
A Reevaluation of the Civil Appeals Management Plan



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A REEVALUATION OF THE CIVIL APPEALS MANAGEMENT PLAN

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This publication is a product of a study undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the authors. The work has been subjected to staff review within the Center, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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FOREWORD

This study is the second evaluation by the Center of the operation of the Second Circuit Civil Appeals Management Plan, an innovative procedure initiated in 1974 by Chief Judge Irving R. Kaufman. The program is generally known by its acronym CAMP, a term that appears to have found a permanent place in the lexicon of appellate case management. On the basis of data available after CAMP had been in effect for about a year, the Center prepared an evaluation, the results of which were inconclusive. The Second Circuit remained committed to the CAMP concept and maintained the program, although with some modifications, and requested a further evaluation.

The findings in this second evaluation are strikingly more favorable. The benefits disclosed by the first study persisted into the period covered by this evaluation. Of even greater significance, the hoped-for increase in settlements of appeals, which eliminated the need for full argument, was achieved at statistically significant levels.

A number of federal and state courts have launched programs reflecting the CAMP approach; still others are presently considering a variety of related programs. The measure of potential benefits identified in this study will certainly be encouraging to those courts. Indeed, the potential is so great that all persons sharing responsibility for the management of appellate caseloads should give these procedures serious consideration.

A. Leo Levin

INTRODUCTION

The Civil Appeals Management Plan of the United States Court of Appeals for the Second Circuit was begun on an experimental basis in 1974 with financial support from the Federal Judicial Center. Under the plan, attorneys in selected civil appeals were required to confer with a lawyer on the staff of the court of appeals in an effort designed to (1) dispose of appeals through settlement, (2) improve the quality of briefs and arguments in those appeals that did not settle, and (3) resolve procedural problems that might arise, such as questions about the contents of a joint appendix. In addition, to expedite the appellate process, all civil appeals—whether nor not selected for conferences—were made subject to scheduling orders that set deadlines for the various steps required to bring an appeal before a panel of judges.

The program began operation in April 1974. For a period of about a year, from October 1974 to October 1975, appeals selected by staff counsel Nathaniel Fensterstock as promising candidates for CAMP treatment were randomly divided, for evaluation purposes, into a group of 225 appeals that in fact received the treatment and a group of 77 appeals that were processed in accordance with preexisting procedures of the court. An analysis of the progress of these 302 appeals, supplemented by questionnaires addressed to lawyers involved in the appeals and to judges who heard the appeals that reached argument, formed the basis for an evaluation of the program published by the Federal Judicial Center in 1977.¹ That evaluation was conducted by Jerry Goldman, a member of the Center staff when most of the work was done and more recently a member of the political science faculty at Northwestern University.

The 1977 evaluation produced three principal findings:

1. J. Goldman, *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration* (Federal Judicial Center 1977). See also J. Goldman, *Ineffective Justice* (1980); Goldman, *The Civil Appeals Management Plan: An Experiment in Appellate Procedural Reform*, 78 Colum. L. Rev. 1209 (1978). Citations to Goldman in this report are to the 1977 Federal Judicial Center publication, from which the other works were adapted. The views expressed in the later writings were somewhat more unfavorable to the program than those expressed in the original.

Introduction

1. Although the proportion of appeals that were argued was somewhat lower in the group subject to CAMP treatment than in the control group, the observed difference in modes of disposition was not statistically significant. Therefore, it could not confidently be stated, on the basis of the 225 CAMP cases and 77 controls, whether CAMP was successful in reducing the proportion of appeals reaching argument.
2. Exposure to the CAMP program did improve the quality of presentation of those appeals that were argued, but the extent of the improvement was probably small.²
3. Appeals that were settled or withdrawn departed from the court's calendar more quickly if exposed to CAMP treatment than if processed in the traditional manner, but the program did not demonstrably accelerate the schedule of those cases that went to argument.

Goldman's conclusion was that the plan did not yet live up to the hopes and expectations of its sponsors, but that judgment about CAMP should be suspended.³

The court continued its commitment to the CAMP program and, indeed, expanded it in 1977 by appointing a second staff counsel, Frank J. Scardilli. In 1978, a second experiment was begun, in which CAMP treatment was withheld from one-third of the appeals that would otherwise have been subject to it. This experiment was developed by Robert D. Lipscher, then the circuit executive, and Ida Smyer, then the senior staff attorney, with the assistance of a Research Advisory Committee whose members were Maurice Rosenberg and Allen H. Barton of Columbia University and Alvin K. Hellerstein of the New York bar. It was implemented by court of appeals staff under the direction of Ms. Smyer.

The experiment was intended to apply to appeals docketed in the year beginning July 1, 1978. It was abandoned, however, with respect to appeals docketed after January 19, 1979, because of the reluctance of the court to continue to exempt one-third of the appeals from the CAMP program.

Immediately before the period of the Goldman experiment, the practice had been for the staff counsel to call preargument conferences only in appeals that he thought, after reviewing papers filed in the case, to be promising candidates for conferencing. The Goldman evaluation therefore provided for both experimental and con-

2. See pages 69-70 for an analysis challenging the conclusion that an improvement in quality of presentation was demonstrated.

3. Goldman at x.

trol groups to be drawn from appeals considered promising by Mr. Fensterstock. In contrast, in 1978, immediately before commencement of the second experiment, the practice was to provide CAMP treatment to all cases in certain objectively defined categories, without the use of a judgmental screen. The design of the second experiment reflected that practice. Hence, although the 1978-79 sample was selected from cases docketed over six and one-half months while the earlier sample was selected from cases docketed over a year, the 1978-79 sample is in fact substantially larger. Some 470 appeals were included in the study, compared with 302 in the earlier evaluation.

In December 1980, the circuit executive for the Second Circuit, Steven Flanders, asked the Research Division of the Federal Judicial Center to undertake an analysis of the data that had been collected by court personnel in the second experiment. The present report is the product of that request.⁴

In the course of our work on the project, we have had the fullest cooperation from the court of appeals staff. We express our appreciation in particular to Messrs. Fensterstock and Scardilli, who permitted us to observe some of their conferences and who offered helpful criticism of drafts of this report. Vincent Flanagan of the circuit executive's office was particularly helpful in tracking down missing pieces of data and explaining court procedures relevant to the study; he also provided helpful criticism of the drafts, as did Mr. Flanders, who was consistently supportive. Ms. Smyer, who is no longer with the court, provided much helpful advice. In acknowledging the helpful participation of all of these people, we also acknowledge that not all of their criticism was accepted. None of them has surrendered the right to disagree with our analysis, and they are not to be taxed with any errors of fact or inference that may be found.

Jerry Goldman, who conducted the first CAMP evaluation, provided assistance in reexamining some of the data from that project. Jay Magidson provided advice on the use of log-linear analysis. Finally, many of our colleagues at the Federal Judicial Center have provided help in varying degrees and at various stages, notably Diane E. Grigsby, Cedric R. Hendricks, Michael R. Leavitt, Patricia A. Lombard, Barbara S. Meierhoefer, Joanne Meil, John E. Shapard, and Donna J. Stienstra. We are happy to acknowledge their contributions and to relieve them, too, of liability for error.

4. A very brief report derived from the same data was issued by the Research Advisory Committee in September 1981: Second Circuit Research Advisory Committee, *Evaluation of the Civil Appeals Management Plan (1981)* (available from the FJC's Information Services Office).

I. FINDINGS AND CONCLUSIONS

Our analysis of the data from the second experiment indicates that the Civil Appeals Management Plan has a number of beneficial effects. The program does result in the settlement or withdrawal of appeals that would otherwise have to be considered by three-judge panels, an effect that must generally be regarded as beneficial to litigants in addition to its value in assisting the court to handle its workload. The program almost certainly results in faster disposition, not only of appeals that are settled or withdrawn as a result of staff counsel intervention but also of appeals that would have been settled in any event; it probably results in faster disposition of appeals that are argued. Lawyers find that the CAMP conferences help improve the quality of briefs and argument in some appeals, and in some they find staff counsel helpful in resolving procedural problems. Most lawyers who practice before the court of appeals regard the program favorably, and some are lavish in their praise.

The program also has costs, of course. For the court itself, the principal costs are the salaries of staff counsel and related overhead. For litigants, there are costs involved in having their lawyers attend the CAMP conferences. And if unfavorable reaction by members of the bar is a cost to be weighed in the balance, it should be noted that some lawyers who practice before the court of appeals are offended by what they regard as undue pressure to settle.

The present evaluation was designed principally to determine whether the program produces the benefits expected of it. We do know something about the program's cost to the court and we have some reactions to the program from lawyers, but there are no data available on the cost of the program to litigants.

Although we can be quite confident that the hoped-for benefits have materialized in some degree, there remains a wide range of uncertainty about their magnitude. This uncertainty is primarily a result of the limited number of appeals included in the experiment. With respect to data based on the questionnaire responses of lawyers who appeared in connection with appeals in the experiment, additional uncertainty is created by the fact that only about half the lawyers responded to the questionnaire. We have no solid basis

for assessing whether the views of the lawyers who responded were representative of the views of all the lawyers in the appeals included in the experiment and, if not, the direction of any bias that may have been introduced.

The best single estimate we can derive from the experimental data is that the program diverts from the argument calendar about 10 percent of the appeals that are eligible for CAMP. We estimate that about 60 percent of the appeals in the eligible group would reach oral argument or submission on the briefs in the absence of CAMP intervention, with the remainder disposed of through settlement, withdrawal, or dismissal. Our best estimate is that CAMP drops the argument rate to 50 percent. If these estimates are on target, the change would represent a reduction of about one-sixth in the number of these appeals argued to the court: Of each sixty appeals that would have been argued (whether orally or by submission), ten are taken off the calendar. For one of the two staff counsel, the best estimate is higher, suggesting a reduction of one-fourth in the number of eligible appeals that reach argument panels. It bears emphasis that these estimates of the program's effect are not based on crediting CAMP with settling every conferred case that is in fact settled. They are estimates that take full account of the fact that many appeals would settle even in the absence of the program.

About one thousand appeals a year are currently assigned to CAMP, so the best projection from our 1978-79 data is that CAMP currently diverts about one hundred appeals a year from argument. Viewed in terms of the court's entire calendar—including criminal appeals and others not eligible for the CAMP program—this figure represents a reduction of about 8 percent from the number of appeals that would have been argued in the absence of CAMP in the 1982 statistical year.

Given a sample that included 318 appeals assigned to CAMP and only 152 assigned to a control group, the possible error in these best estimates remains very large. On the assumption that one thousand appeals are assigned to CAMP treatment each year, and putting aside the problems of projecting to a 1983 universe from a 1979 sample, we can say that the probability is 95 percent that CAMP disposes of something between 2 and 192 appeals annually. We can say that the probability is about two-thirds that it disposes of something between 50 and 147 of them.

With regard to the elapsed time to disposition of an appeal, our best single estimate is that the program reduces the average time by about six weeks. The accuracy of this estimate is affected not only by the sample size but by the fact that the sample did not in-

clude a full year's cycle of filings; our data may not accurately reflect seasonal variations in CAMP's effect on the pace of appellate litigation. If the sample were representative of the year, we could say with 95 percent confidence that the average reduction in disposition time is somewhere between three weeks and nine and one-half weeks. This reduction is partly a by-product of the faster disposition that is likely to result when a case is diverted from the argument calendar and disposed of through settlement or withdrawal. It is also almost surely the case that appeals that would have been settled or withdrawn in any event are disposed of more quickly as a consequence of CAMP intervention. It is less clear that CAMP accelerates the pace of appeals that go to argument. If there was such an effect during the period of the experiment, it was almost certainly measured in terms of weeks rather than months.

Lawyers who practice before the Court of Appeals for the Second Circuit seem to regard settlement as the major purpose of CAMP. It seems clear, even taking account of the problem of the limited response to the questionnaire, that on the whole they favor the program and, if given the choice, would rather have their appeals conferenced than not. A number of them, as has been noted above, volunteered lavish praise for the program and for the individual staff counsel. On the other hand, about 4 percent of the questionnaire respondents volunteered lavish damnation, indicating that they took offense at what they regarded as inappropriate pressure. The level of strongly felt discontent among members of the bar may be either higher or lower than that number suggests. Since staff counsel are often in the position of forcefully expressing their independent assessment of the merits of a lawyer's case—frequently in the presence of opposing counsel—it is not surprising that some lawyers find the process annoying or even humiliating. Whether the frequency of strongly felt discontent could be reduced without diminishing the program's effectiveness is something we cannot say. Some level of discontent seems inevitable.

Even among attorneys who responded favorably to the CAMP program, there were a number who expressed concerns about the burdens on out-of-town attorneys in being required to attend one, and perhaps more than one, conference in New York City. Several suggestions were made to reduce this burden. In addition, the questionnaire responses suggested a number of minor ways in which the program might be improved.

Finally, relatively few lawyers—only about 30 percent of the respondents even in appeals that went to argument—indicated that the CAMP conference or other contact with staff counsel had been helpful in resolving procedural problems, including scheduling

problems. That is a somewhat surprising result, and we are not entirely sure what to make of it. Staff counsel regularly issue amended scheduling orders, which might be thought to indicate that they regularly resolve scheduling problems. Apparently the questionnaire respondents had something else in mind.

Implications for the Second Circuit

Although reduction in the argument rate is not the only objective of the Civil Appeals Management Plan, it appears to us that the program's impact on the argument rate is nevertheless the major question to be asked about the program's success. It was the hoped-for reduction in the number of appeals presented to the court that was the principal justification for the program initially, and it is this reduction—it seems to us—that must provide the continuing justification for maintaining the program in its present form. If the court were interested only in the other benefits that staff counsel provide, it is doubtful indeed that two experienced and (by government standards) highly paid lawyers would be employed and given staff assistance to conduct mandatory face-to-face conferences with the lawyers for the parties to an appeal. If it were concluded that substantial reduction in the number of arguments was an unattainable objective, major redesign of the program would have at least to be seriously considered.

While the present evaluation allows us to state confidently that the program does reduce the number of appeals that reach argument, it leaves considerable uncertainty about the magnitude of that reduction. The policy question for the court is how to deal with that uncertainty. We have no serious doubt that if the decision were ours, we would maintain the program in essentially its present form. Although it comes in for some strongly expressed criticism, it is generally well received by members of the appellate bar. It achieves some reduction in the number of arguments, and the reduction may well be very substantial. And while the other program benefits standing alone would probably not warrant a continuation of the program in its present form, their existence contributes to the conclusion that the program is probably worth its cost.

We do believe that the problems of out-of-town lawyers deserve to be taken seriously. It does not diminish the program's accomplishments to note that if our single best estimate is accurate, ten appeals are put through the CAMP procedure for each one that staff counsel settle; where travel expenses and time are involved,

the cost to the parties in the other nine appeals may be considerable.

Both staff counsel state that they have responded to this concern, and that they agree to telephone conferences considerably more often today than they did at the time of the experiment. Mr. Scardilli reports that he now schedules telephone conferences routinely if out-of-town lawyers request them. We have no basis for an independent judgment about the extent to which the more liberal use of the telephone has alleviated the problems of out-of-town lawyers. The telephone conference is quite probably a less effective settlement mechanism than a face-to-face conference, however, and we think it should not lightly be accepted as the only way of dealing with this problem.

One solution that might work for some appeals would be to conduct conferences outside New York from time to time. This practice is specifically contemplated by the court's June 1982 guidelines, but virtually all conferences are still held in New York. A regular policy of holding conferences in other locations might well require a change in the system for assigning appeals to staff counsel, so that one staff counsel would be assigned all the cases, for example, to be conferenced in New Haven. We have not collected information about the frequency with which lawyers are from outside New York City or about the frequency with which all lawyers in a case are from the same area. But we believe this possibility is worthy of exploration. It would no doubt entail delaying the conferences in some appeals, but might nevertheless be preferable to increased use of the telephone.

Another approach might be to increase scheduling flexibility to accommodate the schedules of the out-of-town lawyers, so that they would more often be able to combine the CAMP conference with other business requiring their presence in New York. Once again, the acceptance of some delay in conferencing is implicit.

We do not suggest that telephone conferences not be used. Rather, we think it likely that different means of accommodating the problems of out-of-town lawyers may be appropriate in different appeals. In view of the likelihood that telephone conferences are less effective than face-to-face ones, we do think some other approaches should also be considered.

Implications for Other Courts of Appeals

In considering the transferability of CAMP to other circuits, it is important to consider possible differences in the environment in

which the program would operate. The two major issues that come to mind are backlog and geography.

The Court of Appeals for the Second Circuit has a long history of disposing of appeals relatively promptly. It was a relatively fast court both before CAMP was inaugurated and during the period of the second experiment, and it is a relatively fast court today. One problem in considering the transferability of the CAMP experience is that it may not work in the same way in a backlogged court.

To a court that has a backlog of cases awaiting argument, the CAMP objective of accelerating lawyers' readiness for argument has no immediate relevance.⁵ But for such a court, the possibility of removing some appeals from the argument queue has to be an enticing one. The data from the Second Circuit suggest the possibility, at least, of disposing of substantial numbers of appeals in this manner. But it is not wholly clear that the settlement experience of a fast court is transferable to a backlogged court. Some parties to litigation will have much less incentive to settle an appeal before briefing when a long delay can be anticipated between briefing and the decision in the case. There are no doubt also cases in which both parties would like to see the matter disposed of and in which the prospect of delay becomes an impetus to settlement rather than an obstacle. We simply do not know whether, in the face of these differences, CAMP-like programs would increase the settlement rate in backlogged courts.

The problem of geography, of course, is that many other circuits are less compact than the Second, and the lawyers who practice before them are more widely dispersed. In considering whether to adopt the CAMP model, such courts will have to consider the extent to which it is practicable to require face-to-face conferences. The feasibility of having the staff counsel ride circuit is worthy of investigation in that regard. As has been noted above, it is possible to conduct conferences over the telephone, but the telephone conferences are probably less effective in producing settlements than face-to-face conferences.

Although we cannot affirm with confidence that the CAMP program has a large effect on the argument rate even in the Second Circuit, the effect is probably substantial and may be very large indeed. As has already been observed, our best single estimate is

5. In his study of the Seventh Circuit's TRACE program, Goldman found that conferenced appeals reached argument more quickly than appeals in a control group. J. Goldman, *The Seventh Circuit Preappeal Program: An Evaluation* 26-28 (Federal Judicial Center 1982). But there can be no doubt that the conferenced cases were accelerated at the expense of unconferenced cases; they were simply given preferential treatment in getting on the argument queue. It is hard to see what interest is served by such a practice.

that the program disposes of one-sixth of the appeals assigned to it that would otherwise have gone to argument, and the best estimate for one staff counsel is one-fourth. Given the possibility of impact of these magnitudes, it seems to us that other courts of appeals would be well advised to experiment with similar efforts to encourage settlement or withdrawal of appeals. We believe, however, that careful, controlled experimentation is the appropriate course for a court that would introduce the program in an environment substantially different from that of the Second Circuit. There is no question at all in our minds that conferences of the CAMP type can be the *occasion* for producing settlements in any court. That being the case, both the court employee conducting the conferences and the lawyers for the parties are quite likely to believe that the conferences are producing settlements, even if in fact the conferences are merely accelerating decisions that would have been made in any event. If the desirability of the program turns on whether settlements are really produced, there can be no substitute for a well-designed control-group experiment.

We recognize, of course, that experimentation is a form of equivocation about the immediate policy decision. As the uncertainty we have reported here suggests, a considerably larger sample would be required if reasonably precise conclusions are to be drawn. A total sample of 1,500 or more appeals would be required, for example, to permit us to say with 95 percent confidence that the true difference in argument rate between CAMP appeals and controls was within about 5 percentage points of the difference observed in the experiment. Moreover, in courts with significant backlog, there may be substantial delay before it can be known whether the argument rate has been reduced. However, given the substantial range of uncertainty about the magnitude of CAMP effects in the Second Circuit, and the further uncertainty that would be added by introducing the program in other contexts, we believe that a balanced decision for most other courts of appeals would be to institute CAMP-like programs but not to go full speed ahead.

II. DESCRIPTION OF THE CAMP PROGRAM

As has already been observed, the Civil Appeals Management Plan was inaugurated by the Court of Appeals for the Second Circuit in 1974.⁶ In the intervening years, it not only has expanded through the addition of a second staff counsel, but has evolved in a number of ways. Nevertheless, the two features that were central to the plan in 1974 remain central today: first, the use of conferences conducted under the auspices of staff counsel in which participation by the lawyers for appellants and appellees is mandatory and, second, the use of scheduling orders, issued by staff counsel, to impose briefing schedules that differ from case to case depending on the needs of the particular appeal and the argument schedule of the court.

Since 1974, a number of other federal courts of appeals have inaugurated programs that include prebriefing conferences, and at least one has borrowed the Second Circuit's title and called its program a Civil Appeals Management Plan. Prebriefing conferences are also used in a number of state appellate courts. It is important to recognize that the programs adopted by other courts, although they may have a surface similarity to CAMP in the Second Circuit, do not necessarily have the same objectives. In the Seventh and Ninth Circuits, for example, prebriefing conferences are held in which settlement of appeals is not a major goal. To the best of our knowledge, only the Eighth Circuit employs scheduling orders in a manner similar to that used in the Second Circuit; indeed, most of the courts of appeals have backlogs of appeals that are ready for argument and are not in a position to accelerate the consideration of appeals by accelerating their readiness for argument. Thus, it should be understood that the present study is not about prebriefing conferences or civil appeals management plans generically, but is a study of a particular plan that has particular goals.

In the Second Circuit, four major objectives can be identified:

6. The Civil Appeals Management Plan and other CAMP documents mentioned in this chapter are reproduced in appendix B.

Encouraging the resolution of appeals without court action. This is accomplished through efforts to foster settlements and efforts to persuade appellants to withdraw appeals that appear to have jurisdictional defects or to be without substantive merit.

Accelerating the consideration and disposition of those appeals that go to argument. This is done through the use of scheduling orders, issued by staff counsel, that tailor briefing schedules to the needs of the particular appeal and the argument schedule of the court.

Clarifying the issues in appeals that go to argument. Such clarification, it is hoped, is one product of the CAMP conferences, which provide opposing lawyers an opportunity to test arguments on each other and on a neutral third party.

Resolving a variety of procedural matters in an informal manner and without the necessity for judicial participation. These matters range from determining the contents of the joint appendix to arranging agreements that the judgment below will be informally stayed pending disposition of the appeal.

During the 1978-79 period embraced by the second experiment, the CAMP program also included rules, whose operation is not considered in the present study, designed to limit the period from the filing of a notice of appeal to the docketing of the appeal. At that time, appeals were docketed by the clerk of the court of appeals only upon payment of the docket fee and filing of Second Circuit forms C and D, two forms prescribed as part of the CAMP program. As a result of the 1979 amendments to rules 3 and 12 of the Federal Rules of Appellate Procedure, the docket fees are now paid to the clerk of the district court, and the appeal is docketed as soon as the notice of appeal is received by the court of appeals. The court's current procedures call for the appeal to be dismissed by the clerk if forms C and D are not filed within ten days after the notice of appeal is filed in the district court. Form C is a "Pre-Argument Statement" that includes information about the basis of jurisdiction and brief statements by the appellant's attorney about the nature of the action, the result below, and the issues proposed to be raised on appeal. Form D is a statement about the arrangements that have been made for ordering a transcript if one is needed.

The main elements of the CAMP program are managed by the two staff counsel—court employees who devote their full time to CAMP activity. These positions have been established at grade JSP-15 (which currently has a salary range of \$48,553 to \$63,115). Each staff counsel is provided a full-time legal assistant who also provides secretarial support. The total cost of the program to the

court is estimated by court personnel at approximately \$200,000 annually.

The staff counsel positions are still held by their original occupants, both of whom were experienced litigating lawyers before assuming this function. The scope of the program and its procedures today are for the most part unchanged from 1978, when the second experiment was initiated. CAMP applies to all civil matters docketed in the court except for original proceedings (such as petitions for mandamus), prisoner petitions, and summary enforcement actions of the National Labor Relations Board. In addition to the docketed matters, some predocketing motions are referred to staff counsel by the clerk's office. In the case of appeals taken *pro se*, the role of CAMP is limited to the issuance of scheduling orders by the clerk's office, and no prebriefing conferences are held. In the present evaluation, the application of the program to *pro se* appeals and predocketing motions has not been studied.⁷

Cases are generally assigned to staff counsel on the basis of their docket numbers: Appeals with odd docket numbers are assigned to Mr. Scardilli, and those with even docket numbers to Mr. Fensterstock. Exceptions are made so that appeals in consolidated groups stay together, following the assignment of the lead case, and cases related to matters previously handled by staff counsel are assigned to the staff counsel already familiar with the issues.

The two staff counsel work individually rather than as a team, although they necessarily fill in for one another from time to time because of illness or other causes of unavailability.

Characteristically, the staff counsel to whom an appeal is assigned issues a scheduling order and a conference order within a few days after receiving papers in the case from the clerk's office. During the period covered by the study, the clerk forwarded papers upon the docketing of the appeal, which occurred only after the CAMP forms had been filed; a scheduling order was often issued on the day of docketing or the next business day thereafter, and it was rare that more than a few days elapsed. As a result of the rules change noted earlier, appeals are now docketed without regard to whether forms C and D have been filed. Since the clerk forwards papers to staff counsel only after receipt of these forms, the elapsed time between docketing and the issuance of scheduling orders tends to be greater today than it was at the time covered by the study. It is to be noted, however, that this change does not represent a lengthening of the entire appellate process; it is simply a

7. At times during the life of the program, staff counsel have conferenced *pro se* appeals in which the appellant was a lawyer. No such appeals are included in the present experiment.

result of the fact that formal docketing takes place earlier in the process than it used to.

The scheduling order sets forth a deadline for the filing of the record by the appellant if it has not already been filed, the schedule for appellant's and appellee's briefs, and a date on which the parties are to be ready for argument. The conference order sets forth a date and time for a CAMP conference.

Although rule 11 of the Federal Rules of Appellate Procedure contemplates that the clerk of the district court will "assemble and transmit the record," it is the practice in the Second Circuit for the appellant's lawyer to prepare the record on appeal, and the role of the district court clerk is limited to transmitting the record to the court of appeals. In this context, it is practicable to impose upon the appellant a deadline for filing the record, even though the rules impose the duty on the clerk of the district court. Delay by court reporters in preparing transcripts is of course outside the control of the appellant and occasionally necessitates amendment of the scheduling order.

The CAMP conference is generally scheduled for well in advance of the due date of the appellant's brief, often before the date for filing the record. In the period of the second experiment, the average (mean) time from docketing to conference in cases assigned to Mr. Fensterstock was seventeen days, and in cases assigned to Mr. Scardilli twenty-three days. The objective of staff counsel is to hold the conference before the parties have made a substantial investment in the appeal. Participation by the attorneys is mandatory if a conference is deemed desirable by staff counsel, which it almost always is. During the period of the experiment, staff counsel generally required attorneys to attend in person. Some exceptions were made, but both staff counsel state that they are more amenable now than they were then to conducting conferences over the telephone to accommodate lawyers from outside New York City. This accommodation might be expected to diminish the effectiveness of the conference in producing settlements and withdrawals. Not only are eye contact and body language lost, but Mr. Scardilli observes that it is not practicable to talk with the parties separately in the course of a telephone conference.

The conference is regarded as confidential. Staff counsel do not report to the court what has been said in the conference, and the lawyers for the parties are instructed not to do so.

The styles of the two staff counsel in the face-to-face conferences are somewhat different, but do not appear to be greatly so. Mr. Fensterstock has a conference table in his office that runs parallel to his desk and is separated from it by perhaps five feet. He has

the lawyers sit at the far side of the conference table while he sits at his desk. This arrangement fosters an atmosphere in which the lawyers speak almost exclusively to staff counsel rather than to each other and in which they do most of their speaking when invited to do so by staff counsel.

Mr. Fensterstock generally schedules his conferences to last an hour. After some preliminaries about the purposes of the conference and the confidentiality rules, he characteristically begins by asking the attorney for the appellant to state the facts, and tends to be insistent that the discussion remain factual for a while. At some point, however, he is likely to lead the conference into a discussion of the legal issues, largely by asking pointed questions of the lawyers.

Mr. Scardilli has the parties' lawyers sit at opposite sides of a conference table in his office. The conference table has a lectern at one end, and Mr. Scardilli usually stands at the lectern while conducting the conference. Once again, this physical arrangement tends to foster an atmosphere in which most of the dialogue is between an attorney and staff counsel rather than directly between the parties' attorneys. Sometimes Mr. Scardilli sits at the same table with the lawyers for the parties, creating a somewhat less formal atmosphere; during the period of the second experiment, that was his customary practice.

Mr. Scardilli generally schedules his conferences for an hour and a half. After discussing the confidentiality rules, he characteristically begins by asking the appellant's lawyer to say why he or she disagrees with the decision of the trial court, and thus gets into legal issues somewhat more quickly than Mr. Fensterstock. He, too, is inclined to interrupt with pointed questions. Both staff counsel state that they spend little time preparing for conferences. Briefs, of course, are not available to them at this stage. Even the opinion below is not normally in the appellate file. Mr. Scardilli makes it a standard practice to obtain and read the opinion below if there is one; Mr. Fensterstock does not. The staff counsel may refresh themselves on a few relevant precedents, but they do not usually undertake substantial legal research or try to master factual records. Mr. Scardilli states that familiarity with the opinion below is important to him, and that he would do more research if time permitted. Both staff counsel, however, are heavily reliant on the oral presentations of the lawyers and their own knowledge of Second Circuit precedents and other legal doctrine.

The discussions of legal issues tend to have something of a Socratic flavor. Not only is the dialogue principally between attorney and staff counsel, but it is for the most part led by staff counsel.

Both staff counsel are assertive about expressing their own opinions, and neither hesitates to express skepticism or even amazement about arguments made by the parties' lawyers. If they believe an appeal is wholly without merit, they often say so forcefully. Both are quick on their feet and seem adept at identifying weak links in arguments.

During the course of the discussion of legal issues, staff counsel in some cases strongly recommend that an appellant's attorney recommend to the client that the appeal be withdrawn. Attorneys sometimes agree to do so. If withdrawal of the appeal is either not recommended by staff counsel or is recommended but not agreed to, staff counsel are likely to ask, toward the end of the conference, whether there is a basis for resolution. Sometimes they ask the lawyers for one side to leave the room so that they can discuss the possibilities with one side outside the presence of the other.

One of the innovations developed in the CAMP program is the use of a stipulation that an appeal will be withdrawn without prejudice to reinstatement, either within a fixed time period or within a time after the occurrence of a certain event, or occasionally without any limit at all. Such a stipulation is often written in the course of a prehearing conference, although it is generally not signed until the attorneys have had an opportunity to consult with their clients. The stipulations are used for a variety of purposes in situations in which there is a reasonable likelihood that an appeal will be mooted: to hold an appeal in abeyance pending a Supreme Court decision in a controlling case; to hold it in abeyance pending some other decision of an administrative agency or court that might make pursuit of the appeal unnecessary; to give the parties time to seek amendment of the district court judgment to reflect the terms of a settlement agreed upon at the appellate level, while preserving the right to pursue the appeal if the district court should decline to amend. Most of the appeals withdrawn on this kind of stipulation are not reinstated, and the withdrawal on stipulation thus becomes the final disposition of the appeal. There are also many appeals, of course, in which withdrawals are without reservation of the right of reinstatement.

The advantages of the stipulation procedure appear to be largely administrative. The procedure permits the clerk's office to treat the case as closed unless the appellant takes the initiative to reopen it; support personnel are thereby relieved of the need to monitor some appeals that may not be pursued. However, the device may also add some impetus to the effort to resolve appeals without judicial intervention.

Naturally, the lawyer for the appellant more often than not is the primary target of staff counsel's efforts at persuasion. An appellant may be persuaded that an appeal has no merit, for example, but it would be a rare case in which an appellee could be persuaded to give up a victory won below. In cases in which staff counsel perceives that there is a serious issue for the appellate court, the efforts to persuade will be more equally distributed, but the appellee's advantage is inevitably a factor.

Toward the close of the conference, staff counsel is likely to instruct the lawyers for one or both sides to consult with their clients, and perhaps talk more with each other, and to report the results of such discussions back to staff counsel by a certain date. Mr. Fensterstock uses a one-page report form that he has developed, and he asks lawyers for all parties to submit it. He states that he generally does not persist if the lawyers report that no progress toward settlement seems possible. Mr. Scardilli usually asks for an oral report from one of the lawyers. On the basis of that report, he decides how to proceed further: He may ask the reporting lawyer to call the other lawyer or lawyers in the case, he may make such a call himself, he may call an additional conference, or he may simply desist. On the whole, it appears that Mr. Scardilli is the more perseverant mediator—less likely to take “no” for an answer.

If settlement or withdrawal has not been tentatively agreed upon at the initial conference, staff counsel is also likely toward the end of the conference to ask whether the original scheduling order is satisfactory and to issue a revised scheduling order if that seems appropriate. If settlement or withdrawal is being considered, a revised scheduling order may be intended to provide some time for consideration of such a disposition without requiring the appellant to go to work on a brief. In other cases, a revision of the schedule may be made simply to accommodate problems of the lawyers. Such amendments to scheduling orders seem to be granted quite freely, and it is not unusual to have three or four amended scheduling orders in the course of an appeal. The willingness of staff counsel to allow additional time is partly dependent upon the state of the court's argument calendar. Generally, there is more flexibility toward the beginning of the court's term than later on.

Clarification of the issues in appeals that are briefed and argued may be a product of the discussions in CAMP conferences, but is not commonly something that is made explicit. Staff counsel do not generally seek prior agreements on what issues will be briefed, for example. If the presentation of argued appeals is improved by the conference, it is principally because the lawyers benefit from any

improved understanding of their adversaries' positions, from the reaction of staff counsel to positions that they put forward, or both.

Finally, a significant role of staff counsel is to assist in the resolution of a variety of procedural matters. A motion for a stay of a district court judgment can sometimes be disposed of by consent even though the underlying appeal is not resolved; in some cases, an expedited argument schedule will provide the basis for an appellee to agree not to enforce the judgment. Sometimes, agreements are reached about the contents of a joint appendix, bypassing the formal procedures of rule 30(b) of the Federal Rules of Appellate Procedure. In appeals with multiple parties, agreements can be reached about who will carry the burden of arguing particular points in which more than one party has a common interest. The resolution of procedural matters of this type and the scheduling flexibility that has been delegated to staff counsel make it possible for many matters to be treated informally, without the need for the filing of written motions or exchange of other writings by the lawyers for the parties.

In summary, although the encouragement of nonjudicial resolution of appeals is a very important goal of the Civil Appeals Management Plan, it is important to keep in mind that it is not the only goal. The plan is viewed by staff counsel and court personnel as an effort to bring a variety of tools to bear upon improving the management of the court's civil docket.

III. METHOD OF THE EVALUATION

The analysis in this report reflects primarily two kinds of data: data from the records of the court about 470 appeals and responses to a questionnaire that was sent to the lawyers in those appeals. We have done a limited amount of observation of the CAMP conferences, but that took place more than two years after most of the conferences in the studied cases had been held. Hence, for our understanding of the program as it operated while these appeals were in the pipeline, we have relied largely on discussions with court personnel.

Most of the analysis is based upon characterization of the second experiment as a control-group experiment. The assumption behind that characterization is that the groups of cases assigned to each of the two staff counsel and to the control group were similar groups of appeals, and that the only differences among the three groups at the time of docketing were those inevitable differences that are the product of chance. Later in this chapter, we discuss the assignment system actually used and conclude that the assumption was substantially met. For the reader more interested in the impact of CAMP than in evaluation methodology, however, the more important question is what the statistical data should be taken to mean.

Understanding the Statistics

All of the statistical tests used in this report are basically efforts to assess the possibility that observed differences in outcomes resulted from the operation of chance in the division of the appeals into three groups. Even if the system for dividing the appeals into these groups was entirely unbiased—an honest deal from a well-shuffled deck—the groups are not likely to have been identical at the time of docketing. One group, for example, may have drawn a disproportionate share of appeals having characteristics that made settlement unlikely. What the statistical tests do is provide an estimate of the likelihood that an observed difference in outcome between groups—such as a difference in the proportions of appeals reaching argument—could reflect differences among the groups

that existed at the time of docketing. Only if we can reject that possibility can we attribute differences in outcomes to differences in the processing of the appeals.⁸

We have followed common convention and used a 95 percent confidence level to decide whether an observed difference between CAMP cases and control cases is statistically significant. That means that we do not treat a difference between CAMP cases and control cases in the sample as persuasive evidence of a CAMP effect unless the chance is smaller than 5 percent that a difference of the observed magnitude would be observed in the absence of a CAMP effect. This is a reasonably tough standard. It reflects the view that we should not regard the success of an innovation as having been demonstrated unless we are quite sure that we have observed something more than a fortuity. The reader should understand that the failure of an observed difference to pass the test of statistical significance does not mean that CAMP does not have the effect being tested for. It simply means that we are unwilling to affirm such an effect on the basis of a sample of the size available for analysis. Indeed, the failure to observe an effect at all among the sampled cases may also reflect the operation of chance. A real impact of CAMP, one that would be observed in a much larger sample, may by chance not be reflected in our sample at all.

Thus, if a statistically significant difference between the CAMP group and the control group is demonstrated at the 95 percent level, we accept that as demonstrating the existence of a CAMP effect. Even in the absence of a statistically significant difference between the entire CAMP group and the control group, however, we have proceeded to test for significant differences between each staff counsel and the control group. In those tests, we have used a 97.5 percent significance level: If the likelihood of a difference of a certain magnitude occurring by chance is 2.5 percent when Mr. Scardilli is compared with the controls and 2.5 percent when Mr. Fensterstock is compared with the controls, the likelihood of its occurring by chance in at least one of the two comparisons is approximately 5 percent. Nevertheless, the rigor of the 95 percent significance level is somewhat relaxed by our decision to accept, as persuasive evidence of a CAMP effect, either a difference between both staff counsel and controls or a difference between one staff counsel and controls.

Another problem of interpreting the statistical data results from the fact that we are analyzing a variety of possible CAMP effects.

8. Appendix A contains a technical discussion of the statistical techniques employed in the study, as well as less technical material on the sources and reliability of some of the data.

If we are prepared to conclude that a program effect exists on the basis of 95 percent probability, we are prepared to accept a 5 percent chance of finding an effect when there is none. When we test for many possible effects, the chance that we will find some effects that do not really exist is obviously increased. Hence, even statistically significant findings should be regarded with some skepticism. Where the data have been available, we have tried to protect ourselves by analyzing more than one measure of the same general characteristic—for example, more than one measure of case complexity. Moreover, we regard it as always appropriate to question statistically significant results if they seem to defy logical explanation.

None of the foregoing makes us doubt the value of controlled experiments to test the effectiveness of innovations in the judicial system. People who develop innovations have a strong tendency to believe in the efficacy of what they do, and the statistical analysis that controlled experimentation makes possible is a powerful machine for separating the wheat from the chaff. We merely wish to emphasize that the statistical analysis is an aid to judgment and not a substitute for it. A number of our conclusions ultimately rest on the application of judgment to the statistical findings. We invite our readers to test our judgment against their own.

Division of the Appeals into Three Groups

The civil cases subject to CAMP treatment are routinely divided into four categories for docketing purposes: appeals from (or petitions to enforce) decisions of administrative agencies; bankruptcy appeals; appeals in other cases in which the United States government is a party; and appeals in disputes between private litigants. Each of these categories has its own series of docket numbers, identified by the first digit of the four-digit number. As was previously noted, the basic assignment rule has been that appeals with odd docket numbers are assigned to Mr. Scardilli and those with even docket numbers are assigned to Mr. Fensterstock. This basic assignment system was maintained during the period of the experiment, except that every third docket number was denominated a control number. Hence, the repeated pattern of assignment was as follows:

Chapter III

Odd Scardilli
Even Fensterstock
Odd Control
Even Fensterstock
Odd Scardilli
Even Control

Appeals in the control group were subject to scheduling orders issued by the clerk that incorporated the time limits of the Federal Rules of Appellate Procedure; they were not subject to staff counsel intervention.

Pro se appeals and National Labor Relations Board summary enforcement petitions were assigned docket numbers in the same manner as other appeals, but were excluded from the experiment entirely. Hence, if the third appeal in the above sequence had been *pro se*, it would not have been assigned to either staff counsel or the control group; the fourth appeal would nevertheless have been assigned to Mr. Fensterstock.

On January 1, 1979, with the introduction of a new year's series of docket numbers, the pattern was interrupted by assigning the first 1979 appeal in each category to Mr. Scardilli.

Although this assignment system is not technically a random system, we are satisfied that it produces an unbiased division of the studied appeals into three groups and can be treated as random for statistical purposes. Under the research design approved by the Second Circuit's Research Advisory Committee, however, several exceptions were made to this basic pattern. Some of them were consistent with maintaining an unbiased division. Others, in our opinion, were not, and we have made compensating adjustments in our analysis.

The first exception was that appeals in groups that were consolidated were assigned docket numbers in normal sequence, but all appeals in the consolidation were assigned to staff counsel or the control group according to the assignment of the first appeal to be docketed. This treatment of consolidations conformed with the practice before the experiment and was a practical necessity; it would be hard to contemplate separate and inconsistent processing of the appeals in a consolidated group.

When separate appeals (often an appeal and a cross-appeal) are taken from a single order of a district court, the appeals are consolidated automatically in the clerk's office. In such cases, we have treated the consolidated group as a single unit for purposes of our analysis and included the unit in the study if the lead case was docketed between July 1, 1978, and January 19, 1979. Since the

lead cases were assigned according to the basic docket-number pattern described above, this treatment is consistent with the objective of maintaining equality of the three groups of appeals, subject only to natural variation as of the time of docketing.

In the case of appeals that were consolidated by motion after the lead appeal had been docketed, we have treated the appeals as separate units of analysis and placed each in the group to which it would have been assigned on the basis of its own docket number. Since consolidation occurred after docketing (and sometimes after the lead case had been conferenced), we regarded this as necessary to maintain the equality of the groups as of the time of docketing.

Another exception made in the design of the Research Advisory Committee was that appeals "related to" earlier appeals were assigned in the same manner as the earlier appeals, regardless of the assignment called for by the docket number. The definition of a "related appeal" was somewhat vague, but one category of such appeals comprised appeals from district court cases from which there had been earlier appeals. Hence if an appeal from an order of the district court had previously been handled by a particular staff counsel, a subsequent appeal from another order in the same case was also assigned to that staff counsel. This was done for the purpose of maintaining a control group that was as insulated as possible from the influence of CAMP. But it is a design feature inconsistent with the goal of equality of groups as of the time of docketing, subject only to natural variation. Because many of the earlier appeals had been docketed before the beginning of the experiment, at a time when there was no control group, this rule in fact resulted in a disproportionate number of the subsequent appeals being assigned to staff counsel. If there was a tendency for these appeals to be more argument-prone than others, staff counsel were assigned less digestible fare than the control group; if there was a tendency for them to be less argument-prone, the converse was true. To avoid this effect, we have treated these cases for purposes of analysis in accordance with their original docket-number assignment. However, in the case of appeals from administrative agencies, where the rules for automatic consolidation of appeals are not the same as the rules that apply to appeals from courts, we treated related groups of cases as consolidated groups in circumstances in which the automatic consolidation rules would have applied to appeals from a court.

Finally, in the course of the administration of the program, a number of other appeals were assigned inconsistently with their docket numbers. Some appeals that would normally have been assigned to Mr. Scardilli were assigned to Mr. Fensterstock because

of the former's illness; some were assigned to a staff counsel because he had handled an emergency motion in the case before the appeal was docketed; some were assigned in conflict with the docket number for reasons that cannot now be reconstructed. In the September 1981 report of the Research Advisory Committee, such appeals were treated in accordance with their actual assignment, except that six were eliminated from the tabulations entirely because they were handled in ways that were not easily characterized as either CAMP or control. In our analysis, all of these appeals have been treated according to the docket-number assignment.

In sum, we conclude that the assignment of automatically consolidated appeals was consistent with maintaining an unbiased division into three groups. We conclude that the assignment of appeals consolidated by motion was not consistent with that goal, even though it was a practical necessity, and we have compensated in our analysis by treating each appeal in these consolidated groups separately and classifying it with the group called for by its docket number. Similarly, other appeals that were assigned inconsistently with their docket numbers have been classified, for purposes of analysis, as if the exceptions had not been made. The overall result is that our sample of 470 appeals includes 54 that we have classified one way although actually treated another way.

To the extent that we have classified appeals inconsistently with the way they were actually handled, our analysis probably tends to understate any effects of the CAMP program. If CAMP treatment reduces the likelihood that an appeal will be argued, for example, and if some appeals counted as controls were in fact conferenced by staff counsel, the control group will have a lower argument rate than it would have had if all the control appeals had been withheld from CAMP treatment, and the observed difference in argument rates between the CAMP appeals and the control appeals will be smaller.⁹

The conclusion that the division into three groups is unbiased depends, of course, on the assumption that docket numbers were assigned in the order in which the appeals were perfected by payment of the docketing fee and the filing of CAMP forms C and D—or, at least, that departures from that order were themselves unbiased. The present authors were not in a position to monitor the as-

9. If CAMP treatment generally tended to reduce the likelihood of argument, but for some reason tended to *increase* the likelihood of argument in the group of control appeals that received CAMP treatment, this logic would not apply. The control group would then have a higher argument rate than it would have had if all the control appeals had been withheld from CAMP treatment, and magnitude of the favorable CAMP effect would consequently be overstated. We do not believe that this theoretical possibility should be a subject of serious concern.

signment process as it occurred, since we came on the scene about two years after assignments in accordance with the experiment had stopped. Through a variety of checks of data and through interviews with personnel in the clerk's office, however, we have concluded that docket numbers were in fact assigned in an unbiased manner.

However, we have somewhat less confidence in that conclusion than we would like. The principal doubt on this score arises from our finding that of the first twenty-two private civil appeals that were lead appeals in consolidated groups (not counting groups consolidated after docketing), only one was assigned a control number. If assignments were made in an unbiased manner, the likelihood of such a distribution was less than one in two hundred. Random assignment does sometimes produce long-shot results, just as honestly dealt card games produce long-shot hands. We believe that is what happened in this instance. Indeed, we have been unable to develop any plausible explanation of this pattern that is based on the assumption of departure from the normal assignment rules. But we did find that, during the experiment, some departures from the design were made without documentation of the reasons. We also found that memories in the winter of 1980-81 about the procedures employed during the period of the experiment were unreliable. When we combine these observations with the observation of a statistically improbable distribution, we cannot wholly put our reservations aside.

We emphasize that our concern is not that someone may have tried to influence the results of the experiment by interfering with the assignment scheme. It is, rather, that the experiment could have been compromised by actions taken that made good sense from the standpoint of day-to-day court management. At some point after the experiment, for example, the docket clerks adopted the practice of assigning docket numbers out of order so that an appeal that was to be assigned to Mr. Scardilli under the "related case" rule got the next odd number and an appeal that was to be assigned to Mr. Fensterstock got the next even number. We are reasonably certain that this practice was not followed at any time during the period of the experiment. If it had been, our classification of these appeals would not assure the unbiased division that we have sought.

We have also devoted considerable attention to the possibility that the CAMP program had an effect on the recording of the number of appeals docketed. Under the stipulation procedure described in the previous chapter, an appeal may be withdrawn subject to reinstatement upon notice to the clerk. If reinstatement

occurs, the appeal is reopened under the old docket number. In such cases, the original withdrawal has been ignored in the data used for the evaluation, and we have looked to the nature and timing of the ultimate disposition. Our principal concern was that, in somewhat similar circumstances, a control appeal might have been withdrawn without prejudice but without any understanding about possible reinstatement and, if it returned to the court, would have been docketed as a new appeal. If that occurred, the initial withdrawal would have been counted as an unargued appeal if in the control group but would not have been counted at all if in the CAMP group. Another unwelcome conservative bias would have been introduced. We have satisfied ourselves that effects of this type were extremely rare, if they occurred at all, and could not have had a substantial impact on the data.

Because docket numbers were assigned to a number of appeals that were excluded from the experiment, there was no guarantee that the three groups would be of equal size. As it turned out, 169 appeals were assigned to Mr. Scardilli and only 149 were assigned to Mr. Fensterstock. Since the assignment system will over the long run assign equal numbers of appeals to the two staff counsel, we have made adjustments in our analysis to give each staff counsel equal weight in the estimates of CAMP effects.

Questionnaire Data

Data about the studied cases obtained from court records are supplemented by the responses to a questionnaire that was sent by the court of appeals staff to the lawyers in the appeals included in the experiment. This questionnaire, which is reproduced in appendix C, had three forms—one for attorneys in control cases, one for attorneys in treatment cases that were conferenced, and one for attorneys in treatment cases that for one reason or another were not conferenced. The questionnaires were mailed to the lawyers upon termination of each appeal. Lawyers in 346 appeals returned 609 usable questionnaires to the court.

No record was kept of the number of questionnaires mailed out to attorneys, and we have not tried to reconstruct that number from docket sheets. Our rough estimate based on a sample of docket sheets is that the response rate was in the neighborhood of 50 percent. Moreover, although the caption and docket number of each appeal were typed on the questionnaire before it was mailed out, there was no identification of the lawyer; unless the lawyer indicated his or her role in the “comments” section, we have no way

of knowing whether the response is from the appellant's lawyer or the appellee's lawyer. We have no basis for making informed judgments about the respects in which our respondents may be unrepresentative of the larger group, and the responses cannot safely be treated as representative of the sample of the lawyers who appeared in civil cases. Nevertheless, giving due recognition to the response-rate problem, we believe the questionnaire responses provide a substantial enrichment of the data obtained from court files.

When appeals were consolidated, the questionnaires did not generally indicate whether the lawyers to whom they were sent were associated with fewer than all of the consolidated appeals. Basically, in the administration of the questionnaire, each consolidated group was treated as a unit. Therefore, when information from the questionnaires is used to supplement information from court files about specific appeals, we have treated each consolidated group as a single unit. With regard to appeals consolidated by motion, that is inconsistent with the practice otherwise used in analyzing data from court records. The result is that we speak of our sample in these cases as being 457 appeals rather than 470.

For the most part, however, we have not used the questionnaires to make statistical statements about what happened to the appeals in the three groups. In most of the analysis of the questionnaire data, therefore, we have not classified responses by the groups that the appeals would have been assigned to if strict docket-number assignment had been followed. We merely report what the lawyers said about the experience they actually had.

IV. IMPACT OF CAMP ON THE NUMBER OF APPEALS THAT REACH ARGUMENT

The Existence and Magnitude of a Program Effect

Table 1 presents the differences between the CAMP appeals and the control appeals with regard to mode of disposition. The top of the table shows the proportion of the appeals in the study that were argued (a term used throughout this report to include both appeals argued orally and those submitted on the briefs); the bottom shows the proportion that were argued *or* dismissed on motion.

TABLE 1
Mode of Disposition of Appeals

	Percentage Argued
CAMP	51.3% (* / 318)
Control	61.2% (93 / 152)
Difference	- 9.9%
95% confidence interval	- 19.2% to - 0.2%
68% confidence interval	- 14.7% to - 5.0%
	Percentage Argued or Dismissed on Motion
CAMP	54.0% (* / 318)
Control	67.1% (102 / 152)
Difference	- 13.1%
95% confidence interval	- 22.1% to - 3.5%
68% confidence interval	- 17.8% to - 8.3%

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

With regard to the proportion argued, the data show 61.2 percent of the control appeals argued but only 51.3 percent of the CAMP appeals argued, for a difference of 9.9 percent. Confidence intervals for the difference are also displayed. At the 95 percent confidence

level, the interval is from -19.2 to -0.2 percent. On the assumption that the appeals docketed in the period of the study can be treated as a representative sample of the business of the court over a longer term, this can be interpreted as saying that there is a 95 percent probability that CAMP's effect on the argument rate lies within that range. Since the range does not include zero, the effect is statistically significant at the 95 percent confidence level, providing strong evidence that the program does reduce the argument rate. But the range of possible magnitudes of that effect is substantial. The 68 percent confidence interval is also displayed, and can be interpreted as saying that the probability is about two-thirds that CAMP reduces the number of appeals argued by between 14.7 and 5.0 percent of the appeals.

The lower portion of table 1 presents similar data for the proportions of appeals that were argued *or* dismissed on motion. As contrasted with the upper portion, the lower portion treats dismissals on motion as more like arguments than like default dismissals and consent dispositions.

Appeals dismissed on motion have been defined as those that were dismissed or remanded by panels of three judges. Generally, that there were three judges indicates that the motion was contested, although one appeal is included in which dismissal was neither actively opposed nor agreed to, and another is included in which the parties had reached agreement but in which, for reasons that are unclear, oral argument on the motion was held.

Something of an anomaly is involved in treating appeals dismissed on motion as analogous to argued appeals. The argued appeals are regarded as argued regardless of the court's decision on the matter. The dismissal motions are treated as analogous to arguments, however, only in those cases in which the motion was granted. It has been suggested that this is appropriate because the grant of a dismissal motion generally indicates substantial court involvement, while denial may indicate only that the panel has deferred a jurisdictional issue until argument on the merits.

Inclusion of the motions makes the demonstration of the CAMP effect somewhat stronger. There is a suggestion here that staff counsel may be more than usually successful in disposing of appeals with jurisdictional defects. The difference between the proportion of CAMP appeals dismissed on motion and the proportion of control appeals so dismissed is not statistically significant, however. Given the small number of cases (nine) dismissed on motion even in the control group, a larger experiment would be required to speak with confidence about whether CAMP reduces the number of such dismissals.

Table 2 presents the table 1 data separately for each of the staff counsel. As table 2 shows, appeals in the sample that were assigned to either of the staff counsel had both a lower argument rate and a lower argument-and-dismissal rate than appeals in the control group. For Mr. Fensterstock, however, the difference is not statistically significant, while for Mr. Scardilli it is. It does not follow, however, that there is a statistically significant difference in the performance of the two staff counsel. In fact, although Mr. Scardilli's argument rate in the sample is enough lower than the control group argument rate to produce a statistically significant difference between his appeals and the control appeals, it is not enough lower than Mr. Fensterstock's argument rate to produce a statistically significant difference between the two staff counsel. It would thus be consistent with our data if both staff counsel were settling about the same numbers of cases.

TABLE 2
Mode of Disposition of Appeals:
Individual Staff Counsel Shown Separately

	Percentage Argued	
	Fensterstock	Scardilli
CAMP	56.4% (84/149)	46.2% (78/169)
Control	61.2% (93/152)	61.2% (93/152)
Difference	- 4.8%	- 15.0%
95% confidence interval	- 16.0% to + 6.2%	- 25.7% to - 4.0%
68% confidence interval	- 10.5% to + 0.9%	- 20.6% to - 9.5%
	Percentage Argued or Dismissed on Motion	
	Fensterstock	Scardilli
CAMP	57.7% (86/149)	50.3% (85/169)
Control	67.1% (102/152)	67.1% (102/152)
Difference	- 9.4%	- 16.8%
95% confidence interval	- 20.5% to + 1.5%	- 27.6% to - 5.9%
68% confidence interval	- 15.0% to - 3.7%	- 22.4% to - 11.3%

The data for Mr. Fensterstock in the upper portion of table 2 are quite consistent with the data reported by Goldman. In table 3 of his 1977 study, Goldman reported a 3 percent difference in argu-

ment rates between Mr. Fensterstock and the control group. The program was operated somewhat differently when the Goldman study was done, of course. The principal change relevant here is that the present experiment did not include a judgmental screening of appeals to assess their amenability to CAMP treatment; all appeals were considered eligible except for certain clearly delimited categories, such as prisoner petitions. One might expect this change to have diminished Mr. Fensterstock's effectiveness in reducing the argument rate by requiring him to include less tractable matters in his caseload. In fact, the observed effectiveness is somewhat greater in the present study. Nevertheless, allowing for natural variation in samples, the results of these two studies seem fundamentally consistent, suggesting that Mr. Fensterstock's effect on the argument rate is probably not very close to either of the outer limits of the reported 95 percent confidence interval.

From the standpoint of the workload of the judges of the court of appeals, the figures in tables 1 and 2 may be regarded as understating the magnitude of the program's effect. If CAMP indeed reduces the number of appeals argued from approximately 60 percent of filings to approximately 50 percent, it is diverting from argument approximately one sixth of the CAMP-eligible appeals that would have been argued in the absence of the program. Thus, although our best single estimate is that staff counsel intervention produces settlement or withdrawal of about 10 percent of the appeals assigned to the CAMP program, that amounts to a reduction of about 16 percent in the number of CAMP-eligible cases on the argument calendar. Table 3 presents the data from the earlier tables in these terms. The observed reduction in appeals argued is merely a reformulation of the data presented in tables 1 and 2: The differences between the CAMP proportions and the control proportions reported in those tables are divided by the reported control proportions. (The confidence intervals reported in table 3 were developed in a manner such that they should be regarded as only approximate.)

As has already been noted, Mr. Scardilli's impact on the argument rate is statistically significant at the 95 percent level. Beyond that, the data suggest the possibility of a very large effect. As table 3 shows, the best single estimate from the experiment is that Mr. Scardilli diverts from argument almost a quarter of the appeals that would have been argued in the absence of his intervention. That would have to be regarded as a stunning success. However, the confidence interval is wide enough so that this remains a tantalizing possibility rather than an unambiguous finding. Mr. Scardil-

TABLE 3
Mode of Disposition: Impact on the Court's Calendar

	Percent Change in Eligible Appeals Argued		
	CAMP	Fensterstock	Scardilli
Observed change	-16.2%	-7.9%	-24.6%
95% confidence interval	-29.0% to -0.8%	-24.0% to +11.4%	-39.0% to -7.8%
68% confidence interval	-23.0% to -8.8%	-16.4% to +2.0%	-32.3% to -16.3%

	Percent Change in Eligible Appeals Argued or Dismissed on Motion		
	CAMP	Fensterstock	Scardilli
Observed change	-19.5%	-14.0%	-25.0%
95% confidence interval	-30.7% to -6.1%	-28.3% to +2.0%	-38.2% to -10.1%
68% confidence interval	-25.5% to -13.1%	-21.5% to -6.0%	-31.9% to -17.6%

NOTE: The confidence intervals in this table should be regarded as approximate.

li's impact is quite probably substantial, but there can be no assurance that it is as great as it appears.

The figures in table 3, of course, are based only on appeals that were regarded as eligible for CAMP treatment and therefore included in the experiment. Our best estimate, therefore, is that about 16 percent of the appeals *in that class* that would otherwise have been argued are diverted as a result of CAMP intervention. At the present time, approximately 1,000 appeals per year (counting consolidated appeals as units) are being given CAMP processing. If our best estimate for the period of the experiment were used to project the present effect of CAMP, it would be concluded that the program diverts about 100 appeals a year from the argument list. This can be compared with a figure of 1,119 oral hearings and submissions on briefs for the statistical year ended June 30, 1982,¹⁰ suggesting that the court's load of arguments is about 8 percent lower than it would be in the absence of CAMP. Another basis for comparison is with the case participation rate of active judges. An active circuit judge in the Second Circuit sits on approximately 210

10. Administrative Office of the United States Courts, 1982 Annual Report of the Director 87, table 8.

argued or submitted appeals per year. Since three judges participate in each appeal, the 100 cases that CAMP is estimated to dispose of represent 300 participations, the work of 1.4 active circuit judges.

We have no particular reason to doubt the validity of making rough projections to the current year from the experimental data. In particular, as will be seen, we did not find persuasive evidence that changes in the case mix that may have occurred over the intervening years would affect the 100-appeal figure. Some diminution in the program's effectiveness may have resulted from the greater liberality today about conducting conferences on the telephone, and it is possible that there have been other changes over time that would affect CAMP's impact. But in our judgment, the more important qualification to these projections lies in the wide range of uncertainty about the magnitude of the CAMP effect even at the time of the experiment. The data reported in table 1 tell us that if 1,000 cases a year are assigned to CAMP, we can say with a 95 percent probability of being correct only that CAMP disposes of between 2 and 192 appeals, and with a 68 percent probability that it disposes of between 50 and 147. The figures are somewhat higher, of course, if both argued appeals and those dismissed on motion are counted. But in either case, the data from this experiment are consistent with both a very large settlement effect and a very small one. This wide range of uncertainty results from the relatively small number of appeals in the experiment, particularly in the control group.

Not every appeal comes to the court with equal potential for occupying the time of judges. Counting each appeal (or automatically consolidated group) as equal, as we have in the preceding analysis, is clearly a very rough way of measuring the extent to which the program reduces the burden on appellate judges. If there were an accepted system of appellate case weights, we would certainly wish to analyze CAMP's impact on the weighted caseload reaching argument as well as on the raw count. In the absence of such a system, we have made a number of efforts to try to refine the analysis based simply on case count.

One effort made to measure the impact on judge burden involves an analysis of brief length. Not only does brief length offer an alternative measure of burden on the court, but it permits the use of statistical tests that are in theory more powerful than those that can be applied to the raw case count. It must be recognized, however, that brief length is not necessarily a good surrogate for burden on the court. As is discussed in appendix A, moreover, our method of measuring aggregate brief length was itself imperfect.

Using microfiche records of Second Circuit briefs that are maintained by the Library of Congress, we were able to determine the aggregate length of the briefs filed in 234 of the 255 argued appeals in the experiment. This figure includes all briefs filed in the appeal, including reply briefs and amicus briefs. We counted each printed page as the equivalent of 1.5 typed pages and worked in typed-page equivalents, but we have satisfied ourselves that our conclusions would be the same if we had used either 1.25 or 1.75 as the basis for conversion. Because we were interested in the burden of brief reading rather than the burden of brief writing, we treated the brief length as zero in each appeal that did not reach argument or submission. We then computed an average aggregate brief length for each appeal docketed, including those not argued.

The results of these computations are shown in table 4. Surprisingly, in view of the lower argument rate observed in the CAMP cases in the experiment, the average aggregate brief length in CAMP appeals is only one page shorter than in control appeals. The explanation of this figure apparently lies in the fact that the aggregate brief length per appeal is a highly variable number. It ranges from 12 pages to 789 pages (in typed-page equivalents) in the argued appeals that we studied. The fifteen appeals that had more than 250 pages of briefs were not evenly distributed among the two staff counsel and the control group, and they had a very substantial influence on the averages. Since we have no reason to think that exposure to CAMP tends to increase the aggregate length of briefs in those appeals that reach argument, we persist in the belief that removing a sixth of the appeals from the argument calendar must result in a greater reduction of the judges' reading

TABLE 4
Average Aggregate Brief Length:
Appeals Docketed

	Typed Pages or Equivalent
CAMP* (309 appeals)	57.6
Control (140 appeals)	58.7
Difference	- 1.1

NOTE: Nine CAMP and twelve control appeals are omitted from this table because aggregate brief length could not be determined.

*The computation of the CAMP average includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

matter. But we are unable to speak to the magnitude of that reduction.

Another way to look at brief length is to examine the average aggregate length in those appeals that are argued. If the appeals that are settled or withdrawn as a result of CAMP are principally appeals that are relatively uncomplex, one might expect the aggregate length of briefs in an argued CAMP appeal to be greater on the average than the aggregate length in an argued control. Such a tendency could be offset, however, if CAMP tends to reduce the brief length in argued cases through simplification of issues or encouraging joint briefing of common issues. If there is such an offset, we have no way of measuring its separate effect.

Table 5 shows the average aggregate brief length per argued appeal. Average brief length is greater in argued CAMP appeals than in argued control appeals by approximately 14 pages. If the staff counsel are looked at individually, the difference for Mr. Fensterstock is quite small (1.7 pages) and for Mr. Scardilli quite large (29.8 pages). However, both the overall difference for CAMP and the individual difference for Mr. Scardilli fall short of meeting our standard of statistical significance. Moreover, as was previously noted, the brief length data are heavily influenced by a maldistribution in the sample of the relatively few appeals with aggregate brief lengths of more than 250 pages. Hence, we do not find the data persuasive that there is a tendency for the briefs in argued cases exposed to CAMP to be longer than the briefs in argued cases not exposed to CAMP. If there is such an effect at all, we are highly skeptical of the proposition that it is as large as it appears in the sample data.

TABLE 5
Average Aggregate Brief Length:
Appeals Argued

	Typed Pages or Equivalent
CAMP* (153 appeals)	115.6
Control (81 appeals)	<u>101.4</u>
Difference	+ 14.2

NOTE: Nine CAMP and twelve control appeals are omitted from this table because aggregate brief length could not be determined.

*The computation of the CAMP average includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

Another possible surrogate for the burden an appeal imposes on the court is whether the court decided the appeal with a written opinion as contrasted with a memorandum order or even a decision from the bench. The preparation of a written opinion is a substantial effort. If the appeals settled or withdrawn as a consequence of the CAMP program were largely appeals in which no opinion would have been written, the consequent relief to the court would be somewhat less than is indicated by the raw count of appeals withdrawn from the argument calendar. If that were true, we would expect to find, among the appeals reaching argument, that a higher proportion were decided with written opinions in the CAMP groups than in the control group. Implicit in this logic is the assumption that CAMP does not directly affect the likelihood that the court will decide to issue a written opinion—an assumption that seems reasonable for working purposes, although is perhaps not beyond dispute.

As table 6 indicates, we found that the CAMP cases reaching argument were in fact slightly less likely than controls to be decided with written opinions. The observed difference is not statistically significant, but there is certainly no evidence here that the appeals disposed of by CAMP intervention are those that would have been relatively unburdensome in any event.

TABLE 6
Decisions with Written Opinions:
Appeals Argued

	Percentage Decided with Written Opinion
CAMP	50.0% (*162)
Control	52.7% (49/93)
Difference	- 2.7%

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

The final effort to refine the measure of CAMP's effect on the argument rate was based on lawyers' responses to questionnaire questions asking them to rate the complexity of the factual and legal issues in the appeal. We have not compared the responses to these questions for argued and unargued appeals; we were concerned that the lawyers' responses might have been affected by the course that the case actually took. There might be a tendency, for example, to regard argued cases as relatively complex and unar-

gued cases as relatively uncomplex simply because more research gets done in appeals that go to argument. However, it does seem reasonable to compare the responses to the complexity question for the argued appeals in the control group and those in the CAMP group. The logic is much the same as it was for the question of whether the appeal was decided with a written opinion. If CAMP tends to dispose of less complex appeals, we would expect to find that the appeals that go the full course in the CAMP group are more complex, on the average, than those that go the full course in the control group. Once again, however, we must recognize the possibility of a confounding tendency. If CAMP tends to produce simplification of the issues in those CAMP appeals that go to argument, it presumably tends to make an argued CAMP appeal less complex.

One of the questionnaire questions asked the lawyers to "rate overall the complexity of the factual issues in this appeal." It offered a scale ranging from 1, labeled as "simple," to 5, labeled as "complex," and provided a place for the respondent to indicate that there were no factual issues in the case. Using 342 ratings received from lawyers in 193 argued appeals, and treating the "no factual issues" response as a rating of zero, we calculated an average rating for each of the appeals. If only one lawyer rated the complexity of the factual issues in the appeal, his or her rating was taken as the rating for the appeal; if two or more lawyers rated the complexity of the factual issues, their ratings were averaged. Then, giving each appeal equal weight regardless of the number of lawyers who rated it, we computed average ratings for the CAMP appeals and control appeals.

The other question asked the lawyers to "rate overall the complexity of the legal issues in this appeal." It used a scale from 1 to 5, similar to that used for rating factual issues, but did not include a "no legal issues" alternative. We followed a similar procedure to arrive at the average complexity rating for CAMP appeals and control appeals. Three hundred forty-one lawyers rated complexity of legal issues in 193 appeals.

Table 7 displays the results of these computations. It shows that the argued CAMP appeals were rated as slightly less complex, on the average, than the argued control appeals with regard to both factual issues and legal issues. The data thus do not confirm that the cases settled or withdrawn as a result of CAMP tend to be the less complex cases.

In summary, then, the data from the present experiment offer persuasive evidence that the Civil Appeals Management Plan reduces the number of appeals that reach argument. The best single

TABLE 7
Lawyers' Ratings of Complexity: Appeals Argued

	Average Rating of Complexity	
	Factual Issues	Legal Issues
CAMP*	1.9	3.0
Control	2.0	3.2
Difference	- 0.1	- 0.2

NOTE: The ratings of complexity of factual issues are based on 120 CAMP appeals and 73 control appeals. The ratings of complexity of legal issues are based on 121 CAMP appeals and 72 control appeals. There were 154 argued CAMP appeals and 89 argued control appeals in the questionnaire sample (in which appeals consolidated by motion were not counted separately). The appeals not included in the table were those for which we did not have complexity ratings.

*The computation of the CAMP average includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

estimate is that the program diverts from the argument stream about 10 percent of the appeals filed that are eligible for CAMP treatment, or about 16 percent of such appeals that would reach argument in the absence of the program. Projected to the present, this best estimate suggests that CAMP results in consensual resolution of about one hundred appeals annually. The best estimate, however, is simply not very good. It would be consistent with the data from the present experiment if CAMP's effect on the argument rate were, on the one hand, almost trivial or, on the other, substantially greater than the effect observed in the experiment. Thus, while we can assert with considerable confidence that the program does reduce the number of appeals that reach argument, we remain quite agnostic about the magnitude of that effect.

Our effort to narrow the range of uncertainty through the study of brief lengths was not successful; the great variation in aggregate brief length from case to case defeated our hope that this analysis would provide more reliable indicators of the magnitude of the effect.

If the reduction in argued appeals is indeed substantial, the ramifications extend beyond those that we were able to observe. A court of appeals decision is not necessarily the end of litigation, and consensual disposition may well avoid further proceedings in the trial court and further appellate proceedings. If, on the other hand, CAMP's impact on the argument rate is really trivial, these consequential effects must also be small.

We do not find persuasive evidence in the experiment that this effect of CAMP operates only or primarily on appeals that are not complex. The data do not enable us to dismiss that possibility, but they do not offer any considerable support for it.

It remains to take note of a theory put forth by Professor Goldman and by at least one of our questionnaire respondents, to the effect that the existence of the CAMP program may invite the filing of appeals by offering an inexpensive forum in which, short of filing briefs or arguing the appeal, the losing party in the trial court might salvage something. We have no way of testing such a possible effect with the data from the present experiment. We do not believe, however, that the possible existence of such an effect is a threat to the validity of the findings here. If litigants indeed file appeals in the hope of achieving something in the CAMP conference but without any intention of pursuing the matter through briefing and argument, there is no reason to expect that the practice would increase the number of arguments heard by the court. During the period of the experiment, if such an appeal was assigned to CAMP, it seems reasonable to assume that it was ultimately settled or withdrawn. If it was assigned as a control, it presumably would have been withdrawn when the appellant's lawyer learned that the inexpensive forum was not to be available. Hence, even if the hypothesized effect does exist, the finding stands that CAMP reduces the number of appeals reaching argument.

Types of Cases for Which CAMP Produces Settlement or Withdrawal

The idea is persistent that if staff counsel intervention can produce settlement or withdrawal of appeals that would otherwise be argued, it may be possible to select groups of appeals that are more promising candidates for intervention than others. When the program was inaugurated in 1974, Mr. Fensterstock made judgments based on papers filed, and on the basis of those judgments decided whether an appeal should be included in the program. The program as currently implemented does not involve a judgmental screening. A number of people—including many of the questionnaire respondents in the present study—have suggested more mechanical screening devices. It has been suggested, for example, that appeals from decisions of administrative agencies are unpromising candidates for CAMP treatment because of the lack of freedom that agency counsel have to talk about settlement of a matter adjudicated by the agency. It has been argued that cases involving

money judgments may be more amenable to CAMP treatment than cases involving injunctive relief, on the ground that it is easier to fashion compromises when the question is “how much?” We have tested a number of these relationships, and we find no persuasive evidence in support of any of these mechanical screening theories. This may be partly a function of the size of our sample. We have already seen how wide the confidence limits are around the estimate of CAMP’s effect on the argument rate, even when the entire sample of 470 appeals is considered. When we seek to divide that sample into subsamples with particular characteristics, we increase the difficulty of eliminating chance as an explanation of observed differences.

Table 8 shows the argument rate separately for the four major classifications of civil appeals that are used in statistics of the Administrative Office of the United States Courts. It should be noted at the outset that 290 of the 470 appeals in the sample are private civil appeals, so the samples of the other types are somewhat small. The result is that we are unable to say that CAMP has a greater impact on some types of appeals than on others. At the extreme, the bankruptcy sample includes only 19 CAMP cases and 9 controls, and the reported reduction in the argument rate for bankruptcy cases is obviously a figure subject to substantial variation. It is not so readily obvious that the difference in effect between appeals in which the United States is a party and appeals in the other categories is also unreliable. However, when the increase in the observed argument rate for United States appeals is compared with the decrease in the observed argument rate for other appeals in the sample, the comparison does not come close to the threshold of statistical significance.

TABLE 8
Argument Rate by Type of Appeal

	Percentage Argued			
	Private Civil	United States a Party	Administrative Agency	Bankruptcy
CAMP	51.8% (*198)	60.0% (*60)	39.2% (*41)	42.8% (*19)
Control	64.1% (59/92)	56.7% (17/30)	47.6% (10/21)	77.8% (7/9)
Difference	- 12.4%	+ 3.3%	- 8.5%	- 35.0%

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

Table 9 provides a further division of the private civil appeals, distinguishing between those based on the federal question jurisdiction and those based on the diversity jurisdiction. The information about basis of jurisdiction was generally derived from the assertion made by the appellant's lawyer on CAMP form C. The table shows that the observed difference in argument rates between CAMP cases and control cases is approximately the same for both categories.

TABLE 9
Argument Rate by Basis of District Court Jurisdiction:
Private Civil Appeals

	Percentage Argued	
	Federal Question	Diversity of Citizenship
CAMP	56.2% (*126)	43.9% (*67)
Control	67.2% (41/61)	56.7% (17/30)
Difference	- 11.0%	- 12.8%

NOTE: Five CAMP appeals and one control appeal are omitted from this table because information about the basis of jurisdiction was not available.

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

Table 10 shows the argument rate separately for appeals in which only money damages were sought and those in which other relief was sought. Again, the data are derived from CAMP form C. The theory of interest here is that appeals involving money damages are more easily settled because there is an obvious range of possible compromises. The data point in the direction contrary to that predicted by the theory, suggesting that CAMP may be more effective with regard to cases in which relief other than money damages is sought. However, once again, the results are not statistically significant. They do not support the theory, but they cannot be taken as disproving it.

Table 11 shows the argument rate separately for appeals from decisions before trial and those from decisions rendered after a trial. One theory here is that parties have a greater investment in cases that have gone to trial below, and may therefore be more willing in such cases to make the additional investment in an appeal that runs the full course. A contrary theory is that the likelihood of affirmance of an order or judgment issued before trial is greater than the likelihood of affirmance of a judgment after trial,

TABLE 10
Argument Rate by Nature of Relief Sought Below:
Private Civil Appeals and Appeals
in Which the United States Is a Party

	Percentage Argued	
	Money Damages Only	Other Relief
CAMP	54.6% (* / 118)	53.6% (* / 137)
Control	60.3% (35 / 58)	66.1% (41 / 62)
Difference	- 5.7%	- 12.6%

NOTE: Administrative agency appeals are not included in this table because form C-A, the version of form C used for those appeals, does not ask about the relief sought. Bankruptcy appeals are excluded because we found it extremely difficult to code the responses with confidence. In addition, three CAMP and two control appeals are omitted because information about the nature of relief sought was not available.

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

TABLE 11
Argument Rate by Stage of Litigation Below:
Private Civil Appeals, Bankruptcy Appeals,
and Appeals in Which the United States Is a Party

	Percentage Argued	
	Appeal before Trial	Appeal after Trial
CAMP	50.6% (* / 161)	59.1% (* / 110)
Control	58.8% (47 / 80)	68.1% (32 / 47)
Difference	- 8.2%	- 9.0%

NOTE: Administrative agency appeals are not included in this table because form C-A, the version of form C used for those appeals, does not ask about the stage of litigation at the agency level. In addition, five CAMP and four control appeals are omitted because information about the stage below was not available. An additional CAMP appeal is omitted because the stage was "midtrial."

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

and that there may therefore be less willingness to compromise an appeal from a pretrial decision. The table shows that the observed reduction in the argument rate when CAMP cases are compared with controls is practically the same in either case. For reasons dis-

TABLE 12
Argument Rate in Appeals from Pretrial Decisions
by Basis of Appellate Jurisdiction:
Private Civil Appeals, Bankruptcy Appeals,
and Appeals in Which the United States Is a Party

	Percentage Argued	
	Interlocutory Appeals	Appeals from Final Decisions
CAMP	34.8% (* / 47)	57.3% (* / 113)
Control	36.4% (8 / 22)	67.9% (38 / 56)
Difference	- 1.5%	- 10.6%

NOTE: Of the appeals classified as "before trial" in table 11, one CAMP appeal and two control appeals are omitted from this table because information about the basis of appellate jurisdiction was not available.

*The computation of the CAMP proportion includes an adjustment to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

cussed in appendix A, however, we regard the data on which this comparison is based as quite unreliable.

In table 12, the appeals from pretrial decisions are further broken down into those denominated by the appellant's attorney as interlocutory appeals and those denominated as appeals from final decisions. At this point, the subsamples have become quite small. Once again, the apparent difference in the magnitude of the CAMP effect is not statistically significant.

As table 11 suggests, it is quite possible that appeals from decisions before trial are more likely to be settled or withdrawn than others and at the same time for staff counsel intervention to be equally effective in both categories. The figures in the table are subject to substantial variation, of course, and the suggested relationships may not in fact prevail, but the table does provide an illustration of the difficulty of many theories that have been advanced. The simple fact is that appeals of all kinds are withdrawn and/or settled, perhaps in differing proportions, with or without CAMP. To say that an appeal from a decision before trial is more likely to be settled or withdrawn than an appeal from a decision after trial is to answer the wrong question. The real question of interest is whether intervention by staff counsel is more likely to affect the course of events in appeals from decisions before trial. The questionnaire responses occasionally addressed that question. For the most part, however, it seems to us that the theories ad-

vanced about kinds of cases in which CAMP is likely to be effective do not have a strong logical foundation. Even if they are based on valid assumptions about the differential likelihood that various classes of appeals will be settled or withdrawn, they do not address the question of differential effectiveness of staff counsel intervention.

Our tests of several of the theories are fundamentally inconclusive because of the insufficient size of the sample. Even though we have not been able to confirm it, it remains possible that there are some categories of appeals for which CAMP has little or no impact on the argument rate and other categories for which it has relatively great impact. We think, however, that all such theories should be regarded with considerable skepticism.

Settlement or Withdrawal

A final question of interest about the nature of the program's impact on the argument rate is whether staff counsel produce principally unilateral withdrawals or principally negotiated settlements.

Most of the appeals that are neither argued nor dismissed on motion are withdrawn by consent of the parties. A few are dismissed for failure to adhere to scheduling orders, but the court is reasonably liberal about permitting reinstatement of appeals dismissed for violation of scheduling orders, so it can probably be assumed that almost all the appeals in which such dismissal stood as the final disposition were appeals that had been deliberately abandoned. When an appeal is withdrawn or abandoned, it is not always clear from court records whether the withdrawal was a unilateral decision on the part of the appellant or whether it resulted from some kind of compromise. The questionnaire administered as part of the experiment included an effort to cast light on that distinction. It asked:

If this appeal was settled or withdrawn:

- ☐ Did appellant(s) decide not to pursue the appeal; or
- ☐ Did all parties mutually reach a basis for resolving the controversy?
- ☐ Other (specify):

The draftsman of the question apparently intended the three alternatives to be mutually exclusive, although the respondents did

not always treat them that way. If the "Other" alternative was checked, we read the comments and classified the disposition if possible. If both the first and second alternatives were checked, we classified the case as settled rather than unilaterally withdrawn since it is logically possible to make both statements in an appeal that was settled but not in one in which the decision to withdraw was unilateral.

We eliminated NLRB enforcement petitions from the effort to distinguish between appeals that were settled and those that were unilaterally withdrawn. This was because of the role reversal involved in those cases: It is the petitioner who seeks to sustain the decision below and the respondent who seeks to upset it, so the substantive meaning of unilateral withdrawal is not the same.

With that elimination, we had 170 appeals in the sample that had been recorded as "settled or withdrawn." Of these, there were 108 in which we were able to determine, within the limits of the accuracy of the questionnaire data, whether the outcome reflected mutual resolution of the controversy or unilateral withdrawal. We found in both the CAMP group and the control group that about half the cases were unilaterally withdrawn and about half resolved mutually. Unfortunately, only 18 of the 108 appeals were in the control group, providing a very small sample whose distribution could be quite unrepresentative of a larger population. We are thus unable to say whether the CAMP effect on the argument rate is produced principally through increasing the number of unilateral withdrawals, principally through increasing the number of negotiated settlements, or with substantial elements of both.

V. EFFECT ON DISPOSITION TIME

Generally, an effort to evaluate an innovative program is an effort to compare the program with the status quo ante. The control group in an experiment is handled in the old way while the experimental group is handled in the new way. The second CAMP experiment was somewhat unusual in that it was designed after the program had been in place for some time. In a sense, CAMP represented the status quo, and the control group was carved out as what might be termed a counterinnovation.

In considering the effect of CAMP on the argument rate, we have taken for granted that CAMP was to be compared with a system in which there were no prebriefing conferences. In considering CAMP's effect on disposition time, it is necessary to describe the alternative with which it was compared.

As has already been noted, the clerk was instructed to issue scheduling orders in control appeals that reflected the time limits of the Federal Rules of Appellate Procedure. This was done so that the clerk could use the authority of the CAMP rules to dismiss appeals for failure to comply with the schedule. But the clerk was also told to be more lenient about dismissing control appeals for failure to comply. A design document for the evaluation contained the following statement:

Control cases will not, however, be dismissed immediately upon default. Given the more liberal time limits within which a control appeal must be prosecuted and the absence of staff counsel's assistance in resolving procedural difficulties and in encouraging early settlement, it is likely that control cases will take longer than CAMP cases to proceed to argument or to settle. Control cases would not have sufficient time for settlements to mature if they were dismissed immediately upon scheduling order default. A reasonable amount of time for settlement or prosecution will be allowed to pass before default dismissal.

There does not appear to have been any fixed time within which the clerk was to dismiss a control appeal for a scheduling order violation. One of these appeals was dismissed sixty-six days after docketing, about five weeks after the appellant had failed to file the record according to the scheduling order. Another was dismissed

more than six months after docketing, more than four months after a similar failure to file the record.

Control appeals were thus subject to scheduling orders incorporating the time limits of the Federal Rules of Appellate Procedure, but were not to be dismissed as quickly as CAMP cases for failure to comply. The lawyers were not informed of the relaxed policy about dismissals, however, and those familiar with CAMP procedures presumably acted on the assumption of more rigorous enforcement.

According to A. Daniel Fusaro, the clerk of the court, the practice before CAMP was instituted was simply to review the docket from time to time looking for long-dormant appeals, and then to contact the attorneys in such appeals with a view to either prodding them forward or encouraging withdrawal. The only formal rule authorizing dismissal for failure to prosecute an appeal was Second Circuit rule 0.18(7), which permits the clerk to dismiss nine months after docketing if the appellant's brief has not been filed. With regard to monitoring, therefore, it appears that the procedure prior to CAMP was more relaxed than the procedure applied to the control group during the experiment.

Extensions of time in control appeals were granted in response to motions, as contrasted with the informal procedures for amending scheduling orders in CAMP appeals. The motion system was essentially the system that prevailed before the CAMP program was initiated. Review of the docket sheets in the control appeals indicates that motions were granted quite freely, which also appears to have been the case before CAMP.

An unmeasurable factor that may influence the comparison of CAMP appeals and controls is that CAMP, during the years the program has been operating, may have changed lawyers' expectations about the pace of appellate litigation and thereby changed their behavior. Control group lawyers may, for example, have filed fewer motions for extensions of time than they would have before CAMP. If CAMP has indeed accelerated the pace, therefore, this factor may cause us to understate the magnitude of the change. We have no way of assessing that possibility.

On the whole, we regard it as unlikely that the management of the control appeals in the experiment was more relaxed than the pre-CAMP status quo. Comparison of CAMP and control appeals probably provides a conservative measure, therefore, of the program's effect on disposition time as compared with the court's procedures before 1974. We note that in a broad sense our conclusions about the program's effect on disposition times are consistent with Goldman's; since Goldman studied the program almost at its incep-

tion, his control group more nearly represented the pre-CAMP status quo.

A final concern about the data on which this chapter is based is that we did not observe an entire year's appeals. Because the court hears few arguments in routine civil appeals in July and August, there is a seasonal influence on case schedules. More important, there is a seasonal influence on staff counsel's efforts to keep appeals moving. When the argument calendar is full, as it tends to be in the fall, staff counsel are likely to be more generous with extensions of time. As the end of the term approaches in the spring, their docket-management responsibilities assume greater importance. With an experiment based on appeals docketed from July 1 to January 19, we are unable to say whether the CAMP effects observed in a full-year study would have been larger or smaller than the effects we observed.

Table 13 presents data about the elapsed time from docketing to disposition of CAMP appeals and control appeals. The upper portion of the table displays the cumulative frequency distribution. It may be read, for example, as saying that 45.1 percent of the CAMP appeals were disposed of within 90 days of docketing, but that only 20.5 percent of the control appeals were. The lower portion of the table shows the average time from docketing to disposition. The average has the advantage of summarizing the data in a single number. In addition, the statistics available for examining the difference between the CAMP and control averages are relatively powerful statistics. But it is important to note that "average" does not mean "typical." The average is influenced disproportionately by those cases that took a very long time. In both CAMP and control categories, more than half the appeals were disposed of in considerably less than the average time.

In examining this table and similar tables that follow, we have applied two statistical tests. One is a test to determine whether the cumulative distributions are so divergent that the differences are not likely to have occurred as a result of chance in drawing the samples. The question is whether the largest difference between the CAMP and control appeals (including not only those differences we have displayed here but also those at intermediate points) is large enough so that it is unlikely to have occurred as a result of chance. The other test is a test to determine whether the difference in the average number of days is likely to have occurred by chance. Both tests indicate that the differences in table 13 are statistically significant. At the 95 percent confidence level, the average disposition time for CAMP appeals is shorter by somewhere between 21 and 67 days than the time for appeals handled the way the control

TABLE 13
Time from Docketing to Disposition

	Cumulative Percentage of Appeals Disposed of within—							
	30 Days	60 Days	90 Days	120 Days	150 Days	180 Days	210 Days	240 Days
CAMP* (317 appeals)	13.7%	33.8%	45.1%	58.0%	71.0%	77.3%	82.6%	87.8%
Control (151 appeals)	4.0%	12.6%	20.5%	30.5%	47.0%	58.3%	72.2%	78.8%
Difference	9.7%	21.2%	24.5%	27.6%	24.0%	19.0%	10.5%	9.0%
Average Time								
CAMP* (317 appeals)	131 days							
Control (151 appeals)	175 days							
Difference	– 44 days							
95% confidence interval	– 67 to – 21 days							
68% confidence interval	– 56 to – 32 days							

NOTE: One CAMP and one control appeal, both consolidated by motion with earlier appeals, are omitted. In one, the docketing date is unknown; the other appeal was docketed after disposition, apparently correcting an error.

*The computations of the CAMP proportion and average include adjustments to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

appeals were. The disposition times are quite similar for both staff counsel.

Table 14 displays the same data for appeals that did not go to argument. Once again, the shorter times for CAMP appeals than controls are statistically significant by both tests; there are no statistically significant differences between the two staff counsel.

Because of CAMP's effect on the argument rate, the CAMP and control groups in table 14 are not groups that were the same, subject to random variation, at the beginning of the experiment. Indeed, according to our best estimate, about one-fifth of the appeals in the CAMP group are appeals that were removed from the argument calendar as a result of staff counsel intervention. Since CAMP conferences typically take place quite soon after docketing, it would not be surprising if the appeals settled or withdrawn as a result of CAMP tended to be among those with relatively short disposition times. In view of the magnitude of the differences between CAMP appeals and controls on this measure, we are quite confident that the reduction in disposition time reflects not only a reduction through removal of appeals from the argument calendar but also a reduction for those appeals that would have been settled or withdrawn even in the absence of CAMP.

Accelerated disposition of appeals that would in any event terminate without argument may well result in cost savings to litigants by reducing the amount of work performed by their lawyers. We do not, of course, have direct measures of cost. We did tabulate the number of unargued appeals in which briefs were filed, with the expectation that accelerated disposition might reduce that number. Of the fifty-nine unargued appeals in the control group, the appellants filed briefs in eight, or 13.6 percent. The proportions for both staff counsel were smaller, but the differences were not statistically significant. Although the 13.6 percent figure does not suggest a great potential for reducing cost by reducing the number of appeals that are briefed but not argued, it should be recognized that the figure is subject to considerable sampling variability; the true proportion could be in excess of 20 percent.

Table 15 presents similar disposition time data for the appeals that were argued. Once again, it has to be recognized that the argued appeals assigned to CAMP were not, as a group, equivalent to the argued control appeals, since CAMP removed some appeals from this category. But we have no reason to think that the appeals settled or withdrawn as a result of CAMP were disproportionately composed of appeals that would have taken a long time to get to argument had they been argued. Hence, if we observe a statistically significant acceleration of the pace in comparing the two

TABLE 14
Time from Docketing to Disposition: Appeals Not Argued

	Cumulative Percentage of Appeals Disposed of within—					
	30 Days	60 Days	90 Days	120 Days	150 Days	180 Days
CAMP* (156 appeals)	24.7%	60.6%	78.9%	91.1%	96.1%	96.8%
Control (59 appeals)	<u>10.2%</u>	<u>27.1%</u>	<u>44.1%</u>	<u>61.0%</u>	<u>72.9%</u>	<u>79.7%</u>
Difference	14.5%	33.5%	34.8%	30.1%	23.2%	17.1%
Average Time						
CAMP* (156 appeals)	65 days					
Control (59 appeals)	<u>129 days</u>					
Difference	– 64 days					
95% confidence interval	– 95 to – 33 days					
68% confidence interval	– 80 to – 48 days					

*The computations of the CAMP proportion and average include adjustments to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

TABLE 15
Time from Docketing to Disposition: Appeals Argued

	Cumulative Percentage of Appeals Disposed of within —								
	60 Days	90 Days	120 Days	150 Days	180 Days	210 Days	240 Days	270 Days	300 Days
CAMP* (161 appeals)	8.2%	12.7%	26.4%	47.0%	58.7%	67.9%	77.4%	82.5%	87.8%
Control (92 appeals)	<u>3.3%</u>	<u>5.4%</u>	<u>10.9%</u>	<u>30.4%</u>	<u>44.6%</u>	<u>62.0%</u>	<u>72.8%</u>	<u>77.2%</u>	<u>84.8%</u>
Difference	5.0%	7.3%	15.5%	16.6%	14.1%	6.0%	4.5%	5.3%	3.1%
Average Time									
CAMP* (161 appeals)	194 days								
Control (92 appeals)	<u>205 days</u>								
Difference	– 11 days								
95% confidence interval	– 37 to + 16 days								
68% confidence interval	– 24 to + 2 days								

NOTE: One CAMP and one control appeal, both consolidated by motion with earlier appeals, are omitted. In one, the docketing date is unknown; the other appeal was docketed after disposition, apparently correcting an error.

*The computations of the CAMP proportion and average include adjustments to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

groups of argued appeals, we can be quite comfortable in concluding that the observation is not a by-product of the settlement or withdrawal effect.

Using the test based on means, the differences are not significant. Using the test based on the cumulative distributions, on the other hand, the overall comparison of CAMP with controls is just short of significance, and the fast pace of Mr. Fensterstock's appeals, when compared with controls, is significant at the 97.5 percent confidence level.

Tables 16 and 17 present further breakdowns of the time for disposition in argued appeals. Table 16 shows the time from docketing to argument. Conceivably, if staff counsel are successful in sharpening the issues in appeals that reach argument, there may be a consequent impact on the time from argument to disposition. But if staff counsel do have an impact on the pace in cases that go to argument, we would expect to find it principally in the period from docketing to argument, shown in table 16.

The practice in the Second Circuit, moreover, is to schedule an appeal for argument at the time the appellant's brief is filed, without waiting for the appellee's brief. Scheduling is done by the clerk's office, and staff counsel are not routinely involved, although they will try to get an early place on the calendar on occasion when that is an important consideration. We would therefore expect the time to argument from the filing of the appellant's brief to be largely (but not wholly) out of the control of staff counsel. Table 17 therefore shows the time from docketing through the filing of appellant's brief.

The differences in both tables 16 and 17 are statistically significant when the distributions are compared but not significant when the means are compared. The interpretation of those findings is not without risk, but we are persuaded that the argued CAMP cases did move somewhat more quickly than the argued controls. The probable magnitude of the CAMP advantage is not very great, however; we are almost surely talking in terms of weeks rather than months.

We noted earlier that Mr. Fensterstock's advantage over the controls in disposition time for argued cases is statistically significant when the distributions are compared but that Mr. Scardilli's is not. The difference between the two staff counsel persists when we consider time from docketing to argument rather than time from docketing to disposition, and for this period the difference is statistically significant at the 95 percent level. However, with regard to the time between docketing and the filing of the appellant's brief, the data for the two staff counsel are very similar, and both have a sta-

TABLE 16
Time from Docketing to Argument: Appeals Argued

	Cumulative Percentage of Appeals Argued within—					
	60 Days	90 Days	120 Days	150 Days	180 Days	210 Days
CAMP* (161 appeals)	12.0%	24.4%	52.2%	77.9%	83.5%	88.9%
Control (92 appeals)	<u>6.5%</u>	<u>10.9%</u>	<u>23.9%</u>	<u>62.0%</u>	<u>78.3%</u>	<u>87.0%</u>
Difference	5.4%	13.6%	28.2%	15.9%	5.3%	2.0%
Average Time						
CAMP* (161 appeals)	137 days					
Control (92 appeals)	<u>154 days</u>					
Difference	– 17 days					
95% confidence interval	– 41 to + 7 days					
68% confidence interval	– 29 to – 5 days					

NOTE: The two appeals omitted from table 15 are also omitted here.
*The computations of the CAMP proportion and average include adjustments to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

TABLE 17
Time from Docketing to Filing of Appellant's Brief: Appeals Argued

	Cumulative Percentage of Briefs Filed within —				
	30 Days	60 Days	90 Days	120 Days	150 Days
CAMP* (161 appeals)	19.4%	61.0%	83.3%	91.5%	93.9%
Control (91 appeals)	7.7%	26.4%	70.3%	85.7%	94.5%
Difference	11.7%	34.6%	13.0%	5.8%	− 0.6%
Average Time					
CAMP* (161 appeals)	71 days				
Control (91 appeals)	82 days				
Difference	− 11 days				
95% confidence interval	− 29 to + 7 days				
68% confidence interval	− 20 to − 2 days				

NOTE: In addition to the two appeals omitted from table 16, a control appeal, consolidated by motion with an earlier appeal, is omitted because the appellant's brief in the consolidation was filed before the appeal was docketed.

*The computations of the CAMP proportion and average include adjustments to compensate for the fact that the two staff counsel were assigned unequal numbers of appeals in the experiment.

tistically significant advantage over the controls. Further investigation discloses that Mr. Fensterstock's relative advantage appears in the interval between the filing of the appellant's brief and the argument. In that period, Mr. Scardilli's appeals moved more slowly than the controls while Mr. Fensterstock's moved more quickly. Neither of these comparisons with the control group is statistically significant, but the comparison of times for the two staff counsel is. Since we have no plausible explanation other than chance variation for the observation that Mr. Scardilli's time in this interval was slower than the time for the control group, we are inclined to accept chance variation as the explanation of the data for Mr. Scardilli. That in turn leads us to question the finding of significance in the comparison of the two staff counsel. It may be, however, that Mr. Fensterstock takes more advantage than Mr. Scardilli of the opportunity to participate in the scheduling of arguments in circumstances in which early argument can be used to settle or forestall a motion for a stay.

In summary, then, we conclude that appeals are processed more quickly if handled under the CAMP program than if handled in the manner in which the control appeals were handled in the ex-

periment. At the 95 percent confidence level, the average saving is between twenty-one and sixty-seven days, with the best single estimate being forty-four days. Since appeals that do not reach argument are likely to be disposed of earlier than those that do, some reduction in disposition time is a by-product of the fact that CAMP results in the settlement or withdrawal of appeals that would otherwise be argued. We are quite confident that there is also an acceleration of the disposition time of those appeals that would ultimately settle or be withdrawn in any event. And we believe that there is an acceleration of the disposition time of appeals that reach argument, but we strongly suspect that the average gain is to be measured in weeks, not months.

As was noted earlier, we think the control group appeals probably moved more quickly than they would have under pre-CAMP procedures, thereby introducing a conservative element if the analysis is taken as a comparison of CAMP procedures with the pre-1974 status quo. However, an element of uncertainty is introduced by the fact that we did not have a full year's observation of a phenomenon with seasonal characteristics. That uncertainty does not raise doubts about whether CAMP accelerates appeals, but does suggest caution in interpreting our estimates of the magnitude of the acceleration.

VI. LAWYERS' VIEWS OF THE CAMP PROGRAM

One of the questions on the attorney questionnaires was, "Do you prefer participation in CAMP?" By a substantial margin, the responding lawyers indicated that they do. Of 584 respondents, 311 (53.3%) answered "yes," 123 (21.1%) answered "no" and 150 (25.7%) either did not respond or responded with a comment rather than checking "yes" or "no."¹¹ The comments were generally of a "sometimes yes, sometimes no" nature.

Another question on the questionnaire asked about the lawyer's prior participation in CAMP conferences. With the responses to this question, we can analyze the expressions of preference for or against CAMP in relation to the respondents' experience with the program. Table 18 shows the results of that analysis.¹²

Examination of table 18 indicates that the principal difference based on experience with CAMP is in the number of respondents willing to express an opinion about the program: Respondents with less experience were less likely to express a preference. Among those who did express an opinion, the data suggest that lawyers who have participated in only one CAMP conference regard the program more favorably than those who have participated in more than one conference. One-time participants preferred CAMP by a margin of more than three-to-one, while more frequent participants preferred CAMP by a margin of a little greater than two-to-one. If the respondents were a random sample of lawyers appearing in the court, this distinction would be statistically significant at the 90

11. Twenty-five questionnaires were eliminated from this tabulation because the respondents indicated that they had used the form before, and were therefore presumed to be reiterating a preference already expressed. This elimination probably was not completely successful as an effort to implement the one lawyer, one vote principle. See appendix A.

12. On the questionnaire forms designed for unconfereced cases, the question was, "Have you ever participated in a CAMP conference?" Lawyers' responses presumably reflected their experience as of the time they completed the questionnaire. On the form for conferenced cases, the question was, "Have you participated in CAMP conferences before?" Lawyers responding to this form presumably did not count conferences held after the conference in the studied case, and some of them may therefore have had additional experience with CAMP at the time they expressed their opinions on the questionnaire.

TABLE 18
Relation between Preference for or
against CAMP and Experience with CAMP Conferences

Number of Conferences	Prefer CAMP	Do Not Prefer CAMP	No Answer
None (109 lawyers)	23.9%	10.1%	66.1%
One (196 lawyers)	58.7%	18.4%	23.0%
More than one (265 lawyers)	61.1%	28.3%	10.6%
No answer (14 lawyers) ¹	57.1%	7.1%	35.7%
Total response (584 lawyers) ²	53.3%	21.1%	27.7%

¹This row includes five instances in which the attorney was sent the wrong questionnaire form and the answer could not be interpreted.

²To avoid multiple counting of the opinions of individual lawyers, the table excludes twenty-five questionnaires on which the lawyer checked that he or she had used the form before.

percent confidence level but not at the 95 percent confidence level. While we have no strong reason to suspect that this particular comparison is affected by it, the response-rate problem must be regarded as increasing the possibility that the distinction we observed does not represent the views of the entire bar.

If there is indeed a tendency for lawyers with more experience to like the program less, it would be consistent with the notion that the first CAMP conference has an educational function and that subsequent conferences are less useful to the lawyers. Even if the data were unambiguous, however, we would be reluctant to accept that conclusion. Lawyers who reported several years after the inauguration of CAMP that they had participated in only one conference are not likely to be lawyers who regularly practice in the Second Circuit Court of Appeals. The extent of experience with CAMP is probably not the only characteristic that distinguishes them, as a group, from the lawyers reporting more frequent participation. The two groups may well differ in the kinds of clients they represent and in the nature of the issues raised in their cases. Hence, even if it is true that regular practitioners in the court of appeals are less likely than occasional practitioners to regard the program favorably, it may be quite wrong to suggest that an individual lawyer is likely to regard the program more favorably after his or her first conference experience than after subsequent experiences.

Among the respondents who had participated in only one CAMP conference, 171 respondents had their one conference in an appeal that was included in the study. We divided this group into those

who had conferred with Mr. Fensterstock and those who had conferred with Mr. Scardilli. No statistically significant difference was found in the expression of preference for CAMP between lawyers whose sole conference experience had been with one staff counsel and those whose sole experience had been with the other.

Reactions to Efforts to Encourage Settlement or Withdrawal

The responses to the structured questions on the questionnaire are illuminated by unstructured responses to the questionnaire's invitation to comment. In considering the lawyers' comments, as in considering their responses to the question about preference, it must of course be understood that advocates are not necessarily unbiased observers. In the course of CAMP conferences, staff counsel often express their own views on the merits of appeals; this practice is quite likely to irritate the lawyer for one side while pleasing the lawyer for the other. When staff counsel persevere in pursuing the possibility of settlement in an appeal that the lawyers regard as unseizable, the perseverance may be regarded as brilliant if successful and bullheaded if unsuccessful. The lawyers' comments thus enrich our understanding of lawyers' reactions to the program, but neither favorable nor unfavorable remarks are necessarily to be taken at face value.

Comments were offered on 328 of the 609 questionnaires received. They varied greatly, as would be expected, in the specificity of the views expressed. Some comments, moreover, were about the conference in the appeal that was the subject of the questionnaire while others were about the program in general.

Most of the comments—both favorable and unfavorable—were addressed to the program's potential for achieving nonjudicial resolution. As would be expected in the light of the preference for CAMP among the responding lawyers, many more of the comments were favorable than unfavorable. Many responses indicated that the conference had been useful in producing settlement or withdrawal of the appeal, and still others praised the effort even when it was unsuccessful. Many, of which the following are a sample, were lavish in their praise:

Based on futile attempts at settlement by counsel prior to the CAMP conference, it is our opinion that without the determined, persuasive and tireless efforts of Mr. _____ to bring the parties together, no settlement of this appeal would have occurred. In particular, Mr. _____'s insistence upon holding a second CAMP

conference at which our client (plaintiff-appellant) would attend proved to be the indispensable factor in settling the appeal.

Based upon this particular appeal and prior experience as well, we firmly believe that the CAMP program is extremely worthwhile and should be continued.

I have participated twice in conferences before Mr. _____, and both times I was impressed with his fairness and professionalism. That is not to say, however, that he did not push hard for settlement. He most assuredly did.

Both staff counsel are eminently excellent at banging heads together and achieving resolutions of problems, sometimes settling the matter, as opposed to similar programs in the State courts, wherein the judges merely try to bring the parties together, by conciliation mainly, but do not do the same forceful banging of heads that a staff counsel can do.

The CAMP conference lasted all afternoon—the parties were rather far apart in ideas of settlement, but Mr. _____ did an excellent job of conferring with parties separately, then jointly. I think CAMP was a most useful program, in the only time I have participated. It resulted in a settlement brought about by Mr. _____'s tireless efforts, saving much time of attorneys and Court.

Extremely knowledgeable in the law as well as considerate and extremely helpful to counsel.

During each conference, Mr. _____ exhibited knowledge of the facts and an understanding of the issues involved in the appeal. More importantly, he was well versed in the law. In addition, he was always courteous and fair to all parties concerned.

This is the second time the CAMP conference aided in convincing an opponent to withdraw an appeal. In each case, my opponents refused to listen to anyone but your staff counsel. Both conferences resulted in substantial saving of time and money for the court and both sides.

The conference was helpful since it served to bring the legal issues into sharper focus which resulted in my client consenting to discontinuance of the appeal.

The assistance of Staff Counsel in disposing of the appeal proved invaluable. The in-depth discussions at the conferences as to the issues on appeal and probability of success enabled both counsel to recognize the practicability of settlement, something which was not conceivable without these meetings.

Under the Staff Counsel's expert and knowledgeable guidance, his pre-argument conferences have resulted in many of our cases being swiftly concluded without the need for our undertaking expensive and lengthy research work or time-consuming briefwriting.

Mr. _____ was well informed factually & legally and did a tenacious job of settling a very difficult case.

The respondents offering unfavorable comments about the efforts to achieve nonjudicial resolution fell into two categories. One category comprised respondents who felt that the program was a waste of time in the particular appeal, or in some class of appeals, or as a general proposition. The other category, which included about 40 of the 328 respondents offering comments, comprised respondents who expressed concern about what they regarded as undue pressure to settle. About 25 of the comments in this group appear to have been written in anger, and were laced with words such as "browbeat," "bludgeon," "strong-arm tactics," and "arm-twisting." A sample of them follows:

Counsel for CAMP was not prepared as to the law of the case. Even though unfamiliar with the facts and the law of the case, he attempted to force a settlement in a most aggressive style offensive to the lawyers participating and most unbecoming to a representative of the court.

While the conferences are of some value for settlement purposes I felt that undue pressure was placed on the parties to settle. I consider "undue pressure" to consist of numerous phone calls and being summoned for additional conferences with less than 48 hour notice. I felt badgered and almost "blackmailed" at one point. While I appreciate the Court's need to control its docket perhaps these efforts at settlement were overly zealous.

Staff counsel without adequately knowing the facts or law of the case purely for the sake of settlement attempted to bludgeon a settlement in a manner most inappropriate and unbecoming to him.

Mr. _____ . . . was rude and pompous. Not only was the conference an unpleasant experience, but we feel the pressure exerted by him to try to force settlement verged on deprivation of our clients' right to their appeal.

Some lawyers objected to requests by staff counsel for permission to talk with their clients:

I think that staff counsel should be cautioned concerning requests by them to be permitted to confer directly with a client. Such a procedure, while appropriate in some circumstances, seems to infringe upon the attorney-client relationship.

At one point in the proceeding, counsel became so exasperated with my position on appeal that he asked if he could call my client in California to explain the situation to him directly. I believe this was an outrageous suggestion, and I advised him in the negative.

Complaints about this practice have been reported elsewhere.¹³ It is clear that some members of the bar regard even a request for permission as a threat to their relationships with their clients. In the “Guidelines for Conduct of Pre-Argument Conferences” adopted by the Second Circuit in June 1982,¹⁴ the practice of requesting clients to attend conferences—presumably including telephone conferences—was specifically authorized. Staff counsel are not permitted to talk with clients without their lawyers present.

A few lawyers expressed concern that inexperienced advocates, in the words of one, might “take as ‘gospel’ staff counsel’s analysis of the chances of success in the Second Circuit” and make unwise decisions as a consequence. And one first-time participant reported uncertainty about that point:

Staff counsel purported to speak knowledgeably on how the court was likely to rule on the claims in an effort to pressure a withdrawal of the appeal. This was confusing, at best, to a first time participant concerning the authority of staff counsel and his representations on how the merits would be treated by the court.

An NLRB lawyer asserted that abandonment of meritorious appeals was common:

If staff counsel were inclined to solicit the NLRB attorney’s candid appraisal of the case prior to the conference, those attorneys might be spared the uncomfortable experience—reported by many—of watching the other side browbeaten into abandoning a respectable—sometimes a possibly winning—position.

In spite of the claim that the experience was “reported by many,” this was the only questionnaire on which it was reported to the court.

Whatever misunderstandings there may have been about staff counsel’s authority to speak for the court seem likely to be cleared up by the practice, currently in effect, of enclosing the court’s June 1982 guidelines with the first conference order. Lawyers may have doubts about how much credence to give to the views of staff counsel, but it is made very clear in the guidelines that the staff counsel’s views are his own and are not communicated to the court.

Finally, among the strongly negative comments about the efforts of staff counsel to achieve settlement or withdrawal were a handful in which the assurances of confidentiality were questioned:

13. See Federal Courts Committee, New York County Lawyers’ Association, *The Operation of the Second Circuit Civil Appeals Management Plan 16-17 (1982)* (available from the FJC’s Information Services Office).

14. These guidelines are reproduced in appendix B.

None of us believe that staff counsel does not make recommendations to the court.

I believe that most attorneys, including myself, are quite frightened at the prospect of recalcitrant attitudes toward settlement being exhibited before someone connected with the Circuit Court of Appeals even though assurances are given that what takes place is not revealed to any other person.

It deserves emphasis that the strong negative reactions to the program were in a distinct minority. After eliminating the questionnaires of respondents who said they had used the form before (and may thus be regarded as voting a second time), we had 584 questionnaires, 312 of which included comments. Only about 25 of them contained comments that suggested that the lawyer was offended by the handling of the conference. Many, as we have seen, contained lavish praise. We see no indication, moreover, that either the very favorable comments or the very unfavorable ones were focused on a particular staff counsel. Both Mr. Fensterstock and Mr. Scardilli were the subjects of both kinds of comment.

The responses to the court's questionnaire were substantially more favorable to CAMP than data reported last year by the Federal Courts Committee of the New York County Lawyers' Association.¹⁵ That committee asked lawyers whether "the conference by Staff Counsel with respect to the Civil Appeals Management Plan was satisfactorily conducted." Twenty-nine percent of their respondents in a sample selected from docket sheets answered that it had not been, and 45 percent of the respondents from the federal court committees of three bar associations answered that way. Lawyers who thought that the conference had not been satisfactorily conducted were asked a series of questions to further refine their complaints. Although the responses to the specific questions were not tabulated in the committee's report, the committee indicated that undue pressure to settle, speaking to clients or threatening to do so, and acting in a manner thought to be "unfair, burdensome, or in your opinion unacceptable" were common complaints.

As we noted in chapter 3, we have no sound basis for making judgments about the representative quality of the responses to the court of appeals' questionnaire. However, we do regard the response to the court of appeals questionnaire as more reliable than the response to the Federal Courts Committee questionnaire. First, the court of appeals' response rate was about 50 percent, while the Federal Courts Committee's response rate was under 30 percent of a much smaller sample. Second, the court of appeals' questionnaire

15. See *supra* note 13.

was neutrally drafted, while the Federal Courts Committee's seemed designed to invite unfavorable responses. We recognize the possibility that some lawyers may have been reluctant to express negative views on the court of appeals' questionnaire in spite of assurances that the responses would be kept confidential from staff counsel and judges. But on the whole, it must be regarded as the better survey.

The other group of responses to the court of appeals questionnaire that were unfavorable to the program's settlement efforts reflect the view that such efforts are a waste of time—either in all appeals or in some. The view that they are a waste of time in all appeals is one on which there is certainly no consensus, and we believe that the best available information is the experimental data discussed in chapter 4. Particular categories of appeals mentioned as unsuitable for the efforts to achieve settlement or withdrawal included the following:

1. NLRB appeals. "[T]he attorneys involved are specialists and know when they want to settle or not, often based on considerations other than the legal or factual merits of the case."
2. United States government cases. "Appellate counsel for most government agencies have no discretion."
3. Appeals from agency adjudications on the record.
4. Appeals not involving money judgments.
5. Admiralty appeals.

We were able to test some of these suggestions, and the results are reported in chapter 4. As reported there, we did not find persuasive evidence that the categories examined were not amenable to CAMP's efforts to increase the rate of settlement or withdrawal. We also expressed in chapter 4 our general skepticism about the notion that certain categories of appeals are somehow immune to the CAMP effect. Most of the theories to that effect seem to us not to be well thought out; they address the question whether certain types of appeals are more likely to settle than others and not the question whether staff counsel intervention is likely to have a greater impact on one type of appeal than on others. Those are simply not the same question.

Another view expressed with some frequency is that staff counsel should exercise more judgment in deciding whether a conference is required, perhaps after talking with the lawyers on the telephone. That would represent a return to the policy followed in the early

days of the CAMP program. Nothing in the current evaluation casts light on the question whether staff counsel can successfully assess the possibility of settlement on this basis. The proposal tended to come from lawyers who claimed that they and their adversaries knew their appeal was unseizable; the questionnaire responses also include a number of testimonials to settlements achieved in the face of such knowledge.

The Role of CAMP in Clarifying Issues

One of the questions on the questionnaire sent to lawyers in conferenced appeals was as follows:

Did the CAMP conference or other contact with Staff Counsel result in:

() Improvement of the quality of the brief or oral argument by clarifying or changing the emphasis on certain issues.

Of 203 respondents in appeals that were conferenced and that went to argument, 47 checked this item, indicating that they thought the quality of the brief or oral argument had been improved as a result of the conference. The remaining 156 left the box unchecked. The questionnaire asked respondents to check the item to indicate an affirmative response and had no place to indicate a negative response. It therefore is not possible to distinguish a negative response from a failure to respond to the question. But it seems safe to assume that in the great bulk of the cases the unchecked box did represent a negative. Thus, about a quarter of those responding believed that the quality of briefs or argument was improved as a result of the conference.

The second experiment did not include a questionnaire to judges sitting on appellate panels, but Goldman's study did. Judges were asked a number of questions relating to the quality of the presentation in the appeals that were argued, and comparisons were made between the responses in CAMP and control appeals. In his tables 16, 19, 20, and 21, Goldman found the judges' ratings of CAMP appeals to be better than their ratings of control appeals, and concluded that the difference was statistically significant. We believe that the statistical tests were incorrectly applied. Upon reanalysis of the Goldman data, we conclude that it has not been demonstrated that CAMP improves the quality of presentations in ways that are perceptible to the judges.¹⁶ To say that, however, is not to deny

16. If the question to be answered is whether the quality of appeals has in some way been improved, the appropriate unit of observation is the appeal, and statistical

that some lawyers genuinely find the conferences helpful in the preparation of their appeals.

CAMP's Role in Resolving Scheduling and Procedural Matters

Lawyers in conferenced appeals were also asked the following questions about the role of staff counsel in resolving procedural problems and scheduling matters:

Did the CAMP conference or other contact with Staff Counsel result in:

. . . .

- () Resolution of procedural problems requiring consultation with opposing counsel, e.g., joint appendix, motions, stipulations
- () Resolution of other procedural problems, including scheduling.

Table 19 presents the answers to those questions. The first column displays the answers for all respondents in conferenced appeals, while the second displays the answers for respondents in appeals that were argued. Appeals that are terminated relatively early obviously present less opportunity for resolution of procedural problems, so it is not surprising to find more lawyers in argued appeals saying that CAMP had resolved such problems.

Once again, we cannot distinguish between a negative response and a nonresponse, but are prepared to assume that the vast majority of the respondents who did not check one of these boxes intended to indicate that CAMP had not resulted in the resolution of procedural problems. We note that the question was not whether CAMP had resolved them more efficiently than some other procedure, but merely whether contact with staff counsel had resulted in resolution of these problems at all. The relatively small number of affirmative answers is, in that context, somewhat mystifying. It is clear, for example, that staff counsel regularly issue amended scheduling orders; one would think it implicit that they regularly

tests should be based on the number of appeals in the sample. Goldman applied the statistics to the number of judge ratings. In effect, this inflated the size of the sample and made relatively small differences in observed effects appear to be statistically significant. One of the present authors—Mr. Partridge—reviewed the Goldman manuscript for the Center before its publication and overlooked the error. In spite of Goldman's traditional statement accepting responsibility for error, it should not be treated as his alone.

Our method of reanalysis is discussed in appendix A.

TABLE 19
Questionnaire Responses about CAMP's Effect
on Resolving Procedural Problems

	Percentage of "Yes" Answers	
	372 Respondents in Conferenced Appeals	203 Respondents in Appeals Conferenced and Argued
Resolution of procedural problems requiring consultation with opposing counsel	11.0%	13.8%
Resolution of other procedural problems, including scheduling	18.0%	25.1%
"Yes" to one or both questions	22.6%	30.5%

resolve scheduling problems. We are left uncertain about the meaning of the low rate of affirmative response.

Even though the percentage of lawyers saying that CAMP had assisted in the resolution of procedural problems was not high, there were quite a few favorable comments about this aspect of the program and particularly about the informality with which scheduling matters can be handled, obviating the need for motions to the court to make minor changes in the schedule. Two samples follow:

Our appeal involved numerous petitioners with different interests and objectives as among themselves, not to mention differences vis-a-vis the respondent. The subject matter of the appeal was large and complex. Without the tough, but reasonable, pressure asserted by Mr. _____, it would have taken the parties much longer to agree on procedural measures, and the total number of pages of briefs probably would have been substantially greater. Mr. _____ saved the parties as well as the Court a significant amount of time, money, and frustration.

I have been involved in about 4 CAMP conferences. None of them have led to settlement or limitation of issues for appeal.

The main benefit I have seen is that CAMP allows for flexible scheduling of briefs, motions, argument, etc. Without this program, much time would be wasted on formal motions relating to scheduling.

Other respondents mentioned avoiding arguments about the contents of the joint appendix and the informal handling of stays pending appeal as advantages of the program.

Some of the lawyers responding found the CAMP scheduling practices objectionable. A number complained that the emphasis on speed is overdone; one referred to the "frenzied pace" at which staff counsel require appeals to be prepared for argument. There were a few complaints about CAMP conferences themselves being called on very short notice.

A view expressed occasionally is that staff counsel deliberately impose unreasonable time requirements as part of the strategy of fostering settlement. Staff counsel state that this is not the case. But they do sometimes relax the briefing schedule if it appears that more time for discussion may make settlement possible. It is not wholly surprising in that context if some lawyers regard a tight schedule as the penalty for lack of interest in settlement.

Problems and Suggestions

The comments on the questionnaires contained a number of suggestions for improving the administration of the program that were premised on the assumption that the program is basically sound.

One theme that recurred with some frequency was a plea for relief from lawyers not located in New York City. Although a few CAMP conferences have been convened at locations outside New York City and some are held on the telephone, staff counsel generally required during the period of the second experiment that at least the first conference be held in person at the courthouse in Foley Square. When lawyers are from outside New York City, the burden imposed by attendance at the conference obviously becomes greater. A lawyer from midtown or downtown Manhattan will not normally devote much more than two hours to attending a conference, including travel time. A lawyer from Rochester or Hartford or Burlington or Washington, D.C., is likely to be taken out of his or her office for the entire day.

A variety of possible solutions for this problem were proposed. These included greater use of telephone conferences, more flexibility in canceling conferences where it is clear that a case is not settleable, and a proposal that conferences be held outside New York City on a regular basis. One out-of-town lawyer asked that consideration be given to not requiring a personal appearance at more than one conference.

The proposal that conferences be held outside New York City would of course not solve the problem in cases in which the opposing lawyers are not from the same area, and it is not clear to us whether the volume of appeals in which this practice would be helpful is enough to support a reasonable schedule of circuit-riding. As has previously been noted, the two staff counsel have responded to the problem by increasing their willingness to conduct conferences over the telephone when out-of-town lawyers are involved. Telephone conferences seem likely to be less effective than face-to-face conferences, however. If a schedule of conferences outside New York City could practicably be arranged, it might be desirable to do so.

Several lawyers attending their first conferences indicated that the conference would have been more fruitful if they had been better informed beforehand of what would take place there:

I believe the parties should be made aware that the conference will entail a factual & legal discussion, in depth, of the issues.

At conference, Mr. _____ wanted parties to discuss legal points (citing cases) of their positions. While I think this is a good idea, it was not made clear to me before the CAMP conference that this was expected & I was not prepared.

The inclusion of the court's June 1982 guidelines with the initial conference orders should go a long way toward alleviating any misunderstandings on this score.

A number of lawyers expressed concern that the lawyers who attend conferences sometimes do not have serious negotiating authority. This apparently occurs in both public and private litigation, although there is some reason to think that it is more common in public litigation because of the bureaucratic processes involved in the government's reaching settlement decisions. One respondent suggested that government lawyers should be required to come to the conference with someone from the agency being represented.

Some lawyers suggested that litigants should regularly attend the conferences. Others, as has already been noted, are troubled by what they regard as an interference in the lawyer-client relationship when staff counsel do ask litigants to attend.

Finally, there were several suggestions to the effect that staff counsel should be better prepared, including one suggestion that the parties be required to submit two-or-three-page summaries of the issues and one suggestion that staff counsel be given law clerk assistance.

Conclusion

It seems clear that most lawyers who practice in the Second Circuit like the CAMP program, and that they like it primarily because they believe (correctly) that it fosters the nonjudicial resolution of some appeals. Other lawyers do not favor the program because they regard it as ineffective. And a minority find the conferences objectionable, basically on the ground of “undue pressure,” sometimes more colorfully expressed. Most lawyers apparently find staff counsel’s aggressive pursuit of settlement desirable and many find it highly praiseworthy, but it must be recognized that there is a group that does not.

In reporting on the particular appeals that were the subject of the study, about a quarter of the responding lawyers in conferenced appeals that reached argument said that they thought the program had resulted in improvement of the quality of the brief or oral argument. About 30 percent reported that the program had resulted in resolution of various procedural issues; beyond that, a number of favorable comments about this aspect of the program were received.

Questionnaire respondents made a number of suggestions for improvements in administration of the program, some of which seem to deserve serious consideration by the court.

APPENDIX A

Technical Notes

Notes to Chapter 3

Statistical Analysis of Categorical Data

The categorical data presented in tables 1, 2, 6, and 8 through 12 were analyzed using what are termed log-linear analysis procedures. These procedures were used because they made it possible to test for whether CAMP is more effective in some circumstances than in others. The procedures test whether each of several characteristics of a case (such as its case type or its assignment to staff counsel or the control group) helps predict whether it will be argued. The tests are conducted by estimating the effect of each characteristic on the argument rate and then determining whether that effect is sufficiently large to be unlikely to have resulted from chance.

In conducting the analysis, one of the characteristics, or "sample factors," was always the three-level treatment factor (Fensterstock, Scardilli, or control). When a second sample factor was used, it was a characteristic, such as case type or basis of jurisdiction, that might interact with the treatment. If the dependent variable was not dichotomous, it was rendered dichotomous by combining categories prior to performing the analysis. Contrasts were generated that compared either the entire CAMP group with the control group or each staff counsel separately with the control group. As is discussed below, when the entire CAMP group was compared with the control group, the data were adjusted so that each staff counsel was given the weight he would have had if both had been assigned equal numbers of appeals in the experiment.

Models were generated and their fit with the observed data was tested according to the following sequences of contrast specification:

1. For comparison of CAMP appeals with controls: CAMP vs. control contrast, Fensterstock vs. Scardilli contrast, all second sample factor contrasts, second sample factor contrast interactions with CAMP vs. control contrast, second sample factor contrasts with Fensterstock vs. Scardilli contrast.
2. For comparison of Fensterstock appeals with controls: Scardilli vs. control contrast, Fensterstock vs. control contrast, all second sample factor contrasts, all interaction contrasts (entered simultaneously).

3. For comparison of Scardilli appeals with controls: Fensterstock vs. control contrast, Scardilli vs. control contrast, all second sample factor contrasts, all interaction contrasts (entered simultaneously).

Significance testing was conducted in two ways. First, we tested the marginal decrease in the maximum-likelihood chi-square when the contrast in question was included in the model. In other words, we tested whether inclusion of a particular case characteristic resulted in significant improvement in the capacity of the model to account for variation in argument rates. Second, the estimated effect of the contrast in the full model was divided by its standard error and the resulting value was evaluated as a standard normal (z) statistic. This is logically equivalent to constructing a confidence interval around the estimated effect and assessing whether it includes zero, or no effect. In all instances, these two types of significance testing led to the same conclusion.

To generate confidence intervals for the various argument-rate comparisons we report, we first generated estimates of the effects in log-linear models. The models used included only the assignment categories (staff counsel or control) as potential explanations of argument-rate differences. (The confidence limits were constructed only after we had determined that there were no significant interactions between assignment and other case characteristics.) The log-linear estimate of the comparison in question was then changed by adding or subtracting 1.96 or 1.0 times the standard error of the estimate. The resulting value was reentered in the log-linear model formula and used to estimate first the odds ratio and then the raw proportion in each condition in the comparison. The values shown in the tables for confidence intervals are the values obtained for the differences in estimated proportions computed in this fashion.

Statistical Analysis of Noncategorical Data

Measures of brief length in chapter 4 and elapsed time in chapter 5 were analyzed with both parametric and nonparametric procedures.

The parametric procedures were based on analysis-of-variance methods. The tests followed what is termed the regression approach and used sequences of model construction identical to those noted above; final tests of the contrasts were computed as F tests with a single degree of freedom. The confidence intervals were constructed using the observed differences between groups of cases and, as an estimate of the standard error of the difference, the

usual formula for pooled variance estimates for groups of unequal size.¹⁷

The brief length and elapsed time data were generally nonnormal in their distribution; often they showed considerable skew. The analysis-of-variance techniques were used in spite of this violation of one of the assumptions of the procedure because the large, more or less equal, samples in the two staff counsel groups and the control group provided some assurance that significance tests would not be much affected by the nonnormalcy. However, the substantial variability of the brief length and elapsed time data rendered analysis of variance less powerful than it might otherwise have been. For this reason, the analysis-of-variance techniques were supplemented by use of the Kolmogorov-Smirnov test.¹⁸

Basically, this test involves developing a cumulative distribution of a staff counsel's cases (or all CAMP cases) and a similar distribution of control cases on the basis of the brief length or elapsed time variable, and determining whether the largest distance between two cumulative distributions exceeds the test statistic. Because it examines all points on the cumulative distribution, we regarded it as preferable to a test of medians. The Kolmogorov-Smirnov test assumes a continuous variable, and our data contained instances in which more than one appeal had the same aggregate brief length or elapsed time. We resolved ties in a conservative manner (i.e., so as to minimize the observed difference between the two cumulative distributions).

With regard to the measures of brief length, the Kolmogorov-Smirnov test confirmed the results of the parametric tests, which found no significant effects. We therefore do not refer to the Kolmogorov-Smirnov test in the discussions of brief length in the text of chapter 4. It is referred to, however, in the discussion of elapsed time in chapter 5.

Nonindependence of Comparisons

The three comparisons (CAMP with controls, Fensterstock with controls, and Scardilli with controls) used most often in the analysis of the data were not orthogonal. We have undertaken some correction for the nonindependence of our tests by placing more stringent criteria for significance on the two comparisons involving individual staff counsel: These are tested at the .025 level. In addition, in the parametric hypothesis tests and the log-linear tests, program effects in these two comparisons have usually been estimated in a

17. See W. Hays, *Statistics* 464-65 (1973).

18. See W. Conover, *Practical Nonparametric Statistics* 308-14 (1971).

way that renders them independent of each other (although not independent of the comparison of CAMP with controls). Independent estimation could not be done for the Kolmogorov-Smirnov test.

For two reasons, we report the results of all three comparisons without attempting any further correction. First, we believe that the various formulas that exist for correcting the results of such radically nonorthogonal tests result in an overcorrection that would produce undue conservatism in the analysis of the program effects. Second, although each of the comparisons provides a somewhat different perspective on the effects of CAMP, we note that our conclusions would be little altered if we had used only the comparison of CAMP with controls. We have presented all three comparisons in order to describe the effects of the program in what seems to us to be a conservative, but not overly conservative, fashion.

Nonindependence of Some Data

The assumption of independence of cases is common to all the statistical procedures we have used. Our decision to retain in the study as distinct units of analysis cases that were consolidated with others by motion or that were "related to" other cases raises the question whether this assumption has been fully met. Appeals consolidated by motion almost surely tended to be argued together or settled together; that was probably also true of some groups of appeals that were treated as "related."

When appeals were consolidated automatically, the problem of lack of independence was resolved by treating the consolidated group as a single unit for purposes of the analysis. This could not be done for groups of "related cases," since court records identified appeals as related to earlier appeals only if they had been excepted on that ground from assignment according to docket number: There was no identifiable universe of "related cases" that included pairs or larger groups that fortuitously received the same assignment. With regard to appeals consolidated by motion, we were concerned that the fact of consolidation may have been a result of CAMP treatment.

Our solution was to classify the later-filed appeals in groups of related appeals, and in groups of appeals consolidated by motion, according to their docket number rather than their actual assignment to a staff counsel or the control group. (The actual assignment followed the assignment of the lead appeal.) Under this solution, there was no systematic tendency for cases within a related or

consolidated group to be classified in the same way.¹⁹ Moreover, there was no systematic tendency for outcome measures for these appeals, such as mode of disposition, to be correlated with the classification we used—a classification that did not in fact affect the way an appeal was processed. The problem of nonindependence thus takes on an unusual form.

With regard to the data about mode of disposition, we simulated the statistical consequences of our assignment procedure on a variety of assumptions, and we were able to satisfy ourselves that the procedure results in more conservative estimates of significance than would have been obtained had we been able to treat these groups of related cases as single units of analysis. We have not been able to conduct a similar simulation with the parametric data. However, we regard it as unlikely that the impact on significance estimates was great.

Our data include thirteen trailing appeals in groups consolidated by motion, of which ten were classified inconsistently with their actual assignments. Of the appeals assigned inconsistently with their docket numbers because “related” to earlier appeals, many were related to appeals docketed before the study began. So long as only one appeal in a related group was included in the study, the problem of independence is of course not raised. The data include about twenty appeals that were assigned inconsistently with their docket numbers and are likely to have been related to other appeals in the study. This number, which includes appeals for which the reason for an inconsistent assignment is unknown, suggests that there may have been thirty appeals in all that were related to prior appeals also included in the study (ten of which fortuitously received docket numbers that produced the same assignment as the lead appeal).

Corrections for Differences in Sample Size in Some Analyses

The sample included 169 appeals that were classified as assigned to Mr. Scardilli and 149 that were classified as assigned to Mr. Fensterstock. Over a longer term, however, the assignment system should result in assignment of equal numbers of appeals to the two staff counsel. Hence, in analyzing the impact of the program we have, where feasible, adjusted the data to compensate for the unequal numbers in the sample. In a table such as table 1, which deals with the percentage that were argued of all appeals in the

19. Indeed, it appears that there may have been some tendency for them to be classified in different ways: If two appeals were filed at the same time and received consecutive docket numbers, both could not be assigned to the same staff counsel or to the control group.

sample, the adjustment is easily made: The CAMP percentage is simply the average of the separate percentages for the two staff counsel. In a table such as table 6, however, that involves only argued cases, the problem is more complex: Giving equal weight to the separately computed percentage of written opinions for each staff counsel would ignore the fact that, in the sample data, the two staff counsel had different proportions of appeals reaching argument.

In such cases, it can be shown that the weighted fraction, F , is expressed by the formula

$$F = \frac{149N_S + 169N_F}{149D_S + 169D_F}$$

where N_S and N_F are the numerators and D_S and D_F the denominators of the fractions computed separately for the individual staff counsel. It is immaterial whether the fraction, F , represents the calculation of a mean or a percentage, and the formula has been used for both kinds of data.

The simple average of the separate proportions or means for the two staff counsel was used to make the adjustment in analyses in which CAMP could not have affected the composition of the group being analyzed—specifically in tables 1, 3, 4, and 8 through 13. The above formula was used to make the adjustment in tables 5 through 7 and 14 through 17.

The methods described above for testing significance and calculating confidence limits are such that the adjustment is reflected in them.

Notes to Chapter 4

Generation of Confidence Intervals Reported in Table 3

The confidence intervals reported in table 3 were generated through the use of a Monte Carlo simulation developed by our colleague John Shapard.

The fraction of interest may be expressed as

$$\frac{T - C}{C} \quad \text{or} \quad \frac{T}{C} - 1$$

where T is the proportion of treatment (CAMP) cases argued and C is the proportion of control cases argued. In the simulation, 200,000 samples are drawn from a population in which the proportion of

CAMP cases argued and the proportion of control cases argued are the proportions that we actually observed in the experiment. Each sample contains 152 control cases and the appropriate number of CAMP cases for the analysis being performed. The ratio T/C is computed for each sample, and the confidence limits are based on the distribution of the 200,000 computed ratios. (In generating confidence intervals for the comparison of CAMP appeals with controls, we used the adjusted CAMP proportion from table 1 as the value of T and 318 appeals as the number of CAMP cases in the sample.)

Strictly speaking, the simulation provides a distribution of experimental observations based on samples drawn from a universe in which the true values are known. That is not the same as finding the confidence interval for the true value when the observed value is known. Since our observed values of T and C were not extreme (ranging from 46.2% to 67.1%), we suspected that the limits generated by the simulation would be close approximations of the theoretically correct limits. We subsequently confirmed that belief by entering into the simulation values of T and C that would produce values of T/C equal to the computed confidence limits. This procedure provided a test of whether our actual observations in the CAMP experiment were consistent with the alternative hypotheses, first, that the true value was the computed upper limit and, second, that the true value was the computed lower limit. In performing this test, we first set T at the value we actually observed and C at the value necessary to make T/C equal to a computed confidence limit; we then reversed the procedure. We thereby tested with the most extreme values of T and C that would produce a ratio equal to the computed limit.

In all cases, the new confidence limits, based on the assumption that the true value was equal to the computed limit, were within about 2.5 percentage points of the observed value, and in most cases they were considerably closer. While the confidence intervals reported in table 3 are thus approximations, we believe that they are quite respectable ones.

Measuring Brief Lengths

The measures of brief length were developed by examining microfiche records of Second Circuit briefs that are maintained by the Library of Congress. Information from docket sheets was used to check on the completeness of the microfiche records. For 1978 docket numbers, the library's collection was virtually complete. For 1979 docket numbers, it was much less complete. There were also some cases in which the microfiche record of an individual case did

not contain all the briefs shown on the docket sheet, and in which we could therefore not develop an aggregate brief length; generally, these were cases with large numbers of briefs. Further detective work at the courthouse in Foley Square probably would have allowed us to obtain brief lengths in nearly all the argued cases, but the analysis we did on the 92 percent sample we had did not suggest that this was likely to add to our knowledge. There is reason to suspect that the missing 8 percent had longer aggregate brief lengths, on the average, than the 92 percent, but there is no reason whatever to believe that any systematic bias was introduced into the comparison of CAMP and control appeals.

In counting pages, we excluded brief covers and blank pages (including pages that had only a printer's logo). We included everything else that was shown on the microfiche as having been included in the briefs, including certificates of service and appendixes that were printed as integral parts of the briefs. This rule was necessitated by the fact that we were counting microfiched pages without putting the fiche in a reader. Using this technique, we were not able to distinguish one printed page from another, or one typed page from another, on the basis of their content. The result, however, is that we have an imperfect count of something that is arguably not a good surrogate in any event for the burden or complexity of an appeal.

With regard to cases consolidated by motion, the aggregate brief length was evenly divided among the consolidated cases, since we treated the individual appeals as separate units of analysis.

The decision to treat one printed page as the equivalent of 1.5 typed pages was based on counting the number of words on a full page of text in small samples of printed and typed briefs. Obviously, we are dealing in somewhat rough measures: A typed page in one brief may not be the equivalent of a typed page in another. As is noted in the text, we established that our conclusions would be the same if we had used either 1.25 typed pages or 1.75 typed pages as the basis of conversion.

Information on Basis of Jurisdiction

CAMP form C, filed by the appellant's lawyer, inquires about the basis of trial court jurisdiction of the case. The alternatives offered are "U.S. a party," "federal question (U.S. not a party)," "diversity," and "other (specify)."

We did not second-guess lawyers' jurisdictional assertions. However, if the question was not answered on form C, we did make an effort to fill in the missing data from briefs or other papers filed in the case.

If both “federal question” and “diversity” were checked, the case was coded as “federal question.” In addition, if the lawyer checked “Other” and wrote in either “admiralty” or “Jones Act,” the case was treated as a federal question case.

Whether Only a Money Judgment Was Sought

CAMP form C also asks whether damages were sought in the court below and whether an injunction was sought. On many of the forms, this question was left unanswered. On others, it became clear from the narrative statement about the case that the answer to the question was incomplete. Hence, our coding was based on a combination of the answers to the specific question and the narrative statement on form C, sometimes supplemented with information from the briefs or case files. We excluded administrative agency appeals from this exercise because form C-A, the version of form C used for such appeals, does not ask the question. We excluded bankruptcy appeals because we found it extremely difficult to code them with confidence.

Generally, the effort was to determine whether the underlying dispute was one in which a judgment for the plaintiff would produce only a money judgment. Therefore, an appeal was treated as “money only” even though the appeal may have been interlocutory and thus not been an appeal from a money judgment or the denial of one. However, if the appeal involved a collateral issue that appeared to have the potential for independent settlement, it was classified according to that issue. A claim for attorneys’ fees arising out of a lawsuit in which injunctive relief was sought, for example, was treated as a “money only” appeal.

A substantial number of cases were difficult to classify, and there may be a number of errors in the data. The expected result of such misclassification would be understatement of any difference that existed between “money only” and other appeals.

A motion to compel or confirm an arbitration award was treated as “money only” only if it clearly appeared that just money was at stake; frequently it was not clear from form C in such a case what the underlying issue was. Lien and foreclosure cases were treated as “money only”; condemnation cases were not. Social Security appeals were not treated as “money only” because they generally involve eligibility questions that have no middle ground: There is no possibility of settling them by agreeing on reduced benefits.

Stage of Litigation

Information on the stage of litigation in the trial court at the time the appeal was taken was also based on information provided by the appellant's attorney on form C. Since the version of the form for administrative agency appeals does not ask the question, these appeals have been excluded from the analysis.

The alternatives offered on form C are "pretrial," "during trial," and "after trial." Examination of the forms suggests that the responses to this question were probably subject to a high error rate. It appears that many lawyers had difficulty when the order below was issued without a trial but was dispositive of the litigation. Although motions leading to such orders are commonly characterized as pretrial motions in the profession, the lawyers apparently did not find it easy to characterize as "pretrial" a decision that obviated the need for a trial. Hence, we found some questionnaires in which a judgment on the pleadings was labeled "after trial" and a number in which lawyers struck out "after trial" and wrote in "after hearing" without indicating whether the hearing was evidentiary.

Our general coding policy with regard to this question was to take the lawyer's response at face value unless it was clearly erroneous. Our suspicion is that a good deal of error remains.

Whether the Appeal Was from a Final Order or an Interlocutory One

Form C asks the appellant's lawyer to characterize the decision below as "final" or "interlocutory." The distinction is, of course, a technical one: Some decisions characterized as "final" may not be dispositive of the underlying litigation, and some characterized as "interlocutory" may for all practical purposes be dispositive. In analyzing the responses to this question, we did not second-guess. We regarded the lawyer's response as his or her claim that there was appellate jurisdiction in the case, and let it stand even where it seemed plainly wrong (e.g., an appeal from a preliminary injunction labeled as final and an appeal that was dismissed for lack of appellate jurisdiction). However, where the lawyer did not complete the form, or where there was an inconsistency in the forms filed for cases that were automatically consolidated, we did make some judgments on the basis of other information on the form or in the file or brief. We do not believe the error rate was high.

Note to Chapter 5

Data on Case Duration

The data on case duration were taken from docket sheets. They appear to be highly reliable.

Where more than one appellant filed a principal brief, the date recorded is the date of the last appellant's brief. Briefs filed by intervenors and amici curiae were ignored, however. If a brief was first filed in page proof, the filing date was recorded as the date of the page proof; delays from page proof to printed brief were typically only a few days.

Some cases were withdrawn or dismissed after briefing but subsequently reinstated and argued. In those cases, the filing dates that we recorded were the dates for the second round of briefs. Two of these appeals were withdrawn or dismissed after argument and subsequently reinstated and reargued; for those we recorded the dates of the second argument and the second round of briefs. For appeals in which the court reached a decision after an argument, however, we ignored subsequent proceedings; the original briefs and arguments were counted even though a rehearing may have been granted or a new argument held after Supreme Court review.

Disposition dates in appeals that were withdrawn or dismissed and subsequently reinstated are the dates of the action following reinstatement. Where automatically consolidated appeals had different disposition dates, the later date was used.

Notes to Chapter 6

Expressions of Preference on Attorney Questionnaire

Among the respondents who did not provide a "yes" or "no" answer to the preference question, several provided answers suggesting that CAMP conferences are valuable in some kinds of cases but not others. Perhaps the most common suggestion was that the program is useful primarily where the appeal is frivolous. Others suggested that staff counsel should make a judgment about whether there is a possibility of "give" in a case and decide on that basis whether to call a conference. This was in fact done in the early days of the CAMP program.

As is noted in the text, twenty-five questionnaires were eliminated from the tabulations about preference because the respondents indicated that they had previously sent in questionnaires as part of the study. Excluding these questionnaires was an effort to imple-

ment the “one lawyer, one vote” principle. However, it seems probable that the principle has not been fully implemented and that some duplication remains in the count. Each of the three questionnaire forms provided an opportunity to “check here if you have used this form before.” The box was checked only on the twenty-five questionnaires that have been excluded. However, the absence of a check mark could represent a failure to respond to the question rather than an indication that the lawyer had not previously returned a questionnaire. Since the opportunity to indicate prior use of the form was on the back of the questionnaire, following the space for comments, one might expect a rate of nonresponse somewhat higher than that found for questions on the face of the form. Moreover, on thirty-two forms, the back of the questionnaire did not print, and the question was not asked at all. Finally, if the lawyers were conscious of the fact that the forms for unconferenced cases were different from the forms for conferenced cases, they might properly have indicated that they had not used “this form” before even though they had previously filed one of the other forms of the questionnaire.

If duplication does remain, the resulting tendency would be for lawyers who are regulars in the court of appeals to be overrepresented in the preference poll.

Even though we have been unable to analyze the rate of nonresponse to the questionnaire and there is probably some double counting in the preference poll, it seems quite clear that most lawyers who practice in the Second Circuit Court of Appeals look upon the CAMP program favorably.

Reanalysis of the Goldman Data about the Quality of Appeals

As is discussed in the text, Goldman’s 1977 study included a questionnaire to judges sitting on appellate panels. In the questionnaire, judges were asked a number of questions about the quality of the appeals that came before them. For many of the appeals in the sample, there were ratings of the relevant characteristics by two or three judges. By treating the questionnaire as the unit of analysis in statistical tests of differences in means and proportions, Goldman overlooked the lack of independence in the responses of two or three judges to a question about the same appeal. In effect, he treated each rating as if it concerned a separate appeal, which had the effect of magnifying the size of the sample.

For the four quality measures for which Goldman found a statistically significant difference between CAMP cases and control cases—those tabulated in tables 16, 19, 20, and 21 of his study—we have reanalyzed the data using multiple regression. The dependent

variable in the regression equation was the rating. The independent variables were the treatment the appeal received (CAMP or control), the identity of the rating judge (handled by using a dummy variable for each judge who heard appeals), and an interaction term combining judge identity and treatment.

Goldman's tables 19, 20, and 21 were based on a three-point rating scale: "Better than average" was scored as 1, "average" was scored as 2, and "worse than average" was scored as 3. Because this may not be a true interval scale, we ran the regressions using not only the three-point scale but also two-point scales constructed from it: one scale in which "average" was combined with "better than average" and one in which "average" was combined with "worse than average." We thus had three regression equations for each of these three dependent variables. In no case did CAMP intervention have a statistically significant effect on the quality measure.

Goldman's table 16 was based on a "yes" or "no" question, which we converted into values of 1 and 2. Once again, there was no statistically significant difference between CAMP and control appeals.

Use of the regression approach moderates the impact of lack of independence, but does not eliminate the problem entirely. Except for the possibility of averaging the answers of the judges who rated a particular appeal, we were unable to find a technique that would wholly eliminate the impact of nonindependence. We were reluctant to use the averaging approach because it ignores differences among judges in their rating standards rather than taking account of them; there were in fact statistically significant differences among judges. In view of the finding that there were no significant differences between CAMP and control appeals when the regression approach was used, we need not be concerned about whether it provides a sufficiently rigorous significance test.

APPENDIX B
CAMP Documents

Civil Appeals Management Plan of the United States Court of Appeals for the Second Circuit

The United States Court of Appeals for the Second Circuit has adopted the following plan to expedite the processing of civil appeals, said plan to have the force and effect of a local rule adopted pursuant to Rule 47 of the Federal Rules of Appellate Procedure.

1. Notice of Appeal, Transmission of Copy and Entry by Court of Appeals.

Upon the filing of a notice of appeal in a civil case, the clerk of the district court shall forthwith transmit a copy of the notice of appeal to the Clerk of the Court of Appeals, who shall promptly enter the appeal upon the appropriate records of the Court of Appeals.

2. Appointment of Counsel for Indigent, Advice by District Court Judge.

If the appeal is in an action in which the appellant may be entitled to the discretionary appointment of counsel under 18 U.S.C. § 3006(A)(g) but has not had such counsel in the district court and there has been any indication that he may be indigent, the judge who heard the case shall advise the Clerk of the Court of Appeals whether in his judgment such appointment would be in the interests of justice.

3. Docketing the Appeal; Filing Pre-argument Statement; Ordering Transcript.

Within ten days after filing the notice of appeal, the appellant shall cause the appeal to be docketed by taking the following actions:

a) filing with the Clerk of the Court of Appeals and serving on other parties a pre-argument statement (in the form attached hereto as Form C with such changes as the Chief Judge of this Court may from time to time direct) detailing information needed for the prompt disposition of an appeal;

b) ordering from the court reporter on a form to be provided by the Clerk of the Court of Appeals (Form D), a transcript of the proceedings pursuant to FRAP 10(b). If desirable the transcript production schedule and the portions of the proceedings to be tran-

Appendix B

scribed shall be subject to determination at the pre-argument conference, if one should be held, unless the appellant directs the court reporter to begin transcribing the proceedings immediately;

c) certifying that satisfactory arrangements have been or will be made with the court reporter for payment of the cost of the transcript;

d) paying the docket fee fixed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1913 (except when the appellant is authorized to prosecute the appeal without payment of fees).

4. Scheduling Order; Contents.

a) In all civil appeals the staff counsel of the Court of Appeals shall issue a scheduling order as soon as practicable after the pre-argument statement has been filed unless a pre-argument conference has been directed in which event the scheduling order may be deferred until the time of the conference in which case the scheduling order may be entered as part of the pre-argument conference order.

b) The scheduling order shall set forth the dates on or before which the record on appeal, the brief and appendix of the appellant, and the brief of the appellee shall be filed and also shall designate the week during which argument of the appeal shall be ready to be heard.

5. Pre-Argument Conference; Pre-argument Conference Order.

a) In cases where he may deem this desirable, the staff counsel may direct the attorneys to attend a pre-argument conference to be held as soon as practicable before him or a judge designated by the Chief Judge to consider the possibility of settlement, the simplification of the issues, and any other matters which the staff counsel determines may aid in the handling or the disposition of the proceeding.

b) At the conclusion of the conference the staff counsel shall enter a pre-argument conference order which shall control the subsequent course of the proceeding.

6. District Court Extension of Time; Notification by Clerk.

In the event the district court grants an extension of time for transmitting the record pursuant to FRAP 11(d), the clerk of the district court shall promptly notify the Clerk of the Court of Appeals to that effect.

7. Non-Compliance Sanctions.

a) If the appellant has not taken each of the actions set forth in paragraph 3 of this Plan within the time therein specified, the appeal may be dismissed by the Clerk without further notice.

b) With respect to docketed appeals in which a scheduling order has been entered, the Clerk shall dismiss the appeal upon default of the appellant regarding any provision of the schedule calling for action on his part, unless extended by the Court. An appellee who fails to file his brief within the time limited by a scheduling order or, if the time has been extended as provided by paragraphs 6 or 8, within the time as so extended, will be subjected to such sanctions as the Court may deem appropriate, including those provided in FRAP 31(c) or FRAP 39(a) or Rule 38 of the Local Rules of this Court supplementing FRAP or the imposition of a fine.

c) In the event of default in any action required by a pre-argument conference order not the subject of the scheduling order, the Clerk shall issue a notice to the appellant that the appeal will be dismissed unless, within ten days thereafter, the appellant shall file an affidavit showing good cause for the default and indicating when the required action will be taken. The staff counsel shall thereupon prepare a recommendation on the basis of which the Chief Judge or any other judge of the Court designated by him shall take appropriate action.

8. Motions.

Motions for leave to file oversized briefs, to postpone the date on which briefs are required to be filed, or to alter the date on which argument is to be heard, shall be accompanied by an affidavit or other statement and shall be made no later than two weeks before the brief is due or the argument is scheduled unless exceptional circumstances exist. Motions not conforming to this requirement will be denied. Motions to alter the date of arguments placed on the calendar are not viewed with favor and will be granted only under extraordinary circumstances.

9. Submission on Briefs; Assignment to Panel.

When the parties agree to submit the appeal on briefs, they shall promptly notify the Clerk, who will cause the appeal to be assigned to the first panel available after the time fixed for the filing of all briefs.

10. Other Proceedings.

a) Review of administrative agency orders; applications for enforcement.

In a review of an order of an administrative agency, board, commission or officer, or an application for enforcement of an order of an agency,

(i) The Staff Counsel of the Court of Appeals shall issue a scheduling order as soon as practicable setting forth the dates on or before which the record or authorized substitute, the petitioner's brief and the appendix and the brief of the respondent shall be filed and also shall designate the week during which argument of the proceeding shall be ready to be heard;

(ii) Paragraph 5 of this Plan, pertaining to Pre-Argument Conferences, and Pre-Argument Conference Orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

(b) Appeals from the United States Tax Court.

In a review of a decision of the tax court,

(i) Paragraphs 3(a) and 3(d) of this Plan, pertaining to filing pre-argument statements and payment of the docket fee, shall be applicable to this subparagraph. If the appellant has not taken each of the actions set forth in those paragraphs within the time specified in Paragraph 3, the appeal from the tax court may be dismissed by the Clerk of the Court without further notice.

(ii) Paragraph 4 of this Plan, pertaining to scheduling orders, shall also be applicable hereto.

(iii) Paragraph 5 of this Plan, pertaining to Pre-Argument Conferences and Pre-Argument Conference Orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

11. The foregoing Civil Appeals Management Plan shall, except for Paragraph 10, be applicable to all civil appeals in the Court of Appeals from the district courts in the Second Circuit in which the Notice of Appeal is filed on or after April 15, 1974.

12. Paragraph 10 shall be applicable to all petitions and appeals specified in Paragraph 10(a) and (b) filed in the Court of Appeals on or after January 1, 1976.

Guidelines for Conduct of Pre-Argument Conferences, Issued June 25, 1982

The conference is held by Staff Counsel with attorneys for the parties under the Civil Appeals Management Plan, Rules of the Second Circuit Court of Appeals. 28 U.S.C.A., Rules, pp. 487-93.

PURPOSES

The purposes are to consider the possibility of settlement, simplification of the issues, and any other matters which may aid in the processing and disposition of the appeal. Experience shows that preliminary review of the issues by the parties with Staff Counsel often leads to a realistic and less partisan view of the chances of success, resulting in settlement or withdrawal of some appeals or particular issues.

With a view to enabling the parties to resolve issues, Staff Counsel, after hearing counsel, is ordinarily expected to give them the benefit of his views of the merits or other aspects of the appeal.

AUTHORITY, PREPARATION AND ATTITUDE OF PARTIES

The success of the conference depends on the attorneys treating it as a serious and non-perfunctory procedure which can often save time and expense for the parties. All sides should be thoroughly prepared to discuss in depth the alleged errors and the reasons for their positions. Attorneys should obtain advance authority from their clients to make such commitments as may reasonably be anticipated.

GOOD FAITH AND NON-COERCIVENESS

The parties are obligated to participate in good faith with a view to resolving differences as to the merits and issues. This process requires each attorney, no matter how strong his or her views, to exercise a degree of objectivity, patience and cooperation that will permit him or her to make a decision based on reason. In this process the Staff Counsel, who provides objective expertise in a forum for appraisal of the merits and expedition of each appeal, is entitled to their respect and his views should be carefully considered. His views, however, are his own and not those of the court, with which he does not communicate about a case. If, after this procedure, attorneys believe in good conscience that they cannot reach an agreement, they are not under any compulsion to do so.

CONFIDENTIALITY

All matters discussed at a conference, including the views of Staff Counsel as to the merits, are confidential and not communicated to any member of the court. Likewise parties are prohibited from advising members of the court or any unauthorized third parties of discussions or action taken at the conference. *In re Lake Utopia Paper Limited*, 608 F.2d 928 (2d Cir. 1979). Thus the court never knows what transpired at a conference.

PRESENCE OF CLIENTS

Ordinarily attorneys are expected to attend the conference without their clients. However, with the permission of Staff Counsel, clients may attend with their attorneys. In the limited number of cases where Staff Counsel reasonably believes that presence of a client might be helpful he may request an attorney to have his client attend the conference with him. Staff Counsel does not talk with clients outside of the presence of their attorneys.

CONFERENCES BY TELEPHONE OR AT DISTANT LOCATIONS

Where considerable distances or other substantial reasons warrant, Staff Counsel may in appropriate cases conduct pre-arranged telephonic conferences. Where a sufficient number of cases can be accumulated and judicial efficiency and economy permit, Staff Counsel may also hold conferences within the Circuit, at locations other than Foley Square, New York City.

These provisions are designed to accommodate parties whose attorneys would otherwise be seriously inconvenienced by being forced to travel long distances or for other reasons.

SCHEDULING ORDERS

In the interest of obtaining prompt resolution of appeals, most scheduling orders in the Second Circuit are somewhat tighter than the schedules provided for in the Federal Rules of Appellate Procedure. See FRAP 31(a).

GRIEVANCES

Any grievances as to the handling of any case under the CAMP program should be addressed to the Circuit Executive, Steven Flanders, Room 1803, who will hold them confidential on behalf of the Circuit Court of Appeals unless release is authorized by the complainant.

Civil Appeal Pre-Argument Statement (Form C)

United States Court of Appeals
SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL:		DISTRICT JUDGE	
DATE FILED IN DISTRICT COURT / /		DISTRICT COURT DOCKET NUMBER	
APPROX. NUMBER OF PAGES IN TRANSCRIPT	NUMBER OF EXHIBITS	HAS TRANSCRIPT BEEN MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO	
DATE NOTICE OF APPEAL FILED / /		IS THIS A CROSS APPEAL? <input type="checkbox"/> YES <input type="checkbox"/> NO	
HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? IF YES, STATE:		<input type="checkbox"/> YES <input type="checkbox"/> NO	
CASE NAME:		DOCKET NUMBER:	
ATTORNEY(S) FOR: NAME ADDRESS TELEPHONE		TELEPHONE	
APPELLANT: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY):		APPELLEE: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY):	

A. JURISDICTION		B. DISTRICT COURT DISPOSITION <small>Check as many as apply.</small>			
1. FEDERAL	2. APPELLATE	1. STAGE OF PROCEEDINGS	2. TYPE OF JUDGMENT/ORDER APPEALED	3. RELIEF	
<input type="checkbox"/> U.S. A PARTY <input type="checkbox"/> FEDERAL QUESTION (U.S. NOT A PARTY) <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CONFIRMED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> PRE-TRIAL <input type="checkbox"/> DURING TRIAL <input type="checkbox"/> AFTER TRIAL	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DAMAGES: AMOUNT SOUGHT: \$ AMOUNT GRANTED: \$ () DENIED: \$ <input type="checkbox"/> INJUNCTIONS: () PRELIMINARY OR () PERMANENT () GRANTED OR () DENIED	

C. NATURE OF SUIT <small>Check as many as apply.</small>		D. PRISONER PETITIONS		E. OTHER	
1. FEDERAL STATUTES	2. TORTS	3. CONTRACTS	4. CIVIL RIGHTS	5. OTHER	
<input type="checkbox"/> ANTITRUST <input type="checkbox"/> BANKRUPTCY <input type="checkbox"/> BANKS AND BANKING <input type="checkbox"/> CIVIL RIGHTS <input type="checkbox"/> COMMERCE, ROUTES, AND TARIFFS <input type="checkbox"/> COMMODITIES <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> FREEDOM OF INFORMATION <input type="checkbox"/> IMMIGRATION <input type="checkbox"/> LABOR <input type="checkbox"/> DOMA <input type="checkbox"/> SECURITIES <input type="checkbox"/> SOC. SECURITY <input type="checkbox"/> TAX	<input type="checkbox"/> ADMIRALTY/MARITIME <input type="checkbox"/> ASSAULT/DEFAMATION <input type="checkbox"/> F.E.L.A. <input type="checkbox"/> PRODUCT LIABILITY/WARRANTY <input type="checkbox"/> OTHER	<input type="checkbox"/> ADMIRALTY/MARITIME <input type="checkbox"/> ARBITRATION <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> EMPLOYMENT <input type="checkbox"/> INSURANCE <input type="checkbox"/> NEGOTIABLE INSTRUMENTS <input type="checkbox"/> OTHER	<input type="checkbox"/> HABEAS CORPUS (2254) <input type="checkbox"/> HANDBOOKS AND OTHER <input type="checkbox"/> PAROLE <input type="checkbox"/> VACATE SENTENCE (2255) <input type="checkbox"/> CONFEITURE/PENALTY <input type="checkbox"/> REAL PROPERTY <input type="checkbox"/> TREATY (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	

6. GENERAL: <input type="checkbox"/> ARBITRATION <input type="checkbox"/> RTTY, DISQUALIFICATION <input type="checkbox"/> CLASS ACTION <input type="checkbox"/> COUNSEL FEES <input type="checkbox"/> SHAREHOLDER DERIVATIVE <input type="checkbox"/> TRANSFER		7. WILL APPEAL RAISE A CONSTITUTIONAL ISSUE? <input type="checkbox"/> YES <input type="checkbox"/> NO WILL APPEAL RAISE A MATTER OF FIRST IMPRESSION? <input type="checkbox"/> YES <input type="checkbox"/> NO	
BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:			
ISSUES PROPOSED TO BE RAISED ON APPEAL:			
TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH: (A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL? <input type="checkbox"/> YES <input type="checkbox"/> NO (B) INVOLVES AN ISSUE THAT IS SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, STATE WHETHER <input type="checkbox"/> "A" <input type="checkbox"/> "B" <input type="checkbox"/> OR BOTH, AND PROVIDE: CASE NAME: CITATION: DOCKET NUMBER: COURT OR AGENCY:			

FORM C 5/79

NAME OF APPELLANT: _____ NAME OF COUNSEL OF RECORD: _____ TELEPHONE: _____

DATE: _____ SIGNATURE OF COUNSEL OF RECORD: _____

CPO 946-041

Appendix B

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007
A. DANIEL FUSARO
CLERK

NOTICE TO COUNSEL AND PRO SE LITIGANTS

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only ten (10) days in which to docket your appeal. You must take the following steps within those ten (10) days.

1. Complete the Civil Appeal Pre-Argument Statement (Form C) which appears on the reverse side of this notice, serve it upon all other parties, and file it with the Clerk of the Court of Appeals.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Court of Appeals.
3. Pay the \$65 docketing fee to the Clerk of the United States District Court, unless you are authorized to prosecute the appeal without payment.

IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN TEN (10) DAYS YOUR APPEAL WILL BE DISMISSED.

A. Daniel Fusaro
Clerk

SEE: CIVIL APPEALS MANAGEMENT PLAN
OF THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Transcript Information (Form D)

FORM D

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

TRANSCRIPT INFORMATION CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellee; (5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
	JUDGE	APPELLANT
	COURT REPORTER	COUNSEL FOR APPELLANT

TRANSCRIPT ORDER

Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH
TRANSCRIPT IS REQUIRED (INCLUDE DATES)

I am ordering a transcript.

I am not ordering a transcript.
Reason:

- ☐ Daily copy is available.
☐ Other. Attach explanation.

METHOD OF PAYMENT ☐ FUNDS ☐ CJA VOUCHER (CJA 21)

- ☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
☐ PREPARE TRANSCRIPT OF TRIAL
☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

COUNSEL'S SIGNATURE	DATE
COURT REPORTER ACKNOWLEDGEMENT <p>To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.</p>	
DATE ORDER RECEIVED	ESTIMATED COMPLETION DATE
SIGNATURE OF COURT REPORTER	ESTIMATED NUMBER OF PAGES
	DATE

CPO 946-012

Mr. Fensterstock's Conference Order

United States Court of Appeals
FOR THE SECOND CIRCUIT

PRE-ARGUMENT CONFERENCE
Docket No.

A PRE-ARGUMENT CONFERENCE has been scheduled for
1982 at AM PM at the
United States Courthouse, Foley Square, New York, New York, 10007,
in Room 2803.

The attorneys in charge of the appeal or proceedings are required to attend and to have authority to do whatever is necessary to accomplish the purpose of the conference. A Pre-Argument Conference is for the purpose of considering the possibility of settlement, the simplification of the issues, and any other matters which the Staff Counsel determines may aid in the handling or the disposition of the proceeding. If there is any pertinent matter which counsel wishes to be raised, it may be raised at the Conference.

Dated: 1982 Nathaniel Fensterstock
Staff Counsel

SEE CIVIL APPEALS MANAGEMENT PLAN OF THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Mr. Scardilli's Conference Order

United States Court of Appeals
FOR THE
SECOND CIRCUIT

PRE-ARGUMENT CONFERENCE

DOCKET #

A PRE-ARGUMENT CONFERENCE has been scheduled for _____
at _____ AM _____ PM at the United States Court House,
Foley Square, New York, NY 10007 in ROOM 2803.

To effectuate the purposes of the Conference, the ATTORNEYS
IN CHARGE of the appeal or proceeding ARE REQUIRED TO ATTEND
and MUST:

- 1) have full authority to settle or otherwise dispose of the appeal or proceeding;
- 2) be fully prepared to discuss and evaluate seriously the legal merit of each issue on appeal or review;
- 3) be prepared to narrow, eliminate or clarify issues on appeal when appropriate.

Any other matters which the Staff Counsel determines may aid
in the handling of the disposition of the proceeding may be discussed.
Counsel may raise any other pertinent matter they wish at the Conference.

DATED: _____

FRANK J. SCARDILLI
Staff Counsel

SEE CIVIL APPEALS MANAGEMENT PLAN
OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Scheduling Order

United States Court of Appeals
FOR THE
SECOND CIRCUIT

ADDRESS ALL INQUIRIES TO:

CIVIL APPEAL SCHEDULING
ORDER #1

Docket No.

Noting that _____ counsel for the appellant has
filed a Notice of Appeal, a Civil Appeal Pre-Argument Statement and Transcript Information, and
being advised as to the progress of the appeal,

IT IS HEREBY ORDERED that an index to the record on appeal, prepared by the attorneys,
reflecting the agreement of the parties as to the composition of the record on appeal, shall be
filed on or before _____. It is further ordered that a copy of the docket
entries certified by the clerk of the district court shall be filed at the same time. The
original papers and exhibits, the transcript of the proceedings and the certificate of the clerk
of the district court shall be filed simultaneously with the brief of the appellant.

IT IS FURTHER ORDERED that the appellant's brief and the joint appendix shall be filed
on or before _____.

IT IS FURTHER ORDERED that the brief of the appellee shall be filed on or before _____.

IT IS FURTHER ORDERED that ten (10) copies of each brief shall be filed with the Clerk.

IT IS FURTHER ORDERED that the argument of the appeal shall be ready to be heard as
early as the week of _____. The time and place of oral argument shall be
separately noticed by the Clerk to counsel.

IT IS FURTHER ORDERED that in the event of default by the appellant in filing the index
to the record on appeal, the certified copy of the docket entries, the appellant's brief and
appendix, or the record on appeal, at the times directed, or upon default of the appellant
regarding any other provision of this order, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that if the appellee fails to file a brief within the time
directed by this order, such appellee shall be subject to such sanctions as the court may
deem appropriate.

DATE: / /

A. DANIEL FUSARO
Clerk

by:

Mr. Fensterstock's Postconference Report Form

United States Court of Appeals

FOR THE
SECOND CIRCUIT

RETURN BY: 1981

REPORT FOLLOWING PRE-ARGUMENT
CONFERENCE

Docket No.

NATHANIEL FENSTERSTOCK
STAFF COUNSEL

United States Court of Appeals

FOR THE
SECOND CIRCUIT

ROOM 2803
UNITED STATES COURTHOUSE
NEW YORK, N.Y. 10007

In accordance with the request at the Pre-argument conference:

☐

Enclosed is a stipulation dismissing the appeal.

☐

A stipulation dismissing the appeal has been signed and forwarded for signature to the other attorney(s), and on completion will be delivered to you in Room 2803.

☐

My client has decided:

☐

Other:

Attorney for: (Specify Name)

() Appellant, () Appellee
() Petitioner, () Respondent

Dated:

Telephone:

APPENDIX C
Questionnaires and Cover Letters
Used in the Study

Questionnaire Used for Conferenced Appeals

CIVIL APPEALS MANAGEMENT PLAN ATTORNEY QUESTIONNAIRE

TITLE:

DOCKET NO.:

1. Did you or your associates discuss this appeal with opposing counsel before the Civil Appeals Management Plan (CAMP) conference? ☐ Yes ☐ No

If "Yes", did that discussion result in:

- | | |
|--|--|
| <input type="checkbox"/> Improvement of the quality of the brief or oral argument by clarifying or changing the emphasis on certain issues | <input type="checkbox"/> Resolution of procedural problems requiring consultation with opposing counsel, e.g., joint appendix, motions, stipulations |
| <input type="checkbox"/> Settlement of the controversy | <input type="checkbox"/> Resolutions of other procedural problems, including scheduling |
| <input type="checkbox"/> Other (specify): | |

If "No", indicate why no discussion was held:

- | |
|---|
| <input type="checkbox"/> Relied on CAMP conference to resolve pre-argument matters |
| <input type="checkbox"/> Controversy on appeal did not lend itself to settlement |
| <input type="checkbox"/> Do not ordinarily discuss settlement on appeal with opposing counsel |
| <input type="checkbox"/> Other (specify): |

2. Did the CAMP conference or other contact with Staff Counsel result in:

- | | |
|--|--|
| <input type="checkbox"/> Improvement of the quality of the brief or oral argument by clarifying or changing the emphasis on certain issues | <input type="checkbox"/> Resolution of procedural problems requiring consultation with opposing counsel, e.g., joint appendix, motions, stipulations |
| <input type="checkbox"/> Settlement of the controversy | <input type="checkbox"/> Resolution of other procedural problems, including scheduling |
| <input type="checkbox"/> Withdrawal of the appeal | |
| <input type="checkbox"/> Other (specify): | |

3. If this appeal was settled or withdrawn:

- | |
|--|
| <input type="checkbox"/> Did appellant(s) decide not to pursue the appeal; or |
| <input type="checkbox"/> Did all parties mutually reach a basis for resolving the controversy? |
| <input type="checkbox"/> Other (specify): |

4. How would you rate overall the complexity of the factual issues in this appeal?

1	2	3	4	5	<input type="checkbox"/> No factual issues
Simple		Medium		Complex	

How would you rate overall the complexity of the legal issues in this appeal?

1	2	3	4	5
Simple		Medium		Complex

5. Have you participated in CAMP conferences before? ☐ No ☐ Once ☐ More than once
Do you prefer participation in CAMP? ☐ Yes ☐ No

We would very much like to have your comments about the CAMP pre-argument conference program including any other results of the conference and of the program not covered by the above questions. Please discuss any way in which you believe CAMP procedures may be improved.

Space for your comments has been provided on the reverse.

Log No.:

Form T: 11/78

Questionnaire Used for Appeals Assigned to Staff Counsel but Not Conferenced

CIVIL APPEALS MANAGEMENT PLAN ATTORNEY QUESTIONNAIRE

TITLE:

DOCKET NO.:

1. Did you or your associates discuss this appeal with opposing counsel before submission of briefs or oral argument? ☐ Yes ☐ No

If "Yes", did that discussion result in:

<input type="checkbox"/> Improvement of the quality of the brief <input type="checkbox"/> or oral argument by clarifying or changing the emphasis on certain issues <input type="checkbox"/> Settlement of the controversy <input type="checkbox"/> Withdrawal of the appeal <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Resolution of procedural problems requiring consultation with opposing counsel, e.g., joint appendix, motions, stipulations <input type="checkbox"/> Resolution of other procedural problems, including scheduling
--	--

If "No", indicate why no discussion was held:

<input type="checkbox"/> Relied on CAMP conference to resolve pre-argument matters <input type="checkbox"/> Controversy on appeal did not lend itself to settlement <input type="checkbox"/> Do not ordinarily discuss settlement on appeal with opposing counsel <input type="checkbox"/> Other (specify):
--

2. Please indicate why a Civil Appeals Management Plan (CAMP) conference was not held:

<input type="checkbox"/> Settlement negotiations were in progress <input type="checkbox"/> Expense of attending the conference was prohibitive for client <input type="checkbox"/> Amount in controversy did not justify the expense of the conference <input type="checkbox"/> The conference could not conveniently be scheduled (specify reason): <input type="checkbox"/> Both counsel, with Staff Counsel's approval, requested that a pre-argument conference not be held (specify reason): <input type="checkbox"/> Other (specify):
--

3. If this appeal was settled or withdrawn:

<input type="checkbox"/> Did appellant(s) decide not to pursue the appeal; or <input type="checkbox"/> Did all parties mutually reach a basis for resolving the controversy? <input type="checkbox"/> Other (specify):
--

4. How would you rate overall the complexity of the factual issues in this appeal?

1	2	3	4	5	<input type="checkbox"/> No factual issues
Simple		Medium		Complex	

How would you rate overall the complexity of the legal issues in this appeal?

1	2	3	4	5
Simple		Medium		Complex

5. Have you ever participated in a CAMP conference: ☐ No ☐ Once ☐ More than once
 Do you prefer participation in CAMP? ☐ Yes ☐ No

If you have participated in a CAMP conference, we would very much like to have your comments about the CAMP pre-argument conference program, including any aspects of the program not covered by the above questions. Please discuss any in which you believe CAMP procedures may be improved and whether a CAMP conference would have been useful in this appeal.

LOG NO.: Space for your comments has been provided on the reverse. FORM TX: 11/78

Questionnaire Used for Control Appeals

ATTORNEY QUESTIONNAIRE - CIVIL APPEALS MANAGEMENT PLAN

TITLE:

DOCKET NO.:

1. Did you or your associates discuss this appeal with opposing counsel before submission of briefs or oral argument? ☐ Yes ☐ No

If "Yes", did that discussion result in:

- | | |
|--|--|
| <input type="checkbox"/> Improvement of the quality of the brief or oral argument by clarifying or changing the emphasis on certain issues | <input type="checkbox"/> Resolution of procedural problems requiring consultation with opposing counsel, e.g., joint appendix, motions, stipulations |
| <input type="checkbox"/> Settlement of the controversy | <input type="checkbox"/> Resolution of other procedural problems, including scheduling |
| <input type="checkbox"/> Withdrawal of the appeal | |
| <input type="checkbox"/> Other (specify): | |

If "No", indicate why no discussion was held:

- ☐ Controversy on appeal did not lend itself to settlement
☐ Do not ordinarily discuss settlement on appeal with opposing counsel
☐ Other (specify):

2. If this appeal was settled or withdrawn:

- ☐ Did appellant(s) decide not to pursue the appeal; or
☐ Did all parties mutually reach a basis for resolving the controversy?
☐ Other (specify):

3. How would you rate overall the complexity of the factual issues in this appeal?

1	2	3	4	5	<input type="checkbox"/> No factual issues
Simple		Medium		Complex	

How would you rate overall the complexity of the legal issues in this appeal?

1	2	3	4	5
Simple		Medium		Complex

4. Have you ever participated in a Civil Appeals Management Plan (CAMP) conference:
☐ No ☐ Once ☐ More than once

Do you prefer participation in CAMP? ☐ Yes ☐ No

If you have participated in a CAMP conference, we would very much like to have your comments about the CAMP pre-argument conference program. Please discuss any way in which you believe CAMP procedures may be improved and whether a CAMP conference would have been useful in this appeal.

Space for your comments has been provided on the reverse.

Log No.:

Form K: 11/78

Back of Questionnaires

[illegible]

Feel free to continue your comments on additional pages.

Check here () if you have used this form before.

Thank you for taking the time to complete this questionnaire.

Cover Letter Used for Conferenced Appeals

Steven Flanders
Acting
Circuit Executive

UNITED STATES COURTS
JUDICIAL COUNCIL OF THE SECOND CIRCUIT

U. S. COURTHOUSE
NEW YORK, N. Y. 10007

TO: CAMP CONFERENCE PARTICIPANT

The Second Circuit is undertaking a review of the Civil Appeals Management Program (CAMP) to determine the program's impact on appellate litigation in our circuit and to find ways in which we might improve or expand the services offered by CAMP.

To adequately perform this study, we are requesting the aid of those who have participated in the pre-argument conference. To give us the benefit of your perspective, would you kindly complete the enclosed questionnaire and return it to us as soon as possible.

The information you furnish will be kept strictly confidential and will be provided in our report only in summary form. Neither the judges of this court nor the Staff Counsel will be provided with any information which might tend to identify the attorney completing the form.

Should you have any questions about the study or wish to discuss the CAMP program beyond the scope of the questionnaire, contact me at (212) 791-0977.

Your participation in our study is valuable and I appreciate your taking the time to assist us.

Yours very truly,

Steven Flanders
Acting Circuit Executive

**Cover Letter Used for Appeals Assigned to
Staff Counsel but Not Conferenced**

**UNITED STATES COURTS
JUDICIAL COUNCIL OF THE SECOND CIRCUIT**

Steven Flanders
Acting
CIRCUIT EXECUTIVE

U. S. COURTHOUSE
NEW YORK, N. Y. 10007

TO: CAMP PARTICIPANT

The Second Circuit is undertaking a review of the Civil Appeals Management Program (CAMP) to determine the program's impact on appellate litigation in our circuit and to find ways in which we might improve or expand the services offered by CAMP.

To adequately perform this study, we are requesting the aid of those who have participated in CAMP. To give us the benefit of your perspective, would you kindly complete the enclosed questionnaire and return it to us as soon as possible.

The information you furnish will be kept strictly confidential and will be provided in our report only in summary form. Neither the judges of this court nor the Staff Counsel will be provided with any information which might tend to identify the attorney completing the form.

Should you have any questions about the study or wish to discuss the CAMP program beyond the scope of the questionnaire, contact me at (212) 791-0977.

Your participation in our study is valuable and I appreciate your taking the time to assist us.

Yours very truly,

Steven Flanders
Acting Circuit Executive

Cover Letter Used for Control Appeals

**UNITED STATES COURTS
JUDICIAL COUNCIL OF THE SECOND CIRCUIT**

Steven Flanders
Acting
CIRCUIT EXECUTIVE

U. S. COURTHOUSE
NEW YORK, N. Y. 10007

TO: COUNSEL FOR CIVIL APPEALS
NOT INCLUDED IN THE CIVIL APPEALS MANAGEMENT PLAN

The Second Circuit is undertaking a review of the Civil Appeals Management Program (CAMP) to determine the program's impact on appellate litigation in our circuit and to find ways in which we might improve or expand the services offered by CAMP.

To adequately assess the program's impact, some appeals were excluded from CAMP treatment on a random basis. So that we may determine how these cases may differ from those which received CAMP treatment, would you kindly complete the enclosed questionnaire and return it to us as soon as possible.

The information you furnish will be kept strictly confidential and will be provided in our report only in summary form. Neither the judges of this court nor the Staff Counsel will be provided with any information which might tend to identify the attorney completing the form.

Should you have any questions about the study or wish to discuss the CAMP program beyond the scope of the questionnaire, contact me at (212) 791-0977.

Your participation in our study is valuable and I appreciate your taking the time to assist us.

Yours very truly,

Steven Flanders
Acting Circuit Executive

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and five judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** conducts seminars, workshops, and short courses for all third-branch personnel. These programs range from orientation seminars for judges to on-site management training for supporting personnel.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and helps the courts implement new technologies, generally under the mantle of Courtran II—a multipurpose, computerized court and case management system developed by the division.

The **Inter-Judicial Affairs and Information Services Division** maintains liaison with state and foreign judges and judicial organizations. The Center's library, which specializes in judicial administration, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services office, 1520 H Street, N.W., Washington, D.C. 20005; the telephone number is 202/633-6365.



Federal Judicial Center

Dolley Madison House
1520 H Street, N.W.
Washington, D.C. 20005
202/633-6011