

“OP ED PIECE IN THE DAILY RECORD ON OCTOBER 19, 2000”

Your editorial entitled “The Sad State of Motions Hearings in Federal Court,” in which it is suggested that hearings be mandated in all but a decided minority of cases, merits a response. Of course, as the editorial states, hearings are an important part of the judicial process. They contribute to the appearance of fairness and can assist a judge in shaping her or his thinking. My colleagues and I do hold hearings whenever we confront in the parties’ written submissions an issue we believe requires further explication. We also recognize that some litigants feel they have not had a fair day in court unless a hearing has been held.

In adhering to Local Rule 105.6 and deciding many motions on the papers, however, we also recognize that there is a countervailing interest that must be taken into account in determining whether a hearing should be held: the widespread public concern about litigation cost and delay. Some members of the legal community ignore this interest. It is, however, an entirely legitimate one. Congress has rightly declared that federal judges have a duty to manage their dockets in an efficient manner in order to prevent litigants from incurring unnecessary expense. Moreover, the judicial system itself must be protected from being bogged down by unnecessary proceedings that prevent judges from performing their core function: exercising reasoned judgment. There are limits to our time. If we hold hearings solely for the sake of holding hearings, there are more important things we will not be able to do, such as carefully reviewing all written materials and taking care in the drafting of our opinions.

If lawyers and judges are more concerned with process than with results, the costs of litigation can become unacceptable and delays interminable. The judicial system then falls into disrepute, and

citizens are forced to turn to private sources of dispute resolution. This is already an endemic problem in many foreign countries, and at least the perception of a problem exists in the United States as well. Beneficial though alternative dispute resolution is as an adjunct to the judicial system, I believe it is a serious indictment of our public institutions that because of the twin problems of cost and delay, many litigants now perceive alternative dispute resolution as the preferred method of resolving almost all civil cases.

This is not to say that it would not be better if we were able to hold more hearings than we do. But when are we supposed to hold them? I appreciate that your editorial expresses sympathy for our heavy workload and crowded dockets and respect for how hard we work. Frankly, however, sympathy and respect alone will not help us address the concerns of those who want us to devote more time to our civil cases. Their support on specific issues is necessary. Over the last year members of the civil bar have remained silent rather than pointing out publicly the implications of the increasing federalization of street crime, particularly the dramatic increase in the number of felon-in-possession of a firearm prosecutions that are being instituted in federal court. During 1999, there was a 72% increase in indictments of felon-in-possession cases under "PROJECT DISARM" compared with 1998. During the first nine months of 2000 there has already been a 56% increase in such prosecutions compared with all twelve months of 1999. Moreover, the impact of these cases upon our docket is even greater than these statistics suggest. Because the penalties are high, defendants in felon-in-possession cases are less likely than defendants in some other kinds of cases to plead guilty, resulting in a higher incidence of criminal trials. Further, since felon-in-possession prosecutions usually arise from warrantless arrests, they frequently involve time-consuming detention and suppression hearings.

Unquestionably, urban violence is a grave problem, and the federal government has a role to play in curbing it. How large a role should ultimately depend upon what the public wants. Public debate on the issue, however, should be responsible. The federal court cannot be all things to all people. In my view congestion of its docket because of expanding federal prosecution of crimes that should primarily be addressed by local authorities will have pernicious effects. For Maryland's citizens to be protected against employment discrimination, consumer fraud, civil rights abuses, nonpayment of health and pension benefits and the like, federal judges must have the time to hear and decide their claims promptly. For the State's economy to thrive, the federal court must remain open for the timely resolution of intellectual property, contract, and other commercial disputes.

I ask concerned members of the bar to help frame discussion about the proper use of the resources of the federal court by making sure that all relevant considerations are placed before the public. I cannot promise in return that we will grant hearings as often as some might request. I can assure you, however, that we respect the role of oral advocacy in the decision-making process and appreciate the benefit that hearings provide in helping to make our decisions more palatable to the losing side. Your editorial was helpful in reminding us that as we strive for efficiency, we should not create the appearance of peremptory justice.