

REPORT OF THE CIVIL JUSTICE ADVISORY GROUP
OF THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

Montgomery,
Alabama

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EXECUTIVE SUMMARY

The Civil Justice Advisory Group for the Middle District of Alabama, appointed by Chief Judge Myron Thompson, in accordance with The Judicial Improvements Act of 1990 (the "Act")¹ published a preliminary report on September 27, 1992 which was made available to the Bar and general public in the Middle District for review and comment. A public meeting was held in each of the three divisions of the District. A summary of the comments received at the public meetings is attached as Appendix Eight.

The Act requires the Civil Justice Advisory Group in each federal district to assess the civil and criminal docket conditions within the district and recommend rules and programs to reduce delay and excessive costs in civil litigation.

The Advisory Group reviewed the dockets for the past six years, with emphasis on statistical years 1991 and 1992, and interviewed lawyers, litigants and the judges of the court.

The civil docket data indicates that while filings are increasing, disposition of cases continues to be prompt. The district, functioning with judicial vacancies in 1991, ranked fifteenth² in the nation in median time for trial after a case is at issue - nine months. Only 4.6% of the civil cases were over three years old.

¹ Pub. L. No. 101-650 (1990), codified as 28 U.S.C. §§ 471-482.

² There are currently 94 Federal Districts, including the district for the District of Columbia and Puerto Rico.

Case terminations of 511 per judge in 1991 were well above the national average of 399.

The criminal cases are increasing and becoming more complex. They will continue to do so. However, the criminal docket does not presently significantly contribute to cost and excessive delay of civil matters.

Analysis of the motion practice showed that only 28 motions had been pending more than six months - twelve because of the heavy caseload.

It was ultimately determined that the Middle District of Alabama does not presently have major cost and delay problems, but recommendations³ were made to improve an efficient justice system and aid in avoiding excessive cost and delay problems as the civil and criminal caseloads continue to increase.

³ See infra Section 8.0.

1.0 INTRODUCTION

The Judicial Improvements Act of 1990,⁴ enacted, as a response to the public perception that cost and delay in civil litigation is excessive, requires that each United States judicial district implement a civil justice expense and delay reduction plan.⁵

1.1 The Statute

The Act states that

"The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."⁶

District courts are required to either develop or select a civil justice expense and delay reduction plan for implementation after consideration of the recommendations of an advisory group⁷ appointed by the chief judge "after consultation with the other judges of such court."⁸ The Act further provides that "The advisory

⁴ Pub. L. No. 101-650 (1990), codified as 28 U.S.C. §§ 471-482. The Act provides, at Sec. 101 thereof, that the title may be cited as the "Civil Justice Reform Act of 1990". The Act will hereinafter be cited generally as the "Act" and specific portions thereof will be cited consistent with the statutory sections of the codification.

⁵ 28 U.S.C. § 471.

⁶ Id.

⁷ 28 U.S.C. § 472.

⁸ 28 U.S.C. § 478(a).

group of a district court shall be balanced and include attorneys and other persons who are representatives of major categories of litigants in such court, as determined by the chief judge of such court."⁹

The Act also requires that the advisory group appointed by the chief judge shall submit a report to the court which shall be made available to the public and shall address the following matters:

- (1) an assessment of the matters referred to in subsection (c)(1);
 - (2) the basis for its recommendation that the district court develop a plan or select a model plan;
 - (3) recommend measures, rules and programs; and
 - (4) an explanation of the manner in which the recommended plan complies with section 473 of this title.
- (c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets.
- In performing the assessment for a district court, the advisory group shall--
- (A) determine the condition of the civil and criminal dockets;
 - (B) identify trends in case filings and in the demands being placed on the court's resources;
 - (C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and
 - (D) examine the extent to which costs and delay could be reduced by a better assessment of the impact of new legislation on the courts.
- (2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigant's attorneys.
 - (3) The advisory group shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigant's attorneys toward reducing cost and delay and thereby

⁹ 28 U.S.C. § 478(b).

facilitating access to the courts. . . .¹⁰

In making a recommendation to the court, the Advisory Group must explain how its recommended plan complies with the mandate of section 473. In the words of that section:

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

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

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

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

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

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

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

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

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

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

¹⁰ 28 U.S.C § 472(b)-(d).

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

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

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

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

(ii) phase discovery into two or more stages;

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

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

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

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

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

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

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

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

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

related matters;

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

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

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

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

(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.¹¹

The statute further provides that:

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

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

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

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

(b) The Judicial Conference of the United States--

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

(2) may request the district court to take addi-

¹¹ 28 U.S.C. § 473.

tional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the group or to the recommendations of the district court's advisory group.¹²

1.2 Structure of Advisory Group

The Advisory Group was organized into committees by the Chairman, David B. Byrne, Jr., Esq., as noted in a roster in Appendix One. The various Committee activities are described in other sections of this report.

2.0 GEOGRAPHIC DESCRIPTION OF THE MIDDLE DISTRICT OF ALABAMA

The Middle District of Alabama consists of twenty-three counties, mostly rural, in the southeastern part of the State bordered on the South by the Florida panhandle and the East by Georgia. The 1990 census shows a population of 940,141, which consists of 641,295 white and 298,846 non-white. It also shows that the population has decreased slightly from the 1989 estimate of 986,424. Montgomery County, which includes the City of Montgomery, is the most populous with a population of 206,732.

There are three major military installations: Maxwell Air Force Base, home of the Air University; Gunter Annex to Maxwell Air Force Base, home of the Standard Systems Center for procurement of Air Force software; and Fort Rucker. Fort Rucker is the home of the United States Army Aviation Center which provides the initial

¹² 28 U.S.C. § 474.

advanced training for all United States Army helicopter pilots.

There are seven universities and colleges: Auburn University; Alabama State University; Auburn University at Montgomery; Huntingdon College; The Troy State University System; Tuskegee University; and Faulkner University. All of these educational institutions are located within a sixty-mile radius of Montgomery.

In addition, several state prisons are in the Middle District of Alabama: Kilby Correctional Facility; the Tutwiler Prison for Women; the Staton, Draper, and Elmore facilities, located in the same complex; the Easterling facility at Clio; the Ventress facility at Clayton, established to offer drug treatment; the Bullock County Corrections Facility at Union Springs; the Red Eagle Honor Farm in Montgomery; and the Maxwell federal prison camp, located at Maxwell Air Force Base.

The economy of the primarily rural Middle District is largely agricultural. Much of the population is involved in employment related to government, the military, and agriculture. There is no significant concentration of industry within the district.

Interstate-65 and Interstate-85 intersect in Montgomery. These two interstate highways are major transportation routes for drugs and other contraband moving north and northeast from Texas and Florida.

3.0 THE COURT

3.1 The Statutory Description of the District Court of the Middle District of Alabama

The State of Alabama is divided into three federal judicial districts: the Northern, Middle and Southern.¹³ The Middle District has three divisions:

(b) The Middle District comprises three divisions.

(1) The Northern Division comprises the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike. Court for the Northern Division shall be held at Montgomery.

(2) The Southern Division comprises the counties of Coffee, Dale, Geneva, Henry, and Houston. Court for the Southern Division shall be held at Dothan.

(3) The Eastern Division comprises the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa. Court for the Eastern Division shall be held at Opelika.¹⁴

3.2 The Composition of the Court

Five district judges, two of whom are on senior status, sit in the Middle District of Alabama:¹⁵

Chief Judge Myron H. Thompson was appointed United States District Judge on September 29, 1980 and entered into service as such on October 9, 1980. Judge Thompson is a graduate of Yale College, receiving a B.A. degree in 1969, and of the Yale Law School, receiving a J.D. degree in 1972. Judge Thompson became chief judge of the Middle District on February 8, 1991.

District Judge William Harold Albritton, III, was appointed United States District Judge on May 14, 1991, and entered

¹³ 28 U.S.C. § 81.

¹⁴ Id. at (b).

¹⁵ District Judge Ira DeMent was appointed and assumed his duties on March 18, 1992. Magistrate Judge Vanzetta Penn McPherson was appointed and assumed her duties on April 6, 1992.

into service as such on May 17, 1991. Judge Albritton is a graduate of the University of Alabama and the University of Alabama Law School. Judge Albritton served in the Judge Advocate General Corps, United States Army, following his graduation from the University of Alabama Law School and has served as president of the Alabama State Bar Association.

District Judge Ira DeMent was appointed United States District Judge on March 18, 1992 and entered into service as such on April 15, 1992. Judge DeMent is a graduate of the University of Alabama, receiving an A.B. degree in 1953, and of the University of Alabama Law School, receiving an LL.B. degree in 1958 (replaced with a J.D. degree in 1969). Judge DeMent is a Major General, USAFR, Retired, and formerly served as Mobilization Assistant to the Judge Advocate General, Headquarters, United States Air Force, Washington, D.C.

Senior District Judge Robert Edward Varner was appointed United States District Judge on April 23, 1971 and entered into service as such on April 30, 1971. He served as Chief Judge from July 12, 1979 until October 15, 1984 and assumed senior status on June 12, 1986. He received a B.S. degree from Auburn University in 1942, and a J.D. Degree from the University of Alabama in 1949. Judge Varner served as a United States Naval Aviator during 1942-1946.

Senior District Judge Truman McGill Hobbs was appointed United States District Judge on April 3, 1980 and entered into service as such on April 14, 1980. He became Chief Judge on October 15, 1984 and assumed senior status on February 11, 1991. Judge Hobbs is a graduate of the University of North Carolina, receiving an A.B. in 1942, and of the Yale Law School, receiving an LL.B. in 1948. He served as a Lieutenant in the United States Navy during the years 1942-1946 and as a law clerk for the United States Supreme Court in 1948-1949.

The Middle District is currently authorized three magistrate judges. The three magistrate judges currently serving the court are:

Magistrate Judge John Lawrence Carroll was appointed a United States Magistrate Judge on November 25, 1986. Magistrate Judge Carroll is a graduate of the Tufts University, receiving a B.A. degree in 1965, and of the Cumberland School of Law of Samford University, receiving a J.D. degree (magna cum laude) in 1974. He also received an LL.M. degree from Harvard University in 1975. Magistrate

Judge Carroll, following graduation from Tufts University, served with the United States Marine Corps as a bombardier/navigator in the Vietnam conflict.

Magistrate Judge Charles S. Coody was appointed a United States Magistrate Judge on May 1, 1987. Magistrate Judge Coody is a graduate of Spring Hill College, receiving a B.S. degree in 1965, and of the University of Alabama School of Law, receiving a J.D. degree in 1975. Magistrate Judge Coody served in the United States Army during the years 1968 through 1972, completing military service as a Captain.

Magistrate Judge Vanzetta Penn McPherson was appointed a United States Magistrate Judge on April 6, 1992. Magistrate Judge McPherson is a graduate of Howard University, receiving a bachelors degree in speech pathology (cum laude) in 1969. She also received a master of arts degree in speech pathology from Columbia University in 1971 and a J.D. degree from the Columbia University School of Law in 1974. Magistrate Judge McPherson has served on numerous state bar committees and is a past president of the Alabama Black Lawyers Association.

3.3 The Support Staff

The Clerk's office has a staff of 30 and is efficiently organized and administered. Case processing and management are efficient and do not contribute to delay or excess costs.

An organizational chart of the Clerk's office is attached as Appendix Two.

3.4 The Federal Court Building

The Frank M. Johnson, Jr. Federal Building and United States Courthouse at Montgomery is inadequate. It is, however, understood that plans for construction of a new federal court building are underway with occupancy currently scheduled for late 1997.

4.0 ASSESSMENT OF DOCKET CONDITIONS

4.1 Condition of the Civil Docket

In order to make an assessment of the civil docket, case filings, dispositions and pending cases, were studied utilizing information available from the Federal Judicial Center (FJC), Administrative Office of the Courts of the United States (AOC), and the Clerk of Court. Interviews with the District Judges and Magistrate Judges¹⁶ were conducted. Two categories of cases terminated in 1991 were reviewed, i.e., cases that required more than three years to conclude and cases that had required more than 18 months but less than 36 months to conclude.¹⁷ The review of these cases is discussed in the next section.

It should be recognized that the docket in the district was in transition during the period of this report. First, the caseload increased significantly. Second, a Judge position was vacant for all of 1991 and several months of 1992.¹⁸ Third, a newly approved

¹⁶ The interviews were conducted by committee members or the Group reporters.

¹⁷ There were 51 cases in each category studied.

¹⁸ The Chief Justice of the Supreme Court of the United States recognized the problem with lengthy vacancies in the judicial office in his 1991 Year-End Report on the Federal Judiciary in the following manner:

Regulating the flow of cases is one important means of preserving the best qualities of the federal courts. Providing necessary tools for the judicial branch is another. I urge that immediate attention be given to the process of selecting and confirming federal judges. Too little attention has been devoted to the problem of filling the positions created by the Judicial Improvements Act of 1990. Almost a year after Congress approved 85 new judicial positions, most remain unfilled. Routine vacancies also continue in the

full-time Magistrate Judge position was filled in April, 1992, and the part-time Magistrate Judge position in Dothan was abolished.

Case filings, based on AOC data, increased from 1,320 in 1987 to 1,596 in the statistical year ending June 30, 1991. This statistical year data has been supplemented with additional information which reveals that for the twelve month period ending December 31, 1991, there were 1,828 cases filed. Further, for the twelve month period ending January, 1992, civil case filings increased from 1,337 to 1,633, an increase of 296.

The charts on pages 18A, 18B and 18C reflect this data. A fourth chart, the Judicial Workload Profile for the twelve month period ending on June 30, 1992, infra at page 18D, based on data from the Clerk, is presented to emphasize the increase in civil case filings.

The Biennial Judgeship Survey for the twelve month period ending June 30, 1991, generated by the AOC, page 24A, shows that case terminations remained relatively constant over the past several years; however, the pending cases have increased from 1,231 in 1990 to 1,438 for the twelve month period ending December 31, 1991.¹⁹ Significantly, the Judgeship Survey also reflects that

court's at a steady rate, and speedy replacements must be found for those judges who depart through resignation and retirement. 24 The Third Branch 1, 3 (1992).

¹⁹ Any lack of consistency between the statistics furnished by the Clerk and the judicial survey may be attributed to the time lapse of reporting from the district court to the AOC and the posting of data to the national statistical data used for the Biennial Judgeship Survey, as well as the closing of judicial business for different months during the reporting year.

there were 15.1 vacant judgeship months in the twelve month period ending December 31, 1991 and 12.2 vacant judgeship months for the 1991 reporting year (ending June 30).

Despite the judicial vacancies, the district has maintained a consistently high number of terminations and trials completed over the past four years. The court, for example, for the statistical period ending in December, 1991, was ranked fifteenth in the nation in median time from issue (after initial pleadings are complete and cases are at issue) to trial (nine months).²⁰

The Judicial Workload Profile, page 18B, offers additional comparisons of the numerical standing of the district to the circuit and nation. The data shows that 511 cases were terminated per judge for the twelve month period ending June 30, 1991, well above the national average of 399.

The Judicial Workload Profile for the twelve month period ending June 30, 1992, page 18D, the most current, shows that filings in the statistical year ending on June 30, 1992, increased 26.7% over 1991. This increase ranks the Middle District first in the United States in case filings per judge and in increase in percentage of filings over the previous statistical year. The data also shows that case terminations per judgeship increased. During the most recent reporting period, 548 cases per judgeship were terminated. During the previous reporting period, 511 cases per

²⁰ It is important to note that senior status judges carried unusually heavy caseloads during this period of time. The court cannot realistically expect the senior judges to carry such a heavy caseload in the future.

judgeship were terminated. The percent of civil cases over three years old also decreased during the same period from 5.6% in statistical year (SY) 1991 to 4.7% in SY 1992.

The 1992 data also shows that while the median time from filing to disposition in civil cases increased from seven to eight months over the preceding year, the median time from issue to trial decreased from ten months to nine.

More cases have been terminated in each of the five reporting years than were pending at the close of the year. However, the number of pending cases at the end of each of the past six reporting years has increased.

Monthly civil filings for the months of February 1, 1991, through January 31, 1992, are on page 18C. The aggregate increase is 296 civil filings. Cases filed by prisoners comprise over half (51.62%) of the civil case filings. Other civil filings equal 44.58% and social security cases provide the balance of 3.80%. This caseload composition is roughly consistent with prior years.

According to the 1992 Biennial Judgeship Survey:

Total filings in Alabama, Middle increased 15 percent in 1991 as increases in both civil and criminal filings caused filings per judgeship to rise from 532 to 609 during the year. Criminal filings rose 51 percent in 1991, primarily due to significant increases in [cases involving] weapons and firearms, fraud, and drugs. Criminal filings per judgeship (68) were well above the national average. A substantial increase in state prisoner petitions helped push civil filings up 12 percent in 1991. Weighted filings per judgeship grew to 498, considerably higher than the Subcommittee's standard of 400 per judgeship. Despite vacancies, the number of cases terminated increased slightly to 518 per judgeship during the year. This was accomplished because the Court's senior judges have agreed to increase

their assistance to the Court because of vacancies. Trials completed per judgeship increased from 42 to 55. Although pending cases increased to 479 per judgeship, the percentage of three-year-old cases declined slightly in 1991 to less than 5 percent.

In the current Survey, the Court has requested one additional judgeship based on increased criminal and civil filings, and a growing level of weighted filings per judgeship. In addition, the Court cites geographical problems related to judges having to travel to two unstaffed court locations as further demonstrating the need for this position. In February 1992, the Eleventh Circuit Judicial Council endorsed the Subcommittee's preliminary recommendation for an additional temporary judgeship. One additional judgeship would reduce weighted filings to 373 per judgeship, a level below the Subcommittee's standard of 400 for an additional permanent position. Weighted filings, however, have consistently exceeded 400 per judgeship since 1988. Therefore, the Subcommittee again recommends a temporary judgeship for Alabama, Middle.²¹

The 1992 Biennial Judgeship Survey also contains the following statistics regarding the magistrate judge workload, as of June 30, 1991.²²

²¹ 1992 Biennial Judgeship Survey, 2, transmitted to Chief Judge Myron H. Thompson by letter from Judge Lucius D. Bunton, III, Chairman, Judicial Conference Subcommittee on Judicial Statistics (April 30, 1992).

²² In reviewing the workload statistics, it is important to note that the statistics were compiled when there were two full-time magistrate judges in Montgomery and a part-time magistrate judge in Dothan. The part-time position in Dothan has been abolished and replaced by a full-time position in Montgomery.

Criminal

Petty Defendants Disposed of.....733
Misdemeanor Defendants Disposed of.....142
Proceedings Conducted in Felony Cases.....434
 Preliminary Proceedings.....434
 Motions 0
 All Other Duties..... 0

Civil

Social Security..... 83
Special Masters..... 2
Motions 17
Prisoner Petitions.....751
Consent Cases..... 9
 Terminated After Trial..... 4
All Other Additional Duties..... 41

The statistics show that the Middle District still needs additional judicial resources. The Eleventh Circuit Judicial Conference and the Judicial Conference of the United States have recommended an additional district judgeship for this district. The Advisory Group strongly supports the recommendation.

4.2 Condition of the Criminal Docket

Criminal defendant filings during the period 1982 through 1986 showed a downward trend bottoming out in 1986. Thereafter, with the exceptions of 1989 and 1991, there has been a steady rise. The number of criminal defendants handled by the court for the years 1986 through 1991 are as follows:

Court Year, July 1-June 30	Number of Criminal Defendants
1986	222
1987	267
1988	317
1989	298
1990	352
1991	297

**U.S. DISTRICT COURTS
1992 BIENNIAL JUDGESHIP SURVEY PAGE 1**

ALABAMA MIDDLE		TWELVE MONTH PERIOD ENDED						NATIONAL AVERAGE	
		DECEMBER 31		JUNE 30					
		1991	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings	1,828	1,596	1,663	1,587	1,719	1,320		
	Terminations	1,555	1,533	1,597	1,505	1,523	1,269		
	Pending	1,438	1,252	1,231	1,175	1,092	896		
	Percent Change In Total Filings/ Current Year	<small>OVER JUNE 30, 1991</small>	14.5						<u>3.8</u> <u>6.4</u>
	Over Earlier Years . . .			9.9	15.2	6.3	38.5		
	Number of Judgeships	3	3	3	3	3	3		
	Vacant Judgeship Months	15.1	12.2	.0	.0	.0	2.6		
	Senior Judges With Staff	2	2	1	1	1	1		
ACTIONS PER JUDGESHIP	FILINGS	Total	609	532	554	529	573	440	<u>386</u>
		Civil	541	485	498	484	524	398	<u>335</u>
		Criminal	68	47	56	45	49	42	<u>51</u>
		Pending Cases	479	417	410	392	364	299	<u>407</u>
		Weighted Filings	498	475	468	446	611	383	<u>390</u>
		Terminations	518	511	532	502	508	423	<u>399</u>
		Trials Completed	55	42	52	47	52	45	<u>31</u>
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.6	5.2	5.8	4.9	3.8	2.8	<u>5.8</u>
		Civil	8	7	6	7	6	7	<u>10</u>
		From Issue to Trial (Civil Only)	9	10	9	7	7	7	<u>15</u>
OTHER	Number (and %) of Civil Cases Over 3 Years Old	61 4.6	65 5.6	35 3.1	23 2.1	19 1.9	12 1.4	<u>9.0</u>	
	Felony Cases with 6 or More Defendants	2	0	1	4	3	0		
TRIALS	TOTAL ALL TRIALS	164	126	157	140	156	135		
	10 - 19 Days	0	0	0	2	2	1		
	20 Days and Over	0	0	0	0	0	0		

N/A -- not available

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ALABAMA MIDDLE		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1991	1990	1989	1988	1987	1986			
OVERALL WORKLOAD STATISTICS	Filings*	1,596	1,663	1,587	1,719	1,320	1,471			
	Terminations	1,533	1,597	1,505	1,523	1,269	1,589			
	Pending	1,252	1,231	1,175	1,092	896	845			
	Percent Change in Total Filings Current Year	Over Last Year . . .	-4.0						50	5
		Over Earlier Years6	-7.2	20.9	8.5		11	3	
	Number of Judgeships	3	3	3	3	3	3			
	Vacant Judgeship Months	12.2	.0	.0	.0	2.6	.6			
ACTIONS PER JUDGESHIP	FILINGS	Total	532	554	529	573	440	490	5	2
		Civil	485	498	484	524	398	459	5	2
		Criminal Felony	47	56	45	49	42	31	44	6
	Pending Cases	417	410	392	364	299	282	36	6	
	Weighted Filings**	475	468	446	611	383	364	5	2	
	Terminations	511	532	502	508	423	530	8	1	
	Trials Completed	42	52	47	52	45	35	13	2	
	MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.2	5.8	4.9	3.8	2.8	2.1	28
Civil**			7	6	7	6	7	7	10	2
From Issue to Trial (Civil Only)		10	9	7	7	7	6	10	2	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	65 5.6	35 3.1	23 2.1	19 1.9	12 1.4	19 2.4	38	6	
	Average Number of Felony Defendants Filed per Case	1.4	1.2	1.6	1.6	1.3	1.2			
	Jurors	Avg. Present for Jury Selection	19.20	17.52	17.94	16.97	18.86	18.33	5	1
Percent Not Selected or Challenged		14.6	14.3	13.6	12.2	16.3	15.1	9	1	

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS
SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER**

1991 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1456	80	31	714	43	28	22	191	112	2	176	2	55
Criminal*	136	1	16	16	2	16	10	17	10	21	2	6	15

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
 **See Page 167.

CIVIL FILINGS
February 1, 1991 thru January 31, 1992
1991 - 1992

	<u>Other Civil</u>	<u>Habeas & 1983 Cases</u>	<u>Soc. Sec.</u>	<u>1991 Total</u>	<u>1990 Total</u>	<u>Increas Decreases</u>
February 1991	53	46	4	103	89	+ 14
March	60	79	4	143	133	+ 10
April	54	63	4	121	95	+ 26
May	60	72	5	137	144	- 7
June	58	51	10	119	103	+ 16
July	65	92	9	166	105	+ 61
August	60	75	4	139	141	- 2
September	45	80	5	130	103	+ 27
October	70	84	7	161	129	+ 32
November	52	66	6	124	99	+ 25
December	69	67	4	140	92	+ 48
January 1992	82	68	0	150	104	+ 46
	<u>728</u>	<u>843</u>	<u>62</u>	<u>1,633</u>	<u>1,337</u>	<u>+ 296</u>
	44.58%	51.62%	3.80%			

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ALABAMA MIDDLE		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
		1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*	2,022	1,596	1,663	1,587	1,719	1,320		
	Terminations	1,644	1,533	1,597	1,505	1,523	1,269		
	Pending	1,609	1,252	1,231	1,175	1,092	896		
	Percent Change In Total Filings Current Year	Over Last Year	26.7						[7]
	Over Earlier Years...	21.6	27.4	17.6	53.2			[1]	
	Number of Judgeships	3	3	3	3	3	3		
	Vacant Judgeship Months	10.5	12.2	.0	.0	.0	2.6		
ACTIONS PER JUDGESHIP	FILINGS	Total	674	532	554	529	573	440	[1]
		Civil	602	485	498	484	524	398	[2]
		Criminal Felony	72	47	56	45	49	42	[24]
		Pending Cases	536	417	410	392	364	299	[9]
		Weighted Filings**	639	475	468	446	611	383	[2]
		Terminations	548	511	532	502	508	423	[10]
		Trials Completed	56	42	52	47	52	45	[3]
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	4.4	5.2	5.8	4.9	3.8	2.8	[11]
		Civil**	8	7	6	7	6	7	[15]
		From Issue to Trial (Civil Only)	9	10	9	7	7	7	[8]
OTHER	Number (and %) of Civil Cases Over 3 Years Old		70 4.7	65 5.6	35 3.1	23 2.1	19 1.9	12 1.4	[33]
	Average Number of Felony Defendants Filed per Case		1.6	1.4	1.2	1.6	1.6	1.3	
	Jurors	Avg. Present for Jury Selection	20.34	19.20	17.52	17.94	18.97	18.86	[6]
Percent Not Selected or Challenged		16.7	14.6	14.3	13.6	12.2	16.3	[11]	

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS
SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER**

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1806	50	82	897	60	11	36	153	154	5	315	1	4
Criminal*	213	-	15	36	5	13	16	41	9	49	4	6	1

4.2.1 Representative Criminal Case Filings (1990)

In court year 1990, there were 167 criminal felony filings. Some cases involved multiple defendants. The 167 criminal felony filings are broken down as follows: 60 narcotics cases (36%); 23 fraud cases (14%); 18 embezzlement cases (11%); 15 forgery and counterfeiting cases (9%); twelve weapons and firearms cases (7%); 8 burglary and larceny (5%); 7 escape cases (4%); 4 robbery cases (2%); 2 homicide or assault cases (1%); and 18 miscellaneous criminal felony cases, including political corruption (11%).

4.2.2 Number of Trials

The criminal felony trials held during the period of 1986 to 1991 were as follows:

Criminal Felony Trials	Number of Trials
1986	31
1987	42
1988	49
1989	45
1990	56
1991	70

4.2.3 Current Assessment

In order to accomplish a current assessment of the criminal docket, questionnaires were sent to each of the trial judges within the Middle District, each of the prosecuting Assistant United States Attorneys and selected members of the defense bar. All the respondents indicated that since the early 1980s both the raw number of federal criminal cases and the time that each of the respondents were required to spend on the cases had significantly increased. The consensus of the responses was that the major

reasons for the increased number of cases were increased illegal drug activity; new Department of Justice priority programs; new Congressional legislation; an aggressive United States Attorney; more "state type" drug prosecutions; and, more federal investigative agents assigned to the Middle District.

It seems clear that a major reason criminal cases take longer is the application of the federal sentencing guidelines. Additional reasons include proliferation of complex cases, changes in procedural rules, and the mandatory minimum sentences which tend to encourage defendants to go to trial rather than plead guilty. In predicting future trends, almost all the respondents believe that the number of criminal cases will continue to grow and the time spent per criminal case will increase.

4.2.4 Projection for the Future

It is anticipated that the number of criminal cases in this district will continue to increase. It does not appear, however, that in the immediate future criminal cases will cause a significant delay in civil cases.

5.0 ADVISORY GROUP CONSIDERATION OF THE PARTICULAR NEEDS AND CIRCUMSTANCES OF THE DISTRICT COURT, THE LITIGANTS, AND THE LITIGANT'S ATTORNEYS²³

Two committees analyzed 51 cases each to determine if there was delay or undue costs and, if so, the cause. As a part of the analysis, the committees sent questionnaires to the lawyers and litigants involved in the cases.²⁴

The responses to the questionnaires were incomplete in many instances and not helpful. One reason may be that the categories of cases, i.e., cases which required more than 18 months (Committee B) and cases which required more than 36 months (Committee A), are atypical. The vast majority of cases filed in this district are terminated in less than a year. Hence, review of the selected cases was not helpful in determining problems of cost and delay in the civil process.²⁵ Nonetheless, the following review of questionnaire responses is offered. The analysis of the results of each committee's inquiry is found in the appendices.

²³ This portion of the report directly addresses the requisites of 28 U.S.C. § 272 (c) (2).

²⁴ A copy of the questionnaire used for the lawyers is included in the appendices as Appendix Three and the Litigant Questionnaire is included as Appendix Four.

²⁵ The questionnaires and final determination time-frames for cases which were used for the inquiry were consistent with suggestions which the Chairman received from the Joint Federal Judicial Center/Administrative Office Task Force on the Civil Justice Reform Act of 1990 at a May 29, 1991 meeting. The ultimate lack of applicability of the final determination of time-frames for cases within the Middle District, exemplified by the explanation of results of the survey effort, indicates both the atypicality of the cases utilized for analysis and one of the reasons that it is necessary for the Middle District to formulate its own plan rather than adopt a standard plan.

5.1 Committee B

Committee B inquired into causes of delay and undue costs for 51 cases which required more than 18 months and less than 36 months to terminate. Questionnaires, as well as a form designed to compile information concerning each case docket sheet,²⁶ were mailed to the lawyers of record in the selected cases. The committee finally received 36 responses.

5.1.1 The Responses to Lawyer Questionnaires

Twenty-two of the 36 responses concerned primarily social security cases. There were six contract cases, one section 1983 case, two personal injury cases, one negligence case, two employment cases, one securities case and one insurance case.²⁷

Two of the 36 lawyer responses characterized the level of case management by the court as intensive; four as high, ten as moderate, seven as low, eight as minimal, and one responding attorney stated that he was not sure what level of case management had occurred in his case.²⁸

²⁶ The time-frames utilized for the committees' inquiry were suggested by the joint Federal Judicial Center/Administrative Office Task Force on the Civil Justice Reform Act. The form appears as Appendix Five.

²⁷ One should not be surprised by the large number of social security cases in Committee B's assigned cases because it will be recalled that the median time from issue joined to termination in the Middle District is less than one year. The cases in this sample indicate, however, that social security cases have, in the past, taken too long for processing.

²⁸ A compilation of responses to Committee B's attorney questionnaire appears as Appendix Six.

The responses suggest that lawyers have the following perceptions:

1. Pretrial activities were held to a firm schedule;
2. Discovery time-frames were set and enforced;
3. Pretrial conferences narrow the issues;
4. The court moves promptly on pretrial motions;
5. There were no referrals of the cases to mediation or arbitration; and
6. The judge exerted firm control over the trial.

Some responses, however, criticized the court's failure to push settlement and the failure to set a firm trial date. Sixteen respondents, for example, stated that settlement discussions had not occurred in their cases. In addition, only eight of the 36 responding lawyers believed that an early and firm trial date had been set in their case. The Advisory Group thus determined that it should review the court's practices in setting and holding firm trial dates in facilitating settlement discussions.

5.1.2 Factors Contributing to Court Delay

Although the 51 sample cases considered by Committee B were atypical, the responses provided some information about lawyers' perceptions concerning the problems which contribute to delays primarily:

1. Inadequate case management by the court;²⁹
2. Dilatory actions by counsel;
3. Dilatory actions by the litigants;
4. Court's failure to rule promptly on motions;
5. Backlog of cases on the court's calendar;
6. Social security cases were given the lowest priority;
7. Extensive time-lapse before the magistrate judge issued recommendation; and
8. The case was not promptly set for oral argument (social security case).

²⁹ See infra 5.2.1 for a contra view from the lawyers responding to Committee A's questionnaire.

Following receipt of the subcommittee report, the Advisory Group as a whole decided to review the problem of delay in ruling on dispositive motions. Review of motions pending more than six months showed that, for the period September 30 through March 31, 1992, the two district judges and one senior district judge³⁰ had a total of 28 motions which had been pending over six months.

The oldest of the motions had been filed on December 1, 1990, in a complex case. An opinion disposing of the motion was in draft form. In five other cases an opinion was also, at the time of the report, in draft form. Three of the cases required a hearing. In those cases, the parties either were conducting discovery or the court was waiting for memoranda from counsel.

Two of the motions were pending because of the complexity of the case and because voluminous briefs or transcripts had to be read before a dispositive ruling could be issued. In another two cases, the court was awaiting materials from the Social Security Administration. Two other cases had been stayed pending bankruptcy proceedings. In one case the parties had been given additional time to file supplemental briefs. The remaining 12 cases were shown to have been pending for over six months because of the heavy caseload of the judge.

Delay in processing motions because of heavy caseload is a primary concern. While it is recognized that the Court was not

³⁰ One senior status district judge had no motions pending over six months.

fully staffed during the period in question,³¹ it is necessary for the court to monitor the processing of dispositive motions and to take action on motions or matters which have been pending for more than six months.³²

5.1.3 Suggestions for Reduction of Delay

The attorneys responding to Committee B's request for suggestions for reducing delays made the following suggestions:

1. There is a need for an additional judge and magistrate;
2. Alternative dispute resolution should be used;
3. Magistrate judges should establish a procedure allowing them to issue prompt recommendations;
4. Some cases should be handled on an expedited docket;
5. Staff attorneys should be employed for the magistrate judges to aid in processing social security appeals;
6. The time cases pend awaiting a determination regarding motions should be reduced; and
7. The time cases pend while awaiting court action should be reduced.

5.1.4 Responses Relating to the nature of the Fees and Costs

The responses regarding fees and costs were mixed, with the majority asserting that the fees and costs were neither too high nor too low, but "about right."

³¹ See supra 4.1 regarding condition of the civil docket.

³² The pending caseload for motions which have been pending more than six months for the magistrate judges in the reporting period, during which time there were two full-time and one part-time magistrate judges, is considerably larger than the pending motion caseload for the district judges. It must be recognized, however, that the overwhelming majority of the magistrate judge motions are prisoner cases, many of which involve the same party movant. The inquiry concerning prisoner litigation, discussed infra this report, does not indicate that the prisoner cases constitute a cost or delay problem in civil cases.

5.1.5 Committee B Responses for Litigant Questionnaires

Committee B received 13 responses from litigants, including eight social security cases (plaintiffs), three contract cases (plaintiffs), one negligence case (plaintiff), and one personal injury case (defendant). For summary purposes, these replies may be grouped into three categories: (i) fees and costs incurred, (ii) timeliness of litigation, and (iii) arbitration/mediation.

5.1.5.1 Fees and Costs Incurred

(a) Social Security Cases - Three of these cases had no fees because they were handled by Legal Services. The other five cases were handled on a contingency fee basis. One of these litigants was of the opinion that the costs incurred were much too high (amount at stake was \$32,000 and the cost of litigation was \$6,600).

(b) Contracts and Personal Injury Cases - These cases were billed at an hourly rate with the exception of one contract case, which was billed on a contingency fee basis. One contract case litigant was of the opinion that the costs incurred were much too high, even though his attorney cut his bill by almost fifty percent. The contract client believed that his attorney conducted far too much research and unnecessarily utilized support staff (amount at stake was \$53,000, initial cost of litigation \$80,000, and adjusted cost of litigation was \$45,000). The personal injury case litigant was also of the opinion that the fee in his case was too high. He believed that costs could have been lowered if the opposing counsel/plaintiff had not over-litigated the case, causing

unnecessary delay (amount at stake was \$1,000,000 plus and the cost of litigation was \$42,000).

(c) Negligence Case - This litigant was billed on a fixed fee basis. The litigant was of the opinion that costs incurred by him were slightly too low and that as a result his attorney did not receive a reasonable fee (amount at stake was \$100,000 and the cost of litigation was \$2,500).

5.1.5.2 Timeliness of Litigation

Those litigants involved in contracts, negligence and personal injury cases reported that the length of time it took to resolve their cases was about right. Cases subject to this highly favorable response were resolved in 21 to 22 months.³³

5.1.5.3 Arbitration/Mediation

Only one litigant (a personal injury case) reported that arbitration had been considered in his case. The defendant (responding litigant) suggested arbitration; however, the opposing counsel (counsel for the plaintiff) rejected the idea.

5.1.6 Analysis of Selected Cases by the Committee

The Committee itself conducted an analysis of 25 selected cases of the 51 case sample (cases 26 through 50). That analysis reveals respectively:

- (a) Three cases indicating excessive continuances, with total loss of time in each case of 22 months, 7 3/4 months and 6 3/4 months;

³³ The litigants in social security cases believed that their cases took too long to process. The delay in processing social security cases is discussed in subsection 5.2.1.6 infra.

- (b) Six Social Security cases indicate that delay was due to the time loss regarding recommendations of the court of 4 1/3 months, 3 1/2 months, 3 1/4 months, 18 months, 16 1/4 months, and 13 1/2 months;
- (c) Five cases indicating delay in briefing process of 24 months, 20 months, 14 1/4 months, 17 1/2 months, and 16 3/4 months;
- (d) Two cases indicating delay in setting the case for oral argument, 7 1/2 months and 10 3/4 months;
- (e) One case where the delay was totally justifiable, i.e., while awaiting a controlling decision of the United States Supreme Court;
- (f) One case indicating delay of the court in issuing its opinion, 12 months;
- (g) Three cases which indicated no delay at all;
- (h) Two cases indicating delay in the process of reassigning from one judge to another, 5 1/4 months and 12 1/4 months;
- (i) One case indicating delay by the plaintiff in moving to have the case reopened after the court's order granting defendant's motion to dismiss, 5 1/4 months; and
- (j) One case indicating delay in setting a pretrial hearing date after having granted defendant's motion for continuance.

5.2 Committee A

Committee A inquired into causes of delay and undue costs for 51 cases which took more than three years to conclude. The committee used the same questionnaires as Committee B. These questionnaires and several reminder letters were mailed to the lawyers involved in the cases selected for analysis. The committee determined, as did Committee B, that many of the cases were atypical, i.e., six cases had been stayed because they were against a bankrupt defendant, A. H. Robbins.

One voting rights case in which motions were filed settled after 39 months. Still another atypical case involving the

desegregation of the Montgomery County public schools had been pending for 27 years. The committee concluded that these atypical cases had limited value for purposes of determining causes of cost and delay in the normal civil case.

Committee A, after making an extensive effort to obtain responses to the questionnaires, ultimately had 27 cases available for analysis. Obviously, the small number of responses diminished the value of the sample. The value of the responses was further diminished because all responding lawyers did not answer all questions.³⁴

5.2.1 The Responses to the Lawyer Questionnaires

Several of the questions did not receive sufficiently responsive answers to be of value; hence, the overview of the responses which follow omits reference to questions insufficiently answered.

5.2.1.1 Level of Case Management by the Court

Twenty-four lawyers responded to the question regarding the level of case management by the court. Five of the respondents asserted that the case management had been intensive, two thought the level had been high and thirteen described the court's management of the case as moderate. Only four of the respondents characterized the level of case management by the court as low.

³⁴ A copy of the committee report appears as Appendix Seven.

5.2.1.2 Case Management Actions Which Could Have Been Taken

The responses to the question regarding what case management actions the district court could have taken indicates that a large majority of respondents were of the view that the court generally managed its cases well. A substantial percentage of respondents, however, answered each of the questions as "not applicable." The "not applicable" responses are attributable either to the fact that the case was a social security case or that the case settled without trial.

A large percentage of the respondents stated that pretrial activities were held to a firm schedule (12 of 17), and that the court set and enforced time limits on discovery (12 of 15). Sixteen of 17 respondents believed that the issues of the case had been successfully narrowed by conference or other methods employed by the court. Thirteen of 16 respondents were of the opinion that the court ruled promptly on pretrial motions, and 14 of 15 respondents noted that there was no use of alternative dispute resolution, such as mediation or arbitration.

Eight of 11 reported that the court set an early and firm trial date, and seven of ten respondents believed that the court either conducted or facilitated settlement discussions. All of these actions were perceived by the respondents as being quite positive.

5.2.1.3 Responses Regarding How Long the Case Should Have Taken From Filing To Disposition

The respondents were asked for opinions regarding an appropriate time from filing to disposition of their cases, assuming the court, counsel, and parties acted reasonably and expeditiously, and there were no other obstacles such as a backlog of cases in the court. Only five comments were received:

- (1) The case involved an appeal to the United States Court of Appeals for the Eleventh Circuit, but otherwise proceeded at a fair pace;
- (2) Approximately one-half of the time which it (the case) consumed;
- (3) Delay was caused by the nature of the issues, identity of the parties, and the existence of other related litigation;
- (4) The case was "in court" for a total of 27 months, it was remanded to HHS for approximately 57 months; and
- (5) The case should have required five years, not the 84 months required for disposition.

5.2.1.4 Factors Contributing to Delay

None of the respondents complained that the delay was caused by either inadequate or excessive case management by the court. One respondent stated that dilatory actions by the litigants contributed to delay, two respondents believed that the backlog of cases on the court's calendar contributed to the delay, and the nature of the case was seen by other respondents as responsible for the delay, i.e., too many defendants, and cases with numerous and difficult issues.

5.2.1.5 Fees and Costs Incurred

The questionnaire also asked the lawyers to give their judgment on the nature of the costs and fees incurred by the client in the case in question. Twenty-three lawyers responded: two

thought the fees and costs were slightly too high; one thought the fees and costs were slightly too low. The overwhelming response was, however, that the fees and costs were about right (20 out of 23).

5.2.1.6 Social Security Cases

Numerous cases assigned to both Committees A and B were social security cases. Hence, a description of those cases is instructive.

Claimants denied social security or SSI benefits by the Social Security Administration have a right to judicial review in federal district court. In the vast majority of these cases the issue to be decided by the district court is whether the decision denying benefits is supported by substantial evidence. The case is decided by review of the record of the administrative proceedings of the Social Security Administration. The record typically contains a transcript of a hearing before an Administrative Law Judge, as well as medical records pertaining to the claimant. In these typical social security cases, there is no discovery or trial at the district court level.

When a social security case is filed in the Middle District, the case is automatically assigned to a Magistrate Judge for a report and recommendation. The Magistrate Judge issues a scheduling order requiring the Secretary of Health and Human Services to file an answer and transcript of the administrative proceedings within 90 days of the filing of the complaint. The order also directs the plaintiff to file a brief within 30 days of

the receipt of the administrative record and directs the Secretary to file a brief within 21 days of the receipt of the plaintiff's brief. The plaintiff is then allowed seven days to file a reply brief. In theory, taking into account the time necessary to serve briefs, a social security case should be ready for action by a Magistrate Judge within roughly five months of filing. In reality, however, that deadline is often extended. The Secretary often requests extensions of time within which to file his brief and it is generally six months before the case is actually ready for review.

The parties have 13 days to file objections after the Magistrate Judge issues a recommended decision. The District Judge then conducts an independent review of the case and issues a decision. In cases where an objection is filed, several months may pass before the District Judge issues a decision.

The analysis done by Committees A and B indicates that social security cases have not been processed, on the average, as quickly as other civil cases. A review of all social security cases filed in the Middle District since 1986 shows that cases filed between 1986 and 1990 had an average disposition time of 17 months.³⁵ Cases filed in 1990 had an average disposition time of 13 months. Those filed in 1991 were disposed of in an average time of eight months. As of August 18, 1992, there were 21 Social Security cases pending which had been filed before 1992. The Social Security

³⁵ The number of social security cases filed in this district are as follows: 1987 - 123 cases; 1988 - 76 cases; 1989 - 45 cases; 1990 - 55 cases; and, 1991 - 61 cases.

cases pending on August 18, 1992 had been pending for an average of 17 months.

The District Court and the Advisory Group are aware of the importance of prompt processing of social security cases. Plaintiffs in most social security cases have no source of income while they await the conclusion of their disability appeals. Hence, it is suggested that these cases should be entitled to some priority. The Group has been informed that the Magistrate Judges give priority to social security cases with the goal of processing all such cases within nine months of the date of filing. The Advisory Group strongly supports the efforts of the Magistrate Judges.

5.3 Committee C

Committee C was charged with the responsibility of interviewing the United States District Judges for the Middle District. The judges also completed a questionnaire which supplemented the initial interviews.³⁶ The interviews and questionnaires produced the following information.

5.3.1 The Internal Case Assignment Process

Each judge has his/her own method for assigning work in cases within his/her chambers. All the judges effectively use their law clerk(s) for research and review of the cases, and in some instances, for drafting opinions and recommendations. A law clerk, once assigned to a case, remains responsible for the case until it is completed.

³⁶ The Magistrate Judges also completed the questionnaire.

5.3.2 First Involvement of Judge in the Case

The practices of the judges vary in the timing of initial involvement in a case. One judge indicated that he reviewed the case shortly after filing, while another becomes actively involved after the answer is filed. Two judges stated that they became involved in a case when a motion is filed, or if none has been filed, a few days before a pretrial conference.

Judges generally utilize early Rule 16 pretrial conferences only in complex cases. However, all judges issue a scheduling order after the defendant's answer is filed. The discovery cut-off dates are generally established in the scheduling order and may be modified as the case develops. Rule 26(f) discovery conferences are generally not held because not necessary.

Rule 16 final pretrial conferences are held in virtually all cases, and in complex cases, there may be several. The court requires the lawyers to confer and seek agreement upon a proposed pretrial order and in any event to submit proposed pretrial orders to the court.

5.3.3 The Procedure Used for Motion Practice

There is little consistency in motion practice. Several judges hold periodic motion reviews with their clerks. One judge uses the printout furnished by the clerk's office to track motions. Another judge places most motions on motion dockets with briefing instructions to attorneys.

The judges do not perceive motion practice to be a problem. Judges monitor motions and tailor motion practice to the needs of

the particular case and often make oral rulings on motions which are later reduced to writing.

5.3.4 Time-frames for Routine and Dispositive Motions

None of the judges have any specific deadlines for disposition of motions. Routine motions are usually acted on without oral argument within a few days of filing. A Magistrate Judge noted that, while a self-imposed deadline has been established for social security cases, i.e., that those cases will be processed within nine months of filing, the time for handling routine and dispositive motions is entirely driven by the trial dates and discovery cutoff dates in a particular case.

5.3.5 Utilization of Law Clerks or Staff Attorneys in Processing Dispositive Motions

All judges reported full utilization of law clerks, generally, for independent research and, with directions from the judge, preparation of preliminary opinions or draft recommendations.

5.3.6 Utilization of Statistical Information

The responses to this inquiry varied greatly. Some judges do not use the statistical information at all. Others use it as the primary source of keeping track of the docket and determining needed work. One judge noted that the information was used for two things: first, to determine if he is disposing of as many cases as are being filed; and, second, to determine which cases have been pending more than two years.

5.3.7 Methods of Case Management Not Currently Being Used in the Middle District

One judge suggested consideration of a formalized differential case management system which is currently not being used in the Middle District.³⁷

5.3.8 Perceived Role of the Judge in the Settlement Process

The judges believe that a judge should have a limited role in the settlement process. Several, however, noted that they were more active in the settlement process when the case involved a jury trial.

5.3.9 Early Neutral Evaluation to Encourage Settlement

A majority of judges favored an early neutral evaluation of a case to encourage settlement, especially in complex cases. However, one of the judges expressed a concern that the lawyers might become dependent on this early evaluation to settle their case and would wait for that evaluation before moving the case along.

5.3.10 Is Alternative Dispute Resolution Desirable in the Middle District at this Time

No responding judge favored any specific program for alternative dispute resolution at this time. One judge noted, however, that encouraging voluntary mediation might be helpful, and to that end, three of the district judges have referred cases to magistrate judges for settlement conferences.

³⁷ See infra 5.3.13 for a comment regarding a system of differential case management.

5.3.11 Is the Cost of Litigation in the Middle District Excessive

A majority of the judges were of the opinion that the cost of litigation in the Middle District, and generally, is excessive. Specifically, two asserted that discovery cost is excessive. One of the judges stated that the cost of litigation in the district was no more than in other districts and that the judges of the district do an excellent job of managing cases, thus minimizing costs.

5.3.12 Cause of Excessive Cost and Delay in the Middle District

One judge stated that the Middle District does not have a problem of either excessive cost or delay. The other judge responses indicated that there were two significant factors which have led to whatever excessive cost and delay problems may exist. The first factor related to discovery, i.e., lawyers waiting until after discovery to pursue serious review of the case and the potential for settlement. The second factor was the heavy case load, resulting in delays in disposition of motions and trials. This latter problem will be relieved to some extent now that the court is up to its authorized complement of judicial officers.

5.3.13 Need for Differential Case Management

One of the respondents favored the establishment of a system of differential case management that would permit the setting of discovery deadlines and trials based upon the complexity of the case. Another stated that he would be interested in exploring such a system. A majority of the judges, however, indicated that no

formal case management system was necessary and that each judge should continue to set discovery deadlines and trial dates based upon the complexity of the case, on a case-by-case basis.

5.3.14 Use of a Fast Track Docket

There was some sentiment among the judges that the establishment of a fast track docket for some types of cases might be a good thing; however, the majority of the judges believed that the disposition time was appropriate and that such a docket is unnecessary. The current system, with each judge identifying relatively simple cases for quicker than normal processing, was considered to be adequate.

5.4 Committee D

This committee examined the need for alternative dispute resolution (ADR) in the Middle District. The committee and the Advisory Group ultimately determined that there was currently no need for a mandatory ADR program since cases in the Middle District are usually concluded within a reasonable time.

5.5 Committee E

This committee conducted a study of prisoner litigation in the district with emphasis on prisoner rights cases. Pro se prisoner litigation comprises over 50% of all cases filed in the Middle District. Approximately 80% of the cases are filed pursuant to 42 U.S.C. Section 1983; the other 20% are habeas corpus cases. Approximately 60% of the Magistrate Judges' time is spent on prisoner cases.

Some 900 prisoner cases were filed in the Middle District in the 12-month period ending on September 30, 1992. In accordance with established procedures, these cases are first reviewed by a pro se law clerk. If the law clerk's review indicates that the complaint is subject to dismissal prior to service it is forwarded to a judge for review to determine whether a dismissal is appropriate. Approximately 15% of all prisoner cases are dismissed prior to service.

The committee examined the processing of habeas corpus cases and those brought under § 1983. Habeas corpus cases are processed quickly and efficiently. Thus the major focus of the committee was on the § 1983 actions.

Inquiries to the Alabama Attorney General's (AG's) office, the Alabama Department of Corrections (DOC), the Alabama Prison Project, and the Greater Birmingham Ministries resulted in very little input. The lawyer for the DOC had no major complaints about the current handling of prisoner cases.

Attorneys from the AG's office, thought that generally prisoner cases were handled in an efficient manner. They did suggest, however, that more aggressive review (and summary dismissal) of frivolous, meritless, and previously litigated claims is necessary. They also proposed that an additional pro se law clerk be employed for this purpose and to review complaints for legibility and clarity before service. The AG's office also proposed an expedited docket for single-issue Section 1983 cases.

Other suggestions from the committee members involved actions

which would be beyond the jurisdiction of the federal courts. Those suggestions include the creation of a meaningful administrative remedy using non-DOC employees which would be a prerequisite to filing civil actions, the development of a more detailed, responsive, and comprehensive DOC administrative hearing procedure, and the hiring of more state lawyers to handle the cases. The Alabama Prison Project proposed the first idea, and the AG's office made the second two proposals. Although these ideas could very well reduce the number of court filings by resolving prisoner complaints at an earlier stage, the DOC attorneys did not believe that the State would provide funds to staff any sort of revamped administrative process.

5.6 Committee F

This committee held public hearings with lawyers and litigants in each division of the Middle District and widely disseminated a draft of the committee report. The results of the hearings are attached as Appendix Eight.

5.7 Committee G

Committee G's analysis of the criminal docket and its potential impact on the civil docket is found, supra at section 4.2.4.

**6.0 EXTENT TO WHICH COSTS AND DELAYS COULD BE REDUCED BY
BETTER ASSESSMENT OF THE IMPACT OF NEW LEGISLATION**

Congress consistently considers legislation which has an impact on the operation of the judiciary, but does not adequately assess this impact prior to passage of legislation. For example, as noted the processing of criminal cases has been made more difficult by the passage of mandatory minimum sentences and the sentencing guidelines. Far more of the court's time is now spent in trying criminal cases and in sentencing criminal defendants than ever before. Yet, there is no evidence that Congress considered the impact of this legislation on the district court. It is the committee's opinion that Congress and the Administrative Office should develop procedures for securing input from the district courts before enacting legislation which will have an impact on the workload in the federal courts.

**7.0 BASIS FOR ADVISORY GROUP RECOMMENDATION THAT THE COURT
DEVELOP ITS OWN PLAN**

The Act requires that the Advisory Group address the "basis for its recommendation that the district develop a plan or select a model plan."³⁸ The Advisory Group believes that the Middle District is sufficiently different from other districts, in both geographic, cultural and caseload characteristics, that it should develop its own plan.

³⁸ 28 U.S.C. § 472(b)(2).

8.0 RECOMMENDED MEASURES, RULES AND PROGRAMS

The Act directs the Advisory Group to conduct a thorough assessment of the state of the courts civil and criminal dockets and to "recommend measures, rules and programs"³⁹ ... "[that] shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigant's attorneys."⁴⁰ This committee has completed its task of assessment and has several recommendations.

In making its recommendation, the committee understands that the Middle District of Alabama does not currently have major cost and delay problems.⁴¹ The median time required to move a civil case from issue to trial in 1991 is nine months.⁴² The national average is 15 months.⁴³ The median time from filing to disposition of a civil case in the district at the end of calendar year 1991 was eight months, while the national average was ten months.⁴⁴ Nonetheless, the Advisory Group found that its recommendations are appropriate and should be adopted by the district court. The aim of these recommendations is to make an already efficient court system even more efficient.

³⁹ See 28 U.S.C. § 472 (b)(2).

⁴⁰ See 28 U.S.C. § 472 (c)(2).

⁴¹ The increasing caseload in the Middle District may well constitute cost and delay problems in the future if such continues and additional judicial personnel are not authorized.

⁴² See supra this report at 18A.

⁴³ Id.

⁴⁴ Id.

8.1 Judicial Impact Statement

The Advisory Group in a previous section of the report has criticized the apparent lack of input which Congress receives from the district courts prior to enacting legislation which has an impact on their workload. Consequently, the Group recommends that the Administrative Office of United States Courts establish a procedure for soliciting specific comments from the district courts about pending legislation.

8.2 Judicial Vacancies

The Middle District of Alabama had 15.1 vacant judgeship months during calendar year 1991. Generally, filling court vacancies takes too long with a consequent negative impact on case disposition. Congress and the other agencies of government involved in the judicial selection process should adopt procedures which will accelerate the process for appointing federal judges to insure that vacancies only exist for the minimum time necessary for the selection process.

8.3 Endorsement of the Recommendation of the Judicial Conference Subcommittee on Judicial Statistics, the Eleventh Circuit Judicial Conference, and the Judicial Conference of the United States, for the Authorization of an Additional District Court Judge for the Middle District

The Judicial Conference Subcommittee on Judicial Statistics of the AOC has recommended that the Middle District be authorized another district court judge.⁴⁵ The 1992 Judicial Workload Profile,⁴⁶ showing a 26.7 percent increase in total case filings in

⁴⁵ See supra Section 4.1.

⁴⁶ See supra p. 18D.

SY 1992, underscores the need for additional judicial resources. The Eleventh Circuit Judicial Conference and the Judicial Conference of the United States have endorsed the recommendation. The Advisory Group, after conducting the study and analysis necessary to prepare this report, strongly supports the recommendation for authorization of another district judge in the Middle District.

8.4 Differential Treatment of Civil Cases Should be Left to the Discretion of the Trial Judge

The Advisory Group recognizes that differential treatment of civil cases is necessary in some complex cases. The Group is of a consensus, however, that no formal system of differential case management is necessary. The present system wherein differential treatment of civil cases is left to the judge's discretion is adequate.

8.5 Early and On-going Control of the Pretrial Process

During the pretrial process, Rule 16 Scheduling Orders are issued as a matter of course within 80 to 85 days of the joinder of issue. It is recommended that a scheduling conference be conducted by a judicial officer as soon as possible after the filing of an answer before a pretrial order is entered. It is further recommended that the scheduling conference be used to assess and plan the progress of the case, and establish a firm trial date. There is a serious need for early and on-going judicial intervention.

8.6 Controlling the Scope and Timeliness of Discovery

The judges indicated some concern with the scope of discovery.⁴⁷ Some responding litigants thought that discovery was subject to abuse. The general perception of civil litigation is that discovery is excessive in many cases and, thus, causes excessive cost and delay in the civil process. The court should monitor discovery as a part of the early and on-going control of the pretrial process as recommended in 8.5 above. The court should determine how the discovery process is to be monitored; however, amendments currently proposed to the Federal Rules of Civil Procedure would limit, absent leave of the court or the agreement of the parties, the number of interrogatories, and, absent direction of the court, limit the number of depositions which may be taken by each party. These proposed revisions of the discovery rules will, if approved, go into effect on December 1, 1993.⁴⁸

8.7 Certification of Reasonable and Good Faith Effort to Reach Agreement with Opposing Counsel before Discovery Motions Issue

The current practice of the court requires that there be a certification of a reasonable and good faith effort to reach agreement with opposing counsel before the court will hear a discovery dispute. The Advisory Group strongly supports this current practice and recommends that it be continued.

⁴⁷ See supra this report at 5.3.11-5.3.12.

⁴⁸ 48 Federal Practice Advisory 1 (July 13, 1992).

8.8 Authorization to Refer Appropriate Cases to Alternative Dispute Resolution

The Advisory Group considered the implementation of a formal alternative dispute resolution (ADR) system for the court. The Group generally supports the use of ADR; however, a large majority of the group believed that there was no need for the implementation of a formal ADR system at this time.

8.9 Counsel to Present a Discovery-Case Management Plan at the Initial Scheduling Conference

The Advisory Group is of the opinion that the court should, in appropriate cases, take control of discovery and order each party to present a discovery-case management plan at the initial scheduling conference.

8.10 Parties to be Represented by a Lawyer with Authority to Bind that Party at each Pretrial Conference

The Advisory Group strongly believes that parties should be represented by a lawyer with authority to bind that party at each pretrial conference. The current Federal Rules of Civil Procedure require such representation. By the terms of Rule 16(c), "At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed."⁴⁹

⁴⁹ Fed. R. Civ. P. 16(c).

8.11 Requirement that all Requests for Extension of Deadlines for Discovery or Continuance of Trial be Signed by the Attorney and the Party Making the Request

The Advisory Group was of a consensus that it would be desirable to have a procedure which requires that any requests or motions for extension of deadlines for discovery or continuance of trial be signed by the lawyer and, if a party rather than the lawyer is the source of the request, the party making the request for the continuance. Such a procedure would identify the source of any delay and may reduce the number of requests for continuances or extensions.

8.12 Provision for an Early Neutral Evaluation Program for the Presentation of the Legal and Factual Basis of a Case to a Judicial Officer

The Advisory Group strongly believes that any excessive cost and delay which may be present in civil case processing can be ameliorated by an early neutral case evaluation program, conducted by a judicial officer. Thus, it is recommended that the court establish a neutral evaluation program, to be conducted by a judicial officer, for the presentation of the legal and factual basis of a case at a nonbinding conference conducted as early as appropriate after the answer is filed.

**9.0 EXPLANATION OF THE MANNER IN WHICH THE ADVISORY GROUP'S
REPORT COMPLIES WITH THE REQUIREMENTS OF 28 U.S.C.
§ 473**

The Advisory Group has met the requisites of the Act⁵⁰ and has considered all principles and guidelines of litigation management enumerated by the Act.⁵¹ The recommendations found in Section 8.0 above were developed after considering the responses to the numerous inquiries made by the Advisory Group of the lawyers, litigants and the court, as well as discussion of all principles and guidelines for litigation management set forth in the Act, specifically 28 U.S.C. § 473.

⁵⁰ See 28 U.S.C. 473.

⁵¹ Id.

10.0 EFFORTS OF THE ADVISORY GROUP TO ENSURE THAT ITS REPORT CAN SERVE AS A BASIS FOR SIGNIFICANT CONTRIBUTIONS TO THE COURT, THE LITIGANTS, AND THE LITIGANTS' ATTORNEYS TOWARD REDUCING COST AND DELAY

The Advisory Group has sought to obtain all necessary and relevant information to assure that this report addresses any causes of excessive cost and delay in the Middle District. The Group has analyzed data concerning the filings and terminations, and has received the input of litigants, lawyers and the court through questionnaires and interviews. Representatives from the Group were at the public meetings. Copies of the preliminary report were made available to the media, to local bar associations and to members of the general public to review and discuss with the members of the Group at public meetings.⁵²

⁵² The dialogue which occurred as a result of these additional efforts to obtain public in-put were incorporated in the final report made to the District Court for the Middle District of Alabama as Appendix Eight.

APPENDICES

APPENDIX ONE

COMMITTEE STRUCTURE, MEMBERSHIP ROSTER AND
MANDATE OF EACH COMMITTEE

Committee A

Committee Chairperson: Thomas E. Buntin, Jr.

Members: John V. Denson and Faith Cooper.

Assignment: Review of 51 randomly selected cases terminated this year which took more than three years to conclude; study such cases to examine causes of delay in civil cases, to include cost of multiple preparations for trial, and examine data regarding the time that motions have been pending in the District.

Committee B

Committee Chairperson: Maury D. Smith

Members: Vanzetta Penn McPherson and Milton E. Belcher.

Assignment: Review of 51 randomly selected cases terminated this year which took more than 18 months and less than 35 months to conclude; study to examine causes of delay in civil cases to include cost of multiple preparations for trial and to examine data concerning the time that motions have been pending in the District.

Committee C

Committee Chairperson: Frank H. McFadden

Members: Frank H. McFadden and Robert B. Ingram.

Assignment: Interview United States District Judges for the Middle District of Alabama.

Committee D

Committee Chairperson: Vanzetta Penn McPherson

Members: Dr. Walter J. Sapp and Faith Cooper.

Assignment: Examination of disposition of cases using alternative dispute resolution (ADR), including an assessment of mandatory versus voluntary arbitration. This committee was charged with the responsibility to conduct an opinion poll/survey district-wide of lawyer's views of ADR as a possible means to reduce delay and cost in litigation.

Committee E

Committee Chairperson: Faith Cooper

Members: John L. Carroll, Milton E. Belcher, and Gwen Mosley.

Assignment: Study and analysis of prison litigation on the District, with emphasis on prisoner civil rights cases.

Committee F

Committee Chairperson: Dr. Walter J. Sapp

Members: Robert F. Ingram and James E. Wilson.

Assignment: This committee was charged with the responsibility to hold major public hearings with both lawyers and litigants in each division of the District and insure wide-spread dissemination of a draft of the District plan. The committee was also asked to consider if it wished to examine the question of the role of law schools in training law students as such related to the question of cost and delay in the District.

Committee G

Committee Chairperson: David B. Byrne, Jr.

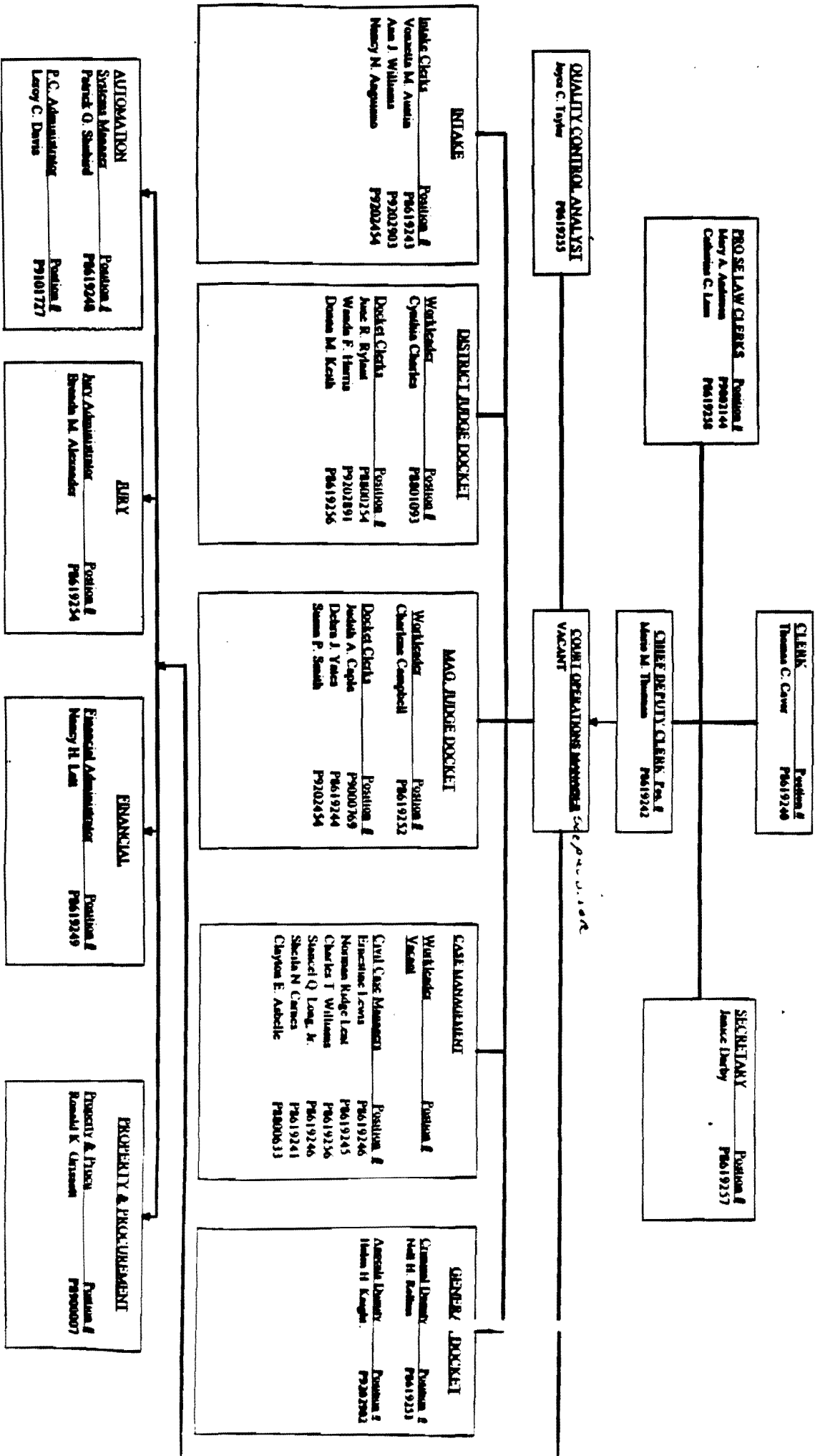
Members: James E. Wilson, Maury D. Smith, Robert P. Longshore, and John L. Carroll.

Assignment: This committee was charged with the responsibility to examine the following: (a) conduct an analysis of the criminal filings in the district for the preceding three fiscal years; (b) criminal discovery problems which contribute and/or lead to delay; (c) examine the impact of mandatory minimum sentences in drug cases, and gun control legislation on the number of criminal cases actually tried in the District; and (d) the impact of the Federal Sentencing Guidelines as a contributing factor for delay in criminal dispositions.

The reports of each committee were considered and utilized as appropriate in the formulation of this report. One must recognize, however, that some of the committees had not completed their deliberations or report for purposes of the preliminary report. Where such is the case the applicable reports will be considered in formulating the report to the Chief Judge of the Middle District following public hearings or further committee deliberations.

CLERK'S OFFICE

ORGANIZATIONAL CHART



QUESTIONS FOR ATTORNEYS

A. MANAGEMENT OF THIS LITIGATION

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

How would you characterize the level of case management by the court in this case? Please circle one.

- (a) Intensive
- (b) High
- (c) Moderate
- (d) Low
- (e) Minimal
- (f) None
- (g) I'm not sure

2. Listed below are several case management actions that could have been taken by the court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the court took such action in this case.

	Was Taken	Was Not Taken	Not Sure	N/A
(a) Hold pretrial activities to a firm schedule.	1	2	3	4
(b) Set and enforce time limits on allowable discovery.	1	2	3	4
(c) Narrow issues through conferences or other methods.	1	2	3	4
(d) Rule promptly on pretrial motions.	1	2	3	4
(e) Refer the case to alternative dispute resolution, such as mediation or arbitration.	1	2	3	4
(f) Set an early and firm trial date.	1	2	3	4

(g) Conduct or facilitate settlement discussions.	1	2	3	4
(h) Exert firm control over trial.	1	2	3	4
(i) Other (please specify).				
<hr/>	1	2	3	4

B. TIMELINESS OF LITIGATION IN THIS CASE

3. Our records indicate this case took about _____ months from filing date to disposition date. Please circle the one answer below that reflects the duration of the case for your client.
- (a) The duration given above is correct for my client.
- (b) The duration given above is not correct for my client. My client was in this case for approximately _____ months.
- (c) I don't recall the duration of this case for my client.
4. How long should this case have taken from filing to disposition under circumstances in which the Court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the Court.
5. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay: (circle one or more)
- (a) Excessive case management by the Court.
(b) Inadequate case management by the Court.
(c) Dilatory actions by counsel.
(d) Dilatory actions by the litigants.
(e) Court's failure to rule promptly on motions.
(f) Backlog of cases on Court's calendar.
(g) Other. (Please specify)
6. If delay is a problem in this district for disposing of civil cases, what suggestions or comments do you have for reducing those delays.

C. COSTS OF LITIGATION IN THIS CASE

7. Please estimate the amount of money at stake in this case.
\$ _____.
8. What type of fee arrangement did you have in this case?
(circle one)
- (a) Hourly rate
 - (b) Hourly rate with a maximum
 - (c) Set fee
 - (d) Contingency
 - (e) Other (please describe)
9. Were the fees and costs incurred in this case by your client
(circle one)
- (a) Much too high
 - (b) Slightly too high
 - (c) About right
 - (d) Slightly too low
 - (e) Much too low
10. If costs associated with civil litigation in this district
are too high, what suggestions or comments do you have for
reducing the costs?

Thank you for your time and comments.

Please Return by August 1, 1991 in the Enclosed Envelope.

QUESTIONS FOR LITIGANTS

1. Were you the plaintiff or defendant in the case noted on the cover letter? (circle one)

(a) Plaintiff
(b) Defendant

2. Please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the total cost only.

(a) Attorneys' Fees _____
(b) Attorneys' Expenses (photocopying, postage, travel expenses, etc.) _____
(c) Consultants _____
(d) Expert witnesses _____
(e) Other (please describe) _____

(f) Total cost of Litigation _____

3. Please estimate the amount of money which was at stake in this case.

\$ _____

4. What type of fee arrangement did you have with your attorney? (circle one)

5. Did this arrangement in your opinion result in reasonable fees being paid to your attorney? (circle one)

(a) Yes
(b) No
(c) Do not know

Comments:

6. Were the costs incurred by you on this matter (circle one)

(a) Much too high
(b) Slightly too high
(c) About right
(d) Slightly too low
(e) Much too low

7. If you believe the cost of litigation was too high, what actions should your attorney or the Court have taken the reduce the cost of this matter?

8. Was the time that it took to resolve this matter (circle one)
- (a) Much too long
 - (b) Slightly too long
 - (c) About right
 - (d) Slightly too short
 - (e) Much too short
9. If you believe that it took too long to resolve your case, what actions should your attorney or the Court have taken to resolve your case more quickly?
10. Was arbitration or mediation used in your case? (circle one)
- (a) Yes
 - (b) No
- If arbitration or mediation was used, please describe the results.
11. Please add any comments or suggestions regarding the time and cost of litigation in the federal courts.

Thank you for your time and comments. Please return in the enclosed envelope by August 1, 1991.

APPENDIX FIVE

REVIEW OF CASE DOCKET SHEET

A. GENERAL INFORMATION

1. Case Name _____
2. Case Number _____
3. Type of case _____
4. Judge _____
5. Total Time for Disposition _____ months
(from filing of complaint to entry of final judgment
for all parties)
6. How was this case disposed of? (circle one)
 - (a) Dismissed for lack of prosecution
 - (b) Judgment entered on motion to dismiss
 - (c) Judgment entered on motion for summary judgment
 - (d) Voluntary dismissal/settlement
 - (e) Trial
 - (f) Other (please specify)

B. LENGTH OF TIME FOR VARIOUS STAGES OF CASE

We are seeking information on how long it takes for a case to progress through various stages such as pleading, discovery, trial, etc. We acknowledge it may be difficult in some cases to get this information from the materials (docket sheet and scheduling order) furnished to you. If so, please indicate by marking "NA" in the appropriate slot.

1. Date of Filing Complaint _____
2. Date of Service of Summons _____
(List last date of service if more than one defendant)
3. Date of Filing any Amended Complaint _____
(List date of last amended complaint filed if more than one complaint filed)
4. Date of Filing Answer _____
(List date of last answer filed to the final complaint or amended complaint)
5. Date of Filing Rule 16 Scheduling Order (if any) _____
6. Date discovery completed _____
7. Date of trial (if any) _____

C. RULE 16 SCHEDULING ORDERS

Under Rule 16, Federal Rules of Civil Procedure, the Court may at the beginning of the case enter a scheduling order, setting dates for completion of discovery, filing motions, and trial. If a scheduling order was used in this case, it has been furnished to you.

1. Was a scheduling order entered in this case? (circle one)
 - (a) Yes
 - (b) No

2. If yes, note the following:
 - (a) _____ months allowed, from date of the order, to amend pleadings
 - (b) _____ months allowed, from date of the order, for completing discovery.
 - (c) _____ months, from date of order, to scheduled trial date.
 - (d) _____ months, from date of order, to filing any dispositive motions (i.e., motions for summary judgment)

D. GENERAL NOTES AND COMMENTS

1. Based on your review of the docket sheet, do you believe the time it took to resolve this matter was (circle one)
 - (a) Much too long
 - (b) Slightly too long
 - (c) About right
 - (d) Slightly too short
 - (e) Much too short

2. Based on your review, list the principal factors which contributed to the length of time it took to dispose of this case (i.e., if it was quickly disposed of - why? and if not, what slowed it down?)

RESPONSES RECEIVED FROM ATTORNEYS

QUESTIONS FOR ATTORNEYS

RESPONSES

A. MANAGEMENT OF THIS LITIGATION

1. How would you characterize the level of case management by the court in this case?

- (a) Intensive
- (b) High
- (c) Moderate
- (d) Low
- (e) Minimal
- (f) None
- (g) I'm not sure

	SSI	CONTRACTS	§ 1983	PERS. INJURY	NEGLIG.	SEC.	EMP.
(a) Intensive		1		1			
(b) High	2			1			1
(c) Moderate	5	3	1		1		
(d) Low	7						
(e) Minimal	8						
(f) None							
(g) I'm not sure							1

2. For each listed action, please circle one number to indicate whether or not the court took such action in this case.

(a) Hold pretrial activities to firm schedule.

- Was Taken
- Was Not Taken
- Not Sure
- N/A

	SSI	CONTRACTS	§ 1983	PERS. INJURY	NEGLIG.	SEC.	EMP.
Was Taken	5	6	1	2	1	1	2
Was Not Taken	1						
Not Sure	2						
N/A	14						

(b) Set/enforce time limits on allowable discovery.

- Was Taken
- Was Not Taken
- Not Sure
- N/A

	SSI	CONTRACTS	§ 1983	PERS. INJURY	NEGLIG.	SEC.	EMP.
Was Taken	2	5		2	1	1	2
Was Not Taken	2	1					
Not Sure			1				
N/A	18						

(c) Narrow issues through conferences/other methods.

Was Taken
Was Not Taken
Not Sure
N/A

SSI	CONTRACTS	§ 1983	PERS.			SEC.	EMP.
			INJURY	NEGLIG.			
7	2	1	2	1			1
4	2						
11							

(d) Rule promptly on pretrial motions.

Was Taken
Was Not Taken
Not Sure
N/A

SSI	CONTRACTS	§ 1983	PERS.			SEC.	EMP.
			INJURY	NEGLIG.			
	4		2	1	1		1
2	2						
1							
19		1					1

(e) Refer case to mediation or arbitration.

Was Taken
Was Not Taken
Not Sure
N/A

SSI	CONTRACTS	§ 1983	PERS.			SEC.	EMP.
			INJURY	NEGLIG.			
8	4	1	1	1	1		1
14	2						1

(f) Set early and firm trial date.

Was Taken
Was Not Taken
Not Sure
N/A

SSI	CONTRACTS	§ 1983	PERS.			SEC.	EMP.
			INJURY	NEGLIG.			
1	4		1		1		1
4	1	1	1	1			
	1						1
17				1			

(g) Conduct/facilitate settlement discussions.

Was Taken
Was Not Taken
Not Sure
N/A

SSI	CONTRACTS	§ 1983	PERS.			SEC.	EMP.
			INJURY	NEGLIG.			
1	2	1	1	1	1		1
11	3		1				1
	1						
10							

(h) Exert firm control over trial.

Was Taken
Was Not Taken
Not Sure
N/A

SSI	CONTRACTS	§ 1983	PERS.			SEC.	EMP.
			INJURY	NEGLIG.			
3	3	1	1		1		
1	1						
17	2		1	1			1

D. TIMELINESS OF LITIGATION

3. Please circle the one answer below that reflects the duration of the case for your client.

- (a) Duration given correct
- (b) Duration given incorrect
- (c) I don't recall

PERS.
SSI CONTRACTS § 1983 INJURY NEGLIGENCE SEC. EMP.

*18	5	1	1	1	1
*2			1		

1 1 1 1
 *Time given on docket sheet is just time spent at court level and often did not include time spent while case was on remand.

4. How long should this case have taken?

Answers varied from 45 days to 25 months

5. Please indicate what factors contributed to the delay: (circle one or more)

- (a) Excessive case management by the Court.
- (b) Inadequate case management by the Court.
- (c) Dilatory actions by counsel.
- (d) Dilatory actions by the litigants.
- (e) Court's failure to rule promptly on motions.
- (f) Backlog of cases on Court's calendar.
- (g) Other.

PERS.
SSI CONTRACTS § 1983 INJURY NEGLIGENCE SEC. EMP.

4					
		1			
1	1				
3	1				
13	1				

OTHER REASONS GIVEN:

SSI:

- Case remained open while on remand to SSA (from 1/89 to 4/90)
- SSI cases are given lowest priority
- Magistrate took over 16 mo. to issue recommendation
- Court's failure to issue Magistrate's recommendation until 1 yr. after oral argument
- Most of the time, the case was in court awaiting a decision
- Case sat for 15 months after statement of issues was submitted by parties before oral argument was ever scheduled. Once oral argument was heard, decision was issued.
- Statement of issues filed by parties on 2/16/88. Oral argument not scheduled until 9/28/88 (7 mos. later)

CONTRACTS:

- MSJ was kept under submission for about 2 years
- Judge changed his mind after granting motion to dismiss
- Probate Judge of Lowndes Co. never ruled on case
- Defendant deliberately evaded service; took 15 months to locate him; Court should have fined him

§ 1983:

- Another Montg. case assigned to Judge M. Thompson

PERS. INJURY:

- Case was put on hold for rulings from Louisiana

NEGLIGENCE:

- Counsel for Pl. withdrew due to illness

6. What suggestions or comments do you have for reducing delays?

SSI:

- Additional judge and magistrate
- Alternative dispute resolution
- Magistrates should be directed to establish a procedure allowing them to issue prompt recommendations
- Handle some cases on an expedited docket
- Employ staff attys for the magistrates to handle SS appeals
- Court should develop scheduling guidelines for handling SS cases
- They are not procedurally complicated, but most of time is spent in ct. waiting for a decision
- These cases pend for entirely too long with no action being taken by the court

CONTRACTS:

- No problem
- Fine litigants who cause delay

§ 1983:

- Don't assign all Montgomery cases to Judge M. Thompson

PERS. INJURY:

- Delay was not a problem

NEGLIGENCE:

- No problem

EMPLOYMENT:

- No problem

C. COSTS OF LITIGATION

7. Estimate the amount of money at stake in this case.

SSI:

\$ 2,700 - \$ 300,000

CONTRACTS:

\$ 25,000 - \$ 300,000

§ 1983:

?

PERS. INJURY:

\$ 1,000,000 - 2,000,000

NEGLIGENCE:

\$ 100,000

EMPLOYMENT:

Question is ambiguous

8. What type of fee arrangement did you have in this case?

- (a) Hourly rate
- (b) Hourly rate with a maximum
- (c) Set fee
- (d) Contingency
- (e) Other

			<u>PERS.</u>		
	<u>SSI</u>	<u>CONTRACTS</u>	<u>§ 1983</u>	<u>INJURY</u>	<u>NEGLIG. SEC. EMP.</u>

(a) Hourly rate		4		1	
(b) Hourly rate with a maximum					
(c) Set fee					
(d) Contingency	11	1		1	2
(e) Other					

OTHER:

SSI:

- N/A
- Gov't atty representing agency

- Fees received by court award
- No fee for client; relied on EAJA
- Fee subject to approval and 25% cap

CONTRACTS:

- Reduced hourly rate and 10% contingency

§ 1983:

- Bill client periodically for reasonable fee

NEGLIGENCE:

- Fee set by statute

9. Were the fees and costs incurred by your client

- (a) Much too high
- (b) Slightly too high
- (c) About right
- (d) Slightly too low
- (e) Much too low

PERS.
SSI CONTRACTS § 1983 INJURY NEGLIGENCE SEC. EMP.

	1	2	1			
	5	3		2	1	2
		1				

OTHER:

SSI:

N/A

10. What suggestions/comments do you have for reducing costs?

SSI:

- Perhaps fees could be paid in installments as in bankruptcy court
- Costs are not a problem for IFP litigants

CONTRACTS:

- Impose fines against the party responsible for causing unnecessary delays

EMPLOYMENT:

- The cost of telephone conferences should be shared equally by the parties, or taxed to the losing party

APPENDIX SEVEN

REPORT OF COMMITTEE A

RESPONSES RECEIVED TO QUESTIONNAIRES TO LAWYERS

1. How would you characterize the level of case management by the court in this case? Intensive - 5; High - 2; Moderate - 13; Low - 0; Minimal - 4; None - 0; I'm not sure - 0.

2. This question related to case management actions that the court could have taken in the case.

	Was Taken	Was Not Taken	Not Sure	N/A
(a) Pretrial activities held to a firm schedule.	12	4	1	10
(b) Set and enforce time limits on discovery.	12	1	2	12
(c) Narrow issues through conference or other methods.	16	0	1	8
(d) Rule promptly on pretrial motions.	13	1	2	10
(e) Refer the case to alternative dispute resolution, such as mediation or arbitration.	1	14	0	10
(f) Set an early and firm trial date.	8	1	2	18
(g) Conduct or facilitate settlement discussions.	7	3	0	15
(h) Exert firm control over trial.	5	0	0	19

Questions without sufficient answers to offer informational value are omitted.

4. How long should this case have taken from filing to disposition under circumstances in which the Court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the Court.
Meaningful answers:

- (a) This case involved an appeal to the 11th Circuit but otherwise it proceeded at a fair pace.
- (b) Approximately one-half of the time which it consumed.
- (c) Delay was caused by the nature of the issues, identity of the parties, and existence of other related litigation.
- (d) Case was "in court" for a total of 27 months. The case was remanded to HHS for approximately 57 months.
- (e) Five years (the case required 84 months for disposition).

5. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay:

- (a) Excessive case management by the Court. 0
- (b) Inadequate case management by the Court. 0
- (c) Dilatory actions by counsel. 0
- (d) Dilatory actions by the litigants. 1
- (e) Court's failure to rule promptly on motions. 0
- (f) Backlog of cases on Court's calendar. 2
- (g) Other: too many defendants, too many and nature of of issues.

7. Please estimate the amount of money at stake in this case.
\$1,000,000 - 10,000,000 - 100,000 - Unknown(7) - N/A(5)

8. What type of fee arrangement did you have in this case?

- (a) Hourly rate - 8
- (b) Hourly rate with a maximum - 0
- (c) Set fee - 0
- (d) Contingency - 8
- (e) Other - 1 court awarded, Public Employee/Counsel - 13

9. Were the fees and costs incurred in this case by your client:

- (a) Much too high - 0
- (b) Slightly too high - 2
- (c) About right - 20
- (d) Slightly too low - 1
- (e) Much too low - 0

10. Question - If costs associated with civil litigation in this district are too high, what suggestion or comments do you have for reducing the costs?

Answers:

(a) This case involved the Department of Justice which made demands on the defendants that I felt were unnecessary and burdensome.

(b) In my opinion, the high and increasing cost of civil litigation is not caused primarily by trial court case management, but is caused by the extent and nature of the issues being litigated under existing appellate decisions, directives and guidelines.

APPENDIX EIGHT

The Advisory Group held public meetings in each division of the Middle District of Alabama on November 12, 1992 (Montgomery), November 16, 1992 (Dothan), and November 18, 1992 (Opelika). The attendance at each of the meetings was very small. A brief synopsis of each of the meetings is as follows:

A. Montgomery, Alabama (Northern Division of the Middle District). Magistrate Judge John Carroll conducted this meeting and reported that only one lawyer attended. The lawyer, affiliated with the ACLU, expressed concern regarding the lack of pro bono representation in prisoner habeas cases.

B. Dothan, Alabama (Southern Division of the Middle District). Magistrate Judge John Carroll, Tommy Buntin and David B. Byrne, Jr., met with the President of the Houston County Bar, Mike Brown. Mr. Brown's comments were directed to his area of practice in the Federal Court, i.e., social security cases. He expressed his concern about the 90-day delay attributable to the completion of the administrative record for appeal of social security cases to the district court. Mr. Brown asserted that he believed that the time for such cases could easily be shortened. He also observed that most Dothan lawyers had not complained of unreasonable delay in getting cases to trial in Federal Court; in fact, he stated that justice is "too swift" in Federal Court for some Dothan lawyers. Mr. Brown also gave some demographic information regarding the Houston County Bar, i.e., there are

approximately 140 practicing lawyers in Dothan and approximately 20 of those lawyers practice in Federal Court. There was further comment concerning delay in ruling on post-trial motions in a case which had been briefed in the summer of 1992. The delay in ruling on post trial motions was the only problem noted during the course of the meeting.

C. Opelika, Alabama (Eastern Division of the Middle District). Magistrate Judge John Carroll and David B. Byrne, Jr., met with Lee County lawyers Bob Meadows, Tutt Barrett and Joe Dean. Each of the lawyers regularly practice in Federal Court. They expressed some concern about delay applicable to the ruling on dispositive motions. Overall, however, the Opelika lawyers appeared to be satisfied with the manner in which the Federal Court operates. The group reaffirmed that one can get a case to trial in Federal Court in the Middle District of Alabama faster than a civil case in State Court in Lee County.