

## COMMENT: ONE COURT'S EXPERIENCE WITH THE CJRA\*

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Although the effects of the Civil Justice Reform Act have been described and discussed in broad strokes as they have been experienced on a nationwide basis, it is important to consider the Act's effect on individual courts as well. The following paragraphs encapsulate the experiences of one of the pilot courts implementing the CJRA: the United States District Court for the Southern District of New York.

Some legal scholars, attorneys, and others charting the progress of the CJRA have indicated a concern that federal judges have resisted the CJRA because of worries about judicial independence. Others have expressed concerns that, although the spirit of the CJRA is experimentation, there may be an unwillingness on the part of federal judges to experiment. Finally, some have worried that the promise of the statute was not being fulfilled because judges do only what they want to do.

These purported fears about interference with judicial independence have not been a concern for the judiciary in the Southern District of New York. The CJRA, passed by the Congress and signed by the President, is the law of the land. The judges of the Southern District of New York know that they have a duty to comply with the law and have made a very intensive effort to do so.

Pursuant to the statute, an Advisory Group was formed comprised of certain judges (including myself), a substantial group of attorneys, and a non-attorney member of the community. The people in the Advisory Group put in a tremendous amount of work studying the operations of the court and formulating a plan. The Advisory Group divided into subcommittees, and each subcommittee prepared materials that were ultimately

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\* Adapted from Remarks by Chief Judge Griesa, at the American Bar Association Conference on the CJRA in Tuscaloosa, Alabama on March 22, 1997.

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included in a lengthy Advisory Group Report.

The Advisory Group sent out questionnaires to the judges of the court and 3,000 practicing attorneys; and the responses were analyzed. The Group launched an extensive study of 2,000 closed cases. The Price Waterhouse firm assisted in analyzing the statistics, questionnaire responses, and docket study. The end result of all of this effort was the preparation of the Civil Justice Expense and Delay Reduction Plan, adopted by the court on December 12, 1991.

The CJRA has been criticized on the grounds that, due to compromise with the judiciary during its passage, the statute is somewhat vague. I do not find it vague at all. The heart of the statute is the concept of case management by judges, and the statute sets forth in clear fashion the main elements of case management.

But case management is hardly a reform. Case management has been the policy of the federal judiciary for more than twenty-five years. A watershed event leading inevitably in the direction of case management was the change from the central calendar system to the individual calendar system, which was completed in the federal courts by about 1970. The specific policy that federal judges should engage in case management has existed in the Southern District of New York at least since 1972, when I joined the court. One of the principal ways that the policy of case management has been effectuated has been through the educational programs of the Federal Judicial Center, which has been emphasizing case management as long as I have been a judge.

The CJRA Plan, which the Advisory Group drafted and which the Southern District adopted, set forth principles and procedures dealing with case management, as was required by the terms of the CJRA. However, this was in effect a codification of policies which our court had been carrying out for many years. Experience has shown that the Plan did not result in a fundamental change in the handling of cases by the court, for the reasons just described.

In describing the Plan as "codifying" existing policies, I must make two qualifications. The first of these is that the Plan instituted a tracking system, not used by the court before, providing that cases be classified as Complex, Standard, or Expedited.

This system was intended to comply with the provision of the CJRA requiring "differential treatment of civil cases." However, our Plan was later changed to eliminate tracking by these classifications because they did not prove useful in our court. The court does indeed provide differential treatment, but such treatment is based on the individual nature of the case. An action where injunctive relief is sought is inevitably treated differently from a damages case. A large securities fraud class action will have far different management requirements than a modest cargo damage case. The resulting differences in treatment emerge naturally from the characteristics of each case, rather than from artificially created categories.

Another innovation made by our Plan was the institution of a mediation program, with volunteer attorneys acting as mediators. This has indeed been a successful program, and the court intends to continue it. However, as it affects only a small portion of the approximately 10,000 civil cases filed in this court each year, this program does not have a major impact upon the practices and procedures of the court as a whole.

None of these observations should be taken to mean that federal judges should be complacent or conclude that nothing needs to be changed. In the federal judiciary as a whole, and in any given court, and for any given judge, some things (hopefully most) go well, but some things go wrong. As time goes on, and as we contemplate the experiences of the last six years, we must make an effort to detect the *real* problems and to arrive at *real* solutions. This will involve a recognition that changes in systems and procedures can only go so far, and that the quality of justice depends largely on the quality of the human beings who do the work.

