

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF VERMONT
FEDERAL BUILDING
BURLINGTON, VERMONT 05402-0945

RICHARD PAUL WASKO
CLERK

BURLINGTON:
(MAIN HEADQUARTERS)
P.O. BOX 945
(802 951-6301)
 RUTLAND 05702-0607
(DIVISIONAL OFFICE)
P.O. BOX 607
(802 773-0245)

January 2, 1996

Mr. Abel J. Mattos
CAPS
One Columbus Circle, NE
Washington, DC 20544

Mr. Mattos:

Pursuant to 28 U.S.C. Section 475, enclosed is the
1995 Annual Report of the CJRA Committee for the District of
Vermont.

Please let me know if you need any further information
from us.

Sincerely,



Richard Paul Wasko
Clerk of Court

enclosure: CJRA report

DISTRICT OF VERMONT

1995 Annual CJRA Report
December 20, 1995

The report will mainly follow the organization of the original report of May, 1993 to facilitate comparison with the original discussion and data. Data will include only the statistical information from years 1990-95. Earlier data can be found in the original report and in the appendix to this report. The original report utilized a statistical year from July 1 to June 30. The Administrative Office now compiles data based on the fiscal year from October 1 to September 30. This report will continue to use the original statistical year when data is available on that basis to facilitate long term comparison on an accurate basis, but utilizes FY data for disposition time.

I. JUDICIAL RESOURCES

1995 was a rather unique year for the District of Vermont in that both district judgeships were simultaneously vacant for the first time during the District's history. On a fiscal year basis (October 1, 1994 - September 30, 1995), 18 of 24 judge months were technically vacant.

During December 1994, the Clerk's Office was advised that Senior District Judge Billings would not accept any new assignments and would be concentrating solely on his existing case load. This change in policy, coupled with the fact that Chief Judge Parker¹ was handling both district and appellate work, placed a very heavy burden upon the court, including the workload of Magistrate Judge Niedermeier. During the early part of 1995, it became evident that additional judicial support in the form of visiting judges would be necessary to ensure that the District's criminal docket remained current and in full compliance with Speedy Trial Act mandates.

Judicial Support

TABLE 1 below indicates the amount of judicial support received from visiting judges during Calendar Year 1995. The total amount of assistance provided by these judges was substantial. One bench trial assigned to the Honorable Warren Eginton (Sr. Judge DCT) consumed three full work weeks. Without the support of these visiting judges, the District would have

¹ Chief District Judge Fred I. Parker was officially sworn in as an appellate judge on October 14, 1994.

been extremely hard pressed to meet its statutory obligations. The District did, in fact, comply with all Speedy Trial Act requirements. No cases were dismissed nor were any sanctions imposed for failure to meet the time limits specified by 18 USC § 3161.

VISITING JUDGE	NUMBER AND TYPE OF PROCEEDING				JUDGE HOURS
	Civil Trials	Cr. Trials	Cr. Pleas	Sentences	
Barbadoro			10	20	25
Cohn	1		5		9
Duplantier		1	1		10
Eginton	2				111
Gagliardi	5	2		1	37
McAuliffe		3	3		60
Oakes	2 (TROs)				9
TOTALS	10	6	19	21	56/261

Civil Case Assignment Policy

After consultation with both of our new district judges, the Clerk's Office formally amended its civil case assignment policy. Rather than trying to balance the civil cases pending totals equally between district judges monthly, which essentially penalized judges who closed more cases, the new case assignment policy assigns cases randomly on a one-to-one basis, irrespective of filing location, the number of case closings each month, and the number of cases pending. The Clerk's Office will review the civil pending totals annually to discern any large imbalance and to take whatever action the court deems appropriate to correct any large imbalances.

II. ASSESSMENT OF CONDITION IN THE DISTRICT

1. Caseload - Overview

Civil filings continued at the same level as 1994. Criminal filings increased forty percent from the recent low in 1994 to

slightly above the recent historical average. In spite of judicial vacancies during the year and the sharp increase in criminal caseload, the number of the total pending cases and pending civil cases remained nearly the same as the figures at the end of SY 1994.

Table 2²

District of Vermont Statistical Overview 1990-1995						
Statistical Year	1990	1991	1992	1993	1994	1995
Total Cases Filed	505	537	612	537	517	557
Civil	365	357	453	398	415	415
Criminal Defendants	140	180	159	139	102	142
Total Pending	576	629	693	704	607	593

2. Nature of Caseload

Several trends appear to be emerging in the composition of the District's civil caseload over the last few years.

Personal injury and contract filings have decreased significantly since the early 90's. Civil rights filings have increased dramatically since 1990, especially during 1995. Prisoner filings have risen substantially over the past five years and have matched the historically high figure of 1989-90. Bankruptcy and land cases have hovered at or near recent historical highs during the past two years. Often technically difficult copyright, patent and trademark cases have been at an historical high point over the past three years but represent less than five percent of the caseload. Labor and forfeiture/penalty cases (excluding drug cases) have become a very minor part of the caseload.

Based upon a system of case weights which utilizes measurements of judge time devoted to different types of cases

²The original report utilized criminal felony filings. Because that data is no longer available, the current table is utilizing criminal defendant filings. The reader should be aware that the pending criminal defendant figure includes approximately sixty fugitives and therefore somewhat overstates the actual criminal workload.

nationally, nearly two-thirds of judge time in the district is expended on civil rights (28%), personal injury (19%) and contract cases (18%). All three types of cases are subject to the district's early neutral evaluation program.

Detailed filing data by case type for the past ten years can be found in Table A-1 (appendix).

3. Filings - Criminal

The number of criminal filings in the District has been extremely disparate over the past ten years, ranging from sixty ten years ago to three times that figure in 1991. Filings fell substantially in each of the three years after 1991, but jumped forty percent in 1995 from the recent low. The 1995 level of criminal case filings, 142, is virtually the same as the average number of filings during the 90's and therefore probably represents a realistic expected figure for future filings absent substantial change in circumstances.

The change from the previous year is attributable primarily to an increase in drug cases and more modest increases in immigration, fraud and firearms filings.

4. Filings - Civil

Civil filings have stabilized in the four hundred case range during the past three years after the precipitous increase in 1992. 415 cases were filed in 1994 and in 1995. The current District filing level, however, is substantially higher than the 1989-91 level while national filings have increased modestly.

The ability of the state court system to reduce its docket and the time to trial may explain the decline in diversity filings (contracts and personal injury) which are primarily responsible for the lower level of filings over the past three years. An increase in bankruptcy appeals and civil rights cases has negated much of the diminution in diversity filings.

In summary, the one quarter rise in civil case filings in 1992, which accompanied the steep rise in criminal cases and alarmed the Committee when it examined the state of the docket in 1992-93, has fortunately not proven to be a totally accurate indicator of the filing trend in the district. Nevertheless, filings for the past two years are up approximately thirteen percent over the 1989-91 level, significantly above the national trend.

Table 3

Civil Caseload Data 1990-95						
SY	1990	1991	1992	1993	1994	1995
Filings	365	357	453	398	415	415
Pending	414	430	486	457	459	461
Terminated	339	340	371	431	413	412

5. Pending Cases & Terminations

Pending civil cases have typically hovered in the 430-440 range since early 1994. (The data in Table 3 reflects upward blips at the end of the statistical year we have utilized in the District's reports.) This represents a substantial reduction from the upward trend during 1992-93 (to nearly 500 cases) which concerned the Committee when it prepared the plan. However, the District has been unable to continue to reduce the pending civil caseload during the past year although it terminated as many cases as it did in 1994. (The District did well to avoid falling behind when the judicial vacancies, appointment of two new judges and sharp increase in criminal cases are considered.) The pending caseload remains one hundred cases higher (approximately 30%) than during 1990-91.

6. Time Required to Terminate Cases

a. case disposition time

The District continues to require eleven months to terminate civil cases, three months more than the national median. The national average time to disposition is approximately twelve months. We could expect the average case filed in the District during 1995 to require fourteen months to termination, up very slightly since 1994.

Vermont, however, has decreased the percentage of cases which exceeded three years of age ("stale" cases) at termination during 1995, from nearly six percent to less than five percent. Vermont has consistently been below the national average with respect to this measure.

Of the major case categories represented in the federal court caseload, contracts (11%), personal injury (5.7%), prisoner (6.8%), and social security cases (6.9%) have exceeded the overall percentage of "stale" cases at termination in the district during the past three years. Fifty percent of a

substantial case category (seven percent of filings), securities/commodities cases, required more than three years to terminate during the past three years. In the future, the District should consider differential case management for categories of cases where a substantial percentage require more than three years to terminate if ENE does not reduce the percentage.

The number of trials held during 1995 was substantially less than during previous years. 1995 was the first year in the past five in which Vermont did not try substantially more cases than the national average. Time from filing a civil case to trial has increased by half during the past three years (1993-1995), and now exceeds the national average by four months. We anticipate that the District could lose ground with respect to median disposition time and percentage of "stale" cases if pressure to try cases is not maintained.

The median disposition time for criminal cases has declined two months to 10.1 since the 1993 "high" point when Vermont took nearly twice the national average time to terminate a criminal case. Vermont currently exceeds the national median (6.7 months) disposition time for criminal cases by half.

b. motion disposition time

While the District had been able to make modest progress with respect to termination time since the initial report was filed, the time required to decide pending motions has increased dramatically during the past year. As table 4 reflects, the number of pending motions has increased. A concomitant sharp increase in both motions pending for more than six months and average disposition time has resulted. The impact of slower processing of motions on delay in the District is apparent, affecting case disposition time and entry of cases into the ENE program. Presently judicial staffs are utilizing pending motion data in a concerted effort to decrease the number of motions pending.

TABLE 4

	Mar. 1994	Sept. 1994	Mar. 1995	Sept. 1995
TOTAL MOTIONS PENDING OLDER THAN 6 MONTHS	35	12	69	70 ³
TOTAL MOTIONS PENDING	.387	461	462	389
AVERAGE DISPOSITION TIME (DAYS)	54	88	108	119

c. Vermont disposition time in perspective

This discussion of disposition time and time to trial should be considered in the context of comparative workload in the District. Vermont has 64% as many filings per judge as the national average, 67% on a weighted case basis. A Vermont judge has 75% of the pending cases of his national counterpart. Traditionally, Vermont judges try *considerably* more cases than their counterparts nationally, but utilize pre-trial conferences *far less* frequently. (Vermont terminated approximately one-tenth the national percentage of cases through pre-trial conferences in 1994.) The average age of a pending Vermont case approximates the average age of cases nationally, yet judicial intervention is utilized or required prior to disposition significantly less frequently (approximately one-quarter less during SY 1994) in the District.

d. Possible effect of ENE on disposition time

Very preliminary data from the ENE program suggests that the ENE requirement will lead to a reduction in the amount of time required to terminate civil cases subject to ENE. In SY 1995, 54% of the civil caseload was subject to ENE. That 54% includes case categories which have been substantially overrepresented in the "stale" case classification (>three years at termination) such as contracts and securities/commodities cases. Two other significant categories, prisoner and social security (approximately one-fifth of the civil caseload), which are assigned to the magistrate judge and are modestly overrepresented in the stale case category, are not subject to ENE.

³Although this is the actual total number pending for the District, both district judges are exempt from reporting for their first six-month reporting period.

III. Implementation of the Plan

This section of the report will briefly address progress made by the District in implementing the plan recommendations during the past year.

A. Early Neutral Evaluation

A comprehensive report on the progress of the ENE program and evaluation thereof by Chief Deputy Clerk Marjorie Krahn, the program administrator, is appended to this report as Appendix 2. Response to the program has been extremely positive. Preliminary data suggests that the program is effective in establishing earlier communication between counsel and fostering more realistic expectations among the parties. The data also suggests that disposition time for cases subject to ENE will be reduced, with the vast majority of cases terminated by the parties prior to an ENE hearing.

The clerk's office has developed a mechanism to monitor the effectiveness of ENE in meeting the objectives established by the committee.

B. Data Subcommittee, Reports and Better Use of ICMS

An automated docketing system is in place for all cases filed in the district. The clerk's office has prepared quarterly executive reports for the past six quarters which track pending cases and motions, age of cases and motions, age of terminated cases and motions and time allocated to civil and criminal trials. We will soon be able to follow this data over a meaningful period of time.

The clerk's office is still working on the design of the yearly report which reports mean disposition time for various case categories and "procedural progress at termination." The report will be helpful to fine-tune the categories of cases subject to ENE and determine whether differentiated case management would be helpful for problematic categories of cases.

C. Bar Education and Meetings

The federal court CLE program was held in conjunction with the Bar Association in March, 1995. Bar reaction to ENE suggests the court has been successful in enlisting cooperation of the bar with the program.

The bar relations subcommittee has been inactive. It has not assisted Magistrate Judge Niedermeier to enlist and train counsel to represent pro se prisoners. Nor has the subcommittee evaluated the ABOTA cost-containment guidelines for possible

adoption in the District.

D. Jury Instructions

Negligible progress has been made in making instructions more easily available to counsel. The court typically uses available pattern instructions when federal law controls. State instructions are now available through the Vermont Trial Lawyers' Association and Michie Publishing.

E. Magistrate Judge Utilization

The Vermont Department of Corrections submitted a grievance procedure to the Department of Justice but has been asked to submit additional data with respect to the effectiveness of its procedure. While information the Committee has obtained from the Department has been somewhat inconsistent, the Department has apparently decided to resubmit a procedure to the Department of Justice. If an "approved" grievance procedure is adopted, the court need only consider petitions by state prisoners who have exhausted the procedure. Two additional developments may further reduce the burden of prisoner petitions on the magistrate judge and court. First, Judge Murtha is applying for a part-time pro se clerk to screen prisoner petitions and assist the magistrate judge by drafting proposed orders. Second, the probable settlement in a state prisoner class action would require the state to provide better library facilities and legal services. This may lead to better drafted and less frivolous petitions as well as less pro se petitions, further reducing the magistrate judge's burden.

While the Committee is mindful of the burden caused by an increasing number of state prisoner filings, it decided to make no recommendations this year because of the desire to assess the probable ameliorative effects of the developments described above.

F. Limited Pretrial Pursuant to New Local Rule 12

There has been a total turnover in judges since the last annual update was prepared. We hope to evaluate the effectiveness of the limited pretrial recommendation after the new judges have established their practices with respect to pre-trial conferences and the clerk's office has implemented the recommendation to collect data on disposition time and procedural progress at termination.

IV. Consideration of Possible Additional Measures or Amendments to the Plan to Reduce Unnecessary Cost and Delay

The District has been able to maintain a reduced level of pending civil cases and slightly reduce the number of stale cases

in spite of judicial vacancy time, two new judges and a substantial increase in criminal filings in SY 1995. Except for the recent increase in pending motions and the time required for disposition of motions, the picture is far more optimistic than it was two years ago. We anticipate that the ENE program will reduce delay in a number of problematic case categories, but will not have sufficient data to evaluate the effect of the program until at least the end of SY 1996. We have not been able to monitor the effect of the limited pre-trial hearing rule which we hoped would make better utilization of the time set aside by the judges for trial possible.

Four areas merit the attention of the committee during the forthcoming year.

1. The problem of increased pending motions and disposition time. The problem is probably attributable to judicial vacancies during the past year and the absorption of a large caseload by two new judges. Since the court is monitoring the problem and attempting to reduce the number of pending motions now that the two new judges are on board, we should only monitor the problem during the coming year.

2. Reduced number of civil cases tried and consequent reduced pressure to try or settle cases. The reduced number of trials also seems attributable to the judicial vacancies and the problem of new judges absorbing a caseload. Only monitoring of the problem seems appropriate at this time.

3. Data collection. The original recommendations of the committee with respect to yearly reports examining terminations in terms of case category and procedural progress has not yet been implemented. Marjorie Krahn's comprehensive ENE evaluation suggests that additional data should be collected to evaluate the effectiveness of the ENE program. Members of the ENE subcommittee and the reporter should work with Ms. Krahn to develop the additional data required to evaluate the program. The data subcommittee should continue to work with Ms. Krahn to implement the committee's original recommendation.

4. Civil rights cases. The committee focused on civil rights cases and prisoner petitions as the two categories of cases which appear to be subject to long-term filing increases. [Developments with respect to the latter are set forth in III.E. above.] The committee has asked the Chief Deputy Clerk and Reporter to ascertain the trends in the various case categories which comprise civil rights filings and attempts to determine why any substantial filing increase exists.

SUMMARY

In summary, the Committee believes that the District has

made progress toward reducing cost and delay and that the caseload is generally under control. We are concerned about the pending motion picture, but believe the problem will be corrected in the near future. We do not feel that any major recommendations are appropriate at this time. We should better understand the impact of our prior recommendations and wait until the impact of the judicial vacancies and two new judges has subsided before moving beyond the modest suggestions outlined above.

MEMBERSHIP
Vermont District Court
CJRA Committee

Robert B. Hemley, Chair
Hon. J. Garvan Murtha
Hon. William K. Sessions
Chief Clerk Richard Wasko
Chief Deputy Clerk Marjorie Krahn
Hon. Jerome J. Niedermeier
Kenneth R. Kreiling, Esq., Reporter
John P. McCrory, Esq.
David L. Cleary, Esq.
Lindsey M. Huddle, Esq.
Mark A. Kaplan, Esq.
Robert E. Manchester, Esq.
Karen McAndrew, Esq.
Helen M. Toor, Esq.

APPENDIX A-1

This is a table copied from the October 1995 SY Statistics Supplement prepared by the Federal Judicial Center for the district. The data included in the table is based on a statistical year from October 1 until September 30 and therefore does not coincide with the data in the body of the report which is based on the traditional statistical year from July 1 through June 30. The table does however convey an excellent sense of the composition of the civil caseload over the past ten years and the general trend of civil filings.

FILINGS BY CASE TYPE, SY 86-95										
<u>District of Vermont</u>	YEAR									
	86	87	88	89	90	91	92	93	94	95
Asbestos	0	0	1	0	0	0	0	1	0	0
Bankruptcy Matters	8	6	4	4	7	9	12	24	22	19
Banks and Banking	2	2	0	0	0	1	1	0	4	2
Civil Rights	32	16	29	27	26	40	45	62	50	77
Commerce: ICC Rates, etc.	0	2	1	1	0	0	2	0	2	1
Contract	55	52	65	67	63	65	84	71	61	54
Copyright, Patent, Trademark	11	8	10	13	12	4	13	14	17	14
ERISA	2	1	1	0	1	2	3	4	5	2
Forfeiture and Penalty (excl. drug)	11	9	11	32	8	5	11	3	6	3
Fraud, Truth in Lending	6	4	2	1	4	1	2	2	1	2
Labor	7	13	8	6	2	10	15	14	8	4
Land Condemnation Foreclosure	13	23	15	16	15	25	33	14	38	38

<u>District of Vermont</u>	YEAR									
	86	87	88	89	90	91	92	93	94	95
Prisoner	20	42	26	57	57	44	46	41	54	56
RICO	1	1	1	4	2	0	3	3	1	2
Securities Commodities Tax	6	9	2	5	3	1	4	0	2	3
Social Security	27	27	29	24	27	20	20	23	28	29
Student Loan and Veteran's	4	0	4	4	3	2	4	6	1	1
Tax	4	3	2	3	0	2	3	2	2	2
All Other	22	31	27	33	62	54	58	58	47	46
All Civil Cases	321	333	302	360	364	361	443	403	418	419