CIVIL JUSTICE REFORM ACT OF 1990

REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE EASTERN DISTRICT OF VIRGINIA

Submitted by:

Mrs. Helen Blackwell
Dr. Edward E. Brickell
David G. Fiske, Esq.
Robert T. Hall, Esq.
Anne Holton, Esq.
Henry E. Hudson, Esq.
Wayne Lustig, Esq.
Neil A.G. McPhie, Esq.
Henry H. McVey, Esq.
Kenneth Melson, Esq.
Mr. Vincent J. Thomas
Hon. Richard L. Williams, Chairman

Prepared by:

Professor A. Kimberley Dayton
Reporter

September 19, 1991

Table of Contents

Appendices

1. Membership of Advisory Group
2. Operating Procedures
3. Local Rules of the Eastern District of Virginia
4. Memorandum Describing Norfolk Tickler System
5. Sample Orders: Alexandria Division
6. Sample Orders: Newport News/Norfolk Division
7. Sample Orders: Richmond Division
8. Asbestos Orders
9. Pro Se Prisoner Forms and Orders
10. Federal Judicial Center/Administrative Office Memoranda
11. Working Paper: Alternative Dispute Resolution in the Federal Courts

Index to Figures

Summary of Report

The judges of the Eastern District of Virginia have long been aware of the need for strong judicial control over the conduct of litigation. They have recognized the importance of such control in eliminating unnecessary expense and delay in the federal courts. The court's and each division's procedures are designed to assure the fair and efficient processing of cases while accommodating the particular needs of the litigants.

The local rules of the Eastern District of Virginia contain numerous provisions geared towards eliminating needless expense and delay. The court controls the venue of actions filed in the district (pp. 7-8), has explicit rules that address motions and discovery practices (pp. 8-12), and provides for the full utilization of magistrates (p. 12). Each division has, in addition, devised pretrial procedures that set time frames for civil cases almost as soon as the case is filed, and envision a firm and early trial date. The Alexandria division relies upon a master docket system in which the Chief Judge develops the initial pretrial schedule and presides at the final pretrial conference (pp. 12-15). The Newport News/Norfolk division also uses a master docket system, and relies upon its master calendaring clerk and judicial law clerks, together with the lawyers, to plan a pretrial schedule and set a trial date (pp. 15-18). The Richmond division uses an individual docket system in which cases are assigned immediately upon filing to an individual judge, who is personally

involved in setting the pretrial schedule and trial date (pp. 18-20). The court has also developed special procedures to deal with two special categories of cases filed in the district: asbestos products liability cases (pp. 20-22) and pro se prisoner filings (pp. 22-28).

These procedures have enabled the Eastern District of Virginia to maintain a position as one of the most efficient and effective federal courts in the nation, despite having civil and criminal caseloads that well exceed the national average (pp. 29-46). The Eastern District of Virginia's per judgeship civil caseload, when weighted for complexity, was the second heaviest in the country in 1990 (p. 40-41). The number of total and felony defendants prosecuted in the district also exceeds the national average (pp. 44-45). The court has had significant judicial vacancies during the past two decades (p. 47). Yet the district's disposition rates for civil cases were first in the country last year (pp. 38-39), and sixth overall for criminal cases (p. 45).

Because the district's existing case management procedures have been effective in controlling expense and delay, the Advisory Group recommends that the court adopt those procedures as its Civil Justice Reform Act Expense and Delay Reduction Plan (pp. 53-55). These procedures already embody and reflect the various principles and techniques discussed in the Civil Justice Reform Act to the extent warranted by the needs of the district (pp. 56-66).

I. Introduction

The Advisory Group on Expense and Delay Reduction for the Eastern District of Virginia submits this Report to the judges of the Eastern District of Virginia in partial fulfillment of its obligations under relevant provisions of the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82 ("CJRA"). This Report conforms generally to the recommendations of the Judicial Conference Committee on Court Administration and Case Management concerning the format for such Reports, as articulated in the Judicial Conference Committee's memorandum received on September 16, 1991.[1]

Part II of this Report describes the administrative structure of the Eastern District of Virginia and court management practices within the district. Part III is an assessment of the current condition of the court's civil and criminal dockets, see 28 U.S.C. § 472(c)(1)(A), recent trends in case filings in the district, and the corresponding demands that are being placed on the court's resources, see 28 U.S.C. § 472(c)(1)(B). Part III also contains the Advisory Group's explanation of why the court has avoided the expense and delay common in federal court litigation elsewhere in the federal judicial system, see 28 U.S.C. § 472(c)(1)(C). Part IV contains the Advisory Group's recommendations to the Court concerning a proposed Plan for managing the civil caseload of the Eastern

---

[1] A copy of the Committee's memorandum is included in Appendix 10.

District of Virginia, see 28 U.S.C. § 472(b). Part IV also discusses the proposed Plan's relationship to the requirements of section 473 of the CJRA, see 28 U.S.C. § 472(b)(4).

The Advisory Group has concluded that the Eastern District of Virginia's existing civil case management procedures have been effective in controlling, to the extent practicable, the expense and delay commonly associated with civil litigation in federal courts, and in providing quality justice to litigants in the district, see 28 U.S.C. § 472(c)(1)(C). The district's commitment to minimizing expense and delay is a longstanding one, tracing to the efforts of Judges Walter E. Hoffman, Oren R. Lewis, and John D. Butzner, Jr. to clear the court's backlog in the early 1960's. The court has developed local rules, standing orders, and internal operating procedures that envision strict judicial control over the conduct of civil litigation in the district court, beginning almost from the filing of the initial complaint and continuing through the trial if the case does not settle. It has benefitted from the willingness of all its judges, active and senior judges alike, to maintain significant caseloads and process the cases in a timely and efficient manner, and from the dedication of its magistrate judges and parajudicial personnel to their respective roles in the case management process.

As a result of the historic efforts of Judges Hoffman, Lewis, and Butzner in the 1960's, and the ongoing efforts of all the court's judicial and parajudicial personnel and the bar, the

court has consistently avoided the litigation "crisis" that appears to confront many other federal district courts. Accordingly, as is explained more fully in Part IV, the Advisory Group recommends that the Eastern District of Virginia adopt its existing local rules and procedures, as augmented by suggestions for certain minor rule or procedure changes described in Part IV, as its CJRA Expense and Delay Reduction Plan, see 28 U.S.C. § 472(b). These suggestions primarily concern formalization or standardization of some procedures already used in one or more of the divisions within the district.

As is discussed in detail below, the Advisory Group has fully considered each of the principles, guidelines, and techniques of litigation management outlined in the CJRA, see 28 U.S.C. § 472(b), 473(a)-(b), in making its recommendations to the court. The Advisory Group believes that existing procedures incorporate these principles, guidelines, and techniques to the extent warranted by the needs of the district, and that major alterations of existing procedures to include principles, guidelines, and techniques not so incorporated would be counterproductive.

The Advisory Group recommends that the Eastern District of Virginia file its Plan by December 31, 1991 and request designation as an Early Implementation District pursuant to 28 U.S.C. § 482(c). The Group believes that the court should seek Early Implementation funding for one additional deputy clerk in each divisional office.

II. Description of the Court

A. Characteristics of the Court

The Eastern District of Virginia has nine permanent district judgeships; this figure does not include senior district judgeships. One of these judgeships is currently vacant due to the recent elevation of Judge Clarke to senior status. The Eastern District of Virginia has been allotted one "temporary" district judgeship under section 203(b)(2)(C) of the Federal Judgeship Act of 1990, but as of September 6, 1991 this temporary judgeship had not been filled. The judgeship was allocated to the Eastern District of Virginia because of its large per judgeship caseload, including per judgeship weighted civil caseload and per judgeship criminal caseload, which is substantially higher than the national average.

The Eastern District of Virginia has a total of five senior district judges. All of these senior judges maintain a caseload within the district, serve at trials in other district courts, and serve on federal appellate panels.

A total of 4.1 judgeship months were vacant during the statistical year ending June 30, 1990. This means that, for 4.1 months during that period, a judicial vacancy on the court remained unfilled. A judicial vacancy currently exists on the court.

The district has four bankruptcy judges.

There are eight federal magistrate judges in the district. One of these is a part-time magistrate judge.

The Eastern District of Virginia comprises four separate divisions: Alexandria, Newport News, Norfolk, and Richmond. E.D.Va. Local R. 3(B). The Alexandria and Richmond divisions have historically operated independently of the others with respect to most case management procedures. The Newport News and Norfolk divisions, though separate by law and local rule, are operated as one court.

B. Special Statutory Requirements

Congress has not designated the Eastern District of Virginia in section 482 of the CJRA as a "demonstration district", that is, as a court that must incorporate specific litigation management principles or techniques into its Expense and Delay Reduction Plan. Nor has the Judicial Conference designated the court a pilot district under that section. Accordingly, the court is not statutorily required to include all six principles and guidelines of litigation management listed in section 472(a) in its Expense and Delay Reduction Plan.

The Advisory Group has recommended below that the court file its Plan by December 31, 1991 and request designation as an Early Implementation district pursuant to section 482(c) of the CJRA.

C. Case Management Procedures in the Eastern District of Virginia

The following subsections discuss specific case management practices which, in the Advisory Group's opinion, are the key to the court's historic effectiveness in handling its civil caseload. Subsection C.1. discusses specific local rule-based procedures that in the Advisory Group's view are the essential

ingredients of the court's effective case management strategy and that are common to all divisions. Subsection C.2. discusses some of the differences among the divisions with respect to court management procedures. These differences reflect the preferences of the district judges assigned to these divisions concerning the details of case, motion, and trial assignment. Despite the differences in specific docketing and scheduling practices, all divisions have comparable management statistics with respect to comparable classes of cases. Finally, subsection C.3. addresses special procedures that the district uses in connection with two categories of cases: asbestos-related personal injury litigation and pro se prisoner civil rights complaints and petitions for habeas corpus relief from state or federal convictions.

1. Local Rules Governing Case Management

The local rules for the Eastern District of Virginia are designed to minimize unnecessary delay and expense in the civil litigation process while achieving quality justice for the litigants. Towards that end, these rules envision strict control by the district judges over litigation filed in the court, as expressly authorized and contemplated by Rule 16 of the Federal Rules of Civil Procedure. This control extends to motions practice, discovery, and the scheduling of trials. The rules also contemplate attorney awareness of and compliance with time deadlines imposed by the rules and by orders in individual cases, and make clear that the court regards requests for extensions and continuances unfavorably. E.D. Va. Local R. 11(J).

The local rules of the Eastern District of Virginia are attached to this Report as Appendix 3. The Advisory Group believes that these rules comply fully with the requirements and limitations of 28 U.S.C. § 2071-77 and Federal Rule of Civil Procedure 83. Although all of these rules contribute to the district's successful management of its civil and criminal caseloads, several are particularly important. Many of these rules, all of which antedate the CJRA, incorporate the very principles, guidelines, and techniques of litigation management that Congress has indicated are important components of any Expense and Delay Reduction Plan. Accordingly, the salient features of some of these rules are discussed below.

a. Local rules concerning venue. The Eastern District's Local R. 3 creates and defines the four divisions of the district. Local R. 4 articulates venue rules governing where an action that may be filed in the Eastern District of Virginia under federal venue statutes must be filed within the district. These venue provisions have contributed to reduced expenses by confining the location of litigation to the geographical area of the district within which it is most convenient for the court and parties to conduct discovery and, in the event of trial, to try the case.

b. Local rules concerning motions practice. The principal local rule governing motions practice in the Eastern District of Virginia is Local R. 11. This rule requires that motions be in writing unless the motion is made in court during a

hearing or the court specifically waives this requirement. It precludes the use of "form" motions unless extraneous material is deleted and the filing attorney personally reviews the motion and certifies that the motion as filed is fully pertinent to the case. Generally, a written brief must accompany all motions. This requirement, however, does not apply to motions for more definite statement or default judgment, for extensions of time to file a responsive pleading unless the time to file has expired, or to some discovery motions.

One of the most important features of Local R. 11 is its requirement that counsel seeking a hearing on a motion must certify to the court that she has met with opposing counsel and attempted to narrow the areas of disagreement at issue in the motion. The motion is returnable to the hearing date and time. The rule provides that in divisions having a motions day, the court will schedule a hearing on the motion at the earliest possible hearing date.[2]

Motions for summary judgment must be filed sufficiently in advance of the scheduled trial date to allow the court fully to consider the motion and supporting briefs before that date. A motion that has not been filed in a timely manner will not be considered. Motions for continuance of a scheduled trial date are not granted upon the mere agreement of counsel, but only for good cause shown to the court.

---

[2] Currently, only the Alexandria division has a motions day.

The four divisions implement the general provisions of Local R. 11 in somewhat different ways. The details of each division's motions procedures are discussed later.

c. Local rules concerning discovery. Local R. 11.1 governs discovery practice in the Eastern District of Virginia. This rule has been instrumental in controlling litigation expenses associated with discovery. Among its important provisions are those setting a limit on the number of interrogatories that may be filed in a civil case to 30, including parts and subparts, see Local R. 11.1(A), and limiting the number of non-party depositions that a party may take to five, see Local R. 11.1(B).

The local rule contains several subsections designed to control the time expended in discovery and prevent conflicts about discovery from delaying the litigation. For example, it requires that objections to requests for discovery must generally be filed within 15 days after service of the discovery request, see Local R. 11.1(D), that once the court has ruled on a motion to compel or for protective order the litigants must provide discovery to the extent contemplated by court's order within 11 days, see Local R. 11.1(H), and that parties may not extend the time limits for discovery established in the local rules and the scheduling order of the case without the court's explicit permission, see Local R. 11.1(K).

The rule requires that parties file written motions concerning discovery with the court, see Local R. 11.1(C), but

that only important motions such as motions to compel or motions for protective order be accompanied by a brief, see Local R. 11.1(E) and (F). No motion concerning discovery may be filed, however, until counsel have met an attempted to resolve any discovery-related controversies informally, see Local R. 11.1(J), and the court will not rule on any discovery motions not accompanied by statement of counsel that such a meeting has taken place, id. Discovery motions are, of course, subject to the provisions of Local R. 11 concerning the setting of a hearing date.

The local rule contains explicit sanction provisions applicable to frivolous discovery requests, see Local R. 11.1(L) and general failure to comply with the provisions of the local rule or any court order concerning discovery, Local R. 11.1(M). These sanction provisions are enforced in the Eastern District of Virginia.

Local R. 21, which deals with depositions, has also helped reduce litigation costs associated with discovery. This rule ensures that depositions of parties or party representatives are ordinarily taken at a location within the district, see Local R. 21(A). The party serving notice of deposition must pay the costs of recording and transcribing the deposition, but transcription costs are taxable if the prevailing party made use of the deposition transcript during trial, see Local R. 21(B). The rule also requires, in the case of depositions taken outside the district, that the party taking the deposition pay reasonable

travel expenses for one opposing counsel to travel to and from the deposition, see Local R. 21(D) and (E), in an amount not exceeding "an amount which would reasonably be required to be paid to associate counsel in the area," see Local R. 21(E). These provisions ultimately encourage parties to take depositions within the district, minimize attorneys' fees associated with the deposition process, and deter the taking of unnecessary depositions generally.

The local rule also contains important provisions concerning how depositions are used during the pretrial process and during the trial. First, it requires that counsel review all depositions, prepare summaries of certain parts of the depositions, such as experts' qualifications, and delete irrelevant material and objections made during the deposition, in the event that the deposition is read during the trial, see Local R. 21(F). Second, for nonjury trials counsel must prepare and submit to the court summaries of "the salient points" of depositions used as evidence at the trial, see Local R. 21(G).[3] These two subsections of the local rule may contribute to the fact that the average length of a civil trial in the Eastern District of Virginia is shorter than the national average.

d. Local rules concerning the role of magistrate judges. Local R. 29, which outlines the duties that magistrate

---

[3] The Fourth Circuit has upheld the practice of requiring lawyers to summarize depositions at trial, see, e.g., Dabbaghian v. Pierce, 884 F.2d 1387 (4th Cir. 1989) (unpublished); Walker v. Action Indus., 802 F.2d 703 (4th Cir. 1986), although it has never specifically considered the validity of Local R. 21(G).

judges may perform within the district, implements the provisions of 28 U.S.C. § 636, Fed. R. Civ. P. 72-76, and the Federal Rules of Criminal Procedure to their fullest extent. Magistrate judges' duties differ somewhat from one division to another, but they play an important role in the case management procedures of the district. In all divisions, magistrate judges handle a broad range of criminal matters. Their primary civil duties include determining discovery motions, handling pro se prisoner-related matters, hearing and deciding matters designated by the district judge, and, with increasing frequency, exercising full jurisdiction over civil cases by stipulation of the parties. The details of how each division uses its magistrate judges are described more fully below.

2. Division Procedures

Each division implements the local rules structure in its own way, resulting in some differences among the four divisions with respect to how civil cases are managed. The most fundamental difference among the divisions is that the Richmond division uses an individual docket system in which cases are assigned promptly upon filing to an individual trial judge, while the other three divisions have master docket systems. This subsection describes the idiosyncracies of each division's case management procedures as they pertain to the civil caseload.

a. Alexandria division. The Alexandria division, which presently has four active judges, uses a pure master docket system. Upon filing, a case is placed on the division's master

docket. The clerk's office reviews this docket monthly, and newly filed cases are examined to determine whether all parties have filed some type of pleading or response (including a notice of appearance). If one or more parties have not responded in some way to the complaint, the case is abated pursuant to Local R. 6.

Once all named parties have filed something with the court, the Chief Judge of the district enters a Rule 16 scheduling order, which, inter alia, sets discovery cutoff and final pretrial conference dates, requires that any motions filed in the case be heard prior to the final pretrial, and advises counsel of certain obligations with respect to the discovery process, the final pretrial conference, and the trial. This order typically sets the final pretrial conference for two to three months after filing and cuts off discovery the Friday before that conference. Any defendant who has filed a response of some kind but has not answered is ordered to file an answer within ten days. Under the scheduling order and the division's procedures, all motions must be heard to obtain a ruling and must be scheduled for a hearing no later than the Friday before the final pretrial conference. The standard order also notifies counsel that a trial will be set at the final pretrial conference and will take place from three to eight weeks after that conference. A copy of the standard scheduling order used in Alexandria is included in Appendix 5.

In the Alexandria division, Fridays are reserved for the hearing of motions that have been scheduled for that day by the

clerk's office. Magistrate judges handle all discovery motions filed in the Alexandria division. Motions are scheduled to be heard by a particular judge or magistrate judge. The clerk's office estimates that approximately fifty civil and criminal motions are heard on a typical motions day in the division, and that approximately 95% of all motions are decided at the hearing.

Attorneys for the litigants must meet in advance of the final pretrial conference to arrive at a stipulation of uncontested facts. The Chief Judge of the district, who is located in Alexandria, presides at all final pretrial conferences in the Alexandria division. Under the standard scheduling order discussed above, attorneys must bring to the final pretrial conference witness and exhibit lists, exhibits marked and ready for filing, and the written stipulation of uncontested facts. Any objections to exhibit evidence must be noted at the final pretrial conference; the court rules on these objections at trial.

Trials are assigned randomly among the division's four judges, giving due consideration to the judges' schedules and potential ethical conflicts. In bench trials, counsel must file with the clerk written proposed findings of fact and conclusions of law.

b. Newport News and Norfolk divisions. Newport News and Norfolk are distinct divisions under Local Rule 3(B). Each division maintains a separate docket and staff. The clerk's office in Newport News is responsible for docketing and

monitoring all civil actions filed in the Newport News division. Newport News and Norfolk cases are calendared for initial pretrial conferences, hearings on motions, trials, and other matters by the master calendar clerk located in Norfolk. Civil motions filed in Newport News cases are sometimes heard in Newport News, sometimes in Norfolk. Cases originating in Newport News are tried in Newport News during days on which one of the judges is sitting there. Since January 1991, the magistrate judge located in Newport News has begun to decide civil motions and assume jurisdiction over civil actions as permitted by 28 U.S.C. § 636, Fed. R. Civ. P. 72-76, and E.D. Va. Local R. 29. The availability of this magistrate judge to handle a broad range of civil matters has increased the workload of the clerk's office in Newport News.

The "tickler system" in Norfolk flags cases in which return of service on a defendant was not made within the 120 days required by Rule 4 or in which the defendant has failed to file a motion to dismiss or an answer. This system also flags cases in which a motion is ready for hearing or ruling. The tickler system used by the Norfolk division, which applies in most respects to Newport News cases as well, is described in a Memorandum attached to this Report as Appendix 4.

The Newport News and Norfolk divisions use a master docket system. This means that matters needing judicial attention are handled by the judges on a rotational basis; individual cases are not assigned to a particular judge. Within two weeks of the time

a case is at issue, an initial pretrial conference is scheduled by the master calendar clerk, who is located in Norfolk. This conference takes place at the court but is generally conducted by either the master calendar clerk or a judicial law clerk, and one attorney for each party is required to attend. At this conference, a time frame for discovery and a trial date are established. If counsel indicate that any "technical" problems such as possible misjoinder, a party's incompetence, or a jurisdictional issue may exist, a time for hearing such issues is set. If they indicate that any motions are likely to be filed in the case, the clerk will work with the lawyers to develop a briefing schedule for these motions. Motions are scheduled for hearing only after filing, however, and according to the provisions of Local R. 11.

The precise timing of pretrial events differs from case to case. In setting the pretrial schedule, the master calendar clerk or judicial law clerk works backwards from a trial date, which is set for four to six months after the initial pretrial conference according to the complexity of the case. The final pretrial conference is set for two-and-a-half to three weeks before trial. An attorney conference is two weeks before the final pretrial conference, the cutoff for de bene esse depositions two weeks before the attorney conference, defendants' discovery cutoff two weeks before that, and the plaintiffs' discovery cutoff one month preceding that. Motions pending at

the time of the initial pretrial are handled under the local rules; and filing deadlines are set for anticipated motions.

The result of the initial pretrial conference is the scheduling order required by Rule 16(b). An example of the scheduling order used in the Newport News and Norfolk divisions is included in Appendix 6. The initial conference and resulting scheduling order procedures permit reasonable accommodation of the needs of the parties, attorneys, and court without sacrificing the court's commitment to a prompt and fair resolution of the case.

Motions are decided on the papers unless the attorney who desires a hearing has obtained a hearing date as provided by the local rule. The calendaring clerk sets all motions for a date and time certain; judges are scheduled to hear motions according to their availability and the need to avoid potential ethical conflicts. Magistrate judges have historically heard all discovery motions. Recently, the judges in these two divisions have begun to refer more motions to the magistrate judges for hearing as permitted by 28 U.S.C. § 636 and Local R. 29, and civil litigants are more frequently stipulating to the magistrate judges' jurisdiction over the entire case under these provisions. Usually, the presiding judicial officer rules on a motion from the bench.

As noted, the trial date for the case is set at the initial pretrial conference. Usually, the trial judge is not assigned until the Thursday preceding the trial date. In some complex

cases, the trial judge is assigned earlier to allow the judge to become more familiar with the record. The vast majority of all civil cases, in this division as elsewhere, settle prior to trial.

c. Richmond division. The Richmond division has two active judges and one senior judge. The division uses an individual docket system in which cases are assigned to the judges on a rotational basis, and the judge to whom a case is assigned then handles all conferences held, motions filed, and other matters arising in the case. Each judge has formulated his own pretrial procedures for use in cases assigned to him, but these procedures are for the most part quite similar.

The clerk's office monitors all cases to ensure that the plaintiff has filed proof of service on all defendants and that answers or other responsive pleadings have been filed. If the plaintiff fails to file proof of service, the case is abated pursuant to Local R. 6. If a party does not timely file a responsive pleading, the clerk's office notifies the party that he is in default. The court enters a default judgment if there is still no answer pursuant to Local R. 12(B).

Judge Merhige's procedures are as follows. The courtroom deputy schedules a pretrial conference within 10 days of when the clerk's office has knowledge of counsel for the defendant by virtue of an entry of appearance, motion to dismiss, or answer. Judge Merhige presides at this conference, at which a discovery schedule is established and dates for the final pretrial

conference and the trial are set. Usually the trial date is set for three to four months after the initial pretrial conference. The result of the initial conference is a Rule 16 scheduling order.

Judge Spencer's procedures are similar. When attorneys for all parties are known, a scheduling order is sent to counsel which sets an initial pretrial within 30 days. He sets his cases personally, and his secretary schedules motions. His courtroom deputy schedules most criminal matters.

Judge Williams sets his own cases, attorneys must schedule motions and arraignments though his secretary, and his courtroom deputy sets a pretrial conference date that is three to four months after the answer has been filed.

Examples of each judge's scheduling order are included in Appendix 7.

Motions are handled according to the procedures described in Local R. 11. If an attorney desires a hearing on a motions, she must contact the appropriate judge's secretary and arrange for a hearing date.

There are very few disputes concerning discovery in the Richmond division. When discovery-related motions are filed, however, judges handle these as they would any other motion. Magistrate judges do not become as involved in discovery in this division as they do elsewhere in the district.

3. Procedures Governing Special Classes of Cases

Special procedures apply to two categories of cases in the Eastern District of Virginia's civil caseload: asbestos-related personal injury cases and pro se prisoner petitions.[4] These procedures have been designed to account for the special characteristics and needs of these two classes of civil litigation.

a. Asbestos litigation. Most of the asbestos-related cases filed in the Eastern District of Virginia are associated with the shipbuilding industry in Newport News and Norfolk. Several companies that at one time were routinely named as defendants in these cases are protected under Chapter 11 of the Bankruptcy Code, and all pre-1990 cases in which those defendants are named parties have been stayed with respect to the bankrupt defendants. These older cases are all resolved with respect to non-bankrupt defendants.

All new asbestos-related cases filed in the Newport News or Norfolk division are subject to special procedures designed by Judge Clarke. When a new complaint is filed, the filing attorney must provide the named defendants with the plaintiff's medical records, pursuant to a standing order entered December 30, 1990. The complaint must also provide certain information concerning

---

[4] In addition, a large number of Dalkon Shield-related personal injury cases, in which the principal defendant is in bankruptcy, are stayed. New claims against the bankrupt defendant must be filed in the bankruptcy court pursuant to the provisions of the Bankruptcy Code.

the plaintiff's work history and factual material that is critical to determining individual defendants' relative potential liability. Upon filing, the court enters a standard pretrial order that delimits the time for discovery and sets dates for a final pretrial conference, attorney settlement conference, and trial.

The asbestos procedure contemplates that all cases filed within a designated two week period will be set for trial on the second or fourth Tuesday of the month that is approximately six months after the filing date. For example, all asbestos cases filed during the first two weeks of June 1991 are included in the "trial group" set for trial on January 14, 1992. If any case in that group does not settle prior to the trial date, it will be tried on that date.

As is the case nationally, virtually all asbestos cases in the Eastern District of Virginia settle before trial. For example, of about 1100 such cases filed in February 1990 and set for trial in October 1990, all but two settled. The trials of the two cases that did not settle took approximately four trial days.

The special asbestos procedures used in the Eastern District of Virginia implicitly recognize that the legal and factual issues in these cases are generally very simple. The procedures are designed to focus the attorneys' attention on the particular facts of the case--such as the extent of the plaintiff's personal injury, the extent of her exposure, if any, to individual

defendants' products, possible statute of limitations problems--that are relevant in arriving at a settlement amount. The procedures ensure that plaintiffs who can establish a nexus between their injuries and the defendants' products receive fair compensation in a timely manner. They prevent the unnecessary allocation of resources to the mere process of obtaining compensation.

A copy of the standard pretrial order used in asbestos cases filed in Newport News or Norfolk is included in Appendix 8.[5]

2. Pro se prisoner litigation. The state maximum security prison and a large federal correctional institution are located within the Eastern District of Virginia. As a result, the per judgeship filings figure for pro se prisoner civil rights complaints and habeas corpus petitions (28 U.S.C. §§ 1983, 2241, 2254, 2255, and Bivens actions) well exceeds the national average. Pro se prisoner complaints and petitions are processed initially in Richmond, and then transferred to other divisions for ultimate disposition.[6] Three staff attorneys, who are hired

---

[5] On July 29, 1991, a Multi-District Litigation panel transferred all pending asbestos-related products liability litigation to the Eastern District of Pennsylvania to be under the control of Judge Charles R. Weiner. See In Re Asbestos Products Liability Litigations (No. VI), MDL No. 875 (July 29, 1991) (copy of order included in Appendix 8). Judge Weiner has advised Judge Clarke of this district that if the Eastern District of Virginia cases do not settle promptly, he will transfer them back to this district.

[6] Civil rights and habeas cases in which the inmate is represented at the time of filing by an attorney are handled according to the court's and division's normal procedures governing civil actions.

for one-year appointments, assist the court in processing these cases. Local R. 28 governs pro se prisoner complaints and habeas petitions.

The staff attorney assigned to the Richmond division is responsible for the initial, prefiling stage of all cases and for the cases ultimately assigned to the Richmond division. All pro se prisoner complaints, both civil rights and habeas corpus, are sent upon receipt in the clerk's office to the Richmond staff attorney. The complaint is not formally filed at this time. The staff attorney reviews the papers to determine whether any technical defects exist--for example, to ensure that the proper number of copies have been filed, that the proper defendants are named, etc. If the papers are defective in some way, they are returned to the inmate along with a letter indicating the reasons for the return. A form letter exists for this purpose, although in some cases the staff attorney must draft a more tailored letter. A copy of the form letter used at this stage is included in Appendix 9.

Once the papers are in order, the staff clerk assigns the case to an individual judge within the appropriate division. This assignment process is quite specific. Once an inmate has filed any pro se petition or complaint in the Eastern District of Virginia, subsequent complaints will be assigned to the judge who handled the first complaint. Petitions filed pursuant to 28 U.S.C. § 2255 are assigned to the sentencing judge. Habeas petitions involving state prisoners are assigned to a judge in

the division encompassing the county in which the state conviction occurred. Otherwise, cases are assigned randomly to all judges in the district, with the objective of keeping the pro se prisoner caseload relatively equal among all judges in the district. All senior judges except one maintain a half-load of prisoner cases.

Once the case has been assigned to an individual judge, it is "provisionally" filed and handled according to procedures used by that judge's division. Three specific procedures are used in all divisions.

First, all divisions utilize the in forma pauperis procedure outlined in Local R. 28(C), which contemplates that virtually all pro se filers will pay at least a nominal filing fee. The staff attorney for each division queries the institution concerning the inmate's account balance during the six months preceding the filing of the complaint or petition. The judge to whom the case is assigned then assesses a filing fee that may total no more than 20% of the aggregate amount in the account during that period. Most judges in the district assess a filing fee of 15%. The inmate has an opportunity to object to the fee and request waiver of all or part of the fee, but waivers are granted only in cases of extreme hardship, such as when a plaintiff is paying child support from his prison earnings. The case is not treated as filed until the inmate pays the filing fee assessed under Local R. 28(C). Copies of the documents used in the in forma pauperis procedure are included in Appendix 9.

Second, pro se civil rights complaints based on alleged constitutional violations occurring in state penal institutions are subject to the provisions of 42 U.S.C. § 1997e, a federal statute authorizing states to implement administrative grievance procedures for prisoners' civil rights claims. If a state's grievance procedures have been approved under 28 U.S.C. § 1997e(2), district courts may require exhaustion of these state administrative remedies before they will consider a state prisoner's civil rights complaint. The civil rights grievance procedures of all major Virginia penal institutions have been approved under section 1997e(2).

Most pro se civil rights complaints filed in the Eastern District of Virginia are subject to the provisions of section 1997e. These cases are stayed pending exhaustion of the state administrative remedy. There is some empirical evidence that implementation of these grievance procedures has reduced the number of pro se prisoner civil rights complaints filed in the Eastern District of Virginia.

Third, the United States Court of Appeals for the Fourth Circuit has held that prisoners proceeding pro se must be given adequate opportunity to respond to a motion for summary judgment, see Roseboro v. Garrison, 528 F.2d 309 (1975). The district has developed a so-called "Roseboro notice" that must be sent to all prisoners whose complaint or petition is subject to a motion for summary judgment. A copy of the district's "Roseboro notice" is included in Appendix 9.

The specific pro se procedures for each division are summarized briefly below.

i. Pro se procedures: Alexandria division. The staff attorney assigned to the Alexandria division completes the in forma pauperis procedure and then, assuming that the plaintiff pays the appropriate filing fee and the case is filed, reviews the papers and drafts an appropriate opinion and order. If the staff attorney believes that she needs additional factual information she will prepare an order directing the appropriate party to provide the necessary evidentiary material. Once a draft opinion and order have been prepared, they are sent for review and final disposition to the district judge to whom the case has been assigned.

Most cases are disposed of without a hearing. If a hearing is necessary, the date of the hearing is set by the Chief Judge at a final pretrial conference. Hearings in these cases are conducted by a magistrate judge in his or her courtroom. Counsel is appointed if the inmate has requested counsel and the nature of the case warrants such appointment. The magistrate judge makes findings of fact and recommendations to the district judge as permitted by Local R. 29.

ii. Pro se procedures: Newport News and Norfolk divisions. About 50% of the pro se prisoner cases received in the Newport News/Norfolk division are handled by the pro se law clerk, and 50% go directly to the judges' chambers. After the defendants respond to the complaint or petition, the pro se law

clerk or the judge's law clerk, as the case may be, notifies the inmate by a form letter how he should respond to the defendants' pleadings (e.g., with a brief, documents or other evidentiary material). In addition, the law clerk may prepare interrogatories for either or both sides if the court has insufficient factual information to decide the case.

The vast majority of pro se prisoner civil rights cases are decided at the summary judgment stage. If not, and the inmate has not made a demand for jury trial, the case is referred to the magistrate judge for an evidentiary hearing. In a number of cases, the magistrate judge appoints an attorney to represent the inmate if the case has reached this stage. Hearings are usually conducted at the institution where the inmate is incarcerated.

The magistrate judges, with the assistance of their law clerks, handle all habeas petitions filed in these two divisions, in accordance with the provisions of Local R. 28 and 29.

iii. Pro se procedures: Richmond division. All pro se petitions and complaints assigned to the Richmond division go through the in forma pauperis procedure of Local R. 28. Pro se prisoner cases, as are all civil cases filed in Richmond, are handled according to the individual judges' own procedures. The staff attorney in Richmond coordinates with each individual judge to ensure that the prisoner cases are processed efficiently. The magistrate judge located in Richmond is very much involved with these cases, reviewing and signing preliminary orders drafted by the staff attorney. Most cases are decided at the summary

judgment stage. The magistrate judge conducts almost all hearings held in connection with pro so prisoner cases pursuant to Local R. 29.

III. Assessment of Conditions in the District

A. Condition of the Docket

The CJRA requires that each advisory group "promptly complete a thorough assessment of the state of the court's civil and criminal dockets." 28 U.S.C. § 472(c)(1)(A). This assessment is a necessary predicate to formulating the proposed Expense and Delay Reduction Plan. Although the Federal Judicial Center and the Administrative Office have repeatedly cautioned Advisory Groups about the potentially misleading nature of court management statistics, it is clear that Congress considers such statistics a relevant indicator of judicial workload and the extent of unacceptable expense and delay within individual district courts. Accordingly, subsections III.A.1. and III.A.2. below discuss recent judicial workload and case management statistics (civil and criminal) for the Eastern District of Virginia, and compares those statistics to national medians.

1. State of the Civil and Criminal Dockets

Analysis of court management statistics reported by the Administrative Office for the Eastern District of Virginia reveals that the district has historically had heavier weighted civil caseloads than the national average. The court has also had a criminal caseload that is more burdensome than average. Despite these relatively heavy caseloads, the court has

consistently processed its civil and criminal caseloads more expeditiously than other, less burdened courts.

a. State of the Civil Docket

During the statistical year (SY[7]) ending June 30, 1990, a total of 5263 criminal felony and civil cases were filed in the Eastern District of Virginia. A total of 5194 cases were terminated. At the close of SY 1990, 3682 cases were pending before the court.

Expressed in terms of per judgeship statistics, these figures reflect 513 civil and 72 felony criminal filings per judgeship, 409 pending cases per judgeship, 647 weighted civil filings[8] per judgeship, and 577 terminations per judgeship.

---

[7] The Administrative Office compiles court management statistics for the "statistical year" July 1 to June 30. Most statistics discussed in this Report are based on Administrative Office data reported in its yearly "Federal Court Management Statistics" publications. Some additional criminal caseload statistics were provided to the Reporter by the AO. As of September 6, 1991, when this Report was completed for final review by the Court's Advisory Group, complete SY 1991 court management statistics were not available to the Reporter.

[8] This "weighted filings" figure is calculated by the Administrative Office of the United States Courts based on a formula developed in 1979. The formula "weights" civil cases according to their presumptive complexity. The formula was developed after a district court time study conducted by the Federal Judicial Center in several district courts throughout the nation; it is revised periodically. For more information concerning the 1979 Time Study, see 1979 Federal District Court Time Study (Federal Judicial Center 1979). For a further explanation of the case-weighting process, see Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 (Feb. 1990) (version prepared for the United States District Court for the Eastern District of Virginia)(included in Appendix 10 of this Report).

The weighted filings figure of 647 cases per judgeship was the second highest figure in the nation during SY 1990.

Each judge in the district completed an average of 59 trials in SY 1990.

About 23.2% of the court's civil cases were more than three years old at the close of SY 1990. As is explained more fully below, however, approximately 90-95% of the cases that made up this 23.2% figure were cases that have been stayed due to the bankruptcy of one or more defendants in the cases. These stayed cases are not subject to the court's normal procedures.

The Eastern District's civil case management figures compare to national figures, for SY 1990, of 379 civil filings per judgeship, 474 pending cases per judgeship, 448 weighted civil filings per judgeship, 423 terminations per judgeship, and 36 trials (criminal and civil) completed per judgeship. Nationally, about 10.4% of all civil cases are more than three years old.

In SY 1990, a total of 4614 civil cases were filed in the Eastern District of Virginia. Of these civil cases, 27 (.6%) were categorized by the Administrative Office as social security appeals; 82 (1.8%) as actions for recovery of overpayments or enforcement of a judgment; 1020 (22.1%) as pro se prisoner actions; 151 (3.3%) as forfeiture and tax suits; 23 (.5%) as real property-related actions; 223 (4.5%) as labor suits; 713 (15.5%) as contract actions; 1776 (38.5%) as tort suits; 66 (1.4%) as intellectual property actions; 284 (6.2%) as civil rights actions; 7 (.2%) as civil antitrust actions; and 242 (5.2%) as some other type of civil matter.

These percentages compare to a national civil filings mix of 7439 (3.4%) social security appeals; 10878 (5.0%) overpayments and judgments actions; 42630 (19.6%) pro se prisoner complaints; 8797 (4.0%) forfeiture and tax suits; 9505 (4.4%) real property-related actions; 13841 (6.4%) labor suits; 35161 (16.1%) contract actions; 43759 (20.1%) tort suits; 5700 (2.6%) intellectual property actions; 18793 (8.6%) civil rights actions; 472 (.2%) civil antitrust actions; and 20904 (9.6%) some other type of civil matter.

Figure 1 illustrates the civil case profile for the Eastern District of Virginia, and the national profile, for SY 1990.

The median time from filing to disposition of a civil case in the Eastern District of Virginia was four months in SY 1990.[9] The median time of four months compares to a national median time from filing to disposition of nine months.

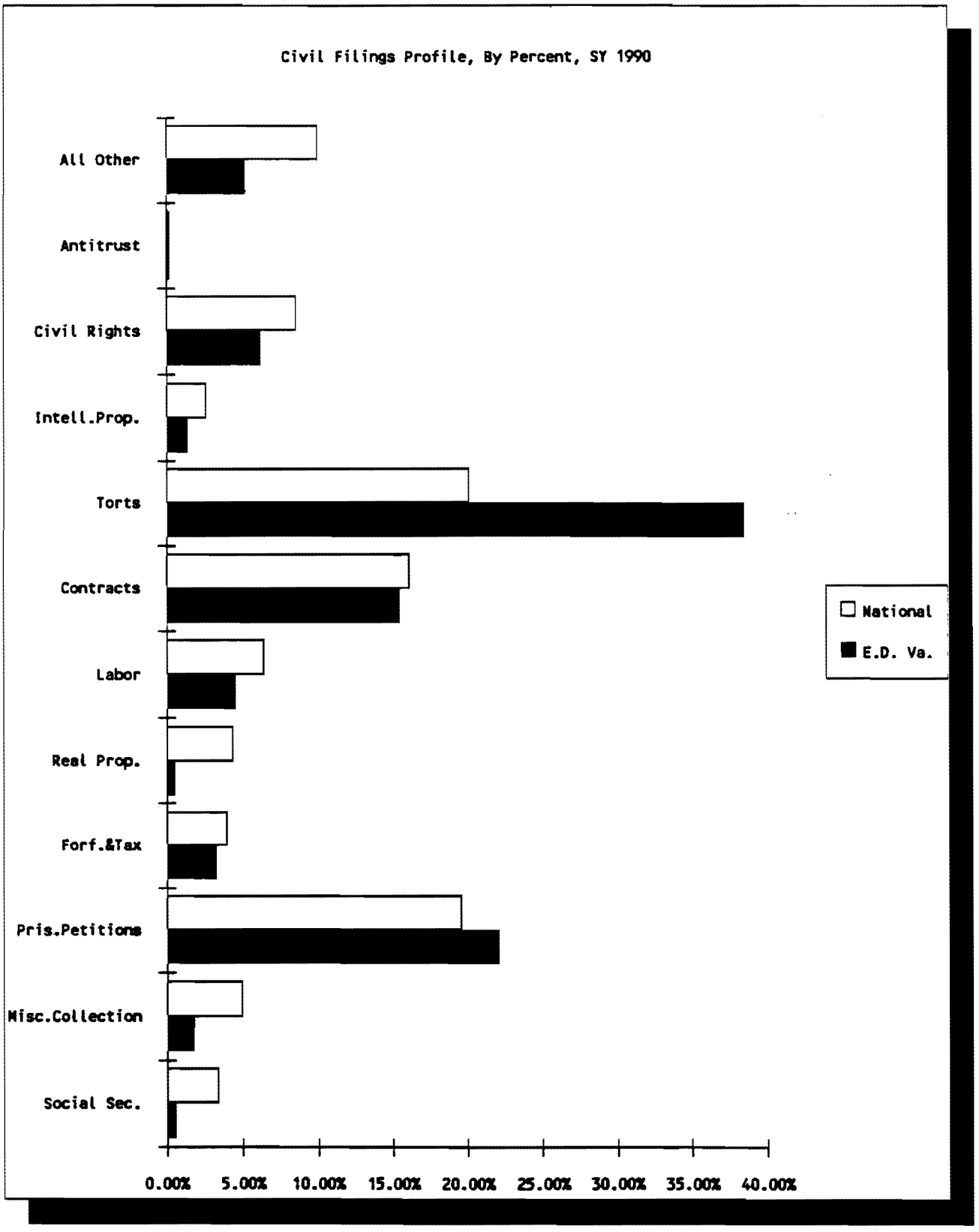
The median time from issue to trial, in cases going to trial, was five months. It compares to a national median of fourteen months for such cases.

The Federal Judicial Center has prepared a caseload analysis for the Eastern District of Virginia that includes, among other things, a discussion of the "life expectancy" and "indexed average lifespan" of civil cases in the district. See Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act

---

[9] The "median" reflects the point at which half the total cases fall below and half are above. In other words, half of the civil cases in the Eastern District are resolved in four months or less, and half are resolved in four months or more.

Figure 1


Civil Filings Profile, By Percent, SY 1990
All Other
Antitrust
Civil Rights
Intell.Prop.
Torts
Contracts
Labor
Real Prop.
Forf.&Tax
Pris.Petitions
Misc.Collection
Social Sec.
National
E.D. Va.
0.00%
5.00%
10.00%
15.00%
20.00%
25.00%
30.00%
35.00%
40.00%

of 1990 (Feb. 1991) (version prepared for the United States District Court for the Eastern District of Virginia) (included in Appendix 10 to this Report). The Center has suggested that it considers these statistics to be a better predictor of a court's future efficiency than most other variables. Guidance, at 15.

The average life expectancy of a civil case in the Eastern District of Virginia is currently 10 months. This figure, however, is based in part on a large number of products liability cases that have been stayed for several years due to the bankruptcy of one or more defendants. The actual average life expectancy of a civil case in the district, not including these stayed cases, is six months or less.

The indexed average lifespan of a civil case in the district is five months. The Center has said that values below the national indexed average lifespan reference of 12 months "indicate that the court disposes of its cases faster than the average." Id.

b. State of the Criminal Docket

The Civil Justice Reform Act is principally concerned with district court management of civil caseloads. The criminal docket in a district court, however, can theoretically have an impact on how effectively the court handles its civil docket. This is primarily because the federal Speedy Trial Act of 1974 (as amended), 18 U.S.C. §§ 3161-62, 3164, requires that all criminal cases be tried within 70 days of the filing of the indictment, unless a delay beyond this period is expressly

authorized by the statute and court order. Because no similar statutes exist with respect to most civil filings, criminal cases have a priority over civil cases. If the criminal caseload in a district is large and many defendants go to trial, this can conceivably impair the court's ability to attend to its civil docket. Recently, a number of district judges have stated publicly that increasing criminal caseloads have adversely affected their ability to deal with their civil cases, and the Federal Judicial Center has specifically recognized that criminal caseloads have had such an impact in some district courts.

There is a widespread perception that the "war on drugs" has increased the number and complexity of criminal cases being filed in the federal district courts. National court management statistics show slight increases in the total and per judgeship criminal filings since 1980. The total number of felony criminal defendants against whom federal indictments were filed has increased nationally by 16% during the last five years, and has increased by 52% in the Eastern District of Virginia during that time. The total number of drug defendants (felony and misdemeanor) prosecuted in federal court has quadrupled both nationally and in the Eastern District since 1980. Nationally, felony drug defendants now represent 45% of all felony defendants. In the Eastern District, they represent 43% of all felony defendants.

There are anecdotal reports that the new Federal Sentencing Guidelines, which became effective on November 1, 1987, have had

the effect of discouraging guilty pleas, thereby increasing the number of criminal cases going to trial. Administrative Office statistics show increases in the overall number of criminal filings occurring since January 1988, but the Advisory Group is aware of no empirical studies or statistics that would support such anecdotes. In the Eastern District of Virginia, the total number of criminal trials has remained relatively constant since 1987.

Whatever may be the case in other district courts, the drug war and the new Federal Sentencing Guidelines have had no measurable adverse impact on the Eastern District's ability to handle either its civil or its criminal caseload. As was noted earlier, median filing-to-disposition and issue-to-trial times for civil cases have shown a consistent downward trend since 1971. This trend has been unaffected by increases in criminal caseload expressed both in absolute terms and as a percentage of the total docket during the last ten years, and by substantial increases in the number of felony defendants prosecuted. Moreover, as discussed below, court management statistics for this substantially larger criminal docket do not differ significantly from earlier years.

During the statistical year ending June 30, 1990, 633 criminal felony indictments or informations were filed in the Eastern District of Virginia. These cases include 10 immigration cases (1.6% of all criminal felony cases); 17 embezzlement cases (2.7%); 88 weapons/firearm cases (13.9%); 23 escape cases (3.6%);

61 burglary/larceny cases (9.6%); 20 marijuana/controlled substances cases (3.2%); 151 narcotics cases (23.9%); 15 forgery/counterfeiting cases (2.4%); 134 fraud cases (21.2%); 33 homicide/assault cases (5.2%); 4 robbery cases (.6%); and 77 other (unclassified) cases (12.2%).[10] Approximately 15 cases were transferred to the district, bringing the total number of criminal filings to 648. This total represents a figure of 72 felony cases per judgeship. Criminal cases made up 12.3% of total filings in the district for SY 1990.

Nationally, the criminal felony profile is as follows: immigration, 6.7%; embezzlement, 5.1% ; weapons/firearms, 8.0%; escape, 2.4%; burglary/larceny, 5.6%; marijuana/controlled substances, 10.6%; narcotics, 22.3%; forgery/counterfeiting, 4.0%; fraud, 20.1%; homicide/assault, 1.8%; robbery, 4.3%; all other, 9.2%. The national average felony filings per judgeship was 58 cases per judgeship. Nationally, criminal cases accounted for about 13.3% of total filings.

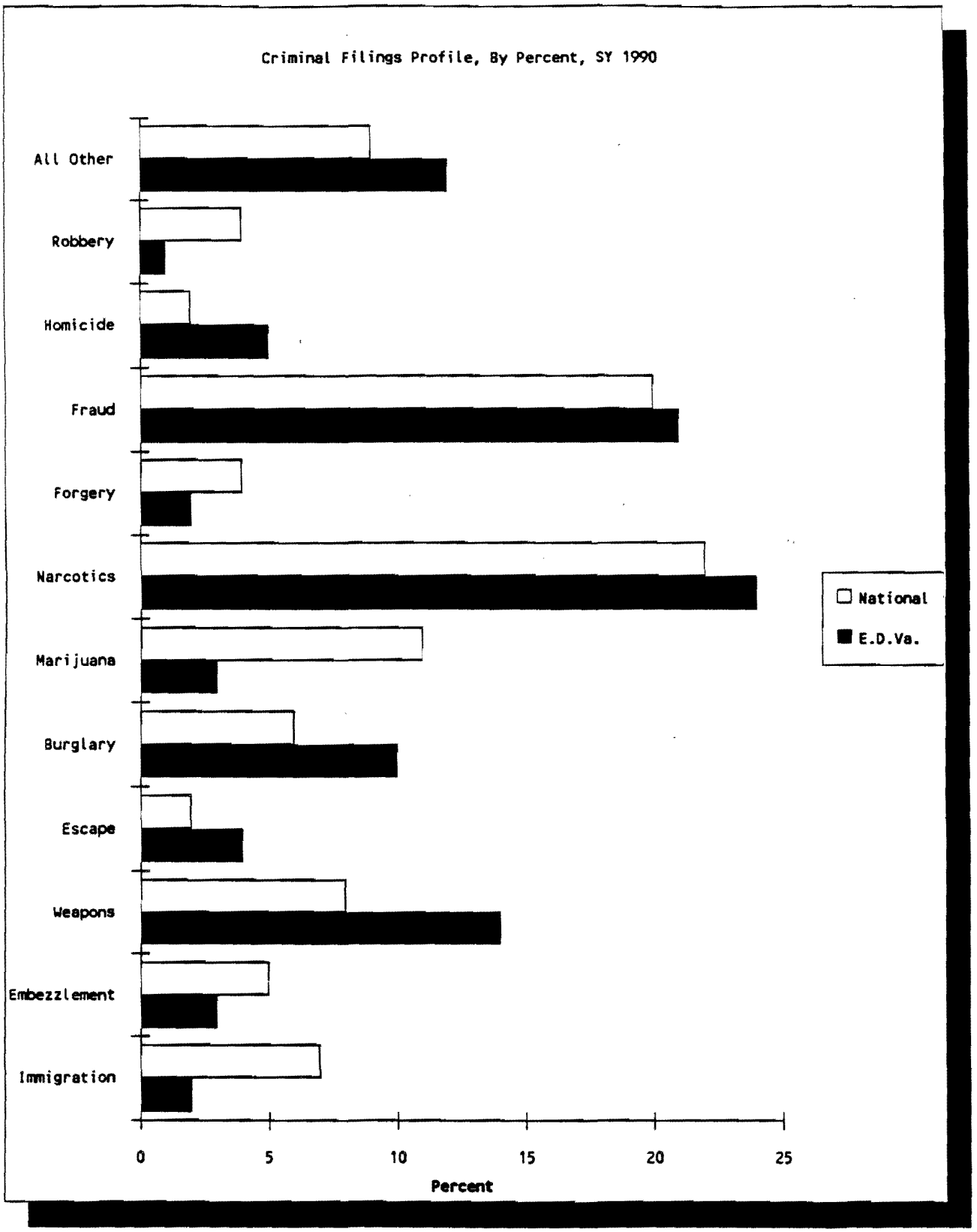
Figure 2 illustrates the criminal case filings profile for the Eastern District of Virginia, and the national profile, for 1990.

A total of 3220 criminal defendants (felony and misdemeanor) were prosecuted in the Eastern District of Virginia in SY 1990,

---

[10] These percentages and those cited for the national profile total 100.1% due to rounding off actual percentages to the nearest .1%.

Figure 2


Criminal Filings Profile, By Percent, SY 1990
All Other
Robbery
Homicide
Fraud
Forgery
Narcotics
Marijuana
Burglary
Escape
Weapons
Embezzlement
Immigration
National
E.D.Va.
0
5
10
15
20
25
Percent

of which 860 were felony defendants.[11] Of these felony defendants, 296, or about 34%, were charged with drug-related crimes. Nationally, drug defendants represented 43% of all felony defendants prosecuted in the federal courts during SY 1990.[12]

The 3245 defendants prosecuted in the district in SY 1990 represented a per judgeship defendant load of 361 defendants. This is more than three times the national average of 113 defendants per judgeship. The felony defendant caseload was 96 felony defendants per judgeship, compared to a national average of 85 felony defendants per judgeship.[13]

There were 33 felony drug defendants prosecuted per judgeship in the Eastern District of Virginia in 1990. This compares to a national average of 37 felony drug defendants per judgeship.[14]

---

[11] A portion of this section's discussion of the Eastern District of Virginia's criminal caseload is based on statistics provided by the Administrative Office. These statistics cover the statistical years 1987-91. Some figures illustrating trends in the criminal caseload thus show trends over the period SY 1987-91, rather than the longer time periods depicted for the civil caseload and some aspects of the criminal caseload.

[12] In SY 1991, the total number of felony drug defendants prosecuted in the Eastern District of Virginia was 476. This number represents 43% of all felony defendants prosecuted in the district during SY 1991.

[13] In SY 1991, the felony defendant caseload increased to 123 defendants per judgeship, compared to a national average of 89 defendants per judgeship.

[14] In SY 1991, the number of felony drug defendants prosecuted per judgeship increased to 53, compared to a national average of 40.

The median time from filing to disposition of a criminal case in the Eastern District of Virginia was 3.6 months in SY 1990. The national median time for filing to disposition of a criminal felony case was 5.3 months during that year.

2. Trends in Case Filings and Demands on Court Resources

The following discussion of the trends in case filings in the Eastern District is based on an analysis of court management statistics compiled and published, or provided to the Reporter, by the Administrative Office. Civil caseload trends examined herein generally cover the statistical years 1971-90. Criminal caseload trends generally cover statistical years 1980-90, or, in some cases, statistical years 1987-91.

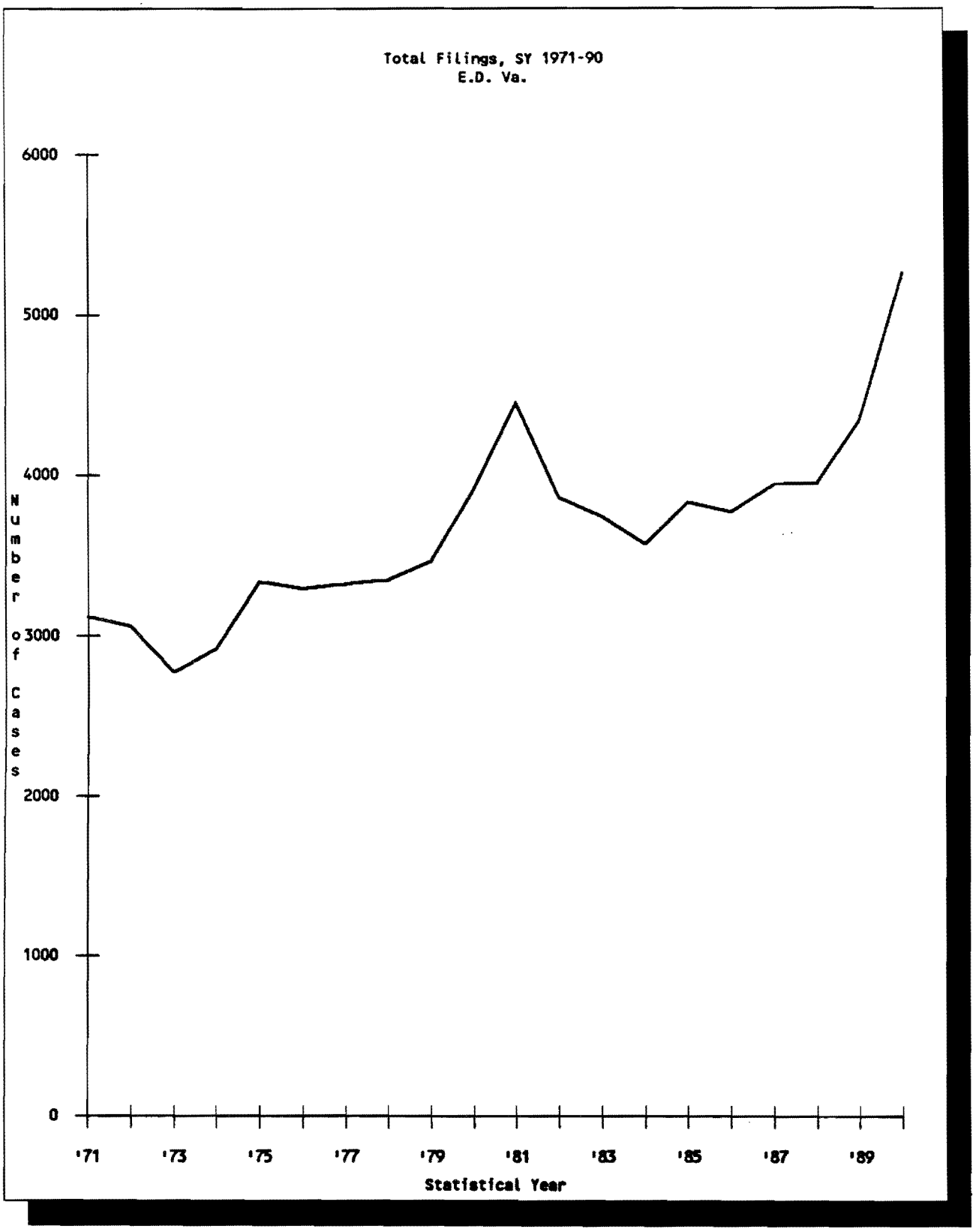
a. Trends in Civil Filings

i. District statistics.

Total filings. Like every other federal district court, the Eastern District of Virginia has experienced significant increases in absolute case filings over the period 1971-90. The total filings figure of 5263 (which includes both criminal felony and civil filings) for SY 1990 represents an increase of 21% in total filings over SY 1989. It represents an increase in total filings of 35% since 1980 and of about 69% since 1971. Figure 3 illustrates the overall trend in total case filings in the Eastern District of Virginia from 1971-90.

Total terminations. The total terminations figure of 5194 for SY 1990 represents a 29% increase over that statistic for SY 1989. It is an increase of 39% over total terminations

Figure 3


Total Filings, SY 1971-90
E.D. Va.
6000
5000
4000
3000
2000
1000
0
Number of Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year

since 1980 and of 82% since 1971. These figures show that the court has kept pace with increased filings in the district through its increased termination rates. Figure 4 illustrates the trend in case terminations in the Eastern District for 1971-90.

Total pending cases. The total pending cases figure of 3682 for SY 1990 represents an increase of about 3% over the previous year. It is an increase of 85% over SY 1980 and of 69% over SY 1971. These increases are correlated to increases in total filings in the district over the period 1971-90. Figure 5 illustrates the trend in total pending cases in the Eastern District from 1971-90.

Ratio of pending cases to case terminations. The Federal Judicial Center has suggested that one measure of a court's effectiveness in handling its caseload over time is the trend of the ratio of pending cases to case terminations. If this ratio decreases over time, the trend indicates that the court is improving on its overall disposition rate. See Shapard, How Caseload Statistics Deceive 3 (Draft of May 2, 1991) (included in Appendix 10 of this Report). If the ratio is less than 1.0, the court is disposing of cases at a faster rate than they are being filed.

At the close of SY 1990, the ratio of pending cases to case terminations in the Eastern District of Virginia was 3682/5194, or .71. This is an decrease from a ratio of .89 in SY 1989, and an increase from ratios of .53 in SY 1980 and .52 in SY 1976.

Figure 4

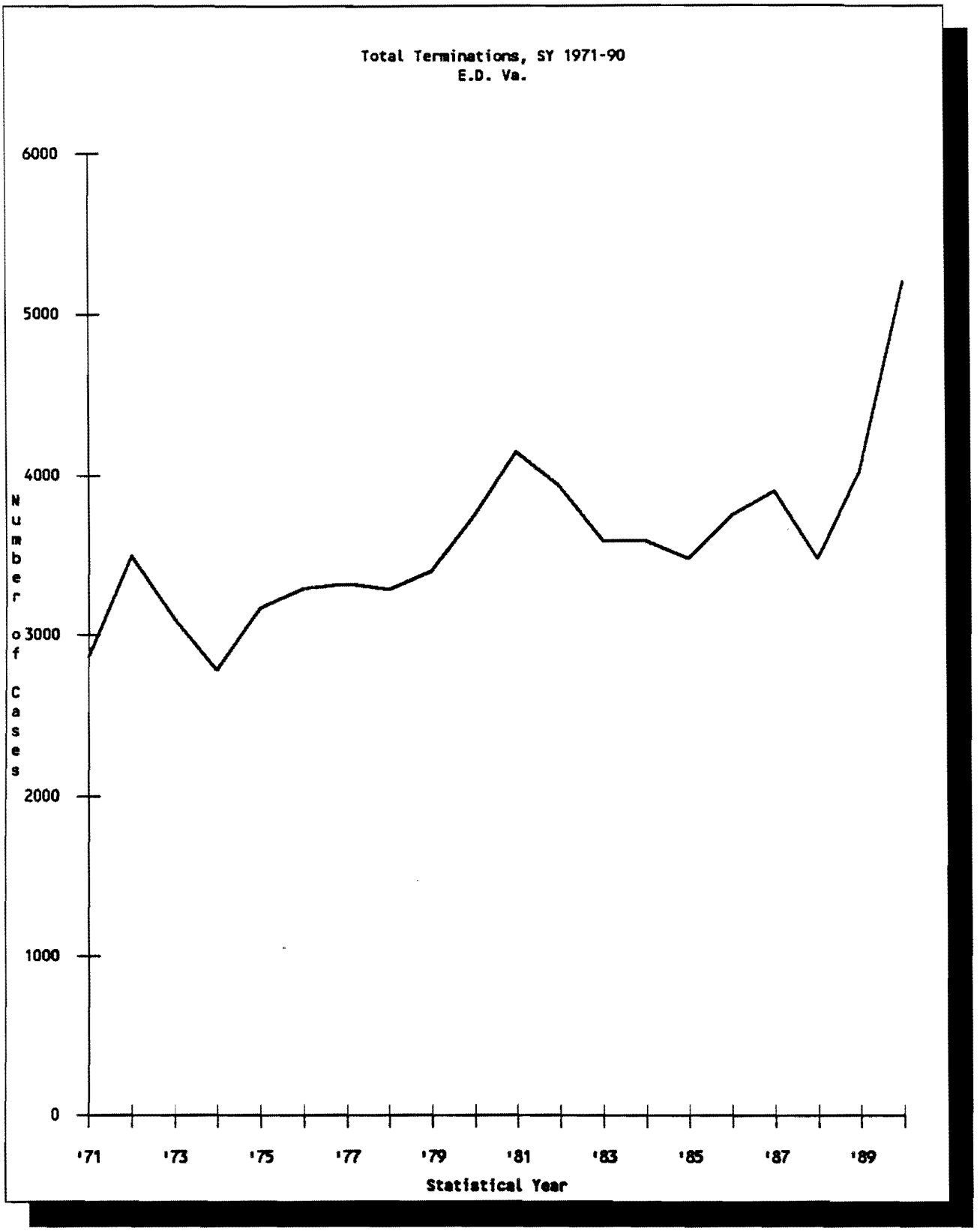
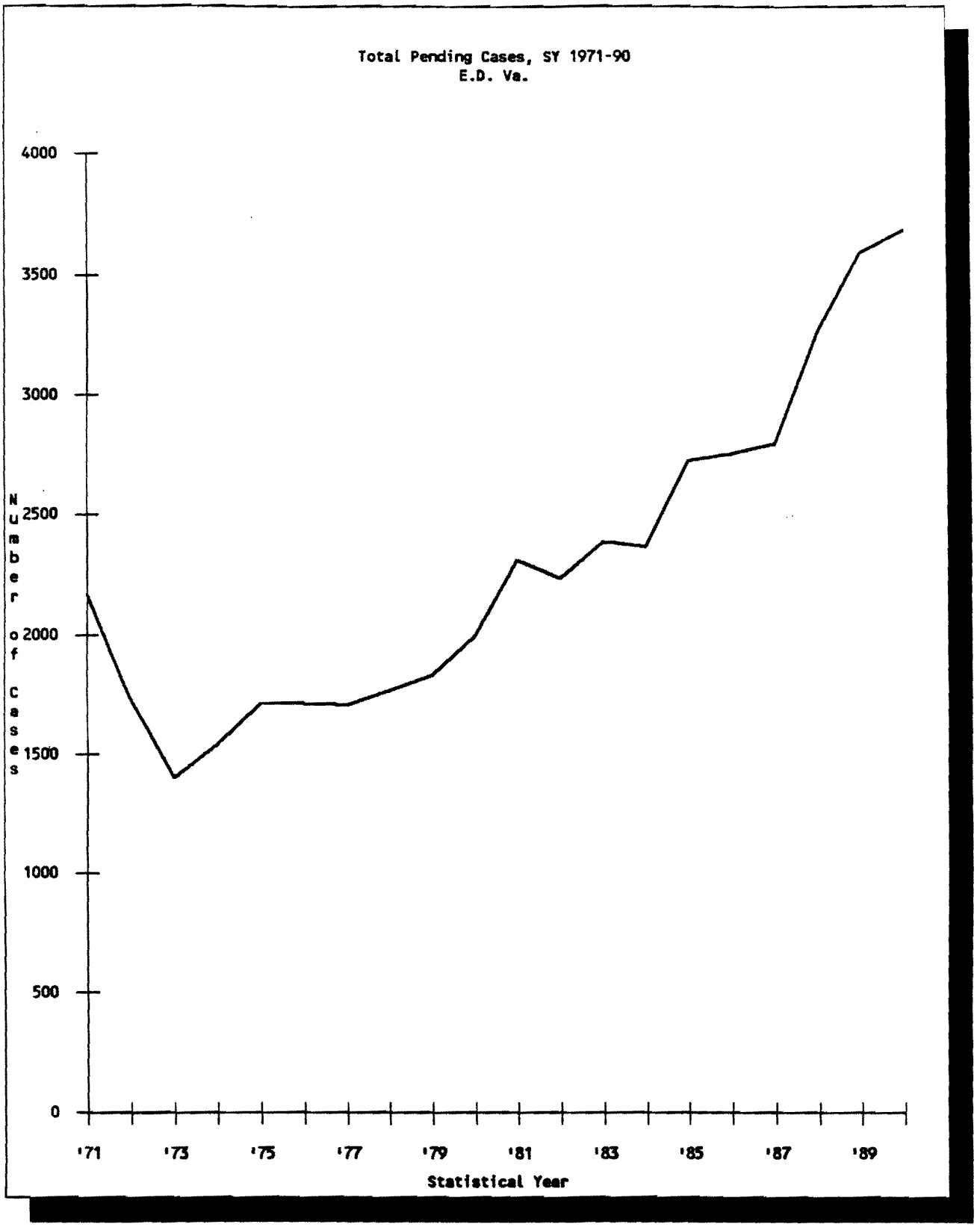

Total Terminations, SY 1971-90
E.D. Va.
6000
5000
4000
3000
2000
1000
0
Number of Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year

Figure 5


Total Pending Cases, SY 1971-90
E.D. Va.
4000
3500
3000
2500
2000
1500
1000
500
0
Number of Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year

Nationally, the pending cases to case terminations ratio for SY 1990 was 1.12. Figure 6 illustrates the trend in this pending cases/case terminations ratio for the Eastern District of Virginia and nationally from SY 1976-90.

Filing to disposition rates. The median time from filing to disposition of four months in SY 1990 represents a decrease of one month since 1989. It is a decrease of one month from 1980 and of four months from 1971. This is the shortest median time from filing to disposition of any district court in the nation. Figure 7 shows the trend in median time from filing to disposition for the Eastern District of Virginia, and the national trend.

Issue to trial rates. The median time from issue to trial (for cases going to trial) of five months in SY 1990 is the same as for 1989. It represents a decrease of one month from 1980 and of three months from 1971. This also is the shortest median time for any federal district court. Figure 8 illustrates the trend in median time from filing to disposition for the Eastern District of Virginia, and the national trend.

ii. Per judgeship statistics and comparison to national statistics. Because the federal district courts differ radically from one another in terms of their size and the complexity of their caseloads, overall case filing and related statistics do not always permit accurate comparison among districts of many variables affecting expense and delay. Per judgeship statistics, in contrast, permit direct comparison of the judicial workload in

Figure 6

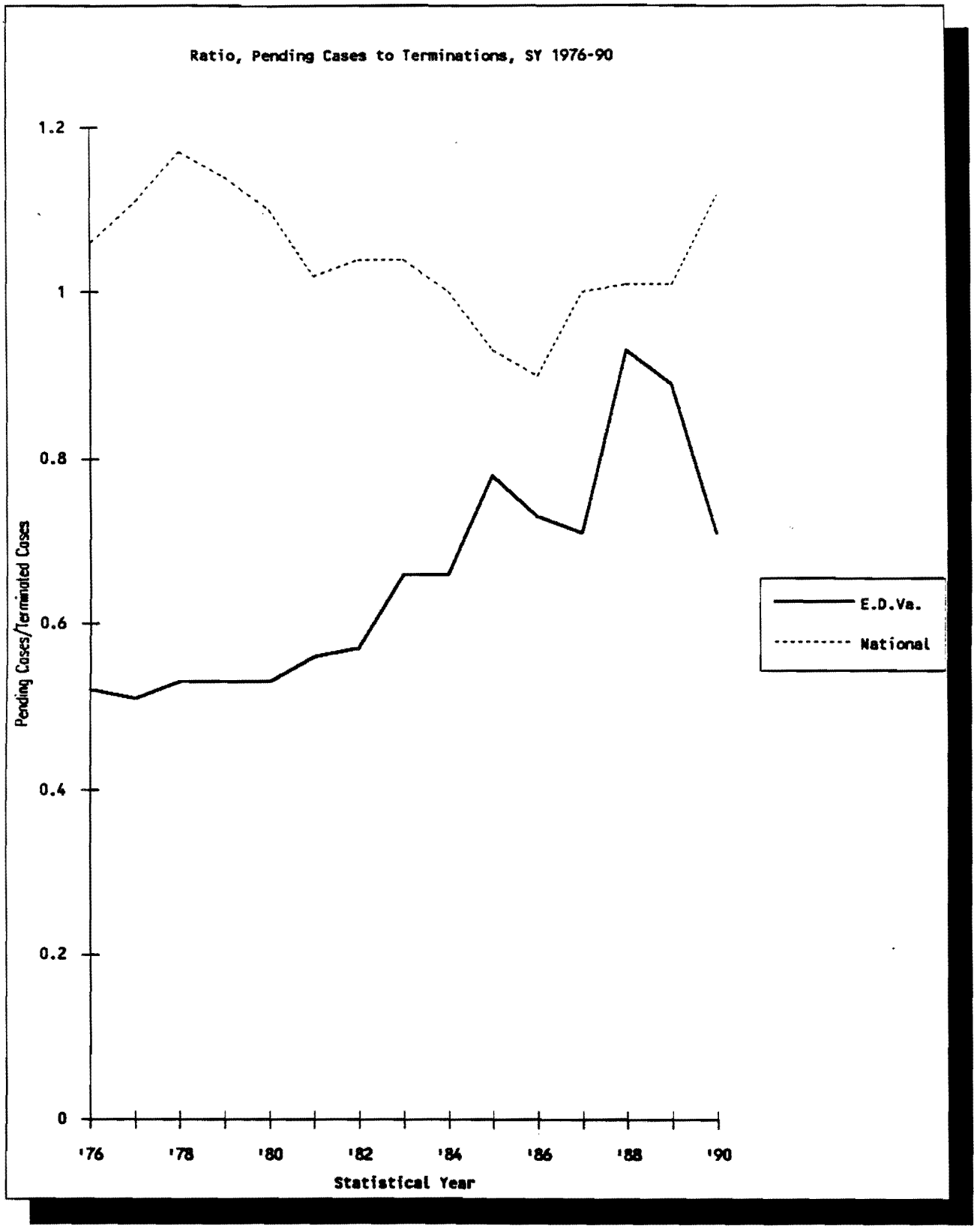

Ratio, Pending Cases to Terminations, SY 1976-90
1.2
1
0.8
0.6
0.4
0.2
0
Pending Cases/Terminated Cases
'76
'78
'80
'82
'84
'86
'88
'90
Statistical Year
E.D.Va.
National

Figure 7

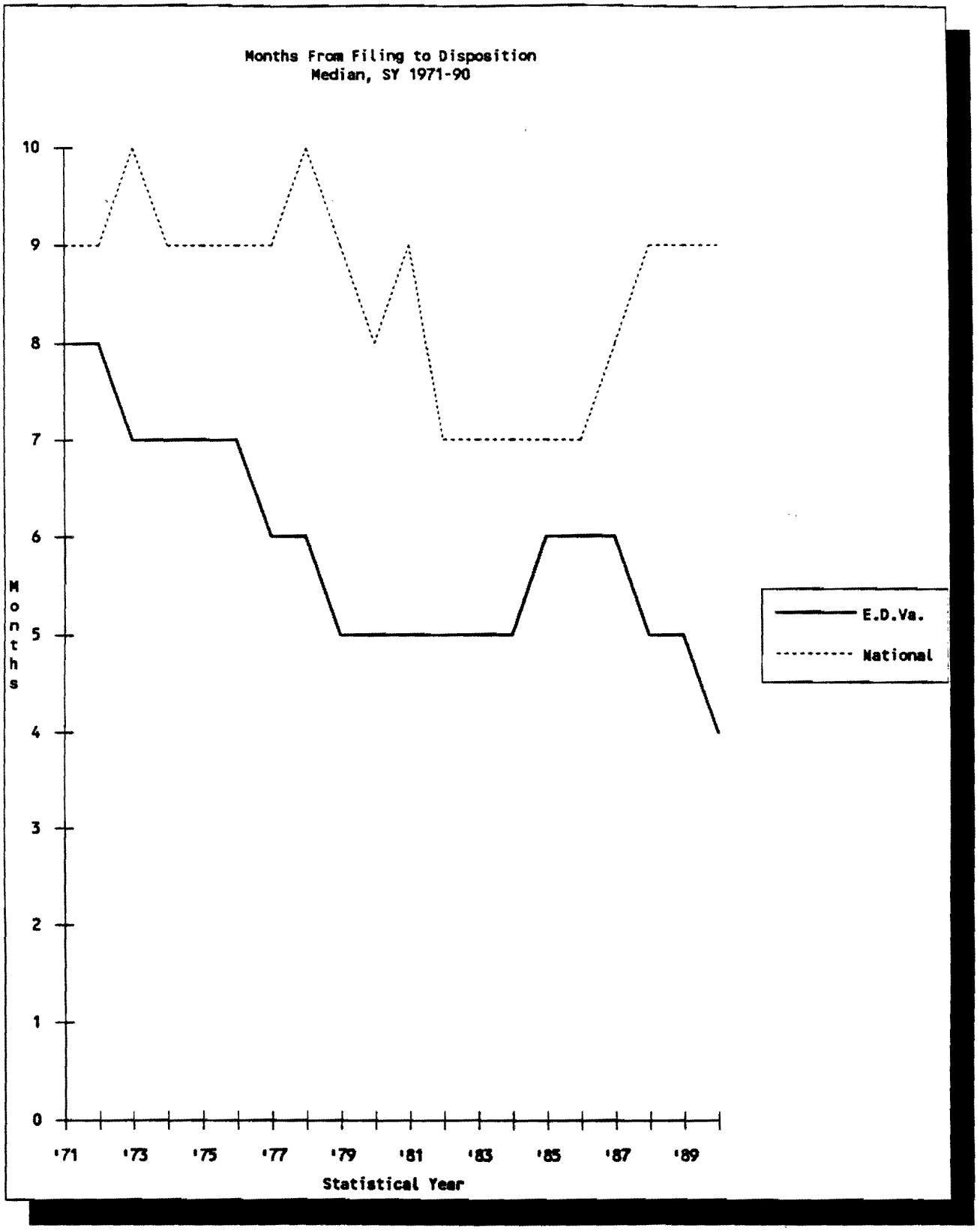
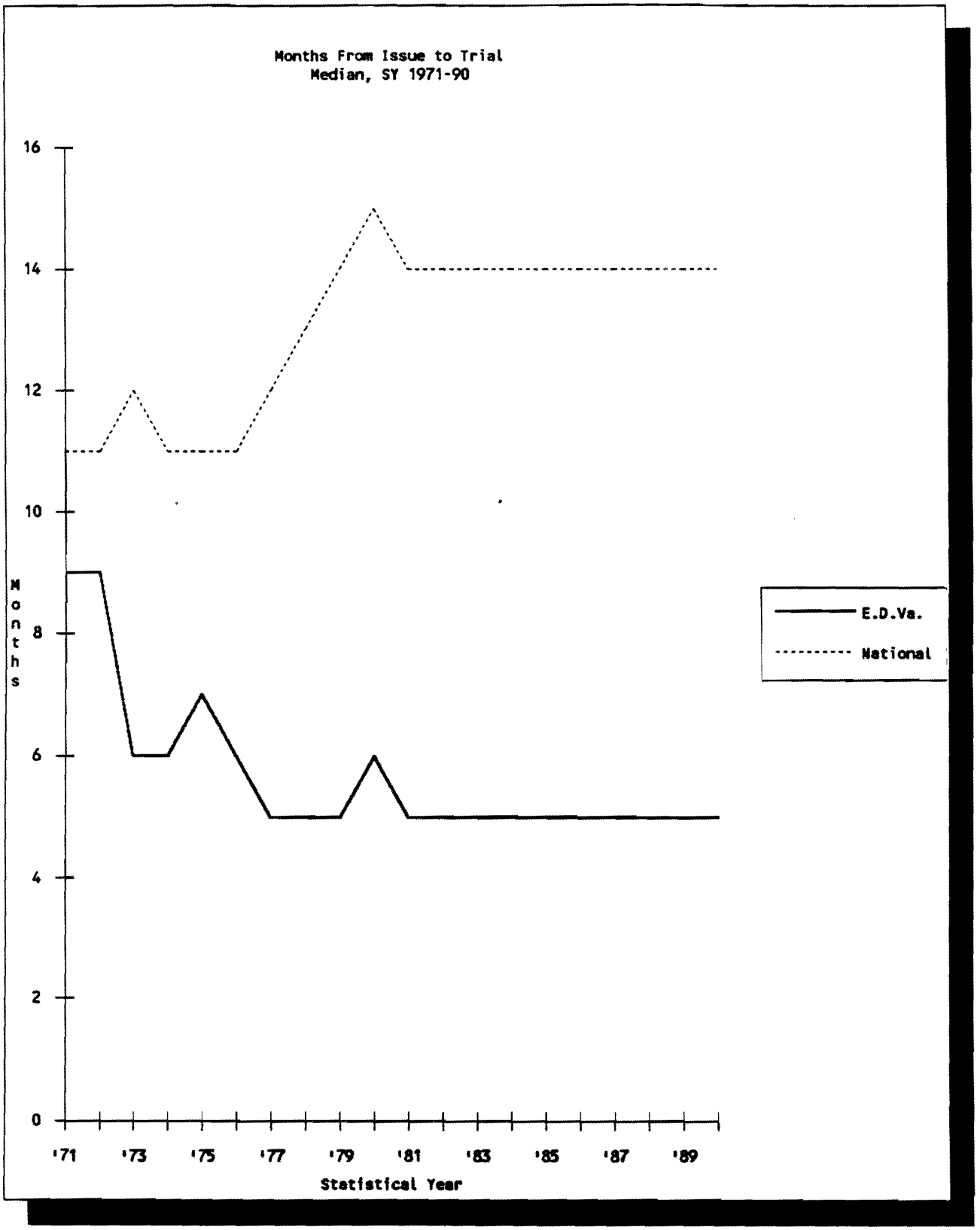

Months From Filing to Disposition
Median, SY 1971-90
Months
10
9
8
7
6
5
4
3
2
1
0
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

Figure 8


Months From Issue to Trial
Median, SY 1971-90
16
14
12
10
8
6
4
2
0
Months
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

one court to the national average or to another individual court. Per judgeship statistics also allow for better longitudinal study of individual judges' workload, because they account for increases in the number of judgeships allotted to that district court. In this section, trends in the Eastern District of Virginia's per judgeship case management statistics are compared to national per judgeship trends.

Civil filings per judgeship. In SY 1990 there were 513 civil filings per judgeship. This is an increase of 21% over 1989, of 1% over 1980, and 43% over 1971. This number compares to a national per judgeship civil filings figure of 379 cases. Figure 9 illustrates the trend in civil filings per judgeship for the Eastern District of Virginia from 1971-90, and the national trend.

Terminations per judgeship. In SY 1990, 577 cases (criminal and civil) per judgeship were terminated. This is an increase of 29% from 1989, 23% from 1980, and 21% from 1971. This figure is substantially higher than the national per judgeship figure of 423 case terminations in 1990. Figure 10 illustrates the trend for the Eastern District of Virginia and the national trend in terminations per judgeship.

Pending cases per judgeship. In SY 1990 there were 409 pending cases (criminal and civil) per judgeship in the Eastern District of Virginia. This is an increase of 2.5% since 1989, of 64% since 1980, and of 28% since 1971. This figure compares to a national per judgeship pending caseload of 474 cases. Figure 11

Figure 9

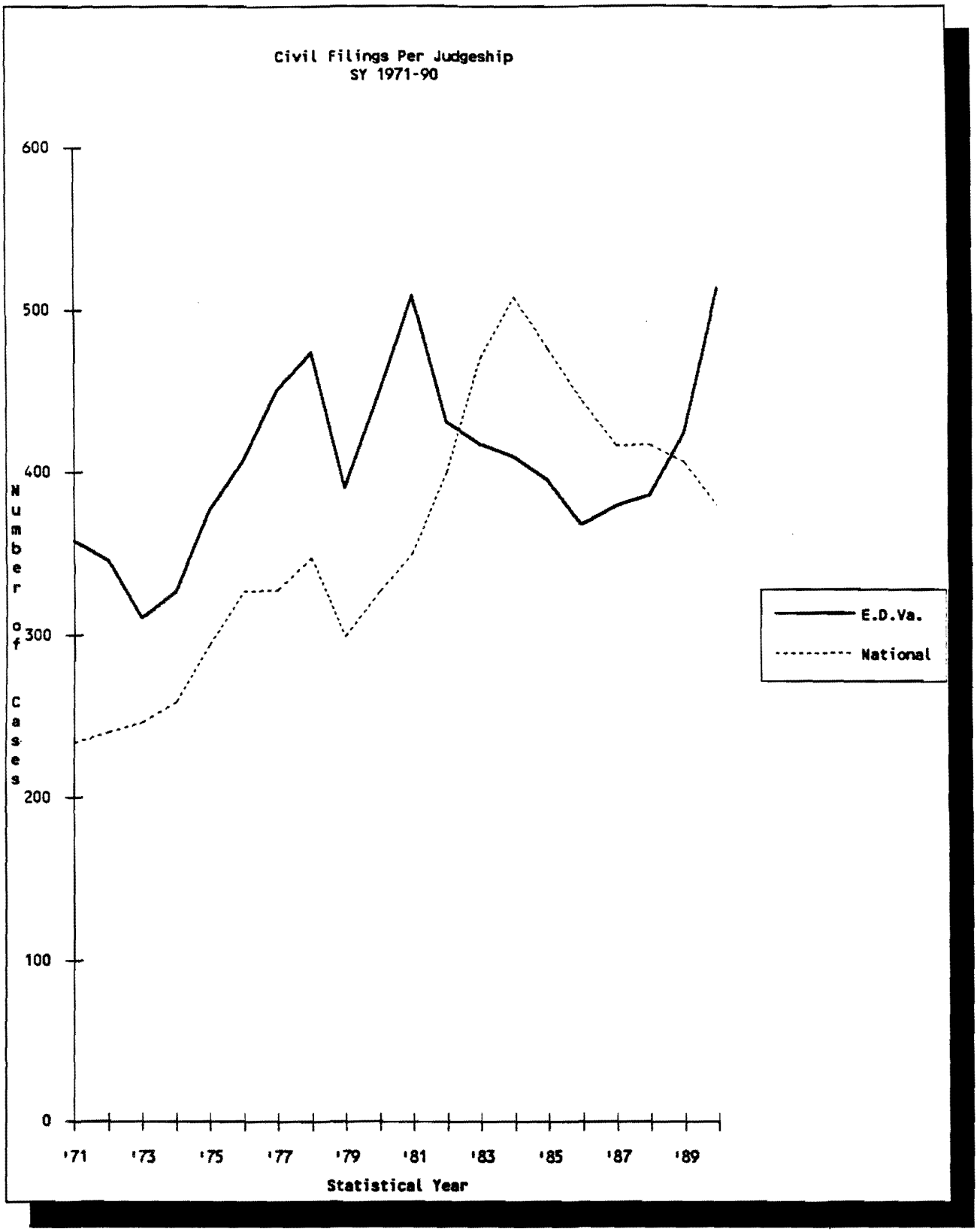

Civil Filings Per Judgeship
SY 1971-90
600
500
400
300
200
100
0
Number of Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

Figure 10

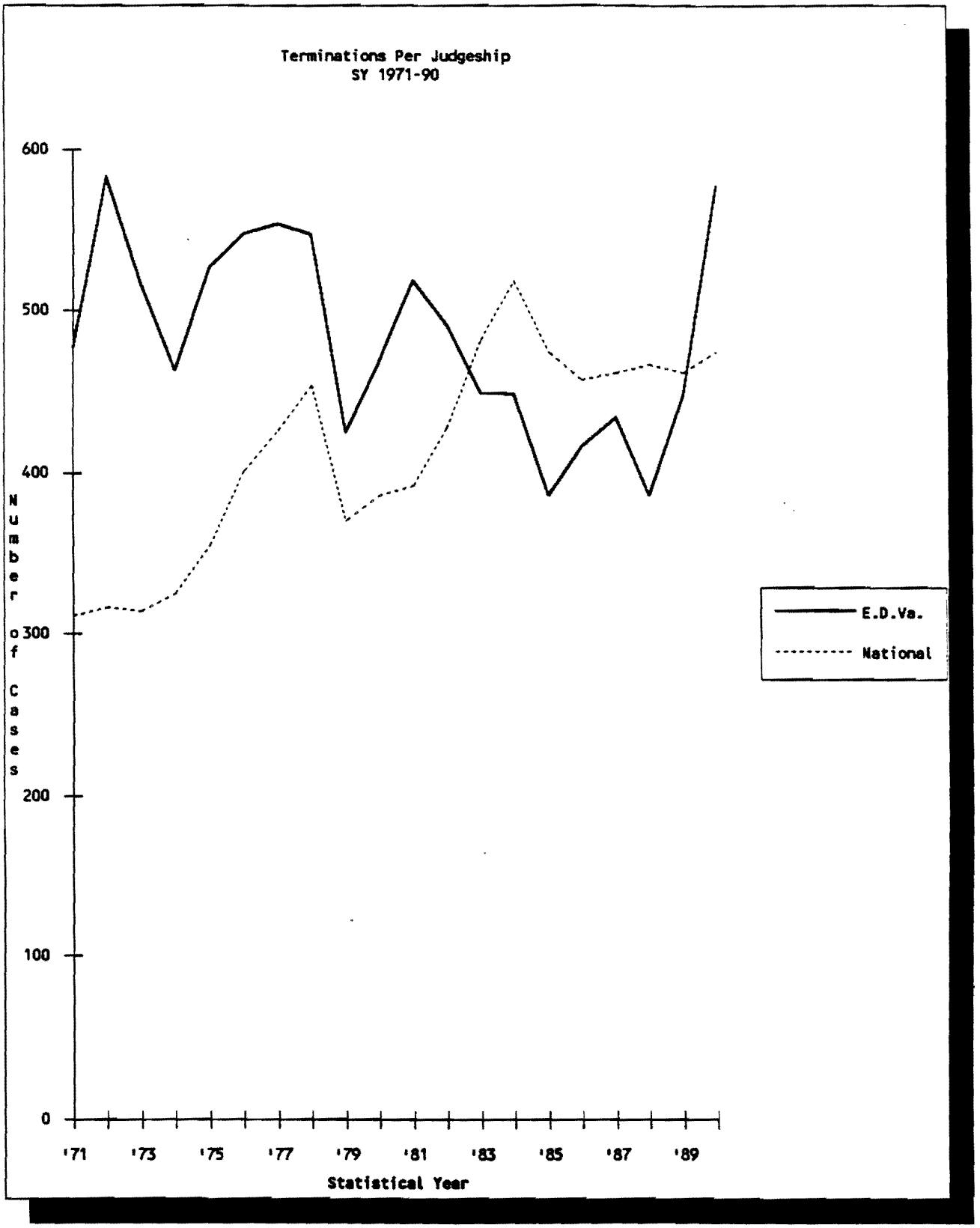
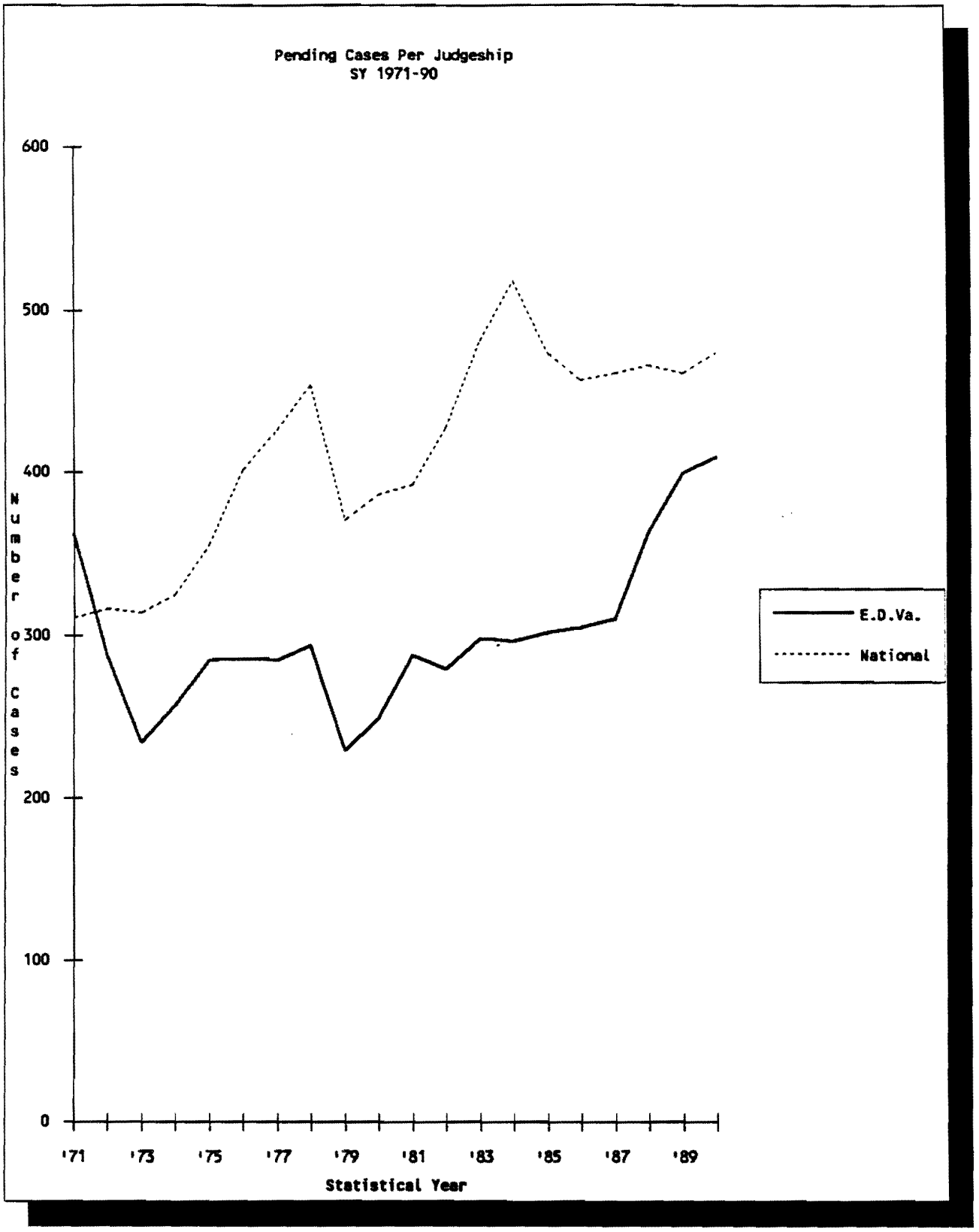

Terminations Per Judgeship
SY 1971-90
600
500
400
300
200
100
0
Number of Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

Figure 11


Pending Cases Per Judgeship
SY 1971-90
600
500
400
300
200
100
0
Number of Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

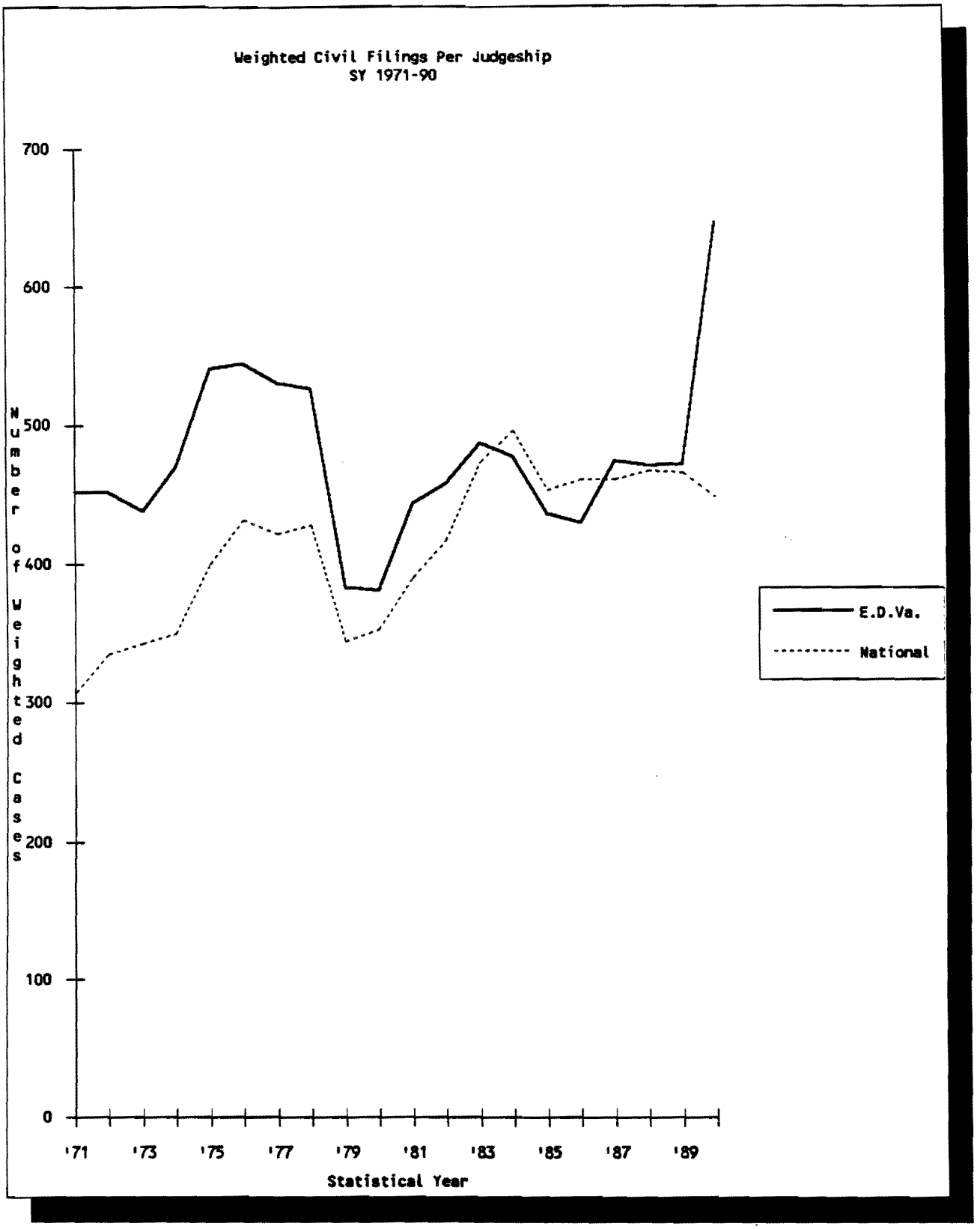
illustrates the trend in pending cases per judgeship for the Eastern District of Virginia from 1971-90, and the national trend.

Weighted civil filings per judgeship. The statistic weighted filings is an extremely important variable. It allows for comparisons of civil caseloads among districts and within districts over time, because it restates the total civil filings figure in a way that reflects the complexity of those civil cases. The weighted filings per judgeship figure of 647 for SY 1990 in the Eastern District of Virginia represents a 37% increase over that for 1989, a 70% increase from 1980, and a 43% increase from 1971. It was the second highest weighted filings figure in the nation in SY 1990, and compares to a national weighted filings per judgeship figure of 448 for that year.

Figure 12 illustrates the trend in weighted filings from 1971-90 for the Eastern District, and the national trend. This trend chart shows that the civil cases filed in the Eastern District, as a group, have historically been more complex than the national average.

Trials completed per judgeship. The judges of the Eastern District of Virginia have adopted a policy of setting an early and firm trial date in virtually all civil cases. One result of this policy has been that the litigants' decision not to settle does not prolong disposition of the case unreasonably as it does in some courts; litigants are able to obtain an early resolution of their dispute through a trial before an Article III

Figure 12


Weighted Civil Filings Per Judgeship
SY 1971-90
700
600
500
400
300
200
100
0
Number of Weighted Cases
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

judge. This may contribute to the fact that more civil cases are tried in the Eastern District of Virginia than in most other courts.

An average of 59 trials per judgeship were completed in the Eastern District of Virginia in SY 1990. Of these 59 trials, 57%, or about 34, were civil trials. This represents a decrease of 3% (2 trials per judgeship) since 1989, an increase of 20% (10 trials per judgeship) since 1980, and a decrease of 25% (20 trials per judgeship) since 1971. This figure compares to a national figure of 36 trials completed per judgeship. Figure 13 illustrates the trend in number of trials completed per judgeship for the Eastern District and nationally.

Percentage of civil cases over three years old. In SY 1990, 23.2% of the Eastern District's civil cases were over three years old. This is an increase from 18% in 1989, from 5.1% in 1980, and from 6.9% in 1971. It compares to a national figure of 10.4% in 1990.

Figure 14 illustrates the trend in percentage of civil cases more than three years old for the Eastern District of Virginia, and the national trend. The trend chart shows that, until 1983, the percentage of civil cases more than three years old in the Eastern District was substantially smaller than the national average. Beginning in 1983, however, a series of bankruptcy orders stayed a large number of asbestos- and IUD-related cases then pending in the Newport News, Norfolk, and Richmond divisions. These stays have precluded the court from handling

Figure 13

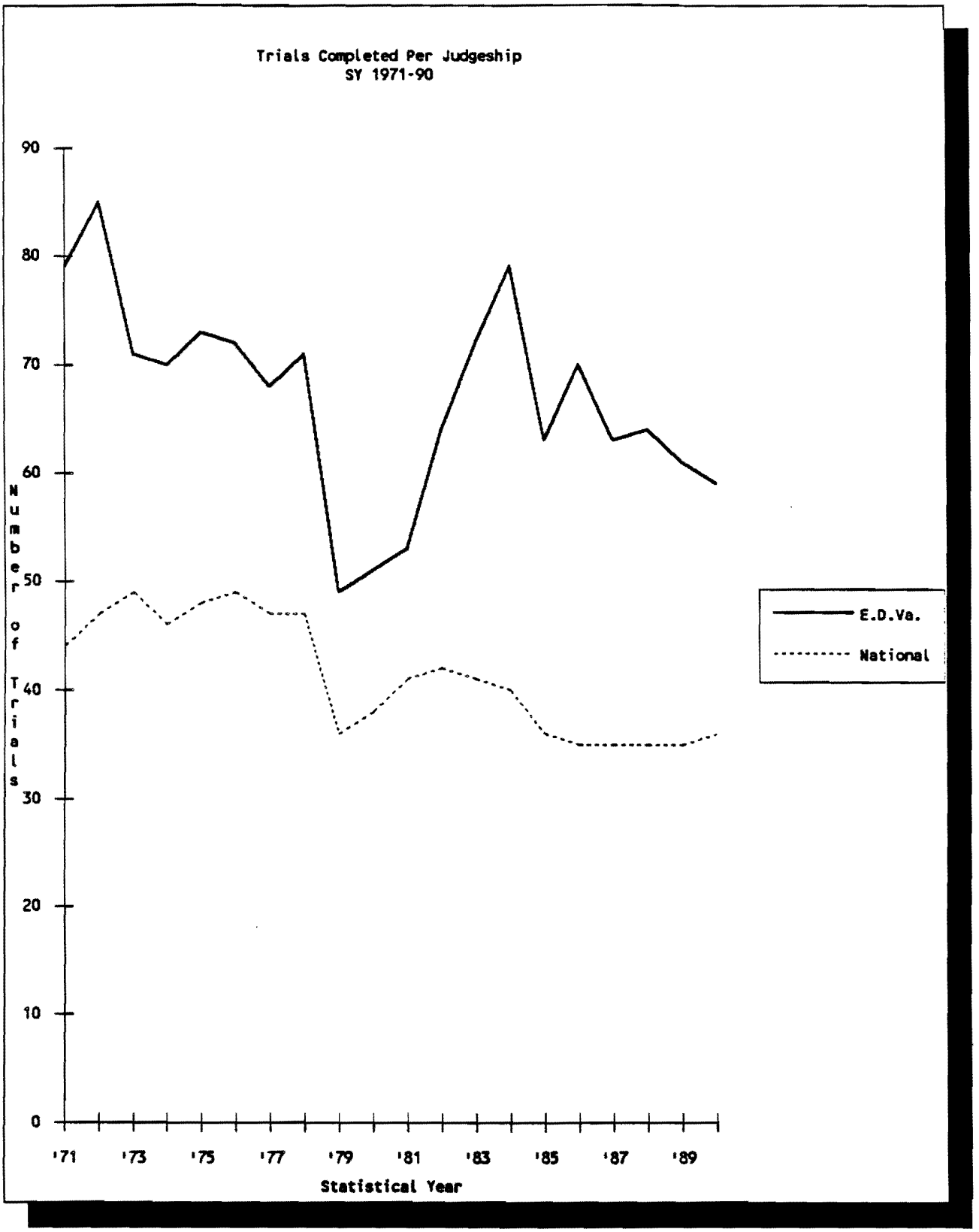
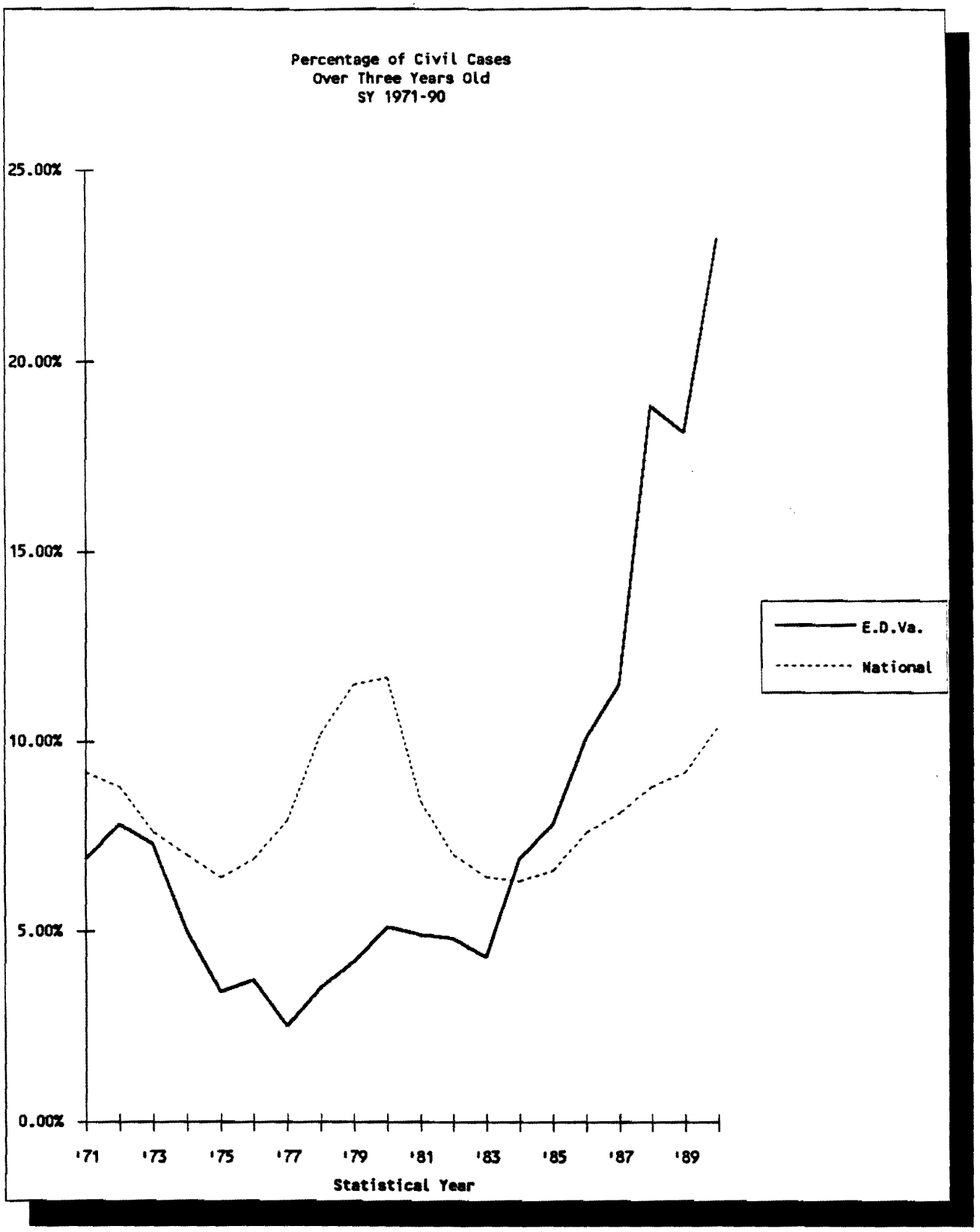

Trials Completed Per Judgeship
SY 1971-90
Number of Trials
90
80
70
60
50
40
30
20
10
0
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

Figure 14


Percentage of Civil Cases
Over Three Years Old
SY 1971-90
25.00%
20.00%
15.00%
10.00%
5.00%
0.00%
'71
'73
'75
'77
'79
'81
'83
'85
'87
'89
Statistical Year
E.D.Va.
National

such cases according to its normal procedures. The clerk's office has advised the Advisory Group that approximately 90-95% of the court's civil cases that are over three years old are cases that have been stayed as a result of these bankruptcy orders. These older cases have all been resolved with respect to non-bankrupt defendants.

b. Trends in Criminal Filings

i. District statistics.

Total criminal felony filings. The total criminal filings figure of 648 cases in the Eastern District of Virginia for SY 1990 reflects an increase of 22% from 1989, and an increase of 103% from 1980. Figure 15 shows the trend in total criminal felony filings from SY 1980-90 for the Eastern District of Virginia.

Criminal filings as a percentage of total filings. In SY 1990, criminal felony filings represented 12.3% of total filings in the Eastern District. This is an decrease from 12.2% in 1989, but an increase from 8.2% in 1980. Nationally, criminal felony filings represented 13.3% of total filings in 1990. Figure 16 illustrates the trend in criminal felony filings as a percentage of total filings for the Eastern District of Virginia, and the national trend, for SY 1980-90

Criminal defendants prosecuted. The Federal Judicial Center has indicated that it considers the total number of defendants prosecuted to be a more important indicator of an individual court's workload than the number of criminal cases

Figure 15

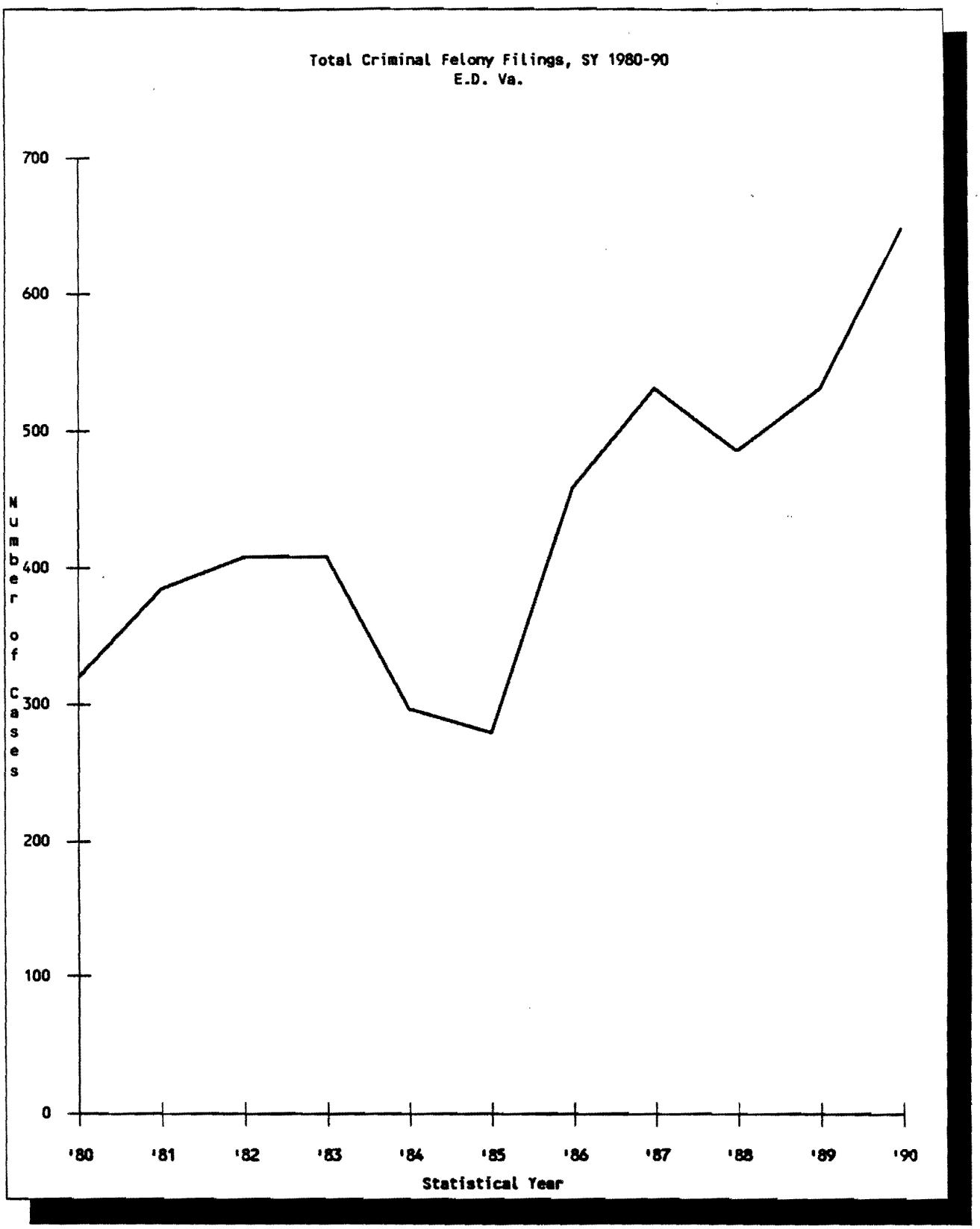
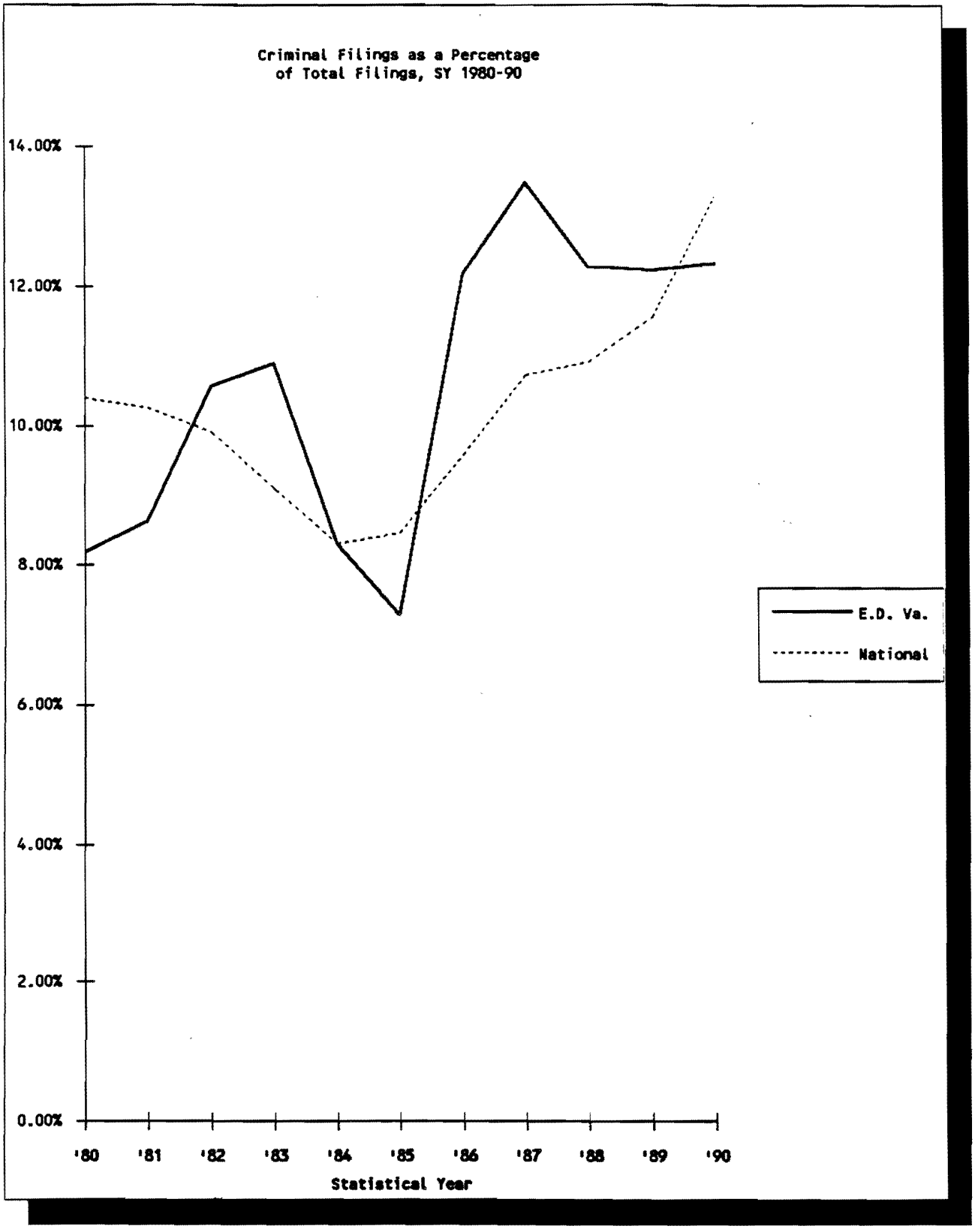

Total Criminal Felony Filings, SY 1980-90
E.D. Va.
700
600
500
400
300
200
100
0
Number of Cases
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year

Figure 16


Criminal Filings as a Percentage
of Total Filings, SY 1980-90
14.00%
12.00%
10.00%
8.00%
6.00%
4.00%
2.00%
0.00%
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year
E.D. Va.
National

filed. Administrative Office data on defendant-load are unavailable until 1980. These data show that, during SY 1980-90, the number of defendants (felony and misdemeanor) prosecuted increased quite substantially, both in the Eastern District of Virginia and nationally. They also show that the total number of felony defendants prosecuted increased significantly from SY 1987-91.

In SY 1990, a total of 3220 defendants (felony and misdemeanor) were prosecuted in the Eastern District of Virginia. This is an increase of 14.4% from SY 1989. It is an increase of 22.6% from 1985 and of 143% from 1980. Nationally, a total of 65359 criminal defendants were prosecuted in the federal courts in SY 1990. This is an increase of 5.3% over 1989, of 23.1% over 1985, and of 72.1% over 1980. A total of 860 felony defendants were prosecuted in the Eastern District of Virginia in SY 1990, an increase of 18% since SY 1987. Nationally, 49125 felony defendants were prosecuted in SY 1990, an increase of 16% since SY 1987.

Figure 17 shows the trend in the total number of criminal defendants prosecuted in the Eastern District of Virginia and nationally during SY 1980-90. Figure 18 shows the trend in the number of criminal felony defendants prosecuted in the Eastern District and nationally during SY 1987-91.

Drug defendants prosecuted. The number of felony drug defendants prosecuted in the federal courts has increased tremendously in recent years. In SY 1990, 296 felony drug

Figure 17

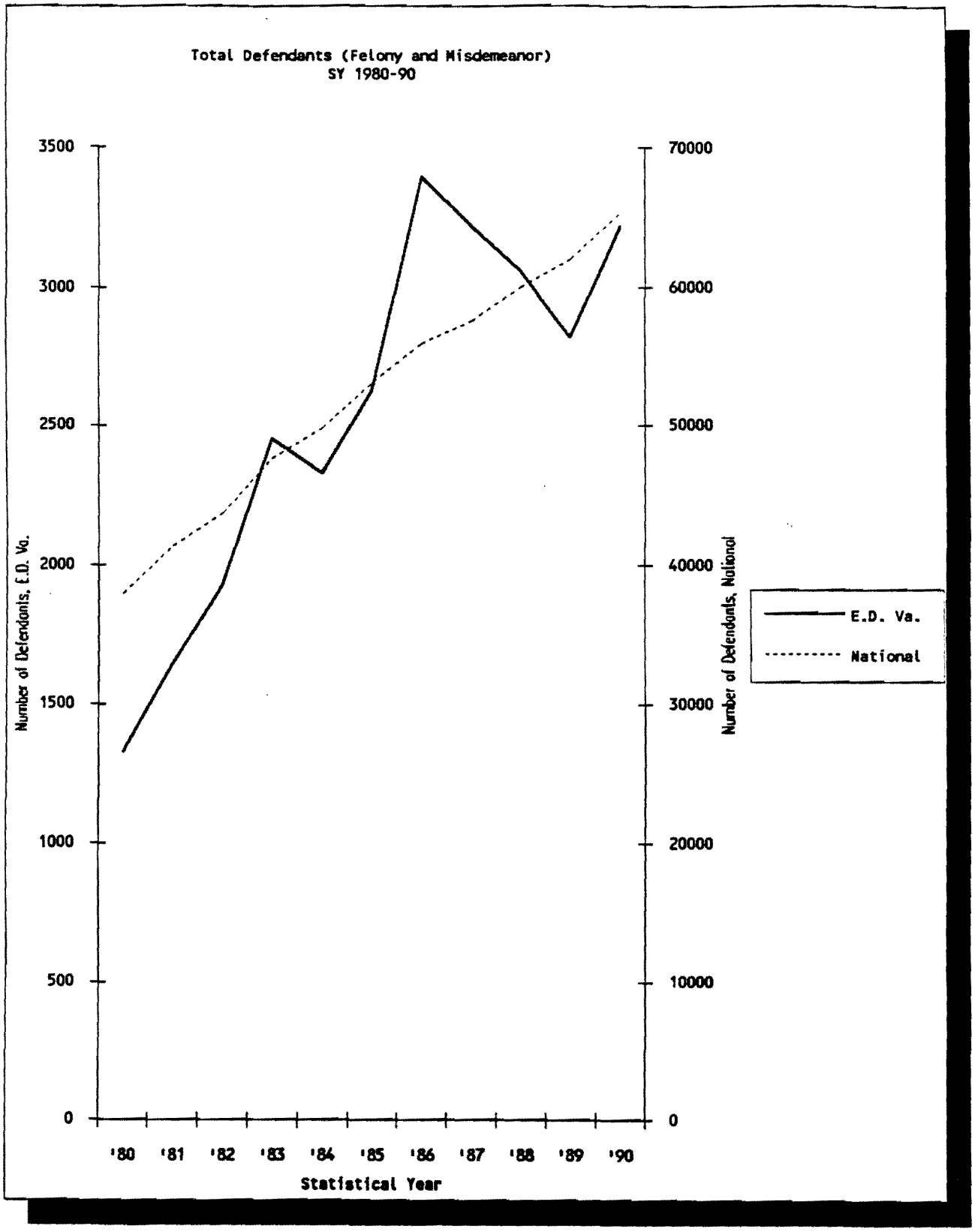
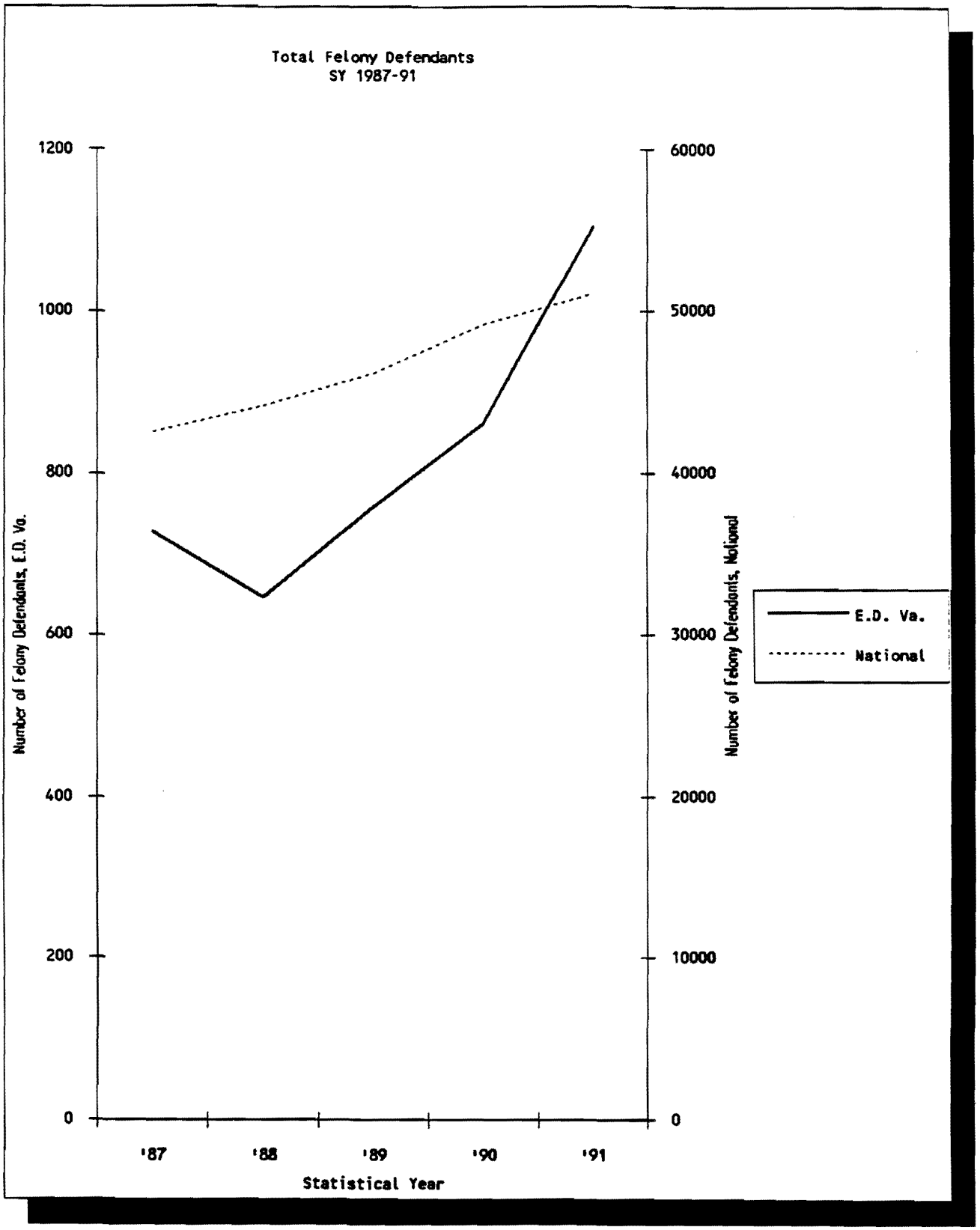

Total Defendants (Felony and Misdemeanor)
SY 1980-90
Number of Defendants, E.D. Va.
Number of Defendants, National
3500
3000
2500
2000
1500
1000
500
0
70000
60000
50000
40000
30000
20000
10000
0
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year
E.D. Va.
National

Figure 18


Total Felony Defendants
SY 1987-91
1200
1000
800
600
400
200
0
60000
50000
40000
30000
20000
10000
0
Number of Felony Defendants, E.D. Va.
Number of Felony Defendants, National
'87
'88
'89
'90
'91
Statistical Year
E.D. Va.
National

defendants were prosecuted in the Eastern District of Virginia. This is an increase of 51% from SY 1987. Nationally, a total of 21148 felony drug defendants were prosecuted in SY 1990, an increase of 36% from SY 1987.

Figure 19 illustrates the trend in the number of felony drug defendants prosecuted during SY 1987-91 nationally, and in the Eastern District of Virginia.

Drug defendants as a percentage of all defendants. Drug defendants represented 34% of all felony defendants in the Eastern District of Virginia in SY 1990. This compares to 43% nationally. Drug defendants have generally represented a smaller percentage of total defendants in this district than the national average. Figure 20 shows the trend in the percentage of all defendants who were drug defendants for the Eastern District of Virginia and nationally for SY 1987-91.

Filing to disposition rates. The median filing-to-disposition rate for a criminal case in the Eastern District of Virginia has varied slightly from year to year, ranging from a low of 1.8 months to a high of 3.8 months, but has consistently been well below the national median. Figure 21 shows the trend in median filing-to-disposition rate for the Eastern District of Virginia for SY 1971-90, and the national trend.

ii. Per judgeship statistics and comparison to national figures. As is true in the civil context, per judgeship statistics concerning criminal filings can be helpful in assessing an individual district court's workload over time, and

Figure 19

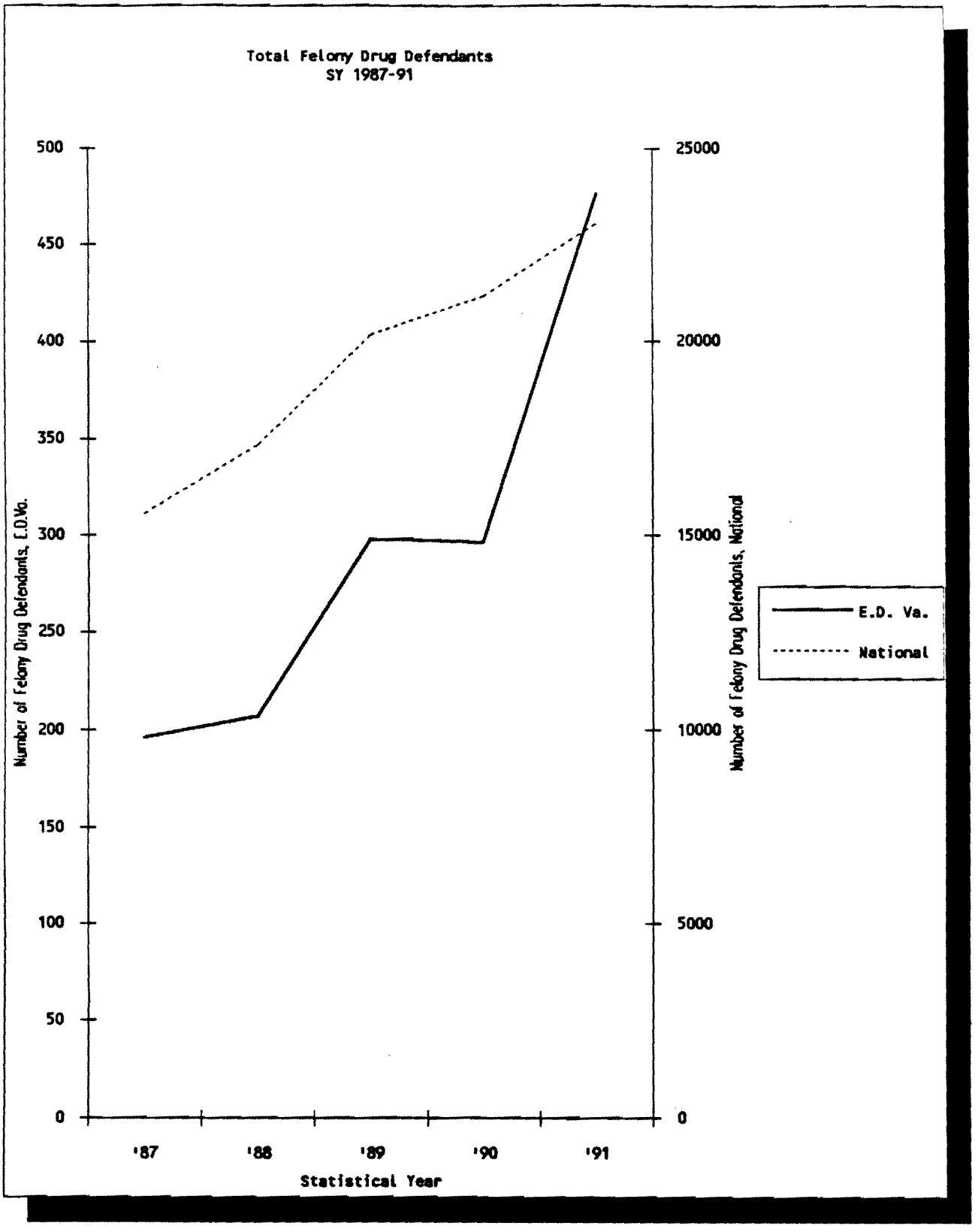

Total Felony Drug Defendants
SY 1987-91
Number of Felony Drug Defendants, E.D.Va.
Number of Felony Drug Defendants, National
500
450
400
350
300
250
200
150
100
50
0
25000
20000
15000
10000
5000
0
'87
'88
'89
'90
'91
Statistical Year
E.D. Va.
National

Figure 20

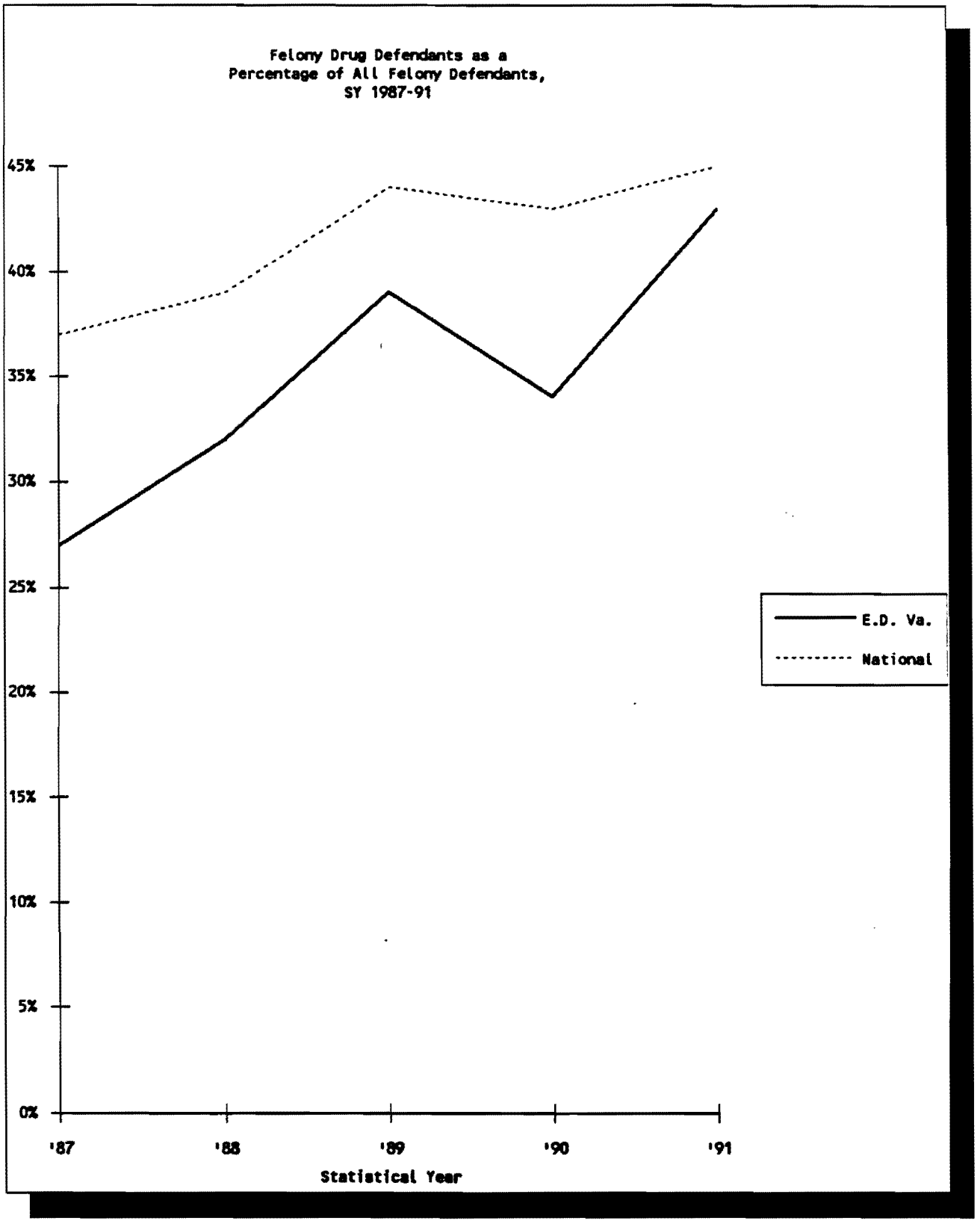
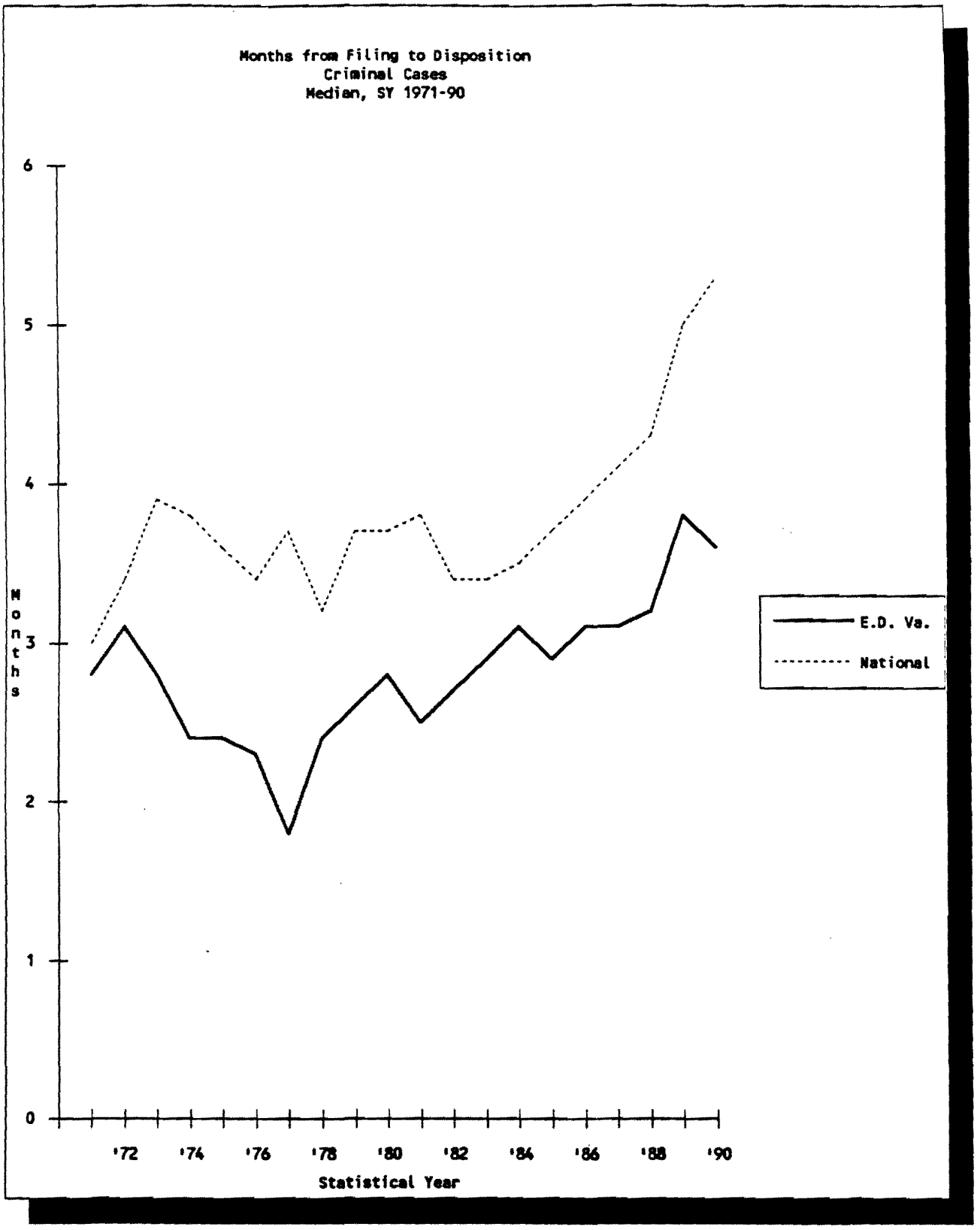

Felony Drug Defendants as a
Percentage of All Felony Defendants,
SY 1987-91
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
'87
'88
'89
'90
'91
Statistical Year
E.D. Va.
National

Figure 21


Months from Filing to Disposition
Criminal Cases
Median, SY 1971-90
6
5
4
3
2
1
0
Months
'72
'74
'76
'78
'80
'82
'84
'86
'88
'90
Statistical Year
E.D. Va.
National

for comparison purposes. This section compares recent trends in the Eastern District's criminal workload statistics to the national trend.

Criminal felony filings per judgeship. In SY 1990 there were 72 criminal felony filings per judgeship in the Eastern District of Virginia. This is an increase in the per judgeship criminal caseload of 22% from 1989 and of 80% from 1980. It compares to a national per judgeship criminal felony filings figure of 58 cases. Figure 22 shows the trend in criminal felony case filings per judgeship for the Eastern District of Virginia, and the national trend, for SY 1980-90.

Criminal defendants per judgeship. In SY 1990, 358 defendants (felony and misdemeanor) per judgeship were prosecuted in the Eastern District of Virginia. This is an increase of 14.4% from 1989, of 22.6% from 1985, and of 115.7% from 1980. This is more than twice the national figure of 166 defendants prosecuted per judgeship. Figure 23 illustrates the trend in total defendants prosecuted per judgeship for the Eastern District of Virginia, and the national trend, for SY 1980-90.

A total of 96 felony defendants were prosecuted per judgeship in the Eastern District of Virginia in SY 1990. This is an increase of 18.5% since SY 1987. It compares to national figure of 85 felony defendants per judgeship. Figure 24 illustrates the trend in felony defendants prosecuted per judgeship for the Eastern District of Virginia and nationally during SY 1987-91.

Figure 22

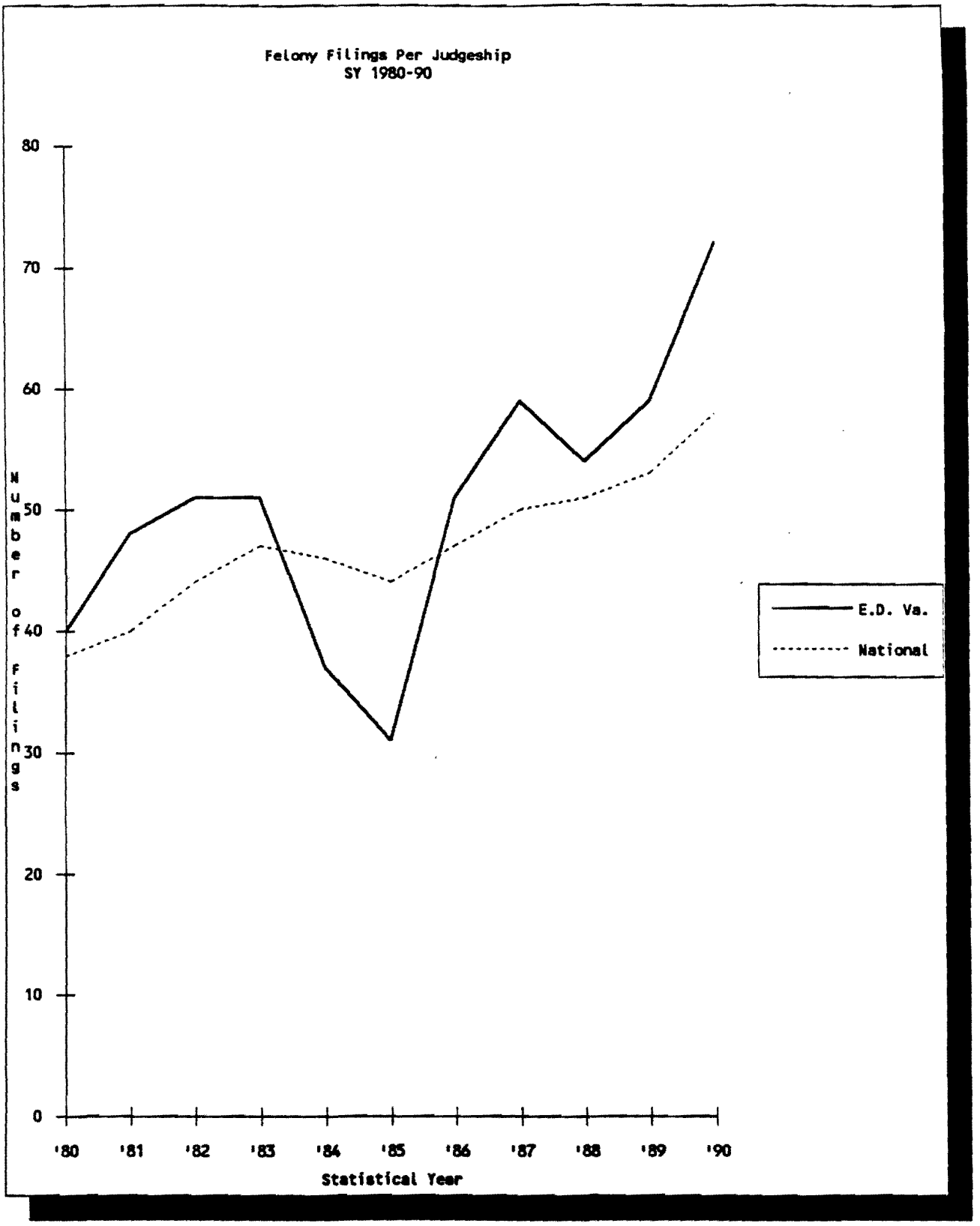

Felony Filings Per Judgeship
SY 1980-90
Number of Filings
80
70
60
50
40
30
20
10
0
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year
E.D. Va.
National

Figure 23

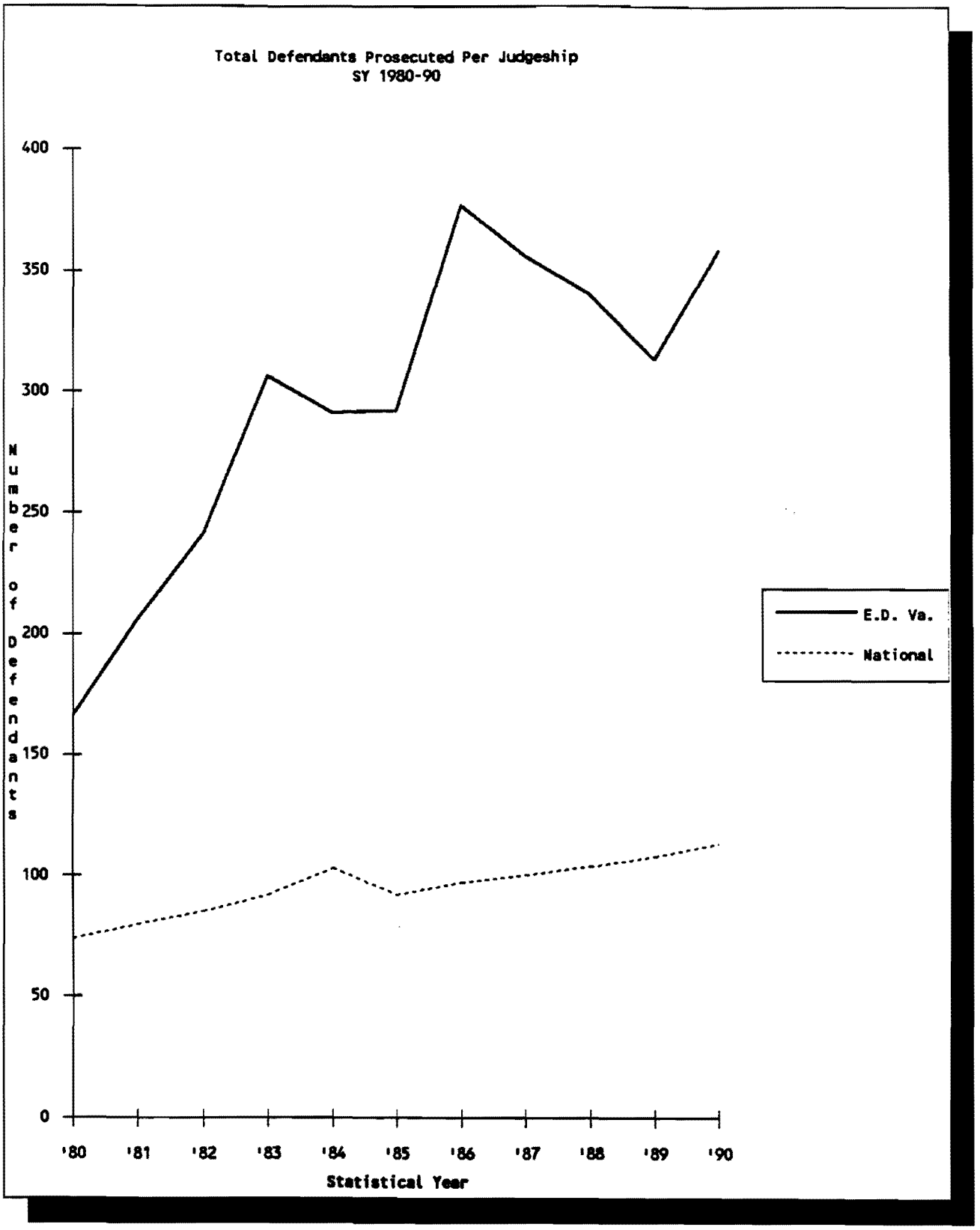
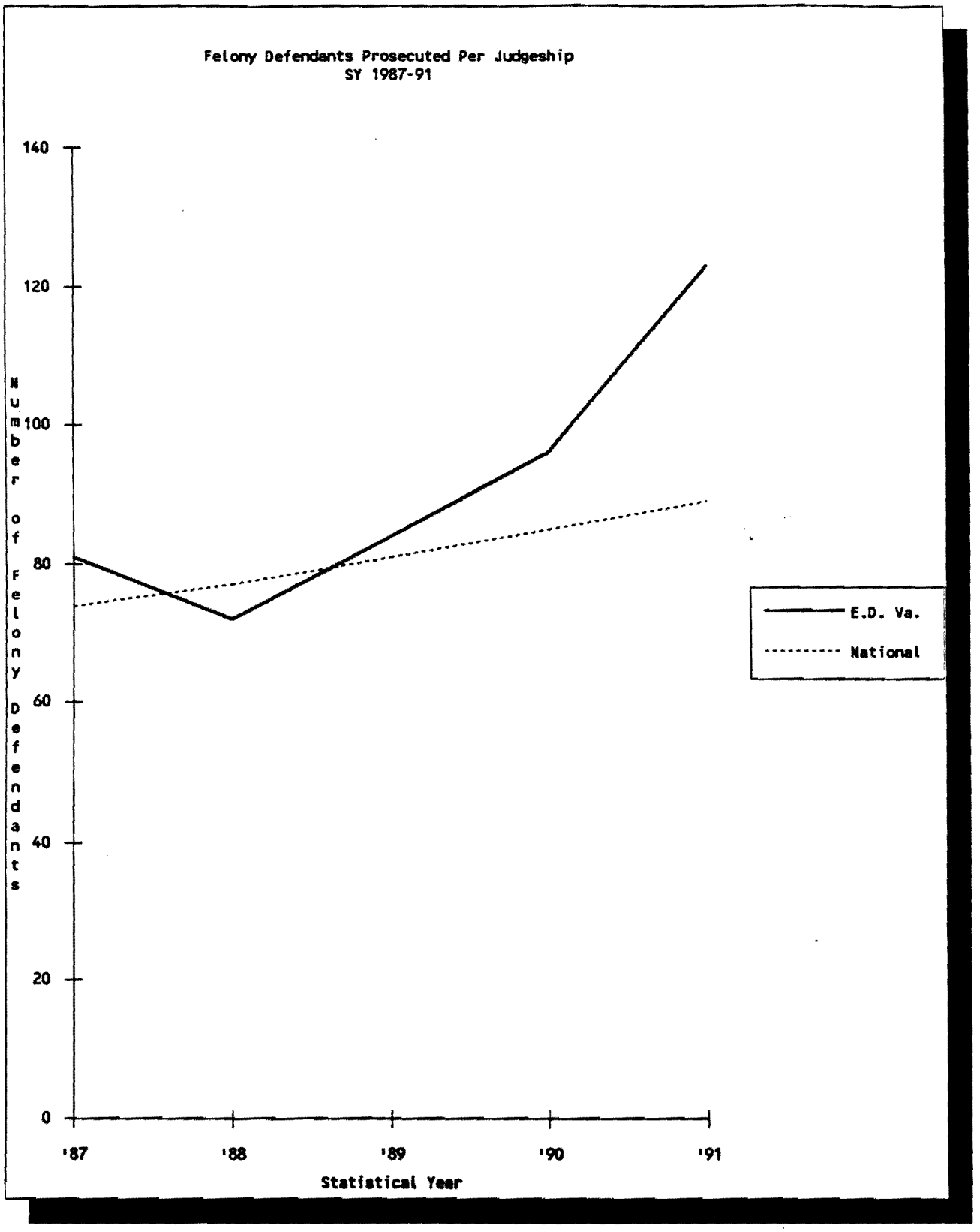

Total Defendants Prosecuted Per Judgeship
SY 1980-90
Number of Defendants
400
350
300
250
200
150
100
50
0
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year
E.D. Va.
National

Figure 24


Felony Defendants Prosecuted Per Judgeship
SY 1987-91
Number of Felony Defendants
140
120
100
80
60
40
20
0
'87
'88
'89
'90
'91
Statistical Year
E.D. Va.
National

Drug defendants per judgeship. A total of 33 felony drug defendants were prosecuted per judgeship in the Eastern District of Virginia in SY 1990. This is an increase of 50% since SY 1987. Nationally, 37 drug defendants were prosecuted per judgeship in SY 1990, an increase of 48% 1987. Figure 25 shows the trend in felony drug defendants prosecuted per judgeship for the Eastern District of Virginia, and the national trend, for SY 1987-91.

3. Trends in Court Resources

a. District Judgeships

The Eastern District of Virginia currently has 10 district judgeships, one of which is a temporary judgeship allocated to the court under section 203(b)(2)(C) of the Federal Judgeship Act of 1990. The district had nine judgeships from SY 1985 through December 1, 1990, eight judgeships from SY 1979 through SY 1984, and six judgeships prior to that time.

b. Judicial Vacancies

The Eastern District of Virginia has experienced significant judicial vacancies during the past two decades. During the period SY 1985-90, a total of 75.6 judgeship months were vacant. This is the equivalent of more than six full time judges absent for one year, and represents 11.7% of the total judgeship months allocated to the Eastern District of Virginia during that time period. During the period SY 1976-90, the percentage of vacant judgeship months in the Eastern District of Virginia exceeded the national average.

Figure 25

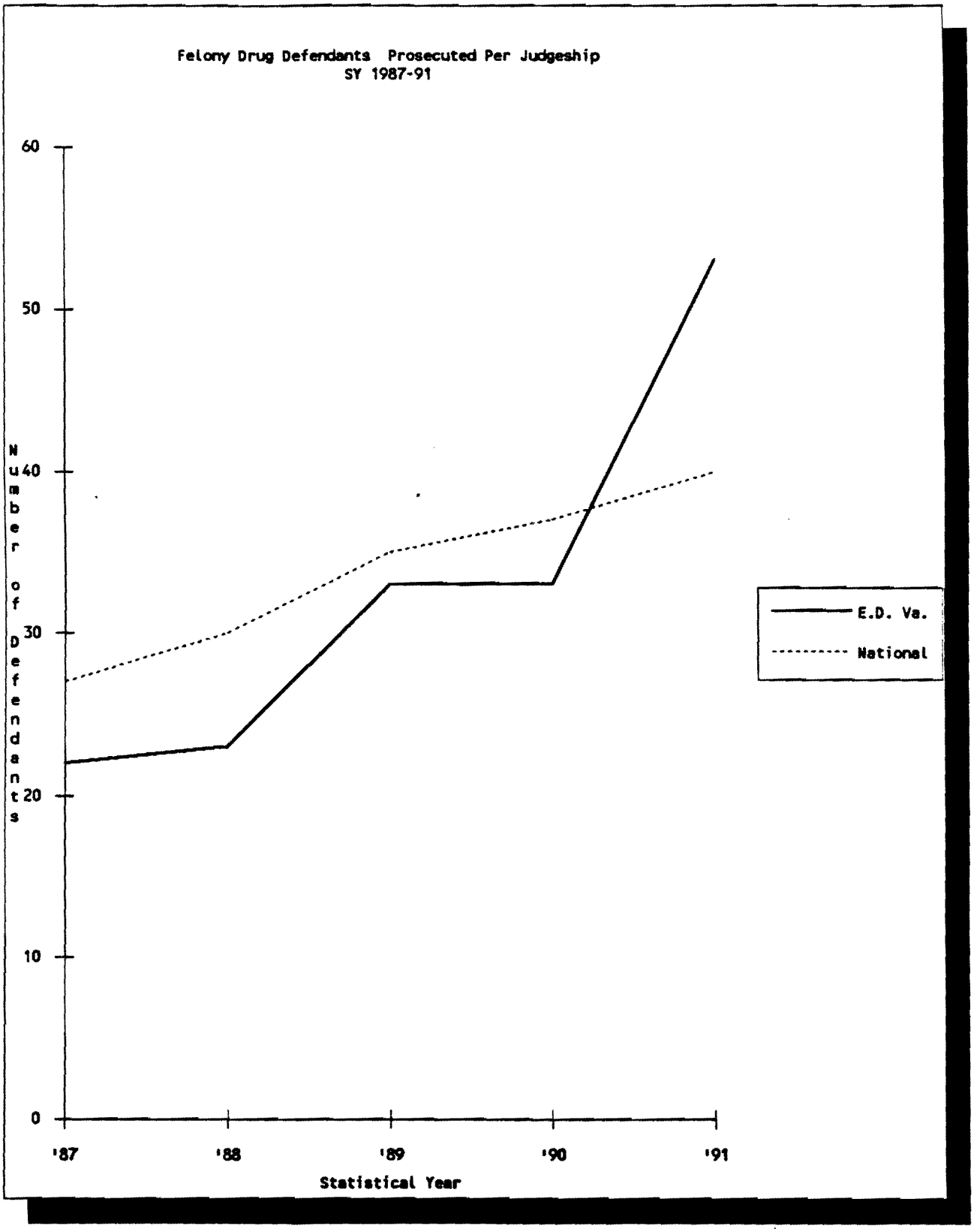

Felony Drug Defendants Prosecuted Per Judgeship
SY 1987-91
Number of Defendants
60
50
40
30
20
10
0
'87
'88
'89
'90
'91
Statistical Year
E.D. Va.
National

Figure 26 shows the trend in judicial vacancies for the Eastern District of Virginia during SY 1971-90. Figure 27 expresses this trend as a percentage of total judgeship months, and compares the trend in this district to the national trend.

c. Senior District Judges

The senior district judges of the Eastern District of Virginia have historically been actively involved in case management activities and have usually maintained full or near-full caseloads. From SY 1974-1980, two senior judges were active on the court. The court had three senior judges during SY 1981-82, two senior judges from SY 1983-85, three during SY 1986, and four from SY 1987-91. The court currently has five senior judges.

B. Cost and Delay

1. Assessment of Conditions

After careful consideration of the information set forth above, and based on their collective experience as lawyers or litigants in the federal district court for the Eastern District of Virginia and the input of numerous bar organizations representing the district's litigation constituencies, the members of the Advisory Group have concluded unanimously that the district does not have a problem either with undue expense, or with delay, associated with its handling of its civil caseload. In arriving at this conclusion, the Advisory Group has made the following findings concerning the civil and criminal caseload and case management procedures within the district:

Figure 26

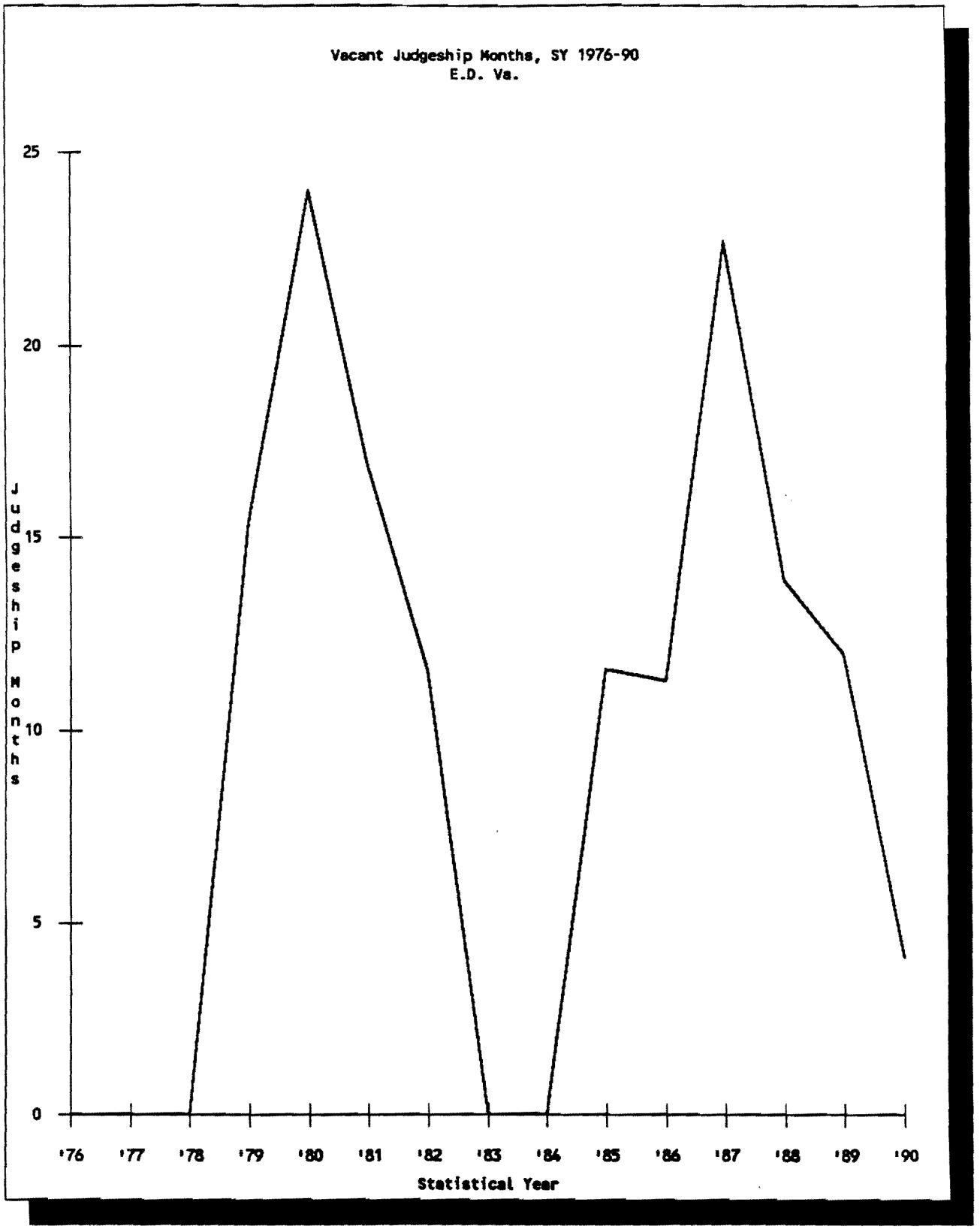
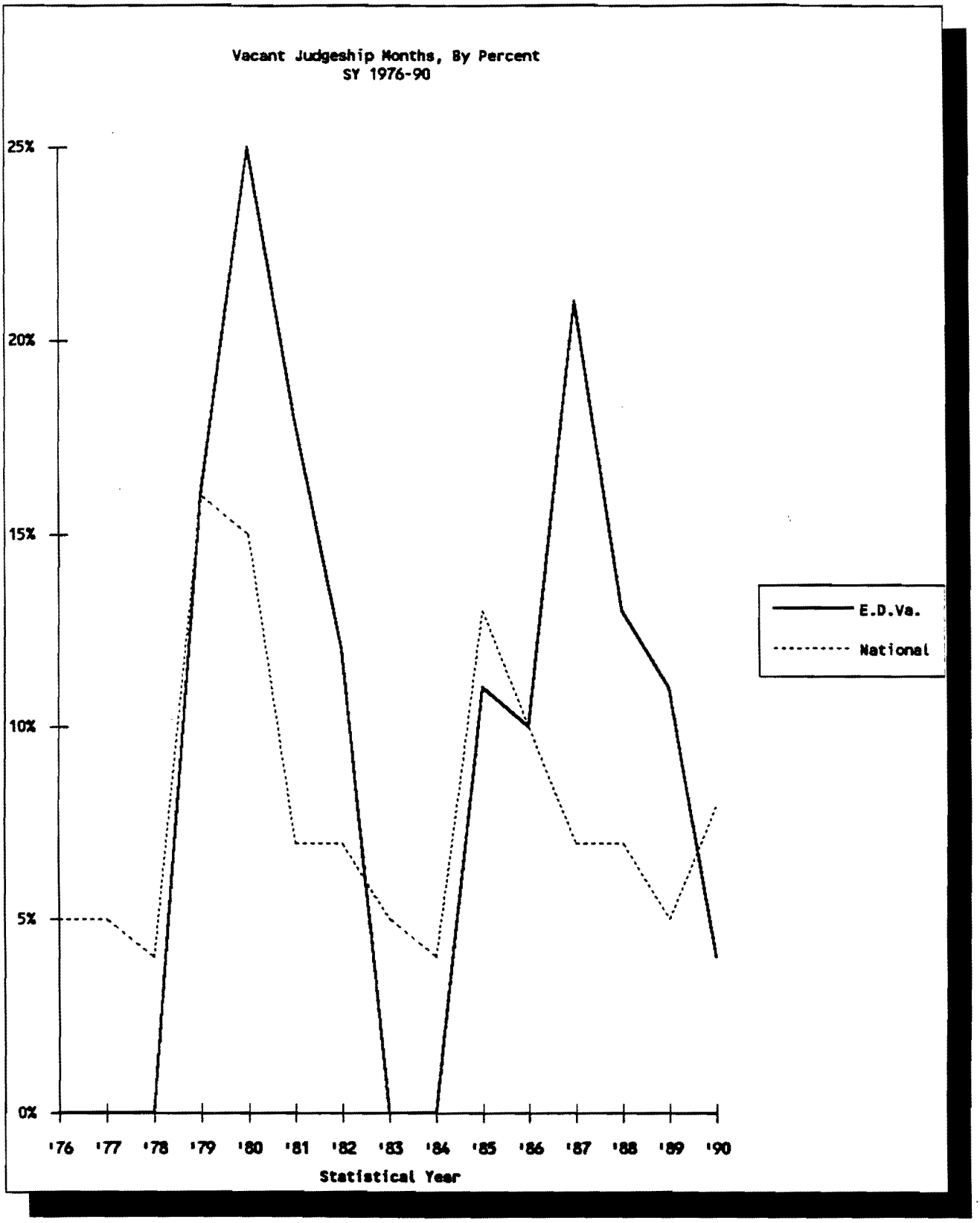

Vacant Judgeship Months, SY 1976-90
E.D. Va.
Judgeship Months
25
20
15
10
5
0
'76
'77
'78
'79
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year

Figure 27


Vacant Judgeship Months, By Percent
SY 1976-90
25%
20%
15%
10%
5%
0%
'76
'77
'78
'79
'80
'81
'82
'83
'84
'85
'86
'87
'88
'89
'90
Statistical Year
E.D.Va.
National

1. The United States District Court for the Eastern District of Virginia currently has, and historically has had, a civil caseload that is more burdensome, in terms of number and complexity of the cases, than the national average.

2. The court currently has, and historically has had, a criminal caseload that is more burdensome, in terms of number of cases filed and number of defendants prosecuted, and at least as burdensome, in terms of the complexity of the cases, as the national average.

3. Case management figures for the Eastern District of Virginia show that the court has significantly shorter disposition rates with respect to its civil and criminal cases than the national average. These shorter disposition rates include, for civil cases, a shorter median time from filing to disposition, a shorter median time from issue to trial, and a shorter indexed average lifespan, than the national average; and for criminal cases, a shorter median time from filing to disposition.

4. Judges in the Eastern District of Virginia try significantly more cases than the national per judgeship average.

5. Civil cases filed in the Eastern District of Virginia are virtually always set for a trial date that is no longer than six months after the date of filing, and most cases are tried approximately four to five months after filing.

6. The reporting requirements of the CJRA and the shift to automation have created a need for additional resources in the divisional clerks' offices.

6. The local rules, standing orders, and internal case management procedures of the Eastern District of Virginia concerning civil case management have been consciously and explicitly designed to minimize the expense and delay commonly associated with federal civil litigation, while maintaining an acceptable level of justice.

7. Any effort to further reduce disposition rates or accelerate trial dates in the Eastern District of Virginia would likely impair the judges' ability to maintain the level of justice now provided to litigants in the district.

2. Comment on the Perceived Causes of Expense and Delay

The Advisory Group for the Eastern District of Virginia has concluded that the district does not have a problem with undue expense or delay with respect to its civil or criminal caseload and thus has no reason to identify any causes for expense and delay in the district as contemplated by section 472(c)(1)(C) of the CJRA and the Judicial Conference's draft recommended format for Reports. Although the Group does not wish to speculate on the causes of expense and delay in other districts, it would like to comment briefly why it believes this particular court has been so successful in handling its caseload. First and foremost, the judges in this district are committed to handling the district's civil and criminal caseloads in a fair and efficient manner.

They have developed procedures, embodied in their local rules, standing orders, and internal procedures, that are specifically aimed at reducing expense and delay to the extent warranted by the needs of the district and that are consistent with achieving the ends of justice. Second, the court has benefitted from its senior judges' desire to maintain significant caseloads. Third, the court has highly qualified magistrate judges who assume a substantial portion of the civil case management responsibilities, particularly with respect to criminal, prisoner, and discovery matters. Fourth, the district's Clerk of Court and deputy clerks are themselves committed to the timely disposition of cases pending in the court, and often work above and beyond the call of duty to ensure the orderly processing of the civil and criminal caseloads. Finally, attorneys practicing in this district respect the court and its processes, understand the court's rules, and follow them.[15]

Because of the district-wide commitment to speedy and just administration of the caseload and the contributions of the district's senior judges and magistrate judges, such matters as the case mix, judicial vacancies, and the actions of the legislative and executive branches have had very little impact on the court's case management statistics. For example, the court has addressed the onslaught of asbestos litigation by developing

---

[15] Interestingly, the clerk's offices in each of the four divisions independently reported that the only attorneys who appear to have difficulty complying with the court's rules and procedures are out-of-district counsel who are unaccustomed to practicing in a court such as the Eastern District of Virginia.

special procedures especially suited to the needs of those cases. The result has been that even a mass filing of 1100 such cases in a single month, which occurred in February 1990, has had no discernable impact on the court's overall management statistics. Likewise, the district has experienced significant judicial vacancies during the past two decades. The nature of the court's case management procedures allow other judges to absorb any workload overflow that might result from such vacancies.

Perhaps the best proof that the court has coped far better than most with what is put before it stems from its criminal caseload. The court has a heavier criminal caseload than the national average. The total number of defendants prosecuted per judgeship is three times the national average, and the number of felony defendants prosecuted per judgeship well exceeds the national average. In other words, the Eastern District of Virginia, like other courts, must react to the effects of congressional and executive actions whose result is to vastly increase the workload of the federal courts. Yet the filing to disposition rate for criminal cases is one of the lowest in the federal judicial system, and the court inevitably meets the demands of the federal Speedy Trial Act in processing these cases. But, unlike in other district courts, increases in the criminal caseload resulting from the "drug war," and possible increases in the numbers of defendants going to trial as a result of the Federal Sentencing Guidelines, have had no impact on the court's civil case management statistics.

In the view of the Advisory Group, the solution to the "crisis" in federal court civil litigation is not tracking proposals, alternative dispute resolution, or other esoteric case management devices. Firm judicial control of the docket, as envisioned in Rule 16 of the Federal Rules of Civil Procedure, is the key to reduced expense and delay in federal civil litigation. Those who are experienced in litigation know, though they may not always admit it, that attorneys and their clients sometimes benefit from delay, and do not always have an incentive to insure that cases move expeditiously through the pretrial stage. They also know that the vast majority of cases will settle once a trial is imminent. The pretrial procedures of the Eastern District of Virginia stem, in a very real sense, from a recognition of these two premises.[16]

IV. Recommendations to the Court and Their Basis

A. Proposed CJRA Expense and Delay Reduction Plan

The Advisory Group unanimously recommends that the federal judges of the Eastern District of Virginia adopt existing case management procedures, as embodied in the district's local rules, standing orders, and internal procedures, as its CJRA Expense and Delay Reduction Plan. As this Report has thus far made

---

[16] Concern has been expressed in some quarters that the standard of justice administered in a district with a fast-moving docket may be less than that available when the docket moves slowly. We are unaware of any empirical study focusing on this hypothesis. After each district court has filed its CJRA Plan, the Federal Judicial Center, the Administrative Office, Congress, or the American Bar Association may wish to study this issue. Any model plan therafter formulated pursuant to the CJRA should take the results of such a study into account.

abundantly clear, these procedures have been effective in controlling litigation expenses and reducing delays, and thus fulfill the statutory mandate. It is the consensus of the Advisory Group that existing procedures have made the Eastern District of Virginia a paradigmatic federal district court that should be regarded as a model for the rest of the nation.

During the course of its deliberations, the Advisory Group has discussed a number of proposals for minor modification of the court's rules and procedures. The Group believes that these proposals warrant consideration by the judges of each division prior to its final submission of a CJRA Plan. Accordingly, the Advisory Group recommends that each division and the court as a whole consider these proposals and, to the extent they are thought to have merit, initiate procedures to implement any changes prior to December 31, 1991. These proposals include the following:

(1) Promulgate a district-wide rule or standing order clarifying that a party or the parties jointly may propose to the court a discovery schedule that is either shorter or longer than the standard discovery schedule, as required by the needs of a particular case.

(2) Promulgate a rule or order that would allow parties jointly to request a settlement/mediation conference at which a judge or magistrate judge would preside. Such conference would never be mandatory, and could be invoked only upon a joint motion by the parties.

(3) Amend E.D. Va. Local Rule 11.1 to clarify that nothing in that rule should be deemed to preclude attorneys from approaching a judge or magistrate telephonically when discovery matters needing prompt judicial attention arise in a case.

(4) Consider adopting standard initial and pretrial orders for use throughout the district.

(5) Consider adopting an individual docket system district-wide.

Finally, the Advisory Group recommends that the judges of the Eastern District of Virginia file the district's Expense and Delay Reduction Plan by December 31, 1991. Filing the Plan by that date will give the court access to certain funding that will ensure that it can continue to operate in an efficient and economical way. The Advisory Group perceives a need for one additional deputy clerk for each of the four divisional offices. This additional clerk will help ensure that the increasing demands being placed on the divisional offices by the shift to automation and the CJRA itself do not impair these offices' ability to perform their responsibilities in connection with case management.

B. Roles of Court, Litigants, and Bar in Plan

The Eastern District of Virginia's existing procedures have been successful precisely because they envision a role for the court, the litigants, and the bar in reducing expense and delay. These procedures entail strict judicial control over all phases of the litigation, demand that attorneys know and comply with the

local rules and standing orders, and requires litigants to cooperate in the discovery process and other phases of the pretrial process in many significant ways. Thus, these procedures are faithful to the congressional mandate that each court's CJRA Plan "include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts." 28 U.S.C. § 472(c)(3).

C. Compliance with the Requirements of Section 473 of the Civil Justice Reform Act

Sections 473(a) and (b) of the CJRA provide that each district court, in consultation with the Advisory Group, "shall consider and may include" six specific principles and guidelines of litigation management and cost and delay reduction in formulating a proposed Expense and Delay Reduction Plan to recommend to the district court. The six statutory principles are: (1) systematic, differential treatment of civil cases depending on their relative complexity, see 28 U.S.C. § 473(a)(1); (2) early and ongoing control of the litigation process by a judicial officer, see 28 U.S.C. § 473(a)(2); (3) use of discovery-case management conferences in complex cases, see 28 U.S.C. § 473(a)(3); (4) encouraging discovery through voluntary and cooperative means, see 28 U.S.C. § 473(a)(4); (5) requiring counsel to meet and attempt to resolve discovery disputes informally prior to the filing of discovery-related motions, see 28 U.S.C. § 473(a)(5); and (6) authorization to refer appropriate cases to alternative dispute resolution, see 28 U.S.C. §

473(a)(6). The six statutory techniques for implementing these principles are: (1) a requirement that counsel submit a discovery-case management plan prior to the initial pretrial conference, see 28 U.S.C. § 473(b)(1); (2) a requirement that each party be represented at each pretrial conference by an attorney having binding authority in connection with matters to be discussed at the conference, see 28 U.S.C. § 473(b)(2); (3) a requirement that all requests for extension of discovery deadlines and postponement of trial dates be signed by the party as well as the attorney making the request, see 28 U.S.C. § 473(b)(3); (4) a program for early neutral evaluation,[17] see 28 U.S.C. § 473(b)(4); and (5) a requirement that a party representative with binding settlement authority be available at any settlement conference, see 28 U.S.C. § 473(b)(5).

Section 472(b)(2) requires that the Advisory Group state in its Report to the district court how the proposed Plan complies with the requirements of section 473(a) and (b). The Judicial Conference has interpreted section 472(b)(2) to mean that the Report must show how the proposed Plan incorporates these principles and techniques, and, if the proposed Plan does not

---

[17] For a description of early-neutral evaluation, see Working Paper: Alternative Dispute Resolution in the Federal Courts 18-20 (included in Appendix 11 of this Report) [excerpted from Dayton, The Myth of Alternative Dispute Resolution in the Federal Courts, 73 Iowa L. Rev. -- (1991) (forthcoming); Brazil, A Close Look at Three Court-Sponsored ADR Programs: Why They Exist, How They Operate, What They Deliver, and Whether They Threaten Important Values, 1990 U. Chi. Leg. F. 303.

incorporate any particular technique or principle, why the Advisory Group has decided not to include it.

This section summarizes the Advisory Group's views on these issues.

1. Statutory Principles and Guidelines for Litigation Management

a. Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) requires each district court, in consultation with the Advisory Group, to consider incorporating a procedures for "systematic, differential treatment of civil cases" depending on their relative complexity. To the extent that this provision envisions that the court should adopt a case "tracking" system such as that discussed in the Brookings Institution's report on expense and delay in the federal courts, see And Justice for All 14-21 (Brookings Institution 1989), the Advisory Group does not believe that such a system is either needed or desirable in this court. The Group notes, however, that the court's existing procedures permit and encourage attorneys and judges to accommodate differences in case complexity through the Rule 16 scheduling order. In addition, the court has developed special procedures for asbestos-related and pro se prisoner litigation, procedures that would appear to fall within the broad language of section 473(a)(1).

b. Early and Ongoing Control of the Litigation Process By a Judicial Officer

Section 473(a)(2) directs the district court, in consultation with the Advisory Group, to consider mechanisms that

ensure "early and ongoing control of the litigation process by a judicial officer." Specifically, this section suggests procedures requiring the judicial officer to assess and plan the progress of the case, see 28 U.S.C. § 473(a)(2)(A), set an early an firm trial date no later than 18 months after filing, see 28 U.S.C. § 473(a)(2)(B); control the time spent on discovery and ensure compliance with time deadlines, see 28 U.S.C. § 473(a)(2)(C); and set time frames for filing and ruling on motions, see 28 U.S.C. § 473(a)(2)(D).

It is the Advisory Group's view that the procedures in place in the Eastern District of Virginia unquestionably incorporate this principle and its related suggestions. Indeed, the hallmark of this particular court is that its judges control and manage the litigation process. From their preliminary involvement in setting a discovery schedule, often within two weeks of issue, in the initial pretrial order to their absolute control over deadlines and the trial date, the judges make it clear to attorneys and litigants alike that they, and not the lawyers, control the court. Existing procedures that reflect this philosophy and practice include, but are not limited to, Local R. 3 and 4 (venue of actions filed within the district); Local R. 11 (governing motions practice); Local R. 11.1 and 21 (governing discovery practice); and Local R. 29 (authorizing use of magistrate judges to the full extent permitted by statute and the Federal Rules of Civil Procedure). Sanction provisions are enforced in this district in appropriate cases to ensure

compliance with the local rules and orders in individual cases. Judges almost always rule promptly on pretrial motions--within a matter of days with respect to motions submitted on the papers, or from the bench with respect to most motions having a hearing. Without exception, cases are set for trial at a very early stage in the litigation, and the trial date is virtually never more than six months from the filing date. The Advisory Group sees no need for the court to alter its existing procedures in order to accommodate the principles and guidelines contained in section 473(a)(2).

c. Use of Discovery-Case Management Conferences

Section 473(a)(3) provides that the district court, in consultation with the Advisory Group, must consider a procedure requiring one or more discovery-case management conferences in complex or other "appropriate" cases. Among the matters for consideration at such discovery-case management conferences are the propriety of settlement, see 28 U.S.C. § 473(a)(3)(A); identification of issues and possible bifurcation of discovery and trial pursuant to Fed. R. Civ. P. 42(b), see 28 U.S.C. § 473(a)(3)(B); a proposed discovery schedule, see 28 U.S.C. § 473(a)(3)(C); and a proposed schedule for the filing of and ruling on motions, see 28 U.S.C. § 473(a)(3)(C).

The Advisory Group does not believe that a general and formal requirement that such conferences take place is needed at this time. The Group notes that in the Newport News and Norfolk divisions, such a procedure effectively exists for all cases, in

the guise of the initial scheduling conference described in Part II.C. above. The district's requirement, articulated in Local R. 11.1(J), that counsel consult and attempt to resolve discovery disputes prior to filing discovery-related motions effectively ensures that periodic discovery management "conferences" occur throughout the discovery phase of the case. In all divisions the scheduling order will generally incorporate a discovery schedule geared to the specific case. To the extent that attorneys believe that a specific discovery schedule does not allow enough time to complete discovery, their concerns can be addressed through appropriate motions and requests for extensions of time in connection with that schedule, pursuant to Local R. 11 and 11.1.[18] As noted above, the initial scheduling order contains deadlines for the filing of pretrial motions that are tied to the date of either the final pretrial conference or the trial date, and the court inevitably rules promptly on these motions. Any requirement that one or a series of pretrial conferences be added to existing procedures would likely be counterproductive in terms of expense to litigants and the court.

d. Encouraging Discovery Through Voluntary and Cooperative Means

Section 473(a)(4) requires the district court, in consultation with the Advisory Group, to consider procedures that will encourage the litigants to engage in voluntary or cooperative discovery. Such procedures currently exist with

---

[18] The Advisory Group has recommended that this prerogative be explicitly clarified.

respect to asbestos-related litigation in the form of the court's standing order that certain relevant factual information be provided to the opposing party or parties as a matter of course. Beyond this, however, the Advisory Group sees no need for additional rules or procedures respecting discovery within the district. The court's existing rules and procedures concerning discovery are designed to facilitate cooperative discovery, and they have been largely successful in this endeavor, as the relative lack of discovery-related disputes arising within the district attests.

e. Informal Resolution of Discovery Disputes

Section 473(a)(5) requires consideration of a rule or procedure requiring that lawyers attempt to resolve discovery disputes informally before they file discovery related motions. Local R. 11.1(J) embodies this principle, and the Advisory Group recommends that the court retain this rule.

f. Authorization for Alternative Dispute Resolution

Section 473(a)(6) requires the Advisory Group to consider incorporating alternative dispute resolution (ADR) devices, including mediation, summary jury trial, mini-trial, early-neutral evaluation, and possibly arbitration, into the court's case management procedures. The Group does not believe such procedures are warranted in the district, for three reasons. First, there is no substantial evidence that the use of ADR decreases costs, improves disposition rates, or improves the quality of justice administered in civil cases. Second, ADR

procedures do not in most cases have any impact on the time spent in discovery, which is the principal cause of both expense and delay in the federal courts. Finally, and most importantly, the availability of a firm and early date for a trial before an Article III judge has eliminated the need for an alternative adjudicatory procedure in this district. It is the consensus of the Advisory Group that incorporating ADR procedures would likely increase costs and delays in this district without offering any significant benefits to the court or the litigants.

2. Statutory Techniques of Litigation Management

Section 473(b)(1) requires the court to consider five specific techniques of litigation management as means to incorporate the six principles and guidelines described above. Although the CJRA does not explicitly require the Report to explain to what extent the proposed Plan incorporates these techniques, the Advisory Group would like briefly to discuss these techniques and their relevance to the proposed Plan.

a. Discovery-Case Management Plans

Section 473(b)(1) states that the district court must consider implementing a requirement that counsel submit a discovery-case management plan prior to the initial pretrial conference. Such a requirement, if institutionalized, might be incompatible with many of the district's existing pretrial procedures, which in two of the four divisions sometimes involve entry of a Rule 16 scheduling order without consultation of

counsel. Accordingly, the Advisory Group does not recommend including such a procedure in the district's CJRA Plan.

b. Attendance at Pretrial Conferences of an Attorney Having Binding Authority

Section 473(b)(2) requires the district court to consider implementing a requirement that each party be represented at each pretrial conference by an attorney having binding authority in connection with matters to be discussed at the conference. It is the Advisory Group's view that a district-wide procedure or rule of this nature is unnecessary. The various scheduling orders utilized in the district explicitly or implicitly contemplate that counsel attending pretrial conferences be knowledgeable about the case, and in practice lead counsel generally do attend these conferences. Because there is no evidence that such a rule is necessary to ensure that pretrial conferences achieve their intended objectives, the Advisory Group does not believe conditions in the district warrant such a provision.

c. Signature of Party on All Requests for Extension

Section 473(b)(4) provides that the district court should consider adopting a requirement that all requests for extension of discovery deadlines and postponement of trial dates be signed by the party as well as the attorney making the request. As noted earlier, requests for extensions of time are rarely filed in this district, and they are even more seldom granted. Moreover, the Advisory Group believes that such a requirement would imply that attorneys in the district routinely request unnecessary extensions and routinely behave in a manner that is

inconsistent with their clients' interests. Because neither condition has historically existed or now exists in the Eastern District of Virginia, the Advisory Group does not believe that a rule of this nature is needed at this time.

d. Implementation of an Early Neutral Evaluation Program

Section 473(b)(4) requires the court to consider implementing a program for early neutral evaluation. The Advisory Group does not believe that the district needs such a program for many of the same reasons that it does not need alternative dispute resolution above, and should not include early neutral evaluation procedures in its Plan.

e. Availability of Party Representative at Settlement Conferences

Finally, section 473(b)(5) directs the court to consider a rule that requires a party with binding settlement authority to be available, either in person or by telephone, at any settlement conference. Inasmuch as the court does not usually hold such conferences, it is the Advisory Group's view that such a rule is not needed in the district and should not be included in the district's Plan.

The Advisory Group has recommended that the court consider devising a means for the attorneys jointly to request the scheduling of a settlement conference at which a judge or magistrate judge would preside. It would be appropriate to consider including in such a procedure a requirement that parties desiring such a conference must make available at the conference,

either in person or by telephone, a representative having authority to settle the case in behalf of the party.

D. Recommendation Concerning Adoption of Proposed or Model Plan

Each federal district court has authority to formulate its own Expense and Delay Reduction Plan, or to indicate its intention to adopt a model Plan formulated by the Judicial Conference pursuant to 28 U.S.C. § 477. As noted in Part III.A. above, the Civil Justice Reform Act Advisory Group for the Eastern District of Virginia unanimously recommends that the Court adopt its existing local rules, standing orders, and internal operating procedures, as modified by the measures, rules, and programs described herein, as its CJRA Expense and Delay Reduction Plan. The Advisory Group believes that these existing rules and procedures, together with the proposed procedures, are more likely to address the particular needs and concerns of judges, litigants, and lawyers in the Eastern District of Virginia than a generic Plan formulated at the national level.

V. Conclusion

The Advisory Group believes that the district judges' firm commitment to fair and efficient case management and the bar's cooperation in this endeavor are the principal reasons that the Eastern District of Virginia has consistently maintained its status as the most efficient and effectively-managed federal district court in the nation. Both the master docket system used in Alexandria, Newport News, and Norfolk, and the individual

docket system used in Richmond, entail significant judicial control over the litigation process to ensure that cases are disposed of in a timely manner. The clerks' offices in each division have worked to ensure that cases do not languish due to noncompliance with time deadlines imposed by statutes, court rules, and orders. Attorneys who practice in the district understand and comply with rule- and court-imposed deadlines and know that dilatory tactics will not be tolerated. Judges and magistrate judges generally rule promptly on nondispositive and dispositive motions the resolution of which is necessary to the fair and efficient disposition of civil cases. Because justice delayed is to a great extent justice denied, this efficiency has without a doubt contributed to the high quality of justice administered to litigants in the federal district court for the Eastern District of Virginia.

It has been an honor to serve as an Advisory Group to this court.

Appendix 1

Membership of Advisory Group

Mrs. Helen Blackwell
3128 17th Street, North
Arlington, VA 22201

Mrs. Blackwell is the Chairman of Virginia Eagle Forum, a grassroots organization devoted to influencing public policy at all levels to protect the interests of the traditional family, and author of the national Eagle Forum's internal newsletter. She has served twice as Chairman of the Arlington County Republican Party, and currently represents the Tenth Congressional District on the Republican State Central Committee. She is President of the Women's Club of Lyon Village, a member of the Daughters of the American Revolution, and a sustaining member of the Junior League of Washington. She has served on the Advisory Committee of the Johenning Baptist Center in the Anacostia area of Washington, D.C., and as a docent at the National Gallery of Art. She has been active in civic, political, charitable, and religious organizations in Northern Virginia and the District of Columbia since moving to the area in 1972. A letter more fully describing her activities is attached.

Dr. Edward E. Brickell
President
Medical College of Hampton Roads
700 Olney Road
Norfolk, VA 23507

Dr. Brickell is President of the Medical College of Hampton Roads and of Brickell Management Services, Inc., a management training and consulting firm. He has an A.B. from the College of William and Mary, an M.A. from the University of Chicago, a C.A.G.S. from the College of William and Mary, and an Ed.D. from the College of William and Mary. Dr. Brickell has been a superintendent of several public school systems within the Commonwealth of Virginia during the past three decades, and in that capacity was involved in numerous lawsuits in the federal district courts of Virginia. He has received many distinguished service awards for his work in education, and has served on several boards of directors and advisory boards. Dr. Brickell's complete resume is attached.

Professor A. Kimberley Dayton (Reporter to the Advisory Group)
University of Kansas School of Law
Green Hall
Lawrence, KS 66045

Professor Dayton is Professor of Law at the University of Kansas School of Law, where she has taught courses in civil and criminal procedure, intellectual property, and appellate advocacy. She received a B.A. from the University of Kansas in 1980, and a J.D. from the University of Michigan in 1983. She clerked for the Honorable James M. Sprouse, U.S. Court of Appeals for the Fourth Circuit, from 1983-84, and was an associate at the law firm of Shea & Gardner in Washington, D.C. from 1984-86. She has authored law review articles on criminal procedure, civil procedure, and alternative dispute resolution in the federal courts. Professor Dayton also serves as Co-Reporter to the Civil Justice Reform Act Advisory Group for the District of Kansas. She is a member of the District of Columbia and Virginia bars. Professor Dayton's complete resume is attached.

David G. Fiske, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20036

Mr. Fiske is presently a litigation partner at Shaw, Pittman, Potts & Trowbride, termporarily resident in the Washington, D.C. office. He was formerly a partner at the law firm of Hazel & Thomas, P.C., in Alexandria, Virginia. Mr. Fiske recived a B.A. degree from Johns Hopkins University in 1966 and a J.D. degree from Georgetown University in 1969. He served as Special Assistant to United States Senator Harry F. Byrd of Virginia from 1968-70 and 1973-74, and was a Captain, Judge Advocate Division of the United States Marine Corps from 11971-73. He is a member of numerous bar organizations, including the Virginia State Bar Association, and has served on several committees of that organization. He has been admitted to the Virginia and Maryland bars. Mr. Fiske has maintained a broad commercial litigation practice and represents a variety of financial institutions and business in the region in state and federal court. He has also defended a number of major national law firms in litigation. His complete resume is attached.

Robert T. Hall, Esq.
Hall, Markle, Sickels & Fudala
4010 University Drive
Fairfax, VA 22030

Mr. Hall is a partner in the law firm of Hall, Markle, Sickels & Fudala, P.C., in Fairfax, Virginia, where he limits his practice to plaintiffs' cases involving serious personal injury or death arising out of medical malpractice, products defects, or vehicular accidents. He received a B.S. in 1960 and a J.D. in 1964 from Georgetown University. After graduation from law school, he served for two years as Minority Counsel to the United States Senate District of Columbia Committee, and has been in private practice since 1966. He has lectured at Georgetown University and for the Judicial Conference of Virginia. He is a member of the Association of Trial Lawyers of America and of the Virginia Trial Lawyers Association Board of Governors, and was President of the latter in 1985-86. He is a member of the Virginia and District of Columbia bars. Mr. Hall's complete resume is attached.

Anne Holton, Esq.
Central Virginia Legal Aid Society
P.O. Box 12206
Richmond, VA 23241

Ms. Holton is a Senior Attorney with the Central Virginia Legal Aid Society, Inc., a non-profit organization that provides free legal services in civil matters to low-income people. She received a B.A. degree from Princeton University in 1980, and a J.D. degree from Harvard University in 1983. After graduation from law school, she served as a law clerk to the Honorable Robert R. Merhige, Jr. of the Eastern District of Virginia. She is on the Board of Directors of the Prison Visitation Project. She is a member of the Virginia Bar and has practiced in the Eastern District of Virginia federal district court for almost seven years. She has represented plaintiffs in federal court in employment actions and in a variety of civil rights cases during this period. Her complete resume is attached.

Henry E. Hudson, Esq.
Reed, Smith, Shaw & McClay
Suite 820
8201 Greensboro Drive
McLean, Va 22101-3604

Mr. Hudson has been Of Counsel in General Litigation at Reed, Smith, Shaw & McClay since July 1991. He served as United States Attorney for the Eastern District of Virginia from June 1986 through June 1991. He received a B.A. in 1969 and a J.D. in 1974 from American University. He has been Deputy Clerk of the Circuit Court of Arlington County, Assistant Commonwealth's Attorney for the Commonwealth of Virginia, and Commonwealth's Attorney of Arlington County. He has been active in numerous professional organizations, including the Virginia Commonwealth Attorney's Association, the Arlington County Bar Association, the National District Attorney's Association, and the Tidewater Association of Commonwealth's Attorneys. He was a member of the National Highway Safety Advisory Committee and Chairman of the United States Attorney General's Commission on Pornography. He is a member of the Virginia bar. Mr. Hudson's complete resume is attached.

Wayne Lustig, Esq.
Towne Point Centre
Norfolk, VA 23510

Mr. Lustig is a partner at Mays & Valentine and opened the firm's Norfolk office in 1979. He received a B.A. from the University of Pennsylvania in 1956 and an LL.B. from the University of Virginia in 1959. He began his legal career as an associate and then partner at the firm of Campbell, Lustig, & Hancock from 1960-79, was a member of Guy, Cromwell, Betz & Lustig, P.C., from 1979-89. He has practiced extensively in the state and federal courts within the Commonwealth of Virginia, with particular emphasis during the last two decades on complex federal criminal litigation such as government fraud, antitrust, securities fraud, income tax fraud, and trademark counterfeiting, and civil litigation such as securities claims, products liability, ERISA, and other complex business and commercial litigation. He is a Fellow of the American College of Trial Lawyers, and a member of the Fourth Circuit Judicial Conference and several bar organizations. He is a member of the Virginia bar. Mr. Lustig's complete resume is attached.

Henry H. McVey, III, Esq.
McGuire, Woods, Battle & Boothe
ne James Center
Richmond, VA 23219

Mr. McVey is a graduate of Hampden-Sydney College and obtained his law degree from the University of Virginia in 1960. He then joined one of the predecessor firms of McGuire, Woods, Battle & Boothe and has been a partner in that firm since 1966. His primary practice has been in the area of civil litigation, mostly on behalf of defendants. He has represented clients in products liability, negligence, fidelity and surety bond, and professional malpractice cases. His practice has taken him outside the Commonwealth of Virginia, but for the most part he has practice in state and federal court within the Commonwealth. He is a Fellow of the American Trial Lawyers, a member of the American Board of Trial Advocates, and a member of the Federal of Insurance and Corporate Counsel. He is the former president of the Virginia Association of Defense Attorneys and a former regional vice president and member of the board of directors of the Defense Research Institute. He is a member of the Richmond, Virginia, and American Bar Associations. Mr. McVey's complete resume is attached.

Kenneth Melson, Esq.
United States Attorney
for the Eastern District of Virginia
1101 King Street, Suite 502
Alexandria, VA 22314

Mr. Melson has been interim United States Attorney for the Eastern District of Virginia since July 1991. He received a B.A. degree from Denison University in 1970 and a J.D. degree from the National Law Center, George Washington University, in 1973. He served in the Office of the Staff Judge Advocate, United States Air Force, from 1973-76 and was honorably discharged on June 7, 1976. Since that time, he has variously been engaged in the private practice of law, served as Assistant, Chief Assistant, and Deputy Assistant Commonwealth's Attorney for Arlington County, Virginia, and served as Assistant and First Assistant United States Attorney for the Eastern District of Virginia. For more than a decade, he has served as a Lecturer in Law at the National Law Center, George Washington University, and has taught basic and advanced courses in the criminal law and criminal procedure areas. He has given many professional presentations and lectures on evidentiary and other issues in criminal law and procedures. He is a member of numerous professional organizations, including the Virginia and District of Columbia bars. Mr. Melson's complete resume is attached.

Neil A.G. McPhie, Esq.
Sr. Assistant Attorney General
Office of the Attorney General
Supreme Court Building
101 North Eighth Street
Richmond, VA 23219

Mr. McPhie is Senior Assistant Attorney General for the Commonwealth of Virginia, and Chief of the Equal Employment Opportunity and Personnel Law Sections of the Attorney General's office. He received a B.A. from Howard University in 1973 and a J.D. from Georgetown University Law Center in 1976. He was an attorney in the Appellate and Legal Counsel Divisions of the United States Equal Employment Opportunity Commission from 1976-82. He has served on numerous bar committees, and was Chair of the Virginia State Bar Special Committee to Reduce Litigation Costs and Delays from 1989-91. Mr. McPhie is a member of the District of Columbia, Iowa, New York, and Virginia bars, and has been admitted to practice in many federal and state courts. His complete resume is attached.

Mr. Vincent J. Thomas
986 Bellmore Avenue
Norfolk, VA 23504

Mr. Thomas is Chairman of Johns Brothers, Inc. He received a B.S from Virginia Military Institute in 1943, and served as a 1st Lieutenant in the United States Army Signal Corps from 1943-46. Mr. Thomas was Mayor of the City of Norfolk from 1976-84 and served as Chairman of the Standing Committee of Community Development, Housing, and Economic Development of the U.S. Conference of Mayors from 1983-84. He has been Chairman of the Norfolk City School Board and Chairman of the Virginia State Board of Education, and currently serves as a board member on several civic and educational organizations. His complete resume is attached.

Hon. Richard L. Williams
United States District Judge
for the Eastern District of Virginia
P.O. Box 2-AD
Richmond, VA 23205

The Honorable Judge Williams is United States District Judge for the Eastern District of Virginia, and is that court's designated representative to the Advisory Group. Judge Williams served in the Air Force from 1940-46. He received a Bachelor of Laws degree from the University of Virginia in 1951. He was engaged in the private practice of law from 1951-72, and left his law partnership at McGuire, Woods & Battle in 1972 to serve as Judge of the Circuit Court of the City of Richmond until 1976. He returned to McGuire, Woods & Battle as a partner in 1976. He was appointed to the federal bench in 1980. Judge Williams' complete resume is attached.

Appendix 2

Operating Procedures

The findings, conclusions, and recommendations set forth in this Report reflect the unanimous views of the membership of this Advisory Group. Accounts of the court's existing management procedures are based on the Advisory Group's experience with and discussion of these procedures at meetings held on March 18, July 22, and September 19 and on the Reporter's interviews with various court personnel, including deputy court clerks, judicial law clerks, and personnel in the United States Probation office and the United States Attorney's office.

Findings, conclusions, and recommendations related to the state of the court's civil and criminal dockets are based on the Group's assessment of civil and criminal workload statistics provided to the Group by the Federal Judicial Center, included in Appendix 10 to this Report, and its consideration of working papers on the civil and criminal workload prepared by the Reporter and incorporated in Parts III.A. and III.B. of this Report. Findings, conclusions, and recommendations related to the decision concerning the role of alternative dispute resolution into the case management process are based on the Group's consideration of a working paper on ADR in the federal courts prepared by the Reporter and discussed at the Advisory Group meeting of March 18; this working paper is attached as Appendix 11 of this Report.

Findings and conclusions related to the causes of expense and delay in the civil litigation process and the need for change in existing practices are based on the collective experience of the Group's membership and upon comments received by the Group in response to its invitation to numerous bar organizations to help the Group identify such causes and, to the extent such problems were thought to exist within the district, to propose solutions. These bar organizations are representative of virtually all attorneys and litigants currently engaged in civil and criminal litigation in the Eastern District of Virginia. A list of the organizations invited to comment is attached.

Findings and recommendations related to the need for an additional deputy clerk in each divisional office are based on the Advisory Group's determination that the reporting requirements of the CJRA and the shift to automation are diverting needed resources from the case management process.

David T. Stitt, Esq.
Chairman
Conference of Local Bar Associations
4100 Chain Bridge Road
Fairfax, VA 22030

Gerald M. West, Esq.
President
Accomac County Bar Association
P.O. Box 727
Chincoteague, VA 23336

Daniel C. Stanley, Jr., Esq.
President
Alexandria Bar Association
1800 Diagonal Road, 3rd Floor
Alexandria, VA 22314

Mark D. Cummings, Esq.
Arlington County Bar Association
3800 N. Fairfax Drive
Tower Villas, Suite 7
Arlington, VA 22203

V. Earl Stanley, Jr., Esq.
President
Brunswick County Bar Association
607 Windsor Avenue
Lawrenceville, VA 23868

Steven F. Shames, Esq.
President
Chesapeake Bar Association
2145 Old Greenbrier Road
Chesapeake, VA 23320

Stephen E. Baril, Esq.
President
Chesterfield-Colonial Heights
Bar Association
P.O. Box 1320
Richmond, VA 23210

C. Edward Roettger, Jr., Esq.
President
Colonial Heights Bar Association
1507 Boulevard
Colonial Heights, VA 23834

Robert C. Hudson, Esq.
President
Culpeper County Bar Association
115 South West Street
Culpeper, VA 22701

R. Neely Owen, Esq.
President
Emporia-Greensville Bar Association
204 S. Main Street
Emporia, VA 23847

Peter D. Greenspun, Esq.
President
Fairfax Bar Association
10605 A-5 Judicial Drive
Fairfax, VA 22030

Jeffrey W. Parker, Esq.
President
Fauquier County Bar Association
98 Alexandria Pike, Ste. 42
Warrenton, VA 22186

Gerald F. Daltan, Esq.
President
15th Judicial Circuit Bar Association
700 Princess Anne Street
Fredericksburg, VA 22401

G. Elliot Cobb, Jr., Esq.
President
Franklin-Southampton Bar Association
506 N. Main Street
P. O. Box 775
Franklin, VA 23851

Enos Richardson, Jr., Esq.
President
Fredericksburg Bar Association
518 Caroline Street
Fredericksburg, VA 22401

Gerald T. Massie, Esq.
President
Goochland County Bar Association
P.O. Box 56
Goochland, VA 23063

Howard J. Gould, Esq.
President
Hampton Bar Association
P.O. Box 3231
Hampton, VA 23663

William Rand Cook, Esq.
President
Hanover County Bar Association
P.O. Box 279
Mechanicsville, VA 23111

Claude C. Farmer, Jr., Esq.
President
Henrico County Bar Association
P.O. Box 468
Sandston, VA 23150

Lawrence D. Diehl, Esq.
President
Hopewell Bar Association
P.O. Box 170
Hopewell, VA 23860

William K. Barlow, Esq.
President
Isle of Wight County Bar Association
P.O. Box 190
Smithfield, VA 23430

Joseph P. Rapisarda, Esq.
President
Local Govt. Attorneys of Virginia
P.O. Box 27032
Richmond, VA 23228

David C. Culbert, Esq.
President
Loudoun County Bar Association
P.O. Box 87
Leesburg, VA 22075

W. W. Whitlock, Esq.
President
Louisa County Bar Association
Mineral, VA 23117

Leslie M. Osborn, Esq.
President
Lunenburg County Bar Association
P.O. Box 617
Kenbridge, VA 23944

David M. Davenport, Esq.
President
McLean Bar Association
1320 Old Chain Bridge Road
Suite 320
McLean, VA 22101

E. Warren Matthews, Esq.
President
Mecklenburg County Bar Association
P.O. Box 369
Bracey, VA 23919

James H. Hudson, Esq.
President
Middle Peninsula Bar Association
P.O. Box 231
West Point, VA 23181

Willard M. Robinson, Jr., Esq.
President
Newport News Bar Association
926 J. Clyde Morris Boulevard, #1
Newport News, VA 23601

Peter W. Rowe, Esq.
President
Norfolk & Portsmouth Bar Association
St. Paul Building, Suite 500
125 St. Paul's Boulevard
Norfolk, VA 23510

Francis P. Hajek, Esq.
Chairman
Young Lawyers Section
Norfolk & Portsmouth Bar Association
P.O. Box 11168
Norfolk, VA 23517-3789

Henry T. Taliaferro, III, Esq.
President
Northern Neck Bar Association
P.O. Box 277
Warsaw, VA 22572

Leslie W. Lickstein, Esq.
President
Northern Virginia Bankruptcy Bar
3141 Fairview Park Drive #400
Falls Church, VA 22150

Tonya Robinson, Esq.
President
Northern Virginia Black Attorneys Assn.
4110 Chain Bridge Road
Fairfax, VA 22030

Karen A. Crist, Esq.
President
Northern Virginia Women Attorneys Assn.
103 W. Broad Street, #400
Falls Church, VA 22046

William M. Cusmano, Esq.
President
Northern Virginia Young Lawyers Assn.
3923 Old Lee Highway, 62-B
Fairfax, VA 22030

Roger Gregory, Esq.
President
Old Dominion Bar Association
2509 E. Broad Street
Richmond, VA 23223

Robin Rattley, Esq.
President
Peninsula Bar Association
2909 Jefferson Avenue
Newport News, VA 23607

William D. Allen, III, Esq.
President
Petersburg Bar Association
P.O. Box 366
Dinwiddie, VA 23841

H. Duncan Garnett, Esq.
President
Piedmont Bar Association
18 Elm Street
Louisa, VA 23093

James W. Backus, Esq.
President
Portsmouth Bar Association
309 County Street, Suite 102
Portsmouth, VA 23704

Pamela S. Baskervill, Esq.
President
Prince-George Co. Bar Association
20 E. Tabb Street
Petersburg, VA 23803

Patricia F. Hammond, Esq.
President
Prince William Co. Bar Association
9116 Cetner Street
Manassas, VA 22110

Russell V. Palmore, Jr., Esq.
President
Bar Association of the City of Richmond
P.O. Box 1122
Richmond, VA 23208

David J. Johnson, Esq.
President
Richmond Criminal Bar Association
900 E. Main Street, Suite 801
Richmond, VA 23219

William G. Shields, Esq.
President
Richmond Trial Lawyers Association
P.O. Box 7439
Richmond, VA 23221

Virginia W. Powell, Esq.
President
Metro Richmond Women's Bar Association
P.O. Box 1535
Richmond, VA 23212

H. Lee Townsend, III, Esq.
President
Sixty Judicial Circuit Bar
300 S. Main Street
Emporia, VA 23847

Dennis L. Montgomery, Esq.
President
Suffolk Bar Association
506 N. Main Street
Suffolk, VA 23434

Connie L. Edwards, Esq.
President
Sussex County Bar Association
Route 1, Box 2
Jarrat, VA 23867

Edwin B. Baker, Esq.
President
Tenth Judicial Circuit Bar
P.O. Box 269
Keysville, VA 23947

Morgan Diane Brooke-Devlin, Esq.
President
Tidewater Women's Bar Assn.
7717 Idylwood Road
Falls Church, VA 22043

Doris L. Edmonds, Esq.
President
Twin City Bar Assn.
1201 Lake James Dr. #200
Virginia Beach, VA 23464

Delores M. Carrington, Esq.
President
Virginia Association of Black
Women Attorneys
Virginia Poverty Law Center, Inc.
9 West Main Street
Richmond, VA 23220

M. Pierce Rucker, Esq.
President
Virginia Association for
Defense Attorneys
Ross Building, Suite 1400
801 E. Main Street
Richmond, VA 23219

Allen C. Goolsby, Esq.
President
Virginia Bar Association
P.O. Box 1535
Richmond, VA 23212

John D. Hooker, Jr., Esq.
President
Virginia Beach Bar Association
P.O. Box 968
Norfolk, VA 23451

Jack L. Harris, Esq.
Executive Director
Virginia Trial Lawyers Association
700 E. Main Street
Suite 1510
Richmond, VA 23219

Vernon M. Geddy, Jr., Esq.
President
Williamsburg Bar Association
P.O. Drawer Q
Williamsburg, VA 23187

E. Thomas Cox, Esq.
President
York County-Poquoson Bar Assn.
739 Thimble Shoals Blvd.
Suite 105
Newport News, VA 23606

VIRGINIA EAGLE FORUM

HELEN BLACKWELL, CHMN.
3128 N. 17TH ST.
ARLINGTON, VA 22201
(703) 243-7660

SIC SEMPER TYRANNUS

GOD, FAMILY & COUN

July 11, 1991

The Hon. Richard L. Williams
U.S. District Judge
P.O. Box 2-AD
Richmond, Va. 23205

Dear Judge Williams:

In response to your memo of July 8, requesting information as to my general area of business and community activities for the files of the Advisory Group on Civil Justice Reform, I believe the following information will satisfy the requirement:

I have been active in civic, political, charitable and religious organizations in Northern Virginia and the District of Columbia since I married and moved to Arlington in 1972.

Currently, I am president of the Woman's Club of Lyon Village, a neighborhood club (federated), which is dedicated to charitable and cultural improvement of the community.

I am active in Columbia Baptist Church, where I serve as a substitute Bible teacher and member of the Stewardship Committee. For 8 years I have done volunteer work and served on the Advisory Committee of the Johenning Baptist Center in Anacostia, an inner city neighborhood of Washington, D.C.

I am a member of Eleanor Wilson Chapter of Daughters of the American Revolution, and a sustaining member of the Junior League of Washington, through which I was able to work as a volunteer docent at the National Gallery of Art for a number of years.

I am currently chairman of Virginia Eagle Forum, a grassroots organization devoted to influencing public policy at all levels to protect the interests of the traditional family as the best means of preserving our freedoms and our nation.

I have been active in the Republican Party, having served twice as Arlington County Chairman. I am currently Outreach Chairman, and am volunteering for several local candidates. I represent the Tenth Congressional District on the Republican State Central Committee.

Professionally, I write a bi-weekly, internal newsletter for the national Eagle Forum organization, entitled "News and Notes." I have previously worked at the Office of Economic Opportunity, the American Legislative Exchange Council, and in the Bond Department of a bank.

If further detail is needed, please let me know. I look forward to seeing you on July 22.

Yours sincerely,

Helen Blackwell

Helen Blackwell

EDWARD E. BRICKELL
6310 Atlantic Avenue
Virginia Beach, Virginia 23451
(804) 425-9262

EDUCATION

Ed.D., School Administration, College of William and Mary
C.A.G.S., School Administration, College of William and Mary
M.A., English, University of Chicago
A.B., English, College of William and Mary

PROFESSIONAL EXPERIENCE

August 1, 1988 to Present
President, Medical College of Hampton Roads

July 1, 1987 --
President, Brickell Management Services, Ltd., a
Management Training and Consulting Firm

July, 1966 to June, 1987 Virginia Beach Public Schools
Superintendent, March, 1968, to June, 1987
Assistant Superintendent, August, 1967, to March, 1968
Director, Secondary Administration, July, 1966, to August, 1987

July, 1965 to July, 1966 College of William and Mary
Administrative Assistant to the President and
Assistant Professor of English

November, 1962 to July, 1965 Franklin City Public Schools
Superintendent

September, 1951 to November, 1962 South Norfolk Public Schools
Superintendent, May, 1961, to November, 1962
Teacher, (3 years), Assistant Principal, Principal (7 years),
September, 1951 to May, 1961

SELECTED HONORS

Phi Beta Kappa
Kappa Delta Pi
Phi Delta Kappa
Phi Kappa Phi
Quill and Scroll

First Citizen Award, City of South Norfolk
First Citizen Award, City of Virginia Beach

Alumni Medallion, College of William and Mary

Leadership for Learning Award, American Association of School Administrators

Twice named in "Top 100 School Administrators in North America" by The Executive Educator

Medal of Honor, Daughters of the American Revolution
Friend to Children Award, School of Education, University of Houston
Alpha Kappa Alpha Award of Merit
Phi Delta Kappa Sorority Outstanding Achievement Award
Virginia Association of Elementary Principals Outstanding Contributions to Education Award
Service to Scouting Award
Virginia Beach Sports Club Service to Sports Award (two times)
Named State Education Administrator of Year, Virginia Association of Educational Secretaries
Named State Administrator of Year, Virginia Music Educators Association
Paul Harris Fellow, Rotary (honorary)
Great American Traditions Award, B'nai B'rith

Distinguished Service Awards:
- Darden School of Education, Old Dominion University
- Virginia Arts Alliance
- Virginia High School League
- Distributive Education Clubs of America
- Association of High School Athletic Directors

Honorary Life Memberships:
- National Congress of Parents and Teachers
- Virginia Congress of Parents and Teachers
- Virginia Young Audiences
- Virginia Industrial Arts Association
- Distributive Education Clubs of America

CURRENT MEMBERSHIPS AND COMMUNITY ACTIVITIES

Board of Directors:
- Virginia Beach Federal Savings Bank (Executive Committee)
- Princess Anne Service Corporation
- Future of Hampton Roads (Executive Committee)
- Jones Institute for Reproductive Medicine (Executive Committee)
- Diabetes Research Foundation (Executive Committee)
- Virginia Beach Foundation
- Greater Norfolk Corporation
- Biomedical Research Park
- Tidewater Tides Baseball Club (Tidewater Professional Sports, Inc.)

Board of Governors, Town Point Club
Chairman, Board of Governors, Shakespeare-by-the-Sea Festival
The Horace Mann League
American Association of School Administrators

Virginia Association of School Administrators
Advisory Board, Education Utility

SELECTED MEMBERSHIPS AND COMMUNITY ACTIVITIES
(prior service)

Member of Board of Visitors and Former Rector,
College of William and Mary
Board of Trustees and Former Chairman and Vice-Chairman,
Tidewater Community College
Chairman, Friends of Virginia Wesleyan College
Advisory Council, Old Dominion University Intergovernmental Institute
Chairman, Tidewater Superintendents (six terms)
President, Virginia Association of School Administrators
Governor's Task Force on Pay-for-Performance and Merit Pay
Advisory Committee on Teacher Education, Commonwealth of Virginia
Advisory Council, AASA
Advisory Board, Virginia Beach Civic Symphony, WHRO-TV, AASA National
Center for the Improvement of Learning, The Instructor magazine
Professor, National Academy of School Executives
Executive Committee, Virginia High School League
Member and former Chairman, Board of Trustees, Bayside Hospital
Board of Directors, General Hospital of Virginia Beach, Center for
Excellence (CenTex), Girl's Camp Fund, United Community Fund, Big
Brothers
Director, Boys' Club of Norfolk/Virginia Beach
Military Liaison Committee, Virginia Beach
Parks and Recreation Commission, Virginia Beach
Steering Committee, Virginia Beach United Way Campaign
Rotary Club
Ruritan Club

SELECTED PUBLICATIONS

"Developing Art Curriculum," Educational Leadership, January, 1988, with
Dr. Nancy T. Jones and Stephena Runyan (Virginia Beach Schools).
"Looking Ahead From the Past," Virginia English Bulletin, December, 1987.
"Merit Pay and Virginia Beach's Career Teacher Pay Plan," The American
School Board Journal, February, 1984.
"Making Curriculum Renewal a Reality," NASSP Bulletin, December, 1983, with
Dr. Nancy T. Jones (Virginia Beach Schools).
"Year-Round Education: A Failure with a Future?" Education Economics,
February, 1976, with Dr. Guilbert Hentschke (University of Rochester)
Numerous newspaper articles, as guest columnist

RELATED ACTIVITIES

University Teaching: American literature, English literature, creative
writing, the American short story, composition, curriculum
development, and school finance.

Public Speaking: An estimated 1,500 addresses, speeches, remarks, welcomes, and dedications since 1956, on local, state, regional, national, and international levels. Audience size ranged up to 5,000 persons. Major topics include leadership, management, the value of the liberal arts, effective advocacy, communicating, communications skills, excellence in education, public relations, the teaching of poetry, and working successfully with legislators.

Consulting: Conduct leadership, management, and communications workshops or seminars for public school, university level, and corporate groups. Worked as a consultant since 1969 in various states, including work with Municipal Advisors, Inc., Departments of Education, and Creative Leadership Systems, Inc.

Other: Taught Sunday School for over twenty years and was certified lay speaker. Listed in state, regional, and national biographies.

ANNE KIMBERLEY DAYTON

Education

Legal	J.D. magna cum laude 1983, University of Michigan, Ann Arbor, Michigan.
Undergraduate	B.A. 1980, University of Kansas, Lawrence, Kansas. Majors in history and English literature.
Honors	Phi Beta Kappa; Certificate of Merit for outstanding brief (first year law school); National Merit Scholarship (four years); Kansas Regents Scholarship (four years); University of Kansas Scholarship Hall; University of Kansas Honors Program; Dean's List (four years).
Other	Articles Editor, University of Michigan Journal of Law Reform, 1982-83; staff member, 1981-82.
Law Teaching	Associate Professor of Law, University of Kansas Law School (August 1986-July 1991); Professor of Law (July 1991-present).
Subjects	Advanced Criminal Procedure, Civil Procedure, Intellectual Property, Kansas Defender Project (clinic); Appellate Advocacy.
Director	First Year Appellate Advocacy, Moot Court Competitions.
Publications	Stacy & Dayton, Rethinking Harmless Constitutional Error, 88 COLUM. L. REV. 79 (1988).
	Dayton, Personal Jurisdiction and the Stream of Commerce, 7 REV. OF LITIGATION 239 (1988).
	Dayton, The Myth of Alternative Dispute Resolution in the Federal Courts, 73 Iowa L. Rev. --- (1991) (forthcoming).
	Dayton, Judges on Judging [book reviews of Satter, Doing Justice (Simon & Schuster, 1990) and Grodin, In Pursuit

	of Justice: Reflections of a State Supreme Court Justice (Univ. of Calif. Press, Berkeley, 1989), 39 Kan. L. Rev. 939 (1991).
Community and Professional Service	Reporter, Civil Justice Reform Act Advisory Group for the Eastern District of Virginia; Co-Reporter, Civil Justice Reform Act Advisory Group for the District of Kansas; Legal Advisor for 2d Congressional District, Dukakis-Bentson Campaign Kansas (Fall 1988); Drafter, Colorado Bar Examination; Pro bono representation of indigents, Duncan v. State (federal habeas corpus); Kelly v. State (state and federal habeas corpus) and Thomas v. State (petition for mandamus in Michigan Court of Appeals)
Professional Organizations	District of Columbia Bar Association, Virginia State Bar, American Judicature Society, American Intellectual Property Law Association.
Legal Employment	October 1984-May 1986. Associate, Shea & Gardner, Washington, D.C. Trial and appellate litigation. September 1983-August 1984. Law Clerk to the Honorable James M. Sprouse, United States Court of Appeals for the Fourth Circuit. May 1983-July 1983. Summer associate, Bondurant, Miller, Hishon & Stephenson, Atlanta, Georgia May 1982-August 1982. Summer associate, King & Spalding, Atlanta, Georgia. June 1981-August 1981. Summer associate, Shook, Hardy & Bacon, Kansas City, Missouri.

DAVID G. FISKE

SHAW, PITTMAN, POTTS & TROWBRIDGE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

EXPERIENCE

Mr. Fiske is presently a litigation partner at Shaw, Pittman, Potts & Trowbridge, temporarily resident in the Washington, D.C. office. He was formerly a partner at the law firm of Hazel & Thomas, P.C., in Alexandria, Virginia, and served as a member of the Executive Committee and chaired the litigation section of that firm.

Mr. Fiske has maintained a broad commerical litigation practice and represents a variety of financial institutions and business entities in federal and state courts in the region. He has also defended a number of major national law firms in litigation.

EDUCATION	GEORGETOWN UNIVERSITY LAW SCHOOL J.D., 1969
	JOHNS HOPKINS UNIVERSITY B.A., 1966
BAR ADMISSIONS	U.S. District Court, District of Maryland, 1990 Commonwealth of Virginia, 1975 U.S. Court of Appeals, Fourth Circuit, 1975 U.S. District Court, Eastern District of Virginia, 1975 State of Maryland, 1969
BAR ASSOCIATIONS	Virginia State Bar Association (Member, 1982-85 and Chairman of Eighth District Grievance Committee 1984-85, Member of Special Committee on Continuing Professional Competence, 1984-1985) Alexandria Bar Association Virginia Bar Association Maryland State Bar Association American Bar Association Virginia Trial Lawyers Association Virginia State Bar Pro Bono Steering Committee
OTHER EMPLOYMENT	United States Senator Harry F. Byrd (VA) Special Assistant 1968-70, 73-74
	United States Marine Corps Cpt. Judge Advocate Division 1971-73

CURRICULUM VITAE

Robert T. Hall
2148 Southbay Lane
Reston, Virginia 22091
(703) 620-9818

4010 University Drive
Fairfax, Virginia 22030
(703) 591-8600

Date of Birth: September 9, 1936
Place of Birth: East Liverpool, Ohio
Marital Status: Married to Sally Wilson Hall
Three children

EDUCATION

Georgetown University, Washington, D.C.
BS - 1960 (Foreign Service)
JD - 1964

PROFESSIONAL ASSOCIATIONS

1964-Present	Virginia State Bar
1966-Present	Association of Trial Lawyers of America
1966-Present	Virginia Trial Lawyers Association Board of Governors
	1977-80 District Governor
	1981-82 Vice President
	1984-85 President Elect
	1985-86 President
	1986-87 Past President
1966-1973	Northern Virginia Trial Lawyers Association
	1971-72 President
1965-Present	Virginia Bar Association
1964-Present	American Bar Association

PROFESSIONAL SERVICES

1961-1963	Law Clerk, ARNOLD, FORTAS & PORTER
1963-1964	Legislative Assistant, Senator Prouty (Vt.)
1964-1966	Minority Counsel, U.S. Senate District of Columbia Committee
1966-Present	Private Practice of Law - Primarily Civil Litigation
	HALL & JACKSON - 1971-1975
	HALL, SUROVELL, JACKSON & COLTEN - 1975-1987
	HALL, MARKLE & SICKELS - 1987-Present
1973-1974	Georgetown University Lecturer
	"Litigation Practice"
1979-1981	Lecturer - Judicial Conference of Virginia

ADMITTED TO BAR: Virginia and District of Columbia 1964

ADMITTED TO PRACTICE BEFORE

United States Supreme Court
Virginia Supreme Court
U.S. District Court for the
Eastern & Western Districts
of Virginia
U.S. Court of Appeals, 4th Circui
U.S. Court of Appeals for D.C.
U.S. District Court for the
District of Columbia

Mr. Hall is a partner in the law firm of Hall, Markle, Sickels & Fudala P.C. in Fairfax, Virginia, where he limits his practice to plaintiffs' case involving serious personal injury and death arising out of medical malpractice, products defects or vehicular accidents. About 80 percent of his time is spent in the field of medical malpractice. Mr. Hall is engage in a substantial volume of trial work, but also handles appellate work befor both federal and state courts.

CURRICULUM VITAE OF
ANNE B. HOLTON

1210 Bellevue Avenue
Richmond, Virginia 23227
(804) 261-7989 (H)
(804) 648-1012 (W)

Education

Harvard Law School, J.D., 1983, cum laude. Student activities: Prison Legal Assistance Project (member three years, Board of Directors one year); Mental Health Legal Advisors Committee (student intern).

Princeton University, A.B., 1980 (Major: Woodrow Wilson School of Public and International Affairs, Economics Division); magna cum laude; Phi Beta Kappa.

Legal Experience

Admitted to Virginia Bar and to practice in United States District Court since October of 1984. Member, Richmond Bar Association and Metropolitan Richmond Women's Bar Association. Former member, Judicial Nominations Committee of MRWBA.

Current Employment

Central Virginia Legal Aid Society, Inc. An organization providing civil legal services at no cost to low-income persons in central Virginia. Position: Senior staff attorney. Regularly practice in Circuit and General District Courts in Richmond and surrounding counties; Virginia Court of Appeals; and United States District Court, Richmond Division.

Prior Employment

Law Clerk, United States District Court, Richmond, Virginia, Chambers of the Honorable Robert R. Merhige, Jr.; August, 1983, to November, 1984. Summer Clerk, McGuire, Woods & Battle, Richmond, Virginia; Summer 1983.

Community Activities

Board of Directors, Prison Visitation Project. Member since 1985; former president of Board and current board member.

Active member of various church committees, Richmond Friends Meeting, 1983 to present.

Personal Data

Born in Roanoke, Virginia in 1958. Married with one child. Residing in City of Richmond since 1983.

CURRICULUM VITAE
OF
HENRY E. HUDSON

GENERAL BACKGROUND

ADDRESS:	8201 Collingwood Court Alexandria, Virginia
	Stratford Harbor Westmoreland, Virginia
DATE OF BIRTH:	July 24, 1947
PLACE OF BIRTH:	Washington, D.C.
MARITAL STATUS:	Married, One son
WIFE'S NAME:	Tara Kathleen Lydon Hudson
WIFE'S OCCUPATION:	Manpower Analyst, Headquarters United States Marine Corps.

EDUCATION

SECONDARY:	Graduated from Wakefield High School, Arlington, Virginia, 1965
UNDERGRADUATE:	Bachelor of Arts, American University, School of International Service Washington, D.C., 1969
LEGAL:	Juris Doctor, American University Washington, D.C., 1974 (Evening Division).

EMPLOYMENT

Deputy Sheriff, Arlington County, Virginia 1969 - 1970

Deputy Clerk of the Circuit Court of Arlington County, Virginia, 1970 - 1974

Assistant Commonwealth's Attorney, Arlington County, Virginia, 1974 - 1977

Assistant United States Attorney for the Eastern District of Virginia, Alexandria Division, Criminal Section, 1978 - 1980

Commonwealth's Attorney of Arlington County, Virginia, 1980 - June, 1986

United States Attorney for the Eastern District of Virginia, June 1986 - June 1991

Of Counsel, General Litigation - Reed Smith Shaw & McClay
July 1991 - present

PROFESSIONAL ORGANIZATIONS

Virginia State Bar
Virginia Commonwealth's Attorneys' Association
(Board of Directors, 1985)
Criminal Law Section, Virginia State Bar
Arlington County Bar Association
(Chairman, Courts Committee 1982)
Alexandria Bar Association
(Member, Board of Directors Foundation of the
Alexandria Bar Association)
National District Attorney's Association
Tidewater Association of Commonwealth's Attorneys

ADMITTED TO PRACTICE BEFORE THE FOLLOWING COURTS

United States Court of Claims
Supreme Court of Virginia
United States District Court for the Eastern District of Virginia
United States Circuit Court of Appeals for the Fourth Circuit
Supreme Court of the United States.

COMMUNITY SERVICE

Arlington County Volunteer Fire Department
(Engine Company No. 1) 1966 - 1980 (Life member)
Boulevard Manor Civic Association (Arlington, Virginia)
President 1981 - 1984
Stratford Harbor Property Owners Association (Westmoreland County, Virginia) Vice-president 1988-1991
Member, Arlington County Police Trial Board
1978 - 1979 (Chairman, 1979)
Special Deputy Sheriff of Arlington County, Virginia
1978 - 1980
Member, Arlington County Criminal Justice Advisory Committee
Member, Arlington County Task Force on Substance Abuse and Youth
Member, Board of Directors, Arlington Chapter, American Red Cross 1983 - 1985
Member, Northern Virginia Community College, Curriculum Advisory Committee (Police Science) 1980 - 1986
Lecturer, Northern Virginia Police Academy
Member, Board of Directors, Arlington Parade Committee
Member, Arlington County Chamber of Commerce (1986-1987)

NATIONAL SERVICE

Member, National Highway Safety Advisory Committee (Appointed by President Reagan in 1981 for one year term; reappointed 1982 for three year term)

Member, Congressional Award Council for the Tenth Congressional District

Chairman, United States Attorney General's Commission on Pornography (Appointed by Attorney General Edwin Meese III)

Selected by the Chief Justice of the United States to participate in the Anglo-American Legal Exchange Program (1980).

Member, United States Attorney General's Advisory Committee of United States Attorneys (1987 - 1990)

Member, Presidential Personnel Advisory Committee for Virginia (1988-89)

Member, Advisory Committee to the National Institute of Corrections

OTHER AFFILIATIONS

Member, Aldersgate United Methodist Church
Member, Arlington Host Lions Club (First Vice President, 1984 - 1986)
Member, Columbia Lodge No. 285, A.F. & A.M.
Member, Kenya Temple

RESUME
WAYNE LUSTIG, MEMBER, ADVISORY GROUP
Civil Justice Reform Act of 1990

University of Pennsylvania, B.A. with honors in American Civilization, 1956;

University of Virginia School of Law, LL.B., 1959;

Commenced practice in Norfolk, Virginia, as a member of the Virginia State Bar in 1960, after attending to military service in the U.S. Army Reserves;

Practiced as an associate and partner in Norfolk, Virginia, from 1960 to 1979 with the firm of Campbell, Lustig & Hancock;

Practiced in Virginia Beach, Virginia, 1979 to 1989 as a member in Guy, Cromwell, Betz & Lustig, P.C.;

1989 to Present, joined Mays & Valentine as a partner and opened the firm's office in Norfolk, Virginia.

Memberships: Virginia State Bar; Virginia State Bar Association; Norfolk-Portsmouth Bar Association (President 1972); Virginia Beach Bar Association; American Bar Association; Virginia Trial Lawyers; Member, Fourth Circuit Judicial Conference and a Fellow, American College of Trial Lawyers since 1977.

For the last 30 years, practice has been principally litigation in state and federal courts in both civil and criminal matters. For the last 20 years, practice has been more extensive in the United States District Court for the Eastern District of Virginia, with particular emphasis in complex criminal litigation, i.e., government fraud, antitrust, securities fraud, income tax fraud, trademark counterfeiting and other white collar criminal areas.

Over the same time, has been involved in extensive civil litigation in areas of securities claims, product liability, civil fraud, administrative law, ERISA liability, insurance coverage, contract disputes and other areas of business litigation.

NEIL ANTHONY GORDON McPHIE

3021 Archdale Road
Richmond, Virginia 23235

Office: (804) 786 0081
Home: (804) 272-7994

LEGAL EXPERIENCE

ATTORNEY GENERAL OF VIRGINIA
Supreme Court Building, Richmond, Virginia

Senior Assistant Attorney General 4/90 - Present

Chief of EEO and Personnel Law Section. Manage two attorneys, three paralegals and one secretary. Represent state agencies and individuals in federal and state courts; represent state agencies in administrative grievance hearings and in termination proceedings in state courts; advise state agencies in the areas of EEO and personnel law.

Assistant Attorney General 7/82 - 4/90

General civil practice with heavy emphasis on trial defense work before state and federal courts representing state agencies and officials as lead attorney. Litigated cases arising under the Civil Rights Statutes, the United States Constitution, personal injury cases under the Virginia Tort Claims Act, and construction contracts. Oral argument before the Supreme Court of Virginia and the United States Court of Appeals for the Fourth Circuit. Emphasis in significant and sensitive cases involving defense of Virginia judges and building construction claims.

Defense Counsel in State employment grievance hearings. Prosecution of persons for unlawful practice of law. Have engaged in all aspects of federal and Virginia civil discovery, witness and case preparation.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of General Counsel, Washington, D.C.

General Attorney - Legal Counsel Division 7/79 - 7/82

Defense oriented civil and administrative practice. Defend the Commission in suits in which it is a party defendant in U.S. District Courts nationwide. Suits generally arise under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, the Freedom of Information Act, the Civil Service Reform Act, and the Administrative Procedures Act. Responsible for the preparation of all pleadings, discovery, witness preparation and presentation, and arguments.

Defend the Commission in administrative hearings involving employee grievances, adverse personnel actions and discrimination complaints. Prepared and presented witnesses, prepared affidavits, legal memoranda and post hearing briefs. Provide advice to program offices and members of the public on questions of law and Commission policy. Drafted regulations. Prepared responses to requests under the FOIA and Privacy Acts. Legal sufficiency review of administrative appellate decisions.

Appellate Attorney - Appellate Division 8/76 - 7/79

Appellate advocate for the Commission in enforcing Title VII. Handled all aspects of appellate litigation, from brief writing to oral argument, both in Commission cases and in private cases as amicus curiae. Filed briefs for the Commission in the Supreme Court through the Solicitor General; filed joint briefs with the Department of Justice where the United States has been a party.

Reviewed the Commission's district court cases to determine whether an appeal should be taken. Kept contact with private Title VII bar for possible amicus participation in cases involving important legal issues in Title VII. As Chairperson of a General Counsel task force, prepared principal portion of a Title VII training manual for Commission attorneys and investigators.

EDUCATION

Graduate:

Georgetown University Law Center, Washington, D.C. - J.D., 1976

Course emphasis: General Business Law, including Labor Law, Antitrust, Gift and Corporate Taxation.

Activities: Students in Court Program (representation of indigents); Student Editor, 33 Federal Bar Journal, Number 1, Winter 1974; A.B.A., Law Students Division; Black American Law Student Association; Society of International Law; Delta Theta Phi Legal Fraternity (Tribune).

Undergraduate:

Howard University, Washington, D.C. - B. A., Economics, 1973

Honors and Activities: Magna Cum Laude, Phi Beta Kappa, Dean's List, Academic Scholarship, International Honor Society in Economics, Varsity Cricket Team.

BAR ADMISSIONS

United States Supreme Court, Virginia, District of Columbia, New York, Iowa, United States Courts of Appeal for the 4th, 7th, 8th, 9th and 10th Circuits, United States District Court for the District of Columbia, and the Eastern and Western Districts of Virginia.

BAR ASSOCIATIONS

District of Columbia

Virginia

Section on Construction Law

Iowa

American Bar Association (ABA)

Forum Committee on Construction Industry

Sections on General Practice, Litigation and Labor and Employment Law

BAR COMMITTEES

Member, Advisory Group, Civil Justice Reform Act of 1990, 1991-1995
Chair, Virginia State Bar Special Committee to Reduce Litigation Costs and Delays, 1989-1991.
Vice Chair, Government Lawyers Committee, Section of General Practice, ABA 1990-1991.
Vice Chair, Minority Lawyers Committee, Section of General Practice, ABA 1990-1991.
Vice Chair, Litigation Committee, Section of General Practice, ABA, 1989-1990.
Member, Steering Committee for Division No. 4, Construction Management, Design/Build and Related Concepts, ABA 1988-1990.

RESUME

Henry H. McVey, III

Born: Richmond, Virginia, August 12, 1935
Home address: 2324 Monument Avenue, Richmond, Virginia
Spouse: Reba
Children: Margaret, Lewis and Ian

Education

Graduated St. Christopher's School,
Richmond, Virginia 1953
Graduated Hampden-Sydney College, B.A. & B.S., magna cum laude, 1957
Graduated University of Virginia Law School, LL.B. 1960

Member: Omicron Delta Kappa (President, 1956-57 Hampden-Sydney College) President, 1959-60 University of Virginia)
Phi Beta Kappa
Chi Beta Phi
Eta Sigma Phi
Chi Phi
Phi Alpha Delta (Legal Fraternity)

Professional

Associate 1960-1966
Partner 1966 - McGuire, Woods, Battle & Boothe (and predecessor firms)

Political and Civic Affiliation

Member: Board of Directors, Richmond Symphony since 1977; former President and Chairman of the Board
Board of Directors, Carpenter Center for the Performing Arts
Former Member of the Board of the Richmond Montessori School
Member, Commission on Architectural Review, City of Richmond
Ruling Elder, Second Presbyterian Church

Professional Activities

Fellow, American College of Trial Lawyers
Member, American Board of Trial Advocacy (Advocate)
Member, Federation of Insurance & Corporate Counsel
Member, American Bar Association

Member, Virginia Bar Association
Member, Virginia State Bar (former member and Chairman, Third District [disciplinary] Committee)
Member, Bar Association of the City of Richmond (former Young Lawyers Section Chairman)
Member, Virginia Association of Defense Attorneys (former President)
Member, Defense Research Institute (former Regional Vice President, Current Board Member)
Member, International Bar Association

Club Memberships

Country Club of Virginia
Bull & Bear Club
Capital Club

CURRICULUM VITAE OF KENNETH E. MELSON

GENERAL BACKGROUND

Address: 3307 North Columbus Drive
Arlington, Virginia 22207
Telephone: (703) 532-0338

DATE OF BIRTH: December 6, 1947
PLACE OF BIRTH: Neenah, Wisconsin

EDUCATION

UNDERGRADUATE: Bachelor of Arts, Denison University,
Granville, Ohio, 1970

LEGAL: Juris Doctor, with Honors
National Law Center
George Washington University, 1973

MILITARY EXPERIENCE: Captain, United States Air Force
Office of the Staff Judge Advocate
Honorable Discharge, June 7, 1976

LEGAL LICENSING: Supreme Court of Virginia
United States Court of Appeals for the Fourth Circuit
United States District Court for the Eastern District of Virginia
District of Columbia Court of Appeals

LAW PRACTICE:

Private law practice, Arlington, Virginia
January 15, 1974 - April 6, 1975.

Assistant Commonwealth's Attorney, Arlington County
April 7, 1975 - January 1, 1978.

Chief Assistant Commonwealth's Attorney, Arlington County
January 1, 1978 - July 25, 1980 (Managerial Position).

Deputy Commonwealth's Attorney, Arlington County
July 25, 1980 - June 25, 1983. This position included all the responsibilities and duties of the Commonwealth Attorney in his absence, as well as daily management of the office.

Assistant United States Attorney for the Eastern District of Virginia.
June 26, 1983 - June, 1986.

First Assistant United States Attorney for the Eastern District of Virginia
June, 1986 - June, 1991

Interim United States Attorney, Eastern District of Virginia
July 1991 - present.

OTHER POSITIONS HELD:

Chairman, Executive Office for United States Attorneys Security Working Group. 1989 to present.

Team Leader, Executive Office for United States Attorneys Evaluation and Review Team. 1989 to present.

TEACHING EXPERIENCE:

Associate Professorial Lecturer in Law, The National Law Center, The George Washington University, Washington, D.C. 1979 - 1988.

Professorial Lecturer in Law, The National Law Center, The George Washington University, Washington, D.C.
1988 - present.

Advanced Criminal Procedure: An elective course offered to second and third year law students.

The Crime Lab, the Forensic Scientist and the Criminal Lawyer: This course involves all aspects of forensic science and applicable law, such as fingerprints, firearm identifications, neutron activation analysis, polygraph, serology, hairs and fibers and DNA Typing.

Assistant Professorial Lecturer in Forensic Science, Department of Forensic Science, The George Washington University, Washington, D.C. July 1974 - present.

Advanced Criminal Evidence: Rules of evidence and their practical application, with emphasis on the Federal Rules of Evidence.

The Crime Lab, the Forensic Scientist and the Criminal Lawyer: Both on-campus and off-campus courses. The students were drawn from local law enforcement agencies, the FBI, Secret Service, the Alcohol, Tobacco and Firearms Division of the Treasury Department nd criminal investigative agencies of the Armed Forces.

Criminal Law: An introductory course in criminal law and procedure.

Criminal Procedure: An advanced course emphasizing Fourth, Fifth and Sixth Amendment problems.

Faculty Advisor. National College of District Attorneys, Houston, Texas, June, 1981. A three week course for career prosecutors from throughout the nation. Faculty advisors are responsible for many aspects of the course including group discussions and practical exercises and demonstrations in trial skills and tactics.

Publications:

"Proposed Amendments to the Federal Rules on Admissibility of Scientific Evidence: A Prosecutor's Perspective", presented to the Science and Technology Section at the American Bar Association annual meeting, August, 1986, and published in 115 Federal Rules Decisions 79, 126-132 (1987).

Chapter 10, Legal and Ethical Considerations, found in Kirby, Lorne, DNA Fingerprinting, An Introduction. Stockton Press, 1990.

Professional Presentations:

"Forensic Scientists Recreate the Corpus Delecti", a paper concerning the trial of a first degree murder case presented at the 33rd Annual Meeting of the American Academy of Forensic Sciences, February 1981.

"Too Many Suspects - Too Much Evidence", a paper concerning the trial of a capital murder case presented at the 35th Annual Meeting of the American Academy of Forensic Sciences, February 1983.

"So Much for Scientific Evidence - A Comment on its Shortcomings", a paper concerning the trial of several rape cases presented at the 36th Annual Meeting of the American Academy of Forensic Scientists, February 1984.

"Reasonable Doubts About the Federal Common Carrier DUI Statute", a paper presented at the 40th Annual Meeting of the American Academy of Forensic Sciences, February 1988.

Moderator, "The Investigation and Trial of a Serial Crime Case", a multi-disciplinary presentation at the 41st Annual Meeting of the American Academy of Forensic Scientists, February 1989.

"Blasting into the 90's: Hot Issues in Criminal Law and Practice", an ABA Criminal Justice Section CLE program presented at the October 1990 ABA Fall Meeting. See 4 BNA Criminal Practice Manual 564 (11/28/90).

"The Medicolegal Problems and Dilemma of the AIDS Epidemic as the 21st Century Approaches", a paper presented at the 42nd Annual Meeting of the American Academy of Forensic Sciences, February 1990

"The Psychiatric, Legal and Social Aspects of Protecting the President", a panel discussion presented at the 43rd Annual Meeting of the American Academy of Forensic Sciences, February 1991.

Guest Lecturer:

Lecturer, Chesapeake Bay Division, International Association for Identification, Educational Conference, October 31, 1987.

Catholic University Law School Trial Advocacy class taught by Judge Tim Murphy, Superior Court of the District of Columbia. Annual presentation of a three hour seminar on courtroom communication.

The District of Columbia Bar, April 13, 1982. The Dynamics of Courtroom Communication was presented to the Courts, Lawyers, and the Administration of Justice Division of the District of Columbia Bar.

Virginia Forensic Science Academy, Richmond, Virginia 1981. A seminar was presented on the legal problems associated with questioned document evidence and examination.

Lecturer in a two-day Symposium on Scientific Sleuthing, an inter-disciplinary institute on the uses of the crime laboratory and the forensic sciences in criminal law, presented in June, 1974, by the Department of Forensic Science, the George Washington University.

Co-authored with James E. Starrs, Professor of Law, George Washington University, extensive course materials used in The Crime Lab, the Forensic Scientist and the Criminal Lawyer taught in both the National law Center and the masters program in the Department of Forensic Science and Introduction to Criminal Procedure taught in the Department of Forensic Science (1972-1974).

Federal Appointments:

Appointed on November 13, 1981, to Selective Service Local Board 35.

Organizational Memberships:

Alexandria Bar Association, Criminal Law Section.
Fellow, American Academy of Forensic Sciences, Jurisprudence Section Program Co-chairman - 1988; Secretary - 1989; Chairman - 1990; Board of Directors - 1991.
Arlington Host Lions Club.
Baileys Crossroads Volunteer Fire Department (State certified Firefighter I and Emergency Medical Technician)(1980 - 1983).

Date: December 5, 1989

Name:	VINCENT JOHNS THOMAS
Home Address:	7321 Barberry Lane Norfolk, Virginia 23505
Business Address:	Chairman Johns Brothers, Inc. Post Office Box 2540 Norfolk, Virginia 23501
Business Phone: Home Phone:	(804) 622-4687 (804) 423-4419
Place of Birth:	Norfolk, Virginia September 20, 1922
Father's Name: Mother's Name:	Vincent Graves Thomas Minnie Allison Thomas
Married:	Elizabeth Parrott Carroll October 4, 1947
Children:	Allison Carter Thomas Kunze (36) Vincent Graves Thomas II (32)
Education:	Maury High School, Norfolk - 1939 Honor Graduate, President of Class Letters in Basketball and Tennis (Captain 1939) Virginia Military Institute - 1943 B.S. Electrical Engineering (Distinguished) Letters in Basketball and Tennis Individual Intramural Champion - 1942 and 1943
Military Service:	1st Lt., United States Army Signal Corps 1943-1946
Religion:.	Episcopalian, Church of the Good Shepherd Norfolk

Civic Business Affiliations:

Past

President - Tidewater Oil Heat Association
Vice President - Norfolk Chamber of Commerce
Board Member - Norfolk Retail Merchants Association
Board Member - Hampton Roads Maritime Association
President - Sales and Marketing Executives
Board Member - First National Bank of Norfolk
Board Member - National Oil Fuel Institute
Board Member - Norfolk Recreation Commission

Current

Board Member - Dominion Bankshares Corporation, Roanoke
Board Member and Former President - Virginia International Terminals, Inc.
Board Member - Future of Hampton Roads
Board Member - The Planning Council
Board Member and Former President - Greater Norfolk Corporation
Board Member - Community Promotion Corporation

Awards:

John H. French Medal for Pure Mathematics, VMI, 1943
Virginia Education Association Award for State's Outstanding School Board Member, 1969
Cosmopolitan Club Award as Norfolk's First Citizen, 1970
Distinguished Service Award of the VMI Foundation
Norfolk and Portsmouth Bar Association
8th Annual Liberty Bell Award, 1972

Educational Affiliations:

Past

Chairman - Norfolk City School Board
Chairman - Council of Big City Boards of Education
President - Virginia State Board of Education
Chairman - Governor's Commission on the Education of the Handicapped
President - Virginia Military Institute Alumni Association
President - Board of Visitors, Virginia Military Institute

Current

Board Member - Virginia Wesleyan College
Board Member - VMI Research Laboratories
Board Member - Maury High School Foundation

Political: Mayor - City of Norfolk, 1976-1984
Chairman - Standing Committee on Community Development, Housing and Economic Development, U. S. Conference of Mayors 1983-1984

BIOGRAPHICAL SKETCH

RICHARD L. WILLIAMS

Born April 6, 1923, Morrisville, Virginia

Educated in public schools in Fauquier County

Served in the Air Force from September, 1940 to October, 1945

Attended University of Virginia from 1946 to 1951, graduating with a Bachelor of Laws Degree

Started as an associate with Parrish, Butcher & Parrish, a four-man firm, in 1951

Joined McGuire, Woods & Battle in 1955, and left that firm as a partner in April, 1972

Served as Judge of the Circuit Court of the City of Richmond from April, 1972 to July, 1976 when he resigned to return to the private practice of law

Lecturer, University of Virginia, Trial Practice Seminar, from 1973 to 1976

Rejoined McGuire, Woods & Battle as a partner in 1976, and left that firm in October, 1980

Served as United States District Judge for the Eastern District of Virginia from October, 1980 to present.

Married Eugenia Kellogg in 1948; has four children, two girls, Nancy and Gwen, and two boys, Greg and Walter; and six grandchildren

Appendix 3

Local Rules of the Eastern District of Virginia

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

LOCAL RULES OF PRACTICE

Effective Date
February 15, 1989

DEDICATION

We dedicate the revision of these Local Rules to the memory of our colleague, the Honorable David Dortch Warriner, United States District Judge at Richmond, Virginia, who served as such from the date of his qualification on May 31, 1974, until his untimely death on March 17, 1986, and who was serving as the Chairman of a Committee to revise the Local Rules at the time of his death.

TABLE OF CONTENTS

LOCAL RULES OF PRACTICE

LOCAL ADMIRALTY RULES

RULE 1

SCOPE OF RULES

These rules, made pursuant to the authority granted by Rule 83 of the Federal Rules of Civil Procedure, and Rule 57 of the Federal Rules of Criminal Procedure, for the District Courts of the United States, as prescribed by the Supreme Court of the United States, so far as not inconsistent therewith and so far as applicable, shall govern the practice and procedure in the United States District Court for the Eastern District of Virginia in all suits, causes or actions of a civil nature, cognizable as cases at law or in equity, all criminal cases, and other proceedings in said court.

In all cases where these rules, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and any other Rules for the district courts of the United States, as prescribed by the Supreme Court of the United States, or any statute of the United States, or the Federal Common Law, do not apply, the practice, pleadings, forms and modes of proceedings in all suits of a civil nature, whether cognizable as cases at law or in equity, and suits of a criminal nature, shall conform, as near as may be, to the practice, pleadings, forms and modes of proceedings existing at the time in like causes in the courts of record of the State of Virginia.

RULE 2
RULE ON CONSTRUCTION

United States Code, Title 1, §§ 1 to 5, both inclusive, shall, as far as applicable, govern in the construction of these rules.

Where the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the clerk is authorized to establish a Master file in which the declaration of taking may be filed, and the filing of the declaration of taking therein shall constitute a filing of the same in each of the actions to which it relates.

RULE 3
AREA AND DIVISIONS

(A) **Area:** The Eastern District of Virginia consists of the counties, cities and towns as set forth in Title 28 § 127, United States Code Annotated, and the places for holding of courts are therein prescribed as Alexandria, Newport News, Norfolk and Richmond.

(B) **Divisions:** This district shall be divided into four divisions, to be designated as the Alexandria, Newport News, Norfolk and Richmond Divisions; the place for holding court for each of said divisions shall be the city whose name the division bears, and the territory comprising, and embraced in, each of the said divisions shall be as follows:

(1) The Alexandria Division shall consist of the City of Alexandria and the Counties of Loudoun, Fairfax, Culpeper, Fauquier, Arlington, Prince William, Orange and Stafford and any other city or town geographically within the exterior boundaries of said counties.

(2) The Newport News Division shall consist of the Cities of Newport News, Hampton and Williamsburg, and the Counties of York, James City, Gloucester, Mathews, and any other city or town geographically within the exterior boundaries of said counties.

(3) The Norfolk Division shall consist of the Cities of Norfolk, Portsmouth, Suffolk, Franklin, Virginia Beach, Chesapeake, and Cape Charles, and the Counties of Accomack, Northampton, Isle of Wight, Southampton, and any other city or town geographically within the exterior boundaries of said counties.

(4) The Richmond Division shall consist of the Cities of Richmond, Petersburg, Hopewell, Colonial Heights and Fredericksburg, and the Counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, Westmoreland, and any other city or town geographically within the exterior boundaries of said counties.

(5) All of the waters, and the lands under such waters, adjacent and opposite to any city, county or town shall be a part of the division of which said city, county or town is a part, and wherever there are any waters between any city, county or town which are in different divisions, then such waters and land under them shall be considered to be in both divisions.

(6) In the event of any annexation or merger of any cities and/or counties the land lying within the merged or annexed area shall be deemed within the exterior boundaries of the original city or county to the same intent and purpose as if the annexation or merger had not occurred, unless otherwise modified by local rule.

RULE 4
DIVISION IN WHICH SUITS TO BE INSTITUTED

Civil Actions of which this Court has jurisdiction and venue, except where otherwise especially provided, shall be brought in the division (a) wherein the cause of action or any part thereof arose; or (b) wherein any of the defendants may reside; or (c) where all defendants are non-residents of the State of Virginia, wherein the plaintiff resides; or (d) if a corporation be defendant, wherein it maintains its principal office or registered agent, or wherein its president, mayor, rector or other chief officer resides; or (e) if it be a foreign corporation, wherein its statutory or registered agent resides, or wherein it maintains a place of business or is doing business; or (f) if it involves a defendant residing without the State, wherein he may be found and served with process, or may have estate or debts due him; or (g) if it involves real property, wherein any part thereof may be; or (h) if it be upon a policy of insurance issued or delivered within this State, the place where the policyholder or the one entitled to maintain action therein resided at the date of the policy or time the cause of action arose or time of institution of the action; or (i) if on property, the place where the property was located at date of issuance of the policy or date of the loss.

When a civil action is filed in a court which has no jurisdiction over the matter, the court shall, if it is in the interest of justice, transfer such action to any other federal court in which the action could have been brought at the time it was filed. See: 28 U.S.C. § 1631.

RULE 5
TRANSFER OF CASES

In its discretion, the Court may conduct evidentiary hearings in prisoner cases at any penal institution in Virginia. The Court may at any time transfer any suit, action or other proceeding, and may transfer any indictment, information, or other criminal proceeding for hearing, trial, or any other purpose. See: 28 U.S.C. § 1404 (civil proceedings); Rule 18, Fed. R. Cr. P. (criminal proceedings).

RULE 6
SERVICE AND RETURN OF SUMMONS—ABATEMENT

(A) The summons and complaint shall be served forthwith in accordance with Rule 4 of the Federal Rules of Civil Procedure and this Rule. If service is not effected, the marshal, or the person to whom it is delivered for service or specially appointed to serve said summons and complaint, shall make return thereof to the Clerk's office with an endorsement thereon stating the reasons for failure to effect service. Unless a defendant has been so served within one hundred and twenty (120) days after the filing of the complaint, or has appeared in the cause, the action as to such defendant shall be abated and dismissed from the docket by the Clerk without prejudice; provided, however, that a plaintiff whose time to effect service has not expired may, from time to time for good cause shown, procure an order extending the time to serve the summons and complaint for such further period as the Court may direct.

EXCEPT in actions in which the plaintiff is a seaman or is otherwise permitted to proceed in forma pauperis, or in actions instituted by the United States, service of the summons and complaint shall be made in accordance with Rule 4, and shall include service made by persons especially appointed by the court for that purpose as provided by Fed. R. Civ. P. 4(c), at the initial cost of the plaintiff. Proof of such service shall be as provided by Fed. R. Civ. P. 4(g) and shall include a written statement under oath or penalty of perjury that the person serving the summons and complaint has made service in accordance with Fed. R. Civ. P. 4(d); how that service was effected; that he or she is 18 years of age or older; and that he or she is not a party to or interested, as counsel or employee of counsel or otherwise, in the subject matter of the controversy.

(B) Requests by a party to withhold the service of a summons and complaint, or a third-party summons and complaint, shall not be granted by the Clerk without leave of court first obtained; provided, however, that a party may request the Clerk to withhold the issuance and service of an *in rem* process upon advising the Clerk that the property subject to arrest or attachment is not within the jurisdiction or that arrangements have been made for the acceptance of service.

(C) **Civil Cover Sheet:** The Clerk is authorized and instructed to require a complete and executed AO Form JS 44(a), Civil Cover Sheet, which shall accompany each civil case to be filed, and to reject for filing any such case not accompanied by same, except that persons filing civil cases *pro se* shall be exempted from said requirement.

RULE 7
ATTORNEYS

(A) Any person who is a member of the bar in good standing in the Supreme Court of Virginia is eligible to practice before this Court upon admission.

(B) Any person who meets the requirements of the foregoing paragraph and who maintains a law office outside of Virginia shall set forth his or her Virginia State Bar I.D. Number on any initial pleading filed by such person.

(C) **Procedure for Admission:** Every person desiring admission to practice in this Court shall file with the Clerk written application therefor accompanied by an endorsement by two qualified members of the bar of this Court stating that the applicant is of good moral character and professional reputation. The form for such application may be obtained from the Clerk's office of the Court. As a part of the application, the applicant shall certify that applicant has within ninety days prior to the submission of the application read or reread (a) The Federal Rules of Civil Procedure, (b) The Federal Rules of Criminal Procedure, (c) The Local Rules of the Court, and (d) The Federal Rules of Evidence. The applicant shall thereafter be presented by a qualified practitioner of the Court who shall in open court by oral motion, and upon giving assurance to the Court that he has examined the credentials of the applicant and is satisfied the applicant possesses the necessary qualifications, move for his admission to practice.

The applicant shall in open court take the oath required for admission, subscribe the roll of the Court, and pay to the Clerk the required fee. For such payment, he shall be issued a certificate of qualification by the Clerk. For good cause shown, the Court may waive payment of the fee.

(D) **Foreign Attorneys:** A practitioner from another state or the District of Columbia may, upon motion made in open court, be permitted to appear and conduct specific cases in association with a duly qualified member of the bar of this Court, if the rules of the federal courts of the district in which he or she maintains an office extend a similar privilege to attorneys of this district; provided, however, that such foreign attorney in all appearances in court shall be accompanied by his or her resident associate. Except where a party conducts his or her own case, no pleading or notice required to be signed by counsel shall be accepted by the clerk unless signed by counsel who shall have been admitted to practice in this Court, who shall have entered his or her appearance of record in the case, with the office address where notice can be served upon said attorney, and who shall have such authority that the Court can deal with the attorney alone in all matters connected with the case. Such appearance shall not be withdrawn without leave of the Court. Service of notice or other proceedings on such attorney shall be equivalent to service on the parties for whom the attorney appeared. Where a party is conducting his or her own case, there shall be filed with the pleading a memorandum of one address within the district where notice can be served.

(E) **Western District of Virginia:** Any attorney admitted to practice in the Western District of Virginia shall be permitted to practice in the courts of the Eastern District of Virginia upon the filing of a certificate from the Clerk of the Western District of Virginia showing that such attorney has been duly admitted to practice in that district.

(F) **Attorneys Filing Pleadings:** Any counsel presenting papers, suits or pleadings for filing, or making an appearance, must be members of the bar of this Court, or must have counsel who are members of the bar of this Court to join in the pleading by endorsement. Any counsel who joins in a pleading, motion, or other paper filed with the Court will be held accountable for the case by the Court. At least one attorney of record from each law firm of record must personally be present at all hearings, pretrials, and trials. This obligation may not be avoided or delegated without leave of Court.

(G) **Withdrawal of Appearance:** No attorney who has entered an appearance in any civil or criminal action shall withdraw such appearance, or have it stricken from the record, except on order of the Court and after reasonable notice to the party on whose behalf said attorney has appeared.

(H) **Practicing Before Admission or While Disbarred or Suspended:** Any person who, before admission to the bar of this Court or during any disbarment or suspension, exercises any of the privileges of a member of the bar of this Court, or who pretends to be entitled so to do, shall be guilty of contempt of court and subject to appropriate punishment therefor.

(I) **Professional Ethics:** The ethical standards relating to the practice of law in this Court shall be the Virginia Code of Professional Responsibility now in force and as hereafter modified or supplemented. However, contrary to Virginia practice, prior court approval as a condition to the issuance of a subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required. The propriety of such a subpoena may be considered on a motion to quash.

(J) **Courtroom Decorum:** Counsel shall at all times conduct and demean themselves with dignity and propriety. When addressing the Court, counsel shall rise unless excused therefrom by the Court. All statements and communications to the Court shall be clearly and audibly made from a standing position at the counsel table or, if the Court is equipped with an attorney's lectern, from a standing position behind the lectern, facing the Court or the witness. Counsel shall not approach the bench unless requested to do so by the Court or unless permission is granted upon the request of counsel.

Examination of witnesses shall be conducted by counsel standing behind counsel table or lectern. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, unless otherwise permitted by the Court. Only one attorney for each party may participate in the examination or cross-examination of a witness.

(K) **Law Clerks to Judges:** Law Clerks to judges are prohibited from practicing law or doing research for any lawyer or law firm while employed by the judge.

(L) **Third-Year Law Student:** An eligible law student qualifying pursuant to Paragraph II of the Plan for Third-Year Practice filed in each division of this Court is herewith given leave to participate in any civil or criminal case pursuant to said plan and as said plan may, from time to time, be amended.

PLAN FOR THIRD YEAR PRACTICE RULE

I. Activities

A. An eligible law student may appear before the judges, magistrates, and bankruptcy judges in this Court on behalf of any person if the person on whose behalf he or she is appearing has indicated in writing consent to that appearance and the supervising lawyer, who must be counsel of record for the person on whose behalf the law student is appearing, has also indicated in writing approval of that appearance, in the following matters:

1. Any civil or criminal matter.

2. Any bankruptcy matter.

B. Any eligible law student may appear in any criminal or civil matter on behalf of the Government with the written approval of the United States Attorney or his authorized representative as the supervising lawyer.

C. In all matters before the judges, magistrates or bankruptcy judges, the supervising lawyer must be personally present unless permission to the contra is granted by the Court.

II. Requirements and Limitations

In order to make an appearance pursuant to this rule, the law student must:

A. Be duly enrolled in a law school approved by the American Bar Association or Virginia Board of Bar Examiners.

B. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis.

C. Be certified by the dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

D. Be introduced to the court in which he or she is appearing by an attorney admitted to practice in same.

E. Neither ask for nor receive any compensation or remuneration of any kind for services from the person on whose behalf he or she renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the State, or federal government, from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

F. Certify in writing that he or she has read and is familiar with the Virginia Code of Professional Responsibility.

III. Certification

The certification of a student by the law school dean:

A. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date he or she is admitted to the bar.

B. May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.

C. May be terminated by this Court at any time without notice or hearing and without any showing of cause.

IV. Other Activities

A. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:

1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

2. Preparation of briefs, abstracts and other documents to be filed, but such documents must be signed by the supervising lawyer.

3. Except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this Court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such a client must be signed by the attorney of record.

4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.

B. Nothing contained herein shall be construed to permit the law student to participate in the taking of depositions in the absence of his supervising attorney.

V. Supervision

The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

A. Be a lawyer whose service as a supervising lawyer for this program is approved by a judge of this Court. Such approval may be given upon application of any attorney who is a member of the bar of the Court. Such approval may be given by a judge of this Court by formally or informally advising the Clerk of such approval. No approval shall be granted, however, unless and until approval by the dean of the law school in which the law student is enrolled is also obtained.

B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

C. Assist the student in his or her preparation to the extent the supervising lawyer considers it necessary.

D. Agree to notify the dean of the appropriate law school of any alleged failure on the part of the student to abide by the letter and spirit of this order.

E. The Clerk of the Court shall maintain a roll of approved law students and supervising attorneys.

VI. Miscellaneous

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything he or she might lawfully do prior to the adoption of this Rule.

(M) **Federal Rules of Disciplinary Enforcement:** All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding (pro hac vice) shall be admitted subject to the following rules, conditions and provisions.

RULE I

Attorneys Convicted of Crimes

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of any other to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded. This Rule shall not be applicable if the attorney has surrendered his license to practice law and has submitted a letter to the Clerk withdrawing his or her name from the Roll of Attorneys.

E. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no references with respect to convictions for minor offenses.

F. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

RULE II

Discipline Imposed By Other Courts

A. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

B. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court, this Court shall forthwith issue a notice directed to the attorney containing:

1. A copy of the judgment or order from the other court; and

2. An order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

D. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

1. That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

3. That the imposition of the same discipline by this Court would result in grave injustice; or

4. That the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

E. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.

F. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

RULE III

Disbarment on Consent or Resignation in Other Courts

A. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

B. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

RULE IV

Standards for Professional Conduct

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court, reprimanded or subjected to other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Virginia Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.

RULE V

Disciplinary Proceedings

A. When misconduct or allegations of misconduct which, as substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Should counsel conlcude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

C. To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court upon a showing of probable cause requiring the respondent-attorney to show cause within 30 days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

D. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more judges of this Court, provided however that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court the hearing shall be conducted before a panel of three other judges of this Court appointed by the chief judge, or, if there are less than three judges eligible to serve or the chief judge is the complainant, by the Chief Judge of the Court of Appeals for this Circuit.

RULE VI

Disbarment on Consent While Under Disciplinary Investigation or Prosecution

A. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

3. the attorney acknowledges that the material facts so alleged are true; and

4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

RULE VII

Reinstatement

A. After Disbarment or Suspension. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this Court.

B. Time of Application Following Disbarment. A person who has not been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

C. Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the chief judge of this Court. Upon receipt of the petition, the chief judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court the hearing shall be conducted before a panel of three other judges of this Court appointed by the chief judge, or, if there are less than three judges eligible to serve or the chief judge was the complainant, by the chief judge of the Court of Appeals for this Circuit. The judge or judges assigned to the matter shall within 30 days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating

by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

D. Duty of Counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

E. Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.

F. Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarmet.

G. Successive Petitions. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

RULE VIII

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

RULE IX

Service of Papers and Other Notices

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the last address of record. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the last address of record; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the court of any proceeding.

RULE X

Appointment of Counsel

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplinary agency of the highest court of the state wherein the Court sits, or the attorney maintains his or her principal office in the case of the courts of appeal, or other disciplinary agency having jurisdiction, counsel for such disciplinary agency shall ordinarily be appointed. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this Court shall appoint as counsel one or more members of the Bar of this Court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

RULE XI

Duties of the Clerk

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified copy or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

D. The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

RULE XII

Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

RULE XIII

Effective Date

Any amendments to Rule 7 shall become effective immediately upon the entry and filing of any Order, provided that any formal disciplinary proceedings then pending before this Court shall be concluded under the procedure existing prior to the effective date of these amendments.

RULE 8

FREE PRESS—FAIR TRIAL DIRECTIVES

(A) In connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, it is the duty of that lawyer or firm not to release or authorize the release of information or opinion (1) if a reasonable person would expect such information or opinion to be further disseminated by any means of public communication, and (2) if there is a reasonable likelihood that such dissemination would interfere with a fair trial or otherwise prejudice the due administration of justice.

(B) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(C) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the termination of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be further disseminated by any means of public communication, if such statement concerns:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any dangers such person may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of the official or professional obligations imposed, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against such person.

(D) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

(E) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against such lawyer.

(F) All court personnel, including, among others, marshals, deputy marshals, court clerks, bailiffs, court reporters, and employees or subcontractors retained by the court-appointed official reporters, are prohibited from disclosing to any person without authorization by the Court, information relating to a pending grand jury proceeding, or criminal case that is not part of the public records of the Court. The divulgence of information concerning grand jury proceedings, in camera arguments, and hearings held in chambers or otherwise outside the presence of the public is likewise forbidden.

(G) In a widely publicized or sensational criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

(H) No rule of court or judicial order should be promulgated by a United States District Court in the Eastern District of Virginia which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case.

(I) Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open court and shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public, in whole or in part, on the grounds:

(1) that there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) that reasonable alternatives to closure will not adequately protect defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

RULE 9
JURORS

(A) **Jury Lists:**

(1) The entire list of names drawn to serve a division of the Court for a particular period, together with the questionnaires prepared by the jurors, may be disclosed to counsel for the parties, or to any party acting *pro se*, unless the Court directs otherwise. However, no juror shall be approached, either directly or through any member of his or her immediate family, in an effort to secure information concerning such juror.

(2) When the jurors report for duty at a session of court, the Clerk shall, upon request, make available to counsel for the parties, or to any party acting *pro se*, a list of such jurors.

(3) Counsel shall have the duty and obligation to review the list of jurors scheduled to appear, for the purpose of examining the juror questionnaires, to determine whether any of the jurors may have served at a prior trial of such case, or a companion case, or any case involving the same facts, and shall promptly notify the Clerk and the Court if it shall appear that any conflict exists. A failure so to do shall constitute a waiver of any objection which might otherwise exist.

(B) **Identification of Jurors:** Counsel desiring identification of jurors composing the jury panel shall, before the proceedings commence, and before the Clerk calls the roll of jurors in attendance, request the Clerk to have each juror in attendance stand when the juror's name is called.

(C) **Stipulation as to Number of Jurors:** Prior to submitting the jury list to counsel to enable them to exercise peremptory challenges, the Clerk shall submit to counsel for signing, and in criminal cases also for signing by the defendant, the stipulation to proceed with less than the required number of jurors in the event any one or more jurors becomes unable for any reason to continue to serve, or one or more of said jurors is for any reason excused by the Court, or disqualified from further service. In a criminal case, if the jury is then deliberating, the right to proceed is governed by Rule 23(b), Fed. R. Crim. P., and is not dependent upon a stipulation.

(D) **Peremptory Challenges:** In civil cases where there are several plaintiffs and/or several defendants, and in a criminal case where there is more than one defendant, on motion made at least three weeks prior to the date scheduled for trial of the case the Court may allow each or both sides more than the usual number of peremptory challenges permitted by law. The failure to timely make such motion shall constitute a waiver of any right thereto.

(E) **Length of Petit Jury Service:** Trial jurors shall not be required to serve in excess of four (4) months as a general rule. However, if any case is in trial at the expiration of the period of four (4) months, the jurors then serving in said case may be required to complete the case.

RULE 10
TRIAL PROCEDURE

(A) **Charge to Jury**: In all cases tried to a jury, whether civil or criminal, any suggested charge must be in writing and furnished to the Court in duplicate, with copy to opposing counsel, at least five business days before trial commences. Opposing counsel shall file objections, if any, at least two business days prior to trial. Such shall not, however, in any way affect the right of the Court to change the jury without any request having been made therefor.

(B) **Presence of Witnesses**: Any counsel desiring to ascertain the presence of witnesses summoned for any particular case shall, before the opening of court, furnish the Clerk with a proper list of the names of such witnesses.

(C) **Qualification of Experts**: Unless the qualifications of an expert witness, including any party litigant, are admitted, a duplicate written statement of such qualifications will be submitted on the morning of trial which, at the discretion of the Court, may be read to the jury in lieu of examining such expert as to his or her qualifications. As to experts who are expected to appear frequently, a statement of their qualifications may be filed with the Clerk in each of the divisions of the Court for use at trial. When so filed, the Clerk will maintain the statement in a file kept for that purpose. Counsel desiring to make use of the statement will be responsible to have it available in court and to return it to the Clerk's file.

(D) **Hypothetical Questions**: Any and all hypothetical questions to be propounded to any witness may, at the discretion of the Court, be required to be filed in writing on the morning of trial or at such earlier time as the Court may direct.

(E) **Physical Examination of Litigant**: No physical examination of any injured party or any of his or her injuries will be permitted in the presence of the jury. No doctor or other expert will be permitted to testify as to the nature and extent of the injuries to any litigant unless such expert has previously examined or interviewed such person, or unless such testimony is to be based on hypothetical questions. Provided, however, that this rule is not intended to limit an expert, having previously examined the party, from properly demonstrating any of the injuries of a party.

RULE 11

MOTIONS—CONTINUANCES

(A) **Requirement of Written Motion**: In civil cases all motions shall be in writing unless made during a hearing or trial. If time does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.

(B) **Grounds and Relief to be Stated**: All motions shall state with particularity the grounds therefor and shall set forth the relief or order sought.

(C) **Signature of Attorney**: All pleadings and motions shall include the attorney's office address and telephone number. If a party is proceeding *pro se*, an address and telephone number shall be included.

(D) **Use of Forms**: Motions and interrogatories on printed forms, multigraphed, mimeographed, or in any manner reproduced by machine process, other than a typewriter, shall not be permitted unless the attorney filing same has deleted all extraneous matter and certifies that he or she has carefully reviewed the remaining portions and in good faith believes that the contents are pertinent to the case.

(E) **Return Date**: Except as otherwise provided by an order of the Court or by the Rules, all motions shall be made returnable to the time obtained from and scheduled by the Court for a hearing thereon. Before endeavoring to secure an appointment for a hearing on any motion, it shall be incumbent upon the party desiring such hearing to meet and confer in person or by telephone with his or her adversary in a good-faith effort to narrow the area of disagreement. In the absence of any agreement, such conference shall be held in the office of the attorney nearest the Court in the division in which the action is pending. In any division which has a regularly scheduled motions day, the motion should be noticed for the first permissible motions day.

(F) **Briefs Required**:

(1) All motions unless otherwise directed by the Court and except as noted hereinbelow in Subsection 11(F)(2), shall be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. The opposing party shall file a response, including a like brief and such supporting documents as are then available, within eleven (11) days after service. The moving party may file a rebuttal brief within three (3) days after the service of the opposing party's reply brief. For good cause, the responding party may be given additional time or may be required to file and serve his response, brief and supporting documents within such shorter period of time as the Court may specify.

(2) Briefs need not accompany motions (a) for a more definite statement, (b) for an extension of time to respond to pleadings, unless the time has already expired, (c) for a default judgment, and (d) solely related to discovery matters, except as set forth in Local Rule 11.1(E), (F) and (I).

(G) **Summary Judgment — Time of Filing**: A party desiring to file a motion for summary judgment must act with reasonable dispatch. No motion for summary judgment

will be considered unless filed within a reasonable time prior to the date of trial, thus permitting a reasonable time for the Court to hear arguments and consider the merits after completion of the briefing schedule specified in Rule 11(F)(1).

(H) **Continuances**: Motions for continuances of a trial or hearing date shall not be granted by the mere agreement of counsel. Any such motion will be considered by the Court only in the presence of all counsel, and no continuance will be granted other than for good cause and upon such terms as the Court may impose.

(I) **Requirement of Proof of Service**: At the end of all pleadings, motions, and other papers required to be served upon a party under Fed. R. Civ. P. 5, there shall be a certificate of counsel or other proof that copies were or will be served, showing the date and manner of service. Any such pleadings, motions, or other papers tendered to the Clerk unaccompanied by such proof of service, shall be marked "Received" with the date and time thereof, and shall be filed by the Clerk only upon order of the Court, which may be entered *nunc pro tunc*.

(J) **Extensions**: Any requests for an extension of time relating to motions must be in writing and, in general, will be looked upon with disfavor.

(K) **Determination of Motions Without Oral Hearing**: In accordance with Rule 78, Federal Rules of Civil Procedure, the Court may rule upon motions without an oral hearing.

(L) **Motions or Petitions For Attorneys' Fees and Costs**: A claim for counsel fees and/or non-taxable costs, whether authorized by statute or otherwise, shall be filed within thirty (30) days after entry of final judgment and shall be accompanied by a written brief pursuant to Rule 11(F) and by appropriate proofs. If the case is on appeal, unless the sole issue on appeal involves the allowance or disallowance of attorneys' fees, the time for filing such motion or petition shall be extended to thirty (30) days after receipt of the mandate, or judgment in lieu of mandate, by the Clerk of this Court from the appellate court. The time for filing such motion or petition shall not be further extended by proceedings in the United States Supreme Court, except by order of the appellate court or by the United States District Court. A claim for attorneys' fees and non-taxable costs, if not so filed and supported, shall be deemed waived, unless the time for filing is extended by the district court prior to the expiration periods specified above. Nothing herein contained shall preclude the right of the Court in an appropriate case, to make one or more interim allowances of attorneys' fees and/or non-taxable costs.

RULE 11.1
DISCOVERY

(A) **Limits on Interrogatories**: Unless otherwise permitted by the Court for good cause shown, such permission being granted only upon written motion to the Court pursuant to Local Rule 11, no party shall serve upon any other party, at any one time or cumulatively, more than 30 written interrogatories, including all parts and sub-parts. This limit may not be waived by agreement of counsel.

(B) **Limits on Depositions**: Unless otherwise permitted by the Court for good cause shown, such permission being granted only upon written motion to the Court pursuant to Local Rule 11, no party shall take more than five depositions, whether upon oral examination pursuant to Rule 30, Federal Rules of Civil Procedure or upon written questions pursuant to Rule 31, Federal Rules of Civil Procedure, upon non-parties. Any party may be deposed. This limit may not be waived by agreement of counsel.

(C) **Requirement of a Writing**: All objections to interrogatories, depositions, requests, or applications under Rules 26 through 37, Federal Rules of Civil Procedure, as well as all motions and replies thereto concerning discovery matters, shall be in writing. If time does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.

(D) **Objections to Discovery Process**: Unless otherwise ordered by the Court, an objection to any interrogatory, request, or application under Rules 26 through 37, Federal Rules of Civil Procedure, shall be filed within fifteen (15) days after the service of the interrogatories, request, or application, except that a defendant may serve an objection within forty-five (45) days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. Any such objection shall be specifically stated. Any such objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter to which no specific objection has been made. (See Rule 33(a), Fed. R. Civ. P.).

(E) **Motions to Compel**: After a discovery request is objected to, or not complied with, within time, and if not otherwise resolved, it is the responsibility of the party initiating discovery to place the matter before the Court by a proper motion pursuant to Rule 37, Federal Rules of Civil Procedure, to compel an answer, production, designation or inspection. Such motion must be accompanied by a a brief as required by Local Rule 11(F).

(F) **Other Discovery Motions**: Motions for a protective order pursuant to Rule 26(c) or 37(a)(2), Federal Rules of Civil Procedure, and motions to compel physical or mental examination pursuant to Rule 35, Federal Rules of Civil Procedure, shall be accompanied by a brief as required by Local Rule 11(F).

(G) **Replies to Discovery Motions**: Replies to discovery motions mentioned in subsections 11.1(E), (F), and (I) herein shall be filed within 11 days after service of the motion and brief, unless otherwise ordered by the Court. Response, if any, to all other discovery motions also shall be filed within eleven days.

(H) **Compliance with Discovery Orders**: After the Court has ruled on a discovery motion, any answer, production, designation, inspection, or examination required by the Court shall be done within 11 days after the entry of the order of the Court, unless otherwise ordered by the Court.

(I) **Failure to Comply with Order**: Should a party fail to comply with an order of the Court concerning discovery motions, it is the responsibility of the party objecting to such failure to comply to place the matter before the Court by a proper motion for supplementary relief pursuant to Rule 37, Federal Rules of Civil Procedure. Such motion must be accompanied by a written brief as required by Local Rule 11(F).

(J) **Consultation Among Counsel**: Counsel are encouraged to participate in pretrial discovery conferences in order to decrease, in every way possible, the filing of unnecessary discovery motions. No motion concerning discovery matters may be filed until counsel shall have explored with opposing counsel the possibility of resolving the discovery matters in controversy. The Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve the discovery matters at issue.

(K) **Extensions**: Depending upon the facts of the particular case, the Court in its discretion may, upon appropriate written motion by a party, allow an extension of time in excess of the time provided by the Federal Rules of Civil Procedure, these Rules, or previous court order, within which to respond to or complete discovery or to reply to discovery motions. Any agreement between counsel relating to any extension of time is of no force or effect; only the Court, after appropriate motion directed thereto, may grant leave for any extension of time. Unless otherwise specifically provided, such extension will be upon the specific condition that, regardless of what may be divulged by such discovery, it will not in any manner alter the schedule of dates and procedure previously adopted by the Court in the particular case.

(L) **Unnecessary Discovery Motions or Objections**: The presentation to the Court of unnecessary discovery motions, and the presentation to another party or non-party of unnecessary discovery requests of any kind, as well as any unwarranted opposition to proper discovery proceedings, will subject such party to appropriate remedies and sanctions, including the imposition of costs and counsel fees.

(M) **Sanctions**: Should any party or his attorney fail to comply with any of the provisions of this Local Rule 11.1, or otherwise fail or refuse to meet and confer in good faith in an effort to narrow the areas of disagreement concerning discovery, sanctions provided by Rule 37, Federal Rules of Civil Procedure, may be imposed.

RULE 12

PRETRIAL CONFERENCE—DOCKET CALL

(A) Matters involving habeas corpus petitions, other *pro se* prisoner petitions, bankruptcy proceedings, condemnation cases, motions to vacate, reduce or modify sentences, probation violations, forfeitures, and reviews from administrative agencies, are not subject to the provisions of this rule, but the judge to whom any such case is assigned may, in his or her discretion, follow the procedure outlined herein in whole or in part in any case. (See Rule 16(b), Fed. R. Civ. P.).

(B) Where the defendant is in default and there has been no appearance in the defendant's behalf, the procedure outlined herein shall not be applicable, but the judge may, in his or her discretion, direct the party not in default to appear for the purpose of noting a default, the entry of a default judgment, and for scheduling a date for trial on the issue of damages if required by law. If the party not in default fails to take action to prosecute the claim, after reasonable notice to appear or take such action, the judge may dismiss the action for failure to prosecute.

(C) In all other civil cases, as promptly as possible after suit has been filed, a judge or parajudicial personnel in that division of the court shall schedule an initial pretrial conference to be conducted in accordance with Rule 16(b), Fed. R. Civ. P., and, at least within 120 days after the filing of the complaint, shall enter an order fixing the cut-off dates for the respective parties to complete the processes of discovery, the date for a final pretrial conference and, whenever practicable, the trial date. Such order may include time limitations for any motions to join any parties, to amend any pleading, and to hear any then pending or contemplated motions.

(D) The judge may include in such initial pretrial or scheduling conference order, or in any supplemental order, such other provisions as may be contained within Rule 16(c), Fed. R. Civ. P., as the judge deems appropriate to assist in expediting the trial or other disposition of the case, and may specify the contents and form of any final pretrial conference order which may be presented to a judge for entry at the time of the final pretrial conference. In those cases in which a final pretrial conference has been scheduled, the obligation of preparing the final pretrial order rests upon both parties, and counsel are required to meet at least eleven (11) days in advance of the final pretrial conference or, if a date for such attorneys' conference has been fixed by the order entered in (C) above, then on that date, for the purpose of discussing and preparing such final pretrial order. If said attorneys' conference has not been previously scheduled by order, the primary responsibility of notifying opposing counsel as to suggested dates or places for said conference shall rest upon counsel for the plaintiff. Attention is directed to Rule 16(f), Fed. R. Civ. P., authorizing the imposition of sanctions for non-compliance.

(E) The parties and their counsel are bound by the dates specified in said order and no extensions or continuances thereof shall be granted in the absence of a showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery shall not constitute good cause for an extension or continuance.

(F) Unless otherwise permitted by the Court on its own initiative or for good cause shown by motion under Rule 5(d), Fed. R. Civ. P., discovery materials, depositions upon oral examination and upon written questions, interrogatories, requests for documents, requests for admission, and answers and responses or objections to such discovery requests shall not be

filed with the pleadings or papers in any case. Where specific discovery material may appropriately support or oppose a motion, the specific discovery material in question shall be appended as an exhibit to the motion, or in response thereto, without having been previously filed. Discovery material otherwise permitted to be used at trial may be properly so used, if otherwise admissible, without having been previously filed.

RULE 13

EXHIBITS, DEPOSITIONS, ETC.

(A) **Numerous Exhibits**: In any civil case, whenever the exhibits to be presented by any party exceed fifteen (15), the party intending to offer such exhibits shall place them in a binder, properly tabbed, numbered and indexed, unless otherwise ordered by the Court.

(B) **Listing and Marking Exhibits**: All exhibits, except such as are prepared in open court or by expert witnesses in open court, must be listed in the final pretrial order in any civil case and shall be delivered to the Clerk for marking prior to the commencement of the trial unless the Court otherwise directs. Such exhibits, unless too large, shall be seen by opposing counsel at or before the final pretrial conference. At any final pretrial conference the Court may rule upon the admissibility of any exhibit or reserve ruling thereon. Exhibits agreed upon shall be admitted in evidence; all others shall be considered as numbered and marked for identification.

(C) **Custody and Disposition of Models and Exhibits**:

(1) Custody: After being marked for identification, exhibits offered or admitted in evidence in any cause pending or tried in this Court shall be placed in the custody of the Clerk, unless otherwise ordered by the Court. All other exhibits, models, and material not offered and admitted in evidence shall be retained in custody of the attorney or party producing same at trial, unless otherwise directed by the Court.

(2) Removal: Whenever any models, diagrams, exhibits, depositions, transcripts, briefs, tables, charts, paper writings, articles or other items or material or things have been placed in the custody of the Clerk for introduction into evidence or for use in the case or otherwise, and same are not admitted or marked for identification, or otherwise used in the case, they shall be removed by the party who delivered or filed or lodged them with the Clerk immediately following the conclusion of the trial or other disposition of the case, unless otherwise directed by the Court. If such items are not withdrawn within ten days after the right to withdraw them exists, the Clerk may forward them to counsel or the party entitled to them, or destroy or make other disposition of them as the Clerk may deem appropriate.

(D) **Disposition of Exhibits, Depositions, etc. in Civil Cases**: All exhibits, models, diagrams, depositions, transcripts, briefs, tables, charts, paper writings, articles or other items or material or things, introduced, tendered, lodged or marked in the trial of a civil case or lodged, filed or delivered to the Clerk in anticipation of their introduction into evidence or for use at trial, shall be withdrawn by the parties to the litigation or their counsel upon the expiration of 60 days after the judgment has become final and the time for appeal or application for a rehearing or further hearing shall have passed. If such items, material or things are not so removed within the time aforesaid, the Clerk may forward them to counsel or the party entitled thereto, or shall destroy or make such other disposition or use of them as the Clerk may deem appropriate.

(E) **Disposition of Exhibits in Criminal Cases**: All exhibits, models or diagrams, documentary or physical, introduced in the trial of a criminal case or otherwise lodged in anticipation of their introduction into evidence in the trial of a criminal case, shall be retained by the Clerk to be disposed of at the time and in the manner directed by order of the Court. Provided, however, that upon the expiration of 45 days after the judgment shall have become final and the time for appeal or application for a rehearing or further hearing shall have passed and no party shall have applied for a return of any exhibits submitted by or belonging to any such applicant, the Clerk may, unless otherwise directed by the Court, deliver to the United States Attorney any exhibit or other physical evidence submitted by any party, for use by any Government Agency interested therein, or for destruction or confiscation.

RULE 14

OFFICIAL COURT REPORTERS TRANSCRIPTS— HEARING ON TRANSCRIPTS—RECORD ON APPEAL

(A) Where a court reporter, under contract or officially employed, is called upon to prepare a transcript, or any portion thereof, in a civil or criminal case in which a party is acting *pro se*, or in a criminal case in which the defendant is entitled to counsel under the Criminal Justice Act, the court reporter may, at his or her election, file said transcript or portion thereof with the Clerk of the United States District Court (or if the transcript or portion thereof is ordered by the Court of Appeals, it may be filed with the Clerk of the United States Court of Appeals), and the Clerk shall acknowledge receipt of said transcript and forward same to the *pro se* party or, if represented by counsel pursuant to appointment under the Criminal Justice Act, to the attorney representing said defendant.

(B) In accordance with the provisions of 28 U.S.C § 753 and the requirements of a resolution adopted by the Judicial Conference of the United States at its session in March 1982, all district courts have been required to file a Court Reporter Management Plan which is available for inspection and copying in the office of the Clerk. This plan calls for the supervision, duties and assignments of court reporters, including the work hours, fees for transcripts, etc. The transcript rates charged by reporters are governed by rates recommended by the Judicial Conference of the United States if adopted by this Court. The schedule of maximum fees which may be charged is posted in the Clerk's Office.

Since the charges and format have been set forth in the regulations of the Judicial Conference, it seems unnecessary to adopt any Local Rule relating to same.

(C) The Clerk shall not release any transcript for copying or reproducing without an order of the Court, but counsel, interested parties, or the news media may examine any transcript on file.

(D) Where there are multiple parties to a particular case, a party not ordering a copy of the transcript shall not be permitted to use (on appeal or otherwise) or examine, photocopy or reproduce in any manner, a copy provided to another party having ordered and paid for same.

(E) No photocopy or reproduction of a transcript in a civil or criminal case may be used by a party not ordering said transcript for the purpose of perfecting a record on appeal, but nothing herein contained shall preclude the use of photocopied or reproduced copies of a transcript in any brief filed with any court.

(F) Unless otherwise directed by the Court, the record on appeal in civil and criminal cases shall not include the examination of the jury on voir dire, counsel's opening statements, arguments of counsel (including arguments of counsel on motions) and the Court's charge to the jury unless there were exceptions to the charge.

(G) Unless the parties file a written stipulation with the Clerk within twenty days after notice of appeal is filed designating the papers which shall constitute the record on appeal the Clerk shall certify and forward to the Court of Appeals all of the original pleadings and orders in the file jacket dealing with the action or proceeding in which the appeal is taken.

RULE 15

APPEAL BOND—EXEMPTION FROM

(A) The Commonwealth of Virginia, or any political subdivision or any office or agent thereof, shall not be required, unless otherwise ordered by the Court, to post a supersedeas bond or other undertaking which includes security for the payment of costs on appeal.

(B) In any case in which a monetary judgment is entered and in such cases as the Court may order, any party desiring to appeal from the adverse effect of such judgment shall be required, unless otherwise ordered by the Court, to post a supersedeas bond with sufficient security to respond to the judgment of the Court in the event of affirmance on appeal and, in the event of failure to give such bond with security, the prevailing party may enforce such judgment as provided by law without regard to the pendency of said appeal.

(C) In lieu of any supersedeas bond, the parties may stipulate with respect to any agreement or undertaking. In lieu of any cost bond, the parties may stipulate with respect to any agreement or undertaking conditioned that the monies and properties of the Court are fully protected or prepaid. The prevailing party in the district court should seriously consider this subdivision as, in the event of a reversal, the premium of any bond will be taxed as a part of the costs.

RULE 16

COSTS—NONRESIDENTS—NOTICE OF APPEAL

(A) **Taxation Generally**: Costs shall be taxed as provided by law in all actions in this Court and, if not otherwise provided by law, in accordance with these Rules.

(B) **Payment in Advance**: All fees and costs due the Clerk shall be paid in advance except (1) in actions brought on behalf of seamen, (2) where a party has been authorized to proceed *in forma pauperis*, or (3) where a party is otherwise exempt by law.

(C) VACANT—formerly **Marshal's Costs**

(D) **Removal Actions**:

Actions by Nonresidents: No bond or security for costs shall be required of parties instituting civil actions, unless otherwise ordered by the Court, except as required by Title 28 U.S.C. § 1446(d) upon filing of a petition for removal of a civil action or proceeding from a state court.

(D-1) **Stipulation for Costs for Certain Admiralty and Maritime Claims**: No stipulation for costs for complaints, petitions, counterclaims, and cross-claims, and the filing of an answer, appearance or claim shall be required, unless specifically ordered by the Court, except where now or hereafter required by statute, the Federal Rules of Civil Procedure, or the Supplementary Rules for Certain Admiralty and Maritime Claims heretofore or hereafter adopted by Congress or through the Rule Making process.

(E) **Bond Premiums**: If costs are awarded by the Court, the reasonable premiums or expense paid on any bond or other security given by the prevailing party shall be taxed as part of the costs.

(F) **Clerk to Tax**: The party entitled to costs shall file a bill of costs as provided in 28 U.S.C. § 1920 and § 1924 within eleven (11) days after entry of final judgment, unless such time is extended by order of court. If the case is on appeal, unless the sole issue on appeal involves the allowance or disallowance of costs, the time for filing such bill of costs shall be extended to 30 days after receipt of the mandate or judgment in lieu of mandate by the Clerk of this Court from the appellate court. The time for filing such bill of costs shall not be further extended by proceedings in the United States Supreme Court, except by order of the appellate court or of the United States District Court. The Clerk shall promptly tax costs and give notice of such action to the parties or their counsel. The court shall promptly review the action of the Clerk upon timely motion under Rule 54(D), Fed. R. Civ. P. In the absence of a timely motion the action of the Clerk is final.

(G) VACANT—formerly **Excessive and Unnecessary Costs**

(H) **Notice of Appeal, Fees, etc.**:

(1) Upon the filing of any separate or joint notice of appeal or application for appeal or from the receipt of any order allowing, or notice of the allowance of, an appeal or writ of certiorari, the amount required by law shall be paid to the Clerk of the district court by the appellant or petitioner.

(2) Where there are multiple parties seeking to appeal jointly (e.g., where

cases are consolidated or tried together or decided by a single judgment or order) and a joint notice of appeal is filed, the Clerk shall collect only one fee and only one cost bond if required. Where separate notices of appeal are filed, the Clerk shall collect separate fees and require separate bonds.

(3) Separate notices of appeal, separate fees, and separate bonds are required of a party who exercises a right of appeal under Rule 4(a)(3), Federal Rules of Appellate Procedure, within 14 days of the date on which the first notice of appeal was filed.

RULE 17

SURETIES—SECURITY—BONDSMAN

(A) **Security:** In both civil and criminal actions, except as otherwise provided by law or by agreement of the parties, ever bond, undertaking or stipulation must be secured by (1) the deposit of cash or negotiable government bonds, undertaking or stipulation; (2) the undertaking or guaranty of a corporate surety doing business in Virginia and holding a certificate of authority from the Secretary of the Treasury; or (3) the undertaking or guaranty of sufficient solvent sureties, residents of Virginia, who own real or personal property within the State of Virginia worth double the amount of the bond, undertaking or stipulation over all debts and liabilities, and over all obligations assumed on other bonds, undertakings or stipulations, and exclusive of all legal exemptions. A husband and wife may act as surety on a bond, but they shall be considered as only one surety. If a bond, undertaking or stipulation is executed by individual sureties, each surety shall execute an affidavit of justification, giving the full name, occupation, residence and business address, showing that he or she is qualified as an individual surety under the provisions of this Rule. Provided that, in criminal cases, this Rule shall not in any way modify, alter or change any of the provisions of the Bail Reform Act or any successor statute.

(B) **Prohibited Sureties:** Members of the bar, administrative officers or employees of this Court, the United States Marshal, his deputies or assistants, shall not act as a surety in any suit, action or proceeding pending in this Court. A member of the bar may execute a bond as attorney-in-fact upon presenting a properly executed power of attorney.

(C) **Powers of Clerk:** To approve security, the Clerk or Deputy Clerk is authorized to approve all recognizances, stipulations, bonds, guaranties, or undertakings, in the penal sum prescribed by statute or order of the Court, whether the security be property or personal or corporate surety. If the bond is offered by a professional bondsman or a person qualifying under (A)(3) above, approval of the Court, Magistrate or Bankruptcy Judge shall be obtained for penal sums in excess of $25,000.00.

(D) **Professional Bondsman:** Any person desiring to become surety for compensation (professional bondsman) on any bond required to be given in any matter before the Court or any of its Magistrates or Bankruptcy Judges, or in any other matter under the jurisdiction of this Court, shall, before attempting to act, obtain approval of the Court. Application for such approval shall be by petition, duly sworn to, setting forth:

(1) That the applicant is of good moral character, is a citizen of the Commonwealth of Virginia, and residing within the boundaries of the Eastern District of Virginia.

(2) His or her full name, business and home address, marital status, and the nature of any business conducted by such person.

(3) Whether he or she is licensed in Virginia and/or any of the cities or counties of Virginia to act as a professional bondsman and, if so, where and whether such person has qualified in any of the courts of Virginia to so act.

(4) Statement (signed by the owners) of assets (including both real estate and personal estate) and liabilities, and as to real estate, its description,

location, how titled and any encumbrances thereon. If a partnership is involved, a statement of the assets of both the partnership and the individual parties must be included, signed by owners of the assets. Assets owned by third parties or jointly with parties who are not partners will not be considered.

(5) A list of any and all bonds on which such person is the surety, the nature of the bond and where lodged.

(6) That such person will quarter-annually file with the Court a list of all bonds upon which he or she is surety, whether any bonds are in default, whether any action on such bond has been instituted, and whether there are any unpaid judgments against such person.

(7) A certificate from a court of record, or the Chief of Police of the home city or town, or of two other responsible citizens, that such person is of good moral character.

(8) A list of any and all criminal convictions, except traffic violations, and whether there are any pending indictments or warrants against such person.

(9) If the information provided under paragraph (4) above reveals a total net worth of at least $200,000.00, and the applicant is otherwise satisfactory, an order may be entered permitting the applicant to act until further order of the Court. Should at any time the total net worth stated in paragraph (4) fall below $200,000.00 as shown on any quarterly report, or the applicant have more bonds outstanding than can be adequately covered, in the Court's opinion, by the net worth shown, or the applicant fail to file on time any quarterly report, or if for any reason the Court should deem the security offered by the applicant to be inadequate or outstanding bonds not adequately secured, the Court may terminate the right of the applicant to act as surety on any bond, without notice.

RULE 18

COURT ORDERS—DEPOSITS INTO COURT

(A) **Copies:** Attorneys shall furnish the Clerk sufficient extra copies of all orders at the time that they are presented to the judge for signature, to enable the Clerk to have available an extra copy and to furnish a copy to each counsel, if certified copies are required by counsel.

(B) VACANT—formerly **Endorsement of Orders**

(C) **Objections Noted:** Whenever counsel shall endorse an order and note with such endorsement any objection to the order, unless the grounds of such objection have been previously stated in the record, or unless the grounds are set forth in writing at the time and as a part of the endorsement, or a request made to the Court for a hearing, it will be assumed the objection is without effect and waived.

(D) **Deposit Into Court Procedure:** Upon entry of an order in any action involving the payment into court of a sum of money to be deposited to the credit of the court for the benefit of any party, the party for whose benefit the sum is to be deposited shall tender to the Court a sketch for an order setting forth the social security number of the beneficiary(ies), the desired depository, the specific investment instrument with the rate of interest expected to be earned thereon, and the proposed disposition of the interest proceeds. The sketch shall be endorsed by the guardian *ad litem* of any party under a legal disability. Upon entry of such sketch, or any modification thereof, the party shall cause the same to be served on the Clerk in similar manner as required by Rule 67, Fed. R. Civ. P.

RULE 19
SUBPOENAS

(A) **Application for Subpoena:** Requests for subpoenas shall be in writing and, except as provided in subsection (G) with respect to a subpoena for a deposition to be taken in a proceeding pending another jurisdiction, signed by counsel qualified to practice in this Court and noted of record in the action in which the subpoenas are to issue. Members or associates of a law firm noted of record are permitted to request subpoenas under this Rule.

Parties appearing *pro se* may apply for subpoenas in their own behalf.

(B) **Return Date of Subpoenas:** All subpoenas shall be made returnable to the place, date and time of trial or hearing unless otherwise ordered by the Court.

(C) **Service of Subpoenas:** All subpoenas in civil actions shall, unless the party requesting the same has been permitted to proceed *in forma pauperis* or is the United States, be served by a person other than the marshal or his deputy, at the initial cost of the party requesting the subpoena, in accordance with Fed. R. Civ. P. 45(c). Proof of service by such person shall be made as provided for proof of service for a summons and complaint in Local Rule 6(A). The person serving the subpoena shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the subpoena. All other subpoenas shall be served by the United States Marshal, a deputy, or by any other person who is not a party or otherwise interested in the proceeding and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the party summoned the fee for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Mileage shall be computed as specified in Title 28 U.S.C. § 1821. Mileage shall also be computed and tendered even though the witness to be subpoenaed lives within the city limits. The Marshal, deputies, or anyone else serving subpoenas is directed not to serve subpoenas unless this Rule is strictly complied with, or unless the party requesting same is authorized to proceed *in forma pauperis* or is an indigent defendant in a criminal case.

(D) **Subpoenas to Officials:** Without permission of the Court first obtained, no subpoena shall issue for the attendance at any hearing, trial or deposition of (1) the Governor, Lieutenant Governor, or Attorney General of any State; (2) the Judge of any court; (3) the President or Vice President of the United States; (4) any member of the President's Cabinet; (5) any Ambassador or Consul; or (6) any military officer holding the rank of Admiral or General.

(E) **Subpoena Duces Tecum:** Whenever a subpoena duces tecum has been directed to any person to produce any books, papers, documents or tangible things to any court and to attend and give testimony at the time scheduled for the trial, taking of depositions or other hearing, the person requested therein to produce, or whenever all parties agree an alternate shall produce such items to the Clerk of the Court on or before 9:00 a.m. on the day designated, or prior thereto if ordered by the Court, to enable counsel to review the same prior to commencement of trial or the hearing. Provided, however, if such party has good reason not to produce and surrender custody of same to the Clerk, he or she shall so advise the Court in writing promptly upon receipt of the subpoena to enable the Court to rule on the objection. Counsel are required to promptly inspect said items so as to be able to proceed promptly at trial.

The provisions hereof are not intended in any way to change or modify the provisions of Rule 26 or Rule 45, or any other applicable rule of the Federal Rules of Civil Procedure, but to supplement the provisions of Rule 45 of said Rules.

(F) **Timely Applications for Subpoenas:** All applications and praecipes for the issuance of subpoenas for the attendance of witnesses at hearings or trials shall be filed with the Clerk not later than 14 days before the date upon which the witness will be directed to appear. If the request is made within 14 days prior to the date of the trial or hearing, it may be issued by the Clerk but no continuances will be granted if said witness fails to appear though served.

(G) **Deposition Subpoenas:** Proof of service of a notice to take depositions as provided in Rules 30(a) and 31(a) of the Federal Rules of Civil Procedure constitutes sufficient authorization for the issuance of a subpoena by the Clerk for the district in which the deposition is to be taken for the attendance of persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), Federal Rules of Civil Procedure. No subpoena for the taking of depositions shall be issued by the Clerk unless there be exhibited to the Clerk a copy of the notice to take deposition together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Rule 45(d)(1).

(H) **Civil Actions—Place of Taking Deposition:** Except with respect to a witness in a foreign country (See 28 U.S.C. § 1783), the Clerk shall, upon request, issue a subpoena for taking a deposition requiring the appearance of any party or witness at any place within 100 miles from the place where that person resides, is employed, or transacts business in person, or is served, or at such other convenient place as is fixed by an order of court. Attendance fees and mileage shall be provided the process server by the party seeking the attendance of the party or witness, and shall be tendered by the process server to the party or witness at the time of service. Mileage provisions shall include as a part of the costs, toll charges, if any, for the party or witness scheduled to appear.

(I) **Subpoenas in Blank:** Whenever there is a question as to whether or not a subpoena in blank should be issued by the Clerk, the applicant shall be referred to a judge of this Court for a final determination. Before the Clerk may issue a subpoena in blank he shall determine the actual pendency of the action and the date and time set for hearing or trial. Except for good cause shown, a blank subpoena returnable in one division will not be issued out of another division. Blank subpoenas shall recite the title and number of the case and shall be completed in every detail except for the name and address of the witness. Returns of service shall be made promptly and filed with the Clerk. All service shall be made strictly in accordance with these Rules.

RULE 20
JURY—JURY COST

(A) Any demand for jury must be in writing and filed strictly in accordance with Rule 38, Federal Rules of Civil Procedure. Removal actions shall be governed by Rule 81(C). In the event another party is added, the additional party may demand trial by jury at any time within 20 days after such party is served with process or summons.

(B) Unless otherwise provided by law, the jury in any civil case shall consist of six. The number of peremptory challenges shall be as provided by law.

(C) Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including service fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the Court, unless the Clerk's Office is notified at least one full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

Likewise, when any civil action, proceeding as a jury trial, is settled at trial in advance of the verdict, then, except for good cause shown, all jury costs, service fees, mileage and per diem shall be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

(D) No attorney or party litigant shall personally, or through any investigator or any other person acting for the attorney or party litigant, interview, examine or question any juror or alternate juror with respect to the verdict or deliberations of the jury in any action, civil or criminal, except on leave of court granted upon good cause shown and upon such conditions as the court shall fix.

RULE 21

DEPOSITIONS—EXPENSES—SUMMARIES—REVIEWING DEPOSITIONS

(A) **Discovery:** Any party, or representative (officer, director or managing agent), of a party, filing a civil action in the proper division of this Court, must ordinarily be required, upon request, to submit to a discovery deposition at a place designated within the division. Exceptions to this general rule may be made on order of the court when the party, or representative of a party, is of such age or physical condition, or special circumstances exist, as may reasonably interfere with the orderly taking of a deposition at a place within the division. A defendant, who becomes a counterclaimant, cross-claimant or third-party plaintiff, shall be considered as having filed an action in this court for the purpose of this Rule. This subsection shall not apply to an involuntary plaintiff nor an interpleader plaintiff.

(B) **Recording and Transcribing Transcript of Discovery Deposition:** The expense of recording a deposition shall be paid by the party seeking to take same. The expense of transcribing the deposition shall be paid by any party ordering the preparation of the original. Any other party desiring a copy of said deposition shall pay for same at the copy rate. Parties may, by agreement, equally share the costs of attendance and transcribing, including such copies as desired. The costs of the original transcript shall be included in the taxable costs, but only if the prevailing party has made use of the deposition during the trial, unless the parties otherwise agree.

(C) **Attorneys' Fees:** Unless the services of associate counsel are retained, in lieu of travel expense, it is not the policy of the Court to make an allowance of counsel fees in attending any deposition, except to the extent provided by statute, and otherwise in this Rule, but the Court reserves the right to make a reasonable allowance where the circumstances of the case may justify same.

(D) **Security for Travel Expense:** Any party desiring to take the deposition of a witness (not a party or representative of a party) for discovery or use at trial, or a party or representative of a party as ordered by the Court under (A), beyond a division of the court in which the action is pending, shall, if such testimony cannot be readily procured in another manner, prepay or secure the reasonable cost of travel of not more than one opposing counsel to the place of taking the deposition and return therefrom, but in no event shall the reasonable costs of travel exceed an amount which would reasonably be required to be paid to associate counsel in the area in which the deposition is being taken unless insufficient time is allowed in giving the notice to take depositions.

(E) **Travel Expense:** The "costs of travel" as provided in this Rule shall consist of the reasonable costs of travel by air or other public transportation, or an allowance for travel by private automobile at the prevailing rate per mile as may be provided for federal government employees on official business, whichever means of transportation is reasonably selected and used, including the cost of transportation from the office or residence to the terminal of the public transportation and from the destination terminal to the place of the taking of the deposition, and reasonable overnight accommodations, if deemed reasonably necessary, and return. The Court may, in its discretion, make a reasonable allowance for food.

The "cost of travel," as herein defined, shall apply to any witness (not a party or the representative of a party) required to attend the taking of a deposition. As to any witness attending a trial or hearing in a civil case, pursuant to Rule 45(e), Fed. R. Civ. P., the expense

of such "cost of travel" shall be taxed as costs if said witness testifies or if it is reasonably necessary for the witness to appear, but said "costs of travel" shall be limited to what would have been expended if said witness resided at 100 miles from the place of the trial or hearing, together with such reasonable allowance, if required for the purpose of the witness testifying, for overnight accommodations and food. If the witness resided within 100 miles of the place of trial or hearing, the "cost of travel" shall be limited to the mileage and attendance fees as provided by law.

(F) **Reviewing Depositions:** Whenever depositions are expected to be presented in evidence, counsel shall, prior to the final pretrial conference or, if same are not then available, prior to the day of trial, review such depositions and (1) extract therefrom a short statement of the qualifications of any expert witness to read to the jury, (2) eliminate unnecessary and/or irrelevant matters, and (3) eliminate all objections and statements of counsel to avoid reading same to a jury. In the event counsel are unable to agree on what shall be eliminated, they shall submit to the Court for a ruling thereon before the date of trial. Failure to do so will constitute a waiver of objections.

(G) **Summaries of Depositions:** In all nonjury cases counsel shall attach to any deposition a summary of the examination of the testimony of each witness, thereby pointing out the salient points to be noted by the Court.

(H) **Reasonable Notice:** As a general rule, 11 days in advance of the contemplated taking of a deposition shall constitute reasonable notice of the taking of a deposition in the continental United States, but this will vary according to the complexity of the contemplated testimony and the urgency of taking the deposition of a party or witness at a particular time and place.

RULE 22

NEWSPAPERS—ADVERTISEMENTS

(A) Unless otherwise ordered by the Court, whenever any notice, including an advertisement for sale, need be given, such notice shall be published in newspapers of general circulation as follows:

(1) In proceedings at Alexandria, in the *Alexandria Gazette Packet* or the *Alexandria Journal.*

(2) In proceedings at Newport News, in the *Daily Press—Times Herald.*

(3) In proceedings at Norfolk, in the *Virginian-Pilot* or *Ledger-Star.*

(4) In proceedings at Richmond, in the *Times-Dispatch* or *News-Leader.*

(B) All notices, including an advertisement for sale, shall be published at least six days prior to requiring any action or conducting any sale, and a longer notice shall be given when required by rule or statute or where deemed proper by the Court.

(C) All notices requiring advertisement shall be published at least once unless otherwise required by rule or statute.

RULE 23
SALES

(A) All sales shall be made by the United States Marshal, or an authorized Deputy United States Marshal in the name of the Marshal.

(B) All sales shall be subject to confirmation by the Court. The Marshal shall file with the Clerk on the day of sale a report thereof, and it shall lie for two business days immediately thereafter for exceptions. If no exceptions are filed, the sale shall stand confirmed as of course. If exceptions are filed within the said two days, the Clerk shall forthwith submit the report and exceptions to the Court for prompt disposition.

(C) The Marshal may decline to knock down a vessel or other property to the highest bidder when the highest bid, in his or her opinion, is grossly inadequate.

(D) The proceeds of all sales by the Marshal shall be forthwith paid into the registry of the Court to be disposed of according to law.

RULE 24
DISTRIBUTION OF PROCEEDS OF SALE

(A) Maritime liens filed before sale, including liens filed by leave of court at any-time prior to sale, shall be paid first. Maritime liens filed after sale shall be paid last.

(B) Liens in each of the foregoing two classes shall preserve their respective rank as among themselves, except in the case of maritime liens of the first class, the order of priority between such liens shall be that those which have accrued within one year prior to the filing of the complaint shall be paid first, and claims which have accrued theretofore shall be paid in the inverse order of the years in which they accrued.

(C) All distributions of the proceeds of any sale shall be by order of court.

RULE 25

PHOTOGRAPHING, BROADCASTING AND TELEVISING IN COURTROOM AND ENVIRONS

(A) The taking of photographs and operation of tape recorders in the courtroom or its environs, and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate or Bankruptcy Judge, whether or not court is actually in session, is prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record; and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

(B) Environs, as used in this Rule, shall include any floor on which any courtroom or hearing room is located, including all hallways, stairways, windows, and elevators immediately adjacent to any such floor.

(C) With permission of the party or parties to be photographed, pictures may be taken by any permanent occupant of any office within the environs aforesaid when the court is not in session.

RULE 26

GRAND JURY—LENGTH OF SERVICE

(A) Unless otherwise ordered by the Court, grand jurors selected for service will be required to serve for a period of one (1) year and, in any event, shall be convened, unless otherwise ordered by the Court, at the following locations:

(1) At Alexandria—on the first Monday in each month except July.

(2) At Norfolk—on the second Monday in each month except February and August.

(3) At Richmond—on the third Monday in each month except August.

(4) At Newport News—on the second Monday of February and August.

Whenever a Monday falls upon a legal holiday, the grand jury may be directed to convene on the next succeeding business day which is not a legal holiday, without the necessity of an order of court. Grand jurors for each respective division of the court shall be selected in accordance with the Jury Selection Act and the district plan implementing same.

(B) When a new grand jury is first convened, the Court shall deliver its charge but, if recessed and later reconvened, the Court shall not be required again to charge the grand jury, but may do so if deemed appropriate.

RULE 27
CRIMINAL CASES—MOTIONS

(A) Within eleven (11) days from the date of arraignment, or such other time as may be fixed by the Court, the parties shall file all desired motions (1) challenging the sufficiency of the indictment, information, warrant or violation notice, (2) raising any issues of venue or jurisdiction, (3) for discovery or production, (4) to suppress evidence, (5) for any mental examination, (6) objections to use by the opposing party of any particular evidence known by a party which may be subject to pretrial ruling, and (7) any other matter capable of being raised by a pretrial motion. A response to any motion shall be filed within eleven (11) days after the filing of the motion or such other time as may be fixed by the Court.

(B) A failure to file any such motion within the prescribed time shall constitute a waiver of the right to raise the matter at the time of trial unless good cause be shown why such motion has not previously been filed.

(C) Whenever the prosecution intends to use any statement or confession alleged to have been made or given by a defendant, if the defendant has not been timely furnished a copy of such statement and/or has not moved to suppress the same, within five (5) days after expiration of the time for defendant to file motions, the prosecution may file a motion for the Court to hear and determine whether such statement or confession is voluntary and admissible in evidence.

(D) If the defendant has waived any right to be present at the time of any hearing on pretrial motions and if any motion filed relates solely to discovery, the Court may enter such order thereon without the necessity of an oral hearing, provided, however, that the party or counsel may thereafter request oral argument at anytime within five (5) days from the date of said order. The Court may always determine the merits of any discovery motion without oral hearing if the motion is filed after the time limit specified in (A) above.

(D) If a party desires to file any proceeding *in forma pauperis*, and is not then confined to a state or federal penal institution, the Court may require the filing of an appropriate affidavit or other information touching upon the party's financial ability to pay a required filing fee including, but not limited to, the period of six months prior to the submission of the complaint or petition, or such other period of time as the Court may reasonably require, for the purpose of determining the financial ability of the party to pay all, or any part, of the required filing fee.

(E) This rule, permitting the filing of an *in forma pauperis* proceeding by making a partial payment, shall not be construed as authorizing the order of successive later payments after the order has been entered authorizing the party to proceed *in forma pauperis*. Whenever it appears that there may have been a change in the party's financial condition, the Court may reconsider whether the party may continue to proceed *in forma pauperis*.

RULE 28

HABEAS CORPUS—PAUPER PROCEEDINGS

(A) In all cases in which a person is being detained in custody pursuant to the judgment of a state court, and in all cases in which a person is being detained in custody pursuant to the judgment of a state or federal court and may be subject to custody in the future under another judgment of a state court, a petition for writ of habeas corpus may be filed *pro se* if it complies with the "Rules Governing Section 2254 Cases in the United States District Court," and the forms therein prescribed.

(B) All *pro se* petitions must be filed on a set of standardized forms to be supplied, upon request, by the clerk of court without cost to the petitioner. Counsel filing a petition for writ of habeas corpus need not use a standardized form, but any petition shall contain essentially the same information as set forth on said form.

(C) If a party desires to file a proceedings *in forma pauperis* under 23 U.S.C. § 1915(a), whether in the form of habeas corpus or under 42 U.S.C. § 1983 or any related statute, and if the party desiring to file such proceeding is then confined to a state or federal penal institution, the party shall, within 30 days of the receipt of any order, accomplish one of the following:

(1) Remit the required filing fee to the Clerk of this Court, or

(2) Request an extension of time within which to pay the required fee and thereafter pay same, or

(3) Cause to be filed a statement of the prison account of the party showing (a) the amount on deposit in the prison account at the period beginning six months immediately preceding the submission of the complaint or petition herein, and (b) the deposits to that prison account within the six-month period, including the source of said funds so deposited in said account and the reasons for any withdrawal therefrom, and

(4) If the party still desires to proceed *in forma pauperis*, the Court may review the application to proceed *in forma pauperis* and may, in its discretion, enter an order permitting the party to proceed *in forma pauperis*, or may condition such action upon the payment of not in excess of 20% of the average amount on deposit in said prison account during said period of six months, including the deposit on account at the commencement of said six-month period. If the party objects to the payment of the portion of the filing fee as ordered by the Court, such party shall, within 11 days of said order, forward to the Clerk his objections thereto, demonstrating the lack of ability or other factors which would justify a failure to pay the required filing fee. The Court, upon further consideration thereof, may grant permission to proceed *in forma pauperis*, or may enter an order declining permission to proceed *in forma pauperis* unless the party pays the amount specified therein within 30 days from the date of said order, but the disposition shall be without prejudice to the right of a party to thereafter file a complaint or petition.

RULE 29
UNITED STATES MAGISTRATES—DUTIES

Magistrates appointed by the Judges of this District serve as judicial officers of the court and are authorized and designated to perform all duties set forth in 28 U.S.C. § 636. Magistrates serving this Court are specially designated to:

1. Exercise civil jurisdiction to conduct any or all proceedings in jury or non-jury cases and order the entry of judgment in any case referred to them for that purpose pursuant to 28 U.S.C. § 636(c) and Rule 72 through 76 of the Federal Rules of Civil Procedure, and

2. Exercise jurisdiction to try persons accused of, and sentence persons convicted of, criminal misdemeanors pursuant to 18 U.S.C. §§ 3401 and 3402.

Duties and cases may be assigned or referred to a Magistrate by an Order entered in the action or on the instructions of a District Judge.

LOCAL ADMIRALTY RULES

FOR THE EASTERN DISTRICT OF VIRGINIA

LOCAL ADMIRALTY RULE (a)

Authority and Scope

LAR (a)(1) Authority. The Local Admiralty Rules of the United States District Court for the Eastern District of Virginia are promulgated by a majority of the judges as authorized by and subject to the limitations of Federal Rule of Civil Procedure 83. Any reference to Federal Rule or Federal Rules shall be to the Federal Rules of Civil Procedure.

LAR (a)(2) Scope. The Local Admiralty Rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims. All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable Local Admiralty Rules, the Local Admiralty Rules shall govern in admiralty cases.

LAR (a)(3) Citation. The Local Admiralty Rules may be cited by the letters "LAR" and the lower case letters and numbers in parentheses that appear at the beginning of each section. The lower case letter is intended to associate the Local Admiralty Rule with the Supplemental Rule that bears the same capital letter.

LAR (a)(4) Officers of Court. As used in the Local Admiralty Rules, "judicial officer" means a United States District Judge or a United States Magistrate; "clerk of court" means the Clerk of the District Court and includes deputy clerks of court; and "marshal" means the United States Marshal and includes deputy marshals.

LOCAL ADMIRALTY RULE (b)

Maritime Attachment and Garnishment

LAR (b)(1) "Not Found Within the District" Defined. A defendant is considered to be "not found within the district" if, in an action *in personam*, the defendant cannot be served with the summons and complaint as provided in Federal Rule 4(d).

LAR (b)(2) Affidavit That Defendant is Not Found Within the District. The affidavit required by Supplemental Rule (B)(2) to accompany the complaint shall list every effort made by and on behalf of plaintiff to find and serve the defendant within the district.

LAR (b)(3) Ownership of Property. In an action where the debts, credits, or effects named in the process of maritime attachment or garnishment are not delivered up to the process server by the defendant or the garnishee, or are asserted by the possessor not to be the property of the defendant, the process shall be served sufficiently by leaving a copy of the process with the defendant, garnishee and possessor, at his or her residence or usual place of business. When the return of service shows that process was so served, and when the plaintiff shows to the satisfaction of the court that the property does belong to the defendant or the garnishee, the court may proceed to hear and decide the case.

LAR (b)(4) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish property under Federal Rule 4(e), the process of attachment or garnishment shall so state.

LOCAL ADMIRALTY RULE (c)

Actions *In Rem*: Special Provisions

LAR (c)(1) Undertaking in Lieu of Arrest. If, before or after commencement of an action by arrest, all parties accept a written undertaking to respond on behalf of the vessel or other property in return for foregoing the arrest, or stipulating to the release of the vessel or other property, the undertaking shall be filed, shall become the party in place of the vessel or other property, and shall be deemed the subject referred to when a pleading, motion, order, or judgment in the action refers to the vessel or property.

LAR (c)(2) Intangible Property. The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of the specified funds or other intangible property to show cause no later than 10 days after service why the funds or other property should not be delivered to the marshal to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the summons has the effect of an arrest of the property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the property or funds proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. A claimant of the property may show cause why the property should not be delivered or should be returned by serving and filing a claim as provided in Supplemental Rule C(6) within the time allowed to show cause and by serving and filing an answer to the complaint within 20 days thereafter. If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this rule, the person who was served shall deliver or pay to the marshal the property or funds proceeded against, or a part thereof sufficient to satisfy plaintiff's claim.

LAR (c)(3) Publication of Notice of Action and Arrest. The notice required by Supplemental Rule C(4) shall be published once in a newspaper named in Local Rule 22, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

(a) the court, title, and number of the action;

(b) the date of the arrest;

(c) the identity of the property arrested;

(d) the name, address and telephone number of the attorney for plaintiff;

(e) a statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6) must be filed with the clerk and served on the attorney for plaintiff within 10 days after publication;

(f) a statement that an answer to the complaint must be filed and served within 20 days after filing of the claim, and that otherwise, default

may be entered and condemnation ordered;

(g) a statement that applications for intervention under Federal Rule 24 by persons claiming maritime liens or other interests shall be filed within the 10 days allowed for claims for possession; and

(h) the name, address and telephone number of the marshal or deputy marshal.

LAR (c)(4) Default in Action *In Rem*.

(a) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the judicial officer that due notice of the action and arrest of the property has been given (1) by publication as required by Local Rule 22, (2) by service under Federal Rule 5(a) upon the master or other person having custody of the property, and (3) by service under Federal Rule 5(b) upon every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons With Recorded Interests.

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must obtain a current certificate of ownership from the United States Coast Guard and give notice to the persons named therein.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must obtain information from the issuing authority and give notice to the persons named in the records of such authority.

(3) If the defendant property is of such character that there exists a registry of recorded property interests and/or security interests in the property (whether governmental or private), the party must obtain information from each such registry and give notice to the persons named in the records of each such registry.

LAR (c)(5) Entry of Default and Default Judgment. After the time for filing an answer has expired, the plaintiff may move for entry of default under Federal Rule 55(a), unless there be an understanding between the parties or counsel to the contrary. Default will be entered upon showing that:

(a) notice has been given as required in LAR (c)(4);

(b) the time for answer has expired: and

(c) no one has filed an appearance to claim the property.

The plaintiff may move for judgment under Federal Rule 55(b) at any time after default has been entered.

THERE IS NO LOCAL ADMIRALTY RULE (d)

Possessory, Petitory and Partition Actions

LOCAL ADMIRALTY RULE (e)

Actions *In Rem* and Quasi *In Rem*: General Provisions

LAR (e)(1) Itemized Demand for Judgment. The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced; and the demand for judgment shall also allege the dollar amount of every claim for interest, costs, attorneys' fees, and other items of damage. The amount of the special bond posted under Supplemental Rule E(5) may be based upon these allegations.

LAR (e)(2) Salvage Actions Complaints. In an action for a salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salved, and the dollar amount of the reward claimed.

LAR (e)(3) Verification of Pleadings. Every complaint in Supplemental Rule B, C and D actions shall be verified on oath or solemn affirmation by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is available, verification of a complaint may be made by an agent, attorney-in-fact, or attorney of record, who shall state the sources of the knowledge, information, and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized so to verify. Such a verification will be deemed to have been made by the party to whom a document might apply as if verified personally. Any interested party may move the court, with or without requesting a stay, for the personal oath of a party or of all parties, or the oath of an authorized corporate officer. If required by the court, such verification shall be procured by commission or as otherwise ordered.

LAR (e)(4) Review by Judicial Officer. Unless otherwise required by a judicial officer, the review of complaints and papers called for by Supplemental Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order from the clerk to the marshal which, upon signature by the judicial officer, will set in motion the arrest, attachment or garnishment sought by the applicant.

LAR (e)(5) Service of Warrants and Process of Attachment. Warrants for the arrest of a vessel, or cargo aboard a vessel, and process to attach a vessel or property aboard a vessel, shall be served only by the marshal.

LAR (e)(6) Marshal's Forms. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal or other process server on forms supplied by the marshal and available from the marshal's office.

LAR (e)(7) Property in Possession of United States Officer. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that

officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by the court.

LAR (e)(8) Security for Costs. In an action under Supplemental Rule E, a party may file and serve upon an adverse party a notice to post security for costs. Unless otherwise ordered by the court, the amount of security shall be $500.00. The party notified shall post security within five days after service. A party who fails to post security when due may not participate further in the proceedings, except for the purpose of seeking relief from the order.

LAR (e)(9) Increased Security for Costs. A party may apply to the court for an order increasing the amount of security for costs. The marshal shall notify the court if a party fails to advance sums as requested, after property has been arrested, attached or garnished, and the marshal may apply to the court for directions if a question arises concerning the obligation of a party to advance moneys required under this rule.

LAR (e)(10) Marshal's Fees and Expenses. The party who first seeks arrest or attachment of property in an action under Supplemental Rule E or Federal Rule 4(e) shall deposit a sum of money with the marshal to cover fees, expenses of arrest, and safekeeping charges for ten days. The marshal is not required to execute process until the deposit is made. The sum of $500.00 shall suffice in any case, subject to reduction following execution, and the party shall advance additional sums from time to time as requested to cover the marshal's estimated fees and expenses until the property is released or disposed of as provided in Supplemental Rule E.

LAR (e)(11) Appraisal. An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee normally will be paid by the moving party, but it is a taxable cost of the action.

LAR (e)(12) Adversary Hearing. The adversary hearing following arrest or attachment and garnishment that is called for in Supplemental Rule E(4)(f) shall be conducted by a judicial officer.

LAR (e)(13) Intervenors' Claims.

(a) When a vessel or other property has been arrested, attached, or garnished and is in the hands of the marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. Upon the filing of an intervening complaint, the clerk shall forthwith deliver a con-

formed copy to the marshal, who shall deliver the copy to the vessel or custodian of the property, but the marshal need not re-arrest or re-attach the vessel or property. Intervenors shall thereafter be subject to the rights and obligations of parties.

(b) No party may intervene without first obtaining leave of court if intervention is sought within 15 days prior to the date for which a sale of the vessel or property has been set by the court.

(c) An intervenor shall share the deposit for marshal's fees and expenses in the proportion that its claim bears to the sum of all the claims.

LAR (e)(14) Custody of Property.

(a) Safekeeping of Property. When a vessel or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel, or the appointment of a facility or person as custodian of the property in place of the marshal.

(b) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations.

(c) Motion for Change in Arrangements. Before or after the marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(d) Insurance. The marshal may order insurance to protect the marshal, his deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and to maintain the court's custody. The party who applies for arrest or attachment of the vessel, cargo, or other property shall reimburse the marshal for premiums paid for the insurance. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the court.

(e) Claims by Suppliers for Payment of Charges. A person who fur-

nishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall submit an invoice to the court for approval in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian (if one has been appointed), and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

LAR (e)(15) Sale of Property.

(a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, a notice of sale of property in an action in rem, including the terms of sale, shall be published daily for a period of six days prior to the day of sale as provided in Local Rule 22(B).

(b) Sale and Report. All sales shall be made by the United States Marshal or his authorized deputy marshal in the name of the Marshal. All sales are subject to confirmation by the court. The marshal may decline to knock down a vessel or other property to the highest bidder when the highest bid is, in his or her opinion, grossly inadequate. On the day of the sale, the marshal shall file his report with the clerk giving all pertinent information, including the fact of the sale, the date, the price obtained and how paid or to be paid, and the name and address of the successful bidder.

(c) Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within two court days following the sale, serving the objection on all parties of record, the successful bidder, and the marshal. The marshal is authorized to demand and receive from the objecting party a sum sufficient to pay the expense of keeping the property for at least seven days. The written objection must be endorsed by the marshal prior to filing with the clerk, as evidence of the acknowledgment of receipt of the deposit of the required expense funds.

(d) Confirmation of the Sale Without Motion. A sale shall stand confirmed as of course without any action by the court unless (1) written objection is filed with the court within the time allowed under these rules, or (2) the purchaser is in default for failure to pay the balance due to the marshal. The purchaser in a sale so confirmed as of course shall present a form of order reflecting the confirmation of the sale for entry by the clerk on the fourth court day following the sale. The marshal shall transfer title to the purchaser upon presentation of such order signed by the clerk.

(e) Confirmation of the Sale Upon Motion. If an objection has been filed or if the successful bidder is in default, the marshal, the objector, the successful bidder, or a party, may move the court for relief. The motion will be heard summarily by a judicial officer. The person seeking the hearing on such a motion shall apply to the court for an order fixing the date and time of the hearing and directing the manner of giving notice and

shall give written notice of the motion to the marshal, all parties, the successful bidder, and the objector. The court may confirm the sale, order a new sale, or grant such other relief as justice requires. Notice of any hearing on such motion may be informal and, if approved by the court, by telephone. The parties are expected to be prepared to go forward with any hearing so ordered.

(f) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

LOCAL ADMIRALTY RULE (f)

Limitation of Liability

LAR (f)(1) Security for Costs. The amount of security for costs under Supplemental Rule F(1) shall be $1,000.00, and it may be combined with the security for value and interest, unless otherwise ordered.

LAR (f)(2) Order of Proof at Trial. Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter, shall proceed with its proof first, as is normal at civil trials.

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

In re:)
) NOTICE AND OPPORTUNITY
AMENDMENT TO LOCAL RULES.) FOR COMMENT

NOTICE IS HEREBY GIVEN that the United States District Court for the Eastern District of Virginia has, pursuant to 28 U.S.C. § 2071(e), amended its local rules as follows:

1. Local Rule 29 is amended to add a provision allowing the forfeiture of collateral in lieu of appearance in accordance with Rule 4(a) of the Rules of Procedure before United States Magistrates (adopted October 15, 1990).

2. Local Rule 7(M), VII B, is amended to correct a typographical error. As amended, it reads as follows:

> B. Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(Adopted October 23, 1990.)

3. Local Rule 28(C)(4) relating to in forma pauperis prisoner proceedings, is amended to substitute the words "aggregate deposits" for the words "average amount on deposit" as they appear in the rule (adopted October 23, 1990).

Copies of the full text of the amendments are available at the Clerk's Office in Alexandria, Newport News, Norfolk and Richmond. Comment on the amendments shall be in writing, addressed to or delivered to the Office of the Clerk at those localities, and must be received on or before February 1, 1991.

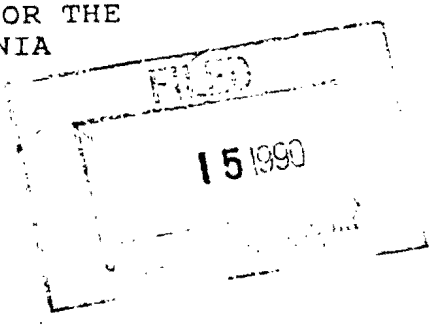
A True Copy, Teste:
Doris R. Casey, Clerk
Deputy Clerk

November 6th, 1990

FOR THE COURT

Chief Judge

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



In re:)
)
Amendment to Local Rules)

O R D E R

Local Rule 29 is amended by adding a paragraph 3, which shall read as follows:

"3. In accordance with Rule 4(a) of the Rules of Procedure for the trial of misdemeanors before United States Magistrates, payment of a fixed sum may be accepted in suitable types of misdemeanor cases in lieu of appearance and as authorizing the termination of the proceedings. Such fixed sums may be increased or decreased from time time by the district court or by a majority of the magistrates, approved by the district court, provided such fixed sums shall not exceed the maximum fine which could be imposed upon conviction."

Pursuant to 28 U.S.C. § 2071(e), the court determines that there is an immediate need for the foregoing amendment; the amendment is adopted forthwith, without public notice and opportunity for comment; and the court shall promptly afford such notice and opportunity for comment.

A True Copy, Teste:
Doris R. Casey, Clerk
By Beth M. Lubus
Deputy Clerk

And it is so ordered.

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

October 15th, 1990.

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

23 1990

IN RE:

AMENDMENT TO LOCAL RULES

ORDER

Local Rule 7(M), VII B, shall be amended to read as follows:

B. Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

Local Rule 28(C)(4) shall be amended to read as follows:

RULE 28

(C)(4) If the party still desires to proceed in forma pauperis, the Court may review the application to proceed in forma pauperis and may, in its discretion, enter an order permitting the party to proceed in forma pauperis, or may condition such action upon the payment of not in excess of 20% of the aggregate deposits in said prison account during said period of six months, including the deposit on account at the commencement of said six-month period. If the party objects to the payment of the portion of the filing fee as ordered by the Court, such party shall, within 11 days of said order, forward to the Clerk his objections thereto, demonstrating the lack of ability or other factors which would justify a failure to pay the required filing fee. The Court, upon further consideration thereof, may grant permission to proceed in forma pauperis, or may enter an order declining permission to proceed in forma pauperis unless the party pays the amount specified therein within 30 days from the date of said order, but the disposition shall be without prejudice to the right of a party to thereafter file a complaint or petition.

Pursuant to 28 U.S.C. § 2071(e), the Court determines that there is an immediate need for the foregoing amendments; the amendments are adopted forthwith, without public notice and opportunity for comment; and the Court shall promptly afford such notice and opportunity for comment.

IT IS SO ORDERED.

United States District Judge

Richard L. Williams
United States District Judge

United States District Judge

James R. Spencer
United States District Judge

United States District Judge

Claude M. Hilton
United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

Rebecca Beach Smith
United States District Judge

United States District Judge

October 23, 1990

United States District Judge

A True Copy, Teste:
Doris R. Casey, Clerk
By
Deputy Clerk

Appendix 4

Memorandum Describing Norfolk Tickler System

CIVIL CASE MANAGEMENT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

April 1984

TABLE OF CONTENTS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Case Management

This court's civil case management system was developed in 1962 with the enactment of local pretrial and discovery rules. There have been only minor changes necessitated by amendments to the local rules, the increase in judges from three to nine, the addition of magistrates, and the increase in case filings. The 1962 Rule A, with its appendices, unless in conflict with the current rules, continues to govern pretrial procedure in the Norfolk and Newport News divisions. The chief judge supervises the docket and case management.

The civil case, with few exceptions, is scheduled for trial within five or six months from the date of issue - a later trial is scheduled only with permission of the chief judge. Continuances rarely are granted.

According to the statistics for fiscal year ending June 30, 1983, the median time interval was five months from the date the case was at issue to trial.

The rapid movement of cases is the result of scheduling each case for trial as soon as it is mature, compliance with pretrial rules and procedures, the enforcement of the deadlines set by the initial pretrial conference order, consistent adherence to the Local and Federal Rules of Civil Procedure, and our case management system.

The low number of pending cases, 2139 for fiscal year ending 1983 (exclusive of land condemnation), is indicative of a busy court. Civil cases are active while pending and case papers must be processed fast and accurately to meet crucial deadlines. This district filed 3338 civil cases in fiscal year ending June 30, 1983. The training of a new civil docket clerk requires one to two years, depending upon prior experience, and is a continuous learning process. There are few personnel problems and relatively no turnover in personnel, attributable in part to the significant

responsibility conferred upon these deputies. Civil Docket clerks work on their own initiative - are conscientious, responsible and proud of their meaningful contribution to the court and the bar.

Civil case management is accomplished through the combined efforts of the judges, miscellaneous judges counsel, highly trained civil docket clerks, and the calendar clerk. The civil case management system plays a very important role in the success of the pretrial procedures. The civil docket section of the clerk's office monitors all civil cases to ensure that at the earliest possible time they are scheduled for initial pre-trial conference, or other appropriate action is taken by a judge, magistrate, civil docket clerk or calendar clerk.

There are two pretrial conferences conducted in most civil cases. At the initial pretrial conference dates are scheduled for discovery by each party, the taking of de bene esse depositions, an attorney's conference, a final pretrial conference, and trial. Pending or contemplated motions are scheduled for briefing and, if necessary, for hearing. Judges' law

clerks conduct the initial pretrial conferences for Norfolk and Newport News cases under the supervision of the calendar clerk; however, a judge is always available should any problem arise needing resolution by the court. The final pretrial conference is conducted by a judge or magistrate judge.

A few cases do not proceed in the usual route to initial pretrial conference. The initial pretrial conference, in a case determined at a preliminary hearing to need an expedited trial date, is conducted at the conclusion of the hearing. Motion procedure is applied to appeals from the magistrate and bankruptcy judge, and reviews from administrative agencies. Land condemnation cases, after maturity, are referred to a land commission.

All state prisoner cases are received at our Richmond office and assigned by rotation to the judges of the entire district. Pending prisoner cases assigned to the Norfolk judges are monitored. Few prisoner cases are tried at Norfolk.

A master calendar system is utilized in the Norfolk, Newport News and Alexandria Divisional Offices, and an individual calendar system has

been adopted in the Richmond Division. The most ~~senior active resident~~ 1. chief judge is the key figure in the Alexandria procedure, with the calendar clerk in the clerk's office assisting with scheduled motions days. The calendar clerk position is unique to the Norfolk and Newport News Divisions. This employee is a deputy clerk, but is located in the office of the ~~chief~~ most senior active judge in Norfolk and works closely with him in managing the master calendar for the judges and magistrate both at Norfolk and Newport News. Initial pretrial conferences are conducted under the direction of the calendar clerk within the guidelines of the ~~Chief Judge~~[1] most senior active. In addition to scheduling routine key dates, the calendar clerk schedules all motions and other necessary hearings, coordinates all changes to the master calendar, assigns judges, courtrooms and court reporters on a daily basis. The civil docket clerk is responsible for the referral of motions submitted on briefs.

The suspense system utilizes a tickler procedure through which the docket clerk monitors civil cases. Those case not on the trial calendar are suspended for further action on a given date. Cases set for trial also are suspended when (1) a motion is to be referred to a judge after

---

[1] Now the chief judge at Alexandria and the senior active resident judge assumes this role at Norfolk & Newport News Div.

briefing, and (2) when the court's attention is needed after a party has complied with a requirement or a deadline has passed.

In cases where neither an answer nor defensive motion has been filed, a status notice is sent by the civil docket clerk to plaintiff's attorney after thirty days have passed from the date of service of the summons. The unserved case or defendant is abated after 120 days from the filing of the complaint. If necessary, counsel in settled cases are reminded by the civil docket clerk, after thirty days, to submit a dismissal order or give a status report. An attorney failing to file a brief is notified to submit same. Motions are referred to a judge for decision when ready.

Motions must be in writing unless made during the trial. The court may waive this requirement if time does not permit the filing of a written motion. Briefs are required with few exceptions. The responsibility for bringing motions to the attention of the court as soon as they are ready for hearing or determination is placed upon the moving party by Local Rule 11.* Motions determined without oral argument, and all motions

* Removed in 1989. We now have a standing order. Copy attached.

requiring decision before a case can be scheduled for initial pretrial conference, are routinely monitored by the civil docket deputies for referral to a judge when they are ready. Unless a motion for summary judgment is filed within a reasonable time before the trial date, it is not considered.

*Discovery-related motions must be accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve the discovery matters at issue (Local Rule 11.1(J). Absent this statement and a specific request for argument or ruling, these motions are not set for hearing or referred to a judge. It is the responsibility of the party initiating discovery to obtain a hearing.

* This provision applies to all motions not just discovery. See Local Rules 11(E)+ 11.1(J). Jdes utilize this for taping costs.

Civil Case Control

Civil case control starts at the time of filing and the case is monitored as long as there is action required by a magistrate, judge the clerk or a judge after an event has occurred or a period of time has elapsed. For example:

1. A case is continued generally
2. A motion requires briefing before it is heard or submitted
3. Settlements
4. Post-trial briefing.

Pending docket sheets and case files are divided into ~~five~~ seven groups — ~~six~~ by the terminal digit of the number assigned to the case: 1; ~~and~~ 2; 3 and 4; 5 and 6; 7 and 8; and 9 and 0 and one tray with habeas corpus and appeals. The ~~five~~ six docket trays are divided into ~~two~~ three sections: (1) pending cases and (2) Appeals pending in the United States courts of appeal asbestos. and habeas corpus cases are in a seventh tray. Docket trays and files are located at the desk with the civil docket clerk to whom they are assigned.

There is no intake file section in this office. The civil division daily receives work from magistrates, judges, judges, counsel at the public counter and through the mail. Incoming work goes to the civil docket clerk handling

that number or, if absent, to the clerk who is temporarily assigned.

Each clerk under the supervision of the civil supervisor, handles every phase of a case including executions, with the exception of scheduling dates and preparation of the record on appeal; however, the civil docket clerk is versed in the procedure for the preparation of the appeal record. The civil division is also responsible for referring matters to the calendar clerk when they are ready for scheduling and to the judge when they are ready for decision.

When a case is filed, the fee is collected, a receipt is written, process is issued, the docket sheet is prepared, the case is indexed, and the file is placed in a rack on the public counter, permitting attorneys and the press to review the newest cases in the presence of the docket clerks without interrupting them.

Docket sheets and 3" x 5" index cards are prenumbered and kept under the public counter. When a number is assigned to a new case, the prenumbered 3" x 5" card is marked with the date of filing and is filed in numerical sequence in a card file on the assigned docket clerk's desk (except prisoner

cases). This card is removed when the case is ready to be scheduled for initial pretrial conference and is used in the outguide as a checkout record to the calendar clerk. These cards are discarded when the pretrial is established and the file is returned. These cards are reviewed each week to ensure that no case has been overlooked for initial pretrial conference scheduling or for suspending.

When the process return is docketed, the case is suspended for thirty (30) days (sixty for U.S. defendants). Each Monday morning all cases, except for the latest two weeks, are removed from the counter and placed with the assigned docket clerk's papers. These files are reviewed and suspended, if appropriate; some are already suspended, some have already been scheduled for initial pretrial conference.

A new case follows one of four courses: (1) an answer is filed and it is scheduled for initial pretrial conference; (2) the summons or other process is not served; (3) no responsive pleadings are filed in response to the process; or (4) defensive motions are filed which require decision prior to the scheduling of the initial pretrial conference.

In the first instance, when the last answer is docketed, the 3" x 5" card is pulled and the date and "Referred for initial pretrial conference" are rubber-stamped on the front of the case folder and the card. The file is then placed in the calendar clerk's out-basket. The card is placed in an outguide and filed in the main file drawer in place of the case file. The calendar clerk selects a date for the initial pretrial conference and returns the file to the docket clerk who prepares written notice to counsel. An initial pretrial is usually held within two weeks.

In the second instance, in a case where no responsive pleadings are filed, the clerk will send a form letter to plaintiff's attorney thirty (30) days following service requesting that a status report be furnished to the clerk within fifteen days. An answer with an endorsed order for late filing, or an order extending the time for defensive pleadings to be filed, is the usual response to the first notice. If no response is received, the clerk gives notice that if the status report is not received within ten (10) days, the file will be referred to ~~the chief~~ a judge on the eleventh day. If no response or an inappropriate response is received,

a letter is prepared by the clerk indicating the case may be dismissed if appropriate action is not taken promptly.

Cases in which the summons has not been served are abated by the clerk after 120 days from filing of the complaint. A status notice is first sent to plaintiff's attorney after 45 days. Periodic notices are sent until 120 days has elapsed, then a final notice is sent advising the parties that unless good cause can be shown within fifteen (15) days, the action will be abated. At the expiration of the fifteen (15) days, if there is no response, the abatement order is prepared and entered by the civil docket clerk.

Finally, in the event defensive motions are filed in lieu of an answer, the case is suspended until all briefs are received. A notice to file a brief is sent by the civil docket clerk for those motions in which counsel fail to submit briefs. In the absence of a request for hearing, the civil docket clerk refers the motion to a judge, on a rotation basis, for decision. If a hearing is requested, the file is referred to the calendar clerk

for scheduling. If the decision on the motion is not dispositive, the civil docket clerk continues to monitor the case until all answers are filed and the initial pretrial conference is scheduled.

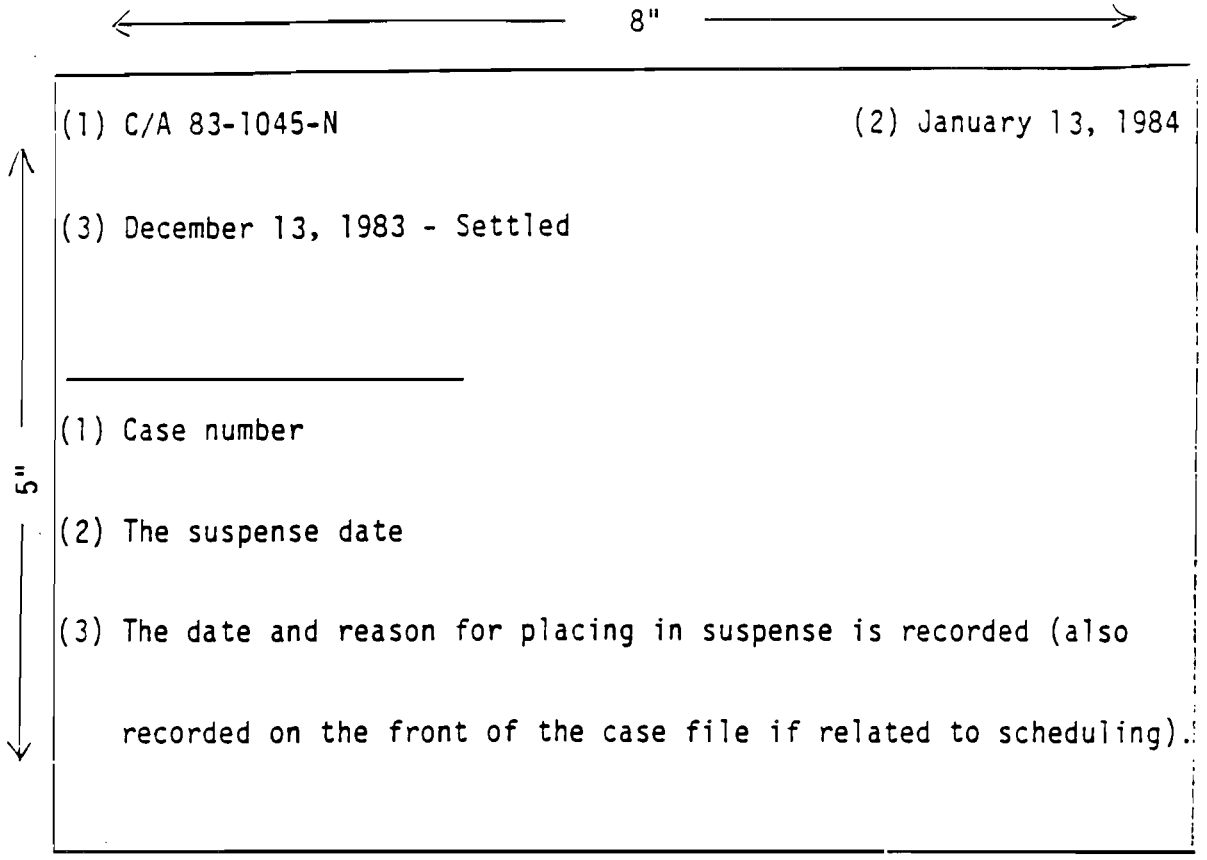
The same procedure applies to the following motions which also are decided before the initial pretrial conference is scheduled: (1) for change of venue or transfer to another division of this court; (2) to stay and/or for arbitration; (3) for remand to the state court; and (4) to join necessary party(s).

Very few cases are set for trial in which no initial pretrial conference is held. These exceptions seek preliminary injunctive relief and are scheduled by the court for an early trial with little or no discovery. Review cases, such as social security appeal, are referred when mature to the calendar clerk for a briefing schedule. If oral argument is not required, these cases are referred after receipt of briefs to one of the judges for decision. They are monitored until removed from the pending docket.

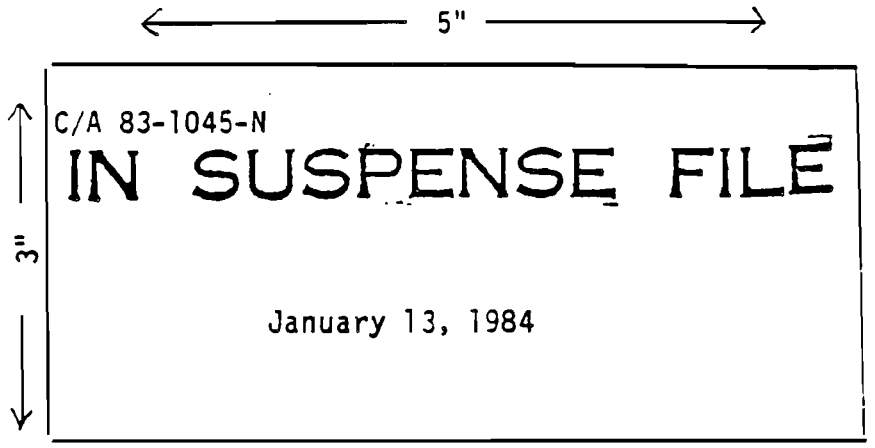
Suspense System

The suspense system is employed to remind the clerk, magistrate, or judge to take appropriate action in civil cases. This tickler system consists of four categories: (1) Current Month (31 guides, one for each day); (2) Next Month (31 guides, one for each day); (3) Month After Next (31 guides, one for each day); and (4) Subsequent Months (12 guides, one for each month). Current Month and Next Month files are contained in seven file drawers, Month After Next in one drawer, and Subsequent Months in one drawer. At the end of each month, labels on the first drawer of Current Month and Next Month are switched. The remaining drawers for these months are labeled by days. Only Month After Next files must be physically shifted.

The case file itself is used as the suspense record. It is placed in the appropriate suspense drawer with a 5" x 8" ruled card stapled on it:



The file is replaced in the main drawer with an outguide containing a 3" x 5" card denoting the file number and suspense date:



If there are external envelopes to the case file, they usually are transferred with the case file to suspense. If they require a lot of space, they are left in the main drawer behind the suspense outguide. An outguide then is placed in the suspense drawer behind the case file, with a notation on the 3" x 5" card that additional envelopes are located in the main drawer.

When a file requires external envelopes, the following label is placed on the front of the main file as an index and on each external envelope as a label of contents:

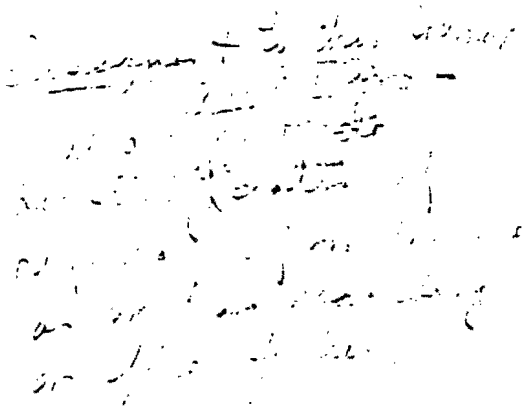
EXTERNAL ENVELOPES

- ☐ Pleadings No._____
- ☐ Memos. No._____
- ☐ Depositions No._____
- ☐ Exhibits No._____
- ☐ Transcripts No._____
- ☐ _____ No._____

If a file in suspense is checked out, an additional outguide is placed in the main drawer in front of the suspense outguide to show the file's current location. If the civil docket section refers the file, the docket clerk prepares this guide; otherwise, the person checking out the file completes the 3" x 5" card, places it in an outguide at the public counter, and asks the docket clerk to pull the file.

Daily the assigned docket clerk pulls suspended cases and takes whatever action is appropriate. Many cases are removed from the suspense system before the assigned date as the result of change in status having occurred. For example, a final order is received on a settled case; briefs are received early and the case is referred to judge or the calendar clerk; extension order is received on a new case and the file is suspended for a later date, or answer is filed early and the case is referred for scheduling of initial pretrial conference. The civil supervisor works very closely with the civil docket clerks and is called on frequently to determine appropriate action to be taken. She develops forms and writes procedures for any changes. She tests cases.

Initially a card suspense system was used. It took much time to maintain and rarely was current. Use of the case file requires a minimum of record keeping and any needed details are in hand. A chronological log reflecting initial pretrial status was also maintained initially and abandoned. It was an unneeded record. This date now is recorded on the outside of each case folder, and a docket entry is made along with other scheduling data and referrals to judges, magistrates and the calendar clerk.



APPENDIX A

Action Prompted by the Docketing or Receipt of Notice for the Following Events (A sample listing)

Complaint - Filing date is added to the prenumbered 3" x 5" card and the file placed in the rack on the counter.

New Prisoner Case (with nondispositive Order) - Suspended for due date of answer, amendment, counteraffidavits, etc.

Process Return - Suspended for answer or responsive pleading or status report.

Answer (all Defendants) - Pre-numbered 3" x 5" card pulled and file referred to the calendar clerk for scheduling of initial pretrial conference.

Motions - Suspended for responding briefs. Notice for briefs mailed. Exception: Those motions for which the attorney is responsible for obtaining a hearing.

Initial Pretrial Conference Order - Record trial, final pretrial conference, and any hearing dates on calendar and front of the case file; suspend any motions to be heard or referred for decision.

Suspense Deadlines

PENDING ACTION	SUSPENSE DATE
Answer has not been filed	
Summons served - awaiting answer.....	Private case - 30 days from service date; USA or USA agency defencant - 60 days from service date
Extension order for filing responsive pleadings.....	Due date for response
Summons not served (possible abatment)....	45 days from date case filed
Lodged answer ..... (untimely)	Set-up for suspense without a suspension date and refer for setting of initial pretrial conference
Third party complaint.....	30 days from filing; USA or USA agency defendant - upon receipt of service return, adjust to 60 days from service date
USA collection cases.....	40 days from service of summons
Letter or order from a judge requiring some action by party.....	Deadline set by judge; if none, 14 days

Third Party Complaint - Suspend for answer.

Answer to Third Party Complaint - Type discovery cut-off order and deliver to calendar clerk (who will update her records); remove from suspense.

Notice of Settlement - Mark off calendar; notify jury clerk/calendar clerk, if applicable; suspend for final order.

Trial/Motion Minutes - Suspend for post-trial briefs. Suspend if not rescheduled when removed from trial calendar. Suspend if judgment entry withheld. Suspend if court wants file returned after or on deadline for compliance with some directive, etc.

Defaults

USA collection case

Notice to defaulted defendant of entry of default.....15 days

Scheduled hearing with judge.....Date set, if briefed, date last brief due

Motions

To be referred to a judge for decision....Date directed; otherwise, 2 days after last brief due

Scheduled motion - judge assigned.....Due date of last brief

Scheduled motion - no judge assigned.....Friday before hearing; if briefs lengthy, date last brief due

Defensive motions - no answer

Supporting brief not received.....30 days from date briefing notice mailed

Supporting brief received.....15 days

Prisoner Cases

All prisoner cases.....Due date of any requirement

Awaiting receipt of state court records in habeas corpus case.....3 weeks from Atty. Gen.'s response

Exhaustion of administrative grievance claims..... 100 days from order requiring same

Election to withdraw non-exhausted state habeas corpus claims.....40 days from order

Post-Trial

Bifurcated trial.....Liability trial date

Court trial under advisement.....Last briefing date; when dates computed from date transcript filed suspend 30 days and adjust when transcript filed

Entry of judgment

Judgment withheld on jury verdict.. Be guided by reason

Attorney directed to prepare.....Date due; if not set, 14 days from date of direction

Special master appointment

Interlocutory order.....Deadline for settling damages

Report of special master.....Deadline set by court; if none, 3 to 6 months depending on nature of appointment and complexity of case

Reviews/Appeals to USDC

Bankruptcy appeals

Scheduled .....Date last brief due

Unscheduled.....Date clerk to refer for for decision

Social Security

Scheduled	Date last brief due
Unscheduled	Date clerk to refer for decision
Remands to Health and Human Services	6 months

Settlements

Dismissal order	30 days, except 60 days for foreign deft. and US deft
Cases removed from calendar "to be settled"	30 days for confirmation of settlement

Trials continued generally	Be governed by reason for continuance

SCHEDULING

A master calendar system is utilized in the Norfolk and Newport News Divisions of this court. The calendar clerk, located in the office of the chief judge at Norfolk, administers the calendar for the judges and magistrate located at Norfolk.

The calendar is maintained in a bound 8½" x 13½" diary, one for Norfolk and one for Newport News. The calendar is planned for the succeeding year usually during August-September relying upon the presence of three active judges, ~~one~~ three senior judge who is available when needed, and ~~the~~ two magistrate judges. ~~The other~~ One senior judge often sits with Courts of Appeals across the country and is frequently assigned to complex or difficult litigation in other areas. He sits in Norfolk and Newport News when he is available.

Based upon the caseload at Newport News, approximately 20-22 weeks per year are allocated for arraignments, motions, final pretrial conferences and trials. Arraignments are scheduled once a week at Norfolk. The grand jury is scheduled once a month in Norfolk, except in February and August when it meets in Newport News. Naturalization ceremonies are scheduled once a month at Norfolk, except in April and October when they are conducted at Newport News and in December when a ceremony generally is conducted at Williamsburg. Holidays are blocked off, as

well as dates for the Fourth Circuit Judicial Conference in June, and two days alloted to law clerk interviews for all judges late in August. Judges' vacation plans also are considered as they are made known.

A glance at the calendar for the coming year readily reveals the availability of the court.

Civil and criminal trials are scheduled to begin Monday through Thursday at 10:00 a.m. Civil and criminal motions, guilty pleas and dispositions in criminal cases, probation violation hearings, appeals from the magistrate and bankruptcy judge, review cases and other hearings generally are set between 9:00 a.m. and 10:00 a.m., Monday through Thursday. Friday is set aside primarily for final pretrial conferences, but as time permits, motions and other matters also may be scheduled. Once a trial has begun, the presiding judge usually resumes trial the following day as early as his schedule permits, including Friday.

Trials

Trials and final pretrial conferences are scheduled at the time of the initial pretrial conference in civil cases.

When a case is at issue, the docket clerk refers the file to the calendar clerk who provides an appropriate date for the scheduling of an initial pretrial conference.

The file is reviewed by the calendar clerk to alert her to potential problems which might arise during the pretrial, to determine how much time to allot, to coordinate the date with those cases already set for the attorneys involved or their firms, and to avoid creating conflicts with trials or other hearings scheduled in this court for these attorneys. Insofar as possible, consideration is given to the personal preferences of counsel.

The file is promptly returned with a date to the docket clerk who directs a form letter to all counsel. Because a judge is not directly involved in the conduct of initial pretrial conferences, more flexibility can be had in their scheduling. If counsel cannot appear on the assigned date, they are invited to arrange with other counsel a more convenient date within a two-week period and call the calendar clerk to arrange the change.

At the initial pretrial conference, consideration is given to the complexity of the case, location of witnesses, projected length of trial, and the personal schedules of counsel. A suitable date for trial is selected within four to six months. In unusually complex cases, permission of a judge is sought for the scheduling of a date more than six months away. The outside range for these cases is eight to nine months, but this timetable is rarely permitted.

A final pretrial conference is fixed on a Friday approximately three weeks prior to trial, and the attorneys' conference is scheduled at the office of plaintiff's counsel two weeks before the final pretrial.

A cut-off date for the taking of de bene esse depositions is set one week ahead of the attorneys' conference. Discovery cutoff for defendants is established two weeks prior to the de bene esse deadline, and plaintiff's discovery is cut off one month prior to defendant's.

Prompt briefing schedules and hearings, if required, are scheduled for all pending or contemplated motions. Dates are established for late responses to discovery. By agreement of counsel, a party may be given up to 30 days from the initial pretrial to respond to pending discovery. A date also is established within 30 days for the filing of third-party complaints, cross-claims and counterclaims, or for the filing of an amended complaint, if there is agreement of counsel.

In short, dates are established at the initial pretrial for all action counsel anticipate during the course of the litigation.

This procedure is designed to ensure the minimum involvement of a judge in the routine scheduling process and the automatic and efficient movement of cases toward trial.

Initial pretrials are conducted under the supervision of the calendar clerk by the ~~ten~~ twelve law clerks of the ~~five~~ six judges. Each judge's clerks assume the responsibility for pretrials for an 8-10 week period on a rotating basis. The calendar clerk trains each law clerk, monitors the conferences until the law clerk reacts competently to counsel's problems, and is always available for consultation. If problems arise which cannot be resolved by the calendar clerk, a judge's assistance is readily obtained.

The calendar clerk provides to the law clerk a list of suitable trial dates and corresponding final pretrial conference dates within a four to six-month period from the initial pretrial. Using the initial pretrial worksheet and conferring with counsel, the law clerk selects mutually agreeable trial and final pretrial conference dates and follows the prescribed schedule established by the judges for fixing an attorneys' conference, de bene esse deposition deadline, and discovery cutoffs for all parties. If hearings on motions are required, the law clerk consults the calendar clerk for suitable dates.

Following the conference, the law clerk photocopies two copies of the initial pretrial worksheet, attaches them to the outside of the folder, and returns the file to the calendar clerk. The calendar clerk reviews the worksheet, records the appropriate trial, final pretrial and hearing dates on the calendar, forwards an information copy of the

worksheet to the civil docket section, and retains a copy for her reference. This copy is filed in numerical order on a clipboard and is readily available should a judge or counsel inquire about the case.

A formal order on initial pretrial conference is prepared by the calendar clerk, typed by a deputy clerk assigned to assist her, reviewed by the calendar clerk for accuracy, presented to the chief judge, or another in his absence, for signing, and photocopied and mailed by the calendar clerk's assistant.

Initial pretrials at Newport News routinely are conducted by the calendar clerk for several reasons. The judge's law clerk who travels to Newport News normally is busy with the judge. In addition, these pretrials are scheduled only about once every three weeks necessitating the scheduling of numerous cases on that date. Since trial dates are not as plentiful at Newport News, several trials must be set for one judge on the available dates and the calendar clerk is better equipped to know which cases likely will result in trial.

At Norfolk, the calendar clerk conducts the initial pretrial conference when directed by a judge and in protracted cases or those involving numerous or difficult counsel or cases involving many unresolved motions.

Criminal trials are set usually no more than 70 days from arraignment, with some exceptions, and consequently are added to the calendar after the earlier scheduled civil trials. The calendar clerk is usually well-acquainted with the civil trials already scheduled and is able to select appropriate dates for criminal cases without disrupting previously scheduled civil trials.

The calendar clerk prepares a list of available trial dates and provides it to the judge or magistrate judges conducting arraignments and scheduling trials.

Motions

If problems arise between the initial pretrial and final pretrial conferences, counsel are strongly encouraged by the calendar clerk to attempt to resolve their differences without the need for a hearing. Often discussion by counsel with the calendar clerk is sufficient to prompt either the presentation of an agreed order or some other appropriate resolution of the problem.

Only after the filing of a motion and brief, a bona fide effort by counsel to resolve their differences, and the filing of an opposing memorandum, is a hearing scheduled. Urgent matters sometimes are scheduled for hearing without a formal motion, but never without an attempt by counsel to agree upon their differences.

~~To comply with the rule which requires every motion to have a notice, counsel are requested to use a fictitious date for their notices--any Friday at 10:00 a.m.~~ A hearing is not conducted ~~at that time and, in fact, is not conducted~~ at all unless counsel ~~there~~after, on motion filing the motion, make a specific request.

Either the moving party or the party seeking oral argument is charged with the responsibility for securing the available dates of other counsel and arranging a convenient hearing with the calendar clerk. Only when a date is confirmed as available to all parties will the calendar clerk fix a hearing.

If a motion can be submitted on briefs, counsel are discouraged by the calendar clerk from appearing simply to reiterate every point in their briefs. If no hearing is necessary, the matter can be referred, by the civil docket clerk, promptly to a judge for determination.

All motions preliminary to answers to the complaint automatically are referred to a judge for decision after the response is received, or the time has passed for a response, unless oral argument is requested. To the contrary, motions filed after the initial pretrial, absent direction from the pretrial order, will not be decided unless counsel request they be referred to a judge or request a hearing.

Post-trial motions are not scheduled for hearing, even at counsel's request, without permission of the trial judge.

Criminal motions are scheduled for hearing only at the request of counsel. When a motion is filed, the criminal docket clerk forwards a notice to the calendar clerk advising of the motions which have been filed and any responses thereto. The calendar clerk is made aware of the activity in the case, but it is expected that counsel will request a hearing if they cannot reach agreement or if negotiations do not lead to a guilty plea.

Occasionally, in a case with multiple defendants and a number of attorneys, it is often efficient to schedule a motion hearing at the time of arraignment. The calendar clerk normally is present in the courtroom to schedule this date.

Post-conviction motions rarely are scheduled for hearing.

Notification to Clerk

Hearings and trials are scheduled in several ways. Hearings may be necessary prior to the initial pretrial conference and these, along with those following the pretrial, usually are scheduled by telephone conferences between counsel and the calendar clerk.

In addition to the scheduling of a trial date, hearings likewise may be scheduled at the time of the initial pretrial conference.

A judge may direct the calendar clerk in open court or during proceedings in chambers to set further hearings or to reschedule a case for trial.

Hearing and trial dates sometimes are established by written order or through correspondence with counsel.

If a hearing or trial is scheduled or rescheduled by the calendar clerk without an order or written communication to counsel, she employs the use of form notices to the clerk, one for civil cases, the other for criminal ones. These notices include the docket number, style of the case, the date and time for hearing, the matters to be considered, and with whom the hearing is arranged.

This is delivered to the clerk's office for appropriate notations on the official calendar and for filing in the case folder.

The civil docket clerk otherwise picks up calendaring information from orders, written communications to counsel, minutes of proceedings in open court, or minutes dictated by a judge relating to proceedings in chambers.

Assignment of the Calendar

It is the responsibility of the calendar clerk, at the direction of the chief judge, or another in his absence, to assure the orderly scheduling of the calendar so that all hearings and trials may be reached without delay or the need for a continuance.

Cases are not assigned to judges; judges are assigned to trials and hearings as they are available.

One or more judges may deal with pretrial motions in a case, the magistrate judge probably will preside over discovery disputes, the final pretrial conference may be conducted by another judge, and another may hear the trial.

The judges generally make good notes when a hearing is conducted so that anyone can pick up the file and know what has transpired. all correspondence is filed in the court file in the clerk's of We find the system to be very efficient. Judge shopping is impossible. Continuances rarely are required, and the court is able to handle hearings on requests for temporary restraining orders, preliminary injunctions and criminal cases without disrupting regularly scheduled civil trials.

If a judge becomes ill or is required to be away from the office, there is always someone to handle the docket. Conceivably an attorney may have to make a more detailed presentation of his argument in certain instances, but the advantages of the system far outweigh the disadvantages.

The calendar is typed for the coming week, usually on Thursday, by the calendar clerk's assistant. It is prepared on a separate page for each day, including those at Newport News, and contains space for the assignment of a judge, a courtroom and court reporter. It is then given to the calendar clerk for review and assignment.

Every effort is made by the calendar clerk to insure as closely as possible an even distribution of work among the judges. Senior judges are not expected to carry the workload of an active judge and trials or hearings are assigned to them only as necessary.

If a judge is assigned a lengthy trial one week, another judge is given a similar trial the following week. Trials, motions, and other matters requiring written opinions are divided as equally as possible. Consideration is also given to other responsibilities including the administrative duties of the chief judge or, as an example, the time-consuming task of another judge in coordinating renovation of the courthouse. Effort is made to minimize a judge's court time immediately before he is scheduled to be away and just following his return.

The judges inform the calendar clerk of personal appointments and other commitments, and also[1] provide information relating to stock ownership, etc., so that conflicts may be avoided.

---

1. The civil docket clerks are also furnished a list of the judge

More importantly, the judges always are at liberty to suggest or make changes in their schedules.

In assigning trials, the calendar clerk considers the type of cases to be tried, the attorneys and parties involved, the estimated length of trial, and other matters scheduled.

The judge conducting the final pretrial conference informs the calendar clerk, and civil docket clerk at the time of the conference of his estimation of the length of trial and settlement prospects. Coupled with the experience of the calendar clerk and often her later discussions with counsel, the calendar clerk is equipped with the necessary tools for planning the week's schedule. Motions, pleas, dispositions, final pretrials, etc., are assigned to the most available judge or to the judge who has earlier dealt with the case, if appropriate.

In addition to the designation of a judge, the calendar clerk determines courtroom assignments and court reporter requirements.

Presently there are ~~three~~ four courtrooms, one for each active judge, and two magistrate judge courtrooms ~~a grand jury room which is~~ used by the magistrates ~~when a grand jury is not convened.~~ While the three active judges usually use their own courtrooms, there are times when departure from the routine is required. For example, a trial involving numerous parties or counsel or one which generates significant public interest is scheduled for the large courtroom regardless of the trial judge assigned.

Senior judges ~~and the magistrate~~ judges are provided courtroom space wherever it is available. Presently, nonjury matters sometimes must be heard by the judge in ~~the grand jury room or~~ in chambers due to a lack of sufficient courtroom space.

The use of a contract court reporter is kept at a minimum insofar as possible by the scheduling of matters for the magistrate or senior judge in clusters. A contract reporter is not called unless a regular reporter is unavailable. Some hearings do not require a reporter and this determination is made by the calendar clerk through consultation with counsel or the judge or magistrate judge involved.

When assignment has been completed, the calendar clerk's assistant photocopies the calendar and distributes sufficient copies to every judge's office, the court reporters, the Clerk, the Magistrate, the United States Attorney, Marshal and Probation Office. This procedure ensures the presence of all necessary parties in the proper place at the proper hour.

It is our practice not to divulge to counsel until the day of trial or hearing which judge has been assigned to a case. For this reason, the United States Attorney, Marshal and Probation Office are given copies of the calendar without case assignments indicated. The

Clerk is provided one copy with assignments and one copy without, to be disseminated in that office as the chief deputy sees fit.

~~A person is~~ designated in every office to secure ~~and verify the calendar on a daily basis with~~ the calendar ~~clerk~~ for additions, settlements, ~~assignments, or changes in assignments.~~

This is a continuing problem - the calendar clerk is responsible for notifying us of additions, settlements, assignments, or changes in assignments — however, she fails to do this in many instances.

Appendix 5

Sample Orders: Alexandria Division

Bryan

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

v.

SCHEDULING ORDER *

A pretrial conference will be held in this action on Thursday, March 21, 1991, at

All discovery must be concluded by Friday, March 15, 1991.

Unless a later time has previously been allowed, any defendant who has not filed an answer must do so within ten (10) days from the date of this order.

All motions shall be noticed for hearing on the nearest possible Friday and prior to the pretrial conference. (See Local Rule 11.) Ten (10) working days notice is required for motions to dismiss, for summary judgment, and for judgment on the pleadings.

Counsel should bring to the pretrial conference a list of the witnesses proposed to be called, a list of exhibits, and the exhibits themselves, pre-marked and ready for filing. No witness or exhibits not so listed and filed will be permitted at trial except for impeachment or rebuttal purposes. Objections to exhibits must be noted (they will be ruled on at trial) at the conference; otherwise the exhibits shall stand admitted in evidence. In addition, counsel should meet prior to the conference, exchange the aforementioned lists and copies of the exhibits, and prepare and bring to the conference a written stipulation of all uncontested facts.

No witness, expert or otherwise, will be permitted to testify who, in response to a request for his identity, has not been identified in time to allow his deposition to be taken or the substance of his knowledge ascertained, or, in the case of an expert, to allow the facts relied upon and opinions held by him to be obtained by F. R. Civ. P. 26(b)(4)(A) or deposition prior to the discovery cutoff.

Depositions, interrogatories, requests for documents and admissions, and answers and responses thereto, shall not be filed except on order of the court or for use in this action in connection with a motion for summary judgment or at the pretrial as an exhibit. F. R. Civ. P. 5(d).

In non-jury cases counsel should file with the clerk at the beginning of the trial written proposed findings of fact and conclusions of law.

The trial of this case will be set for a day certain, not later than three to eight weeks from the date of the pretrial conference.

United States District Judge

Alexandria, Virginia
January 2nd, 1991

* This order is being mailed to local counsel only.

Appendix 6

Sample Orders: Newport News/Norfolk Divisions

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
NORFOLK, VIRGINIA 23510

CHAMBERS OF
CALVITT CLARKE, JR.
DISTRICT JUDGE

Please give me a call if you have questions
622-8134
Michael

(This notice is mailed to all counsel, or the parties if unrepresented, within a few days of the filing of answers. The initial pretrial conference is scheduled within 2 weeks.)

RE: Civil Action No.

NOTICE OF INITIAL PRETRIAL CONFERENCE

At the direction of the Honorable J. Calvitt Clarke, Jr., an initial pretrial conference shall be conducted in this case on

Any attorney or party participating in this conference shall have the authority to enter stipulations to make admissions regarding all matters that the participants may reasonably anticipate will be discussed.

Rule 16(f), F.R.C.P., provides that if a party or attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or attorney is substantially unprepared to participate in the conference, or if a party or attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 36(b)(2)(B)(C)(D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

If you cannot be present for this conference, you may have an attorney from your office who is familiar with the case appear with your available dates. In the event this is not satisfactory, you may arrange with all counsel a more suitable date which falls within two weeks of the date of this notice.

Any problem or request for a date change should be communicated promptly to me or to Kathy McCarthy, the assistant docket clerk, 304 Walter E. Hoffman U. S. Courthouse, Norfolk, Virginia 23510, Telephone 804-622-8134.

Sincerely yours,

(Mrs.) Michael C. Gunn

cc: Clerk

INITIAL PRETRIAL CONFERENCE WORKSHEET

TRIAL DATE: (not more than 6 mos. from initial pretrial) / / At Norfolk / / At Newport News

JURY: / / Demand in file / / No demand / / Demand at IPTC. Complete, if necessary.

Br... supporting demand by _____; brief in opposition _____; Refer for decision _____.

JURY INSTRUCTIONS AND PROPOSED VOIR DIRE BY _____

FINAL PRETRIAL: (approx. 3 weeks prior to trial - all on Friday) at _____.m. / /Norfolk / /Newport News

ATTORNEYS' CONFERENCE: (2 weeks before final pretrial) at _____.m.; office of _____.

DE BENE ESSE DEPOSITION CUT-OFF DATE: (1-2 weeks in advance of atty conference

DISCOVERY CUT-OFF DATES:

Plaintiff(s) (1 month in advance of def's)

Defendant(s) (2 wks. in advance of de bene esse)

Third-party (same as defendant)

(This worksheet is completed in every case by the conduct of the initial pretrial Conference. These time frames are a guide, but can be adjusted as individual cases require; especially cases which can be tried in less than 4 months.)

PENDING DISCOVERY:

Interrogatories filed by plaintiff on _____

Interrogatories filed by defendant on _____

Interrogatories filed by third-party _____

Requests for production filed by plaintiff _____

Requests for production filed by defendant _____

Requests for production filed by third-party _____

Requests for admissions filed by plaintiff on _____

Requests for admissions filed by defendant on _____

Requests for admissions filed by third-party on _____

Responses to be filed by plaintiff on (If there is pending discovery, cut-off date for responses is

Responses to be filed by defendant on _____

Responses to be filed by third-party on established by agreement, but no longer than 30 days from initial

PARTIES	ATTORNEY AT IPTC	ATTORNEY AT TRIAL AND FPTC

Complete style of case

Civil Action

No. _____

/ / Initial
/ / Supplemental

ou anticipate a third-party complaint, cross claim or counterclaim? If so, file by (By agreement, may allow up to 30 days from initial pretrial.)

re the names of the parties correct as stated in the complaint or last amended complaint? If not, state exact changes to be made:

Are there other actions pending or contemplated involving the same subject matter? If yes, explain. / / Should or / /should not be CONSOLIDATED.

Any question of misjoinder or nonjoinder? Explain.

Any infants or incompetents? Explain.

Is this a proposed class action? If yes, provide for briefs and set hearing below.

Any question of jurisdiction? If yes, explain and provide for briefs and hearing request below.

PENDING OR CONTEMPLATED MOTIONS

/ /Pending / /contemplated motion _____ / /shall be / /has been
(what kind)

filed / /with / /without brief by _____ on _____.
(what party) (date)

_____'s brief in opposition / /shall be / /was received on _____.
(what party) (date)

If hearing is requested by _____, the Clerk shall refer the file
(2 days after last brief)

to a judge for decision on _____.
(1 day after hearing request date)

HEARING is scheduled on _____ on _____
(what motion(s)) (date)

at _____.m., at / /Norfolk / /Newport News.
(time)

OTHER ACTIONS REQUIRED: (filing lodged pleadings, dismissing unnecessary parties, filing amended complaint, etc.)

(a date certain is established in every case for any contemplated motion or action in the case. Deviation from this schedule is rare and requires leave of court.)

Ac n based on: _____ COMPLAINT FILED: _____

DATE: _____ BY: _____

Obtaining the appropriate information from the initial pretrial worksheet, this formal order on initial pretrial is prepared for signature of a judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

MELANIE L. GROVE, Plaintiff, v. SEARS, ROEBUCK AND CO., and NORTHERN ELECTRIC COMPANY, a division of Sunbeam Corporation, Defendants.	)	Civil Action No. 90-287-NN

ORDER ON INITIAL PRETRIAL CONFERENCE

Subject to any special appearance, questions of jurisdiction, or other motions now pending, the parties having advised the Court that certain processes of discovery are contemplated, it is

ORDERED that the parties do propound interrogatories (Rule 33) and/or written questions (Rule 31), file requests for production of documents and things (Rule 34) and/or admission (Rule 36) and/or physical and mental examination (Rule 35), and take discovery and/or de bene esse depositions of witnesses and/or parties (Rule 26, 28, 30) in accordance with the following schedule. Interrogatories to any party shall be limited to thirty (30) and discovery depositions of nonparties shall be limited to five (5) (Local Rule 11.1(A) and (B).

The Court reserves the right to permit discovery depositions of a party or witness who is a nonresident, or otherwise unavailable, at any time prior to trial but such permission must be granted by order of court either by agreement of counsel or upon hearing.

Trial shall commence on October 22, 1990, at 10:00 a.m.

Trial by jury has been demanded. Proposed voir dire and jury instructions shall be received by the Clerk on or before October 15, 1990.

A **final pretrial conference** shall be conducted on September 27, 1990, at 10:30 a.m., at which time trial counsel shall appear and present

for entry an order setting forth (1) a stipulation of undisputed facts, (2) agreed upon exhibits and discovery material to be introduced, (3) exhibits and discovery material intended to be introduced by each party to which there are objections, stating the particular grounds for each objection, (4) the names and addresses of all witnesses who will testify on behalf of each party, and the purpose of such testimony, (5) the factual contentions of each party, and (6) the triable issues as contended by each party. With the exception of rebuttal, any witness, exhibit or discovery material not included in the final pretrial conference order will not be permitted at trial.

Counsel shall meet for the attorneys' conference in the office of counsel for plaintiff on September 13, 1990, at 2:00 p.m., for the purpose of preparing stipulations and exchanging information to be included in the final pretrial order. Preparation of the final pretrial order is the responsibility of counsel for plaintiff.

All de bene esse depositions shall be concluded on or before September 6, 1990.

If military personnel or out-of-state persons are involved as parties and/or witnesses, counsel shall proceed forthwith to take the discovery and/or de bene esse depositions of said parties and/or witnesses.

Discovery shall be commenced forthwith and shall be completed by plaintiff(s) on or before July 23, 1990; by defendant(s) on or before August 23, 1990. "Completed" means that interrogatories, motions for production, and other motions touching discovery must be served at least thirty (30) days prior to the established cut-off date so that responses thereto will be due on or before the cut-off date. Depositions upon oral examination and/or written questions, interrogatories, requests for documents, requests for admissions, and objections, answers and responses thereto, shall not be filed with the Court unless the Court, on its own initiative or upon motion of a party for good cause shown, requires the filing of all or part of the discovery material obtained during the course of this litigation. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the Court if needed or so ordered.

Plaintiff shall respond to presently pending discovery on or before April 30, 1990.

It having been represented by counsel that the proper names of the defendants Sears, Roebuck & Co. and Northern Electric Company, are Sears, Roebuck and Co. and Northern Electric Company, a division of Sunbeam Corporation, it is ORDERED that all pleadings be, and they hereby are, changed to indicate the correct names of these defendants.

UNITED STATES DISTRICT JUDGE

Date: April 6, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
_____ DIVISION

The final pretrial conference is scheduled approximately 3 weeks in advance of trial.

In use since about 1962, this outline is furnished upon request to any counsel requesting assistance.

(Suggested Form of Order for Final Pretrial Conference)

ORDER ON FINAL PRETRIAL CONFERENCE

In conformity with the Local Rules of Practice for the United States District Court for the Eastern District of Virginia relating to pretrial procedure, it is ORDERED that:

1. The parties hereto agree upon a stipulation with respect to certain undisputed facts. as follows:

(Here set forth all factual stipulations.)

2(a). The parties hereto agree that the following exhibits, identified by the initials of counsel, may be introduced in evidence without the necessity of further proof:

P/T Ex. #___

P/T Ex. #___

2(b). The plaintiff desires to introduce in evidence P/T Ex. #___, identified by the initials of counsel, and states that the purpose of said exhibit is (state purpose), but defendant and/or third-party defendant objects to said exhibit and, as grounds for said objection, states:

(Give objections.)

2(c). The defendant desires to introduce in evidence P/T Ex. #___, identified by the initials of counsel, and states that the purpose of said exhibit is (state purpose) but plaintiff and/or third-party defendant objects to said exhibit and, as grounds for said objection, states:

(Give objections.)

2(d). The third-party defendant desires to introduce in evidence P/T Ex. #___, identified by the initials of counsel, and states that the purpose of said exhibit is (state purpose), but the plaintiff and/or third-party plaintiff objects to said exhibit and, as grounds for said objection, states:

(Give objection.)

3(a). The names and addresses of the witnesses who will (or may) testify at the instance of the plaintiff (in addition to any witnesses testifying by deposition), and the purposes of such testimony, are:

John Doe, 1002 Main Street, Richmond, Virginia, eye witness

Dr. Richard Roe, Medical Tower, Norfolk, Virginia, medical

Sam Smith, 500 Main Street, Alexandria, Virginia, expert

3(b). The names and addresses of the witnesses who will (or may) testify at the instance of the defendant (third-party plaintiff)(in addition to any testifying by deposition), and the purposes of such testimony, are:

(Same form as 3(a).)

3(c). The names and addresses of the witnesses who will (or may) testify at the instance of the third-party defendant (in addition to any testifying by deposition), and the purposes of such testimony, are:

(Same form as 3(a).)

4(a). The factual contentions of the plaintiff are:

(List contentions.)

4(b). The factual contentions of the defendant (third-party plaintiff) are:

(List contentions.)

4(c). The factual contentions of the third-party defendant are:

(List contentions.)

5(a). The triable issues as contended by the plaintiff are:

(List issues.)

5(b). The triable issues as contended by the defendant (third-party plaintiff) are:

(List issues.)

5(c). The triable issues as contended by the third-party defendant are:

(List issues.)

United States District Judge

At Norfolk, Virginia
(month, day, year)

Counsel for plaintiff

Counsel for defendant
(third-party plaintiff)

Counsel for third-party
defendant

NOTE: The Court may incorporate into any formal order, or counsel may agree, that other matters may be set forth in the pretrial order including, but not limited to:

(a) Rulings on objections to depositions.

(b) Time for presentation of written requests for charge.

(c) Special interrogatories for jury.

(d) Time for filing any pretrial brief on triable issues.

Suggested Check List for
Stipulations and Triable Issues

Negligence Actions

1. Specific statutes, ordinances and regulations alleged to have been violated.

2. If res ipsa loquitor is relied upon, what is the basis for such reliance?

3. A detailed list of personal injuries claimed and, if claimed to be permanent, the nature and extent thereof.

4. The age of the plaintiff or libellant.

5. The life and work expectancy of the plaintiff or libellant, if permanent injury is claimed.

6. An itemized list of all special damages, such as medical, hospital, nursing, drugs, and other expenses, with the amount and to whom paid or owed. If claim is made for the reasonable value of such services actually paid or provided by a third party, such reasonable value shall be considered.

7. A detailed statement of loss of earnings claimed.

8. A detailed list of any property damage.

9. The acts of contributory negligence claimed, and any other defenses to be interposed.

10. Possible agreement as to use of medical reports of physicians, hospital records, etc.

For use in preparation of input to
final pre-trial conference order

11. Will a plat or survey of the scene of the accident be submitted in evidence? If so, will the parties agree upon same without the formality of proof by an engineer?

12. Will photographs demonstrating the scene of the accident, the extent of the injuries, or of objects or vehicles, be submitted in evidence? If so, will the parties agree upon same without the formality of proof?

Death Actions

1. Comply with the provisions respecting negligence actions where applicable.

2. In proceedings under Virginia statute, state:

   (a) Decedent's date of birth, marital status, life and work expectancy, general physical and mental condition immediately prior to accident resulting in death.
   (b) Names, ages and addresses of eligible beneficiaries under Virginia statute.
   (c) Decedent's employment and rate of earnings for three (3) years prior to death.

3. In proceedings under the Jones Act, F.E.L.A., and other statutes where recovery is predicted upon dependency, in addition to 2 (a) and (c) above, state:

   (a) Names, ages, addresses and relationship of decedent's dependents.
   (b) The amounts of monetary contributions or their equivalents made to each dependent by the decedent for a three (3) year period prior to death.

(c) A statement of decedent's personal expenses during his lifetime and a fair allocation of the customary family expenses for decedent's living for a period of three (3) years prior to death. The amount claimed for care, advice, nurture, guidance, training, etc., by the deceased, if a parent, during the minority of any dependent.

4. Is the death conceded to be the result of the accident? Will a death certificate be required?

Contract Actions

1. Whether the contract relied upon was oral or in writing.

2. The date thereof and the parties thereto.

3. The terms of the contract which are relied upon by the party.

4. Any collateral oral agreement, if claimed, and the terms thereof.

5. Any specific breach of contract claimed.

6. Any misrepresentation of fact alleged.

7. Does the party rely upon a contract implied by law?

8. Is any party claiming as a third-party beneficiary of a contract?

9. Whether modification of the contract or waiver of convenant is claimed and, if so, what modification or waiver and how accomplished.

10. An itemized statement of damages claimed to have resulted from any alleged breach; the source of such information; how computed; and any books and records available to sustain such damage claim.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK AND NEWPORT NEWS DIVISIONS

FILED
APR 24 1989
CLERK, U.S. DISTRICT COURT
NORFOLK, VA.

In re: Motions in Civil Actions

ORDER

A party filing any motion, response or other pleading requiring a ruling, hearing or determination by the court shall, as soon as the same is ready therefor, have the obligation and duty to bring it to the attention of the court for decision or, if a hearing is desired, to arrange with all parties and the docket clerk a convenient and timely hearing date.

The attention of all parties is called to Rule 11(F), Local Rules of Practice, which reads as follows:

> (F) Briefs Required
>
> (1) All motions unless otherwise directed by the Court and except as noted hereinbelow in Subsection 11(F)(2), shall be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. The opposing party shall file a response, including a like brief and such supporting documents as are then available, within eleven (11) days after service. The moving party may file a rebuttal brief within three (3) days after the service of the opposing party's reply brief. For good cause, the responding party may be given additional time or may be required to file and serve his response, brief and supporting documents within such shorter period of time as the Court may specify.
>
> (2) Briefs need not accompany motions (a) for a more definite statement, (b) for an extension of time to respond to pleadings, unless the time has already expired, (c) for a default judgment, and (d) solely related to discovery matters, except as set forth in Local Rule 11.1(E), (F) and (I).

All parties must comply with the above rule.

The Clerk shall provide a copy of this order to each plaintiff or counsel at the time a complaint is filed, and shall attach copies to the complaint for service on all defendants.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

At Norfolk, Virginia

Appendix 7

Sample Orders: Richmond Division

RRM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

vs.

CIVIL ACTION

NO.

INITIAL PRE-TRIAL ORDER

Deeming it proper so to do, it is ADJUDGED and ORDERED that:

1. Unless already filed, answers to the complaint will be filed within ten (10) days of this date unless as otherwise mandated in the Federal Rules of Civil Procedure. Any such filing will not be deemed a waiver of prior motions.

2. Counsel will meet with the Court in chambers at _____ A.M., on _____ for purposes of setting this case for trial, and, if necessary, the setting of a date for a formal pre-trial conference.

3. All counsel should anticipate a trial date within ninety (90) days of this date except in cases of protracted litigation.

4. All counsel are admonished to expedite discovery.

5. Counsel attending are to be sufficiently knowledgeable of the case to respond to such queries as the Court may deem appropriate, and be prepared to discuss settlement prospects.

6. If counsels' office is forty or more miles from Richmond, they may attend the conference telephonically. They may call the undersigned precisely at the time scheduled for your conference and we will utilize the Court's telephone speaker so all present may participate. If more than one lawyer on the case has an office forty or more miles from Richmond and wishes to attend the conference telephonically, it will be the responsibility of the lawyer whose office is furthest from Richmond to arrange a conference call amongst the lawyers and to contact the Court once all lawyers are on the line.

Utilization of the foregoing is the responsibility of counsel desiring it and failure to reach the undersigned at the time scheduled will not delay the setting of a trial date which must be accepted as final.

The telephone number is (804) 643-7171.

Let the Clerk send copies of this order to counsel of record and to pro se litigants.

Robert R. Merhige, Jr.
United States District Judge

Date: _____

****IF THIS ACTION IS SETTLED PRIOR TO THE PRE-TRIAL CONFERENCE, PLEASE CALL ROBERT L. WALKER AT (804) 771-2612. THANK YOU.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: EXHIBITS IN A TRIAL BEFORE JUDGE MERHIGE

1. **All** exhibits are to be appropriately marked in sequence (using the **same numbers**, not letters, as shown on the List of Exhibits filed in accordance with the Pre-Trial Order). The exhibit sticker should show the **case number** as well as the **exhibit number.**

2. All paper exhibits should be placed in a **binder**, properly **tabbed, numbered** and **indexed.**

3. **Two** sets of exhibits are required for use by the Court. The **original** set of exhibits are to be given to **Robert L. Walker, Judge Merhige's Courtroom Deputy Clerk, for the use by the witnesses** during the trial of the case. Also a **complete set** of the exhibits are to be supplied to **Judge Merhige** for his use during the trial.

4. If, in a **jury trial**, you wish to show the Jury a particular exhibit, then you **must** have a copy for each juror (and be prepared to have a copy for each alternative juror if the situation should arise). Also during a jury trial if a witness is using a **chart, map, etc.,** it **has to be** large enough for each juror to view from the jury box. (Nothing herein is to be construed as a prediction of the Judge's ultimate ruling in reference to a motion to display any exhibit to the Jury).

5. Judge Merhige does not like to **burden** the Jury with a set of exhibits of their own. If you have an exhibit or exhibits that you think would be **helpful** for the Jury during the testimony of a witness, then you should have copies of the exhibit or exhibits to be passed to **each juror** at the **appropriate** time, with the Court's **permission**, of course.

6. If objections to any proposed exhibits are filed in accordance with the Pre-Trial Order the parties are to **lodge** the Judge's copy of the trial exhibits **with the** Clerk at least **one day** prior to trial.

7. The **original set of exhibits** (as well as the Judge's copy of the exhibits if no objections have been filed) are to be delivered to **Robert L. Walker on the morning of the trial unless** otherwise ordered by the Court.

8. It is **not necessary** to move for the introduction of the exhibits, as listed on the filed List of Exhibits, **individually.** They **may be received** by the Court **collectively** upon motion of the parties at the beginning of the trial proceedings, subject to the Court's ruling on **filed** objections to an exhibit.

You may call Robert L. Walker at 771-2612 if you have any questions or special requests in the handling of the exhibits in a trial before Judge Merhige.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA
OFFICE OF THE CLERK
RICHMOND, VIRGINIA 23205
P O BOX 2-AD

)ORIS R. CASEY
CLERK

TELEPHONE
CIVIL 771-2611
CRIMINAL 771-2612
JURY FINANCIAL 771-2613
ADMINISTRATION 771-2055

UNITED STATES GOVERNMENT

memorandum

DATE:

REPLY TO ATTN OF: Clerk, U.S. District Court, Richmond, Division

SUBJECT: Filing of Proposed Findings of Fact and Conclusions of Law and Filing of Proposed Jury Instructions

TO: Whom it may concern:

When filing Proposed Findings of Fact and Conclusions of Law and Proposed Jury Instructions you should present them in pleadings form with a Certificate of Service just as any other pleading you file in your case. (Each Jury Instruction should be on a separate page and each Instruction should be numbered.) You should also supply a copy of these pleadings for the Court's use at the time you file the original in our office. The judge's copy of each of these pleadings should contain appropriate citations.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

_____

Civil Action No. _____

v.

Trial Date:
Time:

_____

PRE-TRIAL ORDER

Deeming it proper so to do, it is **ADJUDGED and ORDERED** as follows:

1. Within fifteen (15) calendar days from this date, counsel for the respective parties shall meet and confer in an effort to enter into written stipulations of any uncontroverted facts.

2. Except for good cause shown, motions for the joinder of other parties and/or the amendment of pleadings will not be entertained unless made within fifteen (15) calendar days of this date.

3. Motions for summary judgment will be deemed untimely unless filed at least thirty five (35) calendar days before trial.

4. Between ten (10) and twenty (20) calendar days

prior to trial, counsel for the respective parties herein shall meet and confer in an effort to enter into further written stipulations of any uncontroverted facts, and all stipulations, if any, shall be filed with this Court no later than five (5) calendar days prior to trial.

5. On or before ten (10) calendar days prior to trial, plaintiff herein shall file a list of proposed exhibits with the Clerk and shall, prior thereto, either forward copies of said proposed exhibits or make same available to all other counsel for examination. Each defendant shall file a list of proposed exhibits after having exhibited copies of same or having made them available for examination to all other counsel within seven (7) calendar days prior to trial. All exhibits shall be appropriately marked in sequence. Exhibit markers may be secured from the Clerk. Any objection to any proposed exhibit shall be filed in writing with appropriate citations thereto no later than four (4) calendar days prior to trial. Each party shall supply a copy of each proposed exhibit for use by the trial judge. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of affected exhibits.

6. If this action is to be tried to a jury, each of the parties shall file its proposed charge to the jury seven (7) calendar days prior to trial. Counsel are required to submit their suggested charge, keeping in mind that the charge should encompass all rules of law applicable to the evidence anticipated to be adduced. Appropriate citations should be noted by use of

footnotes.

In the event this action is one in which a jury is not called for, the parties shall file their proposed findings of fact and conclusions of law in accordance with this paragraph.

7. On or before fifteen (15) calendar days prior to trial, plaintiff shall file with the Clerk a list of any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereof that plaintiff intends to offer in this cause. Each defendant shall do likewise within three (3) calendar days thereafter, and plaintiff may file a further rebuttal designation within two (2) calendar days thereafter. Any objection to the introduction of any of the foregoing shall be filed in writing by each of the parties by no later than four (4) calendar days prior to trial, or such objection shall be deemed to have been waived. This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.

8. Each of the parties shall file with the Clerk of this Court at least fifteen (15) calendar days prior to trial a biographical sketch of any proposed expert, along with a list of such materials as said expert intends to rely upon. Failure to comply with this paragraph may result in the Court's precluding the testimony of such expert.

9. Discovery for all parties shall be concluded at least fifteen (15) calendar days prior to trial. No interrogatories or requests for admissions shall be propounded later than forty (40) calendar days prior to trial, and no deposi-

tions shall be taken later than twenty-one (21) calendar days prior to trial, except by agreement of counsel or for good cause shown. Interrogatories shall be limited to twenty (20) inquiries including subsections.

10. Counsel for plaintiff shall, at least thirty (30) days prior to trial, notify opposing party or parties, in writing, the name and address of any expert who may be called to testify, as well as the subject matter on which such expert may testify. Opposing party or parties shall, within twenty (20) days prior to trial, notify the plaintiff and other parties in writing of similar information in reference to any expert who may, by such party, be called to testify. Except for good cause shown, failure to timely comply with this paragraph shall preclude the testimony of any such expert.

11. Counsel for plaintiff shall, fifteen (15) calendar days prior to trial, file a list of witnesses, including experts, intended to be called, and each defendant shall file a corresponding list no later than eleven (11) calendar days prior to trial; plaintiff has leave to file a list of rebuttal witnesses three (3) calendar days thereafter. The listing of a witness shall constitute a representation by counsel that the witness possesses relevant evidence and has either agreed to appear or has been or will be timely subpoenaed. No witness listed may be excused except by leave of court or with the consent of all parties. Failure to comply with this paragraph may, in the absence of exceptional circumstances, result in preclusion of a witness's testimony and/or sanctions.

12. In reference to paragraphs 1, 4, and 5 herein, unless otherwise agreed, the parties shall meet at 10:00 a.m. on the last day required in accordance with the respective paragraphs, in the conference room of this Court; unless said date falls at a time at which the Clerk's Office is closed, in which event such meeting shall be held on the Friday preceding said closing of the Clerk's Office, but in no event in fewer days than required under each of the respective paragraphs aforesaid.

13. Unless counsel, within ten (10) calendar days of the entry of this order, moves under Federal Rule of Civil Procedure 5(d) to require the filing of all discovery materials, no party shall file any depositions upon oral examination or upon written questions, interrogatories, requests for documents, requests for admission, or answers and response thereto with the pleadings or papers in this case. However, at any time, upon motion of a party for good cause shown, or on its own initiative, the Court may require the filing of all discovery material or specific discovery material obtained in the course of this litigation.

14. Counsel are admonished that no photo or documentary exhibit shall be shown to the jury during the course of trial unless a separate copy of said exhibit is available for the use of each juror, or the exhibit is of such size or is enlarged to such size that the jurors as a body can examine the exhibit or enlargement.

15. If less than a complete deposition is to be read to the jury, or presented to the Judge for reading, the party so

offering shall highlight the tendered portions. The other party, or parties, shall do likewise in designating such additional portions as such party wishes to offer or contends should, in fairness, be read.

16. In complying with this Order, any party, regardless of his, her, its or their formal designation, shall be deemed a plaintiff if asserting one or more affirmative claims.

Let the Clerk send copies of this order to all counsel of record.

/s/ ROBERT R. MERHIGE, JR.
UNITED STATES DISTRICT JUDGE

Date_____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

_____)
)
v.)
)
_____)

CIVIL ACTION
NO. _____

NOTICE OF PRETRIAL CONFERENCE

Please be advised that the above-styled civil action has been placed on Judge Spencer's docket for trial. Judge Spencer has requested a pretrial conference for _____ at _____ ___.m. It is anticipated that the conference will last approximately five (5) minutes. The conference will take place in the Chambers of Judge Spencer, First Floor, United States Courthouse, Tenth and Main Streets, Richmond, Virginia.

At this conference the Court will set a trial date. All counsel should anticipate a trial date within ninety (90) days of the date of the pretrial conference except in cases of protracted litigation.

Counsel attending the pretrial conference are to be sufficiently knowledgeable of the case to respond to such queries as the Court may deem appropriate, be prepared to set a firm trial date, and to discuss settlement prospects.

DORIS R. CASEY, CLERK

By: _____
Linda K. McDonald
Deputy Clerk

Date: _____

IF THIS CASE IS SETTLED PRIOR TO THE CONFERENCE, PLEASE CALL THE CLERK'S OFFICE AT 771-2612. THANK YOU.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND, VIRGINIA 23219

CHAMBERS OF
JAMES R. SPENCER
DISTRICT JUDGE

TELEPHONE 643-60

TO: Counsel and pro se litigants in cases in which settlement has been reached.

FROM: James R. Spencer
United States District Judge

RE:

DATE:

The Court has been informed that settlement has been reached in the above-styled case. A sketch order to that effect, appropriately endorsed, is to be lodged with the Court no later than the date and time at which trial is scheduled to commence. Trial in this matter is currently set for _____ at _____.

If, for any reason, the above requirement cannot be met, counsel (or pro se litigants) are to confer, and thereafter inform the Court, in writing, of the date by which the Court may expect a sketch order as described above. This informative writing is to be lodged with the Court no later than the date and time at which trial is scheduled to commence.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND, VIRGINIA 23219

CHAMBERS OF
JAMES R. SPENCER
DISTRICT JUDGE

TELEPHONE 643-6081

TO: Counsel and pro se litigants in cases in which the parties have agreed to dismissal.

FROM: James R. Spencer
United States District Judge

RE:

DATE:

The Court has been informed that the above-styled case is to be dismissed by agreement of parties. A sketch order to that effect, appropriately endorsed, is to be lodged with the Court no later than the date and time at which trial is scheduled to commence. Trial in this matter is currently set for _____ _____ at _____.

If, for any reason, the above requirement cannot be met, counsel (or pro se litigants) are to confer, and thereafter inform the Court, in writing, of the date by which the Court may expect a sketch order as described above. This informative writing is to be lodged with the Court no later than the date and time at which trial is scheduled to commence.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

_____)
)
)
v.) Civil Action No._____
)
_____)

PRETRIAL ORDER

1. Trial of this case shall commence at _____ __.m. on _____, and shall be completed on or before _____.

2. If this action is to be tried to a jury, the number of persons comprising the jury shall be governed by Local Rule 20(B). See Colgrove v. Battin, 413 U.S 149 (1973).

3. The selection and impaneling of alternate jurors shall be considered waived unless a written request is made therefor at least ten (10) days prior to trial. If the selection of alternate jurors is waived, counsel and the parties shall be deemed to have consented and agreed that in the event any regular juror or jurors impaneled become unable at any time to continue service the trial shall proceed with the remaining jurors until a verdict is reached. (Rule 47 (b)).

4. Each of the parties shall file its proposed jury instructions on or before 5:00 p.m. seven (7) days prior to trial. Counsel are required to submit their suggested instructions in narrative form (not as citations), keeping in mind that the charge should encompass all rules of law applicable to the evidence anticipated to be adduced. Each Jury Instruction should appear on a separate

page and each Instruction should be numbered. Appropriate citations should be noted by use of footnotes. In the event this action is one in which a jury is not called for, the parties shall file their proposed findings of fact and conclusions of law in accordance with this paragraph.

When filing Proposed Findings of Fact and Conclusions of Law and Proposed Jury Instructions, counsel should present them in pleading form with a Certificate of Service just as any other pleading you file in your case. You should also supply a copy of these pleadings for the Court's use at the time you file the original in the Clerk's Office.

5. Any proposed questions that the Court is asked to put to prospective jurors on voir dire shall be delivered to the Court and opposing counsel not later than seven (7) days prior to the trial date.

6. Within 30 days from the date of this Order, counsel for the respective parties shall meet and confer in an effort to enter into written stipulations of any uncontroverted facts.

7. Between 15 and 25 days prior to trial, counsel for the respective parties herein shall meet and confer in an effort to enter into further written stipulations of any uncontroverted facts, and all stipulations, if any, shall be filed with this Court no later than ten (10) days prior to trial.

8. Counsel for the plaintiff shall notify the Clerk in writing that the meetings required by paragraphs six (6) and (7) herein have been completed. Said notice shall be delivered to the Clerk no more than five (5) days after the meeting takes place.

9. On or before ten (10) days prior to trial, plaintiff herein shall file a list of proposed exhibits with the Clerk and shall, prior thereto, either forward copies of said proposed exhibits or make same available to all other counsel for examination. Each defendant shall file a list of proposed exhibits after having exhibited copies of same or having made them available to all other counsel within seven (7) days prior to trial. All exhibits shall be appropriately marked in sequence. Exhibit markers may be secured from the Clerk. Any objection to any proposed exhibit shall be filed in writing with appropriate citations thereto no later than three (3) days prior to trial. All parties should prepare and deliver two copies of exhibits to the Court and one copy to opposing counsel no later than Noon one business day prior to trial. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of affected exhibits.

Exhibits which counsel contemplate using solely for impeachment purposes need not be listed, disclosed or exhibited. However, such exhibits not listed, can only be used for impeachment.

10. Discovery for all parties shall be concluded at least 41 days prior to trial. No interrogatories or request for admissions shall be propounded later than 71 days prior to trial, and no depositions shall be taken later than 41 days prior to trial, except by agreement of counsel or for good cause shown. Interrogatories shall be limited to twenty (20) inquiries including subsections.

10(a). All dispositive motions are to be filed on or before 40 days prior to trial.

11. On or before fifteen (15) days prior to trial, plaintiff shall file with the Clerk a list of any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereof that plaintiff intends to offer in this cause. Each defendant shall do likewise within three (3) days thereafter, and plaintiff may file a further rebuttal designation within two (2) days thereafter. Any objection to the introduction of any of the foregoing shall be filed in writing by each of the parties by no later than three (3) days prior to trial, or such objection shall be deemed to have been waived. This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.

12. Counsel for plaintiff shall, fifteen (15) days prior to trial, file a list of witnesses intended to be called and each defendant shall file its corresponding list no later than ten (10) days prior to trial; plaintiff has leave to file a list of rebuttal witnesses three (3) days thereafter. Failure to comply with this paragraph will, in the absence of exceptional circumstances, result in preclusion of a witness's testimony.

13. Each of the parties shall file with the Clerk of this Court at least seven (7) days prior to trial a biographical sketch of any proposed expert, along with a list of such materials as said expert intends to rely upon. Failure to comply with this paragraph may result in the Court's precluding the testimony of such expert.

14. Unless counsel shall within ten (10) days of the entry of this Order move under Federal Rule of Civil Procedure 5(d) to require the filing of all discovery materials, no party shall file

any depositions upon oral examination or upon written questions, interrogatories, request for documents, request for admissions, or answers and responses thereto with the pleadings or papers in this case. However, at any time, upon motion of a party for good cause shown, or on its own initiative, the Court may require the filing of all discovery material or specific discovery material obtained in the course of this litigation.

15. Counsel are admonished that no exhibit shall be shown to the jury during the course of the trial unless a separate copy of said exhibit is available for the use of each juror, or the exhibit is of such size or is enlarged to such size that the jurors as a body can examine the exhibit or enlargement.

16. In computing any period of time under this pretrial order if any deadline falls on a Saturday, Sunday or holiday, the deadline shall be the last business day prior to the Saturday, Sunday or holiday. Federal Rule of Civil Procedure 6 shall not apply to time limits under this Order.

17. Counsel are further advised that all time limits and restrictions outlined herein shall be strictly observed.

And it is so ORDERED.

_____

UNITED STATES DISTRICT JUDGE

Date:_____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Plaintiff	)	
v.	)	CIVIL ACTION NO.
Defendant	)	

PRETRIAL ORDER

At a pretrial conference held on _____, this case was set for a trial with a jury on _____ at _____.

Discovery must be concluded by _____.

By _____, one week prior to trial, counsel must exchange with each other and file with the Clerk a list of witnesses proposed to be called, a list of exhibits, and the exhibits themselves, premarked. Objections to exhibits must be noted within five (5) calendar days after the exhibits are filed; otherwise the exhibits shall stand admitted in evidence.

Counsel should file with the Clerk by 12:00 Noon three (3) calendar days before trial written proposed jury instructions. If the third day before trial is a Saturday or Sunday, the proposed instructions shall be filed with the Clerk no later than 5:00 p.m. Friday.

Now that a trial date has been set, this case cannot be transferred to a Magistrate, without leave of Court, unless the Magistrate can maintain the dates set herein.

If the parties settle the case, they must submit a final order within thirty (30) days unless the Court has otherwise ordered. If such an order is not submitted the Court will dismiss the case with prejudice for failure to prosecute.

The scheduling order previously issued by the Court shall remain in effect.

Let the Clerk send a copy of this order to all counsel of record.

_____
UNITED STATES DISTRICT JUDGE

_____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

RLW

Plaintiff	)	
v.	)	CIVIL ACTION NO.
Defendant	)	

PRETRIAL ORDER

At a pretrial conference held on _____, this case was set for a trial without a jury on _____ at _____.

Discovery must be concluded by _____.

By _____, one week prior to trial, counsel must exchange with each other and file with the Clerk a list of witnesses proposed to be called, a list of exhibits, and the exhibits themselves, premarked. Objections to exhibits must be noted within five (5) calendar days after the exhibits are filed; otherwise the exhibits shall stand admitted in evidence.

Counsel should file with the Clerk by 12:00 Noon three (3) calendar days before trial written proposed findings of fact and conclusions of law. If the third day before trial is a Saturday or Sunday, the proposed findings of fact and conclusions of law shall be filed with the Clerk no later than 5:00 p.m. Friday.

Now that a trial date has been set, this case cannot be transferred to a Magistrate, without leave of Court, unless the Magistrate can maintain the dates set herein.

If the parties settle the case, they must submit a final order within thirty (30) days unless the Court has otherwise ordered. If such an order is not submitted the Court will dismiss the case with prejudice for failure to prosecute.

The scheduling order previously issued by the Court shall remain in effect.

Let the Clerk send a copy of this order to all counsel of record.

_____
UNITED STATES DISTRICT JUDGE

RLW

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Plaintiff	)	
v.	)	CIVIL ACTION NO.
Defendant	)	

SCHEDULING ORDER

A pretrial conference will be held in this action on _____ at _____.

All discovery must be concluded two weeks prior to the date of trial. The trial date will be set at the pretrial conference for a day certain, not later than four to eight weeks from the date of the pretrial conference. Once a trial date has been set, the case cannot be transferred to a Magistrate, without leave of Court, unless the Magistrate can maintain the trial date.

Unless a later time has previously been allowed, any defendant who has not filed an answer must do so within ten (10) work days from the date of this order.

Within twenty (20) calendar days from the date of this order, counsel shall meet and confer in an effort to enter into written stipulations of any uncontroverted facts. Between ten (10) and twenty (20) calendar days before trial, counsel shall meet and confer in an effort to enter into further written stipulations of any uncontroverted facts and of the undisputed authenticity of any documents. All stipulations shall be filed with this Court by 12:00 Noon no later than three (3) calendar days before trial. If the third day before trial is a Saturday or Sunday, the stipulations shall be filed with the Court no later than 5:00 p.m. Friday.

Thirty (30) calendar days from the date of filing, all non-discovery motions unnoticed for a hearing are considered submitted on the pleadings. A hearing date should be arranged with the Court's secretary.

Within ten (10) work days from the date of filing, all discovery motions unnoticed for a hearing are deemed withdrawn. Any discovery matter not resolved by the parties pursuant to Local Rule 11.1(J) that is submitted to the Court for resolution will result in sanctions being imposed on either the non-prevailing party, such party's attorney, or both, pursuant to Rule 37, F.R.Civ.P.

Responses to motions shall be governed by Local Rule 11(F). Replies, if necessary, shall be filed within three (3) work days after the response.

If a party objects to the production of documents on the grounds of attorney-client privilege, attorney work product, or any other privilege, he must provide the requesting party with an inventory list of the documents to which he is objecting, and a brief description of what each document contains. Unless this list is provided at the time the objection is filed, the objection will be considered waived.

One week prior to trial, counsel must exchange with each other and file with the Clerk a list of witnesses proposed to be called, a list of exhibits, and the exhibits themselves, premarked. No witness or exhibit not so listed and filed will be permitted at trial except for impeachment or rebuttal purposes. Objections to exhibits must be noted (they will be ruled on at trial) within five (5) calendar days after the exhibits are filed; otherwise the exhibits shall stand admitted in evidence.

Counsel should tender to the Clerk two binders of the exhibits to be used at trial. These should be indexed for easy reference and each exhibit should be individually tabbed. One of these binders will be for the Court's use and the other is for use by the witness. Counsel should have their own copy of each exhibit and should furnish opposing counsel with a copy of each exhibit. If counsel desires, each juror may also have a binder of exhibits to view as counsel examines the witnesses.

No expert witness will be permitted to testify who, in response to a request for his identity, has not been identified as such in time to allow the facts relied upon and opinions held by such expert to be obtained by F.R.Civ.P. 26(a)(4)(A) or deposition prior to the discovery cutoff. This includes treating physicians, other health care providers, and in-house technical witnesses if they are asked to give an opinion on causation or any other relevant issue. Only one expert per discipline is permitted, except by Court order.

Depositions, interrogatories, requests for documents and

admissions, and answers and responses thereto, shall not be filed except on order of the Court or for use in this action. F.R.Civ.P. 5(d).

In non-jury cases, counsel should file with the Clerk by 12:00 Noon three (3) calendar days before trial written proposed findings of fact and conclusions of law. In jury cases, counsel should file with the Clerk by 12:00 Noon three (3) calendar days before trial written proposed finding jury instructions. Counsel should also supply copies for the Court's use. If the third day before trial is a Saturday or Sunday, the proposed findings of fact and conclusions of law or proposed jury instructions shall be filed with the Clerk no later than 5:00 p.m. Friday.

In all cases where a prevailing plaintiff is entitled to attorney fees, counsel for the plaintiff must deliver to counsel for the defendant, three (3) calendar days before the scheduled trial date, his accumulated time records and a quantified fee demand. If the plaintiff prevails at trial, counsel should then be prepared to proceed with a hearing to determine the plaintiff's fee entitlement. Failure to comply with this procedure will be deemed a fee waiver.

Issuance of subpoenas, assessment of jury costs, qualification of experts, and depositions will be governed by Local Rules 19, 20(c) and 21, respectively.

Counsel are advised that if this Order conflicts with the Federal or Local Rules, a hearing within ten (10) work days should be scheduled to resolve such conflicts.

UNITED STATES DISTRICT JUDGE

Appendix 8

Asbestos Orders

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
NORFOLK, VIRGINIA 23510

CHAMBERS OF
J. CALVITT CLARKE, JR.
DISTRICT JUDGE

June 7, 1991

RECEIVED
JUN 11 1991
U.S. DISTRICT COURT
NORFOLK, VA

TO: Jean Basnight

FROM: J. Calvitt Clarke, Jr.

RE: Asbestos Scheduling

To avoid the difficulties we now experience in entering timely scheduling orders in new asbestos cases being filed in the Norfolk and Newport News Divisions, I have prepared the enclosed form orders for the Clerk's use in setting these cases for trial.

Using the attached dates as a scheduling guide, you should select the appropriate trial date and complete a form Scheduling Order upon the filing of each asbestos case. A copy of each order entered should be provided to Michael Gunn.

As soon as all cases have been set on a given date, you should prepare the form Consolidation Order listing all cases set for that date, thus notifying all counsel of the anticipated trial group. A copy of this order also should be given to Michael.

If you have more ideas, I would welcome your suggestions.

JCC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK AND NEWPORT NEWS DIVISIONS

CONSOLIDATION ORDER

These cases, having been set for trial on _____ _____, are ORDERED CONSOLIDATED pursuant to the provisions of Rule 42(a), Federal Rules of Civil Procedure.

Counsel need supply only one copy of each paper submitted in these cases.

Copies of this order shall be forwarded to counsel for all plaintiffs and all defendants.

It is so ORDERED.

_____
UNITED STATES DISTRICT JUDGE

At Norfolk, Virginia

_____

ASBESTOS SCHEDULING DATES

Case is Filed	Trial Date
June 3 - 14, 1991	December 10, 1991
June 17 - July 12, 1991	January 14, 1992
July 15 - 26, 1991	January 28, 1992
July 29 - August 9, 1991	February 11, 1992
August 12 - 23, 1991	February 25, 1992
August 26 - September 6, 1991	March 10, 1992
September 9 - 20, 1991	March 24, 1991
September 23 - October 11, 1991	April 14, 1992
October 15 - 25, 1991	April 28, 1992
October 28 - November 8, 1991	May 12, 1992
November 12 - 22, 1991	May 27, 1992
November 25 - December 9, 1991	June 9, 1992
December 10 - January 10, 1992	July 14, 1992
January 13 - 24, 1992	July 28, 1992
January 27 - February 7, 1992	August 11, 1992
February 10 - 24, 1992	August 25, 1992
February 25 - March 6, 1992	September 9, 1992
March 9 - 20, 1992	September 22, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK AND NEWPORT NEWS DIVISIONS

Civil Action No.

SCHEDULING ORDER

Pursuant to the court's ruling on December 31, 1990, with respect to all asbestos cases to be filed in the Norfolk and Newport News Divisions of this court, it is ORDERED that the trial of this case is set on _____, using the following trial preparation schedule.

Final Pretrial Conference:	Monday, 9:00 a.m., 15 days prior to trial at courthouse
Attorneys' Conference:	Friday, 10:00 a.m., 10 days prior to Final Pretrial Conference (25 days prior to trial)
Mandatory Settlement Conference:	32 days prior to trial
Deadline for: (1) Defendants' Discovery (2) De Bene Esse Depositions (3) Depositions of Medical Experts	35 days prior to trial
Plaintiffs' Discovery Cut-Off:	45 days prior to trial

Defendants shall: (1) Return all medical materials to Plaintiffs with reports from their medical experts; (2) Provide Plaintiffs with reports from all of their experts* other than medical experts; (3) Respond to all Plaintiffs' settlement demands with good faith offers.	60 days prior to trial
Defendants' Witness List Due:	90 days prior to trial
Plaintiffs provide to Defendants: (1) Witness list (2) Reports from all of their experts other than medical reports* (3) Good faith settlement demands	120 days prior to trial
Plaintiffs deliver to Defendants: (1) All medical materials, x-rays, pathology, etc., collected by Plaintiff (2) Reports by Plaintiffs' medical experts other than treating physicians (3) Plaintiffs' Answers to standing Interrogatories and provide available medical records and authorizations to Defendants	150 days prior to trial

* With regard to those experts from whom reports are not provided, the party listing such witness shall designate and provide to opposing party a representative transcript of prior testimony of such witness which contains the substance of the facts and opinions about which the witness is expected to testify.

NOTE: Plaintiff is required to furnish all defendants with all medical reports in plaintiff's possession and complete work history of plaintiff at time of filing of complaint. Plaintiff is also required to furnish all defendants with any additional medical reports as they are received.

If a third-party action is involved, cut-off dates for third-party defendants shall coincide with those fixed for the defendants.

The dates established by this order shall not be varied by counsel absent further order of the court. Failure to comply with any deadline may result in the imposition of sanctions against the parties and/or counsel.

It appearing that there are common issues of law and fact applicable in this and other asbestos cases pending in this court, it is ORDERED that this cause be, and it hereby is, CONSOLIDATED with C/P 77-1 for discovery and all further proceedings.

Copies of this order shall be forwarded to counsel for plaintiff and to known counsel for the defendants.

It is so ORDERED.

UNITED STATES DISTRICT JUDGE

At Norfolk, Virginia

JANUARY

	T	16	W				
2	W	17	T				
3	T	18	F				
4	F	19					
5		20					
6			M				
7	M	22	T				
8	T	23	W				
9	W	24	T				
10	T	25	F				
11	F	26					
12		27					
13		28	M				
14	M	29	T				
15	T	30	W				
		31	T				

FEBRUARY

FPTC: 01/28/91

1	90-1185-N Radford	F	16
2	90-1248-N Cashwell		17
3	90-1336-N Rapier		
4	90-1402-N Pace	M	19
5	90-1410-N Slaughter	T	20
6	90-1451-N Rhodes	W	21
7	90-1478-N Kanash	T	22
8	90-1500-N Oliver	F	23
9	90-1512-N Eason (est.)		24
10	90-1555-N Midgett, Est. Inge		25
11	90-1558-N Smith	M	26
		T	27
		W	28
		T	
15		F	

16	89-65-N Birdsong		
17	90-1212-N Chappell		
	90-1231-N Cahoon	M	18
19	90-1247-N Chestnut	T	
20	90-1260-N Harden	W	
21	90-1267-N Glynn	T	
22	90-1271-N Green	F	
23	90-1305-N Wood		
24	90-1340-N Patterson		
25	90-1341-N Cacioppo	M	
26	90-1357-N Cameron	T	
27	90-1367-N Faulks	W	
28	90-1402-N Watts	T	
	90-1420-N Pague		
	90-1437-N Newton		

MARCH

FPTC: 02/11/91

1		F	16
2			
3			18
4		M	19
5		T	20
6		W	21
7		T	22
8		F	23
9			
10			25
11		M	26
12		T	27
13		W	28
14		T	
15		F	

APRIL

1	M	16	T
2	T	17	W
3	W	18	T
4	T	19	F
5	F	20	
6		21	
7		22	M
8	M	23	T
9	T	24	W
10	W	25	T
11	T	26	F
12	F	27	
13		28	
14		29	M
15	M	30	T

MAY

1	90-1632-N Major Est.	W	16
2	90-1936-N Ruffin Est.	T	17
3	90-1644-N McManus	F	
4	90-1790-N Hollowell Est.		19
5	90-1859-N Hurst		20
6	90-1863-N Gaskins Est.	M	21
7	90-1924-N Emory	T	22
8	90-1931-N Spivey Est.	W	23
9	90-1933-N Rushing	T	24
10	91-1-N Davis	F	25
11	89-849-N Coombs Est.		26
	90-279-NN Lewis Est.		
13	90-394-NN Booker Est.		28
14	90-371-NN Fabry Est.	T	29
15		W	30
			31

16	90-1487-N Cartonis	T	
17	90-1578-N Alston	F	
	90-1585-N Brown		
19	90-1588-N Cologgi		
20	90-1612-N Bunch	M	
21	90-1614-N Baines	T	
22	90-1630-N Carter	W	
23	90-1668-N Darley	T	
24	90-1673-N Dennard	F	
25	90-1698-N Elam		
26	90-1703-N Altman		
	90-1714-N Dalton	M	
28	90-1735-N Askew	T	
29	90-1890-N Duesbery	W	
30	90-1938-N Arrington	T	
		F	

JUNE

1	90-1347-N Penta		89-853-N Staf
2	90-1538-N James		17 90-1473-N Stub
3	90-1576-N Martin	M	18 90-1527-N Tysc
4	90-1577-N Owens	T	19 90-1618-N Smit
5	90-1587-N Hollowell	W	20 90-1625-N Walk
6	90-1613-N Floyd	T	21 90-1631-N Wood
7	90-1616-N Hurst	F	22 90-1689-N Syke
8	90-1617-N Hamilton		23 90-1798-N Sink
9	90-1667-N Haithcock		24 90-1854-N Wyn
10	90-1715-N Jones	M	25 90-1888-N Stev
11	90-1799-N Eure	T	26 90-1889-N Will
12	90-1800-N Gaskins	W	27 90-1894-N Slat
13	90-1855-N Green	T	28 90-1911-N Thor
	90-1860-N Johnson	F	29 91-8-N Tucker
15	90-1921-N Mathias		30 91-17-N Whit

JULY

	90-384-NN Pruitt	M	16
2	90-385-NN	T	17
	90-386-NN Bentley	W	18
	90-387-NN Reel	T	19
5	90-388-NN Highsmith	F	20
	0-389-NN Robinson		21
7	90-391-NN McKenzie		22
8	90-403-NN Moses	M	23
9	)-410-NN Owen	T	24
0	90-411-NN Turner	W	25
1	90-412-NN Boone	T	26
2	-NN Fernald	F	27
	NN Parker		28
	91-3-NN Est. Pierce		29
	4-NN Midyette	M	30
			31

AUGUST

1	90-1822-N Fauntleroy	T	
2	90-1823-N Smith		
3	90-1825-N McCarty		
4	90-1827-N Est. of Woolfolk		19
5	90-1828-N Akers		20
6	90-1829-N Matthews		21
7	90-1830-N Greene Est.	W	22
8	90-1831-N Rogers Est.		23
9	90-1834-N Kavanagh		24
10	90-1835-N Booker		25
11	90-1839-N Donaway		26
12	90-1841-N Brown		27
13	90-1842-N Brockman		28
14	90-1843-N Evans		29
15	90-1848-N Braswell		30
	90-1850-N Stinnette		31
	90-1852-N Millwood		

16	90-1818-N Mosher	F	
17	90-1819-N Sheppard		
18	90-1820-N Maddox		
19	90-1821-N Watkins	M	
20	90-1824-N Rose	T	
21	90-1826-N Williams	W	
22	90-1832-N Young	T	
23	90-1833-N Jones Royce Curtis		
24	90-1836-N Jones		
25	90-1837-N Davis		
26	90-1838-N Ellis		
27	90-1840-N Cotton	T	
28	90-1844-N Garrott	W	
29	90-1845-N Forrest		
30	90-1846-N Norman	F	
31	90-1847-N Grigg		
	90-1849-N Lewis		
	90-1851-N Lindsay		

SEPTEMBER

1	91-18-N Spruill		16 83-477-N Est.
	91-62-N Britt 12/10/91		1787-837-N - And
3	91-63-N Lutz	T	89-178-N - Gra
4	91-66-N McClenney	W	19 89-9-NN Thomas
5	91-117-N Ward	T	20 90-74-N Mazyck
6	91-152-N Knapp	F	21 90-1277-N Redd
7	91-155-N VanHorn		22 91-202-N Borke
8	91-156-N Nettervill		23 91-203-N Davis
	91-157-N Bernard	M	24 91-204-N Hall
10	91-163-N Jones	T	25 91-205-N Clark
11	91-168-N Elke	W	26 91-206-N Dupre
12	91-169-N Canada	T	27 90-1774-N Bond
13	91-22-NN Freeland	F	28 90-1786-N Powe
14	91-23-NN Goins		29 91-48 -NN Cros
15	91-24-NN Smith		30 91-49 -NN Hill

OCTOBER

NOVEMBER

DECEMBER

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge John F. Nangle
United States District Court
Eastern District of Missouri

MEMBERS:
Judge S. Hugh Dillin
United States District Court
Southern District of Indiana

Judge Milton Pollack
United States District Court
Southern District of New York

Judge Louis H. Pollak
United States District Court
Eastern District of Pennsylvania

Judge Halbert O. Woodward
United States District Court
Northern District of Texas

Judge Robert R. Merhige, Jr.
United States District Court
Eastern District of Virginia

Judge William B. Enright
United States District Court
Southern District of California

DIRECT REPLY TO:

Patricia D. Howard
Clerk of the Panel
1120 Vermont Ave., N.W.
Suite 1002
Washington, D.C. 20005-3545

Telephone: [202] 653-6090
FTS: 653-6090

TRANSMITTED VIA FEDERAL EXPRESS

July 29, 1991

MEMORANDUM TO TRANSFEROR CLERKS OF UNITED STATES DISTRICT COURTS AFFECTED BY THE FILING OF THE PANEL'S OPINION AND ORDER IN MDL-875 -- IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)

Enclosed is a copy of the opinion and order filed by the Panel today in the above-referenced litigation which is being transmitted to the Clerk of the Eastern District of Pennsylvania for filing. As you know, the transfers will be effective upon filing of the opinion and order in that district. A copy of my transmittal letter is enclosed for your information.

Your attention is directed to footnote 11 on page 16 of the opinion which states that the Panel "requests the transferor district clerks to notify the Clerk of the Panel of any actions on Schedule A in their districts that have been resolved or are in trial, so as to permit the Panel to issue a correction order excluding such actions from transfer." Please notify this office within the next two weeks regarding any necessary corrections. You may fax any corrections via commercial (202) or FTS 653-7235.

Also, please note a significant change in the usual multidistrict litigation procedures. The Panel, on page 17 of the opinion, has suspended Panel Rule 19 which deals with the transmittal of files from the transferor to the transferee district. Consequently, THE CASE FILE IS NOT TO BE TRANSMITTED TO THE EASTERN DISTRICT OF PENNSYLVANIA. You will receive a certified copy of the opinion from the transferee district and, based on that notification, the action will be terminated in your district. Thereafter, however, only designated documents specifically requested by the transferee judge are to be transmitted to the transferee district. This practice will remain in effect for the transfer of this initial group of actions as well as for transfer of any future "tag-along" actions.

Patricia D. Howard
Clerk of the Panel

Enclosures: Opinion and Order
Transferee Clerk Transmittal Letter

cc: Honorable Charles R. Weiner
Mr. Michael E. Kunz
Chief Judges, Transferor Districts

MULTIDISTRICT LITIGATION
FILED
JULY 29, 1991
PATRICIA D. HOWARD
CLERK OF THE PANEL

DOCKET NO. 875

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)

BEFORE JOHN F. NANGLE, CHAIRMAN, S. HUGH DILLIN,* MILTON POLLACK,* LOUIS H. POLLAK, HALBERT O. WOODWARD, ROBERT R. MERHIGE, JR., AND WILLIAM B. ENRIGHT, JUDGES OF THE PANEL

OPINION AND ORDER

JUDGE NANGLE, CHAIRMAN, DELIVERED THE OPINION OF THE PANEL, IN WHICH JUDGES POLLAK, WOODWARD, MERHIGE AND ENRIGHT JOINED

On January 17, 1991, the Panel issued an order to show cause why all pending federal district court actions not then in trial involving allegations of personal injury or wrongful death caused by asbestos should not be centralized in a single forum under 28 U.S.C. §1407. Because of the difficulty in serving this order on the enormous number of parties in this docket, the Panel relied on the clerks of all district courts to serve the parties to actions in their respective districts.[1] As a result, the parties to the 26,639 actions pending in 87 federal districts and listed on the following Schedule A are subject to the Panel's order.[2] More than 180 pleadings have

---

*Judges Dillin and Pollack did not participate in the decision of this matter.

[1]It appears that the only districts with pending asbestos actions that did not effect service of the Panel's order are the Eastern District of Wisconsin and the District of Rhode Island. In view of the Panel's disposition of this docket, the actions pending there will be treated as potential tag-along actions in accordance with the Panel's Rules. See Rules 12 and 13, R.P.J.P.M.L., 120 F.R.D. 251, 258-59 (1988).

[2]The Statistical Division of the Administrative Office of the United States Courts reports that as of March 31, 1991, nearly 31,000 actions were pending in federal districts. Based on Panel communications with courts throughout the country, the approximately 4,000 pending actions not embraced by the present (continued...)

been filed in response to the Panel's order, and a four hour hearing on the question of transfer was held on May 30, 1991 in New York City, at which time 37 counsel presented oral argument. In many instances the attorneys filing these pleadings or participating in oral argument were representing the views of large groups of parties.

Supporting transfer are plaintiffs in approximately 17,000 actions (including a core group of more than 14,000 plaintiffs represented by over 50 law firms) and 30 defendants (24 of which are named in more than 20,000 actions). Opposing transfer are plaintiffs in at least 5,200 actions and 454 defendants. The positions of those parties that have expressed a preference with respect to transferee district are varied. Many parties suggest centralization in what amounts to their home forum. The Eastern District of Pennsylvania is the district either expressly favored or not objected to in the greatest number of pleadings. The Eastern District of Texas, which is the choice of the aforementioned core group of 14,000 plaintiffs, is also the district that has generated the most opposition from defendants. Other suggested districts that go beyond the home forum approach are the District of the District of Columbia, the Eastern District of Louisiana, the Northern District of Ohio, and the Eastern District of New York. Some parties' forum recommendations are expressed in the form of a suggested individual transferee judge or transferee judge structure.

On the basis of the papers filed and the hearing held, the Panel finds that the actions in this litigation involve common questions of fact relating to injuries or wrongful death allegedly

---

[2](...continued)
order likely include actions that, as of January 17, 1991, were overlooked, in trial or already at least partially tried but not yet statistically closed because, inter alia, claims against one or more defendants were stayed under the Bankruptcy Code.

caused by exposure to asbestos or asbestos containing products, and that centralization under §1407 in the Eastern District of Pennsylvania will best serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.

DISCUSSION

Any discussion of §1407 transfer in this docket must begin with the recognition that the question does not arise in a vacuum. Indeed, the impetus for the Panel's order to show cause was a November 21, 1990 letter signed by eight federal district judges responsible for many asbestos actions in their respective districts.[3] These judges, citing the serious problem that asbestos personal injury litigation continues to be for the federal judiciary, requested that the Panel act on its own initiative to address the question of §1407 transfer. Furthermore, as the title of this docket suggests, this is the sixth time that the Panel has considered transfer of asbestos litigation. On the five previous occasions (1977, 1980, 1985, 1986 and 1987) that the Panel considered the question, it denied transfer in each instance.[4]

The Panel's constancy is not as dramatic as a mere recitation of the denials might suggest, however. The 1986 and 1987 dockets considered by the Panel involved only five and two actions, respectively. The 1985 Panel decision pertained not to personal injury/wrongful

---

[3]The signatories to this letter are Judges Walter J. Gex, III (S.D.Miss.), Thomas D. Lambros (N.D. Ohio), Alan H. Nevas (D.Conn.), Richard A. Schell (E.D.Tx.), Charles Schwartz, Jr. (E.D.La.), Charles R. Weiner (E.D.Pa.), Charles R. Wolle (S.D. Iowa) and Rya W. Zobel (D.Mass.). Additionally, Judge Jack B. Weinstein (E.D.N.Y.) has contacted the Panel staff and requested that he also be considered a signatory to the letter.

[4]In re Asbestos and Asbestos Insulation Material Products Liability Litigation, 431 F.Supp. 906 (J.P.M.L. 1977); In re Asbestos Products Liability Litigation (No. II), MDL-416 (J.P.M.L. March 13, 1980)(unpublished order); In re Asbestos School Products Liability Litigation, 606 F.Supp. 713 (J.P.M.L. 1985); In re Ship Asbestos Products Liability Litigation, MDL-676 (J.P.M.L. Feb. 4, 1986)(unpublished order); and In re Leon Blair Asbestos Products Liability Litigation, MDL-702 (J.P.M.L. Feb. 6, 1987)(unpublished order).

death asbestos actions but rather to property damage claims of school districts that incurred significant costs in removing asbestos products from school buildings. The denial in the 1980 Panel docket was based almost exclusively on the movants' failure to offer any distinctions that would warrant a disposition different from the Panel's first asbestos decision in 1977.

It is only in the 1977 decision, pertaining to 103 actions in nineteen districts, that the Panel offered any detailed analysis of its asbestos litigation reasoning with respect to asbestos personal injury/wrongful death actions. In that decision, the Panel first listed the primary arguments of the responding parties that unanimously opposed transfer: advanced stage of proceedings in many of the actions; use of voluntary coordinating arrangements in several districts; lack of commonality among defendants and plaintiffs; circumstances of exposure predominantly unique to each action; individual questions of causation in each action; predominantly individual questions of the liability of each defendant in each action; local issues predominating in the discovery process; absence of possibility of inconsistent or overlapping class certifications; and the readily discernible nature of the principal area common to all actions, the state of medical and scientific knowledge at a particular time regarding the health hazards posed by exposure to asbestos.

In denying transfer in the 1977 decision, the Panel recognized the existence of some common questions of fact among the actions. For in that docket, as in the matter currently before the Panel, all actions contained allegations of personal injury or death as a result of exposure to asbestos or asbestos containing products. The Panel nevertheless held that the other criteria for §1407 transfer were not satisfied. In relevant part, the Panel stated:

> Many factual questions unique to each action or to a group of actions already pending in a single district clearly predominate, and therefore transfer is

> unwarranted....Furthermore, many of these actions already are well advanced. Some of the actions have been pending for up to four years, and trial dates or discovery cutoff dates have been set in several actions. Under these circumstances, transfer would not further the purposes of Section 1407.

In re Asbestos and Asbestos Insulation Material Products Liability Litigation, 431 F.Supp. 906 910 (J.P.M.L. 1977).

Many of the parties presently opposing transfer in this docket rely on the facts and reasoning of the Panel's 1977 transfer decision. They insist that the situation that warranted denial then not only still prevails but has been magnified by the greatly increased number of actions and parties in federal asbestos personal injury/wrongful death litigation -- more than 30,000 pending federal actions now, as opposed to the 103 actions subject to the Panel's 1977 decision. In our view, it is precisely this change that now leads us to conclude that centralization of all federal asbestos personal injury/wrongful death actions, in the words of 28 U.S.C. §1407(a), "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." In short, we are persuaded that this litigation has reached a magnitude, not contemplated in the record before us in 1977, that threatens the administration of justice and that requires a new, streamlined approach.

The Panel is not the first to reach such a conclusion. Just this past March 1991, the Judicial Conference Ad Hoc Committee on Asbestos Litigation, whose members were appointed by Chief Justice William H. Rehnquist, stated as follows:

> The committee has struggled with the problems confronting the courts of this nation arising from death and disease attributable to airborne asbestos industrial materials and products. The committee has concluded that the situation has reached critical dimensions and is getting worse. What has been a frustrating problem is becoming a disaster of major proportions to both the victims and the producers of asbestos products, which the courts are ill-equipped to meet effectively.

After extensive study, the Institute for Civil Justice of the Rand Corporation in 1985 observed, with respect to how the civil justice system handles asbestos claims, that–

> The picture is not a pretty one. Decisions concerning thousands of deaths, millions of injuries, and billions of dollars are entangled in a litigation system whose strengths have increasingly been overshadowed by its weaknesses.

The ensuing five years have seen the picture worsen: increased filings, larger backlogs, higher costs, more bankruptcies and poorer prospects that judgments - if ever obtained - can be collected.

It is a tale of danger known in the 1930s, exposure inflicted upon millions of Americans in the 1940s and 1950s, injuries that began to take their toll in the 1960s, and a flood of lawsuits beginning in the 1970s. On the basis of past and current filing data, and because of a latency period that may last as long as 40 years for some asbestos related diseases, a continuing stream of claims can be expected. The final toll of asbestos related injuries is unknown. Predictions have been made of 200,000 asbestos disease deaths before the year 2000 and as many as 265,000 by the year 2015.

The most objectionable aspects of asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether.

Report of The Judicial Conference Ad Hoc Committee on Asbestos Litigation, 1-3 (1991) (footnote omitted) (hereinafter Asbestos Committee Report). The Committee pointed out that presently in the federal system nearly two new asbestos actions are being filed for every action terminated, and that at the current rate, there will be more than 48,000 actions pending in the federal courts at the end of three years. Asbestos Committee Report, supra, at 8.

The Committee also discussed the ongoing change in the demographics of asbestos litigation in the federal courts:

> In 1984, when the Federal Judicial Center held its first asbestos conference, asbestos litigation in the federal courts was largely concentrated in only four district courts. Since that time, however, asbestos cases have infiltrated virtually every federal district. Asbestos litigation must therefore be viewed as

> a national problem rather than merely a local or regional one, especially with the number of Americans affected.

Asbestos Committee Report, supra, at 9 (footnote omitted).

Conclusions similar to those of the Judicial Conference Asbestos Committee have also been reached by judges actively involved in asbestos litigation. In perhaps the most recent comprehensive review of asbestos litigation, Judge Jack B. Weinstein (E.D.N.Y.) observed:

> The large number of asbestos lawsuits pending throughout the country threatens to overwhelm the courts and deprive all litigants, in asbestos suits as well as other civil cases, of meaningful resolution of their claims....Several commentators have recounted the inefficiencies and inequities of case-by-case adjudication in the context of mass tort disasters. See, e.g., Rosenberg, Class Actions for Mass Torts: Doing Individual Justice by Collective Means, 62 Ind. L.J. 561 (1987); Trends in Asbestos Litigation (Federal Judicial Center 1987); Rubin, Mass Torts and Litigation Disasters, 20 Ga. L. Rev. 429 (1986); Note, Class Certification in Mass Accident Cases Under Rule 23(b)(1), 96 Harv. L. Rev. 1143 (1983); Comment, Federal Mass Tort Class Actions: A Step Toward Equity and Efficiency, 47 Alb. L. Rev. 1180 (1983).
>
> The heyday of individual adjudication of asbestos mass tort lawsuits has long passed. See [Asbestos Committee Report], supra, at 7 ("one point on which plaintiffs' counsel, defense counsel and the judiciary can agree is that the present way in which we have attempted to resolve asbestos cases has failed"). The reasons are obvious: the complexity of asbestos cases makes them expensive to litigate; costs are exacerbated when each individual has to prove his or her claim de novo; high transaction costs reduce the recovery available to successful plaintiffs; and the sheer number of asbestos cases pending nationwide threatens to deny justice and compensation to many deserving claimants if each claim is handled individually. The backlog is eroding a fundamental aspiration of our judicial system to provide equality of treatment for similarly situated persons. Cf. [Asbestos in the Courts: The Challenge of Mass Toxic Torts (RAND, Inst. of Social Justice 1985)], supra, at 12 (recent wave of asbestos litigation marked by high concentration of claims, dominance of characteristics of individual asbestos cases, behavior of parties, lawyers and the attributes of judges "created a situation in which dispositions are slow, costs are high, and outcomes are variable").
>
> Overhanging this massive failure of the present system is the reality that there is not enough money available from traditional defendants to pay for current and future claims. Even the most conservative estimates of future claims, if realistically estimated on the books of many present defendants, would lead to a declaration of insolvency – as in the case of some dozen manufacturers already in bankruptcy.

In re Johns-Manville Corporation, et al., No. 90-3973, slip op. at 61-63 (E.D.N.Y. May 16, 1991).

Given the dimensions of the perceived problem in federal asbestos litigation, it is not surprising that no ready solution has emerged. The Judicial Conference Asbestos Committee concluded that the only true solution lies in Congressional legislation. Nevertheless, it stressed that "[a]t the same time, or failing congressional action, the federal judiciary must itself act now to achieve the best performance possible from the system under current law." Asbestos Committee Report, supra, at 4. The Committee also noted that the Panel's order to show cause was pending at the time of the issuance of the Committee's report. The Committee observed that "this committee, by its recommendations, does not intend to affect or restrict in any way the actions of the Panel under 28 U.S.C. §1407 or reduce the Panel's jurisdiction or authority." Id. at 22.[5]

It is against this backdrop that the Panel's decision and role in this litigation must be understood. First of all, our decision to order transfer is not unmindful of the fact that the impact of asbestos litigation varies from district to district, and that in some courts asbestos personal injury actions are being resolved in a fashion indistinguishable from other civil actions. It is not surprising, therefore, that parties and courts involved in such actions might urge that inclusion of their actions in multidistrict proceedings is inappropriate. The Panel, however, must weigh the interests of all the plaintiffs and all the defendants, and must consider multiple litigation as a whole in the light of the purposes of the law. In re Multidistrict Private Civil

[5]The Committee also observed that, in the interest of centralizing asbestos claims to the greatest extent possible, the Panel's authority "could be expanded to allow the Panel to transfer actions for trial as well as for pretrial proceedings." Asbestos Committee Report, supra, at 31.

Treble Damage Litigation Involving Library Editions of Children's Books, 297 F.Supp. 385, 386 (J.P.M.L. 1968). It is this perspective that leads us to conclude that centralization in a single district of all pending federal personal injury and wrongful death asbestos actions is necessary.

Much of the argument presented to the Panel in response to its order to show cause is devoted to parties' differing (and often inconsistent) visions of §1407 proceedings: 1) some plaintiffs see centralized pretrial proceedings as a vehicle leading to a single national class action trial or other types of consolidated trials on product defect, state of the art and punitive damages, while many defendants staunchly oppose such a trial, favor a reverse bifurcation procedure where actual damages and individual causation are tried before liability, and hope to use §1407 proceedings to effect the severance of claims for punitive damages through a transferee court order directing that, upon the return of any case to its transferor district, such claims not be tried until claims for compensatory damages have been resolved in all federal cases; 2) some parties hope to persuade the transferee court to establish case deferral programs for plaintiffs who are not critically ill, or who have been exposed to asbestos but do not presently show any signs of impairment (i.e., pleural registries), while many plaintiffs assert that such procedures are unfair or unconstitutional; 3) in response to the pressing concern about transaction costs in this litigation, some defendants consider §1407 transfer necessary in order to provide a single federal forum in which limits on plaintiffs' contingent fees can be addressed, while some plaintiffs maintain that transfer is necessary to prevent the depletion of defendants' limited insurance coverage by defense costs incurred in multiple districts; 4) some plaintiffs and defendants urge that transfer is necessary in order to develop through discovery proceedings nationwide product data bases on all asbestos products and corporate histories of all asbestos defendants, while other

plaintiffs and defendants contend that such efforts would be of no utility and are simply designed to shift liability; 5) some plaintiffs are suggesting that defendants' finances are so fragile as to require limited fund class action determinations pursuant to Fed.R.Civ.P. 23(b)(1)(B), while other plaintiffs resist any attempt to restrict their right to pursue punitive damages; 6) some parties anticipate that a single transferee court would speed up case disposition and purge meritless claims, while others expect a system of spacing out claims so as not to overwhelm currently solvent defendants' cash flow and drive them into bankruptcy; and 7) some parties contend that a single transferee court is necessary for the purpose of exploring the opportunities for global settlements or alternative dispute resolution mechanisms, while other parties assert that such hopes are utopian at best as long as i) more than twice as many asbestos cases remain pending in state courts as in federal courts, and ii) currently stayed claims against bankrupt defendants cannot be addressed by the transferee court.[6]

---

[6]There appears to be some confusion among the parties concerning the interaction of the provisions of the Bankruptcy Code and §1407. Transfer under §1407 of an action containing claims against a defendant in bankruptcy has no effect on the automatic stay provisions of the Bankruptcy Code (11 U.S.C. §362). Claims that have been stayed in the transferor court remain stayed in the transferee court. The Panel, however, has never considered the pendency of such stayed claims in an action to be an impediment to transfer of the action. 28 U.S.C. §1407(a) authorizes the Panel to transfer only "civil actions" and not claims. The complex multidistrict litigations before the Panel have often included actions brought against multiple defendants, the claims against one or more of which have been stayed as a result of bankruptcy. To have allowed the pendency of claims against a single bankrupt defendant to preclude the transfer of actions containing claims actively being litigated against common nonbankrupt defendants would have frustrated the essential purpose of §1407.

Some parties have urged the Panel to treat the bankruptcy reorganizations themselves as "civil actions" appropriate for transfer under §1407 to the transferee district. The reorganization proceedings are not subject to our order to show cause, and this question is therefore not ripe for a Panel decision. We have not addressed this question before and would be reluctant to do so until: 1) the transferee court determines that other alternatives, such as coordination with the concerned bankruptcy courts, are insufficient to accomplish the goals of §1407; and 2) other suggested means of transferring the bankruptcy reorganizations or relevant portions thereof have been fully explored by the transferee court and the concerned bankruptcy courts.

(continued...)

We enumerate these issues not for the purpose, as some parties seemingly misunderstand, of passing on their merits. The language of the first sentence of paragraph (b) of §1407 is quite clear about the proper forum for resolution of such issues – "coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned" by the Panel (emphasis added). The Panel has neither the power nor the disposition to direct the transferee court in the exercise of its powers and discretion in pretrial proceedings. In re Plumbing Fixture Cases, 298 F.Supp. 484, 489 (J.P.M.L. 1968).

We cite these issues only as illustrations of 1) the types of pretrial matters that need to be addressed by a single transferee court in order to avoid duplication of effort (with concomitant unnecessary expenses) by the parties and witnesses, their counsel, and the judiciary, and in order to prevent inconsistent decisions;[7] and 2) why, at least initially, all pending federal personal injury or wrongful death asbestos actions not yet in trial must be included in §1407 proceedings. For example, if, as some courts, parties and commentators have suggested, there are insufficient funds to fairly compensate all deserving claimants, this should be determined before plaintiffs in lightly impacted districts go to trial and secure recoveries (often including punitive damages) at the possible expense of deserving plaintiffs litigating in districts where

---

[6](...continued)
Finally, we note that to the extent that state court actions and bankruptcy proceedings are excluded from the ambit of the Panel's transfer decision, transfer will nonetheless have the salutary effect of creating one federal court with which such proceedings can be coordinated, to the extent deemed desirable by the concerned courts. Indeed, state court judges have communicated to the Panel that coordination among state courts and a single transferee court for the federal actions is an objective worthy of pursuit.

[7]We note that to the extent any of these pretrial decisions are subject to appellate review pursuant to interlocutory appeal or writ of mandamus, §1407 transfer will also help to minimize the potential for inconsistent decisions from courts of appeals.

speedy trial dates have not been available. Similarly, if there are economies to be achieved with respect to remaining national discovery, pretrial rulings or efforts at settlement, these should be secured before claims against distinct types or groups of defendants are separated out of the litigation. Finally, because many of the arguments of parties seeking exclusion from transfer are intertwined with the merits of their claims or defenses and affect the overall management of this litigation, we are unwilling, on the basis of the record presently before us, to carve out exceptions to transfer. We prefer instead to give the transferee court the opportunity to conduct a substantive review of such contentions and how they affect the whole proceedings.

It may well be that on further refinement of the issues and close scrutiny by the transferee court, some claims or actions can be remanded in advance of the other actions in the transferee district. Should the transferee court deem remand of any claims or actions appropriate, the transferee court can communicate this to the Panel, and the Panel will accomplish remand with a minimum of delay. See Rule 14, R.P.J.P.M.L., 120 F.R.D. 251, 259-61 (1988).[8] We add that for those parties urging that resolution of this litigation lies primarily in the setting of firm, credible trial dates, §1407 transfer may serve as a mechanism enabling the transferee court to develop a nationwide roster of senior district and other judges available to follow actions remanded back to heavily impacted districts, for trials in advance of when such districts' overburdened judges may have otherwise been able to schedule them.

---

[8]Those parties who may seek early remand of their actions or claims are reminded of i) Panel Rule 14(d)'s expression of the Panel's reluctance to order remand absent a suggestion of remand from the transferee judge, and ii) the special affidavit requirement of that Rule. 120 F.R.D. at 260. See also In re Holiday Magic Securities and Antitrust Litigation, 433 F.Supp. 1125, 1126 (J.P.M.L. 1977).

We remain sensitive to the concerns of some parties that §1407 transfer will be burdensome or inconvenient. We note that since §1407 transfer is primarily for pretrial, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. See, e.g., Fed.R.Civ.P. 45(d)(2). Furthermore, the judicious use of liaison counsel, lead counsel and steering committees will eliminate the need for most counsel ever to travel to the transferee district. See Manual for Complex Litigation, Second, §20.22 (1985).[9] And it is most logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel, and the judiciary, thereby effectuating an overall savings of cost and a reduction of inconvenience to all concerned. See In re Nissan Motor Corporation Antitrust Litigation, 385 F.Supp. 1253, 1255 (J.P.M.L. 1974). Hopefully, combining such practices with a uniform case management approach will, in fact, lead to sizeable reductions in transaction costs (and especially in attorneys' fees).

In a docket of this size and scope, no district emerges as the clear nexus where centralized pretrial proceedings should be conducted. The Panel has decided to centralize this litigation in the Eastern District of Pennsylvania before Judge Charles R. Weiner. We note that: 1) more asbestos personal injury or wrongful death actions are pending in that district than any other; 2) the court there has extensive experience in complex litigation in general and asbestos litigation in particular; and 3) the court has graciously expressed its willingness to assume the responsibility for this massive undertaking. Furthermore, in the person of Judge Weiner the

---

[9]Liaison counsel would be called upon by the Panel to distribute future Panel orders regarding tag-along actions and any other matters to their liaison group as contemplated in Panel Rule 8(e). R.P.J.P.M.L., supra, 120 F.R.D. at 255.

Panel finds a judge thoroughly familiar with the issues in asbestos litigation, a track record of accomplishment and successful innovation,[10] and, on the basis of the pleadings before the Panel in which an opinion was expressed, a selection to which the majority of responding plaintiffs and defendants either expressly agree or are not opposed.

Many parties have suggested that the dynamics of this litigation make it impractical, if not impossible, for one single judge to discharge the responsibilities of transferee judge, while other parties have emphasized that more than a single transferee judge would dilute the judicial control needed to effectively manage the litigation. Varying suggestions have been made that the Panel appoint additional transferee judges to handle specific issues (e.g., class or limited

---

[10]The Asbestos Committee Report, supra, noted at 15:

> Judge Charles Weiner, the asbestos case manager in the Eastern District of Pennsylvania, is able to call upon over 20 active and senior judges in the district to handle asbestos cases on a priority basis. In addition to mandating standard, abbreviated pleadings, such as complaint, answer, and discovery requests, Judge Weiner meets regularly with counsel and handles on a regular basis all motions and discovery requests. Applying these sophisticated case management techniques, Judge Weiner and his colleagues have disposed of more than 2,000 cases through 1990.

Another testament to Judge Weiner's techniques comes from the Panel pleading of certain plaintiffs already before him in the Pennsylvania district:

> The Eastern District of Pennsylvania may be unique in another respect, and that again is due to the involvement of the Court. Perhaps no other jurisdiction has had the mutual cooperation of liaison counsel who have been instrumental, together with the Court in attempting to resolve the asbestos problem. The adversary system remains, but the Court has eliminated the usual posturing of the litigants and has encouraged them to come up with programs and solutions. The classic example is the unique program established by counsel with the Court of binding arbitration through stipulated percentage of defendants' liability. The arbitrators are experts in asbestos litigation, and the medical issues are tried by submission on report. The average disposition rate is four cases in one day without judicial time.

Pleading 87, Response of Greitzer and Locks at 15.

Our reference to these passages is not meant to be an endorsement of any pretrial techniques to the exclusion of others, and in no way should be viewed as limiting Judge Weiner in his assessment of the appropriate tools to be used now that all federal personal injury/wrongful death asbestos actions will be before him for pretrial proceedings. We do consider such passages to be helpful, however, in allaying the fears of parties not familiar with Judge Weiner that §1407 transfer will result in their actions entering some black hole, never to be seen again.

fund determinations, discovery, settlement, claims administration, etc.), to deal with separate types of claims or defendants (e.g., maritime asbestos actions, railroad worker actions, friction materials actions, tire workers actions, etc.), or to divide the litigation along regional or circuit lines (helping to insure uniformity of decisions within each circuit pertaining, inter alia, to state law questions involved in the actions). Each of these suggestions has merit, as long as one judge has the opportunity to maintain overall control.

Section 1407(b) contemplates that multidistrict litigation may be conducted by "a judge or judges." It further expressly provides that "upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title." And the Panel has long expressed its willingness to appoint additional transferee judges in litigations whose size and complexity make it difficult for the original transferee judge to handle §1407 proceedings alone. See In re Multidistrict Civil Antitrust Actions Involving Antibiotic Drugs, 320 F.Supp. 586, 588 (J.P.M.L. 1970). We emphasize our intention to do everything within our power to provide such assistance in this docket. Before making any specific appointments, however, we deem it advisable to allow the transferee judge to make his own assessment of the needs of this docket and communicate his preferences to us.

The Panel is under no illusion that centralization will, of itself, markedly relieve the critical asbestos situation. It offers no panacea. Only through the combined and determined efforts of the transferee judge and his judicial colleagues, of the many attorneys involved in asbestos matters, and of the parties, can true progress be made toward solving the "asbestos

mess." This order does offer a great opportunity to all participants who sincerely wish to resolve these asbestos matters fairly and with as little unnecessary expense as possible.

Finally, in light of the Panel's disposition in this docket, it is necessary to remind parties and counsel of their continuing responsibility with respect to transfer of potential tag-along actions, including those either inadvertently overlooked at the time of the January 17, 1991 filing of the Panel's order to show cause or filed subsequent to the issuance of the Panel's order to show cause. We note that Panel Rule 13(e) provides as follows:

> Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall notify the Clerk of the Panel of any potential "tag-along actions" in which that party is also named or in which that counsel appears.

R.P.J.M.L., supra, 120 F.R.D. at 259.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. §1407, the actions listed on the following Schedule A that are pending as of the date of this order, are not in trial, and are pending outside the Eastern District of Pennsylvania, be, and the same hereby are, transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the Honorable Charles R. Weiner for coordinated or consolidated pretrial proceedings with the actions on Schedule A that remain pending in that district and are not in trial.[11]

---

[11]The Panel's authority under §1407 is to transfer for "pretrial" proceedings; actions on Schedule A that have been resolved or are presently in trial are not intended to be within the scope of the Panel's transfer decision. Given the tremendous number of actions pending in almost every federal district, however, it is not possible for the Panel to know at any one time the current status of all actions on Schedule A. When, pursuant to §1407(c), the clerks of the transferor district courts receive a certified copy of the MDL-875 transfer order from the clerk of the transferee district court, we request the transferor district clerks to notify the Clerk of the Panel of any actions on Schedule A in their districts that have been resolved or are in trial, so as to permit the Panel to issue a correction order excluding such actions from transfer. We also remind counsel in such actions of the requirements of Panel Rule 10(f):

(continued...)

IT IS FURTHER ORDERED that Panel Rule 19(a) be, and the same hereby is, suspended for this docket.[12]

---

[11](...continued)

> With respect to any action that is the subject of Panel consideration, counsel shall notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

Id. at 257.

[12]Panel Rule 19(a), id. at 263, requires clerks of transferor district courts to forward to the clerk of the transferee district court the complete original file and docket sheet for each transferred action. Because of the voluminous files in this docket, we are suspending this rule. Instead, we will rely on the judgment of the transferee judge to request from the transferor district clerks or the parties whatever case files and docket sheets he needs.

Appendix 9

Pro Se Prisoner Forms and Orders

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA
OFFICE OF THE CLERK
RICHMOND, VIRGINIA 23205
P.O. BOX 2-AD

'ORIS R. CASEY
CLERK

TELEPHONE
CIVIL 771 2611
CRIMINAL 771 2612
JURY FINANCIAL 771-2613
ADMINISTRATION 771-2055

Your petition is being returned to you for the reason(s) checked below. Please include the information requested with your complaint if you intend to pursue the action

_____ You must submit the original complaint to be filed.

_____ You must submit additional copies of your complaint for each defendant.

_____ You have not listed the defendants and their addresses and/or listed a person as a defendant. Please be more specific and give us the name of the individual(s

_____ You have not specified those facts which provide the basis for your claim. State those facts which you believe indicate that your rights have been violated.

_____ You have not designated the relief you seek from the Court. Be advised that you may seek a declaratory judgment, injunctive or monetary relief. If you seek injunctive or monetary relief, state the relief sought in terms of behavior to be enjoined or amount of money.

_____ You have not signed the complaint.

_____ You did not complete the in forma pauperis affidavit. State those reasons why you are unable to prepay the costs of the action as well as those assets you have that could be used to prepay the costs. Sign the affidavit once completed.

_____ Name the court and its location which entered the judgment of conviction under attack.

_____ It appears that the complaint you sent in should be filed as a petition for a writ of habeas corpus. Enclosed is a copy of the form you will need to submit to the Court.

Once the complaint with the requested information is received, it will be processed

Sincerely,

Staff Attorney

Enclosure

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Plaintiff,	)	
v.	)	CIVIL ACTION NO.
Defendants.	)	

O R D E R

The Court has received a responsive pleading from the defendants characterized as .....

Plaintiff is advised he has the right to respond with any matter he wishes to offer within twenty (20) days of the date of this Order. Such material should be in the form of affidavits, sworn or signed by persons having firsthand knowledge of the facts to which the affidavit refers. If the affidavit ends with a declaration in the form, "I declare under penalty of perjury that the foregoing is true and correct," signed and dated by the person making the statement, it need not be notarized to qualify as an affidavit. Plaintiff may also file a legal brief in support of his view of the case. Failure to file any responsive materials within twenty (20) days of the date of this Order may result in the entry of judgment based on the pleadings received from the defendants.

The clerk is directed to send a copy of this Order to the plaintiff and .....

Dated:
Alexandria, Virginia

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Plaintiff,	)	
v.	)	CIVIL ACTION NO. _____
Defendant.	)	

O R D E R

Let this action be provisionally filed in forma pauperis.

On ..... , the Court received from plaintiff ..... , a complaint pursuant to 42 U.S.C. § 1983. The complaint does not comply with Rule 8(a)2, Fed.R.Civ.P., which provides that a "pleading which sets forth a claim for relief...shall contain...a short and plain statement of the claim showing that the pleader is entitled to relief..." Accordingly, plaintiff is hereby

GRANTED fifteen (15) days from the date of the entry of this order within which to particularize his complaint. See Coleman v. Peyton, 340 F.2d 603 (4th Cir. 1965).

Plaintiff is to submit a short particularized statement of background facts and conduct that allegedly violated his constitutional rights. Plaintiff should set forth in separately numbered paragraphs the facts giving rise to his complaint, including the dates of each incident, the persons involved, and the reasons why he believes each defendant is liable to him. Plaintiff should submit the required number of copies. Plaintiff should name such persons as defendants in the style of his case,

if he wishes to impose liability upon them. Plaintiff is advised that should he fail to comply with this Order, it may result in the dismissal of his complaint.

Plaintiff must immediately advise the Court of his new address in the event he is transferred, released, or otherwise relocated while this action is pending. FAILURE TO DO SO MAY RESULT IN THE DISMISSAL OF THIS ACTION.

The clerk is directed to send a copy of this Order to the plaintiff.

Dated:
Alexandria, Virginia

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Petitioner,	)	
v.	)	CIVIL ACTION NO.
Respondent.	)	

O R D E R

Let this action be provisionally filed in forma pauperis.

Petitioner, ... , has brought this action pursuant to 28 U.S.C. § 2241 seeking a writ of habeas corpus. He alleges .....

Judicial review of a claim challenging the validity of federal detention is available under 28 U.S.C. § 2241 after exhaustion of administrative remedies. Chua Han Mow v. United States, 730 F.2d 1308, 1313 (9th Cir. 1984), cert. denied, 470 U.S. 1031 (1985). Requiring inmates to use the administrative remedy aids judicial review in several ways. First, requiring exhaustion allows for the development of a complete factual record; second, exhaustion provides the administrative agency with an opportunity to correct errors occurring in the course of its own proceedings; and finally, requiring inmates to seek relief through the administrative remedy procedure conserves the Court's time by foreclosing the possibility that the relief sought may be granted at the administrative level. See Chua Han Mow, 730 F.2d at 1313. Allowing the federal agency the first opportunity to address petitioner's challenge is a prerequisite

to bringing an action in this Court under § 2241. See United States v. Legrano, 659 F.2d 17, 18 (4th Cir. 1981).

The Federal Bureau of Prisons' administrative remedy system is promulgated at 28 C.F.R. § 542.10-542-16. The first step of this remedial procedure requires an inmate to file a request for remedy to the warden within fifteen (15) days of the date of the event at issue. The warden then has fifteen (15) days after the date of this request to respond. If the inmate is dissatisfied with the warden's response, he or she may appeal the warden's decision to the regional director within twenty (20) days. The regional director then has thirty (30) days to respond to the appeal. If the inmate is dissatisfied with the regional director's response, the inmate may bring a final administrative appeal to the general counsel. While the petitioner has submitted a photocopy of a return receipt for an appeal to the regional director, petitioner has failed to show that he did not receive a remedy at this level or if he appealed a denial of his complaint to the general counsel as required by the Bureau of Prisons' administrative remedy system. 28 C.F.R. § 542.15.

It is not clear from the face of petitioner's pleadings whether he has attempted to exhaust his administrative remedies. As exhaustion is a prerequisite to bring suit in this Court, it is hereby

ORDERED that petitioner submit additional facts or exhibits demonstrating exhaustion of his administrative remedies with respect to the claims presented herein within twenty (20) days from the date of this Order. Failure to comply with this Order

will result in the dismissal of this action without prejudice. Rule 41(b), Fed.R.Civ.P. To demonstrate exhaustion, petitioner may submit a brief legible summary of the actions taken to achieve administrative review of his claims, or copies of the forms and notices of action submitted to administrative authorities.

The clerk is directed to send a copy of this Order to the petitioner.

Dated:
Alexandria, Virginia

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Petitioner,	)	
v.	)	CIVIL ACTION NO.
Respondent.	)	

O R D E R

Let the petition tendered by ..... be conditionally filed in forma pauperis.

Petitioner seeks to bring this petition for a writ of habeas corpus alleging ..... .

It appears that the petitioner may not have exhausted his state court remedies by first submitting all of his claims presented here to the Supreme Court of Virginia. See Rose v. Lundy, 455 U.S. 509 (1982). Exhaustion is a necessary predicate to bringing a habeas corpus action in this Court. Accordingly, it is hereby

ORDERED that the petition be conditionally DISMISSED. This dismissal will become final within fifteen (15) days of the date of this Order unless petitioner submits facts demonstrating that he has exhausted his state court remedies with respect to the claims presented here.

The clerk is directed to send a copy of this Order to the petitioner.

Dated:
Alexandria, Virginia

UNITED STATES DISTRICT JUDGE

United States District Court

DISTRICT OF _____

V.

APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

CASE NUMBER:

I, _____, declare that I am the *(check appropriate box)*

☐ petitioner/plaintiff ☐ movant (filing 28 U.S.C. 2255 motion)

☐ respondent/defendant ☐ _____ *other*

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes ☐ No ☐
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or other form of self-employment Yes ☐ No ☐
   b. Rent payments, interest or dividends? Yes ☐ No ☐
   c. Pensions, annuities or life insurance payments? Yes ☐ No ☐
   d. Gifts or inheritances? Yes ☐ No ☐
   e. Any other sources? Yes ☐ No ☐

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings accounts?
   Yes ☐ No ☐ (Include any funds in prison accounts.)
   If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes ☐ No ☐
   If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ _____
(Date) Signature of Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of $ _____ on account to his credit at the _____ institution where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution: _____

I further certify that during the last six months the applicant's average balance was $ _____

Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied

_____ _____
United States Judge *Date*

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

_____ _____
United States Judge or Magistrate *Date*

IN FORMA PAUPERIS AFFIDAVIT

_____
(Insert appropriate court)

_____
(Petitioner

v.

_____
(Respondent(s))

AFFIDAVIT IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, _____, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes ( ) No ( )
   a. If the answer is "yes," state the amount of salary or wages per month, and give the name address of your employer.
   _____
   _____
   b. If the answer is "no," state the date of last employment and the amount of salary and wages per month which you received.
   _____
   _____

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business or profession or form of self-employment? Yes ( ) No ( )
   b. Rent payments, interest or dividends? Yes ( ) No ( )
   c. Pensions, annuities or life insurance payments? Yes ( ) No ( )
   d. Gifts or inheritances? Yes ( ) No ( )
   e. Any other sources? Yes ( ) No ( )

   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. _____
   _____
   _____
   _____

3. Do you own cash, or do you have money in a checking or savings account?

   Yes ( ) No ( ) (Include any funds in prison accounts.)

   If the answer is "yes," state the total value of the items owned.
   _____
   _____
   _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ( ) No ( )

If the answer is "yes," describe the property and state its approximate value. _____

_____

_____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

_____

_____

_____

_____

_____

_____

_____

I delcare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(Date)

_____
(Signature

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $_____ on account to his credit at _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution: _____

_____

_____

_____

_____
Authorized Officer of
Institution

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA
OFFICE OF THE CLERK
RICHMOND, VIRGINIA 23205
P.O.BOX 2-AD

ORIS R. CASEY
CLERK

TELEPHONE
CIVIL 771-2611
CRIMINAL 771-2612
JURY-FINANCIAL 771-2613
ADMINISTRATION 771-2055

TO: Date:

FROM: Clerk's Office
U.S. District Court

SUBJECT: Inmate Account Report Form

Dear Sir or Madam:

Please complete the enclosed form regarding the account of the above-named inmate. We would like you to furnish us with the following information concerning the inmate's account:

(1) Inmate's balance for the six-month period prior to initiation of the action;

(2) any deposits or withdrawals by the inmate; and,

(3) the balance in the inmate's account at the time of the initiation of the action.

Please note that the date of initiation of the action is the date shown on the form as the date received by the Court.

Thank you for your cooperation in this matter.

Doris R. Casey
Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

INMATE ACCOUNT REPORT FORM

Inmate Name _____ No. _____

Place of Incarceration _____

To be completed by Court:

CA No. _____ Filed _____

To be completed by correctional facility as soon as possible upon receipt:

Beginning Balance _____ Date _____

Withdrawals _____

Deposits _____

Ending Balance _____ Date _____

If inmate was transferred to another institution, please indicate the amount of funds transferred and to which institution:

Amount _____ Institution _____

By: _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Date: _____

Re: _____ v. _____

Dear M___ _____

Please be advised that your Declaration in Support of Request to Proceed In Forma Pauperis has been reviewed and the following decision has been made:

_____ Your complaint will be filed upon payment of the $120.00 filing fee for § 1983 actions.

_____ Your petition for habeas corpus will be filed upon payment of the $5.00 filing fee.

_____ Your complaint/petition will be filed with the payment of a partial fee of $_____. This is 15% of your account deposits for the six months preceding the filing of your action.

You are hereby **NOTIFIED** of the opportunity to explain, in writing, the withdrawal or withdrawals, as well as any special circumstances, warranting excusing any or a part of the payment as provided above. Such statement must be notarized or sworn to under the penalties of perjury pursuant to 28 U.S.C. § 1746.

WARNING: Failure to pay the required fees, or file an explanation as outlined above, within **ELEVEN (11)** days of the receipt of this notice will result in the dismissal of your action.

Appendix 10

Federal Judicial Center/Administrative Office Memoranda

The Advisory Group Report to the Court: Recommended Format and Summary of Statutory Requirements

The Civil Justice Reform Act of 1990 requires each district court advisory group to submit to the court a report of its work. This report will be reviewed by several different bodies, and thus the Judicial Conference Committee on Court Administration and Case Management recommends that to the extent possible advisory groups follow the same format in preparing their reports. This will greatly facilitate the work of the courts, the circuit judicial councils and review committees, the Judicial Conference, the Federal Judicial Center, and the Administrative Office. Those who use your reports will be most appreciative.

Recommended Format for Advisory Group Reports

Please consider using the following outline in preparing your report to the court. The examples given are illustrative only. Each advisory group will decide which issues it must address for its district. We hope, however, that the group will address those issues in the basic sequence outlined below, although you may well find that the nature of your analysis requires integrating the treatment of topics designated by arabic numbers as well as those listed under III.

I. Description of the Court
   - A. Number and location of divisions; number of district judgeships authorized by 28 U.S.C. § 133; number of magistrate judgeships authorized by the Judicial Conference (use II.A.3 to comment on judicial vacancies and II.B.2 to comment on the consequences of these vacancies for cost and delay)
   - B. Special statutory status, if any (e.g., pilot court, early implementation district)

II. Assessment of Conditions in the District
   - A. Condition of the Docket
     1. What is the "condition of the civil and criminal dockets" (28 U.S.C. § 472(c)(1)(A))?
     2. What have been the "trends in case filings and in the demands being placed on court resources" (§ 472(c)(1)(B))?
     3. What have been the trends in court resources (e.g., number of judgeships, vacancies)? (Use II.B.2 to comment on the impact of these trends and III.A to make recommendations regarding the need, if any, for additional resources.)
   - B. Cost and Delay
     1. Is there excessive cost and delay in civil litigation in this district? What is the supporting evidence for the group's finding?
     2. If there is a problem with cost and delay, what are its "principal causes" (§ 472(c)(1)(C))?

a. How are cost and delay in civil litigation affected by the types of cases filed in the district?
b. What is the impact of court procedures and rules (e.g., case scheduling practices; motions practice; jury utilization; alternative dispute resolution procedures such as arbitration and mediation)?
c. What is the effect of court resources (numbers of judicial officers; method of using magistrates; court facilities; court staff; automation)?
d. How do the practices of litigants and attorneys affect the cost and pace of litigation (e.g., discovery and motion practice; relationships among counsel; role of clients)?
e. To what extent could cost and delay be reduced by a better assessment of the impact of legislation and of actions taken by the executive branch (§ 472(c)(1)(D))?

III. Recommendations and Their Basis

A. State the "recommended measures, rules, and programs" (§ 472(b)(3)), such as recommended local rules, dispute resolution programs, or other measures, and for each explain how it relates to an identified condition and how it would help the court reduce excessive cost and delay.
B. Explain how the "recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys" (§ 472(c)(3)).
C. Explain (as required by § 472(b)(4)) how the recommendations comply with § 473, which requires the court, when formulating its plan, to consider six principles and six techniques for litigation management and cost and delay reduction.
D. Make a recommendation that the court develop a plan or select a model plan and state the basis for that recommendation (§ 472(b)(2)). If the advisory group has drafted a formal plan, please attach it as appendix C. If the recommendations stated under III.A. serve as the recommended plan, please make this clear at III.A.

Appendices

A. Membership of the Advisory Group (e.g., list of members, their affiliation, name of reporter(s) and chair)
B. Operating Procedures (e.g., how group was organized, methods used to collect data on caseload and on causes of cost and delay, copies of forms used for collecting information)
C. Cost and Delay Reduction Plan (if a formal plan is part of the report, please include it here)

Add any other appendices required by the advisory group's analysis and recommendations.

Summary of Statutory Requirements

The Civil Justice Reform Act of 1990 requires the advisory group to submit a report to the court (§ 472). The statute, which requires that the report be made available to the public, specifies the content of the report:

1. The report must assess each of the following (28 U.S.C. § 472(b)(1)):
   a. the condition of the civil and criminal dockets;
   b. trends in case filings and demands on the court's resources;
   c. the principal causes of cost and delay in civil litigation; and
   d. the extent to which cost and delay could be reduced by better assessment of the impact of new legislation.
2. The report must state the basis for its recommendation that the court develop a plan or select a model plan (§ 472(b)(2)).
3. The report must include recommended measures, rules, and programs (§ 472(b)(3)).
4. The report must provide an explanation of the manner in which the recommended plan complies with § 473 (consideration of the principles and techniques of litigation management and cost and delay reduction) (§ 472(b)(4)).

Each district court is required by the statute to implement a "civil justice expense and delay reduction plan" (§ 471). The court may develop its own plan or it may adopt a model plan developed by the Judicial Conference of the United States. In either instance, the chief judge of the district must (§ 472(d)) submit the plan *and the report* prepared by the advisory group to:

1. the director of the Administrative Office of the U.S. Courts;
2. the judicial council of the circuit in which the district is located; and
3. the chief judge of each district court in the circuit.

The district court's plan and the advisory group's report will then be reviewed by the following two bodies:

1. a committee made up of each district chief judge in the circuit and the chief judge of the court of appeals for that circuit, who may suggest that additional actions be taken to reduce cost and delay in civil litigation (§ 474(a)(1)); and
2. the Judicial Conference, which may request a district court to take additional action if it "has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group" (§ 474(b)).

By December 1, 1994, the Judicial Conference must prepare a comprehensive report on all the plans (§ 479(a)), which is to be submitted to the district courts and to the Committees on

the Judiciary of the Senate and the House of Representatives. The directors of the Federal Judicial Center and the Administrative Office may make recommendations regarding this report to the Judicial Conference.

A special requirement is specified for the Early Implementation Districts (§ 482(c)(3)–(4)). By June 1, 1992, the Judicial Conference must prepare a report on the plans developed by these courts. This report, along with the plans developed by the courts and the reports prepared by the advisory groups, must be transmitted by the Administrative Office to the district courts and the Committees on the Judiciary of the Senate and the House of Representatives.

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

February 1991

Prepared for the United States District Court for the Eastern District of Virginia

Table of Contents

The Act also designates five district courts as demonstration districts (§ 104). The Western District of Michigan and the Northern District of Ohio are to experiment with assignment of cases to appropriate processing tracks. The Northern District of California, the Northern District of West Virginia, and the Western District of Missouri must experiment with various methods of reducing cost and delay, including alternative dispute resolution procedures. These five courts may become early implementation districts if they elect.

The Act requires that an independent organization with expertise in the area of federal court management compare the results from the ten pilot courts with those from ten comparable districts that were not required to adhere to the six litigation management principles specified in § 473(a). The Judicial Conference must present the results of this independent study to Congress by Dec. 31, 1995, along with recommendations whether some or all courts should be required to incorporate the six principles. If the principles do not prove effective, the Judicial Conference must adopt and implement alternative cost and delay reduction programs.

Although the Act is silent on whether it is intended to apply to bankruptcy courts, the Report of the Senate Judiciary Committee states that it is not (S. Rep. No. 101-416 on S. 2648, Aug. 3, 1990, Senate Report, p. 51).

Overview of Advisory Group Functions

The group's statutory functions fall into these general categories:

- assess the court's docket, the litigation practices and procedures in the district, and the impact of new legislation, in order to identify causes of cost and delay in civil litigation (§ 472(c));
- prepare a report recommending the adoption of a civil justice expense and delay reduction plan, which should include measures, rules, and programs to reduce cost and delay and which should state the basis for the recommendations (§ 472(b)); and
- consult with the court in the annual post-plan assessment of the civil and criminal dockets (§ 475).

These are daunting tasks—nothing on this scale has ever been attempted in the federal court system. Congress has made it clear that the courts and their advisory groups should carry them out in a meaningful manner to try to achieve concrete results, and it is in the interests of the courts and the public that this be done. Because the time and resources available are limited, the tasks must also be carried out in a practical and realistic manner so that they may be accomplished within those limits. Below is a brief introduction to each of the major functions of the advisory group.

A. Assessing the court's civil and criminal dockets (§ 472(c))

A starting point for determining the condition of the court's dockets is an analysis of court statistics. No one statistical formula can determine whether a district is "good" (or "not so good") in litigation management. Therefore, an analysis will incorporate several statistical methods and will take into consideration the particular circumstances of the district, such as unusual case mix, judgeship vacancies, use of senior or visiting judges, and so on. Section II of these materials is provided to assist the group in this analysis.

To identify trends in case filings and in the demands being placed on the court's resources, the group may use court statistics not only to review general trend data, but also to identify categories of cases creating special burdens (e.g., death penalty, asbestos, prisoner, complex crimi-

nal, and RICO cases). The advisory group may also want to explore the causes underlying filing trends, such as conditions giving rise to particular kinds of civil litigation or charging decisions by the U.S. Attorney. The Senate Report notes that this would also include a determination of whether the court lacks sufficient resources, including judicial personnel and administrative staff or space, facilities, and equipment (Senate Report at p. 52.). Section II includes an outline that may be helpful in assessing trends in the relationship between demand and resources.

B. Identifying the principal causes of costs and delay

In performing its assessment, the advisory group is required to identify the principal causes of cost and delay in civil litigation. In so doing, it must consider such potential causes as court procedures and the way litigants and attorneys approach and conduct litigation. It will be difficult for the groups to accomplish this task with precision. However, they might undertake a broad review of litigation practices and procedures both in and out of court with a view toward learning how these practices could be modified to reduce cost and delay. To assist the group with this review, Section III presents a list of some of the practices and procedures in civil litigation.

C. Examining the impact of new legislation on the court

The Act also looks to the advisory group to examine the impact of new legislation on the courts. Thus it addresses a role for Congress in reducing civil delay and expense. Among the topics the group might address are procedural reforms that encumber the courts and encourage litigation, failures of Congress to express its intent clearly or to enact legislation that would ease the burden on courts, and the impact of legislation on court dockets. The group should also consider steps that individual courts or the judicial branch as a whole can take to improve their ability to adapt to new legislation. A discussion of this topic can be found in Section IV.

D. Recommendations to the court

The Act requires that the advisory group, in developing its recommendations, "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys" (§ 472(c)(2)). Thus, the recommendations of the group should be more than generalized findings and conclusions. The advisory group's report should state with specificity the assessments made by the group, the findings on which it bases its recommendations, the particular circumstances of the district that affect cost and delay, and recommended changes in litigation procedures, rules, and methods. Section V addresses this advisory group duty.

The discussions, tables, outlines, and other aids presented below are intended to assist the group with its monumental tasks, not by supplying solutions, but by providing starting points for inquiry. This document does not undertake to tell groups what to do or how to do it, nor does it offer normative judgments. Advisory group members will have been selected for their competence, experience, and judgment, and they can be expected to bring these to bear on the task at hand. When they have completed their work, the court will be able to make decisions about its plan and the implementation of a constructive, workable program for the administration of civil justice.

age, both pending and termination counts were totalled across the twelve months of the statistical year. The ratio of termination total to pending total then gives a precise estimate of the probability that a case reaching a given "birthday" (from the "0th," which is birth itself, to the 100th month) will terminate before reaching its next birthday. These probabilities were then used in standard life expectancy computations, wherein a constant filing rate is broken down according to the probabilities of termination or survival ($1 - m_i$, where m_i is the probability of termination at age i). The standard computation proceeds as follows: for constant filings of F, $F^*(1 - m0)$ cases survive to age 1 month. In turn, $(1 - m1)$ of these survive to age 2 months, and so on. At each age, the average at death is calculated at i + 0.495 (it is not precisely at the 1/2 month point, since slightly more cases terminate between ages i and i + .5 than the number that terminate between ages i + .5 and i + 1). The average age at termination for all cases that ensues from the constant filing rate is then the life expectancy (at case filing) for the statistical year.

4. Indexed average lifespan (IAL) computation

IAL is computed in a two-step process. First, an expected average lifespan is computed for the cases terminated in a given year. Each terminated case is assigned an expected lifespan, which is simply the average age at termination observed among all cases of the same case type in all districts over the past ten years. For instance, the average age at termination for the nearly 73,000 automobile personal injury actions terminated in the last ten years was 11.8 months. Summing the expected lifespans for all cases terminated in the district in the relevant year and dividing by the total number of cases produces the expected average lifespan (EAL). It suggests what the actual average lifespan of these cases would have been if, for each case type, the average age at termination was the same as it had been among all cases of the same type in all districts in the last ten years. In that sense, EAL suggests what the average age at termination would be in an "average" district that had exactly the same mix of cases as the district in question.

Second, we compute the actual average lifespan (AAL) for the cases disposed of in the district in the year. The indexed average lifespan is $12 \times AAL/EAL$ (the "index" of 12 is chosen because the overall average age at termination among civil cases is about 12 months). If the actual average lifespan for cases terminated in the district is 13 months, but the expected average lifespan is 15 months, then IAL is $12 \times 13 \div 15$, or about 10.4. It is lower than 12, suggesting that the average lifespan for the district was lower than "expected" and thus that the district's cases appear to be disposed of more quickly than is typical among all districts.

I. Obtaining Guidance from the Court Regarding the Role of Advisory Groups

As the groups prepare to undertake the analyses required by the Civil Justice Reform Act, they may wish to seek further guidance from the court. Following are some questions a group may wish to ask.

1. Does the court wish to be an early implementation district, or has it been designated a pilot or a demonstration district? If either is so, the court must implement an expense and delay reduction plan by Dec. 31, 1991.

2. If the court is neither a pilot nor an early implementation district, what is the deadline by which the court wishes the advisory group to submit its report? The outside limit set by the statute for implementation of a plan is three years from the date of enactment, i.e., Dec. 1, 1993.

3. If a reporter has been appointed, what is to be the reporter's role?

4. Does the court wish to establish any ground rules for the advisory group with respect to such matters as interviewing members of the bar, government officials, or others?

5. What kind of access will the advisory group have to the court? Will the court permit interviews with judges, magistrate judges, and staff? What court records may be consulted by the advisory group? Will the advisory group be expected or permitted to examine the caseload at the level of individual judges?

6. What resources, monetary and otherwise (e.g, assistance from the court through its clerk or clerk's office staff), will be provided to the advisory group?

7. Will the advisory group be expected or permitted to call on experts, such as statisticians or pollsters? Can names be recommended to the group? What resources will be available for this purpose?

8. What role will the advisory group play in the annual review of the plan and the dockets required by the Act?

9. What are the terms of the current advisory group members? How will future appointments to the group be made?

II. Assessing the Court's Dockets (§ 472(c)(1))

Each district compiles certain statistics on workload and case processing. These statistics conform to a uniform national reporting system, maintained by the Administrative Office, and provide certain basic information about the state of a court's dockets. This information is the necessary starting point for any analysis and is presented here for your use. However, because the national reporting system was not specifically designed for identifying and analyzing causes of cost and delay, the advisory groups will find it necessary to seek and analyze supplemental information.

In Section A we present some of the routinely collected statistics along with several additional measures for assessing the condition of the dockets and for analyzing trends in case filings. (Note that all measures presented in Section A are specific to your district.) In Section B we list some measures the group may wish to seek or develop to aid its assessment of trends in the demands placed on court resources.

A. Determining the condition of the civil and criminal dockets and identifying trends in case filings (§ 472(c)(1)(A) & (1)(B))

A major source of information about the caseloads of the district courts is the statistical data regularly collected and published in the *Federal Court Management Statistics (MgmtRep)*, which provides a six-year picture for each district, and in the *Annual Report of the Director of the Administrative Office of the United States Courts (AORep)*.

The published tables are prepared from individual case data regularly reported to the Administrative Office by the courts. A report is provided when a case is filed, with a follow-up when the case is terminated. As in any massive reporting process, there are many opportunities for error and inconsistency to enter the system, but there is no reason to expect systematic error that would affect specific locations or specific activities.

The published data are the basis of the assessments of court activity that are currently made by the courts, by the judicial system, and by Congress. Consequently, a thorough grasp of those data will be helpful for understanding the assessments others will be making and for communications both among the advisory group, the courts, and the Judicial Conference and among advisory groups.

1. Measures for Determining the Condition of the Civil Docket

a. Caseload volume. *MgmtRep* for 1990 shows the number of civil and criminal cases filed, terminated, and pending for statistical years (years ended June 30) 1985-1990. A copy of the table for the Eastern District of Virginia appears on the following page. The table also shows the number of authorized judgeships and the months of judgeship vacancy. The authorized judgeships—not the available judge power—is used in calculating the number of actions per judgeship reported in this table.

The table does not report the number of actions per magistrate judge. In some districts, these judicial officers handle a substantial volume of pretrial proceedings in civil cases. In most districts, magistrate judges also have responsibility for misdemeanor cases and for preliminary proceedings in felony cases. Statistics on the workload of magistrate judges may be obtained from the Magistrates' Division of the Administrative Office.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

VIRGINIA EASTERN

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1990	1989	1988	1987	1986	1985		
OVERALL WORKLOAD STATISTICS	Filings*		5,263	4,349	3,958	3,941	3,772	3,831		
	Terminations		5,194	4,029	3,477	3,902	3,744	3,476		
	Pending		3,682	3,588	3,267	2,787	2,748	2,720		
	Percent Change In Total Filings Current Year	Over Last Year. . .		21.0					5	1
		Over Earlier Years. . .			33.0	33.5	39.5	37.4	3	1
	Number of Judgeships		9	9	9	9	9	9		
	Vacant Judgeship Months		4.1	12.0	13.9	22.7	11.3	11.6		
ACTIONS PER JUDGESHIP	FILINGS	Total	585	483	440	438	419	426	8	1
		Civil	513	424	386	379	368	395	9	1
		Criminal Felony	72	59	54	59	51	31	25	5
	Pending Cases		409	399	363	310	305	302	57	4
	Weighted Filings**		647	472	471	474	430	436	2	1
	Terminations		577	448	386	434	416	386	6	1
	Trials Completed		59	61	64	63	70	63	5	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	3.6	3.8	3.2	3.1	2.9	3.1	6	1
		Civil	4	5	5	6	6	6	1	1
	From Issue to Trial (Civil Only)		5	5	5	5	5	5	1	1
OTHER	Number (and %) of Civil Cases Over 3 Years Old		772 23.2	591 18.1	561 18.8	289 11.5	252 10.1	194 7.8	86	9
	Triable Defendants** in Pending Criminal Cases Number (and %)		70 (14.7)	147 (29.8)	236 (61.1)	149 (39.0)	103 (30.0)	66 (23.6)		
	Jurors**	Avg. Present for Jury Selection	29.16	29.38	27.53	26.20	32.96	25.28	30	6
		Percent Not Selected or Challenged	32.9	39.3	37.3	39.2	48.6	37.4	57	8

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

1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4614	27	82	1020	151	23	223	713	1776	66	284	7	242
Criminal*	633	10	17	88	23	61	20	151	15	134	33	4	77

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

Key To Table At Left

Weighted filings

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

Civil median time

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

Triable felony defendants in pending criminal cases

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

Key to nature of suit and offense

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

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY88-90

Eastern District of Virginia

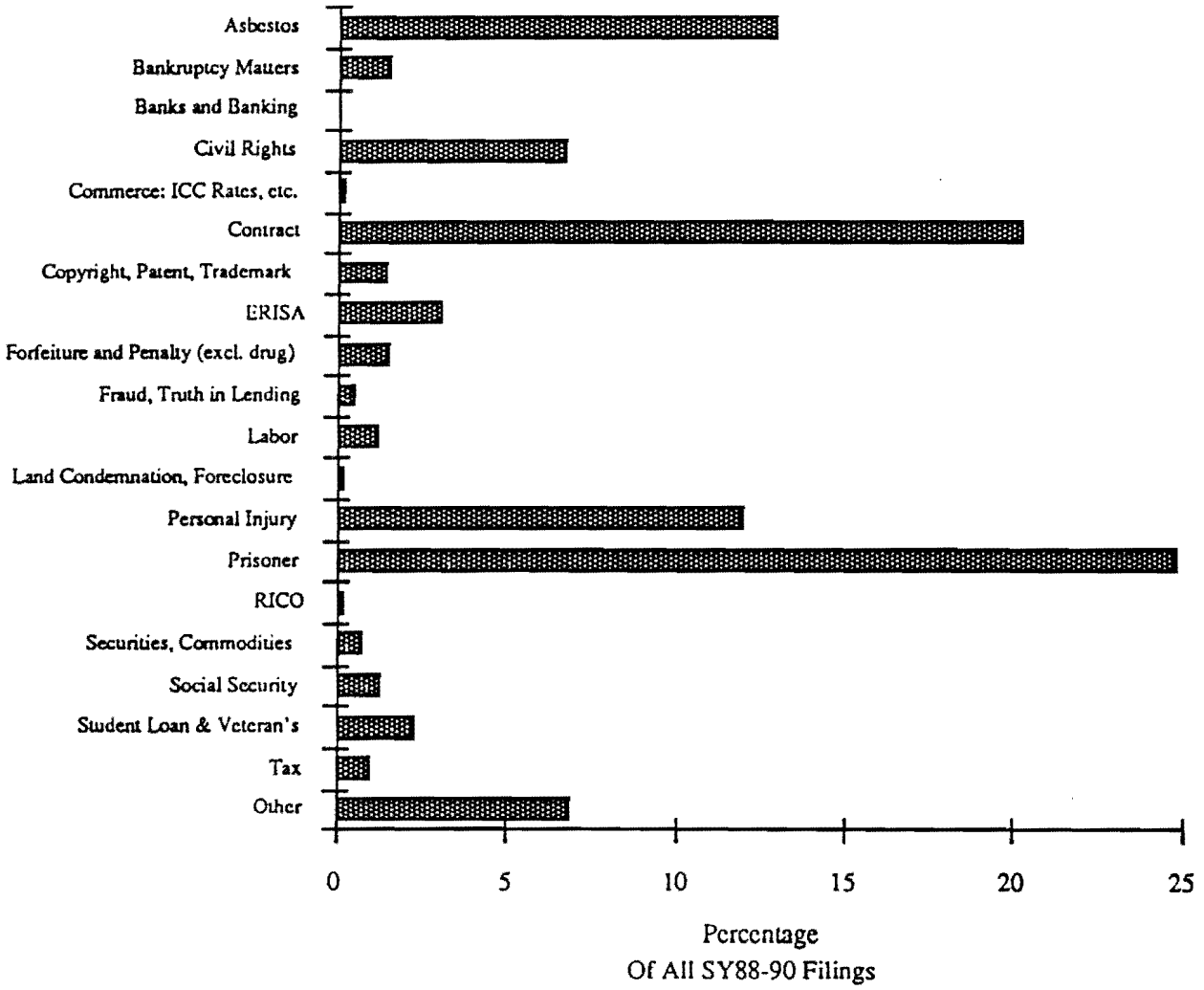


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

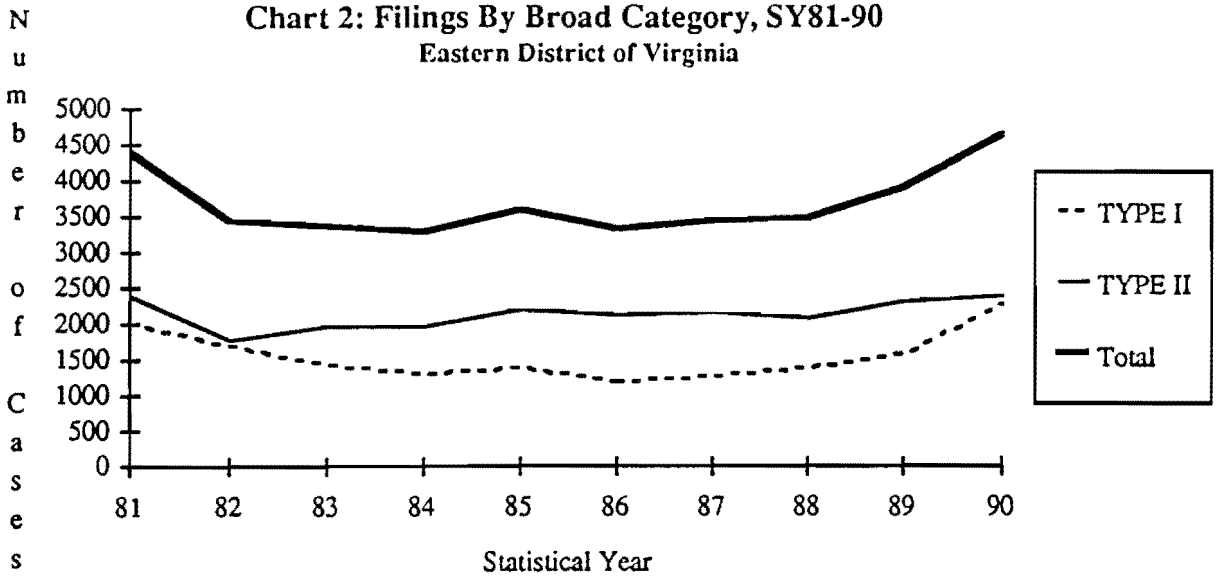


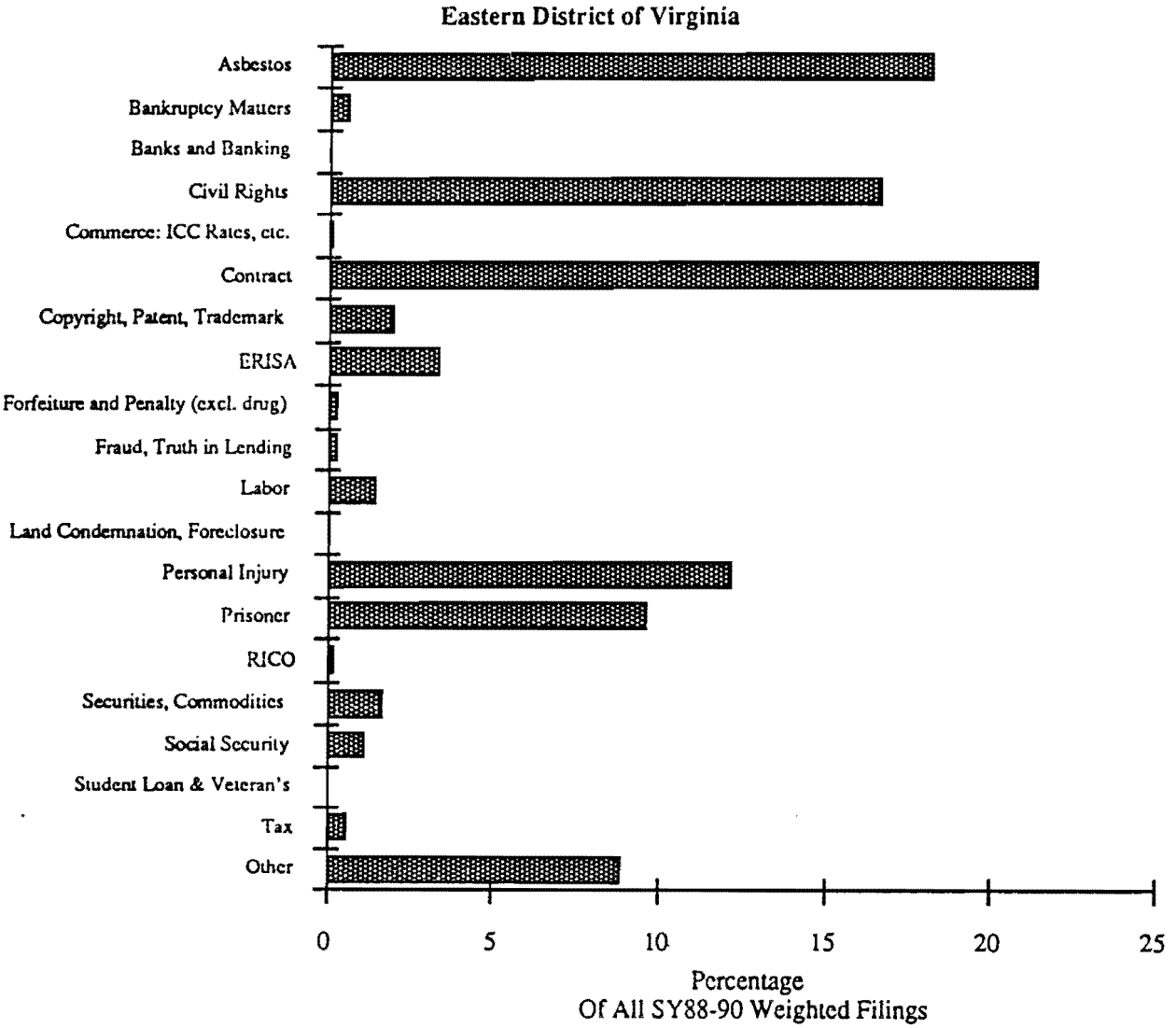
Table 1: Filings by Case Types, SY81-90

Eastern District of Virginia

	81	82	83	84	85	86	87	88	89	90
Asbestos	52	60	43	82	21	51	210	290	161	1100
Bankruptcy Matters	46	48	46	40	59	50	56	52	57	77
Banks and Banking	1	4	5	1	2	2	1	0	4	2
Civil Rights	222	237	357	406	298	335	346	275	250	284
Commerce: ICC Rates, etc.	20	9	10	12	9	3	11	10	12	8
Contract	500	498	629	623	650	748	719	795	912	710
Copyright, Patent, Trademark	47	43	50	48	55	55	45	63	54	66
ERISA	16	8	8	13	15	32	50	57	138	181
Forfeiture and Penalty (excl. drug)	19	21	24	39	23	16	30	44	73	71
Fraud, Truth in Lending	37	40	27	40	27	27	31	26	24	19
Labor	65	52	60	53	48	51	49	61	47	42
Land Condemnation, Foreclosure	6	16	41	19	6	14	19	21	8	5
Personal Injury	542	473	394	402	771	468	550	383	432	627
Prisoner	1836	1417	1040	910	943	923	814	841	1154	968
RICO	0	0	0	0	0	4	15	10	7	17
Securities, Commodities	16	10	22	21	23	21	24	32	32	31
Social Security	64	91	170	188	124	93	77	90	45	27
Student Loan and Veteran's	0	40	59	74	238	63	62	75	135	72
Tax	85	84	72	52	31	38	33	44	38	42
All Other	795	280	291	237	233	291	258	282	278	263
All Civil Cases	4369	3431	3348	3260	3576	3285	3400	3451	3861	4612

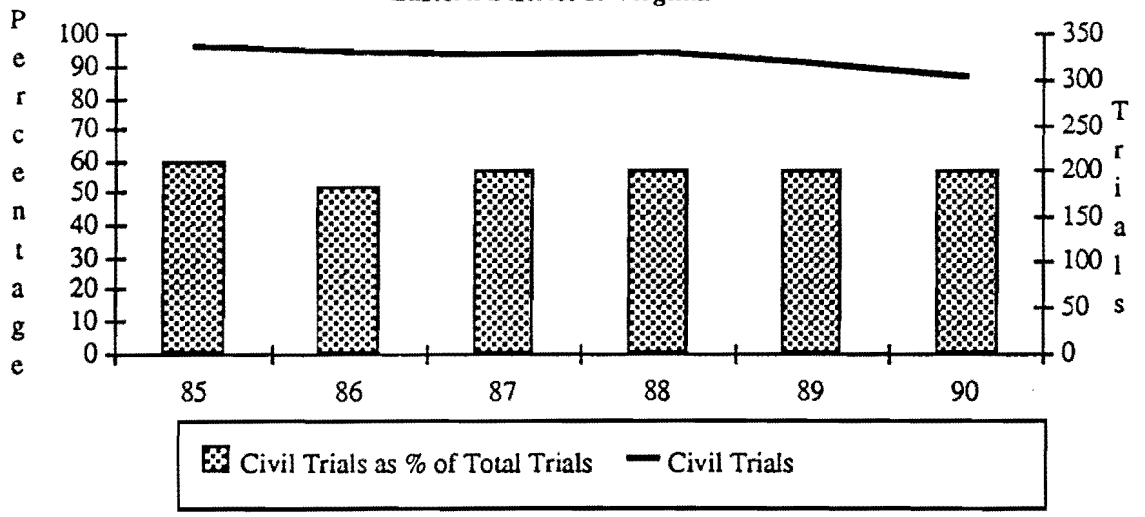
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

Chart 3: Distribution of Weighted Civil Case Filings, SY88-90



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY85-90
Eastern District of Virginia



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY81-90

Eastern District of Virginia

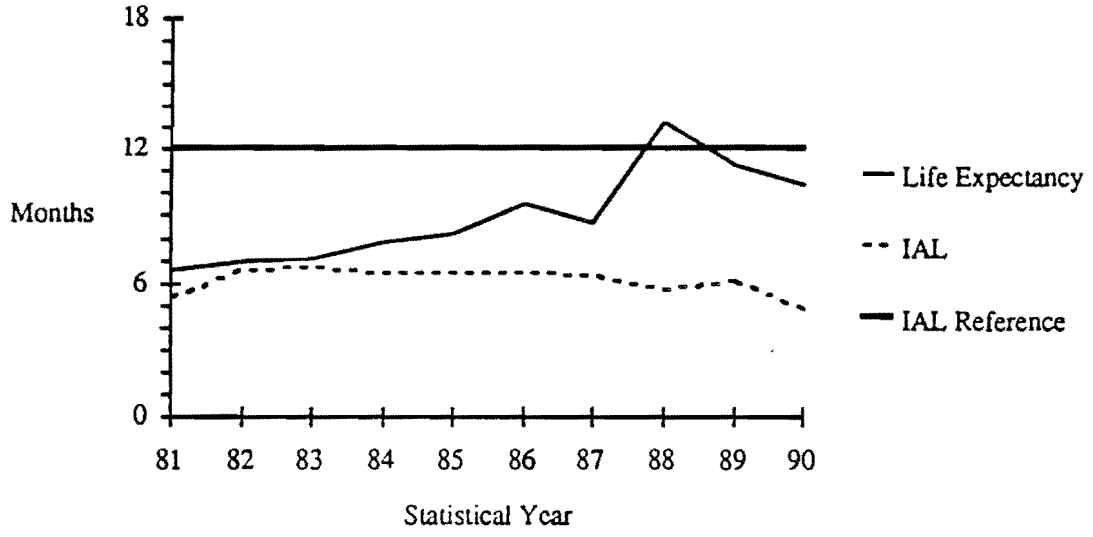
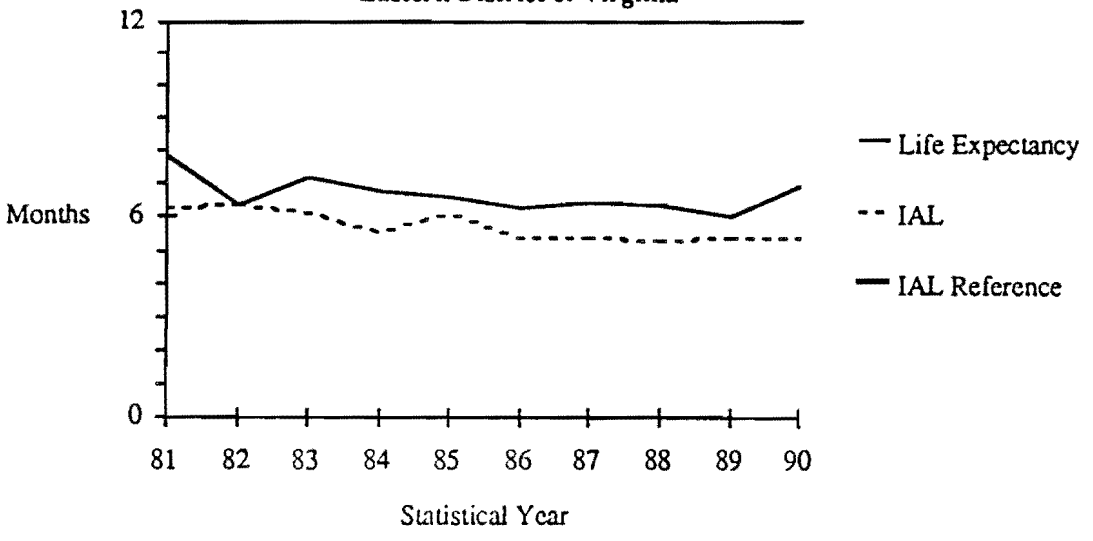


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY81-90

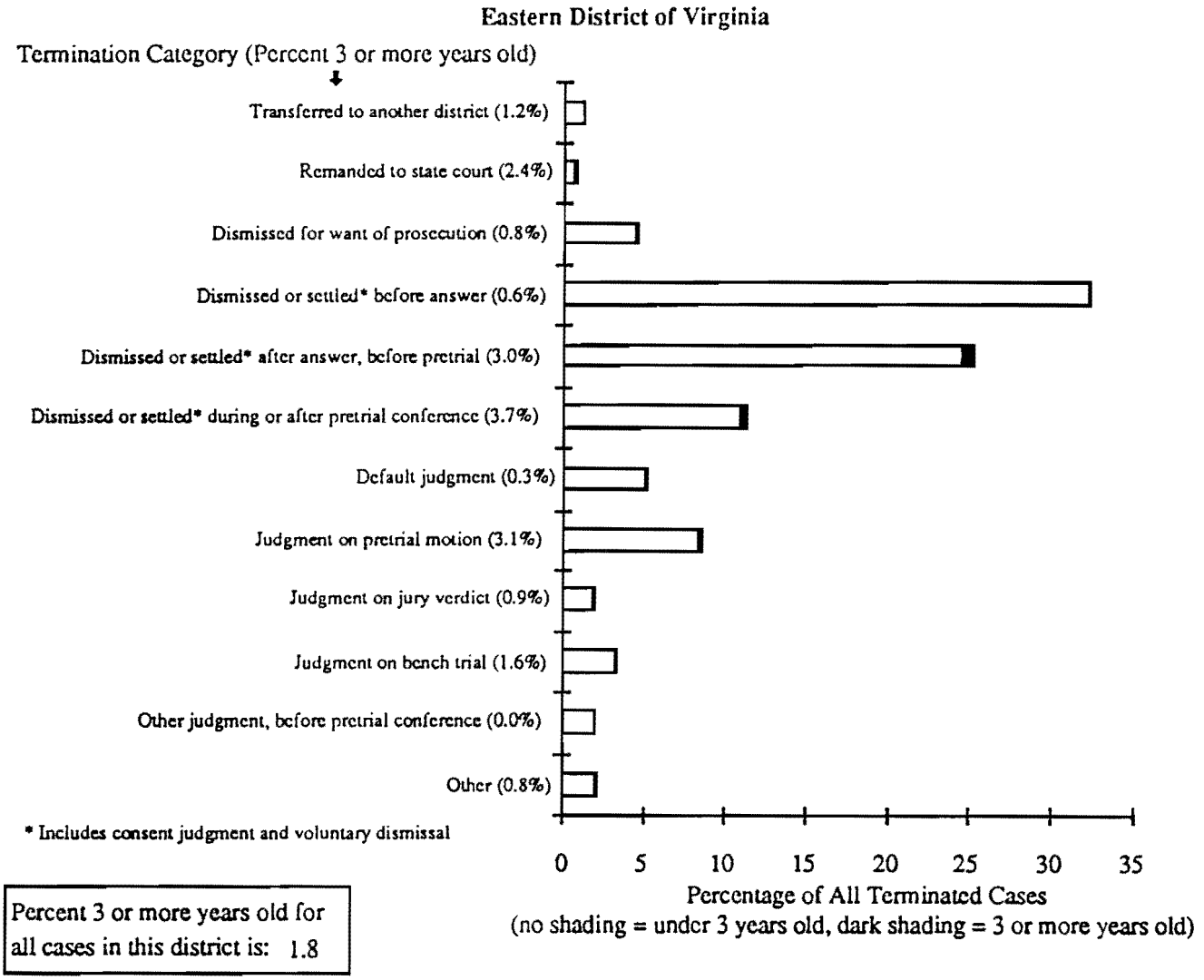
Eastern District of Virginia



e. Three-year-old cases. The *MgmtRep* table shows the number and percentage of pending cases that were over three years old at the indicated reporting dates. We have prepared Charts 7 and 8 to provide some additional information on these cases.

Chart 7 shows the distribution of case terminations among a selection of termination stages and shows within each stage the percentage of cases that were three years old or more at termination.

Chart 7: Cases Terminated in SY88-90, By Termination Category and Age

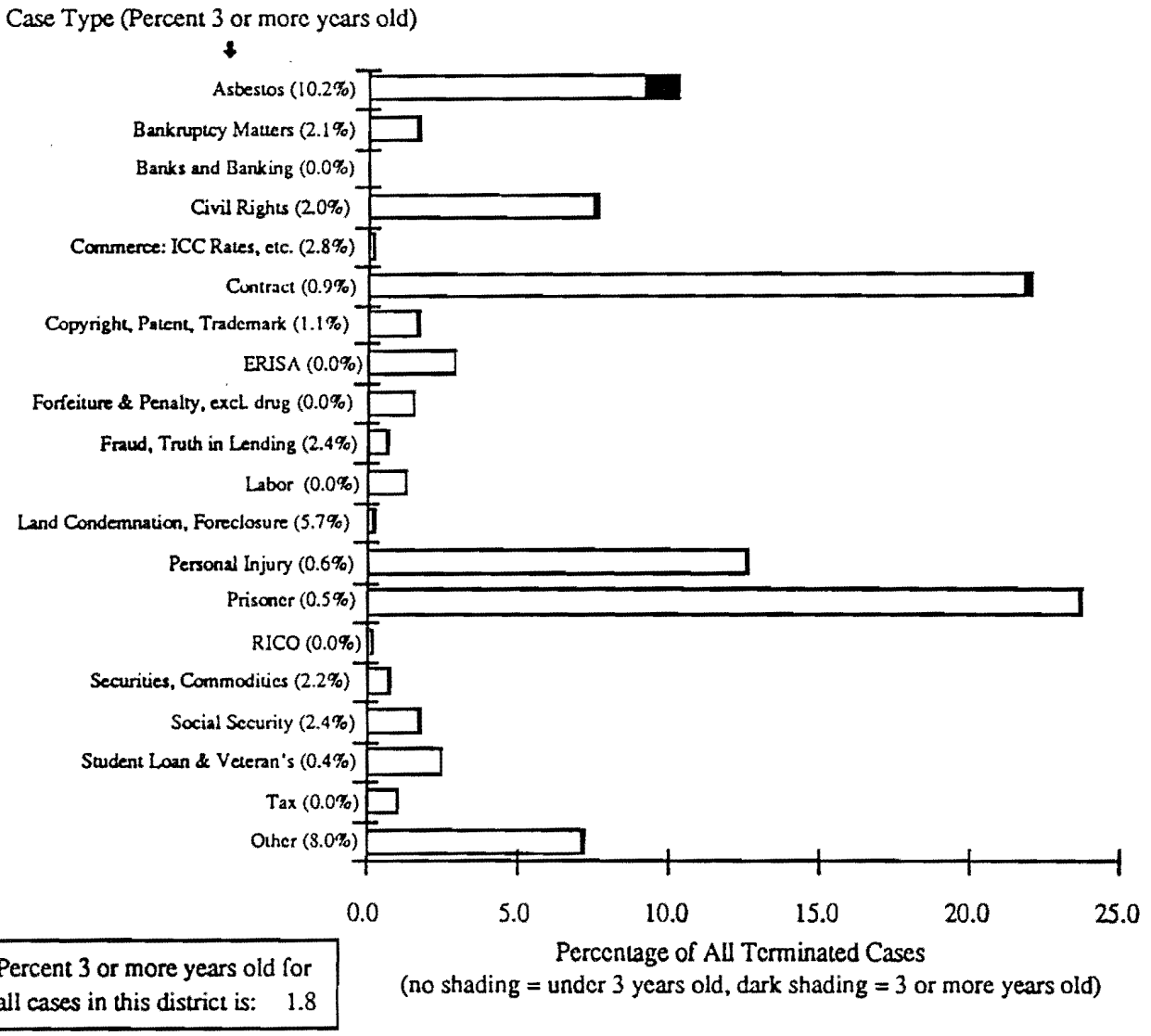


Percent 3 or more years old for all cases in this district is: 1.8

Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY88-90, By Case Type and Age

Eastern District of Virginia



Percent 3 or more years old for all cases in this district is: 1.8

f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 × 1.2). This will overstate the workload of the active judges if

there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

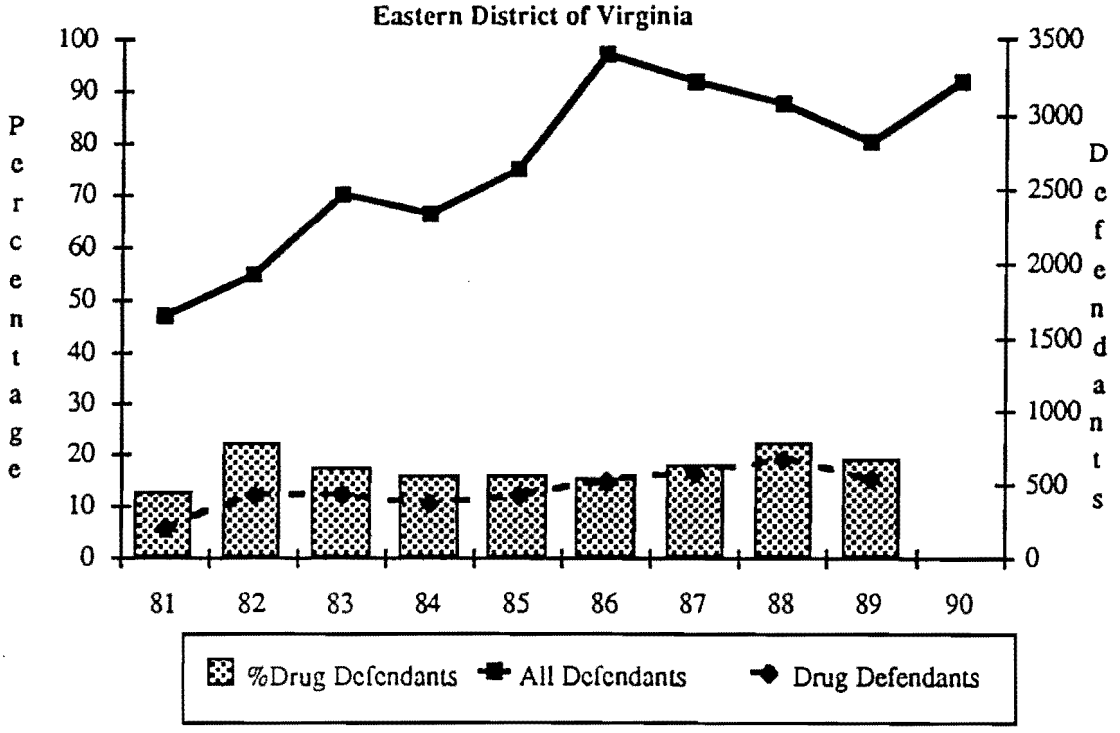
a. The impact of criminal prosecutions. In calling on the advisory group to consider the state of the criminal docket, Congress recognized that the criminal caseload limits the resources available for the court's civil caseload. It is important to recognize that the Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (FTS/633-6094).

Chart 9: Criminal Defendant Filings SY81-90, With Number and Percentage Accounted for by Drug Defendants, SY81-89

(Drug filings data not available for SY90)

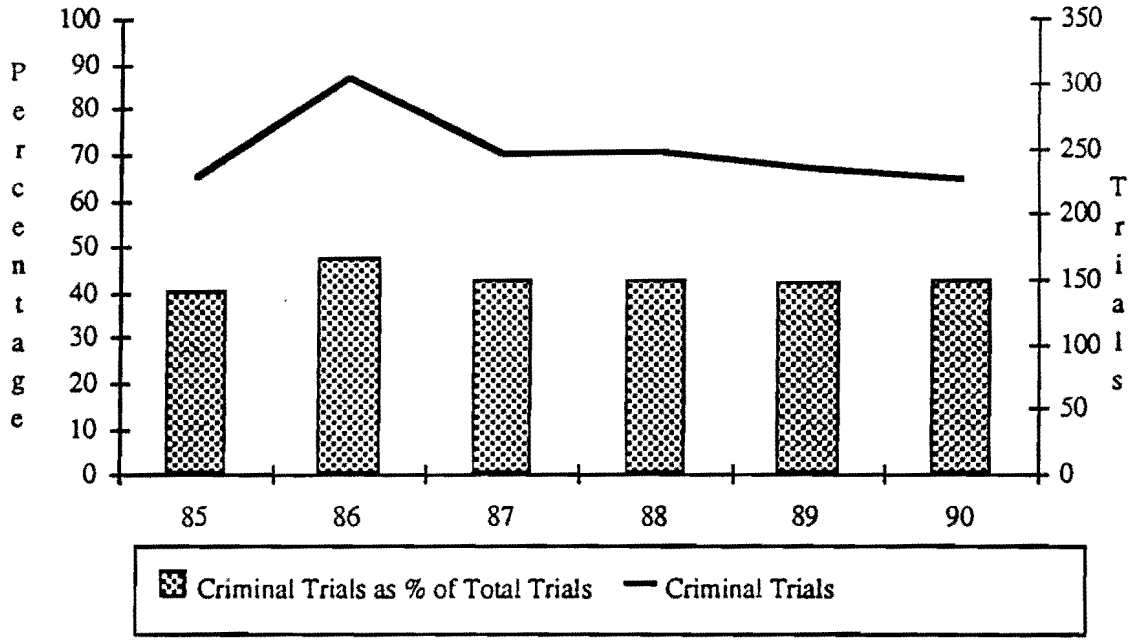
Eastern District of Virginia



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY85-90

Eastern District of Virginia



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

B. Identifying trends in the demands placed on the court's resources (§ 472(c)(1)(B))

While courts maintain some data reflecting trends in the demands on their resources (e.g., the case filing information presented above), these data generally do not provide information about the state of the resources themselves and how these resources relate to demand. The advisory group will want to try to develop information reflecting trends in the relationship between demand and resources. In this section, we suggest some key indicators that may be helpful. Some may be quantifiable. Others will be based on non-numerical information gathered from court personnel.

Court resources may be divided into four categories:

- judicial officers
- supporting personnel
- buildings and facilities
- automation and other technical support.

The following sections provide an outline for assessing trends in the relationship between demand and resources, for each category listed above.

1. Judicial Officers

(a) Article III Judges

The group may want to examine trends over a significant period (five years or more) in the following areas:

- filings and terminations per judgeship and per active judge
- weighted filings per judgeship and per active judge
- raw caseloads per judgeship and per active judge
- weighted caseloads per judgeship and per active judge
- criminal filings and terminations per judgeship and per active judge
- vacant judgeship months
- civil and criminal trials per judge
- participation of senior judges
- participation of visiting judges
- other relevant information

(b) Magistrate Judges

Information may be developed for a similar period in the following areas:

- civil and criminal caseloads per magistrate judge
- civil trials per magistrate judge
- volume of criminal calendars
- vacant magistrate judgeship months
- other relevant information

2. Supporting Personnel

(a) Clerk's Office

Information may be developed for a similar period in the following areas:

- personnel strength and deficiencies in the clerk's office, e.g., percentage of authorized positions permitted to be filled; percentage of positions filled; rate of employee turnover, etc.
- ratio of staff to filings and caseloads
- staff participation in duties related to case management
- other relevant information

(b) Probation/pretrial services department

Information may be developed in the following areas for a period that should take into account the impact of the sentencing guidelines implemented in November 1987:

- personnel strength/deficiencies in the department, e.g., percentage of authorized positions filled, rate of turnover, etc.
- caseloads per officer
- ratio of officers to criminal filings
- other relevant information

3. Buildings and Facilities

Information may be developed for a significant period (five years or more) concerning the adequacy of:

- courtroom facilities
- jury facilities
- prisoner facilities
- library facilities
- support staff facilities

4. Automation and other technical support

Information may be developed for a similar period concerning the adequacy of:

- automation facilities and services
- courtroom reporting services

III. Identifying the Principal Causes of Cost and Delay in Civil Litigation (§ 472(c)(1)(C))

Legislation cannot alter the fact that civil litigation necessarily takes time and costs money. The implementation of the Act can, however, identify causes of avoidable cost and delay, and this is the task on which the group should focus. The group should attempt to arrive at a common understanding of the sense in which it will use those terms. Thus the Act does not specify cost to whom (e.g., the court, the parties, the public) or how much time constitutes delay. The group should define what it means when it uses those terms. So too the group should define other terms and concepts it uses and ensure that its analysis will be as meaningful as possible to the reader. By way of example, to report that "ERISA cases have delayed the resolution of other civil cases" is entirely different from reporting: "As the percentage of ERISA cases on the court's pending civil caseload has grown from __ % in 1986 to __ % in 1990, the life expectancy of all civil cases has grown from __ months to __ months. Six of the seven judges on the court attribute this growth to demands of ERISA cases on their dockets." While the group members' experience and judgment will lend weight to their conclusion, specificity and reference to objective indicia will add greatly to the utility of their report.

The group may begin with a review and analysis of the statistical data assembled in assessing the court's docket and resources (Part II, above). For example (and by way of illustration only), the group may identify a mismatch of demands and resources, illustrated by the emergence of categories of litigation imposing new and substantial burdens on the court's docket, an increasing number of vacant judgeship months, and a decline in the clerk's office personnel. Or the group may find the court's docket to be in a satisfactory state in the sense that it reflects no avoidable cost or delay. Findings such as these should be specific and should not be made in generalities.

Having made its assessment under Part II, the group should proceed to analyze possible causes of cost and delay in "court procedures and the ways in which litigants and their attorneys approach and conduct litigation" (§ 472(c)(1)(C)). The following sections list numerous procedures and practices in civil litigation, although the listing is not intended to be exhaustive. The question to be considered is whether the presence, absence, or application of any such procedures or practices appear to cause avoidable cost or delay in civil litigation.

A. Analysis of court procedures to identify problems of cost and delay

The term "court procedures" may refer to court-wide procedures, i.e., those followed by the court as a whole, whether by rule, order, or custom. It may also refer to the procedures or practices followed by individual judges. For example, assignment of cases typically is a court-wide practice—there is no place for individual variation. On the other hand, the conduct of Rule 16 conferences is essentially a matter for individual judges, even though rules or general orders may be in effect. Some procedures may relate to both categories, e.g., calendaring practices and

jury management practices. In making its study, the group should recognize this distinction and make as clear as possible in its analysis and report which category of procedure it is addressing.

1. Assignment procedures
   a. Methods for assigning cases at filing
   b. Methods of reassigning cases (to new judges, recusal, disqualification, related cases, illness/disability, backlog, protracted/complex cases)
2. Time limits
   a. Monitoring service of process
   b. Monitoring timing of responses to complaint
   c. Enforcing time limits in rules and orders
   d. Practices regarding extensions of time
3. Rule 16 conferences
   a. Exemptions for categories of cases
   b. Format of conference
   c. Development of scheduling orders (See Rule 16(b))
   d. Timing of conferences
   e. Subject matters of conferences (See Rule 16(c))
   f. Use of magistrate judges
4. Discovery procedures
   a. Use and enforcement of cutoff dates
   b. Control of scope and volume of discovery
   c. Use of Rule 26(f) conferences
   d. Use of voluntary exchanges and disclosure and other alternatives to traditional discovery
   e. Procedures used for resolving discovery disputes
   f. Use of sanctions for discovery abuse
   g. Use of magistrate judges
5. Motion practice
   a. Scheduling of motions
   b. Monitoring the filing of motions, responses, and briefs
   c. Hearing and calendaring practices
   d. Method of ruling on motions
   e. Timing of rulings
   f. Use of proposed orders
   g. Use of magistrate judges
6. Final pretrial conferences
   a. Narrowing issues and limiting trial evidence
   b. Controlling length of trials
   c. Structuring sequence of trial issues
   d. Exploring settlement possibilities
7. Jury trials
   a. Method of selection of the venire
   b. Conduct of voir dire
   c. Use of jury selection aids (e.g., pre-screening questionnaires)

d. Use of juror comprehension aids (e.g., encouraging use of visual aids)
e. Use of jury deliberation aids (e.g., written instructions and verdict forms)
f. Assessment of juror costs for late settlement

8. Trial setting
   a. Methods for scheduling trial (e.g., date certain, trailing, combination, etc.)
   b. Timing of setting date for trial
   c. Adherence to trial dates
   d. Priorities (Speedy Trial Act and civil case scheduling--28 U.S.C. § 1657)
   e. Back-ups for multiple settings
   f. System for "clearing the calendar" (e.g., joint trial calendar)
9. Review and dismissal of inactive cases
10. Use of magistrate judges
    a. Pretrial and discovery stages
    b. Settlement conferences
    c. Consent trials
    d. Use as special masters
11. Use of senior and visiting judges
12. Use of courtroom deputy clerks and other personnel to assist judge
    a. Scheduling
    b. Monitoring deadlines
    c. Liaison with attorneys
    d. Preparation of internal statistical reports
    e. Administrative and other functions
13. Use of alternative dispute resolution
    a. Arbitration (voluntary and involuntary)
    b. Early neutral evaluation
    c. Mediation
    d. Mini-trials
    e. Settlement conferences (judicial officer-hosted)
    f. Summary jury trials
    g. Judicial incentives/disincentives to use ADR
14. Efficacy/deficiencies of local rules
    a. Use/non-use of local rules
    b. Alternatives to local rules (e.g., standing orders)
    c. Page limits on briefs
    d. Discovery limits
    e. Time limits
    f. Rules regarding non-filing of discovery materials
    g. Rules on other items from this checklist
15. Use of sanctions
    a. Timing and treatment of motions
    b. Hearings
    c. Control of collateral proceedings
    d. Form and timing of rulings

16. Handling of attorneys' fee petitions
    a. Methods and procedures for setting fees
    b. Hearings, findings, orders
17. Communication and coordination among judges' chambers, magistrate judges' chambers, and clerk's office
18. Other relevant practices of the court or judges

B. Analysis of litigant and attorney practices—privately represented litigants

1. Pre-filing practices—screening cases
    a. Assessing time available for a case
    b. Screening cases for merit
    c. Prefiling investigation of law and fact
    d. Interviewing fact witnesses
    e. Consulting with expert witnesses
    f. Checking documentary evidence
    g. Contacting opposing party
    h. Evaluating the case
    i. Advising client about availability of ADR procedures
2. Pleading practices
    a. Limiting theories and claims in complaint and answer
    b. Amending to remove unfounded claims or defenses
3. Discovery practices
    a. Voluntary exchange of information
    b. Use of admissions and stipulations
    c. Limiting discovery
    d. Resolving discovery issues with counsel
    e. Use of discovery motions
    f. Compliance with rulings
4. Motion practice
    a. Limiting volume of motions
    b. Use of stipulations or consent
    c. Length of pleadings and briefs
    d. Requests for hearings
    e. Conduct of hearings
5. Trial practice
    a. Preparing and organizing evidence
    b. Narrowing claims
    c. Stipulating facts
    d. Estimating time
    e. Complying with time limits
    f. Jury practices—voir dire, selection

6. Sanctions practice
   a. Timing
   b. Circumstances and reasons for requesting sanctions
   c. Frequency of use
   d. Effects on litigation
7. Private attorneys' fees
   a. Effect of local billing and charging practices as incentives/disincentives to litigate
   b. Asymmetries between defense and plaintiff incentives/disincentives
8. Court-awarded attorneys' fees
   a. Class action practices—incentives/disincentives
   b. Statutory fees—incentives/disincentives
9. Settlement practices
   a. Evaluation and ongoing reevaluation of case
   b. Timing of initial discussions
   c. Plaintiff/defendant practices and asymmetries
   d. Resort to court/judge provided procedures—incentives/disincentives
   e. Timing of settlements
10. Use of alternative dispute resolution methods
   a. Incentives/disincentives for plaintiffs and defendants
   b. Use of binding alternatives
   c. Requests for trial de novo
   d. Demand for alternative programs
   e. Resources to implement alternatives
11. Compliance with time limits and local rules at all stages of the litigation
12. Appeals practices
   a. Interlocutory appeals
   b. Appeals on merits
13. Client participation in litigation events and decision making
   a. Impact of presence/absence of client
   b. Fixing client responsibility

C. Analysis of special problems relating to pro se litigation

1. Control of filing of pro se litigation
   a. Review by magistrate judge or judge (28 U.S.C § 1915(d))
   b. Assessing partial filing fees
   c. Orders controlling repeated filings
   d. Certification of grievance procedures by district court (28 U.S.C. § 1997(e))
2. Use of court resources
   a. Delegation to magistrate judges
   b. Use of pro se law clerks

3. Control of hearings
   a. Screening of claims (e.g., at prison)
   b. Narrowing issues
4. Appointment of counsel
   a. Available resources and procedures
   b. Judicial practices

D. Analysis of special problems relating to U.S. litigation

1. Criminal practices
   a. Charging practices (numbers of charges and defendants, separate incidents combined within single indictment, prosecution of offenses in state jurisdiction, etc.)
   b. Plea negotiation practices
   c. Timing of delivery of Jencks Act statements
   d. Discovery practices (e.g., open file; contested)
   e. Length of trials
   f. Use of cross-designations of state prosecutors
2. Civil practices
   a. Selection of cases
   b. Use of removal from state courts
   c. Exercise of settlement authority
   d. Use of alternative, non-adjudicatory procedures
   e. Other practices as listed under Section B above

E. Analysis of special problems relating to state and local government litigation

1. Procedures and practices used by district/states attorneys in habeas corpus litigation
2. Procedures and practices used by district/states attorneys in other prisoner litigation (including use of non-adjudicatory procedures, resort to grievance procedures, etc.)
3. Others

F. Analysis of special problems relating to complex cases

1. Coordination among court, bar, and litigants
2. Pretrial procedures
3. Discovery procedures
4. Motions practice
5. Trial scheduling

IV. Examining the Impact of New Legislation on the Court (§ 472(c)(1)(D))

The Act directs the 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" (§ 472(c)(1)(D)). One approach to making this assessment is to examine the impact of recent legislation on the courts. Another is to consider the lack of legislation that could have improved the civil litigation process. For illustrative purposes only, here are examples of legislative action, or inaction, the group may wish to consider:

A. Criminal legislation

1. Adoption of guideline sentencing and impact of particular aspects of the sentencing guidelines
2. Mandatory minimum sentencing statutes
3. New statutory drug and gun offenses
4. Expansions of federal criminal jurisdiction

B. Civil legislation

1. RICO—civil and criminal sanctions
2. ERISA
3. Financial recoveries from federally insured financial institutions (savings and loans, banks, etc.)
4. Civil rights acts, including the Americans with Disabilities Act of 1990
5. Superfund and other environmental legislation
6. Federal Debt Collection Procedures Act
7. Immigration Act of 1990

C. Legislative inaction

1. Implied causes of action in regulatory statutes
2. Statutes of limitations unspecified
3. Choice of law issues
4. Federal common law
5. Multi-party, multi-forum jurisdiction and procedure
6. Legislative reconciliation of demands and resources (e.g., asymmetry between "authorization" and "appropriation" for responsibilities placed on judiciary such as this Act)
7. Approval of nominees for judicial vacancies

V. Making Recommendations to the Court (§ 472(b))

After making its assessments under § 472(c)(1), the group must submit to the court a report with "its recommendation that the district court develop a plan or select a model plan" (§ 472 (b)(2)). Model plans developed by the Judicial Conference are not expected to be available before the second half of 1992. Moreover, as each plan is to be responsive to local needs and circumstances, it is not likely that a model plan will satisfy the needs of a district.

A. Contents of report

The Act states that the group's report shall:

- include "recommended measures, rules and programs" (§ 472(b)(3));
- include "the basis for its recommendation" (§ 472(b)(2));
- explain "the manner in which the recommended plan complies with section 473" (§ 472(b)(4));
- "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys" (§ 472(c)(2)); and
- "ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts" (§ 472(c)(3)).

In making its recommendations, Congress did not intend to displace or restrict judicial discretion. The House Judiciary Committee said that it was "unwilling to impose the Congress' view of proper case management upon an unwilling judiciary" (House Report, p. 14). Advisory groups (other than those in pilot districts, addressed below) have the discretion to recommend any or all of the principles, guidelines, or techniques of § 473(a) and (b). They must, however, state the reasons for their choices. Specifically, a group must show:

- that it has "consider[ed] . . . the . . . principles and guidelines of litigation management and cost and delay reduction" set out in § 473(a) and (b); and
- that it has included in its recommended measures, rules, and programs those of the Act's principles, guidelines, and techniques that, for the reasons stated in the group's report, are considered appropriate for the needs and circumstances of the district.

While the Act does not require a plan to incorporate specific provisions (except in pilot districts), Congress clearly expects them to reflect a significant commitment to cost and delay reduction. Recommended actions are to "include significant contributions to be made [not only] by the court, [but also] by the litigants, and the litigants' attorneys" (§ 472(c)(3)). They need not be limited to the means set forth in the Act to reduce cost and delay. Nor need they be limited to matters touching directly on the processing of litigation. A plan might, for example, call upon the bar to sponsor advocacy training programs for federal litigators or to provide greater *pro bono* representation to indigent litigants who would otherwise proceed *pro se*.

Implementation of a plan will not necessarily require a court to change current methods and techniques. Where existing methods and techniques are found to be effective in controlling cost and delay, the plan should incorporate them to ensure that they remain part of the court's procedure.

The group should report on problems of cost and delay regardless of whether those problems might be remedied by the Act's principles and guidelines. Problems beyond the control of courts, litigants, and attorneys should be identified, but this material does not address how the group should treat them.

B. Format of report

The Judicial Conference must review all district reports (§ 474(b)(1)) and prepare a report to Congress (§ 479). The Conference will find it helpful if the reports generally conform to a pattern permitting comparison across districts. Such reports will also facilitate research on the administration of justice in federal courts. To be helpful to the court and to the Judicial Conference, reports should, where possible, correlate particular identified problems with particular recommendations. Recommendations should be specific; they may, for example, take the form of a suggested rule, order, or procedure. The Conference, in consultation with the Federal Judicial Center and the Administrative Office, will be working with all the courts to explore appropriate formats.

C. Pilot districts

Plans implemented by the ten pilot districts "shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a)" (§ 105(b)). The following considerations may be helpful to groups in pilot districts:

- If the group finds that the state of the court's docket is satisfactory and there are no discernible causes of avoidable cost and delay, it may recommend measures that incorporate the court's existing practices and procedures, adapted to reflect the six principles and guidelines in a manner that will not disrupt an existing satisfactory operation.
- If the group finds the existence of causes of avoidable cost and delay to which some of the stated principles and guidelines may be relevant, it should recommend their adaptation to "the needs and circumstances" of the court in a pragmatic manner, keeping in mind that the objective is to aid, not impair, the administration of justice. For example, a court already straining under its criminal caseload should not be subjected to procedures imposing additional burdens and demands unless their impact will demonstrably improve the overall ability of that court to process its dockets.

While these considerations are especially relevant to the pilot districts, advisory groups in all districts will want to keep them in mind as they develop their reports and recommendations to the court.

Appendix A

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

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

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

The Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

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

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

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

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

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

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

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

"§ 474. Review of district court action

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

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

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

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

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

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

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

"§ 475. Periodic district court assessment

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

"§ 476. Enhancement of judicial information dissemination

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

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

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

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

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

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

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

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

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

"§ 478. Advisory groups

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 480. Training programs

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

"§ 481. Automated case information

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

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

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

Appendix B

1. Case Types

The case type categories used in this analysis are derived from a more detailed taxonomy of nature-of-suit codes employed by the Administrative Office in its data collection and reporting. The table below shows exactly which nature-of-suit codes were included within each category.

Category	Nature-of-Suit Code and Description	
Asbestos	368	Asbestos
Bankruptcy Matters	420	Bankruptcy Trustee
	421	Bankruptcy Transfer
	422	Bankruptcy Appeals Rule 801
	423	Withdrawal
Banks and Banking	430	Banks and Banking
Civil Rights	440	Civil Rights: Other
	441	Civil Rights: Voting
	442	Civil Rights: Jobs
	443	Civil Rights: Accommodations
	444	Civil Rights: Welfare
Commerce: ICC Rates, etc.	450	Commerce: ICC Rates, etc.
Contract	110	Contract: Insurance
	120	Contract: Marine
	130	Contract: Miller Act
	140	Contract: Negotiable Instrument
	190	Other Contract
	195	Contract Product Liability
Copyright, Patent, Trademark	820	Copyright
	830	Patent
	840	Trademark
ERISA	791	ERISA
Forfeiture & Penalty (excl. drug)	610	Forfeiture and Penalty: Agriculture
	620	Forfeiture and Penalty: Food and Drug
	630	Forfeiture and Penalty: Liquor
	640	Forfeiture and Penalty: Railroad and Trucks
	690	Miscellaneous Forfeiture and Penalty
Fraud, Truth in Lending	370	Fraud
	371	Truth in Lending
Labor	710	Fair Labor Standards Act
	720	Labor Management Relations
	730	Labor Management Reporting and Disclosure
	740	Railway Labor Act
	790	Other Labor Litigation

Category	Nature-of-Suit Code and Description	
Land Condemnation, Foreclosure	210	Land Condemnation
	220	Foreclosure
Personal Injury	310	Airplane Personal Injury
	315	Airplane Product Liability
	330	Federal Employers Liability
	340	Marine Personal Injury
	345	Marine Product Liability
	350	Motor Vehicle
	355	Motor Vehicle Product Liability
	360	Other Personal Injury
	362	Medical Malpractice
	362	Medical Malpractice
	365	Personal Injury Product Liability
Prisoner	530	Habeas Corpus
	535	Death Penalty Habeas Corpus
	540	Mandamus and Other: Prisoner
	550	Civil Rights: Prisoner
RICO	470	RICO
Securities, Commodities	850	Securities, Commodities Exchange
Social Security	860	Social Security-General
	861	Social Security-HIA
	862	Social Security-Black Lung
	863	Social Security-DIWC
	864	Social Security-SSID
	865	Social Security-RSI
Student Loan and Veteran's	152	Recovery of Defaulted Student Loans
	153	Recovery of Veteran's Benefit Overpayment
Tax	870	Taxes
	871	Internal Revenue Service-Third Party
	875	Tax Challenge
Other	150	Contract: Recovery, Enforcement
	151	Contract: Medicare Recovery
	160	Contract: Stockholder Suits
	230	Rent, Lease, and Ejectment
	240	Torts to Land
	245	Real Property Product Liability
	290	All Other Real Property
	320	Assault, Libel and Slander
	380	Other Personal Property Damage
	385	Property Damage-Product Liability
	400	State reapportionment
	410	Antitrust
	460	Deportation
	510	Vacate Sentence

(continued)

Category	Nature-of-Suit Code and Description	
Other *(continued)*	520	Parole Board Review
	625	Drug-Related Property Forfeiture
	650	Air Line Regulations
	660	Occupational Safety/Health
	810	Selective Service
	890	Other Statutory Actions
	891	Agricultural Acts
	892	Economic Stabilization Act
	893	All Environmental Matters
	894	Energy Allocation Act
	895	Freedom of Information Act
	900	Equal Access to Justice Act Appeal of Fee Determination
	910	Local Question: Domestic Relations
	920	Local Question: Insanity
	930	Local Question: Probate
	950	Constitutionality of State Statutes
	970	NARA
	990	Miscellaneous Local Matters
	992	Local Question: Local Appeal

2. Case weights for certain case categories

Where we refer to case weights, we use weights from a 1979 study in which judges kept records of time expended on all cases worked on during a three-month period. Results of this study showed that the average time across all case types in all districts was about 3.9 hours for a weight of 1.0. For comparison, the weight for an automobile personal injury case is 0.87, or about 3.4 judge-hours. Three prominent categories of cases were not separately identified at the time of the 1979 study. Weights subsequently assigned to these categories are those of the most similar category identified in the 1979 study. Asbestos cases were assigned the same weight as other personal injury product liability cases: 1.43, representing an average of about 5.6 hours of judge time per case. The two other prominent categories not separately identified in the 1979 study are student loan and recovery of overpayments of veteran's benefits, both of which are assigned a weight of 0.03.

It is important to understand that these weights are derived by dividing all terminated cases of a certain type into all judge time expended on that type. That means that cases requiring no judge action were included in the divisor. Accordingly, among cases that required any judge time, the average weight will be considerably higher than the weight for all cases.

3. Life expectancy computation

Life expectancy was calculated as follows. Case filing and termination dates and age at termination were computed to exact months. For each district and each month within the statistical year, counts were made of the number of cases pending at each age (from 0 through 99, and 100 or more months of age) and the number that were terminated at that age. For each

How Caseload Statistics Deceive

Prepared by John Shapard, Federal Judicial Center

Draft of May 2, 1991

This paper is provided in draft form for use at the Chief Judge's conference of May, 1991. It may in the future be revised and released or published by the Judicial Center.

How Caseload Statistics Deceive

Despite the various adages concerning statistics and lies, statistics don't lie. Instead, we often mislead ourselves by misinterpreting statistics. Court caseload statistics present numerous opportunities for this sort of self-deception. Obvious ways of looking at caseload data and obvious nostrums about assessing a court's caseload are sometimes just simply wrong. Their flaws are unappreciated not because they are hard to grasp, but because we are conditioned to think about statistics using apples-and-oranges or dice-throwing examples. Because significant time elapses over the life of many court cases, the better statistical analogy is that of human populations. Failure to appreciate how the lifespans of cases affect caseload statistics causes numerous misunderstandings. The purpose of this paper is to illustrate three closely related misunderstandings about caseload statistics, in the hope that a basic understanding of the problem can help prevent mistakes on the part of the various parties charged under the Civil Justice Reform Act with trying to improve the condition of court dockets .

Here is an example, to illustrate the problem. The standard index of case duration in a district is the median time from filing to disposition for cases disposed of in the most recent year. Suppose that the judges of a district , responding to increases in this median time index, decide to improve the situation by working especially hard to clean up the backlog of older pending cases. The judges begin working overtime trying cases that have been awaiting trial, expediting or dismissing cases that have languished too long in the pretrial process, and generally moving along or moving out all cases that they deem overdue for some such movement. The effort and its results are impressive: annual case dispositions increase, the number of cases pending decreases, and the median time from filing to disposition goes way up! The key indicator of the court's "speed" indicates that it has gotten slower than ever. The reason is not hard to see. Exactly as it intended, the court disposed of a lot more old cases last year than it had in previous years. Because the cases terminated last year include an unusually large number of old cases, but only the usual number of young cases, the median age of terminated cases went up. The statistics are not lying. We are deceiving ourselves in thinking that the median age of terminated cases is a reliable indicator of average case duration.

1. Statistics based on terminated cases do not tell us about current caseloads.

The basic flaw in our thinking is this: **terminated cases are not representative of the court's caseload.** The reason can be seen by considering the analogy to human populations. In human populations as well as court caseloads, the life expectancy of newborns or of newly filed cases is not necessarily the same as the average age at death of persons who died last year or of cases disposed of last year. There is a connection, but it is diffused, sometimes greatly, by the passage of time between birth and death or filing and disposition.

Consider a district that has for many years enjoyed a very stable caseload: each year 2000 cases are filed, 2000 cases are terminated, and 2000 cases remain pending at the end of the year. The median time from filing to disposition has long been 8 months. The

average[1] time from filing to disposition has long been 12 months, and cases reaching trial account for 10% of all cases terminated. Suddenly, in 1991, the case filing rate jumps to 3000 per year, the average age at termination drops to 10 months, and the percent of cases reaching trial drops to 8%. It seems likely that the 1000 "new" case filings must have been composed mainly of cases that are "faster" and "easier" than average. But that is wrong. The truth is that nothing has changed except filing rate: the 3000 cases filed in 1991 will average one year from filing to disposition, and 10% of them will reach trial. The average age and trial rate statistics, which for many years told us the truth, are now lying.

The reason is not hard to understand. The 1000 additional case filings produce a major increase in the number of young cases in the pending caseload (a "baby boom" of sorts). Since the pending caseload is the supply of cases from which case terminations arise, and since most cases are disposed of relatively quickly, the number of cases disposed of at an early age increases dramatically. But there is no corresponding increase in the supply of old cases, which arose when annual filings were just 2000 per year, so the number of old case dispositions remains what it was in past years. Hence the average age at termination drops. Similarly, because few young cases reach trial, the number of cases disposed of after trial has not yet changed much. But the total number of case terminations has increased due to the increased number of young-case dispositions, so the percentage of cases disposed of after trial drops.

If our hypothetical court's filings rate either stayed at 3000 per year, or dropped back to 2000 per year and stayed there, the statistical distortions would eventually disappear. After a few years, the statistics would be back to normal, again showing the historic one-year average age at termination and ten percent trial rate. But reality is not so kind. Filing rates change, and in the long term trend they are often either increasing or decreasing. When filing rates are continuously increasing, the median time from filing to disposition will be constantly distorted downward, as will the trial rate, due to the constant relative oversupply of young cases in the pending caseload. Conversely, decreasing filing rates cause an upward distortion in both median age and trial rate.

2. How can you tell if a district is "staying abreast" of new case filings?

An oft-repeated nostrum is that to keep abreast of its caseload, a court must each year dispose of as many cases as are filed Although that advice seems to make sense, the unfortunate truth is that it is correct only under circumstances when it is too obvious to be worth saying. If a court continues year after year to receive 2000 case filings and to dispose of only 1800, there is obviously a problem. As can be seen from the example used in the preceding section, an abrupt increase in case filings does not lead to a comparable increase in case terminations, even when a court is staying fully abreast of its caseload in the sense that it is maintaining a constant average age at termination. Conversely, when filings are decreasing, saying abreast will yield annual case terminations that exceed annual filings.

---

[1] Average is used here to represent the arithmetic average, or mean--the sum of the ages of terminated cases divided by the number of cases. Annual reports from the Administrative Office of the U.S. Courts usually report the median--half of all cases are terminated at an age that is at or below the median, and half at an age that is at or above the median. The average age of terminated cases is usually about 50% greater than the median.

If the nostrum is false, how can you tell whether a court is "staying abreast?" The answer is to track the ratio of pending cases to annual case terminations. If that ratio stays constant, the court is staying abreast; if it decreases, the court is gaining ground--disposing of cases faster--and if it increases, the court is falling behind. The ratio of pending cases to annual case terminations is a good estimate of the true average duration (or life expectancy) of a court's cases (the ratio gives average case duration in years; if divided by 12 the result is average case duration in months).

It is useful to understand why the ratio of pending to terminated cases is a good estimate of average case duration. The key point is that there is an absolute, albeit rough arithmetic relationship between pending caseload and average case duration. To see that relationship, consider a very simple example of a court that handles a single type of case, each of which lasts exactly one year. Suppose the court receives exactly one case per month, filed on the first of each month. This court must have exactly 12 cases pending at any time (the case filed on the first of this month and those filed on the first of the preceding 11 months). If instead each case lasts exactly six months, then the court will have exactly six cases pending at any time. Although it is not intuitively obvious, the same relationship exists--and can be mathematically proven--in respect to average case duration. Provided that the mix of cases of varying durations remains constant and case filings are continuous (i.e., they are not all filed in January, but are filed in roughly equal numbers throughout the year), the pending caseload will equal average case duration (in years) multiplied by annual case terminations. This point is key to the next and final topic.

3. The "momentum" of court caseloads.

Suppose a court that now has an average case duration of 24 months adopts a plan for expediting case dispositions, with the goal of reducing average case duration to 12 months. What will this require? Consider the relationship explained in the previous section. If average case duration is approximately equal to the ratio of pending cases to annual case terminations, and if average case duration is 2 years, then the pending caseload must include about twice as many cases as are annually terminated. To reduce average duration to 1 year, the pending caseload must be cut in half. To accomplish that in the next year, the court must dispose next year of twice as many cases as it did last year (provided that annual filings do not change). To do it in two years requires that case terminations be maintained for two years at a pace fifty per cent higher than current pace.

Are such accomplishments really possible? Probably not, although the answer depends on how an increased pace of case terminations can be achieved. If it can be done by methods that impose little additional demand on court resources, then it might be possible to halve the pending caseload in a year or two. If instead the necessary methods require a drastic increase in trials or other activities that place major demands on court resources, then the pending caseload cannot be quickly cut in half without a major increase in those resources.

Caseloads have momentum. The pending caseload is a heavy weight, and a court can only be as fast as that weight will allow. To get faster, the court must shed weight. Prescriptions and decisions about dieting will lead to disappointment if they are not based on realistic goals and timetables.

Appendix 11

Working Paper:
Alternative Dispute Resolution in the Federal Courts

Alternative Dispute Resolution in the Federal Courts

Working Paper

By:

Professor A. Kimberley Dayton
Reporter, Civil Justice Reform Ac Advisory Group
for the Eastern District of Virginia

February 1991

Acknowledgments

I would like to acknowledge the assistance of Melanie Leary and SuLinda Jamison, University of Kansas School of Law, Class of 1991, for their assistance in the preparation of this paper.

Table of Contents

I. Introduction

The Civil Justice Reform Act of 1990 contains a statement of congressional findings that an effective litigation management and cost and delay program should incorporate a number of interrelated "principles." Among the principles listed in this statement is the concept of alternative dispute resolution ("ADR"). The Act requires that each advisory group established under the act "shall consider and may incorporate" ADR techniques as part of its proposed expense and delay reduction plan. The Act also provides that each advisory group "shall consider and may include" certain litigation management "techniques" as part of the proposed plan. Among the techniques listed in the statute is "a neutral evaluation program . . . conducted early in the litigation." Although each advisory group must consider ADR and early neutral evaluation devices, most groups are not obliged to include them in the plan ultimately presented to the district court.

The purpose of this paper is provide information to the Civil Justice Reform Act Advisory Group for the Eastern District of Virginia about ADR and early neutral evaluation techniques presently in use in the federal district courts. This will enable the group to fulfill its statutory obligation to consider these devices and make an informed decision as to whether and how such programs might contribute to expense and delay reduction in the Eastern District of Virginia.

II. Forms of Alternative Dispute Resolution Used in the Federal Courts

The phrase "alternative dispute resolution" has many connotations. It is often used to describe any extrajudicial procedure through which private parties agree to resolve legal disputes. Contracts between corporations often require that any disputes arising under the contract be referred for binding or nonbinding arbitration, a form of ADR. The term is also used to describe the various state arbitration and mediation panels that exist to resolve certain kinds of civil damages claims, such as medical malpractice claims. Most people have a passing familiarity with labor arbitration procedures. Usually, prospective litigants required to utilize these kinds of ADR must do so before litigation is commenced. The private judging phenomenon used in California, in which litigants essentially hire a retired judge to try their case, is also considered to be a kind of ADR.

As used in the Civil Justice Reform Act, however, "alternative dispute resolution" appears strictly to connote a number of specific forms of ADR that have developed since the late 1970's and which are used in several federal district courts around the country as a case management tool. This kind of ADR is engaged only after a civil case has been filed in a federal court. Although these ADR forms do resemble traditional arbitration, mediation, or trial in many respects, they are very

different in others. The procedures that I will discuss have all been implemented on a fairly large scale in at least one federal district court and are for the most part expressly authorized by federal statute, local rules, or districtwide standing orders.

Both mandatory and voluntary ADR schemes are currently in place in certain federal courts. For the most part, however, I will focus on mandatory ADR procedures. This is because voluntary forms of ADR have not been particularly "successful" in terms of litigant participation. Although the forms that I will discuss differ significantly in their structure and procedure, they have at least two important features in common: each imposes a step in the litigation process that is additional to the pretrial procedures authorized by the Federal Rules of Civil Procedure, and each has as an objective the resolution of civil disputes without a full trial on the merits.

There is some question about whether the Civil Justice Reform Act independently authorizes the district courts to implement mandatory ADR programs. For the purposes of this paper, however, I will assume that the courts have such authority under the Act.

The following discussion summarizes the operation of four kinds of ADR used in the federal courts as case management devices. These include court-annexed arbitration, court-sponsored mediation, the summary jury trial, and early-neutral evaluation. All four forms are explicitly identified in the Civil Justice Reform Act or its legislative history as litigation

principles or techniques that must be considered by each advisory group in formulating its proposed plan.

A. Court-Annexed Arbitration

By far the most widespread form of ADR used in the federal courts is court-annexed arbitration. At least ten federal districts have employed some form of mandatory ADR on a consistent and substantial basis for a period of at least several years. The Judicial Conference has designated ten courts as pilot districts for implementing voluntary arbitration programs, but no such programs are yet in operation. Each of these courts has been authorized to implement its program by federal statute. Most of the ten mandatory arbitration programs are modeled after the procedures used in either the Eastern District of Pennsylvania or the Northern District of California, the two oldest arbitration programs currently in operation in the federal courts.

It is important to recognize at the outset that, although the various court-annexed arbitration programs in use in these federal courts share a common moniker and many procedural features, they also differ in very significant ways. Not only do the actual procedures diverge, but the perceived objective of the program varies from one district to another. Specifically, the Northern District of California model is fashioned more as a settlement device than as a true "alternative" to trial, while the Eastern District of Pennsylvania model is designed actually to replace the trial as the optimal method of resolving disputes.

This distinction is important, for it necessarily impacts on the manner in which court-annexed arbitration in implemented in the particular district court. Should this advisory group decide that it wishes seriously to consider proposing a court-annexed arbitration program for the district, it will need to focus on these alternative "theories" of arbitration and determine which would best serve the needs of the Eastern District of Virginia.

In the Northern District of California, which has a mandatory program, cases are screened immediately after filing to determine eligibility. Those deemed eligible are designated as such after the last answer in the case has been filed. Counsel are required to advise the court of the estimated time necessary for discovery and to select an arbitrator or panel of arbitrators from a list provided by the court. Sometime after the close of discovery, a hearing is conducted by the arbitrator, usually in a lawyer's office, at which each side or party presents its case. The parties generally offer evidence only at the request of the arbitrator. The arbitrator renders a decision after the hearing that becomes a final judgment if no party files a timely demand for a trial de novo within a specified period. The original rule provided that the party making such a demand could be penalized if the new trial did not result in a substantially more favorable verdict, although the Federal Judicial Center has reported that this penalty was imposed only rarely. The California rule was amended in 1989 to eliminate all penalties associated with a demand for trial de novo. Single arbitrators are paid $250 per

day; those serving on a three-member panel are paid $150 per day. Arbitrator compensation and out-of-pocket expenses necessarily incurred are paid by the Administrative Office of the United States Courts ("AO").

Court-annexed arbitration in the Eastern District of Pennsylvania differs from that in the Northern District of California in a number of respects. For example, the hearing takes place at the courthouse, usually in a courtroom, witnesses may be subpoenaed, and there are clear and definite penalties associated with failing to achieve a more favorable result on trial de novo. Indeed, the local rule provides that trial de novo may be denied if the court concludes that the demanding party has failed to participate meaningfully in the arbitration process. Arbitrators receive $75 for service in each case, and may petition for additional compensation if the hearing is protracted, but are not reimbursed for actual expenses incurred. Payment is made initially by the AO but may be charged to the litigants in some circumstances.

The other eight courts using court-annexed arbitration have adopted procedures that follow the basic formats described above. Variations among the local rules affect many aspects of the arbitration procedure, however, including the manner in which the arbitrator is selected or compensated, the extent to which the rules of evidence apply at the arbitration hearing, and the precise scope and nature of the penalties associated with a trial de novo.

All districts using court-annexed arbitration have clearly defined guidelines to determine a case's eligibility for mandatory arbitration. These guidelines, however, tend to be broad enough that almost all federal question, tort, and contract cases are eligible; specific exceptions generally exist for categories of cases such as prisoner petitions, class actions, and multidistrict litigation. The procedure is thought suitable only for cases in which the dollar amount in controversy is relatively small, ranging from $75,000 in some districts to $150,000 in others, and there are no substantial claims for nonmonetary relief. Although eligibility criteria are very similar among the districts, the total percentage of cases referred for arbitration varies widely, from four percent in the Western District of Texas to thirty-one percent in the Eastern District of Pennsylvania.

Some local rules also outline criteria and procedures for obtaining exemption from mandatory arbitration in cases otherwise eligible. In the Middle District of North Carolina, for example, the court may exempt cases in which the legal issues are "unusually complex, novel, or predominate over factual issues" or arbitration is unlikely to accomplish its stated purpose. In those districts permitting exemption from compulsory arbitration, a substantial share of eligible cases are ultimately exempted.

In theory, arbitration eligibility criteria do not distinguish cases in which the principal dispute involves a legal question from those involving a question of fact, although, as

noted, some courts allow an exemption from arbitration if legal issues predominate. Thus, in many districts, an arbitrator may be called upon to resolve both legal and factual disputes that stand in the way of settlement. Most local rules do provide that any dispositive motions, such as a motion for summary judgment, must be resolved before the arbitration hearing.

The factual nature of many arbitration-eligible cases requires that the parties be permitted to engage in an adequate discovery period before the arbitration hearing. In most districts the length of this period is determined at the time the case is referred for arbitration and is significantly shorter than the average discovery period for civil cases generally. A party generally may seek an extension of this discovery period but some reports suggest that such extensions are rarely granted.

As noted, certain designated district courts are authorized by federal statute and the Judicial Conference to implement voluntary programs. To date, none of these courts have voluntary programs in place, although the Middle District of Georgia expects to have one in operation by April 1, 1991. It seems likely that voluntary court-annexed arbitration will operate similarly to mandatory arbitration.

It is not clear whether this advisory group has the authority to adopt a court-annexed arbitration program in the absence of express designation by statute or the Judicial Conference as an arbitration district. Unlike other forms of ADR, which are generally authorized pursuant to local rules or

standing orders, court-annexed arbitration programs have been implemented only after enactment of federal statutes and subsequent local rules. At present, all district courts utilizing the court annexed arbitration procedure have been expressly authorized to do so by federal statute. The legislative history of the Civil Justice Reform Act discusses court-annexed arbitration, but this device is not named in the statute itself. Rather, the Act provides that a plan may include "authorization to refer appropriate cases to alternative dispute resolution programs. . . that have been designated for use in a district court." The most likely meaning of this language is to allow those courts that have been designated by statute as court-annexed arbitration districts, or may be designated as such by the Judicial Conference, to include an arbitration program in their expense and delay reduction plans. Because the Eastern District of Virginia is not at present such a district, it would be necessary to consider carefully this issue before deciding to incorporate an arbitration element into the proposed plan.

B. Mediation

The Civil Justice Reform Act explicitly mentions mediation as a possible component of the district court's expense and delay reduction plan. Court-sponsored mediation as a form of dispute resolution has been employed principally in three federal district courts: the Eastern District of Michigan and the Eastern and Western Districts of Washington. One judge in the District of Kansas also uses a mandatory settlement conference procedure

that is in essence a mandatory mediation program. Although the basic purpose of the mediation procedure is the same in all these courts--to encourage settlement through an evaluation process that places a settlement value on the case--the procedures each uses differ markedly.

The provisions of the local rule authorizing mediation in the Eastern District of Michigan track in some respects procedures that have been used in the Wayne County, Michigan Circuit Court since 1971, and mediation in that district is in a sense dependent upon the state court program. In the Eastern District of Michigan, all cases seeking a money damages remedy in which the United States is not a party are eligible for mediation; otherwise, there are no formal criteria governing what cases will be referred. Some judges make a practice of referring all eligible cases to mediation, but most restrict the procedure to small cases, such as personal injury cases, especially those involving inexperienced attorneys. Most judges do not refer cases to mediation if the attorneys involved object.

Cases are selected for mediation at the close of the discovery period. Shortly thereafter, a hearing is scheduled before a panel of "mediators": three local attorneys chosen from a pool of potential mediators known as the Mediation Tribunal Association. The panel's function is to hear short presentations by counsel of the key factual and legal issues. No live testimony occurs, but documentary and photographic evidence are sometimes presented. After the presentations, the mediators

consult privately with each party's counsel in anticipation of finding a jointly acceptable settlement figure.

Based on the presentations and their private consultations with each attorney, the mediators evaluate the case and, usually within a few minutes, set a settlement figure and announce that figure to the parties. If the valuation does not reflect the unanimous judgment of the mediators, that fact is noted as well.

The valuation placed on the case becomes a final judgment if it is not rejected in writing within forty days of the mediation hearing. If a party rejects the valuation and the case goes to trial and verdict, the rejecting party must improve on the settlement valuation by at least 10% to avoid the risk of substantial penalties.

Each party to the litigation pays a mediation fee of $75.00. Mediators in turn are paid a fee of $700.00 per day by the Tribunal, and are expected to hear 10-15 cases per day.

The mediation procedure used in the Washington federal district courts more resembles a settlement conference than a formal or informal hearing. Cases are designated for and referred to mediation by individual judges. There are no formal criteria for determining eligibility for mediation, and individual judges appear to rely as much on "intuition" as anything in deciding which cases to refer. Many judges surveyed thought that mediation was not appropriate in cases that seldom go to trial anyway, nor in cases that are pursued as a matter of "principle," such as civil rights cases. Most, but not all,

believed that mediation was most useful when the sole issue in dispute was damages, but did not formally limit the procedure to such cases.

The local rule does not specify when referral is to occur, but this is in practice appears to happen as soon as discovery is completed. A party is notified that its case has been selected for mediation by a letter from the judge. A mediator is chosen from a list developed by the local bar association and, to the extent possible, the person chosen reflects the joint agreement of the attorneys involved in the case. The parties are required to submit a memorandum to the mediator at least seven days in advance of the hearing. Because the local rule does not outline any particular procedures for mediation, the mediator is free to conduct the evaluation session as he or she chooses. If the parties are able to reach a settlement, the terms of the settlement are reduced to writing at or immediately following the session. There are no penalties associated with failing to settle as a result of mediation, and no mechanism for compensating the mediator.

The settlement conference/mediation procedure used by Judge Patrick F. Kelly of the District of Kansas is mandatory for almost all cases involving money damages; only a few categories of actions such as bankruptcy matters, foreclosure, and student loan suits are not eligible. The local rule contemplates that attorneys in eligible cases will participate in a settlement conference conducted by either a judge or magistrate, or, more

frequently, a private attorney chosen from a list of local attorneys who have agreed to serve as mediators. Litigants are encouraged but not required to submit a memorandum in advance of the conference outlining the factual and legal issues implicated by the case; this memorandum may be supplemented by evidentiary material such as the statements of expert witnesses. At the conference, the mediator guides the attorneys through settlement discussions and may meet separately with each side to discuss settlement prospects. Both a person having settlement authority and the attorney who will handle the case if it is tried must attend the conference. If the parties fail to reach a settlement, nothing that occurs during the conference may be used subsequently in the case.

Mediators are paid $100.00 per hour; these fees are shared by the litigants. The average settlement conference lasts four hours.

C. Summary Jury Trials

A second type of ADR presently used in the federal courts as a case management tool, one that is explicitly mentioned in the text of the Civil Justice Reform Act, is the summary jury trial. Although many lawyers have encountered this procedure, the precise extent to which it has been utilized is unclear. Many district courts have rules or orders authorizing the summary jury trial procedure but have never or rarely used it. On the other hand, some district courts that do use the device with some frequency do not have local rules describing the particulars of

the procedure or the consequences if it is "unsuccessful" in the sense that it does not result in disposition of the case. In any event, there are a few district courts, including the Middle District of Florida, the District of Massachusetts, the Western District of Michigan, the Northern District of Ohio, and the Western District of Oklahoma, that do appear to have used the procedure with some frequency.

The summary jury trial format is exemplified by a process originally conceived by Judge Thomas O. Lambros of the Northern District of Ohio. Under the summary jury trial procedure, cases that are essentially ready for trial are scheduled for a half-day mini trial before a panel of six jurors. The summary procedure is in substance a condensed trial and features an abridged version of most aspects of a full jury trial on the merits. For example, voir dire is conducted largely through juror questionnaires, followed by a brief oral voir dire by the court. An attorney for each side is given a short opportunity to present that side's version of the facts to the jury. Usually, the parties may present evidence, in the form of live witness testimony or affidavits. The jury returns a "verdict" that is not binding on the parties and does not preclude a subsequent trial de novo. Variations on this theme permit somewhat longer summary jury trials--one or two days, for example--or allow each party, rather than each side, to present evidence and argument.

As is the case with court-annexed arbitration, litigants engaging in the summary jury trial procedure are entitled to a

trial de novo if they are dissatisfied with the result of the summary procedure and are unable thereafter to reach a settlement. There are seldom penalties associated with failing to achieve a more favorable verdict on trial de novo.

The goal of the summary jury trial procedure is to inform litigants of the potential outcome of a full trial before a jury and thereby facilitate settlement. Proponents of the procedure have said that it is especially valuable in situations where an attorney may overestimate the strength of his case's jury appeal and therefore resist settlement. By giving lawyers a lay perspective of the merits of the case, advocates contend, a summary jury trial promotes settlements that might not otherwise occur. It can also be useful in situations where one party "has a need to be vindicated by a jury" and on that basis refuses to settle.

In contrast to districts using court-annexed arbitration, local rules and standing orders authorizing summary jury trial do not refer cases for summary jury trial at or near the time of filing. Rather, referral occurs after normal discovery has been completed and the case is ready for trial. Moreover, districts using the summary jury trial generally have not identified or articulated clear eligibility standards defining which cases are suitable for the procedure. In the Northern District of Ohio, for example, a case is selected for summary jury trial based on the trial judge's perception that it is not likely to settle. In the Western District of Oklahoma, one judge uses the procedure in

all cases where the trial is estimated to last longer than a week.

By definition, the summary jury trial procedure can be used appropriately only in those cases in which the parties' failure to settle stems from factual disputes. Otherwise, however, advocates seem to disagree about the types of cases in which it can be most useful. Some have argued that is most useful in cases that hinge on the credibility of witnesses, while others say that a summary jury trial is inappropriate where factual issues turn on witness credibility. Although it is generally perceived as most effective in relatively simple cases where the amount in controversy is small, Judge Lambros contends that the procedure has a far broader applicability. He reports that it has been used successfully in his and other courts in complex cases that have resulted in judgments as large as $2.2 million.

The summary jury trial procedure is perhaps the most controversial form of ADR in the federal courts. A colleague of Judge Lambros on the federal bench, Judge Frank J. Battisti, ruled in Hume v. M&C Management, 129 F.R.D. 506 (N.D. Ohio 1990), that the summary jury trial procedure used in the Northern District of Ohio violated the federal statute governing the jury selection and payment in the federal district courts. The legislative history of the Civil Justice Reform Act, however, indicates that this case was overruled by virtue of the Act's passage. Thus, it appears that the district courts now have authority to empanel a summary jury and pay jurors in accordance

with the usual procedures. The legislative history of the Civil Justice Reform Act does not squarely answer whether a court may order mandatory participation in the summary jury trial. In Strandell v. Jackson County, Ill., 838 F.2d 884 (7th Cir. 1988), the Seventh Circuit held that Rule 16 of the Federal Rules of Civil Procedure does not authorize mandatory summary jury trials; this decision, of course, antedates the Civil Justice Reform Act and thus does not address whether the Act does permit such a mandatory procedure.

D. Early-neutral Evaluation

The three forms of ADR discussed above are all described in the Civil Justice Reform Act as "principles of litigation management." Early-neutral evaluation, on the other hand, is denominated a "technique" of litigation management. The reasons for this difference--if indeed it is a substantive rather than merely a semantic one--are utterly unclear. One basis for distinguishing early-neutral evaluation from court-annexed arbitration, formal mediation, and summary jury trial, however, is that these devices serve as substitutes for trial, while ENE has the more modest goal of allowing the parties to obtain a preliminary assessment of their cases' strength. In theory, at least, ENE can take place very early in the pretrial process--even before the close of discovery--rather than just before trial.

The ENE procedure does not presently enjoy the relatively widespread use of the other forms of ADR discussed here. ENE has

been used since 1985 in the Northern District of California; a local rule authorizing the procedure in the Eastern District of California became effective in June 1989. The federal district court for the District of Columbia also recently implemented an ENE program.

The premise of ENE is that litigants are more likely to settle if they obtain "an early, frank and thoughtful assessment" of the relative strengths and weaknesses of their positions. The procedure itself resembles mediation in some respects, though it is arguably less formal. Litigants are advised at an early stage of the litigation that the case is subject to ENE. The procedure involves referral of selected cases for "evaluation" by a neutral party--typically, an experienced and locally respected attorney with expertise in the principal subject area of the dispute. This evaluator, or "neutral," receives the parties' assessment of the merits of the case in the form of written statements addressing factual, legal, and procedural issues, prepared and served in advance of an informal evaluation session.

Both the attorneys and the parties themselves, or someone with authority to settle on behalf of the party, are required to attend the evaluation session. Otherwise, there are few formal requirements associated with the conduct of the session itself. After the hearing, the evaluator prepares an assessment of the probable success of the plaintiff's claims and an estimate of the likely damages award if the case were tried. Depending on the needs and interests of the parties, the evaluator can also be

helpful in assisting the parties to prepare stipulations of fact, draft discovery plans, and identify the principal areas in which the parties have disputes involving issues of law. The local rules provide, however, that the evaluator's assessments and recommendations are purely advisory; they are not communicated to the court at any time and do not affect discovery, motions practice, or other aspects of trial preparation unless the parties expressly agree. If the parties fail to settle at or after the evaluation session, the case progresses in the normal fashion.

The nature of early neutral evaluation permits its use in all kinds of cases, regardless of whether legal or factual issues predominate. In the Northern District of California, however, certain categories of cases are routinely excluded from the group of eligible cases, including cases in which one party is proceeding pro se, the complaint seeks principally equitable relief, an important public policy question is implicated, or the legal standards governing relief are unclear. In addition, cases deemed eligible for mandatory arbitration are exempted from the early neutral evaluation procedure. Subject matters of cases referred to the procedure may include contract, personal injury, civil rights, wrongful termination, antitrust, securities, and civil RICO.

III. Costs of Implementing ADR in the Federal Courts

In determining whether to include an ADR component in its proposed expense and delay reduction plan, each advisory group

necessarily must evaluate the costs to the district court and to the bar of adding such a program to existing administrative structures. The costs associated with ADR are of several kinds. These programs obviously require administrative support out of the clerk's office. Arbitrators, mediators, evaluators, and of course summary jurors are usually paid something for their services. Where the payment to the ADR "neutral" is less than the market rate paid for his or her legal services, the attorney or his firm pays an opportunity cost that must be considered an external cost of the program.

Unfortunately, it is almost impossible to estimate these costs, at least with any degree of accuracy, although limited information is available concerning some aspects of these costs in some district courts. Administrative costs are particularly difficult to calculate. One study, conducted internally by the clerk's office for the District of Connecticut, concluded that court-annexed arbitration was more expensive to administer than other methods of case management; its study showed that during 1978-81 14% of the court's administrative resources were required to handle the arbitration cases, which represented only 7.2% of the court's civil caseload. This finding, coupled with the court's conclusion that the program did not seem to affect settlement rates, prompted the district to abandon the program in 1981. On the other hand, a controlled study of the court annexation program in the Middle District of North Carolina

concluded that the cost to administer arbitration cases was the same as that associated with non-arbitration cases.

Even less information is available concerning the out-of-pocket costs of ADR programs. The Administrative Office spent $353,000 on payment of arbitration fees to arbitrators in the ten mandatory court annexed arbitration districts in fiscal year 1989. It has spent nearly $1 million on such fees for the Eastern District of Pennsylvania over the period 1978-1989. At present, the AO does not pay mediator or neutral evaluator fees, and the district courts using these alternatives do not keep readily available records of these costs. Private litigants directly support these programs to some unquantified extent: during the 1978-89 period mentioned above, arbitration participants paid about $240,000 to support the Eastern District of Pennsylvania program in the form of arbitrator fees forfeited as penalties.

The most difficult cost to measure, of course, is the external cost of ADR programs stemming from the relatively low fees paid to arbitrators, mediators, and neutral evaluators. Because an ADR program must rely on relatively well-qualified and experienced attorneys to maintain the credibility and fairness of the program in the eyes of participants, one can assume that this particular external cost is significant.

The Civil Justice Reform Act itself recognizes that information concerning the costs of ADR is lacking, and has provisions explicitly designed to address this problem. Until

such information becomes available, however, advisory groups must exercise their best judgment concerning whether the potential costs of including an ADR component in their proposed plans are justified by anticipated benefits.

IV. Empirical Evidence Concerning ADR in the Federal Courts

Most of the district judges and magistrates involved in the implementation of ADR programs have been extremely enthusiastic about these procedures. They claim that ADR has expedited the handling of civil cases, resulted in a larger percentage of settlements, and reduced the costs of civil litigation. The legislative history of the Civil Justice Reform Act contains numerous references to the benefits of ADR, and of course the Act contains an express congressional finding that ADR is a means to achieve expense and delay reduction.

Yet, despite such statements and findings, and the fact that ADR in the federal courts has been utilized at some level since 1978, there have been very few empirical studies of these programs. Thus, there is very little hard evidence to support the congressional finding. Although the record-keeping and reporting requirements of the Act can be expected to produce a more complete set of data on ADR as a case management tool, such records will obviously not be available for years to come. This section summarizes the results of the few empirical or quasi-empirical studies that have been conducted of ADR in the federal courts.

A. Court-annexed Arbitration

Judges, lawyers, and litigants who have participated in court-annexed arbitration are reportedly satisfied with the procedure. Data compiled by the Federal Judicial Center show that judges perceive it as having a significant effect on reducing civil caseloads, and counsel are generally satisfied that the arbitration hearings are fairly conducted. These data also show, on the other hand, that demands for a trial de novo are made in a significant percentage of cases referred for arbitration, ranging from a low of 46% in the Eastern District of New York to a high of 74% in the Middle District of Florida and the Western District of Michigan.

Court-annexed arbitration programs have been the subject of several separate empirical studies, at least one of which is ongoing. One of these first of these studies, an evaluation by the Federal Judicial Center of the three pilot court-annexed arbitration programs, suggested that, while there was evidence that the annexation programs offered "some benefits," on balance it was impossible, without further study, to conclude that these benefits justified the added costs associated with the programs. An internal evaluation by the District of Connecticut of its pilot arbitration program prompted that district court to abandon ADR because there was no evidence that it was achieving its articulated goals, yet the program required a disproportionate share of the court's administrative resources. A recent report on court-annexed arbitration in the Middle District of North

Carolina concluded that there was few differences between cases assigned to the ADR "track" and those handled according to the district's traditional methods with respect to such variables as length of time from filing to disposition and administration costs. Although a very early study of court-annexed arbitration in the Eastern District of Pennsylvania reported that ADR has been instrumental in increasing settlement ratios and reducing backlogs, the results of that study have not been recently duplicated.

B. Mediation

The mediation procedure in the Eastern District of Michigan has for the most part been positively received. Judges perceive this type of ADR as reducing the number of diversity trials, conserving scarce court resources, and reducing the overall costs of litigation. A majority of attorneys believe that the mediation hearing provides an adequate opportunity to present the case, that valuations resulting from the hearing are generally reasonable, and that mediation does not add appreciably to the costs of litigating cases referred. Likewise, Judge Kelly reports that his mandatory settlement conference/mediation procedure has substantially reduced the number of cases that are settled before a trial date is set and that lawyers involved with the program have been pleased with its results.

It is difficult to say whether mediation can be characterized as successful in Washington due to the lack of formal procedures and record-keeping in those districts. There

is some indication that the procedure is not now used as often as it was when the local rule authorizing it was first adopted, and that this decline may be attributable to attorney dissatisfaction with mediation as well as administrative considerations that reduce individual judges' interest in using the procedure.

There are no reported controlled empirical studies of mediation as a case management tool.

C. Summary Jury Trial

Proponents of the summary jury trial procedure claim a high degree of satisfaction with this form of ADR among judges, attorneys, and litigants. Judge Lambros in particular has credited the summary jury trial program in the Northern District of Ohio with reducing backlogs, delay, and expense in that court. Unfortunately, none of the district courts using summary jury trial have kept verifiable statistics of any kind on the procedure. It is thus impossible to determine to extent to which participants either accept the results of summary jury trials, demand trials de novo but settle prior to trial, or proceed to jury verdict after a full trial.

One extensive study of the mandatory summary jury trial procedure used in the Middle District of Florida reports that almost half of all attorneys participating in the program were dissatisfied with it.

In 1983, Judge Richard Posner of the Seventh Circuit Court of Appeals used statistical methods to evaluate the summary jury trial procedure in three district courts and concluded that these

courts' use of the procedure did not seem to have aided in reducing delays in those districts.

D. Early-neutral Evaluation

Early reports do not suggest that using ENE reduces costs or results in a greater settlement ratio. Still, participants have expressed overall satisfaction with early-neutral evaluation in California, although a study of the pilot phase of the program in the Northern District of California identified a number of problem areas. One serious concern was that in many cases the evaluation session did not occur for many months after filing and referral to early neutral evaluation. In some instances, failures of communication occurred; for example, while evaluators overwhelmingly indicated that their evaluations included an estimate of the case's settlement value, only 59.4% of the attorneys and 58.5% of the parties believed this information had been provided. For the most part, however, the impression of most participants in the Northern District of California program has been that early-neutral evaluation is a valuable additional step in the litigation process, and has contributed to earlier and less costly resolution of many kinds of civil disputes.

Law professors at McGeorge School of Law are undertaking a controlled study of early-neutral evaluation in the Eastern District of California, but no results from that study have yet been reported.

E. Other

One other study of ADR in the federal courts deserves mention. In 1990, I completed my own quasi-empirical study of ADR as a case management device. I used univariate and multivariate statistical analyses similar to those used by Judge Posner in his 1983 assessment of the summary jury trial to determine whether ADR has been superior to more traditional methods of case management in enabling district courts to address the problem of increased caseloads. Specifically, I tested the general hypothesis that ADR per se is a means to achieve caseload reductions and reduce the costs of federal court litigation by measuring whether federal courts using ADR on a consistent basis are statistically different from the group of courts that rely principally on more traditional management techniques.

The data analyses indicated that ADR districts do not differ from non-ADR districts with respect to any major variables that are indicators of cost and delay. They also showed that ADR has not significantly reduced overall delay, decreased the incidence of civil trials, increased the number of civil trials that individual judges are able to conduct, or impacted the pending caseload, in the districts using it over the ten year period involved in the analyses. Although this study structurally is very different from the controlled experiments mentioned above, the conclusions it reached about the value of ADR as a case management tool were similar.

V. Conclusion

A great many federal district courts have used some kind of ADR procedure as a court management tool, though only a relatively few do so on a significant scale. Most if not all district judges who have been involved with the phenomenon of ADR have been pleased with its results, and believe that it is a practical and cost-efficient way to address the problems of expense and delay in federal civil litigation.

It is important to remember, however, that the ADR device adds an additional step in the litigation process and is cost-effective only to the extent that it that it does serve as more than merely as an impetus to settlement. The benefits of ADR lie in its supposed ability to eliminate the trial either by promoting settlement or by substituting for it. In most district courts, assignment to the ADR "track" does not mean that discovery times are reduced. Insofar as the early setting of a firm trial date also serves to promote settlement, or that a prompt trial by an Article III judge is thought preferable to prompt ADR by non-court personnel, paid for either by the court or the litigants, then it is not clear whether ADR's benefits justify its potential costs.

SELECT BIBLIOGRAPHY

Expense and Delay in Federal Court Litigation

S. Report 416, 101st Cong., 2d Sess., The Judicial Improvements Act of 1990: Report of the Committee on the Judiciary of the United States Senate on S. 2648

McLauchlan, Federal Court Caseloads (1984)

Posner, The Federal Courts: Crisis and Reform (1985)

Justice for All: Reducing Costs and Delay in Civil Litigation (Brookings Inst. 1989)

Janofsky, Reducing Court Costs and Delay, 16 U. Mich. J.L. Ref. 467 (1983)

ADR Generally

Delgado, et al., Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution, 1985 Wis. L. Rev. 1359

Levin & Golash, Alternative Dispute Resolution in Federal District Courts, 37 U. Fla. L. Rev. 29 (1985)

Peckham, A Judicial Response to the Cost of Litigation: Case Management, Two-Stage Discovery Planning and Alternative Dispute Resolution, 37 Rutgers L. Rev. 253 (1985)

Developments in "Alternative" Dispute Resolution, 115 F.R.D. 361 (1987)

Court-annexed Arbitration

E. Lind, Status Report to the Court: Current Findings of Research on the Program for Court-annexed Arbitration in the Middle District of North Carolina (1987) (unpublished)

E. Lind & J. Shapard, Evaluation of Court-Annexed Arbitration in Three Federal District Courts (Federal Judicial Center 1983).

B. Meierhoefer, Court-annexed Arbitration in the Western District of Michigan (Federal Judicial Center 1989)

B. Meierhoefer, Court-annexed Arbitration in the District of New Jersey (Federal Judicial Center 1989)

B. Meierhoefer, Court-annexed Arbitration in the Eastern District of New York (Federal Judicial Center 1988)

B. Meierhoefer, Court-annexed Arbitration in the Middle District of North Carolina (Federal Judicial Center 1989)

B. Meierhoefer, Court-annexed Arbitration in the Western District of Oklahoma (Federal Judicial Center 1988)

B. Meierhoefer, Court-annexed Arbitration in the Eastern District of Pennsylvania (Federal Judicial Center 1988)

B. Meierhoefer & C. Seron, Court-annexed Arbitration in the Northern District of California (Federal Judicial Center 1988)

B. Meierhoefer & C. Seron, Court-annexed Arbitration in the Middle District of Florida (Federal Judicial Center 1988)

B. Meierhoefer & C. Seron, Court-annexed Arbitration in the Western District of Missouri (Federal Judicial Center 1989)

B. Meierhoefer & C. Seron, Court-annexed Arbitration in the Western District of Texas (Federal Judicial Center 1989)

Broderick, Court-Annexed Compulsory Arbitration: It Works, 72 JUDICATURE 217 (1989)

Cerino & Rainone, The New Wave: Speedy Arbitration Hearings--But Are They Fair?, 29 VILL. L. REV. 1495 (1984)

Hensler, What We Know and Don't Know About Court Administered Arbitration, 69 JUDICATURE 270 (1986)

Kanowitz, Alternative Dispute Resolution and the Public Interest: The Arbitration Experience, 38 HAST. L.J. 239 (1987)

Levin, Court-Annexed Arbitration, 16 U. MICH. J.L. REF. 537 (1983)

Nejelski, Court-Annexed Arbitration, 14 FORUM 215 (1978-79)

Nejelski & Zeldin, Court-annexed Arbitration in the Federal Courts: The Philadelphia Story, 42 Md. L. Rev. 787 (1983)

Norris, National Trends in Mandatory Arbitration, 17 COLO. L. REV. 1313 (1988)

Note, "No Frills" Justice: North Carolina Experiments With Court-Ordered Arbitration, 66 N.C.L. REV. 395 (1988)

Mediation

J. Christie & K. LeBlanc, Mediation in the Federal Court System: A Report on the Eastern District of Michigan (1987)

S. Estee, Civil Mediation in the Western District of Washington: A Brief Evaluation (1987)

K. Teglund, Mediation in the Western District of Washington (Federal Judicial Center 1984)

K. Shuart, The Wayne County Mediation Program in the Eastern District of Michigan (Federal Judicial Center 1984)

Summary Jury Trial

Alfini, et al., Summary Jury Trials in Florida: An Empirical Assessment (Florida Dispute Resolution Center 1989)

M. Jacoubovich & C. Moore, Summary Jury Trials in the Northern District of Ohio: A Report to the Federal Judicial Center (1982)

Lambros, The Summary Jury Trial and Other Alternative Methods of Dispute Resolution: A Report to the Judicial Conference of the United States Committee on the Operation of the Jury System (1986)

Posner, The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations, 53 U. Chi. L. Rev. 366 (1986)

Spiegel, Summary Jury Trials, 54 U. Cinn. L. Rev. 829 (1986)

Early-neutral Evaluation

Brazil, et al., Early Neutral Evaluation: An Experimental Effort to Expedite Dispute Resolution, 69 Judicature 279 (1986)

Levine, Northern District of California Adopts Early Neutral Evaluation to Expedite Dispute Resolution, 72 Judicature 235 (1989)

Levine, Early-Neutral Evaluation: A Follow-up Report, 70 Judicature 236 (1987)