

**D R A F T**

**1993 ANNUAL REPORT OF THE  
ADVISORY GROUP  
OF THE DISTRICT COURT OF THE  
VIRGIN ISLANDS**

**AN ASSESSMENT OF THE  
CIVIL AND CRIMINAL DOCKETS  
AND RULES OF PROCEDURE**

**DECEMBER 31, 1993**

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## Introduction

The Civil Justice Reform Act of 1990<sup>1</sup> required the 94 federal districts in the nation to develop plans to reduce cost and delay in civil litigation by December 1, 1993.<sup>2</sup> The District Court of the Virgin Islands elected to qualify as an Early Implementation District with the result that its report and plan was submitted before December 31, 1991. That report and plan was widely circulated to the public and the bar and was the subject of public hearings on both St. Thomas and St. Croix.

In early 1992, the report and plan were approved by the Third Circuit Judicial Council and by the Committee on Court Administration of the Judicial Conference of the United States.

The Act required the Advisory Group to "identify the principal causes of cost and delay in civil litigation."<sup>3</sup> Thus, the Act presumed that in every district there would, in fact, be identifiable cost and delay in civil litigation. In its report, the Advisory Group for the District Court of the Virgin Islands expressed its considered judgment that the principal cause of delay in the progress of civil cases in the District Court of the Virgin Islands was the lack of judicial resources.<sup>4</sup> While noting that the district had been ably served by the presence of Acting Chief Judge Stanley S. Brotman, and a host of visiting judges from throughout the United States, the report noted that the principal harm done by the absence of regular on-site judges was to render trial dates less than firm and, consequently, less credible. The Act recognizes the importance of firm, credible trial dates in reducing both cost and delay.

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<sup>1</sup>The Civil Justice Reform Act of 1990 is the short title of Title I of the Judicial Improvements Act of 1990, Pub. L. No. 101-650 (1990), codified at 28 U.S.C. §§471 - 482. In this report the statute will be referred to as the Act.

<sup>2</sup>28 U.S.C. §482(b)(1).

<sup>3</sup>28 U.S.C. §472(c)(1)(C).

<sup>4</sup>Report of the Advisory Group of the District Court of the Virgin Islands, December 23, 1991 (p.10).

Second only to vacant judgeships in impacting on the cost and delay in civil litigation, the Advisory Group found that the overwhelming and growing criminal caseload faced by the district was an equally contributing factor.<sup>5</sup>

The Advisory Group then turned to those areas where it believed that recommendations to address cost and delay could be made and after a thorough examination and analysis of the civil and criminal dockets and a survey of the members of the bar, five discrete aspects of civil litigation were addressed. They were: local rules for practice and procedure; alternative dispute resolution; discovery practices; expert witnesses; and the education of the bar. Later in this report those areas will be revisited with respect to their impact on cost and delay reductions in civil litigation.

### Annual Assessment Required

Each United States district court is required by the Act to assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court.<sup>6</sup> In performing the assessment, the Act directs the court to consult with its Advisory Group with respect to the analysis and recommendations.

In fidelity to the above requirements, the Advisory Group for the District Court of the Virgin Islands convened on November 8, 1993 with its reporter and consultant, William K. Slate, II, to review the experience under the district report and plan and to conduct an analysis and assessment of the court's civil and criminal dockets. Chief Judge Thomas K. Moore hosted the meeting at the St. Thomas Federal Courthouse and participated in the discussions. The report which follows reflects the findings of the Advisory Group.

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<sup>5</sup>Ibid.

<sup>6</sup>28 U.S.C. §475.

It is noted with sincere gratitude that this report benefited immeasurably from the able and professional contributions of Orinn Arnold, the Clerk of the Court, and his very competent staff. Also, note is made of the statistical analysis contributions made by representatives of the Administrative Office of the United States Courts and the Federal Judicial Center, and especially the help and guidance of Beverly Pierce of the Justice Research Institute.

## **Profile of the District Court of the Virgin Islands**

### **An Assessment of the Court's Criminal and Civil Dockets**

#### **Introduction**

The workload of the District Court and its implications for cost and delay reductions are inextricably linked to continuing judgeship vacancies. For the statistical year ending June 30, 1993, one of the two authorized judgeships for the District Court of the Virgin Islands remained unfilled. For the same period, the District Court had 13.4 vacant judgeship months. Again, only the industry and imagination of its chief judge, the commitment and constancy of its magistrate judges and the court's staff, along with the cooperation and flexibility of the Virgin Islands Bar and the Territorial Court of the Virgin Islands, enabled the court to function effectively. Indeed, as will be articulated in this section, the District Court of the Virgin Islands led the Third Circuit and ranked highly in the nation in several indicia of court performance.

#### **Overall Workload**

The facts and the statistics for the year ending June 30 describe a court which is laboring assiduously to handle increasing criminal case workloads, resulting in lengthening disposition times for civil cases and a growth in pending matters. Based on the increase in the number of federal investigators resident in the Virgin Islands and the intentions of the Justice Department to accelerate white collar crime and drug-related investigations, criminal case filings will escalate annually for the foreseeable future.

Total new case filings increased by 8.5% during the reporting period. Criminal felony filings increased by 66%. New civil case filings decreased by 15% as a result of a change in jurisdiction causing certain local civil matters to be filed with the Territorial Court. However, abundant evidence in other jurisdictions, as well as analogies to the periodic increases in diversity jurisdictional threshold dollar amounts in the federal courts indicate that a modest downturn initially in such situations will soon be reversed.

At the same time, the atypical Appellate jurisdiction of the District Court of the Virgin Islands has grown significantly and that growth is not reflected in the 8.5% increase in total new case filings referenced earlier.

now

The daunting referenced workloads, and judgeship vacancies, have resulted in less judicial work time available for civil cases. Consequently, in the space of one year the median time from issue to trial in civil cases rose from 27 to 29 months, placing the Virgin Islands last in the Third Circuit and 87th among 94 federal districts.

Notwithstanding the crush of work in the District Court of the Virgin Islands, the court has distinguished itself in a number of ways that should be noted. In terms of actions per judgeship, the court was first in the Third Circuit and sixth in the Nation for the number of trials completed. Also, since this analysis is about costs, it is particularly noteworthy that the District Court of the Virgin Islands has distinguished itself in the management of juries and their attendant cost to the government. The court was sixth best in the Nation and ranked first in the Third Circuit in terms of the average number of jurors present for jury selection. This suggests superb management on the part of the court and the Clerk's Office. As to the number of jurors present on a given day which were not selected or challenged, the Court was 15th best in the Nation and first in the Third Circuit.

Finally, in concluding this examination of the overall workload of the District Court of the Virgin Islands, it should be remarked that the 8.5% increase in total new filings during the current year represents the greatest increase of any District in the Third Judicial Circuit of the United States and the 18th highest out of 94 Districts among the Federal Courts in the entire Nation.

## Criminal Docket

The District Court of the Virgin Islands is first in the Third Circuit and second in the entire United States in the number of criminal felony filings per judgeship for the last statistical year. Thus, it is particularly noteworthy that notwithstanding this heavy criminal caseload, the District Court of the Virgin Islands is first in the Third Circuit and fourth in the Nation in terms of the median time from filing to disposition of criminal felony cases. Indeed, it is a mark of significant accomplishment that the court lowered the median time during the current year from the previous years' 4.9 months down to 3.6 months. The national average for criminal felony dispositions is 5.9 months. Thus, while the Virgin Islands continues to be very efficient in processing criminal cases, it is invariably the case that the time available for the civil docket is adversely impacted by a court required to concentrate so heavily on a massive criminal docket.

The 66% increase in new criminal felony filings was also reflected in the number of criminal trials, and criminal trials as a percentage of total trials. Criminal trials represented approximately 70% of the trials in the court for the year. When one realizes that of the total cases filed for the year 371 were criminal, while 455 were civil, it becomes clear that the lesser number of criminal cases are consuming excessively more court time.

Additional figures which graphically describe the depth of the criminal caseload include increases in the number of all criminal defendants, drug defendants, and the percentage of drug defendants to the overall criminal caseload. Each of those categories accelerated during the past year, and particularly the number of "all criminal defendants" which rose from approximately 300 to 540—a mecurial increase of 180%.

As indicated in the overall workload section of this report, the addition of more federal agents will have a long term net effect on increased criminal case filings. Thus, although the transfer of some local criminal cases to the Territorial Court is contemplated, we believe that both the number and the complex nature of criminal cases filed in the District Court of the Virgin Islands will continue to increase.



## Civil Docket

The consequences of the criminal caseload on the age and progress of the civil docket are represented in a number of key statistics. The median time from issue to trial in civil cases in the District Court of the Virgin Islands is 29 months. This places the court last in the Third Circuit and 87th in the entire United States. Similarly, the number and percentage of civil cases over three years old have grown significantly. Two Hundred forty two (242) civil cases, representing 20.4% of the docket are over three years old. This places the Virgin Islands fifth out of six courts in the Circuit and 91st out of 94 districts in the Nation. Just three years ago the number and percentage of civil cases over three years old totaled 154 cases, representing 11.2% of the civil docket. Again, this troubling trend underscores the need for additional judicial resources in the District Court of the Virgin Islands.

In examining the civil case filings for the statistical year, by case types, one finds that the percentage distribution is heavily weighted by personal injury and contract cases. Earlier detailed examination and analysis of civil case docket sheets in these two categories revealed that the majority of the personal injury and contract cases were complex in nature, with extensive discovery and frequent involvement of expert witnesses.

The growth during the past year in the number of pending cases for the overall workload of the court (an addition of 44 cases to the pending caseload) virtually all consist entirely of civil cases.

Finally, as discussed earlier, the modest decrease in new civil case filings as a result of changes in jurisdiction in the Virgin Islands is not expected to be a long-term trend. The clear expectation at the bar is that traditional diversity jurisdiction cases will increase in the District Court over the next one to two years.

## Appeals From the Territorial Court

Among the distinguishing features of the District Court of the Virgin Islands is the jurisdictional responsibility to hear certain appeals from the Territorial Court. The appellate caseload is a steady and rising factor contributing to the caseload demands placed upon the court. The complexity of appellate jurisdiction and the movement of cases between two

different court systems consumes a significant amount of judge, attorney, and support staff time.

The perceived need to improve practice and procedure in the appellate division has resulted in the development of an entire new set of local rules of appellate procedure for the District Court of the Virgin Islands. It is expected that these rules will clarify many issues for the bar and reduce cost and delay in appellate practice. For the statistical year ending June 30, 1993, there were appeals filed in the appellate division.

### **Magistrate Judges**

The District Court of the Virgin Islands has two authorized full-time magistrate judges. They continue to be fully utilized and substantially involved in both criminal and civil cases. Recall that the Virgin Islands is first in the Third Circuit and second in the United States in terms of the number of criminal felony filings per judgeship. These numbers would seem to dictate the degree to which magistrate judges' time is available for civil cases. Nonetheless, the magistrate judges of the Virgin Islands are heavily involved in uncontested non-dispositive civil action dispositions. They are also substantially involved in civil pre-trial conferences, discovery conferences and settlement conferences.

Magistrate judge utilization at this juncture is fully maximized, and magistrate judges Barnard and Resnick are clearly linchpins to the effectiveness of the District Court operations.

## **Findings and Recommendations**

### **Introduction**

After concluding an examination of the criminal and civil dockets, the Lawyer's Advisory Group turned its attention to an analysis of previous measures enacted in the January 1, 1992 plan to reduce cost and delay in civil litigation.

1. **Finding** - During the period in which the action plan has been in effect, the District

Court of the Virgin Islands has enacted a new set of Civil Rules of Practice and Procedure, a set of Bankruptcy Rules of Practice and Procedure, a set of Admiralty Rules of Practice and Procedure and Criminal Rules of Practice and Procedure. It is the considered judgment of the Advisory Group that the availability of clearly codified and understood rules of practice and procedure has contributed and will contribute to a reduction of both cost and delay in practice before the court.

**Recommendation - None.**

2. **Finding** - A new civil rule requiring a response to a motion for summary judgment was enacted as a part of a new set Civil Rules of Practice and Procedure. This rule was designed to expedite the disposition of summary judgment motions in that the parties would be on notice as to when and how a motion would be disposed of in the absence of a response. It is the considered judgment of the Advisory Group that the new rule has been effective in its implementation.

**Recommendation** - The Advisory Group believes that the party moving for a motion for summary judgement should have five days to reply to any response to a motion for summary judgement. It is therefore recommended that Rule 56.2 of the local rules of civil procedure be amended to provide for a reply.

3. **Finding** - A major recommendation in the action plan was the adoption of a new local rule governing discovery in civil cases (Rule 26.2).

The effectiveness in reducing cost and delay in terms of the execution of this rule was the subject of some discussion and debate. There was a general consensus that the limiting of the time and participation limits on the taking of depositions was on the whole effective in reducing cost and delay. It was less clear with respect to the rules' enumerated cooperative discovery devices as to whether the rule was successful.

**Recommendation** - It is recommended that a subcommittee of the Lawyer's Advisory Group, consisting of Magistrate Judge Jeffrey Resnick, and attorneys Britian Bryant, Adriane Dudley, and Joel Holt review the voluntary discovery aspects of Rule 26.2 and report to the court.

4. **Finding** - Among the new civil rules enacted in the District Court's action plan was one governing the use of expert witnesses. Although the Advisory Group found that

the rule has, in the main, served this area of civil practice well and contributed to civil case delay and costs reductions, there is still room for improvement in two respects.

**Recommendation** - It is recommended that Rule 26.3 (a) be amended to reflect that the written report of the expert should in fact be from the expert and written on his/her letterhead. ✓

It was also suggested that Rule 26.3 (c)(2) should be amended to advise that if a video tape of an expert is to be used at trial that the video should be indexed and objections thereto submitted in writing. ✓

5. **Finding** - A significant component of the District Court's action plan was the development of a local rule providing for voluntary court-annexed mediation in a broad range of civil cases. To date, the rule has been utilized sparingly for a number of reasons including the time required to acquaint the bar and train mediators. It was the considered judgement of the Lawyer's Advisory Group that the mediation rule should be amended to authorize the magistrate judge or presiding judge broad latitude in ordering any contested civil matter or selected issues to be referred to mediation.

**Recommendation** - It is recommended that Rule 3.2 of the local rules of civil procedure be amended and permit judges to encourage the use of mediation and not being bound by the necessity of an agreement of the parties to undertake mediation. Done

After examining and analyzing measures previously undertaken to reduce cost and delay in civil litigation in the District Court of the Virgin Islands, the Lawyer's Advisory Group considered whether additional measures should be recommended in furtherance of their statutory charge. Three additional areas were discussed and resulted in the findings and recommendations which follow.

6. **Finding** - Chief Judge Moore advised the Lawyer's Advisory Group of the need for a new and clear set of local rules of Appellate Procedure. Appellate cases coming from the Territorial Court frequently entail questions about which courts' rules

prevail, along with additional elements of both the Third Circuit's local rules and the Federal rules of Appellate Procedure come into consideration. Thus, the efficiency of appellate practice and concomitant reductions in cost and delay will be well served by a clear set of appellate rules. Additionally, Judge Moore indicated the perceived value of including in the appellate rules the opportunity for mediation of cases on appeal.

**Recommendation** - The Lawyer's Advisory Group encouraged and supported the completion and enactment of a new set of Local Rules of Appellate Procedure.

7. **Finding** - The Lawyer's Advisory Group expressed the perceived need to continue support for educational programs for members of the Virgin Islands bar. Recent and eminent changes in the jurisdiction of the District Court of the Virgin Islands as well as new sets of local rules of Practice and Procedure highlight the need for members of the bar to convene and discuss the many changes in progress. It was noted that an ALI-ABA Program is planned for early 1994 on St. Thomas, and that to the degree possible the day set aside for lawyer education on local matters should be expanded.

**Recommendation** - It is recommended that lawyer education be encouraged and supported and that the 1994 ALA-ABA Program be expanded to include additional time for a discussion of issues related to the District Court of the Virgin Islands and the Territorial Court. *(It should be noted that this recommendation was in fact pursued by Chief Judge Moore and by attorneys Adriane Dudley and Maria Hodge and that the referenced ALI-ABA Program has now been expanded to accommodate the substance of the referenced recommendation).*

8. **Finding** - It was the sense of the Lawyer's Advisory Group that the involvement of attorneys admitted *pro hac vice* results in a number of inefficiencies and delays in terms of the progress of cases and the sharing of court appointed *pro bono* work in the Virgin Islands.

**Recommendation** - It is recommended that Local Rule of Civil Procedure 83.1(3) be amended to make clear that an attorney admitted *pro hac vice* may participate in no more than a total of three (3) cases (including both civil and criminal cases) in a

given calendar year. It was also suggested that Local Rule of Criminal Procedure 44.1 also be amended to reference the *pro hac vice* rule in the Local Rules of Civil Procedure.

## Conclusions

It is the considered judgement of the Advisory Group that the workload of the District Court of the Virgin Islands is progressing in a business-like and expeditious manner. The overall work of the court is impacted negatively by the continuing failure of the Executive and Legislative Branches to fill the second authorized judgeship. Indeed, it is the sense of the Lawyer's Advisory Group that very serious consideration be given to the authorization to a third judgeship for the District Court of the Virgin Islands to accommodate expected growth in the years ahead.

The growth and demands of the rapidly increasing criminal caseload and the concomitant growth in the number of criminal defendants is increasingly placing the civil docket in a state of jeopardy. The work of the judicial officers and the support staff is exemplary, however there are finite limits to even herculean efforts when additional resources are needed today and will be required in the future to enable the court to maintain even a semblance of currency.

Finally, the Advisory Group notes its continuing debt of gratitude to the many contributions of Chief Judge Moore, the Territorial Court of the Virgin Islands, numerous visiting judges authorized by Chief Judge Sloviter of the Third Circuit, the bench, the bar and the court's support staff reflecting a concerted dedication to justice, all of which make the District Court of the Virgin Islands an institution which works.

## BIOGRAPHICAL SKETCHES OF THE ADVISORY GROUP

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