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Last year in the pages of this reporter, we analyzed the Judicial Amendments Act of 1994, a statute which reauthorized three initiatives that had been significant to the operations of the federal courts. [1] We examined how section two of the legislation extended the authorization of the Judiciary Automation Fund for three years, how section three extended the authorization for court-annexed arbitration in twenty federal district courts until the end of 1997, and how section four extended the experimentation with, and evaluation of, expense and delay reduction procedures and litigation management techniques in ten pilot district courts under the Civil Justice Reform Act (CJRA) of 1990 for an additional year. [2]

We found that Congress had extended the pilot program primarily so that the RAND Corporation could complete its comprehensive evaluation of experimentation with procedures for decreasing cost and delay. [3] We determined that the assessment's conclusion had been delayed principally because unforeseeable problems had slowed the effectuation of the measures being analyzed in numerous relevant districts. [4]

RAND suggested that twenty percent of the suits which it was tracking would not have been terminated by the statutory deadline and that these ***578** were exactly the kind of complicated cases which parties, lawyers, and judges have the greatest difficulty resolving and on which the CJRA is focused. [5] We asserted that Congress had correctly decided to extend this deadline. Having spent significant resources on this national experiment with procedures for reducing expense and delay, it appeared eminently sensible to include those lawsuits which were most likely to inform future experimentation and reform. [6]

Four members of the Senate Judiciary Committee introduced the Civil Justice Reform Act Amendment Act of 1995 on February 23, 1995 as Congress was considering numerous aspects of the Contract With America, most relevantly the legal reforms in its ninth tenet. [7] Senator Orrin Hatch (R-Utah), Chair of the Senate Judiciary Committee, Senator Charles Grassley (R-Iowa), Chair of the Subcommittee on Courts and Administrative Practice, Senator Joseph Biden (D-Del.), the ranking minority member of the Senate Judiciary Committee, and Senator Howell Heflin (D-Ala.), former Chair of the Courts and Administrative Practice Subcommittee, sponsored the legislation. [8] Passage of the proposal by the House of Representatives and the Senate was essentially perfunctory, and President Bill Clinton signed the measure in October. [9] This essay briefly evaluates the new legislation in an attempt to familiarize federal court judges, attorneys and litigants as well as others who may be interested in the operations of the courts with the measure.

Senator Hatch, when introducing the bill in the Senate, observed that the "legislation would work a purely technical correction to extend the time period for [the demonstration district] study currently being conducted in certain Federal courts." [10] The Senate Judiciary Committee Chair then explained why the extension was needed and the advantages that it would afford. He initially traced the background of the pilot and demonstration programs which the CJRA established. Senator Hatch then explained

that the Judicial Amendments Act of 1994 had extended for a year the RAND Corporation's study of the pilot courts, but the legislation did not extend the ***579** Federal Judicial Center's study of the demonstration program because of an oversight.

The Judiciary Chair stated that he was introducing the Civil Justice Reform Act Amendment Act of 1995 to grant the demonstration districts the same extension. Senator Hatch observed that this change would make both programs and their assessments consistent, thereby facilitating direct comparison of the final reports on the two programs that the Judicial Conference must submit to Congress. He asserted that the bill would restore Congress' original intent in prescribing identical deadlines for pilot and demonstration courts. The Senator also suggested that the deadline's extension would improve the study of the demonstration districts because more cases would be concluded and included in the analysis. He concomitantly claimed that improving the two final reports' reliability and consistency could only serve to assist Congress in improving the courts' efficiency. Senator Hatch added that the measure would impose no additional expense because the demonstration districts were planning to continue experimentation.

We afford comparatively few recommendations for effectuating the Civil Justice Reform Act Amendment Act of 1995, as the statute continues experimentation and assessment that have been operating smoothly, while the legislation is relatively straightforward and can be rather easily implemented. The demonstration districts should continue working as closely with the Federal Judicial Center as they have to date and should do everything possible to facilitate the Center's collection, evaluation and synthesis of the maximum accurate information.

The Federal Judicial Center ought to capitalize on the extra year that the extension provides to collect, analyze and synthesize as much relevant data as possible on the procedures, particularly involving ADR, that the demonstration courts are applying. The Judicial Conference should similarly use the additional year to enhance its comprehension of experimentation and to prepare for receipt of the Federal Judicial Center study so that the Conference can assemble a report that will be most helpful to Congress. Congress should correspondingly employ the year to increase its understanding of civil justice reform efforts.

Both the Senate and the House acted correctly in passing the Civil Justice Reform Act Amendment Act of 1995. This legislation will realign the time for experimentation and its assessment in the demonstration and pilot districts, thereby facilitating parallel reporting and decisionmaking on the two programs. Should the federal courts, the Federal Judicial Center and Congress effectuate the measure pursuant to the few recommendations above, Congress will be able to derive the maximum benefit from this ambitious reform.

The views expressed are those of the authors and do not necessarily reflect the views of the publisher.

Footnotes

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1 *See* Margaret L. Sanner & Carl Tobias, *The Judicial Amendments Act of 1994*, 159 F.R.D. 649 (1995); *see also* Pub.L. No. 103 -420, 108 Stat. 4343 (1994); 140 CONG.REC. S12,104 (daily ed. Aug. 18, 1994).

2 *See* Judicial Amendments Act of 1994, Pub.L. No. 103-420, 108 Stat. 4343, 4344-45, §§ 2-4 (1994).

3 *See* Pub.L. No. 103-420, 108 Stat. 4343, 4345, § 4 (1994); *see also* Judicial Improvements Act of 1990, Pub.L. No. 101-650, 104 Stat. 5089, 5098, § 105(c) (1990) (prescribing study).

4 *See* Terence Dunworth & James S. Kakalik, *Preliminary Observations on Implementation of the Pilot Program of the Civil Justice Reform Act of 1990*, 46 STAN.L.REV. 1303, 1322 (1994). The ten pilot courts experimenting with the procedures are 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. The experience in these courts is being compared with that in ten comparison courts. Those courts are the District of Arizona, the Central District of California, the Northern District of Florida, the Northern District of Illinois, the Northern District of Indiana, the Eastern District of Kentucky, the Western District of Kentucky, the District of Maryland, the Eastern District of New York and the Middle District of Pennsylvania.

5 *See* 140 CONG.REC. S12,104, 12,105 (1994) (statement of Senator Heflin).

6 *See* Sanner & Tobias, *supra* note 1, at 650-51.

7 *See* S.464, 104th Cong., 1st Sess. (1995); 141 CONG.REC. S3052 (1995); *see also* Carl Tobias, *Common Sense and Other Legal Reforms*, 48 VAND.L.REV. 699 (1995) (discussing legal reforms in Contract With America).

8 *See* 141 CONG.REC. S3052 (1995).

9 *See* Civil Justice Reform Act Amendment Act of 1995, Pub.L. No. 104-33, 109 Stat. 292 (1995).

10 141 CONG.REC. S3052 (1995). We rely in this paragraph and the next on Senator Hatch's statement in *id.* and on very similar information which appears in the report which accompanied S.464. *See* H.R.Rep. No. 104-180, 104th Cong., 1st Sess. (1995), *reprinted in* 1995 U.S.C.C.A.N. 300. The demonstration program requires that the Western District of Michigan and the Northern District of Ohio experiment with systems of differentiated case management (DCM) and that the Northern District of California, the Northern District of West Virginia and the Western District of Missouri experiment with various techniques for decreasing expense and delay, including alternatives to dispute resolution (ADR). *See* Judicial Improvements Act of 1990, tit. I., Pub.L. No. 101-650, 104 Stat. 5089, 5097, § 104. The Judicial Conference of the United States is to study the experience of these courts; however, the Federal Judicial Center has had primary responsibility for conducting the study.

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