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GRASS ROOTS PROCEDURE: LOCAL ADVISORY GROUPS AND THE CIVIL JUSTICE REFORM ACT OF 1990

Lauren K. Robel[*]

I think it important that the groups illustrate that the federal courts are not the exclusive domain of the district judges. They belong to all of us and each of us has a responsibility to make them work as effectively for people as is possible.[1]

INTRODUCTION

The question of whether federal civil justice needs reform at all appears to have been overtaken and, perhaps, rendered moot, by current events. The Civil Justice Reform Act of 1990 ("CJRA" or "Act") mandated that one version of civil justice reform occur in every trial district in the country.[2] Even now, a Civil Justice Reform Act of 1993 is pending in the House that would unsettle such longstanding traditions as the American Rule regarding attorneys' fees.[3] Both the 1990 legislation

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[1] Member, Civil Justice Reform Advisory Group, Survey No. 53 (on file with the author) (Response to survey described in Part III, *infra*).

[2] Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471-82 (Supp. IV 1992) [hereinafter CJRA].

[3] Civil Justice Reform Act of 1993, S. 585, 103d Cong., 1st Sess. 1 (1993). The bill is sponsored by Senators Grassley and DeConcini. Senator Grassley notes, "The purpose of our bill . . . is to improve deserving parties' access to the federal courts by reducing the volume of frivolous cases, to reduce the costs of federal civil litigation, and to encourage settlement of disputes." *Id.* at 4. The Act includes a modified English Rule on attorneys' fees that awards prevailing parties in federal diversity cases reasonable attorneys fees. The bill also includes a modification of Rule 68 that "allows any party, plaintiff or defendant, to offer a settlement at any point in the litigation. If the offer is declined and the party receiving the offer gets a final judgment that is not more favorable then that party is responsible for the offeror's attorneys fees." *Id.* Other provisions require a 30 day notice period

and the proposed bill reopen the question of who should be involved in designing and enforcing whose vision of "reform."

The tradition of our recent history, at least since 1938, left federal civil procedural innovation firmly in the hands of the "judiciary and their expert advisors,"[4] with only intermittent, if disquieting, interest in the details from Congress.[5] The Federal Rules of Civil Procedure ("Federal Rules") were drafted by a group of elite lawyers, judges and academics,[6] and the drafters have remained those at the top of the profession ever since. Even the 1988 amendments to the Rules Enabling Act, intended to open the process up, relied on a very weak administrative law model of notice and comment.[7] The rulemakers were told to listen, but they retained the power to ignore.

Congress has come close to exploding this model in the CJRA. Indeed, the very existence of the CJRA is testimony to the Congress' new interest in the details of procedural justice in the federal courts. As first proposed, the legislation would have required federal trial districts to adopt a host of case management and alternative dispute resolution ("ADR") procedures,[8] and it was only through the determined lobbying of the Judicial Conference, the judges themselves and, eventually, the organized bar that the judiciary managed to regain control of the actual implementation of reform in the courts.[9]

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before suit is filed and would limit opinion evidence on the same issue to one expert for each party.

[4] Linda S. Mullenix, *The Counter-Reformation in Procedural Justice*, 77 MINN. L. REV. 375, 379 (1993); *see* Stephen N. Subrin, *How Equity Conquered the Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PA. L. REV. 909 (1987).

[5] For example, Congress subjected the proposed Federal Rules of Evidence to two years of review, and made considerable changes in them before enacting them. *See generally* WINIFRED R. BROWN, FEDERAL JUDICIAL CENTER, FEDERAL RULEMAKING: PROBLEMS AND POSSIBILITIES 60-61 (1981). Brown noted that after the controversy surrounding the evidence rules, "Congress went on to examine at length, and make major and detailed revisions in, criminal rules submitted in 1974 and habeas corpus amendments submitted in 1976." *Id.* at 3.

[6] Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1045-46 (1982); Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. CHI. L. REV. 494, 498-501 (1986).

[7] *See* The Judicial Improvements Act of 1988, 28 U.S.C. § 2071 (1988) (requiring open meetings of the Advisory Committees, periods of public comment and public hearings on proposed rules changes).

[8] *See* S. 2027, 101st Cong., 2d Sess. (1990).

[9] For a description of this lobbying effort, see Lauren K. Robel, *The Politics of*

The argument over control of rulemaking between the legislature and the courts, however, is an old one.[10] A more novel aspect of the CJRA is its creation of ninety-four district court advisory groups charged with reinventing procedures at the trial court level.[11] Congress' decision in the CJRA to decentralize procedural decisions is particularly startling when one remembers that its last foray into local proceduralism was to attempt to curtail it.[12]

These local Advisory Groups have changed the dynamics of civil justice reform at the national level in a number of important ways. First, members of these groups have unprecedented access to information about the federal district courts, and have been legislatively charged with investigating local practices, thereby opening the courts to new public scrutiny. While their power is constrained by the legislation,[13] their charge is as broad as can be imagined: to decrease cost and delay in the

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Crisis in the Federal Courts, 7 OHIO ST. J. ON DISP. RESOL. 115, 128 (1991).

[10] *See, e.g.*, CHARLES W. GRAU, JUDICIAL RULEMAKING: ADMINISTRATION, ACCESS AND ACCOUNTABILITY 7-23 (1978); JACK B. WEINSTEIN, REFORM OF COURT RULE-MAKING PROCEDURES 77-89 (1977). That the division of authority over rules between the legislature and the courts still generates controversy is evidenced by the strong claims made by the Senate Judiciary Committee and the response of the testifying judges to those claims. *Compare The Civil Justice Reform Act of 1990 and the Judicial Improvements Act of 1990: Hearings Before the Senate Comm. on the Judiciary*, 101st Cong., 2d Sess. 60-75 (1990) (claiming Congressional power to enact procedural legislation) [hereinafter *Hearings*] *with* Linda S. Mullenix, *Unconstitutional Rulemaking: The Civil Justice Reform Act and Separation of Powers*, 77 MINN. L. REV. 1283 (1993). I have argued elsewhere that Congress had the power to enact the CJRA. *See* Lauren K. Robel, *Fractured Procedure: The Civil Justice Reform Act of 1990*, 45 STAN. L. REV. (forthcoming 1994).

[11] 28 U.S.C. §§ 472, 478 (Supp. IV 1992).

[12] *See* The Judicial Improvements Act of 1988, 28 U.S.C. § 2071 (1988). A reaction to the proliferation of local rules under the authority of Federal Rule of Civil Procedure 83, the legislation requires "appropriate public notice and an opportunity to comment" to precede the adoption of local rules, 28 U.S.C. § 2071(b), formalizes a system of review of local district court rules by judicial councils within a circuit, and authorizes those councils to abrogate local rules inconsistent with Federal Rules. *Id.* § 2071(c)(1). A coordinate amendment to 28 U.S.C. § 332 (1988) requires the judicial councils to perform a substantive review of these rules. See *Id.* § 332(d). Finally, the statute provides that it is the exclusive avenue for prescribing local rules, which is an attempt to avoid the promulgation of the equivalents of local rules under other rubrics, such as "standing orders." *Id.* § 2071(f) comment (1988).

[13] For instance, despite the claims of some groups to the contrary, I have argued that the CJRA does not give local courts the power to disregard the Federal Rules of Civil Procedure ("Federal Rules") in the name of expense and delay reduction. *See* Robel, *supra* note 9.

federal trial courts. The breadth of their charge and their consequent investigations may give them strong persuasive authority in matters of court reform.[14] Second, the creation of local groups destabilizes and, perhaps, revitalizes debate on civil justice by adding a babylon of new voices to the familiar group of organized interests which have dominated discussions of court reform.[15] For instance, the insurance industry, the plaintiffs' bar and the organized business community all have familiar substantive agendas that involve interests in various procedural changes, such as the contraction or protection of discovery. But the local Advisory Groups do not necessarily owe allegiances to any of these familiar visions of civil justice reform.

Finally, the Advisory Groups are an unpredictable wildcard in the relationship between Congress and the judiciary. Traditionally, the judiciary has argued that Congress lacks the expertise to craft the rules and management practices that might improve the performance of the federal courts.[16] The Judicial Conference and individual judges strenuously argued this view in the hearings that preceded the enactment of the CJRA, and they were successful in convincing the Senate Judiciary Committee to back away from its original proposal.[17] But underlying the CJRA was a more-than-implicit accusation that the judiciary was not serious about improving its performance and that its arguments were self-interested and not quite to be trusted.[18]

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[14] Newspapers are beginning to be interested in the reports of the Advisory Groups. *See* R. Lawrence Dessem, *Judicial Reporting Under the Civil Justice Reform Act: Look, Mom, No Cases!*, 54 U. PITT. L. REV. 687, 696-700 (1993) (describing newspaper interest in accounts of pending cases required by the legislation).

[15] *See* Bryant Garth, *From Civil Litigation to Private Justice: Legal Practice at War with the Profession and Its Values*, 59 BROOK. L. REV. 931 (1993) (noting role of the ABA, Council on Competitiveness and other groups in civil justice debates); Jeffrey W. Stempel, *New Paradigm, Normal Science, or Crumbling Construct? Trends in Adjudicatory Procedure and Litigation Reform*, 59 BROOK. L. REV. 659 (1993) (same).

[16] This view of expertise finds clear expression in the Rules Enabling Act, 28 U.S.C. §§ 2071-72 (1988), and was supported by commentators such as Judge Weinstein. *See supra* note 10.

[17] *See generally Hearings*, *supra* note 10, at 73-75.

[18] The legislative history is full of acrimony on this point. Evidence in the legislation of this view includes the "Enhancement of Judicial Information Dissemination" section, 28 U.S.C. § 476, which requires public reporting on a judge-by-judge basis of motions and bench trials that have been pending for over six

Thus, Congress will be interested in the work product of all these Advisory Groups in determining how seriously the judiciary is responding to the CJRA's mandate. Early Advisory Group reports suggest that the judiciary has gained allies in pursuit of its goals for the administration of justice (such as increased funding and more expeditious appointment of judges).[19] Indeed, based on their investigations, many of the groups have taken positions that strongly support views expressed by the judiciary in opposition to the CJRA.[20] However, there are also early suggestions that many judges have ignored the recommendations of these groups without explanation, or undermined implementation of the plans through noncompliance.[21] To the extent that such noncompliance occurs, the judges leave themselves open to the charge that was levelled through the CJRA: that they are to blame for excessive cost and delay.[22]

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months and the names of cases that have been pending for over three years. *See* Dessem, *supra* note 14, at 696-700 (describing newspaper interest in accounts of pending cases required by the legislation).

[19] Districts are required to implement plans by the end of 1993. Civil Justice Reform Act of 1990, § 103(b), 28 U.S.C. § 471 (Supp. IV 1992). Those districts that completed the process by the end of 1991 became "Early Implementation District Courts," and received certain funding benefits. CJRA § 103(c), 28 U.S.C. § 471 (Supp. II 1992). This Article relies primarily on the reports of those early districts.

[20] *See* JUDICIAL CONFERENCE OF THE UNITED STATES, CIVIL JUSTICE REFORM ACT REPORT: DEVELOPMENT AND IMPLEMENTATION OF PLANS BY EARLY IMPLEMENTATION AND PILOT COURTS 16-19 (June 1, 1992) [hereinafter REPORT TO CONGRESS] (noting variety of recommendations from groups to Congress, including speedier filling of judicial vacancies, concerns about the "federalization" of criminal prosecutions; impact of Speedy Trial Act); CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE EASTERN DISTRICT OF PENNSYLVANIA, REPORT TO CONGRESS (May 27, 1993) [hereinafter E.D. PENN. REPORT] (noting that in its report the Advisory Group had "criticized the failure of Congress and the Executive Branch to fill existing vacancies in a timely fashion" and had "called for oversight hearings by the House and Senate Judiciary Committees to review the appointment process"). The Pennsylvania report also criticizes the funding level for the judiciary, noting that funding through fiscal October 1, 1992, is "13% lower than the request of the Judicial Conference" and that Congress failed to appropriate enough money to pay either civil juries (resulting in the suspension of civil jury trials in that district) or criminal defense attorneys for indigents). *Id.* at 16-19.

[21] *See infra* note 115 and accompanying text.

[22] The judiciary clearly viewed the CJRA as an insulting suggestion that Congress viewed judges as inefficient and uninterested in case management. *See* Robel, *supra* note 9, at 115. One judge told me after the CJRA was enacted, "Being told you're inefficient by Congress is like being told you're ugly by a toad."

While the Advisory Groups are unsettling the national picture, the local nature of the groups raises a different set of questions. As mentioned above, attention has been focused on whether Congress' entry into civil justice reform presents the specter of procedure through interest group politics.[23] But local Advisory Groups present the possibility of grass roots politics—a return to the era when local bars controlled local courts, not only through direct barriers to foreign entry, but through the arcane nature of local procedure and practice.[24] The composition of the groups, which may make them well-suited for identifying local problems, could also leave these groups ill-suited to consider the effect of their recommendations on those with multi-district practices. For instance, do local groups consciously consider the costs they might be imposing by choosing to deviate from national procedural norms, or by imposing idiosyncratic management practices? And, if so, is their consideration of the costs too self-interested to be trusted?

Moreover, the CJRA's goals of reducing cost and delay in civil litigation while increasing access to justice require some of the most difficult and controversial kinds of weighing of competing policies. The solutions the local groups propose to address cost and delay are likely to have effects on other important values, such as access to courts.[25] However, the legisla-

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[23] *See, e.g.*, Paul D. Carrington, *The New Order in Judicial Rulemaking*, 75 JUDICATURE 161, 163-65 (1991); Linda S. Mullenix, *Hope Over Experience: Mandatory Informal Discovery and the Politics of Rulemaking*, 69 N.C. L. REV. 795, 835-36 (1991). Professor Mullenix's concerns over Congressional involvement in rulemaking lead her to conclude that Congress' involvement is unconstitutional, Mullenix, *supra* note 10, at 1287, a conclusion with which I disagree. *See* Robel, *supra* note 9. However, Professor Mullenix bolsters her constitutional argument with a pragmatic one: a concern that Congressional involvement "will irretrievably politicize federal procedural rulemaking." Mullenix, *supra* note 10, at 1287.

The ideal of political neutrality in rulemaking has been widely shared. *See, e.g.*, Paul D. Carrington, *Making Rules to Dispose of Manifestly Unfounded Assertions: An Exorcism of the Bogy of Non-Trans-Substantive Rules of Civil Procedure*, 137 U. PA. L. REV. 2167, 2074-79 (1989).

[24] *See, e.g.*, Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1040-42 (1982) (describing the difficulties faced by practitioners with multi-state practices in negotiating the myriad of local practices).

[25] A good example is the proposal adopted by the Eastern District of Texas to cap contingency fees. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN 9-10 (Dec. 20, 1991). The Texas court announced its goal in capping attorneys fees as cutting the

tion does not require that the groups be constituted in ways that assure that they are representative of various viewpoints. Have the groups in fact been constituted with sensitivity to the need for diverse viewpoints?

The direction that the groups take depends in turn on how members view their role. Are they representatives of particular client groups—or even types of practice—entitled to assert those interests to gain systemic benefits for their clients? Do they view their role as a public service in which professional values of access to justice, support of the courts and efficient court administration are their goals? And, if so, does eschewing politics mean that the groups will settle on such a mild, consensus-oriented approach to their task that they accomplish nothing of value?

Finally, the legislation imposes some obligations on the groups for which attorneys may have little expertise, such as docket analysis or making causal determinations about cost and delay. Have the groups been sensitive to their limitations in these areas?

Part I of this Article examines the genesis of the legislative history and statutory framework of the CJRA. Part II then assesses how the Advisory Groups have approached their work. Finally, Part III reports the results of a nationwide survey of Advisory Group members. The survey was undertaken to answer some of the questions suggested above, as well as to obtain basic information about Advisory Groups: Who are the members? What are their practice areas? How do they view their roles? And what is their assessment of their task: was it completed successfully, or was it worth doing at all?

I. CIVIL JUSTICE REFORM ADVISORY GROUPS

A. *The Legislative History*

The impetus for the CJRA was a Brookings Institution

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cost of civil litigation. But the decision involves, or at least should involve, weighing a number of substantive policies, including access to attorneys for those who cannot pay hourly rates and the effect of such a cap on the availability of legal services. I do not believe that the Texas cap is authorized by the legislation. *See* Robel, *supra* note 9.

Task Force ("Task Force") report, *Justice for All*, which addressed the issue of cost and delay in federal civil litigation at the request of Senator Joseph Biden.[26] The Task Force was numerically dominated by past or present corporate counsel,[27] and the report focused on discovery reform, increased use of ADR and control of lawyers through strong judicial case management practices and mandatory deadlines as the keys to increasing federal court efficiency.[28] The Task Force recommended that Congress require the adoption of a number of case management practices in each trial district, and require each district to adopt a Civil Justice Reform Plan explaining how it intended to put those practices into action.[29] It also recommended the creation of local planning groups, with representation from "the Bench, the Public, and the Bar."[30]

Since the Task Force did not believe that its recommended changes should be discretionary, it did not view the planning groups as architects of the basic contours of a Civil Justice Reform Plan. Rather, its view was

> that the wide participation of those who use and are involved in the court system in each district would not only maximize the prospects that workable plans will be developed, but would also stimulate a much-needed dialogue between the bench, the bar, and client communities about methods for streamlining litigation practice.[31]

Much of the Task Force's analysis of delay and cost was premised on an assumption that the judges and lawyers who pre-

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[26] Robel, *supra* note 9, at 117.

[27] *Id.* Corporate counsel comprised a quarter of the Task Force's membership.

[28] *Id.* at 126; *see* BROOKINGS INSTITUTION, JUSTICE FOR ALL: REDUCING COSTS AND DELAY IN CIVIL LITIGATION (1989).

[29] BROOKINGS INSTITUTION, *supra* note 28, at 12.

[30] *Id.*

> In developing its plan, each district court should include in its planning group a representative magistrate in the district, public representatives, and lawyers practicing in firms and corporations representing each of the major categories of litigants in the district. The planning groups may vary in their membership, therefore, from district to district.

Id.

[31] *Id.* "Client community" participation would, almost necessarily, involve only certain kinds of clients—most likely businesses that are repeat litigants—because many kinds of clients, such as social security claimants, for instance, have no obvious representatives. *See, e.g.*, Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974) (arguing that repeat litigants have incentives to be involved in rule-seeking behavior that sporadic litigants do not).

sumably control the litigation had no serious interest in making litigation cheaper and quicker.[32] Thus, the Task Force hoped that planning groups would provide local support for the concepts of strong case management, discovery control and ADR, and insure that those concepts were put into action by opening the courts up to scrutiny by those outside the system, notably "client communities."

The earliest version of the legislation tracked the recommendations of the task force, including the recommendation that the strategies of delay and cost control it identified be made mandatory in all districts.[33] Senator Biden described the role of local courts as "filling in the specifics,"[34] and the role of local planning groups as "the best way to ensure district-wide solidarity for improving the civil justice system."[35] The inclusion of local groups at first appears to be in some tension with the insistence of the bill's supporters that its provisions be made mandatory in each district. But the role for local groups envisioned by the supporters was primarily to ensure that there would be a group of court outsiders invested in the outcome of civil justice reform, and that the people who were responsible for cost and delay (lawyers and judges) would be made locally answerable to the "users of the system."[36]

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[32] Robel, *supra* note 9, at 117.

[33] The Civil Justice Reform Act, S. 2027, 101st Cong., 2d Sess. (1990); *Hearings*, *supra* note 10, at 2.

[34] *See Hearings*, *supra* note 10, at 2 (opening statement of Senator Biden). Senator Biden stated that the bill combines what the experts consider "to be the essential ingredients for a comprehensive reform program." Based on the principle that true reform can only be achieved if it proceeds from the "bottom up" rather than the "top down," the legislation requires every federal district court to develop a civil justice expense and delay reduction plan.

The legislation identifies the chief components that must be in each plan, but leaves it to every district and every district court to fill in the specifics of the plan based on its own particular needs. *See* Jeffrey J. Peck, *"Users United:" The Civil Justice Reform Act of 1990*, 54 LAW & CONTEMP. PROBS. 105, 110 (1991) (Advisory Group creates "a partnership among the members of the court, the bar, and the community that the court serves").

[35] *Id.*

[36] *See Hearings*, *supra* note 10, at 37 (Statement of Bill Wagner, Wagner Cunningham, Vaughan and McLaughlin and immediate past president, Association of Trial Lawyers of America):

> A feature that I think is important is that the Advisory Committee that is required by this plan is an Advisory Committee that is a broad-based advisory committee. It is not the judges and the clerks sitting down and coming up with a plan. It is a plan that is created by the

In the face of strong judicial opposition to the mandatory nature of the bill, Senator Biden eventually backed down. The strategies of delay and cost reduction identified in the legislation are now discretionary, except in a limited number of pilot and demonstration districts.[37] This change probably increased the importance of the Advisory Groups. When the federal trial districts evaluate and adopt the required "Civil Justice Expense and Delay Reduction Plans,"[38] it is the Advisory Group's recommendations, rather than Congress', that are the immediate standard against which the districts must choose.

B. *The Statutory Framework*

As noted, the CJRA requires that each federal district court implement a "civil justice expense and delay reduction plan" to "facilitate deliberate adjudication of civil cases on the

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users of the system, which includes the judges and the clerks and the prosecutors and the public defenders, and those persons. But it also includes corporate representatives. It includes insurance company representatives. It includes the users of the system to have a hands-on development of their experience of what they need to work with.

Id.; *see also* Statement of Patrick Head, member of the Task Force (testifying in favor of S. 2027). Mr. Head was strongly in favor of the bill because it would increase procedural uniformity among districts, a result that he said was important to the corporation of which he was general counsel, since it is involved in litigation throughout the country. *Hearings*, *supra* note 10, at 22 (Statement of Patrick Head, Vice President and General Counsel of FMC Corporation). However, he spoke in support of a role for local planning groups as a way to ensure that responsibility for reforming the system was distributed among those who use the system, including litigants.

[37] The legislation provides for the designation of "demonstration" and "pilot" courts. CJRA § 104, 28 U.S.C. § 4071 (Supp. IV 1992). The district courts for the Western District of Michigan and the Northern District of Ohio were designated to demonstrate systems of differentiated case management. The district courts for the Northern District of California, the Northern District of West Virginia and the Western District of Missouri were designated to demonstrate with various other methods of reducing cost and delay. The Act further required the Judicial Conference to name 10 "pilot courts" that, under CJRA § 105, 28 U.S.C. § 471 (Supp. IV 1992), are required to include in their plans the provisions included in 28 U.S.C. § 472(a) (Supp. IV 1992). The Judicial Conference has designated the Southern District of California, the District of Delaware, the Northern District of Georgia, the Southern District of New York, the Western District of Oklahoma, the Eastern District of Pennsylvania, the Western District of Tennessee, the Southern District of Texas, the District of Utah and the Eastern District of Wisconsin. REPORT TO CONGRESS, *supra* note 20, at 1.

[38] 28 U.S.C. §§ 471-72 (Supp. IV 1992).

merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."[39] The plan is to be the product of cooperation between judges and the groups who use the courts. Therefore, courts must convene Civil Justice Reform Advisory Groups composed of lawyers, litigants and the local United States Attorney.[40] The judges control the group's membership. The statute directs only that the Advisory Group "shall be balanced and include attorneys and other persons who are representative of major categories of litigants in [each] court, as determined by the chief judge of [the] court."[41]

Each Advisory Group is charged with completing "a thorough assessment of the state of the court's civil and criminal dockets."[42] In this context, the statute requires the Group to render a number of judgments about the efficiency of the court, including determining "the condition of the civil and criminal dockets,"[43] identifying "trends in case filings and in the demands being placed on court resources"[44] and identifying "the principle causes of cost and delay in civil litigation."[45] It also requires the Group to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."[46]

The legislation, however, provides no guidance about how to identify and evaluate cost and delay, nor does it tell Advisory Groups how to assess whether cost and delay are excessive. While the legislation directs the Groups to give special consideration to "such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation,"[47] the recipe for excessive cost and delay could have any number of ingredients, including lawyers' case management habits, the court's managerial skills or values, clients' expectations, legislation passed by Congress[48] and decisions by

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[39] *Id.* § 471.
[40] *Id.* §§ 478(b), (d).
[41] *Id.* § 478(b).
[42] *Id.* § 472(c)(1).
[43] *Id.* § 472(c)(1)(A).
[44] *Id.* § 472(c)(1)(B).
[45] *Id.* § 472(c)(1)(C).
[46] *Id.* § 472(c)(1)(D).
[47] *Id.* § 472(c)(1)(C).
[48] For instance, many judges have complained that the Sentencing Reform Act

the Executive Branch.[49] Moreover, the causal relationship between any of these factors and perceived problems in a particular district is unlikely to be clear. Thus, the legislation imposes on the Advisory Groups a task that has often stymied social scientists.[50]

Nevertheless, once this evaluation is complete, the Advisory Group must prepare a report to the court containing its assessment of the extent of excessive cost and delay, what reduction measures the court should adopt and whether the court should develop a plan or select a model plan.[51] In making its recommendations, the Advisory Group is required to consider, but not to adopt, six "principles and guidelines of litigation management and cost reduction" and six "litigation management and cost and delay reduction techniques."[52] The

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of 1984, 18 U.S.C. §§ 3551-3673, 28 U.S.C. §§ 991-98 (1988), dramatically increased their workload. *See* FEDERAL COURTS STUDY COMMITTEE, JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 137 (Apr. 2, 1990) (reporting ninety percent of judges responding to a survey found that the Sentencing Guidelines promulgated under this legislation made sentencing more time consuming). Several CJRA Reports echo this complaint. REPORT TO CONGRESS, *supra* note 20, at 17. Two Advisory Groups (Idaho and the Southern District of West Virginia) recommended repeal of the Guidelines. For an interesting analysis of this problem, see Kenneth Dau-Schmidt, *An Agency Cost Analysis of The Sentencing Reform Act: Recalling the Virtues of Delegating Complex Decisions*, 25 U.C. DAVIS L. REV. 659 (1992).

[49] *See, e.g.*, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WEST VIRGINIA, REPORT OF THE CIVIL JUSTICE REFORM ADVISORY GROUP (1993) (noting that large numbers of narcotics charges involving small amounts of narcotics had been filed in district, impeding court's ability to decide civil cases); *see also* Richard Levy, *Social Security Disability Determinations: Recommendations for Reform*, 1990 B.Y.U. L. REV. 461, 484-506 (discussing executive decision to drop thousands of people from the Social Security Disability rolls, and the effect on federal courts).

[50] The National Center for State Courts has done extensive research in causes of delay. *See, e.g.*, John Goerdt, *Examining Court Delay: The Pace of Litigation, in* 26 URBAN TRIAL COURTS (1989); BARRY MAHONEY, CHANGING TIMES IN TRIAL COURTS: CASEFLOW MANAGEMENT AND DELAY REDUCTION IN URBAN TRIAL COURTS (1988). Making determinations about what causes delay, or even what constitutes delay, requires a theory of appropriate case processing time and a method of distinguishing between appropriate and inappropriate case development. *See* Mary Lee Luskin, *Building a Theory of Case Processing Time*, 62 JUDICATURE 114, 116 (1978).

[51] 28 U.S.C. § 472(b) (Supp. IV 1992).

[52] 28 U.S.C. §§ 473(a), (b) (Supp. IV 1992). The sections require the district court, in consultation with the Advisory Group, to consider the techniques, principles and guidelines. In order to make useful recommendations, it follows that the Advisory Group must also consider the suggestions in the statute.

court must then consider the report and adopt a plan.[53] With the exception of a limited number of demonstration and pilot courts, however, the CJRA leaves ultimate control over the content of that plan in the judiciary.[54]

II. ADVISORY GROUPS AT WORK

Chief Judges have taken three approaches to appointing Advisory Groups. Most groups are made up primarily of attorneys, with one or two "public members"—laypersons whose role in the Groups will be explored below. But some courts have ignored laypersons, selecting only attorneys.[55] A relatively small number have split appointments between attorneys and non-attorneys.[56] Judges and magistrates usually participate in the groups, either as full members (sometimes as Chairs) or *ex officio*.

While the Advisory Groups have little actual power, their work in fulfilling their statutory tasks puts them in a position to be strong persuaders. For instance, in fulfilling the docket assessment function, Advisory Group members have had unparalleled access to inside information about local courts. The Federal Judicial Center and the Administrative Office of the United States Courts have been marshalled to provide detailed statistical information about caseload.[57] Many of the Groups

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[53] 28 U.S.C. § 471 (Supp. IV 1992).

[54] *See, e.g., id.* § 472 (requiring district judges to implement plans); *id.* § 474(a) (requiring judicial circuit committees to review plans); *id.* § 474(b) (requiring Judicial Conference to review plans).

[55] *See, e.g.*, Delaware (response to surveys).

[56] *See, e.g.*, REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA (Sept. 30, 1991) [hereinafter GEORGIA REPORT] (Seven of eighteen members were non-attorneys, including an AFL-CIO president, a retired textile executive, a vice-president of a bank, a director of the NAACP and the director of the Georgia Poultry Federation; of the remaining members, one was a legal aid attorney, three were corporate counsel, one a clerk of the court, one the United States Attorney, one the State Attorney General and the remaining four attorneys were in private practice); REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING (1991) (4 of 14 were members non-attorneys, including members labeled representatives of communications, agriculture, oil, coal, education and railroad industries) [hereinafter WYOMING REPORT].

[57] The Administrative Office releases substantial statistical information each year. *See, e.g.*, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORT (1991). In addition, the Administrative Office and the Federal Judicial

have surveyed or interviewed lawyers and, less successfully, litigants about their litigation experiences within the district.[58] Most have interviewed the judges, magistrates, court clerks and even the judges' room clerks about their case management practices.[59] Many have held public forums to discuss local litigation practices.[60] The legislation itself requires public reports twice yearly of each judge's record of disposing of pending motions and bench trials,[61] and the Groups have examined those reports.[62] Groups also report having undertaken literature reviews and hiring consultants to make sense of the statistical information they were amassing.[63]

The Groups are also charged with evaluating each of the case management strategies, ADR proposals and discovery control mechanisms listed in the statute in light of local conditions, and with making recommendations with respect thereto that "ensure" that the court, litigants and attorneys all make "significant contributions" towards delay and cost reduction.[64] Groups report spending daunting amounts of time discussing and evaluating these proposals.[65] The results of all this investigation and brainstorming are typically written up in a report—often lengthy—that is publicly available[66] and presented to the district court.[67]

Center have provided extensive information to the Advisory Groups, tailored to each district. *See, e.g.*, ADMINISTRATIVE OFFICE OF UNITED STATES COURTS AND FEDERAL JUDICIAL CENTER, GUIDANCE TO ADVISORY GROUPS APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990 (Feb. 1991).

[58] *See* REPORT TO CONGRESS, *supra* note 20, at Exhibit A.

[59] *Id.*

[60] *Id.* at 3.

[61] 28 U.S.C. § 476 (Supp. IV 1992).

[62] The reports of the Advisory Group for the District of Massachusetts and the Advisory Group for the Southern District of Indiana disclose pending motions and bench trials by individual judges.

[63] REPORT TO CONGRESS, *supra* note 20, at Exhibit A.

[64] 28 U.S.C. § 472(c)(3) (Supp. IV 1992).

[65] Thirty-five percent of the respondents estimated spending ten hours or more on Advisory Group business each month during 1991.

[66] *See* 28 U.S.C. § 472(b) (Supp. IV 1992).

[67] As noted earlier, the report has a number of other audiences, including Congress.

III. SURVEY RESULTS

I sent surveys to 485 members of twenty-six Advisory Groups.[68] The groups included three pilot courts and two demonstration districts. All but one of the Groups were Early Implementation Districts; that is, they have already completed reports, and their courts have adopted plans.[69] The Groups ranged in size from fifty-four members to eleven members; most of the groups had fewer than twenty members.[70] Forty percent (194) of the members returned completed surveys.[71]

A. *Advisory Group Membership*

Who sits on the advisory groups?[72] Despite the hopes of the Brookings Task Force, all but fourteen of the respondents were attorneys or judges.[73] Of the attorneys, all but thirteen reported being in practice for over ten years, and ninety had been in practice for over twenty years.[74] The relative seniority of the attorneys responding may account in part for the poor representation of women and minority members in the Groups, although it hardly excuses it.[75] Of the twenty-six Groups, only

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[63] The complete survey, with percentages and frequencies of responses, is attached as an appendix. All references to survey questions and responses are to that appendix.

[69] *See supra* text accompanying note 19.

[70] Fourteen had fewer than 20; seven had between 20-30.

[71] In all of the Groups, at least 25% of the members to whom I sent surveys responded.

[72] To answer this question, I relied on both survey responses and lists of Advisory Group members included in Advisory Group reports. I ran names of Group members through Westlaw's database on practitioners ("West's Legal Directory") in order to check information about practice areas. Search of WESTLAW, West's Legal Directory Database, Private Practice Directory (Dec. 1, 1993).

[73] Survey Question No. III.A. This small number is due to two factors: first, from the lists of members included in the Advisory Group's reports, it is clear that there are relatively few non-attorneys on any of the advisory groups; second, I had more difficulty finding addresses for non-attorneys than for attorneys, who are usually listed in Westlaw's database. However, even assuming that all of the persons listed in the reports as group members who do not appear in the Westlaw database are non-attorneys, only very small numbers of non-attorneys sit on the Goups.

[74] Survey Question No. III.B.

[75] *See also* NINTH CIRCUIT GENDER BIAS TASK FORCE, THE EFFECTS OF GENDER IN THE FEDERAL COURTS 26 n.1 (1993) (noting that of 1721 people appointed nation-wide to CJRA Advisory Groups, 277 (or 16%) were women).

seven had memberships that included twenty percent women; one Group had no women members.[76] Only seventeen percent of the survey respondents identified themselves as women.[77] Membership in a minority group could not, of course, be identified by looking at the lists of members. However, only eleven (5.6%) of the survey respondents described themselves as members of minority groups.[78]

The largest number of respondents (119 or 61%) worked in law firms,[79] but there was considerable diversity in the size of the firms. Seventeen percent worked in firms of fifty or more attorneys; of these, eleven percent were in firms of 100 or more attorneys. Twenty-six percent worked in firms of under ten attorneys.[80] Only five of the respondents (2.6%) identified themselves as corporate counsel and only four (2.1%) as with public interest groups or legal services. Eleven (6%) were judges.[81] Although respondents came from many practice areas, the largest number of the respondents (47%) (as well as the largest number of Chairs) described the "predominate nature of [their] practice" as "general civil litigation,"[82] with the next largest group being "torts and insurance" (17%).[83] Large areas of federal practice were not well represented. Only six people identified their practice areas as civil rights, only three as natural resources or environmental law, only three as patent, trademark or copyright, five as bankruptcy, and none as immigration. More people identified their practice areas as probate and trusts (9) or real estate (7) than these more traditional

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[76] The District of Wyoming listed its membership in its report, WYOMING REPORT, *supra* note 56, along with the constituency that each members represented. Along with representatives of the coal, agriculture and communications industries, the report listed one member as "Representative/Female Attorney." There was another woman member; she was not an attorney and represented education.

[77] Survey Question No. III.I; Seven percent did not respond to the question on gender. *Id.*

[78] Survey Question No. III.J.

[79] Survey Question No. III.B.

[80] Survey Question No. III.C.1.

[81] Survey Questions No. III.C.2-.4.

[82] Ninety-one respondents (47%) chose that label; fourteen of 22 Chairs responding chose that label. Survey Question No. III.D.

[83] Two of the Chairs described their practices as predominately torts and insurance; the remaining Chair who identified a practice area chose criminal law. The third largest group was labor/employment with 18 (9.3%). Survey Question No. III.D.

areas of federal practice.[84]

Most of these attorneys are active in federal court litigation. Almost 40% were in federal court in at least half of their cases, and another 19% were in federal court in at least 25% of their cases.[85] Moreover, a majority of the respondents are active in other bar service activities. Sixty-two percent reported that they served on other state and local bar committees, and forty-one percent serve on other court committees.[86] Twenty-eight percent reported service on national bar committees. Generally, then, it appears that judges have chosen primarily litigators who appear frequently before them, many of whom are already active in bar service activities, to serve on the Groups.[87]

Of those in private civil practice, about 21% reported that they represent primarily plaintiffs, 25% reported representing primarily defendants and 19% reported they represented equal numbers of each. This balance suggests that courts have been sensitive to the differing views that the plaintiffs' and defendants' bar bring to substantive issues.[88] Given the relative lack of diversification by practice area, or gender and ethnicity, it may also suggest that courts have viewed this criterion as the most important to achieving balance on the Groups.

The CJRA's drafters hoped that Advisory Groups would be constituted of people who "live with the civil justice system on a regular basis,"[89] both because they use the courts frequently as lawyers, and because their interests are regularly decided in

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[84] *Id.* In keeping with the notion that family matters do not generally end up in federal court, *see* Judith Resnik, *Revising the Canon: Feminist Help in Teaching Procedure*, 61 U. CIN. L. REV. 1181 (1993), only two of the respondents identified family law as the predominate nature of their practice. *Id.*

[85] Survey Question No. III.F.

[86] Survey Question No. III.G. Twenty percent serve on their district court's Local Rules Committee. *Id.*

[87] Interestingly, relatively few of the Group members report having served as law clerks. Eleven percent have served as clerks in their districts; 2% as law clerks in another district; 4% as clerks at a federal appellate court; and 7% as clerks in the state courts. Survey Question No. III.H.

[88] Within specific Groups, answers to the question, "If you are in private civil practice, do you represent primarily plaintiffs, primarily defendants or about the same [of each]?" varied widely. In some Groups, none of my respondents represented plaintiffs; in some, none represented defendants. Survey Question No. III.E.

[89] *See* 136 CONG. REC. S416 (daily ed. Jan. 25, 1990) (statement of Sen. Biden).

the courts. The hope of the drafters was that client representatives would act as a check on the tendency of court insiders to stay with the status quo. But these survey responses suggest that while the Groups include many people who regularly practice in the federal courts, they exclude many traditional areas of federal practice and, as discussed below, many litigants.

B. *The Role of Non-Attorneys*

The Brookings Institution Task Force and the supporters of the CJRA in the Congress envisioned that the local advisory groups would include significant participation from the "client community."[90] For the most part, this goal has not been achieved in the Early Implementation Districts. Very few of the Groups include significant numbers of non-attorney members;[91] most had only one or two lay members, and several had none. Even when Groups did have litigant participants, many respondents with those Groups reported that they did not, suggesting that the litigants had not had much of a presence.[92]

Significant numbers of respondents questioned the role of non-attorneys in the Groups. Thirty-two percent of the respondents disagreed with the statement, "Litigant participation was helpful because it brought an important perspective to deliberations that attorneys could not provide."[93] Several respondents stated in written comment that lay members were unnecessary because "the lawyers in our Advisory Group repre-

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[90] 136 CONG. REC. S416 (statement of Sen. Coats); GEORGIA REPORT, *supra* note 56.

[91] *See* GEORGIA REPORT, *supra* note 56 (in Advisory Group of 18 members, 7 are non-attorneys, including a retired textiles industry executive, a bank vice-president, a representative from Atlanta city government, the president of the Georgia AFL-CIO, the director of the Georgia Poultry Federation, the director of the NAACP and a foundation trustee; of the remaining attorneys, three were corporate counsel, one was a legal aid director, and one was a clerk of the court); WYOMING REPORT, *supra* note 56, (Advisory Group of fourteen members, six of whom are non-attorneys, including representatives of communications, agriculture, oil, coal, railroad and education industries).

[92] Respondents on seven Groups either reported that they did not know whether non-attorneys had been included in the Group, or erroneously reported that they had not been so included.

[93] Survey Question No. I.I.2.

sented a broad range of litigant groups."[94] Yet others complained about the lack of input from non-attorneys, with one noting that the Group would have accomplished more had they involved people with businesses who knew what it cost to be sued.[95] One of the litigant-respondents commented on his/her role:

> I was able to express my views and concerns for reform from a litigant's perspective. My recommendations were openly received by the Advisory Group and several were implemented into our district's plan. [S]everal of the issues we addressed would not have been discussed or implemented had a litigant not *actively* participated . . . . . One of the saddest things about this process was that we originally started off with several litigants on our committee but I ended up being the only one who diligently participated.[96]

Several respondents noted this lack of participation by lay members. While it may be that litigants do not participate because they are unfamiliar with procedures,[97] it is also likely that in most Groups they are so outnumbered by people with insider expertise that they cannot make a meaningful impact on the work of the Group.

C. *Themes*

1. The Delicate Dance Between Bench and Bar

> Attorney participation helps create a sense of ownership in the system and paves the way for positive cooperative efforts between judges, attorneys, and litigants towards development of the best system of delivering justice possible.[98]

The primary benefit attributed to the CJRA process was not a decrease in cost and delay, but opening a dialogue between the court and the bar.[99] Ninety percent of the respon-

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[94] Survey No. 36 (on file with the author). Seventy-two percent believed litigants' interests were well-represented, even if few litigants directly participated in the Groups. Survey Question No. II.B.

[95] Survey No. 48 (on file with the author).

[96] Survey No. 42 (on file with the author).

[97] Sixty-four percent of respondents disagreed that lack of familiarity with court procedures resulted in litigants not participating. Survey Question I.I.2.

[98] Survey No. 78 (on file with the author).

[99] The theme of dialogue between bench and bar is the single most common positive comment.

dents agreed that the process "increases attorney understanding of the courts,"[100] and eighty-one percent believed it "increases judicial understanding of attorney problems."[101] Of course, in order to have increased judicial understanding, there must often be criticism. While seventy-five percent of the respondents believed that attorneys could overcome concerns about candid criticism of the judges before whom they practice, a significant minority were less certain.[102]

Increased dialogue brings a number of obvious benefits. First, many respondents reported an increased understanding of, and support for, a variety of issues of importance to judges, such as underfunding in the courts and the effect of the criminal docket and sentencing guidelines on the civil docket.[103] This informed support for issues that have concerned the bench in turn was translated into direct recommendations to Congress in a number of Advisory Group reports. For instance, "many Advisory Groups and courts expressed particular concern over pending legislation that would 'federalize' any crime committed with a handgun that traveled in interstate commerce."[104] Advisory Group reports also criticized the impact that the Sentencing Guidelines have had on the courts, with two Groups going so far as to recommend their repeal.[105] Many reports mentioned underfunding as a cause of cost and delay, and recommended that the courts be given additional resources for law clerks, *pro se* clerks, and other help.[106] And, vindicat-

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[100] Thirty-five percent strongly agreed. Survey Question No. I.D.1.

[101] Survey Question No. II.

[102] The question about whether attorneys could be candid before the judges produced more waffling answers than any other. Survey Question No. I.F.8. Many respondents did not want to be held to a 1-5 scale (1 indicating strong agreement, 4 indicating strong disagreement, and 5 indicating "don't know"), preferring instead to mark an answer between "agree" and "disagree."

[103] Typical comments included:

- "I gained appreciation for the difficulties of managing civil caseloads in the context of criminal trials." Survey No. 28 (on file with the author).
- "[The CJRA] allows Congress to escape responsibility for responsible decisions about the court system, such as funding." Survey No. 24 (on file with the author).
- "[In response to question about how process could be improved] Congress could *fund* the courts." Survey No. 49 (on file with the author).

[104] REPORT TO CONGRESS, *supra* note 20, at 17.

[105] *Id.* (noting that both the District of Idaho and the Southern District of West Virginia had recommended repeal of sentencing guidelines).

[106] *Id.* at 18 (recommendations concerning increased funding for personnel); E.D.

ing a position taken by the Judicial Conference in opposition to the CJRA, many groups have correctly noted the impact of the Speedy Trial Act on the civil docket.[107]

However, the increased dialogue between the bench and bar increases the expectations that the court will, in fact, respond to the recommendations. Eighty-six percent of the respondents agreed that "the court was openminded in considering the Advisory Group recommendations."[108] At the same time, a large number of negative comments concerned the role of the judiciary in evaluating the reports, adopting plans or implementing the plans.

Indeed, most attorneys (83%) agreed that the participation of the bench "was essential in understanding issues [the] group was asked to address."[109] Importantly, most also agreed that the judges did not simply take over the Advisory Groups.[110] However, other respondents complained that judges were unwilling to allow the Advisory Group to develop innovative programs: "The judges in our group were really calling the shots, and few suggestions by lawyers (when the lawyers had the gumption to make suggestions) survived the drafting process."[111] In explaining how the process might have been improved, a significant number of respondents cited earlier, and more substantive, involvement by judges:

> Judges should have been more deeply incorporated into the subcommittee deliberations, because they sabotaged a number of proposed rules at the end of the process, after sitting more or less quietly until that point.[112]
>
> The process could have been improved by having a greater frequency of judicial participation in the Advisory Group meetings. Many issues could have been resolved more quickly by having imme-

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PENN. REPORT, *supra* note 20 (noting failure to fund civil jurors, criminal defense representation).

[107] REPORT TO CONGRESS, *supra* note 20, at 17.

[108] Survey Question No. II.B. In three of the Groups, half of the respondents disagreed or strongly disagreed that the court was openminded in considering the Advisory Group report.

[109] Survey Question No. I.H.I.B.

[110] *Id.* Only 10% agreed with the statement "Judges dominated the advisory group meetings." *Id.*

[111] Survey No. 101 (on file with the author). Perceptions of judge interaction with the Group are one area where the responses differ markedly from Group to Group.

[112] Survey No. 16 (on file with the author).

> diate input from the bench. Occasionally decisions were reached by the judges on Advisory Group recommendations that were not satisfactorily explained in instances where the judges disagreed with the recommendations.[113]

Finally, a number of respondents complained that, while the court adopted their recommendations, judges were undermining the plans through lack of consistency or lack of support for the underlying ideas. These comments are typical:

> All the group members agreed that for the rules to work and to be implemented it would require *active* judicial compliance and involvement. All agreed that for the proposed rules to be meaningful the district judges and magistrates had to know and employ the rules. For the most part, there is little or no judicial use of the rule changes. It is the same old process with new hoops to jump through.[114]
>
> Let's see if *all judges* in our district enforce these rules. I already see that within the first six months of the rules being in effect, some judges are not imbued with the spirit of the rules and some follow the rules in a haphazard and slipshod manner.[115]

But because the statute requires an annual assessment of each plan,[116] if noncompliance with plan provisions is occurring, it will become evident over time.

In fact, judicial opposition to the CJRA was intense.[117] Many judges doubted the need for the legislation, while others were disturbed by Congress' implication that they were not doing their jobs. It is predictable, then, that judges may be less than enthusiastic in their reception of Advisory Group recommendations. But the judiciary controls which of the Advisory Group recommendations to adopt.[118] Having chosen to implement plans that adopt Advisory Group recommendations, judges should realize that a lack of enforcement has the potential to be politically embarrassing if Congress revisits the issues involved in the CJRA.

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[113] Survey No. 104 (on file with the author).

[114] Survey No. 9 (on file with the author).

[115] Survey No. 101 (on file with the author).

[116] 28 U.S.C. § 475 (Supp. IV 1992) (Periodic District Court Assessment).

[117] *See* Robel, *supra* note 9, at 128; *see also* Mullenix, *supra* note 4, at 411-19.

[118] 28 U.S.C. § 474(a)(1)(B) (Supp. IV 1992) (the committee shall review the plan and report and "make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate").

2. Resistance to Politics

> In our group, there was fairly good balance between plaintiff and defense bars, large and small firms, public and private sector. This balance was important, as some partisan jockeying occurred.[119]

> Only a few "political" items crept into the agenda, such as protective and non-disclosure orders. These were laid to rest with dispatch.[120]

Most respondents strongly resisted "political" descriptions of their roles; that is, descriptions that legitimized seeking favorable rules for particular client constituencies. Seventy-one percent disagreed with the statement "Attorneys are too interested in rules that favor their clients."[121] Seventy-four percent disagreed that "local groups recommend procedures that favor [the] local bar."[122] And seventy percent disagreed that "members of the Advisory Group represented their own interests."[123]

An astonishing ninety-four percent agreed that "members of the Advisory Group were a diverse group of practitioners."[124] The written comments suggest that the respondents felt it was important to assure that the groups were balanced, primarily along defendant and plaintiff representation lines. However, statistical analysis of the respondents' attitudes towards the CJRA process revealed that this is a cohesive group: there were no statistically significant differences between plaintiff's and defendant's attorneys, for instance, on any of the answers to the survey questions, nor were there statistically significant differences in responses by practice area.[125]

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[119] Survey No. 112 (on file with the author).

[120] Survey No. 2 (on file with the author). These comments were typical of written comments by respondents.

[121] Survey Question No. I.F.4. Although only 18% characterized their disagreement as strong.

[122] Survey Question No. I.F.9.

[123] Survey Question No. II.B.

[124] Survey Question No. II.B.

[125] As noted earlier, some of the practice areas had so few respondents that meaningful statistical analysis is difficult. Likewise, the number of women made meaningful statistical analysis of differing attitudes by gender problematic; however, no statistically significant differences appeared between male and female respondents.

While some individual respondents complained that the Groups were weighted towards particular types of practice ("I felt the tone was set by large law firms that represent corporations and defense"),[126] none of the respondents complained that their Groups had adopted rules that favored particular groups. And support for the results of the Groups' work was very high: ninety-one percent of respondents stated that they "agreed with most of the Advisory Group's recommendations."[127] Moreover, while the respondents for the most part resisted the notion that members voted for changes that favored one group over another, many noted that as members of the bar, they have an interest in incremental rather than dramatic change, and they often have an interest in cost and delay:

> Many changes work against their self-interest. They will not vote to implement these changes.[128]

> Unfortunately, because of the consensus nature of large group meetings, proposed changes will be incremental rather than wholesale. Suggestions to include attorneys' fees under Rule 68, for example . . . drew audible gasps from group members who then dismissed the idea without discussion.[129]

> Attorneys are more resistant to changes in practices and procedures than litigants are (but not as resistant as judges).[130]

> I would not like to say this experience has been a complete waste of time, but I am deeply skeptical of its value to the judicial system. So long as the CJRA permits lawyers and judges to dominate, reform is at least very unlikely.[131]

While seventy-nine percent of respondents disagreed with the statement "The Advisory Group was too cautious in its approach to reform," an examination of the reports themselves suggests, unsurprisingly, that the comments that lawyers are conservative in their approach to civil justice issues are correct. In the area of ADR, for instance, the most common ap-

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[126] Survey No. 14 (on file with the author).

[127] Survey No. II.B. Only one percent stated that they strongly disagreed with the recommendations. *Id.*

[128] Survey No. 24 (on file with the author).

[129] Survey No. 109 (on file with the author).

[130] Survey No. 71 (on file with the author).

[131] Survey No. 37 (on file with the author).

proach taken by the early implementation Groups was to do a little more of whatever it was the court was already doing.[132] Resistance to a political view of their roles could well have meant that subjects viewed as "political" were off-limits ("they were laid to rest with dispatch").

The one area in which this conservative approach was abandoned was in the area of discovery. Surprisingly large numbers of the Groups adopted the mandatory disclosure provisions[133] that have proven so extraordinarily controversial as proposed revisions to Rule 26.[134] One possible explanation for this unusual activism might be that the mandatory disclosure provisions adopted by most of the Groups were modeled after a proposed amendment to Rule 26 that had been published in August 1991.[135] Thus, Groups may have felt that mandatory disclosure was inevitable, and should be included in the recommended plans in order to avoid having to rewrite the plans later to include a new form of discovery that is obviously relevant to the techniques suggested in the CJRA itself. Another explanation may be found in a memorandum from the Federal Judicial Center's Director, William Schwarzer, encouraging Advisory Groups to consider recommending a local rule that mandated prediscovery disclosure provisions as part of their plans.[136] The Federal Judicial Center provided technical sup-

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[132] REPORT TO CONGRESS, *supra* note 20, at 7:

> The most common approach to [ADR] was to strengthen an existing practice by including it in the local rules or by adding requirements. For example, a number of courts that have encouraged settlement in the past will now hold settlement conferences in every case, will hold them earlier, and will require attendance by parties or a representative with authority to make binding decisions.

[133] REPORT TO CONGRESS, *supra* note 20, at 12 (noting that twenty-one courts had adopted mandatory disclosure provisions at the time that the report was written). The Report found this high percentage noteworthy because "the Civil Justice Reform Act neither requires nor suggests [the] use of mandatory disclosure." *Id.* at 13.

[134] *See* Supreme Court of the United States, Transmittal Letter, *reprinted in* 113 S. Ct. (Preface) 575 (1993) and dissenting statement of Justice Scalia, *reprinted in* 113 S. Ct. (Preface) 581, 584-87 (1993); *see also* Carl Tobias, *Collision Course in Federal Civil Discovery*, 145 F.R.D. 139 (1993) (discussing the relationship between proposed rule and activity of CJRA advisory groups).

[135] *See* JUDICIAL CONFERENCE OF THE UNITED STATES, COMMITTEE ON RULES OF PRACTICE AND PROCEDURE, PROPOSED AMENDMENT OF FEDERAL RULE OF CIVIL PROCEDURE 26, *reprinted in* 137 F.R.D. 53, 87-88 (1991).

[136] FEDERAL JUDICIAL CENTER, IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT OF 1990, 16 (Jan. 16, 1991):

port for the Advisory Groups in a number of ways, including a document entitled "Implementation of the Civil Justice Reform Act of 1990." Groups may have included mandatory disclosure provisions simply because they were recommended by the experts at the Judicial Center responsible for helping them implement the legislation.

3. Local v. National Perspectives and Issues of Expertise

There is wide agreement that national uniformity in federal procedural rules is a good idea, despite the difficulty of attaining such uniformity in practice.[137] One serious concern about the proliferation of local groups charged with considering "such potential causes [of cost and delay] as court procedures . . . ."[138] is whether such groups are sensitive when making recommendations to the costs they can impose through procedural disuniformity.[139] Almost thirty percent of the respondents agreed, in fact, that "attorneys do not weigh [the] costs of procedural disuniformity between districts" when they recommend adopting procedures.[140] Fewer respondents (20%) agreed that "attorneys do not weigh costs of procedural disuniformity between local and federal rules."[141]

Suggested Local Rule

a. Prediscovery disclosure

Before any party may initiate any discovery, that party must submit to the opponent (1) the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, together with a summary of that information; (2) a description, including the location, of all documents that are reasonably likely to bear substantially on the claims or defenses; (3) a computation of any damages claimed; (4) the substance of any insurance agreement that may cover any resulting judgment; and (5) a copy of any report of an expert who may be called at trial. The disclosure obligation is reciprocal and continues throughout the case.

[137] The most obvious difficulty has been with local rules promulgated under Rule 83. *See* Robert E. Keeton, *The Function of Local Rules and the Tension with Uniformity*, 50 U. PITT. L. REV. 853 (1989); Stephen Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. PA. L. REV. 1999 (1989).

[138] 28 U.S.C. § 472(c)(1)(C) (Supp. IV 1992).

[139] *See* Robel, *supra* note 9; Carl Tobias, *Civil Justice Reform and The Balkanization of Federal Procedure*, 24 ARIZ. ST. L.J. 1393 (1992).

[140] Survey Question No. I.F.2. Nine percent did not know whether they agreed or disagreed with the statement.

[141] *Id.*

One way of assuring that Group members are sensitive to cross-district disuniformity is to make sure that the Groups include attorneys with multi-state practices. Several of the Groups reported no members in firms of fifty attorneys or more. If size is used as a rough proxy for the possibility that a firm will be involved in cases in other districts, these Groups may not have any members who would be directly affected by the problems that are associated with the multiplication of procedural requirements in different courts.

Respondents also did not appear concerned that they lacked expertise to "determine who is responsible for cost and delay,"[142] or to assess the docket.[143] Given the difficulty of these tasks, this self-assurance may be misplaced. Many Groups, however, relied on consultants to provide docket assessments and other technical help.

4. Was the Advisory Group Experience Worthwhile?

The judges who disputed the need for the CJRA would be heartened by how many of the respondents agreed with them.[144] The highest percentage of negative comments were from respondents expressing frustration with their charge under the Act. A significant number of the respondents questioned the need for the legislation:

> The process was probably more costly than beneficial in our district, which was not plagued by excessive delays or costs.[145]

> Our local federal court . . . is filled with strong-willed, hard-working federal judges who take pride in ensuring efficient, low-cost justice. They have largely accomplished this result, long before the CJRA.

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[142] Only 11% agreed that "attorneys lack expertise to determine who is responsible for cost and delay." *Id.*

[143] *Id.* Only 10% agreed with the statement "attorneys lack skills necessary to assess docket."

[144] For this section, I excluded comments from judges. This one was typical, however:

> The CJRA was well-intentioned, but based on two false premises: (1) That all districts have the same problems (we have long gotten the vast majority of our cases to trial without the CJRA, thank you); (2) docket problems are the result of lazy federal judges (I work harder now than when I was a lawyer).

Survey No. 43 (on file with the author).

[145] Survey No. 44 (on file with the author).

> The CJRA mandate ignores the possibility that reform was unnecessary in at least some districts. I thought we wasted a lot of time, paper, and government money to produce an unnecessary document just because the CJRA mandated it.[146]

> I'm a great believer in "If it ain't broke, don't fix it." Civil justice reform has such a nice ring to it, but the system works fine.[147]

Others noted, as had the judges who testified against the legislation, that an approach to cost and delay that ignored the criminal docket was unlikely to have much of an effect:

> There is little that can be done by the Advisory Group to overcome the tremendous burdens placed on the court by the criminal docket, other than to point out the need for more judges, and more spaces for visiting judges.[148]

> The problem is that Congress under the CJRA has failed to recognize the fundamental causes of undue expense and delay—the delay in appointing judges and the priority given the criminal justice system under the Speedy Trial Act.[149]

Even the respondents who saw the Advisory Group process as professionally rewarding still questioned its long-term utility. This comment was typical:

> I found my service a worthwhile opportunity for professional growth. I am presently agnostic as to whether the CJRA was a good idea. It is contributing toward disuniformity district by district in the federal rules of civil procedure and I oppose this "balkanization." I remain open-minded, pending review of the pilot and demonstration districts, whether it will produce off-setting benefits.[150]

CONCLUSION

The CJRA launched a massive experiment in local proceduralism, and the results are only now beginning to come in. In the debate between Congress and the judiciary over who should control civil justice reform, the results of this experiment are likely to be important. Early returns suggest support for both sides. Congress will be told through the reports issued

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[146] Survey No. 51 (on file with the author).
[147] Survey No. 69 (on file with the author).
[148] Survey No. 112 (on file with the author).
[149] Survey No. 109 (on file with the author).
[150] Survey No. 1 (on file with the author).

by local Groups that many districts did not need to go through this exercise. In addition, having invited the groups to lay responsibility for cost and delay, Congress is learning that many Groups place the responsibility squarely on its doorstep, blaming Congressional inaction in judicial appointments and funding, and blaming statutory requirements that lead to increased demands on the courts.

On the other hand, Congress may well point to the lack of significant input by non-attorneys as evidence that the Advisory Groups' product was the work of court insiders, rather than a cooperative effort between the bench, the bar and the public that Congress envisioned. In any event, the judges risk losing the benefits of the political capital they have amassed through this process if they undermine or ignore the Advisory Groups' recommendations. In this sense, then, the courts may be both the winners and the losers in the latest round of civil justice reform.

APPENDIX A
CIVIL JUSTICE REFORM ADVISORY GROUP
Early Implementation District Survey

I. Experiences on Civil Justice Reform Advisory Group

A. Position on Civil Justice Reform Advisory Group

0. No Response	8	(4.1%)
1. Chair	24	(12.4%)
2. Reporter	15	(7.7%)
3. Member	147	(75.8%)

B. Please estimate the average number of hours you spent each month on Advisory Group work during 1991. _____

C. Did your group employ a consultant?

0. No Response	4	(2.1%)
1. Yes	80	(41.2%)
2. No	99	(51%)
3. Don't Know	11	(5.7%)

D. Based on your experience, do you agree or disagree with these statements about the positive value of attorney participation on Civil Justice Reform Advisory Groups:

1. INCREASES ATTORNEY UNDERSTANDING OF COURTS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
68 (35.1%)	106 (54.6%)	11 (5.7%)	3 (1.5%)	6 (3.1%)	

2. INCREASES JUDICIAL UNDERSTANDING OF ATTORNEY PROBLEMS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
54 (27.8%)	103 (53.1%)	23 (11.9%)	5 (2.6%)	8 (4.1%)	1 (.5%)

3. INCREASES ATTORNEY COMPLIANCE WITH COURT PROCEDURES

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
13 (6.7%)	97 (50.%)	36 (18.6%)	3 (1.5%)	42 (21.6%)	3 (1.5%)

4. IMPROVES RESULT IN RULE FORMULATION: RULES ARE SUBSTANTIVELY BETTER

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
55 (28.4%)	94 (48.5%)	26 (13.4%)	4 (2.1%)	15 (7.7%)	

5. ATTORNEY PERSPECTIVE WOULD OTHERWISE BE IGNORED

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
21 (10.8%)	68 (35.1%)	81 (41.8%)	8 (4.1%)	13 (6.7%)	3 (1.5%)

6. LITIGANT PERSPECTIVE WOULD OTHERWISE BE IGNORED

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
20 (10.3%	66 (34%)	80 (41.2%)	5 (2.6%)	19 (9.8%)	4 (2.1%)

E. Are there ways in which attorney participation in Civil Justice Reform Advisory Groups is valuable that are not recognized in question D? 43 responses

F. Based on your experience, do you agree or disagree with these statements about the negative effects of attorney participation on Civil Justice Reform Advisory Groups?

1. ATTORNEYS DO NOT TAKE NEEDS OF COURTS INTO ACCOUNT

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
4 (2.1%)	15 (7.7%)	122 (62.9%)	48 (24.7%)	3 (1.5%)	2 (1%)

2. ATTORNEYS DO NOT WEIGH COSTS OF PROCEDURAL DISUNIFORMITY BETWEEN DISTRICTS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
7 (3.6%)	51 (26.3%)	91 (46.9%)	24 (12.4%)	20 (10.3%)	1 (.5%)

3. ATTORNEYS DO NOT WEIGH COSTS OF PROCEDURAL DISUNIFORMITY BETWEEN LOCAL AND FEDERAL RULES

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
4 (2.1%)	35 (18%)	103 (53.1)	29 (14.9%)	23 (11.9%)	

4. ATTORNEYS ARE TOO INTERESTED IN RULES THAT FAVOR THEIR CLIENTS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
5 (2.6%)	42 (21.6%)	111 (57.2%)	32 (16.5%)	4 (2.1%)	

5. ATTORNEYS ARE TOO BUSY TO DEVOTE TIME TO CIVIL JUSTICE REFORM ISSUES

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
3 (1.5%)	26 (13.4%)	112 (57.7%)	49 (25.3%)	4 (2.1%)	

6. ATTORNEYS LACK SKILLS NECESSARY TO ASSESS DOCKET

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
2 (1%)	18 (9.3%)	103 (53.1%)	62 (32%)	9 (4.6%)	

7. ATTORNEYS LACK EXPERTISE IN RULES FORMULATION

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
n/a	19 (9.8%)	101 (52.1%)	71 (36.6%)	3 (1.5%)	

8. ATTORNEYS WILL NOT BE CANDID WHEN JUDGES ARE PRESENT

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
7 (3.6%)	39 (20.1%)	106 (54.6%)	39 (20.1%)	2 (1%)	1 (.5%)

9. LOCAL GROUPS RECOMMEND PROCEDURES THAT FAVOR LOCAL BAR

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
4 (2.1%)	37 (19.1%)	105 (54.1%)	31 (16%)	15 (7.7%)	2 (1%)

10. ATTORNEYS LACK EXPERTISE TO DETERMINE WHO IS RESPONSIBLE FOR DELAY OR COST

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
2 (1%)	19 (9.8%)	106 (54.6%)	60 (30.9%)	7 (3.6%)	

G. Does attorney participation in Civil Justice Reform Advisory Groups have negative effects not recognized in question F?

H. Please answer the following questions about the participation of judicial officers (district judges and magistrate judges) on the Advisory Group. 60 responses

1. Were judicial officers members of the Advisory Group?

a. Yes, they were full members	75	38.7%
b. They were ex officio members	29	14.9%
c. They were not members, but attended meetings		
i. They always attended meetings		
ii. They sometimes attended meetings		
d. They were not members and did not attend meetings		

2. If judicial officers participated in the meetings, do you agree with the following statements about judicial officer participation:

n/a

a. JUDICIAL OFFICER PARTICIPATION WAS ESSENTIAL IN UNDERSTANDING ISSUES GROUP WAS ASKED TO ADDRESS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
68 (35.1%)	85 (43.8%)	21 (10.8%)	5 (2.6%)	5 (2.6%)	10 (5.2%)

b. JUDICIAL OFFICERS DOMINATED MEETINGS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
5 (2.6%)	13 (6.7%)	130 (67%)	34 (17.5%)	2 (1%)	10 (5.2%)

c. ATTORNEYS WERE CANDID WHEN JUDICIAL OFFICERS WERE PRESENT

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
29 (14.9%)	116 (59.8%)	30 (15.5%)	2 (1%)	6 (3.1%)	11 (5.7%)

I. The Civil Justice Reform Act suggests that Advisory Groups should include "attorneys and other persons who are representative of major categories of litigants in such court."

1. Did your Advisory Group include non-attorney litigant representatives?

a. Yes	148	(76.3%)
b. No	33	(17%)
c. Don't Know	9	(4.6%)
d. No Response	4	(2.1%)

2. If your Advisory Group included non-attorney litigant representatives, do you agree or disagree with the following statements about their participation:

a. LITIGANT PARTICIPATION WAS HELPFUL BECAUSE IT BROUGHT AN IMPORTANT PERSPECTIVE TO DELIBERATIONS THAT ATTORNEYS COULD NOT PROVIDE

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
24 (12.4%)	71 (36.6%)	40 (20.6%)	8 (4.1%)	8 (4.1%)	43 (22.2%)

b. LITIGANTS WERE ONLY INTERESTED IN RULES THAT FAVORED THEIR INTERESTS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
n/a	13 (6.7%)	99 (51%)	18 (9.3%)	19 (9.8%)	45 (23.2%)

c. LITIGANTS DO NOT KNOW ENOUGH ABOUT COURT PROCEDURES TO BE USEFUL MEMBERS OF ADVISORY GROUP

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
11 (5.7%)	40 (20.6%)	77 (39.7%)	14 (7.2%)	9 (4.6%)	43 (22.2%)

d. LITIGANTS DO NOT PARTICIPATE BECAUSE THEY DO NOT UNDERSTAND COURT PROCEDURES

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
10 (5.2%)	32 (16.5%)	81 (41.8%)	12 (6.2%)	15 (7.7%)	44 (22.7%)

J. Do you feel that your participation in the Civil Justice Reform Advisory Group has been a worthwhile experience? Why or why not? How could the process have been improved? Response: 150 (21 negative; 124 positive)

II. Civil Justice Expense and Delay Reduction Plan

A. Has your district adopted a Civil Justice Expense and Delay Reduction Plan?

1. Yes	177	(91.2%)
2. No (go to part III)	7	(3.6%)
3. Don't Know (go to part III)	9	(4.6%)
4. No Response	1	(.5%)

B. If yes, do you agree or disagree with the following statements:

1. THE COURT WAS OPENMINDED IN CONSIDERING THE ADVISORY GROUP RECOMMENDATIONS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
50 (25.8%)	103 (53.1%)	15 (7.7%)	6 (3.1%)	3 (1.5%)	17 (8.8%)

2. THE ADVISORY GROUP WAS TOO CAUTIOUS IN ITS APPROACH TO REFORM

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
4(2.1%)	30 (15.5%)	118 (60.8%)	22 (11.3%)	4 (2.1%)	16 (8.2%)

3. MEMBERS OF THE ADVISORY GROUP REPRESENTED THEIR OWN INTERESTS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
6 (3.1%)	43 (22.2%)	105 (54.1%)	19 (9.8%)	4 (2.1%)	17 (8.8%)

4. MEMBERS OF THE ADVISORY GROUP WERE A DIVERSE GROUP OF PRACTI TIONERS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
53 (27.3%)	113 (58.2%)	7 (3.6%)	3 (1.5%)	1 (.5%)	17 (8.8%)

5. LITIGANTS' INTERESTS WERE WELL-REPRESENTED ON THE ADVISORY GROUP

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
39 (20.1%)	100 (51.5%)	21 (10.8%)	8 (4.1%)	9 (4.6%)	17 (8.8%)

6. I AGREE WITH MOST OF THE ADVISORY GROUP'S RECOMMENDATIONS

Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know	No Response
48 (24.7%)	113 (58.2%)	10 (5.2%)	1 (.5%)	4 (2.1%)	18 (9.3%)

III. Demographic Information:

A. Are you an attorney?

1. Yes 180 (92.8%)
2. No 14 (7.2%)

b1. If no, what is your job?_____

(If you answered yes, please complete the rest of this section)

B. How long have you been in practice?

1.	over 20 years	90 (46.4%)
2.	over 10 years	70 (36.1%)
3.	over 5 years	12 (6.2%)

4.	under 5 years	1 (.5%)
5.	no response	21 (10.8%)

C. What is the nature of your practice?

1. Law Firm			
a.	Size of firm:		
b.	over 100 attorneys	21 (10.8%)	
c.	over 50 attorneys	12 (6.2%)	
d.	over 20 attorneys	17 (8.8%)	
e.	over 10 attorneys	18 (9.3%)	
f.	under 10 attorneys	51 (26.3%)	
2. Government			
a. Judicial Officer			
	a. Federal	10	(5.2%)
	b. State	1	(.5%)
b. Court Clerk		5	(2.6%)
c. Other Court Personnel		5	(2.6%)
d. United States Attorneys Office		1	(.5%)
e. Other		8	(4.1%)
3. Corporate		5	(2.6%)
4. Public Interest/Legal Services		4	(2.1%)
5. Academic		11	(5.7%)
6. Other (specify) _____		3	(1.5%)

D. If you are in private practice, what is the predominate nature of your practice?

1. bankruptcy	5	(2.6%)
2. corporate/banking/business	13	(6.7%)
3. criminal	8	(4.1%)
4. family	2	(1%)
5. general civil litigation	91	(46.9%)
6. immigration	0	(0%)
7. labor/employment	18	(9.3%)
8. municipal	0	(0%)
9. natural resources/environmental	3	(1.5%)
10. patent/trademark/copyright	3	(1.5%)
11. probate and trusts	9	(4.6%)
12. real estate	7	(3.6%)
13. taxation	4	(2.1%)
14. torts and insurance	32	(16.5%)
15. other (specify) _____		
antitrust	2	(1%)
civil rights	6	(3.1%)

E. If you are in private civil practice, do you represent

1. primarily plaintiffs	40	(20.6%)
2. primarily defendants	48	(24.7%)
3. about the same	37	(19.1%)
4. no response	69	(35.6%)

F. Approximately what percentage of your cases are filed in federal court?

G. Other Service Activities (check all that apply)

1. Serve on local or state bar committees	121	(62.4%)
2. Serve on national bar committees	54	(27.8%)
3. Serve on other court committees	79	(40.7%)
4. Serve on District Court's Local Rules Committee	39	(20.1%)

H. Did you serve as a judicial law clerk?

1. Yes, at a federal trial court in this district.	22	(11.3%)
2. Yes, at a federal trial court in another district.	4	(2.1%)
3. Yes, at a federal appellate court.	7	(3.6%)
4. Yes, at a state court.	13	(6.7%)
5. No	121	(62.4%)

I. What is your gender?

1. female	33	(17%)
2. male	147	(75.8%)
3. no responses	14	(7.2%)

J. What is your race/ethnic group [response not reported] ?

1. Black/African-American	6	3.1%
2. Hispanic/Latino	3	1.5%
3. Native American/Indian		
4. White/Caucasian	170	86.7%
5. Other (Asian-American)	2	1.0%