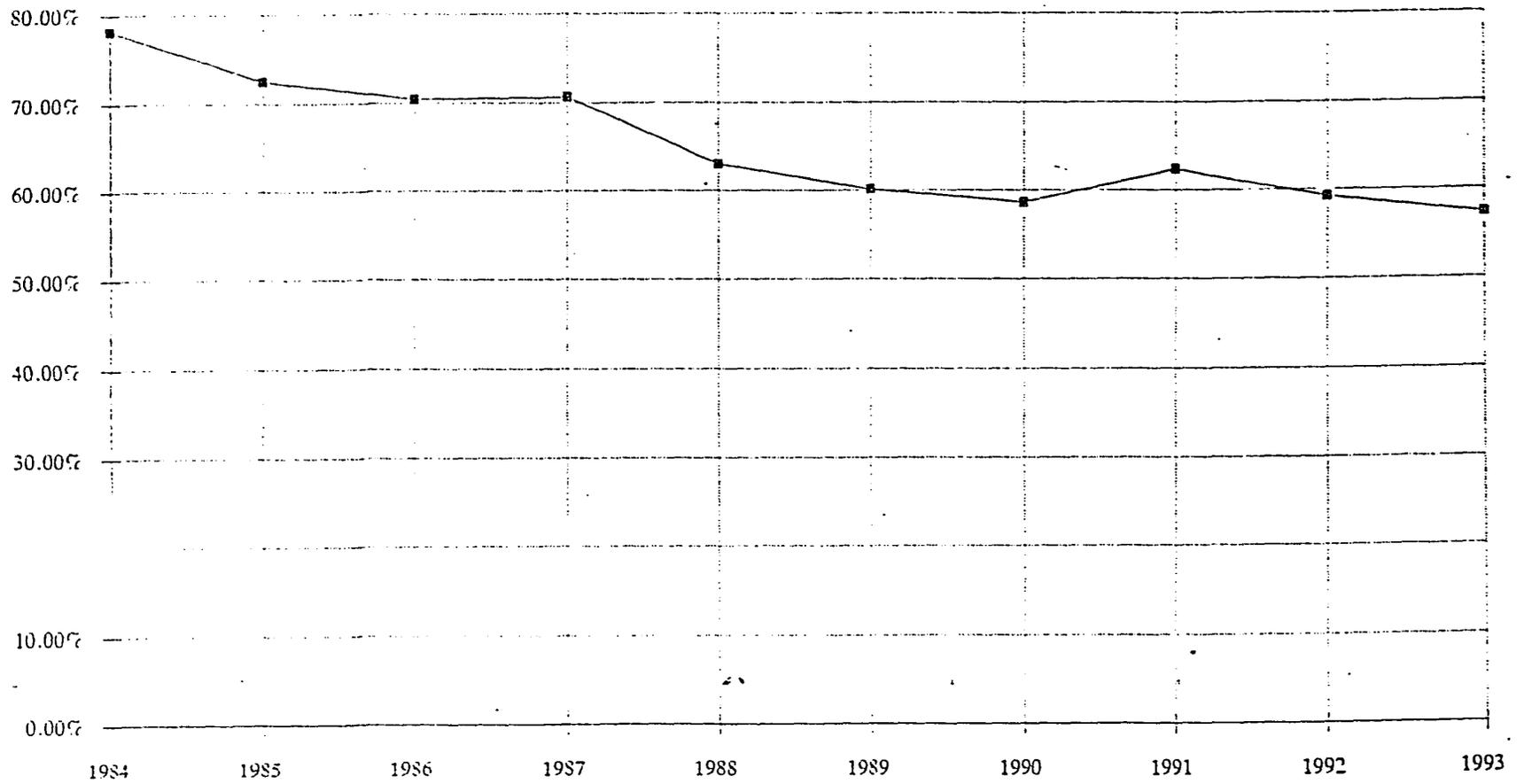
**Case Flow Charts
Courts Efficiency Rates**

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Metropolitan Trial Courts Case Flow



Metropolitan Trial Courts Efficiency Rate

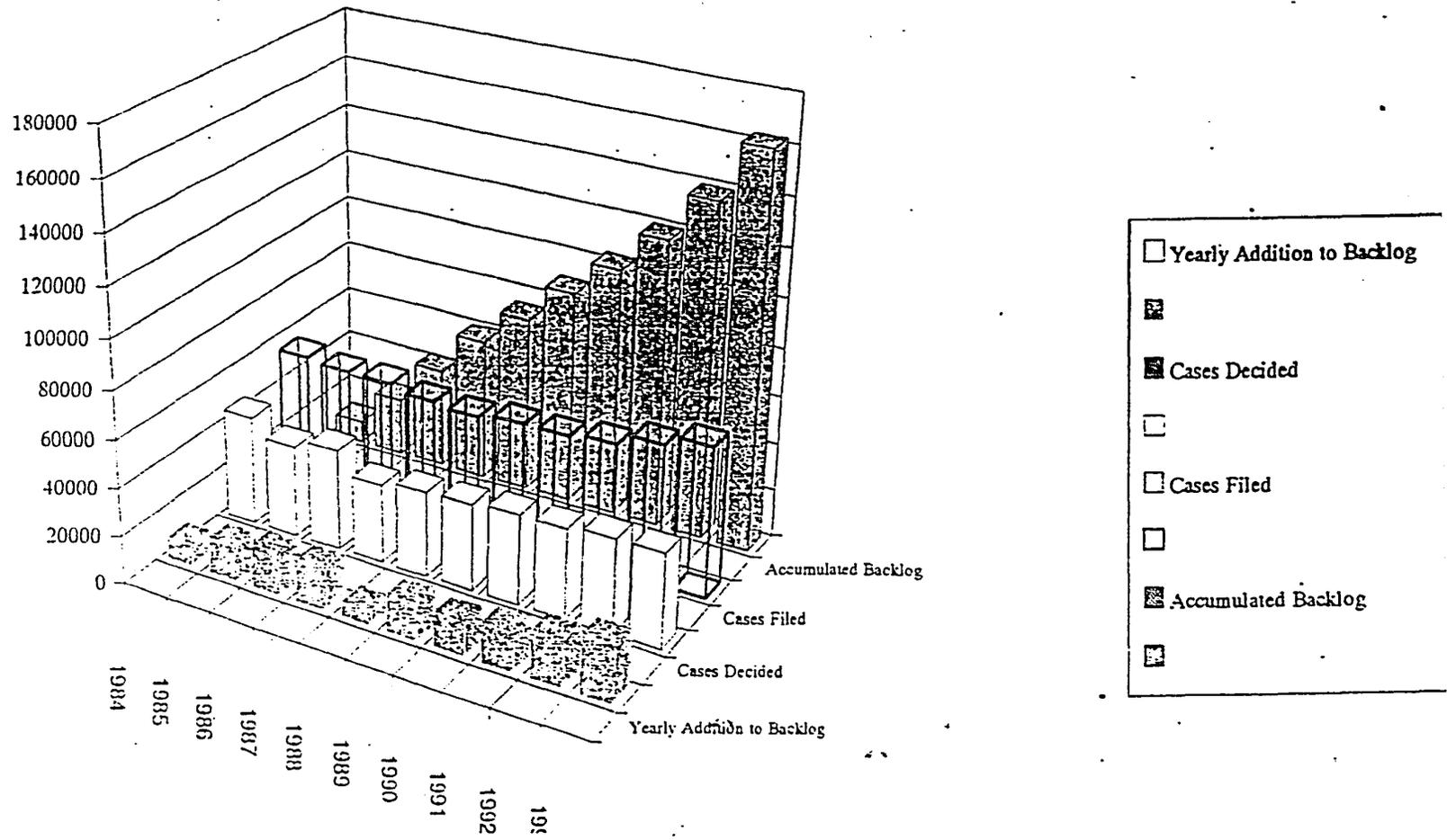


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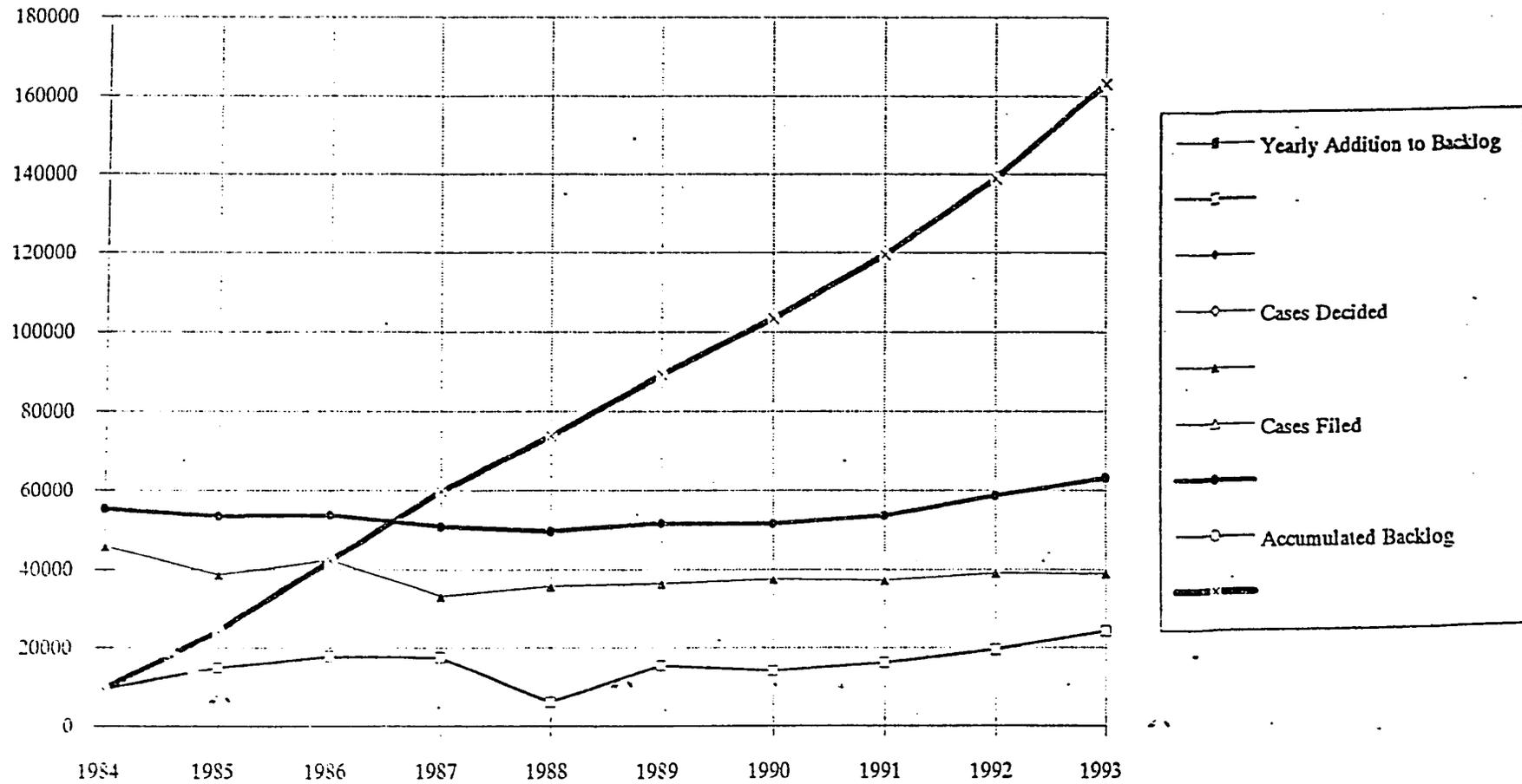
MUNICIPAL TRIAL COURTS

Case Flow Charts
Courts Efficiency Rates

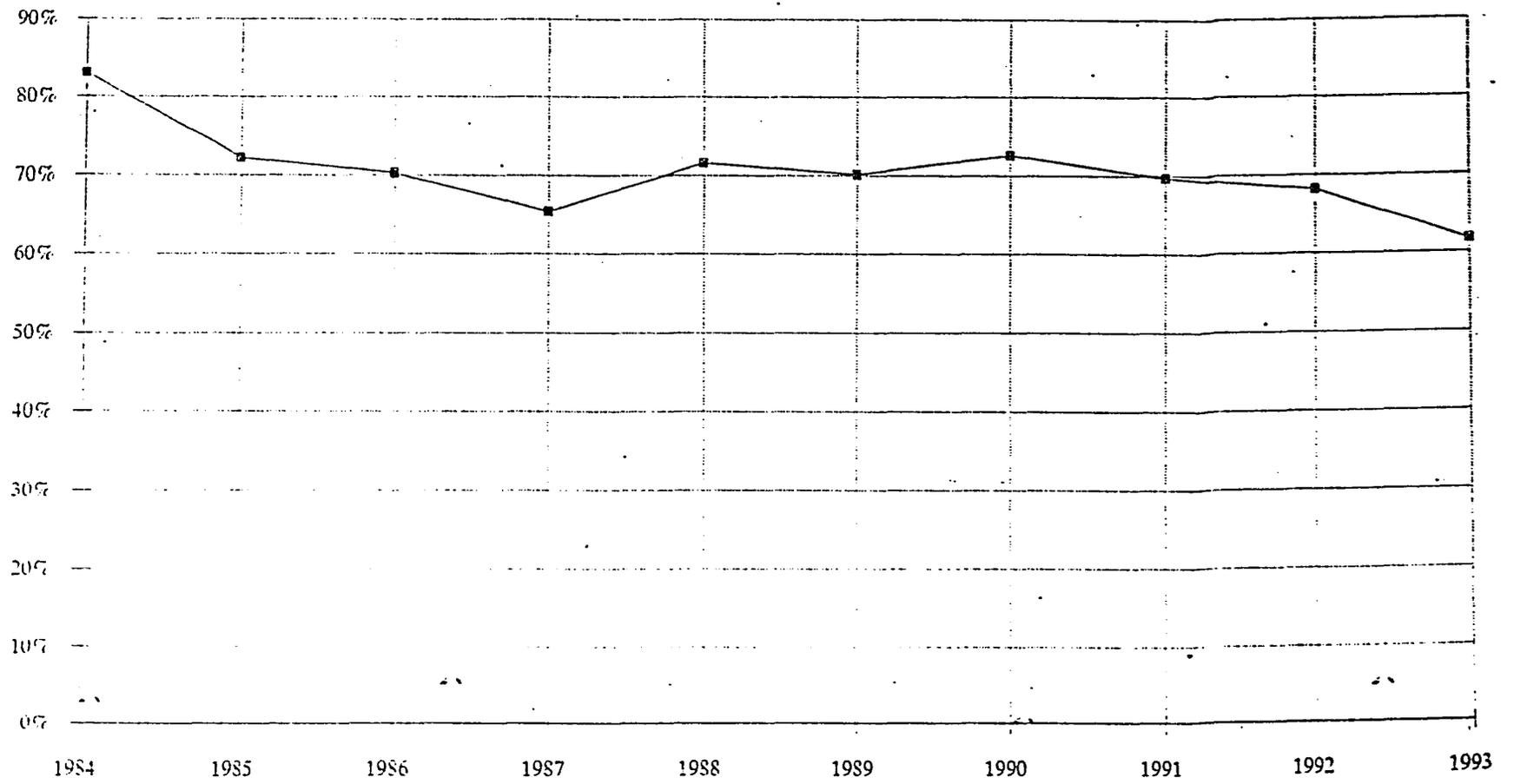
Municipal Trial Courts Case Flow



Municipal Trial Courts Case Flow



Municipal Trial Courts Efficiency Rate

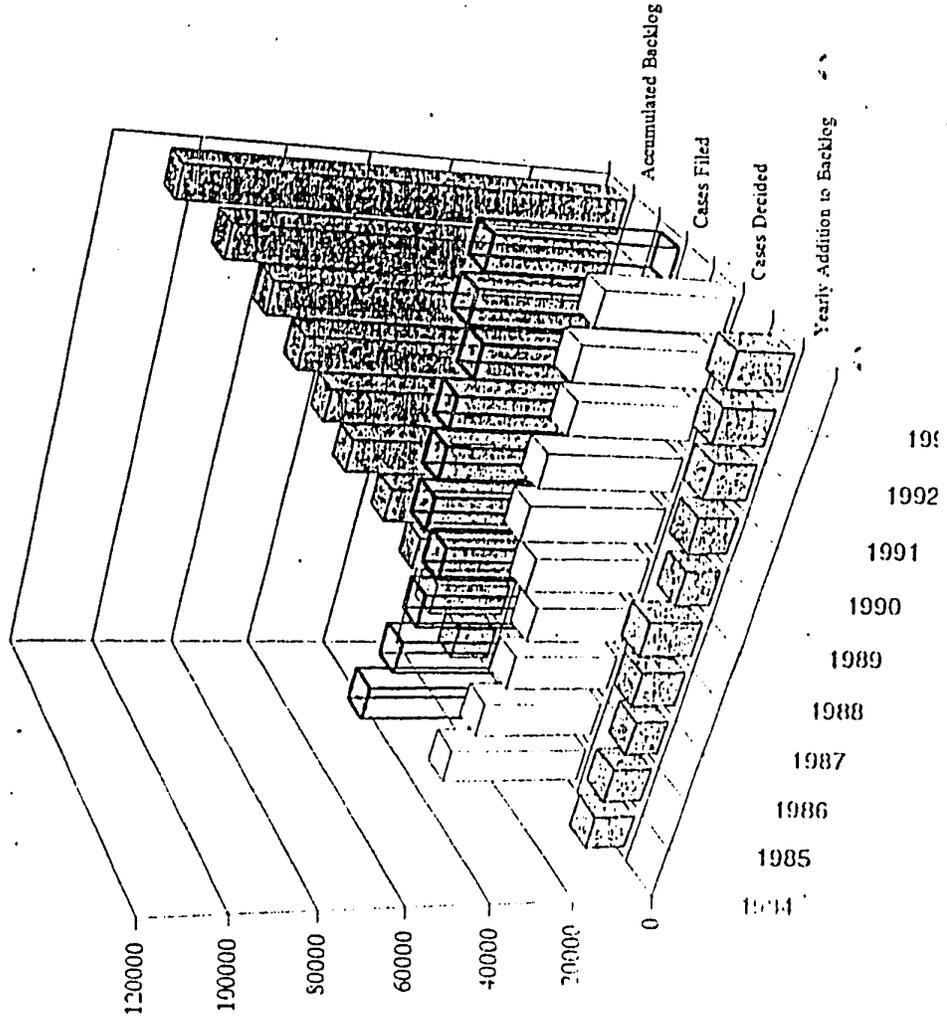


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MUNICIPAL TRIAL COURTS IN CITIES

**Case Flow Charts
Courts Efficiency Rates**

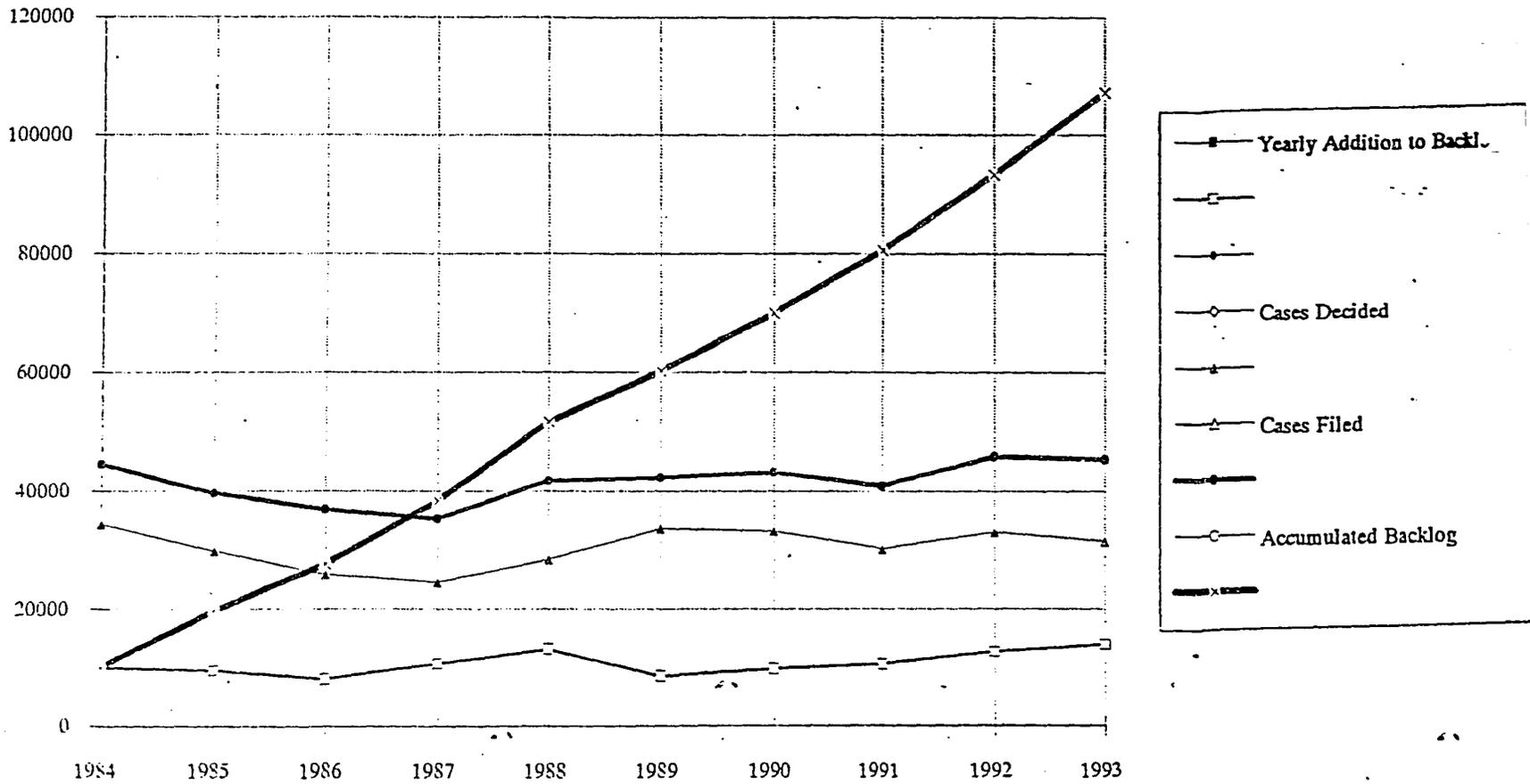
Municipal Trial Courts in Cities Case Flow



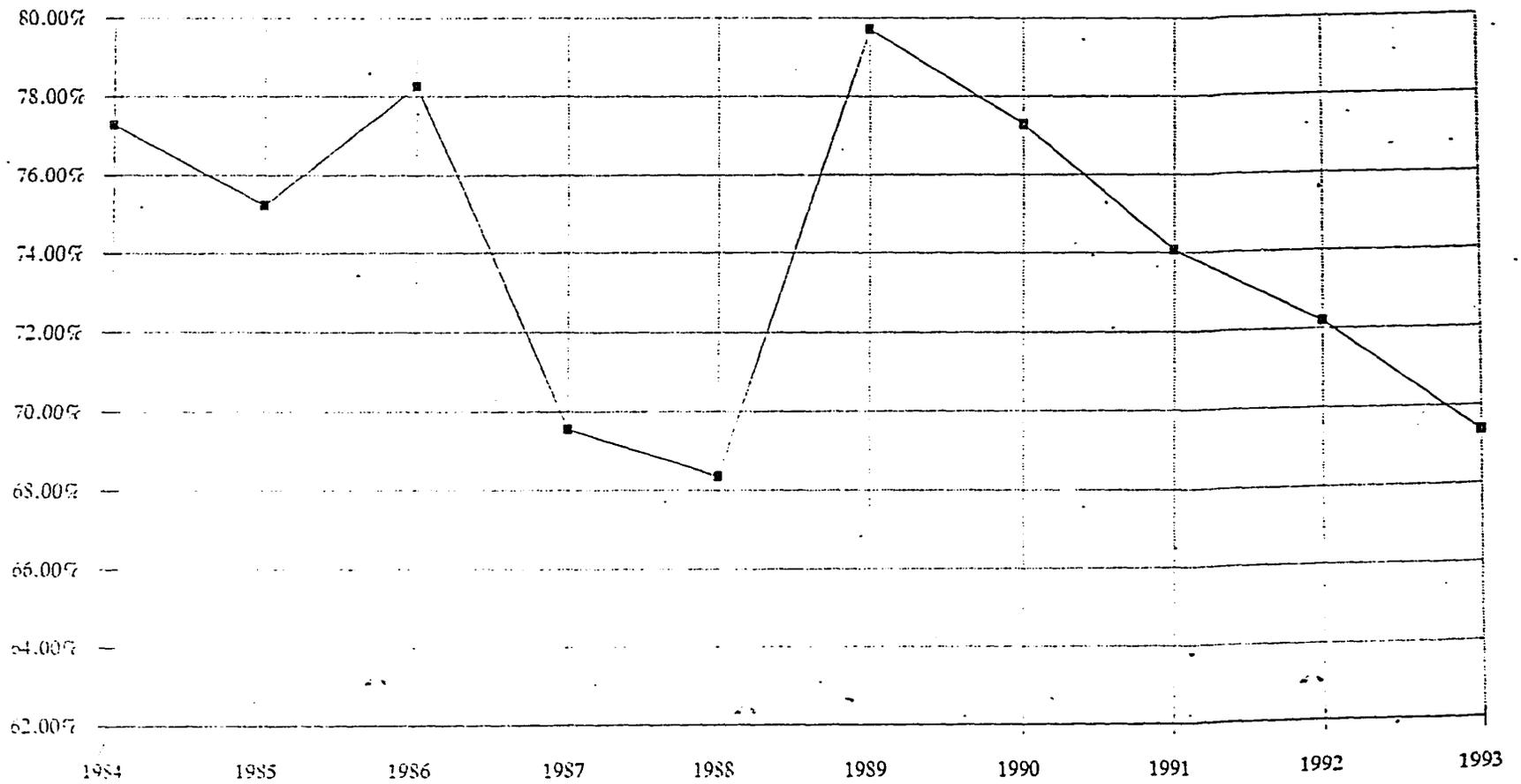
Legend:

- Yearly Addition to Backlog
- Cases Decided
- Cases Filed
- Accumulated Backlog

Municipal Trial Courts in Cities Case Flow



Municipal Trial Courts in Cities Efficiency Rate

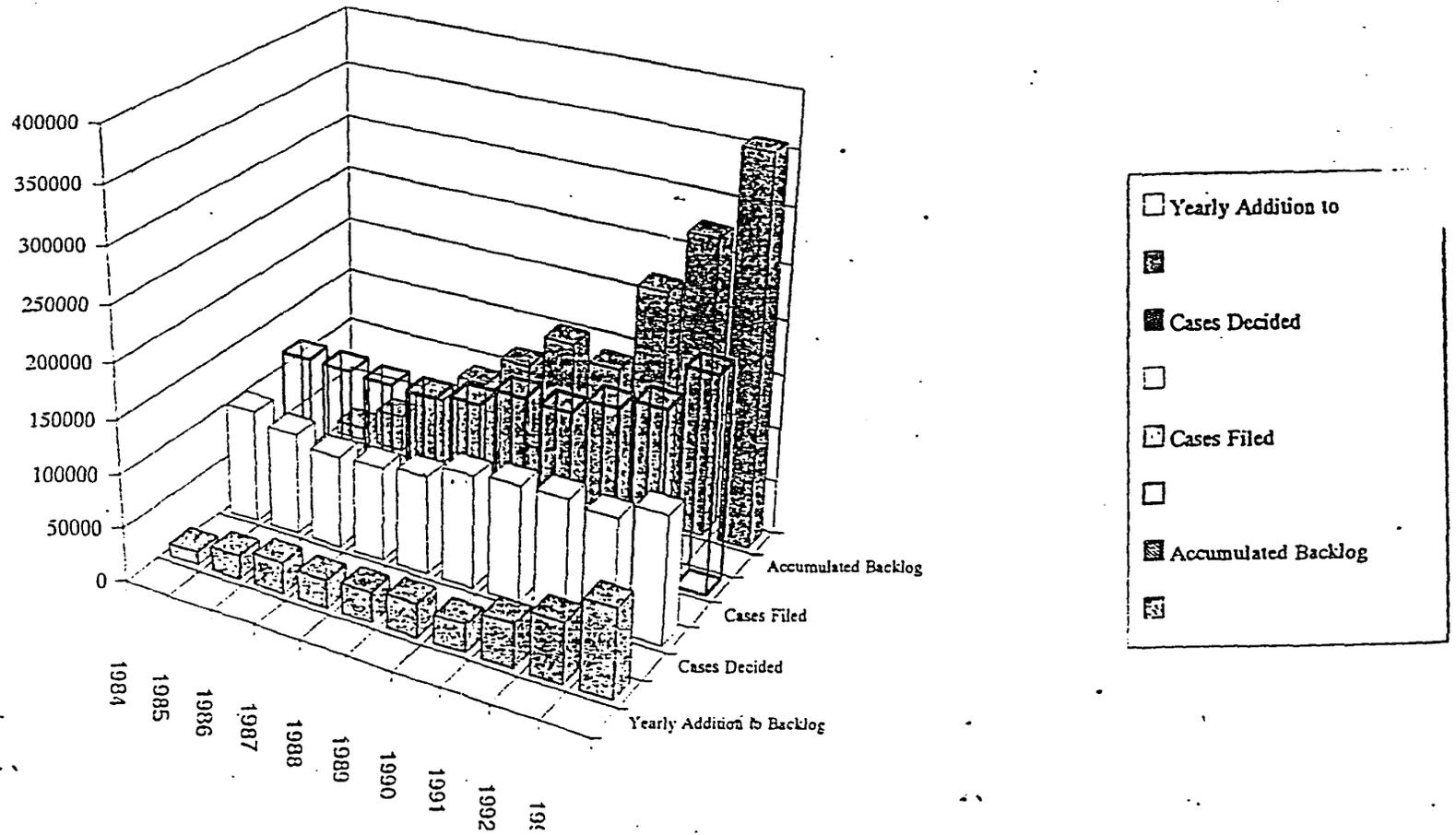


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REGIONAL TRIAL COURTS

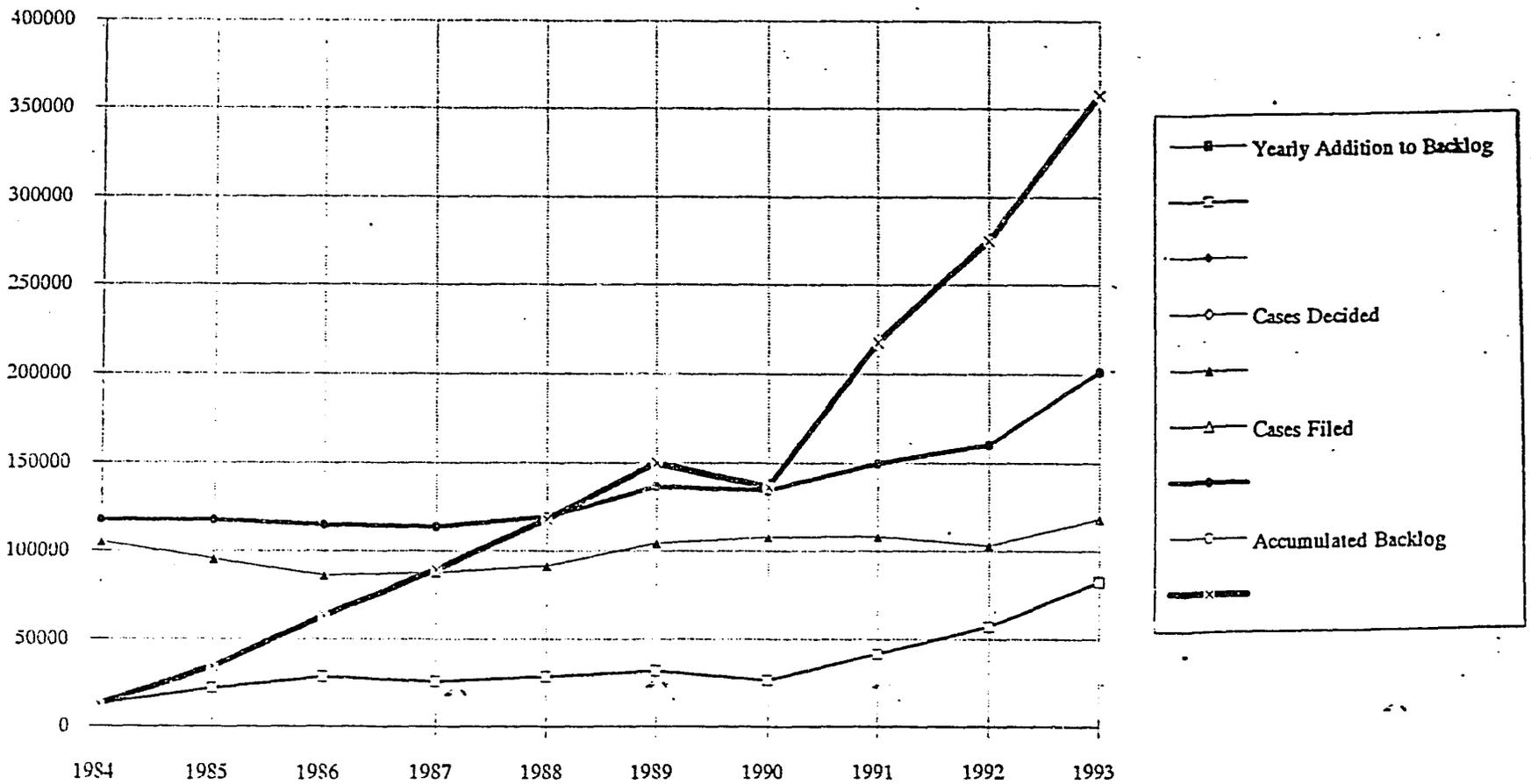
Case Flow Charts
Courts Efficiency Rates

Regional Trial Courts Case Flow



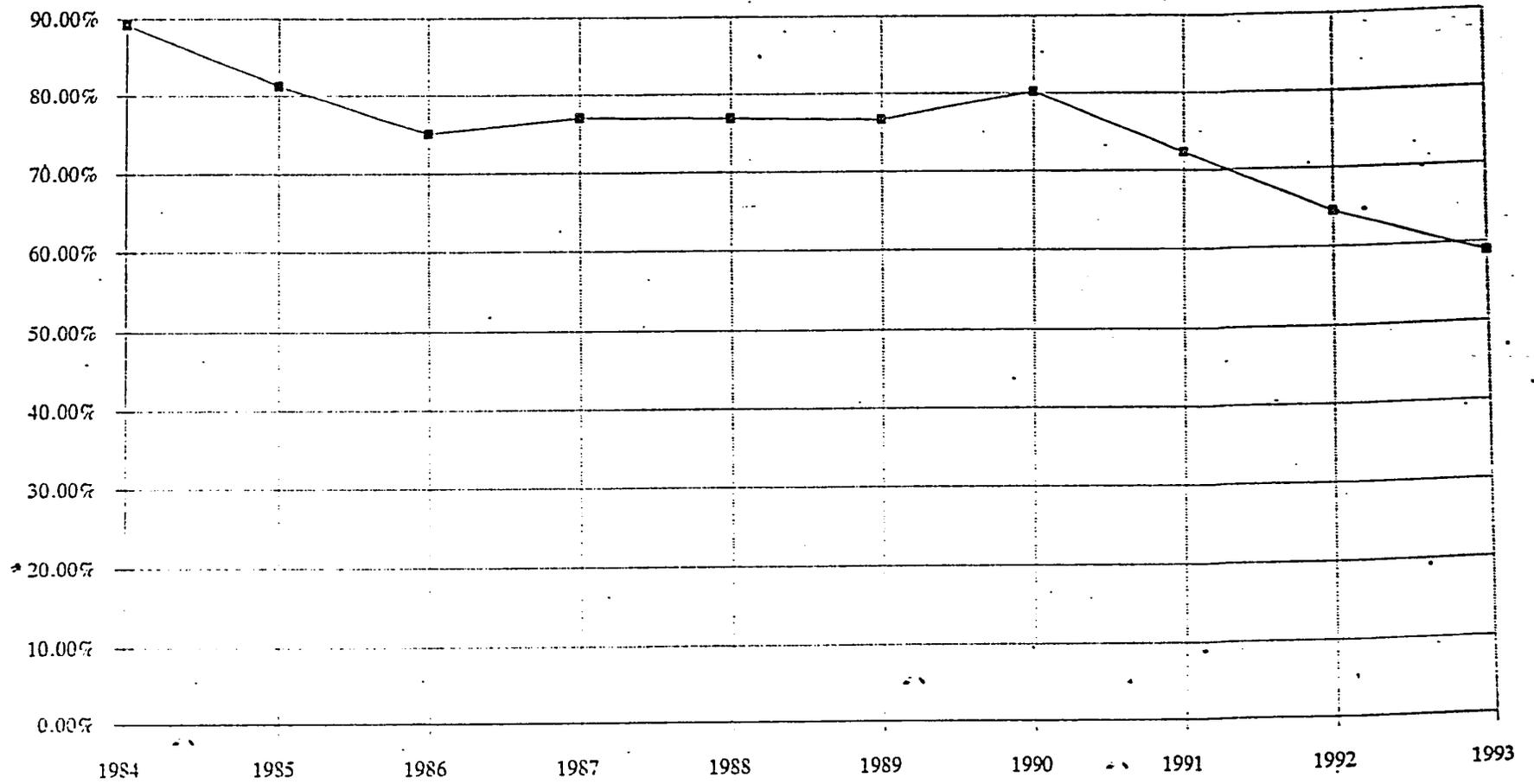
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Regional Trial Courts Case Flow



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Regional Trial Courts Efficiency Rate

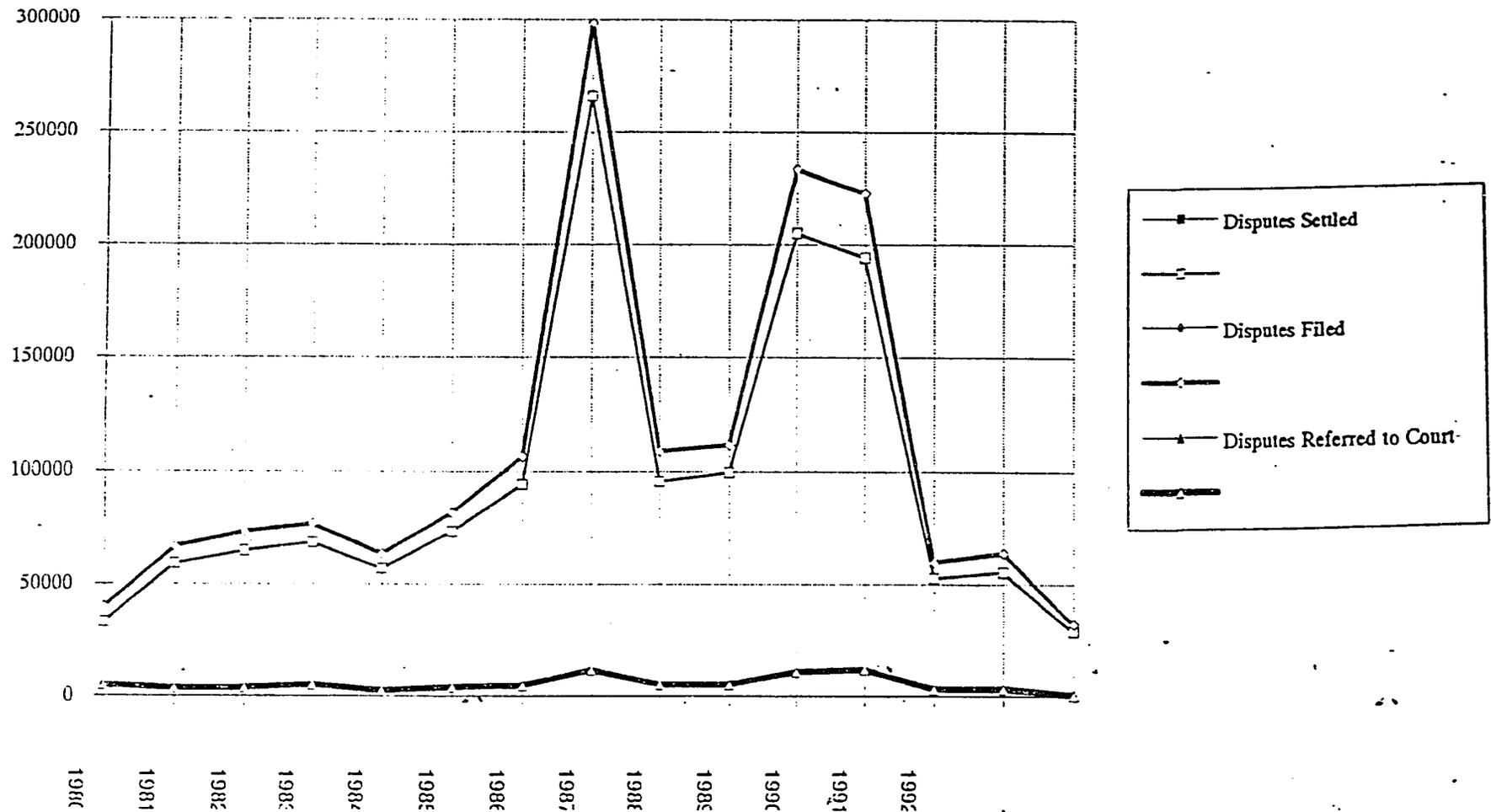


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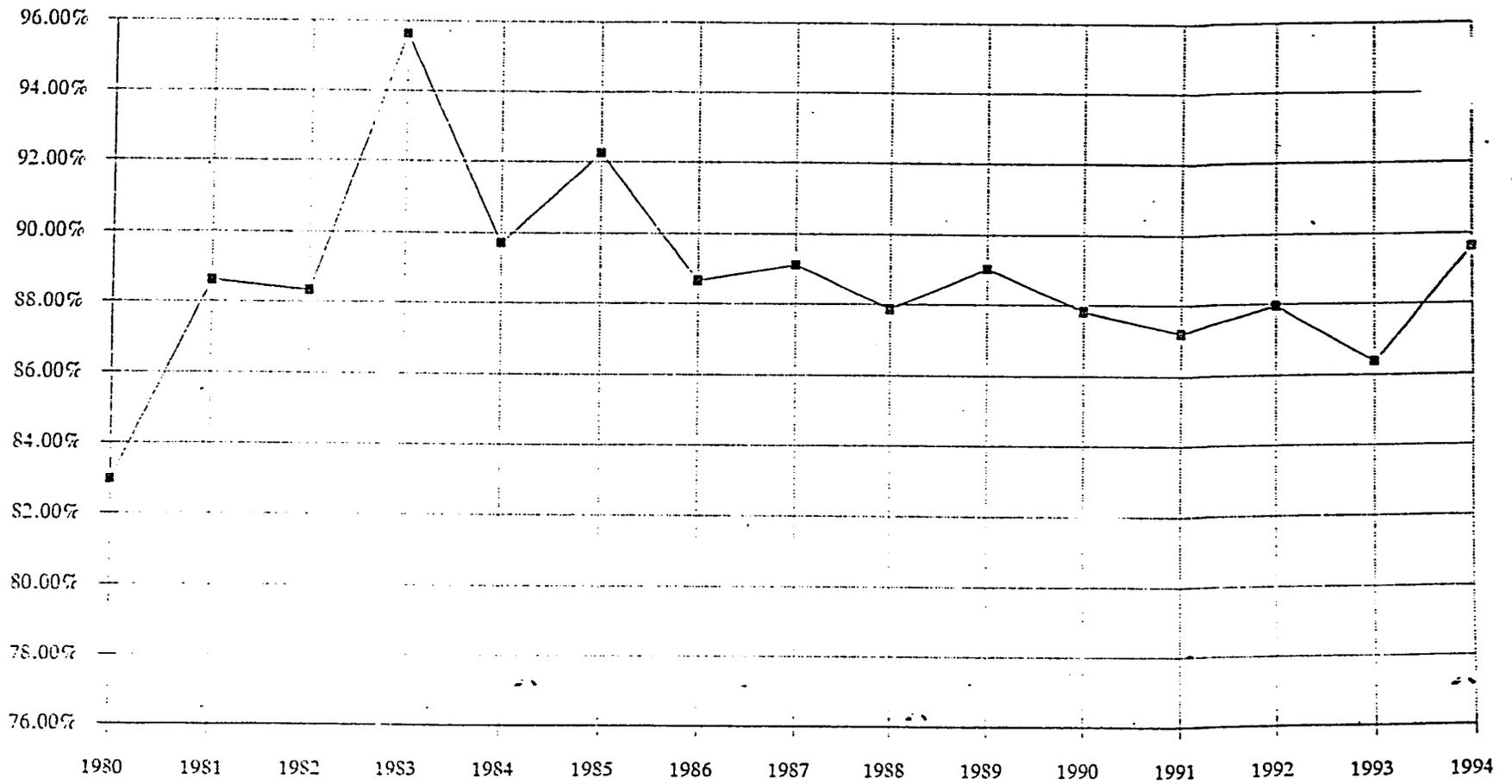
KATARUNGANG PAMBARANGAY

**Case Flow Chart
Courts Efficiency Rates
Government Savings**

Katarungang Pambarangay Case Flow

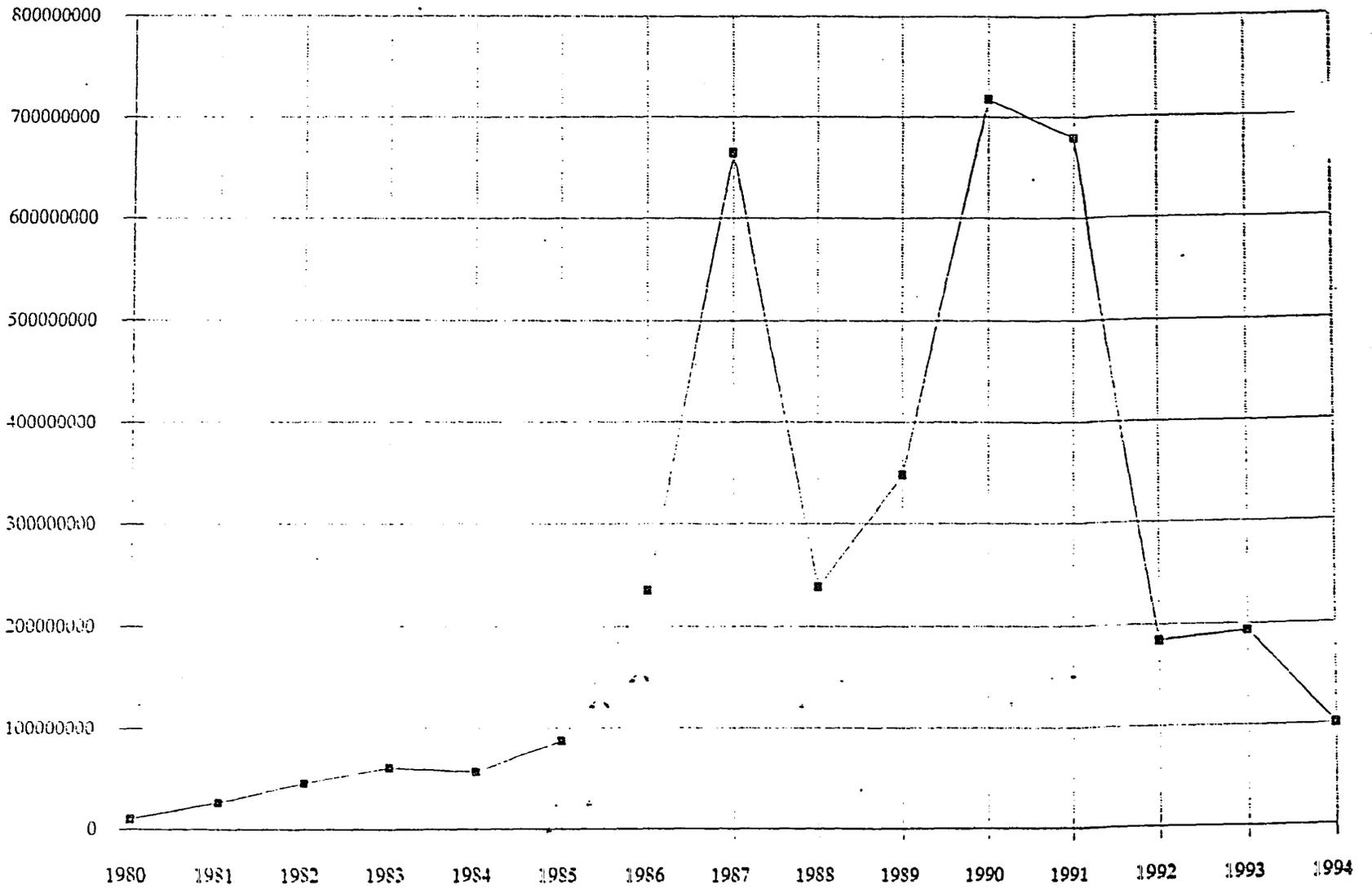


Katarungang Pambarangay Efficiency Rate



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Government Savings



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NATIONAL CONCILIATION AND MEDIATION
BOARD

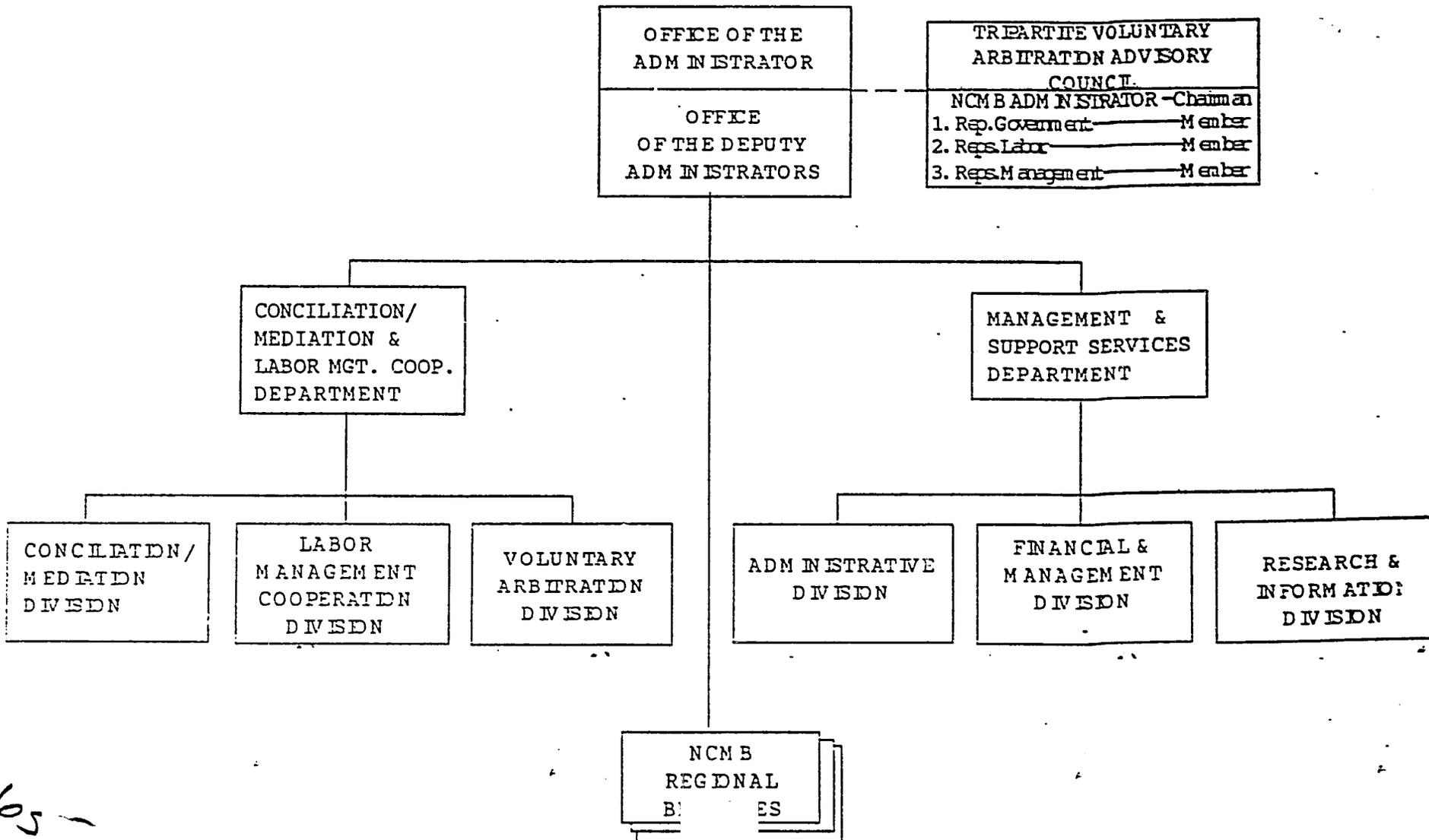
Organization Chart
Disposed Preventive Mediation Cases
Disposition Rate
Settlement Preventive Mediation Cases
Settlement Rate

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Organization Chart

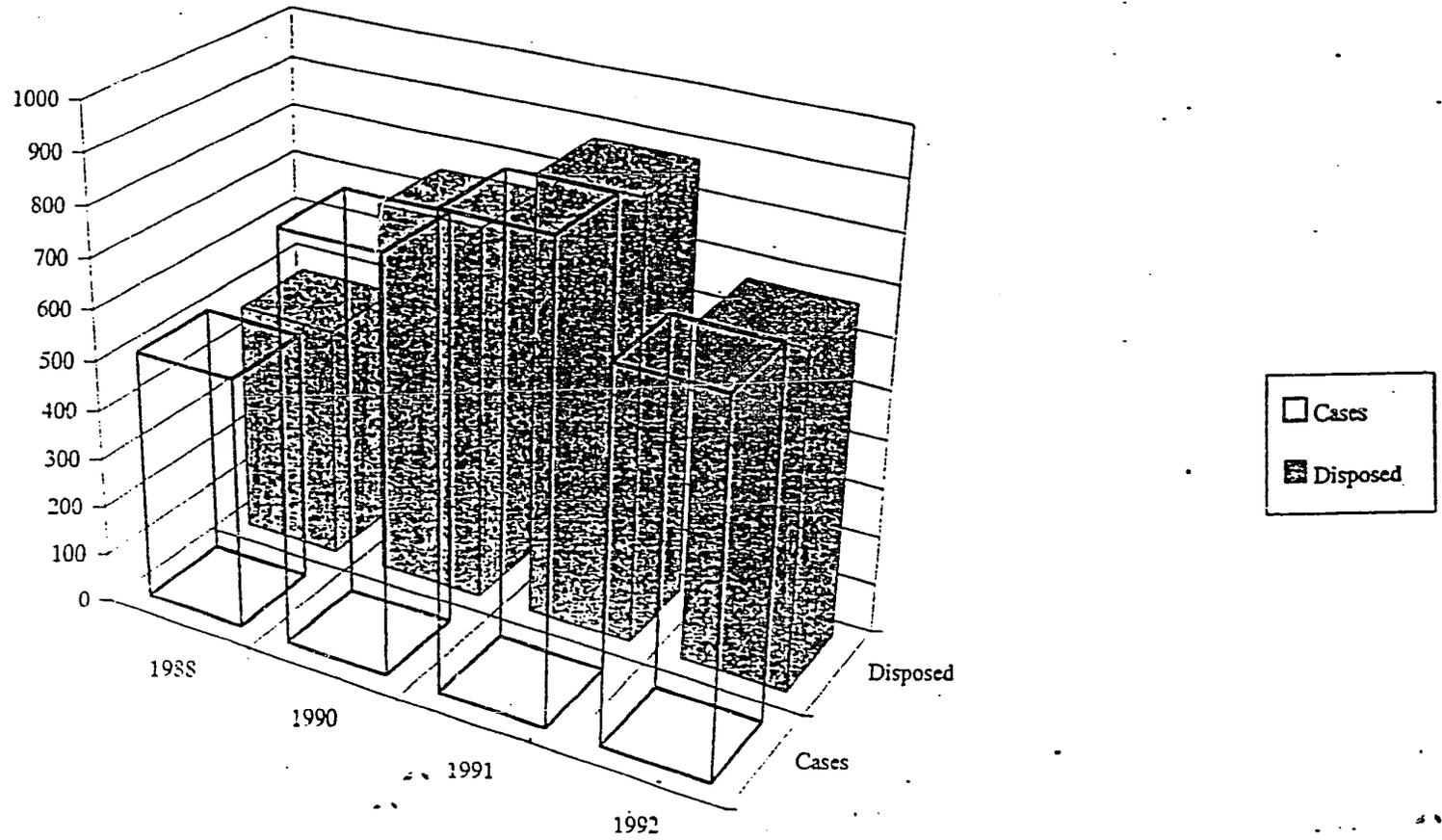
NATIONAL CONCILIATION AND MEDIATION BOARD

Department of Labor and Employment

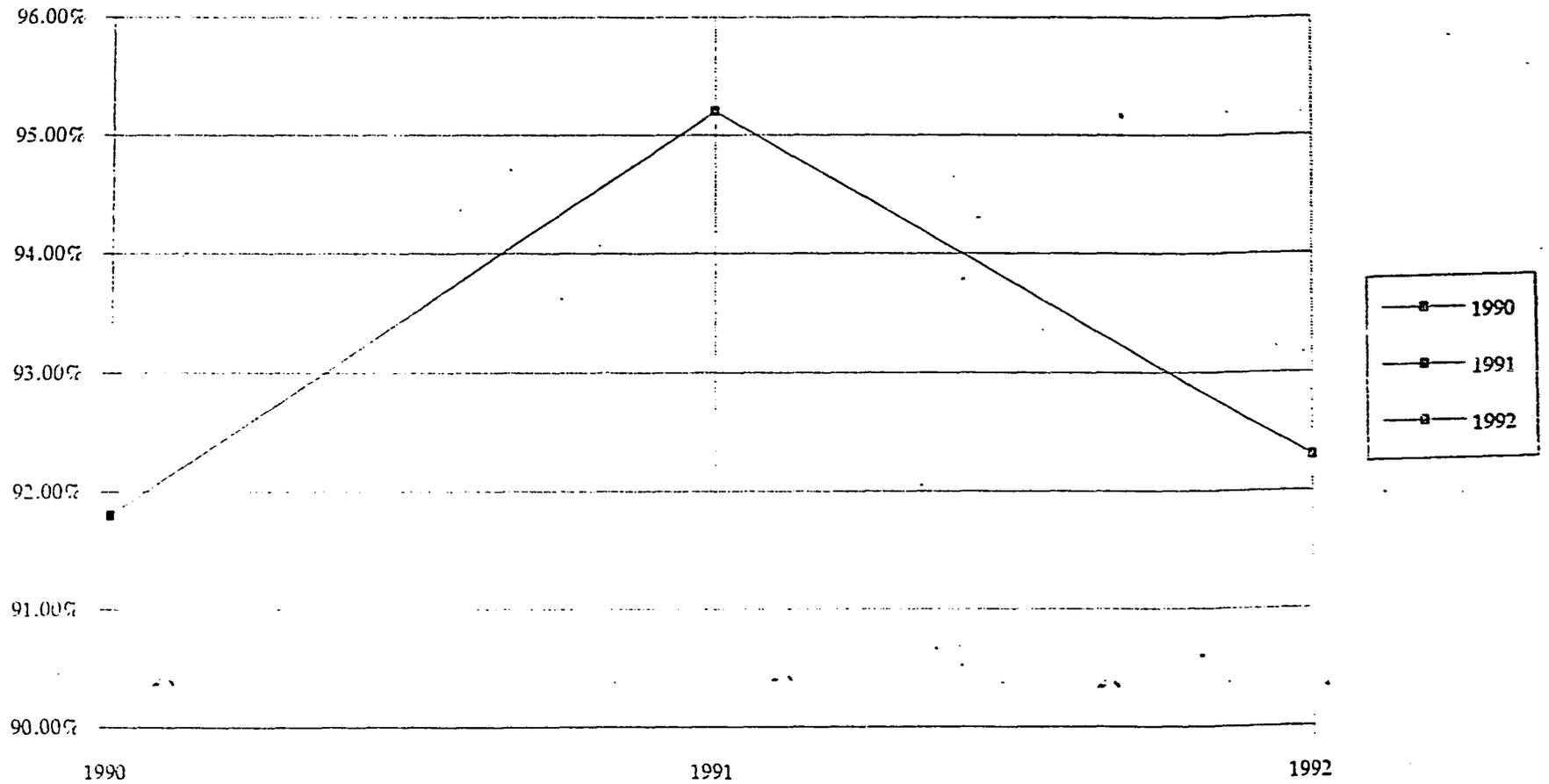


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Disposed Preventive Mediation Cases

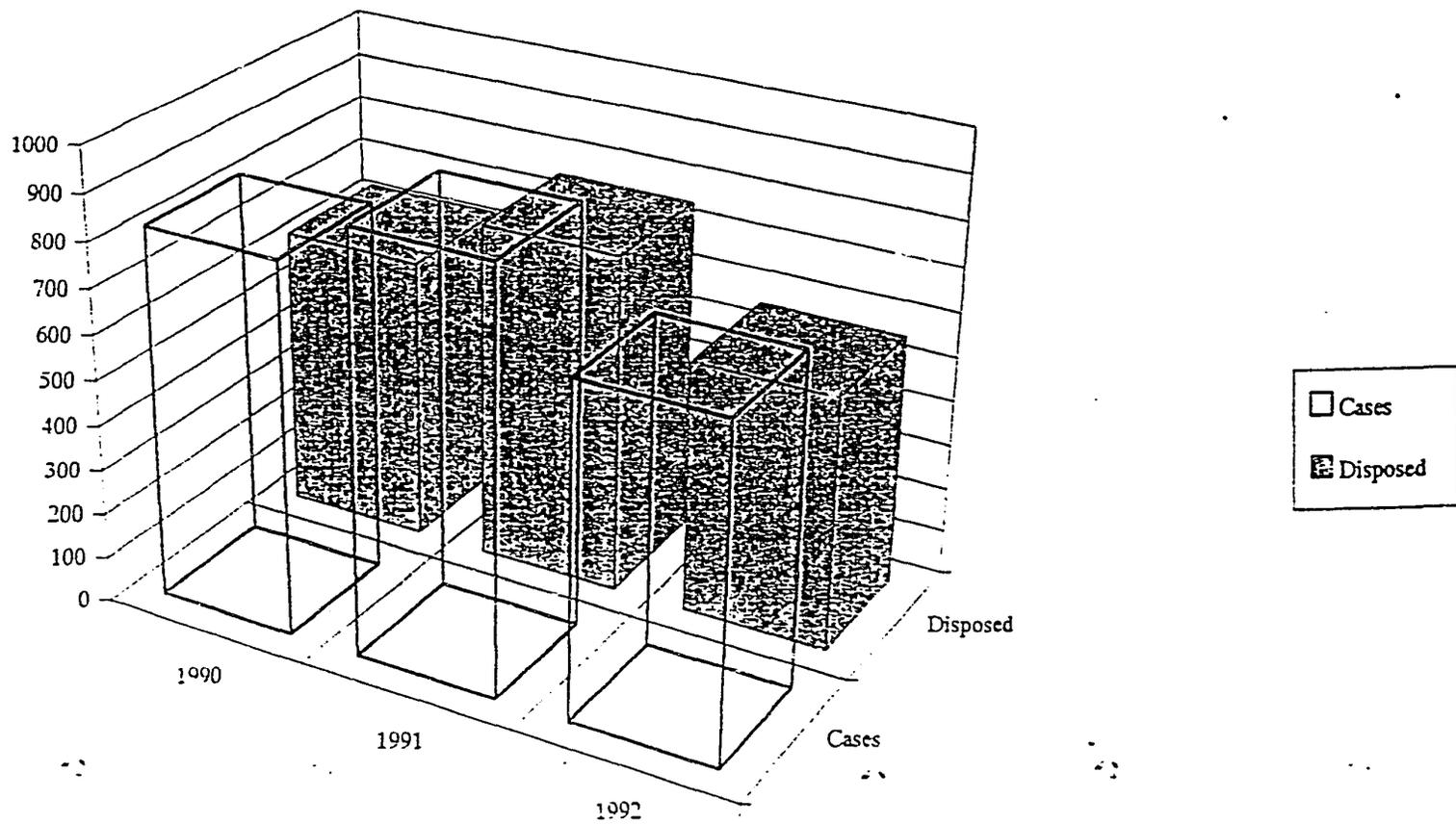


Disposition Rate



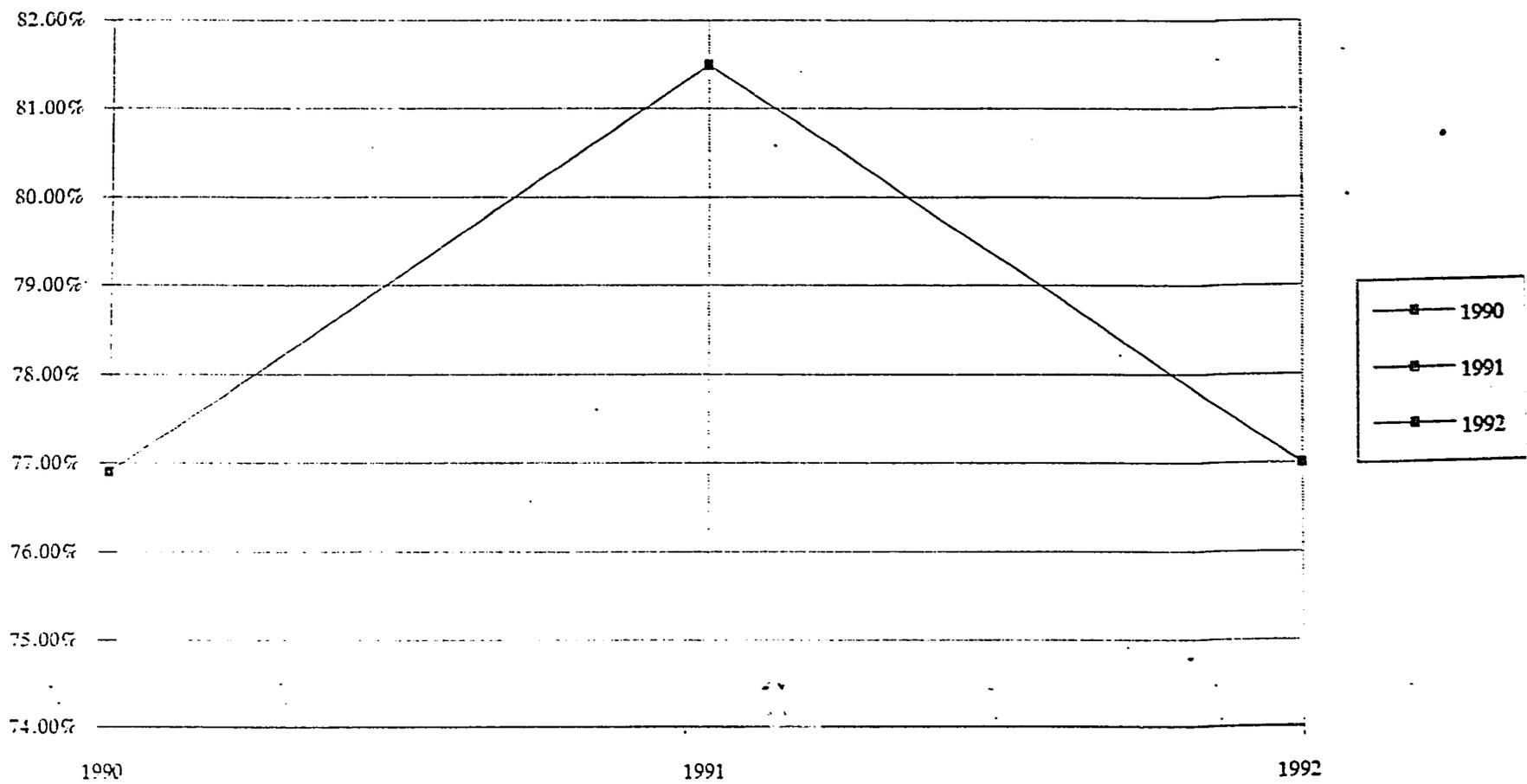
67

Settled Preventive Mediation Cases



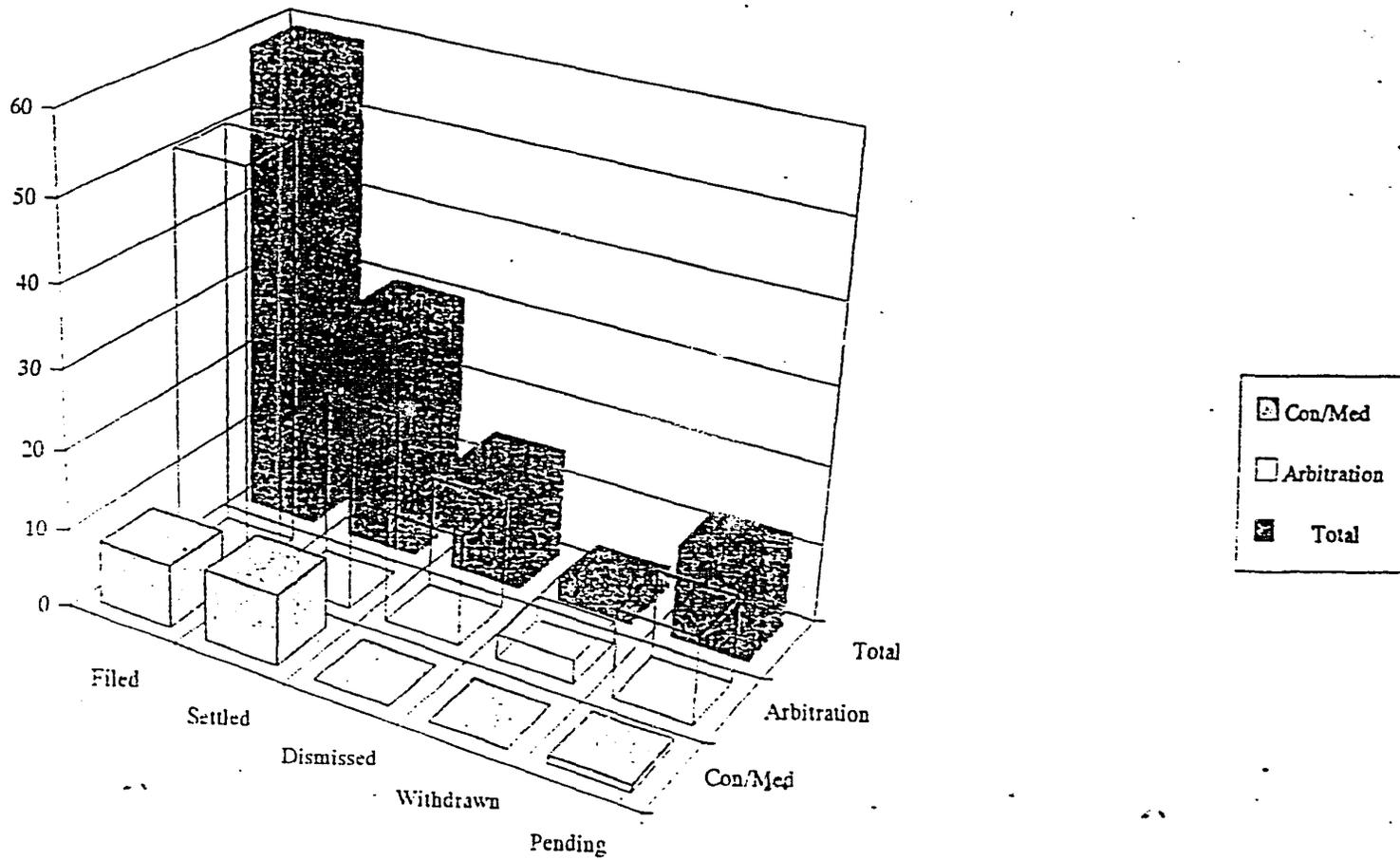
68

Settlement Rate



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Construction Industry Arbitration Commission Statistical Report



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