

1996 ANNUAL ASSESSMENT REPORT
OF THE ADVISORY GROUP



JANUARY, 1997
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO

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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 third annual assessment of the operation of that Plan.

The Advisory Group can report that the Court continues to actively implement substantially all of the Plan. The Advisory Group recommends only two minor modifications of the Plan at this time. Plan Point No. 2, calling for a formalized ADR program in Dayton such as Settlement Week mediation using volunteer mediators, should be eliminated. Although the judicial officers at Dayton are committed to the use of ADR as a general proposition, there is not the sense that a regularly scheduled, relatively formalized program such as is used in Columbus would prove of significant value to the local bar. Unlike Columbus, this ADR technique is not used in the state court system in Montgomery County. The second recommended modification is to delete Plan Point No. 5, addressing special handling of "complex" cases. This has proven unnecessary since such cases gain individualized judicial attention as a matter of course.

Although Congressional authorization for the CJRA process is due to expire in late 1997, this Advisory Group is on record with the Administrative Office of the United States Courts as favoring either reauthorization on a national basis, or some mechanism for continuation of local Advisory Group activities in individual Districts wishing to continue this process. Walter Herbert Rice, the new Chief Judge for this District, has advised our Group that he too favors continuation of this process.

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."¹

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 declined somewhat since 1992.² This change is generally attributed to altered priorities used in selecting cases for prosecution, under guidelines revised during 1993 within the Office of the United States Attorney. However, the number of defendants charged in each of the last two years has increased, and the number of fugitives is lower which results in more actual work by the Court.

The annualized monthly average figure for twelve months between January and December, 1996 is 425 defendants, identical to 1995 except for minor variations by city.³ 1996 statistics from the Federal Judicial Center similarly reflect equivalent numbers for the years ending Sept. 30, 1995 and 1996. 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.

¹ 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."

² 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.

³ At October 31, 1996 11% of defendants were fugitives, while in the two prior years 17% and 18% of defendants were fugitives.

table 1(a)

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

	Cincinnati	Columbus	Dayton	District
Nov-95	94	251	74	419
Dec-95	86	199	72	357
Jan-96	125	193	64	382
Feb-96	132	198	67	397
Mar-96	133	195	65	393
Apr-96	144	188	79	411
May-96	145	234	89	468
Jun-96	145	226	72	443
Jul-96	139	229	73	441
Aug-96	128	218	81	427
Sept-96	121	233	85	439
Oct-96	94	230	112	436
Nov-96	93	215	112	420
Dec-96	125	215	85	425

11% of these Defendants were fugitives at Dec. 31, 1996, down from 17% and 18% in the two prior years.

table 1(b)

Average Number of Pending Felony Defendants (by year)

	Cincinnati	Columbus	Dayton	District
1992	96	294	80	470
1993	99	237	65	401
1994	76	203	52	331
1995	110	245	70	425
1996	125	215	85	425
% increase from 1995:	14%	-12%	21%	0%

table 1(c)

Felony Defendants Charged by Calendar Year

	Cincinnati	Columbus	Dayton	District
1992	150	366	72	588
1993	150	247	66	463
1994	135	232	59	426
1995	171	233	81	485
1996	185	226	107	518
% increase from 1995:	8%	-3%	32%	7%

table 1(d)

Felony Defendants Terminated by Calendar Year

	Cincinnati	Columbus	Dayton	District
1992	169	393	92	654
1993	171	312	76	559
1994	130	214	73	417
1995	148	205	56	409
1996	166	199	71	436
%increase from 1995	12%	-3%	27%	7%

2. Criminal Case Filings

The number of felony criminal cases filed District-wide has remained stable over the past three years, although random variations are sometimes evident at the three locations of the Court. Termination of felony cases began to lag in 1995 such that the average age of criminal cases is noticeably up District-wide. The recent addition of two new District Judges, and reassignment of judicial officers within the District should result in improvement.

table 2(a)

Felony Criminal Cases Filed

	Cincinnati	Columbus	Dayton	District
1992	134	242	61	437
1993	111	188	54	353
1994	103	171	53	327
1995	101	127	70	298
1996	121	134	59	315
% increase from 1995:	20%	6%	-16%	5%

table 2(b)

Felony Cases Terminated

	Cincinnati	Columbus	Dayton	District
1992	143	268	73	484
1993	133	225	54	412
1994	110	167	63	340
1995	96	135	47	278
1996	110	116	57	283
% increase from 1995:	15%	-14%	21%	2%

table 2(c)

AVERAGE AGE OF PENDING FELONY CASES (Months)

	Cincinnati	Columbus	Dayton	District
1992	7	8	9	8
1993	5	7	9	7
1994	7	12	8	10
1995	7	12	15	10
1996	7	14	16	12

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 had approximately a 4% increase in new civil filings over 1995, which in turn had increased roughly that much over 1994. The most significant jump in new filings is again reflected at Cincinnati. This can be explained, in part, by additional civil (tort) 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. A breakdown by case types is found in Table a-4 in the Appendix.

table 3

Total Civil Filings

	Cincinnati	Columbus	Dayton	District
1992	1010	1207	525	2742
1993	906	1208	518	2632
1994	866	1264	545	2675
1995	1149	1281	486	2916
1996	1190	1324	520	3034
% increase from 1995:	4%	3%	7%	4%

2. Pending Civil Cases

Like new filings, the backlog of pending civil cases in recent months has continued to grow. It now exceeds comparable pre-Plan numbers. [*First Report*, page 24, table 5.] However, the addition of a large MDL case to the Cincinnati docket explains a significant portion of this increase, as is reflected in the following table which begins with figures for late 1994 before the MDL assignment.

table 4

Pending Civil Cases

	Cincinnati	Columbus	Dayton	District
Nov-94	873	1097	485	2455
Nov-95	1211	1186	496	2893
Dec-95	1244	1172	500	2916
Jan-96	1256	1163	488	2907
Feb-96	1332	1176	485	2993
Mar-96	1378	1154	473	3005
Apr-96	1423	1187	476	3086
May-96	1433	1177	499	3109
Jun-96	1463	1184	515	3162
Jul-96	1491	1219	526	3236
Aug-96	1527	1186	516	3229
Sept-96	1583	1185	522	3290
Oct-96	1584	1240	544	3368
Nov-96	1584	1299	564	3447
Dec-96	1584	1298	567	3449

District-wide, civil case terminations fell again in 1996 at two of the three locations of the Court. As a result, the Court overall shows the lowest number of civil case terminations in the last five years. This is a troublesome statistic. It is recognized that the drop in case terminations at Cincinnati in 1995 was greatly influenced by the final illness and untimely death of Judge Rubin. Since the Court has reallocated judicial officers among the three cities, and Judge Rubin's replacement (Judge Sargus) was only on board for the last few months of 1996, this set of figures may well be improved without additional efforts during 1997.

table 5

Civil Cases Terminated by Calendar Year

	Cincinnati	Columbus	Dayton	District
1992	1026	1238	547	2811
1993	995	1330	557	2882
1994	942	1248	525	2715
1995	798	1241	514	2553
1996	836	1222	481	2539
% increase from 1995:	5%	-2%	-6%	-1%

Substantial progress has been made since the adoption of the Civil Justice Reform Act toward eliminating civil cases pending over three years. However, the trend over the last three reporting periods suggests some momentum is being lost in this important area, warranting renewed attention by the Court.

table 6

Civil Cases Pending Over Three Years

	District Judges	Magistrate Judges	District Total
9/30/92	140	15	155
3/31/93	107	14	121
9/30/93	81	14	95
3/31/94	57	7	64
9/30/94	54	5	59
3/31/95	55	2	57
9/30/95	69	4	73
3/31/96	77	4	81

3. Trial Activity

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

table 7

Bench Trials Submitted More Than Six Months

	District Judges	Magistrate Judges	District Total
3/31/92	11	0	11
9/30/92	1	1	2
3/31/93	0	1	1
9/30/93	0	1	1
3/31/94	0	0	0
9/30/94	0	0	0
3/31/95	0	0	0
9/30/95	1	0	1
3/31/96	1	0	1
9/30/96	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 8

Civil Motions Pending Over Three Months*

	Civil Motions Pending Over 3 months		% of all Civil Motions Pending Over 3 Months		
	as of:	<u>4/30/96</u>	<u>7/31/96</u>	<u>4/30/96</u>	<u>7/31/96</u>
<u>District Judges</u>					
Beckwith		38	39	24%	24%
Diott		99	142	34%	40%
Graham		28	58	21%	29%
Holschuh		114	175	40%	42%
Kinneary		23	42	17%	33%
Rice		188	240	55%	49%
Sargus					
Smith		82	148	33%	49%
Spiegel		84	135	36%	36%
Weber		67	95	35%	37%
Total		723	1124	36%	40%
	as of:	<u>4/30/96</u>	<u>7/31/96</u>	<u>4/30/96</u>	<u>7/31/96</u>
<u>Magistrate Judges**</u>					
Abel		0	0	0%	0%
Kemp		15	18	52%	64%
King		7	14	39%	58%
Merz		7	10	41%	66%
Sherman		6	6	33%	32%
Hogan +					
Visiting MJ		14	2	88%	29%
Total		49	50	49%	52%
District Total		772	1124	36%	41%

* Includes civil motions still awaiting decision three months after the date at which the motion became at issue. The "at issue" date is thirty days after a motion is first filed, to allow for completion of briefing.

**Reflecting only cases in which parties consented to disposition before a Magistrate Judge.

+Appointed to the bench after the reporting dates

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 8 above, the Southern District of Ohio has seen a dramatic decrease in the number of motions pending over six months.

table 9

Civil Motions Pending Over Six Months

	<u>6-12 months</u>	<u>Over 12 months</u>	<u>TOTAL</u>
<u>District Judges</u>			
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
3/31/96	37	6	43
9/30/96	51	8	59
% decrease since 3/92:	58%	95%	80%
<u>Magistrate Judges</u>			
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
3/31/96	12	3	15
9/30/96	8	1	9
% decrease since 3/92:	75%	90%	79%

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 began in 1993, the Court has continued to utilize a variety of ADR procedures, including primarily summary jury trials and Settlement Week mediation conferences. The regular use of such programs varies among the three locations of the Court, which is consistent with the flexibility inherent in Plan Point No. 1 and in Local Rule 53.1. While Plan Point No. 2 had suggested the Western Division at Dayton undertake some form of formalized ADR program, such as Settlement Week using volunteer mediators, this has not been successfully implemented. Neither the judiciary sitting in Dayton nor the local bar have seen the wisdom in an additional investment of time and effort needed to run a more systematic, formalized ADR program at this time. As a result, it seems reasonable to suggest that Plan Point No. 2 may be deleted.

C. Civil Case Management

Another key component of the CJRA Plan was to retain this Court's commitment to individualized judicial 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 in reports on DCM programs operated in other Districts 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. This resulted in Plan Point No. 5.

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 shortly after the Plan was adopted 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. As a matter of housekeeping, Plan Point No. 5 may be deleted.

D. 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. Nevertheless, use of the Magistrate Judges in consent cases has not significantly increased. During 1996 this was a topic of discussion at Advisory Group meetings, and renewed efforts will be undertaken in 1997 in this area. Statistical information on civil consents is found in Table a-5 of the Appendix.

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. With the addition of Magistrate Judge Hogan in Cincinnati, the pamphlet needs to be updated. This is planned to occur in 1997. In addition, other methods of disseminating information and encouragement for litigants to consider the consent process will be studied.

E. Trial Assignments

18-Month Cases

Most observers believe that assigning a reasonably early, meaningful trial date greatly reduces cost and delay in federal litigation. District Judges adopted two points in the CJRA Plan which 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 monitoring system listing cases which had not gone to trial within 18 months. The 18-month target is twice as fast as the target mandated by the Act, but on balance seemed achievable in the majority of cases in this District. Current figures are shown below, and while they reflect minor slippage from comparable figures for 1995 they nevertheless reflect the reasonableness of that target as it is being met in 85% of cases filed here.

table 10

**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>4/30/96</u>	<u>7/31/96</u>	<u>4/30/96</u>	<u>7/31/96</u>	<u>4/30/96</u>	<u>7/31/96</u>
<u>District Judges</u>						
Beckwith	27	32	10	9	10%	12%
Diott	17	17	8	9	10%	10%
Graham	3	4	6	8	4%	15%
Holschuh	51	51	11	13	21%	21%
Kinneary	25	31	1	1	16%	19%
Rice	64	90	28	21	23%	26%
Sargus +						
Smith	10	17	6	12	6%	11%
Spiegel	34	40	54	55	13%	13%
Unassigned	0	0	1	1	17%	4%
Weber	42	40	10	15	14%	15%
Total	273	322	135	144	14%	15%
<u>Magistrate Judges**</u>						
Abel	0	1	0	0	0%	20%
Kemp	5	5	0	1	55%	67%
King	3	3	1	1	29%	36%
Hogan +						
Merz	5	5	0	0	17%	14%
Sherman	5	9	2	3	28%	46%
Visiting MJ	3	2	1	2	24%	27%
Total	21	25	4	7	26%	31%
District Total	294	347	139	151	14%	15%

* 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.

+Appointed to the bench after the reporting dates

F. Miscellaneous Observations

The Advisory Group recognized sometime ago 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, 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 1997. Under the leadership of Advisory Group member Ted Claypoole, the investigation of publishing opinions of the Court on the Columbus Bar Association's "web" page was undertaken during 1996 with encouragement from the Judges of the Court.

The Advisory Group has also recognized this year that better disseminating information about the Court to the public, by electronic means and otherwise, should become a continuing practice. Federal institutions are of late too frequently subjected to criticisms about inefficiency and insensitivity to the reasonable needs of the public. This District Court has a dedicated group of judicial officers and staff personnel. Their long-standing commitment to the public interest, and to the responsible and cost effective administration of this institution continues to be worthy of public respect.

Having said that, this Advisory Group continues to have great interest in determining, from both members of the bar and litigants who have used the Court, whether current procedures under the CJRA Plan are serving their purpose. Suggestions from any reader on matters of court procedure and administration, or about achieving further improvement in reducing cost and delay are most welcome by this Group and the Court.

As noted earlier, this Advisory Group believes that it is serving a useful purpose for the Court, and is on record as favoring the reauthorization of the CJRA process by the Congress. Failing that, we concur with Chief Judge Rice's view that a continuation of the program on a local level within this District is in the public interest, and will benefit the Court.

V. MEMBERS OF THE ADVISORY GROUP

The current members of the Group are:

Louis E. Gerber, *Chair*

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

Dale A. Goldberg
Peggy Graham
Lawrence J. Greger
Barbara L. Morgenstern
Jacobus C. Rassner
Glenn B. Redick
J. Kermit Smith

EX OFFICIO MEMBERS

Honorable Mark R. Abel
Honorable Timothy S. Hogan
Honorable Terence P. Kemp
Honorable Norah McCann King

Honorable Michael R. Merz
Kenneth J. Murphy, Clerk
Chief Judge Walter Herbert Rice
Honorable Jack Sherman, Jr.

Richard A. Frye, *Reporter*
John H. Wright, *CJRA Analyst, Deputy Clerk*

**APPENDIX TO 1996
ANNUAL ASSESSMENT**

Table a-1

Yearly Average - Misdemeanor Defendants Pending

	Cincinnati	Columbus	Dayton	District
1992	4	1	24	29
1993	3	1	12	16
1994	5	2	21	28
1995	8	3	20	31
1996 (as of 10/31/96)	3	2	28	33
% increase from 1995:	-63%	-33%	40%	6%

Table a-2

Misdemeanor Defendants Charged

	Cincinnati	Columbus	Dayton	District
1992	17	3	50	70
1993	11	3	39	53
1994	14	9	54	77
1995	18	9	44	71
1996	6	8	54	68
% increase from 1995:	-66%	-11%	23%	-4%

Table a-3

Statistical Year - Petty Offense Cases Completed (A.O. Data)

	Cincinnati	Columbus	Dayton	District
1991	12	3	215	230
1992	28	1	212	241
1993	13	8	255	276
1994	11	7	273	291
1995	14	5	194	213
1996	2	1	186	189
Average per year	13	4	223	240

Table a-4

Civil Cases Filed by Case Type

	Contract	Real Property	Tort	Civil Rights	Prisoner	Forfeiture	Labor	Property Rights	Social Security	VA	Environ- ment	Other	TOTAL
1990	245	111	256	322	468	101	226	60	127	141	10	238	2305
1991	262	164	321	327	449	105	205	58	193	156	22	284	2546
1992	267	142	375	389	546	77	227	84	162	123	15	335	2742
1993	203	196	342	468	574	84	195	96	118	71	14	271	2632
1994	215	146	312	576	619	53	227	97	130	10	13	277	2675
1995	292	84	440	584	737	41	208	76	141	2	11	300	2916
1996	390	36	524	646	659	30	226	74	187	0	24	238	3034
<i>% of total (1996)</i>	13%	1%	17%	21%	22%	1%	8%	2%	6%	0%	1%	8%	100%
% Increase from 1990:	59%	-68%	105%	101%	53%	-70%	0%	23%	47%	-100%	140%	0%	32%

Table a-5

Civil Cases Consented to Disposition Before a Magistrate Judge

	<u>Cincinnati</u>	<u>Columbus</u>	<u>Dayton</u>	<u>Total</u>
1993	54	54	77	185
1994	76	40	88	204
1995	77	35	74	186
1996	37	65	78	180

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