BY THE COMPTROLLER GENERAL

Report To The Congress

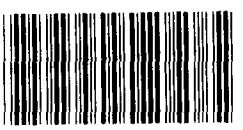
OF THE UNITED STATES

Better Management Can Ease Federal Civil Case Backlog

The number of pending civil cases in Federal district courts increased over 70,000 between 1974 and 1979, creating a concern on the part of the Congress, the Judiciary, the Department of Justice, and the public.

GAO visited nine courts and found that the intensity of the backlog problem was directly related to the efficiency of case management. Ineffective use of personnel and an inadequate number of judges also affected the processing of civil cases.

GAO recommends modifying the Federal Rules of Civil Procedure as an appropriate way to help reduce the backlog. The Administrative Office of the United States Courts disagrees. In contrast, four chief judges and the Justice Department agree that a modification providing for flexible time frames would improve the efficiency of the civil process.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses actions necessary to deal with civil case backlog in Federal district courts. In chapter 2, we recommend that the Judicial Conference initiate actions that will improve the operations of Federal district courts and thereby minimize the backlog of civil cases.

We made this review to determine whether and why a backlog exists and what could be done to alleviate the backlog. By developing and enforcing a case management system, in conjunction with the increased utilization of court resources, the operational effectiveness of Federal district courts will improve and civil case backlog will be reduced.

Copies of this report are being sent to the Director, Office of Management and Budget; the Chairmen, House and Senate Judiciary Committees; the Director, Administrative Office of the United States Courts; the Chairman, Judicial Conference of the United States; the Attorney General; and the chief judge of each Federal district court.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

BETTER MANAGEMENT CAN EASE FEDERAL CIVIL CASE BACKLOG

D I G E S T

The number of pending cases in Federal district courts increased 66 percent between 1974 and 1979. This increase has created a concern on the part of the Congress, the Judiciary, the Department of Justice, and the Public. Processing a large volume of cases requires the development and enforcement of a case management system, use of magistrates and clerks' offices, and an adequate number of judges. GAO found that the degree to which the courts visited experienced a backlog problem correlated with the extent to which these key requirements were satisfied. Improved court administration would minimize this problem.

A SOUND CASE MANAGEMENT SYSTEM CAN IMPROVE THE CIVIL PROCESS

A sound case management system must incorporate the following features:

--Uniform case management procedures.

--Early definition of time frames for each case.

--A monitoring system for identifying cases not adhering to predetermined time frames and not being actively litigated.

--Enforcement of a court's time frames through the use of sanctions.

Consistently and effectively applied, such a case management system would expedite the processing of civil cases and minimize case backlogs.

GGD-81-2

Review of 782 closed case files that took 1 year or longer to terminate in 9 district courts indicated that the average time spent for the civil process was shorter for those courts which had effectively implemented a case management system. Also, judges who had effectively implemented a case management system had a lower pending caseload than those judges without such a system. (See pp. 10 to 18.)

BETTER USE OF COURT RESOURCES CAN EASE CIVIL CASE BACKLOG

Courts were not taking full advantage of magistrates or personnel from the clerks' offices to assist in processing civil cases.

Courts and judges that used clerks' offices for administering case management and docket control systems had fewer backlog cases than those that did not take advantage of this resource. The use of the clerk's office in such a fashion helps reduce the administrative burden on judges and increases the pace of litigation. (See pp. 18 to 21.)

Although the intent of the Federal Magistrate Act of 1979 was to provide additional judicial resource flexibility for district courts, five of the nine courts had not fully utilized their magistrates. Many judges in these courts were unwilling to assign civil case duties to the magistrates because they (1) believed magistrates do not expedite the civil process since their decisions can be appealed to the court, (2) wanted full control of all cases, and (3) believed the opportunities for settlement were greater if they presided over all conferences. (See pp. 21 and 22.)

LACK OF JUDICIAL MANPOWER HAS CONTRIBUTED TO THE CIVIL BACKLOG

Although the inefficient use of resources can increase the backlog, the lack of resources can also be a factor. Five of the nine courts visited experienced shortages of judges because of extended illness or involvement in time-consuming cases. Although an adequate number of judges is needed to effectively dispose of cases, it must be recognized that timely processing of large volumes of cases requires a combination of good court administration as well as sufficient resources. This was evidenced by the fact that the courts which practiced sound case management were better able to cope when a shortage of judges was a problem. (See pp. 22 to 24.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE

To improve the operations of the Federal district courts and to reduce the backlog of civil cases, the Judicial Conference should:

--Develop a proposed amendment to the Federal Rules of Civil Procedure to include maximum time limits for the various steps in the civil process and require each court to establish time frames within these limits. The Federal Rules also should authorize a judge to waive the time limits for good cause shown, such as case complexity, and to establish alternate time frames where appropriate.

--Encourage the district courts to better utilize their clerks' offices in the administration of the courts, particularly for case management and docket control systems.

--Encourage the district courts to make greater use of magistrates as provided in the Federal Magistrate Act of 1979.

AGENCY COMMENTS AND GAO'S EVALUATION

Of the nine Federal district courts visited, eight chief judges provided comments on this report. The remaining chief judge offered no comments. Three of the eight chief judges fully agreed with the basic thrust of the report, while the remaining five generally agreed but in some cases expressed reservations about such factors as case complexity and the Speedy Trial Act.

The Administrative Office of the U.S. Courts endorses the report's recommendation regarding delegation of case management to the clerks of the court and greater use of magistrates. However, the Office does not believe the modification to the Federal Rules of Civil Procedure is an appropriate means by which to reduce civil case backlog. In contrast, four chief judges and the Justice Department agree that a modification providing for flexible time frames would improve the efficiency of the civil process. (See pp. 26 and 27.)

Four of the courts said that the Speedy Trial Act significantly contributed to the civil case backlog problem. The results of GAO's review found that even though the Act had an impact on the courts' operations, the severity of the impact depended on how well a court managed its caseload and used available resources. A Justice Department study reached a similar conclusion. (See pp. 29 and 30.)

The Department of Justice agrees with the report's overall message that a sound case management system and adequate use of court resources is important in reducing civil case backlog. (See p. 27.)

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APPENDIX

CHAPTER 1

INTRODUCTION

The issue of civil case backlogs and their impact on Federal district courts is of concern to the Congress, the Department of Justice, the Judiciary, and the public. This concern stems from the fact that civil filings have increased from 103,530 in 1974 to 154,666 in 1979. During this period, the number of pending civil cases increased from 107,230 to 177,805. Since there was no accepted definition of backlog, however, no one had identified the magnitude of the backlog, the reasons for its existence, or what corrective action was needed to reduce it.

OBJECTIVES, SCOPE, AND METHODOLOGY

We initiated our review to determine whether and why a backlog exists and what could be done to alleviate the backlog. Due to the lack of a definition, we defined backlog as those cases pending 1 year or longer from date of filing. On the basis of this definition, we selected 9 Federal district courts for review 1/ and sampled 1,989 cases out of a universe of 18,807. The courts visited were compared to determine the reasons why some had a larger backlog problem than others. We limited our review to the Federal district court level, because this is the level in the judicial system where cases are initially tried and decided. For further details on the scope and methodology, see chapter 4.

TYPES OF CASES AND CIVIL CASE BACKLOG

Civil cases are filed in Federal district courts to obtain a resolution to a civil controversy and to seek a monetary or other form of remedy. In statistical year 1979 (July 1, 1978, to June 30, 1979) the top four categories--representing about 66 percent of all civil cases filed in Federal district

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1/Arizona, Central District of California, Connecticut, Southern District of Indiana, Eastern District of Kentucky, Maryland, Massachusetts, Northern District of Ohio, and Eastern District of Virginia

courts--involved contract disputes, tort (personal injury related) actions, prisoner petitions seeking sentence reductions or civil rights relief, and private civil rights complaints. The majority of the civil cases filed involved two private parties rather than the U.S. Government.

The civil caseload has increased steadily over the last 11 years, while the criminal caseload has declined. The following chart illustrates the increase in civil filings by nature of the suit in addition to the criminal filings for statistical years 1969 and 1979.

	Statistical year ending June 30, 1969	June 30, 1979
Nature of Civil Filings		
Contract actions	14,951	36,898
Real property actions	3,737	11,876
Tort actions	24,713	28,901
Actions under statutes	31,232	76,067
Other actions	2,560	924
Total civil filings	77,193	154,666
Total criminal filings	33,585	31,536

Civil cases involving the United States as either a plaintiff or defendant represented 36 percent of total filings for 1979 and were composed mainly of social security petitions, land condemnation cases, and contract cases.

Although the significant increase in civil filings has had an impact on the judicial system, there is no objective criteria to measure when a court becomes overburdened and a backlog begins. Some officials of the Administrative Office of the U.S. Courts define a backlog as cases where the parties are ready to go to trial but the court is unable to try the cases. No data, however, is available on cases fitting such a definition. Therefore, the impact of the increased filings is not entirely known. Although it is possible to identify backlogged criminal cases as those not meeting the Speedy Trial Act's (18 U.S.C. 3161-3174) 1/ time frames, a similar approach cannot be used for civil

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1/The act established uniform time frames for stages in the criminal process, such as arraignments and trials, that must be followed by U.S. district courts.

cases. The Federal Rules of Civil Procedure specify certain time limits for particular actions within a case; however, these rules do not define when a case is considered backlogged nor do they establish time frames for the entire civil process.

Due to the lack of a definition, we defined a backlog as those cases which had been pending in the court for 1 year or longer after being filed. Fifty-seven of the 71 judges interviewed agreed that the criterion we established was reasonable and that the majority of civil cases could be completed within 1 year. However, some judges noted that case complexity can cause a minority of cases to be pending for over a year. The judges who disagreed with our criterion did so either because they believed the majority of civil cases take longer than 1 year to terminate, or that each case is atypical and therefore defies application of any criteria.

On the basis of the 1 year or older definition, we determined that the backlog problem varies across the judicial system. In fact, 60 percent of all cases pending 1 year or longer as of June 30, 1979, were concentrated in 20 of the 95 district courts. These 20 courts accounted for about 39 percent of all civil cases filed during the 3-year period ending June 30, 1979.

ADMINISTRATIVE STRUCTURE OF THE JUDICIARY

The judicial branch of the Government has three levels of administration--the Judicial Conference of the United States, the judicial councils of the 11 circuits, and the district courts. Associated with this structure is the Administrative Office of the U.S. Courts.

Judicial Conference of the United States

The Judicial Conference consists of 25 members: the Chief Justice of the United States, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and a chief and district judge from each of the 11 circuits.

The Judicial Conference is a policymaking body for the Federal judicial system. Its areas of interest include court administration, assignment of judges, just determination of litigation, general rules of practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay.

Except for its direct authority over the Administrative Office, the Judicial Conference is not vested with the day-to-day administrative responsibility for the Federal judicial system.

Judicial councils

The United States is divided into 11 judicial circuits, each containing a court of appeals (circuit court) and from 1 to 18 district courts. Each of the 11 judicial circuits has a judicial council consisting of the circuit court judges and presided over by the chief judge of the circuit. The councils are required to meet at least twice a year. Each judicial council considers the quarterly reports on district court activities prepared by the Administrative Office and takes such action as may be appropriate. Additionally, the councils promulgate orders to promote the effective and expeditious administration of the business of the courts within their circuits.

Each judicial council may appoint a circuit executive to exercise administrative power and perform duties delegated by the council.

U.S. district courts

Each State has at least one district court, and some have as many as four. There are 89 district courts in the 50 States and 1 each in the District of Columbia and the Commonwealth of Puerto Rico. There are also four territorial courts, one each in the Canal Zone, Guam, Virgin Islands, and Northern Mariana Islands.

The standard rules of civil and criminal procedures for the U.S. district courts provide the general rules of practice for these courts. The judges of each district court, however, formulate local rules and orders and generally determine how the court's internal affairs will be handled.

Each court has a clerk of the court who is appointed by and is directly responsible to the district judges. The clerk is the court's fiscal and disbursing officer and is responsible for maintaining the court's records and performing other court-assigned duties. He functions as the court's executive officer and attempts to promote administrative procedures which will help move the court's work expeditiously.

Administrative Office of the United States Courts

The Administrative Office is headed by a Director and a Deputy Director appointed by the U.S. Supreme Court. The Director is the administrative officer of all U.S. courts except the Supreme Court. Under the supervision and direction of the Judicial Conference, the Director

--supervises administrative matters relating to the office of the clerks and other clerical and administrative court employees;

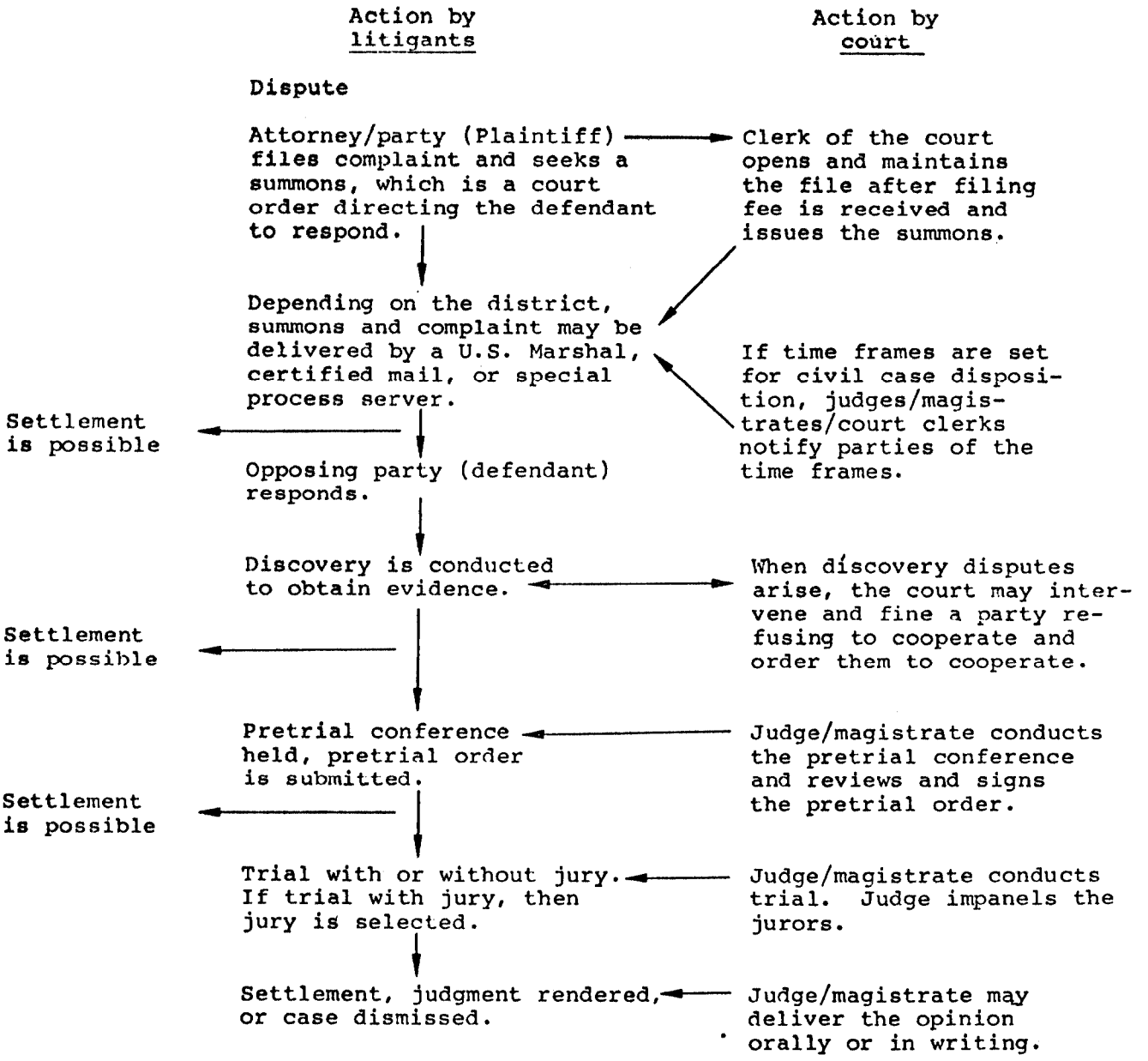
--prepares and submits various reports regarding the state of the court dockets and other statistical data to the chief judges of the circuits, the Congress, the Attorney General, and/or the Judicial Conference; and

--audits vouchers and accounts of the courts and their clerical administrative personnel and determines and pays the necessary expenses of courts, judges, and other court officials.

Also under the purview of the Administrative Office are the U.S. magistrates. In the Federal judicial system, the magistrates are judicial officers of limited tenure authorized to handle, within certain limitations, criminal and civil matters. Such matters include supervising the criminal and civil calendars and handling pretrial proceedings, including discovery conferences, settlement conferences, and issuing subpoenas.

ROLE OF THE COURTS, LITIGANTS, AND ATTORNEYS IN THE CIVIL PROCESS

Federal district courts not only have a role in criminal matters, they also have a role in the civil process when they enforce Federal civil statutes, resolve controversies between citizens of different States, and hear other cases within their jurisdiction. The following chart describes the basic Federal civil process.


Action by litigants
Action by court
Dispute
Attorney/party (Plaintiff) files complaint and seeks a summons, which is a court order directing the defendant to respond.
Clerk of the court opens and maintains the file after filing fee is received and issues the summons.
Depending on the district, summons and complaint may be delivered by a U.S. Marshal, certified mail, or special process server.
If time frames are set for civil case disposition, judges/magistrates/court clerks notify parties of the time frames.
Settlement is possible
Opposing party (defendant) responds.
Discovery is conducted to obtain evidence.
When discovery disputes arise, the court may intervene and fine a party refusing to cooperate and order them to cooperate.
Settlement is possible
Pretrial conference held, pretrial order is submitted.
Judge/magistrate conducts the pretrial conference and reviews and signs the pretrial order.
Settlement is possible
Trial with or without jury. If trial with jury, then jury is selected.
Judge/magistrate conducts trial. Judge impanels the jurors.
Settlement, judgment rendered, or case dismissed.
Judge/magistrate may deliver the opinion orally or in writing.

As one can see from the chart, once the complaint is filed, the court has responsibility until the case is resolved.

Rule One of the Federal Rules of Civil Procedure states that the rules are designed to secure the just, speedy, and inexpensive termination of every action. In this regard, both judicial personnel and attorneys have a responsibility for insuring that cases conform with Federal and local procedural rules. The clerk of the court is the executive officer who is responsible for court administration. As such, he/she is responsible for expediting the civil process by making sure that attorneys and parties conform to Federal and local rules of procedure--tracking the cases via docket entries, maintaining the court files and exhibits, assisting in case management, and performing other administrative duties.

To promote expeditious disposition, judges may (1) establish time frames by a scheduling or pretrial order, (2) enforce such time frames by denying continuances and imposing sanctions, (3) conduct status conferences, pretrial conferences, or settlement conferences, and (4) resolve discovery problems by issuing an order compelling discovery or imposing sanctions. To provide assistance in carrying out these functions, the Federal Magistrate Act of 1979 (P.L. 96-82, 93 Stat. 643) was passed expanding the magistrates' role and allowing magistrates who are certified to try and decide civil cases upon the consent of litigants and judges.

CHAPTER 2

IMPROVEMENTS ARE NEEDED IN CASE MANAGEMENT AND USE OF COURT RESOURCES FOR SPEEDY TERMINATION OF CIVIL DISPUTES

The upward trend in the number of civil filings is likely to continue due to the fact that new legislation continues to expand litigants' access to Federal courts. Old legislation is being revitalized by litigants looking for avenues of relief, and courts are being increasingly sought as the final arbiter. Unless improvements are made in the way courts presently operate, the increased filings will result in a severe backlog of civil cases. To expedite the disposition of civil cases and minimize case backlog, the following are necessary: (1) a case management system that is consistently applied and enforced, (2) increased utilization of magistrates and personnel in the clerks' offices, and (3) an adequate complement of judges.

In the nine Federal district courts visited, we identified four factors as being essential to effective case management: (1) the establishment of uniform court procedures, (2) the early establishment by the court of civil case time frames and deadlines, (3) court monitoring of these time frames, and (4) enforcement by the courts of the time frames. The courts visited that had a large number of cases pending 1 year or longer had weaknesses in some or all four areas. These courts also lacked a consensus among judges on the need for case management and control. Within each court, judges who effectively practiced case management had lower pending caseloads than their colleagues.

To further improve the handling of civil cases, the courts need to reassess the duties and responsibilities of magistrates and clerks. The clerks' offices can assist judges in maximizing their effort by handling the overall case monitoring and routine administrative activities. Magistrates are able to handle the full range of steps in the civil process upon the consent of the litigants and the court. Yet, certain courts visited which could have more effectively utilized the magistrates' and clerks' offices to alleviate their backlog did not do so, primarily because judges would not relinquish such duties to them.

Also vital to strong case management is an adequate complement of judges which was not always available. In one court, control of the civil docket was completely lacking due

to an inadequate number of judges to deal with increased filings at numerous geographical court locations. Courts also experienced a shortage of judges when judges became ill for long periods of time and when judges became involved in cases that consumed a great deal of time.

Collectively, all of these factors are necessary to expedite the civil process and alleviate the backlog problem. The courts visited with strong case management and resource utilization practices incurred minimal impact from sudden changes in filings and caseloads, while courts with poor case management and resource utilization practices experienced problems in processing their cases.

LEGISLATION AFFECTS CIVIL CASES IN FEDERAL DISTRICT COURTS

Over the last decade, new and revitalized legislation has affected the operations of the Federal district courts by placing new and added demands on the courts' services. This is reflected by the near doubling of civil case filings in Federal district courts. In some districts, the added filings have disrupted court operations and taxed the courts' resources. How each Federal district court has adapted to the new demands is still not fully known. However, we observed that the courts which developed and implemented case management systems were better able to accommodate new demands with minimal impact on court operations.

Enactment and revitalization of legislation have expanded litigants' access to Federal courts and have contributed to the increased filings of civil cases. In recent years, the Congress has passed numerous laws which have increased the district courts' caseload. Certain legislation, such as the Black Lung Benefits Act (30 U.S.C. 901 et seq.), which expanded miners' access to the district courts for administrative review and appellate purposes, has contributed to a chronic backlog in one court visited. Prisoners, mostly from State prisons, have made new use of an existing Civil Rights Act (42 U.S.C. 1983) and habeas corpus legislation (28 U.S.C. 2254) to challenge their conditions of confinement and convictions directly in Federal district courts without exhausting State remedies. During the year ending June 30, 1979, prisoners filed 23,000 petitions, which represented 15 percent of all Federal district courts' civil case filings. Because many of these cases are filed by the litigant rather than an attorney, courts visited complained these petitions consume

a disproportionate amount of court personnel time because court personnel serve both as counsel and judge. Barring major changes, it is highly likely that increased civil case filings will continue placing new demands on the Federal district courts.

A SOUND CASE MANAGEMENT SYSTEM CAN IMPROVE THE CIVIL PROCESS

The development and enforcement of a case management system can expedite the civil process. Courts which effectively and consistently applied case management techniques had an expeditious civil process and minimized civil case backlogs. The courts which consistently practiced strong case management had a less severe backlog than the courts that did not. Further, judges who effectively applied and enforced case management had a lower pending caseload than judges who either ineffectively applied case management or who lacked a case management system.

Crucial to an effective case management system are four components:

--The establishment of uniform case management procedures.

--The establishment of case time frames to insure that the case is will proceed expeditiously and that realistic objectives are set for attorneys.

--The court monitoring of pleadings and established time frames to insure that Federal rules, local rules, and each judge's orders regarding time frames are being complied with.

--The enforcement of time frames to insure that the court's management and control over its docket are maintained and that its control is credible.

How successful a court is in expediting and disposing of its civil cases is dependent on how uniformly and strictly the above components are applied within the court. Strong court control of the civil docket can be a major factor in reducing the court's civil backlog and speeding up the civil process. If only a minority of judges within a court practice case management, the court as a whole will not be effective in expediting civil cases. If a court fails to monitor and implement

time frames, then the court will have difficulty in disposing of civil cases in the most expeditious manner to prevent or minimize the backlog.

Need to establish case management systems with time frames

The establishment of time frames for the various steps in the civil process soon after a case has been filed is crucial to an effective case management system. District courts which established time frames (1) had the least number of cases pending a year or longer and (2) completed the civil process in less time for cases that took a year or longer to terminate. In the courts which had a minimal backlog, the majority of judges relied on a case management system which encompassed the early establishment of time frames. Although the time frames established varied in these districts, they generally fell within 1 year from filing of the complaint. In the districts that had a backlog problem, the majority of judges did not establish time frames. The judges blamed inadequate judicial resources and court congestion as the primary reasons why they were unable to control the civil docket and their calendars. Further, certain judges believed that the court should not attempt to control the pace of litigation--such control being the attorneys'. However, to insure expeditious court actions, the courts must take a more active role in controlling the pace of litigation.

Although the establishment of time frames is essential to alleviate a backlog problem, the Federal Rules of Civil Procedure do not contain provisions concerning overall case management. Although the Federal Rules of Civil Procedure do provide some time limits as to when certain pleadings and motions are due, they provide little overall guidance on the amount of time which should be allotted for various steps in the civil process. Specifically, there are no Federal rules governing the establishment of time frames for essential steps, such as delivery of the summons, motions for summary judgements and reply motions, discovery completion, submission of status reports, pretrial orders, exhibit and witness lists, jury instructions, and trial proceedings and/or hearings. The review of 782 closed case files that took 1 year or longer to terminate in nine district courts showed that the median times spent for the civil process was shorter for those courts which established and enforced time frames than for those which did not.

The lack of Federal rules governing overall case management has resulted in a variety of local court rules and judges' orders establishing procedures and deadlines designed to expedite the civil process. Eight of the nine courts visited had local rules of procedure governing civil cases. However, only the courts with a minimal backlog actually enforced their local rules.

These rules, by and large, provided procedures for processing civil cases, including such aspects as delivery of the summons, deadlines for motions, discovery document limitations, pretrial order requirements, court penalties for attorney tardiness, and late settlements. The following table illustrates local rules that expedite the civil process.

Civil case stage	Local rule	Intended effect
Delivery of summons	If a defendant is not served a summons within 60 days from the date the summons is issued, the case can be dismissed by the clerk.	To eliminate inactive cases from the court docket.
Deadlines for motions	Any opposing motions must be filed within 14 days after the filing of the initial motion. Also, a reply to the opposing motion must be filed within 10 days.	To impose time frames on filing opposing motions.
Discovery document limitations	No party shall serve upon any other party more than 30 written interrogatories including parts and subparts.	To eliminate frivolous interrogatories and confine discovery to essential legal issues.
Pretrial order requirements	Require plaintiff's attorney to file a proposed pretrial order in the judge's chambers no later than 5-days before the pretrial conference. The proposed order must be signed by attorneys of all parties and should include; (1) a brief statement of facts that each plaintiff and defendant proposes to prove, (2) a listing of exhibits to be introduced as evidence, and (3) a listing of witnesses for each party.	To insure the case is ready for trial and to control the number of exhibits and witnesses.
Attorney tardiness or failure to appear	Any attorney who is late or fails to appear for a hearing or conference shall be fined $25.00 for the first and $50.00 for second nonappearance or lateness unless otherwise ordered by the court for good cause shown.	Encourage attorneys to meet time frames.
Late settlements	If parties settle but fail to notify the court at least one full business day prior to the scheduled trial date, jury costs and Marshals' fees will be imposed.	To prevent unnecessary cost and delay to the court.

Specific case time frames for individual cases are usually provided by judges' orders. In the districts with a minimal backlog, the majority of the judges established case time frames in adherence to the local rules early in the civil process. For example,

--In one district, although different scheduling practices existed in each of the district's divisions, time frames were established for the key steps in the civil process, and civil cases were generally scheduled for trial between 6 months to 1 year from the filing date. For example, in one division of the court, the majority of civil cases are scheduled for trial within 5 to 6 months after the initial pretrial conference.1/ At the initial pretrial conference, conducted no later than 2 weeks after an answer is filed, a clerk scheduled and recorded on a pretrial worksheet all cut-off dates for discovery and set dates for the attorneys' conference, final pretrial conference and trial. Any trial date set more than 6 months from the date of the initial pretrial conference required permission of the court--in most instances, the chief judge.

--In another district that had local rules designed to expedite the civil process, the majority of judges--five out of seven--established time frames, usually via scheduling orders. The time frames limit discovery, set dates when motions are due, and establish a date for pretrial activities. Total time allotted for the disposition of civil cases ranged from 143 days to 360 days from the date the scheduling order was issued, which in most cases was after the answer had been filed.

1/The Administrative Office in its comments states that in a study entitled "Court Management Study" the Senate Committee on the District of Columbia recommended that pretrial conferences be held by judges. According to the study this expedites the trial and explores early settlement.

--In another district, each judge had developed his/her own management procedures and practices for handling and processing civil cases. These various practices ranged from issuing a standard order setting a trial date 6 months from the date the case was filed, to setting a trial date after the final pretrial conference. The important point is that all judges established time frames for the civil process.

In the other districts, the judges' practices regarding the early establishment of time frames varied substantially. In these districts, judges who established early case time frames and deadlines were in the minority. Judges who did not set case time frames and deadlines believed that this could not be done because of inadequate judicial resources and court congestion. Further, certain judges believed the attorneys should control the pace of litigation, not them.

Although the establishment of time frames is not in and of itself a cure-all for alleviating a court's backlog, what it does is (1) establish the court's control of the case, (2) break the case into manageable components, and (3) provide realistic time frames for the attorneys to meet. The early establishment of such time frames is necessary to avoid a severe backlog. However, to realize the full impact of establishing time frames, the court must incorporate in its case management system a means of monitoring and enforcing the attorneys' compliance with its time frames. If the courts do not actively monitor compliance with the time frames, they become virtually meaningless.

Need to monitor and enforce time frames

The monitoring and enforcement of time frames by the court is essential to expedite the civil process. Like the establishment of time frames, the monitoring and enforcement practices of the nine courts visited varied substantially among courts and judges. Courts which consistently monitored and enforced time frames tended to have lower backlogs than courts where case monitoring was either ineffectively used or not practiced at all. Similarly, within each court, judges who effectively practiced case management by setting up a system which incorporated case time frames and who monitored and enforced the time frames were able to move their cases more expeditiously. As a result, these judges had a lower pending caseload.

Those courts with good case monitoring practices reviewed the status of each case at the various steps in the civil process. This function was performed by personnel from the clerks' offices who systematically reviewed the pending civil docket to identify slow moving cases requiring the court's intervention. This task was performed by tracking, via docket cards, the specific time frames for each case and notifying the attorneys of the court's concern where time frames on pleadings and motions were not being complied with.

These monitoring practices:

--Insured that court-established time frames were maintained so slow moving cases would not disrupt the court calendar.

--Insured that cases not actively litigated were dismissed for want of prosecution before consuming an unwarranted amount of court personnel time.

--Increased the opportunities for early case settlement.

Court enforcement of case time frames and local rules can be accomplished by court-imposed sanctions and fines, denial of continuances, or directly or indirectly applied court pressure. The courts' practices regarding time frame enforcement varied among the districts visited and within courts. In courts which exercised strong judicial control, judges imposed monetary sanctions on attorneys for unreasonable delaying tactics. Further, rather than automatically granting case continuances, these courts required formal requests and justification for time extensions. In addition, judges and court personnel constantly reminded the attorneys of the firmness of the time frames, especially the trial date which most judges considered crucial to early case settlement.

On the basis of case data and interviews, we concluded that courts which effectively enforced case time frames minimized their backlog. The following table illustrates the effectiveness that good case management can have on the number of cases pending 1 year or longer.

Degree to which courts practiced case management	Percent of judges practicing effective case management	Cases pending as of June 30, 1979	Number of cases pending 1 year or longer as of June 30, 1979
Very Great			
Court A	100	1,698	274
Great			
Court B	50	1,679	672
Court C	43	2,432	805
Moderate			
Court D	25	1,846	1,003
Court E	25	3,214	1,291
Court F	25	2,712	1,463
Court G	23	4,380	1,638
Small			
a/Court H	0	3,862	2,958
b/Court I	0	5,576	3,697

Not only did an effectively enforced case management system affect the courts' pending caseloads, it also affected how expeditiously the courts processed their civil cases. For cases that took longer than a year to terminate, courts that practiced sound case management spent less time for the civil process.

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a/ When cases for this court were sampled, the universe of pending cases was reduced to exclude a large number of black lung cases. According to the court these cases were not being actively litigated due to their large numbers and the lack of judges. Including these cases in the universe would have provided an unfair picture of the court's operations.

b/ The universe of pending cases for this court was reduced to exclude a large number of Interstate Commerce Commision rate cases. According to the court these cases were not being actively litigated due to their large number and uniqueness. Including these cases in the universe would have provided an unfair picture of the court's operations.

Courts which effectively enforced a case management system were able to control the amount of time attorneys devoted to the various steps in the civil process, especially the discovery phase. This phase is regarded by the courts as the portion most difficult to control, and yet, one which is most subject to attorney delay and abuse. In one district which lost any semblance of court control, 95 percent of its backlogged cases had not completed the discovery stage. Although certain courts have attempted to limit discovery activity by local rules which restrict the number of interrogatories, enforcement of these rules is still uncertain, since these restrictions are subject to varying court personnel interpretation. As a result, courts which effectively contained the discovery activity managed to terminate cases faster.

The following table illustrates the impact effectively enforced case management practices had on the processing of civil cases which took more than 1 year to terminate. As one can observe, a wide disparity existed in the nine courts for completing the civil process. For example, cases were disposed of in a median time of 462 days in one district and in a median time of 847 days in another district.

Degree to which courts practiced case management	Percent of judges practicing effective case management	Median number of days from date of filing to completion or closure
Very Great		
Court A	100	462
Great		
Court B	50	519
Court C	43	470
Moderate		
Court D	25	792
Court E	25	521
Court F	25	813
Court G	23	591
Small		
Court H	0	845
Court I	0	847

Judges who implemented case management systems had the lowest pending civil caseloads. Because certain courts did not track individual judge's case closings and pending caseloads, we were unable to develop a complete profile for judges within every district. However, the following chart illustrates the wide variance that existed within courts regardless of the court's case management philosophy.

Court and judge	Extent of case management practices	Pending caseload as of June 30, 1979	Number of cases closed during year ending June 30, 1979
Court D			
Judge 1	very great	336	357
Judge 2	moderate	471	310
Judge 3	small	517	238
Court E			
Judge 1	very great	249	400
Judge 2	moderate	379	297
Judge 3	small	528	265
Court G			
Judge 1	very great	169	495
Judge 2	moderate	261	319
Judge 3	small	394	241

It is clear that one of the keys to minimizing civil case backlog and expediting the civil process is the development and enforcement of a case management system.

BETTER USE OF COURT RESOURCES CAN EASE CIVIL CASE BACKLOG

Increased utilization of court resources is essential to the elimination of civil case backlogs. The courts visited could reduce their backlog of civil cases if they increased the use of the clerks' offices and magistrates. Increased use of such resources would relieve judges of many administrative and less important judicial functions. Ultimately, this would lead to more timely disposition of all matters before the court.

Clerks are not fully utilized

The clerk's office in each court can provide a valuable service to the judges and magistrates by administering their case management and docket control systems. The clerk's office can assign cases to the judges, maintain case files and exhibits, record key case information on docket cards, provide monthly reports of case activity, monitor all cases on a systematic basis, and insure deadlines are met. Because each clerk's office is organized differently, depending on the local tradition and judges' preferences, the range of services provided and who performs these services vary.

The courts with the least backlog more actively involved the clerks' offices in administering case management and docket control systems than did the courts with the higher case backlogs. The following describes how three districts with the least backlog used the clerk's office to expedite the disposition of civil cases.

--In one district, the clerks assisted in case assignment, case scheduling, and the systematic monitoring of pending cases. If the attorney in a case failed to comply with established time frames or did not actively litigate, the clerk's office informed the judge and set up meetings to determine why the time frame was not met.

--In another district, the clerk's office tried to insure an equitable assignment of cases to judges by accounting for such factors as case type, pending caseloads, and time spent in trial. Further, it provided monthly caseload activity reports by judge of cases pending, closed, and assigned, along with the prior year's caseload figures. Also, depending on the judge, personnel from the clerk's office scheduled cases, issued scheduling orders, monitored pending cases on a periodic basis, and reminded attorneys of the court's deadlines.

--In the third district, the clerk's office administered the case assignment system to insure an equitable distribution of cases to the judges. Depending on the judge, personnel from the clerk's office performed

various duties. Normally, they were involved in scheduling and monitoring cases for pre-trial conferences, assisting and preparing the trial calendars, and actively monitoring cases. Two judges encouraged the clerk's personnel to maintain close contact with attorneys to keep abreast of settlement possibilities. The judges credit this approach with the settlement of many cases.

The use of the clerks' offices in these courts reduced the administrative burdens on judges and helped maintain the pace of civil litigation. Further, the judges in these courts agreed that the clerks' offices were vital to the expeditious disposition of civil cases.

In the courts with large backlogs, the clerks' offices were minimally involved in administering case management and docket control systems. For example, in one court with a backlog problem, the clerk's office provided little or no management information to judges and did not provide any assistance to judges in monitoring or managing their caseloads. Each judge was left to individually set his own calendar and keep abreast of case flow. In another district with a high case backlog, only one judge used the clerk's office to perform case management and docket control activities.

All the courts suffered from the lack of a uniform and centrally administered case management system. In lieu of a uniform case management system, each judge who had a system implemented it differently. Consequently, the existence of many diverse case management systems limited the clerk's office's ability to (1) establish uniform procedures and forms to streamline case processing and (2) reassign personnel from one judge to another when needed, because each judge had a different system, and generally only one individual in the clerk's office was familiar with each system. Further, some judges, although case management oriented, did not assign case management and docket control services to the clerk's office. Rather, they handled these duties by themselves, or their law clerks or secretaries handled them. This practice placed unnecessary administrative demands on the judge and his personal staff.

If a court is to operate effectively and reduce its backlog, then the judges within the court must agree on how to best utilize the personnel in the clerk's office. Clerks

can relieve the administrative burden on judges, administer the court's case management and docket control system, and insure the court's litigative pace is maintained. To improve the operations of the court, the judges should (1) adopt uniform case management and docket control procedures and (2) assign the administration of such a system to the clerk's office. The clerk's office and the judges then can work in tandem to enforce the requirements of such a system. Utilization of the clerk's office and its personnel in such a fashion can help the court operate more efficiently and effectively and should help reduce the court's backlog.

Magistrates are not being fully utilized

The courts can improve their operations by making better use of magistrates. The magistrates are authorized to handle, within limitations, certain criminal and civil matters. The Federal Magistrate Act of 1979 was enacted on October 10, 1979, to expand the magistrates' authority to dispose of certain minor criminal cases and to dispose of civil cases upon the courts' specific designation and the litigants' consent. Although the legislation's intent was to provide additional judicial resource flexibility for district courts, certain districts, because of judges' practices, have not fully utilized their magistrates.

Magistrates are authorized to handle a wide variety of duties which provide the court with greater flexibility. Some of these duties include supervising the criminal and civil calendars; handling pretrial proceedings, including discovery conferences and settlement conferences; determining nondispositive motions; and issuing subpoenas, writs of habeas corpus, or other orders necessary to obtain needed witnesses and evidence. Although the magistrates have authority to substantially assist the court, the courts visited generally did not effectively use them. In five of the nine courts visited, some judges were unwilling to assign civil case duties to magistrates. These practices limited the court from doing all it could to minimize the civil backlog. The following are examples of such practices:

--In one district with a backlog problem, only two of nine judges used the magistrates to handle substantive matters, such as pretrial conferences.

--In one district with a backlog problem, the magistrates had not been certified to handle civil cases as authorized by the Federal Magistrate Act of 1979.

--In another district, the magistrates were limited to handling primarily administrative cases involving a review of case files and suggesting recommendations to the judges. This court had not used its magistrates to handle pretrial proceedings, settlement conferences, or motions to any great extent. Several judges in this court did not believe magistrates foster timelier disposition of civil cases.

--Even in a district which overall had a low civil case backlog, the magistrates were not being used to their full potential. In one of the court's divisions that had the highest number of pending cases, the judges rarely delegated any portion of a civil case to the magistrates.

Magistrates were not used because judges said they (1) believed magistrates do not expedite the disposition of civil cases because their decisions can be appealed to the court, (2) wanted full control of all cases, and (3) believed the opportunities for settlement were greater if they presided over all conferences. Unless the magistrates are utilized as authorized by the act, the act's potential for expediting and improving on court operations will be impossible to measure.

LACK OF JUDICIAL MANPOWER HAS CONTRIBUTED TO THE CIVIL BACKLOG

The lack of an adequate complement of judges has contributed to a backlog of civil cases. Courts experienced a shortage of judges when judges became ill for long periods of time and when judges became involved in cases that consumed a great deal of time.

Until the passage of the Omnibus Judgeship Act of 1978 (P.L. 95-486, 92 Stat. 1629), the number of authorized judgeships had not increased since 1970. As of July 1, 1970, the number of authorized judgeships for all district courts was

399. The authorized judgeships for the 9 courts visited ranged from 2.5 to 16. Upon passage of the act, the authorized judgeships systemwide increased by 117, thereby providing a new authorized strength for the 9 courts visited, ranging from 5 to 17. During this span of 9 years the number of civil filings increased from 87,321 to 133,770. In one court visited, the lack of judges contributed significantly to the backlog problem. The pending cases in this particular district increased from 739 as of June 30, 1970, to 3,854 as of June 30, 1978. During this period the court was authorized the resource equivalent of two and one-half judges. The half-judge authorization represented a judge who split his time between two different district courts. Compounding the problem, the judges had to divide their time between eight geographical locations. The inability of the judges to handle the increased filings because of their volume, compounded by the inefficiencies caused by the multiple locations of the courts, played a significant role in the court's backlog problems. Under the new judgeship act this court now has a total authorization of five and one-half judges.

Court resource problems caused by judges becoming ill or involved in time-consuming cases occurred in five of the nine courts visited and affected the courts' ability to keep their caseloads current. For example:

--Two courts visited handled school desegregation cases that required the full attention of a judge in each court. In one court a major portion of a judge's time was devoted to one case for 5 years. Furthermore, the court continued to assign cases to the judge even though he was unable to handle them. In the other court, a judge had been handling a desegregation case for 4 years while still being assigned additional cases.

--In another court a judge was involved in a bankruptcy case that required his full attention for 18 months. During this period, the judge was still being assigned cases.

--An airplane accident case required another judge's full attention for 7 months while he continued to be assigned cases.

--In several courts there were occasions when judges became ill for long periods of time and the court was left without a full complement of judges. For example, two courts experienced the equivalent of 32 and 41 vacant judgeship months, respectively, over a 2-year period.

CONCLUSIONS

An adequate complement of judges is essential if a court is to dispose of its cases in a timely manner. However, the problem of backlogs cannot be solved solely by an increase in the number of judges. It must be recognized that processing a large volume of cases requires efficient court administration.

The key element we identified that expedites the civil process is a strong case management system that includes:

--Uniform case management procedures.

--Early definition of time frames for each case.

--A monitoring system for identifying cases that are not adhering to predetermined time frames and not being actively litigated.

--Enforcement of the court's time frames through the use of sanctions.

By establishing a case management system, the court assumes responsibility for insuring that a case is actively litigated.

The development and enforcement of a case management system, in conjunction with the increased utilization of court resources--magistrates' and the clerks' offices--is essential to the elimination of the civil case backlog. The Judiciary needs to insure that the resources it has are effectively used throughout the judicial system.

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE

To improve the operations of the Federal district courts and to reduce the backlog of civil cases, the Judicial Conference should:

--Develop a proposed amendment to the Federal Rules of Civil Procedure to include maximum time frames for the various steps in the civil process and require each court to establish time frames within these limits. The Federal Rules also should authorize a judge to waive the time limits for good cause shown, such as case complexity, and to establish alternate time frames where appropriate.

--Encourage the district courts to better utilize their clerks' offices in the administration of the courts, particularly for case management and docket control systems.

--Encourage the district courts to make greater use of the magistrates as provided in the Federal Magistrate Act of 1979.

CHAPTER 3

AGENCY COMMENTS AND OUR EVALUATION

The Administrative Office of the U.S. Courts, the chief judges in 8 of the 9 Federal district courts visited, and the Department of Justice commented on this report. (See apps. I through X.) One chief judge offered no comments. On the whole there was agreement for effective case management. Some enthusiastically supported our recommendations, while others expressed a number of concerns or did not directly address our recommendations. The areas of agreement and disagreement are discussed in the following sections.

CASE MANAGEMENT AND NEED TO MODIFY THE FEDERAL RULES OF CIVIL PROCEDURE

While agreeing with the need for effective case management, the Administrative Office and one chief judge disagreed with the need to modify the Federal Rules to establish maximum time frames for the various steps in the civil process as the report recommends. The Administrative Office is of the opinion that maximum time frames can not be set for all types of civil cases, especially complex cases or those involving numerous litigants. The Administrative Office further believes that modifying the Federal Rules is not the appropriate means to reduce civil case backlog. The chief judge believes that such a change would lead to a "speedy trial act" for civil cases similar to the Speedy Trial Act for criminal cases and might speed up terminations but not necessarily indicate justice was done.

Contrary to the views of the Administrative Office, the Federal Judicial Center's 1977 report, the majority of chief judges of the nine courts visited, and the Department of Justice all agree that flexible time frames can be established for all types of cases, including complex cases. We appreciate the Office's well founded concern that there will be occasions when cases will not be able to meet predetermined time frames. In recognition of this, our recommendation contemplates that the time frames would be flexible. For example, judges should be authorized to waive time frames for good cause shown, such as case complexity, and establish alternate time frames when appropriate. As for modifying the Federal Rules of Civil Procedure, one judge summarized the report's recommendation by stating that "This proposal strikes me as being the logical approach in the process of bringing about procedural change to achieve uniformity among

the courts and their judges in prescribing time frames for the processing of civil cases." Another chief judge said "Such time limitations are presently not established by the Federal Rules and are instead the subject of myriad local rules throughout the country. The suggested uniform time frames will undoubtedly serve to expedite the civil process." The Department of Justice supported the recommendation by saying "It is apparent that amendments to the Federal Rules of Civil Procedure will probably produce improvements in the efficiency of the civil process, and at the very least will send a message to the Judiciary that greater efficiency is a goal to be emphasized." The establishment of time frames for the various steps in the civil process is not as impractical as the Administrative Office seems to suggest.

The chief judge who was opposed to modifying the Federal Rules did so because he believes such action will limit the courts' flexibility to adjust to changing workloads as the Speedy Trial Act did. Although our recommendation proposes the establishment of time frames, it provides flexibility to enable litigants and courts to accommodate themselves as problems arise. The recommendation states that a judge should be allowed to waive time limits for good cause, such as case complexity.

Another issue raised by this chief judge was that although coerced uniformity might speed up terminations it would not necessarily indicate justice was done. However, we believe our recommendation would avoid the pitfalls of coerced uniformity by providing the judges with sufficient latitude to administer time frames consistent with the requirements of each case. What the report also suggests and the judge agrees with is continuous contact by the court with the attorneys and litigants as one component of good case management. The judge believes that the Federal Rules should not be modified to accomplish such contact. This of course is true if a given court opts to manage its calendar in such a manner as to assure regular contact between the court, attorneys, and litigants. However, we believe the establishment of flexible time frames would be a greater assurance that such contact is occurring in courts throughout the judicial system. It should be noted that the court in question has local rules that insures this contact, and by no means do the lawyers we interviewed who practiced before the court believe they are being coerced.

FAILURE TO SUBSTANTIATE BENEFITS OF CASE MANAGEMENT SYSTEM

The Administrative Office endorsed the report's recommendation regarding effective delegation of strong case management to the clerks of courts. The Administrative Office, however, even though accepting the recommendation on case management, stated that our conclusion should more clearly substantiate the benefits of a case management system. In our opinion, the report clearly demonstrates that a case management system reduces the time needed to process civil cases. On page 17 we demonstrated that courts which had proven case case management systems were able to move their cases much faster than courts that did not. Further, as shown on page 18, the report demonstrates that judges who had effective case management systems were able to process civil cases much faster than judges who were without such a system.

In addition, the chief judges for the courts that commented on our draft report, as well as the Justice Department, agreed with our conclusion and recommendation concerning the merits of a case management system. In September 1977 the Federal Judicial Center issued a report which further supported our recommendation. This report concluded that those courts that practiced case management disposed of civil cases in less time than those district courts that did not.

We believe we have demonstrated that case management systems can reduce the time it takes to dispose of civil cases.

CASE COMPLEXITY

One chief judge suggested that the statistics on cases pending 1 year or longer would be more meaningful if they differentiated between complex and noncomplex cases. He recognized that many cases can be disposed of quickly but observed in his district that complex cases make up a higher proportion of the cases pending 1 year or longer. Using the judge's definition of complex cases--patent, trademark, multidefendant securities, and aircraft cases--we determined that such cases represented only 27 percent or less of the cases pending a year or longer for any of the courts visited.

The report does not recommend or propose that any case, including complex cases, be disposed of in 1 year or less. The report's recommendation concerning the establishment of

time frames specifically provides for a provision allowing for a waiver requirement for complex cases and the establishment of alternate time frames. To clarify the issue further, the maximum time frames recommended can be whatever the Judicial Conference determines is reasonable. In addition to our analysis the Federal Judicial Center's 1977 report states that courts that employed case management systems disposed of complex cases more quickly than courts that did not.

The chief judge was also concerned because the chart on page 18 failed to relate the figures to case complexity. The chart in question illustrates the relationship between effective case management and the number of cases pending and closed for the statistical year ending June 30, 1979, per judge for certain courts. What the report failed to highlight was that the judges in the three courts were assigned cases on the basis of a lottery system, thereby diminishing the likelihood that any one judge would be overburdened with an inequitable share of complex cases.

SPEEDY TRIAL ACT AFFECTS BACKLOG

Four of the chief judges attributed the civil backlog problem to the provisions of the Speedy Trial Act which require the bringing of criminal cases to trial within 100 days. Although the act has affected the courts, the severity of the impact depends on how well the courts managed their caseloads and utilized their resources. Two of the four judges stated that criminal cases are becoming more complex and thus requiring more of their time. Because of this we believe it is even more imperative that judges become familiar with and adopt a case management system to help them ease the burden of civil cases and to insure the timely processing of civil cases.

A study dated April 15, 1980, conducted for the Department of Justice by a private contractor, concluded that courts that disposed of civil cases expeditously prior to the act continued to do so after the act's passage. The study attributed this to long-standing mechanisms already in place. We reached the same conclusion in the courts visited; that is, courts and judges that employed case management and utilized their resources processed civil cases more expeditiously than those that did not.

It should be recognized that 90 percent of all civil cases are settled without going to trial and that establishing time frames for the various steps in the civil process, especially firm trial dates, could lead to early settlements. This eliminates the need for a trial and reduces the time a judge spends on a case. A judge's involvement in a case can be further minimized if the clerks and magistrates were allowed to implement and monitor the case management system.

INNOVATIVE TECHNIQUES

In commenting on the draft report, the Administrative Office stated that improved case management techniques alone will not address the backlog problem. It said that one must find new ways through which litigation may be resolved without the necessity for a trial. It suggested such alternatives as eliminating diversity cases from Federal jurisdiction, new methods for handling prisoner petitions, and expansion of arbitration procedures. The Office also cited innovative calendar management techniques and trial setting practices as steps some courts have taken to ease their workloads.

We agree that improvements in court operations other than case management would help ease the burden on the courts. However, it still remains that reducing the number of matters reaching the courts or making administrative improvements in no way diminishes the need for the courts to employ effective case management systems.

The other alternatives to reduce the workload of the courts, while viable options, have either met resistance or are still in the experimental stage. The issue of removing diversity cases from Federal district courts has been debated within the Congress for many years, and no resolution has come about as of this date. The issue of prisoner petitions is also controversial because prisoners' civil rights are protected by Federal consitutional law. (See p. 9 of the report.) Although these legal limitations presently exist, the options suggested would assist in relieving the courts' workload. The third alternative suggested by the Administrative Office deals with the expansion of arbitration procedures. However, the Administrative Office recognizes that this is an experimental project and has only been established in three district courts. The Administrative Office must recognize that the options it presents could be fruitless if additional efforts are not directed towards improving the management of the Federal district courts.

SHOULD SLOW MOVING CASES BE DISMISSED?

The Administrative Office criticizes the report for not sufficiently emphasizing dismissal for lack of prosecution as a management tool. On the other hand, a judge expressed concern that the court cannot always give lawyers firm trial dates, which possibly could increase litigation costs if a trial date was established and then cancelled. The chief judge also stated that it is easy to be ruthless with lawyers at the expense of litigants by dismissing cases for failure to comply with the court's time frames.

The suggestion by the Administrative Office to dismiss cases for lack of prosecutive action is not the best way to address the causes of civil case backlog. The Administrative Office needs to fully recognize the benefits that can be gained by having a sound case management system. For example, on page 14 of the report, we discussed in detail an essential component of any case management system. That component is a case monitoring system to insure that time frames for the various stages of the civil process are met. The performance of this task not only reduces the time needed to process civil cases but also provides the litigants with the assurance that their case is being actively processed by their attorneys. Also, the establishment of firm dates--especially trial dates--should promote out of court settlements. In view of this, we believe the utility of dismissal for lack of prosecution should be placed in proper perspective and should not be confused with the benefits that can be derived from sound case management. Dismissal is a remedy or a sanction that generally comes into play only when a case lacks prosecutive merit or the litigants fail to adhere, without justification, to the time frames or other requirements applicable to the case involved.

The concerns of the chief judge are addressed by the report's recommendation which allows flexibility and yet does not imply strict conformance to required time frames. The report's recommendation provides flexibility to avoid arbitrarily dismissing cases and to ensure litigants do not incur unnecessary litigative cost.

There are two beneficial aspects of a case management system: (1) it brings the lawyers together to discuss the issues which may lead to settlement and (2) the litigants can be assured that their case is being actively litigated.

To the extent courts practice sound case management and litigants become aware of and adhere to the courts management requirements, it clearly will not be necessary to dismiss cases for lack of prosecution. In fact, what may happen is that cases may be settled out of court or merely dropped by the litigants themselves if the soundness of the case is in question.

SAMPLE SIZE QUESTIONED

The Administrative Office said that our sample was not representative because we visited less than 10 percent of the Federal district courts. We agree that we visited less than 10 percent of all district courts; however, our objectives were to determine whether and why a backlog existed and what could be done to alleviate it. As a result, we identified that 60 percent of all cases pending 1 year or longer, as of June 30, 1979, were concentrated in 20 of the 95 district courts. Therefore, we selected 6 of the 20 for detailed review. These six courts accounted for 40 percent of all cases pending 1 year or longer. For further details on scope and methodology, see chapter 4.

By concentrating our review in the six courts that had a severe backlog problem, we believe we were better able to identify the factors contributing to the problem. For contrast purposes, we selected three district courts that were not experiencing a severe backlog problem. In our opinion, if we had taken a random sample of the 95 district courts, we may have concluded that there was no civil case backlog problem, which we are sure that the Administrative Office would have considered inaccurate. Therefore, we believe by identifying the courts that accounted for 60 percent of the problem, and then sampling 30 percent of these district courts, we were able to more thoroughly analyze what should be done to improve the management of civil cases.

NEED FOR ADDITIONAL RESOURCES

Four of the chief judges commented that there is a need within the courts for additional resources, including judges, court personnel, and magistrates to handle their increasing demands. On pages 22 to 24 the report discusses in detail the impact the lack of judicial manpower has had on civil case backlog. However, the question that must be addressed is

whether the courts are using their present resources effectively. Once case management techniques are adopted and court resources are effectively used, the courts will be in a much better position to appropriately determine the manpower needs of the courts.

CHAPTER 4

SCOPE OF REVIEW AND METHODOLOGY

We reviewed the issue of civil case backlog in Federal district courts because of the concerns of the Congress, the Department of Justice, the Judiciary, and the public. We initiated our review to determine whether and why a backlog exists, and what can be done to alleviate or minimize the backlog.

SELECTION OF LOCATIONS

For the purpose of this review, it was necessary to determine what constitutes a backlog in the Federal district courts. In the absence of a definition, we defined a civil case as being backlogged as any case pending 1 year or longer from the date of filing. Based on this definition, data was obtained from the Administrative Office of the U.S. Courts on all cases pending 1 year or longer as of June 30, 1979, in each district court. The cases were aged by 1 year, 2 years, and 3 years or older.

Our analysis showed that 60 percent of the cases pending 1 year or longer were concentrated in 20 of the 95 district courts. Six of the 20 courts were selected for review. All 6 courts were among the 20 with the largest number of cases in the categories 3 years or older and 2 to 3 years or older. Five of the 6 were ranked among the 20 in the 1-year category. To draw a contrast we also selected 3 courts that were not among the 20 courts for any of the 3 categories. In addition to selecting the courts because of their rankings, an additional factor was the availability of our staff to perform the work. The chart below identifies where the courts reviewed ranked among the 95 Federal district courts.

District court	Ranking			
	1-2 yrs.	2-3 yrs.	3 yrs.-over	Overall
A	55	41	51	52
B	34	31	48	36
C	26	32	33	30
D	30	19	18	20
E	16	18	17	16
F	14	12	13	14
G	11	15	9	11
H	9	2	2	4
I	2	1	1	1

The principal field work was performed between December 1979 and June 1980 and included a detailed review of both pending and closed civil cases, 1 year or older, at nine Federal district courts.

SELECTION OF SAMPLE

The Administrative Office of the U.S. Courts provided us with a list of cases pending 1 year or longer as of June 30, 1979, and those cases over 1 year old that were terminated during statistical year 1979 for the nine courts reviewed. From this universe we randomly sampled both pending and closed cases. The following is the universe and our sample size.

District court	Pending cases: 1 year or longer	Pending cases: Sample size	Closed cases: 1 year or longer	Closed cases: Sample size
A	274	77	191	60
B	672	114	236	58
C	805	101	397	75
D	1,003	127	214	60
a/E	1,291	118	438	93
F	1,463	131	351	95
G	1,638	193	899	130
b/H	2,958	124	172	61
c/I	3,697	222	2,176	150
Total	13,801	1,207	5,074	782

a/ A reduction of sample cases was necessary because a substantial number of the cases pending as of June 30, 1979, were closed between July 1979 and March 1980. Therefore, our original sample would not have accurately depicted the court's current operations.

b/ When cases for this court were sampled, the universe of pending cases was reduced to exclude a large number of black lung cases. According to the court these cases were not being actively litigated due to their large numbers and the lack of judges. Including these cases in the universe would have provided an unfair picture of the court's operations.

c/ The universe of pending cases for this court was reduced to exclude a large number of Interstate Commerce Commission rate cases. According to the court these cases were not being actively litigated due to their large number and uniqueness. Including these cases in the universe would have provided an unfair picture of the court's operations.

For each sample, a detailed case analysis was made to identify at what stage in the civil process the cases were delayed. The case analysis was then used in conjunction with an analysis of each court's operations to identify the practice and procedures that expedited the civil process. At each court visited we interviewed the judges, clerk of the court, courtroom deputies, docket clerks, and the magistrates. Comments from these officials were obtained on such topics as: case management, need for judges, use of magistrates, use of the clerk's office, and their opinion as to why a backlog existed.

APPENDIX I

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR
DEPUTY DIRECTOR

November 25, 1980

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for the opportunity to comment on the proposed report to Congress entitled "Federal Civil Case Backlog: A Localized Problem Which Can Be Eased." The report's emphasis on improved case management and more efficient use of existing court resources is welcome. The Administrative Office acknowledges these to be among its most important goals, and encourages identification of problems and appropriate remedies in this area. However, it should be noted that the small sample of courts selected for review (less than ten percent of all district courts) are not necessarily representative, and there could be a more detailed and informative statistical analysis of the available data on case processing. Given the extensive developments in court management in recent years, we feel that the draft report's conclusions should be more clearly substantiated, and the recommendations supported by some analysis of proven case management systems. This report comes at a time when the impact of the Omnibus Judgeship Act is only just being felt, and its effects could not be measured in the courts under review. 1/

As the draft report recognizes at pages 9-10, federal jurisdiction is increasing through new legislation. Improved case management techniques alone will not suffice to address the backlog problem. In this context, it is necessary to find new mechanisms through which numerous categories of litigation may be resolved without the necessity for trial in a federal court, or at least under conditions which exhaust settlement mechanisms prior to court involvement. Some of these techniques which should be further explored are:

1. Further consideration of reducing diversity jurisdiction through possible adoption of the recommendations of the American Law Institute. Our 1980 Annual Report reflects that of a total of 154,985 cases were disposed of in the district courts and of these 34,727 were diversity cases. The median time from filing to disposition for the 9,490 diversity cases disposed of by trial was 20 months.

1/Although increased resources will help, there is also a need for many courts to improve the use of resources they do have by better management of their caseloads.

2. Encouragement of administrative screening for state and federal prisoner petitions so that the fact-finding procedures can be exhausted before court involvement. In statistical year 1980, a total of 13,000 prisoner civil rights cases were commenced vis-a-vis 11,783 in fiscal 1979.

3. Expansion of arbitration procedures. The Federal Judicial Center is monitoring a research project on arbitration which was established in three districts by local rule. It would seem minimally that arbitration could be available as an alternative where backlogs are prevalent and severe.

Some innovative calendar management techniques could be discussed, for example putting one or more judges on a criminal case rotation for a period of time, in which they handle all criminal matters arising in that period. The remainder of their calendar assignment would be an identifiable block of time in which civil cases could be scheduled heavily without fear of disruption necessitated by speedy trial concerns, and in which no new criminal matters would be received. This arrangement has worked successfully for judges and for magistrates in several medium-size courts. Another significant omission in the draft report is the absence of discussion on trial-setting practices. The report recognizes that most judges consider a firm trial date crucial to early case settlement, but does not discuss the relative merits of "casestacking" (i.e. setting more than one case for trial on the same date), arrangements of trial calendars, etc. Courts where the Clerk's Office has responsibility for calendar control tend to "stack" cases for trial (based on their perceptions of which cases will settle) somewhat more readily than when judges or their personal staffs set the calendar.

Techniques based on routine case disposition (to achieve what the report refers to as "Uniform Court Procedures" on page 24) may not apply to protracted or complex litigation, multidistrict litigation, or large class actions. While some of the suggestions for establishing deadlines and time frames in the report are provocative, they simply do not apply to highly complex cases or those with numerous parties. This should be acknowledged in the report and cross-reference made to the Manual on Complex Litigation and the rules of the Multidistrict Litigation Panel. For similar reasons we question the proposal to modify the Federal Rules of Civil Procedure to include maximum time frames for the various steps in the civil process, subject to waiver (page 24). The Federal Rules are calculated to achieve uniformity in those procedures capable of uniform application. It is not realistic to include in them maximum time limits to fit the conditions of every case whether it is a large antitrust case, involving an entire industry on the one hand, or a pro se prisoner petition on the other. Guidelines appropriate to various categories of litigation might be more appropriately advocated if local procedures of more uniform character are needed, but such

guidelines should not treat all federal civil cases as fungible or even closely related. This can be readily demonstrated by reference to table 37 (cases pending three years or more) in our 1980 Annual Report to the Director. There is such a vast difference in the kinds of litigation reflected in that table (copy enclosed) that no rigid time frame could be applied. 1/However, guidelines could establish some reasonable norms in processing certain categories of cases, which would be a more flexible approach to the enormously varying conditions in 95 district courts and the different kinds of litigation within any given court.

The draft report does not sufficiently emphasize the utility of dismissal for lack of prosecution as a case management tool. It is omitted from the table of local rules which expedite the civil process (page 12) although the majority of courts have such a rule, and it is mentioned only briefly on page 15, with no specific time interval recommended. 2/The report should advocate a systematic screening of inactive cases which would provide for dismissal without prejudice after six months, or no longer than one year. It would be interesting to learn the review team's findings in the cases which they examined, i.e. what percentage of cases over one year old had no docketed entries for over six months or over one year. 3/

Regarding greater use of magistrates, the draft report recommends that the Judicial Conference encourage the district courts in this endeavor. It has been the strong and persistent policy of the Judicial Conference and its Magistrates Committee over the years to encourage maximum utilization of magistrates. This has been done through the jurisdictional checklists, manuals, model rules, sample orders, seminars and workshops, and a variety of reports and memoranda. The statement of page 21 that "the courts generally do not effectively use" magistrates is too broad and misleading. Obviously, certain courts and certain judges use magistrates more effectively than others. Each court must appraise its own needs and preferences. In some districts it is a better application of this resource to use magistrates in certain categories of litigation, such as social security or prisoner cases, than on pretrial and discovery. Although the expanded jurisdiction of the magistrates is relatively new, the courts are gradually developing its potential, and we feel that the sample of courts reviewed by the GAO team is not in fact representative of the district courts as a whole, many of which use magistrates extensively.

A recommendation as to more adequate pretrials was advanced in the Senate document "Court Management Study," Senate Committee on the District of Columbia, 91st Cong. 2d Sess., as reflected in the enclosed extract. 1/This recommended that the judge trying the case should hold a pretrial conference

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1/Enclosure deleted from comments.

2/The local rules illustrated on page 12 of the report are examples that expedite the civil process while maintaining the quality of justice, unlike the rule emphasized by the Administrative Office.

3/Forty percent of the cases pending 1 year or longer had no docket entries for over 6 months.

shortly before the trial date. This not only expedites the trial and explores early settlement, but tends to reduce "court house door" settlements and the consequent waste of a summoned jury panel and staff time. The review team may wish to refer to this recommendation in their report. 1/

With reference to the statistics, we would like to see more discussion regarding the basis of the tables and what the data reflects. (Perhaps appendix tables will be included in the final report.) On page 17, median time intervals are given which reflect days from date of filing to disposition. These medians would be more meaningful if they reflected judge activity; at present they do not distinguish cases in which a judge or magistrate acted, from those which are dismissed by local rule (25 to 35 percent of all dismissals). This distinction would also be valuable in the table on page 18; is credit given equally to all closed cases whether or not there was court action? In court G, what case types are represented in the 495 cases closed by Judge 1? 2/ Although outside of the scope of this report, it would be interesting to know whether the dispositions of a "controlled calendar" judge are more frequently appealed than those of a judge who permits the bar to control the pace of litigation. 3/

On page 16, nine district courts are shown with the number of cases pending one year or longer as of June 30, 1979. Tentatively identifying Court I as Massachusetts, Commerce I.C.C. rates cases are missing; this district had a total of 9,613 civil cases pending one year or longer, of which 5,916 were I.C.C. Other "nature of suit" categories appear to have been omitted from the remaining districts, but without seeing the original data we cannot determine if the figures are correct. 1/

On page 3, the section on "Administrative Structure of the Judiciary" notes that there are three levels of judicial administration plus the Administrative Office, but in the discussion judicial councils in the circuits are omitted. These councils were specifically created by the Congress to "make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit." 1/

In summary, we endorse the report's recommendations regarding effective delegation of strong case management to the clerks of court, and greater utilization of the magistrates as a resource. We do not feel that modification of the Federal Rules of Civil Procedure is an appropriate means by which to reduce civil backlog; rather, we recommend expansion of mechanisms to resolve civil litigation without trial, and further analysis of innovative and exemplary case management techniques which can be applied to the individual circumstances of each district court.

1/Changes made to report on pages 4,13,16, and 35.

2/At the present time there is no data available to measure judge activity on any particular case. The magistrates participation in cases we reviewed was minimal, because they were filed prior to the passage of the Magistrate Act of 1979. Court G assigns cases to judges on a lottery basis eliminating the possibility that judge 1 was assigned only noncomplex cases.

3/As the Office recognizes, such an undertaking was not within the scope of this report.

APPENDIX I

Once again, let me thank you for the opportunity to file our comments.

Sincerely yours,

William E. Foley
Director

APPENDIX II

CHAMBERS OF
EDWARD S. NORTHROP
CHIEF JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE 21201

November 4, 1980

Mr. William J. Anderson
Director
United States General
Accounting Office
General Government Division
Washington, D. C. 20548

Re: GAO survey — Federal Civil Case Backlog

Dear Mr. Anderson:

I acknowledge receipt of your letter of October 28, 1980, enclosing a copy of your proposed report to Congress on the federal civil case backlog. I sincerely appreciate your courtesy in permitting me to read the draft report before it is finalized.

I would certainly agree with the basic recommendations made in the digest of the report. The recent 1980 Annual Report of the Director of the Administrative Office confirms a major problem of this District, i.e., that our magistrates are required to devote an enormous amount of time to the handling of petty and minor offense cases generated through our Central Violations Bureau on federal enclaves throughout Maryland. I enclose excerpts from that Report which show that magistrates in this District handle a greater volume of these matters than their counterparts in the 25 largest courts in the country.1/ Quite obviously, this minor criminal work seriously limits the amount of time they can expend on the civil caseload of this Court. Without additional magistrate manpower, we would have great difficulty in further utilization of our magistrates.

Moreover, I feel that the current criteria for allocating judicial manpower leaves much to be desired. Enclosed is a tabulation showing the trial time (all in-court time) of the judges of this Court, the District of Columbia, in the other courts which were the subject of the Federal Judicial Center District Court Study, and all other district courts having nine authorized judges.1/These statistics clearly indicate the enormous amount of time our judges spend on the bench —

1/The enclosure has been deleted.

a factor not taken into account in the allocation of judicial manpower. Case filings are not only inaccurate; they can be manipulated. We have avoided playing the numbers game and have probably suffered as a result. However, I feel that the enclosed tabulation clearly indicates our judges are working at full capacity; and that the pending caseload is increasing, notwithstanding our emphasis on case management and control.

We also suffer from a chronic shortage of clerical personnel because of the numerical criteria used for assigning support personnel, based on existing judgeships. We feel some subjective criteria should be used in this area. With additional clerical personnel, we could increase the amount of time spent by the Clerk's Office on case management and control, without reducing the time spent on docketing procedures which is essential for the maintenance of court records.

I note that on page 2 of your proposed report you speak of the decline in criminal cases. While the sheer numbers of criminal filings has declined, the complexity of these cases certainly has not. Rather, the complexity factor has increased, so that while we have fewer cases, the caseload requires more time, both in the pretrial stage and in the trial stage. Unfortunately, this District has a long history of complex, multi-party criminal litigation which has consumed an enormous amount of the time of our judges and supporting staffs.

I believe the members of your task force collected some data showing that as our criminal pending caseload was reduced by reason of the Speedy Trial Act, the civil pending caseload increased. This trend continues, particularly because this District has a large criminal docket, and our judges must concentrate most of their trial effort and time on their criminal docket, to the detriment of the pending civil docket.

It was a pleasure working with your personnel, and if we can provide any additional information, please do not hesitate to contact us.

Sincerely yours,

Edward S. Northrop

ESN:ps
Enclosures

APPENDIX III

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK, VIRGINIA 23510

CHAMBERS OF
JOHN A. MACKENZIE
CHIEF JUDGE

November 6, 1980

Mr. William J. Anderson
Director, U. S. General
Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

This is in response to your request of October 28 in which you invite comments to your draft report on case management.

For judges of the Eastern District of Virginia, we would make four points:

1. Amendments to the Federal Rules of Civil Procedure to set out specific court administration time for steps in the progress of civil litigation would not be in the best interest of the solution of the problem. We would be establishing a "Speedy Civil Trial" Act, the foolhardiness of which is already manifested in the "Speedy Trial Act" for criminal prosecutions.

2. Flexibility has to be retained without stringent restrictions so that litigants and courts can accommodate themselves to different problems.

3. Continuous contact with the court is the key, whether through status reports or some other scheduled meeting, but this need not be declared by rule.

4. Coerced uniformity might speed up terminations, but it would not necessarily indicate justice done.

Very truly yours,

John A. MacKenzie
Chief Judge, U. S. District Court

JAM/agw

APPENDIX IV

United States District Court
DISTRICT OF ARIZONA
UNITED STATES COURTHOUSE
PHOENIX, ARIZONA 85025

C. A. MUECKE
Chief Judge

November 17, 1980

Mr. William J. Anderson
Director
U.S. General Accounting Office
General Government Division
Washington, D. C. 20548

Dear Mr. Anderson:

Essentially my disagreement with the approach taken by the G.A.O. audit group toward our civil case backlog at the time they made their survey is that they had an opinion, a fixed approach to the problem when they discussed the project with me, which made no allowances for other points of view.

It was their opinion that if only the federal judges would insist on a short and fixed deadline for the preparation of civil cases, like magic all our backlog of cases would have disappeared.

Unfortunately this did not take into account several factors which existed at that time in our district.

The first and foremost was not enough judges. This combined with the provisions of the Speedy Trial Act as this applies and gives priority to criminal cases, caused our backlog.

It is easy to say that we ought to make all lawyers prepare their cases for trial promptly and at a fixed time. This would be absolutely true, if we could then give a prompt trial setting. But if we cannot do that, then cases have to be prepared twice, once to meet a pretrial deadline, and secondly just before the trial which could come one to two to three years later. This only increases the cost of litigation.

We press for pretrial deadlines in all cases, but have allowed some leaway for the reasons I have stated.

It is also easy to be ruthless with lawyers at the expense of litigants. By that I mean a case can be dismissed for failure to comply with the Court's orders, but that does not result in justice for the litigants, it merely gives them a malpractice action against their lawyers. Presently we now have a full complement of judges as a result of the last Omnibus bill, and we are moving our cases to trial and are insisting on deadlines for pretrial preparation. In fact I've instructed our Clerk to give all of our judges (there are now ten of us) a list of cases every three months that are two or more years old as of June 30, 1981, and have encouraged competition between us to reduce our backlog.

Sincerely,

C. A. Muecke, Chief Judge

United States District Court
FOR THE
Eastern District of Kentucky

CHAMBERS OF
BERNARD T. MOYNAHAN, JR.
CHIEF JUDGE

Lexington, Kentucky
November 19, 1980

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I have received your letter of October 28th regarding your proposed report to the Congress concerning civil case backlog in the Federal District Courts.

While your suggestion as to a case management system probably has merit, the adoption of such a plan is absolutely meaningless in resolving the problems of this District within any reasonable period of time. After many accumulated years of judicial vacancies, we now have an adequate complement of Judges but an insurmountable backlog of civil cases.1/ These civil cases could be reduced somewhat if the Judges were able to devote any appreciable time to them; however, a new specter has now reared its head; namely, compliance with the Speedy Trial Act.

The emphasis on "white collar crime" with the attendant length and complexity of criminal trials flowing from this area of the law is now requiring that our Judges devote almost all of their attention to the management of the criminal docket. The "chickens" of the Speedy Trial Act have now come home to roost and a case management system will avail nothing because the Judges are still not available to handle the cases.

Until Congress becomes aware of the problems which it creates by the spawning of new legislation and the increasing resort to the Courts by the public, I see no meaningful solution to the matter.

Very truly yours,

Bernard T. Moynahan, Jr.
Chief Judge

BTM:dmw

1/The court's problem is discussed on page 23 of the report. However, if the court is to reduce its backlog it must implement some type of management system.

APPENDIX VI

United States District Court
Post Office and Courthouse Building
Boston, Massachusetts 02109

CHAMBERS OF
ANDREW A. CAFFREY
CHIEF JUDGE

November 24, 1980

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for your letter of October 28 in which you enclosed a proposed draft of your report concerning civil backlog in the federal district courts.

Please be advised that I have read the report which I believe to be carefully prepared and I have no further comment. Thank you for your courtesy in sending it to me.

Sincerely,

Andrew A. Caffrey

AAC/bac

APPENDIX VII

United States District Court
Southern District of Indiana
Indianapolis, Indiana 46204

Chambers of
William E. Steckler
Chief Judge

November 24, 1980

Mr. William J. Anderson
Director, United States General
Accounting Office
Washington, D. C. 20548

Re: Draft of A Proposed Report
Federal Civil Case Backlog: A Localized Problem
Which Can Be Eased.

Dear Mr. Anderson:

Pursuant to your request, I have carefully analyzed the Draft of A Proposed Report. As a general conclusion, I fully agree with the draft and the recommendations contained therein. More specifically, while prescribed time frames will not be a cure-all, I agree that the Federal Rules of Civil Procedure should be modified to include specific time frames for various steps in the civil process, and to require each court to establish time frames within the prescribed limits. I cannot believe, however, that modification of the Rules to that end will be an easy accomplishment. Great resistance at the hands of the organized bar, not to mention much of the judiciary, will make the task difficult to accomplish. Modern discovery practices are a major time-consuming factor in the processing of civil litigation and much of a lawyer's billable time is attributable to discovery work, a source of income not likely to be relinquished without resistance. However, if reasonable time frames, subject to extension for good cause shown, are provided in the modifications of the Federal Rules of Civil Procedure, the organized bar, in my opinion, will show less resistance to the proposed rule change. In any event, until adoption of uniform procedures for the early definition of time frames for processing civil litigation is required of the district courts, this one key element of a strong case management system will not be accepted generally by the bench and bar.

To improve the operations of the federal district courts and to reduce the backlog of civil cases, the draft report recommends that the Judicial Conference should modify the Federal Rules of Civil Procedure to include maximum time frames for various steps in the civil process and require each court to establish time frames within those limits.

APPENDIX VII

Also, that the Federal Rules should allow a judge to waive the time limits because of case complexity or for good cause shown but that the waiver should be adequately justified. This proposal strikes me as being the logical approach in the process of bringing about the procedural change to achieve uniformity among the courts and their judges in prescribing time frames for the processing of civil cases.

A second recommendation in the report is that the district courts should better utilize the clerks' offices in the administration of the courts; in particular, that the clerks should be responsible for the administration of the courts' case management and docket control systems. In general, I agree with this recommendation. However, until the clerks' offices are staffed with a complement of paralegals, or with staff attorneys, whose duty would be to screen the cases and invoke effective monitoring, I question whether the clerks' staffs as presently staffed have either the time or competence to exercise full responsibility for the courts' case management and docket control systems. In this connection, it is my view that the optimum achievement is to be gained through the so-called "team approach," that is, by the courtroom deputy clerk, the docket clerk, the judge's law clerks, his secretary, and the judge himself being involved in the calendar control process. 1/

The draft report speaks of having the judges adopt uniform case management and docket control procedures, and to assign the administration of such a system to the clerk's office, and that then the clerk's office and the judges work in tandem to enforce the system. This, to a great extent, is the practice followed in the Southern District of Indiana. However, we have found that it is preferable to have one person in the clerk's office assigned to a judge as a courtroom deputy clerk to be the person responsible for case management and calendaring the cases. This individual in the clerk's office is the person directly responsible to the judge and his staff in keeping open the line of communication between the judge and his staff and the attorneys in the cases. The direct relationship and communication between the judge and his staff and the clerk's office through the courtroom deputy clerk has been found to be the most effective means of coordinating the judge's efforts with those of the clerk's office and the members of the bar. Thus, the role of the courtroom deputy clerk takes on added importance in the adjudicative processes.

1/Such an approach can only work if the court as a whole adopts a uniform case management system.

Basically, I disagree with the definition of a backlog as being those cases which have been pending in the court for one year or more after being filed. I am inclined to the view expressed by the officials in the Administrative Office defining a backlog as cases where the parties are ready to go to trial but the court is unable to try the cases. The one year criterion appears to be an arbitrary standard, one that is suitable for the purpose of the General Accounting Office's staff in conducting its study and making its report of its findings in respect to the lack of uniformity among the courts in adopting and applying time frames in processing civil cases, but beyond that purpose the one year criterion fails to take into account the contributions of senior judgeships in those districts having no serious backlog, where senior judges are actively contributing their services in order to cope with the caseload pressures in their district.1/ The Administrative Office in reporting the average caseload per authorized judgeship does not count the senior judgeships in arriving at the average caseload per judgeship reported. This is a factor that should not be overlooked when comparing the experience of one district court with another.

I agree fully with that part of the draft recommending that the Judicial Conference should encourage the district courts to make greater use of the magistrates as provided in the Federal Magistrate Act of 1979. Indeed, the Southern District of Indiana has three full-time magistrates whose services are fully and completely utilized and without whose services our district would be suffering an even greater backlog than it is. Why any court would not make full use of the magistrates' services is incomprehensible to a judge who has had as good an experience as our court has had.

There are numerous other factors which have contributed to the civil case load and backlog in the federal district courts which cannot be classified as a localized problem. These, for example, include the increased lawyer population and the greater accessibility to the courts as the Congress has provided through the numerous legislative enactments during the last ten to fifteen years. These factors, of course, justify the courts' taking a new look at their present procedures. If by adopting time frames within which to process civil litigation a part of the increased pressure may be met in a more satisfactory manner than we are able to accomplish today, then that should be done.

1/For the most part senior judges did not significantly contribute to reducing the backlog in the courts visited.

APPENDIX VII

It was a pleasure to work with the members of your staff -- Willie Bailey, Tim Whalen, and Deborah Smith. I predict that real benefits will come from the results of your study.

Cordially,

William E. Steckler

APPENDIX VIII

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES COURTHOUSE
LOS ANGELES CALIFORNIA 90012

CHAMBERS OF
A ANDREW HAUK
CHIEF UNITED STATES DISTRICT JUDGE

TELEPHONE
688-5272

November 26, 1980

William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Dear Sir -

Thank you for your letter of October 28, 1980, and for allowing us the opportunity to review the Draft Report to Congress concerning civil case backlogs in Federal District Courts and extending the opportunity to comment on the same until December 10, 1980.

First, let me state that the Judges of this Court are in general agreement that in order to promptly dispose of civil litigation, the Court and not the litigants must control the progress of the litigation. To this end, the Court has had a rule of longstanding that any action which affects the progress of the litigation must be approved by the Judge assigned to the case. We have also had rules of longstanding governing our motions practice, discovery and pre-trial scheduling. With respect to our motions practice and pre-trial schedules, we have recently modified our rules with a view to establishing more uniformity in the Court and tightening up on the control of these phases of case processing.

We do, however, have some concerns with your Draft Report and I offer the following comments in this regard.

In your Draft Report you have defined a backlog as those cases which have been pending in the Court for 1 year or more after being filed. While you have noted that some Judges believe that case complexity can cause a minority of cases to be pending for over a year, we believe that the issue of case complexity should be more fully developed so that the uninformed reader clearly understands the unavoidable impact of these cases and why they do not lend themselves to disposition in a year or less. This becomes particularly important when considering the charts on pages 16 and 18 of the Draft Report.

APPENDIX VIII

The chart on page 16 purports to illustrate the effectiveness of good case management on the number of cases pending 1 year or longer. The raw figures set forth in column 3 of that chart may, in and of themselves, be meaningless because the Draft Report fails to relate the figures to the total number of pending cases and case complexity. 1/

A better method of illustrating your point would be to indicate what percentage of the total cases pending had been pending 1 year or longer as of June 30, 1978, and of that percentage what percentage consisted of non-complex litigation which could lend itself to disposition in less than 1 year.

The chart on page 18 may also be misleading because it fails to relate the raw figures in column 3 to case complexity. When examining the median time for disposition of all cases we note that this District median time is six months (120 days based on a 20 day work month). 2/

We recognize that many cases filed can be disposed of quickly. However, when dealing with a complex patent, trademark, multi-defendant securities, or aircraft crash case, for example, even though the Court may be in a position to try these kinds of cases, the case may not be ready for trial for several years. As a result we find this minority of complex cases in increasing numbers when we examine cases one year or older.

Of major concern is the failure of the Draft Report to examine the impact of the criminal case loads on the work of the District Courts. Criminal case loads have a substantial effect on the civil calendar. As you know, Congress has mandated that criminal cases take precedence over all other business of the District Courts. The Speedy Trial Act sanctions which were not in effect at the time the Draft Report was written are now applicable and an additional significant impact on our workload is taking place. Additionally, criminal case complexity is having a significant impact on the District Courts workload. This District, for example, has experienced a 9.1% increase in the number of complex criminal cases filed, raising the percentage of complex criminal cases from 32.4% in Fiscal Year 1979 to 41.5% in Fiscal Year 1980. In view of this, we believe your recommendation to place additional time constraints on the processing of civil cases is premature. Such action could have an adverse effect on the Court's ability to manage all of its cases and should not be considered until the full impact of the Speedy Trial Act has been thoroughly reviewed.

On pages 22 and 23 of your Draft Report you discuss, as a contributing factor to the civil backlog, the lack of Judicial manpower resulting from illness or involvement in complex cases that consumed a great deal of time. What you have not discussed is the failure of Congress and the President to anticipate judicial vacancies and to fill such vacancies promptly. Allowing these vacant judgeships to remain unfilled for long periods of time contributes to the civil backlog.

1/Total number of cases pending as of June 30, 1979, added to chart on page 16.

2/This figure is misleading because it fails to take into account the total pending workload of the court. Further, the court has local rules that encourage the development of a case management system, but only 23 percent of the judges enforce the rules. This is significant because the court endorses the concept of case management.

APPENDIX VIII

A review of the historical data since 1969 shows that it has taken an average of 11.4 months to fill vacant judgeships in the Central District of California. Since June, 1975, this court has lost 93 judge months (7 years 9 months) because of the failure to promptly fill vacant judgeships.

With regard to the recommendations contained in the Draft Report concerning the expanded use of Magistrates to assist in civil case processing, this Court has utilized Magistrate resources fully to handle many facets of District Court work including discovery matters and prisoner petitions. Because of the heavy demands made on the Magistrates in those areas where they are assisting in the District Court work, we believe additional Magistrates are vitally necessary if there is to be an expansion of their duties in connection with civil litigation. The comment in the report that Courts which could have more effectively utilized Magistrates did not do so primarily because Judges would not relinquish such duties to them does not take into account that in this Court, for example, it is not practicable to do so until additional Magistrates resources are made available. In any event, in order to fully evaluate the effectiveness of Magistrates in accelerating the disposition of civil cases in the District Courts, an accurate analysis cannot be made until some time after the Magistrates are certified to try civil cases and sufficient time has elasped to develop meaningful data. 1/

The comments contained in this letter express a consensus of the views of the Judges of the Court. We hope that you find these comments useful and that they will be taken into consideration when preparing your final report.

If you wish to discuss any of the comments, please feel free to contact me.

Sincerely,

AAH:irm

1/At the time of our review this particular court had not certified its magistrates as authorized by the Federal Magistrate Act of 1979.

APPENDIX IX

FRANK J. BATTISTI
CHIEF JUDGE

United States District Court
Northern District of Ohio
Cleveland, 44114

December 2, 1980

William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for submitting a copy of your proposed report detailing problems arising from the onerous civil caseload currently confronting Federal district courts. Two aspects of the report's recommendations to the Judicial Conference evoke the following brief comments.

It has been recommended that the Federal Rules of Civil Procedure be modified so as to include maximum time frames for the various steps in the litigative process. Such time limitations are presently not established by the Federal Rules and are instead the subject of myriad local rules throughout the country. The suggested uniform time frames will undoubtedly serve to expedite the civil process. I have often advocated the continued need for national uniformity of procedural rules in the face of the proliferation of diverse local rules. The diversity of local time limitations is, in my opinion, symptomatic of a more general problem.

Your report recommends that district courts make greater use of the magistrates as provided in the Federal Magistrate Act of 1979. Personal experience in this regard allows me to concur in this recommendation and to comment that I have found the use of magistrates in pre-trial proceedings to be especially useful.

Sincerely,

FJB:ffk

Frank J. Battisti

U.S. Department of Justice

DEC 15 1980

Washington, D.C. 20530

Mr. William J. Anderson
Director
General Accounting Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Federal Civil Case Backlog: A Localized Problem Which Can Be Eased."

The draft report recommends that the Judicial Conference modify the Federal Rules of Civil Procedure to include maximum time limits for various steps in the civil process and require each court to establish time frames within these limits, encourage the district courts to better utilize their clerks' offices in the administration of the courts, and encourage the district courts to make greater use of magistrates as provided in the Federal Magistrate Act of 1979.

The above matters are of interest to the Department and are related to some of the major projects being undertaken by the Office for Improvements in the Administration of Justice. Although we recognize that the principal concern and responsibility over the matters addressed in this report lie with the Federal Judicial Center and the Administrative Office of the United States Courts, we are taking this opportunity to provide some general observations.

Two of the three main findings of the report reaffirm the results of prior studies, namely, that in the area of judicial administration, (a) an effectively implemented case management system is markedly beneficial for courts with heavy case loads, and (b) adequate use of court clerks is very important in reducing case backlog. The General Accounting Office's (GAO) view--that Federal courts which have effectively implemented case management systems and which actively utilize court clerks to assist in processing civil cases experience a lesser backlog problem--is well supported by research that the Federal judiciary recently conducted through the Federal Judicial Center.

With regard to the third finding and recommendation in the report--that magistrates are not being fully utilized in Federal courts and that increased use of magistrates can help courts operate more efficiently--more data may

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be necessary before such a finding can be definitely ascertained. It is known that the frequency and nature of use of magistrates varies among district courts, but more research is needed to draw conclusions about what this implies, particularly since the expansion of the Federal magistrate's role and the increase in the number of Federal magistrates did not begin to materialize until as recently as October 10, 1980.1/

GAO's recommendation to the Judicial Conference that the Federal Rules of Civil Procedure be amended to include maximum time limits for the various steps in the civil process is of special interest to the Department. It is apparent that amendments to the Federal Rules of Civil Procedure will probably produce improvement in the efficiency of the civil process, and at the very least will send a message to the judiciary that greater efficiency is a goal to be emphasized. The recent experience of the Federal judiciary in trying to deal with the backlog problem by improving the management and administration of the judicial system suggests that effective reform is difficult to achieve because of the many different variables subject to control. It is not clear that a uniform and centrally administered case management system would work well for a judicial system that is highly localized in nature, that is characterized by notable differences among its judges, types of cases, workload, legal culture and so forth, and in which diversity of approach and room for inventiveness have been traditionally regarded as desirable features. The fixing of maximum time limits, while it deserves further study, is a hopeful way of imposing an organized framework on the litigants. Care would have to be taken so that litigants do not expand procedural tasks to fill available time, but on balance the benefits from some kind of time limits would seem to outweigh this rather unlikely disadvantage. The Department is interested in pursuing the concept of time limits as an aid to judicial efficiency.

The above observations also suggest that the establishment of time frames should contain some degree of flexibility to allow for the variety and complexity of litigation. While the objective of the case management system should be to achieve a reduction of the civil case backlog and provide for effective management of caseloads, care must be exercised to assure that the system does not become an end unto itself with disregard for a viable civil process.

The Federal Rules of Civil Procedure were enacted to provide the procedural framework in which the interests of the litigants and the fair application of the Nation's civil laws are paramount. On the other hand, while it is true that the interests of the litigants are important, it is also true that the interests of society in an orderly and efficient justice system are important. In our opinion, the balancing of these two issues argues in favor of stronger control by the judiciary over the litigants before them in the form of time limits which are established early, tailored to the circumstances of each case, firmly but fairly maintained, and accompanied by other methods of sound judicial management.

1/The Federal Magistrate Act was passed October 10, 1979, not 1980.

We appreciate the opportunity to comment on the draft report. Should you desire any additional information, please feel free to contact me.

Sincerely,

Kevin D. Rooney
Assistant Attorney General
for Administration

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