United States District Court
Western District of Pennsylvania
821 U.S. Post Office & Courthouse
Pittsburgh, Pennsylvania 15219

Chambers of
Gustave Diamond
Chief Judge

Telephone
412-644-6574

August 11, 1993

L. Ralph Mecham
Director, Administrative Office
of the United States Courts
Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear ~~Director~~ Ralph Mecham:

In accordance with the provisions of 28 U.S.C. §472(d), I enclose herewith a copy of the Civil Justice Reform Act Report prepared by our Advisory Committee and Plan which was adopted by this district on July 7, 1993, to be effective October 1, 1993.

Yours truly,

Gustave Diamond
Chief Judge

Enclosure

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REPORT CIVIL JUSTICE ADVISORY GROUP

of the United States District Court for the Western District of Pennsylvania

&

PLAN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Roslyn M. Litman, Chair

Dean Mark A. Nordenberg, Reporter

Alfred L. Wilson, Clerk of Court

Honorable Donald E. Ziegler, Court Liason

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

I. The Court and its Advisory Group

A. The District Court

The United States District Court for the Western District of Pennsylvania comprises twenty-five counties--Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington and Westmoreland--in the western part of the state. It stretches from Lake Erie and western New York state in the north to West Virginia and western Maryland in the south. Its principal western border is with Ohio.

The District encompasses more than 19,000 square miles and is home to over 4,000,000 people. It includes one of the country's major commercial centers and some of its principal inland waterways. The District also includes some of the least developed, most naturally beautiful, and most sparsely populated areas of the state. In fact, population in the District's counties ranges from well over 1,000,000 to under 5,000.

The Western District of Pennsylvania was established by the Act of April 20, 1818.[1] At that time, Pennsylvania was divided into two federal judicial districts, the Eastern District and the Western District. In 1901, a third Pennsylvania district, the Middle District, was created. Throughout its history, the largest portion of the Western District's caseload has been handled in Pittsburgh. However, since 1867, sessions also have been held in Erie. In 1989, one of the District's judges began sitting in Johnstown.

The Western District always has been characterized by its collegial bar and by the friendly and productive professional relationships that exist between bench and bar. There is a strong traditional commitment to the cause of justice, including its timely delivery. Evidence of that shared commitment can be found in numerous cooperative projects undertaken by groups such

[1]A brief history of the Western District can be found in the booklet "The United States District Court for the Western District of Pennsylvania--The Bicentennial" published in 1989 with the cooperation of the Allegheny County Bar Association and the Academy of Trial Lawyers of Allegheny County.

as the Academy of Trial Lawyers of Allegheny County and the Federal Court Section of the Allegheny County Bar Association in partnership with the District's judges over the years.

That commitment also was evident throughout the months of work undertaken by the members of the Civil Justice Advisory Group. In fact, the formation of the Advisory Group sparked a new form of dialogue between bench and bar. Largely through the efforts of the Honorable Donald E. Ziegler, designated Court Liaison, the District's judges were advised of the Group's work as it progressed. They were more than just interested observers. On occasion, in fact, they responded to an identified problem, individually or collectively, by implementing an appropriate solution without waiting for the Advisory Group to complete all of its work and frame a formal recommendation.

There is every reason to believe that this cooperative spirit will continue into the future. That is critical if the District is to benefit from the "ongoing consultation and communication" identified in the Civil Justice Reform Act as essential to dealing with problems of cost and delay.[2]

B. The Advisory Group

By order dated March 11, 1991, then Chief Judge Maurice B. Cohill, Jr. appointed the Civil Justice Advisory Group of the United States District Court for the Western District of Pennsylvania and named Roslyn M. Litman to serve as its Chair. Consistent with the requirements of the Civil Justice Reform Act of 1990, the Group appointed was "balanced and include[d] attorneys and other persons who are representatives of major categories of litigants" in the District. Its almost fifty members include lawyers engaged in different types of practices and possessing a variety of perspectives. Three district judges and one magistrate judge were involved in the work of the Advisory Group, as were a number of distinguished laypersons.

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[2]Civil Justice Reform Act of 1990, §102(6).

Membership Roster
Civil Justice Advisory Group
of the
U.S. District Court for the
Western District of Pennsylvania[3]

Daniel M. Berger	Berger, Kapetan, Meyers, Rosen, Louik & Raizman
John H. Bingler	Thorp, Reed & Armstrong
Byrd R. Brown	Byrd R. Brown & Associates
G. Daniel Carney	Thorp, Reed & Armstrong
Robert J. Cindrich	Cindrich & Titus
Joy Flowers Conti	Kirkpatrick & Lockhart
Thomas W. Corbett, Jr.	United States Attorney
R. Di Valerio	General Counsel, National Fuel Gas Co.
Thomas L. Donohoe	Aetna Life & Casualty
Terry Dunkle	President, United States National Bank
Frederick N. Egler	Egler, Garrett & Egler
David B. Fawcett	Dickie, McCamey & Chilcote, P.C.
Wendell G. Freeland	Freeland & Kronz
Thomas F. Halloran	Asst. State Attorney General
Amy Reynolds Hay	Asst. United States Attorney
David J. Hickton	Burns, White & Hickton
R. Lee Holz	General Counsel, ALCOA
Fritz Huysman	Pittsburgh Post-Gazette
Thomas J. Jackson	Houston, Harbaugh, P.C.
Kerry A. Kearney	Reed, Smith, Shaw & McClay
William J. Kelly	Elderkin Martin Kelly & Messina
Dominic B. King	General Counsel, USX Corp.
Edwin L. Klett	Klett, Lieber, Rooney & Schorling
Wallace J. Knox, II	Knox McLaughlin Gornall & Sennett
Jere Krakoff	Law Office of Jere Krakoff

[3]Though not named in the March 11, 1991 order, Amy Reynolds Hay was designated by the United States Attorney to assist him in representing that Office within the Advisory Group. She participated actively, particularly in the work of the U.S. Litigation Subcommittee. The order also stated that "[t]he Office of the Clerk of Court, Catherine Martrano, shall serve as secretariat for the entire Advisory Group." From the outset, Alfred L. Wilson, then Chief Deputy Clerk and now Clerk of Court, served actively within the Advisory Group and as a member of its Steering Committee.

Alan R. Krier	Jubelirer, Carothers, Krier & Halpern
Roslyn M. Litman, Chair	Litman, Litman, Harris, Brown & Watzman, P.C.
W. Thomas McGough	Reed Smith Shaw & McClay
Pamela Maier	Johnstown Tribune-Democrat
Paul A. Manion	Manion, McDonough & Lucas, P.C.
Edward Meade	President, Times Publishing
Cloyd R. Mellott	Eckert, Seamans, Cherin & Mellott
The Hon. Glenn E. Mencer	Judge, U.S. District Court
James D. Morton	Buchanan Ingersoll
James C. Munro, II	Spence, Custer, Saylor, Wolf & Rose
Mark A. Nordenberg, Reporter	Dean, University of Pittsburgh School of Law
Father Christian Oravec	St. Francis College
Anthony P. Picadio	Picadio, McCall & Kane
Donald F. Placido	President, Erie Chamber of Commerce
Robert F. Pugliese	Exec. Vice President, Westinghouse
Samuel J. Reich	Hess, Reich, Georgiades, Wile & Homyak, P.C.
Will J. Schaaf	Marsh Spaeder Baur Spaeder & Schaaf
The Hon. Ila Jean Sensenich	Magistrate Judge, U.S. District Court
The Hon. D. Brooks Smith	Judge, U.S. District Court
Cecile Springer	President, Springer Associates
Norman H. Stark	MacDonald Illig Jones & Britton
Dawn M. Svirsko	Svirsko & Svirsko
H. Woodruff Turner	Kirkpatrick & Lockhart
Alfred L. Wilson, Clerk's Office Liaison	Clerk of Court
The Hon. Donald E. Ziegler, Court Liaison	Judge, U.S. District Court

Because the Advisory Group was quite large, much of its work was done in committees. A Steering Committee consisting of Roslyn M. Litman (the Advisory Group Chair), Dean Mark A. Nordenberg (the Reporter), Alfred L. Wilson (the Clerk of Courts) and The Honorable Donald E. Ziegler (the Court Liaison) generally met once per month and sometimes more frequently. Six subcommittees were established. Each dealt with an important aspect of the Court's work, was led by a team of two subcommittee co-chairs, and was assisted in its work by a law clerk to one of the federal judges serving as subcommittee reporter. Those groups were:

Subcommittees, Co-Chairs and Reporters
Civil Justice Advisory Group
of the
U.S. District Court for the
Western District of Pennsylvania

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1) Subcommittee on Problems of Cost and Delay
   Co-chairs: Daniel M. Berger
              Kerry A. Kearney
   Reporter: Lynn Ellenberger

2) Subcommittee on Litigant and Attorney Practices
   Co-chairs: David J. Hickton
              Dominic B. King
   Reporter: Anne E. Mulgrave

3) Subcommittee on Pro Se Litigation
   Co-chairs: Wendell G. Freeland
              Thomas F. Halloran
   Reporters: Andrew Sykes
              Timothy Volk

4) Subcommittee on U.S. Litigation
   Co-chairs: Thomas W. Corbett, Jr.
              Samuel J. Reich
   Reporter: Namosha Smith

5) Subcommittee on Complex Cases
   Co-chairs: John H. Bingler
              David B. Fawcett
   Reporter: Janene Marasciullo

6) Subcommittee on Demands on Court Resources
   Co-chairs: Frederick N. Egler
              The Honorable Glenn E. Mencer
   Reporter: John Mulroy

The co-chairs of the substantive subcommittees not only managed the work of their assigned groups but met on appropriate occasions to serve as a collective initial sounding board for all of the ideas that were being considered. The Advisory Group also included an Erie subcommittee, chaired by Wallace J. Knox, and a Johnstown subcommittee, chaired by Dawn M. Svirsko.

Under the terms of the Civil Justice Reform Act, the principal responsibility of the Advisory Group is to assist the Court in developing an effective expense and delay reduction plan. Providing a foundation for that plan is the purpose of this report. The content of the report is shaped by many

provisions of the Act, including the following Congressional 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]

By requesting that Advisory Groups be created in each of the nation's judicial districts, Congress clearly hoped that the resulting plans would "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys."[5]

In pursuing its charge, the Advisory Group was aided immeasurably by the advice, encouragement, statistics and suggestions provided by representatives of the Administrative Office of the United States Courts, the Federal Judicial Center, and our own Clerk of Courts Office. The Group undertook to supplement such information in a number of different ways. Two of those alternative information sources are worthy of mention here.

1) Review of Case Sample. Because delay in litigation is a principal concern under the Act, the Subcommittee on Problems of Cost and Delay conducted a study of 150 "delayed cases" from the Western District's docket. All of the cases had been terminated between July 1, 1990 and May 1, 1991. The case sample was

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[4]Civil Justice Reform Act of 1990, §102.

[5]28 U.S.C. §472(2).

selected with the help of John Shapard of the Federal Judicial Center and included:

> (a) A randomly selected group of 50 private party general civil cases lasting at least 30 months;
>
> (b) all civil cases involving the U.S. as a party that lasted at least 12 months;
>
> (c) all private cases believed to have been potentially complex (antitrust, RICO, securities, patent, environmental, class actions, etc.);
>
> (d) the 10 oldest of 15 asbestos cases; and
>
> (e) all prisoner cases lasting at least 12 months.

Docket sheets for each of these cases were reviewed by subcommittee members. In addition, questionnaires were sent to the 441 attorneys and 145 litigants who could be identified as having been involved in these cases. Responses were received from 238 (54%) of the lawyers and 51 (35%) of the litigants contacted. A consulting statistician reviewed the data and concluded that its statistical validity was questionable because the sample, focusing as it did on "delayed cases", was not random. He also concluded that its usefulness was limited by the fact that causal connections often cannot be determined from retrospective studies. Nonetheless, the Advisory Group found certain parts of the information useful in assessing the docket's condition and planning to improve it.

2) Judicial Interviews. Early in 1992, members of the Subcommittee on Demands on Court Resources, assisted by the Advisory Group's Chair and Reporter, conducted 75-minute interviews with each of the district judges and magistrate judges and with the one senior judge actively handling cases at that time.[6] These interviews were conducted after each of the other

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[6]In an effort to maximize the likelihood of a candid exchange, these interviews were not recorded or transcribed. However, a summary of each was prepared for the internal use of the Advisory Group. Four lawyers provided invaluable assistance to the Advisory Group in that regard. They are Richard K. Dandrea, Peter J. Egler, George P. Faines and Carole S. Katz. These individual summaries were then consolidated into a single, highly-usable report by Walter R. Bashaw, II, then a second-year student at the University of Pittsburgh School of Law.

subcommittees had prepared a preliminary report. A standard protocol for the interviews was prepared. It focused upon both the "principles and guidelines of litigation management and cost and delay reduction" and the "litigation management and cost and delay reduction techniques" set forth in the Act.[7] It also sought initial judicial reactions to each subcommittee's assessment of docket difficulties and tentative suggestions for dealing with them.

These interviews were invaluable for two very different reasons. First, they offered a view of the Court's work far richer than mere numbers could ever provide, and they were a source of informed and thoughtful reactions to ideas that might possibly be pursued in controlling cost and limiting delay. Second, they provided a substantial measure of inspiration for those directly involved in the process. The judges displayed pride in their work, commitment to their responsibilities, and great respect for others involved in the judicial process. Nothing could be more important in meeting the challenges that lie ahead.

The Western District of Pennsylvania has no special status under the Civil Justice Reform Act either as a pilot district or as an early implementation district. Therefore, the Advisory Group scheduled its work in a way that was designed to ensure that there was a full opportunity to develop information and consider possibilities for improvement while still giving the Court an extended period to consider the Advisory Group Report before the District Plan must be adopted in December of 1993. This scheduling also gave members of the Advisory Group a chance to consider recommendations developed within the pilot and early implementation districts and to participate in working conferences sponsored by the Federal Judicial Center.

This Report, then, is the product of an intensive, multi-staged effort. As is true whenever intelligent and strong-minded individuals are asked to work together, the process sometimes generated sharply competing views. Not every individual idea advanced was embraced by the relevant subcommittee. Similarly, not every subcommittee proposal was adopted by the larger group. And not all of the recommendations included in the Report enjoy unanimous support within the Advisory Group. However, the Report does reflect broad consensus within the rather large group asked to cooperate in its creation.

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[7] See 28 U.S.C. §473(a) and (b).

II. Current Conditions in the Western District

A. Trends in Filings and Demands[8]

The trend in total civil filings in the U.S. District Court for the Western District of Pennsylvania from Statistical Year 82 through Statistical Year 91 roughly followed the pattern for the federal system as a whole. Nationally, total civil filings increased every year between SY80 and SY85, peaking in that year. The only increase between SY85 and SY92 occurred in SY88.[9] Within the Western District, total civil filings peaked one year earlier, in SY84. A gradual decrease in total filings began in SY85, with an upward surge in SY88. A pattern of progressive decrease in total civil filings returned in SY89, SY90, and SY91.

What may be unique about the Western District, however, is that the downward trend was dramatically reversed in SY92. From SY91 to SY92, there was a 34% increase in total civil filings in the District. Total civil filings rose to 3,689--returning the Court very nearly to the peak level of SY84. There also was an increase in total civil filings nationally from SY91 to SY92. However, it was far more modest, amounting to only about 9%.

TABLE 1

Total Civil Filings
SY82-SY92
U.S. District Court
Western District of Pennsylvania

SY82--2,894	SY87--3,204
SY83--3,612	SY88--3,389
SY84--3,693	SY89--3,288
SY85--3,475	SY90--2,869
SY86--3,362	SY91--2,761
	SY92--3,689

[8]Many of the numbers included in this document are reported on a Statistical Year (SY) basis. A Statistical Year, under the practices followed by the Administrative Office of the United States Court, runs from July 1 to the following June 30. As this report is being written, some--but not all--of the statistics for SY92, the period ending June 30, 1992, are available. Therefore, SY91 statistics sometimes are used as the most current that are available.

[9]"Select Significant Factors in the Workload of the Federal Courts," Administrative Office of the United States Courts, Analysis and Reports Branch (January, 1991).

The composition of civil filings in the Western District also changed from SY82 to SY91. In SY82, the five most common categories of civil actions filed were Student Loan and Veterans' Benefit (497), Contract (461), Personal Injury (315), Prisoner (282), and Social Security (238). By SY87, substantial change had occurred, with the top five categories of civil filings being Contract (831), Prisoner (455), Social Security (342), Personal Injury (336), and Civil Rights (215). By SY91, the list of top five civil filing categories--Prisoner (644), Contract (442), Personal Injury (247), Civil Rights (234) and ERISA (210)--showed even more dramatic change.

TABLE 2
Most Frequent Civil Filings
By Case Type
SY82, 87, 91
U.S. District Court
Western District of Pennsylvania[10]

SY82		SY87		SY91	
Student Loan & Vet. Benefit	(497)	Contract	(831)	Prisoner	(644)
Contract	(461)	Prisoner	(455)	Contract	(442)
Personal Inj.	(315)	Social Sec.	(342)	Pers. Inj.	(247)
Prisoner	(282)	Pers. Inj.	(336)	Civil Rts.	(234)
Social Sec.	(238)	Civil Rts.	(215)	ERISA	(210)

Looking to other case categories, it is worthwhile to note that Bankruptcy filings increased dramatically from SY82 (64) to SY91 (108). There were no asbestos or RICO filings in SY82, but cases of those types became a significant part of the Court's civil docket in succeeding years, with asbestos filings reaching a peak of 140 in SY90 and RICO filings reaching a peak of 34 in SY88. Labor filings decreased sharply from 200 in SY82 to 121 in SY91. There were no discernible patterns to the filings in Commerce, Copyright, Fraud, Securities or Tax cases. In most

[10]Preliminary case category breakdowns for SY92 became available only after these portions of this report were substantially complete. Prisoner, contract, personal injury, civil rights and ERISA actions remained the five types of civil actions most commonly filed in the District, as they had been in SY91. Two specific developments are worthy of note, however. Personal injury filings far outpaced any other category in SY92, apparently because of the filing of a large number of FELA hearing loss cases in the District. There also was a rather dramatic 35% increase in civil rights filings.

years, filings in the Banks and Banking category have been rare, but 12 such cases were filed in SY91.

TABLE 3
Civil Filings by Case Type
SY82-91
U.S. District Court
Western District of Pennsylvania

SY	87	83	84	85	86	87	88	89	90	91
Asbestos	0	4	23	20	33	9	18	91	140	21
Bankruptcy Matters	64	54	50	43	81	65	94	134	137	108
Banks and Banking	0	1	2	1	1	2	2	3	12	4
Civil Rights	188	183	234	208	235	215	236	248	253	234
Commerce: ICC Rates, etc.	13	11	14	9	10	23	16	12	6	21
Contract	461	797	855	787	763	831	846	712	394	442
Copyright, Patent, Trade-mark	35	40	40	54	46	52	73	62	43	46
ERISA	107	168	154	149	164	159	188	140	184	210
Forfeiture and Penalty (excl. drug)	45	110	102	73	45	13	13	63	53	11
Fraud, Truth in Lending	11	14	15	22	10	17	11	24	18	5
Labor	200	147	170	142	133	122	119	108	118	121
Land Condemnation, Foreclosure	53	47	90	75	65	63	106	113	95	82
Personal Injury	315	408	376	345	365	336	360	300	267	247
Prisoner	282	425	324	346	436	455	510	469	501	644
RICO	0	0	0	0	7	15	34	16	23	24
Securities, Commodities	26	28	22	24	22	48	32	14	25	37
Social Security	238	474	692	430	384	342	321	336	224	186
Student Loan and Vet. Benefit	497	441	304	502	262	161	165	196	103	82
Tax	46	71	37	34	23	30	42	43	19	36
All Other	313	189	189	211	277	246	203	204	254	200
All Civil Cases	2894	3612	3693	3475	3362	3204	3389	3288	2869	2761

Looking again at the five categories of civil actions most frequently filed in SY82, SY87 and SY91, some general observations are in order. The first is that there has been a dramatic and unrelenting increase--128% from SY82 to SY91--in prisoner filings. Dealing with this part of the court's docket is both important and a source of special challenges. A number of proposals focusing on that part of the docket will receive more extended discussion later in this report. The second is that two categories of relatively routine cases that together dominated the court's docket in SY82--Social Security and Student Loan and Veterans' Benefit cases--did not even make the "top five" list in SY91.[11] In fact, such cases accounted for over 25% of the district's total civil filings in SY82 but accounted for less than 10% of the total civil filings in SY91. Finally, the decreased level of contract and personal injury filings must be noted. Filings in those case categories reached their peaks in the mid-1980's and held relatively steady until SY90 and SY91, when there was a dramatic decrease, particularly in contract filings.

There are at least two companion explanations for this last change. The first is that the decrease is precisely what Congress intended. Most contract and personal injury actions enter the federal court system as diversity cases. In May of 1989, the jurisdictional amount in diversity cases was increased from $10,000 to $50,000, leading to a decline in diversity filings nationwide.[12] The other explanation is both less benign and more difficult to quantify. There is a feeling among judges and lawyers that many claimants today, though entitled to bring their contract and tort actions into the Western District, file in the state system instead, believing that their claims will be handled more expeditiously. Delay within the federal system is thought to be the result of both judicial vacancies left unfulfilled for extended periods and the increased demands of the federal criminal docket.[13]

Total criminal filings for all federal courts rose from 28,921 in SY80 to 48,904 in SY90. Drug filings (including

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[11]Student loan cases are collection actions brought by the government. In Veterans' Benefit cases, the government seeks recovery of overpayment of veterans' benefits. Both types of cases tend to be routine.

[12]"Select Significant Factors in the Workload of the Federal Courts," Administrative Office of the United States Courts, Analysis and Reports Branch (January, 1991).

[13]The relationship between these two factors and delay in the Western District is discussed at greater length in Section III of this Report.

prosecutions involving marijuana, narcotics and controlled substances) increased by more than 300% in that same period. Interdiction of illegal narcotics was a special priority of federal law enforcement throughout the 1980's and remains a high priority today. Between SY80 and SY90, narcotics filings in the United States District Courts increased by 355%. In 1980, a total of 1,653 narcotics cases were filed in the federal district courts. By 1990, that number had risen to 7,522 cases. Drug-related criminal filings, such as weapons and firearms cases, increased nearly 200% in that same period.[14]

On average, drug prosecutions involve nearly two defendants per case, compared to slightly more than one defendant for other criminal cases. The studies of the Administrative Office of the United States Courts establish that the burdens of a criminal case increase in proportion to the number of defendants. Hence, the increase in drug filings creates an even heavier burden on limited judicial resources. This has emerged as a substantial problem nationally.[15]

Within the Western District, the impact of a growing criminal docket has been somewhat less severe than in certain other districts. However, there have been increased demands. Criminal filings rose from 204 in SY82 to 310 in SY87 and then fell to 273 in SY92. The number of criminal defendants commenced in the Western District rose from 331 in SY82 to 440 in SY87 and then fell to 399 in SY92.

Drug filings in general and narcotics filings in particular showed more dramatic growth throughout the mid-1980's, increasing by 130% and 364% respectively between SY82 and SY87. There has been some tapering off in more recent years.

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[14]"Selected Significant Factors in the Workload of the Federal Courts," Administrative Office of the United States Courts, Analysis and Reports Branch (January, 1991). In discussing the impact of this dramatic growth in the federal criminal docket, the Federal Courts Study Committee stated: "The deterioration in the indices of federal judicial performance has been gradual, but the expanded federal effort to reduce drug trafficking has led to a recent surge in federal criminal trials that is preventing federal judges in major metropolitan areas from scheduling civil trials, especially civil jury trials, of which there is now a rapidly growing backlog." Report of the Federal Courts Study Committee 6 (1990).

[15]Id.

TABLE 4
Drug and Narcotics Filings
SY82, 87, 92
U.S. District Court
Western District of Pennsylvania

	SY82	SY87	SY92
Total Criminal Filings	204	310	273
Drug Filings	30	69	59
As a Percentage of Total	14.7%	22.3%	21.6%
Narcotics Filings	11	51	43
As a Percentage of Total	5.39%	16.45%	15.75%

Even in this most recent period of some tapering off in the total number of criminal filings, the number of criminal trials as a percentage of all trials in the district increased from 32.6% in SY87 to 40% in SY91. Expressed in a somewhat different way, though criminal filings amounted to only 8% of total filings in SY91, criminal trials amounted to 40% of total trials in that same year.

These bare statistics may not convey the total impact of the current criminal caseload on the resources of the courts. In discussing that impact, the Federal Courts Study Committee stated:

> Drug filings not only increase the federal court workload; they distort it. The Speedy Trial Act in effect requires that federal courts give criminal cases priority over civil cases. As a result, some districts with heavy drug caseloads are virtually unable to try civil cases and others will soon be at that point. And when courts cannot set realistic trial dates, parties lose much of their incentive to settle and civil cases drag on in limbo.[16]

Speaking even more generally about the effects of a changing criminal docket, the increased penalties prescribed by the

[16]Report of the Federal Courts Study Committee, 36 (1990). The creation of this distinguished group was mandated by Congress, and its members were appointed by the Chief Justice. The Study Committee was chaired by the Honorable Joseph F. Weis, Jr., now a Senior Judge of the United States Court of Appeals for the Third Circuit and long a highly respected leader of the profession within the Western District.

Sentencing Guidelines beginning in 1987 and by the mandatory minimum sentencing statutes enacted by Congress have increased both the stakes for federal offenders and the work load for the federal judiciary.

B. Court Resources

It should be noted from the outset that the judges of the Western District had few complaints with respect to the adequacy of either the physical facilities in which they work or the technical support made available to them. Most of the magistrate judges believed that their work would be facilitated if they were authorized to employ a second law clerk. And some of the magistrate judges pointed out that their courtrooms were not as functional as those of the district judges, particularly for conducting trials. Overall, however, the judges seemed genuinely appreciative of the facilities that they occupy and for the support that they receive. This was particularly true of the judges who had earlier served in the state trial court system. The judges also were extremely positive in their comments regarding the important forms of support provided by the Clerk's Office and by Probation and Pretrial Services.

The Court's most important resource, of course, is its judges. As noted earlier, they are a talented, committed and hardworking group. One could conclude, however, that their services are valued less highly outside of the District. Since the mid-1980's, the Court has been plagued by large numbers of unfilled judicial vacancies.

The number of district judgeships authorized for the Western District of Pennsylvania increased from eight to ten in 1970 and has not changed since then. Beginning in the mid-1980's, the District began laboring under a very substantial disadvantage when judicial vacancies were not promptly filled. In fact, one vacancy created on December 31, 1988 remains unfilled almost four years later, and the Western District has been an "emergency court", as that term is used by the U.S. Judicial Conference, for more than two years.

TABLE 5
Vacant Judgeship Months
SY86-SY91
U.S. District Court
Western District of Pennsylvania

Statistical Year	86	87	88	89	90	91
Authorized Judgeship Months	120	120	120	120	120	120
Vacant Judgeship Months	35.9	36.0	29.0	21.9	22.2	24.0

As Table 5 shows, from SY86 to SY91, vacant judgeship months per year ranged from 21.9 months to 36.0 months. The mean number of vacant judgeship months over this six-year period was more than 28 vacant judgeship months per year. Remembering that the ten authorized judges account for only 120 total judgeship months per year, this means that the Western District lost almost one-fourth of its judicial resources during this period. In the worst of years, the actual loss of authorized judge time reached 30%.[17]

Other districts, too, have been forced to function with authorized, but unfilled, judgeships. However, the magnitude of the problem has not been so great elsewhere. Nationally, from SY87 through SY91, the federal system lost an average of 8% of its district court judgeship months because of unfilled vacancies. Though a substantial problem, it pales in comparison to the handicap under which the Western District labored during this same period.

The existence of this handicap is one that must be highlighted from the outset because it affects most of the comparative judicial workload statistics that are distributed nationally. Those calculations are based upon authorized judgeships and do not take account of unfilled vacancies. As the tables below demonstrate, this skews any comparisons involving a Court like the Western District, which has lost such a sizeable part of its authorized judgeship months over an extended period of time.

[17]In SY92, the Court functioned with only a single vacancy. However, the recent appointment of a Western District judge to the bench of the Third Circuit Court of Appeals again leaves the Court with two vacancies.

TABLE 6
Filings Per Judge
(Civil and Criminal Combined)
SY87-92
U.S. District Court
Western District of Pennsylvania

	SY87	SY88	SY89	SY90	SY91	SY92
Per Authorized Judge	352	365	353	311	301	397
Per Actual Judge	502	481	432	381	376	441

TABLE 7
Pending Cases Per Judge
(Civil and Criminal Combined)
SY87-92
U.S. District Court
Western District of Pennsylvania

	SY87	SY88	SY89	SY90	SY91	SY92
Per Authorized Judge	312	334	317	315	315	368
Per Actual Judge	445	440	388	387	393	408

TABLE 8
Terminations Per Judge
(Civil and Criminal Combined)
SY87-92
U.S. District Court
Western District of Pennsylvania

	SY87	SY88	SY89	SY90	SY91	SY92
Per Authorized Judge	340	342	371	312	301	344
Per Actual Judge	485	452	454	382	376	382

A further sense of the magnitude of both the very real problems faced by the active judges in an understaffed court and the statistical problems created when vacant judge months are not considered is provided by one additional comparison. The Judicial Conference of the United States will not recommend additional judgeships for a district where the weighted caseload does not exceed 400 cases per judgeship. For SY92, weighted

filings per authorized judgeship in the Western District stood at 397, just below this standard. However, weighted filings per actual judge in that same year stood at 441, well above this threshold measure of when additional help is required.[18] With another recently created vacancy within the Court, workload problems will become even more severe unless appointments occur far more rapidly than they have in the past.

Some relief from the extended vacancy problem has been provided by the enlarged complement of magistrate judges sitting in the District. In recent years, two full-time magistrate judges have been added in Pittsburgh, and a part-time magistrate judge has been added in Erie. Their contributions have been substantial. To some extent, though, those contributions have been offset by a dramatic decrease in the number of senior judges actively handling cases. Just a few years ago, as many as four senior judges simultaneously were shouldering significant caseloads. Today, only one senior judge is making that kind of contribution to the Court's work.

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[18]This standard, it should be noted, is a demanding one. It assumes a rate of disposition of more than three cases every two working days--while the judge is meeting all of the other responsibilities of the position.

III. Cost and Delay

The focused goal of the Civil Justice Reform Act of 1990 is to achieve improvements in the delivery of civil justice by reducing cost and delay. To that end, each district is required to implement a civil justice expense and delay reduction plan.[19] It is important to note, however, that the legitimate objectives of district plans extend beyond that. As articulated in the Act, the permissible objectives 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."[20]

Acknowledging the existence of this broader statement of purpose is important because there are, of course, many aspects of justice not directly tied to concerns with cost and delay. Consistent with the basic thrust of the Act, this report focuses principally on those two factors in seeking to assist the Court in its implementation of an expense and delay reduction plan. However, certain of its recommendations are grounded in a more general belief that their implementation would make the system better in ways that go beyond a desire to save either time or money.

A. Cost

The Civil Justice Reform Act gives equal emphasis in its expressions of concern to problems of excessive cost and problems of excessive delay. Despite that fact, virtually all of the completed reports available for review to date (generally those from early implementation and pilot districts) devote most of their attention to delay. The principal reason for this seemingly unbalanced focus is clear: There is very little information immediately available or easily obtainable that relates to the issue of cost.

An important dimension of cost is the expense of maintaining our federal "justice system." At the district court level, this clearly would include the direct cost of supporting the judges themselves, as well as the cost of the Clerk's Office. It also should include the expenses associated with Probation and Pretrial Services, the U.S. Marshal's Service and the U.S. Attorney's Office. Presumably, statistical information regarding the cost of these operations already is available in some form. However, it has not been a part of the statistical packets provided to the civil justice advisory groups.

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[19] 28 U.S.C. §471.

[20] Id.

Other relevant information regarding "system costs" may or may not be presently available. For example, jury trials quite clearly involve greater costs than non-jury trials. Similarly, criminal jury trials--both because of the larger number of potential jurors who must be called and because of the larger number of jurors ultimately seated--involve greater costs than civil jury trials. If not immediately available, statistics relating to such expenses should be obtainable and should be considered--at least with respect to reform recommendations affecting the federal court system as a whole.[21]

Because the courts are not involved in any general monitoring of the costs borne by the litigants themselves, it seems quite likely that information regarding this important type of expense is not currently available.[22] None of the regularly compiled national statistics bear on issues of such cost, other than perhaps inferentially. Even if such an effort might otherwise be productive, the advisory groups themselves lack the time, money and expertise to generate the types of comprehensive empirical data that might be usefully revealing with respect to this broad concern.

The Advisory Group for the Western District limited its data collection efforts with respect to litigant cost to general inquiries made as a part of its "case sample" analysis. Questionnaires sent to litigants and lawyers sought information both with respect to the level of expense incurred in the particular case and also with respect to the respondent's view of its appropriateness.

Of the 51 litigants responding to the questionnaire, 60% had been defendants, and 40% had been plaintiffs. Not surprisingly, then, fee arrangements tied to an hourly rate were most common. Fees paid ranged from nothing to over $800,000, with the mean fee payment being just over $45,000. In terms of appropriateness, 70% of the responding litigants found the fee paid to have been reasonable, 20% found the fee paid to have been unreasonable, and 10% were unsure.

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[21]For example, this report recommends an amendment to Federal Rule of Criminal Procedure 23(a) to accord a criminal defendant the sole option of electing to proceed to trial before a jury. See infra Recommendation 18. The cost savings that this would trigger could be substantial and should at least be subject to reasonable estimate.

[22]Such costs could include counsel fees, fees for experts and other witnesses, expenses connected with discovery and other matters.

Interestingly, of the 145 lawyers responding to the lawyer questionnaire, just over 70% found the fees and costs incurred by their clients to be "about right." Initially, that might seem to suggest a rather strong shared perception, on the part of both litigants and their lawyers, regarding expense issues. However, when the litigants were asked in a separate question about the litigation costs incurred by them, 47% labelled them "much too high," and an additional 11% found those costs to be at least "slightly too high."

It is not clear what triggered this far stronger level of litigant dissatisfaction with costs, as opposed to lawyer fees. The data simply does not reveal whether there were concerns with such specific types of expenses as consultant or expert witness fees or whether dissatisfactions were tied more broadly to such matters as cost of the litigant's own time. However, it may be professionally comforting to note that, at least in most cases, these general expressions of "cost dissatisfaction" seem not to be tied to the fee arrangements made by the responding litigant and that litigant's lawyer.[23]

B. Delay

The litigants responding to the Advisory Group questionnaire were even stronger in their expressions of dissatisfaction with the time required to resolve their cases. Over 62% said that the process took "much too long." An additional 10% said that it took "slightly too long." Of course, these respondents were litigants in what had been defined for sampling purposes as "delayed cases." In that sense, any other response from them would have been surprising.

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[23]In a very recent memorandum, the Chair of the Committee on Court Administration and Case Management of the Judicial Conference of the United States strongly recommended that local plans include limitations on the percentage that can be charged as a contingency fee. He further reported, however, that the Committee had decided that it "should leave the matter to the discretion of each district." See the memorandum of October 22, 1992, regarding Civil Justice Reform Act Implementation, from the Honorable Robert M. Parker to Chief Judges and Advisory Group Chairs. Because contingency fees had not emerged as a cost concern at any stage of this advisory group's work, that matter is not dealt with directly in this report. An April 20, 1971, resolution of the Western District's Board of Judges, which had generally governed counsel fees, was rescinded on November 25, 1980. Today, court rules governing counsel fees are limited to specialized types of actions, such as those brought by seamen or on behalf of minors. See, e.g., local rules 19 and 20.

However, more objective indicators demonstrate, as a general proposition, that it is taking increasingly longer to dispose of cases in the Western District. That is true of both civil and criminal matters. However, it is on the civil side that the District appears to be losing the most ground, both in an absolute sense and when compared to other courts.

From SY87 to SY92, the median time from filing to disposition of a criminal felony case increased from 3.6 months to 5.4 months. Even with that increase, though, the District's disposition time remained lower than the national median, which was 5.9 months. In civil actions, during this same period, the median time from filing to disposition increased from 7 months to 10 months in the District, while the national median remained constant at 9 months. What this means, of course, is that a court that had been performing at levels better than median national standards now has slipped below them.

There has been even more dramatic slippage in the District's position in terms of median time from issue to trial in civil cases that ultimately are tried. The national median in SY82, SY87 and SY92 remained constant at 14 months. The Western District actually was lower than that national standard, at 12 months, in SY82. However, by SY87, the time from issue to trial within our District had risen to 19 months, and by SY92, it was 22 months.

This unrelenting increase in the time that it takes to move a civil action to trial is distressing to judges and lawyers alike. It also stands as a source of particular concern when considered in light of the Civil Justice Reform Act. What is viewed by many interested reformers as the "centerpiece" of the Act is the proposed guideline that would ensure:

> early and ongoing control of the pretrial process through involvement of a judicial officer in . . . 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 . . .[24]

Obviously, to the extent that civil trials are not now conducted until 22 months after the issues have been joined, it seems unlikely that early and firm trial dates within eighteen months of the filing of the complaint can be set, at least in the absence of other fundamental changes.

In the judgment of the Advisory Group, two principal factors contribute to this form of delay. The first is the failure of the executive and legislative branches to act in a reasonably expeditious fashion to fill judicial vacancies. The second is the impact of the criminal docket, which is growing and which, under controlling legislation, must be given trial priority. Here, again, principal remedies lie in the hands of the executive and legislative branches, but complementary responses that might be implemented locally also will be discussed later in this Report.

Trial delay is not the only form of litigation delay, of course. Practices of the parties, their lawyers and the court can contribute to delay at other stages in the process. Such delay can add to cost, and because so many civil cases are resolved without a trial, may also delay the final disposition of the action. Other recommendations advanced in this Report are intended to more generally expedite the pretrial processes.

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[24]28 U.S.C. §473(a)(2)(B).

IV. Recommendations for the Future

A. General Observations and Recommendations

Among its many responsibilities, each civil justice advisory group is to recommend whether its district should adopt a model plan or craft a plan of its own.[25] There is strong feeling within this group that an individualized plan is most appropriate for the Western District of Pennsylvania. Only in that way can the recommended action properly "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys."[26] Of course, in shaping its recommendations, this group has benefitted from the work done by the more than thirty pilot and early implementation districts whose reports and plans were finalized and circulated several months ago. In that sense, there has been use of models.[27]

In developing this report, close attention has been paid to the "principles of litigation management and cost and delay reduction"[28] and "litigation management and cost and delay reduction techniques"[29] set forth in the Civil Justice Reform Act. In fact, this section of the report consists largely of recommendations that are directly responsive to those statutory suggestions. Of course, other matters, too, received careful consideration.

As noted above, there is a tradition of cooperation between the bench and the bar of the Western District. Even without Congressional prodding, those groups have a record of working together on common problems toward the shared goal of improving the court system. Most of the recommendations contained in this report build upon that tradition. They require those actively involved in litigation within the District--judges, litigants and

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[25]28 U.S.C. §472(b)(2).

[26]28 U.S.C. §472(c)(2).

[27]In fact, the Model Civil Justice Expense and Delay Reduction Plan distributed by the Judicial Conference of the United States on October 30, 1992 consists essentially of a "menu" of alternative approaches taken with respect to particular litigation management issues by early implementation and demonstration courts. As a part of their ongoing efforts, members of the Western District's Steering Committee had been reviewing those plans as they were distributed.

[28]28 U.S.C. §473(a).

[29]28 U.S.C. §473(b).

lawyers alike--to adapt and contribute to new procedural approaches that can be implemented and tested at the local level.

However, those actively involved in litigation within the Western District also struggle to shoulder the sometimes crushing weight of problems that have a profound local impact but no local solution. The Congressional findings providing the foundation for the Civil Justice Reform Act of 1990 include a recognition that Congress and the Executive Branch share responsibility for problems of cost and delay in civil litigation and must make significant contributions to the solution of those problems.[30] It seems appropriate, therefore, to begin with a request for help in addressing some significant problems that plague local districts but that cannot be dealt with by any judicial district acting alone.

Recommendation 1: Filling Judicial Vacancies

The Congress and the Executive Branch should give a much higher priority to filling judicial vacancies when they occur and should cooperate in developing procedures for doing so expeditiously.

Appointments to the federal bench are a serious matter. Those ultimately appointed enjoy life tenure and exercise significant authority. Within the Western District, there is great pride in the quality of our federal judges. In fact, as we look to pressing problems and their possible solutions, one source of hope is the dedication and ability of the individuals occupying these important positions. We do not suggest, therefore, that appointments be made before there has been ample opportunity to investigate and reflect upon the qualifications of those under consideration.

However, extended vacancies on the federal bench are an equally serious matter. Judicial authorizations reflect reasoned decisions about the level of human resources necessary for a court to meet its basic responsibilities. Extended judicial vacancies rob the courts of those resources. Expressed in a somewhat different way, extended vacancies rob citizens of their right of meaningful access to the federal courts by making it impossible for those courts to provide proper and timely action. In short, they contribute in a very major way to the precise

[30]Civil Justice Reform Act of 1990, §102(2), (3).

problems that Congress, through the Civil Justice Reform Act, has asked district courts to address.[31]

Because so many groups and individuals are involved in the process of review when there is an opening on the federal bench,[32] it would seem sensible for those participants to consider ways in which their contributions could be more effectively coordinated. That would work to the benefit of the federal judiciary nationwide. The Western District of Pennsylvania, though, has been plagued by problems that extend far beyond such inefficiencies and that involve political stalemates that have been highly detrimental to the Court and to the citizens who seek its services.

By December of 1994, the Judicial Conference of the United States will prepare a comprehensive report on the district court plans for distribution to a number of groups, including the Committees on the Judiciary of the Senate and the House of Representatives.[33] Because the judicial vacancy problems of the Western District have parallels in type--though not in magnitude--elsewhere, it seems quite likely that these matters will be raised in that comprehensive report. Before that much time has passed, however, it is the intention of this Advisory Group to raise the specific problems experienced in this District with Pennsylvania's Senators, the Senate Judiciary Committee, the Department of Justice, and the Office of White House Counsel.

Recommendation 2: Assessing the Impact of Legislation

The Congress and the Judicial Conference of the United States should cooperate in a coordinated effort to assess the impact of new legislation on the courts, to protect against unnecessary demands on limited judicial resources, and to provide for appropriate resource enhancements when additional demands are necessary.

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[31]For a statement of those problems, see, e.g., Civil Justice Reform Act of 1990, §102.

[32]Those participants include the White House, the Department of Justice, the Senate, the Senate Judiciary Committee, individual Senators, the American Bar Association and the F.B.I.

[33]28 U.S.C. §479.

The Act requires advisory groups to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."[34] Given limited time and resources, it probably is beyond the capacity of any local group to comprehensively examine and quantify the extent to which cost and delay can be attributed to the demands of new legislation. However, the broader existence of a relationship between new legislation and a court's workload is clearly confirmed by the impact of such statutes as ERISA and RICO on filings in the Western District.

The Report of the Federal Courts Study Committee recommended that "[a]n Office of Judicial Impact Assessment . . . be created in the judicial branch to advise Congress on, inter alia, the effect of proposed legislation on the judicial branch and legislative drafting matters likely to lead to unnecessary litigation."[35] It should be underscored that the proposed office would not exist to discourage legislative initiatives. Instead, its function would be to ensure that decisions regarding such initiatives would be better informed and to guard against drafting flaws that might unnecessarily add to the burdens of the courts. Whatever particular mechanisms might finally be employed to achieve these objectives, they are laudable.

The Federal Courts Study Committee also recommended that Congress employ a drafting checklist to avoid "technical" ambiguities that can require a very substantial investment of time, energy and money before they ultimately are resolved in the courts.[36] That checklist would serve as a reminder to participants in the legislative process that they should include items such as the following in their review of pending legislation: the appropriate statute of limitations; whether a

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[34]28 U.S.C. §472(c)(1)(D).

[35]Report of the Federal Courts Study Committee 89 (1990).

[36]Report of the Federal Courts Study Committee 91 (1990). Five members of the Study Committee believed that its proposal did not go far enough: "We have a problem, and we need to do more than the Committee suggests to solve it. At the very least we should have recommended that an entity be created in the Congress modelled on the Office of Technology Assessment to serve three distinct functions: (1) to assist congressional committees to assess the impact on the federal judiciary (and perhaps the federal prisons) of proposed legislation; (2) to call to the attention of Congress decisions by the courts and the executive branch that have important consequences on the courts or the Congress; and (3) to facilitate communications between the branches by providing a contact point for judges and other officials." Id. at 92-93.

private right of action is contemplated; whether preemption of state law is intended; the types of relief available; whether there is to be retroactive application; the conditions for an award of authorized attorney's fees; and whether exhaustion of administrative remedies is required.[37] A similar approach was recommended by the President's Council on Competitiveness[38] and has been promulgated by Executive Order with respect to the legislative activities of federal agencies.[39]

Judges of the Western District have wrestled with these questions and others like them. To the extent that any of them could be eliminated in the legislative process, that would reduce judicial burdens and should help in controlling both cost and delay.

Recommendation 3: Balancing Criminal and Civil Priorities

> *The Congress and the Executive Branch should more carefully consider the impact of ever broader federal criminal laws on the effective operation of the civil justice system.*

The earliest version of the Civil Justice Reform Act focused exclusively on management techniques for civil cases, without even acknowledging the impact of growing criminal dockets on the capacity of the federal district courts to effectively handle their civil caseloads. As finally passed, the Act of 1990 included the following Congressional finding:

> 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

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[37]Id. at 91-92. The list is more extensive than the examples set forth in the text.

[38]President's Council on Competitiveness, "Agenda for Civil Justice Reform in America" 27 (August, 1991).

[39]Executive Order No. 12778, "Civil Justice Reform," 56 F.R. 55195 (October 23, 1991).

> court's resources by both civil and criminal matters.[40]

This finding notwithstanding, the "action sections" of the statute deal almost exclusively with principles and techniques for expediting civil litigation.[41] Because local control over the growth of criminal dockets is quite limited, that is not surprising.

However, most members of the Western District Advisory Group believe that existing delay problems would be largely eliminated if two basic steps were taken. The first, already discussed, is the timely filling of judicial vacancies. The second is for Congress and the Executive Branch to take the above-quoted finding seriously by attaching real significance to the impact of a growing criminal docket on the ability of any court to deal with civil litigation expeditiously.

This reaction, it should be underscored, comes from an Advisory Group whose members recognize that the Western District of Pennsylvania has not been as severely affected by the growth of its criminal docket as have some other courts. However, clear pressures now are being felt here. Seven of nine district judges stated in their interviews that the percentage of time that they devote to criminal matters has increased in recent years. In fact, a number of them indicated that they currently spend a majority of their time on criminal matters. In the case of one judge, that time investment has reached 80%.

The fact that increased criminal docket pressures would flow from such statutes as the Speedy Trial Act and the Sentencing Reform Act and from such enforcement initiatives as Operation Triggerlock seems inescapable. The fact that the number of Assistant United States Attorneys more than doubled in a fifteen-year period when authorized judgeships did not increase at all is a strong indication of another type that existing judges almost inevitably would be expected to invest more and more of their time on criminal matters. In this same period, the Pittsburgh offices of other federal agencies, including the Drug Enforcement Administration, also saw significant growth in their agent and staff allocations.

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[40]Civil Justice Reform Act of 1990, §102(a).

[41]Executive Branch reform initiatives typically have not even acknowledged a link between the demands of the criminal docket and the problems that courts currently face in meeting their civil justice responsibilities. See, e.g., President's Council on Competitiveness, "Agenda for Civil Justice Reform in America," (August, 1991) and Executive Order No. 12778, "Civil Justice Reform," 56 F.R. 55195 (Oct. 23, 1991).

The position increases were authorized by the Executive Branch to address specific national and regional law enforcement initiatives. The members of the Advisory Group recognize this and share in the belief that crime prevention and law enforcement should be important priorities on both the local and national levels. However, most members of the Group also know that virtually every new criminal law initiative diminishes the resources that otherwise would be devoted to the delivery of civil justice. It is the Group's strong feeling that these costs to the civil system must be recognized and weighed and that any future expansion of the federal role in criminal prosecutions should be more measured.

B. Systematic, Differential Case Management

Among other principles of litigation management, the Civil Justice Reform Act requires each district to consider:

> 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.[42]

The work of the Western District Advisory Group suggested that this principle might effectively be applied in two very different types of cases--prisoner pro se actions and complex cases.

Just as these case types are different, though, so would the basic principle be applied to them in substantially different ways. The tracking and handling of prisoner pro se cases is, and should continue to be, very systematic. With complex cases, on the other hand, the preferred approach is a more intense, but case-tailored, form of management once an action has been identified as complex. Because complex cases also are the subject of a separate litigation management principle, recommendations regarding such cases shall be treated later in the report,[43] and this section will focus on prisoner pro se actions.

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[42] 28 U.S.C. §473(a)(1).

[43] See infra Section IV, G.

For more than ten years, prisoner pro se actions have been among the most common civil filings in the Western District of Pennsylvania. During the past five statistical years, there has been an average of 540 such filings annually. Prisoner pro se filings reached a peak of 644 in SY91. In that year, they accounted for 23% of all civil filings in the District.

However, numbers alone do not convey an adequate sense of the extent to which these cases impose special burdens on the Court and affect its ability to deal effectively with the rest of the civil docket. Some clearer sense of the difficulties presented emerged from both the report of the Pro Se Litigation Subcommittee and the interviews with the District's judges. Both groups underscored the fact that the absence of professional representation and the low level of pro se litigant skill alters the role played by judges and creates special demands on others involved in the process. There also was a shared feeling that such actions frequently were without legal merit, but were nonetheless unlikely to settle, and often were repetitious efforts of especially litigious prisoners. In light of these difficulties, it is somewhat surprising that condition-of-confinement cases brought by state prisoners are labelled "Type I" cases by the Administrative Office of the United States Courts. This means that they are weighted less heavily when a court's caseload is being assessed.

Despite the problems they present, both the District's judges and the members of its Advisory Group recognize that some cases within this large group do have merit and that providing a formal mechanism for prisoner redress is both necessary and desirable. The recommendations that follow are advanced in the hope that--through improved management, increased education, and the careful use of alternative dispute resolution--justice in these cases can be achieved in more appropriate, expeditious and effective ways.

Recommendation 4: Use of Magistrate Judges

Magistrate judges, to whom most prisoner pro se cases are initially referred, should continue and expand the practice of conducting proceedings within the penal institution, exercising the full range of judicial authority available to them.

A variety of proceedings, including status and settlement conferences, can be effectively conducted within the institution. This eliminates practical problems, involving both cost and delay, presented by the need to transport prisoners to the Courthouse. Conducting proceedings within the prison may also

eliminate one incentive--an understandable desire to travel--that can lead some prisoners to bring federal civil actions.

Magistrate judges are authorized to enter orders disposing of discovery motions and can make recommendations regarding the disposition of motions to dismiss and motions for summary judgment. If neither party demands a jury trial, magistrate judges can conduct hearings and submit written recommendations for disposition to the district judge. In appropriate circumstances, a magistrate judge also is permitted to conduct evidentiary proceedings at the institution and then recommend the dismissal of frivolous cases under 28 U.S.C. §1915(d).[44]

Recommendation 5: Uniform Prisoner Complaints

Local Rule 38 should be amended to provide that the court-approved complaint form to be used in all pro se civil rights actions brought by incarcerated persons shall be returned to the prisoner plaintiff unless it has been completed thoroughly. The local rule should further be amended to require the plaintiff to state whether or not the facts underlying the complaint were the subject of an earlier disciplinary proceeding against the plaintiff and, if so, to provide basic identifying information regarding that proceeding.

Local Rule 38 currently requires the Clerk to return to a pro se prisoner plaintiff a civil rights complaint which "is not submitted on the required form." When taking such action, the Clerk is directed by the local rule to return to the plaintiff "adequate copies of the form, instructions for its completion, and instructions for service of process." To advance its basic purposes, the rule should be expanded to also provide for a return of the complaint when the proper form has been selected but when that form has not been thoroughly completed.

In 1991, Rule 5 of the Federal Rules of Civil Procedure was amended to provide: "The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices." The reasons for this amendment were set forth in the Advisory Committee Note.

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[44]See Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (1992) and Spears v. McColter, 766 F.2d 179 (5th Cir. 1985).

> Several local district rules have directed the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by local rule or practice. This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form and may be directed to so inform the court.

The existing local rule is administered in a way that attempts to address these concerns and is consistent with local procedures recommended by the Administrative Office of the United States Courts. Any amended local rule obviously would have to meet the requirements of Federal Rule 5 and should, in particular, provide protection against the "hazards of time bars."

By requiring the plaintiff to include basic identifying information regarding a related, earlier disciplinary proceeding, the amended rule should advance the disposition of the action without imposing any substantial burdens upon the plaintiff. Generally, this information will be most useful in facilitating the early identification of guards or other prisoners who may have knowledge of the incident. In this sense, then, the amended local rule would serve a function similar to the more general disclosure provisions that have been recommended as amendments to the Federal Rules of Civil Procedure and that have been imposed by local rule in a number of demonstration and early implementation districts.

Recommendation 6: Prisoner Education

> *The pro se litigation kit currently made available by the Court should be supplemented with an educational booklet providing information on subjects of frequent inquiry or misunderstanding.*

As has already been noted, many of the special burdens imposed by pro se prisoner actions result directly from the fact that the plaintiffs are neither represented by counsel nor professionally trained themselves. The pro se litigation kit already distributed by the Court is helpful, but more could be done. Specifically, a handbook addressing areas of frequent

inquiry or misunderstanding would better equip pro se litigants to properly advance their claims while also easing some of the otherwise individualized demands made upon the Court. Suitable topics for coverage might include: alternatives to going to court; the role of legal counsel; a description of the federal court system; forms, rules and procedures for filing and serving complaints; motion practice; discovery; evidence; any requirement that administrative grievance procedures or other non-adjudicatory remedies be exhausted; trial procedures; and the function of judge and jury.

The preparation of such a handbook could be a cooperative project involving appropriate Court personnel and interested members of the Federal Court Section of the Allegheny County Bar Association. The Court also might draw upon the developed expertise of the Advisory Group's Pro Se Subcommittee in developing this handbook. Because handbooks of this type already are used in some districts and are now being developed in others, good models should be available.

Recommendation 7: Alternative Dispute Resolution

The Court should fully explore, and implement if possible, pilot alternative dispute resolution programs to deal with three major categories of prisoner pro se filings--those involving claims of inadequate medical treatment, improper discipline, and assault.

The general use of alternative dispute resolution is discussed more fully in a later section of this report.[45] It should be noted now, though, that most prisoner pro se actions tend to be somewhat routine and to fit into three major case categories--inadequate medical treatment, improper discipline and assault. As such, these actions might be particularly appropriate for the use of alternative disposition resolution.

The Pro Se Litigation Subcommittee has recommended a particular model, utilizing volunteer hearing officers drawn from the membership of the local bar. These hearing officers would go to the prison and meet with the plaintiff and the defendant or the defendant's representative. The hearing officer in each case would attempt to resolve the case informally, clarify any factual averments not clear from the face of the complaint, establish a discovery schedule--if necessary, and issue a report to the

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[45]See infra Section IV, H.

magistrate judge. Further exploring the feasibility of this and other possible approaches should be a part of the continuing work envisioned by the Civil Justice Reform Act.

Recommendation 8: Administrative Grievance Procedures

The Chief Judge, with support of leaders of the bar, should work to forge a partnership with state prison officials for the purpose of developing a fair and effective administrative grievance procedure that must be exhausted before civil rights actions based upon conditions of confinement can be filed in the federal court.

Fair and effective administrative grievance procedures should work to the benefit of everyone. Prisoner claims could be addressed and, in many cases, resolved far more quickly. If these procedures finally resolved even a fraction of the pro se prisoner filings, substantial court time could be saved.[46] And those disputes not finally resolved through the grievance procedure would come to the court with a record that might be of assistance in the ultimate disposition of the case.

One major obstacle to this initiative is the coordination that would be required, because the active participation of judicial and non-judicial officers from both the state and federal governments is necessary. For these reasons, it seems imperative that the Chief Judge play a leadership role in initiating the discussions that might lead to the implementation of suitable procedures.

A second significant obstacle seems to exist within the provisions of current federal law. Exhaustion of administrative remedies currently is required before federal prisoners may file civil rights actions. State prisoners, however, are required to exhaust administrative grievance procedures only if the U.S. Attorney General has certified or the district court has determined that those procedures are in "substantial compliance"

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[46]In his interview with members of the Advisory Group, one magistrate judge noted that while most pro se claims are legally frivolous, they are not necessarily frivolous in terms of one's more basic sense of what is right and what is wrong. When that is the case, the availability of a non-judicial grievance procedure might satisfy a prisoner's felt need to be heard, if the procedure is thought to have some legitimacy.

with statutory "minimum standards."[47] According to the Federal Courts Study Committee, "Justice Department regulations and procedures for certifying a state's system are slow" and "some states evidently regard the substantive standards as onerous (especially those requiring inmate participation in the system's design and administration)."[48] As a result, few states "have sought and obtained certification."[49]

Given these circumstances, the Study Committee recommended that Congress delete the specific minimum standards from the current statute and "direct federal courts in state prisoner cases brought under 42 U.S.C. §1983 to require exhaustion of state institutional remedies for a period of 120 days, if the court or the Attorney General of the United States is satisfied that the remedies are fair and effective."[50] Such action, of course, would involve far more than a local initiative. Whether or not statutory change is required, however, will not be known until the more modest first step proposed in this report is taken and the described dialogue, exploring possibilities within the existing statutory framework, is initiated.

Recommendation 9: Legislation Regarding Counsel Fees

Congress should enact legislation authorizing the payment of fees to court-appointed counsel in appropriate prisoner pro se cases.

The Court currently maintains a list of attorneys who have volunteered to represent pro se prisoner plaintiffs. However, the list is short, and most attorneys withdraw from it after handling one or two cases because of expenses incurred, potential malpractice actions, and demanding litigants. Because these cases are difficult and because some are both meritorious and important, Congress should provide for the payment of fees to court appointed counsel.

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[47]42 U.S.C. §1997(e).

[48]Report of the Federal Courts Study Committee 49 (1990).

[49]Id.

[50]Id. at 48.

Recommendation 10: Involvement of Law Students

The Court should explore the possibility of reinstituting programs that in earlier years had involved law students in providing assistance to prisoner pro se litigants.

In the past, local law schools had sponsored programs that provided student assistance to pro se prisoner litigants. Those programs were discontinued several years ago--principally because of new waiver and indemnification responsibilities that were imposed upon the schools. The discontinuation of these programs resulted in the loss of a potentially helpful resource. It should be determined whether or not these programs, or some variation of them, could now be reinstituted in a way that would be helpful to prisoner pro se litigants and the Court.

C. Assessing and Planning the Progress of the Case

The Civil Justice Reform Act requires each district to consider "early and ongoing control of the pretrial process through involvement of a judicial officer in--assisting and planning the progress of a case."[51] This broad principle of litigation management is advanced by several of the recommendations included in other sections of this Report. In addition, however, the Advisory Group has developed certain directly responsive recommendations that are most appropriately discussed here.

Recommendation 11: Early Status and Conciliation Conference

An initial status and conciliation conference should be held within sixty days after the filing of the defendant's answer. Seven days prior to that conference, each party should be required to file a single-page narrative statement of the case, and the parties together should be required to file a jointly prepared case management plan setting forth recommended time periods for discovery and the filing of pretrial statements.

Rule 16 of the Federal Rules of Civil Procedure requires that the court, within 120 days after the filing of the complaint

[51] 28 U.S.C. §473(a)(2)(A).

and "after consulting with the attorneys for the parties and any unrepresented parties," enter a scheduling order. Rule 26(f) of the Federal Rules permits, but does not require, a court to conduct a discovery conference. The Civil Justice Reform Act suggests that more active and regular involvement by the court and more meaningful interaction between the parties at the earliest stages of the pretrial processes would be highly desirable. The Advisory Group agrees.

It should be noted that the proposed status and conciliation conference would, as the label suggests, have a dual purpose. One important function would be the development of a plan for dealing with discovery and other matters likely to arise prior to trial. In this regard, the parties' development of a joint case management plan should provide the necessary foundation for the court's order. That plan, as modified by the court or through subsequent agreement of the parties, would govern the future conduct of the case.

For the court to conciliate at this early stage, it must have useable information about the case. For that reason, each party would be required to submit a single-page narrative statement of the case. To facilitate a meaningful dialogue, the narrative statement would not become a part of the record, could not be used as a source of admissions, and would have no preclusive effects.[52]

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[52]There are parallels between this recommendation and proposed amendments to the Federal Rules of Civil Procedure now pending before the Supreme Court. For example, proposed amendments to Rule 26(f) would require that the parties meet "to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by [proposed Rule 26(a)(1)], and to develop a proposed discovery plan." That meeting would be held "as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)."

Recommendation 11 ties the early status and conciliation conference to "the filing of the defendant's answer." This would not preclude a judge from scheduling such a conference when no answer has been filed because motions to dismiss are pending. However, that would depend upon a case-specific determination that such a conference would be productive.

Recommendation 12: Limits on the Transfer of Cases From Judge to Judge

Except in the case of death, disability or other exceptional circumstances, the transfer of civil actions from one judge to another should be limited in the following ways: (1) no action should be transferred from one judge to another more than once; (2) no action more than two years old should be transferred; and (3) no case with dispositive motions pending should be transferred.

The potential for constructive control of a case increases as the judge becomes more familiar with it. Obviously, then, much of that potential is lost when a case is transferred by one judge to another. Not only does this have a detrimental impact upon efforts to control cost and delay, but it causes litigants to feel that the resolution of their dispute must not be viewed as important by those who control the system or it would not be passed from judge to judge. In fact, no other practice prompted stronger negative comments from the litigants responding to the Advisory Group survey.[53]

Some transfers are inevitable when there is death or disability or when a judge takes senior status or otherwise leaves the Court. It is believed, however, that the proposed limitations on the transfer of cases are appropriate. In fact, the Advisory Group understands that on the basis of earlier dialogue prompted by this effort, the District's judges already have modified transfer practices and that the suggested limitations are largely in place.

D. Impact of the Criminal Docket in Setting Early, Firm Trial Dates

The statutory requirement that a court set early, firm trial dates--such that a civil trial ordinarily is scheduled to occur within eighteen months after the filing of the complaint--may be the "centerpiece" management principle of the Civil Justice

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[53]One of the most "colorful" responses came in a litigant's answer to the question "If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly?" The response: "Looked at case instead of passing it on to 4 Judges. As soon as a new Judge was appointed, they opened the dog kennel again, and out we went to a new Judge." In what was a relatively small group of responding litigants, several complained about having their cases transferred to three or four different judges.

Reform Act.[54] Its importance was underscored in reports of several of the Western District Advisory Group's subcommittees. It is when this particular principle is discussed that tensions between the Act and the demands of the criminal docket become most pronounced.

Most of the recommendations that follow should be considered, in light of the earlier described "Trends in Filings and Demands" within our District.[55] An important part of that discussion related to the growth in criminal filings, the increasing complexity of criminal cases, and the additional work produced by the Sentencing Guidelines. Even more significant--at least in terms of a court's struggle to set early, firm civil trial dates--is the fact that the Speedy Trial Act, in effect, gives perpetual priority to the disposition of criminal cases over civil cases. This is true even in the absence of exceptional circumstances such as the continuing pre-trial confinement of the defendant or strong public interest in a particular case.

In an earlier section of this report, the Advisory Group generally urged that Congress and the Executive Branch "more carefully consider the impact of ever broader federal criminal laws on the effective operation of the civil justice system."[56] It is believed that the following more focused recommendations, if implemented, would advance the goal of achieving a more appropriate balance in the discharge of criminal and civil case resolution responsibilities. Consistent with the directives of the Act, they require contributions by participants in the process at both the national and local level.

When specific recommendations relate to the prosecutorial function, they should not be viewed as criticisms of either the Department of Justice or the United States Attorneys Office. Instead, they reflect the basic fact that prosecutorial practices have a significant impact upon a court's ability to meet its civil docket responsibilities. Unless some adjustment to these practices can be achieved, it seems highly unlikely that there will be significant progress toward meeting the overall goals of the Act.

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[54]Consideration of the principle is mandated by 28 U.S.C. §473(a)(2)(B).

[55]See supra Section II, A.

[56]See supra Recommendation 3.

Recommendation 13: More Selective Federal Prosecutions

Federal criminal prosecutions should be restricted to activities in which federal involvement is necessary and appropriate.

In recent years, there has been some tendency to sweep into the federal courts criminal matters that traditionally would have been prosecuted in the state court system. It is recommended that prosecutorial intake policies be continuously monitored by the U.S. Attorney to ensure that cases that can be effectively handled by local prosecutors do not find their way into federal court. Cases referred by local authorities should be examined to ensure that federal interests are implicated and that crimes involving concurrent federal and state court jurisdiction are not prosecuted in federal court solely to enhance the penalty or to avoid state statutes.

Recommendation 14: Simplified Indictments

Federal criminal indictments should be more limited in terms of both the number of counts and the number of defendants charged.

Eleven of the thirteen judges responding to the question in their interviews expressed a view that the government was including unnecessary counts in its indictments. Apparently, the twin motivations are to lay a foundation for "charge bargaining" and to minimize the possibility that Rule 404(b) evidence may be excluded by the application of Rule 403. Putting differences about the propriety of such practices to the side, any advantages gained seem slight when compared to the costs that are paid.

The Advisory Group believes that a more restrictive approach to the drafting of indictments could shorten the length of many criminal trials without adversely affecting either the percentage of guilty pleas entered or the percentage of guilty verdicts won. As has already been noted,[57] the burdens of a criminal case increase in proportion to the number of defendants. Further, a more controlled approach to the inclusion of additional counts could have a direct impact upon efforts to control cost and delay.

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[57] See supra Section II, A.

Recommendation 15: Amendment to Sentencing Guidelines

The Sentencing Guidelines should be amended to recognize as a basis for departure from them that the defendant was convicted of a violation within the concurrent jurisdiction of the state and federal courts, and that the crime was investigated by state authorities, but that it was prosecuted as a federal offense. In such circumstances, the federal sentencing court should be permitted to depart and impose a sentence that is consistent with state court guidelines.

An amendment of this type might help advance two desirable objectives. At least in some cases, it presumably would eliminate one incentive to prosecuting in the federal system, rather than the state courts. It also would better position the sentencing judge to do what may be fair in a particular case.

It is true that many federal crimes have a state counterpart and that a significant number of crimes are jointly investigated by state and federal authorities. It must be noted, however, that the proposed amendments would not obligate the federal judge to sentence according to state standards. Instead, the amendment would only free the judge to consider state standards in arriving at a just sentence.

The federal guidelines do provide a measure of sentencing uniformity within the federal system. However, the resulting sentences may be grossly disparate when compared to the sentences imposed upon similarly situated offenders who are sentenced in state court. When there is concurrent jurisdiction and when there has been a joint investigation, this is a matter that the sentencing judge should be permitted to consider.

Recommendation 16: Motions for Departure from Sentencing Guidelines

The United States Attorney should file motions for departure from the Sentencing Guidelines, pursuant to Section 5K of the Guidelines, prior to sentencing rather than within twelve months of the judgment of sentence, absent compelling circumstances.

In most cases, the government should request a continuation of the sentencing hearing rather than filing a Section 5K motion within 12 months. By following this procedure, prosecutors can

provide the court with all pertinent information at the time of sentencing and avoid the necessity of a subsequent judicial proceeding. See United States v. Drown, 942 F.2d 55 (1st Cir. 1991).

Recommendation 17: Delivery of Jencks Act Statements

The United States Attorney should continue the practice of providing Jencks Act and Brady material to defense counsel no later than after jury selection and before trial has begun. In fact, federal prosecutors should be encouraged to provide these materials at the earliest possible time, absent exceptional circumstances.

The purpose of Recommendation 17 is to recognize a highly desirable practice and to urge its continuation and appropriate expansion. Particularly because individuals in positions of leadership do change, it is important to make such recommendations a matter of record, even though they do not involve substantial alterations to existing practice. The practice embraced in this recommendation advances the cause of justice and serves to expedite the proceedings. In fact, prosecutors should be encouraged to provide these materials at the earliest possible time, absent exceptional circumstances.

Recommendation 18: Non-Jury Criminal Trials

Federal Rule of Criminal Procedure 23(a) should be amended to accord a defendant the sole option of electing to proceed to trial before a jury. Until that national change is effectuated, the United States Attorney should implement the practice within the District by agreeing to try criminal cases to the Court when there has been a waiver by the defendant of the right to a jury trial.

The Sixth Amendment to the United States Constitution guarantees that "the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." Rule 23(a) of the Federal Rules of Criminal Procedure, in practical effect, grants an equivalent right to the prosecution. It provides that the defendant can waive a jury trial only "with the approval of the

court and the consent of the government." Within the Western District, at least in recent years, the government almost never has consented to a non-jury trial.

This stands in sharp contrast to the practice in some other federal districts, as well as to the practice in the Court of Common Pleas of Allegheny County. In that court in 1991, a total of 2,192 criminal cases were tried. Of those cases, only 355, or 15% of the total, were tried to a jury. In fact, for the four-year period from 1988 through 1991, jury trials accounted for only 16.6% of the criminal trials conducted in the Court of Common Pleas. However, in the Western District, non-jury criminal trials are a rarity, primarily due to the resistance of the government.

Particularly given their state-court experience with non-jury criminal trials, the district judges who previously had served on the bench of the Court of Common Pleas expressed some surprise at the resistance of federal prosecutors in the Western District to try criminal cases to the court. Clearly, a shift to non-jury trials when the defendant is willing would involve a significant cost saving, if only because juror fees are eliminated. Most of the district judges with Common Pleas experience also indicated that a substantial time savings would result.

Recommendation 19: Special Section Subcommittee

The Court should work with the Federal Court Section of the Allegheny County Bar Association to establish a permanent subcommittee of the Section to monitor the Court's ability to meet the sometimes competing demands of its criminal and civil dockets, particularly Speedy Trial Act requirements in criminal cases and the Civil Justice Reform Act recommendation that there be early, firm trial dates in civil cases.

As a result of earlier dialogue triggered by the Advisory Group's work, this recommended committee--known as the Federal Criminal Practice Committee of the Federal Court Section--already has been formed and has begun meeting. It is co-chaired by the United States Attorney and a distinguished private practicioner who was an Assistant United States Attorney earlier in his career. The first meeting was very well attended--attracting, among others, three of the District's judges and four Assistant United States Attorneys.

There were a number of reasons for suggesting that the Federal Court Section be used to create this subcommittee. Among them, of course, is the past record of the group in constructively supporting the work of the Court. Also important is the fact that this Section has aggressively sought members from throughout the District, rather than limiting itself to Allegheny County.

Because the Federal Court Section likely will continue to be an important forum for the discussion of issues relating to the business of the Court, including both criminal and civil docket pressures, it is highly desirable that both criminal and civil practitioners be involved in its work. It would be particularly helpful if lawyers from the United States Attorney's Office and the Federal Public Defender's Office were active in the Section. Ways should be found to encourage and facilitate their membership.

Recommendation 20: Criminal Docket Rotation

The Court should carefully explore docket rotation procedures that would free each judge periodically from the demands of the criminal trial docket, so that the judge, at least for a time, can devote full attention to his or her civil docket responsibilities.

The justification for criminal docket rotation procedures of some type was articulated in the Expense and Delay Reduction Plan of the United States District Court for the Western District of Tennessee:

> The [Western Tennessee] Advisory Group found that the problems with the civil docket in this district are largely caused by the heavy criminal docket. While the judges cannot control the number of indictments or criminal trials, we can try to manage the valuable resources of judicial time differently so that each judge can have some period of freedom from the responsibility of criminal trials. This should enable judges to schedule civil cases with a firm trial date and should give judges some uninterrupted time in chambers to deal with civil motions, settlement conferences, and other civil matters.

This Advisory Group agrees that a reasoned and deliberate allocation of judicial resources may provide the most effective means of achieving some reasonable balance in meeting the competing demands of the criminal and civil dockets. A docket rotation approach seems preferable to the creation of separate criminal and civil divisions within the District, an alternative that also was discussed.

A specific plan should be developed after more full discussion with the District's judges. However, the plans implemented in the Western District of Tennessee and Southern District of California each provide interesting models. The Southern District of California's plan is very straightforward. It simply provides that "each district judge be excluded on a rotating basis from the criminal draw for a two-month period each year so that the judge will be afforded two full months of uninterrupted civil case management time." The rotation plan of the Western District of Tennessee is somewhat more elaborate. However, it is built upon the following provision: "Three judges at a time will hear criminal cases. Criminal cases will be heard only in the first two full weeks of each month."

It would be difficult to simply borrow and implement either of these plans in this District. Both the Western District of Tennessee and the Southern District of California do have heavier criminal dockets, and the Western District of Tennessee is a much smaller court. However, if the basic concept was viewed favorably by the judges of our Court, an appropriate plan presumably could be designed.

Recommendation 21: Trailing Docket

> *Judges should make more regular, but careful, use of a "trailing docket," particularly for less complex civil cases that can be tried in three to four days or less. When such procedures are employed, no case should be called for trial from the trailing docket without reasonable notice to counsel for all parties.*

As has already been noted, the Advisory Group's examination of the District's docket condition identified a number of issues of concern. Chief among them was the time that it now takes to resolve a civil case, by trial or in some other way.[58] One

[58]See supra Section II, C.

recommendation for dealing with this problem is more extensive use of "trailing dockets."[59]

Under these procedures, cases that can be tried in three to four days or less would be listed for trial on the trailing docket. Such cases can then be inserted into a judge's trial calendar in the event that a more complex civil case or a criminal case concludes and a gap is left in the judge's trial schedule. Most often, this should mean that the trailing docket cases themselves will be tried more quickly. Because they will be tried in what might otherwise have been unused trial time, their disposition also should free up later trial time for the judges to invest in more complex cases.

While these procedures would, then, advance the goal of earlier trial dates, it must be noted that, at least for the trailing docket cases, they do not advance the goal of firm trial dates. Instead, the lawyers and parties involved in cases listed on the trailing docket are essentially "on call." Unless that docket is handled carefully, this can breed additional expense as lawyers and parties prepare for "back up trial dates" that may never come.

In light of the practical problems faced by lawyers, there also can be unfairness if adequate notice that an action is being called from the trailing docket for trial is not given. Therefore, this recommendation is accompanied by the caution that these procedures must be utilized with care. For example, in establishing and utilizing its trailing docket, the court might routinely gather information not only about probable trial length but also regarding the geographic location of parties and key witnesses, because these factors have such a clear impact upon a lawyer's ability to be quickly ready for trial. It also would be helpful if each judge would periodically distribute a list of his or her trailing docket cases, indicating the likely order in which matters will be called for trial.

Members of the bar are concerned that cases not languish on a trailing docket. Therefore, each judge should periodically inventory the cases on that docket. If a case has been pending on a trailing docket for a year or more, the courtroom deputy clerk or some other appropriate representative of the court ordinarily should contact the lawyers to determine if there has been any change in the status of the case. This might also be an appropriate time to encourage the lawyers to again consider dispute resolution alternatives.

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[59]The Subcommittee on Cost and Delay, which initiated this recommendation, found that "the principal differentiating system between the speedy courts and the Western District is the use of a 'trailing docket' method of scheduling trials."

E. Controlling Discovery

In its "principles and guidelines of litigation management," the Civil Justice Reform Act directs each advisory group to consider three companion approaches to expense and delay reduction in discovery:

> (1) early and ongoing control of the pretrial process through involvement of a judicial officer in . . . controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion;[60]
>
> (2) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;[61] and
>
> (3) 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.[62]

Discovery abuse frequently is identified as a principal cause of excessive cost and delay in federal civil practice, both nationally and in some other districts.[63] Assessments of discovery practice within the Western District were far less critical. In fact, after reviewing responses to the litigant and lawyer questionnaires sent to participants in our sample of 150 delayed civil cases, the Subcommittee on Cost and Delay stated:

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[60]28 U.S.C. §473(a)(2)(C).

[61]28 U.S.C. §473(a)(4).

[62]28 U.S.C. §473(a)(5).

[63]See, e.g., the memorandum of October 22, 1992, regarding Civil Justice Reform Act Implementation from the Honorable Robert M. Parker (Chair of the Committee on Court Administration and Case Management of the Judicial Conference of the United States) to Chief Judges and Advisory Group Chairs. See also "Report of the Advisory Group of the United States District Court for the Eastern District of Pennsylvania," 52-53 (1991).

"It is particularly noteworthy that there is little complaint in the Western District of Pennsylvania, either among litigants or attorneys, about discovery abuse." Though the statistical validity of that survey sample is questionable, its conclusions with respect to discovery practice received strong support from the judicial interviews. The vast majority of district judges and magistrate judges felt that discovery abuse in the Western District was minimal.

The Advisory Group's approach-of-choice for controlling discovery is embodied in the concept of an early status conference, which already has been discussed.[64] The parties would be required to jointly prepare a case management plan. The order based upon that plan, among other things, would control discovery. The fact that the Court would be involved in a meaningful way at such an early point also should facilitate later supervision of the process, if that is required.

A slight majority of the judges interviewed expressed some interest in the early, voluntary exchange of basic information as a cost-effective alternative to discovery. However, it was the position of the Advisory Group that procedural change of that type should not be implemented within the Western District, at least at the present time. To some considerable extent, that position is grounded in basic reservations about the "voluntary disclosure" concept itself. Those reservations include both questions about the practical effectiveness of disclosure and concerns regarding negative ways in which it might affect lawyer/client relationships and relations between lawyers.

There also was a feeling that this District might benefit by waiting and learning from the disclosure experimentation now underway in other parts of the country. Twenty-one of the thirty-four early implementation and demonstration districts included some form of mandatory disclosure in their expense and delay reduction plans. Many of these twenty-one "disclosure courts" patterned their provisions after the proposal of the Advisory Committee on Civil Rules published in August of 1991. A different disclosure proposal subsequently was recommended by the Advisory Committee and now is pending before the Supreme Court. Under the circumstances, it does seem sensible to see what happens with amendments to the Federal Rules themselves and to examine the experiences in districts experimenting with disclosure before deciding whether or not to move ahead with reform of this type.

Local Rule 4 of the Western District does contain a requirement prohibiting the consideration of discovery motions unless the parties certify that there has been a good faith

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[64]See supra Recommendation 11.

effort to resolve the dispute. Therefore, nothing further need be done with respect to that litigation management principle.

Recommendation 22: Expert Depositions

Motions seeking court orders authorizing depositions of expert witnesses generally should be granted.

Members of the Advisory Group did feel that depositions of experts should be permitted more freely. A proposed amendment to Federal Rule of Civil Procedure 26, now pending before the Supreme Court, would effectuate that change nationally. Under Rule 26 in its current form, however, such discovery is permitted only pursuant to court order.[65] Some judges rather freely issue such orders, frequently at the initial status conference. Pending amendment of Rule 26, the Advisory Group recommends that orders of this type generally be granted, especially after the close of other discovery when the issues have been refined.

F. Improving Motion Practice

The Civil Justice Reform Act requires each advisory group to consider the benefits that might flow from "early and ongoing control of the pretrial process through involvement of a judicial officer in . . . setting, at the earliest practical time, deadlines for filing motions and a time framework for their disposition."[66] The work of the Western District Advisory Group unearthed no particular concerns regarding the time for filing of motions. To the extent that deadlines might be desirable in a particular case, that matter presumably could most effectively be addressed in the parties' jointly prepared case management plan and resolved at the early status and conciliation conference.[67] However, considerable concern was expressed with respect to the timely disposition of motions.

The Report of the Advisory Group of the United States District Court for the Eastern District of Pennsylvania referred to what was described as

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[65] See Fed. R. Civ. P. 26(b)(4)(A)(ii).

[66] 28 U.S.C. §473(a)(2)(D).

[67] See supra Recommendation 11.

> the inherent tension between the views of the litigants and their lawyers that dispositive motions are useful means to reduce cost and delay but often are eviscerated by the fact that judges do not rule on them promptly or with due consideration, and the views of some judges that many such motions are time-consuming, burdensome, frivolous and crafted for delay or to avoid later criticism.[68]

There is no indication that a basic tension of this type exists within the Western District. Certainly, no general antipathy toward motions, dispositive or otherwise, was revealed in the judicial interviews.[69] Instead, judges seemed concerned when advised that lack of timeliness in resolving motions was a common concern of lawyers and parties involved in litigation in the District.[70]

Already, some members of the District's bench have begun experimenting with new approaches to achieving greater promptness and efficiency in ruling on motions. For example, the "happy hour" format long employed in the Court of Common Pleas of Allegheny County now is being used by some of the District's judges. These experimental efforts are a very constructive reaction to the Advisory Group's preliminary expressions of concern, and they should be encouraged.

At the same time, it also seems necessary and prudent to begin creating a general framework for motion practice within the District. That framework should be sufficiently flexible to allow for appropriate variations from judge-to-judge and case-to-case. However, it also should address core concerns with respect to unnecessary expense and delay.

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[68]"Report of the Advisory Group of the United States District Court for the Eastern District of Pennsylvania" 70 (1991).

[69]In this regard, compare the expense and delay reduction plan adopted by the U.S. District Court for the Eastern District of Texas, which provides that leave of court must be obtained before a motion is filed.

[70]The court's failure to rule promptly on motions was one of the most commonly listed causes of delay in the responses submitted by both lawyers and litigants to the Advisory Group's "delayed cases" questionnaire.

Recommendation 23: Timely Resolution of Motions

Non-dispositive motions should be resolved in an expedited fashion, ordinarily within thirty days of their filing, on oral argument and without written briefs, unless briefs are expressly required by the court. Dispositive motions ordinarily should be resolved within ninety days of their filing, on briefs and oral argument, unless oral argument is expressly precluded by the court. Any motion not resolved within ninety days of its filing should automatically be scheduled for oral argument.

The initial recommendations of the Subcommittee on Expense and Delay took a somewhat different approach. It was suggested that any motion not disposed of in ninety days automatically be deemed denied. Other members of the Advisory Group and many of the District's judges had serious reservations about this proposal, fearing that it simply would provide an "easy way out." A judge not inclined, for whatever reason, to rule on a motion could simply wait for ninety days, and the motion would self-destruct.

The current recommendation pursues the same goal in a somewhat different way. Rather than providing for the automatic denial of a "stale" motion, it would move such a motion back onto the decisionmaking track by providing for the automatic scheduling of oral argument. The judge's desire to avoid a time investment in unnecessary oral argument might actually prompt earlier rulings on motions.

A presumptive format for motion submissions also is embodied in this recommendation. Non-dispositive motions generally should be resolved on oral argument and without briefs. This procedural approach is intended to be responsive to the expense and the delay concerns of the Civil Justice Reform Act. Because dispositive motions, by definition, are more important to the ultimate resolution of the action, there is a stated presumption that both briefs and oral argument would be permitted.

Members of the Advisory Group recognize, however, that there may be good reason for variation in this procedure from judge-to-judge and from case-to-case. Among other things, the judicial interviews revealed that different judges simply find different forms of submission most helpful to them when considering and ruling upon motions. Therefore, the format provisions of this recommendation are only presumptive and can be changed by an individual judge.

G. Carefully Monitoring Complex Cases

The principles and guidelines applicable to complex cases under the Civil Justice Reform Act are quite extensive. They include:

> 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 practical time, deadlines for filing motions and a time framework for their disposition.[71]

As should be apparent, there is considerable overlap between these provisions and the principles and guidelines that the Act more generally urges be applied to civil case management.

The fact that there is strong identity between the principles of litigation management to be applied in complex

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[71]28 U.S.C. §473(a)(3).

cases and those to be applied in "ordinary" cases is at the heart of the Advisory Group's approach to complex case responsibilities. We do not recommend that cases be identified as complex according to a set of predetermined criteria and then assigned to a differential case management track. Instead, we recommend that parties be given the opportunity to advise the court that a case is complex and to work with the court to devise the most appropriate, individualized case management plan.

Recommendation 24: Complex Cases

The Court should promulgate a local rule that would authorize a party believing that a case is complex to move for "complex case" designation and to present a plan for more intensive judicial management at the Early Status and Conciliation Conference or at some other appropriate time.

Relatively early in its work, but after considerable effort, the Subcommittee on Complex Cases concluded that it could not develop a definitive "test" for what constitutes a complex case. Factors bearing on complexity include: number of fact issues; number of legal issues; number of causes of action or defenses; number of parties; number of lay and expert witnesses; amount involved; parties involved; lawyers or law firms involved; fee basis; type of case; and judge involved. However, it is the combination of factors presented in a case that finally determines its complexity.

The subcommittee's difficulties in defining case complexity were mirrored in two other aspects of its work. First, the case sample of 150 "delayed cases" taken from the Western District's docket included a subgroup of cases that, based upon docket information, appeared to be potentially complex. When the subcommittee reviewed those cases, it found that many were not complex and that case type was not a reliable predictor of complexity. Second, in follow-up work with judges and lawyers who had handled complex cases, it became apparent that while those individuals "knew a complex case when they saw one" even they could come no closer to a functional definition than a listing of relevant factors.

The fact that it is so difficult to pre-identify complex cases and the fact that complex cases tend to be complex in different ways played a central role in shaping this recommendation. A party who believes that a case is complex and deserving of more intensive judicial management can seek complex

case designation. If the court agrees, a more intensive form of case management would result, but it would be tailored to the individual case. Among the matters to be addressed would be discovery-related issues, motion practice, and the time of trial. In most important respects, then, this recommendation parallels Recommendation 11, dealing with the management of civil cases generally. It also should be noted that this approach to complex case management has worked well in the Court of Common Pleas of Allegheny County and in other courts.

H. Referring Matters to Alternative Dispute Resolution

At a very early point in its work, the Subcommittee on Litigant and Attorney Practices was asked to focus on alternative dispute resolution. That charge reflected the fact that many of the subcommittee's members had experience with ADR and were positioned to make a special contribution to the Advisory Group's work in this area. The subcommittee report is unusually helpful as an educational document--carefully describing a broad range of ADR techniques and discussing their potential application here within the Western District.[72]

The Civil Justice Reform Act does direct each advisory group to consider: "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."[73] Heavier reliance upon ADR also has been strongly urged by the Executive Branch. In its Report on Civil Justice Reform, the President's Council on Competitiveness recommended "greater access to alternative dispute resolution (ADR) techniques that would routinely be available as a substitute for traditional litigation."[74] More specifically, the Council urged that courts "provide a choice for resolving disputes" by creating "multi-door courthouses."[75]

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[72]Other very helpful resources are also available. See, e.g., Plapinger and Shaw, Court ADR: Elements of Program Design (Center for Public Resources, 1992) and Manual on Court-Based Dispute Resolution Procedures (Federal Judicial Center, 1991).

[73]28 U.S.C. §473(a)(6).

[74]President's Council on Competitiveness, "Agenda for Civil Justice Reform in America 7 (1991). However, there are clear limits on the willingness of the federal government to submit its own disputes to ADR. See Executive Order No. 12778, "Civil Justice Reform," 56 F.R. 55195 (October 23, 1991).

[75]Id. at 15.

> Before the contest would be sent for trial, the parties would attend a mandatory conference to identify the areas in controversy. At this conference the parties would be given the opportunity to resolve their claims through a variety of alternative dispute resolution mechanisms, including early neutral evaluation, mediation, arbitration, minitrial, and summary jury trial.[76]

However, as desirable as such an approach might be, the Western District clearly is not positioned, in terms of resources and otherwise, to create a multi-door courthouse, even if that would be a shared desire. And there is a strong feeling within the Advisory Group that any mandatory ADR should be court-annexed. This reflects a continuing belief that dispute resolution remains an important governmental responsibility.[77] To the extent, then, that litigants are directed to participate in ADR, they should not simply be directed to the open market, but instead should be able to participate in programs sponsored by the Court.[78]

Within this context, the Advisory Group believes that it would be best to strongly advance three recommendations of the Subcommittee on Litigant and Attorney Practices. They are: supporting and enhancing our existing arbitration program; developing a program for the early neutral evaluation of cases; and doing more to educate both judges and lawyers about the

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[76]Id.

[77]One commentator has described that responsibility in the following way:

> Dispute settling is a social function of government. At the root, it is of a piece with delivering the mail, controlling traffic, or providing school lunches. That is to say, the people have needs which they cannot serve for themselves and so they look to the group servant, the government, to solve these problems for them.

Frank, "The Rules of Civil Procedure--Agenda for Reform" in "Symposium on the 50th Anniversary of the Federal Rules of Civil Procedure," 137 U. Pa. L. Rev. 1883 (1989).

[78]Of course, litigants desiring to participate in private ADR, and having the resources to do so, generally are free to make that choice.

dispute resolution alternatives that are available. These steps would represent a substantial, but manageable, contribution to the goals of the Act.

Recommendation 25: Supporting and Enhancing Arbitration

> *The voluntary arbitration program now functioning within the Western District should continue to receive the full support of the bench and bar. As greater experience with the program reveals what changes would be desirable, the program should be appropriately enhanced.*

In July of 1991, the judges of the Western District promulgated Local Rule 43. It provides for voluntary arbitration, with a right to trial de novo, in all civil actions except: (1) social security cases; (2) cases in which a prisoner is a party; (3) cases alleging violation of a right secured by the U.S. Constitution; and (4) actions in which jurisdiction is based, in whole or in part, on 28 U.S.C. §1343. All other cases are subject to arbitration unless a party opts out within ten days after the filing of the answer or the court exempts the case for good cause.

In implementing this voluntary arbitration program, the Western District is part of a national pilot project. The Federal Judicial Center is responsible for evaluating the pilot project so that the Judicial Conference of the United States can make recommendations regarding its future in 1994. In the meantime, both the Federal Court Section of the Allegheny County Bar Association and the Office of the Clerk of Court intend to undertake basic, complementary data-gathering initiatives.

On balance, the results to date are quite encouraging. From one perspective, there is, perhaps, reason to be concerned about the number of cases--close to one-third of those eligible--that have been "opted out" of the program. However, substantial numbers of cases now are being handled in arbitration. It seems most significant that a very high percentage of the cases arbitrated are finally resolved at that stage. Despite the right to a trial de novo, very few of the arbitrated cases have later been tried.[79]

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[79]As of October 1, 1992, 335 cases had been referred to arbitration. In 90 other cases, the parties had opted out as soon as the action was filed and before it was referred to

Recommendation 26: Early Neutral Evaluation

If it proves feasible, the Court should supplement its existing arbitration program by instituting an early neutral evaluation program, relying upon distinguished, senior lawyers as "settlement judges."

The general commitment to ADR embodied in the Civil Justice Reform Act already has been noted. The Act additionally directs each advisory group to specifically consider early neutral evaluation as a "litigation management and cost and delay reduction technique." Early neutral evaluation is defined as a 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."[80]

Not only was early neutral evaluation singled out in the Act; it also was recommended by the Subcommittee on Litigant and Attorney Practices. The subcommittee found that because of the "wide success" that it has enjoyed in other districts, early neutral evaluation "is the most desirable means by which parties could obtain a frank, candid and early assessment of their case before committing to an expensive, time-consuming course of full scale litigation on the court's docket."

Recommendation 27: Budgetary Support for ADR

As increasingly larger parts of a court's traditional dispute-resolution responsibilities are referred to ADR programs, Congress must recognize that these programs, too, must be appropriately staffed and adequately funded. Court-annexed ADR programs should receive the budgetary support that will enable them to work well.

If an early neutral evaluation program was to be initiated in this District, a number of practical issues would have to be confronted. The most important of them relates to staffing.

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arbitration. Opt-out notices were filed in 101 of the 335 referred cases. Thirteen hearings had been held. There was a trial de novo in only one case.

[80] 28 U.S.C. §473(b)(4).

Typically, the early neutral evaluator is either a magistrate judge or a volunteer attorney. It seems highly unlikely that this District's magistrate judges could undertake this task without jeopardizing the work that they already do in meeting other Court responsibilities. Therefore, it is the Advisory Group's hope that this program could be built around the volunteer service of recently retired, but distinguished and respected, litigators. In fact, initial steps to determine the feasibility of this approach already have been taken. However, ultimately it must be recognized that important and time-consuming programs cannot be permanently staffed on a volunteer basis.

Recommendation 28: Education in ADR

Steps should be taken to ensure that the bench and the bar are fully informed as to both existing ADR programs and emerging ADR techniques.

Both the bench and the bar need adequate and up-to-date information to fully appreciate the benefits of ADR methods and to effectively plan for their use. This is true whether one is considering the application of ADR to a particular case or is participating in broader planning for the improvement of the courts. It is the sense of the Advisory Group that such information has not been adequately disseminated within the Western District.

Appropriate educational initiatives would advance at least three related goals. The first is providing an informed sense of currently existing alternatives, so that lawyers and their clients can make intelligent decisions regarding the dispute resolution avenues that are open to them. Hopefully, this could be accomplished through the educational initiatives of any of a number of interested professional groups, including the Federal Court Section of the Allegheny County Bar Association. The second is providing timely reminders of available alternatives to those actively involved in moving a case through the courts. It would seem particularly important to remind litigants of ADR possibilities both at a very early stage of the process and also as trial approaches. Presumably, this is a responsibility best met by the court. Finally, there should be an ongoing effort to ensure that current ADR programs are functioning well and that new ADR possibilities receive careful consideration by the Court. This may require the creation of a special committee.

I. Other Litigation Management Techniques

As already has been noted, the Civil Justice Reform Act separately mandates consideration of specified "principles and guidelines of litigation management and cost and delay reduction"[81] and "litigation management and cost and delay reduction techniques."[82] Though they are separately listed, there is considerable overlap between the "principles" and the "techniques," some already having been dealt with together.[83] None of the remaining "technique suggestions" has generated a formal recommendation from the Advisory Group. However, the record would not be complete without a brief discussion of each.

Section 473(b)(2) of the Act sets forth the suggested technique of "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." The Advisory Group's interviews of the judges revealed that this step already was being taken, and there seems to be little need to formalize the practice.

Similar considerations apply to Section 473(b)(5)'s suggested 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." Except where it would serve no purpose, most judges of the Western District already are employing this practice.

Both the Advisory Group and the District's judges had a very different reaction to Section 473(b)(3). That subsection suggests "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." The overwhelming reaction to this suggestion was extremely negative. It was felt that little good would flow from such a requirement but that it could undermine relationships between lawyer and client.

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[81]28 U.S.C. §473(a).

[82]28 U.S.C. §473(b).

[83]For example, though requirements for a discovery--case management plan and an early neutral evaluation program are separately listed as techniques in §473(b), they also are encompassed by the broader principles of §473(a). Because they have received earlier attention, they will not be revisited here.

V. The Work That Lies Ahead

Roscoe Pound opened his now famous 1906 address on "The Causes of Popular Dissatisfaction with the Administration of Justice"[84] by noting that "[d]issatisfaction with the administration of justice is as old as law. Not to go outside of our own legal system, discontent has an ancient and unbroken pedigree."[85] He continued by warning that "we must not be deceived by this innocuous and inevitable discontent with all law into overlooking or understating the real and serious dissatisfaction with courts and lack of respect for law which exists in the United States today."[86] Certainly, it would be a mistake to underestimate either the very real and serious problems facing the federal courts in 1992 or the dissatisfactions that those problems have generated.

In its 1990 report, the Federal Courts Study Committee asserted that "the long-expected crisis of the federal courts, caused by unabated rapid growth in case filings, is at last upon us."[87] Even in the face of this crisis, the Study Committee chose to recommend incremental, and not radical, change.

> What is to be done? We share the view of Edmund Burke that radical social reform is justifiable only as a last resort, because its total impact is so difficult to predict; and Jefferson's correlate that "moderate imperfections had better be borne with." Incremental reform, building upon an existing and time-tested structure and changing it as little as seems consistent with the goals of reform, is much to be preferred to a leap into conceptual outer space.[88]

So, too, are the recommendations in this Report incremental. They are grounded in deep respect for a system which, at least in this District, continues to function reasonably well. At the same time, those recommendations are triggered by a recognition that, at least in certain respects, the system functioned even

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[84]This address was delivered at the Annual Meeting of the American Bar Association in St. Paul, Minnesota. The text can be found at 35 F.R.D. 273 (1964).

[85]35 F.R.D. at 273.

[86]Id.

[87]Report of the Federal Courts Study Committee 6 (1990).

[88]Id. at 9.

better in the past and by the hope that those earlier levels of performance can be achieved or even exceeded in the years ahead.

Of course, even attempts at incremental change can meet with resistance. In anticipating the range of likely reactions to its report, the Federal Courts Study Committee stated:

> But, though incremental, many of the proposals are bound to be controversial because they threaten a status quo to which bench and bar have grown accustomed. It is no doubt a compliment to the federal judiciary that so many people are so eager to use its services in preference to those of other adjudicatory institutions. Many of these people do not realize, however--or do not care--that the demands they place on the system make it less able to serve the needs of other groups, or even their own needs in the long run.[89]

The Civil Justice Reform Act of 1990 was designed to minimize the impact of narrow self-interest. It promotes broad participation in the quest for court improvement and seeks contributions from all positioned to "give" in its pursuit of expense and delay reduction. This Report was prepared in that spirit.

In transmitting it, the members of the Advisory Group reaffirm their principal partnership in this mission with the judges of the District Court. We realize that this is only a first step. Some of the ideas advanced may require further explanation or justification. Others, if they are to be implemented, clearly would require refinement and additional work. We stand ready to respond to further calls for help.

Particularly in the weeks and months ahead, as we move toward the finalization of the District's plan, it would be most sensible for the Court to continue to rely upon the Advisory Group as currently constituted. Its members, after all, have invested considerable time in studying the problems currently faced by the Western District and in developing approaches to dealing with them. However, the Court also should begin considering somewhat longer-term responsibilities.

The Civil Justice Reform Act does envision a continuing working relationship between a Western District Advisory Group and the Court. Among other things, the statute mandates consultation in annually assessing "the condition of the court's civil and criminal docket with a view to determining appropriate

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[89] Id. at 4.

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."[90] The statute also provides that, with the exception of the United States Attorney, no member of an advisory group shall serve for longer than four years.[91]

What this probably means is that the Western District's Advisory Group should be reconfigured at the time the District's plan is adopted. Presumably, the Group could be somewhat smaller. Almost certainly, it should be a mix of current members, who can provide a measure of highly desirable continuity within the four-year service limitation of the statute, and new members, who can carry on with this important work beyond that point in time.

However those practical matters ultimately are resolved, it is our sincere hope that this collective effort can produce an even better Court, both in the near term and in the years that lie even further ahead.

THE CIVIL JUSTICE ADVISORY GROUP
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Roslyn M. Litman
Chair

Alfred L. Wilson
Clerk of Court

Dean Mark A. Nordenberg
Reporter

The Hon. Donald E. Ziegler
Court Liaison

[90] 28 U.S.C. §475.

[91] 28 U.S.C. §478.

PLAN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Hon. Gustave Diamond, Chief Judge
Hon. Maurice B. Cohill
Hon. Donald E. Ziegler
Hon. Alan N. Bloch
Hon. Glenn E. Mencer
Hon. William L. Standish
Hon. D. Brooks Smith
Hon. Donald J. Lee
Hon. Barron P. McCune

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EXPENSE AND DELAY REDUCTION PLAN
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

I. INTRODUCTION

The Report of the Civil Justice Advisory Group properly, and proudly, makes note of the special bonds that traditionally have existed between members of the bench and bar within the Western District of Pennsylvania. The Civil Justice Reform Act of 1990 has added an important new dimension to that professional partnership--the working relationship between the District Court and the Advisory Group.

This Plan will focus principally on particular parts of the Advisory Group Report--those recommendations that can now be implemented by local rule. However, we recognize that the scope of the Report is far broader than this. Therefore, we begin by expressing our support for the many other aspects of the Report and by offering two general observations.

First, if the goals of the Civil Justice Reform Act are to be fully achieved, assistance from the other branches of government is required. Many of the most significant problems facing local districts can be dealt with effectively only at the national level. The Civil Justice Reform Act recognizes that Congress and the Executive Branch share responsibility for the problems of cost and delay in civil litigation. The Act also recognizes that these other branches of government must make contributions to the solution of those problems.

Second, some of the most important recommendations included in the Advisory Group Report require further work before they can be adopted. This is particularly true of those recommendations regarding the processing of prisoner cases and the development of additional programs for alternative dispute resolution. Ideas advanced in the Report require both further study and careful implementation.

Each of these observations serves as a reminder that the Advisory Group has not fully discharged its responsibilities with the filing of its Report. Instead, there are important contributions yet to be made. This may involve working with the court to advance proposals that can only be adopted at the national level. It almost certainly will include continuing involvement as recommendations for local change not yet ready for implementation are considered and refined. And the changes to be effectuated under this Plan must be monitored.

The Civil Justice Advisory Group itself has a continuing life under the statute, though its membership must change over time. The current members of the Advisory Group deserve great thanks for their contributions to this important

undertaking. The court looks forward to working with a reconfigured Advisory Group in the months and years ahead.

A. Overview

The Civil Justice Reform Act requires the District Court to establish a plan for case management based upon the "systematic, differential treatment of civil cases." The Act calls for a system that "tailors the level of . . . 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." 28 U.S.C. § 473(a)(1). The ultimate goal is to establish an early, firm trial date in every civil action so that the case can be tried within eighteen months after filing of the complaint, unless the complexity of the case or the number of pending criminal cases prevents this end. 28 U.S.C. § 473(a)(B)(ii).

The Plan is designed to resolve the problems described by the Advisory Committee in five ways:

(1) utilize judicial resources more effectively;

(2) implement early and ongoing intervention in case management by judicial officers;

(3) involve the parties and the responsible attorneys;

(4) expand the availability of ADR; and

(5) conclude the ongoing revision of the local rules.

In developing our Plan, we have considered each of the recommendations of the Report. We have considered each of the cost and delay reduction and litigation techniques specified in 28 U.S.C. § 473(b). We have also received input from the members of the Advisory Group, the Federal Court Section of the Allegheny County Bar Association, the federal practitioners of the Erie bar, and the Rules Committee of the court. Finally, the differential case management system adopted by the Western District is intended to permit management of the civil docket in the most effective manner, and to reduce costs and avoid unnecessary delay, without compromising the independence or authority of either the judicial system or the individual judge. The underlying principle is to make a fair and efficient court system available and affordable to all citizens.

B. Amendments to the Local Rules -- The District Court shall initiate the process for formal amendment of the following local rules.

(1) Revise Local Rule 4 by inclusion of a new subsection (e) which shall read as follows:

> (e) Timely Resolution of Motions. The court shall resolve non-dispositive motions in an expedited fashion, ordinarily within 30 days, with or without oral argument and without briefs, unless briefs are required by the court. Dispositive motions shall be resolved within 90 days of their filing, on briefs and oral argument, unless oral argument is expressly precluded by the court. Any motion that is not resolved within 90 days of its filing shall be scheduled for oral argument by the Clerk of Court.

(2) Delete Local Rule 5 II and replace it with a new Local Rule 5 II, which shall read as follows:

II. Pre-Trial Procedure

A. Scheduling Case Management Conferences--Generally

1. As soon as counsel are identified, but in any event, within 60 days of the filing of an answer (or the answer of the last defendant), the judicial officer to whom the case is assigned shall schedule an initial case management conference. A judicial officer or judge is either a United States District Court Judge or a United States Magistrate Judge. The judicial officer may defer an initial conference if a motion is pending such as a motion to dismiss or to transfer venue, which may make an initial conference superfluous.

2. The judicial officer may conduct such further status conferences as are consistent with the circumstances of the particular case and this rule, and may revise any prior scheduling order for good cause.

3. At each conference each party not appearing pro se shall be represented by an attorney who shall have full authority to bind the party in all pretrial matters, and shall have authority to discuss settlement of the action.

4. At each such conference, attorneys shall ensure that the parties are available, either in person or by telephone, except that a governmental party may be represented by a knowledgeable delegate.

5. Initial case management conferences shall not be conducted in any civil action that is referred to arbitration pursuant to Local Rule 43, or in civil actions involving social

security claims, bankruptcy appeals, habeas corpus, government collection, and prisoner civil rights cases, unless the judge directs otherwise.

6. No judicial officer shall depart from the provisions of these rules and impose additional requirements on counsel or the parties, except as may be necessary in an individual case to avoid injustice.

B. Case Management Plan

1. The judicial officer shall, after consultation with counsel, enter a case management order which may include, but need not be limited to, the following:

(a) the dates by which the parties must move to amend pleadings or add new parties;

(b) the dates for completion of fact and expert discovery;

(c) the dates for document production;

(d) the dates for submission of experts' reports and the dates for depositions of experts, if appropriate;

(e) the dates for filing of dispositive motions after considering whether such motions should be brought at an early stage of the proceedings (i.e., before completion of fact discovery or submission of experts' reports);

(f) the date of the pretrial conference;

(g) the designation of the case for arbitration, mediation, appointment of a special master or other special procedure; and

(h) the presumptive trial date, or the date of the subsequent status conference for complex cases.

2. The case management order may further include such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

3. The judicial officer shall, after consultation with the parties, designate each civil action either Track I or

II. Each class action, antitrust, securities, environmental, patent, trademark, multi-district or complex case shall presumptively be designated as Track II.

4. The judge shall also advise each party of the provisions of Local Rule 43 (Arbitration).

5. In a civil action arising under 38 U.S.C. §§ 1961-1968, the judge may require a RICO case statement to be filed and served in a form approved by the court.

6. Counsel shall confer to resolve any discovery or case management disputes, without judicial intervention. Any dispute not resolved shall be presented by motion in accordance with Local Rule 4.

7. Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

C. Subsequent Conferences -- Track I and II Cases

Track I cases are those which are neither subject to Local Rule 43 (arbitration) nor designated as Track II. Track I cases are presumed to require infrequent judicial conferences or other judicial intervention after the initial case management conference. A pretrial conference shall presumptively be conducted within 12 months of filing of an initial answer in Track I cases, and scheduled for trial within 18 months after the filing of the complaint.

Counsel are advised that the judges will make regular use of a "trailing docket" of Track I cases. When such procedures are employed, the judge shall provide counsel with reasonable notice of the date on which the case will be called for trial.

Track II cases are those which, based on the complexity of the pleadings or facts, or the demands of the case, appear to require frequent conferences or other judicial intervention. Status conferences shall be scheduled on a regular basis, and the case shall be scheduled for trial on a date certain, as justice requires.

D. Pre-Trial Conference

1. Within 20 days of the close of the discovery period, counsel for the plaintiff shall file and serve a brief narrative statement of the material facts that will be offered at trial, including all damages claimed, the method of calculation, and the damages that will be proven. There shall be attached to the statement:

(a) A copy of all reports containing the substance of the facts, findings or opinions, and a summary of the grounds and reasons for each opinion of any expert whom a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of an expert shall be confined to the scope of his report. The report of an expert shall bear his/her signature.

(b) A copy of all reports containing findings or conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of a physician shall be confined to the scope of the report.

(c) Names and addresses of all witnesses, including damage witnesses, that the plaintiff expects to call.

(d) A list of any unusual legal issues.

(e) A written list of the exhibits which the plaintiff expects to offer in evidence, containing the identifying mark of each exhibit and a brief description of each exhibit. Exhibits shall be examined by opposing counsel prior to the pretrial conference in preparation for the conference.

(f) Authorizations to other parties to examine pertinent records unless earlier provided.

2. Within 20 days of filing of the plaintiff's pretrial statement, counsel for defendant shall file and serve a brief narrative statement of the material facts that will be offered at trial, including the defenses to the damage claims. There shall be attached to the statement:

(a) A copy of all reports containing the substance of the facts, findings, opinions

and a summary of the grounds and reasons for each opinion of any expert whom a party expects to call as a witness at the trial. If timely production of any such report is not made, the testimony of such expert shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of an expert shall be confined to the scope of the report. The report of an expert shall bear his/her signature.

(b) A copy of all reports containing findings and conclusions of any physician who has treated, examined, or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case. If timely production of any such report is not made, the testimony of such physician shall be excluded at the trial, except upon consent of the other party or parties, or order of court. The testimony of a physician shall be confined to the scope of the report.

(c) Names and addresses of all witnesses, including damage witnesses, that the defendant expects to call.

(d) A list of any unusual legal issues.

(e) A written list of all of the exhibits which defendant expects to offer in evidence containing the identifying mark of each exhibit and a brief description of each exhibit. Exhibits shall be examined by opposing counsel prior to the pretrial conference in preparation of the conference.

(f) Authorizations to other parties to examine pertinent records unless earlier provided.

3. Within 20 days of the filing of defendant's pretrial statement, counsel for any third party defendant shall file a brief narrative statement meeting the requirements set forth above for plaintiffs and defendants.

4. Following the filing of the statements, counsel shall meet with the court at a time fixed by the court for a pretrial conference. Prior to the conference, counsel shall determine, in jury cases, whether they can agree that the

case shall be tried non-jury. If an agreement is reached, the parties shall report to the court at the conference. If no agreement is reached, no inquiry shall be made and no disclosure shall be made identifying the attorney or party who failed to agree.

5. At the pretrial conference, the following shall be done:

(a) Each attorney shall indicate on the record whether the taking of the deposition of an expert witness may ensure the just, speedy and inexpensive resolution of the civil action. If the court grants the request to depose an expert, the court shall grant reciprocal discovery of expert witnesses upon request. The depositions of expert witnesses shall be completed within 45 days of the pretrial conference.

(b) Each attorney shall indicate on the record whether the exhibits of any other party are agreed to or objected to, and the reason for any objection.

(c) If any legal issues have not been decided, the proper motions shall be presented, along with a brief.

(d) Counsel shall have inquired of their authority to settle and shall have their clients present or available by phone. The judge shall inquire whether counsel have discussed settlement.

(e) Such record shall be made of the conference as the judge orders. Failure to fully disclose in the pretrial narrative statements, or at the pretrial conference, the substance of the evidence proposed to be offered at trial, will result in the exclusion of that evidence at trial, unless the parties otherwise agree or the court orders otherwise. The only exception will be evidence used for impeachment purposes.

(f) Only in an unusual case may the court require additional material from counsel.

6. In the event that the civil action has not been tried within 12 months of the pretrial conference, the judicial officer shall schedule a status conference to discuss the possibility of settlement and establish a prompt trial date.

(3) **Revise Local Rule 35 by inclusion of new subsection G which shall read as follows:**

> G. Except in the case of death, disability or other exceptional circumstances approved by the Chief Judge, no civil action shall be transferred from one judge to another where (1) the action has already been transferred from one judge to another; (2) the case has been pending for more than two years; or (3) there are dispositive motions pending.

(4) **Revise Local Rule 38 by adding new requirements (g) and (h), which shall read as follows:**

> (g) Fails to state whether or not the facts underlying the complaint were the subject of an earlier disciplinary proceeding against the plaintiff and, if so, the basic identifying information regarding that proceeding.
>
> (h) Is otherwise incomplete.

II. BASIS FOR CERTAIN PROVISIONS OF THE PLAN

A. Efficient Use of Judicial Resources

The District court will implement early and ongoing judicial intervention by scheduling initial conferences under Fed.R.Civ.P. 16 within 60 days of filing of the initial answer. This is more workable than setting an initial conference triggered by the date of filing of a complaint. The latter would be inappropriate inasmuch as service need not be effected under Fed.R.Civ.P. Rule 4(j) until 120 days after filing a complaint.

The District Court will utilize more effectively judicial resources by the creation of "tracks." The Plan creates two tracks for civil actions not in arbitration. Track I will consist of all civil actions which do not qualify for Rule 43 arbitration but appear capable of completion of discovery and execution of a final pretrial order within one year of filing of an initial answer. Conferences are expected to be infrequent in Track I cases.

Track II cases are those which are complex and lengthy. Certain types of cases shall presumptively be in Track II. Judicial officers will designate cases in Track I or II at the initial conference. Since cases will be segregated into tracks, presumptively complex cases have been identified for enhanced judicial scrutiny on a regular basis.

In the interest of conserving the resources of both the court and parties, revised Local Rule 5 II A.1. authorizes the judicial officer to defer the initial conference if a motion is pending. Such a motion (for example, to dismiss a complaint or to transfer venue) might make an initial conference superfluous.

Consistent with the practice in the Western District pursuant to which certain classes of civil cases are not usually conferenced, the Plan excludes habeas corpus proceedings, social security review proceedings, government collection cases, bankruptcy appeals and pro se actions. Most actions in which pro se litigants are either plaintiffs or defendants are best dealt with on written submissions.

B. Discovery

The District Court will ensure that certain steps are taken to minimize expenses arising from discovery disputes. First, attorneys must confer among themselves in an attempt to resolve any discovery dispute. Second, if the attorneys cannot resolve the dispute, the dispute should be brought to the attention of a judicial officer only after the lawyers have made a good faith effort.

The Advisory Committee considered the possibility of placing limits on discovery (for example, limiting the number of interrogatories and depositions). However, such uniform limitations are inappropriate. It is the obligation of attorneys in each case, based upon its own particular characteristics, to attempt to limit discovery prior to involvement of a judicial officer.

C. Role of Attorneys

Attorneys play an important role in this Plan. The role of counsel may be summarized as one of conferring among themselves and with the District Court. In the first instance, attorneys must be prepared to assist the judicial officer in formulating a case management plan at the initial case management conference. The judicial officer, after consultation with the parties, will issue a case management order.

Attorneys who appear at conferences are expected to be fully prepared to deal with all scheduling matters, including having binding authority to discuss settlement and to enter into scheduling orders. This requirement for binding authority is expected to minimize the need to relax scheduling orders after they are entered and is further expected to minimize subsequent discovery disputes.

The role of the attorney is heightened in all non-arbitration cases. In such cases the attorneys must confer prior to any conference after the initial scheduling conference. The

purpose of this requirement is to encourage attorneys to resolve scheduling and/or discovery issues before these are presented to the judicial officer.

D. Alternative Dispute Resolution

The District Court envisions a major expansion in the use and availability of ADR in the district. The court is justifiably pleased with the success of arbitration under Local Rule 43. Arbitration limits the involvement of judicial officers, diverts cases from the standard pretrial process, and allows parties to submit their disputes promptly to a neutral panel of professionals.

The Advisory Committee recommends that the Chief Judge shall establish a neutral evaluation program in cooperation with the President of the Academy of Trial Lawyers of Allegheny County. The neutral evaluation program shall be conducted by members of the Academy of Trial Lawyers who shall serve as "adjunct settlement judges."

1. The adjunct settlement judge shall be selected by the Clerk of Court from a list of the members of the Academy of Trial Lawyers who are willing and able to serve.

2. The proceedings shall be conducted in the United States Courthouse in accordance with rules adopted by the court to implement the neutral evaluation program.

3. The adjunct settlement judge shall conduct a conference with counsel and the parties, or a representative of a party with appropriate settlement authority, in an effort to conclude the civil action without a trial on the merits.

4. The adjunct settlement judge shall be assigned select civil actions by the district court judges which have a reasonable probability of settlement. The civil action may be selected by the judicial officer at any state of the litigation with particular attention to early neutral evaluation of civil actions, and to cases in which a trial de novo has been demanded following arbitration.

5. The adjunct settlement judge shall advise the parties of alternative dispute resolution programs which are available in the District Court in the event that settlement efforts are unsuccessful, such as arbitration, trial before a magistrate, non-jury trial, or summary jury trial.

E. Experimental Trial of Civil Cases

In order to meet the goals of the Civil Justice Reform Act, the District Court may adopt a plan on an experimental basis for a two year period which will permit each district court judge

to devote 60 consecutive days to the trial of civil cases. Each district court judge shall schedule only civil actions for trial during the period of time designated by the Chief Judge. If a criminal case is assigned to a judicial officer and must be tried within the 60 day period due to the Speedy Trial Act, the Chief Judge shall reassign the criminal case to an available judicial officer, or shall direct the Clerk of Court to reassign the criminal case in accordance with the assignment of criminal cases.

F. Cost and Delay Reduction Data

The Clerk of Court shall compile and report to the Chief Judge on an annual basis the improvement in the adjudication of civil actions, if any, based upon the recommendations of the Report and the Plan adopted by the court. The clerk shall collect data to determine, inter alia, the impact of the number of criminal filings, the success of the alternative dispute resolution programs, and the reduction of cost and delay in the pending civil actions.

III. CONCLUSION

The Report and Plan set forth above provide this court with a comprehensive means by which to reduce expense and delay within the district to the benefit of all participants in the civil justice process. The court pledges its efforts to put the Report and Plan into practice and calls upon attorneys and litigants to do likewise. Working together we can achieve the goals of the Civil Justice Reform Act of 1990. The effective date of this Plan shall be October 1, 1993, and shall apply to all civil actions filed thereafter.

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Hon. Gustave Diamond,
Chief Judge

Hon. William L. Standish

Hon. Maurice B. Cohill

Hon. D. Brooks Smith

Hon. Donald E. Ziegler

Hon. Donald J. Lee

Hon. Alan N. Bloch

Hon. Barron P. McCune

Hon. Glenn E. Mencer

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