FINAL REPORT

OF THE

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

FOR THE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

AUGUST 1993

CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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FOREWORD

In 1990, Congress enacted the Civil Justice Reform Act, which requires each federal district court to identify the sources of significant cost and delay in civil litigation in that district and to consider ways of reducing both to improve the civil justice system. Former Chief Judge Aubrey E. Robinson, Jr., appointed an advisory group of attorneys and representatives of litigant groups to assist the Court in its development of a civil justice expense and delay reduction plan, as required by the Act.

The Advisory Group has been studying the Court and analyzing the issues of cost and delay in civil litigation in this district since March 1991. The Group interviewed every active judge, senior judge, and magistrate judge of the Court; surveyed 5,000 attorneys who have appeared before the Court over the last three years; interviewed courtroom clerks and senior staff of the Clerk's Office; talked at length with the Clerk of Court and the Circuit Executive; examined caseload statistics; reviewed docket sheets and case files; and studied relevant reports and articles on civil justice reform. The result of this work was a Draft Report that contained 48 recommendations for improving the civil justice system in this district.

The Advisory Group released its Draft Report in February 1993 and requested comments from the bench, the bar, and the public. A public hearing on the Draft Report was held in April 1993, and testimony was offered by a number of organizations. The Group also received written comments on the Draft Report from numerous individuals and groups. Advisory Group members met with several judges and magistrate judges individually to discuss the Draft Report as well.

As a result of these comments, the Advisory Group has made some significant changes and some minor changes in the Final Report, particularly with respect to the use of magistrate judges and its recommendations concerning *pro se* litigation. In other areas, such as alternative dispute resolution, the Group concluded after careful consideration of the comments received that the recommendations in the Draft Report should stand.

The Advisory Group believes that each recommendation in the Final Report furthers the central features of the Report—strong judicial management of the case from start to finish by a single judicial officer assisted by a magistrate judge. The combination of strong judicial management, a meet-and-confer conference, an early-scheduling conference, prompt decisions on all motions (particularly those involving discovery disputes or scheduling), prompt decisions after bench trials, and the use of senior judges and magistrate judges as "back-up" resources for the Court will ensure that firm and realistic trial dates are set and that cases are disposed of quickly and inexpensively. The recommendations in the Final Report should be considered parts of an overall systemic approach to reduce delay and cost in civil litigation in this district.

The Final Report is the culmination of innumerable hours of work by dedicated Advisory Group members and staff. Each contributed to every aspect of the preparation of the Report and made what was originally an overwhelming task manageable and achievable. I am indebted to each of them. I would also like to thank the *ex officio* members of the Advisory Group for their support and guidance over the past two and a half years. The leadership, support, and advice of Chief Judge John Garrett Penn and former Chief Judge Aubrey E. Robinson, Jr., were essential to the work of the Advisory Group, and I appreciate all that they did. I am grateful to Stephen A. Saltzburg and Elizabeth H.

Paret for their vital contributions to the Advisory Group and to the completion of the Report. Finally, I would like to thank all those who read and commented on the Draft Report.

The opportunity for lawyers, litigants, and judges to review and comment on the workings of the Court is a healthy and worthwhile exercise that can only improve the common enterprise in which judges and lawyers are engaged on behalf of the public. The release of this Report and even the adoption of the Advisory Group's recommendations by the Court are just the beginning of a process in which judges and lawyers must work together to reduce cost and delay in civil litigation in this district. The Advisory Group stands ready to assist the Court in any role it thinks would be helpful as this process continues.

Paul L. Friedman, Chair

Civil Justice Reform Act Advisory Group

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SUMMARY OF RECOMMENDATIONS

Judicial Management

Time Limits

Recommendation 1: Most cases should be categorized according to complexity, and a time period for completion of each category of cases should be prescribed. The district judge should determine which track is appropriate for each case. Most cases should be completed within the prescribed period.

Preliminary Pretrial Procedures

Recommendation 2: When a complaint is filed, the Clerk should mail to the party or counsel filing the complaint (1) a description of the Court's Alternative Dispute Resolution (ADR) Program, (2) a list of the items on which the parties must confer before the scheduling conference with the Court, and (3) a notice that the action will be dismissed against a defendant unless proof of service of process is filed as to that defendant within 125 days of the date of the filing of the complaint. Items (1) and (2) should also be sent when an answer or any motion is filed by a party or counsel. The Clerk should automatically issue an order dismissing without prejudice any complaint against a defendant for which a return of service has not been filed as to that defendant within 125 days of the filing of that complaint, unless otherwise expressly directed by the judge to whom the case has been assigned.

Recommendation 3: In cases involving only one defendant, counsel (including any nonprisoner *pro se* party) should meet in person or, if the parties consent, by telephone to discuss the case in preparation for the initial scheduling conference with the Court within 15 days of the appearance or first filing in the form of an answer or any motion by that defendant. In any case involving multiple defendants, including the United States or any other defendant who is given more than 20 days to answer the complaint, the 15-day period shall begin with the appearance or first filing in the form of an answer or any motion by the party that is given the longest time to answer under the Federal Rules of Civil Procedure.

In any case in which some but not all defendants have been served or in which some defendants with longer periods to answer have not appeared, the plaintiff or any defendant may file a motion or letter with the Court requesting that the meet-and-confer requirement be suspended until such time as the Court shall fix in light of the fact that some defendants have not yet entered or appeared in the case.

The meet-and-confer requirement shall not apply in any prisoner *pro se* case or in any nonprisoner *pro se* cases in which a dispositive motion is filed before the time to meet and confer expires.

Recommendation 4: To promote the Court's ability to manage cases and to enable the parties to provide the Court with information that will advise the Court about any peculiarities or unique aspects of their case, lead counsel (including any nonprisoner *pro se* party) for each party shall meet in person or, if the parties consent, by telephone, and discuss the following matters:

1. The category in which the case should be placed, whether the case is likely to be disposed of by dispositive motion, and whether, if a dispositive motion has already been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

2. The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

3. Whether the case can be assigned to a magistrate judge for all purposes, including trial.

4. Whether there is a realistic possibility of settling the case.

5. Whether the case could benefit from the Court's alternative dispute-resolution procedures or some other form of alternative dispute resolution and, if so, which procedure should be used, and should discovery be stayed or limited pending completion of ADR.

6. Whether the case can be resolved on summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

7. Whether the parties can agree on the exchange of certain core information (e.g., names and addresses of witnesses, relevant documents, computations of damages, the existence and amount of insurance) without formal discovery, the extent of any discovery, how long discovery should take, whether there should be a limit on discovery (e.g., number of interrogatories, number of depositions, time limits on depositions), whether a protective order is appropriate, and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

8. Dates for the exchange of expert witness information pursuant to Fed.R.Civ.P. 26(b)(4), and for taking depositions of experts (within the discovery cut-off period).

9. In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, an opposition and reply, and for oral argument and/or evidentiary hearing on the motion, and a proposed date for decision.

10. Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

11. The date for the pretrial conference (understanding that a trial will take place 4 to 8 weeks thereafter).

12. Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

No later than 10 days following this meeting, counsel for the parties must file with the Court a succinct statement of the following matters:

1. Any agreements the parties have reached at their meeting with respect to any of the 12 specific matters set forth above.

2. The parties' position on any of the 12 specific matters set forth above as to which they disagree. Counsel must file a joint submission, even if the submission sets forth differing views. *Counsel's filing of a statement will constitute certification that counsel has discussed with the client the 12 matters set forth above, including the possibility of settlement and the availability and range of ADR options.*

Recommendation 5: The Court should set the first scheduling conference for no later than 20 days after receipt of the parties' "meet-and-confer" statement, unless, based on a joint recommendation of the parties for good cause shown, the Court concludes that the conference should be deferred. The conference may be deferred for no more than 30 days.

Recommendation 6: After conferring with the parties at the first scheduling conference, the judge shall place a case in the category in which it best fits, determine whether specified limits should be placed upon discovery, and issue a scheduling order.

Recommendation 7: Any continuance or enlargement of time granted must be for good cause only and should be for a reasonable period so that only one continuance or enlargement is required, rather than several.

Pretrial Conference

Recommendation 8: The Court should seek to ensure that the period of time between the pretrial conference and commencement of the trial is no more than 30 to 60 days.

Recommendation 9: The requirements for all pretrial conferences should be reduced, and the full panoply of Rule 16 and Local Rule 209 procedures should be reserved for complex cases (Category 4), those that generally should be disposed of within 24 months of the first scheduling conference.

Motions and Hearings; Findings in Bench Trials

Recommendation 10: The trial judge should carefully consider which *in limine* motions, if decided prior to trial, might warrant the granting of a motion for summary judgment or lead to settlement and endeavor to resolve those motions prior to trial. The trial judge should also carefully consider whether other *in limine* motions might become moot if a case settles or as the issues unfold at trial or might more easily be resolved either immediately before the trial begins or during the trial.

Recommendation 11: Each judge should establish as his or her policy that all motions will be heard and decided promptly and that findings of fact and conclusions of law will be promptly rendered in nonjury cases.

Recommendation 12: Each judge should establish as a personal policy that he or she will decide motions that seek to dispose of any claim, counter-claim, third-party claim, or substantive defense (usually by a motion to dismiss or for full or partial summary judgment) within 60 days of submission of all memoranda or briefs or within 60 days of oral argument, provided that oral argument is held within 30 days of the submission of all memoranda or briefs. To the extent that a judge knows that a

motion will not be decided within these periods, the judge should consider notifying counsel that, because of the judge's other responsibilities, the motion will not be decided within these periods.

Recommendation 13: Each judge should establish a policy of deciding nonjury cases within 90 days of the conclusion of a trial or the submission by the parties of post-trial proposed findings of fact and conclusions of law. Each judge should consider deciding some cases from the bench and incorporating as part of the findings and conclusions submissions of the parties in ways that clearly indicate that the judge has independently reviewed and adopted suggestions by the parties.

Recommendation 14: The Clerk of the Court should monitor the handling of all dispositive motions and bench trials to ensure that the time periods set forth above are followed. The Clerk should circulate monthly lists to the judges indicating the motions that remain undecided beyond the limits recommended here. No public circulation of these lists should occur until a pending matter is more than 6 months old and appears on the list of pending issues that is currently made available to the public under the Civil Justice Reform Act.

Recommendation 15: Each judge should require that all dispositive motions be filed sufficiently in advance of the pretrial conference so that they can be ruled on before the conference and the parties can avoid unnecessary preparation for a conference and/or a trial if such motions are granted.

Recommendation 16: Each judge should require counsel for the party planning to make a nondispositive motion to discuss the motion either in person or by telephone with opposing counsel in a good-faith effort to determine whether there is any opposition to the motion and to narrow the areas of disagreement if there is opposition. A party should be required to include in its motion a statement that the required discussion occurred, state whether the motion is opposed or not, and describe briefly whether that discussion did in fact reduce the area of disagreement and how it was reduced.

Discovery

Recommendation 17: The Court should not adopt mandatory core disclosure or numerical limits on interrogatories and depositions.

Recommendation 18: Except in extraordinary cases involving sensitive constitutional or similar issues, judges should refer discovery matters in civil cases to magistrate judges. Judges should clearly indicate that decisions by magistrate judges on discovery matters will be given great deference by the district judge who is likely to overturn a ruling by the magistrate judge only when it is clearly erroneous and palpably harmful.

When a case is drawn from the wheel and assigned to a district judge, other than one that is part of the experiment covered by Recommendation 23, a magistrate judge should be assigned randomly at the same time to handle all discovery matters and other pretrial matters in the case which the district judge chooses to refer.

Recommendation 19: The Court's Committee on Local Rules should review the problem of deposition and discovery conduct and should consider ways of controlling misbehavior and eliminating conduct falling short of basic standards of civility. The District of Columbia Bar should be asked to study the problem and assist in promoting appropriate deposition and discovery conduct.

Recommendation 20: The district judges and magistrate judges should have the discretion to determine whether discovery disputes should be resolved by telephone conference, short informal written submissions, formal submissions, or briefing and oral argument. Judges should decide routine discovery motions from the bench, in a telephone conference with counsel, or within 7 days of submission or of the hearing.

Managing Trials and Settlement Discussions

Back-up Judges

Recommendation 21: When a conflict arises between a civil trial and a criminal trial, the judge should notify the Chief Judge (or the Calendar Committee or its Chair) who will ask another judge, usually a senior judge, to handle one of the cases. There should be a presumption that the criminal case will be the one transferred to the other judge because it usually will have involved less pretrial investment of judicial time and knowledge. In some instances, a straightforward civil case might be transferred instead of a complicated criminal case.

Recommendation 22: If senior judges participate in this cooperative plan, their status should be enhanced so that they have a more equal role in the Court and its decision-making bodies.

Magistrate Judges

Recommendation 23: The Court should conduct a 3-year experiment during which district judges would automatically refer a random sample of personal injury cases and some contract cases to magistrate judges for all purposes.

Recommendation 24: The Court should seek authority to appoint two additional magistrate judges to provide the assistance that will be required if magistrate judges are to handle discovery in civil cases generally, handle the tort and contract cases that will be assigned to them in the experiment described in Recommendation 23, and play an increased role in conducting settlement conferences and in providing alternative dispute resolution options.

Recommendation 25: Judges should not refer dispositive motions to magistrate judges. Judges should consider referral of certain matters to magistrate judges for certain labor-intensive tasks, after consulting with the magistrate judge as to the feasibility of the magistrate judge's completing the tasks within the time period envisioned by the district judge.

Recommendation 26: The Court should seek to educate the Bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases and should invite the Bar to provide feedback on its experiences before magistrate judges.

Recommendation 27: Magistrate judges should retain primary responsibility for considering petitions by adopted persons to open adoption records of the Court pursuant to Local Rule 501.

Recommendation 28: The Court should invite magistrate judges to attend certain meetings of the Executive Session.

Special Masters

Recommendation 29: Under the appropriate supervision of the Court, special masters should be used in exceptional pretrial and post-liability settings when the issues to be referred require extraordinary amounts of time that would be difficult to obtain from a judicial officer.

Recommendation 30: The Clerk of the Court should maintain a list of special masters with experience in this Court and in other courts as a reference source and shall also list all mediators who have been certified in the Dispute Resolution Programs administered by the Circuit Executive's Office. The Clerk shall seek to ensure that the list is updated on a regular basis to guarantee that it is as inclusive as is reasonably possible.

Trial Procedures

Recommendation 31: Each judge should try to schedule a trial, in either a civil or a criminal case, so that the evidence will not be interrupted by status conferences, motions hearings, sentencing hearings, or other proceedings.

Recommendation 32: Trials should be held during "normal business hours," although a judge might choose to end the trial day in the early afternoon on some days for the convenience of the parties and their counsel, to make jury service easier for many jurors, and to provide time for hearing or deciding motions.

Recommendation 33: Each judge should set strict timetables for the submission of proposed findings of fact and conclusions of law in nonjury trials and proposed jury instructions for jury trials.

Recommendation 34: In jury trials, judges should encourage the use of short, written jury questionnaires that can provide meaningful information to counsel about the jurors to aid counsel in exercising challenges for cause and peremptory challenges.

Alternative Dispute Resolution and Settlement

Alternative Dispute Resolution (ADR)

Recommendation 35: The Court should conduct a 3-year experimental pilot project where a number of judges (three to six) would test the effectiveness of a system in which the parties would be required in randomly selected cases, at their first conference with the judge, to select from a menu of ADR processes (mediation, early neutral evaluation, binding or nonbinding arbitration). If the parties cannot agree on an ADR process, the judge will designate mediation as the least expensive and intrusive of the options. A participating judge may, for good cause shown, exclude a case from the experiment and may defer ADR in cases in which it appears that a dispositive motion will be filed or in which the parties need some discovery before determining which ADR process best fits the case.

Recommendation 36: In either voluntary ADR or the pilot project, the parties should have three options for choosing an ADR specialist: (1) a qualified volunteer from the Court's roster or a staff mediator, (2) a magistrate judge, or (3) a person agreed upon and paid by the parties. If the parties cannot agree, the Court should select a qualified volunteer or staff mediator.

Recommendation 37: The Court should require all attorneys to certify that they are familiar with the ADR processes that are available.

Settlement

Recommendation 38: The Court should require, whenever possible, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement negotiations and ADR proceedings.

Pro Se Cases

Recommendation 39: For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention or the prisoner has already exhausted the remedies offered by the grievance process or the judge determines that there is no reasonable possibility that the grievance process will resolve the complaint, judges should grant a 90-day stay to permit the grievance process recently certified by the Department of Justice to run its course. The Court should monitor the effectiveness of the grievance process to ensure that the stays actually contribute to reducing cost and delay.

Recommendation 40: The Clerk's Office should hire additional *pro se* staff attorneys to prepare reports and recommendations at an early stage concerning a *pro se* filer's *in forma pauperis* status and the merits of each complaint filed *pro se*. The Court should adopt a procedure that would require the preparation of such reports and recommendations within 2 weeks of the filing of a complaint and an *in forma pauperis* application and would permit one or more judges to consider at an early stage whether or not to dismiss cases as frivolous under 28 U.S.C. §1915(d).

Recommendation 41: Judges should decide as soon as possible after a case is assigned to them whether appointment of counsel is appropriate and, if so, should appoint counsel as early as possible.

Additional Recommendations

The Executive, the Congress, the United States Sentencing Commission, and the Administrative Office of the United States Courts

Recommendation 42: When vacancies arise on the Court, those involved in the selection process should seek to recommend and the President should seek to nominate highly qualified women and men with relevant experience in the courts in the District of Columbia without delay. When nominations are made, the Senate should act expeditiously on all nominees.

Recommendation 43: Better statistics should be collected with a view toward their use in the decision-making process of this Court, other bodies within the judiciary, and the Congress.

Recommendation 44: The Civil Cover Sheet (AO Form JS44) and the classification system should be changed substantially so that civil cases are divided into more meaningful categories that reflect the current caseload of the Court. The case category called "temporary restraining order—preliminary injunction" should be replaced with substantive descriptions of the case.

Recommendation 45: Both Congress and the United States Sentencing Commission should examine carefully the impact of the sentencing guidelines on the workload of federal judges, particularly when judges are required to engage in fact-finding to implement various guidelines.

Recommendation 46: Congress should examine mandatory minimum sentences to determine whether they impose unwarranted burdens on the federal judiciary and others.

Recommendation 47: Congress should provide more resources for the Clerk's Office to ensure that the Clerk's Office can effectively carry out the recommendations contained in this Report.

Space and Facilities

Recommendation 48: The Court should seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, every magistrate judge, and the bankruptcy judge.

Annual Review

Recommendation 49: Pursuant to Section 475 of the Act, the Court should assess annually the condition of the Court's civil and criminal dockets and make appropriate recommendations.

CHAPTER I: INTRODUCTION

A. Background

On December 1, 1990, Congress passed the Civil Justice Reform Act, Title I of P.L. 101-650, 104 Stat. 5090, codified in 28 U.S.C. §§ 471-482. The Act requires each of the 94 federal district courts in the United States to appoint an advisory group to identify the sources of significant cost and delay in civil litigation in that district and to propose reforms where appropriate.

Section 473(a) requires the Advisory Group to consider six principles and guidelines of litigation management and cost and delay reduction: (1) systematic, differential treatment of civil cases; (2) early ongoing judicial control of the trial process; (3) discovery and case management conferences; (4) encouragement of voluntary exchange of information among litigants and other cooperative discovery devices; (5) prohibition of discovery motions absent a certification of a good- faith effort to reach agreement with opposing counsel; and (6) authorization to refer cases to alternative dispute resolution (ADR) programs. Each of these principles and guidelines has been carefully considered by the Advisory Group, and this Report seeks to apply the principles and guidelines to the realities of the U.S. District Court for the District of Columbia.

While the Act sets forth a national strategy for addressing excessive cost and delay in civil litigation, it provides for the implementation of cost and delay measures by each district court. The intent of the Act, and the cost and delay reduction plans developed by each district court, are to provide each court with a practical document that—by incorporating principles, guidelines, and techniques suitable for that court—will focus the entire legal community on the improvement of the civil litigation process.

B. The Advisory Group

On February 13, 1991, Chief Judge Aubrey E. Robinson, Jr., appointed a broad-based, diverse, 25-person Advisory Group (including *ex officio* members) for the U.S. District Court for the District of Columbia. In an effort to ensure that the Advisory Group examined the Court from every relevant perspective, on January 7, 1992, the Court added five members whose client base or experience supplemented that already represented on the committee.

The Advisory Group determined to conduct a thorough analysis of the workings of the Court with the goal of producing a report that would be empirically supported and carefully considered. Both Judge Robinson and his successor, Chief Judge John Garrett Penn, emphasized that the Court wanted a report that would identify problems and propose practical solutions, even in areas where the Advisory Group found the Court was performing well.

As the Report explains, 40 percent of the Court's civil cases involve the United States as a party, and 8 percent involve the District of Columbia. Given the major impact of government cases on the Court's workload, the Advisory Group included representatives from the United States Attorney's Office and the Office of the Corporation Counsel for the District of Columbia. The Advisory Group included lawyers who primarily handle plaintiff's cases, lawyers who primarily handle defense cases,

lawyers with public interest organizations, lawyers with experience in mediation and other forms of alternative dispute resolution, lawyers with experience in criminal cases, lawyers who handle large corporate cases, lawyers who handle cases involving individuals, law professors with experience in civil and criminal litigation, and nonlawyers with an interest in a well-run court. Four district court judges, one magistrate judge, the Clerk of the Court, and the Administrative Assistant to the Chief Judge served as *ex officio* members of the Advisory Group. The names and affiliations of Advisory Group members are included in Appendix B.

C. The Advisory Group Report

The Advisory Group was committed from the start to the principle that every conclusion and recommendation should be supported, to the extent practicable, by data rather than simply by members' anecdotal sense of how the Court worked. The Group gathered all the information it could from lawyers, litigants, judges, Clerk's Office staff, and others who have had significant experience with the Court.

As part of its effort to develop an empirical basis for every recommendation, the Advisory Group carefully studied the historical and current pattern of case filings, both civil and criminal, in this Court, reviewed the statistics made available by the Administrative Office of the U.S. Courts, reviewed randomly selected cases, surveyed lawyers who practice in this Court, and interviewed all the active, senior, and magistrate judges.

The Report begins with a brief explanation of the efforts that the Advisory Group made to collect and analyze information, both objective and subjective, describing how this Court operates. The Report then describes the condition of the civil and criminal dockets and moves to specific recommendations in a number of areas that the Advisory Group believes will improve the handling of civil cases. Pursuant to Section 472(c)(3) of the Act, in making its recommendations the Advisory Group endeavored to ensure that all participants in the civil justice system accept a level of responsibility for reducing cost and delay and facilitating access to the Court.

Virtually every recommendation in this Report was forged by consensus among the many divergent interests represented by the Advisory Group. Each recommendation finds support in the current practices of one or more judges of the Court. The terminology used in this Report might differ from that used by some judges in describing their own procedures, and at times the Advisory Group might be more specific in the suggestions than some judges would be in describing their practices. But there is no recommendation that is not firmly based on practices or procedures already used in the Court. Although judges of this Court, like judges on every court, differ among themselves in their practices, they share a common interest in making the Court work effectively, and each of them provided substantive suggestions to the Advisory Group.

Throughout the Group's work, the judges stated that they often lack the time to make themselves aware of and to benefit from innovations made by other judges on the Court. This Report draws together what the Advisory Group believes are the most effective judicial management techniques used by various judges of the Court. The Group has tried to help accomplish what time may not permit the judges readily to do for themselves: to learn from each other about the management tools their colleagues use to reduce delay and cost in the processing of civil cases.

CHAPTER II: DATA COLLECTION

The Advisory Group gathered data on filings and dispositions, both civil and criminal, to determine whether there were problems of unnecessary delay and excessive cost in the handling of civil cases. Even though the Group was able to obtain some "hard" data on the number of cases filed and terminated (although the data published by the Administrative Office of the U.S. Courts and that produced by the Clerk's Office were not always in accord), it concluded that the words "unnecessary" and "excessive" as they relate to delay and cost are neither self-explanatory nor objective.

The Advisory Group believes that efforts to find an objective way to assess whether there is unnecessary delay in a district are likely to fail. Although it is possible to compare the average time from filing to disposition in one district to the national average, or to the average in other districts, each district is unique. The nature of the cases filed in a district might well support a conclusion that a district should be above or below the national average, or above or below the average in some other district. The Group also concluded that there are virtually no figures available that permit a comparison of costs of litigation in one district to those of another.

The Advisory Group also sought to ascertain from the lawyers and litigants who use the Court, and from the judges who handle the cases, whether they see problems of delay and cost and the magnitude of any such problems. The Group also studied some randomly selected cases previously terminated to decide whether those cases provided useful information on whether there are problems of unnecessary delay and excessive cost in this Court.

A. Attorney Survey

1. Methodology

The Advisory Group started with a survey developed by Ernst & Young for the Advisory Group for the U.S. District Court for the Eastern District of New York. After tailoring the survey to the circumstances of this Court, the Group mailed it to 5,000 attorneys, selected randomly, who had appeared as counsel in one or more cases during the previous 3 years. Specifically included in the survey were the attorneys in the 190 cases that were selected for the docket sheet review described in (Chapter II (B)) of this Report. The questionnaires were coded so that the responses of counsel in the 190 docket review cases could be segregated and examined independently of the other responses.

The survey consisted of 61 questions (some with multiple parts), three of which called for narrative answers. The questions focused on a broad range of issues relating to potential causes of excessive cost and delay in civil cases and asked for opinions on a variety of solutions, including more rigorous, hands-on case management by judges and greater use of various alternative dispute resolution techniques. A copy of the questionnaire is included in Appendix H.

The attorneys were told that their responses were confidential and their anonymity preserved. The Advisory Group arranged for all surveys to be returned to Ernst & Young, rather than to the Court. The Group expresses its gratitude to Ernst & Young for processing the survey responses and providing computer printouts of the results sorted in a variety of ways (which made it easier to understand their significance), all at no cost to the Group or the Court.

2. Findings

Approximately 25 percent (1,251) of the attorneys who were mailed the questionnaire returned a completed survey. The Advisory Group would have preferred a larger response, but it has been advised that the number of surveys returned is statistically significant. The numerous written comments indicate that the respondents paid careful attention to the survey and that they regard the issues of cost and delay as important. The survey demonstrates a belief among the lawyers who use the Court that there are problems of unnecessary delay and excessive cost, and that there are solutions to these problems. Throughout this Report there are recommendations strongly supported by the attorney surveys.

Although the survey cannot reflect the views of every lawyer who practices in this Court, it does represent the views of a broad cross-section of those lawyers. The opinions expressed in the survey, therefore, were carefully considered by the Advisory Group. A compilation of the survey results and a condensed version of the narrative responses are included in Appendix E.

The surveys were mailed to several categories of practitioners in this Court. The breakdown of the responses by category type is as follows: 81 percent private law firm; 8 percent federal government; 1 percent state government; 1 percent local government; 3 percent in-house corporate counsel; 3 percent independent nonprofit organizations; and 3 percent others. Two-thirds (66 percent) of all the lawyers who responded have been practicing law for 11 or more years.

Of those responding, 59 percent thought they encountered unreasonable delay in this Court, and 57 percent attributed the delay to judicial practices. The most frequently mentioned causes of delay were failure to resolve discovery disputes promptly (27 percent) and failure to resolve other motions promptly (55 percent).

On the cost side, approximately 57 percent of the lawyers found civil litigation to be unnecessarily costly, and 40 percent attributed the cost to the conduct of counsel. The most frequently criticized tactics that contribute to excessive cost and delay were failure to attempt in good faith to resolve issues without court intervention (30 percent) and overbroad document requests (35 percent).

When asked about the ways to reduce cost and delay, survey respondents expressed interest in alternative dispute resolution techniques, such as mandatory arbitration in which the amount is less than $100,000 (28 percent) and requiring lawyers to have settlement conferences (25 percent). Among 43 proposed solutions, the most frequently selected response by survey respondents was to require judges to issue decisions on motions, or after nonjury trials, within a set time (60 percent). The second most common response was to require automatic disclosure of the qualifications, the opinions, and the basis for those opinions of experts intended to be called as trial witnesses prior to the final pretrial conference (58 percent), as many judges now require.

B. Docket Sheet Review

1. Methodology

With the assistance of the Federal Judicial Center, the Advisory Group randomly selected 190 cases from among the 3,051 civil cases terminated between July 1, 1990, and June 30, 1991 (statistical year 1991). Ten cases were selected from each of 19 categories (Student Loan, Miller Act, Other

Contract, Motor Vehicle Personal Injury, Malpractice and Product Liability, Other Tort, Civil Rights and Employment—U.S. Party, Civil Rights Employment—Private, Other Civil Rights (except Prisoner), Habeas Corpus and Prisoner Mandamus Actions, Prisoner Civil Rights—Non-U.S. Party, Prisoner Civil Rights—U.S. Party, ERISA, Other Labor, Other Statutory Actions—Private, Other Statutory Actions—U.S. Party, FOIA, Potentially Complex, and All Other), with five cases chosen from among the 20 percent oldest cases in each category and the other five selected from among the other 80 percent of the category.

A small group of Advisory Group members reviewed the docket sheets for the selected cases. Each person reviewed approximately 38 cases, with an eye to assessing whether the time required to dispose of the case was about right, slightly too long, or much too long. If a determination was made that a case took too long, the Group member who reviewed it tried to identify why. When the docket sheet did not provide sufficient information to justify a judgment as to the time required for disposition or the reasons for delay, the Group member examined the actual Court file in the case before reaching a conclusion. A copy of the docket sheet review form is included in Appendix F. Although Advisory Group members individually reviewed the docket sheets, most of the reviews were done in a group setting in which members could discuss cases as they reviewed them.

2. Findings

Recognizing that this random review of cases described above was not in any way scientific and may or may not be representative of the Court's entire docket, the docket sheet review nevertheless did corroborate certain views expressed by the judges in their interviews and the opinions of the attorneys who were surveyed. The docket sheet review was also invaluable in giving the Advisory Group a good sense of the case management procedures used in this Court. The Advisory Group found that there is a problem of unnecessary delay in some cases. Although the docket sheets were extremely helpful to the Advisory Group in understanding the variety of causes for delays in civil cases and in assessing whether delays are reasonable or unreasonable, the docket sheets contained no information about the costs to the litigants. The docket sheet review did not indicate that some categories of cases are always delayed or that some judges always took a long time to decide cases.

The docket sheet review did reveal, however, that patterns emerged in the cases in which excessive delay was identified. In some cases, the delay was attributable to the current practice of some judges of referring discovery issues to magistrate judges. As the interviews with magistrate judges confirmed, these referrals are sporadic and often inefficient because magistrate judges usually have no prior familiarity with a case and thus must invest substantial effort before they feel comfortable in resolving disputes. The Group also found that delays of many months (or sometimes longer) often occurred after a dispositive motion was submitted or a bench trial was completed. Finally, the Advisory Group noted that in some cases frequent extensions of time were granted for filing and responding to motions.

The docket sheet review also revealed that judges who manage their cases actively tended to have few problems of delay. When decisions on dispositive motions and findings of fact and conclusions of law in bench trials followed closely upon submission of a case for decision, the docket sheets indicated that a case would be disposed of efficiently and without undue delay. The same was true when discovery disputes were resolved promptly by the trial judge.

C. Judges' Interviews

1. Methodology

In early 1992, the Advisory Group interviewed each of the 14 active judges, the six senior judges and the three magistrate judges. To make the process more efficient, the Advisory Group used a two-tiered approach. First, to reduce the amount of time needed for the actual interview and to educate the interviewers beforehand, the judges completed a pre-interview questionnaire concerning their case management practices and provided a copy of their standard orders following Rule 16 conferences. Second, the Advisory Group sent each judge, in advance of the interview, a one-page outline of the issues that would be discussed. Copies of the pre-interview questionnaire, the one-page outline of issues, and a list of the judges and magistrate judges interviewed are included in Appendix G.

To maintain continuity, each interview team consisted of three people: (1) one member of the Advisory Group (each was given the opportunity to participate in at least one interview); (2) Paul L. Friedman (Advisory Group Chair) or John D. Aldock (Chair of the Court's Committee on Local Rules and a member of the Advisory Group) or Professor Stephen A. Saltzburg (Advisory Group Reporter); and (3) Elizabeth H. Paret (CJRA Administrative Analyst).

The judge was informed that his or her comments would be confidential (i.e., they would be shared with the members of the Advisory Group, excluding *ex officio* members, but comments would not be attributed to any judge in any report or circulation that went beyond the Advisory Group). Following the interview, one member of the interview team prepared a report of the interview, based on a model form, so that each judge's views on a subject could be compared with those of other judges. A draft of the interview report was sent to the judge for any necessary corrections.

2. Findings

The interviews were candid, and the information provided by the judges was extremely useful to the Group's understanding of the workings of the Court, its problems, and how different judges dealt with them. To a person, the judges of this Court understand the need for judicial management and facilitation in the processing of civil cases and are committed to making the goal of Fed.R.Civ.P. 1—a prompt and fair disposition of all civil cases—a reality.

Each of the judges has adopted techniques that he or she has decided work to move cases along. For some, a key technique is to have the parties appear at regular intervals before the Court. Others adopt the opposite approach and seek to impose deadlines that the parties are expected to meet without the necessity of routine appearances. The fact that the techniques differ is not as significant as the overall commitment to the management of cases. The Advisory Group endeavors in this Report to build upon this commitment and to suggest some ways in which management might be strengthened and made more consistent throughout the Court.

Overall, there was a general sense from the interviews that the judges did not believe there was a major problem with excessive cost and delay in this Court. Many judges believed that there might be too much discovery in at least some cases, discovery lasted too long, and there were too many discovery disputes. Most of the judges believe that the key to managing their caseload effectively is setting and keeping strict deadlines and exercising strong judicial control. This practice, however, is difficult to sustain when the criminal caseload makes increasingly heavy demands on the judge's civil calendar.

As the Report explains in Chapter VI, the judges' main complaint was with the increase in the criminal docket generally, and particularly the number of relatively small narcotics cases prosecuted in federal court. Many judges said that these criminal cases should be brought in the Superior Court of the District of Columbia and that the existence of federal sentencing guidelines and mandatory minimum statutes did not warrant bringing what should be local cases in district court. Even judges who did not directly address the United States Attorney's charging patterns remarked that, with the Speedy Trial Act, the increase in the criminal caseload had made it difficult to maintain firm trial dates for civil cases. Many judges also expressed concern about the impact of the sentencing guidelines and the additional work they imposed on the Court. Some judges also said that mandatory minimum- sentencing statutes, together with the guidelines, reduced the plea rate and increased the number of trials.

Some judges thought that lawyers representing the Office of the Corporation Counsel for the District of Columbia commonly sought extensions of time that delay the disposition of civil cases. Some judges noted that the Office has improved the quality of its representation recently.

Although senior judges do not handle many criminal cases, they shared the concern of the active judges about the increase in the criminal caseload and the adverse impact it has on civil cases. Senior judges also mentioned that upon taking senior status they lose their regular courtroom deputy and court reporter. While that may seem inconsequential, the senior judges noted that it is sometimes difficult to be as efficient in the courtroom with shifting personnel as it is with regularly assigned personnel.

The interviews also disclosed that judges faced with problems were sometimes unaware of how other judges had resolved the same or similar problems. In fact, the Advisory Group observed that the individual caseloads of the judges so occupied their time that they often had no knowledge of management techniques that one of them might have implemented successfully and that might work for them as well.

D. Interview of Courtroom Deputies

1. Methodology

The Advisory Group's reporter and the CJRA Administrative Analyst met with a group of courtroom deputies for an informal discussion of some of the information that the Group had gathered. The deputies candidly discussed such issues as the impact of criminal cases on the civil docket and the extent to which a trial date, once fixed in a civil case, actually would be honored. The deputies were assured that their comments would not be attributed to any particular deputy and that the *ex officio* members of the Group would not be apprised of the statements made by a particular deputy.

2. Findings

The discussion with the courtroom deputies confirmed much of the data gathered from other sources. The deputies agreed with what the judges said about criminal cases bumping civil cases. The courtroom deputies said that virtually every civil case is bumped at least once and that it is virtually impossible for an active judge to guarantee a firm trial date for civil cases. The deputies explained how the judges have tried to accommodate the rise in criminal cases. Many judges have made efforts to streamline trials and improve their in-court procedures to reduce wasted time at trial. The courtroom deputies also noted that, when cases settle on the eve of trial, trial dates are often wasted.

Although some judges have experimented with "trailer" cases or "double booking" trial dates, they found that the parties who have prepared for a trial that is not actually set are unfairly burdened if the case does not go to trial.

E. Interviews With Clerk's Office Senior Staff

1. Methodology

The CJRA administrative analyst met with the Clerk of Court and several members of the Clerk's Office senior staff to discuss their perspectives on cost and delay in civil litigation. The analyst also attended weekly meetings of the senior staff when many of the issues noted below were discussed.

2. Findings

The mission of the Clerk's Office is to provide the Court, the Bar, and the public with courteous and efficient service. The principal services to the Court are computer support and administrative and case management support, including docketing, filing, and assistance with calendar control. The primary services to the Bar and public are timely and accurate processing of case documents and courteous responses to requests for assistance and information.

The senior staff expressed a concern about the ability of the Clerk's Office to maintain a high level of service in light of decreased staffing allocations, added responsibilities from the Administrative Office of the U.S. Courts and the Civil Justice Reform Act, and budget cuts. The Clerk's Office has been doing more with less for several years; there is real concern that it will not be able to continue absorbing more responsibilities while its staffing and funding continue to decrease. The Administrative Office allocates positions to the Clerk's Office based on a formula that includes case filings, the number of judges, and the number of office divisions. Since 1986, staffing has been restricted to 90-98 percent of authorized positions, and the Clerk's Office is currently staffed at 96 percent of its authorized positions. This is due in large part to budgetary constraints imposed by the Gramm-Rudman-Hollings Act. Depending upon the state of the federal budget, the staffing formula is reduced by a percentage that reflects the shortfall in dollars. Based on a revised work measurement study recently conducted by the National Academy of Public Administration, however, the Clerk's Office, with 76 positions, is actually 15 percent below its full staffing allocation.

The Administrative Office is also decentralizing many of the tasks it performs by shifting responsibility to Clerk's Offices throughout the country. Although many functions, including budget control, are being transferred to the Clerk's Offices, positions to do the work are not being transferred. Decentralization has increased the workload of Clerk's Office staff and has created a burden in the handling of the Court's daily paper flow.

The overall budget crisis affecting the federal government is also having an impact on the work of the courts. There is constant growth in workload experienced by the courts; this growth is due in large part to forces beyond the judiciary's control, such as executive and legislative initiatives. Based on the Court's anticipated workload and funding, the senior staff in the Clerk's Office believe that they must plan for the possibility of furloughs and/or layoffs, reduced services and access to the Court, reduced courthouse security, and cessation of civil jury trials.

F. Literature Review

1. Methodology

The Advisory Group identified and reviewed relevant articles, editorials, and reports issued by various agencies and organizations (e.g., the Federal Judicial Center, the Administrative Office of U.S. Courts, the Federal Courts Study Committee, the American Bar Association) and law journal articles that addressed issues similar to those under consideration by the Group. The Group considered both professional and lay publications in an effort to become familiar with all suggestions for reform that might be worthy of consideration and of public attitudes toward the federal courts in general and this Court in particular.

2. Findings

There are substantial disagreements among judges and lawyers as to the extent to which delay is a problem in federal courts and as to the amount of money that litigants are forced to spend unnecessarily in the course of federal litigation. Nowhere was the disagreement more evident than in the comments submitted to the Advisory Committee on the Federal Rules of Civil Procedure in connection with its proposed amendments to the civil discovery rules. Having proposed substantial changes in civil discovery practice, several of which are discussed in connection with specific recommendations that the Advisory Group makes in this Report, the Civil Rules Committee indicated at one point that, in view of the opposition that had been voiced to the proposed changes, it would abandon some of the most significant changes. In the end, however, the changes were approved, sent forward to the Judicial Conference, and ultimately submitted on behalf of the Supreme Court (over three dissents) by the Chief Justice to the Congress on April 22, 1993. The debate continues in the Congress, however, on the proposed amendments.

The Advisory Group found that some of the strong divisions that exist regarding the extent to which unnecessary delay and excessive cost are problems can be explained by the differences that are apparent in the caseload mix and the types of cases that comprise the caseload in different districts. The District of Columbia is unique among district courts in several respects: the United States Attorney has a choice of bringing many criminal cases either in the Superior Court or in the District Court; almost half the civil cases filed here involve either the United States or the District of Columbia government; many important and difficult civil cases involving governmental agencies and practices are brought here; and certain types of cases (e.g., Freedom of Information Act suits) are especially likely to be filed in the District of Columbia and often involve a substantial number of documents.

The Advisory Group found that the literature review was helpful in pointing out various views as to the scope of the problems facing federal courts and on possible solutions. But the Group concluded that the differences among districts requires a careful assessment of the problems that exist in any particular district and a selection of remedies that recognizes the culture and traditions within a district and the reasons why some remedies are particularly likely or unlikely to be embraced by the judges and lawyers there.

G. Examination of Other Reports and Other Districts

1. Methodology

The Advisory Group also reviewed the reports and proposed plans that were developed by similar advisory groups in other districts. The reporter created a chart that summarized the key features of many of the reports of early implementation courts. The Group's chair, the reporter, the CJRA administrative analyst, and Judge Royce C. Lamberth, one of the *ex officio* judicial members, traveled to St. Louis, Missouri, for a 2-day program conducted by the Federal Judicial Center on implementation of the Civil Justice Reform Act.

In addition, the CJRA administrative analyst went to Pittsburgh, Pennsylvania, and Wilmington, Delaware, to see how *pro se* cases are handled there. The information she gathered assisted the Advisory Group in identifying alternative models for dealing with an important part of the Court's civil docket and facilitated discussions with the Federal Judicial Center and the Administrative Office of the U.S. Courts as to the funding that is available for the Clerk's Office and the extent to which funding one position takes money from another position.

2. Findings

The Advisory Group paid careful attention to the recommendations adopted by other advisory groups, particularly those with wide support. But the Group also followed the advice of the Federal Judicial Center and Judge Robinson and decided that its most important task was to focus on the unique characteristics of this Court and to make recommendations that fit the needs of this Court, regardless of whether they would be appropriate for other district courts.

H. The Advisory Group's Initial Work and Draft Report

The full Advisory Group met monthly from March 1991 through May 1992. The Group met twice in June 1992 for two full days and three times in October 1992. The early meetings were used as briefing sessions to learn more about the Court's caseload and resources. Nancy Mayer-Whittington, the Clerk of Court, provided the Group with an overall picture of the Court's caseload and statistics. Judge Thomas F. Hogan and Magistrate Judge Patrick J. Attridge gave a presentation on the use of magistrate judges nationally and how district judges of this Court use magistrate judges. Judge Royce C. Lamberth provided the Group with a description of how civil cases move through the system. Finally, the Advisory Group was briefed by Linda J. Finkelstein, the Circuit Executive, and Nancy E. Stanley, Director of the Court's Alternative Dispute Resolution (ADR) Program, on the Court's ADR Program and ADR techniques practiced nationally.

After these initial briefing sessions, the Advisory Group created six subcommittees to work in various areas: Caseload Assessment and Statistics; Alternative Dispute Resolution and Settlement; Utilization of Senior Judges, Magistrate Judges, and Special Masters; Pretrial Proceedings, Discovery, and Motions Practice; Trial Practice and Management; and Government Litigation and *Pro Se* Cases. Initially, the subcommittees met more often than the full Advisory Group and gathered data to augment the information obtained from the judges' interviews, attorney survey, and docket sheet review. Each subcommittee drafted a report with its recommendations for its subject areas. The full Advisory Group met for two days in June 1992 to discuss the subcommittee reports and recommendations and to formulate the content of the Advisory Group's Draft Report. That Draft Report was circulat-

ed to the Court, the Bar, and the public in February 1993. Reactions to it are discussed in the following Section.

I. Distribution of the Draft Report and Analysis of Comments

1. Methodology

The February 5, 1993, Draft Report was circulated widely to virtually all bar associations and other interested groups. Copies were available to any member of the Bar or any interested person, and the Advisory Group did all that it could to invite input from judges, lawyers, litigants, and interested citizens. The chair of the Advisory Group accepted invitations to discuss the Draft Report at in-house sessions of law firms and at the Council for Court Excellence. A total of 550 copies of the Draft Report were distributed. Members of the Advisory Group received informal and largely positive feedback from many people who reviewed it. In addition, during the public comment period, 30 individuals, organizations, and agencies submitted written comments. A list of those who submitted written comments is included in Appendix J.

On April 20, 1993, the Advisory Group held a public hearing on the Draft Report. The chair, the reporter, the CJRA administrative analyst, and six members of the Advisory Group were present. Five witnesses testified, representing the Council for Court Excellence, the Litigation Section of the D.C. Bar, the Courts, Lawyers and Administration of Justice Section of the D.C. Bar, the D.C. Prisoners' Legal Services Project, Inc., and the Bar Association of the District of Columbia. Copies of the testimony, their written statements, and the written submissions of persons who did not testify were circulated to all members of the Advisory Group and carefully considered as the Advisory Group assessed the various reactions to the Draft Report.

In addition to reviewing all comments submitted by bar groups and individuals, the Advisory Group invited the judges of the Court to submit views and to meet with members of the Group. Two of the active district judges and two of the magistrate judges asked for and participated in a second round of interviews. This Final Report takes into account all of the available data and all the opinions and suggestions made by the judges and by the bar groups and lawyers who commented on the Draft Report.

2. Findings

The greatest concern among lawyers who commented on the Draft Report was whether it adequately dealt with problems frequently encountered in discovery. Although the comments were not unanimous, the Council for Court Excellence, the D.C. Bar's Section on Courts, Lawyers and the Administration of Justice, and the Bar Association of the District of Columbia all recommended that the Advisory Group recommend greater limits on discovery than were contained in the Draft Report. Some of the comments also supported the use of magistrate judges to assist in resolving discovery disputes and in freeing district judges to do the other tasks that cannot be delegated. Several comments also suggested that the Advisory Group clarify its recommendations with respect to *pro se* litigants.

While generally agreeing with the principles of prompt judicial decision making, the judges were most concerned about the Draft Report's suggested time limits for decisions by judges on motions and for entering findings of fact and conclusions of law in bench trials. The Advisory Group notes that during the time that the judges were commenting on the Draft Report, there were four vacancies on the

Court, and one active judge was not taking new cases because of an illness. (With Judge Revercomb's death on August 1, 1993, there are now five vacancies.) As a result, the suggestion that the judges should be completing various tasks under deadlines could not have been raised at a worse time.

The Advisory Group has made every effort to respond to the issues raised in the comments by the Bar and by the Court. But the Group adheres to the fundamental principles that underlie its Draft Report, because it believes that those principles are sound and will provide a framework for the Court to handle civil and criminal cases efficiently and fairly in the future.

CHAPTER III: STATE OF THE DOCKET

Section 472(c)(1)(A) of the Act requires advisory groups to examine the docket of their district. Recognizing the importance of that undertaking and of how the docket has changed over the years, the Advisory Group studied the Court's statistics for a 7-year period. Although the Group can say with confidence that the statistics represent the best information that exists for each statistical year (SY) (e.g., SY 1991 begins on July 1, 1990, and ends on June 30, 1991), the Group concluded that the statistics are problematic in several important respects and must be viewed with caution.

There are two problems with the available statistics that illustrate why the Advisory Group urges caution in making a statistical case for any specific proposal: cases are grouped into overly broad categories, and there are inadequate statistics based on the actual case assignment system employed by the Court.

The first problem was apparent at several stages of the Advisory Group's deliberations, especially when it considered proposals to adopt special procedures for certain kinds of cases (e.g., to refer certain kinds of cases to a particular alternative dispute resolution (ADR) process). When the Group examined the available statistics, it found, for example, that, in the contract cases, "other contracts" accounted for 68 percent of all contract cases; in personal injury cases, "other personal injury" comprised 37 percent of the cases; and in civil rights cases, "other civil rights cases" accounted for 21 percent of the filings. When the Group examined *pro se* cases, it had difficulty determining which cases were prisoner cases, which were employment cases, and which fell into other categories.

There are similar problems with terminations. The statistics for civil cases purport to indicate the stage of the proceeding at which a case is terminated (e.g., dismissed, settled before trial). But they do not reveal what actually occurred in a case or the amount of judicial time spent in particular subcategories of cases—information that might be very useful in deciding on solutions to problems of excessive cost and delay. For example, if 95 percent of all automobile accident cases were settled with less than 2 hours of judge time, there would be no need for an elaborate ADR program for them. If only categories of cases have discovery disputes—or for that matter any significant discovery at all—then the Advisory Group should know that when making policy recommendations. But this information often is impossible to discern because the breadth of the categories (e.g., "other contract" and "other personal injury") made it extremely difficult to make meaningful recommendations for particular categories of cases with precision or confidence.

This problem of statistical overbreadth was not confined to civil cases alone. For example, one set of statistics for criminal cases noted that 200 of 853 criminal cases in SY 1991 were dismissed, without also indicating whether the dismissal was the result of a superseding indictment, a prosecutorial decision to drop charges, or another development. The criminal statistics for felony indictments in SY 1991 indicate that 519 of 706 felony indictments were narcotics cases (74 percent), with only one other category greater than 5 percent of the total number of indictments (fraud cases 8 percent). The large number of narcotics cases provides information as to the emphasis of the United States Attorney's Office, but little assistance in understanding the differences among these cases in terms of the demands they place on the judicial system. The Advisory Group found little data that would indicate the time required of judges to handle cases by various types or the time actually spent on particular cases.

The Advisory Group also found that the statistics on judicial allocation of time to civil and criminal cases were not helpful. In looking at in-court hours, which includes civil trials, criminal trials, and other procedural hours, "other" procedural hours made up nearly 63 percent of the 3,883 total procedural hours, which itself represented 31 percent of the total in-court hours for all judges of the Court in SY 1991.

A second problem is the inadequacy of the case assignment statistics. The case assignment form lists eight categories of cases. These categories do not correlate, however, with the "nature of suit" boxes on the other side of the Civil Cover Sheet form that attorneys complete. (A copy of the case assignment form and JS44 Civil Cover Sheet is included in Appendix K.) The assignment form includes categories of cases (e.g., temporary restraining orders and preliminary injunctions, with exceptions) that do not separate cases according to subject matter. Although it makes sense for the Court to seek to identify temporary restraining orders and injunctions as "emergency" or time-sensitive matters that should be divided among the judges, it would be preferable to categorize cases on the basis of reasonably well-defined subject matter groupings and also to identify emergency matters.

The current assignment system results in large numbers of cases being forced into a few categories, with most categories being extremely small. "General civil" cases amount to somewhere between 60 and 70 percent of all cases, and to an even higher percentage of *pro se* prisoner cases. Because the bulk of civil filings are in one category, this provides little assistance in assessing the time required by different types of cases. While this category contains most cases, other categories cover only a small percentage of the filed cases. For example, antitrust cases have amounted to less than 1 percent of the cases filed over 5 years, and malpractice cases (legal and medical are lumped together) account for less than 2 percent of the cases filed each year. Another category, Freedom of Information Act cases, has less than 5 percent of the filings each year.

The Advisory Group concluded that these problems and others justify caution in making a statistical case for any particular proposal. While there are some trends in the statistics that the Group believes are significant, for the most part the Group has relied upon statistics that find confirmation in the attorney surveys, judges' interviews, and the other sources that the Group has reviewed.

Three other points should be made in connection with this statistical overview. First, the Clerk's Office has typically published data on a calendar-year basis, while the Administrative Office has typically reported on a statistical-year basis. The Advisory Group requested and obtained some statistical-year information from the Clerk, but also tried to meld the Clerk's Office data with the data from the Administrative Office. To complicate matters further, the Administrative Office now reports statistical data on a fiscal-year basis (i.e., October 1 to September 30).

Second, statistics frequently are reported on a "per-authorized-judgeship" basis. Although that permits one court to compare its work with national data, it does not account for the contributions of senior judges in this or any other district. In this Court, senior judges make significant contributions, particularly in civil cases, that are not accounted for in the per-authorized-judgeship figures.

Third, judicial vacancies may burden a court significantly but may not be accounted for in the data. For example, the per-authorized-judgeship statistics were maintained on the assumption that there were 15 active judges. But two vacancies have existed since Judge Boudin resigned in January 1992 and Chief Judge Robinson took senior status in March 1992. Since Judge Oberdorfer took

senior status in July 1992 and Judge Gesell died in February 1993, there have been four vacancies. In view of Judge Revercomb's illness and his inability to take new cases (and the reassignment of the majority of his old cases), there have effectively been only 10 active judges on the Court. (Judge Revercomb died in August 1993.)

In Chapter XIII, the Advisory Group offers several recommendations regarding the collection and use of statistics by the Court and the Administrative Office.

CHAPTER IV: THE DOCKET AT THE END OF 1991

A. Overview

When the Advisory Group circulated its Draft Report, it had analyzed the Court's docket for a 7-year period, from SY 1985 to SY 1991. The trends that were apparent informed the Group's recommendations. This 7-year analysis is set forth in this chapter, and the post-SY 1991 data, which the Advisory Group has considered more recently, are discussed in Chapter V.

1. Filings

In SY 1991, 3,902 civil and criminal cases were filed in this Court. This total was slightly higher than the 3,883 cases filed in SY 1990. Over a 7-year period (SY 1985–SY 1991) there was a decrease of 833 cases (20 percent) filed. The total number of cases filed in SY 1990 and SY 1991 was lower than at any time since 1980.

This decrease is the result of a relatively steady decrease in the number of civil cases filed. From SY 1985 to SY 1991, the number of civil cases filed fell from 4,199 to 3,099, a 26 percent decrease. In contrast, criminal filings increased from 536 to 803 during the same period, a 50 percent increase. The greatest increase in criminal cases occurred between SY 1990 and SY 1991, when the filings rose 33 percent from 602 to 803. As a result of the decrease in civil filings and the increase in criminal filings, the ratio of criminal filings to total filings rose from 11 percent in SY 1985 to 21 percent in SY 1991.

The number of cases filed per authorized judgeship decreased almost 20 percent since SY 1985, although the number remained constant at 254 for SY 1990 and SY 1991. By comparison, the national averages per judgeship were 437 and 372 for SY 1990 and SY 1991, respectively. In SY 1991, this district ranked 81st out of all 94 districts in filings per judgeship. The data do not reflect the complexity of cases and the time required by judges to decide them. Because some cases are more difficult and time-consuming than others, the Administrative Office calculates and reports "weighted filings" per judgeship in each district. (The weighted filings system, however, is outmoded and in the process of revision.) Weighted filings in the Court decreased from SY 1985 to SY 1990, but rose 4 percent between SY 1990 and SY 1991. Weighted filings per judgeship were 339 in SY 1991, which was below the national average of 393 for that year. During the period from SY 1985 to SY 1991, the number of weighted civil cases declined from 364 per judgeship to 288, while the number of weighted criminal cases rose from 38 to 51.

2. Terminations and Pending Cases

The Court terminated 3,662 cases in SY 1991. This represented a 23 percent decrease in the annual termination rate since SY 1985. At the same time that the termination rate decreased, the number of pending cases increased. As a result, the total number of pending cases rose 20 percent between SY 1985 and SY 1991. Despite this increase, the Court reported fewer pending cases (299) per authorized judgeship than the national average (422) in SY 1991.

3. Trials and Other Contested Proceedings

In SY 1991, 716 "trials and other contested proceedings" were conducted in the Court—an increase of 202 over the number conducted in SY 1985. During this period, the number of civil trials

and contested proceedings decreased by approximately 28 percent, while the number of criminal trials and contested proceedings more than doubled. In SY 1991, 48 trials and contested proceedings were completed per authorized judgeship in the Court, while the national average was only 31.

B. Civil Cases

1. Civil Filings

As noted above, the number of civil cases filed in the Court decreased by 26 percent from 4,199 in SY 1985 to 3,099 in SY 1991. The number of civil filings per authorized judgeship dropped from 280 to 207 in the same period. In SY 1991, the District of Columbia ranked 84th among all districts in the number of civil filings per judgeship.

Although there was a decrease in the number of civil filings over the 7-year period, there does not appear to have been any significant change in the general composition of the civil docket. Included in Appendix L is a table showing the relative distribution of civil filings over the 7-year period. It indicates that decreases in the number of cases filed in the broad categories of "torts" and "other civil" (which include all cases against the federal government) account for 64 percent of the 1,100 case drop in the number of civil filings. Notwithstanding the declines in these two categories, they continue to rank one and two (612 and 611 filings), respectively, in the hierarchy of cases filed in SY 1991. These categories are followed by contracts (522) and civil rights (410) in SY 1991, a ranking that is consistent with that for SY 1985. Civil rights cases dropped in number during this period, but became a slightly larger percentage of the total civil filings. Torts, "other civil," contracts, and civil rights cases accounted for 69 percent of all civil cases filed in SY 1991.

The remaining categories of cases in SY 1991 (in descending size) were prisoner petitions (324), labor (258), recovery actions (142), real property (109), social security (43), copyright (32), antitrust (20), and forfeitures/tax suits (19). In SY 1985, the rankings of these categories were labor (354), recovery actions (328), prisoner petitions (310), social security cases (89), copyright (46), real property (39), forfeiture/tax suits (26), and antitrust (13). The most noticeable decreases in the number of filings are evident in labor, recovery actions, and social security cases. Although real property cases increased threefold from SY 1985 to SY 1991, the absolute number of such cases was small.

It is difficult to draw many useful conclusions from these figures. As noted above, the Advisory Group does not know the types of cases contained within the categories "other civil," "other civil rights," "other torts," or "other contracts" and how these subcategories may have changed over the years. A better, more refined list of categories would have to be developed to draw any meaningful conclusions. The number of *pro se* cases was substantial throughout the 7-year period. In the last 3 years they have declined from 982 in 1989 (28 percent of all civil cases filed) to 784 (25 percent) in 1990 to 602 (18 percent) in 1991. The Group has been unable to determine the reason for the decline. Because the plaintiff in a *pro se* case lacks counsel, the Court frequently assumed burdens in these cases that would be borne by counsel in other cases. These burdens required the judges, or other in-chambers staff, to spend time handling administrative matters in *pro se* cases that might better be spent on other matters.

2. Terminations and Pending Cases

This Court ranked among the fastest in the nation in median disposition time. In SY 1991, the median disposition time from filing of a civil case to disposition was 6 months—the fourth fastest disposition rate in the country. The number of civil cases terminated in SY 1991 (3,051) was slightly less than the number of filings (3,099). The number of cases terminated in SY 1991 was the second lowest since SY 1985. SY 1987 had the fewest terminations (2,999).

According to data from the Clerk's Office, most civil cases had been and continued to be disposed of by "dismissals," even though the number and proportion of "dismissals" had decreased since SY 1987. In SY 1987, there were 1,816 dismissals, accounting for 52 percent of all closed civil cases. In comparison, SY 1991 had 1,631 cases terminated by dismissal, accounting for 48 percent of all closed cases. The term "dismissal" does not provide much information about how and why a case was terminated or at what stage of the process it was terminated.

Several trends are apparent in the period beginning in SY 1987 and ending in SY 1991. The number and proportion of civil cases settled before or during trial rose from SY 1987 to SY 1990, but fell in SY 1991. The number of cases resolved by summary judgment rose from 315 in SY 1987 (9 percent) to 400 in SY 1991 (12 percent). The number of dispositions by trial decreased from 144 (4 percent) to 118 (3 percent) during this period. The most evident trend was in the volume of civil cases transferred to other districts: a rise from 4 to 12 percent. The Advisory Group believes that the principal reason for this increase was the increase in cases involving the Resolution Trust Corporation, which were required by statute to be filed in the District of Columbia, but which were then transferred almost immediately to the locations where the failed financial institutions are located, generally with the consent of all parties.

Although the total number of pending civil cases in SY 1991 (3,894) was higher than in SY 1985 (3,481), total civil cases pending dropped by 581 cases (13 percent) between SY 1987 and SY 1991. This drop is consistent with a national trend that shows the number of pending civil cases decreasing every year from SY 1988 to SY 1991.

3. Age of Pending Cases

The statistics, properly interpreted, demonstrate that, except for a modest drop between SY 1985 and SY 1986, the number of pending civil cases over 3 years old steadily rose from 143 cases at the end of SY 1985 to 649 at the end of SY 1991. Nevertheless, the number of these older cases pending per authorized judgeship (33 in SY 1990 and 43 in SY 1991) was below the national average (44 in both years).

The pending caseload of older cases has been influenced by a large number of claims arising from two unusual matters. One set of claims arises from the Korean Air Lines disaster which occurred on September 1, 1983. Between 1985 and 1988, 105 civil cases relating to that disaster were filed, and none had been fully resolved by the end of SY 1991. A jury verdict was rendered for the plaintiffs on liability issues only, and the Supreme Court denied certiorari in 1992. The Clerk's Office predicted that 81 of these cases would be transferred, and 24 would remain for a determination of damages.

A second set of claims was filed by the families of Filipino veterans who fought under the command of the United States during World War II. The families brought 489 claims for social security

benefits from 1985 to 1988, all of which now are more than 3 years old. The Court of Appeals recently decided a controlling issue in these cases, and this Court is considering whether to consolidate the cases. The Clerk's Office predicts that a large number may be dismissed.

These two sets of cases accounted for 376 or 58 percent of the 649 cases pending for 3 years or more in SY 1991. If these cases are disregarded, the number of older cases in the Court per authorized judgeship (18) is far less than the national average (44).

4. Civil In-Court Time

Using the definition of "trials" provided by the Administrative Office (i.e., all contested proceedings in which evidence is introduced, which includes evidentiary hearings on contested motions as well as formal trials), 255 civil trials and other contested proceedings were held in the Court in SY 1991, down from 352 in SY 1985. Thus, assuming 15 active judges, each judge tried 6.4 fewer civil cases in 1991 than in 1985. Throughout the period from SY 1985 to SY 1991, the vast majority of contested proceedings lasted 3 days or less, with contested proceedings of 1 day or less constituting approximately one-half of all contested proceedings. In SY 1991, 206 (81 percent) of all civil trials and contested proceedings lasted 3 days or less. These 206 cases broke down as follows: 150 (59 percent) lasted 1 day; 38 (15 percent) lasted 2 days; and 18 (7 percent) lasted 3 days.

Although the Administrative Office does not report statistics on the number or length of civil trials by nature of suit, the Clerk's Office provided to the Advisory Group information on the number of civil trials in various categories of cases from January 1988 through September 1991. Of 404 trials, 206 were tort cases, 101 were civil rights cases, and 59 were contract cases. Of the tort cases, 63 (31 percent) took 4 to 9 days to try, and 20 (10 percent) took 10 or more days to try. The most common tort cases were motor vehicle cases; the second most common were "other personal injury" cases; and the third most common were medical malpractice, which are more likely to require a substantial amount of trial time.

Of 101 civil rights trials, 31 (31 percent) took 4 to 9 days to try, and 24 (24 percent) took 2 days. A higher percentage of civil rights cases (18 percent) than tort cases took 10 days or more to try. Seventy-nine of the civil rights cases were employment actions; of these, 25 took 4 to 9 days, and 16 took 10 days or more. Most contract cases (68 percent) were classified as "other contracts," making it difficult to determine which kinds of contract cases require the most trial time.

C. Criminal Cases

1. Criminal Filings

As noted, the number of criminal cases filed in the Court rose from 536 in SY 1985 to 803 in SY 1991. This 50 percent increase meant that the number of criminal filings per authorized judgeship rose from 29 to 47 during the 7-year period. Although this increase was large and important, the number of criminal filings per authorized judgeship remains lower than the national average (52). In SY 1991, this district ranked 44th in the number of criminal felony filings per judgeship.

Not only did the number of criminal filings increase, but the number of defendants rose from 506 in SY 1985 to 1,194 in SY 1991, an increase of 60 percent. While the national average of felony defendants per case rose from 1.4 in SY 1986 (earliest year for which figures are available) to 1.6 in

SY 1991, the average number of felony defendants per case filed in the District of Columbia in SY 1991 was 1.4—exactly the same as in SY 1986.

The statistics indicate that the greatest number of felony prosecutions each year since SY 1985 occurred in the combined categories of "narcotics" and "marijuana and controlled substances." After a slight drop between SY 1985 and SY 1986, the number and proportion of drug cases increased every year. These cases included arrest-generated cases where the amount of drugs exceeds federal mandatory minimum amounts, interdiction cases involving more substantial quantities of drugs, and large-scale, conspiracy, racketeering, and continuing criminal enterprise cases involving multiple defendants and large quantities of narcotics.

The second-largest category of felonies prosecuted was fraud. The number of fraud cases peaked at 107 in SY 1988. While the number of such cases in SY 1991 (53) was half of this peak, the number remained higher than in SY 1985 (47). Fraud cases range from theft and uttering violations, to financial institution and insurance fraud, consumer fraud, business fraud and embezzlement, SEC and IRS violations, and fraud against the government.

The third-largest category of felonies was weapons offenses, which involve illegal trafficking in firearms and the possession of weapons in violation of federal law. The number of prosecutions for weapons offenses rose from 19 in SY 1985 to 29 in SY 1991. The burden on the Court of weapons offenses was greater than these numbers would suggest. The number of weapons prosecutions understates the number of weapons charges actually brought because criminal cases are categorized for statistical purposes according to the major count in the indictment. Prosecutions of drug distribution offenses often involve weapons charges subject to the mandatory minimum penalties of 18 U.S.C. § 924(c), but are typically recorded only as drug prosecutions.

2. Terminations and Pending Cases

As the number of criminal filings increased, the number of such terminations also increased from 464 in SY 1985 to 611 in SY 1991. The large increase in filed cases between SY 1990 (602) and SY 1991 (803) resulted in a large increase in terminations in the same 1-year period—from 454 to 611, or an increase of 35 percent. In SY 1991, charges against 853 defendants were resolved, as compared to charges against 593 defendants in SY 1985.

Data on the method of disposition of criminal cases reveal that charges against criminal defendants are more often disposed of by guilty pleas than by any other method. The proportion of guilty pleas decreased steadily, however, resulting in more trials. Taking dismissals into account, in SY 1991, 412 (63 percent) of the defendants facing trial pleaded guilty, as compared to 411 (79 percent) in SY 1985. During this same period, the number and percent of defendants whose charges were disposed of by trial rose from 106 (18 percent) to 234 (27 percent)—an increase of 121 percent.

The Court disposed of criminal cases more quickly than the national average, although the median disposition time rose from SY 1985 to SY 1991. During this period, the median disposition time for felony cases in the Court moved from 3.2 months to 4.8 months, as compared to the national median time, which rose from 3.7 months to 5.7 months. For defendants who pleaded guilty, the median time for disposition in the Court was 4.6 months. For defendants who went to trial, dispositions took a median time of 5.7 months, which is much faster than the national average of 7.6 months.

As the number of criminal filings rose, the number of pending cases also rose, from 18 per authorized judgeship in SY 1985 to 41 in SY 1991. During the same time period, the number of defendants with pending charges rose from 372 to 845.

3. Criminal In-Court Time

Using the definition of "trial" described above in connection with civil cases, 461 criminal trials and contested proceedings were completed in SY 1991, compared to 185 such proceedings in SY 1985. Of the 461 proceedings completed in SY 1991, 180 (39 percent) took only 1 day or less to complete, 103 (22 percent) took 2 days, and 87 (19 percent) took 3 days. Another 45 proceedings lasted from 4 to 9 days, while 10 additional proceedings took 10 to 19 days. Eight proceedings in SY 1991 took 20 or more days to resolve. The proportion of proceedings requiring 3 days or less in SY 1991 was slightly higher than in SY 1985 and was better than the national average (75 percent of criminal cases take 3 days or less nationally, while 80 percent take 3 days or less in this Court). Within the cases taking 3 days or less, there has been a decrease in the percentage of cases taking 1 day and an increase in the percentage taking 2 and 3 days.

CHAPTER V: THE POST-1991 DOCKET

The data available from the Clerk's Office for SY 1992 and SY 1993 indicate that several changes are apparent in the Court's docket.

A. Overview

The Court experienced a 16 percent decrease in the total number of case filings between SY 1992 and SY 1993 (3,967 in SY 1992 to 3,341 in SY 1992). A drop in civil case filings from 3,364 in SY 1992 to 2,813 in SY 1993 was accompanied by a decrease in criminal filings from 603 in SY 1992 to 528 in SY 1993. The Court's pending caseload decreased as well—from 3,199 in SY 1992 to 2,971 in SY 1993. Criminal case filings accounted for 15 percent of the Court's overall caseload in both SY 1992 and SY 1993.

B. Civil Cases

Civil case filings decreased 16 percent from 3,364 in SY 1992 to 2,813 in SY 1993. The pending civil caseload decreased 8 percent, from 2,916 pending cases at the end of SY 1992 to 2,671 cases at the end of SY 1993. There was a 20 percent decrease in the number of civil cases terminated, from 3,839 in SY 1992 to 3,058 in SY 1992. The rate of dismissals increased from 36 percent in SY 1992 to 44 percent in SY 1993, while the percentage of cases that settled before trial rose from 12 percent to 19 percent. There were 13 cases settled during trial in SY 1992, and no cases were settled during trial in SY 1993. The rate of terminations by trial remained constant at 3 percent with 115 civil trials in SY 1992 and 105 civil trials in SY 1993. The biggest change was in the percentage of civil cases that were terminated by summary judgment. This category comprised 22 percent of the civil terminations in SY 1992, compared to just 13 percent in SY 1993.

In SY 1991, the Court ranked among the fastest in the nation in median disposition time. The median time from filing to disposition in civil cases in SY 1991 was 6 months; it is now 9 months. While 9 months is also the average median time for all federal district courts, the drop in standing—from 4th to 36th—can be attributed to a couple of factors. First, the Court disposed of 216 civil cases that were over 3 years old. While the impact of reducing the number of cases over 3 years old is good for the Court's overall caseload, statistically it skews the median time figure so it becomes misleading in terms of indicating whether a court is "fast" or "slow" in its disposition of cases. Second, the Court's number of vacant judgeship months increased from zero in SY 1991 to 17 vacant judgeship months in SY 1992.

C. Criminal Cases

In SY 1992, 603 criminal cases were filed, while only 528 cases were filed in SY 1993. The pending criminal caseload increased from 283 pending cases at the end of SY 1992 to 300 cases at the end of SY 1993. The number of criminal defendants declined by 15 percent in SY 1993, from 853 in SY 1992 to 722 in SY 1993. The number of criminal cases going to trial also shifted in SY 1993, decreasing from 32 percent in SY 1992 to 27 percent in SY 1993. In contrast, the plea rate in criminal cases rose from 50 percent in SY 1992 to 59 percent in SY 1993. The median time from filing to

disposition in criminal felony cases was 5.7 months, which was slightly lower than the median time of 5.9 months for district courts nationwide.

CHAPTER VI: IMPACT OF THE CRIMINAL CASELOAD

A. Judicial Reaction to Drug Cases

The dedication of the judges to the prompt and fair handling of civil cases helps to explain the single most common complaint made by the judges in the interviews. There is a unanimous view that the increase in criminal cases and the burdens imposed by the Speedy Trial Act and the federal sentencing guidelines impair the Court's ability to adhere to trial dates in civil cases. Management of civil cases in this Court is more difficult than it has ever been.

The statistical information, despite its deficiencies, clearly supports the judges' view that they have been called upon to handle more criminal cases generally and more narcotics cases specifically. The 50 percent increase over 6 years was substantial (Chapter IV (C)). This increase accounts for the judges' reaction that they have been "burdened" by a rise in criminal cases.

Many of the judges have opined that certain types of drug cases, which are typically brought in state court in other districts, are filed in this Court because the United States Attorney's Office has virtually unfettered discretion to bring cases either in federal court or in the Superior Court. The judges' opinion that many of these cases should not be in federal court leads them to conclude that the criminal caseload is higher than it should be. They believe the Court would be better equipped to handle both the more serious criminal cases and the civil docket if routine drug cases were filed in the Superior Court.

Many of the judges believe that the rising criminal docket is explained in large part by the sentencing guidelines and mandatory minimum-sentencing statutes, which they believe influence the U.S. Attorney's decision to bring certain cases in this Court rather than in the Superior Court. And many of the judges resent the extent to which the guidelines and mandatory minimum sentences deprive them of the discretion in sentencing that they exercised before the guidelines took effect in 1987 and before many of the mandatory minimum sentencing statutes were enacted.

Data for SY 1992 and SY 1993 indicate that some of the charging practices of the U.S. Attorney's Office may have changed, and that fewer cases involving small quantities of narcotics have been brought in the District Court. The Court's civil docket has not benefited substantially during this period, however, because of the judicial vacancies and the number of criminal and civil cases each active judge has been assigned. It seems likely, but there is no guarantee, that the number of small narcotics cases will decline. Whether this will produce an overall decrease in the number of criminal prosecutions cannot be known. But if federal prosecutorial resources are shifted to firearm prosecutions, and if statutes other than narcotics statutes receive new emphasis, the criminal caseload could rise again, and the sentencing guidelines and mandatory minimum-sentencing statutes will continue to have an impact.

B. Advisory Group's Analysis

It may be true that the percentage of "street crime" cases charged in this Court rather than in the Superior Court is higher than the percentage charged in many district courts vis-à-vis their state

courts. Not only must the judges handle an increasing number of criminal cases, but the magistrate judges must handle a variety of pretrial criminal proceedings, including *Gerstein* hearings, that are not required as frequently in jurisdictions in which cases typically begin with a grand jury indictment rather than a street arrest.

This Court is not alone in witnessing an increase in federal criminal prosecutions generally and in narcotics cases particularly. In some other districts the increase is more dramatic and poses a greater challenge to judicial capacity to handle civil as well as criminal cases than in this Court. Federal law enforcement has increased nationwide. Presidents Reagan and Bush declared a war on drugs. Congress increased law enforcement resources and enacted both sentencing guidelines and more mandatory minimum-sentencing statutes. At least a part of the increase in prosecutions has been the inevitable result of the actions of the Executive and Congress.

It is understandable that the judges of this Court do not welcome the increase in narcotics cases and other "street crime" prosecutions. It is also not surprising that federal judges here and throughout the country, who have been accustomed to having discretion in sentencing, object to sentencing guidelines and mandatory minimum-sentencing statutes. To the extent that the judges believe they are less able to do justice in individual cases, the frustration with a burgeoning criminal docket increases. It is not the function of the Advisory Group, however, to assess whether or not judicial discretion is preferable to a guideline-sentencing system and mandatory minimum-sentencing statutes or whether the U.S. Attorney is properly exercising his charging discretion.

The Advisory Group is mandated to assess the causes of unnecessary cost and delay in civil cases, including the impact, if any, of the criminal docket on civil litigation. The Group has concluded that one reason for delay in civil cases and for an increase in costs associated with delay in this Court is that the criminal caseload has increased, and there are more criminal trials and sentencing proceedings. As a result, the Court has struggled to find time to try civil cases and has found it increasingly difficult to provide firm trial dates in civil cases. There is no doubt that the rising criminal docket has had a real and substantial impact on the Court's ability to dispose of civil cases.

If fewer criminal cases were brought in this Court, obviously the impact of the criminal caseload on the civil docket would be reduced, and civil cases could be disposed of with less delay. The Group, however, lacks sufficient information to assess whether changes in sentencing guidelines or mandatory minimum statutes would significantly reduce the impact of a rising criminal docket on civil cases. The Group supports efforts to gather additional information concerning the demands that sentencing guidelines and mandatory minimum statutes actually place on the judicial system. Later in this Report, the Advisory Group recommends gathering specific information on this issue.

For now, the Advisory Group assumes that the Court will, at least in the near term, continue to handle more criminal cases than in the recent past. Although the Advisory Group believes that there may be a decrease in cases brought for a while, as there was a decrease reflected in the post-SY 1991 data, it believes that it would be a mistake to assume that over the long run the number of criminal cases and sentencing proceedings will decline substantially. Congress has before it proposals to enact statutes that would expand federal criminal jurisdiction in several areas. If they are enacted, or if law enforcement priorities change, the number of criminal cases might well rise again. For example, there is increasing pressure to ensure that all federal firearms violations are prosecuted, either as part of a larger case or as a stand-alone prosecution. Investigations into the savings-and-loan scandals may lead

to an increased number of white-collar prosecutions. Some Justice Department officials have predicted that federal forfeiture laws will be invoked more frequently in white-collar cases. In sum, it is unlikely that the number of criminal cases in the Court soon will decline to any significant degree.

It is also unlikely that the number of authorized federal judges for the District of Columbia will increase. Rather, the currently authorized 15 active district court judges, with the help of senior judges and magistrate judges, will handle a demanding civil and criminal caseload. The Group has made the recommendations that follow in Chapters VIII to XIII with the reality that the federal courts have played and are likely to play a more substantial role in handling criminal prosecutions in the next decade than they played in the past.

The Advisory Group believes that its recommendations, based on strong judicial management techniques and control by the trial judge, will enable the Court to handle the increase in criminal cases without producing unnecessary delay or excessive cost in civil cases. The Court is faced with the challenge of handling more cases with no increase in judges. The recommendations attempt to respond to that challenge. Should the number of criminal cases decrease substantially, the recommendations will remain sound and will most likely reduce the amount of time needed to process civil cases even further than the Advisory Group believes is feasible in light of the current criminal docket.

CHAPTER VII: CAUSES OF UNNECESSARY DELAY AND EXCESSIVE COST AND FUNDAMENTAL PRINCIPLES OF REFORM

A. Unnecessary Delay

Throughout much of its deliberations, the Advisory Group struggled to define the adjective "unnecessary" as it modifies "delay." Every case takes time. Some cases require more time than others. There will always be a time lapse between filing and disposition, and injustice may result as much from a rush to judgment as from a delay in reaching judgment. The delays the Group seeks to eliminate are those that denigrate the quality of justice for the litigants. There is no mathematical formula that can be applied in all cases.

The Advisory Group believes that "unnecessary delay" is the time beyond which a reasonably conscientious judge and a reasonably conscientious litigant would expect a case to move from filing to disposition. Each of the recommendations in the following chapters is an attempt to assist the Court in determining a reasonable time frame for handling civil cases and avoiding the delays that the Group has concluded are unnecessary.

The Advisory Group's informal discussion with some of the courtroom clerks, the docket review of 190 cases, the Group members' own experience litigating in the Court, the judges' interviews, and the attorney surveys all support many of the Report's observations concerning unnecessary delay. Many cases are disposed of quickly, particularly in the case of frivolous *pro se* filings.

It is clear that in those civil cases that pose difficult legal or factual issues or that result in extensive discovery or motions practice, the impact of the criminal caseload and the complexity of some motions (e.g., motions to dismiss and summary-judgment motions) have caused delays that lawyers and their clients, and this Advisory Group, view as unacceptably long. The judges' interviews demonstrated that the judges generally believe that they are working as quickly as circumstances permit. Many of the interviews revealed, however, that delay is a problem, particularly when a judge confronts a series of speedy trial-driven criminal trials at the same time as complicated civil case issues are submitted for resolution by motion or after a bench trial.

The courtroom deputies confirmed that it is a rare civil case that is tried on the date originally set. While some cases naturally require an adjustment in a trial date because of developments that no one could have foreseen when the date was selected, many civil cases simply are "bumped" by criminal cases or are set so far in the future that no one views the trial date as realistic. This is a primary cause of delay and of increased cost.

The Advisory Group has identified four principal causes of delay in civil cases:

1. *Unrealistic trial dates are set in civil cases, and civil trial dates frequently are "bumped" by criminal cases.* As a result, final disposition of civil cases is postponed, and litigation costs may increase. Depending on when the parties are put on notice that a civil trial will be postponed, extensive pretrial preparation, including lay and expert witness preparation, will have taken place only to be largely repeated when the case is next set for trial.

Furthermore, even when "firm" trial dates are set in civil cases, the parties and litigants do not believe they are realistic dates. Because serious settlement negotiations often do not take place until counsel and their clients genuinely believe they face trial, final disposition by settlement may be delayed.

2. *Judges often fail to rule promptly on dispositive motions, on discovery disputes, and after bench trials.* Motions to dismiss and motions for summary judgment often remain undecided for many months after submission or argument. This causes delay and may increase cost substantially, depending on the state of discovery at the time a motion is pending. If discovery has been completed and a dispositive motion is denied in whole or in part after a prolonged delay, discovery may have to be reopened. If discovery has been on hold pending a decision on the motion, a prolonged delay may make discovery more difficult and expensive.

   Another cause of delay is the failure to have discovery disputes resolved promptly. The attorney survey identified the practices of some judges of referring discovery disputes to magistrate judges as a cause of delay, presumably because it adds an extra step to the process with two judicial officers considering these matters in succession. The attorneys surveyed also mentioned the failure of judges to rule promptly after the completion of bench trials. This may result in further delay (and possibly less precision) because the matter is less fresh in the judge's mind when finally making a decision.

3. *Parties often ask unnecessarily or repeatedly for additional time for discovery or to file responsive pleadings, motions, oppositions, or pretrial statements.* The more additional time that a judge allows, the longer it takes to move a case to a final disposition. The Advisory Group believes that firm deadlines should be set for completion of discovery and for the final pretrial conference (at which time trial dates should be set). Once these dates are in place, the Court should be receptive to joint requests for additional time only if the key deadlines remain in place. The Group believes the Court should carefully screen requests for extensions that are opposed because such requests increase the costs of motion practice and have the potential for delay.

4. *Improper discovery practices unnecessarily lengthen depositions or delay their completion.* The attorney survey revealed that discovery practice is a significant cause of delay, particularly overbroad document production requests and deposition conduct. This response finds support in the experience of Advisory Group members who have seen objectionable deposition conduct that lengthens depositions, sometimes requires additional depositions, or frustrates the successful completion of a deposition. The greater the number of discovery delays, the greater the threat to key deadlines in the processing of a case.

B. Excessive Cost

The Advisory Group expected to and did find it more difficult to assess the extent to which litigation in the Court is excessively costly than to identify unnecessary delay. The obvious reason is that, while the Group could examine docket sheets and determine exactly how much time was required for various parts of specific cases, and could talk with judges and courtroom clerks about how long it

took to dispose of cases and why it took so long in particular cases, the case file rarely gives a clue as to how much money is spent by the litigants on discovery, motions, pretrial preparation, and trial. Judges and their staffs will have little firsthand knowledge as to the expenditures of the parties. Because half the judges enter orders providing that discovery (i.e., interrogatories, requests for production and admissions, and depositions) is not to be filed with the Clerk's Office, except as part of a motion to compel or for a protective order, it is no longer possible in many cases to determine even how much discovery occurred.

The Advisory Group has approached the issue of excessive cost by relying on the experience of its members in handling cases in the Court and on the attorney surveys. Just as the Group struggled to define "unnecessary" when it examined delay, it struggled to define "excessive" in the context of litigation costs. The Advisory Group concluded that "excessive cost" is the amount that litigants are required to spend on litigation that exceeds the amount reasonably conscientious litigants would be expected to spend to adequately prepare a case.

The Group identified four principal causes of excessive cost:

1. *Unnecessary delay almost always means excessive cost.* There is a direct, but not linear, correlation between the amount of time a case takes to complete and the amount the parties spend on the case. As the time increases, the costs also increase.

2. *Abusive or improper discovery practices lead to excessive costs.* Unnecessary interrogatories, unnecessary requests for production of documents or depositions, or depositions that take too long can drive up the costs to litigants to the point that it is excessive. Just as abusive and improper discovery practices can lead to delay in the processing of a civil case, the same practices can increase the costs of litigation. Discovery motions and responses may be required, sanctions may be sought, additional depositions may be required. All of the costs associated with abusive and improper discovery are excessive.

3. *Judicial insistence that parties meet deadlines that are not carefully tied to an actual trial date or other firm dates may result in repetitive or excessive costs.* For example, if a judge imposes a discovery cut-off and sets a trial date a year after the cut-off date, in many cases one or both parties will have reason to seek to reopen discovery to obtain late-developing information. If a judge requires the parties to submit a pretrial statement 4 months before a trial is set, the parties probably will include more exhibits and more witness names than are necessary, simply because they do not hone their case until the trial is closer at hand, and they seek to avoid abandoning any point by failing to include it in the pretrial statement.

4. *Federal and local rules require the filing of formal motions to resolve routine discovery issues.* The more elaborate the procedural requirements are, the more costly they are likely to be for the litigants. Most discovery disputes can be resolved quickly and without elaborate briefing of the generally routine and fact-specific issues. Where parties genuinely need prompt rulings on discovery disputes, unnecessary procedural formality is likely to increase delay and increase cost without adequate justification.

Each of the Advisory Group's recommendations contained in the remaining sections of this Report is intended to avoid excessive cost and, where practicable, to reduce the typical costs of litigation. Because the Group is convinced that issues of delay and cost go hand in hand, it emphasizes that procedural improvements to reduce delay in the processing of civil cases are also likely to reduce cost.

C. Fundamental Principles of Reform

Working on the assumption that the criminal caseload will remain relatively constant or perhaps even increase over time, and that the civil caseload might increase slightly as Congress enacts new statutes, the Advisory Group concludes that for the judges to handle criminal cases and comply with the Speedy Trial Act and also to expeditiously deal with civil cases, they must explicitly adopt certain principles that many already are using in various forms. These principles form the basis for the more specific proposals that are made in the remainder of this Report:

1. *Civil case deadlines, including the setting of trial dates, must be firm and cannot be "bumped" in deference to criminal cases.* Express recognition of this principle requires that the judges agree among themselves that, although the individual calendar system is a fundamental part of sound judicial management, there is a need for a back-up system where one judge can substitute for another when a conflict exists between a civil and a criminal trial. In addition, the setting and keeping of firm pretrial dates for discovery and motions will reduce delay more than the setting of unrealistic "firm" trial dates far in the future.

2. *Realistic time limitations on discovery and dispositive motions, as well as realistic trial dates must be set, depending on the nature and complexity of the particular case.* The Advisory Group has suggested time limits for several categories of cases, but its recommendations leave judges with sufficient discretion to accommodate the needs of individual cases. Although the Advisory Group has not embraced numerical limitations on discovery that would apply to all cases, it recommends that judges consider early in a case, after hearing the parties set forth their views, whether presumptive limitations should be placed on the number of depositions and interrogatories, depending on the category and complexity of the case.

3. *Judges should use available resources and personnel to complement their management efforts when such resources and personnel will fit the needs of particular cases.* In some cases, judges may find that alternative dispute resolution is likely to resolve a dispute and avoid much of the cost and delay that would occur if the case went to trial or were fully prepared for trial. In other cases, judges may be able to refer an entire dispute to a magistrate judge who will have the time to devote to the case. This is especially desirable when the parties consent to referral to the magistrate judge for all purposes. Judges may decide to refer civil cases to a magistrate judge for all discovery, rather than to refer an isolated discovery dispute to a magistrate judge who is not familiar with the case. In certain exceptional cases, involving the kind of labor-intensive issues that would tie up a judge for unacceptably long periods of time, special masters should be used.

4. *A single judicial officer should be responsible for the management of a civil case from start to finish, or for particular stages in a civil case.* If a district judge chooses to refer a civil case

to a magistrate judge for discovery, it is advisable for all discovery issues to be before that same magistrate judge, rather than to have a district judge refer an isolated issue in a case in which the magistrate judge has not been involved. Discovery disputes must be resolved promptly and in a manner consistent with the overall case management system established by the judge at the first scheduling conference.

5. *The potential assistance that magistrate judges can offer the Court, and the ability of magistrate judges to provide parties with speedy trials in civil cases, should be more clearly identified and more widely understood.* Magistrate judges can try civil cases, usually without encountering the conflicts generated by the responsibility of trying criminal cases. Magistrate judges may also handle discovery in virtually all civil cases and thereby free the district judge to meet his or her other responsibilities.

6. *Better screening would reduce the time spent on* pro se *cases that do not warrant allocation of scarce judicial resources.* Appropriate procedures should be implemented and personnel should be hired to assist the Court in screening.

CHAPTER VIII: JUDICIAL MANAGEMENT

In this and the following chapters, the Advisory Group sets forth specific recommendations that implement the principles described in Chapter VII. The common thread among the proposals is the need for active judicial management, with fixed dates that make sense for each case. The recommendations require judges to set realistic discovery deadlines and trial dates with the assistance of the parties and then to hold the parties to them, to respond to parties' requests for limitations on discovery by establishing limitations responsive to the needs of individual cases, and to avail themselves of a broad array of resources that will assist in moving cases forward. The Advisory Group concludes that lawyers ought to be expected to inform the judge at the outset of a case as to their views of the management required to process the case fairly and expeditiously. The judge will have these views at the time that he or she sets the various deadlines and dispute resolution alternatives that the Group believes are essential to sound management.

A. Time Limits

The first recommendation requires that cases be categorized or "tracked" according to the complexity of the case, the necessary discovery in the case, and anticipated motions. Although the concept of "tracking" might be seen as an arbitrary interference with judicial discretion, the recommendation made by the Group provides guidance to both judges and lawyers without taking from the judge the tools necessary to make particular cases work.

Recommendation 1

Most cases should be categorized according to complexity, and a time period for completion of each category of cases should be prescribed. The district judge should determine which track is appropriate for each case. Most cases should be completed within the prescribed period.

The judges' interviews demonstrate that, in a variety of ways, every judge on the Court makes an effort to provide "appropriate" time limits on discovery and the filing of pretrial motions that fit each particular case. Although the judges do not refer to their choice of time limitations as "differential case management" or "tracking," the essence of what they do and have done for many years is to apply different time limits to different types of cases.

The Advisory Group concludes that tracking makes sense and should be encouraged and refined. By articulating more comprehensively what many judges already do, the Court can provide useful standards for itself and guidance for litigants as to the pace at which they can expect their case to proceed. Unlike tracking proposals that have been adopted in some other courts, the Advisory Group recommends that the individual judge, after consultation with the parties, make a final decision as to the appropriate category for particular cases.

The Group considered a number of different categories and finally arrived at its recommendation that there should be four categories of cases to provide the judge with sufficient flexibility without making the grouping task unduly complex. The four categories are the following:

> *Category 1:* Cases that are relatively straightforward in which the judge determines that, because discovery either will not be necessary or will be quickly completed, or it is clear

that the case will be decided by motion or on the basis of the pleadings, disposition should take place in less than 6 months from the date of the first scheduling conference described in Recommendation 5.

Category 2: Cases that are relatively straightforward in most respects but that have some element of complexity in which the judge determines that, given the amount of discovery required and/or the nature of expected motions, disposition should take place in less than 12 months from the date of the first scheduling conference.

Category 3: Cases of moderate complexity in which the judge determines that, given the amount of discovery required and/or the nature of expected motions, disposition should take place in less than 18 months from the date of the first scheduling conference.

Category 4: Complex cases, involving multiple parties and difficult issues, in which the judge determines that, in view of the number of issues and/or parties and the variety of issues that may arise, disposition should take place in less than 24 months from the date of the first scheduling conference.

By "disposition," the Group means a final decision on the basis of either trial or motion. The Advisory Group envisions a system in which the judge, in consultation with counsel for the parties, will estimate how long a case will take to reach the dispositive stage and how long the disposition is likely to take. These estimates will be made against the backdrop of the time limits recommended by the Advisory Group for completion of various parts of a case. Presumptive limits on discovery should vary, depending on the category to which the case is assigned, and timetables for motions and discovery should be set sufficiently in advance of these estimated dates to ensure that disposition takes place within the time prescribed. Once these estimates are made, the judge will be able to decide in which category a case should be placed. Thereafter, the judge and the parties are expected to make all reasonable efforts to make the estimate a reality, and the Advisory Group believes that it is ultimately the Court's responsibility to keep the parties and their counsel to the timetables.

The Advisory Group recognizes that a small number of cases will not easily fit into one of the four categories or that the appropriate category will depend on the outcome of a dispositive motion. The Group is aware that some cases will be likely candidates from the moment they are filed for disposition by motion. These might well include some habeas corpus and § 2255 claims, and many of the following types of cases: Administrative Procedures Act, prisoner civil rights claims, social security review, Freedom of Information Act, bankruptcy appeals, condemnation, forfeiture, and administrative subpoena.

The Group does not recommend forcing a unique case with has special requirements into a category. Instead, the Group recommends that in such cases the time limits be prescribed to fit the needs of the case, but that the judge, in consultation with the parties, nonetheless make an effort to set a date by which the case will be decided.

The Advisory Group believes, however, that the vast bulk of cases can be properly grouped in one of the four categories, provided that the parties do what is required in Recommendation 4 and the judge makes a careful assessment of a case before assigning it to a category. The Advisory Group believes that this system will provide guidance to the Court and to the litigants who appear before it.

It is a system of time limits, but one that has the necessary flexibility to address the variety of cases brought in this Court.

B. Preliminary Pretrial Procedures

The second recommendation discusses issues related to monitoring service of process. The third, fourth, fifth, and sixth recommendations impose a "meet-and-confer" requirement that ensures that the parties and their counsel will be prepared early in a case to advise the judge whether the litigation appears to be routine or presents unique issues that ought to be considered as early in the process as possible; provide that the first scheduling conference take place within a short time after the parties confer; require the judge to decide in which category a case should be placed; and require the judge to determine what limits, if any, should be placed upon discovery. The seventh recommendation addresses the problem of repetitive requests for continuances and enlargements of time. The Group's view is that, once a schedule is fixed, continuances should be the exception rather than the rule. Even in situations in which continuances are granted, they should not delay the ultimate disposition date.

Recommendation 2

When a complaint is filed, the Clerk should mail to the party or counsel filing the complaint (1) a description of the Court's ADR program, (2) a list of the items on which the parties must confer before the scheduling conference with the Court, and (3) a notice that the action will be dismissed against a defendant unless proof of service of process is filed as to that defendant within 125 days of the date of the filing of the complaint. Items (1) and (2) should also be sent when an answer or any motion is filed by a party or counsel. The Clerk should automatically issue an order dismissing without prejudice any complaint against a defendant for which a return of service has not been filed as to that defendant within 125 days of the filing of that complaint, unless otherwise expressly directed by the judge to whom the case has been assigned.

This recommendation would require the Clerk of the Court to provide parties early notice about the procedures that will be used in civil cases and to monitor service of process so that a case is not delayed at the service stage. The same procedure should be used for third-party complaints. Notice of the ADR procedures will ensure that the parties know in every case the procedures that are then available. These procedures may change over time, in which case the Clerk's notice will also change. The notice of the matters on which the parties must confer will help to ensure that Recommendation 4 works in every case.

Some judges complained in their interviews about having to keep track of service of process. The Advisory Group seeks to relieve them of this responsibility by placing it on the Clerk's Office. Since a party has 120 days to serve the complaint under Fed.R.Civ.P. 4, no dismissal for failure to serve process can occur prior to this time. Because a party might serve process at the end of the 120-day period and some time might pass until the Clerk's Office receives proof of service, the Clerk should be authorized to dismiss a complaint without prejudice when no proof of service has been received as to a defendant within 125 days of the filing of the complaint.

The judges' interviews revealed that some judges are concerned that an automatic dismissal might increase the likelihood of a reversal on appeal. The Advisory Group believes that the Clerk's notice—that a dismissal will occur if proof of service is not filed—is sufficient to put every party on notice as

to the consequences of failing to demonstrate that service has been made within the period required by Rule 4. A dismissal without prejudice is not likely to damage any party, except if it requires a new filing fee or in cases where the statute of limitations may have run. The Group believes that it is prudent to permit the Clerk to dismiss a complaint after 125 days when no proof of service has been received. Individual judges should be able to direct the Clerk not to dismiss a case or cases if they prefer to address the service problems and to enter an order dismissing a case themselves.

The recommendation would require dismissal as to a defendant where there is no proof of service of process upon that defendant within 125 days of the filing of the complaint. In a multidefendant case, the plaintiff might have served some but not all defendants before the 125 days expires. In such a case, the complaint would be dismissed only with respect to the defendant who had not been served.

Recommendation 3

In cases involving only one defendant, counsel (including any nonprisoner *pro se* party) should meet in person or, if the parties consent, by telephone to discuss the case in preparation for the initial scheduling conference with the Court within 15 days of the appearance or first filing in the form of an answer or any motion by that defendant. In any case involving multiple defendants, including the United States or any other defendant who is given more than 20 days to answer the complaint, the 15-day period shall begin with the appearance or first filing in the form of an answer or any motion by the party that is given the longest time to answer under the Federal Rules of Civil Procedure.

In any case in which some but not all defendants have been served or in which some defendants with longer periods to answer have not appeared, the plaintiff or any defendant may file a motion or letter with the Court requesting that the meet-and-confer requirement be suspended until such time as the Court shall fix in light of the fact that some defendants have not yet entered or appeared in the case.

The meet-and-confer requirement shall not apply in any prisoner *pro se* case or in any nonprisoner *pro se* cases in which a dispositive motion is filed before the time to meet and confer expires.

The Advisory Group envisions that the first meeting will be triggered by the filing of an answer or any motion by a defendant. Fed.R.Civ.P. 12(a) requires a party to serve an answer within 20 days after service, except that the United States has 60 days to answer (30 days for FOIA cases). Rule 12(a) also provides that a defendant who files a motion to dismiss or for a more definite statement may delay answering until the motion is decided. The Advisory Group discussed and at one point considered making the 15-day period run from the time that a defendant appears in any way in a case (e.g., when counsel files a notice of appearance), but recognized that a defendant is not required to file anything prior to answering or filing a motion and that a rule that discouraged defense counsel from filing an early notice of appearance might actually discourage cooperation among parties.

Recommendation 3 focuses on the first formal filing by a defendant as the point that triggers the 15-day period. Any motion by a defendant, even an unopposed motion for additional time to answer, triggers the meet-and-confer requirement. This is to ensure that the vast majority of cases will begin with an early conference and that the parties in these cases will discuss how best to proceed early in the case, that a defendant cannot unilaterally delay the conference by filing a motion in lieu

of an answer, and that parties cannot jointly agree to put off the meet-and-confer obligation through an unopposed motion for additional time to answer.

The Advisory Group considered whether to exempt all *pro se* cases from the meet-and-confer requirement. Although some *pro se* litigants may waste the time of an adversary, others will have the capacity to discuss many matters and to reach agreement on some. Because *pro se* cases account for a substantial portion of the Court's docket, the Group concluded that a requirement that all parties, including *pro se* litigants, meet and confer is desirable, with two exceptions.

1. The first exception to the meet-and-confer rule is for prisoners who litigate *pro se*. In those cases, it is often impracticable for adversaries to arrange a meeting or to schedule a telephone call of sufficient length to discuss the matters covered by this recommendation.

2. The second exception to the meet-and-confer rule is for nonprisoner *pro se* cases in which a dispositive motion is filed prior to the expiration of the meet-and-confer period. Based on the docket sheet review and the experience of its members, the Group concludes that the chances that the motion will be granted in these cases are sufficiently high that it would add to the cost of litigation to require counsel to meet in these cases and that such a meeting would not be likely to reduce delay.

In a case involving only one defendant, the 15-day rule should cause no difficulty. If a defendant, such as the United States, is given 60 days to answer, it would increase delay and cost to require the United States to meet and confer before it is in a position to answer or otherwise respond to the complaint. It makes sense in the single-defendant case to have the 15-day period begin when the defendant makes the first formal appearance in the form of a motion or answer. In the typical case, the answer is required in 20 days, and the meet-and-confer requirement must be satisfied within 15 days of the answer being filed or any motion for a continuance being made. In the case of the United States, which has 60 days to answer, the meet-and-confer requirement still must be satisfied within 15 days of the answer being filed or any motion for a continuance being made. But the answer may be filed later than in the typical case. The same will be true for any defendant who by statute or rule is given a longer period than 20 days to answer; that defendant should not be required to meet and confer until the end of the period in which the answer may be filed. For example, if the proposed amendment to Fed.R.Civ.P. 4 to provide for waiver of service of a summons (sent to the Congress by the Chief Justice on April 22, 1993) is approved, defendants in the United States who waive service of the summons have 60 days to answer from the date when the request for waiver was made, and defendants outside the United States have 90 days to answer from the date the request was made. Recommendation 3 is written to provide sufficient flexibility to account for such alternative times for the filing of an answer.

When there are multiple defendants in a case, two different problems may arise. First, assuming that all defendants have 20 days to answer, but that not all have been served, a defendant who has been served might reasonably be concerned that the meeting with the plaintiff's counsel will be premature and may have to be repeated when additional defendants are served. Multiple meetings can raise the costs of litigation unnecessarily. In some cases, the plaintiff may have made good-faith efforts to serve all defendants and may be as likely as a defendant to be the victim of increased cost if the meet-and-confer requirement is rigidly followed. In other cases, the plaintiff may seek to serve defendants seriatim in an effort to burden them. Whatever the situation, the Advisory Group believes that when some but not all defendants have been served, either the plaintiff or any defendant who

has been served should be able to move the Court to delay the meet-and-confer requirement until such time as it is likely that the meeting will not be wasteful. Recommendation 3 anticipates an informal motion, perhaps in the form of a letter to the Court setting forth the reasons why the meet-and-confer requirement should be delayed and a suggestion as to the date the Court might fix to begin the 15-day period. The Advisory Group believes that, in many cases in which not all defendants are served at approximately the same time, it will be in the interest of both the plaintiff and any served defendant to seek a delay in the meet-and-confer requirement. A joint motion or letter will be appropriate in these cases.

Second, in some multiple-defendant cases, the plaintiff will serve all defendants at the same time, but one defendant (e.g., the United States) will have a longer time to answer than another defendant. When a defendant has a longer time to answer, it would be wasteful in many cases for the plaintiff and some defendants to meet and confer at a time when some parties are not yet compelled to answer. In these cases, Recommendation 3 provides that the meet-and-confer requirement is not triggered until the party with the longest period to answer enters an appearance in the form of an answer or motion. It is possible that in such cases several defendants may have a longer period to answer than other defendants and that one of the defendants with a longer period to answer will file a motion or answer long before a codefendant with an equally long period to answer is compelled to do so. In such a case, any party should be permitted to file a motion or letter with the Court to delay the meet-and-confer requirement, generally to a date by which the last defendant's answer is due.

The Advisory Group recognizes that in some cases in which a motion to dismiss or a motion for a more definite statement has been filed, the meet-and-confer requirement will have the parties meeting before an answer is filed. In some cases, a motion to dismiss will be granted after the parties have met, and the conference may be viewed as an unnecessary cost in these cases. Some members of the Advisory Group believe that in all cases in which a dispositive motion has been filed, the meet-and-confer requirement should be stayed until the motion is ruled upon. These members conclude that many of the topics to be discussed at the first conference are irrelevant while a dispositive motion is pending, and that the costs of the conference cannot be justified. The majority of the Advisory Group believes, however, that the meet-and-confer requirement does not involve substantial cost, and that it will reduce both cost and delay in most cases if it occurs promptly after a complaint has been filed and the defendant has had sufficient time either to answer or to file a motion. In any case in which a dispositive motion is rejected, the early conference should enable the parties to proceed with the filing of an answer, discovery, etc., without having to meet for the first time to discuss the case. A majority of the Advisory Group also believes that the fact that the parties must confer and that the Court must meet with the parties within 20 days of receiving their meet-and-confer statements will help provide an incentive for prompt judicial decisions on dispositive motions.

Recommendation 4

To promote the Court's ability to manage cases and to enable the parties to provide the Court with information that will advise the Court about any peculiarities or unique aspects of their case, lead counsel (including any nonprisoner *pro se* party) for each party shall meet in person or, if the parties consent, by telephone, and discuss the following matters:

1. **The category in which the case should be placed, whether the case is likely to be disposed of by dispositive motion, and whether, if a dispositive motion has already**

been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

2. The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.

3. Whether the case can be assigned to a magistrate judge for all purposes, including trial.

4. Whether there is a realistic possibility of settling the case.

5. Whether the case could benefit from the Court's alternative dispute resolution procedures or some other form of alternative dispute resolution and, if so, which procedure should be used and should discovery be stayed or limited pending completion of ADR.

6. Whether the case can be resolved on summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

7. Whether the parties can agree on the exchange of certain core information (e.g., names and addresses of witnesses, relevant documents, computations of damages, the existence and amount of insurance) without formal discovery, the extent of any discovery, how long discovery should take, whether there should be a limit on discovery (e.g., number of interrogatories, number of depositions, time limits on depositions, etc.), whether a protective order is appropriate, and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

8. Dates for the exchange of expert witness information pursuant to Fed.R.Civ.P. 26(b)(4), and for taking depositions of experts (within the discovery cut-off period).

9. In-class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, an opposition and reply, and for oral argument and/or evidentiary hearing on the motion, and a proposed date for decision.

10. Whether the trial and/or discovery should be bifurcated or managed in phases and a specific proposal for such bifurcation.

11. The date for the pretrial conference (understanding that a trial will take place 4 to 8 weeks thereafter).

12. Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date be set at the pretrial conference from 30 to 60 days after that conference.

No later than 10 days following this meeting, counsel for the parties must file with the Court a succinct statement of the following matters:

1. **Any agreements the parties have reached at their meeting with respect to any of the 12 specific matters set forth above.**

2. **The parties' position on any of the 12 specific matters set forth above on which they disagree. Counsel must file a joint submission, even if the submission sets forth differing views. *Counsel's filing of a statement will constitute certification that counsel has discussed with the client the 12 matters set forth above, including the possibility of settlement and the availability and range of ADR options.***

Lead counsel for plaintiff would be responsible for initiating arrangements for the meet-and-confer meeting. In the absence of agreement on location, the meeting should take place at the office of counsel closest to the courthouse. If counsel cannot confer within a 15-day period because of prior scheduling conflicts, the time period may be extended 15 additional days by mutual agreement, but this meeting must take place within 30 days of the defendant's appearance or first filing, unless leave to extend further is granted by the Court for good cause. The meeting is critical to enable counsel to develop a sound plan to govern the particular case from start to finish, where possible, to present that plan to the Court, to inform the Court where agreement is not possible, and to explain the differences between the parties' perception of the needs of the case.

The first item listed in the matters to be discussed at the conference goes to the proper categorization of the case. It is important for counsel first to focus on whether the case is likely to be decided by motion. If a dispositive motion already has been filed, the nature of the conference is likely to change. In the face of a dispositive motion, counsel should discuss whether a number of the other matters that ordinarily would be discussed fully should await a decision by the Court on the motion. The meeting can be useful even where a motion is filed, because counsel can decide whether they are able to agree that any part of the case should proceed before the motion is decided and can indicate to the Court the areas of agreement and disagreement.

In view of the emphasis placed by this Report on strong case management by the individual trial judge and the setting and keeping of firm pretrial and trial dates, this recommendation also requires the parties at the meet-and-confer conference to try to agree upon disclosure without a formal discovery request of certain core information, dates for the filing of dispositive motions, limitations on the number of interrogatories and depositions and on the time needed for depositions, a firm discovery cut-off date, and a date for the exchange of expert witness information. The parties are also to propose a firm date for the final pretrial conference, with the understanding that the trial will take place 4 to 8 weeks thereafter. The parties would also be required to discuss the use of magistrate judges and alternative dispute resolution options, as well as the possibility of settlement.

A written report to the Court is required prior to the first scheduling conference so that the Court is equipped to resolve the matters on which the parties could not agree and to enter a scheduling order that would serve as the unalterable road map (absent good cause) for the remainder of the case.

Recommendation 5

The Court should set the first scheduling conference for no later than 20 days after receipt of the parties' meet-and-confer statement, unless, based on a joint recommendation of the parties for good cause shown, the Court concludes that the conference should be deferred. The conference may be deferred for no more than 30 days.

The judge's courtroom clerk should set a scheduling conference within 20 days of receiving the parties' meet-and-confer statement. To ensure that counsel meet the requirement of Recommendation 3, however, the conference should automatically be scheduled in every case no later than 45 days after the appearance or first filing of any answer or motion by any defendant.

The purpose of the scheduling conference is to set a plan for managing the case from start to finish, with the burden being placed in the first instance on counsel to propose a realistic plan. The Court can then adopt or modify the plan to meet the needs of the case and then hold counsel to it. Recommendations 3 and 4 are intended to place the principal burden on the parties to provide the Court with sufficient information so that the case will be managed successfully from start to finish.

Recommendations 5 and 6 direct the Court to focus on the needs of a particular case and any special circumstances that may exist. By requiring counsel for the parties to attempt to work out matters voluntarily in the first instance, the parties should be able to obtain judicial assistance at the scheduling conference, and the Court should be able to impose a schedule when the parties do not agree, all in an effort to avoid unnecessary delay and to reduce cost as the case progresses.

The Advisory Group examined the proposed amendment to Fed.R.Civ.P. 16, submitted to Congress by the Chief Justice on April 22, 1993. The proposed amendment requires the trial judge or magistrate judge to conduct a scheduling conference and enter a scheduling order within 90 days after the appearance of a defendant and within 120 days of the service of the complaint on a defendant. The Group determined that Recommendation 5 is superior to the proposed amendment for several reasons: in combination with Recommendation 3, it deals with the problem of multiple defendants and unserved defendants; it provides for a faster start in cases in which service is made promptly; it requires a scheduling conference and clearly puts the district judge in charge of the first scheduling conference, thereby putting the full authority of the judge behind all time limits; and it permits the judge to rule on the full panoply of issues as to which the parties must meet and confer, including possible limits on discovery.

The recommendation provides the Court with latitude to defer the scheduling conference on a joint recommendation of the parties for good cause. The occasion might arise, for example, where the parties all believe that the case can be resolved promptly and informally without the need for any court intervention. In such circumstances, the parties should be able to recommend deferral of the scheduling conference, and the Court should act favorably upon that recommendation. The deferral, however, should be for no longer than 30 days.

Recommendation 6

After conferring with the parties at the first scheduling conference, the judge shall place a case in the category in which it best fits, determine whether specified limits should be placed upon discovery, and issue a scheduling order.

Once the judge has reviewed the parties' meet-and-confer statement and has met with counsel, a decision can be made as to which category a case belongs. As Recommendation 1 indicates, it is for the judge to decide the track in which a case belongs. In making this decision, the judge will consider whether a case is likely to be decided by dispositive motion, the time limits provided in these recommendations, the time required for discovery, the time needed to move the case to the dispositive stage, and the time required for actual disposition. The judge should then issue a scheduling order reflecting the agreements reached or decisions made as a result of the scheduling conference.

As discussed in the discovery recommendations, the Advisory Group does not recommend that the Court adopt generalized discovery limitations that apply in all cases or in some tracks irrespective of the nature of the parties and issues involved in a case. But the Group is concerned about the costs generated by discovery and believes that it is of the utmost importance that the parties not only discuss possible limits on discovery when they meet and confer, but that the judge rule on any requests for discovery limits at the first scheduling conference and discuss such limitations with the parties even when no requests are made.

In many track 1 and track 2 cases, the parties may need little, if any, discovery. If they agree on the discovery that is appropriate, they may ask the Court to impose limits. If they do not agree, both sides may ask the Court, or the Court may decide on its own to restrict discovery so that it is tailored to the genuine needs of a case and to the time limits that each track establishes. In track 1 and 2 cases, it may be quite appropriate at the outset of the case to set limits on the numbers of depositions and interrogatories permitted and even on the time allowed for depositions. While it may be more difficult to do so in the more complex cases (and different limits may be appropriate), the issue of presumptive limits should be discussed by the Court with counsel at the scheduling conference. The Advisory Group's suggestion of different presumptive limits for different categories of cases differs from the proposed amendment to Fed.R.Civ.P. 26, which would presumptively limit each side to 10 depositions and each party to 25 interrogatories (including subparts) without regard to the complexity of the case.

Recommendation 7

Any continuance or enlargement of time granted must be for good cause only and should be for a reasonable period so that only one continuance or enlargement is required, rather than several.

The Advisory Group believes that from this point forward, the parties and their counsel should be bound by the dates specified in any first scheduling or other scheduling order, and that no extensions or continuances should be granted, except on a timely showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery and trial preparation should not be considered good cause.

Once the schedule is set at the scheduling conference, the presumption should be firmly against the granting of continuances. If good cause is shown, a reasonable extension of time for a particular purpose may be granted by the Court; stipulations by the parties should not be accepted in the absence of good cause.

At this point, the Group does not recommend a requirement that all extensions of time be signed by a client as well as counsel. Such a requirement is less meaningful in our Court, where 48 percent

of all civil cases involve the United States or the District of Columbia. The Group believes that avoiding routine motions for extensions of time will result in the more expeditious handling of cases and will reduce the cost of litigation by avoiding the need for litigants and their counsel to ready themselves to respond on an issue only to find that an extension of time has been granted.

The U.S. Attorney's Office often operates with a heavy caseload, must respond to a significant number of emergency filings, and must coordinate with other governmental agencies. It has explicitly recognized, however, that requests for extensions of time should be monitored by senior counsel so any request for an extension is reasonable, that no reasonable alternative is available, and that the amount of time requested should be realistic so that the need for multiple extensions is minimized. The Office of the Corporation Counsel has agreed that these kinds of procedures make sense and has committed itself to avoiding repetitive delays that result from motions for extensions of time by increasing staff and training. The Advisory Group applauds these moves and encourages private law firms to follow their lead. Further, the Group urges the Court to closely monitor requests for extensions of time.

C. Pretrial Conference

Recommendations 8 and 9 address the pretrial conference and pretrial orders conducted and issued pursuant to Fed.R.Civ.P. 16. The Advisory Group believes that the Rule 16 pretrial conference works best when it is held close in time to the actual trial, both because parties will be prepared and because it minimizes duplicative preparation efforts. The governing pretrial orders and statements should take into account that most cases are disposed of by settlement or motion.

Recommendation 8

The Court should seek to ensure that the period of time between the pretrial conference and commencement of the trial is no more than 30 to 60 days.

The parties and counsel are not focused on a trial or the settlement of a case until trial is relatively close at hand. A final pretrial conference that is held long before trial is simply less effective in identifying the real issues to be tried than a conference that is held shortly before the trial. When trial dates or final pretrials are scheduled too far in advance, they either are ignored as unrealistic dates (which they often are) or result in time being spent in preparation for an event that will not take place. In Category 1 and 2 cases, at least, the date of the pretrial conference should be firmly set at the first scheduling conference. In category 3 and 4 cases, it may be advisable to set dates both for an early status conference and a pretrial conference. In either event, the Advisory Group believes it is more realistic not to set a trial date at the scheduling conference, but to do so at the pretrial conference, with the understanding at the outset that the trial date will be within 30 to 60 days of the date of that conference and that, once set, the trial date will be firm.

The closer in time the pretrial conference is to trial in those cases that will be tried, the more likely it is that the witness lists, summaries of testimony, exhibit lists, objections, and other matters that the Court may require the parties to prepare and/or to discuss in connection with the pretrial conference will narrow. The further in time the pretrial conference is from the trial, the more likely the parties are to file "protective" lists of witnesses, issues, and objections. When parties have not yet focused on the case as they will when trial is approaching, they are likely to be reluctant to abandon any witness,

defense, or objection claim lest they regret the choice later when they have focused more sharply on how the case will be tried.

Recommendation 9

The requirements for all pretrial conferences should be reduced, and the full panoply of Rule 16 and Local Rule 209 procedures should be reserved for complex cases (Category 4)—those that generally should be disposed of within 24 months of the first scheduling conference.

Many cases now settle between the pretrial conference and the first day of trial. With the use of ADR and other proposals included in this Report, earlier settlement may occur, thereby also reducing costs. Because most cases settle and the vast bulk of cases (95 percent) will be disposed of either by settlement or motion, the time and expense of preparing a lengthy pretrial statement in most relatively routine or moderately complex cases often will be wasted.

The Court should require for all pretrial conferences that counsel meet and confer at least 5 business days prior to the pretrial conference. The Court should also require that, prior to this meeting, counsel provide the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises; designate those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; provide an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those that the party expects to offer and those that the party may offer if the need arises; and make a good-faith effort to agree on stipulated facts.

Recommendation 15 suggests that all dispositive motions should be decided before the final pretrial conference. If this occurs and the parties file their pretrial statements identifying witnesses, exhibits, deposition segments to be relied upon and similar matters, the Court should be in a position to narrow the issues and focus the trial without requiring more in the pretrial conference. In complex cases, additional filings may be necessary. The Group believes that these simple requirements are necessary and useful in all civil cases and are all that should be required in most cases. It also believes that cost and delay can be reduced by reserving the full panoply of Local Rule 209(b) procedures for complex cases.

D. Motions and Hearings; Findings in Bench Trials

Having identified in the attorney surveys, the judges' interviews, and the docket sheet review a problem of delay in the resolution of dispositive motions or in entering findings of fact and conclusions of law in bench trials, the Advisory Group makes a number of recommendations concerning procedures that might help to minimize these delays. Delays in ruling on motions are a factor that can significantly prolong a case unnecessarily and raise the costs, as well as undermine public confidence in the judicial system.

While it may be true, as some of the judges indicated in the interviews, that every lawyer thinks that his or her case is the most important case on the docket and, therefore, dislikes delay, it is also true that parties and their counsel understandably become frustrated when they meet deadlines

imposed by a court and then wait and wait for a decision on a dispositive motion or for a judgment in a bench trial.

The Advisory Group understands that it is not always the case that "justice delayed is justice denied." But the Advisory Group's survey of the Bar reinforces the basic concept of the Civil Justice Reform Act, which is that delay in civil cases often raises costs and sometimes impairs litigants' ability to obtain relief in a timely and satisfactory manner.

Delays in rulings frustrate the parties' efforts to settle some cases and make it more difficult for counsel to agree and the Court to impose a realistic schedule of events. To the extent that discovery is on hold while a motion is pending, with the concomitant movement of witnesses and possible loss of evidence, the costs of gathering information once the motion is decided may rise. On the other hand, if discovery continues while a dispositive motion is under consideration, some or all of the discovery costs will be wasted if the motion is granted in whole or part.

If a trial date is set and the case is ultimately dismissed on motion, that date is unavailable to allocate to cases that actually will go to trial. The Court's calendar may show an unrealistic picture of what dates are and are not available for the trial of civil cases because a case that will never go to trial is occupying a potential trial date. This is particularly true when the judge has already decided (or tentatively decided) a motion, but simply has not had time to complete his or her opinion, order, or judgment. Not ruling on motions for summary judgment and motions to dismiss until the day of the scheduled trial significantly and unnecessarily increases costs.

Delays in entering findings of fact and conclusions of law after a bench trial are less likely to increase the costs of litigation than are delays in ruling on motions, since the litigation is by definition complete but for the findings and conclusions. Nevertheless, such delays may undermine the confidence of litigants as they await word on whether they have won or lost and to what extent. This form of delay, particularly for plaintiffs' counsel, imposes economic stress from carrying the expenses of litigation indefinitely. Indirectly, this may limit the availability of plaintiffs' counsel for civil rights and other contingent-fee matters. Finally, if post-trial motions or appeals are filed, delay may result in increased costs, as memories fade in a case and lawyers are forced to review what happened a long time before the Court's findings and conclusions were entered.

The Court should impose time limits on itself to decide dispositive motions and to enter findings of fact and conclusions of law after bench trials. Obviously, it is easier for the judge to decide a matter when it is fresh in his or her mind, and less complex matters can be decided more quickly if done promptly after argument or submission. While other matters are always pressing on the Court, making time to decide, dictating short orders and foregoing the preparation of more analytical opinions, and relying on proposed findings of fact and conclusions of law submitted promptly by the parties are management techniques that are essential to alleviate a growing cause of delay in this Court.

The Advisory Group is acutely aware of the problems the Court has had to face during 1992 and 1993 as a result of judicial vacancies. Indeed, the timing could not be less opportune for recommendations that call for judges to do things within specified time periods in most cases. Until all vacancies are filled, some of these recommendations may not be practicable, and the plan adopted by the Court may well have to address the strains on any court that result from judicial vacancies. Nonetheless, the basic principles proposed by the Advisory Group can guide the Court even in diffi-

cult times as goals to be sought, and the Group strongly believes that the goals can and should be met when the Court is at full strength.

In making recommendations that judges decide dispositive motions and render findings of fact and conclusions of law within the periods set forth in this Report, the Advisory Group does not intend to suggest that it never is excusable for a judge to take more time than the Group regards as presumptively reasonable. It is possible that a judge will have one or more complex criminal or civil trials that will wreak havoc with a docket or that several complicated dispositive motions will be filed simultaneously while the judge is occupied with other difficult issues. The Advisory Group does believe, however, that the suggestions made in this Report with respect to management techniques— such as using magistrate judges in discovery, encouraging consent to trial before magistrate judges, using informal motions or letter requests and/or conference calls and making oral rulings in discovery disputes, referring to the memoranda of the parties in the course of explaining grants of summary judgment, using senior and other judges as backup judges when conflicts between trials arise, and enforcing the time limits originally set in a case—will free up scarce judicial time that now does not exist.

In the future, as the plan adopted by the Court is examined from year to year, the Court will be in a position to decide whether the time limits recommended here are too short or too long and to adjust them. Presumptive deadlines can provide guidance to the Court and to the parties and their counsel with respect to what is reasonable in most cases. They cannot and should not be thought of as hard and fixed rules that define what is reasonable in all cases and in all circumstances. Although the Advisory Group's interviews with the judges reveal some concern about the presumptive time limits for decision making, the Group believes that most, perhaps all, the judges share the Group's basic judgment that the principle of prompt decision making set forth in Recommendation 11 is essential and sound. The precise time periods chosen are and must be somewhat arbitrarily fixed. At this stage, it is more important to establish the fundamental principle and to offer some initial presumptive time periods than to conclusively determine that these time periods are better than others that might be chosen. To do nothing, however, would be to disregard one of the primary causes of delay identified by the Bar. As noted above, the Group believes that the time periods should be examined as part of the annual review of the Court's plan.

Recommendations 10, 11, 12, 13, and 14 respond to the delays identified in the docket sheet review and the attorney surveys concerning the disposition of motions and the rendering of findings of fact and conclusions of law in bench trials. The recommendations offer outer limits for judges to decide dispositive motions and to render their findings and conclusions in nonjury cases, and require the Clerk's Office to monitor these time limits.

Recommendations 15 and 16 are straightforward proposals to improve the motions practice in the Court—the cause of the greatest delay—by requiring the Court to ensure that all dispositive motions will be decided before the parties undertake the expense and time to prepare for a pretrial conference. The Advisory Group recommends that all motions be quickly reviewed by the Court with an eye to deciding which should be decided on the papers and which require oral argument. The Advisory Group also recommends that the parties discuss nondispositive motions before filing them to avoid burdening the Court with unnecessary motions.

Recommendation 10

The trial judge should carefully consider which *in limine* motions, if decided prior to trial, might warrant the granting of a motion for summary judgment or lead to settlement and endeavor to resolve those motions prior to trial. The trial judge should also carefully consider whether other *in limine* motions might become moot if a case settles or as the issues unfold at trial or might more easily be resolved either immediately before the trial begins or during the trial.

It may often be a wise allocation of resources for the Court to postpone ruling on *in limine* evidence motions until the morning of the trial, if not during the trial in some cases, rather than to spend time at the pretrial conference on such motions when most cases will never be tried. If settlement does occur, a decision on the motion will not be necessary. If settlement discussions fail, the motions are likely to be more focused with trial on the near horizon. In addition, it is possible that some evidentiary issues will become moot as the issues are developed at trial. Evidence presumed relevant before trial may appear clearly irrelevant once the trial begins as issues are dropped from a party's case. In sum, the Advisory Group believes that *in limine* motions involving routine evidentiary and procedural issues often are best considered when the case is about to be tried and has the judge's attention and the parties' evidence can be assessed in light of the issues that are actually disputed.

On the other hand, there may be good reasons in some cases for a judge to consider certain *in limine* motions in advance of trial. In some cases, a ruling might provide a basis for a summary judgment motion. In other cases, a ruling that an expert may not testify or that a certain type of evidence will be excluded may save a party the expense of producing a witness or evidence at trial.

Recommendation 11

Each judge should establish as his or her policy that all motions will be heard and decided promptly and that findings of fact and conclusions of law will be promptly rendered in non-jury cases.

One of the greatest causes of delay occurs after motions are argued and submitted or after bench trials are concluded while matters are under advisement. Some of this time is taken up by decision making and writing, some by time spent on the many other matters on a judge's calendar. By setting personal deadlines and adopting methods for monitoring cases in chambers so those deadlines are met (e.g., early assignment with deadlines to a law clerk for a draft, reminder lists of deadlines from a judge's secretary or courtroom deputy), the judges will be able to transform their individual practices into an implemented policy of the Court.

Based on the judges' interviews, there are two prevailing practices in the Court with respect to motions: some judges routinely set motions for a hearing, while other judges discourage oral argument on motions and decide them on the basis of written submissions. Except as to discovery (Recommendation 20), the Advisory Group makes no recommendation with respect to oral argument. Because oral argument requires the presence of counsel and scheduling by the Court, it is a potential source of both delay and cost. On the other hand, it is possible for some judges to focus on the issues and to decide them more quickly when they have an opportunity for an exchange with counsel. Oral argument for these judges may lead to earlier decisions on motions. Regardless of whether there is oral argument, however, the motion should be scheduled by the judge for decision promptly after all papers have been submitted.

Recommendation 12

Each judge should establish as a personal policy that he or she will decide motions that seek to dispose of any claim, counter-claim, third-party claim or substantive defense (usually by a motion to dismiss or for full or partial summary judgment) within 60 days of submission of all memoranda or briefs or within 60 days of oral argument, provided that oral argument is held within 30 days of the submission of all memoranda or briefs. To the extent that a judge knows that a motion will not be decided within these periods, the judge should consider notifying counsel that, because of the judge's other responsibilities, the motion will not be decided within these periods.

Because of the importance of dispositive motions and the obvious impact they have on both delay and cost in the particular case and in the Court's overall docket, the Advisory Group specifically recommends that they be resolved within 60 days of submission. Generally speaking, discovery that would become unnecessary if the outstanding motion is granted should be stayed until the motion is decided to avoid potential unnecessary expense. To ensure that such stays do not put the case on hold indefinitely, the 60-day-to-decision rule should be met in most cases. The Advisory Group recognizes that in some cases the judge may wish to hear oral argument after having an opportunity to review the parties' written submissions. To recognize the utility of oral argument but to ensure that its scheduling does not result in unnecessary delay, the Group recommends that the 60-day period for decision run from the date of oral argument, provided that oral argument takes place within 30 days after all written submissions have been filed.

As noted above, the Advisory Group understands fully that in some circumstances these time limits will not be practical. However, the limits should be the policy each judge adopts for the times when they are realistic and should be the policy after the Court is again at full strength. The Group has suggested that each year when the Court's plan for reducing excessive delay and unnecessary cost is examined, these periods should be part of that examination.

Although a judge might not know early in the 60- or 90-day period whether a timely decision will be rendered, as the period draws to a close the judge will know in most cases whether the decision will fall within the presumptive time limit. If a judge is certain that the decision will not be rendered within the period, the Advisory Group believes that the judge should consider notifying the parties so that they can inform their clients and consider the impact on trial preparation or settlement. If the judge is uncertain when a decision will be rendered, an indication to the parties to that effect might cushion the disappointment of delay by demonstrating that the judge is aware of the delay and that the circumstances are such that the judge cannot indicate when a decision might be expected. Even this information may be helpful to the parties and their counsel in planning.

Recommendation 13

Each judge should establish a policy of deciding nonjury cases within 90 days of the conclusion of a trial or the submission by the parties of post-trial proposed findings of fact and conclusions of law. Each judge should consider deciding some cases from the bench and incorporating as part of the findings and conclusions submissions of the parties in ways that clearly indicate that the judge has independently reviewed and adopted suggestions by the parties.

There is a tremendous range of issues tried before the Court without a jury. In employment discrimination cases which do not involve a jury, for example, complex statistical evidence may have to be sorted and explained in the Court's opinion. Notwithstanding the burdens that some cases place upon the Court, the Group believes, and the judges' interviews confirm, that cases become harder, not easier, to decide as time passes between trial and decision making. Evidence will be freshest in the judge's mind shortly after the case is presented.

In appropriate cases, the parties and the judge will reasonably conclude that a transcript is required before the parties can be expected to submit their final written proposals with respect to findings of fact and conclusions of law. In such cases, the Advisory Group's proposal is that the time period for the judge to enter findings of fact and conclusions of law shall run from the date on which all post-trial submissions by the parties have been filed. Recognizing that transcripts are sometimes essential should not be interpreted as a judgment by the Group that in all cases the judge should wait for a transcript or even for post-trial submissions by the parties. In some short or less complex trials, the judge may want to enter findings of fact and conclusions of law from the bench or almost immediately after the trial. The Advisory Group seeks to provide sufficient flexibility for the judge to handle the variety of cases that will arise.

Judges may want to require the parties to submit proposed findings of fact and conclusions of law prior to trial, and to propose any amendments thereto (perhaps with record references) within a reasonable period following the conclusion of the trial. Pretrial submission of proposed findings of fact and conclusions of law would put the judge on notice before hearing of the facts that the parties believe are most important and how they relate to the law upon which the parties rely. Prompt post-trial amendments would provide the judge with the parties' post-trial view on whether certain facts have become more or less important as a result of the trial.

The Advisory Group found one of the suggestions made in the judges' interviews to be especially interesting. The suggestion was that judges should build a day or two in chambers into their schedules after a series of scheduled bench trials to allow time for deciding the cases. If a judge's schedule permitted this block of time to be set aside, the in-chambers time might be profitably spent, and bench trials might be disposed of more efficiently than is possible when there is a long hiatus between hearing evidence and entering findings of fact and conclusions of law. The Group recognizes that in many instances the judges' schedules may not accommodate the time in chambers. The Group believes, however, that the basic concept, that the judge might well profit from some in-chambers review shortly after a bench trial, is a sound one.

Both the Supreme Court and the D.C. Circuit have expressed concern and disapproval of judges' rubber-stamping the proposed findings of fact and conclusions of law submitted by a prevailing party. The Advisory Group does not endorse rubber-stamping; judges must examine the evidence, weigh it, and decide what to believe and how much weight to give the evidence believed. But the Advisory Group concludes that it is perfectly appropriate for a trial judge to adopt findings of fact suggested by a party so long as those findings are sound and the judge has independently reached the conclusion set forth in the proposed findings on the basis of the evidence presented. A judge should also be able to rely upon, cite to, quote from, or incorporate into his or her opinion or judgment proposed conclusions of law or legal analyses submitted by a party. If a case is cited, quoted, or analyzed in the submission of a party, the judge should be free to rely on the case, the excerpt, or the analysis so long as he or she has independently arrived at the same conclusion. Similarly, if a particular argu-

ment in one side's brief has persuaded the judge to reach a certain conclusion, it should be sufficient to refer to that argument as the basis for decision, in whole or in part, without requiring the judge to take the time to restate it in his or her own words.

The Advisory Group believes that judges can, and encourages judges to, fashion findings of fact and conclusions of law by drawing from the submissions of the parties and adding to those submissions the material that indicates that there has been independent judicial review and consideration of the proposed findings or conclusion. This can save an enormous amount of court time and provide the assurances the Supreme Court and the D.C. Circuit have demanded of careful judicial attention to evidence and its legal implications.

Recommendation 14

The Clerk of the Court should monitor the handling of all dispositive motions and bench trials to ensure that the time periods set forth above are followed. The Clerk should circulate monthly lists to the judges indicating the motions that remain undecided beyond the limits recommended here. No public circulation of these lists should occur until a pending matter is more than 6 months old and appears on the list of pending issues that is currently made available to the public under the Civil Justice Reform Act.

To ensure that the 60-day time period for deciding dispositive motions and the 90-day time period for deciding nonjury cases are not missed, the Clerk of the Court should take the following steps to monitor the handling of all dispositive motions and bench trials:

1. On the day after a dispositive motion is deemed submitted, or the Clerk becomes aware that a nonjury case has been concluded (including the submission of all post-trial findings and conclusions the Court may require), the Clerk should send a notice to the judge before whom the case is pending and to all counsel that the 60-day or 90-day period has begun.

2. If a dispositive motion has been at issue for 60 days without having been decided, or no decision in a nonjury case has been entered 90 days after the conclusion of the trial, the Clerk should include this motion or case on a list of similar motions or cases that shall be circulated to the Court.

3. Every 30 days the Clerk shall circulate to the judges the list of motions that have not been decided for more than 60 days or nonjury cases that remain undecided after 90 days.

4. Every quarter the Clerk should provide the Chief Judge, with a copy to all judges of the Court, a list of all dispositive motions and nonjury cases pending more than 120 days and the judges before whom such motions and nonjury cases are pending.

5. When a dispositive motion or nonjury case remains undecided after 180 days, it shall be included on the list of matters pending more than 180 days, which is circulated to the judges and made publicly available.

In making this recommendation, the Advisory Group seeks to emphasize the importance it attaches to prompt resolution of dispositive motions and to final decisions in bench trials. Sometimes a judge may be in the midst of a lengthy, complex trial, and the 60-day or 90-day period may not

always be workable, but it is important to keep these time frames in mind for most cases. Periodic notification and reporting by the Clerk's Office will serve as a reminder of the importance that the lawyers and litigants who appear before the Court attach to these matters, as an inducement to the Court to avoid protracted delay, and as an additional judicial management tool to assist individual judges in setting their priorities. The reporting function will also alert the Chief Judge to exceptional circumstances that might arise from time to time.

The Advisory Group does not recommend that there be public disclosure of the lists until a motion on a nonjury case has been pending for more than 6 months, at which time it will appear on the list that is currently circulated and made public under the Civil Justice Reform Act. The Group concludes that the peer pressure that will be generated by the internal circulation of the lists should be sufficient incentive for judges to adhere to the policy that they agree is fundamental: avoiding unnecessary delay in decisions on dispositive motions and in rendering findings of fact and conclusions of law in nonjury cases.

Recommendation 15

Each judge should require that all dispositive motions be filed sufficiently in advance of the pretrial conference so that they can be ruled on before the conference and the parties can avoid unnecessary preparation for a conference and/or a trial if such motions are granted.

The Advisory Group recommends that the pretrial conference be in close proximity to the actual trial date. This is to ensure that the parties are actually prepared for the final conference and that the conference serves as an additional opportunity for settlement or a forum to make the trial more efficient if it is to occur. Because it is expensive and time-consuming for parties to prepare for a pretrial conference and for trial, the Advisory Group concludes that such a conference should not occur if there is a reasonable chance that the case will be resolved by dispositive motion. This recommendation is consistent with the Group's belief that the judge should rule on all dispositive motions prior to the pretrial conference so that time need not be wasted on preparation for the conference and/or for trial.

Recommendation 16

Each judge should require counsel for the party planning to make a nondispositive motion to discuss the motion either in person or by telephone with opposing counsel in a good-faith effort to determine whether there is any opposition to the motion and to narrow the areas of disagreement if there is opposition. A party should be required to include in its motion a statement that the required discussion occurred, state whether the motion is opposed or not, and describe briefly whether that discussion did in fact reduce the area of disagreement and how it was reduced.

The Advisory Group concludes that it would add to cost and delay to require counsel for the parties to meet and confer as to dispositive motions before they are filed. Such motions go to the heart of a case and generally are unlikely to be resolved by a meeting of counsel. The Group concludes, however, that much may be accomplished by requiring that other motions be discussed before they are filed. In many cases, the discussion will reveal that a motion is unopposed or that the opposition is to part but not all of a motion. Discussion will save time and money and will alert the judge to whether or not a motion is disputed. This procedure will help to guarantee that undisputed motions are ruled upon quickly.

CHAPTER IX: DISCOVERY

The attorney surveys and the Advisory Group members' own experiences suggest that discovery is probably the most important component of excessive cost in civil cases. By controlling discovery, the Group's recommendations go a long way to controlling cost and may also eliminate some forms of unnecessary delay.

The Advisory Group shares the concern of other judges and lawyers around the country that discovery is often too expensive and frequently beyond the needs of particular cases. It nevertheless concludes that the best way to address excessive discovery is not to adopt the mandatory automatic discovery proposals approved by the Supreme Court and sent to Congress by the Chief Justice on April 22, 1993. As discussed in Chapter VII, in connection with fundamental principles for reform, the Advisory Group believes that the best judicial management is to set discovery limits for individual cases after the parties have met and conferred and can indicate to the Court what limits they agree are appropriate and, if they disagree, why they disagree on the need for particular limits. Thus, the recommendations that follow require litigants and their counsel to fully inform the judge about the nature and needs of the specific case so that the judge can assess how much discovery makes sense in that case. The Group believes that keeping discovery disputes to a minimum and resolving them informally and quickly will reduce cost and delay.

At the meet-and-confer conference required under Recommendations 3 and 4, the parties must discuss whether they can agree to the voluntary disclosure of certain core information and whether they believe certain discovery limitations should be imposed. And at the first scheduling conference, either or both parties may request that the judge impose discovery limitations, and the judge must decide what limitations, if any, to impose, based on the complexity of the case. If it appears that the parties are bringing frequent discovery disputes to the Court, the judge should consider requiring the parties to appear at a second scheduling conference to assess discovery problems and possible abuse and to consider further limitations. The Advisory Group encourages limitations that a judge believes are appropriate in particular cases.

Recommendation 17

The Court should not adopt mandatory core disclosure or numerical limits on interrogatories and depositions.

Throughout its work, the Advisory Group has examined the various draft amendments to the Federal Rules of Civil Procedure that will require mandatory disclosure of certain information and limit interrogatories and depositions if approved by Congress. Although the Group believes that discovery practice is one of the most important cost elements in any litigation, the Group opposes mandatory core disclosure and mandatory numerical limits by rule on discovery.

As a theoretical matter, mandatory disclosure of certain core information might make sense. But in the real world of civil litigation, the Advisory Group concludes that it will increase rather than reduce the cost of litigation, lead to satellite litigation, and possibly increase delay. No matter what formulation is used to define a mandatory disclosure requirement, counsel will have to make a judgment about what documents are relevant to a claim or defense. Inevitably, an adversary will challenge the good faith or reasonableness of that judgment. The Advisory Group believes that, just as sanctions

issued under Fed.R.Civ.P. 11 have become a cottage industry (so much so that the Supreme Court also sent amendments to Rule 11 to Congress at the same time it sent the discovery amendments), motions for sanctions for violations of a mandatory disclosure requirement would be routine, would increase the costs to all parties, and would burden the Court.

Some members of the Advisory Group see more reason to favor limitations on discovery than mandatory disclosure (i.e., limits on the number of interrogatories and the number of depositions or even limits on the hours allowed for each deposition). They believe from experience and observation that discovery is abused both in its scope and volume and in its intensity. Some discovery is unnecessary and is used either purposely or inadvertently to harass and increase the cost of litigation. They note the overbreadth of document production requests and interrogatories and the lack of civility in deposition practice. Support is found for their views in the attorney surveys.

Other members of the Group adamantly oppose numerical limits. They believe that limitations are likely to spawn arguments as to what qualifies as a single interrogatory, whether a deposition exceeds a certain time limit when it is delayed because of improper objections, the scope of any limitation that is imposed, and similar diversions. They believe genuine abuses of the process can be resolved by the trial judge who may, in appropriate cases, impose sanctions and costs. They believe limitations on discovery would most likely provide too much discovery in some cases and too little in others.

The reaction of the bar groups and individual lawyers to the Draft Report mirrored the division among members of the Advisory Group. Some comments strongly urged discovery limits, while others opposed such limits or endorsed some but not all of the amendments approved by the Supreme Court. Some opposed mandatory core disclosure for the reasons set forth above, while at the same time endorsing presumptive limits on depositions and/or interrogatories.

After renewed discussion and debate, the Advisory Group reaffirmed its fundamental approach to discovery and, in particular, its opposition to mandatory core disclosure. It modified its view on presumptive limits on discovery, however, and enhanced its emphasis on the importance both of the parties attempting to agree on such limits at the meet-and-confer conference and of the Court's seriously addressing the issue at the scheduling conference.

The Advisory Group's approach requires the parties to discuss, *inter alia*, discovery limitations (Recommendation 4). The Group believes that, after the parties have conferred and understand each other's views on the discovery that is reasonable for a particular case, they can articulate to the judge at the first scheduling conference why some discovery limitations should be imposed in the particular case. Recognizing that Category 1 and 2 cases generally are simpler and, therefore, should require less discovery, the judge can decide on a case-by-case basis whether limitations on the number of interrogatories and depositions—and perhaps even time limits for depositions—would help to reduce unnecessary delay and avoid excessive cost in the particular case.

At the meet-and-confer conference, either side can ask for a commitment that certain documents or other core information be produced. Absent an agreement on production, either side can raise with the Court at the scheduling conference a request that certain documents, categories of documents, or other information be subject to disclosure without the necessity of a formal request for production or motion to compel. For example, in a gender employment discrimination case in which a plaintiff alleges that she was not promoted although she was more qualified than a male who was

promoted, if the defendant refuses to agree to provide relevant employment records for the plaintiff and the person promoted after appropriate protection for privacy is guaranteed, the plaintiff could raise the matter with the judge at the scheduling conference. The Advisory Group believes that the combination of the meet-and-confer rule and the early scheduling conference will provide many of the benefits of mandatory disclosure, but avoid its problems.

Similarly, if one side suggests, for example, that no more than six depositions per side or 20 interrogatories per party, or that a total of 12 hours for depositions per side be permitted, but no agreement is reached, the side or party seeking a limit can raise the issue at the scheduling conference, and the judge can fix limits with his or her knowledge of the specific case before the Court. This process will lead to sensible, case-specific discovery limitations and avoid the problems inherent in arbitrary rules.

Recommendation 18

Except in extraordinary cases involving sensitive constitutional or similar issues, judges should refer discovery matters in civil cases to magistrate judges. Judges should clearly indicate that decisions by magistrate judges on discovery matters will be given great deference by the district judge who is likely to overturn a ruling by the magistrate judge only when it is clearly erroneous and palpably harmful.

When a case is drawn from the wheel and assigned to a district judge, other than one that is part of the experiment covered by Recommendation 23, a magistrate judge should be assigned randomly at the same time to handle all discovery matters and other pretrial matters in the case that the district judge chooses to refer.

The Draft Report of the Advisory Group concluded that discovery disputes should not routinely be referred to magistrate judges. The Group set forth several rationales supporting this conclusion. First, magistrate judges do not know the case as well as the trial judge. The magistrate judge will not have been at the scheduling conference and is not as well situated as the judge to whom the case is assigned to resolve disputes expeditiously. Second, referral usually adds another step to the process by offering litigants two opportunities to argue the point—one to the magistrate judge and one to the trial judge. Third, most discovery disputes are a matter of judgment and reason and are not governed by complicated legal precedents; thus, when the problem is identified to the trial judge familiar with the case, he or she should be able to rule promptly. If the recommendation regarding scheduling conferences with the Court and firm dates for each stage of the proceedings is to serve its purpose, the management and control of the case must remain with the trial judge.

After considering a number of negative reactions to its recommendation against referral of discovery disputes to magistrate judges on the part of some district judges, some magistrate judges, and some bar groups and individuals, the Advisory Group reexamined completely its recommendation and determined that the Court could make better use of its magistrate judges if it routinely referred all civil discovery matters to them. Since this change in approach is significant, it warrants at least a short explanation.

The Advisory Group concluded that each of the three rationales offered to support the initial recommendation could be defended on theoretical grounds more easily than on practical grounds. The Group remains convinced that strong management of a case from start to finish by a single judicial officer is ideal and that referral of an isolated discovery issue to a magistrate judge in a case that the

magistrate judge has not seen before is likely to be inefficient. The Group has come to believe, however, that if all discovery in a case is referred to a single magistrate judge, that magistrate judge may come to know the case as well as the assigned district judge will know it and, therefore, can efficiently resolve discovery disputes.

The Group also believes that it is inadvisable to refer matters to magistrate judges if their decisions are likely to be appealed to district judges. Such referrals are likely to increase delay and cost. But the experience of members of the Group and the Group's analysis of both our Court and other courts leads to the conclusion that discovery decisions are rarely appealed. The Group believes that routine discovery issues can be readily handled by magistrate judges and that their decisions should receive great deference by district judges, who should only reverse where a discovery ruling is clearly wrong as a matter of law and also is palpably harmful.

Finally, the Group adheres to the view that most discovery disputes are not complicated matters. They can be referred to magistrate judges without compromising the basic function of Article III courts. Because magistrate judges' time is less frequently consumed by trials, they should be able to hold conference calls, meetings in chambers, and brief hearings to resolve discovery matters promptly.

The Advisory Group now recommends that district judges routinely refer discovery matters to magistrate judges. The magistrate judges have expressed a willingness to handle discovery, and their doing so will free up more time for district judges to devote to tasks that only they can perform. To provide some assurance of an equitable distribution of work for the magistrate judges and to avoid forum shopping by counsel and judges, the Group recommends that the magistrate judges be randomly assigned by case so that one magistrate judge is designated as the judge to whom all referrals in that case will go. This system ensures that one magistrate judge who knows a case will manage it when a referral takes place.

In practice, all cases would be assigned to both an Article III judge and a magistrate judge at the time of filing and the names of both judicial officers would be stamped on the file and on the complaint. Counsel would be required to designate both names on all papers subsequently filed. Each of the two judicial officers would keep a file on the case, and (unless the judge indicated otherwise at the scheduling conference) all discovery matters would be sent directly to the magistrate judge.

The Advisory Group notes that most of the senior judges and a few of the active judges rarely refer discovery matters (and/or pretrial matters) to magistrate judges. One variation on this recommendation would be to permit those few judges, if they had a strong desire to maintain their current practice on a consistent basis, to notify the Clerk's Office in writing that they plan to continue their current practice of resolving all discovery matters themselves. Their cases then would not be randomly assigned to both a judge and a magistrate judge for all purposes at the time of filing. This ability of a district judge to "opt out" of this proposal for all civil cases assigned to him or her would also ensure that magistrate judges would not be randomly assigned to a case where the overall case manager—the trial judge—knows at the outset that he or she will not use the assistance of the magistrate judge. Those judges would, of course, be able to call on the assistance of a magistrate judge in the occasional case, as he or she currently does, but to be consistent with Recommendation 18, the magistrate judges would be assigned in rotation when their services are called upon.

In some extraordinary cases (e.g., cases involving Presidential privilege or sensitive national security documents) the importance of the issues, the likelihood that one or both sides will insist upon an appeal to the district judge, and the district judge's experience in dealing with related issues may counsel against referral. Discovery issues can sometimes be intertwined with matters relating to the merits of a case. In these situations, the district judge should decide the legal issues before referring discovery to the magistrate judge.

Recommendation 19

The Court's Committee on Local Rules should review the problem of deposition and discovery conduct and should consider ways of controlling misbehavior and eliminating conduct falling short of basic standards of civility. The District of Columbia Bar should be asked to study the problem and assist in promoting appropriate deposition and discovery conduct.

The Advisory Group has examined several examples of orders, guidelines, and rules that address appropriate deposition conduct and proper behavior during discovery. Of particular interest are the standing orders on deposition conduct adopted by the U.S. District Court for the Eastern District of New York, the Maryland Discovery Guidelines, and the *Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit.* The Court's Committee on Local Rules should consider how best to control what many believe is an increasing problem of lack of civility in discovery. By providing additional guidance on such issues as instructions not to answer, suggestive objections, conferences between a deponent and counsel, and claims of privilege, the Committee could help to ensure, especially during depositions, that counsel do not waste time and increase costs as a result of unproductive, time-consuming, and costly posturing.

The District of Columbia Bar might be able to educate counsel about the importance of civility in an adversarial system. Continuing legal education, discussions in bar publications, and other efforts to call attention to the problem of incivility could provide a stimulus for lawyers to reexamine their behavior at depositions and help to ensure the success of any order, guideline or rule that is adopted.

Recommendation 20

The district judges and magistrate judges should have the discretion to determine whether discovery disputes should be resolved by telephone conference; short, informal, written submissions; formal submissions; or briefing and oral argument. Judges should decide routine discovery motions from the bench, in a telephone conference with counsel, or within 7 days of submission or of the hearing.

There are a range of discovery disputes. Attorney-client privilege and work-product issues may involve intricate factual questions and disputed legal issues. Most discovery issues, such as whether an answer to an interrogatory is sufficient or an objection to an interrogatory or a request for production of documents is well-founded, are much simpler. A judge ought to have broad discretion to tailor the procedure for resolving a discovery dispute so that it is no more formal than is necessary under the circumstances and can lead to a prompt resolution with minimal delays in the discovery process. This should reduce delay and decrease the costs of discovery.

Routine discovery disputes often could be resolved on the basis of informal procedures. One quick and inexpensive method for resolution is for the judge to hear the parties in a telephone conference.

Another would be for the Court to adopt a local rule that would permit parties to file a "Notice of Discovery Dispute" not to exceed five pages, that does not include extensive legal argument or citation of authority, to inform the Court of the nature of a discovery issue that requires judicial resolution. Many of the judges believe that most pages of routine discovery motions simply rehash established law and aid little in helping to resolve the dispute.

The judges' interviews indicated that the judges have not found most discovery disputes to be complex or a serious problem for the Court. Yet the attorney survey and the experience of Advisory Group members is that discovery issues can be a cause of unnecessary delay and often account for substantial expense in litigation. To prevent discovery disputes from delaying the disposition of a case, or from unnecessarily burdening parties with expensive briefing and argument, the Advisory Group recommends that judges decide routine discovery motions from the bench, in a telephone conference with counsel, or within 7 days of submission or of the hearing. The use of less formal procedures when such procedures are adequate to inform the judge of the issues in dispute will permit a fair, just, and prompt resolution. It is important that discovery issues are resolved promptly so that the case can continue moving forward.

The Group understands that telephone conferences do pose the possibility that a judge's schedule will be interrupted frequently and that, by making it easier to contact the Court, parties may increase their reliance on judicial rulings. On the other hand, some judges believe that, by requiring counsel to appear before the Court or participate in an immediate conference call on a discovery dispute, counsel are likely to become more reasonable and to agree on some things they would not otherwise agree upon. With the greater involvement of and responsibility of magistrate judges, telephone conferences and other methods will not unduly burden the Court.

The Advisory Group believes that in some cases informal written submissions or telephone conferences can save time and reduce the costs to parties without unduly burdening the Court. A judge can rule on many routine discovery disputes without formal briefing and argument. A judge can schedule a call at his or her convenience and require the parties to ensure that a court reporter is making a record. The judge may instruct one of the parties to prepare an order for the judge's signature, or the judge may prepare a short order confirming any ruling made. Experienced district and magistrate judges can discourage litigants from seeking recourse to the Court on minor matters by the way they schedule motions, by the rulings that they make, by disposing of routine matters quickly, and by imposing costs pursuant to Fed.R.Civ.P. 37 in appropriate cases.

The Advisory Group believes that the informal procedures suggested herein can be used by magistrate judges as readily as by district judges. The full range of options is and should be available to any judicial officer called upon to resolve discovery disputes.

The Advisory Group examined the recent installation of a discovery hotline in the U.S. District Court for the Southern District of Texas. The hotline is staffed by a judicial officer during business hours who will rule on discovery disputes and enforce provisions of the Civil Justice Reform Act plan. Such a hotline is not needed in our Court, and it places a judge who knows neither the case nor the lawyers in a position of ruling on disputes. This, in the Group's judgment, is not as desirable as having the judge who is responsible for moving the case to a conclusion rule on disputed issues.

CHAPTER X: MANAGING TRIALS AND SETTLEMENT DISCUSSIONS

A. Back-up Judges

The Advisory Group completely supports the individual calendar system now used by the Court. The Group believes that only under such a system is it possible to provide the hands-on judicial management necessary to control cost and delay that is a centerpiece of this Report. The time limits and other procedural mechanisms recommended by the Group assume that a single judge will be monitoring a case from the time it is filed until it is terminated, although the Group's recommendations with respect to the use of magistrate judges in discovery and with respect to "back-up" judges recognize that in some cases judicial management is improved when a single judicial officer is responsible for designated parts of a case, while another judicial officer is assigned the case generally. Without disturbing the individual calendar system, the Advisory Group makes a number of recommendations to improve the Court's use of senior judges, magistrate judges, and special masters. The use of magistrate judges to handle discovery was discussed under Recommendation 18.

The Group believes that the Court can also enhance the value of magistrate judges if other changes are made. The Advisory Group recommends that, in addition to referrals of civil cases to magistrate judges for discovery purposes, there be instituted a 3-year experiment in which a sample of personal injury and small contract cases would be referred by random assignment to a magistrate judge for all purposes, including (with the consent of the parties) for trial.

To avoid bumping civil cases in favor of criminal cases, the Group recommends that a system of "back-up" judges be developed, with senior judges serving as the primary source of back-up. In recognition of the important role senior judges will play in this system of cooperative assistance, the Advisory Group recommends that the role of senior judges be enhanced at the Court's Executive Session. As noted in Recommendation 22, the Group suggests that the senior judges be given a vote at the Executive Session and be included in administrative decisions made by the Court.

The Group further recommends a number of specific procedures that it believes will help to expedite both civil and criminal trials, whether conducted by district or magistrate judges. Finally, the Group recommends procedures to assist the Court in the appointment of qualified special masters and makes recommendations that will assist the Court in finding them.

Recommendation 21

When a conflict arises between a civil trial and a criminal trial, the judge should notify the chief judge (or the Calendar Committee or its chair) who will ask another judge, usually a senior judge, to handle one of the cases. There should be a presumption that the criminal case will be the one transferred to the other judge because it usually will have involved less pretrial investment of judicial time and knowledge. In some instances, a straightforward civil case might be transferred instead of a complicated criminal case.

Before the Court was faced with an increase in filings, litigants generally understood that a trial date once set was firm and would only be changed in the event of a genuine emergency. The

Advisory Group believes that, if unnecessary delay and cost are to be reduced, it is essential that the Court make every effort to establish that once a trial date is set in civil cases, that date will remain firm once again. To make firm trial dates a reality, it is essential that, without disturbing the individual calendar system, judges back each other up in a cooperative effort to respond to the impact criminal cases have had. The key to making this system work is that, if there is a conflict between a civil and a criminal trial, the criminal case (or, in some cases, a noncomplex civil case) will be transferred to another judge (a back-up judge) instead of "bumping" the civil trial date. Such a transfer could be made as late as the day of trial.

Even though many judges find routine drug cases to be tiresome and sentencing requirements in some cases to be objectionable, the judges are virtually unanimous in their recognition that these drug cases and other uncomplicated criminal cases are routine in the sense of procedures, number of witnesses, and the straightforward nature of the facts. Jury instructions in these cases, once drafted, can be used again and again. All of the judges are familiar with the typical motions to suppress that are made and can rule on them without having to relearn Fourth, Fifth, and Sixth Amendment law. Because the vast majority of criminal cases are tried to juries, the judge is not burdened with the need to prepare findings of fact and conclusions of law. Even in bench trials, the burden of explaining a finding of guilt is small.

In contrast, most civil cases require the judge to be more familiar with the case and with the specific contentions of the parties. Many jury trials require particularized instructions. Nonjury cases involve fact-finding and written conclusions of law. For all these reasons, civil cases generally are not as easily transferred as criminal cases.

There will always be some instances in which a judge who has scheduled a civil trial will find that the trial date poses a conflict with the Speedy Trial Act, as applied in a criminal case. Whenever a conflict exists, the presumption should be that the case that requires the least judicial involvement (i.e., preparation, background knowledge, trial time) for the back-up judge should be assigned to that judge. Ordinarily, the criminal case should be reassigned. A complex conspiracy case, however, might require more work than a simple 1- or 2-day personal injury civil case. In this instance, the civil case, rather than the criminal case, might be transferred.

For this recommendation to work, a judge faced with a conflict would so indicate to the chief judge, the Calendar Committee, or its chair, who would then contact a potential back-up judge to inquire whether he or she would be willing to step in to resolve the conflict and try the case. If the judge is willing to step in and cooperate in the interest of avoiding a delay in either the civil or the criminal trial, both will proceed as scheduled.

This back-up system requires greater cooperation and coordination among judges than has happened before. The linchpin of a workable system is efficient use of senior judges. The Court now has the benefit of seven senior judges with broad experience in handling all types of civil and criminal cases. To be considered as fully participating in senior status, these judges need only take 25 percent of the caseload of active judges; but they also have the option of choosing not to take certain types of cases. Senior judges typically choose not to be "in the wheel" for criminal and/or *pro se* cases. Nevertheless, under the current system, senior judges often do far more than 25 percent of a standard workload.

Although an argument could be made that senior judges should be encouraged to take criminal cases in rotation to help the Court respond to the increased criminal filings, the Advisory Group does not recommend that criminal cases be routinely assigned to senior judges. Instead, senior judges should be asked to serve as the principal back-up judges in a cooperative system. Because they need not take a full caseload, senior judges are more likely to have time available and to be more flexible when another judge has a conflict.

The Advisory Group respects the right of senior judges to choose not to hear certain types of cases. Yet, for the reasons stated, the Group believes that some sharing of criminal work by the active judges with the senior judges is the best system for the Court and for the litigants who appear before it to ensure compliance with the Speedy Trial Act and to implement the goals of the Civil Justice Reform Act at the same time. Although the Advisory Group is sensitive to the concern expressed by some judges that defining the role of senior judges is the prerogative of the Court, the Group does note that it looked at and carefully considered various alternatives on how to best use senior judges. The back-up system seems to be the best proposal.

Mention should be made of a proposal that the Group considered, but ultimately rejected. That proposal would have asked the Court to develop a plan under which some or all judges would designate a month or more in which they would schedule no civil trials. With their calendars free of civil cases, the hope would be that, when a conflict arose for another judge during this month, the judges whose calendars had been cleared of civil trials would hear the criminal (or civil) case. In the end, the Group determined that this process was unduly complicated, might be inconsistent with other recommendations made by the Group as to how quickly judges should be expected to rule on motions and to decide nonjury cases, interfered with the individual calendar system, gave no assurance that the judge whose calendar was free of civil trials would not have a calendar full of criminal trials, and provided little, if anything, that is not provided by the back-up system that the Group recommends.

Recommendation 22

If senior judges participate in this cooperative plan, their status should be enhanced so that they have a more equal role in the Court and its decision-making bodies.

The Advisory Group recommends that senior judges who participate in this cooperative plan should be given a vote at the Executive Session of the Court and be included in all administrative decisions made by the judges of the Court. Moreover, the Group urges the Court, as it works with the Court of Appeals on space and facilities issues, to make an effort to ensure that sufficient courtrooms are available so that every senior judge and magistrate judge, as well as every active judge, has a courtroom. The availability of courtroom space will make it easier for all judges—active, senior, and magistrate—to be available to try cases and will reduce delay and cost to litigants. If courtrooms are not available for the senior and magistrate judges at all times, the Advisory Group's proposals for back-up judges cannot work.

Efforts by the Advisory Group to find ways to permit senior judges to have their own full-time court reporters and courtroom clerks were unsuccessful because the resources available from the Administrative Office are not sufficient to permit the Court to hire the additional personnel. It is the Group's understanding that senior judges share courtroom clerks and generally have access to the

court reporter of their choice. The Advisory Group applauds every effort made to provide senior judges with the support staff necessary to enable them to participate as fully as they are able and to permit the Advisory Group's proposals to reduce delay through back-up judges to work.

B. Magistrate Judges

It would appear from the interviews with all of the judges and magistrate judges that the role of the magistrate judges in the Court is not well-defined. Many of the judges refer few or no matters to the magistrate judges. Some of the judges refer selected cases to magistrate judges for discovery. Some send most of their cases to magistrate judges for discovery. Any one of the three magistrate judges may receive no referrals for a period of time and then suddenly receive several referrals.

At the current time, the three magistrate judges rotate so that each handles criminal proceedings (i.e., pretrial matters in criminal cases) for a month and then handles civil cases and any carryover matters from the month of criminal duty for the next 2 months. The Group found that the role of the magistrate judges in criminal cases is the only part of their job description that is clearly defined.

There is a wide variety of views among the judges and magistrate judges as to how magistrate judges optimally should be used and what their proper role is within the Court. By virtue of the practices of approximately one-third of the judges, it is apparent that many judges use magistrate judges almost exclusively for pretrial and discovery matters, while others use them hardly at all for such matters, and still others do not use magistrate judges for almost any purpose. Some of the active judges, while acknowledging that they are overburdened and can use help in the disposition of civil cases (particularly in view of the burgeoning criminal caseload), believe that only Article III judges should be trying cases and that, even with the consent of the parties, the trial of cases is not a proper role for magistrate judges. As for the magistrate judges, all of them would like the opportunity to handle and try cases from start to finish while, at the same time, some of them would not be enthusiastic about giving up their role as pretrial and discovery dispute judges.

The Advisory Group considered all of these different points of view, as well as the caseload of the Court, the ratio of district judges to magistrate judges, the current use of magistrate judges, how magistrate judges are used in other district courts, and the suggestions made by some of the district judges and magistrate judges of this Court and the attorneys who responded to the attorney survey. It also considered the comments made on its Draft Report, many of which focused on the role of magistrate judges.

In considering this mix of factors, the Advisory Group also kept foremost in its mind its fundamental view that there should not be duplication in the system. It is far better for each judicial officer to have a discrete role to play in a matter from start to finish, rather than to have a number of different judicial officers handling portions of cases or to have the same issue presented to more than one judicial officer for decision and/or review and decision. In the view of the Advisory Group, nothing is gained except delay, often accompanied by increased cost, from a piecemeal approach where an issue is referred to a magistrate judge for decision or for recommendation with the decision or for recommendation open for review by a district judge. At the same time, the Advisory Group concluded that some tasks can be performed as well by a magistrate judge as by the district judge and can be assigned to the magistrate judge without much risk that appeals will be taken from the magistrate judge's decisions.

Applying its general rule that a magistrate judge should not be used in a role that is likely to lead to an appeal from his or her decision and thereby result in a duplication of judicial effort increases cost and delay for the litigants, the Advisory Group's Recommendation 18 urges that when a case is assigned to a district judge, it should simultaneously be assigned to a magistrate judge who would handle all routine discovery matters in the case.

Applying the same general rule, the Advisory Group's Recommendation 25 is that dispositive motions should not be referred to magistrate judges. The magistrate judge's recommended decision on these motions is virtually certain to be challenged by the losing party, and the challenge will be in the form of written exceptions to the magistrate judge's recommendations. The process of referral, recommendation, filing of exceptions, and response to exceptions is a guarantee that there will be delay, an additional round of filings by the parties in response to the recommendations, more paper for the district judge to read, and additional delay and expense.

Applying the general rule a third time, the Advisory Group rejected the proposal that all *pro se* cases be referred to the magistrate judges for reports and recommendations. That practice is followed in some other district courts and was discussed at the conference in St. Louis attended by the Advisory Group's chair, reporter, and administrative analyst, and by Judge Lamberth, an *ex officio* member of the Advisory Group. While the *pro se* referral system initially had a good deal of appeal, the full Advisory Group ultimately rejected it as inconsistent with the notion of streamlining the process. The Group did not see how using magistrate judges to perform functions that are essentially duplicative of those that ultimately will be performed by district judges would reduce cost and delay.

In addition, the Advisory Group adopted a second general rule in evaluating the work of all judicial officers: a judicial officer should not be required to perform tasks that another judicial officer or other person with more flexible responsibilities could perform as well. Just as this second rule supports the referral of discovery in civil cases to magistrate judges, it supports assignment of screening of *pro se* cases by staff attorneys rather than by judges.

As is discussed in Chapter XII, the Advisory Group decided to recommend that the Court hire one or more *pro se* staff attorneys to prepare reports and recommendations that would go directly to the judges to consider at an early stage in the process. It was the consensus of the Group that this would be much more efficient than having a judicial officer (i.e., a magistrate judge) prepare such recommendations and reports for review by a district judge.

Recommendation 23

The Court should conduct a 3-year experiment, during which district judges would automatically refer a random sample of personal-injury cases and some contract cases to magistrate judges for all purposes.

Some cases can be assigned to magistrate judges at the outset, and the Group believes that once parties have experience with magistrate judges, they will consent to proceed before the magistrate judge for all purposes. To test this belief, the Group recommends a 3-year experiment. During this period, the judges would automatically refer to magistrate judges a random sample of personal-injury cases and some contract cases. Although under 28 U.S.C. § 636, parties cannot be compelled to proceed before the magistrate judge for all purposes, with the consent of the parties, the magistrate judge may handle all aspects of a civil case. The Advisory Group believes that many parties will want to

proceed before the magistrate judge who is handling the pretrial aspects of the case and who is intimately familiar with the issues once they experience this use of magistrate judges. In the types of cases to be referred, the Advisory Group believes that the magistrate judges can play a useful role in processing civil cases and permitting the Article III judges to spend more time on other cases.

Out of respect for the unique role that Article III judges play in the justice system, the Advisory Group suggests that constitutional or civil rights cases not be referred to magistrate judges. By focusing on personal-injury cases (which now constitute 49 percent of the cases in this Court that go to trial) and by asking the Court to identify types of contract cases (approximately 15 percent of the cases that go to trial) that could be included in the experiment, the Advisory Group limits referral to cases in which the independence of the federal judiciary is likely to be less significant to the litigants than the goals of reducing cost and delay.

Assuming that the Court will select and retain highly qualified magistrate judges, the Group predicts that the experiment will lead to litigants opting to proceed before magistrate judges for all purposes in most referred cases. The end result will be to spread the work in civil cases among more judicial personnel and, thus, to reduce delay. If the experiment is successful, additional types of cases could be included in the random referrals, or referrals of personal injury and certain contract cases could become standard practice in this Court.

If the Advisory Group's recommendation that civil discovery be assigned to magistrate judges generally is accepted by the Court, the Advisory Group believes that lawyers and their clients will become increasingly familiar with the magistrate judges and will recognize their ability to handle civil cases. The Advisory Group believes that many litigants will be advised by counsel to proceed to trial before the magistrate judge and will accept the advice without feeling pressured to do so.

The Advisory Group is concerned that, unless a more clearly defined role emerges for magistrate judges in civil cases, the Court will find it difficult to recruit and retain the best people for the positions. The proposed experiment is an important part of an effort to begin to define the role of the magistrate judges in civil cases consistently with an overall delay and cost reduction plan.

In proposing a 3-year experiment, the Advisory Group intends that the experiment be evaluated at the end of 3 years, not when all cases that have been assigned to magistrate judges have been completed. The Group is aware that, at the end of 3 years, a number of cases that have been sent to magistrate judges as part of experiment will not have been settled, disposed of by motion, or tried. But a sufficient number of cases should have been disposed of to permit a review of the success of the experiment and to consider whether it should be continued, abandoned, or expanded.

Recommendation 24

The Court should seek authority to appoint two additional magistrate judges to provide the assistance that will be required if magistrate judges are to handle discovery in civil cases generally, handle the tort and contract cases that will be assigned to them in the experiment described in Recommendation 23, and play an increased role in conducting settlement conferences and in providing alternative dispute resolution options.

The Court has fewer magistrate judges per authorized judgeship than many other courts and fewer than almost any other urban federal district court. Whether the limited past use of magistrate judges

by the district judges is attributable to the small number of magistrate judges who are available or whether the small number of magistrate judges is attributable to their limited use is debatable. Whichever is the truer statement, the Advisory Group concludes that, with the docket facing the Court now and in the predictable future, magistrate judges can provide essential services that will free district judges to do things that only they can and should do.

The Advisory Group envisions magistrate judges handling civil discovery, handling a number (likely to be increasing over time) of cases from start to finish as parties consent to trial before magistrate judges, handling settlement conferences for district judges (especially in nonjury cases), and participating in an important way in the Court's offering an increased array of alternative dispute resolution opportunities.

To do all of these things, the Court will need at least two new magistrate judges. The Group recognizes that the Administrative Office tends to approve requests for additional personnel on the basis of matters actually handled by these personnel. Past practice with respect to magistrate judges might not provide adequate support for the Group's recommendations. But the Group is confident that the role of the magistrate judges in the recommendations made here is substantial and that the number of matters projected to be handled in the future will support the addition of at least two more magistrate judges. The Group hopes and trusts that the Administrative Office can be persuaded of just how strong the case is for additional personnel by this Report, the Court's plan, and the rapid increase in magistrate judge referrals that will occur if the recommendations made are implemented.

In Chapter XI, the Advisory Group explains the important role increased ADR may play in reducing cost and delay. Because the Group supports efforts to expand the ADR resources availableto litigants, the Court could consider encouraging the magistrate judges to offer several alternative dispute resolution opportunities. If at least two additional magistrate judges are appointed, there may be a sufficient number of magistrate judges available so that the parties might be able to elect a magistrate judge (other than the one to whom discovery may be referred or to whom the case has been sent as part of the experiment) as one of the alternatives available to all parties who voluntarily agree to ADR or who are compelled to participate in any mandatory program of ADR. Once a sufficient number of magistrate judges exists, the magistrate judges may serve as a resource available to the district judges for promoting settlement of cases when the trial judge cannot or should not participate in settlement conferences him or herself.

Recommendation 25

Judges should not refer dispositive motions to magistrate judges. Judges should consider referral of certain matters to magistrate judges for certain labor-intensive tasks, after consulting with the magistrate judge as to the feasibility of the magistrate judge completing the tasks within the time period envisioned by the district judge.

The Advisory Group's Recommendation 18 provides that a magistrate judge will be assigned to a case along with a district judge, and that this magistrate judge is the one to whom virtually all discovery in the case will be referred. The Group believes that in the interest of having as few judicial officers handling matters in the same case as possible and in ensuring that caseloads of magistrate judges remain relatively equal, the magistrate judge assigned to a case should be the magistrate judge to whom all other referrals are also made. Judges may wish to refer certain other labor-intensive tasks to

magistrate judges (e.g., review of voluminous records when attorney-client privilege and work-product claims are made, or individualized hearings in certain class-action cases).

Because the Advisory Group has defined a number of new and important roles for the magistrate judges, they may not have much more time than the district judge to handle massive numbers of documents or to conduct hearings in class-action cases. Therefore, before referring a particularly labor-intensive task to a magistrate judge, the Group recommends that the district judge consult with the magistrate judge and determine whether the magistrate judge can reasonably perform the task within the time period the district judge has in mind. Such consultation promises to avoid referrals that result in delay. In cases in which referral would require too much of a magistrate judge's time, a special master might be a preferable alternative.

Recommendation 26

The Court should seek to educate the Bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases and should invite the Bar to provide feedback on its experiences before magistrate judges.

The Court should develop and publicize materials to educate the Bar—especially government lawyers who litigate in this Court and other members of this Court's Bar who try cases—about the pilot program and the benefits of participating in it. The Court should also invite feedback on the Bar's experience with magistrate judges. The Advisory Group acknowledges that some comments on a magistrate judge's performance may well be affected, consciously or unconsciously, by whether one's client has won or lost. But the Group believes that the Court is fully capable of separating useful information from sour grapes. Feedback should inform the Court whether magistrate judges are deciding matters quickly, whether their courtroom facilities are adequate to handle jury trials, and on other matters that may help the Court improve the services that magistrate judges can provide.

Recommendation 27

Magistrate judges should retain primary responsibility for considering petitions by adopted persons to open adoption records of the Court pursuant to Local Rule 501.

Although the number of adoption petitions diminishes greatly each year, the Advisory Group believes that magistrate judges should retain this task.

Recommendation 28

The Court should invite magistrate judges to attend certain meetings of the Executive Session.

The Advisory Group does not recommend that magistrate judges have a vote in the Executive Session of the Court. The Group does recommend, however, that magistrate judges be invited to attend Executive Session meetings periodically, excluding, of course, meetings that involve evaluations of the magistrate judges or other issues that are deemed not appropriate to non-Article III judges.

Involving the magistrate judges in some of the discussions of Court policy is consistent with the Advisory Group's recommendations concerning developing better management techniques, exchanging ideas for moving cases, and using magistrate judges as additional judicial resources for all purposes in appropriate cases.

C. Special Masters

The District of Columbia and its surrounding area are blessed with an array of legal talent. When appropriately employed as special masters under Fed.R.Civ.P. 53, this talent can provide enormous assistance to the Court. A special master can devote whatever time is required to a case, whereas judges or magistrate judges could not do so without compromising their capacity to handle the many other matters before them. Further, the parties and the Court often will benefit when a talented lawyer is committed to assisting with the prompt and efficient resolution of their dispute, especially in cases in which the cost of a special master's services are small in relation to the overall costs of litigation and/or the amount in controversy.

Recommendation 29

Under the appropriate supervision of the Court, special masters should be used in exceptional pretrial and post-liability settings when the issues to be referred require extraordinary amounts of time that would be difficult to obtain from a judicial officer.

Fed.R.Civ.P. 53(b) governs a district court's power to refer matters to a special master and provides that reference to a master "shall be the exception and not the rule." The rule permits reference to a master in a jury-trial case only where there are complicated issues, and in a nonjury case where there is some "exceptional condition" or a difficult damage calculation is required. In this Court, special masters have been used in cases involving such matters as patents, back-pay awards in class-action suits, settlement discussions in class-action cases, and review of documents during discovery.

In a recent decision by the District of Columbia Circuit, *In re Bituminous Coal Operators Ass'n, Inc.*, 949 F.2d 1165 (1991), the Court ruled that a judge may not impose upon the parties against their will a "surrogate judge" to assume the functions of an Article III judge and that a special master is to assist, not replace, a judge. The judge may assign a broad range of tasks to a special master in conjunction with pretrial matters, however, and may use a special master to deal with remedial issues in a case following a finding of liability or to supervise post-trial injunctive relief.

Referrals are most appropriate when the parties agree to a special master. Rule 53 does not require agreement, however, and in some cases the Court may decide that the only way to bring a case to a reasonably prompt end is to appoint a special master, even though one or both parties object. Consideration should be given to the financial cost that a special master would impose on the parties.

Recommendation 30

The Clerk of the Court should maintain a list of special masters with experience in this Court and in other courts as a reference source and shall also list all mediators who have been certified in the Dispute Resolution Programs administered by the Circuit Executive's Office. The Clerk shall seek to ensure that the list is updated on a regular basis to guarantee that it is as inclusive as is reasonably possible.

The Advisory Group has compiled a list of some of the cases in which special masters have been used and is submitting the list to the Clerk of the Court. The Group recommends that the Chief Judge ask each judge to provide the Clerk with a list of cases in which special masters have been used, the name of the special master, the nature of the case, and an evaluation of how the special master performed. The Clerk should update this list regularly so that any judge or litigant who

wishes to know the names of persons with experience in the Court as a special master has a convenient reference source.

The Advisory Group believes that it is important for the list to be as inclusive as possible so that all members of the bar with relevant experience are known to the Court. The Group suggests that the Court ask the Federal Judicial Center and the Chief Judge of the Superior Court of the District of Columbia to provide the names of lawyers practicing in the District of Columbia who have served as special masters in that court or elsewhere in the country and to update the list as often as possible so that the Clerk can add these names to the list of special masters. Finally, the Group believes that anyone who has served as a special master should be permitted to call that fact to the Clerk's attention and should be added to the list once the Clerk determines that the person did serve as a special master. The Clerk should also keep a list of all mediators certified in the Dispute Resolution Programs of the Circuit Executive's Office for possible service as special masters.

The judges' interviews revealed that many judges have had great success in employing special masters, and only in rare instances have any judges been dissatisfied with a special master. It would be beneficial to have the Clerk not only maintain a master list of all those who have served as special masters, but to include a formal statement from the judges as to the level of satisfaction with the special master's performance.

D. Trial Procedures

The Advisory Group decided not to make a large number of recommendations for the actual trial of cases and trial procedures. While a number of new and innovative ideas based on Advisory Group members' experiences in other courts were discussed, the Group consciously limited its trial procedures proposals to those it thought would have a direct impact on the reduction of excessive cost or delay.

Recommendation 31

Each judge should try to schedule a trial, in either a civil or a criminal case, so that the evidence will not be interrupted by status conferences, motions hearings, sentencing hearings, or other proceedings.

Judges often schedule status conferences, motions hearings, sentencing hearings, or other proceedings in the morning, at lunch, or at the end of the day while a jury trial is ongoing. The Group observes, however, that each interruption in a case, whether jury or nonjury, increases the cost and burden to the litigants and to witnesses. Litigants must pay for their lawyers' time and sometimes for the time of witnesses, especially expert witnesses, as well, even when they are waiting for other proceedings to terminate. Sometimes experts become unavailable as a result of delay. Ordinary witnesses are kept waiting during delays and become discouraged with the trial process. In jury cases, the jurors are inconvenienced as well as the litigants and witnesses, and the cost of jury trials increases if the trial takes more days than truly are necessary. Thus, the Advisory Group urges that scheduling be done as carefully as possible to avoid spillover of other proceedings into the time set aside for the trial.

The Advisory Group does not recommend one particular approach with respect to scheduling hearings. But the Group does recommend that each judge embrace two goals in scheduling. First,

once a trial has begun, the judge should devote a substantial number of hours to the trial on each scheduled trial day, and the trial should be interrupted as little as possible. Second, parties and their counsel should not be unnecessarily kept waiting, because time spent waiting can be costly.

With these goals in mind, the Group envisions a number of alternatives that a judge might choose. One is to schedule other hearings on a designated morning or afternoon each week and to stagger the hearings so as to minimize waiting time. Another is to begin trial days earlier and to end trials at 1:00 p.m. or 2:00 p.m. on certain days, break for lunch, and use the afternoon for hearings or for in-chambers work on pending motions and undecided nonjury cases. (This also allows additional witness preparation time for the trial lawyers.) A third possibility is to set an entire day aside from time to time for hearings and to stagger them in order to minimize waiting.

Recommendation 32

Trials should be held during "normal business hours," although a judge might choose to end the trial day in the early afternoon on some days for the convenience of the parties and their counsel, to make jury service easier for many jurors, and to provide time for hearing or deciding motions.

Trials generally should be held between the hours of 9:30 a.m. and 4:30 p.m. or 5:00 p.m., with an hour off for lunch and 10-minute breaks in the morning and afternoon. The Advisory Group has observed that judges who run a trial for an entire day often schedule motions before and after the trial begins each day. Such scheduling may cause a problem when a hearing held in the morning continues after the parties, their counsel, and the jurors are present and ready to proceed. This scheduling may also be a problem for court personnel whose family responsibilities may make it difficult for them to begin before ordinary business hours and to work beyond those hours. Hearings early in the morning or late in the afternoon may also conflict with other required appearances of counsel and may make it particularly difficult for a lawyer in trial in another court to appear on time for an afternoon hearing.

The Advisory Group concludes that each judge should consider all possible scheduling alternatives, the problems that early-morning and late-evening hearings pose for court personnel as well as for counsel in some cases, and the possibility that scheduling hearings at times other than early mornings and late afternoons may reduce the cost to litigants and avoid conflicts between scheduled judicial appearances. The Advisory Group observes that if a judge conducts a trial for the entire day, taking only the lunch breaks and recesses described herein, the judge would be providing more trial time in a day than is now provided by some judges. In some cases, this schedule would be welcomed by litigants, counsel, and jurors. But, in other cases, the Advisory Group believes that the jury pool might be expanded and the parties might be able to try a better case if the judge began earlier and adjourned the proceedings each day (or at least some days) early in the afternoon. The remainder of the afternoon would not be lost time; it could be used for hearings or for the judge to work on other pending matters and for counsel to better prepare witnesses for the next day.

Recommendation 33

Each judge should set strict timetables for the submission of proposed findings of fact and conclusions of law in nonjury trials and proposed jury instructions for jury trials.

In nonjury cases, the trial judge should exercise his or her discretion to require the parties to submit proposed findings of fact and conclusions of law and proposed jury instructions in jury cases at a time that is most helpful to the Court, but not sooner than 5 days before trial. The provision that submission should not be required sooner than 5 days before trial is consistent with the Advisory Group's other recommendations that parties should not be burdened far in advance of trial with a host of responsibilities. Since few cases will be tried, this recommendation helps to ensure that parties will be spared the necessity of submitting proposed findings and conclusions or instructions, because their cases will settle more than 5 days before the trial date.

Recommendation 34

In jury trials, judges should encourage the use of short, written, jury questionnaires that can provide meaningful information to counsel about the jurors to aid counsel in exercising challenges for cause and peremptory challenges.

The use of written questionnaires also will reduce the time required of the Court to hear *Batson*-type challenges in which one or both parties claim that the peremptory challenges are being used in a discriminatory or in some other unconstitutional manner.

CHAPTER XI: ALTERNATIVE DISPUTE RESOLUTION AND SETTLEMENT

Most cases that are not disposed of by motion settle, often when litigants squarely face the prospect of going to trial. The track record in this District is similar to that in other jurisdictions, and it appears relatively constant. Since most litigants prefer the certainty of accommodation to the risks of trial, the Advisory Group concluded that it is in the best interests of the litigants who use the Court, and of the judges who try to maintain a trial schedule for the Court, to provide a wide array of dispute resolution and settlement vehicles so that parties can select the one that is most likely to work for their case. This conclusion leads to several recommendations that involve alternative dispute resolution and magistrate judges, in addition to an increased role for magistrate judges in settlement, as discussed earlier.

A. Alternative Dispute Resolution (ADR)

The existing ADR procedures in the Court are exceptionally well-run and -conceived. It is one of the best programs in the country and, under the leadership of Chief Judge Robinson and Circuit Executive Linda Finkelstein, has been in the forefront of efforts nationwide. Among the cases using ADR, there is a 51 percent settlement rate in mediation and a 48 percent settlement rate for early neutral evaluation. Although it has been successful, the Advisory Group offers a few recommendations to encourage even more parties and more lawyers to participate in ADR and to learn about the benefits of ADR.

A number of judges expressed a concern that judges ought not to discourage litigants from having their day in court by twisting arms to coerce a settlement or referring them to an ADR process that the litigants really do not want. The Advisory Group shares this concern and agrees that settlements should not be encouraged or achieved at all cost.

Based on its own experience, the data available with respect to trials and settlement in this Court, the experience in federal and state courts throughout the country, the recent experience with the ADR program in the Superior Court of the District of Columbia, and the attorney surveys, the Advisory Group believes that most litigants do want to settle their cases or resolve disputes without a trial. They prefer certain outcomes (especially early in the process) to the risks of trial. Thus, the Advisory Group's ADR proposals seek to provide litigants with a variety of ways to achieve what many of them want—a settlement of their dispute so they are not forced to trial because of their inability to find a vehicle that will enable them to settle.

As with most innovations in the law, judges and lawyers, who are creatures of precedent, have an initial reluctance to embrace change. The fact is, however, that change has already occurred in this Court. The existing ADR program, which permits judges to refer cases, has been a great success. The judges, lawyers, and parties who have been involved in the program have been pleased, and the Court has now started an experimental program of referring all automobile accident cases to ADR. As lawyers and their clients have more occasion to experience ADR, they will come to recognize that it is simply an alternative—or more properly a variety of alternatives—that is offered to assist them in achieving what they want—a fair resolution of their dispute.

Recommendation 35

The Court should conduct a 3-year experimental pilot project where a number of judges (3 to 6) would test the effectiveness of a system in which the parties would be required in randomly selected cases, at their first conference with the judge, to select from a menu of ADR processes (mediation, early neutral evaluation, binding or nonbinding arbitration). If the parties cannot agree on an ADR process, the judge will designate mediation as the least expensive and intrusive of the options. A participating judge may, for good cause shown, exclude a case from the experiment and may defer ADR in cases in which it appears that a dispositive motion will be filed or in which the parties need some discovery before determining which ADR process best fits the case.

The Advisory Group recommends a 3-year pilot project of automatically referring cases, randomly selected, to ADR to help develop data on whether increased use of ADR avoids delay and reduces cost. All categories of cases would be included as part of the project, except for categories that the Court determines at the outset should be excluded (e.g., prisoner or social security cases). A judge could also exclude any particular case from the pilot project only upon a showing of good cause, such as need for immediate judicial attention. Any less rigorous method for exclusion would make it too difficult to evaluate the experiment.

The Court's current ADR program consists of mediation and early neutral evaluation. This proposed experiment would add the option of binding and nonbinding arbitration. Certain forms of ADR (e.g., summary jury trials and mini-trials) are not recommended for inclusion in the menu of options at this time because of their expense and time requirements. The Advisory Group observes, however, that two additional magistrate judges may provide a resource to which the parties may resort for mediation or even some form of arbitration. Some litigants may seek to avail themselves of more elaborate and expensive ADR alternatives, such as summary jury trials. With the addition of two magistrate judges, new forms of ADR might well be provided.

In its Draft Report, the Advisory Group predicted that some litigants and their counsel may not be enthusiastic about the pilot program and will resist ADR. This proved to be the case. The Department of Justice and the Administrative Conference oppose mandatory ADR in all cases. The Circuit Executive and the Director of the Dispute Resolution Program expressed their concern about the experiment.

After revisiting its recommendation in light of the reactions to it, the Advisory Group reaffirms the 3-year experiment but clarifies two points. First, the Group reiterates its original provision that the judges who choose to participate in this experiment may for good cause shown exclude a particular case. A litigant who believes that a case requires immediate attention or has some unique aspect might want to contact the Director of the Dispute Resolution Program to determine whether the Director would support that party's argument to the judge that a case should be excluded. Second, the Group adds a provision to the recommendation indicating that ADR may be deferred in cases that might quickly be disposed of by dispositive motion or when some discovery is required before parties will be able to make educated decisions about their ADR options. The Group believes that these clarifications respond to a number of the concerns that were raised in comments on the Draft Report.

The Group is unwilling to support "opt-out" for any litigant. It respects the view of the United States that mandatory ADR is not the best approach, but believes that the United States may find that, with the clarifications set forth in this Report, the experimental program may produce surprising results in reducing delay and cost. Because the United States is such a major litigant in the Court, its participation in the experiment is essential, and its experience after 3 years will be an important part of the evaluation that will occur.

Although enthusiasm may be expected to increase as the pilot program becomes better understood by litigants and their counsel, some litigants may be unwilling to agree on any ADR process in the beginning. In this event, the Group's recommendation is that the judge select mediation as the fall-back process, since it is the least intrusive method of ADR and the least costly.

If additional resources are required in the Circuit Executive's Office to handle the increased ADR under the pilot project, the Advisory Group recommends that the Court and Circuit Executive seek a grant to support the pilot project.

In proposing a 3-year experiment, the Advisory Group intends, as with the 3-year experiment involving magistrate judges, that the experiment be evaluated at the end of 3 years, not when all cases that have been referred to ADR have been completed. The Group is aware that, at the end of 3 years, a number of cases that have been sent to ADR will not have been completed. A sufficient number of cases, however, should have been disposed of to permit a review of the success of the experiment and to consider whether it should be continued, abandoned, or expanded.

Recommendation 36

In either voluntary ADR or the pilot project, the parties should have three options for choosing an ADR specialist: (1) a qualified volunteer from the Court's roster or a staff mediator, (2) a magistrate judge, or (3) a person agreed upon and paid by the parties. If the parties cannot agree, the Court should select a qualified volunteer or staff mediator.

ADR specialists should be selected in one of three ways: (1) by the program administrator who should appoint a qualified volunteer from the Court's roster or a staff mediator, if one is hired by the Court; (2) by a magistrate judge if the parties prefer a judicial officer to someone on the Court's roster; and (3) by the parties who may mutually select any neutral and compensate the neutral at a negotiated rate, to be shared among the parties as they agree.

If the parties cannot agree on an option, the Court shall designate a volunteer specialist or a staff mediator if one is available. The magistrate judge option is available for those parties who believe that a judicial officer, other than the one to whom the case is assigned (which includes a magistrate judge who has been assigned a case as part of the Recommendation 23 experiment and the magistrate judge selected for possible discovery referral as provided in Recommendation 18), can provide the most useful assistance with ADR.

The option of retaining a person whose fees must be paid by the parties is available for any case, but requires agreement of the parties who must pay the fees of the person selected. The first two options do not result in the parties' being charged for the time of the ADR specialist. Thus, every litigant will have at least two cost-free ADR possibilities whether they voluntarily elect ADR or are compelled to participate in the pilot program.

Some of the members of the Advisory Group, including those most familiar with ADR, suggest that the Court should seek private funding to support the payment of mediators, on an experimental basis, in types of cases where the mediator's involvement is expected to be too extensive to make volunteer services realistic, but it would be inappropriate to ask the parties to compensate the mediator. An example of this type of case would be a class action brought against the District of Columbia to challenge the operation of institutions or services maintained by the city, such as education, prisons, or foster care. They believe that, if ADR is to develop as a profession, and if mediation is to be widely used in large-scale commercial and public policy disputes, this system cannot rely exclusively on volunteers.

Although a magistrate judge may be available for this type of assignment, some parties, whether or not they can afford to pay may prefer private, professional mediators to a magistrate judge who is so closely associated with the Court. This choice should remain open to as broad a spectrum of litigants as possible. Members of the Advisory Group also stress that the Court has an interest in encouraging the development of a local cadre of private professional mediators, who can help parties to settle civil disputes without the involvement of the Court.

Recommendation 37

The Court should require all attorneys to certify that they are familiar with the ADR processes that are available.

Information about the Court's ADR program and procedures should be included as an informational section in the Court's publication that describes the Local Rules. As part of its trial certification process, the Court should require all attorneys to certify that they are familiar with the ADR processes that are available. The Advisory Group's draft report recommended that the Circuit Executive's Office should develop more written materials on ADR and, as noted in Recommendation 2, the Clerk should disseminate them to all counsel. The Advisory Group has been informed by the Circuit Executive and the Director of the Dispute Resolution Program that a new brochure will soon be ready for distribution to litigants. The Group recommends that the brochure be modified as needed to reflect changes in ADR and possibly to describe the results of the 3-year experiment if it proves successful and is continued.

It is important that all counsel understand the ADR options, because they are required to discuss them at the meet-and-confer conference prior to the first scheduling conference with the Court. Moreover, their filing of a statement with the Court following their first conference is also deemed to be a certification that they have discussed with their client the possibility of settlement and the availability and range of available ADR options.

The Circuit Executive and the Director of the Dispute Resolution Program have suggested that the Advisory Group consider a requirement that lead counsel in a case consult with the Court's ADR program as part of their meet-and-confer responsibility. The Group believes that any lawyer or litigant should be free to consult with the Court's ADR staff, but that a requirement that they do so would be likely to lead to increased cost and possible delay. Attorneys who know the ADR process need not call, and in some cases having to arrange a call might delay the first meeting of counsel. As long as the Court's ADR staff are available to receive calls from any counsel or litigant who seeks information, no one should be denied professional help in deciding what form of ADR might be best in a particular case.

B. Settlement

Recommendation 38

The Court should require, whenever possible, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement negotiations and ADR proceedings.

When the United States or a state or independent agency is a party, it may not be possible to require that a representative with settlement authority be present or available by phone. In such cases, the Group recommends that the attorney for the United States (or the state or independent agency) be prepared to estimate how long it will take to obtain a final decision on any settlement proposal and be prepared to commit that a prompt decision will be made within an agreed-upon time frame.

CHAPTER XII: *PRO SE* CASES

Approximately 18 percent of the Court's docket consists of *pro se* cases, down from 25 percent 3 years ago. The Advisory Group has pointed out throughout this Report the instances in which it believes that the presence of a *pro se* litigant in a case might require special procedures, and there are a few additional recommendations contained in this chapter.

Pro se cases pose an obvious problem. Nonlawyers frequently know little about procedure and less about substantive law. Their pleadings may be confusing and take judicial time to interpret. The Advisory Group was impressed with the care that the judges of this Court take with all filings, no matter what their form, and with the judicial commitment to the dignity of each case. Recognizing that any recommendations that would cause *pro se* cases to be handled differently from their present handling would raise a question of fairness and equality, the Group proceeded cautiously in this area. In the final analysis, the Group recommends that new procedures and personnel be added to enable the Court to screen *pro se* cases more effectively and to ensure that scarce judicial resources are used efficiently.

The statistical section of the Report discussed the substantial portion of the Court's docket that is attributable to *pro se* cases and briefly outlined the administrative burden those cases create. The current procedures used by the Court in processing *pro se* cases are the following:

Step 1: When a *pro se* case is filed, it is reviewed by a deputy clerk at the New Case Desk.

Step 2: If the papers are in proper order, they are logged in and forwarded to the *pro se* staff attorney.

Step 3: The *pro se* staff attorney separates the complaints into case categories and identifies cases in which the plaintiff seeks to proceed *in forma pauperis.*

Step 4: One senior judge (Judge Pratt) rules on all the *in forma pauperis* applications and considers only whether the allegation of poverty is sufficient, not the merits of a claim.

Step 5: Of the filings reviewed, 95 percent of the *in forma pauperis* applications are approved for filing, 3 percent are denied *in forma pauperis* status, and 2 percent are dismissed at this stage as "frivolous" under 28 U.S.C. § 1915(d).

Step 6: When leave to proceed is granted, the Clerk's Office files the complaint and notifies the litigant of the filing.

Step 7: A civil action number and a randomly selected judge is assigned to the case.

Step 8: The judge assigned to the case will review it again to determine whether the case should be dismissed as frivolous and, if not, whether counsel from the Civil Pro Bono Panel should be appointed to represent the *pro se* litigant.

The staff attorney reviews all *pro se* filings for the Court. Currently, approximately 20 to 25 *pro se* complaints are filed each week. These cases range from complex Title VII cases and civil rights claims to nearly incomprehensible filings. Because these filings are often confusing and difficult to understand, the staff attorney's initial review saves valuable in-chambers time for the judges.

After the initial review, either an order of dismissal or a report and recommendation is prepared by the staff attorney and forwarded to the assigned judge. The number of truly "frivolous" claims that can be dismissed at this initial review stage, pursuant to 28 U.S.C. § 1915(d), accounts for approximately 25 percent of the claims filed. Of the 195 cases received and reported by the Court from January to March 15, 1993, 52 (or 26 percent) were dismissed under 28 U.S.C. § 1915(d).

In addition, claims are dismissed at this point in the process on other grounds. For example, approximately 20 percent of the total *pro se* filings in the court are habeas petitions filed in this Court by petitioners under sentence by the Superior Court of the District of Columbia. This Court lacks jurisdiction to review petitions for writs of habeas corpus filed against the District of Columbia Board of Parole before the petitioner seeks the appropriate relief in the Superior Court of the District of Columbia. (See D.C. Code § 16-1901; *Lewis v. Stempson*, 737 F. Supp. 667, 668 (D.D.C. 1990)). These actions are therefore dismissed for lack of subject-matter jurisdiction. In fact, a significant number of *pro se* habeas petitions are dismissed by the Court *sua sponte* for lack of subject-matter jurisdiction, under Fed.R.Civ.P. 12(h)(3). *Anger v. Revco Drug Co.*, 791 F.2d 956 (D.C. Cir. 1986), which bars *sua sponte* dismissal of claims on grounds that should be raised by a defendant in a motion or a responsive pleading pursuant to Fed.R.Civ.P. 12(h)(1) or (2), does not bar *sua sponte* dismissals of claims for lack of subject-matter jurisdiction.

Similarly, because of the unique nature of the District of Columbia, many of the *pro se* petitions filed here should be filed in other jurisdictions. The staff attorney drafts transfer orders and recommendations for the assigned judge in these cases.

In all other cases, the staff attorney prepares a report and recommendation after an initial review of the case. All such memoranda are written for the benefit of the judge assigned to the case and his or her law clerk, to identify the cause of action and any significant issues presented in the case. In addition, the staff attorney also includes a recommendation as to whether counsel should be appointed in the case. If necessary, the judge may request that counsel be appointed from the Court's Civil Pro Bono Panel. As in the case of memoranda between law clerks and judges, these memoranda are confidential and are not part of the public record in the case.

Because the staff attorney position is permanent, the experience of the staff attorney provides a constant resource to the Court and to the judges' law clerks who serve 1- to 2-year terms. Use of the staff attorney contributes to consistency in the handling of cases and reduces the possibility of duplicative research.

The staff attorney provides the Court with a centralized resource for handling *pro se* matters. The Advisory Group believes that the early analysis of *pro se* filings by an attorney who can draft recommendations for disposition, and the prompt appointment of counsel in those cases where the appointment of counsel is appropriate, can contribute significantly to the efficient processing of these cases toward conclusion and can help substantially to reduce delays in the handling of *pro se* cases. If resources are available for the hiring of additional staff attorneys, the Advisory Group recommends that a sufficient number of staff attorneys be employed to make this recommendation a reality at all times. Toward this end, the Group emphasizes its support for allocation of the staff attorneys' time to *pro se* cases as their top priority. Time permitting, such attorneys may also help on other matters. But their principal role should remain focused on screening *pro se* cases.

Recommendation 39

For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention or the prisoner has already exhausted the remedies offered by the grievance process or the judge determines that there is no reasonable possibility of the grievance process resolving the complaint, judges should grant a 90-day stay to permit the grievance process recently certified by the Department of Justice to run its course. The Court should monitor the effectiveness of the grievance process to ensure that the stays actually contribute to reducing cost and delay.

More than half of the *pro se* filings in the Court are prisoner filings. The Department of Justice recently certified as adequate the inmate grievance procedure adopted by the District of Columbia Department of Corrections. Under federal law, once such a procedure has been certified by the Department, a federal judge may stay a complaint by a prisoner for 90 days while the procedure is used. The advantages to the judicial system are that the grievance procedure may resolve some complaints by nonjudicial means, and may assist the Court in the handling of any case that is not resolved in the grievance proceeding by providing an administrative record that may be used to support a dispositive motion.

The stay recommended by the Advisory Group is based upon the assumption that the grievance process will work in practice and that it will not produce delay with no benefit to either prisoners or the Court. The Advisory Group recommends three exceptions from the general rule favoring a stay. The first exception is for cases in which immediate judicial intervention is required (e.g., where a prisoner alleges denial of medical treatment). The second exception is for cases in which the prisoner has already exhausted any rights and sought any remedies that might have existed in the grievance process. Finally, there is an exception for situations in which the grievance process will not consider a certain type of claim, or it cannot provide any of the relief sought by the prisoner (i.e., that a statute is unconstitutional).

Because some criticisms of the new grievance procedure were made in response to the Draft Report, and the Advisory Group lacks sufficient information to predict how the procedure will work once the Department of Corrections has more experience with it, the Group recommends that the Court adopt this recommendation and stay prisoner cases only as long as the grievance process appears to be effective. To that end, the Group recommends that the process be monitored as part of the yearly review of the Court's plan to ensure that it actually contributes to reducing cost and delay.

Recommendation 40

The Clerk's Office should hire additional *pro se* staff attorneys to prepare reports and recommendations at an early stage concerning a *pro se* filer's *in forma pauperis* status and the merits of each complaint filed *pro se*. The Court should adopt a procedure that would require the preparation of such reports and recommendations within two weeks of the filing of a complaint and an *in forma pauperis* application and would permit one or more judges to consider at an early stage whether or not to dismiss cases as frivolous under 28 U.S.C. § 1915(d).

The Supreme Court in *Denton v. Hernandez*, U.S. , 112 S. Ct. 1728 (1992), affirmed the authority of a judge to dismiss "frivolous" *pro se* cases at the *in forma pauperis* petition stage of the proceed

ings, and stated that a judge is not bound to accept without question the truth of the allegations made in a complaint.

To permit more careful consideration of the merits of an *in forma pauperis* or *pro se* filing, the Advisory Group recommended in its Draft Report that the Clerk's Office hire *pro se* staff attorneys to prepare brief reports and recommendations concerning both a *pro se* litigant's *in forma pauperis* status and the merits of each complaint filed *pro se*. The reports and recommendations of the staff attorneys should be submitted within 2 weeks of the filing of the complaint to a judge for a decision as to whether the case should be filed or dismissed. The review function could be performed by Judge Pratt, if he were willing to take on the increased work required by the recommendation (i.e., to decide whether a case has sufficient merit to go forward or is frivolous), or by three or four judges who would volunteer to rotate as the reviewing judge.

In October 1992, the first *pro se* staff attorney was hired by the Clerk. The Group commends the hiring and believes that this is the first step toward full implementation of Recommendation 40.

The advantages the Group sees in using staff attorneys to evaluate the merits of a *pro se* case before assignment to a judge, combined with limiting the review function to one judge or to a small group of rotating judges, are that the staff attorneys can develop a sense of what the judge or judges want by way of reports and recommendations, and that the judge or judges will develop expertise in the processing of these cases. As a result, the cases ultimately determined to be frivolous under 28 U.S.C. § 1915(d) will not sit on an individual judge's calendar like other cases until this decision is made.

The review function could well be reserved for one or more senior judges. The result likely would be dismissal of a far larger number of cases before assignment of the case to a trial judge for all purposes. In the Southern District of New York, 35 percent of all *pro se* cases are dismissed at this stage. Thus, there would be fewer active cases on a judge's calendar (the frivolous cases never being assigned at all) and less judicial and other in-chambers time being devoted to the cases that on their face are without merit.

The use of staff attorneys does not mean that all or most *pro se* cases will be dismissed as "frivolous." It is often impossible to tell from the face of a complaint whether or not a complaint is "frivolous" within the meaning of 28 U.S.C. § 1915(d) and, therefore, subject to dismissal on that ground. For example, the Supreme Court has held that a complaint filed *in forma pauperis* is not automatically frivolous within the meaning of section 1915(d) merely because it fails to state a claim under Fed.R.Civ.P. 12(b)(6), *Neitzke v. Williams*, 490 U.S. 319, 330 (1989). As the Court wrote in *Neitzke*: "Section 1915(d) is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suits and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." *Id.* at 327. The statute does authorize the *sua sponte* dismissal of claims by the court based on "an indisputably meritless legal theory ... and ... those claims against which it is clear the defendants are immune from suit, ... and claims of infringement of a legal interest which clearly does not exist." *Id.* See also, *Brandon v. District of Columbia Board of Parole*, 734 F.2d 56, 59 (D.C. Cir. 1984): "A complaint need not indisputably state a cause of action to survive *sua sponte* dismissal [pursuant to 1915(d)]; instead, if the complaint has at least an arguable basis in law and fact—if the complaint is viable—it cannot be deemed frivolous."

Similarly, the U.S. Court of Appeals for the District of Columbia Circuit has held that the judges may not dismiss *pro se* pleadings filed *in forma pauperis* just because the District Court anticipates that the *pro se* litigant's opponent will file, and prevail upon, a motion to dismiss based on one of the grounds specified in Fed.R.Civ.P. 12(b). Anger v. Revco Drug Co., 791 F.2d 956, 958 (D.C. Cir. 1986): "*in forma pauperis pro se* complaint may not be dismissed *sua sponte* before service on defendants, on ground that court lacks personal jurisdiction over defendants."

Despite these limitations, the *pro se* staff attorneys can provide useful screening and assist the Court in the efficient and fair handling of *pro se* cases. The Advisory Group envisions *pro se* staff attorneys assisting the Clerk in monitoring service of process in *pro se* cases, something that the Clerk would be required to do for all cases if Recommendation 2 is adopted.

Recommendation 41

Judges should decide as soon as possible after a case is assigned to them whether appointment of counsel is appropriate and, if so, should appoint counsel as early as possible.

Court statistics suggest that participation of counsel makes a significant difference for the *pro se* plaintiff. During 1989 and 1990, *pro se* litigants with counsel prevailed 49 percent of the time, while *pro se* litigants without counsel lost all their cases.

Local Rule 702.1, which the Court adopted in January 1991, established a Civil Pro Bono Panel made up of lawyers, law firms, and law school clinical legal education programs who agree to accept appointment by the Court to at least one *pro se* case a year. The Panel has been accepting cases since April 1991. By the end of its first year, the Panel had 61 members willing to accept appointments in a total of 152 *pro se* cases annually.

The Civil Pro Bono Panel provides a useful resource to the Court. The Advisory Group believes that most Panel members and other attorneys who are appointed to represent *pro se* litigants would prefer to be appointed early in a case so that they can begin gathering facts and participating in a decision-making process as soon as possible. The Advisory Group is therefore recommending that after a judge determines that a complaint has merit and that assignment of counsel to the case would be appropriate, the judge appoint counsel to the case as soon as possible. The thrust of this recommendation relates to the timing of appointment of counsel, rather than identifying cases in which counsel should be appointed, which is governed by Local Rule 702.1(a)(5)(A).

CHAPTER XIII: ADDITIONAL RECOMMENDATIONS

A. The Executive, the Congress, the United States Sentencing Commission, and the Administrative Office of the United States Courts

Not surprisingly, most of the Advisory Group's recommendations for reduction of delay and cost in civil litigation are addressed to the Court. The Act made clear, however, that it is appropriate for advisory groups to address recommendations to all three branches of government. As noted in § 102(3), "the solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch." Thus, the Advisory Group has concluded that certain problems it identified can only by addressed by the Executive, the Congress, the U.S. Sentencing Commission, or the Administrative Office.

Recommendation 42

When vacancies arise on the Court, those involved in the selection process should seek to recommend and the President should seek to nominate highly qualified women and men with relevant experience in the courts in the District of Columbia without delay. When nominations are made, the Senate should act expeditiously on all nominees.

With one-third of the active seats vacant on this Court, it is difficult for the Court to move the civil and criminal cases with the speed that would be expected of a full court. The problems associated with unfilled vacancies are not unique to the District of Columbia, but the number of current vacancies is unusually high. If the Court is to provide speedy criminal and civil trials, the need for a full complement of trial judges is clear.

Recommendation 43

Better statistics should be collected, with a view toward their use in the decision-making process of this Court, other bodies within the judiciary, and the Congress.

The recommended changes, some of which can be made by the Court alone and others in conjunction with the Administrative Office, should include, but not be limited to, the following areas:

1. Dividing both civil and criminal cases into meaningful groupings that correspond with current caseloads and that do not contain categories with only a few cases or categories, such as "other contract," with large numbers of cases in them.

2. Redesigning the case termination codes so that categories are clear and more nearly approximate different stages of litigation that reflect differences in judicial involvement in the case.

3. Breaking down in-court data, other than trials, into subcategories and including sentencing time as a separate category.

4. Having each judge, at the time of the termination of each civil case, check a box on a termination form indicating the approximate number of hours that the judge spent on the

case (e.g., 0-5 hours, 6-25 hours, 26-100 hours, and over 100 hours) and the method of termination (e.g., motion, settlement, trial, transfer).

5. Randomly monitoring the statistical forms completed by court personnel and attorneys to ensure consistency and accuracy.

This Court is not alone in its statistical needs. Every year the Judicial Conference makes recommendations or responds to congressional proposals with respect to the jurisdiction and procedures of the federal courts. Better statistics would enable each district to provide the Judicial Conference with more meaningful information about the burdens associated with various kinds of cases and would enable the Judicial Conference to make more informed recommendations with respect to the jurisdiction and procedures of the federal courts.

Recommendation 44

The Civil Cover Sheet (AO Form JS44) and the classification system should be changed substantially so that civil cases are divided into more meaningful categories that reflect the current caseload of the Court. The case category called "temporary restraining order—preliminary injunction" should be replaced with substantive descriptions of the case.

The cover sheet and the classification system should be improved if the Court is to have adequate information about the real nature of its caseload. The categories on the Cover Sheet need not be as specific as the groupings addressed by Recommendation 43(1), but the categories should be sufficient to differentiate cases that are truly complex from other cases and to inform the Court as to the actual state of the docket at any given time. The "temporary restraining order—preliminary injunction" category should be replaced by a separate question as to whether a case requires expedited treatment and an explanation of exactly what form and why.

Recommendation 45

Both Congress and the United States Sentencing Commission should examine carefully the impact of the sentencing guidelines on the workload of federal judges, particularly when judges are required to engage in fact-finding to implement various guidelines.

In Chapter VI, the Advisory Group noted the reaction of many of the judges to sentencing guidelines. The judges expressed two different criticisms: (1) the guidelines interfere with judicial discretion, and (2) they place increased demands on the federal judiciary. The first criticism is outside the scope of the Group's investigation, but the second directly relates to increased delay and cost in civil litigation. Because it lacks sufficient information about the actual judicial time that various procedures require and believes that no adequate information is currently available to any policymaker, the Advisory Group recommends that the Sentencing Commission and Congress investigate the administrative burdens the guidelines impose on federal courts.

It is difficult to know, based on the statistics now available, the extent to which judges must spend time on guideline issues and which guidelines, if any, tend to require the expenditure of large amounts of judicial time and effort. It is equally difficult to know how much time prosecutors and defense counsel spend in preparing for and participating in sentencing hearings, and how much appellate effort is generated by sentencing issues. The Advisory Group therefore recommends that the policymaking bodies that have jurisdiction over sentencing issues gather information that will

permit judgments to be made in the future as to whether some sentencing approaches are too costly and time-consuming.

Recommendation 46

Congress should examine mandatory minimum sentences to determine whether they impose unwarranted burdens on the federal judiciary and others.

The criticisms that many of the judges leveled at mandatory minimum sentences, discussed in Chapter VI, are similar to those directed at the guidelines: they reduce judicial discretion and place increased demands on the judiciary. The Sentencing Commission has submitted to Congress a lengthy report on the effect of mandatory minimum sentences on various classes of offenders. That report highlights some of the problems that the judges have previously reported. Florida's legislature has just decided to abandon many of that state's mandatory minimum sentences.

The Advisory Group recommends that, when it looks at mandatory minimum statutes, Congress should examine the burden on the judiciary of making factual determinations required by some of these statutes, and whether these statutes cause too many defendants to select trials rather than entering guilty pleas. It should look at whether the requirements of these statutes are too costly and time-consuming, and their impact on delay and cost in civil litigation.

Recommendation 47

Congress should provide more resources for the Clerk's Office to ensure that the Clerk's Office can effectively carry out the recommendations contained in this Report.

Recommendations 2, 3, 5, 14, 18, 23, 26, 30, 34, 35, 37, 40, and 49 require extensive use of Clerk's Office personnel. The Clerk's Office is currently under a hiring freeze and has been in this position since July 1992. In addition, under the current workload projections, without any additional duties imposed by the Civil Justice Reform Act, the Advisory Group has been advised by a recent work measurement study and subsequent staffing formula that the Office is understaffed by 15 positions. The only relief in sight is a Judicial Conference ruling that allows the Clerk's Office to implement the new staffing formula by hiring at the rate of 1/5 of the deficit per year, "budget permitting." Requiring an already understaffed office to do more will not improve the quality of civil case management in this Court. If Congress is serious about civil justice reform, it should provide the courts—and more specifically the clerk's offices—with the resources to carry out the civil justice reform mandate.

B. Space and Facilities

Recommendation 48

The Court should seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, every magistrate judge, and the bankruptcy judge.

At the current time, the Court has four judicial vacancies, so there is not a pressing problem with available chamber space and courtrooms. There will be, however, a serious problem when the Court is operating with a full complement of judges. The Courthouse has 19 regular courtrooms for district

judges and 3 courtrooms for the magistrate judges. With 11 active district judges, 7 senior judges, 3 magistrate judges, and 1 bankruptcy judge, all available courtrooms have been assigned to a judicial officer. When the four judicial vacancies are filled, this Court will be short four courtrooms.

Furthermore, the magistrate judges do not have access to the kind of courtrooms that make it attractive for counsel to elect trials before them. The Advisory Group believes that, if magistrate judges are to handle more civil cases for all purposes, it is important for them to have acceptable courtroom space available. If two new magistrate judges are to be hired, as recommended by the Group, these magistrate judges also will need adequate courtroom space and room to conduct ADR proceedings. When the four new district judges are appointed, they too will need space. Finally, if the senior judges are to play the "back-up" judge role envisioned in this Report, they will continue to require that courtrooms be available to them at all times.

When the Court is confronted with an exceptionally complicated civil or criminal case that may effectively occupy a single judge's time for many weeks or even months, the possibility of inviting a judge from another court to sit as a visiting judge is complicated by the space problem the Group has identified. Indeed, in the summer of 1993, the Court invited eight judges from other courts to visit for 2-week periods to try criminal and civil cases. The visits were possible with four vacancies, but would have posed logistical problems for the Court if all vacancies had been filled before these visiting judges arrived.

Without more courtrooms, the Court simply is less able than many other courts to respond to temporary demands on judicial resources and may be unable to provide for the back-up system needed to ensure trial dates for civil cases.

The Advisory Group found no evidence to support a conclusion that keeping the Court in the same building as the D.C. Circuit Court of Appeals is nearly as important to the successful and efficient operation of the Court as is the availability of courtrooms for the judges and magistrate judges. The Advisory Group strongly urges the Court, in conjunction with the Court of Appeals and the Administrative Office, if necessary, to examine how space is allocated between the two courts to probation officers and to other nonjudicial personnel and to take whatever steps are required to ensure that every judge has adequate courtroom and office space to conduct trials and settlement conferences.

C. Annual Review

Recommendation 49

Pursuant to Section 475 of the Act, the Court should assess annually the condition of the Court's civil and criminal docket and make appropriate recommendations.

The Court should appoint a small standing committee consisting of five to seven members from the Advisory Group, to assess annually the Court's civil and criminal docket and to monitor the implementation of the Court's Civil Justice Reform Expense and Delay Reduction Plan. The Chair of the Advisory Group or one of it members could serve as chair of this assessment committee, and the CJRA administrative analyst could continue to collect statistics and provide information to it.

This new committee could assist the Court in examining the problems with the current statistics. Such a committee would focus on the nature-of-suit categories and assess whether subcategories of cases might be developed that would provide more helpful data to the Court as to the type of cases that are filed, and whether temporary restraining orders and injunctions should be tracked so that emergencies are identified and spread among the judges at the same time that each case receives a proper subject-matter classification. The committee could also seek to develop a better method for obtaining information as to the time each case requires before it is terminated, and as to the amount of discovery and the number of discovery disputes that occurred in particular cases. The Advisory Group believes that any recommendations made by the committee and accepted by the Court in this regard should be forwarded to the Judicial Conference of the United States.

ADDENDUM:

PROPOSED CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

PROPOSED CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

Part I: Requirements of the Act

The United States District Court for the District of Columbia adopts the following Civil Justice Expense and Delay Reduction Plan, as required by 28 U.S.C. § 471, and directs that it be implemented on December 1, 1993 (Sec. 103(b), Pub.L. 101-650).

Pursuant to 28 U.S.C. §§ 472(a) and 478, the Court has had the benefit of a detailed report prepared by an Advisory Group appointed by former Chief Judge Aubrey E. Robinson, Jr., in March 1991 after consultation with the other judges of the Court. The Court has been mindful of its obligation to undertake an independent review and assessment of the Advisory Group's recommendations, and it has done so (28 U.S.C. §§ 472(a) and 473(b)(6)). Nevertheless, in formulating this Plan, the Court has relied extensively on the work of the Advisory Group, and its Report constitutes the "legislative history" of the Plan, which shall serve as a guide in its implementation.

The Civil Justice Reform Act of 1990 sets forth in great detail "principles and guidelines of litigation management and cost and delay reduction" (28 U.S.C. § 473(a)) and requires that every district court consider these principles and guidelines in the development of its plan. The six principles and guidelines are: (1) systematic, differential treatment of civil cases; (2) early ongoing judicial control of the trial process; (3) discovery and case management conferences; (4) encouragement of voluntary exchange of information among litigants and other cooperative discovery devices; (5) prohibition of discovery motions absent a certification of a good-faith effort to reach agreement with opposing counsel; and (6) authorization to refer cases to alternative dispute resolution (ADR) programs. As is clear from the Final Report prepared by the Advisory Group and the Court's Plan (Part II), each of these principles has been carefully considered and applied to the realities of this district.

The Act also includes a number of litigation management techniques that district courts "shall consider and may include" in their plan (28 U.S.C. § 473(b)). The cost and delay reduction techniques are: (1) a requirement of a joint discovery-case management plan; (2) a requirement that counsel with authority to bind be present at the pretrial conference; (3) a requirement that clients as well as their lawyers sign requests for extension of discovery deadlines or postponement of the trial date; (4) the availability of referral to a neutral evaluation program early in the litigation; and (5) a requirement that representatives of the parties with authority to bind be present or available by telephone during any settlement conference. Each has been considered by the Advisory Group and the Court. Adoption of all of them in whole or in part can be seen in the Court's Plan (Part II).

Pursuant to 28 U.S.C. § 474(b)(2), the Court's Plan "adequately responds to the conditions relevant to the civil and criminal dockets of the court." While the Advisory Group's Final Report does include several chapters discussing the docket, the recommendations really describe what the Court should do in response to the problems identified by the Advisory Group. As such, the Court has addressed the Group's concerns with the docket in its Plan (Part II).

The Court recognizes that facilitating access to justice and ensuring just, speedy, and inexpensive resolutions of civil disputes is an ongoing process. As required by 28 U.S.C. § 475, the Court will

assess annually the condition of the Court's civil and criminal dockets, with a view to determining what additional steps could be taken to reduce cost and delay and improve litigation management techniques practiced by the Court. The Court will consult with the Advisory Group.

Part II: Civil Justice Expense and Delay Reduction Plan

As required by the Act at 28 U.S.C. §§ 472(a) and 473(b)(6), the Court has considered all of the Advisory Group's 49 recommendations. As part of that consideration, the Court has explained the reasoning why it has adopted, modified, or rejected the Advisory Group's recommendations. The recommendations and the Court's commentary with time frames for implementation (to be inserted when available) are noted below.

I. Judicial Management

A. Time Limits[1]

Most cases should be categorized according to complexity, and a time period for completion of each category of cases should be prescribed. The district judge should determine which track is appropriate for each case. Most cases should be completed within the prescribed period.

> *Category 1:* Cases that are relatively straightforward in which the judge determines that, because discovery either will not be necessary or will be quickly completed, or it is clear that the case will be decided by motion or on the basis of the pleadings, disposition should take place in less than 6 months from the date of the first scheduling conference described in I(B)(4).
>
> *Category 2:* Cases that are relatively straightforward in most respects but that have some element of complexity in which the judge determines that, given the amount of discovery required and/or the nature of expected motions, disposition should take place in less than 12 months from the date of the first scheduling conference.
>
> *Category 3:* Cases of moderate complexity in which the judge determines that, given the amount of discovery required and/or the nature of expected motions, disposition should take place in less than 18 months from the date of the first scheduling conference.
>
> *Category 4:* Complex cases, involving multiple parties and difficult issues, in which the judge determines that, in view of the number of issues and/or parties and the variety of issues that may arise, disposition should take place in less than 24 months from the date of the first scheduling conference.

B. Preliminary Pretrial Procedures[2]

1. When a complaint is filed, the Clerk should mail to the party or counsel filing the complaint (1) a description of the Court's ADR program, (2) a list of the items on which the parties must confer before the scheduling conference with the Court, and (3) a notice that the action will be dismissed against a defendant unless proof of service of process is filed as to that defendant within 125 days of the date of the filing of the complaint. Items (1) and (2) should also be sent when an answer or any motion is filed by a party or counsel. The Clerk should automat-

[1] See Advisory Group's Final Report (Recommendation 1).
[2] See Advisory Group's Final Report (Recommendations 2–7).

cally issue an order dismissing without prejudice any complaint against a defendant for which a return of service has not been filed as to that defendant within 125 days of the filing of that complaint, unless otherwise expressly directed by the judge to whom the case has been assigned.

2. In cases involving only one defendant, counsel (including any nonprisoner *pro se* party) should meet in person or, if the parties consent, by telephone to discuss the case in preparation for the initial scheduling conference with the Court within 15 days of the appearance or first filing in the form of an answer or any motion by that defendant. In any case involving multiple defendants, including the United States or any other defendant who is given more than 20 days to answer the complaint, the 15-day period shall begin with the appearance or first filing in the form of an answer or any motion by the party that is given the longest time to answer under the Federal Rules of Civil Procedure.

In any case in which some but not all defendants have been served or in which some defendants with longer periods to answer have not appeared, the plaintiff or any defendant may file a motion or letter with the Court requesting that the meet-and-confer requirement be suspended until such time as the Court shall fix in light of the fact that some defendants have not yet entered or appeared in the case.

The meet-and-confer requirement shall not apply in any prisoner *pro se* case or in any nonprisoner *pro se* cases in which a dispositive motion is filed before the time to meet and confer expires.

3. To promote the Court's ability to manage cases and to enable the parties to provide the Court with information that will advise the Court about any peculiarities or unique aspects of their case, lead counsel (including any nonprisoner *pro se* party) for each party shall meet in person or, if the parties consent, by telephone, and discuss the following matters:

   a. The category in which the case should be placed; whether the case is likely to be disposed of by dispositive motion, and whether; if a dispositive motion has already been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

   b. The date by which any other parties shall be joined or the pleadings amended, and whether some or all of the factual and legal issues can be agreed upon or narrowed.

   c. Whether the case can be assigned to a magistrate judge for all purposes, including trial.

   d. Whether there is a realistic possibility of settling the case.

   e. Whether the case could benefit from the Court's ADR procedures or some other form of ADR and, if so, which procedure should be used, and should discovery be stayed or limited pending completion of ADR.

   f. Whether the case can be resolved on summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.

g. Whether the parties can agree on the exchange of certain core information (e.g., names and addresses of witnesses, relevant documents, computations of damages, the existence and amount of insurance) without formal discovery, the extent of any discovery, how long discovery should take, whether there should be a limit on discovery (e.g., number of interrogatories, number of depositions, time limits on depositions), whether a protective order is appropriate, and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

h. Dates for the exchange of expert witness information pursuant to Fed.R.Civ.P. 26(b)(4), and for taking depositions of experts (within the discovery cut-off period).

i. In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, an opposition and reply, and for oral argument and/or evidentiary hearing on the motion, and a proposed date for decision.

j. Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

k. The date for the pretrial conference (understanding that a trial will take place 4 to 8 weeks thereafter).

l. Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

No later than 10 days following this meeting, counsel for the parties must file with the Court a succinct statement of the following matters:

a. Any agreements the parties have reached at their meeting with respect to any of the 12 specific matters set forth above.

b. The parties' position on any of the 12 specific matters set forth above as to which they disagree. Counsel must file a joint submission, even if the submission sets forth differing views. *Counsel's filing of a statement will constitute certification that counsel has discussed with the client the 12 matters set forth above, including the possibility of settlement and the availability and range of ADR options.*

4. The Court should set the first scheduling conference for no later than 20 days after receipt of the parties' "meet-and-confer" statement, unless, based on a joint recommendation of the parties for good cause shown, the Court concludes that the conference should be deferred. The conference may be deferred for no more than 30 days.

5. After conferring with the parties at the first scheduling conference, the judge shall place a case in the category in which it best fits, determine whether specified limits should be placed upon discovery, and issue a scheduling order.

6. Any continuance or enlargement of time granted must be for good cause only and should be for a reasonable period so that only one continuance or enlargement is required, rather than several.

C. Pretrial Conference[3]

1. The Court should seek to ensure that the period of time between the pretrial conference and commencement of the trial is no more than 30 to 60 days.

2. The requirements for all pretrial conferences should be reduced, and the full panoply of Rule 16 and Local Rule 209 procedures should be reserved for complex cases (Category 4), those that generally should be disposed of within 24 months of the first scheduling conference.

D. Motions and Hearings; Findings in Bench Trials[4]

1. The trial judge should carefully consider which *in limine* motions, if decided prior to trial, might warrant the granting of a motion for summary judgment or lead to settlement and endeavor to resolve those motions prior to trial. The trial judge should also carefully consider whether other *in limine* motions might become moot if a case settles or as the issues unfold at trial or might more easily be resolved either immediately before the trial begins or during the trial.

2. Each judge should establish as his or her policy that all motions will be heard and decided promptly and that findings of fact and conclusions of law will be promptly rendered in non-jury cases.

3. Each judge should establish as a personal policy that he or she will decide motions that seek to dispose of any claim, counter-claim, third-party claim, or substantive defense (usually by a motion to dismiss or for full or partial summary judgment) within 60 days of submission of all memoranda or briefs or within 60 days of oral argument, provided that oral argument is held within 30 days of the submission of all memoranda or briefs. To the extent that a judge knows that a motion will not be decided within these periods, the judge should consider notifying counsel that, because of the judge's other responsibilities, the motion will not be decided within these periods.

4. Each judge should establish a policy of deciding nonjury cases within 90 days of the conclusion of a trial or the submission by the parties of post-trial proposed findings of fact and conclusions of law. Each judge should consider deciding some cases from the bench and incorporating as part of the findings and conclusions submissions of the parties in ways that clearly indicate that the judge has independently reviewed and adopted suggestions by the parties.

5. The Clerk of the Court should monitor the handling of all dispositive motions and bench trials to ensure that the time periods set forth above are followed. The Clerk should circulate monthly lists to the judges indicating the motions that remain undecided beyond the limits recommended here. No public circulation of these lists should occur until a pending matter is more than 6 months old and appears on the list of pending issues that is currently made available to the public under the Civil Justice Reform Act.

[3] See Advisory Group's Final Report (Recommendations 8 and 9).
[4] See Advisory Group's Final Report (Recommendations 10–16).

6. Each judge should require that all dispositive motions be filed sufficiently in advance of the pretrial conference so that they can be ruled on before the conference and the parties can avoid unnecessary preparation for a conference and/or a trial if such motions are granted.

7. Each judge should require counsel for the party planning to make a nondispositive motion to discuss the motion either in person or by telephone with opposing counsel in a good-faith effort to determine whether there is any opposition to the motion and to narrow the areas of disagreement if there is opposition. A party should be required to include in its motion a statement that the required discussion occurred, state whether the motion is opposed or not, and describe briefly whether that discussion did in fact reduce the area of disagreement and how it was reduced.

II. Discovery[5]

A. The Court should not adopt mandatory core disclosure or numerical limits on interrogatories and depositions.

B. Except in extraordinary cases involving sensitive constitutional or similar issues, judges should refer discovery matters in civil cases to magistrate judges. Judges should clearly indicate that decisions by magistrate judges on discovery matters will be given great deference by the district judge who is likely to overturn a ruling by the magistrate judge only when it is clearly erroneous and palpably harmful.

When a case is drawn from the wheel and assigned to a district judge, other than one that is part of the experiment covered by III(B)(1), a magistrate judge should be assigned randomly at the same time to handle all discovery matters and other pretrial matters in the case which the district judge chooses to refer.

C. The Court's Committee on Local Rules should review the problem of deposition and discovery conduct and should consider ways of controlling misbehavior and eliminating conduct falling short of basic standards of civility. The District of Columbia Bar should be asked to study the problem and assist in promoting appropriate deposition and discovery conduct.

D. The district judges and magistrate judges should have the discretion to determine whether discovery disputes should be resolved by telephone conference, short informal written submissions, formal submissions or briefing and oral argument. Judges should decide routine discovery motions from the bench, in a telephone conference with counsel, or within 7 days of submission or of the hearing.

III. Managing Trials and Settlement Discussions

A. Back-up Judges[6]

1. When a conflict arises between a civil trial and a criminal trial, the judge should notify the Chief Judge (or the Calendar Committee or its Chair) who will ask another judge, usually a senior judge, to handle one of the cases. There should be a presumption that the criminal case will be the one transferred to the other judge because it usually will have involved less pretrial investment of judicial time and knowledge. In some instances, a straightforward civil case might be transferred instead of a complicated criminal case.

[5] See Advisory Group's Final Report (Recommendations 17–20).
[6] See Advisory Group's Final Report (Recommendations 21 and 22).

2. If senior judges participate in this cooperative plan, their status should be enhanced so that they have a more equal role in the Court and its decision-making bodies.

B. Magistrate Judges[7]

1. The Court should conduct a 3-year experiment during which district judges would automatically refer a random sample of personal injury cases and some contract cases to magistrate judges for all purposes.

2. The Court should seek authority to appoint two additional magistrate judges to provide the assistance that will be required if magistrate judges are to handle discovery in civil cases generally, handle the tort and contract cases that will be assigned to them in the experiment described in III(B)(1), and play an increased role in conducting settlement conferences and in providing alternative dispute resolution options.

3. Judges should not refer dispositive motions to magistrate judges. Judges should consider referral of certain matters to magistrate judges for certain labor-intensive tasks, after consulting with the magistrate judge as to the feasibility of the magistrate judge's completing the tasks within the time period envisioned by the district judge.

4. The Court should seek to educate the Bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases and should invite the Bar to provide feedback on its experiences before magistrate judges.

5. Magistrate judges should retain primary responsibility for considering petitions by adopted persons to open adoption records of the Court pursuant to Local Rule 501.

6. The Court should invite magistrate judges to attend certain meetings of the Executive Session.

C. Special Masters[8]

1. Under the appropriate supervision of the Court, special masters should be used in exceptional pretrial and post-liability settings when the issues to be referred require extraordinary amounts of time that would be difficult to obtain from a judicial officer.

2. The Clerk of the Court should maintain a list of special masters with experience in this Court and in other courts as a reference source and shall also list all mediators who have been certified in the Dispute Resolution Programs administered by the Circuit Executive's Office. The Clerk shall seek to ensure that the list is updated on a regular basis to guarantee that it is as inclusive as is reasonably possible.

D. Trial Procedures[9]

1. Each judge should try to schedule a trial, in either a civil or a criminal case, so that the evidence will not be interrupted by status conferences, motions hearings, sentencing hearings, or other proceedings.

2. Trials should be held during "normal business hours," although a judge might choose to end the trial day in the early afternoon on some days for the convenience of the parties and their

[7] See Advisory Group's Final Report (Recommendations 23–28).
[8] See Advisory Group's Final Report (Recommendations 29 and 30).
[9] See Advisory Group's Final Report (Recommendations 31–34).

counsel, to make jury service easier for many jurors, and to provide time for hearing or deciding motions.

3. Each judge should set strict timetables for the submission of proposed findings of fact and conclusions of law in nonjury trials and proposed jury instructions for jury trials.

4. In jury trials, judges should encourage the use of short, written jury questionnaires that can provide meaningful information to counsel about the jurors to aid counsel in exercising challenges for cause and peremptory challenges.

IV. Alternative Dispute Resolution and Settlement

A. Alternative Dispute Resolution (ADR)[10]

1. The Court should conduct a 3-year experimental pilot project where a number of judges (three to six) would test the effectiveness of a system in which the parties would be required in randomly selected cases, at their first conference with the judge, to select from a menu of ADR processes (mediation, early neutral evaluation, binding or nonbinding arbitration). If the parties cannot agree on an ADR process, the judge will designate mediation as the least expensive and intrusive of the options. A participating judge may, for good cause shown, exclude a case from the experiment and may defer ADR in cases in which it appears that a dispositive motion will be filed or in which the parties need some discovery before determining which ADR process best fits the case.

2. In either voluntary ADR or the pilot project, the parties should have three options for choosing an ADR specialist: (1) a qualified volunteer from the Court's roster or a staff mediator, (2) a magistrate judge, or (3) a person agreed upon and paid by the parties. If the parties cannot agree, the Court should select a qualified volunteer or staff mediator.

3. The Court should require all attorneys to certify that they are familiar with the ADR processes that are available.

B. Settlement[11]

The Court should require, whenever possible, that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement negotiations and ADR proceedings.

V. Pro Se *Cases*[12]

A. For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention or the prisoner has already exhausted the remedies offered by the grievance process or the judge determines that there is no reasonable possibility that the grievance process will resolve the complaint, judges should grant a 90-day stay to permit the grievance process recently certified by the Department of Justice to run its course. The Court should monitor the effectiveness of the grievance process to ensure that the stays actually contribute to reducing cost and delay.

B. The Clerk's Office should hire additional *pro se* staff attorneys to prepare reports and recommendations at an early stage concerning a *pro se* filer's *in forma pauperis* status and the merits of each complaint filed *pro se*. The Court should adopt a procedure that would require the preparation of

[10] See Advisory Group's Final Report (Recommendations 35–37).
[11] See Advisory Group's Final Report (Recommendation 38).
[12] See Advisory Group's Final Report (Recommendations 39–41).

such reports and recommendations within 2 weeks of the filing of a complaint and an *in forma pauperis* application and would permit one or more judges to consider at an early stage whether or not to dismiss cases as frivolous under 28 U.S.C. § 1915(d).

C. Judges should decide as soon as possible after a case is assigned to them whether appointment of counsel is appropriate and, if so, should appoint counsel as early as possible.

VI. Additional Recommendations

A. The Executive, the Congress, the United States Sentencing Commission, and the Administrative Office of the United States Courts[13]

1. When vacancies arise on the Court, those involved in the selection process should seek to recommend and the President should seek to nominate highly qualified women and men with relevant experience in the courts in the District of Columbia without delay. When nominations are made, the Senate should act expeditiously on all nominees.

2. Better statistics should be collected with a view toward their use in the decision-making process of this Court, other bodies within the judiciary, and the Congress.

3. The Civil Cover Sheet (AO Form JS44) and the classification system should be changed substantially so that civil cases are divided into more meaningful categories that reflect the current caseload of the Court. The case category called "temporary restraining order—preliminary injunction" should be replaced with substantive descriptions of the case.

4. Both Congress and the United States Sentencing Commission should examine carefully the impact of the sentencing guidelines on the workload of federal judges, particularly when judges are required to engage in fact-finding to implement various guidelines.

5. Congress should examine mandatory minimum sentences to determine whether they impose unwarranted burdens on the federal judiciary and others.

6. Congress should provide more resources for the Clerk's Office to ensure that the Clerk's Office can effectively carry out the recommendations contained in this Plan.

B. Space and Facilities[14]

The Court should seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, every magistrate judge, and the bankruptcy judge.

C. Annual Review[15]

Pursuant to Section 475 of the Act, the Court should assess annually the condition of the Court's civil and criminal dockets and make appropriate recommendations.

This Plan was approved and adopted by the Board of Judges of the United States District Court for the District of Columbia.

Date

John Garrett Penn
Chief Judge

[13] See Advisory Group's Final Report (Recommendations 42–47).
[14] See Advisory Group's Final Report (Recommendation 48).
[15] See Advisory Group's Final Report (Recommendation 49).

Part III: Guidelines for Review of the Report and Plan

The following guidelines have been developed by the Court Administration and Case Management Committee of the Judicial Conference to assist the circuit review committee that will be reviewing the Advisory Group's Report and the Court's Plan. The guidelines have been included in the Proposed Civil Justice Expense and Delay Reduction Plan for the Court's consideration in finalizing its Plan.

Guidelines for Review of the Advisory Group's Report

1. Does the Advisory Group Report include, as required by 28 U.S.C. §§ 472(b)(1) and (c)(1), each of the following:

   a. A determination of the condition of the civil and criminal dockets.
   Yes. See Chapters IV–VI.

   b. Identification of trends in case filings and in demands on court resources.
   Yes. See Chapters IV and VI.

   c. Identification of the principal causes of cost and delay, including both court procedures and the way in which litigants and attorneys conduct litigation.
   Yes. See Chapter VII.

   d. An examination of the extent to which costs and delays could be reduced by better assessment of the impact of new legislation.
   Yes. See Chapters VI–XIII.

2. Does the Advisory Group Report include, as required by 28 U.S.C. § 472(b)(2), the basis for its recommendations that the court develop its own plan or select a model plan?
   Yes. See Addendum.

3. Does the Advisory Group Report include, as required by 28 U.S.C. § 472(b)(3), recommended measures, rules, and programs?
   Yes. See Chapters VIII–XIII.

4. Does the Advisory Group Report include, as required by 28 U.S.C. § 472 (b)(4), an explanation of the manner in which the Advisory Group's recommended Plan, or its recommendations in whatever other form, complies with the requirements of 28 U.S.C. § 473?
   Yes. See Chapters VII–XIII.

5. In developing its recommendations, did the Advisory Group take into account, as required by 28 U.S.C. § 472(c)(2), the particular needs and circumstances of the district court, the litigants, and the litigants' attorneys?
   Yes. See Chapters I–VII.

6. Do the recommendations of the Advisory Group ensure, in accordance with 28 U.S.C. § 472(c)(3), that significant contributions will be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay?
   Yes. See Chapters I and VIII–XIII.

7. Does the Advisory Group Report adequately recognize and address any special conditions in the district, such as those listed below?

   a. Disparate civil or criminal caseloads or filings among places of holding court in the district.
   No. Not applicable to this district.

   b. The necessity of travel over substantial distances by litigants and attorneys.
   No. Not applicable to this district.

   c. Judicial vacancies or inadequate judicial power.
   Yes. See Chapters II, III, VI, and XIII.

   d. The impact of a high volume of complex cases, repetitive mass tort cases, or prisoner civil rights cases.
   Yes. See Chapters VI and XIII (criminal cases).

   e. Procedures, rules, or programs that meet the requirements of 28 U.S.C. § 473 and pre-dated the effective date of the Act.
   Yes. See Chapter XI (ADR).

Guidelines for Review of the Court's Plan

1. Has the Court, in accordance with 28 U.S.C. § 471, implemented a Cost and Delay Reduction Plan?

2. Does the Plan meet its statutory purpose, stated in 28 U.S.C. § 471, which is to "facilitate [the Court's] deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes"?

3. Was the Plan developed, as required by 28 U.S.C. § 472(a), after consideration of the recommendations of the court's CJRA Advisory Group? Note that "consideration of" does not necessarily mean "acceptance of."

4. Does the Plan reflect that the Court, in consultation with its Advisory Group, considered the following six principles and guidelines of litigation management and cost and delay reduction set out in 28 U.S.C. § 473(a):

   a. Systematic, differential treatment of civil cases.

   b. Early and ongoing judicial control of the pretrial process, including case planning, early and firm trial dates, control of discovery, and deadlines for motions.

   c. Discovery/case management conference(s) for complex or other appropriate cases, at which the judicial officer and the parties explore the possibility of settlement; identify the principal issues in contention; provide, if appropriate, for staged resolution of the case; prepare a discovery plan and schedule; and set deadlines for motions.

d. Encouragement of voluntary exchange of information among litigants and other cooperative discovery devices.

e. Prohibition on discovery motions, unless accompanied by certification by the moving party that a good-faith effort was made to reach agreement with opposing counsel.

f. Authorization to refer appropriate cases to alternative dispute resolution programs.

5. Does the Plan reflect that the Court, in consultation with its Advisory Group, considered the following litigation management and cost and delay reduction techniques set out in 28 U.S.C. § 473(b):

a. A requirement that counsel for each party present a joint discovery/case management plan at the initial pretrial conference.

b. A requirement that each party be represented at each pretrial conference by an attorney with authority to bind that party to all matters previously identified by the court for discussion at the conference.

c. A requirement that all requests for extension of discovery deadlines or for postponement of trial be signed by the attorney and party.

d. A neutral evaluation program for presentation of the legal and factual bases of a case to a neutral court representative at an early nonbinding conference.

e. A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during settlement conferences.

f. Such other features as the district court thinks appropriate after considering the Advisory Group's recommendations.

6. Does the Plan indicate, as required by 28 U.S.C. § 474, that the Court has a plan for taking such action as is necessary to reduce cost and delay in civil litigation?

7. Does the Plan require the court (judges, magistrate judges, and/or staff) to make significant contributions to reducing cost and delay in civil litigation? If yes, what significant contributions are required?

8. Does the Plan require litigants to make significant contributions to reducing cost and delay in civil litigation? If yes, what significant contributions are required?

9. Does the Plan require attorneys to make significant contributions to reducing cost and delay in civil litigation? If yes, what significant contributions are required? Please describe the contributions required of the various categories of attorneys, such as those who practice in the district and those from outside the district; in-house counsel and outside counsel; hourly fee and contingent-fee attorneys, attorneys whose fees are set by statute or the fact finder, and attorneys paid on some other basis.

10. Are the principal components of litigation costs—such as attorneys' fees incurred during discovery, during motion practice, and for trial time; expert witness expenses; travel time; court reporting; and video expense—likely to be reduced under the Court's Plan?

Appendix A:
Civil Justice Reform Act of 1990

TITLE I—CIVIL JUSTICE EXPENSES AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress finds that:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction-principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following chapter:

"Chapter 23—Civil Justice Expense and Delay Reduction Plans

"Sec.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources; and

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) A civil justice expense and delay reduction plan developed and implemented under this chapter shall include provisions applying the following principles and guidelines of litigation management and cost and delay reduction:

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

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

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

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months of the filing of the complaint, unless a judicial officer certifies that the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

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

"(D) setting deadlines for the filing of motions and target dates for the deciding of motions;

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

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

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

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

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

"(ii) phase discovery into two or more stages; and

"(D) establishes deadlines for filing motions and target dates for deciding motions;

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

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

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

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

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

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

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

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

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

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

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

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

"§ 474. Review of district court action

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

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

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

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

"(b) The Judicial Conference of the United States—

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

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial accountability through information dissemination

"(a) To enhance the accountability of each judicial officer in a district court, the Director of the Administrative Office of the United States Courts shall prepare a semiannual 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 the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice and expense delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other per-

sons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) In no event shall any member of the advisory group serve longer than four years.

"(d) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(e) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title and the litigation management and cost and delay reduction demonstration programs that the Judicial Conference shall conduct under this title.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Within three years after the date of the enactment of this title, each United States district court shall implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than six months and no later than twelve months after the date of the enactment of this title, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 105(a).

(3) Within eighteen months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

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

"23. Civil justice expense and delay reduction plans .....471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the four-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the

United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than March 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1990 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1990 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1990 to carry out the provisions of section 104.

Appendix B:
Members of the Advisory Group

MEMBERS OF THE ADVISORY GROUP

Members

Paul L. Friedman, Chair	White & Case
John D. Aldock	Shea & Gardner
William J. Birney	United States Attorney's Office for the District of Columbia
Harlow R. Case	Jack H. Olender & Associates
Gregory Davis	District of Columbia Chamber of Commerce
J. Gordon Forester, Jr.	Greenstein, Delorme & Luchs
Richard A. Green	Stohlman, Beuchert, Egan & Smith
Martin L. Grossman	Office of the Corporation Counsel for the District of Columbia
D. Jeffrey Hirschberg	Ernst & Young
Loren Kieve	Debevoise & Plimpton
Jane Lang	Sprenger & Lang
Wilma A. Lewis	United States Attorney's Office for the District of Columbia
Myles V. Lynk	Dewey Ballantine
Arnold I. Melnick	Washington Metropolitan Area Transit Authority
Judith A. Miller	Williams & Connolly
Elliot M. Mincberg	People for the American Way
Alan B. Morrison	Public Citizen Litigation Group
Dwight D. Murray	Jordan, Coyne, Savits & Lopata
Irving R.M. Panzer	Catholic University Law School
John Payton	Office of the Corporation Counsel for the District of Columbia
Deanne C. Siemer	Pillsbury, Madison & Sutro
Linda R. Singer	Lichtman, Trister, Singer & Ross
Fred S. Souk	Crowell & Moring
Nathaniel H. Speights	Speights & Micheel

Ex Officio Members

Chief Judge John Garrett Penn	United States District Court for the District of Columbia
Judge Aubrey E. Robinson, Jr.	United States District Court for the District of Columbia
Judge Charles R. Richey	United States District Court for the District of Columbia
Judge Royce C. Lamberth	United States District Court for the District of Columbia
Magistrate Judge Patrick J. Attridge	United States District Court for the District of Columbia
Nancy M. Mayer-Whittington, Clerk	United States District Court for the District of Columbia
LeeAnn Flynn Hall	United States District Court for the District of Columbia

Reporter

Stephen A. Saltzburg	George Washington University, National Law Center

Staff

Elizabeth H. Paret	United States District Court for the District of Columbia

Appendix C:
Cover Letter and Attorney Survey

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Paul L. Friedman
Chair

Honorable John Garrett Penn
Chief Judge

Stephen A. Saltzburg
Reporter

Nancy M. Mayer-Whittington
Clerk of Court

January 10, 1992

Dear Attorney:

In 1990, Congress enacted the Civil Justice Reform Act which requires each federal district court to identify the sources of significant cost and delay in civil litigation in that district and to consider ways of reducing both to improve the civil justice system. Under that law, advisory groups were formed in each of the 94 federal districts throughout the United States to study civil justice reform in their respective districts and to propose reforms where appropriate.

Chief Judge Aubrey E. Robinson, Jr. of the United States District Court for the District of Columbia appointed an advisory group of attorneys and representatives of litigant groups to assist in the development of an expense and delay reduction plan for the Court. As part of the information-gathering process, our Advisory Group is seeking information from attorneys who practice before this Court.

We are asking you to help us identify and address any problems that may exist with cost and delay by completing the enclosed survey. We recognize that this questionnaire may require some time to complete, but please be assured that your contribution is extremely important in providing data critical to the Advisory Group as it develops its report and recommendations for the Court.

So that we can assemble the data and have it available as the Advisory Group formulates its recommendations, we need your response by Monday, February 3, 1992. We ask that you return your completed questionnaire in the enclosed, self-addressed, franked envelope to the accounting firm of Ernst & Young, which is assisting us in tabulating the responses. Because we want you to be as candid as possible, you can be assured that none of the judges will see your responses which will remain confidential.

The time you spend completing the questionnaire is an investment in the future of our District Court. Thank you for your help and cooperation.

Sincerely,

Paul L. Friedman, Chair
Civil Justice Reform Act Advisory Group

D. Jeffrey Hirschberg, Chair
Subcommittee on the Cost of Litigation

Enclosures

January 1992

United States District Court for the District of Columbia

Attorney Survey

ERNST & YOUNG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Attorney Survey
January 1992

Address Correction Requested

The following survey is being conducted by the Advisory Group of the D.D.C, a body appointed pursuant to the Judicial Reform Act of 1990 to study whether there are unnecessary costs and delays associated with civil litigation in this district and, if so, how they can be reduced. The Group is seeking your opinions as a practicing attorney in the D.D.C in order to assist it in making recommendations for improving the management of civil litigation. The survey should take no longer than fifteen minutes to complete. Please return it no later than February 3, 1992, in the enclosed postage prepaid envelope. We appreciate your taking the time to participate in this study. Confidentially will be maintained.

Please use questions 59, 60 and 61 to more fully explain any answer you feel requires more than just a selected response.

Background Information

1. For how many years have you been practicing law? ___ ___ years.

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

3. During the past three years, what percentage (estimated) of your civil litigation practice was in the D.D.C.? ___ ___ ___ %

4. During the past three years, what percentage (estimated) of your civil litigation practice was in the E.D.Va.? ___ ___ ___ %

5. How would you best describe your practice setting?
   - [ ] Private law firm
   - [ ] Federal government
   - [ ] State government
   - [ ] Local government
   - [ ] Corporate counsel
   - [ ] Independent non-profit organization
   - [ ] Other_____

6. How many practicing lawyers are there in your firm or organization? ___ ___ ___

7. What percentage (estimated) of your civil litigation practice consists of representing plaintiffs? ___ ___ ___ %

The following questions pertain to your civil litigation experience in the District of Columbia during the past three years.

8. Have you encountered unreasonable delays? [ ] yes [ ] no
(If you wish to describe any delays, please do so in question 59.)

If yes, how much have each of the following contributed to these delays ?

	No contribution	Slight contribution	Moderate contribution	Substantial contribution
Tactics of opposing counsel	[ ]	[ ]	[ ]	[ ]
Conduct of clients	[ ]	[ ]	[ ]	[ ]
Conduct of insurers	[ ]	[ ]	[ ]	[ ]
Personal or office practices	[ ]	[ ]	[ ]	[ ]
Judicial practices	[ ]	[ ]	[ ]	[ ]

9. Have you found such litigation to be unnecessarily costly? [ ] yes [ ] no
(If you wish to describe any unnecessary costs, please do so in question 60.)

If yes, how much have each of the following contributed to the unnecessary costs ?

	No contribution	Slight contribution	Moderate contribution	Substantial contribution
Conduct of counsel	[ ]	[ ]	[ ]	[ ]
Conduct of clients	[ ]	[ ]	[ ]	[ ]
Conduct of insurers	[ ]	[ ]	[ ]	[ ]
Personal or office practices	[ ]	[ ]	[ ]	[ ]
Judicial practices	[ ]	[ ]	[ ]	[ ]

10. To what extent have each of the following tactics of counsel contributed to your assessment that there was unreasonable delay or unnecessary cost (Answer this question <u>only</u> if you answered "yes" to either questions 8 or 9):

	Substantial cause	Moderate cause	Slight cause	Not a cause
Unnecessary use of interrogatories	[ ]	[ ]	[ ]	[ ]
Too many interrogatories	[ ]	[ ]	[ ]	[ ]
Too many depositions	[ ]	[ ]	[ ]	[ ]
Too many deposition questions	[ ]	[ ]	[ ]	[ ]
Overbroad document requests	[ ]	[ ]	[ ]	[ ]
Overbroad responses to document production requests	[ ]	[ ]	[ ]	[ ]
Unavailability of witness or counsel	[ ]	[ ]	[ ]	[ ]
Raising frivolous objections	[ ]	[ ]	[ ]	[ ]
Failure to attempt in good faith to resolve issues without court intervention	[ ]	[ ]	[ ]	[ ]
Unwarranted sanctions motions	[ ]	[ ]	[ ]	[ ]
Lack of professional courtesy	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]

11. To what extent have the case management practices of **district judges** contributed to unnecessary delays or unreasonable costs?

[ ] None [ ] Slight [ ] Moderate [ ] Substantial

If **none**, please skip to question 12.

Please select the appropriate response for the following court activities:

Number of status conferences	Pre-motion conferences	Deadlines	Extension of deadlines
[ ] Far too many	[ ] Far too many	[ ] Far too restrictive	[ ] Far too many
[ ] Somewhat too many	[ ] Somewhat too many	[ ] Somewhat too restrictive	[ ] Somewhat too many
[ ] Reasonable number	[ ] Reasonable number	[ ] Reasonable	[ ] Reasonable number
[ ] Somewhat too few	[ ] Somewhat too few	[ ] Somewhat permissive	[ ] Somewhat too few
[ ] Far too few	[ ] Far too few	[ ] Far too permissive	[ ] Far too few

Please indicate the extent to which each of the following possible instances of case management practices by **district judges** contributed to your assessment:

	Substantial cause	Moderate cause	Slight cause	Not a cause
Delays in entering scheduling orders	[ ]	[ ]	[ ]	[ ]
Excessive time periods provided for in scheduling orders	[ ]	[ ]	[ ]	[ ]
Failure to resolve discovery disputes promptly	[ ]	[ ]	[ ]	[ ]
Failure to resolve other motions promptly	[ ]	[ ]	[ ]	[ ]
Scheduling too many motions on different cases concurrently	[ ]	[ ]	[ ]	[ ]
Failure to tailor discovery to needs of the case	[ ]	[ ]	[ ]	[ ]
Failure by judge to initiate settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate supervision of settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate judicial preparation for conferences or proceedings	[ ]	[ ]	[ ]	[ ]
Failure by judge to assign reasonably prompt trial dates	[ ]	[ ]	[ ]	[ ]
Failure of judge to meet assigned trial dates	[ ]	[ ]	[ ]	[ ]
Failure by judge to give sufficient advance notice of trial	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]

12. To what extent have the case management practices of **magistrate judges** contributed to unnecessary delays or unreasonable costs?

[ ] None [ ] Slight [ ] Moderate [ ] Substantial

If **none**, please skip to question 13.

Please select the appropriate response for the following court activities:

Number of status conferences	Pre-motion conferences	Deadlines	Extension of deadlines
[ ] Far too many	[ ] Far too many	[ ] Far too restrictive	[ ] Far too many
[ ] Somewhat too many	[ ] Somewhat too many	[ ] Somewhat too restrictive	[ ] Somewhat too many
[ ] Reasonable number	[ ] Reasonable number	[ ] Reasonable	[ ] Reasonable number
[ ] Somewhat too few	[ ] Somewhat too few	[ ] Somewhat permissive	[ ] Somewhat too few
[ ] Far too few	[ ] Far too few	[ ] Far too permissive	[ ] Far too few

Please indicate the extent to which each of the following possible instances of case management practices by **magistrate** judges contributed to your assessment:

	Substantial cause	Moderate cause	Slight cause	Not a cause
Delays in entering scheduling orders	[ ]	[ ]	[ ]	[ ]
Excessive time periods provided for in scheduling orders	[ ]	[ ]	[ ]	[ ]
Failure to resolve discovery disputes promptly	[ ]	[ ]	[ ]	[ ]
Failure to resolve other motions promptly	[ ]	[ ]	[ ]	[ ]
Scheduling too many motions on different cases concurrently	[ ]	[ ]	[ ]	[ ]
Failure to tailor discovery to needs of the case	[ ]	[ ]	[ ]	[ ]
Failure by judge to initiate settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate supervision of settlement discussions	[ ]	[ ]	[ ]	[ ]
Inadequate judicial preparation for conferences or proceedings	[ ]	[ ]	[ ]	[ ]
Failure by judge to assign reasonably prompt trial dates	[ ]	[ ]	[ ]	[ ]
Failure of judge to meet assigned trial dates	[ ]	[ ]	[ ]	[ ]
Failure by judge to give sufficient advance notice of trial	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]
Other_____	[ ]	[ ]	[ ]	[ ]

13. How much experience have you had with <u>any</u> court's (Please estimate the number of cases):

	No Experience	1 to 5	6 to 10	11 to 20	21 to 30	More than 30
a. Voluntary mediation program, in which an impartial person helps the parties and their attorneys to reach a settlement	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
b. Voluntary early neutral evaluation program in which a lawyer familiar with the substance of the dispute helps to evaluate the parties' claims and defenses	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
c. Mandatory non-binding arbitration, in which an impartial person holds a hearing and makes a decision	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
d. Summary jury trials, in which a jury gives a non-binding verdict after hearing a summary of the evidence	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

14. How effective do you think the following programs, which have been in effect in this Court for the past two years, have been in reducing cost and delay in cases in which they have been used:

	Substantial effect	Moderate effect	Slight effect	No effect at all	No opinion
a. Mediation	[ ]	[ ]	[ ]	[ ]	[ ]
b. Early neutral evaluation	[ ]	[ ]	[ ]	[ ]	[ ]

15. Please indicate your opinion of the net benefit of the following changes in civil litigation on reducing its cost and delay of civil litigation:

	Substantial effect	Moderate effect	Slight effect	No effect at all	No opinion
a. Requiring lawyers to:					
1. Have settlement discussions	[ ]	[ ]	[ ]	[ ]	[ ]
2. Discuss ADR options with clients	[ ]	[ ]	[ ]	[ ]	[ ]
b. Increasing filing fees to pay for alternative dispute resolution (ADR) programs	[ ]	[ ]	[ ]	[ ]	[ ]
c. Offering arbitration of all disputes in which the amount in controversy is less than:					
$100,000	[ ]	[ ]	[ ]	[ ]	[ ]
$200,000	[ ]	[ ]	[ ]	[ ]	[ ]
$1,000,000	[ ]	[ ]	[ ]	[ ]	[ ]
d. Mandatory arbitration of all disputes in which the amount in controversy is less than:					
$100,000	[ ]	[ ]	[ ]	[ ]	[ ]
$200,000	[ ]	[ ]	[ ]	[ ]	[ ]
$1,000,000	[ ]	[ ]	[ ]	[ ]	[ ]
e. Requiring court-administered mediation of all or most civil cases at some stage in the proceedings	[ ]	[ ]	[ ]	[ ]	[ ]
f. Requiring the parties to choose one ADR process in all civil cases	[ ]	[ ]	[ ]	[ ]	[ ]
g. Permitting the parties to agree on the timing of mediation or early neutral evaluation	[ ]	[ ]	[ ]	[ ]	[ ]
h. Expanding use of court referrals to private professional mediators paid by the parties	[ ]	[ ]	[ ]	[ ]	[ ]
i. Expanding the court's use of Special Masters in complex litigation (to be paid by the parties)	[ ]	[ ]	[ ]	[ ]	[ ]
j. Increased use of magistrate judges for discovery conferences	[ ]	[ ]	[ ]	[ ]	[ ]
k. Increased use of magistrate judges for discovery motion	[ ]	[ ]	[ ]	[ ]	[ ]
l. Increased use of magistrate judges for settlement conferences	[ ]	[ ]	[ ]	[ ]	[ ]
m. Increased use of magistrate judges for pre-trial conferences	[ ]	[ ]	[ ]	[ ]	[ ]

The following questions describe solutions which have been implemented in other districts or are under active consideration in this or other districts to address concerns regarding unnecessary delays and unreasonable costs in federal civil litigation. With respect to each proposed solution, please indicate the extent to which you would favor implementation of the proposal. Please answer whether you have had personal experience with each of the questions listed below by answering "Y" or "N" in the "Experience" column. Do not consider who, if anyone, has the power to implement these changes.

		Strongly favor	Moderately favor	Slightly favor	Do not favor	No opinion	Experience (Y/N)
16.	Establishing an expedited docket for some cases	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
17.	Shorter time limits for completing the various stages of litigation	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
18.	Requiring mandatory arbitration of all (or most) cases	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
19.	Firmer time limits for completing the various stages of litigation	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
20.	Requiring periodic oversight of litigation activity by the judge through status conferences	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
21.	Requiring counsel to attempt to resolve issues before court intervention	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
22.	Permitting pre-motion conferences with the court on any motion at the request of any party	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
23.	Requiring pre-motion conferences with the court for the following categories of motions:						
	Dispositive motions (dismissal, summary judgment)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	Discovery motions	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	Other motions	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
24.	Permitting the filing of procedural, non-dispositive motions (for example, motions to amend and motions to add parties) by letter rather than formal motion and brief	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
25.	Providing a page limitation for memoranda of law, except for good cause shown	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
26.	Requiring court-annexed mediation of all (or most) cases	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
27.	Providing court-annexed mediation for cases before they are filed	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
28.	Requiring Rule 11 sanctions motions to be separately filed and not appended to another motion	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
29.	Increased availability of telephone conferences with the court	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
30.	Requiring automatic disclosure of the following information shortly after joinder of issue:						
	The identity of witnesses reasonably likely to have information which bears significantly upon claims, defenses or damages	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	General description of documents relied upon in preparing pleadings or contemplated to be used in support of the parties' allegations or calculation of damages	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	Existence and contents of insurance agreements	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
31.	Requiring automatic disclosure prior to the final pre-trial conference of the qualifications, the opinions and the basis for those opinions of experts intended to be called as trial witnesses	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

		Strongly favor	Moderately favor	Slightly favor	Do not favor	No opinion	Experience (Y/N)
32.	Conditioning grants by the court of broader discovery upon the shifting of costs in instances where the burden of responding to such requests appears to be out of proportion to the amounts or issues in dispute	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
33.	Defining the scope of permissible discovery by balancing the burden or expenses of the discovery against its likely benefit	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
34.	Assessing the costs of discovery motions on the losing party	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
35.	Providing less time for completion of discovery	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
36.	Requiring discovery relating to particular issues (e.g., venue, class certification) or a specified stage of the case (e.g., liability) to be completed before permitting discovery respecting other issues or another stage (e.g., damages, experts)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
37.	Limiting the number of interrogatories presumptively permitted	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
38.	Limiting the type of interrogatories (e.g., identification, contention) presumptively permitted at various stages of discovery	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
39.	Limiting the number of depositions presumptively permitted	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
40.	Limiting the length of depositions presumptively permitted	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
41.	Requiring the losing party to pay all costs (including attorney fees) of the winning party	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
42.	Increasing the dollar threshold for diversity jurisdiction	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
43.	Increasing the number of magistrate judges	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
44.	Increasing the number of judges	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
45.	Increasing the use of special masters (to be paid by the parties)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
46.	Making available jurors to render advisory verdicts in "summary jury trials" held to foster settlement	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
47.	Requiring trial days to consist of more actual trial time (by starting earlier, ending later, having short breaks, etc.)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
48.	Making Saturday a routine trial day	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
49.	More use of Rule 11 by judges at all stages of litigation	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
50.	More attention by judges to deterring inappropriate attorney behavior during trial	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
51.	More attention by judges to excluding repetitive or irrelevant testimony at trial	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
52.	Requiring judges to issue decisions on motions or in non-jury trials within a set time	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
53.	Assignment of judges to the civil docket on a dedicated basis so that the criminal caseload could not affect scheduling and management of civil cases	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
54.	More efforts by the court to communicate with and educate members of the bar regarding appropriate methods of controlling delay and cost	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

	Substantially improved	Moderately improved	Remained unchanged	Moderately worsened	Substantially worsened
55. During the past three years, the cost and time it takes to litigate civil actions has:	[ ]	[ ]	[ ]	[ ]	[ ]

56. During the past three years, how many months (on average) has it taken from the time your civil cases were ready for trial to the time that trial actually commenced? ___ ___ months (or NA, if not applicable)

57. Please give the title and docket number of any case in the D.D.C. over the last 3 years in which you feel unreasonable delay or unnecessary cost was experienced

58. Have you encountered any special problems (including settlement of cases) in terms of either delay or cost when your opponent has been the Federal Government? [ ] yes [ ] no

If no, please skip to question 59.

Do the problems differ depending upon whether the government is represented by (i) agency counsel, (ii) the U.S. attorney's office, or (iii) the Department of Justice? [ ] yes [ ] no

59. If delay is a problem in the D.D.C. for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

60. If costs associated with civil litigation in the D.D.C. are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

61. Other comments

Appendix D: Compilation of Attorney Survey Results

COMPILATION OF ATTORNEY SURVEY RESULTS

Background Information

1. For how many years have you been practicing law?

Years	1	2-5	6-10	11-20	20+	All
%	.2%	13.9%	19.7%	44.7%	21.5%	1,00%
Count	3	173	245	556	268	1,245

2. What percentage of your practice is devoted to civil litigation?

Time	None	1-25%	26-50%	51-75%	76-100%	All
%	2.6%	13.3%	14.2%	15.1%	54.8%	1,00%
Count	33	166	177	188	684	1,248

3. During the past 3 years, what percentage of your civil practice was in the D.D.C.?

Time	None	1-25%	26-50%	51-75%	76-100%	All
%	6.8%	62.6%	18.4%	5.6%	6.7%	1,00%
Count	85	780	229	70	83	1,247

4. During the past 3 years, what percentage of your civil litigation practice was in the E.D.VA?

Time	None	1-25%	26-50%	51-75%	76-100%	All
%	53.7%	39.7%	4.9%	1.1%	.6%	1,00%
Count	668	493	61	14	7	1,243

5. How would you best describe your practice setting?

Type	Percentage	Count
Private law firm	81.1%	1014
Federal government	7.5%	94
State government	1.0%	12
Local government	1.0%	13
Corporate counsel	3.4%	42
Independent nonprofit	2.6%	33
Other	2.9%	36
Total	**99.4%**	**1,244**

6. How many practicing lawyers are there in your firm or organization?

Number	1-5	6-20	21-50	51-100	101+	All
%	26.5%	24.8%	12.4%	6.6%	29.7%	1,00%
Count	327	306	153	81	366	1,233

7. What percentage of your civil litigation practice consists of representing plaintiffs?

Percentage	None	1-25%	26-50%	51-75%	76-100%	All
%	11.0%	32.7%	21.0%	9.9%	25.5%	1,00%
Count	137	408	262	123	318	1,248

The following questions pertain to your civil litigation experience in the District of Columbia during the past 3 years.

8. Have you encountered unreasonable delays?

Response	Percentage	Count
Yes	59.4%	713
No	40.6%	487
Total	**100%**	**1,200**

If yes, how much have each of the following contributed to these delays?

	No		Slight		Moderate		Substantial		All	
Tactics of opposing counsel	13.5%	(91)	29.4%	(199)	33.9%	(229)	23.2%	(157)	100%	(676)
Conduct of clients	51.2%	(308)	34.9%	(210)	10.0%	(60)	3.8%	(601)	100%	(601)
Conduct of insurers	66.7%	(380)	16.7%	(95)	8.8%	(50)	7.9%	(45)	100%	(570)
Personal or office practices	55.6%	(320)	35.6%	(205)	6.6%	(38)	2.3%	(13)	100%	(576)
Judicial practices	1.4%	(10)	11.2%	(78)	30.7%	(214)	56.6%	(394)	100%	(696)

9. Have you found such litigation to be unnecessarily costly?

Response	Percentage	Count
Yes	57.4%	678
No	42.6%	503
Total	100%	**1,181**

If yes, how much have each of the following contributed to the unnecessary costs?

	No		Slight		Moderate		Substantial		All	
Conduct of counsel	3.1%	(20)	16.2%	(106)	41.1%	(269)	39.7%	(260)	100%	(655)
Conduct of clients	31.4%	(175)	38.2%	(213)	22.6%	(126)	7.9%	(44)	100%	(558)
Conduct of insurers	56.9%	(296)	16.7%	(87)	14.6%	(76)	11.7%	(61)	100%	(520)
Personal or office practices	54.4%	(282)	34.0%	(176)	10.2%	(53)	1.4%	(7)	100%	(518)
Judicial practices	11.1%	(69)	22.3%	(139)	39.6%	(247)	27.1%	(169)	100%	(624)

10. To what extent have each of the following tactics of counsel contributed to your assessment that there was unreasonable delay or unnecessary cost? (Answer this question only if you answered "yes" to either question 8 or 9)

	Substantial		Moderate		Slight		Not a Cause		All	
Unnecessary use of interrogatories	12.8%	(88)	26.0%	(178)	24.8%	(170)	36.4%	(249)	100%	(685)
Too many interrogatories	16.9%	(117)	27.7%	(192)	23.4%	(162)	32.0%	(222)	100%	(693)
Too many depositions	18.8%	(130)	26.0%	(180)	21.5%	(149)	33.8%	(234)	100%	(693)
Too many deposition questions	20.8%	(141)	22.7%	(154)	21.7%	(147)	34.7%	(235)	100%	(677)
Overbroad document requests	35.1%	(248)	26.6%	(188)	17.4%	(123)	20.8%	(147)	100%	(706)
Overbroad responses to document production requests	11.7%	(77)	17.7%	(116)	27.9%	(183)	42.7%	(280)	100%	(656)
Unavailability of witness or counsel	6.2%	(41)	21.7%	(143)	32.9%	(217)	39.2%	(259)	100%	(660)
Raising frivolous objections	19.5%	(137)	31.3%	(220)	30.0%	(211)	19.3%	(136)	100%	(704)
Failure to attempt in good faith to resolve issues without court intervention	29.6%	(215)	33.4%	(243)	23.4%	(170)	13.6%	(99)	100%	(727)
Unwarranted sanctions motions	8.3%	(54)	15.0%	(98)	24.2%	(158)	52.6%	(344)	100%	(654)
Lack of professional courtesy	16.3%	(113)	28.8%	(200)	31.1%	(216)	23.8%	(165)	100%	(694)

11. To what extent have the case management practices of district judges contributed to unnecessary delays or unreasonable costs?

Response	Percentage	Count
None	27.3%	316
Slight	21.0%	243
Moderate	27.2%	315
Substantial	24.5%	284
Total	100%	**1,158**

If none, please skip to question 12. If yes, please select the appropriate response for the following court activities:

Activity	Far Too Many	Somewhat	Reasonable	Somewhat	Far Too Few	All
Status conferences	3.1% (23)	12.1% (91)	50.5% (380)	22.2% (167)	12.2% (92)	100% (753)
Pre-motion conferences	2.1% (14)	8.3% (56)	59.6% (402)	16.9% (114)	13.1% (88)	100% (674)
Deadline extensions	13.3% (96)	25.1% (181)	51.7% (372)	7.8% (56)	2.1% (15)	100% (720)

Activity	Far Too Restrictive	Somewhat Too Restrictive	Reasonable	Somewhat Permissive	Far Too Permissive	All
Deadlines	4.9% (36)	18.7% (138)	48.8% (360)	15.7% (116)	11.9% (88)	100% (738)

Please indicate the extent to which each of the following possible instances of case management practices by district judges contributed to your assessment:

Practice	Substantial Cause	Moderate Cause	Slight Cause	Not a Cause	All
Delays in entering scheduling orders	10.4% (73)	19.3% (136)	23.6% (166)	46.7% (329)	100% (704)
Excessive time periods - scheduling orders	4.2% (29)	10.7% (74)	24.1% (166)	61.0% (421)	100% (690)
Failure to resolve discovery disputes promptly	27.0% (199)	30.7% (226)	21.3% (157)	21.0% (155)	100% (737)
Failure to resolve other motions promptly	55.1% (429)	23.6% (184)	12.3% (96)	9.0% (70)	100% (779)
Scheduling too many motions on different cases concurrently	6.0% (41)	11.5% (78)	19.7% (134)	62.8% (427)	100% (680)
Failure to tailor discovery to needs of the case	12.3% (87)	19.5% (138)	24.3% (172)	44.0% (312)	100% (709)
Failure by judge to initiate settlement discussions	13.4% (96)	23.9% (171)	22.4% (160)	40.3% (288)	100% (715)
Inadequate supervision of settlement discussions	11.2% (79)	23.3% (165)	20.9% (148)	44.6% (315)	100% (707)
Inadequate judicial preparation for conferences or proceedings	10.7% (76)	19.0% (135)	24.6% (175)	45.8% (326)	100% (712)
Failure by judge to assign reasonably prompt trial dates	20.4% (144)	20.1% (142)	19.3% (136)	40.1% (283)	100% (705)
Failure of judge to meet assigned trial dates	18.4% (128)	13.2% (92)	15.9% (111)	52.4% (365)	100% (696)
Failure by judge to give sufficient advance notice of trial	2.9% (20)	5.9% (40)	12.6% (86)	78.6% (535)	100% (681)

12. To what extent have the case management practices of magistrate judges contributed to unnecessary delays or unreasonable costs?

Response	Percentage	Count
None	82.0%	902
Slight	8.2%	90
Moderate	7.4%	81
Substantial	2.5%	27
Total	**100%**	**1,100**

If none, please skip to question 13. If yes, please select the appropriate response for the following court activities:

Activity	Far Too Many	Somewhat	Reasonable	Somewhat	Far Too Few	All
Status conferences	1.9% (3)	8.7% (14)	57.1% (92)	20.5% (33)	11.8% (19)	100% (161)
Pre-motion conferences	2.0% (3)	7.9% (12)	64.5% (98)	17.1% (26)	8.6% (13)	100% (152)
Deadline extensions	11.3% (18)	23.9% (38)	52.8% (84)	10.1% (16)	1.9% (3)	100% (159)

Activity	Far Too Restrictive	Somewhat Too Restrictive	Reasonable	Somewhat Permissive	Far Too Permissive	All
Deadlines	6.7% (11)	22.6% (37)	43.9% (72)	15.2% (25)	11.6% (19)	100% (164)

Please indicate the extent to which each of the following possible instances of case management practices by magistrate judges contributed to your assessment:

Practice	Substantial Cause	Moderate Cause	Slight Cause	Not a Cause	All
Delays in entering scheduling orders	8.4% (13)	14.3% (22)	27.9% (43)	49.4% (76)	100% (154)
Excessive time periods - scheduling orders	2.6% (4)	11.3% (17)	28.5% (43)	57.6% (87)	100% (151)
Failure to resolve discovery disputes promptly	28.5% (47)	33.3% (55)	15.2% (25)	23.0% (38)	100% (165)
Failure to resolve other motions promptly	34.2% (54)	26.6% (42)	13.9% (22)	25.3% (40)	100% (158)
Scheduling too many motions on different cases concurrently	2.7% (4)	10.7% (16)	22.7% (34)	64.0% (96)	100% (150)
Failure to tailor discovery to needs of the case	14.9% (25)	22.0% (37)	23.8% (40)	39.3% (66)	100% (168)
Failure by judge to initiate settlement discussions	14.1% (21)	19.5% (29)	18.8% (28)	47.7% (71)	100% (149)
Inadequate supervision of settlement discussions	16.4% (25)	19.1% (29)	16.4% (25)	48.0% (73)	100% (152)
Inadequate judicial preparation for conferences or proceedings	10.3% (16)	15.5% (24)	28.4% (44)	45.8% (71)	100% (155)
Failure by judge to assign reasonably prompt trial dates	11.3% (17)	9.9% (15)	18.5% (28)	60.3% (91)	100% (151)
Failure of judge to meet assigned trial dates	11.5% (17)	10.1% (15)	13.5% (20)	64.9% (96)	100% (148)
Failure by judge to give sufficient advance notice of trial	.7% (1)	6.2% (9)	15.9% (23)	77.2% (112)	100% (145)

13. How much experience (please estimate the number of cases) have you had with any court's:

Program	No Experience	1-5 Cases	6-10 Cases	11-30 Cases	30+ Cases	All
Voluntary mediation program	36.3% (437)	43.0% (518)	7.8% (94)	7.6% (91)	5.3% (64)	100% (1,204)
Voluntary early neutral evaluation	72.6% (850)	21.9% (257)	3.6% (42)	1.5% (17)	.4% (5)	100% (1,171)
Mandatory non-binding arbirration	68.6% (806)	24.6% (289)	3.4% (40)	2.5% (29)	.9% (11)	100% (1,175)
Summary jury trials	92.1% (1071)	7.7% (90)	.1% (1)	0.0% (0)	.1% (1)	100% (1,163)

14. How effective do you think the following programs, which have been in effect in this Court for the past 2 years, have been in reducing cost and delay in cases in which they have been used?

Program	Substantial Effect	Moderate Effect	Slight Effect	No Effect	No Opinion	All
Mediation	11.0% (137)	16.7% (209)	12.2% (153)	7.6% (95)	52.5% (657)	100% (1,251)
Early neutral evaluation	3.4% (42)	8.6% (107)	8.8% (110)	6.3% (79)	73.0% (913)	100% (1,251)

15. Please indicate your opinion of the net benefit of the following changes in civil litigation on reducing its cost and delay of civil litigation:

Practice	Substantial Effect	Moderate Effect	Slight Effect	No Effect	No Opinion	All
Requiring lawyers to have settlement discussions	24.7% (309)	29.8% (373)	26.8% (335)	9.0% (113)	9.7% (121)	100% (1,251)
Requiring lawyers to discuss ADR options with clients	15.1% (189)	23.8% (298)	32.1% (401)	13.1% (164)	15.9% (199)	100% (1,251)
Increasing filing fees to pay for ADR programs	4.5% (56)	10.7% (134)	23.9% (299)	35.8% (448)	25.1% (314)	100% (1,251)
Offering arbitration of all disputes in which the amount in controversy is less than:						
$100,000	17.4% (218)	23.9% (299)	24.6% (308)	13.0% (163)	21.0% (263)	100% (1,251)
$200,000	9.0% (113)	18.9% (237)	29.5% (369)	16.1% (202)	26.4% (330)	100% (1,251)
$1,000,000	7.6% (95)	9.8% (123)	28.1% (352)	27.1% (339)	27.3% (342)	100% (1,251)
Mandatory arbitration of all disputes in which the amount in controversy is less than:						
$100,000	27.7% (347)	20.2% (253)	12.9% (162)	14.7% (184)	24.4% (305)	100% (1,251)
$200,000	19.8% (248)	20.2% (253)	15.3% (191)	16.1% (202)	28.5% (357)	100% (1,251)
$1,000,000	17.2% (215)	14.9% (187)	16.8% (210)	21.2% (265)	29.9% (374)	100% (1,251)
Requiring court-administered mediation of all or most civil cases at some stage in the proceedings	22.9% (287)	32.7% (409)	22.1% (277)	9.7% (121)	12.5% (157)	100% (1,251)
Requiring the parties to choose one ADR process in all civil cases	18.8% (235)	27.8% (348)	23.1% (289)	12.9% (161)	17.4% (218)	100% (1,251)
Permitting the parties to agree on the timing of mediation or early neutral evaluation	10.6% (133)	21.7% (271)	30.0% (375)	17.3% (216)	20.5% (256)	100% (1,251)
Expanding use of court referrals to private professional mediators paid by the parties	8.6% (108)	17.5% (219)	31.0% (388)	20.5% (257)	22.3% (279)	100% (1,251)
Expanding the court's use of special masters in complex litigation (paid by parties)	14.5% (182)	27.9% (349)	20.9% (262)	12.6% (158)	24.0% (300)	100% (1,251)
Increased use of magistrate judges for discovery conferences	16.1% (201)	33.6% (420)	22.3% (279)	11.7% (146)	16.4% (205)	100% (1,251)
Increased use of magistrate judges for discovery motions	17.2% (215)	32.1% (401)	22.5% (282)	12.3% (154)	15.9% (199)	100% (1,251)
Increased use of magistrate judges for settlement conferences	14.8% (185)	30.4% (380)	25.1% (314)	13.4% (168)	16.3% (204)	100% (1,251)
Increased use of magistrate judges for pretrial conferences	11.0% (138)	23.4% (293)	25.3% (316)	22.3% (279)	18.0% (225)	100% (1,251)

The following questions describe solutions which have been implemented in other districts or are under active consideration in this or other districts to address concerns regarding unnecessary delays and unreasonable costs in federal civil litigation. With respect to each proposed solution, please indicate the extent to which you would favor implementation of the proposal. Do not consider who, if anyone, has the power to implement these changes.

Proposals	Strongly Favor	Moderately Favor	Slightly Favor	Do Not Favor	No Opinion	All
16. Establishing an expedited docket for some cases	42.0% (526)	27.0% (338)	13.6% (170)	8.1% (101)	9.3% (116)	100% (1,251)
17. Shorter time limits for completing the various stages of litigation	24.9% (311)	26.1% (327)	16.9% (211)	25.6% (320)	6.6% (82)	100% (1,251)
18. Requiring mandatory arbitration of most cases	6.3% (79)	9.1% (114)	14.5% (181)	60.2% (753)	9.9% (124)	100% (1,251)
19. Firmer time limits for completing the various stages of litigation	26.5% (332)	25.7% (321)	23.2% (290)	17.9% (224)	6.7% (84)	100% (1,251)
20. Requiring periodic oversight of litigation activity by the judge through status conferences	40.8% (511)	28.5% (356)	17.9% (224)	7.3% (91)	5.5% (69)	100% (1,251)
21. Requiring counsel to attempt to resolve issues before court intervention	40.6% (508)	25.2% (315)	19.4% (243)	7.4% (92)	7.4% (93)	100% (1,251)
22. Permitting pre-motion conferences with the court on any motion at the request of any party	13.1% (164)	20.6% (258)	19.5% (244)	30.6% (383)	16.1% (202)	100% (1,251)
23. Requiring pre-motion conferences with the court for the following categories of motions:						
Dispositive motions	21.5% (265)	20.8% (260)	13.6% (170)	30.8% (385)	13.7% (171)	100% (1,251)
Discovery motions	14.9% (186)	19.1% (239)	20.2% (253)	31.2% (390)	14.6% (183)	100% (1,251)
Other motions	8.9% (111)	14.3% (179)	18.7% (234)	31.7% (397)	26.4% (330)	100% (1,251)
24. Permitting the filing of procedural, nondispositive motions by letter rather than by formal motion or brief	27.4% (343)	16.3% (204)	11.3% (141)	34.0% (425)	11.0% (138)	100% (1,251)

Proposals	Strongly Favor	Moderately Favor	Slightly Favor	Do Not Favor	No Opinion	All
25. Providing a page limit for memoranda of law, except for good cause shown	39.8% (498)	22.5% (282)	13.9% (174)	16.9% (212)	6.8% (85)	100% (1,251)
26. Requiring court-annexed mediation of most cases	12.9% (162)	17.7% (222)	20.9% (262)	33.3% (416)	15.1% (189)	100% (1,251)
27. Providing court-annexed mediation for cases before they are filed	6.5% (81)	9.5% (119)	15.2% (190)	49.4% (618)	19.4% (243)	100% (1,251)
28. Requiring Rule 11 sanction motions to be separately filed and not appended to another motion	33.4% (418)	15.9% (199)	12.2% (153)	11.8% (147)	26.7% (334)	100% (1,251)
29. Increased availability of telephone conferences with the court	46.0% (576)	24.4% (305)	14.9% (187)	6.2% (77)	8.5% (106)	100% (1,251)
30. Requiring automatic disclosure of the following information shortly after joinder of issue:						
The identity of witnesses	38.0% (476)	23.1% (289)	13.3% (167)	15.8% (198)	9.7% (121)	100% (1,251)
Description of documents	34.4% (430)	20.3% (254)	13.9% (174)	21.2% (265)	10.2% (128)	100% (1,251)
Existence and contents of insurance agreements	38.4% (481)	17.3% (217)	10.7% (134)	13.0% (163)	20.5% (256)	100% (1,251)
31. Requiring automatic disclosure prior to the final pretrial conference of the qualifications and opinions of experts to be called as trial witnesses	57.6% (721)	21.0% (263)	7.1% (89)	4.4% (55)	9.8% (123)	100% (1,251)
32. Conditioning grants by the court of broader discovery upon the shifting of costs in instances where the burden of responding to such requests appears to be out of proportion to the amounts or issues in dispute	30.0% (375)	27.7% (347)	13.3% (166)	15.5% (194)	13.5% (169)	100% (1,251)

Proposals	Strongly Favor	Moderately Favor	Slightly Favor	Do Not Favor	No Opinion	All
33. Defining the scope of permissible discovery by balancing the burden or expenses of the discovery against its likely benefit	25.3% (317)	23.3% (291)	15.6% (195)	25.3% (316)	10.6% (132)	100% (1,251)
34. Assessing the costs of discovery motions on the losing party	18.7% (234)	20.1% (251)	19.4% (243)	33.5% (419)	8.3% (104)	100% (1,251)
35. Providing less time for completion of discovery	15.8% (198)	16.1% (202)	19.4% (243)	40.6% (508)	8.0% (100)	100% (1,251)
36. Requiring discovery relating to particular issues or a specified stage of the case to be completed before permitting discovery respecting other issues or another stage	25.0% (313)	21.9% (274)	15.8% (198)	25.7% (322)	11.5% (144)	100% (1,251)
37. Limiting the number of interrogatories presumptively permitted	33.3% (416)	22.2% (278)	16.4% (205)	21.4% (268)	6.7% (84)	100% (1,251)
38. Limiting the type of interrogatories presumptively permitted at various stages of discovery	20.4% (255)	17.3% (217)	14.6% (183)	35.3% (441)	12.4% (155)	100% (1,251)
39. Limiting the number of depositions presumptively permitted	20.0% (250)	16.3% (204)	18.0% (225)	37.5% (469)	8.2% (103)	100% (1,251)
40. Limiting the length of depositions presumptively permitted	16.3% (204)	13.6% (170)	14.8% (185)	45.7% (572)	9.6% (120)	100% (1,251)
41. Requiring the losing party to pay all costs of the winning party	11.2% (140)	10.8% (135)	12.4% (155)	56.6% (708)	9.0% (113)	100% (1,251)
42. Increasing the dollar threshold for diversity jurisdiction	11.4% (143)	10.3% (129)	9.5% (119)	50.1% (627)	18.6% (233)	100% (1,251)
43. Increasing the number of magistrate judges	21.7% (272)	20.1% (251)	21.5% (269)	11.4% (143)	25.3% (316)	100% (1,251)
44. Increasing the number of judges	39.4% (493)	20.9% (261)	17.5% (219)	6.2% (77)	16.1% (201)	100% (1,251)
45. Increasing the use of special masters (paid by parties)	12.1% (151)	17.3% (217)	23.0% (288)	22.4% (280)	25.2% (315)	100% (1,251)

Proposals	Strongly Favor	Moderately Favor	Slightly Favor	Do Not Favor	No Opinion	All
46. Making available jurors to render advisory verdicts in summary jury trials held to foster settlement	10.6% (132)	18.3% (229)	22.0% (275)	23.8% (298)	25.3% (317)	100% (1,251)
47. Requiting trial days to consist of more actual trial time	32.2% (403)	21.7% (271)	14.0% (175)	17.3% (217)	14.8% (185)	100% (1,251)
48. Making Saturday a routine trial day	5.8% (73)	6.9% (86)	6.1% (76)	71.3% (892)	9.9% (124)	100% (1,251)
49. More use of Rule 11 by judges at all stages of litigation	12.6% (158)	11.4% (143)	19.8% (248)	45.2% (565)	11.0% (137)	100% (1,251)
50. More attention by judges to deterring inappropriate attorney behavior during trial	28.4% (355)	22.6% (283)	19.9% (249)	10.0% (125)	19.1% (239)	100% (1,251)
51. More attention by judges to excluding repetitive or irrelevant testimony at trial	28.3% (354)	23.9% (299)	21.7% (271)	10.6% (133)	15.5% (194)	100% (1,251)
52. Requiring judges to issue decisions on motions or in non-jury trials within a set time	59.7% (747)	22.8% (285)	8.5% (106)	3.4% (43)	5.6% (70)	100% (1,251)
53. Assignment of judges to the civil docket on a dedicated basis so that the criminal caseload could nor affect scheduling and management of civil cases	51.7% (647)	20.1% (252)	8.9% (111)	8.3% (104)	11.0% (137)	100% (1,251)
54. More efforts by the court to communicate with and educate members of the bar regarding appropriate methods of controlling delay and cost	30.3% (379)	22.5% (281)	22.2% (278)	6.7% (84)	18.3% (229)	100% (1,251)

55. During the past 3 years, the cost and time it takes to litigate civil actions has:

Effect	Percentage	Count
Substantially improved	1.4%	16
Moderately improved	16.5%	187
Remained unchanged	39.2%	445
Moderately worsened	30.1%	342
Substantially worsened	12.9%	146
Total	**100%**	**1,136**

56. During the past 3 years, how many months (on average) has it taken from the time your civil cases were ready for trial to the time that trial actually commenced?

Months	Count
12.6	1,251

58. Have you encountered any special problems (including settlement of cases) in terms of either delay or cost when your opponent has been the Federal Government?

Response	Percentage	Count
Yes	38.8%	367
No	61.2%	580
Total	**100%**	**947**

Do the problems differ upon whether the government is represented by (i) agency counsel, (ii) the U.S. Attorney's Office, or (iii) the Department of Justice?

Response	Percentage	Count
Yes	44.1%	149
No	55.9%	189
Total	**100%**	**338**

Appendix E:
Narrative Responses to the Attorney Survey

NARRATIVE RESPONSES TO THE ATTORNEY SURVEY

Methodology

Of the 5,000 surveys sent to practicing attorneys in the District of Columbia, 1,251 (25%) were returned. Of those, 591 included written narrative comments.

Three of the questions called for narrative responses. The questions read:

- If delay is a problem in the D.D.C. for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays?
- If costs associated with civil litigation in the D.D.C. are unreasonably high, what additional suggestions or comments do you have for reducing those costs?
- Other comments?

Sample Narrative Responses

A sampling of the narrative responses, by category, follows:

Judges

We need more judges and we need to pay our judges better!

There should be more utilization of magistrate judges.

I do not favor the increased routine use of special masters, or magistrate judges for that matter. Unless they can truly give greater attention than judges can to some routine matters, my experience tells me that they result in merely an additional layer of litigation, inasmuch as their actions can be and usually are appealed to the district judge.

More use of telephone conferences (scheduling, settlement, etc.).

Ask judges not to set multiple status conferences, etc. at the same time so that attorneys do not have to wait in court for 1 to ½ half hours for a 5 minute status call. Also, inform attorneys if court is running substantially late.

Require judges to issue decision, or at least report, on pending motions within a fixed time.

Judicial willingness to make a decision early on in discovery disputes.

Maximum speed occurs when the judge exercises hands-on management.

I have found that the judges avoid delay and insist on resolving cases quickly, regardless of the parties' or counsel's wishes.

Give the judges some deadlines, everyone else has them.

Judicial approach that treats each case as a unique and worthy endeavor, until shown otherwise.

Attention must be paid to the more complex cases which are not amenable to rapid movement.

Convince judges that diversity cases are more than just a nuisance relative to their federal question cases.

More judicial intervention prior to trial.

More active participation by judges who have familiarized themselves with the cases and issues.

Judges seem to be tied up handling criminal cases.

The federal judges are overwhelmed with criminal cases and unwilling to become involved in civil matters.

The best suggestion is to have judges dedicated to civil docket with no interference from criminal docket.

Some judges show a lack of respect given to the lawyers appearing before them.

No procedural innovation or modification is remotely as important as having intelligent, dedicated, energetic judges who care about their cases, enjoy their work, don't dislike lawyers, and are committed to managing their dockets in a fair and rational way, without undue postponements of complex litigation.

You can't take care of this problem [delay] as long as judges do not grant summary judgment. The best judges in Virginia and Maryland trim cases substantially and quickly, knowing that the 4th Circuit will back them up.

The best D.C. judges seem to have private practice experience, though the converse is not necessarily true.

Peer pressure on slower judges; make statistics public on monthly basis; require remedial case management training.

Interlocutory appeals in civil cases pending in the District Court should be expedited. Appellate Courts should be required to promptly issue decisions. Firm adherence to filing deadlines; no extension of dates once set.

This bench is outstanding and hard working. The biggest problem in civil cases is keeping trial dates.

Need mechanism to remind judges about pending cases...perhaps assign one judge to clean up back-log (summary dispositions).

Tighter control of schedules...similar program to D.C.'s Superior Court tracking system.

Judges must crack down on abusive practices.

More judicial control at an earlier point; set and enforce discovery and other deadlines. The main thing is more judicial involvement in managing the case.

In my experience, the judges of the D.D.C. believe that in litigation, fairness, not expedition, is the highest value. This is not always the case in other courts where I have practiced.

My only experience of significant delay in D.D.C. (or anywhere) is due to the judge's failure to resolve a pending dispositive motion that has been around for *years*. But because delay is in my client's interests, I'm not inclined to do anything about it.

Require cases to be set down for trial within a specified time limit from date of filing complaint.

Provide for reassignment of case to a new judge when current judge cannot move case.

Please keep one judge assigned to one case, start to finish.

Take lessons from the Eastern District of Virginia.

The Eastern District of Virginia is a wonderful, tough court that gets the job done promptly and just as fairly as any other district I've seen.

Schedule a court-wide motions day...similar to practice in E.D.VA.

Discovery

The Court should require that when discovery motions are filed, the parties certify their prior efforts together to resolve the disputed issue.

The provisions in Rule 37 requiring the losing party in a discovery dispute to pay the other side's costs should be enforced.

Enforce discovery rules strictly.

Greater willingness of courts to impose discovery and Rule 11 sanctions on governmental defendants.

Failure to answer discovery requests and delay tactics involving discovery are the problems that I confront most often.

Fixed discovery deadlines, except for good cause shown.

Reduce formal discovery by requiring parties to disclose all witnesses and documents at initial stages of case and eliminate all but essential depositions, i.e., parties and experts.

Reduce discovery and require early disclosure of core information.

At the beginning of each case, the judge should review with counsel the necessary discovery and impose limits on that discovery.

I strongly oppose deadlines for discovery. The party in control of the facts (usually the defendant) is thereby encouraged to delay in order to prevent effective discovery within the allowed time period.

I think the Court needs to be careful about limiting discovery too rigidly because some cases, especially fraud cases, need a lot of discovery. But D.D.C. needs to follow the lead of other courts and limit the number of interrogatories.

Limit the time for discovery to a reasonable period in light of case complexity.

Bifurcated discovery results in delay.

Closer judicial supervision of discovery requires more judges.

Discovery abuses, mostly the pursuit of irrelevant facts and documents, are the biggest waste of time and money in my practice.

Judicial rulings that quickly dispose of nonmeritorious cases put an end to abusive discovery practices, etc., [and] would save everyone time and money.

Discovery motions particularly, but other motions as well, are not being resolved and litigation grinds to a halt as a result.

Sanctions against frivolous actions should be the rule, not the exception. Depositions should be limited and shortened.

Loser to pay *all* discovery costs including attorney fees.

The problem with discovery is that no one pays attention to it, and therefore the attorneys misbehave and conduct unnecessary inquiry.

My experiences in D.C. District Court largely involve legal challenges to federal action on the civil side; they are ordinarily resolved by dispositive motions, with little discovery. The Court has become less responsive and slower in such cases, which seems a shame, since this court traditionally has been a forum for such cases.

Discovery matters should not, as a rule, be handled by district judges.

Allow depositions by tape recorder.

Motions

Greater effort to consider motions quickly.

Fix time for decision of summary judgment motions and other motions (choice of law) that will have a significant impact upon the settlement negotiations; establish firm trial dates sooner.

Reduce motions for extensions of time.

Motions to disqualify should be expedited.

Sixty-day deadline for courts to rule on motions (dismissal, summary judgment, etc.).

Require judges to decide motions within 90 days, or lose new assignments until backlog is cleared. (an 11th Circuit practice).

Timely rulings on motions, particularly dispositive motions.

Make judges rule on motions within 30 days. Some are too forgetful of the problems inherent in unnecessary delay by the judiciary.

Giving judges a deadline to rule on motions is probably the best way to speed up resolution of civil cases where disposition is other than by jury trial.

Grant motions for summary judgments and motions to dismiss. Reduce time that motions are kept under advisement.

The Court should impose tough Rule 11 sanctions for frivolous motions. Magistrate judges should be available to decide disputes.

Regular motions day, as in E.D.VA, which would encourage ruling from the bench.

The E.D.VA runs the best docket I have experienced. Cases cannot be used as mere bargaining ploys. When the case is filed, counsel know they need to settle or be ready to go to trial. However, I prefer the D.D.C. practice of scheduling motions arguments.

Too often, plaintiffs are permitted to go "fishing" for facts to establish liability and/or damages.

Procedural

Follow the lead of the U.S. District Court for the Eastern District of Virginia and greatly accelerate the timetable of civil cases where appropriate, but do *not* be as draconian as E.D.VA is.

Decreased use of expert testimony.

The most costly item for my clients has been expert witness fees. Expert witnesses have been compelled to testify despite the fact that opposing counsel have had, prior to trial, access to their reports, backup data, and opinions.

The greatest cost to our system is the overwhelming number of defense counsel representing one party assigned to a relatively straightforward case. A "team" of attorneys is not only not necessary, but also gives the victim a real question of "fairness existence."

Authorize and set ground rules, by court rule, for use of *fax* for communications with court and between counsel.

I think that it is important *not* to overuse Rule 11. It is used as a weapon rather than a shield and often results in unnecessary "satellite litigation." I think that sanctions should be automatically assessed against a party whose motion for sanctions is denied.

Less procedure and costly attempts to shortcut trial process.

Assessing legal fees and costs against losing party.

Bifurcated trials for simple negligence cases.

Adopt the "English Rule" (loser pays all of winner's costs, including attorneys' fees). This will reduce the size of the docket and solve many other problems.

Greater supervision of documents.

ADR

The statistics of court-ordered mediation programs are phenomenal. All civil cases should be mediated by an experienced *lawyer* in that field of *practice!*

I question the usefulness of nonbinding mediation. Once the Court or a magistrate becomes directly involved, the case seems to speed up.

More ADR, arbitration, and mediation.

Strongly support ADR mechanism to balance strength of government against plaintiffs with limited resources. ADR should be compulsory where reasonable settlement is found to be possible.

End [the] mediation program or end program's use of amateurish mediators. My experience with the program is that it is a waste of time and money.

My experience with the court-sponsored mediation program was very positive.

Mandatory arbitration for all personal injury cases.

Allow parties to waive mediation when both sides certify mediation unlikely to achieve settlement.

Mediation and pretrial conferences are helpful.

More use of ENE and arbitration/mediation, as in Superior Court for personal injury cases.

Binding arbitration for most civil cases.

Adopt the program in force at the Superior Court for tracking ADR.

Courts refer cases to mediation, especially medical malpractice cases, much too early, before enough is known about the case to evaluate it. Consequently, mediation is generally a waste of time.

Swift, binding, voluntary, *independent* arbitration. Compliance with court procedures is a costly and time consuming process. Some litigants will chose an alternative *if* it were through knowledgeable independent arbitrators.

Clerk's Office

Accept filings by fax.

Clerk's Office should be more responsive.

Mandate two-sided copying as much as possible. Establish master service lists to be referenced on a one-paragraph certificate of service. *Pro hac vice* motions by letter. Consider electronic filing of pleadings.

Implement tracking system, assigning cases to fast, moderate or slow track, depending upon nature and complexity of case and legal issues involved.

I have experienced unreasonable delay in the processing of bills of costs by the Clerk's Office.

The Clerk's Office has been courteous and helpful at all times.

Although I realize this problem is not the subject of the current survey, I believe the decision not to provide simple docket information to counsel over the phone by the Clerk's Office greatly increases the costs to both government attorneys as well as members of the private bar who cannot afford to be included on the computer network. Even for those who are on the network, the information is often inaccurate and/or not current, thus necessitating time-consuming and therefore costly trips to the Clerk's Office.

I deeply appreciate being able to file documents until midnight.

Expansion of computer use would help. PACER, the D.D.C. Clerk's Office data base, has been a big help in tracking orders, filings, etc.

Sometimes slavish adherence to local rules in nonsubstantive areas is overdone by the clerk.

There are two firms that share our office suites. Despite putting our firm name and address on all filings, the Clerk's Office always sends orders and notices to the wrong firm.

Government Attorneys

Reduce criminal jurisdiction.

Get the local criminal cases out of the Federal Court.

Shift prosecutions of nickel and dime drug cases to the Superior Court where they belong. The judges are absolutely right on this.

Eliminate the ability of the U.S. Attorney to pick and choose whether to bring criminal (drug) cases in Superior Court or U.S. District Court.

Treat Department of Justice lawyers as counsel in private firms are treated.

Extensions of time awarded to government attorneys are excessive. Government lawyers should not have an advantage over private attorneys.

Courts tolerate delay, sloppiness, etc. from government attorneys that would not and are not tolerated from attorneys representing private parties.

The government generally is not prepared to settle on the basis of risks and costs.

Hold government lawyers to the same exacting standards as private counsel.

Lawyers with the Department of Justice appear on balance to be more reasonable than agency counsel and assistant U.S. attorneys.

Penalize the Department of Justice for making routine motions to dismiss on frivolous jurisdictional grounds.

Attorneys

Monitor practice of the side that is billing by the hour.

Educate lawyers to be more efficient in the delivery of legal services. Do not use multiple lawyers for a single task.

Bar should provide a handbook for clients outlining the time, costs, and delay associated with litigation. Should urge settlement prior to or immediately after filing of complaint.

I have only been in practice for 2 years. However, I have already experienced tactics which are totally unnecessary and cause undue delay. Most of these tactics are used by defense counsel in civil cases during the discovery process.

There should be guidelines for proper attorney conduct and questions during depositions.

The central problem with the bar today is lack of civility and professionalism.

Pretrial Motions

More prompt resolution of pretrial motions.

On occasion, the requirements set in standardized pretrial orders need to be reduced in smaller cases.

More effective use of status or pretrial conferences by the Court to narrow issues including liability and proof of damages.

There should be adequate time between the date summary judgment motions are due and trial dates, so that parties do not have to prepare pretrial memoranda, voir dire, jury instructions, and do trial preparations which may all be totally unnecessary.

I am wary of any proposal to require lengthy pretrial submissions by parties, as I think they drive up cost without any corresponding benefits.

Courts should be more aggressive at the pleading stages and be willing to use Rules 12(b) and 9(b) to dismiss frivolous cases.

Appendix F:
Docket Sheet Review Form

DOCKET SHEET REVIEW FORM

(Please attach a copy of the docket sheet to this form.)

General Information

1. Case name _____ 2. Case number _____

3. Type of case (use category name and number from civil cover sheet) _____

4. Judge in case _____

5. Number of parties in case: Plaintiffs _____ Defendants _____

6. Total time (in months, rounded off to nearest month) from filing of complaint to entry of final judgment for all parties _____

7. How was the case disposed of? (circle one)
   (1) Dismissed for lack of prosecution
   (2) Judgment entered on a motion to dismiss
   (3) Judgment entered on a motion for summary judgment
   (4) Voluntary dismissal/Settlement
   (5) Trial
   (6) Other (please specify) _____

8. If this case was disposed of by a motion to dismiss or a motion for summary judgment (answers (2) or (3) to question 7), what was the number of days between the filing of that motion and the entry of judgment? _____

Pretrial and Trial Dates

Please use the docket sheet to record the following dates of pretrial and trial activities. If this is impossible, please write "NA" in the appropriate slot.

9. Date that initial complaint was filed _____

10. Dates of filing of any amended complaints _____

11. Date of service of summons (list multiple dates if more than one defendant) _____
    _____

12. Dates that answer(s) were filed to original complaint and any amended complaints _____
    _____

13. Dates of any pretrial conferences *other than* Rule 16 scheduling conferences _____
    _____

14. Date that discovery was completed _____

15. Date(s) of trial, if any _____ to _____

16. Length of trial (in days) _____

17. Date of entry of final judgment _____

18. Were extensions of time granted in this case for (circle each that applies):

    (1) Responding to the complaint

    (2) Filing or responding to motions

    (3) Trial

    (4) Other (please specify) _____

19. If extensions of time were granted, what was the total number of days of the extensions? _____

20. Were there oral arguments on any pretrial motions filed in this case? (circle one)

    (1) Yes (2) No

21. If oral arguments were held (you answered "yes" to question 20), please list the number of oral arguments _____

Rule 16 Scheduling Orders

22. Was a Rule 16 scheduling order entered in this case? (circle one)

    (1) Yes (2) No

23. If a scheduling order was entered, what was the date of that order? _____

24. Was there a Rule 16 scheduling conference held in this case? (circle one)

    (1) Yes (2) No

25. If one or more scheduling conferences were held, what were the dates of those conferences? _____

    _____

26. From examining the scheduling order, please indicate (rounding off to the nearest month):

    (1) The months allowed, from the date of the order, for the parties to amend their pleadings ____

    (2) The months allowed, from the date of the order, for the completion of discovery _____

    (3) The months allowed, from the date of the order, for the filing of any dispositive motions ____

    (4) The months allowed, from the date of the order, to the scheduled trial date _____

27. From comparing the scheduling order with the docket sheet, please indicate whether the parties completed the following tasks by the dates originally set in the scheduling order:

    a. Amendment of the pleadings: (circle one)

        (1) There were no amended pleadings filed after the date set in the original scheduling order.

        (2) Amended pleadings were filed after the date set in the original scheduling order.

    b. Completion of discovery: (circle one)

        (1) There were no discovery responses filed after the date set in the original scheduling order.

        (2) Discovery responses were filed after the date set in the original scheduling order.

    c. Dispositive motions: (circle one)

        (1) There were no dispositive motions filed after the date set in the original scheduling order.

        (2) Dispositive motions were filed after the date set in the original scheduling order.

    d. Trial date: (circle one)

        (1) There was no extension of the trial date set in the original scheduling order.

        (2) There was an extension of the trial date set in the original scheduling order.

28. Please list the *number* of the following discovery *responses* that were filed in this case by plaintiffs and defendants.

    a. The plaintiffs filed *responses* to:

    _____ Interrogatories

    _____ Document production requests

    _____ Admission requests

    b. The defendants filed *responses* to:

    _____ Interrogatories

    _____ Document production requests

    _____ Admission requests

General Comments

29. Is there evidence of the use of alternative dispute resolution in this case (such as a settlement conference, mediation, arbitration, or summary jury trial)? (circle one)

    (1) Yes (please describe) _____

    (2) No

30. Is there any evidence that this case was referred to a magistrate judge or special master? (circle one)

    (1) Yes (please describe to whom the case was referred and for what purpose) _____

    _____

    _____

    (2) No

31. Based upon your review of this docket sheet, do you believe that the time that it took to resolve this matter was:

    (1) Much too long

    (2) Slightly too long

    (3) About right

    (4) Slightly too short

    (5) Much too short

32. Based on your review of this docket, list the principle factors that contributed to the length of time that it took to resolve this case. Your answer should contain an explanation for the answer that you circled in response to question 31.

    _____

    _____

    _____

    _____

    _____

    _____

    _____

    _____

    _____

    _____

    _____

Appendix G:
Judges' Interviews — List of Those Interviewed

JUDGES' INTERVIEWS — LIST OF THOSE INTERVIEWED

Date of Interview	*Judge/Magistrate Judge Interviewed*
January 24, 1992	Judge Royce C. Lamberth
January 30, 1992	Judge Gerhard A. Gesell
January 30, 1992	Magistrate Judge Patrick J. Attridge
January 31, 1992	Judge Aubrey E. Robinson, Jr.
February 5, 1992	Judge William B. Bryant
February 12, 1992	Judge John H. Pratt
February 13, 1992	Judge Oliver Gasch
February 14, 1992	Judge Charles R. Richey
February 14, 1992	Chief Judge John Garrett Penn
February 18, 1992	Judge Thomas A. Flannery
February 19, 1992	Judge Joyce Hens Green
February 20, 1992	Magistrate Judge Deborah A. Robinson
February 24, 1992	Judge Thomas Penfield Jackson
February 24, 1992	Judge Stanley S. Harris
February 25, 1992	Judge Louis F. Oberdorfer
February 26, 1992	Judge Thomas F. Hogan
March 2, 1992	Judge George H. Revercomb
March 2, 1992	Judge Norma Holloway Johnson
March 3, 1992	Magistrate Judge Alan Kay
March 5, 1992	Judge June L. Green
March 5, 1992	Judge Stanley Sporkin
March 25, 1992	Judge Harold H. Greene

Appendix H:
Judges' Interviews — Pre-Interview Questionnaire

JUDGES' INTERVIEWS — PRE-INTERVIEW QUESTIONNAIRE

Name _____

Service

1. Do you monitor service of the summons and complaint? (please circle) yes no

Scheduling

2. Do you receive frequent requests for extensions of time? (please circle) yes no

   If yes, what percentage of these motions are meritorious? _____

3. Do you hold Rule 16(b) scheduling conferences in all cases? (please circle) yes no

   If not, in approximately what percentage of cases? _____

4. Do you use a standard scheduling order as outlined in Rule 16(b) or some modification of the standard order? (please circle) standard modification

   In approximately what percentage of cases do you modify the order? _____

Discovery

5. Do you set discovery cut-off dates? (please circle) yes no

   If yes, in approximately what percentage of cases do you give extensions? _____

6. Do you use a standard discovery scheduling order? (please circle) yes no

   If not, in approximately what percentage of cases do you modify the order? _____

7. In approximately what percentage of cases do you order that requests for production of documents, responses, or other discovery materials *not* be filed with the Clerk's Office? _____

8. Do you hold Rule 26 discovery conferences? (please circle) yes no

   If yes, in approximately what percentage of cases? _____

Motions

9. Do you make oral rulings on motions? (please circle) yes no

   If yes, in approximately what percentage of cases? _____

10. Do you monitor the timing and filing of motions and responses? (please circle) yes no

Pretrial

11. Do you hold frequent pretrial or status conferences? (please circle) yes no

    If yes, do you use telephone conferences? (please circle) yes no

If yes, in approximately what percentage of cases? _____

12. Do you advise counsel of the availability of alternative dispute resolution techniques? (please circle) yes no

    If yes, in approximately what percentage of cases? _____

13. Do you hold a final pretrial conference in all cases under Rule 16(d) and Local Rule 209? (please circle) yes no

    If not, in approximately what percentage of cases? _____

14. Do you use a standard final pretrial order in every civil case or some modification of it? (please circle) standard modification

    In approximately what percentage of cases do you modify the orders? _____

Pro Se *Cases*

15. Do you routinely appoint counsel in *pro se* cases? (please circle) yes no

16. Do you use any special procedures to manage *pro se* cases? (please circle) yes no

Trial

17. Do you routinely bifurcate trials (e.g., separate liability and damage issues)? (please circle) yes no

18. When presiding over a trial...

    (a) Approximately how many days per week is the trial convened?
    Bench trial _____ Jury trial _____

    (b) Do you hear motions in other cases while the trial is underway?
    Bench trial (please circle) yes no Jury trial (please circle) yes no

    (c) Do you hold conferences in other cases while the trial is underway?
    Bench trial (please circle) yes no Jury trial (please circle) yes no

    (d) Do you usually sit consecutive days until the trial is completed?
    Bench trial (please circle) yes no Jury trial (please circle) yes no

    (e) Do you usually sit full days?
    Bench trial (please circle) yes no Jury trial (please circle) yes no

19. In a bench trial, in approximately what percentage of cases do you rule from the bench immediately following trial?

If you use standard orders as noted in questions #4 (scheduling), #6 (discovery), and #14 (final pre-trial), please attach them to this questionnaire.

Please return the completed questionnaire to Nancy Mayer-Whittington in Room 1834 by January 14, 1992. Thank you for your time.

Appendix I:
Judges' Interviews — Questions for Judicial Officers

JUDGES' INTERVIEWS — QUESTIONS FOR JUDICIAL OFFICERS

1. Are there problems of excessive cost and delay in the processing of civil cases in the Court? Why? What specific solutions would you recommend?

2. What are the most effective measures you have employed for preventing excessive cost and delay that are not case-specific? What measures would you like to see instituted in this Court, right now, to deal with excessive cost and delay?

3. Is the allocation and coordination of work among active judges, senior judges, and magistrate judges effective? Is there sufficient backup for a district judge who has an unusually burdensome case?

4. What role should a district judge and/or magistrate judge play in the settlement process? When? Would it make sense to have one or more senior judges or magistrate judges assume the role of a settlement judge?

5. How effective has the alternative dispute resolution process been in the Court? Are there ways in which ADR should be improved or expanded?

6. When should a district judge appoint a special master? What roles can a special master most effectively and efficiently assume?

7. Is civil discovery a cause of excessive cost? Excessive delay? What actions can a district judge take to reduce excessive cost and delay?

8. What impact does the criminal caseload have on the processing of civil cases? Are there administrative improvements that would assist judges in handling their civil cases without delaying the disposition of criminal cases? Are there procedures that would expedite criminal trials and permit more time for consideration of civil cases?

9. How should a district judge or magistrate judge decide the priority to be given to various cases and motions? Should a judge inform the parties of the status of dispositive motions or have a status conference when such motions have been pending for several months?

10. Are there specific actions that you have taken to manage the trial of civil cases that expedite trials and reduce costs?

11. Are there special problems created by *pro se* cases (25% of the Court's caseload) that lead to delay in their processing or in the disposition of other civil cases?

12. Does this Court have unique problems because it is in the seat of the Federal Government? In civil cases? In criminal cases?

Appendix J:
Comments on the Draft Report — List of Respondents

COMMENTS ON THE DRAFT REPORT — LIST OF RESPONDENTS

Comments from Organizations

1. Civil Justice Reform Act Advisory Group for the Eastern District of Pennsylvania
2. Office of General Counsel, United States Department of Defense
3. Bar Association of the District of Columbia
4. Center for Public Resources Legal Program
5. Office of the Solicitor, United States Department of the Interior
6. Committee on Pro Se Litigation of the United States District Court for the District of Columbia
7. Special Committee on Gender for the Task Force on Gender, Race and Ethnic Bias
8. Council for Court Excellence
9. Litigation Section of the District of Columbia Bar
10. Courts, Lawyers and the Administration of Justice Section of the District of Columbia Bar
11. District of Columbia Prisoners' Legal Services Project, Inc.
12. Civil Division, United States Department of Justice
13. Office of the Chairman, Administrative Conference of the United States
14. Legal Division, Federal Deposit Insurance Corporation
15. Clerk's Office, United States District Court for the District of Columbia
16. Standing Committee on Pro Bono Legal Services of the Judicial Conference of the District of Columbia Circuit
17. Circuit Executive's Office, District of Columbia Circuit

Comments from Individuals (Affiliation Listed for Identification Purposes Only)

1.	Judge Avern Cohn	United States District Court for the Eastern District of Michigan
2.	Aubrey M. Daniel, III	Williams & Connolly
3.	John W. Berresford	Metzger, Hollis, Gordon & Mortimer
4.	Judge Robert W. Sweet	United States District Court for the Southern District of New York
5.	Paul D. Pearlstein	Pearlstein & Jacques
6.	Robert C. Hauhart	Public Defender Service for the District of Columbia
7.	Earl J. Silbert	Schwalb, Donnenfeld, Bray & Silbert
8.	R. Stan Mortenson	Miller, Cassidy, Larroca & Lewin
9.	C. Stanley Dees	McKenna & Cuneo
10.	Arthur B. Spitzer	ACLU Fund of the National Capital Area
11.	Judge Thomas Penfield Jackson	United States District Court for the District of Columbia
12.	James Robertson	Wilmer, Cutler & Pickering
13.	Nicholas H. Cobbs	Law Offices of Nicholas H. Cobbs

Appendix K:
Civil Cover Sheet

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

DEFENDANTS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

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

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

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med Malpractice
- ☐ 365 Personal Injury—Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Other

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

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

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

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

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23

DEMAND $

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

Category in which case belongs:

_____ A. Anti-Trust Cases

_____ B. Malpractice Cases (Legal/Medical)

_____ D. Temporary Restraining Orders and Preliminary Injunctions (If a TRO is requested in an Anti-Trust or Labor Relations Case, the A or C designation will govern).

_____ E. General Civil Cases

_____ F. Pro Se General Civil Cases

_____ G. Habeas Corpus Cases

_____ H. Equal Employment Opportunity Cases (If filed by a pro se litigant, the case is to be assigned from this H Category).

_____ I. Freedom of Information Act Cases (If filed by a pro se litigant, the case is to be assigned from this I Category).

Appendix L: Statistical Tables

Table I. Aggregate Civil and Criminal Caseload: District of Columbia

(SY 1985–SY 1991)[1]

Status	1985	1986	1987	1988	1989	1990	1991
Filed							
Civil	4,199	3,875	3,564	3,513	3,964	3,281	3,099
Criminal	536	506	611	625	578	602	803
Total	4,735	4,381	4,175	4,138	4,542	3,883	3,902
Closed							
Civil	4,305	3,446	2,999	3,926	3,675	3,327	3,051
Criminal	464	403	489	785	553	454	611
Total	4,769	3,849	3,488	4,711	4,228	3,781	3,662
Pending[2]							
Civil	3,481	3,910	4,475	4,062	4,112	3,846	3,894
Criminal	274	370	493	335	352	428	620
Total	3,755	4,280	4,968	4,397	4,464	4,274	4,514

Source: Tables C and D, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[3]

[1] Based on a statistical year running from July 1 through June 30.
[2] Number pending at end of statistical year.
[3] Totals do not match the totals that appear on tables derived from the Judicial Workload Profile published in Federal Court Management Statistics because of reporting differences. For example, Tables C and D include all criminal cases while the Workload Profile does include misdemeanors in the criminal filings totals. Also, the totals for filed, closed, and pending cases on the Workload Profile include transferred criminal cases, while the totals C and D do not.

Table II. Caseload per Authorized Judgeship[1]

(SY 1985–SY 1991)[2]

	1985		1986		1987		1988		1989		1990		1991	
Status	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
Filed	309	520	286	491	270	466	266	467	295	452	254	437	254	372
Civil	280	476	258	444	238	416	234	417	264	406	219	379	207	320
Criminal	29	44	28	47	32	50	32	51	31	53	35	58	47	52
Terminated	315	511	254	508	218	462	305	462	275	457	248	423	240	371
Pending	246	474	278	457	330	461	292	466	312	461	304	476	299	422

Source: Judicial Workload Profile, Federal Court Management Statistics.

[1] The number of authorized judgeships in this district has remained constant at 15 since SY 1985. The number of authorized judgeships nationwide was 575 from SY 1985–SY 1990. The number increased to 649 in SY 1991.
[2] Based on a statistical year running from July 1 through June 30.

Table III. Weighted Filings per Authorized Judgeship[1]

(SY 1985–SY 1991)[2]

	1985		1986		1987		1988		1989		1990		1991	
Type of Filing	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
Civil	364	401	348	408	314	408	304	413	322	411	283	390	288	333
Criminal	38	59	40	61	35	60	36	64	37	64	42	68	51	60
Total	402	460	388	469	349	468	340	477	359	475	325	458	339	393

Source: Table X–1, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[3]

[1] The number of authorized judgeships in this district has remained constant at 15 since SY 1985. The number of authorized judgeships nationwide was 575 from SY 1985–SY 1990. The number increased to 649 in SY 1991.
[2] Based on a statistical year running from July 1 through June 30.
[3] Totals do not match totals that appear on tables derived from the Judicial Workload Profile published in Federal Court Management Statistics because of reporting differences. For example, Table X–1 includes all criminal cases, while the Workload Profile includes only felonies. Also, Table X–1 excludes transferred criminal cases, while the Workload Profile includes them.

Table IV. Trials and Other Contested Proceedings Completed: District of Columbia[1]

(SY 1985–SY 1991)[2]

Type of Filing	1985	1986	1987	1988	1989	1990	1991
Civil	352	313	307	330	322	305	255
Criminal	162	110	113	173	198	311	461
Total	514	423	420	503	520	616	716
Per Judgeship	34	28	28	34	35	41	48

Source: Total "Trials": Table C–8, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts. "Trials" per Authorized Judgeship: Judicial Workload Profile for the District of Columbia, Federal Court Management Statistics.[3]

[1] Excludes proceedings conducted by magistrates. Includes hearings temporary restraining orders and preliminary injunctions, hearings on contested motions, and other contested proceedings in which evidence is introduced.
[2] Based on a statistical year running from July 1 through June 30.
[3] Numbers will not match because of rounding.

Table V. Civil Filings by Nature of Suit: District of Columbia

(SY 1985–SY 1991, by number and percent of total civil filings)[1]

Nature	1985		1986		1987		1988		1989		1990		1991	
of Suit	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Social Sec.	89	2.0	148	3.8	183	5.1	140	4.0	116	2.9	102	2.6	43	1.4
Recoveries	328	7.8	104	2.7	54	1.5	84	2.4	176	4.4	110	3.4	142	4.6
Pris. Pet.	310	7.4	349	9.0	381	10.7	373	10.6	595	15.0	481	14.7	324	10.4
Forf./Tax	26	.6	22	.5	30	.8	25	.7	92	2.3	30	.9	19	.6
Real Prop.	39	.9	52	1.3	46	1.3	53	1.5	47	1.2	40	1.2	109	3.5
Labor	354	8.4	437	11.3	342	9.6	336	9.6	297	7.5	257	7.8	258	8.3
Contracts	557	13.3	537	13.9	501	14.1	582	16.6	608	15.3	411	12.5	522	16.8
Torts	981	23.4	917	23.7	833	23.4	891	25.4	990	25.0	757	23.1	612	19.7
Copyright	46	1.1	70	1.8	57	10.1	80	2.3	60	1.5	70	2.1	32	1.0
Civ. Rights	514	12.2	480	12.4	445	12.5	338	9.6	424	10.7	443	13.5	410	13.2
Antitrust	13	.3	16	.4	23	.6	15	.4	6	.2	14	.4	20	.6
"Other"	942	22.4	743	19.2	669	18.8	596	17.0	553	14.0	566	17.3	611	19.7
Total	4,199		3,875		3,564		3,513		3,964		3,281		3,099	

Source: Judicial Workload Profiles, Federal Court Management Statistics.

[1] Based on a statistical year running from July 1 through June 30.

Table VI. United States District Court for the District of Columbia: Methods of Termination–Civil

(SY 1987–SY 1991)

Termination Method	1987	1988	1989	1990	1991
Dismissals	1,816	1,796	1,898	1,631	1,631
Settled Before Trial	558	559	573	574	466
Settled Before Trial	20	16	28	28	16
Trials	144	171	137	124	118
Summary Judgments	315	358	342	423	400
Transfer Other Court	153	145	168	161	413
Other	481	489	484	477	385
Total Terminations	3,487	3,534	3,630	3,418	3,429

Note: A statistical year (SY) represents a 12-month period beginning July 1 and ending June 30. For example, SY 1991 represents the period beginning July 1, 1990, and ending June 30, 1991.

This table should be used to analyze trends in the methods of termination. The data should not be used in direct comparison with figures published by the Administrative Office. Because of reporting differences, the Court's and the Administrative Office's data may not be the same.

Source: Clerk's Office, United States District Court for the District of Columbia.

Table VII. Median Civil Disposition Time From Filing to Disposition

(SY 1985–SY 1991, in months)[1]

	1985	1986	1987	1988	1989	1990	1991
District of Columbia	6	6	6	9	8	7	6
National	9	9	9	9	9	9	9
Rank[2]	21st	19th	9th	44th	16th	6th	4th

Source: Judicial Workload Profile, Federal Court Management Statistics.

[1] Based on a statistical year running from July 1 through June 30.
[2] Indicates standing among the 94 federal district courts, from lowest to highest disposition time.

Table VIII. Median Time From Date of Issue to Start of Trial of Civil Cases Tried

(SY 1985–SY 1991, in months)[1]

	1985		1986		1987		1988		1989		1990		1991	
Type of Trial	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
Nonjury	9	14	11	14	13	13	10	14	12	13	13	13	13	14
Jury	12	15	10	14	10	15	11	14	12	14	10	15	11	15
Total	10	14	11	14	11	14	11	14	12	14	12	14	12	15

Source: Table C–10, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30.
[2] Excludes all trials by magistrates. Also excludes the following kinds of trials: land condemnation, forfeitures and penalty cases, prisoner petitions, bankruptcy petitions, and three-judge court cases.

Table IX. Median Civil Disposition Time by Method

(SY 1985–SY 1991, in months)[1]

	1985		1986		1987		1988		1989		1990		1991	
Method	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
No Court Action	4	4	4	4	5	5	8	6	6	6	6	6	6	7
Before Pretrial	7	8	7	7	6	7	8	7	8	6	7	7	6	8
At/After Pretrial	10	15	11	15	10	15	12	16	13	15	11	14	12	15
Trial	15	19	14	19	14	20	15	19	18	18	16	19	17	20
Overall Median	6	7	6	7	6	8	9	8	8	8	7	8	7	9

Source: Table C–5, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30.
[2] Totals do not match totals that appear on the Judicial Workload Profile published in Federal Court Management Statistics because of reporting differences.

Table X. Civil Cases Pending by Length of Time Pending: District of Columbia

(SY 1985–SY 1991)[1]

Number of Years	1985	1986	1987	1988	1989	1990	1991
Less Than 1 Year	2,171	2,301	2,267	2,181	2,571	1,920	1,741
1–2 Years	799	925	1,250	820	874	1,118	769
2–3 Years	356	553	737	763	508	539	735
3+ Years	143	131	221	298	372	489	649
Total Pending	3,469	3,910	4,475	4,062	4,325	4,066	3,894

Source: Table C–6A and C–6, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30. Figures represent cases pending at the end of each statistical year.
[2] Totals may not match totals appearing on tables derived from Table C of the Appendix because Tables C–6A and its successor C–6 do not include land condemnation cases.

Table XI. Pending Civil Cases Over Three Years Old per Judgeship[1]

(SY 1985–1991)[2]

Judgeship	1985	1986	1987	1988	1989	1990	1991
District of Columbia	10	9	15	20	25	33	43
National	29	34	34	37	40	44	44

Source: Table C–6A and C–6, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.

[1] The number of authorized judgeships nationally from SY 1985–SY 1990 was 575. In SY 1991, the number rose to 649. The number of authorized judgeships in this district has remained constant at 15.
[2] Based on a statistical year running from July 1 through June 30. Figures represent cases pending at the end of each statistical year.

Table XII. Length of Civil Trials and Other Contested Proceedings Completed: District of Columbia

(SY 1985–SY 1991)[1]

Number of Days	1985	1986	1987	1988	1989	1990	1991
1 Day	188	83	150	149	168	188	150
2 Days	68	27	53	47	53	43	38
3 Days	36	17	37	36	32	28	18
4–9 Days	52	29	61	62	58	39	43
10–19 Days	7	4	7	9	8	6	6
20+ Days	1	2	5	4	3	1	0
Civil Total	352	162	313	307	322	305	255

Source: Table C–8, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30.
[2] Excludes proceedings by magistrates. Includes hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, and other contested proceedings in which evidence is introduced.

TABLE XIII. Distribution of Civil Trials and Other Contested Proceedings

(SY 1985–SY 1991, by percentage and length in days)[1]

	1985		1986		1987		1988		1989		1990		1991	
No. of Days	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
1 Day	53.4		51.2		47.9		48.5	40.3	52.2	40.9	61.6	43.4	58.8	43.9
2 Days	19.3		16.7		16.9		15.3	21.0	16.5	19.7	14.1	19.6	14.9	18.1
3 Days	10.2		10.5		11.8		11.7	13.6	9.9	14.3	9.2	12.4	7.0	12.9
4–9 Days	14.8		17.9		19.5		20.2	21.2	18.0	21.4	12.8	20.8	16.9	21.3
10–19 Days	2.0		2.5		2.2		2.9	2.9	2.5	3.0	2.0	3.0	2.4	3.1
20+ Days	.3		1.2		1.6		1.3	.9	.9	.7	.3	.7	0	.7

Source: Table C–8, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30.
[2] Excludes proceedings by magistrates. Includes hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, and other contested proceedings in which evidence is introduced.

Table XIV. Length of Civil Trials in Days by Nature of Suit

*(January 1988–September 1991)**

Summary of Civil Trials (404 Total)					
# of Trials	1 Day	2 Days	3 Days	4–9 Days	10+ Days
404	67	94	66	125	52
100%	17%	23%	16%	31%	13%

Nature of Suit	# of Trials	1 Day	2 Days	3 Days	4–9 Days	10+ Days
Contract (59 Trials–15%)						
110 Insurance	6	2	0	2	1	1
120 Marine	1	1	0	0	0	0
130 Miller Act	4	4	0	0	0	0
140 Negotiable Instrument	3	1	1	0	1	0
150 Recovery of Payment & Enforcement of Judgment	1	1	0	0	0	0
151 Medicare Act	0					
152 Recovery Student Loans	1	1	0	0	0	0
153 Recovery Overpayment of Veterans' Benefits	0					
160 Stockholders' Suits	2	0	0	0	1	1
190 Other Contract	40	9	10	3	13	5
195 Contract Product Liability	1	0	0	0	0	1
Total	59	19	11	5	16	8

Table XIV. (cont'd.)

Nature of Suit	# of Trials	1 Day	2 Days	3 Days	4–9 Days	10+ Days
Real Property (6 Trials –1%)						
210 Land Condemnation	0					
220 Foreclosure	0					
230 Rent Lease & Ejectment	0					
240 Torts to Land	0					
245 Tort Product Liability	0					
290 All Other Real Property	6	1	2	0	3	0
Total	**6**	**1**	**2**	**0**	**3**	**0**
Torts (206 Trials–51%)						
Personal Injury (196 trials)						
310 Airplane	2	0	0	0	1	1
315 Airplane Product Liability	1	0	0	0	0	1
320 Assault, Libel & Slander	4	0	0	1	0	3
330 Federal Employers' Liability	2	0	0	0	2	0
340 Marine	0					
345 Marine Product Liability	0					
350 Motor Vehicle	79	13	29	16	20	1
355 Motor Vehicle Product Liability	2	1	1	0	0	0
360 Other Personal Injury	73	13	18	15	21	6
362 Personal Injury–Med. Malpractice	24	1	1	2	13	7
365 Personal Injury–Prod. Liability	8	1	1	3	2	1
368 Asbestos Personal Injury–Product Liability	1	0	0	0	1	0
Total	**196**	**29**	**50**	**37**	**60**	**20**

Table XIV. (cont'd.)

Nature of Suit	# of Trials	1 Day	2 Days	3 Days	4–9 Days	10+ Days
Personal Property (10 Trials)						
370 Other Fraud	6	0	0	1	2	3
371 Truth in Lending	0					
380 Other Personal Property Damage	4	1	0	2	1	0
385 Property Damage Product Liability	0					
Total	**10**	**1**	**0**	**3**	**3**	**3**
Bankruptcy (1 Trial–0%)						
422 Appeal	0					
423 Withdrawal	1	0	1	0	0	0
426 Debt Chapter 11	0					
454 Recover Money or Property	0					
Total	**1**	**0**	**1**	**0**	**0**	**0**
Civil Rights (101 Trials–25%)						
440 Other Civil Rights	21	3	8	3	6	1
441 Voting	1	0	0	0	0	1
442 Employment	79	6	16	16	25	16
443 Housing/ Accommodations	0					
444 Welfare	0					
Total	**101**	**9**	**24**	**19**	**31**	**18**
Prisoner Petitions (3 Trials–1%)						
510 Motions to Vacate Sentence	0					
530 Habeas Corpus–General	0					
535 Habeas Corpus–Death Penalty	0					
540 Mandamus & Other	0					
550 Other	3	1	0	0	2	0
Total	**3**	**1**	**0**	**0**	**2**	**0**

Table XIV. (cont'd.)

Nature of Suit	# of Trials	1 Day	2 Days	3 Days	4–9 Days	10+ Days
Forfeiture/Penalty (3 Trials–1%)						
610 Agriculture	0					
620 Other Food & Drug	3	3	0	0	0	0
625 Drug Related Seizure of Property	0					
630 Liquor Laws	0					
640 RR & Truck	0					
650 Airline Regulations	0					
660 Occupational Safety/Health	0					
690 Other	0					
Total	**3**	**3**	**0**	**0**	**0**	**0**
Labor (6 Trials–1%)						
710 Fair Labor Standards Act	0					
720 Labor/Management Relations	0					
730 Labor/Management Reporting & Disclosure	0					
740 Railway Labor Act	0					
790 Other Labor Litigation	1	0	1	0	0	0
791 ERISA	5	2	0	0	3	0
Total	**6**	**2**	**1**	**0**	**3**	**0**
Property Rights (6 Trials–1%)						
820 Copyrights	2	1	0	0	1	0
830 Patent	4	1	0	1	2	0
840 Trademark	0					
Total	**6**	**2**	**0**	**1**	**3**	**0**
Social Security (0 Trials–0%)						
861 HIA	0					
862 Black Lung	0					
863 DIWC/DIWW	0					
864 SSID Title XVI	0					
865 RSI	0					
Total	**0**	**0**	**0**	**0**	**0**	**0**

Table XIV. (cont'd.)1

Nature of Suit	# of Trials	1 Day	2 Days	3 Days	4–9 Days	10+ Days
Federal Tax Suits (2 Trials–0%)						
870 Taxes—U.S. Plaintiff/ Defendant	2	0	1	0	1	0
871 IRS—Third Party	0					
Total	**2**	**0**	**1**	**0**	**1**	**0**
Other Statutes (11 Trials–3%)						
400 State Reapportionment	0					
410 Antitrust	1	0	0	0	1	0
430 Banks and Banking	1	0	1	0	0	0
450 Commerce/ ICC Rates/etc.	0					
460 Deportation	0					
470 RICO	0					
810 Selective Service	0					
850 Securities/ Commodities Exchange	1	0	0	1	0	0
875 Customer Challenge	0					
890 Other Statutory Acts	8	0	3	0	2	3
891 Agricultural Acts	0					
892 Economic Stabilization Act	0					
893 Environmental Matters	0					
894 Energy Allocation Act	0					
895 FOIA	0					
900 Appeal of Fee Determination	0					
950 Constitutionality of State Stat.	0					
Total	**11**	**0**	**4**	**1**	**3**	**3**

* First trial in sample: January 6, 1988. Last trial in sample: September 24, 1991.

Table XV. Criminal Felony Filings by Nature of Suit: District of Columbia

(SY 1985–SY 1991, by number and percent of total felony filings)[1]

	1985		1986		1987		1988		1989		1990		1991	
Nature of Suit	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Immigration	0	0	0	0	1	.2	2	.4	4	.9	2	.4	3	.4
Embezzlement	25	5.7	21	5.1	27	5.6	23	4.9	11	2.4	5	.9	14	2.0
Auto Theft[2]	1	.2	3	.1	2	.4	7	1.5	5	1.0	–	–	–	–
Weapons	19	4.3	21	5.1	14	2.9	8	1.7	12	2.6	15	2.8	29	4.1
Escape	12	2.7	6	1.2	6	1.2	14	3.0	13	2.8	4	.7	2	.3
Burgl./Larc.	58	13.2	57	13.9	62	12.9	47	10.0	28	6.1	15	2.8	24	3.4
Cont. Sub.	39	8.9	54	13.2	38	7.9	36	7.6	18	3.9	17	3.2	10	1.4
Narcotics	141	32.0	78	19.0	141	29.4	166	35.2	231	50.2	361	67.6	519	73.5
Forg./C'feit.	37	8.4	30	7.3	43	9.0	19	4.0	22	4.8	15	2.8	14	2.0
Fraud	47	10.7	94	22.9	98	20.4	107	22.7	82	17.8	73	13.7	53	7.5
Hom/Rb/Aslt2	11	2.5	13	3.2	10	2.0	12	2.5	12	2.6	8	1.5	12	1.7
Other	50	11.4	33	8.0	38	7.9	31	6.6	22	4.8	19	3.6	26	3.7
Total	**440**		**410**		**480**		**472**		**460**		**534**		**706**	

Source: Judicial Workload Profiles, Federal Court Management Statistics.

[1] Based on a statistical year running from July 1 through June 30.
[2] Beginning in SY 1990, the Administrative Office stopped reporting Auto Thefts separately. Also in thar year, Robberies began to be reported separately from Homicides and Assaults, although these offenses continue to be combined in this table for comparative purposes.

Table XVI. Average Number of Felony Defendants Filed per Case

(SY 1986–SY 1991)[1]

Judgeship	1986	1987	1988	1989	1990	1991
District of Columbia	1.4	1.5	1.5	1.4	1.3	1.4
National	1.4	1.4	1.4	1.4	1.4	1.6

Source: Judicial Workload Profile, Federal Court Management Statistics.

[1] Based on a statistical year running from July 1 through June 30.

Table XVII. Disposition of Charges Against Criminal Defendants by Method of Disposition: District of Columbia

(SY 1985–SY 1991)[1]

Method of Disposition	1985	1986	1987	1988	1989	1990	1991
Dismissal	76	63	267	110	73	102	200
Plea	411	400	310	800	517	360	412
Court Trial	23	25	10	34	13	4	7
Jury Trial	83	45	36	126	131	124	234
Total	593	533	623	1,070	734	590	853

Source: Table D–6, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.

[1] Based on a statistical year running from July 1 through June 30.

Table XVIII. Median Criminal Case Disposition Time

(SY 1985–SY 1991, in months)[1]

	1985	1986	1987	1988	1989	1990	1991
District of Columbia	3.2	3.1	2.7	3.7	4.4	4.5	4.8
National	3.7	3.9	4.1	4.3	5.0	5.3	5.7
Rank[2]	20th	13th	4th	23rd	21st	17th	18th

Source: Judicial Workload Profile, Federal Court Management Statistics.

[1] Based on a statistical year running from July 1 through June 30.
[2] Indicates standing among the 94 federal district courts, from lowest to highest disposition time.

Table XIX. Median Disposition Time for Criminal Defendants by Method of Disposition

(SY 1985–SY 1991, in months)[1]

Method of	1985		1986		1987		1988		1989		1990		1991	
Disposition	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
Dismissal	3.5	2.5	2.7	2.7	.1	3.0	3.4	3.6	3.6	3.1	3.2	3.3	2.4	3.8
Plea	2.8	2.8	2.8	3.0	2.2	3.3	3.1	3.4	3.6	4.0	3.9	4.3	4.6	4.7
Court Trial	3.7	2.5	28.9	1.6	4.5	1.1	6.5	.6	4.0	.8	–[2]	.1	–[2]	.1
Jury Trial	3.9	5.1	5.4	5.4	4.2	5.7	5.7	5.7	5.7	6.5	5.2	7.1	5.7	7.6
Total	3.1	3.0	3.0	3.2	1.7	3.4	3.5	3.6	3.9	4.1	4.1	4.5	4.4	4.9

Source: Table D–6, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.

[1] Based on a statistical year running from July 1 through June 30.
[2] Median not computed because there were fewer than 10 defendants.

Table XX. Length of Criminal Trials and Other Contested Proceedings Completed: District of Columbia

(SY 1985–SY 1991)[1]

Number of Days	1985	1986	1987	1988	1989	1990	1991
1 Day	83	51	46	69	90	128	180
2 Days	27	14	26	38	28	75	103
3 Days	17	20	16	20	30	53	87
4–9 Days	29	18	21	36	43	45	75
10–19 Days	4	4	1	6	6	3	8
20+ Days	2	3	3	4	1	7	8
Criminal Total	162	110	113	173	198	311	461

Source: Table C–8, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30.
[2] Excludes proceedings conducted by magistrates. Includes hearings on contested motions and other contested proceedings in which evidence is introduced.

Table XXI. Distribution of Criminal Trials and Other Contested Proceedings

(SY 1985–SY 1991, by percentage and length in days)[1]

Number of	1985		1986		1987		1988		1989		1990		1991	
Days	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.	D.C.	U.S.
1 Day	51.2		46.4		40.7		39.9	43.2	45.5	43.8	41.2	43.9	39.0	42.0
2 Days	16.7		12.7		23.0		22.0	18.9	14.1	19.3	24.1	19.2	22.3	18.9
3 Days	10.5		18.2		14.2		11.6	13.8	15.2	13.5	17.0	13.5	18.9	14.1
4–9 Days	17.9		16.4		18.6		20.8	19.8	21.7	18.4	14.5	19.0	16.3	20.5
10–19 Days	2.5		3.6		.9		3.5	3.2	3.0	3.5	1.0	3.2	1.7	1.1
20+ Days	1.2		2.7		2.7		2.3	1.3	.5	1.4	2.3	1.2	1.7	1.1

Source: Table C–8, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[2]

[1] Based on a statistical year running from July 1 through June 30.
[2] Excludes proceedings conducted by magistrates. Includes hearings on contested motions and other contested proceedings in which evidence is introduced.

Table XXII: *Pro Se* Filing Analysis

Filings	1985		1986		1987		1988		1989		1990		1991	
Nonprisoner														
Dismissed	286	55%	146	27%	146	29%	104	29%	152	37%	149	44%	134	51%
Defendant	26	5%	15	3%	42	8%	11	3%	26	6%	19	6%	7	3%
Plaintiff	8	2%	3	1%	0		0		1		0		1	
Transferred	0		1		11	2%	12	3%	20	5%	17	5%	9	3%
Pending	200	38%	375	69%	306	61%	234	65%	215	52%	155	45%	112	43%
Total	520	43%	540	48%	505	48%	361	38%	414	42%	340	43%	263	44%
Prisoner														
Dismissed	185	47%	97	24%	108	23%	250	42%	167	29%	168	38%	123	36%
Defendant	43	11%	22	5%	90	19%	41	7%	37	6%	28	6%	23	7%
Plaintiff	3	1%	2	1%	4	1%	0		0		2	0%	1	
Transferred	1		10	2%	17	3%	27	4%	60	11%	16	4%	29	9%
Pending	164	41%	279	68%	256	54%	277	47%	304	54%	230	52%	163	48%
Total	396	57%	410	52%	475	52%	595	62%	568	58%	444	57%	339	56%
Total *Pro Se* Filings	916		950		980		956		982		784		602	

Table XXIII: Prisoner Cases Filed by Nature of Suit and Disposition—1991

Nature of Suit	IFP Pending 12/31/91	IFP Terminated				Paid Pending 12/31/91	Paid Terminated				Total Cases IFP and Paid Assigned
		Dism.*	Deft.	Pltf.	Trans.		Dism.	Deft.	Pltf..	Trans.	
190 Contract	2	0	0	0	0	0	0	0	0	0	2
320 Assault Personal Injury	0	0	1	0	0	0	0	0	0	0	1
360 Other Personal Injury	1	1	0	0	1	0	0	0	0	0	3
440 Civil Rights	27	8	1	0	2	4	1	1	0	0	44
442 Employment	1	0	0	0	0	0	0	0	0	0	1
470 RICO	1	0	0	0	0	0	0	0	0	0	1
530 General Petition	17	33	4	0	5	1	1	2	0	4	67
540 Mandamus	4	2	0	0	0	0	1	0	0	0	7
550 Other Petitions	57	68	9	1	16	4	2	3	0	1	161
890 Statutory Actions	1	0	0	0	0	0	1	0	0	0	2
895 FOIA	39	5	2	0	0	4	0	0	0	0	50
Total	150	117	17	1	24	13	6	6	0	5	339

Total Number of Paid Cases: 30
Total Number of IFP Cases: 309
Total Number of Prisoner Cases Filed: 339

*Three dismissals were shown as voluntary dismissals.

Table XXIV: Nonprisoner Cases Filed by Nature of Suit and Disposition—1991

Nature of Suit	IFP Pending 12/31/91	IFP Terminated				Paid Pending 12/31/91	Paid Terminated				Total Cases IFP and Paid Assigned
		Dism.*	Deft.	Pltf.	Trans.		Dism.**	Deft.	Pltf..	Trans.	
190 Other Contract	2	3	0	0	0	2	2	0	0	0	9
195 Contract Product	0	1	0	0	0	0	0	0	0	0	1
230 Rent/Lease	0	1	0	0	0	0	0	0	0	0	1
320 Assault/ Libel	2	3	1	0	0	0	0	0	0	0	6
360 Personal Injury	4	0	0	0	0	1	1	0	0	0	6
362 Medical Malpractice	1	2	0	0	0	0	1	0	0	0	4
370 Other Fraud	0	1	0	0	0	0	0	0	0	0	1
380 Personal Property	0	1	0	0	0	0	0	0	0	0	1
440 Civil Rights	29	67	2	1	3	4	11	0	0	0	117
441 Voting	0	1	0	0	0	0	0	0	0	0	1
442 Employment	36	15	2	0	2	5	0	0	0	2	62
443 Housing	0	1	0	0	0	0	0	0	0	0	1
444 Welfare	1	4	0	0	0	0	0	0	0	0	5
530 Petitions General	0	3	0	0	0	1	2	0	0	0	6
540 Mandamus	0	1	0	0	0	0	0	0	0	0	1
550 Civil Rights	2	2	0	0	0	0	0	0	0	0	4
790 Labor Litigation	0	1	0	0	0	0	0	0	0	0	1
864 SSID, Title VXI	10	1	0	0	1	0	0	0	0	0	12
890 Other Statutory	1	3	0	0	0	2	1	0	0	1	8
895 FOIA	5	5	1	0	0	4	0	1	0	0	16
Total	**93**	**116**	**6**	**1**	**6**	**19**	**18**	**1**	**0**	**3**	**263**

Total Number of Paid Cases: 41
Total Number IFP Cases: 222
Total Number of Prisoner Cases Filed: 263

*Three dismissals were shown as voluntary dismissals and one as settled.
**One dismissal was voluntary and one case settled.