Annual Assessment of the Civil Justice Expense and Delay Reduction Plan for Implementation of the Civil Justice Reform Act of 1990 in the Southern District of Florida

September 30, 1995

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ANNUAL ASSESSMENT OF THE PLAN FOR IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT OF 1990 IN THE SOUTHERN DISTRICT OF FLORIDA

I. INTRODUCTION AND METHODOLOGY

In November 1991, the United States District Court for the Southern District of Florida, by unanimous vote, adopted a Civil Justice Expense and Delay Reduction Plan (the "Plan") pursuant to Section 103(a) of the Civil Justice Reform Act of 1990, 42 U.S.C. § 471 (the "Act"). Section 103(a) also provides that,

> [a]fter developing or selecting a civil justice expense and delay plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title. [28 U.S.C. §475].

The Civil Justice Advisory Group for the United States District Court for the Southern District of Florida (the "CJAG") was established pursuant to Administrative Order 91-05 filed January 28, 1991.

In preparing this Annual Assessment the Court was well aware of the fiscal constraints under which the Judiciary now functions as well as the acute need to minimize expense. Consistent with this recognition and with the mandate of the Act, the Court relied in large measure on the advice of the CJAG. However, the Court also authorized the issuance of questionnaires to attorneys who represented parties in cases which were filed subsequent to the

implementation of the Plan as well as interviews of judges, magistrates and court personnel. The CJAG also performed a sampling of actual case files and an exhaustive statistical review of various performance parameters.

The recommendations of the CJAG have been carefully considered by the judges of this Court. The efforts of the CJAG are set forth in this Annual Assessment.[1] The goal of the Plan was to achieve a 5-10% increase in efficiency in handling civil cases. It is premature to evaluate the results of the Plan at this early stage.

II. SUMMARY OF RECOMMENDATIONS

The following summarizes the Recommendations of the CJAG following its assessment of the docket of this District and the implementation of the Plan.

1. **Tracking**

Draft a Uniform Scheduling Order for all Judges to use and attach as a Form to the Local Rules. Encourage compliance among bench and bar to submit and enter Scheduling Orders early in the case. Designate one person in each chambers to monitor compliance with Local Rule 16.1.

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[1] The CJAG wishes to give special recognition to Joe Obermeyer and the accounting firm of Coopers & Lybrand which have given generously of their time and expertise to assist the CJAG and the court in the formulation, implementation and assessment of the Plan.

Likewise the CJAG wishes to specifically recognize the Clerk's Office and the Clerk Carlos Juenke and Special Assistant to the Court Administrator, Tom Cheleotis, for the extraordinary efforts of that office in the implementation and assessment of the Plan.

2. **Resolution of Nondispositive Motions**

Resolve within 30 days of filing, without legal memoranda, and upon the oral argument of the parties unless the Court specifically orders otherwise.

3. **90 Day Motions**

Amend the rule to include notification of the Magistrate for all motions which have been fully briefed and pending for over 90 days.

4. **Criminal Prosecutions**

Encourage prosecutors to simplify indictments and selectively prosecute cases so that cases typically handled by a state prosecutor are not filed in federal court. Establish permanent subcommittee to monitor the Court's ability to meet the demands of both the criminal and civil dockets.

5. **Mediation**

Require parties to send the mediator a position paper, essential documents, and any confidential information they desire. Counsel may request a stay in the proceedings for up to 60 days while parties mediate. Designate a compliance judge to oversee administration of mediation program and resolve issues arising from the program.

6. **Arbitration**

Consider the implementation of a voluntary arbitration program.

7. **Volunteer Lawyers' Project**

Continue to support the Project and educate and encourage the Bar to support it as well.

8. **Utilization of Magistrates**

Undertake a study to determine the effectiveness of referring dispositive motions to Magistrates.

III. ASSESSMENT OF THE DOCKETS

A. Condition of the Civil and Criminal Dockets.[2]

1. **Civil**

(a) During the twelve-month period ending September 30, 1994, **civil case filings increased** 7.4% from 4748 to 5100. Of this total number, civil filings involving the United States numbered 1215 cases (24% of the 1994 civil docket). The remainder of civil filings (3225) were private in nature.

(b) As of September 30, 1994, the total number of **pending civil cases** was 4523. Of this total, 1124 were cases in which the United States was a party; prisoner cases numbered 321, and the remainder were private in nature.

(c) During the twelve-month period ending September 30, 1994, 4996 civil cases were terminated. Of this total, 1204 civil

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[2]The Court acknowledges that the 1994 reporting year information "captures" statistics for a period of only some eighteen months from the implementation of the Plan through the adoption of new local rules on February 15, 1993, to the close of the statistical year on September 30, 1994. Therefore, the Court expects that the next Annual Assessment will more fully reflect the effect of the Plan on the civil and criminal caseload in the District.

cases involved the United States, prisoner cases numbered 977, and the remainder were private in nature. Civil case terminations improved 19.6% over 1991.

(d) For 1991 and 1994, the disposition rate of non-prisoner civil cases in the District, from the date of filing of a complaint, was as follows:

NON-PRISONER CIVIL CASES

	1991	1994
Total Number of Cases Disposed of	3578	4017
Number of Cases Disposed of Before Any Court Action	431	155
Number of Cases Disposed of Before Pretrial	2961	3689
Number of Cases Disposed of During or After Pretrial	80	21
Number of Cases Tried to Disposition	106	152

These figures continue to reflect that while only a small percentage of civil cases are disposed of at trial, the number did increase by .8 %(3.0% in 1991 as opposed to 3.8% in 1994).

(e) Consistent with (d) above, the median time intervals for disposition of non-prisoner[3] civil cases in the District from the filing of a complaint for 1991 and 1994 were as follows:

[3] From C-5 tables which exclude Prisoner Petitions, Land Condemnation, and Deportation Reviews.

MEDIAN TIME (Months) FROM FILING TO DISPOSITION

	1991 (Months)	1994 (Months)
All Civil Cases	6	7
Cases Disposed of Before Court Action	2	5
Cases Disposed of Before Pretrial	6	7
Cases Disposed of During or After Pretrial	20	16
Cases Disposed of by Trial to Completion	19	20

These figures demonstrate that the vast majority of all non-prisoner civil cases terminated in 1994 were disposed of well within the eighteen-month period suggested by the Act (28 U.S.C. §473(a)(2)(B)). The fact that disposition times are slightly longer in 1994 is to be expected. As other districts have noted, implementation of a Civil Justice Advisory Plan along with new local rules to implement the Plan may results in short term confusion and slight delays, but generally results in long term efficiencies. More complex cases may also increase disposition times.

(f) Consistent with (d) and (e) above, the median disposition time of 8 months for all civil cases terminated in 1994 ranked the District 27th nationwide out of 94 judicial districts. The District ranked 52nd nationally with a median disposition time of 20 months from filing to time of trial. However, this ranking is less significant than that for all dispositions since only 3.2%

(161 cases) of all terminated non-prisoner civil cases fall in the "tried to completion" category.

(g) As of September 30, 1994, 308 three-year or older civil cases were pending. This represents 6.8% of the pending civil caseload. This figure is up 2.2 % from 1991.

2. <u>Criminal</u>

(a) During the statistical year ending September 30, 1994, 1105 new criminal cases were filed in the district. During that same period, 700 were terminated with 1036 pending as of September 30, 1994. Of the cases filed, 1081 were felonies and 21 were misdemeanors.

(b) In 1994, criminal cases were instituted against 1840 defendants. Of this number, 1806 defendants were charged with felonies and 31 with misdemeanor offenses.

(c) The criminal statistics comparing 1991 and 1994 may be summarized as follow:

CRIMINAL CASES

	1991	1994
Criminal Cases Filed	1495	1105
Criminal Cases Terminated	1226	1047
Felony Cases Filed	1488	1081
Misdemeanor Cases Filed	6	21
Number of Defendants	2594	1840
Number of Defendants (Felony)	2587	1806
Number of Defendants (Misdemeanor)	6	31
Criminal Cases Pending Year End	2574	1036

3. **Ranking of the District**

For the twelve-month period ending September 30, 1994, the District ranked 53rd nationwide in total case filings (civil of 5100 and criminal of 1105) with a total of 6205.

B. **Trends in Case Filings and Demands Being Placed on the Resources of the District**

1. **Civil**

(a) Civil case filings in the District rose 7.4% in 1994 while nationally, they increased by 13.8%.

(b) The District continues to experience an increase in filing of complex cases. For example, patent actions increased by 36%, labor-related actions by 4.5% and statutory actions such as civil RICO, banking-related and environmental matters) by 3.8%. This increase in complex case filings has resulted in the District presently being ranked 27th nationwide in terms of weighted filings per judge (464 per judge in the District against a national average of 419 per judge).

(c) Over the past three years, pending civil actions per judge have been reduced by 10% from 428 to 390. This annual reduction appears to be a result of increased case dispositions accomplished while the number of judges during the past twelve months remained basically at prior year levels. Even more encouraging, the number of three- year or older cases now represents 5.2% of the pending caseload in an extremely busy district compared to a nationwide level of 5.6%. The Civil Justice Expense and Delay Reduction Plan implemented in the Southern District of Florida seems to be working since the number of 3 year old cases has dropped steadily from a high of 8% in 1993.

2. <u>Criminal</u>

While the District made continued progress with its civil calendar, its efforts have been hampered by criminal filings, especially drug prosecutions. Currently there are 1969 defendants pending in criminal cases. Drug prosecutions represent 36% of the District's criminal felony caseload and the number of felony drug defendants comprises 46.7% of all defendants.

C. Principal Causes of Cost and Delay in Civil Litigation

The Plan identifies several principal causes of cost and delay in civil litigation:

(1) The disposition time for motions and cases;

(2) The availability of Court time;

(3) Lack of Case Management;

(4) Discovery disputes;

(5) Failure to fill Judicial vacancies;

(6) The impact of the Criminal Caseload

(a) Federalizing State Crimes

(7) Lack of formalized Alternate Dispute Resolution mechanisms;

(8) Failure to match Court personnel and facility needs to Congressionally mandated demands;

(9) Growth of Prisoner cases.

IV. REVIEW OF THE PLAN

The heart of the Plan is a proposal to increase the general efficiency of the Court. This Annual Assessment will consider the effect of the Plan's recommendations in addressing the problems noted above.

To address most, if not all, of the problems facing the Court in processing civil cases, the Plan made the following recommendations.[4]

(1) Pre-Trial Management - the Introduction of Differentiated Case Management (Tracking);

(2) Automatic Notice by the Clerk's Office of Motions pending longer than 90 days;

(3) Implementation of Alternative Dispute Resolution;

(4) Filling Judicial Vacancies;

(5) Pro Se Handling of Prisoner Cases/Volunteer Lawyer Program;

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[4] Each of the recommendations and their impact on the efficiency of handling of civil cases will be discussed in separate sections herein.

(6) Adequate facilities and staff;

(7) Recommendations to Congress regarding crimin legislation.

V. IMPLEMENTATION AND EFFECT OF THE PLAN

A. Differentiated Case Management (Tracking)

One of the pretrial management tools that the Civil Justice Reform Act specifically required the Advisory Group to consider was "differentiated case management" (DCM) or "tracking."[5] This system divides cases into classes or tracks based on their complexity and requirement for judicial involvement. The purpose of tracking is to set systematic, routine and predictable deadlines for the parties based on the complexity of the case.

This Court adopted the Advisory Group's recommendation that three tracks be established: an "expedited" track for cases requiring 3-6 months of discovery, a "standard" track for cases requiring 6-9 months of discovery; and a "complex" track for cases requiring 9-12 months of discovery. Counsel for the parties are

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[5] The Act provided:

> In formulating the provisions of its civil justice expense and delay reduction plan, ... an advisory group ... shall consider ...:
>
> (1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

CJRA, § 473(a)(1).

required to meet within 20 days of filing an answer or 60 days after the filing of the complaint, whichever is sooner for a variety of actions including agreeing upon a track. Ten days after this meeting the parties are required to submit a Scheduling Report and Proposed Scheduling Order containing the following:

1. selection of a track;
2. detailed discovery schedule;
3. deadlines for joining additional parties and filing pretrial motions; and
4. Spaces for the court to fill in a trial date certain and for ruling on all pending pretrial motions.

The Court is then required to enter a Scheduling Order within 40 days after the filing of an answer or with 120 days after the filing a complaint, whichever is sooner.[6] Although the Rule only requires the judge to enter a "Scheduling Order" and does not specifically list what the scheduling order requires, it is evident from the preceding paragraph that the scheduling order should include, at a minimum, the information set forth above which the parties are required to file in their proposed Scheduling Order.

The Advisory Group considered whether to recommend that a Scheduling Conference be held in most civil cases. The Group concluded that while the entry of a uniform Scheduling Order should be done in each case, that it should be at the discretion of the Court whether to also hold a Scheduling Conference.

The recommendations regarding tracking and the Uniform Scheduling Order were codified at Local Rule 16.1(A) and (B).

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[6] Local Rule 16.1(B)(7) provides "each judge shall in all civil cases (except those expressly exempted below) enter a Scheduling Order."

1. Analysis of Implementation of Tracking and Scheduling Orders (Local Rule 16.1(A),(B))

(a) **Judicial Assessment**

Most of the Judges interviewed indicated that the[illegible] complying with the rules regarding tracking and the scheduling order. The Judges indicated that the parties generally followed the rule, submitted scheduling orders with the predominant track selected being the standard track for 6-9 months of discovery. The persons responsible for monitoring compliance with submitting scheduling orders varied among the Chambers with the responsibility assigned to either the secretary, the law clerk, or no one. All of the district judges interviewed stated that they routinely entered a scheduling order. While almost all of the judges interviewed agreed that it is beneficial to set a trial date early on in the case, they were about evenly divided on whether it was realistic to do so in this District.

(b) **Attorney Assessment**

The attorneys responding to the questionnaire indicated that they held scheduling conferences 67% of the time. Of those holding a conference, 90% of them submitted a report and proposed scheduling order. In half of their cases, the Court held a scheduling conference. A majority of the attorneys (64%) felt that a scheduling conference early in the case would be helpful. The attorneys chose the standard track 41% of the time and the expedited track 35% of the time.

(c) **Docket Sheet Analysis**

The analysis of 257 docket sheets shows a pictur different from that offered by the attorneys and judges. Co to the attorneys' responses, scheduling reports and proposed orders were filed in only 23% of the cases reviewed. Of those filing a scheduling report 18% of the parties selected one of the three tracks. The Court entered a Scheduling Order in only 27% of the cases. Even in those minority of cases in which a scheduling order was entered, it was entered within the time limits set forth in the Rule only 56% of the time.

Thus, while it seems to be the perception of the bench and bar that it is useful to have early, certain dates for discovery and trial (and that the judges and lawyers are following Rule 16.1), the reality is that in the vast majority of civil cases, this is not being done. The Advisory Group continues to believe that the rules regarding tracking and uniform scheduling orders will aid in reducing costs and delays in civil litigation. Accordingly, steps should be taken to encourage compliance among the bench and the bar of these measures.

B. Disposal of 90 Day Old Motions

1. **Evaluation of Local Rule 7.1.B.3**

Local General Rule 7.1.B.3. was adopted as part of the CJRA Plan. It provides:

> With respect to any motion or any matter which has been pending and fully briefed with no hearing set thereon for a period of 90 days, the Clerk of the Court shall send to the Court and to all parties a "Notification of 90 days Expiring and Ripeness for Hearing." Any

> party may request the Clerk to do so, and in that event, the Clerk shall not file the request in the Court file nor indicate the identity of the party making the request. When the Court receives such notification, it shall set the matter for hearing within 10 days of receipt of the notification or shall issue an order resolving the motion or other matter during the same 10 day period.

The rule was intended to further the goal of deciding motions 90 days or less from the date of filing the last brief.[7] Since the Clerk's Office will not have information as to when a Motion is fully briefed, it is incumbent upon counsel, as the Rule states, to request the Clerk's Office to send the 90 day Notice.

To assess the effectiveness of this rule in reducing delay in disposition of motions, the CJAG reviewed docket sheets in 257 cases covering a period subsequent to the enactment of the Plan. In only 13% of the cases reviewed did there appear to be substantive motions pending more than 90 days after briefing was completed. From January of 1994 through July of 1995 the Clerk's Office, at the request of Counsel, sent out 462 Notices pursuant to Rule 7.1.B.3. No data was obtained for non-substantive motions. While the judges interviewed by the CJAG believe the Clerk of the Court is satisfactorily notifying chambers of the pendency of motions pending and fully briefed more than 90 days, none of the attorney members of the CJAG had ever received a "Notification of

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[7] In addition, the new rule made the Clerk responsible for notifying the Court of motions fully briefed and pending 90 days. Under former Local General Rule 10.B.3. counsel were required to file notices after a motion had been pending 60 and 90 days. Anecdotal evidence suggested that counsel were reluctant to file such notices for fear of retribution.

90 days Expiring and Ripeness for Hearing," even in cases where Rule 7.1.B.3. required such notices. The bar's perception is that, while most members of the Court are extremely diligent in promptly ruling on motions, there remain far too many instances in which motions remain fully briefed and pending more than 90 days without any notice from the Clerk. In short, the bar believes Rule 7.1.B.3.'s notification and 10 day hearing/ruling requirements are not being observed.

C. Implementation of Alternative Dispute Resolution

The perspectives of the attorneys and the judicial officers who were interviewed concerning mediation were overwhelmingly positive. The majority of the judicial officers interviewed perceives that mediation aids the settlement of civil cases. Attorney respondents characterized their experience with mediation as very satisfactory 38% of the time and satisfactory 51% of the time. Client experience with mediation was also rated highly by the attorneys who were interviewed (very satisfactory 22% of the time and satisfactory 53% of the time). This high level of satisfaction is perhaps due to the fact that the attorneys interviewed believed that cases settled as a direct or indirect result of mediation 49% of the time and that mediation costs were generally limited. The total cost of mediation was estimated at $1,000 or less in 63% of the cases.

However, the survey results also suggest that some improvements could be made in the system which might lead to the successful resolution of even more cases through mediation.

Although 90% of the attorney respondents were satisfied or very satisfied with the skill and training level of the mediators, 31% voiced dissatisfaction with particular mediators. A judicial officer also expressed dissatisfaction with the reports received from mediators. Obviously if there is any correlation between the effectiveness of the mediator and a successful mediation outcome, it may be necessary to develop a method whereby mediators can be evaluated and problems with particular mediators are addressed. The Committee suggests that the Chief Judge designate a Judge or Magistrate to serve as the Compliance Judge for mediation. One of the duties of the Compliance Judge would be to create a process for evaluating mediators and to review any criticism of particular mediators.

There did not appear to be a clear consensus among the judicial officers or the attorneys interviewed as to the point during litigation when mediation was most effective. However, 44% of the attorneys interviewed believed that mediation was more effective during discovery and 34% believed that mediation was more effective after discovery closed and before the case was called to trial. Although 14% of the attorneys interviewed believed that mediation was more effective before discovery begins, and therefore before the parties have solidified their positions, a sentiment shared by at least one judicial officer, mediation was conducted prior to discovery in only 8% of the cases. The type of case may have a great deal of impact on when mediation is optimal. More complex cases may require that dispositive motions and moderate

discovery take place before the parties can engage in meaningful mediation. It may be necessary to track a statistically significant sample of cases through the system in order to develop any meaningful data on this issue.

D. **Filling Judicial Vacancies**

The current process of selecting, nominating, and confirming federal judges is far too lengthy and cumbersome. The CJAG recommends encouraging Congress and the Executive Branch to fill judicial vacancies as expeditiously as possible.

The Congress and the Executive Branch should give a much higher priority to filling judicial vacancies when they occur and should cooperate in developing procedures for doing so expeditiously.

Appointments to the federal bench are a serious matter. Those ultimately appointed enjoy life tenure and exercise significant authority. Within the District, there is great pride in the quality of our federal judges. In fact, as we look to pressing problems and their possible solutions, one source of hope is the dedication and ability of the individuals occupying these important positions. We do not suggest, therefore, that appointments be made before there has been ample opportunity to investigate and reflect upon the qualifications of those under consideration.

However, extended vacancies on the federal bench are an equally serious matter. Judicial authorizations reflect reasoned decisions about the level of human resources necessary for a court to meet its basic responsibilities. Extended judicial vacancies

rob the court of those resources. Expressed in a somewhat different way, extended vacancies rob citizens of their right of meaningful access to the federal courts by making it impossible for those courts to provide proper and timely action. In short, they contribute in a very major way to the precise problems that Congress, through the Civil Justice Reform Act, has asked district courts to address.

Because so many groups and individuals are involved in the process of review when there is an opening on the federal bench, it would seem sensible for those participants to consider ways in which their contributions could be more effectively coordinated. That would work to the benefit of the federal judiciary nationwide. The Southern District of Florida has been plagued by problems that extend far beyond such inefficiencies and that involve political stalemates that have been highly detrimental to the Court and to the citizens who seek its services.

The U.S. District Court's 1996 Biennial Judgeship Survey was just released. See Ex. A. Its findings emphasize the need for filling vacancies in the Southern District of Florida.

The average weighted filings per district judge are 513 compared to 431 nationwide. However, the 513 number is deceptive; it is based on 16 full time District Court Judges. Since 2 vacancies have been unfilled during the time period these statistics were gathered, each of the 14 sitting District Court Judges actually has 586 weighted filings. This is 155 weighted filings <u>per sitting judge</u> more than the national average. The 14

sitting judges perform yeoman's work. While the national average for completed trials is 27 per judge the 14 sitting judges in the Southern District of Florida each complete 44 trials per year. The trials are far from simple, given that trials 20 days and over has increased almost 50% from the prior year.

E. Pro Se Handling of Prisoner Cases (Volunteer Lawyers' Project)

Prisoner pro se petitions continue to represent a significant percentage of cases filed in the Southern District of Florida. In 1990, 19% of all civil cases were prisoner pro se cases.[8] Of the 5100 civil cases filed this past year[9], 18% or 932 were prisoner pro se cases. The nature of the claims raised by prisoner petitioners range widely from serious medical or physical abuse claims, to minor complaints concerning loss of personal items.

Prisoner pro se claims significantly tax the time and resources of the District judiciary and the Attorney General's office. The problem is particularly acute in this District given the number of state, federal prisons and prisoners in the Southern District. Prisoner pro se petitioners, who usually have had minimal education, are, in general, unfamiliar with the rules of procedure and their rights and obligations as litigants. Prisoner petitioners are generally ill-equipped, by themselves, to adequately prosecute their interests in the very complex federal arena.

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[8] Civil Justice Advisory Group For the Southern District of Florida 1990 Report at 73.

[9] The statistics reflect prisoner pro se cases filed between October 1, 1993 and September 31, 1994.

1. The Pro Se Division

As reported in the 1990 Report of the Civil Justice Advisory Group for the Southern District of Florida, in 1987, this Court established the Pro Se Division to help alleviate some of the strains that pro se petitions can pose. Magistrate Judge Charlene Sorrentino continues to oversee the Pro Se Division, with a staff of four career law clerks, a non-attorney writ clerk, and one secretary. Under a standing order of the Court, all prisoner pro se cases are assigned to a district judge and to Magistrate Judge Sorrentino. The Pro Se Division continues to handle almost every aspect of the case, including recommending some cases to the Volunteer Lawyers' Project.

The Pro Se Division continues to use and update its software for its tracking system for pro se cases. Each month, the Pro Se Division forwards a print out to each district judge indicating what prisoner pro se cases are pending before each respective judge, and denoting the current disposition of those cases. As it has in the past, the Pro Se Division, on behalf of the prisoner, continues to obtain service of process, issue subpoenas, and perform other essential ministerial functions. This reduces the unnecessary expenditure of Court time and resources as frivolous cases are closed at an early stage. The Division also ensures that the prosecution of a meritorious claim is not delayed. Magistrate Sorrentino and the entire Pro Se Division Staff should be commended for their tireless dedication to assist prisoner pro se litigants,

and for their initiative in striving to improve the efficiency of the this Court by handling prisoner pro se cases.

2. Obtaining Counsel for Pro Se Prisoners/Volunteer Lawyers' Project

The Court's Pro Se cases fall into three categories: Section 2255 habeas corpus cases handled exclusively by magistrate Judge Lurana Snow, prisoner civil rights cases handled by Magistrate Judge Charlene Sorrentino, and those falling into neither category handled by the randomly assigned judge or magistrate (see generally Administrative Orders 89-31 and 91-48). However, this report deals exclusively with those cases examined by Judge Sorrentino.

At the recommendation of the Civil Justice Advisory Group for the Southern District of Florida, in December, 1993, this Court unanimously approved the formation of the Volunteer Lawyers' Project. The Volunteer Lawyers' Project is a unique, ambitious initiative which was implemented to help find counsel for indigent pro se litigants. The Project is independent of the Court, and is housed at the offices of the Florida Justice Institute, Inc.

Due to personnel changes, the Project has not fully implemented its plan to secure pro bono legal representation for pro se litigants with meritorious legal claims. Consequently, relatively few cases have been assigned to the Project. The Project recently hired a new Project Coordinator, David Weintraub,

who has experience with directing pro bono programs.[10] At pr

the Project has no secretarial staff.

The Project receives case referrals from two sources: the pro Se Division, and the Court itself. The Pro Se Division recommends civil, non-habeas corpus prisoner pro se cases, which consist primarily of § 1983 and "Bivens" actions. The balance of case referrals to the Project are non-prisoner civil pro se cases, which are referred by various district judges in the Southern District, at their discretion.

After a pro se case is recommended to the Project, the Project Coordinator investigates the factual underpinnings of the case to assess whether the claim is meritorious. The Project Coordinator's investigation may include speaking with the litigant, requesting and reviewing records, and contacting witnesses. The Court provides the Project Coordinator with on-line computer access to its integrated Case Management System at no cost.

At present, neither the Florida Bar[11], nor the general or trial bars of the Southern District require that attorneys provide pro bono representation to indigent clients. However, pursuant to

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[10] The Project Coordinator, who works at the direction of the Executive Director of the Florida Justice Institute, Inc., is the only employee of the Volunteer Lawyers' Project.

[11] The Florida Bar does inquire of attorneys as to whether they have provided pro bono representation to indigent clients. Rule 4-6.1(b) of the Rules Regulating the Florida Bar. The Florida Bar strongly recommends that members of the Bar should participate in pro bono activities, which include donating at least 20 hours of pro bono legal services, or contributing at least $350.00 annually to a legal aid organization. Rule 44-6.1(a)-(b) of the Rules Regulating the Florida Bar.

Administrative Order 93-106, the Court established a fund, supported by $25.00 in dues paid by general and trial bar members, to meet the ongoing administrative expenses and litigation costs of the Project.

The Project has streamlined its process of tracking cases, so as to permit volunteer lawyers to spend their time in court, versus handling administrative paperwork. After an attorney agrees to take a case, the attorney receives a copy of the complaint, copies of pleadings and orders that have been entered, a summary of the legal and factual issues, and additional information obtained through the post-filing investigation. Every effort is made to assign a volunteer lawyer to a pro se litigant in their geographic area.

After the initial contact with a client and after filing a notice of appearance with the Court, the volunteer lawyer files a brief Initial Disposition Checklist, which initiates the attorney's pro bono file with the Project, and triggers professional liability coverage where appropriate.[12] The Project provides legal support to all volunteer lawyers in several forms. The Project will make available to volunteer lawyers a large bank of forms for pleadings, motions, notices, discovery requests and other filings on disk. The Project will periodically conduct orientation programs and

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[12] A volunteer lawyer must carry at least $200,000 in liability insurance. If the attorney does not have insurance (or, if pro bono activities are expressly exempted from their policy), upon written notice to the Project, insurance will be provided without charge on cases taken through the Project.

seminars on procedural and substantive legal issues.[13] The Project will also attempt to recruit veteran members of the trial bar to mentor volunteer lawyers who lack experience litigating by themselves before the Southern District.

With regard to the expenses associated with supporting the pro bono initiatives of the volunteer lawyers, it is anticipated that most firms will absorb the costs. The Project has limited financial support from a Revolving Litigation Loan Fund[14], which it can make available to those firms which cannot absorb the costs. Monies loaned to attorneys to assist in the payment of out-of-pocket expenses are repaid to the Loan Fund at the conclusion of litigation out of either a judicial award of attorney's fees and costs[15], or a settlement agreement.

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[13] Volunteer lawyers who participate in the sessions may receive CLE credit from the Florida Bar.

[14] In order to receive support from the Revolving Loan Fund, the volunteer attorney initially files a written request for loan funds. After the request is reviewed, the Project will advance all or part of the amount requested on a periodic basis after receiving actual written receipts and other supporting documentation. Volunteer attorneys who receive litigation funds through the Revolving Litigation Loan fund are required to sign an agreement with the Project which prescribes repayment terms and the loan amount.

[15] As a policy, the Project volunteers keep track of the their time in the event attorney's fees are recoverable. When attorney's fees and costs are awarded to a plaintiff represented by a volunteer attorney, they are split as follows:

i) The Project will be reimbursed first for any expenses it advanced under the Revolving Litigation Loan Fund.
ii) The attorney is then reimbursed for actual costs advanced in furtherance of the litigation.
iii) With respect to funds remaining, the funds are distributed at a ratio of 75% to the

The Project Coordinator is expected to report to the Volunteer Lawyers' Project Committee of the Civil Justice Advisory Group, which acts as the Project's executive committee. The Coordinator's reports will detail the current case levels and activities, and the status of the Revolving Litigation Loan fund. These reports are intended to provide an opportunity to evaluate the Project's performance and program direction.

In view of the ever increasing number of pro se cases, both prisoner and non-prisoner, which constitute a significant percentage of cases filed in the Southern District, the success of the Volunteer Lawyers' Project has the potential to alleviate a number of strains placed on the overburdened dockets in the Southern District. However, that success can only be realized with the support of the bar of the Southern District, whose resources, in the form of volunteers and financial support, are vital. The Project can serve an important purpose for practitioners and firms, as well, by providing less experienced lawyers in the South Florida community with an opportunity to obtain valuable exposure to federal court practice.

The Florida Justice Institute, Inc., Randall C. Berg, David Weintraub and the law firm of Steel, Hector & Davis are to be commended for their support of this program, their efforts to alleviate the strains placed upon the resources of the Southern District, and their efforts to provide a vehicle for obtaining

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attorney, and 25% to the Project, to cover past and future operating expenses.

counsel for those who otherwise could not afford counsel. The Volunteer Lawyer Project is a new, unique and innovative project which should not only provide needed legal services to those who cannot afford it, but will also help reduce the delays caused by pro se cases as it matures.

F. Adequate Facilities and Staff

Without sufficient courtroom facilities it is impossible to maintain an efficient and up-to-date civil docket. Lack of space also limits the use of magistrate judges, senior judges, and visiting judges whose services might otherwise be of great assistance in reducing a court's civil caseload.

Congress must authorize additional Article III judgeships and provide added funding for magistrate judges, law clerks, and other court personnel.

Additional funding for staff attorneys or law clerks to handle prisoner pro se and social security appeal cases should also be available. Additional positions would allow the courts to process these cases in a more efficient manner.

1. **Courtroom and Office Space**

(a) **Miami Available Space**

At present, the District has thirty-five authorized judicial officers,[16] twenty-four of which are assigned and housed

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[16]The breakdown is:

16 authorized district judges
6 district judges on senior status
11 full-time magistrate judges
1 recalled magistrate judge
1 part-time magistrate judge

in the Miami Division. In recognition of the critical space problem faced by the Court in Miami, the construction of the Federal Justice Building began in 1992, immediately north of the old Post Office and Courthouse complex. This project is now complete and accommodates six district courtrooms and chambers. It was originally planned as a twin tower development; however, the Bureau of Prisons has since acquired the adjacent site on which it has built a fourteen story detention center. On our recommendation the Court has asked Congress to fund the acquisition and construction of another new building in Miami. However, a proposed seven year moratorium on all new construction could delay any new space before the year 2002. This will necessitate an ongoing program of renovation in our oldest building, the United States Post Office and Courthouse.

(b) **Ft. Lauderdale and West Palm Beach Courtroom and Office Space**

In 1992 the Court began an ambitious renovation project on the courthouses located in Broward and Palm Beach County. However, late starts and conflicts with the contractors at both locations have plagued both projects from inception. This has adversely impacted Court operations in these locations requiring many proceedings to be held in Miami. The completion dates on these projects is as follows: Ft. Lauderdale, - September 1996, West Palm Beach, - January 1996.

As case filings continue to increase in the Northern Division, we recommend the transfer of the former post office building in West Palm to the Judiciary. It should be renovated to meet the needs of Bankruptcy, Court and Justice Department agencies now housed in lease space. This would also alleviate the critical space requirements of the Clerk's Office. The Court's most critical immediate need is additional space in Fort Lauderdale. We support the judiciary's Committee on Security, Space, and Facilities which recommends that a new facility be constructed during the next five years.

(c) **Ft. Pierce Courtroom and Office Space**

In 1995 the Magistrate Judge position in Ft. Pierce was converted from a part-time to full-time position. As the space located at 500 Orange Avenue was wholly inadequate for a full-time judge, the Court immediately negotiated with G.S.A. for new space. While it is anticipated that the temporary space now in use by the Magistrate Judge at 300 South Sixth Street will be suitable for the present, G.S.A. and the Court are moving forward on a new permanent structure. This will fulfill not only the needs of the incumbent Magistrate Judge, but also allow those Judges currently handling Ft. Pierce cases to effectively hold trials in those cases which should be tried in that venue.

2. **Personnel Needs**

Since July of 1992 the Clerk's Office, Probation and Pre-trial have been working at 72% - 84% of their full personnel compliment. This is due in part to the inability of the Administrative Office

of the U.S. Courts and the Judicial Conference to achieve funding as Congress and the President downsize the federal bureaucracy. This has had at least one positive effect. All three have embraced Total Quality Service (TQS), a non-bureaucratic management system committed to serving the customer and continuous improvement. While the implementation of Total Quality Service has provided some short term gains, the system generally produces its best results in three to five years. The Agency heads are now working on their long term strategic plans to change the existing culture and train all employees in the skills of continuous improvement. As funding for any positions other than those mentioned below will probably be unavailable for years to come, this Committee strongly supports the implementation of Total Quality Services.

Additional funding for staff attorneys or law clerks to handle prisoner pro se cases should be available in 1996. Additional positions would allow the courts to process these cases in a more efficient manner.

G. Impact of Legislation on the Court

1. **<u>"Federalization" of Criminal Prosecutions</u>**

The CJAG is concerned about the growing "federalization" of drug and firearm crimes that have traditionally been prosecuted in state courts. While the CJAG recognizes the extreme importance of reducing violent crime, we also note that the growing federal prosecution of criminal cases has severely impeded processing the civil docket historically handled by federal courts.

Relatively minor criminal cases, especially drug charges involving small quantities of narcotics and gun charges, should be prosecuted in state courts with federal prosecution being limited to cases involving large cases, such as drug distribution networks and conspiracies that cross state lines.

The CJAG is strongly opposed to "federalizing" crimes involving firearms that traveled in interstate commerce and crimes involving domestic violence. We believe the federalization of such crimes would virtually overwhelm the federal district courts and likely displace the trial of many more serious federal crimes not subject to state court jurisdiction, as well as all federal civil cases.

2. Assessment of the Impact of Proposed Legislation of the Judiciary

Congress must consider fully the impact that proposed legislation will have on the federal judiciary. Legislation, with the potential to increase drastically both criminal and civil case filings, is often passed without proper consideration of its impact on the federal courts.

Legislation with the potential to substantially impact the courts should be accompanied by a judicial impact statement, and Congress should fully consider the impact of such legislation on the judiciary. The Judicial Impact Office of the Administration Office of the U.S. Courts was established in 1991, and is currently providing judicial impact statements to Congress.

The Congress and the Judicial Conference of the United States should cooperate in a coordinated effort to assess the impact of

new legislation on the courts, to protect against unnecessary demands on limited judicial resources, and to provide for appropriate resource enhancements when additional demands are necessary.

The Act requires advisory groups to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts." Given limited time and resources, it is beyond the capacity of any local group to comprehensively examine and quantify the extent to which cost and delay can be attributed to the demands of new legislation. However, the broader existence of a relationship between new legislation and a court's workload is clearly confirmed by the impact of such statutes as The Speedy Trial Act, Minimum Mandatory Sentences, The Sentencing Guidelines, ERISA and RICO on filings in the District.

The Report of the Federal Courts Study Committee recommended that "[a]n Office of Judicial Impact Assessment . . . be created in the judicial branch to advise Congress on the effect of proposed legislation on the judicial branch and legislative drafting matters likely to lead to unnecessary litigation." It should be underscored that the proposed office does not exist to discourage legislative initiatives. Instead, its function is to ensure that decisions regarding such initiatives are better informed and to guard against drafting flaws that might unnecessarily add to the burdens of the courts.

The Federal Courts Study Committee also recommended that Congress employ a drafting checklist to avoid "technical" ambiguities that can require a very substantial investment of time, energy and money before they ultimately are resolved in the courts. That checklist would serve as a reminder to participants in the legislative process that they should include items such as the following in their review of pending legislation: the appropriate statute of limitations; whether a private right of action is contemplated; whether preemption of state law is intended; the types of relief available; whether there is to be retroactive application; the conditions for an award of authorized attorney's fees; and whether exhaustion of administrative remedies is required. A similar approach was recommended by the President's Council on Competitiveness and has been promulgated by Executive Order with respect to the legislative activities of federal agencies.

Judges of the District have wrestled with these questions and others like them. To the extent that any of them could be eliminated in the legislative process, that would reduce judicial burdens and should help in controlling both cost and delay.

The Congress and the Executive Branch should more carefully consider the impact of ever broader federal criminal laws on the effective operation of the civil justice system.

The earliest version of the Civil Justice Reform Act focused exclusively on management techniques for civil cases, without even acknowledging the impact of growing criminal dockets on the

capacity of the federal district courts to effectively handle their civil caseloads. As finally passed, the Act of 1990 included the following Congressional finding:

> The problems of cost and delay in civil litigation in any United States District Court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

This finding notwithstanding, the "action sections" of the statute deal almost exclusively with principles and techniques for expediting civil litigation.[17] Because local control over the growth of criminal dockets is quite limited, that is not surprising.

However, most members of the Advisory Group believe that existing delay problems would be significantly reduced if two basic steps were taken. The first, already discussed, is the timely filling of judicial vacancies. The second is for Congress and the Executive Branch to take the above-quoted finding seriously by attaching real significance to the impact of a growing criminal docket on the ability of any court to deal with civil litigation expeditiously.

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[17]Executive Branch reform initiatives typically have not even acknowledged a link between the demands of the criminal docket and the problems that courts currently face in meeting their civil justice responsibilities. See, e.g., President's Council on Competitiveness, "Agenda for Civil Justice Reform in America," (August, 1991) and Executive Order No. 12778, "Civil Justice Reform," 56 F.R. 55195 (Oct. 23, 1991).

This observation, it should be underscored, comes from an Advisory Group whose members recognize that the District has been severely affected by the growth of its criminal docket. Clear pressures are being felt here. The district judges stated in their interviews that they currently spend the vast majority of their time on criminal matters.

The fact that increased criminal docket pressures would flow from such statutes as the Speedy Trial Act and the Sentencing Reform Act and from such enforcement initiatives as Operation Triggerlock seems inescapable. The fact that the number of Assistant United States Attorneys increased geometrically in a fifteen-year period when authorized judgeships clearly did not keep pace is a strong indication that existing judges almost inevitably would be expected to invest more and more of their time on criminal matters. In this same period, the offices of other federal agencies, including the FBI and the Drug Enforcement Administration, also saw significant growth in their agent and staff allocations.

The increases in law enforcement personnel were authorized by the Executive Branch to address specific national and regional law enforcement initiatives. The members of the Advisory Group recognize this and share in the belief that crime prevention and law enforcement should be important priorities on both the local and national levels. However, most members of the Group also know that virtually every new criminal law initiative diminishes the resources that otherwise would be devoted to the delivery of civil

justice. It is the Group's strong feeling that these burd
the civil system must be recognized and weighed and that any expansion of the federal role in criminal prosecutions should be more carefully measured. Likewise any increase in the resources of the U.S. Attorney's Office should create a requirement to increase the resources in the Federal Public Defenders Office.

H. **Uniform Scheduling Orders**

The Local Rules of the Southern District require the Court to enter a scheduling order within 20 days of the filing of an answer or 60 days of filing the complaint, whichever occurs first. The Local Rules also require that the parties meet to discuss the case and submit a proposed scheduling order.

In both the attorney and judicial questionnaires the use of scheduling orders was determined to be of significant benefit in progressing the litigation forward.

Ninety percent of the attorneys responding indicated that they filed a scheduling order after the scheduling conference. 64% of the attorneys believed that the scheduling conferences early in the case was helpful in expediting the matter. The majority of the District Court Judges indicated that they entered scheduling orders in their cases. The Judge's staff is responsible for sending out the scheduling orders.

The results of the docket review are inconsistent with the responses from the attorney and judicial questionnaire. The docket sheets indicated that the court entered a scheduling order in only 27% of the cases, and of the 27% only 56% were entered timely.

Several factors may account for this discrepancy. First, certain types of cases are exempted from this scheduling requirement or the cases surveyed were dismissed prior to a scheduling order being entered.

Those Judges not entering scheduling orders referred to the problem of not being able to give the parties a date certain for matters due to the civil docket being subject to criminal case interruptions or the parties having previously submitted a joint scheduling order.

In all cases where the Court has entered a scheduling order, a trial date is set. All discovery and motion deadlines are tracked by the court for compliance. The Court found the setting of deadlines for discovery, filing of motions and resolution of motions was critical in the effectiveness of moving the case forward. Most Judges surveyed set deadlines in 30, 60 and 90 day increments for matters to be resolved.

The criminal docket was consistently cited as a major factor in the disruption of the scheduling process.

I. Voluntary Disclosures

The CJRA encourages "cost-effective" discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices; . . . 28 U.S.C. § 473(a)(4). In its 1991 report, the CJAG noted that local rule 14 already requires the parties to exchange documents and witness lists within ninety days after the case is

filed. The CJAG found, however, that the rule was routinel ignored unless compliance was specifically ordered by the Court.

Voluntary disclosure now is governed by local rule 16.1. Rule 16.1(b) requires the parties to hold a scheduling conference within time case-event time frames and to make certain disclosures. Rule 16.1(B)(1) requires disclosure of documents then contemplated to be used in support of the allegations; rule 16.1(B)(4) requires exchange of witnesses then known to have knowledge of a party's material allegations.

The recent experience shows a marked difference in voluntary disclosure since the adoption of the Plan in 1991. In contrast to the voluntary disclosure requirement being virtually ignored as reported in 1991, the bar is complying with Rule 16.1's requirements in greater number. In 67% of cases, the parties conducted Rule 16.1 scheduling conferences. In 76% of the cases documents were exchanged.[18] The exchange of witness lists closely followed these percentages. In 79% of the cases witness lists were exchanged whereas in only 21% of the cases witness lists were not exchanged.[19]

[18] 42% - all parties exchanged all documents; 28% - some but not all documents were exchanged; 6% - some parties produced documents but others did not.

[19] 70% - all parties exchanged witness lists; 9% - some but not all parties exchanged witness lists; 21% - none of the parties exchanged witness lists.

VI. RESULTS OF ATTORNEY SURVEYS, COURT SURVEYS AND DOCKET SHEET REVIEW

A. Results of Attorney Surveys

A sampling of 143 attorneys who experienced litigation subsequent to the implementation of the Plan were surveyed. The Attorneys' Questionnaire utilized for the survey is attached to the Report as Ex. B.

1. Mediation

Mediation was held in 57% of the cases of the litigants surveyed. The parties agreed on a mediator in a vast majority of cases. Mediation tended to be brief. Of those responding, 78% spent six hours or less on mediation.

Approximately 36% of those surveyed believed that the case settled as a result of litigation.

The litigants were generally satisfied with the mediation experience with 89% listing their experience as satisfactory or very satisfactory. Most lawyer's clients attended the mediation. Approximately 79% of those responding felt that mediation should be required.

Most practitioners were satisfied with the skill and training of the mediators (90%). On the other hand, a full 31% have been dissatisfied with a particular mediator.

2. Tracking/Scheduling

Sixty seven percent of those responding had a pretrial scheduling conference as set forth in Local Rule 16.1. About 70% of those responding believed that the scheduling conference aided to an orderly exchange of documents and witness lists. Sixty six

percent of practitioners agreed that the pretrial conference side in devising a discovery schedule. Most discovery (76%) was completed in six to nine months. The majority of those responding (64%) stated that an early scheduling conference is helpful in expediting cases.

3. **Motions Pending Over 90 Days**

Attorneys surveyed had the perception that new Local Rule 7.1(B) requiring a Clerk's notice of motions pending for 90 days or more was not complied with. This contrasts with the Court's perception that the Clerk's office uniformly notifies it of motions pending over 90 days.

4. **Effectiveness of the New Rules**

Litigants were split as to whether the new rules increased or decreased cost and fees. However, a majority of those responding believed that the new rules reduced delays in litigation. Litigants also believed that the use of magistrates on non-discovery motions reduced delay in litigation.

5. **Docket Sheet Review**

The CJAG reviewed 257 docket sheets of cases handled after the Plan was implemented. The following results were obtained. See Docket Sheet Review Summary attached as Ex. C.

Parties did not file a scheduling order in 74% of the cases surveyed. The Court entered a Scheduling Order in only 27% of the cases. In 63% of the cases the Court did not enter an Order of referral to mediation. Of those responding, the mediators filed a report in 30% of the cases studied. Of those responding, counsel

filed a certificate of conference with opposing counsel in 52% of pretrial discovery motions. Clearly the new rules have not yet taken hold. On the other hand, in 73% of the cases studied no substantive motion was pending over 90 days.

6. **Survey of Judges and Magistrates**

The CJAG received responses from 13 judges and magistrates. The results are stated below. See Summary of Judge and Magistrate Survey attached as Ex. D.[20]

7. **Mediation**

About 30% of the judges do not automatically refer cases to mediation. Generally, the Court permits the parties or the Clerk select the mediator. The Court has no opinion regarding the quality of the mediators because the Court is not involved in the mediation process. Nor does the Court independently evaluate the level of skill and experience of the mediator. Most judges felt that mediation was aiding in the settlement of civil cases. Most judges also felt that mediation was not simply another unnecessary layer of time and expense. The judges find that mediation is particularly successful in personal injury cases and cases where liability is established and only damages are at issue. Cases where the government is a party are not good candidates for mediation since government lawyers have limited authority to settle. The majority of judges believe that mediation is most successful after discovery. The judges also favored Court ordered

[20] See individual comments of Judge Highsmith attached as Exhibit "E".

settlement conferences held by the magistrates as another form of alternate dispute resolution. The Court's comments indicate that the ability and skill of individual mediators need to be evaluated and mediation results need to be tracked better.

8. **Tracking**

All but three of the judges responding automatically issued a scheduling order. The judges indicated that litigants usually agree to the tracking schedule. There is no clear indication of whether the Court actually monitors the scheduling order. The vast majority of judges agreed that tracking and uniform scheduling aid in litigation efficiency.

9. **Notice of 90 Day Old Motions**

Most judges believe that the Clerk's office religiously notifies them of motions pending over 90 days.

10. **Use of Magistrates**

The judges believed that the magistrates needed an additional law clerk to resolve substantive motions more quickly. There was no uniformity among the judges as to whether referring dispositive motions to the magistrates helped or hurt. Some felt it very effective while others felt that it was merely a prelude to an appeal to the district court.

11. **Volunteer Lawyers Project**

The Court expressed very little knowledge about the Volunteer Lawyer Project and believed that very few cases were handled by this program. The Court expressed a need to publicize the program and educate the Court and litigants about the Project.

VII. ADDITIONAL RECOMMENDATIONS RESULTING ASSESSMENT

The CJAG has made the following additional recom aid in implementing the Plan and further reducing co in civil litigation:

A. Recommendations for Tracking

1. Draft a Uniform Scheduling Order for all Judges to utilize and attach as a Form to the Local Rules.

2. Distribute a Uniform Scheduling Order to the Judges, Secretaries, Deputy Clerks and Law Clerks and encourage use of the Form.

3. Recommend that one person be designated in each Chambers as the person responsible for monitoring compliance with the Rule.

4. Send press releases to local and federal bars to educate them about the rule and encourage compliance.

B. Recommendations for Non-Dispositive And Dispositive Motions

Non-dispositive motions[21] should be resolved in an expedited fashion, ordinarily within thirty days of their filing, on oral argument and without supporting or opposing legal memoranda, unless written briefs are expressly required by the Court. Dispositive motions ordinarily should be resolved within ninety days of their being fully briefed presumptively without oral argument, unless

[21] Borrowing from 28 U.S.C. § 636(b)(1)(A), "dispositive motions" are defined to include motions for: injunctive relief, judgment on the pleadings, summary judgment, dismissal or permission to maintain a class action, dismissal for failure to state a claim upon which relief can be granted, and involuntary dismissal on any ground. All other motions would be deemed "non-dispositive."

specifically requested by the parties or ordered by the Court. However, any dispositive motion not resolved within ninety days of its being fully briefed should be the subject of a notification from the Clerk's office based on a request by Counsel.

1. **Non-dispositive Motions**

Many non-dispositive motions, particularly those involving discovery disputes, need to be resolved expeditiously so the parties can continue with discovery and pretrial preparations. Such motions frequently can be decided without the need for the time consuming and costly preparation of supporting, opposing and reply memoranda of law. The CJAG recommends that non-dispositive motions can and ordinarily should be resolved within thirty days of their filing, on oral argument and without supporting or opposing legal memoranda, presumably on motion day hearings before a District Judge or Magistrate Judge to whom non-dispositive motions have been referred by a general reference order under 28 U.S.C. § 636(b)(1)(A). Of course, the parties are free to file memoranda and the Court may require them to do so if, in the particular judge's discretion, the issues presented need briefing.

2. **Dispositive Motions**

Because dispositive motions, by definition, are more important to the ultimate resolution of the action, both briefs and oral argument should be permitted. However, in recognition of the Court's extraordinarily heavy caseload and the relatively limited percentage of 90-day old unresolved substantive motions, the CJAG believes it is presently not necessary to presumptively require

both briefs and oral arguments by local rule. To pro disposition of dispositive motions should they remain pending after being fully briefed for 90 days, the CJAG suggests that Counsel be permitted to request the Clerk's office to notify the Judge or Magistrate of the pendency of an undisposed motion over 90 days old.

3. **Required Local Rule Changes**

The procedural approach suggested above would require amendments to Local Rules 7.1 and 7.2. Such amendment would include the Magistrates in the 90 day notice provision. Such amendments will be prepared by the Court's standing Committee on Local Rules and Procedures if the Court adopts the CJAG's recommendation.

4. **Judicial Discretion to Deviate from these Procedures**

The CJAG recognizes that, from judge-to-judge and from case-to-case, there may be good reasons for variation of the recommended procedure. Among other things, the judicial officers interviewed revealed that different judges simply find different forms of submission most helpful when considering and ruling upon motions. Therefore, the recommendations set forth above, even if implemented by local rule, are only presumptive and can be changed by an individual judge.

C. 90-Day Motions

1. Educate counsel that the 90 day pending Motion Notice is not automatically issued by the Clerk's Office and that counsel

must request such a notice 90 days after the Motion is fully briefed.

D. Criminal Prosecutions Recommendations

While specific recommendations relate to the prosecutorial function, they should not be viewed as criticisms of either the Department of Justice or the United States Attorneys Office. Instead, they reflect the basic fact that prosecutorial practices have a significant impact upon a court's ability to meet its civil docket responsibilities. Unless some adjustment to these practices can be achieved, it seems highly unlikely that there will be significant progress toward meeting the overall goals of the Act.

1. **More Selective Federal Prosecutions**

Federal criminal prosecutions should be restricted to activities in which federal involvement is necessary and appropriate.

In recent years, there has been some tendency to sweep into the federal courts criminal matters that traditionally would have been prosecuted in the state court system. It is recommended that prosecutorial intake policies be continuously monitored by the U.S. Attorney to ensure that cases that can be effectively handled by local prosecutors do not find their way into federal court. Cases referred by local authorities should be examined to ensure that federal interests are implicated and that crimes involving concurrent federal and state court jurisdiction are not prosecuted in federal court solely to enhance the penalty or to avoid state statutes.

2. **Simplified Indictments**

Federal criminal indictments should be more limited in ter[m]s of both the number of counts and the number of defendants charged.

The Advisory Group believes that a more restrictive approach to the drafting of indictments could shorten the length of many criminal trials without adversely affecting either the percentage of guilty pleas entered or the percentage of guilty verdicts won.

3. **Special Section Subcommittee**

The Court should establish a permanent subcommittee to monitor the Court's ability to meet the sometimes competing demands of its criminal and civil dockets.

The Advisory Group Plan previously recommended a Federal Criminal Practice Committee to include the United States Attorney's Office, the Public Defender's Office, the Court and distinguished private practitioners.

E. **Alternative Dispute Resolution Recommendations**

1. **Mediation**

(a) **Designation of Compliance Judge**

The Chief Judge should designate a Judge or Magistrate to serve as the compliance judge for mediation. This compliance judge shall be responsible to the Chief Judge for administration of the mediation program and should entertain any procedural or substantive issues arising out of mediation. This "Mediation Compliance Judge" should develop a process for evaluating mediators and resolving problems that arise in mediation.

(b) **Mediation Procedure**

(1) Whenever a civil action is referred to mediation the parties should immediately prepare and send to the designated mediator a position paper not exceeding ten pages in length. The parties should append to their position papers essential documents only. Counsel may, as an alternative or in addition to the position paper shared with their adversary, present to the mediator a confidential mediation position paper which does not have to be filed in the Court or served on the opposing party. The mediator would not disclose the contents of the confidential position paper absent express authorization to do so.

(2) Counsel and the parties (including individuals with settlement authority or specific individuals) shall attend mediation sessions as requested by the mediator.

(3) The mediator may meet with counsel and the parties jointly or _ex parte_. All information presented to the mediator shall, on request, be deemed confidential and shall not be disclosed by anyone, including the mediator, without consent, except as necessary to advise the Court of an apparent failure to participate. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an admission.

(4) Counsel may request that all proceedings (including motion practice and discovery) shall be stayed for a period of up to 60 days from the date a civil action is referred to

mediation. The decision to stay proceedings during mediation be at the discretion of the Court. Any application fo extension of the stay shall be made jointly by the parties and the mediator shall be considered by the referring Judge or Magistrate.

3. **Suggested Rule Changes**

A Local Rule should be considered to address the possible liability of a mediator. The CJAG is concerned that attorneys who serve as mediators receive the maximum protection available under the law. To that end, a Local Rule should be considered that deems mediators to be quasi-judicial officers. The CJAG recognizes, however, that the issue of mediator immunity is unsettled and, accordingly, recommends that the Judicial Conference of the United States propose legislation to the Congress which would afford statutory immunity to mediators (as well as arbitrators).

A Local Rule should be considered which establishes the framework for mediation. Counsel and parties are required to cooperate with the mediator. Prior to any meeting with a mediator, the parties must submit "position papers" of limited length to him or her. The rule should require that counsel and parties ("including individuals with settlement authority or specific individuals") attend mediation sessions. The Local Rule should provide for ex parte meetings and confidentiality of information presented to mediators. The Local Rule should also provide for the designation of a "compliance judge for mediation," whose task is to administer the mediation program and resolve procedural or substantive issues which might arise.

A Local Rule should be considered to utilize jud: resources more effectively while cases are in mediat establishing a stay of proceedings for 60 days. During that t..e it will be unnecessary for judicial officers to deal with any case in mediation. Instead, they will be able to devote more time to non-mediation cases. The stay will also conserve resources of the parties which would otherwise be expended in discovery.

The CJAG acknowledges that cost and delay may be increased, rather than decreased, if a case referred to mediation does not settle. The 60-day stay is intended to afford a reasonable period of time within which to reach a settlement. When the stay expires a case which has not been settled will be restored to the active calendar, thus protecting the parties from an extended (and unfruitful) stay. The Local Rule should provide, however, that the parties and the mediator may make a joint application for an extension of the stay, thus recognizing that certain cases may need additional time for settlement.

2. **Arbitration**

(a) **Supporting and Enhancing Arbitration**

A voluntary arbitration program should be considered within the District.

The judges of the Southern District should consider the promulgation of a Local Rule providing for voluntary arbitration, in civil actions except: (1) social security cases; (2) cases in which a prisoner is a party; (3) cases alleging violation of a right secured by the U.S. Constitution; and (4) actions in which

jurisdiction is based, in whole or in part, on 28 U.S.C. §
All other cases should be subject to arbitration unless a
opts out within ten days after the filling of the answer
court exempts the case for good cause. Substantial numbers of cases now are being handled in arbitration nation wide.

3. **Budgetary Support for ADR**

(a) Congress must recognize that ADR programs must be appropriately staffed and adequately funded. Court-supported ADR programs should receive the budgetary support that will enable them to work well.

4. **Education in ADR**

(a) Steps should be taken to ensure that the bench and the bar are fully informed as to both existing ADR programs and emerging ADR techniques. Both the bench and the bar need adequate and up-to-date information to fully appreciate the benefits of ADR methods and to effectively plan for their use. This is true whether one is considering the application of ADR to a particular case or is participating in broader planning for the improvement of the courts. It is the sense of the Advisory Group that such information has not been adequately disseminated within the District Court.

Appropriate educational initiatives would advance at least three related goals. The first is providing an informed sense of currently existing alternatives, so that lawyers and their clients can make intelligent decisions regarding the dispute resolution avenues that are open to them. Hopefully, this could be

accomplished through the educational initiatives of any of a number of interested professional groups, including the Federal Bar Association. The second is providing timely reminders of available alternatives to those actively involved in moving a case through the courts. It would seem particularly important to remind litigants of ADR possibilities both at a very early stage of the process and also as trial approaches. Presumably, this is a responsibility best met by the court. Finally, there should be an ongoing effort to ensure that current ADR programs are functioning well and that new ADR possibilities receive careful consideration by the Court. This may require the creation of a special committee.

F. Recommendations Regarding Volunteer Lawyer's Project

We recommend that the Court continue to support the Volunteer Lawyers' Project. We also recommend that the Civil Justice Advisory Group continue with its oversight of the Project, and that the oversight committee evaluate ways to provide the Project with resources that it needs, such as funds to pay for a secretary and future additional staff members. We further recommend that the Court and the Civil Justice Advisory Group consider ways of encouraging the bar of the Southern District to actively participate in the Volunteer Lawyers' Project program.

G. Recommendations Regarding Use of Magistrates

1. Encourage parties to consent to a magistrate judge trial by publishing a pamphlet for lawyers and litigants explaining the

consent system and providing professional and biographical information on all magistrate judges.

2. A specific study should be undertaken to determine the effect of referring dispositive motions to the Magistrates. The study should focus on the number and percent of Magistrate Report and Recommendations which are appealed to the District Court Judge; the number and percent of such Report and Recommendations reversed; and the perception of the Bench and the Bar as to whether the Magistrate's initial handling of such dispositive motions lessens the District Court's and the parties' burdens.

3. The CJAG recommends that the District's Magistrate Committee study the equalization of work load for U.S. Magistrates.

VIII. CONCLUSION

Civil justice reform was introduced in the Southern District of Florida in November of 1991. Although it would be premature to conclude that reform has proven effective, the trends in the civil calendar are encouraging. However, 1994 also saw the continued burden in the criminal calendar and the first of what may prove to be burdensome fiscal constraints. Moreover, enactment and implementation of the new Rules has not had the benefit of enough experience to cause an effect on the efficiency of the civil docket. Civil justice is but one facet of the Court's operations and cannot be afforded without consideration of both the obligation to afford criminal justice and the need for adequate funding. The Court will strive to implement civil justice reform in the present

environment and trusts that the next Annual Assessment will reflect that its efforts has been successful.

MIA3-316990.2

U.S. DISTRICT COURTS
1996 BIENNIAL JUDGESHIP SURVEY PAGE 1

FLORIDA SOUTHERN

			TWELVE MONTH PERIOD ENDED JUNE 30						
			1995	1994	1993	1992	1991	1990	NATIONAL AVERAGE
OVERALL CASELOAD STATISTICS	Filings		6,590	5,963	6,007	6,396	6,318	6,427	
	Terminations		6,240	6,041	6,364	6,045	5,371	5,646	
	Pending		5,693	5,485	7,095	7,391	7,132	6,281	
	Percent Change In Total Filings/ Current Year	Over 1994. . .		10.5					1.5
		Over Earlier Years. . .			9.7	3.0	4.3	2.5	8.1
	Number of Judgeships		16	16	16	16	16	15	
	Vacant Judgeship Months		24.0	38.5	43.0	39.3	35.4	24.0	
	Senior Judges With Staff		6	6	6	3	3	2	
ACTIONS PER JUDGESHIP	FILINGS	Total	412	373	375	400	395	428	418
		Civil	332	307	306	328	297	340	368
		Criminal	80	66	69	72	98	88	50
	Pending Cases		356	343	443	462	446	419	398
	Weighted Filings		513	458	453	442	529	496	431
	95% Confidence	Upper	545	488	484	470	562	543	
		Lower	481	427	423	414	496	477	
	Terminations		390	378	398	378	336	376	394
	Trials Completed		39	41	37	42	40	46	27
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	8.2	8.3	9.0	7.9	7.5	6.5	6.7
		Civil	8	8	8	8	6	7	8
	From Filing to Trial* (Civil Only)		22	21	17	13	12	11	18
OTHER	Number (and %) of Civil Cases Over 3 Years Old	Number	238	312	368	287	229	161	
		%	5.2	7.1	8.0	5.9	5.0	3.9	5.6
	Felony Cases with 6 or More Defendants		31	39	41	34	56	38	
TRIALS	TOTAL ALL TRIALS		621	649	590	674	637	695	
	10 - 19 Days		23	19	14	15	18	18	
	20 Days and Over		9	6	11	5	8	3	

*PRIOR TO 1994, TIME IS COMPUTED FROM THE DATE THE RESPONSE IS FILED TO THE DATE TRIAL BEGINS

ATTORNEY INTERVIEWS

- Was mediation held in your case?

  Yes 57%
  No 41%

- If yes, did the parties agree on a mediator?

  Yes 93%
  No 6%

- If the parties were unable to agree on a mediator, was one selected by the Clerk's office?

  Yes 62%
  No 38%

- How long did the mediation last?

  1-3 Hours 57%
  3-6 Hours 21%
  6-9 Hours 13%
  9 Hours or more 5%

- What was the approximate total cost of the mediation?

  0-$500 35%
  $500-$1000 28%
  $1000-$2000 9%
  $2000-$3000 6%
  $3000 or more 4%

- What was the result of the mediation?

  Case settled as a direct result of mediation 36%
  Case did not settle 42%
  Case settled later as an indirect result of mediation 13%
  Case settled but not as a result of mediation 8%

- How would you characterize your experience with mediation in this case?

  Very satisfactory 38%
  Satisfactory 51%
  Unsatisfactory 6%

Very unsatisfactory 5%

- Did your client attend the mediation?

  Yes 94%
  No 5%

- How would your client characterize your experience with mediation in this case?

  Very satisfactory 22%
  Satisfactory 53%
  Unsatisfactory 13%
  Very unsatisfactory 5%

- Should mediation be required in federal civil cases?

  Yes 79%
  No 20%

- Are you satisfied with the skill and training level of mediators?

  Very satisfied 31%
  Satisfied 59%
  Dissatisfied 9%
  Very dissatisfied 1%

- At what point in the litigation did you mediate?

  Before Discovery 8%
  At a point during Discovery 47%
  After Discovery, before Trial 41%
  During Trial 3%
  Depends 2%

- Is there an optimal stage of the litigation when mediation is more effective?

  Yes 72%
  No 17%

- For those who answered "yes", what is the optimal stage?

  Before Discovery 14%
  At a point during Discovery 44%
  After Discovery, before Trial 34%
  Depends 8%

- Have you been dissatisfied with particular mediators?

  Yes 31%
  No 64%

- Did counsel for the parties have a scheduling conference as set forth in Local Rule 16.1?

  Yes 67%
  No 25%

- At the scheduling conference, or as a result thereof, did the parties voluntarily exchange all documents then reasonably available which were then contemplated to be used in support of the allegations of the pleading filed by that party?

  All parties exchanged documents 42%
  The parties did not exchange documents 22%
  Some but not all documents were exchanged 28%
  Some parties produced documents, but others did not [illegible]

- At the scheduling conference, or as a result thereof, did the parties exchange a list of witnesses then known to the parties?

  Yes, a witness list was exchanged by all parties 70%
  No, a witness list was not exchanged 21%
  Some parties produced a witness list, but others did not 9%

- At the scheduling conference, or as a result thereof, did the parties agree to a discovery period?

    Yes 90%
    No 9%

- What was the length of the discovery period? (among those reported being dissatisfied with particular mediators)

    3-6 Months 35%
    6-9 Months 41%
    9-12 Months 14%
    Over 12 Months 5%

- Did the parties file a report of their scheduling conference with a proposed Scheduling Order setting forth pretrial deadlines?

    Yes 90%
    No 9%

- Did the Court hold a scheduling conference early in the case to set pretrial deadlines?

    Yes 49%
    No 48%

- Do you believe such a scheduling conference early in the case would be helpful in expediting this action?

    Yes 64%
    Not necessarily 29%
    No 5%

- Should certain cases be exempt from the scheduling conference?

    Yes 36%
    No 62%

- Do you have any such cases?

    Yes 56%
    No 44%

- New Local Rule 25.1(G) requires counsel to file a certificate with all pretrial discovery motions certifying that counsel has attempted to resolve the matter with

opposing counsel but was unsuccessful. Was this procedure followed in any pretrial discovery motions in your case?

Yes 63%
No 22%
Unaware of the Rule 3%

- New Local Rule 7.1 (B)(3) requires the Clerk to notify the Court of any motions pending for greater than 90 days and for the Court to either hold a hearing or resolve the motion within 10 days.

  Was this procedure followed in your case for any motions pending over 90 days?

  Yes 19%
  No 53%

- Do the new rules or programs increase or decrease costs and fees for litigants?

  Decrease 30%
  Increase 37%
  Same 6%

- Do the new rules or programs increase or decrease the delays in civil litigation in federal court?

  Decrease 41%
  Increase 13%
  Same 17%

- Do you belive that the use of Magistrates on non-discovery motions increse or decreases delays and costs?

  Decreases 55%
  Increases 28%
  Same 1%

- What percentage of appeals are taken from Magistrate's orders?

None	15%
1-25%	18%
26-50%	10%
51-75%	7%
76-100%	17%

- How often does the Court conduct telephone hearings?

Always	1%
Never	53%
Sometimes	
0-20%	31%
21-40%	1%
41-60%	2%
61-80%	1%
81-100%	0%

- What percentage of your practice is devoted to litigation?

0-10%	1%
11-20%	1%
21-30%	2%
31-40%	2%
41-50%	2%
51-60%	0%
61-70%	3%
71-80%	9%
81-90%	13%
91-100%	60%

- The majority of the time do you represent plaintiffs or defendants?

Plaintiffs	23%
Defendants	42%
Both Equally	29%

- **What percentage of the litigation you handle is in federal court versus state court or other dispute resolution forums?**

0-10%	30%
11-20%	8%
21-30%	13%
31-40%	6%
41-50%	13%
51-60%	4%
61-70%	5%
71-80%	8%
81-90%	4%
91-100%	1%

MIA3-325888

REVIEW OF DOCKET SHEETS

- Did the parties file a Scheduling Report?

Yes	23%
No	74%

- Did the parties select one of the three tracks for discovery deadlines?

Yes	18%
No	71%

- If yes, which track was selected?

3-6 Months	32%
6-9 Months	52%
9-12 Months	16%

- Did the Court enter a Scheduling Order?

Yes	27%
No	59%

- Among those who selected one of three tracks for discovery deadlines, was the Scheduling Order entered within the time limits set forth in the Local Rule? (40 days of the answer or 120 days of the complaint, whichever is sonner).

Yes	56%
No	42%

- Did the Court enter an Order of Referral to Mediation?

Yes	24%
No	63%

- Did the Mediator file a Mediation Report?

Yes	30%
No	67%

- What was the outcome of mediation?

Case settled	9%
Case did not settle	8%
Mediation was continued with parties' consent	0%

- For any pretrial discovery motions, did counsel file a certificate of conference with opposing counsel?

Yes	43%
No	48%

- Were any substantive motions (motions to dismiss or motions for summary judgment) pending for over 90 days?

Yes	13%
No	87%

MIA3-325346

Interviewee	1a	1b
A	all cases go to mediation except exempt cases per the rules.	Magistrate has authority to assign cases if parties agree to his handling the case
B	y	by order of court which is issued at status conf.
C	y	pretrial order
D	y	separate order with order for trial
E	y, those referred to us by consent or as special master	court sends out order
F	not enough time for interviewer to ask all questions. summary of interview is: Dispositive motions - should not be referred to mediators. Social Security cases - Ideally handled by separate court. Too many layers of appeal exist.	
G	n, I rely on Rule 16 sched. conf. and pretrial conf. to settle civil cases	by court order
H	y, her practice is to refer all civil cases to mediation	send out order of mediation when sch. order sent out
I	y	by order
J	n, when parties don't have money to mediate. Pro se, discrimination cases	clerk will send out on judge's order
K	y	by issuance of order of referral
L	y, in some circumstances it may not be appropriate	aparties and court agree to mediation
M	he asks if parties want to mediate	

Interviewee	1c	1d
A	court issues order	
B	y, less than 10 cases	
C		
D		
E		
F		
G	select them after Rule 16 or pretrial conf	use own after rule 16 or pre tr. cont.
H		
I	not fan of mediation b/c only works if attys. want to participate	
J		y, usually wait until disc. taken care of
K	court uses standard order	order is issued at same time as order setting trial schedule
L	court issues mediation order	y
M		y, uses form order

Interviewee	1e	2a
A	y, low, multiple mediations are voluntary where likelihood of settlement is good	y
B		n, parties generally agree using mediators on and off list
C	none known; wouldn't require	n
D	rarely	n
E	y, only in few, when parties request add'l mediation	n
F		
G	n	problem has not arisen
H	yes, less than 10 cases	n, clerk select mediator if no agreement
I	only if parties agree or if bad faith existed	n, court chooses from list of qualified mediators
J	n	n
K	n	n, it doesn't assign particular mediator
L	y, multiple mediation cases occur in more complicated cases	y
M	n, not aware of any	refers to mediators pool

Interviewee	2b	2c
A	n	y
B	n	y
C	n	doesn't know mediators
D	n	y
E	n	unknown
F		
G	n	has no opinion since has little contact
H		n, mediators prepare vague reports and are illegible
I	n	no opinion
J	n	
K	n	y
L	y, if parties cannot agree	y
M	n	impossible for him to tell

Interviewee	2d	2e
A	availability and knowledge of legal issues	y
B	Whether or not case is settled	y, in great majority of cases
C	doesn't evaluate	doesn't know
D	n	y
E	we don't	y
F		
G	has no opinion since has little contact	y
H	primarily, based upon job that they do, attys. should evaluate	
I	no opinion	y
J	does get feed back from individual parties	seen one or two
K	court does not attempt to evaluate mediator	most do
L	court receive atty feedback	y, at times reports do not follow form of rule
M	court can't evaluate	y

Interviewee	2f	3a
A	y	y, judge thinks overly litigious lawyers prevent settlement
B	did not know	y
C	n	y
D	n	
E	n	y
F		
G	n	n
H	y, judge's lawclerks are resp. for this.	y, remarkable
I	n	
J	just recently started to check	y
K	y, law clerk responsible for case	y
L	y, at final pretrial. conf. stage	y
M	n	y

Interviewee	3b	3c
A	n, not necessary is it settles case	y, cases with clear liability or liquidated damages or if client can't afford expensive discovery
B	n	y, contract cases or cases for strictly money damages
C	n	y
D		
E	n	n
F		
G	y	don't know
H	only if done improperly	y, pi, sex and age discr. cases are better
I		cases where only issue is money damages
J	n	y, damage cases, personal injury cases, if both parties can afford it
K	n	y, cases where principal issue is damages mediation is very good
L	n, court can evaluate up front the willingness of parties to agree to mediate	y, some cases involve fed. gov't as party are not good candidates for mediation b/c US atty has limited authority
M	n	civil forfeiture, student loan cases

Interviewee	3d	4
A	y, earlier the better if knowledge of facts available	y, court ordered settlement conferences
B	after discovery has started; early to mid discovery	Sometimes sends matter to magistrate for settlement conference
C	not necessarily	as circuit judge has used summary jury trials
D		
E		
F		
G	don't know	n, trial is best form of resolution
H	earlier is better	n, only interested in mediation
I		y, settlement conf. before magistrate especially in pro se cases
J	y, in the first stages get parties to start talking	n, summary jury trials time consuming
K	y, after disc. mostly finished	n, like to give one opinion
L	sometimes	y, mediation is good way to proceed
M	y, more successful in cases where disc. completed	y, believes that arbitration could be effective

Interviewee	5	1a
A	n	parties should voluntarily comply with rules
B	track results	y, issued at initial status conference when attorneys must file "pretrial stipulation: before conference
C		
D		sends out order to comply with 16.1. tickler system
E		send order, parties meet & submit order
F		
G	no suggestions	neither
H	feels mediation system is good, but need typed reports	Judge started sending out such an order 1/1/95
I	n	y
J	needs to be more effort from judges standard form demand or show cause	court sends out order
K	system appears to be working well	court relies on voluntary compliance
L		y, court holds 2 pretrial. conf.
M	develop system where participating attys. can evaluate	

Interviewee	1b	1c
A	y	standard
B	y	6-9, discovery only
C		
D	y	complex
E	y, sometimes have to order parties to submit schd. order	standard
F		
G	frequently happens	neither
H	y, but judge ignores b/c clerks set for trial 6-9 months after answer filed	standard track
I	y	standard
J	exception rather than rule	usually the lengthier trial
K	those who submit sch. orders include track suggestion	standard
L	y, b/c parties agree to sch. at early pretrial. conf. schedule is tracked in advance	
M		

Interviewee	1d	1e
A	court requires filing in 3 days upon motion or determines track after a hearing	not part of magistrate's responsibility
B	court sets dates	y, secretary handles civil docket with info. supplied by clerks
C	sets dates at pretrial conf.	
D	generally the parties agree. it may take a phone call to get them to agree, but they are forced to come to some agreement	secretary
E	has never happened	law clerk
F		
G	lawyers always agree at the sch. conf.	n, not necessary b/c lawyers always comply
H	judge will call the attys. in for status conf and generally set case on standard track	y, law clerks
I		n
J	court sends out scheduling order	y, law clerk
K	court always issues its own sch. order;` taken care of by status conf	y, law clerk assigned to case monitors all filings; always issue own sch. order; rarely refer to magistrates
L		
M		

Interviewee	2a	2b
A	not usually part of magistrate's responsibility	
B	y, five days after initial status conf.	y
C	y	
D	y	law clerk sets dates
E	y	don't have typed order
F		
G	y	y
H	y, finds to be important and beneficial	y
I	y	
J	y	y
K	y	y
L	y, court will set down dates as to when court will decide whether it can entertain lawsuit	
M	n	

Interviewee	2c	2d
A		n, dates are usually determined by parties who create by agreement the schedule case will follow
B	secr. sends out order based on dates provided by clerks who attend	y, start trial date back up from that
C		n, I don't make promises I can't keep
D	y	30 days after deadline for motions
E	law clerk	y, dates are generally those set forth in parties; schd. report
F		
G	courtroom deputy	n, unless agrees upon with counsel,
H	courtroom deputy	judge will issue standard order on summ J.
I	clerk	
J	law clerk or secretary	y, tend to be 60 day deadlines for disc., dispositive motions, pretrial conf.
K	dates set out at status conf	y, deadline for filing pretrial. motions is 8 wks before trial
L	y	
M		

Interviewee	2e	3a
A	y	y
B	y	y
C	y	
D	is in a separate order with scheduling. Add'l info is in order	
E	y	
F		
G	y	don't understand question
H	y, tr. date is set in pretrial. order	y
I		y
J	y, trial date tends to move	y, tends to be more flexible, unless parties have own schedule
K	y	y
L		y
M		

Interviewee	3b	3c
A	n	y
B	no idea	y
C		y
D	doesn't know	y, but will give extensions
E		y, generally, dates are changed by motion of parties. not realistic to do early
F		
G	don't know	probably
H	n	y, such dates should be set early on shortly after answer is filed
I	n	n, but if attys. think it helps then yes
J	n	y
K	n	y
L	different judges will have different viewpoints	y
M		

Interviewee	3d	3e
A	y, except the speedy trial req.. of criminal cases sometimes cause preemption of civil case	force parties to stick to rules
B	y, trial should be conducted within 12 months	would not oppose uniform order
C	y	
D	not very realistic	pretrial conf. is waste of time
E	n	part of problem in respecting trial orders since aren't going to have realistic trial dates
F		
G	y, dates are important	Bar should insist upon certain trial calendars
H	y, very possible	list experts early, rule on motions promptly, resolve discovery disputes
I	in complex civil cases, no, especially where speedy trial rule in crim cases takes priority over civil matters	n
J	n	anything short of very stiff with or rigid guidelines
K	y, parties can agree to change deadlines among themselves but not court deadlines	court has fine tuned practice
L	y, it is more realistic to set trial date at second pretrial. conf. sometimes parties will agree to trial date earlier.	in order to understand dynamics of civil lit., we must keep in mind and understand crim. cases and appreciate enormous demands crim cases place upon our system.
M		

Interviewee	1	2
A	y	investigate and set motions for hearing if useful, or rule
B	occasionally	rule immediately
C	y	
D	yes	
E	occasionally	try to rule on routine matters and older motions first
F		
G	possibly	motions reviewed on day comes to judge
H	y	once court is advised by clerk, they mover immediately on motions
I	y	set motions for hearing or refer to magistrate
J	y	send to clerk
K	y	court rules on motion within time set by rule
L	y	resolution within 90 days.
M	y	doesn't have tickler system, not enough time or people, review motions quickly

Interviewee	3	4
A	y, magistrates need additional law clerks	y, all types, very effective
B	y, have lawyers call court staff to advise if pending 60 days	y, non-dispositive motions
C	y, except dispositive motions	doesn't know
D	perhaps times for filing motions and memos should be shortened	not dispositive motions. mostly disc. disputes
E		all types
F		
G	know of none	infrequently, motions for fees, ss review, pro se prisoner petitions
H	not really	very few, too much time
I	y, oral argument helps to narrow the issues	y, disc. matters ss cases and somes cases in full, assign on issue by issue basis, not too effective b/c mag. needs 2nd clerk
J	do motions early in AM	y, disc. motions with research and writing; referral to magistrates is very efffective.
K	y, reduce briefing time	court selectively refers relatively small number of civil motions to magistrate
L		y, court refers wide variety of matters to magistrates, though principally most of motions referred relate to discovery
M	y, referral disp. motions to magistrates is #1 time wasting procedure	depends on motion

Interviewee	1	2
A	y, most do	n, court has become more relaxed in enforcement of rule
B	y	y, denial of motion for failure to comply
C	will strike motion if comes to his attention	
D	y	sometimes sends out an order saying he won't rule because of non-compliance
E	y, but a lot just state they unsuccessfully tried to contact opp. atty.	sometimes deny motion with leave to refile with certificate
F		
G	y, usually deny w/o prejudice	usually deny w/ prejudice
H	y	y, judge call attys. into court
I	y	depends on issue
J	sometimes included	n
K	most do	y, motion is denied w/o prejudice
L	y	
M		y, 75% of time; if no certificate, deny w/o prejudice

Interviewee	3	4
A	sense is they do not make real effort to resolve	y, limited disclosure under local rule
B	status conf. has impact	
C		
D		
E	go through motions	
F		
G	lawyers comply	don't know
H	avg. impact. Judge feels that lawyers should have to say why they cannot agree	y
I	y, reducing amount of hearings	no opinion
J	don't usually go through motions - just file the motion	too early to tell, magistrates may have a better feel
K	appears to have impact	district opted out of rule 26(a)
L		
M	y, but need to be more stringent	doesn't know

Interviewee	5	6
A	y	y, required by local rule
B	not sure	
C		
D		
E	no difference	
F		
G	don't know	inclined to say "no"
H		
I	y	y
J		y
K	don't think it reduces request	think it's a good idea
L	too soon to tell	
M	no idea	may not make difference

Interviewee	7	1
A	y	n, court is unfamiliar with project
B	vary rarely	n
C		
D		
E	y	n
F		
G	n	n
H		n, cases don't need to be referred
I	y, only a very low percentage	y, no real knowledge of system
J	n	y
K	n	n, court has no experience
L	y, not very often	y, 2
M	y, treated like motion to compel w/o sanctions	n

Interviewee	2	3
A		
B	n	n/a
C		
D		
E	n	
F		
G	n	
H	y	not yet
I		
J		n, conflict arose between client/atty; concept is good
K	n	n
L		y, in the few cases court has had it has expedited cases
M	n	

Interviewee	4	5
A		
B	n/a	3 or 4 in 3 1/2 years
C		
D		
E		none
F		
G		approximately 5 per year. I have 2 sch. 8/28/95
H	feels positive about it	twice a yr.
I		not often
J		very infrequently
K	n	none so far
L	court believes that project is a good idea	handful every year
M		has not had any

Interviewee	6	1
A	greater publicity as court not familiar with program	y, insist upon compliance with rules
B	publicize program	set a schedule and adhere to it.
C		
D		
E		
F		
G	n	insist that judges set meaningful trial calendars
H		y, rule promptly on motion
I	n	y, allow fewer continuances, shorten length of trial
J	client and atty met and confer to decide compatibility early in case	status conf. very effective
K	make its availability known to pro se litigants through clerk's office	y, substantive status conferencing with judges at early state of litigation.
L	court does not know enough to say how much was accomplished	n
M		

Interviewee	2	3
A	n	unsure, approximately 25%
B	n, court changed because felt more expedient	0.2
C		
D		not many
E	no, but magistrate judge law clerk complains	
F		
G	no complaints	few except criminal bond matters
H	yes	not may on civil cases
I	n	0.9
J	court has kept most significant rulings	0.7
K	n	close to 100%, objections to R &R's are included
L	y, court has heard complaints from local attys. regarding increased costs assoc. with magistrate reviewing some matters	depends on nature of matter ruled upon
M	has not heard complaints from attys., but from other people	50% or more, difficult b/c magistrates usually don't receive copies of orders

Interviewee	4
A	in order to keep costs down, especially if one of the lawyers is out of area.
B	occasionally, wants phone system in courtroom
C	
D	no ability in courtroom as of yet. would do frequently if system in place in order to accommodate the parties
E	no rarely
F	
G	attys. do not like telephone con.
H	usually not
I	y, they are liberally granted to out of town lawyers
J	y, doesn't like them but will conduct them to reduce expense
K	rarely
L	y, not often, only where distance is a factor, but not for dispositive motions pretrial. conf. or settlement conf.
M	y, for urgent matters

MEMORANDUM

95 SEP 19 PM 4:12
CARLOS JUENKE
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S.D. OF FLA.-MIAMI

TO: Carlos Juenke, Court Administrator/Clerk of Court

FROM: Shelby Highsmith, United States District Judge

RE: Comments on CJRA Annual Assessment Report

DATE: September 19, 1995

Pursuant to your memorandum of September 8, 1995, here are my comments regarding the above-captioned report.

The report appears to have been well researched. Some of the data gathered, however, in my opinion, requires further refinement. For example, the statistic that scheduling orders are entered in only 27 % of the cases does not take into account the numerous cases that are disposed of on motions to dismiss, that are remanded or transferred, or that settle right after inception. Thus, further refinement of this statistic would give a more accurate picture of the Court's practice, and probably comport with the judges' responses that they comply with the rule requiring the issuance of a scheduling order. Another area where statistics and anecdotal information conflict is in the case of 90 day pending motions notices.

With regard to the recommendations embodied in the report, I have the following comments:

1. The recommendation that a uniform scheduling order be drafted for all judges to use does not appear to be workable. In my cases, my staff and I have refined our scheduling order and the time intervals for pretrial deadlines based on experience. I am sure that each judge has arrived at his or her own formula in this area.

2. The recommendation that a person be designated in each Chamber to monitor compliance with Rule 16.1 (submission of scheduling reports) appears to create busy work. My

EXHIBIT
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order setting status conference requires submission of a joint status report which encompasses the matters required by Rule 16.1, plus additional matters.

2. The recommendation that all non-dispositive motions be ruled upon oral argument does not appear workable. This would require the scheduling of motion hearing calendars, which would create, rather than decrease work for the judges. A modified version of this concept is at work in my Chambers, since I address all pending motions at the time of the status conference and argument is invited if required by the Court. Also, in practice, the Chambers' resources are conserved by disposing of simple motions on written submission, but without issuing memorandum opinions.

3. The recommendation that a case be stayed for 60 days pending mediation will delay, rather than expedite case resolution. The sixty day hiatus will take away one of the factors that often makes mediation successful; i.e., the imminence of trial.

The other recommendations appear salutary.