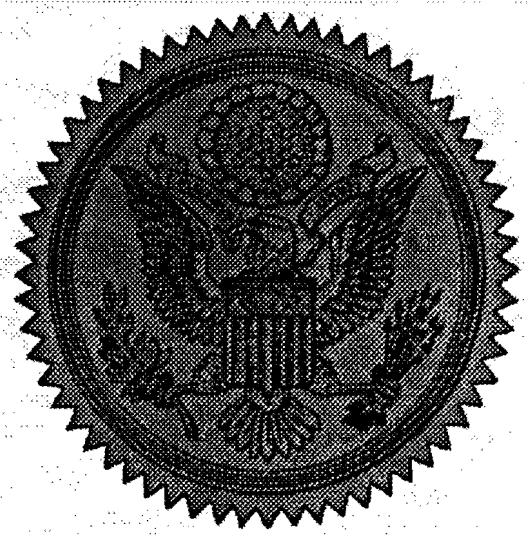
REPORT OF

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE



SEPTEMBER 1, 1993

REPORT AND RECOMMENDATIONS
OF THE ADVISORY COMMITTEE
FOR THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
UNDER THE CIVIL JUSTICE REFORM
ACT OF 1990

SEPTEMBER 1, 1993

INDEX

INTRODUCTION

Is there excessive cost and delay in civil litigation in the United States District Court for the Eastern District of Kentucky? This is the major question addressed by this report as mandated by the Judicial Improvements Act of 1990, more specifically known as the Civil Justice Reform Act of 1990. Pub. L. No. 101-650, Stat. 5089 codified at 28 U.S.C. §§ #71-82 (Supp. 1992). (Appendix G)

Section 448(b) of the Act requires that the Advisory Committee appointed by the court "be balanced and include attorneys and other persons who are representative of the major categories of litigants in such court, as determined by the chief judge of such court." In response to § 478 of the Civil Justice Reform Act of 1990, the Chief Judge of the Court appointed an Advisory Committee composed of lawyers and non-lawyers who represent the various interests of litigants in the community of the Eastern District of Kentucky. The task of the Advisory Committee has been to recommend a civil justice expense and delay reduction plan under 28 U.S.C.A. § 472. (Appendix G)

The mission of the Advisory Committee has been to assess the condition of the courts' civil and criminal dockets, to identify the causes of unnecessary delays and costs in civil litigation,

and to recommend to the court ways to reduce unnecessary delays and costs.

The Advisory Committee made extensive efforts to obtain input from those involved in litigation in the district. Those efforts included: mailing questionnaires to litigants and their attorneys; interviewing the district judges; magistrate judges; law clerks and court personnel; television solicitation to solicit input from the public; distribution of questionnaires to attorneys at state bar association functions. Responses from litigants were limited. Responses from attorneys were good, by comparison. The Advisory Committee also obtained and reviewed extensive statistical data. Appendix B contains a more complete description of the methods used to obtain and analyze information.

The report of the Advisory Committee represents a consensus of views developed after long deliberation and rigorous debate.

PART I

BRIEF HISTORY AND DESCRIPTION OF THE COURT

Clark	Lawrence	Robertson
Clay	Lee	Rockcastle
Elliott	Leslie	Rowan
Estill	Letcher	Scott
Fayette	Lewis	Shelby
Fleming	Lincoln	Trimble
Floyd	McCreary	Wayne
Franklin	Madison	Whitley
Gallatin	Magoffin	Wolfe
Garrard	Martin	Woodford
	Mason	

The remaining fifty-three (53) counties of the Commonwealth constitute the Western District.

The United States District Court for the Eastern District of Kentucky is divided into the following jury divisions for both civil and criminal cases:

Ashland Division. By Counties:

Boyd	Lawrence
Carter	Lewis
Elliott	Morgan
Greenup	Rowan

Covington Division. By Counties:

Boone	Kenton
Bracken	Mason
Campbell	Pendleton
Gallatin	Robertson
Grant	

Frankfort Division. By Counties:

Anderson	Owen
Carroll	Shelby
Franklin	Trimble
Henry	

Lexington Division. By Counties:

Bath	Garrard	Mercer
Bourbon	Harrison	Montgomery
Boyle	Jessamine	Nicholas
Clark	Lee	Powell
Estill	Lincoln	Scott
Fayette	Madison	Wolfe
Fleming	Menifee	Woodford

London Division. By Counties:

Bell	Laurel	Rockcastle
Clay	Leslie	Wayne
Harlan	McCreary	Whitley
Jackson	Owsley	
Knox	Pulaski	

Pikeville Division. By Counties:

Breathitt	Magoffin
Floyd	Martin
Johnson	Pike
Knott	Perry
Letcher	

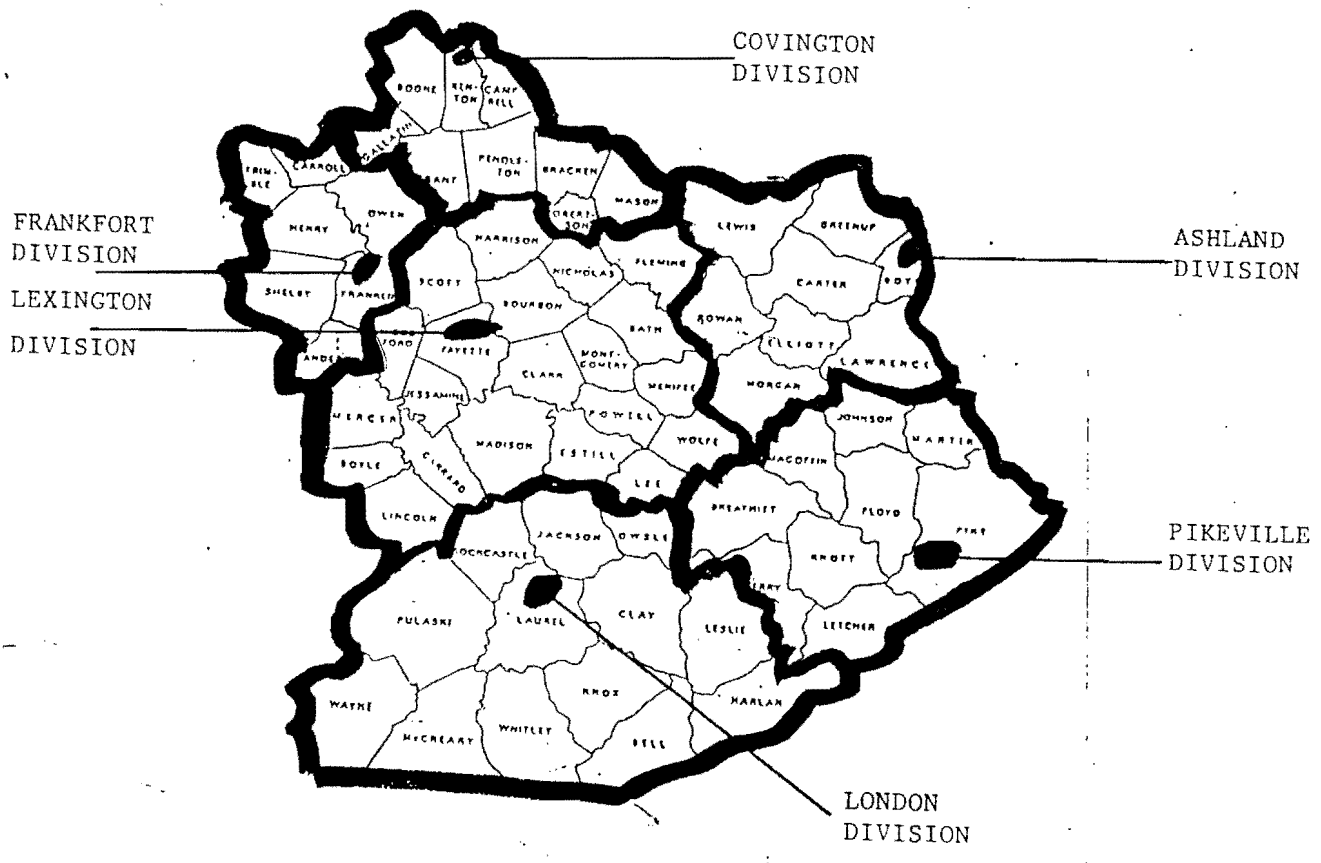
Since the division of the Commonwealth in 1901, the Eastern District Court terms have been held at Jackson, Frankfort, Covington, Richmond, London, Catlettsburg and Lexington. Through the process of legislative evolution, the court sits in Ashland, Covington, Frankfort, Lexington, London and Pikeville.

Visually, the United States District Court for the Eastern District of Kentucky appears as follows:

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF KENTUCKY



DESCRIPTION OF THE PRESENT COURT

ARTICLE III JUDGES

Title 28 U.S.C.A §133 authorizes four (4) Article III Judges for the United States District Court for the Eastern District of Kentucky plus one (1) Article III Judge for both the Eastern and Western District. At present Article III Judges sit in Covington (Chief Judge), Ashland, Lexington and Frankfort. One judge is located in each of the five jury divisions of the Court with no resident judge in the jury division of the Court at Pikeville. An Article III Judge vacancy has existed in the London division of the Court since 1991 which has not yet been filled[1] There is an active Senior District Judge presently at London that exclusively handles all social security cases for the entire District. One of the district judgeships is shared with the Western District of Kentucky which is the vacant judgeship assigned to the London division.

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[1] It is noted that a person has been nominated for this position but has not yet been confirmed by the Senate.

SUPPORT STAFF FOR THE ARTICLE III JUDGES

Each District Judge has a staff of one secretary and two law clerks. The Chief Judge is given a third law clerk. Additional support staff for the Court includes:

A.) MAGISTRATE JUDGES

There are three (3) full time Magistrate Judges in the Eastern District, one at each Lexington, Ashland/Pikeville and Covington/Frankfort. Additionally, there is a part-time Magistrate Judge in the London division who deals exclusively with criminal matters.

The basic duties of the Magistrate Judge are to assist the District Judges, consistent with 28 U.S.C.A. §636, in civil pre-trial matters which are non-dispositive and criminal matters such as issuing search and arrest warrants, misdemeanors and petty offenses setting bond, habeas corpus (state and federal), prisoner petitions and civil rights actions under §1983 and Bivens cases. Through consent jurisdiction, conferred by the parties, the Magistrate Judge may dispose of a civil case in its entirety.

Each full time Magistrate Judge has a full time secretary who is responsible for typing, record keeping, preparation of

multiple statistical reports, and, in some cases, case management.

Also, each full time Magistrate Judge has an "in chambers" law clerk who does research and writing. These clerks are usually with the Magistrate for no more than two (2) years at a time.

B.) **LAW CLERKS**

As noted above, each Article III Judge has two law clerks, the Chief Judge has a third clerk and Magistrate Judges have an "in chambers" law clerk. Additionally, there is one Pro Se Law Clerk for the entire Eastern District.

The duties of the Pro Se Law Clerk are confined to the initial screening of pro se prisoner petitions to weed out frivolous filings. The Pro Se Law Clerk is based in Lexington, Kentucky and is assisted in prisoner litigation by a half-time secretary who is a member of the staff of the Clerk of Court.

C.) **PROBATION AND PRE-TRIAL SERVICES DIVISION**

The Probation and Pre-Trial Services Division of the Court has thirty (30) employees. They assist the Court in criminal cases.

D.) **COURT REPORTERS**

There are five (5) official court reporters, one assigned to each District Judge. Contract court reporters and interpreters are employed as needed to cover court proceedings.

E.) **CLERK OF COURT**

The chief administrative officer of the Eastern District of Kentucky is the Clerk of Court. The office of the Clerk of Court has thirty five (35) employees district-wide. There are eighteen (18) employee positions in Lexington and four (4) in each of the four divisional offices plus one in the office at Frankfort. Staffing is determined by the administrative office through the use of a formula having eighteen elements. Primarily the clerk's office duties are twofold: clerking duties and administrative duties.

Clerking duties are, for example: receiving and entering a case on the court docket; preparation of courtroom calendars; issuing supplemental process; answering inquiries on case preparation of orders; judgment minutes and all documents arising out of court proceedings; retention of case files; criminal court docketing; handling of civil cases on appeal to the Sixth Circuit; the process and vetting of jurors; trial exhibit

custodian; attorney admissions; naturalization proceedings; and servicing Criminal Justice Act Panel Attorneys.

Administrative duties consist of: being the financial officer (disbursing agent) for the District and Bankruptcy Courts; Probation Division and the Sixth Circuit Judges in the District; procurement of office equipment, supplies, forms, space and facilities; personnel and payroll officer for the court; record management; court security (spaces and property); budget preparation and programming; public relations and information; statistical compilation and reporting; liaison with United States Attorneys office, General Services Administration, U.S. Marshall's Service, National Archives, Federal Judicial Center and Administrative office of the United States Courts.

As of January, 1993, the Court installed a computerized telecommunications line for public access to the civil case dockets, courtroom calendars and party name searches.

F.) **BANKRUPTCY JUDGES**

There are two Bankruptcy Judges in the Eastern District. While the Bankruptcy Court is a Division of the Eastern District Court, it is administratively independent. The two Bankruptcy Judges are appointed by the United States Court of Appeals for

the Sixth Circuit, the Chief Bankruptcy Judge is designated by the district court.

PHYSICAL FACILITIES

The United States District Court for the Eastern District of Kentucky maintains six courthouses, ten law libraries and one chamber for the active Senior Judge in London, Kentucky. This chamber is however, in private rented space.

RELATIONSHIP WITH THE WESTERN DISTRICT: THE JOINT LOCAL RULES

Because of the geographical divisions between the Eastern District Court and the Western District Court, and in order to standardize procedures for the convenience of the bench and bar, the Chief Judges of these Courts adopted uniform local rules for the two districts. These rules were developed in 1986 by a committee composed of lawyers, judges and scholars from both districts. The results of their efforts became the Joint Local Rules for the United States District Courts of the Eastern and Western Districts of Kentucky, effective on July 1, 1987. These rules both complement and supplement the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. They do not eliminate the distinctions between the statutory districts of

the District Court for the Eastern and Western Districts of Kentucky created by Congress on February 12, 1901.

The adoption of the Joint Local Rules eliminated a serious problem previously confronted by practitioners and litigants in the Commonwealth: lack of uniformity, simplicity and clarity. These rules are flexible enough to permit each district its own autonomy where necessary, but are liberally construed to carry out the spirit of Rule 1 of the Federal Rules of Civil Procedure --- "to secure the just, efficient and inexpensive determination of any action" (including criminal actions).

The Joint Local Rules have been widely accepted and welcomed by the practitioners of the Commonwealth who frequently have litigation in both divisions. Also, the standardization of these joint local practice rules have made a more efficient and uniform practice for the Court as well. This is particularly true for the one Article III Judge who is shared with the Western District under 29 U.S.C.A. §133.

PART II

ASSESSMENT OF CONDITIONS

IN THE DISTRICT

PART II

ASSESSMENT OF THE CONDITIONS IN THIS DISTRICT

A.) CONDITION OF THE DOCKET

1.) Conditions of the Criminal and Civil Dockets.

The condition of the court's civil docket is satisfactory, considering the fact that there has been a judicial vacancy in the district since 1991.

The life expectancy of each civil case in the district, as calculated by the Federal Judicial Center, is twelve (12) to eighteen (18) months. (Appendix C. p. 15) This statistic has remained constant because since the judicial vacancy, the active Senior District Judge sitting at London, Kentucky, has exclusively handled all social security case filings for the District. The Social Security cases represent one of the highest filings of this type of case in the country (Appendix F).[2] The handling of this specific type of case by a specific judge has resulted in the ability of the remaining judges of the District to absorb the workload to make up for the absent judgeship.

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[2] According to the Administrative Office (A.O.) Report of September 1, 1993, the Eastern District of Kentucky ranks number one in the nation at 72.2 social security cases per judgeship.

The condition of the court's criminal docket is also satisfactory again considering the judicial vacancy at the London, Kentucky location. This condition is tempered by the fact that the number of criminal cases have been steadily on the rise since 1991 (Appendix C, p. 18, 19) and are projected to rise even further by the year 2021. (Appendix D)) If this proves to be true (and there is no reason to question the projections by the Administrative Office) Congress must increase all court facilities and staff to meet the docket pressures commensurate with these projected figures.

It is a well recognized fact, acknowledged by Congress, the Court and the practitioners in the Eastern District, that the Speedy Trial Act does in fact interfere with the prompt disposition of civil matters.

However, there are no statistics available to show the effect of the Speedy Trial Act on civil dispositions. Because of this fact, the criminal caseload limits the resources available to handle the courts civil caseload. The court will not be able to appropriately respond to meet the projected needs.

2.) **TRENDS IN CASE FILINGS**

During the period of 1988 to the present, the trends in case filings and demands on the court resources have increased.

Despite the fact that certain types of cases may appear cyclical in filings, certain trends have been constant in the increasing number of filings.

Prisoner case filings have dramatically increased and, according to the Magistrates Status Report regarding pro se litigation, the trend appears to be upward. Pro se filings are received from both the state and federal prisons located in the district. There are currently six (6) state prisons in the Eastern District. These prisons currently house approximately three thousand two hundred (3,200) prisoners. Additionally, each county in the Eastern District has a jail with a total inmate capacity of thirteen hundred (1,300) prisoners.

There are three (3) federal prisons in the Eastern District, located at London, Ashland and Manchester. The London and Ashland facilities have approximately three thousand (3,000) inmates. The recent addition of the Manchester federal facility has added approximately one thousand five hundred (1,500) new inmates, resulting in a total of approximately four thousand five hundred (4,500) total federal inmates. This represents a federal inmate population in the Eastern District of more than six (6) times the national average. The federal prison population, in addition to the state prison population, will undoubtedly increase the amount of prisoner filings in the district.

According to the statistics of the Federal Judicial Center for the years 1991 and 1992, Civil Rights cases have increased from 1991 to 1992 to make up over 21% of the courts civil docket. The civil rights cases are followed by Social Security cases that make up approximately 18% of the civil docket. These cases are followed by personal injury, contract and prisoner cases. (Appendix C) It is noted that many of the cases listed as "Civil Rights" are prisoner cases separate and apart from specifically labeled "Prisoner Cases." With the increasing number of such cases filed, regardless of how they are labeled, the demands on the Magistrates, Pro Se Law Clerks, etc. are increasing and the Article III Judges of this district already spend a great deal of their time dealing with criminal cases. Both projected civil and criminal filings indicate an upward spiral. (Appendix D)

3.) **TRENDS IN COURT RESOURCES**

The impact of the increased litigation in the district has strained court resources affecting virtually every facet of the court's operation. At the top of the list is the judicial vacancy which Congress has not yet filled. This vacancy has caused a shift in caseloads to make up for the lack of one judicial resource.

The Magistrate Judge's work is rapidly increasing. There is an increasing volume of habeas corpus and pro-se prisoner cases

especially from the state prisons. By statute the habeas corpus cases have first priority and make up the largest chunk of the Magistrates workload (50-65% of cases handled by the Magistrate Judges). These cases are separate from the prisoner cases where a prisoner has challenged the conditions of jail or prison. Additionally, the Magistrate Judge must compile and report statistics to the various agencies regarding their work. If and when there is a cessation of handling of social security cases by a specific judge as is presently being done, such cases will revert back to a Magistrate who will have to handle social security cases by report and recommendation. This will add to their workload. In the remaining time outside of their normal workload, the Magistrate Judge handles non-dispositive civil matters for the Article III Judges as well as final dispositions of civil cases through their consent jurisdiction.

The Magistrate Judges staffs are currently working at full capacity. Because there is only one "in chambers" law clerk and a Pro Se Law Clerk who is based in Lexington, most of their work is confined to the habeas corpus and prisoner cases, their work in this highly specialized area makes them less available to assist in other types of cases (civil). An additional secretary to assist the Pro Se Clerk would also aid the efficiency of the office.

The growing business of the Court has also placed a strain on the physical facilities of the Court. Many of the federal agencies related to Court operation such as Probation and U.S. Attorney's Office, have had to expand to meet the needs of the Court. Their staffs have physically outgrown the federal facilities presently available to them and consequently such agencies have moved into private facilities. This same condition is true for the Active Senior Judge handling social security cases and a Judge of the Sixth Circuit Court of Appeals. Private facilities are being rented for them because the present federal facilities are inadequate. Unless Congress provides adequate funding to improve the physical facilities of the Eastern District Court, particularly at Covington and London, Kentucky, the efficiency of the Court will be affected. The division of funds for the purpose of paying high rent for court related activities has resulted in a reduction of critically needed funds for court operation.

The clerk has made excellent strides in modernizing its operations in spite of limited funding. At least one staff position has been frozen. The recent computerization of the Court's docket, etc. necessitates additional staff for quality control and maintenance of the program for the entire district. The jury system and financial operations of the Court have been computerized within the year. With this modernization of the Court, new personnel is needed to keep efficiency of this new

system at a level that makes it cost effective. These positions need to be fully funded.

B.) **COST AND DELAY**

Is there excessive cost and delay in civil litigation in the district? Because no one has been able to adequately define the word "excessive" the answer to this question would obviously depend upon the perceptions of the persons asked. Based upon statistical information provided to the Committee by the Administrative Office (A.O.), and the subjective input of attorneys and judges, the Advisory Committee concluded that under the circumstances that have existed in the district since 1991 to the present, there is no excessive delay in civil litigation in the Eastern District.[3] However, this conclusion is tempered. It is tempered because the temporary readjustments of the docket among the Article III Judges to compensate for the unfilled vacancy and the readjustments in staff and personnel to deal with the rise in prisoner cases (both state and federal) cannot continue. Perceptions of the surveyed litigants and a minority of the surveyed attorneys support the Committee's conclusion.

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[3] It should be noted that of the 335 attorney questionnaires were returned out of the 500 questionnaires sent out, while only 56 litigant questionnaires were returned, therefore, each litigant's opinions (perceptions) weighted more heavily in the litigant percentages than each attorney's in the attorney percentage. In the responses approximately one hundred (100) written comments were received. Those comments were generally consistent with the statistical results. (Appendix E).

The survey results of attorneys confirm the Committee's finding that most civil litigation in the District was disposed of in less than and eighteen (18) months. While 85.29% of the attorneys thought that the resolution time frame of their case was appropriate, only 38.89% of the litigants agreed. This differing view of delay is seen again in the fact that 35.19% of the litigants thought the case took "much too long", but only 5.32% of the attorneys agreed. The Committee is aware that despite the litigant's pessimism, delay reduction has always been a concern of this district and changes are continually being made as reflected in, for example, the Joint Local Rules. The impetus for economical justice comes from lawyers and the judges as well as from litigants. The Committee has concluded that there is still room for improvements as reflected in its recommendations in Part III.

Responsibility for the perceived delay was, according to the survey, laid first at the feet of the opposing attorneys (64.28% of litigants versus 31.52% of attorneys).

The second greatest delay factor was "the system" according to 47.61% of the litigants and 31.52% of the attorneys. Although these responses may reflect some real dissatisfaction with the federal judicial process, the overall responses indicate that both litigants and attorneys prefer the existing Federal process although it is sure-but-slow. This begrudging acceptance of the slow grinding of judicial wheels is seen in the responses

comparing federal versus state litigation. Based on the total number of responses, 40.56% were of the opinion that a case filed in the Eastern District is usually resolved in about the same amount of time as a case of similar complexity filed in the state courts of Kentucky. 22.96% were of the opinion that a similar case was more quickly handled in the Eastern District Court than the state court and 19.13% were of the opinion that such a case was slower in the Eastern District than in the state courts.

An opposing party was considered a moderate third delaying cause (19.82% of attorneys versus 33.33% of litigants surveyed).

Attorneys' actions such as excessive discovery, hyper-technical defenses, complex joinder, lack of preparation, docket "bumping," slow rulings by the Court, and difficulty in getting trial dates were the leading causes listed by the questionnaire respondents. Almost half of the litigants (46.0%) stated that the trial of their case had been postponed, but less than one-fourth of the attorneys (19.63%) had sought a postponement. The Committee is aware of the fact that there are certain circumstances that arise during the pendency of litigation which are unforeseen and uncontrollable such as the death of opposing counsel, or the unavailability of an expert for depositions. The Committee has noted, however, that the responses reflect the need for improvement although some of these causes given for delay are beyond the control of the Court.

The Committee is aware that delay can be a major factor of excessive expenses, but there are other perceived excessive costs. Litigant responses (60.57%) revealed that attorneys' fees were "unnecessarily high" above all other expenses. Conversely only 24.14% of attorney responses thought that attorneys fees were too high. Most attorneys (65.15%) considered discovery costs, particularly for medical depositions and expert fees, to be too high. Attorneys also complained about their additional costs such as travel expenses and time lost from other affairs. The Committee realizes that the Court has no control over most of these costs.

Responsibility for the high costs of a case was, by both attorneys and litigants, laid at the feet of the system itself (51.90% of attorneys and 56.11% of the litigants). However, the same percent (56.11%) of the litigants also felt that the opposing attorney's actions were responsible for high costs and 31.85% of the attorneys agreed. 34.15% of the litigants felt the other party was a cause of high costs in their cases.

The overwhelming solution to help reduce expenses according to the litigants (84.08%) was a speedier resolution of the case. Attorneys agreed, but not by such a large percentage (49.83%).

The second solution offered by both groups was more control of a case by the Court (45.45% of litigants versus 45.29% by attorneys).

Prompt rulings by the Court, early pre-trial conferences, and facilitation of settlement discussions were among the most favored case management techniques. Setting an early and firm trial date was the among the least favored by the respondents.

Individuals written responses to solutions for excessive costs included federal regulation of medical deposition costs, limitation of expert fees mandated reliance on a single court appointed expert, and a cap on the number and length of depositions. One response went up as far as to require attorneys to remit their fees if they "mess up."

Surprisingly, referring a case to alternate dispute resolution, such as mediation or arbitration, was least favored as a means of speeding up the resolution of a case. This response was not taken by the Committee to be negative because there was no designation as whether the A.D.R. was voluntary or not. Of all the suggested non-Article III Judge dispute resolution methods, such as mediation, binding or non-binding arbitration, or trial by Magistrate, trial by Magistrate was the favored alternative. Yet, in a follow up question which asked which form of A.D.R. would reduce the amount of money spent in

litigation, 40.05% of all respondents answered that mediation would have helped reduce those costs. Well over a third of the litigants would have agreed to mediation or non-binding arbitration to resolve their cases. Attorneys were slightly less favorable to these two A.D.R. methods.

The Committee's consideration of all the factors that create cost and delay has included those matters over which the Court has no control, but are necessary to reduce cost and delay. If it is the overriding consensus of Congress that there is, in fact, excessive cost and delay in the federal system, then they must respond appropriately.

One of the first areas of major concern is the proliferation of rights and remedies in the federal courts but without commensurate increases in federal judges and court staff. Congress must study the impact of such new legislation on the federal court system and cannot continue to ignore their own impact statements. New legislation acted on by Congress without heeding such impact statements is a disservice to the courts who are trying to keep the system working efficiently. New legislation in the area of child support and proposed legislation in domestic violence will prove disastrous to the present system unless adequate personnel and facilities are made available to handle the caseload.

PART III

RECOMMENDATIONS OF THE COMMITTEE

III RECOMMENDATIONS AND THEIR BASIS

In this section, the Advisory Committee reports its recommendations for reducing delay and costs.

The Committee is fully aware that most of the recommendations should help reduce cost and delay, some may reduce only delay, while some may only reduce costs. These recommendations serve as the recommended plan by the Committee to the court for implementation.

RECOMMENDATION NO.1

THE COURT SHOULD CONTINUE TO REFINE AND IMPLEMENT THOSE MEASURES THAT HAVE PROVIDED FOR STANDARDIZATION AND UNIFORMITY THROUGH THE JOINT LOCAL RULES.

BASIS FOR RECOMMENDATION: In 1987, the Courts of the Eastern and Western District adopted a set of local rules, designed, in part, to provide standardized procedures for the convenience of the bench and bar and to reduce delays and costs in civil litigation. These local rules have been continually upgraded to meet the needs of an ever growing docket and to streamline procedures for the purpose of efficiency and convenience. The Committee has unanimously agreed that these

Joint Local Rules are a necessity for both the bench and bar in the Commonwealth. The Committee also has unanimously adopted these Joint Local Rules as a necessary part of their plan. These local rules do not supersede the Federal Rules of Civil or Criminal Procedure but in fact compliment them. Neither do the Joint Local Rules eliminate the Statutory Districts for the Eastern and Western Divisions. Geographical and travel problems for both the bench and bar necessitate uniformity. These rules should be regularly reviewed and revised by the Joint Local Rules Commission made up of attorneys and judges of both districts.

RECOMMENDATION NO.2

THE COURT SHOULD ADOPT AND IMPLEMENT A VOLUNTARY MEDIATION PROGRAM FOR USE IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY.

BASIS FOR RECOMMENDATION: The Advisory Committee is unanimously opposed to any mandatory Alternative Dispute Resolution Program. The primary reason for such opposition is that mandating alternate dispute resolution procedures should never be used to circumvent the guaranteed fundamental right to trial by jury. Mediation should be implemented if any party asks for it and a party should be able to opt out at any anytime, without prejudice to his or her case. Any party may object to its use if suggested by the Court. Mediation can be used by full

agreement of the parties. There is no objection to the use of any private ADR procedure. The Court and the committee encourage such use.

Certain cases should be exempt from A.D.R. such as criminal cases, habeas corpus or other extraordinary writs, social security, bankruptcy and pro se cases. Such procedures can be established by a special A.D.R. Committee appointed by the Court. It would be the responsibility of this Committee to develop a specific detailed plan that is acceptable to both the Eastern and Western Districts under Joint Local Rule 23.

Once a plan is established, both lawyers and litigants should be adequately informed of the availability of A.D.R. options. Therefore, the availability of these options should be more widely published, particularly to federal court litigants.

The Committee makes this recommendation because it is fully aware that in every civil case in this district, the Article III Judges, as well as Magistrates act as mediators. However, the Committee also is aware that case loads, case management techniques and dockets do not provide sufficient time to be allocated to full, formal mediation and A.D.R. procedures. This is so despite the heroic efforts made by the judges and magistrates who consistently attempt to assist in the settlement process. The A.D.R. procedures to which the Committee refers are

formal procedures in which the Article III and Magistrate Judges have not been actively participating in at present. Some of the district judges have exercised their inherent powers and made some settlement procedures mandatory. The Committee's position is supported by the survey results.

RECOMMENDATION NO. 3

THE COURT SHOULD HAVE A MANDATORY STATUS CONFERENCE EARLY IN THE LITIGATION (EXCEPT CRIMINAL CASES, PRISONER CASES SUCH AS HABEAS CORPUS, EXTRAORDINARY WRITS, U.S. CASES SUCH AS STUDENT LOANS AND FORFEITURES), AT WHICH TIME THE COURT SHOULD ADDRESS CASE MANAGEMENT TECHNIQUES WHICH SHOULD INCLUDE:

1. Limiting Interrogatories to twenty-five (25);

2. Limiting depositions to no more than ten (10);

3. Limiting the number of expert witnesses, where appropriate;

4. Discovery deadlines;

5. Dispositive motion deadlines;

individual judge in the district should be continued at each judges discretion. Each judge has maintained their own system of ad hoc tracking to meet their own individual needs or the needs of a particular case. Because of the geographical uniqueness of the district, travel problems of the bench and bar, each judge needs flexibility in order to consider inconvenience to the parties, witnesses, etc. Therefore, each judge should retain their own autonomy in such matters. Cases such as Social Security, pro se civil cases, criminal cases, bankruptcy and asbestos should be excluded from any tracking system.

RECOMMENDATION NO.4

PRIOR TO THE MANDATORY STATUS CONFERENCE REFERRED TO IN RECOMMENDATION NO. 3, THERE SHOULD BE AN "EARLY MEETING" OF LITIGANT REPRESENTATIVES IN ALL CASES (EXCEPT CRIMINAL CASES, PRISONER CASES SUCH AS HABEAS CORPUS, EXTRAORDINARY WRITS, U.S. CASES SUCH AS STUDENT LOAN AND FORFEITURES) FOR THE EXCHANGE OF INFORMATION SUCH AS THE NAMES OF WITNESSES AND DOCUMENTS THEN AVAILABLE TO THE PARTIES.

BASIS OF RECOMMENDATION: The consensus or the Committee as to this recommendation is based on the fact that over the past years the Court has continually tried, through revisions of the Joint Local Rules, to reduce delay in the district. As the Committee has noted herein, most of the perceived problems of

RECOMMENDATION NO. 5

THE COMMITTEE RECOMMENDS THAT ANY CIVIL MOTION REFERRED TO THE MAGISTRATES FOR REPORT AND RECOMMENDATION, SHOULD AUTOMATICALLY REVERT BACK TO THE COURT IF NOT RULED ON WITHIN NINETY (90) DAYS OF ITS REFERRAL.

BASIS FOR RECOMMENDATION: The current practice oF referring for recommendation civil motions to the Magistrate Judges, by the Article III Judges, has always been consistent with the Magistrate Judge's basic duty (28 U.S.C.A. §636). The Committee commends this practice.

However, because of the lack of available time of the Magistrate Judges, under the present docket conditions, many motions referred by the Court take more time than available and cannot be expedited within ninety (90) days. The Committee is of the opinion, therefore, that motions that are not disposed of by the Magistrate for Report and Recommendation within ninety (90) days of referral should automatically be reverted back to the Court and not be permitted to languish.

RECOMMENDATION NO. 6

THERE SHOULD BE A FULL COMPLIMENT OF JUDGES FOR THE EASTERN DISTRICT.

BASIS FOR RECOMMENDATION: There has been a vacancy in one Article III judicial position since 1991 which has not been filled. The present court's response is to readjust their dockets to absorb the caseload of the unfilled position into their own dockets. Thanks to a Senior Judge, all Social Security cases are being centralized in one location. Neither the Committee nor the Court is apprised of the statistical changes in their dockets due to this vacancy, but it is definitely being felt. Projections of case filings (Appendix C & F) lead to the conclusion that this situation cannot continue.

RECOMMENDATION NO. 7

EACH ARTICLE III JUDGE OF THE EASTERN DISTRICT SHOULD HAVE THEIR OWN FULL TIME MAGISTRATE JUDGE ASSIGNED TO THEM.

BASIS OF RECOMMENDATION: From the perspective of the bench, the Judges think that if each Article III Judge had a magistrate Judge assigned to them the present work load could be more equally distributed throughout the district. This in turn would permit the Magistrate Judges to handle more pre-trial civil matters through report and recommendation and dispositive civil matters through their consent jurisdiction.

Presently, the bulk of the Magistrate Judge's work load is criminal matters which are increasing in number. Therefore the

ability of the court to use the Magistrate Judge more efficiently has been and will continue to be diminished. This recommendation is supported by the Committee's study and subsequent findings.

RECOMMENDATION NO. 8

THERE SHOULD BE AN ADDITIONAL LAW CLERK ASSIGNED TO EACH MAGISTRATE JUDGE.

BASIS OF RECOMMENDATION: The Committee makes this proposal because it is necessary for additional support in handling the Magistrate Judges's present and future workload.

RECOMMENDATION NO. 9

THERE SHOULD BE AN ADDITIONAL PRO SE LAW CLERK AND A FULL TIME SECRETARIAL POSITION CREATED TO SUPPORT THE PRO SE LAW CLERK.

BASIS OF RECOMMENDATION: The new Federal prison at Manchester, Kentucky, has begun to produce more pro se filings. The current Pro Se Law Clerk handled 474 cases in 1992 and at the present rate of filings, the projected case load will be approximately 580 cases.

Currently, the Pro Se Law Clerk is assisted by a part time secretary supplied by the Clerk of Court. A full time secretary is needed to accommodate the commensurate increase in cases being handled.

RECOMMENDATION NO. 10

THERE SHOULD BE FULL FUNDING FOR COURT PERSONNEL.

BASIS OF RECOMMENDATION: Currently the staff in the District Court Clerk's office is only at 72% of its normal 100% staffing. At present, two positions have been frozen: (1) a P.C. Administrator's position for equipment installation, maintenance and software design for the entire district and (2) a Deputy Clerk at London, Kentucky. Both of these positions are critical for the continued operation of the Court's Administrative business.

RECOMMENDATION NO. 11

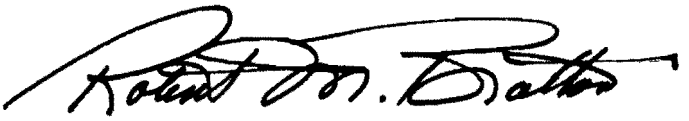
THERE SHOULD BE FULL FUNDING FOR THE PHYSICAL FACILITIES OF THE COURT.

BASIS OF RECOMMENDATION: The physical facilities at Covington, Lexington and London are inadequate and underfunded. The "Long Range Facility Plan" for the Eastern District of

Kentucky was produced in October, 1991 by the Administrative Office of the United States Court in Washington, D.C. with the assistance of a team composed of court and court related personnel in the Eastern District. There is currently a 17,244 square foot deficit for Lexington alone which has existed since October, 1991. To date this has not been changed despite the fact that the U.S. Attorney's Office, Probation and other support staff have had to move to accommodate their expanding workload of court related business.

In Covington, the space deficit is 15,736 square feet and in London there is a deficit of 9,773 square feet. Nothing has changed to date, but court business still continues to grow.

Respectfully Submitted,



Robert M. Bratton
Professor of Law
Reporter, Civil Justice Reform Act Advisory Committee, U.S. District Court, Eastern District of Kentucky

APPENDICES

Paul Wilkins*	Insurance Industry Representative
Timothy Cone	Agriculture
Stephen McMurtry	Civil Rights & Municipal Corporations
Carl West*	Editor, the State Journal, Frankfort, Kentucky
Dr. John T. Smith*	Minority Affairs, University of Kentucky

* Denotes Non-Lawyer

APPENDIX B

OPERATING PROCEDURES AND METHODOLOGY OF THE ADVISORY COMMITTEE

The C.J.R.A. Advisory Committee for the Eastern District of Kentucky was appointed on March 14, 1991, by the Chief Judge, pursuant to 28 U.S.C.A. § 478. Some delay in implementing the Advisory Committee's function was experienced because of late funding by Congress. Funds sufficient to cover per diem expenses for committee meetings were finally received and the Advisory Committee began its work in October, 1991.

The full advisory group met from October, 1991, through August, 1993. During this time the committee concentrated on gathering information regarding the operations of the Court from the Clerk of Courts, the Magistrate Judges, the Probation Department, the United States Attorney and the Pro Se Law Clerk. As the meetings progressed additional information was garnered from the United States District Court Mediation Program of the District of Columbia District Court, the Mediation Center of Kentucky, and the Kentucky Bar Association Mediation Committee on the workings of A.D.R. on state and federal levels. Also, several members of the Eastern District Advisory Committee attended the Seminar for Non-EID courts sponsored by the Federal Judicial Center.

During the course of the Committee's meetings, subcommittees were appointed to develop questionnaires to the litigants and attorneys in the Eastern District and to identify those persons to whom the questionnaire would be sent. The committee as a whole evaluated and analyzed qualifiable and statistical data

regarding case loads and dispositions by individual judges, filings by types of cases, and cases under advisement. The Committee also benefitted from personal interviews with the judges of the District regarding their specific types of case management procedures, use of alternate forms of dispute resolution, and discovery practices.

The subcommittee in charge of formulating the questionnaires and analyzing the responses from the litigants and attorneys sent out two questionnaires: one to attorneys and one to litigants. Responses from the actual litigants was negligible. The subcommittee sent five hundred (500) questionnaires to both litigants and attorneys. There were only fifty six (56) responses from litigants but three hundred thirty five (335) responses from attorneys. Questionnaires were also distributed to attorneys at the State Bar Association meetings and public input was solicited from call-ins on a statewide television program.

Additionally, the subcommittee met several times to assess information it had gathered and to analyze the responses. It provided a concise and helpful report to the full advisory group.

The full advisory group spent several sessions considering a long list of possible conclusions it might reach with possible recommendations it might make. In finally reaching agreement on basic conclusions, the drafting process began. At conclusion of the process the final report and recommendations were submitted to the Court.

APPENDIX C

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

SY92 Statistics Supplement

September 1992

Prepared for the Eastern District of Kentucky

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

Eastern District of Kentucky

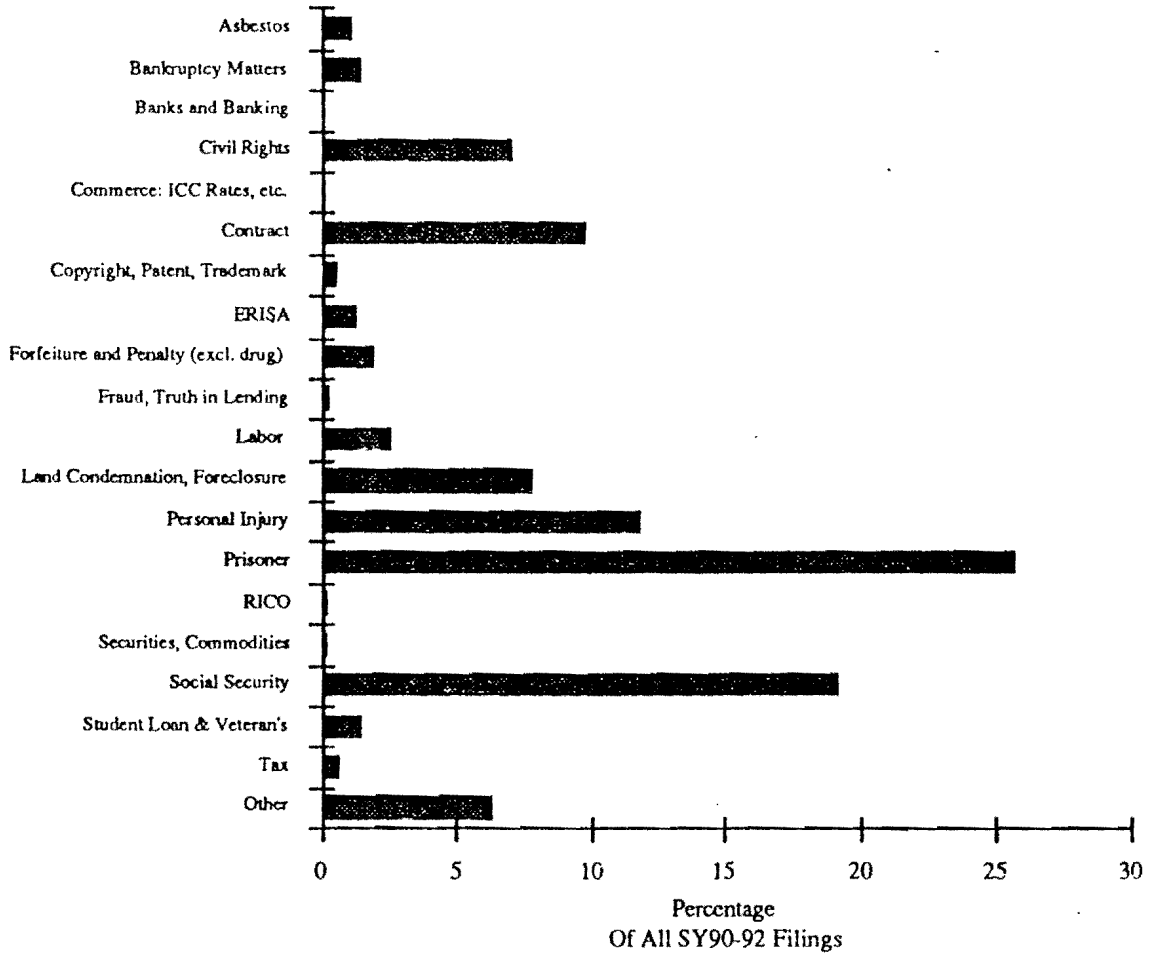


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY83-92
Eastern District of Kentucky

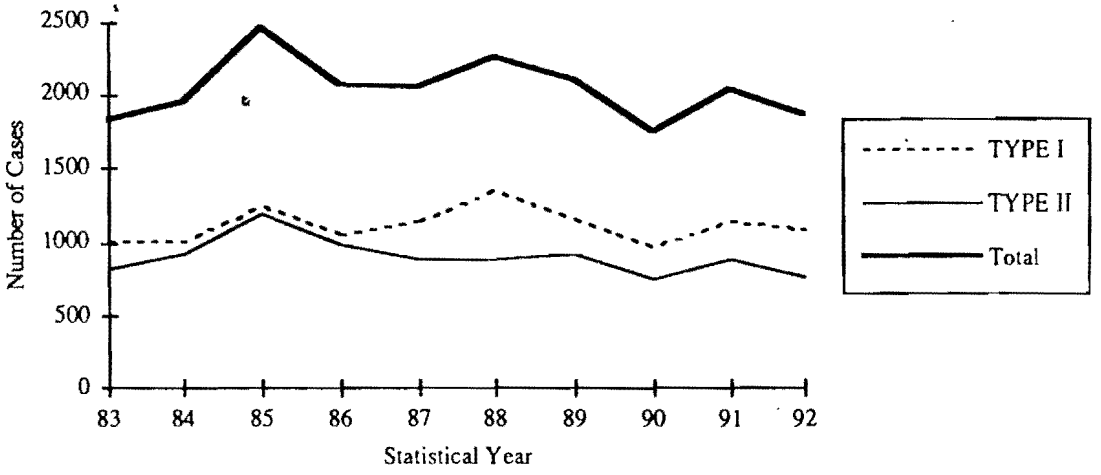


Table 1: Filings by Case Types, SY83-92

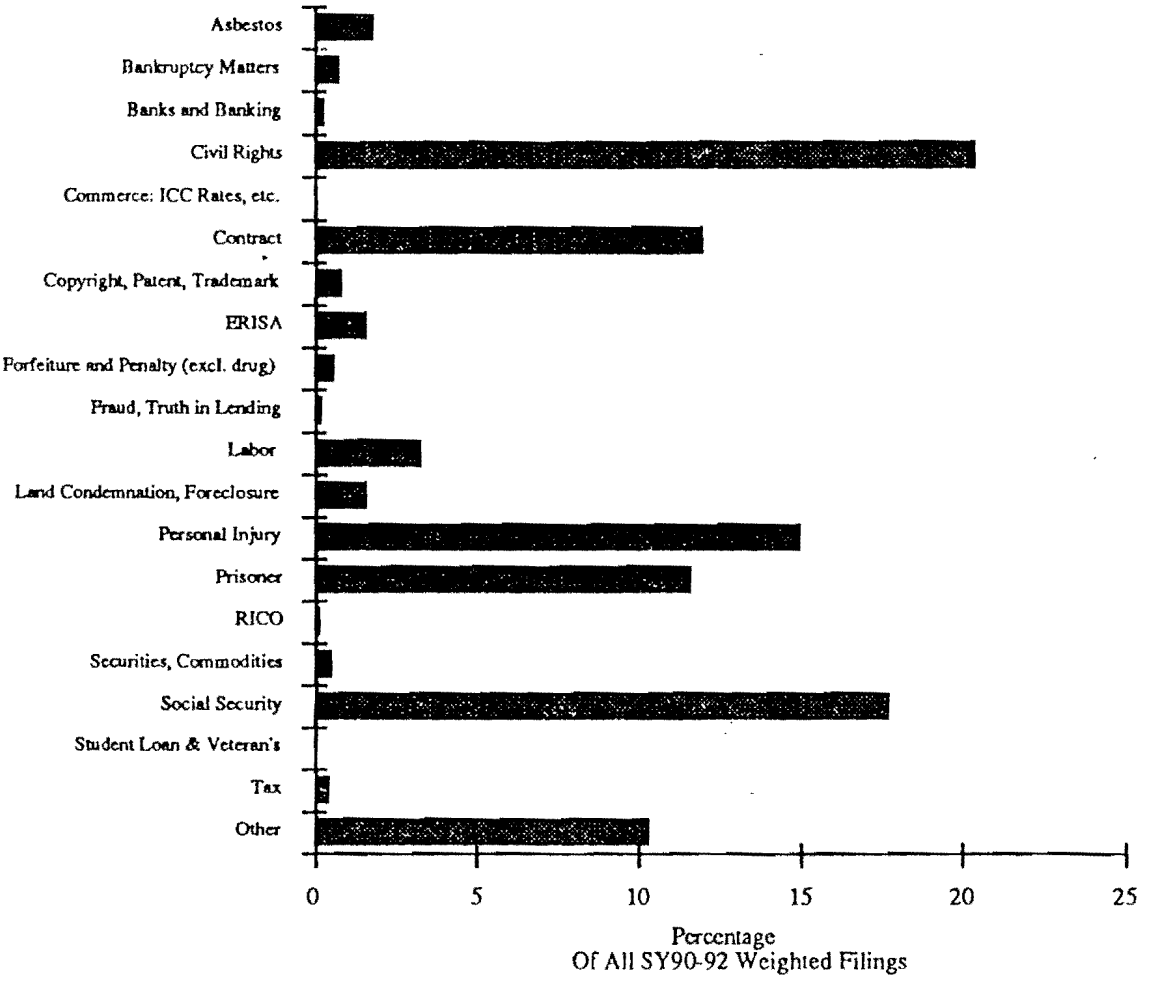
Eastern District of Kentucky

	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	0	0	0	0	4	26	12	21	32	11
Bankruptcy Matters	16	10	17	13	27	21	14	27	36	23
Banks and Banking	7	3	3	2	4	1	1	0	4	1
Civil Rights	107	100	120	150	118	114	117	120	118	163
Commerce: ICC Rates, etc.	1	5	8	3	2	3	1	0	6	2
Contract	230	264	284	302	288	288	273	192	197	167
Copyright, Patent, Trademark	14	13	18	24	12	12	16	9	14	10
ERISA	19	59	28	16	16	21	14	22	24	27
Forfeiture and Penalty (excl. drug)	83	144	315	85	54	69	93	32	41	37
Fraud, Truth in Lending	5	7	6	7	14	8	6	4	3	11
Labor	59	59	58	44	65	44	51	56	44	46
Land Condemnation, Foreclosure	81	84	82	83	113	131	94	122	117	203
Personal Injury	178	150	183	205	169	172	219	220	284	165
Prisoner	273	277	264	354	342	355	463	471	519	465
RICO	0	0	0	2	2	1	2	2	4	3
Securities, Commodities	3	9	15	7	9	13	5	1	8	4
Social Security	452	568	585	460	650	788	556	324	419	344
Student Loan and Veteran's	184	77	303	160	13	37	29	16	20	50
Tax	11	17	30	27	12	14	12	12	12	13
All Other	101	101	136	124	131	132	122	93	138	126
All Civil Cases	1824	1947	2455	2068	2045	2250	2100	1744	2040	1871

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.

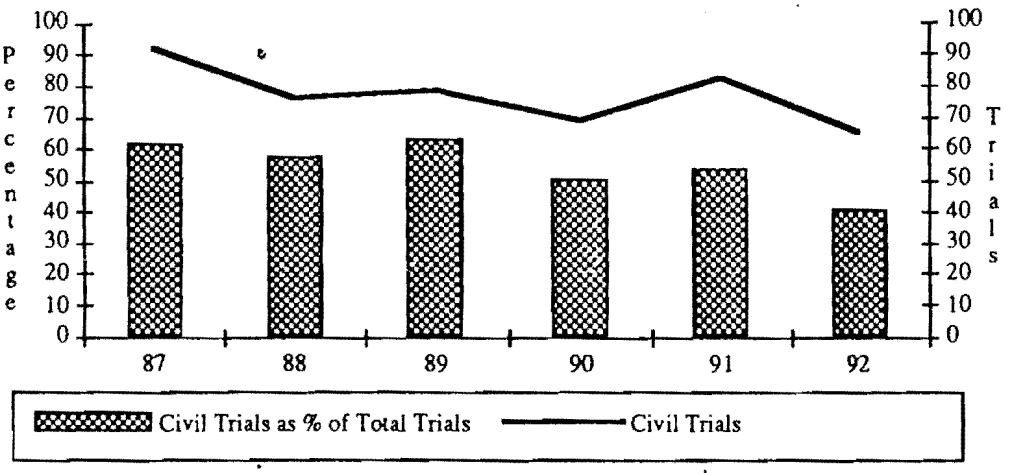
Chart 3: Distribution of Weighted Civil Case Filings, SY90-92

Eastern District of Kentucky



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
Eastern District of Kentucky



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
Eastern District of Kentucky

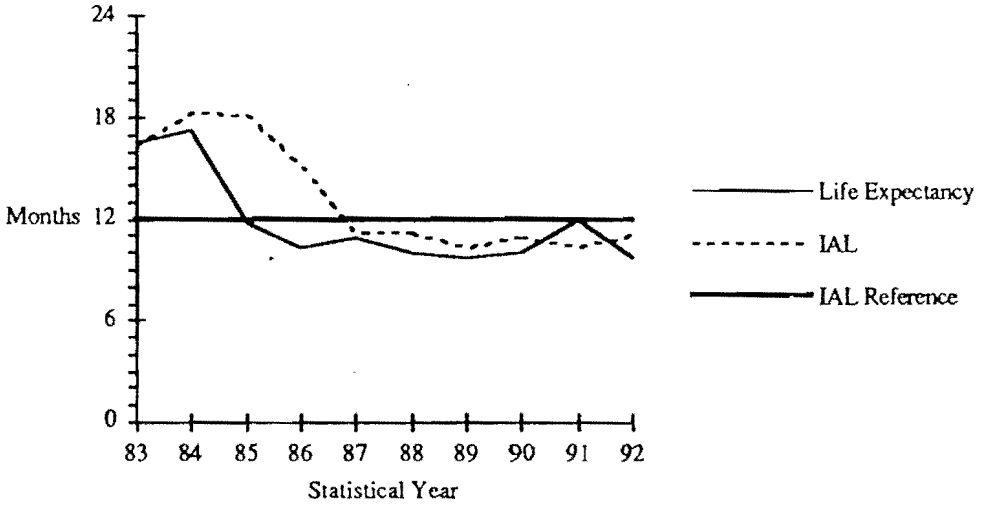
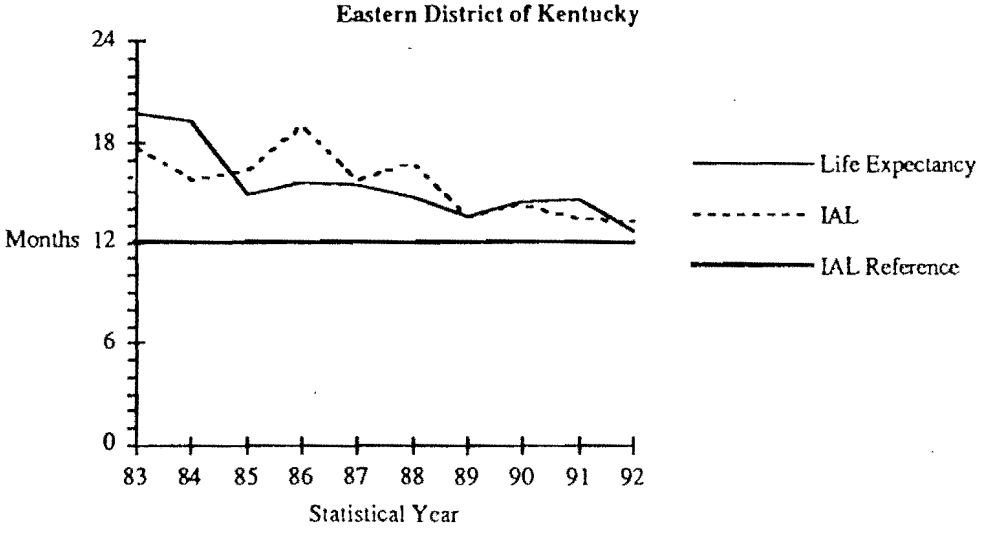


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92
Eastern District of Kentucky



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

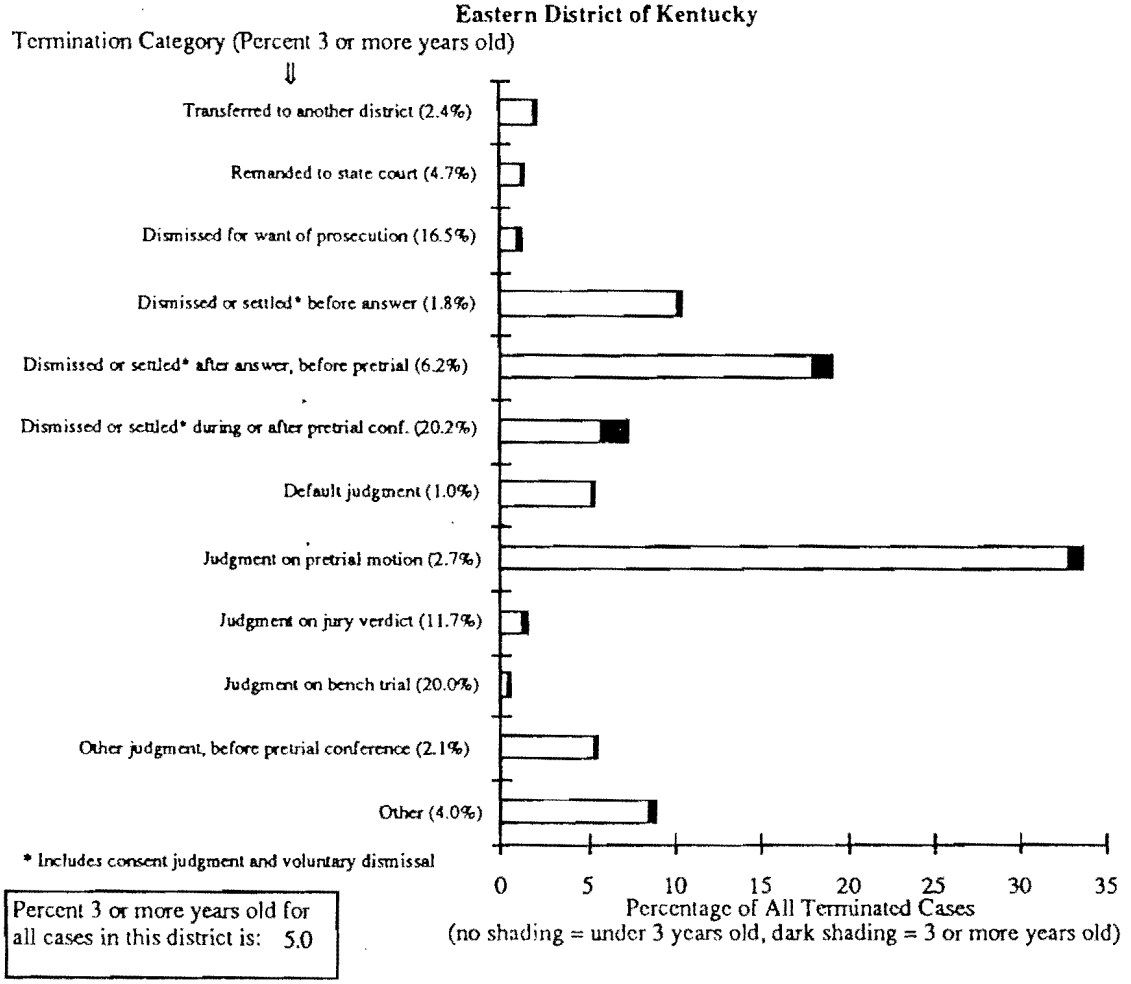
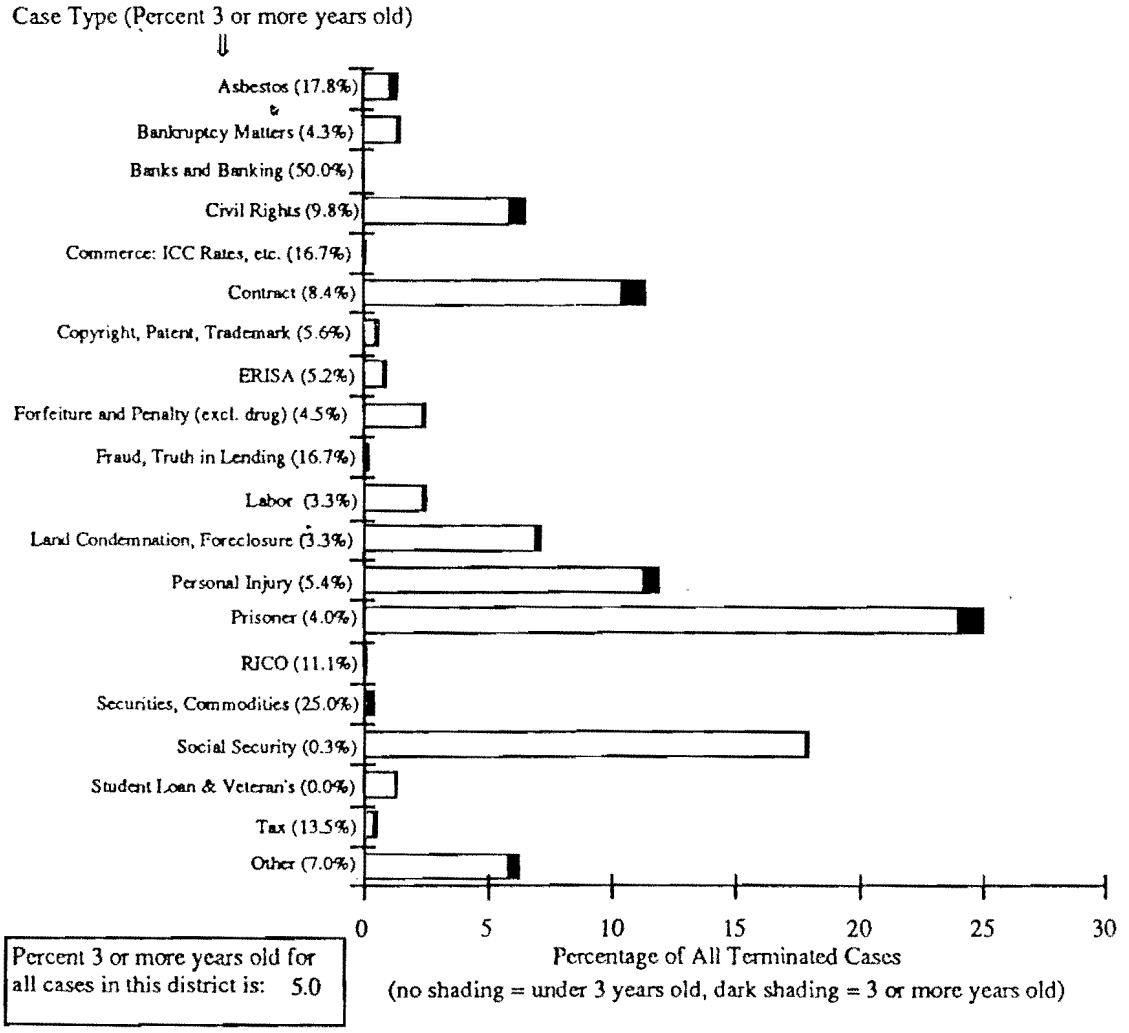


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

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

Eastern District of Kentucky



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

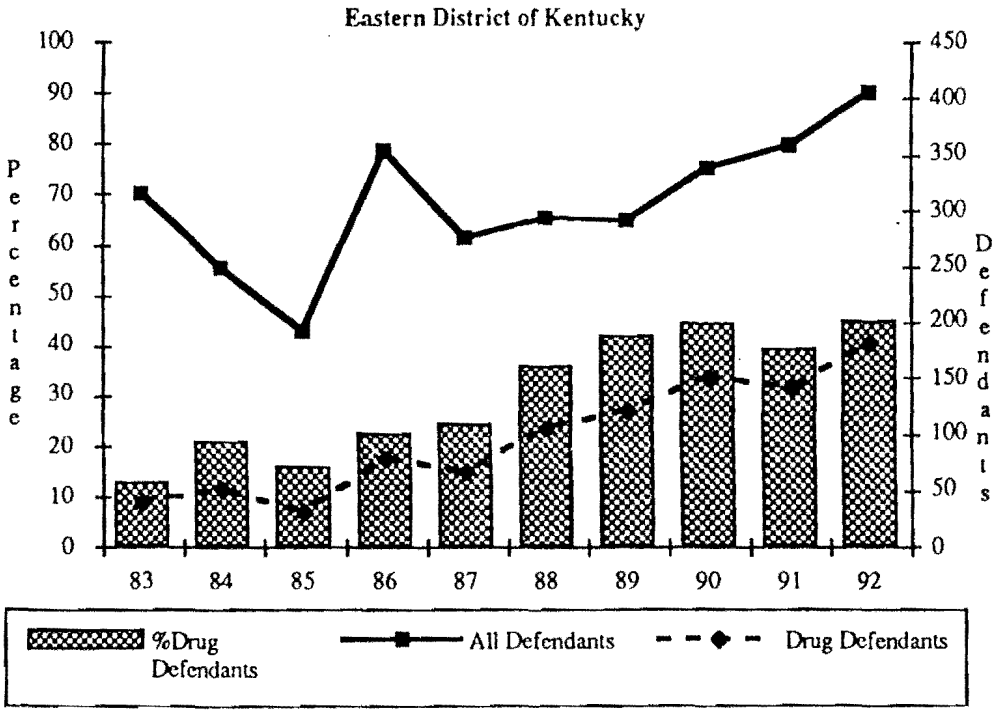
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

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



APPENDIX E

CIVIL JUSTICE REFORM ACT OF 1990
ADVISORY COMMITTEE
SURVEY
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Please answer the following questions.

If you have been or are involved in only one case in federal court in the Eastern District of Kentucky, please answer in reference to that particular case. Otherwise please answer based on your general experience as a litigant in the United States District Courts in the Eastern District of Kentucky.

PLEASE CHECK ALL ANSWERS UNDER EACH QUESTION THAT ARE RELEVANT.

Atty	Lit		All
		1. What type of case(s) were you involved in?	
33.74	34.56	a. contract	33.84
34.98	56.38	b. personal Injury, products liability	39.08
15.04	12.73	c. civil rights, discrimination in employment, age, sex, race	14.68
.31	3.64	d. Habeas Corpus	.78
30.98	18.19	e. other (Please specify.) _____	29.62
		2. What was the nature of your participation. (Please remember to check all appropriate answers.)	
13.73	29.1	a. plaintiff	16.17
10.15	41.82	b. defendant	11.28
34.93	0	c. attorney for plaintiff	31.30
49.56	18.18	d. attorney for defendant	44.89
0	0	e. individual	....
0	27.28	f. corporation	5.40
0	0	g. prisoner representing his/herself	0.00
4.48	7.27	h. other entity (Please specify.) _____	4.88
		3. What was the location of the court in which your case was filed?	
21.67	21.45	a. Pikeville	21.66
19.27	35.73	b. Covington	21.66
15.05	16.08	c. London	15.22
16.25	12.52	d. Ashland	15.47
6.32	8.94	e. Frankfort	6.71
29.80	28.59	f. Lexington	29.65
		4. Who presided over or heard your case?	
93.75	94.23	a. Judge	93.82
14.06	21.15	b. Magistrate	15.05
		5. What were you seeking from your lawsuit?	
60.56	46.67	a. money damages	58.66
10.91	13.33	b. injunction	11.24
42.60	60.00	c. other (Please explain.) _____	44.98

PLEASE CHECK ALL ANSWERS UNDER EACH QUESTION THAT ARE RELEVANT.

All

Atty	Client			
29.51	21.15	a.	28.39	6. What was the type of payment arrangement between lawyer and client in your case? contingent
64.45	92.3	b.	65.37	hourly rate
1.20	0	c.	1.04	hourly rate with a maximum
2.11	3.85	d.	2.34	set fee
6.32	9.62	e.	6.77	government or salaried attorney
3.31	0	f.	2.86	other (Please specify.) _____

32.47	67.30	a.	80.37	7. Did you consider the outcome of the case to be a victory, or at least not a defeat, for you? yes
10.16	19.23	b.	11.4	no
12.93	17.3	c.	13.53	other (Please explain.) _____

59.02	62.27	a.	59.75	8. How was your case disposed of or resolved? settlement
2.40	7.55	b.	3.12	trial by Judge
7.81	18.86	c.	9.36	trial by Jury
11.13	24.54	d.	11.69	summary judgment
13.55	9.44	e.	12.73	dismissal
15.66	13.21	f.	15.33	other (Please specify.) _____

22.32	9.8	a.	20.59	9. How long did your case take from the time it was filed in court to its conclusion? 1 to 6 months
30.81	21.57	b.	29.53	6 to 12 months
26.39	15.68	c.	24.66	12 to 18 months
12.88	31.37	d.	15.45	18 to 24 months
7.22	13.72	e.	8.67	24 to 36 months
6.59	19.61	f.	8.39	over 36 months

22.13	38.89	a.	75.87	10. Did you think that your case took too long? no
13.79	27.78	b.	15.82	slightly too long
5.32	35.19	c.	9.66	much too long

10A. If you think your case took too long to resolve, why did it take too long? % of total given.

a. 2.55	too much or inappropriate management by the court	
b. 6.12	not enough case management by the court	
c. 9.69	actions by attorney(s) (Please explain.)	_____
d. 4.08	actions by a party or parties (Please explain.)	_____
e. 9.50	uncontrollable factors (Please explain.)	_____

PLEASE CHECK ALL ANSWERS UNDER EACH QUESTION THAT ARE RELEVANT.

10B. If you think your case took too long to resolve, what part took too long? % of total cases

- 2.81 a. filing complaint and getting parties before court
- 10.71 b. discovery
- 8.93 c. rulings by the court on motions
- 7.40 d. getting a trial date

10C. Please indicate what should be done to speed up the process. % of total cases

- 20.15 a. hold an early pre-trial conference
- 17.60 b. hold pretrial activities to a firm schedule
- 17.35 c. set and enforce limits on allowable discovery
- 18.88 d. narrow issues through conference or other methods
- 21.17 e. rule promptly on pretrial motions
- 8.16 f. refer the case to alternative dispute resolution, such as mediation or arbitration
- 11.99 g. set an early and firm trial date
- 20.15 h. conduct or facilitate settlement discussions
- 3.32 i. exert firm control over trial
- 3.83 j. other (Please specify.)_____

11. Who do you feel was responsible for delays in resolving your case? % of total cases / % of attorneys

% of total cases	% of attorneys		
4.50	2.38	a. 3.26	yourself as a litigant
6.30	4.76	b. 5.21	your attorney
19.82	33.33	c. 21.55	other party
31.52	64.28	d. 36.60	opposing attorney
15.31	11.90	e. 12.42	the judge
29.72	47.61	f. 32.01	the system
18.91	4.76	g. 16.03	other (Please specify.) _____

12. How long should your case have taken from the time it was filed in court to its conclusion?

26.05	33.33	a. 27.33	1 to 6 months
29.83	43.14	b. 32.53	6 to 12 months
29.41	21.57	c. 28.04	12 to 18 months
12.60	5.88	d. 11.42	18 to 24 months
4.23	0	e. 3.47	24 to 36 months
1.26	0	f. 1.39	over 36 months

13. Was the trial of your case postponed?

19.63	46.0	a. 23.74	yes
81.85	58.0	b. 78.12	no

13A. If yes, please give the number of times it was postponed.
_____ times 10=1 5=2x 2=3x 1=4+x
Please give the reason(s) for postponement for each time.

1-_____
2-_____
3-_____
4-_____
5-_____

PLEASE CHECK ALL ANSWERS UNDER EACH QUESTION THAT ARE RELEVANT.

Atty Lit. All

14. How do you feel about the expense, including all expenditures, court costs, and attorney's fees, involved in your case?

6.60	36.00	a. 10.95	much too high
11.46	30.00	b. 14.20	somewhat too high
75.00	40.00	c. 69.82	about what I expected
6.94	0	d. 5.92	lower than I expected

15. If you think the expenses of your case were too high, what parts were too high?

24.14	60.57	a. 37.37	attorney's fees
8.62	18.18	b. 12.10	court costs such as the filing fee and subpoena fees
45.51	48.48	c. 29.68	discovery costs such as depositions, copying documents, telephone calls
37.92	42.42	d. 39.57	fees to employ experts
24.14	18.18	e. 21.99	your own costs such as travel expenses, time lost from your other affairs

16. Who do you feel was responsible for the high costs of your case?

7.38	0	a. 2.46	yourself as a litigant
4.92	24.40	b. 9.02	your attorney
22.19	34.15	c. 26.24	other party
30.84	56.11	d. 38.54	opposing attorney
6.15	12.20	e. 8.20	the judge
51.90	56.11	f. 53.28	the system
12.34	4.88	g. 9.84	other (Please specify.) _____

17. What could be done to reduce the expense?

35.29	45.45	a. 38.34	more control of case by court
6.86	6.81	b. 6.82	more control of case by my attorney
6.86	11.36	c. 8.89	more control of case by myself
49.02	84.08	d. 58.58	a speedier resolution of the litigation
22.55	13.63	e. 19.17	other (Please specify.) _____

18. Which of the following would you have agreed to in regard to the resolution of your case?

34.18 defendants
17.56 litigants
36.9 attorneys

36.33	38.92	a. 38.37	mediation
31.14	39.13	b. 28.30	non-binding arbitration
21.23	30.43	c. 22.87	binding arbitration
69.35	60.86	d. 68.22	trial by magistrate

18A. Which of the following alternative dispute methods do you think would reduce the amount of time spent in litigation?

a. 36.48 mediation
b. 24.23 non-binding arbitration
c. 26.02 binding arbitration
d. 35.46 trial by magistrate

PLEASE CHECK ALL ANSWERS UNDER EACH QUESTION THAT ARE RELEVANT.

18B. Which of the following alternative dispute methods do you think would reduce the amount of money spent in litigation?

a. 40.05 mediation
b. 23.98 non-binding arbitration
c. 28.83 binding arbitration
d. 27.04 trial by magistrate

18C. A case of similar complexity filed in the United States District Court, Eastern District of Kentucky, is usually resolved (a. 22.96 more quickly, b. 19.13 slower, c. 40.56 in about the same amount of time) as a case filed in the state courts of Kentucky.

18D. A case of similar complexity filed in the United States District Court, Eastern District of Kentucky, usually costs (a. 20.15 more, b. 5.87 less, c. 56.12 about the same) to obtain a resolution as a case filed in the state courts of Kentucky.

19. If you are an attorney, please indicate how long you have been practicing law. _____years 17.26 mean min = 2 yrs
15.00 median max = 54 yrs.

20. Please elaborate upon any of your observations in regard to the cause of excessive delays and costs in litigating in federal court as well as suggestions for improving the situation.

Please return in the enclosed envelope to:

Hon. Leslie G. Whitmer
Clerk, U.S. District Court
Eastern District of Kentucky
P.O. Box 3074
Lexington, KY 40596-3074

APPENDIX F

ADMINISTRATIVE OFFICE OF THE U.S. COURTS
Statistics Division, Analysis and Reports Branch
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

DATE: 9/1/93

FROM: Thomas S. Russell
Management Analyst

PHONE: (202) 273-2290; 273-2295 direct

TO: Les Whitmer
Clerk of Court
The Eastern District of Kentucky

PHONE: (606) 233-2503; 233-2470 fax

NUMBER OF PAGES 2
(including this page)

SUBJECT:

Here is a table I did per your request of yesterday.

You can see where KY,E ranks in social security cases filings and per judgship social security filings. KY,E has the highest number of social security cases filed per judgeship at 72.2.

Call me if you need anything else.

Total Social Security Filings in FY 92 = 8,958

District	Social Security Filings	Judgeships	Social Sec. Cases Per Judgeship
PR	267	7	38.1
VA,W	232	4	58.0
SC	204	9	22.7
WV,S	203	5	40.6
LA,W	216	7	30.9
OH,N	454	12	37.8
MI,E	395	15	26.3
KY,E	325	4.5	72.2
AR,E	213	5	42.6
CA,C	217	27	8.0
AL,N	346	8	43.3
FL,M	221	11	20.1

Admin. Office of the U.S. Courts
Statistics Division

APPENDIX G

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

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

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

The Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

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

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

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

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

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

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

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

"§ 474. Review of district court action

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

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

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

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

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

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

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

"§ 475. Periodic district court assessment

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

"§ 476. Enhancement of judicial information dissemination

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

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

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

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

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

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

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

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

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

"§ 478. Advisory groups

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 480. Training programs

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

"§ 481. Automated case information

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

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

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.