

1995 ANNUAL ASSESSMENT REPORT  
OF THE ADVISORY GROUP



NOVEMBER 30, 1995  
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO

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December 22, 1995

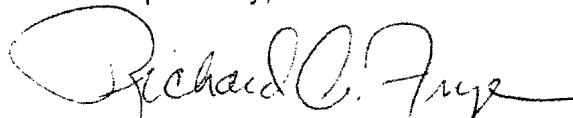
Ms. Donna Stienstra  
The Federal Judicial Center, Research Division  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, DC 20002-8003

Re: **Annual Assessment Report, Southern District of Ohio**

Dear Ms. Stienstra:

Delivered herewith are duplicate copies of the 1995 Annual Assessment Report by the Civil Justice Reform Act Advisory Group, for the Southern District of Ohio. Obviously, if you have any questions about any of the material in the Report you should feel free to contact the undersigned, or our Chairman Louis E. Gerber, Esq., at 614-229-3251.

Respectfully,

  
Richard A. Frye, Reporter

RAF/ksb  
Enclosures

cc: Mr. Abel J. Mattos (w/ enclosure)  
John D. Holschuh, Chief Judge (w/ enclosure)  
Members of Advisory Group (w/ enclosure)  
Kenneth J. Murphy, Clerk

## TABLE OF CONTENTS

	<u>PAGE</u>
I. Introduction .....	1
II. Purpose of the Assessment .....	1
III. State of the Docket.....	2
A. The Criminal Docket .....	2
1. Number of Defendants .....	2
2. Criminal Case Filings .....	5
B. The Civil Docket.....	6
1. New Filings.....	6
2. Pending Cases .....	6
3. Trial Activity .....	9
IV. Implementation of the CJRA Plan .....	10
A. Expediting Motion Practice .....	10
1. 90-Day Motions .....	10
2. 180-Day Motions .....	11
B. Alternative Dispute Resolution Programs.....	12
C. Civil Case Management.....	13
D. Local Rules of the District.....	14
E. Utilization of Magistrate Judges.....	14
F. Trial Assignments .....	15
1. 18-Month Cases .....	15
2. 3-Year Cases.....	16
3. State Court Comparison .....	17
G. Miscellaneous Provisions .....	18
V. Members of the Advisory Group.....	19
 Appendix to 1995 Annual Assessment.....	 A-1

## **I. INTRODUCTION**

Section 475 of the Civil Justice Reform Act of 1990 requires each United States District Court, in consultation with its Advisory Group, to 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. The *First Report of the Advisory Group* in this District was released Sept. 30, 1993, and this Court adopted its Civil Justice Expense and Delay Reduction Plan on November 30, 1993. This is the second annual assessment of the operation of that Plan.

In summary, the Advisory Group can report that the Court continues to actively implement its Plan, and that both statistical data and reports from the trial bar persuade us that significant progress continues to be achieved in reducing cost and delay in civil litigation under the Plan. While several statistics may suggest that some slippage is occurring, as there is an increase in pending civil and criminal cases and a somewhat longer delay in the Court's motion docket by comparison with earlier periods under the Plan, our Group sees no cause for alarm. This is attributable to increased criminal and civil filings. In addition, commencing in early 1995, at the onset of the serious illness which in August claimed the life of United States District Judge Carl B. Rubin of Cincinnati, the Court operated without one of its active Article III judicial officers.

Thus, although modest recommendations are set forth hereinafter respecting several points in the Plan, the Advisory Group recommends no significant modification of the Plan at this time.

## **II. PURPOSE OF THE ASSESSMENT**

Although the statute does not specifically define the purposes of an annual assessment, the Judicial Conference suggests three purposes for the Advisory Group's annual review. These are: "(1) to inform the court itself of the impact of its CJRA plan so it can make adjustments and revisions as necessary; (2) to provide information to other courts and advisory groups who would benefit from analyses made by the courts; and (3) for use by the Judicial Conference in reporting to Congress." The Judicial Conference also recommends examining the "impact of the plan on other elements of importance to the court, attorneys, and litigants, such as the court budget, litigation costs, and attorney, litigant, and judge satisfaction with the programs and procedures adopted."<sup>1</sup>

<sup>1</sup> Robert M. Parker, Judicial Conference of the United States, February 5, 1993 letter regarding "Annual Assessments and Plan Revisions Under the Civil Justice Reform Act of 1990."

### III. STATE OF THE DOCKET

#### A. THE CRIMINAL DOCKET

##### 1. Number of Defendants

The number of criminal felony defendants charged in the Southern District of Ohio has varied rather significantly from year to year since Plan implementation. Over a ten-month period in 1992 and 1993, the average number of pending criminal defendants each month was 446 (*First Report* at 19); for 1994 the average dropped to 359 felony and Class A misdemeanor defendants.<sup>2</sup> This change was attributed to altered priorities used in selecting cases for prosecution, under guidelines revised during 1993 within the Office of the United States Attorney.

In late 1994 the number of criminal defendants again climbed, and the annualized monthly average figure for the ten months between January and October, 1995 suggests the District will average 433 defendants this year.<sup>3</sup> Statistical information on the felony docket is set forth in the following tables, while additional statistics on the criminal docket are in the Appendix to this Report.

table 1(a)

#### Number of Pending Felony Defendants (by month)

	Cincinnati	Columbus	Dayton	District
Nov-94	67	208	52	327
Dec-94	78	208	46	332
Jan-95	100	209	54	363
Feb-95	116	207	61	384
Mar-95	115	249	61	425
Apr-95	112	261	68	441
May-95	118	268	76	462
Jun-95	129	266	74	469
Jul-95	129	267	72	468
Aug-95	121	256	72	449
Sep-95	108	250	77	435
Oct-95	97	261	76	434
Nov-95	94	251	74	419

<sup>2</sup> Administrative Office of the United States Courts statistics for years ending June 30, 1994 reflected, similarly, a drop from 526 defendants in 1993 to 372 in 1994.

<sup>3</sup> At October 31, 1995 17% of defendants were fugitives, while a year earlier 18% of defendants were fugitives.

table 1(b)

**Average Number of Pending Felony Defendants (by year)**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>1992</b>	96	294	80	470
<b>1993</b>	99	237	65	401
<b>1994</b>	76	203	52	331
<b>1995</b>	113	249	69	431
<b>(as of 11/30/95)</b>				
<b>% increase from 1994:</b>	<b>47%</b>	<b>23%</b>	<b>33%</b>	<b>30%</b>

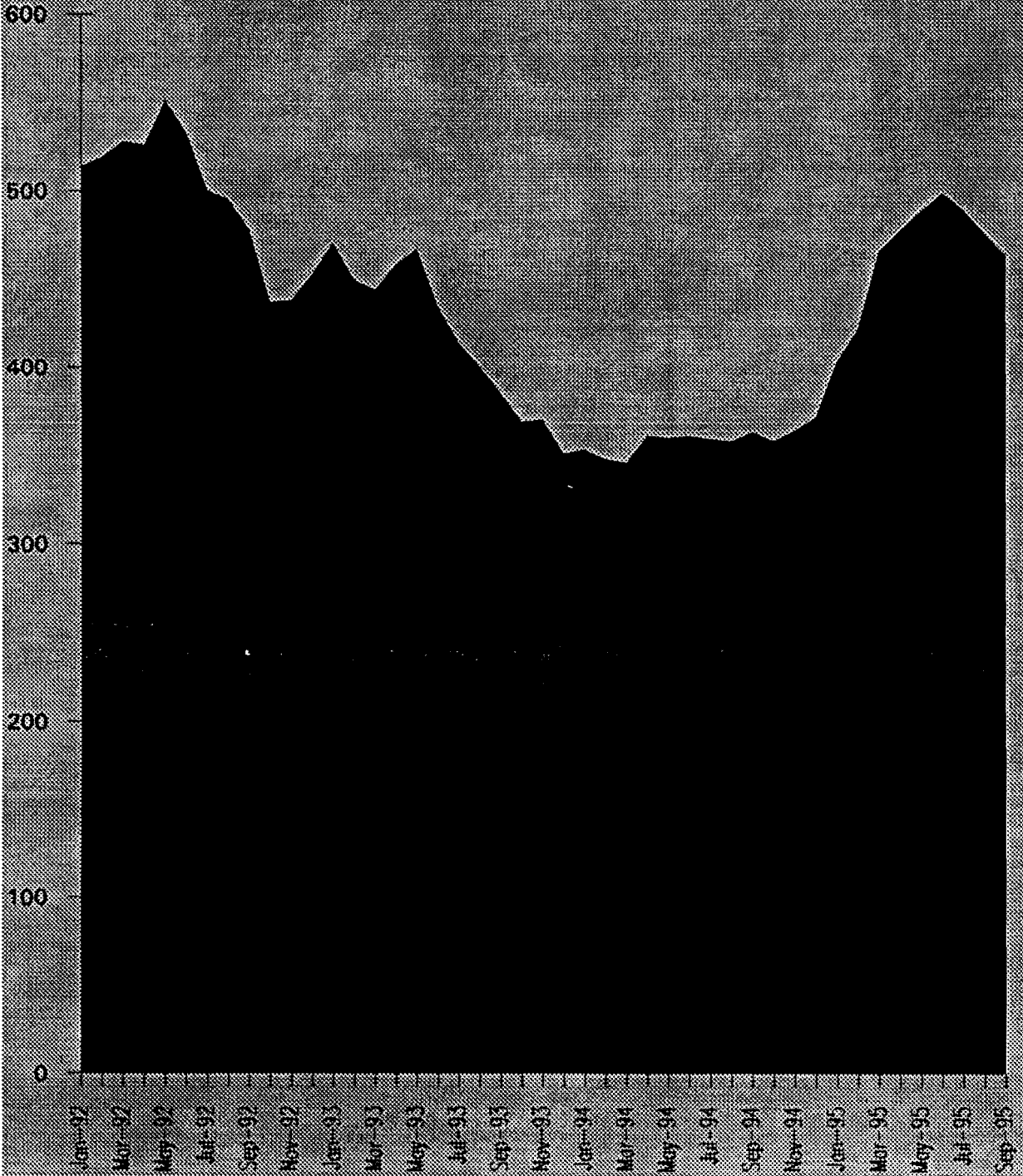
table 1(c)

**Felony Defendants Charged by Calendar Year**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>1992</b>	150	366	72	588
<b>1993</b>	150	247	66	463
<b>1994</b>	135	232	59	426
<b>1995</b>	178	231	88	497
<b>(annualized as of 11/30/95)</b>				
<b>% increase from 1994:</b>	<b>32%</b>	<b>0%</b>	<b>49%</b>	<b>17%</b>

table 1(d)

Pending Criminal Defendants: 1992 - 1995



## 2. Criminal Case Filings

The number of felony criminal cases filed District-wide has remained stable over the past three years, although random but significant variations are observed in filings among the three locations of the Court.

table 2(a)

### Felony Criminal Cases Filed

	Cincinnati	Columbus	Dayton	District
<b>1992</b>	134	242	61	437
<b>1993</b>	111	188	54	353
<b>1994</b>	103	171	53	327
<b>1995</b>	109	133	75	317
(annualized as of 11/30/95)				
% increase from 1994:	6%	-22%	42%	-3%

table 2(b)

### Felony Cases Terminated

	Cincinnati	Columbus	Dayton	District
<b>1992</b>	143	268	73	484
<b>1993</b>	133	225	54	412
<b>1994</b>	110	167	63	340
<b>1995</b>	100	133	47	280
(annualized as of 11/30/95)				
% increase from 1994:	-9%	-20%	-25%	-18%

table 2(c)

### AVERAGE AGE OF PENDING FELONY CASES (Months)

	Cincinnati	Columbus	Dayton	District
<b>1992</b>	7	7	7	7
<b>1993</b>	6	7	10	7
<b>1994</b>	6	9	6	8
<b>1995</b>	7	12	14	11
(annualized as of 11/30/95)				



Distribution of criminal misdemeanor and petty offense filings adds disproportionately to the workload of the Court in Dayton, due to the presence of the Wright Patterson AFB and several other federal facilities. Statistics on misdemeanor and petty cases are in the Appendix to this Report.

## B. THE CIVIL DOCKET

### 1. New Filings

District-wide the Court will show approximately an 8% increase in new civil filings over 1994. The most significant jump in new filings is reflected at Cincinnati. This can be explained, in part, by the addition of approximately 170 civil cases assigned to Senior Judge Spiegel by the Multi-District Litigation Panel and, in the view of some, by the fact that filings at Cincinnati in 1993 and 1994 were unexpectedly low.

table 3

#### Total Civil Filings

	Cincinnati	Columbus	Dayton	District
<b>1992</b>	1010	1207	525	2742
<b>1993</b>	906	1208	518	2632
<b>1994</b>	866	1264	545	2675
<b>1995</b>	1142	1258	491	2891
(annualized as of 11/30/95)				
<b>% increase from 1994:</b>	32%	0%	-10%	8%

### 2. Pending Cases

Like new filings, the backlog of pending civil cases in recent months has grown. It now exceeds comparable pre-Plan numbers. [*First Report*, page 24, table 5.] As noted earlier, however, the loss of District Judge Rubin's many years of experience, diligent work, and exemplary case-management skills for some six months before his death in August, together with the addition of a large MDL case to the Cincinnati docket explain a significant portion of this increase. In addition, this District now has approximately 14 death penalty Habeas Corpus cases on its civil docket. These are the first wave of such cases under Ohio law, where no execution has occurred since the early 1960's. These important cases obviously demand substantial judicial attention.

table 4

**Total Number of Pending  
Civil Cases**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>Nov-94</b>	873	1097	485	2455
<b>Dec-94</b>	874	1109	502	2485
<b>Jan-95</b>	867	1124	504	2495
<b>Feb-95</b>	881	1162	512	2555
<b>Mar-95</b>	930	1142	489	2561
<b>Apr-95</b>	948	1151	495	2594
<b>May-95</b>	965	1141	496	2602
<b>Jun-95</b>	1077	1160	501	2738
<b>Jul-95</b>	1075	1128	490	2693
<b>Aug-95</b>	1094	1149	500	2743
<b>Sep-95</b>	1151	1135	487	2773
<b>Oct-95</b>	1178	1182	490	2850
<b>Nov-95</b>	1211	1186	496	2893

A new Article III judge awaits final Senate confirmation. Gaining an additional judge will, no doubt, have an immediate positive impact on the backlog in Cincinnati. Administratively the Court plans to assign District Judge Beckwith to Cincinnati, and once confirmed the new judge will take Judge Beckwith's Columbus and Dayton docket. Anticipating confirmation would occur fairly promptly, and exhibiting the Court's long-standing dedication to moving its docket, Judge Beckwith assumed many of the cases on Judge Rubin's docket shortly after his death in late summer. Since then she has continued to carry essentially a "double" docket of cases in Columbus, Dayton, and Cincinnati to keep the backlog from growing any greater than absolutely necessary.

Beyond the nomination awaiting final Senate confirmation, a second Article III vacancy exists in this District. A name is under consideration by the Executive branch at present. If during early 1996 there is both timely nomination and confirmation of that second District Judge, it would have an obvious and immediate impact in reducing the Court's backlog.

The drop in civil terminations at Cincinnati in 1995 evidences the dual impact of Judge Rubin's loss and of the MDL cases described above.

table 5

**Civil Cases Terminated by Calendar Year**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>1992</b>	1026	1238	547	2811
<b>1993</b>	995	1330	557	2882
<b>1994</b>	942	1248	525	2715
<b>1995</b> (annualized as of 11/30/95)	779	1213	525	2517
<b>% increase from 1994:</b>	-17%	-3%	0%	-7%

Substantial progress has been made since the adoption of the Civil Justice Reform Act respecting civil cases pending over three years. A fraction of the docket now lasts this length of time, and this is frequently attributable to interlocutory appeals, and other factors outside the control of the trial judge.

table 6

**Civil Cases Pending Over Three Years**

	<b>District Judges</b>	<b>Magistrate Judges</b>	<b>District Total</b>
<b>9/30/92</b>	140	15	155
<b>3/31/93</b>	107	14	121
<b>9/30/93</b>	81	14	95
<b>3/31/94</b>	57	7	64
<b>9/30/94</b>	54	5	59
<b>3/31/95</b>	55	2	57
<b>9/30/95</b>	*	*	*

\* Data not available at the time of this report.

### 3. Trial Activity

Judge Rubin's lengthy absence from the bench due to illness, and normal fluctuations in the docket account for a slight drop in reported trial activity during the statistical year ended June 30, 1995.

table 7

**District and Magistrate Judge**  
**Trial Activity**  
(12 months ended June 30)

	<u>Trials</u>	<u>10-19 days</u>	<u>20 days and over</u>
<b>1990</b>	225	9	2
<b>1991</b>	164	12	2
<b>1992</b>	218	10	2
<b>1993</b>	218	5	1
<b>1994</b>	208	6	1
<b>1995</b>	197	8	0

Deciding bench trials promptly after they are heard remains a priority in this District, consistent with the Civil Justice Reform Act.

table 8

**Bench Trials Submitted**  
**More Than Six Months**

	<u>District Judges</u>	<u>Magistrate Judges</u>	<u>District Total</u>
<b>3/31/92</b>	11	0	11
<b>9/30/92</b>	1	1	2
<b>3/31/93</b>	0	1	1
<b>9/30/93</b>	0	1	1
<b>3/31/94</b>	0	0	0
<b>9/30/94</b>	0	0	0
<b>3/31/95</b>	0	0	0
<b>9/30/95</b>	1	0	1

#### **IV. IMPLEMENTATION OF THE CJRA PLAN**

##### **A. Expediting Motion Practice**

###### **1. 90-Day Motions**

A key element of this District's CJRA Plan was the establishment of an aggressive goal of deciding motions within 90 days after they are submitted. A corollary goal was to issue dispositive motion rulings in an expeditious manner which minimizes unnecessary trial preparations late in a case. The Plan provision and a table outlining the significant progress made on both goals since Plan adoption appear below. The Advisory Group recommends the Court continue to emphasize this important part of its Plan.

#### **PLAN POINT NO. 12**

Each judicial officer will set for himself or herself the goal of deciding Motions within 90 days after they are submitted; and the goal of issuing rulings on dispositive Motions not later than one week before the Final Pretrial Order is due to be filed by counsel, provided that the judge has had a reasonable opportunity to rule on the Motion prior to that time.

table 9

#### **Civil Motions Pending Over Three Months Per Judge**

<u>District Judges</u>	as of:	<u>Civil Motions Pending Over 3 months</u>		<u>% of all Civil Motions Pending Over 3 Months</u>	
		<u>4/30/95</u>	<u>7/31/95</u>	<u>4/30/95</u>	<u>7/31/95</u>
Beckwith		62	85	29%	37%
Graham		33	64	22%	34%
Holschuh		98	123	40%	38%
Kinneary		47	72	33%	61%
Rice		141	107	39%	48%
Rubin		23	-	26%	-
Smith		83	111	36%	45%
Spiegel		29	55	25%	29%
Unassigned		-	26	-	20%
Weber		94	155	33%	44%
<b>Total</b>		<b>610</b>	<b>798</b>	<b>33%</b>	<b>40%</b>

	as of:	Civil Motions Pending Over 3 months*		% of all Civil Motions Pending Over 3 Months	
		<u>4/30/95</u>	<u>7/31/95</u>	<u>4/30/95</u>	<u>7/31/95</u>
<b><u>Magistrate Judges**</u></b>					
Abel		6	0	100%	0%
Kemp		6	4	67%	31%
King		1	5	8%	16%
Merz		2	7	15%	29%
Sherman		2	4	20%	19%
Steinberg		8	7	36%	16%
<b>Total</b>		<b>25</b>	<b>27</b>	<b>34%</b>	<b>20%</b>
<b>District Total</b>		<b>635</b>	<b>825</b>	<b>33%</b>	<b>39%</b>

\* Includes civil motions pending three months from the date at which the motion became at issue.

\*\*Only includes cases which were consented to disposition before a Magistrate Judge.

Less than 40% of motions await decision more than three months. These statistics evidence the serious commitment which all judicial officers of this Court have made to the implementation of this key element of the CJRA Plan.

## 2. 180-Day Motions

The Civil Justice Reform Act of 1990 focused attention upon motions awaiting decision at 180 days or more. Consistent with this Court's serious focus on its motion docket, reflected in the statistics in table 9 above, the Southern District of Ohio has seen a dramatic decrease in the number of motions pending over six months. [See, *First Report* at 25, table 8.] For District Judges, the number dropped from 285 in March 1992 when statistics first became available to only 24 in March, 1995. Since then, due to increased case filings on both the criminal and civil dockets, the loss of District Judge Rubin, and the inevitable reorganization of the docket needed to accommodate these changes, the 6-month motion docket has jumped to its highest point in three years, although still far below comparable pre-Plan figures.

table 10

**Civil Motions Pending Over Six Months**

	<u>6-12 months</u>	<u>Over 12 months</u>	<u>TOTAL</u>
<b><u>District Judges</u></b>			
3/31/92	122	163	285
9/30/92	123	176	299
3/31/93	39	31	70
9/30/93	51	21	72
3/31/94	17	10	27
9/30/94	26	5	31
3/31/95	14	10	24
9/30/95	72	13	85
<b>% decrease since 3/92:</b>	<b>41%</b>	<b>92%</b>	<b>70%</b>

**Magistrate Judges**

3/31/92	32	10	42
9/30/92	38	6	44
3/31/93	25	14	39
9/30/93	12	3	15
3/31/94	9	1	10
9/30/94	8	0	8
3/31/95	5	1	6
9/30/95	4	3	7
<b>% decrease since 3/92:</b>	<b>88%</b>	<b>70%</b>	<b>83%</b>

**B. Alternative Dispute Resolution Programs**

In the primary section of the CJRA Plan addressing this subject, the District Judges resolved to retain a flexible approach to ADR. Historically, this Court had been creative and offered a variety of alternative dispute resolution programs to litigants.

**PLAN POINT NO. 1**

The Court will continue its commitment to ADR, and to the flexible approach reflected in Local Rule 53.1.

Since Plan implementation, the Court has continued to regularly utilize a variety of ADR procedures, including summary jury trials, Settlement Week mediation conferences, and other forms of mediation. Although the Court at Dayton continues to study the possibility of using "Settlement Week" mediation at that location, to date it has not been implemented. The judges in Dayton continue to actively pursue settlement on an individual case basis.

### **C. Civil Case Management**

The CJRA Plan opted to retain this Court's commitment to individualized attention to the pretrial management of civil cases, in lieu of establishing some other type of "Differentiated Case Management" (DCM) system. That policy was outlined in Plan Point No. 4.

#### **PLAN POINT NO. 4**

The Court will continue to give personalized attention by a judicial officer to the pretrial management of each trial-track civil case, and ~~will not adopt a predetermined "Differentiated Case Management" system.~~

The bar of this Court has strongly supported the Court's action in Point No. 4, and nothing observed by this Advisory Group to date suggests this part of the Plan should be altered.

Although the Court refrained from adopting a predetermined case track system, it considered the need to assure that there was an early means to identify individual cases anticipated to require an unusual amount of pretrial case management.

#### **PLAN POINT NO. 5**

The Court will provide some mechanism by which a party can advise the Court at the earliest stage of a case which appears likely to require unusual types of pretrial attention, or other special handling as a "complex" case. The Court will promptly respond in such cases with as much additional attention as the Court's resources permit and the legitimate needs of the case require. \*\*\*

~~Although the Court developed a simple "complex case" identification form to allow counsel to self-identify such cases, the form has never been widely distributed or used. The Advisory Group sees no need to do so now.~~ It appears that judicial officers are alert to the need for special attention in such cases, and that they are being routinely identified in a timely fashion without the new form.



**D. Local Rules of the District**

**Discovery Motions**

Long before the adoption of the CJRA this Court adhered to the principle that discovery disputes are best resolved by extrajudicial means between counsel. Plan Point 11 reiterated this policy that counsel have an affirmative obligation to exhaust all extrajudicial means before involving judicial officers in discovery disputes. Under both the Plan and the Court's Local Rules, discovery motions must be accompanied by an affidavit from counsel detailing the extrajudicial means used in an effort to resolve the dispute.

That long-standing requirement of this Court now essentially duplicates procedures included in 1993 amendments to the Federal Rules of Civil Procedure. ~~Such duplication may well reinforce the importance of extrajudicial effort upon both the bar and litigants, but under the amendment of Federal Civil Rule 83 which became effective December 1, 1995, such duplication between the two sets of Rules is forbidden. Hence, during 1996 the Advisory Group and the Court's Local Rules Committee will examine the Local Rules on this issue to decide whether such Local Rules remain truly warranted.~~

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**E. Utilization of Magistrate Judges**

Implementing Plan Point 14, the District Judges have made a concerted effort to inform the bar and litigants of the exceptional skills of the Magistrate Judges in this District. As one example, most of the Magistrate Judges were given significant roles in the Court's well-attended Bench/Bar Conference in May, 1994.

As contemplated in Point 15 of the Plan, in May, 1994 the District Court published a 16-page pamphlet which summarizes the civil case "consent" process for trial to a Magistrate Judge, and provides a photograph and substantial biographical information on each of the six full-time incumbent Magistrate Judges. The Magistrate Judge pamphlet has been circulated in this District. The Advisory Group continues to believe that better educating the bar and litigants to the potential benefits of the "consent" system, and to the top quality individuals who serve as Magistrate Judges will over time increase the use of these judicial officers.

However, as reflected in Table a-8 in the Appendix, consents to Magistrate Judges have remained constant despite efforts to date under the CJRA Plan. In 1996, the Advisory Group plans to investigate this subject further.

**F. Trial Assignments**

1. 18-Month Cases

The Court firmly believes that assigning a reasonably early, meaningful trial date greatly reduces cost and delay in federal litigation. District and Magistrate Judges continue to make every effort to assign such trial dates in the early stages of litigation. Two points in the CJRA Plan focused on this subject.

**PLAN POINT NO. 16**

The Court will adopt a practice of uniformly assigning a meaningful trial date early in the progress of each civil case.

**PLAN POINT NO. 17**

As a goal, the Court will attempt to assure that the trial of most non-"complex" civil cases occurs within 18 months after filing.

As part of the Court's effort to implement these Points, the Clerk's office developed a computerized monitoring system listing cases which have not gone to trial within 18 months. Such statistics are intended for distribution to all District and Magistrate Judges. Current figures are shown below, and they reflect significant improvement over comparable figures from 1994.

table 11

**Civil Cases in Which a Trial Has Not  
Occurred Within 18 Months of Filing**

as of:	Trial Track Civil Cases		Non-Trial Track Civil Cases*		% of Civil Caseload Pending Over 18 Months	
	<u>4/30/95</u>	<u>7/31/95</u>	<u>4/30/95</u>	<u>7/31/95</u>	<u>4/30/95</u>	<u>7/31/95</u>
<b><u>District Judges</u></b>						
Beckwith	15	20	5	4	7%	9%
Graham	6	4	5	3	5%	3%
Holschuh	38	40	9	10	17%	18%
Kinneary	28	29	0	1	17%	17%
Rice	56	65	13	12	17%	19%
Rubin	6	-	6	-	6%	-
Smith	14	13	5	4	8%	7%
Spiegel	34	30	41	48	22%	18%
Unassigned	-	12	-	6	-	8%
Weber	19	18	23	17	13%	10%
<b>Total</b>	<b>216</b>	<b>231</b>	<b>107</b>	<b>105</b>	<b>13%</b>	<b>13%</b>
<b><u>Magistrate Judges**</u></b>						
Abel	2	1	0	0	40%	50%
Kemp	3	3	0	0	20%	27%
King	3	5	1	1	31%	40%
Merz	1	7	2	0	7%	16%
Sherman	8	8	1	2	30%	32%
Steinberg	6	6	8	5	46%	41%
<b>Total</b>	<b>23</b>	<b>30</b>	<b>12</b>	<b>8</b>	<b>26%</b>	<b>29%</b>
<b>District Total</b>	<b>239</b>	<b>261</b>	<b>119</b>	<b>113</b>	<b>14%</b>	<b>14%</b>

\* Non-Trial track cases include all prisoner petitions, bankruptcy appeals, Social Security, student loans, federal foreclosure, and VA benefits.

\*\*Only includes cases which were consented to disposition before a Magistrate Judge.

## 2. 3-Year Cases

The number of civil cases pending more than three years has also decreased. The latest figures available show a 63% decrease below comparable figures for September, 1992. For the year ending June 30, 1995 this District had only 2.6% of its civil caseload at three years old or over, compared to the national average in federal courts of 5.6%. While the challenge of

moving the docket to minimize the number of such older cases is a continuing one, the Advisory Group has confidence in the Court's commitment in this area.

Since 86% of pending civil cases reach trial or are otherwise resolved within 18 months, the Advisory Group believes the Court is performing well in terms of minimizing delay. Given the complexity of cases frequently filed in the District Court and the often substantially increased demands on lawyers and trial judges in complex federal civil cases, it is unrealistic to expect any significant increase in moving the docket to conclusion is likely to provide a higher yield of justice for litigants.

### 3. State Court Comparison

During the past year this Advisory Group gathered data to attempt to compare the speed with which cases move through the dockets of the state courts of general jurisdiction in the three locations at which this District Court sits (Franklin, Hamilton, and Montgomery Counties) with the foregoing figures concerning timely resolution on this Court's docket. We concluded that federal court moves civil cases at approximately the same pace as comparable state courts. However, different reporting criteria used in the state court system make confirmation of such statistical comparisons difficult.

Superficially, state courts of general jurisdiction in two of the three counties complete their civil cases 95% of the time within their own time deadlines. This is misleading because a number of state court deadlines are longer than the 18-month goal used in this Court. Moreover, it is difficult to determine whether case types are comparable. For instance, state courts adjudicate as much as 1/3 of their docket in cases assigned to a generic "other civil" category, in which disposition is intended to occur within twelve months. Presumably these are relatively routine matters, no more complicated than "foreclosure" cases allowed twelve months under a separate state reporting category. On the other extreme, as opposed to the 18-month trial goal used in this District, several types of state cases are assigned a 24-month disposition goal, including "professional tort," and "product liability" cases. State courts in all three counties report that they adjudicate a mere handful of cases assigned to the 36-month "complex litigation" category. Yet, we recognize this small number of reported cases may underreport the frequency of difficult civil cases in the state courts and be attributable largely to the designation process for such cases. (State court designation of "complex" civil cases requires two judicial officers to agree a case qualifies as "complex" under the Ohio Supreme Court's Common Pleas Superintendence Rule 8.01(B).)

Most observers agree that there are many relatively "complex" civil cases on the docket of this District Court. Statistics confirm this. So-called "Type II" cases are classified in the federal system to include tax, labor, patent, securities, ERISA, non-prisoner civil rights, non-

routine contract, and personal injury cases other than asbestos. Both nationally and in this District "Type II" cases comprise about 60% of civil filings.<sup>4</sup>

Like the state courts, the District Court has its share of relatively quickly moving cases. Roughly 28% of this District's pending civil docket at mid-year 1995 was *pro se* prisoner and civil rights cases. Experience teaches that many such cases are readily concluded. Closer examination, however, reveals that drawing a simplistic conclusion from the *pro se* docket may be mistaken. The Southern District of Ohio has seen some "prisoner" and "civil rights" cases, (in statistical years '93-'95,) last more than three years. The most recent Federal Judicial Conference statistics also attempt to track the "burden" which different case types impose on a Court through a "case weights" system, and that most recent report reflects that "civil rights" and "prisoner" cases took about one-half of the judge time in this District during SY93-95.

~~While any attempt to definitively compare federal court civil caseloads and speed to complete cases with comparable state court activity will require further study, from available statistical data and observations of both systems this Advisory Group does not believe there is any unreasonable delay evident in the federal system in this District.~~

#### **G. Miscellaneous Provisions**

The Court implemented Point 18 of its Plan by holding a biennial meeting focused on relevant substantive and procedural issues, including the Court's CJRA Plan, in May, 1994. It is anticipated the Court will hold some comparable function in 1996, as the Sixth Circuit Judicial Conference will not include participation by the bar due to budgetary constraints.

The Advisory Group in 1995 recognized that a study of Court automation and computer technology may offer assistance to both the Court, and to litigants and members of the bar. Our investigation of this area of the Court, building upon the significant activities already undertaken by Clerk of Courts Murphy and Ms. Toni Alkire, Systems Manager on Mr. Murphy's staff, will continue into 1996.

The Advisory Group also was appraised of the need to examine the manner in which the *pro se* docket is handled. The investigation of procedures to fund lawyers assisting *pro se* litigants, as has been accomplished in the Southern District of Florida through its "Volunteer Lawyers' Project", appears worthwhile. This Advisory Group will continue to study the issue, and the resources already available through other groups such as the local bar associations at the three locations of Court, during 1996.

Finally, interest has been expressed in determining from both members of the bar and from litigants who have used the Court whether current procedures under the CJRA Plan are

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<sup>4</sup> *Guidance to Advisory Groups Memo SY95* (Oct. 17, 1995), at pages 10 and 12. Interestingly, in this District the so-called "life expectancy" of Type II civil cases remains around 13 months, only slightly above the 12 month IAL average lifespan for all district courts in the United States over the last decade.

serving their purpose. It is expected that one or more questionnaires and other methods to gather information will be used during 1996 to gain further public input for the Court.

**V. MEMBERS OF THE ADVISORY GROUP**

With the expiration of the four-year terms of the initial members of the Group, the membership was altered substantially in the past year. The current members of the Group are:

Louis E. Gerber, *Chair*

Vicki B. Buyniski  
Frank Cagnetti  
Theodore F. Claypoole  
Michael D. Eagen  
Mary Ellen Fairfield  
Charles J. Faruki  
Stephen C. Fitch  
Peggy Graham

Lawrence J. Greger  
Jeffrey P. Hopkins  
Barbara L. Morgenstern  
Jacobus C. Rassner  
Glenn B. Redick  
Edmund A. Sargus, Jr.  
J. Kermit Smith

**EX OFFICIO MEMBERS**

Honorable Mark R. Abel  
Chief Judge John D. Holschuh  
Honorable Terence P. Kemp  
Honorable Norah McCann King  
Honorable Michael R. Merz

Kenneth J. Murphy, Clerk  
Honorable Jack Sherman, Jr.  
Percy Squire, Esq.  
Honorable Robert A. Steinberg

Richard A. Frye, *Reporter*

**APPENDIX TO 1995  
ANNUAL ASSESSMENT**

Table a-1

**By Month - Felony Cases Pending**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
Nov-94	53	129	35	217
Dec-94	55	129	31	215
Jan-95	49	133	37	219
Feb-95	60	134	44	238
Mar-95	61	134	45	240
Apr-95	63	142	50	255
May-95	64	144	52	260
Jun-95	73	146	50	269
Jul-95	70	150	48	268
Aug-95	61	141	52	254
Sep-95	74	140	56	270
Oct-95	66	142	55	263
Nov-95	60	136	56	252

Table a-2

**By Month - Misdemeanor Cases Pending**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>Nov-94</b>	3	5	29	37
<b>Dec-94</b>	8	6	25	39
<b>Jan-95</b>	12	5	23	40
<b>Feb-95</b>	6	4	27	37
<b>Mar-95</b>	12	4	24	40
<b>Apr-95</b>	10	4	22	36
<b>May-95</b>	9	1	16	26
<b>Jun-95</b>	11	1	17	29
<b>Jul-95</b>	6	3	12	21
<b>Aug-95</b>	4	3	19	26
<b>Sep-95</b>	5	3	20	28
<b>Oct-95</b>	4	3	18	25
<b>Nov-95</b>	3	2	20	25



Table a-3

**By Month - Misdemeanor Defendants Pending  
(Excluding Petty Offenses)**

	Cincinnati	Columbus	Dayton	District
Nov-94	3	5	29	37
Dec-94	8	6	25	39
Jan-95	12	5	23	40
Feb-95	6	4	27	37
Mar-95	12	4	24	40
Apr-95	10	4	22	36
May-95	9	1	16	26
Jun-95	11	1	17	29
Jul-95	6	3	12	21
Aug-95	4	3	19	26
Sep-95	5	3	20	28
Oct-95	4	3	18	25
Nov-95	3	2	20	25

Table a-4

**Yearly Average - Misdemeanor Defendants (by Calendar Year)**

	Cincinnati	Columbus	Dayton	District
1992	4	1	24	29
1993	3	1	12	16
1994	5	2	21	28
1995 (as of 11/30/95)	7	3	20	30
% increase from 1994:	40%	50%	-5%	7%

Table a-5

**Calendar Year - Misdemeanor Defendants Filed**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>1992</b>	17	3	50	70
<b>1993</b>	11	3	39	53
<b>1994</b>	14	9	54	77
<b>1995</b>	17	12	40	69
(annualized as of 11/30/95)				
<b>% increase from 1994:</b>	21%	33%	-26%	-10%

Table a-6

**Calendar Year - Misdemeanor Cases Filed**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>1992</b>	17	3	50	70
<b>1993</b>	11	3	39	53
<b>1994</b>	14	9	54	77
<b>1995</b>	21	12	40	69
(annualized as of 11/30/95)				
<b>% increase from 1994:</b>	21%	33%	-26%	-10%

Table a-7

**Statistical Year - Petty Offense Cases Completed**

	<b>Cincinnati</b>	<b>Columbus</b>	<b>Dayton</b>	<b>District</b>
<b>1991</b>	12	3	215	230
<b>1992</b>	28	1	212	241
<b>1993</b>	13	8	255	276
<b>1994</b>	11	7	273	291
<b>1995</b>	14	5	194	213
<b>Average per year</b>	<b>16</b>	<b>5</b>	<b>230</b>	<b>250</b>

Table a-8

**Civil Cases Consented to Disposition Before a Magistrate Judge**  
**January 1993 to July 1995 (31 months)**

	<u>Cincinnati</u>	<u>Columbus</u>	<u>Dayton</u>	<u>District</u> <u>Total</u>	<u>Six Month Average</u>			
					<u>Cin</u>	<u>Col</u>	<u>Day</u>	<u>Total</u>
Jan-93	5	4	10	19				
Feb-93	1	4	10	15				
Mar-93	9	3	7	19				
Apr-93	7	1	9	17				
May-93	1	4	3	8				
Jun-93	8	3	8	19	5	3	8	16
Jul-93	2	7	3	12				
Aug-93	5	6	4	15				
Sep-93	2	5	7	14				
Oct-93	5	6	1	12				
Nov-93	2	5	3	10				
Dec-93	7	6	12	25	4	6	5	15
Jan-94	13	5	7	25				
Feb-94	7	5	7	19				
Mar-94	4	4	6	14				
Apr-94	4	2	9	15				
May-94	5	3	7	15				
Jun-94	7	7	9	23	7	4	8	19
Jul-94	3	0	8	11				
Aug-94	7	4	7	18				
Sep-94	5	1	4	10				
Oct-94	7	6	5	18				
Nov-94	7	1	12	20				
Dec-94	7	2	7	16	6	2	7	16
Jan-95	6	3	5	14				
Feb-95	6	5	6	17				
Mar-95	10	3	8	21				
Apr-95	3	1	2	6				
May-95	6	3	13	22				
Jun-95	6	2	7	15	6	3	7	16
Jul-95	6	2	4	12				
<b>TOTAL</b>	<b>173</b>	<b>113</b>	<b>210</b>	<b>496</b>				
Consents per Mag. Judge at this Court location								
	87	38	210	83				
AVERAGE per Mag. Judge/per month								
	3	1.3	7	2.6				

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