CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE
MIDDLE DISTRICT OF FLORIDA
United States District Court
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Reporter

Earleen Ann Shord, MA, CLA
Management Analyst

July 13, 1993

Mr. Abel Mattos
Director, CJRA Project
Court Administration Division
Room 4-560
Administrative Office of the
United States Courts
Washington, DC 20544

Dear Mr. Mattos:

Enclosed herewith is the Advisory Group Report of the Middle District of Florida, dated June 30, 1993. The Report was formally presented to Chief Judge John H. Moore, II at The Florida Bar Convention in Lake Buena Vista, Florida, on June 24, 1993.

Thank you for your continued assistance on this project.

Sincerely,

Earleen Ann Shord

Enclosure

REPORT
of the
CIVIL JUSTICE REFORM ACT ADVISORY GROUP
of the
UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF FLORIDA

Submitted to the Court and the Public
Pursuant to Title 28, Section 472(b)
of the United States Code

June 30, 1993

CIVIL JUSTICE ADVISORY GROUP
FOR THE MIDDLE DISTRICT OF FLORIDA

MEMBERS:

Marshall M. Criser, Esquire
(Chairman)
Richard A. Belz, Esquire
Edward M. Booth, Esquire
John A. DeVault, III, Esquire
Mr. T. O'Neal Douglas
The Honorable Tillie K. Fowler
Robert W. Genzman, U.S. Attorney
Eurich Z. Griffin, Esquire
Leon H. Handley, Esquire
Dr. Adam W. Herbert
Benjamin H. Hill, III, Esquire
Mark L. Horwitz, Esquire
Thomas C. MacDonald, Jr., Esquire
Arthur Lamar Matthews, Jr., Esquire
Stella Ferguson Thayer, Esquire
Professor Mary P. Twitchell
Dewey R. Villareal, Jr., Esquire
Bill Wagner, Esquire

EX OFFICIO MEMBERS:
The Honorable John H. Moore, II, Chief Judge
The Honorable Wm. Terrell Hodges
The Honorable Harvey E. Schlesinger
David L. Edwards, Clerk of the Court
Susan Horn Walsh, Esquire, Operations Chief

FORMER EX OFFICIO MEMBER:
The Honorable Susan H. Black (formerly Chief Judge, currently Judge of the Eleventh Circuit Court of Appeals)

*****

Sharon A. Kennedy, Esquire, Reporter
Earleen Ann Shord, MA, CLA, Management Analyst

MISSION OF THE ADVISORY GROUP

In December of 1990, the Congress of the United States enacted the Judicial Improvements Act of 1990, Title I of which is the Civil Justice Reform Act of 1990 ("CJRA"), which mandated that each United States District Court devise and implement a civil justice expense and delay reduction plan. To assist the court in development of this plan, the CJRA called for the Chief Judge of each district to appoint an Advisory Group consisting of experienced trial lawyers and representatives of the major categories of litigants before the court.

In March, 1991, then Chief Judge Susan H. Black appointed the undersigned as members of the Advisory Group for the Middle District of Florida. The Advisory Group undertook as its mission to prepare a thorough assessment of the district's civil and criminal dockets, to identify trends in case filings and the demands placed on the court's resources, and to locate the principal causes of cost and delay in civil litigation in the district. Further, the Advisory Group sought to assess existing rules, measures, programs, and practices in this district which facilitate the fair and efficient adjudication of civil cases.

The Advisory Group has now developed recommendations, rules and other measures which it believes could improve litigation management and help to insure the just, speedy and inexpensive resolution of civil disputes in this district. The recommendations have been based upon existing successful practices wherever possible. In developing its recommendations, the Advisory Group has considered the particular needs and circumstances of the Middle District, the litigants in this

court and the litigants' attorneys. The following Report is submitted by the Advisory Group in fulfillment of the requirements of § 472(b) of the CJRA.

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(Chairman)

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NOTE: See Appendix A for further information regarding the membership.

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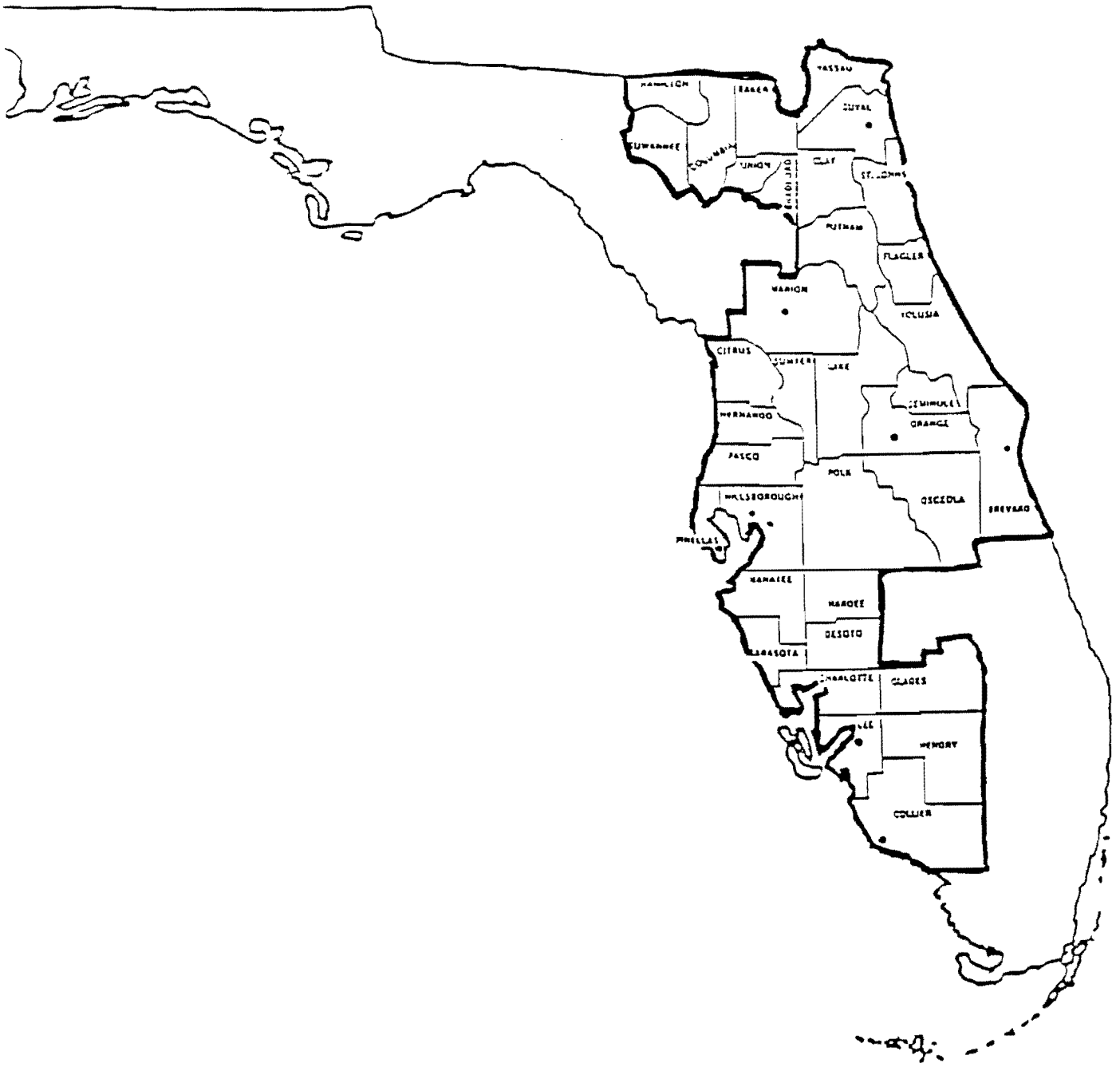
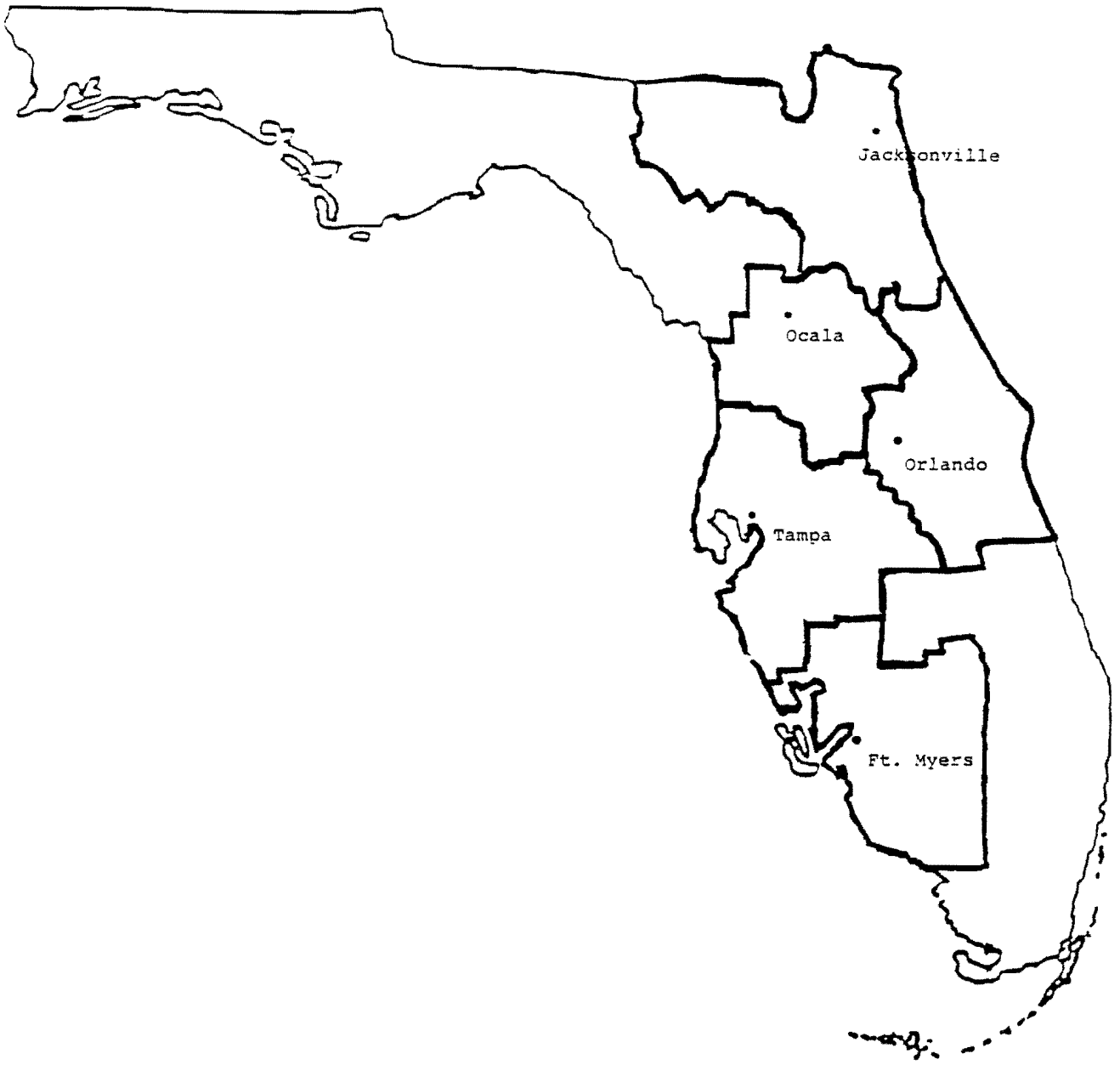
MIDDLE DISTRICT OF FLORIDA



Middle District of Florida Advisory Group Report • June 30, 1993 35 Counties/5 Divisions

DIVISIONS OF THE MIDDLE DISTRICT:
Jacksonville, Ocala, Orlando, Tampa and Ft. Myers



I. DESCRIPTION OF THE COURT

A. *The Middle District of Florida*

The Middle District of Florida incorporates thirty-five of Florida's sixty-seven counties, including seven of the ten most populous counties, and extends from Jacksonville to Naples. (See maps on preceding pages). Of Florida's 12,937,926 permanent residents (1990 census), 55% reside in the Middle District. Some of the fastest growing metropolitan areas in the country are located in this district.

Florida has the highest crime rate of any state in the country.[1] Criminal cases filed in the Middle District of Florida increased 172% during the 1980's. The Tampa and Fort Myers divisions have been especially hard hit. The number of criminal cases filed in those two divisions increased by just over 200% from 1982 to 1991, with no increase in judgeships.

Due to its proximity to South America, the state has always been the focus of drug trafficking activity, and drug trafficking organizations are well established here. These organizations include financiers, money launderers, distributors, and, occasionally, corrupt law enforcement officers. This high level of criminal activity has placed extreme burdens on both the state and federal criminal justice systems. Because the state prison system operates under a federally imposed inmate population cap which serves to substantially reduce the effective sentences of inmates and because federal penalties were

[1] "Crime in the United States," Federal Bureau of Investigation, 1991. The ranking is done by the Florida Department of Law Enforcement.

increased significantly in the 1980's, federal prosecutions for drug traffickers are increasingly attractive to the law enforcement community.

During the 1980's, federal drug prosecutions in the Middle District increased by 766%, vastly more than any other category of criminal case. By 1990, 58% of the inmates incarcerated in federal prison had been convicted of a drug trafficking offense.

The Middle District also contains a substantial number of state correctional facilities. As a result, this district has one of the highest numbers of prisoner filings in the country. State prisoners file civil rights complaints (under 42 U.S.C. § 1983 which challenge the conditions of confinement), and collateral attacks on their convictions (under 28 U.S.C. § 2254). Federal prisoners file civil rights complaints and collateral attacks on their convictions under 28 U.S.C. § 2255.

Additionally, senior citizens comprise 18% of Florida's population. Fully 57% of these citizens reside in the Middle District. The huge amounts of government transfer payments associated with Medicare, Social Security and Veteran's benefits create an attractive environment for governmental program fraud.

Finally, thirty-two financial institutions located within the Middle District have failed over the last six years. Many of these failures have generated substantial bank fraud prosecutions.

As a result of these and other factors, the Middle District of Florida ranked eighth in the nation in total per judge case filings in 1992.

1. Judicial Resources

District Judges Judicial resources, however, have not kept pace with the judicial workload. The number of judicial officers in the Middle District remained at nine authorized district judges for the entire decade between 1980 and 1990. At the same time, the district labored with judicial vacancies for months, often years at a time. In the thirty months from January, 1990, through June, 1992, the district experienced 52.2 months of judicial vacancies.[2] The problem of handling the criminal caseload within the strictures of the Speedy Trial Act became critical with the death of Judge Carr, a Tampa division judge, in January of 1990. On January 11, 1991, in view of the continuing vacancy in Judge Carr's position, the eight active judges of the Middle District adopted the emergency measure of temporarily suspending the trial of civil cases by active judges in the district. The judges announced that judges sitting in Jacksonville and Ocala would assist the Tampa judges in trying criminal cases in the Tampa and Fort Myers divisions. The Chief Judge stated that the moratorium was "the only option remaining which might permit continued control of a burgeoning criminal caseload."[3]

The Middle District made every effort, however, to keep abreast of its civil docket by the vigorous pursuit of the services of visiting judges from other federal jurisdictions to try civil cases. In 1991, the district had eighteen visiting judges who tried a total of 132 cases, including 64 civil cases. Without the services of the visiting

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[2] See Footnote #13, p. 13.

[3] Press Release, January, 1991, by then Chief Judge Susan H. Black.

judges, this district would have been significantly impaired in its ability to move its civil docket.

Nevertheless, this solution to the problem of trying civil cases in this district is very expensive. From May 1, 1991, to April 30, 1992, the Middle District had 24 visiting judge designations for a total of 780 visiting judge days. To calculate the cost, it was assumed that each visiting judge "unit" was comprised of the judge and two staff members (usually a secretary and law clerk). The per diem rate for each person in the unit is approximately $80.00. Unit travel costs average $1,000.00. Thus, the cost of having visiting judges for that year was $221,200.00.

In December of 1990, Congress enacted the Judicial Improvements Act of 1990 which authorized new judges for those districts whose case filings justified additional judicial personnel.[4] Despite the fact that case filings in the Middle District justified the addition of three judges, the district was authorized only two new district judges. By August of 1992, the per judge case filings had risen sufficiently to justify still another district judge, bringing the total to thirteen statistically justifiable judgeships. This means that even if the district were at its fully authorized complement of eleven district judges, it would be operating at a statistical deficit of two full-time judges.

The district, however, has not operated with its full complement of judges for almost four years. It was January of 1992 before the vacancy created by Judge Carr's death in January, 1990, was filled and March of 1992 before the second of the new

[4] The Administrative Office of the United States Courts has adopted a formula which authorizes a district to seek additional judicial personnel whenever its weighted case filings exceed 451 per judge.

judges authorized by Congress in December of 1990 was seated. Then, in the summer of 1992, two new vacancies were created by the elevation of Chief Judge Susan H. Black to the Eleventh Circuit and the taking of senior status by the Honorable William J. Castagna. These vacancies are in the Tampa Division, the division with the highest number and percentage of criminal filings and remain unfilled in June of 1993.

The district does have three senior status judges and their contribution is substantial. Nevertheless, our examination of the dockets in this district takes place within the context of these events.

Magistrate Judges The Middle District of Florida is served by nine full-time magistrate judges. There are two each in Jacksonville and Orlando, four in Tampa, and one in Ft. Myers. The magistrate judges play an invaluable role in the court's case management efforts. Under the authority of Chapter Six, Local Rules of the Middle District of Florida ("Local Rule"), Local Rule 6.01, the magistrate judges preside over both civil and criminal matters and exercise the full range of judicial authority provided by Title 28 U.S.C. § 636.

The court refers civil cases to the magistrate judges on a random basis. In all divisions, by Local Rule 6.01(c)(18), the magistrate judges handle all pretrial discovery motions and disputes. Additionally, the magistrate judges rule on motions for extensions of time, and motions to appoint, substitute, or allow counsel to appear specially. In the Tampa division, the magistrate judges also handle many pretrial conferences.

Preliminary proceedings in criminal matters are also handled by the magistrate judges. This includes the issuance of search and arrest warrants, appointment of

attorneys, detention and suppression hearings (except in Tampa), extradition proceedings and Omnibus hearings.

By Local Rule 6.01(c)(17), (19) and (21), the magistrate judges conduct preliminary proceedings in social security reviews, enforcement of tax summons, civil rights cases pursuant to 42 U.S.C. § 1983, and habeas corpus cases filed pursuant to 28 U.S.C. § 2241 and § 2254.

If the parties to a civil case agree, the magistrate judges may also preside over the trial of their case. Finally, the magistrate judges are also called upon occasionally to handle settlement conferences for the district judges.

Due to the increasing number of criminal filings and the projected rise in prisoner petitions in the district[5], it is anticipated that the demands upon the already fully-utilized magistrate judges will increase substantially in the future.

Staff Attorneys This district currently has five staff attorneys assigned to assist with the case management of the large volume of *pro se* prisoner filings. There are two staff attorneys in Jacksonville, one in Orlando and two in Tampa.

Senior Judges There are three senior judges in the Middle District: one in each division. In the past, caseloads carried by senior judges have been "substantial."[6]

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[5] See *Prisoner Litigation Trends*, p. 39.

[6] One definition of "substantial" is found in the Judicial Council of the Eleventh Circuit's Guidelines for Providing Staff in Chambers for Senior Circuit and Senior District Judges, as follows: "any senior judge who will accept case assignments equal to 60% of the caseload of an active judge or 150 cases, whichever is less; or spend 40 days per year in actual trials."

Clerk's Office The Clerk's Office provides the court with support in managing the flow of litigation through scheduling and calendar control, in providing space and facilities management, records management, statistical and accounting controls, personnel management and procurement of services and supplies.

The office is now actively involved in automation management as well. In the brief period of two years, the Clerk's Office has converted from a manual docketing system to a fully-automated Integrated Case Management System (ICMS) for civil cases. The rapid and recent implementation of the latest case management tools provides invaluable support resources, which will be enhanced by additional hardware and applications and continuing training and support through the automation staff. The implementation of these systems has been a time-consuming and demanding transition, but automated docketing and case management for civil cases is now on-line. Implementation of the criminal automated docketing has not commenced yet, but will likely do so by the fall of 1993.

The current staffing level of the Clerk's office totals ninety-seven permanent and three temporary indefinite deputy clerk positions.[7] Among these deputy clerks are one

[7] The staffing allocation of the district courts is determined by a formula developed by the Court Administration. Prior to FY1993, the percentage of staff permitted to the Middle District of Florida was 98%. Due to fiscal constraints, the percentage for the Middle District was decreased to 79% for FY1993. District court clerks with reduced staffing authorizations are directed to reach the percentage by attrition. At 100% authorization, this district's clerk's office had 112 permanent positions; as of May 31, 1993, 96 permanent positions were authorized; at 79% authorization, the clerk's office must be reduced to 88 permanent positions. As of May, 1993, the Administrative Office of the United States Courts informed the district court clerks that FY1994, in terms of staffing allocation, will be no better than FY1993 and may be even worse.

courtroom deputy and one court reporter per district judge and one courtroom deputy per magistrate judge. The courtroom deputies are responsible for calendaring and case management. They also serve as courtroom clerks whenever their judge is on the bench.

2. The Divisions

The court has five divisions: Jacksonville, Ocala, Orlando, Tampa and Ft. Myers.

Jacksonville The Jacksonville Division has three active judges, two magistrate judges and one senior judge in residence. The division includes the divisional district court clerk's office (eighteen and one-half deputy clerk positions), the U.S. Attorney (eighteen Assistant U.S. Attorneys), the U.S. Probation Office (twenty-nine Probation Officers and staff), Pretrial Services Office (four Officers), Federal Public Defender (two Defenders), U.S. Bankruptcy Court (forty-one deputy clerks) and U.S. Marshal (twelve Deputy U.S. Marshals). Jacksonville is also the resident station of the Clerk of the Court and his district staff (fifteen positions).

The Jacksonville courthouse has three courtrooms for its three active judges, two magistrate courtrooms and one courtroom for a visiting judge, which may also be used by the senior judge. An additional courtroom is scheduled to be constructed within the next one to two years and a prospectus project for construction of a new courthouse annex building is in the planning stages.

Ocala The Ocala Division is located in the federal building/courthouse and has one full courtroom, chambers, intake counter and clerk's office space. There are no

judges in residence. The Jacksonville Division judges sit in Ocala as required. The only court agency resident in the Ocala courthouse is the U.S. Probation office.

Orlando The Orlando Division has three active judges and one senior resident judge. The division has two magistrate judges, divisional district court clerk's office (seventeen and one-half deputy clerks positions), the U.S. Attorney (sixteen authorized and fourteen actual Assistant U.S. Attorneys), the U.S. Probation Office (twelve Probation Officers), Federal Public Defender (four Defenders) and the U.S. Marshal (nine Deputy U.S. Marshals). The combined courthouse/federal building in Orlando has three courtrooms on the sixth floor. Construction of a fourth courtroom was completed in the fall of 1992. There are two magistrate courtrooms on the fifth floor. A prospectus project for construction of a new courthouse annex building is in the planning stages. If funded, the new facility should be ready for occupancy in 1998.

Tampa The Tampa Division has five authorized active judges. As noted earlier, there are currently two vacancies and little likelihood that either will be filled until the fall of 1993. Therefore, the division will be understaffed for some time to come. The division has one senior judge and four magistrate judges. The Tampa courthouse has five courtrooms and three magistrate courtrooms. Additionally, the court completed construction of two additional courtrooms on the twelfth floor of the Timberlake Annex Building in October, 1992. The courthouse also contains a divisional district court Clerk's office (thirty-eight deputy clerk positions), the district Operations Chief and U.S. Marshal (fourteen Deputy U.S. Marshals). The U.S. Attorney (fifty-four authorized and forty-nine actual Assistant U.S. Attorneys), the U.S. Probation Office (twenty-eight

Probation Officers), Pretrial Services Office (five Officers) and Federal Public Defender (five Assistant Public Defenders) are housed in the Timberlake Building and Timberlake Annex Building across the street from the courthouse. A new federal courthouse planned for use in conjunction with the existing courthouse is projected to be completed by summer, 1996.

Ft. Myers The Ft. Myers Division is authorized one magistrate judge with staff in residence but no resident judges. The division does have a visiting judge for six months of the year. Otherwise, Tampa judges sit in Ft. Myers as required. The divisional district court clerk's office has seven deputy clerk positions. The U.S. Attorney has seven Assistant U.S. Attorneys. The Ft. Myers courthouse has one courtroom and a magistrate hearing room and also houses the U.S. Marshal (five Deputy U.S. Marshals). The U.S. Probation Office (five Officers), Pretrial Services Office (two Officers) and Federal Public Defender (two Assistant Public Defenders) are located in leased space in the Barnett Center five blocks away. A new courthouse is planned and construction should be completed by mid-1995.

B. *Special Statutory Status*

The Middle District of Florida is not an Early Implementation, Pilot or Demonstration Court as defined by CJRA § 482.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. *Condition of the Docket*

The Civil Justice Reform Act requires that in developing its recommendations each Advisory Group "shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets."[8] As part of that assessment, it shall "identify trends in case filings and in the demands being placed on the court's resources."[9] The Advisory Group is also obligated to "identify the principal causes of cost and delay in civil litigation."[10] Finally, the Advisory Group must "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."[11]

Part II of the Advisory Group's Report has been prepared to meet these requirements.

1. *The Condition of the Civil and Criminal Dockets*

a. *Judicial Workload Profile*

Almost 6000 cases (5,814) were filed in SY1992 (for purposes of this Report, the statistical year runs from July 1st to June 30th; in this case July 1, 1991, to June 30,

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[8] 28 U.S.C. § 472(c)(1).

[9] 28 U.S.C. § 472(c)(1)(B).

[10] 28 U.S.C. § 472(c)(1)(C).

[11] 28 U.S.C. § 472(c)(1)(D).

1992),[12] with 5,447 cases pending at the end of 1992. (See Chart 1). In 1992, this constituted 529 filings and 495 pending cases for each of the eleven authorized judges, ranking the district eighth in the nation for filings and sixteenth for pending cases.

There has been a steady increase in the Middle District's national rankings on these measures over the last three years. In 1990, the Middle District ranked thirteenth for case filings and twenty-seventh for pending cases. In 1991, the rankings rose to eleventh and eighteenth, and in 1992, the Middle District was eighth in civil filings and sixteenth in pending cases. These increases occurred despite the addition of two authorized judgeships in December, 1990. The civil docket in the Middle District is rapidly expanding.

Even these figures, however, do not accurately reflect the workload per *actual* active judge in this district in 1990, 1991 and 1992 because the per judge caseload statistics as reported on Chart 1 do not factor in judicial vacancies. This district experienced over five months of vacancy in SY1990, thirty-one months of vacancy in

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[12] Until 1992 the Judicial Business section of the Annual Report of the Director of the Administrative Office of the United States Courts has reported on the workload of the federal courts for the twelve-month period ending June 30th of each year. Beginning with 1992, the Annual Report covers the twelve-month period that ended September 30, 1992. This change made its reporting year compatible with the fiscal year of the federal government, October 1 to September 30th. By shifting court workload reporting to the fiscal year cycle, the Administrative Office hoped to simplify comparison to budgetary requirements, appropriations and forecasts. However, since the Advisory Group conducted its analysis of the docket using twelve years of statistics based on a June 30th year end, Chart 1 also reflects that time frame. Chart 1, ended June 30, 1992, was prepared by the Administrative Office and provided to the Advisory Group but will not be published as part of any future Annual Report.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	FLORIDA MIDDLE		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD TATISTICS	Filings*		5,814	5,061	5,059	5,507	5,427	5,240		
	Terminations		5,697	4,411	4,833	5,192	5,293	5,349		
	Pending		5,447	5,447	4,864	4,637	4,324	4,191		
	Percent Change In Total Filings Current Year	Over Last Year. . .		14.9					22	4
		Over Earlier Years. . .			14.9	5.6	7.1	11.0	23	5
	Number of Judgeships		11	11	9	9	9	9		
	Vacant Judgeship Months		26.6	24.2	5.2	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	529	460	562	612	603	582	8	2
		Civil	449	383	472	537	526	518	8	2
		Criminal Felony	80	77	90	75	77	64	16	2
	Pending Cases		495	495	540	515	480	466	16	2
	Weighted Filings**		471	436	509	514	496	486	12	3
	Terminations		518	401	537	577	588	594	15	3
	Trials Completed		34	34	41	38	36	41	35	8
MEDIAN TIMES MONTHS)	From Filing to Disposition	Criminal Felony	6.0	6.2	5.9	5.3	4.1	4.0	50	5
		Civil**	11	10	10	9	8	9	61	8
	From Issue to Trial (Civil Only)		16	13	13	16	16	15	46	7
OTHER	Number (and %) of Civil Cases Over 3 Years Old		218 4.6	287 6.0	257 6.0	241 5.8	162 4.1	249 6.5	28	5
	Average Number of Felony Defendants Filed per Case		1.7	1.9	2.0	2.0	1.6	1.5		
	Jurors	Avg. Present for Jury Selection	44.56	42.63	43.35	35.36	43.43	31.83	79	9
		Percent Not Selected or Challenged	44.2	41.8	42.2	39.6	46.2	37.5	83	9

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	4936	183	451	1658	202	134	187	648	388	153	497	13	422
Criminal*	829	1	27	85	4	38	86	215	57	157	4	88	67

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

SY1991 and sixteen months in SY1992.[13] When filings and pending cases are calculated per *actual* active judge (which factors in vacant judgeship months), the total per judge filings were 591 in 1990 and rose to 601 in 1991. (See Chart 2, p.14). Of these 601 per actual judge filings, 500 were civil cases and 101 were criminal felony

[13] The 1991 and the 1992 judicial vacancy month figures in Chart 1 are errors. The 1991 figure should be 31 months and the 1992 figure should be 16 months. The correct figures will appear in the 1993 edition of *Federal Court Management Statistics*. The formula used by the Analysis and Reports Branch, Statistics Division, Administrative Office of the United States Courts is detailed below. The date the replacement judge entered active duty is subtracted from the CMS* SY1992 Vacancy Date and the remainder is divided by 30.5 to yield the number of vacant months. The divisor, 30.5, is derived by dividing the days in the year (365) by the months in the year (12).

PERIOD JULY 1, 1991 TO JUNE 30, 1992					
Previous Judge (A)	New Judge (B)	Original Vacancy Date (C)	SY1992 Vacancy Date (D)	Entered on Active Duty Date (E)	Calculation of Vacant Months {D - E ÷ 30.5}
Judge Carr (death)	Judge Conway	01/26/90	07/01/91	01/03/92	6.1
New position (Congress created)	Judge Nimmons	12/01/90	07/01/91	08/09/91	1.3
New position (Congress created)	Judge Merryday	12/01/90	07/01/91	03/16/92	8.5
Judge Melton (senior status)	Judge Schlesinger	02/01/91	07/01/91	07/03/91	0.1
					16.0

* Court Management Statistics

cases. The pending caseload per actual judge was 568 in 1990, and rose to 647 in 1991. In 1992, even with an additional three judges (the fourth new judge did not enter active duty until near the end of the statistical year), there were still 16 vacant judgeship months and total and civil filings per actual judge increased again. (See Chart 2 below).

Chart 2 MIDDLE DISTRICT OF FLORIDA

JUDICIAL WORKLOAD PROFILE

	1988		1989		1990		1991		1992	
	Per Active Authorized Judgeship (9)	Per Actual Active Judge	Per Active Authorized Judgeship (9)	Per Actual Active Judge	Per Active Authorized Judgeship (9)	Per Actual Active Judge	Per Active Authorized Judgeship (11)	Per Actual Active Judge	Per Active Authorized Judgeship (11)	Per Actual Active Judge
Total Filings	603	603	612	612	562	591	460	601	529	603
Civil	526	526	537	537	472	496	383	500	449	512
Criminal Felony	77	77	75	75	90	90	77	101	80	91
Defendants	131	131	157	157	180	189	148	193	140	174
Pending	480	480	515	515	540	568	495	647	495	564
Weighted Filings	496	496	514	514	509	535	436	589	471	537
Terminations	588	588	577	577	537	564	401	524	518	591
Trials Completed	36	36	38	38	41	43	34	44	34	39

These judicial workload statistics for the Middle District of Florida are even more compelling when compared to the national judicial workload profile.[14] Chart 3 below demonstrates the disparity between the national judicial workload and that carried by the judges of the Middle District in 1992.

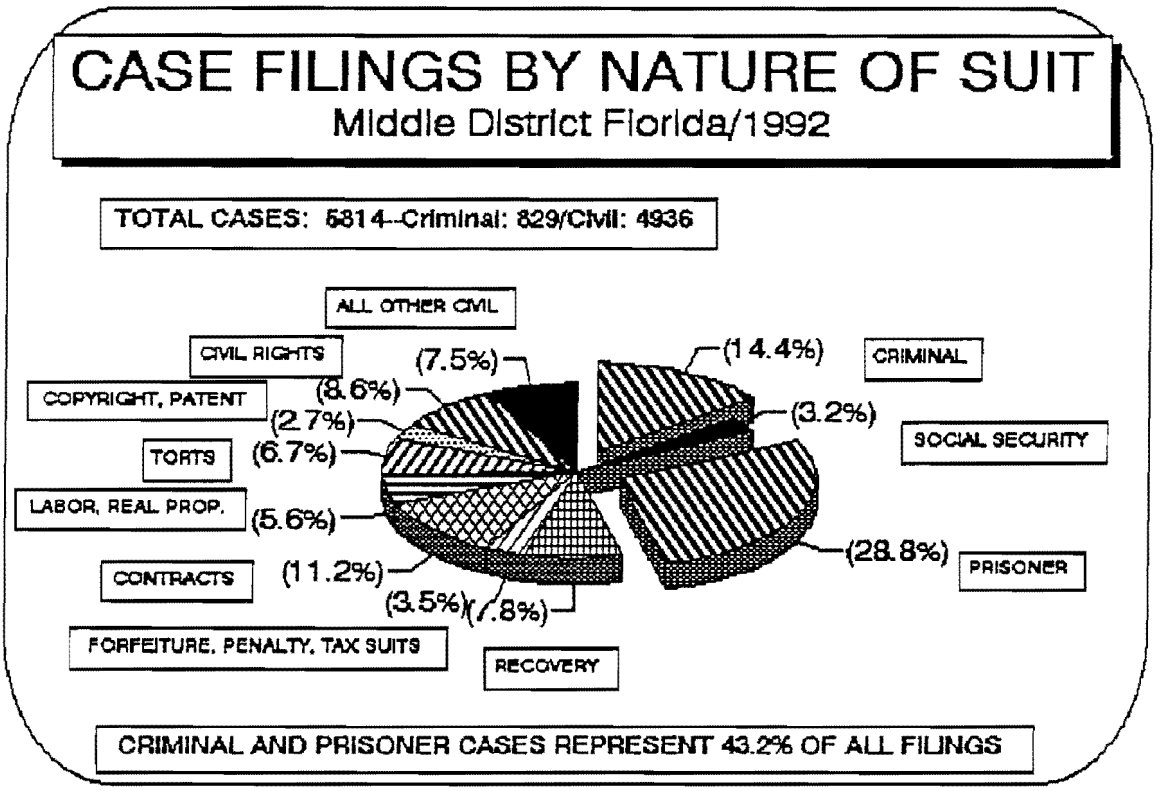
Chart 3

SY1992	MIDDLE DISTRICT OF FLORIDA	ALL U.S. DISTRICT COURTS
FILINGS	**AUTHORIZED**	**AUTHORIZED**
TOTAL	529	403
CIVIL	449	350
CRIMINAL-FELONY	80	53
PENDING	495	402
WEIGHTED	471	405
TERMINATIONS	518	416

[14] *See* Judicial Workload Profile, All District Courts for the Five-Year Period Ended June 30, 1992, Exhibit A. This information was developed by the Administrative Office of the United States Courts for *Federal Court Management Statistics* but will not be published since it is based on the July 1-June 30th statistical year.

In addition to the large number of total cases filed and pending, the district has an unusually high percentage of criminal and prisoner civil rights filings. The following pie chart shows the filings for SY1992 by nature of suit.

Chart 4



The large percentage of criminal cases is significant because of the priority which criminal cases are accorded due to the requirements of the Speedy Trial Act. As we have seen, this priority previously resulted in an actual moratorium on the trial of civil cases by the active judges. Although the moratorium is no longer in effect, it remains true that civil cases must be subordinated to the demands of the criminal docket and that

this priority results in delay for the federal civil docket in this district. The following statistics were examined to assist the Advisory Group in determining whether this delay is "excessive." Except where indicated, it must be remembered that the statistics reflect the efforts of visiting judges as well as our resident judges.

b. *The Condition of the Civil Docket*

Total civil filings have increased 27.5% since 1981, from 3872 in 1981 to 4936 in 1992. This rise in civil filings occurred despite an increase from $10,000 to $50,000 in the jurisdictional amount for diversity cases. Although civil filings decreased somewhat after the increase in the diversity jurisdiction amount, which became effective in 1989, this reduction was only temporary. Civil filings in 1992 were up 17.1% from 1991.

(1) *Median Times*[15]

Chart 1 shows that the median time from filing to disposition for all civil cases in this district has gradually increased over the last five years, from nine months in 1987, to eleven months in 1992, ranking the court sixty-first of the ninety-four district courts. The national median time from filing to disposition is nine months. *(See* Exhibit A). During the same period, the median time from issue to trial for those civil cases requiring a trial ranged between thirteen and sixteen months. For 1992, the Middle District ranked forty-sixth among the ninety-four districts, the national median being fourteen months from issue to trial. (*See* Exhibit A). Median times can be misleading,

[15] Civil median times exclude recovery of overpayments and enforcement of judgments and prisoner petitions. Source: Administrative Office of the United States Courts.

however, as they are determined by the age of the cases terminated in a particular year, which may be skewed in an unrepresentative direction.[16] Therefore, alternative statistics have been developed.

(2) *Life Expectancy of Cases*

Life expectancy is determined by calculating the ratio of pending cases to annual case terminations. It is a timeliness measure, used to assess change in the actual case lifespan.[17] The Federal Judicial Research Division considers life expectancy an accurate measure of whether a district is staying abreast of its caseload. If the ratio of closings to pending cases stays constant, the court is considered to be keeping current.

From 1986 to 1991, the life expectancy of pending civil cases in the Middle District of Florida increased from nine months to sixteen months. (See Chart 5, p. 19). The most significant increase occurred between 1990 and 1991, when the life expectancy of a civil case increased from twelve to sixteen months. This dramatic increase is probably attributable to the moratorium discussed above. In 1992, however, with the addition of three judges[18] and the lifting of the moratorium, life expectancy fell to twelve months.

If we want to compare the Middle District to other districts, we look to the indexed average lifespan. The average time for disposition of civil actions in the ninety-four United States district courts is twelve months. Average lifespan is, therefore,

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[16] John Shapard, "How Caseload Statistics Deceive," Federal Judicial Center, August 9, 1991.

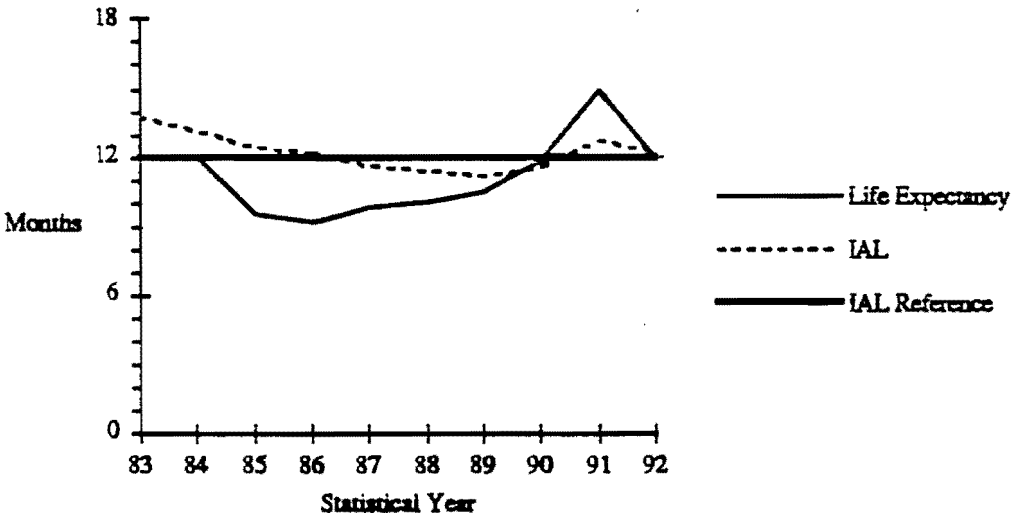
[17] It is corrected for changes in the filing rate, but not for changes in caseload mix.

[18] See Footnote 13, p. 13.

indexed at twelve. The indexed average lifespan is considered a reliable statistical tool for comparison of docket function among the district courts.

The indexed average lifespan (IAL) for statistical years 1987-1990 for all civil cases in the Middle District of Florida was lower than the national indexed average lifespan. In 1990, however, the indexed average lifespan for all civil cases in the Middle District of Florida rose slightly above the national average. (See Chart 5). The narrow margin between the district and the national indexed average lifespan is testimony to the diligence of the court in this district.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92

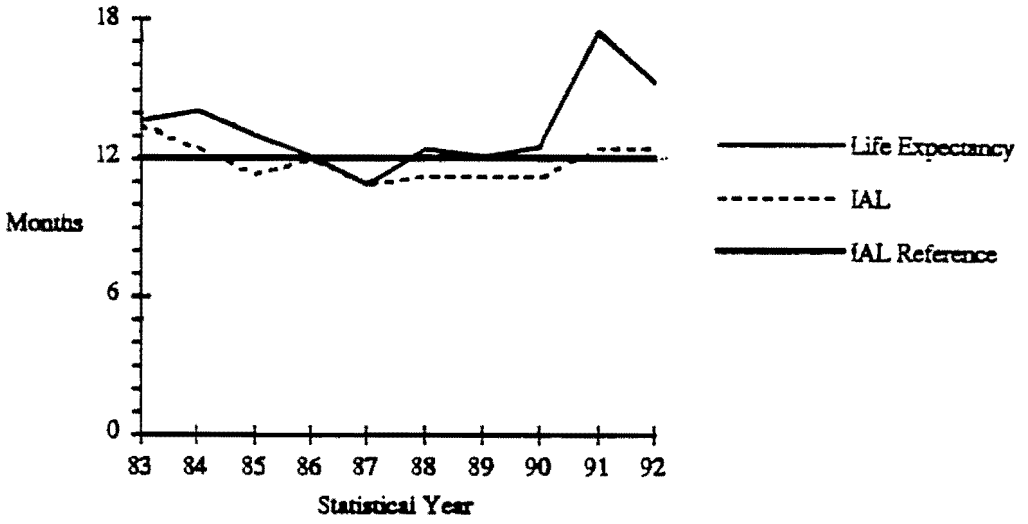


Since Chart 5 includes all civil cases, including those which may be disposed of quickly, the Federal Judicial Research Division has also developed an average lifespan for Type II civil cases, the more complex cases.[19] The district's life expectancy for Type II cases

[19] The federal courts have analyzed filings by category and developed statistical information differentiating between Type I cases, which are generally disposed of by the same or substantially the same procedures, and Type II cases, which are disposed of by a greater variety of methods. Type II cases generally involve more judicial time and more involvement of the judges in the myriad of details of case management.

began to rise in 1989, peaked at 18 months in 1991, and remains at almost sixteen months for 1992. The district's indexed average lifespan, however, hovers around the national average and does not indicate that the court has significantly more delay than other districts. (See Chart 6 below).

Chart 6: Life Expectancy and Indexed
Average Lifespan, Type II Civil Cases SY83-92

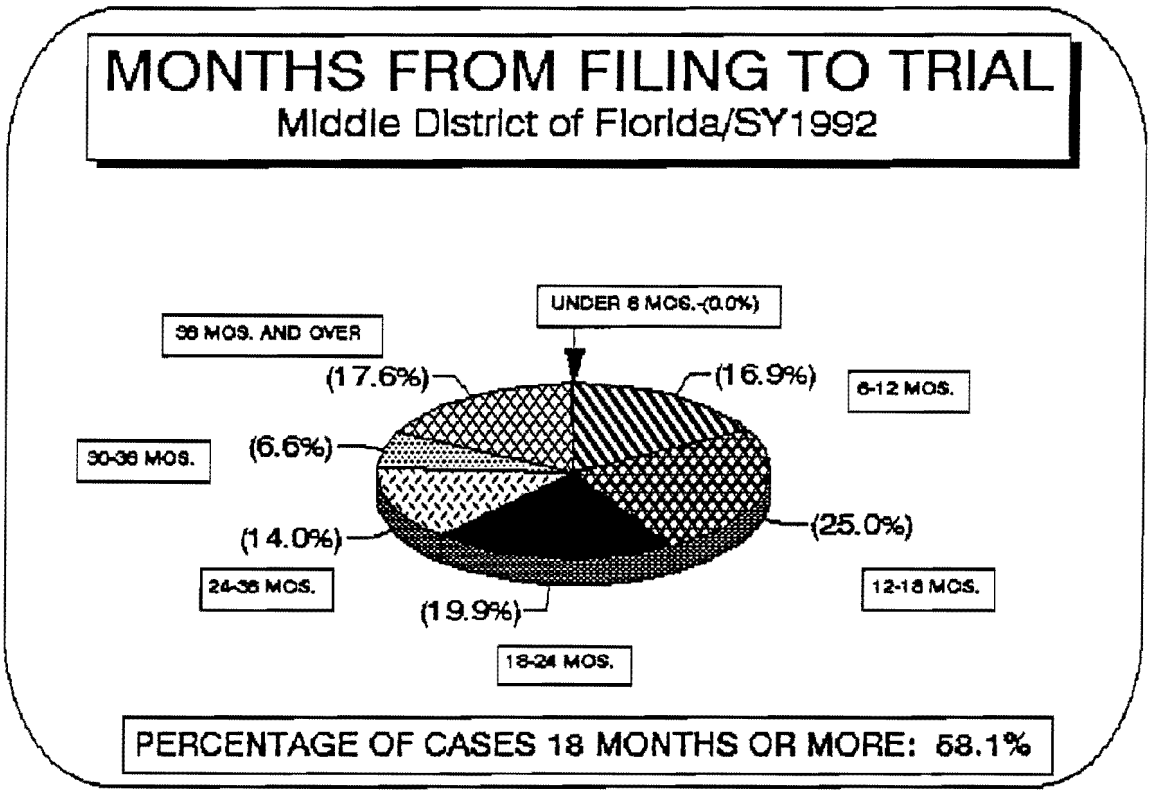


(3) *True Average Duration of Trial Track Cases*

The foregoing statistics, while helpful, do not focus on the actual (as opposed to median) time it takes to get to trial in the Middle District, a topic in which the Advisory Group was especially interested. Therefore, the Advisory Group gathered statistics on civil cases which actually went to trial to determine the true average duration of trial track cases district-wide, as well as in each division. We found that well over half of

all the cases tried in 1992 took *over* eighteen months from filing to reach that trial. (See Chart 7 below).[20] The breakdown by divisions demonstrated in Charts 8 through 11 shows that some delay is present in every division, but is most pronounced in Tampa where 80.7% of cases take more than eighteen months from filing to trial. Tampa has the most criminal filings of all the divisions (52.6% of all criminal cases are filed there).

Chart 7



[20] The Group would like to point out that neither median time nor time from filing to trial are unambiguous statistics inasmuch as median disposition time blurs distinctions between non-trial and trial track cases and true average duration may be affected by the smallness of the sample and the aberrational case which skews the average. More definitive judgments could be made if statistics were kept by nature of suit on length of time from filing or joinder to disposition in order to more accurately assess true average duration of civil cases in the district.

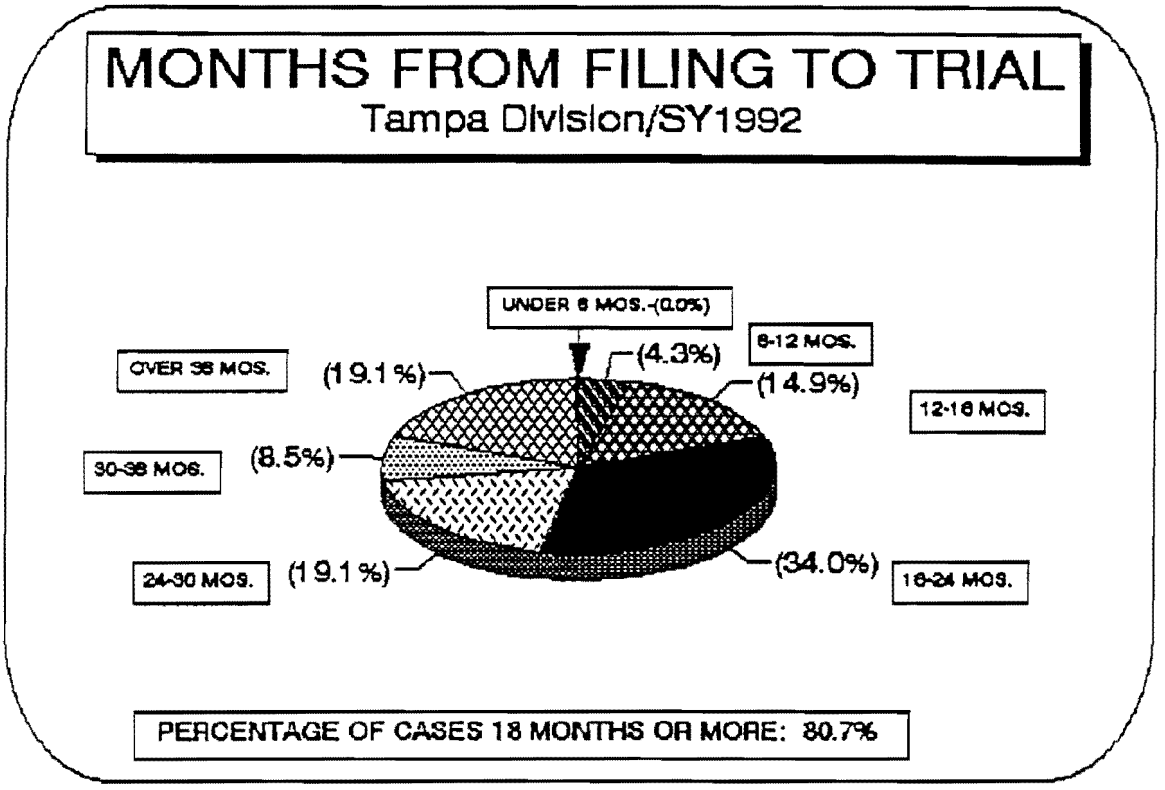
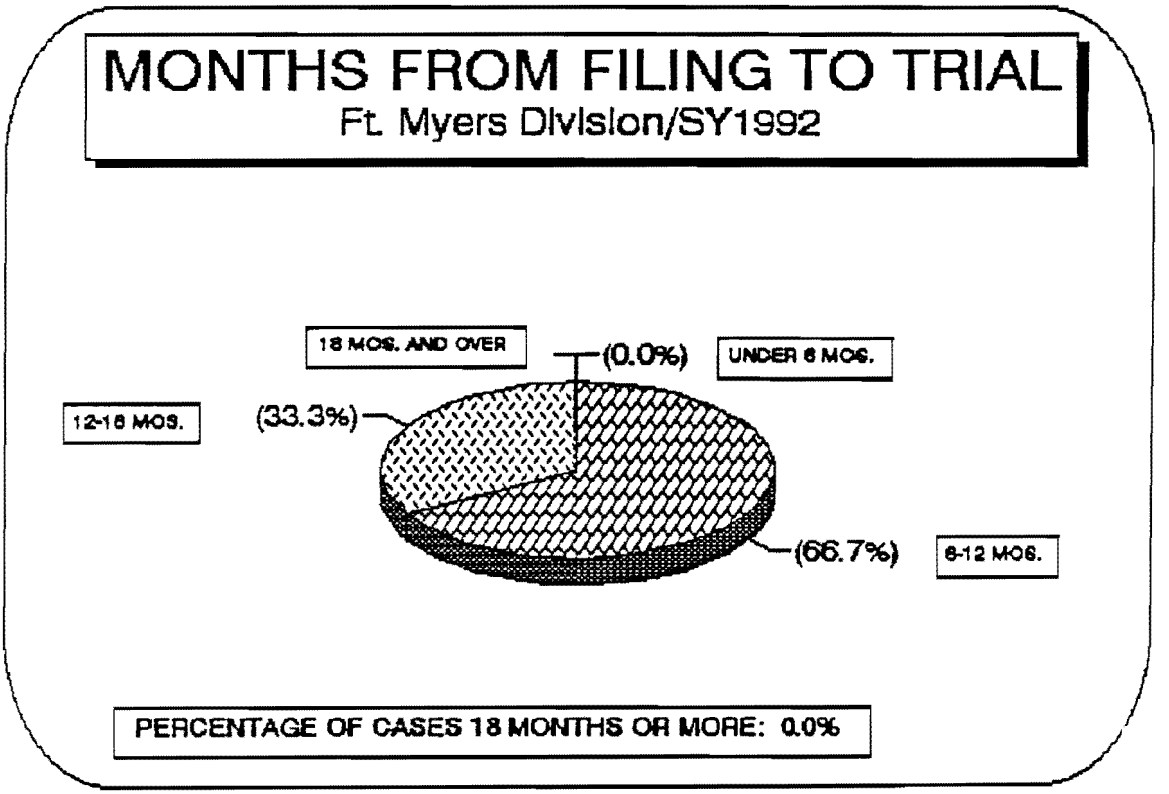


Chart 8

Chart 9



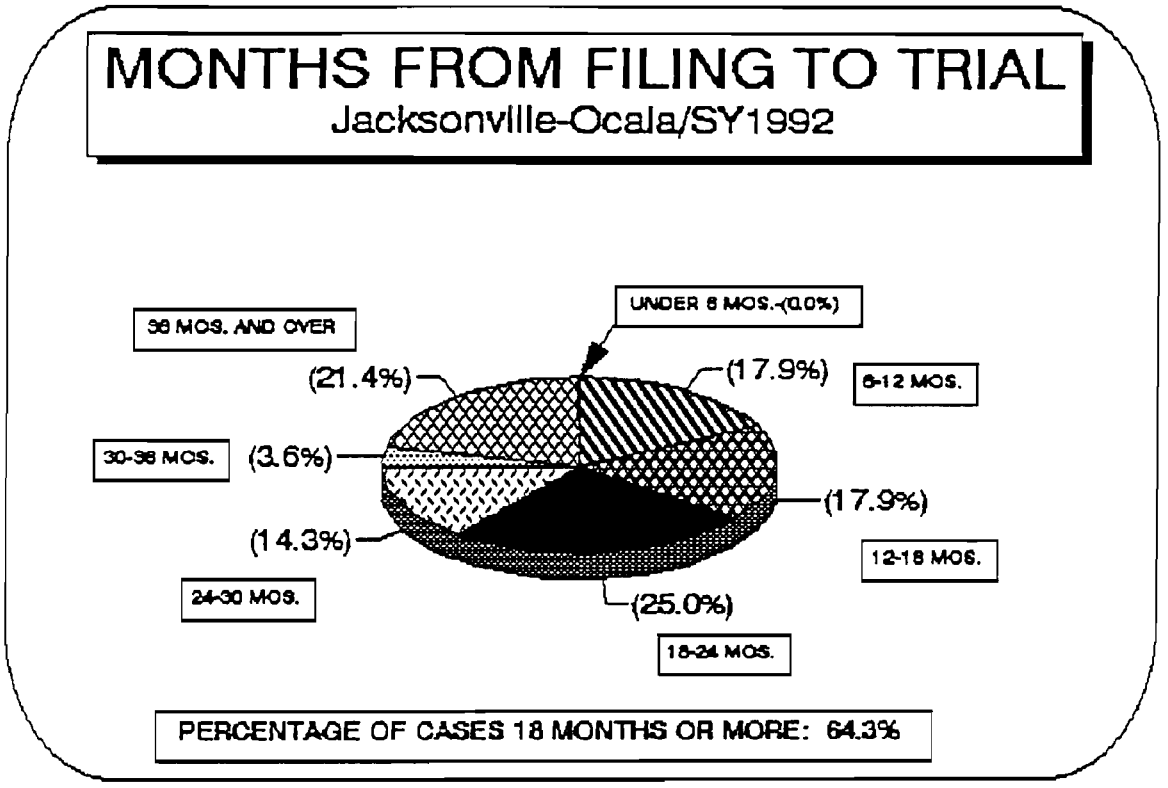
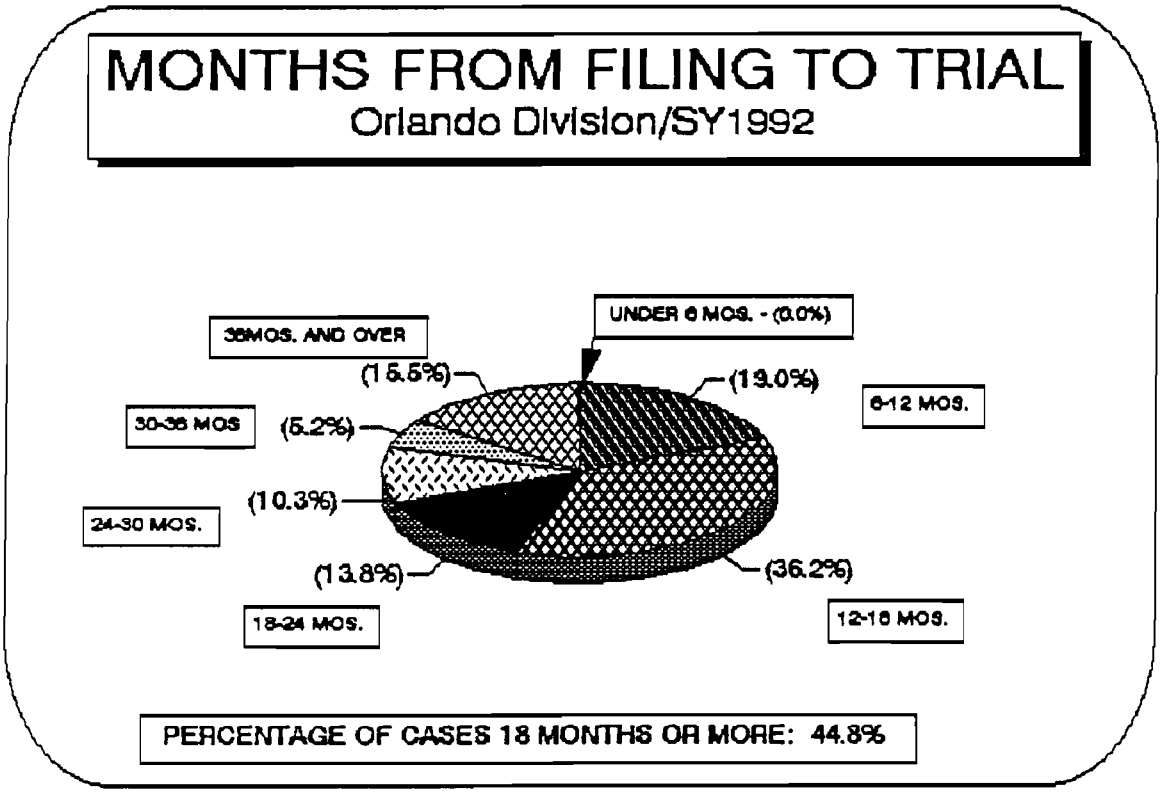


Chart 10

Chart 11



It should be noted again, that approximately half of the civil cases that are tried in the Middle District are being tried by visiting judges.

(4) *Age of Caseload*

(a) *Cases Pending Less Than One Year*

The Middle District of Florida had 2857 pending civil cases that were less than one year old as of June 30, 1992. This was 60.6% of all civil cases and is .5% higher than the national average of 60.1% for 1992.

(b) *Cases Pending One to Two Years*

There were 22.8% of cases between one and two years of age. This figure was 1.8% higher than the national average of 21% for the same period.

(c) *Cases Pending Two to Three Years*

In 1992, 12% of this district's pending caseload was two to three years old. This was 1.7% higher than the national average of 10.3%.

(d) *Cases Pending Three Years and Over*

As of June 30, 1992, the Middle District of Florida had 218 cases pending three years or more, representing 4.6% of the total pending civil caseload of 4712. The national average, which was 8.7% in 1992, is considerably higher.

(e) *Five-, Ten-, Fifteen-Year-and-Older Cases*

If the five-, ten-, fifteen- and twenty-year-old cases are factored out of the three year and over category, as of July, 1991,[21] the Middle District of Florida had 91

[21] The 1992 figures were not available at the time of preparation of this Report.

pending five-, ten-, fifteen-year-and-older cases, representing 1.9% of the total 1991 pending civil caseload of 4759. These cases are as follows:

CHART 12: Cases Pending 5, 10, 15 and 20 Years
SY1991

		Years			
		5	10	15	20
Contract-Real Property, Marine, Insurance	23	23	-	-	-
Prisoner Petitions-Civil Rights, General	20	18	-	-	2
Civil Rights-Employment, Housing	6	6	-	-	-
Securities, Shareholders' Suits, Antitrust	10	10	-	-	-
Personal Injury–Product Liability, Personal Property Damage, Motor Vehicle, Marine, Medical Malpractice	10	10	-	-	-
Bankruptcy–Withdrawal, Appeal	3	3	-	-	-
Taxes	2	2	-	-	-
ERISA	1	1	-	-	-
Miller Act	1	1	-	-	-
Environmental Matters	1	1	-	-	-
Selective Service	1	1	-	-	-
Trademark	1	1	-	-	-
Social Security–DIWC	1	1	-	-	-
Foreclosure, Forfeiture, Other Statutory Action	11	11	-	-	-
Totals	91	89	0	0	2

(5) *Specific Cases*

Finally, the Advisory Group has identified one particular category of case which, it is widely agreed, suffers from excessive delay – appeals. These appeals come from administrative denials of social security benefits and from bankruptcy court. While not great in numbers, these cases proceed very slowly to resolution. The Advisory Group believes that the civil justice system can better serve these types of litigants.

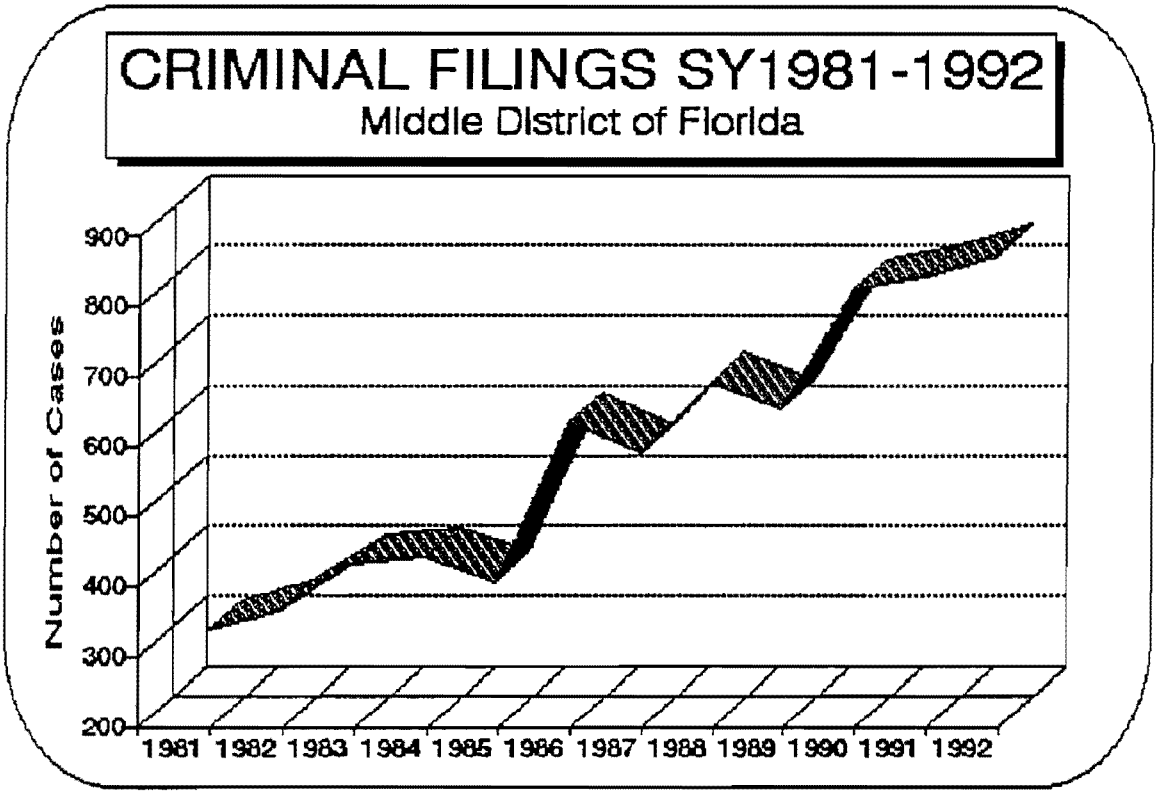
c. *The Condition of the Criminal Docket*

The Civil Justice Reform Act requires that the Advisory Group assess the condition of the criminal docket in order to determine the extent to which the court's criminal caseload may be a source of cost and delay in federal civil litigation. This section of our report has been prepared to fulfill this requirement. *See* CJRA § 472(c)(1).

1. *Criminal Filings*

Criminal filings in the Middle District have almost tripled since 1981 (from 294 cases in 1981 to 829 cases in 1992). Chart 13 below shows this dramatic increase. Criminal cases represented 14.4% of the total filings in this district in 1992.

Chart 13



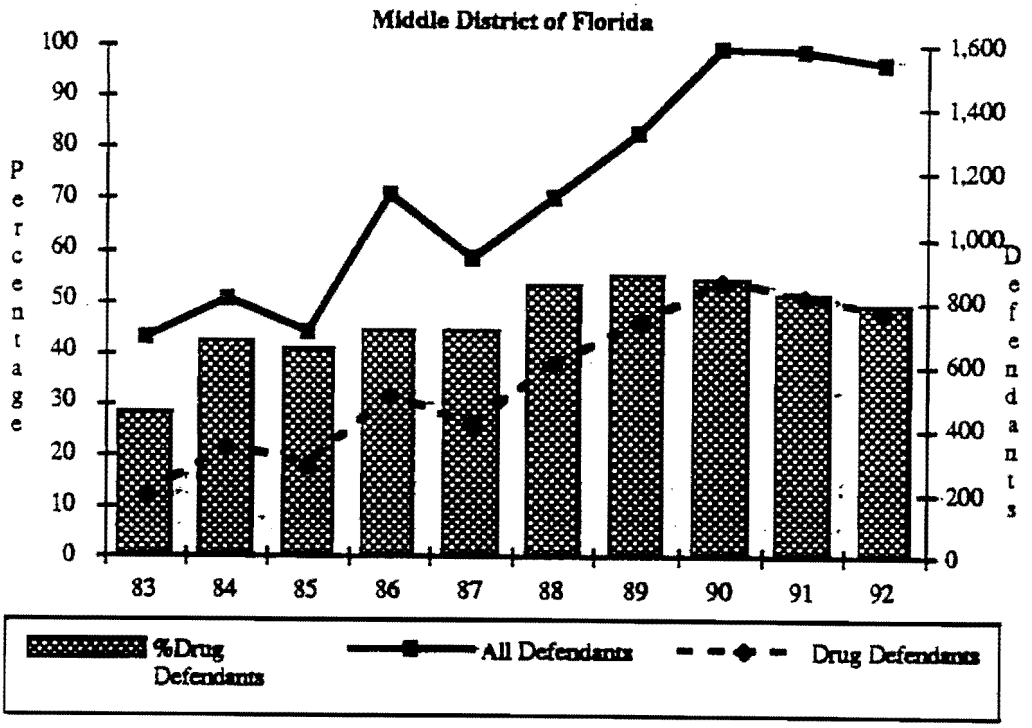
If criminal cases transferred to the district are included, the criminal felony workload per authorized judge in 1992 was 80 cases. If judicial vacancies are factored in, the total criminal caseload per active judge was 91 in 1992. (See Chart 2, p. 14).

Drug-related prosecutions have risen more than any other type of criminal case in the federal courts, increasing by 766% over the last decade. In 1982, 49 drug-related cases were filed, constituting only 15% of the criminal docket. By 1992, the 301 drug-

related cases filed accounted for about 36% of all criminal cases filed in this district. (See Chart 1, p. 12A, Nature of Suit, Categories F & G). Drug-related cases generally are more complex than most other criminal cases because they tend to involve multiple defendants, multiple transactions and complicated factual and legal issues. In 1985, there were 737 criminal defendants. In 1992, there were almost 1600 criminal defendants, an increase of 120%. Of these, approximately half were drug defendants. Chart 14 below shows these relationships and demonstrates that these levels have remained stable for the last three years.

Chart 14

Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY83-92



It is not uncommon for drug cases, especially those related to importation and distribution, to have multiple defendants per case. Accordingly, there has been an increase in the number of defendants per criminal case in the Middle District over the last ten years. By 1990, this district had twenty drug cases with 6-9 defendants, fifteen

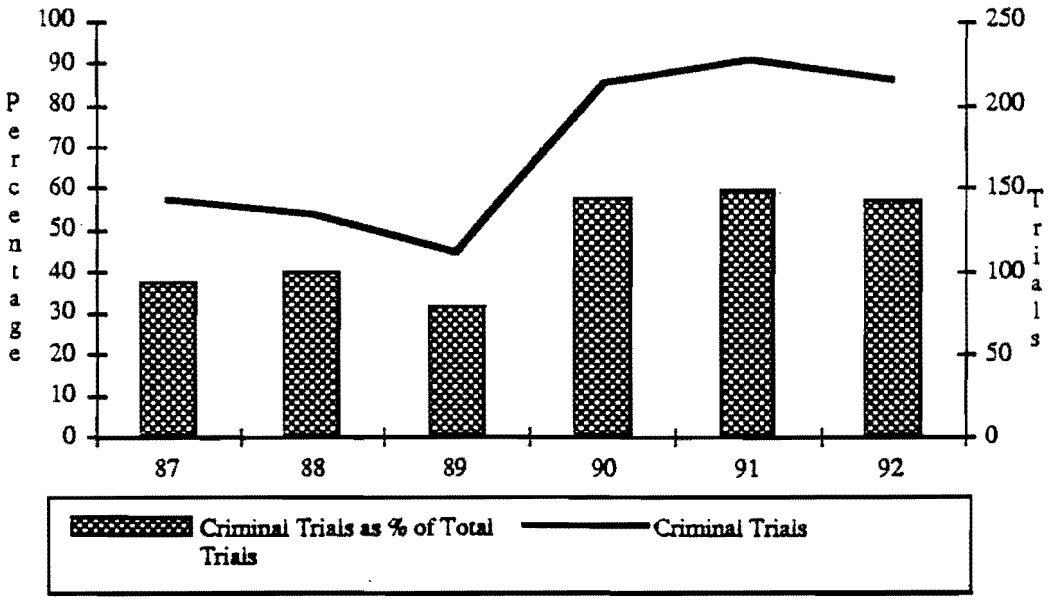
cases with 10-19 defendants, and four cases with 20 or more defendants. By comparison, the average number of defendants for a non-criminal case in the Middle District is two.

2. *Criminal Trials*

In 1987 in the Middle District, there were 80 criminal trials involving 139 defendants. In 1992, there were 206 criminal trials involving 319 defendants. From 1982 to 1992, criminal trials increased 60%.

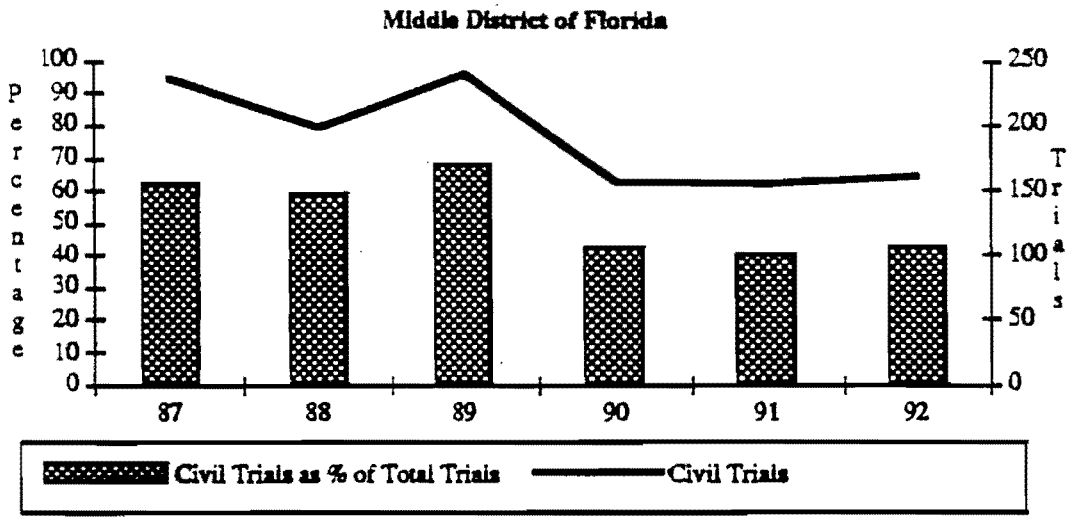
In addition, criminal trials make up an ever-increasing percentage of the total trials conducted in the district--from 40% in 1987 to almost 60% in 1992.

Chart 15: Number of Criminal Trials and Criminal Trials as as Percentage of Total Trials, SY87-92
Middle District of Florida



As a result, civil trials as a percentage of total trials have declined, as demonstrated in Chart 16 below.

Chart 16 Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY87-92



In addition to dominating the judges' trial calendars, criminal trials consume an ever-increasing share of the bench time of the judges in this district. Multi-defendant drug cases generally require more judicial time and support staff time than other criminal cases. According to statistics provided by the U.S. Attorney, the average major drug trafficking case takes nine days try. There have been 51 of those trials in the last three years. In 1990, the trial of members of the Medellin drug cartel occupied one judge for 118 trial days. This, in effect, eliminated that judge from conducting any other matters for seven and one-half months. Other categories requiring substantial bench time are bank fraud cases (ten days to try, 15 in the last three years) and governmental fraud (11 days to try, 12 in the last three years).

In 1987, prosecutors spent 6,240 hours in trial. By 1991, that number had risen approximately 60% to 9,976 hours of federal bench time.[22]

[22] Figures for 1992 were not available at the time of preparation of this Report.

The number of trial days consumed by criminal trials is illustrated by the following chart.

CHART 17: LENGTH OF CRIMINAL TRIALS COMPLETED IN THE MIDDLE DISTRICT FOR THE FOUR-YEAR PERIOD ENDED JUNE 30, 1992 (INCLUDES TRIALS OF MISCELLANEOUS CASES)

Year	Total	1 Day	2 Days	3 Days	4-9 Days	10-19 Days	20+ Days
1992	206	49	53	37	56	9	2
1991	221	50	56	40	57	16	2
1990	210	56	48	28	61	11	6
1989	108	24	31	18	21	10	4

2. *Trends in Case Filings and Demands on the Court's Resources*

a. *Criminal Docket Trends*

To manage this expansion of the criminal docket, the staff of the United States Attorney's Office grew from 30 Assistant United States Attorneys in 1980, to 95 in 1990, an increase of 217%. Much of this increase occurred over the last four years, when the U.S. Attorney's Office went from 50 to 95 attorneys, a 90% increase, during which time the number of active judges in this district actually decreased. [23]

This trend can be expected to continue. In August of 1989, former President Bush signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This legislation strengthened the civil and criminal penalties for bank fraud and was primarily a response to the deteriorating state of the nation's thrift

[23] In 1990, the Middle District was authorized two additional judgeships; however, it was 1992 before either of these positions was filled. See footnote 13, p. 13.

industry. In 1990, Congress further strengthened the criminal penalties under FIRREA.

Fourteen U.S. Attorneys have been hired in this district under the authority of FIRREA to investigate and prosecute significant bank fraud cases. These attorneys have just begun to bring actions under FIRREA. In 1991, the U.S. Attorney's Office filed 69 bank fraud cases (the previous high was 49 in 1990). As grand juries begin to return FIRREA indictments, there will be a substantial impact on the criminal docket and judicial workload, as it is expected these cases will require substantial trial time due to the complex nature of the cases.

Additionally, the U.S. Attorney's Office has been allocated 15 new attorney positions under the Organized Crime Drug Enforcement Task Force (OCDETF) program. The purpose of OCDETF is to identify, investigate and prosecute members of high-level drug trafficking and related enterprises and to dismantle the operations of these organizations. The OCDETF prosecutors are charged with the responsibility of prosecuting the complex, multi-defendant, multi-transaction drug trafficking and money laundering cases. The U.S. Attorney informs us that great emphasis is being placed on this program. As a result, there were 119 OCDEFT cases filed in 1991, representing a 190% increase over 1990. This trend is expected to continue. The law enforcement agencies primarily responsible for these types of investigations expect to grow and bring increasing numbers of these cases over the next several years.

From the perspective of the management and control of cost and delay in civil litigation, it is clear what the impact of these federal legislative and prosecutorial initiatives will be--substantially increased demands upon the judicial system. Absent an

increase in resources, the crush of the criminal caseload will necessarily diminish the capacity of the federal court system and of this court to carry out the mandate of the Act to reduce cost and delay in the disposition of its civil litigation caseload.

It must be remembered, however, that there are demographic, geographic, and social factors at work in this district which are driving the system toward an upward spiral in criminal case filings. Florida has the highest crime rate in the country, is a major drug trafficking center, and has an unusually high number of government transfer recipients. In addition, most of the state prisoners in Florida reside in the Middle District, and the district has suffered an unusually high number of bank failures. Therefore, it is abundantly clear that the demands of the criminal docket in the Middle District are not exclusively, or even primarily, the result of prosecutorial decisions made in this district. Rather, the criminal docket is the result of a combination of factors none of which will disappear in the foreseeable future.

b. *Civil Docket Trends*

The expansion of federal jurisdiction has not been limited to the criminal arena. In the last twenty years, Congress has created numerous federal causes of action which have resulted in an ever-increasing number of civil litigants in the federal system.

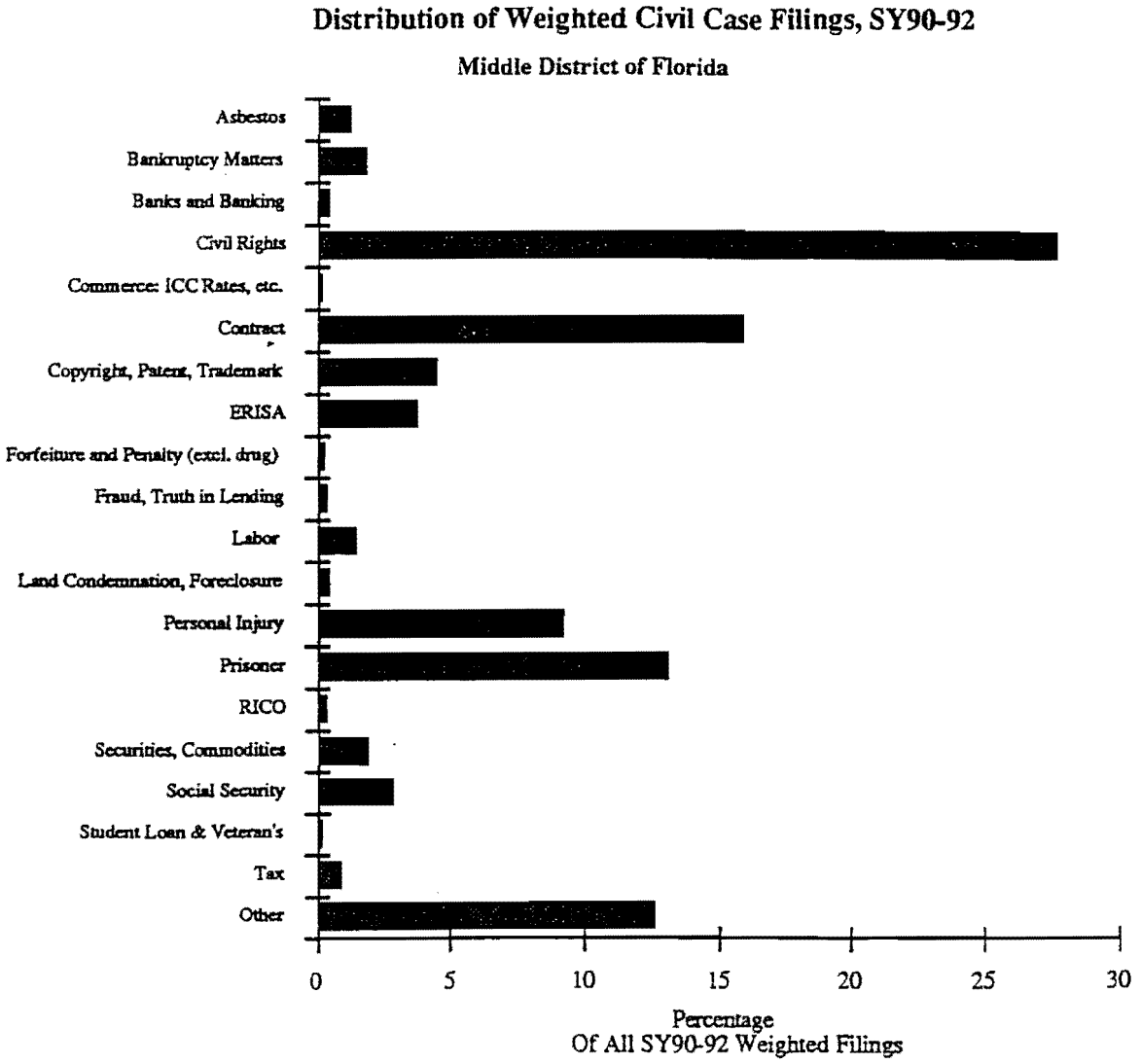
The Employment Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (ERISA), is a comprehensive federal scheme for regulating pension and other employee benefit plans. In 1982, there were 14 ERISA filings. In 1991, there were 140, an increase of 900% over the last decade.

In 1970, Congress enacted the Organized Crime Control Act, Title IX of which is known as the Racketeer Influence and Corrupt Organization Act (RICO). Although the number of civil RICO cases in this district decreased in 1991, approximately 20 civil RICO actions are still filed every year.

Of course, civil rights causes of action have been one of the areas of greatest expansion. Congress has created numerous causes of action for various sorts of gender, racial and age discrimination which have been widely utilized. Civil rights cases have doubled over the last decade and account for nearly 10% of all civil filings and almost 30% of all judge time. Recently, Congress enacted new legislation granting a right to jury trial for employment discrimination plaintiffs, which will increase the length of these trials. Furthermore, in 1989, Congress passed the Americans With Disabilities Act (ADA) which took effect on July 26, 1992. Affecting companies with 25 or more employees, ADA bars discrimination in employment, education, or access to public facilities against the 43 million Americans deemed disabled. The Act has an expansive notion of what "disabled" means, to include individuals with low IQs, most mental illnesses and a wide range of other problems (e.g., alcoholism and drug addiction). Furthermore, Congress neglected to define virtually all the crucial concepts in the act. The act requires that employers "reasonably accommodate" disabled job applicants, and that they may not set job standards that are "subterfuges" used to screen out disabled applicants. More than four years after passage, the Equal Employment Opportunity commission is still trying to define a subterfuge. The act also provides that employers need not accommodate applicants when doing so would represent "undue hardship."

Many observers believe that litigation under the act will inundate the federal courts. Chart 18 below shows the amount of judge time occupied by each category of case and demonstrates the enormous demand on judge time by civil rights cases.[24]

Chart 18



[24] The Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 18 employs the current case weights to show the approximate distribution of demands on district judge time among the case types accounting for the past three years' filings in this district.

As a result of the ever-increasing filings in this district, civil trials increased more or less steadily between 1982 and 1989. Chart 19 demonstrates this trend. In 1990, however, civil trials dropped 34%. This drop was precipitated by the increasing preoccupation of the judges with the criminal docket, and continued into 1991, the second six months of which (January 1-June 30, 1991) were part of the moratorium on civil trials by active resident judges. The trend continued into 1992.

CHART 19: CIVIL TRIALS COMPLETED
DURING THE ELEVEN-YEAR PERIOD ENDED JUNE 30, 1992
(includes contested evidentiary hearings)[25]

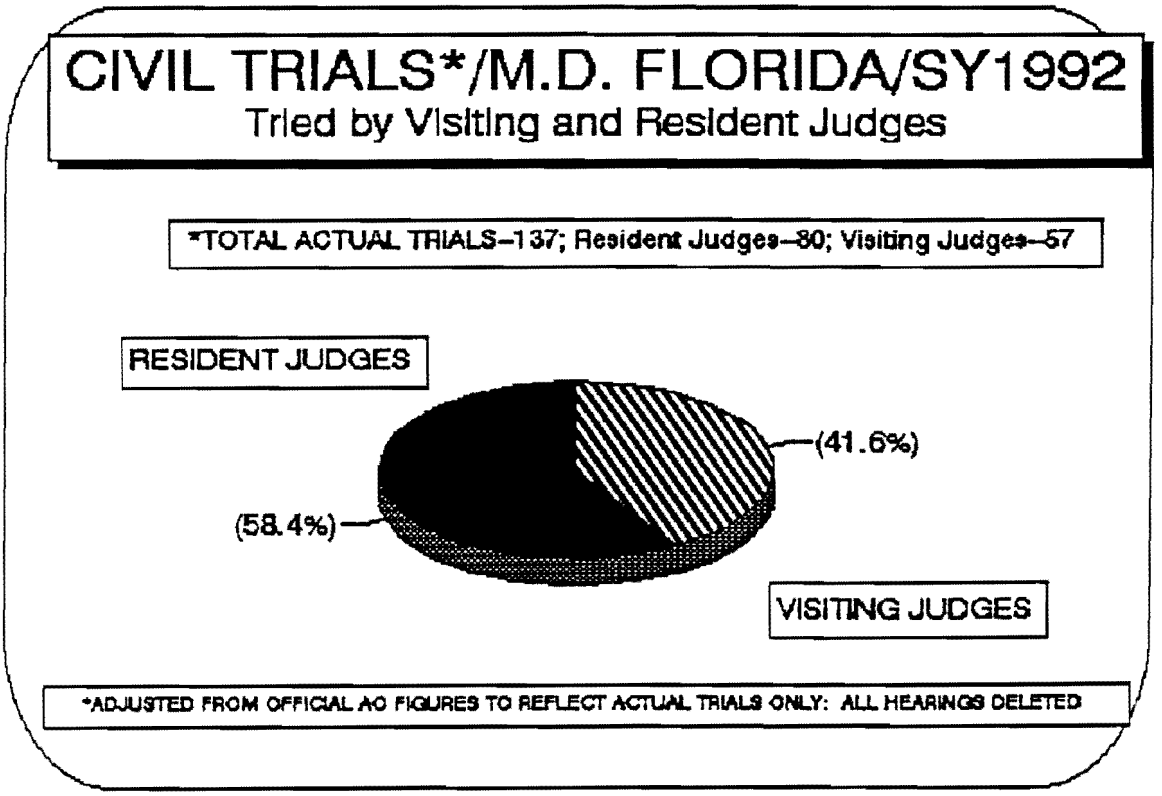
Year	Total-All Trials	Total Civil	Non-Jury	Jury
1992	370	164	93	71
1991	376	155	81	74
1990	367	157	95	62
1989	346	238	134	104
1988	326	193	126	67
1987	370	232	133	99
1986	339	196	110	86
1985	325	195	128	67
1984	353	220	153	67
1983	351	229	158	71
1982	321	192	132	60

[25] The yearly totals on this chart differ slightly from Chart 1 of this Report. This discrepancy is the result of differences in data collection and analysis between the *Federal Court Management Statistics* and the Judicial Business section of the Annual Report of the Director of the Administrative Office of the United States Courts. The Advisory Group has used the Administrative Office's statistics in this instance since it contains the information on non-jury and jury trials, information which is not available from *Federal Court Management Statistics*.

The drop in the number of civil trials conducted in 1992 becomes even more pronounced if contested evidentiary hearings are excluded from the 164 trials reported for 1992. Although these hearings occupy bench time just as though they were trials and for that reason are reported as trials, the Advisory Group wanted to look at actual civil trials, and so factored hearings out of the 1992 statistics. According to information provided by the Administrative Office of the United States Courts, 27 of the trials reported for 1992 were, in fact, contested evidentiary or motion hearings. Therefore, there were only 137 civil trials conducted in the Middle District in 1992.

Furthermore, as was pointed out earlier, any discussion of the number of trials completed in the Middle District is misleading if it does not take into account the number of trials which are completed in our district by the visiting judges. Fully 41.6% of all civil trials completed in the Middle District in 1992 were conducted by visiting judges. (See Charts 20 to 24 below).

Chart 20



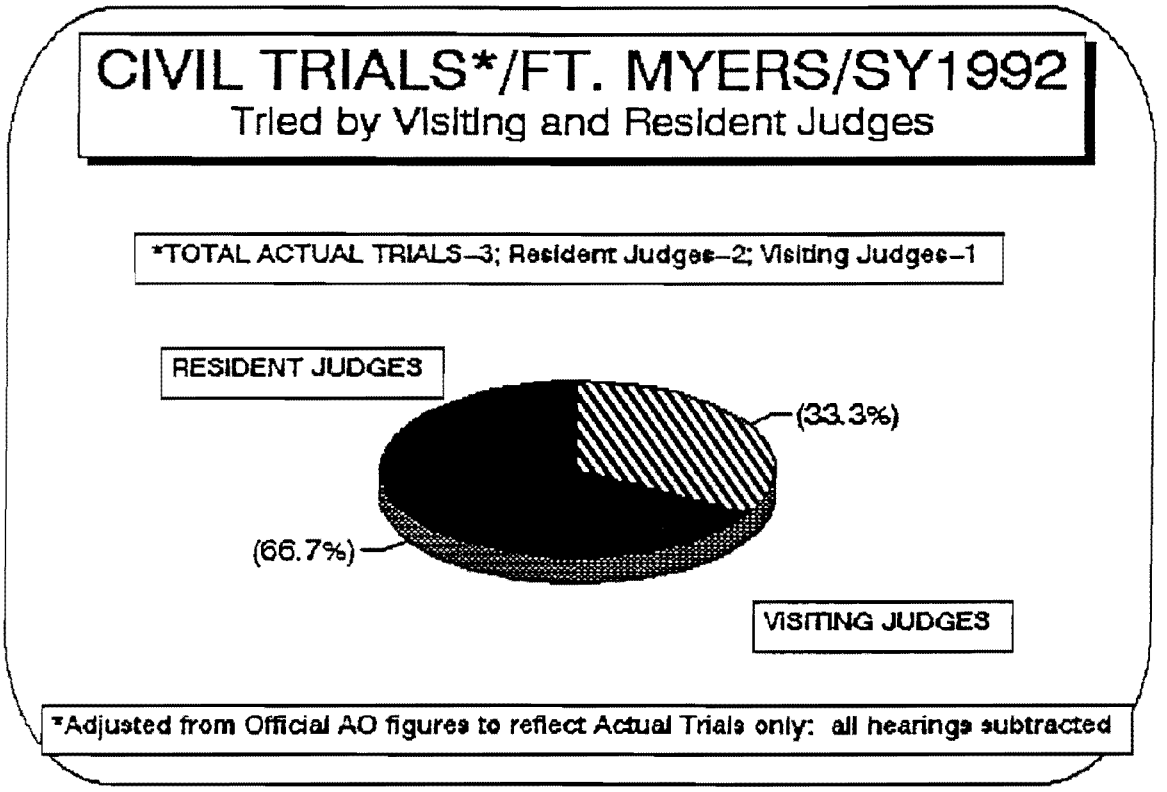
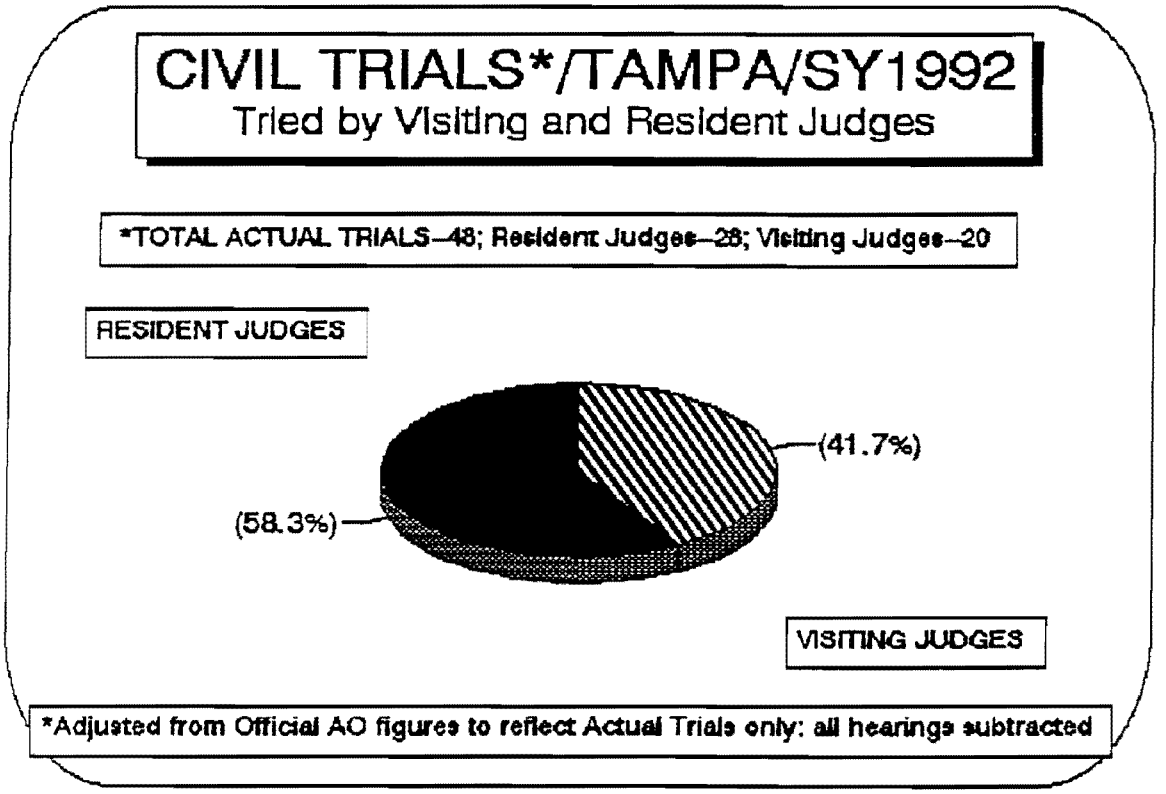


Chart 21

Chart 22



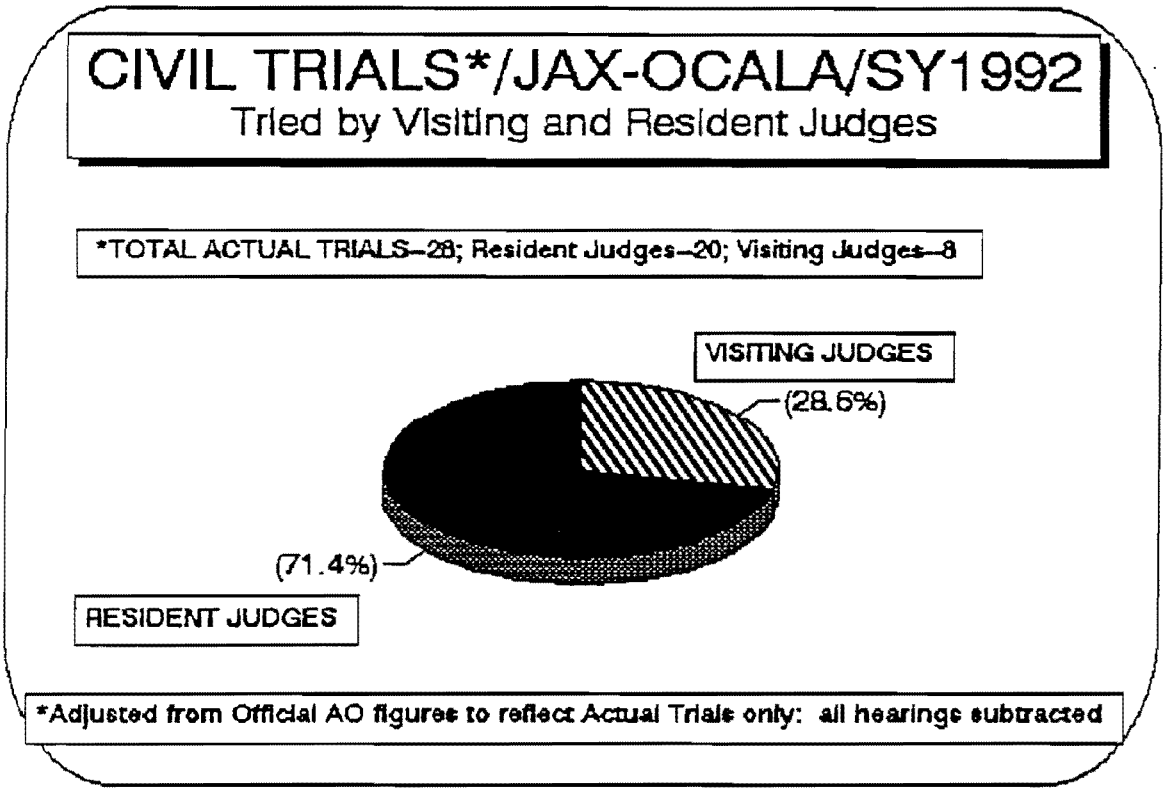
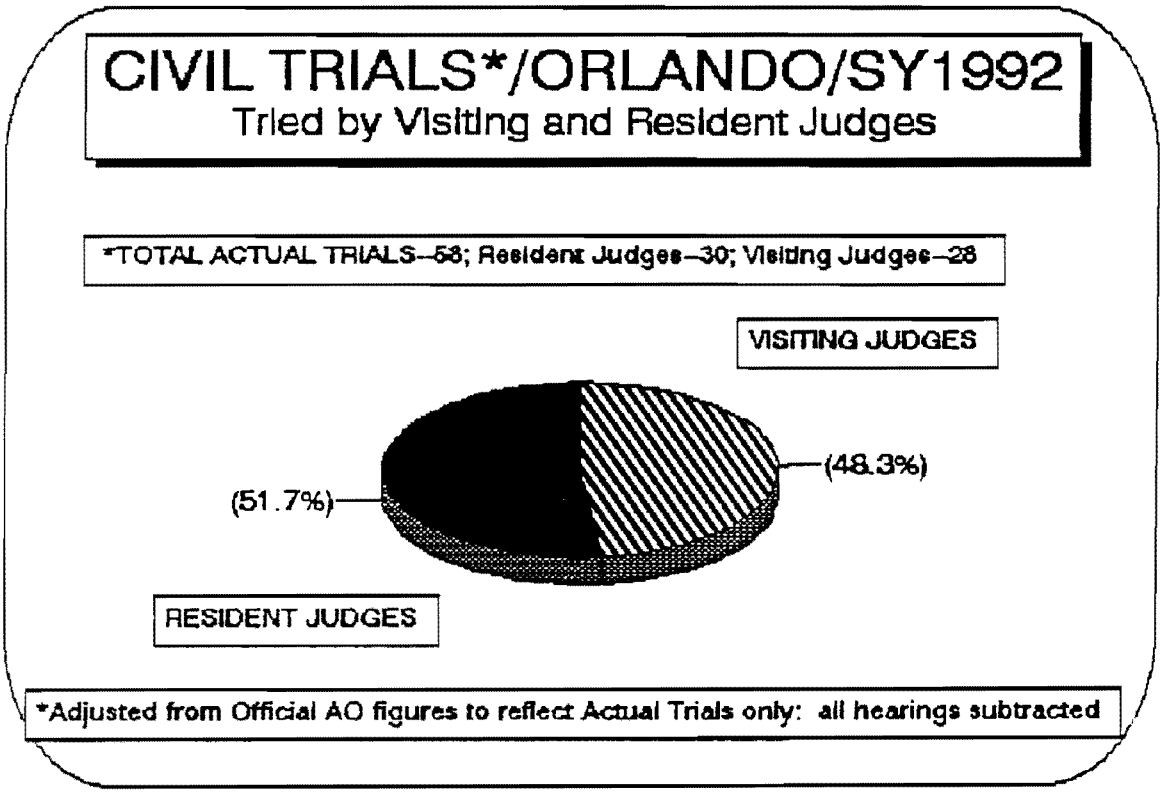


Chart 23

Chart 24

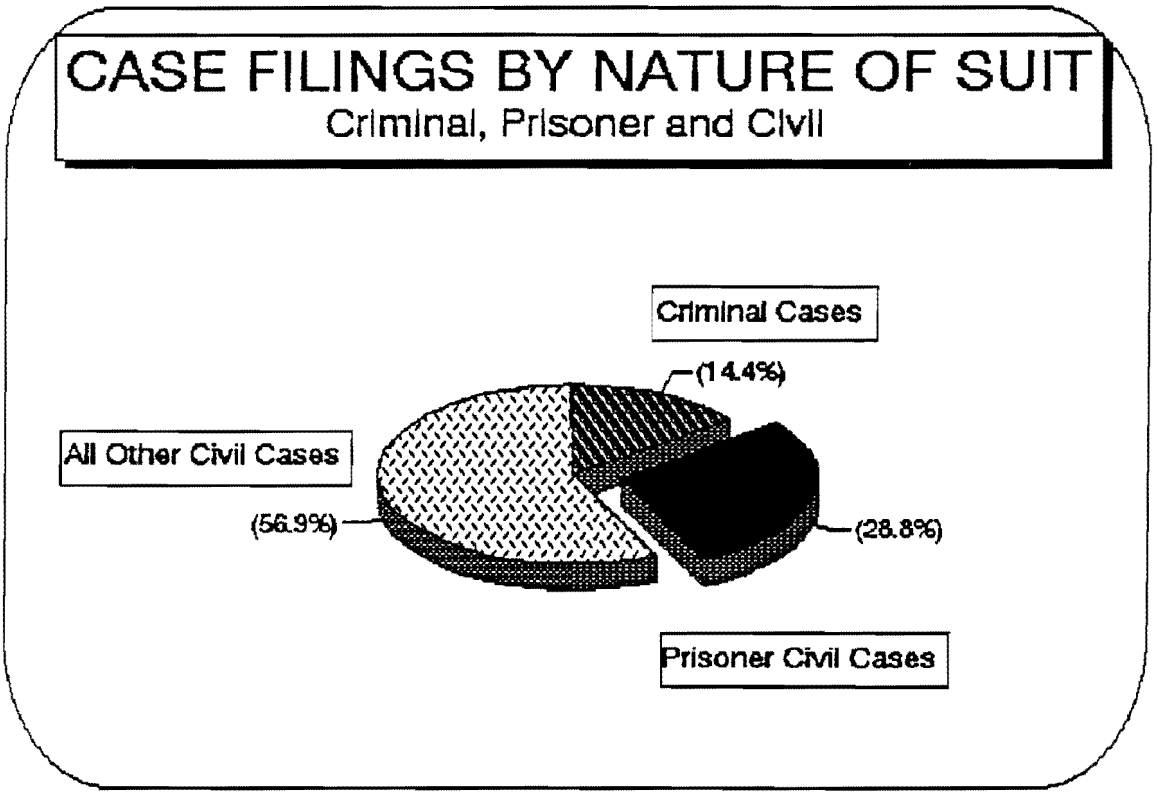


It must be noted, therefore, that almost all of the statistics reported here which indicate that the Middle District is staying reasonably abreast of its docket reflect the assistance of judges who are not resident in the district and whose future services are not mandated.

c. *Prisoner Litigation Trends*

In 1992, 1658 prisoner civil rights petitions were filed--an increase of over 50% from 1985 and fully 28.8% of the civil docket in this district.

Chart 25



Unfortunately, this already heavy caseload will soon increase. The Bureau of Prisons announced recently that it will construct a 3,000 bed federal prison, the district's first and the nation's largest in Sumter County which is in the Middle District. It is

scheduled to open in 1994. As a result, prisoner petitions are projected to rise by 40-50 per month.

3. *Trends in Court Resources*

a. *Authorized Judgeships*

While the number of authorized judgeships in the Middle District of Florida was increased by two to eleven judges in December of 1990, the number of filings justified the addition of three judges in this district. The district's request for a twelfth judge was not acted upon by the date of this Report. Furthermore, the case filings for the period ended June 30, 1992, now justify a thirteenth judge. However, it does not appear likely that Congress will authorize these judges in the near future.

b. *Vacancies*

Not only is Congress unlikely to increase the number of authorized judges in this district in the near future, but the district has had two vacancies for almost twelve months. As discussed above, it is the understanding of the Advisory Group that these vacancies will not be filled until Fall, 1993, at the earliest. That means that this district will labor under the burden of two authorized and two justified judicial vacancies for an indefinite period of time. This has contributed to delay in the civil docket in the Middle District of Florida and will continue to do so.

c. *Magistrates*

The district's request for one additional magistrate for the Tampa division was approved in September of 1992 and the magistrate will be at work by July, 1993.

d. *Physical Resources*

As has been discussed above, the district is in the process of constructing courthouses in both the Ft. Myers and Tampa divisions. These facilities should be completed by mid-1995 and summer, 1996, respectively. New courthouse annexes for Jacksonville and Orlando are in the planning stages.

Additionally, and probably more importantly for the reduction of cost and delay, the implementation of the computerized case management system and of the automated docketing system (ICMS) is on-line for civil cases and should be completed for criminal cases by the fall of 1993. For the first time, the judges will have the ability to efficiently investigate the status of their individual dockets and to monitor developments in any particular case.

B. ***Cost and Delay***

1. *Cost and Delay in the District*

The Advisory Group has reviewed all of the statistical evidence, information gathered from docket sheets, as well as the attorney questionnaires, judicial interviews, and information gathered at the public hearings. It is the conclusion of the Group that the Middle District of Florida has stayed reasonably abreast of its civil docket under the very difficult circumstances of the last three years. On the other hand, there has been a trend toward increased delay in this district. It is unclear, however, whether the circumstances of the last three years--52.2 months of judicial vacancies constituting almost one and one-half full-time district judgeships, plus civil and criminal dockets

which have dramatically increased--constitute anomalous circumstances producing only a temporary trend.

There is some support for this interpretation in the 1992 statistics. The life expectancy for civil cases, which had been declining from 1982 to 1986, began a slow but steady rise in 1986, jumped from 12 to 16 months between 1990 and 1991, and then dropped dramatically in 1992 down to 12 months. The number and percentage of three-year-old cases also declined in 1992 to 4.6%, well below the national average.

On the other hand, the median times for all civil cases from filing to disposition and from issue to trial are both showing slight, but steady, increases over the last five years. Also, civil trials are decreasing, both in absolute numbers and as the percentage of total trials. Finally, the resident judges in this district were able to try a total of only 80 civil trials in 1992--a remarkable number under the circumstances, but one which must be increased if the Middle District is to have an effective *civil* justice system.

Furthermore, the Advisory Group believes that the conditions which have produced this trend toward delay, are not anomalous, but chronic. All evidence indicates that the criminal docket will continue to dramatically increase. Congress continues to expand federal jurisdiction--both criminal and civil. Filling judicial vacancies remains problematic, with vacancies extending indefinitely. We conclude, therefore, that despite our court's best efforts, delay can be expected to worsen in the Middle District.

The issue of whether there is excessive cost in the Middle District of Florida is not as amenable to definition and determination as that of delay. Our primary source of information on excessive cost was the subjective perceptions of the bar in the Middle

District of Florida as reported both in attorney questionnaires and at a series of public hearings held throughout the district.[26] It was widely agreed that litigating in the federal courts is costly,[27] and that it is more costly than in state court. Discovery abuse and inadequate case management are considered important causes of this excessive cost.[28] Therefore, the Advisory Group believes that excessive cost is a problem in the Middle District of Florida to which some of our later recommendations are addressed.

The next section of our Report further explores the specific sources of excessive cost and delay in the civil justice system in the Middle District.

2. *The Causes of Cost and Delay in the District*

a. *Types of Cases*

The Advisory Group recognizes that the 1991 increase in the average life expectancy of a civil case in this district is in part the result of the moratorium on civil trials declared in 1991 by the resident judges. As discussed above, this action was precipitated by judicial vacancies coupled with the overwhelming demands of the criminal docket and the requirements of the Speedy Trial Act. Unfortunately, the Advisory Group believes that this crushing burden of the criminal docket is the hallmark of the future.

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[26] The Advisory Group held public hearings in Jacksonville, Orlando and Tampa at which both members of the bar and interested groups were invited to attend and comment on the issue of cost and delay in federal civil litigation.

[27] *See also Procedural Reform of the Civil Justice System, a Study Conducted by Louis Harris & Associates*, March, 1989, in which 900 lawyers and 147 federal district judges agreed that excessive transaction costs in federal civil litigation result in unequal access to justice.

[28] These reasons were also cited by the interviewees referred to in Footnote 27.

There is no doubt that the criminal docket will continue to dominate the trial time of the district judges--in fact, it is the expectation of the Group that the demands of the criminal docket will increase rather dramatically over the next few years. All of the causes of the expanding criminal docket are still present, and, in fact, have become more pronounced. Florida continues to reel from the effects of an exploding population with its attendant huge increase in the crime rate, the highest level of drug importation and distribution in the country, and very high rates of bank failure and fraud. Therefore, we conclude that the demands of the criminal docket in this district which have produced a trend toward increased delay in the termination of civil cases will continue and grow worse.

Criminal cases are not the only type of cases contributing to the trend toward delay in the delivery of civil justice in this district. As we have seen, there are too many civil cases as well. Over the last two decades, Congress has created a myriad of civil causes of action which clog the civil justice system. Civil rights cases alone currently consume almost 30% of district judge time. So long as Congress continues to create civil causes of action without allocating sufficient judicial resources to meet the demands of ever-increasing dockets, there will be excessive delay in the federal civil justice system--in every judicial district.

On the other hand, the indefinite expansion of the federal judiciary is not to be desired either. Many have noted the "perils of judicial numerousness"[29] which Chief

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[29] *See* former Chief Judge Robert P. Smith, Jr.'s discussion in *Department of Insurance v. Insurance Services Office*, 434 So. 2d 908 (Fla. 1st DCA 1983).

Judge Gerald Bard Tjoflat of the Eleventh Circuit Court of Appeals defined some time ago as the increasing probability of conflicting opinions. He noted that:

> This tremendous potential for instability in the rule of law creates a great deal of litigation. So you have a situation where you add judges to dispose of more cases, and at the court of appeals level, at least, the new judges may well cause more litigation than they can terminate.[30]

This result can be expected at the district court level as well. The solution is to constrict rather than continually expand federal jurisdiction. Much of the problem of excessive delay can be laid at the door of Congress, and the solution lies there as well.

Another type of case which constitutes a significant portion of the judicial workload for this court is prisoner petitions. This district has averaged over 1000 prisoner petitions a year for the past five years. In 1992, there were 1658 prisoner petitions filed, fully 28.8% of the total filings in this district, just over one-third of all civil filings.

These cases are almost always *pro se*, requiring substantial efforts on the part of the court to decipher claims and theories. This district has been a leader in developing creative ways to cope with this problem. In 1976, the district hired its first staff attorney to assist the judges in the Jacksonville division (which has 43% of the filings) in processing prisoner petitions. Several years later Jacksonville received a second staff attorney. More recently, the Orlando (22%) and Tampa (35%) divisions each received

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[30] Quoted in *The Third Branch, Bulletin of the Federal Courts*, Vol. 15, No. 4 (April, 1983) at 1.

a staff attorney for prisoner petitions. The district hired a fifth staff attorney in September, 1992, who is in Tampa.

These attorneys do all of the initial processing of the prisoner petitions, preparing orders for preliminary matters, and drafting such other orders as the magistrate and district judge may require. In this way the court has been able to keep current on its prisoner petitions. Nevertheless, the final resolution of these petitions must be made by the district judge, accounting for 13% of a district judge's work time (See Chart 18, p. 34). The trend is for this heavy burden on the judicial resources of this district to increase (See p. 39).

b. *Court Procedures and Rules*

In 1992, the Middle District of Florida ranked 15th out of 94 districts in the number of civil cases terminated. This high ranking, despite being understaffed, was achieved by active case management by the individual judges in this district as well as by the adoption of many innovative methods of case management and alternative methods of resolving disputes. The following is a discussion of the strengths and weaknesses of some of the case management practices of the judges in the Middle District.

Tracking The Middle District of Florida operates on an individual judge calendar system. Each case in this district is assigned randomly to a specific judge at the time of initial filing, and the case remains with that judge until final disposition. Upon receipt of the case, the district judge assigned to the case sends out a set of mandatory court interrogatories. The interrogatories solicit information regarding the nature of the case, the projected length of discovery and trial and the likelihood of settlement. The parties

are required to confer and report their answers to the court. Within 120 days of the filing of the complaint, and using the parties' answers as its guide, the court sends out a scheduling order in which time limits for discovery, the filing of dispositive motions and the date of the pretrial and, perhaps, trial are set. (*See* Local Rule 3.05). The case is then "on track" for orderly progress. The judges vary on whether they hold a preliminary pretrial conference at this point.

By standing order or local rule, certain cases are diverted from this "normal trial track." These cases include recovery cases, prisoner petitions, review of administrative decisions (largely social security cases), mortgage foreclosures, and habeas corpus petitions.

The largest number of "diverted cases" are prisoner petitions. The staff attorneys prepare reports and recommendations on these cases for the magistrate's review and resolution by the district judge. Among the other diverted cases, social security cases are sent to the magistrate judges for a report and recommendation before proceeding to their assigned judge, and recovery and mortgage foreclosure cases are handled largely by the U.S. Attorney's Office.

In this manner, the diverted cases are treated differently from other civil cases and receive a form of expedited review. Their resolution involves less district judge involvement, which, because of their volume, is necessary if they are to be resolved expeditiously.

On the other hand, the remainder of the civil cases are not differentiated in any institutionalized fashion. While one judge may make an effort to separate the complex

cases from the more simple ones and to treat those cases differently, another may not. Whether a judge "manages" the case in any formal way after the scheduling order varies too widely to summarize. Some judges hold status and settlement conferences. Others do not actively manage a case any further unless requested to do so by the parties.

It is the opinion of the Group that the types of procedures which the district has developed for the "diverted" cases have been largely instrumental in keeping this district in the forefront of case management techniques for such cases, as well as in keeping it relatively current on its docket. The use of the staff attorneys for the prisoner petitions and the broad use of magistrate judges for the other diverted cases reflects a thoughtful and creative approach to the identification of cases which can be processed in a different and more efficient way than the normal trial track civil case.

However, there are differences among the cases which we have labelled "normal trial track" cases which if identified and acted upon might help the court to process these cases in a more efficient and less costly manner. Early, hands-on management through the expanded use of Rule 16 conferences by the district judge could expedite the initial stages of those cases which are complex and clearly on a trial track. Identification of these cases and proper tracking of them will be the focus of some of the Group's later recommendations.

Alternative Dispute Resolution The Middle District was one of ten pilot courts in the country for the development of a court-annexed arbitration program. In our district, the referral to arbitration is automatic and mandatory for certain types of cases. This includes any civil case filed which consists of a claim(s) not in excess of $150,000

(certain cases are excepted from mandatory arbitration, including, for example, civil rights cases). The parties in other cases may consent to voluntary arbitration.

Arbitration is an early disposition program for the lower dollar, less complex case. The Clerk of the Court notifies the parties that their case has been referred to the program within twenty days of its being at issue. No more than three arbitrators are selected. The arbitration hearing is held within ninety days of their selection. The case is presented to the arbitrators primarily through the statements and arguments of counsel who then evaluate the claims and issue an award which is filed with the Clerk. Within thirty days, any party may demand a trial *de novo*. If the final judgment is not more favorable to that party, however, they are assessed the amount of the arbitration fees. (*See* Local Rules, Chapter 8)

In 1992, 569 cases representing 11.5% of the relevant caseload in this district were assigned to the arbitration tract. There were 86 hearings conducted, and 70 trials *de novo* were requested. One case proceeded to trial.

There is disagreement in this district over the extent to which arbitration contributes to the pretrial settlement of civil cases. Some point to the fact that 70 trials *de novo* were requested in the 86 arbitration hearings held as proof that arbitration does not resolve cases. Some argue that since only one arbitrated case ultimately proceeded to trial, arbitration clearly works. Others assert that this result merely reflects the fact that over 94% of all civil cases in this district settle with or without arbitration. There is, however, widespread agreement among the bar in the district that arbitration is no longer as successful as it once may have been. In fact, much of the bar reports that

mandatory arbitration has become a primary source of increased cost in civil litigation. They believe that arbitration occurs too early in the litigation and that it results in an exercise which is increasingly pro forma, and that the costs associated with preparing for arbitration are not justified.

On the other hand, mediation enjoys wide support. Mediation in the Middle District of Florida is a supervised settlement conference presided over by a qualified, certified and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action. (*See* Local Rules, Chapter 9, Section 9.01)

The mediator is an attorney, certified by the Chief Judge in accordance with the local rules, who possesses the unique skills required to facilitate the mediation process, including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The local rule does not allow for testimony of witnesses in the mediation process. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report only to the presiding judge as to whether the case settled, was adjourned for further mediation (by agreement of the parties), or that the mediator declared an impasse.

Mediation has enjoyed great success in the state courts of Florida during the last five years and there is enthusiasm for expanding its role in the federal courts. Therefore, the Advisory Group will recommend some changes in the district's alternative dispute resolution rules.

Trailing Calendar The trailing calendar employed by most districts is used to maximize the efficient use of a judge's trial time. In this way, if a case settles on the eve of trial, as they are likely to do, there are cases trailing it on the judge's trial calendar which can then be tried.

The problem, of course, is that attorneys and litigants must prepare for trial not knowing if they will actually try their case at all or at what point during a calendar which may span several weeks. Witnesses must travel, and all other preparations completed for a trial which often never takes place. There is no doubt that this preparation greatly increases the cost of a civil case if it must be done more than once. Additionally, the setting of firm trial dates guarantees that all other dates set by a scheduling order are taken more seriously by attorneys and litigants and continuances, and, therefore delay, can be reduced.

In this district, the civil calendar almost always trails the criminal calendar. With the expansion of the criminal caseload, the civil calendar is often not reached at all. There is unanimous agreement that if something can be done to make it possible for the judges of this district to set early and firm civil trial dates that do not trail a criminal calendar, that not only delay, but also the cost of civil litigation could be reduced for many cases. The Advisory Group believes that no other reform could generate more positive results in the reduction of cost and delay than this one.

Motion Practice Motion practice is individually managed by each judge. The judges vary in their willingness to permit oral argument. The Advisory Group found a widespread perception among the bar that an important source of delay in federal civil

litigation lies in the failure of some judges to rule upon their pending motions, especially dispositive motions. While the Advisory Group has investigated the validity of this perception, it is our belief that this area has been too impacted by the civil moratorium and the judicial vacancies for us to be able to draw any valid conclusions on this point. Nevertheless, it is clear from the pending motion report prepared by the Clerk's Office as required by the CJRA that there are a great many pending motions of some age. (See Appendix E). The Advisory Group believes that failure to rule on such motions does cause delay in civil litigation and will address this issue in its recommendations.

c. *Court Resources*

First, the failure of Congress to authorize the two additional district judges justified by the case filings in this district is a major source of delay. Congress must grant the judiciary adequate resources to manage the ever-increasing case filings. This failure to provide adequate resources will continue to result in excessive cost and delay in civil litigation in the Middle District.

Second, persistent judicial vacancies cause delay. Unfilled vacancies are probably the single greatest source of delay in the Middle District. The Middle District's over 52.2 months of vacancies between January 1990 and early 1992 resulted in a moratorium on civil trials. Although those vacancies were finally filled in early 1992, the Middle District has two new judicial vacancies which remain unfilled well into 1993. The district is, therefore, right back where it was in early 1991 when the civil trial moratorium was declared.

Unfilled judicial vacancies constitute a serious and continuing problem in the federal judiciary. The process of filling these vacancies is cumbersome, inordinately time-consuming, and subject to the vagaries of politics. Reform of the process is long overdue if persistent vacancies are to be eliminated as an intolerable source of delay.

Third, although, under federal statutes, the parties to a civil case may consent to trial before a magistrate judge, such consent has been historically underutilized. The Advisory Group believes that expansion of trial before a magistrate judge could facilitate resolution of civil cases and reduce delay in the Middle District. This practice helps to alleviate docket pressures on the district judges as well as provide a forum for earlier trial than the district judge's dockets might permit. The ability of the court to encourage trial before magistrate judges in civil matters has been broadened by the Judicial Improvements Act of 1990. Now judges and magistrate judges may advise civil litigants of the option to consent to trial before a magistrate judge. More should be done to increase acceptance by the bar of the practice of trial before a magistrate judge and the Advisory Group's recommendations speak to this issue. The Advisory Group believes that consent to trial by the magistrate judge is an opportunity which this district in particular must cultivate.

d. *Litigant and Attorney Practices*

The principal contribution of litigants and attorneys to the problems of cost and delay in federal civil litigation in this district, as elsewhere, is protracted and unnecessary discovery. The problem areas identified in the literature and in our interviews, questionnaires, and hearings include: excessive reliance on motions and formal

discovery; inattention to cases in their early stages; the number and length of depositions; the use of expert witnesses and their associated costs; the volume of documents sought in discovery and the subsequent use of those documents; and discovery with respect to parties, witnesses, and issues that are marginally involved in the litigation.

Protracted, unnecessary discovery and unnecessary discovery disputes are nationally recognized sources of both cost and delay, as a result of which there will be changes to the federal rules of civil procedure next year which will address many areas of discovery which have been subject to abuse by litigants and attorneys. The next section of this report contains our recommendation regarding tracking which calls for active participation by the court, litigants and attorneys in effective case management.

e. *Congress and the Executive Branch*

Congress and the executive branch have also contributed to the problems of cost and delay in this district. In recent years, Congress has passed legislation extending the reach of federal law enforcement activities, and decisions of the executive branch through the Department of Justice have extended areas of concurrent law enforcement jurisdiction with the result that the federal criminal docket has increased dramatically.

The Speedy Trial Act of 1976 requires that all criminal defendants, absent waiver, be brought to trial within seventy days. This Act ensures that criminal trials take precedence on the federal trial docket.

The Bail Reform Act of 1984 makes it more difficult for federal criminal defendants to get bail, thus reducing the likelihood of a waiver of their Speedy Trial Act rights.

The Sentencing Reform Act of 1984 and the United States Sentencing Guidelines issued under the Act have also had a tendency to increase the judicial workload. The guidelines apply to all federal offenses committed after November 1, 1987. They require the court to make a series of factual determinations and then to impose sentence within particular, narrowly defined limits. These guidelines, which generally impose longer sentences than are typically imposed in state courts for the same underlying offense, create an incentive to prosecute in federal court. As a result, prosecutors may be bringing into federal court cases that they would have earlier left for state prosecution. This "federalization" of state crimes is especially appealing in the state of Florida where the state prisons are under federal court orders capping prison populations resulting in early release for many offenders. Under these circumstances there is an even greater incentive to prosecute in federal court where convicted felons serve their sentence without the possibility of early furlough or even parole.

Furthermore, although the percentage of defendants who plead guilty has remained around 74% over the last five years, the U.S. Attorney for the Middle District reports that the recent trend is toward a decline in those pleas. Under the sentencing guidelines the incentive to plead guilty has diminished because the sentence imposed at trial may not be significantly different from the sentence imposed after a guilty plea. Since there is not a substantial reduction in sentence after a guilty plea, and given the chance a jury may acquit, there may be a greater incentive to go to trial. As guilty pleas decline, criminal trials increase.

The guidelines pose additional problems in cases involving offenses for which the guideline sentencing range is established on the basis of the total amount of harm or loss, the quantity of controlled substances involved or some other measure of aggregate harm, or whether the offensive behavior is ongoing or continuous in nature. Such cases include the multiple defendant drug conspiracy case. In these cases, the guidelines require the district court to determine the total quantity of controlled substances attributable to the conspiracy, and the amounts attributable to individual members. Although the guidelines allow the parties to reach non-binding factual stipulations on these and other issues, defendants in these cases often have an incentive to insist on full evidentiary hearings because the court's quantity determination greatly affects the applicable prison time range. Thus, the sentencing guidelines have increased the significance of factual disputes between the parties in the sentencing process, with a resulting impact on the length and complexity of both the preparation of the presentence report and the sentencing hearing. These hearings frequently become mini-trials with a corresponding demand on the court's resources. For that reason, many judges now report their time on the bench in sentencing hearings as non-jury trial time. Chart 26 below reflects this practice in the increase of 95% in the number of non-jury trials between 1989 and 1991, a rise almost totally attributable to sentencing hearings (the chart counts as non-jury trials all contested evidentiary hearings).

CHART 26: CRIMINAL TRIALS COMPLETED
DURING THE ELEVEN-YEAR PERIOD ENDED JUNE 30, 1992
(INCLUDES TRIALS OF MISCELLANEOUS CASES)

Year	Total-All Trials	Total	Non-Jury	Jury
1992	370	206	43	163
1991	376	221	52	169
1990	367	210	57	153
1989	346	108	25	83
1988	326	133	25	108
1987	370	138	28	110
1986	339	143	39	104
1985	325	130	25	105
1984	353	133	27	106
1983	351	122	24	98
1982	321	129	38	91

Additionally, in March of 1991, former Attorney General Thornburgh announced the initiation of a new program, "Operation Triggerlock," under which there would be increased prosecution in federal court of state cases involving firearms by using federal laws prohibiting the use of firearms to commit violent crimes. According to our U.S. Attorney's Office, these cases now constitute approximately five percent of the criminal docket in the district.

The impact of these legislative and executive initiatives on the overall criminal caseload of this district has been dramatic, as we have seen above. The explosion in civil and criminal filings in the federal courts is, in large part, the handiwork of

Congress. There can be no doubt that the continued expansion of criminal jurisdiction and channeling of resources into the U.S. Attorney's Office by the legislative and executive branches and the profligate creation of federal civil causes of action without consideration of the impact these have on the judicial branch will result in the breakdown of the system. There will not only be cost and delay in the federal system, there will be meltdown.

While the Advisory Group understands the desire of Congress and the executive branch to do something about the spiraling crime rate in this country, and to make the federal courts available to rectify violations of civil rights, there can be no doubt that these goals have been pursued without much consideration of the impact on the civil justice system. In terms of our responsibility to identify the sources of cost and delay in civil justice in the federal courts, these executive and legislative decisions are clearly major contributors.

III. RECOMMENDATIONS AND THEIR BASES

A. *Recommended Measures, Rules and Programs*

Pursuant to CJRA § 472(b)(3), the Advisory Group makes the following recommendations to reduce cost and delay. We have organized these recommendations under the same categories used to examine the causes of cost and delay: (1) Types of Cases; (2) Court Procedures and Rules; (3) Court Resources; (4) Litigant and Attorney Practices; (5) Congress and the Executive Branch.

1. *Types of Cases*

The Advisory Group has identified the greatly expanding criminal caseload as a major contributor to delay in civil justice in the Middle District of Florida. Prisoner litigation was also identified as a significant portion of the district's workload which impacts on the court's ability to move the civil docket. [31]

Civil Division

RECOMMENDATION 1: The court should adopt whatever measures necessary to insure that civil cases are tried regularly by the resident judges. If sufficient resources can be obtained under the Civil Justice Reform Act or otherwise, the Advisory Group urges the adoption of civil and criminal divisions with the following provisions.

CIVIL DIVISION

The civil division shall operate district-wide and shall consist of at least one district judge in the Tampa, Jacksonville and Orlando divisions, to whom all civil cases

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[31] Social Security and bankruptcy appeals, which were identified as types of cases which suffer from delay, will be discussed under "Court Resources," p. 73. The problem of rapidly expanding federal jurisdiction is addressed by Recommendation 29, p. 84.

filed in that division shall be assigned. Civil cases filed in Ft. Myers shall be assigned to the Tampa civil division judge. Civil cases filed in Ocala shall be assigned to the Jacksonville civil division judge. The civil division judge shall be removed from the criminal case draw 70 days prior to moving into the civil division and shall not again draw criminal cases until 70 days before leaving the civil division. The civil division shall have the responsibility of trying all civil cases within the district. The judges assigned to the civil division will insure that civil litigants are given access to the court for resolving disputes through the various procedures as set forth in this report.

The civil division will strive to hold hearings when requested by a party and deemed helpful by the court. The civil division shall strive to rule upon motions within four weeks of their becoming ripe or of oral argument on the motions.

The Chief Judge will coordinate the judges of the civil division and recommend that a judge from one geographic division assist in the civil docket of another geographic division, if necessary, to insure that civil litigants are provided fair access to the courts throughout the entire district. The Chief Judge may also assign judges from the criminal division and visiting judges to assist in trying civil cases, as needed.

Judges in the civil division shall serve on the civil division for a minimum period of two years. The Chief Judge of the district may, upon consultation with the other judges in the district, extend the two year period of appointment to the civil division.

The civil division judges shall have additional law clerks to assist them, funded by the resources available under the CJRA until its expiration in 1997, at which time,

if the civil division is to be continued, the court should seek the permanent allocation of additional law clerks from the Administrative Office of the United States Courts.

CRIMINAL DIVISION

The criminal division shall consist of all district judges not assigned to the civil division. The criminal division shall have the responsibility of trying all criminal cases. The criminal division shall operate district-wide.

If a geographic division's criminal caseload becomes excessive in relation to the other geographic divisions, the Chief Judge may assign criminal cases to judges in the criminal division who sit in other geographic divisions.

Visiting judges should be required to try criminal cases on a back-up basis in every geographic division, if needed. No civil division judge should be required to try a criminal case unless the Chief Judge of the district first ascertains that the criminal division is unable to try the criminal case, no visiting judges are available, and the court certifies that the case to be tried involves an incarcerated defendant and is subject to dismissal, with prejudice, under the Speedy Trial Act.

If, when the above plan is implemented there are insufficient judicial resources to handle criminal cases within the time demands of the Speedy Trial Act, the Chief Judge of the Middle District should request the Chief Judge of the United States Court of Appeals for the Eleventh Circuit to reassign judges from other districts within the circuit to service in the Middle District of Florida. If such reassignments are not sufficient to handle criminal cases within the time demands of the Speedy Trial Act, the Chief Judge of the Middle District should request the Judicial Conference of the United

States to reassign judges from other districts in the country to service in the Middle District of Florida. These steps should be taken before assigning criminal cases to judges in the civil division.

See Proposed Local Rule 1, Exhibit C.

COMMENTARY: Criminal cases are taking up more and more of the available judicial resources within the Middle District, to the point that civil cases are becoming increasingly difficult to try. The Advisory Group believes that only with the creation of a civil division can civil justice be reestablished as an integral part of the federal judicial system.

Furthermore, the creation of a civil division makes possible the elimination of the trailing civil calendar–universally agreed to be a major source of cost and delay in civil litigation. Sufficient resources would be provided for a reasonable level of civil case handling to be met within a predictable time frame, without the excessive financial hardships on civil litigants caused by having their cases being subject to the priority the criminal docket.

If it appears that the resources of the criminal division are insufficient to handle criminal cases within the time demands of the Speedy Trial Act, the Chief Judge of the Middle District should request the Chief Judge of the United States Court of Appeals for the Eleventh Circuit to reassign judges from other districts within the circuit to serve in the Middle District.

The civil division should be created as soon as Tampa receives its full complement of judges.

Prisoner Litigation

RECOMMENDATION 2: The court should adopt a local rule which requires a civil rights complaint filed on behalf of an inmate pursuant to 42 U.S.C. § 1983 to:

a. state that exhaustion of administrative remedies has been accomplished prior to the filing of the complaint, and

b. requires the Department of Corrections grievance response(s) to be attached to the complaint to verify exhaustion.

See Proposed Local Rule 2, Exhibit C.

COMMENTARY: Although exhaustion of administrative remedies is not a condition precedent to bringing a civil rights actions pursuant to 42 U.S.C. § 1983, the Civil Rights of Institutionalized Persons Act, § 1997 says:

> (1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed ninety days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.
>
> (2) The exhaustion of administrative remedies under paragraph (1) may not be required unless the Attorney General has certified or the court has determined that such administrative remedies are in substantial compliance with the minimum acceptable standards promulgated under subsection (b).

42 U.S.C. § 1997e(a). *See also* Lay, *Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act*, 71 *Iowa L. Rev.* 935 (1986).

Florida's inmate grievance procedure is found in Florida Administrative Code Chapter 33-29 and Florida law requires that:

> The department [of corrections] shall establish by rule an inmate grievance procedure which shall conform to the Minimum Standards for Inmate Grievance Procedures as promulgated by the United States Department of Justice pursuant to 42 U.S.C. § 1997e.

§ 944.331, Fla. Stat. (1989). These minimum standards are found in 28 C.F.R. §§ 40.1-40.22 (1990).

The United States Department of Justice has now certified Florida's inmate grievance procedure and the clerk supplied pro se inmate civil rights complaint forms have been amended to reflect this. At this point there is no notice to attorneys filing such complaints that exhaustion of administrative remedies is required prior to the filing of the complaint. Attorneys filing a civil rights complaint without a sufficient showing of exhaustion are routinely sent an Order to Show Cause directing them to address the exhaustion question.

RECOMMENDATION 3: The court should adopt a local rule which:

a. requires the defendant to file a special report in all *pro se* prisoner civil rights case filed pursuant to 42 U.S.C. § 1983, (but only in *pro se* cases), and

b. adopts a standardized form for such special report, based on the Federal Judicial Center's recommended Order Requiring Special Report.

See Proposed Local Rule 3, Exhibit C.

COMMENTARY: In 1975 the United States Court of Appeals for the Fifth Circuit adopted an idea from what was then the tentative draft of the present Federal Judicial Center publication, *Recommended Procedures for Handling Prisoner Civil Right Cases in the Federal Courts*. This approach to prisoner civil rights cases used a "special report." In *Hardwick v. Ault*, 517 F.2d 295 (5th Cir. 1975) the court suggested the use of special reports, saying:

> ...if utilized, they should serve the useful functions of notifying the responsible state officials of the precise nature of the prisoner's grievance and encouraging informal settlement of it, or, at the least, of encouraging them to give the matter their immediate attention so that the case may expeditiously be shaped for adjudication.

Id. at 298.

In *Taylor v. Gibson*, 529 F.2d 709, 717 (5th Cir. 1976) the court again discussed this technique and said:

> The questionnaire, special report, and request for "factual responses" all appear to be appropriate methods by which district courts have attempted to narrow and require specification of the issues raised. They are perhaps useful and valid tools and their use is not challenged here. We mention them as examples of the approach of some courts to this problem.

Since these early Fifth Circuit cases encouraging the use of the special report pre-date the establishment of the Eleventh Circuit, they are part of the jurisprudence of the Eleventh Circuit. *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. 1981). As such, any United States district court within the geographic area of the United States Court of Appeals for the Eleventh Circuit is able to implement such an idea anytime it wishes. The federal courts in Alabama seem to have done so already. *Whitehorn v. Harrelson*, 758 F.2d 1416, 1418 (11th Cir. 1985) [Middle District of Alabama, Chief

Judge Truman M. Hobbs]; *Coleman v. Smith*, 828 F.2d 714, 715 (11th Cir. 1987) [Northern District of Alabama, Judge James Hughes Hancock]; *Williams v. Cash*, 836 F.2d 1318, 1319 (11th Cir. 1988) [Northern District of Alabama, Judge William M. Acker Jr.].

RECOMMENDATION 4: Prisoner petitions brought pursuant to 42 U.S.C. § 1983 should be subject to mandatory arbitration at the institution at which the prisoner resides. [*See* Proposed Local Rule 4, Exhibit C; *see also* Recommendation #13 under *Alternative Dispute Resolution*].

COMMENTARY: Prisoner civil rights actions are brought under 42 U.S.C. § 1983 and, consequently, jurisdiction attaches pursuant to 28 U.S.C. § 1331. Local Rule 8.02 permits such actions to be referred to arbitration by consent but does not require such referral.

The proposed amendment would require referral by the clerk to arbitration in all cases brought by persons serving a penal sentence in an institution in the state of Florida, whenever:

> The action consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-monetary claims are insubstantial),

Local Rule 8.02(a)(2)(A). The intent is to arbitrate all monetary issues, including the amount of any attorney fees to be awarded, but not those cases involving purely injunctive relief claims.

Many prisoner civil rights cases are brought for purely money damages, not for injunctive relief. It is the hypothesis of the Advisory Group that many of these cases are also brought purely to air a grievance against prison officials, and that they might be settled if the prisoner is allowed to make his case to a neutral arbitrator in the presence of the prison officials. The Advisory Group, therefore, recommends the adoption of court-annexed arbitration as a pilot program to last for a specific period of time during which this hypothesis can be tested. If the program is successful in reducing the burdens on the court by resolving these petitions without further court involvement, then the program should be made permanent. If not, the program should not be renewed.

Since most inmates proceed *in forma pauperis* and cannot afford to pay for the services of an arbitrator, it is suggested that the court seek the assistance of voluntary lawyers to assist as unpaid arbitrators. With the forthcoming mandatory pro bono reporting requirement soon to be adopted by the Supreme Court of Florida, it should be possible to arrange a pool of qualified attorneys willing to perform this service.

Diversity Litigation

RECOMMENDATION 5: The Advisory Group urges Congress to further limit diversity jurisdiction by: (a) increasing the jurisdictional amount to $100,000.00, exclusive of interest and costs; (b) requiring damages meeting the jurisdictional test to be "compensatory damages"; and (c) prohibiting forum-state citizens from instituting original diversity cases against diverse defendants.

COMMENTARY: The statistics examined by the Advisory Group indicate that the number of diversity cases filed for the twelve-month period ended September 30,

1992, comprise 14% of the civil docket. The Advisory Group believes that further limiting diversity jurisdiction will not unfairly limit access to the federal court and will reduce delay by decreasing the court's civil workload. Prohibiting forum-state citizens from instituting original diversity cases against diverse defendants is a long-overdue reform. The Advisory Group wishes to make clear that it excludes statutorily-trebled damages, punitive damages, interest and attorneys' fees from the requisite jurisdictional amount.

Temporary Shift of Caseloads within the District

RECOMMENDATION 6: Pursuant to Local Rule 1.02, the court should temporarily reassign all pending and future cases in which the principal plaintiff resides in Hardee and Polk counties from the Tampa division to the Orlando division.

COMMENTARY: The number of criminal cases pending in the Ft. Myers division is equal to the number of criminal cases in the Orlando division and the number of civil cases pending in the Tampa and Ft. Myers divisions equals the total number of cases in the Jacksonville, Ocala and Orlando divisions. Therefore, if civil cases arising in Hardee and Polk counties are shifted to the Orlando division, the caseload burden, particularly in terms of the criminal docket, would be eased on the Tampa division. These counties may be shifted back when the Tampa division receives its full complement of judges.

2. *Court Procedures and Rules*

Our recommendations in this area come under the following headings: a) Case Management Procedures; b) Motion Practice; and c) Alternative Dispute Resolution. We will address each in turn.

a. *Case Management Procedures*

RECOMMENDATION 7: The court should adopt a local rule providing for a two-tiered tracking system of case management. Track 1--Diverted Cases--would include all cases not requiring active judicial management. Track 2--Standard Cases--would include all trial-track cases. The Track 2 cases would receive active judicial management, including a joint response to court interrogatories, early voluntary disclosure and a case management conference at which the following is discussed: specific motions and their resolution; discovery limits and deadlines; settlement; alternative dispute resolution possibilities; and a firm trial date. [*See* Proposed Case Management Rule, Exhibit B. *See also* CJRA § 473(a)(1).]

COMMENTARY: The Advisory Group spent much time in interviewing the judges and reviewing the case management practices of the Middle District of Florida. The Group has concluded that active judicial management of trial track cases enhances the resolution of those cases. Those judges in the district who actively manage their cases have the best reputations for having their docket under control. The Group has concluded that all trial track cases should require a joint response to standard court interrogatories regarding major events in the case and an early case management conference at which the orderly progress of the case is discussed, time frames are

established for the major phases of the case, and other relevant decisions are made. The Proposed Local Rule regarding case management further details our recommendation.

b. *Motion Practice*

RECOMMENDATION 8: Pending motions should be ruled upon within sixty days of the responsive filing (any hearing held should accommodate this timeframe). The court should adopt a local rule which provides that all dispositive motions are so designated in the caption of the motion. All dispositive motions which are not decided within ninety days of the responsive filing (or the expiration of the time allowed for its filing under the local rules) shall be brought to the attention of the district judge by the movant by filing a "Notice To the Court" within ten days after the time for deciding the motion has expired. Movant shall file an additional "Notice To The Court" after the expiration of each and every additional thirty day period during which the motion remains undecided. Movant shall provide the Chief Judge of the Middle District with a copy of each and every "Notice To The Court" which movant is required to file under this rule. [*See* Proposed Local Rule 5, Exhibit C].

COMMENTARY: The Advisory Group believes that most district judges exercise their best efforts to resolve motions when they are ripe for decision. Nevertheless, there is a wide-spread perception among the bar that many times failure to resolve motions in a timely fashion causes unnecessary delay and greatly adds to the cost of civil litigation by allowing discovery to proceed on issues which are ultimately resolved by the motion (or which should have been resolved by a motion which is never ruled upon).

Therefore, the Advisory Group urges the adoption of a local rule which provides that the movant of a dispositive motion not decided within ninety days of its responsive filing should be brought to the attention of the district judge assigned to the case by the filing of a notice. The requirement for providing the Chief Judge with a copy of the notice permits the Chief Judge to take whatever action he or she deems appropriate.

RECOMMENDATION 9: The court should adopt a local rule providing for "motion calendar" day at which non-dispositive motions pending over thirty days could be brought to the attention of the magistrate. [*See* Proposed Local Rule 6, Exhibit C.]

COMMENTARY: Although there was little evidence that there is any significant backlog of motions pending before the magistrate judges, there was enthusiasm among the bar for the ability to "get before" the magistrate judge on motions pending more than thirty days.

RECOMMENDATION 10: The court should adopt a local rule requiring that motions to continue trial be signed by the attorney of record who shall certify that a copy of the motion was furnished to the moving party. [*See* Proposed Local Rule 7, Exhibit C.]

COMMENTARY: The Advisory Group believes that the foregoing recommendation may reduce delay in some cases. The suggestion of the Civil Justice Reform Act that the party be required to sign the motion is unnecessary if the attorney certifies that the party knows of the reason for delay. *Compare* CJRA § 473(a)(5).

RECOMMENDATION 11: The court should adopt a local rule encouraging the use of telephonic hearings and conferences, whenever possible, particularly when counsel are located in different and/or distant cities. At the request of any party, a civil hearing or

conference before the magistrate judge shall be by telephone. [*See* Proposed Local Rule 8, Exhibit C.]

COMMENTARY: The state courts have adopted the foregoing practice and the bar is enthusiastic in its support. The savings in both time and cost are obvious.

RECOMMENDATION 12: The court should amend Local Rule 1.05 to permit the use of facsimile machines as a means of service. The following language should be inserted as a new subparagraph (c):

> (c) Service of a pleading or paper may be made by transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next business day. Service by facsimile constitutes a method of hand delivery.

See Proposed Local Rule 9, Exhibit C.

COMMENTARY: The proposed local rule change would make federal practice consistent with state practice.

c. *Alternative Dispute Resolution*

RECOMMENDATION 13: The court should revise Local Rule 8 so that arbitration is no longer mandatory [except for prisoner actions for money damages sought pursuant to 42 U.S.C. § 1331.[32]] The court should provide for mediation as an alternative to

[32] *See* Recommendation #4, p. 66.

arbitration in those cases which the parties and the court believe are susceptible to resolution through mediation.

COMMENTARY: The Florida bar has developed considerable experience with mediation in the state courts. The views expressed at the public hearings, including those of the Advisory Group members were overwhelmingly in favor of mediation as the preferred form of alternative dispute resolution. The state court mediation statistics affirm the sentiment of the bar that mediation is successful there. If the court permits mediation as an alternative to mandatory arbitration, a closing sheet should be developed to gather information in order to assess the success of mediation. The Advisory Group has included relevant information on its proposed CJRA Exit Questionnaire for all civil cases. [*See* Proposed Local Rule 10, Exhibit C, and CJRA Exit Questionnaire, Exhibit D.]

3. Court Resources

Judges

RECOMMENDATION 14: Congress should authorize two additional district judges for the Middle District of Florida immediately.

COMMENTARY: The case filings justify the authorization of two additional district judges and Congress should immediately act to authorize the positions. At least one of these judges should sit in Tampa.

RECOMMENDATION 15: The Advisory Group urges the adoption by Congress of the Judicial Nomination and Confirmation Reform Act of 1991, Senator Bob Graham's bill regarding judicial vacancies. The bill provides that the President shall submit a

nomination to the Senate within 180 calendar days after the date on which a vacancy in the office of a judge occurs and that the Judiciary Committee must report the nomination to the Senate within 90 days after receiving the nomination. The bill requires that the Senate shall vote on the nomination within 30 days after receiving it. [*See* S.910, Exhibit E.]

COMMENTARY: Judicial vacancies must be filled much more quickly. The present process takes over a year to fill the average vacancy. This sort of delay cannot be tolerated any longer. Such delay has an enormous effect on the judicial system, and in the Middle District it continues to be devastating.

RECOMMENDATION 16: The Administrative Office of the United States Courts should alter the formula used for calculating the need for additional district and magistrate judges to one which accords greater weight to criminal cases than to civil cases.

COMMENTARY: The formula by which additional judgeships are justified should be revised. The current formula does not differentiate between civil and criminal case filings. As a result, the case mix of a particular district is ignored in the calculations. Because of the demands of the Speedy Trial rule, criminal cases are being tried to the exclusion of civil cases in those districts with expanding criminal dockets. The revised formula should weight criminal cases more heavily than civil since they are accorded priority on trial calendars. Districts with high ratios of criminal to civil cases should be accorded additional resources including district judges. If this district were to

receive additional judges based upon its criminal docket, at least one of these judges should sit in Ft. Myers.

RECOMMENDATION 17: The court should secure the services of two visiting judges at all times for the Tampa division until its present judicial vacancies are filled.

COMMENTARY: The Tampa division cannot function adequately with two vacancies, 40% of its full complement of judges. The district should take steps immediately to secure the services of two visiting judges in Tampa at all times until the division is back at full strength.

Magistrate Judges

RECOMMENDATION 18: Trial by magistrate judge should be encouraged at every case management conference or preliminary pretrial conference. Magistrate judges should set a date certain for trials to encourage consent by the parties.

COMMENTARY: Greater use of magistrate judges in the conduct of civil trials could greatly expand the ability of the court to provide civil justice to the Middle District. If offered a date certain for trial, the bar would have a significant incentive to consent to trial before the magistrate judge.

Bankruptcy Appellate Panels

RECOMMENDATION 19: The court should urge the Court of Appeals for the Eleventh Circuit to exercise its authority under 28 U.S.C. § 158 to establish a bankruptcy appellate panel to handle bankruptcy appeals in this circuit.

The statute reads, in part, as follows:

> (b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear

and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

***

(b)(3) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

(b)(4) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders and decrees entered under subsections (a) and (b) of this section.

COMMENTARY: Bankruptcy appeals it is generally agreed often suffer from excessive delay in the system. Bankruptcy appellate panels could reduce delay by providing a group whose function is to resolve these appeals. The Advisory Group solicited the views of the bankruptcy bar and judges, who unanimously endorsed this idea. [*See also* Recommendation 30, p. 84]

Computerization of the Docket

RECOMMENDATION 20: Full computerization of all dockets should be accomplished as soon as possible.

COMMENTARY: The computerization process in the Middle District of Florida is three-tiered. Step 1 is the automation of the civil docket, which is currently on-line.

Step 2 is the automation of the criminal docket, which is scheduled to be completed by the fall of 1993. Step 3 concerns the dial-up access by members of the bar, which will be known as PACER (Public Access for Electronic Retrieval). The completion date for PACER has not yet been set.

Reciprocal Attorney Admissions

RECOMMENDATION 21: The Middle District should urge the Northern and Southern Districts to adopt reciprocal attorney admissions among the three federal districts in the State of Florida.

COMMENTARY: In order to reduce the cost of hiring local counsel, admission to one district in the State of Florida should result in automatic admission to any other federal district in Florida, provided the attorney certify that he or she has read the local rules for that district.

Advisory Group

RECOMMENDATION 22: The Advisory Group shall assist the United States district court in its annual assessment of the condition of the court's civil and criminal dockets (CJRA § 475) with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. The court and the Advisory Group shall continue to perform this assessment each year until December, 1997. CJRA § 482(b)(2). A CJRA staff position should be sought through December, 1997, to perform the necessary statistical, tracking and other support functions for the court and the Advisory Group. The court should adopt the CJRA Exit Questionnaire, which would be sent to the

prevailing attorney at the termination of *every* civil case, and which would provide information necessary for the court and the Advisory Group to perform a meaningful assessment. Information regarding time from issue to trial by nature of suit plus additional details regarding the nature of disposition and the role played by alternative dispute resolution would assist the court and the Advisory Group in identifying problem areas and assess the effectiveness of court procedures. [*See* CJRA Exit Questionnaire, Exhibit D.]

COMMENTARY: The Advisory Group is required to assist the court in evaluating the effectiveness of the remedial measures being implemented and to recommend changes or modifications. The reassessment and evaluation methodology which the Advisory Group may use includes: statistical data; internal management reports; attorney questionnaires; client surveys; internal court studies; interviews with judges, law clerks, courtroom deputies, and clerk's office personnel; input from representatives of selected groups and entities; public forums; and the personal experience of CJRA Advisory Group members. The Group will continue to analyze statistical data concerning the number and types of cases filed, the median disposition times, the number of trials, judicial workload, the percentage of settlement or disposition before trial, cases referred to magistrate judges and referral to ADR programs. Since most of the remedial measures are prospective in nature, the results might not be immediately measurable. An effort will be made to quantify and compare data generated on cases filed after the implementation date with the materials on which the Advisory Group relied in the formulation of its findings and recommendations. The remedial

measures being proposed are intended to supersede any presently existing local rules to the extent they are inconsistent or incompatible. If, after evaluation, these recommendations have contributed to the reduction of cost and delay, the Local Rules Committee should consider whether the local rules proposed under CJRA should become permanent.

RECOMMENDATION 23: As no member of the Advisory Group may serve more than four years [§ 478(c)], the Chief Judge of the Middle District shall appoint new members of the Advisory Group beginning in January, 1994. The Chief Judge shall replace one-third of the Advisory Group in January of 1994, 1995 and 1996.

COMMENTARY: The staggered terms proposed above are necessary for continuity of the Advisory Group. The current members should remain in place for 1993 to assist the court in evaluating this Report and in the development of the court's CJRA plan.

4. *Litigant and Attorney Practices*

Disclosure

RECOMMENDATION 24: The court should adopt a local rule establishing a duty to disclose core information early in every case. The parties should be required to exchange core information prior to any other formal discovery activity. Core case information refers generally to:

1) The name and address of each witness which the party believes in good faith has factual or expert knowledge bearing on the issues in the case, setting forth as to each witness a brief general statement of the type of information known by the witness. The party will not be bound by the list so provided, but the court may consider the good faith of the party in

preparing such list in making later discretionary ruling involving case management.

2) A list of all types of documents (or other tangible things) then known to exist which the party will rely upon in presenting the case, or if a specific item cannot be identified, a list of the types of items believed to exist which the party expects to discover and rely on by the time of trial. The list will not be binding, but each party is expected to exercise good faith in preparing the list.

3) A list of all applicable insurance agreements under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, stating where these agreements may be inspected and copied.

See Proposed Local Rule 11, Exhibit C. *See also* Recommendation 7, p. 69.

COMMENTARY: The Advisory Group considered adopting the Pointer Committee's definition of core information, but chose a more restricted definition in the belief that other information is more appropriately gained through interrogatories. Voluntary disclosure of information will reduce cost and delay by eliminating the need to formulate these discovery requests.

Discovery

RECOMMENDATION 25: The court should adopt a local rule which encourages litigants to agree to utilize computer technology to the maximum extent possible in all phases of litigation *i.e.*, to serve interrogatories on opposing counsel with a copy of the questions on computer disk in addition to the required printed copy. [*See* Proposed Local Rule 12, Exhibit C.]

COMMENTARY: The proposed local rule would encourage attorneys to exchange interrogatories in machine readable form, by the use of floppy disks, with an accompanying printed (and signed) paper copy.

Since not all law offices utilize the same computer architecture (i.e., some use MS-DOS systems, some others), this cannot be made an absolute requirement. The mechanical preparation of interrogatory responses consumes a great deal of attorney and staff time. Simply organizing and keeping track of the responses to the questions is a time-consuming task which is, in many cases, wasted effort.

This idea was endorsed by a county judge in rural upstate New York who wrote:

> In this electronic age, a procedure which the court suggests to the profession is the exchange of interrogatories in magnetic recorded form, with hard copy attached.
>
> The use of computers as word processors in law offices has become commonplace, even in relatively rural Greene County. While the particulars of office automation vary widely, in those law offices which have acquired word processing equipment and software, the double sided double density (360K) floppy disk with text files containing ASCII coded text is a virtual generic standard. Most equipment now in use can utilize this medium, and most major word processing software can exchange documents stored in this form.
>
> The advantage of the court's suggestion is apparent. The proponent serves a compact, readable set of interrogatories upon his adversary, with a copy of the questions on disk included. The recipient loads the electronic document directly into his word processor, avoiding the need to retype the questions. He then obtains answers to the questions using the hard copy, and inserts them as appropriate into the word processing document, where he can manipulate and format the text as he pleases, finally printing and serving a coherent, readable question-and-answer format document without distracting cross-

> references and extra sheets, as useful at trial as the transcript of an EBT. (See CPLR 3131.) Courtesy would dictate that he return the proponent's disk as well.
>
> The Court realizes the procedure outlines above is unworkable unless the attorneys involved possess both compatible equipment and a sense of professional courtesy and accommodation. In the belief and hope that both are achievable, the foregoing suggestions are offered.

Vincent v. Seaman, 536 N.Y.S.2d 677, 679 (Co. Ct. 1989).

Civility

RECOMMENDATION 26: Attorneys and litigants should conduct themselves with civility and in a spirit of cooperation in order to reduce unnecessary cost and delay.

COMMENTARY: The Advisory Group believes that the reinvigoration of the spirit of cooperation between members of the bar would significantly reduce cost and delay in civil litigation.

5. *Congress and the Executive Branch*

RECOMMENDATION 27: The Advisory Group urges Congress not to adopt legislation which would federalize all crimes committed with a handgun that travels in interstate commerce, and crimes of domestic violence.

COMMENTARY: The Advisory Group believes that such crimes can be more effectively dealt with by state rather than federal courts. Moreover, we believe the federalization of such crimes would virtually overwhelm the federal district courts and likely displace the trial of many more serious federal crimes not subject to state court jurisdiction, as well as all federal civil cases.

RECOMMENDATION 28: Congress should provide that ERISA actions and all future federal statutory causes of action may be brought in either state or federal court, and that removal on the basis of a federal question not be permitted. Congress should review all existing federal causes of action which have exclusively federal jurisdiction to determine whether concurrent jurisdiction should be granted to the state courts.

COMMENTARY: During the past several years Congress has enacted a plethora of statutes providing civil remedies for various persons. Much of the civil caseload of the federal district court is attributable to claims brought under such statutes. In most instances there is no jurisdictional minimum; therefore, the amounts at issue vary greatly. Violations of some of these statutes can be brought either in state or federal court (i.e., the Civil Rights Act), others can be brought only in the federal court (i.e., Antitrust Act and ERISA). There is no apparent rationale or basis for making federal jurisdiction exclusive in some but not all of these cases. In order to alleviate the burden on the federal courts in resolving most of the cases under such acts, and in order to give litigants the option of a more speedy and less expensive forum, the Advisory Group recommends that Congress permit state courts to decide all cases involving statutorily enacted federal civil remedies in the absence of some other basis for federal jurisdiction. Thus, under the Advisory Group's recommendation, a plaintiff could bring an ERISA action either in state or federal court (as he can now with a Civil Rights Act claim). We further recommend that removal of such cases involving concurrent jurisdiction on the basis of a "federal question" (absent diversity jurisdiction), not be permitted. *See Spencer v. South Florida Water Management District*, 667 F.Supp. 66 (S.D. Fla. 1986).

However, if the claim exceeded $50,000 and was against citizens of another state, the defendant could remove the case to federal court pursuant to 28 U.S.C. § 1441.

RECOMMENDATION 29: It is recommended that Congress refer all legislation having an impact upon the judicial system to the Congressional Budget Office for a fair and unbiased evaluation of the impact of such legislation upon the judicial branch of the United States government and the judicial branch of the state governments and that the report of such evaluation accompany proposed legislation at the appropriate stage in the legislative process to assure consideration of the report by the Congress. To the extent that the Congressional Budget Office is not currently staffed to provide such analysis, it is recommended that the Congress provide the necessary legislation and appropriations to so staff such office.

COMMENTARY: The Advisory Group believes that frequently Congress fails to appreciate the impact of federally created causes of action, both criminal and civil, on the judiciary. Requiring an impact statement would inform Congress of the effect of proposed legislation and encourage it to provide additional judicial resources to deal with the anticipated impact of the legislation.

RECOMMENDATION 30: The Congress of the United States should provide that all bankruptcy court final orders are appealed directly to the appropriate circuit court of appeals.

COMMENTARY: The Advisory Group has recommended the creation of bankruptcy appellate panels as a vehicle for facilitating review of bankruptcy appeals but believes that ideally these appeals should proceed directly to the circuit court of appeals. *See* Recommendation 19 and Commentary, pp. 75-76.

RECOMMENDATION 31: Congress should create an Article I court to review appeals from denial of social security benefits. Alternatively, Congress should provide that magistrates render final decisions for the district court in such cases with appeal to the appropriate circuit court of appeals.

COMMENTARY: District court review of these administrative decisions should be eliminated and the procedure for review should parallel that accorded some other administrative agencies, which proceed from administrative action to a review board and then to a circuit court of appeals. In the alternative, the rate of rejection of the reports and recommendations of the magistrate judges in social security cases is so low as to justify treating these decisions as final with appeal to the court of appeals. Removal of these cases from the district court's civil docket should diminish delay by reducing the judicial workload. This shift preserves the party's right to ultimate review by an Article III judge, while eliminating one tier of a presently five-tiered review.

B. *Contributions To Be Made By Court, Litigants, Attorneys*

The Advisory Group is satisfied that significant and meaningful contributions from all participants in the civil justice system are required by its recommendations and that no one group has been singled out to make unreasonable sacrifices. *See* CJRA § 472(c)(3).

1. *By the Court*

Perhaps the greatest contributions are requested from the court itself. Rather than adopting a model plan, the Advisory Group is recommending that the court develop its own plan which meets the particular needs of this district. *See* CJRA § 472(b)(2). Specifically, the Advisory Group recommends that the court create a civil division, adopt an expanded tracking system, hold mandatory case management conferences, set limits

on disposition time for motions, modify its practices concerning the trailing calendar, and refocus its alternative dispute resolution energies into mediation. In addition, the Advisory Group will look to the court for significant assistance in fulfilling its statutory charge to monitor the effects of all of its recommendations and to report periodically on the status of the docket.

2. *By Litigants and Attorneys*

Attorneys will be required to make substantial changes in the way they approach the conduct of their cases and discovery. Attention will have to be focused on cases at their inception. Voluntary disclosure of core information will be required. Attorneys will be required to actively develop discovery and case management plans and to attend case management and settlement conferences where required by the new tracking system.

3. *By Congress and the Executive Branch*

Finally, although not suggested by the Judicial Conference, the Advisory Group would like to comment briefly on the contributions it has requested from the executive and legislative branches of government. As we have seen, the Advisory Group has concluded that legislative and prosecutorial initiatives have contributed greatly to the problems we now experience with cost and delay in civil litigation in the federal courts. Accordingly, we have made several recommendations with respect to past and future legislation, as well as regarding the provision of increased judicial resources. The contributions requested from these two branches are among the most significant and far-reaching of all of those recommended by the Advisory Group. Nevertheless, it is the Group's firm conviction that very little progress can be made in reducing cost and delay in the civil justice system unless the legislative and executive branches stop using the judicial system as a panacea for the hopes and fears of the American public.

C. *Consideration of The Six Principles and Six Techniques*

Section 472(b)(4) of the CJRA requires that our Report explain how our recommendations demonstrate a consideration of the six principles and six techniques of case management outlined in CJRA § 473(a) and (b). With two exceptions, these twelve measures were either already in place in the district or the Advisory Group has recommended their adoption.

The Middle District of Florida has had in place for some time the following principles recommended by the CJRA for our consideration: § 473(a)(1)--tracking (a limited procedure for tracking is found in Local Rule 3.05); § 473(a)(5)--certification of good faith effort prior to filing motions (Local Rule 3.01(g) recently adopted); § 478(a)(6)--ADR (Local Rules, Chapters 8 and 9); § 473(b)(1)--discovery-case management plan (abbreviated version required by the district as a joint response to court-ordered interrogatories); § 473(b)(2)--representation at pretrial by attorney with authority to bind (Local Rule 3.06(d) requires lead trial attorney to attend); § 473(b)(5)--representation at settlement conference by party with authority to bind (found in standard pretrial order).

The Group does not recommend, however, that parties be required to sign all requests for extensions of deadlines or continuances of trial. In the context of the other changes being recommended by the Group, we do not believe that this technique would result in any measurable reduction of cost and delay. Also, the Advisory Group believes that requiring early neutral evaluation in every case undermines the goal of reducing cost and delay. The remainder of the six principles and techniques are discussed above and the appropriate statutory citation may be found in those discussions.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ALL DISTRICT COURTS			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		261,698	241,420	251,113	263,896	269,174	268,023		
	Terminations		270,298	240,952	243,512	262,806	265,916	265,727		
	Pending		261,181	274,010	273,542	265,035	268,070	264,953		
	Percent Change In Total Filings Current Year	Over Last Year. . .	8.4							
		Over Earlier Years. . .			4.2	-.8	-2.8	-2.4		
	Number of Judgeships		649	649	575	575	575	575		
	Vacant Judgeship Months		1,340.4	988.7	540.1	374.1	485.2	483.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	403	372	437	459	467	466		
		Civil	350	320	379	406	417	416		
		Criminal Felony	53	52	58	53	51	50		
	Pending Cases		402	422	476	461	466	461		
	Weighted Filings**		405	386	448	466	467	461		
	Terminations		416	371	423	457	462	462		
	Trials Completed		31	31	36	35	35	35		
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.9	5.7	5.3	5.0	4.3	4.1		
		Civil**	9	9	9	9	9	9		
	From Issue to Trial (Civil Only)		14	15	14	14	14	14		
OTHER	Number (and %) of Civil Cases Over 3 Years Old		19,423 8.7	28,421 11.8	25,207 10.4	22,391 9.2	21,487 8.8	19,782 8.1		
	Average Number of Felony Defendants Filed per Case		1.5	1.6	1.4	1.4	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	37.84	36.79	35.84	35.89	3 2.7	3 1.1		
		Percent Not Selected or Challenged	34.3	34.0	34.2	35.8	33.7	32.1		

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	226895	8415	17475	46452	7797	10143	15800	33771	36469	56702	3419	506	20978
Criminal*	33994	1906	1490	4005	606	1685	4602	6994	1060	6169	624	1804	3049

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

PROPOSED CASE MANAGEMENT RULE

A. Upon the filing of a complaint in any civil action, the Clerk shall assign the case to one of two tracks:

1. TRACK 1--EXPEDITED. Those cases requiring no active management by the court. The following cases shall be so assigned:
   a. Social Security cases
   b. Student Loan Enforcement cases
   c. Veterans Benefits Recovery cases
   d. Prisoner cases:
      (1) Civil Rights (under U.S.C. § 1983)
      (2) Habeas (under U.S.C. § 2241 and § 2254)
   e. Enforcement of Internal Revenue Service summons cases
   f. Real Property/Foreclosure cases
   g. Cases in which no responsive paper has been filed after the expiration of 120 days from the filing of the Complaint
   h. Such other cases as the Court shall determine by Order should be assigned to such category.

2. TRACK 2--STANDARD. All other cases

B. Treatment of Track 2 cases.

1. STANDARD NOTICE FROM THE COURT [see *Notice of Case Management Rules and Required Submissions by Parties* ("*Notice*") [attached hereto as **Form 1**]: Thirty (30) days after the filing of the first responsive pleading or other paper by any defendant in all TRACK 2 cases, the Clerk shall mail to each party which has, as of that date, filed any pleading or paper the *Notice* referenced above. The *Notice* shall instruct the parties to exchange and file with the Court certain preliminary information within thirty (30) days, and shall designate a specific date for the filing of a *Joint Response to Notice of Case Management Rule and Required Submissions by Parties* ("*Joint Response*") [attached hereto as **Form 2**] with the Court. The notice shall also specify the names and addresses to whom the *Notice* has been mailed and the date of mailing.

2. SETTING DATE FOR JOINT RESPONSE: The Clerk shall require the *Joint Response* be filed within a period of time no shorter than thirty (30) days and no longer than one hundred twenty (120) days from the date of mailing the *Notice*, such response date to be established based on the following:

   a. The length of time given to file a *Joint Response* shall be shorter for cases which appear to be simple, and longer for cases which appear to be more complex, based upon a preliminary evaluation by the Clerk and based on guidelines established by the Court from time to time, having due regard for the type of case, the number

of adverse parties, the number and types of counts and other relevant factors.

b. The deadline for filing the *Joint Response* shall be on a Monday.

c. Upon stipulation of all parties then appearing or by order of the Court, the time for filing a *Joint Response* may be extended on any case so long as the *Joint Response* is filed in all cases within one hundred twenty (120) days of the *Notice* and so long as the stipulations set forth a basis which the parties represent to the Court is a reasonable basis for requesting additional time for filing a *Joint Response.*

3. EFFECT OF JURISDICTIONAL CHALLENGES: Within ten (10) days after filing any motion contesting jurisdiction or venue of the Court, the party contesting jurisdiction or venue shall complete, file and serve on all parties a statement providing the information requested in items a - h below.

Within ten (10) days of receipt of a copy of the information, all parties seeking to sustain the Court's jurisdiction or this district's venue shall complete, file and serve a statement providing the information requested in items a - h below.

The attorneys for the parties are encouraged, but not required, to confer regarding the issues raised by items a - h prior to filing their responsive statements. Each party is to promptly notify the Court and all other parties of any information received which in good faith would call for an amendment to the information exchanged.

a. What is the claimed basis of jurisdiction and/or venue. (Provide statutory and factual basis, if known).

b. What is the claimed basis of challenge to jurisdiction and/or venue. (Provide statutory citations and factual basis, if known).

c. State any facts which the party submitting this form believes are or will be uncontested.

d. Outline those facts which the party submitting this form believes will be in genuine dispute.

e. List that discovery which the party submitting this form believes will be necessary before the matter will be ready for determination by the Court. If several series of discovery activities will be required, describe them as completely as possible, and provide an estimate of the time required to complete each activity. If depositions are to be taken, state the name or description and

address of the deponent and the city and state where such discovery will most likely be taken.

f. Describe any affidavits or other documents which have been or are expected to be filed in support of your position.

g. Estimate a date when this jurisdictional/venue matter will be ready for determination by the Court.

h. State if you are willing to submit to discovery on other issues during pendency of the jurisdictional or venue question.

4. NOTICE TO ADDITIONAL PARTIES: If additional parties file pleadings or papers after the date of the mailing of the *Notice* above required, it shall be the responsibility of each party receiving a copy of the notice to furnish a copy of the *Notice* to the late appearing party, and to certify to the Clerk that a copy has been so furnished, which certificate shall become a part of the record. The parties, by agreement between themselves, may agree that only one party will furnish the *Notice*; however, the responsibility remains on all parties to see that the *Notice* is given.

5. INFORMATION DISCLOSURE ("Disclosure"):

a. Within thirty (30) days after notification by the Clerk of the provisions of this Rule, each party shall serve on each other party and file with the Court, a statement of the following:

(1) The name and address of each witness which the party believes in good faith has factual or expert knowledge bearing on the issues in the case, setting forth as to each witness a brief general statement of the type of information known by the witness. The party will not be bound by the list so provided, but the Court may consider the good faith of the party in preparing such list in making later discretionary rulings involving case management.

(2) A list of all expert witnesses which the party believes may be used at trial, and a brief statement of the field of expertise of the expert and general nature of the expert's opinion, if known. If an expert is expected to be called in some field, but the specific expert has not been selected, the party shall state the nature of the expert expected to be called. The parties shall not be bound by the information provided, but the Court will consider the good faith of the party in providing such information in making later discretionary rulings involving case management.

(3) A list of all types of documents (or other tangible things) then known to exist which the party will rely upon in presenting the case, or, if a specific item cannot be identified, a list of the types believed to exist which the party expects to discover and rely on by the time of trial. The list will not be binding but each party is expected to exercise good faith in preparing the list.

(4) A list of all applicable insurance agreements under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, stating where these agreements may be inspected and copied.

(5) A statement of whether a party believes that a motion will be filed which will dispose of the entire case, or a major portion of the case, without the necessity of completing discovery on all aspects of the case, the nature of the motion expected to be filed, a general statement of the basis for the motion and the discovery believed required to be accomplished before the Court can consider the motion. If any witnesses or tangible evidence will be relied upon to support such motion, the names and addresses of such witnesses and a general description of the expected testimony will be given.

b. In each case in which the information in paragraph a above is filed by an attorney for a party, the attorney shall certify that a copy of the information has been furnished to the client (in the case of an individual) and to the senior operating official of any business organization responsible for management of the litigation. If the party is covered by liability insurance, a copy of such information shall be furnished to the employee of such insurer having primary responsibility for the litigation.

6. JOINT RESPONSE:

a. On or before the date set by the Clerk as required herein, as extended by stipulation or court order, the parties shall file with the Court (and furnish to the client) a *Joint Response*.

b. Unless designated as "stipulations," matters included in the *Joint Response* shall not be binding upon the parties but will be considered as good faith representations by the parties and their attorneys and may be considered by the Court in making

discretionary rulings governing the further management of the case. The parties are urged in good faith to stipulate to as many matters as possible.

c. If any statement cannot be agreed upon even informally, the areas of disagreement shall be clearly stated, with each party submitting its position as part of the *Joint Response*, or separately filed at the same time.

d. The *Joint Response* shall be signed by the parties or their attorneys, and a certificate that the parties have been furnished a copy must be filed with the Court.

7. CASE MANAGEMENT CONFERENCE:

a. Within fifteen (15) days of the receipt of the *Joint Response* required above, the Court shall set by Order the date and time for a Case Management Conference to be held before the district judge. See *Order for Case Management Conference* attached hereto as **Form 3**. Based upon the information before the Court, the Court shall state in the Order the amount of time allocated by the Court for conducting the Case Management Conference which shall be no shorter than ten (10) minutes. The Court will set a greater period of time for management conferences for cases which appear to be more complex.

b. The conference will be attended by the lawyer responsible for the trial of the case, unless the lawyer's attendance is impossible because of conflicting trial attendance, in which case a substitute may attend, provided that substitute will be in attendance at the trial and has full authority to act on behalf of the client. The parties are encouraged to communicate with the Court's staff to adjust the time for the Case Management Conference, if this will allow attendance of the attorney in charge of the case. If the date and time selected for the conference makes it impossible for a responsible attorney to appear, the party shall immediately notify the Court's staff in writing of the conflict and seek a different date for the conference.

c. The Court may require the client, or in the case of an insurance company or corporate defendant, a responsible representative of the client, to attend the Case Management Conference in cases which the Court has determined by a review of the *Joint Response* are likely to be complex.

d. The Court may require the attendance of a magistrate judge at the Case Management Conference to coordinate the past and future involvement of the magistrate judge in the management of the case.

e. The parties shall meet, prepare and present a proposed Case Management Order to the Court at the Case Management Conference [see *Case Management Order* attached hereto as **Form 4**] for use by the Court in conducting the Case Management Conference. The following guidelines govern the preparation of the proposed Order:

1). The parties are urged to stipulate to proposed deadlines, limitations and requirements. If the parties cannot so stipulate, the proposed Order shall include recommendations of each party. The Court may select any party's recommendation (by striking through those not selected) or fashion an order different from any proposed recommendation.

2). The parties are to prepare the list of "outstanding motions" in such a way that the Court may at the Conference note on the proposed Order whether, as to each such motion, the Court "grants", "denies", "refers to magistrate", "reserves ruling" or "separately enters orders" on said motions. The parties will be expected to be prepared to further argue the motions if requested by the Court.

f. At the Case Management Conference, the Court will discuss the items outlined in the *Order for Case Management Conference* (see **Form 3**).

g. Following the Case Management Conference, the Court will enter a *Case Management Order* which will direct the progress of the case.

8. PRETRIAL CONFERENCE:

a. A Pretrial Conference may be held in any Track 2 case set for trial on not less than twenty (20) days notice. See *Order for Pretrial Conference*--**Form 5**.

b. Prior to the conference, the parties shall meet to discuss the possibility of settlement; stipulate to as many facts and issues as possible; examine all exhibits and documents and other tangible evidence proposed to be used at the trial; furnish opposing counsel

the names and addresses of all witnesses, including experts, if any, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony (Rule 26(e)(1)(B) and (3), F.R. Civ.P.); prepare a pretrial statement in accordance with the *Order*; and complete all other matters which may expedite both the pretrial and trial of this case.

c. In cases determined to be complex, the Court may require the parties to submit a pretrial statement prior to the conference which shall contain:

1) the basis of federal jurisdiction;
2) a concise statement of the nature of the action;
3) a brief, general statement of each party's case;
4) a list of all exhibits and Rule 5.04 exhibit substitutes to be offered at trial with notation of all objections thereto;
5) a list of all witnesses who may be called at trial;
6) a list of all expert witnesses, including, as to each such witness, a statement of the subject matter and a summary of the substance of his or her testimony pursuant to Rule 26(e)(1) and (3), F.R.Civ.P.;
7) in cases in which any party claims money damages, a statement of the elements of each such claim and the amount being sought with respect to each such element;
8) a list of all depositions to be offered in evidence at trial (as distinguished from possible use for impeachment), including a designation of the pages and lines to be offered from each deposition;
9) a concise statement of those facts which are admitted and will require no proof at trial, together with any reservations directed to such admissions;
10) a concise statement of applicable principles of law on which there is agreement;
11) a concise statement of those issues of fact which remain to be litigated (without incorporation by reference to prior pleadings and memoranda);
12) a concise statement of those issues of law which remain for determination by the Court (without incorporation by reference to prior pleadings or memoranda);
13) a concise statement of any disagreement as to the application of the Federal Rules of Evidence or the Federal Rules of Civil Procedure;
14) a list of all motions or other matters which require action by the Court; and
15) the signatures of counsel for all parties.

Form 1-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION

Plaintiff(s),

vs. Case No.

Defendant(s).

NOTICE OF CASE MANAGEMENT RULE
AND REQUIRED SUBMISSIONS BY PARTIES

NOTICE is given that the parties to this litigation are bound by the provision of the attached Rule regarding case management governing **TRACK 2 cases**, and accordingly, the parties are required to exchange information as required by the attached Rule within **thirty (30) days** of the date of this certificate.

The parties are required to submit a Joint Submission required by the attached Rule on or before _____, 199____.

This Notice has been furnished to the following:

This Notice is given in accordance with the above Rule and is dated and was mailed to the above persons on _____, 199____.

DAVID L. EDWARDS
CLERK OF THE COURT

By:_____

Form 2-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION

Plaintiff(s),

vs. Case No.

Defendant(s).

JOINT RESPONSE TO NOTICE OF CASE MANAGEMENT RULE AND REQUIRED SUBMISSIONS BY PARTIES

Except where noted, the following represents a good faith settlement by the attorneys for the parties on the matters stated. The parties are not bound by such statements unless the agreement is specifically noted as being a "stipulation". To the extent there is a disagreement between the parties regarding the matters stated, such agreement is noted or will be noted in a separately submitted statement of the party.

I. GENERAL DESCRIPTION OF CASE

Please set forth a general description of the nature of the case.

II. LEGAL AND FACTUAL BASIS FOR CLAIMS

As an additional explanation of the statement in Roman Numeral I, give the following information:

a) A brief statement of the facts which the plaintiff believes describes the basis of the claim.

b) A brief statement of the legal theory or theories upon which the plaintiff is proceeding.

c) A brief statement of the facts which the defendant believes forms the basis of the defendant(s)' defense to the plaintiff(s)' claim.

d) A brief statement of the legal defenses which the defendant will raise.

e) A statement with regard to whether or not it is anticipated at this time that any additional entities will be made parties to the litigation and, if so, a statement of the factual or legal basis giving rise to the joining of additional parties.

f) A statement of whether or not there are any entities not a party to the litigation who have substantial economic interest which will be resolved at least in part by the litigation and an explanation of such interest and the legal basis for such interest.

g) A statement as to whether or not there remains any question regarding the jurisdiction of the Court and a statement as to whether or not there exists any remaining question concerning the venue.

h) A statement as to whether it is expected that the Court will be called upon to determine this matter by dispositive motion before trial. The nature of the dispositive motion should be identified. If the dispositive motion is to be a motion for summary judgment, to the extent possible, the basis of the summary judgment motion shall be stated.

III. DISCOVERY–GENERAL

A statement of the expected discovery that will be needed before the case is in a posture to be ready for:

a) Ruling on motions for summary judgment or other dispositive motion.

b) Pretrial conference (a general statement concerning the nature of discovery and the time to complete such discovery shall be included).

IV. DISCOVERY–EXPERTS

a) A statement concerning the kinds of experts that each party reasonably expects to use at trial.

b) A statement concerning the date when the parties reasonably expect to select their experts.

c) A statement concerning the date when the parties' experts are expected to have given opinions which will be given at trial (this date is intended to be the date on which experts reach any substantial opinions. It is not intended to be the date on which the experts will reach their final opinion).

d) A statement regarding the expected order of discovery. If any party seeks to limit the order of discovery, such statement should be made at this time.

e) A statement generally outlining the information which has already been made available to the parties at the time of the conference through informal discovery, discovery conducted before the conference or pre-suit negotiations.

V. ALTERNATIVE DISPUTE RESOLUTION

A statement concerning whether or not this matter should be referred to the alternative dispute resolution program and, if so, whether to arbitration or mediation and when the same shall occur. If a party believes that certain things must take place before effective arbitration or mediation can be accomplished, a statement of those matters shall be made.

VI. TRIAL

a) A statement by the parties of the earliest time which the parties believe the matter will be ready for trial in the absence of changed circumstances.

b) A statement of any known unusual legal issues which currently are expected to be submitted to the Court prior to trial.

c) A statement of any known unusual evidentiary matters which the Court will be called upon to consider at the Pretrial Conference, or motion in limine, or at the trial of the case.

d) A statement of any "stipulations" on facts about which the parties now agree.

e) A statement of any "stipulations" on issues of law about which the parties agree.

f) A statement of any "stipulations" regarding discovery upon which the parties agree.

g) A statement of suggestions to the Court concerning further pretrial activity. Such statement may include the following:

1) A statement that no Pretrial Conference will be required. If no Pretrial Conference is required, then the statement shall include, at a minimum, a deadline for the exchange of the names and addresses of all witnesses together with an identification of the general nature of the witnesses' testimony; a date for the exchange of a list of all the exhibits and the filing of an agreement regarding the viewing and examination of exhibits.

2) A statement with regard to the Case Management Conference which shall include:

a. Expected length of Case Management Conference. If a lengthy conference is suggested, the reasons for the expected length should be stated.

b. Whether the magistrate judge should attend the conference.

c. A statement of any matters the parties feel must be accomplished before the Case Management Conference can be conducted.

d. A statement of the name of the attorney or attorneys who will be principally responsible for the trial of the case.

(The document must be signed by the attorneys responsible for the trial of the case or with that attorney(s)' specific authority.)

Copies to:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION

Plaintiff(s),

vs. Case No.

Defendant(s).

_____

ORDER FOR CASE MANAGEMENT CONFERENCE

Pursuant to Rule 16(b), *Federal Rules of Civil Procedure*, and to Local Rule _____, IT IS ORDERED THAT:

(a) A Case Management Conference will be held at _____ M., on _____, 199___, in the chambers of the undersigned, Suite _____, _____Floor, United States Courthouse, _____, _____, Florida.

(b) The Case Management Conference shall be attended by all counsel of record at the time of the conference and any unrepresented party. When counsel of record appears on behalf of a particular party, such counsel shall be either the trial counsel or the counsel empowered to direct the court of litigation and with the power to enter into settlements on behalf of the represented party.

(c) At the Case Management Conference, all counsel of record and any unrepresented party, shall be prepared to discuss with the Court the following matters:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of document and advance rulings from the Court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a magistrate judge or master, including the possibility of consent to trial before the magistrate judge;

(7) the possibility of settlement;

(8) the use and type of alternative dispute resolution to resolve the dispute;

(9) the form and substance of the Case Management Order;

(10) the types of motions to be filed and a timeframe for their resolution;

(11) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems; and

(12) such other matters as may aid the disposition of the action.

DONE AND ORDERED at _____, Florida, this _____ day of _____, 199____.

_____(name)
United States District Judge

By:_____
Deputy Clerk

Copies to:

Counsel of Record

Form 4 - 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION

Plaintiff(s),

vs. Case No.

Defendant(s).

_____

CASE MANAGEMENT ORDER

THIS CAUSE came on for a Case Management Conference on the _____ day of _____, 199____, and the following will govern the further proceeding in this case unless and until modified by court order or court-approved stipulation:

1. The attorney responsible for the case of each party is:

2. The attorney attending the Case Management Conference is:

3. Representatives of the parties (other than attorneys) and any insurers attending the Conference are:

4. The following outstanding motions were noted by the Court and decisions regarding the same are noted:

5. Dispositive motions requiring resolution:

A. Nature of motion, including a statement of facts upon which the motion is based.

B. Proponent of Motion to Complete Discovery and File Affidavits by _____.

C. Opponent of Motion to Complete Discovery and File Affidavits by _____.

D. Memoranda of Law to be filed by:

Proponent (____ pages) by _____

Opponent (_____ pages) by _____

6. Arbitration/Mediation will be completed by _____.

7. A settlement conference before the magistrate judge will ____ will not____ be held on _____, 19____.

8. Further Case Management Conference will ____ will not ____ be held. If held, it will be held during the month of _____, 19_____. Conference will be held before _____(Magistrate Judge/Court).

9. This case is set for trial during the week beginning _____, 19____. The following deadlines are established based on that date. If the trial date is postponed, the dates not already passed will be extended accordingly.

A. Exchange of names of experts to be used at trial to be completed by: _____

B. Date for completion of discovery:_____

C. Cutoff date for motions for summary judgment:_____

D. Date for Pretrial Conference, if any:_____

Before magistrate judge:_____

E. Cutoff date for all motions in limine:_____

10. Other matters considered, agreements reached or deadlines set:

DONE AND ORDERED at _____, Florida, this _____ day of _____, 199____.

_____
United States District Judge

Copies to:

Form 5 -1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION

Plaintiff(s),

vs. Case No.

Defendant(s).

ORDER FOR PRETRIAL CONFERENCE

This case is before the Court concerning the scheduling of a pretrial conference. It is

ORDERED:

1. A pretrial conference will be held in Room _____, United States Courthouse, _____ _____, at _____.

2. The attorneys for all parties are further directed to meet together by agreement, instigated by counsel for the plaintiff(s), no later than ten days before the date of the pretrial conference to:

(a) discuss the possibility of settlement;

(b) stipulate to as many facts and issues as possible;

(c) examine all exhibits and documents and other tangible evidence proposed to be used at the trial;

(d) furnish opposing counsel the names and addresses of all witnesses, including experts, if any, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony (Rule 26(e)(1)(B) and (3), F.R. Civ.P.);

(e) prepare a pretrial statement if required by this Order; and

(f) complete all other matters which may expedite both the pretrial and trial of this case.

3. OPTIONAL REQUIREMENTS:

(a) No later than _____, the parties shall file with the Court the pretrial statement which shall contain:

(1) the basis of federal jurisdiction;

(2) a concise statement of the nature of the action;

(3) a brief, general statement of each party's case;

(4) a list of all exhibits and Rule 5.04 exhibit substitutes to be offered at trial with notation of all objections thereto;

(5) a list of all witnesses who may be called at trial;

(6) a list of all expert witnesses, including, as to each such witness, a statement of the subject matter and a summary of the substance of his or her testimony pursuant to Rule 26(e)(1) and (3), F.R.Civ.P.;

(7) in cases in which any party claims money damages, a statement of the elements of each such claim and the amount being sought with respect to each such element;

(8) a list of all depositions to be offered in evidence at trial (as distinguished from possible use for impeachment), including a designation of the pages and lines to be offered from each deposition;

(9) a concise statement of those facts which are admitted and will require no proof at trial, together with any reservations directed to such admissions;

(10) a concise statement of applicable principles of law on which there is agreement;

(11) a concise statement of those issues of fact which remain to be litigated (without incorporation by reference to prior pleadings and memoranda);

(12) a concise statement of those issues of law which remain for determination by the Court (without incorporation by reference to prior pleadings or memoranda);

(13) a concise statement of any disagreement as to the application of the Federal Rules of Evidence or the Federal Rules of Civil Procedure;

(14) a list of all motions or other matters which require action by the Court; and

(15) the signatures of counsel for all parties.

(b) No later than five days before the date set for trial, or at such other time as the Court may direct:

(1) Each side shall submit to the Court and to opposing counsel a trial brief or memorandum with citations of authorities and arguments in support of his position on all disputed issues of law.

(2) Counsel for each party in any jury trial shall submit to the Court, with a copy to opposing counsel, written requests for instructions to the jury. Supplemental requests for instructions may be submitted at any time prior to the arguments to the jury. All requests for instructions shall be plainly marked with the name and number of the case; shall contain citations of supporting authorities, if any; shall designate the party submitting the same; and, in the case of multiple requests by a party, shall be numbered in sequence.

(c) When hereafter requested by the Court, counsel for each party in any non-jury case shall submit to the Court, with a copy to opposing counsel, proposed written findings of fact and conclusions of law.

4. In the event that the date set herein for pretrial conference is continued or otherwise modified, the remaining provisions of this Order shall remain in full force and effect.

5. In order that the full purpose of the conference may be accomplished, it is directed that each party be represented at all of the meetings herein provided for by an attorney who will participate in the trial of the case and who is vested with full authority to make admissions and disclosures of facts and to bind his client(s) by agreements with respect to all matters pertaining to the trial of the case and said conference.

6. Failure to comply with the requirements of this Order may result in dismissal of the action, default or other appropriate penalties.

DONE AND ORDERED at _____, Florida, this _____ day of _____, 199____.

_____
UNITED STATES DISTRICT JUDGE

Copies to:

Proposed Local Rule 1

Civil and Criminal Divisions

(1) CIVIL DIVISION The civil division operates district-wide and consists of at least one district court judge in the Tampa, Jacksonville and Orlando divisions, to whom all civil cases filed in that division are assigned. Civil cases filed in Ft. Myers are assigned to the Tampa civil division judge. Civil cases filed in Ocala are assigned to the Jacksonville civil division judge. The civil division judge is removed from the criminal case draw 70 days prior to moving into the civil division and does not again draw criminal cases until 70 days before leaving the civil division. The civil division has the responsibility of trying all civil cases within the district.

The civil division holds hearings when requested by a party and deemed helpful by the Court. The civil division strives to rule upon motions within four weeks of their becoming ripe or of oral argument on said motions.

The Chief Judge coordinates the judges of the civil division and recommends that a judge from one geographic division assist in the civil docket of another geographic division, if necessary, to insure that civil litigants are provided fair access to the courts throughout the entire district. The Chief Judge may also assign judges from the criminal division and visiting judges to assist in trying civil cases, as needed.

Judges in the civil division serve on the civil division for a minimum period of two years. The Chief Judge of the district may, upon consultation with the other judges in the district, extend the two-year period of appointment to the civil division.

(2) CRIMINAL DIVISION The criminal division consists of all district court judges not assigned to the civil division. The criminal division has the responsibility of trying all criminal cases. The criminal division operates district-wide.

If a geographic division's criminal caseload becomes excessive in relation to the other geographic divisions, the Chief Judge may assign criminal cases to judges in the criminal division who sit in other geographic divisions.

Visiting judges are required to try criminal cases on a back-up basis in every geographic division, if needed. No civil division judge is required to try a criminal case unless the Chief Judge of the district first ascertains that the criminal division is unable to try the criminal case, no visiting judges are available, and the Court certifies that the case to be tried involves an incarcerated defendant and is subject to dismissal, with prejudice, under the Speedy Trial Act.

If there are insufficient judicial resources to handle criminal cases within the time demands of the Speedy Trial Act, the Chief Judge of the Middle District requests the Chief Judge of the United States Court of Appeals for the Eleventh Circuit to reassign judges from other districts within the circuit to service in the Middle District of Florida. If such reassignments are not sufficient to handle criminal cases within the time demands of the Speedy Trial Act, the Chief Judge of the Middle District requests the Judicial Conference of the United States to reassign judges from other districts in the country to service in the Middle District of Florida. These steps are taken before assigning criminal cases to judges in the civil division.

Proposed Local Rule 2

A civil rights complaint filed on behalf of an inmate pursuant to 42 U.S.C. §1983 must:

(1) state that exhaustion of administrative remedies has been accomplished prior to the filing of the complaint, and

(2) attach a copy of the Department of Corrections grievance response(s) to the complaint to verify exhaustion.

Proposed Local Rule 3

In all *pro se* prisoner civil rights case filed pursuant to 42 U.S.C. §1983, the defendant must file a special report in the form found in the Appendix of Forms.

Proposed Local Rule 4

Amends current Local Rule 8.02(a)(2)(A) to read:

Any action that consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to 28 U.S.C. Section 1331 and 42 U.S.C. Section 1983 by a person serving a penal sentence in an institution in the State of Florida.

Deletes subsections 8.02(a)(2)(A)(i), (ii) and (iii):

~~(i) 28 U.S.C. Section 1331 and the Jones Act, 46 U.S.C. Section 688, or the FELA, 45 U.S.C. Section 51;~~

~~(ii) 28 U.S.C. Sections 1331 or 1332 arising out of a negotiable instrument or a contract; or~~

~~(iii) 28 U.S.C. Sections 1332 or 1333 and Rule 9(h), Fed.R.Civ.P., to recover for personal injuries or property damage.~~

Proposed Local Rule 5

All dispositive motions must be so designated in the caption of the motion. All dispositive motions which are not decided within ninety days of the responsive filing (or the expiration of the time allowed for its filing under the local rules) shall be brought to the attention of the district judge by the movant by filing a "Notice To the Court" within ten days after the time for deciding the motion has expired. Movant shall file an additional "Notice To The Court" after the expiration of each and every additional thirty day period during which the motion remains undecided. Movant shall provide the Chief Judge of the Middle District with a copy of each and every "Notice To The Court" which movant is required to file under this rule.

Proposed Local Rule 6

A "motion calendar" day is scheduled each month at which non-dispositive motions pending over 30 days can be brought to the attention of the magistrate judge. The specific day varies from time to time and is determined by each magistrate judge.

Proposed Local Rule 7

Motions to continue trial must be signed by the attorney of record who shall certify that a copy of the motion was furnished to the moving party.

Proposed Local Rule 8

The use of telephonic hearings and conferences is encouraged, whenever possible, particularly when counsel are located in different and/or distant cities. At the request of any party, a civil hearing or conference before the magistrate judge shall be by telephone.

Proposed Local Rule 9

Service of a pleading or paper may be made by transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next business day. Service by facsimile constitutes a method of hand delivery.

Proposed Local Rule 10

- **Amends current Local Rule 8.02(a)(2)(A), as follows:**

Any action that consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to 28 U.S.C. Section 1331 and 42 U.S.C. Section 1983 by a person serving a penal sentence in an institution in the State of Florida.

- **Deletes the rest of the current local rule:**

~~(a) Any civil action shall be referred by the Clerk to arbitration in accordance with this rule if:~~

~~(1) The United States is a party; and~~

~~(A) The action is of a type that the Attorney General has provided by regulation may be submitted to arbitration; or~~

~~(B) The action consists of a claim for money damages not in excess of $150,000, exclusive of interest and costs (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to the Miller Act, 40 U.S.C. Section 270(a) *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. Sections 1346(b) and 2671 *et seq.*~~

~~(C) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.~~

~~(2) The United States is not a party; and~~

~~(A)~~ Any action that consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-

monetary claims are insubstantial), and is brought pursuant to 28 U.S.C. Section 1331 and 42 U.S.C. Section 1983 by a person serving a penal sentence in an institution in the State of Florida.

~~(i) 28 U.S.C. Section 1331 and the Jones Act, 46 U.S.C. Section 688, or the FELA, 45 U.S.C. Section 51;~~

~~(ii) 28 U.S.C. Sections 1331 or 1332 arising out of a negotiable instrument or a contract; or~~

~~(iii) 28 U.S.C. Sections 1332 or 1333 and Rule 9(h), Fed.R.Civ.P., to recover for personal injuries or property damage.~~

~~(B) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.~~

~~(3) The parties consent to arbitration as provided in this rule with respect to any case not within the provisions of subsections (a)(1) and (2) above, and agree to pay a reasonable fee to the arbitrator(s). The written consent to arbitration shall include a statement of understanding that~~

~~(A) Consent to arbitration is freely and knowingly obtained; and~~

~~(B) No party or attorney can be prejudiced for refusing to participate in arbitration by consent.~~

~~(4) For the purpose of making a determination concerning the dollar amount of unstated or unliquidated claims incident to the application of subsection (a) of this Rule, claims for damages shall be presumed in all cases to be less than $150,000 exclusive of punitive damages, interest, costs and attorneys fees, unless counsel asserting the claim certifies in writing before the case is referred by the Clerk for arbitration that to the best of his knowledge and beliefs, in good faith, the damages recoverable exceed $150,000 exclusive of punitive damages, interest, costs and attorneys fees.~~

~~(5) Notwithstanding the amount alleged or stated in a party's pleading relating to liquidated claims, and despite a party's good faith certification concerning the amount recoverable with regard to unliquidated claims, the Court may in any appropriate case at any time disregard such allegation or such certificate and require arbitration if satisfied that recoverable damages do not in fact exceed $150,000 exclusive of punitive damages, interest, costs and attorney's fees, or that arbitration may promote prompt and just disposition of the cause. Conversely, any civil action subject to arbitration pursuant to this rule may be exempt or withdrawn from arbitration by the presiding Judge at any time, before or after reference, upon a determination for any reason that the case is not suitable for arbitration.~~

Proposed Local Rule 11

The parties are required to exchange core information prior to any other formal discovery activity. Core case information refers generally to:

1) The name and address of each witness which the party believes in good faith has factual or expert knowledge bearing on the issues in the case, setting forth as to each witness a brief general statement of the type of information known by the witness. The party will not be bound by the list so provided, but the Court may consider the good faith of the party in preparing such list in making later discretionary ruling involving case management.

2) A list of all types of documents (or other tangible things) then known to exist which the party will rely upon in presenting the case, or if a specific item cannot be identified, a list of the types of items believed to exist which the party expects to discover and rely on by the time of trial. The list will not be binding, but each party is expected to exercise good faith in preparing the list.

3) A list of all applicable insurance agreements under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, stating where these agreements may be inspected and copied.

Proposed Local Rule 12

Litigants' counsel should agree to utilize computer technology to the maximum extent possible in all phases of litigation, i.e., to serve interrogatories on opposing counsel with a copy of the questions on computer disk in addition to the required printed copy.

EXHIBIT D

Civil Justice Reform Act Exit Questionnaire

The purpose of this questionnaire is to help the Court determine if its CJRA Plan, implemented December 1, 1993, is effective. Your responses will be a significant factor in this determination. Please be as objective and candid as possible and return this form within 30 days to: CJRA Analyst, Box 53137, Jacksonville FL 32201.

I. CASE STYLE

Plaintiff _____
_____
_____
_____

vs

Defendant(s) _____
_____
_____
_____

Case #: _____

Date Filed: _____

Date At Issue (Answer Filed): _____

Date of Final Pretrial: _____

Date Trial Began: _____

Trial Judge: _____

Length of Trial: _____

Date Closed: _____

II. NATURE OF SUIT (See Code on reverse side of form)

III. TRACK Was a case management conference held? If so, when?

IV. FORM OF ADR

V. MEANS OF FINAL DISPOSITION (Place a "✓" in one box only)

☐ Default

☐ Dispositive Motion (specify type of motion): _____
- ☐ Date filed: _____
- ☐ Date resolved: _____

☐ Non-Jury Trial

☐ Jury Trial

☐ Settled
- ☐ 1. Pre-ADR
- ☐ 2. At ADR
- ☐ 3. Post-ADR

Was ADR a major factor in settlement? Yes ☐ No ☐
Do you believe ADR reduced cost and delay in this case? Yes ☐ No ☐

☐ Other (explain)

Date: _____

Signature of Attorney for Prevailing Party: _____

Please use the reverse side for any comments or suggestions you may have.

NATURE OF SUIT CODES

Contract
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability

Real Property
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property

Torts
Personal Injury
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury–Med. Malpractice
365 Personal Injury–Product Liability
368 Asbestos Personal Injury Product Liability

Personal Property
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability

Civil Rights
441 Voting
442 Employment
443 Housing/Accommodations
444 Welfare
440 Other Civil Rights

Prisoner Petitions
510 Motions to Vacate Sentence
Habeas Corpus:
530 General
535 Death Penalty
540 Mandamus and Other
550 Other

Forfeiture/Penalty
610 Agriculture
620 Other Food & Drug
625 Drug Related Seizure of Property 21 USC 881
630 Liquor Laws
640 RR & Truck
650 Airline Regs
660 Occupational Safety/Health
690 Other

Labor
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
730 Labor/Mgmt. Reporting & Disclosure Act
740 Railway Labor Act
790 Other Labor Organization
791 Empl. Ret. Inc. Security Act

Bankruptcy
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157

Property Rights
820 Copyrights
830 Patent
840 Trademark

Social Security
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))

Federal Tax Suits
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS–Third Party 26 USC 7609

Other Statutes
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce/ICC Rates/etc.
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
810 Selective Service
850 Securities/Commodities/Exchange
875 Customer Challenge 12 USC 3410
891 Agricultural Acts
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
895 Freedom of Information Act
900 Appeal of Fee Determination Under Equal Access to Justice
950 Constitutionality of State Statutes
890 Other Statutory Actions

USE SPACE BELOW FOR ANY ADDITIONAL COMMENTS OR SUGGESTIONS:

II

102D CONGRESS
1ST SESSION

S. 910

To amend part I of title 28, United States Code, to provide for time limitations in the Presidential nomination and Senate confirmation of Federal judges, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 24 (legislative day, APRIL 9), 1991

Mr. GRAHAM (for himself and Mr. MACK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend part I of title 28, United States Code, to provide for time limitations in the Presidential nomination and Senate confirmation of Federal judges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Judicial Nomination and Confirmation Reform Act of 1991".

SEC. 2. JUDICIAL NOMINATION AND CONFIRMATION REFORM.

(a) IN GENERAL.—Part I of title 28, United States Code, is amended by adding after chapter 23 the following new chapter:

"CHAPTER 25—JUDICIAL NOMINATIONS AND SENATE ADVICE AND CONSENT

"§ 491. Definitions

"For purposes of this chapter, the term—

"(1) 'judge' means a judge of the United States as defined under section 451; and

"(2) 'justice' means a justice of the United States as defined under section 451.

"§ 492. Time limitation on nomination for judicial vacancy

"(a) Subject to the provisions of subsection (b), no later than 180 calendar days after the date on which a vacancy in the office of a justice or judge occurs, the President shall submit a nomination to the Senate to fill such vacancy.

"(b)(1) The time limitation described under subsection (a) may be extended, if before the end of such time

limitation the President submits a written notice to the Senate—

"(A) requesting an extension of no more than 30 calendar days; and

"(B) an explanation of the reasons for the need for such extension.

"(2) An extension under this subsection may not exceed 30 calendar days after the 180-day period described under subsection (a).

"§ 493. Time limitation for Senate advice and consent

"(a)(1) No later than 90 calendar days after the date of receiving a nomination described under section 492(a), the Judiciary Committee of the Senate shall—

"(A) review such nomination; and

"(B) report such nomination to the Senate for advice and consent.

"(2) If a nomination is not reported to the Senate within the 90 calendar days described under subsection (a), such nomination shall be discharged from the Judiciary Committee, without recommendation, for a vote by the Senate on confirmation.

"(b) No later than 30 calendar days after the date of receiving a nomination under subsection (a), the Senate shall vote on the confirmation of the nomination.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

SEC. 3. EFFECTIVE DATE.

The provisions of this Act and amendments made by this Act shall be effective on and after the date of the enactment of this Act and shall apply—

(1) to judicial vacancies first occurring on or after such date; and

(2) with regard to judicial vacancies existing on the date of the enactment of this Act, as though such vacancies first occurred on such date.

O

APPENDIX A

MEMBERSHIP OF THE ADVISORY GROUP

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APPENDIX B

OPERATING PROCEDURES

As required by the Civil Justice Reform Act of 1990, an Advisory Group for the Middle District of Florida was convened by former Chief Judge Susan H. Black in March, 1991.

The chairperson and members of the Civil Justice Advisory Group were nominated and requested to serve by Judge Black. A concerted and deliberate effort was made to appoint members who collectively represented the entire range of civil litigation in the district. Since prisoner petitions comprise a high percentage of civil filings, the Advisory Group's membership included the immediate past executive director of Florida Institutional Legal Services, an organization that represents prisoners. A president of a major insurance company, the president of a state university, plaintiffs' and defense counsel from the three major cities of the district, business lawyers, a Jacksonville councilwoman (now a member of Congress) and a professor of law were named to the Advisory Group. By statute, the membership also included the U.S. Attorney. Serving as ex-officio members in addition to Judge Black were United States District Court Judges Hodges and Schlesinger, the Clerk of the Court and the Operations Chief of the Court. The Reporter was selected for her dual doctorates in political science and law as well as her experience as law clerk to a federal judge and practicing attorney. A management analyst was selected in June, 1991, to perform statistical analysis and assist with the drafting of the report.

The inaugural meeting of the Advisory Group was held April 26, 1991. The Group divided itself into three committees, each concentrating on a major focal point of the intended plan. There were subcommittees on: 1) The Civil Docket; 2) The Criminal Docket; and 3) Court Practices and Procedures. Each subcommittee met at its convenience at various locations throughout the district. The arrangement was beneficial to the Advisory Group because it allowed each subcommittee to contribute specific information to the report in its area of concentration and provided a free exchange of information both inside and outside the Group's meetings.

Since its inaugural meeting, the Group has met eleven times. Its three-pronged strategy for the development of its report has been: 1) Discovery of Facts; 2) Analysis of Case Management Alternatives; and 3) Drafting of the Report. As part of its Discovery phase, the Advisory Group held six public hearings, two each in Tampa, Orlando and Jacksonville, to solicit views of attorneys and litigants on the causes of and possible solutions to excessive cost and delay in federal civil litigation. The attorneys who attended the hearings offered meaningful suggestions that were considered for the Group's final report. The Advisory Group also asked each judge and magistrate judge to prepare a case management summary, including sample orders. These summaries were compiled and distributed to all Advisory Group members for review. From February through April, 1992, judicial interviews based on these case management summaries were held in Tampa, Orlando and Jacksonville. These interviews were of particular benefit to the Advisory Group members in their deliberations.

Preliminary drafts of Parts I and II were reviewed at the April, May and June, 1992, Advisory Group meetings. The members began discussing Part III, the Recommendations section, at their September, 1992, meeting and continued their revisions at the October, November, and December, 1992, meetings. The Advisory Group also voted to have the draft report reviewed by the bar in the Middle District prior to presentation to the court. To that end, copies of the draft report were made available through the local bar associations and the clerk's offices of each division. The responses elicited from this review were considered at a meeting in April, 1993, to which the district judges were also invited to give their views on the draft. After the April meeting, final revisions to the draft were made. The final report was presented to the court on June 30, 1993.

QUESTIONS FOR DISTRICT COURT JUDGES

All of the members of the Advisory Group from each city are encouraged to attend each interview. No interview should be conducted, however, by only one member. For the sake of uniformity, please try to discuss the questions listed below. You, of course, should add to these questions as may be necessary to follow up a Judge's responses.

Please send each Judge a copy of the six principles and six techniques for reduction of cost and delay prior to your interview. Please make clear to the Judges that we have reviewed his/her case management summary and scheduling orders and that the interview will build on that information. Your summary of your informal conference with the Judge should correspond to the outline below (with a narrative summary at the end to cover discussions of questions not listed below). Your summary of your conference with the Judge should be distributed to all Advisory Group members by April 1, 1992.

Civil Case Processing

1. Rule 16 Conferences

   (a) Do you hold Rule 16 conferences?

   (b) What is the format of your conference?

   (c) What do you believe are the advantages of your scheduling order? Disadvantages?

   (d) Have you had a chance to review the scheduling orders of the other Judges? Do you plan to make any changes in your orders?

   (e) Do you set deadlines for filing motions and a time framework for their disposition? Could you?

   (f) Are there any types of cases exempted from Rule 16 conferences?

   (g) Do you find the conferences effective? If so, why or why not?

(h) Do you believe cost and delay could be reduced by a requirement that counsel jointly present a case management plan at the conference?

(i) Describe your use of magistrate judges in your Rule 16 conferences.

(j) Would an early neutral evaluation program help dispose of cases?

(k) How do you select the cut-off dates for discovery set in your scheduling order? Do you ever shorten the time periods suggested by the lawyers?

(l) Describe your procedures and practices regarding controlling the scope and volume of discovery.

(m) Do you ever use any other kinds of conferences? If so, when do you decide to have them?

2. Differential Case Management

(a) Do you put cases on different management tracks?

(b) Do you believe your civil cases could benefit from further differentiation?

(c) Would you require additional resources to accomplish this? If so, what kinds of resources? Personnel? Automation upgrades?

3. Rule 16 and Complex Cases

(a) Do you always hold a preliminary pretrial conference in a complex case?

(b) Do you explore settlement possibilities?

(c) Do you identify/formulate the principle issues in contention?

(d) Do you consider a staged resolution or bifurcation of those issues consistent with Rule 42(b) of the Federal Rules of Civil Procedure?

(e) Do you attempt to identify and limit the volume of discovery to avoid unnecessary or unduly burdensome or expensive discovery?

(f) Do you phase discovery into two or more stages?

(g) Do you set deadlines for motions and a time framework for their disposition?

4. Time Limits

(a) What is your practice regarding monitoring service of process?

(b) What do you think will be the effect of Rule 4(m) of the Federal Rules of Civil Procedure which permits 120 days to effect service of process?

(c) What is your practice regarding extensions of time to respond to complaints or motions?

(d) What is your practice regarding extensions of time for discovery or postponement of trial? Do you believe a party should also be required to sign such a request?

(e) What procedures have you found most effective in enforcing time limits?

5. Courtroom Deputy

(a) How could your courtroom deputy's case management function be enhanced?

(b) Would funding an additional lower grade position to perform solely as a courtroom deputy be offset by a significant increase in the ability of your present deputy to perform as a case manager?

6. Discovery Procedures

(a) Do you use a Rule 26(f) discovery conference? If so, describe the scope of the conference.

(b) Describe your use of magistrate judges for resolving discovery disputes.

(c) Discuss voluntary exchanges and disclosure and other alternatives to traditional discovery.

(d) Do you believe that Local Rule 3.04(a) is effective at conserving judicial resources? Would it enhance its effectiveness to require certification prior to filing any discovery motion?

(e) Do you use sanctions for discovery abuse? If so, under what conditions?

7. Motion Practice

(a) Describe your practice regarding requests for oral argument. Do you believe there should be more or fewer oral arguments?

(b) What are your criteria for granting oral argument?

(c) Do you use proposed orders from attorneys?

(d) What is your opinion of a motion day practice similar to the state court's use of motion days? of ex parte hours?

(e) Do you make oral rulings on motions? Is so, describe frequency, type of case, effectiveness, etc.

(f) Describe your internal policies for handling motions which are ready for ruling -- (i.e., priority of motions, policies for written opinions; policies regarding published opinions).

8. Final Pretrial Conferences

(a) Describe your procedures regarding final pretrial conferences.

(b) After reviewing the pretrial conference orders of the other Judges, do you plan to make any changes in your orders?

(c) How do you structure the sequence of trial issues, i.e., do you bifurcate trials? Under what conditions?

(d) Describe your role in exploring settlement possibilities.

(e) Do you believe someone with authority to bind a party should be present or available by phone at all settlement conferences?

9. Setting Trial

(a) Describe procedures you have found to be most effective in scheduling trials and "clearing the calendar".

(b) Describe your priorities in balancing Speedy Trial Act and civil case scheduling.

(c) Do you set firm trial dates? Under what circumstances could you set firm trial dates?

(d) Is 18 months a reasonable time limit for disposition of the ordinary civil case in this district?

10. Alternative Dispute Resolution

(a) What are your opinions of the effectiveness of alternative forms of dispute resolution? (arbitration, mediation, summary jury trial, mini trial)

(b) What changes need to be made?

(c) Upon what basis do you send cases to arbitration/mediation?

(d) Do you send some cases to both?

(e) Which method of ADR have you found most successful in resolving cases prior to trial?

(f) How do you choose a mediator in the cases in which you use mediation? Does attorney preference play a part? Do you use a magistrate judge for mediation?

11. Impact of Criminal Caseload

(a) What impact has the criminal caseload had on your disposition of your civil cases?

(b) What changes, if any, would you like to see in the charging decisions of the U.S. Attorney?

(c) What can the U.S. Attorney do to expedite the handling of criminal cases?

(d) What can Congress do to ameliorate the impact of federal legislation on the Courts?

(e) Could the criminal caseload in this Division be more efficiently managed if, on an annually rotating basis, two or one and one-half judges were assigned exclusively to handling criminal cases?

(f) Could the criminal and civil caseloads in this Division be more efficiently managed if all judges tried cases during the same trial weeks and, if a case was not reached by the judge to whom the case is assigned, the case was tried by another available judge?

12. General Comments

(a) Do you think civil cases take too long in this District? If so, are there certain types of cases which take longer than others?

(b) Do you think it costs too much to litigate civil cases in this District? If so, what can be done to decrease the costs of litigation?

(c) What, in your opinion, is the most effective tool or process to expedite civil cases?

(d) Do you believe magistrate judges are utilized fully at the present time in this district? What changes would you make in their utilization?

(e) What other recommendations or suggestions do you have for addressing the cost or delay of civil cases?

(f) Have you encountered any problems relating to admiralty and maritime cases? Have you any suggestions as to how the admiralty and maritime practice might be improved?

QUESTIONS FOR ATTORNEYS

1. Please select a case which you litigated in federal court recently and answer the following questions based upon your experience in that case. Please specify the kind of action and approximate value of your case.

2. How would you characterize the level of case management by the court in your case? Please circle <u>one</u>.
   a. Intensive
   b. High
   c. Moderate
   d. Low
   e. Minimal
   f. None

3. 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 <u>one</u> number to indicate whether or not the court took such action in <u>this</u> case.

Case Management Actions	Was Taken	Was Not Taken	Not Sure	Not Applicable
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):	1	2	3	4

4. How long should this case have taken from filing to disposition under circumstance 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? _____

   How long did it actually take from filing to disposition?

   _____

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?

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 specify):

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.

APPENDIX C

U.S. Department of Justice

United States Attorney
Middle District of Florida

500 Zack Street, Suite 400 *813/225-7300*

Tampa, Florida 33602

June 10, 1993

Sharon A. Kennedy, Esquire
Civil Justice Reform Act Advisory Group
for the Middle District of Florida
United States District Court
U.S. Courthouse, Rooms 549-550A
Post Office Box 53137
Jacksonville, Florida 32201

Re: Final Report

Dear Ms. Kennedy:

I would like to take this opportunity to provide some comments to the Civil Justice Reform Act Advisory Group concerning its final Report generally and several specific recommendations.

As a statutory member of the Group, I have been privileged to serve with you for the past 21 months. As you know, the United States Attorney's Office generates more business for the District Court than any other single entity. Consequently, the Assistant United States Attorneys and I who work in this office are well aware of the grave problems confronting the court system in this District; we encounter these problems every day. There can be no doubt that there are excessive costs and delays plaguing the civil docket. Many of the factors contributing to those excessive costs and delays have been identified in the Report. I share the Group's concern with these matters; excessive costs and delays in the prosecution of civil cases are unacceptable.

The Report identifies the expansion of the criminal docket in the past 10 years as the major factor contributing to the excessive costs of and delays in the civil docket. This factor, combined with a lack of proportionate increase in judicial resources, has created an imbalance which exists at the present time. Because the Speedy Trial Act requires the District Court to give priority to criminal cases, the prosecution of civil cases necessarily suffers.

Turning now to the recommendations, a prefatory remark is in order. As I mentioned continually to the Group, the Department of Justice as a matter of policy forbids U.S. Attorneys to personally comment on proposed legislation affecting matters within the Department's jurisdiction. Therefore, I cannot officially support many recommendations.

With respect to specific recommendations, I voted "no" on several of them for substantive reasons, and I would like my "no" vote reflected in the Report via this letter. The explanations are set forth below.

No. 1 (Creation of Civil and Criminal Divisions): This recommendation is ill-advised, unworkable, and unnecessary to achieve the goals sought.

No. 6 (Shifting certain civil cases from the Tampa Division to the Orlando Division): I oppose the wholesale transfer of civil cases from one locale to another. It is disruptive, inefficient, and actually adds to the costs of litigation.

No. 28 (New federal crimes): The Department of Justice in Washington, D.C., forbids U.S. Attorneys to take positions on proposed legislation.

Notwithstanding these objections, I still support the Group's efforts to develop rational and creative methods to reduce excessive costs and delays in civil cases, and look forward to future efforts in that regard.

Sincerely,

Robert W. Genzman

ROBERT W. GENZMAN
United States Attorney

APPENDIX D
(Prepared by Administrative Office of the U.S. Courts)

PENDING MOTIONS REPORT
(SUMMARY FROM MOTIONS PENDING OVER SIX MONTHS
BENCH TRIALS SUBMITTED OVER SIX MONTHS
CIVIL CASES PENDING OVER THREE YEARS
ON SEPTEMBER 30, 1992)

Eleventh Circuit
Florida, M.

DISTRICT JUDGE	MOTIONS PENDING	BENCH TRIALS SUBMITTED	3-YR. CASES PENDING
Alaimo, Anthony A. (SJ),(VJ)	0	0	1
Black, Susan H. (Elevated)	0	0	2
Castagna, William J.	0	0	23
Conway, Anne C. (NJ)	137	0	11
Fawsett, Patricia C.	3	0	2
Hodges, William T.	35	0	12
Kovachevich, Elizabeth A.	212	0	10
Krentzman, Ben (SJ)	0	0	0
Melton, Howell W. (SJ)	2	0	0
Merryday, Steven D. (NJ)	179	0	7
Moore, John H., II	2	1	12
Nimmons, Ralph W., Jr.	101	0	11
Schlesinger, Harvey E.	34	0	20
Sharp, George K.	8	0	6
Unassigned	0	0	23
Young, George C. (SJ)	0	0	0
District Totals:	713	0	140