PREPARED STATEMENT

OF

HONORABLE AUBREY E. ROBINSON, JR.
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES

BEFORE
THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

S. 2027, THE CIVIL JUSTICE REFORM ACT OF 1990

TUESDAY
MARCH 6, 1990

INTRODUCTION

Mr. Chairman and Members of the Committee, I am Aubrey Robinson, Chief Judge of the United States District Court for the District of Columbia. I appear before you today on behalf of the Judicial Conference of the United States, the policymaking body of the Judicial Branch. Given the preliminary nature of this hearing and the relatively short time we have had to prepare for it, my remarks will be general in nature, but I believe will present an accurate view of the initial reaction of the Judiciary to S. 2027. I ask the Committee to afford other Conference witnesses the opportunity to appear at later hearings on the bill to detail further our suggestions and concerns.

It may be helpful if I briefly review the actions taken by the Conference since introduction of S. 2027 a little over a month ago. Normally, Conference policy is set after referral of an issue to the appropriate committee for study and recommendations, followed by full Conference action at its semi-annual session. However, in recognition of the substantial impact this legislation would have on the Federal courts if

enacted, the Conference's Executive Committee agreed to assume responsibility, by constituting a subcommittee consisting of its four district judge members to prepare the Judiciary position on S. 2027 and to respond during the interim until the full Judicial Conference has had an opportunity to act.

The subcommittee consists of District Judges Robert Peckham of the Northern District of California, John Nangle of the Eastern District of Missouri, Sarah Barker of the Southern District of Indiana, and myself. Judge Peckham, already well known to the Chairman for his expertise in this area, was named to chair the subcommittee. It had been our hope that Judge Peckham and the other members of the subcommittee could be here today, but my colleagues found themselves in the midst of lengthy trials which they could not leave on such short notice. However, the testimony I am about to give represents our joint views. I might add that the regularly scheduled semi-annual meeting of the full Judicial Conference will take place next week. Judge Peckham and I will review for the Conference the actions taken to date by the Executive Committee and our discussions of today. We will then receive instructions from the Conference as to how to proceed with regard to the preparation of views for the consideration of this Committee.

DISCUSSION OF THE LEGISLATION

Mr. Chairman, the Judiciary applauds your interest in the subject of civil justice in the Federal courts. In your actions creating the task force to review civil justice and your subsequent introduction of a bill, you have reflected an understanding of the importance of the civil justice system. For many years, judges have been unable to devote as much time to the civil portion of their dockets as compared to the criminal side. The Speedy Trial Act, fueled by a growing drug caseload, has, in many districts, imperiled the timely and efficient resolution of civil cases. There is no question that several of our Federal courts need more help. The issue is how best to provide that help.

In discussions of this bill with my colleagues over the past week, two themes have emerged. The first is almost a truism -- we share your goal of enhancing and perfecting the delivery of civil justice. We can agree with many of the principles underlying your bill: early involvement by a judicial officer to control the pace and cost of cases; utilization of status conferences; setting of target dates for completion of various pretrial stages of a case; close supervision of discovery; prompt decisions on discovery; the development and use of computerized systems to monitor the progress of cases; increased education of judges, magistrates, clerks of court and other court personnel; experimentation with alternative forms of dispute resolution; and

case management generally. Indeed, Federal district courts are now applying many of these principles and other creative and innovative case management principles, and applying them successfully. Our evolving case management methods are the result of years of experimentation, study, and review of what works, and we continue to struggle to progress and be innovative in our management techniques. The Federal judges of this country are strongly committed to this effort and are surely in the position to know what is needed to run our courts so as to maximize the efficient delivery of justice.

The second theme is that serious concerns have arisen over the specific means your bill has chosen to arrive at our common goal, and I must share with this Committee the reaction of the preponderance of Federal judges familiar with this bill. The fact is that they simply do not believe that, in its present form, it will achieve its stated objectives; to the contrary, they fear that it may actually have a <u>negative</u> effect on the handling of civil litigation. For example, the proposed diminution of the role of magistrates would reverse improvements made in civil case management through the increased use of magistrates, and would result in a vastly greater need for more life-tenured judges.

In addition, there has been a strong reaction that the bill is extraordinarily intrusive into the internal workings of the Judicial Branch. These are procedural matters which should be handled through the normal, Congressionally-mandated Rules Enabling Act process. Many thoughtful Federal judges are very, very uneasy about the signals this bill sends of legislative incursion -- albeit well-meaning -- in the judicial arena and what it portends for the future.

THE PROBLEM AND SUGGESTED SOLUTIONS

Mr. Chairman, we applaud your efforts and those of the Judiciary Committee in repeatedly tackling the seemingly endless problems caused in recent years by the scourge of drugs and crime. This Committee has responded with major legislation designed to protect the public and yet assure defendants of their full constitutional rights. As this Committee well knows, those laws have had a tremendous impact on the resource needs of the entire justice system -- not just the criminal justice system. The impact on the Federal courts has been dramatic and threatens to change the entire nature of the Federal judiciary. More and more Federal district courts are becoming virtually criminal courts, to the detriment of the handling of civil cases.

With the imposition of the Speedy Trial Act, sentencing guidelines, mandatory minimum sentencing, and the series of anti-drug and anti-crime laws enacted since 1984, something has had to give. Of necessity, it has been the civil justice system that has suffered the most. It is imperative that any solution look to the entire business of the courts, and not just civil cases in isolation.

First and foremost, if this Committee wants to take a meaningful step toward resolving the perceived crisis facing the Federal justice system, you must process a proper omnibus judgeship bill. We need it now and we need it badly. In addition, the unprecedented number of judicial vacancies (63 currently) must be filled promptly.

The last judgeship bill was passed by Congress in 1984. We have submitted requests for additional judgeships in previous years and have now pending before the Congress our request for 76 additional Federal judgeships, 60 of them at the district court level. In reality, given the spurt of drug cases in the past year, the request substantially understates our real need. Tentative data we have provided this Committee suggest that we actually have a need for almost 100 new judgeships. Of these, 13 would go to Texas districts which are currently inundated with drug, other criminal and asbestos cases. The Chief Judge of the Southern District of Texas estimates that, without prompt relief,

by the end of this year there will be no civil cases heard in that district populated by approximately 5,000,000 people. The situation is nearly as dramatic in several additional districts. We welcome the opportunity to furnish detailed justification for a more precise number of additional judgeships and where they are most urgently needed.

The other obvious solution -- and one which would save the Government millions of dollars -- is to modify or eliminate diversity jurisdiction from the Federal courts. The official and long-standing position of the Judicial Conference is that diversity should be eliminated. I need not belabor this point, as the Committee is familiar with our views.

With implementation of these two proposals, and adequate funding for education, automation, and experimentation with different forms of case management developed and implemented by the Judiciary, we can meet the caseload challenges of the rest of this century.

CONCLUSION

We applaud the sponsors of S. 2027 for their demonstrated sincerity and sensitivity to the demands placed on our civil justice system. We caution that the solutions adopted be of a nature that will not impose even greater costs and burdens on the courts.

We do not come before you today saying we have all the answers or that we should not continue our attempts to improve the delivery of civil justice. The implementation of various forms of case management and the education of our judges and support personnel in this area have proven invaluable. We will continue full speed ahead in devising better mechanisms to handle civil cases within the omnipresent constraints of time and budget. We take pride in what we have done and believe that the closing of nearly 1,000,000 cases in the Federal courts last year and the opening of over 1,000,000 new cases reflect that the Judiciary has developed and implemented many valuable tools of case administration. We believe we have earned the right to continue working on their extension and implementation. If you provide the Federal Judicial system with sufficient resources, manpower, and money, the Federal trial judges are confident that we can efficiently dispose of our cases to the satisfaction of this Committee and, more importantly, to the satisfaction of the public we both serve.

Our needs are four-fold:

(a) We need maximum flexibility on the part of each judge to manage his or her own caseload;

(b) We need adequate resources to meet whatever demands are placed upon us;

(c) We need time for research and testing of those case management methods that work well; and, finally,

(d) We need consistency and understanding from Congress with regard to the demands placed on the Judiciary -- in short, not everything can be given the highest priority.

I end as I began. On behalf of the Judicial Conference of the United States, I earnestly request:

(1) The opportunity at a future hearing of this Committee to present expanded testimony by Judge Peckham, chairman of our subcommittee, and the testimony of such other spokespersons as the Judicial Conference may designate.

(2) The opportunity to present detailed written submissions concerning the views of the Judicial Conference.

(3) The opportunity for adequate time to prepare properly for both.

We stand ready to work with you to implement these principles.