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December 28, 1992

Mr. Mark Shapiro  
Federal Judicial Center  
1 Columbus Circle, NE  
Washington, D.C. 20544

Dear Mr. Shapiro:

Per your request, I am enclosing an unbound copy of the Civil Justice Reform Act Report for the Middle District of Pennsylvania.

Please call me at (717)347-0205 if you have any questions.

Sincerely,



Todd M. Stickle,  
CJRA Management Analyst

Enclosure

Report of the Advisory Group of  
the United States District Court  
for the Middle District of Pennsylvania  
Appointed Under the  
Civil Justice Reform Act of 1990



*December 1, 1992*

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of the United States District Court  
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Civil Justice Reform Act of 1990*

*December 1, 1992*



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PAUL W. BRANN  
TERRY W. LIGHT

November 16, 1992

The Honorable Sylvia H. Rambo  
Chief Judge  
United States District Court  
Middle District of Pennsylvania  
P.O. Box 868  
Harrisburg, PA 17108

Re: Report of the Civil Justice Reform Act Advisory Group

Dear Judge Rambo:

The Advisory Group constituted by your predecessor, Judge Conaboy, under a mandate from Congress, was assigned one of life's more difficult tasks -- to examine and suggest remedies for a system that was exhibiting few, if any, symptoms. In all candor, and without trying to be obsequious, I believe I echo the sentiments of the Group when I say that, if all District Courts enjoyed the quality of judging and case management that prevails in the Middle District of Pennsylvania, we would not have had a Civil Justice Reform Act.

Recently, I have been immersed in learning a new computer software program, whose capabilities astound me. It will take me years to fully appreciate and extract all its benefits. Yet, in about six to nine months, its developer will issue an upgraded version. It occurs to me that the work of this Advisory Group Report has much in common with that upgrade process. We have prepared the Report not to highlight deficiencies, but rather to suggest modest improvements, which might make an outstanding system slightly better.

We do not consider this Report the completion of our work. As you will see, in some areas, it contains suggestions without elaborate detail. The Group felt that, in those situations, it should await the Court's decision before investing the necessary time and effort to implement the procedures.

The Honorable Sylvia H. Rambo  
November 16, 1992  
Page Two

This Advisory Group did itself struggle with one problem, which we are sure affects the Court but which, literally, comes with the territory -- the logistical and administrative hurdles associated with a large geographical District. I cannot emphasize enough how much the Group relied upon and benefited from the efforts of Lance Wilson and his staff to coordinate our work and turn out the documentation you see in this Report. Similarly, while my name appears at the bottom of this letter, I hope that all the Judges will take a moment to study the list of Advisory Group members. They have given unselfishly to this project their time, skill, and diligence.

We respectfully present the 1992 Report of the Civil Justice Reform Act Advisory Group for the United States District Court for the Middle District of Pennsylvania.

Very truly yours,

BRANN & LIGHT, P.C.

A handwritten signature in dark ink, appearing to read "Terry W. Light". The signature is written in a cursive style with a large, looped "L" at the end.

Terry W. Light

TWL/cgs

*Civil Justice Reform Act  
Advisory Group  
of the United States District Court  
for the Middle District of Pennsylvania*

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R. Todd Hogan, Esq., Vice Chairman*

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*Honorable William J. Nealon*

*Honorable Richard P. Conaboy*

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# *EXECUTIVE SUMMARY*

U.S. MIDDLE DISTRICT COURT  
OF PENNSYLVANIA  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
REPORT: EXECUTIVE SUMMARY

The following executive summary provides an overview of the findings and recommendations of the Civil Justice Reform Act Advisory Group for the Middle District of Pennsylvania. The executive summary is divided into three sections: general methodology, findings, and recommendations.

**GENERAL METHODOLOGY:** The Advisory Group used several methods to comply with the legislative requirements of the Civil Justice Reform Act. At the initial meeting of the Advisory Group, the Chairman appointed three subcommittees: status of the docket, cost and delay, and legislative impact. In addition to nine full Advisory Group meetings, the subcommittees met regularly in person and by telephone.

The docket assessment examined the demands placed on the Court's resources, analyzing current caseloads, past trends, future caseloads, and workload measures. The study of excessive cost and delay examined court procedures and the way in which litigants and their attorneys approach and conduct litigation. Specifically, the Advisory Group reviewed the analysis of the docket, conducted a survey to attorneys and clients, studied each Judge's case management practices, and examined the local rules of practice. The impact of legislation subcommittee studied the intent of judicial impact statements prepared by the Administrative Office of the United States Courts, reviewed specific proposed legislation, and interviewed each of the Judges, with an emphasis on the impact of new legislation and possible sources of excessive cost and delay. The Report includes these various methods of analysis.

The Advisory Group recognizes that a few of the recommendations detailed in the report may need additional research should the Court elect to adopt the recommendations.

The Advisory Group stands willing to assist the Court in the implementation of any of the recommendations at the Court's request.

**FINDINGS:** The Advisory Group is pleased to report that, as initially suspected, the Middle District of Pennsylvania is operating in an efficient and effective manner. The review of the docket found that there is currently no significant delay and that the 1991 median time from filing to disposition for civil cases was six months with the average life expectancy of a case equaling nine months. The review of each individual Judge's caseload and disposition times indicated that all Judges are moving cases in a timely manner. The surveys to attorneys and litigants also confirmed that delay is not a problem in the Middle District of Pennsylvania. The Advisory Group attributes this efficiency in court operations to the dedication and diligence of the Judges, the case management requirements of the local rules of practice, and the workload carried by the Senior Judges. Lastly, the legislative subcommittee found that there exists a trend in Congress to create laws that limit judicial discretion and increase caseloads. The Advisory Group is concerned with this trend and the future impact it will have on the Court and its resources.

**RECOMMENDATIONS:** The Advisory Group concluded that significant changes to the current practices in the Middle District are not required. The recommendations are offered to "fine-tune" an already efficient system.

**RECOMMENDATION #1**  
**Systematic, Differential Treatment of Cases**

The Advisory Group recommends a common practice that when a case is filed the Judge issues a scheduling order shortly after the Answer, which includes differential treatment of the case based on the casetype and its facts. The Court should also consider adopting a "fast-track" for cases where at the time of filing or the scheduling/case management conference it appears that the case can be resolved in a manner more timely than the norm.

RECOMMENDATION #2

**Early and Ongoing Judicial Control of the Pretrial Process Including: Case Planning, Early and Firm Trial Dates, Control of Discovery, and Deadlines for Motions**

The scheduling practice proposed in Recommendation #1 calls for common elements of early and ongoing judicial control to take place at the Judge's discretion. Local Rule 408.4 currently requires the issuance of a scheduling order 120 days from the filing of the complaint. The Advisory Group feels that the 120-day standard should be a minimum.

RECOMMENDATION #3

**Authorization to Refer Appropriate Cases to Alternative Dispute Resolution**

The Advisory Group recommends that the Court adopt an array of alternatives to trial which may include arbitration, mediation, and summary jury trials.

RECOMMENDATION #4

**A Neutral Evaluation Program for Presentation of the Legal and Factual Basis of a Case to a Neutral Court Representative at an Early Non-Binding Conference**

In addition to a status conference, the Court may order the parties or the parties may elect to participate in an established early non-binding neutral evaluation of the case with a Magistrate Judge to facilitate settlement.

RECOMMENDATION #5

**Encouragement of Voluntary Exchange of Information Among Litigants and Other Cooperative Discovery Devices**

The Advisory Group recommends the Court await the outcome on the adoption of proposed Federal Rule 26 which is intended to accelerate the exchange of basic information about the case and eliminate paper work involved when requesting discovery material.<sup>1</sup>

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1. Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure and the Rules of Evidence, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, August 1991., p.26.

RECOMMENDATION #6

**Require Each Party to be Represented at Each Pretrial Conference Including Settlement Conferences by an Attorney with Authority to Bind that Party to all Matters Previously Identified by the Court for Discussion at the Conference**

The Advisory Group recommends the Court adopt this practice by local rule.

RECOMMENDATION #7

**Prohibition of Discovery Motions Unless Accompanied by Certification by the Moving Party that a Good Faith Effort was Made to Resolve Issues with Opposing Counsel**

The Advisory Group recommends the Court modify local rule 402.6 to require the certificate of a good faith effort to be filed at the time of the motion.

RECOMMENDATION #8

**Require Counsel for each party to Confirm a Joint Discovery/Case Management Plan at the Scheduling/Case Management Conference**

A discovery/case management plan is proposed as part of the common scheduling order in Recommendation #1. Specifically, the proposal is that the Court propose a plan to counsel and counsel respond jointly at the scheduling conference.

RECOMMENDATION #9

**Scheduling/Case Management Conference(s), at which the Judicial Officer Explores the Possibility of Settlement; Identifies the Principal Issues in Contention; Provides, if Appropriate, for Staged Resolution of the Case; Prepares a Discovery Plan and Schedule; and Sets Deadlines for Motions**

The Advisory Group recommends development of a discovery schedule during the scheduling conference discussed in Recommendation #1. The scheduling/case management conference should be held in person with due consideration being given to a request for a telephone conference.



RECOMMENDATION'S #10 to #16

**Such Other Features as the District Court Considers Appropriate after Considering the Recommendations of the Advisory Group**

RECOMMENDATION #10

The Advisory Group recommends the Court consider adopting a Code of Conduct for the District to improve lawyer collegiality and civility. If implementation of such a code is agreed to by the Court, the Advisory Group stands ready to assist the Court in anyway the Court deems appropriate.

RECOMMENDATION #11

The Advisory Group recommends the Court review the duties of the Magistrate Judges with the goal of expanding their role, specifically presiding over civil trials, overseeing or participating in a District ADR program, and grand jury returns.

RECOMMENDATION #12

The Advisory Group recommends that the Court encourage Congress and the Executive Branch to fill vacant judgeships in a timely manner.

RECOMMENDATION #13

The Advisory Group notes the necessity for Congress to recognize and acknowledge the impact which legislation has on judicial discretion and on cost and delay separate and apart from the efficacy of the courts.

RECOMMENDATION #14

The Advisory Group recommends the Court disseminate to the Bar or public basic case processing information. The education could be in the form of a pamphlet flow-charting the life of a typical case in District Court.

RECOMMENDATION #15

The Advisory Group recommends the District enhance collegiality and civility by establishing local training programs that facilitate bench-bar interaction through seminars.

RECOMMENDATION #16

The Advisory Group recommends the Court re-examine local rule 901.4 to require that temporary restraining orders filed by prisoners with counsel be assigned in all instances to a Judge rather than a Magistrate Judge.

NOT  
ADOPTED

## *PART I: An Overview*

U.S. MIDDLE DISTRICT COURT  
OF PENNSYLVANIA  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
REPORT: PART I

OVERVIEW

The Middle District of Pennsylvania serves a population of over 2.7 million and encompasses approximately 20,400 square miles within thirty-two separate counties. The District has experienced a slight increase in population of approximately four percent since 1980. The map at the end of this section shows the geographic boundaries of the Middle District.

Scranton is the location of the main office, with divisional offices located in Williamsport and Harrisburg.

DISTRICT JUDGES & MAGISTRATE JUDGES

There are presently four active Judges and three active senior Judges presiding in the District, located in the following offices:

<u>DISTRICT JUDGE</u>	<u>LOCATION</u>
Edwin M. Kosik, Judge	Scranton
William J. Nealon, Senior Judge	Scranton
Richard P. Conaboy, Senior Judge	Scranton
Sylvia H. Rambo, Chief Judge	Harrisburg
William W. Caldwell, Judge	Harrisburg
James F. McClure, Judge	Williamsport
Malcolm Muir, Senior Judge	Williamsport

There are three full-time Magistrate Judges and two part-time Magistrate positions in the District, located in the following offices:

<u>FULL TIME MAGISTRATE JUDGES</u>	<u>LOCATION</u>
Raymond J. Durkin, Magistrate Judge	Wilkes-Barre
J. Andrew Smyser, Magistrate Judge	Harrisburg
Thomas P. Blewitt, Magistrate Judge	Scranton

<u>PART TIME MAGISTRATE JUDGE</u>	<u>LOCATION</u>
William H. Askey, Magistrate Judge	Williamsport
Paul Kramer, Jr, Magistrate Judge	Stroudsburg

### JUDICIAL VACANCIES

The signing of the Civil Justice Reform Act of 1990 by President Bush on November 30, 1990 authorized a sixth District Judge for the Middle District. While authorization for the judgeship came over one year ago, the position remains vacant while the candidate awaits official nomination by the President and confirmation by the Senate. The Judge will be located in the divisional office in Harrisburg once confirmed by the Senate.

The Court is also operating with a second vacancy in that Judge Conaboy took senior Judge status in September 1992. The speed at which these vacancies are filled will certainly impact the Court's ability to stay current with its docket.

### CIVIL CASE ASSIGNMENT PRACTICES

Case assignments in the Middle District of Pennsylvania are primarily by rotation according to case type. In that the Court is currently experimenting with an automated random assignment system, the method of case assignment detailed below is subject to change. Five categories comprise the rotation; 1) Location Cases, 2) Prisoner Cases, 3) Emergency Cases, 4) Loan Cases, and 5) Health and Human Services Cases.

**Location Cases** - Location cases consist of all original civil cases that do not fall into the other four categories. The assignment of location cases is a two step process. The first criterion is the county location of the civil action:

Harrisburg: Adams, Cumberland, Dauphin,  
Franklin, Fulton, Huntingdon, Juniata,  
Lebanon, Mifflin, Perry, York.

Scranton: Bradford, Carbon, Luzerne, Lackawanna,  
Monroe, Pike, Susquehanna, Wayne, Wyoming

Williamsport: Cameron, Clinton, Centre,  
Columbia, Lycoming, Montour, Northumberland,  
Potter, Snyder, Sullivan, Tioga, Union

The divisional office that supports the county location of the civil action receives the case.

The second criterion is Judge rotation. Judge's names are placed in order of rotation at each location. The Judge rotation decides the order of case assignment. Senior status Judges can choose the number of times their name appears in the rotation.

Related cases are exceptions. Related cases are separate civil cases resulting from the same incident and assigned to the Judge handling the like case previously assigned.

**Prisoner Cases** - Prisoner cases are civil actions filed by an individual in either state or federal custody claiming a violation of his civil rights. Typically, treatment (report and recommendation) rotates to either a pro se law clerk or a Magistrate despite location. A Judge is also assigned in every case for final action. The exception to the coincidental assignment is that each Judge receives two cases for every 108 prisoner filings.

The judicial officer handling the case in the previous occurrence receives a repeat prisoner case.

**Emergency Cases** - Emergency cases are civil cases requiring judicial action within fifteen days from filing. Counsel filing the action initially determines the urgency of the matter. The assigned Judge makes the final decision to accept an emergency matter. The law clerk of the Judge assigned to the case typically confers with counsel and accepts an emergency status only if the Judge agrees that the filing is an emergency matter.

As with location cases, emergency cases are separated by location and each divisional office has a separate rotation designed for an even distribution of emergency matters. The judicial officer handling the previous like case receives all related cases. Senior Judges may choose the number of times their names appear in the rotation.

**Loan Cases** - A United State's Loan case is a civil action filed when a loan made by the United States is in default (e.g. student loans). The assignment of loan cases is solely on rotation to all Judges and senior Judges throughout the Middle District. All Judges and senior Judges receive an even distribution of assignments.

**Health and Human Services Cases** - Each Health and Human Services case (HHS) is assigned to both a Judge and Magistrate Judge by rotation regardless of the location of the case.

The Magistrate Judge initially works the case which typically results in dispositive recommendations to the Judge assigned the case. The Judge receives the record for action after thirteen days. If an objection to the dispositive recommendation is made prior to the thirteen day period, the case transfers to the Judge at the time of the objection.

The relationship between the number of case assignments and judicial workload occasionally results in modification of the rotation system to ensure even distribution of each Judge's caseload. For example, a Judge receives additional credit in civil location cases equaling 6/10 of a case for each day a protracted case extends beyond twenty trial days including jury selection.

Recusals result in an adjustment to the civil assignment system. A recusal occurs when a Judge determines that there exists a professional or personal conflict of interest arising out of the circumstances of the case or out of a relationship with a party, an attorney, or a potential witness, and withdraws from the case. A formal recusal by written order results in a "blind" draw for the selection of a new Judge. The draw is made from the pool of Judges at the location the case was initially assigned. If all Judges at the assignment location are unable to take the case, a pool of Judges at all other locations compete in the draw. Every case does not require a formal recusal, with reasons stated. If the assignment is to a Judge that is uncomfortable with the case, that Judge contacts the next Judge on the list from the same location to determine if he or she is able to take the assigned case. Cases are not exchanged between Judges but the recusing Judge receives another case on rotation.

**EXISTING LOCAL CASE MANAGEMENT RULES DESIGNED  
TO REDUCE COST AND EXPEDITE CASE FLOW**

Under the direction of Senior Judge Nealon, The Middle District Committee on Rules of Practice and Procedure completed a thorough review of the Court's local rules in 1990. The Committee completed its final report on November 16, 1990 and presented it to the members of the CJRA Advisory Group. The Court has been pro-active in avoiding excessive cost and delay in that the Civil Justice Reform Act encourages many of the District's existing local rules.

The current local rules directly influencing case management and the cost of litigation in the Middle District follow:

**Local Rule 105.2.** Limits the number of copies to only one of all pleadings except for briefs and/or Memoranda of Law.

**Local Rule 203.2.** Requires all requests for continuances be signed by counsel and client.

**Local Rule 203.5** Prohibits the continuance of a trial due to the unavailability of a witness who was not subpoenaed for trial.

**Local Rule 203.5** Restricts continuances of all court proceedings due to other court hearings. Generally, counsel must appear in the Middle District court or have associate counsel present for them.

**Local Rule 402.9.** Contributes to containing costs by imposing monetary sanctions for the abuse of discovery.

**Local Rule 408.1.** Requires that a pretrial conference is held in every civil case, unless otherwise ordered by the court.

**Local Rule 408.2.** Requires every party of record have counsel present at the pre trial conference. Pro se parties must appear in person.

**Local Rule 408.3.** Requires the plaintiff to initiate and conduct a conference of all attorneys at least five days prior to the pretrial conference to discuss settlement and enter into any possible agreement(s).

**Local Rule 408.4.** Provides for the court to issue a scheduling order within 120 days of the filing of the complaint in all civil actions.

**Local Rule 410.** Requires completion of a pretrial memorandum by each party using a standard form.

**Local Rule 411.** Provides for the dismissal of a case if there is no activity for one full calendar year.

**Local Rule 503.1 - 503.3.** Provides for the trial judge to limit the number of witnesses; limits the number of attorneys on a case; and regulates the length of address to the jury at the trial stage.

**Local Rule 513.** Allows for any civil case to be submitted to a summary jury.

#### **CASE MANAGEMENT PRACTICES BY JUDGE**

There are presently five active Judges and two active senior Judges in The Middle District of Pennsylvania. The District maintains an individual case calendar system resulting in varied case management practices for each Judge and allowing for individual judicial control from case initiation to disposition. The process has proven to be very efficient as illustrated throughout this Report.

Generally, an individual case calendar results in case familiarity making it easier for the Judge and staff to assess the likelihood of trial, length of trial, and other intermediate factors that decide a Judge's schedule.<sup>1</sup>

Each Judge's pretrial case management practice follows.

#### **THE HONORABLE SYLVIA RAMBO**

##### **Judge History:**

Chief Judge Sylvia H. Rambo graduated from the Dickinson School of Law in 1962. Subsequent to private practice, Chief Judge Rambo served as Chief Public Defender, Cumberland County and a Judge for the Cumberland County Court of Common

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1. Maureen Solomon and Douglas Somerlot, Caseflow Management in The Trial Court, (Chicago: American Bar Association, 1987), p.36.



Pleas, Cumberland County. Judge Rambo was appointed as a United States District Court Judge in the Middle District of Pennsylvania in 1979. She is a member of the American Bar Association, Pennsylvania Bar Association, Cumberland County Bar Association, National Association of Women Judges, and Federal Judges Association. She has been Chief Judge of the District since September 1992.

**Staff/Overview:**

Courtroom Deputy Clerk - The courtroom clerk's involvement with case management at the pretrial stages consists of case monitoring, attending case management conferences, and preparing case management orders. Other responsibilities of the courtroom deputy clerk are courtroom related.

Judge's Secretary - The Judge's secretary coordinates most pretrial case management matters requiring report preparation and occasional correspondence with counsel.

Law Clerks - The law clerks research motions and communicate with counsel as necessary. The assignment of cases to law clerks occurs when they are filed. Among other duties, the law clerks sit in on all pretrial conferences and sit through non-jury trials.

Reports - The Judge's secretary manually prepares motion reports and trial lists.

**Pretrial Activities:**

Assignment & Initial Correspondence - Chief Judge Rambo receives civil cases on a rotating basis. Upon assignment, the courtroom deputy clerk separates the case according to casetype. Plaintiff's counsel is then sent a letter prepared by the courtroom deputy for Judge Rambo's signature outlining general pretrial court procedures.

The complaint is put into a tickler file and monitored by the courtroom deputy clerk every thirty days to determine the

status. An order is prepared and sent if there has been no return of service or the complaint has not been answered.

The Court sends a Scheduling Conference Order upon filing of the answer.

Pre-Case Management/Scheduling Conference - The scheduling conference order advises counsel to meet prior to the conference to discuss potential assignment of the case to a Magistrate Judge, the anticipated length of the discovery period, and a projection as to when the case will be ready for trial.

Case Management/Scheduling Conference - As mentioned, the Judge issues a scheduling order at the joinder of parties setting a scheduling conference within approximately two weeks. The Judge does not issue a separate practice order. The conference is typically held in person. Although, the Judge will allow the conference to be conducted by telephone with the consent of the parties.

The primary purpose of the conference is to establish case management dates for discovery, dispositive motions, pretrial conference, and trial month. Participation is mandatory.

The conference results in a scheduling order that includes practice procedures. The order specifies all critical dates. Typically, time frames are consistent for each case, e.g., discovery = 180 days, motions thirty days. It is the Court's practice to schedule a one year trial date. Occasionally, if there are no dispositive motions filed the trial date will be moved forward. Extensions are rarely granted.

The Judge maintains separate case management and scheduling conference procedures for jury and non-jury cases. Both orders encourage disposition of the case by a Magistrate Judge. The difference between the two orders (JURY v NON-JURY) is that the jury order discusses and reviews requests for summary jury trials and the non-jury procedure requires counsel to meet within four weeks of the close of discovery and discuss

settlement. Further consideration is to be given in non-jury cases to the assistance of a Magistrate Judge in conducting a settlement conference.

Settlement Conference - The Judge does not typically require a separate settlement conference because the discussion of settlement takes place at the pretrial conference. In non-jury cases and at the request of counsel, the Magistrate Judge in non-jury cases conducts the settlement conference.

Pre-PreTrial Conference - The Judge requires counsel to meet prior to the pretrial conference at least three weeks before the date scheduled for the submission of pretrial memorandum.

Pretrial Conference - The scheduling order outlines the procedure for a pretrial conference for both a jury and non-jury case. Attendance is mandatory.

The purpose of the pretrial conference is to narrow the issues, review requests for stipulations in the pretrial memos, resolve exhibit problems, review special verdict questions, identify a specific day for trial, and discuss settlement.

Settlement techniques include summary jury trial primarily. The conference results in a pretrial order.

Cases are tried in the order filed unless otherwise ordered by the Court. Alternatively, the Court grants specific trial dates when possible. Counsel may contact the court one week in advance to determine the approximate starting date and time of trial so that they may be available within twenty-four hours of notice.

#### **THE HONORABLE WILLIAM CALDWELL**

##### **Judge History:**

Judge William W. Caldwell received an LL.B. from the Dickinson School of Law in 1951. Prior to his 1982 appointment as a Federal District Court Judge in the Middle District of Pennsylvania, Judge Caldwell served as a Judge for the Dauphin County Court of Common Pleas from 1970-1982. Judge Caldwell was

in legal practice from 1951-1970 and served in the United States Air Force. He is a member of the Pennsylvania Bar Association and the Dauphin County Bar Association.

**Staff/Overview:**

Courtroom Deputy Clerk - The courtroom clerk's involvement with case management at the pretrial stages includes case monitoring. The majority of the courtroom clerk's responsibility is courtroom related.

Judge's Secretary - The Judge's secretary coordinates most pretrial case management matters requiring, in part, report preparation and correspondence with counsel.

Law Clerks - The law clerks research motions and correspond with counsel as necessary. Motions are assigned as they are filed.

Reports - The Judge's secretary manually prepares motion reports and trial lists.

**Pretrial Activities:**

Assignment & Initial Correspondence - The assignment of civil cases is on a rotating basis. Upon the assignment of a case, Judge Caldwell's office holds the complaint pending the filing of an answer. If the complaint is not served, counsel are sent a letter (about forty-five days after the assignment) requesting a return of service. Procedures are in place to dismiss unserved complaints and for obtaining default where an answer is not filed.

The issuance of a scheduling conference order proceeds less than thirty days from the filing of an answer. The order requires counsel to meet for a scheduling conference about sixty days later and to commence or continue discovery in the meantime.

Pre-Case Management/Scheduling Conference - The Judge does not require counsel to meet prior to the scheduling conference.

Case Management/Scheduling Conference - As mentioned, the Judge conducts a conference about sixty days from the answer of the complaint. The conference can be held by telephone. The length of time for discovery, etc. is set by the Judge according to the needs of the individual case. Thus, times for the completion of critical events vary among cases.

The purpose of the scheduling conference is to discuss simplification of issues, establish a schedule for completion of discovery, amend pleadings, and set motion deadlines. A trial month is also designated. A pretrial conference is not scheduled at this point but is held in the trial month, shortly before jury selection.

Following the scheduling conference the Judge issues an order outlining the dates discussed and urging counsel to adhere to the dates.

About three months prior to trial, the Court sends a separate trial order listing all cases for trial in the month selected at the scheduling conference. The trial order also includes a date and time for each pretrial conference. The order outlines much of the trial practice.

Settlement Conference - The Judge does not typically require a settlement conference, although the subject is pursued at the pretrial conference.

Pre-Pretrial Conference - The trial order directs counsel expected to confer at least five days prior to the pretrial conference. Pretrial memorandum are to be submitted to the Court two days prior to the pretrial conference.

Pretrial Conference - The purpose of the pretrial conference is to prepare for trial and discuss potential problems, settlement, etc. The conference is typically held four or five days prior to jury selection for all cases that remain on the monthly list.

The Pretrial conference focuses on narrowing the issues, reviewing exhibits, reviewing the form of the verdict,

and fully discussing settlement. The Judge rarely uses a summary jury trial procedure, limiting it to cases that are unusually complex and/or will require an extended time for trial. While summary jury trials may result in settlements, it is Judge Caldwell's belief that most if not all cases selected for a summary jury trial will also settle prior to trial, without resort to the procedure. Thus, valuable time and resources are not expended.

The court conducts all trials sequentially and sits until all cases on the list are tried. A high percentage of cases settle prior to jury selection, suggesting that a firm and fixed trial date is a most important ingredient in having litigation resolved by settlement.

#### THE HONORABLE EDWIN KOSIK

##### Judge History:

Judge Edwin M. Kosik received his LL.B from the Dickinson School of Law in 1951. Prior to his 1986 appointment as a Federal District Court Judge in the Middle District of Pennsylvania, Judge Kosik served as a Judge for the Lackawanna County Court of Common Pleas where he presided as President Judge from 1980-1986. Judge Kosik was also employed as an associate with a Pennsylvania law firm, served as Assistant U.S. Attorney in the Middle District of Pennsylvania, and was Chairman of the Pennsylvania Department of Labor and Industry Workmen's Compensation Board. He is a member of the Pennsylvania Bar Association and the Lackawanna County Bar Association.

##### Staff/Overview:

Courtroom Deputy Clerk - The courtroom clerk has complete responsibility for case administration and calendaring of cases. As such, the only courtroom responsibility is assistance with jury selection. All other courtroom duties are

primarily the responsibility of the court reporter. As case administrator the courtroom clerk corresponds with counsel.

Judge's Secretary - The Judge's secretary performs many functions pertaining to office procedures. The position requires typing opinions for the Judge, checking and answering electronic mail, maintaining the Judges calendar, and compiling all forms, i.e., phone bills, travel vouchers, monthly reports.

Law Clerks - The law clerks research motions and assist with writing opinions.

Reports - The courtroom clerk is responsible for preparing all motion reports and maintaining trial lists. The automated civil docket system generates reports. While the automated civil system produces reports, much is still done manually through card files and "tickler" systems. There is reconciliation between differences in the automated and manual systems.

#### Pretrial Activities:

Assignment & Initial Correspondence - Judge Kosik receives civil cases on a rotating basis. Upon assignment of a case to Judge Kosik, the courtroom clerk places the complaint on a case inventory list. Also, at the filing of the complaint a letter is sent to the plaintiff's counsel indicating that Judge Kosik has been assigned the case.

A 60-day tickler system reviews case activity, specifically whether there has been an answer to the complaint. Occasionally, the courtroom clerk determines that a less complex case can be tickled thirty days rather than sixty.

If it appears that no action has taken place when the case surfaces from the tickler file, the Judge will issue an order to the plaintiff's counsel requesting a written status report. Initial contact with the defendant's counsel is through a standing order sent to both counsel when the complaint is

answered. Simultaneously, along with the standing order, the case is listed for a scheduling conference.

Pre-Case Management/Scheduling Conference - The Judge does not require counsel to meet prior to the scheduling conference.

Case Management/Scheduling Conference - The Judge's initial standing order typically requires a scheduling conference. The conference is scheduled upon the filing of the answer.

Generally, the standing order schedules the length of time for discovery, typically 120 days from the filing of the answer. Dates for other major events are not listed. Rather, the order states that 1) a pretrial conference will be held about thirty days from the completion of discovery and 2) a trial will be scheduled at the conclusion of the pretrial conference. The order also reviews the major activity that may take place throughout the life of the case. The Judge does not issue a separate practice order.

The Judge typically conducts the scheduling conference. In the Judge's absence or unavailability, the courtroom clerk conducts the scheduling conference. The Judge allows the conference to be conducted by telephone. The dates for discovery are reviewed at the conference. The conference also includes discussion of a possible early resolution of the case whether through reducing the discovery period or early settlement. At the conclusion of the conference, the courtroom clerk prepares and sends to counsel a case action memorandum.

Settlement Conference - The Judge does not typically require the parties to meet at a settlement conference unless counsel request one.

Pre-Pre-Trial Conference - The Judge requires counsel to meet prior to the pre-trial conference consistent with local rules.



Pretrial Conference - Thirty days from the end of discovery period and when there are no outstanding motions the court schedules a pretrial conference. An order schedules the conference. The Judge presides over the pretrial conference and it is held in person. In addition to preparing for trial, counsel discuss possible settlement with the Judge. The Judge does not typically use summary jury trials or alternative dispute resolution.

The case is placed on a monthly trial list at the conclusion of the conference typically allowing sixty days from pretrial conference to the trial. The Judge maintains two trial lists; one for jury trials and one for non-jury trials. Cases are scheduled on a first come first served basis.

An order is prepared in response to the setting of the trial month which counsel receive forty-five days in advance of trial. The Judge has a policy of firm trial dates and requires that all applications for continuances are in writing.

#### **THE HONORABLE JAMES McCLURE**

##### **Judge History:**

Judge James F. McClure, Jr. graduated from The University of Pennsylvania Law School in 1957. He was appointed as a United States District Judge for the Middle District of Pennsylvania in 1990. Prior to his appointment to the Federal Bench, Judge McClure was President Judge of the Snyder and Union County Court of Common Pleas from 1984 to 1990.

Immediately after law school Judge McClure served as an Attorney Advisor with the Legal Advisor's Office of the United States Department of State in Washington, D.C., three years with the Philadelphia law firm of Morgan, Lewis & Bockius, four years with Merck & Co., Inc., and in 1965 entered personal private practice.

He is a member of the Union County Bar Association, Pennsylvania Bar Association, American Bar Association, and the American Judicature Society.

Staff/Overview:

Courtroom Deputy Clerk - The courtroom clerk's involvement with case management at the pretrial stages is minimal. The majority of the responsibility for this position is courtroom related.

Judge's Secretary - The Judge's secretary acts as the case administrator, in that the position is responsible for coordinating all pretrial case management matters. The secretary also prepares trial lists, motion reports, and communicates with counsel. There is a review of trial lists and motion lists at a weekly staff meeting.

Law Clerks - The law clerks research motions and other legal issues as assigned by the Judge. They draft memoranda and orders for the court. They will, infrequently, reply to correspondence addressed to the Judge. Motions are assigned as they are filed, to the law clerk to whom the case was originally assigned.

Reports - The Judge's secretary maintains trial lists and motion reports on the personal computer. The information is reconciled with the mainframe system when the case is closed.

Pretrial Activities:

Assignment & Initial Correspondence - Judge McClure receives civil cases on a rotating basis. When a case is received, it is placed on the civil inventory list and assigned to a law clerk. Next, the Judge reviews the file, and distributes it to the appropriate law clerk for his/her review before being placed in a file drawer.

Thirty days after filing for status the Judge reviews the file. If no appearance has been entered and no pleading has

been filed in response to the complaint, the file is placed back into the thirty-day tickler system. If, upon the second thirty-day review no appearance has been entered and no pleading has been filed in response to the complaint, the Judge issues an order directing plaintiff to file a status report.

Once the complaint is answered or an appearance is entered for defendant, the Judge reviews the file for case complexity. Subsequent pretrial activities vary depending on the Judge's review. For the usual personal injury (strict liability or negligence) cases, and other cases appearing to require similar preparation the Court issues a scheduling order setting critical dates and assigning the case to a monthly trial list.

For more or less complex cases, the Judge issues one of two orders: 1) an order requiring a scheduling conference to discuss aspects of the case, including simplification of issues, a case management schedule, and possible settlement or 2) a scheduling order setting critical dates and usually assigning the case to a monthly trial list. More often these orders place the case on an earlier trial list than the "normal" case, as there is less need for pretrial preparation or the case lends itself peculiarly to disposition by summary judgment motions.

All conferences, other than the final pretrial conference, can be conducted by telephone. Trial dates vary and are typically set according to case complexity.

Case Management/Scheduling Conference - For cases that appear to be either more complex and time-consuming or less complex and time-consuming than the usual personal injury case, the Judge may require a scheduling conference to be conducted by telephone. The purpose of the conference is to simplify the issues and set dates for the amendment of pleadings, joinder of parties, filing of motions, and a trial month.

Again, for the usual personal injury case, or other cases of similar complexity, the Judge does not hold a scheduling conference. The initial order including critical case management

dates is sent when the complaint is answered. If the schedule is unacceptable, counsel are to confer and attempt to agree on a revised schedule. If counsel cannot agree, either party may submit separate schedules to the court.

A scheduling conference is typically held ninety days after the filing of the complaint.

Settlement Conference - All cases require formal settlement conferences. For non-jury cases, the Judge may ask another Judge to conduct the conference to expedite settlement.

A formal settlement conference is typically held sixty days prior to jury selection. However, settlement is the first topic for discussion at all pre-trial conferences.

Pre-Pretrial Conference - Counsel expected to try the case confer prior to the pretrial conference as required by local rule.

Pretrial Conference - For all cases, final pretrial conferences are scheduled according to the initial scheduling order approximately two business days prior to jury selection. Approximately thirty days prior to the scheduled conference, the Court issues an order fixing the time of the conference.

The purpose of the final pretrial conference is to prepare for trial. However, settlement is discussed. The court selects juries usually on the first Monday of each month for the cases on that month's trial list. Trials are usually placed on a trailing list, commencing the next day, with criminal cases getting priority. Trial dates vary depending on case complexity.

## THE HONORABLE WILLIAM NEALON

### Judge History:

Senior Judge William J. Nealon received a J.D. from Catholic University School of Law in 1950 and was admitted to the Pennsylvania Bar on January 5, 1951. He was appointed to the Lackawanna County Court of Common Pleas on January 5, 1960, and was elected to a ten (10) year term in 1961. He was appointed as a United States District Court Judge for the Middle District of Pennsylvania on December 15, 1962.

Judge Nealon was Chief Judge of the Middle District for twelve and a half years before taking senior status in 1989. He was a member of the Judicial Council of the 3rd Circuit and was the District Court Representative from the 3rd Circuit to the Judicial Conference of the United States from 1987-1990. From 1978 to 1986 he served as a member of the Judicial Conference Committee on the Administration of the Criminal Law. He is a member of the Pennsylvania Bar Association and the Lackawanna County Bar Association.

### Staff/Overview:

Courtroom Deputy Clerk - The courtroom clerk has primary responsibility over case management during the pretrial stages of the life of a case. In addition to the courtroom responsibilities the courtroom clerk prepares monthly case lists, monitors case progress, prepares motion reports, meets daily with the Judge to discuss case status, and corresponds with counsel as required.

Judge's Secretary - The Judge's secretary must possess a broad knowledge of the federal judicial system and office procedures. Specifically, the position requires transcribing dictation, screening and disbursing mail and telephone calls, compiling monthly reports, maintaining the Judge's calendar, preparing vouchers and procurement.

Law Clerks - The two law clerks research motions. The senior law clerk is responsible for researching all motions with the exception of prisoner cases of which the junior law clerk maintains responsibility. The Judge does not typically assign motions to the Magistrate Judge.

Reports - The courtroom clerk prepares trial lists and motion reports. The reports are maintained manually and generated off the word processor.

Pretrial Activities:

Assignment & Initial Correspondence - Judge Nealon receives civil cases on a rotating basis. The courtroom clerk reviews the file upon assignment at which point plaintiff's counsel is sent a letter by the Judge reminding counsel of the need for timely service. The letter also alerts counsel that a scheduling conference will be held approximately four months after the filing date. The Judge does not issue a practice order.

The file is reviewed at the end of each month to check if the complaint has been answered. If the complaint has not been answered the courtroom clerk calls the plaintiff's counsel to determine if service has been made. A scheduling conference is set once the complaint has been answered.

Pre-Case Management/Scheduling Conference - The Judge requests plaintiff's counsel as indicated in the scheduling letter to arrange a meeting with the defense counsel to discuss an informal exchange of discovery matters prior to the scheduling conference.

Case Management/Scheduling Conference - The court sends counsel the scheduling letter approximately four months after the filing of the complaint. The Judge prefers the conference be held in person. However, a telephone conference may be considered.

The purpose of the scheduling conference is to limit time to amend pleadings, to file and hear motions, and to complete discovery. Discovery dates vary depending on case complexity from 30, 60, 90 days.

A potential trial date is discussed at the scheduling conference. The date varies depending on case readiness. The conference results in a specific date for status reports on settlement where appropriate, and on the progress or completion of discovery. Upon receipt of discovery status reports, a status conference is ordered or a trial date is fixed.

There is brief discussion of settlement at the conference.

Settlement Conference - The scheduling conference includes settlement discussion and consideration is given to the likelihood of settlement in the future. The Court allows the parties a specific period prior to undertaking discovery, usually no more than thirty days, to discuss settlement and report back to Court. If a settlement conference appears appropriate, it will be set promptly. If a minimum amount of discovery is necessary for meaningful settlement negotiations, a settlement conference will be scheduled at the completion of discovery.

Pre-Pretrial Conference - The Judge requires counsel to meet at least five days prior to the pretrial conference which is consistent with the local rules of court.

Two letters are sent; 1) a pre-pretrial letter requesting the pre-pretrial conference and 2) a letter reviewing the purpose and substance of a pretrial conference.

Pretrial memorandum are due two days prior to the pretrial conference.

Pretrial Conference - After receipt of status reports, the Court sets a pretrial conference as directed at the scheduling conference. As mentioned, a reminder letter confirming the conference is sent that also states when jury selection and the trial will commence.

The pretrial conference is typically held the Thursday or Friday prior to the trial. The Judge requires pretrial conferences to be held in person.

The purpose of the conference is to narrow the issues, dispose of pending motions, and review the pretrial memoranda. The pretrial conference also includes an exchange of exhibits and trial length discussion. The Judge requires the individual with final authority to be present at the conference or at least be available if needed.

#### **THE HONORABLE MALCOLM MUIR**

##### **Judge History:**

Senior Judge Malcolm Muir graduated from Harvard Law School in 1938. Prior to his appointment in 1970 to the Federal Bench in the Middle District of Pennsylvania, Judge Muir was in private practice from 1938-1970 and served in the U.S. Naval Reserves during World War II. He is a member of the Pennsylvania Bar Association where he was elected President-Elect in 1969, a member of the American Bar Association, and a member of the American Judicature Society. The Judge also served as Treasurer of the Pennsylvania Bar Association. Judge Muir took senior Judge status in 1984.

##### **Staff/Overview:**

Courtroom Deputy Clerk - The courtroom clerk has complete responsibility for case management during the pretrial stages of a case. The courtroom clerk is responsible for corresponding with counsel, preparing reports, and preparing trial lists.

Judge's Secretary - The Judge's secretary performs many of the functions pertaining to office procedures. Specifically, the position requires typing opinions for the Judge and transcribing dictation, preparing vouchers, ordering supplies, and performing other related office duties.



Law Clerks - The law clerks research motions and prepare preliminary drafts of orders and opinions. Odd-numbered cases are assigned to one law clerk and even-numbered cases assigned to the other.

Reports - The courtroom clerk is responsible for preparing all reports including trial lists and motion reports. The reports are prepared manually.

**Pretrial Activities:**

Assignment & Initial Correspondence - Judge Muir receives civil cases on a rotating basis. The courtroom clerk sends the plaintiff's counsel and defendant(s) named in the complaint a case management and practice order upon assignment of the case. Defense counsel is sent the same material when the complaint is answered.

The case management order requests counsel prepare and jointly present a case management plan and suggests consideration of court proposed litigation events and cut-off dates. The order requires a pre-case management conference at least two weeks prior to a required case management conference. The Court conducts a case management conference typically sixty days after filing.

Pre-Case Management Conference - As mentioned, the case management order requests that counsel confer at least two weeks prior to the case management conference to discuss the court proposed case management plan. The Judge requests the pre-case management conference be held in person and not by telephone.

Case Management Conference - The case management order schedules a case management conference approximately sixty days from the filing of the complaint. The Judge requests the conference be held in person. The purpose of the case management conference is to review the case management plan including setting dates for the amendment of pleadings, dispositive motions, discovery cutoff, future case management conferences,

trial list, pretrial conference, and dispute resolution proceedings.

The Case Management Conference results in the issuance of a scheduling order. The Order reconciles any changes on the Case Management Order resulting from the Case Management Conference. The order indicates a trial month. The trial month listed on the order is typically 8-10 months from the filing of the complaint.

Settlement Conference - As indicated on the scheduling order, counsel are requested to meet with the Judge in person to explore the feasibility of initiating settlement negotiations. Counsel are to meet with each other prior to the conference. The Judge typically sets the settlement conference two to three months in advance of the trial month.

Pre-Pretrial Conference - As indicated in the practice order, counsel shall confer in person and not by telephone prior to the pretrial conference. The conference is to be held at least five days prior to the final pretrial conference.

Pretrial Conference - A pretrial conference date is set typically one day prior to jury selection as indicated on the scheduling and subsequent trial order. The Court issues a trial order approximately two weeks in advance of the trial month listed on the scheduling order. The Judge uses a trailing docket where cases are tried in the order they are shown on the trial order.

The purpose of the conference is to prepare for trial and review possible settlement options. The practice order includes details of the conference.

The Judge uses summary jury trials frequently. A summary jury trial is typically discussed at the pretrial conference.

**THE HONORABLE RICHARD CONABOY**

**Judge History:**

Senior Judge Richard B. Conaboy received an LL.B. from Catholic University School of Law in 1950. Prior to his 1979 appointment to the Federal Bench in the Middle District of Pennsylvania, Judge Conaboy served as a State Judge for the Lackawanna County Court of Common Pleas from 1962-1979. During this period Judge Conaboy presided as President Judge from 1978-1979. Judge Conaboy is an active member of the American Bar Association, Pennsylvania Bar Association and the Federal Judges Association. He was Chief Judge of the Middle District from 1989 to September of 1992.

**Staff/Overview:**

**Courtroom Deputy Clerk** - The courtroom clerk's involvement with case management at pretrial stages includes both case and motion monitoring. When the office receives a case he, along with the law clerks, has the duty to assign it to a specific law clerk. In addition, when motions are filed, he also develops a separate motion file and when the proper answers and briefs are filed alerts the appropriate law clerk. He is responsible for all courtroom activity, including the selection of juries in civil cases.

**Judge's Secretary** - The Judge's secretary coordinates most pretrial case management matters requiring status and trial report preparation. She handles all written correspondence but has minimal direct contact with counsel. Typically, the courtroom deputy clerk and law clerks correspond directly with counsel on case schedules and pending motions.

**Law Clerks** - Law clerks scan all cases to determine if early action is necessary. They review motions and discuss them with the Judge, thereafter preparing memoranda for disposition. Each case is assigned to a specific law clerk for monitoring.

The law clerks recommend scheduling and/or settlement conferences to the Judge, depending on the status and movement in each case. Oral arguments are infrequent but occasionally recommended by law clerks or requested by counsel.

Reports - On a personal computer, the Judge's secretary maintains trial lists, prepares memoranda, sends all notices and orders for status reports on direction of law clerks and Judge and generates a daily calendar report for the Judge. The mainframe civil docketing system produces monthly reports requested by the secretary.

**Pretrial Activities:**

Assignment & Initial Correspondence - Judge Conaboy receives civil cases on a rotating basis. New cases are initially reviewed to determine whether immediate or emergency action is necessary. Otherwise, after thirty days, the case moves to a trial list and counsel receive a trial/practice/scheduling order setting the case for trial approximately one year from the filing of the complaint. If an answer to the complaint is not received within the thirty-day "tickler" period, the practice order is mailed to defense counsel when an answer is filed.

The Judge issues an order requiring a status report for cases where there is an answer to the complaint but there has been no activity. Distribution of the order takes place thirty days after the filing of the answer.

Pre-Case Management/Scheduling Conference - The initial trial/practice/scheduling order sets up a suggested schedule for proper pretrial preparation of each case. Counsel are to meet and discuss the dates and schedule presented in that Order and to notify the Court whether the schedule is acceptable or not. If the schedule is not acceptable, counsel must submit a jointly acceptable schedule or to submit separate suggested schedules, after which the Court will set a specific schedule. If counsel

desire a scheduling conference, as such, it is usually handled by telephone.

In a case needing immediate attention or in a complicated matter, specific initial conferences are scheduled and a more detailed and sometimes extended scheduling order is entered.

Case Management/Scheduling Conference - Cases are closely monitored and case management conferences are held only in those cases that do not fit into the scheduling process described in the foregoing paragraph. In those cases requiring special attention, such management conferences are held and specific schedules are either agreed upon or set by the Court.

Settlement Conference - In addition to discussing settlement at the scheduling conferences, the Court targets a number of cases for early settlement intervention and frequently holds telephone conferences with counsel in this regard. In addition, counsel understand that a settlement conference is available any time if they feel the Court's intervention would help in the settlement process.

Pre-Pretrial Conference - Counsel are directed to meet prior to the pretrial conference to prepare and submit pretrial memorandum. Counsel submit the pretrial memorandum at least two days prior to the pretrial conference.

Pretrial Conference - Pretrial conferences are scheduled approximately thirty days prior to the trial month to prepare for trial and discuss settlement options. The order scheduling the conference is mailed approximately forty-five days before the trial list date. The conference may be by telephone, although the Judge prefers holding the conference in person. One or two pretrial conferences per day are scheduled, rather than full days of pretrial/settlement conferences on cases set for trial the next month. This practice reduces the number of attorney contacts in the event the Judge must reschedule pretrial conferences on the day scheduled.

Jury selection is monthly, except July and August. Trials are typically scheduled thirty days after the conference. During the two-week period following jury selection, counsel must be prepared to begin trial within twenty-four hours of notice. The trial/practice order contains the jury selection date, as well. Trials generally commence in the order listed on the trial/practice order.

The Judge may grant continuance of discovery with good cause. One method of ensuring firm trial dates is to advise counsel that a continuance will move the case to the bottom of a future trial list. This has proven to be very effective in allowing continuances but maintaining firm trial schedules.

Figure 1a  
Summary of Pretrial Case Management Practices

Judge	Initial Contact	Case Mngmt. Conference	Discovery	Settlement Conference	Pre Pre-Trial Conference	Pretrial Conference	Trial
Rambo	Reviewed @ 30 Days	Scheduled 2 Weeks From Joinder	180 Days	Varies	Held 3 Weeks Prior To Submission Of Memorandum	1 Week Prior To The Trial Date	365 Days From Complnt
Caldwell	Reviewed @ 60 Days	As Needed/ Requested	Varies	As Needed/ Requested	5 Days Prior To The Pre-Trial	1 Week Prior To Jury Selection	Trail- ing List
Kosik	Reviewed @ 60 Days	Held 30 Days From Answer	120 Days From Answer	Discussed @ Pre-Trial Conf. Unless Otherwise Requested	Accordance With Local Rules	30 Days From Discovery Cut-Off	45-50 Days From Pre-Trial
McCLure	Reviewed @ 30 Days	Held 90 Days After Cmplnt. Filed	3 Months Before Jury Selection	2 Months Before Jury Selection	30 Days Prior To Pretrial Conf.	1-2 Days Prior To Jury Selection	11th Month After Complnt
Nealon*	Reviewed @ 30 Days	Held 120 Days From Complnt. Filed	Varies 30, 60, 90 Days	As Ordered By Court	Held 5 Days Prior To Pretrial Conference	Held 2/3 Days Prior To Trial	Varies
Muir*	Practice Order Sent @ Filing	Held 60 Days After Cmplnt. Filed	Varies	Held 6 Months From Complaint Filed	5 Days Prior To Pretrial Conf.	Held 1 Day Prior To Jury Selection	8-10 Months From Complnt
Conaboy	Reviewed @ 30 Days	As Needed/ Requested	180 Days	As Needed/ Requested	Prior To Pre-Trial Time Varies	Held 30 Days Prior To Trial	365 Days From Complnt

\*Judge Muir and Judge Nealon Typically Hold Pre-Case Management Conferences

## ROLE OF THE MAGISTRATE JUDGE

The Middle District of Pennsylvania employs the services of three full time Magistrate Judges located in Scranton, Harrisburg and Wilkes-Barre, Pennsylvania. There is a part-time Magistrate Judge located in Williamsport and Stroudsburg.

The Magistrate Judges provide the court with various services as authorized by the local rules of court, the Federal Rules and Federal statutes.

In addition to being the court of original jurisdiction for violations occurring on federal property, the primary services provided by the Magistrate Judges include:

**INITIAL APPEARANCE AND BAIL HEARINGS.** The Magistrate Judges may conduct bail hearings for all criminal cases in the District, including not guilty pleas, with the consent of the District Judge. The defendant and all parties present receive a pre-trial order signed by the District Judge assigned to the case, before they leave the initial appearance that has the dates or deadlines for:

1. Jury Selection Date
2. Trial Date
3. Motions Deadlines
4. Status Conference Date
5. Discovery Deadlines

**PRELIMINARY HEARINGS:** In those cases filed by complaint, the Magistrate Judges will conduct the preliminary hearings/probable cause hearings.

**EXTRADITION, REMOVAL AND CONSENT TO TRANSFER PROCEEDINGS.** The Magistrate Judges conduct the hearings for all criminal cases requiring these proceedings returning the defendant to the court with original jurisdiction or to the requested country.

**ISSUANCE OF BENCH WARRANTS, SEARCH WARRANTS AND O.S.H.A. WARRANTS.** The Magistrate Judges issue bench warrants for criminal complaints, traffic warrants and failure to appear warrants. The Magistrate Judge issues all search and O.S.H.A. warrants.

**APPOINTMENT OF COUNSEL AND PANEL ATTORNEYS.** The Magistrate Judges routinely appoint counsel during the initial appearance and bail hearings; for grand jury targeted witnesses and for prisoner cases going before the parole board.



**DISPOSITION OF MISDEMEANOR CASES.** The Magistrate Judges conduct all proceedings for misdemeanor cases, including the conducting of a jury trial with the consent of the defendant.

**NON-DISPOSITIVE PRE TRIAL MATTERS.** The Magistrate Judges handle non-dispositive matters in civil cases for the District Judges and issue a report and recommendation.

**PRISONER CASE ASSIGNMENT.** Twenty one of every 108 prisoner cases filed is sent to a full time Magistrate Judge, who issues a report and recommendation on the case.

**SPECIAL MASTER.** The Magistrate Judges are not used frequently as a special master. They occasionally conduct settlement conferences in civil cases.

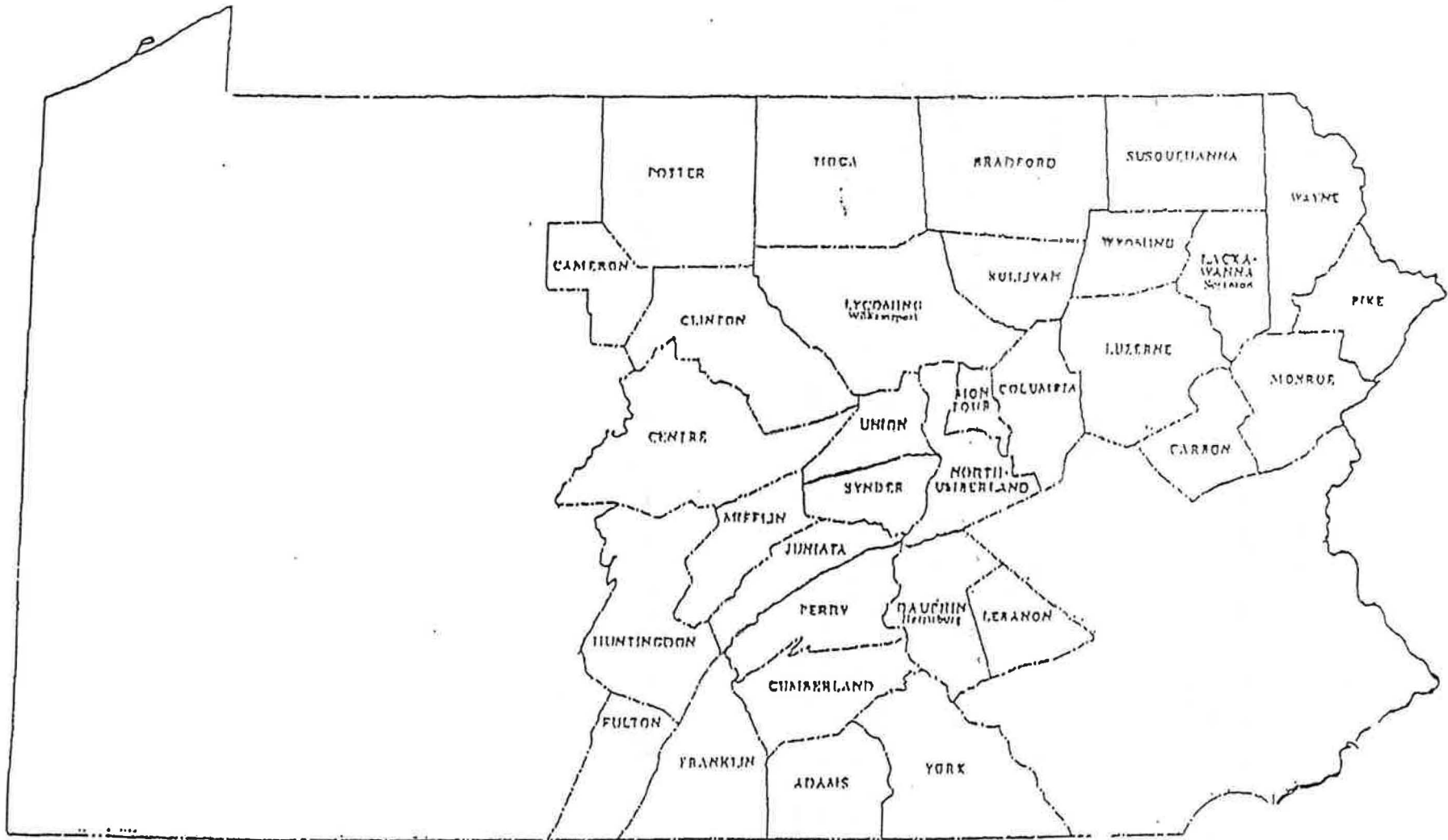
**VOIR DIRE.** Magistrate Judges seldom conduct voir dire in the Middle District.

**GRAND JURY RETURNS.** When a District Judge is not available, a Magistrate Judge will take the Grand Jury returns.

**HABEAS CORPUS WRITS.** Magistrate Judges issue habeas corpus writs routinely for civil and criminal cases to have the defendant brought before the Magistrate Judge as well as brought before a District Judge.

*Don't see any court books*

# MIDDLE DISTRICT OF PENNSYLVANIA



*PART II: Status of the civil  
and criminal dockets*

U.S. MIDDLE DISTRICT COURT  
OF PENNSYLVANIA  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
REPORT: PART II  
STATUS OF THE CIVIL AND CRIMINAL DOCKETS

*"In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall- (A) determine the condition of the civil and criminal dockets, (B) identify trends in case filings and in the demands being placed on the court's resources". Civil Justice Reform Act, 28 USC § 472 (4)A,B.*

The following section of the Report, "Part II: Status of the Civil and Criminal Dockets", responds to the CJRA 28 USC § 472 (c) (1) (A) (B). The assessment is the first step toward formulating an expense and delay reduction plan for the Middle District of Pennsylvania.

Part II is the result of the research conducted by the Advisory Group's status of the docket subcommittee and offers a detailed assessment of the civil docket, criminal docket, and the Magistrate Judge's workload. The review specifically examines the demands placed on the court's resources through analysis of current caseloads, past trends, future caseloads, and workload measures. The format of the docket assessment complies with the CJRA 28 USC § 475 in that it is conducive to annual follow-up study to determine if "additional actions may be taken by the Court to reduce cost and delay in civil litigation and to improve the litigation management practices of the Court" once the CJRA Plan is implemented.

Parts I, Parts III and IV of this Report, An Overview, The Impact of Legislation and An Assessment of Avoidable Costs and Delay, respectively, supplement the docket analysis. Thus, Part II is one of four "building blocks" providing the foundation which results in the Advisory Group's recommendations to the Court.

**CIVIL:**

**Civil: Filings by Casetype, 1991**

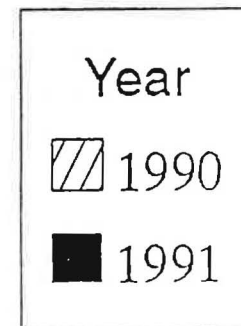
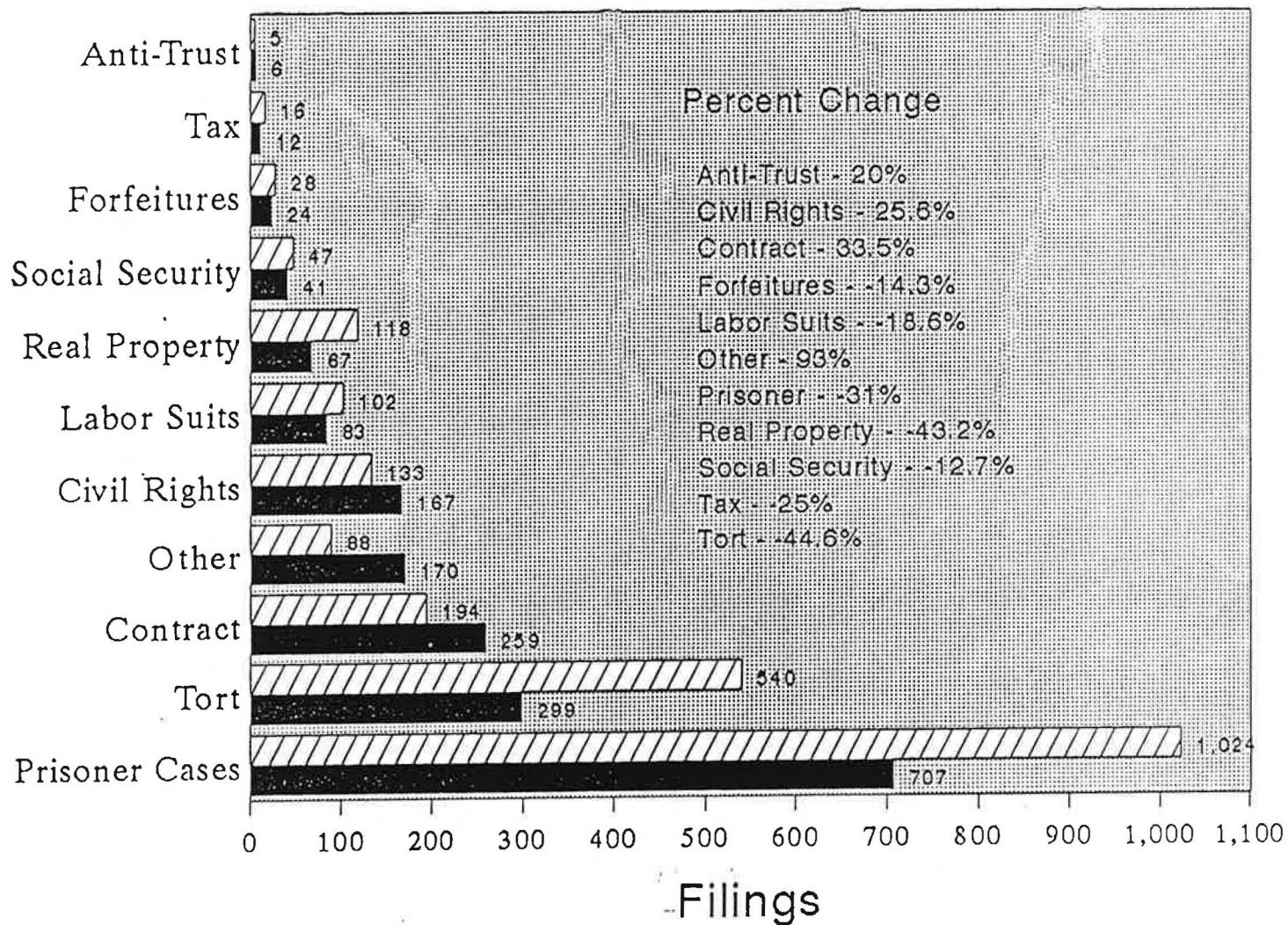
More than 2,000 civil and criminal cases were filed in the Middle District of Pennsylvania in 1991.<sup>2</sup> This represents a decrease of

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2. Reopened cases are counted as new filings unless indicated.

# Graph IIA: Civil Filings by Casetype 1990 and 1991

Casetype



approximately 20.0 percent from the number of cases filed in the previous calendar year. A reduction in civil filings produced the large drop.

Civil cases which include contract, real property, tort, anti-trust, civil rights, prisoner, forfeitures, labor suits, social security, tax, and other cases represent 1,835 of the total filings or 87.2 percent of the court's 1991 caseload. Graph IIA displays 1990 and 1991 civil filings by casetype. The District experienced a decrease of 20.0 percent in civil caseload. Tort cases represent the largest drop in filings at 44.6 percent. The most frequently filed casetype is prisoner cases. One in every 2.6 civil cases initiated in the District for 1991 was a prisoner petition.

#### Civil: Terminations by Casetype, 1991

The Court terminated 2,023 civil cases in 1991, reflecting a 1.0 percent decline since 1990. Graph IIB displays the number of civil cases terminated by casetype for calendar years 1990 and 1991. The 47.1 percent drop in Anti-trust cases represents the largest decrease in 1991. Terminations increased in five of the eleven casetype categories, with tort cases representing the largest rise at 32.3 percent.

#### Civil: Pending Cases by Casetype, 1991

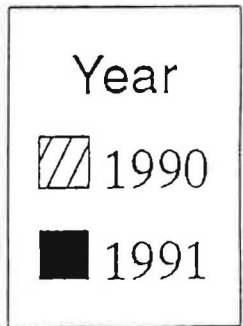
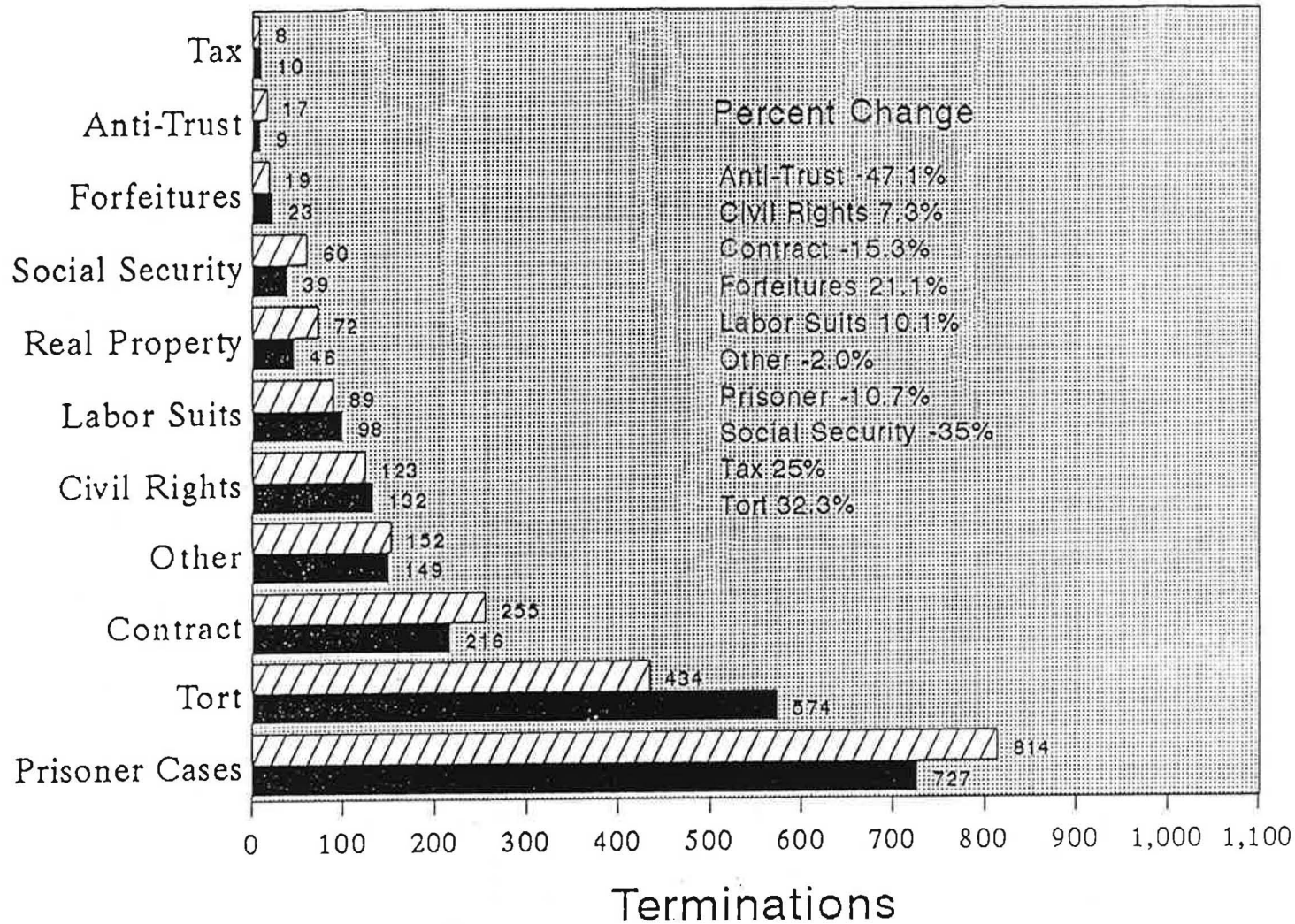
By disposing of more civil cases during 1991 than were filed, the Court reduced its pending civil caseload. The reduction is significant given that the number of pending civil cases grew over twenty-seven percent during the previous four years.

Graph IIC displays the number of pending cases by casetype for calendar years 1990 and 1991. Pending cases have declined 10.8 percent since 1990. The forty-four percent decline in pending tort cases represents the largest decline for 1991. The large drop is expected given that the tort category also claims the largest increase in terminations between 1990 and 1991.

Pending real property cases jumped 77.8 percent in 1991. This rise is atypical given that the number of real property cases filed in 1991 decreased by forty-three percent. For example, when the number of filings drop in a given category, one would expect the number of pending cases for that category to decline.

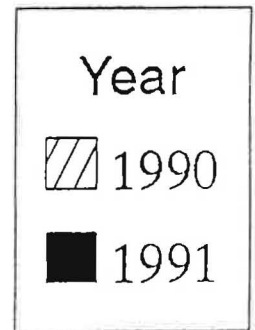
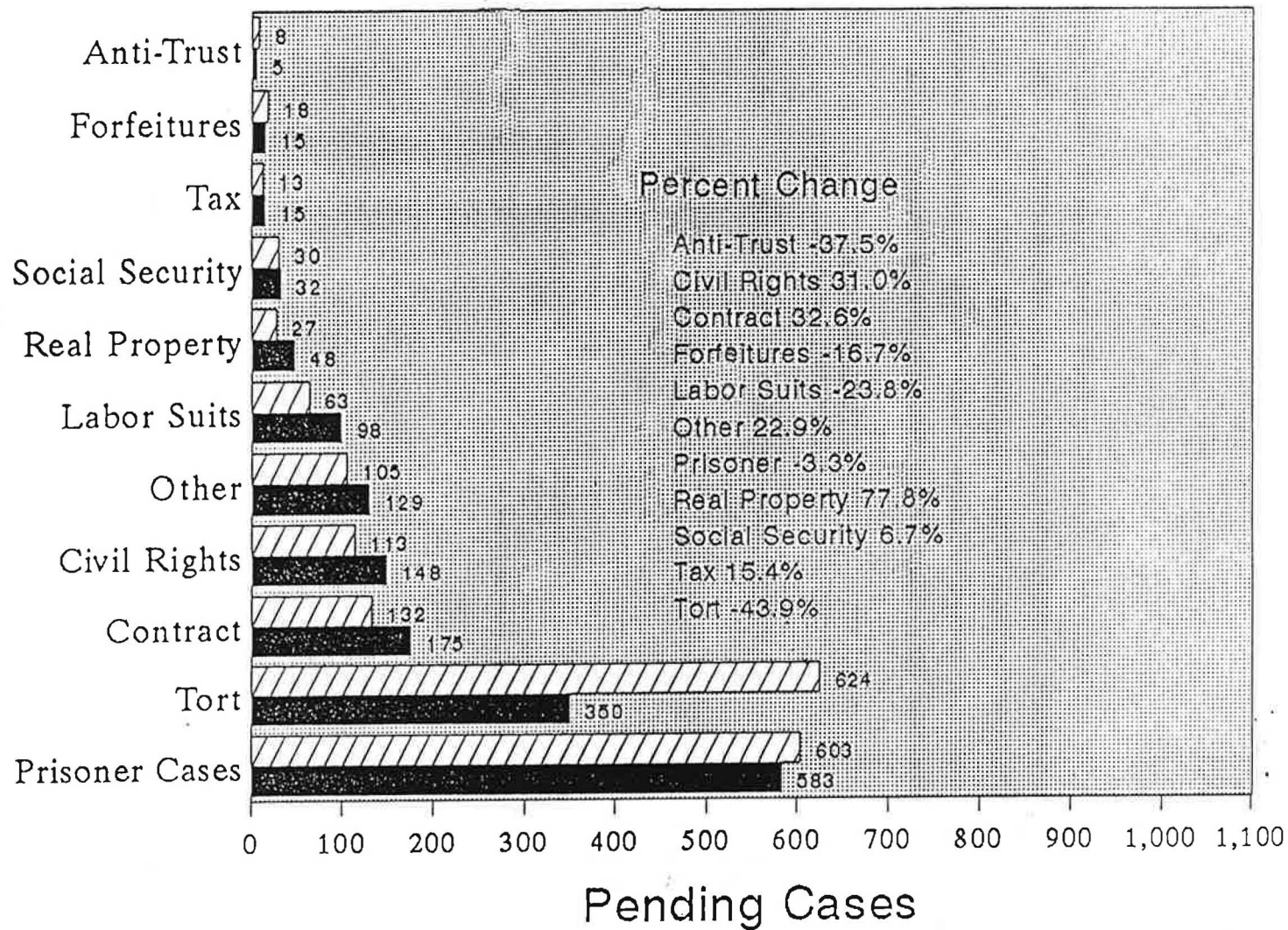
# Graph IIB: Civil Terminations by Casetype 1990 and 1991

Casetype



# Graph IIC: Civil Pending by Casetype 1990 and 1991

Casetype





Civil: Assignments by Judge, 1991

Figure IIa details the number of location cases filed in the District by Location.<sup>3</sup> Scranton received the largest number of location cases, 45.7 percent of the 1,014.

Figure IIa: 1991 Civil Location Cases

<u>Location</u>	<u>Number of Cases</u>	<u>Percentages</u>
Scranton	463	45.7%
Harrisburg	402	39.6%
<u>Williamsport</u>	<u>149</u>	<u>14.7%</u>
Total	1014	100.0%

Figure IIb lists each judge with the number of 1991 civil case assignments. Reopened cases are excluded. The number of case assignments to active Judges range from 269 to 282, except for Judge Rambo who received 337 new filings. The large number of cases assigned to Judge Rambo is due to the Camp Hill Prison riot cases.<sup>4</sup>

FIGURE IIb  
Civil Assignments, 1991

	<u>Location</u>	<u>Prisoner</u>	<u>Loan</u>	<u>H.H.S.</u>
Judge Rambo	175	144	13	5
Judge Caldwell	172	92	13	5
Judge Kosik	163	92	12	5
Judge McClure	170	80	13	6
Judge Nealon	79	85	14	6
Judge Muir	37	89	14	6
Judge Conaboy	<u>168</u>	<u>86</u>	<u>14</u>	<u>6</u>
TOTAL	964	668	93	39

Note: Above figures exclude reopened cases.

3. See page 2, Part I of the Report for the definition of location cases and other civil assignment categories.

4. As detailed in Part 1 of this Report, like cases are assigned to the same Judge. Thus, Judge Rambo received in 1991 an additional 81 cases resulting from the Camp Hill Prison riot in 1989.

**TRENDS:**

**Filings: 1987 - 1991**

The District has experienced a slight decrease in the number of civil filings since 1987, 4 percent. In contrast to the slight five year decline is the dramatic shift in the number of filings from year to year. The average annual change is +/- 315.5 cases. Graph IID illustrates the five year fluctuation of case filings. The variance is particularly wide between the calendar years of 1990 - 1991.

It is not correct to assume the high number of filings in 1988 and 1990 indicates a rise in civil caseloads. The civil filing spikes are anomalies resulting from the Three Mile Island incident in 1988 and an influx of asbestos litigation in 1990. It is likely that 1992 filings will more closely resemble the filing trends seen in 1987, 1989, and 1991.

Despite the appearance of a declining civil caseload since 1990, the civil caseload data indicate no clear filing pattern over the last five years. While civil filings do not appear to be significantly rising or falling, a review of activity over the last ten years suggests a slow rise in caseloads. Figure IIc details the changes in filings, terminations, and pending cases from 1987 - 1991.

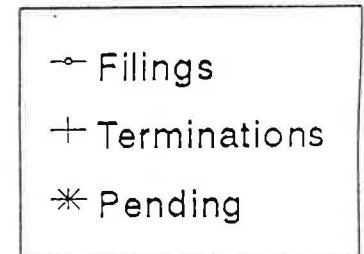
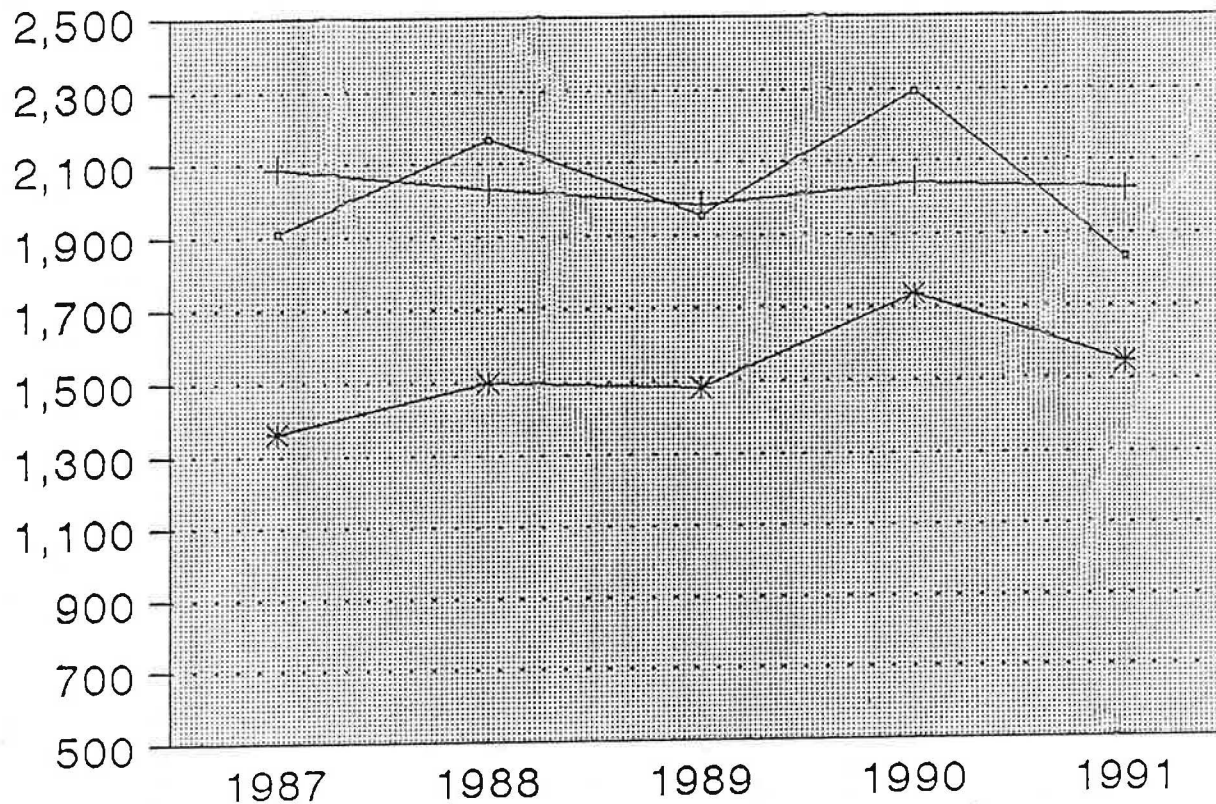
**FIGURE IIc  
Civil Filing, Termination, and Pending  
Caseload Trends, 1987-1991**

	<u>1987</u>	<u>1988</u>	<u>Chng.</u>	<u>1989</u>	<u>Chng.</u>	<u>1990</u>	<u>Chng.</u>	<u>1991</u>	<u>Chng.</u>
<u>Filings</u>	1913	2167	13.3%	1957	-10.7%	2295	17.3%	1835	-20.7%
<u>Terminations</u>	2088	2033	-2.6%	1984	- 2.4%	2043	3.0%	2023	- 1.0%
<u>Pending</u>	1362	1499	10.1%	1483	- 1.1%	1736	17.1%	1548	-10.8%

**Terminations: 1987 - 1991**

The number of terminations has kept pace with caseloads over the last five years. In fact, by removing the anomalies in 1988 and 1990, the number of terminations exceeds the number of filings in each year. Clearly, the pattern is the result of the proper use of court

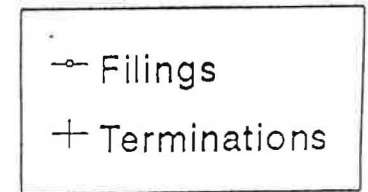
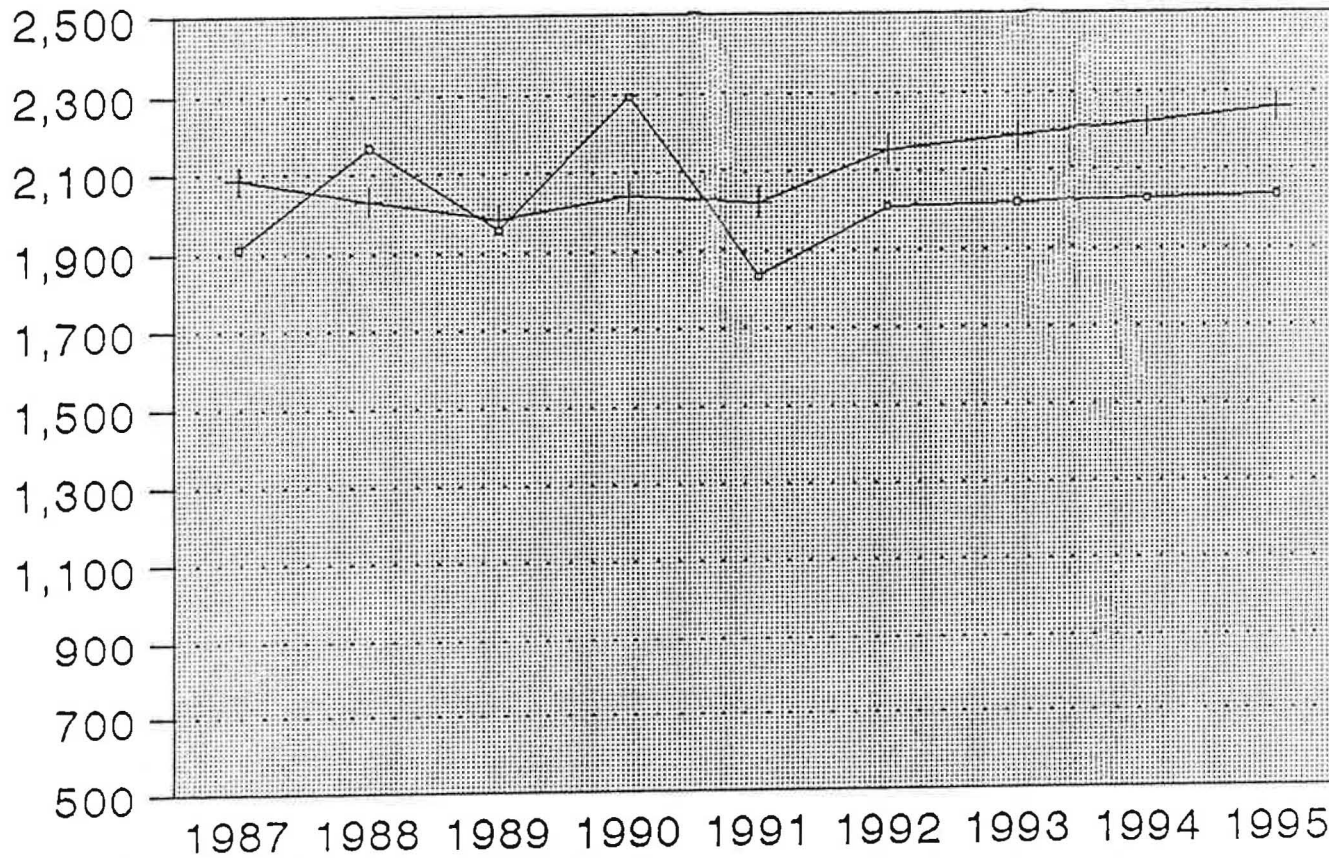
# Graph IID: Civil Caseload Trends, 1987 - 1991



Filings	1,913	2,167	1,957	2,295	1,835
Terminations	2,088	2,033	1,984	2,043	2,023
Pending	1,362	1,499	1,483	1,736	1,548

Year

# Graph IIE: Civil Caseload Projections, 1987 - 1995



Filings	1,913	2,167	1,957	2,295	1,835	2,010	2,018	2,027	2,035
Terminations	2,088	2,033	1,984	2,043	2,023	2,155	2,190	2,225	2,260

Year

\*Linear regression was used to calculate the projections using 9 years of data (1983-91).

resources and court management techniques keeping pace with the court's annual fluctuation in workload. The number of pending cases carried on the docket supplements the argument.

Pending Cases: 1987 - 1991

Except for 1990, the number of pending cases has remained moderately consistent over the last five years, growing 13.7 percent since 1987. Given the exaggerated civil caseload in 1990, this growth may be outside the norm.

As seen on Graph IID, pending caseloads over the last five years follow the number of civil filings for the same period. The effect is similar to that seen with terminations in that it reflects the Court's ability to keep pace with a changing caseload.

Of further interest is the seventeen percent increase in pending cases in 1990. The large number of filings experienced the prior year explains the increase. If the current filing trend remains constant, the court can most likely expect pending caseloads to return to a normalized state over the next one or two years.

PROJECTIONS:

Filings and Terminations, 1987 - 1995<sup>5</sup>

Graph IIE illustrates civil filing and termination activity over the last five years and offers projections through 1995. The regression line (projections 1991-1995) involves a margin of error, where a relationship that holds for a moderate range of variables (Years: 1983 - 1991) may change as the prediction extends into the future.<sup>6</sup>

The last ten years of civil filings show a slight rise. While more recent years have brought dramatic changes from year to year, a slight increase remains. The court may witness an approximate eleven percent rise in filings over the next three to four years if future filing

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5. Projections are calculated according to a linear regression equation where the independent variable X = Year and the dependent variable Y = Number of Filings. The regression equation for Y on X was calculated with nine years of filing data (1983-1991).

6. The standard error of the estimate for filings=150.1 and terminations=147.4.

activity is consistent with past trends. In contrast to the four percent drop noticed over the last five years, civil caseloads are expected to rise moderately into 1995.

The projected number of terminations on Graph IIE does not consider the probable direct relationship with filing levels and is based solely on past termination trends. If the Court experiences the moderate rise in caseload as predicted, the number of terminations will most likely remain constant and not reflect the dramatic 11.7 percent rise shown on Graph IIE. The 1990 authorization of an additional judgeship may also effect future terminations. Nevertheless, the predicted average annual increase of 2.8 percent is consistent with patterns over the last ten years.

**WORKLOAD:**

**Disposition Rates and Case Aging, 1987 - 1991**

One method of determining the ability of a court to stay current with its caseload is the clearance rate. That is, the percentage of open cases terminated in a given year. The Middle District has cleared, on average, better than 100 percent of its civil caseload since 1987. Thus, the court maintains a consistent level of pending cases from year to year. As illustrated on Figure IIId, 1990 ended with the lowest percentage of cases cleared, 89.0 percent. The low disposition rate, however, is uncharacteristic of the court. The high of 110.2 percent in 1991 is more consistent with the median clearance rate of 101.4 percent.

**FIGURE IId**  
**Civil Disposition Rates,**  
**1987 - 1991**

<u>Year</u>	<u>Filings</u>	<u>Terminations</u>	<u>Percentage Cleared</u>
1987	1,913	2,088	109.1
1988	2,167	2,033	93.8
1989	1,957	1,984	101.4
1990	2,295	2,043	89.0
1991	1,835	2,023	110.2

Average Clearance Rate = 100.0%  
Median Clearance Rate = 101.4%

The District is keeping pace with changing caseloads and for the most part clearing the same percent of cases filed in a given year.

**Median Case Disposition Times, SY 1990 and 1991**

Graph IIF displays 1990 and 1991 median case processing times for each Judge.<sup>7</sup> The median is the middle most point in a range of numbers and is a measure of central tendency that in most instances is more precise than the average.

Median times remained moderately consistent over the last two years, where the Court is disposing of most cases in six months or less. Five of the seven Judge's median case processing times varied less than one month between the two years. Any wide variation is atypical and is most likely the result of anomalies that exist from year to year.

**SUMMARY:**

**Civil Caseload**

Civil filings in 1991 are down twenty percent from a year ago. The downward trend is atypical. Caseloads, as they have over the last ten years, are likely to accelerate for the next three to five years.

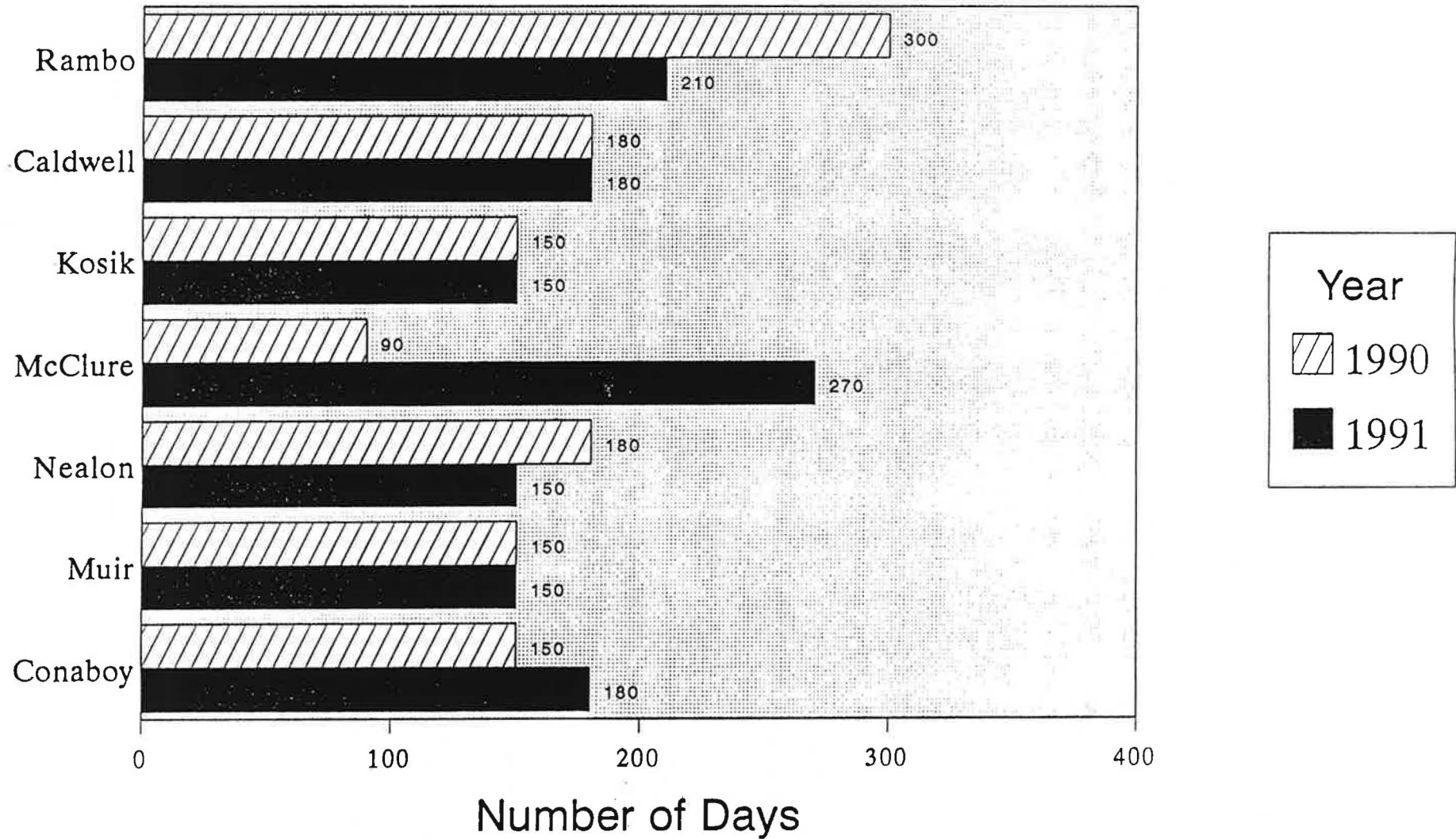
Terminations dipped slightly in 1991, but continue to keep

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7. Median times are calculated on a statistical year (July to June) rather than a calendar year. All other statistics are calculated on a calendar year unless indicated.

# Graph IIF: Median Case Processing Times, SY 1990 and 1991

Judge





pace with the changing number of filings. The number of terminations has typically exceeded the number of filings in the last five years.

The number of pending cases has remained moderately consistent over the last five years. The extent of the Court's pending caseload appears to be a reflection of filing activity. As filings increase pending cases increase, as filings drop, pending cases decline.

The ratio of terminations to filings is one measure of court performance. The Court scores very well in this category, averaging better than a 100 percent clearance rate for the last five years.

#### CRIMINAL:

##### Criminal: Filings/Terminations/Pending<sup>8</sup>

Graph IIG displays the number of criminal cases filed, terminated, and pending for the last three years. In 1991, terminations were up, filings were down slightly, and pending cases appeared to be leveling. The District's criminal cases represent 12.8 percent of the court's 1991 caseload.

A total of 269 criminal cases were filed in 1991. While this represents a decrease of eighteen percent from the previous year's filings of 328 cases it is sixteen percent higher than the number of criminal cases filed in 1989.

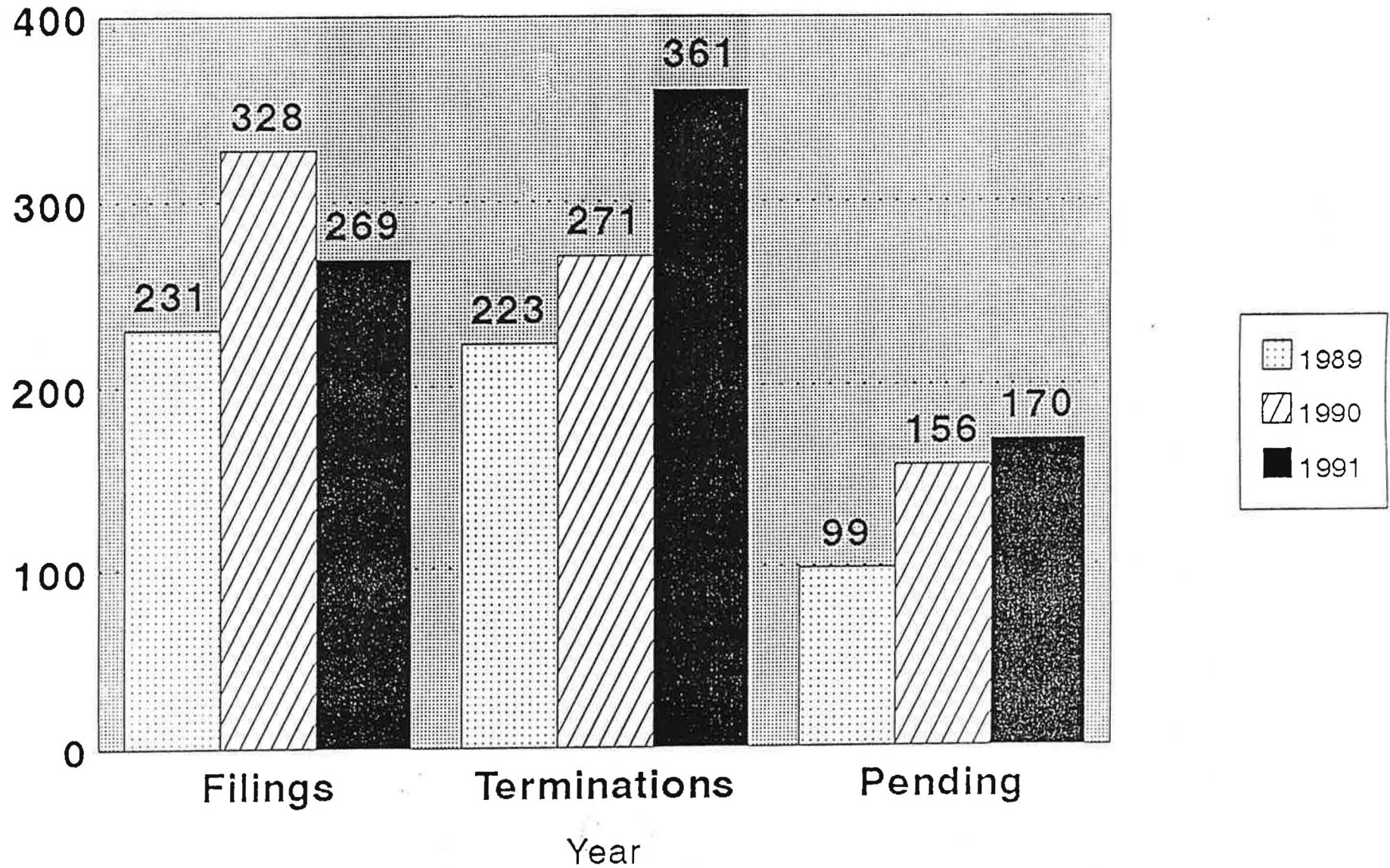
The Court terminated 361 criminal cases in 1991. The high number of terminations represents a 33.2 percent jump from 1990. Terminations have increased 61.9 percent since 1989.

The 170 pending cases left in 1991 represents a slight increase from 1990. The nine percent rise, however, is considerably less than the 57.6 percent upward change between 1989 and 1990. Perhaps, the modest change in 1991 is indicative of future consistency in pending caseloads.

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8. The number of cases pending at the beginning of one year may not equal the number of cases pending from the prior year due to statistical adjustments.

# Graph IIG: Criminal Caseload, 1989 - 1991



Criminal: Cases by Location, 1990 - 1991

As seen on Figure II f, approximately sixty percent of all 1991 criminal filings occurred in the Harrisburg office. The amount decreased to fifty percent of the filings in 1991 largely due to the overall decrease in filings. Of the remaining cases filed in 1991, thirty-three percent of the cases were initiated in the Scranton area and seventeen percent in the Williamsport area.

Figure II f  
1991 Criminal Cases by Location

<u>LOCATION</u>	<u>1990</u>	<u>1991</u>
SCRANTON OFFICE	94 CASES (28.7%)	90 CASES (33.5%)
HARRISBURG OFFICE	196 CASES (59.8%)	134 CASES (49.8%)
WILLIAMSPORT OFFICE	38 CASES (11.5%)	45 CASES (16.7%)

Figure II g shows the number of defendants filed in the Middle District in 1990 and 1991. The number of defendants filed in the Scranton office increased by sixteen percent over the previous year. The number of defendants filed in the Harrisburg office decreased by twenty percent and the number of defendants filed in Williamsport decreased by ten percent.

Figure II g  
1991 Defendants Filed by Location

<u>LOCATION</u>	<u>1990</u>	<u>1991</u>
SCRANTON	121	140
HARRISBURG	250	200
WILLIAMSPORT	52	47

Criminal Assignments by Judge, 1989 - 1991

The number of criminal assignments has fluctuated over the last year. The average annual change is +/- 91.5 cases which equals thirty-three percent of the 1991 assignments. Calendar year 1990 brought

the highest number of assignments, 346. Criminal assignments by Judge are listed on Figure IIh.

**Figure IIh \*\***  
**Criminal Assignments by Judge**

<u>JUDGE</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Judge Rambo	59	95	62
Judge Caldwell	58	95	62
Judge Kosik	29	35	31
Judge McClure*	0	30	40
Judge Nealon	14	21	15 ✓
Judge Muir	21	11	7 ✓
Judge Conaboy	28	37	34 ✓
<u>(Magistrate Judges)</u>	<u>22</u>	<u>12</u>	<u>27</u>
<b>TOTAL</b>	<b>231</b>	<b>346</b>	<b>278</b>

*Sereni*

\*\* Totals may exceed actual filings, due to local assignment practices which allow extra case credit for multiple defendant cases with 6 or more defendants.

**Criminal Defendants by Judge, 1989 - 1991**

Defendant-based counting is a method of measuring criminal caseload that is more accurate than counting the number of assignments. Figure IIIi illustrates this method of count by Judge for criminal cases filed in 1989, 1990, and 1991. Criminal cases in 1991 averaged 1.4 defendants per case (269 cases/387 defendants). The average number of defendants per Judge over the last three years equaled 52.4.

**Figure IIIi**  
**Criminal Defendants by Judge**

<u>JUDGE</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Judge Rambo	68	117	91
Judge Caldwell	76	115	93
Judge Kosik	48	50	47
Judge McClure	0	45*	44
Judge Nealon	16	21	25
Judge Muir	26	13	8
Judge Conaboy	35	50	52
<u>(Magistrate Judges)</u>	<u>22</u>	<u>12</u>	<u>27</u>
<b>TOTAL</b>	<b>291</b>	<b>423</b>	<b>387</b>

\* Defendants from May 1990 through December 1990.

**SUMMARY:**

**Criminal Caseload**

Criminal filings in 1991 were down from a year ago. The decline is offset by a 33.2 percent increase in the number of terminations. Pending cases may be leveling despite rising slightly since 1990.

As civil filings drop, criminal activity continues to grow. The average number of defendants per judge over the last three years is 52.4 and it appears to be growing annually. The number of criminal assignments has also jumped over the last three years. Assignments have increased twenty percent since 1989.

**MAGISTRATE JUDGES:**

**Scope of Analysis**

The Middle District of Pennsylvania employs the services of three full time and two part time Magistrate Judges. Analysis of the condition of the Magistrate docket will be limited to reviewing the docket trends since 1988 of the full time Magistrate Judges. Magistrate Judge Smyser and Magistrate Judge Durkin are the two full time Magistrate Judges who serve the Middle District in this full time capacity.

A statistical review of the docket of the third full time Magistrate Judge, Magistrate Judge Thomas Blewitt, is not included in the scope of the analysis due to the following factors:

1. The third full time Magistrate Judge position for the Middle District was previously a part time position. This change to a full time position has resulted in significant changes of the duties of the Magistrate Judge position.
2. Magistrate Judge Blewitt filled this full time position in February of 1992 and therefore there is no database of docket trends to review.

A statistical review of the docket trends for the part time Magistrate Judges of the Middle District was not included in the scope of analysis due to the following factors:

1. The limited nature of the duties and assignments of the part time Magistrate Judges are primarily petty offenses.
2. The duties and assignments of one of the part time Magistrate Judge positions is limited primarily to petty offenses committed in the area known as the Delaware Water Gap.

The analysis of the condition of the docket will therefore be focused on the case processing trends of full time Magistrate Judge Smyser who is located in the Harrisburg, Pennsylvania divisional office; and full time Magistrate Judge Durkin who is located in Wilkes-Barre, Pennsylvania.

**CASELOAD:**

**Background**

Each full time Magistrate Judge is required to submit a monthly statistical report, known as the JS43, which reports the number of cases processed each month. An important distinction in reviewing the docket trends of the Magistrate Judges is recognizing that a Magistrate Judge processes pieces of civil and criminal cases, usually in lieu of having a District Court Judge handle the matter. The number of cases in which a Magistrate Judge issues a final adjudication are limited.

There are three types of cases that the Magistrate Judge processes that are reported on the JS43 report; Felony Criminal matters, Prisoner matters and Civil Non-Prisoner matters. It is important to note that there are other duties assigned the Magistrate Judges such as petty offenses, misdemeanor cases and central violation bureau collection efforts, all which are excluded from this review.

The following figures provide an overview of the matters assigned and processed by the full time Magistrate Judges for the years 1988, 1989, 1990 and 1991 as reported on the JS43 report.

**Felony Criminal Matters: 1988-1991**

Figure IIh identifies fourteen categories of case processing duties which a full time Magistrate Judge is authorized to perform and are reported on the monthly reports. The figures specifically identify the number of felony criminal matters processed by the full time Magistrate Judges.

Initial appearances represent the largest area of activity, followed by the number of search and arrest warrants processed.

The areas of conducting pre-trial conferences, conducting status conferences and conducting voir dres are categories in which the Magistrate Judge is authorized to assist the District Court. The Middle District has not utilized the Magistrate Judges for these services due to the large number of prisoner cases in the District for which the Magistrate Judges provide assistance.

**Figure IIh: Felony Criminal Cases Processed  
Full Time Magistrate Judges  
1988-1991**

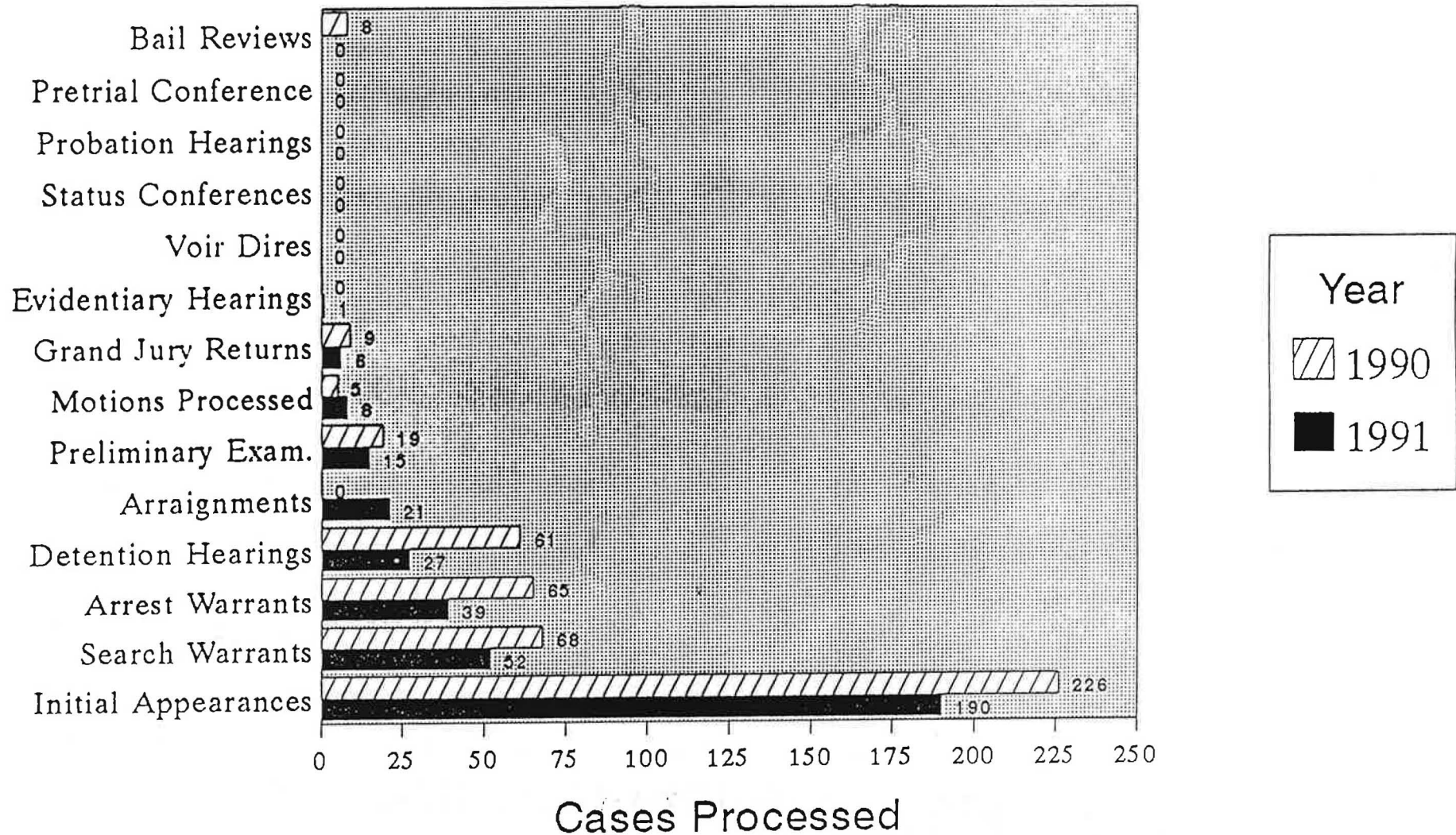
<b><u>Activity</u></b>	<b><u>1988</u></b>	<b><u>1989</u></b>	<b><u>1990</u></b>	<b><u>1991</u></b>
Search Warrants	57	46	68	52
Arrest Warrants	44	47	65	39
Initial Appearances	181	134	226	190
Detention Hearings	29	45	61	27
Bail Reviews	4	1	8	0
Preliminary Examinations	7	11	19	15
Arraignments	4	3	0	21
Grand Jury Returns	5	8	9	6
Motions Processed	12	6	5	8
Evidentiary Hearings	1	0	0	1
Probation Hearings	1	0	0	0
Pre-Trial Conferences	0	0	0	0
Status Conferences	0	0	0	0
Voir Dires	0	0	0	0

**Civil Prisoner Cases: 1988-1991**

The full time Magistrate Judges are authorized to issue reports and recommendations; process motions; conduct evidentiary hearings and conduct pre-trial conferences on prisoner cases. The number of matters

# Graph IIH: Full Time Magistrate Judge Felony Criminal Matters: 1990-1991

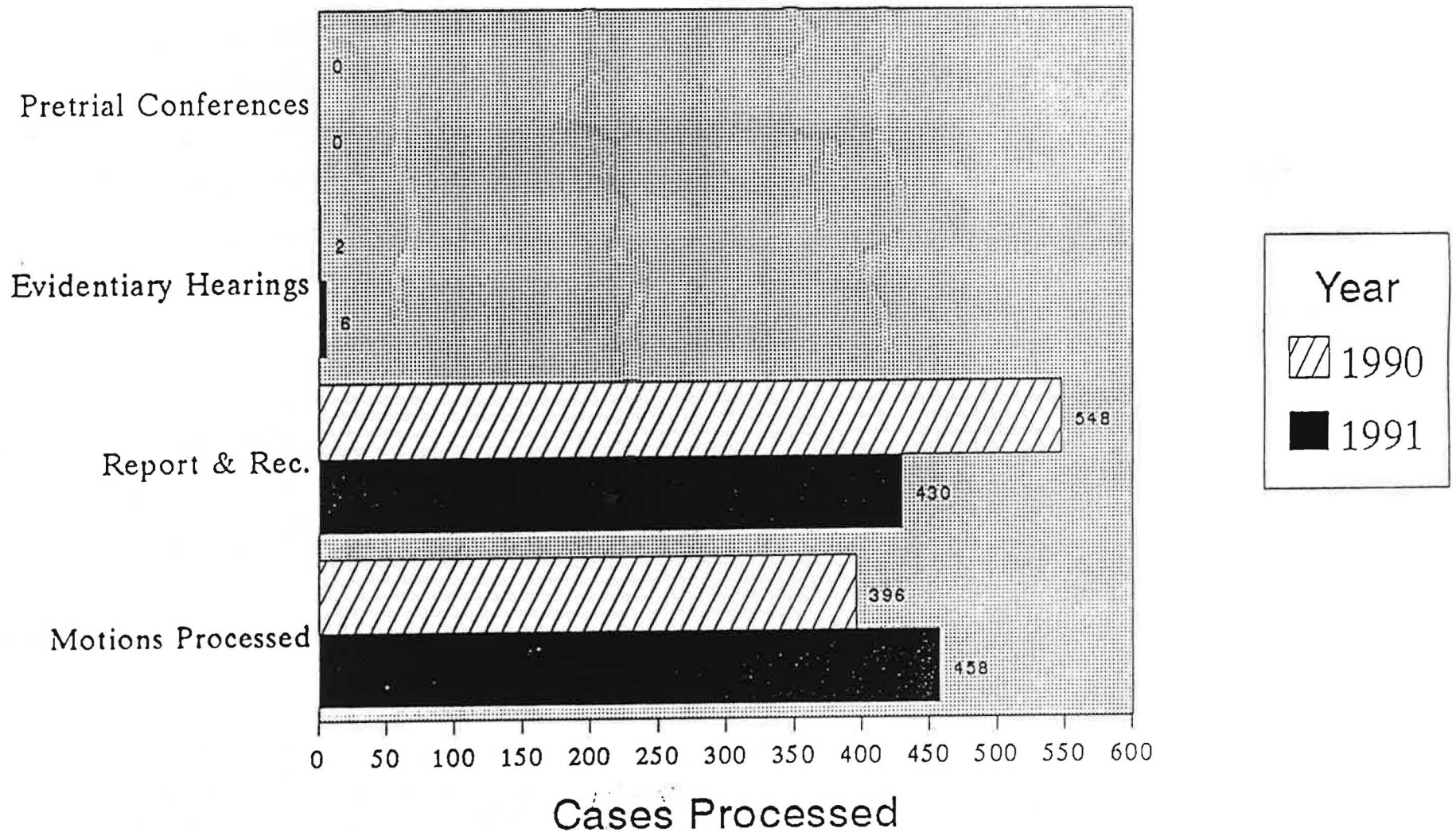
Casetype/Matter





# Graph II I: Full Time Magistrate Judge Civil Prisoner Matters: 1990-1991

Casetype/Matter



processed within these categories are reported on the JS43 monthly report for each Magistrate Judge.

Figure III identifies the number of civil prisoner cases processed for each of the above categories by the full time Magistrate Judges in 1988, 1989, 1990 and 1991. The area of greatest activity is the number of reports and recommendations issued each year. The second highest area of activity is the number of motions processed each year on prisoner cases.

Figure III  
Civil Prisoner Cases Processed  
Full Time Magistrate Judges  
1988-1991

<u>ACTIVITY</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Report/Recommendation	356	385	548	430
Motions Processed	225	320	396	458
Evidentiary Hearings	4	7	2	6
Pre-Trial Conferences	0	1	0	0

Civil Non-Prisoner Cases: 1988-1991

Figure IIj identifies eleven major categories of case processing which a Magistrate Judge is authorized to perform and were reported on the JS43 reports. The figure specifically identifies the number of civil non-prisoner matters processed by full time Magistrate Judges in 1988, 1989, 1990 and 1991.

Social Security appeals represent the largest area of activity for the last four years, followed by the number of civil motions processed and settlement conferences conducted.

The areas of conducting initial pre-trial conferences; conducting discovery conferences; conducting final pre-trial conferences; conducting evidentiary hearings; conducting voir dices and assigning cases to a Magistrate Judge as a special master are areas in which the Magistrate Judges are authorized to assist the District Court but have not been utilized for these services in the Middle District.

# Graph IIJ: Full Time Magistrate Judge Civil Non-Prisoner Cases Processed: 1990-1991

Casetype/Matter

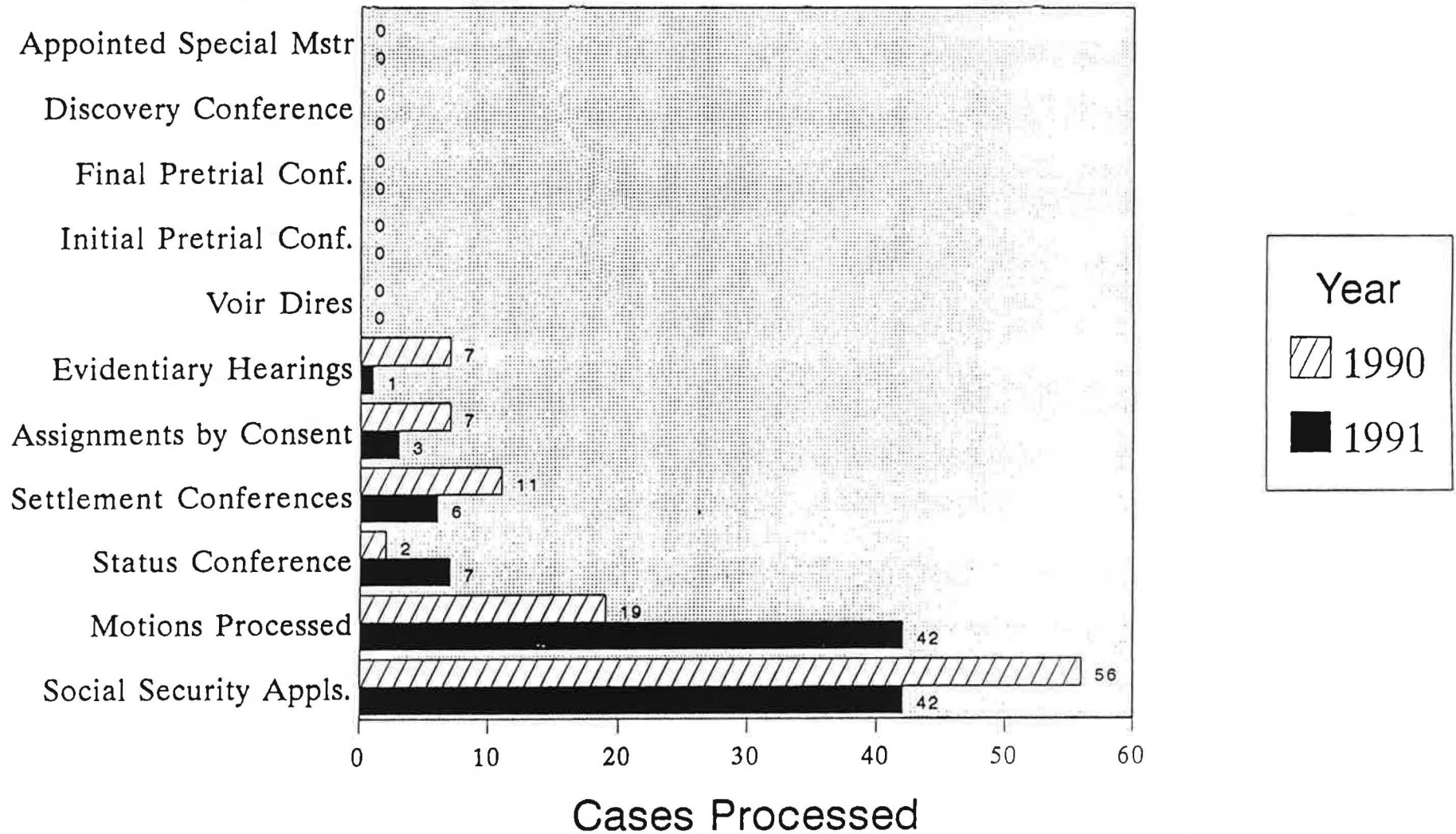


Figure IIj  
Civil Non-Prisoner Cases Processed  
Full Time Magistrate Judges 1988-1991

<u>Activity</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Social Security Appeals	111	75	56	42
Motions Processed	28	31	19	42
Settlement Conferences	10	17	11	6
Initial Pre-Trial Conf.	6	0	0	0
Discovery Conference	2	0	0	0
Final Pre-Trial Conf.	0	0	0	0
Status Conference	0	0	2	7
Evidentiary Hearings	1	3	7	1
Voir Dires	0	0	0	0
Assignments by Consent	8	8	7	3
Appointed Special Master	1	0	0	0

Pending Cases As of March 1, 1992

Figure IIk identifies the number of pending cases on the docket of the full time Magistrate Judges as of March 1, 1992. The figure includes the number of pending petty offenses.

The felony criminal matters which were identified in Figure IIh include misdemeanors and are combined under the category Felonies.

Figure IIk  
Pending Cases as of March 1, 1992

<u>Type of Case/Matter</u>	<u>Number of Pending Cases/Matters</u>
Prisoner Cases	338
Social Security Appeals	17
Civil Pretrial, Post-trial motions	0
Consent Cases	1
Special Master Cases	0
Criminal Pretrial, Post-trial motions	0
Felonies/Misdemeanors	20
Petty Offenses	12
Miscellaneous Cases	21

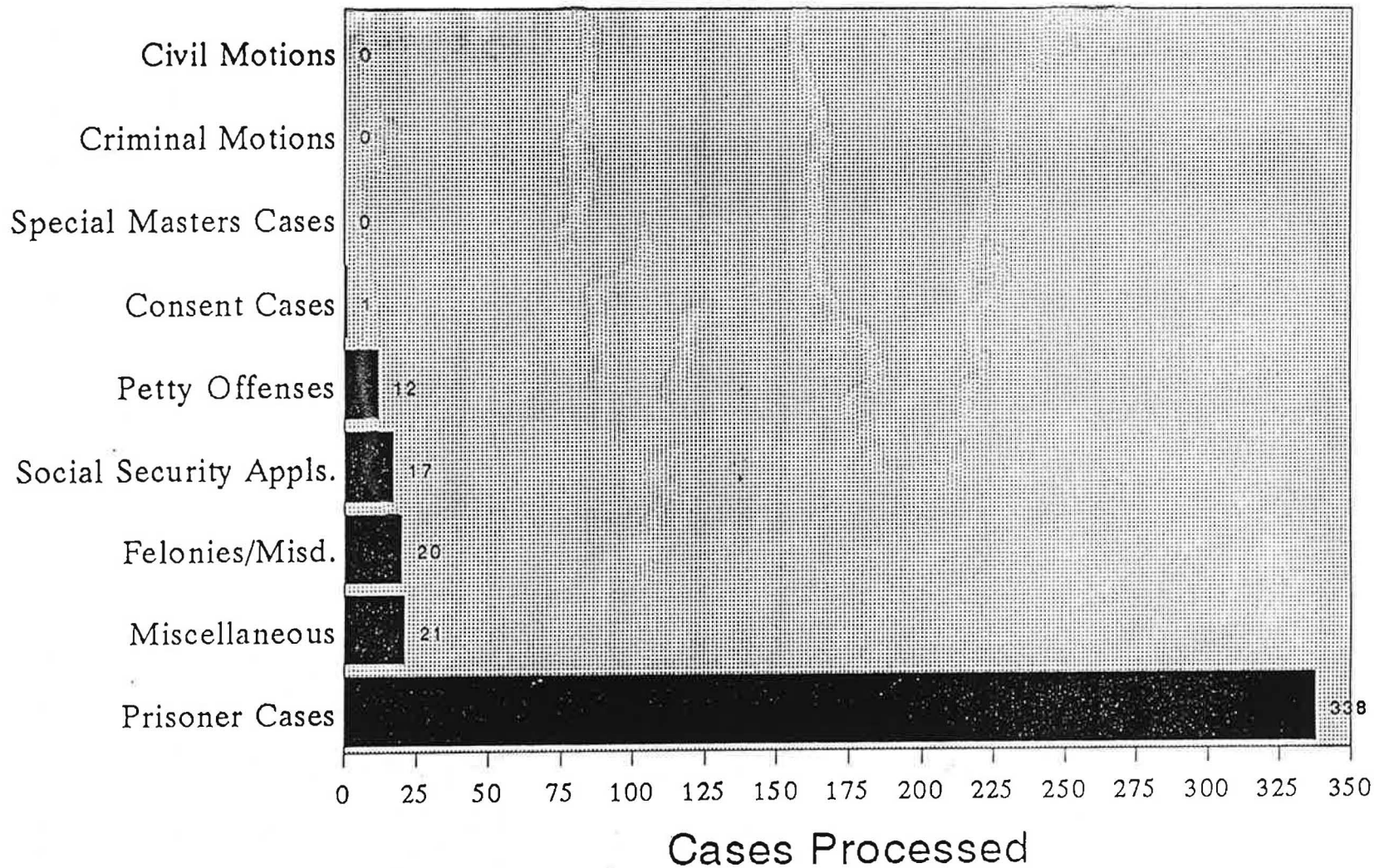
PROJECTIONS:

In that the amount of cases referred to a Magistrate Judge varies according to a number of factors, it is difficult to accurately project their future workload. Rather than attempt a comprehensive estimate of future Magistrate Judge workload, this section provides the

# Graph IIK: Full Time Magistrate Judge Pending Cases/Matters: March 1992

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Casetype/Matter



potential change of prisoner cases in the District on the assumption that the processing of prisoner matters will continue to be a significant responsibility of the Magistrate Judge in the upcoming years.

Prisoner cases are civil actions filed by an individual in either state or federal custody claiming a violation of his civil rights. Approximately thirty-six percent of the 1,835 civil cases filed in 1991 were prisoner petitions. Figure III illustrates the change in prisoner filings over the last two years as well as projections for 1992, 1993, and 1994.

Figure III  
Projected Prisoner Cases, 1990-1994<sup>9</sup>

<u>Year</u>	<u>Filings</u>	<u>% Change</u>
1990	999	Not Applicable
1991	668	-50.0
1992	673	00.7
1993	663	-01.5
1994	624	-06.3

The number of state correctional facilities in the District likely contributes to the high prisoner caseload in the District. A review of the "Monthly Population Report" published by the Pennsylvania Department of Corrections Planning and Research Office shows that over the last three years better than seventy-five percent of the states' prison population has been in the Middle District of Pennsylvania. The remaining twenty-five percent is disbursed between the other two judicial districts in the state.

Statistics suggest the current ratio of 36 prisoner cases for every one hundred civil filings is likely to stabilize over the next two years. If the past is a predictor of the future, the District can expect the filing ratio of 1 prisoner case for every 2.6 civil cases to drop slightly to 1:3 by 1994. While the statistics suggest a slight drop

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9. The two year projections were calculated according to a linear regression equation where the independent variable X = Year and the dependent variable Y = Number of Prisoner Assignments. The regression equation for Y on X was calculated with four years of filing data (1989-1992). The standard error of the estimate equals +/- 188.

in overall prisoner caseloads, the Advisory Group's research suggests large increases. The statistical calculations assume past filing activity will repeat in the future and cannot consider the impact of significant future changes in the District.<sup>10</sup> One change is the expected expansion of federal prisons, specifically the expansion of Allenwood Penitentiary in Lewisburg. The anticipated construction of a new federal prison possibly in Lackawanna County will also contribute to a rise in prisoner petitions.

WORKLOAD:

Median Disposition Time for Reports/Recommendations

Reports/recommendations for prisoner cases represent the majority of the reports/recommendations issued by a Magistrate Judge and consume a significant amount of the magistrate judges' time.

In calendar year 1990, the disposition time of 388 reports/recommendations issued by Magistrate Judge Smyser and Magistrate Judge Durkin were reviewed to determine the time period from initial assignment of the case to the time when the report/recommendation was filed.

The time from assignment to disposition by report/recommendation ranged from five days to a high end of 604 days. After discarding both the low and high extremes, the median time from initial assignment to filing of the report/recommendation in 1990 was 125 calendar days.

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10. For a discussion on the limits of linear regression see, James D. Wynne, Learning Statistics, (New York: Macmillan Publishing Co., 1982), p.223.

## *PART III: Impact of legislation*



U.S. MIDDLE DISTRICT COURT  
OF PENNSYLVANIA  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
REPORT: PART III  
THE IMPACT OF LEGISLATION

*"In performing the assessment for a district court, the advisory group shall examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts." CIVIL JUSTICE REFORM ACT, 28 U.S.C. s472(C)(1)(D).*

The mission of the Subcommittee on the Impact of Legislation encompassed four distinct areas:

- Analysis and identification of existing Judicial Impact Statements;
- Identification of specific legislation which has impacted the costs and delays of the business of the district court;
- Analysis of the proposed changes to the Federal Rules of Civil Procedure;
- In-depth interviews with each district Judge for the purpose of identifying major topics/issues from the Judges' point of view.

The findings presented in this Section add to the research conducted in Parts I and II of the Report and broaden the foundation on which the Advisory Group bases its recommendations.

EXISTING JUDICIAL IMPACT STATEMENTS

The Administrative Office of U.S. Courts has an Office of Judicial Impact Assessment. This office, staffed with a total of four employees, is responsible for preparing a Judicial Impact Statement on any bill that may impact the federal courts.

The primary purpose of the Judicial Impact Statement is to equate proposed legislation with court resources to identify the potential impact on the courts, while attempting to maintain a neutral position on the bill.

The Statement contains a brief overview or description of the bill, a section on the impact on the judiciary with estimates of the costs to implement the legislation, an analytical assumption providing an overview of the assumptions and facts used for the cost projection, and a cost assumption detailing the costs in dollars and personnel that would be needed to implement the legislation.

Four questions arose upon analysis of the effectiveness of a Judicial Impact Statement.

- 1.) Do the Statements contain the detail to determine what methodology was used to calculate the dollars and staff year cost projections?
- 2.) Why do the statements not contain recommendations for changes or revisions to the legislation?
- 3.) Who reviews or receives the statements and what is done with them upon receipt or review?
- 4.) Why do the statements not contain commentary on the appropriateness of the legislation or clarify the language for ambiguities that may lead to additional costs and/or delay?

The Advisory Group believes that a correlation exists between increased effectiveness of the Judicial Impact Statements and the decreased negative impact new legislation has on the Courts.

#### SPECIFIC LEGISLATION IMPACTING COST AND DELAY

The Subcommittee on the Impact of Legislation identified legislation which would have or already has had a significant impact on the courts including the firearms bill, the domestic violence bill, and habeas corpus reform.

At the time of writing of this report, the Violent Crime Control Act passed the Senate and was being considered by the House. If adopted in its present form the legislation would, according to Mr. David Selles of the Administrative Office of the

U.S. Courts, make "many homicides committed with handguns potential federal cases, provided the weapon crossed state or foreign boundaries".<sup>11</sup>

Another example of pending legislation which could adversely impact the cost and delay of litigation in the courts is the proposed Anti-Car Theft Act of 1992. This bill, which is speeding through Congress, will toughen penalties for car theft, establish car-jacking as a federal crime and set up a national clearinghouse to track used car parts. The rapid pace of passage of this particular piece of legislation clearly illustrates the ineffectiveness of the Judicial Impact Statements discussed earlier.

Other examples where Congress expanded the federal jurisdiction of the courts are the Civil Rights Acts; Americans with Disabilities Act; Environmental Legislation; the Employment Retirement Income Security Act; the Organized Crime Control Act; the Financial Institutions Reform, Recovery and Enforcement Act; the Speedy Trial Act; the Sentencing Reform Act; the Comprehensive Crime Control Act; and the Anti-Drug Abuse Act. Clearly this legislation has resulted in a cumulative increase in the number of cases being filed in the federal courts. The expanded jurisdiction potentially compounds delay in the resolution of pending litigation and the costs associated with said delay are markedly increased.

The Subcommittee identified one area, habeas corpus reform, in which legislation would actually help the courts. Habeas Corpus reform proposes limiting a defendant's right to file a habeas corpus appeal, if the state court system ensured the appointment of effective legal assistance at the state level.

Under the current system, a defendant may have numerous hearings before different Judges on virtually the same issue, consuming the courts' scarce resources. Unfortunately due to legislative inaction on this issue, the potential relief habeas

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11. The Commercial Appeal, July 21, 1991, p.81 col. 6.

corpus reform would provide to the federal courts is not forthcoming.

ANALYSIS OF PROPOSED CHANGES  
TO THE FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure are often interpreted as legislation enacted by the Court. Given this definition, the Advisory Group performed a detailed analysis of the proposed changes to the Federal Rules.

The proposed Rules impact some very critical areas of the court's method of operation, revise the discovery process, expand the power of the courts in connection with the use of alternative dispute resolution methods, require specificity in summary judgment motions, streamline procedures for dealing with attorneys' fee petitions, and permit courts greater flexibility in promulgating local rules. The observations of the Advisory Group on each of the above areas are:

**Discovery.** The proposed rules require parties to disclose certain information without first receiving a request from the other side, disclose the substance of any experts' testimony, prohibit the parties from engaging in other types of discovery until the mandated disclosures are made, limit the extent of other forms of discovery, require that the parties identify witnesses and exhibits before trial, and require that motions to compel and for sanctions include a certification of a good faith effort to resolve.

The Advisory Group believes that in most instances the proposed rules promulgate pre-trial practices that currently exist in the Middle District of Pennsylvania and it encourages their continued use.

**Alternative Dispute Resolution Techniques.** The proposed rules include alternative dispute resolution methods as an item to be considered at Rule 16 conferences and authorize the court to require parties to use these methods.

While the existing local rules do not address the use of alternative dispute resolution techniques, the Advisory Group's Recommendations urge the Middle District to move forward and study the adoption of an alternative dispute resolution program.

**Summary Judgment.** The proposed rules expand Rule 56 to encourage the use of summary determinations. Proposed Rule 56 seeks to eliminate or narrow issues, requires a detailed outline of the basis for summary judgment, recognizes the Court's authority to establish schedules for filing motions for Summary Judgment, expands or reduces the time for filing and responding to such motions, inquires into the propriety of Summary Judgment, and conducts hearings on whether certain facts are in dispute. The Advisory Group believes that the Court's local rules currently require many of the proposed changes and that increased use of these methods would contribute to the reduction of delay and expense of civil litigation.

**Fee Petitions.** The proposed rules make several changes to streamline the handling of attorneys' fee petitions. The changes require attorneys to file fee petitions no later than fourteen days after the entry of judgment, recognize the court's authority to establish fee schedules and permit the courts to treat a timely fee petition as a timely motion under Rule 59.

The Advisory Group feels that the existing local rules do not, nor more interesting, does the Civil Justice Reform Act directly refer to attorneys' fee petitions. The Subcommittee on Causes of Cost and Delay also addressed this issue in the survey of litigants and attorneys.

**Local Rules.** The proposed rules recognize that the preparation of cost and delay reduction plans as required by the Act, requires some flexibility on the part of the courts. Therefore, the proposed rules would permit courts to implement temporarily local rules that are inconsistent with the Federal

Rules of Civil Procedure.<sup>12</sup> The Judicial Conference must approve these experimental rules and the rules may not be effective for more than five years; and, although the rules may be inconsistent with the Federal Rules, they may not be inconsistent with Title 28.

#### IN-DEPTH INTERVIEWS WITH DISTRICT COURT JUDGES

The Subcommittee on the Impact of Legislation conducted separate interviews with the seven District Court Judges of the Middle District of Pennsylvania. The interviews were candid and thoughtful, providing insight into the workings of the courts beyond cold statistical summaries.

Upon completing the interviews, the Subcommittee prepared a written report included herein as Appendix A. The first part of the report presents the Subcommittee's analysis of the interviews and highlights the Judges' comments. The second part of the report is a summary of the actual interviews organized by major topics identified by the interview team.

Consideration was given to interviewing the Bankruptcy Judges of the Middle District. The Advisory Group decided that interviewing the Bankruptcy Judges was outside the scope of the CJRA. The highlights of the Judges' interviews and a brief analysis of the findings are presented below.

**Overview:** While the Judges are content with their jobs, there is some frustration over recent legislative action, specifically the discretionary limitations associated with the federal sentencing guidelines.

**Resources:** There may be a need for an additional law clerk in the Middle District. There was a consensus among the Judges for the need of an additional law clerk, such as an overflow clerk who could assist all the Judges.

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12. Proposed Rule 83 (b).

**Procedures:** There is a general consensus on the need to improve discovery practices, perhaps encouraging voluntary discovery early in the case management process. One of the District Judges implemented a portion of the changes suggested in the Civil Justice Reform Act which may have resulted in early settlements. Lastly, it appears there were mixed opinions concerning the adoption of a uniform scheduling order and a program of alternative dispute resolution.

**Collegiality:** The Judges share a concern that a growing lack of collegiality among lawyers in the District negatively affects the litigation process.

**Future Trends:** The Judges felt a strong need to plan for a growth in caseload, specifically in the area of prisoner cases.

In addition to the above findings, many Judges commented on the potential for abuse of discovery, although most Judges declined to identify the abuse as an overwhelming problem in the Middle District. The Judges generally welcome the proposed changes to the Rules of Federal Procedure that require the automatic disclosure of certain information.

Other comments and suggestions from the Judges' interviews included expanding the Magistrates' responsibilities, considering the use of alternative dispute mechanisms, maintaining their flexibility in dealing with different cases and suggesting that the construction of new prisons in the district may have an adverse impact on the courts' case processing times.

*PART IV: An assessment of  
cost and delay*



U.S. MIDDLE DISTRICT COURT  
OF PENNSYLVANIA  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
REPORT: PART IV  
AN ASSESSMENT OF AVOIDABLE COST AND DELAY

*"In developing its recommendations, the advisory group of a district shall...identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the way in which litigants and their attorneys approach and conduct litigation". Civil Justice Reform Act, 28 USC § 472 (c) (1) (C).*

The following section of the Report, "Part IV: An Assessment of Avoidable Cost and Delay", responds to CJRA 28 USC §472 (c) (1) (C) & (2). The assessment is the fourth and final step toward formulating expense and delay reduction recommendations for the Middle District of Pennsylvania.

The Advisory Group, specifically its Cost and Delay Subcommittee, spent considerable time discussing the definition of excessive cost and delay. Although the Advisory Group feels that the CJRA requirements provide an opportunity to conduct an in-depth study of the Court's ability to process cases in a timely manner, the Act may not provide the appropriate measures to assess adequately the presence of excessive costs. The definition of excessive costs appears to be a shared concern among District Courts across the country. The Advisory Group's review of the completed CJRA Reports and Plans did not offer a solution or provide a valid methodology from which to examine costs. In many instances an assumption is made that a relationship exists between excessive costs and excessive case processing time. While the MDPA Advisory Group questions the validity of this assumption, it has been unable to develop a more solid measure of excessive costs.<sup>13</sup> Thus, the Advisory Group's analysis of excessive costs is limited by the premise that delay increases client costs and court expenses.

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13. For an explanation of court costs and their relationship to court efficiency see, Kent John Chabotar, Analyzing Costs in the Court, (National Institute of Justice, January 1987), p. 24.

This section offers a detailed review of the Advisory Group's research of excessive cost and delay. As required by the Act, the research considered potential causes of cost and delay including court procedures and the way in which litigants and their attorneys approach and conduct litigation. The research in Section IV benefits from the findings in earlier sections of the Report and in many ways is a synopsis of the Advisory Group's findings.

### Court Procedures

The Advisory Group researched the Court's procedures by reviewing case management practices, analyzing the local court rules, and conducting Judge interviews. In that many of the findings from the above listed research are shown throughout previous sections of the Report, the analysis here highlights only the major points.

Part I of this Report offers documentation on the case management practices of the Judges in order to identify the practices that may be conducive to speedy case processing. Figure Ia in Part I illustrates the varying case management practices of the Judges. While alternatives to the current practice, specifically the adoption of common case management elements, may speed overall case processing times, the Court currently maintains a high level of efficiency. Parties to a civil suit can expect, on average, that their case in the Middle District will last about 9 months. Figure IVa illustrates that the nine-month duration has been relatively constant over the last five years.<sup>14</sup> The positive status of the Court's docket supports this finding.<sup>15</sup> The Advisory Group feels that the Court's

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14. For an explanation of case life expectancy see, John Shapard, "How Caseload Statistics Deceive". The calculation is arguably a good estimate of the Court's ability to keep pace with its caseload.

15. Over the last five years pending cases remained consistent, the ratio of terminations to filings averaged better than 100 percent, and median case processing times stayed at 6 months. See, Part II of this Report, "Status of the Docket".

ability to defeat delay has been due, in part, to the high caseload assumed by the senior Judges.

Figure IVa

Year	Filings	Terminations	Pending	Life Expectancy
1987	1913	2088	1362	8 (months)
1988	2167	2033	1499	9 (months)
1989	1957	1984	1483	9 (months)
1990	2295	2043	1736	10 (months)
1991	1835	2023	1548	9 (months)

The Advisory Group also reviewed the Court's local rules of practice, determining that the District has been proactive in many areas required by the CJRA.<sup>16</sup> A number of the local rules assist in preventing delay by limiting the number of continuances and requiring strict adherence to schedules.<sup>17</sup>

The third area of research consisted of in-depth interviews with the Judges. The Legislative section of the Report illustrates the detailed results of the interviews. Without exception, the Judges attributed the Middle District's fine record in the timely disposition of cases to the integrity and work ethic of their colleagues.

The Advisory Group concludes that the case management practices of the Judge's are conducive, for the most part, to expeditious case processing. As such the recommendations section of this Report suggests "fine tuning" of the procedures. The Advisory Group feels that, while the Court is not experiencing excessive delay in case processing, slight modifications to the current case management practices could enhance an already efficient system.

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16. See Part I: The District's Report, p.4.

17. Part I, page 4 contains a list of local rules that specifically relate to reducing delay in the District.

### Attorney Practice

The Advisory Group surveyed 167 attorneys practicing in the Middle District of Pennsylvania.<sup>18</sup> The attorney questionnaire consisted of three parts including questions concerning a specific case, general questions on the attorney's practice in the Middle District of Pennsylvania, and general questions on litigation costs. Of the 167 surveys distributed, 129 were returned for a response rate of 77.2 percent.

Part I of the survey solicited input for a specific case on the level of case management, case management actions, factors influencing excessive delay, and suggestions for reducing civil case processing delay. Generally, the attorneys surveyed are satisfied with the level of case management by the Court and feel that in most instances the Court is disposing of cases in a reasonable amount of time. This favorable response remains consistent across all case types included within the survey.

Part II of the questionnaire solicited input on general case management techniques in the Middle District. The respondents were able to return this portion of the survey anonymously. As with the first portion of the survey, the responses were favorable and complimented the Court's case management practices. The vast majority of respondents indicated that they have never experienced excessive delay when practicing in the Middle District. The attorneys specifically commented that they are satisfied with the level of compliance with local rules and time-frames; that the current local rules are effective in preventing excessive delay; and that there are few, if any, case management problems facing the District today. The attorneys surveyed suggest the adoption of a uniform scheduling order with variations among standard, complex, and expedited cases; increasing the use of Court initiated settlement; and considering the adoption of a voluntary alternative dispute resolution program.

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18. Appendix B contains a copy of the attorney questionnaire.

While the cost section survey tracked the specific case identified in Part I, the responses remained anonymous. As with delay, the attorneys responding did not feel there exists excessive civil litigation costs in the District.

The Advisory Group Concluded its Research  
on Attorney Practice with the Following Findings

- 1) While the attorneys surveyed are satisfied with the level of case management in the Middle District of Pennsylvania and feel that in most instances the Court is disposing of cases in a reasonable amount of time, there may be areas for minimal change that could reduce delay in case processing.
- 2) The attorneys surveyed indicate that dilatory actions by counsel contribute to excessive delay and costs. In that dilatory actions may be the result of excessive discovery, the Advisory Group feels there may be a need to modify the District's present local rules of discovery.
- 3) The attorneys surveyed desire consideration of a District-wide scheduling order.
- 4) The attorneys surveyed feel there is a need in the District to study the feasibility of establishing a program of alternative dispute resolution.
- 5) The results of the survey indicate a need to expand the awareness of the role of the Magistrate Judge.
- 6) The results of the survey indicate a preference for court-initiated settlement.
- 7) The results of the survey suggest that requests for extensions of time be signed by the litigants to discourage continuances.<sup>19</sup>

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19. Local Rule 203.2 currently requires that motions for continuances be signed by counsel and client.

### Litigant Experience

The Advisory Group conducted a survey of Court litigants to solicit input on their experience with the Court.<sup>20</sup> The Advisory Group distributed the survey to litigants in closed cases over a three month period. In that all cases disposed during the three month period were not appropriate to survey, the Advisory Group only surveyed litigants involved in location cases.<sup>21</sup> The Advisory Group surveyed one hundred and twenty three litigants, of which 29 responded.

While the twenty-four percent response may not be representative of all court participants, the results offer the experience of a sample of the Court's litigants. The information may also provide a baseline from which to measure the effect of the CJRA Advisory Group recommendations on a similar sample in the future.

The litigants surveyed expressed a high level of satisfaction. Specifically, the respondents felt that their cases were resolved expeditiously and the cost to litigate was reasonable. A common suggestion among the respondents was that litigants have available from their attorney or the Court, educational material on the judicial process including information on alternatives to the traditional functions of the Court.

The remaining section of the Report, Section V, proposes recommendations to the Court according to the findings in this Section as well as previous portions of the Report.

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20. Appendix C contains a copy of the client/insurer questionnaire.

21. Part I of this Report contains a discussion on defining location cases. The Committee did not survey prisoners or cases where the United States was a party.

## *PART V: Recommendations*

U.S. MIDDLE DISTRICT COURT  
OF PENNSYLVANIA  
CIVIL JUSTICE REFORM ACT ADVISORY GROUP  
REPORT: PART V  
RECOMMENDATIONS

*"The advisory group of a United States district court shall submit to the court recommendations which shall be made available to the public and which shall include recommended measures, rules and programs". Civil Justice Reform Act, 28 USC § 472 (b)(3).*

The Advisory Group submits the following recommendations to the Court after consideration of the status of the civil and criminal dockets (Part II), trends in case filings and demands being placed on the Court's resources (Part II), the principle causes of cost and delay in civil litigation (Part IV), and the extent to which cost and delay could be reduced through a better assessment of the impact of new legislation on the courts (Part III).<sup>22</sup> The Advisory Group's recommendations call for significant contributions by the Court, the litigants and their attorneys as required by the Judicial Improvements Act. In that each Court is unique, specifically in its resources and approach to case management, the Advisory Group feels that adopting a model plan discussed under 28 USC §472(b)(2) is not a feasible option for the Middle District of Pennsylvania. The Advisory Group proposes to the Court that subsequent to consideration of the forthcoming recommendations, the District develop its own plan pursuant to its specific needs and resources.

While the Advisory Group findings illustrate that there exists little to no delay in civil case processing, it feels that there may be areas that can be modified slightly in anticipation of the future needs of the Court and to "fine-tune" an already efficient system.

The Advisory Group believes, as is consistent with the Act, that, if adopted by the Court, its recommendations should be systematically assessed for effectiveness. In part, the

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22. 28 USC § 472. The recommendations respond to the findings illustrated in the previous portions of the Report shown in parentheses.



periodical review of the status of the civil and criminal docket will accomplish the assessment.<sup>23</sup>

Each of the following proposals consists of the recommendation, the rationale for the recommendation based on the Advisory Group's research, and a potential method of implementation. The Advisory Group submits these recommendations to the Court for approval and ultimately the development of a CJRA Plan for the District. The Advisory Group plans to assist the Court in developing the details of the approved recommendations including methods of implementation.

Lastly, the Advisory Group is sensitive to balancing speed with justice and is wary of promulgating "assembly-line justice", but feels that it is possible to maintain a system that assures:

- 1) Equal treatment of all litigants by the court;
- 2) Timely disposition consistent with the circumstances of the individual case;
- 3) Enhancement of the quality of the litigation process;
- 4) Public confidence in the Court as an institution<sup>24</sup>

#### RECOMMENDATION #1

##### **Systematic, Differential Treatment of Cases**

The Advisory Group recommends a common practice that when a case is filed the Judge issues a scheduling order shortly after the Answer which includes differential treatment of the case based on the casetype and its facts. The Court could adopt

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23. The Committee suggests that the required annual assessment of the docket be conducted consistent with the methodology of the initial review illustrated in Part II of this report as to identify trends in case filings and the demands being placed on the Court's resources.

24. Maureen Solomon and Doug Somerlot, Caseflow Management in the Trial Court, (Chicago: American Bar Association, 1987), p.5.

the proposal by local rule. The Advisory Group further recommends that the common elements of the scheduling order issued in each case consist of the following practices, the timing to take place at the Judge's discretion:

- 1) Scheduling/Case Management Conference
- 2) Cut-Off Dates for Adding Parties
- 3) Status Conference Prior to Discovery Deadline
- 4) Firm Discovery Deadline
- 5) Pretrial/Settlement Conference subsequent to the Close of Discovery but significantly in advance of the Jury Selection and Trial Date
- 6) Trial Date

The Court should also consider adopting a "fast-track" for cases, where at the time of filing or the scheduling/case management conference, it appears that the case can be resolved in a manner more timely than the norm. The Court's current procedural order for social security review cases is similar to this proposal. For example, in social security cases the Court issues a standard order referring the case to a Magistrate Judge for recommendations. The order also sets forth standard time-frames conducive to the characteristics of a social security case.<sup>25</sup>

While the recommendation is consistent with the results of the attorney questionnaire, the proposal considers the findings of the Judge interviews which suggest that rigid, uniform scheduling practices may inhibit the Judge's case management discretion and upset the balance of speed and justice.

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25. For a copy of the procedural order see Appendix D.

## RECOMMENDATION #2

### **Early and Ongoing Judicial Control of the Pretrial Process Including: Case Planning, Early and Firm Trial Dates, Control of Discovery, and Deadlines for Motions**

The scheduling practice proposed in Recommendation #1 calls for common elements of early and ongoing judicial control to take place at the Judge's discretion. Local Rule 408.4 currently requires the issuance of a scheduling order 120 days from the filing of the complaint. The Advisory Group feels that the 120-day standard should be a minimum.

The scheduling order sets forth the period of time between each major case management action, specifically the point of time when the pretrial/settlement conference occurs. The Advisory Group recommends the pretrial/settlement conference occur substantially in advance of jury selection and the trial date, but subsequent to the completion of discovery.

The Advisory Group stresses the timing of the pretrial/settlement conference soon after the completion of discovery. The pretrial case management practices in Part I of this Report show that settlement discussions are often held close to the trial date during the final pretrial conference. While this is a technique that works well in the District, the Advisory Group believes that the pretrial/settlement conference could be moved forward in the process and be held shortly after the close of discovery. The Advisory Group feels that early settlement discussions would result in a savings to litigants in that all cases may not require the lengthy pretrial preparation time the Court currently provides. This recommendation is consistent with national studies of delay citing a key factor in reducing case processing time is early and ongoing court control over the caseflow.<sup>26</sup> Recommendation #1 provides the method to implement the proposal.

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26. John Goerd, Examining Court Delay, (Williamsburg: National Center for State Courts, 1987), p.49.

### RECOMMENDATION #3

#### **Authorization to Refer Appropriate Cases to Alternative Dispute Resolution**

The Advisory Group recommends that the Court adopt an array of alternatives to trial which may include arbitration, mediation, and summary jury trials.

The Advisory Group discussed the definition of alternative dispute resolution (ADR) deciding to define ADR as any program established as an alternative to trial. The Advisory Group feels the District should broaden its use of ADR recognizing that the practice is a growing and widely-accepted method of case disposition across the country. Consideration could be given to the use of Magistrate Judges to conduct ADR proceedings. The Court could also consider having a Magistrate Judge preside over civil trials.

In that the District experiments only slightly with ADR,<sup>27</sup> the Advisory Group decided that, rather than proposing the broad adoption of a local rule authorizing the Court in its discretion to set any appropriate civil case for alternative methods of dispute resolution, the Court should consider the array of programs available and select those method(s) that suit the needs of the District. This Advisory Group could then be called upon to work-out the specifics of the program selected. The proposal is consistent with the Judge interviews, the attorney questionnaire and suggestions by Court litigants. A review and analysis of the Proposed Federal Rules of Civil Procedure conducted by the Advisory Group's Legislative Subcommittee also supports adoption of this concept. While the Advisory Group shares the Court's belief that compulsory arbitration is not needed in the District, there are many other ADR programs that may be suitable for adoption by the District

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27. Part I of this Report describes Senior Judge Muir's use of summary jury trials as an alternative to trial.

including early neutral evaluation, mediation, settlement weeks, valuation programs, mini-trials, and summary jury trials.<sup>28</sup>

RECOMMENDATION #4

**A Neutral Evaluation Program for Presentation of the Legal and Factual Basis of a Case to a Neutral Court Representative at an Early Non-Binding Conference**

In addition to a status conference, the Court may order the parties or the parties may elect to participate in an established early non-binding neutral evaluation of the case with a Magistrate Judge to facilitate settlement.

The recommendation responds to the results of the Judge interviews conducted by the legislative subcommittee and the attorney questionnaire where the respondents requested that the Court become more involved with settlement discussions and consider expanding the role of the Magistrate Judges. The proposal also considers the results of the review of case management practices, specifically the role of the Magistrate.

The Court could adopt a program of early neutral evaluation by local rule.

RECOMMENDATION #5

**Encouragement of Voluntary Exchange of Information Among Litigants and Other Cooperative Discovery Devices**

The Advisory Group recommends the Court await the outcome on the adoption of proposed Federal Rule 26 which is intended to accelerate the exchange of basic information about the case and eliminate paper work involved when requesting discovery material.<sup>29</sup>

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28. For an explanation of the benefits and concerns associated with ADR programs, see "Court Based Dispute Resolution Programs", the Court Administration Division of the Federal Judicial Center.

29. Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure and the Rules of Evidence, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, August 1991., p.26.

The results of the attorney survey and Judge interviews suggest that occasionally dilatory discovery actions by counsel contribute to the limited amount of delay existing in the District. If adopted, proposed Federal Rule 26 will eliminate much of this concern. If Federal Rule 26 is not adopted, the Advisory Group recommends the Court adopt a local rule to encourage the voluntary exchange of information.

RECOMMENDATION #6

**Require Each Party to be Represented at Each Pretrial Conference Including Settlement Conferences by an Attorney with Authority to Bind that Party to all Matters Previously Identified by the Court for Discussion at the Conference**

The Advisory Group recommends the Court adopt this practice by local rule. While local rule 408.2 requires that representatives of the parties with authority to bind them in settlement discussion be present or available by telephone at pretrial conferences, the Advisory Group recommends revision to local rule 408.2 to expand the binding representation to any conference where settlement may be discussed. This recommendation is supported by the results of the attorney survey and agrees with the Advisory Group's advocacy of early and ongoing judicial control of the pretrial process. Additional changes to local rule 408.2 are proposed under Recommendation #9.

RECOMMENDATION #7

**Prohibition of Discovery Motions Unless Accompanied by Certification by the Moving Party that a Good Faith Effort was Made to Resolve Issues with Opposing Counsel**

The Advisory Group recommends the Court modify local rule 402.6 to require the certificate of a good faith effort to be filed at the time of the motion.

While the District has been pro-active in this area, the Advisory Group agreed that local rule 402.6 could be modified slightly. Local rule 402.6 requires that "counsel for the movant

in all discovery matters file with the Court ten days after filing of the respondents brief a statement certifying that he has conferred with the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion...". The Advisory Group proposes that local rule 402.6 be modified to require that a certificate of good faith be filed with the discovery motion, rather than ten days after the filing of the respondents brief.

Discovery has been called the most time consuming element in federal civil litigation.<sup>30</sup> Thus, the Advisory Group believes that any proposal that makes the discovery process more efficient will result in reduced case processing delay. The proposed modification to local rule 402.6 also responds to suggestions made on the attorney survey and results of the Judge interviews.

RECOMMENDATION #8

**Require Counsel for each party to Confirm a Joint Discovery/Case Management Plan at the Scheduling/Case Management Conference**

A discovery/case management plan is proposed as part of the common scheduling order in Recommendation #1. Specifically, the proposal is that the Court propose a plan to counsel and counsel respond jointly at the scheduling conference.

Recommendation #1 contains the rationale behind this proposal, as well as a potential method of adoption.

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30. Steven Flanders, Case Management and Court Management in United States District Court, (Federal Judicial Center, Sept. 1977), p.25.

RECOMMENDATION #9

**Scheduling/Case Management Conference(s), at which the Judicial Officer Explores the Possibility of Settlement; Identifies the Principal Issues in Contention; Provides, if Appropriate, for Staged Resolution of the Case; Prepares a Discovery Plan and Schedule; and Sets Deadlines for Motions**

The Advisory Group recommends development of a discovery schedule during the scheduling conference discussed in Recommendation #1. The scheduling/case management conference should be held in person with due consideration being given to a request for a telephone conference. The Advisory Group proposes that in person conferences, rather than telephone conferences result in earlier disposition, an opportunity to narrow the issues, the ability to streamline discovery and encourage the voluntary exchange of information.

As with other recommendations, the Advisory Group feels that developing a discovery plan at an early scheduling conference responds to the Act's provisions concerning early judicial control over the pretrial process, a theme supported throughout the Report. This recommendation will require an amendment to local rule 408.2 to emphasize the use of in person conferences. Local rule 408.2 currently reads that the conference may be held either by telephone or in person, without indicating a preference for in person conferences.

RECOMMENDATION'S #10 to #16

**Such Other Features as the District Court Considers Appropriate after Considering the Recommendations of the Advisory Group**

The Advisory Group addressed potential causes of delay beyond the statutorily required areas of study. The findings which support these recommendations are largely the result of meeting discussions prompted by Advisory Group members supplemented by the research conducted during the CJRA study. The Advisory Group is providing these recommendations to the



Court for consideration and inclusion in the District's CJRA Plan.

RECOMMENDATION #10

The Advisory Group recommends the Court consider adopting a Code of Conduct for the District to improve lawyer collegiality and civility. If implementation of such a code is agreed to by the Court, The Advisory Group stands ready to assist the Court in anyway the Court deems appropriate.

RECOMMENDATION #11

The Advisory Group recommends the Court review the duties of the Magistrate Judges with the goal of expanding their role, specifically presiding over civil trials, overseeing or participating in a District ADR program, and grand jury returns.

Many of the preceding recommendations call for the Magistrate Judges to take a more active role in civil case processing. To broaden the Magistrate Judge resource, the Advisory Group recommends that the Court conduct a study of Magistrate Judge usage in the District with a view toward the feasibility of expanding their role. A review of the full-time Magistrate Judge workload supports this recommendation. While the Magistrate Judges in the District process an abundance of prisoner and non-prisoner matters, the Advisory Group believes their role could become more diversified, specifically in the processing of non-prisoner matters.<sup>31</sup>

RECOMMENDATION #12

The Advisory Group recommends that the Court encourage Congress and the Executive Branch to fill vacant judgeships in a timely manner.

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31. Graphs III in Part II of this Report illustrates that the majority of the Magistrate Judge caseload is processing prisoner cases. Their non-prisoner caseload shown on Graph IIJ is primarily processing social security appeals and motions.

The Court currently has two judicial vacancies. While the analysis of the docket reveals that the District has been able to overcome this shortage of resources, the impact of increased caseloads over the next three years is likely to adversely affect the Court's ability to timely process cases. Of specific concern is the potential growth in prisoner cases.

RECOMMENDATION #13

The Advisory Group notes the necessity for Congress to recognize and acknowledge the impact of legislation on judicial discretion and on cost and delay separate and apart from the efficacy of the courts. Specifically, the Advisory Group proposes that Congress review legislation prior to enactment to study its impact in regard to increased court caseloads and changes in judicial discretion. Such a study should reflect the legislative impact by district. For example, the construction of a new federal prison in Lackawanna County will have a potentially negative impact on caseloads in the Middle District of Pennsylvania. While the building of a new penitentiary is beneficial in many ways, the Court may require additional resources to process the likely increase in prisoner litigation that will accompany the growth in prisoner population.

Part III of the Report, which includes an analysis of current legislation, shows that Congress is increasingly passing laws that have potential to adversely impact the cost and delay of litigation. The Advisory Group recognizes the intent behind the Judicial Impact Statements described earlier in the Report. The concern is that legislation will continue to have a potentially adverse impact on litigation costs and contribute to increased delay unless the judicial impact statements can become more effective.

In addition, the results of the Judge interviews suggest that legislative action often results in a reduction of judicial discretion. The limitations concern the Judges in the

Middle District, specifically the discretionary limitations associated with the federal sentencing guidelines.

RECOMMENDATION #14

The Advisory Group recommends the Court disseminate to the Bar or public basic case processing information. The education could be in the form of a pamphlet flow-charting the life of a typical case in District Court.

This recommendation primarily responds to the results of the client survey where the sample litigants indicated they would have benefitted from being more educated on the general caseflow process. The litigant informational pamphlet extends the obligation to beat delay in case processing beyond the Court and the Bar to the litigant.

RECOMMENDATION #15

The Advisory Group recommends the District enhance collegiality and civility by establishing local training programs that facilitate bench-bar interaction through seminars. The practice has met with success nationally in the District of Colorado<sup>32</sup> and locally in Pennsylvania's Allegheny County. Enhancing collegiality, civility, and bench-bar relations was a recurring theme throughout meetings of the Advisory Group.

RECOMMENDATION #16

The Advisory Group recommends the Court re-examine local rule 901.4 to require temporary restraining orders (TRO) filed by prisoners with counsel be assigned in all instances to a Judge rather than a Magistrate Judge. Currently local rule 901.4 states that a TRO may be assigned to a Magistrate Judge for submission of a report and recommendation to a Judge. The Court follows rule 901.4 in most prisoner matters regardless of whether

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32. The Civil Justice Reform Act Advisory Group and U.S. District Court for the District of Colorado had great success sponsoring a "bench-bar" seminar in May, 1992. The seminar received national recognition.

the case proceeds in forma pauperis or with counsel.<sup>33</sup> The concern of the Advisory Group is the extra step that may accompany motions for TRO that are initially assigned to the Magistrate Judge. The rationale is that the extra step is not a condition for counsel in non-prisoner matters, thus it should not be necessary for counsel in prisoner cases.

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33. Part 1, page 3 describes the rotation of prisoner cases by which each Judge receives two cases for every 108 prisoner filings.

# *APPENDICES*

# *APPENDIX A*

## *Judge Interviews: Detailed Results*

REPORT ON INTERVIEWS  
WITH JUDGES OF THE MIDDLE DISTRICT

The interview teams appreciate the time the judges of this district spent sharing their views with us. They were candid and thoughtful in our conversations. As a result, we obtained insights into the workings of the court that go beyond statistical summaries. We hope to convey those insights in this report.

The first part of the report presents our analysis of the interviews as a whole. In it we attempt to highlight what struck us most about the judges' comments and what appears to have the most relevance to the work of the committee as a whole.

The second part of the report is our summary of the interviews organized to conform with the major topics in the outline of questions used by the teams.

I. ANALYSIS

A. The State of the Judiciary in the Middle District

Without exception the judges attributed the Middle District's fine record in the timely disposition of cases to the integrity and work ethic of their colleagues. These comments reminded the interview teams that the manner in which the system works, or does not work, depends heavily on the judges. Therefore, we begin our report by turning our attention to the state of this district's judiciary.

While the judges uniformly report great satisfaction with their jobs, one source of frustration was mentioned by all. The judges are not happy about being forced to use the federal sentencing guidelines. Each judge felt that this limitation on his or her discretion resulted in some sentences that were unjust given the circumstances of the case. While no judge directly expressed resentment of the guidelines, the interview teams feel that most do resent them. We believe this resentment arises because the very existence of the guidelines implies that Congress does not trust the judiciary to do its job, that is, to exercise judgment. We believe the committee would do well to keep in mind the judges' reaction to this limitation in their discretion as we consider our recommendations to streamline the disposition of cases.

Because the Middle District has an enviable record when it comes to the expeditious disposal of cases, the judges are generally not anxious about increasing the rate of dispositions. A couple of judges did express some concern, however, that in the rush to move cases the opportunity to give them the consideration they deserve is lost. While the interview teams understand that our mandate is limited to making recommendations to expedite and

streamline the system, we believe we must not lose sight of the need to enable judges to render quality decisions as well. We think it would be appropriate for the committee's final report to make some mention of this concern.

Finally the interview teams came away from our conversations with a new appreciation of how much senior judges contribute to the orderly administration of justice in this district. We have two senior judges each of whom handles approximately 70% of the caseload of an active judge. In effect, our senior judges allow the courts to operate as though there were an additional judge on the bench. We must keep in mind, however, that judges on senior status are not required to maintain caseloads. We are fortunate at present to have senior judges who are willing and able to handle significant caseloads. That situation can change for a variety of reasons; and if it does, the impact on the district's ability to process cases will be substantial.

#### B. Resources

The judges did not generally complain that they lacked resources to do their jobs. Nonetheless, several suggested that at times having an additional law clerk might be helpful in managing their caseloads. Our impression is that the judges feel they would periodically benefit from extra help. We suggest that the committee as a whole consider whether hiring additional law clerks to handle "overflow work" would be helpful.

Interestingly, although the need for additional law clerks came up several times, the judges seldom mentioned the desire to use the magistrates differently. On one hand, two of the judges expressed an interest in exploring how the magistrates might be used differently. On the other hand, one of the judges was very clear that he would not want to use a magistrate to oversee pre-trial matters on a regular basis. He prefers to get personally involved in his cases from the start.

#### C. Procedures

The judges have strong views on the procedures we now use and on the procedures that may be adopted in the future to move cases more quickly. Generally, the judges identified discovery disputes as the culprit in slowing down the disposition of cases. To address that problem, they uniformly support the proposed changes in the Rules of Procedure to require the parties to automatically disclose certain information at the outset of litigation.



The judges are not as supportive of a standardized practice order. For the most part, they do not see the need for a standard order; and they generally prefer to establish their own procedures for handling cases.

The judges also expressed very little interest in the use of alternative dispute resolution mechanisms. The interview teams are not clear whether this is because we have never used such mechanisms in this district or whether the judges simply do not see them as helpful in managing caseloads.

Finally, Senior Judge Muir has implemented the pre-trial procedures mentioned in the Civil Justice Reform Act. He reports no problems with the procedures. While he has not noticed a dramatic effect on his case disposition rate, he does believe that certain cases are resolved earlier in the pre-trial process because early scheduling conferences require the lawyers to focus on the case sooner rather than later.

#### D. Collegiality

The judges mentioned the lack of collegiality among lawyers in a variety of contexts during the interviews. They identified it as a factor in slowing discovery and preventing settlement. They also mentioned the lack of professional courtesy as a general frustration that reduces job satisfaction. The interview teams conclude that the lack of collegiality affects the disposition of cases in a variety of ways. We believe that it deserves some attention in the committee's final report and recommendation.

#### E. Future Trends

The judges all see the construction of new prisons in the district as the factor that will have the greatest impact on the future operation of the Middle District. They expect a substantial increase in the number of prisoner filings which are already a significant portion of their caseloads. The interview teams believe the committee should keep this development in mind when formulating its recommendations.

## II. INTERVIEW SUMMARIES

### A. Impact of the Judge on the System

The judges uniformly reported themselves satisfied with the role they perform in the administration of justice. They

generally enjoy the challenge of fairly deciding cases within the structure of our legal system.

A few of the judges mentioned frustrations they experience in their role, but none of them felt they were seriously hampered in performing their duties. The frustrations included inexperienced or ill-prepared lawyers. A few judges also mentioned the limited discretion they are afforded under the sentencing guidelines. The judges also listed the lack of civility among counsel as a frustration. One of the judges specifically mentioned the need for more time to do the best job possible in disposing of cases.

#### B. Impact of Legislation on System

The judges were nearly unanimous in noting that congressional persistence in creating new causes of action has significantly affected the work of the courts over the years. In addition, the judges pointed to specific statutes that have created work for the courts that could have been avoided by greater precision in drafting. RICO and the Civil Rights Act of 1991 were repeatedly mentioned in this regard. RICO was cited because the breadth of its language has permitted actions to be brought in federal court for conduct that otherwise would give rise to state law actions for fraud. The Civil Rights Act was mentioned because Congress' failure to expressly state whether it was to be applied for retroactivity or only prospectively has spawned litigation on that point throughout the nation.

In addition to these two statutes, several of the judges noted that the increased complexity of legislation generally has increased the burden on the courts. ERISA and environmental laws were named in connection with this problem. The trend toward "federalizing" crimes that had previously been the exclusive concern of state courts was also mentioned as adversely affecting the court's caseload.

A couple of judges commented on the slow pace at which judicial vacancies have been filled. While this delay cannot be laid entirely at the feet of Congress, the judges noted that legislative inaction has certainly contributed to the problem.

#### C. Impact of Cases on the System

There was no real consensus among the judges about what sort of cases consume the most time. Several judges noted that neither criminal nor prisoner cases are particularly time consuming. A couple of judges noted that they spend much of their time working on the disposition of various pre-trial motions. One of the judges definitely felt that the filing of ill-considered

motions significantly delayed the disposition of cases, while another judge felt that most of the pre-trial motions filed were not frivolous.

The judges were unanimous in the view that most cases settle between the time of the pre-trial conference and trial. The judges generally agreed that this occurs because that is the time when each side has the most information about the case.

The judges offered a variety of reasons to explain why some cases do not settle. One judge suggested that civil rights, discrimination and environmental cases go to trial because they frequently involve the deliberate conduct of government officials or of municipalities, the settlement of which is difficult to justify to the public. Another pointed to the strong convictions of the litigants and employers' fears of setting precedents as factors preventing settlement. Lack of collegiality among lawyers was also identified as negatively affecting settlements.

#### D. Additional Comments and Suggestions

Many of the judges commented that the discovery phase of cases can be abused although most declined to identify it as an overwhelming problem. The judges generally welcomed the proposed changes to the Rules of Procedure that would require the automatic disclosure of certain information.

On the other hand, most of the judges felt there was no need for a uniform practice order. They value the flexibility they have to deal with cases as the needs of the cases require.

The judges had mixed views on expending the magistrates' responsibilities as a means of speeding the disposition of cases. One of the judges expressed a personal preference to be involved with cases from the outset. Others expressed interest in exploring how the magistrates might be used differently than they are now. Only one of the judges mentioned an interest in the use of alternative dispute mechanisms.

In terms of the future, several of the judges mentioned the construction of new prisons in the district and the impact that will have on the caseload. No one really proposed how to deal with the anticipated increase. A few of the judges did suggest that hiring an additional law clerk might be helpful generally.

*APPENDIX B*

*Attorney Questionnaire*

**MIDDLE DISTRICT OF PENNSYLVANIA**  
**PART I: ATTORNEY QUESTIONNAIRE**

Name: \_\_\_\_\_

Please respond to the first 7 questions based on your experience in:

\_\_\_\_\_ {Name of Specific Case Inserted} \_\_\_\_\_

**A. Case Management in This Case**

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine Court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial Court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely un-managed by the Court, with the pace and course of litigation left to counsel and with Court intervention only when requested.

How would you characterize the level of case management by the Court in this case? Please circle one.

a. Intensive    b. High    c. Moderate    d. Low

e. Minimal    f. None    g. I'm not sure

2. Listed below are several case management actions that could have been taken by the Court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the Court took such action in this case.

	<u>Was Taken</u>	<u>Was Not Taken</u>	<u>Not Sure</u>	<u>Not Applicable</u>
Hold Pretrial activities to a firm schedule	1	2	3	4
Set and enforce time limits on allowable discovery	1	2	3	4
Narrow issues through conferences or other methods	1	2	3	4
Rule promptly on pretrial motions	1	2	3	4

	<u>Was Taken</u>	<u>Was Not Taken</u>	<u>Not Sure</u>	<u>Not Applicable</u>
Refer the case to alternative dispute resolution, such as mediation or arbitration	1	2	3	4
Set an early and firm trial date	1	2	3	4
Conduct or facilitate settlement discussions	1	2	3	4
Exert firm control over trial	1	2	3	4
Other: _____	1	2	3	4

***B. Timeliness of Litigation In This Case***

3. Our records indicate this case took about \_\_\_\_ days from filing (date) to disposition (date). How long should this case have taken from filing to disposition under circumstances in which the Court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles to final disposition such as a backlog of pending cases?

(Please estimate how many days.) \_\_\_\_\_

4. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay:

Yes No

- a. Excessive case management by the Court.
- b. Inadequate case management by the Court.
- c. Dilatory actions by counsel.
- d. Dilatory actions by the litigants or their insurers
- e. Court's failure to rule promptly on motions.
- f. Backlog of cases on Court's calendar.
- g. Unnecessary discovery.

Yes No

h. Failure to complete discovery within the time fixed by scheduling order.

i. Too much time allowed for discovery.

j. Unnecessary delay entering or failure to enter a scheduling order.

k. Parties' failure to adhere to the scheduling order.

l. Unnecessary motions.

m. Trial date not set at early stage of proceedings.

n. Rescheduling of trial.

o. Too much time allowed until trial.

p. Too much time allowed for trial.

q. Delay in entry of judgment.

r. Other. \_\_\_\_\_

5. What suggestions or comments do you have for reducing the delays connected with the disposition of civil cases in this district?

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**C. Final Outcome Of This Case**

6. Was this case appealed?

Yes \_\_\_ No \_\_\_

7. If yes, what was the holding of the Court of Appeals?

a. affirmed

b. reversed

c. affirmed in part, reversed in part

**PART II: GENERAL QUESTIONS**

The following general questions do not pertain to a particular case. Please limit your response to practice in the Middle District of Pennsylvania.

**A. Case Management**

1. Before accepting a case, do you commonly estimate the time each case is likely to take and assess your firm's available attorney time and resources?

Yes\_\_ No\_\_

2. Do you commonly prepare a preliminary cost analysis of each case including the projected cost to bring the case and the expected return from the case to your client?

Yes\_\_ No\_\_

3. Do you commonly discuss or share this preliminary cost analysis with your client?

Yes\_\_ No\_\_

4. In your experience, do attorneys typically comply with time limits in the District Court?

Yes\_\_ No\_\_

5. In your experience, do attorneys typically comply with the local rules of the District Court?

Yes\_\_ No\_\_

6. In your experience, are any local rules ignored or bent with regularity?

Yes\_\_ No\_\_

If yes, what rules? \_\_\_\_\_

\_\_\_\_\_

**B. Court Practice**

1. Should briefs accompanying motions be limited in length?

Yes\_\_ No\_\_

2. Should a page limit be applied to case dispositive motions?

Yes\_\_ No\_\_



3. Should this page limitation apply to all types of cases?

Yes\_\_ No\_\_

If not, what type of cases should be excluded? (Circle one or more.)

- a. patent
- b. antitrust
- c. environmental
- d. contract
- e. torts
- f. other \_\_\_\_\_

4. Should the Court adopt a uniform scheduling order?

Yes\_\_ No\_\_

Should the Court adopt a uniform scheduling order with variations between standard, complex and expedited cases?

Yes\_\_ No\_\_

5. Should the Court utilize sanctions under the Federal Rules of Civil Procedure, to a greater extent for failure to comply with a scheduling or pretrial order, failure to appear at a scheduling or pretrial conference, or failure to prepare or participate in good faith in a pretrial conference?

Yes\_\_ No\_\_

6. Should the Court initiate settlement discussions?

Yes\_\_ No\_\_

If so, in what situation should the Court do so?

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7. If a settlement conference is being held, should the court require attendance by litigants or any other party with an interest in the case and binding settlement authority?

Yes\_\_ No\_\_

8. Are there any specific situations where the practice in question #7 would be helpful?

Yes\_\_ No\_\_

If yes, please list.

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9. Are there changes that could be made to the Rules of Court for the Middle District of Pennsylvania which would prevent delay?

Yes\_\_ No\_\_

If yes please explain.

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10. Should requests for extensions of deadlines be signed by the party and the attorney making the request.

Yes\_\_ No\_\_

C. Discovery

1. Should discovery be limited in certain types of cases?

Yes\_\_ No\_\_

If yes, why and in what types of cases?

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(Please circle.)

- |                                  |                                 |
|----------------------------------|---------------------------------|
| a. 1983                          | l. Fraud                        |
| b. Antitrust                     | m. Labor                        |
| c. Asbestos                      | n. Motor Vehicle                |
| d. Bankruptcy                    | o. Patent, Trademark, Copyright |
| e. Banks & Banking               | p. Personal Injury              |
| f. Civil Rights                  | q. Prisoner                     |
| g. Commerce Rights:<br>ICC Rates | r. RICO                         |
| h. Contract                      | s. Securities                   |
| i. ERISA                         | t. Other _____                  |
| j. Environmental                 | u. All Cases                    |
| k. Forfeiture                    |                                 |

2. Should discovery be bifurcated (i.e., liability then damage discovery) in certain types of cases?

Yes\_\_ No\_\_

If yes, what types? (Please circle.)

- |                                  |                                 |
|----------------------------------|---------------------------------|
| a. 1983                          | l. Fraud                        |
| b. Antitrust                     | m. Labor                        |
| c. Asbestos                      | n. Motor Vehicle                |
| d. Bankruptcy                    | o. Patent, Trademark, Copyright |
| e. Banks & Banking               | p. Personal Injury              |
| f. Civil Rights                  | q. Prisoner                     |
| g. Commerce Rights:<br>ICC Rates | r. RICO                         |
| h. Contract                      | s. Securities                   |
| i. ERISA                         | t. Other _____                  |
| j. Environmental                 | u. All Cases                    |
| k. Forfeiture                    |                                 |

3. Should discovery be eliminated in certain types of cases?

Yes\_\_ No\_\_

If yes, why and in what types of cases?

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(Please circle.)

- |                     |                                 |
|---------------------|---------------------------------|
| a. 1983             | l. Fraud                        |
| b. Antitrust        | m. Labor                        |
| c. Asbestos         | n. Motor Vehicle                |
| d. Bankruptcy       | o. Patent, Trademark, Copyright |
| e. Banks & Banking  | p. Personal Injury              |
| f. Civil Rights     | q. Prisoner                     |
| g. Commerce Rights: | r. RICO                         |
| ICC Rates           | s. Securities                   |
| h. Contract         | t. Other_____                   |
| i. ERISA            | _____                           |
| j. Environmental    | u. All Cases                    |
| k. Forfeiture       |                                 |

4. Should certain discovery be filed with the pleadings?

Yes\_\_ No\_\_

If yes, what type of discovery in what type of cases?

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5. Should the court require mandatory disclosure? (for example, proposed Fed. Rule 26)

Yes \_\_\_ No\_\_

*D. Alternative Dispute Resolution (ADR)*

1. Have you ever been involved with ADR?

Yes\_\_ No\_\_

If yes, in what capacity?

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2. If voluntary court-annexed ADR were available would you recommend it to your client?

Yes\_\_ No\_\_

If yes, in what type of cases?

- |                     |                                 |
|---------------------|---------------------------------|
| a. 1983             | l. Fraud                        |
| b. Antitrust        | m. Labor                        |
| c. Asbestos         | n. Motor Vehicle                |
| d. Bankruptcy       | o. Patent, Trademark, Copyright |
| e. Banks & Banking  | p. Personal Injury              |
| f. Civil Rights     | q. Prisoner                     |
| g. Commerce Rights: | r. RICO                         |
| ICC Rates           | s. Securities                   |
| h. Contract         | t. Other_____                   |
| i. ERISA            | _____                           |
| j. Environmental    | u. All Cases                    |
| k. Forfeiture       |                                 |

3. Do you feel that mandatory court-annexed ADR is needed in the Middle District?

Yes\_\_ No\_\_

If yes, in what type of cases?

- |                     |                                 |
|---------------------|---------------------------------|
| a. 1983             | l. Fraud                        |
| b. Antitrust        | m. Labor                        |
| c. Asbestos         | n. Motor Vehicle                |
| d. Bankruptcy       | o. Patent, Trademark, Copyright |
| e. Banks & Banking  | p. Personal Injury              |
| f. Civil Rights     | q. Prisoner                     |
| g. Commerce Rights: | r. RICO                         |
| ICC Rates           | s. Securities                   |
| h. Contract         | t. Other_____                   |
| i. ERISA            | _____                           |
| j. Environmental    | u. All Cases                    |
| k. Forfeiture       |                                 |

*E. Legislation*

1. Are there any instances in which legislation has unnecessarily contributed to the delay in disposing of your cases?

Yes\_ No\_\_

If yes, please identify \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*F. Other/General*

1. What are the most effective delay reduction techniques currently used by the Middle District of Pennsylvania?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. What are the most serious case management/disposition problems facing the Middle District of Pennsylvania?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. What characteristics lead a case to pend longer than what you consider an average time?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The Federal Rules of Civil Procedure provide that a magistrate judge, upon agreement of all parties, may try a civil jury or non-jury case. Have you ever pursued this procedure?

Yes\_\_ No\_\_

If not, why have you not elected this procedure? \_\_\_\_\_

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PART III: COST QUESTIONNAIRE

Part of the task of the Middle District of Pennsylvania Advisory Group is to gather information relating to the cost of the case. We recognize that this is a sensitive issue. Therefore, to preserve the confidentiality of this information, please detach this last section and mail it in separately from the rest of the questionnaire.

A. Costs Of Litigation In The Specific Case Listed in Part I

1. What type of action was this case? (Please circle.)

- |                                  |                                 |
|----------------------------------|---------------------------------|
| a. 1983                          | l. Fraud                        |
| b. Antitrust                     | m. Labor                        |
| c. Asbestos                      | n. Motor Vehicle                |
| d. Bankruptcy                    | o. Patent, Trademark, Copyright |
| e. Banks & Banking               | p. Personal Injury              |
| f. Civil Rights                  | q. Prisoner                     |
| g. Commerce Rights:<br>ICC Rates | r. RICO                         |
| h. Contract                      | s. Securities                   |
| i. ERISA                         | t. Other _____                  |
| j. Environmental                 | u. All Cases                    |
| k. Forfeiture                    |                                 |

2. What was the estimated or approximate dollar amount at stake?

\$ \_\_\_\_\_

3. Please estimate the total fees and direct costs incurred by your client in bringing this case:

\$ \_\_\_\_\_

4. Were there indirect costs involved? (i.e. time attending depositions, time-off from work)

Yes\_\_ No\_\_

If yes, please explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



5. What type of fee arrangement did you have in this case?

(Please circle one.)

- a. hourly rate
- b. hourly rate with maximum
- c. combination of hourly rate and other factors
- d. combination of reduced rate and other factors
- e. fixed fee
- f. contingency
- g. other (Please describe.) \_\_\_\_\_

6. What might the litigants, counsel, or the Court have done differently to reduce the cost to your client and what amount could have been saved? Please be as specific as you can without disclosing the identity of the case, client or Judge.

Examples:

- a) Because the trial date was moved three times at the last minute, I was forced to prepare two additional times at an extra cost of \$ 10,000 to my client.
- b) Because the opposing attorney refused to cooperate in discovery, I was forced to move to compel at an additional cost of \$ 1,000 to my client.
- c) Because my client refused to settle, we went through a full trial only to obtain the same amount as the settlement offer. This resulted in an additional cost of \$ 30,000 to my client.

(If you need additional space, please attach additional sheets.)

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7. What are the most effective cost saving techniques currently used by the Middle District of Pennsylvania?

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8. What suggestions or comments do you have for reducing the costs associated with civil litigation in this district?

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***THANK YOU!!***

# *APPENDIX C*

## *Client/Insurer Questionnaire*

Client Questionnaire for the  
Middle District of Pennsylvania

1) In your experience in the Middle District of Pennsylvania, were you satisfied with the length of time it took to resolve your matter in federal court given the complexities of your case?

Yes\_\_\_\_\_ No\_\_\_\_\_

2) In your experience in the Middle District of Pennsylvania, did you incur what you believe to be unreasonable or unnecessary costs in resolving your case?

Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, please list any of the costs you feel were unreasonable or unnecessary

\_\_\_\_\_  
\_\_\_\_\_

3) Is there a relationship between your responses to questions 1) and 2)? If so, what is the connection? Yes\_\_\_ No\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4) In your experience in the Middle District of Pennsylvania, would you have benefitted from being better educated of court proceedings by the court and/or counsel?

Yes\_\_\_\_\_ No\_\_\_\_\_

5) If you would like to comment on any of the above questions or have general suggestions for improving case processing in the Middle District of Pennsylvania, please comment below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THANK YOU!!!

Insurer Questionnaire for the  
Middle District of Pennsylvania

In your experience in the Middle District of Pennsylvania on  
Claim # \_\_\_\_\_

1) Do you view any of the expenses associated with the defense  
of this claim to be unreasonable or unnecessary? If so, please  
list or give examples.

\_\_\_\_\_  
\_\_\_\_\_

2) Did you view the length of time to resolve the litigated  
issues as unreasonable?

Yes\_\_\_ No\_\_\_

3) What could have been done with this claim to resolve the  
matter more expeditiously or for less expense?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THANK YOU!!!**

# *APPENDIX D*

## *Standard Order: Social Security Appeals*

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

	:	CIVIL ACTION NO.
	:	
Plaintiff	:	
	:	
v.	:	
	:	
SECRETARY	:	
OF HEALTH AND HUMAN SERVICES,	:	
	:	
Defendant	:	

PROCEDURAL ORDER FOR  
SOCIAL SECURITY REVIEW CASES

The captioned 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 HEREBY 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) of the 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.

8) The case is referred to the Honorable  
United States Magistrate,

to report to the court and to  
make recommendations for the disposition of the motions.



9) Briefs in connection with a motion to dismiss or a motion to remand shall follow the format contained in Rule 401, M.D. of Pa.

10) All provisions of Rule 401, M.D. of Pa., are applicable, except that the time limits set forth in this order are applicable instead of those set forth in Rule 401.

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U.S. District Judge  
Middle District of Pennsylvania

Dated:

*APPENDIX E*

*Civil Justice Reform Act of 1990*

PUBLIC LAW 101-650 (H.R. 5316); December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".*

**TITLE I—CIVIL JUSTICE EXPENSE AND  
DELAY REDUCTION PLANS**

**SEC. 101. SHORT TITLE.**

This title may be cited as the "Civil Justice Reform Act of 1990".

**SEC. 102. FINDINGS.**

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

“CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

“Sec.

“471. Requirement for a district court civil justice expense and delay reduction plan.

“472. Development and implementation of a civil justice expense and delay reduction plan.

“473. Content of civil justice expense and delay reduction plans.

“474. Review of district court action.

“475. Periodic district court assessment.

“476. Enhancement of judicial information dissemination.

“477. Model civil justice expense and delay reduction plan.

“478. Advisory groups.

“479. Information on litigation management and cost and delay reduction.

“480. Training programs.

“481. Automated case information.

“482. Definitions.

“§ 471. Requirement for a district court civil justice expense and delay reduction plan

“There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

“§ 472. Development and implementation of a civil justice expense and delay reduction plan

“(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

“(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

“(1) an assessment of the matters referred to in subsection (c)(1);

“(2) the basis for its recommendation that the district court develop a plan or select a model plan;

“(3) recommended measures, rules and programs; and

“(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

“(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court’s civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

“(A) determine the condition of the civil and criminal dockets;

“(B) identify trends in case filings and in the demands being placed on the court’s resources;

“(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

“(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

“(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants’ attorneys.

“(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants’ attorneys toward reducing cost and delay and thereby facilitating access to the courts.

“(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

“(1) the Director of the Administrative Office of the United States Courts;

“(2) the judicial council of the circuit in which the district court is located; and

“(3) the chief judge of each of the other United States district courts located in such circuit.

“§ 473. Content of civil justice expense and delay reduction plans

“(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

“(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

“(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

“(A) assessing and planning the progress of a case;

“(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

“(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

- “(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;
- “(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and
- “(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;
- “(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—
  - “(A) explores the parties’ receptivity to, and the propriety of, settlement or proceeding with the litigation;
  - “(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;
  - “(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—
    - “(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and
    - “(ii) phase discovery into two or more stages; and
  - “(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;
- “(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;
- “(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and
- “(6) authorization to refer appropriate cases to alternative dispute resolution programs that—
  - “(A) have been designated for use in a district court; or
  - “(B) the court may make available, including mediation, minitrial, and summary jury trial.
- “(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:
  - “(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;
  - “(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

#### "§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

#### "§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

#### "§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semi-annual report prepared under subsection (a).

**"§ 477. Model civil justice expense and delay reduction plan**

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

**"§ 478. Advisory groups**

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.



“§ 479. Information on litigation management and cost and delay reduction

“(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

“(b) The Judicial Conference of the United States shall, on a continuing basis—

“(1) study ways to improve litigation management and dispute resolution services in the district courts; and

“(2) make recommendations to the district courts on ways to improve such services.

“(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

“(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

“(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

“§ 480. Training programs

“The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

“§ 481. Automated case information

“(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

“(b)(1) In carrying out subsection (a), the Director shall prescribe—