

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

DIVISIONAL OFFICE:

Norbert H. Ebel
CLERK OF COURT

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June 30, 1995

Mr. Abel Mattos, Programs Chief
CJRA Programs Coordinator
Court Administration Division
Administrative Office of the
United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Dear Abel:

Enclosed is a copy of the annual docket assessment of the United States District Court for the District of Nebraska that is required by the Civil Justice Reform Act of 1990. It is believed that this docket assessment is complete and in compliance with the statutory requirements. If you have any questions concerning this report, please feel free to contact me.

Sincerely,



Norbert H. Ebel, Clerk
U. S. District Court

NHE/jlm
Encl.

**ANNUAL DOCKET ASSESSMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEBRASKA
MADE PURSUANT TO THE CIVIL JUSTICE
REFORM ACT OF 1990**

JULY 1995

I. INTRODUCTION

The Civil Justice Reform Act of 1990, 28 U.S.C. § 475, requires each United States District Court that has promulgated a civil justice delay and expense reduction plan to reassess the state of its docket annually. The Act requires the Court to consult with the advisory committee appointed under the Act. The United States District Court for the District of Nebraska promulgated its plan in November 1993. A copy of the plan will be found in Appendix I. This report is the first annual docket assessment made pursuant to 28 U.S.C. § 475.

II. DOCKET ASSESSMENT

The state of the docket in the District of Nebraska has improved measurably in a number of respects since 1992. First, the number of civil cases pending has dropped from 1154 in 1992 to 964 in 1994, a decrease of 16.5%. This is partly due to the fact that case filings are down from 1210 to 1153, a 4.7% decrease. However, it is obvious that the decrease in filings cannot account for the entire decrease in civil cases pending. On the criminal side of the docket, the number of cases pending has dropped from 182 to 143, a decrease of 21.4%, while criminal filings are down from 229 to 209, a decrease of 8.7%. The following charts show case filings, case terminations, and cases pending on the civil and criminal dockets for 1992, 1993, and 1994. Throughout the period shown, there has been a steady downward trend in all categories (filings, terminations, and cases pending).

CIVIL CASES			
	Filings	Terminations	Pending
1992	1210	1297	1154
1993	1139	1184	1035
1994	1153	1178	964

CRIMINAL CASES			
	Filings	Terminations	Pending
1992	229	234	182
1993	210	269	144
1994	209	212	143

The Administrative Office of the United States Courts divides civil cases into two types, based on the ways in which they move through the courts. For example, student loan cases are almost always disposed of by default and Social Security cases are almost always disposed of on summary judgment (Type I cases). Other cases (Type II cases) tend to move through the court system in a greater variety of ways. Type I cases include the following kinds of cases, which have accounted for about 40% of civil filings in all districts over the last ten years:

1. Student loan collection cases;
2. Cases seeking recovery of overpayment of veterans' benefits;
3. Appeals of Social Security Administration benefit denials;
4. Condition-of-confinement cases brought by state prisoners;
5. Habeas corpus petitions;
6. Appeals from bankruptcy court decisions;
7. Land condemnation cases;
8. Asbestos product liability cases.

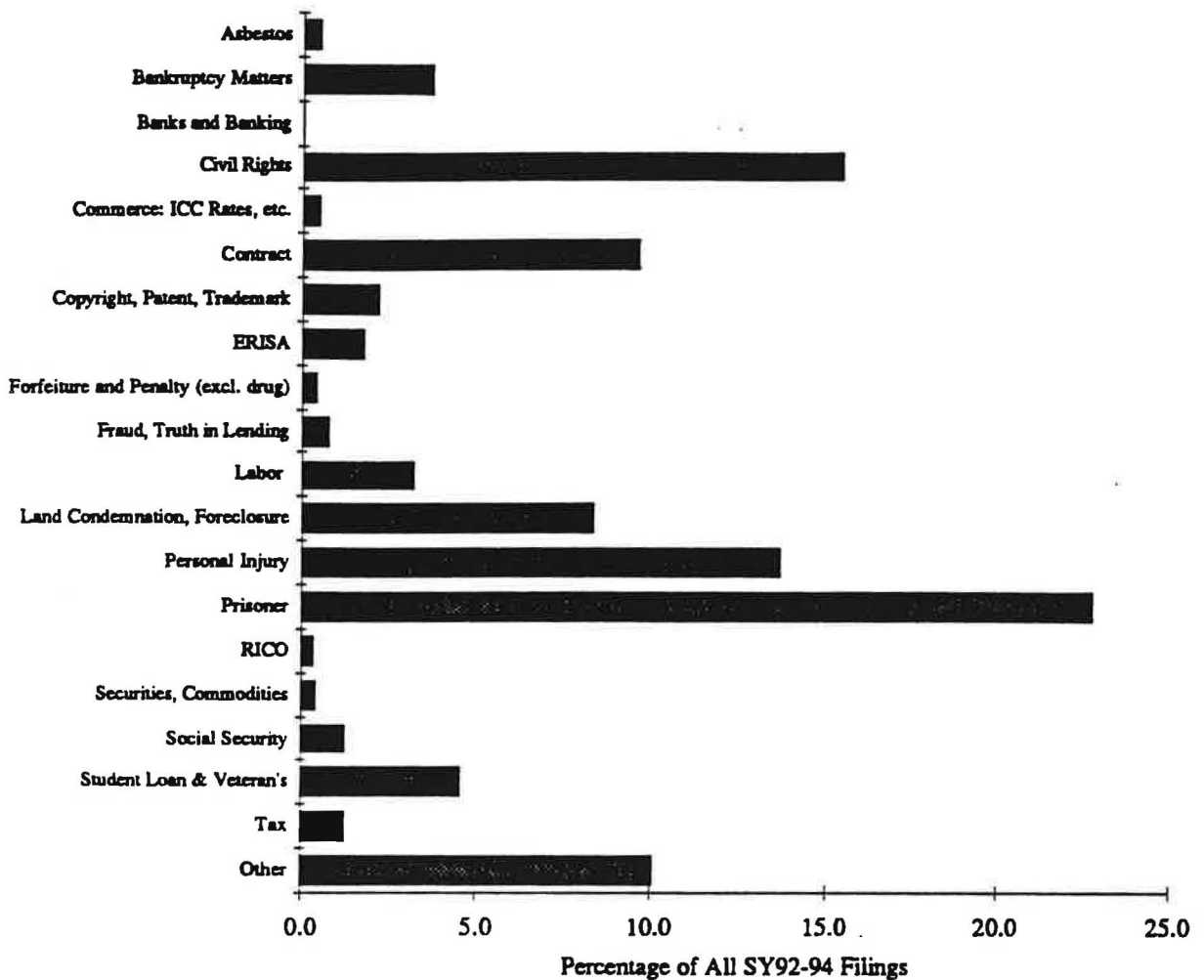
Type II cases include the following kinds of cases, which have accounted for about 60% of national civil filings over the last ten years:

1. Contract actions other than student loan, veterans' benefits, and collection of judgment cases;
2. Personal injury cases other than asbestos cases;

3. Non-prisoner civil rights cases;
4. Patent and copyright cases;
5. ERISA cases;
6. Labor law cases;
7. Tax cases;
8. Securities cases;
9. Other actions under federal statutes--e.g., FOIA, RICO, and banking laws.

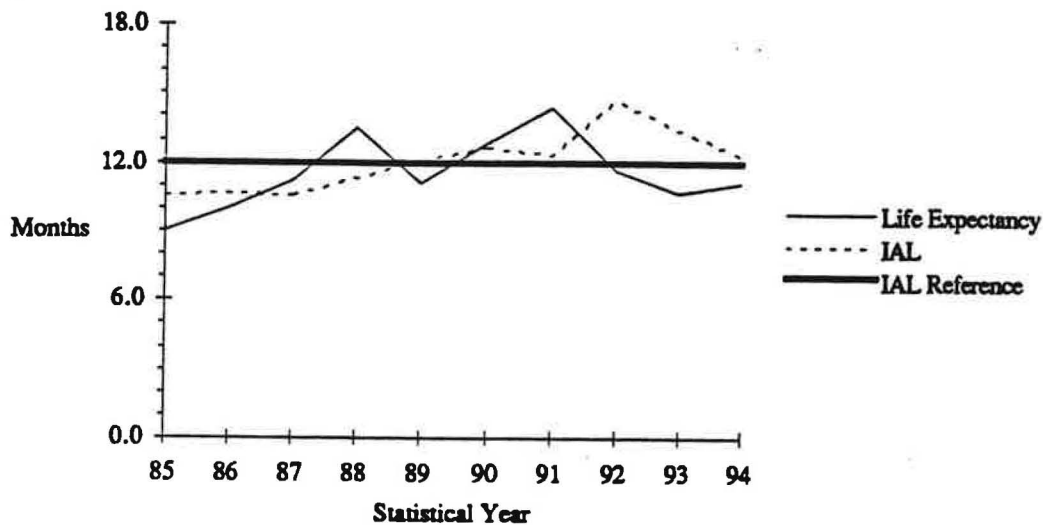
The following chart shows the percentage distribution among types of civil cases filed in the District of Nebraska from 1992 through 1994:

**DISTRIBUTION OF CASE FILINGS, SY92-94
DISTRICT OF NEBRASKA**

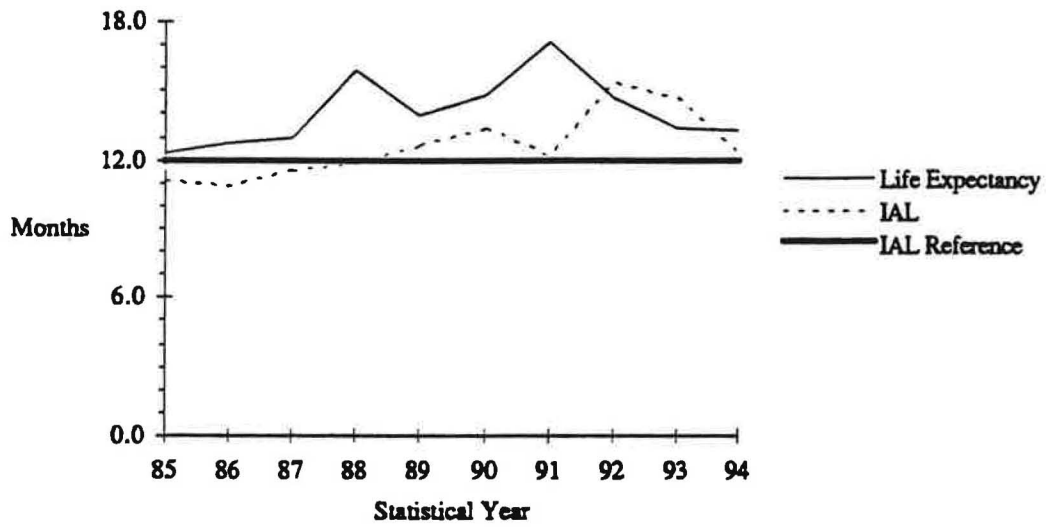


The following charts show the life expectancy and indexed average life span of all cases filed in the District of Nebraska from 1985 through 1994 and the same data for Type II civil cases for the same period. Life expectancy is used to assess change in the trend of actual case life span. Indexed average life span is used by the Administrative Office for comparison among districts. As can be seen from a comparison of the charts, the life expectancy of all civil cases in Nebraska is less than twelve months, while the life expectancy of Type II civil cases is slightly higher, at about thirteen months.

**LIFE EXPECTANCY AND INDEXED AVERAGE
LIFESPAN, ALL CIVIL CASES SY85-94
District of Nebraska**



**LIFE EXPECTANCY AND INDEXED AVERAGE
LIFESPAN, TYPE II CIVIL CASES SY85-94
District of Nebraska**



Of special interest is the number of cases pending for three years or longer (as of December 31, 1994):

CIVIL CASES PENDING THREE YEARS OR LONGER	
1992	52
1993	47
1994	37

As one can see from the above table, the number of cases pending three years or longer has decreased steadily from 1992 through 1994. In addition, the cases pending per judge have decreased from 1992 to the present, as the following tables show:¹

CIVIL CASES PENDING BY JUDGE 1992-94			
Judge	1992	1993	1994
Judge Strom	278	202	173
Judge Cambridge	273	188	181
Judge Kopf	312	269	247
Judge Urbom	234	71	72
Judge Shanahan		253	231
Magistrate Judge Piester	4	7	2
Magistrate Judge Jaudzemis	8	3	2
Magistrate Judge Thalcken		9	11

¹Figures are as of December 31 of each year.

In the second table, for 1992, Judge Kopf's average pending caseload is from July - December 1992, which is the time period that he served as a District Judge in that year. The average for all other judges is based upon the calendar year. Judge Kopf's increased caseload was created by a reassignment of cases from Judge Strom, Judge Cambridge, and Judge Urbom.

In the second table, for 1993, Judge Shanahan's average pending caseload is for August - December 1993, which is the time period that he served as a District Judge in that year. The average for all other judges is based upon the calendar year. Judge Shanahan's docket was created by a reassignment of cases from Judge Strom, Judge Cambridge, and Judge Kopf. Judge Kopf relocated to Lincoln in August 1993 and Judge Urbom took senior status at that time, which resulted in a reassignment of his cases to Judge Kopf. Magistrate Judge Thalcken was appointed in January 1993.

The North Platte docket is not represented in either of the tables.

AVERAGE CIVIL CASES PENDING PER JUDGE 1992-94			
Judge	1992	1993	1994
Judge Strom	364	246	192
Judge Cambridge	340	216	177
Judge Kopf	310	290	246
Judge Urbom	318	155	66
Judge Shanahan		259	244
Magistrate Judge Piester	4	5	5
Magistrate Judge Jaudzemis	3	6	1
Magistrate Judge Thalken		3	9

III. EVALUATION OF IMPROVEMENTS IN THE DOCKET

It seems clear from the statistics presented in section II, above, that the single most important factor in the improvement of the docket in the District of Nebraska from 1992 through 1994 was the addition of a fourth United States District Judge by Congress under the Federal Judgeship Act of 1990,² as well as the addition of a third full-time magistrate judge. The effect of the new judges on the docket is apparent from the dramatic decrease in civil cases pending, which dropped dramatically from 1992 to 1994 (see page 2, above). It is also apparent that the dramatic drop in the civil cases pending per judge from 1992 to 1994 is attributable to the new judgeships (see page 7, above).

The appointment of a fourth district judge and a third magistrate judge has also made implementation of the elements of component 1 of the Civil Delay and Expense Reduction Plan unnecessary. (See comments of Chief Judge Cambridge in Appendix II, below.) Component

²See Pub.L. 101-650, 203(c)(9) (1990).

1 concerns (a) the periodic setting aside of a two to three week period during which certain civil cases that would take five days or less to try would be placed on the trailing calendar and called for trial; (b) the splitting of the criminal and civil dockets with at least one district judge assigned to deal only with the civil docket; and (c) inclusion of magistrate judges in the civil case assignment rotation. In addition, the fourth district judge and third magistrate judge have made possible the implementation of the second component of the plan, which concerned modification of the trailing docket in Omaha to more closely correspond with the method of setting trials used in Lincoln. (See the comments of Chief Judge Cambridge, Judge Shanahan, and Magistrate Judge Jaudzemis in Appendix II, below.)

Component 3 of the plan concerning modification of the local rules to provide for automatic discovery has been rendered unnecessary due to the 1993 amendments of the Federal Rules of Civil Procedure. (See the comments of Judge Kopf, Judge Shanahan, and Magistrate Judge Jaudzemis in Appendix II, below.)

Components 4 (motion procedure), 7 (early settlement conferences), 8 (motion in limine procedure), 9 (videotape deposition procedure), 10 (telephone hearings on motions and status conferences), 11 (separate multiple defendant assignment deck for criminal cases with five or more defendants), 12 (short opinions denying motions for summary judgment), and 13 (development of uniform procedure for arraignments, sentencings, and changes of pleas in criminal cases) have all been implemented.³ (See the comments of Chief Judge Cambridge, Judge Kopf, Judge Shanahan, and Magistrate Judge Jaudzemis in Appendix II, below.)

Component 6, which concerns a mediation plan for the district, was implemented in June 1995. Regarding component 14, which concerns the uniform development of pretrial procedure

³Judge Kopf expresses doubt whether the multiple defendant case assignment system for criminal cases has been implemented, but Chief Judge Cambridge indicates that it has been, and Judge Cambridge's view is confirmed by the Clerk. (See the comments of Chief Judge Cambridge and Judge Kopf in Appendix II, below.)

for criminal cases involving wiretaps, the procedures among judges appear to be relatively uniform, but there may need to be some study and coordination by the judges to make sure that this component is being fully implemented. (See the comments of Judge Kopf in Appendix II, below.)

Comments by the District and Magistrate Judges indicate that there is some variation among the judges in the extent to which they conform to the procedures prescribed by the plan. (See, e.g., the comments of Judge Shanahan in Appendix II, below.) This is natural and inevitable, and the variation does not seem to have disrupted the effectiveness of the plan. The general impressions of the judges are that the plan has been effective thus far. (See the comments of Chief Judge Cambridge and Judge Kopf in Appendix II, below.) However, it may be that lawyers are not yet taking full advantage of some components of the plan. (See the comments of Judge Kopf concerning motions in limine and videotape depositions in Appendix II, below.) In addition, there is some difference of opinion among the judges about whether additional action should be taken to improve the plan. For example, Chief Judge Cambridge sees no need for any additional action at this time to reduce cost and delay in civil litigation except for Congress to make the temporary district judgeship permanent. In contrast, Judge Kopf has several suggestions for additional action that should be taken at this time. (See the comments of Chief Judge Cambridge and Judge Kopf in Appendix II, below.) This variation in opinion about the need for additional action is probably due to the short time period that the plan has been in effect. Further experience with the plan will doubtless produce greater clarity about the need for additional action. However, it does seem clear that the need to make the temporary district judgeship permanent would command near unanimity from the bench and bar. Although the civil justice delay and expense reduction plan has had an important effect in

improving the state of the docket in Nebraska, the effect of the plan has been far less than the effect of the additional judgeships.

APPENDIX I

**U.S. District Court
for the
District of Nebraska**

**CIVIL JUSTICE DELAY
AND EXPENSE REDUCTION
PLAN**

November 1993

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA
CIVIL JUSTICE DELAY AND EXPENSE REDUCTION PLAN

I.

This civil delay and expense reduction plan for the District of Nebraska is being adopted pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471 - 82. The plan is being adopted after consideration of the report and recommendations of the Advisory Group for the District of Nebraska, submitted to the court on April 16, 1993. The plan includes only those recommendations of the Advisory Group pertaining to action that should be taken by the United States District Court for the District of Nebraska. It does not include the Advisory Group's recommendations to the legislative and executive branches or the Supreme Court of the United States.

II.

The following are the components of the plan:

1. In Omaha, the court will consider the following alternatives to reduce the impact of the criminal docket on the trial and disposition of its civil docket:

a) The periodic setting aside of a two or three week period during which certain civil cases that have pretrial orders on file and which the lawyers estimate will take five (5) days or less to try will be placed on one trailing calendar and called for trial.

b) The splitting of the criminal and civil dockets, with at least one of the district judges assigned to deal only with the civil docket.

c) Including magistrate judges in the civil case assignment rotation with a provision permitting either party to require reassignment of the case to a district judge.

2. The court will consider modifying the use of a trailing docket in Omaha to utilize a method of setting trials which more closely parallels the method used in Lincoln.

3. The court will consider modifying the local rules of practice to provide for automatic discovery between the parties to include

a) Identification of the issues of fact and issues of law which the party contends are raised by their claims;

b) The name and address of each witness known to the party;

c) Identification, location, and name of custodian of documents or records which are relevant to their claims.

4. The court intends that dispositive motions be decided within sixty days after the motion is deemed to be submitted. Generally, motions will be decided in the following order of priority:

a. Post trial motions;

b. Pre-answer, dispositive procedural motions;

c. Pre-answer motions to dismiss on substantive legal grounds;

d. Motions for judgment on the pleadings;

e. Motions for summary judgment;

f. Other motions.

5. Within sixty days after the defendant or defendants have appeared, the court will commence the progression of the case in accordance with Fed. R. Civ. P. 16(b). The court will suggest or solicit progression deadlines in a scheduling letter or conference or will establish deadlines in a scheduling order subject to amendment. Except in unusual circumstances, the pendency of dispositive motions will not delay the scheduling or progression of the case.

6. The local rules will be amended to provide for a court annexed mediation procedure in cases deemed appropriate for mediation. The procedure to be utilized in referring a matter for mediation, selecting the mediator, and conducting the mediation shall be as directed by a standing order of the district judges or by amendment to the local rules. The court will attempt to utilize the resources of the Nebraska Office of Dispute Resolution in consultation with the practicing bar in drafting the standing order or local rule.

7. In civil actions in which the mediation procedure described in the preceding paragraph is not utilized, a district judge or magistrate judge will consult with the parties and/or counsel early in the progression of the case regarding settlement, and will make a determination as to whether a settlement conference with the court would be likely to assist the parties in resolving

their dispute. If the court decides such a conference would likely be helpful, the parties and counsel will be directed to appear at a settlement conference. The local rules may exempt certain categories of cases from the operation of this paragraph.

8. The court will, through amendments to the progression order or otherwise, require the parties to file motions in limine or on before the date of the pretrial conference and will rule, prior to the trial of the case, on those motions in limine which, if granted, would eliminate substantial issues or substantial evidentiary showings at trial.

9. The proposed pretrial order submitted by the parties shall identify any videotape deposition intended to be offered. If there be any objection to any portion of the videotape deposition, a transcript of the deposition shall be presented to the trial court with a list of objections, identifying the applicable page and lines of the transcript. The trial judge will rule on the objections, if possible, at least three working days prior to trial. If rulings are made more than three working days before trial, counsel shall edit the videotape deposition prior to trial to eliminate unnecessary or stricken portions of the deposition.

10. When hearings on pending motions or status conferences are to be convened, consideration will be given to conducting such

proceedings by telephone conference call to expedite their disposition.

11. The court will establish a separate multiple defendant case assignment deck for criminal cases involving five or more defendants;

12. When motions for summary judgment are considered by a district judge and are denied on the ground that a genuine issue of material fact exists for trial, the court will issue a short opinion so stating, rather than a lengthy opinion canvassing the materials on file in support of or opposition to the motion.

13. The court will develop uniform procedures for arraignments, sentencings, and changes of pleas in criminal cases in order to reduce or eliminate disparities in the amount of time spent by different judges on these matters.

14. The court will develop a uniform pretrial procedure for criminal cases involving wiretaps that will provide for the editing of tapes and transcripts in order to streamline the trial of criminal actions in which wiretaps are involved.

15. The court has reviewed the Civil Justice Reform Act report submitted by the Committee, and in preparing this plan, has

considered the principles and guidelines of litigation management described in 28 U.S.C. § 473.

III.

This Civil Justice Delay and Expense Reduction Plan may be amended by the court at any time. The court will continue to consult with the Advisory Group on the operation of the plan. Information about the operation of the plan or comments and suggestions on the plan should be communicated to:

Advisory Group on Civil Justice Delay and
Expense Reduction
Office of the Clerk
United States District Court for the District
of Nebraska
P.O. Box 129
Omaha, NE 68101

SCHEDULE FOR IMPLEMENTATION: The provisions of this plan shall be implemented as soon as it practicable, and this implementation shall be completed by July 1, 1994.

DATED this 5TH day of November, 1993.

BY THE COURT:



LYLE E. STROM, Chief Judge
United States District Court



WILLIAM G. CAMBRIDGE, Judge
United States District Court



RICHARD G. KOPF, Judge
United States District Court

APPENDIX II

UNITED STATES DISTRICT COURT

District of Nebraska

Post Office Box 1076

Omaha, Nebraska 68101

William G. Cambridge
Chief Judge

June 26, 1995

Professor Ralph U. Whitten
Creighton University
School of Law
California at 24th Street
Omaha, NE 68178

Re: Civil Justice Delay and Expense Reduction Plan

Dear Professor Whitten:

Attached hereto are comments of three of the other judges of the district relative to the above-referenced plan of the United States District Court for the District of Nebraska.

The following constitute my comments with respect to the plan:

1. The implementation of Component 1 of the plan, i.e.: (a) the periodic setting aside of a two- or three-week period for trial on a trailing calendar basis of certain civil cases; (b) the splitting of the criminal and civil dockets and assignment of one or more district judges to deal with only civil actions; and (c) inclusion of magistrate judges in the civil case assignment rotation with provision for reassignment of the case to a district judge, were all made unnecessary by the appointment of the fourth district judge for the district, i.e., the temporary judgeship created under the Biden Bill. As a result of the creation and filling of that judgeship, the docket has become manageable and the processing and trials of civil cases are no longer being delayed by criminal cases.
2. As a result of the creation and filling of the temporary judgeship, it has become possible to implement Component 2 of the plan, and use of the trailing docket in Omaha has been modified to more closely parallel the method of setting trials utilized in Lincoln.
3. Component 6, i.e., mediation, is in the process of being implemented, a plan therefore having been adopted by the district.

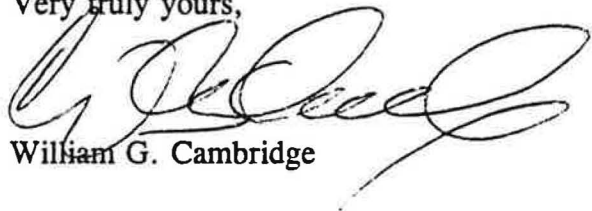
Professor Ralph U. Whitten
June 26, 1995
Page Two

4. Component 14 of the plan, i.e., the development of the uniform pretrial procedure for criminal cases involving wiretaps is in the process of being implemented and developed.
5. All other components of the plan have been implemented, i.e., Component 4 (the procedure with respect to motions); Component 7 (early settlement conferences); Component 8 (procedure with regard to motions in limine); Component 9 (procedures re videotape depositions); Component 10 (telephone hearings on motions and status conferences); Component 11 (establishment of a separate multiple defendant case assignment deck for criminal cases involving five or more defendants); Component 12 (short opinions denying motions for summary judgment); and Component 13 (the development of the uniform pretrial procedure for arraignments, sentencings, and changes of pleas in criminal cases).

The civil docket at the present time is in excellent order with cases being disposed of in a just, speedy, and inexpensive manner. The Civil Justice Delay and Expense Reduction Plan has assisted in achieving that status, but the main factor has been the addition of the fourth district judge and the third full-time magistrate judge. Simply put, there is no substitute for having the necessary number of judges required to handle the caseload.

I see no further or additional actions which should be taken by the Court at this time to reduce costs and delay in civil litigation and to improve the litigation management of the Court, other than taking action to ensure that the temporary judgeship of the district is converted into a permanent one.

Very truly yours,



William G. Cambridge

Enclosure

UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA
ROOM 586
ROBERT V. DENNEY FEDERAL BUILDING
100 CENTENNIAL MALL NORTH
LINCOLN, NEBRASKA 68508

RICHARD G. KOPF
UNITED STATES DISTRICT JUDGE

May 16, 1995

TELEPHONE
402-437-5252
FAX
402-437-5651

The Honorable William G. Cambridge
Chief Judge of the United States District Court
for the District of Nebraska
Edward Zorinsky Federal Building
215 North 17th Street, Room 9014
Omaha, Nebraska 68102

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MAY 17 1995

**WILLIAM G. CAMBRIDGE
CHIEF JUDGE**

Dear Chief Judge Cambridge:

I received your letter of May 11, 1995, regarding the Civil Justice Delay and Expense Reduction Plan (the Plan). I offer the following comments in response to your request for my views concerning the effect of the Plan on the state of the docket.

¶ II.1-2. These paragraphs deal with Omaha, and I shall not comment except to state that I think we could do a better job of utilizing magistrate judges throughout the district and that we ought to specifically encourage consents. When Magistrate Judge Piester and I made the attempt in January and February of this year, we were able to increase his consent calendar dramatically with very little effort. We randomly selected cases, and I wrote a personal letter to the parties requesting their consent. We encountered virtually no opposition, and Judge Piester now has 21 cases to try by consent.

¶ II.3. This paragraph deals with modifying the local rules, essentially to streamline discovery. As required by the recent amendments to the Federal Rules of Civil Procedure, we are now doing this as a matter of practice. Moreover, the magistrate judges are drafting conforming amendments to the local rules. It is too soon to tell whether this will make any difference.

¶ II.4. This paragraph addresses the way we handle motions. I think everyone more or less adheres to this paragraph, and I think we have speeded up the resolution of motions as a result. The Clerk's Office should do a statistical review to see if my impressions are correct. In any event, I think all of us should review the motion lists weekly to make sure they are accurate and that we are resolving motions within the 60-day time frame.

¶ II.5. This paragraph deals with case progression, and it is my impression that we are following it. I do not know whether it has made a difference.

¶ II.6-7. These paragraphs deal with mediation, and, of course, we have adopted a mediation plan that is now being implemented.

¶ II.8-9. These paragraphs deal with motions in limine and objections to videotaped depositions and the early rulings regarding them. I think we are following these paragraphs, but I really do not see the lawyers taking advantage of these changes.

¶ II.10. This paragraph deals with telephone conferences and the hope that we will utilize telephone conferences in lieu of personal appearances when appropriate. I use telephone conferences frequently and have purchased relatively cheap recording equipment to record such conferences, thus freeing up my court reporter. Long-term, I think we should consider video conferences and urge the computer experts in the Clerk's Office to look into this.

¶ II.11. This paragraph deals with a multiple-defendant case-assignment system. I do not believe we are in conformity with this requirement, but I think we should be. I would urge the Clerk of Court to suggest a specific proposal in this regard.

¶ II.12. This paragraph deals with writing short opinions when we deny motions for summary judgment so that our time can be spent on other matters. I follow this procedure, and it does seem to have helped.

¶ II.13-14. These paragraphs deal with the development of uniform procedures in criminal cases. I think we are all fairly uniform, but I do not think we have studied our various procedures to make sure we conform to these paragraphs. I suggest that we do so.

My general impression is that the Civil Justice Delay and Expense Reduction Plan has been modestly successful. Improvements in the time necessary for resolving cases are probably attributable to having the necessary number of judges rather than to the Plan itself. However, the Plan has caused us to look at our docket from a "manager's" point of view, and it is my impression that this change in perspective will increase both the efficiency and speed of our court long-term.

If I were to point out areas that I believe have the most potential for improving speed and reducing costs under the Plan, there would be four: (a) magistrate judges should take over trial

scheduling district-wide, dropping any semblance of the trailing docket and imposing firm weekly trial schedules; (b) the consent calendars of the magistrate judges should be increased; (c) we ought to do our very best to utilize the motion lists in every judge's chambers to see that motions are resolved as rapidly as possible (someone should monitor the motion lists weekly); and (d) we should promote, but not force, mediation.

Best regards.

Very truly yours,

A handwritten signature in cursive script that reads "Richard G. Kopf". The signature is written in dark ink and is positioned above the typed name.

Richard G. Kopf
United States District Judge

RGK:cg

cc: The Honorable Lyle E. Strom
The Honorable Thomas M. Shanahan
The Honorable Warren K. Urbom
The Honorable David L. Piester
The Honorable Kathleen A. Jaudzemis
The Honorable Thomas D. Thalken
Mr. Norbert H. Ebel

*United States District Court
District of Nebraska
P.O. Box 457
Omaha, Nebraska 68101*

*Thomas M. Shanahan
United States District Judge*

*Phone: (402) 221-4178
FAX: (402) 221-3160*

June 8, 1995

Honorable William G. Cambridge
Chief Judge
United States District Court
P. O. Box 1076
Omaha, Nebraska 68101

Re: Civil Justice Delay and Expense Reduction Plan
for the U.S. District Court for the District of Nebraska

Dear Judge Cambridge:

This is a belated response to your letter of May 11, 1995. References in this letter relate to parts or sections of the plan.

Paragraph II.1-2. Presently, I use a system which may be characterized as a modified trailing docket, that is, a series of cases set for trial during a designated two-week period. If a case cannot be tried during the designated period, the case is assigned a subsequent and specific date for trial at the first available time after conclusion of the serial cases. Of course, any setting is subject to rescheduling on account of criminal cases which must be set for trial pursuant to the Speedy Trial Act. I believe the aforescribed system closely "parallels the method used in Lincoln."

Paragraph II.3. With the amendment of the Federal Rules of Civil Procedure (December 1, 1994), the plan's provisions regarding "automatic discovery" may have been superseded by the new rules, e.g., Federal Rule of Civil Procedure 26 (general provisions governing discovery and duty of disclosure).

Paragraph II.4. Referring to the current form of the progression order, it appears that only a motion pursuant to Federal Rule of Civil Procedure 56 (summary judgment) must be filed within a prescribed time. See paragraph 12(b) of "Order Setting Schedule of Progression of Case." However, notwithstanding the progression order, some resourceful attorneys have filed motions pursuant to Federal Rule of Civil Procedure 12(b)(6) or 12(c), contending that the time limit expressed in the progression order applies only to summary judgments and not to motions under Rule 12(b)(6) or 12(c). Perhaps we could consider imposing a time limit

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**WILLIAM G. CAMBRIDGE
CHIEF JUDGE**

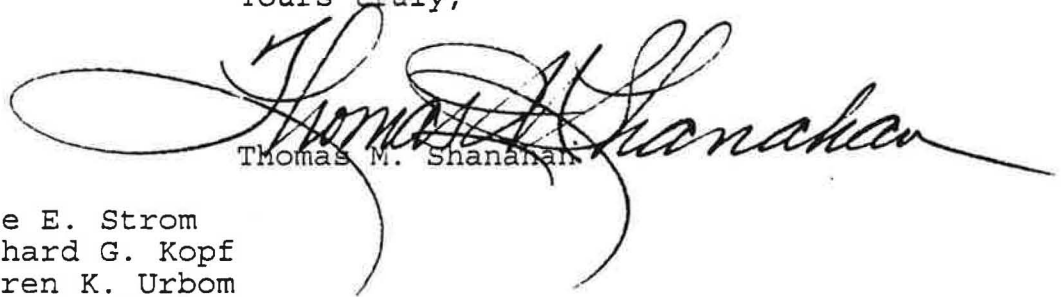
for all post-answer dispositive motions, including those which may be treated as a motion under Rule 56.

Paragraph II.8. It is my recollection that the magistrate judges are working on language in a progression order regarding an evidentiary hearing on a motion in limine. If an evidentiary hearing is required pursuant to Federal Rule of Evidence 104(a) for disposition of a motion in limine related to a jury trial, I suggest that the requisite hearing be held sufficiently in advance of trial through use of a specified deadline so that a pretrial ruling is possible, rather than a ruling in the course of a jury trial with the consequential interruption of trial and inconvenience to the jury.

Paragraph II.9. In an information sheet which is sent to counsel, I use the period of five working days before trial, rather than the three-day period indicated by the plan. The five-day period is more practical in situations involving back-to-back jury trials which are projected to last one week or less.

Paragraph II.12. After setting out the specific grounds for the requested summary judgment, my denial of a summary judgment is expressed in a short order that recites that a genuine issue of material fact remains for disposition at trial and that, therefore, summary judgment is denied pursuant to Federal Rule of Civil Procedure 56.

Yours truly,

A large, stylized handwritten signature in black ink, appearing to read "Thomas M. Shanahan". The signature is written over a printed name.

Thomas M. Shanahan

cc: Honorable Lyle E. Strom
Honorable Richard G. Kopf
Honorable Warren K. Urbom
Honorable David L. Piester
Honorable Kathleen A. Jaudzemis
Honorable Thomas D. Thalken

RECEIVED

MAY 11 1995

United States District Court

WILLIAM G. CAMBRIDGE
CHIEF JUDGE

District of Nebraska

8305 Zorinsky Federal Building
215 North 17th Street

PH: (402) 221-4772

KATHLEEN A. JAUDZEMIS
United States Magistrate Judge

Post Office Box 336 DTS
Omaha, Nebraska 68101-0336

FAX: (402) 221-3160

May 11, 1995

Honorable William G. Cambridge
Chief Judge
United States District Court
Omaha, NE 68102

RE: Assessment of Civil Justice Delay and Expense Reduction Plan

Dear Judge Cambridge:

This letter is in response to your request for comments on Part II of the Civil Justice Delay and Expense Reduction Plan adopted by the United States District Court for the District of Nebraska in November of 1993.

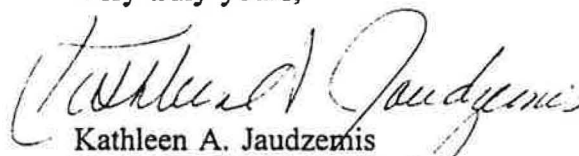
Whatever statistics the Clerk's office provides will of course provide "hard evidence" of the success we have had in streamlining the progress of civil cases through our docket. Nevertheless, I will share with you my perceptions. Two of our three district judges have modified their use of the trailing docket in Omaha to provide a more specific setting to civil cases. The majority of civil practitioners who have commented on the changed practice to me have been very complimentary and mentioned that it is of substantial assistance to them and their clients. For some lawyers, the adage, "Be careful what you ask for, for you just may get it," applies. That is, as soon as they receive a date certain they realize that they have to comply with the deadlines of the progression order and immediately ask for repeated extensions.

The automatic discovery suggested in the plan was preempted by the amendments to the federal civil rules. Those amendments are a substantial improvement in the way discovery used to be conducted. I believe they provide the parties with an earlier opportunity for case evaluation and possible settlement.

I have expanded extensively my use of telephone conferences for motion hearings and for scheduling. The Form 35 reports often give me an impetus for a scheduling conference call with counsel. I believe those telephone calls will result in the deadlines established in the progression orders being more closely adhered to by counsel. That, of course, remains to be seen.

If I can provide any additional assistance in the review of this plan, do not hesitate to call on me.

Very truly yours,

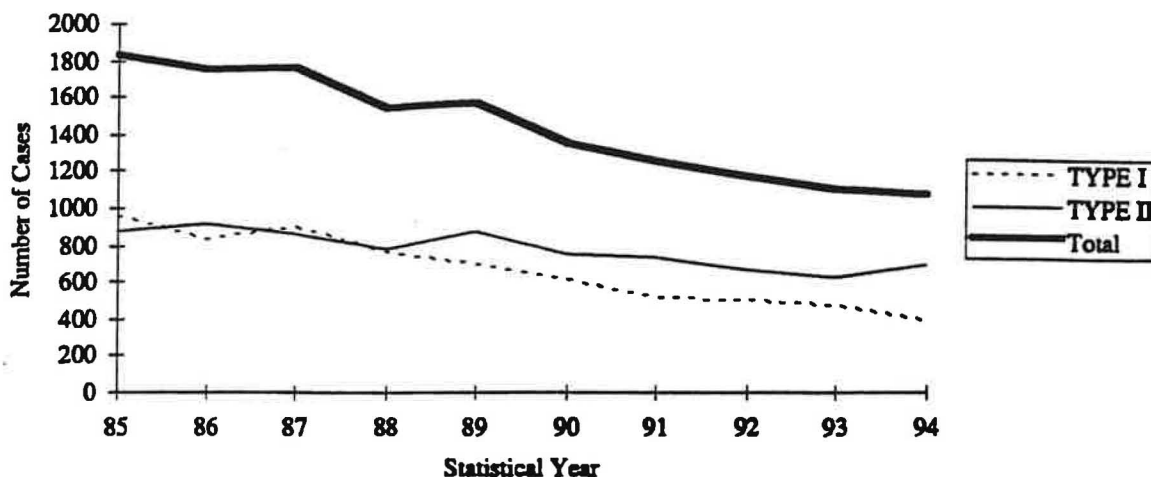
A handwritten signature in cursive script, appearing to read "Kathleen A. Jaudzenis".

Kathleen A. Jaudzenis
United States Magistrate Judge

KAJ/mkm

The next chart shows the trend of case filings for Type I and Type II cases over the last nine years, while the table that follows it shows the filings by case type from 1985 through 1994.

FILINGS BY BROAD CATEGORY, SY85-94
District of Nebraska



FILINGS BY CASE TYPE, SY85-94

District of Nebraska	YEAR									
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Asbestos	20	50	77	79	20	6	4	14	1	0
Bankruptcy Matters	196	82	95	126	121	85	87	47	37	39
Banks and Banking	6	14	9	0	7	1	4	1	2	0
Civil Rights	136	170	125	131	174	160	158	160	170	191
Commerce: ICC Rates, etc.	2	6	4	2	3	2	8	1	5	9
Contract	204	220	236	174	173	115	111	109	109	105
Copyright, Patent, Trademark	14	29	34	30	45	27	22	22	26	24
ERISA	4	3	17	4	6	15	17	20	15	24
Forfeiture and Penalty (excl. drug)	9	9	7	29	29	2	17	3	5	4
Fraud, Truth in Lending	48	10	11	15	15	11	11	10	4	9
Labor	44	52	44	39	41	44	32	30	38	38
Land Condemnation, Foreclosure	85	91	121	102	79	111	134	114	78	87
Personal Injury	208	221	196	206	232	215	203	163	143	155
Prisoner	113	316	463	332	328	320	231	225	290	252
RICO	0	5	1	0	2	4	4	2	2	5
Securities, Commodities	24	23	20	19	6	7	5	2	8	3
Social Security	64	41	40	51	21	24	12	13	18	11
Student Loan and Veteran's	483	260	104	73	128	66	56	92	54	6
Tax	32	13	16	16	10	12	11	19	10	11
All Other	139	144	142	120	136	136	139	132	89	116
All Civil Cases	1831	1759	1762	1548	1576	1363	1266	1179	1104	1089