

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
OFFICE OF THE CLERK
ROOM 1210 U.S. COURTHOUSE
200 N.W. 4TH STREET
OKLAHOMA CITY, OKLAHOMA 73102-3092

#18

ROBERT D. DENNIS
CLERK

(405)231-4792

March 6, 1995

Mr. Abel Mattos, Chief
Programs Branch
Court Administration Division
Administrative Office of the
United States Courts
Washington, D.C. 20544

Re: Annual Assessment for 1993

Dear Mr. Mattos:

Enclosed please find a copy of the Annual Assessment for 1993 for the U.S. District Court for the Western District of Oklahoma. Also enclosed please find a copy of the January 27, 1995 meeting minutes of the CJRA Advisory Group.

Please let me know if you have any questions.

Sincerely,

Robert D. Dennis

Robert D. Dennis
Court Clerk

RDD/cm
Enc.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ANNUAL ASSESSMENT

**UNDER THE
CIVIL JUSTICE REFORM ACT OF 1990
FOR THE YEAR 1993**

January 1995

ADVISORY GROUP

Peter B. Bradford, Chairman
Judy Hamilton Morse, Vice-Chairman

Members

Emmanuel Edem	Henry A. Hodder
Glen D. Huff	Guy Hurst
Pat Ryan	John Coyle
Guy Clark	Donna Blakley
Joe Heaton	Dianne Goldschmidt

Acting U.S. Attorney, Rozia McKinney-Foster

Ex-Officio/Non-Voting Members

Honorable David L. Russell	Honorable Ronald L. Howland
Honorable Ralph G. Thompson	Honorable Pat Irwin
Honorable Wayne E. Alley	Honorable Doyle W. Argo
Honorable Robin J. Cauthron	Honorable Bana Blasdel
Honorable Timothy D. Leonard	Honorable Gary M. Purcell
Honorable Vicki Miles-LaGrange	

Robert D. Dennis, Clerk of Court
Reporter

Ann D. Marshall, Law Clerk
Special Assistant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

SECOND ANNUAL ASSESSMENT OF THE CONDITION OF THE COURT AND REVIEW OF
THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN BY THE ADVISORY GROUP
APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

STATE OF THE COURT REPORT FOR 1993

This is the second "State of the Court Report" and assessment made after the adoption on December 31, 1991 and the implementation in January, 1992 of the Civil Justice Expense and Delay Reduction Plan (The Plan) in this pilot district court. This annual assessment of the condition of the court's criminal and civil dockets is in response to 28 U.S.C. § 475 and § 482 of the Civil Justice Reform Act of 1990 requiring assessments, consultation with and review by the Advisory Group through 1997. This is an update of our first annual assessment and report with further analysis of the impact of the court's Plan, assessment of the Plan's performance. It also compares the data of the second year under the Plan (1993) with the first year of the Plan (1992) and at least the two years prior to implementation. ¹

¹ Except the portions on Alternative Dispute Resolution and Consent to Civil Trials with Magistrate Judges, which is prepared by the court and is based on the calendar year, the statistical data used throughout this report was derived from the 1990, 1991, 1992 and 1993 Federal Court Management Statistics, prepared annually by the Administrative Office of the Courts, the Guidelines to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, February 1991, the SY 91 Statistics Supplement, October 1991, the SY 92 Statistics Supplement, September 1992 and the SY 93 Statistics Supplement, September 1993, prepared by the Administrative Office of the Courts and the Federal Judicial Center. Also used were actual statistics from the Statistics Division of the Federal Judicial Center. These are some of the same resources utilized and given the Advisory Group for preparation for the Advisory Group Report in the Fall of 1991. Please recall that the assessment of the court's criminal and civil dockets used in the Advisory Group Report was based primarily on statistics from SY 1990.

N.B. "SY" indicates statistical year. The SY year end date is June 30 for the data used for 1990 and 1991 and September 30 for 1992 and 1993. The Judicial Conference approved the new statistical reporting period to coincide with the federal fiscal year.

CONDITION OF THE DOCKET:

	<u>SY 1993</u>	<u>SY 1992</u>	<u>SY 1991</u>	<u>SY 1990</u>
<u>Total Case Filings:</u>	2610	2647	2174	2533
<u>Total Civil Cases Filed:</u>	2375	2442	1949	2288
<u>Total Criminal Felony Cases Filed:</u>	235	205	225	245
<u>Total Case Terminations:</u>	2650	2248	2145	2644
<u>Total Cases Pending:</u>	1772	1907	1508	1475

The court's civil caseload for SY 1993 was just above 90% of the total cases filed and criminal filings close to 10 % of the caseload. The high civil caseload in relation to its criminal docket has continued for more than the past decade in the Western District of Oklahoma.

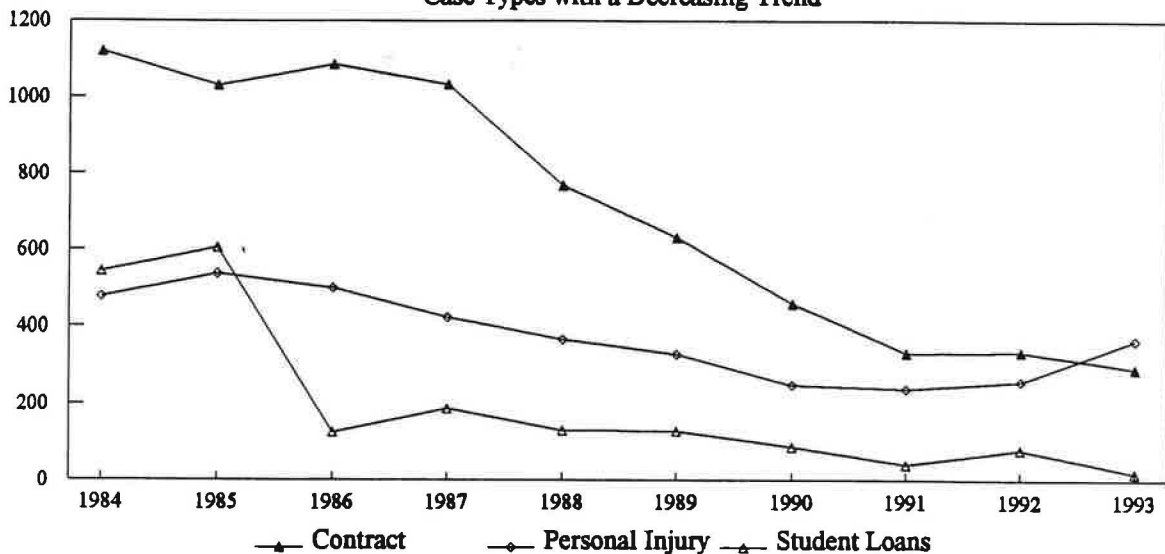
Civil Statistics:

The 1993 Federal Court Management Statistics reports a 1.4% decrease in total filings for the Western District of Oklahoma since SY 1992 and a 3% decrease in civil filings. This averages to 396 civil filings per judgeship in SY 1993.

The civil cases showing the greatest decrease in filings are contract cases while the civil cases showing the greatest increase in filings are prisoner and habeas corpus cases (comprising 28% of the civil docket) with non-prisoner civil rights (i.e. employment discrimination and § 1983 actions) a close second in number of filings. These civil rights cases constitute by far the greatest burden on the court in terms of judge time devoted per case.

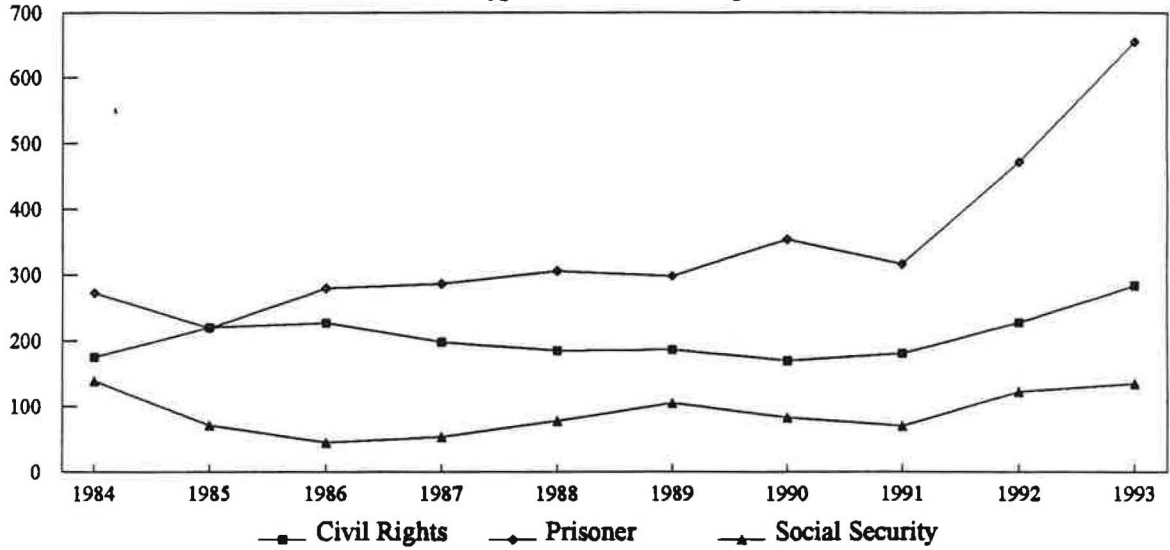
The following charts show case types with decreasing and increasing trends:

Civil Case Filings
Case Types with a Decreasing Trend



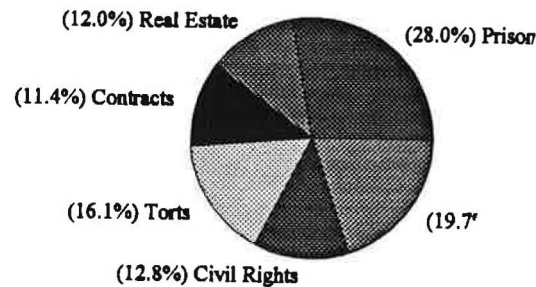
Civil Case Filings

Case Types with an Increasing Trend



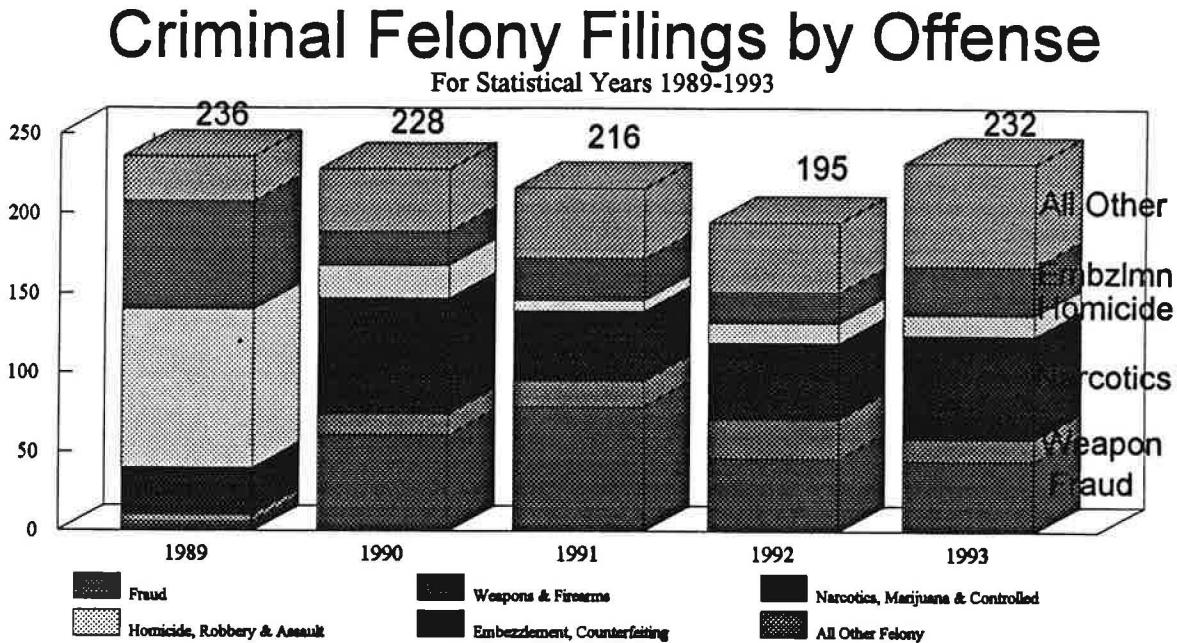
The following pie chart shows percentage of types of civil filings by nature of suit:

1993 Civil Filings by Nature of Suit



Criminal Statistics:

The following graph compares criminal felony filings over the last five years by nature of offence:



Filings in this area have remained fairly stable for the last several years - 232 felony filings for 1993, up from 195 in 1992 but about the same as prior years (see graph). Burden on the court in this area is measured by the number of criminal defendants and the court averaged 1.3 per case in SY 1993. In fact the court has only varied from 1.3 to 1.5 felony defendants per case since 1988.

CASE PROCESSING:

The 1993 Federal Court Management Statistics rates the Western District of Oklahoma second nationwide for timely disposition of criminal felony cases with a median time of only 3.4 months while the national average was 6.3 months. As you know, the Speedy Trial Act and the court's Local Rule 38, Plan For Achieving Prompt Disposition of Criminal Cases in the Western District of Oklahoma, governs the time for a criminal case to reach trial. Our court has always maintained excellent ratings in this area and at least since 1991, our court has ranked at between 2nd and 4th in the nation and 1st in the 10th Circuit in prompt disposition of criminal felony cases.

According to the 1993 Federal court Management Statistics, in 1993 our court ranked sixth in the

nation in median time (months) from filing to disposition in civil cases. The national average was eight months, while our court's average was six months. Furthermore, our court ranked sixth in the nation in the median time (months) from issue to trial of civil cases. The national average was sixteen months while our court's average was only ten months. In fact since 1990, we have ranked well within the top 10 courts in the country in both these categories for prompt civil case processing.

One of the measures of how well the court is processing and managing its civil caseload is to review the relationship of terminations to number of cases pending at the end of given year. Total civil terminations were 2378 in 1993 while they were 1998 in 1992, 2092 in 1991 and 2470 in 1990 demonstrating an increase in terminations. The pending cases at the close of 1993 increased slightly to 1679 over 1571 in 1992 and prior years. Recall that last year we indicated that a comparison of terminations and pending cases demonstrates the life expectancy/lifespan of cases (i.e. some cases are "living longer"). This year, therefore, while the life expectancy of some civil cases is lasting longer (more pending cases), considering the type of cases/case mix and weighted caseload in our court, we are still disposing of cases in a timely fashion (increased terminations).

With the addition of the 6th Federal Judge in late 1992 fulfilling our court's judicial allotment, it appears that many cases that had needed judge and chambers staff time have been better served in 1993.

Alternative Dispute Resolution Programs:

The court's ADR programs and settlement procedures for civil cases go a long way in assisting with prompt case processing and management. The volume or number of cases utilizing non-binding arbitration, mediation and the settlement conference did not vary much from prior years. The use of the summary jury trial continues to decrease due in part to the court temporarily discontinuing magistrate use in this area but also due to better case evaluation for use of such an expensive process and because different types of cases are reaching the final trial preparation stages than in the past.

Non-binding arbitration:

	<u>1993</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>
Cases referred	177	201	190	223
mandatory	(138	150)		
voluntary	(39	51)		
Hearings Scheduled	119	188		
Hearings Held	60	92	130	89
Trial de Novo Demand	36	54	69	39

Again we can note the real significance in this program is in the setting of an early firm deadline resulting in case disposition prior to the hearing. Of those who do utilize our panel of arbitrators, again the result is case resolution due to award evaluation and often further discussion of the award and what was learned at the arbitration with the settlement conference judge. There are 350 attorney arbitrators on our full panel. Only 60 arbitrators were actually used in calendar year 1993. Of those, several served twice in that year

but usually members of the panel serve no more than once every other year . Many on the full panel have not actually ever served due to the good pre-hearing settlement rate in this type of dispute resolution program.

Mediation:

The early mediation program began as a result of a recommendation from the Civil Justice Reform Act Advisory Group and their experience with both attorney and client satisfaction with the process in the state courts. The following compares only the statistical information for the 2 years the court has employed the procedure.

	<u>1993</u>	<u>1992</u>	
Cases referred	145	109	
Court-ordered	(0	28)	
Voluntary	(145	81)	
Sessions Held	108	62	
Settled at Mediation	51	27	
Not Settled at Session	52	35	N.B. many do settle shortly thereafter as they do at settlement conferences

Virtually all sessions were held during the early discovery period according to our Mediator Reports suggesting that for those cases that did settle, costs were saved and for those cases which did not settle, issues were narrowed and discovery more focused. By the end of 1993, we had 44 attorney and 6 non-attorney/special master mediators as members of the court’s roster of approved mediators - met minimum requirements of training, observation and experience. Only 1 of the non-attorney mediators has served. Because selection is by agreement of the parties from the entire list, the market place determines selection and since inception of the program through 1993, 2 of the mediators have done as many as 25 mediations each, 1 other has done 17, 10 have done 6 to 12, 8 have done 1-5 and 20 have not served as of year end 1993. Several attorneys and mediators reported using the mediators on the court’s panel, who are also private mediators, even earlier than the court anticipated i.e. pre status/scheduling conference and further several local attorneys have begun to utilize pre-litigation mediation in their practice on a regular basis.

Summary Jury Trials:

	<u>1993</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>
Cases referred	5	19	20	46
Settled Prior to SJT	0	3	6	17
SJT Held	5	14	11	25
Settled After SJT	4	12	10	13
Full Trial after SJT	3*	1	1	10

*(1 carry over from 1992)

Most judges have discontinued use of the SJT except for very particular cases or circumstances.

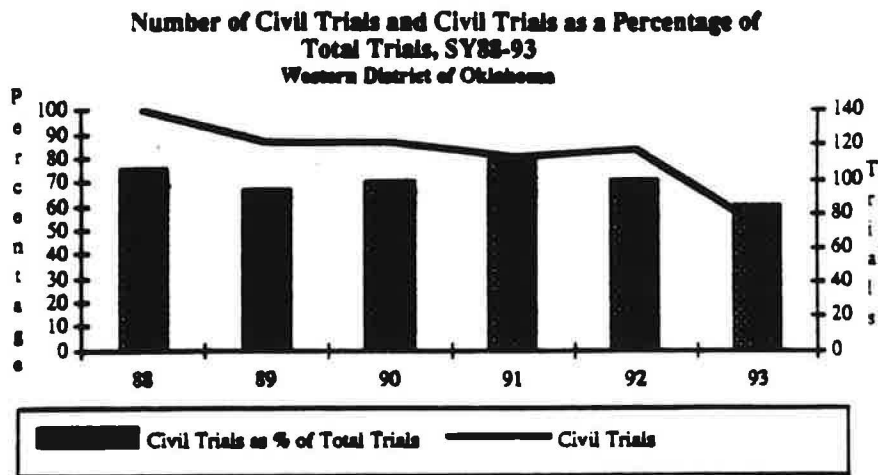
Settlement Conferences: The magistrate judge-hosted settlement conference continues to be the most popular of the court's settlement procedures but can only accommodate a small number of cases at the early stages of litigation. It was originally designed for and appears to have better success when held near the end of the litigation process after most all of the discovery has been done and most motions have been judicially ruled on.

Consent to Civil Trials before a U.S. Magistrate Judge:

In 1993 there were 33 consents and subsequent referrals to magistrate judges for trial in civil suits as compared to the large number of 66 consent referrals in 1992 when the court, because of changes in 28 U.S.C. § 626, began to utilize the magistrate judges in this way. However, due to increasing numbers of cases that are traditionally handled by our magistrate judges such as prisoner civil rights, habeas, social security appeals and the like, the court ordered that fewer other civil matters be referred to magistrate judges in the latter part of 1993. Therefore, for at least the last quarter of 1993, the Article III judges did not refer civil cases that consented to magistrate trials, retained discovery disputes and rarely referred any summary jury trials to magistrates in an effort to allow the magistrate judges to handle their own caseload. This order continued in effect well into 1994.

Trials:

According to our court's own JS-10 Forms for the calendar year 1993, it appears that the court completed 88 civil "trials" in 1993, down from 117 in 1992 and 129 in 1991.² It appears that the judges conducted 50 "trials" in criminal felony cases in 1993. Thus criminal trials represented 40% of all trials conducted, up from prior years as indicated by the chart below:



² According to the Federal Judicial Center Research/Statistics Division, the definition of "trial" for statistical purposes as used by the Administrative Office of the Courts and the Federal Judicial Center is broader than merely jury or non-jury trials and may include for civil case hearings on preliminary injunctions and TRO's and a category entitled "all other." For criminal trials the same is true and "all other" would include hearings that were completed by court decision such as hearings on motions to suppress. The JS-10 Form itself from which they derive their data includes these as "types of trial."

PLAN ASSESSMENT AND CJRA REVIEW FOR 1993

The court's way of doing business under the Plan in 1993 did not differ much from 1992. The court was at full capacity in terms of having the full number of federal and magistrate judges allowed working for the entire year. Early and continuous control of the pretrial process continued with status/scheduling conferences and the filing of status reports for all civil cases along with the smooth operation of the systematic differential treatment of civil cases and standard or special management track assignments. Further the Advisory Group is mindful that the RAND Corporation was commissioned by Congress to assess and evaluate all plans in pilot courts such as ours and RAND is also conducting a study and evaluation of this court's early and virtually voluntary mediation program.

In 1993 refinements were made in the local rules and procedures surrounding status/scheduling conferences concerning our court's exchange of discovery materials in Local Rule 17 (C) and by tightening up reporting of compliance with discovery disclosure in status reports. (See attached Local Rule 17 (C) as amended 6-15-93 and a copy of a sample Status Conference Docket with notice of disclosure discovery compliance requirements). The judges have indicated that they are willing to fix any language in the Plan relating to privilege log issues if so requested by the bar or advisory group. The court has not had any litigation over or formal complaints about this portion of the Plan as a few of the judges had anticipated.

Several negative comments concerning the requirement that litigants pay for the services of mediators have been expressed to a few of the judges and the ADR Administrator. Many attorneys would prefer to use the services of the settlement magistrate judge rather than pay a mediator. In 1993 the court did not order any mediations without attorney/party consent due in large to the mediator fee factor. However, according to information from county and state ADR committees, most attorneys practicing in our community recognize that mediator training is expensive and that the mediation process to be effective can take time and thus, the practice in our community of compensating mediators, rather than requiring them to serve pro bono, is generally accepted. Also it is reported by the ADR Administrator that a few attorneys have expressed a preference for subject matter knowledgeable mediators in certain types of cases.

At the request of the Chair of the Advisory Group, an informal survey of the judges, magistrate judges and several court room deputies of the judges concerning the impact to this court's Plan was conducted. All the judges indicated that because we really adopted or "codified" what we were doing prior to the Civil Justice Reform Act i.e. early judicial intervention, differentiated case management, ADR, etc., the impact of the Plan on the court and the judges is "de minimis." As one judge put it "life is the same as before the Plan." Courtroom Deputies say that the main impact that they can see is on attorneys and changes expected of them in their federal practice. These "case managers" state that they have a few more reporting requirements due to the CJRA Act itself, but nothing substantial.

The statistical information appears to support the judge's assessment. The court has adapted well to changes in its docket and is able to do so, in part because of a very flexible Plan but primarily due to excellent communication, cooperation between judges, individual case management and the overall management in the district.

Generally it is the feeling and belief of the court and the Civil Justice Advisory Group that our Civil Justice Expense and Delay Reduction Plan promotes economy and efficiency and that satisfies the purpose of the Act.

WESTERN DISTRICT OF OKLAHOMA
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

MINUTES OF MEETING

DATE: January 27, 1995
8:30 A.M.

PLACE: U.S. Courthouse, Oklahoma City, OK

MEMBERS PRESENT: The Honorable David L. Russell, Chief Judge
Peter B. Bradford, Chairman
Judy Hamilton Morse, Vice-Chair
Joe L. Heaton, In-Coming Chairman
Glen D. Huff
Donna Blakley
John A. Kenney
Guy Clark
Melvin Hall
Patrick M. Ryan
Roza McKinney-Foster, Acting U.S. Attorney
Robert D. Dennis, Reporter and Clerk of Court
Ann D. Marshall, Resource Person

OTHERS PRESENT: Roger Griffith, AUSA
Phil Lombardi, Chief Deputy Court Clerk
Carrie McKee, Secretary to Reporter

Chief Judge David L. Russell called the meeting to order, introduced Peter Bradford, the Chair, and Judy Hamilton Morse, the Vice Chair, and thanked them for their service and all their hard work over the past four years. He introduced Joe Heaton who will succeed Peter and serve as the new Chairman of the Advisory Group.

The Judge expressed gratitude to the outgoing members of the Group and welcomed the new members. He stressed the significance of the role this Group has had and will continue to have and remarked on the importance of the product produced by this Advisory Group to the Court. He extended his and the Court's appreciation to all of the members of the Group and turned the meeting over to Chair, Peter Bradford.

Mr. Bradford gave a brief history and background of the Civil Justice Reform Act of 1990, the role that our Court is playing as one of 10 pilot courts and the work that this Advisory Group has done to date. He indicated his particular pride with the Group's work in establishing the court-sponsored mediation program. He thanked Judy Hamilton Morse for her outstanding contribution to the Advisory Group and thanked Robert Dennis and Ann Dudley Marshall for their untiring dedication during his tenure as chairman. He stressed how valuable the Group's input is to the judicial system and expressed enjoyment of his term of service and is pleased to present today the Second Annual Assessment of this Court under the Civil Justice Expense and Delay Reduction Plan for the Advisory Group's comment and review.

Robert D. Dennis, Reporter and Clerk of Court, described to the Group his role in the process. He explained that as a pilot court, we are currently working with the RAND Corporation, who was hired by the AO to evaluate the success of the Plans adopted by each pilot court. Their "Preliminary Observations on Implementation of the Pilot Program of the Civil Justice Reform Act of 1990," can be found in a recent special issue of The Stanford Law Review. RAND should be concluding its work in 1996.

Phil Lombardi, Chief Deputy Court Clerk, addressed the Group about his work with Judge Robin Cauthron of this Court to revise the Local Court Rules. The purpose of this revision is primarily to shorten the local rules by reducing repetition with the Federal Rules of Civil Procedure and other statutes, removing rules that are purely administrative that could better be dealt with by Standing Order, and renumbering them to correspond to the Federal Rules of Civil Procedure. A separate Plan for the court's settlement and alternative dispute resolution programs is proposed for the Appendix portion of the Rules. A few copies of the proposed changes were circulated among the Group for review. He indicated that, once adopted, they would also be available on diskette to the public.

Group discussion followed as to the significance and relevance of this project to the work of the CJRA Advisory Group.

Ann Dudley Marshall, Resource Person for the Advisory Group and Administrator of the Alternative Dispute Resolution Programs of the Court, addressed the Group about the 1993 Annual Report or Second Annual Assessment of the Court, for which copies had previously been mailed and circulated to all members. She explained that this assessment with comments from the Advisory Group is a statutory requirement under the CJRA. She went over the assessment and proposed report and asked for comments.

The Group concurred that the privilege log portion of current Local Rule 17 (which was adopted as a portion of the Court's Civil Justice Expense and Delay Reduction Plan) presents problems to both plaintiffs and defendants as well as the U.S. Attorney's office. It was agreed that the Group or a sub-committee of it would review this problem and that it should also be addressed in any local rule changes.

Guy Clark moved to adopt the 1993 Report and forward it to the appropriate parties. The motion was seconded by Donna Blakley. The motion carried. The 1993 Report was approved as submitted.

A report entitled "Mediation Program Update for the CJRA Advisory Group," was circulated and commented on by Ann Marshall. Questions and discussion followed. Mrs. Marshall informed the Group that the RAND Corporation was also conducting a evaluation of our court's Mediation Program.

Peter Bradford then introduced Joe Heaton, the next CJRA Advisory Group Chair, and turned the meeting and the committee over to him.

Mr. Heaton indicated his pleasure at being asked to serve and is looking forward to working with the members of the Group. He will meet with Judge Cauthron concerning any existing Committee on the Local Rules and how this Advisory Group could be of assistance to and work cooperatively with the Rules Committee. He indicated his openness to suggestions and willingness to examine any problem areas. Discussion followed with the suggestion that all federal districts within the state share consistent rules and procedures.

Mr. Heaton thanked everyone for their attendance and contributions to the committee and the meeting. He invited anyone interested in working on a specific task to contact him.

The meeting was adjourned at 10:00 A.M.

Robert D. Dennis, Reporter