DRAFT REPORT

OF THE

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

FOR THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

FEBRUARY 5, 1993

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FOR THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

FOREWORD

The Civil Justice Reform Act of 1990 promotes as one of its six principles building reform from the "bottom up." This principle is illustrated most clearly in 28 U.S.C. §§ 471-472 which require every district court to implement a civil justice expense and delay reduction plan after consideration of the recommendations of a local advisory group. The Act anticipated that the creation of an advisory group of local practitioners and representatives of client communities would not only maximize the prospect that workable plans would be developed, but would stimulate much needed dialogue between the bench, the bar, and litigants about civil justice reform.

With a well-defined mandate from former Chief Judge Aubrey E. Robinson, Jr. who appointed the Advisory Group in March 1991, the Group began a serious study of the judicial management techniques and litigation practices used in this Court. The Group interviewed all the judges and magistrate judges, surveyed 5,000 attorneys who litigate in this district, examined caseload statistics, reviewed docket sheets, interviewed Clerk's Office staff, and studied relevant reports and studies on civil justice reform.

The Draft Report before you is the culmination of many Advisory Group meetings, numerous subcommittee meetings, and innumerable hours of work by individual Advisory Group members and its reporter and administrative analyst. The task of the Advisory Group was made easier by the dedicated work of all the Advisory Group members and the cooperation of the Court. Their willingness to devote time and energy to this project is an example of their dedication to the law and their interest in improving the Federal civil justice system. Special thanks to Stephen A. Saltzburg, the Advisory Group's reporter, and Elizabeth H. Paret, CJRA administrative analyst, for their good judgment, good humor, and valuable assistance in the preparation of the Draft Report.

The opportunity for lawyers, litigants, and judges of the district to review and comment on the workings of the Court is a healthy and worthwhile exercise. The administration of justice can and should be examined periodically by the people who use it. It is with this thought in mind that I encourage you to review and comment on the Draft Report. The views of those who care about this Court are important and will receive serious consideration by the Advisory Group.

I look forward to receiving your comments and appreciate your participation in this very important process.

Paul L. Friedman, Chair
Civil Justice Reform Act Advisory Group

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

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. 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 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 unless proof of service of process is filed 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 for which a return of service has not been filed 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: Counsel (including any nonprisoner *pro se* party) should meet in person or by telephone within 15 days of the appearance or first filing of an answer or any motion by a defendant to discuss the case in preparation for the initial scheduling conference with the Court. The meet and confer requirement shall not apply in nonprisoner *pro se* cases in which a dispositive motion is filed before the time to meet and confer expires.

Recommendation 4: The Court should set the first scheduling conference for no later than 20 days after receipt of the parties' "meet and confer" statement(s), 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 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 and issue a scheduling order.

Recommendation 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.

Pretrial Conference
Recommendation 7: The Court should seek to ensure that the period of time between the pretrial conference and commencement of the trial is no more than 30-60 days.

Recommendation 8: 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.

Recommendation 9: The requirements for all pretrial conferences should be reduced and the full panoply of Local Rule 209(b) procedures should be reserved for Category 4 cases.

Motions and Hearings; Findings in Bench Trials
Recommendation 10: 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 11: Each judge should 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 memoranda or briefs or within 60 days of oral argument. Oral argument should be held within 30 days of the submission of all memoranda or briefs.

Recommendation 12: 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.

Recommendation 13: 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.

Recommendation 14: 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 at which such motions are granted.

Recommendation 15: 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 and describe briefly whether that discussion did in fact reduce the area of disagreement and how it was reduced.

DISCOVERY

Recommendation 16: The Court should not adopt mandatory disclosure or numerical limits on interrogatories and depositions.

Recommendation 17: Judges should not refer discovery disputes to magistrate judges, except in circumstances in which large quantities of documents require labor-intensive *in camera* review.

Recommendation 18: The Court's Committee on Local Rules should review the problem of deposition conduct and should consider ways of controlling misbehavior and conduct falling short of basic standards of civility. It should consider asking the District of Columbia Bar to assist in promoting appropriate deposition and discovery conduct.

Recommendation 19: 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. They should avoid unnecessary formal presentations on routine issues.

MANAGING TRIALS AND SETTLEMENT DISCUSSIONS

Backup Judges

Recommendation 20: 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 time and knowledge. In some instances a straightforward civil case might be transferred instead of a complicated criminal case.

Recommendation 21: If senior judges participate in this cooperative plan, their status should be enhanced so that they have a more equal role in the Court.

Magistrate Judges

Recommendation 22: The Court should conduct a three-year experiment during which time district judges would automatically refer a random sample of personal injury cases and some contract cases to magistrate judges.

Recommendation 23: The Court should seek authority to appoint one additional magistrate judge with training and experience in alternative dispute resolution and settlement.

Recommendation 24: Judges should consider referring civil cases to magistrate judges for settlement conferences and for certain labor intensive tasks.

Recommendation 25: The Court should seek to educate the bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases.

Recommendation 26: 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 27: The Court should invite magistrate judges to attend certain meetings of the Executive Session.

Special Masters
Recommendation 28: 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 29: The Clerk of Court should maintain a list of special masters with experience in this Court as a reference source and a list of all mediators who have been certified in the Dispute Resolution Programs administered by the Circuit Executive's Office.

Trial Procedures
Recommendation 30: Each judge should try to schedule a trial, in either a civil or criminal case, so that the evidence will not be interrupted by status conferences, motions hearings, sentencing hearings, or other proceedings.

Recommendation 31: Trials should be held during "normal business hours."

Recommendation 32: 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 33: 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
Recommendation 34: The Court should conduct a three-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, at their first conference with the judge, to select from a menu of ADR processes (mediation, early neutral evaluation, binding or non-binding arbitration). The cases would be randomly selected. If the parties cannot agree on an ADR process, the judge will designate mediation as the least expensive and intrusive of the options.

Recommendation 35: In either voluntary ADR or in 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 36: The Court should require all attorneys to certify that they are familiar with the ADR processes that are available.

Settlement
Recommendation 37: 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 38: For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention, 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 39: The Clerk's Office should hire *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).

Recommendation 40: 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 in the case as possible.

ADDITIONAL RECOMMENDATIONS

The Executive, the Congress, the United States Sentencing Commission, and the Administrative Office of the United States Courts
Recommendation 41: When vacancies arise on the Court, 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 42: 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 43: 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 44: 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 factfinding to implement various guidelines.

Recommendation 45: Congress should examine mandatory minimum sentences to determine whether they impose unwarranted burdens on the federal judiciary and others.

Recommendation 46: Congress must 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 47: The Court should seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, and every magistrate judge.

Annual Review

Recommendation 48: Pursuant to § 475 of the Act, the Court should assess annually the condition of the Court's civil and criminal docket 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 advisory groups to identify the sources of significant cost and delay in civil litigation in that district and to propose reforms where appropriate.

The Act, § 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. As is clear from the following chapters, each of these principles and guidelines has been carefully considered by the Advisory Group. The recommendations made in this Report seek 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, is to provide each court with a practical document that—by incorporating principles, guidelines, and techniques suitable for each 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 25-person Advisory Group 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 additional members whose client base or experience added to that already represented on the committee.

The Advisory Group determined to conduct an exhaustive 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. To this end, the Court appointed a broad-based, diverse Advisory Group to try to ensure that the suggestions made were practical and based on experience.

As the Report explains, 40% of the civil cases in this Court involve the United States as a party, and eight percent of the civil cases involve the District of Columbia. Given the tremendous 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 also 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 non-lawyers 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 the Appendix.

C. THE ADVISORY GROUP REPORT

Although the members of the Advisory Group brought a wide range of experience in and knowledge of the Court to their deliberations, the Group was committed from the start to the principle that every conclusion and recommendation it made should be supported, to the extent practicable, by data rather than simply by members' anecdotal sense of how the Court worked. Thus, 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 undertook a careful study of the historical and current pattern of case filings, both civil and criminal, in this Court, including a review of statistics made available by the Administrative Office of the U.S. Courts, a review of randomly selected cases, a survey of the lawyers who practice in this Court, and interviews of all the active, senior, and magistrate judges.

The Report begins with a brief explanation of the efforts 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 § 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.

It is important to note that 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 this Court. Although judges of this Court, like judges on every court, differ among themselves in their practices, the judges share a common interest in making the Court work effectively, and each of them provided substantive suggestions to the Group.

Throughout the Advisory 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. Thus, the Advisory 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. That virtually every proposal in this Report can be found in the procedures now employed by one or more judges demonstrates that serious efforts already have been undertaken by the judges of this Court to provide management techniques designed to reduce cost and delay.

CHAPTER II: DATA COLLECTION

The Advisory Group gathered data with respect to filings and dispositions, both civil and criminal, in order to determine whether there were problems of unnecessary delay and excessive cost in the handling of civil cases in this Court. 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 the data 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 certain other districts, the fact is that 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 as compared to another.

The Advisory Group also sought to discover 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 decided to study some randomly selected cases previously terminated in order to decide whether a review of those cases provided useful information with respect to 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 that had been developed by Ernst & Young in conjunction with the Advisory Group for the U.S. District Court for the Eastern District of New York. After tailoring the survey to the unique circumstances of this Court, the Group mailed it to 5,000 attorneys admitted to practice in this Court. These attorneys were selected randomly as a result of having appeared as counsel in one or more cases during the previous three years. Specifically included in the survey were the attorneys in the 190 cases that were selected for the docket sheet review described below (Chapter II(B)). The questionnaires were specially 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 magistrate judges and greater use of various alternative dispute resolution techniques. A copy of the questionnaire is included in the Appendix.

Attorneys who were surveyed were told that their responses would be 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 the Group with computer printouts of the results sorted in a variety of ways that made it easier to understand the significance of various responses, all at no cost to the Group or the Court.

2. *Findings*

Approximately 25% (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. Moreover, 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 clearly demonstrates a belief among the lawyers who use the Court that there are problems of unnecessary delay and excessive cost and that solutions to these problems exist. Throughout this Report mention is made of recommendations that are strongly supported by the attorney surveys.

Although there is no claim that this survey reflects the views of every lawyer who practices in this Court, it does represent the views of a broad cross-section of those lawyers. For that reason the opinions expressed in the survey were carefully considered by the Advisory Group. A compilation of the survey results and a condensed version of the narrative responses are included in the Appendix.

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

The responses revealed that 59% of those surveyed felt they encountered unreasonable delay in this Court, and 57% of those surveyed attributed the delay to judicial practices. The most often mentioned causes of delay were failure to resolve discovery disputes promptly (27%) and failure to resolve other motions promptly (55%).

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

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

B. DOCKET SHEET REVIEW

1. Methodology

With the assistance of the Federal Judicial Center, the Advisory Group selected at random 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 selected from among the 20% oldest cases in each category and the other five selected from among the other 80% 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 attempted to identify the reason why it took so long. 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 the Appendix. 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 the 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 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. Moreover, the docket sheet review did not show

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 in the cases in which excessive delay was identified, patterns emerged that explained the delay. In some cases, the delay was attributable to the Court's current system of referring discovery issues to magistrate judges. As the interviews with magistrate judges confirmed, the referral of civil cases is sporadic and often inefficient because magistrate judges usually have no familiarity with a case prior to referral and thus must invest substantial effort before they feel comfortable in resolving disputes. The Advisory 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

The Advisory Group interviewed each of the 14 active judges, the six senior judges, and the three magistrate judges. To make the interview process more efficient, the Advisory Group designed a two-tiered approach to soliciting information. First, to reduce the amount of time needed for the actual interview and to better educate the interviewers in advance of the interview, the judges were asked to complete a pre-interview questionnaire concerning their case management

practices and to provide 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 issues that would be discussed. Copies of the pre-interview questionnaire and the one-page outline of issues are included in the Appendix.

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, 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 Advisory Group's understanding of the workings of the Court, its problems, and how different judges dealt with them, and in arriving at its recommendations. To a person, the active and senior judges of this Court, as well as the magistrate judges, understand the need for judicial management and facilitation in the processing of civil cases. The interviews with the judges and magistrate judges demonstrated that they are committed to making the goals of Fed.R.Civ.P. 1, a prompt and fair disposition of all civil cases, a reality.

Each of the judges and magistrate judges has adopted techniques which 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 as a key technique 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 among the judges and magistrate judges is not as significant as the overall commitment to management of cases. With this commitment to management techniques and realistic deadlines, the Advisory Group endeavors in this Report to build upon it and to suggest some general ways in which management might be improved and made more consistent throughout the Court to the advantage of the judiciary as well as to litigants in civil cases.

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. The key to effectively managing their caseload as mentioned by most of the judges was 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 V, 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 federal court. Even the 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 created a

problem for the Court in maintaining firm trial dates for civil cases. Many judges also expressed their 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 expressed concern about the way in which the lawyers representing the Office of the Corporation Counsel for the District of Columbia handled civil cases in the past. Several judges noted that it has been common for these lawyers to seek 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 frequently a judge faced with a problem was unaware of how other judges had resolved the same or a similar problem. 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 other judges 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 in an informal discussion of some of the information that the Group had gathered. This permitted the deputies to candidly discuss 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 courtroom deputies were assured that their comments would not be attributed to any particular deputy and that even 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. In fact, the courtroom deputies indicated 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. Further, the Analyst attended weekly meetings of the senior staff during which many of the issues noted below were discussed.

2. Findings

The mission of the Clerk's Office, as described by those interviewed, is to provide the Court, the Bar, and the public with courteous and efficient service. The principal services to the Court are computer support, 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 the high level of service to the Court, the Bar, and the public 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 financial allocations 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 between 90-98% of 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. Currently, with 76 positions, the

Clerk's Office is staffed at 96% of its authorized positions. Based on a revised work measurement study recently conducted by the National Academy of Public Administration, however, the Clerk's Office is actually 15% 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.

Finally, the overall budget crisis affecting the federal government is having an impact on the work of the courts. The judiciary is operating at its lowest funding level ever, which does not allow room for the 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. WORK OF THE ADVISORY GROUP

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 of the Advisory Group were used as briefing sessions to learn more about the Court's caseload and resources. Nancy Mayer-Whittington, the Clerk of Court, provided the Advisory 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 utilization 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 ADR Programs, on the Court's Alternative Dispute Resolution 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 a tremendous amount of data to augment the information gathered from the judges' interviews, attorney survey, and docket sheet review. Each subcommittee drafted a report with its recommendations for each subject area. 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 Report.

G. EXAMINATION OF OTHER REPORTS AND OTHER DISTRICTS

1. Methodology

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

In addition, the CJRA Administrative Analyst traveled to Pittsburgh, Pennsylvania and Wilmington, Delaware to examine how *pro se* cases are handled there. The information which she gathered on these trips assisted the Advisory Group in identifying a number of alternative models for dealing with an important part of the Court's civil docket and enabled the Group to engage in discussions with the Federal Judicial Center and the Administrative Office of the U.S. Courts as to the funding which is available for the Clerk's Office and the extent to which funding one position makes unavailable money that might otherwise be available for 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 Chief Judge Robinson and decided that the Group's most important task was to focus on the unique characteristics of this Court and to report on its successes and failures, its strengths and weaknesses, and to make recommendations that fit the needs of this Court, whether or not those recommendations would be appropriate for other district courts.

H. LITERATURE REVIEW

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) 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.

CHAPTER III: STATE OF THE DOCKET

As part of its work, § 472(c)(1)(A) of the Act required Advisory Groups to examine the docket of their district. Recognizing the importance of that undertaking and of how the docket has changed over a period of years, the Advisory Group carefully studied the Court's statistics for a seven-year period. Although the Group can say with confidence that the statistical year (SY) statistics represent the best information that exists for each 12-month period beginning July 1 of one year and ending June 30 of the next year, (*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 care.

Two problems with the available statistics encountered by the Advisory Group illustrate why we urge caution in making a statistical case for any specific proposal. First, cases are grouped into overly broad categories. Second, there are inadequate statistics on the 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 within the category of contract cases, "other contracts" accounted for 68% of all contract cases. Similarly, within the category of personal injury, "other personal injury" comprised 37% of the cases. In civil rights cases, "other civil rights cases" accounted for 21% of the filings. When the Group examined *pro se* cases, it had difficulty in determining which cases were prisoner cases, which were employment cases, and which cases fell into other categories.

Similar problems occur with respect to terminations. The statistics published for civil cases purport to indicate the stage of the proceeding at which a case is terminated (*e.g.*, dismissed, settled

before trial). But the available statistics do not reveal what actually occurred in a case, or the amount of judicial time expended in particular subcategories of cases, data that might be very useful in deciding on solutions to problems of excessive cost and delay. For example, if 95% of all automobile accident cases were settled with less than two hours of judge time, there would be no need for an elaborate ADR program for them. If there are discovery disputes, or for that matter any significant discovery at all, in only certain categories of cases, then the Advisory Group should know that when making policy recommendations to the Court. But this is impossible to discern in some cases; 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. One set of statistics for criminal cases, for example, 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%), with fraud cases identified as only comprising more than 5% of the total number of indictments. 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 unhelpful. In looking at in-court hours, which includes civil trials, criminal trials, and other procedural hours, "other" procedural hours made up nearly 63% of the 3,883.5

total procedural hours, which itself represented 31% of the total in-court hours for all judges of the Court in SY 1991.

The 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 the Appendix.) Moreover, the assignment form includes categories of cases (*e.g.*, temporary restraining orders and preliminary injunctions, with exceptions) that do not separate cases into subject matter groupings. 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 should 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% of all cases, and to an even higher percentage of *pro se* prisoner cases. Thus, because the bulk of civil filings are in one category, this provides little assistance to either the Court or to the Advisory Group when they seek to assess 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% of the cases filed over five years, and malpractice cases (legal and medical are lumped together) account for less than 2% of the cases filed each year. Another category, Freedom of Information Act cases, are less than 5% 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 consulted.

In addition to the problems with statistics noted above, 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 endeavored to meld the Clerk's Office data with that of the Administrative Office. Second, statistics frequently are reported on a "per authorized judgeship" basis. Although these statistics permit one court to compare its work with national data, they do not account for the contributions of senior judges in this district or any other. In this Court, senior judges make significant contributions that are not accounted for in the "per authorized judgeship" figures. Third, judicial vacancies may burden a court significantly but 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 Chief Judge Robinson took senior status in March 1992 and Judge Boudin resigned in January 1992. Since Judge Oberdorfer took senior status in July 1992, there have been three vacancies and only 12 active judges on the Court.

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

CHAPTER IV: THE DOCKET

A. OVERVIEW

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. But a comparison over a seven-year period (SY 1985 to SY 1991) reveals a decrease of 833 cases (20%) filed. In fact, the total number of cases filed in SY 1990 and SY 1991 was lower than at any time since 1980.

The decrease in the total number of filings results from the 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% decrease. In contrast, criminal filings increased from 536 to 803 during the same period, a 50% increase. The greatest increase in criminal cases filed occurred between SY 1990 and SY 1991, when the number rose 33% 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% in SY 1985 to 21% in SY 1991.

The number of cases filed per authorized judgeship has decreased almost 20% 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 the number of filings per judgeship. This data, of course, does 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% between SY 1990 and SY 1991. The weighted filings per judgeship was 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 is a 23% decrease in the annual termination rate since SY 1985. At the same time that the termination rate has decreased, the number of pending cases has increased. As a result, the total number of pending cases rose 20% 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%, 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 26% 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 has been a decrease in the number of civil filings over a seven-year period, so far as can be determined from available data there has been no significant change in the general composition of the civil docket. Included in the Appendix is a table showing the relative distribution of civil filings over the seven year period. The table 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% 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 seen in 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% 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). Thus, the most noticeable decreases in the number of filings are evident in labor, recovery actions and social security cases. Although real property cases have increased threefold from SY 1985 to SY 1991, the absolute number of such cases remains 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 in order for the Advisory Group or the Court to draw any meaningful conclusions.

The number of *pro se* cases in the Court has been substantial throughout the seven year period. In the last three years the number has declined from 982 in 1989 (28% of all civil cases filed) to 784 (25%) in 1990 to 602 (18%) 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 assumes burdens in these cases that would be borne by counsel in other cases. These burdens require 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

In terms of the median disposition time, this Court ranks among the fastest in the nation. In SY 1991, the median disposition time from filing of a civil case to disposition was only six 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 Advisory Group notes that 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 have been and continue to be disposed of by "dismissals," even though the number and proportion of "dismissals" has decreased since SY 1987. In SY 1987, there were 1,816 dismissals, accounting for 52% of all closed civil cases. In comparison, SY 1991 had 1,631 cases terminated by dismissal, accounting for 48% 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%) to 400 in SY 1991 (12%). The number of dispositions by trial decreased from 144 (4%) to 118 (3%) during this period. The most evident trend was in the volume of civil cases transferred to other districts. The percentage rose from 4% to 12%. The Advisory Group believes that the principal reason for this increase is the increase in cases involving the Resolution Trust Corporation, which were required by statute to be filed in the District of Columbia and which were then transferred almost immediately to locations where a failed financial institution is 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%) 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 three years old has risen 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 overage (44 in both years).

The pending caseload of older cases has clearly 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 three 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 account for 376 or 58% of the 649 cases pending for three 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), the Advisory Group found that 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 three days or less, with contested proceedings of one day or less constituting approximately one-half of all contested proceedings. In SY 1991, 206 (81%) of all civil trials and contested proceedings lasted three days or less. These 206 cases broke down as follows: 150 (59%) lasted one day; 38 (15%) lasted two days; and 18 (7%) lasted three 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%) took four to nine days to try, and twenty (10%) 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. 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%) took four to nine days to try, and 24 (24%) took two days. A higher percentage of civil rights cases (18%) than tort cases took ten days or more to try. Seventy-nine of the civil rights cases were employment actions. Of these, 25 took four to nine days, and 16 took 10 days or more. Most contract cases (68%) 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% increase meant that the number of criminal filings per authorized judgeship rose from 29 to 47 during the seven-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%. 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 have been 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 has increased every single year. These cases include 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 is "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 remains 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 is 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 is 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 has increased, the number of such terminations has 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 one year

period, from 454 to 611 or an increase of 35%. 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 has been decreasing steadily, however, resulting in more trials. Taking dismissals into account, in SY 1991, 412 (63%) of the defendants facing trial pleaded guilty, as compared to 411 (79%) in SY 1985. During this same period, the number and percent of defendants whose charges were disposed of by trial rose from 106 (18%) to 234 (27%), an increase of 121%.

The Court disposes 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%) took only one day or less to complete, 103 (22%) took two days, and 87 (19%) took three days. Another 45 proceedings lasted from four to nine 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 three days or less in SY 1991 was slightly higher than in SY 1985 and was better than the national average (75% of criminal cases take three days or less nationally while 80% take three days or less in this Court). Within the cases taking three days or less, there has been a decrease in the percentage of cases taking one day and an increase in the percentage taking two and three days.

CHAPTER V: 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 are handling more criminal cases generally and more narcotics cases specifically. An increase of 50% in a six year period is a substantial increase (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 brought in this Court because the United States Attorney's Office has virtually unfettered discretion to choose to bring cases in either federal court or in the Superior Court of the District of Columbia. 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 of the District of Columbia.

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 of the District of Columbia. 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 many of the mandatory minimum sentencing statutes were enacted.

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 of the District of Columbia is higher than the percentage charged in many district courts vis-a-vis their state courts. This phenomenon increases the demands placed on this Court. 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. The President declared a war on drugs. The 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.

The Advisory Group concludes that if fewer criminal cases were brought in this Court, the impact of the criminal caseload on the civil docket would be reduced and civil cases likely 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, however, 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. The Group has made the recommendations that follow in Chapters VII to XII with the increasing criminal caseload in mind. The Advisory Group believes that its recommendations 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 herein attempt to respond to that challenge.

CHAPTER VI: 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 obviously 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 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. As noted above, the Court is among the fastest in the nation in the processing of civil cases.

It is also obvious 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 that 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 repeated when the case is next set for trial. Furthermore, when "firm" trial dates are set in civil cases, the parties and litigants do not believe they are realistic dates that are really firm. 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 system 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 cause delay that unnecessarily lengthens depositions or delays 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 cost. The Advisory Group concluded that excessive cost is the amount that litigants are required to spend on litigation that exceeds the amount they 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 or 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 four 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. The involvement of magistrate judges in discovery disputes, rather than the trial judge, may actually increase both cost and delay rather than decrease them. 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

The historical fact that Congress has been wont to add to the workload of federal courts, but not to subtract, leads the Advisory Group to conclude that for the near future at least the criminal caseload in the Court will be substantial. Although the criminal caseload dropped slightly in the first half of SY 1992, there is no reason to conclude that the caseload is likely to decrease routinely. Emphasis on drug prosecutions remains strong. 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 & Loan scandal 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, fifteen active judges, with the help of senior judges and magistrate judges, will handle a demanding civil and criminal caseload. And with the enactment of new civil statutes, it will not be surprising if civil filings once again increase.

The Advisory Group assumes that the criminal caseload will remain relatively constant or perhaps even increase, and that the civil caseload might increase slightly. 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 the Report:

The Advisory Group concludes that tracking makes sense and should be encouraged and refined. In fact, the Group believes that, by articulating in a more comprehensive way 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 will either 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 six months from the date of the first scheduling conference described in Recommendation 4.
>
> **Category 2**: Cases that are relatively straightforward in most respects but which 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 either on the basis of trial or motion. Thus, the Advisory Group envisions a system in which the judge, in consultation with counsel for

the parties, will make an estimate as to how long a case will take to reach the dispositive stage <u>and</u> 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. 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 will 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 counsel to the timetables.

The Group believes that most cases can be grouped in one of these four categories. 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, cases filed under the Administrative Procedures Act, prisoner civil rights claims, student loan suits, social security review, Freedom of Information Act cases, bankruptcy appeals, condemnation, forfeiture, magistrate judge appeals, and administrative subpoenas. The Group is also aware that, in at least some of these categories of cases, and in many other cases, the parties will reasonably believe that the case will only be disposed of by settlement or by trial. We believe 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 3 and the judge makes a careful assessment of a case before assigning it to a category.

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. Thus, the Group does not recommend that the unique case, which has special requirements, be forced 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 that this system will provide guidance both 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, and fifth 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 should take place within a short time after the parties confer; and require the judge to decide in which category a case should be placed. The sixth 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 unless proof of service of process is filed 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 for which a return of service has not been filed 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 3 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 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. Moreover, a dismissal without prejudice is not likely to damage any party, except if requiring a new filing fee or is applied to cases in which the statute of limitations may have run. Thus, 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.

Recommendation 3: Counsel (including any nonprisoner *pro se* party) should meet in person or by telephone within 15 days of the appearance or first filing of an answer or any motion by a defendant to discuss the case in preparation for the initial scheduling conference with the Court. The meet and confer requirement shall not apply in nonprisoner *pro se* cases in which a dispositive motion is filed before the time to meet and confer expires.

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, the Advisory Group recommends that, within 15 days of the appearance or first filing of an answer or any motion by a defendant, lead counsel (including any nonprisoner *pro se* party) for each party shall make reasonable efforts to meet in person or, if 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 whether discovery should 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 of witnesses, relevant documents, 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 four to eight weeks thereafter); and

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 from 30-60 days after the pretrial conference.

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. Rule 12(a) also provides that a defendant who files a motion to dismiss or a motion 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

counsel for a defendant 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 which 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 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 <u>if</u> 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. Moreover, a majority of the Advisory Group 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 provide an incentive for prompt judicial decisions on dispositive motions.

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 plan to govern the particular case from start to finish, where possible, that they believe is sound and to present that plan to the Court, and to enable them to inform the Court where agreement is not possible and the differences between the parties' perception of the needs of the case.

No later than 10 days following this conference, 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 conference with respect to any of the 12 specific matters set forth above; and

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.*

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 when counsel for the parties

meet, 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.

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.

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 cover the matters covered by this recommendation.

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 is 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.

The Advisory Group paid special attention to the problems that arise in multiple party cases. To ensure that these cases move toward a prompt resolution, the Group decided that once any defendant appears in the case, the meet and confer rule should apply to that defendant and the

plaintiff. The initial meeting will enable the parties to discuss why other parties have not yet entered the case and what recommendations they have for the Court in view of the fact that some potential parties have not yet entered an appearance. At the first scheduling conference, the Court will be in a position to decide how the case should be handled to avoid unnecessary delay and excessive cost.

Recommendation 4: The Court should set the first scheduling conference for no later than 20 days after receipt of the parties' "meet and confer" statement(s), 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" statements. To ensure that counsel meet the requirement of Recommendation 3, however, the notice of the conference should automatically be prepared in every case within 30 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.

Recommendation 4 directs 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 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 be able to act favorably upon that recommendation. The deferral, however, should be for no longer than 30 days.

Recommendation 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 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, the judgment as to an appropriate category should take into account whether a case is likely to be decided by dispositive motion, the time limits provided in these recommendations, 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.

Recommendation 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.

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. Only 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% 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 monitor requests for extensions of time closely.

C. PRETRIAL CONFERENCE

Recommendations 7, 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 rules governing pretrial

orders and statements should take into account that most cases are disposed of by settlement or motion.

Recommendation 7: 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. In fact, 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.

Recommendation 8: 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%) 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.

Recommendation 14 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.

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, the motions will not be necessary. If settlement discussions fail, the motions are likely to be more focused and better prepared with trial on the near horizon. This suggestion concerning *in limine* motions is directed at routine evidentiary and procedural issues that are best considered when the case is about to be tried and has the judge's attention.

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 9: The requirements for all pretrial conferences should be reduced, and the full panoply of Local Rule 209(b) procedures should be reserved for Category 4 cases.

The Court should establish the following minimum requirements for all pretrial conferences:

1. Counsel should be required to meet and confer at least 5 business days prior to the pretrial conference; prior to this meeting they should arrange to exchange witness lists, exhibit lists, copies of exhibits, and deposition segments relied on; and at the meeting they should make a good faith effort to agree on stipulated facts.

2. Counsel should bring to the pretrial conference two copies of a list of witnesses to be called along with a <u>brief</u> summary of each witness's proposed testimony, two copies of a list of exhibits and pre-marked exhibits with copies for opposing counsel and the Court.

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.

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.

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. 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.

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. Moreover, 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 Advisory Group strongly urges judges to decide routine motions (*e.g.*, discovery, scheduling) from the bench, in a telephone conference with counsel, or within seven days of submission or the hearing. 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.

Recommendations 10, 11, 12, and 13 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 14 and 15 are straight-forward 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 should 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: 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.

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 deadlines for him or herself 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 clerk), 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: 1) some judges routinely set motions for a hearing and 2) some judges discourage oral argument on motions and decide them on the basis of written submissions. Except as to discovery (Recommendation 19), 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.

Generally speaking, the Advisory Group recommends that oral argument be held when the judge determines that it will assist in an efficient disposition of a motion. 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 11: Each judge should 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. Oral argument should be held within 30 days of the submission of all memoranda or briefs.

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 must 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.

Recommendation 12: 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.

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 reasonably will 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 provides 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 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 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 will 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.

Recommendation 13: 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.

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 send written notice of this fact to the judge before whom the case is pending and to all counsel or parties of record.

3. Every 30 days thereafter until the motion or nonjury case is decided, the Clerk should send written notice of this fact to the judge before whom the case is pending and to all counsel or parties of record.

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.

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 that the 60 day or 90 day period may not always be workable. But the Group believes that, exceptional circumstances aside, 60 days is a reasonable period for resolution of dispositive motions and that 90 days is a reasonable time period for the entry of a final decision in a nonjury case. 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.

Recommendation 14: 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 in which 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, 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. Thus, this recommendation is consistent with the Group's belief that the judge should rule on all dispositive motions prior to the pretrial conference.

Recommendation 15: 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 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 VIII: 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 now under consideration nationally by the Advisory Committee on the Federal Rules of Civil Procedure, but instead to 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 Recommendation 3 the parties must discuss whether or not discovery limitations should be imposed. And at the first scheduling conference either or both parties may request that the judge impose discovery limitations. If it appears in any case 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 16: The Court should not adopt mandatory disclosure or numerical limits on interrogatories and depositions.

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

As a theoretical matter, mandatory disclosure 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, 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 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 arbitrary 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 likely provide too much discovery in some cases and too little in others.

The Advisory Group would require the parties to discuss discovery limitations when they first meet and confer (Recommendation 3). 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 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 be produced. Absent an agreement on production, either side can raise with the Court at the scheduling conference a request that certain documents or categories of documents be subject to discovery 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 that no more than six depositions or 20 interrogatories per side be permitted, but no agreement is reached, the side 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 of arbitrary rules.

Recommendation 17: Judges should not refer discovery disputes to magistrate judges, except in circumstances in which large quantities of documents require labor-intensive *in camera* review.

The Advisory Group believes that discovery disputes should not routinely be referred to magistrate judges. 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.

Recommendation 18: The Court's Committee on Local Rules should review the problem of deposition conduct and should consider ways of controlling misbehavior and conduct falling short of basic standards of civility. It should consider asking the District of Columbia Bar to 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 which is adopted.

Recommendation 19: 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. They should avoid unnecessary formal presentations on routine issues.

There are a range of discovery disputes. Attorney-client privilege and work product issues may involve intricate factual questions and disputed legal issues. Other 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. 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 a complex or 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 use less formal procedures when such procedures are adequate to inform the judge of the issues in dispute and to permit a fair and just resolution. The important thing is that discovery issues be resolved promptly so that the case can continue moving forward.

The Group understands why judges would not want to encourage parties to take every discovery disagreement to the Court for resolution. 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 before the Court on a discovery dispute, counsel are likely to become more reasonable and to agree on some things they would not otherwise agree upon.

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 trial 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 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 IX: MANAGING TRIALS AND SETTLEMENT DISCUSSIONS

A. BACK-UP JUDGES

The Advisory Group completely supports the individual calendar system now used by the Court. Indeed, 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 which 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. Without disturbing the individual calendar system, the Advisory Group makes recommendations to improve the Court's use of senior judges, magistrate judges, and special masters. 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.

With respect to magistrate judges, the Advisory Group recommends that, instead of referrals of civil cases to magistrate judges for discovery purposes, there be instituted a three-year experiment in which a random 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. The Group further recommends procedures 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.

> **Recommendation 20: 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 time and knowledge. In some instances a straightforward civil case might be transferred instead of a complicated criminal case.**

It is essential that a firm trial date in civil cases once again becomes a meaningful concept. In order to make this a reality, it is essential that, without disturbing the individual calendar system,

judges should back each other up in a cooperative effort in order to respond to the impact that criminal cases have had. The key to making this system work is that, if there is a conflict between a civil and criminal trial, the criminal case (or, in some cases, a non-complex 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.

Virtually without dissent, even though many judges find routine drug cases to be tiresome, and sentencing requirements in some cases to be objectionable, the judges recognize that these 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 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.

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 factfinding and written conclusions of law. For 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 preparation should be assigned to the back-up judge. Ordinarily, it is the criminal case that should be reassigned. A complex conspiracy case, however, might require more preparation than a simple personal injury civil case. In this instance, the civil case might be transferred rather than the criminal case. 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.

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% 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% 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, however, 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 keep a month or more free of civil trials. When a conflict arose for another judge during this month, these judges would hear the criminal (or civil) case. In the end, the Group determined that this process was unduly complicated, interfered with the individual calendar system, and provided little, if anything, that is not provided by the back-up system that the Group does recommend.

Recommendation 21: If senior judges participate in this cooperative plan, their status should be enhanced so that they have a more equal role in the Court.

The Advisory Group recommends that participating senior judges be given a vote at the Executive Session and that they 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 judges— to be available to try cases and will reduce delay and cost to litigants. Indeed, 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. Approximately half of the judges refer no cases 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 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 two 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 clearly is a wide variety of views among the district court 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 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 district court 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 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. 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, and often 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.

As a general rule, the Advisory Group concluded that a magistrate judge should not be used in a role that may lead to an appeal from his or her decision because that may result in a duplication of effort, thus increasing cost and delay for the litigants. This explains the Group's suggestion in Recommendation 17 that cases should not be referred to magistrate judges for routine discovery matters. For the same reason, the Group concludes that dispositive motions should not be referred to magistrate judges.

For the same reason, 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 a conference in St. Louis attended by the Advisory Group's Chair, Reporter, and Administrative Analyst, and Judge Lamberth, and *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.

As is discussed in Chapter XI, 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 one or more judges to consider at an early stage in the process. It was the consensus of the Group that this would be a much more efficient system than having a judicial officer (*i.e.*, a magistrate judge) prepare such recommendations and reports for review by a district judge.

The timetables and procedures recommended in this Report require the judge assigned to a case to be thoroughly familiar with that case and in a position to ensure that dates are kept once set. This system will not work if cases bounce back and forth between district judges and magistrate judges. Thus, the Group believes that, generally speaking, when a case is assigned to a judge, the presumption is that the judge should handle it without the help of a magistrate judge. Magistrate judges should be given discrete matters to handle on their own from start to finish.

Recommendation 22: The Court should conduct a three-year experiment during which time district judges would automatically refer a random sample of personal injury cases and some contract cases to magistrate judges.

Some cases can be assigned to magistrate judges at the outset, and 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 three-year experiment. During this period, the judges would automatically refer to magistrate judges a random sample of personal injury cases and some contract cases. 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, and 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. 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% of the cases in this Court that go to trial) and by asking the Court to identify types of contract cases (approximately 15% 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 only the most highly qualified magistrate judges, the Group predicts that the experiment will lead to litigants opting to proceed before magistrate judges for all purposes in 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.

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 effort to begin to define the role of the magistrate judges in civil cases consistently with an overall delay and cost reduction plan.

Recommendation 23: The Court should seek authority to appoint one additional magistrate judge with training and experience in alternative dispute resolution and settlement.

In Chapter X, the Advisory Group explains the important role that increased ADR may play in reducing cost and delay. Because the Group supports efforts to expand the ADR resources

available to litigants, it concludes that the Court could benefit from the appointment of an additional magistrate judge designated specifically to assist the Court with settlement and alternative dispute resolution. In Recommendation 35 the Group notes that this new magistrate judge should be 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. This new magistrate judge, at least at the outset, could also be the primary 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. The additional magistrate judge would also be available, like other magistrate judges, for additional duties.

The additional magistrate judge could benefit the Court and the other magistrate judges by providing training to the other magistrate judges in mediation and settlement. The training might well lead to all of the magistrate judges playing a more useful role in settlement conferences.

Recommendation 24: Judges should consider referring civil cases to magistrate judges for settlement conferences and for certain labor intensive tasks.

Some judges do not believe it is appropriate to conduct settlement discussions in nonjury cases and then to try the case if the discussions are unsuccessful; they therefore often refer settlement talks to other judges. Magistrate judges can also conduct settlement discussions, and that they are likely to have more time to do so than other judicial personnel if the recommendations contained in this Report are adopted. The Group believes that magistrate judges can be used to conduct settlement conferences in both nonjury and jury cases. If an additional magistrate judge is appointed pursuant to Recommendation 23 and is able to train the other magistrate judges in mediation and settlement, individual judges might find that referral of cases to magistrate judges for settlement conferences would make good sense in many cases. Also, as mentioned in our

discussion of ADR, *infra*, magistrate judges may be asked to conduct some labor intensive ADR with the consent of the parties.

Judges may also 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). In some cases, however, referral would require too much of a magistrate judge's time and a special master might be a preferable alternative.

Recommendation 25: The Court should seek to educate the bar on the possibility of proceeding before a magistrate judge for all purposes in civil cases.

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, about the pilot program and the benefits of participating in it.

Recommendation 26: 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 27: 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.

> **Recommendation 28: 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 utilize 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 party objects. Consideration should be given to the financial cost that a special master would impose on the parties.

Recommendation 29: The Clerk of the Court should maintain a list of special masters with experience in this Court as a reference source and a list of all mediators who have been certified in the Dispute Resolution Programs administered by the Circuit Executive's Office.

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, 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 Clerk should also keep a list of all mediators certified in the Dispute Resolution Programs of the Circuit Executive's Office. Such mediators have been carefully selected and trained and might be attractive candidates 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 30: Each judge should try to schedule a trial, in either a civil or criminal case, so that the evidence will not be interrupted by status conferences, motions hearings, sentencing hearings, or other proceedings.

Judges often schedule these 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 necessary. Thus, the Advisory Group urges that scheduling be done as carefully as possible to avoid spillover of proceedings into the time set aside for the trial.

Recommendation 31: Trials should be held during "normal business hours."

Trials should be held from 9:30 am to 4:30 or 5:00 pm with an hour off for lunch and ten minute breaks in the morning and afternoon. If motions are scheduled, they should take place and be concluded before 9:30 am or after 5:00 pm. This would provide for more trial time in a day than is now provided by some judges and would generally be welcomed by litigants, counsel, and jurors.

Recommendation 32: 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 in nonjury cases and proposed jury instructions in jury cases at a time that is most helpful to the Court, but not sooner than five days before trial. The provision that submission should not be required sooner than five 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 most cases will not reach trial, this recommendation helps to ensure that parties sometimes will be spared the necessity of submitting proposed findings and conclusions or instructions, because their cases will settle more than five days before the trial date.

Recommendation 33: 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 X: 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 such efforts nationwide. It has a 53% settlement rate in mediation and a 49% 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 in the judges' interviews 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 34: The Court should conduct a three-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, at their first conference with the judge, to select from a menu of ADR processes (mediation, early neutral evaluation, binding or non-binding arbitration). The cases would be randomly selected. If the parties cannot agree on an ADR process, the judge will designate mediation as the least expensive and intrusive of the options.**

The Advisory Group recommends a three-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 non-binding 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 in calling for a fourth magistrate judge with expertise in settlement and ADR (Recommendation 23), some litigants may seek to avail themselves of more elaborate and expensive ADR alternatives. They might well be provided by the new magistrate judge.

Some litigants and their counsel may not be enthusiastic about the pilot program and will resist ADR. 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, which is the least intrusive method of ADR and the least costly, as the fallback process.

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.

Recommendation 35: In either voluntary ADR or in 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, 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 36: 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 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.

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.

B. SETTLEMENT

Recommendation 37: 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, who is present be prepared to estimate how long it will take to obtain a final decision on

any settlement proposal and be prepared to obtain the decision in the shortest time possible under the circumstances.

CHAPTER XI: *PRO SE* CASES

Approximately 18% of the Court's docket consists of *pro se* cases, down from 25% two 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 than at present raises 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 are:

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% of the *in forma pauperis* applications are approved for filing, 3% are denied *in forma pauperis* status, and 2% of the cases 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.

Recommendation 38: For *pro se* prisoner cases involving the District of Columbia Department of Corrections, unless there is a need for immediate judicial intervention, 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 utilized. 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. Because some criticisms of the process have already been made, however, the Advisory Group recommends that the Court stay prisoner cases as long as the grievance process

appears to be effective. To that end, the Group recommends that the process be monitored to ensure that it actually contributes to reducing cost and delay.

Recommendation 39: The Clerk's Office should hire *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 proceedings, 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 recommends 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 two weeks of the filing of the complaint to a judge for a decision as to whether the case should be filed or whether it should be 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.

The advantages the Group sees in hiring 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% 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 which on their face are without merit.

In addition to screening *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.

Representatives of the Advisory Group originally discussed the usefulness of staff attorneys to perform the function discussed above at a March 1992 meeting in St. Louis sponsored by the Federal Judicial Center. The Chair, the Reporter, the CJRA Administrative Analyst, and Judge Royce C. Lamberth, an *ex officio* member of the Advisory Group, attended and met with counterparts from various other districts that were in the process of preparing their reports. Following that meeting, the Advisory Group discussed this proposal with the Clerk of the Court, and on October 19, 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 implementation of Recommendation 39.

Recommendation 40: 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 in the case 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% 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 to which counsel should be appointed.

Local Rule 702.1 and the Civil Pro Bono Panel represent a commitment by the Court and its bar in seeking to address the problem of *pro se* cases.

CHAPTER XII: 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 41: When vacancies arise on the Court, 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-fifth 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 42: 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 sub-categories 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, etc.).

5. Monitoring on a random basis, the statistical forms completed by court personnel and attorneys to ensure consistency and accuracy.

This Court is not alone in its statistical problems. 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 43: 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 42.1, 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 44: 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 factfinding to implement various guidelines.

In Chapter V, 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 policy-maker, 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 policy-making 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 45: 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 V, 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. 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 46: Congress must 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, 4, 10, 11, 12, 13, 20, 22, 25, 29, 33, and 39 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 of 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 must 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 47: The Court should seek sufficient space to provide adequate chambers and an adequate courtroom for every active judge, every senior judge, and every magistrate judge.

At the current time, the Court has three 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 court judges and three courtrooms for the magistrate judges. With 12 active district judges,

seven senior judges, and three magistrate judges, all available courtrooms have been assigned to a judicial officer. When the three judicial vacancies are filled, this Court will be short three courtrooms.

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 a new magistrate judge is to be hired, as recommended by the Group, that magistrate judge also will need adequate courtroom space and room to conduct ADR proceedings. When the three new district judges are appointed, they too will need space. Finally, if the senior judges are to play "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 the exceptionally complicated civil or criminal case, one 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. 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 backup system needed to ensure trial dates for civil cases.

The Advisory Group has found no evidence to support a conclusion that keeping the Court in close physical proximity to 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 to probation officers and 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 without having to wait for space to become available.

C. ANNUAL REVIEW

Recommendation 48: Pursuant to § 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 sub-categories 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 which 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.

APPENDICES

The vote on the bill was as follows:

YEAS—12	NAYS—1
Biden	Heflin
Kennedy*	
Metzenbaum	
Leahy*	
DeConcini	
Simon	
Kohl*	
Thurmond	
Hatch*	
Grassley*	
Specter	
Humphrey	

*By proxy.

Senator Simpson was not present and did not vote.

V. Text of S. 2648, as Reported

[101st Cong., 2d sess.]

A BILL To amend title 28, United States Code, to provide for civil justice expense and delay reduction plans, authorize additional judicial positions for the courts of appeals and district courts of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I—CIVIL JUSTICE EXPENSE 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 new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.
"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial accountability through information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§ 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 de-

liberate 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) [illegible]ivil justice expense and delay reduction plan developed and im[illegible]mented under this chapter shall include provisions apply-

ing 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 persons 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 re-

duction 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.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 4 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.".

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the western district of Arkansas;

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
CIVIL JUSTICE REFORM ACT ADVISORY GROUP
(January 1993)

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Nancy M. Mayer-Whittington	U.S. District Court for D.C.
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Reporter

Stephen A. Saltzburg	George Washington University National Law Center

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE DISTRICT OF COLUMBIA

Paul L. Friedman
Chair

Stephen A. Saltzburg
Reporter

Hon. Aubrey E. Robinson, Jr.
Chief Judge

Nancy 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.

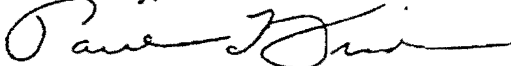
Chief Judge Aubrey E. Robinson, Jr. of the United States District Court for the District of Columbia appointed an advisory group of attorneys and representatives of litigant groups to assist in the development of an expense and delay reduction plan for the Court. As part of the information-gathering 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

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January 1992

United States District Court for the District of Columbia

Attorney Survey

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 __only__ 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

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

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%	100%
Count	3	173	245	556	268	1245

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%	100%
Count	33	166	177	188	684	1248

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%	100%
Count	85	780	229	70	83	1247

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%	100%
Count	668	493	61	14	7	1243

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
	99.4%	1244

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%	100%
Count	327	306	153	81	366	1233

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%	100%
Count	137	408	262	123	318	1248

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
	100%	1200

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
	100%	1181

If yes, how much have each of the following contributed to the unnccessary 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
	100%	1158

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
	100%	1100

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% (1204)
Voluntary early neutral evaluation	72.6% (850)	21.9% (257)	3.6% (42)	1.5% (17)	.4% (5)	100% (1171)
Mandatory non-binding arbitration	68.6% (806)	24.6% (289)	3.4% (40)	2.5% (29)	.9% (11)	100% (1175)
Summary jury trials	92.1% (1071)	7.7% (90)	.1% (1)	0.0% (0)	.1% (1)	100% (1163)

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?

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% (1251)
Early Neutral Evaluation	3.4% (42)	8.6% (107)	8.8% (110)	6.3% (79)	73.0% (913)	100% (1251)

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% (1251)
Requiring lawyers to discuss ADR options with clients	15.1% (189)	23.8% (298)	32.1% (401)	13.1% (164)	15.9% (199)	100% (1251)
Increasing filing fees to pay for ADR programs	4.5% (56)	10.7% (134)	23.9% (299)	35.8% (448)	25.1% (314)	100% (1251)
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% (1251)
$ 200,000	9.0% (113)	18.9% (237)	29.5% (369)	16.1% (202)	26.4% (330)	100% (1251)
$1,000,000	7.6% (95)	9.8% (123)	28.1% (352)	27.1% (339)	27.3% (342)	100% (1251)
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% (1251)
$ 200,000	19.8% (248)	20.2% (253)	15.3% (191)	16.1% (202)	28.5% (357)	100% (1251)
$1,000,000	17.2% (215)	14.9% (187)	16.8% (210)	21.2% (265)	29.9% (374)	100% (1251)
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% (1251)
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% (1251)
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% (1251)
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% (1251)
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% (1251)
Increased use of magistrate judges for discovery conferences	16.1% (201)	33.6% (420)	22.3% (279)	11.7% (146)	16.4% (205)	100% (1251)

Practice	Substantial Effect	Moderate Effect	Slight Effect	No Effect	No Opinion	All
Increased use of magistrate judges for discovery motions	17.2% (215)	32.1% (401)	22.5% (282)	12.3% (154)	15.9% (199)	100% (1251)
Increased use of magistrate judges for settlement conferences	14.8% (185)	30.4% (380)	25.1% (314)	13.4% (168)	16.3% (204)	100% (1251)
Increased use of magistrate judges for pretrial conferences	11.0% (138)	23.4% (293)	25.3% (316)	22.3% (279)	18.0% (225)	100% (1251)

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% (1251)
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% (1251)
18.	Requiring mandatory arbitration of most cases	6.3% (79)	9.1% (114)	14.5% (181)	60.2% (753)	9.9% (124)	100% (1251)
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% (1251)
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% (1251)
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% (1251)
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% (1251)
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% (1251)
	Discovery motions	14.9% (186)	19.1% (239)	20.2% (253)	31.2% (390)	14.6% (183)	100% (1251)
	Other motions	8.9% (111)	14.3% (179)	18.7% (234)	31.7% (397)	26.4% (330)	100% (1251)
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% 1251
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% (1251)
26.	Requiring court-annexed mediation of most cases	12.9% (162)	17.7% (222)	20.9% (262)	33.3% (416)	15.1% (189)	100% (1251)
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% (1251)
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% (1251)
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% (1251)

	Proposals	Strongly Favor	Moderately Favor	Slightly Favor	Do Not Favor	No Opinion	All
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% (1251)
	Description of documents	34.4% (430)	20.3% (254)	13.9% (174)	21.2% (265)	10.2% (128)	100% (1251)
	Existence and contents of insurance agreements	38.4% (481)	17.3% (217)	10.7% (134)	13.0% (163)	20.5% (256)	100% (1251)
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% (1251)
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% (1251)
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% (1251)
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% (1251)
35.	Providing less time for completion of discovery	15.8% (198)	16.1% (202)	19.4% (243)	40.6% (508)	8.0% (100)	100% (1251)
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% (1251)
37.	Limiting the number of interrogatories presumptively permitted	33.3% (416)	22.2% (278)	16.4% (205)	21.4% (268)	6.7% (84)	100% (1251)
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% (1251)
39.	Limiting the number of depositions presumptively permitted	20.0% (250)	16.3% (204)	18.0% (225)	37.5% (469)	8.2% (103)	100% (1251)
40.	Limiting the length of depositions presumptively permitted	16.3% (204)	13.6% (170)	14.8% (185)	45.7% (572)	9.6% (120)	100% (1251)
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% (1251)
42.	Increasing the dollar threshold for diversity jurisdiction	11.4% (143)	10.3% (129)	9.5% (119)	50.1% (627)	18.6% (233)	100% (1251)
43.	Increasing the number of magistrate judges	21.7% (272)	20.1% (251)	21.5% (269)	11.4% (143)	25.3% (316)	100% (1251)
44.	Increasing the number of judges	39.4% (493)	20.9% (261)	17.5% (219)	6.2% (77)	16.1% (201)	100% (1251)
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% (1251)
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% (1251)

	Proposals	Strongly Favor	Moderately Favor	Slightly Favor	Do Not Favor	No Opinion	All
47.	Requiring 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% (1251)
48.	Making Saturday a routine trial day	5.8% (73)	6.9% (86)	6.1% (76)	71.3% (892)	9.9% (124)	100% (1251)
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% (1251)
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% (1251)
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% (1251)
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% (1251)
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	51.7% (647)	20.1% (252)	8.9% (111)	8.3% (104)	11.0% (137)	100% (1251)
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% (1251)

55. During the past three 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
	100%	1136

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	Count
12.6	1251

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
	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
	100%	338

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

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?

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 one to one half hours for a five 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 give 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 VA and MD 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 backlog (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 non-meritorious 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 <u>all</u> 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 straight-forward 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 over use 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 non-binding 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 pre-trial 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 database, has been a big help in tracking orders, filings, etc.

Sometimes slavish adherence to local rules in non-substantive 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 two 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.

PRE-TRIAL MOTIONS

More prompt resolution of pre-trial motions.

On occasion, the requirements set in standardized pre-trial orders need to be reduced in smaller cases.

More effective use of status or pre-trial 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 pre-trial memoranda, voir dire, jury instructions, and do trial preparations which may all be totally unnecessary.

I am wary of any proposal to require lengthy pre-trial 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.

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

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.

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

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 of the 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 pretrial), 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.

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

QUESTIONS FOR JUDICIAL OFFICERS
(January 23, 1992)

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?

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 × 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 × 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 × 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 × 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) (See instructions): IF ANY

JUDGE ______ DOCKET NUMBER ______

DATE SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

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).

FPI-LEX 3/91

STATISTICAL TABLES

TABLE I: AGGREGATE CIVIL AND CRIMINAL CASELOAD
DISTRICT OF COLUMBIA
(SY 1985 THROUGH SY 1991)[1]

	1985	1986	1987	1988	1989	1990	1991
FILED							
Civil	4199	3875	3564	3513	3964	3281	3099
Criminal	536	506	611	625	578	602	803
Total	4735	4381	4175	4138	4542	3883	3902
CLOSED							
Civil	4305	3446	2999	3926	3675	3327	3051
Criminal	464	403	489	785	553	454	611
Total	4769	3849	3488	4711	4228	3781	3662
PENDING[2]							
Civil	3481	3910	4475	4062	4112	3846	3894
Criminal	274	370	493	335	352	428	620
Total	3755	4280	4968	4397	4464	4274	4514

Source: Tables C and D, Appendix to the Annual Report of the Director of the Administrative Office of the United States Courts.[3]

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[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 not 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 on Tables C and D do not.

TABLE II
CASELOAD PER AUTHORIZED JUDGESHIP[1]
(SY 1985 THROUGH SY 1991)[2]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
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.

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[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 THROUGH SY 1991)[2]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
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]

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[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[1]
DISTRICT OF COLUMBIA
(SY 1985 to SY 1991)[2]

	1985	1986	1987	1988	1989	1990	1991
TOTAL	514	423	420	503	520	616	716
Civil	352	313	307	330	322	305	255
Criminal	162	110	113	173	198	311	461
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 the District of Columbia, Federal Court Management Statistics.[3]

[1] Excludes proceedings conducted by magistrates. Includes hearings on 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]

	1985		1986		1987		1988		1989		1990		1991	
	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	4199		3875		3564		3513		3964		3281		3099	

Source: Judicial Workload Profiles, Federal Court Management Statistics.

[1] Based on a statistical year running from July 1 through June 30.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
METHODS OF TERMINATION — CIVIL (SY87-SY91)

ACTION	SY91	SY90	SY89	SY88	SY87
Dismissals	1,631	1,631	1,898	1,796	1,816
Settled Before Trial	466	574	573	559	558
Settled During Trial	16	28	28	16	20
Trials	118	124	137	171	144
Summary Judgments	400	423	342	358	315
Transfer Other Court	413	161	168	145	153
Other	385	477	484	489	481
TOTAL TERMINATIONS	3,429	3,418	3,630	3,534	3,487

NOTE: A statistical year (SY) represents a 12-month period beginning July 1 and ending June 30. For example, SY91 represents the time 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 THROUGH 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 THROUGH SY 1991, IN MONTHS)[1]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
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 THROUGH SY 1991, IN MONTHS)[1]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
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 THROUGH SY 1991)[1]

	1985	1986	1987	1988	1989	1990	1991
Less Than One Year	2171	2301	2267	2181	2571	1920	1741
One - Two Years	799	925	1250	820	874	1118	769
Two - Three Years	356	553	737	763	508	539	735
Three Years And Over	143	131	221	298	372	489	649
Total Pending	3469	3910	4475	4062	4325	4066	3894

Source: Table C6A 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 1980 THROUGH SY 1991)[2]

	1985	1986	1987	1988	1989	1990	1991
Dist. 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.

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[1] The number of authorized judgeships nationally from SY 1985 through 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 THROUGH SY 1991)[1]

	1985	1986	1987	1988	1989	1990	1991
CIVIL TOTAL	352	162	313	307	322	305	255
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 Plus Days	1	2	5	4	3	1	0

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, BY PERCENTAGE AND LENGTH IN DAYS (SY 1985 THROUGH SY 1991)[1]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
One	53.4		51.2		47.9		48.5	40.3	52.2	40.9	61.6	43.4	58.8	43.9
Two	19.3		16.7		16.9		15.3	21.0	16.5	19.7	14.1	19.6	14.9	18.1
Three	10.2		10.5		11.8		11.7	13.6	9.9	14.3	9.2	12.4	7.0	12.9
4-9	14.8		17.9		19.5		20.2	21.2	18.0	21.4	12.8	20.8	16.9	21.3
10-19	2.0		2.5		2.2		2.9	2.9	2.5	3.0	2.0	3.0	2.4	3.1
20 Plus	.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
(Jan 1988 to Sept 1991)*
(404 TRIALS)

SUMMARY OF CIVIL TRIALS

# 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	#	1	2	3	4-9	10+
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 Veteran's 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
	59	19	11	5	16	8
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
	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 Prod Liab	1	0	0	0	1	0
	196	29	50	37	60	20

	#	1	2	3	4-9	10+
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					
	10	1	0	3	3	3
BANKRUPTCY (1 trial - 0%)						
422 Appeal	0					
423 Withdrawal	1	0	1	0	0	0
426 Debt Chpt 11	0					
454 Recover Money or Property	0					
	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					
	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
	3	1	0	0	2	0
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					
	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 & Discl	0					
740 Railway Labor Act	0					
790 Other Labor Litigation	1	0	1	0	0	0
791 ERISA	5	2	0	0	3	0
	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					
	6	2	0	1	3	0

		#	1	2	3	4-9	10+
SOCIAL SECURITY (0 - 0%)							
861	HIA	0					
862	Black Lung	0					
863	DIWC/DIWW	0					
864	SSID Title XVI	0					
865	RSI	0					
		0	0	0	0	0	0
FEDERAL TAX SUITS (2 trials - 0%)							
870	Taxes - U.S. Plaintiff/Defendant	2	0	1	0	1	0
871	IRS - Third Party	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					
		11	0	4	1	3	3

* First trial in sample Jan. 6, 1988
* Last trial in sample Sept. 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	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Immigration	0	0	0	0	1	.2	2	.4	4	.9	2	.4	3	.4
Embezzlem.	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.

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[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 that 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 1985 to SY 1991)[1]

	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 IN THE DISTRICT OF COLUMBIA, BY METHOD OF DISPOSITION (SY 1985 THROUGH SY 1991)[1]

	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	1070	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 THROUGH 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 THROUGH SY 1991, IN MONTHS)[1]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
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
Ct 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 THROUGH SY 1991)[1]

	1985	1986	1987	1988	1989	1990	1991
CRIMINAL TOTAL	162	110	113	173	198	311	461
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 Plus Days	2	3	3	4	1	7	8

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, BY PERCENTAGE AND LENGTH IN DAYS (SY 1985 THROUGH SY 1991)[1]

	1985		1986		1987		1988		1989		1990		1991	
	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US	DC	US
One	51.2		46.4		40.7		39.9	43.2	45.5	43.8	41.2	43.9	39.0	42.0
Two	16.7		12.7		23.0		22.0	18.9	14.1	19.3	24.1	19.2	22.3	18.9
Three	10.5		18.2		14.2		11.6	13.8	15.2	13.5	17.0	13.5	18.9	14.1
4-9	17.9		16.4		18.6		20.8	19.8	21.7	18.4	14.5	19.0	16.3	20.5
10-19	2.5		3.6		.9		3.5	3.2	3.0	3.5	1.0	3.2	1.7	1.1
20 Plus	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]

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[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.

PRO SE FILING ANALYSIS

NON-PRISONER

	1985		1986		1987		1988		1989		1990		1991	
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		540		505		361		414		340		263	

PRISONER

	1985		1986		1987		1988		1989		1990		1991	
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		410		475		595		568		444		339	

TOTAL PRO SE FILINGS

	1985		1986		1987		1988		1989		1990		1991	
NON-PRISONER	520	(43%)	540	(48%)	505	(48%)	361	38%	414	42%	340	43%	263	44%
PRISONER	396	(57%)	410	(52%)	475	(52%)	595	62%	568	58%	444	57%	339	56%
TOTAL	916		950		980		956		982		784		602	

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 Per.Inj.	0	0	1	0	0	0	0	0	0	0	1
(360) Other Per.Inj.	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)F.O.I.A.	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 IFP CASES	309
TOTAL NUMBER OF PRISONER CASES FILED	339

*Three dismissals were shown as voluntary dismissals.

NON-PRISONER CASES FILED BY 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 Med.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 dismissal were shown as voluntary dismissals and one as settled.

** One dismissal was voluntary and one case settled.