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Introduction

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With expense and delay reduction plans now in place, each of the ninety-four United States district courts has completed a significant step mandated by the Civil Justice Reform Act of 1990 ("CJRA").[1] The CJRA was intended to reverse a recent trend in which one's bank balance, rather than the merits of the case, controlled a decision to file suit.[2] It already appears that the changes this legislation put in place are working toward the goal of ensuring that all Americans have access to the courts and, ultimately, to justice.

In this Issue, the *St. John's Law Review* provides an interim view of the ongoing civil justice reform process initiated in 1989 by a task force cosponsored by the Foundation for Change and the Brookings Institute. I convened this task force to address the significant problems of expense and delay that have undermined the performance of and confidence in the civil justice system.[3] The task force brought together individuals and perspectives from across the stratum of legal thought and practice, including consumer and civil rights groups, women's rights advocates, representatives of the insurance industry and business roundtable, trial lawyers, and members of the plaintiff and defense bars.[4] This diversity generated discussions that were thoughtful, lively, and informed. Every issue was fully debated; every response was fully analyzed. The group was committed to a consensus process and agreed that each proposal had to be unanimously adopted.[5]

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1 28 U.S.C. §§ 471-82 (Supp. IV 1992).

2 *See* Amendments to the Federal Rules of Civil Procedure, 85 F.R.D. 521, 523 (1990).

3 Jeffrey J. Peck, *"Users United": The Civil Justice Reform Act of 1990*, 54 LAW & CONTEMP. PROBS. 105, 107 (Summer 1991).

4 *See* Joseph R. Biden, Jr., *Equal, Accessible, Affordable Justice Under Law: The Civil Justice Reform Act of 1990*, 1 CORNELL J.L. & PUB. POL'Y 1 (1992); Peck, *supra* note 3, at 108; BROOKINGS INSTITUTE, JUSTICE FOR ALL: REDUCING COSTS AND DELAYS IN CIVIL LITIGATION (1989), *reprinted in the Civil Justice Reform Act of 1990 and the Judicial Improvements Act of 1990: Hearings Before the Comm. on the Judiciary* 101st Cong., 2d Sess. app. (1990) [hereinafter *Hearings*].

5 *See* Peck, *supra* note 3, at 108.

The inclusive process and insistence on unanimity generated the momentum for a comprehensive national strategy for procedural reforms which resulted in the CJRA.[6]

The principles embodied in the CJRA affect more than procedural, or "housekeeping," rules. The CJRA represents a policy decision by Congress that each district court be proactive in reducing expense and delay. The intent was to overcome the "complacency" and "inertia" that results from modest amendments, such as those to the federal rules of procedure in 1980.[7] By providing the necessary statutory components, Congress set the agenda for the federal courts to implement meaningful and effective reform.[8]

The CJRA incorporates five components that comprise the foundation for civil justice reform in the United States. The legislation mandated reform that "worked from the bottom-up," introduced mandatory case management principles, focused attention on judicial accountability, expanded dissemination of information, and implemented a system for renewal of the district court advisory groups.[9] In many respects, the Articles in this Issue reflect these five components. This Introduction briefly discusses each component, since each is an integral part of the reform process put into action by the CJRA.

A number of the Articles in this Issue comment on the cornerstone principle of the CJRA—"bottom-up" reform. Too often in the past, unsuccessful reform measures and solutions have been dictated by outsiders who lack the day-to-day experience with the system, its problems, and potential solutions. The CJRA has taken advantage of the judges, magistrates, clerks, and administrators who are best positioned to identify and implement thoughtful and creative reforms at the local level.[10] More than 1700 users[11] of the federal court system—lawyers, judges, aca-

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[6] *See id.* at 113.

[7] Amendments to the Federal Rules of Civil Procedure, 85 F.R.D. 521, 523 (1980) (Powell, J., dissenting). Powell believed that Congressional acceptance of "tinkering changes" would only postpone the adoption of truly effective reforms. *Id.* It is the courts, litigants, attorneys, Congress, and the executive branch who are responsible for the problems in civil litigation, and therefore, responsible for the solutions. PUB. L. No. 101-650, § 102, 104 Stat. 5089, 5089 (1990).

[8] *See* Peck, *supra* note 3, at 118 ("The CJRA is a roadmap but those who travel the road [clients, lawyers, judges] are the ones who decide whether the destination is reached.").

[9] *See generally* Peck, *supra* note 3.

[10] *Hearings*, *supra* note 4, at 314-18 (statement of Judge Robert Peckam).

[11] *Hearings*, *supra* note 4, at 227 (statement of Judge Richard Enslen).

demics, legislators, business people, public interest groups, and other community leaders and activists—have participated in the CJRA's bottom-up reform as members of their district court advisory groups. The advisory group structure was designed to mirror the successful framework of the task force that put the CJRA together—bringing together users of every variety and perspective.[12] Each of the ninety-four U.S. district court advisory groups studied the problems facing civil litigants in their districts and recommended an expense and delay reduction plan to the court. In making their recommendations, the advisory groups consulted their local bar groups, chambers of commerce, interest groups, academics, community leaders, and district court judges by holding public hearings and soliciting comments.[13] As of December 1993, all ninety-four advisory groups presented their recommendations and each district court had implemented an expense and delay reduction plan based on those recommendations.[14]

In developing a plan, each district court was required to consider six "principles and guidelines of litigation management and cost and delay reduction."[15] Each principle embodied the task force's unanimous judgment regarding the importance of case management for successful reform: (1) systematic, differential treatment of complex and simple cases; (2) early judicial involvement in controlling discovery, setting firm trial dates and deadlines for motions; (3) monitoring of complex cases; (4) encouragement of cost effective discovery; (5) certification of discovery matters; and (6) authorization to refer cases to available alternative dispute resolution programs.[16]

Significantly, of the first forty-four counts to implement plans, each included most, if not all, of the six principles.[17] These principles were flexible enough to allow innovative and thoughtful reform while promoting the integrity of the federal civil system to meet the needs of litigants. The principles are variously charac-

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12 *See* 28 U.S.C. § 478(b) (Supp. IV 1992).

13 *See, e.g.*, CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN, U.S. DIST. CT. FOR THE E. DIST. OF CAL. 1 (1991); REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP, U.S. DIST. CT. FOR THE DIST. OF NEV. iii (1993); REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP, U.S. DIST. CT. FOR THE W. DIST. OF TENN. 1 (1991).

14 Pub. L. No. 101-650, § 103(b), 104 Stat. 5089, 5096 (1990) sets this deadline.

15 28 U.S.C. § 473(a) (Supp. IV 1992).

16 *Id.*

17 ADMINISTRATIVE OFFICE OF U.S. COURTS, PRINCIPLES AND GUIDELINES (Aug. 1993) (table compiling implementations of CJRA guidelines).

terized in the following Articles as bringing a common-sense approach to civil litigation, providing a framework by which magistrate judges can meet the needs of civil litigants, and importantly, serving as a reminder "that the cost of civil litigation does not depend solely on the courts," but is a responsibility shared by all.

Each of the six principles invokes difficult issues, none more troublesome than discovery reform. As evidenced by the recent public debate on mandatory disclosure and proposed Rule 26(a)(1) of the Federal Rules of Civil Procedure, not all users of the system agree on the path to reform.[18] Indeed, the variations generated by the advisory group of each district court which devised its own plan prompted some to caution that the federal system would be "balkanized."[19] The development of information generated by the experimental plans is destined to overtake the tension that exists between reform and what is aptly termed the local "legal culture." Rather than balkanization, the CJRA creates, as a first stage, a national laboratory to test the most promising ideas developed by court users. Building on the experimentation—selecting the ideas that prove successful—the Judicial Conference will develop uniform recommendations for reducing expense and delay.[20]

To disseminate information and establish a record by which to devise future reforms, the Judicial Conference commissioned the RAND Corporation to conduct a study, to be completed by December 1995, of the ten early implementation courts. These courts implemented their plans, which included all six case management principles, by December 1991.[21] The plans, the RAND study, and the informal exchange of information among districts provide a framework by which a national set of reforms can be implemented in each district court.

Responding to a significant complaint by litigants regarding the delay involved in the time required to resolve motions and issue opinions, the CJRA also introduced measures to monitor the

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[18] *See, e.g.*, *Panel Urges Federal Judges to Opt Out of Mandatory Disclosure*, CONN. L. TRIB., Mar. 14, 1994, at 12.

[19] Actually, it is the proliferation of local rules, not the uniform reform intended by CJRA, that creates balkanization and contributes to expense and delay.

[20] *See* PUB. L. NO. 101-650, § 105(c), 104 Stat. 5089, 5098 (1990).

[21] *See* PUB. L. NO. 101-650, § 105(b), 104 Stat. 5089, 5097 (1990). In addition, five courts were required to adopt specific methods of reducing cost and delay, such as alternative dispute resolution and differentiated case management. *Id.* § 104(a), (b), 104 Stat. 5089, 5097 (1990). The Judicial Conference of the United States will report the results of this program by the end of 1995. *Id.* § 104(d), 104 Stat. 5089, 5097 (1990).

disposition of motions and trials in the district courts.[22] On a bi-annual basis, the Administrative Office of the United States Courts ("AO") is required to report the following statistics for each judge: the number of motions pending for longer than six months, the number of bench trials submitted for more than six months, and the number of cases that have not been resolved within three years.[23] The most recent report revealed that the number of motions, bench trials, and three-year-old cases has increased slightly over the preceding six-month period.[24] The AO attributed the rise in pending motions to the number of judicial vacancies. As the number of vacancies diminish, the statistics will provide a useful baseline to determine whether the number of motions diminish as a corollary matter. The reports will become a useful resource as the measures taken under the expense and delay reduction plans take effect and as judicial vacancies continue to be filled.

The dissemination of information to the public does not end with statistics on judicial accountability. Rather, the CJRA requires that the Judicial Conference study the plans in a continuing effort to improve the civil justice system.[25] Each expense and delay reduction plan is being made available on a commercial database that presently includes thirty-four plans, the June 1992 Report of the Judicial Conference, and the Model Plan developed by the Judicial Conference.[26] In addition to the remaining plans, all other CJRA documents, including the district courts' annual assessments,[27] will be available on-line. Individual district courts have mailed copies of their plans to members of the Federal Bar or made the plans available in the clerk's office. In addition, the AO and the Federal Judicial Judicial Center have produced summaries of each of the ninety-four plans, and the Judicial Conference Committee on Court Administration recently completed its evaluation of all the expense and delay reduction plans.[28] The AO will submit a report in December 1994 that outlines the provisions adopted under each plan.

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22 28 U.S.C. § 476(a) (Supp. IV 1992).

23 *Id.*

24 CIVIL JUSTICE REFORM ACT REPORT OF MOTIONS PENDING OVER SIX MONTHS, BENCH TRIALS SUBMITTED OVER SIX MONTHS AND CIVIL CASES PENDING OVER THREE YEARS (Mar. 31, 1993).

25 28 U.S.C. § 472(b) (Supp. IV 1992).

26 *Id.*

27 *See* Ed Finkel, *Andersen Team to Provide Document Link*, CHICAGO LAWYER, Jan. 1994, at 63. The model plan was developed in accord with 28 U.S.C. § 477.

28 *Id.* at § 475.

The work of the advisory groups was not meant to end with the adoption of the plans, just as the CJRA was not intended to be an end in itself.[29] Many advisory groups are continuing their active role by providing courts with comments for the annual assessment and recommending further changes in the plans.[30] In the coming year, the advisory groups will begin to experience turnover as the four-year term of individual members expire.[31] The active role of the advisory groups will continue as new members are appointed and bring fresh perspective to the task of civil justice reform.

The process set into motion by the CJRA continues forward. All ninety-four district courts have their expense and delay reduction plans in place. As a result of the CJRA, the awareness and sensitivity to problems litigants face in the civil justice system have reached new heights. I look forward to reviewing the results of the RAND study, as well as hearing from the users of the system about their various civil justice reform ideas and plans. Without the input of those who use the legal system and the opportunity to put their imaginative and innovative ideas to work, true reform of the civil justice system would never occur. Already, the advisory groups have contacted me about issues ranging from the proposed changes to the Federal Rules of Civil Procedure to judicial vacancies. Appropriately, the active involvement of the advisory groups under the CJRA has restored the focus of the civil justice system to litigants pursuing just and equitable resolutions in the federal courts and has served as a reminder that the federal court system should serve all people.

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[29] *See* U.S.C. § 474(b) (Supp. IV 1992).

[30] *See id.* § 475 (providing for annual consulting with advisory group).

[31] *Id.*