CIVIL JUSTICE ADVISORY COMMITTEE

REPORT AND PLAN OF THE ADVISORY COMMITTEE
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

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September 30, 1993

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REPORT AND PLAN OF THE ADVISORY COMMITTEE APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

I. DESCRIPTION OF THE COURT

A. Structure

The Southern District of Georgia embraces a large geographical area. Its six divisions, located at Augusta, Brunswick, Dublin, Savannah, Waycross, and Statesboro, stretch over forty-three counties. Located in the Southern District are the urban commercial centers of Augusta and Savannah, as well as rural agricultural areas. It features two port cities, several large federal military bases, and both state and federal correctional facilities.

The Southern District is authorized three judgeships. One authorized judgeship has been vacant since July 1991 when a judge took senior status. This judge has continued to carry a full civil and criminal caseload, however. A second senior judge has regularly visited in the Southern District since January 1, 1991, and carries a 4% caseload.

The Southern District is served by three magistrate judges, the full complement authorized by the Judicial Conference, and two bankruptcy judges. An additional bankruptcy judge to be shared with the Middle District of Georgia and located there has recently been approved. Funding for this new, shared position has not been authorized but is expected soon.

The Southern District of Georgia contains urban areas as well as less populated rural counties. The Article III judges and magistrate judges principally sit in the cities of Augusta, Brunswick, and Savannah. Cases from the Dublin and Statesboro Divisions are filed and processed in the clerk's office in Augusta. Cases from the Waycross Division are filed and processed in Savannah. The judges travel to Dublin, Statesboro, and Waycross to hear cases originating in those divisions. Courthouses in these three divisions are staffed only when court is scheduled. As a result of the arrangement by which cases from the Dublin, Statesboro, and Waycross Divisions are filed in Augusta or Savannah, respectively, and the judges and court personnel travel to these locations to hold court, there are some travel inconveniences but no significant disruptions or inefficiencies in balancing the civil and criminal caseload in the district.

Because cases are tried locally, most of the burden of travel is borne by the judges and the court personnel. Juries for civil and criminal cases are drawn from the relevant division. The Grand Jury, however, only sits in Savannah and its members are drawn throughout the district. Thus, some grand jurors may be compelled to travel a considerable distance to serve.

B. Special Statutory Status

The Southern District of Georgia has not been designated under the Civil Justice Reform Act either as a pilot court or as an Early Implementation District.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. Condition of the Civil and Criminal Dockets

For the twelve-month period ending June 30, 1991, the Southern District of Georgia ranked first in the circuit and second in the nation in the number of civil filings per judgeship and first in the country in weighted filings per judgeship.[1]

Asbestos case filings during the statistical reporting years of 1990 and 1991 imposed "peak load" demands on the Southern District. The Advisory Committee commends the judges, magistrate judges, and court personnel for the extraordinary work and competence that preserved the Southern District's well-established reputation for the prompt disposition of cases.

Nevertheless, the surge in civil filings in 1990 and 1991, coupled with the steady and sizable increase in the number of criminal filings, have exacted a toll on the characteristic speed with which both civil and criminal cases have been disposed in the Southern District. The Judicial Workload Profile for the twelve months ending June 30, 1992,[2] that covers the statistical reporting years of 1987 to 1992, included as Attachment A, shows that the median time from filing to disposition for both civil and criminal cases has increased over this six-year span. The 1992 Judicial Workload Profile reports that the median time from filing to disposition for criminal felony cases has risen steadily in the Southern District from 3.2 months in 1987 to 6.3 months in 1992. Similarly, the median time from filing to disposition of civil cases, which was 8 months in the years of 1987 through 1989, reached 10 months in both 1991 and 1992. In 1992 for the first time, the Southern District's median time from filing to disposition for criminal felony cases of 6.3 months surpassed the national median time of 5.9 months, and the median time from filing to disposition for civil cases in the Southern District of 10 months exceeded the national average of 9 months.

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[1]Judicial Workload Profile for the Southern District of Georgia for Twelve Months ending June 30, 1991, in 1991 Court Management Statistics (Administrative Office of United States Courts) (covering SY 1986 to 1991 inclusive).

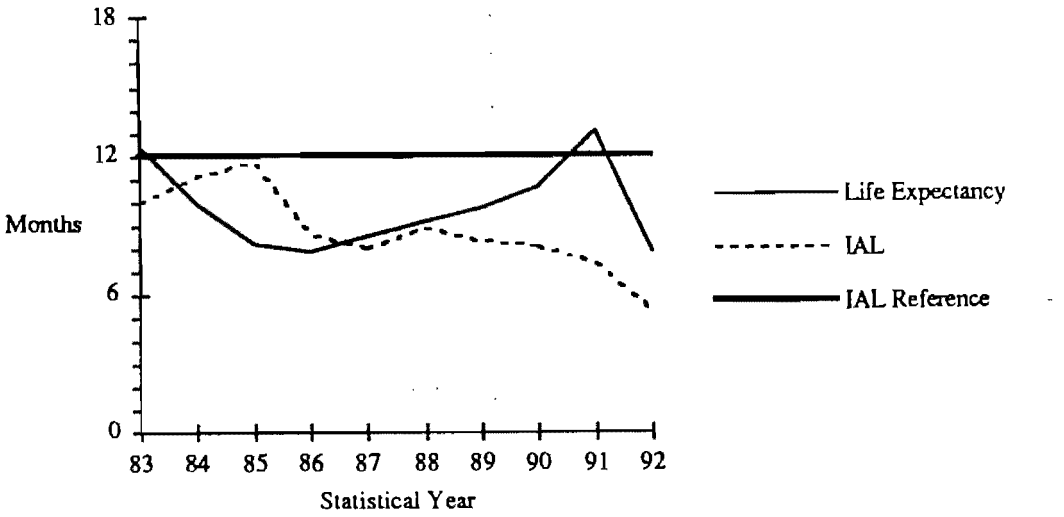
[2]Judicial Workload Profile for the Twelve Months ending June 30, 1992, in 1992 Court Management Statistics (Administrative Office of the United States Courts) (covering SY1987 to 1992 inclusive)

Use of median time to disposition to gauge the condition of the docket can be notoriously misleading because this figure is based on the age of terminated cases. Terminating a large number of older cases in a year will result in an elevated median time even though the court is making gains in disposing of relatively more of its oldest cases. For this reason the Advisory Committees have been cautioned to look to more sophisticated measures to determine the condition of the docket.

Charts 1 and 2 depict the life expectancy and indexed average lifespan (IAL) of civil cases in the Southern District for the ten years ending June 30, 1992.[3] The average time for disposition of civil actions in the 94 United States District courts is 12 months; hence the IAL is indexed at 12 and is calculated to permit a comparison of the characteristic lifespan of this court's cases to that of all district courts over this past decade. An IAL value below 12 indicates that the court disposes of the cases faster than the national average. Life expectancy shows the change in the trend of actual case lifespan, i.e., how many months a newly-filed case will likely take to disposition, given changes in the rate of filing.

Chart 1: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92

Southern District of Georgia



[3]Guidance to Advisory Groups Memo SY92 Statistics Supplement (Sept. 21, 1992) at 15.

Chart 2: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92

Southern District of Georgia

Charts 1 and 2 above show that the Southern District of Georgia has consistently disposed of civil cases, including so-called Type II cases that presumptively are more complex and permit less routine handling, far faster than the national average. Only during the peak filing years of 1990-91 did the life expectancy of a newly-filed case exceed twelve months. The civil docket in the Southern District has been and remains impressively current, with the average civil case taking under twelve months from filing to disposition. According to the most recent statistics available, for the twelve-month period ending March 31, 1993, the median time from filing to disposition for all civil cases terminated in the Southern District was 7 months.[4]

Another telling measure of the condition of the civil docket is the number and percentage of cases more than three years old. For the years 1989, 1990, and 1991, the Southern District had no cases over three years old,[5] ranking first in the country by that measure. In SY 92, the Southern District had seven cases over three years old, or 0.7% of its civil docket. The national average, which was 8.7% in 1992, has hovered around 10%, considerably higher.[6]

Table 1 contains data compiled by the Reporter from Federal Judicial Workload Statistics over a period of seven years that is relevant to assessing the condition of the civil and criminal dockets of the Southern District. It should be noted that the number of civil filings for the two

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[4]Federal Judicial Workload Statistics for the Twelve Months ending March 31, 1993 (Administrative Office of the United States Courts).

[5]The Advisory Committee was informed by Henry R. Crumley, Jr., Clerk of the Court, by letter dated December 5, 1991, that the Judicial Workload Profile for SY91 is in error in showing the District with one civil case over three years old; it had none for SY91.

[6]See 1992 Judicial Workload Profile for All District Courts at Attachment A.

most recent reporting periods have returned to the level of the 1986-89 period, averaging around 1,275 civil filings per year. The years of 1990 and 1991 saw asbestos case filings soar, driving total case filings to more than 1,600 filings for these years. On July 29, 1991, the Judicial Panel on Multidistrict Litigation issued an order transferring asbestos cases to the Eastern District of Pennsylvania. The high number of terminations in the Southern District in 1992 reflects this transfer of asbestos cases.

Asbestos cases filed in the Southern District for 1992 and later are reported as "filings" and then as "terminations" when transferred to the Eastern District of Pennsylvannia under MDL Order 875.

The number of pending civil cases (943) shown in the most recent reporting period is similarly back in line with the number of pending cases in the earlier reporting periods. Thus, with annual case terminations again approximating the number of annual case filings, the life expectancy of civil cases in the Southern District should remain below the national average.

TABLE I
Southern District of Georgia
For Twelve-Month Reporting Periods Indicated*

	12/31 1986	12/31 1987	6/30 1988	6/30 1989	6/30 1990	6/30 1991	6/30 1992	3/31 1993
CIVIL CASES								
Total Commenced	1,216	1,240	1,278	1,236	1,601	1,618	1,310	1,261
Total U.S. (%)	392 (32.2%)	342 (27.6%)	368 (28.8%)	362 (29.2%)	299 (18.7%)	268 (16.6%)	265 (20.2%)	242 (21.6%)
Total Private (%)	824 (67.8%)	898 (72.4%)	910 (71.2%)	739 (59.8%)	1,302 (81.3%)	1,350 (83.4%)	1,045 (79.8%)	989 (78.4%)
Terminated	1,238	1,167	1,145	1,239	1,167	1,278	1,964	1,281
Pending	892	964	1,010	1,007	1,370	1,710	1,059	943
CRIMINAL CASES								
Total Commenced	310	302	270	307	372	382	400	424
Felony	148	158	144	135	138	140	156	156
Drug Offenses (%)	53 (17.0%)	67 (22.1%)	48 (17.7%)	37 (12.0%)	43 (11.6%)	48 (12.6%)	42 (10.0%)	58 (13.7%)
Terminated	275	309	248	308	342	384	367	395
Pending	103	96	117	101	146	136	169	204
CRIMINAL DEFENDANTS								
Commenced	380	413	350	420	486	508	526	594
Felony	216	276	222	244	244	264	281	--
Drug Offenses (%)	107 (28.1%)	166 (40.1%)	91 (26.0%)	115 (27.3%)	135 (27.7%)	120 (23.6%)	121 (23.0%)	157 (16.4%)
Terminated	344	410	346	407	431	510	500	--
Pending	138	149	168	163	218	228	254	--

*Federal Judicial Workload Statistics for the Twelve-Month Periods Shown.
(Administrative Office of the United States Courts)

Despite the overall very positive assessment of the current condition of the docket, a caution flag should be raised about the criminal docket. Since 1986, the number of criminal cases commenced in the Southern District has increased from 310 to 424, an increase of 36%. Of equal, or perhaps greater impact, the number of criminal defendants has increased during the same period from 380 to 594, an increase of 56%. Counting criminal defendants rather than cases is thought to be a more realistic measure of judicial time in this side of the docket.

The increased burden of the surging criminal docket on the Southern District can be seen in several ways. First, the median time from filing to disposition in criminal felony cases has grown steadily from 3.2 months in 1987, to 5.1 months in 1991, and 6.3 months in 1992. A growing problem is indicated. Since the Speedy Trial Act dictates that criminal cases receive priority, the impact of the growth in the criminal docket on how quickly civil cases reach trial might be expected and can, in fact, already be detected. According to the Judicial Workload Profile for the twelve-month periods ending June 30, 1987 through 1992,[7] the median time from issue to trial, for only civil cases tried, averaged ten months from 1987 to 1989. For 1990, the median grew to 12 months, and for 1991 and 1992, it reached 13 months. Although not fully comparable because the measuring period is different, the most recent data, for the period ending March 31, 1993, show that the median time from filing to disposition by trial in the Southern District was 14 months. The time from joining the issue to trial in civil cases in the Southern District remains below the national median of 14 months.

The increasing demands of the criminal docket are likely to have a greater and greater impact on the civil docket. The sharp increase in the number of criminal defendants prosecuted in the Southern District over the past seven years and the adoption of far more elaborate rules pursuant to the United States Sentencing Guidelines issued under the Sentencing Reform Act of 1984 that now govern the sentencing of convicted defendants virtually assures that the criminal docket will be a key determinant in whether the civil docket will retain its present current condition.

1. Trends in Case Filings and in Demands on Court Resources

a. Criminal Cases and Defendants

In assessing the condition of the docket in section II. A. above, the Advisory Committee has noted the sharply rising number of criminal defendants prosecuted in the Southern District and the increasing demand that these cases place on the district court. Chart 3[8] depicts this trend.

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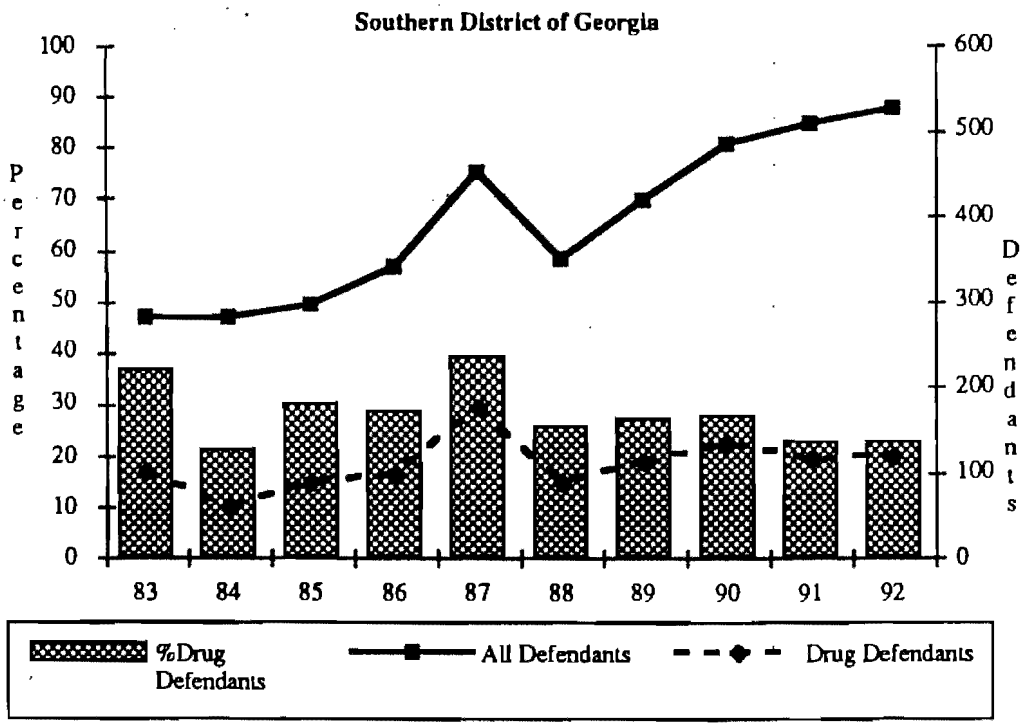
[7]See Attachment A.

[8]Guidance to Advisory Groups Memo SY92 Statistics Supplement of September 21, 1992, at p. 18.

Chart 3: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY83-92



It should be noted that this increase is not fueled primarily by a sharply increasing number of drug defendants. The percentage of drug offense prosecutions and drug defendants has remained relatively stable over this seven-year period as Table 1 and Chart 3 show.

An analysis in greater detail of the criminal cases commenced and criminal defendants prosecuted by major offenses between 1988 and 1992 compiled by the Reporter from the Federal Judicial Workload Statistics confirms that the sizable increase in the number of criminal defendants prosecuted in the Southern District is not, at least directly, attributable to drug prosecutions. The total number of criminal defendant filings rose by 173 between 1988 and 1992, from 350 criminal defendants to 523. Drug offense filings rose by only 30 during this period and accounted for only 17.3% of the increased number of criminal defendants prosecuted. Criminal defendants charged with weapons and firearms offenses rose from 7 in 1988 to 24 in 1992, constituting roughly 9% of the increase. This increase in the number of firearms and weapons prosecutions reflects the policy of the Department of Justice to prosecute under Operation Triggerlock defendants using weapons in the commission of a crime.

Surprisingly, defendants prosecuted for larceny constituted by far the largest percentage of the increase. The number of criminal defendants prosecuted for larceny rose from a low of

9 in 1988 to 58 in 1989 and to 98 in 1992, and accounted for 51.4% of the overall increase in the number of criminal defendants prosecuted between 1988 and 1992. Traffic cases were also a significant portion of the increase, rising from 102 in 1988 to 149 in 1992 and constituting 27% of the increase in criminal defendant filings. The increase in the number of criminal defendant filings in other categories of crime was minuscule. Thus, the recent increase in the number of criminal defendant filings in the Southern District appears to be attributable to larger numbers of larceny, traffic, drug, and weapons and firearms prosecutions, in that order.

b. Trends in Civil Cases Types

Table 2 below shows the civil filings by case type for the Southern District of Georgia for the statistical reporting years 1983 to 1992.

Table 2: Filings by Case Types, SY83-92

Southern District of Georgia	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	27	9	34	65	86	195	111	540	676	190
Bankruptcy Matters	27	30	25	16	23	15	19	28	18	21
Banks and Banking	3	1	1	1	0	1	1	0	1	0
Civil Rights	93	118	81	97	98	67	82	88	72	133
Commerce: ICC Rates, etc.	3	1	2	0	1	0	1	1	2	0
Contract	302	241	275	251	239	209	225	191	146	139
Copyright, Patent, Trademark	4	6	6	5	4	9	14	10	6	16
ERISA	2	8	1	3	10	7	10	17	14	24
Forfeiture and Penalty (excl. drug)	20	18	24	5	14	25	32	52	49	19
Fraud, Truth in Lending	21	17	10	12	5	6	8	6	9	4
Labor	22	9	14	17	19	32	15	12	15	22
Land Condemnation, Foreclosure	30	35	46	91	40	80	120	53	12	14
Personal Injury	236	188	195	201	193	137	190	183	199	216
Prisoner	285	262	186	241	204	228	190	230	219	292
RICO	0	0	0	0	3	0	5	3	5	18
Securities, Commodities	0	2	1	1	1	2	1	2	4	2
Social Security	116	144	108	64	55	95	47	54	45	55
Student Loan and Veteran's	165	147	129	170	61	65	70	39	35	38
Tax	27	22	12	9	5	4	8	9	8	7
All Other	90	92	117	105	87	60	78	74	93	95
All Civil Cases	1473	1350	1267	1354	1148	1237	1227	1592	1628	1305

Several case types deserve special attention:

(1) Asbestos Cases

Asbestos litigation has been called a "major test" of the federal tort system because of the volume of cases and the tremendous workload accompanying them. As Table 2 reports

and as noted in section II. A. asbestos case filings rose dramatically in the Southern District in 1990 and 1991. Under Multidistrict Litigation Order 875 these cases were transferred to the Eastern District of Pennsylvania in July 1991. In the event these cases are not finally resolved there and are returned to the Southern District for trial, the civil caseload could be overwhelmed with "old" asbestos cases. Recent developments suggest that a nationwide class action may be used to capture all asbestos litigation.

(2) Prisoner Civil Rights Cases

Federal civil lawsuits brought by state prisoners challenging the conditions of their confinement have grown nationally at a rate much faster than civil litigation generally. With a number of state correctional facilities located in the district, the Southern District of Georgia already has seen prisoner § 1983 actions claim a significant portion of its civil docket. The number of state prisoner actions filed in the Southern District may increase significantly, if unchecked, because three new 750 bed correctional facilities will soon open and add over 2,000 inmates to the population of the district.

Prisoner civil rights cases have ranged from 14% to 22% of all civil case filings in the Southern District for the last decade. According to the most recent data, state prisoner civil rights cases accounted for 244 of 1,261 civil cases filed in the Southern District for the twelve months ending March 31, 1993, or 19%. More significantly, prisoner cases constituted 24.7% of the 989 private civil cases filed during this period.

When assigned a weight to measure judge time devoted to this type of case, prisoner civil rights cases constitute a smaller proportion of the civil docket than their actual total number. The system of weights does not purport to measure the time of magistrate judges who devote substantial time to these cases, however. These prisoner cases constitute a substantial part of the judicial workload of the district. They usually are filed *pro se*, contain poorly formulated allegations, and require special attention and patience not to miss the meritorious claim among the many that are baseless.

The Advisory Committee believes that prisoner civil rights cases now impose an unwise and unwarranted burden on the federal courts and that this condition will worsen significantly in the Southern District unless a fair and workable system to divert these claims to state courts or to state administrative hearings is adopted. The Advisory Committee has included a recommendation, Recommendation No. 1, to Congress to impose an exhaustion of remedies requirement to such claims prior to their filing in federal court.

(3) Other Civil Types

In examining the data in Table 2, the Advisory Committee has noted that Contract, Personal Injury, and Civil Rights cases comprise a significant portion of the Southern District's

civil docket. No particular trend is observable among these case types other than an apparent decline in the number and proportion of contract actions.

Although few in absolute numbers, there has been a steady increase in the number of Copyright, Patent and Trademark cases and in the number of ERISA cases filed, case types which are listed as presumptively more complex Type II cases. Finally, although the number of social security appeals is declining, the Advisory Committee considers this type of case appropriate for special handling and includes a recommendation to divert these cases to a new Article I court. See Recommendation No. 3. Similarly, the Advisory Committee has endorsed the proposal in the Report of the Federal Courts Study Committee that certain Title VII EEOC cases and other worker claims be resolved through court annexed mediation and arbitration, or outside the federal courts entirely. See Recommendation No. 4.

c. Civil Case Mix

In an effort to look for trends deeper than the mere number of case filings by type, the Advisory Committee analyzed the mix of cases on the docket over time. Table 3 below uses data from the Judicial Workload Profiles for the Southern District for the statistical reporting years of 1986 to 1992 to compare weighted case filings with actual case filings.

Table 3
Comparison of Weighted Case Filings
With Actual Case Filings, SY86-92

	Weighted Filings	Actual Filings	Ratio
SY 1992	1,539	1,467	1.05
SY 1991	2,058	1,763	1.17
SY 1990	1,836	1,740	1.06
SY 1989	1,269	1,373	0.92
SY 1988	1,311	1,433	0.91
SY 1987	1,275	1,489	0.95
SY 1986	1,251	1,489	0.84

A ratio of weighted case to actual case filing greater than 1.0 is indicative of a more complex caseload, requiring greater judge time. Data is not available to extend this calculation to SY93 after the transfer of the asbestos cases. This is a caseload measure that should be followed in subsequent assessment of conditions in the Southern District. It signals a caseload growing in complexity.

Table 1 reports the total number of civil case filings as well as the division of civil cases between those where the United States is a party (plaintiff or defendant) and private civil actions. As Table 1 shows, the percentage of civil cases where the United States is a party has declined somewhat over the last seven years, while the proportion of private civil cases

correspondingly has increased. Private civil actions are not identical with, but do include, actions based on diversity of citizenship jurisdiction. It is surprising to see that the number and percentage of private civil suits are increasing since Congress in 1989 increased from $10,000 to $50,000 the amount in controversy requirement for diversity cases. That change has apparently had little effect in the Southern District. Diversity cases nationally represent roughly 23% of the civil cases filed in the federal district courts each year and constituted an even larger percentage of the judicial workload. For example, while only 3.5% of all civil cases filed in the United States District Courts reach trial, 5.5% of the diversity cases reach trial. Only 1.5% of the cases where the United States is a party do so.

Although data on the exact number of diversity cases among these private civil cases has not been gathered, it is likely to be at least one-third of the caseload if the national averages obtain. Thus, a significant percentage of the civil cases, and an even larger percentage of the judicial workload, results from diversity of citizenship jurisdiction.

The Advisory Committee has debated whether to recommend that Congress amend 28 U.S.C. § 1332 to eliminate or restrict diversity jurisdiction by limiting the right of a resident plaintiff to invoke diversity in the plaintiff's home state. The Advisory Committee declined by vote to make that recommendation, see Recommendation No. 5, but did endorse a proposal in the Report of the Federal Courts Study Committee (1990) to ask Congress to broaden the multi-district litigation statute to permit handling in federal court of large-scale, multi-party litigation. See Recommendation No. 6.

d. Civil and Criminal Trials

The Advisory Committee has observed that the number of civil trials has gradually declined over the six year period from 136 in 1987 to approximately 80 in 1992. The number of criminal trials during this period has averaged 32-35. The percentages of civil and criminal trials has not changed markedly. Civil cases still account for about two-thirds of the completed trials. Charts 4 and 5 present the data on civil and criminal trials.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY87-92

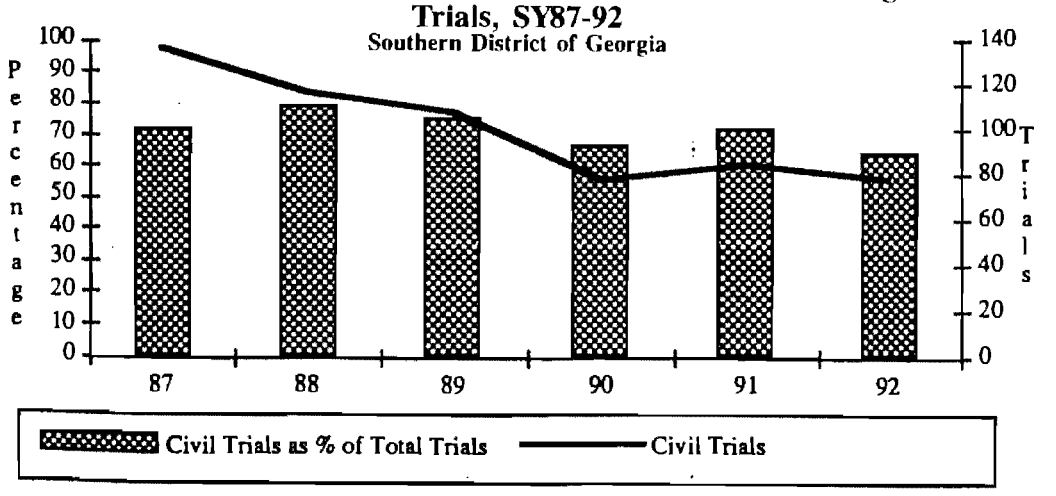
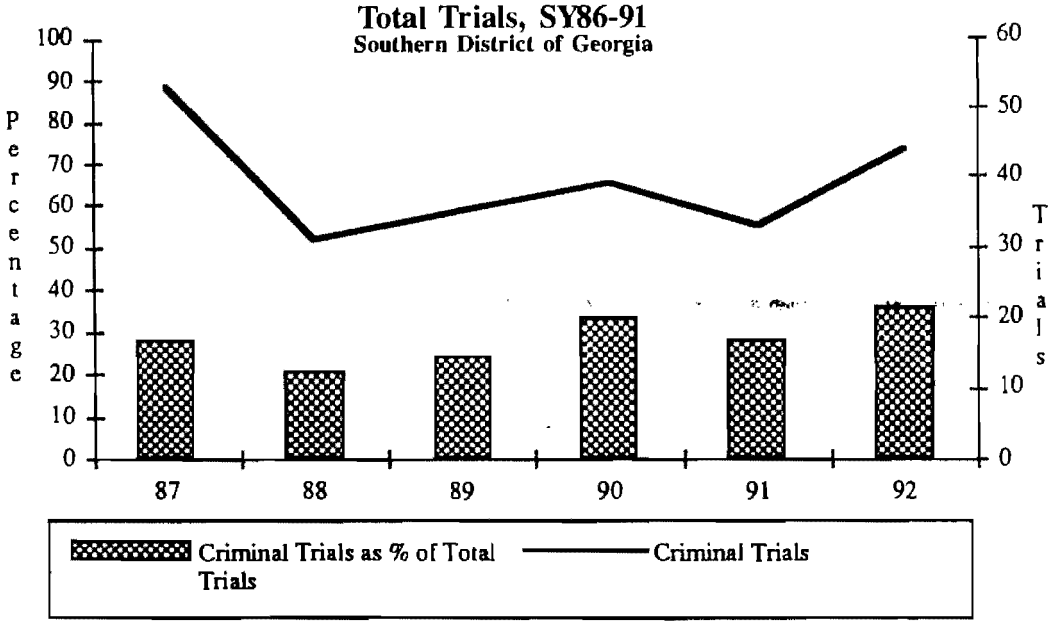


Chart 5: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91



e. Future Demands

It is difficult to forecast with prescience what new kinds or types of litigation may be forming and first beginning to appear in significant numbers on the dockets of the nation's federal courts. Members of the Advisory Committee have speculated variously that environmental litigation, especially toxic tort cases, may arise in significant numbers. Similarly, cases involving breast implants and litigation brought under the Americans with Disabilities Act and the 1991 Amendments to the Civil Rights Act (that added jury trials and awards of punitive damages) could place substantial new demands on the district court's resources. History shows that entirely new categories of litigation have been spawned by Congressional enactments over the past twenty-five years. Accordingly, the Advisory Committee believes that even though the docket of the Southern District of Georgia is in excellent condition today, prudence dictates that the court consider measures to improve its capacity to handle future demands.

2. Trends in Court Resources

The Southern District of Georgia is authorized three judgeships. One of these authorized judgeships has been vacant since July 1991 when a judge took senior status. Fortunately for the court, that judge as a senior judge has continued to carry a full criminal and civil caseload. In January 1991 a senior judge from another district began regular visits to the Southern District. Although this senior judge spends a substantial block of his time chairing the Multidistrict Litigation Panel and on other judicial duties outside the district, he does hear cases in the Southern District as well and has carried a 4% caseload.

The Southern District is served by three full-time magistrate judges located in the Augusta, Brunswick, and Savannah Divisions, respectively. There are no pending requests for additional magistrate judge appointments in the Southern District.

Magistrate judges in the Southern District issue search and arrest warrants and handle preliminary proceedings in criminal cases. Magistrate judges try petty and misdemeanor criminal cases. In civil cases, magistrate judges hear discovery disputes and conduct initial hearings in *pro se* prisoner civil rights suits. By consent of the parties, magistrate judges can try civil cases but do not routinely do so at present.

Members of the Advisory Committee met with and interviewed all three magistrate judges. Magistrate judges in the Southern District of Georgia are authorized to perform the full range of duties permitted under the Federal Magistrate Act. The Advisory Committee is recommending to Congress a specific, limited expansion of the powers of magistrate judges. See Recommendation No. 7.

In terms of physical facilities, the needs of the Southern District are well met. The courthouse in Augusta is currently being renovated. It offers separate court rooms and chambers for both an Article III judge and a magistrate judge. A new courthouse is under construction in Statesboro and work is scheduled for completion by the end of December 1993.

The courthouse in Brunswick provides separate courtrooms and chambers for both an Article III judge and a magistrate judge, and the courthouse in Savannah contains courtrooms and chambers for two district court judges and a courtroom and chambers for the magistrate judge. Thus, a courtroom and chambers are available already for the new district court judge once appointed to fill the existing judicial vacancy in the district. The senior judge who regularly visits the Southern District also has his chambers in Savannah but uses one of the active judge's courtrooms when sitting. The clerk's office in the Southern District has been in the vanguard nationally in automation. It has modern computer equipment and software. There are ample computer resources to match the court's needs, and innovative computer programs such as PACER and CHASER either are on-line or soon will be. In terms of automation, the Southern District is in excellent shape.

The one area that has not kept pace with the court's increased workload is the number of personnel in the clerk's office. The clerk's office is under strength. Based on the formula for staffing, the clerk's office should have 35 positions; at present it has 28 or 29, approximately 72% of formula. The "stretching" caused by understaffing is exacerbated by need for court personnel to travel to Dublin, Statesboro, and Waycross when court is scheduled in those divisions.

The clerk's office manages to overcome the shortage of numbers through the hard work of a highly qualified, well-trained, and dedicated group of men and women. The Advisory Committee has been most favorably impressed with the high calibre, work ethic, and esprit de corps of the court personnel in the Southern District. This "will-do" attitude stems from the top and is, albeit intangible, an important resource of the court. The Advisory Committee has included Recommendation No. 24 to address the staffing level in the clerk's office.

B. Cost and Delay

The Civil Justice Reform Act directs the Advisory Committee to determine if there is excessive cost and delay in civil litigation in the Southern District and to cite evidence to support its conclusion. The Advisory Committee has been mindful of the truism that civil litigation necessarily takes time and costs money. Our assessment has sought to determine the existence and principal causes of unreasonable or avoidable cost and delay.

The cost of litigation has many dimensions.[9] Some are obvious, such as money expended for transcripts, for experts, and for attorney fees. Other costs may be less obvious but are no less real. Litigant time required to deal with litigation, whether in responding to discovery or in making decisions about the course of a case, often called "opportunity costs," is a familiar example. The very fact that liability remains in doubt may exact a cost, perhaps the highest of all, by curtailing a party's freedom of action in the conduct of other personal or business affairs.

The common assumption is that the cost of litigation to the litigants increases as the total elapsed duration of the case increases. In general this will result because lengthy delays can force attorneys to refamiliarize themselves with the case and excess time may contribute to doing work of marginal utility, such as duplicative and non-productive discovery. A caveat is in order here: this description of the link between the duration of a case and the cost to litigants is premised on the assumption that the cost to the client is a function of the number of hours billed by the attorney. It holds where billing is determined by an hourly rate; it is much less the case for lawyers who are working on a contingent fee basis for whom the few studies that exist indicate there is no extra charge to the client as the number of hours spent by the attorney increases.

Expediting the pace of litigation will not invariably reduce the cost to the parties. Compressing the time available for trial preparation may in some circumstances compel an attorney or her firm into a more intensive schedule and into "staffing up" the case or conducting discovery that was in the fullness of time unneeded.

Some cases take time to season. Litigants sometimes require time to achieve a sense of perspective through a realistic appraisal of the situation. In attempting to determine if there is "excessive cost and delay" in litigation in the Southern District, the Advisory Committee has sought to be mindful of these considerations.

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[9]The analysis of the link between cost and delay is borrowed from the thoughtful and scholarly treatment of this complex issue in the Report of the Advisory Group for the Eastern District of Pennsylvania (Aug. 1, 1991), at 41-43.

1. Existence of Excessive Cost and Delay

Life expectancy for Type II cases (which excludes asbestos cases) has risen from a low of 9 months in 1987 to 12 months in 1992. See Chart 2. The median time from filing to disposition for civil cases has risen from 7 months in 1986 to 10 months in 1992, and the median time from issue to trial in civil cases rose from 10 months in 1987 to 13 months in 1991 and 1992. It is important to put this data in context, since as discussed in section II. A., the years of 1990 and 1991 were "peak load" times in the Southern District because of a record high number of asbestos filings. With the transfer of these asbestos cases to the Eastern District of Pennsylvania in July 1991 and with the number of civil case filings returning to the levels of 1986-87, the median time for disposition of civil cases in the most recent reporting period has dropped to 7 months from filing. Further, this same report shows that the median time from filing to trial for civil cases tried was 14 months although the number of civil trials was down.

After a significant increase caused by the large filing of asbestos cases in 1990 and 1991, the number of pending civil cases has returned to earlier levels with the number of case terminations annually roughly equalling as the number of case filings. In light of this data, and the fact that the Southern District has even during the peak load years led the country in having the fewest number of civil cases over three years old, the Advisory Committee is satisfied that the court is performing ably in staying abreast of its civil caseload and that there is no pattern of "excessive delay" in the Southern District.

In an effort to create a better empirical base for understanding the timeliness and cost of litigation in the Southern District, the Advisory Committee, aided by Mr. John E. Shapard of the Federal Judicial Center's Research Division, selected a random sample of 120 civil cases closed in the Southern District between July 1, 1990, and June 30, 1992, to study. The cases were selected from four major case types found on the court's docket: contract cases, personal injury cases (excluding asbestos), civil rights cases, and other "complex cases" (typically federal statutory actions such as antitrust, securities, patent, and trademark). Thirty cases from each case type were drawn after imposing a time frame that identified cases that were "older" than the median age of terminated civil cases. Thus, in an effort to locate cases in major case types that had remained, on average, longer in court, one-half of the cases selected were drawn from the middle 60% in duration time and one-half came from the oldest 20% of terminated cases.

A Questionnaire for Attorneys was developed, again with the assistance of John Shapard of the Federal Judicial Center, and mailed to 370 attorneys who were listed as lead counsel in the 120 cases selected. From this mailing, 238 Attorney Responses were completed and returned, a response rate of 64%.

In addition, a Questionnaire for Parties was prepared, and the attorneys surveyed were asked to forward a copy of the Questionnaire for Parties to their clients. One hundred twelve (112) responses were received from parties in these closed cases.

Summaries of the Questionnaire for Attorneys and Questionnaire for Parties that report the tabulation of individual responses are attached as Attachments B and C, respectively.

As to the timeliness of the litigation in which they had been involved, 71% of the attorneys responded that the "time from filing to disposition was reasonable" and 24.8% responded that the "time from filing to disposition was too long." Of the attorneys responding to the survey, 40.3% had represented a plaintiff and 57.6% had represented a defendant in the case. A few responses (2.1%) failed to indicate the side represented. A statistical analysis of the survey responses was performed by the Survey Research Center at the University of Georgia. It showed that there was "no significant statistical difference" between attorneys who represented plaintiffs and those who represented defendants as to the question of whether the time from filing to disposition was reasonable.

Of the parties responding to the survey, 31.5% reported that they had been a plaintiff in the case and 65.7% had been a defendant. (2.8% of the respondents did not report their party status). A larger percentage of the parties than attorneys thought the case took "too long." Thus, 27.8% of the parties responded that the case took "much too long" and 13.0% responded that it took "slightly too long." Some 45.4% of the parties replied that the case took about the right length of time and 11.2% thought it took "somewhat less" or "less than expected." Again, an analysis revealed no significant differences between plaintiffs and defendants as to this question.

Because these 120 cases selected for the study were chosen in part for their longer-than-average duration, it is not surprising that 25% of the attorneys and 40% of the parties expressed the opinion that the time from filing to disposition was longer than reasonable. The Advisory Committee has not concluded that these survey results are evidence of "excessive delay." Rather, the Advisory Committee concludes based on all the data assembled that there is no overall pattern of excessive delay in civil litigation in the Southern District. To the extent delay occurs, it occurs irregularly and only in particular cases.

When the attorneys surveyed by the Advisory Committee were asked about the litigation costs of the case being studied, 68.5% reported that "the total litigation costs in the case were reasonable and necessary" and 21.8% reported that these costs were "too high and in part unnecessary." There was no significant difference in the responses from lawyers who had represented plaintiffs as contrasted with those who had represented defendants.

Of the parties who responded to the survey, 14.8% responded that, "considering what was at stake, the total costs incurred" to litigate the case were "much too high" and 13.8% thought the costs "slightly too high." Thus, 28.6% of the parties thought the litigation costs were "too high," while 64.3% found them "reasonable" and 4.9% "less than expected." There was no significant differences in the responses between plaintiffs and defendants.

Litigation entails costs of both time and money. The Advisory Committee believes that judges, lawyers, and litigants all have important roles to play and a shared responsibility to avoid engendering unnecessary costs. Judges should be aware of and sensitive to the implications of court rules and practices on cost and delay. Lawyers have a professional obligation to control costs for their clients and for the justice system, and all litigants should stay informed about the course of the litigation and its attendant costs. Large corporations, insurance companies, governmental entities, and other institutional litigants have the ability to control, or at least influence significantly, the cost of litigation, yet often lack sufficient incentive to do so because of tactical considerations. Litigants, especially sophisticated "repeat players," have an obligation to the justice system to monitor carefully the cost of litigation and to avoid imposing or incurring wasteful costs.

It is the view of the Advisory Committee that the cost of litigation is sometimes increased beyond what is reasonable and necessary for the needs of the case because of the perceived risk by one side of not matching the escalation of resources devoted to the case by the other side. Thus, one party's decision to have an expert, or a tandem of experts, may set off a "battle of experts," thereby greatly raising the costs to both sides. The growing cottage industry of experts-for-hire contributes to this costly practice. Where the real cost of litigation is borne by another (stockholders, taxpayers, members, etc.) those responsible for managing the cost of litigation may find it easier to defend the approach of "leaving no stone unturned" than a more economical one, if the outcome of the case is unsatisfactory.

Reducing the cost of litigation by overcoming these powerful, latent forces will require a concerted effort by all involved in the process. Although the primary responsibility to reduce costs rests on the litigants and their attorneys, the Advisory Committee believes that the judges have an important role to play in assuring that all represented litigants are made aware of the transaction costs of litigation and the implications of such costs for settlement or other alternatives to litigation.

While preserving in the court the flexibility needed to accord particular cases different treatment according to their needs, the Advisory Committee accepts in principle that reducing the total elapsed time from the commencement of litigation until its termination in most cases will have a salutary impact on costs to the litigant. This results from: (1) eliminating non-productive hours spent in review of a case that could be avoided if there are no long lapses in activity; (2) by discouraging repetitive and unnecessary discovery or discovery of marginal utility; and (3)

fostering earlier terminations of cases through dispositive motions or settlements. These principles have guided the Advisory Committee in considering how the principal causes of cost and delay can be identified and cured and how significant contributions to reducing cost and delay can be made by the court, the litigants, and the litigants' attorneys as required by § 472(c)(3) of the Civil Justice Reform Act.

a. Case Types as a Factor in Cost and Delay

Several of the case filing trends discussed in section II. A. 1. above have affected the overall pace and cost of litigation in the Southern District. First, the steep rise in the number of criminal cases and criminal defendant filings, along with the expanded time for holding sentencing hearings under the Sentencing Guidelines for convicted defendants, has impacted on the time required for disposition of civil cases. The judges of the Southern District have already taken steps to attempt to control the demands of the criminal docket.

In the case of many defendants both the United States and the State of Georgia have jurisdiction to prosecute. State prisons are seriously overcrowded, compelling state authorities to release inmates well short of serving the full sentence to free beds for new arrivals. In addition, the Federal Sentencing Guidelines tend to fix longer sentences with mandatory minimums prescribed for most offenses. As a result, there is constant pressure from state law enforcement authorities to "federalize" criminal prosecutions, especially in drug distribution and firearms cases. The Advisory Committee has explored the problems raised by this concurrent criminal jurisdiction with the judges singly, and in full committee. The Advisory Committee recommends that the court continue the present policy of informal consultation between the judges and the United States Attorney's Office to assure that appropriate discretion is exercised in selecting cases where there is concurrent federal and state jurisdiction for prosecution in the United States District Court. The impact of the criminal docket on civil litigation is potentially serious, and careful monitoring of the types of cases in which federal prosecution is chosen should be pursued by the United States Attorney's Office, the Department of Justice, and the District Court. See Recommendation No. 13.

In addition to informal consultation between the judges in the Southern District and the United States Attorney's Office concerning the types of criminal cases brought for federal prosecution, the judges have sought to limit the length of criminal trials by encouraging the government to pick the "most important defendant" and the "best" five counts. This is not a hard and fast rule nor is it applied uniformly. However, it does serve in appropriate cases to concentrate attention on the most serious elements of the offense and to avoid needlessly expanding the proceedings.

On the civil docket, the Advisory Committee has noted the persistent demand on both district judge and magistrate judge time caused by state prisoner civil rights cases. The magistrate

judges when interviewed by the members of the Advisory Committee estimated that they spend a substantial portion of their time on prisoner litigation,[10] and the Federal Judicial Workload statistics estimate that these cases, which account for between 14% and 22% of all civil filings in the Southern District annually, constitute about 7% of weighted case filings for the district judges. It should be noted that the formula for weighted case filings does not take into account the time spent by magistrate judges.[11] The Advisory Committee has concluded that a forum other than an Article III court should hear these cases initially and includes a recommendation to divert these cases, at least initially, to the state courts or through a state administrative hearing by requiring the exhaustion of remedies before allowing these cases to be filed in federal court. See Recommendation No. 1.

Although the burden is not nearly so great, the Advisory Committee has concluded that other types of cases tax the capacity of the federal courts so that litigation of these claims under the present rules in federal courts should be reexamined. First, habeas corpus claims by state prisoners continue to pose a vexing problem for federal courts. The lack of finality for these claims threatens to undermine public respect and confidence in the criminal justice system. The Advisory Committee has included a recommendation, Recommendation No. 2, to urge Congress to strengthen the finality and timeliness requirements in habeas corpus.

Two other types of cases appear well-suited to resolution by processes other than an Article III court. Social security disability appeals can be handled more appropriately by a special court established for this type of case. Under the present law the District Court reviews the decision of an administrative law judge based on a record developed in an evidentiary hearing conducted in an administrative proceeding. Social security appeals constitute roughly 3% of the civil docket and 3% of the weighted cases. The Advisory Committee recommends that the adjudication of disability claims under the Social Security Act be removed from Article III courts and vested in a new Article I Court of Disability Claims as proposed in the Report of the Federal Courts Study Committee (1990), at page 55. Recommendation No. 3.

Similarly, the Advisory Committee agrees with the Report of the Federal Courts Study Committee recommending that mechanisms for court annexed mediation and arbitration be created for Title VII EEOC and other specialized worker claims. See Recommendation No. 4.

The Advisory Committee has concluded that Congress and the Executive Branch must think anew about allocation decisions of this kind to permit the district courts to concentrate on the most vital parts of their historic jurisdiction.

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[10]One magistrate judge estimated that he spent one-half of his time on prisoner complaints; another responded that suits by prisoners could "take all his time" were it not necessary to handle other duties simultaneously. Clearly, the present system forces the magistrate judges to act as the front line to winnow state prisoner civil suits and imposes a substantial toll on their time.

[11]Guidance to Advisory Groups Memo SY92 Statistics for September 21, 1992, at 13.

b. Court Rules and Procedures as a Factor in Cost and Delay

The Southern District has adopted a number of Local Rules aimed at moving cases expeditiously and reducing costs and delay to litigants. These rules are strategically designed to curb the cost of discovery, focus the contentions of the parties, keep the case moving, and promote settlements.

Local Rule 7.1 sets a four-month period from the time the answer is filed for completing discovery unless the court extends the time for cause. It enjoins litigants that "any desired discovery procedure shall be commenced promptly, pursued diligently and completed without unnecessary delay and within four (4) months after the filing of the answer unless for cause the time has been extended by the Court."[12]

Local Rule 7.4 sets limits on the number of interrogatories in civil cases. It provides that:

> "The interrogatories served upon either party shall not exceed twenty-five (25) in number. Each interrogatory shall consist of a single question. Additional interrogatories will be allowed only after initial interrogatories are answered and with the written permission of the Court on application."[13]

In an effort to spur the attorneys to attempt to resolve discovery disputes between themselves to avoid the delay and expense of a court hearing on motions to compel, Local Rule 6.5 sets out a procedure for focusing the objection and provides that:

> "counsel for the moving party shall confer with counsel for the opposing party and file with the court at the time of filing the motion [to compel] a statement certifying that he has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised and that counsel have been unable to do so."[14]

Beyond the formal requirements of the rules, the judges of the Southern District

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[12]Local Rule 7.1 is set out in Attachment D.
[13]Rule 7.4 is set out in Attachment D.
[14]Local Rule 6.5 is set out in Attachment D.

have sought to foster a climate in which attorneys and parties comply with discovery obligations by demonstrating the judicial resolve to impose sanctions for willful abuses. Discovery abuses are not common in the Southern District and that fortunate result is due to the professionalism of the bar regularly practicing in the district and the firm expectations of the judges.

To focus the attention of the attorneys and the court early on the relevant facts and law and to obviate the need for discovery requests covering certain basic matters, Local Rules 8.6 and 8.7 require plaintiffs and defendants to answer a set of prescribed interrogatories about the case when the complaint is filed by the plaintiff and when responsive pleadings are filed by the defendant.[15] These rules focus attention early in the case on the principal contentions of the adversaries.

In addition to the local rule requirement that discovery be undertaken promptly and completed in four months, other local rules are intended to keep the case moving forward. Local Rule 6.8 imposes a time frame of twenty days after the close of discovery to file dispositive motions such as motions to dismiss and motions for summary judgment, unless otherwise provided.[16] And, Local Rule 6.10 prescribes a period of sixty days after issue is joined to move to add or join additional parties or to amend the pleadings.[17]

Because a high proportion of civil cases will eventually settle, and settlements offer an opportunity for substantial savings to litigants and to the justice system, court procedures and practices should be structured to facilitate the early settlement of most disputes. To this end, Local Rule 8.3, in providing for pretrial conferences with the court, specifies that "counsel who will actually try the case, or other counsel of record with authority to define issues, make stipulations, and discuss settlement, shall attend the pretrial conference."[18] Judges of the Southern District have evidenced their willingness to use the court's inherent power to compel compliance with the requirement that parties and nonparty insurers produce representatives with full settlement authority at pretrial settlement conferences. See *In re Novak,* 932 F.2d 1397, 1404-09 (11th Cir. 1991). The law of the Southern District and the Eleventh Circuit seeks to have pretrial conferences serve as real opportunities to exchange relevant information and engage in fruitful discussions about the case.

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[15]Local Rules 8.6 and 8.7 are set out in Attachment D.
[16]Local Rule 6.8 is set out in Attachment D.
[17]Local Rule 6.1 is set out in Attachment D.
[18]Local Rule 8.3 is set out in Attachment D.

The Advisory Committee has canvassed the existing court rules, procedures, and practices to determine whether, as written, any present impediments to the prompt and efficient resolution of cases. The Advisory Committee has concluded that no such barriers exist although several recommendations are made to improve the Local Rules. These include: handling of complex cases by instituting the use of a Special Case Management Order, see Recommendation No. 14; extending the requirement in Local Rule 8.6 for the presentation of a discovery plan by the plaintiff to the defendant as well, see Recommendation No. 15(d); clarifying the requirement in Local Rule 8.3 in light of *In re Novak* about the obligation of a party or its insurer to attend the pretrial conference, see Recommendation No. 17; proposing special provisions governing the settlement authority of attorneys representing the United States and its agencies, see Recommendation No. 18; and proposing a notification to litigants that would enable them to make better informed decisions about the case and alternatives to litigation, see Recommendation No. 19.

The Advisory Committee undertook to assess the operation of the existing court rules and procedures in practice in the survey sent to attorneys in the 120 closed cases and by the Reporter's analysis of the docket records in these cases. The committee sought to determine the opinion of attorneys about the level of case management their particular cases had received as well as how well the various local rules described above had succeeded in reducing cost and delay.

When asked how they would characterize the level of case management in their case, 27.3% of the attorneys rated it as "intensive" or "high," while 34.9% viewed it as "moderate," and 23.5% thought it "low" or "minimal." This spread is not surprising, of course, because the level of judicial involvement does vary from case to case. Attorneys were asked whether particular case management actions were taken in their cases.

Table 4: Management of Litigation

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

	Was Taken	Was Not Taken	Not Sure	Not Applicable
Held pretrial activities to a firm schedule.	57.6%	17.2%	6.3%	15.5%
Set and enforced limits on allowable discovery.	59.7%	12.2%	3.4%	21.8%
Narrowed issues through conferences or other methods.	46.6%	27.7%	2.5%	19.7%
Resolved discovery disputes promptly.	34.0%	5.9%	2.9%	53.8%
Ruled promptly on pretrial motions.	53.8%	10.9%	3.8%	28.6%
Set an early and firm trial date.	27.7%	25.2%	5.5%	37.4%
Conducted or facilitated settlement discussions.	36.6%	24.4%	4.6%	31.1%
Exerted firm control over trial.	20.2%	27.6%	1.7%	63.4%

Attorneys surveyed were next asked to respond about the effect of various local rules and practices on reducing cost and delay in their case. Table 5 presents this data.

Table 5: Devices to Reduce Costs and Delay

The Southern District of Georgia has adopted a number of Local Rules designed to move cases to resolution expeditiously. Please indicate the extent to which each of the following rules or practices contributed, in your estimation, to reducing cost and delay in ***this*** case.

	Substantial Cause	Slight Cause	Not A Cause	Probably Increased Cost and Delay
a. Four (4) month period after filing answer to complete discovery.	34.9%	18.9%	38.7%	5.9%
b. Limit initially to twenty-five (25) single question interrogatories.	17.6%	25.6%	50.8%	2.9%
c. Certificate of good faith effort to resolve discovery matters between counsel prior to filing discovery motion or objection.	13.4%	19.7%	60.1%	2.5%
d. Deadline for filing dispositive motions and motions to amend or join other parties.	26.9%	25.6%	41.6%	2.5%
e. Requirement that counsel who will actually try case and who have authority to make stipulations and discuss settlement attend pretrial conference.	23.1%	16.0%	55.9%	1.3%
f. Specific interrogatories about case required to be answered by plaintiff upon filing complaint and by defendant with answer.	24.4%	32.4%	38.2%	2.5%
g. Use of status conference.	26.9%	13.9%	49.2%	4.6%
h. Use of pretrial conference.	30.3%	10.9%	47.1%	1
i. Use of settlement conference.	23.5%	8.8%	55.5%	2.5%

There is no clear and obvious correlation between the level of management a case received and the attorney's reported perception that the case took "too long." In a number of instances attorneys responded that most of case management techniques available to the court to move litigation along had been used, yet they concluded, nevertheless, that the case took "too long."

To analyze these responses in greater depth, the Reporter reviewed the docket sheets for each of the 120 cases to look for any patterns of activity causing delay and particularly examined the docket sheets of those discrete cases where an attorney had responded that the time from filing to disposition was "too long" to see what case management actions had occurred in them.

This analysis reveals that in a few cases there were relatively long delays in ruling on dispositive motions. While this assessment is admittedly somewhat subjective, and cannot take into account fully the circumstances that may explain a lengthy delay in ruling on a motion

in a particular case, it nevertheless appears that in the 120 cases studied there were some 15 instances of delays of five or more months in ruling on pending motions for summary judgment or motions to dismiss.

At the same time, it should be noted that in many other instances dispositive motions were ruled on very promptly, in periods of two to three months. There is certainly no general pattern of delay in ruling on motions in the Southern District. Yet, delay in ruling on motions is a prime cause of delay and also can create unnecessary cost for litigants whenever it occurs.

There is general agreement that prompt rulings on dispositive motions can help reduce cost and delay in litigation. Section 476 of the Civil Justice Reform Act now requires that the Administrative Office of the United States Courts prepare reports, available to the public, that disclose for each judicial officer the number of motions that have been pending for more than six months. The Southern District already prepares a monthly report to track pending motions before each judicial officer. Because such salutary savings of time and money can result from the prompt ruling on dispositive motions, the Advisory Committee recommends to the judges of the Southern District that the clerk's office be instructed to format the monthly report on pending motions in a way that will list the motions pending before each judicial officer in a chronological ranking to permit the judges readily to spot those motions that have been pending longest. See Recommendation No. 20.

c. Effect of Court Resources on Cost and Delay

As reported in section II. A. 2. there has been a judicial vacancy in the Southern District since July 1991 when a judge took senior status. Because this senior judge has continued to carry a full civil and criminal caseload, this unfilled vacancy has not caused cost and delay. The regular visits by a senior judge from another district have relieved somewhat the judicial workload of the Southern District, and when the new district judge is appointed to fill the existing vacancy, the Southern District will be at its all-time high level of strength with a full complement of three active Article III judges, three magistrate judges, and continuing substantial help from its senior judge.

In terms of court facilities, the needs of the district are well served. The clerk's office is seriously under-staffed according to formula, and the Advisory Committee has included a recommendation, Recommendation No. 24, that it be staffed at the appropriate level. There is no evidence that a lack of court personnel has contributed to delay or cost in litigation. The Southern District has long been imbued with a strong work ethic, and the available judges and court personnel have done the work set before them.

d. Effect of Practices of Litigants and Attorneys on Cost and Delay

Following the commonsense approach that the best places to start to reduce cost and delay in litigation are with those elements that cost the most money, the Advisory Committee paid close attention to discovery practices and attorneys fees. The survey of attorneys confirmed that the cost of discovery and investigating the case and of attorneys fees constitute by far the largest portion of the expense of litigation. Nearly one-half of the attorneys surveyed reported that attorneys fees constituted between 75% and 90% of the total litigation costs for their client; discovery was the single largest item of expense. These areas, then, offer the most promise for the greatest savings.

An analysis of the docket sheets of the 120 cases studied reveals relatively few discovery disputes serious enough to be brought to the court's attention. In only 14 cases, or 12% of the total, were any discovery disputes presented to the court for resolution. All appeared to be relatively minor, typically a motion to compel by one or both sides, and all were resolved promptly. Each constituted a single episode and in no case studied was there a pattern of repeated discovery disputes.

This data matches the impressions of the judges and lawyer members of the Advisory Committee that abuse of discovery generally is not a problem in the Southern District. This fortunate result obtains because of the professionalism of the bar that regularly practices in the Southern District and because of the high expectations and no-nonsense resolve of the judges who are prepared to use available sanctions to punish willful abuses.

Can it similarly be said that the amount of discovery undertaken in litigation in the Southern District is reasonable and cost effective? In the Questionnaire for Attorneys respondents were asked to think about and balance the burden and expense of discovery for their client and the extent to which the information obtained through discovery was actually useful and used in the case. Approximately two-thirds of the attorneys responded that "the cost of discovery in [their] case was about proportional to the needs of the case." Roughly 12% replied that the cost of discovery was relatively greater than the resulting information obtained was worth, and an equal percent thought the cost of discovery was relatively less than the resulting information obtained was worth.[19]

It is the conclusion of the Advisory Committee that the present set of Local Rules and the local legal culture have worked to prevent rampant discovery abuse or overuse. The four-month deadline for completing discovery in Local Rule 7.1 and the required interrogatories in Local Rules 8.6 and 8.7 that obviate the need for discovery requests on certain basic matters have served well in the main to reduce costs and to focus attention early on the key aspects of the

[19]A summary of the results of the Questionnaire for Attorneys is included at Attachment B.

case. Although the Advisory Committee is dubious about the vague and open-ended character of the voluntary disclosure requirement in the current proposed amendment to Federal Rule of Civil Procedure 26, it does recommend the more measured and definite step of voluntary disclosure to require litigants to furnish copies of, or to describe and identify all documents "that the party intends to rely on to establish the party's claim or defense." Further, the Advisory Committee recommends that the testimony of all experts be disclosed in advance in writing. See Recommendation No. 15. Adoption of these measures should contribute to cost savings for litigants without generating the potential satellite disputes about the uncertain scope of voluntary disclosure that may follow from the adoption of proposed Federal Rule of Civil Procedure 26.

Although there is no evidence for concluding that frivolous claims or groundless litigation is a particular problem in the Southern District, such abuses of litigation are wrong and wasteful whenever they occur, and should be discouraged. For this reason, the Advisory Committee supports the resolve of the judges in the Southern District in imposing sanctions under Federal Rule of Civil Procedure 11 in appropriate cases and opposes the amendments currently pending before Congress that would, it is submitted, weaken the effectiveness of Rule 11 as a deterrent to abusive litigation practices. See Recommendation No. 12. The Advisory Committee believes that the proposed amendments to Rule 11 will weaken it and are counter-productive to the goals of the Civil Justice Reform Act.

Moreover, the Advisory Committee recommends that Rule 11 be further buttressed by the enactment of legislation modeled after the Equal Access to Justice Act, 28 U.S.C. § 2412, to curb abuses of litigation by providing for fee shifting in private litigation. There should be real costs imposed on litigants who assert frivolous claims or defenses, and the Advisory Committee recommends the enactment of a statute like that found in many states that allow the prevailing party (plaintiff or defendant) to recover attorneys' fees and the expenses of litigation if the court determines that the claim or defense of the non-prevailing party was without substantial justification. See Recommendation No. 10.

The Advisory Committee considered and ultimately rejected various proposals for capping attorneys' fees, especially contingent fees. Persuaded that setting a limit only on contingent fees charged by attorneys for plaintiffs would be one-sided and unfair, and yet convinced that some corrective mechanism is required to allow the court to control excessive fees charged by attorneys and excessive fees paid to expert witnesses if the goals of the Civil Justice Reform Act are to be met, the Advisory Committee recommends the enactment of legislation that will authorize the court to review and adjust, where warranted, attorneys' fees and fees paid to experts. See Recommendation No.11. The ability of the court to act directly to reduce excessive and unreasonable fees is the best prophylactic to prevent them.

Finally, the Advisory Committee concluded that the court and the litigants sometime have more interest in concluding the case quickly and saving costs than attorneys who are billing

on an hourly rate. The Advisory Committee concluded that it was necessary to try to put the client in a better position to control costs and to reduce delay, and it recommends doing this by requiring that a Notice of Case Management Procedures, the so-called Litigants' Bill of Rights, be given to all represented parties, informing them in plain terms about various aspects of the case including the possibility of using less expensive alternatives to litigation. To underscore the importance of these issues and to compel client and attorney to "stop and think" together about these choices, the Advisory Committee recommends that the party, as well as the attorney, sign the notice. See Recommendation No. 19.

Reducing unnecessary cost and delay in a fundamental way requires altering the present power relationship of attorneys and clients by empowering clients to make better informed decisions about their cases. The Litigants' Bill of Rights is designed to serve this purpose by confronting the factors that engender avoidable cost and delay.

e. Roles of the Executive Branch and Congress in Reducing Cost and Delay

Congress should take more responsibility than it has shown to assess realistically the impact of proposed legislation on the federal courts. The federal judiciary is a valuable resource helping to preserve the rights of American citizens. It is also a finite resource and cannot simply be enlarged to accommodate more and different causes of action without losing its distinctive character. Endorsing the proposal of the Federal Courts Study Committee, the Advisory Committee recommends that Congress create appropriate methods for both the pre-passage and post-passage assessment of the impact of legislation on the federal courts. See Recommendation No. 9. Unless Congress is prepared to understand the impact of new legislation on the courts, to ameliorate that impact where possible, and to equip the courts to meet the demands placed on them, the civil justice system is bound to suffer and the quality of justice will decline.

The Executive Branch, too, needs a way to bring to bear a careful assessment of executive branch actions and decisions on the courts, and the Advisory Committee has included several recommendations directed to the Department of Justice and the United States Attorney's Office that involve executive department policy decisions that have an immediate impact on the courts, such as the decision to prosecute criminal offenses in a federal court where there is concurrent state jurisdiction.

From the beginning of its study and deliberations, the very experienced business executives on the Advisory Committee have viewed the judge as the key person in determining whether the system works well. No set of rules will work if the judge lacks the requisite skills and temperament to make them work and to manage cases decisively. The Advisory Committee unanimously endorses this strategic insight and commends to the President and the Senate the statement submitted by advisory committee members Carter and McSwiney proposing that

prospects for judicial appointment be screened by experts trained in identifying decision-making skills. The Advisory Committee is well aware that the selection of judges is part of the political process. Nevertheless, just as the character and legal ability of prospective judicial appointees are inquired into, so should the prospective judge's capacity to decide with dispatch and to handle an enormous workload. See Carter and McSwiney Statement included as Attachment E.

The court system will be no better than the individual men and women appointed as its judges. It behooves the justice system to have judges who have the capacity to decide, a detectable skill.

III. Recommendations and Their Basis

A. Recommended Legislation, Rules, and Actions

Based on its assessment of the condition of the docket in the Southern District and of trends in case filings and case mix and on its analysis of the principal causes of unnecessary cost and delay in civil litigation today, the Advisory Committee recommends the following legislation, local rules, and actions.

1. **Recommend to Congress** that 42 U.S.C. § 1983 be amended to withdraw jurisdiction over suits by state prisoners claiming damages arising out of the conditions of confinement except for collateral review in federal court of state court determinations of federal constitutional issues raised in such cases or, as an alternative, that 42 U.S.C. § 1977e be amended to direct federal courts in state prisoner suits brought under 42 U.S.C. § 1983 claiming damages arising out of conditions of confinement to require exhaustion of state institutional remedies for a period of 120 days, if the *district court* certifies that the state administrative procedure for hearing inmate grievances is fair and effective. Congress should delete § 1977(e)(b)'s minimal standards for state institutional remedies and for certification of state plans by the Attorney General.

2. **Recommend to Congress** that the statutes governing habeas corpus petitions be amended to impose (a) a timeliness requirement for filing petitions, (b) a limitation on the number of petitions that can be filed by the same prisoner, and (c) a codification of *Teague v. Lane*, 489 U.S. 288 (1989), that prohibits federal courts from entertaining petitions based on law established after state court affirmance of the judgment of conviction under which the prisoner is in custody.

[Note: Habeas corpus petitions, particularly those from state prisoners, constitute a substantial portion of the federal courts' caseload. The 537 habeas corpus petitions filed

in 1945 grew to 10,521 in 1989 — an increase of over 1,800 percent. See Report of Federal Courts Study Committee (1990), at 51. According to the most recent Federal Judicial Workload Statistics for the Twelve Month period ending March 31, 1993, there were 11,394 habeas corpus petitions filed in all federal district courts by state prisoners. This constitutes roughly 5% of all civil cases filed. In the Southern District of Georgia for this same period, there were 34 state prisoner habeas petitions filed. In comparison, there were 244 state prisoner civil rights cases commenced in the Southern District during this same twelve-month period.]

The writ of habeas corpus is the means by which state prisoners challenge their state convictions on federal constitutional grounds. This matter is therefore of central concern to the nation and to its federal courts. Congress is already considering several wide ranging recommendations for revising habeas corpus procedures in death penalty cases, and the Advisory Committee urges Congress to take steps to protect public confidence in the criminal justice system by strengthening the finality and timeliness requirements for these actions.

3. **Recommend to Congress** that a new structure for adjudicating disability claims under the Social Security Act be created. Hearings before administrative law judges with adequate institutional independence would be appealed to a new Article I Court of Disability Claims instead of the Article III district courts. Decisions of the new Article I Court would be reviewable on questions of law in the U.S. Courts of Appeal.

[Note: this tracks the recommendation of the Report of the Federal Courts Study Committee (1990) at 55-59.]

4. **Recommend to Congress** that mechanisms for court-annexed mediation and arbitration be employed in Title VII EEOC cases and other specialized worker claims such as those brought under the Equal Pay Act and the Age Discrimination in Employment Act. Congress in 42 U.S.C. § 2000e-5(f)(5) has already authorized district judges to appoint special masters in Title VII cases if the case has been pending more than 120 days after issue has been joined. In some districts, referral to magistrate judges has been used. The Report of the Federal Courts Study Committee (1990), at 60-61, recommends that Congress experiment with the use of arbitration outside the federal judiciary by authorizing the Equal Employment Opportunity Commission to arbitrate employment discrimination cases with the consent of both parties. The Advisory Committee endorses this suggestion.

5. **Recommend to Congress** that diversity of citizenship jurisdiction be retained. Diversity of citizenship allows a lawsuit on a state cause of action to be brought in a federal court where the plaintiffs and defendants are citizens of different states. Such cases constitute approximately one in four cases in the district courts and about one in two civil trials according to the Report of the Federal Courts Study Committee (1990),

at 38. Although federal courts apply state rules of decisions in such cases, and federal jurisdiction is concurrent with that of the state courts, there are persuasive reasons of policy for retaining this historic branch of federal court jurisdiction.

[Note: The Sprague Subcommittee proposed that diversity jurisdiction be modified by prohibiting plaintiffs from invoking diversity to select a federal forum in their home states. The argument that supports diversity jurisdiction generally — that state tribunals may be biased against out-of-state litigants — has no force here where an in-state plaintiff is seeking a federal forum. The Advisory Committee by divided vote at the June meeting declined to recommend this modification to diversity jurisdiction.]

6. **Recommend to Congress** that the multi-district litigation statute, 28 U.S.C. § 1407, be broadened to permit consolidated trials as well as pretrial proceedings and to create a special diversity jurisdiction, based on minimal diversity, to make possible the consolidation of major multi-party, multi-forum litigation. The advantage of a federal trial forum for litigation stemming from airplane crashes and product liability that now may be divided between state and federal courts in a number of states could result in substantial savings to the parties. Such jurisdiction would result in more efficient resolution of myriad disputes without a significant increase in federal workload since many of the suits would be brought in federal courts anyway.

[Note: This recommendation tracks a proposal made in the Report of the Federal Courts Study Commission (1990), at 44-45.]

7. **Recommend to Congress** that the jurisdiction and powers of the magistrate judges under 28 U.S.C. § 636 be expanded to permit a magistrate judge to entertain actions to enforce IRS summons and to issue appropriate orders and to hold appropriate hearings. The decision of the magistrate judge would then be subject to review by the district judge based on the record.

8. **Recommend to Congress and to the Judicial Conference** that a careful evaluation of the impact on federal courts of mandatory minimum sentences and of the sentencing guidelines promulgated by the United States Sentencing Commission be undertaken. See criticism in Report of the Federal Courts Study Committee (1990), at 133-140. The Advisory Committee believes that a "safety valve" addition to mandatory minimum sentences as proposed by Representative Charles Schumer is desirable and that consideration should be urgently given to ways to ameliorate the increased work load for judges in sentencing arising from the federal sentencing guidelines.

9. **Recommend to Congress** that appropriate methods to establish both pre-passage and post-passage impact of legislation on the federal courts be established. Congress should insure that the impact of any proposed legislation on the federal

courts is identified and considered prior to enactment and that ways to mitigate any adverse impact on the federal courts are considered. Moreover, Congress should perform a thorough post-passage evaluation of the legislation to determine its actual impact on the workload of the federal judiciary.[20] A "sunset provision" should be included in every piece of legislation which impacts the judiciary to enable Congress after an appropriate period to reevaluate the utility of the measure and to cure any unintended gaps or defects and to address contingencies not foreseen when the legislation was enacted.

10. Recommend to Congress that a statute modeled after the Equal Access to Justice Act, 28 U.S.C. § 2412, be enacted to curb abuses of litigation by providing for fee shifting in private litigation. Attorneys fees, expenses, and costs of litigation should be recovered by the prevailing party in private litigation if the court finds that the claim or defense of the non-prevailing party was substantially unjustified.

11. Recommend to Congress that to control legal fees and fees paid to expert witnesses, legislation be enacted to permit the district court judge on the request of a party or *sua sponte* to review and adjust attorneys fees and fees paid to expert witnesses in civil litigation in the federal courts. Currently, there are few legal controls available to the court to act directly to curb excessive attorneys fees or fees paid to expert witnesses. The Federal Tort Claims Act in suits against the United States limits the amount of attorneys fees that can be charged, received, or collected to 25% of the recovery. See 28 U.S.C § 2678. Proposals to limit the amount of contingent fees that can be awarded in private litigation appear to be one-sided, yet some mechanism to authorize the court to review and in appropriate cases reduce unwarranted and excessive fees charged by attorneys for either side, or paid to expert witnesses for their testimony, is needed if excessive cost in civil litigation is to be reduced. Hence, the Advisory Committee recommends that legislation be enacted to grant the court authority to approve fees of attorneys and expert witnesses and to act to prevent excessive and unreasonable charges.

12. Recommend to Congress that certain proposed amendments to Federal Rule of Civil Procedure 11 be rejected. The proposed amendments are objectionable because they create a 21-day "safe harbor" in which a frivolous filing could be withdrawn to escape sanctions, disfavor compensation to the abused party of litigation expenses, and make sanctions discretionary instead of required.

[Note: The Advisory Committee believes that frivolous litigation and abuses of the litigation process must be deterred by the determination and willingness of courts to impose sanctions when abuses occur. Weakening present FRCP 11 is contrary to the CJRA's efforts to reduce cost and delay.]

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[20]The Federal Sentencing Reform Act and the Sentencing Guidelines, for example, have had profound ramifications for the federal courts that were not clearly foreseen at the time of passage.

13. Recommend to the District Court, the United States Attorney, and the Department of Justice that informal consultation continue to occur between the judges and the United States Attorney's Office to assure that appropriate discretion is exercised when offenses under both state and federal law are selected for federal criminal prosecution. In cases of concurrent jurisdiction, great care should be taken to avoid overloading the federal court system with cases that do not further important federal law enforcement objectives.

14. Recommendation to the District Court that by Local Rule or General Order a differentiated track for "complex" or predictably protracted cases be established whereby discovery disclosure, requests and deadlines, issue identification and narrowing, motions, hearings and other pretrial developments of the case will be the subject of a Special Case Management Order patterned after Form 35 of the Federal Rules of Civil Procedure.

The criteria for identifying complex cases that may be subject to the Special Case Management Order include the following factors:

a. large number of parties;
b. large number of claims or defenses;
c. complex factual issues;
d. large volume of evidence;
e. problems locating or preserving evidence;
f. extensive discovery expected;
g. use of expert witnesses;
h. existence of issues the early resolution of which would significantly effect the likely course and disposition of the case; and
i. likelihood that trial will exceed five days.

A party could request the court to schedule a conference to enter a Special Case Management Order in the response to the Local Rule 8.6 Interrogatories to Parties, or by joint petition, or the court could enter such an order *sua sponte.*

Consistent with § 473(a)(3) of the Act, it is recommended that for all cases the court "determines are complex and any other appropriate cases," the court consider principles and procedures for "careful and deliberate monitoring through a discovery case management conference or a series of such conferences." This recommendation is consistent with the requirement in § 473(a)(2) that for all cases, the court consider "early and ongoing control of the pretrial process through involvement of a judicial officer." Finally, this recommendation responds to § 473(a)(1) that the court consider a plan to identify on a systematic basis, and treat differently, cases that require more judicial involvement.

The Advisory Committee agrees with the precept that active judicial management in specially targeted complex cases will reduce cost and delay. Such judicial involvement will enhance settlement possibilities and require parties to organize and focus their

discovery early. The Advisory Committee believes that it would be counter-productive to the goals of cost and delay reduction to require such intensive judicial involvement in all cases, or in any particular case, because many cases do not require it. The final arbiter of selecting cases for a Special Case Management Order and more intensive pretrial management should be the district judge.

15. Recommend to District Court that Local Rule 8.6 be revised as follows:

a. require that litigants furnish within 45 days after filing the complaint or responsive pleading a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that the party intends to rely on to establish the party's claim or defense;

b. require the timely identification of expert witnesses to avoid last minute designations just as the four-month period for discovery is ending;

c. require advance, written disclosure of all expert testimony as provided in proposed Federal Rule of Civil Procedure 26(a)(2) [Note: This goes beyond proposed FRCP 26(a)(2) by applying to the testimony of *all* experts.]; and

d. require the defendant to respond to plaintiff's suggested discovery plan by either agreeing to it or proposing modifications.

16. Recommend to the District Court that Local Rule 6.1 be amended to add the requirement that a proposed order accompany all motions except motions for summary judgment or motions to dismiss.

17. Recommend to the District Court that Local Rule 8.3 be revised in light of § 473(b)(2) and *In re Novak* to include, as an option, the attendance at a pretrial conference of the client or representative with settlement authority.

18. Recommend to the District Court, the United States Attorney, and Department of Justice that procedures be set up to facilitate the attendance at pretrial conferences of the United States Attorney or lead counsel having settlement authority where the United States is a party to litigation.

19. Recommend to the District Court that, by Local Rule or General Order a Notice of Case Management Procedures, the so-called Litigants' Bill of Rights, be sent by the clerk, after all defendants have appeared, to counsel for each party notifying them about alternatives to adjudication and various steps in the litigation process. The proposed text of the notice is set out below.

This recommendation is designed to empower the parties to make better informed decisions about the litigation and to consider less costly alternatives without trenching

on the relationship between attorney and client. A lawyer today has a professional obligation to advise the client concerning all forms of dispute resolution and to assist the client in considering the advantages and disadvantages of alternative methods of dispute resolution, such as arbitration and mediation, as well as to manage the case, if litigated, in the client's best interest, bearing in mind the clients' interest in avoiding unnecessary costs. The Advisory Committee, by a split vote, recommends that the client be asked to sign the so-called Litigant's Bill of Rights to guarantee that client and attorney "stop and think" about the decisions raised by the notice.

(LITIGANTS' BILL OF RIGHTS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

_____	)	Case No. _____
Plaintiff,	)	
	)	
v.	)	**NOTICE OF CASE MANAGEMENT PROCEDURES**
	)	
_____	)	
Defendant.	)	

Litigants in this Court may wish to utilize procedures that are available to assist the speedy and efficient resolution of civil cases. This notice *must* be furnished by counsel to each party represented, filled out, signed by the party, and returned by counsel to the Clerk's office within 15 days.

Notice to Parties and Counsel

1. If all parties in a case elect to do so, a civil case in this Court can be referred to non-binding mediation. The purpose of such is to assist the parties in understanding the strengths and weaknesses of their respective positions and to facilitate settlement.

Do you wish to use such a procedure and for your lawyer to meet with opposing counsel and a Judge of this Court to establish a mediation plan for this case?

_____ .
(answer yes or no)

2. If the parties in a case elect to do so, a civil case in this Court can be referred to binding or non-binding arbitration. In some instances, arbitration may be quicker, cheaper, and less formal than litigation. Its outcome can be binding or purely advisory, depending on the parties' agreement. The parties can also agree to tailor the rules of procedure.

Do you wish to consider such a procedure and for your lawyer to meet with opposing counsel and a Judge of this Court to establish an arbitration plan for this case?

_____ .
(answer yes or no)

3. If all parties in a case consent and the Court concurs, the right to proceed before a United States District Judge may be waived, and the case can be presided over by a United States Magistrate Judge.

Would you like to *consider* use of a Magistrate Judge and receive more information on this alternative? _____ .
(answer yes or no)

4. After the complaint and answer are filed in a case, the rules of this Court normally allow four months for the completion of discovery. If discovery continues for a longer period of time, it will be because the attorneys have requested an extension of time from the Court.

5. If justified by the complexity or difficulty of a case, the Court will consider the entry of a special case management order. After hearing from the parties, this order would supersede the local rules and provide new dates for the different aspects of discovery, amendments to the pleadings, the filing of motions, conferences with the Court, and preparation for the ultimate pretrial order and trial of the case.

The lawyers for all of the parties are encouraged to consult concerning the need for such a case management order.

6. At the completion of discovery and before trial, each party will be required to participate in the filing of a pretrial order. In most cases, there will also be a pretrial conference with the presiding Judge. At the conference, the Court will inquire about the prospects for settlement of the case. Normally the Court will require the client to be present in person or by telephone.

By Order of the Court.

_____

Clerk of Court

I have reviewed with my attorney the above notice and have indicated my desired responses to paragraphs 1, 2 and 3.

This _____ day of _____, 199____.

_____

Name and signature of party or Representative

I have furnished a copy of this notice to the party represented by me (including any insurance company assisting with the cost of defense) and discussed with my client responses to paragraphs 1, 2 and 3 which have been noted. I have also served opposing counsel with a copy of this completed notice.

This _____ day of _____, 199____.

_____

Attorney for _____

20. Recommend to the District Court that a protocol for monitoring pending motions be established to encourage prompt rulings. The failure to rule in a timely fashion on pending motions can contribute to unnecessary costs and delay. Section 476 of the Civil Justice Reform Act requires that the Administrative Office of the United States Courts prepare a semi-annual report, available to the public, that discloses for each judicial officer (1) the number of motions that have been pending for more than six months and (2) the number of bench trials that have been submitted for more than six months. Currently, the Southern District prepares a monthly report showing by judicial officer all pending motions. The Advisory Committee recommends to the district court judges that this report on pending motions be distributed monthly to the judges and formatted in a way that will allow the judges readily to spot the motions that have been pending the longest time by listing motions for each judicial officer in chronological order, oldest first.

21. The Advisory Committee recommends *against* the establishment of *mandatory* alternatives to litigation in the Southern District. First, the docket is current, and civil cases are receiving prompt disposition. Second, there is a legitimate concern that requiring litigants to seek to resolve their cases initially through compelled arbitration or mediation will simply build in another layer of cost and delay. Finally, the survey of attorneys who had served as lead counsel in the group of cases studied by the Advisory Committee reported a real split of opinion about the efficacy of ADR (Alternative Dispute Resolution). Approximately one-half of the attorneys thought that referring the case they had handled to early neutral evaluation, court-annexed non-binding mediation, or court-annexed non-binding arbitration would likely have resulted in some savings in cost and delay, whereas roughly one in five thought that such a referral would have increased cost and delay instead.

Rather than mandate some form of ADR, the Advisory Committee recommends to the District Court that by Local Rule or General Order a plan permitting the early neutral evaluation and non-binding mediation of cases be implemented. Such a plan would allow the court to refer the dispute for early neutral evaluation and mediation upon the consent of both parties on a case-by-case basis.

Experience teaches that a high percentage of civil cases filed in court will settle rather than proceed to a trial. Substantial savings for the litigants and the court system will result when these cases settle before a great deal of time and expense have been invested in them. Hence, a strategy that facilitates early settlement can yield significant reductions of cost and delay. While early resolutions are desirable, it is often the case that the parties require time and information to gain the necessary perspective to realistically discuss resolving the dispute without trial.

The Advisory Committee recommends that the Southern District allow early neutral evaluation and non-binding mediation on a case-by-case basis to parties who signal the desire to pursue this alternative to further litigation. Parties will be informed about this option through the Litigants' Bill of Rights.

22. Recommend to the District Court that to shorten the time for disposition in criminal cases the U.S. Probation Office be instructed to furnish the requisite pre-sentencing reports within thirty (30) days after trial or entry of a plea of guilty.

23. Recommend to Congress and the Judicial Conference that the mission of the United States Marshals Service be clarified to establish that its first and foremost duty is to provide security for the courts and judges. The Advisory Committee is informed that currently Congress only appropriates 68% of the funds projected to be needed to provide courthouse security. The Advisory Committee recommends that Congress fully fund an adequate system of courthouse security and that the task of apprehending fugitives be assigned to other, more appropriate agencies.

24. Recommend to the Congress and the Judicial Conference that funds be provided to staff the clerk's office at the personnel level called for by the authorized formula.

B. Contributions Required of the Court, the Litigants, and the Litigants' Attorneys to Carry out the Recommendations

This section will describe for each of the recommendations made by the Advisory Committee the contributions expected to be made by the district court, the litigants, and the litigants' attorneys.

Recommendation No. 1 asks Congress to enact legislation to divert state prisoner civil rights suits for damages to the state courts or, alternatively, to a state administrative hearing before permitting their filing in federal court. Imposing an exhaustion of remedies requirement would substantially ease the workload of the district judges and magistrate judges. It would restrict direct access of state prisoners to federal courts but would preserve the safety valve of collateral review of constitutional issues on a record made in a state court or state administrative proceeding. The benefit for the federal court would be substantial if prisoner claims are winnowed before filing in federal court.

Recommendation No. 2 asks Congress to enact legislation to strengthen the timeliness and finality requirements of habeas corpus. This measure would ease somewhat the workload of the federal courts and, more importantly, it would protect public confidence in the criminal justice system.

Recommendation No. 3 proposes a new Article I court to hear social security disability claims. Establishing such a court should benefit claimants and the Article III courts that at present hear the appeals in such cases.

Recommendation No. 4 proposes that Congress establish new mechanisms for resolving Title VII EEOC and other worker cases. Resolving such disputes without full adjudication would aid litigants by providing a less expensive and more appropriate dispute resolution mechanism and would aid the court by diverting this part of their present caseload to another forum.

Recommendation No. 5 proposes that Congress retain diversity of citizenship jurisdiction. Although eliminating diversity of citizenship jurisdiction would substantially reduce the caseload of federal courts, there are important policy reasons for continuing this branch of federal jurisdiction. The disadvantages to litigants and their attorneys by foreclosing the alternative of a federal forum and the specialized jurisdiction that would be left to federal courts if the general area of private litigation were removed, on balance, outweigh the benefits.

Recommendation No. 6 proposes that Congress broaden the multi-district litigation statute to aid in the resolution of large scale, multi-party litigation. It is projected that such a change would add little to the caseload of the federal courts while making possible a national forum for litigation that cannot be carried on efficiently in state or federal forums today. Litigants in multi-party, multi-state litigation would benefit significantly from this recommended measure.

Recommendation No. 7 proposes that Congress broaden in a limited way the jurisdiction and powers of magistrate judges hearing actions to enforce IRS summons. This change would increase the speed and efficiency of such actions with no burden to the court or private litigants.

Recommendation No. 8 asks Congress and the Judicial Conference to evaluate carefully the impact on federal courts of mandatory minimum sentences and sentencing guidelines. It is posited that these provisions have contributed to a significant increase in the workload of the federal judiciary. It is speculated they have created incentives for prosecutors to "federalize" more state crimes to obtain tougher sentences and for defendants to risk conviction at trial rather than to plead guilty. Certainly, the time spent by federal judges on sentencing has increased. Effects such as those posited need to be studied and understood by congressional policy makers.

Recommendation No. 9 is tied to the prior recommendation. A better way is needed for Congress to assess the impact of proposed, as well as enacted, legislation on the federal courts. An appropriate method to determine the effect of new legislation on the courts would benefit the courts and all litigants.

Recommendation No. 10 asks Congress to enact legislation to allow the court to impose attorneys fees and expenses of litigation on the losing party whose claim or defense is determined by the court to have been substantially unjustified. This measure would create a new point of decision for the court and would penalize litigants who pursue substantially unjustified claims or defenses. At the same time, such a measure promises to relieve the court of frivolous cases and to protect litigants from the expense of litigating claims or defenses that were without merit or support.

Recommendation No. 11 asks Congress to authorize courts to deal directly, in appropriate cases, with unreasonable and excessive attorneys fees and fees paid to expert witnesses. This measure calls on courts to shoulder directly final responsibility for preventing unreasonable charges for attorneys fees and fees paid to expert witnesses in private litigation. It would make the court responsible for reviewing and controlling fees and might be seen as an infringement on the freedom of attorney and client to contract. Nevertheless, the knowledge that the court has the authority to review and even adjust fees charged by attorneys and expert witnesses could have a most salutary, prophylactic effect in protecting litigants from unreasonable litigation costs.

Recommendation No. 12 asks Congress to reject amendments to Federal Rule of Civil Procedure 11 that would weaken it. The firm resolve of the court to impose sanctions on attorneys and parties who abuse the process of litigation prevent such abuses. The court, litigants, and litigants' attorneys will all be served well by high expectations of conduct enforced by certain sanctions for willful violations. The amendments to Rule 11 would be counterproductive to the announced goals of the Civil Justice Reform Act.

Recommendation No. 13 proposes that informal consultation continue between the court and the United States Attorney's Office to assure that appropriate discretion is exercised in selecting cases of concurrent jurisdiction for federal criminal prosecution. This measure respects the responsibility of the Executive Branch to exercise prosecutorial discretion while keeping in everyone's attention the impact that the growing criminal docket has on the resources of the federal court.

Recommendation No. 14 proposes that the district court adopt a differentiated track for "complex" or protracted cases. Criteria for identifying such cases are set out to guide attorneys in requesting the entry of a Special Case Management Order. The judge to whom the case is assigned will make the final determination whether the case should be so designated. The use of a Special Case Management Order in appropriate cases should result in selectively greater judicial involvement in overseeing complex cases, and this should result in savings of time and money to the litigants, attorneys, and the court. The procedure creates a handy judicial management tool and leaves to the court the decision about the right occasions for its use, thereby avoiding the creation of a rigid or mechanical system of differentiated case management.

Recommendation No. 15 suggests several revisions to Local Rules 8.6 and 8.7 that already specify that certain information be furnished with the complaint and answer. These interrogatories to parties have worked well to focus early in the case the contentions of the parties. In recommending that these local rules be broadened to call for the disclosure of documents on which parties intend to rely to establish their cases and for disclosure in advance of written reports on all expert testimony, the Advisory Committee determined that time and costs can be saved for litigants with little or no burden on the court or others. This proposal for disclosure is more definite than that contemplated in the amendment proposed to Federal Rule of Civil Procedure 26 and thus avoids the problems of uncertainty of scope that its adoption could engender for the court and the bar.

The other revisions suggested in this recommendation cure defects found in the operation of the present local rules and pose no undue burden on the court or attorneys.

Recommendation No. 16 suggests that a proposed order accompany certain motions. Its adoption as a local rule change should reduce the court's time for disposing of motions without imposing any appreciable burden on litigants or their attorneys.

Recommendations 17 and 18 are designed to further the goal of making the pretrial conference a real opportunity to narrow the dispute or settle the case by insuring the attendance of persons with authority to make concessions and to settle. This measure, which already has the authority of case support in the Eleventh Circuit, serves the goals of both Federal Rule of Civil Procedure 16 and the Civil Justice Reform Act and requires litigants and their attorneys to come to pretrial conferences prepared to enter into binding discussion about the case with the court.

Recommendation No. 19 is designed to empower litigants to make better informed decisions about the course of the lawsuit in which they are parties, The so-called Litigants' Bill of Rights is intended to make litigants and their attorneys "stop and think" about less costly alternatives to litigation but does not mandate any form of alternative dispute resolution. The Litigants' Bill of Rights does call on litigants and their attorneys to confer about the case, and both must sign the notice. This proposal proceeds from the premise that the court, the litigants and their attorneys all have an obligation and a role to play in reducing cost and delay in litigation.

Recommendation No. 20 urges the district court to develop a better method for monitoring pending motions. Prompt rulings on motions can do much to save litigants and attorneys time and money. Reports on motions are prepared monthly by the clerk's office and distributed to the judges. Automation makes it feasible to format this information in a way that lists the pending motions chronologically for each judicial officer so that motions long pending can be readily seen. The pride that the judges of the Southern District take in keeping the court's docket

current will be a strong incentive for disposing of motions promptly once highlighted in this way.

Recommendation No. 21 declines to call on the District Court to develop a plan for mandatory ADR. The condition of the docket does not require a mandatory system for diverting cases from adjudication and there are well-placed fears that any such system could itself build in new cost and delay. However, on a case-by-case basis the court has signalled its willingness to cooperate in a voluntary plan for early neutral evaluation or mediation with the consent of litigants. This approach fits the particular circumstances of the court and permits early neutral evaluation and mediation in those instances where it is most likely to succeed.

Recommendation No. 22 proposes that the District Court instruct the U.S. Probation Office to speed up the time for furnishing pre-sentence reports to reduce the time for disposition in criminal cases. The U.S. Probation Office would bear the burden of compliance with this directive.

Recommendations No. 23 and 24 are directed to Congress and the Judicial Conference. They call for the appropriation of funds to permit staffing the clerk's office at the level authorized by formula and to permit the full funding of the United States Marshals Service to provide courthouse security. Our federal courts are a great national resource, and they deserve adequate funding to carry out their important mission.

C. How the Recommendations Comply with § 473

The Advisory Committee, in consultation with the judges of the Southern District, considered each of the six principles and six techniques for litigation management listed in 28 U.S.C. § 473 in its discussions and in formulating a recommended plan for cost and delay reduction. This section will explain concisely how the recommendations to the District Court in section III. A. comply with the principles and techniques identified in § 473 of the Civil Justice Reform Act.

1. Systematic, differential treatment of civil cases

Various local rules of the Southern District already provide for systematic, differentiated handling of certain types of cases. Class actions, see Local Rule 14, and Civil RICO cases are two examples. The Advisory Committee recommends the continuation of these measures. In addition, the Advisory Committee has proposed the creation of a differentiated case management track for "complex" or protracted cases. Recommendation No. 14 calling for the establishment of a Special Case Management Order carries out this first principle.

5. Requirement that representatives of the parties with authority to bind them be present or available by telephone during settlement conferences.

This technique is embodied in Recommendations Nos. 17 and 18.

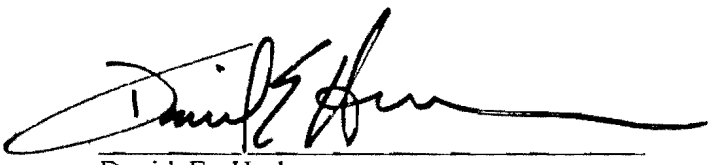
6. Other features that are appropriate.

To facilitate the prompt ruling on motions the Advisory Committee has recommended that the monthly report on motions be reformatted to highlight those motions that have been pending the longest. See Recommendation No. 20.

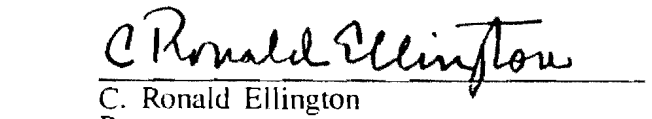
D. Recommendation of Plan

Based on its assessment of the condition of the docket and on its conclusions about the principal causes of cost and delay in litigation, the Advisory Committee has proposed a number of recommended actions to Congress, the Executive Branch, and the district court. The Southern District of Georgia has been in the forefront nationally in employing judicious case management techniques to expedite the pace of litigation. The Advisory Committee recommends that the present measures be continued and that certain new measures presented in the Recommendations be adopted. The Advisory Committee recommends that the district court adopt the Cost and Delay Reduction Plan set out in Appendix C based on the recommendations in its report.

Respectfully Submitted for the Advisory Committee.



David E. Hudson
Chairman



C. Ronald Ellington
Reporter

ATTACHMENT A

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

GEORGIA SOUTHERN

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTIC	Filings*		1,468	1,763	1,740	1,373	1,433	1,340		
	Terminations		2,128	1,418	1,288	1,390	1,290	1,359		
	Pending		1,151	1,804	1,471	1,082	1,099	955		
	Percent Change In Total Filings Current Year	Over Last Year	-16.7	-15.6	6.9	2.4	9.6		92	9
		Over Earlier Years							26	6
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months		12.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	Filings	Total	489	588	580	458	478	447	11	3
		Civil	437	539	534	412	426	391	10	3
		Criminal Felony	52	49	46	46	52	56	42	7
	Pending Cases		384	602	490	361	365	318	46	8
	Weighted Filings**		513	686	612	423	437	425	5	2
	Terminations		709	473	429	463	430	453	3	1
	Trials Completed		46	40	38	47	49	63	11	2
MEDIAN TIMES (MONTHS)		Criminal Felony	6.3	5.1	4.5	4.9	3.7	3.2	57	6
		Civil**	10	10	9	8	8	8	46	6
	From Issue to Trial (Civil Only)		13	13	12	9	11	10	26	3
OTHER	Number (and %) of Civil Cases Over 3 Years Old		7 .7	1 .1	0 .0	0 .0	1 .1	6 .7	4	1
	Average Number of Felony Defendants Filed per Case		1.8	1.9	1.8	1.8	1.5	1.8		
	Jurors	Avg. Present for Jury Selection	27.07	28.41	25.11	21.68	19.97	19.19	19	3
		Percent not Selected or Challenged	22.3	27.3	47.4	9.5	18.5	14.5	27	4

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	1310	56	39	320	37	23	46	140	421	16	133	3	76
Criminal*	156	-	5	21	6	12	17	24	4	17	3	12	35

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
** See Page 157.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ALL DISTRICT COURTS

			TWELVE MONTH PERIOD ENDED JUNE 30					
			1992	1991	1990	1989	1988	1987
OVERALL WORKLOAD STATISTIC	Filings*		261,698	241,420	251,113	263,896	263,174	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 ... Over Earlier Years ...	8.4	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)		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	32.7	31.1
		Percent not Selected or	34.3	34.0	34.2	35.8	33.7	32.1

NUMERICAL STANDING WITHIN U.S. CIRCUIT

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	5670	23419	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.
** See Page 157.

ATTACHMENT B

MANAGEMENT OF CIVIL LITIGATION IN SOUTHERN DISTRICT OF GEORGIA

Based on 238 Attorney Responses

A. MANAGEMENT OF THIS LITIGATION

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

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

1	Intensive	6.3% }	27.3%
2	High	21.0 }	
3	Moderate	34.9	
4	Low	14.7 }	23.5%
5	Minimal	8.8 }	
6	None	3.4	
7	I'm not sure.	2.5	
	Missing	8.4	

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

	Was Taken	Was Not Taken	Not Sure	Not Applicable
Held pretrial activities to a firm schedule.	57.6%	17.2%	6.3%	15.5%
Set and enforced limits on allowable discovery.	59.7%	12.2%	3.4%	21.8%
Narrowed issues through conferences or other methods.	46.6%	27.7%	2.5%	19.7%
Resolved discovery disputes promptly.	34.0%	5.9%	2.9%	53.8%
Ruled promptly on pretial motions.	53.8%	10.9%	3.8%	28.6%
Set an early and firm trial date.	27.7%	25.2%	5.5%	37.4%
Conducted or faciliated settlement discussions.	36.6%	24.4%	4.6%	31.1%
Exerted firm control over trial.	20.2%	27.6%	1.7%	63.4%

Other _____

B. TIMELINESS OF LITIGATION IN THIS CASE

3. Our records indicate this case took about ____ months from filing to disposition. Please circle the *one* answer below that reflects the duration of the case *for your client.*

Median duration was 14 months.

1 The duration given above is correct for my client.
2 The duration given above is not correct for my client. My client was in this case for approximately _____ months.
3 This case has not yet reached disposition for my client.
4 I don't recall the duration of this case for my client.

4. Please consider how long this case might have taken from filing to disposition under circumstances in which the court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the court. How would you evaluate the time that elapsed from filing to disposition for your client in this case compared to what it might have been under such circumstances? Please circle *one* response from answers a-d; if you select either "b" or "c", please answer the subsidiary question.

a. The time from filing to disposition was reasonable **71%**

b. The time from filing to disposition was too long. → **24.8%**

4.b Which of the following were significant causes of the excess duration? Please circle *all* that apply.

1 Excessive or inapposite case management by the court. **1.3% (3 responses)**
2 Inadequate case management by the court. **5.5% (13 responses)**
3 Actions by counsel or parties. **16% (38)**
4 Factors related neither to the court's case management nor to actions by counsel or parties. (e.g., the demands of the court's criminal caseload) **7.1% (17)**

c. The time from filing to disposition was too short. →

4.c. Please explain:

d. I can't say.

C. COSTS OF LITIGATION IN THIS CASE

This section seeks information about the costs of litigating this case. When answering these questions, please take into account *only* activity that was in direct preparation for or occurred subsequent to filing the case in this Court, up until the time of final disposition of the district court proceedings. Do *not* take into account activity related to state court or administrative proceedings, settlement efforts that took place prior to federal court filing, or appellate litigation.

5. Which party (plaintiff or defendant) did you represent in this case? Please circle one:

1	plaintiff	**40.3%**
2	defendant	**57.6%**
	missing	**2.1%**

6. *Approximately* how many *hours* were spent on this case by *attorneys* representing your client?

Approximate number of attorney hours

34%	**50 hours or less**
55%	**100 hours or less**
71%	**200 hours or less**
84%	**400 hours or less**
91%	**600 hours or less**
92%	**750 hours or less**
96%	**1000 hours or less**

7. What was the attorney fee arrangement with your client? Please circle *one*.

1	Contingent fee	**23.9%**
2	Hourly fee	**61.8%**
3	Government or other salaried attorney	**10.1%**
4	Other. Please specify: _____	

8. Please think about the *total* litigation costs for your client in this case, including such items as expert witness fees, transcript fees, and fees for legal assistants or paralegals, as well as attorneys' fees. If the attorney fee arrangement with your client was other than on a standard hourly basis, or if you are a government or other salaried attorney, please answer the following questions in light of what the fees might have been if charged at a standard hourly rate.

8.a. *Approximately* what percentage of the total litigation costs for your client were accounted for by attorneys' fees?

Attorneys' fees were approximately _____ % of the total litigation costs.

16%	**reported atty fees of 50% or less**
31%	**reported atty fees of 75% or less**
76%	**reported atty fees of 90% or less**

8.b. What is the approximate portion of the *total* what percentage of the total litigation costs for your client attributable to *each* of the following activities?

Preliminary investigation of the case, drafting complaint or answer	**10- 15% median**
Discovery, including motions related to discovery	**30%**
Other motions (e.g., summary judgement, TRO)	**10%**
Negotiations for settlement or other stipulated disposition	**5%**
Status conferences, scheduling conferences or hearings, final pretrial conferences, and other case management related events	**5%**
Trial (81% reported)	**0%**
Please specify: _____	__%

9. If discovery costs were one element of the total litigation costs of this case for your client, please think about and balance the burden and expense of discovery for your client against the use to which the information obtained through discovery was actually useful and used in the case.

   Please circle the answer that best applies:

   1 The cost of discovery in this case was relatively greater than the resulting information obtained was worth to the case. **11.7%**

   2 The cost of discovery in this case was about proportionate to the needs of the case. **65.8%**

   3 The cost of discovery in this case was relatively less than the resulting information obtained was worth to the case. **11.7%**

   4 I can't say.

10. To what extent was your client concerned about possible consequences beyond the relief sought in this specific case, such as possible future litigation based on similar claims or the possibility of a legal precedent of significant consequence for your client? Please circle *one.*

1	Such consequences were of dominant concern to my client	**19.7%**
2	Such consequences were of some concern to my client	**30.7%**
3	Such consequences were of little or no concern to my client	**42.9%**
4	I'm not sure.	**5.5%**
	Missing	**1.3%**

11. *Excluding* litigation expenses and factors such as those mentioned in the preceding question, how much was at stake for your client in this case? Please complete statements 1 and 2 if this case involved stakes susceptible to monetary valuation. Please complete statement 3 if the case also involved - or only involved - stakes that were not susceptible to monetary valuation.

1. The dollar value of the *worst* likely outcome was a $_____ [ ] gain. [ ] loss.

2. The dollar value of the *best* likely outcome was a $ _____ [ ] gain. [ ] loss.

3. The following "stakes" were not susceptible to monetary valuation: _____

---

12. Civil litigation necessarily costs money. Please consider what the *total* litigation costs in this case might have been under circumstances in which the court, all counsel, and all parties acted expeditiously and according to the prescribed rules of federal procedure. How would you evaluate the total litigation costs to your client in this case compared to what the costs might have been under such circumstances? Please circle *one* response from answers a-d; if you select "B" or "C", please answer the subsidiary question.

a The total litigation costs in this case were reasonable and necessary. **68.5%**

b The total litigation costs were too high and in part unnecessary → **21.8%** }

of these 21.8% }

12.b. Which of the following were significant causes of the excess costs? Please circle *all* that apply.

1 Excessive or inapposite case management by the court **1.7% (4 responses)**

2 Inadequate case management by the court. **4.2% (10)**

3 Actions by counsel or parties. **16.4% (39)**

4 Factors related neither to the court's case management nor to actions by counsel or parties. Please explain: **4.6% (11)**

c The total litigation costs were lower than expected. → **5.5%**

12.c. Please explain:

d I can't say.

D. DEVICES TO REDUCE COSTS AND DELAY

13. The Southern District of Georgia has adopted a number of Local Rules designed to move cases to resolution expeditiously. Please indicate the extent to which each of the following rules or practices contributed, in your estimation, to reducing cost and delay in *this* case.

	Substantial Cause	Slight Cause	Not A Cause	Probably Increased Cost and Delay
a. Four (4) month period after filing answer to complete discovery	34.9%	18.9%	38.7%	5.9%
b. Limit initially to twenty-five (25) single question interrogatories	17.6%	25.6%	50.8%	2.9%
c. Certificate of good faith effort to resolve discovery matters between counsel prior to filing discovery motion or objection	13.4%	19.7%	60.1%	2.5%
d. Deadline for filing dispositive motions and motions to amend or join other parties	26.9%	25.6%	41.6%	2.5%
e. Requirement that counsel who will actually try case and who have authority to make stipulations and discuss settlement attend pretrial conference	23.1%	16.0%	55.9%	1.3%
f. Specific interrogatories about case required to be answered by plaintiff upon filing complaint and by defendant with answer	24.4%	32.4%	38.2%	2.5%
g. Use of status conference	26.9%	13.9%	49.2%	4.6%
h. Use of pretrial conference	30.3%	10.9%	47.1%	1.7%
i. Use of settlement conference	23.5%	8.8%	55.5%	2.5%

14. Some of the devices below either have been implemented or proposed in other federal district courts to reduce unnecessary cost and unreasonable delay in civil litigation. Based on your experience in this case or in civil litigation generally, please indicate your opinion about the likelihood that these devices would have expedited the resolution and reduced cost in *this* case:

	Likely a Substantial Effect	Likely a Slight Effect	Likely No Effect at all	Likely Instead to Increase Cost and Delay
a. Refer case for evaluation by neutral court representative in early nonbinding conference	23.9%	22.3%	33.2%	18.1%
b. Refer case to court-annexed, non-binding mediation by attorney selected from panel of trained mediators	23.5%	19.3%	34.5%	19.3%
c. Refer case to court-annexed, non-binding arbitration by attorney selected from panel of trained arbitrators	19.7%	21.8%	34.0%	21.0%
d. Require greater exchange of relevant information among litigants without formal discovery	28.2%	21.4%	42.9%	5.5%
e. Exclude cost of experts in calculating prevailing party's recoverable court cost	7.6%	12.2%	67.2%	8.4%
f. Require attorneys to certify that alternatives to litigation have been discussed with and considered by party represented	9.2%	24.8%	55.0%	9.7%

E. ATTORNEY PROFILE

15. How many years have you been engaged in the practice of law?

median — 16 years

10 years or less — 25%
20 years or less — 70%
30 years or less — 92%

16. What percentage (estimated) of your practice (of time spent) is devoted to civil litigation?

About 2/3rds of respondents devote 75% or more of time

17. During the past five years (or during the time you have been in practice, if less than five years) what percentage of your practice (of time spent) has been devoted to litigation in a federal district court?

About 25% of respondents devote more than 50% to federal litigation

18. This case was litigated in the United States District Court for the Southern District of Georgia. When you have cases in federal court is this the district in which you usually litigate or is another district your "home district"? Please circle *one*.

1	I usually litigate in this district.	**73.9%**
2	I usually litigate in another district.	**9.2%**
3	I litigate in a number of districts, including this one.	**14.3%**
4	Other. Please specify:	**2.5%**

19. Please compare the unnecessary cost and delay in this case with that in other cases you have litigated in the Southern District of Georgia during the past five years. Please circle *one:*

1 Unnecessary cost and delay was significantly higher in this case than in similar cases I have litigated in the Southern District. **9.2%**

2 Unnecessary cost and delay were somewhat higher in this case than in similar cases I have litigated in the Southern District. **5.5%**

3 Unnecessary cost and delay were about the same in this case as in similar cases I have litigated in the Southern District. **25.6%**

4 Unnecessary cost and delay were somewhat lower in this case than in similar cases I have litigated in the Southern District. **18.5%**

5 Unnecessary cost and delay were significantly lower in this case than in similar cases I have litigated in the Southern District. **5.9%**

6 Not applicable **34.5%**

20. Please compare the unnecessary cost and delay in this case with that in other cases you have litigated in other federal district courts during the past five years. Please circle *one:*

5.9% } 1 Unnecessary cost and delay were significantly higher in this case than in similar cases I have litigated in other federal district courts.
} **9.7%**
3.8% } 2 Unnecessary cost and delay were somewhat higher in this case than in similar cases I have litigated in other federal district courts.

20.2% 3 Unnecessary cost and delay were about the same in this case as in similar cases I have litigated in other federal district courts.

15.1% } 4 Unnecessary cost and delay in this case were somewhat lower in this case
} **34.0%** than in similar cases I have litigated in other federal district courts.
]
18.9% } 5 Unnecessary cost and delay were significantly lower in this case than in similar cases I have litigated in other federal district courts.

34.0% 6 Not applicable.

21. Please use the space below (and on the back of this page, if you wish) for any additional comments you would like to make about management of this case in particular or about management of litigation by the federal courts in general.

ATTACHMENT C

BASED ON 112 RESPONSES FROM PARTIES

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA

THE MANAGEMENT OF CIVIL LITIGATION

A SURVEY OF PARTIES
WITH CASES IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

GENERAL INSTRUCTIONS AND PURPOSE

Instructions: This questionnaire is designed to be completed in a few minutes. Its ask questions about a case identified in the cover letter, which was filed in the Southern District of Georgia, and in which you were a party. Please review your records to refresh your recollection of the particular litigation. A postage-paid, addressed envelope is enclosed for your convenience in returning the questionnaire. It would be most helpful to have your response by **April 15, 1993.**

Purpose: This questionnaire seeks information from you as part of the Civil Justice Reform Act assessment of the cost and pace of litigation. Your individual response will be kept confidential and the information obtained will be disclosed to court officers only in the aggregate. To match your response on the questionnaire with other information about the case for the purpose of the CJRA Study only, this case is coded as _____.

Case and Court: Most of the questions below refer to "this case," which is the case identified in the cover letter in which you were one of the parties. Some of the questions also refer to "this court" which is the United States District Court for the Southern District of Georgia. **Please answer all questions with reference to this case and this court only.**

A. QUESTIONS FOR PARTIES

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

   1. plaintiff **31.5%**
   2. defendant **65.7%**
   MISSING **2.8%**

2. Please indicate the total costs you incurred in the case for each of the categorites listed below. If you are unable to categorize your costs, pleae indicate the *total* cost only.

1. Attorney's Fees	-
2. Attorney's Expenses (photocopying, postage, travel expenses, etc.	-
3. Consultants	-
4. Expert Witnesses	-
5. Other (please describe)	-
6. Total Cost of Litigation	**1/2 reported less than $10,000**
	15% reported $10,000 to $25,000
	18% reported $25,000 to $50,000

3. Please estimate the amount of money which you had at stake (i.e., might recover or have to pay) in this case.

   > 38% reported $50,000 or less
   > 23% reported $100,000 to $750,000
   > 15% reported $1,000,000 or more

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

   1. Hourly rate . . . . .] **66%**
   2. Hourly rate with a maximum . . . . . .
   3. Set fee **5%**
   4. Percentage of the amount recovered **15%**
   5. Other—please describe . . . . . .
   MISSING **10%**

5. Consider what was at stake, were the total costs incurred by you on this matter (circle one)

   1. much too high **14.8%**
   2. slightly too high **13.8%**
   3. reasonable **64.3%**
   4. somewhat less than expected **4.9%**
   5. much less than expected . . **1.9%**

6. If you believe the cost of litigation was too high, what actions could your attorney or the court have taken to reduce the cost of this matter?

7. Was the length of time that it took to resolve this matter (circle one)

   1. much too long **27.8%**
   2. slightly too long **13.0%**
   3. about right **45.4%**
   4. somewhat less than expected **9.3%**
   5. less than expected **1.9%**

   MISSING 2.8%

8. If you believe that it took too long to resolve your case, what actions could your attorney or the court have taken to resolve your case more quickly?

9. Considering your experience in this case, would you in a similar lawsuit in the future be likely to favor trying at the beginning of the case some nonbinding alternative to litigation such as mediation or arbitration to attempt to resolve the matter if available through the Court?

   (circle one)

   1. Yes **61.1%**
   2. No **35.2%**

   MISSING 3.7%

10. Please add any comments or suggestions you have regarding the time and cost of litigation in the federal courts.

ATTACHMENT D

RULE 6
MOTIONS

6.1 Filing. Unless the assigned judge prescribes otherwise, every motion filed in civil and criminal proceedings shall be accompanied by a memorandum of law citing supporting authorities. Where allegations of fact are relied upon, supporting affidavits shall be submitted. The clerk shall not accept for filing any motion which does not conform to this rule. This rule does not apply to motions for enlargement of time.

6.2 Reply. Unless the assigned judge prescribes otherwise, wach party opposing a motion shall serve and file his responses, reply memorandum, affidavits or other material, within ten (10) days of service of the motions, except that in cases of motions for summary judgment, the time shall be twenty (20) days after service of the motion. Failure to respond shall indicate that there is no opposition to a motion.

6.3 Hearings. Motions shall generally be determined upon the motion and supporting documents filed as prescribed herein. However, the assigned judge may allow oral argument *sua sponte*, or upon written request of either party made at the time of the filing of the motions. Requests for oral argument shall estimate the time required for argument.

6.4 Discovery Motions. Unless otherwise ordered by the assigned judge, all discovery motions in civil cases shall be automatically referred to the United States Magistrate in those divisions having a full-time magistrate. In other divisions, the assigned judge may, by oral or written request, refer any discovery motion to any available magistrate. Upon referral, the magistrate shall promptly enter an order which shall be final unless a party seeks review of the order by the assigned judge by motion filed within ten (10) days of the magistrate's order.

6.5 Discovery Motions and Objections. Motions to compel discovery in accordance with Rules 33, 34, 36 and 37 of the Federal Rules of Civil Procedure and objections relating to discovery shall:

(a) quote verbatim each interrogatory, request for admission, or request for production to which a motion or objection is taken;

(b) include the specific ground for motion objection;

(c) include the grounds assigned for the objection (if not apparent from the objection; and

(d) include the reasons assigned as supporting the motion, which shall be written in immediate succession to one another. Such objections and

grounds shall be addressed to the specific interrogator, request for admission, or request for production and may not be made generally.

Counsel for the moving party shall confer with counsel for the opposing party and file with the Court at the time of filing the motion, a statement certifying that he has conferred with counsel for the opposing paty in a good faith effort to resolve by agreement the issues raised and that counsel have been unable to do so. Such statement shall specify any issues resolved by agreement. No motion to compel discovery shall be accepted for filing by the clerk unless it contains such certification.

6.6 Motions for Summary Judgment. Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, in addition to the brief, there shall be annexed to the motion, a separate, short and concise statement of the material facts as to which it is contended there exists no genuine issue to be tried as well as any conclusions of law thereof. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. Response to a motion for summary judgment shall be made within twenty (20) days of service of the motion. See Rule 6.2.

6.7 Orders Made Orally In Court. Unless the Court directs otherwise, all orders including findings of fact and conclusions of law orally announced in court shall be prepared in writing by the attorney for the prevailing party and taken to the judge within two (2) days thereafter, with sufficient copies for all parties and the Court.

6.8 Time for Filing Civil Motions. Except as otherwise provided in these local rules, including but not limited to Local Rule 6.10, motions for summary judgment pursuant to Federal Rules of Civil Procedure 56, motions to dismiss pursuant to Federal Rules of Civil Procedure 12 and all other motions in a civil action shall be filed and served upon the opposing party within twenty (20) days after the close of discovery pursuant to Local Rule 7.1, or as otherwise ordered by the Court.

6.9 Time for Filing Criminal Motions. All pretrial motions in criminal cases, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, shall be filed within ten (10) days of arraignment.

6.10 Time for Filing Motions to Amend or to Join Other Parties. All motions in civil cases wherein a party seeks to add or join another party or to amend the pleadings shall be filed within sixty (60) days after issue is joined in the case by the filing of an answer.

RULE 7
DISCOVERY

7.1 Time Limitations. Any desired discovery procedure shall be commenced promptly, pursued diligently and completed without unnecessary delay and within four (4) months after the filing of the answer unless for cause shown the time has been extended by the Court. In third-party actions, the parties thereto shall have four (4) months from filing of answer by third-party defendant within which to complete discovery. This four-month limitation shall not be applicable to patent or antitrust cases.

7.2 Extensions of Time. No extension of time for discovery shall be granted unless an order to such effect in entered by the Court prior to the expiration of such period.

7.3 Pretrial Discovery and Inspection in Criminal Cases. Within five (5) days after arraignment, the United States attorney and the defendant's attorney shall confer and, upon request, the government shall:

(a) Permit defendant's attorney to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, or copies thereof, with the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government.

(b) Permit defendant's attorney to inspect and copy or photograph any relevant results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the case, or copies thereof, within the possession or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government.

(c) Permit defendant's attorney to inspect and copy or photograph any relevant recorded testimony of the defendant before a grand jury.

(d) Permit defendant's attorney to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places which are the property of the defendant and which are within the possession, custody or control of the government.

(e) Permit defendant's attorney to inspect and copy or photograph the Federal Bureau of Investigation Identification Sheet indicating defendant's prior criminal record.

(f) Permit defendant's attorney to inspect and copy or photograph any evidence favorable to the defendant.

(g) There shall be no duplication required of a party making discovery under this Rule or under Rule 16 of the Federal Rules of Criminal Procedure.

In the event the United States Attorney declines to furnish any such information described in this rule, he shall file such declination in writing specifying the types of disclosure that are declined and the grounds therefor. If defendant's attorney objects to such refusal, he shall move the court for a hearing thereon. Any duty of disclosure and discovery set forth in the Rule is a continuing one and the United States Attorney shall produce any additional information gained by the government.

Any disclosure granted by the government pursuant to this Rule of material within the purview of Rules 16(a)(2) and 16(b) of the Federal Rules of Criminal Procedure, shall be considered as relief sought by the defendant and granted by the Court.

7.4 Interrogatories in Civil Cases. The interrogatories served upon either party shall not exceed twenty-five (25) in number. Each interrogatory shall consist of a single question. Additional interrogatories will be allowed only after initial interrogatories are answered and with the written permission of the Court on application.

(a) Interrogatories under Rule 33, Federal Rules of Civil Procedure, and the answer thereto, requests for production or inspection under Rule 34, Federal Rules of Civil Procedure, and requests for admissions under Rule 36, Federal Rules of Civil Procedure, and responses thereto shall be served upon other counsel or parties, but *shall not be filed with the court.* If relief is sought under Rule 26(c) or Rule 37, Federal Rules of Civil Procedure, concerning any interrogatories, requests for production or inspection, requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with any motion filed under Rule 26(c) or Rule 37, Federal Rules of Civil Procedure.

(b) If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed with the clerk at the outset of the trial insofar as their use reasonably can be anticipated.

(c) Motions under Rule 26(c) or 37(a), Federal Rules of Civil Procedure, directed at interrogatories or requests under Rules 33 or 34. Federal Rules of Civil Procedure, or at the responses thereto, shall set forth the interrogatory, request or response constituting the subject matter of the motion.

(d) Unless otherwise ordered, the court will not entertain any motion under Rule 37, Federal Rules of Civil Procedure, unless counsel for the moving party has conferred or has made reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule with any motion filed under Rule 37(a), Federal Rules of Civil Procedure.

(e) The number of interrogatories which are permitted to be served by either party in civil cases pursuant to this rule shall not be diminished or otherwise affected by the number of mandatory standard interrogatories which are propounded to the parties by Local Rule 8.6.

7.5 Depositions. Depositions under Rules 30 and 31, Federal Rules of Civil Procedure shall be served upon other Counsel or parties, but *shall not be filed with the clerk.* The party responsible for the service of the discovery material shall retain the original and become the custodian. If a party determines that is shall be necessary to use a deposition at trial, the deposition to be used shall be filed with the clerk prior to the trial insofar as its use reasonably can be anticipated.

7.6 Objections to Depositions. Any objections by any party to any deposition or portion thereof must be filed with the Court in writing, stating the page and line number objected to, and the reason for the objection. The objections must be filed in sufficient time to allow the court time to study and enter its written ruling before the proposed use of same.

RULE 8
PRETRIAL CONFERENCES AND PROCEDURE

8.1 Status Conference. The assigned judge may at any time direct counsel to appear and confer regarding the status of any pending case. Joint status reports shall be submitted at the time and in the form required by the judge.

8.2 Pretrial Order. Unless the assigned judge prescribes otherwise, the parties shall submit a consolidated pretrial order at the time and in the form prescribed by the assigned judge. When entered by or at the direction of the assigned judge, the pretrial order shall supersede all prior pleadings, shall control the trial of the case, and shall be amended only by order of the Court and only upon showing of good cause.

8.3 Pretrial Conference. A civil case may be scheduled for pretrial conference any time after the expiration of the discovery period. Counsel who will actually try the case, or other counsel of record with authority to define issues, make stipulations, and discuss settlement, shall attend the pretrial conference.

8.4 Dismissal. Failure of a party or counsel to comply with the requirements of the assigned judge relating to pretrial orders, conferences, and status reports shall be cause for dismissal under Rule 15.1.

8.5 Scheduling Orders. The "scheduling order" requirements of Federal Rule of Civil Procedure 16(b) are entered in this district as to civil cases by the operation of these local rules. The utilization of status reports, status conferences, pretrial orders and pretrial conferences shall continue in this district in the manner directed by the judge to whom a particular case is assigned. Compliance with the mandate of Federal Rule of Civil Procedure 16(b) shall be achieved by the parties' answers to the interrogatories which are hereinafter prescribed and provided for. Such interrogatories shall be required except in the following categories of cases only:

(a) Cases filed in this Court or removed to this Court before October 15, 1984;

(b) Habeas corpus cases arising under 28 U.S.C. §§ 2254, 2255;

(c) Employment discrimination cases;

(d) Mortgage, deed to secure debt or lien foreclosure cases;

(e) Cases appealing or seeking review of administrative rulings;

(f) Social security cases;

(g) Bankruptcy proceedings;

(h) Default proceedings;

(i) Veterans Administration recoveries;

(j) Cases in which all plaintiffs are unrepresented by and attorney (*pro se* cases);

(k) Condemnation cases;

(l) Asbestosis cases;

(m) Claims for relief within the admirality and maritime jurisdiction as set forth in Federal Rule of Civil Procedure 9(h) and the supplemental Rules for Certain Admiralty and Maritime Claims; and

(n) Appeals from orders entered by the bankruptcy judge or the magistrates.

In all other civil cases, the parties shall comply with the requirement for the answer of mandatory standard interrogatories set forth in Local Rule 8.6 according to the rules set forth in Local Rule 8.7.

8.6 Interrogatories to be Answered by All Plaintiffs and Defendants. Together with the filing of any complaint in a civil action other than one exempted under Rule 8.5, *all plaintiffs* are each required to answer the following interrogatories seriatim:

1. State with particularity what you contend the defendant did, or failed to do, which entitles you to obtain the relief you seek in this action.

2. Describe in detail all laws, acts having the force and effect of law, codes, regulations and legal principles, standards and customs or usages which you contend are applicable in this action.

3. State the full names, addresses and telephone numbers of all lay witnesses whose testimony you may use at the trial of this case and describe the issues to which that testimony will relate.

4. Identify by full name, address and telephone number each person whom you expect to call as an expert witness at the trial of this case and, as to each expert so identified, state the subject matter on which the expert is expected to testify, the susbstance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

5. If you contend that you have been injured or damaged, describe such injuries and damage in detail and list the elements of damages for which you contend you are entitled to recover and the measure by which you contend the same should be computed.

6. State the full name, address and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in your complaint, and state the basis and extent of such interest.

7. Outline in detail the discovery you anticipate you will pursue in this case and state the time you estimate it will take you to complete each item of same, along with an explanation of how you compute said times.

8. Do you wish for this case to be tried jury or nonjury?

The interrogatories to be answered by *all defendants* when filing responsive pleadings are as follows:

1. If the defendant is improperly identified, give it proper identification and state whether or not you will accept service on an amended summons and complaint reflecting the information furnished by you in answer hereto.

2. Furnish a detailed factual basis for the defense you assert in your answer.

3. Describe in detail all laws, acts having the force and effect of law, codes, regulations and legal principles, standards, customs and usages which you contend are applicable to this action.

4. If you contend that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state its full name, address and telephone number and describe in detail the basis of such liability.

5. State the full names, addresses and telephone numbers of all lay witnesses whose testimony you may use at the trial of this case, and describe the issues to which that testimony will relate.

6. Identify by full name, address and telephone number each person whom you expect to call as an expert witness at the trial of this case and, as to each expert so identified, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

7. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the matter alleged in the complaint, the number or numbers of such policies, the amount of liability coverage provided in each policy and the name insured in the same.

8. Do you wish for this case to be tried jury or nonjury?

8.7 General Rules for Interrogatories. In answering and suplplementing answers to the interrogatories which are required by the parties in Local Rule 8.6, the parties shall be governed by the following rules:

(a) All interrogatories must be answered fully in writing in accordance with Federal Rules of Civil Procedure 11 and 33.

(b) In the event any question cannot be fully answered after the exercise of reasonable diligence, the party shall furnish as complete an answer as possible and explain in detail the reasons why the party cannot give a full answer, state what is needed to be done in order to be in a position to answer fully and estimate when the party will be in that position.

In the event a party fails to answer an interrogatory fully and offers an explanation therefore, the party opponent shall respond to said explanation within ten (10) days after its receipt if the party disagrees with the same.

(c) If there is more than one plaintiff or more than one defendant in a case, each interrogatory must be answered separately by each unless the answer is the same for all.

(d) Each interrogatory shall be set forth immediately prior to the answer thereto.

(e) Plaintiff shall file answers in the office of the clerk of the court at the time the complaint is filed, and serve a copy of said answers with the summons and complaint, except in cases removed to this Court. In addition, plaintiff shall have ten (10) days after receipt of defendant's answers to file and serve amended answers made necessary by the information received from the defendant's answers. In removed cases, plaintiff shall file and serve answers forty (40) days after receiving notice of removal.

The provision of this rule giving the plaintiff ten (10) days to respond after receipt of the defendant's answers to interrogatories applies to all mandatory standard interrogatories. The Court recognizes, however, that it will have special significance to plaintiff's interrogatory number 7, and an amended answer to that question will be necessary in most cases.

(f) Defendant shall file answers in the office of clerk of court, and serve same on plaintiff, within thirty (30) days after the time for answering expires, except in cases removed to this Court and in cases where the United States of America is a defendant. In removed cases, defendant shall file and serve answers within thirty (30) days after receipt of plaintiff's answers, and the United States of America shall file and serve answers when its time for answering expires.

(g) A party shall *seasonably,* and in no event more than ten (10) days after receipt of the information in question directly *related* to (1) the identity, address and telephone number of persons who may be called as witnesses at trial, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Failure to disclose any such new witness may result in that witness not being allowed to testify at trial.

A party is also under a duty to seasonably, and not more than ten (10) days after receipt of the information in question, amend a prior response if the party obtains information upon the basis of which (1) the party knows that the reponse was incorrect when made, or (2) the party knows that the response, though correct when made, is no longer true or complete and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(h) Answers shall identify all attorneys representing a party by full name, mailing address and telephone number.

ATTACHMENT E

STATEMENT OF J. W. McSWINEY AND DON E. CARTER PRESENTING

SOME THOUGHTS AS TO WHAT WOULD SEEM TO BE REQUIRED SKILLS FOR THE FEDERAL JUDICIARY

The concept of the Biden Committee is to be commended, if for no other reason than it has caused a broad spectrum of lay people to examine the workings of the Federal Judiciary System and thus come to a better understanding as to the scope, complexity, competence and short-comings of the system.

It would be well to note, however, that two things almost always remain immutable: (1) no set of rules, regulations or legislation will work best for every institution; (2) where there is a "will to prevail" almost any system can be made to work.

It is not appropriate to overlook the degree of authority, influence, and command that federal judges are able to exercise. Today where the drive to make it work is at work, much is accomplished.

Upon reflection, it is clear that in getting the best possible job done, the Federal Judiciary System is no different than that of other well-run institutions. Each requires a leader with a clear vision of that over which he is to preside. Competency relative to the law and other regulations should be an almost given with regard to potential candidates. Leadership and organizational concepts need intense scrutiny.

Leaders must have a multiplicity of characteristics. Most of the characteristics, such as intelligence, moral persuasion, financial responsibility and many others, are routinely checked by the FBI and others for candidates proposed for appointment as federal judges.

What is hard to get is good perspective. In-depth efforts are often avoided because in some way they might seem to reflect unfavorably on a prospective judge. These include: (1) how well one is structured to organize and administer both personal and institutional matters; (2) the degree of work ethic with which one is comfortable; and (3) the ability of one to make prompt decisions.

It is the conclusion of this committee that the greatest assurance of obtaining optimum costs and efficiency in the Federal Judiciary System lies in the selection process. It is

recognized that submitted candidates will be along party lines, but that in no way should rule out the selection of a candidate who most likely possesses suitable characteristics for the job.

Also, it should be noted that in those districts where the work ethic and the decision making process seem clear, that efficiency, backlog, and costs are also very favorable.

There are several highly skilled and well-regarded organizations that, after a personal interview, can foretell with a high degree of accuracy one's organizational skills, work ethic, and ability to make prompt decisions. Interviews like this are conducted throughout the academic and business world. It is clear that those institutions which embrace such interviews are well-pleased with the results.

As the American Bar Association normally renders an opinion on proposed candidates, it is recommended that the Bar employ qualified professionals to interview all proposed candidates with regard to organizational skills, work ethics, and decision making ability. With these skills, a federal judge can make things work, almost regardless of rules, regulations, and the system.

REFERENCES OF PROFESSIONAL ORGANIZATIONS SKILLED WITH REGARD TO THE FOREGOING REFERENCES ARE AVAILABLE.

J. W. McSwiney and Don E. Carter

ATTACHMENT F

Reporter's Notes of Interviews
by
Civil Justice Reform Act Advisory Groups

I. AUGUSTA, GEORGIA ADVISORY GROUP
AUGUST 18, 1992
Present: Burnside (Chair), Miller, Simon, Hudson, and Ellington (Reporter)

A. Interview with Judge Bowen:

Judge Bowen opened the interview by expressing skepticism about the Administrative Office's seeming faith that improving "case processing" is the way to improve civil justice. A cookie cutter, stamp-them-out approach does not fit real cases that are different.

It is important to preserve the special character and timbre of Article III courts. We should avoid the wholesale relegation of civil litigation out of the courts into alternative dispute resolution mechanisms or from Article III courts to Article I courts. The magistrate judges in the Southern District are eager to help, work hard, and are contributing in the appropriate way now. Judge Bowen would not favor responding to an increasing caseload by depriving civil litigants of the full panoply of an Article III court.

In assessing problem areas, Judge Bowen thought very few cases featured excessive tactics or abuses. There is an overuse of experts. Lawyers hire experts to advocate their side of the case; the court would get a true expert and more reliable opinion if the judge selected the expert, not the parties.

Although there is a wide perception that discovery is often abused, Judge Bowen encounters few discovery disputes. Mont Miller observed that discovery problems often flow out-of-town, big city lawyers. Tommy Burnside concurred: most problems of discovery happen with lawyers from out of the area who do not know each other. In the Augusta Division, Magistrate Judge Dunsmore handles all discovery motions, and it was estimated that 95% of these are concluded by the magistrate without involvement by Judge Bowen.

The biggest problem cases, according to Judge Bowen, are *pro se* prisoner civil rights actions. Courts need an effective way to screen out the meritless while identifying the serious claims by those in confinement. There is a strong incentive to file these actions and almost no disincentive to doing so, where "winning" a trip to Augusta for a court hearing can count as success. Judge Bowen expressed doubt that applying local rule 8.6 [Standard Interrogatories to be Answered by Plaintiffs and Defendants] to these cases would help. Generally, these cases will need a lawyer to sort out the issues.

Judge Bowen estimated that the criminal docket takes about 25-30% of his time. The Speedy Trial Act both speeded up and simplified these cases. So far, in Judge Bowen's experience, criminal cases in the Southern District have not yet resulted in real interference with the civil docket. There is a rising trend now for felony drug possession cases to be prosecuted in the federal court rather than a state court, even though the arrest and seizure were made by state officers. A firearms count can add five years to a sentence under the federal sentencing guidelines. Crowded state prisons that lead to early release and stiffer, mandatory sentences under the federal sentencing guidelines may explain the recent shift of criminal cases that could be prosecuted in either the state system or the federal system to the federal courts.

Discussion turned to the differential treatment of civil cases and alternative dispute resolution [ADR]. Judge Bowen is opposed to mandatory ADR because it can create just another level of case processing with its own attendant cost and delay. Under the present rules parties can consent to trial by the magistrate judge. On some occasions, Judge Bowen has appointed a special master to hold a hearing where the parties have consented.

Generally Judge Bowen prefers to wait for a motion by a party to trigger his pre-trial involvement in a case; he acts *sua sponte* when he believes he can defuse a problem. He no longer routinely requires status reports.

Experience and familiarity with the lawyers involved suggests when a case is ripe for settlement, or if it will settle at all. Judge Bowen thinks settlement conference should not be mandatory. Mont Miller reported that in California, where such conferences are required, it is often helpful because the conference educates the *clients* about the two sides of the case.

Discussion turnjed to the flow of judicial business between Judge Dalis (Bankruptcy) and Judge Dunsmore (Magistrate) and Judge Bowen. Appeals from rulings by the Bankruptcy Judge or the Magistrate Judge are monitored by Judge Bowen's courtroom deputy who prepares an appeal sheet showing dates briefs are filed, etc. No special tickler system is used; instead a listing of the status of appeals is maintained.

Judge Bowen principally utilizes his two law clerks to glean the most important and dispositive motions for his consideration and decision. He does not always take up the oldest matters; he can sometimes dispose of five or eight motions in a day to keep more recent cases moving.

Judge Bowen also relies on his courtroom deputy to watch the flow of cases. He does not engage in any special techniques to identify some cases for early, differential treatment.

In closing, Judge Bowen expressed his belief that the Southern District operates well and is effectively run, giving in particular accolades to Henry Crumley, the Clerk, and to the bankruptcy clerk's office that was recently recognized as one of the very best in the country.

B. Interview with Magistrate Judge Dunsmore

In response to an opening question from Tommy Burnside, Judge Dunsmore stated that he thought he was used adequately, neither under- nor over-used. He could try more civil matters if the parties consented; the rules do not permit Judge Bowen just to assign him civil cases to try.

Judge Dunsmore explained that he handles pre-trial motions in criminal cases. He arraigns defendants and handles motions. If a motion would dispose of the case, Judge Dunsmore makes a report and recommendation to Judge Bowen that presents basic facts, law, and conclusions. Consideration of the matter first by the magistrate judge is designed to save the district judge time. And, often a plea will be agreed to once the motions are decided, thus avoiding the necessity for trial.

Judge Dunsmore related the recent trend of federalizing smaller drug cases, especially if firearms are involved, that could be prosecuted in the state system. Because of state prison overcrowding and stiffer federal sentences, we are seeing an increase in the number of these cases in the federal courts. So far, the increase in criminal cases has not caused a delay in civil cases, but the policy of federalizing more criminal cases is shifting cases to the federal courts.

The magistrate judge also has some criminal misdemeanor jurisdiction in matters occurring on federal facilities such as Fort Gordon.

In civil cases, the magistrate judge assists the district judge by hearing discovery motions. Only a small number of the magistrate's discovery orders are appealed to Judge Bowen. Most discovery matters are dealt with by the magistrate judge. Significantly, a regular and substantial amount of the magistrate judge's time (approximately 45-90 minutes a day) is spent on *pro se* prisoner civil rights cases. It takes time to review each complaint to identify issues and boil them down to find the handful (less than 1%) that present meritious claims.

Pro se state prisoner civil rights cases present special problems. The number of filings is increasing, unlike habeas corpus cases where the number has declined. Judge Dunsmore believes that there needs to be some administrative grievance procedure prior to court filing to build a record that the magistrate judge could then review. Under the present system, the magistrate judge often spends a disproportionate amount of time initially to formulate what the case is about. Relatively less time is required to consider and decide the legal issues than to clarify the factual foundation for the claim. In comparison, social security appeals are presented to the court much more clearly and cleanly since an administrative law judge has worked through the dispute to formulate the issues before judicial review is allowed. A state grievance procedure or an administrative hearing required prior to filing in federal court would be a major help.

The magistrate judge initially determines the need to appoint counsel for indigent persons in criminal cases and in some civil cases as well. The determination of indigency is covered by general guidelines. In civil cases counsel is appointed only when the issues and circumstances warrant, e.g., a prisoner is suffering under a disability.

In response to a question about problem cases or areas of excessive cost and delay, Judge Dunsmore identified product liability and environmental cases that have high stakes and involve massive discovery and many experts. This, in turn, led the members of the Advisory Group to speculate that as a rule plaintiffs (and their counsel) have a financial incentive to move the case along fast; large defendants (and their counsel) have an incentive to drag out cases.

Judge Dunsmore reported his experience that management of discovery in large, complex cases by discovery conferences or scheduling conferences helps. Sometimes a motion to compel discovery, a sure sign that a problem has already arisen, can be the occasion for both sides to look at the discovery needed in the case with the magistrate. Generally, local lawyers can work out discovery disputes, unless hostage to litigation decisions by outside firms.

Overall, Judge Dunsmore does not find that there is excessive cost and delay in the Southern District.

The Southern District's local rule that allows four months to complete discovery was discussed by the Advisory Group. Judge Dunsmore stated that he extends the deadline up to 60 days when both sides so request. Cases do differ, and the lawyers should be allowed to handle their cases unless the pace causes a problem. Often, this extra time results in the case being settled before extra discovery expense is incurred.

It was observed that sometimes this four-month rule can have the unintended consequence of adding to cost and delay because counsel must speed up to complete discovery within the window allowed and must staff-up the case to work the case at the required pace.

Judge Dunsmore thought that the present number of judges and magistrates in the Southern District was sufficient. He felt strongly that courts should handle the disputes brought to them and not relegate some types of disputes to ADR, a diversion that "cheapens" those disputes.

In looking for places where the system could be structurally improved, Judge Dunsmore suggested that *maybe* the pretrial order should ask, "would you consider consenting to trial before the magistrate judge?" Under the current law, parties can consent to trial before the magistrate judge, and the statute now permits the district court to suggest to the parties that they so consent. At present the clerk's office mails a form to parties at filing, informing them of this option. The suggestion by Judge Dunsmore was that the option might be utilized more if it were a matter for decision at a later stage of the case.

As discussed above, all discovery motions are handled initially by the magistrate judge and most discovery matters are resolved finally at that level. On the other hand, motions to dismiss or motions for summary judgment are heard by the District Judge initially. There may be some cases where the magistrate judge has worked on the discovery phase of a case that he could efficiently help with the dispositive motions as well. Apparently, under the rules, the magistrate's assistance in formulating the law and facts could be drawn on by the district judge as needed in such cases.

Local Rule 6.5 of the Southern District does require that counsel make a good faith attempt to resolve discovery disputes before filing a motion to compel discovery with the court. The rule as written seems to work.

It was suggested that perhaps Local Rule 8.6 [Interrogations to be Answered by All Plaintiffs and Defendants] should be applied to *pro se* prisoner civil rights cases.

C. Interview with Bankruptcy Judge Dalis

Bankruptcy requires the prompt resolution of cases to serve the law's purpose. For bankruptcy law to work effectively there must be a speedy resolution. A number of factors contribute to the present speed of resolution:

(1) The bankruptcy statute itself provides for systematic, differential case treatment since Chapter 7, 13, and 11 cases, for example, are put on particular tracks appropriate to the needs of the case as a matter of course;

(2) The bankruptcy bar is small, specialized, knowledgeable, and generally quite excellent;

(3) The statute's meaning has by court decisions over the last ten or twelve years become more certain; and

(4) The clerk's office is rated one of the best in the country.

Problems that hinder effectiveness include:

(1) The caseloads consists of many routine matters and some "blockbuster" cases. For example, Judge Dalis reported that on the day of the interview he had scheduled some 48 motions in Chapter 13 cases and that he had upcoming a case that was predicted to take ten days to try. Thus, one problem is to stay current with routine matters while handling the big case.

(2) The financial disparity of the parties can lead to discovery abuse. In some cases an interesting reversal of incentives can occur with the trustee initially seeking to save every dollar to save the going business; later it's the creditors who are feeling the costs most acutely.

(3) Bankruptcy filings have increased sharply for a number of years, averaging at 15% increase each year. Filings appear to have leveled off, but they have leveled off at a high level (nearly 650 filings per month).

There is a bill pending in Congress to add a new bankruptcy judge to be shared between the Middle District (Macon) and the Southern District. The formula based on caseload would warrant an additional bankruptcy judge in both districts, but the Judicial Conference recommended only one new judge to be shared. This new one-half position will help, but even so the geographic size of the Southern District seems not to have been weighted sufficiently in deciding where to add personnel. The Southern District is the 18th busiest of 92 districts, with a caseload that is 125% of the average. And, case filings alone do not reflect travel time in a large district like the Southern District. Thus, a case can be made that the Southern District needs the addition of a third bankruptcy judge, not just a shared third judge.

The bankruptcy judge has one law clerk; no other adjuncts such as special masters are allowed. The bankruptcy court has the equipment and computerization that it needs to perform efficiently; the most pressing resource problem is the need for a third judge to help meet the current caseload.

Appeals from decisions of the bankruptcy judge go to the District Court and from there to the Eleventh Circuit Court of Appeals. The bankruptcy court loses jurisdiction once the case is appealed and delays in ruling on appeals hinder final resolution. Judge Dalis' impression is that most appeals to the district court are decided without undue delay; appeals on to the Eleventh

Circuit can take longer. The Advisory Group discussed whether it would be useful to generate a list of appeals in bankruptcy cases by dates to focus attention on timely review similar to a motions pending calendar.

As to encouraging settlement, Judge Dalis reported that lawyers do not expect him to take an active role in spurring settlement in the bankruptcy court and that he would be reluctant to push for a settlement because he sits as the trier of fact if the case does not settle. In an opportune case with Judge Dalis suggested that he could swap off the case with Judge Davis and hold a settlement confernce. Then, if no settlement is reached, Judge Davis could act as the fact finder without having been a participant in the settlement negotiations.

II. BRUNSWICK, GEORGIA ADVISORY GROUP AUGUST 28, 1992

Present: Fendig (Chair), Davis, Killgallon, McSwiney, and Ellington (Reporter)

A. Interview with Judge Alaimo

The interview began with the Advisory Group asking Judge Alaimo what factors he thought resulted in the Soutern District consistently being ranked among the most current district courts in the country. Judge Alaimo responded that, first, the judges work hard and, second, the court sets an early trial date. The court can avoid excessive cost and delay by keeping the litigation process moving (the four-month period for disovery and the set trial date do this), and by seeing to it that the lawyers stay in communication with each other about the case (the status conference does this).

As to what he might do to improve the handling of cases, Judge Alaimo would prefer to get involved in the case earlier by holding an early status conference. At such a conference the judge could help the parties focus on the potential cost of the lawsuit as well as the expected benefit. Judge Alaimo reported that as a long-standing practice he reads all the complaints when they are filed and that holding an early status conference within 60 days might save considerable time and expense by getting the parties to focus on their contentions and the potential costs of the lawsuit. The clients should be present to hear the good and bad of the case, and this should occur before the parties have incurred all the costs of discovery.

In different ways Judge Alaimo made the point that the cost of delivering legal remedies has become too high. Judge Alaimo stressed the need of clients to stay informed about the case, consider costs vs. benefits, and manage the lawyers (and not be managed by the lawyers). In too many cases, lawyers control the client.

As to discovery abuse, Judge Alaimo stated that abuse will be rare if the judge puts a limit on the time to complete discovery. Albert Fendig reported that he sees little abuse of discovery in cases in the Southern District.

The four-month period to complete discovery and the court's pretrial procedures assure that the case moves ahead promptly and that the attorneys get sufficiently well prepared to focus on the real issues sooner than later.

In criminal cases, Judge Alaimo insists on an open file policy by the government. Hence, no motions to compel discovery are needed.

The Middle District of Florida is flooded with criminal cases; in the Southern District of Georgia the practice of requiring the government to bring the best five counts against the best five defendants has helped to insure that there will be no protracted criminal cases.

Even so, Judge Alaimo is concerned that the growing criminal caseload has reached the point of threatening delay in civil cases. The Federal Sentencing Reform Act with its schedule of mandatory sentences has caused about one-third more criminal defendants to go to trial rather than to plead, and this has increased both the absolute number of criminal trials as well as the time to sentence.

Discussion then turned to ADR. Albert Fendig distributed a handout from the Center for Public Resources entitled, "Alternatives to the High Cost of Litigation" for August 1992 that contains an excellent glossary of ADR terms for both private and court-annexed ADR. Fendig reported that clients today expect lawyers to consider ADR and major insurance companies require their lawyers to consider ADR before pursuing litigation.

Bill Davis reported that Gilman Paper Company now routinely requires its suppliers to agree to binding arbitration in contracts. He reported being very satisfied with this arrangement.

The Middle District of Florida now requires mandatory arbitration in cases under $100,000. The Southern District of Georgia has not had to adopt such a rule because cases move fast and the docket is kept current.

Question: What form of ADR would be best suited to conditions in Southern District? One suggestion was that the court could require parties to use *non-binding* arbitration, with the kicker being that a party who refused to accept the result of arbitration, and who failed to improve his position at trial would have to pay the other side's court costs.

Judge Alaimo indicated that he favored an early status conference as a form of early judge-hosted settlement.

Bill Davis suggested that a short (1 or 2 page) description of alternatives to litigation be prepared and that the clerk's office send this information to the parties as well as the lawyers when a case if filed. By presenting the ADR possibilities in this way, the client would be encouraged to consider ways of resolving the matter other than by trial.

B. Interview of Magistrate Judge Graham

The Advisory Group asked Magistrate Judge Graham to suggest areas where cost and delay could be reduced. Judge Graham responded that in his opinion the Southern District does not have much delay in processing cases. (General laughter ensued.) It is rare to find a case that is more than three years old. Judge Graham attributed the good record of the Southern District in hearing cases promptly to the work ethic of the district judges and to the four-month discovery rule.

Judge Graham was asked to explain the responsibilities of the magistrate and how he allocated his time. Judge Graham estimated that he spent almost 50% of his time on prisoner civil rights cases; about 25% on civil discovery matters; 20% on criminal preliminaries; and 5% on miscellaneous matters.

In civil cases the magistrate handles initially all discovery disputes and motions except motions for summary judgment that go directly to the district judge. A significant percentage of the work of the magistrate is taken up with prisoner civil rights suits and habeas corpus actions. The magistrate estimates that while he spent approximately half of his time on such cases, his law clerk spent 90% of his time on prisoner suits. The number of prisoner suits in the Southern District is unusually high because of the location of a number of large state correctional facilities including Reidsville Prison and Ware, Wayne, and Dublin Correctional Institutes. More than the size of the prison population, prisoner suits are filed in greater numbers than other civil suits because there is almost no cost disincentive to filing and inmates attempt to use the law suit as leverage in dealing with correctional officials.

Basically, the magistrate handles prison cases in the first instance. If the parties agree, the magistrate can conduct the trial so that an appeal from the magistrate judge goes directly to the Eleventh Circuit Court of Appeals. Where the parties do not consent to trial by the magistrate, the magistrate can make recommendations on disposition which go to the district court for hearing.

The magistrate handles the preliminary stage in criminal cases. The magistrate considers and signs warrants for arrest and search and seizure. The first court appearance of those arrested (within 48 hours) is before the magistrate. The magistrate sets bail, arraigns defendants,

and appoints counsel. Felony cases are tried by the district court judges. In misdemeanors, the defendant can consent to trial by the magistrate.

The Advisory Group asked Judge Graham's opinion on whether holding early status conferences could reduce cost and delay. Judge Graham stated that an early status conferences is not needed in every civil case, but that an early status conference in some cases can prove very, very helpful. For example, an early conference to set deadlines for the selection of plaintiffs' experts and the rendering of plaintiffs' experts' opinions, and the appointment of defendants' experts and the rendering of defendants' experts' opinion can avoid problems later. If the lawyers can agree to a schedule of discovery events, the magistrate can enter that agreement as an order. If the lawyers cannot agree, the magistrate can hold a scheduling conference to set up a discovery schedule.

In regard to the Southern District's four-month rule for completing discovery, Magistrate Graham reported that, on motion, parties regularly can obtain one extension. Seldom is a second extension ever allowed.

When asked about changes in rules or practices that could reduce costs and delay, Magistrate Graham suggested that perhaps all experts should be court appointed. Second, he suggested that a change in the rules to require automatically that experts prepare a comprehensive reports in writing about their opinion and the basis for their opinion would be helpful.

As have other judicial officers who have been interviewed, Judge Graham expressed concern about the rising number of criminal cases, fearing that the criminal caseload would begin to squeeze the time available for handling civil matters.

The interview concluded with the observation that about 90% of all civil cases settle rather than proceeding to trial. The hope is that ways could be found to obtain settlement in the cases that will settlement quickly before either the court or the parties are required to expend resources of time and money on them. Generally this result can be furthered by early and differential control by the court in setting firm deadlines, and by getting the parties talking about the case. Methods of ADR to accomplish this goal might be required so long as these methods themselves do not add a new layer of cost and delay.

III. SAVANNAH, GEORGIA ADVISORY GROUP

A. Interview with Judge Edenfield
September 3, 1992
Present: Karsman (Chair), Sprague, and Ellington (Reporter) by telephone conference call.

The interview followed the order of the questions in the suggested questionnaire. Judge Edenfield was asked to identify case types or particular problems that frequently cause excessive cost or delay. Judge Edenfield identified the large, complex case as the generator of unusual cost and delay because such litigation typically will involve more lawyers and, at least initially, unframed issues. For example, class actions or cases involving trade secrets are usually going to entail extensive time and expense. In big cases with large law firms, every issue is fought over and extensive paper is generated.

Judge Edenfield indicated that the judge can speed up the day that the case will conclude getting involved in it earlier. Big cases, such as class actions, tend to get knottier the longer they linger. While early judicial involvement usually works to head off potential problems, the time required for the judge to get involved is being reduced by the growing criminal caseload.

In terms of discovery abuse, Judge Edenfield explained that discovery disputes go to, and are largely handled by the magistrate judges. Although some lawyers may expect all disputes to be decided by Article III judges, the lawyers in the Southern District have come to accept the role of the magistrate in handling discovery because they act decisely and do a good job.

Prisoner *pro se* actions are problem cases. These actions are initially and often finally handled by the magistrate judge, except for death penalty habeas cases.

For the ordinary civil case, Judge Edenfield was satisfied that the court process moves expeditiously. Cases move because of the four-month discovery window, status conferences, and setting a firm date for trial.

The question was asked whether some form of ADR should be used. Could ADR save expense? The answer to that question seems to turn on whether ADR would increase the cost for the parties by adding another tier to the proceedings, or whether some form of ADR would help settle more cases earlier, thereby saving parties money and worry. Bill Sprague made the point that early mediation and arbitration save parties not just money but time and stress; that litigation can be a tremendous drain on the time, attention, and energy of corporate executives. The point was echoed by others. Litigation involves stress, and the parties' relief when a case is finally settled is palpable.

One form of ADR which has proven to be attractive in some circumstances involves an early presentation to the CEOs of both parties of the facts and contentions of the two sides in the law suits, followed by an attempt at negotiation or mediation. Sometimes, an exchange of information about the strengths and weaknesses of a case can help those with authority to decide to resolve it. The question was raised about whether the parties should be required to pay the costs of any mediation.

Judge Edenfield reported that he does not accept the view that all cases should be settled. Some cases ought to be litigated, and a lawyer who simply settles to buy peace has not helped either his client, or the court system if it encourages the filing of other specious claims. To settle a case both the judge and the attorneys must be prepared and informed. Neither settlement nor trial will succeed if the lawyers can't clearly frame the issues in the case.

As to measures found effective generally to prevent excessive cost and delay, Judge Edenfield suggested that clients who are repeat players in litigation can do more to hold down legal costs than the judge. The client must be aware and consider the costs of the lawsuit.

It is almost axiomatic that the longer a case lingers, the more it will cost. Hence, the local rule allowing four months to complete discovery is a centerpiece in the court's effort to control cost and delay. A question was asked about whether the Southern District had or should have a local rule that would limit the number of hours for a deposition. A horror story was recounted about a witness who was deposed for seventeen days. A Local Rule that would limit the hours for a deposition is being considered for adoption by the Southern District's Advisory Committee on Local Rules.

Judge Edenfield identified that status conference and the pretrial conference as important mechanisms for controlling cost and delay. These are occasions for him as judge to meet with the parties and sometimes discover that the parties are really much closer to resolving the dispute than they realize, when the "bottom line" positions of both sides are shared separately with him.

Concerning the magistrates, both Judge Edenfield and Stan Karsman were very complimentary about the excellent job they do. When asked if there are other ways magistrates could be of help to the district judges, Judges Edenfield indicated that he was well satisfied with the help provided now by the magistrates, and expressed doubt about whether it would be effective to ask the magistrates to take on more reponsibility in conducting settlement conferences. The more cases a lawyer has tried and the longer one has served on the bench affects the "art" of sensing when the parties are prepared to settle and inducing them to do so. Requiring that the magistrate judges hold settlement conferences at the expense of their other work is not likely to result in a net gain for the court system.

In thinking about settlement, the heart of the matter is this: About 90% of all civil cases settle. The question is when and how to get that result as soon as possible. When a case settles on the eve of trial, the parties, have already devoted substantial stime and expense to the matter. The detail required in the proposed consolidated pretrial order is designed to compel the lawyers to put the case into focus, and this often helps achieve settlement.

Stan Karsman indicated that he would favor trying some system of *voluntary* mediation. He would not make mediation mandatory, but where the parties agree, mediation might help resolve the case sooner and with less expense.

Bill Sprague pointed out that he thought that business would like more arbitration or mediation of disputes, and the Advisory Group recalled the comments of Bill Davis that Gilman Paper Company requires by contract its suppliers to agree to binding arbitration. Bill Sprague pointed out that companies abroad do not get involved in litigation like businesses in the United States do. He suggested the adoption of a loser-pays rule like England's. The downside of such a rule, however, may be the tendency of a jury to give the plaintiff at least a small amount in cases where it would not otherwise find for the plaintiff just to protect against the imposition of litigation costs on a small party.

Stan Karsman asked Judge Edenfield where he thought the court system was headed in terms of managing a growing caseload. Judge Edenfield responded that he did not think the solution was to add more judges. The Southern District judges seek to keep the law uniform in the Southern District, and there is a danger of the loss of uniformity of law and the dilution of the special status of the federal courts if the problem is addressed simply by adding more personnel.

Secondly, he made the point that a better way should be found to handle prisoner complaints. They constitute an awesome load for the court. He is faced now, for example, with some 25 *pro se* prisoner cases to try in Waycross.

In regard to the criminal caseload, Judge Edenfield identified the trend of "street crimes" being federalized for prosecution because of overcrowded state prisons and tougher federal sentencing guidelines. The federal sentencing guidelines have imposed more work on the federal judges. The guidelines require the judge to spend significantly more time to determine a convicted defendant's sentence. In Judge Edenfield's opinion, the criminal caseload has begun to impact the civil side.

In thinking about the future, Judge Edenfield identified as a potentially serious problem the possibility that the asbestos cases that have been transferred to Philadelphia will be returned to the Southern District if they are not settled there. The judges in the Southern District had been able to keep these cases moving and were staying current at the time these cases were

transferred to Philadelphia for the consolidated handling. If they come back, the Southern District will be in a far worse situation than if they had never been transferred. In other words, there is the potential for a tidal wave of asbestos cases to flow back to the Southern District all at once.

B. Interview with Bankruptcy Judge Davis
September 1, 1992
Members present: Karsman (Chair), Sprague and Ellington (Reporter) by telephone conference call.

Judge Davis was asked to identify problems in the bankruptcy court that could cause increased cost or delay. He recounted the various types of bankruptcy court proceedings and how they differ. There are a high volume of consumer cases brought under Chapters 7 and 13. In these cases, there is a minimum of delay and expense; they progress very rapidly. On the other hand, in the more complex business cases in Chapter 11, there is greater opportunity for incurring cost and delay since more money and more creditors are involved, and there are more lawyers. To the extent that there is delay now in the Southern District, the solution is the addition of the third bankruptcy judge who will be shared with the Middle District of Georgia. The additional judge will obviously help cope with the higher volume of bankruptcy filings of the last few years.

Judge Davis pointed out that the bankruptcy clerk's office had recently received national recognition as being one of the most efficient in the country. It was one of only seven clerk's offices in the country to be rated that high in all seventeen categories used.

The chief problem with the operation of the bankruptcy court in the Southern District is the steep increase in the volume of case filings over the last few years. Judge Davis pointed out that between 1986, when he was appointed bankruptcy judge and 1991, filings had increased by approximately 110-120%. There has been nearly a double digit increase in filing each year for the past five years, although the number of filings has flattened out during the first six months of 1992 without showing an increase over the rate of the prior year. This extra volume of cases has meant the delay of trials. In many simple bankruptcy cases, the case could be tried after the answer is filed. Usually the evidence could be heard in 45-60 minutes, and the decision whether to discharge made. Usually in Chapter 7 cases the debtor appears only once and the case is closed within three to four ~~months by liquidating and discharging the debts~~. In ~~Chapter~~ 13 wage earner cases, the Chapter 13 Trustee collects the debtor's payments and disburses to creditors. Generally within five months after the case is filed, there can be a confirmation hearing where the debtor's plan will be confirmed or dismissed or converted to a Chapter 7 proceeding. Generally, the debtor pays disposable income to creditors under the Chapter 13 plan over a period of up to five years to satisfy the debt.

The Bankruptcy Court deals with a high volume of matters, sometimes receiving 75 to 80 motions a day. Often these are motions to stay relief. Despite the high volume, the system seems to work efficiently. The lawyers work well. It is a specialized bar and the lawyers know each other. Also, another positive factor is that the law has become well established, and the judge is predictable and consistent in his rulings so that many of the matters are resolved by settlement without the necessity of the judge actually holding a settlement conference. In the typical consumer case, both sides have an incentive to move the case along promptly.

The Chapter 11 cases are the large, complex commercial bankruptcy cases. Out of the approximately 8,000 bankruptcy cases, about 100 are Chapter 11 cases in the Southern District. However, these cases take about one-half of the Bankruptcy Judge's time on average.

Judge Davis explained that he does not utilize ADR in the bankruptcy court. He does hold a scheduling conference to find out about the case usually in 45 days. Before the volume of cases became so heavy, Judge Davis was often able to conduct the trial and dispose of the simpler cases at this stage where there was a narrowly drawn issue and little need for evidence to resolve factual disputes. If a case is not resolved at the scheduling conference or requires discovery before it can be resolved, Judge Davis' practice is to look at it once again before trial. The Bankruptcy Judge is both fact finder and law applier, and for this reason he is reluctant to become too involved in trying to force a settlement of the case.

Discovery is not a problem in bankruptcy matters. Most of the 8,000 cases do not involve the use of any discovery devices. There is a special Rule 2004 in bankruptcy practice that allows an examination of the debtor's estate, but Judge Davis estimated that perhaps 80% of the bankruptcy cases are tried or resolved without resort to discovery.

Because it is a specialized Article I court, the criminal caseload in the Article III court does not affect its work.

Appeals from the rulings of the Bankruptcy Judge go to the District Court for a de novo review on the facts and a review of the legal rulings on a clearly erroneous standard. From the District Court the appeals go to the Eleventh Circuit. Judge Davis reported that for his divisions, the Southern District was current on appeals from the Bankruptcy Court and that these appeals are quickly and timely resolved.

The discussion of the Bankruptcy Court continued to come back to the volume of cases. There are about 300 new cases a month filed and, to keep up, it is necessary for the court to resolve about that same number. Even so, Judge Davis reported that he saw no need for major changes in the rules of operation of the court.

He did make a suggestion that had not been called to the attention of the Advisory Committee previously which concerns the possibility of the United States Attorney prosecuting bankruptcy crimes. The Bankruptcy Judge is under a duty to report suspected bankruptcy crimes such as fraudulent filings under oath to the United States Attorney. The U.S. Attorney's office has not prosecuted any of those cases so far, but publicized prosecution could help preserve the integrity of the bankruptcy system by insuring the filing of truthful and honest information. This is an Executive Branch decision, but action by the United States Attorney to prosecute some bankruptcy crimes would compel the lawyers to investigate their client's representations more closely before filing. The bankruptcy law does give creditors tools to use to deny discharge, but there may be a need for the United States Attorney's Office also to use criminal sanctions against those making false and fraudulent representations.

C. Interview with Magistrate Judge Smith and Mr. Crumley, Clerk of the Court September 10, 1992 Present: Karsman (Chair) and Ellington (Reporter) by telephone conference call.

The interview began by asking Magistrate Smith where he saw excessive cost and delay. Magistrate Smith answered that he did not find evidence of undue cost or delay in the Southern District. Mr. Crumley pointed out that the Southern District ranked number one among the district courts in the United States in terms of the fewest number of three year old cases. In the year ending June 1991, the Southern District had no case over three years old and for the largest reporting period, September 1992, the Southern District will have only the *Brooks* litigation (the case challenging the way state court judges are selected in Georgia) plus five other cases that are over three years old. By this measure of effectiveness, the Southern District ranks first in the country. It also is well below the national average in the median life of civil cases, meaning that a case moves from filing to disposition in the Southern District in about nine to ten months, several months faster than the national average.

In regards to discovery, Magistrate Smith indicated that discovery disputes tend to be associated with certain lawyers, as opposed to certain types of lawsuits, although product liability suits are often the occasion for massive discovery with attendant problems. The magistrate handles all discovery matters in his divisions of Savannah and Waycross. He estimated that about half of the discovery disputes brought to him on motion involved genuine disputes over the law where both sides could have legitimate contentions. Obviously, that means that about half of the disputes involve clear-cut issues that the parties should have been able to resolve. At the same time, Magistrate Smith thought that the Local Rule that requires lawyers to certify that they have attempted to resolve a discovery dispute between themselves prior to filing a motion to compel does succeed in eliminating many disputes from being brought to court. Magistrate Smith estimated

that about 95% of all discovery disputes end with the magistrate's ruling, so that parties are not appealing many of his rulings to the district judge.

In response to the question of how he allocated his time among the various areas of his responsibility, Magistrate Smith responded that he *could* spend 100% of his time on prisoner *pro se* and other types of *pro se* litigation. Criminal cases where he hears all pretrial motions, seem to come all at one or sporadically. When these cases come, the magistrate gives them top priority because the district court judges are going to move criminal cases along expeditiously and so the magistrate has to attend to the motions in these cases very quickly.

Magistrate Smith identified the way experts are used as a significant problem. Far too many cases involve "hired-gun" experts. Stan Karsman indicated that experts may be the single most expensive aspect of a lawsuit and that often it seems that the so-called "experts" are on the fringe of their discipline or science. While a rule limiting the selection of experts to the court might be a useful reform, it was pointed out that sometimes even an expert chosen by the court will prove to be of little help, but considerable expense.

The Southern District of Georgia has an on-going advisory committee or lawyers and lay persons who serve to advise the court on the local rules and on other aspects of the court's operation. Returning to the subject of alternative dispute resolution, there was discussion by both Magistrate Smith and Mr. Crumley about the effectiveness of Judge Edenfield's practice of holding early status conferences as well as pretrial conferences in cases. Mr. Crumley estimated that about one-third of the cases settled after the first status conference and about one-third of the cases settled after the pretrial conference. The holding of a status conference within four to five months of the date the answer was filed thus appeared to be a particularly effective way to resolve lawsuits without prolonged litigation.

Stan Karsman pointed out that you often need the involvement of a judicial officer to get the parties to settle and that some civil cases where the damages were substantial simply would not be settled early or until the lawyers had tested each other's resolve and mettle.

Mr. Crumley pointed out that from his experience, one of the most important factors leading to settlements was for the court to set and keep a firm date for trial. There was agreement that the practice of judges in holding to a firm trial date did wonders to produce settlements.

Magistrate Smith reported that *pro se* cases constitute a substantial percent of the cases filed in the Southern District. Where there will be an evidentiary hearing in a habeas case under 28 U.S.C. § 2254 or 28 U.S.C. § 2255, counsel will be appointed for indigents. Otherwise, he follows the practice of not usually appointing counsel for *pro se* claimants in section 1983 actions or Title VII suits.

Magistrate Smith explained how he handles *pro se* prisoner cases, a matter that has been identified consistently by the Advisory Committee as a problem. Magistrate Smith conducts what might be called a "frivolity review" of the complaint when it is filed, before allowing service on the defendant. Although it requires a substantial amount of his time, Magistrate Smith reviews the case closely to weed out frivolous suits and to force prisoners to cull out frivolous claims in suits. Thus, before he allows a *pro se* complaint to proceed even to the point of allowing service, he has inspected the case to determine that it has on its face some colorable claim that may be meritorious. The Magistrate expressed doubt that applying Local Rule 8.6 generally to such cases would help, although it might be possible to have some standing rules that required prison officials to make certain matters, such as an inmate's medical records, or the names of certain correctional officials, routinely available.

[We did not explore the role of Judge Smith's law clerk in *pro se* matters, but it might be worthwhile for the Advisory Committee to consider whether the addition of one or more law clerks in the district to screen *pro se* prisoner complaints by engaging in an initial frivolity review and factual inquiry would save valuable time for other matters.]

Mr. Crumley made an important point about cost-savings measures already instituted in the Southern District. The Southern District is among the best districts in the country in terms of jury usage. That is, there are very few wasted jurors — jurors called but not used. The Southern District uses a system of striking numerous juries at one time, and as Stan Karsman pointed out, engaging multiple panels in voir dire that is largely carried out by the trial judge. The system is that lawyers can propose voir dire questions in the consolidated pretrial order. The judge will ask those that he thinks are appropriate and a lawyer who has a particular question that he thinks is important that has not been asked by the judge will be allowed to do so. By striking several juries at one time, the number of voir dire questions that need to be asked the later panels is substantially reduced as the judge works through the panels.

This system is something of an innovation and might be described more fully and included in the Advisory Committee's report for reconsideration for adoption elsewhere.

As the conclusion of the interview, Magistrate Smith pointed out that the system now in place in the Southern District was working well; that there is no need for fundamental change in the way cases are handled. There was recognition all around that the system works because of the extremely hard work by the district court judges who are responsible for setting the pace and tone of the court.

ABC'S of ADR: A Dispute Resolution Glossary

Editor's Note: Alternative Dispute Resolution encompasses a wide range of practices for managing and quickly resolving disputes at modest cost and with minimal adverse impact on commercial relationships. These processes, marked by confidentiality when desired, significantly broaden dispute resolution options beyond litigation or traditional unassisted negotiation.

Some ADR procedures, such as binding arbitration and private judging, are similar to expedited litigation in that they involve a third party decision maker with authority to impose a resolution if the parties so desire. Other procedures, such as mediation and the minitrial, are collaborative, with a neutral third party helping a group of individuals or entities with divergent views to reach a goal or complete a task to their mutual satisfaction.

Arbitration, mediation and the minitrial tend to be the mechanisms most often used and, for many, are synonymous with the term ADR itself. But hybrid procedures that combine one or more aspects of these and other methods are often crafted to respond to specific needs.

The range of ADR devices and disputes they can address demand a working knowledge of basic ADR processes. Yet the myriad of possible approaches has also led to confusion in vocabulary. Sometimes participants in a process are not even sure what to call the technique that has helped them to resolve their dispute without costly litigation.

What follows is a partial glossary of ADR terms, designed to help parties communicate about this rapidly changing field. They are not standardized, but flexible and creative like ADR itself. And with all aspects of ADR it is most important not that the parties use exactly the same terms, but that they understand each other.

The glossary is divided into private and court-related ADR processes. Most of these working definitions are derived from prior Center for Public Resources publications, a number of which address particular ADR processes in depth. For a complete list of CPR publication and practice tools, write to CPR at 366 Madison Avenue, New York, NY 10017-3122. Telephone: (212) 949-6490.

PRIVATE ADR PROCESSES

Arbitration: The most traditional form of private dispute resolution. It can be "administered" (managed) by a variety of private organizations, or "non-administered" and managed solely by the parties. It can be entered into by agreement at the time of the dispute, or prescribed in pre-dispute clauses contained in the parties' underlying business agreement. Arbitration can take any of the following forms:

• ***Binding Arbitration:*** A private adversarial process in which the disputing parties choose a neutral person or a panel of three neutrals to hear their dispute and to render a final and binding decision or award. The process is less formal than litigation; the parties can craft their own procedures and determine if any formal rules of evidence will apply. Unless there has been fraud or some other defect in the arbitration procedure, binding arbitration awards typically are enforceable by courts and not subject to appellate review.

• ***Non-binding Arbitration:*** This process works the same way as binding arbitration except that the neurtral's decision is advisory only. The parties may agree in advance to use the advisory decision as a tool in resolving their dispute through negotiation or other means.

• ***"Baseball" or "Final-Offer" Arbitration:*** In this process, used increasingly in commercial disputes, each party submits a proposed monetary award to the arbitrator. At the conclusion of the hearing, the arbitrator chooses one award without modification. This approach imposes limits on the arbitrator's discretion and gives each party an incentive to offer a reasonable proposal, in the hope that it will be accepted by the decision-maker. A related variation, referred to as *"night-baseball"* arbitration requires the arbitrator to make a decision without the benefit of the parties' proposals and then to make the award to the party whose proposal is closest to that of the arbitrator.

• ***"Bounded" or "High-Low" Arbritration:*** The parties agree privately without informing the arbitrator that the arbitrator's final award will be adjusted to a bounded range. Example: P wants $200,000. D is willing to pay $70,000. Their high-low agreement would provide that if the award is below $70,000, D will pay at least $70,000; if that award exceeds $200,000, the payment will be reduced to $200,000. If the award is within the range, the parties are bound by the figure in the award.

• ***Incentive Arbitration:*** In non-binding arbitration, the parties agree to a penalty if one of them rejects the arbitrator's decision, resorts to litigation, and fails to improve his position by some specified percentage or formula. Penalties may include payment of attorneys' fees incurred in the litigation.

Confidential Listener: The parties submit their confidential settlement positions to a third-party neutral, who without relaying one side's confidential offer to the other, informs them whether their positions are within a negotiable range. The parties may agree that if the proposed settlement figures overlap, with the plaintiff citing a lower figure, they will settle at a level that splits the difference. If the proposed figures are within a specified range of each other (for example 10 percent) the parties may direct the neutral to so inform them and help them to narrow the gap. And if the submitted numbers are not within the set range, the parties might repeat the process.

Factfinding: A process by which the facts relevant to a controversy are determined. Factfinding is a component of other ADR procedures, and may take a number of forms.

In ***neutral factfinding,*** the parties appoint a neutral third party to perform the function and typically determine in advance whether the results of the factfinding will be conclusive or advisory only.

With ***expert factfinding*** the parties privately employ neutrals to render expert opinions that are conclusive or non-binding on technical, scientific or legal questions. In the latter, a former judge is often employed.

Federal Rules of Evidence 706 gives courts the option of appointing ***neutral expert factfinders.*** And while the procedure was rarely used in the past, courts increasingly find it an effective approach in cases that require special technical expertise, such as disputes over high-technology questions. The neutral expert can be called as a witness subject to cross-examination.

In ***joint factfinding*** the parties designate representatives to work together to develop responses to factual questions.

Mediation: A voluntary and informal process in which the disputing parties select a neutral third party to assist them in reaching a negotiated settlement. Parties can employ mediation as a result of a contract provision, by private agreement made when disputes arise, or as part of a court-annexed program that diverts cases to mediation.

Unlike a judge or arbitrator, a mediator has no power to impose a solution on the parties. Rather, mediators assist parties in shaping solutions to meet their interests and objectives. The mediator's role and the mediation process can take various forms, depending on the nature of the dispute and the approach of the mediator. The mediator can assist parties to communicate effectively; can identify and narrow issues; crystallize each side's underlying interests and concerns; carry messages between the parties; explore bases for agreement and the consequences of not settling; and develop a cooperative problem-solving approach. By learning the confidential concerns and positions of all parties, the mediator can often identify options beyond their perceptions. The process is sometimes referred to as "facilitation" to structure participation in the mediation process, or "conciliation" in the international arena.

The mediator's role can take a number of forms. Some mediators favor party-generated settlement options and will not suggest settlement terms. At the other end of the spectrum are activist mediators who will propose settlement options and try to persuade parties to make concessions. In yet another approach in major commercial disputes, mediators, at the parties' request, offer assessment of the probable outcome of the case in court in an effort to offer divergent parties a realistic benchmark on validity of specified claims or defenses, liability or damages to guide party negotiations. In this style of mediation, the mediator must have adequate substative law expertise and background to make such assessments.

Med-Arb: A short-hand reference to the procedure mediation-arbitration. In med-arb, the parties agree to mediate with the understanding that any issues not settled through the mediation will be resolved by arbitration using the same individual to act both as mediator and arbitrator. However, that choice may have a chilling effect on full participation in the mediation portion. A party may not believe that the arbitrator will be able to discount unfavorable information learned in mediation when making the arbitration decision.

• ***Co-Med-Ard*** addresses the problem by having two different people perform the roles of mediator and arbitrator. Jointly they preside over an information exchange between the parties, after which the mediator works with the parties in the absence of the arbitrator. If mediation fails to achieve a settlement, the case (or any unresolved issues) can be submitted to the arbitrator for a binding decision.

Minitrial: A structured process with two distinct components. Parties engage in an information exchange that provides an opportuntity to hear the strengths and weaknesses of one's own case as well as the cases of the other parties involved before turning to negotiation of the matter. In the minitrial, an attorney for each party presents an abbreviated version of that side's case. The case is heard not by a judge, but by high-level business representatives from both sides with full settlement authority. It may be presided over by these representatives with or without a neutral advisor, who can regulate the information exchange. Following the presentations, the parties' representatives meet, with or without the neutral, to negotiate a settlement. Frequently, the neutral will serve as a mediator during the negotiation phase or be asked to offer an advisory opinion on the potential court outcome to guide negotiators.

Multi-Party Coordinated Defense: A coordinated joint defense strategy in which a neutral facilitator helps multiple defendants negotiate, organize, and manage cooperative joint-party arrangements that are ancillary to the main dispute but streamline the resolution process. These include agreements to: limit infightingamong defendants, use joint counsel and experts, assign and share discovery and research tasks, coordinate and share the results of procedural maneuvers, and approportion liability payments should they be imposed.

Multi-Step ADR: Parties may agree, either when a specific dispute arises, or earlier as a contract clause between business venturers, to engage in a progressive series of dispute resolution procedures. One step typically is some form of negotiation, preferably face-to-face between the parties. If unsuccessful, a second tier of negotiation between higher levels of executives may resolve the matter. The next step may be mediation or other facilitated settlement effort. If no resolution has been reached at any of the earlier stages the agreement can provide for a binding resolution either through arbitration, private adjudication or litigation.

One form of multi-step ADR is the *wise man* procedure, typically used when problems arise in long-term partnerships such as those in the oil and gas industry. Sometimes called "progressive negotiation" or "mutual escalation" this procedure refers matters first to a partnership committee which oversees the day-to-day operations of the project. If the problem cannot be resolved at that level, the wise-man option — the next ADR step — is employed. The wise men are respected senior executive of each company who are uninvolved in the project. These officials are given a fairly short time frame (sometimes just 30 days) to investigate the dispute. If that fails, the matter goes to a third step, usuall binding arbitration. While pioneered in the oil industry, the wise man approach could also be useful in the high-technology field and other areas involving close and continuing business relationships.

Negotiated Rule-Making: Also known as regulatory negotiation, this ADR method is an alternative to the traditional approach of U.S. government agencies to issue regulations after a lengthly notice and comment period. In reg.-neg., as it is called, agency officials and affected private parties meet under the guidance of a neutral facilitator to engage in joint negotiation and drafting of the rule. The public is then asked to comment on the resulting proposed rule. By encouraging participation by interested stakeholders, the process makes use of private parties' perspectives and expertise, and can help avoid subsequent litigation over the resulting rule.

Ombudsperson: An organized dispute resolution tool. The ombudsperson is appointed by an institution to investigate complaints within the institution and either prevent disputes or facilitate their resolution. The ombudsperson may use various ADR mechanisms such as fact-finding or mediation in the process of resolving disputes brought to his or her attention.

Partnering: Typically used as a dispute-prevention method for large construction projects, this method is capable of being transposed in other settings, particularly in joint ventures. Before the work starts, parties to the project generally assemble for a several-day retreat away from the organizations. With the help of a third-party neutral, they get to know each other; discuss some of the likely rough spots in the project; and even settle on a process to resolve misunderstandings and disputes as the project progresses.

Pre-Dispute ADR Contract Clause: A clause included in the parties' business agreement specifying a method for resolving disputes that may arise under that agreement. It may refer to one or more ADR techniques, even naming the third party that will serve as an arbitrator or mediator in the case. Alternatively, the parties may agree to a process that will result in selection of an ADR method at a later date.

Two-Track Approach: Involves use of ADR processes or traditional settlement negotiations in conjunction with litigation. Representatives of the disputing parties who are not involved in the litigation are used to conduct the settlement negotiations or ADR procedure. The negotiation or ADR efforts may proceed concurrently with litigation or during an agreed-upon cessation of litigation. This approach is particularly useful in cases where it may not be feasible to abandon litigation while settlement possibilities are explored or where, as a practical matter, the specter of litigation must be present in order for the opposing party to consider or agree to an alternative mechanism. It is also useful where the litigation has become acrimonious or where there is concern that a suggestion of settlement will be construed as a sign of weakness.

COURT ADR PROCESSES

This section provides short descriptions of the major judicial approaches to ADR and is included to provide readers with a common reference for the numerous court-related ADR programs. Readers seeking a more detailed compendium of court-connected ADR, particularly emphasizing federal court ADR, are directed to the Alternatives *Special Issue: ADR in the Courts (July 1991), available from the Center for Public Resources.*

Appellate ADR: More and more federal and state courts are instituting appellate mediation programs. By resorting to ADR at the appellate level, litigants can avoid the considerable cost and delays of appeals, as well as the uncertainty caused by continued litigation. Almost half of the federal circuit courts and increasing numbers of state appellate courts offer or mandate ADR use. The ADR session is usually hosted either by a staff attorney or lawyer-mediator selected and trained by the court.

Court-Annexed Arbitration: A non-binding ADR process used mainly for small-to moderate-sized disputes. Typically based on an authorizing statute, the process is used in more than 10 federal district courts and in varying numbers of courts in nearly half the states. Even when mandatory, court-annexed arbitration is always non-binding (unlike private arbitration); dissatisfied parties can reject the advisory arbitration award and insist on a regular trial. Some federal and state courts also offer non-binding arbitration as a dispute resolution process that parties can choose to use voluntarily.

Court Minitrial: The minitrial is a nonbinding settlement process primarily used out of court. But in the past decade, with some modifications, it has been embraced by a number of federal judges. Like the summary jury trial, the court minitrial is a relatively elaborate ADR method using a neutral advisor, lawyers, settlement-authorized clients and a structured though flexible procedure. As with the SJT, courts generally reserve it for large disputes. Like private minitrials, court minitrials vary greatly. But in a typical one, settlement-authorized client representatives — usually senior executives — listen to short case presentations by their attorneys. The hearing is informal, with no witnesses and a relaxation of the rules of evidence and procedure. A judge, magistrate or special master will preside over the one- or two-day hearing. After it, the clients will retire to negotiate settlement, often with the neutral advisor's help. If the talks fail, the parties proceed to conventional trial.

Early Neutral Evaluation: This process began seven years ago with an ambitious experiment in the Northern District of California, and is now used in other courts. In ENE, a neutral evaluator — a private attorney expert in the substance of the dispute — holds a brief, confidential, nonbinding session early in the litigation to hear both sides of the case. The session, typically lasting a few hours, is conducted on neutral territory such as a courthouse or a private law office. Afterwards, the evaluator identifies the main issues in dispute, explores the possibility of settlement, and assesses the merits of the claims.

While ENE may include settlement discussions, its broader purposes are to make both the case development and the settlement process more efficient. If settlement discussions are appropriate (and ENE can foster settlement ideas by exposing each side to the other side's case), then the evaluator may act as a mediator, holding separate or joint sessions with the parties to move them toward agreement. When settlement seems unlikely, the evaluator can recommend a discovery or motion plan, and when necessary, follow-up meetings.

Judge-Hosted Settlement Conferences: The most common form of ADR used in federal and state courts, the conference is usually scheduled by the court, held in a judge's chambers and presided over by a judge or magistrate. While traditionally the judge's settlement role was mainly to referee a horse trade, today many settlement judges and magistrates act as mediators or facilititators at the settlement conference, promoting communication among parties, breaking down psychological and strategic barriers to settlement, holding one-on-one sessions with each side, offering objective assessments of the case, and suggesting settlement options.

Mediation by Non-Judicial Personnel: Mediation is increasingly being used in the courts as well as initiated privately. For a description of the process, which works the same in the courts as in private settings, see the discussion of mediation above. In both environments, the role of the mediator is to assist the parties in reaching their own agreement, unlike a judge, who has the power to impose a solution.

Michigan "Mediation": Borrowing elements from mediation, case evaluation and court-annexed arbitration, Michigan Mediation is an often-mandatory, nonbinding process in which a three-lawyer panel both pins a settlement value on a case and tries to bring the disputants to agreement. If no accord is reached, the parties can accept the panel's suggested settlement or opt for a trial de novo. Despite its name, then, Michigan Mediation combines a variety of ADR techniques.

Multi-Door Courthouse: A courthouse set up to disputes and to channel them to the dispute-resolution method best suited to the case. Multi-Door courthouses have been established in the District of Columbia and a handful of state trial courts, including those in Texas and Massachusetts, and the concept is now being used experimentally in the federal court in Kansas City, Mo.

Private Judging: Any process by which disputing parties empower a private individual to hear and decide their case. The procedure may be exclusively a matter of contract between the parties or may be undertaken in connection with an authorizing statute. When authorized by statute, the process is sometimes referred to by the colloquial term, "Rent-a-Judge."

Settlement Week: In a typical "settlement week," a court suspends normal trial activity and, aided by bar groups and volunteer lawyers, devotes itself to the mediation of long-pending civil cases. Mediation, a flexible, informal and nonbinding procedure is the mainstay ADR method in a typical "week." Volunteer lawyers will conduct mediations in courtrooms, conference rooms and other areas of the closed courthouse. Sessions may last an hour or two, with additional sessions held as needed. Unresolved cases return to the court's docket.

Special Masters: Function as case managers, facilitators, mediators and factfinders under the authority of Federal Rule of Civil Procedure 53 and similar state rules. Increasingly, special masters are used to relieve busy judges of tasks associated with managing massive litigation and to bring special skills to large case management.

Summary Jury Trial: A summary jury trial is a nonbinding, informal settlement process in which real jurors hear abbreviated case presentations, typically lasting a day or two. A judge or magistrate presides over the hearing, but there are usually no witnesses and the rules of evidence are relaxed. Business executives and other client principals authorized to settle the case are required to attend the SJT. After the "trial," the jurors retire to deliberate and then hand up an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the clients, lawyers, and perhaps, the presiding judicial officer. If no settlement is reached, the parties proceed to a regular trial.

ATTACHMENT G

DOCKET SHEET REVIEW

Case Name: _____

Civil Action No.: _____

Case Type: _____

Judge: _____

	Month Day Year	Duration
I. Filing Date: Disposition Date: How:		

II. Discovery Events and Motions:

III. Pretrial Motions:

IV. General Assessment:

APPENDIX A

SOUTHERN DISTRICT OF GEORGIA
ADVISORY GROUP, CIVIL JUSTICE REFORM ACT
"BIDEN COMMITTEE"

BIOGRAPHICAL INFORMATION

Chairman

David E. Hudson, Esq.
Hull, Towill, Norman & Barrett
Attorneys at Law
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706-722-4481

David E. Hudson has been a partner of Hull, Towill, Norman & Barrett since 1974. He is married to the former Janet Kirkley of Augusta, and they have two sons.

He is a graduate of Henry County High School, McDonough, Georgia; A.B., *suma cum laude,* Mercer University, 1968; and J.D., *cum laude,* Harvard Law School, 1971.

His professional activities include Fellow, American College of Trial Lawyers; Augusta Trial Lawyers Association; Georgia Institute of Legal Education; Lecturer in Libel and First Amendment Law, Alaska Associated Press, Georgia Association of Broadcasters, Georgia Press Association, Society of Professional Journalists, and National Newspaper Association.

His civic activities include being chairman of Mercer University Trustee Executive Committee; Deacon of First Baptist Church of Augusta; Director and Vice President of the Augusta Chamber of Commerce; Executive Committee, Leadership Augusta; Augusta Rotary Club; Leadership Georgia Foundation; and the Augusta Easter Seals Board.

Committee Reporter

Dean C. Ronald Ellington
University of Georgia
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C. Ronald Ellington was reared in Thomaston, Georgia. He and his wife, the former Jean Spencer, have two children.

His degrees include an A.B. from Emory University, *summa cum laude*, Phi Beta Kappa, Dean's List, John Gordon Stipe Scholar, Woodrow Wilson Fellowship recipient; LL.B. from the University of Virginia (Order of the Coif, Dean's List; Southeastern Region Honor Scholar for three years; Raven Society; Notes Editor of *Virginia Law Review)*; and an LL.M. from Harvard University.

From 1979-80 Mr. Ellington was Scholar-in-Residence in the Office for Improvements in the Administration of Justice of the United States Department of Justice. In 1973-74 he was a Fellow in Law and Humanities at Harvard University. He was elected to membership in the American Law Institute in 1977, listed in *Who's Who in America*, and held a Law School Alumni Association Professorship in 1981-82. Appointed Thomas R. Cobb Professor of Law in 1983, he received the Faculty Book Award for Outstanding Teacher in both 1982-83 and 1983-84, and the Professional Responsibility Award in 1977 and 1987.

He was in private practice with the law firm of Sutherland, Ashbill & Brennan in Atlanta, Georgia, from 1966 to 1969. He joined the law faculty as Assistant Professor of Law in 1969, was promoted to Associate Professor in 1972, and Professor since 1977. He served as Dean of the University of Georgia School of Law from 1987 to 1993 and was appointed J. Alton Hosch Professor of Law in 1993 at the conclusion of his deanship.

Mr. Charles E. Burden
Warden
Hayes Correctional Institute
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Trion, Georgia 307753
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Charles E. Burden, his wife Diane, and three children, attend the Davisboro Methodist Church. He graduated from West Georgia College with a Bachelors Degree in Psychology and a Masters Degree in Counseling and Psychological Services.

He served in private practice in Carrollton, Georgia, for three years, and has since counselled at Rutledge Correctional, Central Correctional, Augusta Correctional, and is presently at Hayes Correctional Institution.

His professional and civic associations include the Southern States Correctional Association, Georgia Correctional Association, Georgia Prison Wardens Association, and the Lion's Club of Sandersville.

Thomas R. Burnside, Jr., Esq.
Burnside, Wall & Daniel
Attorneys at Law
454 Greene Street
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Thomas R. Burnside, Jr., graduated from the University of Georgia with a B.B.A. and LL.B. Degree. He has practiced law in Augusta, Georgia, since 1962 and is affiliated with many professional and legal organizations. He is extremely active in the State Bar of Georgia and has served on numerous committees.

His community activities include the Augusta Lions Club; Westminister Day School; Augusta Preparatory School; and the State YMCA of Georgia.

Mr. Don E. Carter
Vice President (Ret.)
Knight-Ridder Publishing
244 West DeSoto Drive
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Don Carter was born in Plains, Georgia. He served as a military intelligence officer in India and China in World War II. His wife, Carolyn McKenzie Carter, has had a distinguished career of her own as a photo-journalist. Married in 1942, they now live at Sea Island, Georgia.

Mr. Carter has rounded out 50 years of newspaper work and retired to his native Georgia for a few years of relaxed living.

A Phi Beta Kappa graduate of the University of Georgia, he learned his newspapering on the Atlanta Journal as a reporter and later city editor. Later he joined Dow Jones & Company in New York and became the founding managing editor of the National Observer. From there he moved to the executive editorship of the Bergen Record in New Jersey. In 1971, Carter joined Knight-Ridder Newspapers, serving successively as executive editor of the Macon Telegraph and News; publisher of the Lexington Herald-Leader; and as vice-president/news in Miami, with responsibilities for eighteen of Knight-Ridder's daily publications.

A former national president of the Associated Press Managing editors Association, he served for ten years as president of the Accrediting Council for Education in Journalism and Mass Communications. He has been as a frequent discussion leader at the American Press Institute and was a member of its board of directors. He has an honorary doctorate in literature from St. Bonaventure University.

Mrs. Ann B. Crowder
Chatham County School Board President
Vice President, C & S National Bank
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(Bank) 912-944-3176

Ann B. Crowder grew up in Kingstree, South Carolina, received a B.S. in Business and Economic Education from Winthrop College, and a Master of Arts in Education from the University of South Carolina. She has completed a number of post-graduate courses, including the three-year summer program at Stanford University.

Mrs. Crowder taught for four years at Lower Richland High School, Columbia, South Carolina, and part-time at Hancock Academy in Savannah, Georgia. Since 1978 she has been with Citizens and Southern National Bank where she is presently Vice President of Corporate Lending.

She and her husband, James, live on Wilmington Island in Savannah, with their two children.

Mrs. Crowder represented the Fourth District on the Savannah-Chatham Board of Public Education, and was elected President in November, 1990.

Mr. William Davis
President and CEO
Gilman Paper Corporation
Post Office Box 878
St. Marys, Georgia 31558

Mr. William Davis is President and Chief Operating Officer of Gilman Paper Company. He is married to June Bailey Davis, and has three children.

Mr. Davis has a Bachelor of Mechanical Engineering Degree from Georgia Institute of Technology and a Master's Degree in Business Administration from Harvard Graduate School.

His civic and business activities include St. Marys Chamber of Commerce; St. Marys Kiwanis Club Director; St. Marys Country Club; St. Marys Restoration Committee; Boy Scouts of America; Board of Visitors, Duke University; Director, American Paper Institute; Trustee, Brunswick Junior College Foundation; Chairman of the Board, First National Bank; and President of the Georgia Tech Pulp and Paper Foundation.

Albert Fendig, Jr., Esquire
Fendig, McLemore, Taylor & Whitworth, P.C.
Attorneys at Law
Post Office Box 1996
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Albert Fendig, Jr. is a Senior partner in the law firm, Fendig, McLemore, Taylor and Whitworth, in which he has practiced since 1958. He is married to the former Joyce Land of Athens, Georgia and they have two children, Leslie (Mrs. John Mabbett) anbd Albert IV.

Mr. Fendig graduated from Glynn Academy and received his A.B. and L.L.B. at the University of Georgia. Member: Blue Key, ODK, Gridiron, Cadet Comdr. (AFROTC).

His professional activities include: Fellow, American College of Trial Lawyers; International Academy of Trial Lawyers (State Committee); International Society of Barristers (Board of Governors); Founder and Charter Chairman - General Practice & Trial Section (State Bar of Georgia); Co-founder and Chairman - International Legal Exchange (General Practice Section, ABA); Litigation Section Chairman, State Liaison; American Bar Foundation; Federation of Insurance Counsel; and many other professional and civic organizations.

Professor Joseph D. Greene
Dept. of Business Administration
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A native of Georgia, and now residing in Thomson, Mr. Greene is married to the former Barney Robinson and has two children. He is presently a professor with the Department of Business Administration at Augusta College.

He received a B.B.A. degree from Augusta College and an M.A. from the University of Georgia. He also received the CLU designation from the American College at the University of Pennsylvania. He is an International Business Fellow through the London Business School. Mr. Greene has received numerous continuing education certificates, served as part-time instructor at Augusta College, and has received many honors and distinctions. He formerly served as Chairman of the Board of Regents of the University System of Georgia from 1984 to 1991.

Among his civic and business accomplishments are: appointment by Governor Joe Frank Harris to several posts; first black elected official in McDuffie County as a member of the McDuffie County Board of Education; Georgia's Constitution Revision Commission; writing several articles and publications; and speaking frequently on college campuses and to civic and religious groups.

Eric Lance Jones, Esq.
Jones, Hillburn, Claxton & Sanders
Attorneys at Law
205 N. Franklin Street
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912-272-7933

Born in Washington, D.C., November 28, 1938, Eric Jones attended Montgomery County High School in Mount Vernon, Georgia. He received a B.B.A. Degree from the University of Georgia, and an LL.B., *cum laude* degree from the University of Georgia School of Law.

Among his business associations, he is Past President of the Laurens County Bar Association; the Dublin Circuit Bar Association, member of the State Bar of Georgia; American Bar Association; Georgia Trial Lawyers Asociation; and the Association of Trial Lawyers in America.

Stanley M. Karsman, Esq.
Karsman, Brooks & Callaway
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Post Office Box 9149
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Stanley Murray Karsman was born in Savannah. He is married to Simone Karsman and has four children. He was admitted to the Georgia Bar in 1961.

His education includes the University of Georgia, both graduate and undergraduate (LL.B., 1961). He is a former member of the Board of Directors for both the Jewish Educational Alliance and B'nai B'rith Jacob Synagogue, as well as a member of the Chatham County Clean Air Study Commission. Stanley served as General Counsel for the Georgia Ports Authority from 1967 through 1970. He is also a member of the Savannah Bar Association, State Bar of Georgia, Georgia Defense Lawyers Association, Defense Research Institute, and is an advocate member of the American Board of Trial Advocates.

Mr. William C. Killgallon
CEO, Ohio Art (Ret.)
238 East Augustin Street
Sea Island, Georgia 31561
912-638-4238

William C. Killgallon was born in McKeesport, Pennsylvania. He is married to the former Christine Behrens, has four children, and thirteen grandchildren.

He is Director and Chairman of the Executive Committee of the Ohio Art Company; Chairman of the Federal Land Commission; Trustee of Davis and Elkins College; and a member of the Masonic Lodges Blue Lodge, Cammandery, Consistory and Shriners.

Mr. James W. McSwiney
CEO, Mead Corporation (Ret.)
396 West D'Ayllon Street
Sea Island, Georgia 31561

James W. McSwiney is the retired chairman of the board of the Mead Corporation. He attended the Advanced Management Program of Harvard Business School, and has been granted honorary doctoral degrees by both the University of Dayton and Wright State University.

He has been active in civic and business affairs at local, state, and national levels. He is a former director of the Chamber of Commerce of the United States of America, and is currently active with: Energy Innovations, Inc.; Gosiger, Inc.; Kettering Medical Center; Sea Island Company; Center for Creative Leadership; Committee for Economic Development; Miami Valley Research Foundation; AFIT Foundation; Sinclair Community College Foundation; and Brunswick College Foundation.

Mr. A. Montague Miller
President, Club Car, Inc.
Post Office Box 4658
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President of Club Car, Inc., Augusta, Georgia, Montague Miller is married to the former Peggy Elaine Mays. He has a B.B.A. and J.D. degree from the University of Georgia.

He is Director of the First Nation Bank of Atlanta, Augusta Division; and a member of GSEF, Athens, Georgia; Fellow, Georgia Bar Foundation and American College of Trial Lawyers; American Judicature Society; American Bar Association; State Bar of Georgia; Augusta Bar; International Association of Defense Counsel; Georgia Defense Lawyers Association; Beta Gamma Sigma; Chi Phi Fraternity; and Phi Delta Phi.

Mr. Charles B. Presley
Chairman, Executive Committee
First Union Corporation of Georgia
Post Office Box 1211
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706-823-2500

Mr. Presley is married to the former Jane Hinton, and has two daughters.

A native of Chatsworth, Georgia, Charles Presley graduated *magna cum laude* from the University of Georgia. He also graduated from Stonier Graduate School of Banking, Rutgers University, where he was a thesis examiner for ten years. He has been a government consultant to banks in Iran.

Charles B. Presley is Chairman of the Executive committee of First Union Corporation of Georgia, and retired Chairman of First Union National Bank of Georgia/Augusta, and the Board of First Railroad Banking Company. He is a member of the Boards of Directors of Boral Industries, Inc.; Coca-Cola Bottling Company United, Inc.; Morris Communications Corporation; and Merry Land & Investment Co., Inc.

He is a Trustee of the University of Georgia Foundation; Director of the National Science Center for Electronics and Communications Foundation, Inc.; a member of the Augusta Country Club, the Pinnacle Club, Capital City Club of Atlanta, and the Necomen Society in North America.

Mr. Paul S. Simon
President
Morris Communications Corporation
Post Office Box 936
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Paul S. Simon is married to the former Carolyn Adcock, and has two daughters. He attended local schools in Augusta, Georgia, and was graduated from the Academy of Richmond County, Augusta College, and the University of Georgia with a B.B.A. degree as a certified public accountant.

He is President and member of Boards of Directors of: Morris Communications Corporation; Southeastern Newspapers Corporation; Southwestern Newspapers Corporation; Athens Newspapers, Inc.; North American Publications Corporation; and the Florida Publishing Company.

His career and professional activities include publishing and financial organizations. His social activities include the Pinnacle Club; Augusta Country Club; Kiwanis Club; and the Rotary Club of Augusta.

Mr. W. W. Sprague, Jr.
President and CEO
Savannah Foods & Industries, Inc.
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William Wallace Sprague, Jr., was born in Savannah, graduated from Yale University with a B.S. Degree in Mechanical Engineering, and served two years with the United States Navy.

Mr. Sprague is married to the former Elizabeth Louise Carr of Memphis, Tennessee, and they have four children.

In addition to his position with Savannah Foods, Mr. Sprague is a Director and Chairman of the Executive Committee of C & S/Sovran Corporation; the Citizens and Southern National Bank, Savannah; Adeline Sugar Factory Co., Ltd.; and a number of subsidiaries of Savannah Foods.

His participation in numerous professional and civic organizations include the Savannah Youth Futures Authority; International Management Council; Savannah Business Group; Savannah Benevolent Association; Chatham Club; Medical College of Georgia Advisory Counsel; United Way; and South Atlantic Foundation.

Mr. Edmund A. Booth, Jr.
Assistant United States Attorney
Civil Division Chief
Southern District of Georgia
Post Office Box 2017
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706-724-0517

Edmund A. Booth, Jr., was born in Athens, Georgia, October 14, 1945. He and his wife, Mary, have one son. Mr. Booth was appointed Assitant United States Attorney in 1971, and is now Chief of the Civil Division.

He graduated from Athens High School in 1963; has a B.B.A. degree from the University of Georgia; and a J.D. degree from the University of Georgia School of Law.

Mr. Booth is a member of the State Bar of Georgia and the Augusta Bar Association.

Honorable B. Avant Edenfield
Chief United States District Judge
Southern District of Georgia
Post Office Box 9865
Savannah, Georgia 31412

B. Avant Edenfield is a native of Bulloch County and is a graduate of Stilson High School.

He holds a B.B.A. Degree and J.D. Degree from the University of Georgia, and practiced law in Bulloch County and southeast Georgia for twenty years.

He served in the Georgia State Senate, he chaired several committees, and served as secretary of the Senate Committee on Higher Education, and sponsored the legislation creating the Statesboro-Bulloch County Development Authority.

He was active in a number of civic organizations, Chairman of the Board of the Statesboro-Bulloch County Regional Library, and the State Advisory Committee on Vocational Education. He was selected in 1963 as Bulloch County's Outstanding Young Man, and again in 1978 he was selected by the Statesboro Rotary Club as Bulloch County's Man of the Year.

He was appointed a Judge to the United States District Court for the Southern District of Georgia, on October 11, 1978. He has served with the Eleventh Circuit Court of Appeals and carried dockets in the Southern District of Alabama for approximately three years, as well as Tampa, Florida, and other diverse places, such as the Panama Canal Zone.

He is presently serving as Chief Judge for the Southern District of Georgia, and he serves on the Eleventh Circuit Judicial Council and is Vice-Chairman of the Educational Planning Group for the Eleventh Circuit. In addition, he serves on numerous committees relating to the improvement of the Judiciary and Judicial Branch of government.

Honorable Anthony A. Alaimo
United States District Judge
Southern District of Georgia
Post Office Box 944
Brunswick, Georgia 31521

Judge Alaimo was born on March 29, 1920, in Termini, Sicily (near Palermo). He was brought by his parents to Jamestown, New York, in 1922. Upon his parents' naturalization in 1928 in the Supreme Court of New York, sitting in Chautauqua County, he, too, became a naturalized citizen of the United States of America.

Judge Alaimo attended the public schools of Jamestown, New York, graduating in June of 1937. He received his Bachelor of Arts degree from Ohio Northern University in the summer of 1940. Following military service during World War II, he attended Emory University School of Law in Atlanta, from which he graduated in June of 1948 and was admitted to the Georgia Bar and to the Ohio Bar.

Judge Alaimo practiced law in Atlanta until 1957, at which time he relocated to Brunswick, Georgia and engaged in the private practice of law until December, 1971, when he was appointed a United States District Judge for the Southern District of Georgia by President Richard M. Nixon. He was appointed and served as Chief Judge of the Southern District of Georgia from November 1, 1976, until March 28, 1990.

In addition, from 1965 to 1969 he was a County Commissioner in Glynn County. He also served on the Coastal Area Planning and Development Commission from its inception in 1965 until 1973, and was President of that organization from 1967 until 1971. He was also a Trustee of the Coastal Plans Regional Commission, a member of the Governor's Advisory Committee on Area Planning Commissions and was a member of the National Public Advisory Committee on Economic Development, as well as a Trustee of Emory University School of Law in Atlanta.

Honorable Dudley H. Bowen, Jr.
United States District Judge
Southern District of Georgia
Post Office Box 2106
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Judge Bowen was appointed United States District Judge for the Southern District of Georgia on November 27, 1979. He is a graduate of the University of Georgia, receiving an A.B. and an LL.B. Degree. He also attended Washington & Lee University and the University of Valencia. He served as 1st Lieutenant in the United States Army from 1966 to 1968.

Judge Bowen was formerly a Bankruptcy Judge, United States District Court for the Southern District of Georgia. In 1987 he was appointed to the Judicial Conference Committee on Court Security.

Judge Bowen is married to the former Madeline Martin, and has two daughters. He is a member of the American Bar Association; the American Judicature Society; the State Bar of Georgia; the Augusta Bar Association; the Southeastern Bankruptcy Law Institute; the Georgia Historical Society; and the Commercial Law League of America.

Appendix B

OPERATING PROCEDURES

The Civil Justice Reform Act Advisory Committee for the Southern District of Georgia held its inaugural meeting in Savannah on May 31, 1991. Subsequent meetings of the full committee were held in Brunswick on August 31, 1991, on Amelia Island on September 13, 1992, in Savannah on June 10, 1993, and on Amelia Island on September 3, 1993.

After the initial meeting in May 1991, the chairman, David Hudson, appointed subcommittees to study and report on three key areas of interest.

Appointed were (1) Subcommittee to Assess the Current Docket and Future Trends co-chaired by J. W. McSwiney and Albert Fendig; (2) Subcommittee to Assess Causes of Costs and Delay co-chaired by David Hudson and William Davis; and (3) Subcommittee to Assess the Impact of Federal Legislation co-chaired by William Sprague and Edmund Booth. These subcommittees met and worked between sessions of the full committee.

Small groups of committee members, accompanied by the Reporter, met with and interviewed each district court judge, magistrate judge, and bankruptcy judge in the district. The Reporter's Notes of Interviews were distributed to the full committee. The Reporter's Notes are annexed as Attachment F in the section containing Attachments at the end of the report.

After attending a Federal Judicial Center Seminar on the Civil Justice Reform Act in St. Louis on April 8-9, 1992, the Chairman and Reporter developed with the assistance of John E. Shapard of the Research Division of the Federal Judicial Center a plan for randomly drawing 120 closed civil cases to study. A questionnaire was mailed to lead counsel in all of the cases, and some 238, or 64% responded. Attorneys were requested to send another enclosed questionnaire to the party represented by them, and responses were received from 112 parties. The data in these surveys of attorneys and litigants was tabulated and analyzed statistically by the Survey Research Center at the University of Georgia. Valuable information was obtained in these surveys on the attorneys and litigants' perceptions about the operation of local court rules and case management practices and on the existence and putative causes of unnecessary cost and delay.

Copies of the docket sheets in each of the 120 sample cases were reviewed by the Reporter and a law student research assistant and a Docket Sheet Review Form was completed on each case. This instrument is annexed as Attachment G in the section on Attachments. This analysis of the docket sheets provided data about the number of discovery disputes brought to the court for resolution and the pace of litigation and of rulings on motions.

Data on caseload, case types, and the life expectancy of cases, etc. were obtained from the Federal Judicial Workload Statistics furnished by the Administrative Office of the United States Courts. Additional data on the number of civil and criminal trials conducted was provided by the Clerk's Office of the United States District Court of the Southern District of Georgia.

The district court judges met regularly with the Advisory Committee and were extraordinarily open and generous in discussing existing court rules and practices and ideas for improvement.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

As Proposed by the Civil Justice Reform Advisory Committee.

The District Court,

> after considering (1) the recommendations of the Civil Justice Reform Advisory Committee ("Committee") appointed pursuant to 28 U.S.C. § 478, (2) the principles and guidelines of litigation management and cost and delay reduction listed in 28 U.S.C. § 473(a), and (3) the litigation management and cost and delay reduction techniques listed in 28 U.S.C. § 473(b),

and

> after consulting with the Committee, pursuant to 28 U.S.C. § 473(a), (b),

adopts this **CIVIL JUSTICE DELAY AND EXPENSE REDUCTION PLAN,** pursuant to 28 U.S.C. §§ 471, et seq.

SECTION ONE: DIFFERENTIAL CASE MANAGEMENT [28 U.S.C. § 473(a)(1)]

(A) Existing Procedures:

The Court shall retain the existing Local Rules (L. R.) which provide for specialized treatment for certain types oflitigation. These are the following:

- L.R. 7.1: An exemption from the four month limit on discovery for antitrust and patent cases.
- L.R. 8.5: Exemptions from the standard "voluntary" discovery exchange required by L.R. 8.6. The exemptions currently apply to thirteen categories of cases specified in L.R. 8.5.[1]

[1]The exemption in L.R. 8.5 (c) in employment cases will be eliminated in accordance with the Committee's recommendation.

— L.R. 14: This Local Rule provides special requirements for pleading and disposition of cases brought as class actions.

— L.R. 25: This rule provides for court intervention in the disposition of cases involving minors, wards, and incompetents.

— Standing order of October 2, 1989: This order requires in-depth investigation and specialized pleadings in any case alleging a civil violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq. This standing order shall be incorporated into the Local Rules of Court.

(B) Special Case Management Order:

The Court concurs with recommendation 14 of the Committee that provision be made in the Local Rules of Court for the adoption and implementation of special case management orders to facilitate the disposition of caseswhere the court, *sua sponte,* or upon motion of the parties, determines that individiualized and case specific management will be appropriate. The Local Rules of Court shall be amended to provide the following:

— That the use of special case management orders be referenced in Local Rule 8.6 and addressed by the parties in the responses required by Local Rule 8.6.

— That special case management orders may be entered by the court, *sua sponte,* or upon motion. The rule shall specify the types of issues that may be addressed in a special case management order.

This approach will be the technique used in this district to address the concern noted in 28 U.S.C. 473(b)(1).

(C) Litigant's Bill of Rights:

The Court concurs in recommendation 19 of the Committee that after the appearance of each party, they should be provided with a notice of case management procedures which the Committee referred to as a "Litigant's Bill of Rights." The purpose of this notice, which will be sent by the Clerk, is to apprise counsel and parties of alternative dispute resolution opportunities, the availability of the use of a magistrate judge, the period of time expected for the completion of discovery, the opportunity to request a special case management order, and to alert the parties that they may be required to appear at a pretrial conference.

A Local Rule of Court shall be adopted which incorporates the text recommended by the Committee in its report. The Local Rule shall provide that the document shall be furnished to each party through counsel upon the appearance of the party in the case, and that the completed form be returned within fifteen days. The Rule shall also provide that the Clerk of Court shall have authority to grant extensions of time of up to ten business days to return the completed form.

Use of the "Litigant's Bill of Rights" will be the technique used in this district to address the concern noted in 28 U.S.C. § 473(b)(3).

SECTION TWO: EARLY AND ONGOING CONTROL OF THE PRETRIAL PROCESS [28 U.S.C. § 473(a)(2)]

(A) Assessing and Planning the Progress of a Case [§ 473(a)(2)(A)]:

The Court will continue to use the existing procedures set forth in the preceding section of this Plan, and the new special case management order in appropriate cases.

(B) Setting Early, Firm Trial Dates [§ 473(a)(2)(B)]:

The Court concurs with the Committee that existing procedures to schedule the disposition of cases should be retained. These are the following:

- L.R. 8.5: Implements Rule 16, FRCP. A scheduling order issued by the Clerk of Court sets sixty days to add parties or amend the complaint; four months to complete discovery; and twenty days after the completion of discovery to file dispositive motions.

- L.R. 8.1: Provides for the convening of status conferences as directed by the court.

- L.R. 8.2 and 8.3: Provides for the submission of consolidated pretrial orders and the holding of pretrial conferences as directed by the Court.

(C) Controlling the Extent of and Time for Discovery [§ 473(a)(2)(C)]:

The Plan addresses discovery in Section Four, *infra*.

(D) Filing and Disposition of Motions [§ 473(a)(2)(D)]:

1. Existing Procedures:

The Court concurs with the Committee that existing procedures already expedite the filing and disposition of motions. These procedures are the following:

— L.R. 6.8: Requires the filing of dispositive motions within twenty days after the close of discovery.

— L.R. 6.10: Requires motions to add a party or amend the pleading to be filed within sixty days after issues are joined by the filing of an answer.

— L.R. 6.1: Memoranda of law are required for every motion. Affidavits are required for allegations of fact.

— L.R. 6.2: Opposition to a motion requires a reply memorandum, affidavits to support contentions of fact, and a response within ten days of service except that twenty days are allowed to respond to a summary judgment motion.

— L.R. 6.6: Motions for summary judgment must be accompanied by a statement of undisputed material facts, to which the opposing party must respond.

2. New Procedures

The Court concurs with Committee recommendations 16 and 20 and shall incorporate them into practice in the Local Rules as follows:

— L.R. 6.1 shall be amended to add the requirement that a proposed order accompany all motions except motions for enlargement of time, summary judgement, or motions to dismiss.

— The Court shall instruct the Clerk ~~to~~ revise ~~the report of~~ pending motions for each judicial officer in the district. The new format shall be distributed monthly and will readily identify the motions that have been pending the longest time by listing the motions for each judicial officer in chronological order, oldest first.

SECTION THREE: MONITORING OF COMPLEX AND OTHER APPROPRIATE CASES THROUGH DISCOVERY-CASE-MANAGEMENT CONFERENCES [28 U.S.C. § 473(a)(3)]

A. Existing Procedures:

The Court concurs with the Committee that existing procedures are already in place to involve the Court in management of appropriate cases. These procedures are the following:

— L.R. 8.5: Implements Rule 16, FRCP. A scheduling order issued by the Clerk of Court sets sixty days to add parties or amend the complaint; four months to complete discovery; and twenty days after the completion of discovery to file dispositive motions.

— L.R. 8.1: Provides for the convening of status conferences as directed by the Court.

— L.R. 8.2 and 8.3: Provide for the submission of consolidated pretrial orders and the holding of pretrial conferences as directed by the Court.

— L.R. 6: This rule provides a time limit for filing reponses to motions; a deadline for filing dispositive motions within twenty days after the close of discovery; a deadline for filing motions in criminal cases within ten days of arraignment; and a deadline of sixty days to file motions to amend or add or join another party within sixty days of the filing of an answer.

— L.R. 8: Requires the plaintiff to file with his complaint, and the defendant with responsive pleading, voluntary discovery disclosures by answering standard interrogatories.

(B) New Procedures:

The Court agrees with the recommendations of the Committee that this process be supplemented by Local Rules of Court providing for the entry of special case management orders where appropriate, and for the service and ~~return by~~ each party of a Litigant's Bill of Rights, *supra.*

The combination of a special case management order, where appropriate, and the Litigant's Bill of Rights will serve to satisfy the concerns identified in 473(a)(3)(A)-(D). They alert the parties and their counsel to the availability of alternatives to litigation, and provide mechanisms to enhance issue identification, implement discovery schedules and plans, and set deadlines for completing the various stages of preparation which are required in a given case.

SECTION FOUR: COST EFFECTIVE DISCOVERY AND VOLUNTARY EXCHANGE OF INFORMATION [§ 473(a)(4)]

(A) Existing Procedures:

The Court agrees with the assessment of the Committee that existing Local Rules have had a positive impact on the efficiency of discovery in the district, and that they should be continued. These existing provisions are the following:

- L.R. 8: Requires the plaintiff to file with his complaint, and the defendant with responsive pleadings, voluntary discovery disclosures by answering standard interrogatories.

- L.R. 6.5(d): This rule requires a party to certify that it has attempted to resolve a discovery dispute before a discovery motion is filed with the Court.

- L.R. 7: In cases except those specifically exempted, a four month limit is set on the time for discovery.

- L.R. 7.4: This rule limits the number of interrogatories, including subparts, to a total of twenty-five.

(B) New Procedures:

The Court agrees with the recommendation 15 of the Committee that the Local Rules be amended to make additional provisions to expedite and control discovery. The Local Rules of Court shall be amended to provide the following:

- The requirement in L.R. 8.6(7) for plaintiffs to set forth a discovery plan shall be extended to the responses to the standard interrogatories made by defendants.

- The standard interrogatory responses of each party shall include the indentification of documents and tangible things relied upon to support the contentions of that party in its pleadings.

- The Local Rules shall be amended to require that for each expert expected to be used at trial, a written report of expected testimony for the expert must be served upon opposing counsel. The identification of the expert and the service of the written report must be made with sufficient time to allow deposition within the four month discovery period.

— The responses to standard interrogatories of each party shall include the requirement that for each expert expected to be used at trial, a written report of expected testimony from the expert must be served upon opposing counsel. Also, all experts must be identified with sufficient time to allow depositions with the four month discovery period.

— The exemption in L.R. 8.5 for responding to standard interrogatories in employment discrimination cases shall be eliminated.

SECTION FIVE: REQUIREMENT THAT COUNSEL CERTIFY TO GOOD FAITH EFFORTS TO RESOLVE DISCOVERY DISPUTES [§ 473(a)(5)]

This is already required in the district by Local Rule 6.5. Also, discovery disputes which do result in the filing of a motion are referred initially to a magistrate judge for disposition. L.R. 6.4.

SECTION SIX: ALTERNATIVE DISPUTE RESOLUTION [28 U.S.C. § 473(a)(6) and § 473(b)(4)]

The Court concurs with recommendation 21 of the Committee that a mandatory program of alternative dispute resolution not be instituted at the present time in this district. However, the Court concurs with the assessment of the Committee that the Litigant's Bill of Rights should include a discussion of the availability of alternative dispute resolution options and the requirement that the parties express any interest in proceeding by such a method at an early stage of the case.

On its own motion, or at the request of the parties, the Court will be alert for opportunities to resolve or expedite the resolution of cases through alternative methods tailored to the individual case where a request is made or where the Court deems it appropriate.

SECTION SEVEN: OTHER FEATURES [28 U.S.C. § 473(b)(6)]

(A) Criminal Prosecutions:

The Court concurs in recommendation 13 of the Committee that informal consultation continue between the Judges and the United States Attorney's Office to assure the exercise of appropriate discretion when cases subject to concurrent state and federal jurisdiction are selected for federal criminal prosecution, and that the number of parties indicted and the counts of the indictment are efficiently and appropriately determined.

(B) Pending Motions:

The Court concurs with recommendation 20 of the Committee and directs the Clerk of Court to furnish a monthly report to each Judge of the district listing in chronological order, oldest first, pending motions for each judicial officer.

(C) Criminal Sentencing:

The Court concurs with recommendation 22 of the Committee, and hereby instructs the Probation Office to furnish presentencing reports within thirty days after the entry of a plea of guilty or a verdict of guilty after trial.

(D) Attendance at Pretrial Conferences [28 U.S.C. § 473(b)(2), (5)]:

The Court concurs with Committee recommendations 17 and 18. The Local Rules shall be amended to provide that parties, or their representatives with settlement authority, may be required to attend a pretrial conference. Where the United States is a party, the United States Attorney or lead counsel with settlement authority may be required to attend.

(E) Recommendations to Congress [28 U.S.C. § 472(c)]:

Fifteen of the twenty-four recommendations of the Committee are addressed in whole or in part to Congress. They cover the following subjects:

(1) State prisoner suits brought under 42 U.S.C. § 1983;

(2) The filing and disposition of habeas corpus petitions;

(3) Social Security Act appeals;

(4) Mediation and arbitration of Title VII, EEOC cases, and other specialized employee claims;

(5) Retaining diversity jurisdiction;

(6) Creating special diversity jurisdiction in multidistrict litigation;

(7) Expanding the powers of magistrate judges;

(8) Enactment by Congress of a "safety valve" exception to mandatory minimum sentences;

(9) Enactment of legislation to require both pre-passage and post-passage consideration of the impact of legislation on the federal courts;

(10) Enactment of a statute to provide for fee shifting in private civil litigation modelled after the Equal Access to Justice Act;

(11) Legislation authorizing the federal trial courts to approve fees of attorneys and expert witnesses to prevent excessive and unreasonable charges in civil cases;

(12) Opposing the amendment to Rule 11, FRCP, that would create a twenty-day "safe harbor" for frivolous filings;

(13) A Recommendation to Congress and the Judicial Conference that the mission of the United States Marshal Service be clarified to establish its foremost duty to provide security for the courts and judges; and

(14) That Congress and the Judicial Conference provide funding for personnel in the Clerk's office of the Southern District of Georgia at the level called for by the authorized formula.

These recommendations are acknowledged by the Court to be the product of serious and careful study by a committee comprised of able and conscientious attorneys and representatives of industry and government. These recommendations deserve equally serious consideration by the Congress and the Judicial Conference. Accordingly, the Chair of the Committee is directed to forward copies of the Committee report and these recommendations to the Judiciary Committees of the United States House of Representatives and the United States Senate.

(F) Annual Reassessment [§ 475]:

At least on an annual basis, this Court will request the Committee or the standing lawyer advisory committee on the Local Rules of Court to compare the condition of the Court's docket with the findings of the Committee and to make any recommendations it may have for modification of this Plan and/or the Local Rules of Court.

(G) Dissemination of this Plan:

Upon the adoption of this Plan, the Clerk of Court shall coordinate with the Chair of the Committee and furnish a copy of the Plan with an appropriate introductory letter to each

bar association functioning within the district. Also the Clerk shall post a notice at each of its offices that the Plan has been adopted by this Court and that copies are available for members of the public and the bar upon request at each office of the Clerk.

The Chair of the Committee and the Clerk of Court shall also make copies of the Committee report available to the daily newspapers published within the District.

(H) Implementation Schedule:

Upon the adoption of this Plan, it shall be made available to the standing attorney advisory committee on the Local Rules of Court for the Southern District of Georgia. That committee is charged with the ongoing task of reviewing and revising the Local Rules of Court. It shall be charged with drafting the text of the changes in the Local Rules of Court to implement this Plan. The Court suggests to the committee that its drafting be completed so that its work can be considered for adoption by the Court as early as January 1, 1994.

ENTERED AT SAVANNAH, GEORGIA, this _____ day of _____, 1993.

_____

B. AVANT EDENFIELD, CHIEF JUDGE
UNITED STATES DISTRICT COURT

_____

ANTHONY A. ALAIMO, JUDGE
UNITED STATES DISTRICT COURT

_____

DUDLEY H. BOWEN, JR., JUDGE
UNITED STATES DISTRICT COURT