UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

EDMUND V. LUDWIG
JUDGE

12614 UNITED STATES COURT HOUSE
INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106-1769
597-5872

February 4, 1993

Robert M. Landis, Esq., Chairman
Civil Justice Reform Act Advisory Group
For United States District Court for the
Eastern District of Pennsylvania
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

Dear Mr. Landis:

Thank you for your letter of January 22, 1993 and for your and your Advisory Group's conscientious work and continuing commitment.

As I did initially, I will respond in writing, although I am quite willing to appear in person if you would want me to do so.

In case conferences under Rule 16, I have heard little from attorneys regarding the Plan. I continue to follow my pre-Plan case management procedures - conferencing early and often and using a trial list rather than a trial pool system. My scheduling policy is more stringent than that contained in the Plan.

At the Bench-Bar Conference last June and at the Federal Judicial Center's recent program on proposed Rule modifications, I heard much debate on self-executing disclosure. I believe this mandate represents poor policy and is unnecessary. In its place, I advocate discovery deadlines - i.e., procedural case management, not substantive. For example, a party would be required to make discovery requests within a time certain. Supplemental requests would be confined to a period after receipt of initial discovery. Deposition notices could also be put in a time frame. Extensions would be available for cause shown. In this way, delay reduction could be controlled and effectuated. The judge could set and, in given cases, revise the parameters. The present disclosure system not only thumbs its nose at the adversary system but also - ironically enough - engenders delay well beyond what is necessary in many instances.

I have serious reservations about court-annexed mediation. Lawyers tell me the judges wanted it. Judges say it was demanded by the lawyers. I believe it is an unjustified delegation of the court's obligation. In my view, it is the judge's function under Rule 16 to mediate or to refer an appropriate case to another judge or magistrate-judge for mediation. Also, I believe statistics will show that active case management by a judge disposes of as many cases as mediation, or more. The pro forma cost of mediation to litigants probably exceeds $1 million/year. The contribution of 500 mediators' time must also be a gargantuan number. Pro bono legal services are desperately needed in other areas. Moreover, in certain cases, mediation becomes an impediment to settlement - the resolution posture of the case having been imposed early on by the mediator. As we all know, very often the critical factor in settlement is the settlement history.

In my view, the key to expense and delay reduction is hands-on case management by a judicial officer. This means setting a target date and holding a conference every few months - and being available in the meantime to help counsel cut through problems informally so as to avoid getting bogged down in discovery dispute motion practice and other time-consuming procedures. It also means offering, on a differential basis, ADR approaches suitable to the case. For better or worse, the judge, particularly in an individual calendaring setting, has become a neutral communicator or transmitter of messages, as well as an authoritative evaluator. Until a judge brings counsel together, very little communication may take place, and there is often no sense of urgency in processing the case or reaching resolution.

Thank you for the opportunity to make these comments.

Sincerely,

Edmund V. Ludwig

EVL/td
cc. Chief Judge Louis C. Bechtle
Michael E. Kunz, Clerk of Court