

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
U.S. COURT HOUSE
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May 2, 1991

Mr. Abel J. Mattos, Chief
Court Programs Branch
Administrative Office of the
United States Courts
1120 Vermont Ave., N. W.
Room 1008
Washington, DC 20054

Dear Mr. Mattos:

Attached hereto are copies of the Status of the Docket Report, the minutes and the transcripts of the four meetings that have been held by our Civil Justice Reform Act Advisory Group. Please contact me if you have any questions.

Sincerely,



Michael E. Kunz

*P.S. Our next meeting is May 7 and May 13
Regards*

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
STATUS OF DOCKET
AS OF JUNE 30, 1990**

TABLE OF CONTENTS

SECTION	PAGE
Executive Summary	iv
EDPA - Jurisdiction	1
EDPA - Caseload	1
Weighted Caseload Defined	2
EDPA Weighted & Unweighted Filings	2
Comparison of Weighted Filings Per Authorized Judgeship in EDPA with other Large Metropolitan Courts	4
Comparison of Weighted Filings Per Authorized EDPA with those of All U.S. District Courts & of the Index of Weighted to Unweighted Filings	4
Pending Three Year-Old Cases	4
Three Year-Old Civil Cases Pending as of June 30, 1990 of the Twenty Five Metropolitan Courts	5
Vacant Judgeship Months	5
Median Time Frame	7
Number of Trials	8
Magistrate Judges	8
Senior Judges	11
Number of Grand Jury Matters	11
New State Correctional Institution	11
Increase in Criminal Prosecutions	11
Impact of Diversity Jurisdiction	13
Asbestos Filings	15
Pending Asbestos Cases	16
Projection of Caseload	17
Arbitration	18

TABLE OF CONTENTS (Continued)

SECTION	PAGE
Mediation	19
Pro Se Law Clerks	19
Automation	20
PACER - Public Access to Court Records	21
CHASER - Chambers Access to Selected Electronic Records	21
Electronic Filing of Documents	21
Electronic Sound Recording	22
Videotaping	23
Broadcasting in the Courtroom	23
Procedural Forms	24
Attachment 1: Total Civil & Criminal Filings of EDPA	25
Attachment 2: Civil & Criminal Caseload of EDPA.....	26
Attachment 3: EDPA Civil & Criminal Caseload 1964 to 1990...	27
Attachment 4: EDPA Breakdown by Nature of Suit in All Civil Cases	28
Attachment 5: Ten Largest Metropolitan Courts: Filings, Terminations, Pending	29
Attachment 6: Comparison of Civil & Criminal Cases Filed Between EDPA & Nationwide 1979 to 1990	30
Attachment 7: Ten Districts with the Most Weighted Filings Per Judge & the Districts' Median Times	31
Attachment 8: Complex & Less Weighted Civil Filings EDPA ...	32
Attachment 9: EDPA Weighted Caseload 1962-97	33
Attachment 10: Comparison of Weighted & Unweighted Caseloads for Ten Metropolitan Courts 1979-90	34
Attachment 11: EDPA Index of Weighted Filings to Unweighted Filings 1971-90	38

TABLE OF CONTENTS (Continued)

SECTION	PAGE
Attachment 12: Civil Cases Pending & Length of Time Pending As of 6/30/90	39
Attachment 13: Comparison of Vacant Authorized Judgeship Months 1969-1990	40
Attachment 14: Comparison of Weighted Filings Per Authorized Judgeship with Weighted Filings Per Actual Judgeship	41
Attachment 15: Comparison of Ten Largest Metropolitan Courts By Filing with their Weighted Filings & Median Times for 1990	42
Attachment 16: Median Time Intervals in Months from Filing to Disposition of Civil Cases Terminated	43
Attachment 17: Total Number of Trials Completed in 1990 By the Ten Largest Metropolitan Courts	44
Attachment 18: Length of Civil Trials Completed	45
Attachment 19: EDPA Asbestos Cases 1977-90	46
Attachment 20: Pending Asbestos & Non-Asbestos Civil Caseload	47
Attachment 21: Procedural Order for Social Security Review Cases	48
Attachment 22: Procedural Order for Bankruptcy Appeals Cases	49
Attachment 23: Local Civil Rule 3 - Designation Form and Civil Cover Sheet	50
Attachment 24: Local Civil Rule 23 Order	53
Attachment 25: Asbestos Trial List	54
Attachment 26: Arbitration - Case Tracking Form	59
Attachment 27: Mediation - Case Tracking Form	60
Attachment 28: Arbitration Orders	61

Executive Summary

The Civil Justice Reform Act Advisory Group is required by the Civil Justice Reform Act of 1990, to assess the court's workload and to prepare a report recommending specific rules, procedures and programs that the court should adopt in its model plan in order to reduce cost and delay in litigation in the federal courts. The status of the docket has been reviewed for the past five years and caseload statistics are set forth on ATTACHMENTS A-1 and A-2 of the executive summary. The following per judge case statistics are presented in order to provide a basis for determining the status of the court's docket:

1. Total civil and criminal filings per authorized judge has caseload increased 14.5% since 1986 and filings per actual judge, for the same time period, has increased 16.6%. Terminations per authorized judge increased 6.6% and terminations per actual judge for the same five year period increased 8.6%.
2. Weighted filings per judgeship has increased 17.7% and weighted filings per active judge for the same time period increased 19.9%. The Eastern District of Pennsylvania ranks third among all districts in weighted caseload.
3. Civil filings per authorized judge increased 16.2% and civil filings per actual judge has increased 18.4% since 1986.
4. Criminal filings for the same five year period decreased slightly for both case per authorized judge (10.3%) and per actual judge (8.7%). However, despite the decrease in criminal cases, the number of defendants in each criminal case has increased; 11.4% per authorized judgeship and 13.6% per actual judgeship. Drug-related cases generally are more complex than most criminal cases, because they tend to involve multiple defendants, multiple transactions, and complicated factual and legal issues. As a result, they require more judicial time and supporting staff time than any other cases. In addition, most drug related cases require the use of interpreters further increasing the need for more court resources.
5. The pending caseload per judgeship has increased dramatically over the past years from 321 cases per authorized judgeship in 1986 to 537 per authorized judgeship on 1990; an increase of 67.3%. Pending caseload per actual judgeship has increased even more; from 340.7 cases per actual judgeship in 1986 to 580.7 cases per actual judgeship in 1990 representing an increase of 70.4%.
6. Vacant judgeship months reached an all-time high in 1988 with 30 months. Although the vacant judgeship months for 1990 have been reduced, this remains a continuing problem.

7. Visiting Judges - This district rarely has any visiting judges serving on this court, however, our judges do serve as visiting judges in other district courts.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

PENNSYLVANIA EASTERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1990	1989	1988	1987	1986	1985			
OVERALL WORKLOAD STATISTICS	Filings*	9,771	10,797	10,958	8,593	8,527	7,843			
	Terminations	8,884	9,555	9,428	8,151	8,343	7,284			
	Pending	10,198	9,310	8,066	6,537	6,095	5,911			
	Percent Change In Total Filings Current Year	Over Last Year . . .	-9.5						[62]	[5]
		Over Earlier Years . . .	-10.8	13.7	14.6	24.6		[5]	[1]	
	Number of Judgeships	19	19	19	19	19	19			
	Vacant Judgeship Months	17.2	15.8	30.1	31.6	12.8	15.5			
ACTIONS PER JUDGESHIP	FILINGS	Total	514	568	577	452	449	413	[17]	[1]
		Civil	488	540	555	426	420	389	[14]	[1]
		Criminal Felony	26	28	22	26	29	24	[91]	[5]
	Pending Cases	537	490	425	344	321	311	[29]	[2]	
	Weighted Filings**	638	688	724	551	542	501	[3]	[1]	
	Terminations	468	503	496	429	439	383	[29]	[1]	
	Trials Completed	36	41	37	37	36	37	[44]	[3]	
	MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.1	5.4	5.2	3.9	3.9	4.1	[69]
Civil			7	6	6	7	7	7	[6]	[1]
From Issue to Trial (Civil Only)		12	11	11	11	10	11	[21]	[2]	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	209 2.1	151 1.7	165 2.1	135 2.2	108 1.9	111 2.0	[11]	[1]	
	Triable Defendants** in Pending Criminal Cases Number (and %)	303 (37.9)	336 (48.1)	190 (33.9)	217 (39.0)	138 (30.5)	150 (33.6)			
	Jurors**	Avg. Present for Jury Selection	41.73	49.67	40.89	32.55	39.08	38.83	[72]	[5]
Percent Not Selected or Challenged		33.9	41.2	35.0	24.8	35.1	32.2	[64]	[4]	

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS
SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER**

1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	9271	167	114	1053	111	105	613	1460	4176	162	603	28	679
Criminal*	493	3	34	42	5	24	33	100	35	152	3	20	42

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 167.

Key To Table At Left

Weighted filings

To assess how much work a case will impose on the court, the Judicial Conference uses a system of case weights based on measurements of judge time. The weighted filings figures presented in the table are based on weights developed from the 1979 Time Study conducted by the Federal Judicial Center. A detailed discussion of that project can be found in the *1979 Federal District Court Time Study*, published by the Center in October 1980. Also, a historical statement about weighted caseload studies completed in the U.S. district courts appears in the 1980 *AORep*, pages 290 through 298.

Civil median time

Civil median times shown for all six years on the profile pages exclude not only land condemnation, prisoner petitions, and deportation reviews, but also all recovery of overpayments and enforcement of judgments cases. The large number of these recovery/enforcement cases (primarily student loan and VA overpayments) are quickly processed by the courts and their inclusion would shorten the median times in most courts. Excluding these cases gives a more accurate picture of the time it takes for a case to be processed in the federal courts.

Triable felony defendants in pending criminal cases

Triable defendants include defendants in all pending felony cases who were available for plea or trial on June 30, as well as those who were in certain periods of excludable delay under the Speedy Trial Act. Excluded from this figure are defendants who were fugitives on June 30, awaiting sentence after conviction, committed for observation and study, awaiting trial on state or other federal charges, or mentally incompetent to stand trial, as well as defendants for whom the U.S. Attorney had requested an authorization of dismissal from the Department of Justice.

Key to nature of suit and offense

Civil Cases	Criminal Cases
A Social Security	A Immigration
B Recovery of Overpayments and Enforcement of Judgments	B Embezzlement
C Prisoner Petitions	C Weapons and Firearms
D Forfeitures and Penalties and Tax Suits	D Escape
E Real Property	E Burglary and Larceny
F Labor Suits	F Marijuana and Controlled Substances
G Contracts	G Narcotics
H Torts	H Forgery and Counterfeiting
I Copyright, Patent, and Trademark	I Fraud
J Civil Rights	J Homicide and Assault
K Antitrust	K Robbery
L All Other Civil	L All Other Criminal Felony Cases

EASTERN DISTRICT OF PENNSYLVANIA

JUDICIAL WORKLOAD PROFILE

	1986		1987		1988		1989		1990	
	PER ACTIVE AUTHORIZED JUDGESHIP (19)	PER ACTUAL ACTIVE JUDGE	PER ACTIVE AUTHORIZED JUDGESHIP (19)	PER ACTUAL ACTIVE JUDGE	PER ACTIVE AUTHORIZED JUDGESHIP (19)	PER ACTUAL ACTIVE JUDGE	PER ACTIVE AUTHORIZED JUDGESHIP (19)	PER ACTUAL ACTIVE JUDGE	PER ACTIVE AUTHORIZED JUDGESHIP (19)	PER ACTUAL ACTIVE JUDGE
FILINGS										
TOTAL	449	476.6	452	523.6	577	664.4	568	609.7	514	555.8
CIVIL	420	445.8	426	493.5	555	639.0	540	579.7	488	527.7
CRIMINAL FELONY	29	30.8	26	30.1	22	25.3	28	30.0	26	28.1
Defendants	44	46.4	43	50.1	39	44.9	49	52.4	49	52.7
PENDING	321	340.7	344	398.5	425	489.4	490	526.0	537	580.7
WEIGHTED FILINGS	542	575.3	551	638.3	724	833.7	688	738.5	638	689.9
TERMINATIONS	439	466.0	429	497.0	496	571.1	503	539.9	468	506.1
TRIALS COMPLETED	36	38.2	37	42.9	37	42.6	41	44.0	36	38.9

Jurisdiction

The jurisdiction of the EDPA, a tri-state area of substantial commercial growth, includes the county of Philadelphia as well as the 9 large suburban counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Schuylkill. The court currently sits in Philadelphia, Reading, Allentown, and Easton, with two senior judges sitting in Reading and two active judges dividing bench time between Philadelphia and Allentown and Philadelphia and Easton, respectively.

Allentown/Reading civil case assignments have continually increased over the past five years or so, and for the statistical year ending June 30, 1990, constituted 8.3% of the EDPA's total civil case assignments. Part of the reason for this increase, we suspect is that the choice of a federal forum in Philadelphia, Reading, or Allentown makes it possible for more litigants to file complaints in federal court. Lastly, the new state correctional institution at Frackville has caused an increase in the number of prisoner filings on the Allentown/Reading Assignment wheel.

CASELOAD

The number of civil and criminal filings commenced, terminated and pending in the Eastern District has risen steadily over the past two decades (Attachments 1 and 2). Just in the past five years, the number of civil cases commenced in our district increased 25.4% from 7,392 in 1985 to 9,271 in 1990, increasing our pending civil caseload 74% from 5,633 in 1985 to 9,784 in 1990, despite the fact that terminations increased 24% from 6,834 in 1985 to 8,389 in 1990. During that same five-year period, the number of criminal felony filings increased 7% from 474 in 1985 to 507 in 1990. While terminations increased 2% (493 in 1990) for the same time period, due to the complicated nature of our criminal caseload, the number of criminal cases pending increased a drastic 44% from 290 in 1985 to 418 cases in 1990. (Attachments 3, 4, 5 and 6)

Since 1970, the year in which the Eastern District was first authorized 19 active judges, the total number of civil and criminal cases commenced in our district jumped from 4,204 to 9,778 in 1990, an increase of 134% (Attachment 3). Over the 20-year period, our increasing number of terminations could not keep pace with the even-faster growing number of filings. Thus, despite enviable gains in our productivity, which saw civil and criminal terminations rise 72% from 5,147 in 1970 to 8,882 in 1990, our pending civil and criminal caseload increased 55% over the same period of time from 6,581 in 1970 to 10,202 in 1990.

Weighted Caseload Defined

Aside from the phenomenal rise in the number of filings in the Eastern District of Pennsylvania, it is well established that certain types of cases require more judicial time and attention than others. Hence, weighted caseload statistics were developed by the Judicial Conference in an attempt to adjust for differences among case types by assigning weights which represent the relative amount of judge time necessary to resolve each type. If the "average" case is worth one case, each type of case is worth more than, equal to, or less than that number depending on how much judicial time that type of case may consume. Weighted cases include product liability-personal injury; copyright, patent, and trademark; antitrust; civil rights actions and prosecutions under the Drug Abuse Prevention and Control Act (DAPCA). Less-weighted cases include recovery of student loans and social security actions.

Data used for determining the weights has historically been collected in time studies which require judges to record all time spent on each case type over a period of several months. If a particular case type is one percent of all cases terminated but takes 2% of the time spent on all cases, it takes twice as long as the average case and is, hence, given a weight of two. If "weighted" cases are therefore more complicated and time-consuming than "unweighted" cases, then it follows that a district with more complicated and time-consuming cases filed for disposition will necessarily have higher weighted filings statistics.

Weighted and Unweighted Filings in the EDPA

In the EDPA, our weighted caseload filings clearly show that we handle a disproportionate share of difficult and complicated cases. In statistical year 1990, for example, the EDPA ranked third among all 94 district courts in weighted filings per judgeship, up from our ranking of 83rd in 1979 (Attachment 7). In comparison, the EDPA was ranked 17th in filings and 29th in terminations per judgeship in 1990, up from 79th and 71st respectively in 1979, leading to the conclusion that while total filings are up in our district -- as they are in all federal courts -- weighted filings have risen even higher.

<u>EDPA NATIONAL RANKING* FOR WEIGHTED FILINGS PER JUDGESHIP</u>	
<u>Statistical Year</u>	<u>Ranking</u>
1979	83
1980	34
1981	58
1982	59
1983	61
1984	66
1985	19
1986	11
1987	13
1988	2
1989	2
1990	3

<u>EDPA NATIONAL RANKING* FOR CIVIL AND CRIMINAL FILINGS PER JUDGESHIP</u>		<u>EDPA NATIONAL RANKING* FOR CIVIL AND CRIMINAL TERMINATIONS PER JUDGESHIP</u>	
<u>SY</u>	<u>Ranking</u>	<u>SY</u>	<u>Ranking</u>
1979	79	1979	71
1980	80	1980	75
1981	80	1981	81
1982	84	1982	79
1983	86	1983	84
1984	86	1984	83
1985	80	1985	82
1986	62	1986	69
1987	51	1987	56
1988	13	1988	37
1989	11	1989	30
1990	17	1990	29

*Ranking is done in descending order, highest value receiving a rank of 1.

Since 1979, the total number of complex and less-weighted civil filings increased 65% from 1,354 in 1979 to 2,238 in 1990. Complex civil filings increased 42% from 560 to 793 and less weighted civil filings increasing 82% from 794 to 1445 during the same time period. (Attachment 8) This increase is, of course, reflected in our growing number of weighted filings per judgeship. (Attachment 9)

Comparison of Weighted Filings Per Authorized Judgeship in the EDPA With Those of Other Large Metropolitan Courts

Weighted filings declined slightly this past year from 688 to 638 per authorized judgeship, still far exceeding the Judicial Conference's standard of 400 weighted cases per authorized judgeship and placing the EDPA second among the top ten metropolitan districts. A comparison of weighted and unweighted caseloads for ten metropolitan districts covering statistical years 1979 through 1990 (Attachment 10) clearly illustrates how the number of authorized judgeships in the EDPA has remained the same while the number of weighted filings per authorized judgeship over the same period almost doubled. During this same time period, the other metropolitan districts listed on the comparison all show increases in the number of authorized judgeships; the Northern District of Illinois, for example, increased its judgeships from 16 in 1979 to 21 in 1986 and the Central District of California increased its judgeships from 17 in 1979 to 22 in 1986.

Comparison of Weighted Filings Per Authorized Judgeships in the EDPA With Those of All U. S. Districts Courts and of the Index of Weighted to Unweighted Filings

A comparison of weighted filings per authorized judgeship in the EDPA with the average number of weighted filings per authorized judgeships in all U. S. Districts Courts and a similar comparison of the index of weighted to unweighted filings covering the years 1971 through 1990 also show a growing disparity. (Attachment 11) For example, for the year ending June 30, 1990, weighted filings per authorized judgeship number 638 in the EDPA compared with the national average of 458.

As another measure of case difficulty, the index of weighted to unweighted filings in the EDPA averaged 1.21 during the 10-year period from June 30 1980 to June 30, 1990, which indicates that the average case in the EDPA required 21% more judge time for disposition than the average caseload. In comparison, during the same time period, this index averaged .95 for all U. S. District Courts.

Pending Three Year-Old Cases

The Eastern District of Pennsylvania has 209 pending three year-old civil cases as of June 30, 1990 (Attachment 12). This figure represents 2.1% of the total pending civil caseload of 9,764. This figure has increased slightly over 1989 of 153 cases pending three or more years representing 1.7% of the total pending civil caseload. Even with this slight increase, the Eastern District of Pennsylvania still one of the lowest

proportion of three year-old pending case among the 25 metropolitan courts in the United States.

THREE YEAR-OLD CIVIL CASES PENDING AS OF JUNE 30, 1990
OF THE TWENTY-FIVE METROPOLITAN COURTS

<u>COURT</u>	<u>NO. CASES PENDING</u>	<u>NO. CASES THREE YEARS OLD</u>	<u>% OF CASES THREE YEARS OLD</u>
AZ	3,413	394	11.5
CA (C)	8,586	742	8.6
CA (N)	4,945	746	15.1
CA (S)	2,232	297	12.7
DC	4,066	489	12.0
FL (M)	4,273	257	6.0
FL (S)	4,100	161	3.9
GA (N)	3,463	138	4.0
IL (N)	6,347	737	11.6
LA (E)	3,795	95	2.5
MD	3,447	351	10.2
MA	7,645	2,293	30.8
MI (E)	4,471	154	3.4
NJ	5,160	303	5.9
NY (E)	5,806	762	13.1
NY (S)	12,269	1,567	12.8
OH (N)	11,137	662	5.9
OH (S)	3,081	389	12.6
PA (E)	9,784	209	2.1
PA (W)	3,001	230	7.7
SC	2,504	32	1.3
TX (N)	5,121	296	5.8
TX (S)	8,185	1,080	13.2
TX (W)	3,043	56	1.8
VA (E)	3,322	772	23.2

Vacant Judgeship Months

At the same time that the average number of weighted filings per judgeship has reached an all-time high in the EDPA, our vacant judgeship months have been on the rise for the past ten years and now stand at 17.2 for statistical year 1990. This represents judicial time lost which can never be recovered and does a severe injustice to those litigants who come before our court. Moreover, vacant judgeship months have been an acute and recurring problem in the Eastern District of Pennsylvania.

A comparison of the number of authorized judgeships, judgeships months, and vacant judgeship months in the EDPA with all U. S. District Courts and with a sampling of four large

metropolitan courts during the years 1969 through 1990 (Attachment 13) illustrates that at 7.5% of the total number of authorized judgeship months, the number of vacant judgeship months in the EDPA ranks about equal with the national average of 7.8%, as well as above the percentages shown in the four survey districts.

If we distill our high number of vacant judgeship months into a computation of the number of actual judges hearing cases, the number of weighted filings per authorized judge is shown as even greater than the number of weighted filings per authorized judgeship. (Attachment 14) When judgeship vacancy months are taken into consideration, the number of weighted filings for the year ending June 30, 1990 increases from 638 per authorized judge to 693 per actual judge, and the number of actual judges hearing cases decreases to 16 from our authorized number of 19.

	Author. Judgeships	Actual Judgeships	Four Addtl. Judgeships	Addtl. Judgeships
<u>1986</u> (Per Judge)	(19)	(18)	(23)	(30)
Total Filings	449	474	371	415
Civ. Filings	420	443	347	395
Crim. Filings	29	31	24	20
Pending Cases	321	339	265	358
Weighted Cases	542	572	448	503
 <u>1987</u> (Per Judge)	 (19)	 (17.5)	 (23)	 (30)
Total Filings	452	496	373	286
Civ. Filings	426	463	352	270
Crim. Filings	26	28	21	16
Pending Cases	344	373	284	218
Weighted Cases	551	598	455	349
 <u>1988</u> (Per Judge)	 (19)	 (16.5)	 (23)	 (30)
Total Filings	577	662	477	365
Civ. Filings	555	639	639	352
Crim. Filings	22	25	18	14
Pending Cases	425	489	351	269
Weighted Cases	724	834	598	459
 <u>1989</u> (Per Judge)	 (19)	 (17.7)	 (23)	 (30)
Total Filings	568	610	469	360
Civ. Filings	540	580	446	342
Crim. Filings	28	30	23	18
Pending Cases	490	526	405	310
Weighted Cases	688	739	568	436

<u>1990</u> (Per Judge)	(19)	(17.5)	(23)	(30)
Total Filings	514	558	425	326
Civ. Filings	488	530	403	309
Crim. Filings	26	28	21	16
Pending Cases	537	583	444	340
Weighted Cases	638	693	527	404

The Judicial Conference of the United States has recommended and the United States Congress has approved three additional permanent judgeships and one temporary judgeship for this district. The above comparison chart details the caseload per judge for the past five years for the authorized judges, the active judges, the additional authorized judges and the number of judges needed in this district to reduce the weighted caseload per judge to the national standard of 400.

Median Time Frame

In 1990, the EDPA had the lowest median time frame for cases proceeding from filing to trial and the second lowest median time for civil cases proceeding from filing to disposition for the top ten metropolitan districts. (See Attachment 15) This is in spite of the EDPA having the highest number of filings in 1990 among the 10 largest metropolitan courts. However, with the increasing number of filings and the high number of weighted filings, our excellent median time frames of 7 months from filing to disposition and 12 months from issue to trial for civil cases and 6.1 months from filing to disposition for criminal cases would most likely revert to the intolerable median time frames listed below which existed in the 1960's when our court did not have an adequate number of judgeships:

MEDIAN TIME FRAMES (in months)

CIVIL

	<u>1968</u>	<u>1970</u>	<u>1980</u>	<u>1990</u>
Filing to Disposition	32	32	8	7
Issue to Trial	39	36	13	12

CRIMINAL

Filing to Disposition	39	36	4.1	6.1
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In addition, when determining the median time from filing to disposition by nature of suit, the Eastern District of Pennsylvania is below the national average in all, but four types

of cases; other civil rights, other torts, antitrust, and other diversity cases. (See Attachment 16).

Number of Trials

The disproportionate weighted caseload statistics in our district reflect an unequal share of difficult cases. This is illustrated by the high number of trials completed and the jury trial days in the EDPA and in the number of protracted trials of 20 days or more, as well as in the high number of trials lasting from 10 to 19 days. In addition, the EDPA has had an average of 7% of all cases terminated reaching trial (4th highest among the 10 metropolitan courts), a figure which demonstrates that a large number of cases stay on the docket for the entire course of litigation. (See Attachments 17 and 18).

Magistrate Judges

The Eastern District of Pennsylvania is served by seven full-time magistrate judges in Philadelphia and one part-time magistrate judge in Allentown. In December 1990, the Magistrates' Division of the Administrative Office of the United States Courts conducted a study to ascertain if additional magistrate judge positions were warranted in the EDPA. The study recommended the addition of one magistrate judge at Philadelphia and conversion of the part-time magistrate judge at Allentown to a full-time magistrate judge at Philadelphia or Allentown. This recommendation was approved by the Judicial Conference of the United States in March 1991.

The full-time magistrate judges in the EDPA are authorized to perform the full range of duties permitted under the Federal Magistrates Act. The part-time magistrate judge hears petty offense cases and conducts preliminary proceedings in felony cases arising at a number of federal parks and enclaves in the northern part of the district. In addition, the part-time magistrate judge is responsible for petty offense originating at Philadelphia, primarily from the Philadelphia Navy Yard.

In statistical year 1990, magistrate judges in this district handled a total of 3,993 civil and criminal matters (not including additional duties), a 9% increase over 1987.

COMPARISON OF MAGISTRATE JUDGES' WORKLOAD

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
MISDEMEANORS	8	7	3	3	3
Traffic	0	1	0	0	0
Other	8	6	6	3	3
Total Trials	(0)	(1)	(0)	(0)	(0)
PETTY OFFENSES	134	236	205	65	52
Traffic	79	142	107	7	1
Immigration	0	0	8	4	16
Other	55	94	90	54	35
Total Trials	(47)	(50)	(47)	(32)	(18)
PREL. PROCEEDINGS	2816	3406	2914	3474	3938
Search Warrants	295	352	245	433	569
Arrest Warrants	457	565	625	654	857
Initial Appearances	591	785	669	775	805
Detention Hearings	147	281	193	344	410
Bail Reviews	42	62	45	70	64
Preliminary Exams	235	395	303	304	350
Arraignments	716	695	581	653	671
Other	333	271	253	241	212
ADDTL. DUTIES	2067	2158	1036	1439	1208
<u>Criminal</u>					
Motions §636(b)(1)(A)	285	513	390	218	112
Motions §636(b)(1)(B)	97	142	120	169	118
Pretrial Conferences	0	0	1	0	0
Evidentiary Hearings	5	3	5	2	8
Other	37	27	17	19	24
<u>Prisoner Litigation</u>					
State Habeas	260	272	280	217	246
Federal Habeas	12	13	8	11	9
Pris. Civil Rights	16	9	7	14	15
(Evidentiary Hearings)	37	27	17	19	24
<u>Civil</u>					
Motions §636(b)(1)(A)	738	570	487	263	146
Motions §636(b)(1)(B)	38	56	44	54	50
Pretrial Conferences	427	395	398	383	335
Evidentiary Hearings	10	8	9	4	6
Special Masterhips	0	3	3	0	2
Social Security	142	142	60	84	124
Other	0	5	35	1	13
CIVIL CASES ON CONSENT	20	15	17	17	38
Without Trial	7	7	6	11	21
Jury Trial	5	5	4	3	3
Nonjury Trial	8	3	7	3	2
TOTAL ALL MATTERS	5045	5822	5003	4998	5239

The preliminary proceedings in felony cases are handled by the magistrate judges on a weekly rotational basis. The volume of these matters is heavy and consumes virtually the full time of the "criminal duty" magistrate judge. Frequently, the magistrates are involved in subsequent proceedings in those cases that arose during their duty week. Motions in felony cases are referred on a selective basis to the magistrate who handled the preliminary proceedings in the case.

The growth in felony drug prosecutions has had a significant impact on the criminal workload of the magistrates since 1986 (in particular, drug-related proceedings such as detention hearings and motions to suppress evidence). Overall, the magistrates handled a total of 4,200 criminal matters in 1990 compared with 3,240 in 1986, an increase of approximately 30%. Specifically, 1,426 warrants were issued during statistical year 1990 compared to 752 in statistical year 1986, a 52.7 % increase; the magistrates conducted 805 initial appearance proceedings in 1990 compared with 591 in 1986, up 36%; and the number of detention hearings for the year 1990 totaled 410, approximately 179% above the 1986 level.

In civil cases, the court has a paired arrangement whereby each magistrate receives assignments of duties from only certain judges. In practical terms this means that the magistrates receive requests from 4 or 5 judges rather than 28. Primarily, the magistrates civil workload consists of discovery motions, settlement conferences and other pretrial conferences. Since June, 1990 magistrate judges in the Eastern District of Pennsylvania are randomly assigned all state habeas corpus petitions and social security appeals for a report and recommendation to be forwarded to the assigned judge.

The volume of civil matters assigned to the magistrate judges has declined in recent years due to the increase in their felony duties. In 1986, the magistrate judges handled 1,355 additional civil duties compared with 676 in 1990, a decline of fifty percent. The magistrate judges of the Eastern District are also authorized to try civil cases on the consent of the parties. The seven magistrate judges disposed of an average of about five cases per judicial officer in 1990. This figure would be considerably higher if this district did not have their successful arbitration program. The Eastern District refers 24% of its caseload to compulsory arbitration.

It should be noted that this district has experienced a significant problem with vacant magistrate judge months. For example, the Judicial Conference approved two additional magistrate positions in September of 1988. These positions were not filled until March and May of 1990; resulting in a loss of 21 months of lost magistrate time that can never be recovered.

Senior Judges

This court presently has 11 senior judges, all of whom regularly handle cases. Four of our senior judges carry full caseloads, while seven carry one-half caseload. In the Eastern District of Pennsylvania, a number of difficult and complex cases are handled by senior judges. In addition, 22% of the cases terminated in the EDPA for the period ended June 30, 1990 were attributable to the invaluable service rendered by the senior judges. The large number of cases filed in this district preclude our senior judges from reducing the amount of cases which they handle. Hopefully, by adding judicial positions, it will enable the senior judges in this district to ease their workload.

Number of Grand Jury Matters

Due in part to the complex nature of our criminal caseload, there are also a large number of grand jury matters in the EDPA. Judicial time spent in grand jury matters, which is not reported in any Administrative Office statistics by case type, is substantial in our district, with approximately grand jury assignments over the past five years, as shown below:

GRAND JURY CASE ASSIGNMENTS

1986	-	468
1987	-	386
1988	-	368
1989	-	431
1990	-	505

New State Correctional Institution

The new State correctional institution in Frackville, Schuylkill County, Pennsylvania, has joined Graterford Prison in Montgomery County, Pennsylvania, as the second state correctional institution in this district. This new facility has increased prisoner filings in the EDPA and adds to the Allentown/Reading/Easton assignment wheel.

Increase in Criminal Prosecutions

During the 1980's, drug prosecutions have risen more than any other type of case in the federal courts. Overall, criminal case filings have risen 56% during the 1980's and drug related offenses now account for about 24% of the criminal case filings and 44% of all criminal trials in the district courts nationwide. Specifically, cases involving marijuana are up almost 400%; cases involving heroin and cocaine have risen 260%; and prescription drug cases have increased 25%. Drug-related

cases generally are more complex than most criminal cases, because they tend to involve multiple defendants, multiple transactions, and complicated factual and legal issues. As a result, they require more judicial time and supporting staff time than any other cases. In addition, most drug related cases require the use of interpreters further increasing the need for more court resources.

In the Eastern District of Pennsylvania, for instance, drug cases rose from 121 in 1980 to 161 in 1989, an increase of 33%. While the statistics for drug cases are dramatic, they do not provide a complete picture of their impact on the federal courts. It is not uncommon for drug cases, especially those related to importation and distribution, to have in excess of 10 defendants per case. By comparison, the average number of defendants for a non-drug case is approximately 1.2. And the amount of time which judicial officers have to devote to drug cases (and to other drug-related proceedings such as detention hearings and motions to suppress evidence) has increased substantially.

<u>YEAR</u>	<u>CASES</u>	<u>DEFENDANTS</u>
1986	564	831
1987	506	822
1988	430	741
1989	556	928
1990	515	926

The sentencing guidelines and procedures recommended by the U. S. Sentencing Commission may increase the length of sentencing hearings, which would in turn increase our judicial workload. The guidelines require the court to impose sentences within particular, narrow ranges. Although they apply to all federal offenses, they pose special problems with respect to drug prosecutions. Factors such as the amount of drugs involved as applied to the total offense committed and the number of defendants can increase the guideline offense level. Drug defendant presentence investigation reports are among the most time-consuming and the sentencing hearings for drug defendants are among the longest in the federal system. Furthermore, compulsory and lengthier sentences may increase prisoner filings in our district which would also add to the workload of our judges.

The Sentencing Reform Act also established a statutory right of appeal for federal sentences. Although the provisions for appeal relate to all federal offenses, drug offenses tend to be more complicated and involve more serious sentences and can therefore be expected to compromise a disproportionate percentage of appeals taken from guidelines sentences. However, at the present time, we do not have sufficient empirical data to provide

us with a basis for an estimate of how many additional judicial officers and support staff would be needed to handle this increased workload.

Impact of Diversity Jurisdiction

Diversity filings have been increasing in the EDPA over the past 10 years and presently amount to 52.7% of our total civil filings, as shown below. However, since a substantial number of these cases are already referred to compulsory arbitration, removal of diversity jurisdiction would not immediately alleviate our judicial workload. The filing statistics for the period ending June 30, 1990, show a slight decline in filings which is attributable to the increase in the diversity jurisdictional amount required for a federal diversity case from \$10,000 to \$50,000 under 28 U.S.C. §1332. This decrease in filings is a sole result in the jurisdictional increase and is not expected to have any significant effect on projected filings over the next several years. In addition, the slight decline in filings did not significantly effect the EDPA caseload because diversity filings are usually lower weighted cases that are routinely disposed through our compulsory arbitration.

Diversity Filings v. Total Filings			
	<u>Diversity Filings</u>	<u>Civil Filings</u>	<u>Percentage of Caseload</u>
1977	1,856	4,315	43.0
1978	1,870	4,543	41.2
1979	2,008	4,793	41.9
1980	2,218	5,102	43.5
1981	2,230	5,308	42.0
1982	2,525	5,787	43.6
1983	2,769	6,422	43.1
1984	2,930	6,502	45.1
1985	3,423	7,392	46.3
1986	3,942	7,988	49.3
1987	4,057	8,103	50.1
1988	6,283	10,569	59.4
1989	5,833	10,255	56.9
1990	4,888	9,271	52.7

An additional factor which must be considered is whether diversity jurisdiction is to be eliminated altogether in the federal courts or merely limited so as to preclude plaintiffs from initiating a suit in a federal court located in a state in which they are citizens. As shown below, diversity cases filed in the EDPA by in-state plaintiffs have been increasing in number and now account for one-half of all diversity cases filed in our district.

Diversity Cases Filed By
In-State Plaintiffs
Statistical Years 1979 -1990

<u>Year</u>	<u>EDPA</u>			<u>Nationwide</u>		
	<u>Total Diver.</u>	<u>In-state Plff.</u>	<u>%</u>	<u>Total Divers.</u>	<u>In-state Plff.</u>	<u>%</u>
1979	2,008	1,200	59.8	34,491	20,334	59.0
1980	2,218	1,168	52.7	39,315	22,390	57.0
1981	2,230	1,194	53.5	45,442	26,313	57.9
1982	2,525	1,301	51.5	50,555	26,631	52.7
1983	2,769	1,450	52.4	57,421	31,072	54.1
1984	2,930	1,526	52.1	56,856	28,996	51.0
1985	3,423	1,782	52.1	61,101	31,108	50.9
1986	3,942	2,012	51.0	63,672	31,256	49.1
1987	4,057	2,082	51.3	67,071	32,785	48.9
1988	6,283	2,997	47.7	68,224	32,994	48.4
1989	5,833	3,053	52.3	67,211	32,377	48.2
1990	4,888	2,928	59.9	57,183	32,908	57.5

Assuming that Congress is more likely to enact legislation eliminating in-state resident plaintiff diversity actions than to enact legislation eliminating diversity jurisdiction altogether, the elimination of at least half our diversity caseload would be more feasible.

Diversity cases filed in the EDPA on removal from state courts are also on the rise, as shown below and, as of June 30, 1990, accounted for 10.5% of all diversity cases.

<u>Year</u>	<u>EDPA</u>			<u>Nationwide</u>		
	<u>Total Diver.</u>	<u>Remov.</u>	<u>%</u>	<u>Total Divers.</u>	<u>Remov.</u>	<u>%</u>
1979	2,008	107	5.4	34,491	6,202	18.0
1980	2,218	167	7.5	39,315	7,457	19.0
1981	2,230	232	10.4	45,442	8,491	18.7
1982	2,525	365	14.5	50,555	9,688	19.2
1983	2,769	343	12.4	57,421	11,297	19.7
1984	2,930	429	14.6	56,856	10,291	18.3
1985	3,423	484	14.1	61,101	11,464	18.8
1986	3,942	572	14.5	63,672	12,535	19.7
1987	4,057	607	15.0	67,071	12,984	19.4
1988	6,283	668	10.6	68,224	12,175	17.8
1989	5,833	692	11.9	67,211	14,192	21.1
1990	4,888	513	10.5	57,183	N/A	N/A

The fact that diversity removals jumped from 101 in 1978 (5.4% of all diversity cases filed in the EDPA that year) to 513 in 1990 (an increase of 407%) may also be indicative of a

case backlog in the state courts that does not bode well for our district's own caseload.

Lastly, we note that because removal of diversity jurisdiction, either in whole or in part, would have a greater effect on unweighted cases than on weighted cases, the number of weighted cases per judgeship in our district would most likely remain unchanged. Therefore, additional judgeships would still be needed.

Asbestos Filings

Asbestos filings continue to exhaust judicial resources and will continue through the federal court system for at least the next 20 years, a factor which cannot be considered temporary in our district's civil caseload at this point. In 1977, for example, 50 asbestos suits were filed in the EDPA compared with 112 in 1990. The Rand report¹ profiling the federal asbestos litigation problem predicts that the disposition of asbestos claims will continue to be a major problem well into the future. It is imperative that the EDPA have the long-term judicial resources to timely, efficiently and equitably respond to the parties involved in pending asbestos claims, not including the school asbestos cases, in our district during their lifetimes.

The number of asbestos filings in the EDPA has steadily increased since in 1979, with the total number of cases pending in this district as of June 30, 1990, standing at 4,919. An indication of the complexity of these cases is the fact that a total of 9,109 plaintiffs, defendants, and third-party defendants have been involved in all 4,935 asbestos cases pending, terminated, or in suspense in the EDPA since 1979. (Attachments 19 and 20).

Our district has approximately 15.4% of all asbestos cases filed in the federal courts, and the number of such filings are increasing yearly. In statistical year 1990, 2,141 asbestos cases were filed in the EDPA, as compared with 50 filed in 1979. Over the past 3 years alone, the number of asbestos cases filed in the EDPA has increased a dramatic 387% from 439 in 1987 to 2,141 in 1990. Terminations during the period ended June 30, 1990 number 623, with cases placed in suspense, leaving a balance of 4,919. Thus, the statistical pattern forewarns that these cases, which represent an enormous drain on our judicial resources, will continue to increase in age and in length, and, as indicated below, will soon inflate our district's pending number of three-year old cases.

1. Asbestos in the Courts: The Challenge of Mass Toxic Torts, Rand, The Institute for Civil Justice, 1985.

PENDING ASBESTOS CASES
As of June 30, 1990

	<u>Total</u>	<u>%</u>
Pending Less Than One Year	1,993	40
Pending 1-2 Years	1,315	27
Pending 2-3 Years	1,525	31
Pending Over 3 Years	<u>86</u>	<u>2</u>
Total	4,919	100

As previously discussed, the Rand study profiling the asbestos litigation problem in our courts dubbed asbestos cases a "major test" of the federal tort system because of the tremendous workload accompanying these cases. This workload is typically characterized by the filing of multiple complaints and cross-complaints, involving an average of 20 defendants; numerous motions associated with a lengthy discovery process, regulated by judicial orders issued after several judicial conferences; numerous lengthy appeals and bankruptcy proceedings; and a settlement which occurs after one or more conferences with a judge. As the final study correctly noted, statistics presented for asbestos litigation reflect only a small fraction of the actual workload imposed by these cases.

In 1984, the backlog of asbestos cases in the EDPA reached crisis proportions. Some untried cases were 8 years old, leaving plaintiffs without compensation at a time when it was most needed. In addition, certain defendants were in various stages of reorganization or had actually filed for bankruptcy, complicating the speedy resolution of many cases. And finally, the issues raised in the asbestos litigation were not settled areas of law, requiring close attention and lengthy research for proper disposition of motions.

To address this backlog of cases, the district embarked upon a program supervised by the Honorable Charles R. Weiner. First, a district-wide asbestos wheel was established containing the names of all judges. Under the supervision of the court, counsel for both sides prepared trial lists establishing firm trial dates for the oldest pending cases. To facilitate trying these cases on the dates submitted by counsel, our judges agreed to make the entire court available to hear any case listed for trial. Thus, if the judge who was originally assigned to try a case later became unavailable to hear it on the date listed, another judge whose calendar was open for that date took over. While the structure of this program is simple, it has had dramatic effects. Since its inception, over 1,100 cases have been closed, most resolved by settlement negotiations, which are routinely supervised by the court.

A class action of all public and private non-profit elementary and secondary schools in the nation seeking compensatory damages for asbestos claims has recently been certified to the EDPA. Although this additional asbestos litigation will involve a potential of 14,000 cases, our district will receive credit for just one case. Obviously, the impact of this class action will take an additional toll on judgeship hours.

Based on historical factors, such as the large number of manufacturing facilities in the Eastern District of Pennsylvania and the large number of product liability suits in this district, it is conservatively estimated that asbestos and other toxic tort cases will continue to drain the judicial resources of this court for at least the next 20 years.

Projection of Caseload

A forecast of the caseload in the EDPA projects our weighted filings to increase to 13,164 in 1992 and to 15,769 in 1997. (Attachment 9) Assuming that conditions in the EDPA remain constant, our weighted filings per judgeship will jump to 572 in 1992 despite the addition of four judges and to an astronomical 868 in 1997 should we not receive any additional judgeships. The combination of the above factors not included in our statistical profile -- the high number of trials, the large number of grand jury matters, the increasing number of prisoner filings, the status of our senior judges, and our projected weighted filings per judgeship over the next ten years -- all support the need for additional judges in this district.

Several factors combine to cause the Eastern District of Pennsylvania's caseload to continue to increase. These include: the increase in the complex case mix; the demands of lengthy cases, such as asbestos litigation; the corresponding increase in weighted filings per judgeship; our judgeship vacancy months; our high number of protracted trials and jury trial days; our large number of grand jury matters and prisoner filings; the projected status of our senior judges; our full use of magistrate judges; and our projected caseload figures and weighted filings per judgeship over the next ten years. If yearly filings remain the same as 1990 levels, the addition of four judges would reduce weighted filings to 527 per authorized judgeship.

The judges, as well as the magistrate judges, of the EDPA are working at a maximum level of efficiency, and our district has instituted case management procedures which have best utilized our support staff, including automation, electronic sound court reporting, our successful arbitration program, and our pro se law clerk program. These case management procedures are discussed below. It must, however, be noted that the

contributions of the court's support personnel are limited to the availability of an adequate number of judges.

Arbitration

The Eastern District of Pennsylvania began a program of mandatory court-annexed non-binding arbitration on February 1, 1978. The program presently includes all civil cases where the amount in controversy is less than \$100,000, except for Social Security cases and suits where a prisoner is a party. The program has five goals: providing increased options for litigants; providing procedural fairness; cost savings; reducing time to disposition; and, reducing the burden on the court.

Arbitration offers litigants an opportunity for an adjudicatory hearing held at an earlier time than is possible for trial. Three experienced attorneys, approved by the Chief Judge, sit as arbitrators. Immediately after the hearing, the panel makes its award; no opinion or findings of fact are filed. For the most part, the program is administered by the Clerk's Office. When the plaintiff files his complaint, he must certify that damages are presumed not to be in excess of \$100,000. In a 1988 survey of attorneys, 61.8% viewed arbitration as useful, whether or not they were satisfied with the judgment of the arbitrators. 56.7% of the attorneys in this survey agreed that the arbitration award was a useful starting point for settlement discussions.

Although the majority viewed even unsuccessful arbitrations as useful, hearings can only be expected to generate positive results if the participants view them as fair. In a survey of the Eastern District of Pennsylvania, 90.3% of the attorneys agreed that arbitration was fair and a vast majority (82%) of those attorneys dissatisfied with the decisions still agreed that the hearing was procedurally fair. The Eastern District of Pennsylvania uses courtrooms for hearings and chooses impartial, prepared arbitrators. It is clear that litigants do not regard arbitration as "second class justice", especially with the right to demand a trial de novo.

Arbitration seeks to cut down costs by streamlining the discovery process, providing for an adjudication with relaxed rules of evidence and promoting settlement. Immediately after the answer is filed, the clerk notifies the attorneys of the hearing date and that discovery must be completed within 120 days. In a 1988 survey of the Eastern District of Pennsylvania, 68.2% of attorneys involved agreed that arbitration reduced costs. In a survey of the nine other districts with pilot programs, 64.7% of parties found the cost of arbitration to be reasonable.

A study recently concluded that disposition time was substantially reduced by the arbitration program. Among all

cases remaining in the program, time from issue date to arbitration was five months, whereas, median time from issue date to trial was 11 months. It can therefore be seen that our arbitration program has substantially succeeded in the goal of saving time.

In SY 1990, 20% of all civil filings were eligible for the arbitration program. Of these 20%, 44.7% were terminated by settlement and only 2.9% proceeded to trial de novo. This compares favorably with the approximately eight percent of non-arbitration cases which required a trial during the first 10 years of the program. In a survey of judges of the Eastern District of Pennsylvania, 100% agreed that the arbitration program reduced their burden and 12 of the 15 responding judges felt that arbitration cases rarely require their attention prior to the hearing. The majority of cases closed prior to referral, of those closed after referral 81% did not return to the trial calendar in calendar year 1985. 41% Of arbitration cases involved torts and 31% were contract cases.

Mediation

The Eastern District of Pennsylvania adopted a program of court-annexed mediation effective January 1, 1991. Those cases assigned an "odd" number by the Clerk of Court are placed in the program, except for Social Security cases, cases in which a prisoner is a party, cases eligible for arbitration, asbestos cases, or cases which a judge determines sua sponte or on application by the mediator or a party to be unsuitable for mediation.

Mediators must be members of a bar for fifteen years and certified by the Chief Judge. After the first appearance is made for a defendant in an eligible case, the mediation clerk notifies counsel of the date, time and place for the mediation conference. Because the rule is of such recent vintage, little statistical data is available for analysis, although many mediation conferences were scheduled for March, 1991.

Pro Se Law Clerks

The Eastern District of Pennsylvania has employs two law clerks to review all incoming prisoner civil rights complaints. The Pro Se law clerk is responsible for screening the petitions and motions and to draft appropriate recommendations and orders for the Court's signature. In 1990, this court processed over 1,000 prisoner civil rights complaints with the majority of these complaints disposed of according to the recommendations of the Pro Se Law Clerk.

Automation

For the past several years, the Eastern District of Pennsylvania attempted to bring the court into the age of automation. Largely due to appropriations from Congress specifically to be used for automation, the EDPA has provided all judicial officers and their staffs with personal computers. These personal computers are equipped with word perfect, a word processing program; Lexis and Westlaw, for legal research; electronic mail, for the rapid transfer of data; and an electronic interface to CIVIL, the automated civil docketing system used by the Clerk's Office. At present, this district has 260 personal computers utilized by judges, law clerks, secretaries, clerk's office staff, probation officers, and pre-trial services employees. The response to these technological innovations has been favorable and any new advancements or upgrades will be provided to our court.

On July 1, 1990, the Clerk's Office implemented use of the CIVIL system, an on-line automated civil docketing system. CIVIL is an electronic docketing system and case management system that replaces the manual paper system. The CIVIL automated docketing system utilizes a Unisys 5000/95 computer that is capable of supporting 120 users. CIVIL will: automate the maintenance of the docket sheet; provide case status, document, and deadline tracking; serve as a central, up-to-date information resource throughout the court or wherever a terminal is linked to the computer; automate production of notices and other standard correspondence, case and party indexes, the case opening report and the case closing report; provide standard reports to assist judges and court administrators in monitoring case activity; and enable this court to customize reports to address our special needs as they arise.

All cases filed after January 1, 1990 are contained within the CIVIL data base. The system is available to all judicial officers in this district with communication via electronic mail and can be accessed by the public through terminals in the Clerk's Office. Since its inception there have been 3,500 new filings and 4,000 pending cases have been entered on the CIVIL system. In addition, this court has experienced very little "down time" and we have not had any data loss or misplaced dockets. All deputy clerks have been trained on the CIVIL system and are able to enter information and retrieve dockets to effectively and efficiently maintain a system of case management. Other deputy clerks, such as law clerks, are able to access docket information to effectively manage the court's cases.

Implementation of the CIVIL system has increased the security of our dockets. All entries into the CIVIL system are "backed up" daily, weekly and monthly onto magnetic tapes. The

monthly back ups contain all information entered into the system and are located off-site for a period of three years before being forwarded to the Federal Records Center. This back up system allows our court to have two copies of all docket information. Therefore if there is a breach of security, this district will be able to retrieve information from the magnetic tapes stored in an off-site facility.

We have also developed an attorney roll as a separate data base on the CIVIL system. At present, there are 6,600 attorneys entered on the data base. It is capable of providing this court with mailing labels for all attorneys involved in civil litigation in this district and has provided our court with an effective and efficient means of communicating with the attorneys in the Eastern District of Pennsylvania.

PACER - Public Access to Court Records

The PACER system provides improved access to court records for attorneys and other members of the public. Access to information contained in the court's data-base can be accessed via modem. The user dials in from a remote terminal to the court's computer and is able to access a search of information either through a case name or a case number and can request docket reports. The information is either saved on the user's PC terminal or the report is printed during online access. This system is scheduled to be available during 1991.

CHASER - Chambers Access to Selected Electronic Records

The CHASER system operates like PACER and provides access by this court's chambers into the court data-base via modem. This feature will be added to the main menu of the chambers personnel computer network. The in-house court user can access court records by searching data by a case name or a case number. In addition to printing docket reports, the CHASER system will be able to provide the chambers user with case management data, such as pending cases, pending motions, and pending schedules reports.

Electronic Filing of Documents

Electronic filing is available for certain documents filed in the Eastern District of Pennsylvania. All civil documents will be accepted for electronic submission, except complaints, notices of removal and notices of appeal. The legal agency or law firm utilizing electronic filing must first submit an application to the clerk's office which explains the equipment specifications needed to transmit electronically.

Electronic Sound Recording

Since the Judicial Conference sanctioned use of ESR in the federal courts, it has experienced dramatic and rapid growth due to its efficiency and cost-effectiveness. In the Eastern district of Pennsylvania, our electronic sound recording program has had a substantial impact on court reporting costs. In addition, our combined court reporting program of official court reporters and ESR operators enables us to meet the needs of 39 judicial officers at one time (including senior judges, magistrates and bankruptcy judges) without resorting to contract court reporters.

Our program has an ESR Supervisor who assigns court recorder operators on an "as needed" basis, processes all orders for transcripts and tapes, and maintains liaison between the transcription firms and the court. The operators of electronic sound recording equipment are not concerned strictly with the mechanical operation of the equipment, but also performing such functions as administering oaths to jurors, swearing in witnesses, taking exhibits, and calling the calendar, in addition to producing a verbatim record of all court proceedings. Training for this position, therefore, is extensive, requiring a broad understanding of Clerk's Office policies and court proceedings.

Aside from learning the mechanical operation of the equipment, operators receive substantive training in courtroom procedures for civil, criminal and bankruptcy proceedings; case processing and paperflow management; and the local and federal rules of court. In addition, ESR operators are schooled in "courtroom protocol", an important aspect of training required by the judicial officers in this district. Thus, ESR operators are expected to possess a high level of poise and initiative and must consistently demonstrate a sense of professionalism and confidence, coupled with common sense and good judgment.

ESR equipment has been used in a variety of proceedings in this district, the scope of which has ranged from jury and non-jury trials to hearings, voir dire, chambers' conferences, and side-bar courtroom conferences. One particularly effective use of ESR is for the recording of pleas and sentences in criminal cases since 28 U.S.C. 753 specified that either a transcript or tape must be filed in these proceedings by the court reporter. Several extensive high-volume cases also have been produced exclusively by ESR, including some which required daily copy. One example was the case of U.S.A. v. Shearson-Lehman Bros., Inc., a legally complicated and highly publicized criminal trial. The matter, held before then-District Judge Anthony J. Scirica, involved 8 days of pre-trial hearings and 8 weeks of testimony producing 6,369 pages of transcript on a daily

copy basis. Aside from not experiencing any delays in transcript delivery, it cost the litigants \$.60 per page less than if it had been produced by an official court reporter, which saved over \$3,800. In October, 1988, a complex criminal case, U.S.A. v. Scarfo, was tried before the Honorable Thomas N. O'Neill, Jr., which involved a total of 24 defendants and was divided into three phases.

Our combined reporting program worked so well that we have succeeded in reducing our contract court reporting costs from \$34,740 in 1985 to \$6,695 in 1986 (a reduction of 80.7%) and in 1987, we spent a total of \$950 for contract court reporters, \$710 of which was spent by the Chief Bankruptcy Judge who travels to suburban county locations on a monthly basis to hold court sessions. In 1988, we spent a total of \$320 for contract court reporting services for district court. This figure has in 1989 attained a zero level. Further, since all three bankruptcy judges in the Eastern District have elected to use ESR to record bankruptcy proceedings, we save approximately \$80,000 in contract costs for the Bankruptcy Court yearly.

Additionally, there has been a noticeable improvement in the delivery of transcript since initiation of the ESR program. We believe that by utilizing a staff of court reporters, augmented with the use of electronic sound recording operators, official court reporters have more quality time to devote to the production of timely and accurate transcript both for the District Court and the U.S. Court of Appeals.

Videotaping

The Eastern District of Pennsylvania has been selected to participate in the two-year pilot program on the use of videotaping as a means to record official court proceedings. Videotape equipment has been installed in the two courtrooms on the eleventh floor. This equipment consists of 8 cameras which are voice activated and fully automatic. Use of videotape will serve to reduce costs while maintaining the accuracy of the court record. Videotape will allow the court and counsel to review that days testimony at a minimal cost and without the ordinary transcript delay. This pilot program is scheduled to commence January, 1991.

Broadcasting in the Courtroom

At the September, 1990, meeting, the Judicial Conference of the United States Courts approved the recommendation of its Ad Hoc Committee on Cameras (the Peckham Committee) in the Courtroom thereby authorizing a pilot program permitting photographing, recording, and broadcasting of federal civil court proceedings. In response, a proposal, approved by the Judges of the Eastern District of Pennsylvania, was sent to the Ad Hoc Committee

requesting approval of this district as a participant in that pilot program. Our request is still pending. The Broadcasting pilot program is scheduled for a three year experiment to begin in July, 1991.

Procedural Forms

The Eastern District of Pennsylvania has implemented a number of case management techniques and policies over the past 20 years which have contributed to the substantial reduction in the time from filing to disposition of cases of this court. These policies are codified in the following procedures and forms:

Social Security - Procedural Order for Social Security Review Cases. (Attachment 21).

Bankruptcy - Procedural Order for Bankruptcy Appeals cases. (Attachment 22).

Local Civil Rule 3 - Designation Form and Civil Cover Sheet. (Attachment 23).

Local Civil Rule 23 - Dismissal and Abandonment of Actions. (Attachment 24).

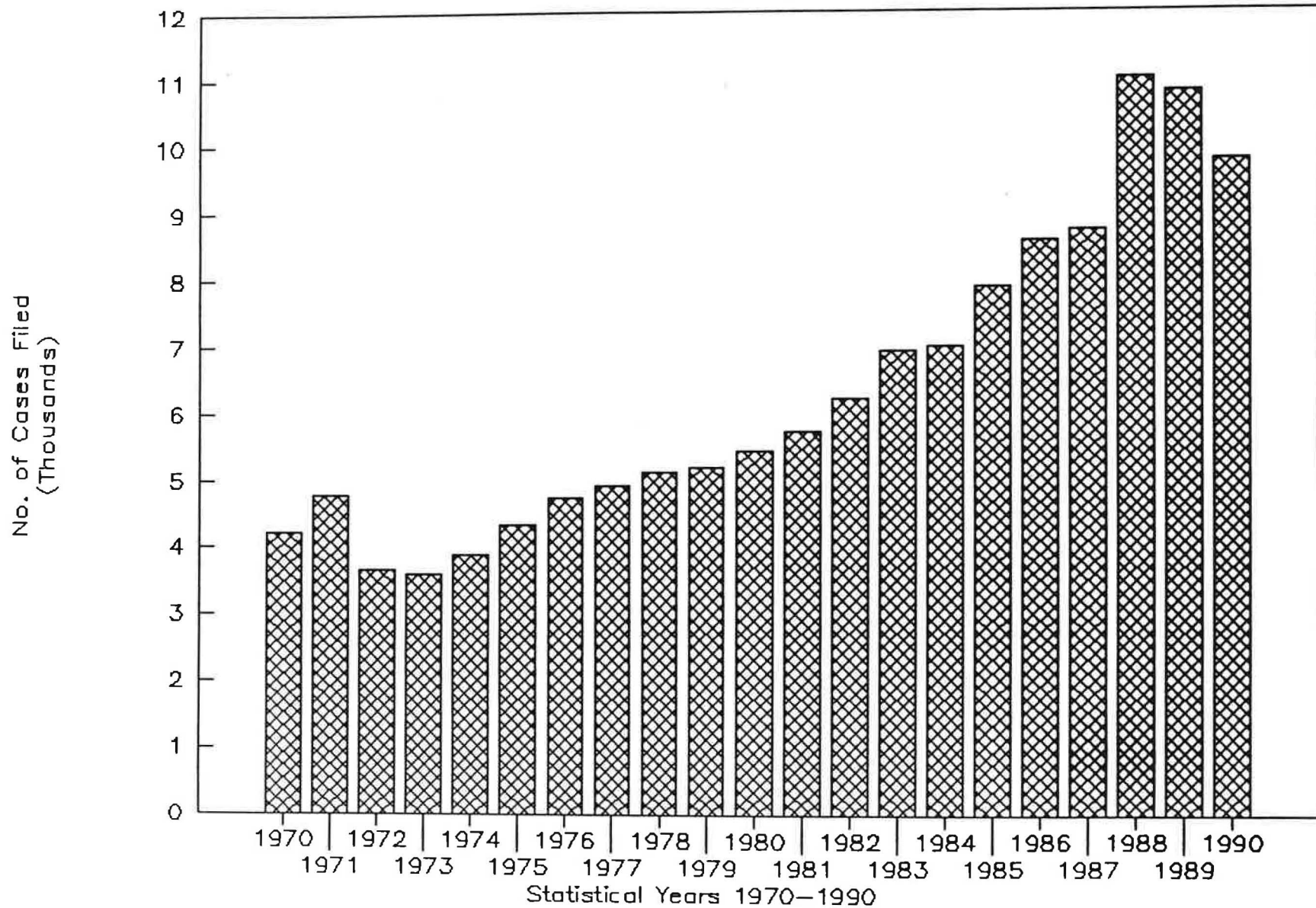
Asbestos Trial List (Attachment 25)

Arbitration and Mediation Tracking Form (Attachments 26 and 27).

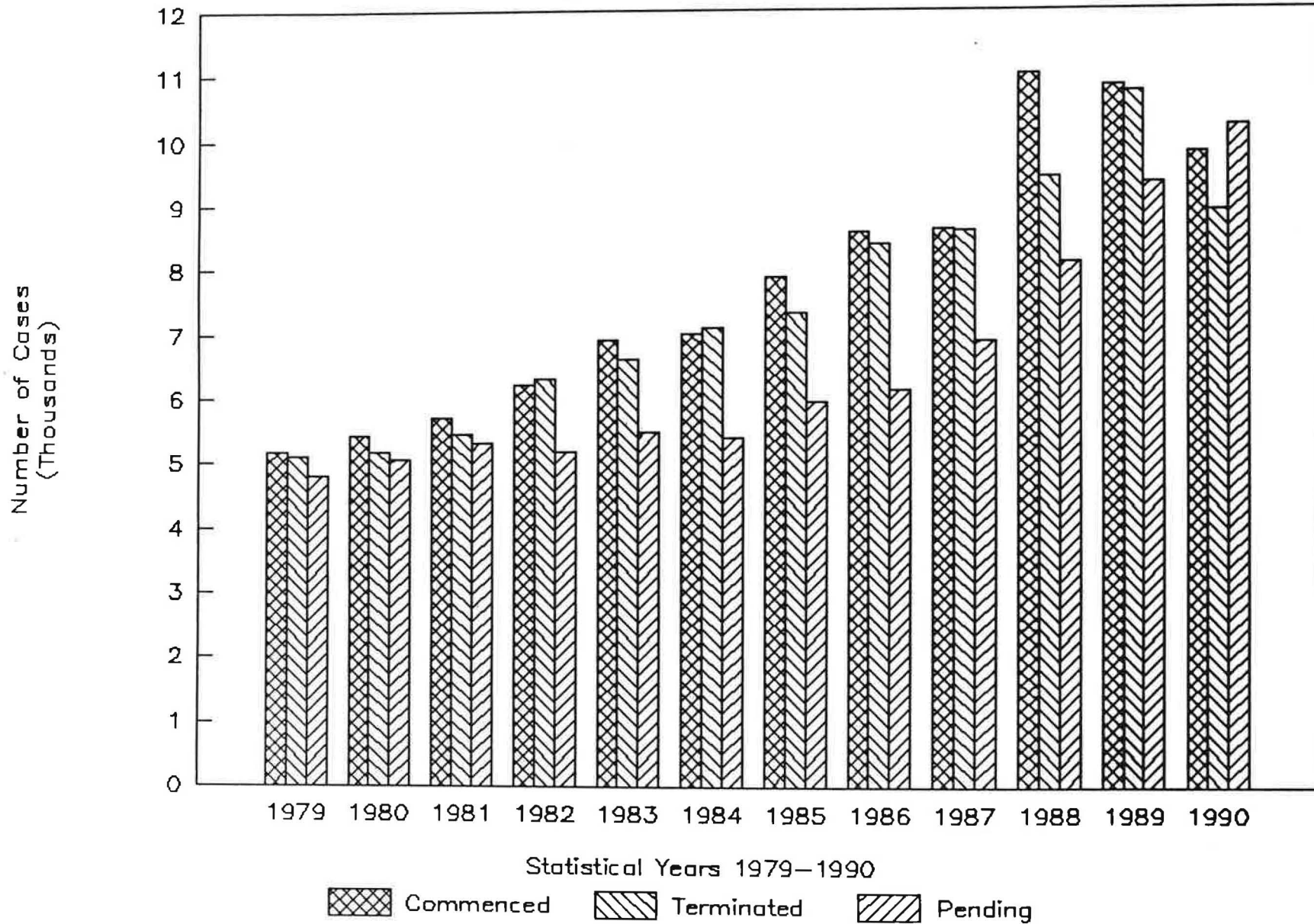
Arbitration Orders (Attachment 28).

EASTERN DISTRICT OF PENNSYLVANIA

TOTAL CIVIL & CRIMINAL FILINGS



EASTERN DISTRICT OF PENNSYLVANIA CIVIL AND CRIMINAL CASELOAD



EASTERN DISTRICT OF PENNSYLVANIA
CIVIL AND CRIMINAL CASELOAD
JUNE 30, 1964 THROUGH JUNE 30, 1990

AS OF JUNE 30	AUTHORIZED JUDGESHIPS	CIVIL CASES			CRIMINAL CASES		
		COMMENCED	TERMINATED	PENDING	COMMENCED	TERMINATED	PENDING
1964	11	2,701	2,131	5,287	299	355	170
1965	11	2,712	1,972	6,027	421	328	263
1966	14	2,819	2,153	6,693	376	429	210
1967	13	2,728	2,585	6,836	369	261	318
1968	14	3,068	2,727	7,177	376	375	319
1969	13	3,357	3,399	7,135	432	362	389
1970	19	3,531	4,725	5,941	673	422	640
1971	19	3,966	4,054	5,853	806	755	691
1972	19	2,949	3,823	4,979	712	884	519
1973	19	2,890	3,566	4,303	692	943	268
1974	19	3,173	3,727	3,749	709	710	267
1975	19	3,539	3,589	3,699	780	778	269
1976	19	3,978	3,781	3,896	740	771	238
1977	19	4,315	3,994	4,217	582	629	191
1978	19	4,543	4,207	4,553	554	559	187
1979	19	4,793	4,723	4,623	369	386	171
1980	19	5,102	4,835	4,890	320	328	163
1981	19	5,308	5,149	5,049	399	305	257
1982	19	5,787	5,906	4,930	407	400	247
1983	19	6,422	6,123	5,229	481	481	247
1984	19	6,502	6,656	5,075	479	430	297
1985	19	7,392	6,834	5,633	474	481	290
1986	19	7,988	7,820	5,801	564	548	306
1987	19	8,102	8,153	6,540	506	473	339
1988	19	10,569	9,002	7,725	434	411	362
1989	19	10,258	9,081	8,902	541	472	411
1990	19	9,271	8,389	9,784	507	493	418

EASTERN DISTRICT OF PENNSYLVANIA

	<u>Pending</u> <u>7/1/89</u>	<u>Filed</u> <u>SY 90</u>	<u>Term</u> <u>SY 90</u>	<u>Pending</u> <u>6/30/90</u>
TOTAL CIVIL CASES.....	8,902	9,271	8,389	9,784
U.S. CASES, TOTAL.....	601	846	899	548
Recovery.....	27	108	119	16
Medicare-Act.....	3	4	1	6
Student Loans.....	23	95	112	6
VA.....	0	5	5	0
Other Recovery.....	1	4	1	4
Other Contract.....	22	58	50	30
Land Condemnation.....	1	3	2	2
Other Real Property.....	15	16	22	9
Tort Actions.....	82	121	114	89
Antitrust.....	1	2	1	2
Civil Rights.....	66	60	72	54
Prisoner Petitions, Total..	26	60	55	31
Habeas Corpus.....	0	1	1	0
Civil Rights.....	0	1	0	1
Other.....	26	58	54	30
Forfeiture & Penalty.....	37	68	69	36
Labor Laws.....	30	35	45	20
Social Security.....	210	167	226	151
Tax Suits.....	25	43	36	32
All Other U.S. Cases.....	59	105	88	76
PRIVATE CASES, TOTAL.....	8,301	8,425	7,490	9,236
Contract.....	1,245	1,408	1,794	859
Real Property.....	58	86	90	54
Tort Actions, Total.....	5,264	4,055	2,860	6,459
FELA.....	277	434	360	351
Air Personal Injury.....	18	22	29	11
Marine Personal Injury..	77	83	101	59
Auto Personal Injury....	588	534	704	418
Other Personal Injury...	523	459	608	374
Asbestos Product Liab...	3,381	2,141	613	4,909
Other PI Product Liab...	292	298	321	269
Personal Property.....	108	84	124	68
Antitrust.....	34	26	25	35
Civil Rights, Total.....	463	543	538	468
Voting.....	1	1	0	2
Employment.....	152	169	164	157
Housing/Accom.....	7	7	7	7
Welfare.....	3	13	5	11
Other.....	300	353	362	291
Commerce.....	23	19	34	8
Prisoner Petitions, Total..	407	993	908	492
Habeas Corpus.....	148	280	266	162
Death Penalty.....	0	2	0	2
Civil Rights.....	258	711	642	327
Mandamus & Other.....	1	0	0	1
RICO.....	52	71	68	55
Labor Laws.....	279	578	520	337
Copy, Pat., Trade.....	77	161	153	85
All Other Private Cases....	399	485	500	384

TEN LARGEST METROPOLITAN COURTS (BY FILINGS)

FILINGS

	SY 88	SY 89	% Change
CALIFORNIA-Central	10,170	8,824	- 13.2
FLORIDA-Southern	4,301	5,100	+ 18.5
ILLINOIS-Northern	10,083	7,989	- 20.7
LOUISIANA-Eastern	6,021	4,860	- 19.2
NEW JERSEY	5,801	5,439	- 6.2
NEW YORK-Southern	9,631	8,772	- 8.9
OHIO-Northern	5,328	7,032	+ 31.9
PENNSYLVANIA-Eastern	10,258	9,271	- 9.6
TEXAS-Northern	5,346	4,962	- 7.1
TEXAS-Southern	6,043	5,983	- 0.9
NATION	233,529	217,879	- 6.7

TERMINATIONS

	SY 88	SY 89	% Change
CALIFORNIA-Central	10,258	8,966	- 12.8
FLORIDA-Southern	4,428	4,481	+ 1.2
ILLINOIS-Northern	10,358	8,687	- 16.1
LOUISIANA-Eastern	5,936	5,502	- 7.3
NEW JERSEY	6,278	5,767	- 8.1
NEW YORK-Southern	8,711	8,541	- 1.9
OHIO-Northern	4,982	3,267	- 34.4
PENNSYLVANIA-Eastern	9,081	8,389	- 7.6
TEXAS-Northern	5,172	4,867	- 5.9
TEXAS-Southern	6,033	5,878	- 2.5
NATION	235,219	213,922	- 9.1

PENDING

	SY 88	SY 89	% Change
CALIFORNIA-Central	8,728	8,586	- 1.6
FLORIDA-Southern	3,481	4,100	+ 17.7
ILLINOIS-Northern	7,045	6,347	- 9.9
LOUISIANA-Eastern	4,437	3,795	- 14.4
NEW JERSEY	5,488	5,160	- 5.9
NEW YORK-Southern	12,038	12,269	+ 1.9
OHIO-Northern	7,372	11,137	+ 51.0
PENNSYLVANIA-Eastern	8,902	9,784	+ 9.9
TEXAS-Northern	5,026	5,121	+ 1.8
TEXAS-Southern	8,080	8,185	+ 1.3
NATION	238,389	242,346	+ 1.7

COMPARISON OF CIVIL AND CRIMINAL CASES FILED
EASTERN DISTRICT OF PENNSYLVANIA AND NATIONWIDE
STATISTICAL YEARS 1979-1990

	<u>Eastern Pennsylvania</u>				<u>Nationwide</u>			
	Total Civil Filings	Percent* Change	Total Criminal Filings	Percent* Change	Total Civil Filings	Percent* Change	Total Criminal Filings	Percent* Change
1979	4,793	5.5	369	-33.4	154,666	11.5	32,688	- 9.2
1980	5,102	6.4	320	-13.3	168,789	9.1	28,932	-11.5
1981	5,308	4.0	399	24.7	180,576	7.0	31,328	8.3
1982	5,787	9.0	407	2.0	206,193	14.2	32,682	4.3
1983	6,422	11.0	481	18.2	241,842	17.3	35,913	9.9
1984	6,502	1.2	479	- 0.4	261,485	8.1	36,845	2.6
1985	7,392	13.7	474	- 1.0	273,670	4.7	39,500	7.2
1986	7,988	8.1	564	19.0	254,828	- 6.9	41,490	5.0
1987	8,102	1.4	481	-14.3	238,982	- 6.2	43,292	4.3
1988	10,569	30.4	434	- 9.8	239,634	0.3	44,585	3.0
1989	10,258	- 2.9	541	24.7	233,529	-2.5	44,891	0.7
1990	9,271	-9.6	507	-6.3	217,879	-6.7	47,962	6.8

1990 WEIGHTED CASELOAD

**TEN DISTRICTS WITH THE MOST WEIGHTED FILINGS PER JUDGE
& THE DISTRICTS' MEDIAN TIMES**

DIS- TRICT	RANK	NO. OF AUTH. JUDGES	NO. OF W'GHTED FILINGS PER JUDGE	MEDIAN TIMES FILING TO DISPOSITION		MEDIAN TIME ISSUE TO TRIAL
				CRIMINAL	CIVIL	
N.D. OH.	1	11	876	5.9	10	13
E.D. VA.	2	9	647	3.6	4	5
E.D. PA.	3	19	638	6.1	7	12
S.D. GA.	4	3	612	4.5	9	12
S.D. IND.	5	5	597	4.9	9	19
E.D. TENN.	5	4	597	4.7	10	13
S.D. TX.	7	13	587	4.0	11	23
D. CONN.	8	6	582	5.1	12	21
E.D. TX.	9	6	581	5.6	10	11
W.D. TX.	9	7	581	5.2	9	11

EASTERN DISTRICT OF PENNSYLVANIA
COMPLEX AND LESS WEIGHTED CIVIL FILINGS
FOR STATISTICAL YEARS 1979 - 1990

<u>CIVIL COMPLEX CASES *</u>		
<u>Statistical Year</u>	<u>Total</u>	<u>% Change From Previous Year</u>
1979	560	- 11.1
1980	572	2.1
1981	518	- 9.4
1982	579	11.8
1983	619	6.9
1984	668	7.9
1985	670	0.3
1986	777	16.0
1987	812	4.5
1988	799	- 1.6
1989	775	- 3.0
1990	793	2.3

<u>CIVIL LESS WEIGHTED CASES **</u>		
<u>Statistical Year</u>	<u>Total</u>	<u>% Change From Previous Year</u>
1979	794	4.1
1980	862	8.6
1981	1168	35.5
1982	1093	- 6.4
1983	1365	24.9
1984	1301	- 4.7
1985	1325	1.8
1986	1285	- 3.0
1987	1175	- 8.6
1988	1391	18.4
1989	1596	14.7
1990	1445	- 9.5

* Complex cases include: copyrights, patents, trademarks, civil rights and antitrust.

** Less weighted cases include: social security, recovery of overpayments and enforcement of judgments, prisoner petitions, forfeitures, and penalties and tax suits.

EASTERN DISTRICT OF PENNSYLVANIA
WEIGHTED CASELOAD

Statistical Years 1962-1997

Year Ended June 30th	Judgeships	Weighted Cases Per Judgeship	Actual Weighted Cases	Predicted Weighted Cases
1962	11	258	2,838	
1963	11	258	2,848	
1964	11	260	2,860	
1965	11	279	3,069	
1966	14	224	3,136	
1967	13	241	3,133	
1968	14	245	3,430	
1969	13	276	3,588	
1970	19	196	3,724	
1971	19	255	4,845	
1972	19	193	3,667	
1973	19	203	3,857	
1974	19	217	4,123	
1975	19	242	4,598	
1976	19	277	5,263	
1977	19	281	5,339	
1978	19	288	5,472	
1979	19	346	6,574	
1980	19	360	6,840	
1981	19	349	6,631	
1982	19	381	7,239	
1983	19	427	8,113	
1984	19	433	8,227	
1985	19	501	9,519	
1986	19	542	10,298	
1987	19	551	10,469	
1988	19	724	13,756	
1989	19	688	13,072	
1990	19	638	12,122	
Projected:				
1991	23	550		12,643
1992	23	572		13,164
1993	23	595		13,685
1994	23	618		14,206
1995	23	640		14,727
1996	23	663		15,248
1997	23	686		15,769

EASTERN DISTRICT OF PENNSYLVANIA

COMPARISON OF WEIGHTED AND UNWEIGHTED CASELOADS
FOR TEN METROPOLITAN DISTRICTS
STATISTICAL YEARS 1979 THROUGH 1990

Period Ending June 30	District	Auth. Judgeships	Weighted Filings Per Auth. Judge	Unweighted Filings Per Auth. Judge
<u>1990</u>	OH(N)	11	876	678
	TX(S)	13	644	689
	PA(E)	19	638	515
	TX(N)	10	580	569
	NJ	14	540	437
	FL(M)	9	512	564
	CA(N)	12	511	461
	IL(N)	21	491	418
	CA(C)	22	489	449
	OH(S)	7	444	423
<u>1989</u>	PA (E)	19	688	568
	TX (S)	13	678	665
	OH (N)	11	650	526
	TX (N)	10	628	603
	IL (N)	21	607	518
	NJ	14	547	455
	CA (C)	22	536	504
	CA (N)	12	521	544
	FL (M)	9	518	613
	OH (S)	7	496	484

Period Ending June 30	District	Auth. Judgeships	Weighted Filings Per Auth. Judge	Unweighted Filings Per Auth. Judge
<u>1988</u>	PA (E)	19	724	577
	OH (N)	11	694	637
	IL (N)	21	618	538
	TX (N)	10	589	553
	TX (S)	13	576	583
	CA (C)	22	555	582
	NJ	14	533	457
	OH (S)	7	516	556
	FL (M)	9	502	608
	CA (N)	12	500	604
<u>1987</u>	IL (N)	21	643	572
	TX (N)	10	608	549
	CA (N)	12	593	742
	PA (E)	19	552	452
	TX (S)	13	569	570
	CA (C)	22	532	647
	OH (N)	11	527	513
	OH (S)	7	519	583
	NJ	14	499	434
	FL (M)	9	491	588
<u>1986</u>	IL (N)	21	589	482
	TX (N)	10	569	613
	OH (N)	11	566	588
	TX (S)	13	548	678
	CA (N)	12	545	890
	PA (E)	19	543	448
	CA (C)	22	520	539
	NJ	14	508	445
	FL (M)	9	506	626
	OH (S)	7	498	632

Period Ending June 30	District	Auth. Judgeships	Weighted Filings Per Auth. Judge	Unweighted Filings Per Auth. Judge
<u>1985</u>	OH (S)	7	624	800
	TX (S)	13	580	696
	TX (N)	10	544	481
	IL (N)	21	539	570
	CA (C)	22	510	506
	CA (N)	12	510	780
	NJ	14	505	481
	PA (E)	19	501	412
	FL (M)	9	451	638
<u>1984</u>	IL (N)	16	761	714
	OH (S)	6	701	1048
	CA (C)	17	636	598
	NJ	11	593	535
	CA (N)	12	548	757
	OH (N)	10	531	621
	TX (S)	13	534	714
	TX (N)	9	526	459
	FL (M)	9	461	564
	PA (E)	19	438	367
	<u>1983</u>	IL (N)	16	690
OH (S)		6	647	967
CA (C)		17	587	525
NJ		11	578	498
TX (S)		13	555	712
TX (N)		9	535	470
OH (N)		10	501	652
CA (N)		12	477	651
PA (E)		19	428	362
FL (M)		9	422	492

ATTACHMENT 10-2

Period Ending June 30	District	Auth. Judgeships	Weighted Filings Per Auth. Judge	Unweighted Filings Per Auth. Judge
<u>1982</u>	IL (N)	16	639	519
	OH (S)	6	546	595
	CA (C)	17	494	452
	TX (N)	9	490	478
	NJ	11	480	423
	TX (S)	13	464	483
	OH (N)	10	437	402
	CA (N)	12	392	499
	PA (E)	19	381	324
	FL (M)	9	360	462
<u>1981</u>	IL (N)	16	587	469
	CA (C)	17	477	440
	NJ	11	469	426
	TX (N)	9	459	408
	OH (S)	6	441	553
	OH (N)	10	424	378
	TX (S)	13	411	553
	CA (N)	10	424	378
	PA (E)	19	349	296
	FL (M)	9	336	426
<u>1980</u>	IL (N)	16	528	408
	NJ	11	447	392
	CA (C)	17	424	382
	CA (N)	12	423	486
	TX (S)	13	406	373
	OH (S)	6	388	441
	TX (N)	9	375	324
	PA (E)	19	360	284
	OH (N)	10	353	328
	FL (M)	9	316	439

EASTERN DISTRICT OF PENNSYLVANIA

**INDEX OF WEIGHTED FILINGS TO UNWEIGHTED FILINGS
Statistical Years 1971-1990**

Year Ending June 30	Unweighted Filings Per Auth. Judgeship		Weighted Filings Per Auth. Judgeship		Index of Weighted to Unweighted Filings	
	U.S.	EDPA	U.S.	EDPA	U.S.	EDPA
1971	341	251	307	255	.90	1.02
1972	363	193	335	193	.92	1.00
1973	352	189	343	203	.97	1.07
1974	358	204	350	217	.98	1.06
1975	402	227	400	242	1.00	1.07
1976	430	248	432	277	1.00	1.12
1977	411	256	422	281	1.03	1.10
1978	417	264	428	288	1.03	1.09
1979	344	270	344	348	1.00	1.29
1980	365	284	353	260	.97	1.27
1981	390	296	390	349	1.00	1.18
1982	444	324	417	381	.94	1.18
1983	517	360	473	428	.91	1.19
1984	554	365	496	433	.90	1.19
1985	520	413	453	501	.87	1.21
1986	491	449	461	542	.94	1.21
1987	490	452	468	552	.95	1.22
1988	493	577	477	724	.97	1.25
1989	485	568	475	688	.98	1.21
1990	463	515	458	638	.99	1.23

* The index is calculated by dividing the weighted filings by the unweighted filings; 1.00 is the value given to an average case.

CIVIL CASES PENDING AND LENGTH OF TIME PENDING
AS OF JUNE 30, 1990

District	Total	Less than 1 Year	1 to 2 Years	2 to 3 Years	Over 3 Years	% 3 Years + Over of Total
S.D. N.Y.	12,269	5,643	3,270	1,789	1,567	12.8%
N.D. OH.	11,137	5,867	2,207	2,001	662	5.9%
E.D. PA.	9,784	5,610	2,169	1,796	209	2.1%
C.D. CAL.	8,586	5,071	1,719	1,054	742	8.6%
S.D. TX.	8,185	3,968	2,122	1,015	1,080	13.2%
N.D. ILL.	6,347	3,771	1,290	549	737	11.6%
D. N.J.	5,160	3,275	1,181	401	303	5.9%
N.D. TX.	5,121	3,139	1,260	426	296	5.8%
S.D. FLA.	4,100	2,752	847	340	161	3.9%
E.D. LA.	3,795	2,772	749	179	95	2.5%
NATIONAL	242,346	135,334	53,933	27,872	25,207	10.4%

PERCENTAGE BREAKDOWN OF THE NUMBER OF CIVIL CASES PENDING
BY THEIR LENGTH OF TIME PENDING

	Less than 1 Year	1 to 2 Years	2 to 3 Years	Over 3 Years
NATIONAL	55.8%	22.3%	11.5%	10.4%
TOP 10 METRO. COURTS	56.2%	23.1%	12.8%	7.9%
E.D. PA.	57.3%	22.2%	18.4%	2.1%

EASTERN DISTRICT OF PENNSYLVANIA

**COMPARISON OF VACANT AUTHORIZED JUDGESHIP MONTHS
ALL DISTRICT COURTS WITH FIVE METROPOLITAN COURTS
Statistical Years 1969-1990**

Year Ended	All Dist. Courts	Percentage of Vacant Authorized Judgeship Months				
		PA (E)	IL (N)	NJ	CA (C)	CA (M)
1969	0.0	0.0	0.0	0.0	0.0	0.0
1970	5.4	2.6	3.4	14.0	2.0	2.0
1971	12.6	22.0	17.1	12.0	18.0	24.0
1972	4.8	7.0	5.3	0.0	1.0	6.0
1973	3.3	5.0	7.4	11.0	0.0	0.0
1974	4.5	3.0	1.7	14.0	4.0	5.0
1975	4.0	3.0	6.5	15.0	0.0	3.0
1976	5.0	0.0	16.6	0.0	9.0	18.0
1977	4.9	0.0	15.0	0.0	0.0	4.0
1978	5.7	7.0	5.8	0.0	3.0	0.0
1979	17.8	8.0	15.2	22.0	6.0	5.0
1980	15.4	3.0	21.1	15.0	20.0	22.0
1981	6.7	0.0	6.6	0.0	17.0	9.0
1982	6.9	2.0	15.7	2.0	16.0	6.0
1983	4.7	1.0	4.0	8.0	14.0	6.0
1984	4.0	3.0	6.3	3.0	13.0	6.0
1985	13.0	7.0	23.0	20.0	23.0	2.0
1986	10.0	6.0	10.0	10.0	13.0	5.0
1987	7.0	14.0	14.0	4.0	4.0	3.0
1988	7.0	13.2	5.9	11.8	0.0	13.8
1989	5.4	6.9	3.2	0.0	.9	15.2
1990	7.8	7.5	1.7	1.4	4.5	13.3

EASTERN DISTRICT OF PENNSYLVANIA

COMPARISON OF NUMBER OF WEIGHTED FILINGS PER AUTHORIZED JUDGESHIP
WITH NUMBER OF WEIGHTED FILINGS PER ACTUAL JUDGESHIP
Statistical Years 1979-1990

Year Ended June 30th	No. of Judgeships			No. of Weighted Filings	
	Authorized	Actual	Vacant	Per Auth. Judge	Per Actual Judge
1979	19	17.6	1.4	344	376
1980	19	18.5	.5	360	370
1981	19	19.0	0.0	349	349
1982	19	18.5	.5	381	391
1983	19	18.8	.2	428	432
1984	19	18.5	.5	433	445
1985	19	17.7	1.3	501	537
1986	19	17.9	1.1	542	575
1987	19	16.4	2.6	551	639
1988	19	16.5	2.5	724	834
1989	19	17.7	1.3	688	738
1990	19	17.6	1.4	638	689

COMPARISON OF THE TEN LARGEST METROPOLITAN COURTS BY FILING

WITH THEIR WEIGHTED FILINGS AND MEDIAN TIMES FOR 1990

Dis- trict	No. of Auth. Judges	No. of Filings	No. of Wtd. Filings Per Judge	Wtd. Filings Rank	M E D I A N T I M E			
					Filing to Disposition		Issue to Trial	Filing to Trial
					Criminal	Civil		
E.D. PA.	19	9,271	638	3	6.1	7	12	15
C.D. CAL.	22	8,824	487	21	5.1	7	12	19
S.D. N.Y.	27	8,772	409	49	7.9	9	19	21
N.D. ILL.	21	7,989	488	20	6.4	5	12	20
N.D. OH.	11	7,032	876	1	5.9	10	13	18
S.D. TX.	13	5,983	587	7	4.0	11	23	29
D. N.J.	14	5,439	532	14	6.7	8	11	16
S.D. FL.	15	5,100	402	53	6.5	7	11	19
N.D. TX.	10	4,962	577	11	5.1	8	17	30
E.D. LA.	13	4,860	354	69	4.8	8	11	16

MEDIAN TIME INTERVALS IN MONTHS
FROM FILING TO DISPOSITION
OF CIVIL CASES TERMINATED SY90

	<u>Pennsylvania-Eastern</u>	<u>Nation</u>
Total Cases	6	8
United States Cases	5	6
Contract Actions		
Negotiable Instruments	-	5
Recovery of Overpayments and Enforcement of Judgments	2	3
Other Contracts	4	5
Real Property	5	6
Tort Actions		
Marine, Personal Injury	-	14
Motor Vehicle, Personal Injury	6	9
Other Personal Injury	7	13
Other Torts	-	8
Actions Under Statutes		
Antitrust	-	5
Civil Rights		
Employment	8	11
Other Civil Rights	7	6
Liquor Forfeitures	-	-
Other Forfeiture & Penalty Suits	5	6
Fair Labor Standards Act	6	8
Other Labor Litigation	4	5
Selective Service Act	-	-
Social Security Laws		
Health Insurance	-	10
Black Lung	-	2
Disability Insurance	9	10
Supplemental Security Income	8	10
Retirement & Survivor Benefits	-	10
Other	-	-
Tax Suits	6	9
All Other U.S. Actions	5	6
Federal Question	6	8
Contract Actions		
Marine	5	7
Miller Act	6	7
Other Contracts	4	8
Real Property	-	7
Tort Actions		
Employers' Liability Act	7	12
Marine, Personal Injury	7	12
Other Personal Injury	10	11
Other Torts	11	9
Actions Under Statutes		
Antitrust	18	14
Civil Rights		
Employment	8	12
Other Civil Rights	7	10
Fair Labor Standards Act	8	11
Labor Management Relations Act	5	7
Other Labor Litigation	4	6
Copyright	4	6
Patent	8	10
Trademark	3	6
Constitutionality of State Statutes	-	6
All Other Federal Question	5	7
Diversity of Citizenship	7	10
Contract Actions		
Insurance	7	10
Negotiable Instruments	6	8
Other Contracts	5	9
Real Property	5	6
Tort Actions		
Marine, Personal Injury	8	9
Motor Vehicle, Personal Injury	8	10
Other Personal Injury	8	13
Other Torts	8	11
All Other Diversity	29	19

* Time intervals are computed only where there are ten (10) or more cases.

**TOTAL NUMBER OF TRIALS COMPLETED IN 1990
BY THE TEN LARGEST METROPOLITAN COURTS (BY FILING)**

Dis- trict	Total No. of Trials	No. of Auth. Judges	Trials Per Judge	CIVIL TRIALS			CRIMINAL TRIALS		
				Total	Non- jury	Jury	Total	Non- jury	Jury
S.D. TX.	871	13	67.0	410	325	85	461	229	232
S.D. N.Y.	698	27	25.9	471	307	164	227	65	162
S.D. FL.	695	15	46.3	297	214	83	398	98	300
E.D. PA.	691	19	36.4	586	267	319	105	17	88
C.D. CAL.	632	22	28.7	311	211	100	321	136	185
N.D. ILL.	569	21	27.1	345	209	136	224	106	118
E.D. LA.	405	13	31.2	313	162	151	92	38	54
D. N.J.	397	14	28.4	287	145	142	110	49	61
N.D. TX.	373	10	37.3	206	144	62	167	90	77
N.D. OH.	205	11	18.6	134	80	54	71	18	53
Nat'l	20,433	575	35.5	11,502	6,737	4,765	8,931	3,870	5,061

LENGTH OF CIVIL TRIALS COMPLETED
AS OF JUNE 30, 1990

District	Total	1 Day	2 Days	3 Days	4 to 9 Days	10 to 19 Days	20 Days & over
E.D. PA.	586	192	147	75	154	15	3
S.D. N.Y.	471	160	84	62	139	19	7
S.D. TX.	410	257	58	28	53	9	5
N.D. ILL.	345	119	49	42	100	20	5
E.D. LA.	313	134	95	40	40	1	3
C.D. CAL.	311	106	68	36	68	23	10
S.D. FL.	297	144	57	27	62	5	2
D. N.J.	287	87	63	44	80	11	2
N.D. TX.	206	118	34	17	28	5	4
N.D. OH.	134	56	17	23	35	2	1
NATIONAL	11,502	4,996	2,251	1,430	2,393	347	85

PERCENTAGE BREAKDOWN OF THE LENGTH OF CIVIL TRIALS COMPLETED

	1 Day	2 Days	3 Days	4 to 9 Days	10 to 19 Days	20 Days & over
NATIONAL	43.4%	19.6%	12.4%	20.9%	3.0%	.7%
TOP 10 METRO. COURTS	40.9%	20.0%	11.7%	22.6%	3.3%	1.3%
E.D. PA.	32.8%	25.1%	12.8%	26.3%	2.5%	.5%

EASTERN DISTRICT OF PENNSYLVANIA
ASBESTOS CASES FOR STATISTICAL YEARS 1977-1990

ATTACHMENT 19

Case Statistics				
<u>Year</u>	<u>No. Parties</u>	<u>No. Terminated</u>	<u>Placed in Suspense</u>	<u>Pending</u>
1977-82	273	109	11	153
1983	133	34	38	214
1984	212	56	14	356
1985	216	51	80	441
1986	326	87	130	550
1987	448	124	139	735
1988	1,838	584	-269	2,254
1989	1,489	319	30	3,398
1990	<u>2,114</u>	<u>511</u>	<u>83</u>	<u>4,919</u>
TOTALS:	7,049	1,875	256	4,919

Asbestos Parties					
<u>Year</u>	<u>Yrly. Total</u>	<u>No.</u>	<u>No. Placed</u>	<u>No. Parties Pending</u>	
	<u>Term/Susp/New</u>	<u>Terminated</u>	<u>in Suspense</u>	<u>New</u>	<u>Running Total</u>
1977-84	11,082	4,017	1,068	5,997	5,997
1985	4,689	2,217	331	2,141	8,138
1986	6,292	3,652	641	1,999	10,137
1987	7,788	4,788	857	2,143	12,280
1988	30,493	7,050	-396	23,839	36,119
1989	30,752	6,640	883	23,229	59,348
1990	<u>38,688</u>	<u>11,188</u>	<u>2,125</u>	<u>25,375</u>	<u>84,723</u>
TOTALS:	129,784	39,552	5,509	84,723	84,723

Breakdown of Parties Involved in 4935 Cases As Of June 30, 1990

	<u>No. of</u>	<u>No. of</u>	<u>No. of Third-</u>	<u>Total No.</u>
	<u>Plaintiffs</u>	<u>Defendants</u>	<u>Party Defendants</u>	<u>of Parties</u>
Pending	9,780	73,187	1,756	84,723
Suspense	568	4,533	408	5,509
Terminated	<u>4,368</u>	<u>30,451</u>	<u>4,733</u>	<u>39,552</u>
TOTALS:	14,716	108,171	6,897	129,784

JUDGE: ALL

PENDING ASBESTOS AND NON-ASBESTOS CIVIL CASELOAD

	Triable Cases 6/30/89	Previous Suspense	New Assignments		Rsgnmnts		# Closed SY/90	# Cases In Suspense			#Triable Cases 6/30/90
			SY/90	Related*	Out	In		In	Out	**	
Asbestos	3,398	173	2,113	1	39	38	509	102	20	255	4,920
Non-Asbestos	5,497	674	6,777	10,914	722	721	7,497	310	378	606	4,844
Total	8,895	847	8,890	10,915	761	760	8,006	412	398	861	9,764

PENDING CIVIL CASELOAD BY NATURE OF SUIT

Pending 7/1/90		Soc. Sec.	Prisoner Civ Rts	Other Civ Rts	VA/ Stud Loan	Other Contr	Prop Rts	Real Prop	Pers Inj	Pers Prop	Bnk App	Tax Suits	Labor Suits	All Other	
Total	9,764	152	329	196	525	6	901	84	65	6,478	72	75	31	349	501
Percent	100%	1.6	5.4	5.4	0.1	9.2	0.9	0.7	66.3	0.7	0.8	0.3	3.5	5.1	

PENDING CIVIL CASELOAD BY AGE

	Less Than 1 Year	1 - 2 Years	2 - 3 Years	Over 3 Years	Total
Asbestos	1,993	1,315	1,525	86	4,919
Non-Asbestos	3,599	851	273	122	4,845
Total	5,592	2,166	1,798	208	9,764
Percent	57.3%	22.2%	18.4%	2.1%	100.0%

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

v.

Civil Action No. _____

**Procedural Order for
Social Security
Review Cases**

The above action seeks review of a decision by the Secretary of Health and Human Services denying plaintiff social security disability benefits. The Court's jurisdiction is limited to reviewing the administrative record to determine whether the decision is supported by substantial evidence in the record. Notwithstanding any other rule governing the procedure in civil cases, it is ordered that:

(1) The plaintiff shall cause the summons and complaint to be served upon the defendant in the manner specified by Rules 4(d)4 and 4(d)5, Federal Rules of Civil Procedure within ten (10) days of the date of this Order.

(2) Defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record, within sixty (60) days of service of the complaint.

(3) Plaintiff shall serve and file a motion for summary judgment and brief supporting plaintiff's petition for review within forty-five (45) days of service of defendant's answer.

(4) Defendant shall serve and file a cross-motion for summary judgment and brief within thirty (30) days of service of plaintiff's brief.

(5) Plaintiff may serve and file a reply within fifteen (15) days after service of defendant's brief.

(6) The matter shall be deemed submitted, without hearing, fifteen (15) days after the filing of defendant's opposition, unless otherwise ordered by the Court.

(7) No extensions of time will be permitted without order of the Court.

Dated: this _____ day of _____, 198_____.

Michael E. Kunz
Clerk of Court

By: _____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF:

:

:

CIVIL ACTION NO.

:

The record on appeal from the Bankruptcy Court in the above-captioned case was entered on the docket in this office on _____ and has been assigned to the Honorable _____

The following is the schedule for filing briefs with this office:

- (1) The Appellant shall serve and file his brief within 15 days after entry of the appeal on the docket.
- (2) The Appellee shall serve and file his brief within 15 days after service of the brief on the Appellant.
- (3) The Appellant may serve and file a reply brief within five days after service of the brief of the Appellee.

Very truly yours,

MICHAEL E. KUNZ
Clerk of Court

BY: _____
Deputy Clerk

Copy to:

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: _____

Address of Defendant: _____

Place of Accident, incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities? Yes [] No []

RELATED CASE IF ANY

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No []
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No []
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No []

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act—Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [] All other Federal Question Cases (please specify)

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability—Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check appropriate category)

I, _____, counsel of record do hereby certify:

[] Pursuant to Local Civil Rule 8, Section 4(a)(2), that, to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$100,000 exclusive of interest and cost;

[] Relief other than monetary damages is sought.

DATE: _____ Attorney-at-Law

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____ Attorney-at-Law

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

DEFENDANTS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Annuity <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 560 Other		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

vs. : CIVIL ACTION
 :
 :
 :
 : NO.

ORDER

AND NOW, TO WIT:

it having been reported that the issues between the parties in the above action have been settled and upon Order of the Court pursuant to the provisions of Rule 23(b) of the Local Rules of Civil Procedure of this Court (effective January 1, 1970), it is

ORDERED that the above action is DISMISSED with prejudice, pursuant to agreement of counsel without costs except as provided by Local Rule 42(d).

MICHAEL E. KUNZ, Clerk of Court

BY: _____
Deputy Clerk

ASBESTOS TRIAL LIST FOR 1991

<u>DATE</u>	<u>CASE</u>	<u>NUMBER</u>	<u>PLFF'S ATTY.</u>	<u>JUDGE</u>	<u>TRIAL JUDGE</u>	
1-7-91	Bolden	88-0021	Shein	FVA	EC	
	Glaccum	88-0026	Greitzer	MK	LP	
	Caputo	88-9443	Greitzer	RJB	NS	
	Lavery	88-0028	Perlberger	JM	JG	
	Bean	88-0029	Haft	CN	TON	
	Harvey	88-0030	Greitzer	LP	JK	
	Green	88-0031	Greitzer	FVA	MK	
	Simkanin	88-0045	Berner, J.	EC	EL	
	Luzetsky	88-0048	Cohan, L.	JL	RK	
Lindley	88-0072	Powell	LP	FVA		
1-14-91	Dalton	88-0027	Cohen	CG	RG	
	Pantano	88-0074	Powell	JM	LR	
	Ambrico	88-0077	Shein	JK	HH	
	Yoder	88-0104	Cohen	DH	RB	
	Bohner	88-0122	Cohan, L.	LR	JL	
	Burcin	88-0127	Greitzer	JF	JF	
	Robinson	88-0128	Greitzer	RK	CW	
	Lecker	88-0129	Blank, Rome	MK	MT	
	Borishek	88-0130	Greitzer	FVA	VA	
	Jurist	88-0131	Greitzer	JM	DH	
	1-21-91	Beverly	88-0132	Greitzer	RJB	WD
		Givins	88-0133	Greitzer	RK	RJB
Mulbauer		88-0134	Haft	HH	CN	
McSparran		88-0135	Greitzer	WD	CG	
Dingwall		88-0136	Greitzer	MK	JM	
Bennett		88-0137	Greitzer	DH	EC	
McFadden		88-0138	Haft	FVA	LP	
Schilling		88-0139	Haft	JG	NS	
Frierson		88-0140	Greitzer	NS	JG	
McCarthy	88-0187	Brown	MK	TON		
1-28-91	Carullo	88-0188	Brown	EL	JK	
	Donatucci	88-0200	Shein	CN	MK	
	Brown	88-0202	Greitzer	JF	EL	
	Murphy	88-0203	Greitzer	VA	RK	
	Rich	88-0204	Greitzer	EL	FVA	
	Perry	88-0205	Greitzer	RK	RG	
	Bishop	88-0221	Greitzer	NS	LR	
	Wallin	88-0222	Haft	RG	HH	
	Levin	88-0223	Haft	CN	RB	
	Melnick	88-0224	Haft	JK	JL	

ATTACHMENT 25A

<u>DATE</u>	<u>CASE</u>	<u>NUMBER</u>	<u>PLFF'S ATTY.</u>	<u>JUDGE</u>	<u>TRIAL JUDGE</u>
2-4-91	Neil	88-0243	Haft	CG	JF
	Pettit	88-0320	Greitzer	JK	CW
	Campbell	88-0321	Greitzer	EC	MT
	Mauri	88-0322	Greitzer	CW	VA
	Patchell	88-0323	Greitzer	RG	WD
	Ivers	88-0324	Haft	WD	RJB
	Kosmowski	88-0325	Brown	CW	CN
	Bailey	88-0327	Brown	LP	CG
	Dougherty	88-0328	Haft	MT	JM
	Kelly	88-0329	Haft	CG	EC
2-11-91	Long	88-0345	Murphy	EC	LP
	Flynn	88-0347	Murphy	JM	NS
	Ricciardi	88-0348	Murphy	JF	JG
	Georgette	88-0350	Powell	JG	TON
	Erickson	88-0351	Shein	JL	JK
	Quigley	88-0356	Greitzer	MT	MK
	Eaton	88-0357	Greitzer	EL	EL
	Lewis	88-0358	Greitzer	MK	RK
	Klinger	88-0359	Greitzer	NS	FVA
	Tumola	88-0360	Greitzer	CW	RG
2-18-91	Marcinowski	88-0410	Paul	JK	LR
	Sheehan	88-0362	Greitzer	NS	HH
	Allen	88-0363	Greitzer	CW	RB
	Goldsborough	88-0364	Greitzer	MK	JL
	Wolf	88-0365	Greitzer	RG	JF
	Burhenne	88-0366	Greitzer	RK	CW
	Volb	88-0367	Greitzer	HH	MT
	DiJosie	88-0368	Greitzer	CG	VA
	Cesarano	88-0369	Greitzer	FVA	DH
Francis	88-0370	Greitzer	JH	WD	
2-25-91	Dunn	88-0371	Haft	JG	RJB
	Hannan	88-0372	Greitzer	JM	CN
	Amadio	88-0374	Haft	JG	CG
	Tubic	88-0375	Haft	RJB	JM
	Signora	88-0398	Brown	RK	EC
	Scully	88-0399	Brown	VA	LP
	Hold	88-0400	Brown	JL	NS
	Smialkowski	88-0407	Gordon	LR	JG
	Peters	88-0408	Greitzer	JF	TON
	Jackson	88-0409	Greitzer	CN	JK

<u>DATE</u>	<u>CASE</u>	<u>NUMBER</u>	<u>PLFF'S ATTY.</u>	<u>JUDGE</u>	<u>TRIAL JUDGE</u>
3-4-91	Smith	88-0417	Cohan, L.	JK	MK
	White	88-0439	Greitzer	EL	EL
	Summers	88-0361	Greitzer	FVA	RK
	McCue	88-0441	Doig	JM	FVA
	Dorazio	88-0468	Brown	LP	RG
	D'Aprile	88-0469	Brown	JF	LR
	Uelli	88-0470	Brown	RG	HH
	Lee	88-0480	Paul	WD	RB
	Lucas	88-0488	Greitzer	EC	JL
	Fecca	88-0489	Greitzer	CG	JF
3-11-91	Bailey	88-0490	Haft	CN	CW
	Petriccione	88-0491	Haft	JK	MT
	Oshman	88-0492	Haft	EC	VA
	Fizur	88-0493	Greitzer	VA	DH
	Smolar	88-0494	Haft	FVA	WD
	Kockersperger	88-0495	Haft	JF	RJB
	Bratton	88-0496	Greitzer	HH	CN
	Winer	88-0497	Haft	LP	CG
	Szewczak	88-0498	Greitzer	RG	JM
	Tart	88-0499	Haft	JM	EC
3-18-91	Gardener	88-0500	Greitzer	RK	LP
	Rich	88-0501	Greitzer	MT	NS
	Brabazon	88-0502	Geritzer	EL	JG
	Lundell	88-0503	Greitzer	RJB	TON
	Bernabeo	88-0505	Haft	JF	JK
	Margarhan	88-0506	Cohen	JM	MK
	Tetefsky	88-0507	Gordon	FVA	EL
	Capp	88-0508	Greitzer	RK	RK
	Balestrucci	88-0509	Haft	JH	FVA
	Hood	88-0513	Greitzer	EC	RG
3-25-91	Lonabaugh	88-6438	Paul	NS	LR
	Violon	88-0515	Greitzer	NS	HH
	Munz	88-0516	Greitzer	LP	RB
	McDermott	88-0517	Greitzer	CW	JL
	Lowden	88-0518	Greitzer	JK	JF
	Clancy	88-0519	Perlberger	JL	CW
	McFarland	88-0520	Brown	JG	MT
	Valcukas	88-0521	Brown	EC	VA
	Lightcap	88-0522	Brown	CW	DH
Salayda	88-0523	Brown	EL	WD	

<u>DATE</u>	<u>CASE</u>	<u>NUMBER</u>	<u>PLFF'S ATTY.</u>	<u>JUDGE</u>	<u>TRIAL JUDGE</u>
4-1-91	Gould	88-0524	Greitzer	NS	RJB
	Castoria	88-0525	Greitzer	MK	CN
	Horwanko	88-0528	Cohan, L.	CN	CG
	James	88-0568	Cohen	HH	JM
	Chieffo	88-0580	Cohan, L.	JG	EC
	Cyrus	88-0587	Shein	MK	LP
	Catalini	88-0597	Brown	DH	NS
	Britz	88-0598	Brown	RG	JG
	Manley	88-0617	Haft	CG	TON
Ciannone	88-0618	Haft	CG	JK	
4-8-91	Simeo	88-0619	Greitzer	CN	MK
	Lloyd	88-0620	Haft	LR	EL
	Walish	88-0622	Greitzer	RK	RK
	Moyer	88-0623	Greitzer	MT	FVA
	Holt	88-0624	Greitzer	LP	RG
	Ras	88-0625	Haft	EL	LR
	Cattell	88-0626	Haft	JK	HH
	Carey	88-0627	Haft	MK	RB
	D'Angelo	88-0628	Haft	JH	JL
	Johnson	88-0629	Greitzer	JG	JF
4-15-91	Seybold	88-0630	Greitzer	EL	CW
	Fennimore	88-0631	Haft	JK	MT
	McDevitt	88-0632	Greitzer	RK	VA
	Carr	88-0633	Haft	JG	DH
	Aldrich	88-0634	Haft	LR	WD
	Dowd	88-0635	Haft	NS	RJB
	McDonnell	88-0640	Brown	JL	CN
	McErlain	88-0641	Brown	MK	CG
	Larwa	88-0666	Blank, Rome	RG	JM
	Parne	88-0674	Weingarten	VA	EC
4-22-91	White	88-0700	Paul	JM	LP
	Thompson	88-0716	Brown	EC	NS
	Robinson	88-0717	Brown	LP	JG
	Finnegan	88-0718	Brown	RG	TON
	Thalman	88-0719	Brown	CG	JK
	Krol	88-0720	Brown	HH	MK
	McCaron	88-0721		CG	EL
	Austin	88-0722	Cohan, L.	EC	RK
	Biondo	88-0747	Forceno	CW	FVA
	Ognissanti	88-0763	Weingarten	JF	RG

<u>DATE</u>	<u>CASE</u>	<u>NUMBER</u>	<u>PLFF'S ATTY.</u>	<u>JUDGE</u>	<u>TRIAL JUDGE</u>
4-29-91	Messner	88-0764	Greitzer	CN	HH
	Godorov	88-0765	Greitzer	CW	RB
	McGlensey	88-0766	Greitzer	FVA	JL
	O'Malley	88-0781	Cohan, L.	CN	JF
	Chladni	88-0789	Rubin	RJB	CW
	Richardson	88-0809	Haft	JF	MT
	Smith	88-0810	Haft	FVA	VA
	Pruss	88-0811	Greitzer	NS	DH
	Minniti	88-0813	Blank, Rome	DH	WD
	Weider	88-814	Greitzer	VA	RJB

TRACKING FORM FOR ARBITRATION

Case No.
Date

Name of Case

Judge's Initials
Type of Case

Service: _____

Answer Filed: _____

Extended Deadline: _____

Issue Joined: _____

Motions: _____

Hearing Date: _____

DeNovo: _____ Judgment: _____

MEDIATION TRACKING FORM

V.

Nature of Suit: _____ Case No.: _____

Assigned Judge: _____

First Appearance of Defendant: _____

Mediation Date: _____

Rescheduled Date: _____

Mediator: (name) _____

(address) _____

(phone no.) _____

Report Filed: _____

Settled: _____

Stage of Proceedings Settlement Reported:

(a) Before mediation conference: _____

(b) During mediation conference: _____

(c) After mediation conference: _____

Not Settled:

Method of Disposition: _____ Date: _____

Comments: _____

RULE 16 CONFERENCE ORDER

C.A. No.

Filed:

Jury _____ Non-jury _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

v.

O R D E R

Upon conference, it is ORDERED:

Arbitrate during week of _____, 199 . No continuance without order.

- Contact courtroom deputy for instructions before filing a discovery motion as to a discovery dispute. (215) 597-0241. If total default, file under Local Rule 24(g) for immediate order.
- See Statement of Scheduling Policy (SSP 89-2).
- Trial depositions no later than 10 days before trial date unless by agreement or court approval.
- No summary judgment motion may be filed less than 30 days before trial date without permission.

By _____, 199 plaintiff will report in writing on serious settlement efforts. Any party may request another conference.

[If arbitration decision is appealed, a Pretrial Stipulation signed by all counsel must be submitted 10 days before the trial date. (See Standing Order on pretrial preparation - on back of this page.)]

Edmund V. Ludwig, J.

Date: _____

(Rule 16 - Arbitration CO-1989-2)

(Attachment, Judge Ludwig, page 2)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

: CIVIL ACTION
:
:
: NO.
:
:
:
:
:
:
:
:

ORDER

AND NOW, this _____ day of _____, 19____,
it is ORDERED that the above-captioned matter shall be listed for
arbitration during the month of _____.

If any party appeals from the decision of the
arbitration panel, it is FURTHER ORDERED as follows:

1. Plaintiff's pretrial memorandum under Local Rule
21(c) shall be filed within four days of the date that the Notice
of Trial De Novo is filed.

2. Defendant's pretrial memorandum under Local Rule
21(c) shall be filed within eight days of the date that the
Notice of Trial De Novo is filed.

3. No continuances shall be granted without the
court's approval.

BY THE COURT:

Robert S. Gawthrop, III J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

: CIVIL ACTION
:
:
:
:
: NO.

PRETRIAL SCHEDULING ORDER FOR ARBITRATION CASE

AND NOW, TO WIT, this _____ day of _____,
1990, IT IS ORDERED as follows:

1. All discovery shall proceed forthwith and continue in such manner as will assure that all requests for and responses to discovery will be served, noticed and completed by the one hundred and twenty (120) day discovery deadline set forth in the letter Notice of Arbitration served by the Arbitration Deputy Clerk as required by Local Rule of Civil Procedure 8, 4, (a). No discovery will be allowed after the arbitration except upon order of this Court and upon good cause shown as to why the discovery requested could not have been reasonably anticipated and completed prior to arbitration.

2. In the event there is a duly perfected demand for trial de novo after an arbitration award:

A. All parties shall prepare and file with the Clerk of Court their pretrial memoranda, in accordance with this Order and Local Rule of Civil Procedure 21(c) within thirty (30) days after the demand for trial de novo is entered on the docket by the Clerk of Court; and

B. Within twenty (20) days after the demand for trial de novo is entered on the docket by the Clerk of Court, counsel for each party shall serve upon counsel for every other party:

(1) the original or a copy of each exhibit they expect to offer at the trial de novo in furtherance of their respective contentions. Each party shall mark its trial exhibits in advance of trial with consecutive numbers appropriately prefixed with an identifying letter of counsel's choice (i.e., P-1, P-2; D-1, D-2); (2) curriculum vitae for each expert witness expected to testify; and, (3) a specific identification of each discovery item expected to be offered into evidence.

3. This case will go on the Court's trial list thirty-five (35) days after the demand for trial de novo is entered on the docket by the Clerk of Court.

COUNSEL PLEASE NOTE: This Scheduling Order will be the only written advance notice counsel receive of the date this case will appear on the Court's trial list for a trial de novo. Counsel and all parties shall be prepared to commence trial on that date and as soon thereafter as counsel receive telephone notice that a trial is to commence. Cases on the trial list are disposed of in a variety of unpredictable methods (trial, dismissal, settlement, stay, etc.). For this reason it is very likely that your case may be called for trial out of its sequence on the list.

4. As to the trial de novo, any party having an objection to: (A) the admissibility of any exhibit based on

authenticity; (B) the adequacy of the qualifications of an expert witness expected to testify; or (C) the admissibility for any reason (except relevancy) of any item of evidence expected to be offered; shall set forth separately each such objection, clearly and concisely, in their pretrial memorandum. Such objection shall describe with particularity the ground and the authority for the objection. Unless the Court concludes at trial that manifest injustice will result, the Court can be expected to overrule any objection offered at trial in respect to any matter covered by (A), (B), and/or (C) above, if the Court concludes that the objection should have been made as required by this Order.

5. As to the trial de novo, if any party desires an "offer of proof" as to any witness or exhibit expected to be offered, that party shall inquire of counsel prior to trial for such information. If the inquiring party is dissatisfied with any offer provided, such party shall file a motion seeking relief from the Court prior to trial. THE COURT WILL NOT INTERRUPT TRIAL PROCEEDINGS ON THE APPLICATION OF ANY PARTY FOR AN "OFFER OR PROOF."

6. Only those exhibits, discovery items, and expert witnesses whose qualifications have been furnished in the manner set forth in this Order, shall be considered by the Court for admission into evidence at the trial de novo, unless stipulated to by all affected parties and approved by the Court, or by Order of Court so as to avoid manifest injustice.

7. Because a witness may be unavailable at the time of the trial de novo as defined in Federal Rule of Civil Procedure 32(a)93), the Court expects use of oral or videotape depositions at such trial of any witness whose testimony a party believes essential to the presentation of that party's case, whether that witness is a party, a non-party or an expert. The unavailability of any such witness will not be ground to delay the commencement or progress of an ongoing trial de novo. In the event a deposition is to be offered, the offering party shall file with the Court, prior to the commencement of the trial de novo, a copy of the deposition transcript, but only after all efforts have been made to resolve objections with other counsel. Unresolved objections shall be noted in the margin of the deposition page(s) where a Court ruling is necessary and a covering list of such objections supplied therewith.

8. At least two days before the trial de novo date, each party shall submit proposed jury instructions IN DUPLICATE (ONE POINT PER PAGE) and proposed jury interrogatories IN DUPLICATE to the Court (Chambers, Room 11614). The original shall be filed with the Clerk of the Court. On the first day of trial de novo, each party shall respond in writing to the other's proposed jury instructions and jury interrogatories, IN DUPLICATE (ONE POINT PER PAGE). Supplemental proposed jury instructions may be submitted only for good cause and with the permission of the Court. Two copies of all submissions shall be made to

Chambers (Room 11614). The original shall be filed with the Clerk.

9. At the commencement of trial de novo, the Court should be supplied with TWO COPIES of each exhibit, and TWO COPIES of a schedule of exhibits which shall briefly describe each exhibit. Counsel will be responsible for the originals of all exhibits until the case is submitted to the jury, at which time counsel will place all exhibits on the lectern. At the conclusion of the trial de novo, counsel shall retrieve all original exhibits and preserve them for possible appeal.

10. At least two days before the trial de novo date, party shall submit any special proposed voir dire questions they deem required by the circumstances of this particular case. The court will conduct a general voir dire and consider the proposed special questions of counsel at that time.

LOWELL A. REED, JR., J.

**CIVIL JUSTICE REFORM ACT
ADVISORY GROUP MEETING**

March 11, 1991

MEMBERS Robert M. Landis, Chairman, Alice W. Ballard,
PRESENT: Michael M. Baylson, Andre L. Dennis, Eve B. Klothen,
 Edward W. Mullinix, Arthur G. Raynes,
 Richard M. Rosenbleeth, John O.J. Shellenberger,
 J. Clayton Undercofler, III, and A. Leo Levin

MEMBERS James C. Corcoran, Jr., Seymour Kurland,
NOT PRESENT: S. Gerald Litvin, and Daniel J. Ryan

EX OFFICIO Chief Judge Bechtle, Judge Cahn, Judge R. Kelly,
MEMBERS Magistrate Judge Melinson, Michael E. Kunz, Clerk
PRESENT: of Court

Opening Remarks by Chief Judge Bechtle

Chief Judge Bechtle opened the meeting expressing his appreciation to everyone for serving on this group. He explained that he wanted to have a representative from the major litigants in the area and was fortunate to have assembled such a distinguished group.

Purpose of Group

He stated the purpose of the Civil Justice Reform Act Advisory Group is to adopt a plan to be circulated to all districts of the court to assist the court to try to reduce the cost and delay of civil cases. He is glad to participate in preparing the plan along with five other metropolitan districts. This district was picked because it has the second highest weighted caseload yet it has a very favorable disposition rate. Sixty percent of the cases are diversity cases and very few districts have diversity cases.

The pilot districts are to develop a plan that, when the advisory group submits recommendations as to what the plan should include, then the court should follow these recommendations, perhaps make some recommendations for changes in rules or a public comment. The end product of the group's work will be a report submitted by August 1, 1991.

Chief Judge Bechtle stated that the court was honored that Bob Landis agreed to serve as chairman of the group because of his vast experience in this area. He also praised Leo Levin

for his outstanding contributions to the administration of justice in the numerous capacities that he has served throughout his illustrious career. Chief Judge Bechtle pointed out that the Eastern District of Pennsylvania Advisory Group was undoubtedly the finest in the federal court system and that Chairman Landis and Professor Levin will provide outstanding leadership in the work of the advisory group which undoubtedly will receive national attention.

Booklet

A booklet, prepared by Michael E. Kunz, Clerk of Court, was distributed to each member of the group. Under Tab "A" there is a list of members together with each person's letter stating their background. Tab "B" includes letters that the court received. The December 20, 1990 letter was the first letter received from the Administrative Office and the January 16, 1991 letter is a very comprehensive letter as to what should happen. Chief Judge Bechtle went over various districts' pending caseloads and their number of judges. He also made reference to, under Tab "B", Guidance to Advisory Groups (page one, dated February 28, 1991), which seeks to reduce the cost and delay of civil litigation in the United States District Courts through the "significant contributions by the courts, the litigants, litigants' attorneys, and by the Congress and the Executive Branch."

Chief Judge Bechtle mentioned some ways the group might decide to move cases along. Under Local Rule 4(j), some litigants and some attorneys feel four months is a safe haven. The group might have to think that within 15 days a report has to be filed and service should be made or the court may decide that service should be made within 15 days at client's expense. Limit depositions to five or six or limit interrogatories in a case.

The Ex-officio members and Leo Levin, the reporter, are not voting members but are here to assist and serve in any way they can.

Under Tab "C" Mike Kunz prepared a list of statistics for this district and a narrative which explains how cases are assigned. There is a list of reports that Mike Kunz's staff makes and/or distributes. These are some resources you will find useful. It was noted that the court and court staff are here to serve the group any way they can.

Under Tab "D" - Impact of Drug Cases. This is a factor because they are beginning to be not as important as defendant cases because some cases have 40 to 50 defendants which can tie a judge up for five to six months. Tab "D" also contains a 53-page article which will give you some insight into civil litigation. Chief Judge Bechtle stated the group has everything here that the court has.

Meetings

Chief Judge Bechtle advised that there should be some meetings when judges are not present. He mentioned that this bill had labor pains getting through Congress and some disappointment with some of the judges still persists. Chief Judge Bechtle stated our district judges do cooperate with court administration but many other districts have judges that do not. Magistrate judges cannot be called judges, things of that nature. This is a law that has to be conformed with and this court has been picked to be a leader to bring about a just, speedy and inexpensive court system. All 94 districts must enact a plan by December, 1993. The pilot districts have to have a plan in place by December, 1991. The Advisory Group should advise this court with a report by August 1, 1991.

Dates for meeting should be kept in order to meet the deadlines. Chief Judge Bechtle also mentioned that in the material from the Administrative Office there is a reference to a model plan - at the moment there is no model plan.

Chief Judge Bechtle talked to Bob Landis, Chairman, about meeting in the courthouse. If the group wants to meet at the courthouse that can be arranged, however he thinks a neutral place to meet might be more appropriate or a different place each time since the report by the group will be a public report. These are just some observations by Chief Judge Bechtle, not requirements. He wants to have a plan that will be a model for the country.

Mike Kunz is a non-voting member but will furnish someone to take minutes, if needed. It was also mentioned that Michael Baylson is a permanent member under the stature.

Major Concerns

There are some major areas to be covered:

1. Discovery.
2. Alternate Dispute Resolution - our federal court stole an outstanding arbitration program from the state years ago. Only five districts in the country are doing that and the results are astonishing.
3. Pre-trial Planning - literally eats up time. Our median time from filing to disposition is seven months, which takes in arbitration and early settlement. Some courts median time is 12-14 months.

Some concerns have been addressed by members of the group and members of the bar already. All of our judges and

magistrates are ready to appear before the group to be asked about certain viewpoints of their work. The group is going to have every judges' dockets and they might sense a trend that they want to know about.

Bankruptcy will not be included in this report.

Chief Judge Bechtle again welcomed everyone and stressed the importance of the work of the group, and his opinion that this court has the best 15 people in the group.

Diversity/Local Rules

Michael Baylson asked if they should be concerned with local issues or diversity. Chief Judge Bechtle stated the group is not here to change rules and he hopes not to change diversity. He further stated the group is not to be involved with rule changing but changes should be included within the rules, for example: Rule 16 - Conference.

Michael Churchill asked if they could be furnished with names or reports studying local rules. Chief Judge Bechtle said Judge O'Neill is chairman of a committee reviewing the local rules.

Judges' Procedures

The last thing Chief Judge Bechtle talked about was the Philadelphia Bar Association has already had the judges of this district submit to the bar a statement of their own procedures. If you look at a docket and wonder why a case is taking long, you could then look at the judge's procedure and see how he handles the case. You might decide to divide judges among yourselves. You can look at that book at the Philadelphia Bar Association. This is all public and a resource that other districts probably do not have.

Bob Landis, Chairman

Bob Landis, Chairman of the Group, took the opportunity to thank Chief Judge Bechtle and tell him that everyone is honored to have been chosen for this important responsibility.

He stated that it speaks to the esteem of this court that it was chosen to be a pilot program. He stated that the group starts with a court that has a series of statistics that meet many of the objectives of the act.

Mr. Landis stated the time table is tough to evaluate the impact of any federal legislation on the working of the court on the caseload. They will take the six areas, study them and make recommendations. Accommodations can be made on existing rules. The group can comment on rules. The memo from the

Federal Judicial Center and the letter from the Administrative Office to Chief Judges are good guides.

Mr. Landis feels this meeting got off to a good start and that the group should have another meeting this month. It was agreed to meet March 19, 1991 at 9:00 a.m. at the Conference Room on the 40th Floor of the Bell Atlantic Tower. Arrangements will be made for the meeting through the Philadelphia Bar Association. Mr. Landis commented there is a lot of material to study and he will try to put together a modest agenda. Their findings will precede their recommendations. He invited Leo Levin to speak.

Leo Levin

Mr. Levin stated he was honored to be here and thanked Chief Judge Bechtel for his kind comments. He is looking forward to working with the group and welcomes any calls. He also stated this court is terrific compared to the 93 other district courts and there is no better Clerk of Court in the country. The project is a real challenge and he looks forward to it.

Closing Remarks by Chief Judge Bechtel

Chief Judge Bechtel brought the group's attention to the Guide to Advisory Group and the chart on page eight, which shows the entire judicial system reporting statistics. He explained how the chart shows each court's ranking on various filings. This court has favorable rankings due in part to the arbitration program and the benefit of a good stable of senior judges. He also mentioned that this district is getting four new judges and there are three vacancies at the this time. When all seven vacancies are filled the judges will be able to do anything this group recommends.

Adjournment

Bob Landis adjourned the meeting until March 19, 1991 at 9:00 a.m.

**CIVIL JUSTICE REFORM ACT
ADVISORY GROUP MEETING**

March 19, 1991

MEMBERS Robert M. Landis, Chairman, Alice W. Ballard,
PRESENT: Michael Churchill, James C. Corcoran, Andre L.
 Dennis, Eve B. Klothen, Seymour Kurland, Professor
 A. Leo Levin, Edward W. Mullinix, Arthur G.
 Raynes, Richard M. Rosenbleeth, John O. J.
 Shellenberger, and J. Clayton Undercofler, III

EX OFFICIO Michael E. Kunz, Magistrate Judge James Melinson
MEMBERS:

OTHERS: Jennifer Clarke, Patricia Smeykal

Mr. Landis introduced Jennifer Clarke, an attorney with Dechert, Price and Rhoads who will be working as assistant to the Chairman.

1. Access of the Public to Advisory Group Meetings

The public will need access to some of the meetings, but it is preferred that some meetings remain confidential to promote open and frank discussion. The sense of the meeting was to delay a decision on specific procedures for public hearings or executive sessions at this meeting.

2. Public Hearings

The group will want to have input from all sectors including the Bar, the public, businesses and the community. They will need to decide if these interests can be adequately addressed through special interest groups, or will written material and/or oral testimony be required from a sampling from each. Caution should be exercised in determining the procedure of the public hearing so as to include only those who will provide information not previously received and to allow the panel to meet their August deadline. The ceremonial courtroom can be used for these public hearings to provide a record of the proceedings.

3. Next Meeting

The use of the Ceremonial Courtroom for meetings was discussed to provide a permanent record of the proceedings. The use of the Philadelphia Bar Association Conference Room was also discussed. The next meeting is scheduled for April 9, 1991 at 9:00 a.m. in the ceremonial courtroom. April 23, 1991 meeting is tentatively set for the Philadelphia Bar Association. May 7, 1991 will be the third meeting.

4. West Publishing Company - West Publishing has offered to provide the pilot courts with computer assistance on court caseload analysis. Professor Levin will investigate this proposal. Mr. Raynes suggested that we find out what other pilot courts are doing with this information.

5. Agenda Items

a. Statistics - EDPA's statistics are impressive, but there is always room for improvement. Mr. Kunz stated that this is due to arbitration and a number of sound procedures developed by the court over the years to promptly and efficiently process litigation in this court. He suggested that the group look at specific types of cases and the feasibility of tracking these specific cases to reduce time to disposition.

It was decided that Mr. Kunz would prepare a presentation familiarizing the members with the workings of the district court. This presentation would include statistics and the dispositions of cases by senior judges, statistics on the magistrates workload, various practices of judges of the eastern District with respect to the assignment of matters to magistrates and a description of the magistrate position. Ms. Ballard suggested that the judges of this court submit letters on what practices they feel eliminate cost and delay or what are the problem areas. Chairman Landis will pursue this suggestion with Chief Judge Bechtle.

Professor Levin cautioned that the group's job is not to assess an individual judges productivity, but to determine practices of individual judges that reduce delay and cost of litigation. He also suggested that the delay in providing funds for new judges and the nomination process were matters appropriate for consideration by the advisory group.

b. The following agreed to work on these specific areas of cost and delay in federal litigation:

Differential Case Management - John Shellenberger,
Michael Kunz

Trial Date - Seymour Kurland, J. Clayton Undercofler

Procedures - Michael Churchill, Michael Kunz

Discovery - Andre Dennis, Alice Ballard, Eve Klothen,
Edward Mullinix

Motion Practice -

Alternate Dispute Resolution - Seymour Kurland, Arthur
Raynes, Richard Rosenbleeth

6. Prisoner Civil Rights and Social Security Cases

These cases represent a substantial portion of the court's caseload for several reasons:

- (Mr. Kurland) Law firms need a great amount of preparation for these cases, even though the damages are small.

- (Mr. Raynes) A portion of the amounts recovered should be placed into a fund to provide funding for witness fees for later civil rights cases.

- (Mr. Kunz) §1915 and Title 7 provide for the appointment of counsel, but do not provide funds.

7. The U. S. Attorney letter dated March 14, 1991 describing the state of the criminal caseload will be distributed to panel members.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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CIVIL JUSTICE REFORM ACT
ADVISORY GROUP
MEETING

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Ceremonial Courtroom
April 9, 1991
9:00 o'clock a.m.

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ADVISORY GROUP MEMBERS:

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Ex Officio Members: HONORABLE EDWARD N. CAHN
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Reporter: A. LEO LEVIN
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Audio Operator: Thomas J. McCann

Transcribed by: Elizabeth Power

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Proceeding recorded by Electronic Sound Recording;
transcript produced by computer-aided transcription service.

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1 MR. LANDIS: Good morning. Well, let's take a look
2 at the agenda. Today's agenda is largely going to be a
3 factual presentation by Mike Kunz, Clerk of Court.

4 The basic undertaking we have today is to hear from
5 Mike Kunz on a vast array of statistical material that he has
6 pulled together which bear on the findings that we're obliged
7 to make under the Act. And so that will take care of the
8 principal part of our activities.

9 Under status report, I can't recall whether I
10 reported this the last time, but the Judicial Conference is
11 going to issue an advisory opinion on two of the things that
12 we touched on as possible policy considerations; one, the
13 accessibility of these meetings to the public, including the
14 press and, two, the extent to which the proffer of assistance
15 by West Publishing Company shall be considered and utilized.

16 We still haven't mentioned that we had had that
17 offer from West, but we're going to receive advisory opinions
18 on those and I guess we'll have to wait to see what the
19 opinions say to decide whether we will be advised by them.

20 Beyond this, there's a series of meetings that are
21 taking place for the various participants in this major
22 undertaking. All of the clerks of the Federal Courts are
23 meeting in Houston in a couple of weeks and then there is a
24 special meeting for the Chief Judges that will take place at
25 which our reporter will be an advisor to the Chief Judges to

1 tell them how to go about their side of it and as an adjunct
2 to that meeting, the Advisory Group chairs will have a half-
3 day session.

4 So those things don't take place till the middle of
5 May, but obviously we'll report on all of those activities.

6 There is some work being done on the papers to be
7 presented and so let's turn that -- well, let's comment on
8 the minutes. Let me say preliminarily that -- well, no.

9 Have we all reviewed the minutes? Are there any
10 suggestions for corrections or expansion?

11 Well, then, the minutes may stand as approved as
12 distributed.

13 Item 5 is an open discussion on matters to be
14 discussed by members. That's kind of a -- obviously an open
15 item and I think until Mike gets here with all of his
16 material, we can turn to that.

17 Does anyone have anything to comment on or bring
18 before the meeting? Jerry.

19 MR. LITVIN: Well, having missed the first two
20 meetings, I could be objective about the minutes -- and what
21 I really have is a question, Bob.

22 MR. LANDIS: Yes.

23 MR. LITVIN: At the last meeting, there were areas
24 of interest to which various members attached themselves.

25 MR. LANDIS: Right.

1 MR. LITVIN: Are we thinking about working as
2 subcommittees for the people in each area to do some workup
3 and present it to this group?

4 MR. LANDIS: Well, in a very informal way. We
5 considered -- we considered that. I know that some of the
6 Advisory Groups are working that way. I'm in touch with the
7 group in the Central District of California and they have a
8 very elaborate subcommittee system to deal with fragments of
9 the report and I think at least for the opening couple of
10 meetings, we would be more effective as a committee as a
11 whole because each member of the committee is selected in the
12 representative spread that the statute has mandated. And so
13 each member of the committee has contributions to make which
14 I think may perhaps be more effectively made in open session.
15 It may well be that some of these things will be better
16 served if we have an intense focus by a small group and then
17 a report back. I've been through enough of these
18 bureaucratic efforts to know that too many task forces with
19 too many reports get wedded to their own reports and when
20 they come back into the committee of the whole, there may be
21 some parliamentary problems in getting progress made. Now,
22 that may be a peculiarity of mine, but I have seen that
23 happen.

24 So, a long answer to your good question is that for
25 now at least, except for asking people to sort of take a

1 primary interest in some of these subjects, Jerry, we're not
2 going to operate on subcommittees.

3 And of course, having expressed myself on it, if
4 there's a better -- if there's a thought that we should
5 approach some of these problems, why I certainly am open to
6 approaching it that way.

7 Any other comments?

8 Well, we have -- I picked up this series of articles
9 from judicature which I think is before you. This is the
10 report on the Northern District of California's early Neutral
11 Evaluation Project. That, as you know, is one of the
12 elements in the statute that we as a pilot court are mandated
13 to consider. The plan has been in being since 1986. It's
14 been adopted in various other districts as well. I know that
15 it's in practice at the District of Columbia.

16 I ran into Erwin Griswold at a meeting last week who
17 sits as an early neutral evaluator and at least judged by his
18 own experience he thinks it's an effective program.

19 So this is one of the things that we will be
20 considering as part of our report. And I commend it to you.
21 We'll be getting more specific information from it or about
22 it as well.

23 Leo, do you have any comments on this particularly?

24 MR. LEVIN: No, nothing beyond that. Apparently,
25 they're very innovative there. I don't know how many of you

1 know Wayne Brazil who became a magistrate there at Judge
2 Peckum's urging. He had been full-time teaching. He had
3 done work for the American Bar Foundation, some interesting
4 empirical work, and they came up with it and have launched it
5 and they keep studying it. And so far, as you say, they seem
6 to be very pleased with it.

7 MR. LANDIS: All right. Are there any other
8 comments before we launch into the presentation by Mr. Kunz?

9 All right, Mike. Am I catching you before your
10 script is ready to roll?

11 MR. KUNZ: I'm ready to go.

12 MR. LANDIS: As always. Carry on.

13 MR. KUNZ: Thank you. First, good morning,
14 everyone, and I thank the Chair and the reporter for
15 providing me with the opportunity to make this presentation.

16 What I've done is prepare for you a document which I
17 think outlines all the essential elements of the caseload of
18 our Court and the status of the docket. We've extracted
19 information from the court management statistics and the
20 Annual Report of the Director of the Administrative Office of
21 the U. S. Courts.

22 There are statistics and there are statistics and
23 there are statistics. We've attempted to distill the most
24 important factors that impact on the caseload of our Court.
25 We've used as a frame of reference those materials which

1 we've been provided by the Administrative Office and Federal
2 Judicial Center.

3 The thing that I think is most important for us to
4 bear in mind is that this Court has authorized 19 active
5 judges. We also have at the present time 11 senior judges.
6 Rarely is the Court ever at full complement. That's
7 something that this Committee should take note of. It's a
8 problem in the Eastern District of Pennsylvania, a problem in
9 the Third Circuit and it's a problem in the nation.
10 Throughout all the Federal Courts, the delay in filling
11 judgeships, reduces substantially the judicial resources
12 available to handle the litigation in the courts. Let me
13 cite at least one horror story.

14 The District Court for the District of the Virgin
15 Islands has had a vacancy for over five years. Now, that
16 means judges from the Third Circuit and other judges
17 throughout the country are required to go there and decide
18 cases. Certainly it's not a satisfactory situation for the
19 Court, the Bar or the litigants. And I think that's
20 something which this group should take note of and perhaps
21 make a recommendation on.

22 MR. LANDIS: Mike, if I may interject --

23 MR. KUNZ: Sure.

24 MR. LANDIS: -- a footnote on that, as a former
25 member of the ABA Judiciary, Federal Judiciary Committee, I

1 am doing a couple of investigations. There are four
2 nominations to this Court out there right now. There are
3 more to come. And I had a conversation with the Chairman of
4 the ABA Committee about this and there's just going to be a
5 surge of nominations to the Federal Courts all around the
6 country. I think there's some -- we have about 39 of these
7 investigations going right now which are a necessary
8 preliminary to the appointment.

9 Excuse me. Go ahead, Mike.

10 MR. KUNZ: Thank you. The next thing I would
11 suggest and ask that everyone turn to the materials that I've
12 distributed. And I think it might be well to just look over
13 the executive summary. And what we've attempted to do is to
14 show in the executive summary, and Attachment A-2, which is a
15 chart of what our authorized judgeships are and what the
16 actual judges are serving the court.

17 And this chart clearly shows that there's a
18 substantial disparity in the caseload when you view it from
19 this perspective.

20 It's clear that the filings have increased
21 substantially and if we look over the last 20 years, which
22 was the last time this District was provided additional
23 judgeships, the caseload has increased dramatically. It
24 continues -- there was a slight decrease because of the
25 change in the jurisdictional amount and the diversity cases

1 but that has been just slight.

2 The reduction of those cases has not had a
3 substantial impact on the work of the Court because they are
4 cases which customarily go to arbitration or perhaps default
5 judgments are entered so that I don't see that change in the
6 filings which has been a slight decrease to be long-range.

7 If we could now look at Attachment A-1 which is the
8 judicial workload profile for this District, I would just
9 mention two areas which I think are relevant. Weighted
10 filings for judgeship which is approximately the eleventh
11 line down shows that the Eastern District of Pennsylvania
12 ranks third of all District Courts. Now, that's ranking
13 third based on 19 active judgeships. It's not on the actual
14 judgeships available in this Court.

15 The other area is the median time from filing for
16 disposition, which is at Lines 14, 15 and 16, and that shows
17 that in this District the median times ranged between six to
18 seven months from filing to disposition of all cases and 11
19 to 12 months from issue to trial.

20 Now, my personal impression is the slight increase
21 in the median time from filing to disposition and issue to
22 trial is the disposition of some of the asbestos litigation
23 which would increase those median times. It doesn't mean
24 that the Court is getting slower, it means that the Court is
25 dealing with some very complex litigation. And when those

1 cases are included in the dispositions, the median times tend
2 to increase somewhat.

3 When you compare those figures to other courts
4 nationwide, this District has always had a considerably lower
5 median time. And I think it's important first to compare not
6 all 95 districts, but those times become particularly more
7 impressive when you consider districts with 5,000 or more
8 civil filings.

9 The other statistic on the bottom of that page,
10 which I think is particularly relevant, is Items G and H on
11 the civil side. And you'll note that there's a large
12 concentration of more complex cases. And I believe that that
13 is indicative of the caseload in this District for a number
14 of years. I've studied these statistics and that's been a
15 consistent pattern.

16 Other measures which we're asked to look at is
17 weighted caseload, which I've touched upon, and clearly this
18 District has a very high weighted caseload. If you go to the
19 detailed report which is after the Executive Summary on Pages
20 2 through 3 --

21 MR. RAYNES: Mike?

22 MR. KUNZ: Yes.

23 MR. RAYNES: Could we go back to that G and H again?

24 MR. KUNZ: Yes.

25 MR. RAYNES: I think I asked you the question last

1 time. I don't know whether you found it or not. Where you
2 have 4100 court cases --

3 MR. KUNZ: Yes.

4 MR. RAYNES: -- you did have the breakdown between
5 asbestos and regular personal injury in one of the other
6 charts. What I wanted to know was if you -- if there's a
7 multiple plaintiff case, is that considered to be one case,
8 if they're all consolidated together like in a class action
9 or do you consider that to be -- do you break it up if
10 there's 200 plaintiffs, is that 200 cases?

11 MR. KUNZ: Well, if they're filed as separate cases,
12 they're considered a separate case. Rarely do we have a case
13 filed with multiple defendants of 25, 30, 40.

14 MR. RAYNES: Plaintiffs.

15 MR. KUNZ: Plaintiffs. Often in the asbestos
16 litigation, there are large numbers of defendants. But these
17 cases, Art, and if you could go to Attachment 4 of this
18 material and under personal injury --

19 MR. LANDIS: Does that have a letter in front of it?
20 I've got F-4 and a --

21 MR. KUNZ: Go back to the detailed material.

22 MR. LANDIS: How far back?

23 MR. KUNZ: All the way --

24 MR. LANDIS: Oh, yeah, I got it.

25 MR. KUNZ: Page 26.

1 MR. LANDIS: Got it. Thank you.

2 MR. KUNZ: This shows a breakdown, Arthur, about the
3 middle of the page, court actions, total 5264, were pending
4 on July 1st, 1989. Now, as you go down, you see there were
5 3,381 asbestos cases. Asbestos cases are filed by individual
6 plaintiffs. It's rare that they're consolidated plaintiffs.
7 They're individual cases.

8 MR. RAYNES: I think I was thinking more in terms of
9 the property damage. Is this all personal injury? Because
10 property damage may have a thousand schools in a class action
11 plaintiff, I don't know whether that is listed as one case,
12 which there is a class action property damage asbestos case
13 pending or that that was considered a thousand.

14 MR. KUNZ: The class action asbestos litigation,
15 when I get into the asbestos litigation later on, I'll
16 address that, but that is treated as one case and I believe
17 there's 30,000 claims in the case.

18 MR. RAYNES: Okay.

19 MR. KUNZ: Thank you. The chart on Page 3 shows how
20 dramatically at the top the weighted caseload for this
21 District has increased and we tracked it from 1979 in this
22 District --

23 MR. LITVIN: Excuse me.

24 MR. KUNZ: Yes.

25 MR. LITVIN: Could you give us a little time to find

1 it and I think some others are having this problem as well.

2 MR. KUNZ: Yes, well, it's taken me 29 years to get
3 here, and you want me to slow down?

4 (Laughter.)

5 MR. LANDIS: Okay. Page 3, right?

6 MR. LITVIN: I've got it now. Page 3. Go ahead.

7 MR. KUNZ: Page 3 at the top shows the Eastern
8 District of Pennsylvania's ranking for weighted filings for
9 judgeship. And that's based on authorized judgeships not
10 actual. I don't mean to keep repeating myself, but I think
11 that's so important. We ranked 83rd. At that time, I
12 believe there was 95 districts. We're now third of 94.

13 MR. CHURCHILL: Something dramatic happened in '85.
14 Do you have any idea what that was?

15 MR. KUNZ: I think across the board the caseload
16 started to increase.

17 MR. SHELLENBERGER: Mike, do you have any figures in
18 here adjusting the weighted caseload for the activity of the
19 senior judges?

20 MR. KUNZ: We have specifics on the work of the
21 senior judges as to what they dispose of, which is about 25
22 percent of the caseload. I could pull out some figures, but
23 let me give you this frame of reference --

24 MR. SHELLENBERGER: Yes.

25 MR. KUNZ: -- and I think you can judge from this

1 explanation. Basically senior judges, three of our eleven,
2 take a full caseload and eight take a half caseload. So that
3 you can take your measurements from that figure. But of
4 course my experience is that the judgeship not filled often
5 compensate for the senior judges. And if you add to the
6 judgeships not filled, the judges who sit in other districts
7 helping out, and, you know, it's our responsibility to share
8 that burden. For example, Judge Bechtle's experience in the
9 Aguilar case which took a good bit of time. It's a
10 responsibility that the Court has to answer the call of the
11 Chief Justice, but that oftentimes compensates for the
12 additional senior judges. But I could break the caseload, the
13 weighted caseload, out by active judge and senior judge.

14 MR. SHELLENBERGER: Well, I guess what I'm getting
15 at, do the senior judges compensate for the unfilled active
16 positions or not?

17 MR. KUNZ: To a certain extent, yes.

18 MR. LITVIN: Could I say a word about this because
19 this is a policy question, if I may, that I think at some
20 point is going to come up. On the one hand, it's quite true
21 that you have senior judges and they're working very hard and
22 it makes a difference in terms of the number that are
23 actually sitting on the bench. On the other hand, if we
24 figure out what does this District really need, the weighted
25 caseload -- or the caseload, weighted caseload, which are

1 used as national standards of what warrants a new judgeship,
2 really is very very high because over the country the seniors
3 contribute so much.

4 In other words, if we've got to put in a
5 requisition, because that's part of the statute, saying what
6 we have, are we so shorthanded, et cetera. There are the
7 vacancies which Mike has illustrated very dramatically, there
8 are also the fact that they start out that unless you have
9 400 civil filings per year, for the judges that are there,
10 we're not even going to talk about another vacancy. That's a
11 lot of cases.

12 MR. SHELLENBERGER: Weighted or -- weighted filings?

13 MR. LEVIN: I think it's -- well, isn't that true,
14 now, Mike? 400 --

15 MR. KUNZ: 400 is the measure and I'll show you --

16 MR. SHELLENBERGER: Is that a weighted figure or...

17 MR. KUNZ: That's 400 weighted cases. yes. And --

18 MR. LITVIN: So that's set that high because of the
19 assumption that you've got a lot of the seniors there. Now,
20 if you've got your vacancies in addition, then I think it
21 fair to say that the Court is shorthanded and producing these
22 very impressive statistics even being that shorthanded.

23 MR. KUNZ: Well, Bob, I think we ought to follow up
24 on other judicial officers, United States Magistrates is a
25 classic example. In this District, the time from approval by

1 the Judicial Conference of the United States to funding was
2 14 months. And then we could begin the process of filling
3 the vacancies which normally takes three to six months to
4 fill those positions.

5 I'm not complaining that the process of review and
6 selection should take a substantial amount of time and ample
7 time to insure that the finest candidate be selected, but
8 what I'm saying is that there's this great hiatus between the
9 time of approval and funding and it -- that is, at the
10 magistrate and bankruptcy judge level there is a terrible
11 delay. 14 months, that's two judicial officers, that's 28
12 months.

13 We were just recently authorized two additional
14 magistrates and I was reliably informed that it will take
15 probably another year before funding is available. And we're
16 not talking about big dollars. A judicial officer and his
17 staff is not in the overall picture, in my judgment, a
18 substantial sum of money.

19 MR. LANDIS: I know that the tradition is that
20 there's a funding lag, but looking at the legislative process
21 I don't understand why the package doesn't come with the
22 funding. It's a little puzzling to me but that's the way
23 they work.

24 Alice, did you have a question? Excuse me.

25 MS. BALLARD: Yeah, on the senior judgeship issue. I

1 mean if we're getting ready to make the point that these
2 vacancies need to be filled faster, perhaps we want to be
3 able to tell the world whether we have more or fewer senior
4 judges than other districts. If all the districts have about
5 the same number of senior judges, then we really need to have
6 the vacancies filled. But if we have a lot more senior
7 judges than other districts, then maybe we can wait.

8 So I'm just wondering like where we stand in
9 comparison to other districts? Do we have extra senior
10 judges compared to other districts or...

11 MR. KUNZ: Well, no, I think the districts of
12 comparable size we have relatively the same number.

13 MS. BALLARD: Standard.

14 MR. KUNZ: Central District of California, Southern
15 District of New York, those large districts. But I think as
16 a rule of thumb, we ought to use the policy the Judicial
17 Conference of the United States and the Congress has accepted
18 and that is that you base the workload on active judgeships
19 because, you know, Lord, we all hope the senior judges stay
20 with us forever, but, you know, that's just not part of life.
21 And as time goes on and they are no longer with us, there's
22 no means of recapturing that position. Whereas a vacancy, a
23 vacancy -- and suppose it's a district that doesn't have the
24 luxury of senior judges like our Court and I think that's a
25 more important policy issue.

1 MS. KLOTHERN: Do we have the same number of
2 magistrates to these comparably sized districts?

3 MR. KUNZ: No. We have considerably less. We've
4 increased from seven -- or we were five, we're now seven as
5 of a year ago and we'll be adding two more in another year,
6 that's nine, but that's considerably below.

7 MS. KLOTHERN: Is there a reason for that? That we
8 have fewer magistrates?

9 MR. KUNZ: Yes, and I think that was a policy
10 decision made some years ago that has now changed.

11 MS. KLOTHERN: Was that decision made by this
12 District or was that made by the Federal Judicial Center?
13 Who made that decision?

14 MR. KUNZ: Well, I think there were many factors. I
15 think the Court was one of the components. I think the
16 Administrative Office funding. There wasn't an attitude that
17 you come in for additional magistrates.

18 Yes, Arthur?

19 MR. RAYNES: That was along the line of I guess as a
20 followup to that. Is there some kind of a statutory limit as
21 to how many magistrates a given jurisdiction can have?

22 MR. KUNZ: It's solely based on workload and I think
23 the fact that this District has been authorized four District
24 Court judges and four magistrates within the same year
25 indicates that there's substantial workload there.

1 MR. RAYNES: In your analysis of the -- if you lose
2 a senior judge, you don't have a vacancy as you would have
3 with the District Court judge who's an active judge. Is
4 there any way that some kind of formula could be worked out
5 between magistrates and senior judges so that you would have
6 a complement between the two that if you go below a certain
7 amount of senior judges that are required to maintain a
8 caseload in this jurisdiction, that then it would trigger an
9 opening for an additional magistrate?

10 MR. KUNZ: I think that's one of the components that
11 could be used. When I get into the magistrate section,
12 hopefully Judge Melinson will add some comments.

13 There's a whole array of criminal matters that they
14 handle which probably most of the people other than Mike
15 Baylson and Judge Cahn and maybe Leo are really not familiar
16 with and that has a lot to do with basing the number of
17 magistrates you're authorized. I would say this. I don't
18 believe that there's any standard established to provide that
19 you replace senior judges with magistrates. I'm unaware of
20 any policy of that nature. I'm not saying it's not
21 desirable, but I'm just not aware of it.

22 MR. RYAN: Mike?

23 MR. KUNZ: Yes.

24 MR. RYAN: In looking at the judicial workload
25 profile on A-1 where the median times for disposition seem to

1 be quite good, I'm wondering whether there's some standard of
2 disposition time which someone has set up as a desirable
3 standard and also what would the impact of the authorized but
4 not yet completed judgeships have on that time, what
5 proportional -- what change could you expect?

6 I think we rate fairly high in terms of the short
7 period of disposition time already. Am I correct about that?

8 MR. KUNZ: Yes. That's correct. Maybe I could
9 refer everyone to Page 42, and Attachment 16 which gives a
10 comparison of the median time in months from filing to the
11 disposition of civil cases terminated in the Eastern District
12 of Pennsylvania by nature of suit and how long they take
13 nationwide. And I think if you look down that chart, you'll
14 see all but in four categories, the median time in this
15 District was less than all other districts throughout the
16 country.

17 I think, Dan, the answer to your question is that
18 the impact would be that they would reduce the number of
19 pending cases that my view is I don't know that we can keep
20 asking with the level of actual judges we have now, to
21 continue to dispose of cases at the rate they are now. And
22 really the beneficiary would be the litigants, that their
23 cases would be heard in more expeditious time.

24 I don't know that we can continue to maintain these
25 same median times. I think that if the number of judgeships

1 stays at where it's at now and the four additional we are
2 being authorized, I think we may revert back to the sixties
3 when the times were considerably longer and you are a veteran
4 who remembers that period. I did include in the materials a
5 reference that at one time the median time from filing to
6 disposition and issue to trial in this Court, back in the
7 1960's, was over 30 months.

8 MR. RYAN: I guess what I'm asking, is there some
9 standard -- is that the main standard that we judge the
10 effectiveness of the Court by?

11 MR. KUNZ: No, it's just one of the standards,
12 median time, pending caseload, weighted caseload. I'm going
13 to get into three-year-old cases a little later on.

14 MR. RAYNES: Mike, that's a very short time, it
15 seems to me, for disposal for cases. How much did the
16 arbitration system impact on bringing that median time down,
17 if any?

18 MR. KUNZ: It contributes substantially because if
19 you look at the attachment -- and I don't know whether
20 everyone has it -- that the Federal Judicial Center -- it was
21 a document entitled Guidance to Advisory Groups, and it was
22 in our materials given out early on, and in there they did an
23 excellent job of taking our caseload and assessing the impact
24 of arbitration. It's on Page 12 and it has a breakdown of
25 this. And it broke down the cases -- does everybody have it?

1 MR. LANDIS: Is it in the -- is it from the AO or
2 the Judicial Center, which one?

3 MR. KUNZ: The Federal Juicial Center.

4 MR. LANDIS: The one from the Judicial Center or the
5 one from the AO?

6 MR. UNDERCOFFLER: Do you know what tab it was,
7 Mike?

8 MR. LANDIS: It's B. It's Tab B, I think. Which
9 one of those is it, Mike?

10 MR. KUNZ: Tab B and it is the last item under Tab
11 B.

12 MR. LANDIS: The one that's headed implementation?
13 The Federal Judicial Center?

14 MR. KUNZ: Guidance to Advisory Groups by Federal
15 Judicial Center.

16 MS. BALLARD: It's later than that.

17 MR. RAYNES: And which page of that are we looking
18 at?

19 MR. KUNZ: The last item?

20 MR. LANDIS: Oh, the last item. Right. Oh, yeah,
21 right. Okay.

22 MR. KUNZ: And if you look at that chart, you'll see
23 Contract Item 6 and go down to personal injury which is about
24 six or seven more. And that's a large concentration of the
25 caseload of this District. Arbitration for the statistical

1 year that we measured disposed of about 20 percent of the
2 cases that were eligible -- or 20 percent of the total civil
3 caseload filed. And that's on a consistent basis. It was up
4 to about 25 percent prior to the enactment of the Act that
5 raised the jurisdictional amount in diversity cases.

6 But you see those two categories of cases, that's a
7 large number of cases in our District. And those cases go
8 through the arbitration process and only about 2.9 percent
9 ever get to the dockets of the judges of our Court and many
10 of them settle after that.

11 MR. RAYNES: Do you have a figure on -- do you have
12 a figure on to take the arbitration out what the median time
13 of the cases that are --

14 MR. KUNZ: Well, I can say this, that it takes about
15 half the time to get a case to an arbitration hearing, about
16 five, five and a half months as opposed to the issue to trial
17 time of 11 months.

18 MS. BALLARD: Issue to trial doesn't have the
19 arbitration cases in it.

20 MR. RAYNES: Okay.

21 MR. KUNZ: That's right.

22 MS. BALLARD: So that's the number you're looking
23 for, I think.

24 MR. RAYNES: Yes.

25 MS. BALLARD: Or cases that actually go to trial.

1 MR. RAYNES: Because it seems to me that the
2 effectiveness of the arbitration program be being good at it
3 hurts when you want to make a case for needing more judges
4 when if they look at the figure of the short period of time
5 when the arbitration is figured into it.

6 MR. LANDIS: Let me add a footnote to that one. The
7 irony of that is that when that issue was involved in the
8 Federal Court Study Committee Implementation Act, the
9 Judicial Conference resisted extending the experimental
10 arbitration program because they said they needed two more
11 years to study it. Now, it's been around for a long time and
12 our example has been up there in the showcase of the nation,
13 but that's what happened and as a result instead of having an
14 extension of the arbitration to other courts besides the ones
15 that are now doing it, the Judicial Conference is going to
16 take two more years to decide whether they'll go along with
17 it.

18 MR. KUNZ: I think that the corollary to that,
19 though, Arthur, is that they measure the weighted caseload.
20 I think the weighted caseload adjusts for that. That there
21 are less weighted cases --

22 MR. LANDIS: Yeah.

23 MR. KUNZ: -- and when I talk about the impact of
24 diversity cases, I'll show that those cases tend to be of
25 lesser weight and eligible for arbitration, therefore,

1 although they've been reduced, it means that we're calling on
2 our arbitrators less than the judges. So it hasn't had that
3 substantial impact from the standpoint of relief for the
4 judges.

5 The next thing I'd like to talk about is pending
6 three-year-old cases and would direct you to Page 4 of the
7 detailed report in the materials that I circulated.

8 I think the statistics speak for themselves. The
9 judges of this Court made a conscientious effort to insure
10 that the pending caseload is maintained with a system that
11 provides for prompt and efficient disposition of cases.

12 If you look at Page 4, it shows that only 2.1
13 percent of the caseload was over three years old. Go to Page
14 5 and look at the chart -- and this is for 25 metropolitan
15 courts which is really I think the comparative of what we're
16 doing here, caseload, population and so forth.

17 If you look at districts with 5,000 or more, we have
18 the lowest number of three-year-old cases. And that is the
19 entire -- of the entire caseload of our Court. So I think
20 those statistics speak for themselves.

21 Yes?

22 MR. CHURCHILL: How do you measure that three-year-
23 old caseload of, for instance, in the complex injunctive
24 actions that my office brings, like a Pennhurst case which
25 stays on for eight years on the docket with injunctive relief

1 over time or something? Are those in there or are these
2 cases that haven't come to trial in three years?

3 MR. KUNZ: Those cases would be in there and I have
4 a more detailed report that I can provide to everyone.
5 However, when you get to the point of having a consent decree
6 and so forth, then the cases go off the docket. It's not
7 statistically accurate. In other words, the judge is
8 monitoring the consent decree.

9 And I think, my recollection is, there is a
10 provision -- it's a Judicial Conference resolution that
11 authorizes a court where a case is merely monitored by a
12 judge under a consent decree, he can remove that from the
13 active docket of the Court.

14 If I could, the next area is vacant judgeship months
15 in that material and I talked somewhat about that, but turn
16 to Page 6, if you could, and what we've tried to illustrate
17 here is what the total filings are, civil, criminal, pending
18 and weighted, with our authorized judgeships in Column 1 and
19 the next column is our actual judgeships. The third column
20 reflects our soon-to-arrive four additional judges. And that
21 will bring us to 23.

22 The last column shows the number of judgeships we
23 would require to bring our caseload down to the Judicial
24 Conference standard of 400 cases by 1990. That talks about
25 30 active judgeships. And the caseload continues to

1 increase.

2 So I think again those figures clearly illustrate
3 that when you distill the vacant judgeship months that you
4 have an entirely different perspective of the caseload and
5 the work of the Court.

6 MR. LANDIS: Mike, is that Judicial Conference
7 Standard, as you called it, fluctuated over the years? Is it
8 reexamined?

9 MR. KUNZ: The last time it was measured was in 1979
10 and our judges over the last three years have now been
11 keeping detailed statistics and there will be a new weighted
12 caseload figure calculated.

13 The next area of median times -- and I think I've
14 covered that pretty well. The figures I do -- see I came
15 across them. We were up in the sixties, up around 32 months
16 from filing to disposition, 39 months from issue to trial.
17 Arthur Raynes remembers those days, Dan Ryan and others.

18 MR. RAYNES: I'm not as old as Dan Ryan.

19 (Laughter.)

20 MR. LANDIS: You're one of the older trial lawyers
21 around there, Arthur.

22 MR. KUNZ: I don't mean to give the impression that
23 I'm trying to put halos over our judges, both men and women,
24 but if you could look at number of trials on Attachments 16
25 and 17 in the materials, I think you'll see that there has

1 been a substantial amount of work accomplished in this
2 District. 16 shows median times but if you look at 17, total
3 number of trials completed in 1990 for the ten largest
4 metropolitan courts -- and that's ranked by filings -- and do
5 you see where we're at, Number 4, was 691 trials. Now, that
6 says number of authorized judgeships. Okay? So clearly, you
7 know, that statistic is skewed a little bit. But let's go
8 with the way they're reported.

9 Southern District of New York with 27 judges, just
10 seven more trials; Southern District of Florida has always
11 had a high number of trials because they have a lot of land
12 condemnation cases in that district. The United States
13 Attorney treats each plot as a separate case, so they've
14 always had a large number of trials.

15 If we go to Attachment 18 and look at the length of
16 the trials. This starts to show the complexity of our
17 caseload. You can see that there's a large number of trials
18 in excess of four days in this District.

19 The last item I'd like to talk about is the asbestos
20 cases and I have some narrative material included here and
21 the asbestos program, of course, is coordinated by Judge
22 Weiner and the statistics are set forth on I believe it was
23 Attachment 18 or 19.

24 MR. LANDIS: 19.

25 MR. KUNZ: 19. And you can just see how massive

1 that litigation is. As an attachment to the Executive
2 Summary is a listing of the trial list that he compiles and
3 it's interesting -- it's an individual calendar system in
4 this Court but he combines that with the best elements of an
5 individual calendar system and a master calendar system and
6 that provides for those cases to move through expeditiously.
7 He supervises his pretrial conferences, settlement
8 conferences and he's recognized around the nation as just one
9 of the real outstanding judges in that area. These cases are
10 massive and they tend to consume a large number of resources,
11 the dockets are extensive, the time to process them from all
12 aspects of the Court, is time consuming.

13 MR. LANDIS: Mike, what is the significance of the
14 two negatives factors that appeared and placed in suspense,
15 one in the top at 1988 and the other at the bottom of 1988?
16 What does that mean?

17 MR. KUNZ: That those cases were taken out.

18 MR. LANDIS: Oh, taken out. I see.

19 MR. KUNZ: That represents the negative number in
20 that area.

21 MR. LANDIS: Yeah, okay. Okay.

22 MR. KUNZ: The final chart, which is Attachment 20
23 on Page 46 shows the overall caseload of the Court, not as
24 detailed as some of the other charts in the materials, but it
25 clearly shows, when you look at the pending civil caseload by

1 age, that a majority of the cases are in the first two years.
2 We have a reasonable number of two to three year old cases,
3 but over three is considerably lower than most districts and
4 I think it illustrates that this Court has a good handle on
5 the litigation that proceeds through the Court.

6 If we could go back to the Executive Summary for a
7 minute, I was going to include a conclusion to the Executive
8 Summary, but I thought that would be somewhat presumptuous of
9 an individual such as myself to present to this august body.
10 So I would just recommend that you take a look at these
11 figures in greater detail when you have a leisurely moment.

12 We've included some procedural forms. These are not
13 all of the forms that are used. My goodness, we have form
14 after form after form. They're just merely illustrative,
15 Social Security cases, bankruptcy appeals, designation forms,
16 our local Civil Rule 3 that provides for an equal
17 distribution of the cases among all judges. We have some
18 information on the asbestos trial list, the arbitration.

19 I'd like to talk a little bit about arbitration and
20 then move on into automation. Arbitration, I think, the pro
21 bono service provided by members of the Bar is commendable,
22 the Clerk's Office serves as the courtroom deputy, so to
23 speak, monitors those cases and all the scheduling is done in
24 the Clerk's Office.

25 We've implemented a fully-automated civil docket

1 system and I am very proud that the employees of our office
2 put our entire caseload on the docket with a few cases to go.
3 It enables all of our judges, courtroom deputies to access
4 the dockets. We're, as is described in the written
5 materials, adding programs to add access to members of the
6 Bar. That's the next step which we hope in May or June so
7 that you can call up the docket in your office. We'll have
8 that same program available for our judges. We also have a
9 program of electronic filing which encourages lawyers to be
10 file their documents through electronic means over
11 telecommunication lines.

12 I think a number of things that we've done to try
13 and improve the administration of justice in the court and I
14 would say that the leadership comes from the judges of our
15 Court. Over the past 20 years I think if you look at the
16 figures, there was a dramatic change when the individual
17 calendar was implemented around 1970 and I think it's
18 continued over these years.

19 I would ask that you take note of two things. I
20 think you ought to look at the vacant judgeship months, not
21 just in our District, in our Circuit, but nationwide. The
22 delay between filling resources of non-Article 3 judges, I
23 think that's so important.

24 I also would ask that I be permitted to make a
25 presentation on some other technological innovations. Our

1 Court's involved in videotaping of court proceedings which
2 allows the preparation of the court record using tape in lieu
3 of transcript to cut down the delay. We'll be piloting a
4 broadcasting program and perhaps some other things, but I
5 know I've gone on pretty extensively, so that would conclude
6 my presentation, Mr. Chairman.

7 MR. LANDIS: Are there -- yes, Dan?

8 MR. RYAN: Mike, do you have any breakdown of the
9 judicial time as it relates to different types of matters?
10 In other words, is it possible for us to determine whether an
11 inordinate amount of time is being given in an area that
12 could possibly be handled in a different way, such as -- I
13 know that -- I understand from the Wise report that the
14 Social Security cases and the prisoners' rights cases, many
15 of which are frivolous, nevertheless eat up a huge amount of
16 judicial time. Is that an appropriate area of inquiry for us
17 in terms of whether there is some more appropriate way to
18 handle certain types of matters?

19 MR. LANDIS: It's certainly in the area of
20 appropriate inquiry, there's no question about that. Mike,
21 do you have a comment on that?

22 MR. KUNZ: Yes. I would say in this District, we
23 address that problem, Dan, with respect to both Social
24 Security cases and -- now, that's this District -- Social
25 Security cases and prisoner civil rights cases. I neglected

1 to mention on the staff of the Clerk's Office we have two
2 full-time lawyers who process prisoner civil rights
3 litigation that comes into our Court. The advantage to that
4 is they develop skill and expertise in that area. With the
5 judges' law clerks turning over every year or every two
6 years, you don't have that continuity in handling those
7 cases.

8 But if you could go to the charts, Attachment 4 on
9 Page 26, and if you look at that chart, you can pretty much
10 see that for the most part, there's the first column of
11 pending cases, then the column is those filed, the third is
12 terminations and the fourth is pending. The Court for the
13 most part, with the exception of the asbestos litigation,
14 which is quite understandable, the Court is pretty current of
15 disposing of the same number of cases that come into the
16 Court and that's applicable to Social Security cases.

17 Some years ago, and if you look down at -- probably
18 12 down, just before tax suits, a third up from the bottom,
19 the first group of cases, on July 1 we had 210 cases pending,
20 167 filed, 226 were disposed of and 151 cases pending. So
21 those cases are moving through. Now, they're handled by our
22 magistrate judges. They're not handled by the District
23 Judges. Reports and recommendations are prepared by the
24 magistrate and referred to the judge.

25 One of the forms included in here is a form which

1 Judge McGlynn's committee, which was appointed to reduce the
2 cost of litigation, developed and it's Attachment B to the
3 Executive Summary. And that's really a one-step order that
4 my deputy clerk entered when the case is filed. In many
5 jurisdictions what's done is the judge may have a hearing in
6 court or a conference in chambers and set up a briefing
7 schedule and so forth. Not in this District. This order is
8 entered at the time of filing the cases. Puts it on track,
9 states specifically who is to do what, when and I would
10 submit that we don't have that problem.

11 Prisoner civil rights cases again, they go through
12 this Court I think at rather expeditious fashion. We have
13 about I guess a thousand cases a year and dispose -- I think
14 that it's just about an equal number. Let me just see now.
15 On that same Attachment 4, Page 26, we have prisoner
16 petitions total 407 pending, 993 filed, 908 terminated and
17 492 pending. So an inventory of 400, roughly 500 cases in
18 that category doesn't really seem to indicate that in this
19 District that that's a problem.

20 So I think the answer to your question is, looking
21 at Attachment 4 and kind of muddle through and I really don't
22 see any categories in comparing that with the median times, I
23 just don't see any specific problem areas of delay.

24 JUDGE CAHN: Am I --

25 MR. KUNZ: Yes, Judge.

1 JUDGE CAHN: We have to be careful that these
2 figures are a year old or almost a year old. Since the
3 Frackville (ph) facility has been up near Pottsville, we've
4 been getting a lot more civil rights cases and I think you're
5 going to see that figure increase.

6 There's something else working there, too. The
7 Court of Appeals has not been too generous in letting us
8 flush those cases and I'm not being critical about it, which
9 means that some of these are going to have to be tried in a
10 pro se atmosphere which is going to be slow and difficult for
11 us.

12 MR. LANDIS: But before I take -- I want to pick up
13 on one thing that caught my ear. You made a reference to
14 Judge McGlynn's committee to reduce cost of litigation? Is
15 there -- when was that -- when would that committee function
16 and when was -- and is the report available?

17 MR. KUNZ: The committee is probably -- possibly
18 eight years old.

19 MR. LANDIS: Oh.

20 MR. KUNZ: And I think that committee was
21 responsible for the non-filing of discovery documents, this
22 Social Security order and I'm not sure there have been any
23 issues since that time.

24 MR. LANDIS: Okay. But it was --

25 MR. KUNZ: I'm not sure that the committee is in

1 existence as it's --

2 MR. LANDIS: About eight years ago?

3 MR. KUNZ: Yes.

4 MR. LANDIS: Okay.

5 MR. KUNZ: It's about eight years --

6 JUDGE CAHN: I can get you whatever they have.

7 MR. LANDIS: That would be helpful, if you could,

8 Judge Cahn.

9 Dick?

10 MR. ROSENBLEETH: Yes. I'd like to address the
11 asbestos cases for a moment. I think it's clear that Judge
12 Weiner has done a remarkable job over the years in disposing
13 of these cases and keeping the amount of judicial time
14 involved at a minimum, because the way the system really
15 works is that the cases are filed and Judge Weiner, with the
16 cooperation of plaintiffs' and defense counsel, sets up a
17 yearly trial list. And by the time the cases get to the
18 trial list, by reason of the conferences that he holds and
19 his procedure is the cases get settled pretty much before any
20 cases are tried so that there's very little time involved in
21 trying of asbestos cases.

22 As I understand it, Mike or Judges can correct me if
23 I'm wrong. But one of the problems that has been developing
24 is that delay has begun to cost the plaintiffs in those cases
25 considerable -- considerable because defendants are slowly

1 going into bankruptcy or becoming non-viable. So that even
2 though the system is working, the number of defendants has
3 been reduced over the years.

4 And it seemed to me that there is perhaps one
5 measure we might address which might assist not only the
6 Court in it in terms of its time but the plaintiffs in those
7 cases and that is most of the discovery is pretty much done
8 in the asbestos cases and there's very little that's done
9 after a case is filed because it's all old hat and very
10 little has to be done in terms of getting the cases ready for
11 trial. The major problem is getting the medical reports
12 which have to be reviewed by both sides in terms of trying to
13 get a case settled.

14 And perhaps there might be some way to address that
15 problem. And that is when a case is filed -- and this of
16 course would be subject to Judge Weiner's thoughts because he
17 is the recognized expert -- but it seems to me that perhaps
18 when a case is filed that some time limits be placed on the
19 exchange of medical information between the plaintiffs and
20 the defendants, 90 days, 60 days, whatever, in terms of
21 whether or not the case is a serious case or non-serious case
22 in terms of the injury.

23 And at that point, and this is where the problem
24 arises in terms of judicial time, there ought to be some
25 emphasis on a conference, a settlement conference at an

1 earlier stage than at the trial list stage, after medical
2 reports are exchanged, but it seems to me within three or
3 four months of the filing of an asbestos case, you might have
4 a time period whereby a case can be disposed of. And that
5 would really aid the plaintiffs in terms of getting them some
6 recovery at an earlier stage, not having to wait the
7 potential of other defendants going down the tubes, so to
8 speak, and -- but the problem will be who's going to handle
9 those conferences. And it may be that this early evaluation
10 procedure that's used in the Northern District of California
11 or some other procedure might be developed to get these cases
12 reviewed at an earlier stage.

13 MR. LANDIS: Oh, Alice, I --

14 MS. BALLARD: I had a question about asbestos cases.
15 That really sounded like a great idea.

16 MR. ROSENBLEETH: Thank you.

17 MS. BALLARD: We ought to do something like that,
18 but I had a question about the asbestos cases.

19 MR. LANDIS: Yes.

20 MS. BALLARD: Do we have any sense that at some
21 point in the future they are going to wane, the number of
22 asbestos cases? Is it a bulge that's just going through this
23 system that's going to be over and when it is, if it is over
24 five years from now, is that going to make a difference in
25 terms of how hard our judges have to work? Is it going to

1 offer them some relief or...

2 MR. LANDIS: Do you have a comment on that, Andre?

3 MR. DENNIS: Yes. First on Dick's comment, one part
4 of the asbestos litigation which still requires discovery is
5 product identification. So having the medical reports
6 exchanged early on may not lead to the kind of early result
7 that we think.

8 The other problem is there is no, at least to my
9 knowledge, second disease rule in Pennsylvania. So that if
10 someone files with a relatively mild form of an asbestos-
11 related disease, when that person's case gets to trial, the
12 person gets compensation for that disease and for fear of
13 other diseases and such, but if that person should contract
14 cancer later on, there's no additional suit that can be
15 brought for that cancer.

16 We are in the Federal Court, I think, doing well, to
17 be on the '86-'88 cases. In State Court we're on '82 cases.
18 On May 30th, the judicial panel in multidistrict litigation
19 will hear argument on a motion that it has brought about by
20 an order to show cause why the asbestos cases should not be
21 transferred to a particular transferee district -- I guess
22 one or more -- for purposes of pretrial treatment. I guess
23 it is possible that that district could be the Eastern
24 District of Pennsylvania. We will know that when the panel
25 rules.

1 Since it has entertained a similar motion before on
2 about four or five occasions and has denied multidistrict
3 treatment but this time has on its own motion asked that that
4 matter be addressed, I guess one tends to read something into
5 that in terms of there may be some multidistrict litigation
6 treatment.

7 MR. ROSENBLEETH: Well, I think if that happens,
8 that may very well obviate the problem.

9 MR. LANDIS: When did you say that's being argued?

10 MR. DENNIS: May 30th.

11 MR. LANDIS: May 30th?

12 MR. ROSENBLEETH: Well, just in response to your
13 comments about the discovery and the second disease problem,
14 there may be some cases where there are product
15 identification problems or where there may be a potential for
16 more serious disease, but those problems can be dealt with,
17 it seems to me, early on. If further discovery is required,
18 fine, but as I understand it, most of discovery in most of
19 the asbestos cases pretty much have been done.

20 MR. DENNIS: No, that's not true. I can tell you --

21
22 MR. ROSENBLEETH: Well, that's my understanding.

23 MR. DENNIS: I can tell you because I represent
24 parties in asbestos cases pending. There is a question at
25 least as to -- well, I don't want to personalize it --

1 there's a question in each case as to product identification.

2 MR. ROSENBLEETH: Of course.

3 MR. DENNIS: And because of the Eckenrod (ph)
4 decision, that question is even more of an issue in asbestos
5 cases. It's like it was ten years ago, if you were there and
6 your product was there, it was almost automatic that there
7 was a causal connection. So I think all these factors are
8 going into it. Now, some people have talked about plural
9 registries where you sort of triage the cases, but I think
10 it's something that we have to consider in greater detail to
11 try to come up with a plan that we can suggest to Judge
12 Weiner.

13 MR. ROSENBLEETH: But the fact of the matter is,
14 Andre -- excuse me, one more comment -- that none of those
15 cases are getting tried so those issues of product
16 identification are pretty much resolved during this
17 litigation process. I mean, those issues are not that
18 outstanding so that the cases are going to trial.

19 MR. DENNIS: Well, I don't want to engage in a
20 colloquy, but just --

21 MR. LANDIS: We'll have a final comment on this
22 specific. Go ahead.

23 MR. DENNIS: All right. What happens is because the
24 offices are trying to get the cases ready for trial or
25 disposition, they're concentrating on the cases that are

1 about to go to trial. They're focusing their attention on
2 those cases. The cases that these offices are handling in
3 State Court, in Philadelphia State Court, County Court in
4 Montgomery County, in Delaware County, there are a lot of
5 demands on the attorneys' time and you have to look at the
6 big picture, so I'm just suggesting that we have to take that
7 approach.

8 MR. LANDIS: John had had a -- John, you'd had a
9 question, I thought, just right after Alice --

10 MR. SHELLENBERGER: I have a comment -- I share the
11 question that Alice asked about --

12 MR. LANDIS: Oh.

13 MR. SHELLENBERGER: -- can we project where asbestos
14 cases are going. I'd like to hear more comment on that, but
15 one thing, back on the prisoner petitions just for a second.
16 I think one thing that's relevant here. On the list on Page
17 26, under prisoner petitions, you have under that both habeas
18 corpus and civil rights and they're both, for whatever it's
19 worth, two different kinds of cases. And correct me if I'm
20 wrong, but habeas corpus cases are largely handled by the
21 magistrates where civil rights cases are largely handled as
22 any other civil action by the judges.

23 MR. LANDIS: Arthur?

24 MR. RAYNES: I want to go to Andre's comment on the
25 second disease. One of the dilemmas that a plaintiff's lawyer

1 faces where there is -- say there's pleural thickening with
2 no kind of cancer. It's like in the DES cases with adenosis.
3 It may or may not turn into cancer. He may have a big case
4 and that case comes up for trial and since you can't bring
5 another case, the plaintiff may be well to buy an insurance
6 policy by getting a suspension of the Statute of Limitations
7 and not making any money on a minor case for fear that
8 something happens later on. By the same token, you know,
9 it's a difficult decision for plaintiffs' lawyers to make.

10 I know in the State Court in talking to Charlie
11 Lord, he told me that the bulk of the cases that were being
12 tried were these pleural thickening cases and there's some
13 thinking over there how they would deal with those
14 differently.

15 I guess if they were all viable defendants and you
16 knew that down the line nobody was going to go bankrupt, the
17 decision would be easier. But I guess the optimum way to
18 deal with it, assuming that the Federal Court, and I don't
19 know whether it is, is the same percentage of just pleural
20 thickening cases as it is in the State Court, the suggestion
21 that was made in the State Court was that there'd be some
22 payment made on the pleural thickening cases and if it
23 ripened into a full-blown cancer, then your rights were not
24 cut off.

25 MR. LANDIS: I think --

1 MR. RAYNES: Has there been any kind of thinking
2 like that -- I mean because it's --

3 MR. LANDIS: Well, I think, if I may, Arthur, we'll
4 hold that one. We will be dealing specifically with case
5 management and several other things that will bear on the
6 kinds of questions that are being raised and I think that
7 rather than have that pursued in general discussion, maybe if
8 -- you could pursue it afterwards with Andre, much as, I'm
9 sure, we'd be interested in hearing the rejoinder.

10 MR. RAYNES: No, I think that he made a suggestion--

11

12 MR. LANDIS: Oh, all right.

13 MR. RAYNES: -- since the -- no, no, no.

14 MR. LANDIS: I don't want --

15 MR. RAYNES: Not to pursue it any further, but since
16 the asbestos cases seem to be such a big part of the
17 caseload, and we don't know whether it's a bulge or it's
18 going to continue, I'm throwing things up in the air and I
19 don't know the answers to them. Your suggestion that we
20 should have Judge Weiner here the next time --

21 MR. LANDIS: Oh, we should have Judge Weiner to
22 speak to this, there's no question about that. The only
23 question is when it will come in the course of deliberations.

24 JUDGE KELLY: You might answer -- you might have a
25 suggestion as to where do we stand --

1 MR. LANDIS: Yeah.

2 JUDGE KELLY: -- with the flow of these cases.

3 MR. LANDIS: Right.

4 JUDGE KELLY: I don't know whether anybody has.

5 MS. BALLARD: Well, I thought maybe Richard would
6 know.

7 MR. ROSENBLEETH: Excuse me.

8 MS. BALLARD: About whether the asbestos cases are
9 going -- whether the number of them is --

10 MR. ROSENBLEETH: Oh. I'm not sure about that.

11 MR. LANDIS: Well, I've read some horror statistics
12 about the upward trend.

13 MS. BALLARD: Oh, really?

14 MR. LANDIS: I can't come up with them, but I've
15 seen some things in print.

16 MR. CHURCHILL: Well, it's not using to stop in most
17 places, it's got to stop someplace.

18 MR. RYAN: Speaking as a defendant's lawyer here, if
19 you fellows would give the companies enough time, they may
20 make enough money to pay you.

21 (Laughter.)

22 MR. RYAN: But if they all came to trial tomorrow,
23 they'd probably all go broke.

24 MR. LEVIN: I've heard that comment by a judge,
25 precisely that comment, that some of the cases are not moving

1 as fast as they could -- still moving pretty fast --
2 precisely because there's a risk of bankrupting some of the
3 defendants if the judgments flowed too fast. So it's a
4 serious comment that you've made and God knows what we're
5 supposed to do with that.

6 MR. LANDIS: Mike had a couple of other specifics
7 that he wanted to cover in his report.

8 MR. KUNZ: And I'd ask Judge Melinson to add
9 anything he would like or anyone else, but the magistrate
10 judges on the Detailed Report, Page 8, I've outlined the
11 duties and responsibilities that the magistrates were
12 assigned and I think it's important to point out that they
13 handle a substantial part of the criminal caseload that
14 really never gets into the District Court and under
15 preliminary proceedings and additional duties and so forth,
16 you can see that they handle a substantial amount of work.

17 I know one of the things that's very time-consuming
18 is the detention hearings and they've increased dramatically.
19 The preliminary proceeding shows the increased concentration
20 of criminal cases and expansion of the caseload, the criminal
21 caseload.

22 The cases we're receiving, while the raw filings may
23 not indicate a substantial increase, the complexity of the
24 cases and the defendants have shown a dramatic increase.

25 And I think this chart shows both the work they do

1 with respect to criminal cases and also the additional duties
2 in both civil and prisoner litigation.

3 The final thing is the matter of the diversity
4 cases. I think that's something that this group -- I know
5 there have been numerous studies and reports on diversity
6 cases, but diversity cases is a good proportion of our
7 litigations, 52 percent of the cases in the in-state
8 plaintiffs is probably one-half of that number.

9 The removal of cases are on the increase and I think
10 it's something that this group might want to take a look at.
11 I don't know where you would -- where you'd arrive, at what
12 kind of decision, but I do think it's a substantial
13 proportion of our caseload. A lot of those cases go through
14 the arbitration program.

15 And I think that's all I have, Bob. Thank you very
16 much.

17 MS. KLOTHEN: Can I ask one quick question about the
18 diversity cases? Are those 52 percent of all the cases or 52
19 percent of civil cases?

20 MR. KUNZ: Civil.

21 MR. LANDIS: Mike, you did comment on this. I
22 remember that my committee of the ABA was responsible for
23 putting through the recommendation that the diversity
24 jurisdictional amount go up. At that time, the predictions
25 were, and the house committee report that came out in support

1 of it, was that it would have an impact of maybe around 20
2 percent on the filings. I think you said that the impact,
3 although discernible, wasn't anywhere near that, is that
4 right?

5 MR. KUNZ: No.

6 MR. LANDIS: What would you -- do you have a sense
7 for it?

8 MR. KUNZ: 10 -- 10 percent would be the maximum.
9 But the last time the diversity amount was increased, there
10 was only a temporary decrease on the caseload. In other
11 words, for about three years, it went down --

12 MR. LANDIS: You could feel it and then --

13 MR. KUNZ: -- and then it would start -- it started
14 right back up.

15 MR. LANDIS: -- it went up again.

16 Mike Baylson, we have distributed your report and I
17 realize I'm catching you cold on this, but it would be very
18 helpful if you could make some comments on -- everyone does
19 have a copy, but if you could make some comments about how
20 the criminal cases and particularly the responsibilities of
21 your office play into the problems that we're dealing with.

22 MR. BAYLSON: Well, I tried to put the essential
23 point of our prosecution program in this letter and I frankly
24 don't have a lot to add except that I see this increasing
25 over the next five years. I think Congress is in a mood to

1 increase federal prosecution. I know that's the policy of
2 the administration. And the more specific dedicated slots
3 that we get, that is in certain areas, we have to be
4 responsive in bringing cases in those areas. So the
5 President's push this year is on firearm control and violent
6 crime. It's very possible there'll be more prosecutors in
7 which case we'll be doing more of those cases.

8 And I already -- as I said in the letter, we have
9 our own program with the District Attorney's Office which I
10 think is going to increase our caseload but I agree with Mike
11 Kunz that the most significant change in the nature of our
12 cases is the complexity of the cases and that is something
13 that I personally feel is very important, that that has to be
14 done and these are cases that need to be brought, they need
15 to be brought in this manner and they take more time to deal
16 with. Even when they're 95 percent guilty pleas, our --
17 these big drug cases that you may read about, almost
18 everybody pleads guilty, but it takes a lot of time for a
19 magistrate to process 30 to 40 defendants when they're
20 arrested and then for a judge to do the guilty pleas, that
21 can take longer than a couple of average trials to do these
22 guilty pleas. Take the guilty plea, review the sentence
23 materials and then have the sentencing hearing is very time-
24 consuming. And for 40 defendants, that's going to take
25 longer than your average trial, in my opinion.

1 MR. LANDIS: Let me turn next to some housekeeping
2 questions. What's your sense of having the meetings here?
3 Remember at the last discussion we were sort of holding the
4 prospect of maybe moving them around at various locations.

5 My own sense is that unless there's some compelling
6 policy reason to do it, this seems to be as good a setup as
7 we can get. It's central, it's neutral unless we sense the
8 brooding presence of the Court sitting above us, and bringing
9 its subliminal pressures, but I think we could manage to
10 resist that.

11 What do you think about having -- continuing to have
12 our meetings of the full committee here in the ceremonial
13 courtroom.

14 UNIDENTIFIED SPEAKER: Well, I'm very much in favor
15 of it.

16 MR. LANDIS: Well, that certainly is my sense. And
17 I will convey the committee's view that notwithstanding the
18 chief's sensitivity to that concern that we feel that we can
19 resist it.

20 Well, then, the next meetings have been scheduled.
21 There will be an agenda to go out just to refresh your
22 calendars. The next meeting is on the 23rd of April,
23 Tuesday, and the meeting following that is the 7th of May.
24 It might be useful to look ahead to a meeting following that,
25 although we needn't fix it today. What is the -- if we're

1 meeting on the 7th, then what does the -- how does the 23rd
2 of May, which is a Thursday, suit generally? How many people
3 couldn't make that?

4 JUDGE MELINSON: Mr. Chairman, I have in my book
5 that the ceremonial courtroom is being used on that day.

6 MR. LANDIS: Oh, is it?

7 JUDGE MELINSON: Yes.

8 MR. LANDIS: Well, then that may be an occasion when
9 we'll seek another refuge. Okay.

10 MR. RYAN: Bob, the notes of the last meeting
11 indicate that we're at the Philadelphia Bar Association for
12 that meeting tentatively. Now, are you changing that? If
13 so --

14 MR. LANDIS: I'm sorry.

15 MR. RYAN: On your minutes of the last meeting, it
16 says the April 23rd meeting is tentatively set for the
17 Philadelphia Bar Association.

18 MR. LANDIS: Well, then I guess we are changing it.
19 Thank you for watching that -- picking that up. I do know
20 that we had discussed the possibility of using the Bar
21 Association but I think that you always have to do a little
22 jockeying and I think the setting here is sufficiently
23 attractive and comfortable that -- except for the
24 temperature, Mike -- that we'll just skip that.

25 MR. KUNZ: There was many years ago, it's a good

1 idea --

2 MR. LANDIS: Keep them cold.

3 MR. KUNZ: -- to keep the courtrooms cold.

4 MR. LANDIS: Yeah, that's right.

5 MR. LITVIN: Bob, why can't we move the May 23rd
6 meeting up a day to May 22nd if this room's available?

7 MR. LANDIS: Well, shall I be perfectly honest why
8 that can't be done?

9 MR. LITVIN: No.

10 MR. LANDIS: Because I'm going to be --

11 MR. LITVIN: That's not necessary.

12 MR. LANDIS: Because I'm going to be fishing that
13 day. That's one of my modest indulgences and I'm going to be
14 fishing that day. And of course -- I'm sorry?

15 MR. RAYNES: So we have a backlog on account of your
16 fishing.

17 MR. LANDIS: But we can shift -- no, I will exercise
18 that prerogative of the Chair to stick with the 23rd and find
19 another place if this isn't -- and thank you for calling that
20 to our attention. We'll do the Bar Association on the 23rd
21 since that date did seem to be okay with everybody here.

22 MR. RAYNES: Andre, did you clear that with the Bar
23 Association, that it's open?

24 MR. DENNIS: No. I will.

25 MR. LANDIS: Yeah. Okay. Would you check it?

1 MR. LITVIN: You may want to release the 23rd in
2 case somebody already booked it.

3 MR. LANDIS: Yeah, we'll meet on -- the rest of the
4 meetings will be here. And I'll speak with the Chief Judge
5 about that.

6 MR. SHELLENBERGER: And that's 9:00 o'clock at all--

7 MR. LANDIS: 9:00 o'clock, at all times.

8 Are there any other things that should come before
9 the meeting for the good and welfare of the activity? We
10 have finished a little earlier than usual. And I hope you
11 don't mind that. We --

12 MR. RAYNES: What about this suggestion from Judge
13 Kelly that we have Judge Weiner --

14 MR. LANDIS: Oh, we will certainly want to have
15 Judge Weiner -- oh, no question. At some point we'll
16 probably want to have Judge Weiner here.

17 MR. RAYNES: When would you be taking -- have other
18 people come in?

19 MR. LANDIS: Oh, you mean here -- a public hearing?

20 MR. RAYNES: Yes.

21 MR. LANDIS: Well, what -- let's talk about that for
22 a minute because one of the things that we certainly -- we
23 discussed at our earliest session was that we would surely
24 have public hearings. I had originally thought that until we
25 bring into focus some of the specific things that we will

1 want to get public views -- and by public I'm speaking the
2 views of the lawyers and the litigants, maybe the
3 institutional views of some of the lawyers groups, but from
4 whatever sources, we've got to bear in mind that our target
5 date is the 1st of August. So between now and the 1st of
6 August, we've got to have a report, which means that we can't
7 hold back too far, Arthur, or too long in getting underway
8 with public hearings.

9 I had originally thought that maybe we could crank
10 up at least one sometime in May. I still haven't abandoned
11 that thought, but what is your thought about public hearings
12 and who should be invited and that sort of thing?

13 MS. BALLARD: You mean by comment, written comment?

14 MR. LANDIS: Oh, yeah, we certainly would do that.
15 Yeah, we certainly would do that. And we'd encourage that.

16 MR. LITVIN: Mr. Chairman, I don't think we should
17 be thinking in terms of public hearings until we have a
18 proposal, until we have ideas that we've generated addressing
19 our mandate and then I would assume the public hearings would
20 essentially mean other members of the Bar may want to react
21 to some of our thoughts and suggestions.

22 MR. LANDIS: Well, certainly, until we have a sense
23 of direction and specific areas that we're going to be
24 focusing on, I don't think we should hold public hearings at
25 a stage when we've already got a lot of stuff on the record

1 of our sort of tentative thoughts. I'm concerned with holding
2 them off for that long but we need to have some idea what we
3 want to ask people's views on.

4 MR. BAYLSON: Well, I'd like to suggest a two-stage
5 process, that we invite written comments before we make
6 proposals and then we issue a whole group of tentative
7 proposals perhaps including some that have been suggested
8 from others and have public hearings on them. But I agree
9 that if we're going to have hearings, and I hope somebody
10 comes, but you're never sure --

11 MR. LANDIS: Well --

12 MR. BAYLSON: -- that there be something out there
13 that we're thinking of.

14 MR. LANDIS: Oh, we certainly will have to do that.
15 Dan, you had a thought.

16 MR. RYAN: I think we should hear from some
17 representative group of District Court judges on the subject
18 of what it is about their job that's causing problems and
19 what their attitude is here. These -- it seems to me that we
20 may learn some stuff from them.

21 MR. LANDIS: Such a communication is going forward.
22 That was discussed the last time. We're going to have a
23 direct communication and to tell them we invite their initial
24 comment or suggestions and also in due course have the --
25 interview them and discuss with each of them, who wants the

1 opportunity, the specific ideas that they have. Yeah, that
2 is certainly being done. That was discussed at the last
3 meeting.

4 MR. CHURCHILL: Just a reminder that Judge Bechtle
5 indicated that Judge O'Neill is chairing a committee on local
6 rule changes and I don't know if they have any in their minds
7 that would be appropriate for our consideration but we
8 certainly ought to direct an inquiry to him about that.

9 MR. LANDIS: Andre?

10 MR. DENNIS: Yeah, I was just looking at Mike's memo
11 to us dated March 21st which refers to an advisory opinion
12 and I'd just ask Mike about that, on public access to our
13 meetings, which seems to me a little different than public
14 hearings.

15 MR. LANDIS: Well, that -- as I said, we're waiting
16 for an advisory opinion on that one from the Judicial
17 Conference and I guess we'll be getting it pretty soon. I
18 don't know just what the timetable is but, Mike, do you know
19 anything more about it than that?

20 MR. KUNZ: I would suspect that we have it probably
21 at the beginning of May, mid-May, I guess.

22 MR. DENNIS: I guess my feeling is that we are going
23 to have public access. To a certain extent we have it now,
24 because anyone could walk in, I guess, a member of the
25 public, and sit and listen. But if we're going to have

1 public access, then it almost seems like the public hearing
2 aspects sort of merges into public access. It's just a
3 matter of letting people know what we're doing and then to
4 set ourselves up to ask people to address specific issues if
5 and when we get to that point.

6 Now, whether, Jerry, it's after we finalize our
7 report or some other point, I think it will flow almost
8 automatically if we start having public access at some point.

9 MR. LEVIN: Well, if I can just indicate a
10 corollary. There may be some kind of public access. There
11 may also be permission to have some kind of executive
12 sessions. My own thinking was that it would be good not to
13 announce any public hearings until we had some decision
14 either from Washington or this group as to how we wanted to
15 relate to public meetings or -- and/or executive sessions
16 because it's possible to have both. And because otherwise
17 it'll stimulate all kinds of things, maybe even from the
18 press and some others to come in. But I'd like to hope maybe
19 we could press for an answer from the -- Judge Parker's
20 committee because I think it would help us making the plans.

21 MR. LANDIS: I'll call him up.

22 MR. RAYNES: My suggestion -- I've just spoken with
23 Judge Kelly -- it was not for Judge Weiner as part of any
24 kind of public hearing.

25 MR. LANDIS: Oh, no, no.

1 MR. RAYNES: It was merely for informational
2 purposes.

3 MR. LANDIS: No way. No, no, no. No. Oh,
4 absolutely -- no thought of that at all. Public hearing, as
5 I conceive it, would be not even the whole committee has to
6 sit through it, but an opportunity for written comment,
7 preferably, but also an opportunity to state publicly to a
8 committee or representatives of the committee what the views
9 say of the Philadelphia Trial Lawyers Association, maybe, or
10 the defense counsel or some -- or groups like that or
11 individuals. So that -- that would be an entirely different
12 approach than the approach that we would take in having
13 individuals who come for a special reason to meet with us.

14 Did someone -- Mike, did you -- did I see a hand
15 down there? Alice.

16 MS. BALLARD: I did have my hand up because I wanted
17 to follow up on the idea of our letter to the judges that
18 was --

19 MR. LANDIS: Right. Right.

20 MS. BALLARD: -- and (inaudible). I'm also feeling
21 as though it might be a good idea to, just as an exercise,
22 sort of rough out totally a working form completely flexible,
23 some idea of what our report is going to look like. What are
24 we -- our conclusions don't have to be in it, but just some
25 skeleton of where we're headed because I feel very vague

1 about that. And...

2 MR. LANDIS: Well, in as a rough an approach as I
3 can take to it, I tried to break down in that initial kind of
4 rambling agenda that we had the elements that I saw.

5 MS. BALLARD: In our committee assignments?

6 MR. LANDIS: And our committee assignments are
7 explicit. As a pilot district, we have to deal with each of
8 the elements that's set out as the elements of a civil
9 defense -- I keep calling it civil defense -- civil
10 litigation delay and expense reduction plan. They are
11 statutorily prescribed but preliminary to that are findings
12 that we are required to make, findings on the state of the
13 caseload, findings -- and this is explicit -- the impact of
14 certain kinds of litigation. RICO is mentioned, maybe not
15 specifically. The impact of Congressional litigation on
16 causing delay and needless costs and what the things are.

17 So that that's it. I mean that goes to the
18 elements. There are about -- what'd we figure -- seven or
19 eight -- I think seven or eight findings and then the
20 specifics of it we can maybe flush them out a little bit
21 more, but if you look at the preliminary -- look at the
22 statute, that's where you look first and then there are some
23 guidelines here that kind of in a rough way tell us where
24 we're going and it would be great if we could at least get
25 some Roman numeral heads and some subparagraphs and all of

1 that, but I think maybe it's a little premature to do that.

2 No, believe me, you recall Judge Bechtle's comment
3 when we started this, recognizing that our objectives are
4 dealing with delay that we can't expect to file a motion for
5 a continuance with the Judge on the date of our report.

6 MR. LANDIS: John.

7 MR. SHELLENBERGER: Just a comment on the public
8 hearings. My first inclination is to agree with everybody
9 saying we ought to hold off on them, but one of the elements
10 of the first part of our report, the assessment part of the
11 report, asks us to identify the principal causes of cost and
12 delay.

13 MR. LANDIS: Sure.

14 MR. SHELLENBERGER: And when I think about that, it
15 seems to me it might be helpful to have comment from outside
16 the confines of the committee on what people think are the
17 causes of excessive costs and delay.

18 MR. LANDIS: That certainly is one of the things we
19 would direct our attention to, there's no question about
20 that.

21 MR. SHELLENBERGER: Which would incline me to think
22 those kinds of hearings should be early rather than late.

23 MR. LANDIS: Well, I had thought that we ought to
24 maybe have at least one by sometime in May. Well, if you'll
25 -- Ed, did you have a comment? Or -- oh.

1 JUDGE MELINSON: Mr. Chairman, don't you think the
2 Chief Judge appointed people to this committee, though,
3 bearing in mind what --

4 MR. LANDIS: Sure.

5 JUDGE MELINSON: -- their various roles are, to try
6 to obviate the need for that?

7 MR. LANDIS: Well, not -- certainly this committee,
8 as we recognize, is a representative committee, so that a
9 primary source of information on these issues comes from the
10 people sitting around this table. But on the other hand that
11 doesn't mean that we've got a monopoly on it all and that to
12 supplement our own views and to augment them we shouldn't
13 permit others who don't sit around the table to inform us as
14 well.

15 JUDGE MELINSON: I merely offer that though as a
16 reason why it wouldn't be necessary to do it so early.

17 MR. LANDIS: Oh, I see. Yeah, sure, that's true.
18 Yeah. Dan?

19 MR. RYAN: After hearing Mike's excellent report,
20 I'm tempted to say that if it ain't broke, don't fix it.

21 MR. LANDIS: Well, there's a --

22 MR. RYAN: Where's the delay? One year. If you had
23 it much faster than that you couldn't get ready for trial.
24 Cost, yes; but delay, I suspect that if we had to vote right
25 now, I'd say what delay.

1 MR. LANDIS: Well, one of the things that -- of
2 course, that I commented on initially is that we're very
3 fortunate that this is the Court that we serve with the
4 responsibilities that we have. We could be in a lot worse
5 shape than that.

6 Andre and then --

7 MR. DENNIS: Well, I have to go back to what Alice
8 said because I share your concern somewhat. I mean the
9 statute tells us what elements a pilot program must have, so
10 therefore we know that we have to have a certain amount of
11 things in that plan.

12 Chief Judge Bechtel, the first day I think,
13 mentioned something about service of process, if I'm not
14 mistaken and how that is a bottleneck, at least as I
15 understood his remarks. We ought to focus on that. We ought
16 to identify, it seems to me, the bottlenecks and if we're
17 going to come up with a plan, I think you're right, we're
18 going to have to start focusing our direction pretty soon or
19 August 1st is going to be upon us.

20 MR. LANDIS: Well, fortunately we have a wise
21 reporter who is shaking his head. I don't know whether he's
22 rejecting the adjective or sensing where I'm leading, but
23 that's something that we can give some thought to, Leo.

24 MR. LEVIN: Yeah, I would be quite willing to work
25 out together with our Chair some kind of skeletal outline. I

1 think it could be helpful.

2 MR. LANDIS: Yeah.

3 MR. LEVIN: I think though in connection with, if it
4 ain't broke, don't fix it, we're a pilot court. As a pilot
5 court, it is mandatory that our plan include what for other
6 courts you shall consider and may implement. We are
7 obligated to include in the plan, not just in the report, six
8 cost and delay reduction techniques from, as I recall, one of
9 them is the early neutral evaluation, for example. We can
10 shape what kind of a program we want.

11 We are mandated, though, to include these particular
12 six things. A requirement that counsel for each party to a
13 case jointly present a discovery case management plan at the
14 beginning, et cetera. We can shape it or we can say we
15 include it because the statute does it, but our record shows
16 that it's a little silly for Congress to tell us we ought to
17 include it. But at least we have to, I think, follow the
18 statute on that.

19 Beyond that, I agree, and I will try to help work
20 out some skeletal.

21 My own guess, and it's just an uninformed guess,
22 that maybe one of our greatest contributions in considering
23 how good the Court is and how well it's stacked up against
24 the rest of the country may be in the findings. Findings
25 about delay in funding magistrate positions, delay in filling

1 mentioned that really describe to me, how come we don't have
2 some of the bottlenecks that other places don't have? And
3 one is the arbitration program which is obviously an
4 exportable item and is a very important one.

5 And the second, I guess, is Judge Weiner's specific
6 calendar control mechanisms in the asbestos cases, which I
7 don't purport to really understand how it's working, but I
8 gather is felt to be successful.

9 But I don't know whether others can identify any
10 other specific techniques that have been adopted here that we
11 think are responsible for the fact that we seem to be
12 handling a higher caseload than average.

13 And do you want to have any comments on that, Mike?

14 MR. KUNZ: Yes, Michael, as I mentioned in my
15 Executive Summary, I attempted to identify some of the case
16 management techniques and procedures, but I would hope that
17 when we talk about a case management plan that we will
18 include all the techniques and procedures that are used by
19 the judges and magistrates of our Court and the procedures
20 that have been implemented in the Clerk's Office to monitor
21 cases.

22 If I brought all those forms I could certainly
23 document all those procedures for the benefit of the
24 committee and I think they ought to be included in --

25 MR. LANDIS: Absolutely.

1 MR. CHURCHILL: It might be useful if you would
2 indicate what ones you think are unique compared to other
3 districts or which ones are the most successful in terms of
4 moving cases forward on a timely matter. I know a lot of the
5 matters that, for instance, in connection with pretrial
6 orders that don't seem to move cases forward much, but are
7 good for judges to stay in touch with what's happening. But
8 there may be specific matters that you think have been
9 uniquely done here compared to other districts.

10 MR. KUNZ: I think the arbitration program takes
11 care of a good portion of the cases. That's 20 percent.
12 That's a good size caseload. And that frees the judges up to
13 work on other cases. There's always a sufficient backlog.

14 But I think I understand your question and I'd be
15 happy to bring to the next meeting documented procedures that
16 are used both by the judges and magistrates in the Clerk's
17 Office which are unique to this district.

18 MR. LANDIS: Dan.

19 MR. KUNZ: Oftentimes much of what we do is
20 transferred to other districts, you know, it's no longer
21 unique to this district.

22 The other thing I think might be important, Bob, is
23 that we may want to include in the report a recommendation
24 with respect to alternate dispute resolutions.

25 MR. LANDIS: Oh, we not only may, we have to include

1 something on that. Dan?

2 MR. RYAN: Mike, I served as an arbitrator recently
3 -- I haven't done it very often, but I'm assuming, I guess,
4 that the powers of the arbitrators have been carefully
5 considered and limited appropriately, but if not, I think we
6 ought to take a look at that because we had for example a
7 case come in in which one defendant had been served but never
8 retained counsel, never filed an answer and we didn't have
9 the power to enter a judgment against them. And it looked to
10 us like a situation where they were intentionally ignoring it
11 because it was an arbitration and I think maybe we ought to -
12 - if we could speed that up a little bit, if we give the
13 arbitrator some more power.

14 MR. KUNZ: Well, in that regard, as Chief Judge
15 Bechtle mentioned, one of the problems that we see is the
16 provisions of Rule 4. We feel candidly that these figures
17 could be better if we had a little better control under the
18 provisions of Rule 4.

19 Yes, Art.

20 MR. RAYNES: Do you think we'll have any statistics
21 available on the new mediation program by the time we --

22 MR. KUNZ: Yes.

23 MR. RAYNES: -- get this report?

24 MR. KUNZ: Yes. Let me just mention we did
25 implement a new mediation program effective January 1st,

1 1991. We did hold some hearings in March and --

2 MR. LANDIS: I sat on one a couple of weeks ago.

3 MR. KUNZ: Yes. Okay. So those cases are in
4 progress, but the statistics at this point are scant and --

5 MR. RAYNES: No, I don't mean now, I mean by
6 August.

7 MR. KUNZ: Oh.

8 MR. RAYNES: Do you think we'll have anything in?

9 MR. KUNZ: Well, I think realistically, I believe,
10 the best we have in is maybe a half a year's statistics. So
11 it probably won't be significant.

12 MR. LANDIS: Not terribly definitive at that stage.

13 MR. RAYNES: I haven't read this new piece of paper,
14 the article on the Northern District of California on the
15 early evaluation. Was mediation a part of any of this?

16 MR. LANDIS: That plan as it's being done in the
17 Northern District I think is a -- how shall I describe it --
18 a more sophisticated approach than the mediation program as
19 it's outlined, but the framework of the mediation program as
20 it now is prescribed is -- certainly could accommodate some
21 of those techniques.

22 Well, I won't go into the details of that. I think
23 that's included in your material, the rules of the new
24 program and its applicability. What is it, the odd cases or
25 the even cases?

1 MR. KUNZ: Odd not even.

2 MR. LANDIS: Odd not even, yeah.

3 MR. KUNZ: That's what the rule says.

4 JUDGE CAHN: I drafted it.

5 (Laughter.)

6 MR. LANDIS: Okay, there you are. Odd not even.

7 Well, if there's no further business -- yes, Eve?

8 MS. KLOTHEN: Very briefly, if we're at the end, I
9 just want to thank Mike for pulling together an enormous
10 amount of material --

11 MR. LANDIS: Oh, yeah, it was terrific.

12 MS. KLOTHEN: -- and putting it in a very --

13 MR. LANDIS: Wonderful.

14 MS. KLOTHEN: -- readable and understandable fashion
15 and it has been very very helpful for this discussion.

16 MR. KUNZ: Well, that's the perfect lead-in, Eve,
17 for me to ask Patricia Finghal (ph) and Roberta Capazolla to
18 stand up.

19 (Applause.)

20 MR. KUNZ: 8:00 o'clock last night.

21 MR. LANDIS: Very good. Thank you.

22 MR. LITVIN: Well, Mr. Chairman --

23 MR. LANDIS: Yes.

24 MR. LITVIN: -- without detracting at all from the
25 accolade, which is appropriate, I do think it would be

1 helpful for future meetings, if there are going to be reports
2 if we could possibly get them a day or two in advance.

3 MR. LANDIS: Yeah, I agree with that.

4 MR. LITVIN: I think that would help us question
5 Mike specifically and --

6 MR. LANDIS: The timetable --

7 MR. LITVIN: -- get us on with our agenda.

8 MR. LANDIS: The timetable was tight and I'm sorry,
9 but that certainly is a fair comment.

10 MR. LANDIS: The next meeting is here on -- wait a
11 second.

12 MS. BALLARD: The 23rd of April.

13 MR. LANDIS: The 23rd of April. Thank you, Alice.

14 Thank you all for coming.

15 (Conference adjourned at 11:00 o'clock a.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

CIVIL JUSTICE REFORM ACT
ADVISORY GROUP
MEETING

- - -

Ceremonial Courtroom
April 23, 1991
8:30 o'clock a.m.

- - -

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45 transcript produced by computer-aided transcription service.
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1 MR. LANDIS: Good morning. We're at nearly full
2 strength today. I had a call from Jim Corcoran offering his
3 regrets that he couldn't be here and Mike Baylson is starting
4 a trial, too, and it also is going to involve Mike Rocco. So
5 that they're not going to be present with us today.

6 And her timing is uncanny, because as the first
7 order of business, I want to exercise a point of personal
8 privilege and that is to report that on Saturday, Jennifer
9 Clark was elected a member of the firm of Dechert, Price and
10 Rhoads.

11 (Applause.)

12 MR. LANDIS: A few items of what's going on. I
13 think I told you the last time that the Judicial Center is
14 working on two advisory opinions; one advisory opinion
15 telling us what to do or advising us how to deal with the
16 offer of the West Company of assistance to the work of the
17 advisory groups, the other dealing with the more important
18 policy question of access. I can report that they're still
19 working on the opinion and that we may get a ruling on it
20 sometime in the next month.

21 So meanwhile we have no advice on how to deal with
22 the question of access to our meetings and so far it hasn't
23 presented a particular problem.

24 We're very pleased today to have as our first --
25 won't call him a witness. I'll call him one who can share

1 his experiences as a trial judge with this group and that's
2 our good friend and colleague, Judge Louis Pollak. He has
3 been modestly briefed on the kinds of things that we're
4 dealing with and has been invited to speak totally freely on
5 his views of -- as he sees some of the undertakings we have
6 to do and also any solutions that he may propose for us to
7 consider.

8 Judge Pollak.

9 JUDGE POLLAK: Well, thank you, Chairperson Landis.
10 I'm delighted to be here. I'm doubly delighted. I'm pleased
11 that Bob and Leo invited me to talk with you. You are a group
12 which is doing important service for this Court and I hope in
13 that sense for Article 3 generally. We are really enormously
14 grateful for the glittering assemblage of expert advisors
15 whom you comprise.

16 Our Court, to the extent that we accomplish
17 anything, it's I think very much a consequence of having such
18 wonderful support from the Bar. This is simply the latest
19 example of that.

20 I gather from the Chair's remarks that the question
21 of access to these meetings is an initial and intriguing one.
22 though perhaps not one yet of pressing operative consequence.
23 In personal terms, though, I'm glad that I was able to get
24 access to this meeting notwithstanding that I began by
25 following my mentor, Professor Levin's instructions to report

1 to the ceremonial courtroom, which I did, and it was locked,
2 as I should have expected and I took it that this was merely
3 the byplay of my colleague who has helped me to understand
4 the ways of the world, academic and litigating, for some
5 decades now.

6 But I made my way here and what I'd like to do if
7 this is agreeable to you, Bob, is to comment for a moment
8 about sort of the initial general framework which I see
9 reflected in Roman numeral I of your -- the draft interim
10 tentative outline of the report which ultimately your
11 committee is to produce.

12 And this is not at the expense of addressing with
13 particularity the matters that your committee is instructed
14 to cover under Roman numeral II, and I'm delighted to be
15 interrupted or brought back to base at any point. But my
16 suspicion was that since you are going to be required to
17 cover all of the factors and principles and ingredients and
18 criteria and what not in Roman numeral II in your report, you
19 may be as interested in sort of setting a context for that
20 specific set of principles.

21 And perhaps if I at least began by offering thoughts
22 in a more general way, that might be helpful for you.

23 MR. LANDIS: Please do.

24 JUDGE POLLAK: But I hope you'll all feel free to
25 break in and inquire at any point.

1 I'm probably a particularly apt person for you to be
2 talking to early on since perhaps I'm your prototypical
3 problem judge. In terms of what the Biden bill is addressed
4 to, I'm a pretty slow judge, I think. I think Mike's figures
5 will confirm that I'm a pillar up at the high end of the
6 caseload statistics. And I suppose if your committee could
7 find a way of moving me from high to somewhere in the middle.
8 you could regard that as a gain, at least if you could
9 generalize from that particularized success. But I think I
10 may present a challenge to you, but I hope you can succeed.

11 I've been thinking in the last few days since
12 speaking both to Bob and Leo about this appearance. I've
13 been thinking about what I've been doing for the last couple
14 of years which has led me to feel somewhat mired in
15 activities which are not the activities that I think you, as
16 a committee, would want me to be primarily engaged in, but
17 frankly I would just as soon not being engaged in.

18 I don't pretend to have in my head the figures on
19 case filings, criminal versus civil or the various breakdowns
20 in each of those categories. My sense is that in the -- it's
21 now a dozen years that I've been here -- the balance between
22 criminal and civil filings has not changed markedly if one is
23 just looking at numbers of filings. Mike may tell me I'm
24 wrong on that, but the criminal filings clearly are,
25 numerically speaking, are only a modest fraction of the civil

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1 mid-1989 to now, at least two-thirds, more likely three-
2 quarters of my in-court time has been devoted to criminal
3 cases and most particularly drug cases.

4 Now, I don't offer that as typical. My colleagues
5 may have a different profile, but I suspect that there are a
6 number of comparable profiles. What this means is, starting
7 in the fall of 1989, there was returned a drug conspiracy
8 case involving 41 defendants. In the event only three of
9 those went to trial, but the proceedings which involved the
10 pleas of 25 or 30 some others that did not go to trial --
11 there were some defendants never apprehended -- those
12 proceedings have been extended and intensive. The trial of
13 those that did go to trial was extended and intensive. There
14 still lie ahead the sentencings of these people and that will
15 take large portions of weeks and weeks and weeks to come.

16 Fitting the trial of civil cases into the
17 interstices of that activity has been quite hard, at least
18 it's been very hard for me. So that though when one's not
19 in-court time, one could do one's best to supervise the
20 progress of civil cases toward trial, one had no confidence
21 that when a case was ready for trial, you could offer counsel
22 a courtroom and your time. And so the cases pile up.

23 I guess I would feel less troubled by that, since
24 one regards after all the criminal and civil litigation
25 together as an aggregate of a job that's to be done, I'd feel

1 less concerned about the pushing-aside of civil litigation if
2 I felt that all our hard work in processing drug cases was
3 really generating some important victory somewhere with
4 respect to that intractable problem. It's hard to feel
5 enormous confidence about that. And obviously that takes us
6 beyond the confines of your responsibilities but I simply
7 register the fact that a great deal of the energies which I
8 ought to be devoting to the trial of civil cases have been
9 displaced.

10 Now, if I bring you up to date, for the last four
11 weeks I have actually been able to try two civil cases.
12 Well, one has been tried and the other -- the second is to go
13 to the jury either today or tomorrow. It happens that those
14 two cases are themselves illustrative of problems that beset
15 us in terms of court congestion on the civil side of the
16 docket.

17 The first of the two cases was an asbestos case and
18 it took two weeks. Now, that's the first asbestos case that
19 I've had to try for -- I'm not sure -- three or four years.
20 There are relatively few asbestos cases that actually come to
21 trial in this courthouse so far. Again, I'm sure Mike has
22 the absolute figures and I do not, but I do know that we
23 would be in much worse shape than we are on the asbestos side
24 of things were it not for a marvelous machine which we have
25 in this courthouse which we hope to keep protected and

1 unknown to the outside world, at least to other court
2 systems, called Charles Weiner.

3 And Judge Weiner manages to make hundreds and
4 hundreds and hundreds of asbestos cases get resolved. I
5 think his success in that score is much better than the
6 success of anybody doing a comparable job in any other
7 district in the United States. I think that covers both
8 federal and state courts so far as I know. But he is one
9 extraordinary person with his finger in a dike and we may be
10 overwhelmed very shortly by these tens of thousands of cases
11 which I think we here in Philadelphia have what, is it 7,000
12 cases?

13 MR. KUNZ: 5300.

14 JUDGE POLLAK: 5300. That's either the largest or
15 the second or third largest number of any district, any
16 federal district in the United States.

17 I remind you that what happens with the asbestos
18 cases may be subject to change with respect to the federal
19 system as a whole if the multi-district litigation panel,
20 which is going to be considering this matter in New York late
21 next month, concludes that asbestos cases should be brought
22 within the framework of the multi-district litigation system.
23 But that's a matter to be determined by the panel. Up to now
24 the panel has resolutely said no to bringing asbestos cases
25 within the rubric of airplane accidents, securities,

1 whatever, the staple cases that are multi-districted.

2 If Charles Weiner's success can be cloned throughout
3 the federal judicial system, it may be that we can bring some
4 sort of sense to that aspect of the Article 3 process.

5 Frankly I'm kind of bearish about it. It's an example of
6 cases that shouldn't be, in my humble judgment, handled by
7 litigation at all but by a compensation system. Obviously
8 that involves ranges of solutions that lie way beyond our
9 poor power to add or detract.

10 I went from an asbestos case, which incidentally was
11 a verdict for defendants -- we have cautious juries in this
12 district as I think members of this committee know. I went
13 from there to an FELA case, which will go to the jury in the
14 next day, perhaps today, perhaps tomorrow. FELA of course
15 has been a staple of this district's docket and of every
16 other district's docket for decades now. There are very
17 large numbers of cases and most of them get settled, but some
18 of them go to trial.

19 Why should they be in the federal courts at all?
20 You may remember that I guess either two or three years ago
21 Chief Justice Rehnquist singled out FELA and Jones Act cases
22 and Social Security cases and in-state plaintiff versus out-
23 of-state defendant diversity cases as categories of cases
24 that should be removed from the federal district courts. And
25 he also added that Congress should take a cold look at civil

1 RICO with a view to cutting that down.

2 I think the Chief Justice was right with respect to
3 three of those four categories. I think to remove Social
4 Security cases from our docket, even though you will find in
5 the figures that they constitute a big slice of time, I think
6 his remedy was wrong because he proposed simply having Social
7 Security cases be appealed directly to the courts of appeals.
8 That would have had some incremental value for the district
9 courts. It would have drowned the court of appeals. It
10 would have added I think 30,000 cases to their -- nationwide
11 -- to their docket. So distributionally through the court
12 system, I think that's not a change that would have made
13 sense.

14 I think he was absolutely right that FELA and Jones
15 Act cases while they are staple federal cases can as easily
16 be tried exclusively in the state courts, which have
17 concurrent jurisdiction over them now. Surely courts of
18 common pleas are every bit as competent to try those cases as
19 federal district courts. The problem that would be
20 presented, I think, would be that plaintiffs would have to
21 wait even longer to get to trial.

22 My sense is that cutting back on civil RICO is
23 something that is high time and that's illustrative of the
24 general problem of Congress creating causes of action without
25 really thinking much about their impact on the judicial

1 system. Maybe Congress should be encouraged to think that
2 when it generates new causes of action -- and certainly there
3 are reasons for creating new legal claims from time to time -
4 - but Congress might well begin to think that in creating new
5 federal causes of action that filter into the federal courts,
6 they'd better look for categories of cases to remove from the
7 system.

8 The diversity category, obviously, is a very likely
9 target. The Chief Justice made the very modest proposal of
10 removing in-state plaintiff versus out-of-state defendant
11 cases. Any challenge to the diversity jurisdiction will of
12 course run into the loud outcries of the leaders of the Bar.
13 I assume I can generate 20 speeches of rebuttal right around
14 this table. You'll tell me and tell our reporter how wrong it
15 would be to think of tampering with the diversity
16 jurisdiction.

17 Well, those are the -- I bring these to your
18 attention simply because they seem to me contextual factors
19 for you to be thinking about.

20 When you start addressing particular needs of this
21 court, do we need more judges? We always think we need more
22 judges, but frankly, I guess, within the privacy of this room
23 we have to acknowledge that we're pretty well served.
24 Senator Specter has certainly been enormously supportive from
25 his position on the Judiciary Committee of the courts in

1 general and what we would like to think of as his court here
2 in the Eastern District in particular. And we have new
3 appointees or at least new seats for new appointees to
4 occupy, if the appointment process can ever be speeded up.
5 So I can't make the claim that we need more judges, qua
6 judges. We need more women judges, that we clearly do need.
7 I don't know what the scope of this committee's power is, but
8 do what you can on that score.

9 We would not be able to do what work we do do were
10 it not for the extraordinary cohort of magistrates who work
11 so hard and take the laboring oar with respect to Social
12 Security cases, habeas corpus cases, a great deal of
13 supervision of pretrial work for some judges, not so much for
14 others, and so forth.

15 I implore your committee in its report not to say a
16 word that discloses to the outside world what an
17 extraordinary clerk's office and, most particularly, what an
18 extraordinary clerk we have. It is as important to the
19 health of this district that Mr. Kunz be kept right here as
20 it is that Judge Weiner be kept right here. We don't want
21 anybody else to find out what marvels we possess.

22 The one category of support personnel that
23 conceivably a court like ours could use more of, and there
24 would be, I'm sure, differences of view within sorority and
25 fraternity which is our board of judges, is with respect to

1 law clerks. We all are allotted two. At least some of us, I
2 suspect, would think that productivity would improve if we
3 had a third law clerk. It would dilute to some extent the
4 wonderful intimacy of the chambers to have three law clerks
5 rather than two. The court of appeals judges, though, have
6 managed that for many years. I'm not for a moment saying
7 that most or indeed many of our colleagues would want to have
8 a third law clerk and I have misgivings about even that
9 structural alteration, but if you want to know what a slow
10 judge thinks, I think I would be addressing motions more
11 quickly, denying summary judgment and motions to dismiss
12 faster. I suppose occasionally even granting some of those
13 motions if I had a third law clerk.

14 I've spoken at length about things that are in a
15 sense not central to your report. I mean they're not the
16 mandated subjects of your report. Maybe I should pause and
17 find out whether there are particular things that I haven't
18 been talking about that the committee wants my thoughts on.

19 MR. LANDIS: Well --

20 JUDGE POLLAK: I have about ten minutes before I go
21 back to being a FELA judge.

22 MR. LANDIS: Well, speaking for Leo and me, we had
23 thought to give you a blank page and have you write on it.
24 If there are any other --

25 JUDGE POLLAK: So far it's still blank.

1 MR. LANDIS: No, no, no, no, I'm already on to my
2 second page of notes. Are there any other members of the
3 committee who have some specifics that they'd like to have
4 Judge Pollak address?

5 MR. LEVIN: Let me break the ice, all right.

6 MR. LANDIS: Go ahead.

7 MR. LEVIN: And I'm exceedingly grateful and I
8 subscribe to the blank page theory, but in addition I hoped
9 for a kind of dialogue that we would, you know, that we could
10 have. And I'm on my fourth page of notes.

11 MR. LANDIS: I write smaller, Leo, and slower.

12 MR. LEVIN: Let me probe a little bit, if I can.
13 The notion that the Congress maybe ought to contract the
14 jurisdiction but yet you have enough judges. In other words,
15 I would assume -- and all I'm trying to do is to understand
16 the thing. I could see a report which says to Congress -- I
17 mean I can just envision -- you want to give us all this
18 work, you want to give us the in-state diversity, you want to
19 do all these things. Fine, give us the resources. And for
20 that kind of a job, with this kind of a complex criminal
21 thing, we need X additional cadre.

22 If there's enough at the moment, there really is
23 enough, judges, as you put it, qua judges, to do the job,
24 that Congress has currently given -- and I'm not taking away
25 from the idea that we maybe ought to tell Congress it would

1 better not to increase the size and so on -- but I want to
2 explore that relationship, your views of that relationship.

3 Do I make myself clear? I'm not...

4 JUDGE POLLAK: I think, Leo, I did not make myself
5 clear in saying that we had enough judges. In saying that we
6 have enough judges, all I meant was that comparatively
7 speaking I don't think the Eastern District of Pennsylvania
8 is in a position to ask the Judicial Conference to tell
9 Congress that we need more judges more than the Northern
10 District of California or the Southern District of New York
11 or the Eastern District of New York or the District of New
12 Jersey or whatever. I just mean -- I think we in this
13 district are, as compared with other federal districts,
14 reasonably well-staffed. But I think all of us are -- I
15 won't quite say hopelessly but well beyond the point of doing
16 the job thoughtfully and carefully and in the sort of
17 individually tailored way that I think we expect the federal
18 courts to be doing and that to the extent that people insist
19 that diversity should be retained because the state courts
20 don't do the job so well, they're really critical of the
21 state courts for operating it wholesale.

22 So that's the only sense in which I meant that we
23 have enough judges.

24 MR. LANDIS: Yes, John. All right. Go ahead, John,
25 and then --

1 MR. SHELLENBERGER: It doesn't matter.

2 MR. LANDIS: All right, Sy, you've been yielded to.

3 MR. KURLAND: Judge Pollak, I was a little surprised
4 by some of your remarks from the standpoint that we're
5 focusing here on things like discovery control in civil
6 cases, control of motions in cases, how to get a differential
7 case management program and the description that you gave
8 honestly as to, you know, the things that concern you seem to
9 indicate that the majority of the work that's consuming your
10 time is managing these very complex criminal cases that come
11 up only a very small percentage of which come to trial and,
12 you know, Judge Weiner dealing with this tremendous caseload
13 that he has which is an administrative problem and these FELA
14 cases and Jones Act and, you know, Social Security-type
15 cases.

16 And that the real thrust of what we're sort of
17 dealing with and addressing ourselves to is not where the
18 real thrust of the time the court is really being spent when
19 you get right down to it. It's in these areas that sort of
20 you wonder why you yourself have to be bothering doing all of
21 these cases.

22 JUDGE POLLAK: Well, Sy, I'm not -- in speaking to
23 you about matters that I'm engaged in that are different from
24 the items covered in the mandated part of your report, the
25 management of the discovery process. All the rest of it I'm

1 not for a moment trying to suggest the unimportance of that.
2 It's not merely that Congress requires us to address it, it
3 is critical.

4 What I was trying to express really to you is a
5 concern that, though if instructed, I can set a, quotes,
6 "firm trial date," we'll have a conference and we'll develop
7 a plan for the management of this civil case, big or small,
8 and for the purposes of this discussion we'll call it one of
9 the large Kurland cases, but I can tell you, Sy, that we're
10 going to go to trial in February of '92 with a case that
11 you're going to file tomorrow, but you won't believe me and I
12 won't believe myself because though it may be written down in
13 our plan, in February of '92, I think the high probability is
14 that I'm going to be in court on a drug case.

15 And so that doesn't mean that it's unimportant to
16 undertake these things, but I don't want to enlarge your
17 sense that we're going to change the world this way.

18 MR. KURLAND: Well, then that's pretty much in
19 accord with what you said to Professor Levin with the judges,
20 that what your description does is not negate the rest of the
21 problems, it just emphasizes. The ones that you see.

22 MR. LANDIS: John, did you have a comment or
23 question?

24 MR. SHELLENBERGER: I have maybe two related
25 questions. Do you have any sense of what in your view an

1 average federal civil case, what the time from filing to
2 trial should be. I don't mean the most complex, I don't
3 meant the most routine, but a case that goes to trial, how
4 much time should that take?

5 JUDGE POLLAK: A year.

6 MR. SHELLENBERGER: Can I ask the second part?

7 JUDGE POLLAK: Yeah.

8 MR. SHELLENBERGER: If you didn't have all these
9 criminal cases and you had time to do civil cases, you say
10 you're a slow judge. If we forced you or what we recommend
11 would force you to be faster, would there be a cost in that?
12 Would we be giving something up by forcing you to be faster?

13 JUDGE POLLAK: I don't think you would be giving up
14 very much. No. I think I'd get motions decided faster and
15 probably --

16 MR. SHELLENBERGER: As well?

17 JUDGE POLLAK: -- it might be healthy. I mean that
18 would move -- you know, that would bring some cases along for
19 at least trial readiness or dispose of them quicker. And I
20 can -- I'm prepared to believe that it probably would be a
21 healthy thing for me, though I think I'm one of -- I'm not
22 sure that you should draft rules that are directed just at
23 sinners because most of my colleagues -- I look immediately
24 to my left and to my far right -- they're not slow. And I
25 don't think that what they need are prods, though I don't see

1 that these are costly to us. I'm not distressed about what's
2 proposed.

3 MR. LANDIS: Ed, did you have a question or a
4 comment?

5 MR. MULLINIX: I have a question for Judge Pollak,
6 if I may. Judge, do you think there's any validity to the
7 notion that putting some members of the court exclusively on
8 criminal cases and other members --

9 JUDGE POLLAK: No.

10 MR. MULLINIX: -- of the court exclusively on civil
11 cases and --

12 JUDGE POLLAK: Excuse me. Do I have to wait for the
13 end of your question?

14 (Laughter.)

15 MR. MULLINIX: Obviously you wouldn't do that on a
16 permanent basis but rotating in and out, it would at least
17 alleviate the problem of having to fit the needs of civil
18 cases into the interstices of the demands of criminal cases.

19 JUDGE POLLAK: I would be very distressed if we
20 moved one inch, one centimeter in that direction, Ed, I
21 really would. I'd much rather have the luck of the draw
22 determine what we're doing at any particular point. And I
23 don't think that there are any inefficiencies that are
24 created by the fact that a particular judge isn't known to be
25 assigned to criminal cases for six months or whatever.

1 MR. LANDIS: Mike.

2 MR. CHURCHILL: I have a related question, though.
3 Would there be any use in your view that some procedure that
4 if you got backed up with a major criminal trial or set of
5 them that you could assign off some of the cases that are now
6 trial ready, that you've managed up to the point of getting
7 everybody ready for trial?

8 JUDGE POLLAK: I think that's certainly a reasonable
9 thing to explore. I don't have any principal problem with
10 that provided that any such reassignment would be random,
11 just as the original assignment was or like that.

12 MR. LANDIS: Alice.

13 MS. BALLARD: Just as a follow-up to that idea,
14 maybe you could reinstitute the notice of a right to
15 disposition by a magistrate at that point. I mean I know I
16 have cases sitting on trial lists and now I'm sort of
17 thinking, well, gee, that's a good idea, Michael, maybe we
18 could handle them that way.

19 JUDGE POLLAK: Obviously the more we can utilize
20 magistrates or for trial purposes, it seems to me all of us
21 benefit. We --

22 MS. BALLARD: It seems like now you have to choose
23 the magistrate at the beginning. And the idea of being able
24 to choose one at the end isn't really ever thought of.

25 JUDGE POLLAK: Well, I don't think there's anything

1 that forecloses moving to magistrate trial quite late in the
2 progress of a case.

3 MR. LEVIN: In the 1990 amendment I think will
4 facilitate that. The December 1990, there's a provision
5 about what you may do advising litigants after the first time
6 about the availability of magistrates and that may help along
7 that line.

8 MR. LANDIS: Eve.

9 MS. KLOTHEN: How big a benefit would it be to have
10 additional magistrates for the court?

11 JUDGE POLLAK: I guess that would be -- I think we
12 would agree that they would be a useful additional resource.

13 MR. LANDIS: I wouldn't.

14 JUDGE POLLAK: You wouldn't?

15 MR. LANDIS: I was going to --

16 JUDGE POLLAK: Well, some of us would agree. Others
17 of us wouldn't agree.

18 (Laughter.)

19 MS. KLOTHEN: I have one other somewhat related
20 question. You had indicated that you thought more law clerks
21 would be very helpful. Would you need authorization for that
22 or is that merely a question of additional funding for those
23 positions?

24 JUDGE POLLAK: I think that's -- it certainly would
25 require Judicial Conference approval. I'm not sure whether

1 it's statutory. Do you know, Leo? I think it's probably at
2 least an issue for the Judicial Conference.

3 MR. LANDIS: Yes, but it is also a question of
4 funding.

5 JUDGE POLLAK: And also money is, I'm sure. I mean
6 in that sense, yes, it's going to require funding.

7 MS. KLOTHEN: Right. But going beyond that?

8 JUDGE POLLAK: Yes.

9 MR. LANDIS: Dick and then Art.

10 MR. ROSENBLEETH: Judge Pollak, do you have any idea
11 of the breakdown of your out-of-court time in terms of
12 criminal and civil?

13 JUDGE POLLAK: Out of court, the vast bulk of what
14 you do that you're in chambers is civil.

15 MR. ROSENBLEETH: And that's motions and --

16 JUDGE POLLAK: Yeah. Yeah.

17 MR. ROSENBLEETH: What about with regard to
18 management of...

19 JUDGE POLLAK: There's a lot of time that's on the
20 phone with counsel and motions, discovery stuff, but too
21 often -- and here I will be critical of the Bar -- too much
22 of that policing involves matters that counsel really ought
23 to have worked out for themselves. But I'm at least one of
24 those who thinks that it is important to be available to
25 counsel by phone when they're stuck in a deposition and

1 stuck.

2 MR. ROSENBLEETH: I just have one other question.
3 Without getting into the specifics of the potentials that are
4 available, what is your view on the so-called alternative
5 dispute resolution techniques which would be -- involve non-
6 magistrates, non-court personnel, those kinds of things?

7 JUDGE POLLAK: I have a sense of being interested --
8 I'm receptive to the idea and I profess ignorance as to what
9 real experience has been with them and what we can hope for,
10 but I'm all for exploring.

11 MR. LANDIS: Art.

12 MR. RAYNES: I want to try to get a feel from your
13 own personal experience on your docket. Let's take a look at
14 these on the civil side, the FELA and the diversity cases and
15 the civil RICO. How much of your time is spent in actually
16 dealing with those cases, say for trial, as distinguished
17 from the time that you would spend on criminal cases. We
18 know from Mike Kunz what the numbers are on the filings, but
19 I don't know whether we have statistics on whether or not
20 those are -- I don't want to say labor intensive -- but I
21 mean court intensive work, that is, on those kinds of views
22 on those kinds of cases as distinguished to the criminal
23 cases.

24 JUDGE POLLAK: All of the civil cases are labor
25 intensive as compared with the criminal cases out of court.

1 There's relatively little out-of-court work to be done in
2 moving criminal cases to trial. They become time-consuming
3 at the trial stage or at the plea stage or the sentencing
4 stage. Then a lot of time is consumed, but not otherwise.

5 MR. LANDIS: Art, we have three judges who have
6 kindly agreed to come to share their wisdom with us and I
7 don't intend to cut off the discussion with Judge Pollak but
8 we do have Judge Katz who is here, who has joined us and also
9 our own colleague, Judge Kelly. So I'd invite Judge Pollak
10 to stay with us if he wishes, but it will --

11 JUDGE POLLAK: It will be at the delay of another --

12
13 MR. LANDIS: I was going to say, with all that labor
14 intensive civil work you've got waiting for you, I won't
15 presume to do that. But I do offer the thanks of the
16 Committee for joining us, Judge Pollak, and for leading off.

17 JUDGE POLLAK: Thank you all.

18 MR. LANDIS: Thank you, Judge Pollak.

19 JUDGE POLLAK: If there comes any later point where
20 you want me to be responsive to your real questions, you
21 know, please summon me back. And it's a great pleasure to
22 meet with you and again our thanks to you all for what you're
23 doing.

24 MR. LANDIS: Thank you, Judge Pollak.

25 Judge Katz, would you like to slide over here to the

1 middle. Or it doesn't make any difference, but I think maybe
2 you'll be nearer the center of the eyes of the committee.

3 JUDGE KATZ: Judge Pollak said that I may now scotch
4 his heresies. I do agree on two points that Judge Pollak
5 made and my anecdotal experience is different from his on all
6 the others.

7 On the two points with which I agree, we do have a
8 superb manager in Mike Kunz. He's just remarkable. He's
9 innovative. He's forced upon us the computers. I'm trying
10 to learn the Lexus and the word processor and the law clerks
11 use it all the time and to great advantage. I used to be a
12 very good hard copy researcher but I find that now by the
13 time I get close to the book, they have the case and have
14 shepherdized it, so it's discouraging. But certainly on that
15 point, I'm in agreement.

16 And also I'm in agreement that Senator Specter has
17 been enormously supportive, at least in my case, and in the
18 case of others as well, in getting judges for this court. I
19 find the quality of the judges is excellent. No one came here
20 to retire. Everybody came here to work. People take the
21 work seriously, not themselves, but the work.

22 The court is a collegial one. Many of us have lunch
23 every day in our lunchroom.

24 I think the fact that we have an individual calendar
25 is perhaps helpful. That is, if you have to decide cases,

1 for example, in a context of a committee of three, as the
2 court of appeals does in most of its cases, perhaps that's
3 less inducing to a sense of collegiality overall than our
4 court which has basically an individual calendar with the
5 exception of the asbestos cases which Judge Weiner
6 administers.

7 Let me tell you my anecdotal experience on the other
8 matters which is different from Judge Pollak's. I find that
9 I haven't been spending more time in criminal cases after the
10 sentencing guidelines, which are imposed on us, than I did
11 before. Now, that's just my impression. I don't keep time
12 records, although I have a vague notion that there are some
13 time records in existence which are kept by the clerks. I
14 have never seen them. I shouldn't say that.

15 They once came in a large book from the
16 administrative office in Washington and there was some
17 breakdown of time records, but the print was so small that
18 when I looked at it I could not read it with my glasses and
19 as part one of the Gramm-Rudman type inquiries we were asked
20 how we could economize on the judicial branch budget and
21 someone responded that we could perhaps do away with the book
22 which no one ever looked at and the administrative office
23 responded that they would continue to keep the time records
24 but they would no longer send the book to the judges who had
25 raised the issue of economy.

1 So perhaps there are records somewhere which can
2 give you a meaningful answer. I don't know what the time
3 records but our deputy clerks do turn in sheets, I think --
4 I've never seen one -- of how much time we spend I think in
5 court or in chambers or something like that. And the
6 information may be available to you in that regard.

7 My anecdotal experiences is perhaps skewed. I had a
8 drug case recently which I think were 18 defendants and all
9 but one pleaded guilty and that case went to trial and took
10 three days. Basically the drug cases that -- this drug case,
11 for example, it was all on recorded telephone conversations.
12 And with one defendant they played the portion of the
13 telephone conversations in which he had participated and that
14 was the case.

15 And perhaps I'm influenced by the fact that I tried
16 the roofers case before the sentencing guideline where there
17 were 13 union people and two lawyers and a third group of
18 three alleged organized crime people. I broke it into three
19 trials and I tried the union people over several months and
20 the lawyers, I forget how long that case took and the three
21 alleged organized crime people pleaded guilty. So it seemed
22 like an enormous amount of time in that one case and my
23 recollection may be skewed by that subjective impression, but
24 overall I don't think I'm trying more criminal cases now than
25 before the sentencing guidelines.

1 I share Lou's question about the usefulness. I
2 don't know the answer about the usefulness of proceeding with
3 all of these federalized drug cases. They're very depressing
4 to try. And I think there's a political pressure that builds
5 up to federalize those cases and perhaps others like people
6 who have a felony record and gun cases, are arrested with a
7 weapon which is a federal offense because of a perceived
8 difficulty in the state courts in dealing with those kinds of
9 cases with promptness and I don't know what the answer is in
10 that regard.

11 On the asbestos cases, my anecdotal experiences,
12 I've been here since August of 1983 and I have tried three
13 asbestos cases through to verdict, two defense verdicts, one
14 verdict for I think \$75,000. They were all fear of cancer
15 cases, as the jargon goes. That is to say, the people didn't
16 have any physical symptoms. I forget what you call the
17 condition. And they were afraid that at some time in the
18 future they would contract cancer. The cases were all
19 similar in that regard and the results, as I've told you,
20 were quite different.

21 I don't know what a multi-district panel is going to
22 do. I'd be delighted to see them find some solution. More
23 than half of my civil docket consists of asbestos cases.
24 Clearly more than half of my civil docket. And I don't know
25 of an alternative except trying them one case at a time,

1 except for Judge Kelly, the other Judge Kelly's experiment in
2 the class action with the school district cases which I think
3 is an interesting and useful experiment. I'll be very
4 interested to see how that comes out.

5 As a policy matter, my own view is that, as a
6 legislative solution, it should be some kind of workmen's
7 compensation, but that's my own view. And as far as I can
8 see, the problem is that these companies can't settle all the
9 cases because they don't have the money so basically they're
10 litigating for the use of the money. And when the cases are
11 listed for trial -- I've had hundreds listed for trial --
12 certainly hundreds. That's fair to say. And they go to
13 Charlie Weiner and they go away. I don't know what happens
14 to them, but they work something out. And I think that's
15 what the shooting's all about in the asbestos cases. I could
16 be wrong about that.

17 On the FELA cases, I've only tried a couple of those
18 through to verdict. They were both similar. It was somebody
19 who hurt his back lifting and in one case the person got a
20 million dollars, the other case the person got nothing. And
21 the lawyers were relatively evenly matched in both cases.
22 Things blur after a while at my age, but the cases seem
23 relatively similar and I don't have any words of wisdom on
24 the FELA.

25 The Jones Act cases, I guess I've been here almost

1 eight years, I've never tried one. I don't know where they
2 are. A lawyer came in, once I tried to have a Longshoreman's
3 Act case and I tried one of those, and he seemed very
4 knowledgeable. I asked him, you know, something about where
5 are the Jones Act cases and he said, you know, there was a
6 depression in the American shipping industry or something
7 like that and in any event they haven't burdened my docket.

8 On the Social Security cases, it doesn't really
9 matter to me if they go here or they go to the court of
10 appeals, but they should go somewhere and there should be an
11 inexpensive way, from what I've seen of the Social Security
12 cases, to correct administrative errors. And it should be --
13 what do they call it in the rules? Speedy -- fair, speedy
14 and inexpensive, is that what we're supposed to do under Rule
15 1. That's a clear case where we ought to apply it to all the
16 cases in my view, but certainly to the Social Security cases.

17 On the RICO, the civil RICO cases, I've only tried
18 one of those through to verdict since I've been here. Most
19 of them -- I guess I've seen more than one and I know sitting
20 in the court of appeals I get the sense that they have a lot
21 of RICO business in the court of appeals and I think the
22 judge-made law now is to cut back on the federalized fraud
23 notion in RICO, whether that's a wise idea or not, I don't
24 know.

25 On the third law clerk, I disagree. I think two's

1 enough and I think -- my own preference is not to overdo the
2 law clerks and, for example, the motions I do myself and I
3 think there's -- two law clerks is enough for me. I don't
4 speak for anyone else.

5 On the question of discovery control that was
6 raised, I think -- well, I have to tell you, it's an area of
7 concern to me and I think it's because of the limitations of
8 my own legal education. You know, they say we are what we
9 were as children and in law school they only taught one case
10 in procedure in my law school which was D'Agardi versus
11 Durning (ph) and it was basically notice pleading and -- now,
12 from what I hear, there's an effort to deal with perceived
13 discovery abuses by getting back to what in my law school was
14 called fact pleading or code pleading or common law pleading
15 and those were dirty words in my law school. The notions
16 varied, but for example, one is that when you file the
17 Complaint within 30 days you provide a list of the people
18 having information and a summary of what they're going to
19 say, a list of the documents and you furnish them, you attach
20 your expert reports and then when the answer is filed, the
21 same thing. And there are lots of variations on the proposal
22 of Judge Schwarzer (ph) who's at the Federal Judicial Center
23 and is very interested in that. And Judge Pointer, a very
24 bright guy, who taught in our new judge school, is very
25 interested in working on it and there's a lot of stuff in the

1 works and it looks like there's going to be something like
2 that to get around the perceived abuses of discovery.

3 I haven't seen that. I get the motions, I rule on
4 them. I try to save the trees as much as possible. I write,
5 you know, a note on the order trying to explain in as few
6 words as I can why I've ruled on a discovery motion. I very
7 rarely write a memorandum. But that's just me and that's --
8 there's certainly another point of view. I'm just giving you
9 my anecdotal experience.

10 On case management, I don't understand really what
11 all the fancy stuff is on case management. To me case
12 management is what they call a credible trial date. And then
13 Sy Kurland settles his case, he doesn't come and bother you.
14 But the rest of it seems to me largely superfluous. For
15 example, I think one of the difficulties of the discovery
16 control devices, getting us back to the fact pleading is --
17 you have to have a procedure to test the sufficiency of the
18 disclosure. Did you disclose the witnesses? Did you
19 disclose the documents? Did you attach the right expert
20 reports? Are they sufficiently complete? So that has to be
21 built into the rule.

22 And of course you have to have a level of sanctions.
23 What happens if you didn't disclose the people the
24 information, disclose the documents, disclose the expert
25 reports, at trial, you know, you're going to be stuck, are

1 you going to be cut some slack, are you going to -- what's
2 going to happen.

3 So the difficulty that I see, among others, with the
4 trend toward what I'll call in a pejorative way fact pleading
5 is it's going to lead to a whole new layer of motion
6 practice, testing the sufficiency of the fact pleading and
7 some dumb lawyer is going to get kicked out of court even
8 though his client has a meritorious case and, you know. And
9 the answer is, well, he should carry insurance.

10 But it gets back to the notion of common law
11 pleading and that whole debate and I must confess the
12 deficiencies of my own legal education and my own bias in
13 that regard. And finally on alternative dispute resolution,
14 my own personal view, it's a complete waste of time.

15 But I'm willing, you know, to participate. We have
16 a program, as you know, for mediators. My own view is that
17 the cases that will go away would go away anyway and that if
18 the judge scheduled a conference they would go away at the
19 conference and if they won't go away, then however skillful,
20 the mediator isn't going to do anything and it's just sort of
21 something that sounds good and is really just going to result
22 in another trip to the courthouse that isn't going to serve a
23 useful purpose.

24 I invite you to ask me whatever you wish and what's
25 really on your mind and I would just say that if I may

1 presume, I would say that the most useful function your group
2 could perform is to find out what's happening.

3 Now, for example, Lou, my beloved brother Lou, told
4 you his anecdotal experience. I told you my anecdotal
5 experience. They're different. And we'd love to have your
6 anecdotal experiences, we'd love to have your views, we'd
7 love to have your pontifications, but if you could find out
8 what's happening on any question that interests you, that
9 would be, in my opinion, the most useful exercise.

10 MR. LANDIS: Thank you very much, Judge Katz. Sy.

11 MR. KURLAND: Judge, I want to discuss with you
12 something that I had -- my office had in relation with you.
13 that doesn't -- that you didn't address in any of your
14 remarks. And that's the problem in disposition of these
15 prisoner civil rights cases.

16 I supervised that program in my office and I think
17 we had two of them that were out of your office and both of
18 them followed the same type of pattern which I think happens
19 in many of the other cases. We get assigned to those cases
20 and fairly quickly in the cases we determine, after talking
21 to the prisoner or finding out what it is, that it's really a
22 piece of junk, but we are counsel for the prisoner. We can't
23 say this is a piece of junk when there's a motion to dismiss
24 filed that we can win because it's not filed well on the
25 other side.

1 And we also then are faced with the responsibility
2 of having to determine whether to make discovery or not or
3 else we're -- because many of these cases result in
4 malpractice cases.

5 We sit with those cases and unless they're closely
6 supervised in our firms, young lawyers who are given the
7 cases and who take it much more seriously and are concerned
8 about malpractice spend many many hours, many -- you know, a
9 lot of time on those cases and a lot of office expense and
10 they're not resolved.

11 What I did in connection with one or two such cases
12 that we had in front of you was to tell the lawyer to order
13 the case down for trial and to ask for a pretrial conference.
14 So that somehow or other we could get at an early stage in
15 front of the judge and the judge could tune in, so to speak,
16 as to what this case is more than just the pleading. Then
17 you make the decision for us that you're not going to permit
18 a lot of discovery, you want this case tried right away or
19 you want a motion filed in front of you or you want a couple
20 hundred dollars put on the table to get rid of it for this
21 guy's complaint about losing the tooth.

22 But when you took control, when we did get in front
23 of you -- and I think I asked them to file a motion for a
24 pretrial conference just to get there -- when you did take
25 control of those cases and you issued the orders minimizing

1 the discovery and issuing the trial date, we then were not
2 faced with the dilemma of having to worry about malpractice
3 suits or worry about fulfilling your responsibility.

4 And both of those cases that I recall, one I think
5 they paid \$200 or another they paid a hundred and fifty, they
6 were not serious cases. And I find that 80 percent of those
7 cases that we have in front of judges like yourself are those
8 kind of cases where if there was a system instituted where
9 you could promptly have pretrial conferences after the
10 assigned lawyer interviews the people and you can in a way
11 find out, okay, tell me what this one is really about. Is
12 there something here or is this just another one of, you
13 know, the same guy back again with another complaint. If it
14 is, let's have the hearing, et cetera. We could save an
15 awful lot of office legal time that's input into those cases.

16 And I agree with you on the -- I think the return to
17 fact pleading which is what a lot of this stuff is really all
18 about and it's really all intended I don't think so much for
19 efficiency as to curb lawyer abuse in the institutional
20 litigation that's not warranted.

21 JUDGE KATZ: The pro se cases are an extremely
22 difficult problem. I try to sort out from the pro se
23 complaint whether to appoint lawyers. It's very very hard to
24 do and I'm not sure I have clear standards. But basically in
25 the case that Sy -- the cases that Sy was talking about --

1 Mr. Allah is the guy's name -- and the cases are now over.
2 Those cases are now over, he has many more.

3 Mr. Allah was a very difficult person and he was
4 really a pain to his jailers. And he had a rather severe and
5 painful medical condition. And as best I could make out, the
6 people were so angry at him, including the doctors, the
7 nurses, the jailers, the guards, that they wouldn't let him
8 get treated for his painful medical condition.

9 Sy's recollection is incorrect in a couple of
10 regards. First of all, I scheduled the pretrial conference.
11 I've never seen a motion for a pretrial conference and I
12 listed the case for trial promptly. And the case was settled
13 for \$7500 and your office did not take a fee which I regret.

14 I don't know what the real merit of the cases was
15 because they were not tried but you did so well for Mr. Allah
16 that I think he has 16 or 17 more and the question is what --
17 he's in a different jail and claims that they're still not
18 taking care of the same painful medical condition and the
19 question is, with the \$7500 that you got him whether he may
20 proceed in forma pauperis, but I will not appoint you to
21 litigate that issue.

22 (Laughter.)

23 JUDGE KATZ: I'm sorry, I apologize.

24 MR. LANDIS: That's okay.

25 MR. LITVIN: Judge, I was --

1 MR. LANDIS: All right, Jerry, sorry.

2 MR. LITVIN: I was pleasantly shocked by so many of
3 the things you said because you and I have had radically
4 different career paths for 40 years and on some --

5 JUDGE KATZ: We grew up in the same neighborhood,
6 however.

7 MR. LITVIN: Well, till age three. But I come out
8 almost where you do on everything and therefore you must be
9 right. But I do want to make one comment and ask a question.
10 I just loved when you said that case management means setting
11 a trial date. I say the same thing in 20 minutes but you
12 said it much better. And I think there's an awful lot there
13 in that statement and I think we, this group, ought to be
14 exploring that. I think that has great value.

15 But I do have this question. You said that you
16 believe that alternative dispute resolution is a waste of
17 time. If by that you mean having judges sitting with lawyers
18 and trying to hammer out settlements and if by that you mean
19 having the judge or someone else mediate, then I agree with
20 you, those cases are going to go away anyway and why waste
21 judges or magistrates or others having lawyers talk to one
22 another. I think it's really counterproductive. But are you
23 including other aspects of ADR when you say it's a waste of
24 time?

25 JUDGE KATZ: Now, let me be clear or at least make

1 an attempt to be clear. What I was referring to specifically
2 was the new program under -- which our court promulgated a
3 rule where lawyers serve as mediators early on and if it's
4 the odd digit or the even digit, you go to a lawyer who's
5 graciously given his time to come to the courthouse and
6 mediate at a very early stage, I think, shortly after the
7 Complaint and Answer are filed, if not I'm mistaken, and
8 that's what I was speaking about.

9 For example, to just contrast it with something
10 else, we have an arbitration program which is superb and you
11 go to three lawyers who arbitrate the case, they render a
12 decision, you take a de novo appeal and you can try it again
13 if you're dissatisfied with the result and that's been
14 marvelous in my experience. But I was referring to the new
15 mediation business. I'm sorry.

16 MR. LANDIS: Andre and then we'll work -- Mike, I'm
17 sorry. Mike I think was up first.

18 MR. CHURCHILL: Just in the quest for more
19 information, I'd be interested in getting a picture of your
20 docket in terms of the amount of time you spend. What amount
21 of time is spent on criminal matters in your view and how
22 much, because the issue's been raised about diversity and the
23 statement has been suggested I guess that a great deal of the
24 filings never find their way in front of the judge because of
25 the arbitration program, what percentage of your time do you

1 think you spend on diversity matters?

2 JUDGE KATZ: The answer is I don't know and I'd love
3 to find out. I really think somebody makes out time sheets.
4 I don't anymore. I gave it up I had such a bad reaction to
5 try to bill 1500 hours of time in those days.

6 (Laughter.)

7 JUDGE KATZ: I just couldn't get back to it, you
8 know. There is somebody who I think makes out timesheets.
9 You know, I could tell you stuff and it wouldn't have any
10 basis in fact. I simply don't know. I'm sorry.

11 MR. CHURCHILL: But you think Judge Pollak's
12 suggestion that he's spending somewhere around two-thirds to
13 three-quarters of his time on criminal matters is not typical
14 for you?

15 JUDGE KATZ: I think -- yes, I think that he's -- I
16 don't spend that much time on criminal cases, I don't think.
17 You know it's a much smaller part of my time, but I couldn't
18 tell you how much. I honestly don't know. I'm sorry.

19 MR. LANDIS: Andre.

20 MR. DENNIS: With respect to the civil cases, the
21 asbestos civil cases on your docket, you said you tried three
22 cases, I believe, and over half of your civil case docket is
23 asbestos cases. How much time do you spend on those cases,
24 those asbestos cases, that you have not tried?

25 JUDGE KATZ: None.

1 MR. LANDIS: Art.

2 MR. RAYNES: Going back to what Jerry said about
3 case management is the best thing to move cases by listing
4 the case for trial, I guess nothing stimulates settlement
5 discussion more than a firm trial date other than a big
6 verdict. Sometimes if there's a big verdict that stimulates
7 settlement discussions too.

8 There has been some talk about having the early
9 settlement negotiations with the judge and there's talk
10 around that for a judge trying to hammer out a settlement may
11 not be -- as Jerry says, may be counterproductive. However,
12 do you find that when you have -- when you are the trial
13 judge and you do have a trial date and then you get the
14 parties together, that those meetings then are productive?

15 JUDGE KATZ: Yes.

16 MR. LANDIS: Dan.

17 MR. RYAN: Judge, if you were to take all of your
18 activities, judicial activities, and put them on a scale of
19 one to ten from the most effective use of your time down to
20 the least effective or the wasting of your time, what would
21 be down at the bottom?

22 JUDGE KATZ: Boy, that's a good question.

23 MR. LITVIN: Don't say the lunches with the other
24 judges.

25 MR. LANDIS: Yeah, and admission against interest.

1 (Laughter.)

2 JUDGE KATZ: Well, the most effective I think where
3 the taxpayers get the most out of it is to be in court and
4 try cases, civil, criminal, whatever. I think that's the
5 most effective.

6 And I guess the least effective, I don't know. You
7 know, there was -- Judge Seitz wrote an opinion recently in
8 the court of appeals, I forget the case, but he called --
9 what is it, motions under 12B6, those motions to dismiss.
10 What did he call it? A relic of common law and code
11 pleadings. So, you know, you have to pile on papers and all
12 of that stuff and go through all of that with a 12B6 motion
13 and I read them. I mean myself. I don't like to use law
14 clerks for that because they're too busy. But that's not, in
15 my view, an effective use of a judge's time, to try to I
16 guess -- I don't know what the notion is. I always think
17 it's like to educate me early on about how strong the case or
18 how weak the case or something like that.

19 MR. LANDIS: John.

20 MR. SHELLENBERGER: According to the Red Book, you
21 use a trial pool, you don't assign cases for dates certain,
22 is that your practice?

23 JUDGE KATZ: Oh, it's a fiction. Yes, I do use a
24 trial pool but actually all of my cases are assigned for a
25 date certain. It's a fiction.

1 MR. SHELLENBERGER: At what point are they assigned
2 to date certain?

3 JUDGE KATZ: When they get in the trial pool.

4 MR. SHELLENBERGER: I guess maybe I can follow up on
5 that because one of the --

6 JUDGE KATZ: Yes, sure. Go ahead.

7 MR. SHELLENBERGER: -- criteria, one of our
8 principles is for early assignment -- early establishment of
9 trial dates and in light of your comment that establishment
10 of the trial date helps the case settle, would it be feasible
11 to assign a fixed trial date certain at an earlier stage in
12 the case?

13 JUDGE KATZ: I don't think so because there's always
14 a problem about, you know, the discovery and so on and then,
15 you know, people may need more time or this, that and the
16 other thing and it's hard to know very early on just when the
17 case will be in a trial posture. I adjust it and then when
18 it does get into a trial posture, it goes into a trial pool
19 and then at that point every case has a date certain. I
20 don't use the local rule to assign a case on a 48 hours
21 notice or is it 24 hours notice, something like that. It's
22 just a fiction.

23 MR. LANDIS: Thank you very much, Judge Katz. We
24 appreciate your coming here and giving us your views and we'd
25 be delighted to have you stay while Judge Kelly presents it,

1 but...

2 JUDGE KATZ: I've got some of my --

3 MR. LANDIS: I saw you get a signal at the doorway a
4 little while ago, so...

5 JUDGE KATZ: -- lawyers in my courtroom, so forgive
6 me.

7 MR. LANDIS: All right. Thank you very much, Judge
8 Katz.

9 JUDGE KATZ: Please ask me anything later. I'll be
10 willing to come back.

11 MR. LANDIS: Okay. Great.

12 All right. Judge Kelly, you're one of our group, so
13 that you're going to be around here any time, so that you
14 will be under continual examination. But why don't you...

15 JUDGE KELLY: I came with a couple of ideas and I
16 have to start my case at 11:00 o'clock today.

17 MR. LANDIS: Okay.

18 JUDGE KELLY: And I'm trying a defendant who's 84
19 years of age. So I figure I'd better not be late.

20 (Laughter.)

21 JUDGE KELLY: As a matter of fact, if we weren't so
22 prompt at trying those cases, I think maybe some other law
23 would take care of it.

24 Just as I sit here, I didn't plan to mention a
25 couple of things but the other judges did, so I should

1 probably tell you where I stand.

2 FELA cases. I came here -- I was sworn in July 17th
3 of 1987. I tried one FELA case, went back to the chambers,
4 said to the secretary, we're going to put those charge forms
5 in our computer. So we loaded the computer up with FELA
6 charges and we haven't used them since. They just aren't a
7 problem.

8 The Jones Act cases I have no problem with.
9 Asbestos cases, I have never tried an asbestos case. I
10 presided -- well, I didn't want to. The lawyers were picking
11 a jury and I try not to go into the courtroom when they're
12 picking civil juries, but it took them all morning and I went
13 up to find out what was going on and to that extent I got
14 involved in it and then they finally settled. But those were
15 unusual lawyers.

16 I don't think about asbestos cases. I want to know
17 how many non-asbestos cases I have. That's what I'm
18 interested in. My impression of asbestos cases is if you
19 want to try some, I'm ready, but if all the judges were ready
20 to start trying asbestos cases, my impression is that they're
21 not spread out among enough people in the Bar. I think the
22 same firms would be involved in most of those cases. So they
23 just are not -- thanks to Judge Weiner, they're just not a
24 part of my concern.

25 Civil RICO cases. I've had to try many of them and

1 they are a problem, mainly because the issues just aren't
2 developed by the time trial comes around. And I now have a
3 three-page questionnaire that I send out as discovery is
4 about to start telling the attorney for the plaintiff that
5 these are the things I want you to be able to answer by the
6 time discovery is over because I find that just people's
7 ideas of what constitutes civil RICO are so diverse and it's,
8 you know, understanding. I think civil RICO is being
9 interpreted more narrowly than criminal RICO which is the
10 reverse of what it should be. But I would love to see those
11 cases go away.

12 Getting to some of my comments. As far as support
13 personnel, with the increase of the use of electronic
14 material, the docket clerks, people like that, have to become
15 -- that has to be a more permanent position rather than just
16 an entry level position. So that we have to compensate those
17 people because they have to make judgments as to what they
18 put in the computer. The courtroom deputy, our system just
19 doesn't work without a really effective courtroom deputy.
20 That's the person listed in the Legal Intelligencer or under
21 our name and I guess that might be the best way to start out
22 to tell you.

23 I think one of the points that I'd like to make here
24 is this. I think the best thing that ever happened to the
25 federal system is the individual calendar. I think it's the

1 best system that anybody has devised yet for a large court
2 because it isolates a workload on a specific judge. You put
3 them together and then you look at it periodically to see
4 who's winning and then it gives that judge a certain amount
5 of satisfaction in his own accomplishments, it lets lawyers
6 know that there is a judge who has control over their case.
7 And I say that not because anybody is thinking of doing away
8 with that, but I say it because I think that there is a
9 process that we're undertaking that has that effect. And
10 that's why when Judge Pollak touched on it in one of the
11 questions that was asked of him, do you think that we should
12 have more magistrates, and he felt maybe it would be helpful.
13 He asked me and I didn't.

14 And this is the reason. The idea of assigning a
15 workload to a particular judge and then seeing what he does
16 with it over a period of time, or she does, and the idea that
17 that judge can lay off his workload on to some other judicial
18 officer just doesn't make sense. In other words, assigning
19 habeas corpuses to that person, assigning trials to that
20 person, assigning your Social Security cases to that person,
21 assigning all the discovery to that person, I think that that
22 is what you should look into. This isn't a question of
23 whether the magistrates -- you know, a lot of the magistrates
24 do a better job than I'll ever do with them, I'm sure, but
25 that's not the issue. The issue is in doing that aren't we

1 in effect diluting the individual calendar system that I
2 thought was so effective in any event. That's the first
3 effect of that.

4 I think the second is that the -- in discovery where
5 the practice of some judges is to give the magistrate that is
6 assigned to them the decision to do their discovery. I know
7 the perception here among judges that I've talked to, older
8 judges that have been to other -- have experience with other
9 court systems, is that that extends the amount of time that a
10 case takes to get to trial in a very considerable fashion.

11 So I think it would be interesting perhaps for this
12 group to maybe individually poll the judges within our court
13 to ask them, if we just designed a questionnaire, you know,
14 would you please indicate which of the following matters you
15 automatically assign to magistrates, which of these do you
16 sometimes assign to magistrates and things of that nature.
17 And to find out, and maybe you could then look and compare
18 the practice with the statistics to see is it helping the
19 judge or is it delaying his trial.

20 If you had time, maybe we could -- I don't know
21 whether we're allowed to or not, just poll another district
22 where that is -- for example, giving discovery to the
23 magistrates to handle is the practice for the whole district.
24 What effect does that have on litigation in that district?
25 And I think New Jersey is one of those areas. I think that

1 would be enlightening. I don't know whether we have time to
2 do that, as I say.

3 So if someone asked me, would you add more
4 magistrates? No, I would make Jim Melinson a district court
5 judge. I wouldn't add magistrates. That's the way I would
6 handle it because, you know, I think they have to decide what
7 does a magistrate do and what does a district court judge do.
8 Should they do away with magistrates entirely and have only
9 district court judges or -- I don't even know how this all
10 started. Maybe Leo might be able to tell us. But when the
11 practice of assigning things to magistrates -- when did it
12 start? Was it because magistrates were very able people who
13 were sitting there with not enough interesting things to do?
14 And they get into discovery, you know, and other things, and
15 they're very interesting and...

16 But I think there's a real blurring of those
17 functions and I think that's something that we should look
18 into, because, one, I think it adds time to the litigation
19 and, two, it undermines, as far as I know, the individual
20 calendar system because it allows a judge to turn over part
21 of her work or his workload to someone else.

22 The other thought I had, and this really would --
23 the notion of assigning some judges to criminal, to hear
24 criminal cases only. It wouldn't work around here. I think
25 for one thing the United States Attorney, Mike Baylson, I

1 guess left, but I think he -- they wouldn't have enough --
2 they need more courtrooms. I think their people would be
3 backed up if there were a limited number of judges available
4 for them to go to. I don't think that would work and I want
5 to make it clear that is not what I'm talking in this
6 suggestion, but I would like just to see maybe the
7 possibility of, in large courts, experimenting with
8 specialization of trial judges in certain fields and not
9 officially, I'm not talking about making another tax court or
10 anything like that, but having judges within a large court
11 system who specialize in handling, say, class action security
12 cases, things of that nature. When I finish one of those
13 cases, I have the feeling -- and I just finished one
14 yesterday so it's fresh in my mind -- I've put it out of my
15 mind. Most of the things I learned in that process I won't
16 even deal with again until the next one comes in.

17 I just think it would be interesting to have a trial
18 judge or trial judges who maybe would volunteer on a certain
19 basis to do that just to see what the effect of having a
20 judge who was as expert in that as the lawyers who appear
21 because the lawyers who do appear in those cases, in my
22 experience, have been really very much experts in the field.
23 I think it would help other judges on the bench having
24 someone who was an expert in a particular field and then that
25 judge would be in a position to make suggestions. He would

1 get or she would get to know a lot about it and then perhaps
2 be in a position to make suggestions for how to handle cases
3 like that. You know, even perhaps a senior judge would be in
4 a position to volunteer to try something like that in
5 difficult cases.

6 I know that judges don't want to hear that. They
7 don't want to hear that -- we're like lawyers, we don't want
8 to hear that we can't do anything or do it all well, but it's
9 purely an experiment or maybe a pilot project that we could
10 look into.

11 When I heard the discussion about limiting civil
12 jurisdiction, and it just struck me that if we want to limit
13 our civil jurisdiction, it's going to take Congress to act,
14 but we increase our criminal jurisdiction -- Mike Baylson can
15 increase our criminal jurisdiction just by indicting
16 different types of crimes. The last six weeks, I would say,
17 I've tried three felons caught with firearms. One of them is
18 waiting to be tried for murder in City Hall. So anyway, my
19 point is it might be difficult to limit jurisdiction on the
20 civil side but it's not very difficult to increase the number
21 of criminal cases that we're going to be taking.

22 One thing I do as far as trying to get a case moving
23 along, I send out a letter as soon as the case is assigned to
24 me telling the attorney for the plaintiff that it has been
25 assigned and I ask him to promptly obtain service upon the

1 defendant and advise my chambers when service has been made
2 so that I may issue an appropriate pretrial scheduling order.
3 In the event that you're not able to obtain service upon the
4 defendant within 30 days of the filing of the Complaint, I
5 ask that you advise me in writing as to the efforts that
6 you've made to obtain service during the period.

7 I've only been doing that for less than two months,
8 but it has really had an effect and I think that the time
9 within which to serve a Complaint could be restricted a lot
10 more than it is now and in the difficult case they can
11 certainly come in and get extension, request an extension of
12 the judge.

13 I think that, and I don't know how much this group
14 would have concern with it, but I think that we should use or
15 attempt to use all of the modern electronic facilities that
16 are developed to see if they can help the court system. I'm
17 presently involved in the experiment using a video camera as
18 a transcript -- as the official court record and we have just
19 started that. Things like that have a way of developing a
20 lot of offshoot benefits that nobody ever anticipated and so,
21 you know, there's no end to it.

22 I just noticed yesterday as the jury was being
23 picked the camera picking up counsel sitting at counsel table
24 conferring with the client during every stage, you know, as
25 to every strike. Of course you can't hear it, but at least

1 if any issue ever came up as to, well, I wasn't part of that
2 process, it's right there. In civil cases, plaintiff in a
3 retrial, most of that expense is borne by a plaintiff who has
4 to bring in an expert again for the second time, the
5 possibility of just using the video of the witness who has
6 testified the first time and save the plaintiff a lot of
7 money or the defendant. But I think it's usually plaintiffs
8 who have the problem with that.

9 So I think they should be encouraged to try those
10 things. We don't know how well it's going to work. But it's
11 really foolish of us not to at least try them and give them a
12 chance.

13 I think that's about all I had. I'd be happy to
14 answer any questions.

15 MR. LANDIS: Are there any questions of Judge Kelly,
16 bearing in mind that he will be with us at our other meetings
17 and we are pressing on? Alice.

18 MS. BALLARD: I was interested in your reaction to
19 Judge Pollak's view that the mandatory minimum sentences have
20 increased the number of criminal trials. Do you think that's
21 true in your case?

22 JUDGE KELLY: I could see it in a couple of cases,
23 yes, but I don't think it's had a great impact overall. It
24 delays our sentencing because of the length of time to do a
25 presentence report now, but I think what the United States

1 Attorney would probably tell you -- I think it has a way of
2 having, in these large defendant cases, sort of a race to get
3 to his office first so that you can cooperate and get them to
4 make a recommendation to depart downward. I really can't
5 say. I don't really think it's had an effect. I was
6 accustomed to using it in the state court and when everybody
7 -- you know, there were a lot of misgivings about it -- or
8 here. But I don't think -- I don't really think it's had
9 that much effect.

10 There was something else that I was going to say
11 when -- I lost it. Go ahead.

12 MR. LANDIS: Any other questions or comments? John.

13 JUDGE KELLY: Yes.

14 MR. SHELLENBERGER: What do you think is a
15 reasonable time for a standard civil case to go to trial?

16 JUDGE KELLY: I think a year. I don't disagree with
17 Judge Pollak on that. We've tried them in less time and the
18 lawyers always seem to be so surprised that they comment on
19 it to the jury when they're making their opening statement
20 about it. I think that's rather prompt.

21 Did somebody ask? Yes. Oh, I'm sorry.

22 MR. CHURCHILL: Just what percentage of your time is
23 now spent on criminal matters?

24 JUDGE KELLY: I would think maybe 25 percent. Judge
25 Katz mentioned statistics that he thought were available as

1 to what -- I remember when I was in the state court looking
2 at statistics for the federal court and I remember thinking,
3 gee, I think I tried as many state court criminal cases as
4 the whole Eastern District. I was --

5 MR. KUNZ: You were correct.

6 JUDGE KELLY: -- charged as a criminal -- what?

7 MR. KUNZ: You were correct.

8 JUDGE KELLY: But those statistics are available.
9 And then when I got here, you know, I realized that -- the
10 first year there were not many criminal trials. Then some of
11 the big drug cases came in.

12 Incidentally, just on the drug cases, talking about
13 electronic things in the courtroom that spin off, we have in
14 our courtroom the system that allows the jurors to just plug
15 their earphones in to an outlet in the jury box to hear tape
16 recordings and of evidence that is presented at trial. We
17 had a trial that involved I think nine defendants that none
18 of them spoke English. It would have required a number of
19 interpreters sitting between all of them mumbling during
20 trial. We were able to just plug the interpreters into a
21 microphone that went to the earphones of the nine defendants
22 and really able to use one interpreter in the courtroom
23 rather than many. And it limited that constant din that you
24 get in a courtroom when you have the interpreter.

25 And that's just one of the offshoots of these things

1 that you just don't even imagine, nobody even thought about
2 it when it was first put in. So I really encourage the use
3 of it because I think that pilot money is nothing compared to
4 the... Yes?

5 MS. KLOTHEN: I just wanted to narrow Mike's
6 question a little bit. I think Judge Pollak said that he
7 spends perhaps up to two-thirds of his court time on criminal
8 cases. Can you tell us about what percentage of your court
9 time is spent on criminal cases?

10 JUDGE KELLY: That's what I --

11 MS. KLOTHEN: Okay. That's what you were
12 addressing? Okay.

13 JUDGE KELLY: Yeah. Because I really -- we're not
14 required -- there's not too much in the way of pretrial
15 problems in that.

16 MS. KLOTHEN: Mm-hmm. And the pretrial work on the
17 criminal cases is assigned to magistrates or do you do that
18 yourself?

19 JUDGE KELLY: I do it myself, yeah.

20 MR. LANDIS: Thank you very much, Judge Kelly. We
21 have a couple of fairly important housekeeping matters and
22 one of them is far from housekeeping. It's a more
23 substantive matter.

24 We do have meetings scheduled on May 7th and May
25 23rd. One of those, and I can't remember which one, was

1 originally set for the Bar Association. We've encountered
2 some housing problems there so that meeting, whichever one it
3 was -- or putting it more directly, the rest of our meetings
4 will be in the ceremonial courtroom unless we're shut out for
5 other reasons and then we'll have it here.

6 We also should look ahead to other meeting dates and
7 if we keep to the schedule that we've so far kept to, which
8 at least for now seems to be a fairly -- give us fairly
9 reasonable intervals, the next successive dates would be June
10 6th and the date after that would be June 20th.

11 May I have a show of hands on the availability of
12 each of you here on June 6th?

13 Yes.

14 MR. LITVIN: Yeses or noes?

15 MR. LANDIS: I mean unavailable. Sorry. The ones
16 who can't make June 6th. There's two, three.

17 MR. LITVIN: Bob, I'm starting a trial out of town
18 on June 3rd that's going to take about two weeks, so --

19 MR. LANDIS: Okay. Well, then that --

20 MR. LITVIN: It's not that date, it's those two
21 weeks.

22 MR. LANDIS: Okay. All right. So there are two who
23 can't make that.

24 How about June 20th? One. Well, then, I think with
25 respect to those who can't make those dates, I think since

1 the substantial majority can, we'll go then with June 6th,
2 9:00 o'clock in the courthouse here and June 20th, also 9:00
3 o'clock, holding to our two-hour adjournment time.

4 Each of you has received the letter that was the
5 joint product of Leo Levin and me to generate the expertise
6 that we have around this table, because we were all selected
7 based on the requirements of the statute to get significant
8 representation of the whole gamut of litigants and interests
9 in the Eastern District and now is the time for us to draw on
10 our own resources beyond listening to other experts and other
11 people who come before us.

12 And so, what we've suggested is that each of us sit
13 down, think through the elements of the report that we need
14 to address and in a fairly -- I won't hold to the two-page
15 limit that my good colleague has suggested is desirable.
16 Take any amount of space that you want to take but give us
17 your thoughts on your own views of what we need to address
18 and also other sources, other resources, other individuals,
19 other groups of individuals whom we should take into account
20 as we go forward with the fact-finding thing. And it would
21 be very helpful if you could focus on that. I'm sure that a
22 lot of you have been thinking about these things ever since
23 you got the word from Chief Judge Bechtel that you're going
24 to be involved in this.

25 So that I do hope that this can be done in time for

1 exchange of these documents before our next meeting. That's
2 the kind of deadline that everybody sitting around this table
3 is accustomed to dealing with every day anyway.

4 Any questions about that, Dan?

5 MR. RYAN: Yeah, Bob. I think in view of the
6 deadlines that we have, it might not be a bad idea for you or
7 Leo to write to and elicit views from some of the more
8 obvious sources, such as the American College and I jotted
9 down ten different groups, all of whom are aware of the
10 committees --

11 MR. LANDIS: Yeah.

12 MR. RYAN: -- around the country and I've gotten a
13 couple of letters --

14 MR. LANDIS: Right.

15 MR. RYAN: -- and so forth and they only have until
16 August, I guess, to --

17 MR. LANDIS: Yeah, August is our deadline. That's
18 right.

19 MR. RYAN: Yeah, so wouldn't it be appropriate to at
20 least go after the more obvious ones --

21 MR. LANDIS: Okay.

22 MR. RYAN: -- and then they can't say they didn't
23 have any input --

24 MR. LANDIS: Right.

25 MR. RYAN: -- as a minimum, and maybe they'll have

1 some good ideas.

2 MR. LANDIS: Good idea. Andre.

3 UNIDENTIFIED SPEAKER: Maybe it would make sense.
4 Could you send me your list and then maybe the two of us can
5 work to put some of those --

6 MR. LANDIS: Yeah.

7 UNIDENTIFIED SPEAKER: -- on the agenda for each of
8 our next --

9 MR. LANDIS: Andre.

10 MR. DENNIS: Picking up on that comment, I was
11 wondering whether it made sense to ask the same of our judges
12 here. We're not going to be able to have everyone in, but we
13 want to have input from each.

14 MR. LANDIS: Well, I should add this, that already a
15 letter has gone out along these lines to the whole court,
16 that is, all the senior judges, all the active judges, so
17 that every judge has received such a letter and has been
18 asked to consider giving us the information that they want
19 and giving them the option of either presenting it in writing
20 or coming to join us at meetings or having a member of the
21 committee call on them to discuss this in chambers with the
22 request that we be permitted to record the discussions. So
23 that those individual discussions can be made generally
24 available to everyone.

25 That has gone forward to the court. It went out on

1 Friday. It was hand delivered to all the judges and with a
2 request that they call in and let us know what their
3 preference is.

4 If it turns out that we're faced with a large number
5 of judges who wish to come into a meeting such as this, then
6 we may need to deal with them in panels and groups, but so
7 far, that's been done and we'll be eliciting -- getting their
8 responses I think very quickly.

9 MR. LEVIN: Just as a matter of inquiry, has this
10 group gotten a copy of the letter that went out to the
11 judges?

12 COUNSEL SPEAKING AT ONCE: Yes.

13 UNIDENTIFIED SPEAKER: Yes, it was distributed with
14 Bob Landis' letter of the 19th.

15 MR. LEVIN: Fine.

16 MR. LANDIS: Okay.

17 MR. LEVIN: Yeah. And also -- that's all right,
18 because there -- I also got a copy of the very draft outline
19 and although I don't see the time to discuss it today, I do
20 suggest if any of you have any ideas at all, at the moment
21 that outline really tracks the statute and the statute almost
22 has what commas we have to put in the final report. Please
23 give me a buzz, I'd be grateful for advance notice and then
24 I'm sure from what Bob has told me we'll have time to discuss
25 it as our work proceeds.

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MR. LANDIS: All right. Any other comments or observations for the good and welfare of the project and the organization?

And hearing none, we're adjourned.

(Proceedings adjourned at 11:00 o'clock a.m.)

* * *

CERTIFICATION

1 I hereby certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 Geraldine C. Laws
6

4/30/91

7 Geraldine C. Laws
8 Laws Transcription Service

Date

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10 Elizabeth Power
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12 Elizabeth Power
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