Report of the Civil Justice Reform Act Advisory Committee of the United States District Court for the Western District of Virginia

July 30, 1993

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TABLE OF CONTENTS

Chapter I: Summary of Conclusions

The Committee's major conclusions explained in the body of the report may be summarized as follows.

- The District is characterized by professionalism and colleagiality which should be fostered and preserved.

- The District should strive to preserve flexibility and simplicity in its procedures.

- The current organization of the District in seven divisions is warranted and should continue.

- Increased judicial involvement, particularly the setting of an early and firm trial date, will result in the reduction of unneeded cost and delay in the District.

- Magistrate Judges should be charged with ongoing oversight of civil cases in their pretrial phase.

- Local rules need not be adopted, the Committee's recommendations can be implemented through the Court's plan and through a form of pretrial order.[1]

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[1] The Committee's proposed form of order is found at Appendix A.

- Some restrictions on discovery should be imposed, subject to alteration to fit the needs of a particular case.

- Tenative rulings on dispositive motions should be promptly made.

- The current procedures for handling social security and pro se prisoner cases should continue and adequate resources should be devoted to those procedures.

- Ongoing attention to the criminal docket, to alternative dispute resolution and to the physical and human resources of the Western District is needed.

Chapter II: Description of the Western District of Virginia

A. General Description of the region.

The Western District occupies the western portion of the Commonwealth, from the Piedmont to the border.[2] 52 counties and 20 cities are contained within the district. The district is geographically large, encompassing 24,716 square miles. The size of the District is illustrated by the driving distances between various locations. For example, it is 235 miles from Big Stone Gap to Roanoke and 220 miles from Roanoke to Winchester.

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[2] A map of the district is included as Appendix B.

The district's total population is 1,949,200. The population is dispersed among several large cities - Roanoke (96,397), Lynchburg (66,049), Danville (53,056), Charlottesville (40,341), Harrisonburg (30,707), Winchester (21,947), numerous small cities and towns and large rural areas.

In the 1980's, most of the Western District had a stable population. However, the southwestern portion of the District saw its population decline and the northern portion of the District experienced substantial population growth. Should this trend continue, the Charlottesville and Harrisonburg Divisions may well see a disproportionate increase in criminal and civil filings relative to other divisions of the Western District.

The economy of the Western District is varied. Services, particularly higher education and medical care, represent a major sector. Both public and private employers are represented in the service sector. Manufacturing is a major economic force in much of the District. Although a wide range of manufacturing is found here, two major types of manufacturing are particularly prevalent -- 1) wood and wood products, including lumber, furniture, paper goods and printing and 2)textiles and apparel. Coal mining is important in the southwestern portion of the District. Transportation, including railroad transport, is an important factor in the Roanoke area and in the southwestern portion of the

District. Agriculture remains an important economic force in much of the District.

5511 state prisoners are housed in 17 facilities in the Western District. Currently, there is no federal prison facility in the Western District. One is planned for Lee County, in the Big Stone Gap division, within the next few years.

The Western District includes 814,090 acres of federal land, the bulk of which is federal forest located in the Blue Ridge and Appalachian Mountains.

B. Description of the Court, its Personnel, Facilities and Equipment.

1. Judicial Officers.

The Western District has an unusual structure in that it has seven divisions and four authorized judgeships. The district's divisions are Harrisonburg, Charlottesville, Lynchburg, Danville, Roanoke, Abingdon and Big Stone Gap.

Currently, all of the Western Districts authorized judgeships are filled. In addition to its four active judges, the district is served by one senior judge and three magistrate judges. The District is fortunate in being served by an experienced bench,

well-known to each other and to the local bar. Judge Turk was appointed to the bench in 1972 and served as Chief Judge from 1973 to 1993. Judge Williams and Magistrate Judge Conrad were appointed in 1976, Judge Michael was appointed in 1980, and Magistrate Judge Crigler was appointed in 1981. Judge Kiser, who became Chief Judge of the District in May of 1993, was appointed in 1982. Most recently, in 1990, Judge Wilson and Magistrate Judge Kinser were appointed. The District has also been served by an experienced Clerk of Court, Joyce Witt, who has served in that position since 1972.

Currently, division assignments are as follows:

Judge Michael is resident in the Charlottesville division.

Judge Turk is resident in the Roanoke division.

Judge Kiser is resident in the Danville division.

Judge Wilson is resident in the Abingdon division.

Senior Judge Williams is resident in the Abingdon division.

Magistrate Judge Conrad is resident in the Roanoke division.

Magistrate Judge Kinser is resident in the Abingdon division.

Magistrate Judge Crigler is resident in the Charlottesville division.

Currently, civil docket assignments are as follows:

Civil cases docketed in Charlottesville and Harrisonburg are assigned to Judge Michael.

Civil cases docketed in Roanoke are assigned 1/3 to Judge Turk, 1/3 to Judge Wilson, and 1/3 to Judge Kiser.

Civil cases docketed in Abingdon and Big Stone Gap are assigned 1/3 to Judge Turk, 1/3 to Judge Wilson and 1/3 to Judge Williams.

Civil cases docketed in Lynchburg are assigned 1/2 to Judge Turk and 1/2 to Judge Kiser.

Civil cases docketed in Danville are assigned to Judge Kiser.

2. Support Personnel

Each judge is served by two law clerks and a secretary. Each magistrate judge is served by a law clerk and a secretary. In addition, the divisions are staffed by the following personnel:

Division	Clerk's Staff	Court Reporters
Harrisonburg	2	0
Charlottesville	3	1
Roanoke	21	2
Lynchburg	2	0
Danville	2	0
Abingdon	4	1
Big Stone Gap	2	0

Currently, the District is also served by two pro se law clerks who, under the supervision of Magistrate Judge Conrad, assist in handling pro se petitions. Although the growth of pro se petitions has been such that a third pro se law clerk position may soon be needed to maintain service at current levels, budgetary constraints are such that the District may be reduced to one pro se law clerk position.[3]

3. Equipment and Physical Facilities

Four of the divisions (Big Stone Gap, Danville, Harrisonburg and Lynchburg) have a single courtroom each. Abingdon, Charlottesville and Roanoke divisions each have three courtrooms --

[3] In Chapter IV. A, the handling of pro se petitions is addressed at greater length.

one large, one small and one Magistrate Judge's courtroom. Although the total number of courtrooms in the District is thus relatively large, courtroom scheduling difficulties do arise in some of the divisions -- Roanoke, Big Stone Gap and Harrisonburg -- which are served by more than one judicial officer.

The District is currently engaged in implementing an electronic docketing system. The system can be accessed through computer terminals in each judge's chambers. In the future, public access to the electronic docket will be available. The district currently has an electronic court reporting system which is operated by a qualified technician and is used to supplement its court reporting staff.

Chapter III: Statistical Analysis of the Western District Docket

A. New Filings.

1. Total Filings. Total filings in the district decreased from a recent high of 2,209[4] in 1988 to a low of 1,713 in 1990 but increased to 2,036 in 1992. There was a substantial

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[4] The numbers used in this report may not be identical with other reports for the same years because of the timing of reports and the adjustments made in reports from year to year. The statistics are generally taken from the September, 1992 report of the Administrative Office of the United States Courts, which is found in Appendix C.

increase in the number of criminal cases filed in 1992. There was an increase of 8.4% in total filings from 1991 to 1992.

2. Civil Case Filings. New filings decreased significantly from a high in 1984 of 3,011 cases to a low of 1,603 cases in 1991. There was a modest increase to 1,635 new filings in 1992. In 1984, two-thirds of the civil filings consisted of prisoner cases, social security cases and student loan cases. Those same three component areas comprised 57% of the 1992 filings. New civil filings in those three component areas dropped by 1,097 from 1984 to 1992 while overall civil filings during the same period dropped by 1,376. The increase of 32 civil filings from 1991 to 1992 is more than explained by the new filings in those three component areas: prisoner filings from 1991 to 1992 increased by 107, student loan cases increased from 22 to 65 while social security cases dropped by 5. The net increase of 150 new filings in those component areas from 1991 to 1992 was substantially more than the total increase in new civil filings of 32. In terms of new filings in 1992, the Western District ranked 4th of the 9 districts in the Fourth Circuit.

B. Terminations and Pending Cases.

In 1992, 2,045 cases were terminated, a drop of almost 200 terminations from 1991 when 2,220 cases were terminated. In civil case terminations, the number of cases terminated increased from

1,677 in 1991 (to June 30) to 1,970 cases in 1992, an increase of 17.5% in terminations. On September 30, 1992, there were 1,599 cases pending in the district, a slight decrease from a 1991 level of 1,608 and a substantial increase from the 1990 level of 1,937. The decrease in the number of pending civil cases was even more dramatic: From a June 30, 1991 level of pending civil cases of 1,705, the number on June 30, 1992 was 1,373, a drop of almost 20%.

C. Actions Per Judge.

The district was at full judicial strength in 1991 and 1992 and had the benefit of an active senior judge. At first look, the case load per judge appears relatively heavy. As to new filings, 470 cases (criminal and civil) per judge were filed in 1991, the 2nd highest number in the Fourth Circuit and in 1992 the number increased to 509 per judge, first in the Fourth Circuit. The number of pending cases per judge in 1992 was 400 and substantially lower than a high of 504 pending cases per judge in 1988. The number of pending cases per judge in the Western District is 3rd in the Fourth Circuit. As far as trials completed in 1992, the number dropped to 42 from a 1991 level of 63.

It should be observed, however, that the caseload per judge has been higher. During the years 1986 to 1989, the number of cases for each judge averaged over 500. It is hard to be certain about the meaning of these statistics. Clearly, they are affected

by the current high number of prisoner cases which are handled principally by a magistrate judge. These cases require relatively little district judge time. Similarly, from 1986 to 1989, a great number of student loan cases "padded" the statistics and they required very little district judge time.

The mix of cases has also changed. From a combination of 515 civil filings and 37 criminal felony filings per judge in 1988, the mix had changed in 1992 to 437 civil filings and 72 criminal felony filings per judge. The trend is clearly in the direction of more criminal cases.

Of concern must be the time taken to dispose of cases. From filing to disposition, in 1992, the median time was 7.0 months. While this was a significant decrease from the several years immediately preceding 1992 (in 1990 the median time was 8.2 months), it is up substantially from 5.1 months in 1987 and ranks the Western District 6th in the Fourth Circuit and 71st in the United States. The median time from the filing to the disposition of civil cases improved remarkably from 1991 to 1992. In 1992, the average time for the disposition of civil cases was 10 months; in 1991, it was 15 months. Still, this ranked the district only 8th best in the Fourth circuit and 56th in the United States.

The district does not appear to have an inappropriate number of civil cases over three years old. From a high of 104 such cases in 1990, the district now shows only 41 cases of that age.

On the basis of judicial interviews and statistics, it is apparent that some district judges are able to handle and dispose of substantially more cases than others. It is also significant that a high number of cases (particular prisoner cases) are handled by a magistrate judge. There does not appear to be an adequate justification for the current delays in the disposition of cases. Clearly, the number and priority of criminal cases make it increasingly difficult to handle civil cases more expeditiously. Still, effective case management should significantly reduce the length of time for disposing of civil cases.

D. Pro Se/Prisoner Cases.

The district appears to have achieved an exemplary procedure for handling pro se/prisoner cases. In spite of the significant number of prisoner cases filed in the district (711 in 1992) and the substantial increase in those cases (up from 439 in 1990), the district seems to handle those cases in an expeditious way. In the final quarter of 1992, only 23 prisoner cases had been pending for more than 12 months.

Chapter IV - Specialized Aspects of the Western District Docket.

Two categories of civil cases account for slightly over one-half of the civil cases filed in the Western District. They are social security cases and prisoner petitions.[5] Both categories of cases receive specialized handling in the District. The Committee believes that the procedures developed to handle these cases are working well and should be continued. The current procedures are summarized here. The Committee's later recommendations for change (see Chapter VI below) do not apply to these cases.

A. Prisoner Petitions.

Currently, all prisoner petitions, wherever filed, are referred to Magistrate Judge Conrad in the Roanoke Division for oversight. He is assisted in his work by two pro se law clerks. Prisoner petitions are also docketed in Roanoke and are handled by designated deputy clerks. (Appendix D contains a sample pro se filing order with attachments.)

In approximately 5% of these cases, a trial or hearing is warranted and the matter is heard in the division in which it originated. The vast majority of cases are disposed of in the Roanoke division through sua sponte dismissal or on dispositive

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[5] 1748 civil cases were filed through the twelve month period ending 9/30/92. Of these, 232 were social security cases and 734 were prisoner petitions for a total of 966, or 55% of the civil docket. This combined percentage is the highest for any district court in the nation. The Western District of Virginia ranks 5th in the prisoner petitions per judge.

motion. Some of these dispositions, by consent of the parties, are made directly by the Magistrate Judge. In other cases, the Magistrate Judge prepares a report and recommendation for action by a District Court Judge. Finally, some pro se petitions are identified by the pro se law clerks as appropriate for direct disposition by a District Court Judge. (Appendix E contains the 1992 year-end statistical report on pro se/prisoner cases.)

The Committee is of the view that the centralized handling of prisoner cases in Roanoke, which began in 1988, has been successful. The increasing volume of prisoner petitions has been efficiently handled. The time required for disposition of these cases has been reduced. Those cases warranting judicial scrutiny are identified and heard. We strongly recommend that the current procedures be continued.

The current procedures necessitate at least two pro se law clerk positions. If the docket continues to grow, as we believe it will, a third position will be needed to effectively handle the caseload. The Committee recommends that every effort be made to secure funding for needed pro se law clerk positions. We view pro se law clerks as valuable staff members whose work relieves pressure on the time of Judges and Magistrate Judges.

The Committee discussed what procedures should be followed in the event that it proves impossible to fund the needed pro se law

clerk positions. In that event, our alternative recommendation is that pro se petitions continue to be handled initially in Roanoke by the designated deputy clerks and the remaining pro se law clerk, acting under Magistrate Judge Conrad's supervision. Initial screening, sua sponte dismissals, filing and non-dispositive motions should continue to be centrally handled. Cases would then be returned to the divisions in which they originated for the handling of dispositive motions. This system would preserve the value of initial centralization, in particular the pro se law clerk and deputy clerks will be able to continue early, consistent processing of these cases. It is a less desirable alternative than the current procedure, because it imposes increased costs and creates an increased risk of delay and inconsistency in the treatment of dispositive motions. Experience before 1988 suggests that, in the absence of experienced handling by pro se law clerks, a greater percentage of dispositive motions will be set for hearing before Magistrate Judges. The Committee therefore urges that this alternative be adopted only as a last resort.

The Committee wishes to comment on two other areas of concern. First, as we have noted, the prisoner petition docket has grown rapidly with the increase in the Virginia prison population, and continues to increase. The expected addition of a federal prison in the District will lead to further expansion. In the Committee's view, it is important that no judicial officer be limited to handling only prisoner cases. The growth of the pro se docket may,

therefore, ultimately necessitate the division of oversight responsibilities among the Magistrate Judges.

Second, we are concerned with the availability of counsel to represent pro se litigants with potentially meritorious claims. The limited availability of fee awards in these cases had made it difficult to secure counsel. We understand that a list of available attorneys has been started and we recommend that the bench and bar work to expand the pool. We also urge that, in setting fees, the bench recognize the significant contribution of those attorneys who make themselves available to handle the cases.

B. Social Security Cases.

This category of cases involves claimant challenges to agency action denying social security benefits. Social security cases are handled by Magistrate Judges to the extent possible. The Committee believes that social security cases are handled well in this District. The United States Attorney's Office is cooperative and the Magistrate Judges knowledgeable, well-prepared and well-organized. We recommend that the current procedure continue.

Under current procedure, Magistrate Judges are involved in social security cases through one of three mechanisms: a) party consent to referral of the case to a Magistrate Judge for disposition; b) by reference for report and recommendation on

dispositive motions; and, c) preparation of a preliminary draft opinion for a District Judge on a dispositive motion. In social security cases, the government, by standing order, is given 120 days to answer in social security cases. Experience has shown that this time is needed to prepare and file the agency record. The standing order obviates the need to respond to repeated requests for extension of time to answer. Thereafter, cases are set for argument before Magistrate Judges without the need for a party request. The United States Attorney ordinarily briefs and argues only cases in which his participation is invited by the Magistrate Judge. Participation is invited where the record suggests the agency's action might be reversed. In most cases, the Magistrate Judge hears argument in chambers from the claimant and his counsel and the case is then disposed of.

Chapter V - Description of the Committee and a Summary of its Research Findings.

A. Description of the Committee and its Work.

The Committee was appointed by Judge Turk during his tenure as Chief Judge and did most of its work on this report during that period. The Committee has thirteen voting members and four ex officio members. It is chaired by Phillip C. Stone of Wharton, Aldizer and Weaver. The majority of Committee members are practicing lawyers from different geographic areas and with a

variety of practices. The United States Attorney, Montgomery Tucker, is a voting member. The Committee also includes a member of the state judiciary, a representative of the news media and an alternative dispute resolution specialist. The Clerk of the Court, Joyce Witt, the Chief Probation Officer, Wray Ware, Magistrate Judge Conrad and Judge Turk are ex officio members of the Committee. Professor Joan Shaughnessy, a member of the Committee, serves as reporter. (Biographical sketches of the Committee members are attached as Appendix F.)

The Committee met for the first time on September 11, 1991 and has met in day-long sessions approximately once every two or three months since then. A Steering Committee, consisting of the Chairman, the Reporter, and the Clerk of the Court prepared information and agendas for the full Committee meetings. The Committee, at its meetings, heard a variety of presentations on aspects of its work from various Committee members and has discussed at length the current state of civil litigation in the District. The Committee, from the outset, worked as a Committee of the whole. No subcommittees were created.

The Committee reviewed an array of statistical information, existing court orders and reports, background information and the work of other CJRA Committees. The Committee Chairman and others attended national meetings on the CJRA organized by the Judicial Conference. The Committee also conducted several data-gathering

activities. The Committee conducted a written survey of Western District practitioners, conducted interviews with the District's judicial officers, reviewed eighty cases which had been unusually delayed and held two public hearings. The method and results of each activity will be summarized briefly in this Chapter. Later, in Chapter VI, Committee Recommendations, references are made to particular results.

B. The Attorney Survey.

In March, 1992, the Committee mailed a survey to all lawyers admitted to practice in the Western District. (A copy of the survey instrument is attached in Appendix G.) A total of 845 surveys were mailed. 440 responses were received. Many of the questions were answered by only a portion of the respondents. (The survey results are found in Appendices H and I.) In general, the survey results revealed that the bar is satisfied with handling of civil litigation in the District. To the question, "have you encountered unreasonable delays," 70 attorneys answered "yes" and 350 answered "no". Similarly, the question, "have you found [civil litigation in the Western District] to be unnecessarily costly," elicited 94 positive responses and 346 negative responses. A majority of respondents was satisfied with the District's current policy of conducting business without written local rules. 169 answers favored the adoption of written local rules, 271 opposed adoption.

The most common causes of unreasonable delay and unnecessary cost, according to respondents, are tactics of counsel. 437 respondents identified them as a moderate or substantial contribution. By contrast, only 55 respondents identified ineffective case management by judges as a substantial or moderate cause.

The comments of respondents echo the surveys statistical results. The most frequent comment was "if it ain't broke, don't fix it." Several comments noted the collegiality of bench and bar. As one respondent observed, "[T]he lawyers and judges have a good working relationship to effectively get cases through the system." Concern was expressed in the comments at the possibility of counterproductive change. "Imposition of additional formal, 'trendy' devices will only make federal practice more complex for attorneys and ultimately more costly for litigants."

There were, nevertheless, a number of comments in the survey suggesting the desirability of some judicial supervision of litigation, particularly of discovery, and of setting basic deadlines. Conduct of discovery appeared to be the most common source of complaints about lawyers' contributions to cost and delay. Two common comments suggested areas for possible attention by the bench. First, respondents frequently noted the critical importance of prompt rulings on dispositive motions. Second,

several comments noted the high cost associated with last-minute changes in scheduled trial dates.

Finally, a noteworthy result of the survey was the relative dearth of experience with alternative dispute resolution among the respondents. 329 reported slight or no experience with arbitration compared with 71 reporting substantial or moderate experience. Mediation was similarly little known. Those lawyers who did have experience with alternative dispute resolution reported predominately favorable opinions of the process.

C. Judicial Questionnaires and Interviews

The Committee, during the summer of 1992, sought information concerning the policies, practices and opinions of all judicial officers in the District. This was a two-step process, involving written questionnaires and interviews. In advance of the interviews, an outline of questions to be explored at the interview was supplied to each judicial officer. Interviews were conducted with Judges Turk, Michael, Kiser and Wilson and with Magistrate Judges Crigler and Kinser. Scheduling difficulties led to the Committee's receiving Judge Williams' views in writing. Magistrate Judge Conrad sat with the Committee throughout its deliberations, so no separate interview of him was conducted. Most interviews lasted about two hours. The reporter attended all interviews. She was accompanied by one or two other Committee members at each

interview. (Attached as Appendix J are copies of the judicial questionnaire and an outline of suggested interview questions.)

This section will summarize some of the themes and concerns which emerged from the interviews. Later, in the recommendations section, reference is made to some of the current judicial policies and practices which have been successfully used in the District.

The interviews revealed that the judges of the District recognize and value the collegiality which characterizes bench/bar relations here. Judges find most lawyers well-prepared and professional. Only a small percentage of cases raise problems of abuse by lawyers, in the judges' view. Accordingly, several judges commented that sanctions were used sparingly in this District. In general, the judges expressed a willingness to be involved in pretrial activity if called upon by counsel, but, by and large, the judges reported that they did not engage in on-going supervision as a matter of course. All of the judges noted the importance of keeping the court's docket moving while at the same time avoiding unnecessary rigidity. Thus, the interviews did not reveal a consensus for any particular rules limiting the extent of discovery or motion practice.

The judges differ in their approach to managing the length of time a case remains on the docket. Some of the judges leave the matter to counsel unless asked to intervene. Others establish

general time limits (trial dates and discovery cut-off dates) early in the litigation.

Several of the judges commented on alternative dispute resolution. None had wide experience with it. In general, the judges expressed the view that ADR could be extremely useful in some cases, when the parties were interested in its use, but that it should not be imposed upon unwilling litigants.

In the interviews, the Committee explored with the judges the current organization of the District. The judges recognized the logistical costs of operating multiple divisions, but were of the view that the costs were outweighed by the benefits of making access to the federal court possible for persons in remote areas of the District. The judges were generally satisfied with the current caseload allocation. They stressed the willingness of their judicial colleagues to assist one another in overcoming scheduling difficulties. A cause of future concern is the growing docket, particularly the criminal docket, in the northern part of the District. Several judges also noted the difficulty of scheduling trials in some divisions due to limited courtroom space.

D. Analysis of Problem Cases

The Clerk of Court identified for the Committee eighty recent cases in which the amount of litigation activity and/or the length

of time the case had been pending suggested that the case might exemplify unreasonable delay and unnecessary cost. Twenty cases were selected from the Roanoke Division and ten cases each from the other six divisions. With the assistance of deputy clerks, members of the Committee sought to identify causes of cost and delay in each of the sample cases. Where appropriate, Committee members examined the docket and case file and communicated with attorneys and parties.

Members of the Committee found that one common pattern in the problem cases studied was that none of the attorneys involved chose to take the initiative to move the case forward. In such cases, eventual judicial intervention led to relatively quick resolution. The Committee members found it difficult to determine whether the delays brought on by lawyer inaction were in the best interest of the parties. In some cases, cost and delay seemed to be caused by one side of the litigation. In such cases, attorneys engaged in excessive discovery or sought lengthy continuances which might have been prevented by more stringent oversight. Another cause of cost and delay sometimes noted in the case study was delay in issuing rulings either on dispositive motions or following bench trials. Occasionally, the major cause of delay appeared to be the time required to prepare a transcript for appeal to the Fourth Circuit. Lastly, upon examination, several of the cases appeared to be substantively complex and demanding, and the time and activity shown on the docket not unreasonable.

Lawyers from outside the District expressed more concern about the handling of the cases under review than did local lawyers. Some outside lawyers found the District's informality disconcerting. They expected more active judicial involvement in moving cases and expressed the view that such oversight would have reduced the cost of litigation for their clients.

E. Public Hearings

In the Fall of 1992, the Committee conducted two public hearings. The first was held in Roanoke on September 14, 1992 and the second in St. Paul, Virginia on October 20, 1992. Both hearings were publicized in the media. In addition, the Committee wrote to approximately 260 organizations identified as having an interest in the federal courts, inviting participation at the Roanoke public hearing. The invited organizations included bar associations, legal services organizations, civil rights groups, labor unions, medical societies, Chambers of Commerce, school boards, community services boards, environmental groups, veterans organizations and prisoner advocacy groups. (Attached as Appendix K are letters, press releases and mailing lists pertaining to the Roanoke public hearing.)

Both public hearings were lightly attended and neither resulted in any severe criticism of the Court. Among the speakers at the Roanoke public hearing were Bill Rakes, President of the

Virginia State Bar, a representative of the Roanoke NAACP and a handful of members of the Bar. In general, the speakers praised the quality of the bench and were satisfied with the workings of the Court. Some concerns and suggestions were voiced. For example, the Committee's attention was drawn to the Virginia state courts' recent development of ADR programs. It was suggested that the federal courts could draw upon the experience being developed at the state court level. Concern was also expressed at the hearing about the availability of counsel to undertake civil rights cases. It was suggested that the fee award structure was not adequate to secure representation.

The public hearing at St. Paul also elicited general satisfaction with the handling of civil cases in the District. (A report on the St. Paul hearing is annexed as Appendix L.) The particular concern most forcefully expressed at the St. Paul hearing was the desire that the Big Stone Gap division remain open and operational.

Chapter VI - Committee Recommendations

A. The Committee's Approach to Civil Justice Reform

In evaluating procedures to be recommended for the handling of civil cases, the Committee necessarily developed in its thinking a model of an efficient judge in terms of docket management. It is

the Committee's view that efficiency in the management of cases enhances the likelihood of fairness and justice by making the justice system more predictable, less costly and the resolution of cases more expeditious.

The Committee recognizes and wishes to emphasize here that a good judge must be much more than an efficient judge. We have, given our statutory charge, focused on efficiency as it impacts cost and delay in litigation. We recognize and reaffirm the other greater attributes of a good judge -- attributes valued by all the judicial officers of the District and by this Committee. Those attributes -- of fairness, thoughtfulness, intelligence, wisdom, and impartiality and courtesy -- are of utmost importance. They are all necessary to the first goal of procedure -- a just outcome. Our profile of an efficient judge is not meant to denigrate or overlook these more fundamental virtues. Rather it reflects our response to Congress's more limited charge to us.

The efficient judge is one who:

1. Establishes procedures to accommodate and promote reasonably prompt handling of civil cases by an appropriate expenditure of the time, energy and resources of the community's court system, the litigants, witnesses and others related to the judicial system.

2. Is committed to efficiency as a value and goal. A judge should not only be philosophically and personally committed to the efficient allocation of resources and the expeditious handling of cases, but should take advantage of educational opportunities to learn skills and techniques to develop efficiency.

3. Employs procedures which are calculated to produce efficiency. The procedures employed should be clearly communicated and consistently applied within the district, except as variations in cases may dictate.

4. Takes an active role in case management. Many cases can be adequately dealt with by the application of clearly stated procedures, such as those in the pretrial and standing orders. Others will require some unique and individual handling. Exceptions need to be granted to assure that standard rules do not create unnecessary cost and delay.

5. Either directly or through the magistrate judge or staff adequately monitors the progress of the pre-trial activities to assure that the case is resolved or tried on schedule. The trial date should not be set with such rigidity that it could not be moved in the interest of fairness and avoiding unnecessary costs. For example, when dispositive motions have not been ruled on and rulings would avoid trial preparation, it may be very desirable to continue the case if the court is not able to rule on the motion.

This avoids the unnecessary cost of trial preparation when the case may not be tried.

The Committee believes that the most significant step the trial judge can take to assure the prompt and inexpensive disposition of cases, is to set a trial date early in the process. Since other dates necessarily relate to the trial date, discovery dates and the dates for ruling on motions should evolve from the date of trial.

The Committee does not believe that the efficiency of a court is measured best -- or even measured at all -- by attempting to set records for promptness of trial dates and the rigidity of schedules. While the court may have "bragging rights" to a fast docket, parties will probably incur unnecessary and unjustified expense when required to accelerate discovery and prepare urgently for a trial when efforts ought to be first expended toward alternative dispute resolution methods or settlement. Such a system places a premium on a firm's having sufficient personnel so the case can be given extraordinary attention. It reflects a lack of understanding of efficiency and a lack of consideration for the inability of some litigants and attorneys to accommodate those time requirements without substantial hardship. While it is clearly not desirable for courts to be operated on such a fast track and with such rigidity that oppression results, neither is it necessary for a court to indulge attorneys, witnesses and litigants who

procrastinate, fail to expend reasonable efforts on the case and do not show proper respect for the court's time and schedule or for the interests of others. The efficient judge will attempt to develop case management techniques which apply the pressure of a fixed trial date and the expectation of a predictable time for resolution of the case on one hand and give an opportunity for the orderly preparation of the trial and efforts to settle on the other.

The Committee's recommendations are guided by its desire to see the many valuable attributes of Western District practice preserved and, at the same time, to respond to Congress' mandate that cost and delay in civil litigation be minimized. The Committee believes that the collegiality of the Western District is an important asset, to be preserved and nurtured. We value the willingness of our judges and magistrate judges to consult with counsel and respond to their needs. Similarly, we value the willingness of most members of the bar to avoid abuse of the litigation process. We believe that the current flexibility and collegiality which characterize the District should be preserved. Detailed, rigid rules could well do more harm than good.

At the same time, the Committee believes that it is necessary to place some general limits on lawyer's autonomy in litigation. A system which relies too heavily on the initiative of the lawyers to move a case through the process invites undue delay. One attorney, by inaction, can force his opponent to continually seek

court intervention. Moreover, while counsel may prefer to proceed through a case without time constraints, the interests of at least some parties may well be ill-served by delay. As one survey respondent noted, "attorneys are not self-policing, and indeed may have a responsibility to delay where it serves their clients' interests." In light of these concerns, the Committee is suggesting a framework, drawn from a variety of practices now in use in the District, to provide general oversight of the conduct of civil litigation. Within this framework, there is discretion to respond to the needs of parties and lawyers and to provide more detailed supervision where necessary.

B. Differential Case Management

The civil docket in the Western District is composed of cases which, for various reasons, call for specialized treatment and ordinary civil litigation to which most of the Committee recommendations are addressed. The Committee wishes to avoid imposing inappropriate rules on cases calling for special handling. Therefore, unless otherwise noted, the Committee recommendations in this Chapter do not apply to:

a. Cases requesting review of a decision denying Social Security benefits. (The Committee's views on the handling of Social Security cases are found in Chapter IV.B.)

b. Pro se prisoner's cases. (The Committee's views on the handling of prisoner cases are found in Chapter IV.A.)

c. Suits by the United States to recover on defaulted student loans and overpayment of veteran's benefits. Many of these collection cases brought by the government are resolved by default, and, therefore, do not warrant involvement of judicial officers.

d. Appeals from bankruptcy court decisions. The processing of bankruptcy cases is beyond the scope of the Committee's study.

e. Any other case in which the District Court acts in an appellate capacity.

As to the remainder of the civil docket, the Committee believes that it is unnecessary, in our District, to attempt rigid categorization of civil cases by degree of complexity. Rather, our recommendations give the court and counsel the flexibility to plan the progress of each case depending upon its expected demands. In the remainder of this Chapter, the report frequently uses the term Ordinary civil case. By this term we mean simply all civil cases other than those listed in paragraphs a to e above.

C. The Initial Pretrial Order

The Committee recommends that all Ordinary civil cases be the subject of an initial pretrial scheduling order. The order would consist primarily of two sections. First, it would establish certain basic deadlines for litigation activity. Second, it would refer the case to a Magistrate Judge for ongoing supervision.

The Committee believes that the single most useful tool for reduction of delay in litigation is the early setting of a trial date. An established trial date allows lawyers to plan and accomplish pretrial activity in a prompt and efficient fashion. The litigation deadline can often act as a catalyst for settlement. Our District has had some experience with this technique. The Committee is of the view that, after a period of adjustment, early scheduling orders have worked well for those judges who have used them.

The Committee is also of the view that civil cases will benefit from flexible ongoing oversight by a judicial officer. The Magistrate Judge reference will provide the parties and counsel with a vehicle for discussion of settlement and of narrowing issues, for early intervention in discovery disputes and for exploration of the possibility of voluntary alternative dispute resolution. Routine reference to Magistrate Judges has also been used with success in our District and we recommend its use in all Ordinary civil cases.

The Committee also recommends that some minimal limits be set on discovery in the pretrial order subject to case-by-case adjustment by the Judge or Magistrate Judge.

Before turning to the details of the recommendations, the Committee wishes to emphasize that it does not view its recommendations as a first step on the road to a regime of detailed, rigid rules and deadlines governing all aspects of civil litigation. To the contrary, the Committee hopes and expects that flexibility and cooperation will continue to be a hallmark of practice in the Western District. In particular, the Committee is of the view that the procedures in use in the Eastern District of Virginia, the so-called "rocket docket", are not suited to practice here. The Committee believes that excessive regulation increases the cost and burden of litigation and exacerbates the effect of differences in resources among litigants. The following recommendations, therefore, represent what the Committee views, as a balance between flexibility and oversight.

The initial order should contain the following provisions:

1. Deadlines

As soon as possible after the filing of an answer or pre-answer motion in an Ordinary civil case, the Judge to whom it is assigned or a member of the judge's staff shall consult

with counsel and set a discovery cut-off date and a trial date. Ordinarily, the trial date should be approximately eight months from the date of the order. In complex cases, the trial date should ordinarily be later. The usual discovery cut-off date should be approximately forty days before the trial date. Ordinarily, consultation with counsel will be in the form of telephone or written communication.

Commentary:

1. *Because of the central importance of the trial date, we view consultation with counsel before the date is set to be of critical importance. Counsel should be in a position to inform the Court of any unusual features affecting case scheduling. The Committee believes that trial dates which are too early can lead to unnecessary cost. They force simultaneous discovery, much of which might ultimately prove unnecessary, instead of discovery in an orderly sequence. Moreover, it is important not to create a structure which virtually forces firms to staff cases with several different lawyers in order to meet*

deadlines. Such staffing drives up costs and places small firms and sole practitioners at a serious disadvantage.

2. *The forty-day discovery cut-off date is meant to accommodate dispositive motions.*

3. *At several places in this report, the Committee urges the use of teleconferencing in lieu of personal appearances by counsel. The Committee wishes to draw attention to the high costs of personal appearances by counsel at conferences in a District of our size. It is not uncommon for attorneys to travel several hours in order to appear. This time is costly and should be required only when genuinely necessary.*

2. Dispositive Motions.

The order should require that all dispositive motions be filed in time to be briefed, argued and submitted for decision no later than thirty days before the trial date. (See Chapter VI.E.1 below for a discussion of decisions on motions.) The order should also provide that the moving party has the

responsibility to bring all dispositive motions on for hearing within a set period of time on pain of denial of the motion.

Commentary: This provision is intended to give the Court time to rule on dispositive motions in advance of trial. It is also intended to discourage the filing of motions on which no ruling is ever sought. Chapter VI.E.1 below contains a provision suggesting that judges issue a ruling on dispositive motions no later than twenty days before the trial date. This is intended to obviate the cost of unnecessary final trial preparation.

3. Presumptive Discovery Limits.

The order should provide that, subject to change by the judge or magistrate judge, each party shall propound no more than thirty interrogatories and shall name as experts no more than five persons total and no more than two persons on any issue.

The order should provide that no discovery shall be filed with the Court unless required by the Court on good cause shown. When motions are made the parties can, and should, file any discovery materials having a bearing on the motion.

The order should require that any objections to discovery be made within ten days of the request. The order should provide that exceptions will be made to this deadline when an unanticipated basis for objection is discovered after the ten-day objection period has run.

Commentary:

1. *The Committee believes that where possible, practices throughout the District should be uniform. This helps avoid uncertainty among those who do not frequently practice in federal court. Currently, the majority of judges in the District routinely order the parties to refrain from filing discovery with the Court. This practice reduces cost to the parties and to the clerk's office. Therefore, we recommend against filing of discovery. In the special case of prisoner petitions, where oversight of discovery is needed, filing would continue because this order is inapplicable.*

2. *Expert discovery is so costly that some control is viewed as necessary.*

3. *The Committee is concerned that last minute objections to discovery constitute a cause of unnecessary delay. Frequently, parties are aware when discovery requests are received that an objection will be lodged. In such cases, objections should be lodged promptly. The Committee does not intend to create a trap for the unwary. Therefore, provision is made for exceptions to the ten-day time limit.*

4. Reference to Magistrate Judge

The order should contain a reference of the case to a Magistrate Judge for purposes of overseeing discovery and pretrial preparation. The order should require the Magistrate Judge to enter into discussions with counsel concerning possible settlement of the case and the interest of the parties in pursuing voluntary alternative dispute resolution. The order should authorize the Magistrate Judge to require parties to attend or be available by telephone for settlement conferences. The order should also authorize the Magistrate Judge to impose limits on discovery

different than, or in addition to, those imposed in the initial order. Finally, the order should authorize the Magistrate Judge, in consultation with the District Judge, to alter as needed all deadlines established by the initial order.

> *Commentary: In lieu of extensive regulation of discovery at the outset, the Magistrate Judge is vested with discretion to impose such limits and controls as may be required. Where discovery proceeds without difficulties, further limits should not be necessary.*

D. Supervision by the Magistrate Judge

1. Required Initial Conference

Following entry of the initial order, the Magistrate Judge should set an early conference with counsel in each case.

The conference is intended to provide a setting for an exploration of the issues actually in dispute between the parties under the guidance of the Magistrate Judge. To this end, counsel should be prepared to discuss the factual and legal bases for their claims and defenses, the main factual inquiries to be pursued in discovery and plans for resolving legal issues before trial through dispositive motions.

The conference is also intended to provide counsel with an opportunity to plan for discovery and to alert the Magistrate Judge to any discovery problems which counsel can anticipate at the outset. If necessary, counsel and the court can establish a procedure for resolving any anticipated discovery problems. Counsel should, therefore, be prepared to discuss discovery plans during this conference.

The conference also provides an opportunity for the Magistrate Judge to explore voluntary resolution of the litigation. The possibility of early settlement could be explored, where appropriate, or plans for a later settlement conference could be made. Additionally, the conference provides an occasion for counsel and the Court to discuss whether the case might better be handled through ADR and, if so, what ADR process should be used. Counsel should, therefore, be prepared to discuss voluntary resolution of the dispute, and how and when such resolution might best be explored, during this conference.

In the discretion of the Magistrate Judge, attorneys may be required to appear in person for this conference. However, wherever possible, such conferences will be conducted by telephone.

Commentary: The Committee believes that an early, informal assessment of each case and a discussion of general plans for the course of

the litigation will be of great assistance. First, it will require counsel, in preparing for the conference, to give early attention to the case's merits and weaknesses. Preparation will also entail early thought on plans for discovery. Second, it will give counsel a tentative insight into the perspectives of his or her opponent and of a neutral third party, the Magistrate Judge, on the case. Last, the conference will provide an opportunity to begin the process, which may take some time to complete, of exploring voluntary resolution. The Committee hopes that the conference will afford some of the benefits of the early neutral evaluation process, adopted by some districts, without requiring creation of a separate, court-annexed ADR program. The Committee recognizes that the benefits of this conference will accrue only if lawyers are willing to give serious thought to their cases before the conference. The Committee hopes that, with experience, counsel will realize the benefits of full preparation for, and participation in, the initial conference.

2. <u>Further conferences.</u>

In all cases not resolved by the discovery cut-off date, the Magistrate Judge should hold a settlement conference unless all parties indicate in writing that such a conference would not be helpful to resolution of the dispute. The Magistrate Judge would nevertheless be authorized to convene a settlement conference if he or she disagreed with the parties' conclusion. This settlement conference should be scheduled to occur promptly after the completion of discovery.

Some cases may benefit from additional conferences with the Magistrate Judge. For example, unanticipated scheduling problems may arise or discovery problems may reach a level where a conference is necessary to resolve the issues or impose additional limits. The Magistrate Judge, on the Magistrate Judge's own initiative or upon request of a party, should conduct additional conferences when they would be helpful. The Magistrate Judge may, to facilitate resolution of the case, call a conference in response to the request of a party without disclosing the identity of the requesting party.

The settlement conference and any additional conferences should be conducted, where possible, by telephone or, when the Magistrate Judge deems necessary, by personal appearance. The Magistrate Judge, at any conference, should have authority to require the attendance or availability of parties when their presence would assist in resolution of the case.

Commentary: Many cases may warrant active, ongoing oversight by the Magistrate Judge. Others may progress with no need for intervention, simply on the strength of the pre-existing trial date. The degree of ongoing involvement is thus left to case-by-case determination. For those cases not resolved during the pretrial process, a settlement conference seems warranted. Therefore, we recommend that such a conference be held unless all parties decline to participate.

The authority of the Magistrate Judge to call a conference upon the request of a party without disclosing the identity of the requesting party is not meant to authorize ex parte communications concerning the substance of a dispute. Nor does the Committee mean to suggest that it need be used routinely. Rather, the Committee believes that, in certain cases, each side's unwillingness to be perceived as initiating settlement discussions may be a barrier to dispute resolution. This device is suggested as a possible means to overcome the barrier.

3. Discovery Disputes

The initial referral includes the authority to hear and resolve discovery disputes. The Committee recommends the following guidelines.

1. Attorneys for the parties are expected to make a reasonable, good faith effort to resolve any discovery disputes among themselves before the intervention of the Magistrate Judge is sought.

2. Normally, discovery disputes should be resolved through telephone conferences between attorneys for the parties and the Magistrate Judge.

3. If the Magistrate Judge so orders, or any party so requests, a discovery dispute will be submitted to the Magistrate Judge on written motion for resolution. All written discovery motions and responses thereto must contain the relevant portions of the discovery materials at issue.

4. Appeal of any discovery ruling may be made to the District Judge to whom the case is assigned.

Commentary: We believe that, in general, counsel in the district do attempt to resolve

matters among themselves and this section states the Committee's expectation that such cooperation will continue to be the norm. We do not believe a formal certification to that effect is called for.

E. Recommendations Related to Pretrial Motions.

1. Rulings on Dispositive Motions.

The Committee recommends that the Court advise the parties of its proposed ruling on all timely dispositive motions no later than 20 days before the scheduled trial date or 30 days after completion of briefing and oral argument, whichever occurs first. The Court's advice will be followed at a later time by a written order and memorandum opinion.

The Committee recommends that, in cases where a dispositive motion has been pending more than 30 days, the time limits in the initial scheduling order extended upon application of any party.

Commentary: This recommendation is similar to those set out in the Judicial Conference's Model Plan. The provision for a ruling no later than twenty days before trial is critically important. Final trial preparation

is extremely costly. It requires parties, witnesses and attorneys to arrange their schedules and frequently their travel plans to be in attendance. Lawyers devote long hours to preparing examinations, arguments and instructions. Dispositive motions, if granted, should avoid the cost of final pretrial preparation. They cannot serve their intended function if a ruling comes on the eve of trial. Even a pending motion which is ultimately denied can interfere with trial preparation by creating uncertainty. It is thus critically important that rulings be made well in advance of trial. Without this mechanism, many of the benefits of setting an early and firm trial date will be lost.

The Committee is of the view that dispositive motions at every stage of the litigation should be ruled on promptly. Costs incurred in discovery on a case that is ultimately dismissed are wasted. If the parties seek to avoid costs by deferring discovery pending a ruling, delay is inevitable.

The Committee believes that tenative rulings can be made relatively quickly, if the written order and opinion can follow at a later time. Our recommendation for tenative rulings does not limit the time available for preparation of written orders and opinions. Moreover, it is structured to avoid confusion concerning the time at which the right to appeal begins to run.

2. The Role of Magistrate Judges with Respect to Dispositive Motions.

The Court should seek partial consent of the parties to referral of a case to a Magistrate Judge for disposition by motion. This partial consent would not extend to the trial, which would, if it occurs, be conducted by the District Judge.

Commentary: The Committee considered the advisability of reference of dispositive motions to Magistrate Judges for report and recommendation. Such a reference can be useful where the motion involves a voluminous record. However, in many cases reference ultimately leads to delay and duplication of effort since the party aggrieved has every

incentive to seek de novo review by the District Judge. In such cases, the District Judge in turn is required to write an opinion. In the alternative, we suggest a new technique, being used in some Districts, whereby parties enter partial consent to the Magistrate Judge's ruling on summary judgment. This process permits the Magistrate Judge to rule on the motion for summary judgment and eliminates the necessity of de novo consideration of the same motion by the District Judge. On filing their consent, the parties may reserve their right to appeal the Magistrate Judge's ruling to the District Court or they may agree that any appeal be filed with the Fourth Circuit. In any event, if the motion were denied, trial would be held before the District Judge.

3. Use of Teleconferencing Facilities.

Normally, whenever reasonably possible, arguments on motions should be heard through the use of teleconferencing facilities, unless the Court or counsel prefer that counsel appear. Motions which required the taking of testimony or which are supported by a

complex documentary record should ordinarily be heard with counsel personally present.

> *Commentary: The Committee, as stated above, believes the use of teleconferences can be extremely cost-effective.*

4. Committee views on Other Matters relating to Motion Practice

The Committee considered a range of other possible recommendations concerning motion practice, for example, requirements for, or limitation on, written briefs, requirements of pre-motion conferences or certification of pre-argument consultation, and limitations on the filing of Rule 11 motions. The Committee did not believe any of these changes were necessary.

With respect to sanctions, the Committee believes that the treatment of Rule 11 in this District is to be commended. Attorneys who practice here generally use restraint in determining whether to seek sanctions. Judges impose sanctions when they are clearly called for but not otherwise. We hope that this collegial state of affairs will continue.

F. Managing the Trial Calendar.

1. Initial Scheduling of Trial Dates.

It is frequently necessary to schedule more than one trial for a single trial date. However, District Judges should seek to avoid "double-booking" whenever possible and consistent with providing early trial dates. If more than one case is scheduled for a single date, counsel should be so informed when the date is scheduled. The Court should also notify counsel of the identity and priority of each case scheduled for that date.

Commentary: The Western District's docket appears to have reached the point where "double-booking" has become common. The Committee recognizes the docket pressures which may necessitate this practice. The Committee does, however, view "double-booking" as a regrettable necessity, and not as a preferred practice and urges that it be avoided where possible.

Some judges in the District currently notify counsel of whether their cases stand first or second on the docket. This practice is extremely helpful to attorneys and we recommend that it be adopted throughout the District.

2. Resolving Conflicts in Trial Dates.

Whenever possible, a case should proceed to trial on the date originally set. If it becomes apparent that a District Judge has on his or her schedule more than one case to be tried, one of the cases should be transferred to another District Court Judge, if possible. Alternatively, the District Court should explore with the parties their willingness to consent to trial before a Magistrate Judge.

If it becomes apparent that the Court will be unable to comply with a scheduled trial date, counsel should be notified as soon as possible. In any event, trial dates should be released on the request of any party no later than three days before trial. In cases where more notice is needed to avoid extraordinary expense in rescheduling, the parties should so notify the Court. In that event, the case should be released no later than ten days before trial. A case should not be rescheduled for trial due to "double-booking" more than once.

> *Commentary: The Judges in the Western District demonstrate a genuine willingness to assist their colleagues in keeping trial date commitments. The Committee's recommendation is intended to reflect and approve current practice. We also recommend that the Court*

continue to use consent to trial by a Magistrate Judge as a means to honor trial commitments.

As the Committee has already noted, final trial preparation is one of the most costly stages of the litigation process. Last minute cancellation of a scheduled trial is expensive and disruptive. At some point, cases must be released and rescheduled. On the other hand, if release comes too early, later pleas and settlements may leave a gap in the Court's calendar. We recommend, therefore, three days for most cases and ten days for cases involving extraordinary expense. Such expenses might be anticipated for example, in cases involving several experts, multiple parties, lengthy trial time or substantial involvement of out-of-state counsel, witnesses or parties.

3. Committee Views on Other Matters relating to Trials

The Committee discussed whether to make other recommendations concerning the conduct of trials and has chosen not to do so. We would note some observations. The daily schedule of a jury trial

should strike a balance between utilizing the day as fully as possible, in the interest of efficiency, and consideration of the need of participants. Jurors, in particular, often must travel long distances over sometimes difficult roads to attend each day. At a certain point, concern for the Court's efficiency must yield to jurors' legitimate needs.

G. The Criminal Docket.

This District, like many across the country, is experiencing significant growth in its criminal docket. This Committee, like its counterparts in other Districts, believes that this growth has had, and will continue to have, an impact on civil litigation. Fortunately, we have not experienced the kind of overwhelming criminal docket which in some Districts has brought civil litigation to a virtual halt. Nevertheless, the Committee does have some observations and suggestions to ameliorate the pressure of the criminal docket.

1. Arraignments.

Magistrate Judges should conduct all arraignments.

Commentary: Currently, practice within the District varies. The Committee suggests that the practice on arraignments throughout the

District should be uniform. We suggest that Magistrate Judges conduct arraignments. In our view, this suggestion will help alleviate pressure on the District Judges' calendars.

2. The "Federalization" of Criminal Law.

a. Federal Criminal Statutes

Congress should exercise restraint in enacting wide-ranging criminal statutes covering conduct already governed by state criminal laws. Congress should reexamine the scope of current federal criminal law.

b. Charging Practices.

The United States Attorney should carefully exercise the discretion of the office in determining whether to bring federal charges when a matter might also be prosecuted under state law. Cases which can be prosecuted in state court effectively should be brought there.

Commentary: The breadth of federal criminal law is such that a large percentage of all criminal conduct could conceivably be prosecuted in federal court. Nevertheless,

our history and tradition has been that states have the major responsibility for ordinary law enforcement. The Committee recommends that Congress examine the scope of coverage of the federal criminal law with a view to determining whether it covers conduct best left to state control. The federal system will never be able to handle more than a fraction of the criminal prosecutions in this country -- nor was it meant to do so. It is important that Congress recognize this constraint.

The United States Attorney also has an important role to play in balancing the federal and state role in law enforcement. It is incumbent upon the United States Attorney to make an informed judgment as to whether there is a particular federal interest or concern warranting federal prosecution in cases involving crime under both state and federal law. The Committee urges continued attention by the United States Attorney to charging practices.

3. Suggestions to Congress Concerning Sentencing.

The sentencing guidelines and mandatory minimum sentences have resulted in a major change in federal criminal practice. We suggest to Congress, as some of our counterparts have done, that it re-examine its imposition of mandatory minimum sentences. In our view, there is reason to believe that they frequently constitute an unwarranted disincentive to guilty pleas.

We also suggest that Congress re-examine the question of whether the coverage of misdemeanors under the guidelines is warranted. Some misdemeanors are not covered now and if all were removed, sentencing would be prompter. We suggest that misdemeanors may not warrant the time and attention required to prepare a pre-sentence investigation report.

4. Allocation of the Criminal Docket.

The recent growth in the criminal docket has been located disproportionately in the northern part of the District. Demographic information projecting population growth and the United States Attorney's decision to assign staff to that area suggest that this trend will continue. Accordingly, the Committee recommends consideration of the current allocation of the criminal docket. We suggest that, where necessary to spread the caseload evenly, cases be assigned to Judges from other divisions. We also are of the view that sentencing should follow the filing of a pre-

sentence investigation report by no more than three months. If necessary, the assignment of new criminal cases should be adjusted to permit sentencing judges to meet this time limit.

H. Local Rules.

The Western District of Virginia has never adopted local rules. Some observers tease that this simply means the rules are not written. However, it is certainly not the experience of the members of the Committee (and the responses of the survey of several hundred attorneys were in accord) that particular preferences of judges have constituted procedural traps for practitioners from other areas. While it might be reassuring to have detailed rules in writing, litigants and attorneys certainly are not penalized in the Western District when they comply with the Federal Rules of Civil Procedure. The Committee is unaware of any rigid local traditions. If there are local traditions, they are usually pointed out in a patient and courteous manner and the necessary adjustment is permitted.

Clearly, in this report, the Committee is proposing some standardized procedures and techniques for case management which might often be found in the format of local written rules. The Committee discussed whether it ought to develop local rules and concluded that it would not move in that direction. There were several reasons for this decision:

1. Because of a long tradition of not having local rules, it is more comfortable for the practitioners in the Western District to continue the same tradition. If there is not demonstrable need to change, the bias is in favor of continuing the current arrangement.

2. There is a perception by many practitioners in the Western District that local rules in other districts are used as an obstacle course. Rules pertaining to some of the most trivial matters for which consistency would not seem to be important become obstacles over which the litigant must pass before being heard. They often appear to be enforced in a rigid, doctrinaire manner so that additional costs are incurred. The Committee does not believe that the claimed benefit of clarity and predictability offsets the risk that costs will actually be increased by the detailed requirements established in local rules.

3. The Committee believes that there are some scheduling and pre-trial matters which ought to be clearly understood by all the parties. It also concludes that consistency among the judges is desirable. Obviously, for a new practitioner or a practitioner coming in from another district, it will be helpful to know the expectations of the court which exceed the Federal Rules or Civil Procedure. Therefore, the Committee recommends in the report that there be a standard order which will contain much identical information in almost all cases in addition to any special terms

applying to a particular case. The common elements would include setting of a trial date and the referral to a magistrate judge with instructions on pre-trial handling. Those matters which do not need to be made part of the order will be part of the district judges' or the magistrate judges' list of items to cover with the parties during pre-trial activities. By making these matters part of an order in each particular case, it appears that there would be more focused attention on the compliance with the Court's requirements in that particular case, give clear notice to counsel for the litigants since all counsel will receive a copy of the order in each case and thereby better assure that all requirements are designated in one order as opposed to being contained partially in local rules and partially in a pre-trial order.

4. In two years, when the procedures recommended in this report are evaluated, an evaluation can be made as to whether written rules would be an improvement over the use of the standard order.

I. Other Matters.

1. Divisions of the District.

The Committee discussed at length the advantages and disadvantages of the District's current organization in seven active divisions. The Committee believes this organization is

warranted and should continue.[6] At the public hearing in St. Paul, in attorney surveys and in judicial interviews, the importance of ensuring that litigants and jurors in remote sections of the District have access to the federal courts was repeatedly emphasized. The Committee is of the view that any efficiency gains from closing divisions would be more than offset by the cost to litigants and jurors of inaccessible federal courthouses.

2. Assignment of Cases.

As has been noted at various points in this report, there is an increasing disparity within the District between population growth and division staffing. The docket is growing most quickly in the northern portion of the District while judicial resources are predominately located in the center and south. Accordingly, the Committee recommends that the Chief Judge, with the assistance of the Clerk of Court and the Chief Probation Officer, actively monitor the docket to ensure its currency. The Chief Judge should assign and transfer cases where necessary to account for undue burdens and docket congestion.

3. Court Reporters.

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[6] The Committee notes that the Office of the United States Attorney for the Western District of Virginia is of the view that the seven divisions of the District are not warranted. The Office, and the Committee, recognize that the decision is ultimately one for Congress and the judges of the District to make.

We recognize that the assignment of court reporters in this District is difficult due to its size and that the demands on their time can contribute to delay. In general, we are of the view that sufficient court reporting services should be available to all judicial officers to permit them to utilize their time to the fullest while permitting prompt completion of transcripts. Often, contract court reporters will fill this need. Advances in technology may also help. The District's electronic court recorder operator (ECRO) also contributes valuable service to the District, particularly to the Magistrate Judges. The Court may, however, soon require more full-time reporters.

4. Comments Relating to Other Matters the Committee is Required by Statute to Consider.

a. Model Plan.

The Committee considered the Model Plan and drew upon many of the ideas it presented. The Committee also attempted to follow the order of the Model Plan. However, the Committee developed its own plan.

b. Contributions by the Court, the Litigants, and Litigants' Attorneys.

Among other things, the report recommends that litigants' attorneys contribute to cost and delay reduction by earlier case assessment in preparation for the initial conference and by adhering the deadline. The recommended contribution by the Court includes commitment to prompt ruling on motions and limitation on trial calendar management. Contribution by litigants includes their participation where required at settlement conferences and the limitations imposed on the number of experts who may be called on their behalf.

c. Other Statutory Matters.

The Committee's views and approach to other factors the statute directs it to consider are, we believe, addressed in the Report. Appendix M contains a cross-reference table referring readers to the section of the report which responds to each statutory provision.

J. Future Plans for Committee Work.

The Committee, as established by Congress, is intended to be a continuing body, albeit one whose membership must change. Accordingly, our recommendations here are to the Court and the Committee concerning future endeavors the Committee plans to undertake, on its own or with others.

1. Western District Bench-Bar Conference.

We recommend that the Committee sponsor a regular conference of practitioners and judicial officers in the Western District. We envision this Conference as a vehicle for an ongoing exchange of views among participants about the nature of practice in the District and about general areas of change or concern. We also envision that this Conference would serve an education function, familiarizing the bench and bar with new developments in the area of litigation. Initially, of course, it could be used as a means of introducing this report and the Court's plan. We also believe it can and should be used to discuss in depth alternative dispute resolution. Finally, and most importantly, we hope that this Conference will help the bench and bar to continue their collegial relationship. It will also serve as a vehicle to acquaint new lawyers, and those new to federal practice, with the members of our bench and bar.

2. Equipment and Facilities.

The Committee believes that the Court should have available to it all equipment and facilities it needs. We believe that courtroom space needs should continue to be studied by the Court, assisted as needed by this Committee. Particular attention should be given to Big Stone Gap, Roanoke, and Harrisonburg where additional courtroom space may well be needed. The Committee has

no reason to believe that courtroom space is needed elsewhere, but the demand for additional office space may be more widespread.

Similarly, we recommend future attention to advances in technology which might be of benefit to the Court. For example, telecommunication equipment may be, or become, available to facilitate telephone conferences and arguments. Advances in recording equipment and computer technology may be of assistance in court reporting.

3. Alternative Dispute Resolution.

Above, we have recommended that Magistrate Judges discuss ADR with litigants with a view to determining its desirability in the case. We have also recommended that the Bench-Bar Conference be used to introduce ADR to judges and practitioners in the District. We believe the Committee should continue to investigate how ADR might best be used in the District.

As a first step, we recommend that the Committee consider investigating the available ADR programs in the District with a view to determining which programs might be suited to federal litigants. (A list of all currently available programs is annexed as Appendix N.) The results could then be made available to Magistrate Judges. Second, we suggest that the Committee seek information concerning developing state court experience which

might be adopted for federal court use. Third, we suggest that the Committee gather information concerning available ADR training for interested persons in the District.

In the longer term, the Committee should seek to develop a profile of cases best suited to various ADR procedures. This profile might then be used to develop training and referral programs for court-annexed ADR in the Western District. To implement these suggestions we recommend that the Committee, in conjunction with the Bench/Bar Conference, consider creating an advisory group on alternative dispute resolution. This group could bring needed expertise to bear on the questions raised here and might ultimately be the focus of ADR programs in the District.

4. Study of Litigant Views and Expenditures.

Like our counterparts in other Districts, we found it difficult to obtain information directly from litigants concerning their experiences. We also had little direct data on legal fees incurred in litigation. We believe the Committee should attempt to gather additional information on these questions. It might, for example, be possible to identify litigants as their case is filed and then to follow-up when the case is closed.

5. Two-year Review.

We recommend that, two years after the District's CJRA plan is implemented, the Committee undertake a thorough review of the efficiency of the plan. In particular, we recommend study of the scheduling order and Magistrate Judge reference recommended in Chapter VI. C and D.

6. Response to Forthcoming Amendments to the Federal Rules of Civil Procedure.

On April 22, 1993, the Supreme Court transmitted to Congress amentments to the Federal Rules of Civil Procedure. The amendments, absent action by Congress, will take effect on December 1, 1993. Several of the amendments are written to permit courts to override the requirements of the Rules by order or by local rules. These "override" provisions were drafted, in part, to avoid interfering with implementation of the Civil Justice Reform Act. Accordingly, once Congressional review of the amendments is completed, the Committee should review them and recommend to the judges of the District what action, if any, should be taken in response.

APPENDICES
To
Report of the Civil Justice Reform Act Advisory Committee of the United States District Court for the Western District of Virginia

July 30, 1993

APPENDICES
To
Report of the Civil Justice Reform Act Advisory Committee of the United States District Court for the Western District of Virginia

July 30, 1993

Phillip C. Stone, Esq.
Chairman

Members

Susie Stuart Campbell Drake, Esquire

D. Brock Green, Esquire

Honorable George W. Harris, Jr.

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Frank Kilgore, Esquire

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Honorable E. Montgomery Tucker

Professor Joan M. Shaughnessy
Reporter

Ex-Officio Members

Honorable James C. Turk

Honorable Joyce F. Witt

Honorable Glen E. Conrad

Honorable G. Wray Ware

APPENDICES

TO THE CIVIL JUSTICE REFORM ACT

COMMITTEE REPORT

July 30, 1993

/lt

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
_____ DIVISION

_____,

Plaintiff,

v. CIVIL ACTION NO. _____

_____,

Defendant.

SCHEDULING AND REFERRAL ORDER

Pursuant to Federal Rule of Civil Procedure 16(b), the court orders as follows:

(1) This case is set for trial on _____ [approximately eight months from the date of the filing of the case].

(2) Discovery shall be completed no later than _____ [40 days prior to trial date].

(3) All dispositive motions must be filed in writing with the court no later than _____ [approximately 45 days before the trial date so the matter will be submitted for a ruling at least 30 days before trial].

(4) The moving party for any motion will have the responsibility to bring the motion on for a hearing or the motion will be deemed to have been abandoned.

(5) Absent approval by the magistrate judge or the court, no party shall propound more than 30 interrogatories and shall name as experts no more than a total of five persons and no more than two persons on each triable issue. Discovery materials are not to be filed with the court unless relevant to a motion or objection or unless specifically ordered by the court.

(6) Any objections to discovery must be made within ten days after the discovery request. For good cause the time for filing objections may be enlarged.

(7) This case is referred to the Hon. Glen E. Conrad, United States Magistrate Judge for the following purposes:

(a) Require the attendance or availability of parties for settlement conferences when appropriate;

(b) Monitor and rule on discovery issues. Counsel are directed to make reasonable good faith efforts to resolve any discovery disputes before the intervention of the magistrate judge is sought. If the magistrate judge orders or any party requests, a dispute will be submitted to the magistrate judge for resolution;

(c) Expand or restrict discovery;

(d) Make the parties aware of alternative dispute resolution possibilities and, where appropriate, recommend such procedures;

(e) Encourage and assist the parties to consider all reasonable settlement efforts; and

(f) For good cause shown to alter any deadlines or dates established in this order.

(8) When a party identifies an expert witness as a potential trial witness, that party shall at the same time furnish any reports prepared by the expert for the case.

ENTER this ____ day of _____, 199_.

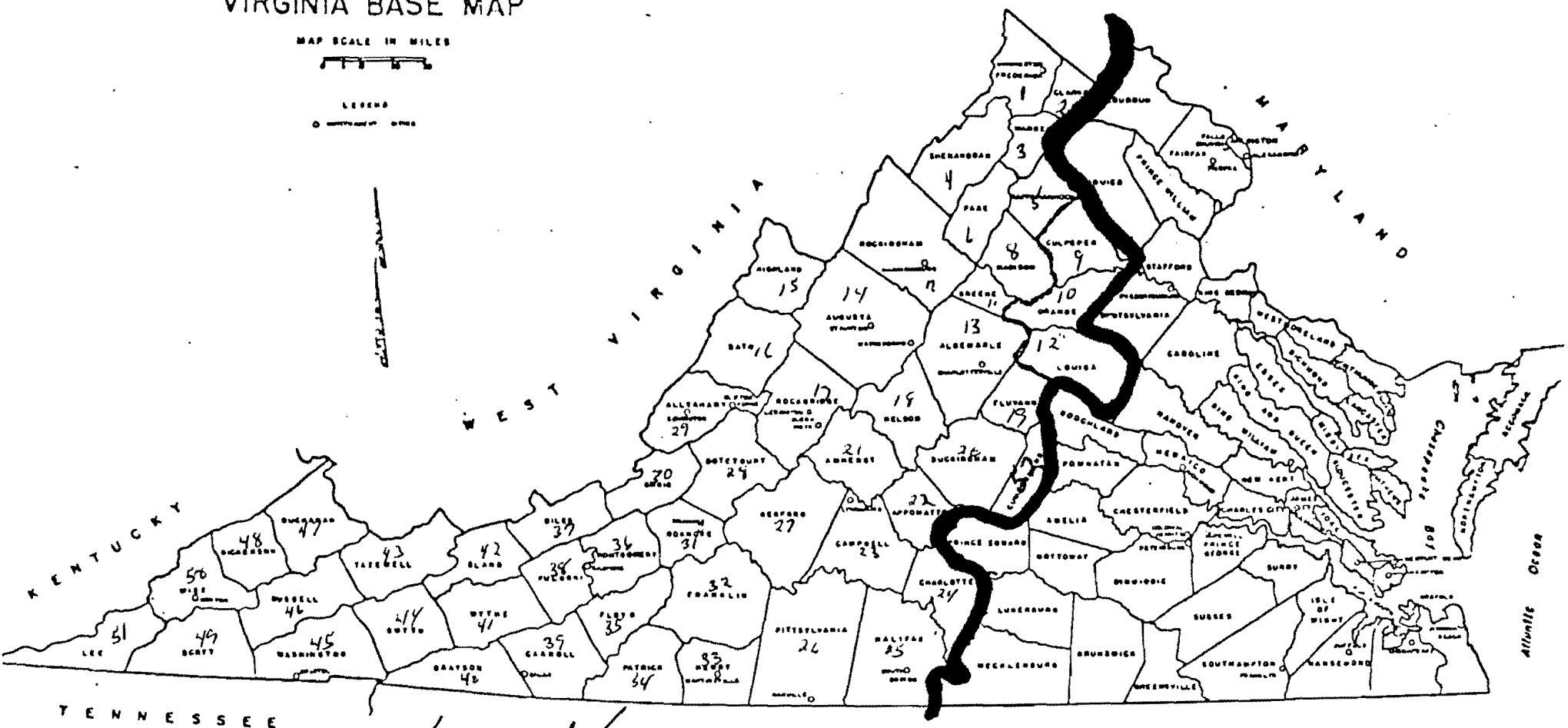
_____
DISTRICT COURT JUDGE

PCS/CJRA/AI1

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HIGHWAYS
DIVISION OF TRAFFIC AND PLANNING
VIRGINIA BASE MAP

MAP SCALE IN MILES

LEGEND



52 Counties in the 0/D of VA.

DR. NO. TA — 2

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY92 Statistics Supplement

September 1992

Prepared for the Western District of Virginia

NOTES:

(Except for the update to 1992 data and this parenthetical, this document is identical to the one entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 SY91 Statistics Supplement, October 1991.")

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1992 (the twelve months ended June 30, 1992). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 (page 12) may show slightly different counts of case filings for recent years (e.g., SY88-90) than were shown in Table 1 of the original document. The variations arise from two sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing counts.

2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been replaced in this update with a chart entitled "Chart 6 Corrected," which is based on all Type II cases. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.

3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this update.

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, SY90-92

Western District of Virginia

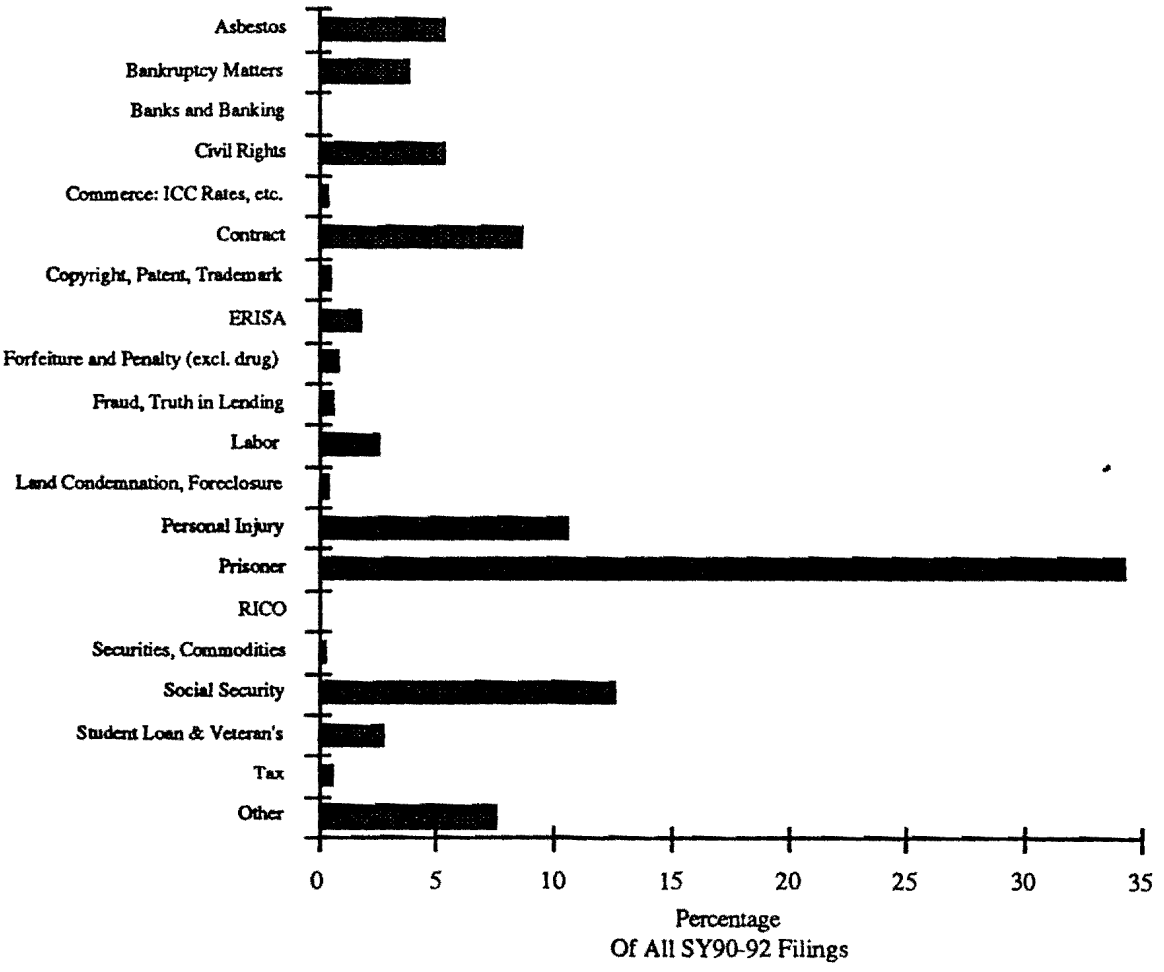


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY83-92
Western District of Virginia

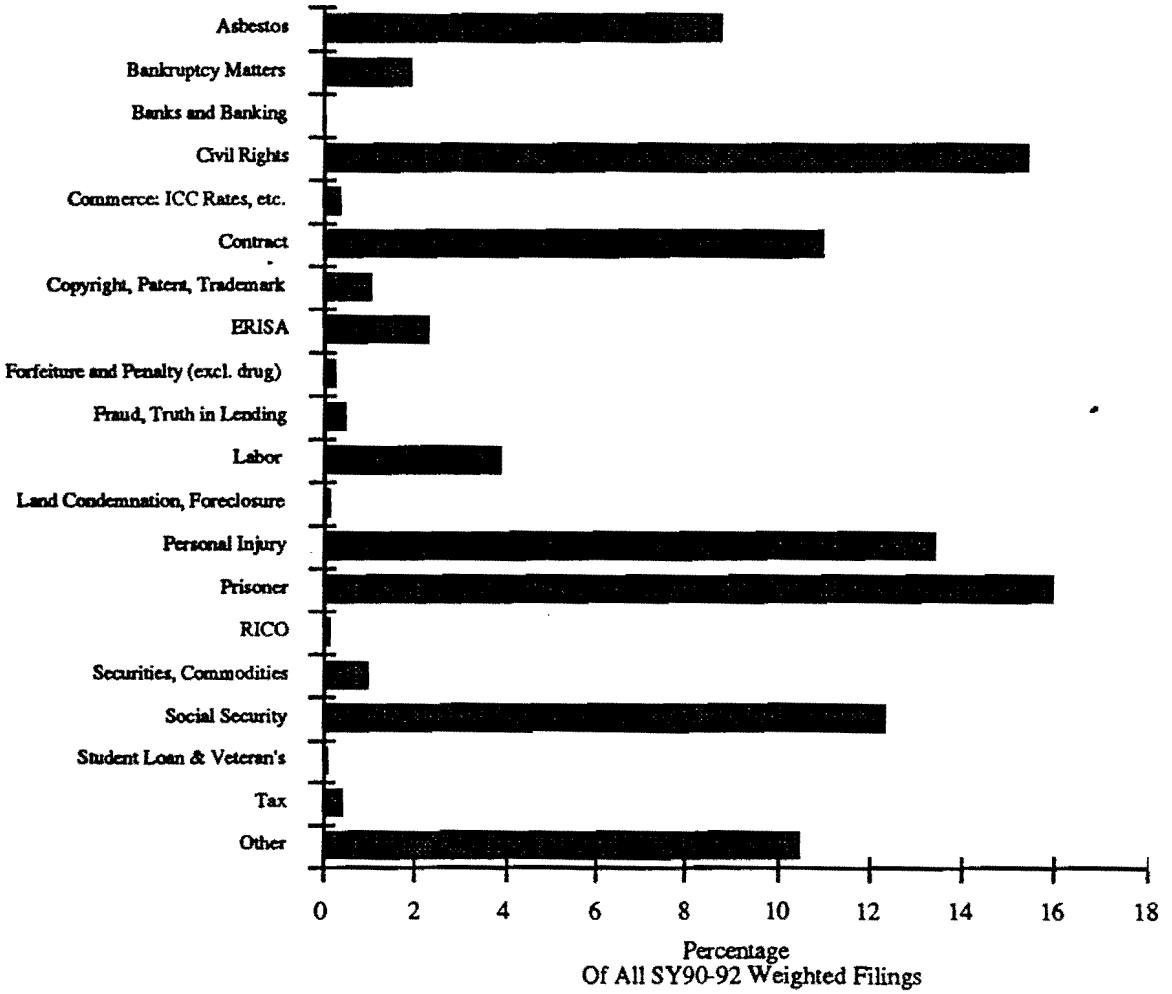
Table 1: Filings by Case Types, SY83-92

Western District of Virginia	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	1	9	18	38	37	30	51	169	77	13
Bankruptcy Matters	69	62	105	67	57	64	58	59	80	49
Banks and Banking	0	1	0	0	0	2	1	0	1	0
Civil Rights	168	151	133	151	112	116	99	72	108	80
Commerce: ICC Rates, etc.	0	3	1	1	3	1	4	2	5	15
Contract	205	192	217	216	217	241	223	159	125	136
Copyright, Patent, Trademark	5	14	13	18	9	16	15	4	11	12
ERISA	6	4	18	13	20	19	19	23	35	31
Forfeiture and Penalty (excl. drug)	167	146	78	25	13	17	31	22	12	7
Fraud, Truth in Lending	12	14	19	10	8	9	8	10	2	20
Labor	63	59	61	104	63	44	40	50	44	33
Land Condemnation, Foreclosure	3	1	18	22	4	7	3	9	3	8
Personal Injury	189	199	177	178	184	179	219	189	153	175
Prisoner	452	449	463	400	461	508	562	482	539	646
RICO	0	0	0	3	4	3	1	3	1	4
Securities, Commodities	7	11	4	5	11	8	4	4	13	2
Social Security	629	814	592	349	430	541	361	180	219	214
Student Loan and Veteran's	725	759	662	423	135	101	108	50	22	65
Tax	11	15	8	12	9	16	13	7	13	14
All Other	100	108	133	137	120	140	94	117	140	111
All Civil Cases	2812	3011	2720	2172	1897	2062	1914	1611	1603	1635

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.

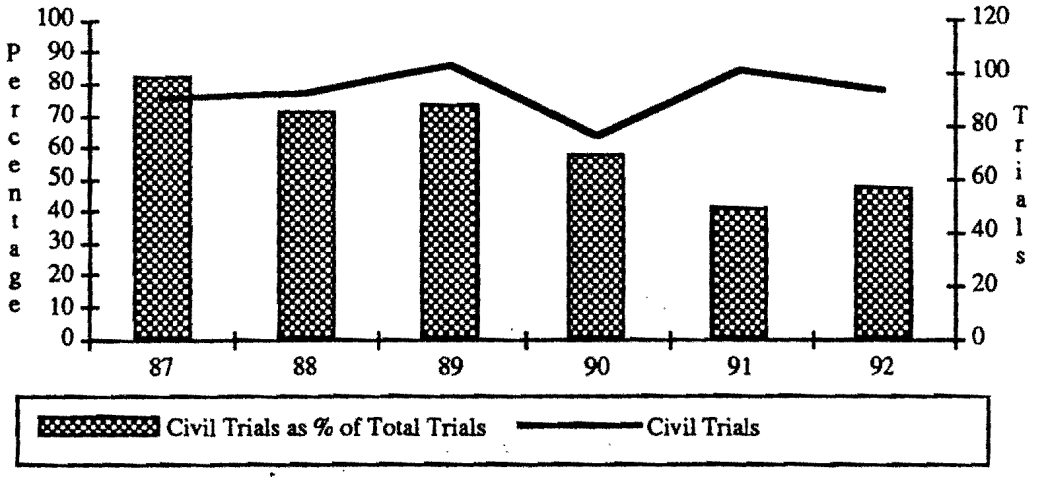
Chart 3: Distribution of Weighted Civil Case Filings, SY90-92

Western District of Virginia



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, SY87-92
Western 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 SY83-92
Western District of Virginia

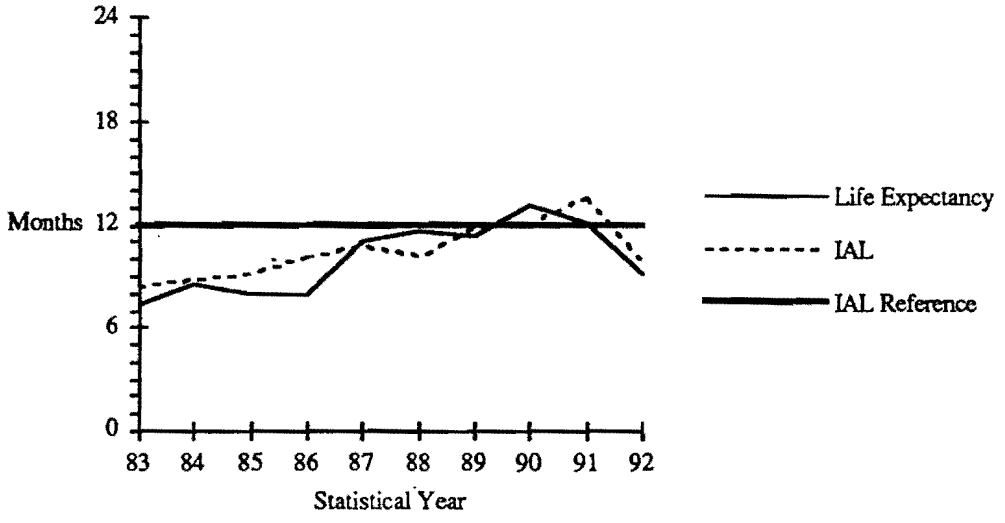
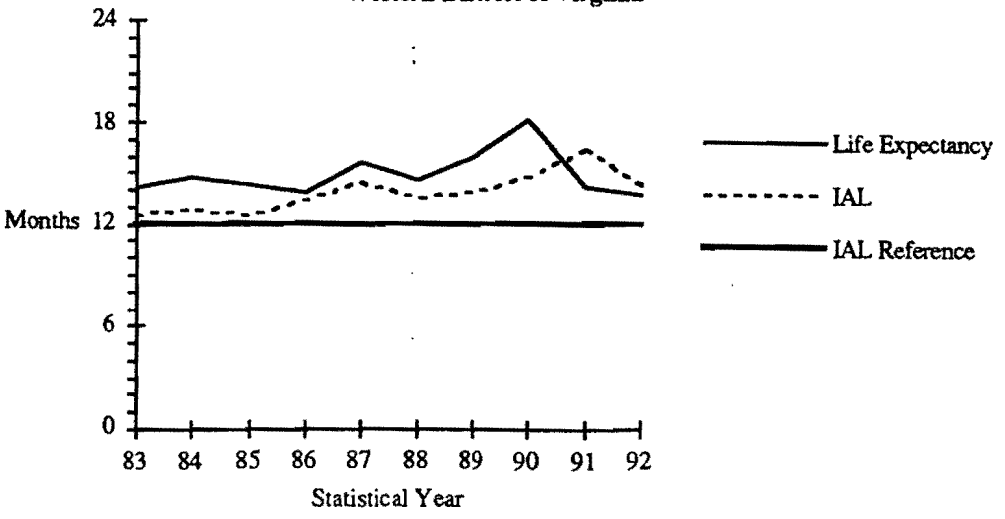


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92
Western District of Virginia



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 SY89-91, By Termination Category and Age

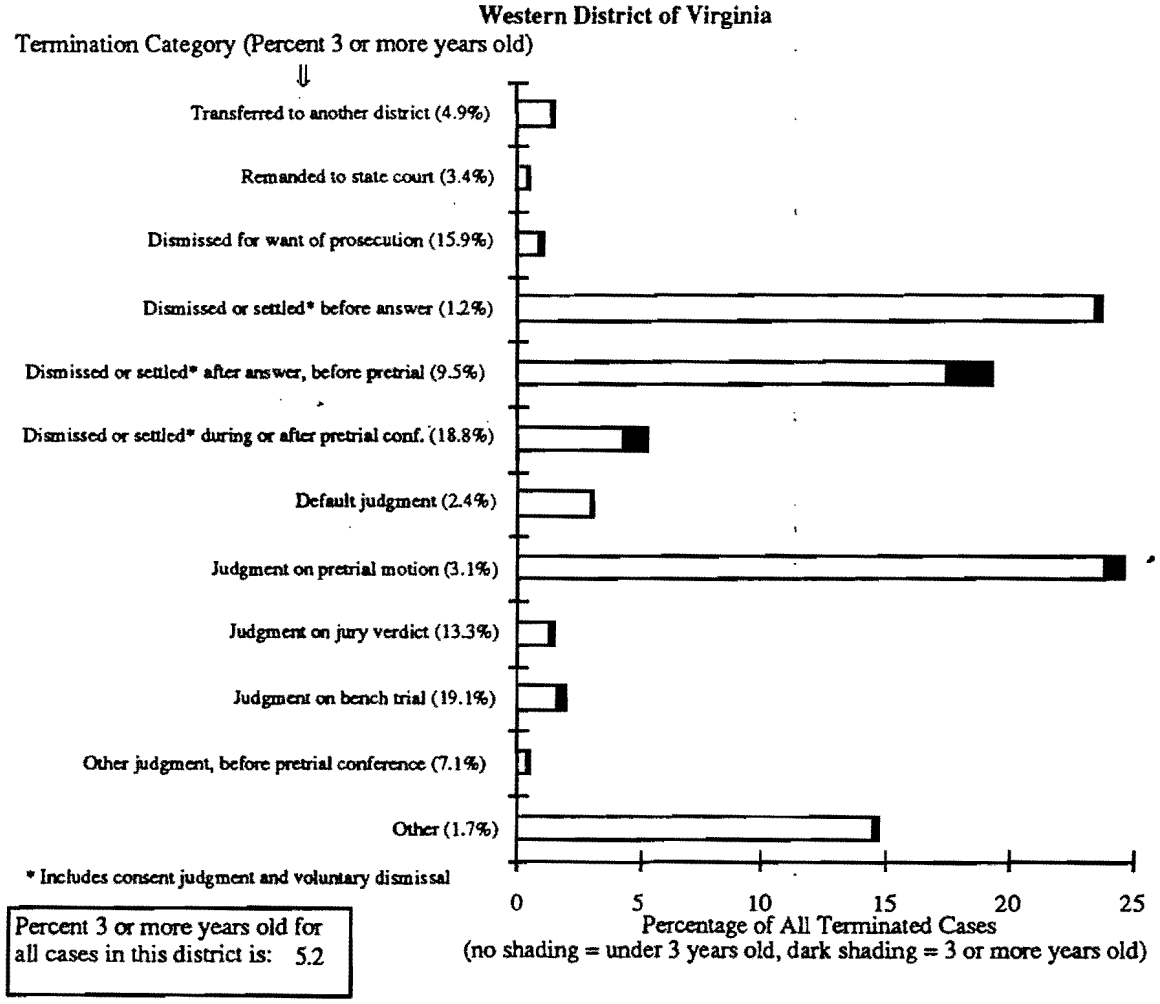
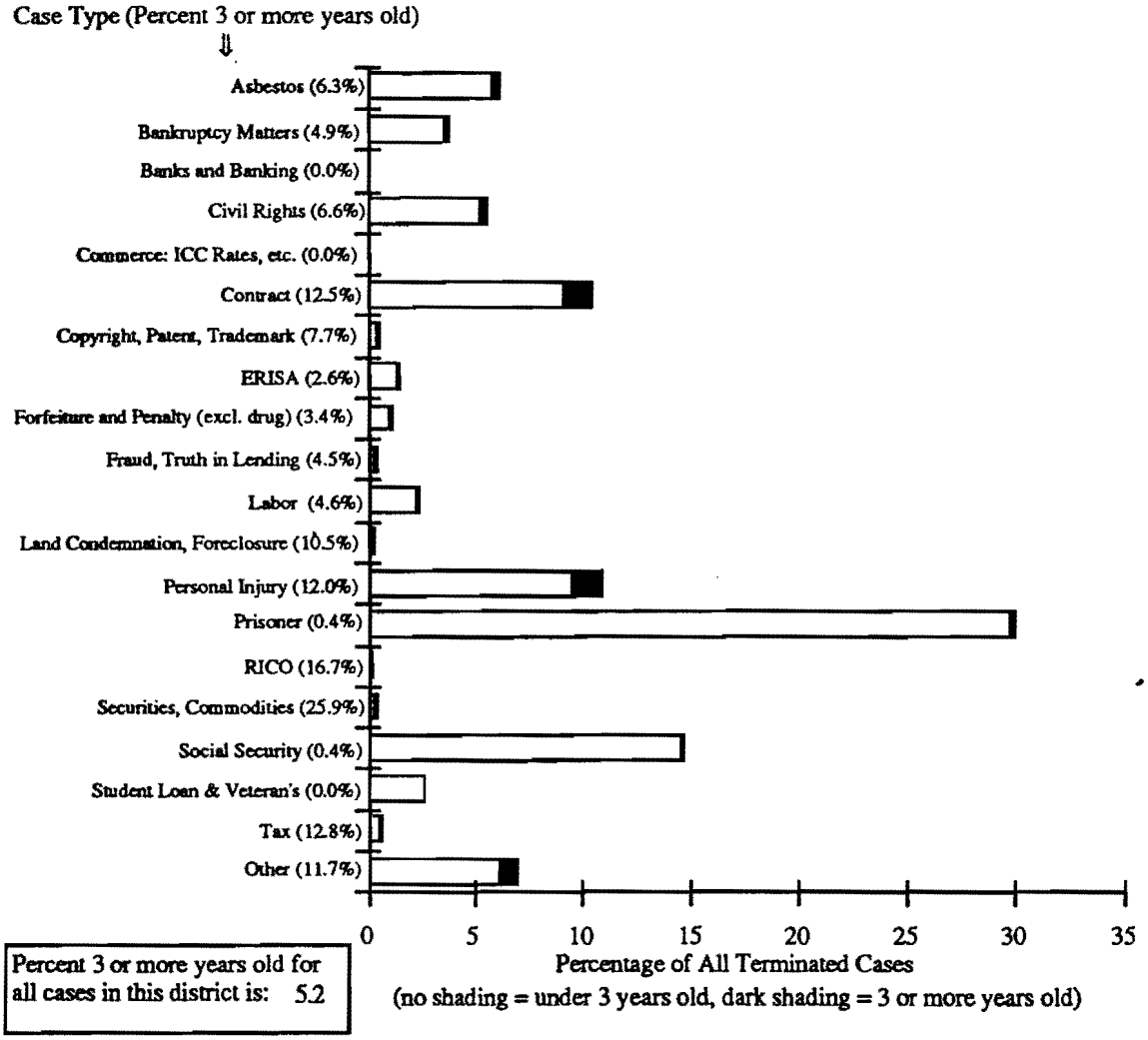


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY90-92, By Case Type and Age

Western District of Virginia



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

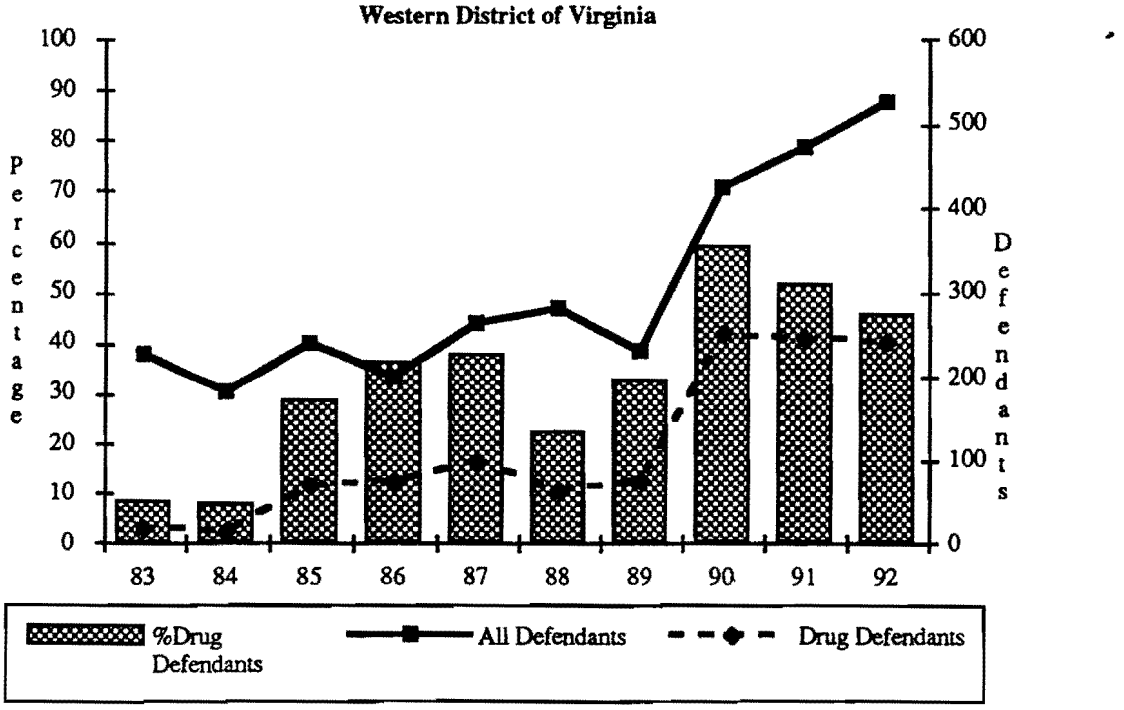
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

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).

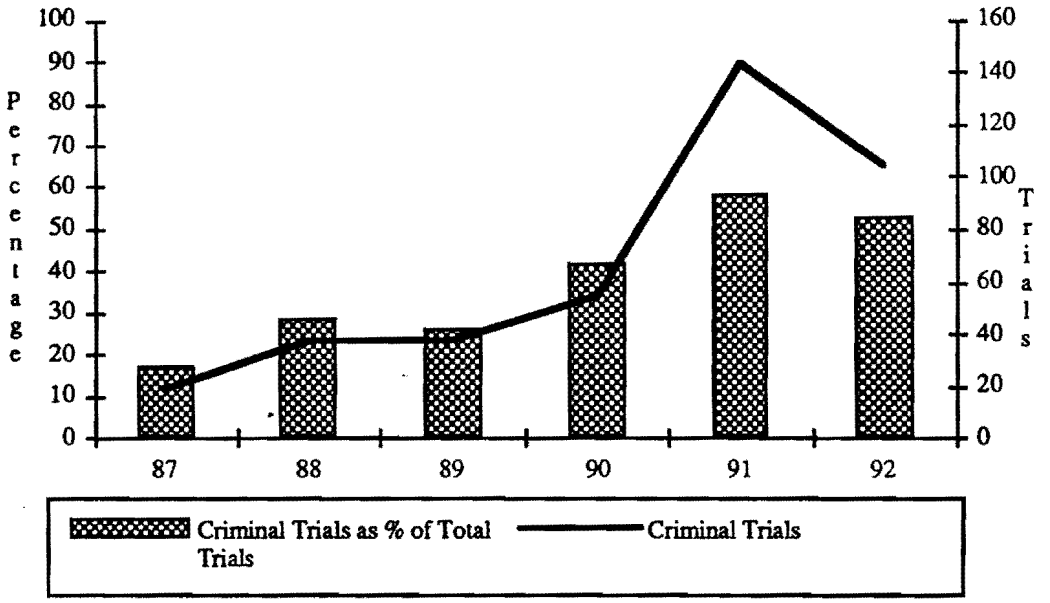
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY83-92



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, SY86-91

Western 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.

TABLE C. U.S. DISTRICT COURTS
CIVIL CASES COMMENCED, TERMINATED AND PENDING
DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1991 AND 1992

CIRCUIT AND DISTRICT	FILINGS			TERMINATIONS			PENDING		
	PERIOD ENDED JUNE 30, 1991	PERIOD ENDED JUNE 30, 1992	PERCENT CHANGE	PERIOD ENDED JUNE 30, 1991	PERIOD ENDED JUNE 30, 1992	PERCENT CHANGE	PERIOD ENDED JUNE 30, 1991*	PERIOD ENDED JUNE 30, 1992	PERCENT CHANGE
TOTAL...	207,690	226,895	9.2	211,713	239,633	13.2	237,040	224,302	-5.4
DC.....	3,099	3,351	8.1	3,051	3,140	2.9	3,737	3,948	5.6
1ST...	7,446	7,957	6.9	7,138	9,833	37.8	11,839	9,963	-15.9
ME.....	691	696	0.7	756	432	-42.9	566	830	46.6
MA.....	3,870	3,918	1.2	3,631	6,255	72.3	7,704	5,367	-30.3
NH.....	579	844	45.8	567	739	30.3	823	928	12.8
RI.....	648	724	11.7	624	744	19.2	776	756	-2.6
PR.....	1,658	1,775	7.1	1,560	1,663	6.6	1,970	2,082	5.7
2ND...	18,573	20,903	12.5	15,349	21,144	37.8	29,409	29,168	-0.8
CT.....	2,654	2,842	7.1	2,453	2,485	1.3	3,427	3,784	10.4
NY,N....	1,474	1,576	6.9	1,380	2,065	49.6	3,293	2,804	-14.9
NY,E....	4,739	4,672	-1.4	3,809	5,119	34.4	6,649	6,202	-6.7
NY,S....	7,925	9,918	25.1	6,020	9,242	53.5	13,115	13,791	5.2
NY,W....	1,423	1,442	1.3	1,351	1,877	38.9	2,495	2,060	-17.4
VT.....	358	453	26.5	336	356	6.0	430	527	22.6
3RD...	20,076	20,918	4.2	19,066	21,529	12.9	22,730	22,119	-2.7
DE.....	835	749	-10.3	658	875	33.0	1,056	930	-11.9
NJ.....	5,560	5,783	4.0	5,466	6,000	9.8	5,265	5,048	-4.1
PA,E....	8,254	8,193	-0.7	7,427	8,676	16.8	10,373	9,890	-4.7
PA,M....	1,879	1,967	4.7	1,961	2,041	4.1	1,658	1,584	-4.5
PA,W....	2,761	3,689	33.6	2,779	3,200	15.1	2,983	3,472	16.4
VI.....	787	537	-31.8	775	737	-4.9	1,395	1,195	-14.3
4TH...	16,773	18,110	8.0	16,417	18,463	12.5	16,032	15,679	-2.2
MD.....	3,450	3,544	2.7	3,291	3,533	7.4	3,479	3,490	0.3
NC,E....	1,321	1,509	14.2	1,231	1,520	23.5	1,066	1,055	-1.0
NC,M....	654	727	11.2	632	625	-1.1	614	716	16.6
NC,W....	726	887	22.2	718	769	7.1	829	947	14.2
SC.....	3,656	3,963	8.4	2,839	3,572	25.8	3,203	3,594	12.2
VA,E....	3,499	3,969	13.4	3,811	4,637	21.7	3,096	2,428	-21.6
VA,W....	1,582	1,638	3.5	1,677	1,970	17.5	1,705	1,373	-19.5
WV,N....	507	590	16.4	577	612	6.1	638	616	-3.5
WV,S....	1,378	1,283	-6.9	1,641	1,225	-25.4	1,402	1,460	4.1
5TH...	27,229	27,093	-0.5	29,845	33,716	13.0	32,923	26,300	-20.1
LA,E....	4,953	4,302	-13.2	5,358	4,557	-15.0	3,404	3,149	-7.5
LA,M....	1,296	1,141	-12.0	1,161	1,241	6.9	1,483	1,383	-6.8
LA,W....	2,691	2,774	3.1	3,115	2,912	-6.5	3,283	3,145	-4.2
MS,N....	986	1,156	17.2	1,043	1,004	-3.7	1,290	1,442	11.8
MS,S....	1,745	1,932	10.7	2,415	2,786	15.4	2,980	2,126	-28.7
TX,N....	4,585	4,892	6.7	5,214	4,886	-6.3	4,472	4,478	0.1
TX,E....	2,751	2,293	-16.7	2,427	6,238	157.0	6,247	2,302	-63.2
TX,S....	5,497	5,783	5.2	6,011	7,073	17.7	7,141	5,851	-18.1
TX,W....	2,725	2,820	3.5	3,101	3,019	-2.7	2,623	2,424	-7.6
6TH...	21,359	24,373	14.1	29,449	29,440	0.0	25,811	20,744	-19.6
KY,E....	2,005	1,885	-6.0	1,699	2,176	28.1	1,847	1,556	-15.8
KY,W....	1,481	1,456	-1.7	1,473	1,523	3.4	1,851	1,784	-3.6
MI,E....	5,103	7,187	40.8	5,101	6,464	26.7	4,405	5,128	16.4
MI,W....	1,641	1,663	1.3	1,811	1,767	-2.4	1,470	1,366	-7.1
OH,N....	4,422	4,597	4.0	12,195	9,817	-19.5	8,781	3,561	-59.5
OH,S....	2,387	2,793	17.0	2,737	2,828	3.3	2,741	2,706	-1.3
TN,E....	1,653	2,011	21.7	1,873	1,863	-0.5	1,692	1,840	8.7
TN,M....	1,387	1,468	5.8	1,269	1,415	11.5	1,264	1,317	4.2
TN,W....	1,280	1,313	2.6	1,291	1,587	22.9	1,760	1,486	-15.6

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	ALL DISTRICT COURTS		TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		265,612	244,790	251,166	257,259	269,982	265,234		
	Terminations		263,034	250,615	245,014	255,473	266,595	262,605		
	Pending		262,805	260,095	273,301	267,440	269,646	266,006		
	Percent Change In Total Filings Current Year	Over Last Year. . .		8.5						
		Over Earlier Years. . .			5.8	3.2	-1.6	.1		
	Number of Judgeships		649	649	575	575	575	575		
	Vacant Judgeship Months**		1326.5	1227.6	540.1	374.1	485.2	483.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	409	377	437	447	470	461		
		Civil	355	325	381	393	419	411		
		Criminal Felony	54	52	56	54	51	50		
	Pending Cases		405	401	475	465	469	463		
	Weighted Filings**		416	384	452	454	469	454		
	Terminations		405	386	426	444	464	457		
	Trials Completed		32	31	35	35	34	34		
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.9	5.8	5.4	5.2	4.5	4.1		
		Civil**	9	10	9	9	9	9		
	From Issue to Trial (Civil Only)		15	15	14	13	14	14		
OTHER	Number (and %) of Civil Cases Over 3 Years Old		17,249 7.7	21,252 9.4	25,672 10.6	23,137 9.7	21,918 8.9	20,043 8.2		
	Average Number of Felony Defendants Filed per Case		1.6	1.5	1.5	1.5	1.6	1.5		
	Jurors	Avg. Present for Jury Selection**	37.64	37.43	35.60	36.07	32.70	31.14		
		Percent Not Selected or Challenged**	34.1	34.3	33.9	35.4	33.7	32.1		

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

1992 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	230509	8958	16006	48423	7825	9976	16394	33428	38179	5830	24233	502	20755
Criminal*	34277	1883	1467	3782	576	1676	5118	6766	1022	6354	595	1925	3113

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

ee Page 167.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

VIRGINIA WESTERN

			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		2,036	1,878	1,713	2,065	2,209	2,125		
	Terminations		2,045	2,220	1,650	2,122	2,103	1,770		
	Pending		1,599	1,608	1,937	1,865	2,017	1,914		
	Percent Change In Total Filings Current Year	Over Last Year...		8.4					44	6
		Over Earlier Years...			18.9	-1.4	-7.8	-4.2	61	7
	Number of Judgeships		4	4	4	4	4	4		
	Vacant Judgeship Months**		.0	.0	12.0	7.2	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	509	470	428	516	552	531	12	1
		Civil	437	398	377	476	515	494	12	1
		Criminal Felony	72	72	51	40	37	37	26	6
	Pending Cases		400	402	484	466	504	479	41	3
	Weighted Filings**		380	392	375	399	432	400	55	6
	Terminations		511	555	413	531	526	443	12	2
	Trials Completed		42	63	42	36	33	26	17	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	7.0	7.4	8.2	8.1	5.8	5.1	71	6
		Civil**	10	15	12	10	10	8	56	8
	From Issue to Trial (Civil Only)		13	12	13	11	11	16	27	5
OTHER	Number (and %) of Civil Cases Over 3 Years Old		41 3.0	59 4.3	104 5.9	73 4.2	98 5.1	65 3.6	22	3
	Average Number of Felony Defendants Filed per Case		1.7	1.5	2.0	1.6	1.5	1.7		
	Jurors	Avg. Present for Jury Selection**	33.65	29.01	28.89	23.95	27.29	25.31	44	6
		Percent Not Selected or Challenged**	21.0	16.4	13.9	13.6	23.1	22.0	25	4

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

1992 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	1748	232	56	734	49	31	78	138	233	15	78	-	104
Criminal*	257	-	20	74	3	1	28	75	6	26	2	3	19

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

See Page 167.

SAMPLE FILING ORDER W/ATTACHMENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

REGGIE AMBROSE RICHARDSON JR. Plaintiff(s), #197857	)	Civil Action No. 93-
v.	)	By: Hon. Glen E. Conrad U. S. Magistrate Judge
DEPT. OF CORR., et als) Defendant(s).	)	O R D E R

Upon consideration of plaintiff's application to proceed in forma pauperis, his proof of poverty and the complaint annexed, it is **ORDERED** that:

(1) The complaint may be filed without contemporaneous payment of filing and service of process fees. The Court shall conduct additional investigations as to the status of the plaintiff's trust account and his rate of earnings, and any other relevant evidence, and upon consideration of this additional evidence, may require the plaintiff to pay all or any portion of the usual fees by, among other ways, requiring the plaintiff to execute a consent to permit a partial withholding of his prison earnings by the appropriate prison officials to be paid over to the Court in payment of such fees. See Evans v. Croom, 650 F.2d 521(4th Cir. 1981);

(2) The defendants file their responsive pleadings within twenty days of the receipt of this Order. The pleadings shall contain a supporting affidavit from the appropriate prison official setting forth the status of the plaintiff's trust account for six (6) months preceding the date of this Order as well as plaintiff's

rate of pay for any work performed as an inmate. The Court further directs that copies of the ledger sheets comprising the plaintiff's trust account for that period be submitted with the affidavits;

(3) To the extent that the Inmate Grievance Procedures set forth in the Department of Corrections Department Policy Manual is applicable to plaintiff, that the complaint contains grievance matters as defined in 10-2 of said policy, and that plaintiff has failed to utilize said procedure, the defendants may move for a continuance not to exceed ninety days so that the plaintiff may present his claims through the procedure. Upon the termination of the ninety days, the Court shall take whatever action deemed appropriate;

(4) The plaintiff is referred to Rule 5 of the Federal Rules of Civil Procedure which requires that every pleading after the complaint and every written motion, notice, or other similar paper be served on all parties, which service shall be made by mailing it to the parties' attorney;

(5) The plaintiff is hereby granted 20 days from the receipt of a copy of defendants' answer and other responsive pleadings within which to file opposing affidavits or other appropriate material, if he be so advised. Failure to so respond may result in the entry of judgment against the plaintiff on the basis of defendants' responsive pleading;

(6) Plaintiff shall notify the Court immediately upon his transfer or release and shall provide a new address if known. FAILURE TO NOTIFY THE COURT OF SUCH A CHANGE OF ADDRESS WILL RESULT IN DISMISSAL OF THIS CASE.

(7) Pursuant to the Standing Order of Court entered September 19, 1988, all nondispositive orders in this case will be referred to the Hon. Glen E. Conrad, United States Magistrate Judge. (See Appendix.)

A copy of the complaint herein shall be certified to: to the Office of the Attorney General, Commonwealth of Virginia, 101 N. Eighth Street, Richmond, Virginia 23219, with a certified copy of this Order and Appendix, and a copy of this Order shall also be certified to the plaintiff herein.

ENTER: This _____ day of February, 1993.

_____
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE: FILING AND PROCESSING PRISONER CIVIL RIGHTS CASES AND PETITIONS FOR WRITS OF HABEAS CORPUS

STANDING ORDER OF REFERENCE

In furtherance of a more centralized system for processing prisoner civil rights cases and petitions for writs of habeas corpus, it is now **O R D E R E D** that effective October 1, 1988, all such cases will be routinely referred to United States Magistrate Judge Glen E. Conrad for purposes of consideration and ruling as to any and all nondispositive , pretrial matter and motions as may arise. This order is entered under the authority of 28 USC § 636(b)(1)(A), and the provisions set forth thereunder shall govern the magistrate's conduct and scope of authority.

For purposes of the Order, the terms prisoner civil rights cases and petitions for writs of habeas corpus shall be deemed to include the following:

a. civil rights complaints filed pursuant to 42 USC §1983;
b. civil rights complaints filed pursuant to 28 USC §1331 (Bivens Actions);
c. habeas corpus petitions filed pursuant to 28 USC §2254 (state habeas);
d. habeas corpus petitions filed pursuant to 28 USC §2255 (federal habeas).

The clerk is directed to associate a copy of this Order with filings as outlined above to all parties in all cases.

ENTER: This 1st day of November, 1991.

FOR THE COURT:

/s/ James C. Turk
Chief US District Judge

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

NOTICE TO PARTIES OF RIGHT TO CONSENT TO JURISDICTION OF UNITED STATES MAGISTRATE JUDGE

ELIJAH ISRAEL,
Plaintiff(s)

Date: 2/25/93

vs

CIVIL ACTION NO. 93-0041-R

ED MURRAY, et als.,
Defendant(s)

Pursuant to 28 U.S.C. Sec. 636(c) (2) the parties to this action are hereby notified of the availability of a magistrate judge to exercise jurisdiction of any or all proceedings in this civil action, including the entry of dispositive orders, by a United States Magistrate Judge specifically designated by the Court to exercise such jurisdiction. Your decision should be communicated to the Clerk of this Court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.

You are further notified that if all parties consent to the exercise of jurisdiction in this case by a magistrate judge, appeal from the judgment of a magistrate judge will be to the United States Court of Appeals for the Fourth Circuit unless all of the parties to this action further consent to appeal to a district judge. If appeal to a district judge is elected by all of the parties, review of the decision of the district judge by the Fourth Circuit Court of Appeals shall be only upon petition for leave to appeal by a party stating specific objections to the judgment. Election of this method of appeal shall not limit any party's right to seek review by the Supreme Court of the United States.

JOYCE F. WITT, Clerk

By:
Deputy Clerk

If you desire to consent to this action please indicate by checking the blank below and returning to the Clerk's Office within 15 days from the date of this Notice.

_____ I Consent

_____
SIGNATURE

WESTERN DISTRICT OF VIRGINIA
PRO SE/PRISONER YEAR END STATISTICAL REPORT
1992

I. PRELIMINARY SCREENING

TOTAL PETITIONS/COMPLAINTS SCREENED	873
Total filed this year (incl. 124 sua sponte dismissals)	711
Total returned to inmate w/o filing	81
Total sent to other districts w/o filing	67
Other/Miscellaneous	14

II. MOTIONS/ORDERS - HEARINGS/TRIALS

TOTAL ORDERS ENTERED THIS YEAR	3088
Total standard filing orders entered	711
Total dispositive orders entered	606
Total non-dispositive orders entered	1771
TOTAL HEARINGS/TRIALS CONDUCTED THIS YEAR	57

III. APPEALS

PENDING AT BEGINNING OF YEAR	83
Total NOA filed this year	169
Total appeals disposed of this year	141
Affirmed	137
Vacated & Remanded	2
Other	2
TOTAL PENDING AT END OF YEAR	111

WD/VA PRISONER/PRO SE QUARTERLY REPORT - SEPT. - DEC. 1992

I. **PRELIMINARY SCREENING**

TOTAL PETITIONS/COMPLAINTS SCREENED	171
Total filed this quarter (incl. 25 sua sponte dismissals)	132
Total returned to inmate w/o filing	15
Total sent to other districts w/o filing	10
Other/Miscellaneous	14

II. **MOTIONS/ORDERS - HEARINGS/TRIALS**

TOTAL ORDERS ENTERED THIS QUARTER	655
Total standard filing orders entered	132
Total dispositive orders entered	132
Total non-dispositive orders entered	391
TOTAL HEARINGS/TRIALS CONDUCTED THIS QUARTER	11

III. **APPEALS**

PENDING AT BEGINNING OF QUARTER	127
Total NOA filed this quarter	39
Total appeals disposed of this quarter	55
Affirmed	51
Vacated & Remanded	2
Other	2
TOTAL PENDING AT END OF QUARTER	111

	2307	2308	2309	2310	2311	23AX	23BA	23BC	TOTAL
TOTAL PENDING AT BEG	104	0	16	106	89	24	15	4	358
TOTAL PENDING AT END	132	1	15	90	96	16	15	1	366
***	***	***	***	***	***	***	***	***	***
TOTAL APPEALS PENDING AT BEG	-	-	-	-	-	-	-	-	127
TOTAL APPEALS PENDING AT END	44	0	4	41	11	7	3	1	111
***	**	***	***	***	***	***	***	***	***
< 6 MOS	84	0	2	69	60	8	3	1	227
6-12 MOS	41	1	4	21	33	6	10	0	116
>12 MOS	7	0	9	0	3	2	2	0	23

QUARTERLY FILING STATISTICS COMPARISON

JAN - MAR 1990	90
JAN - MAR 1991	122
JAN - MAR 1992	214
APR - JUNE 1990	107
APR - JUNE 1991	149
APR - JUNE 1992	185
JULY - SEP 1990	98
JULY - SEP 1991	132
JULY - SEP 1992	180
OCT - DEC 1990	144
OCT - DEC 1991	122
OCT - DEC 1992	132
TOTAL FILINGS 1990	439
TOTAL FILINGS 1991	525
TOTAL FILINGS 1992	711

BIOGRAPHIES OF COMMITTEE MEMBERS

Susie Stuart Drake, Esquire, practices law in Lynchburg, Virginia. She received her B.A. from Hollins College and her Ll.B. from the University of Virginia School of Law.

D. Brock Green, Esquire, graduated from Virginia Polytechnic Institute and State University in 1972 and the University of Virginia School of Law in 1975. He is a member of the Virginia State Bar, the Bars of the Eastern and Western District of Virginia, the Fourth Circuit Court of Appeals, and the United States Supreme Court. He has practiced extensively in many state courts in Virginia, both federal courts, the Fourth Circuit Court of Appeals, the United States District Court for the Southern District of New York, and the Second Circuit Court of Appeals. After a judicial clerkship, he worked in various capacities within the Legal Services Corporation for approximately seven years. He has been in private practice with an emphasis in civil litigation since that time.

Honorable George W. Harris, Jr. is a Judge of the Virginia District Court, Twenty-third Judicial District. He was appointed by Governor Charles Robb in 1985 and subsequently elected by the General Assembly. His current term expires April 1997. Judge Harris graduated from Virginia Union University in 1963 and from North Carolina Central University School of Law in 1967. He is admitted to practice in Virginia, in the U.S. District Courts for the Eastern and Western Districts of Virginia and the U.S. Court of Appeals for the Fourth Circuit. He practiced law in Roanoke from 1967 to 1985. He is a member of the Old Dominion Bar, the Virginia State Bar, and the Virginia, National and American Bar Associations. He attended the Special Court Course of The National Judicial College and is a recipient of Diplomas of Judicial Skills and of Humanities and Judging from the American Academy of Judicial Education.

James P. Jones, Esquire, is a 1965 graduate of the University of Virginia School of Law. He is engaged in general litigation practice in a firm with offices in Abingdon and Bristol.

Frank Kilgore, Esquire, is a lifelong resident of the coalfield section of Virginia and has practiced law in the town of St. Paul since 1982, concentrating in the fields of torts, labor and environmental law and local government. He is active in economic development, natural resource protection and management issues and educational improvements in the state's coalfield counties. He is past president of the Wise County Bar Association and through articles and commentaries addresses the issue of uniform and effective ethical standards within the state bar.

Robert W. Mann, Esquire, is a Partner in the firm of Young,Haskins, Mann & Gregory in Martinsville, Virginia, where he is engaged in litigation, primarily in the personal injury field. He is a Fellow of the American College of Trial Lawyers and certified as a Civil Trial Advocate by the National Board of Trial Advocacy. He is a Member of the American Trial Lawyers Association and Past President of the Virginia Trial Lawyers Association. Mr. Mann graduated from the University of Richmond Law School.

James Boswell McCloskey, Esquire, a graduate of Drury College in Springfield, Missouri and the University of Missouri - Columbia (JD 1970), has been employed by Norfolk Southern Corporation and its predecessor Norfolk and Western Railway Company since July 1970. He served in the NW regional headquarters in St. Louis, Missouri until 1984, when he was transferred to Roanoke, Virginia and then to Norfolk in 1989. Mr. McCloskey is General Attorney, responsible for the investigation and litigation of personal injury claims involving NS's operating subsidiaries including Norfolk Southern Railway Company and North American Van Lines, Inc. He is a member of the Virginia State Bar and The Missouri Bar and serves on the U.C. council of the Civil Litigation Section, Virginia Bar Association.

Mr. Laurence E. Richardson, received his BCS from Benjamin Franklin University and his Ll.B. from Southeastern University. He served as Naval Aviator during World War II. From 1948 to 1969, he worked in the television and radio industry in Washington, D.C. at WTOP, WTOP-TV and the Post-Newsweek Stations. Since 1970, he has been Owner/President of Charlottesville Broadcasting Corporation (WINA/WQMZ/WKAV) Charlottesville, Virginia.

Steven D. Rosenfield, Esquire, received his B.S. in Engineering from the University of Miami (Fla.) in 1970. He was a law reader from 1973 to 1976 and was licensed to practice law in 1977. He was a Legal Services attorney from 1977 to 1979. Since 1979, he has been engaged in private practice in Charlottesville, Virginia with an emphasis on criminal defense and plantiffs' civil rights law.

Professor Joan M. Shaughnessy, is an Associate Professor of Law at Washington & Lee University School of Law in Lexington, Virginia, where she currently teaches Civil Procedure, Federal Courts, Trial Advocacy and Jurisprudence. Prior to joining the Washington & Lee faculty, she was an associate with Cleary, Gottlieb, Steen & Hamilton in New York City, where she engaged primarily in securities and commercial litigation. She received her B.A. from the State University of New York at Binghamton and her J.D. from the University of Chicago Law School. She is a member of the New York bar and an associate member of the Virginia Bar.

Ms. Kathy Graves Stockburger, is the Executive Director of theConflict Resolution Center, Inc., a community based, non-profit dispute resolution service located in Roanoke, Virginia. The Center offers mediation, arbitration and facilitation services and provides consultation and training in dispute resolution and conflict management. Ms. Stockburger received her B.A. from the University of Virginia and is a trained mediator. She attended T.C. Williams School of Law and is currently engaged in graduate studies in Training and Human Resource Development at Virginia Tech. She is a member of The American Society of Training and Development and an applicant for Associate Membership in the Academy of Family Mediators.

Phillip C. Stone, Esquire, is a partner in the firm of Wharton, Aldhizer & Weaver in Harrisonburg, Virginia. He is a Fellow of the American College of Trial Lawyers, the American Bar Association, and the Virginia Law Foundation. Mr. Stone is Chairman of the Civil Litigation Section of Virginia Bar Association and a member of the Executive Committee of the Virginia Bar Association. He is past president of the Virginia Association of Defense Attorneys, a member of the Fourth Circuit Judicial Conference and past chairman of the Virginia State Bar Disciplinary Board and of the Virginia State Bar Ethics Committee.

E. Montgomery (Monty) Tucker, Esquire, has served since 1990 as the United States Attorney for the Western District of Virginia. Prior to becoming U.S. Attorney, from 1973 to 1990, he served as an Assistant U.S. Attorney. From 1970 to 1973, he was a Litigation Associate with Hunton and Williams. He received his B.A. and J.D. degrees from Washington and Lee University.

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Attorney Survey
March 1992

The following survey is being conducted by the Advisory Group of the W.D.VA., a body appointed pursuant to the Judicial Reform Act of 1990 to study whether there are unnecessary costs and delays associated with civil litigation in this district and, if so, how they can be reduced. The Group is seeking your opinions as a practicing attorney in the W.D.VA. in order to assist it in making recommendations for improving the management of civil litigation. The survey should take no longer than fifteen minutes to complete. Please return it no later than April 3, 1992, in the enclosed postage prepaid envelope. We appreciate your taking the time to participate in this study. Confidentiality will be maintained.

Background Information

1. For how many years have your been practicing law? _____ years.

2. What percentage of your practice is devoted to civil litigation? _____%

3. During the past three years, what percentage of your civil litigation practice was in the U.S.D.Ct. for the W.D.VA.? _____%

4. What percentage of your W.D.VA. civil practice is in each of the following divisions?

(i)	Roanoke	____%	(v)	Danville	____%
(ii)	Abingdon	____%	(vi)	Harrisonburg	____%
(iii)	Big Stone Gap	____%	(vii)	Lynchburg	____%
(iv)	Charlottesville	____%			

5. During the past three years, what percentage of your civil litigation practice was in the U.S.D.Ct. for the E.D.VA.? _____%

6. How would you best describe your practice setting?

[ ] Private law firm
[ ] Federal government
[ ] State government
[ ] Local government
[ ] Corporate counsel
[ ] Independent non-profit organization
[ ] Other _____

7. How many practicing lawyers are there in your firm or organization?

[ ] 1-3 [ ] 3-10 [ ] Over 10

8. What percentage of your civil litigation practice consists of representing plaintiffs? _____%

9. What percentage of your practice consists of criminal litigation in the U.S.D.Ct. for the W.D.VA.? _____%

10. Please indicate the extent of your experience with the following dispute resolution devices.

	Substantial	Moderate	Slight	None
Arbitration	[ ]	[ ]	[ ]	[ ]
Mediation	[ ]	[ ]	[ ]	[ ]
Other _____	[ ]	[ ]	[ ]	[ ]
Other _____	[ ]	[ ]	[ ]	[ ]

11. If your answer was substantial or moderate, please give your opinion of the process.

	Highly Favorable	Somewhat Favorable	Neutral	Somewhat Opposed	Strongly Opposed
Arbitration	[ ]	[ ]	[ ]	[ ]	[ ]
Mediation	[ ]	[ ]	[ ]	[ ]	[ ]
Other _____	[ ]	[ ]	[ ]	[ ]	[ ]
Other _____	[ ]	[ ]	[ ]	[ ]	[ ]

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

_____

_____

_____

_____

The following questions pertain to your civil litigation experience in the Western District of Virginia during the past three years.

13. Have you encountered unreasonable delays? [ ] yes [ ] no

If yes, how much have each of the following contributed to these delays?

	No contribution	Slight contribution	Moderate contribution	Substantial contribution
Tactics of opposing counsel	[ ]	[ ]	[ ]	[ ]
Conduct of clients	[ ]	[ ]	[ ]	[ ]
Conduct of insurers	[ ]	[ ]	[ ]	[ ]
Personal or office practice inefficiencies	[ ]	[ ]	[ ]	[ ]
Judicial inefficiencies	[ ]	[ ]	[ ]	[ ]
Inefficiencies in the clerk's office	[ ]	[ ]	[ ]	[ ]
Unnecessary or inadequate procedural rules	[ ]	[ ]	[ ]	[ ]
Demands of criminal docket	[ ]	[ ]	[ ]	[ ]

14. Have you found such litigation to be unnecessarily costly for your clients? [ ] yes [ ] no

If yes, how much have each of the following contributed to the unnecessary costs?

	No contribution	Slight contribution	Moderate contribution	Substantial contribution
Conduct of counsel	[ ]	[ ]	[ ]	[ ]
Conduct of clients	[ ]	[ ]	[ ]	[ ]
Conduct of insurers	[ ]	[ ]	[ ]	[ ]
Personal or office practice inefficiencies	[ ]	[ ]	[ ]	[ ]
Judicial inefficiencies	[ ]	[ ]	[ ]	[ ]
Inefficiencies in the clerk's office	[ ]	[ ]	[ ]	[ ]
Unnecessary or inadequate procedural rules	[ ]	[ ]	[ ]	[ ]

15. To what extent have tactics of counsel contributed to unreasonable delays or unnecessary cost?

[ ] None [ ] Slight [ ] Moderate [ ] Substantial

*If you selected **moderate** or **substantial**, please indicate the extent to which of the following tactics of counsel contributed to your assessment*

	Substantial cause	Moderate cause	Slight cause	Not a cause
Unnecessary use of interrogatories	[ ]	[ ]	[ ]	[ ]
Too many interrogatories	[ ]	[ ]	[ ]	[ ]
Too many depositions	[ ]	[ ]	[ ]	[ ]
Too many deposition questions	[ ]	[ ]	[ ]	[ ]
Overbroad document requests	[ ]	[ ]	[ ]	[ ]
Overbroad responses to document production requests	[ ]	[ ]	[ ]	[ ]
Unavailability of witness or counsel	[ ]	[ ]	[ ]	[ ]
Raising frivolous objections	[ ]	[ ]	[ ]	[ ]
Failure to comply with time schedules	[ ]	[ ]	[ ]	[ ]
Failure to attempt in good faith to resolve issues without court intervention	[ ]	[ ]	[ ]	[ ]
Unnecessary motions	[ ]	[ ]	[ ]	[ ]
Unwarranted sanctions motions	[ ]	[ ]	[ ]	[ ]
Lack of professional courtesy	[ ]	[ ]	[ ]	[ ]
Unwillingness to engage in settlement negotiations	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]

16. In general, have you found case management by **magistrate judges** responsive to the needs of litigants as to both time and costs?

[ ] yes [ ] no [ ] no opinion

To what extent has ineffective case management by **magistrate judges** contributed to unnecessary delays or unreasonable costs?

[ ] None [ ] Slight [ ] Moderate [ ] Substantial [ ] No Opinion

*If you selected **moderate** or **substantial**, please select the appropriate response for the following court activities:*

Number of status conferences	Deadlines	Extension of deadlines
[ ] Far too many	[ ] Far too restrictive	[ ] Far too many
[ ] Somewhat too many	[ ] Somewhat too restrictive	[ ] Somewhat too many
[ ] Reasonable number	[ ] Reasonable	[ ] Reasonable number
[ ] Somewhat too few	[ ] Somewhat permissive	[ ] Somewhat too few
[ ] Far too few	[ ] Far too permissive	[ ] Far too few

Please indicate the extent to which each of the following possible instances of ineffective case management by **magistrate judges** contributed to your assessment:

	Substantial cause	Moderate cause	Slight cause	Not a cause
Delays in entering scheduling orders	[ ]	[ ]	[ ]	[ ]
Excessive time periods provided for in scheduling orders	[ ]	[ ]	[ ]	[ ]
Failure to resolve discovery disputes promptly	[ ]	[ ]	[ ]	[ ]
Failure to resolve other motions promptly	[ ]	[ ]	[ ]	[ ]
Scheduling too many motions on different cases concurrently	[ ]	[ ]	[ ]	[ ]
Failure to tailor discovery to needs of the case	[ ]	[ ]	[ ]	[ ]
Failure by magistrate judge to initiate settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate supervision of settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate judicial preparation for conferences or proceedings	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]

17. To what extent has ineffective case management by **judges** contributed to unnecessary delays or unreasonable costs?

[ ] None [ ] Slight [ ] Moderate [ ] Substantial

*If you selected **moderate** or **substantial**, please select the appropriate response for the following court activities:*

Number of status conferences	*Deadlines*	*Extension of deadlines*
[ ] Far too many	[ ] Far too restrictive	[ ] Far too many
[ ] Somewhat too many	[ ] Somewhat too restrictive	[ ] Somewhat too many
[ ] Reasonable number	[ ] Reasonable	[ ] Reasonable number
[ ] Somewhat too few	[ ] Somewhat permissive	[ ] Somewhat too few
[ ] Far too few	[ ] Far too permissive	[ ] Far too few

Please indicate the extent to which each of the following possible instances of ineffective case management by **judges** contributed to your assessment:

	Substantial cause	Moderate cause	Slight cause	Not a cause
Delays in entering scheduling orders	[ ]	[ ]	[ ]	[ ]
Excessive time periods provided for in scheduling orders	[ ]	[ ]	[ ]	[ ]
Failure to resolve discovery disputes promptly	[ ]	[ ]	[ ]	[ ]
Failure to resolve other motions promptly	[ ]	[ ]	[ ]	[ ]
Scheduling too many motions on different cases concurrently	[ ]	[ ]	[ ]	[ ]
Failure to tailor discovery to needs of the case	[ ]	[ ]	[ ]	[ ]
Failure by judge to initiate settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate supervision of settlement discussions	[ ]	[ ]	[ ]	[ ]

Inadequate judicial preparation for conferences or proceedings	[ ]	[ ]	[ ]	[ ]
Failure by judge to assign reasonably prompt trial dates	[ ]	[ ]	[ ]	[ ]
Failure of judge to meet assigned trial dates	[ ]	[ ]	[ ]	[ ]
Failure by judge to give sufficient advance notice of trial	[ ]	[ ]	[ ]	[ ]
Failure by judge to manage trial time efficiently	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]

18. Do you favor the adoption of written local rules in the W.D.VA.?

[ ] Yes [ ] No

If yes, what areas would you like to see addressed by local rules:

[ ] Continuity of procedures amoung divisions
[ ] Discovery
[ ] Pre-trial scheduling orders
[ ] Motions practice
[ ] Sanctions
[ ] Attorney's fees motions
[ ] Prisoner litigation
[ ] Social Security litigation
[ ] Other _____
[ ] Other _____

	Substantially Improved	Moderately Improved	Remained unchanged	Moderately worsened	Substantially worsened
19. During the past three years, the cost and time it takes to litigate civil actions has:	[ ]	[ ]	[ ]	[ ]	[ ]

20. During the past three years, how many months (on average) has it taken from the time your civil cases were ready for trial to the time that trial actually commenced? _____months (or NA, if not applicable)

	Substantial	Moderate	Slight	No Opinion
21. The impact of the court's criminal docket on cost and delay in civil actions is:	[ ]	[ ]	[ ]	[ ]

The following questions describe solutions which have been implemented in other districts or are under active consideration in this or other districts to address concerns regarding unnecessary delays and unreasonable costs in federal litigation. With respect to each proposed solution, please indicate your opinion as to its effectiveness in expediting civil litigation or reducing its cost.

22. <u>GENERAL</u>	Substantial Effect	Moderate Effect	Slight Effect	No Effect at all	No Opinion
Shorter time limits for completing the various stages of litigation	[ ]	[ ]	[ ]	[ ]	[ ]
Requiring counsel to attempt to resolve issues before court intervention	[ ]	[ ]	[ ]	[ ]	[ ]
Permitting pre-motion conferences with the court on any motion at the request of any party	[ ]	[ ]	[ ]	[ ]	[ ]
Requiring pre-motion conferences with the court for the following categories of motions:					
Dispositive motions (dismissal, summary judgment)	[ ]	[ ]	[ ]	[ ]	[ ]
Discovery motions	[ ]	[ ]	[ ]	[ ]	[ ]

Other motions	[ ]	[ ]	[ ]	[ ]	[ ]
Permitting the filing of procedural, non-dispositive motions (for example, motions to amend and motions to add parties) by letter rather than formal motion and brief	[ ]	[ ]	[ ]	[ ]	[ ]
Providing a 30 page limitation for memoranda of law, except for good cause shown	[ ]	[ ]	[ ]	[ ]	[ ]
Requiring Rule 11 sanctions motions to be separately filed and not appended to another motion	[ ]	[ ]	[ ]	[ ]	[ ]
Increased availability of telephone conferences with the court	[ ]	[ ]	[ ]	[ ]	[ ]

23. **ALTERNATIVE DISPUTE RESOLUTION**

	Substantial Effect	Moderate Effect	Slight Effect	No Effect	No Opinion
Requiring mandatory arbitration of all disputes in which the amount in controversy is less than:					
$100,000	[ ]	[ ]	[ ]	[ ]	[ ]
$200,000	[ ]	[ ]	[ ]	[ ]	[ ]
$1,000,000	[ ]	[ ]	[ ]	[ ]	[ ]
Providing court-annexed mediation upon mutual consent of parties for some or all issues in dispute	[ ]	[ ]	[ ]	[ ]	[ ]
Making available attorneys who are experts in the subject matters in dispute to evaluate claims and defenses and to assist parties in settlement negotiations ("early neutral evaluation")	[ ]	[ ]	[ ]	[ ]	[ ]
Requiring attendance of parties and/or their insurers at court settlement conferences	[ ]	[ ]	[ ]	[ ]	[ ]

24. **DISCOVERY**

Requiring automatic disclosure of the following information shortly after joinder of issue:					
The identity of witnesses reasonably likely to have information which bears significantly upon claims, defenses or damages	[ ]	[ ]	[ ]	[ ]	[ ]
General description of documents relied upon in preparing pleadings or contemplated to be used in support of the parties' allegations or calculation of damages	[ ]	[ ]	[ ]	[ ]	[ ]
Existence and contents of insurance agreements	[ ]	[ ]	[ ]	[ ]	[ ]
Requiring automatic disclosure prior to the final pre-trial conference of the qualifications, the opinions and the basis for those opinions of experts intended to be called as trial witnesses	[ ]	[ ]	[ ]	[ ]	[ ]
Conditioning grants by the court of broader discovery upon the shifting of costs in instances where the burden of responding to such requests appears to be out of proportion to the amounts or issues in dispute	[ ]	[ ]	[ ]	[ ]	[ ]
Defining the scope of permissible discovery by balancing the burden or expenses of the discovery against its likely benefit	[ ]	[ ]	[ ]	[ ]	[ ]
Assessing the costs of discovery motions on the losing party	[ ]	[ ]	[ ]	[ ]	[ ]
Providing less time for completion of discovery	[ ]	[ ]	[ ]	[ ]	[ ]
Requiring discovery relating to particular issues (e.g., venue, class certification) or a specified stage of the case					

(e.g., liability) to be completed before permitting discovery respecting other issues or another state (e.g., damages, experts)	[ ]	[ ]	[ ]	[ ]	[ ]
Limiting the number of interrogatories presumptively permitted	[ ]	[ ]	[ ]	[ ]	[ ]
Limiting the type of interrogatories (e.g., identification, contention) presumptively permitted at various stages of discovery	[ ]	[ ]	[ ]	[ ]	[ ]
Limiting the number of depositions presumptively permitted	[ ]	[ ]	[ ]	[ ]	[ ]
Limiting the length of depositions presumptively permitted	[ ]	[ ]	[ ]	[ ]	[ ]

If you have a <u>criminal</u> practice in the W.D.VA., please answer the following questions (25-27).

		Far More Likely	Somewhat More Likely	No Effect	Somewhat Less Likely	Far Less Likely	No Opinion
25.	The sentencing guidelines have had the following effect on likelihood that a criminal case will be tried:	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
26.	Congressional mandatory minimum sentences, in cases to which they apply, have had the following effect on likelihood that a criminal case will be tried:	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

		Substantial Increase	Moderate Increase	No Effect	Substantial Decrease	Moderate Decrease	No Opinion
27.	The sentencing guidelines have had the following effect on judicial time devoted to sentencing:	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

_____

_____

_____

_____

_____

_____

_____

_____

_____

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

WESTERN DISTRICT OF VIRGINIA
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

Results of Attorney Survey
March 1992

Number of Respondents

Total	**440**
Junior	142
Senior	298
Non-Litigators	99
Litigators	341
Plaintiff Lawyer	170
Defense Lawyer	203
Mixed	67

Explanatory Notes: Junior Lawyers are those who reported being in practice less than ten years. Senior Lawyers ten years or more. (Question 1).

Litigators are those who reported at least 40% of their practice devoted to civil litigation, Non-Litigators reported less than 40% civil litigation. (Question 2)

Plaintiff Lawyers reported at least 80% of their civil litigation practice representing plaintiffs, Defense Lawyers 20% or less, mixed 21% - 79%. (Question 8)

Many respondents did not answer one or more questions.

July 27, 1992

13. Have you encountered unreasonable delays?

	Yes	No
Total	70	350
Junior	23	119
Senior	47	231
Non-Litigators	11	68
Litigators	59	282
Plaintiff Lawyer	20	150
Defense Lawyer	39	164
Mixed	11	58

If yes, how much have each of the following contributed to these delays?

	Substantial Contribution	Moderate Contribution
A. Tactics of opposing counsel		
Total	17	21
Junior	5	7
Senior	12	14
Non-Litigators	13	20
Litigators	4	1
Plaintiff Lawyer	3	4
Defense Lawyer	9	13
Mixed	5	4
B. Conduct of clients		
Total	2	8
Junior	1	4
Senior	1	4
Non-Litigators	0	2
Litigators	2	6
Plaintiff Lawyer	0	2
Defense Lawyer	2	4
Mixed	0	2

C. Conduct of insurers

	Substantial Contribution	Moderate Contribution
Total	**2**	**1**
Junior	0	0
Senior	2	1
Non-Litigators	1	0
Litigators	1	1
Plaintiff Lawyer	0	1
Defense Lawyer	1	0
Mixed	1	0

D. Personal or office practice inefficiencies

Total	**0**	**4**
Junior	0	1
Senior	0	3
Non-Litigators	0	0
Litigators	0	4
Plaintiff Lawyer	0	1
Defense Lawyer	0	2
Mixed	0	1

E. Judicial inefficiencies

Total	**11**	**20**
Junior	3	8
Senior	8	12
Non-Litigators	1	2
Litigators	10	18
Plaintiff Lawyer	5	6
Defense Lawyer	4	12
Mixed	2	2

	Substantial Contribution	Moderate Contribution
F. Inefficiencies in the clerk's office		
Total	**3**	**6**
Junior	0	2
Senior	3	4
Non-Litigators	0	0
Litigators	3	6
Plaintiff Lawyer	0	2
Defense Lawyer	3	2
Mixed	0	2
G. Unnecessary or inadequate procedural rules		
Total	**8**	**9**
Junior	3	2
Senior	5	7
Non-Litigators	2	1
Litigators	6	8
Plaintiff Lawyer	1	1
Defense Lawyer	5	6
Mixed	2	2
H. Demands of criminal docket		
Total	**14**	**6**
Junior	4	3
Senior	10	3
Non-Litigators	1	1
Litigators	13	5
Plaintiff Lawyer	5	3
Defense Lawyer	6	3
Mixed	3	0

14. Have you found such litigation to be unnecessarily costly for your clients?

	Yes	No
Total	**94**	**346**
Junior	30	112
Senior	64	234
Non-Litigators	18	81
Litigators	76	265
Plaintiff Lawyer	29	141
Defense Lawyer	50	153
Mixed	15	52

If yes, how much have each of the following contributed to the unnecessary costs?

	Substantial Contribution	Moderate Contribution
A. Conduct of counsel		
Total	**27**	**44**
Junior	7	15
Senior	20	29
Non-Litigators	9	4
Litigators	18	40
Plaintiff Lawyer	9	13
Defense Lawyer	15	21
Mixed	3	10
B. Conduct of clients		
Total	**5**	**15**
Junior	3	8
Senior	2	7
Non-Litigators	1	1
Litigators	4	14
Plaintiff Lawyer	3	5
Defense Lawyer	2	6
Mixed	0	4

	Substantial Contribution	Moderate Contribution
C. Conduct of insurers		
Total	**7**	**11**
Junior	1	4
Senior	6	7
Non-Litigators	1	2
Litigators	6	9
Plaintiff Lawyer	5	7
Defense Lawyer	0	1
Mixed	2	3
D. Personal or office practice inefficiencies		
Total	**1**	**5**
Junior	0	1
Senior	1	4
Non-Litigators	1	1
Litigators	0	4
Plaintiff Lawyer	0	2
Defense Lawyer	0	1
Mixed	0	1
E. Judicial inefficiencies		
Total	**7**	**16**
Junior	2	7
Senior	5	9
Non-Litigators	2	3
Litigators	5	13
Plaintiff Lawyer	2	5
Defense Lawyer	4	9
Mixed	1	2

	Substantial Contribution	Moderate Contribution
F. Inefficiencies in the clerk's office		
Total	**1**	**4**
Junior	0	2
Senior	1	2
Non-Litigators	1	0
Litigators	0	4
Plaintiff Lawyer	0	1
Defense Lawyer	1	2
Mixed	0	1
G. Unnecessary or inadequate procedural rules		
Total	**14**	**15**
Junior	3	4
Senior	11	11
Non-Litigators	3	3
Litigators	11	12
Plaintiff Lawyer	3	5
Defense Lawyer	8	7
Mixed	3	3

15. To what extent have tactics of counsel contributed to unreasonable delays or unnecessary cost?

	Substantial Contribution	Moderate Contribution
Total	**110**	**327**
Junior	40	99
Senior	70	228
Non-Litigators	18	78
Litigators	92	249
Plaintiff Lawyer	36	134
Defense Lawyer	55	148
Mixed	19	45

If you selected moderate or substantial, please indicate the extent to which of the following tactics of counsel contributed to your assessment.

	Substantial Cause	Moderate Cause
A. Unnecessary use of interrogatories		
Total	**22**	**26**
Junior	4	8
Senior	18	18
Non-Litigators	5	17
Litigators	5	21
Plaintiff Lawyer	9	10
Defense Lawyer	5	14
Mixed	8	2
B. Too many interrogatories		
Total	**21**	**23**
Junior	6	6
Senior	15	17
Non-Litigators	5	6
Litigators	16	17
Plaintiff Lawyer	9	11
Defense Lawyer	4	10
Mixed	8	2
C. Too many depositions		
Total	**24**	**20**
Junior	5	6
Senior	19	14
Non-Litigators	2	3
Litigators	22	17
Plaintiff Lawyer	9	10
Defense Lawyer	6	7
Mixed	9	4

	Substantial Cause	Moderate Cause
D. Too many deposition questions		
Total	**21**	**25**
Junior	6	8
Senior	15	17
Non-Litigators	3	6
Litigators	18	19
Plaintiff Lawyer	7	8
Defense Lawyer	8	10
Mixed	6	7
E. Overbroad document requests		
Total	**31**	**29**
Junior	10	7
Senior	21	22
Non-Litigators	4	9
Litigators	27	20
Plaintiff Lawyer	7	10
Defense Lawyer	17	10
Mixed	7	9
F. Overbroad responses to document production requests		
Total	**14**	**15**
Junior	3	5
Senior	11	10
Non-Litigators	2	2
Litigators	12	13
Plaintiff Lawyer	5	5
Defense Lawyer	5	6
Mixed	4	4

	Substantial Cause	Moderate Cause
G. Unavailability of witness or counsel		
Total	**15**	**20**
Junior	9	7
Senior	6	13
Non-Litigators	0	15
Litigators	6	14
Plaintiff Lawyer	2	7
Defense Lawyer	9	8
Mixed	4	5
H. Raising frivolous objections		
Total	**20**	**26**
Junior	6	4
Senior	14	22
Non-Litigators	3	5
Litigators	17	21
Plaintiff Lawyer	7	13
Defense Lawyer	9	10
Mixed	4	3
I. Failure to comply with time schedules		
Total	**20**	**21**
Junior	10	7
Senior	10	14
Non-Litigators	2	4
Litigators	18	17
Plaintiff Lawyer	6	8
Defense Lawyer	9	8
Mixed	5	5

	Substantial Cause	Moderate Cause
J. Failure to attempt in good faith to resolve issues without court intervations		
Total	**34**	**27**
Junior	13	8
Senior	21	19
Non-Litigators	3	5
Litigators	31	22
Plaintiff Lawyer	13	11
Defense Lawyer	13	15
Mixed	4	5
K. Unnecessary motions		
Total	**15**	**30**
Junior	6	6
Senior	9	24
Non-Litigators	2	13
Litigators	4	26
Plaintiff Lawyer	5	11
Defense Lawyer	8	8
Mixed	2	11
L. Unwarranted sanctions motions		
Total	**3**	**15**
Junior	1	4
Senior	2	11
Non-Litigators	0	1
Litigators	3	14
Plaintiff Lawyer	1	3
Defense Lawyer	1	7
Mixed	1	5

	Substantial Cause	Moderate Cause
M. Lack of professional courtesy		
Total	**10**	**22**
Junior	3	7
Senior	7	15
Non-Litigators	1	4
Litigators	9	18
Plaintiff Lawyer	3	8
Defense Lawyer	4	11
Mixed	3	3
N. Unwillingness to engage in settlement negotiations		
Total	**16**	**23**
Junior	5	7
Senior	11	16
Non-Litigators	1	6
Litigators	15	17
Plaintiff Lawyer	12	10
Defense Lawyer	2	6
Mixed	2	7
O. Other		
Total	**8**	**2**
Junior	4	0
Senior	4	2
Non-Litigators	1	0
Litigators	7	2
Plaintiff Lawyer	1	0
Defense Lawyer	5	2
Mixed	2	0

16. In general, have you found case management by magistrate judges responsive to the needs of litigants as to both time and costs?

	Yes	No	No Opinion
Total	230	13	197
Junior	79	5	58
Senior	151	8	139
Non-Litigators	43	2	54
Litigators	187	11	143
Plaintiff Lawyer	94	4	72
Defense Lawyer	113	7	83
Mixed	23	2	42

B. To what extent has ineffective case management by magistrate judges contributed to unnecessary delays or unreasonable costs?

	Substantial Contribution	Moderate Contribution
Total	2	7
Junior	1	2
Senior	1	5
Non-Litigators	0	2
Litigators	2	5
Plaintiff Lawyer	0	1
Defense Lawyer	2	6
Mixed	0	0

C. If you selected moderate or substantial, please select the appropriate response for the following court activities:

Number of status conferences

	Far Too Many	Somewhat Too Many	Reasonable Number	Somewhat Too Few	Far Too Few
Total	0	0	6	0	2
Junior	0	0	2	0	1
Senior	0	0	4	0	1
Non-Litigators	0	0	2	0	0
Litigators	0	0	4	0	2
Plaintiff Lawyer	0	0	1	0	0
Defense Lawyer	0	0	5	0	2
Mixed	0	0	0	0	0

D. Deadlines

	Far Too Restv.	Somewhat Too Restv.	Rsnble.	Somewhat Prmsble.	Far Too Prmsbl.
Total	1	1	2	1	3
Junior	0	1	1	1	0
Senior	1	0	1	0	3
Non-Litgtrs.	0	0			
Litgtrs.	1	1	1	1	3
Pltf. Lawyer	0	0	1	0	0
Def. Lawyer	1	1	1	1	3
Mixed	0	0	0	0	0

E. Extension of deadlines

	Far Too Many	Somewhat Too Many	Reasonable Number	Somewhat Too Few	Far Too Few
Total	0	2	5	0	0
Junior	0	1	2	0	0
Senior	0	1	3	0	0
Non-Litigators	0	0	1	0	0
Litigators	0	2	4	0	0
Plaintiff Lawyer	0	0	1	0	0
Defense Lawyer	0	2	4	0	0
Mixed	0	0	0	0	0

F. Please indicate the extent to which each of the following possible instances of ineffective case management by magistrate judges contributed to your assessment:

	Substantial Cause	Moderate Cause
Total	5	4
Junior	0	3
Senior	5	1
Non-Litigators	5	2
Litigators	0	2
Plaintiff Lawyer	0	1
Defense Lawyer	0	3
Mixed	0	0

G. Excessive time periods provided for in scheduling orders

Total	0	1
Junior	0	0
Senior	0	1
Non-Litigators	0	1
Litigators	0	0
Plaintiff Lawyer	0	0
Defense Lawyer	0	1
Mixed	0	0

	Substantial Cause	Moderate Cause
H. Failure to resolve discovery disputes promptly		
Total	**2**	**0**
Junior	1	0
Senior	1	0
Non-Litigators	0	0
Litigators	2	0
Plaintiff Lawyer	0	0
Defense Lawyer	2	0
Mixed	0	0
I. Failure to resolve other motions promptly		
Total	**4**	**1**
Junior	3	1
Senior	1	0
Non-Litigators	0	3
Litigators	1	0
Plaintiff Lawyer	0	1
Defense Lawyer	3	0
Mixed	0	0
J. Scheduling too many motions on different cases concurrently		
Total	**0**	**0**
Junior	0	0
Senior	0	0
Non-Litigators	0	0
Litigators	0	0
Plaintiff Lawyer	0	0
Defense Lawyer	0	0
Mixed	0	0

	Substantial Cause	Moderate Cause
K. Failure to tailor discovery to needs of the case		
Total	**0**	**3**
Junior	0	0
Senior	0	3
Non-Litigators	0	1
Litigators	0	2
Plaintiff Lawyer	0	0
Defense Lawyer	0	3
Mixed	0	0
L. Failure by magistrate judge to initiate settlement discussions		
Total	**0**	**1**
Junior	0	0
Senior	0	1
Non-Litigators	0	0
Litigators	0	1
Plaintiff Lawyer	0	0
Defense Lawyer	0	1
Mixed	0	0
M. Inadequate supervision of settlement discussions		
Total	**0**	**1**
Junior	0	0
Senior	0	1
Non-Litigators	0	0
Litigators	0	1
Plaintiff Lawyer	0	0
Defense Lawyer	0	0
Mixed	0	0

	Substantial Cause	Moderate Cause
N. Inadequate judicial preparation for conferences or proceedings		
Total	**0**	**1**
Junior	0	1
Senior	0	0
Non-Litigators	0	1
Litigators	0	0
Plaintiff Lawyer	0	0
Defense Lawyer	0	0
Mixed	0	0
O. Other		
Total	**0**	**1**
Junior	0	0
Senior	0	1
Non-Litigators	0	0
Litigators	0	1
Plaintiff Lawyer	0	0
Defense Lawyer	0	0
Mixed	0	0

17. To what extent has ineffective case management by judges contributed to unnecessary delays or unreasonable costs?

Total	**11**	**44**
Junior	4	17
Senior	7	27
Non-Litigators	2	9
Litigators	2	42
Plaintiff Lawyer	4	12
Defense Lawyer	6	28
Mixed	2	4

B. If you selected moderate or substantial, please select the appropriate response for the following court activities:

Number of status conferences

	Far Too Many	Somewhat Too Many	Reasonable Number	Somewhat Too Few	Far Too Few
Total	**0**	**1**	**20**	**17**	**11**
Junior	0	0	11	7	3
Senior	0	1	9	10	8
Non-Litigators	0	0	1	1	3
Litigators	0	1	19	16	8
Plaintiff Lawyer	0	0	4	7	3
Defense Lawyer	0	1	14	8	7
Mixed	0	0	2	2	1

C. Deadlines

	Far Too Restv.	Somewhat Too Restv.	Renble.	Somewhat Prmsble.	Far Too Prmsble.
Total	**4**	**5**	**9**	**17**	**18**
Junior	1	3	5	7	6
Senior	3	2	4	10	12
Non-Litgtrs.	0	0	1	1	3
Litgtrs.	4	5	8	16	15
Pltf. Lawyer	2	1	3	5	4
Def. Lawyer	2	4	4	10	12
Mixed	0	0	2	2	2

D. Extension of deadlines

	Far Too Many	Somewhat Too Many	Reasonable Number	Somewhat Too Few	Far Too Few
Total	**6**	**19**	**14**	**6**	**2**
Junior	3	8	6	2	0
Senior	3	11	8	4	2
Non-Litigators	0	3	1	1	0
Litigators	6	16	13	5	2
Plaintiff Lawyer	2	5	3	1	2
Defense Lawyer	3	12	9	5	0
Mixed	1	2	2	0	0

E. Please indicate the extent to which each of the following possible instances of ineffective case management by judges contributed to your assessment:

Delays in entering scheduling orders

	Substantial Cause	Moderate Cause
Total	**9**	**10**
Junior	4	3
Senior	5	7
Non-Litigators	1	3
Litigators	8	7
Plaintiff Lawyer	2	2
Defense Lawyer	7	5
Mixed	0	3

F. Excessive time periods provided for in scheduling orders

Total	**4**	**12**
Junior	3	4
Senior	1	8
Non-Litigators	1	3
Litigators	3	9
Plaintiff Lawyer	1	4
Defense Lawyer	3	5
Mixed	0	3

	Substantial Cause	Moderate Cause
G. Failure to resolve discovery disputes promptly		
Total	**4**	**12**
Junior	3	2
Senior	1	10
Non-Litigators	0	2
Litigators	4	10
Plaintiff Lawyer	0	3
Defense Lawyer	3	7
Mixed	1	2
H. Failure to resolve other motions promptly		
Total	**20**	**14**
Junior	10	1
Senior	10	13
Non-Litigators	1	2
Litigators	19	12
Plaintiff Lawyer	2	6
Defense Lawyer	14	6
Mixed	4	2
I. Scheduling too many motions on different cases concurrently		
Total	**4**	**7**
Junior	1	1
Senior	3	6
Non-Litigators	0	1
Litigators	4	6
Plaintiff Lawyer	1	3
Defense Lawyer	3	3
Mixed	0	1

	Substantial Cause	Moderate Cause
J. Failure to tailor discovery to needs of the case		
Total	**3**	**7**
Junior	1	1
Senior	2	6
Non-Litigators	0	1
Litigators	3	6
Plaintiff Lawyer	0	2
Defense Lawyer	3	3
Mixed	0	2
K. Failure by judge to initiate settlement discussions		
Total	**6**	**13**
Junior	1	2
Senior	5	11
Non-Litigators	0	4
Litigators	6	9
Plaintiff Lawyer	4	6
Defense Lawyer	2	5
Mixed	0	2
L. Inadequate supervision of settlement discussions		
Total	**2**	**10**
Junior	0	1
Senior	2	9
Non-Litigators	0	2
Litigators	2	8
Plaintiff Lawyer	2	5
Defense Lawyer	0	4
Mixed	0	1

	Substantial Cause	Moderate Cause
M. Inadequate judicial preparation for conferences of proceedings		
Total	**5**	**7**
Junior	4	1
Senior	1	6
Non-Litigators	1	1
Litigators	4	6
Plaintiff Lawyer	1	1
Defense Lawyer	3	4
Mixed	1	2
N. Failure to judge to assign reasonably prompt trial dates		
Total	**12**	**12**
Junior	2	4
Senior	10	8
Non-Litigators	3	1
Litigators	9	11
Plaintiff Lawyer	4	6
Defense Lawyer	8	3
Mixed	0	3
O. Failure to judge to meet assigned trial dates		
Total	**5**	**8**
Junior	3	0
Senior	2	8
Non-Litigators	1	1
Litigators	4	7
Plaintiff Lawyer	1	3
Defense Lawyer	3	5
Mixed	1	0

	Substantial Cause	Moderate Cause
P. Failure by judge to give sufficient advance notice of trial		
Total	**1**	**3**
Junior	0	1
Senior	1	2
Non-Litigators	0	1
Litigators	1	2
Plaintiff Lawyer	0	2
Defense Lawyer	1	1
Mixed	0	0
Q. Failure by judge to manage trial time efficiently		
Total	**4**	**11**
Junior	3	1
Senior	1	10
Non-Litigators	0	3
Litigators	4	8
Plaintiff Lawyer	1	5
Defense Lawyer	3	5
Mixed	0	1
R. Other		
Total	9	1
Junior	2	0
Senior	7	1
Non-Litigators	2	0
Litigators	7	1
Plaintiff Lawyer	3	0
Defense Lawyer	5	1
Mixed	1	0

18. Do you favor the adoption of written local rules in the W.D. Va?

Total	169	271
Junior	62	80
Senior	107	191
Non-Litigators	39	60
Litigators	130	211
Plaintiff Lawyer	56	114
Defense Lawyer	84	119
Mixed	29	38

The following questions describe solutions which have been implemented in other districts or are under active consideration in this or other districts to address concerns regarding unnecessary delays and unreasonable costs in federal litigation. With respect to each proposed solution, please indicate your opinion as to its effectiveness in expediting civil litigation or reducing its cost.

22. GENERAL Shorter time limits for completing the various stages of litigation.

	Substantial Effect	Moderate Effect
Total	102	81
Junior	33	24
Senior	69	57
Non-Litigators	21	14
Litigators	81	67
Plaintiff Lawyer	27	29
Defense Lawyer	62	34
Mixed	13	18

	Substantial Effect	Moderate Effect
B. Requiring counsel to attempt to resolve issues before court intervention		
Total	**89**	**115**
Junior	28	41
Senior	61	74
Non-Litigators	18	29
Litigators	71	86
Plaintiff Lawyer	38	45
Defense Lawyer	38	52
Mixed	13	18
C. Permitting pre-motion conferences with the court on any motion at the request of any party.		
Total	**53**	**109**
Junior	10	41
Senior	43	68
Non-Litigator	14	24
Litigator	39	85
Plaintiff Lawyer	28	46
Defense Lawyer	15	44
Mixed	10	19
D. Requiring pre-motion conferences with the court for the following categories of motions:		
Dispositive motions (dismissal, summary judgment)		
Total	**69**	**126**
Junior	17	51
Senior	52	75
Non-Litigators	15	30
Litigators	54	96
Plaintiff Lawyer	31	56
Defense Lawyer	27	48
Mixed	11	22

	Substantial Effect	Moderate Effect
E. Discovery motions		
Total	**42**	**117**
Junior	8	42
Senior	34	75
Non-Litigators	12	27
Litigators	30	90
Plaintiff Lawyer	22	56
Defense Lawyer	11	42
Mixed	9	19
F. Other motions		
Total	**17**	**45**
Junior	5	15
Senior	12	30
Non-Litigators	5	8
Litigators	12	37
Plaintiff Lawyer	9	23
Defense Lawyer	6	15
Mixed	2	7
G. Permitting the filing of procedural, non-dispositive motions (for example, motions to amend and motions to add parties) by letter rather than formal motion and brief		
Total	**81**	**97**
Junior	35	26
Senior	46	71
Non-Litigators	20	19
Litigators	61	78
Plaintiff Lawyer	44	42
Defense Lawyer	22	38
Mixed	15	17

	Substantial Effect	Moderate Effect
H. Providing a 30 page limitation for memoranda of law, except for good cause shown		
Total	**82**	**107**
Junior	26	34
Senior	56	73
Non-Litigators	22	21
Litigators	60	86
Plaintiff Lawyer	42	46
Defense Lawyer	29	44
Mixed	11	17
I. Requiring Rule 11 sanctions motions to be separately filed and not appended to another motion		
Total	**55**	**75**
Junior	14	20
Senior	41	55
Non-Litigators	16	14
Litigators	39	61
Plaintiff Lawyer	28	32
Defense Lawyer	17	30
Mixed	10	13
J. Increased availability of telephone conferences with the court		
Total	**135**	**147**
Junior	39	55
Senior	96	92
Non-Litigators	22	38
Litigators	113	109
Plaintiff Lawyer	52	55
Defense Lawyer	58	72
Mixed	25	20

23. ALTERNATIVE DISPUTE RESOLUTION

Requiring mandatory arbitration of all disputes in which the amount in controversy is less than: $100,000

	Substantial Effect	Moderate Effect
Total	**61**	**54**
Junior	22	18
Senior	39	36
Non-Litigators	14	11
Litigators	97	43
Plaintiff Lawyer	28	22
Defense Lawyer	27	26
Mixed	6	6

B. $200,000

Total	**35**	**61**
Junior	14	17
Senior	21	44
Non-Litigators	10	16
Litigators	25	45
Plaintiff Lawyer	18	24
Defense Lawyer	16	29
Mixed	1	8

C. $1,000,000

Total	**44**	**35**
Junior	17	10
Senior	27	25
Non-Litigators	13	9
Litigators	31	26
Plaintiff Lawyer	22	14
Defense Lawyer	22	17
Mixed	0	2

	Substantial Effect	Moderate Effect
D. Providing court-annexed mediation upon mutual consent of parties for some or all issues in dispute		
Total	**58**	**87**
Junior	16	29
Senior	42	58
Non-Litigators	16	16
Litigators	42	71
Plaintiff Lawyer	25	37
Defense Lawyer	22	39
Mixed	11	11
E. Making available attorneys who are experts in the subject matters in settlement negotiations ("early neutral evaluation")		
Total	**56**	**90**
Junior	16	30
Senior	40	60
Non-Litigators	14	23
Litigators	42	67
Plaintiff Lawyer	27	34
Defense Lawyer	20	45
Mixed	9	11
F. Requiring attendance of parties and/or their insurers at court settlement conferences		
Total	**77**	**105**
Junior	25	35
Senior	52	70
Non-Litigators	18	19
Litigators	59	86
Plaintiff Lawyer	35	40
Defense Lawyer	28	53
Mixed	14	12

	Substantial Effect	Moderate Effect
24. DISCOVERY		
A. Requiring automatic disclosure of the following information shortly after joinder of issue: The identity of witnesses reasonably likely to have information which bears significantly upon claims, defenses or damages		
Total	**138**	**119**
Junior	40	44
Senior	98	75
Non-Litigators	25	31
Litigators	113	88
Plaintiff Lawyer	62	40
Defense Lawyer	44	63
Mixed	32	16
B. General description of documents relied upon in preparing pleadings or contemplated to be used in support of the parties' allegations or calculation of damages		
Total	**109**	**123**
Junior	27	51
Senior	82	72
Non-Litigators	22	31
Litigators	87	92
Plaintiff Lawyer	44	48
Defense Lawyer	37	57
Mixed	28	18
C. Existence and contents of insurance agreements		
Total	**114**	**88**
Junior	36	29
Senior	78	59
Non-Litigators	26	20
Litigators	88	68
Plaintiff Lawyer	67	32
Defense Lawyer	24	39
Mixed	23	17

	Substantial Effect	Moderate Effect
D. Requiring automatic disclosure prior to the final pre-trial conference of the qualifications, the opinions and the basis for those opinions of experts intended to be called as trial witnesses		
Total	**144**	**106**
Junior	43	40
Senior	101	66
Non-Litigators	27	25
Litigators	117	81
Plaintiff Lawyer	56	37
Defense Lawyer	62	52
Mixed	26	17
E. Conditioning grants by the court of broader discovery upon the shifting of costs in instances where the burden of responding to such requests appears to be out of proportion to the amounts or issues in dispute		
Total	**117**	**115**
Junior	31	40
Senior	86	75
Non-Litigators	24	27
Litigators	93	88
Plaintiff Lawyer	49	41
Defense Lawyer	56	52
Mixed	22	22
F. Defining the scope of permissible discovery by balancing the burden or expenses of the discovery against its likely benefit		
Total	**97**	**111**
Junior	32	32
Senior	65	79
Non-Litigators	18	24
Litigators	79	87
Plaintiff Lawyer	38	37
Defense Lawyer	39	56
Mixed	20	18

	Substantial Effect	Moderate Effect
G. Assessing the costs of discovery motions on the losing party		
Total	**98**	**96**
Junior	33	34
Senior	65	62
Non-Litigators	19	21
Litigators	79	75
Plaintiff Lawyers	33	31
Defense Lawyer	45	51
Mixed	20	14
H. Providing less time for completion of discovery		
Total	**73**	**85**
Junior	23	34
Senior	50	51
Non-Litigators	15	15
Litigators	58	70
Plaintiff Lawyer	19	30
Defense Lawyer	39	38
Mixed	15	17
I. Requiring discovery relating to particular issues (e.g., venue, class certification) or a specified stage of the case (e.g., liability) to be completed before permitting discovery respecting other issues or another state (e.g., damages, experts)		
Total	**61**	**96**
Junior	20	25
Senior	41	71
Non-Litigators	11	24
Litigators	50	72
Plaintiff Lawyer	27	28
Defense Lawyer	23	49
Mixed	11	19

	Substantial Effect	Moderate Effect
J. Limiting the number of interrogatories presumptively permitted		
Total	**94**	**103**
Junior	30	34
Senior	64	69
Non-Litigators	17	18
Litigators	77	85
Plaintiff Lawyer	34	35
Defense Lawyer	45	49
Mixed	15	19
K. Limiting the type of interrogatories (.e.g., identification, contention) presumptively permitted at various stages of discovery		
Total	**55**	**94**
Junior	11	34
Senior	44	60
Non-Litigators	11	21
Litigators	44	73
Plaintiff Lawyer	21	35
Defense Lawyer	19	44
Mixed	15	15
L. Limiting the number of depositions presumptively permitted		
Total	**62**	**105**
Junior	16	36
Senior	46	69
Non-Litigators	12	22
Litigators	50	83
Plaintiff Lawyer	21	39
Defense Lawyer	25	49
Mixed	16	17

	Substantial Effect	Moderate Effect
M. Limiting the length of depositions presumptively permitted		
Total	**54**	**83**
Junior	18	26
Senior	36	57
Non-Litigators	11	16
Litigators	43	67
Plaintiff Lawyer	24	30
Defense Lawyer	17	37
Mixed	13	16

/pl

WESTERN DISTRICT OF VIRGINIA
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

Results of Attorney Survey
March 1992

Addendum August 26, 1992

10. Please indicate the extent of your experience with the following dispute resolution devices.

	Substantial	Moderate	Slight	None
A. Arbitration				
Total	22	49	128	201
B. Mediation				
Total	16	22	75	266
C. Other				
Total	2	5	3	131

11. If your answer was substantial or moderate, please give your opinion of the process.

	Highly Favorable	Somewhat Favorable	Neutral	Somewhat Opposed	Strongly Opposed
A. Arbitration					
Total	17	33	24	15	4
B. Mediation					
Total	20	21	14	4	3
C. Other					
Total	5	1	3	0	2

18. (Cont.) If yes [to question 10 - do you favor local rules?], what areas would you like to see addressed by local rules:

A. Continuity of procedures among divisions

Total	96
Junior	37
Senior	59
Non-Litigator	20
Litigator	76
Plaintiff Lawyer	34
Defense Lawyer	49
Mixed	13

B. Discovery

Total	132
Junior	51
Senior	81
Non-Litigator	29
Litigator	103
Plaintiff Lawyer	44
Defense Lawyer	66
Mixed	22

C. Pre-trial scheduling orders

Total	134
Junior	47
Senior	87
Non-Litigator	31
Litigator	103
Plaintiff Lawyer	44
Defense Lawyer	67
Mixed	23

D. Motions Practice

Total	135
Junior	53
Senior	82
Non-Litigator	31
Litigator	104
Plaintiff Lawyer	47
Defense Lawyer	63
Mixed	25

E. Sanctions

Total	78
Junior	27
Senior	51
Non-Litigator	14
Litigator	64
Plaintiff Lawyer	27
Defense Lawyer	40
Mixed	11

F. Attorney's fees motions

Total	57
Junior	21
Senior	36
Non-Litigator	16
Litigator	41
Plaintiff Lawyer	26
Defense Lawyer	21
Mixed	10

G. Prisoner litigation

Total	19
Junior	10
Senior	9
Non-Litigator	4
Litigator	15
Plaintiff Lawyer	9
Defense Lawyer	9
Mixed	1

H. Social Security litigation

Total	22
Junior	12
Senior	10
Non-Litigator	8
Litigator	14
Plaintiff Lawyer	15
Defense Lawyer	3
Mixed	4

I. Other

Total	1
Junior	0
Senior	1
Non-Litigator	0
Litigator	1
Plaintiff Lawyer	0
Defense Lawyer	1
Mixed	0

19. During the past three years, the cost and time it takes to litigate civil actions has:

	Substantially Improved	Moderately Improved	Remained Unchanged	Moderately Worsened	Substantially Worsened
Total	22	59	221	53	9

20. During the past three years, how many months (on average) has it taken from the time your civil cases were ready for trial to the time that trial actually commenced? _____ months (or NA, if not applicable)

1 - 2 Month Total	34
3 - 4 Month Total	39
5 - 8 Month Total	50
9 - 12 Month Total	45
13 - 18 Month Total	19
19 - 24 Month Total	5

21. The impact of the Court's criminal docket on cost and delay in civil actions is:

	Substantial	Moderate	Slight	No Opinion
Total	34	84	55	183

If you have a criminal practice in the W.D.VA., please answer the following questions (25-27).

25. The sentencing guidelines have had the following effect on likelihood that a criminal case will be tried:

	Far More Likely	Somewhat More Likely	No Effect	Somewhat Less Likely	Far Less Likely	No Opinion
Total	34	29	9	12	5	16

26. Congressional mandatory minimum sentences, in cases to which they apply, have had the following effect on likelihood that a criminal case will be tried:

	Far More Likely	Somewhat More Likely	No Effect	Somewhat Less Likely	Far Less Likely	No Opinion
Total	38	30	7	7	3	18

27. The sentencing guidelines have had the following effect on judicial time devoted to sentencing:

	Substantial Increase	Moderate Increase	No Effect	Moderate Decrease	Substantial Decrease	No Opinion
Total	32	25	12	10	6	18

/pl

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Non-Litigator/Plaintiff

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State court - familiarity

12. State court - Quicker/less complicated/more assistance from Clerk's Office and Courts/service cheaper and less complicated.

12. State court - familiarity with procedures

12. Federal court - I have had more experience in the Federal System and know Federal Procedure better than state procedure.

12. State court.

12. Depends upon nature of the case - Time - can't get a decision on trial date in fed. ct.

12. Federal court - Issues tend to be more substantial/More experience in federal forum/less local nuances.

12. Federal court - more discovery available under FRCP.

12. Depends upon nature of the case - Diversity of citizenship; amt. in controversy.

12. Depends upon nature of the case - Statutory remedies.

12. State court - More accessible since I practice in Lynchburg; familiar with court staff, judges, etc. in state court.

12. Depends upon nature of the case - Status of parties.

12. Depends upon nature of the case - type of case; amount of damages.

12. Federal court - Most litigation is against local or state governments. Federal court appears more impartial in such cases.

12. Federal court - More orderly procedure; more respect for lawyers; better rules of procedure.

12. Depends upon nature of the case.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Non-Litigator/Plaintiff

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. More rules is not the answer!

---

28. I do not do enough civil litigation in Federal Court to have an opinion.

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28. A lot can be learned from the way Judge Michael runs his court. He treats lawyers and others with respect. He returns order and dignity to the practice. He is organized and efficient without being rushed.

---

28. I have had superb results, generally with no delays. I think rules would only add to difficulty of litigation from what I hear from lawyers practicing in other districts. The Western District should be the model for other districts.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Litigator/Plaintiff

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State court - venue

12. State court - experience in state court

12. Depends upon nature of the case - Speed of litigation; nature of case; better federal procedure.

12. Federal court - Body of law is more identifiable and more extensive but federal practice is more expensive.

12. Federal court - Accessibility to the judges scheduling of hearings can be done quickly and easily.

12. Federal court - Federal Rules of Civil Procedure; easier summary judgment; use of affidavits and depositions at summary judgment.

12. Depends upon nature of the case - Out of state party; convenience of parties, witnesses and counsel.

12. State court - Having county jurors rather than regional jurors.

12. Depends upon nature of the case - Subject matter of case primarily.....

12. Depends upon nature of the case - Type of claim; geographic location of parties and witnesses; amount in controversy.

12. Depends upon nature of the case - depends upon case.

12. Federal court - Better organized; formality.

12. State court - More familiar with state law (inc. jurisdiction); state courts are less formal.

12. Depends upon nature of the case - complexion of jury; docket.

12. State court - types of cases that I see are typically in State Court.

12. Depends upon nature of the case - Complexity of issues; amount of damages at issue; court backlog; potential jury pool.

12. Federal court -

12. Federal court - The knowledge I have acquired in practicing in the federal court influences my preference.

12. Federal court - quality of the judiciary and fairness of the results.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Litigator/Plaintiff

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. I make this comment as to the nature of your suggested responses. You should have had a block indicating whether this particular action would have worsened the problem or made it better. The discovery in the discrimination area is often horrendous because the employer is the general custodian of personnel records and files. They are most reluctant to disclose culpatory material. If both parties are given a reasonable time to disclose and then a certain penalty for deliberate omissions, we can get to the issues sooner. Waging the nation's battles over discovery is one log jam in most civil cases. Perhaps, there is no easy solution to forcing someone to disclose but the crux of the cases lie there.

29. U.S. District Court cases are much like the state courts in cost excluding discovery battles. However, appeals from district courts are rather cumbersome and generally cost prohibitive for plaintiffs. As a side note, what do having bound copies of briefs and appendixes really do to augment appellate review. A compliment -- simplification of the process of service was greatly needed; and is appreciated by the plaintiffs bar. Anything that eases the burden on the clerk's and makes the process readily understandable by lay people and attorneys alike, I am in favor.

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28. It has been my experience that delay has not been a problem in the W.D. Va.

---

28. Given the substantial criminal docket, the only solution would be appointment of additional judges or increased duties or magistrates.

NOTE: Your questionnaire seems to imply that all measures which speed the civil litigation process or reduce its cost are good. The process must also be fair and provide citizens with a full and fair opportunity to have their grievances addressed and resolved. Unfortunately, this requires time and money.

---

28. I'm happy with system -- no delays! Leave it alone -- If not broken don't fix it!

29. Not high.

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29. Bankruptcy fee of $120 is too high -- of all the types of cases I file, the highest filing fee is for bankruptcy. This seems inappropriate given the nature of the clients (i.e. their financial standing).

---

29. The clerks offices in the Big Stone Gap and Abingdon Divisions are staffed with very capable people who make it a pleasure to practice in the W.D. of Virginia.

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28. None.

29. No opinion.

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28. I do not subscribe to the idea that delay is a problem in the W.D. Va. I do subscribe to the maxim that, if it's not broke, don't fix it. Some of the proposed idea might reduce delay or cost in S.D.N.Y. or other large urban districts. In my experience, however, the W.D.VA operates in a manner which often minimizes cost and time. Introduction of unnecessary new rules or procedures is more likely to make cases take longer and be more contentious than to have the opposite effect.

29. (See 28.)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Litigator/Mixed

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State court - Ease of access; availability of judges; less rigid state procedures.

12. Federal court - (1) complexity of suit; (2) speed of docket.

12. Federal court - Ability to get summary judgment; better docket control and scheduling, although this is definitely more the case in the E.D. than the W.D.

12. Depends upon nature of the case - nature of case and community.

12. Depends upon nature of the case - summary judgment procedure; evidentiary concerns.

12. Federal court - quality of the bench; speed of docket.

12. Depends upon nature of the case - speed of resolution; subpoena powers and other means of discovery; costs.

12. Depends upon nature of the case - the size of the case and its complexity. The Federal Rules of Procedure are easier to deal with in handling most matters.

12. Federal court - available discovery.

12. Depends upon nature of the case - cost; Rule 11; location.

12. State court - familiarity

12. Federal court - (1) rules; (2) better developed law; (3) judges.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Litigator/Mixed

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. N/A

---

29. Refer motions for decision on the briefs -- don't let them sit until a hearing is scheduled. Adopt and enforce a no continuance rule like the Eastern District -- it works!

---

28. More judges; motions day as in E.D.VA.

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28. Delay is not a tremendous problem. Do encourage the Judges to give their thoughts on settlement early and often -- this more than any one other factor leads to settlements.

29. The cost of federal litigation is far higher than similar state litigation, but is not as high in W.D.VA as in E.D.VA, as I understand it. Judges encouraging settlement and using telephone conferences helps cut cost. Most of unnecessary cost I see comes from lawyers who don't know when to hush -- maybe Judges could help on that score -- I have seen Judge Turk do it effectively.

---

28. In the Western District, the Judges, magistrates, and clerks do not contribute to delay. Discovery is the primary cause for delay in moving a case from complaint to trial. Thus, only limitations on discovery will have an effect in reducing civil delay. The adoption of rules in areas other than discovery would have little effect and would diminish the fairness which now characterizes federal court.

29. My experience is, all things being equal, it is far cheaper to try and appeal cases in federal court than in state circuit court, and the quality of justice in federal court is far higher.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Non-Litigator/Defendant

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. Federal court - more streamlined -- less crowded.

12. Depends upon nature of the case - jury selection.

12. State court - more familiar with state courts.

12. Depends upon nature of the case - expertise of judges in cases involving federal law; good law clerks.

12. Federal court - familiarity with rules and procedures.

12. Depends upon nature of the case -

12. State court -

12. State court - familiarity with State -- no experience in Fed. Ct.

12. State court - more comfortable with state court procedures.

12. Federal court - Enforcement of rules; willingness to summarily dispose of cases; support services enabling judges and make more informal decisions.

12. Federal court - I know federal practice.

12. State court - racial/ethnic.

12. Depends upon nature of the case - nature of case; jury make-up; expense.

12. State court - In eastern Va. slower pace and not as many rules and deadlines as imposed by U.S.D.C. for the E.D. - no preference in Western Va.

12. State court - familiarity with rules of civil procedure -- risk of costs of attorney's fees, etc. in federal court -- knowledge of local judges.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Non-Litigator/Defendant

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. I expect to retire very soon.

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28. The principal reason for any delay in the Western District is the ever expanding criminal docket. All "reforms" of civil litigation are a waste of time until this problem is addressed.

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28. Get rid of the sentencing guidelines.

29. Less costly discovery.

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28. Case management in W.D.VA. seems competent and fair from my experience.

29. None.

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28. I believe the less structured environment of the W.D. is preferable to the E.D.'s rocket docket and 10,000 rules. Any emphasis on further controls and rules should be directed toward uncooperative, dilatory or recalcitrant attorneys, not the entire bar of the Court.

29. None.

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28. I have always found the judges in the Western District to practice excellent case management and to move cases on the docket in a timely manner. Our main complaint is the number of frivolous cases filed against the City and the Court's reluctance to impose sanctions, particularly in pro se cases. I do not see a need for written rules in the Western District.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Litigator/Mixed

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State court - (1) high cost of pre-trial discovery in federal courts; (2) pro-defendant bias of federal judges in W.D.Va.; (3) lack of character and qualifications for some judges in W.D. Va.

12. Federal court - Pre-trial procedure, and the tendency of the court to assist in the timely disposition of collateral and central case issues.

12. Federal court - federal rules; Judge Williams.

12. Depends upon nature of the case - procedural aspects of case.

12. State court - convenience and location; familiarity with judges and procedures; case type.

12. Depends upon nature of the case - quality of judge, quality of potential juries, and tight docket control.

12. State court - speed of procedural progress of case; otherwise, I would far prefer the federal courts.

12. Depends upon nature of the case - nature of cause of action.

12. State court - familiarity; convenience.

12. Depends upon nature of the case - the type of case.

12. Depends upon nature of the case - (1) type of claim and theory of recovery; (2) availability of Motion Sum. JMT; (3) rules of evidence; (4) selection/avoidance of state court judge.

12. State court - flexibility in scheduling; availability; location.

12. Federal court - rules; quality of personnel; issues.

12. Depends upon nature of the case - cost to client: ability to obtain reasonable trial date: differences in procedure/formality between state and federal court.

12. Depends upon nature of the case - (1) EDVA's "rocket docket"; (2) ability to use depositions in federal court in support of motion for summary judgment.

12. State court - convenience.

12. Federal court - professional; prompt.

12. Depends upon nature of the case - parties involved, amount at issue.

12. Depends upon nature of the case - (1) time taken to reach trial; (2) presence of federal question; (3) distance to court.

12. State court - State court is more flexible and federal court is very rigid and their requirements are based upon deadlines, large firms, or small practitioners; considerations are not given for attorneys.

12. State court - issues, extent of liabilities of defendants (damages) availability and cost of pretrial discovery and cost and availability of experts.

12. Depends upon nature of the case - generally prefer state court due to factors of geographical proximity and familiarity unless other factors in a particular case outweigh these.

12. State court - I know the jury better; ease of getting in and out; I know VA procedure better.

12. State court - State court procedures are less formal.

12. State court - travel time loss.

12. Federal court - speed to complete case -- procedures enforced uniformly.

12. Federal court - less politics; more uniform rules of procedure.

12. Federal court - clarity of procedure rules; greater clarity of legal precedence; magnitude of available relief.

28. Automatic grant of extension in some social security cases creates delays.

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28. I believe local rules similar to E.D.VA. would be helpful with a more moderate attitude toward flexibility. The use of a pre-trial conference or room or issues are joined and upon completion of discovery, pursuant to terms of pre-trial order -- to narrow issues, obtain stipulations, provide encouragement for settlement.

29. Get a trial date established and don't back off for any reason; other than one that will substantially prejudice a party if a continuance is not granted. There is nothing like an early trial date to bring about settlement.

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28. Access to the courts is unusually good. It may help to limit other unrelated proceedings during civil jury trials.

NOTE: The practice of law in the W.D.VA. is more relaxed and enjoyable than in the E.D.VA. -- don't put so much structure and so many rules in that you take the enjoyment out of it!

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28. I have only had two (2) cases in Western District of Virginia and therefore, I am not in the position to express an opinion as to any delay in each instance found at the Clerk's office; and the Court was quite efficient.

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29. Most of my recent litigation experience in the federal system has been in the Bankruptcy Court. My observation has been there that the expense of litigation could be reduced significantly by the Court making use of conference telephone calls rather than Court appearances for some relatively routine matters such as pre-trial conferences to schedule discovery, etc. and final pre-trial conference with Court to resolve any outstanding issues before trial.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Non-Litigator/Mixed

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. Federal court - The Federal Rules of Civil Procedure, far superior way of handling docket control (i.e., setting cases, hearing motions, setting and conducting trials) to the way it's handled in state courts. Also, attitude and demeanor of Clerks and Judges is more palatable in federal courts.

12. Depends upon nature of the case - local politics.

12. Depends upon nature of the case - rules and judges.

12. State court - more familiar in state court.

12. Depends upon nature of the case -

12. Depends upon nature of the case - arbitration of significant commercial disputes is inordinately expensive and, too frequently, involves the judiciary in jurisdictional and enforcement issues.

12. Depends upon nature of the case - perceived judicial reluctance or receptiveness to rules of evidence and summary judgment motions.

12. Depends upon nature of the case - actually it depends on the law involved. If I can make a federal case I do so.

12. State court - familiarity

12. Depends upon nature of the case - type of jury and nature of claim, distance to court.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Non-Litigator/Mixed

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. While the "rocket docket" of the Eastern District has its drawbacks, its advantages are great in that all parties know what and when something is going to happen.

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28. NOTE: My practice is limited to tax practice, both civil and criminal. I spend very little time in actual litigation.

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29. Costs are too great because discovery is excessive and response is frequently easier and not promptly overseen and corrected by the Court.

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28. Delay is not yet a problem.

29. Grant motions for summary judgment.

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29. Formal arbitration can take as long and be as expensive as litigation. However, informal mediation or evaluations with the parties present could be a great help -- "bring them to the table."

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Non-Litigator/Plaintiff

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. Federal court - Depends upon nature of the case - minor cases; prefer state general district.

12. State court - access to library, distance to travel, rule changes, lack of continuous clients, inability to specialize.

12. Depends upon nature of the case - nature of the claim; the parties, whether they are individuals or business entities; the nature was extent to damages.

12. Federal court - I think that the decisions from the bench are better as far as the depth of analysis.

12. Depends upon nature of the case - temperaments of judges; knowledge of particular field by the judge.

12. Depends upon nature of the case - convenience/result to client.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Non-Litigator/Plaintiff

28. **[Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.**

29. **[Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?**

29. Have an escrow account for Court reporters and refunded by the prevailing party or shared by the settling parties.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Non-Litigator/Defendant

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State court -

12. Federal court - (1) rules of procedure; (2) scheduling practice encourages speedy trial - doesn't permit foot dragging techniques used in state court.

12. Depends upon nature of the case - identity of plaintiff and defendant; subject matter of litigation; need for out-of-state process.

12. Federal court - issues addressed; discovery available.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Non-Litigator/Defendant

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. -11.1(J) ED/VA Local Rules -- Court would only be involved in discovery matters after parties had attempted to resolve disputes. Would require parties to work together and present court a much narrower range of issues to resolve. No compliance with rule by a party -- motion to compel denied.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Non-Litigator/Mixed

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State court - familiarity

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Non-Litigator/Mixed

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

29. Giving the Court discretion to assess costs of discovery on a party when it appears a deep pocket party (i.e., insurance defense carrier) is trying to outlast and outspend the opposing party.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Litigator/Plaintiff

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. Federal court - Federal Rules of Procedure and Evidence are more dependable when issues arise. Jury is selected from a broader geographical area.

12. Depends upon nature of the case - no preference.

12. Federal court - Federal Rules of Civil Procedure; independent judiciary; docket control - pretrial procedures; federal law.

12. Depends upon nature of the case - prefer federal court for complex and constitutional issues.

12. Depends upon nature of the case - type of case; e.g. products (federal); auto accident (state).

12. Federal court - My practice is limited to Social Security law and is, of course, exclusively federal.

12. Depends upon the nature of the case - Filing deadlines; jury verdict potential; liberal rules of evidence.

12. Federal court - Civil Rules of Procedure and Evidence; capable judges.

12. Depends upon nature of the case -

12. Federal court - Jury bias in state court; appellate review is more accessible.

12. Depends upon nature of the case - penalties of practice.

12. No preference -

12. Depends upon nature of the case - the parties and state venue.

12. State court - Until recently federal court - however now at least one of the judges' policy to have arbitrary trial scheduled for 8 months from filing - plus setting 2 or 3 cases for same date - render federal court now not to be best forum in which to obtain justice. In fact this policy often results in just the opposite and increases the expense to litigate and greatly expands the benefit of larger law firms and corporate interest with greater "man" power and financial resources and greatly tips the judicial scales in favor of bigger financial interest.

12. Depends upon nature of the case - Rules of Evidence; type of jury.

12. State court - more informal, fewer procedural requirements, fewer supporting documents required in state court.

12. Depends upon nature of the case - type of case; amount sought; local representative of parties.

12. Depends upon nature of the case - the fact finder.

12. State court - The access to the judge and the more informal atmosphere.

12. State court - judge.

12. State court - location; E.D. "rocket docket."

12. State court - Recent rules applications limiting the factual issues which may be decided at trial, when fully litigated by plaintiff and defendant, interfere with a jury's ability to fully and fairly decide a case. (Western District judges so far have been reasonable in the application of these limitations).

12. State court - convenience.

12. State court - 1) Familiarity with the law, rules of the court; 2) Distance to the courthouse.

12. State court - More familiar with state judges and procedures.

12. State court - No metal detectors, frisking, atmosphere of a police state. You feel like you are in a court, instead of a stalinist concentration camp.

12. Federal court - The efficiency, courtesy, and knowledge displayed by the Federal Courts (i.e., Judges/Magistrate Judges/Clerks, etc.) in the Federal Courts of the Western District.

12. No preference - Purely a matter of jurisdiction.

12. Depends upon nature of the case - unless federal law offers some substantial advantage -- such as comparative negligence in admiralty -- I prefer state court.

12. State court - Docket time to jury trial absence of summary judgment in state court fewer rules in state court.

12. Facts involved in the case and type of defendant.

12. Depends upon nature of the case -

12. Depends upon nature of the case - Strength of the case and likelihood that the judge will participate actively in settlement process.

12. State court - more familiar with state courts and more convenient.

12. Federal court - cases proceed faster and more efficiently. Federal Rules of Procedure are more effective.

12. Depends upon nature of the case - 1) Jury selection; 2) Rules of Evidence; 3) Rules of Procedure.

12. Depends upon nature of the case - opposing counsel in identity; type of case.

12. State court - Geography - our office is an hour away from the nearest federal court.

12. Federal court - broader rules of admissibility of evidence.

12. Depends upon nature of the case - jury panel.

12. Federal court - ability to get my case tried quickly.

12. Depends upon nature of the case - 1) Good, fair judges; 2) Federal Rules of Evidence; 3) Speedy efficient trials.

12. State court - distance and variance in state statutes and rules versus federal statutes and rules.

12. Federal court - federal rules.

12. State court - State court moves faster; judges are more accessible; clerks are more helpful.

12. Depends upon nature of the case - Identity of parties; nature of claims; geographic area of courts, rules.

12. State court - familiarity.

12. Federal court - clear rules.

12. Depends upon nature of the case - characteristics of the plaintiff and defendant track record of the respective courts for awards.

12. Depends upon nature of the case - the type of case; the residence of the parties.

12. Depends upon nature of the case -

12. Federal court - quality of judges; nature of my work (bankruptcy); Evidence Rules; jury venue.

12. No preference -

12. Depends upon nature of the case - fewer delays in federal court; better quality judges in federal court; more familiarity by state court judges with certain types of claims.

12. Depends upon nature of the case - nature of case; evidentiary issues; judicial factors.

12. Depends upon nature of the case -

12. Federal court - more intelligent judges; briefing is used more than in state court which results in at least intelligible decisions.

12. Depends upon nature of the case - type of case.

12. Depends upon nature of the case - type of case; amount sued for; multi-state parties.

12. State court - more familiar with rules of court.

12. Depends upon nature of the case - familiarity with state court procedure.

12. Depends upon nature of the case - procedural advantages.

12. Depends upon nature of the case - size of verdicts; presiding judge.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Litigator/Plaintiff

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. Repeal the Federal Sentencing Guidelines. Urge Congress to adopt guidelines similar to those used in Virginia State Courts!

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28. Court supervised mediation, more settlement conferences and use of mini trials.

29. Longer cases cost more money; shorter cases - use ADR.

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28. I have no problem with the present system. In this area attorneys are generally cooperative in preparing for trial and I have seen no abuses. In any case that I have wanted a trial date, I have been able to obtain one in what I feel is a reasonable amount of time. The problem that I perceive is this new "rocket docket" which the Court is experimenting with is going to quickly put the small firms and sole practitioners out of the Federal System as they do not have manpower or resources to do the things the Court is asking them to do in the time allowed.

29. I have never had a problem with costs anymore so than with the other courts which I appear before.

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28. I have been impressed by arbitration proceedings and the cost. My major concern is expense of experts to prove very obvious facts. Arbitration helps both sides get past the cost problems of proving damages by submission of reports and medical bills. It is simple, timely and cost effective. It is not likely to result in outrageous decisions as can come from jury trials. Federal courts should either engage in a medium of arbitration by engaging the

magistrates in such duties or encourage the parties to use arbitration within the civil lawsuit (educate the attorney on the advantages, present contracts enforceable in the federal court suit).

29. Motions to present medical bills and medical reports in lieu of depositions of medical experts. Failure to stipulate charges the nonstipulating with deposition costs unless there is a very great question that only a deposition will resolve.

A single doctor's deposition costs approximately $1,000 (with travel and reporter). Clients who are unemployed from an injury who made $12,000 a year cannot ask this up front funding of litigation.

Also, a party who takes a deposition should have the original available by the other party for copying at their own option. Court reporters are taking advantage of this procedure to charge plaintiffs high copy costs which they cannot afford.

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29. Eliminate practice of setting several trials on same date and not advising counsel and parties that they have been "bumped" until afternoon before; current practice unreasonably increases costs ("re-prepare" for trial; re-subpoena witnesses; cancel non-refundable airline tickets or inability to make non-refundable, "super-saver" airline reservations, etc.).

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29. I like things the way they are -- good job.

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28. Again delay is not a problem -- bureaucratic interference with our judicial system is, however. In fact this questionnaire perhaps is somewhat suggestive of that fact -- since it is too slanted toward calling for answers that would only increase more paper work and decrease option to allow the judge and jury to dispense justice -- as opposed to some paper pushing bureaucrat trying to enhance their meaning in life by thinking up another form or arbitrary approach without being sensitive to the human factors and the realities of life.

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28. Delay is not a problem.

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28. A separate criminal division should be created. It is simply unfair to the judges to have to balance a civil docket with the bulging criminal docket. While it takes less time to sentence in individual cases, the volume of cases requires much more judicial time.

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28. No opinion.

29. No opinion.

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28. When an attorney asks for a trial date after the parties are at issue, give him one instead of ignoring his requests.

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29. I represent indigent plaintiffs in Social Security disability cases. The W.D.VA. allows for the waiver of costs for the indigent with a simple form. My poor clients' cases are given a thorough review and consideration by competent Magistrate Judges and Judges. My clients would prefer a thorough review and well reasoned decision to some form of a "speedy" rule. To have a quick denial is of no benefit to a person who is indigent and has a legitimate claim. My clients prefer the type of system where their cases are considered on an individual basis as is now done. This latest fad of "speed" could be potentially harmful to justice for the many people that I represent. To hear the horror stories from lawyers around the country who practice in districts with rules for everything is not encouraging news (particularly for the people that the courts were set up to serve). In the W.D.VA., the Clerks are most helpful. The Judges and Magistrate Judges will schedule cases to suit everyone. And when a case is argued, a client has the full attention of the Court. The Judges and Magistrate Judges are always familiar with the applicable law. I certainly hope that this study points out the excellence that exists in the W.D.VA. The system we have should be duplicated elsewhere and not changed or experimented with.

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29. I believe our procedures are efficient and effective in the W.D.VA. I would have to see more cumbersome and technical rules. The problem facing us is simply the criminal docket is growing and the civil docket suffers. We need less crime, more judges or both.

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28. Delay in Big Stone and Abingdon have not been a problem for us.

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29. Not applicable.

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28. The case management system in the W.D.VA. "ain't broke" please don't try to fix it.

29. Litigating costs in the W.D.VA. are fair and reasonable. It is simply not a factor.

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28. I wish I could get motions decided and cases tried in State Court as quickly as they are in Federal Court. I have a case pending in State Court with a motion for Summary Judgment (other side) under advisement for almost 2 years.

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28. In the last 5 years I have practiced in the federal courts in 8-10 states. The W.D.VA. has the best court system in the country! The judges are terrific, the court keeps cases moving and overall its simply heavenly to practice here. Please don't tinker with a good thing. If it ain't broke, don't fix it.

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28. No problem with delay -- in fact, on most occasions, cases are set for trial too quickly.

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28. Not applicable.

29. Not applicable.

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28. Delay is not a problem. "If its not broke, don't fix it."

29. They are not unusually high.

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28. I don't see the delay.

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28. Rules should be flexible so as to be applied based upon a multiple set of variables: Nature of case; desire of counsel to proceed; relationship between counsel (contentions, unprofessional attitudes); needs of client; burden upon clerk's office; desire to "clean" docket.

    In my opinion Judge Williams has managed to maintain a most pleasant atmosphere in which to practice law. Why try to change or fix that which is not 'broke'!!

29. To my knowledge costs are not unreasonably high.

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29. None. I practice mainly in New York State. In my experience, the bankruptcy and district court judges in the W.D.VA. that I appeared before were exceptionally competent and efficient.

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29. Require civil defendants to admit liability prior to trial or confirm that it won't be admitted. Limit number of experts that "may" testify to one expert per field of expertise who "shall" testify.

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28. With the "rocket docket" I don't perceive delay as a problem except that there are times when justice is denied when justice (the trial) is rushed.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Litigator/Defendant

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. Depends upon nature of the case - appeal as of right in federal court, use of depositions for summary judgment in federal court.

12. Depends upon nature of the case - rules of evidence; grounds for summary judgment; potential for local prejudice.

12. Federal court - good judges; predictable procedure; better likelihood of resolution on motions; venue drawn from bigger area.

12. Depends upon nature of the case - judge; geographical region, pool for veniremen; docket load of court.

12. Federal court - Judge Turk.

12. Federal court - availability of summary judgment.

12. Federal court - the fact that my client is a large corporation.

12. State court - flexibility with trial and discovery schedule. Settlement is not shoved down my throat in state court.

12. Federal court - rules of procedure; law clerks and libraries.

12. Depends upon nature of the case - more liberal summary judgment rules; broader jury pool; negate "home court" advantage.

12. Depends upon nature of the case - if I had my preference, I'd practice exclusively in the U.S.D.Ct. for the W.D.Va.

12. State court - I generally practice in state court therefore I feel more comfortable there.

12. Federal court - rules; adherence to law (substantive); case management.

12. Federal court - willingness of federal district courts to dismiss meritless cases prior to trial.

12. State court - Depends upon nature of the case - I despise the rocket docket.

12. Federal court - quality of the judges and the court staffs, formality of the proceedings.

12. Federal court - quality of the judges and attorneys, prefer Federal Rules to state rules of procedure.

12. Depends upon nature of the case - ability to obtain summary judgment.

12. State court - more comfortable in state court due to better familiarity with state court procedure.

12. Depends upon nature of the case - opposing counsel and party -do I want to get them off of their "home field"

12. Federal court - more familiar with FRCP; overall quality of judges are better; better case law.

12. Federal court - personnel of the court; the judges, accessibility.

12. Depends upon nature of the case - how much of case is factual resolution; decisions are based on "judge shopping"

12. Depends upon nature of the case - complexity of the case -- experience of judges in certain matters; caseload in state court; type of case.

12. Federal court - the rules are more defined; the judges are more astute and less susceptible to influence by the local bars.

12. Depends upon nature of the case - whether the case may be resolved by summary judgment.

12. Depends upon nature of the case - (1) whether a summary judgment motion is available; (2) speed with which client wants matter resolved.

12. Federal court - prefer Fed. R. Civ. P. to Va. civil procedure; docket is less congested than in some counties.

12. Depends upon nature of the case - opposing attorney(s).

12. Depends upon nature of the case - (1) faster docket in E.D.Va. -- good if a plaintiff or a defendant against a plaintiff n/a weak case; (2) state court is generally better for defendants.

12. Did not answer this question.

12. State court - familiarity.

12. Depends upon nature of the case - size of case; need for quick resolution (federal); possibility for summary judgment.

12. Federal court - efficiency, speed, rules you can depend upon!

12. Depends upon nature of the case - possibility of the use of depositions for summary judgment; reputation of judge; federal ct. venue giving impression case is more important or valuable than it really is.

12. Federal court - quality of judges.

12. Federal court - (1) quality of judges and their decisiveness; (2) fewer plaintiff-oriented procedural devices (e.g., state rules re: summary judgment and non-suit).

12. Depends upon nature of the case -

12. Federal court - Federal Rules of Civil Procedure.

12. Federal court - trial date availability; Rule 56.

12. State court - less docket control; more flexible.

12. Federal court - favorable federal procedures.

12. Depends upon nature of the case - personalities of potential judge; complexity of issues and expected rulings.

12. Depends upon nature of the case - availability of summary judgment on depositions and affidavits in fed. ct.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Junior/Litigator/Defendant

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. I don't think there is an unnecessary delay problem in the W.D.Va.

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28. Having the judge issue rulings on Motion for Summary Judgment early enough for defense to avoid cost of preparation for trial if motion is granted. Have opinions and orders entered faster after trials or motions heard.

29. Same as 28.

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28. Adoption of local procedural rules with strict discovery deadlines and strict court enforcement of deadlines. Swift court action on dispositive motions.

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28. Judge Kiser's method of docket control (setting a case for trial shortly after the answer is filed) goes farther to relieve delay problems, in my opinion, than anything discussed above.

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29. Convince the bar to charge lower fees.

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28. In my opinion, delay is not a problem in the W.D.Va. for disposing of civil cases.

29. Costs associated with civil litigation in the W.D.Va. are not any higher and are probably less than they are in other jurisdictions. Two reasons: (1) the bar; and, (2) the judiciary and clerk's office.

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28. (a) The docket should be checked periodically to see that things are moving. If there is a delay, often one side or the other has found a weakness and judge should offer the parties a conference. (b) A pre-motion leaving appeals useless. Why not hear the motion and limit the length of briefs and number of witnesses?

29. (a) Setting case six deep generally is a good idea because the parties will often settle. However, a numerical priority should be set-up so that attorneys can monitor and not have to prepare several times before the case is tried. That preparation runs up the costs. (b) Narrow the issues early so that the discovery is directed to those issues. The court should help weed out weaker cases.

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28. It is not! We do not need your rocket docket in S.W. Va. We enjoy a gentlemanly practice of law. I believe the rocket docket fosters contempt among the bar.

29. They are not!

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28. Judges should rule on summary judgment within a reasonable time (one month). It should be impermissible for a judge to rule on summary judgment the morning of trial. Time limits on attorneys are ineffectual if there are not corresponding time limits on judges.

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28. I do not personally feel that delay is a problem at present.

29. I do not personally feel that present costs are too high.

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29. I do not believe that the costs are high in W.D.Va. I have prior experiences in E.D.Va. where things are put on docket quickly. Thus, discovery has to be done hastily and is less likely to be tailored to the specifics of the case. As a defense attorney, we require an opportunity to discover the essentials of the plaintiff's case. (The plaintiff has presumably prepared his case before he filed it.) However, motions by telephone or through only written pleadings could greatly reduce expenses if making discovery motions and move the case more quickly. The only real delays in Western District come from delays due to the criminal docket. Otherwise, the cases move along appropriately.

---

28. In my opinion, the best way to reduce delay is to adopt strict judicial control over litigation on the model of the E.D.Va. Attorneys are not self-policing, and indeed may have a responsibility to delay where it serves their clients' interests. Judicial management of litigation will do far more to reduce delay than alternative dispute resolution, which can promote delay. Strict adherence to discovery and motion deadlines and a reasonable early trial date are the best methods to promote settlement and reduce delay.

29. See #28.

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28. I compare the Eastern and Western Districts because I practice so much in the Eastern District. The rules in the Eastern District are followed even when the result is draconian. However, the lawyers all know the rules and the penalties for breaking them. Thus, cases are by necessity prepared in a timely fashion often without the need for substantial pre-trial intervention by the Court. I think this system works well and overall cost to the litigants is less. I do not, however, agree that the Court should effectively "force" settlements in any case, as the Eastern District is want to do.

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28. Many of those proposed solutions would certainly reduce the cost of litigation in federal courts, but at what cost. These questions ask us to assess the effect each will have on efficiency -- but they do not address the effect each will have on achieving a just solution or resolution to disputes. Tremendous savings in litigation expense will be of little consolation to a litigant who does not feel that he received a full and fair hearing.

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28. Setting trial date shortly after case is filed.

29. Strict adherence to the federal rules.

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28. A certain judge takes too long to try a case. That's the biggest problem in the Harrisonburg division.

23. (Note: answer to question 23, which concerns effectiveness of ADR in cost and delay reduction) Alternative Dispute Resolution is merely the creation of another court system. It ignores our responsibilities to the law to make the judicial process work. If the courts are broken, they should be fixed -- not scrapped or have another, parallel, court system created. ADR will not save costs -- it will only shift costs to those seeking quicker or private justice. We don't need ADR. We need for society to realize that more litigation will cost more by way of taxes to pay more judges, create more courts, and expand the judicial system. As the adage goes: "You get what you pay for."

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28. No motion for summary judgment should remain pending more than 45 days following oral argument. Judges should be encouraged to follow federal policy and grant those motions where well-taken. Withholding these rulings to "encourage" settlement is unfair to the litigants.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Litigator/Defendant

12. Given the choice, where do you prefer to conduct civil litigation:

[ ] federal court [ ] state court [ ] depends upon nature of the case [ ] no preference

Optional: What factors influence your preference most strongly?

12. State Court - familiarity with procedures.

12. Federal Court - Presiding Judge

12. Federal Court - Rules of evidence are established and written down.

12. Depends upon nature of the case - availability of summary judgment on affidavits and depositions; reputation of opposing party where he/she lives; generally better "quality" of jurors in federal court; closer proximity and greater familiarity with federal court than opposing counsel.

12. Depends upon nature of the case - geography of case; subject matter of case.

12. State Court - higher caliber judges; less judicial interference.

12. Depends upon nature of the case - Factors which influence my preference relate to merits for the particular case; aside from this consideration, the most important consideration is knowing the judge and the personnel of the Court.

12. Federal Court - quality of judges; procedural system.

12. Depends upon nature of the case - My opponent's experience (or lack of it) in federal court practice; the need for a more educated jury (ex: in a product liability case).

12. Depends upon nature of the case.

12. Depends upon nature of the case - Complexity; source of law; need for speed.

12. Federal Court - Easier to get hearings; use of discovery on pretrial motions.

12. No preference - Location of witnesses and other discovery matters; substantive and evidentiary legal issues.

12. Depends upon nature of the case - Local jury reputation; identity of parties.

12. Federal Court - Discovery; summary judgment options; procedure - law and equity in one form.

12. State Court - Distance from situs of court; familiarity with procedures.

12. Depends upon nature of the case - availability of summary judgment; expertise on legal issues.

12. State Court - convenience.

12. Federal Court - judicial experience; docket control; magistrate system - discovery disputes.

12. No preference.

12. Depends upon nature of the case - judges.

12. Federal Court - federal rules; docket; ability of judges to rule quickly.

12. Depends upon nature of the case - speed, prefer fed. court if plaintiff, discovery, who other lawyer is.

12. Depends upon nature of the case - Whether or not the case is one where summary judgment may be an option. Whether I feel as if I can get it ready in time to comply with Judge Wilson's "rocket docket". Whether I think my client will get a fair trial in state court int he particular jurisdiction.

12. State Court - Presence of sitting judge in Lynchburg at all times.

12. Depends upon nature of the case - Substantive law; availability of summary judgment; inability of plaintiff to non-suit.

12. State Court - More familiarity with state court rules and procedures.

12. State Court.

12. Depends upon nature of the case.

12. Federal Court - Clerks help the court accurately consider the law.

12. Depends upon nature of the case - Chances of local bias, particularly in smaller, more rural state circuit courts.

12. Federal Court - Quality of the Court; Consistency of rules and rules interpretation; access to appellate process; flexibility of scheduling.

12. Depends upon nature of the case - Availability of appeal of right in Fed. Court; jury profile; time to trial (in E.D. Va.).

12. Federal Court - Quality of judges and juries - no non suits available; In E.D. Va. docket moves sometimes too fast but generally good.

12. Federal Court - Pretrial procedures are consistent. Greater opportunity to resolve a case short of a trial proceeding.

12. Federal Court - Speed of the docket; availability of depositions for summary judgment.

12. Federal Court - Speed of docket; certainty of rules; ability to get summary judgment.

12. Depends upon nature of the case - Access to state courts and familiarity.

12. Federal Court - Federal Rules provide structure to proceedings and provide consistency (knowing same rule followed in each federal court).

12. Federal Court - I have never practiced in state courts.

12. Federal Court - Consistent and clear rules of practice; sophistication of judiciary; time limitations.

12. Federal Court - Judges are fair and "no-nonsense"; will hold both parties to scheduling orders; plaintiff's can't play games with non suit like state court.

12. Federal Court - Quality of judges.

12. Federal Court - Quality of the judiciary; less likelihood of bias in favor of plaintiffs; more attention paid to legal motions.

12. Depends upon nature of the case - Extended delays in federal court; rules of evidence - FRE more reduced and defined; summary judgment available on basis of denos. in fed. ct., not state.

12. Federal Court - Magistrate is available for prompt resolution of discovery matters. Written opinions in all important matters.

12. Federal Court - Quality of judges; rules of procedure; speed; standard of practice (i.e. better attorneys).

12. Federal Court - Pretrial Orders.

12. Depends upon nature of the case - litigation cost; jury.

12. Federal Court.

12. Federal Court - Rules are clear and predictable.

12. Depends upon nature of the case - complexibility of subject matter; location of parties.

12. Depends upon nature of the case - Federal Court is desired for prompt resolution, for complex issues and for more neutral forum.

12. Depends upon nature of the case - Type of law involved; rules of evidence; local v. out-of-state foreign parties.

12. Federal Court - Quality of judges and their support staffs and facilities; FRCP; convenience.

12. Depends upon nature of the case - Perceived quality of jurors; perceived ideas of judge.

12. Federal Court - Procedure; jury selection; court personnel.

12. Depends upon nature of the case - Availability of effective summary judgment procedure in federal court.

12. No preference.

12. Depends upon nature of the case - Where prompt result desired and cost of litigation no factor; USDA-EDs, Richmond Div. is a good choice for complex cases.

12. Depends upon nature of the case - Substance of the case; "make-up" of parties; Jury composition; Opposing counsel.

12. Depends upon nature of the case - Parties; nature of dispute; federal rules; federal judges.

12. State Court - Avoidance of rocket docket; fewer local rules of court.

12. Federal Court - Predictability of rules and judicial attitude.

12. Depends upon nature of the case - Plaintiff v. Defendant; discovery considerations; speed of resolution.

12. Depends upon nature of the case - The identity of the client; the speed in which a result is sought; the applicable body of law.

12. Federal Court - Broader discovery; better juries from defense standpoint; current docket.

12. Depends upon nature of the case - In large document cases I'd rather be in federal court; defending damages actions with a jury I'd rather be in federal court.

12. Depends upon nature of the case - Whether technical defenses are available and chance for motion for summary judgment.

12. Depends upon nature of the case - Type of case; personality of parties.

12. Depends upon nature of the case - Strength of case; complexity of issues; client wishes; whether early summary judgment desirable.

12. Federal Court - Better judicial support structure (e.g. law clerks); better pretrial procedures (e.g. possibility of summary judgment).

12. Federal Court - Quality of the judges.

12. Federal Court - Short time to trial; well established pre-trial practice; competence of judges.

12. Federal Court - Federal rules of civil procedure; quality and impartiality of judges.

12. Depends upon nature of the case.

12. Depends upon nature of the case - Helpfulness/responsiveness of clerk's office if better in state court.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Attorney Survey Responses

Senior/Litigator/Defendant

28. [Optional] If delay is a problem in the W.D.VA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

29. [Optional] If costs associated with civil litigation in the W.D.VA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

28. Delay is not a problem in the WD of Va. Our current system has the flexibility to meet the demands of each case. If an early trial date is needed, one can be obtained. If additional time is needed to prepare the case for trial, it usually can be obtained. Imposition of additional formal, "trendy" devices will only make federal practice more complex for attorneys and ultimately more costly for litigants.

29. See #28.

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29. My answers do not appear to be very helpful. This is because my overall experience with litigation in the Western District has been positive. I have not encountered what I would consider either unreasonable delays or costs in the Western District. There are several reasons. The judges in this District area all fairly reasonable and blessed with common sense. For the most part, the attorneys in this District are the same. As a result, I do not think we have any significant problems in this regard.

    You should know that the litigation I have generally been involved with in federal court has been fairly straight forward and without "high stakes". (High stakes: $500,000 and above.) If I was involved in different types of cases, I may have encountered more problems with delay and unnecessary costs.

---

28. Delay is not a problem.

---

28. I hate the thought of written local rules because the ones I've dealt with before (in the Eastern District in Minnesota) make the lawyer's life a nightmare but don't resolve the problems. I would like to see earlier status conferences with discovery schedule established to suit the type of case and wider use of dispositive motions.

29. Greater assessment of costs against losing parties.

---

29. Costs are not high, precisely because there are not extensive and complex rules and rigid pre-trial requirements. Slightly more active judicial management (setting discovery cut-offs, trial dates, status and settlement conferences) would resolve any delays I've encountered.

---

28. The question in items 23 and 24 [concerning effectiveness of ADR and discovery limits in reducing cost and delay] would not allow us to comment that their adoption would increase cost and make litigation more inefficient. The W.D. Va. _____ well now. Reducing interrogatories, limiting depositions, etc., with arbitrary rules would be counterproductive. The pre-trial conference and rescheduling order are most effective in placing litigation in an efficient and timely path.

29. Where costs get high in cases with many documents that are requested by opponent. My worst experiences have been in representing non-parties served with subpoenas. Upon motions, some limitations should be placed in document examination.

---

28. I believe WDVa does an excellent job in case management. I do not believe any changes are needed or warranted.

---

28. I do not believe that delay is a great problem. To the extent it is, it is more of a lawyer problem than a court problem.

29. I do not believe the costs are unreasonably high.

---

28. I do not think we have any problem with delay in civil litigation in the Abingdon & Big Stone Gap Divisions. These rules and limitations may be appropriate where there is a problem but are unnecessary and I think unnecessarily restricts parties and counsels ability to proceed with their cases. If the system is not broke, why try and fix it. We have always been able

to move cases as quickly as either party wants to move the case and have not been forced to go forward with development of the damages aspect of the evidence before we know whether liability is there. Now, we are forced to take depositions on damages before we get a ruling on motions for summary judgment so that we can be prepared for trial if we lose on summary judgment.

I think a status conference early in the case where the court sets realistic deadlines for discovery on liability, filing of motions for summary judgment, rulings on the motions by the court would be helpful. However, the deadlines need to be appropriate for the particular case. If the case gets past the summary judgement stage, then another status conference where realistic deadline for the development of damages evidence and a trial date are set should be held. Then, a third hearing could be scheduled at the option of the parties shortly before the trial to take care of routine pre-trial matters.

I think the manner in which we are proceeding in cases handled by Judge Wilson at the present time unnecessarily increases the cost of litigation by forcing development of evidence on damages prematurely. I think the loose system employed by Judge Williams works fine in this area.

---

28. I honestly don't believe delay is a problem in the WD of Va and that the lawyers and judges have a good working relationship to effectively get cases through the system.

29. More utilization of "offers of judgment".

---

28. An apparent serious backlog exists with respect to ability of some court reporters to provide required transcripts within a reasonable period of time.

29. I do not believe costs in the Western District are unreasonably high.

---

29. Generally, the WDVa is effective. I think experimenting with ADR is not a good idea. Just move the docket faster and that's the best dispute resolution.

---

28. See response to #29. Seems to be resistent difficulty in getting a date to be heard on dispositive motions.

Suggest local rule requiring filing of memorandum with the motions. Fewer/shorter motions would be filed.

29. Greater availability of magistrate judges who, by general exercise, expedite dispute resolution. Suggest automatic referral of all discovery disputes and non-dispositive motions by magistrate with initial pleading of complaint and summaries.

---

28. Deadline should be established for completion of discovery. Trial dates should be established when defendant files his answer and continuances should not be granted unless the parties mutually agree.

29. Eliminate delays.

---

28. I think local rules of court for civil practice dealing with such things as discovery, motion practice, etc., is very helpful.

---

28. I do not find delay to be a problem, generally. The current system seems to work well. I suggest and request that the Big Stone Gap Court be kept open - it serves the needs of a lot of people who are not at all well-located with respect to the other court sites.

You may use my name - (signed) Ronald G. Thomason.

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28. It is a pleasure to litigate in the Abingdon and Big Stone Gap Divisions of this Court.

We get cases tried or the disputes otherwise resolved without rules and timetables, etc. - in as timely a fashion as the parties and their counsel desire. Nothing more should be required - although cases generally more quite fast.

The system here works. It is not broken; please don't try to fix it.

29. I don't need confidentiality. (signed) Jackson A. White.

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29. More aggressive use of Rule 11 sanctions. There are too many frivolous suits and too many frivolous claims and courts in suits which have a non-frivolous complaint.

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29. Discovery has turned out to be one of the worst things that the mind of man could have devised. It is time consuming, a way to run up huge legal costs, and an utter and complete waste of time. We were much better off without it than we are with it.

---

28. Present system works quite well. Don't mess with it!

29. Litigation costs are currently not unreasonable as a rule. In those rare instances of unusual expenses, I have found the attorneys and judges amendable to cost reduction suggestions.

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29. W. District judges have from time to time accommodated counsel with telephone hearings - that's a big help.

---

29. Implement the English system, whereby the losing party pays the winner's costs and attorney's fees.

---

28. Have not encountered unreasonable delay in W.D.Va.

29. Have not encountered unreasonable costs.

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28. Additional judges, more expeditious rulings on dispositive motions.

---

28. Force early trial dates. Then, the lawyers do only that which they must do in discovery. They also focus quickly in settlement.

    Settlement conferences just don't work. Deadlines do.

---

28. Have experienced delay primarily on U.S. Bankruptcy Court. I do not know if they are participating in survey or not, but they should be.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

PRE-INTERVIEW QUESTIONNAIRE

Name _____

Scheduling

1. Do you receive frequent requests for extensions of time? (please circle) yes no

   If yes, what percentage of these motions are meritorious? _____

2. Do you hold Rule 16(b) scheduling conferences in all cases? (please circle) yes no

   If not, in approximately what percentage of cases? _____

3. Do you use a standard scheduling order as outlined in Rule 16(b) or some modification of the standard order? (please circle) standard modification

   In approximately what percentage of cases do you modify the order you ordinarily use?

   _____

Discovery

4. Do you set discovery cut-off dates? (please circle) yes no

   If yes, in approximately what percentage of cases do you give extensions? _____

5. Do you use a standard discovery scheduling order? (please circle) yes no

If so, in approximately what percentage of cases do you modify the order you ordinarily use?

_____

6. In approximately what percentage of cases do you order that requests for production of documents, responses, or other discovery material not be filed with the Clerk's Office?

_____

7. Do you hold Rule 26 discovery conferences? (please circle) yes no

If yes, in approximately what percentage of cases? _____

Motions

8. Do you make oral rulings on motions? (please circle) yes no

If yes, in approximately what percentage of cases? _____

9. Do you monitor the timing of the filing of motions and responses?

(please circle) yes no

Pretrial

10. Do you hold frequent pretrial or status conferences? (please circle) yes no

If yes, do you use telephone conferences? (please circle) yes no

If yes, in approximately what percentage of cases? _____

11. Do you on occasion discuss alternative dispute resolution with counsel?

(please circle) yes no

If yes, in approximately what percentage of cases? _____

12. Do you hold a final pretrial conference in all cases under Rule 16(d)? (please circle) yes no

If not, in approximately what percentage of cases? _____

13. Do you use a standard final pretrial order in civil cases? (please circle) yes no

In approximately what percentage of cases do you modify your standard order? _____

Trial

14. Do you routinely bifurcate trials (e.g. separate liability and damage issues)?

(please circle) yes no

15. When presiding over a trial...

(a) Approximately how many days per week is the trial convened?

Bench Trial _____ Jury Trial _____

(b) Do you hear motions in other cases while the trial is underway?

Bench Trial (please circle) yes no Jury Trial (please circle) yes no

(c) Do you hold conferences in other cases while the trial is underway?

Bench Trial (please circle) yes no Jury Trial (please circle) yes no

(d) Do you usually sit consecutive days until the trial is completed?

Bench Trial (please circle) yes no Jury Trial (please circle) yes no

(e) How many hours in a day do you usually sit during a trial?

Bench Trial _____ Jury Trial _____

16. In a bench trial, in approximately what percentage of cases do you rule from the bench immediately following trial? _____

General

17. Approximately how many work days per year do you spend in divisions of the Western District other than your resident division? _____

18. Approximately how many work days per year do you spend sitting in other districts?

_____

19. Approximately how many work days per year do you spend sitting with the Fourth Circuit?

_____

20. Approximately how many work days per year do you spend at administrative and educational programs outside of the Western District? _____

If you use standard orders as noted in questions #3 (scheduling), #5 (discovery), and #13 (final pretrial), please attach them to this questionnaire.

Please return the completed questionnaire to Joan Shaughnessy in the envelope provided. Thank you for your time.

/lt

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

OUTLINE OF QUESTIONS FOR JUDICIAL OFFICER INTERVIEWS

1. Are there problems of excessive cost and delay in the processing of civil cases in the Court? Why? What specific solutions would you recommend?

2. What are the most effective measures you have employed for preventing excessive cost and delay that are not case-specific? What measures would you like to see instituted in this Court to deal with excessive cost and delay?

3. Is the allocation and coordination of work among judicial officers effective? Is there sufficient backup for a judicial officer who has an unusually burdensome case?

4. What role should a judicial officer play in the settlement process? When? Would it make sense to have a judicial officer other than the one to whom the case is assigned assume the role of a settlement judge?

5. How effective would alternative dispute resolution processes be in this Court? Are there specific ADR processes which should be used here?

6. Is civil discovery a cause of excessive cost? Excessive delay? What actions can a judicial officer take to reduce excessive cost and delay in discovery?

7. What impact does the criminal caseload have on the processing of civil cases? Are there administrative improvements that would assist judges in handling their civil cases without delaying the disposition of criminal cases? Are there procedures that would expedite criminal trials and permit more time for consideration of civil cases?

8. How should a district judge or magistrate judge decide the priority to be given to various cases and motions? What is the best method for handling the hearing and disposition of motions?

9. Are there specific actions that you have taken to manage the trial of civil cases that expedite trials and reduce costs?

10. Does this Court have unique problems because of its geographic size and the number of divisions in the district?

11. Are there additional resources which would assist you in cost and delay reduction?

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

ISSUES TO BE DISCUSSED IN INTERVIEWS WITH JUDICIAL OFFICERS

1. **Are there problems of excessive cost and delay in the processing of civil cases in the Court? Why? What specific solutions would you recommend?**

   Is delay a problem in all types of cases? In certain types of cases? Which ones? Why?

   To what extent is delay the fault of the parties or the lawyers? The Court? Are there certain steps in the process where delay is most serious? Which ones? Why? What can be done?

   What costs are excessive? Who is responsible for excessive costs? Can the Court act to lower the costs to the parties? How?

   Are the attorneys adequately prepared? At all stages in the process?

2. **What are the most effective measures you have employed for preventing excessive cost and delay that are not case-specific? What measures would you like to see instituted in this Court to deal with excessive cost and delay?**

   Should a judge try to provide "hands-on" management of a case?

   Should the judge manage cases more actively at some stages of pretrial than at other stages? Which stages require active management?

   Should the Court resist requests for extensions of time to respond to complaints? To motions?

   How frequently should the Court meet with counsel? With the parties?

   Should argument on motions be discouraged? Encouraged?

   How formal should a Rule 16 conference be? What form should a Rule 16 order take? Should the conference or order be modified in some types of cases?

   When should a final pretrial conference occur? What form should the pretrial order take?

3. **Is the allocation and coordination of work among judicial officers effective? Is there sufficient backup for a judicial officer who has an unusually burdensome case?**

Is more centralized planning and case assignment desirable in our district? Possible?

Are there sufficient magistrate judges? Are they used appropriately?

For what functions do you use magistrate judges? [What functions are you, as magistrate judge, asked to serve?] Are there additional ways in which they can be used?

Should other judges be used more frequently to relieve a judge whose trial schedule results in a conflict?

4. **What role should a judicial officer play in the settlement process? When? Would it make sense to have a judicial officer other than the one to whom the case is assigned assume the role of a settlement judge?**

How does the Court promote settlement? When is the best time for the Court to facilitate settlement?

What are the advantages and disadvantages of having one or more judges or magistrate judges focusing on settlement?

Do ADR techniques facilitate settlement? Should ADR be used in our district to promote settlement?

Should parties be required to attend settlement conferences? What is your practice?

Should the judge or magistrate judge meet with counsel or parties separately or together? In all cases? In jury cases? In nonjury cases?

5. **How effective would alternative dispute resolution processes be in this Court? Are there specific ADR processes which should be used here?**

Have you ever referred a case to an ADR process? If not, why not? If so, do you have an opinion as to the success of the process?

What types of cases are most appropriate for ADR? Least appropriate?

Would ADR reduce cost and delay? Increase cost and delay?

What forms of ADR should be considered?

Should more ADR processes be available in our district?

Should ADR be required in certain cases? Which cases? What form of ADR should be required?

6. **Is civil discovery a cause or excessive costs? Excessive delay? What actions can a judicial officer take to reduce excessive cost and delay in discovery?**

What discovery cutoffs should be set?

Should each judge use a standard discovery scheduling order?

How frequently does the Court have to resolve discovery disputes?

When should Rule 26(g) conferences be held?

Are the costs imposed on parties adequate to deter discovery abuse?

Should the Court monitor discovery by requiring periodic reports?

What are the advantages of having discovery requests and responses filed with the Clerk's Office? The disadvantages?

What parts of discovery generate excessive costs? Excessive delay?

What measures can the Court take to reduce costs and delay? Will prompt rulings on discovery disputes help?

Should the judge be active in managing the discovery process? What steps best prevent excessive cost, delay, and abuse in the discovery process? What level of management of the discovery process is optimal?

Should there be limits (by rule or court order) on the number of interrogatories? The number of depositions? The time permitted for depositions? In all cases? In certain types of cases?

Should automatic disclosure be required? In all cases? In certain types of cases? Of what information?

Should the discovery process be shortened? In all cases? In certain types of cases?

Is the discovery process a cause of delay in civil litigation? A cause of undue cost of litigation? In certain kinds of cases?

What types of cases generate a disproportionate number of discovery disputes? How do you handle them? How can such disputes be resolved expeditiously?

Should there be changes to procedures concerning discovery sanctions? Such as requiring the moving parties to certify that a good faith attempt has been made to resolve the discovery dispute before filing the motion? Replacing the motion with a two page letter to the judge or magistrate judge?

Are sanctions an effective tool in the area of discovery disputes? Should they be used more frequently?

7. **What impact does the criminal caseload have on the processing of civil cases? Are there administrative improvements that would assist judges in handling their civil cases without delaying the disposition of criminal cases? Are there procedures that would expedite criminal trials and permit more time for consideration of civil cases?**

Should certain cases not be brought by the U.S. attorney?

Can prosecutors better assist the Court in moving cases forward? How?

Should defense counsel be required to do more to assist the Court? How?

Should pretrial motions in criminal cases be expedited? Which motions?

Can magistrate judges assist in this process?

Can pretrial hearings be expedited? How?

Should motions be decided without oral argument? When?

Can sentencing proceedings be expedited? In what way?

Are there any recommendations the Advisory Group should make to the executive or legislative branches?

8. **How should a district judge or magistrate judge decide the priority to be given to various cases and motions? What is the best method for handling the hearing and disposition of motions?**

What procedures should be used for deciding which motions should be disposed of first? Last?

Should motions be handled the same way in criminal and civil cases?

Are some types of motions particularly responsible for delay or for increasing the costs of litigation? How can motions practice be modified to reduce cost and delay?

Should opinions in support of rulings be encouraged? Discouraged?

Should there be a separate motions day?

Can motions be handled by conference call? In which types of cases?

Is the time between argument and disposition a cause of undue delay in the system? Is there a time limit by which all motions should be decided?

Should page limits be set on motion papers? Should some motions be heard without supporting papers? What types of motions?

Should premotion conferences and/or leave of court be required for certain motions? If so, what types of motions?

9. **Are there specific actions that you have taken to manage the trial of civil cases that expedite trials and reduce costs?**

How should trial dates be set?

Should trial dates be kept firm?

If so, how can this be accomplished?

Who should serve as backup for a judge who has a conflict when a trial is scheduled?

Can bifurcation expedite trials?

What other procedures have you tried? Have they been successful?

10. **Does this Court have unique problems because of its geographic size and the number of divisions in the district?**

Is it unusually difficult to manage caseload allocation and trial and motion calendars in this district?

Is the allocation of support personnel, particularly court reporters, among the divisions a problem?

Do you spend a substantial amount of time in travel within the district?

Do you find it more difficult to sit outside your resident division?

11. Are there additional resources which would assist you in cost and delay reduction?

Would more judicial education programs be helpful? Of what sort?

Is there a need for additional personnel in the Western District? In what positions?

Is there a need for additional space or equipment in the Western District? Of what sort?

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE, VIRGINIA

ADVISORY GROUP
CIVIL JUSTICE REFORM ACT
PHILLIP C. STONE, CHAIRMAN
JOAN M. SHAUGHNESSY, REPORTER

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(703) 434-0316
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NOTICE OF PUBLIC HEARING

CIVIL JUSTICE REFORM ACT COMMITTEE
WESTERN DISTRICT OF VIRGINIA

The Civil Justice Reform Act Committee for the Western District of Virginia, a Committee appointed at the direction of Congress to study the efficiency of the federal courts, will conduct a public hearing at the following time and place:

Monday, September 14, 1992 - 7:30 p.m.

Poff Federal Building
Third Floor
210 Franklin Road
Roanoke, Virginia 24011

The public is invited to attend and participate. The purpose of the hearing will be to permit the community to make observations and suggestions as to how civil litigation in the federal courts in the Western District of Virginia could be improved, particularly as to savings in cost and time.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE, VIRGINIA

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PRESS RELEASE

FEDERAL COURTS COMMITTEE TO CONDUCT PUBLIC HEARING

In 1990, Congress passed legislation requiring each of the 94 federal court districts to name a committee of judges, lawyers and lay people to study the federal courts in each district and to make recommendations as to how civil litigation could be handled in a more expeditious and less costly manner. The Civil Justice Reform Advisory Committee for the Western District of Virginia, has been working for more than a year interviewing judges and others, reviewing dockets and cases, evaluating statistical data, collecting responses from questionnaires from lawyers and evaluating the operations of the federal courts in the western part of Virginia. Members of the Committee come from various parts of the district. The Committee Reporter is Professor Joan Shaughnessy of the Washington and Lee Law School who will take the lead in compiling the eventual report containing the Committee's plan or changes.

The Committee has announced that on Monday, September 14, 1992 at 7:30 p.m. it will conduct a hearing in the Poff Federal Building (Third Floor) in Roanoke to permit individuals and representatives of community organizations, civic clubs, businesses and any others having an interest in presenting their views as to how the administration of justice could be done in a more orderly, expeditious and less costly manner. The meeting is open to the public.

While the Committee has a deadline of December 31, 1993 to complete its work and file its report with the Federal Court, the Committee spokesman indicated the Committee for the Western District of Virginia will probably finish its work by the end of 1992.

Contact person:

Professor Joan Shaughnessy
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE, VIRGINIA

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August 12, 1992

Dear Sir or Madam:

In 1990, Congress passed the "Civil Justice Reform Act of 1990" (CJRA) which requires a study of the operations of the federal courts in each of the 94 districts in the United States to see how litigation might be made less costly and take less time. The CJRA Committee appointed for the Western District of Virginia has been at work for over a year interviewing judges, analyzing data, looking at alternative methods for resolving disputes and generally evaluating the federal courts in the Western District of Virginia.

Because your organization may well have an interest in and experience with the federal courts in the Western District, the Committee would like to hear from you, your organization or others associated with you and your organization. The opportunity will be given at a public hearing to be held in Roanoke on Monday, September 14, 1992, at 7:30 p.m. on the Third Floor of the Poff Federal Building, 210 Franklin Road, Roanoke, Virginia. You and all others in attendance will be given an opportunity to express any opinions or comments you have about how the federal courts operate and how civil litigation in the courts could be made less expensive and take less time. The Committee also welcomes correspondence from interested individuals and organizations.

Shortly after the hearing, the Committee will conclude its work and propose a plan for changes in how civil litigation ought to be handled in our district. Your contribution to this effort at the public hearing will be very helpful to our work.

If you have any questions about the procedures, please feel free to contact me at Washington and Lee University, School of Law, Lexington, Virginia 24450 - 703/463-8512.

Sincerely,

Joan M. Shaughnessy

Joan M. Shaughnessy
CJRA Committee Reporter

/lt

WESTERN DISTRICT OF VIRGINIA

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Lee County Public Schools
5 Park Street
Jonesville, Virginia 24263

Chair, School Board
Montgomery County Public Schools
Post Office Box 29
Christiansburg, Virginia 24073

Chair, School Board
Pittsylvania County Public Schools
Post Office Box 232
Chatham, Virginia 24531

Chair, School Board
Fluvanna County Public Schools
Post Office Box 419
Palmyra, Virginia 22963

Chair, School Board
Galax City Public Schools
223 Long Street
Galax, Virginia 24333

Chair, School Board
Greene Cuonty Public Schools
Post Office Box 98
Stanardsville, Virginia 22973

Chair, School Board
Henry County Public Schools
Post Office Box 8958
Collinsville, Virginia

Chair, School Board
Lexington City Public Schools
300-A White Street
Lexington, Virginia 24450

Chair, School Board
Manassas Park City Public Schools
One Park Center Court, Suite A
Manassas Park, Virginia 22111

Chair, School Board
Nelson County Public Schools
Post Office Box 276
Lovingston, Virginia 22949

Chair, School Board
Page County Public Schools
735 West Main Street
Luray, Virginia 22835

Chair, School Board
Franklin County Public Schools
102 Bernard Road
Rocky Mount, Virginia 24151

Chair, School Board
Giles County Public Schools
Route 1, Box 52
Pearisburg, Virginia 24134

Chair, School Board
Halifax County Public Schools
Post Office Box 1849
Halifax, Virginia 24558

Chair, School Board
Highland County Public Schools
Post Office Box 250
Monterey, Virginia 24465

Chair, School Board
Madison County Public Schools
Post Office Box 647
Madison, Virginia 22727

Chair, School Board
Martinsville City Public Schools
Post Office Box 5548
Martinsville, Virginia 24115

Chair, School Board
Norton City Public Schools
Post Office Box 498
Norton, Virginia 24273

Chair, School Board
Patrick County Public Schools
Post Office Box 346
Stuart, Virginia 24171

Chair, School Board
Pulaski County Public Schools
44 Third Street, N.W.
Pulaski, Virginia 24301

Chair, School Board
Roanoke City Public Schools
Post Office Box 13145
Roanoke, Virginia 24031

Chair, School Board
Rockingham County Public Schools
304 County Office Building
Harrisonburg, Virginia 22801

Chair, School Board
Scott County Public Schools
261 East Jackson Street
Gate City, Virginia 24251

Chair, School Board
South Boston City Public Schools
Post Office Box 1849
Halifax, Virginia 24558

Chair, School Board
Warren County Public Schools
111 East Criser Road
Front Royal, Virginia 22630

Chair, School Board
Winchester City Public Schools
Post Office Box 551
Winchester, Virginia 22601

Chair, School Board
Radford City Public Schools
Post Office Box 3698 FFS
Radford, Virginia 24143

Chair, School Board
Roanoke County Public Schools
526 College Avenue
Salem, Virginia 24153

Chair, School Board
Russell County Public Schools
Post Office Box 8
Lebanon, Virginia 24266

Chair, School Board
Shenandoah County Public Schools
Post Office Box 488
Woodstock, Birginia 22664

Chair, School Board
Staunton City Public Schools
Post Office Box 2626
Staunton, Virginia 24401

Chair, School Board
Washington County Public Schools
812 Thompson Drive
Abingdon, Virginia 24210

Chair, School Board
Wise County Public Schools
Post Office Box 1217
Wise, Virginia 24293

Chair, School Board
Rappahannock County Public Schools
Post Office Box 273
Sperryville, Virginia 22740

Chair, School Board
Rockbridge County Public Schools
417 Morningside Drive
Lexington, Virginia 24450

Chair, School Board
Salem City Public Schools
19 North College Avenue
Salem, Virginia 24153

Chair, School Board
Smyth County Public Schools
Post Office Box 987
Marion, Virginia 24354

Chair, School Board
Tazewell County Public Schools
Post Office Box 469
Tazewell, Virginia 24651

Chair, School Board
Waynesboro City Public Schools
301 Pine Avenue
Waynesboro, Virginia 22980

Chair, School Board
Wythe County Public Schools
1570 West Reservoir Street
Wytheville, Virginia 24382

Department of Veterans Affairs
Commonwealth of Virginia
210 Franklin Road, S.W., Room 1012
Post Office Box 809
Roanoke, Virginia 24004

Mr. Charles Tonn
Disabled American Vets Association
United States Courthouse
Federal Building
210 Franklin Road, S.W.
Roanoke, Virginia 24011

NVLSP
2001 South Street, S.W., Suite 610
Washington, DC 20009

MHLP
1101 15th Street, N.W., Suite 1212
Washington, DC 20005

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Wise County Medical Society
Highway 1000
Big Stone Gap, Virginia 24219

Dr. Dan Patel
Buchanan County Medical Society
124 U.S. 460 East
Grundy, Virginia 24614

/lt

WESTERN DISTRICT OF VIRGINIA

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

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August 26, 1992

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FRANK KILGORE
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FAX (703) 762-5593

October 20, 1992

Philip Stone, Chairman
U. S. Civil Advisory Committee
P. O. Box 809
Harrisonburg, Virginia 22801

Dear Phillip:

On October 15, 1992, Jim Jones and I conducted a public hearing in St. Paul, Virginia regarding comments and suggestions for our committee. In attendance were the mayors of the towns of St. Paul and Castlewood, Delegate Bud Phillips, and members of the press. We also received a letter from Gregory M. Stewart, president of the Wise County Bar Association, which I am enclosing herewith.

The consensus of the speakers was that the federal courthouse in Big Stone Gap should not only remain open, but should be expanded to help accommodate the activities there, especially when bankruptcy court and the magistrate are holding hearings simultaneously with the district court. As we found in Roanoke, the members of the public in attendance were complimentary of the general nature of the handling of civil cases in the Western District. I think this speaks well for our district and everyone present at the public hearing was very gratified that the committee saw fit to hold a public hearing in the coalfields.

Delegate Jackie Stump had intended to attend to discuss the overlapping of jurisdictions of state and federal court during labor hearings but called at the last minute to state that he had to go to Richmond in his capacity as a member of the Virginia General Assembly for a meeting. Therefore, we did not have any direct input at the public hearing regarding this particular issue.

I would like to personally thank the committee for allowing the public hearing to be held in our area. The hearing was well publicized on radio, T.V., and the print media. The only conclusion I could reach after the public hearing is that our federal court system in the Western District is not broken and therefore we are not receiving many comments on how to fix it. The overriding concern is that the Big Stone Gap courthouse not be closed because of the terrible inconvenience that would pose to parties and jurors in the farthest reaches of the outlying counties.

I hope that you will share this report and attachment with the other members of our committee and I will see each of you at our next scheduled meeting.

Very truly yours,

FK

Frank Kilgore

FK/cdm

Enclosure

cc: Jim Jones (with enclosure)
Joan Shaughnessy (with enclosure) ✓

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October 15, 1992

Mr. Frank Kilgore
Attorney at Law
P. O. Box 1210
St. Paul, Virginia 24283

Dear Frank:

I apologize for not being able to attend the committee meeting in regard to improvements to the Federal Court in our area. However, I request that you please accept this letter in behalf of the Wise County Bar Association.

The Wise County Bar Association has found the United States District Court for the Western District of Virginia to be very efficient and we trust that the Court will continue in a similar manner. We further trust that the Clerk's Office and Federal Courthouse in Big Stone Gap will remain operational.

We suggest that in order to alleviate the overcrowding situation in the Big Stone Gap Courthouse during the numerous bankruptcy, social security, magistrate, and other hearings and/or trials which are regularly scheduled simultaneously in that Courthouse, the Courthouse facility should be expanded to provide enough courtrooms for these various hearings and/or trials.

I trust this information and suggestion will be helpful to the committee in its endeavors to improve upon the Federal Court for our area.

Sincerely,

Gregory M. Stewart

Gregory M. Stewart, President
Wise County Bar Association

sdg

Cross-Reference Table

CJRA Statutory Directive*	Response in Report
§ 472 (c)(1)(A)&(B) (condition of docket and trends in case filing)	Chapter III
§ 472 (c)(1)(C) (causes of cost and delay identified)	Chapters V and VI.A
§ 472 (c)(1)(D) (impact of legislation)	Chapter VI. G (discussing effect of legislation on criminal docket)
§ 472 (c)(2) (particular needs and circumstances of Western District of Virginia)	Chapters II, VI.H and VI.I.1 (discussing number of divisions, size of social security and prisoner petition docket and absence of local rules)
§ 472 (c)(3) (contributions by court, litigants and attorneys)	Chapter VI.I.4
§ 473 (a)(1) (differential case management)	Chapter VI.B
§ 473 (a)(2)(A) (early involvement of judicial officer in case)	Chapter VI.C.4 and VI.D (recommending early reference of cases to Magistrate Judges)
§ 473 (a)(2)(B) (early, firm trial dates)	Chapter VI.C.1 and VI.F (recommending early setting of trial date and means for managing trial calendar)
§ 473 (a)(2)(C) (control of discovery)	Chapter VI.C and VI.D (recommending discovery cut-off, discovery limits and reference to magistrate judge for supervision of discovery)

§ 473 (a)(2)(D) (disposition of motions)	Chapter VI.C and VI.E (recommending time limit for motions and guidelines for decisions on dispositive motions)
§ 473 (a)(3) (complex case management)	Chapter VI.C.4 and VI.D (recommending that Magistrate Judge be authorized to engage in ongoing supervision of cases which require such treatment)
§ 473 (a)(4) (voluntary disclosure and cooperative discovery)	Chapter VI.C.3 and VI.C.4 (recommending discovery limits, subject to change by magistrate judge. No recommendation for voluntary exchange of information)
§ 473 (a)(5) (certification of effort to resolve discovery dispute)	Chapter VI.D.3 (recommending that attorneys be expected to attempt resolution of discovery disputes; rejecting certification requirement)
§ 473 (a)(6) (alternative dispute resolution)	Chapter VI.D and VI.J (recommending discussion of ADR, if desirable, at initial conference with magistrate judge and further study of ADR)
§ 473 (b)(1) (presentation of discovery - case management plan at initial pretrial conference)	Chapter VI.D.1 (recommending discussion of discovery plans and anticipated problems at initial conference. Not recommending preparation of formal document before conference)
§ 473 (b)(2) (requirement that attorney at pretrial conference be authorized to bind party)	(Not recommended. See below for recommendation that magistrate judge be authorized to require attendance of parties)
§ 473 (b)(3) (requests for extensions be signed by attorney and party)	(Not recommended; Chapter VI.c recommends initial consultation with counsel on deadlines, with discretion in the magistrate judge, in consultation with the district judge, to alter deadlines as needed)

§ 473 (b)(4) (early neutral evaluation)	Chapter VI.D.1 (recommending initial conference before magistrate judge in lieu of formal early neutral evaluation program)
§ 473 (b)(5) (authority to require presence of parties at settlement conference)	Chapter VI.D.2 (recommending that magistrate judge have such authority)
§ 475 (continuing assessment)	Chapter VI.J
§ 478 (membership of advisory group)	Chapter V.4

* All references are to sections of Title 28 of the United States Code.

ADR RESOURCES AVAILABLE IN THE WESTERN DISTRICT OF VA, 1992

LOCATION	PROVIDER	SERVICES RENDERED
Abingdon	28th Dist. Juv. C.S.U.	M(DR),A,ND
Appomattox	10th Dist. J&DR C.S.U.	M(DR)
Campbell	Hawkins, David A.	A,MT,SC,SJT
Charlottesville	16th Dist. Juv. C.S.U.	M(DR)
	Emery, Robert	M(DR)
	FOCUS/The Mediation Center	M,T
	Institute for Environmental Neg.	M,MT,NA
Gate City	30th Dist. Juv. C.S.U.	M(DR)
Giles	29th Dist. Juv. C.S.U.	M(DR)
Harrisonburg	Center for Mediation (JMU)	C,M,A,NA,SC,T
	Community Mediation Center	C,M,NA,F,T
	Fairfield, Kathryn	C,M,A
	Hess, Susan	C,M,NA
	Hoover, Eliza	M,NA,SC
	Hoover, Lawrence H., Jr.	C, M,A,T
	Wettstone, Richard P.	C,M,NA
Lynchburg	24th Dist. C.S.U.	M(DR),ND
	Mediation Center for Central VA	M,T
	Morrison, Frank West	M(DR)
Martinsville	21st Dist. Juv. C.S.U.	M(DR),Criminal,ND
Montgomery	27th Dist. C.S.U.	M(DR),ND
	Mullen, David W.	A,NA,SC
Nelson	Willett, Fehrunissa	M(DR),ND
Orange	Ellerson, H. Watkins	C,M,MT,NA
Patrick	Corbett, Christopher A.	C,M,A,MT,NA,SC,SJT
Pittsylvania	Lucy G. Moore and Assoc.	M(DR)
Pulaski	Sadler, Philip M.	C,M,NA
Roanoke	Conflict Resolution Center,Inc.	M,C,A,T
	Family Mediation Services	M(DR),T
	Peters, Holly S.	M(DR)
	Roanoke City Dept. of Soc. Ser.	M(DR)
Salem	Roanoke Co. Dept. of Soc. Ser.	M(DR)

Staunton	25th Dist. Juv. C.S.U.	M(DR),C
	Augusta Center for Mediation	C,M,A,NA
	Seltzer, Curtis	M.A
Tazewell	Henderson and deCourcy,P.C.	C,M,NA

KEY

A	Arbitration
C	Conciliation
(DR)	Domestic Relations
F	Facilitation
M	Mediation
MT	Mini Trial
NA	Neutral Advisor
ND	Neighborhood Dispute
SC	Settlement Conference
SJT	Summary Jury Trial
T	Training