Chambers of

Wayne D. Brazil

United States Magistrate

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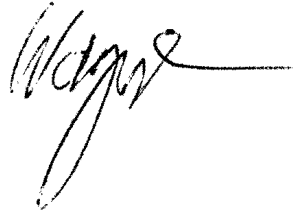
April 17, 1990

Dear Karen:

I enclose hard copy and a diskette with the two documents, edited to reflect the decisions made this afternoon by the Executive Committee.

On the diskette, the documents are named as follows:

1. Background = backgrnd.1

2. Measures to Address = measures.1

Thank you for doing so much work under such time pressure.

Sincerely,

compare.dft

Key Differences Between the Four Bills
to Be Discussed at the 4/17/90 Meeting

This list focuses only on major differences.

It begins with the bill that would ask least of the judiciary and
works toward the bill that would ask most of the judiciary.

1. Judge Barker's suggested re-shaping of the minimalist version:

    a. would require:

        (1) each district to appoint an advisory group, and

        (2) to conduct an unspecified "continuing review of the
            administration of civil justice" in the court.

    b. would not require any court to adopt a plan of any kind,
        or to take any cost-delay reduction steps, unless a
        majority of the judges of the court voted to do so

    c. would not make mandatory any components of any plans.

2. Greg Scott's minimalist version of 4/12/90.

      a. would require each district to appoint an advisory group.

      b. would require each district to conduct, on a continuing basis, an unspecified review of its administration of civil justice.

      c. would [require or exhort] each district to adopt some unspecified plan.

      d. would not make mandatory any components of any plans.

      e. would require a committee, composed of the chief district judges of each circuit (or their designees), to evaluate each district's plan and would empower this committee, at its election, to modify or abrogate any plan.

3. Wayne Brazil's minimalist version of 4/12/90:

a. would require appointment of an advisory group in each district.

b. would require each district to complete a thorough self-assessment, and would require the Judicial Conference to establish the kinds of data that each court, at a minimum, would be required to generate about itself.

c. would require each advisory group and district court to consider a list of 12 specified topics or measures that might improve case management or reduce cost/delay.

d. would require each advisory group to report its assessment of the court, to describe its consideration of each of the 12 topics or measures, and to recommend a plan or measures to be implemented. The report and recommendations would be sent not only to the court, but also to a circuit-wide committee of chief district judges and to the Judicial Conference. [social pressure]

e. would require each court to consider the recommendations of its advisory group, but would not require the adoption of any measures. But would empower the Judicial Conference to order a district to adopt measures that the Conference deemed appropriate.

f. would require the circuit-wide committee of chief district judges to review the reports, recommendations, and measures taken by each district court, and would empower this committee to compel district courts to consider additional measures or reconsider initial decisions in response to the advisory group's report and recommendations.

g. would require each district court to reconvene its advisory group every three years, would require that group to re-assess conditions in the district and measures taken in the past, and would require the court to consider any new recommendations the advisory group might make.

h. would require the Judicial Conference to (1) establish guidelines for the self-assessments by the district courts, (2) generate model plans and lists of possible cost/delay reduction measures, (3) publish results of district self-assessments and descriptions of plans adopted or measures taken, (4) arrange for the preparation of a Manual for Litigation Management [all drafts include this requirement].

i. would authorize the Judicial Conference to conduct demonstration programs in up to five volunteer districts [all drafts include some version of this authorization].

4. The April 9 revision of the April 6 draft.

a. would require the appointment of an advisory group in each district.

b. would require each district to conduct biennially an unspecified review of its case management procedures.

c. would require each district to implement a cost/delay reduction plan (either a plan locally designed or a model plan developed by the Judicial Conference)

d. would **require that each plan include the following:**

1. case-specific management consistent with Rule 16.
2. early judicial involvement of some sort in civil cases. [appears to require judge to fix trial date early in pretrial period, which might be inconsistent with Rule 16].
3. ongoing training programs for judicial officers and staff.

e. would list several **optional features** of local plans, but this list would **not include tracking systems.**

f. would require a circuit-wide committee composed of the chief district judges to review each district's plan, and would empower this committee to modify or abrogate any such plan.
[there is some potential tension between giving this kind of committee this power and 28 U.S.C. §332(d), which requires the Circuit Judicial Council to review all local rules for conformity with national rules of procedure and evidence].

g. would empower the Judicial Conference to review and modify any action taken by the circuit-wide committees of chief district judges.

h. would require the Judicial Conference, after consulting an advisory group, to develop one or more model expense/delay reduction plans.

i. would authorize the Judicial Conference to conduct demonstration programs and would require preparation of a Manual of Litigation Management.

j. would require semi-annual reporting on caseload processing and might permit Circuit Council's to decide whether to make the reports public.