REPORT ON CASE MANAGEMENT PROCEDURES

WESTERN DISTRICT OF TENNESSEE

AUGUST 1991

COURT ADMINISTRATION DIVISION

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

WASHINGTON, D.C. 20544

CONTENTS

I. INTRODUCTION

At the request of the Circuit Executive for the Sixth Circuit, James Higgins, and with the concurrence of Chief Judge Odell Horton, a study of the case management operations of the Western District of Tennessee was performed from May 20-24, 1991. An exit conference with the chief judge, other judicial officers and the clerk of court was held on May 24, 1991. The study and debriefing were a follow up to a preliminary review on October 2-3, 1990, conducted by a member of the Court Administration Division and the clerk of court from the Eastern District of North Carolina.

The team conducting the study consisted of two representatives from the Administrative Office: David Williams, Senior Programs Specialist from the Court Administration Division and Mark Braswell, Senior Attorney from the Magistrate Judges Division. Three representatives from the district courts also comprised the team: Robert Shemwell, Clerk of Court for the Western District of Louisiana; Joseph Skupniewitz, Clerk of Court for the Western District of Wisconsin; and Barbara Quartulli, Courtroom Deputy from the District of Massachusetts.

II. OVERVIEW

The district has four active judges and one senior judge. Three active judges, including the chief judge, and the senior judge sit in Memphis. One active judge sits in Jackson. Two full-time magistrate judges sit in Memphis and one full-time magistrate judge sits in Jackson. (In March 1990 the Judicial Conference converted the part-time magistrate judge position at Jackson to full-time status. The full-time magistrate judge was appointed on July 1, 1991.)

The headquarters clerk's office is located in Memphis and a staffed divisional office is located in Jackson. The members of the team conducted interviews with all judicial officers in Memphis and Jackson (except for the new full-time magistrate judge at Jackson, who had not been appointed yet) and with the judges' and clerk's office staff in Memphis responsible for case management and docketing functions.

For the year ended June 30, 1990, the number of criminal felony filings per judgeship was 78 as compared to the national average of 58. The median time from filing to disposition in criminal felony cases was 5.8 months as compared to the national average of 5.3 months. During this period, 83 percent of the total number of jury trials completed were criminal.

Due to the heavy criminal caseload, the district was experiencing a substantial civil case backlog. Minimizing the civil backlog and preventing the development of an even greater one may be achieved without sacrificing any of the court's tradition of justice by redesigning the court's civil caseflow management system after models other districts have found to be productive and fair. To achieve this goal, however, will require a major change in the philosophy of the judges, the clerk of court and his staff, and the local bar. Even taking into consideration that the district has been approved the addition of a fifth judgeship and a third full-time magistrate judge has recently been appointed, the court must take steps to implement effective case management techniques in order to refine and strengthen their procedures to maximize the available resources of the court.

For the year ended June 30, 1990, the median time from issue to trial for civil cases in the district was 30 months as compared to the national average of 14 months. The district had 256 civil cases pending three years or more. This number represented 14.5 percent of the total pending civil caseload as compared to the national percentage of 10.4. A number of factors contributed to the backlog and constrained the setting of civil trial settings, such as priorities in favor of trials and hearings in criminal cases, many criminal cases going to trial rather than being plea bargained, pretrial and trial management and scheduling practices, and in-chambers work (e.g., deciding motions).

The judges stated that they spend much of their time in court handling various civil and criminal matters, and this time impacted on their ability to expedite pending motions and perform other chambers work. Exhibit One, attached, shows the summary of trial hours and other court activity for the judges and senior judge for each month for a previous year. The information in this exhibit, compiled from the JS-10 "Monthly Report of Trials and Other Court Activity," suggests that the judges are not spending a majority of their time conducting proceedings.

There is little court supervision of case development in this district. Courts with fast disposition and high termination rates generally have routine, automatic procedures to assure that answers in every civil case are received promptly, discovery begins promptly and is completed expeditiously, and a trial is scheduled early if needed. Mismanagement or nonmanagement of cases can cause considerable delay. The Western District of Tennessee could achieve greater efficiency in case management and processing by tightening controls during the various stages of civil litigation.

The clerk's office performs virtually no monitoring of the progress of case events as filings are received or of the timeliness of responses. The gathering of case

information is fragmented among chambers staff, the courtroom deputies, and the clerk's office staff, thereby creating the situation where the level of support provided to the district judges and magistrate judges is not at an optimum. A reorganization of the job functions among these groups, coupled with additional responsibilities assigned to the staff of the clerk's office, would enable a greater degree of effective case management to be performed by all concerned.

For the clerk's office to provide the necessary tools to effectuate efficient caseflow management, the clerk of court and the chief deputy should develop and structure an effective case processing and monitoring system. This need is particularly acute because the court is scheduled to receive the Integrated Case Management System (ICMS) in October, and the district has been designated as one of the ten pilot courts pursuant to the Civil Justice Reform Act of 1990 (CJRA).

To a great extent, bar practices in the district affect the efficiency of the court. Extensions of time and continuances of trials are requested frequently and often granted. The court should encourage greater efficiency in case processing by tightening time limits and implementing a more restrictive pleadings practice. Modification of the court's system should be accompanied by discussion with the local bar on the need for tighter judicial controls and the advantages that can be gained by all--counsel, clients, and the court--through more efficient case processing and quicker case disposition.

The recommendations in the report suggest ways to increase the efficiency and effectiveness of the case management practices and procedures of the court. Many of the suggested changes are interrelated while others are free-standing. Certain changes cannot be made until other steps have been accomplished.

The recommendations for the court's consideration are based on statutory requirements; the Federal Rules; Judicial Conference and Administrative Office policies, guidelines, and recommendations; and successful methods currently in use by other courts. The Administrative Office is available to assist in the implementation.

III. CIVIL CASE MANAGEMENT

Court supervision of case development should be instituted at the earliest feasible point. Many courts have developed case control systems with each case set for action on a specific date. Such a management practice serves to shorten the median case disposition time and also to identify inactive cases. In addition, the exercise of case control by the court has a discernible impact on bar practice by

creating the expectation that a case will be tried at the earliest possible date. The following are recommendations and suggestions to achieve these goals.

A. Pretrial Procedures

1. *The court should develop by local rule a stricter enforcement policy for dismissal of civil cases pursuant to Rule 4(j) of the Federal Rules of Civil Procedure.*

   [Cases are dismissed on an ad hoc basis for failure to prosecute. The present local rules have a provision (Local Rule 13) to dismiss "dormant civil claims." The proposed revisions to the local rules do not contain either this rule or a similar provision.]

   Reference: Contact Robert Shemwell, Clerk, Western District of Louisiana (FTS-493-5273) for information about developing a system of automatic dismissal of civil cases for failure to prosecute.

2. *The clerk of court should adopt a system of monitoring all due dates and immediately following up on overdue pleadings.*

   [The monitoring function includes events such as service of process, answers, motions practice, deadlines imposed by the court, and deadlines established in orders to show cause. With the court scheduled to receive ICMS in October, it is imperative that the docket clerks be fully trained to track various pleadings. The system is designed to perform many case management functions, but depends upon data being entered correctly.]

3. *Trial dates should be set in consultation with counsel at the initial scheduling conference.*

   [Presently, the courtroom deputy sets the trial date independently after the scheduling conference has been held. The likelihood of a continuance may be significantly reduced if the judge consults with counsel at the time of the conference to set a realistic trial date. Also, setting trial dates early can minimize conflicts with state court proceedings and other counsel commitments.]

4. *The court should consider implementing a policy to restrict extensions of time and continuances by stricter enforcement of the time limits imposed by the court, the local rules, and the Federal Rules of Civil Procedure.*

5. *The court could impose sanctions for failure to comply with court orders, the local rules, and the Federal Rules of Civil Procedure.*

Reference: Robert E. Rodes Jr., Kenneth F. Ripple, and Carol Mooney, Sanctions Imposable for Violations of the Federal Rules of Civil Procedure, (Federal Judicial Center, 1981)

B. Motions

6. *The judges could establish guidelines for effective management of motions that can help expedite the disposition of cases.*

[The judges could establish target dates or block a certain amount of time for ruling on dispositive motions. Routine motions could be acted upon expeditiously. Discovery motions need not be considered by the court unless counsel have certified that they tried to resolve the matter between themselves first. The bar could be trained as to how to prepare proposed findings of fact and conclusions of law for dispositive motions.]

Reference: Paul Connolly, and Patricia A. Lombard, Judicial Controls and the Civil Litigative Process: Motions, (Federal Judicial Center, 1980)

C. Final Pretrial/Settlement Conference Procedures

7. *An administrative order could be issued by the clerk's office to close out a case in the event of settlement.*

[Presently, when a case is reported settled by the parties without filing a stipulation of dismissal or consent decree, the case remains open until the appropriate papers are filed. In many instances, a substantial period of time has passed and the courtroom deputy has to call counsel to remind them to file these papers. An administrative order closing or dismissing the case will help to avoid any delay. If the settlement falls through, the case can always be reopened. Attached as Exhibit Two is a sample order used in the District of Massachusetts.]

8. *The court could consider using alternative dispute resolution (ADR) techniques such as mediation and the use of third parties as settlement judges.*

[A procedure could be established whereby a settlement conference would be conducted by a magistrate judge (or adjunct settlement judge) who will not be trying the case. The Western District of Oklahoma has a settlement magistrate judge. In the Northern District of Oklahoma, the assigned judge may refer any case for a settlement conference before any other judge or magistrate judge. Members of the local bar can also preside over settlement conferences. Both courts can be contacted for further information.]

References: Marie D. Provine, Settlement Strategies for Federal District Judges, (Federal Judicial Center, 1986). Contact Jack Silver, Clerk, Northern District of Oklahoma (FTS-745-7183) about the adjunct settlement judge training program.

Additional References: Steven Flanders, Case Management and Court Management in United States District Courts, (Federal Judicial Center, 1977); Robert F. Peckham, The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition, 69 Cal. L. Rev. 770 (1981).

IV. CIVIL TRIALS AND SCHEDULING

An effective calendaring system requires setting early, firm trial dates. See Section 473(a)(2)(B) of the Civil Justice Reform Act of 1990.

1. *The court could schedule multiple civil cases for trial.*

   [If the judges set trial dates at the scheduling conference, they could schedule 10 to 15 cases for trial in one week. Many of these cases are likely to settle in advance of trial. If a case does not settle, the court has the opportunity to discuss and refine the trial date further with counsel at the final pretrial conference. Any further rescheduling should be kept to a minimum.]

2. *The court could keep trial dates firm for as long as possible before continuing them.*

   [With a strict continuance policy, the judges will have a better idea of exactly what their trial schedules will be like when they consider a motion for continuance.]

3. *The court could establish a trailing calendar system in which routine civil cases are typically set for trial during a certain term or period of time.*

[A trailing calendar system gives all parties an idea of how they stand on the docket. Some examples include Monday morning setting of all cases with attorneys on notice and a trial-ready calendar for the same or next day.]

4. *The court could employ an "accelerated calendar" system for routine civil cases in order to put its calendar on a more current basis and use the accelerated calendar system on a periodic basis as necessary to keep the calendar current.*

[The court has used a similar system in the past. The Western District of Missouri uses the "accelerated calendar" system twice a year to try all ready-for trial civil cases which take no more than four days to try. Under this system, cases are put on a master list and pooled for trial during a short period. The accelerated calendar system is successful in clearing a court's calendar because it (1) concentrates all of a court's judicial resources toward reducing the district's backlog of cases; and (2) generates a high rate of settlements because trial dates are definite and no continuances are allowed except under extraordinary circumstances.]

Reference: Contact Robert Connor, Clerk, Western District of Missouri (FTS-867-2811) for information about the court's "accelerated calendar" system.

5. *A policy of requiring counsel to premark exhibits could be stressed by the court, made part of the pretrial order, and formalized as a local rule.*

Reference: Contact Joseph Skupniewitz, Clerk, Western District of Wisconsin (FTS-364-5156) for sample exhibit list forms prepared by counsel in advance of trial.

6. *When possible, the court could bifurcate issues presented for trial.*

[For example, in some cases the issue of liability could be tried prior to the issue of damages. If no liability is found, then the issue of damages does not need to be addressed at trial. Alternatively, if liability is found, then the probability of settlement increases.]

7. *Stipulations of uncontested fact could be read into the record in lieu of live testimony.*

[The above three recommendations will assist the court to shorten the length of the trial.]

V. MAGISTRATE JUDGES

1. *The court could consider adopting a local rule that specifically delineates how a case and how a motion would be referred to a magistrate judge after assignment.*

   [The local rules for many courts specify the manner in which cases are assigned to district judges and magistrate judges upon filing. The court could randomly assign a magistrate judge to every civil and felony case at the same time the district judge is assigned. The draw could be weighted so that the new magistrate judge in Jackson would receive more of the cases filed in that division. Any motion referred in civil or felony cases would then go to the assigned magistrate judge. For dispositive motions, a copy of the docket sheet could be attached to the case file, with the matter ripe for review being highlighted.]

2. *The court could establish an order of reference or local rule for all discovery-related non-dispositive motions and for all social security cases to be referred to the magistrate judge assigned to the case at filing.*

   [Currently, one judge has a blanket standing order referring all of his civil discovery motions to magistrate judges, while other judges refer matters on a case-by-case basis. Many districts use some type of automatic reference of civil work to magistrate judges. For example, in the Eastern District of North Carolina, civil cases are randomly assigned to both a district judge and a magistrate judge at the time of filing. The assigned magistrate judge is then responsible for all discovery-related motions in most case categories and generally handles pretrial management.]

   References: Contact J. Rich Leonard, Clerk, Eastern District of North Carolina (FTS-672-4370) and Loretta Whyte, Clerk, Eastern District of Louisiana (FTS-682-2946) for information about automatic assignment and referral of matters to magistrate judges.

3. *The court could develop an order of reference form for use by the district judges in matters that are not automatically referred to magistrate judges.*

[Appropriate categories would be marked to describe the nature of the reference and the purpose for which the file is being assigned to the magistrate judge. Attached as Exhibit Three is a sample referral order form used in the Eastern District of North Carolina.]

4. *The court could encourage counsel to consent to proceed to trial before a magistrate judge. See 28 U.S.C. § 636(c)(2).*

[Recently, 28 U.S.C. § 636(c) was amended to allow district court judges or magistrate judges to remind parties of the availability of a magistrate judge to conduct all matters in a civil case, including the entry of judgment, upon consent of the parties. This subsection continues to require the clerk of court to notify the parties at the time of filing of the availability of a magistrate judge to exercise such jurisdiction. The local bar could be educated that the district judges support the use of civil consent jurisdiction for magistrate judges. Willingness of the parties to consent may flow from a more active role of the magistrate judges in civil pretrial management.]

5. *Magistrate judges could conduct discovery conferences, settlement conferences and status conferences.*

[This suggestion is consistent with the Report of the Senate Judiciary Committee accompanying the CJRA which contained the following observation: "[G]iven the increasingly heavy demands of the civil and criminal dockets and the increasingly high quality of the magistrates themselves, the committee believes that magistrates can and should play an important role, particularly in the pretrial and case management process." S. Rep. No. 416, 101st Cong., 2d Sess. 20 (1990).]

6. *The court could adopt a duty magistrate rotation system for criminal cases.*

[For example, for one month a magistrate judge could hold all felony preliminary proceedings arising during that time (i.e., warrants, initial appearances, detention hearings, preliminary examinations and arraignments). The new magistrate judge in Jackson could share in the proceedings at Memphis but handle all felony preliminary proceedings

arising at Jackson. Misdemeanor and petty offense cases could also be handled by the duty magistrate judge.]

VI. PRO SE CASES

A. Role of Pro Se Law Clerk

Although the district has had a pro se law clerk position for several years, the current pro se law clerk had entered on duty shortly before the review and had begun to reorganize the procedures for handling pro se matters. The pro se law clerk was responsible for the initial screening of all pro se cases and handling requests for forms. Dispositive motions were referred by the district judges to the pro se law clerk on a limited basis.

1. *An administrative order could be issued by the pro se law clerk stating any deficiencies in the petitioner's case and instructing the petitioner to supplement the petition. The clerk's office could handle requests for forms.*

   Reference: Contact Robert Shemwell, Clerk, Western District of Louisiana (FTS-493-5273) for assistance and a sample order.

2. *All pro se cases could be screened by the pro se law clerk to determine if filing procedures have been followed and whether dismissal is appropriate based on frivolity. The pro se law clerk could prepare procedural orders and the order or recommendation for dismissal pursuant to 28 U.S.C. § 1915(d).*

   References: Contact Robert Shemwell, Clerk, Western District of Louisiana (FTS-493-5273) and J. Rich Leonard, Clerk, Eastern District of North Carolina (FTS-672-4370) for information about utilization of the pro se law clerk position.

B. Case Processing

3. *All Section 1983 and state habeas corpus cases could be referred to a magistrate judge for full case supervision.*

   [Magistrate judges supervise prisoner litigation in many courts. Dispositive motions could be referred to the magistrate judge who would then determine whether they should be referred to the pro se law clerk.]

4. *Dispositive motions could be referred automatically to the assigned magistrate judge. The pro se law clerk could prepare draft opinions as needed.*

[Dispositive motions for the most part are referred on a case-by-case basis. As the pro se law clerk becomes more experienced with pro se cases, particularly prisoner cases, more dispositive motions could be referred to him.]

Reference: Federal Judicial Center's Prisoner Civil Rights Committee, Recommended Procedures for Handling Civil Rights Cases in the Federal Courts, (Federal Judicial Center, 1980)

5. *If a witness cannot be available for trial, the testimony could be obtained by affidavit or deposition.*

[One of the magistrate judges has continued prisoner evidentiary hearings because witness fees were not available for witnesses to testify at the hearings. Unavailability of a witness should not be a good cause to continue the trial.]

VII. CRIMINAL CASE MANAGEMENT

1. *The magistrate judge could set the report date and trial date at the arraignment. The order of arraignment issued by the magistrate judge should be revised to reflect these dates.*

[Presently, the criminal docket clerks set both the report date, which is the final pretrial conference, and trial date at some point after the arraignment. A more realistic date can be set if the magistrate judges consult with the parties at arraignment. Prior to the arraignment, the magistrate judge's courtroom deputy could coordinate with the judge's courtroom deputy regarding the judge's trial calendar. At the report date, the judges can refine the actual trial date, if required.]

2. *The sentencing date could be scheduled at the time of a change of plea or when a guilty verdict is returned.*

[Proposed Local Rule 20(d) states that the sentencing will be scheduled when the court receives the presentence report and position papers. There have been some delays caused by this procedure.]

3. *The U.S. Attorney should discontinue approving criminal judgments prior to the judge's signature. If the court wants the judgments reviewed, then the Probation Office could perform this task.*

[This practice is causing undue delays in the processing of judgments. In most other courts, criminal judgments are not reviewed by anyone other than the courtroom deputy and the judge.]

VIII. CASE ASSIGNMENT

A. Pro Se Cases

1. *The court could consider assigning multiple filings by a prisoner to the same judge and/or magistrate judge.*

[Currently, all prisoner cases are assigned on a random basis.]

B. Divisional Representation

2. *The court could consider including Judge Todd in the draw for assignment of cases in the Western Division.*

[According to the district's case assignment procedures, Judge Todd is assigned cases arising only from the Eastern Division. Presently, his criminal caseload averages one-half that of the other judges and he has approximately 100 fewer pending civil cases than most of the other judges. One way to balance the caseload among all of the judges would be to give Judge Todd a percentage of the cases assigned in the Western Division. Alternatively, the court could change its assignment system to divert some cases from the Western Division to the Eastern Division. Attached as Exhibit Four is correspondence from the General Counsel to the Clerk of Court for the Western District of New York regarding transfer of cases.]

C. **Reassignment System**

3. *The court could adopt procedures and include in the case assignment plan or system which provide for calendar relief to judicial officers in instances of prolonged illness, protracted trials, unavoidable absence, disability, or other similar circumstances.*

IX. PERSONNEL MANAGEMENT

The case management functions are fragmented among the judges, magistrate judges, secretaries, courtroom deputies, docket clerks, and law clerks. All are involved to different degrees with scheduling and monitoring cases. The courtroom deputies perform primarily in-court functions for the judges in addition to having certain case scheduling responsibilities. The courtroom deputies to the district judges are classified at a grade JSP-11. For the courtroom deputies to be classified at this grade level, however, they should be performing the full range of case management and calendaring functions. See Exhibit Five for a list of the duties and responsibilities from the position descriptions of the Judiciary Salary Plan for courtroom deputies with full calendar management responsibilities to district judges and magistrate judges.

Effective case management can be achieved by focusing these functions on a single person, the courtroom deputy. Judges, secretaries, and law clerks have other responsibilities which require their attention.

In most courts, the courtroom deputy has complete calendar responsibility. The courtroom deputy is involved with the various aspects of case and motions management and represents the clerk of court in matters relating to the management of the various procedural stages cases must go through from filing to disposition. The courtroom deputy also advises counsel and the public about and assures compliance with court policies and local and Federal rules.

In order to implement this method of operation in the court, an overhaul of the present case flow system would be necessary. The following are recommendations and suggestions directed to this purpose.

A. Personnel Utilization

1. *The judges should relieve their secretaries and law clerks of the administrative calendar management responsibilities in order to concentrate on their other duties.*

2. *The judges, in conjunction with the clerk of court, should utilize the courtroom deputy positions to exercise the full range of calendar management and scheduling responsibilities.*

   [The full utilization of the courtroom deputies would not only relieve the judges, secretaries and law clerks from administrative responsibilities, but it would also enable the court to institute a highly effective level of calendar management through centralization of the functions in one individual, as well as to institute a court-wide case monitoring system in the clerk's office.]

   References: Contact Leonard Brosnan, Clerk, Central District of California (FTS-798-3535) and Loretta Whyte, Clerk, Eastern District of Louisiana (FTS-682-2946) for assistance in developing case monitoring systems for courtroom deputies.

3. *Whenever possible, the courtroom deputy could bring additional work into the courtroom while court is in session.*

4. *The judges could release the courtroom deputies from the courtroom during lengthy testimony, closing arguments and charging the jury.*

   [The judges have the discretion to decide in what types of cases or portions of trials and to what extent this practice would be permissible. The court could contact GSA to have buzzers installed at the bench to summon courtroom deputies to the courtrooms when necessary, or have speakers installed in the clerk's office so that the courtroom deputy can hear what is going on in the courtroom.]

5. *The clerk's office should review all active dockets periodically to make sure cases are kept current.*

6. *The courtroom deputy could prepare all judgments in civil and criminal cases.*

[Currently, the criminal docket clerks prepare the judgment and commitment orders. The civil docket clerks prepare the civil judgments in pro se cases.]

B. Training

7. *The clerk of court should develop a training program and procedures manual for courtroom deputies and docket clerks.*

   References: Contact Nancy Doherty, Clerk, Northern District of Texas (FTS-729-0787) for information about developing training programs. Contact Stuart O'Hare, Clerk, Southern District of Illinois (FTS 277-9371) for information on developing a manual for magistrate judge courtroom deputies.]

8. *The cross training of deputy clerks should be undertaken by the clerk's office to ensure adequate backup for courtroom deputies.*

9. *The clerk of court could direct the development and implementation of a structured training program for courtroom deputies to be facilitated by the training coordinator. In this connection, the court could utilize training materials including books and videotapes which are available through the Federal Judicial Center.*

   Reference: Contact Marilyn Vernon at the Federal Judicial Center (FTS-633-6316) for information on the role and responsibilities of the training coordinator position.

10. *The chief deputy clerk could travel to other districts to observe and be trained on case monitoring and processing systems.*

11. *The clerk of court could utilize personnel from other districts to train its employees.*

    [The clerk could consider bringing in senior personnel from another court that has set up a uniform case monitoring and tracking system in preparation for installation of ICMS.]

    Reference: Contact Stanley Sargol, Regional Administrator, Court Administration Division (FTS-633-6236) regarding funding for sending the

chief deputy clerk to other courts or bringing in personnel from other districts for training purposes.]

X. MISCELLANEOUS AREAS

A. Space and Facilities

1. *The court should continue efforts to address the courtroom and office space problem as a high priority matter.*

   [Lack of adequate courtroom and office space is a major problem in Memphis. One of the magistrate judges' offices is located in the tax court office. The courtroom is not designed to hold civil jury trials. When tax court is held, the magistrate judge uses the law library to conduct court business. The court recently received approval from GSA to build a new magistrate judge's courtroom, but funding has not been approved.]

2. *The judges could conduct pretrial and status conferences in chambers so that the courtrooms could be available for use by the magistrate judges and senior judge.*

3. *The clerk's office could coordinate the judges' and magistrate judges' calendars to determine courtroom availability.*

   [For example, if a judge schedules proceedings to begin in the afternoon, the courtroom could be used by other judicial officers during the morning. Utilization of magistrate judges for civil consent jurisdiction and other duties depends in part upon courtroom availability.]

B. Judges' Meetings

4. *The court could consider having the clerk of court attend and make presentations, when appropriate, at the judges' meetings on issues affecting clerk's office operations.*

C. Docketing

5. *Only essential information should be included in the minute entries on docket sheets.*

[From a review of the docket sheets, courtroom minutes in many instances are typed verbatim on the docket sheets. If the courtroom minutes are lengthy, a brief summary could be entered on the docket. The docket entry will serve as an index to the minutes in the file.]

6. *The docket sheet should remain in the docket tray at all times. If it is necessary for the docket to be removed, a copy could be made or an outcard could be provided in its place.*

[The media and attorneys are allowed to review dockets at the docket clerks' desks and at the intake counter. This practice should be prohibited. To reduce the risk of alteration, destruction, or loss of dockets, the clerk of court could adopt a policy to provide individuals with a copy of the docket. If a docket sheet is removed from the tray, an outcard could be used to indicate the date and by whom a docket sheet is taken, if for more than a very short period of time.]

7. *The index log could be eliminated.*

[The index log of party names duplicates information on the index cards.]

8. *The clerk of court could take steps to develop uniform docketing procedures.*

[Uniformity will facilitate the implementation and use of ICMS CIVIL.]

D. Case Files and Filing of Pleadings

9. *The filing of all pleadings in duplicate could be eliminated.*

[Currently, all pleadings and other papers are required to be filed in duplicate. The duplicate filing of all papers is counterproductive to effective case management. This procedure causes extra work for the clerk's office to process the papers and for the judge to review the papers and creates an unnecessary paper trail. If the judge or magistrate judge needs to review the pleadings in the case, the case folder containing the original pleadings can be forwarded to chambers. At a minimum, this practice could be discontinued at Jackson. After evaluating the experience with a single file system at Jackson, the court could consider adopting a single file system at Memphis. Alternatively, the court might consider requiring duplicate filing of only certain pleadings, such as motions and responses.]

E. Minutes

10. *Only essential information should be included in the courtroom minutes.*

[Minutes sheets should be used to record only the very basic information about what occurred in court (e.g., date of proceeding, what was ordered, and any action needed to be taken by the parties). Many courts have devised local minute sheet forms that make extensive use of short notations and abbreviations.]

Reference: Contact Joseph Skupniewitz, Clerk, Western District of Wisconsin (FTS-364-5156) for sample minute sheet forms.]

F. Reports

11. *The clerk of court could devise a system to generate status reports for the judges and magistrate judges regarding their respective caseloads.*

[For example, the clerk of court could utilize the Administrative Office monthly report of pending civil cases and include information on the status of all two-year-old cases. ICMS CIVIL can provide a similar report.]

G. Automation

12. *The clerk of court could provide courtroom deputies with personal computers to issue standard procedural orders, track and monitor case proceedings, and maintain case status reports.*

XI. ACTION PLAN

In order to implement the recommendations and suggestions for improvements outlined above, the court should develop a structured action plan including a timetable and priorities. This plan should be completed before implementing any realignment of duties and responsibilities of the staff or major changes in procedures.

Since many of the changes in procedures will affect several sections and/or individuals, no realignment of duties of staff should occur until the major changes in

procedures are implemented. An adequate period of training also should be provided.

For example, the recommendations and suggestions for changes in the case management practices of the court should be implemented before the recommendations and suggestions to realign the duties and responsibilities of the judges' staff, courtroom deputies and docket clerks. Any suggested changes in case management practices might be coordinated with the CJRA advisory group. The clerk of court and the chief deputy clerk also need to determine short and long range goals and establish due dates for the changes within the clerk's office to be accomplished. The clerk could memorialize all actions in writing and file written reports with the chief judge on a regular basis. In this way, progress can be monitored and follow-up assistance provided.

EXHIBIT ONE

SUMMARY OF TRIAL HOURS AND OTHER COURT ACTIVITY PER JUDGE

Month	Horton	Gibbons	Turner	McRae	Month	Todd
Apr 90	61	60	63	79.5	Oct 89	28
May 90	27.5	74.5	51	70.5	Nov 89	24.5
Jun 90	42	36.5	29.5	23.5	Dec 89	49
Jul 90	35.5	22.5	80	32.5	Jan 90	15
Aug 90	19.5	39.5	66.5	18.5	Feb 90	44.5
Sep 90	-	38	67	50.5	Mar 90	27.5
Oct 90	65.5	46	35	40	Apr 90	48.5
Nov 90	21.5	36	37	36	May 90	19.5
Dec 90	41	34	26.5	30.5	Jun 90	54.5
Jan 91	49	41	36	24	Jul 90	12.5
Feb 91	33	50	53.5	7	Aug 90	19.5
Mar 91	32.5	69	46.5	114	Sep 90	45
TOTAL	428	547	591.5	526.5		388

NOTE: This report was compiled by reviewing each judge's Monthly Report of Trials and Other Court Activity (JS-10) provided to the Court Administration Division by the Clerk's Office.

EXHIBIT TWO

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

JOHN DOE, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 91-1234
ABC CORPORATION, Defendant.	)	

SETTLEMENT ORDER OF DISMISSAL

_____ (Judge)

The Court having been advised that the above-entitled action has been settled; IT IS ORDERED that this action is hereby DISMISSED without costs and without prejudice to the right of any party upon good cause shown within 30 days,* to reopen the action if settlement is not consummated.

BY THE COURT,

_____
Deputy Clerk

DATE: June 1, 1991

*Thirty days is customary, but the time stated can vary and can be specified by counsel.

EXHIBIT THREE

REQUEST FOR INSTRUCTIONS OF HANDLING CIVIL MOTIONS

DATE: _____

TO: Judge _____

FROM: _____, Deputy Clerk

RE: Case Number: _____

_____ vs. _____

PLAINTIFF'S / DEFENDANT'S Motion _____

_____

in this action assigned to you was filed on _____. A copy of the motion is attached. Please return this form to the Clerk's Office indicating which of the procedures you desire to follow in its disposition:

_____ Calendar this before the Judge for oral argument _____

_____ Refer this motion to a Magistrate Judge for his recommendation.

_____ Motion will be decided by the Judge without oral argument.

_____

JUDGE OR LAW CLERK

Anticipated Trial Date: _____

EXHIBIT FOUR

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
GENERAL COUNSEL

October 22, 1990

Mr. Michael J. Kaplan
Clerk, United States District Court
304 U. S. Courthouse
68 Court Street
Buffalo, New York 14202

Dear Mike:

Bill Burchill has asked me to respond to your recent letter asking if it would be lawful for your court to change its assignment system to divert some cases from Rochester to Buffalo, where a new judge will soon be sworn in. I apologize for the delay in responding, but the issues turned out to be more complicated than I expected. My conclusions, as discussed below, are that a change in your court's case assignment system would in no way violate the law regarding jury selection. As to venue, your court has broad latitude in fixing the place of trial of criminal cases, although it appears--somewhat surprisingly--that the court has less discretion to reassign civil cases without the consent of the parties.

Turning first to jury selection issues, I enclose my recent letter to Chief Judge Real in Los Angeles, analyzing the extent of a district court's discretion to utilize administratively-established divisions for jury selection purposes. As you can see, it is well established that there is no constitutional or other legal right to a jury drawn from an entire district, and that courts may permissibly select both grand and petit juries from only a portion of their districts. The Jury Selection and Service Act does require that all residents of a district have at least some opportunity for jury service, and one Federal case has held that division-based jury selection may not be concentrated so as to wholly exclude or significantly underrepresent cognizable groups from particular types of proceedings, such as grand jury sessions. Assuming your court conforms to these basic requirements, however, I foresee no jury selection problems in your new case-assignment system.

Turning next to considerations of venue, I enclose my 1983 correspondence with Chief Judge Weinstein of the Eastern District of New York, reviewing both the jury selection and venue implications of inter-division assignment of criminal cases within a

single district. The decisions cited therein establish that district courts have substantial flexibility in assigning criminal cases to either statutory or administrative divisions--and in selecting juries solely from those divisions--for the purpose of enhancing the court's administrative convenience. Cases since 1983 remain in accord. For example, United States v. Rosier, 623 F. Supp. 98 (W.D. Mo. 1985), determined that the place-of-trial factors listed in F. R. Cr. P. 18 are not exclusive, and that other considerations--including unpredictable weather in portions of a district--may properly influence the choice of division in which to hold a trial. To similar effect are United States v. Ezeodo, 748 F.2d 97 (2d Cir. 1984), cert. denied, 469 U.S. 1225 (1985); United States v. Truglio, 731 F.2d 1123 (4th Cir. 1983), cert. denied, 469 U.S. 862 (1984); In re Chesson, 897 F.2d 156 (5th Cir. 1990); United States v. Kaufman, 858 F.2d 994 (5th Cir. 1988); and United States v. Pepe, 747 F.2d 632 (11th Cir. 1984). It thus remains the law that parties in criminal cases have no entitlement to trials conducted in the part of the district where the case arose.

As noted in my letter, however, there are two caveats to this general principle: that the court's administrative convenience must yield, in cases of actual conflict, to the convenience of the defendant and his witnesses; and that the selection of the situs of trial must not be "abused" so as to appear to create a tribunal that is favorably inclined to the prosecution. Assuming these types of problems would not arise in your district (and you seem to be sensitive to them), I am confident that your court may adjust its assignment system to funnel more criminal cases toward the new judge in Buffalo, and select juries from the Buffalo division, even if the underlying cases arose elsewhere within the district.

Intuitively one would imagine that the same latitude exists as to civil cases, but such does not appear to be entirely the case. I could find no provision of the civil rules giving courts the same broad discretion to fix the place of civil trials as is set out in Criminal Rule 18. Rather, section 1404(a) of title 28, United States Code, authorizes the inter-district or inter-divisional transfer of civil cases as follows:

> (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

Note that there are several components to the statute. First, a transfer may only be made to a place "where [the action] might have been brought." While this provision must be adhered to, I suspect that the abolition of divisional venue requirements in

civil cases[1] will eliminate most problems arising from the simple transfer of cases between divisions of the same district. Second, the statute does not specifically authorize a court to initiate a transfer sua sponte. Nonetheless, a number of case decisions have suggested that such authority may fairly be read into the statute and that transfers may be ordered even over the objection of one of the parties. See generally Moore's Federal Practice, Vol 1-A, Part 2, ¶ 0.345[3.-2]. It has also been held, however, that the parties should be provided notice and opportunity to be heard before the court acts on its own. See Mobil Corp. v. S.E.C., 550 F. Supp. 67 (S.D. N.Y. 1982), and cases cited therein.[2] The statute's final--and most significant--requirement is that a transfer may be made only "for the convenience of parties and witnesses, in the interest of justice."

The Supreme Court has made clear that, "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum [in a civil case] should rarely be disturbed." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). While section 1404(a) was intended to liberalize the earlier--and rather restrictive--doctrine of *forum non conveniens*, Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955), Mobil Corp. v. S.E.C., supra, at 70, some deference to a plaintiff's choice of forum remains due. In this regard, there is authority indicating that the administrative convenience of the court is insufficient, without more, to constitute "the interest of justice" supporting a transfer. In In re Scott, 709 F.2d 717 (D.C. Cir. 1983), the District Court for the District of Columbia sua sponte ordered the transfer of a Freedom of Information Act case to the Northern District of Georgia, where the desired records apparently were stored. The trial court justified its action on the basis that it had a large number of cases pending in forma pauperis that were burdening the court, and that there were other districts in which venue properly lay. Although not questioning the accuracy of those facts, the appeals court found the rationale legally unacceptable.

> The law is well established that a federal court may not order transfer under section 1404(a) merely to serve its personal convenience. We think it is clear in this light that a court may not utilize section 1404(a) as a handy device readily available to avoid

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[1]See Pub. L. No. 100-702, Title X, § 1001(a), 102 Stat. 4664 (1988), repealing 28 U.S.C. § 1393.

[2]I note in this regard that section 1404(b) of title 28 specifically authorizes inter-divisional transfers (in the discretion of the court) where all parties consent or stipulate. In light of limitations on the court's authority to order the transfer of cases solely for its own convenience, securing such consent may be the simplest way for your court to facilitate its desires to transfer civil cases between Rochester and Buffalo.

> the express congressional determination to place venue for FOIA suits in the District of Columbia. *A transferor court should act in response to considerations, apart from the court's own convenience, for rejecting a plaintiff's forum choice. Inconvenience to the court is a relevant factor but, standing alone, it should not carry the day.*

709 F.2d at 721 (emphasis added). Accord, In re Chatman-Bay, 718 F.2d 484 (D.C. Cir. 1983). For illustrative decisions in which the facts have been found to justify a transfer, see Pfizer, Inc. v. Lord, 447 F.2d 122 (2d Cir. 1971), and Washington Public Utilities Group v. United States District Court for the Western District of Washington, 843 F.2d 319, 326-327 (9th Cir. 1987).

Scott, like almost all of the other cases I found arising under section 1404(a), was concerned with an inter-district, rather than an inter-divisional transfer.[2] It thus may be distinguishable on the basis that a transfer within the boundaries of a district, especially the relatively short distance between Rochester and Buffalo, will entail less long-distance travel and other hardship than does a transfer between districts. Further, an inter-divisional transfer does not raise the specter of "dumping" an undesirable case to another court. Nonetheless, to my reading the literal language of section 1404(a) counsels hesitation in unilaterally ordering the transfer of civil actions. At a minimum, it would seem highly advisable that proposed transfers be preceded by giving the parties notice and an opportunity to comment, and that the court carefully weigh and make clear findings regarding the convenience of the parties and witnesses and the interest of justice. And, as with criminal cases, it would appear that a transfer should not be ordered when the parties or their witnesses demonstrate a specific inconvenience or hardship that would result therefrom.

In light of all the above, I do not believe it would be proper for your court to simply order in advance that a set number of civil cases filed in Rochester be transferred to Buffalo. Rather, I would recommend that the court consider each proposed transfer of a civil action on a case-by-case basis in accordance with the criteria of section 1404(a). Obviously this process will entail some extra effort, which suggests to me that perhaps the easiest way to achieve your overall management

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[2]The cases regarding inter-divisional transfers typically arose before 1988, and focused only on whether the case "might have been brought" in the proposed transferee division under the former divisional venue provisions of 28 U.S.C. § 1393. See, e.g., 15 Wright, Miller and Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3809. Although it is possible that I missed a relevant case among the hundreds discussing venue generally, I could not find much beyond the Scott case which discussed the extent to which convenience to the court may justify a transfer.

objectives (at least in civil cases) is by seeking consent. As indicated in footnote 2, section 1404(b) of title 28 explicitly authorizes consensual transfers of civil cases, so that there would seem to be no reason not to at least try to secure the consent of the parties to reassignments to Buffalo. Even if only a few parties so agree, perhaps that will be sufficient to balance the caseload among the two court locations.

I hope you find this response helpful; please feel free to contact me directly if you have any further questions or if you need any additional information.

Sincerely,

Robert K. Loesche
Deputy General Counsel

Enclosures

MINISTRATIVE OFFICE OF ..IE
JNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM M. NICHOLS
GENERAL COUNSEL

September 23, 1983

Honorable Jack B. Weinstein
Chief Judge, United States District Court
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Dear Judge Weinstein:

Bill Eldridge of the Federal Judicial Center has referred to us your inquiry regarding the transfer of criminal jury trials from Brooklyn or Queens to Suffolk or Nassau counties. He explained that your court maintains two jury wheels; one covering the entire district and one covering only Suffolk and Nassau counties. Juries in Brooklyn and Queens are drawn from the former wheel, while juries in the eastern counties are drawn only from the latter wheel. As I understand the situation, the majority of criminal cases arise in Brooklyn, but to balance the caseload among the district's judges, you desire to assign some of these cases for trial in the outlying counties. The question, then, is whether the trial of offenses originating in Brooklyn or Queens may legally be conducted in Suffolk or Nassau counties before juries drawn exclusively from those localities. For the reasons set forth below, we feel that this practice is permissible, but only insofar as no significant inconvenience is caused to a defendant.

I

Since its amendment in 1966, F.R.Cr.P. 18 requires only that the place of holding trial be fixed within the district involved, giving "due regard to the convenience of the defendant and the witnesses and the prompt administration of justice." There is no longer a requirement that trial be held in the division where the offense occurred. Rule 18 thus mirrors the venue requirement set forth in the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law . . . ."

Cases have consistently concluded that a division, be it formal (i.e., statutory) or informal, does not constitute a unit of venue in criminal cases, nor does a division have any constitutional significance. United States v. Alvarado, 647 F.2d 537 (5th Cir. 1981); United States v. Lewis, 504 F.2d 92 (6th Cir. 1974), cert. denied, 421 U.S. 975 (1975); United States v. James, 528 F.2d 999 (5th Cir.), cert. denied, 429 U.S. 959 (1976). District courts enjoy wide discretion in determining where within the district a criminal trial will be held. United States v. Seest, 631 F.2d 107 (8th Cir. 1980); United States v. Lewis, supra. In the absence of objection by the defendant, courts may for their own administrative convenience schedule all criminal trials in one division or place of holding court. United States v. Burns, 662 F.2d 1378 (11th Cir. 1981).

Courts have equally broad latitude in defining the geographic area from which juries will be selected. There is no constitutional right to have a jury from an entire district. United States v. Herbert, 698 F.2d 981 (9th Cir. 1983); United States v. Young, 618 F.2d 1281 (8th Cir. 1980); United States v. Florence, 456 F.2d 46 (4th Cir. 1972); Ruthenberg v. United States, 245 U.S. 480 (1918). Juries may be selected exclusively from certain geographic areas, such as the division or counties located nearest the courthouse. Zicarelli v. Dietz, 633 F.2d 312 (3rd Cir. 1980), cert. denied 449 U.S. 1083 (1981); United States v. Young, supra; Zicarelli v. Gray, 543 F.2d 466 (3rd Cir. 1976); United States v. Edwards, 465 F.2d 943 (9th Cir. 1972).[1]

Obviously, such selection may not be used to systemically exclude "distinctive groups" in the community. Taylor v. Louisiana, 419 U.S. 522, 538 (1975). But as long as the selection procedures are executed in a neutral and random manner, the fact that citizens from certain cities and towns are not represented on juries will not alone invalidate the procedure: "[I]t can hardly be asserted that the registered voters in a given city or town are sufficiently 'distinct' to constitute a cognizable group." United States v. Foxworth, 599 F.2d 1, 4 (1st Cir. 1979). Nor is the Jury Selection Act violated if certain counties are unrepresented:

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[1] Contrariwise, even though trials may be scheduled in only one division, juries may be drawn on a district-wide basis. United States v. Lewis, supra. Nor is a court required to concentrate its jury selection within the particular division, county or city where the trial will take place or where the defendant resides. Savage v. United States, 547 F.2d 212 (3rd Cir. 1976), cert. denied 430 U.S. 958 (1977).

> [W]e are not aware that residents of counties can be said to hold views and attitudes which are in any way 'distinct' from those of their neighbors in nearby counties. . . . While common experience tells us that people's attitudes differ to some degree along lines of age, sex and extent of education, we are not aware that they differ along county lines.

United States v. Butera, 420 F.2d 564, 572 (1st Cir. 1970).

Under these principles, "transfer of a particular case from one place within the district to another place within the district is a matter for the local district judges to decide, and the assent of the defendant to such a transfer is not required." United States v. Lewis, supra, at 98. This means, in my view, that your court is fully authorized to transfer a select number of criminal cases for trial in Suffolk or Nassau counties before juries drawn exclusively from those counties.

II

Cases have recognized, however, that one and possibly two limitations must be placed on this discretion.

A

First, a court's administrative convenience must yield, in cases of conflict, to the convenience of the defendant and his witnesses. That is, while the defendant need not be consulted as to the situs of the trial, the court must defer if he establishes that the transfer would work a hardship on his witnesses or interfere with the presentation of his defense. United States v. Burns, supra. This is an outgrowth of both the literal language of Rule 18 as well as "the public policy of this Country that one must not arbitrarily be sent, without his consent, into a strange locality to defend himself against the powerful prosecutorial resources of the Government." Id. at 1382, quoting Dupoint v. United States, 398 F.2d 39, 44 (5th Cir. 1967). Thus, in Burns, where the trial was automatically scheduled for Birmingham, Alabama--which was 100 miles from the place of the offense and from the residence of 22 of the defendant's 24 witnesses--the defendant's request for a change in venue should have been granted.

Burns did recognize that the interests of a court could prevail over those of a defendant if a violation of speedy trial requirements would otherwise result. This principle stems from Rule 18's mandate that, when selecting venue, a

court consider both the convenience of the defendant and the "prompt administration of justice." The decision also made clear, however, that more than a mere incantation of the words "speedy trial" is required to overcome a defendant's legitimate interest in a local trial. If speedy trial considerations are to outweigh the inconvenience to the defendant and his witnesses, such considerations must be articulated by the court in detailed findings of fact. 662 F.2d at 1383. See also United States v. Brown, 535 F.2d 424 (8th Cir. 1976).

Although Burns implied that speedy trial grounds were the only administrative interests which could be asserted over a defendant's objections, other concerns may be asserted as well. A court's administrative convenience has been honored, for example, where all other places of holding court were dismantled, United States v. Raineri, 670 F.2d 702 (7th Cir. 1982), or where a transfer was necessary to avoid extensive pretrial publicity in the area where the crime occurred, United States v. Alvarado, supra, United States v. Mase, 556 F.2d 671 (2d. Cir. 1977).

What Burns teaches, I conclude, is that your court may try Brooklyn-based cases in Suffolk or Nassau counties for reasons of its own administrative convenience. However, if a defendant establishes that such an assignment would interfere with his defense, and if there is no countervailing speedy trial or other consideration, your court will be obligated to return the case to Brooklyn.

B

480 F.2d 726 (2d Cir. 1973)

The other limitation on your court's discretion was suggested by United States v. Fernandez, supra, a case originating in the Eastern District. In Fernandez, the defendant's conviction for armed robbery was overturned due to the partisan conduct of the trial judge, but the Second Circuit also expressed serious "disfavor" with the fact that the case was heard in Westbury (in Nassau county) rather than in Brooklyn, the court location nearest the scene of the offense. It appears that the case was randomly assigned to Judge Travia, who for his own convenience held the trial in his normal location in Westbury.

The Circuit did affirm that this exercise was constitutional:

> [S]ince the theft of which Fernandez was convicted occurred in Queens, in the Eastern District of New York, trial in Westbury, in Nassau County, a county adjacent to Queens and within the district, rather

> than in Brooklyn, the headquarters of the Eastern District, does not offend the terms of [the] venue requirements [of the Sixth Amendment and Rule 18] . . . . When a district is not separated into divisions, like the Eastern District of New York, trial at any place within the district is allowable under the Sixth Amendment and the first sentence of F.R.Cr.P. 18.

480 F.2d at 730.[2/]

The court nonetheless expressed concern that the grant of extensive leeway to the district court in selecting the situs of trial might "[lead] to the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution." United States v. Johnson, 323 U.S. 273, 275 (1944). There were two components of this problem.

First, pursuant to a now-repealed provision of the jury selection statute, jurors who lived more than 25 miles from the district headquarters in Brooklyn or 25 miles from the courthouse in Westbury were automatically excluded from service upon their request. Said the court:

> [A]n excuse procedure based on distance, reasonable though this may be from the standpoint of the prospective juror, will have the inevitable effect of tending to concentrate the representation on the venire of those living relatively close to the courthouse. Although this may be without legal consequences when veniremen are selected for a single courthouse within a division or district, [citation omitted], or when court is held in several places and cases are assigned because they rationally belong there, a more difficult problem is presented when the place of trial--and thus the area of likely concentration in the selection of a

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[2/] The court also referred to the problem subsequently addressed in Burns--inconvenience to the defendant. It noted that there was no "sound reason" to conduct the trial 26 miles from the headquarters of the court and the United States Attorney, and nearly that much farther away from the offices of the defendant's counsel. However, the defendant failed to establish any specific prejudice resulting from this arrangement, and so the issue was avoided.

> venire--is moved from its normal site, over objection, apparently for the sole convenience of the judge.

480 F.2d at 734.

Second, the court noted that juries from the outlying area would likely have a different racial composition. "Furthermore, our reading of the gross census figures for the counties involved indicates that the impact of the move to Westbury on the relative incidence of representation of non-white minorities might well have been significant." Id.

As indicated, it was the conduct of the trial judge, rather than venue problems, that led to reversal, but the Second Circuit's "disfavor" with the selection of the place of holding trial was evident. The Second Circuit "suggested" that the questions it raised "receive the immediate attention of the judges of the Eastern District." Id. at 735.

It is unclear to me how serious or substantial these questions really are. What the Second Circuit appeared to be saying was that the transfer of a trial to an outlying venue solely for the trial judge's convenience was somehow unseemly. Other cases are quite consistent, though, in holding that the administrative convenience of a court is a perfectly proper reason for selecting venue, as long as the defendant does not object. This is the only decision which has suggested that such a practice is per se inappropriate. Fernandez also found the transfer problematical because it exposed the defendant to a geographically and perhaps racially different jury. Where the jury for the outlying division is drawn in accordance with the Jury Selection Act, I fail to see the legitimacy of this concern. As the Fernandez decision itself noted, cases have held time and again that a defendant is not entitled to a panel represented by any particular racial, social, or economic group, United States v. Dennis, 183 F.2d 201 (2nd Cir. 1950), affirmed 341 U.S. 494 (1951), nor to exact "proportional representation" in the array, United States v. Flynn, 216 F.2d 354, 388 (2nd Cir. 1904 Harlan, J.) Certainly, as United States v. Johnson made clear, a transfer should not lead to the appearance of a tribunal more oriented toward the prosecution, but not a word in the Fernandez opinion explains why a jury drawn from Nassau and Suffolk counties would be presumed to be so biased. Even if juries from the outlying counties have lower minority representation and are more affluent than those from Brooklyn (although I note that Brooklyn juries do have representatives from Suffolk and Nassau counties), no case I know of has established or even suggested that such juries may be presumed to discriminate against defendants. Indeed, such a

conclusion would undercut a core philosophy of our jury system; that any properly impaneled jury--regardless of its particular racial, social or economic makeup--may be expected to serve fairly and impartially according to law.

While this decision cannot simply be ignored, I consider it to have limited precedential value. In this regard, I find it significant that no other case has voiced the concerns expressed in Fernandez.

III

In conclusion, I feel that your transfer of cases to Nassau and Suffolk counties is permissible under the law, provided you accommodate any defendants who would demonstrably be inconvenienced thereby. The specter of Fernandez will linger over this procedure, however, and so you should be especially sensitive to any significant differences in the composition of the juries used. If a discernible racial or other disparity arises, you might, out of an abundance of caution, wish to curtail or modify the procedure to redress the imbalance.

I will be happy to discuss this further if you wish.

Sincerely,

Robert K. Loesche
Assistant General Counsel

cc: Mr. William B. Eldridge

March 27, 1989

Courtroom Deputy (Article III Judge)

Definition

The courtroom deputy to an Article III judge has complete responsibility for the calendar of the Article III active or senior district judge to whom assigned. The courtroom deputy to an Article III judge is highly involved with the various assigned aspects of case and motions management and may or may not be assigned in-courtroom related functions. The courtroom deputy to an Article III judge represents the clerk in matters relating to the management of the various procedural stages cases must go through before a judicial officer from the point a complaint is filed and assigned to the judicial officer until the case is either settled or disposed of through the judicial process.

Occupational Information

A courtroom deputy to an Article III judge performs duties and responsibilities such as the following:

1. Maintains control records of all cases or case related actions assigned to the judicial officer as they are filed. Examines all papers filed in an action assigned to a judicial officer to determine that these conform with the rules of practice and/or policies and procedures of the clerk's office and the individual judicial officer's chambers. Screens motions for readiness for judicial review.

2. Assists in the management and movement of case related matters on a judicial officer's docket from filing to disposition by calendaring and regulating the movement of these case-related matters; fixing (or resetting when necessary) dates and times for conferences, hearings, and trials; and notifying counsel accordingly.

3. Assists the judge in maximizing efficient usage of court time by gauging relative trial and/or hearing times; determining if estimates of trial and hearing time are accurate; and preventing over-scheduling by setting in consultation with the judge specific dates for hearings, pretrial conferences, settlement conferences, and trials; and by scheduling appropriate back-up matters to minimize any unplanned court sessions down time.

4. Establishes and revises recordkeeping methods and procedures, including various tickler systems, to accurately track case-related matters and motions before the assigned judicial officer. Provides up-to-date information on the status of matters before the judicial officer.

5. Assists the judicial officer in the reduction of procedural delays of case-related matters by monitoring the various recordkeeping and tickler systems (either manual or automated) which reflect the status of each pertinent case event (e.g., service, answers, and brief filing dates) for compliance by all parties on all critical deadlines as set by the judicial officer or by Federal or local rules. Assists the judicial officer in enforcing a continuance policy, by reviewing requests for continuances and extensions for time. Grants those requests which the

judicial officer has empowered them to review and/or forwards for the judicial officer's review those which the judge must oversee.

6. Confers with attorneys, acting as liaison between the bar, clerk's office, and the judicial officer to whom assigned. Serves as the main source of procedural information to attorneys for the scheduling and/or rescheduling of conferences, hearings, and trials, as well as the procedures of the clerk's office and special procedures of the judicial officer.

7. Assists with compliance to Federal and local rules, as well as special procedures peculiar to the court through reminding attorneys of their procedural responsibilities, resolving procedural problems, and ensuring that all parties have been notified of scheduled hearings, conferences, and trials.

8. Coordinates with various staff members of the clerk's office and judge's office such as jury administrator, speedy trial coordinator, docket clerks, law clerks, and secretaries, to ensure appropriate utilization of resources needed to support court sessions. Coordinates with other staff from the court family or offices and staff of other Governmental agencies (such as U.S. Marshal's Service, U.S. Attorney's Office, court security officers, federal public defenders, and the Federal Probation Service, etc.) concerned with court sessions. Acts as liaison with these various parties for the purposes of coordination and management of the trial and/or hearing calendar, monitoring case events, and to ensure proper courtroom administration.

9. Prepares special reports for the judicial officer on the status of case matters before the judge. Prepares statistical record of cases and special reports for the clerk, Administrative Office, and other interested parties, which provides up-to-date case-related information.

10. Evaluates case and motions management practices and recommends changes as needed. Implements and evaluates techniques for minimizing attorney schedule conflicts.

11. Arranges for the appointment of attorneys when such services are requested by defendants in criminal cases, thereby preventing late attachment of counsel.

12. Serves as relief courtroom deputy to an Article III judge to visiting judicial officers as requested.

13. Confers with the bar and other officials regarding particular cases and case-related matters.

14. Calls the court calendar. Notes appearance of counsel in matters before the court. Informs the judge that all parties are present, and opens court.

15. Swears witnesses and interpreters as well as other parties before the court; and, as appropriate, impanels the jury, administers oaths to jurors, and keeps juror attendance records.

16. Assists in the conduct of sessions, conferences, and hearings held in a courtroom setting before a judicial officer.

17. Records proceedings and rulings for minutes of the court and takes, marks, files or stores, and returns exhibits during open sessions before the court.

18. Prepares verdict forms, judgments, and copies, as well as composes minute orders, as required by the judicial officer.

19. Coordinates with other clerk's office staff such as courtroom deputies, docket clerks, etc., to ensure judgments and other actions of the court are entered in the dockets, order books, and other court records.

20. Assists in the preparation of statistical reports related to court sessions.

21. Coordinates with and advises the financial section of the clerk's office of matters affecting that section's records, such as the imposition of fines, orders of restitution, confirmation of sales, conditions of bond, etc.

22. Ensures that the equipment to be used for any scheduled court session is properly set up and operational. Ensures that the judicial officer, counsel and, as appropriate, parties and the jury are properly supplied with pens, pencils, paper, and any other appropriate supplies necessary for the conduct of court sessions. Sets up courtroom for sessions, ensuring proper temperature settings and lighting are maintained.

23. Performs other duties as assigned.

Organizational Relationships

A courtroom deputy to an Article III judge position is typically located in the operations section of a court and reports to the supervisor responsible for that unit.

Qualifications

To qualify for a position of courtroom deputy to an Article III judge, a person must be a high school graduate or equivalent and must have the following experience:

Courtroom Deputy ("Full Case Management" Magistrate Judge)

Definition

The magistrate judge courtroom deputy clerk has complete responsibility for the calendar of a magistrate judge who requires full case and calendar management services. The magistrate judge courtroom deputy clerk is highly involved with the various assigned aspects of case and motions management and may or may not be assigned in-courtroom related functions. The courtroom clerk represents the clerk in matters relating to the management of various procedural stages cases must go through before the court.

Occupational Information

A magistrate judge courtroom deputy clerk performs duties and responsibilities such as the following:

1. Maintains control records of all cases or case-related actions assigned to the magistrate judge as they are filed. Examines all papers filed in an action assigned to a magistrate judge to determine that these conform with the rules of practice and/or policies and procedures of the clerk's office and the individual magistrate judge's chambers. Screens motions for readiness for judicial review.

2. Assists in the management and movement of case-related matters on a magistrate judge's docket from assignment or referral to disposition or conclusion by calendaring and regulating the movement of these case-related matters; fixing (or resetting when necessary) dates and times for conferences, hearings, and trials; and notifying counsel accordingly.

3. Assists the magistrate judge in maximizing efficient usage of court time by gauging relative trial and/or hearing times; determining if estimates of trial and hearing time are accurate; and preventing over-scheduling by setting in consultation with the magistrate judge specific dates of hearings, pretrial conferences, settlement conferences, and trials; and by scheduling appropriate back-up matters to minimize any unplanned court sessions down time.

4. Establishes and revises record keeping methods and procedures, including various tickler systems, to accurately track case-related matters and motions before the magistrate judge. Provides up-to-date information on the status of matters before the magistrate judge.

5. Assists the magistrate judge in the reduction of proce-

dural delays of case-related mattes by monitoring the various record keeping and tickler systems (either manual or automated) which reflect the status of each pertinent case event (e.g. service, answers, and brief filing dates) for compliance by all parties on all critical deadlines as set by the magistrate judge or by Federal and local rules. Assists the magistrate judge in enforcing a continuance policy, by reviewing requests for continuances and extensions for time. Grants those requests which the magistrate judge has empowered them to review and/or forwards for the magistrate judge's review those which the magistrate judge must oversee.

6. Confers with attorneys, acting as liaison between the bar, clerk's office and the magistrate judge to whom assigned. Serves as the main source of procedural information to attorneys for the scheduling and/or rescheduling of conferences, hearings, and trials, as well as the procedures of the magistrate judge.

7. Assists with compliance to Federal and local rules, as well as special procedures peculiar to the court through reminding attorneys of their procedural responsibilities, resolving procedural problems, and ensuring that all parties have been notified of scheduled hearings, conferences, and trials.

8. Coordinates with various staff members of the clerk's office and magistrate judge's office such as jury administrator, speedy trial coordinator, docket clerks, law clerks, and secretaries, to ensure appropriate utilization of resources needed to support court sessions. Coordinates with other staff from the court family of offices and staff of other Governmental agencies (such as U.S. Marshal's Service, U.S. Attorney's Office, Court Security officers, federal public defenders, and Federal Probation Service, etc.) concerned with court sessions. Acts as liaison with these various parties for the purposes of coordination and management of the trial and/or hearing calendar, monitoring case events, and to ensure proper courtroom administration.

9. Prepares special reports for the magistrate judge on the status of case matters before the magistrate judge. Prepares statistical record of cases and special reports for the clerk, Administrative Office, and other interested parties, which provide up-to-date case-related information.

10. Evaluates case and motions management practices and recommends changes as needed. Implements and evaluates techniques for minimizing attorney schedule conflicts.

11. Arranges for the appointment of attorneys when such services are requested by defendants in criminal cases, thereby preventing late attachment of counsel.

12. Provides relief services as required.

13. Confers with the bar and other officials regarding particular cases and case-related matters.

14. Calls the court calendar. Notes appearance of counsel in matters before the court. Informs the magistrate judge that all parties are present, and opens court.

15. Swears witnesses and interpreters as well as other parties before the court; and, as appropriate, impanels the jury, administers oaths to jurors, and keeps juror attendance records.

16. Assists in the conduct of sessions, conferences, and hearings held in a courtroom setting before a magistrate judge.

17. Records proceedings and rulings for minutes of the court and takes, marks, files and stores, and returns exhibits during open sessions before the court.

18. Prepares verdict forms, judgments, and copies, as well as composes minute orders, as required by the magistrate judge.

19. Coordinates with other clerk's office staff such as courtroom deputies, docket clerks, etc., to ensure judgments and other actions of the court are entered in the dockets, order books, and other court records.

20. Assists in the preparation of statistical reports related to court sessions.

21. Coordinates with and advises the financial section of the clerk's office of matters affecting that section's records, such as the imposition of fines, orders of restitution, confirmation of sales, conditions of bond, etc.

22. Ensures that the equipment to be used for any scheduled court session is properly set up and operational. Ensures that the magistrate judge, counsel and, as appropriate, parties and the jury are properly supplied with pens, pencils, paper, and any other appropriate supplies necessary for the conduct of court sessions. Sets up courtroom for sessions, ensuring proper temperature settings and lighting are maintained.

23. Performs other duties as assigned.