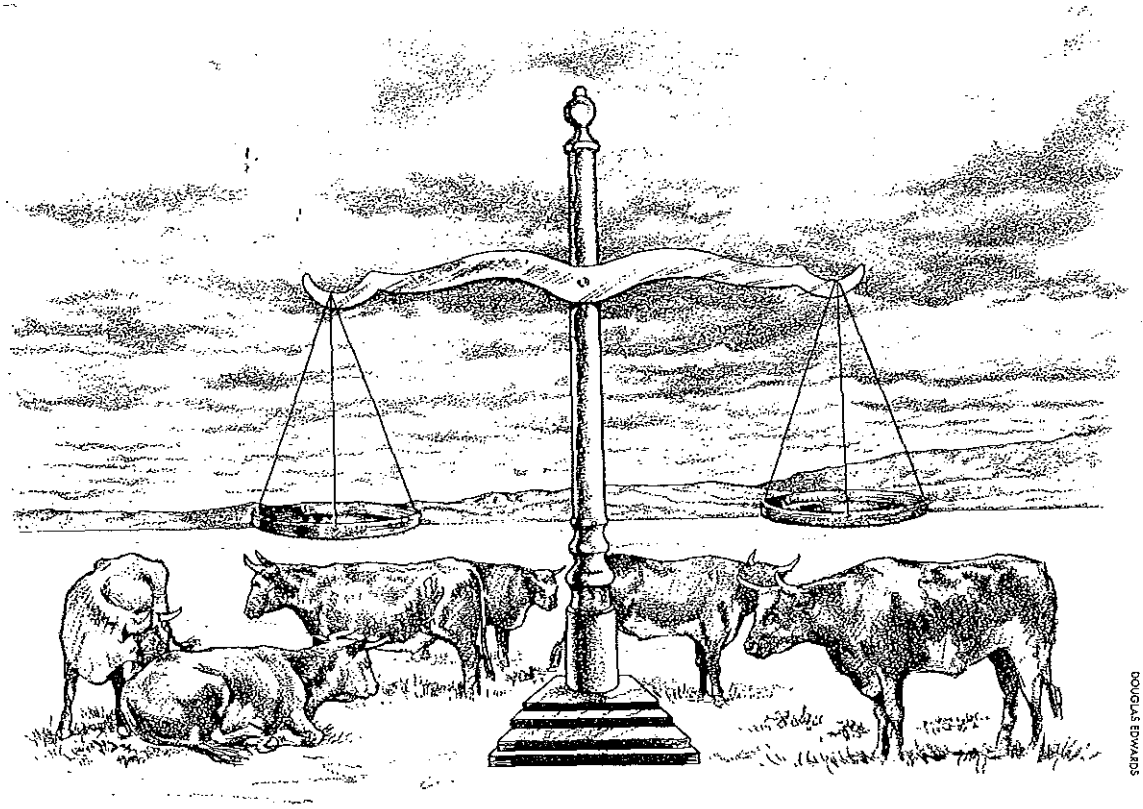
Justice Stays Civil in Montana



DOUGLAS EDWARDS

BY CARL TOBIAS

Almost exactly a year ago, Congress passed the Judicial Improvements Act with minimal fanfare. A little-noticed provision of that legislation is the Civil Justice Reform Act, which requires that every federal District Court implement a "civil justice expense and delay reduction plan."

The purposes of the plan should be, in the words of the statute, to "facilitate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." By December 1993, each District Court must implement its own plan or adopt a model plan that the Judicial Conference of the United States develops.

Districts that develop and implement plans early—between June 30 and Dec. 31, 1991—are to be designated "Early Implementation District Courts" by the Judicial Conference. The chief judge of any district so designated may seek from the conference extra resources—such as technological and personnel support and information systems—needed to effectuate the plan.

By this past spring, any district that intended to be an early-implementation court was required to appoint its own advisory group of lawyers and other individuals representative of the principal categories of parties in civil cases. Those groups were charged with assisting the court in developing a plan to reduce civil-justice expense and delay. By now, the groups have submitted their reports and recommendations to their respective courts. (See the accompanying chart, Page 23, which lists the District Courts that to date have expressed their intention to ask for early-implementation status.)

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Imaginary Problems?

I recently read the submission of the advisory group for the U.S. District Court in Montana, the state in which I teach law. Much to my surprise, the report describes a federal district with problems, and solutions to those problems, that match in few relevant particulars the realities of federal court practice in Montana.

> Congress failed to consider differences among the federal districts.

The report's concern with excessive discovery, litigation abuse, overloaded dockets, and the need to expedite dispute resolution is less applicable to Montana than to urban districts, such as the Central District of California (covering Los Angeles), the Northern District of Illinois (covering Chicago), or the District of Columbia—none of which is seeking early-bird status (perhaps understanding that truly difficult problems can't be planned out of existence in a year). The report is replete with innovative and exciting techniques for reducing expense and delay. The advisory group proposes, for example, that peer-review committees be established to advise judges in imposing sanctions for discovery abuse. The group recommends this division of labor notwithstanding legitimate questions concerning the court's authority to delegate its sanctioning function in this way.

The group also suggests that the judicial officer (Article III judge or magistrate judge) assigned a case be accorded discretion to preside at any settlement conference held in the matter. Moreover, the group recommends that there be "assertive judicial management" of pretrial activity through the judicial officer's direct involvement in creating, supervising, and enforcing a case-specific plan for discovery and disposition. This would be facilitated by requiring litigants to file pre-discovery disclosure statements and preliminary pretrial statements—at a point in the litigation where the parties could be expected to have little relevant information, as that information would only be available with discovery.

Home on the Range

The artificial grafting of the problems and solutions of urban federal districts onto the Montana District might be understandable were this a formerly rural jurisdiction that had suddenly or gradually been transformed into an urban one, such as may be true of cities like Albuquerque,

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N.M., or of certain areas in California or the Sunbelt. This, however, is Montana, Big Sky country, the state that is about to lose one of its two members of the House of Representatives because of its dwindling population.

Montana is also the place where seldom is heard a discouraging word, and perhaps nowhere is that more true than in its federal District Court. Federal court practice here is exceedingly civilized as well as civil. Montana lawyers routinely grant each other extensions of time to file as a matter of courtesy. Attorneys who want to resolve disputes expeditiously can generally secure trials within a year of filing their initial papers. Only a tiny number of Rule 11 decisions have been reported in the Montana District since the rule's 1983 strengthening. The number of civil filings here has decreased every year since 1985, declining a total of 35 percent from 1985 to 1990.

The requirements of the Civil Justice Reform Act may have dictated much that Montana's advisory group included in its report and recommendations. Congress, in its haste to achieve the commendable goal of reducing expense and delay in civil litigation, apparently failed to consider adequately differences among the federal districts. Montana is simply not Miami or San Francisco (where the District Courts are working toward early-implementation status). Indeed, the recommendations for Montana, if implemented as proposed, could well have the ironic effect of increasing expense and delay.

The Civil Justice Reform Act was well-intended. And who can blame judges, court administrators, and lawyers for trying to get some money from Washington to improve the court systems in their communities? Still, the Montana example

Early Implementation District Courts

The following 24 federal District Courts have expressed their intention to become "Early Implementation District Courts" under the Civil Justice Reform Act of 1990:

Alaska
Arkansas (Eastern)
California (Northern)
Florida (Southern)
Idaho
Illinois (Southern)
Indiana (Northern)
Indiana (Southern)
Kansas
Massachusetts
Michigan (Western)
Missouri (Western)
Montana
New Jersey
New York (Eastern)
Ohio (Northern)
Oregon
Texas (Eastern)
Virginia (Eastern)
Virgin Islands
West Virginia (Northern)
West Virginia (Southern)
Wisconsin (Western)
Wyoming