

## ANALYSIS OF THE THIRD CIRCUIT

### **A. Number of Authorized Judges and Current Request for Additional Judges**

At present, Congress has allocated 14 judgeships to the Third Circuit. Twelve of these judgeship positions are filled, thus creating two vacancies, one of which occurred in 1996 and the other in 1998. According to former Chief Judge Dolores Sloviter, it has not been necessary for the Third Circuit to request additional authorized judgeships. Rather, at the time of the Subcommittee hearing in November 1997, the Third Circuit only requested that the one then-existing judicial vacancy be filled. Since the Subcommittee hearing, with the retirement of another judge, the second vacancy was created.

### **B. Discussion of Third Circuit Caseload**

The number of Third Circuit filings increased by 36% in the past 10 years, from 2645 in 1987, to 3604 in 1996. The number of motions acted on by the court rose from 4060 in 1987, to 6014 in 1996. If one does not include clerk's motions, the number of motions increased by 53% in this 10 year period, from 1914 in 1987, to 2939 in 1996. While the number of filings for the Third Circuit has leveled off in recent years, Judge Sloviter cautioned that this may be a "temporary plateau" rather than a permanent shift in filing patterns.

The Third Circuit also has an active death penalty caseload. While the effect of the Prisoner Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act on the Third Circuit's caseload is still unclear, there has been a downward trend in filings in prisoner civil rights cases. If this downward trend continues, Congress may want to consider reducing the authorized complement of judges for the Third Circuit.

### **C. Third Circuit Case Management**

Under the Third Circuit's procedures, only one set of judges examines the briefs. Because the court does not conduct an advance case screening, Judge Sloviter explained that there is a significant reduction in duplication of work which can occur when one judge, or a panel of judges, decides which cases are to be argued or submitted and another panel of judges sits in judgment. The Third Circuit's procedures provide that cases should be submitted without oral argument where the facts are clear and supported by the record, the applicable law is established, the briefing is adequate, and there is no change in precedent at issue. A single judge on a 3-judge panel can request oral argument, but the decision to dispense with oral argument must be unanimous. Where there is no oral argument, the case is disposed of by a not-for-publication memorandum opinion. In 1997, the Third Circuit heard oral argument in 44% of cases in which the parties were represented by counsel.

**Court Schedule and Recess Period:** The Third Circuit sits throughout the year without recess and holds approximately 36 weekly sessions per year. The court hears an average of 35 to 37 fully briefed counseled cases per session, for a total of 245-252 consolidated cases per judge per year. Each active judge also sits on one of five standing pro se panels, to

which approximately 90-100 cases are submitted per year. Further, judges participate in a busy en banc practice.

Because the Third Circuit has no recess period, arguments are scheduled throughout the year and appeals are disposed of on a “regular and expeditious basis.” As of the end of FY 1996, the median case disposition time from notice of appeal to final order was 8 months, as compared to the national average of 10.4 months.

**Use of Staff Attorneys:** Unlike other circuits, staff attorneys in the Third Circuit provide no input in substantive case dispositions or in the screening process which determines the cases selected for oral argument. Instead, staff attorneys are utilized primarily in motions panels, death penalty cases, and in preparing the record in pro se cases.

**Use of Visiting Judges:** Judge Sloviter considered visiting judges and district judges sitting by designation as a valuable tool in the reduction of their caseload. She believed visiting judges to be an opportunity for cross-fertilization of ideas with respect to procedures followed by different circuits. However, she also believed that excessive use of visiting judges could have an adverse impact on decisional consistency within the courts. While she did not think that court consistency was implicated with respect to visiting senior district judges from within the circuit, Judge Sloviter suggested that the assignment of visiting district judges from other circuits should be approached “with great caution.”

**Use of Senior Judges:** The pool of Third Circuit senior judges has been decreasing. However, Judge Sloviter calculated that in the next 2 1/2 years, half of the court’s active judges will be eligible for senior status or retirement, thus increasing the number of senior judges available to the Third Circuit. Several of the circuit’s 5 senior judges sit on other circuit courts.

**Use of Mediation Programs:** The Third Circuit’s mediation program has resulted in the settlement of approximately 10% of the court’s counseled civil docket. Senior circuit and district judges act as arbitrators with the court’s mediation staff.

#### **D. Third Circuit Use of Other Court Efficiencies**

The Third Circuit was among the first courts to use word processing, electronic mail, picture phones, computer-assisted legal research and electronic filings of briefs. Judge Sloviter commented that while video conferencing may produce savings for the lawyers and the parties, there are no significant savings for the court. The Third Circuit conducted a study which determined that too much time was wasted when judges traveled from chambers to the central courthouse for arguments and conferences; consequently, the court eliminated allowing oral arguments for every case filed and set fewer weeks of sitting, with more cases on the schedule. Judge Sloviter felt that the computer program which makes judges computer-literate is another worthwhile program, because judges can work on cases at home and communicate with colleagues through their computers.

Judge Jane Roth indicated that all active judges, including magistrate and bankruptcy judges, need the flexibility and availability of their own courtroom to schedule trials, motions or other hearings. However, she did note that non-resident judges and senior judges share chambers in the Third Circuit.

Judge Sloviter also recommended that Congress carefully review the legislation it enacts to help maintain an equilibrium between the supply and demand of the federal courts and keeping costs in check. For example, she suggested that legislation specifically state whether there is a private right of action.

#### **E. Conclusion**

Despite the utilization of programs and procedures to render the court more efficient, Judge Sloviter urged a prompt filling of the then-existing single vacancy in the Third Circuit because she felt that the Third Circuit had not experienced the benefit of functioning at full capacity. She argued that judges could not undertake a permanent increase in workload without diminishing the quality of the court's decision-making. Although it is unclear whether the Third Circuit's caseload will increase in the future, Judge Sloviter argued that it would be more beneficial for the court to fill the vacancy now in order to prevent an emergency situation in the future.

However, Judge Sloviter also agreed that every vacancy should be justified by a court before it is filled. At the time of her testimony, she indicated that if the current vacancy were to be filled and one of the current judges were to take senior status in the spring of 1998, the Third Circuit would wait and see whether that new vacancy should be filled. Judge Sloviter was convinced that merely increasing the number of judges per circuit indefinitely would not increase efficiency. She explained that such an increase in judgeships would impede consistency in the law and adversely affect collegiality among the members. Judge Sloviter believed that there is a maximum number of judges per court in terms of efficiency, and that if one goes beyond 13 - 15 judges, there may be diminishing returns. She also suggested that one would not want to increase a court by more than 20% at any one time because it would not constitute "carefully calibrated" growth. Judge Sloviter agreed that methods, such as the use of visiting judges, could help alleviate temporary increases in caseload.

Given the decreasing caseload of the Third Circuit and the fact that the circuit renders decisions more quickly than the national average, and considering Judge Sloviter's testimony that the pool of senior judges should increase as current judges take senior status, Congress should fill the judicial vacancy which existed at the time of the Subcommittee hearing and proceed with caution as to the newest vacancy.

EXHIBIT TO TESTIMONY OF CHIEF JUDGE DOLORES K. SLOVITER

U. S. COURT OF APPEALS  
FOR THE  
THIRD JUDICIAL CIRCUIT  
STATISTICAL PROFILE

YEAR	APPEALS FILED	% CHG 1987	PRO SE APPEALS	% CHG 1987	TOTAL MOTIONS FILED	% CHG 1987	COURT MOTIONS	% CHG 1987
1987	2645		741		4060		1914	
1988	2914	10.17%	929	25.37%	4359	7.36%	1972	3.03%
1989	3139	18.68%	993	34.01%	4624	13.89%	2159	12.80%
1990	2992	13.12%	1099	48.31%	4433	9.19%	2107	10.08%
1991	3057	15.58%	1123	51.55%	4872	20.00%	2301	20.22%
1992	3301	24.80%	1369	84.75%	4358	7.34%	2298	20.06%
1993	3599	36.07%	1452	95.95%	5010	23.40%	1741	-9.04%
1994	3675	38.94%	1513	104.18%	6271	54.46%	2839	48.33%
1995	3485	31.76%	1405	89.61%	6191	52.49%	2972	55.28%
1996	3604	36.26%	1578	112.96%	6014	48.13%	2939	53.55%