UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

Civil Justice Reform Act Advisory Group

Report

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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EXECUTIVE SUMMARY

The Advisory Group for the District of Rhode Island (the "Group"), appointed pursuant to the Civil Justice Reform Act of 1990 (CJRA), finds, that there is no serious delay in this district. To the extent there is delay, the primary causes reside in motion practice. Recommendations in this Report from the Group's Practices and Procedures Subcommittee, as well as other sources, attempt to address this problem and suggest solutions to the Court.

The Group analyzed civil litigation in the District, relying upon its members' experience, the deliberations of its committees and the results of several surveys, as well as consideration of other quantitative and qualitative material. In general, the Group concludes that this Court functions well in its management of workload and in its delivery of judicial services to litigants and members of the bar.

The Group's conclusions might not be statistically anticipated. We make these findings despite the fact that filings of difficult civil cases have risen, filings of criminal cases (as well as the number of defendants) have increased dramatically, and the percentage of cases tried remains very high. Notwithstanding those trends, median time to disposition is decreasing and pending cases have declined dramatically in the last year.

The disposition time of cases remains acceptably low because of two factors: the ***historical*** presence of a full complement of active judges and two extremely active senior judges[1]; and the work habits of all the judges who process cases to conclusion expeditiously.

Do dramatic changes need to be made? No. Can costs and delay be contained or reduced without significant change or expense to the Court? Yes.

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1 In December, 1992, then Chief Judge Boyle took senior status. The Court presently has two active district judges, two senior judges, one bankruptcy judge, two full-time magistrate judges, and one retired magistrate judge. The term "active" is used to denote authorized judges.

The Group believes that this is the appropriate time to implement a few changes in the way the Court functions for several reasons:

a. *The Court will never possess greater judicial assets than it will have within the next year and into the foreseeable future—three active district judges, two senior district judges, one bankruptcy judge, two full-time magistrate judges and one retired magistrate judge available for assistance, and*

b. *For the foreseeable future, civil and criminal case filings will not decline (the criminal docket and number of defendants is likely to increase). Now is the time to gain* ***greater*** *control over the docket and to seek to reduce the huge percentage of cases that go to trial.*

Many districts have discovered too late, that their criminal docket demands greatly impair their ability to manage their civil docket. Before our rapidly increasing criminal docket does that to this Court action needs to be taken. Accordingly, our key recommendations include adoption of a comprehensive revision of the local rules, an Alternative Dispute Resolution program, streamlined motion practice, and uniformity in case management.

The Group recommends that the Court:

a. *Implement the proposed revision of the local rules, previously submitted to the Court, and thereafter undertake every two years a review of the local rules and when necessary, update or revise them.*

b. *Modestly revise the way in which civil and criminal cases are initially assigned by the Clerk.*

c. *Require that all discovery motions contain a certification that counsel have met and conferred in good faith to attempt to resolve disputes prior to the filing of motions.*

d. *Require that responses to non-dispositive motions be filed within eleven (11) days from the* ***filing*** *of such motions.*

e. *Automatically refer all discovery motions to the assigned magistrate judge.*

f. *Adopt a uniform pretrial order for use by all of the district judges.*

g. *Encourage the litigants to agree to consensual referral of* ***appropriate cases*** *to magistrate judges.*

h. *Provide a pamphlet for pro se litigants with instructions for complying with basic tenets of practice and procedure in the federal courts. Such litigants should be required to certify that they have read the pamphlet and that they understand and agree to comply with the practices and procedures set forth therein.*

i. *Conduct a program on the scope of the CJRA Plan soon after its approval and adoption to educate the Federal Bar and the public on changes resulting from the plan's implementation.*

j. *Consider the use of video-technology to conduct civil hearings and arraignments to reduce cost associated with transporting prisoners and detainees and to eliminate the security risks inherent in that process.*

The Group also believes that active use of Alternative Dispute Resolution ("ADR") by the Court will expedite the resolution of litigation and ultimately make it less expensive. Specifically, we recommend that the Court:

- *Prepare and distribute a pamphlet on ADR to attorneys appearing as counsel for parties and to pro se litigants in all civil cases filed with the Court. The pamphlet, which should be distributed at the time of filing, should describe the alternative dispute resolution options available to litigants, as well as provide information on how to access these alternatives. The pamphlet should be written in simple language.*

- *Submit civil cases filed in this district to a mandatory settlement conference before a judicial officer, unless the parties elect to participate voluntarily in an approved ADR option offered by the Court. Approved forms of alternative dispute resolution should include early neutral evaluation, summary jury and bench trials, mediation and court-annexed arbitration. These alternatives are voluntary and are non-binding.*[2]

[2] The full text of the ADR Plan appears at Appendix D.

I. PREFACE TO THE CIVIL JUSTICE REFORM ACT

In 1990, Congress enacted the Civil Justice Reform Act, 28 U.S.C. § 471 (the **"Act"**), to facilitate district-by-district solutions to the perceived problems of growing cost and delay in federal court civil litigation. The Act required each district to create an Advisory Group to analyze its operations and to propose solutions to existing problems of litigation cost and delay in the form of an Expense and Delay Reduction Plan.

These plans were to be adopted in two phases. An initial phase, comprised of so-called "pilot" and "early implementation" districts, was to be completed by December 31, 1991; all remaining districts were required to adopt plans by December 31, 1993. The District of Rhode Island is part of the latter group. Many reports acknowledge that some problems of cost and delay derive from legislative action or inaction and are therefore beyond the direct control of the courts.

While this Court's Report and Plan concentrate on issues of cost and delay, the Group has attempted to include areas of concern to the judiciary as a whole, and this district in particular, to assist in long-range planning. Our approach aims to insure that the federal judiciary is equipped to meet the future needs of litigants and their counsel and receives the organizational resources necessary to fulfill the court's ultimate mission, to do justice in individual cases.

II. INTRODUCTION

The Act is an exercise in reform, unparalleled since the enactment of the Federal Rules of Civil Procedure in 1938.[3] It mandates local review by advisory groups appointed by the Chief Judge of each of the 94 federal district courts. This undertaking is unique because it is distinct from the judicial rule-making process usually assigned to committees of the Judicial Conference.

Two events set in motion the reform movement in the federal courts. First, in 1990, Congress established the Federal Courts Study Committee (hereafter the Committee), a diverse group of lawyers and lay persons appointed by the Chief Justice of the United States Supreme Court, to study problems that exist in the federal courts.[4] After fifteen months of intense examination, the Committee proposed recommendations for reform, noting mounting public and professional concern with congestion, delay and expense.[5]

The second event was the publication of ***Justice for All: Reducing Cost and Delay in Civil Litigation***[6] by the Brookings Institution Task Force on Civil Justice Reform, at the request of Senator Joseph R. Biden.[7] After considering the problems of civil justice for two years, the Task Force Report recommended broad, sweeping reforms relating to the civil justice system. These two reports formed the basis for the Act.

In the Act, Congress created a framework mandating sweeping changes in the district courts and also requiring each advisory group to take a serious look at the

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[3] The goal of achieving "just, speedy, and inexpensive" resolution of every civil case in the federal courts was plainly set forth in the first Rule of the Federal Rules of Civil Procedure.

[4] Federal Courts Study Committee, ***Report of the Federal Courts Study Committee***, April 20, 1990.

[5] Id.

[6] Task Force on Civil Justice Reform, Brookings Institute., ***Justice for All: Reducing Cost and Delay in Civil Litigation*** (1990).

[7] Chairman of the U.S. Senate's Judiciary Committee.

operational health of its court. Where warranted, the groups may make recommendations for changes in practice or procedure which each court must consider, though not necessarily adopt. The Act also requires each of the district courts to develop and implement a plan to reduce cost and delay in civil litigation.

The problems facing the federal courts are not limited to problems of litigation cost and delay; they also include an unprecedented funding crisis. The federal judiciary suffered a shortfall of $120 million in 1992.[8] The funding crisis ironically came at a time when the Civil Justice Reform Act was concluding its first full year.

Nonetheless, the Act was intended to address the reform movement head on. The Act calls for the following:

> ***a.*** *building reform from the bottom up (with emphasis on the role of the litigants in the process);*
>
> ***b.*** *establishing a national policy of active judicial case management;*[9]

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[8] The Executive Committee of the Judicial Conference identified nearly $120 million in reductions needed to stay within available resources for salaries and general operating expenses for the current fiscal year. The scope of reductions is broad and includes: automation systems and support; building alterations and other space-related expenses; furniture, equipment and other operating expenses; probation and pretrial services; travel; and personnel. In total the shortfall for FY93 is about $200 million. On October 6, 1992, then President Bush signed P.L. 102-395, which appropriated $2.47 billion for the Judiciary for FY93. This is $370 million less than the amount requested.

[9] The key to effective delay reduction is committed judicial leadership. Standard 2.50 of the ***ABA Standards Relating to Court Delay Reduction***, promulgated by the American Bar Association National Conference of State Trial Judges, states, "from the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and other court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket." Even in the absence of a delay problem, the best insurance that such a problem will not be born in an otherwise current docket, is zealous commitment to active case management by judges and court staff. We are fortunate to have that commitment in this Court.

c. *imposing greater controls on the discovery process (accepting the argument that discovery abuse exists to some degree in every jurisdiction, some greater than others);*

d. *considering and, where appropriate, establishing a system of differentiated case management, recognizing the fundamental notion that all cases are not alike and therefore should not be treated as such;*

e. *improving motion practice and reducing undue delay in rendering decisions on both dispositive and non-dispositive motions;*

f. *enacting methods of alternative dispute resolution if such mechanisms do not exist, or expanding upon those that do according to the needs and dynamics of the courts.*

The act aims for more deliberate control over pretrial proceedings, curbing discovery abuse, and providing alternative means of resolving disputes short of trial. With these directions in mind, the Group submits this combined Report and Plan to the Court.

III. RECOMMENDATIONS IN BRIEF

In arriving at its recommendations set forth in this Report and Plan, the Group considered the following principles of litigation management and cost and delay reduction set forth in 28 U.S.C. Section 473 (a)

A. Systematic Differentiation Of Civil Cases:

Comment: The Group neither recommends nor believes that there is a need for a formalized differentiated case management (DCM) program in this district. It is clear that each judicial officer in this district already practices DCM. Informal processes work

well and therefore the Group does not recommend at this time that any formal DCM program be implemented.

B. Early And Ongoing Judicial Control Of The Pretrial Process , Including Case Planning , Early And Firm Trial Dates, Control Of Discovery, And Deadlines On Motion:

Comment: By reason of their existing practices and procedures the judicial officers in this District already assume early and on-going judicial control of the pretrial process through use of settlement conferences, setting early and firm trial dates, and in general exercising appropriate levels of control over discovery and deadlines mandated by the court or by reason of federal or local rules.

C. Discovery/case management conferences for complex or other appropriate cases, at which the judicial officer and the parties explore the possibility of settlement; identify the principal issues in contention; provide, if appropriate, and set deadlines for motions:

Comment: The Group does not believe that formal discovery/case management conferences for routine or complex cases should be required by counsel. It is the Group's belief that the mandatory settlement conference before a judicial officer required under the proposed ADR plan together with the adoption of a uniform pre- trial order and continuation of F.R.C.P. 16(b) conferences, provide ample opportunity for judicial officers, the parties and their counsel to explore the possibility of settlement; identify the principal issues in contention; and provide if necessary partial resolution of the case, and set deadlines for motions.

D. Encouragement of voluntary exchange of information among litigants and other cooperative discovery device:

Comment: The Group believes that communication is a vital link in the early resolution of cases and in shaping the dynamics of cases that go to trial in ways that

advance the goals of reducing litigation cost and delays. If Congress fails to adopt the amendment to the F.R.C.P. requiring early automatic disclosure, the Group recommends that the Court consider adopting a local rule, similar to the one contained in our proposed rules, requiring the voluntary exchange of basic information as well as a requirement that parties cooperate in the conduct of discovery in good faith.

E. Prohibition on discovery motions unless accompanied by certification by the moving party that a good-faith effort was made to reach agreement with opposing counsel:

Comment: In conjunction with the development of an expense and delay reduction plan, pursuant to the Act, local rules for this district have been revised and are currently before the Court for review. One of the revised local rules, requires certification by the moving party, of efforts to resolve the motion when a discovery motion is filed with the court.

F. Authorization to refer appropriate cases to alternative dispute resolution programs.

Comment: One of the main components of this District's plan is its ADR program. The program includes a requirement that all civil litigants (except those categories of cases the court may choose in its sole discretion to exempt) must attend a mandatory settlement conference before a judicial officer. Parties may opt out of the settlement conference by choosing one of the ADR alternatives provided for in the ADR Plan.

IV. DESCRIPTION OF THE COURT

A. Judicial Staff

The Court is authorized three district judges, but currently has only two active district judges, Chief Judge Ronald R. Lagueux and Judge Ernest C. Torres. A third

active judge has been nominated.[10] Critically important to the functioning of the Court are its two senior judges, Raymond J. Pettine and Francis J. Boyle, who, because of their commitment to the administration of justice and their energetic work styles, each carry a full share of the Court's caseload. Thus, in reality, this district currently enjoys the services of four very active and productive district judges.[11]

This District has one full-time bankruptcy judge, Arthur N. Votolato (appointed in 1968), and two full-time magistrate judges, Timothy M. Boudewyns (appointed February 1, 1993), and Robert W. Lovegreen (appointed March 1, 1993). The Court also has the benefit of the adjunct services of retired Magistrate Judge Jacob Hagopian.

Rhode Island, while a district with a small number of absolute filings, has an extremely complex caseload which demands substantial amounts of judicial time and resources.[12] As an example, in 1992 more than 18 percent of the civil cases filed in this District were tried, compared to a national average of approximately 7 percent. Rhode Island ranks eighth in the nation and first in the Circuit in the number of civil cases tried. The District has historically ranked high in this category. During the period October 1, 1991 through September 30, 1992, 22.6 percent of the district's criminal cases went to trial. This compares with approximately 12 percent of criminal cases tried nationally per judge. As a percentage, no other district within the First Circuit tried as many cases per judge (both criminal and civil), as did Rhode Island in 1992. Reducing these demands on judges were of major concern to the Group.

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[10] Mary M. Lisi, Esq. has been nominated, but not yet confirmed.

[11] The percentage of the workload of the federal courts handled by senior judges nationally hit an all time high in 1992. In 1992 the number of trials conducted by senior district judges was equivalent to the trial work performed by 103 active judges. Without their work, the case backlog in many courts would be overwhelming. In this district both senior judges carry a full share of cases. Their contribution cannot be overstated (See the Third Branch Newsletter of the Federal Courts, Vol. 25, No. 6 (June 1993) at P3).

[12] Loss of either senior judge would seriously impact on the court's ability to dispose of cases with the level of dispatch that presently exists.

B. Non-Judicial Staff—Clerk's Office

The mission of the Clerk's Office is to provide the necessary operational and administrative support to allow the Court to carry out its judicial functions effectively and efficiently. The Clerk's Office provides services to district and magistrate judges, judicial support staff, litigants, the bar, jurors, other court and governmental agencies, and the public. In general, the Clerk's Office fulfills three main functions: administrative services, operations support, and systems management.

C. Operational Aspects Of The Court's Structure, Practices And Operations

The Court randomly assigns each new case to one of the district judges through a drawing conducted weekly by the Chief Judge. Since certain types of cases may require greater judicial involvement than others, the pool of case assignments is divided into several categories.[13] This weekly assignment procedure allows the judges to establish early control over their cases. In addition, a magistrate judge is randomly assigned to each case at the same time as the district judge. In civil cases, having the same magistrate judge hear all discovery matters reduces the time for disposition of specific issues and adds an additional level of oversight.

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[13] Currently, the following categories are used for assigning cases:

CRIMINAL	CIVIL	CIVIL (contd.)
Bail Appeals	Admiralty	Patents/copyrights/trademarks
Forfeitures	Antitrust	Real Property
All Indictments	Bankruptcy Appeals	Social Security
	Civil Rights	Torts
	Contract	Miscellaneous Grand Jury Proceedings
	Habeas Corpus	Prisoner Petitions
	Taxes	Transfers from Other Districts
	Labor	Miscellaneous

Each district judge is assigned a "team"[14] of two deputy clerks, who are responsible for the cases assigned to their judge. These deputy clerks perform a wide range of duties including docketing, scheduling, and other courtroom support services. The team concept provides for continuity and knowledge by the clerks of the specific needs of each case. These administrative practices result in rapid and cost-conscious resolution of cases.

D. Organizational Structure And Staff

Clerk's offices differ greatly nationwide in their structure, management, organization, and manner of functioning.

This District is fortunate to have a particularly well qualified and experienced court clerk and administrator, Raymond F. Burghardt. Since his appointment in January, 1991, after many years of service as Clerk in one of the nation's largest district courts (the Southern District of New York), Mr. Burghardt has demonstrated sound leadership and resourceful resolve in meeting the needs of the Court, and managing a staff of 19:

[14] The "team" approach, while not widely used in other districts, is an approach to "total case management" that has worked extremely well in this district, providing intensive support to judges in the Court's efforts to actively manage their dockets. The two are jointly responsible for all aspects of the judge's calendar. In addition to serving the judges, they also perform duties and functions in the Clerk's Office. A major technological advance that has enhanced the ability of these people to productively undertake functions relative to both courtroom activities and those more closely associated with the Clerk's Office is the advent of a court wide computer network. This network allows courtroom deputies and their team counterparts, in the absence of the assigned courtroom deputy, to docket, calendar and schedule during the course of trial in the courtroom, while also providing the full range of courtroom deputy functions for the court.

CLERK'S OFFICE	
JOB TITLE	**NUMBER**
Chief Deputy Clerk	1
Operations Manager	1
Calendar Deputy Clerk	4
Courtroom Deputy Clerk	4
Magistrate Judges Deputy Clerk	2
Financial Deputy Clerk	1
Jury Deputy Clerk	1
Intake Deputy Clerk	1
Administrative analyst	1
Systems Manager	1
Certified Court Interpreter	1
CJRA Project Manager/Analyst	1

FIGURE 1

Unlike many other district courts, this Court has the benefit of an Operations Manager. As a member of the Clerk's management team, the Operations Manager reports directly to the Clerk. In general the Operations Manager is concerned with oversight of the "teams" (calendaring/courtroom clerks), internal controls management, training of staff, quality control, and the administration of the Rhode Island Federal Bar Examination.[15]

In a budgetary climate that mandates "doing more with less", training has become a critical aspect of operations. This is especially true in smaller district courts,

[15] See U.S. District Court Local Rule 4(b)(2), as amended, which requires applicants for admission to the federal bar in Rhode Island to undertake a course of instruction and pass an examination on federal practice and procedure administered by the Board of Federal Bar Examiners for the District. Rhode Island is one of approximately six districts that require applicants to take and pass a bar examination separate and apart from the general bar examination required by the state.

such as here, where teamwork requires that everyone be broadly cross-trained[16] to compensate for the absence of a larger staff and additional resources.

The Clerk's Office must keep track of thousands of documents filed by litigants, judges, and other people involved in a case; record motions, responses, and orders; monitor statutory and court imposed deadlines; and produce notices and other correspondence. Automation efforts begun in 1992 and continuing in 1993 have greatly enhanced the abilities of the Clerk's staff to perform all of these functions.

Calendar year 1992 was an extremely active year in terms of automation in this district. The District went on-line with a civil electronic docketing and case management system that replaced the old manual system entirely. In late 1992, the merger of paper systems into the new Integrated Case Management System (ICMS) was completed. In January, 1993, the Court began using ICMS Criminal. These systems enable the Court to maintain case records and produce docket sheets, check on the status of cases, track deadlines, and provide a central, up-to-date informational resource through the establishment of a court wide network.

The new system produces notices and other standard correspondence, case and party indices, a case opening report, and a case closing report. It also improves the capacity to monitor case activity and develop customized information for the Court and its administrative and operational support personnel. This ability to compile statistical information was of great value to this Group's efforts.

In addition to the immediate and enhanced access to case information, other technologies have been introduced to the Court. The District recently went on-line with an automated public information access service (PACER), which allows anyone with the proper computer technology (via modem and a proper password), to retrieve

[16] In smaller districts, such as this one, the operational efficiency of the Clerk's Office is greatly enhanced by broad cross training. The Clerk has mandated that such training be given a high priority, since the size of the office requires that staff be trained not only in their own job functions, but also in other functions as well. The success of this approach has allowed administrative work to flow virtually uninterrupted by down time, and has promoted the efficient use of court personnel and resources.

electronic docket summaries without leaving one's workstation. The user charge is nominal and the service is available virtually around the clock. This new technology greatly improves public access to case information, while reducing the time and cost associated with manually retrieving and viewing docket information. However, none of this new technology disposes of cases—if properly used, it can assist in moving matters along but cannot resolve cases.

V. DESCRIPTION OF THE DISTRICT

A. Geography

Rhode Island, with a total land area of 1,055 square miles, is the smallest of the fifty states, yet is the fifth most densely populated district in the nation.[17] As one of the New England states, Rhode Island is bordered by Massachusetts on the north and east, Block Island Sound to the south, and Connecticut on the west. The capital, Providence, where this District Court is located, is less than one hour's travel time from any other point in the state. There are no divisional offices of the District Court and all of the judicial functions are conducted in Providence.[18]

There are five counties: Bristol, Kent, Newport, Providence and Washington counties. The largest of these is Providence County, with a 1990 Census population of 596,270, out of a statewide population of 1,003,464.

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[17] The population density is 819.3 persons per square mile. Survey of demographic statistical data, ***United States Sentencing Commission Annual Report, 1991***. "Growth in population exerts an increased demand for judicial services, due to factors of urbanization, intensification, and increased number of possible interaction among people". Carter Goble Associates, Inc., Justice System Planning Division, ***Judicial System Forecasting, Philosophy, Assumptions, and Methodology, 1989.***

[18] Except Criminal Violations Bureau (CVB) cases, which are held before a magistrate judge one day a month in Newport.

B. Demographics

Rhode Island's population[19] of just over 1 million ranks 43rd among the 50 states based on its 1990 census, 92.5 percent of whom live in urban areas. Residents 16 years or older account for 78.3 percent of the total population, 23.3 percent are between the ages of 18 and 64 and 14.6 percent are over 65 years of age. The number of persons 22 to 44 years of age is projected to decline slightly, while the 45 to 65 age segment is projected to increase by 23.2 percent by the year 2000.

Rhode Island's population is predominantly Caucasian, (86.8% of the total population). The following comprise the remaining 13.2%: Hispanic Origin 4.6%, African American 3.9%, Asian or Pacific Islander 1.8%, American Indian, Eskimo, or Aleut 0.4 %, and other 2.5% (figure 2).

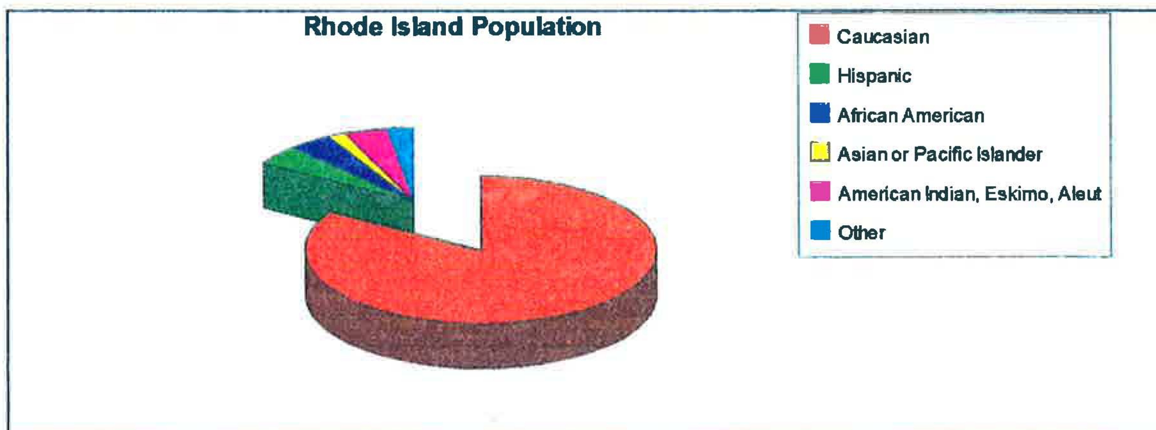

FIGURE 2

[19] Rhode Island Department of Employment Security's 1991 Report, ***Rhode Island 2000: Rhode Island's Workforce To The Year 2000.***

C. The Economy

Following a boom in the mid-1980s, the New England economy has suffered a significant downturn in the past few years; the region felt the effects of substantial job cutbacks in the 1990s compared to a somewhat stronger performance in mid-1980s. Economic conditions in the State continue to weaken and, as a result, appear to have contributed to increased civil litigation and criminal matters. Examples include banking litigation, bankruptcy matters and increased numbers of "white collar" criminal felony filings.

D. Case Mix

Rhode Island's docket is unusual in many ways. Although the number of cases per judge is lower than the national average, the complexity of each case is significantly greater than in courts with "similar" numbers of judges and cases. Four case types — contracts, personal injury, civil rights and prisoner[20] (hereafter referred to as the ***"Big Four"***) drive this Court's docket, and draw most heavily upon its resources (figure 3). Contract litigation comprises approximately 28 percent of the Court's docket; personal injury litigation approximately 19 percent; civil rights litigation approximately 13 percent; and prisoner litigation approximately 5 percent. The remaining 35 percent is distributed among a number of categories, none of which is statistically significant individually.

[20] The Court has actively been engaged in the supervision of the state prison, the Adult Correctional Institute (ACI) since 1972. The impact of prisoner litigation upon the judicial resources of the Court is a significant contributor to the workload that affects the Court's docket.

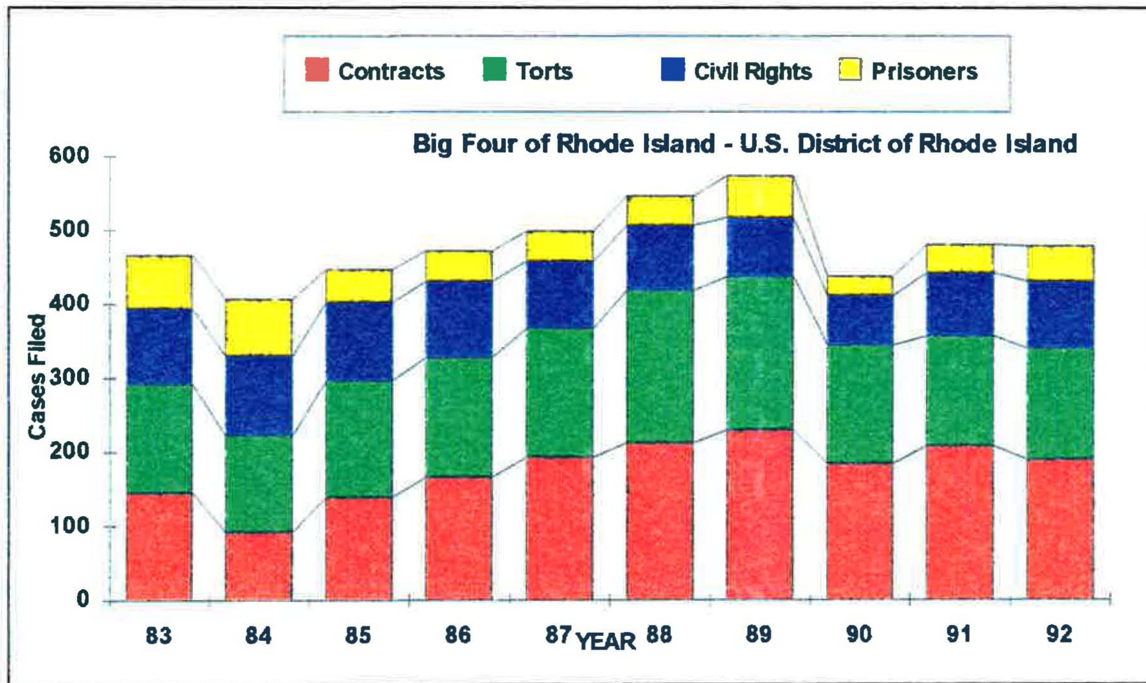

FIGURE 3

Figure 4 shows the distribution of civil case filings for statistical years 1990-1992.[21] The Group elected to focus upon the "Big Four" case types which could be statistically analyzed in a meaningful manner.

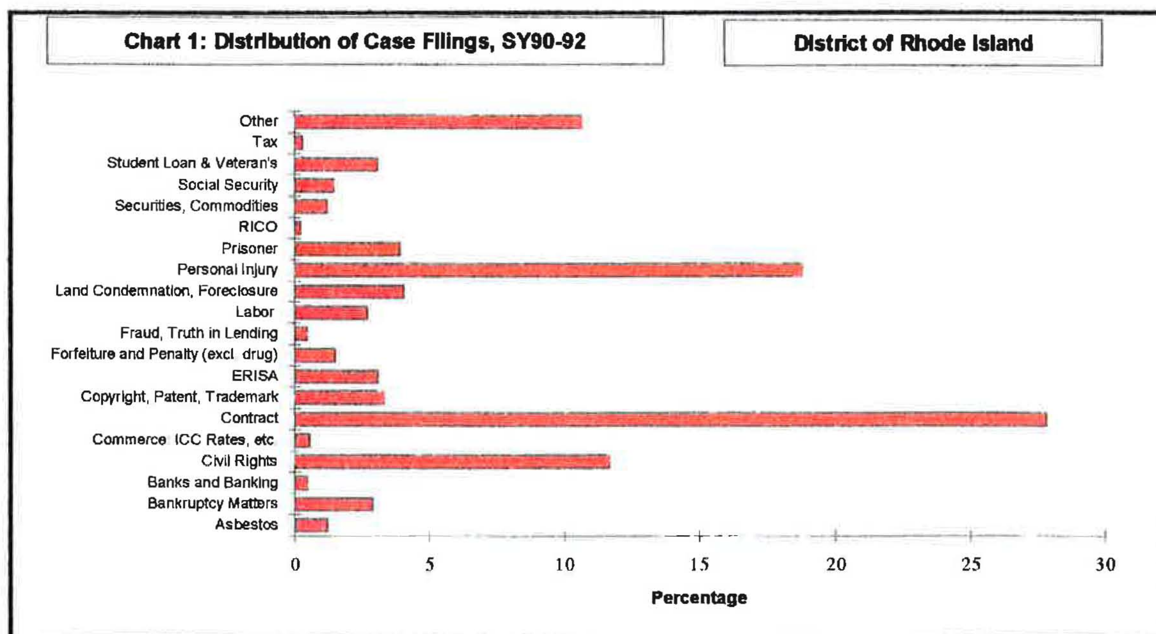

FIGURE 4

In reviewing the statistics of courts most similar to Rhode Island,[22] the Group discovered that the case mix of many districts contained significant numbers of less complex case types, such as prisoner petitions.[23] In some districts the case mix includes criminal dockets with high percentages of misdemeanor crimes, such as traffic

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[21] See, the Administrative Office of the U.S. Courts/ Federal Judicial Center ***Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 -SY-92 Statistical Supplement, September, 1992.***

[22] The Advisory Group examined in depth the statistics of 19 out of 94 district courts. The four identified as being most similar were chosen from two independent lists, one reflecting the number of judicial officers assigned to the court and the second reflecting the workload profile. Use of these lists revealed districts that have achieved unusual results utilizing comparable resources. Such results proved a valuable resource in aiding the Advisory Group in making recommendations to the Court.

[23] As an example: one district, otherwise similar, has a case mix which includes more than 40 percent prisoner petitions. Rhode Island prisoner petitions account for 5 percent of the District's docket.

violations committed on federal facilities; by contrast there are fewer than 100 such misdemeanor cases each year which arise from this Court's federal territorial jurisdiction. A close examination of apparently similar courts with shorter disposition times revealed that they had large numbers of these less complex case types.

VI. DEVELOPMENT OF A CIVIL JUSTICE EXPENSE & DELAY REDUCTION PLAN

After extensive review of reports and plans from other districts as well as the "Model Plan" drafted by the Judicial Conference of the United States and approved by the Committee on Court Administration and Case Management, this District chose to draft and submit its own plan to the Court . The Group believes that this Report and Plan takes account of the particular dynamics of this District while addressing each of the mandates of the Act.

A. Introduction

The Act requires that each advisory group "shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets."[24] As part of that assessment, the Group is charged with identifying trends in case filings and describing the principal causes of cost and delay. In addition, each group is to examine the extent to which cost and delay can be reduced by better assessment of the impact of new legislation on the courts.[25] In developing its recommendations each group is also required to "take into account the particular needs and circumstances of the district court, litigants and the litigants attorneys",[26] and "ensure that its recommended actions include significant contributions" by the various persons who participate in the system.[27]

Pursuant to the provisions of the Act, then Chief Judge Boyle appointed 19 members to the Advisory Group in January 1991. There are 19 members of the Group. In accordance with Section 478(b) of the Act, the membership includes attorneys, members of the academic and medical community, and other persons who are representative of major categories of litigants within the district.[28] In order to accomplish the tasks mandated, The Group Chair, William A. Curran, formed the following five subcommittees:

- **a.** *Assessment of the Docket;*
- **b.** *Practices and Procedures.*
- **c.** *Alternative Dispute Resolution;*
- **d.** *Local Rules and*
- **e.** *Media*

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[24] 28 U.S.C. § 472(c)(1).

[25] 28 U.S.C. § 472 (c)(1)(D)

[26] 28 U.S.C. § 472(c)(2)

[27] 28 U.S.C. § 472(c)(3)

[28] A more complete description of the members and their qualifications is located in Appendix **A** of this Report.

During 1991, the Group identified tasks to be performed, allocated the work effort and a methodological process for its work. In addition, significant time was spent on planning and the retention of staff particularly suited to the work of the Group. After conducting a nation-wide search, the Court appointed Dr. Berry B. Mitchell[29] to serve as Project Manager/Analyst.

The Group also retained the services of Mr. Julian Chan as a temporary consultant to assist the Group on statistical matters, including data collection, analysis and assessment of the court's docket. Mr. Chan assisted in the oversight of four very bright and motivated legal/management interns from the University of Rhode Island during the summer of 1992.

Among the sources of information utilized by the Group were the following:

1. *Interviews with each of the active district judges, senior judges, magistrate judges, and bankruptcy judge regarding individual practices and procedures, caseload information, sources of delay, sources of excess cost, and concerns about the delivery of judicial services;*

2. *Interviews with members of each district and magistrate judge's staff regarding practices and procedures and concerns relating to the delivery of judicial services;*

3. *Interviews with each member of the Clerk's Office, including the Clerk of Court, Chief Deputy Clerk, Operations Manager and Systems Manager regarding practices and procedures, workload, personnel, space and facilities, equipment, and technology, as well as concerns about the delivery of non-judicial support services to the Court;*

4. *Interview of the Clerk of Court, U.S. Bankruptcy Court for the District of Rhode Island, regarding practices and procedures, workload, personnel, space and facilities, equipment and technology, as well as concerns about the delivery of non-judicial support services to the bankruptcy court;*

[29] Background of Dr. Mitchell appears in Appendix **A**

5. *Interview of the Chief Probation Officer on workload, personnel, space and facilities, equipment, and technology as well as concerns about the delivery of non-judicial support services to the Court;*

6. *Site visits to the District Courts for the Western District of Michigan and Western District of Wisconsin to examine their practices and procedures;*

7. *Development, distribution and analysis of a detailed survey distributed to all members of the Rhode Island Bar (a copy of the Survey is attached as Appendix **B**);*

8. *Development, distribution and analysis of a detailed survey to litigants who were involved in cases in the district court (a copy of the Survey is attached as Appendix **C**);*

9. *Feedback resulting from publication of a notice to the public inviting comment on the work of the District Court in Rhode Island, delivery of judicial services and the justice system in general;*

10. *The collection and analysis of anecdotal information evaluating the sources and causes of cost and delay in litigation in the District;*

11. *Review of available literature, statistics and reports from the Administrative Office and other districts, including materials on alternative dispute resolution;*

12. *Review of published plans from other districts;*

13. *Review of more than two dozen sets of local rules from other districts; and*

14. *Review of miscellaneous published material relevant to civil justice reform and the Act.*

In developing its strategy and undertaking its task the Group had a decided advantage because it could review other districts' reports and plans, visit other courts and employ a Project Manager charged with supporting and assisting its work of the Group.

The Group also had the benefit of input from attorneys and others who volunteered impressions, observations, ideas and a wide range of other information. Thus, unlike some other districts which found themselves lacking a broad information base, this Group found itself having to reduce the plethora of information to a manageable and meaningful quantity.

VII. ASSESSING THE COURT'S DOCKET

A. Methodology

The Group chose to focus its analysis on comparisons between this District and other similar districts. It took a "general to specific" approach in analyzing the Court's docket.

Three approaches were utilized; the first involved a brief look at the national and First Circuit statistics for previous years. The second, and perhaps most novel approach, involved the development of two independently chosen lists of courts deemed most similar to Rhode Island and the subsequent analysis of the performance of those courts. The first list contains courts with a number of judicial officers similar to Rhode Island's authorized judicial complement prior to January, 1993 (three district judges, one extremely active senior judge, one full-time magistrate judge and one part-time magistrate judge).[30] The second list of "courts most similar" was based on similarity in ***total*** weighted filings of the respective courts. Independently studying two

[30] In September, 1992 Magistrate Judge Jacob Hagopian retired. In February, 1993, former part-time Magistrate Judge Timothy M. Boudewyns was sworn in as full-time magistrate judge. A second full-time magistrate judge, Robert W. Lovegreen, was sworn in on March 1, 1993.

lists enabled the Group to compare this District's resources with courts whose workloads are of similar difficulty. A third list was developed drawing from the first two, constituting the districts that the Group felt were ***most*** similar to this District; this list also served to counter the bias one might expect from analyzing oneself. Finally, the third approach in analyzing the Court's docket focused on the District of Rhode Island itself.

VIII. NATIONAL STATISTICS

A. Civil & Criminal Workload

The workload of the federal courts continues to grow. In 1962 there were 100,000 district court filings (civil & criminal).[31] This past year there were 277,000 district court filings nationally, nearly a threefold increase.[32] Bankruptcy petitions have also soared to record levels. In 1992 they approached one million filings nationally, compared to 148,000 in 1962. [33] Part of the reason for this continued growth is that federal legislation has steadily expanded the responsibilities of the courts. Despite increases in the number of judgeships over the last 30 years, these increases have not kept pace with the workload.[34]

Reversing a slightly declining trend begun in 1988, civil case filings rose 9 percent in 1992, from 210,890 in 1991 to 229,075. This increase was due in large part to filings related to recovery of student loans and veterans' benefits, and suits filed against the United States to overturn denial of Social Security benefits.[35] Approximately 231,043 civil cases were terminated in 1992, leaving 224,224 cases

[31] Administrative Office of the U.S. Courts, ***Annual Report of the Director, 1992***, at p 10.

[32] Id at p 10.

[33] Id at p 10.

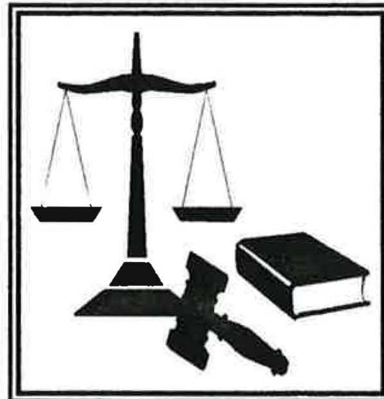
[34] Id at p 10.

[35] Id at p 10.

pending, excluding asbestos cases transferred under Multi-District Litigation docket #875, a drop of 5 percent.[36]

Criminal filings have risen steadily over the last 10 years. In Statistical Year 1992, criminal filings rose 3 percent, from 47,123 cases in 1991 to 48,366 cases.[37] While the total number of criminal case terminations rose 2 percent to 44,147, the number of cases pending at the end of the year rose 11 percent. There were 65,624 criminal defendants cases pending on September 30, 1992; many of these defendants are fugitives.[38]

In 1992, the continuing effects of the nation's economic recession were reflected in bankruptcy filings which exceeded 1 million. This was a 6 percent increase over the previous year.[39] Despite a 20 percent increase in terminations, pending bankruptcy cases increased 7 percent to 1,224,524.[40]



[36] Id at p 10.

[37] Id at p 12.

[38] Id at p 12.

[39] Id at p 12.

[40] Id at p 12.

IX. FIRST CIRCUIT

The districts of Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island comprise the First Circuit. A comparison of the district's statistics within the First Circuit for the fiscal year ending September 30, 1992 is reflected in figure 5. The First Circuit has 29 district judges, seven senior judges, 9 bankruptcy judges and 15 magistrate judges (this includes part-time magistrate judges).

After a review of First Circuit data, the Group concluded that any direct comparison between the Circuit and national data, or any direct comparison between all the district courts within the Circuit and the District of Rhode Island, would be of little value in accomplishing the goals of the Act. Comparisons between Circuit and national data contain so many variables that such comparisons are unreliable and inequitable. Likewise, comparisons between this District and the other districts within the Circuit generate little in the way of noteworthy findings that would benefit this District or influence the Group's recommendations to the Court. The District of Maine, one of the courts most similar to Rhode Island, is the only district within this Circuit which bears any resemblance to this District in terms of judicial resources and case mix.

COMPARISON OF DISTRICTS WITHIN THE CIRCUIT— YEAR ENDED SEPTEMBER 30, 1992

FIRST CIRCUIT

			ME	MA	NH	PR	RI
Overall Workload Statistics	Filings (criminal & civil)		893	4,212	980	2,179	**845**
	Terminations		936	6,600	832	2,046	**842**
	Pending		532	5,697	1,015	2,346	**908**
	Percent Change in Total Filings Current Year	Over Last Year	5.9	-.4	44.1	2.7	**10.2**
		Over 1987	-10.4	4.0	67.0	-11.8	**9.9**
	Number of Judgeships		3	13	3	7	**3**
	Vacant Judgeship Months		.0	45.5	13.5	.0	**.0**
ACTIONS PER JUDGESHIP	FILINGS	Total	298	324	327	311	**282**
		Civil	252	300	301	262	**232**
		Criminal Felony	46	24	26	49	**50**
	Pending Cases		177	438	338	335	**303**
	Weighted Filings		320	406	426	252	**333**
	Terminations		312	508	277	292	**281**
	Trials Completed		26	23	17	22	**50**
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.1	10.0	7.1	6.5	**5.4**
		Civil*	7	22	8	8	**10**
	From Issue to Trial (Civil Only)		8	25	23	10	**12**
OTHER	Number (and %) of Civil Cases Over 3 Years Old		4 1.0	420 8.0	57 6.0	427 20.3	**27** **3.4**
	Average Number of Felony Defendants Filed per Case		1.3	1.7	1.7	1.6	**1.5**
	Jurors	Avg Present for Jury Selection	27.42	36.69	43.48	51.33	**24.02**
		Percent Not Selected	23.4	30.3	31.4	46.9	**29.4**

FIGURE 5

X. ASSESSMENT OF CONDITIONS IN THE DISTRICT OF RHODE ISLAND

A. The Civil Docket

The percentage of civil cases[41] 3 years old or older in this District increased from a low of 1.2 percent in 1987 to 3.4 percent in 1992. This District's level of such cases, however, remains well below the national average of 7.7 percent.

A breakdown of civil cases by specific case types provides further detail and allows a more precise analysis of the court's docket. The mixture of civil cases filed in this District has changed significantly over the last decade. The most significant change during this period was the decline in the number of rapidly terminating Type I cases,[42] particularly in student and veteran loan cases and in prisoner cases. The student and veteran loan cases declined from 135 filings in Statistical Year 1983 to 30 in Statistical Year 1992 while prisoner cases declined from 65 to 32 over the same period .

On the other hand, filings of the more complicated and lengthy Type II cases[43] rose significantly from 450 cases filed in Statistical Year 1984 to approximately 585 cases filed in Statistical Year 1992 (figure 6).[44]

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[41] Unless otherwise stated, statistics reported hereafter are for the twelve months period ending September 30, 1992, as reported in the Federal Court Management Statistics prepared by the Administrative Office of the U.S. Courts.

[42] Type I cases are those which are more routine in nature and take up less judicial time for disposition. Included within this category are student loan collection cases, recovery of overpayments of veterans benefits, appeal of social security administration benefit details, condition-of-confinement cases brought by state prisoners, habeas corpus petitions, appeals from bankruptcy court decisions, land condemnation and asbestos product liability cases.

[43] Type II cases on the other hand involve more complex and time-consuming judicial matters, including contract actions other than student loans, veterans benefits and collection of judgment cases; personal injury cases other than asbestos cases; non-prisoner civil rights cases; patent and copyright cases; ERISA, labor, tax, securities, and other actions under federal statutes, e.g., FOIA, RICO and banking laws.

[44] As of August 31, 1993, the number of civil cases pending totals 719.

In terms of actual numbers, **civil filings** per judgeship for this period rose only 0.4 percent compared to **criminal felony filings** per judgeship which increased 100 percent. Relatively, total filings per judgeship increased 9.8 percent.[45] The number of total pending cases rose dramatically from 728 in 1987 to 908 in 1992, or 24.7 percent. However, pending cases showed a significant reduction through August 31, 1993 to 719.

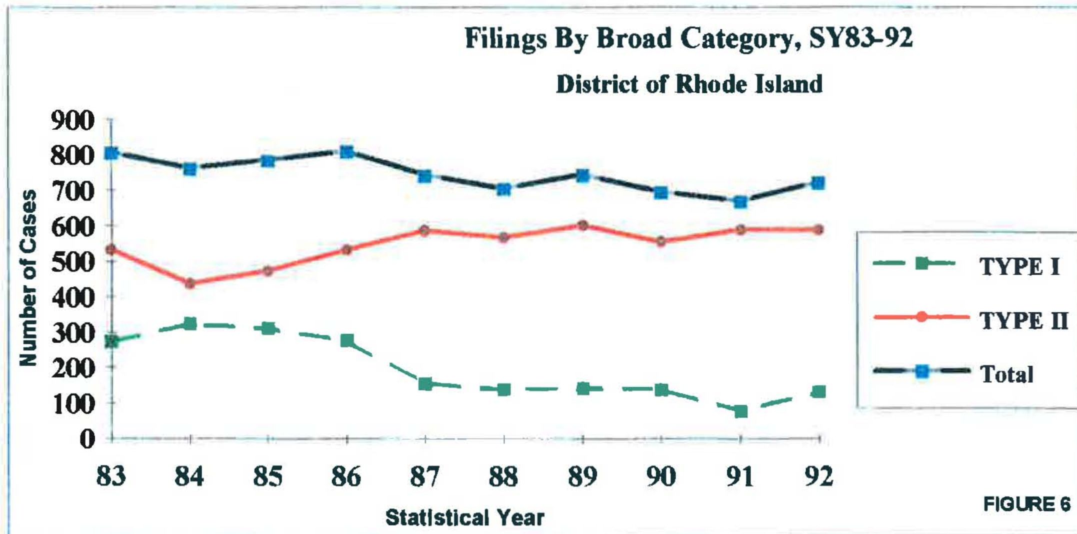

FIGURE 6

FILED AND PENDING CASES DISTRICT OF RHODE ISLAND		
SY	CASES FILED	CASES PENDING
1987	769	728
1988	828	763
1989	807	794
1990	818	879
1991	767	904
1992	845	908
1993 *	679	719

* to August 31 1993

FIGURE 7

[45] Filings as of August 31, 1993 totaled 679.

As figures 7 and 8 illustrate, while the trend in pending cases has risen steadily since 1987, the Court has, for the most part, maintained parity in cases filed and cases terminated. Of particular importance to the Group, since March of 1993 there has been both a dramatic decrease in the number of cases pending and a significant increase in the number of cases being terminated. A number of factors may be contributing to these improvements: leveling off of the economic downturn which is credited for much of the increase in commercial litigation over the last four to six years; the added presence of two full-time magistrate judges since shortly after the first of the year; the adjunct services of a retired magistrate judge; and a renewed emphasis on settlement conferences and the use of mini-trials by the Court.

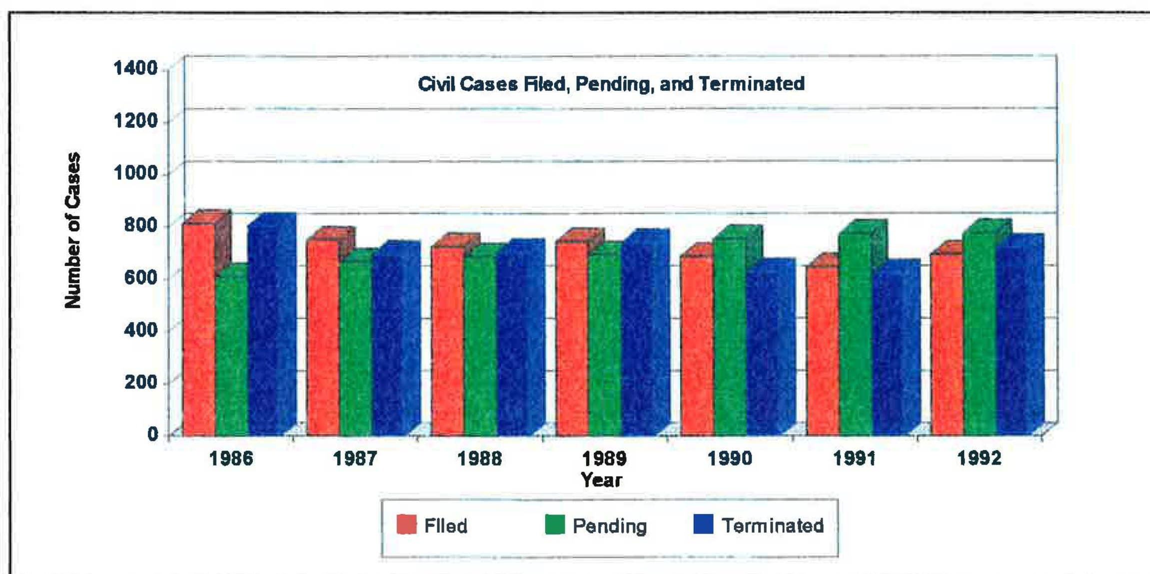

FIGURE 8

Despite a steady increase in the number of pending civil cases over the past six years, median time from filing to disposition (figure 9) has remained rather constant at ten months.

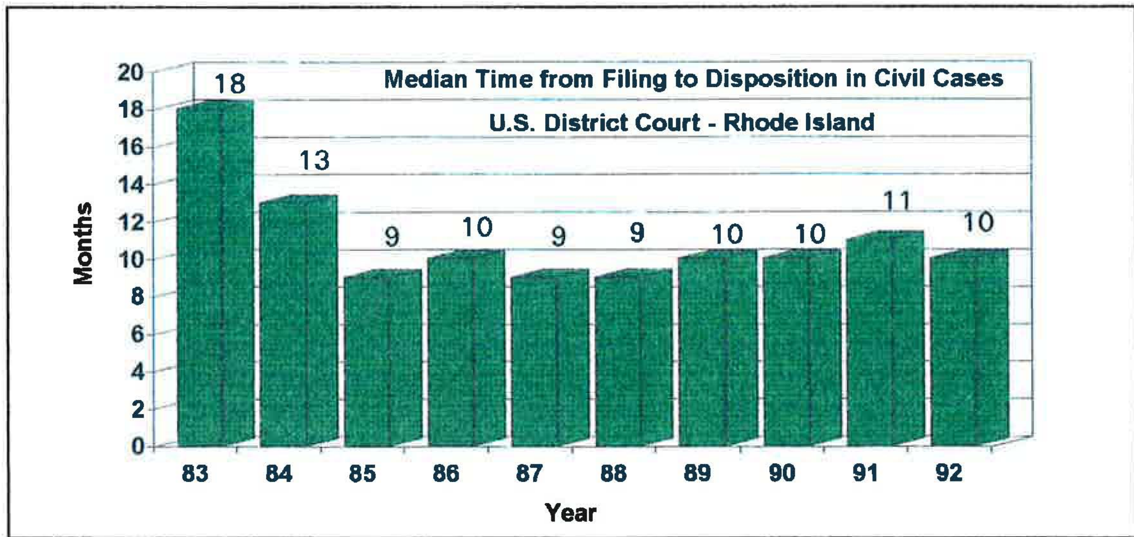

FIGURE 9

As figure 10 indicates, the "life expectancy" of civil cases in this District reflects the overall impression of the Group that there is little, if any, delay in this district.

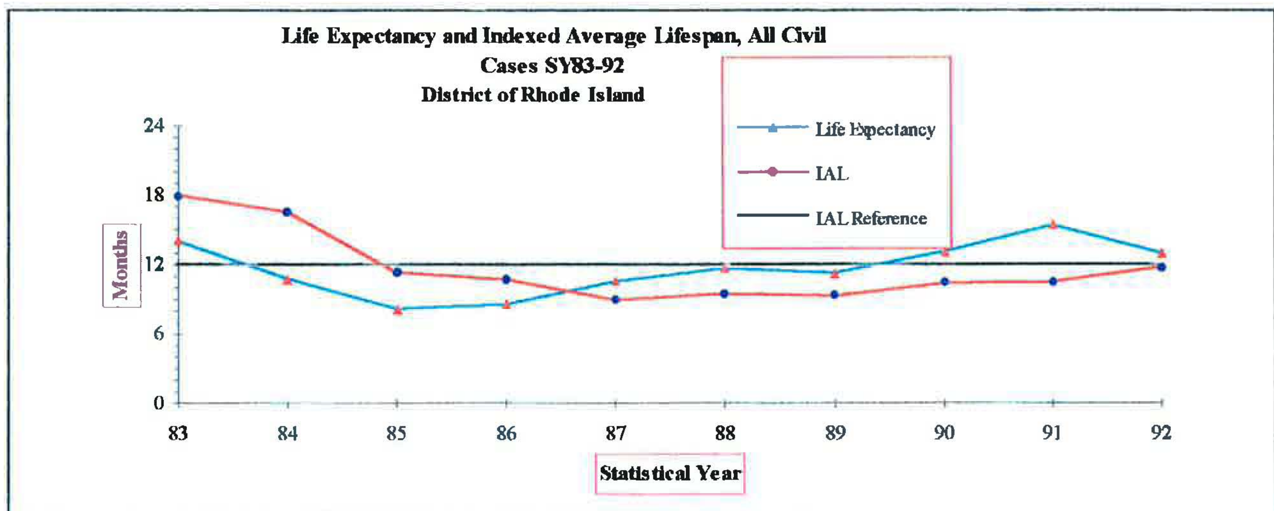

FIGURE 10

The Indexed Average Lifespan ("IAL")[46] for this District is 11 months, which is below the national average of 12 months for all civil cases. The previous measures of the dispatch with which this Court manages its civil docket is all the more remarkable when the large number of trials completed per judge is considered.[47]

B. The Criminal Docket

Felony filings increased steadily from 75 in 1987 to 150 in 1992, a 100 percent increase in five years. The number of filings is impressive but the burden to judges in criminal cases is generally proportional to the number of defendants per case. In 1987 there were an average of 1.6 criminal defendants per case.[48] In 1992 the average number of defendants declined slightly to 1.5 equaling a record total of 225 defendants. Drug prosecutions, especially those involving multiple defendants, have dramatically increased demands on all the Court's resources. The percentage of drug defendants, compared to all criminal defendants increased from 10 percent in Statistical Year 1983 to over 45 percent in Statistical Year 1992. The number of drug defendants both as a percentage and as an actual number, has soared since 1983, to over 40 percent of the criminal docket, or approximately 125 defendants in 1992.

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[46] Life expectancy is used to assess change in the trend of actual cases life span; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL permits comparison of the characteristic life span of this court's cases to those at all district courts over the past decade. The IAL is indexed at a value of 12 because the national average for time to disposition is about 12 months nationally. This value then represents an average speed of case disposition, shown on figure 10 as IAL Reference. Values below 12 indicate the court is disposing of cases faster than the average, and, conversely, values above 12 indicate that cases are being disposed of at a slower rate than the national average.

[47] See the comparison chart of districts within the Circuit displayed in figure 5.

[48] Administrative Office of the U.S. Courts/Federal Judicial Center, **Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, September 1992** at p 18.

The large number of defendants coupled with the percentage of criminal cases tried (22.6 percent),[49] reinforces the Group's recognition that the criminal docket is becoming increasingly arduous.

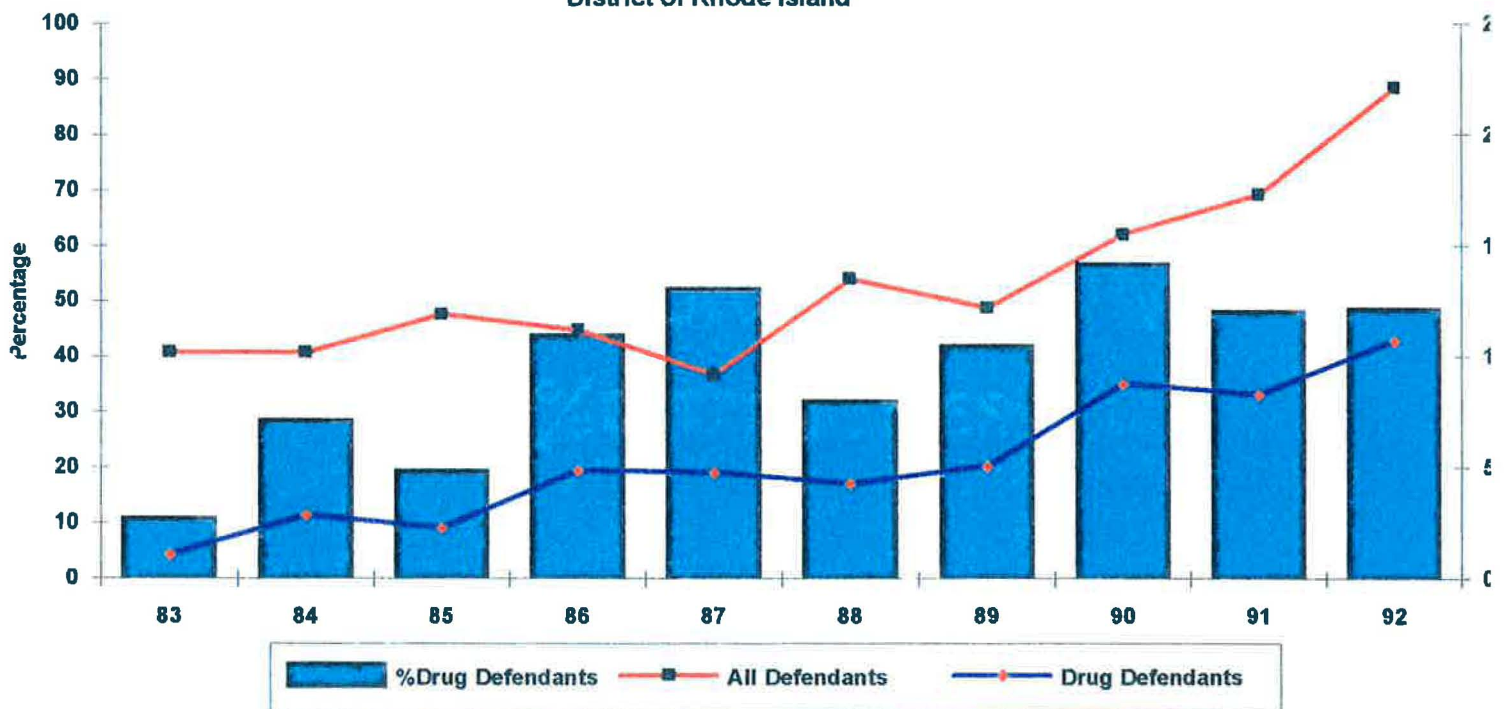

FIGURE 11

[49] United States Sentencing Commission, ***Annual Report***, 1992 at p 56, Table 18.

In 1983, median time from filing to disposition of criminal cases was 7.2 months (figure 12); by 1992 it had declined to 5.3 months. However, median time is likely to increase again in view of the increasing trend in total criminal felony filings, the unusually large percentage of criminal cases tried in this District, and the continuing deluge of legislation which affects the criminal dockets of district courts nationwide.

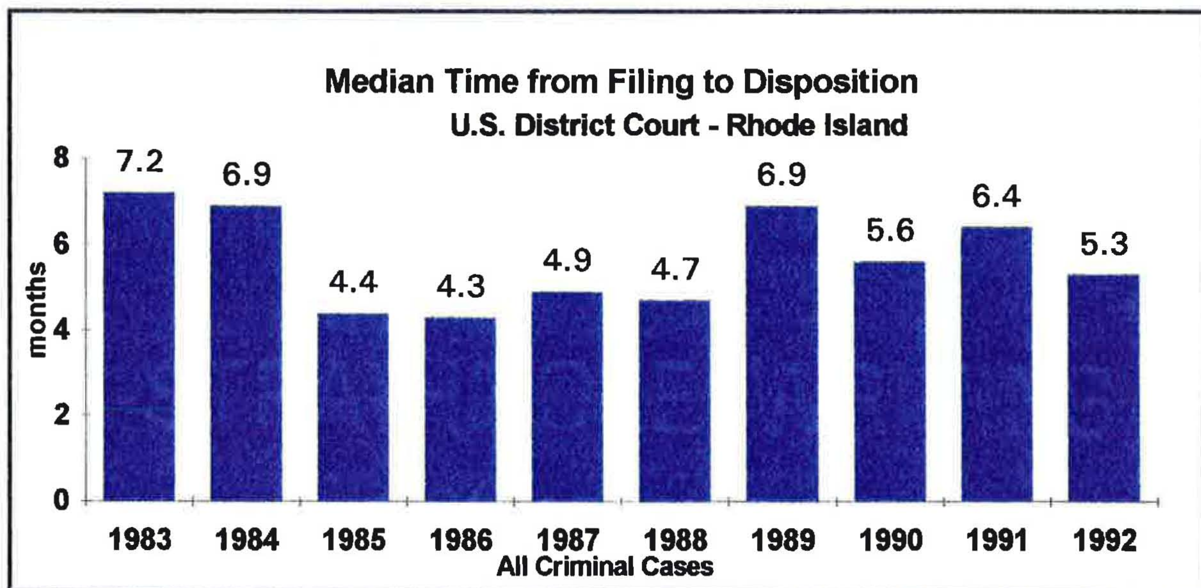

FIGURE 12

XI. DEMANDS ON COURT RESOURCES

The most significant change during this period has been the decline in the number of rapidly-terminating Type I cases coupled with the increase in the more complicated Type II case filings from a low of 450 cases in Statistical Year 1983 to a high of 585 cases in Statistical Year 1989 (figure 13)

CURRENT TREND

Filings of difficult civil cases are up, filings of criminal cases (and in particular the number of drug defendants), is dramatically up and cases resolved only after trial remains high. Disposition time of cases has remained generally low due to the historical presence of a full complement of very active judges whose work habits have resulted in aggressively managed civil and criminal dockets.

FIGURE 13

While broad workload data regarding trends is helpful, it is only a starting point in discerning the relationship between court resources and demands placed upon those resources. To examine this relationship more fully, the Group divided court resources into four categories:

- ***a.*** *Judicial officers;*
- ***b.*** *Supporting personnel;*
- ***c.*** *Buildings and facilities; and*
- ***d.*** *Automation and other technical support.*

A. Judicial Officers

District Judges: The number of total filings per authorized judgeship as reflected in figure 14, over the last five years, has not increased significantly. In 1987, there were 256 such filings, compared to 282 in 1992.

U.S. DISTRICT COURT—JUDICIAL WORKLOAD PROFILE

RHODE ISLAND			1992	1991	1990	1989	1988	1987	NUMERICAL STANDING WITHIN U.S.	NUMERICAL STANDING WITHIN CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings*		845	767	818	807	828	769		
	Terminations		842	755	723	766	795	722		
	Pending		908	904	879	794	763	728		
	Percent Change in Total Filings Current Year	Over Last Yr...	10.2						36	2
		Over Earlier Yrs...			3.3	4.7	2.1	9.9	30	2
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months**		.0	.0	.0	.0	6.6	9.2		
ACTIONS PER JUDGESHIP	FILINGS	Total	282	256	273	269	276	256	83	5
		Civil	232	216	239	243	250	231	82	5
		Criminal Felony	50	40	34	26	26	25	45	1
	Pending Cases		303	301	293	265	254	243	77	4
	Weighted Filings**		333	313	306	329	338	318	69	3
	Terminations		281	252	241	255	265	241	83	4
	Trials Completed		50	58	46	44	42	39	8	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.4	5.9	5.8	6.8	4.5		31	1
		Civil**	10	11	10	10	9	9	56	4
	From Issue to Trial (Civil Only)		12	10	12	11	12	11	20	3
OTHER	Number (and %) of Civil Cases Over 3 Years Old		27 3.4	32 4.0	28 3.5	24 3.3	14 2.0	9 1.4	27	2
	Average Number of Felony Defendants Filed per Case		1.5	1.4	1.5	1.4	1.6	1.6		
	Jurors	Avg. Present for Jury Selection**	24.02	18.51	17.82	17.36	16.42	17.36	10	1
		Percent Not Selected or Challenged**	29.4	15.4	17.1	17.2	21.6	22.1	40	2

TWELVE MONTH PERIOD ENDED SEPTEMBER 30

FIGURE 14

FILINGS PER JUDGESHIP			
YEAR	CIVIL	CRIMINAL	TOTAL
!987	231	25	256
1992	232	50	282

This District is first in the Circuit and is 45th in the nation in terms of criminal felony filings per authorized judgeship. As previously noted in the discussion of the Court's criminal docket, drug prosecutions, especially those involving multiple defendants, have risen dramatically and have placed significant demands upon the court's judicial resources.

FIGURE 15

While the pending civil caseload increased approximately 24 percent from 243 cases per judge in 1987 to 303 in 1992 (figure 16), for the period ended August 31 1993 the number of cases pending per judge has declined to 239 (figure 17). Terminations per judge have risen from 241 in 1987 to 281 in 1992, or an increase of approximately 16 percent. That trend has continued in 1993.

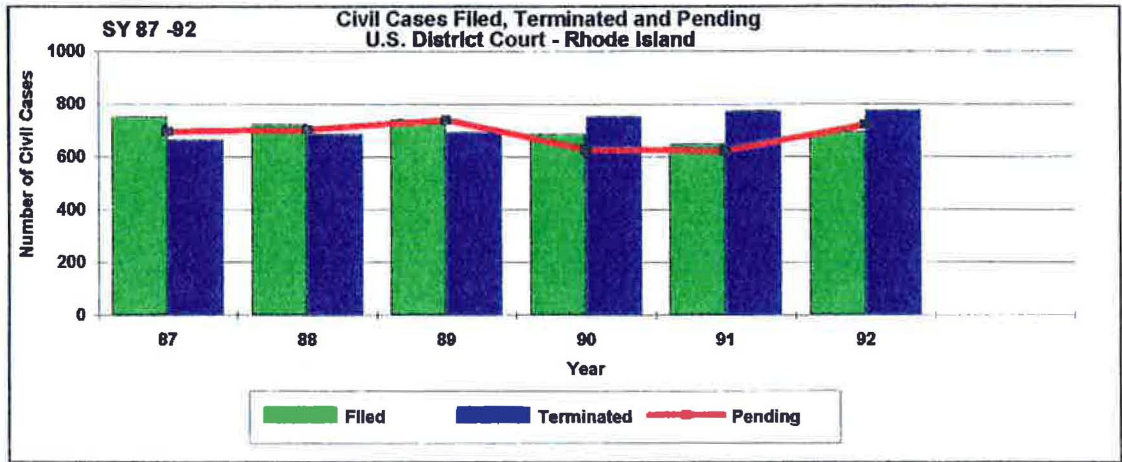

FIGURE 16

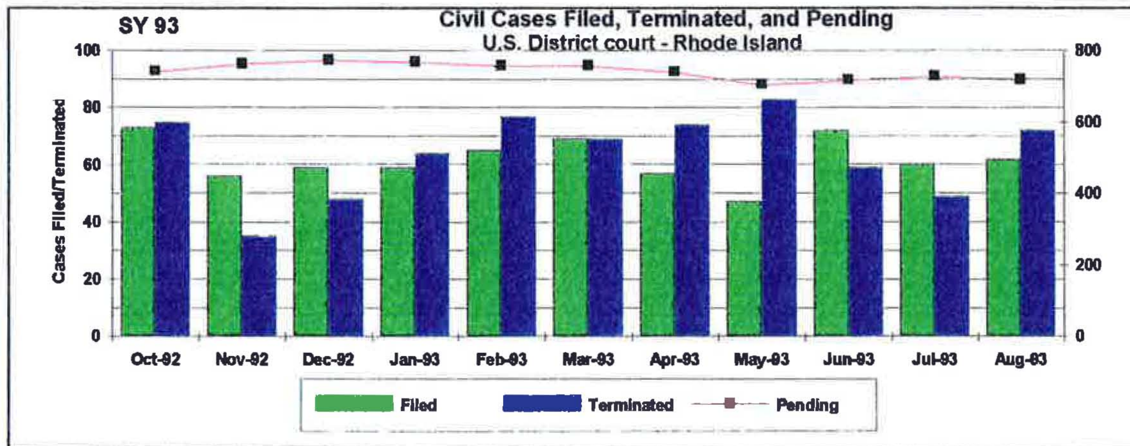

FIGURE 17

Weighted filings per judgeship[50] have not increased significantly since 1987, when there were 318 weighted filings per judgeship. In 1992 there were 333 or a 4.7 percent increase over 1987. Terminations per judgeship over the five year period increased approximately 17 percent. As noted, earlier workload data for the Court as a whole indicates that the Court is maintaining a balance between total filings and terminations. Statistical Year 1993 has seen a dramatic improvement.

Perhaps nowhere is the increasing demand on this Court's district judges more evident than the number of trials completed per judge. In the districts determined by the Group to be ***most*** similar to Rhode Island, none completed as many trials per judge in 1992.[51]

In 1992 there were 50 trials completed per authorized district judge for a combined total of 150 trials; in 1987, 117 trials were completed (39 per judge). Over the five-years from 1987 to 1992, this District has seen a 28 percent increase in the number of trials completed.

Despite the significant increase in the amount of judge time consumed by the cases that are tried and the complexity of case mix, the Court has maintained a low filing to disposition time of 10 months and issue to trial time of 12 months.

The contribution of this Court's senior judges to these accomplishments cannot be overstated, since each carries an equal share of the Court's civil and criminal workload. All of the Court's judicial officers have, in a very visible way, demonstrated their allegiance to the concept of active case management and the guarantee of a firm trial date.

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[50] This is a mathematical adjustment of filings which gives heavier count to cases known to be more difficult and time consuming in nature. The weighted filing figures are based on weights developed from a 1979 Time Study conducted by the Federal Judicial Center. The study measured the actual hours judges expended on cases (grouped by category), and calculated a weight for each category reflecting differences in judge time per case. A case category that required average judge time was given a weight of 1.0; one requiring twice the average was given judge time of 2.0; one requiring half the average 0.5, and so on.

[51] The districts deemed ***most*** similar include the Districts of: Maine, Montana, New Hampshire and the Northern West Virginia.

Magistrate Judges: The workload trend for magistrate judges in this district is one of consistent growth. The trend will likely continue in the coming years. In the Statistical Year ending June 30, 1992 magistrate judges in this district conducted 2,526 matters, compared to 1,975 matters in 1991, or an increase of 28 percent. In 1991 the magistrate judges conducted 698 preliminary proceedings;[52] in 1992 preliminary proceedings increased by 190, or 27 percent to 888. In 1991 magistrate judges conducted 1,246 "additional matters".[53] In 1992 1,619 such matters were undertaken, or approximately a 30 percent increase over 1991.

Use of magistrate judges to try civil cases has been infrequent in this District, but appears to be increasing. Prior to 1990, 28 U.S.C. § 636(c) provided only for initial advice by the clerk of court when a case was filed "of the availability of a magistrate". Section 636 was amended as part of the Judicial Improvements Act of 1990, of which the Civil Justice Reform Act is a part. The statute now permits either the assigned district judge or the magistrate judge to advise the parties of the availability of a magistrate judge, so long as the parties are informed that "they are free to withhold consent without adverse substantive consequences." This "advice" is being given more frequently. The Group recommends that the Court consider actively seeking referrals in certain "appropriate" cases, i.e. cases which do not significantly prevent the magistrate judges from performing their pre-trial functions for all of the Court's cases. Ideal cases for consensual referral include social security cases, non-jury prisoner cases and non-jury civil forfeiture cases.

[52] "Preliminary proceedings" include search warrants, arrest warrants/summonses, initial appearances, detention hearings, bail reviews, preliminary exams, arraignments, and certain "other" proceedings.

[53] "Additional matters" include criminal motions under U.S.C. § 636 (b)(1)(A) and (b)(1)(B), pretrial conferences, evidentiary hearings, prisoner litigation, including state and federal habeus corpus, prisoner civil rights and evidentiary hearings, civil 636(b)(1)(A) and 636 (b)(1)(B), pretrial conferences, and evidentiary hearings related to civil matters, social security appeals, and Special Masterships.

Despite the dramatic increase in the overall workload of the judges in this district, the presence of two full-time magistrate judges, combined with the adjunct services of one retired magistrate judge, has proved to be an effective deterrent to the growth trend. For the period March 1993 through August 1993, terminations have dramatically increased and far outpace the number of cases filed. The number of pending cases have dropped. The Group believes that this is due at least in part to the efforts of magistrate judges and to what the Group also believes is an increasing awareness and reliance upon these judges by the Court to perform a full range of statutorily permitted duties.

However, the Group's assessment of the impact of new and proposed Congressional legislation makes clear that such legislation is likely to increase the workload in the Court's docket generally, and more specifically, is likely to impact on the workload of magistrate judges. District and magistrate judges will be hearing more matters legistatively transferred from state to federal courts which traditionally were reserved to the state courts. This increase in workload is unlikely to be met with a corresponding increase in personnel.[54]

B. Recommendations

The Group believes that the Court should take full advantage of its present success and all of its available resources and build into the Plan operational integrity, sufficient to deliver consistently efficient and high quality service to litigants.

[54] This issue is more fully developed in section **XIV** of this Report, which examines ways in which cost and delay can be reduced by better assessment of the impact of new legislation.

The Group believes that a few minor "adjustments" to the Court's pretrial practices would help reduce time and expenses:

1. *Implement our comprehensive revision of the Local Rules.*

2. *Revise the categories for assigning cases. Currently, the following categories are used for assigning cases:*

CIVIL

- Admiralty
- Antitrust
- Bankruptcy
- Civil Rights
- Contracts
- Habeas Corpus
- Taxes
- Labor
- Miscellaneous
- Patents/Copyrights/Trademarks
- Real Property
- Social Security
- Torts
- TRO
- Miscellaneous Grand Jury Proceedings
- Prisoner Petitions
- Transfers from other districts

CRIMINAL

- All Indictments
- Bail Appeals
- Forfeitures

The Group has found that, while each judge receives a pro rata share of cases, the weighted value of those cases is skewed by several factors:

- The number of categories,
- The number of cards for each judge placed in the category
- The difficulty of the case, etc.

In civil cases little can be done to estimate a case's difficulty, but the number of categories and numbers of cards assigned can be controlled. In order to assure

the close approximation in each category of the expected cases to be assigned during the following year it is suggested that TROs and Transfers from other districts be drawn from the category which most closely fits the nature of the TRO or Transfer case, all criminal matters be consolidated into one category, and that Grand Jury and bail appeals be added to miscellaneous. Thus, the Court would use the following categories for assigning its cases:

- Admiralty
- Antitrust
- Bankruptcy Appeals
- Civil Rights
- Contracts
- Forfeiture/Penalty/Tax suits
- Labor
- Miscellaneous (including Grand Jury proceedings and Bail appeals)
- Patents, Copyrights, and Trademarks (Intellectual Property Rights)
- Prisoner Petitions (including Habeas Corpus)
- Real Property
- Social Security
- Torts

It is recommended that close attention be paid to the historical data for the number of cases to be expected from any category to assure that the least number of judge cards necessary are used for the draw.

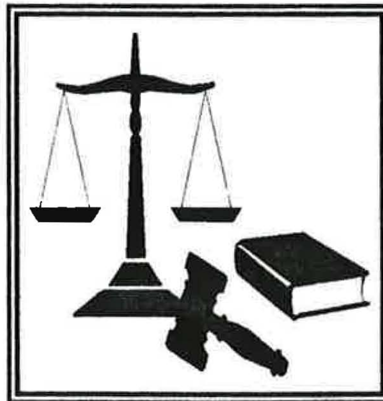
See figure 18 below which reflects the number of Civil filings by nature of suits.

1992 CIVIL FILINGS BY NATURE OF SUIT													
Type	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Total	696	18	24	55	18	21	56	170	138	30	79	4	83

A – Social security
B – Recovery of Overpayment
C – Prisoner Petitions
D – Forfeitures and Penalties &Tax-Suits
E – Real Property
F – Labor Suits
G – Contracts
H – Torts
I – Copyright, Patent, and Trademark
J – Civil Rights
K – Antitrust
L – All Other Civil

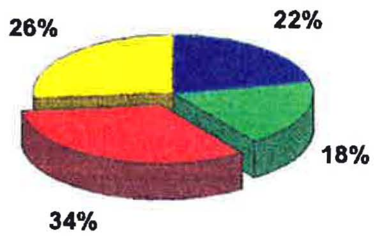
FIGURE 18

The civil docket is heavily influenced by the criminal docket. While we have not evaluated the criminal docket in depth it is clear that some thought ought to be given to either weighting criminal cases or to categorizing them so that the possibility of one judge receiving a number of very time-consuming cases is minimized. As reflected in Figure 19. one judge (Judge. A has amassed 40 percent of the criminal trial bench time) of the entire Court over the last two years.

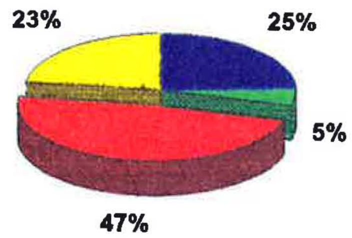


Percentage of Total Criminal Trial Hours Per Judge

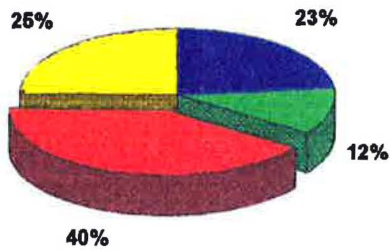
SY–92



SY–93



SY–92 & 93 Combined



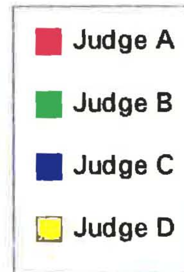


FIGURE 19

The Group recommends that three categories of cases be used for the criminal draw based on expected trial length:

- *less than three days (Category I),*
- *three to six days (Category II), and*
- *over six days (Category III)*

The U.S. Attorney already estimates trial length on all new indictments on form AO 257 ("defendant information relative to a criminal action in U.S. District Court"). While most cases are Category I type, we recommend that only one set of cards be placed in the Category II draw and one set in the Category III draw. All cards should be drawn from the Category before being replenished. Each judge would be assured of only receiving one Category II or Category III type case out of each four cases assigned in that Category.

3. *Require a certification on all discovery motions, by the moving party, that counsel have met and conferred in an attempt to resolve the dispute. The Group's interviews with the magistrate judges revealed that one-third to one-half of all discovery matters resolve themselves at the courthouse when counsel discuss the motion just prior to the scheduled hearing. This results in lost judicial time which could be used on other cases. This proposed requirement could be accomplished immediately through issuance of a standing order; ultimately the requirement can be included in the Local Rules. While the present Local Rules require counsel to confer about objections to interrogatories or requests (Rule 13(d)), this certification will insure the requirement is being complied with.*

4. *The present Local Rule (Rule 12 (2)) allows the opposing party 10 days **after service** of a motion to file an opposition. We recommend 2 minor adjustments. In all motions the time limit to object should be increased to 11 days vice 10. The time limit should run from the day the motion is **filed** with the court. This minor, perverse change will save almost two weeks in closing the response time to motions. The 11 days is **inclusive** of weekends and holidays — the 10 day limit was **exclusive** of weekends and holidays (10 days computes to about 17 days under F.R.C.P. 6(a). Eleven days compute as eleven days). Starting the 11 day clock from filing rather than service saves an additional 2 to 3 days.*

5. *Presently, the magistrate judges act on most non-dispositive pre-trial discovery motions for all of the district judges. However, referrals of these motions seem to occur after the motions are taken to the district judge's chambers and then individually referred. This evolution adds 7 to 10 days to processing of the motion. The Group recommends that all non-dispositive discovery type motions be presumptively referred to the assigned magistrate judge for action.*

6. *Presently the Court uses a combination of 3 basic pre-trial orders. One is very detailed, one has very little detail, and one is somewhere between these two opposites. The Group recommends that, if possible, a uniform pre-trial order be used by the court. The savings in time may not be great for the litigants, but the consistency of practice for the bar would improve the value of the pre-trial submissions. A possible uniform order is discussed in the revision to the Local Rules and outlined in appendix C to those proposed rules.*

7. *Enhanced use of the consensual referral of cases might be of assistance to the Court. While the Group recognizes the tension between an Article III judge's historical performance of certain constitutional functions and the trend towards delegating some of those functions to magistrate judges, we are not recommending anything radical. Some civil matters which may readily be resolved by magistrate judges (upon consent of the parties) will save the district judges significant time, and still not approach the limits of Article III concerns.* ***Non-jury trials*** *(e.g. prisoner cases, civil forfeiture matters, and Social Security matters) seem appropriate areas for the Court to seek consensual referrals. The Group encourages these attempts.*

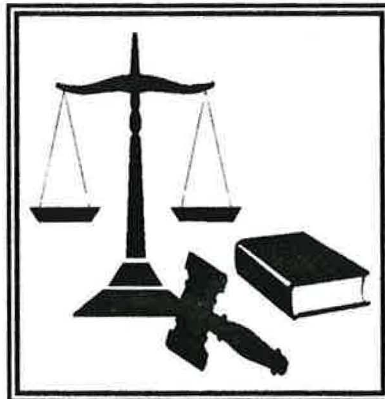
8. *The use of video technology for prisoner civil rights and habeas corpus cases, for example, would reduce cost and delay associated with the scheduling and transport of prisoners.*

C. Non-Judicial Support Personnel

As previously noted, the Clerk's Office is currently staffed with 20 persons, including the Clerk. Staff requirements in clerk's offices nationwide for fiscal year 1993 workload exceeds 11,500 positions. Current funding on the nationwide payroll will support less than 10,500 positions, or 90 percent of the required staff. Some offices, including this office, are staffed at 79 percent of the level needed to handle the caseloads. The confirmation of the new active district judge may result in a need to increase staff to support the new judge and the workload resulting therefrom, both in terms of administrative functions performed in the Clerk's Office and judicial support relative to the judge's workload.

In general the Clerk's Office has staffing needs in three areas: (1) general clerical support staff; (2) automation; (3) judicial team support. Consideration of a policy that would equalize staffing needs among the federal courts nationwide is

currently under consideration by the Director of the Administrative Office of the U.S. Courts. Depending upon how the recommendations regarding equalization of staff are established by the Director, the Clerk's Office may acquire additional staff positions, already authorized under the current work measurement formula. The Group will monitor this matter over the next two years to assure adequate staffing continues in the clerk's office.



D. Space and Facilities

The Providence Federal Building and Courthouse – erected 1905 to 1908 – is considered an exceptionally well-conceived example of the classical Beaux Arts style favored for monumental public buildings at the turn of the century. In its day, it was considered one of the finest federal buildings to be found outside of Washington, D.C. The building to this day contains some of the most prized courtrooms in the Federal Court System. The original courtrooms are richly paneled in oak, with fluted oak columns and beautifully carved benches and furniture. The ceremonial courtroom has a domed ceiling and a stained glass skylight as well as a magnificent Federal eagle which dominates the entrance wall. It would be virtually impossible to replace these courtrooms as they are truly works of art themselves.

However, this five story edifice no longer has sufficient space to house the entire court family. In recent years the Probation Department, the United States Attorney's Office, the Marshal's Office, and the Bankruptcy Court have had to move out of the building. Present plans call for relocating two full-time magistrate judges and their staffs to the Pastore Building, a three-story brick Federal Building and Post Office of modernized Federal design with simple Grecian ornament, located adjacent to the Courthouse. Consideration is also being given to relocating the aforementioned court family agencies and departments into the Pastore Building. The objective would be to re-unify the court and related agencies under the umbrella of a two building Federal Court Complex. The General Services Administration has offered the Pastore Building for use as a court complex.

E. Automation and Technical Support

As previously noted in this Report, 1992 was an extremely active year in terms of automation. The District went on-line with a civil electronic docketing and case management system, replacing the old manual methods of docketing and monitoring case progress. In late 1992, the integration of paper systems into the new integrated

case management system (ICMS) was completed, and in January, 1993, the Court began using ICMS Criminal. The Court also went on-line with an automated public information access service (PACER). In addition the Court has completed a transition from individual PC's and some LANS to a court-wide computer network.

This new technology has greatly improved the delivery of services to the public and bar, and has enhanced greatly the ability of the Court to perform its functions. However, critically important to the continued delivery of these improved services is sufficient automation staff. At present, the Court has one Systems Manager, with no underlying support staff. To the extent that funding is available, a Systems Administrator or PC Coordinator is clearly justified and should be secured at the earliest possible time.

XII. ANALYSIS OF COST AND DELAY

A. Defined

The Senate Report to the Act defined litigation transaction costs as "the total costs incurred by all parties to civil litigation, excluding any ultimate liability or settlement."[55] The Report also cites costs in the context of costs to litigants and taxpayers, i.e. the cost to operate the judicial system.[56]

The Group, heeding the legislative comments to the Act, decided that costs include not only the costs of expenses to the parties to prosecute and defend civil cases (i.e. litigation transaction costs), but also indirect costs (e.g. judicial time, clerk time and administrative costs such as building use, incident to litigation.)

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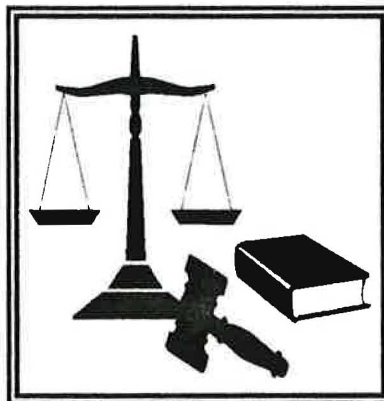
[55] S. Rep. No. 101-416, 101st Cong., 2d Sess. 6. (1990), reprinted in 1990 U.S.C.C.A.N. 6802, 6808-09.

[56] Id. at 8, 1990 U.S.C.C.A.N. at 6810-11, citing Newman, Rethinking Fairness, 93 Yale L.J. 1643 (1984) and Justice Powell's dissent to the 1980 amendments to the Federal Rules of Civil Procedure, 446 U.S. 997, 998, 1000-01 (1980).

Excessive delay, was not defined in the Report. However, the Report cites testimony that equates delay with excessive time to obtain a just solution in civil litigation.[57] Thus, despite the Act's use of the phrases "expense and delay" or "cost and delay,"[58] delay emerges as a factor of costs or expenses. ***Most*** plaintiffs want to have their claims adjudicated promptly; the longer they must wait to get monetary or other relief, the longer they must make economic adjustments pending final adjudication. Similarly, ***most*** defendants want to have their cases adjudicated promptly; the longer they must wait for a decision, the longer they must make economic adjustments to cover against a possible adverse result. In either case, the parties lose through delay. Plaintiffs cannot get the resources that victory would give them to apply in the marketplace or their personal lives; defendants or their insurers must tie up capital that might be put to other and better uses.

Beyond these tangible aspects of cost or expense and delay, there are the intangible psychological factors of seemingly endless waiting for a result, time spent in the process and the fear of disproportionate costs for the result obtained. The Group could not measure these factors but acknowledged their existence as it prepared this Report.



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[57] S. Rep. No. 101-416, supra at 6, 1990 U.S.C.C.A.N. at 6809.

[58] e.g. 28 U.S.C. §§ 471, 472.

B. Findings

The Group identified no significant delays in this district. To the extent that any delay was identified as a problem, it is generally confined to the area of pre-trial discovery motion practice, though the Practices and Procedures Subcommittee did identify some other areas worthy of mention. That Subcommittee found the greatest delays to be in the failure to resolve both non-dispositive and dispositive motions promptly. With respect to this delay, the problem seems to be one of past administrative practice and procedure, rather than any lack of judicial attention to motions once they are before the Court. Simply modifying the way motions are processed, as mentioned earlier, may alleviate much of this delay. Beyond the area of motion practice, the following areas of potential delay were identified by the Committee:

- *Any significant delay in the confirmation of Mary M. Lisi will impact upon the efficiency of case dispositions.*

- *Magistrate judges have not always been utilized in this jurisdiction to the full extent permitted by law. As a result, the Group believes that district judges have less time available to spend on dispositive motions, trials and other matters. The Group urges that the Court expand the use of magistrate judges to the greatest degree possible in order to relieve district judges of the burden of reviewing and hearing matters that by statute may be referred to magistrate judges. A survey of members of the Rhode Island Bar supports the enhanced use of magistrate judges.*

- *The federal War on Drugs, which began in earnest in 1989, has also resulted in a sharp increase in the number of criminal defendants being prosecuted by the U.S. Attorney in this district. The number of criminal defendants climbed in Statistical Year 92 to approximately 225. While both civil and criminal case disposition times have not been as yet impaired by the growth of criminal case filings, if the present trend continues, and if the existing number of sitting district or magistrate judges changes or the distribution of their workload is altered, it is entirely possible that the median time from filing to disposition in civil and criminal cases may be significantly increased. This does not take into account external factors which might affect the docket.*[59]

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[59] On June 18, 1993, civil jury trials were temporarily suspended due to a lack of funds with which to pay jurors. The Court ceased empaneling jurors and other trials that were in

Thus, we have a situation where projected growth in the number and percentage of criminal case filings will significantly outpace civil filings, and changes in the existing judicial resources of this court may create a significant backlog. Contingency planning is therefore an interim part of this Report. Act now while judicial resources are at their apex, before criminal filings can dramatically affect the civil docket.

XIII. THE PRINCIPAL CAUSES OF COST AND DELAY

A. In General

The overall focus of the Act is upon the issues of litigation cost and delay. These issues have captured the attention of the American public. A national survey of more than 2,000 Americans in 1987 showed that 71 percent believe that the overall cost of lawsuits is too high, and 57 percent believe that the system fails to provide resolutions of disputes without delay.[60] This view was shared by more than 1,000 experienced litigators and Federal trial judges, who said that high cost of litigation unreasonably impedes access to the courts by the ordinary citizen.[61]

The Act focuses upon a number of areas which generally may be considered important to the reduction of litigation cost and delay, including the following:

- *Importance of establishing early and ongoing pretrial involvement of judges,*

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progress at the time continued. Criminal jury trials were not affected. This event, i.e the Congress' failure to provide adequate funding to the federal judiciary, is a prime example of an external force that affects the court's docket and its ability to deliver judicial services.

[60] Louis Harris and Associates Inc., "Public Attitudes Toward Civil Justice System and Tort Law Reform", March 1987, at 15,19

[61] Survey conducted by Louis Harris and Associates, Inc., for the Foundation for Change, Inc., was based on telephone interviews with 250 private litigators who represent plaintiffs, and 250 who represent defendants; 100 public interest litigators who actively pursue litigation in Federal Courts; 300 corporate general counsel of companies selected from the 5,000 largest American Corporations (based on annual sales revenues); and 147 sitting Federal trial judges. (Louis Harris and Associates, Inc., "Procedural Reform of the Civil Justice System" (March, 1989))

- *Importance of setting early, firm trial dates,*

- *Utilization of magistrate judges to aid the district judges in meeting the demands of the district court workload,*

- *Establishment of effective means of controlling discovery,*

- *Establishment where appropriate and desirable, of differentiated case management,*

- *Reduction in the cost and delay associated with motion practice and decisions, and*

- *Expansion and enhancement of the use of alternative dispute resolution.*

B. The Situation In The District of Rhode Island

Many of the above areas have either already been addressed by this Court or have been examined and addressed in this Report and Plan.

All of the judicial officers in this district participate in early and ongoing pretrial involvement, some to a greater degree than others. The belief that early and firm trial dates foster early settlement of cases is routinely practiced and has met with positive results. Notwithstanding that practice, as previously noted, in both civil and criminal cases an unusually high percentage of both civil and criminal cases are tried.

The Group is unable to explain any unusual factors which might explain this phenomenon. It is "common knowledge" that the same trait occurs in the state system. Attorneys and judges have commented on the unusually high percentage of cases in Rhode Island (federal and state) which are resolved only after trial.

The Group believes that full use of magistrate judges will aid the Court in the expeditious resolution of cases. Because of this belief the Group has recommended enhanced use of our magistrate judges. Filings and terminations data beginning in

January, 1993 and continuing to the present have already demonstrated the value of the services of two full-time and one retired magistrate judge (see figure 17).

Each judicial officer informally practices differentiated case management and the low median time in both civil and criminal matters does not suggest a need to implement a formal DCM program.

Early in its deliberations the Group identified the Court's outdated local rules as a potential source of delay and cost in the processing of cases. The present rules have not been modified for many years. Many provisions are no longer enforced and some current practices are not reflected in the rules. The Local Rules Subcommittee, with input from dozens of attorneys, prepared and has presented some suggested changes to the proposed Local Rules of Court. The Group urges the Court, as soon as the status of the pending revisions to the Federal Rules is resolved, to adopt and promulgate new Local Rules. We stand ready to assist in fine-tuning these Rules to the Court's satisfaction.

There does not appear to be much abuse of discovery in this district, though the Group recognizes this as an area requiring routine monitoring to ensure that discovery remains reasonable and does not drive up litigation cost unnecessarily.

Perhaps the hallmark of the Report and Plan involves the introduction of a formal plan for ADR. The plan calls for a single mandatory settlement conference with a provision for exception if litigants choose one of the ADR options offered. Failure to adopt one of the options offered from the menu results in parties having to participate in the settlement conference. The Group believes that this mandatory voluntary process will have the effect of drawing parties together early in the litigation process and will result in earlier settlement and a reduction of litigation cost.

Insofar as the mix of civil cases is concerned, there appears to the Group to be nothing unusual about the district's mix of civil cases. Historically, the mix has changed periodically, reflecting economic trends, legislative enactment's, executive decisions by the Department of Justice, and other influences. The docket always has a number of

major cases that are extraordinarily time-consuming for judges and require intensive management.

C. Evaluation Of Court Procedures

The Group concludes that the District currently meets the standards for reducing or eliminating excessive cost and delay; however, the Group recommends the following to improve upon existing practices and procedures and meet future expected situations:

1. *Implement the proposed revision of the Local Rules, previously submitted to the Court, and thereafter undertake a review of the Local Rules every two years and where necessary, update or revise them.*

2. *Revise the way in which civil and criminal cases are initially assigned by the Clerk.*

3. *Require all discovery motions to have a certification that counsel have met and conferred in good faith to attempt to resolve disputes prior to the filing of motions.*

4. *Require that responses to non-dispositive motions be filed within eleven (11) days from the filing of such motions.*

5. *Automatically refer all discovery motions to the assigned magistrate judge.*

6. *Adopt a uniform pretrial order satisfactory for use by all the district judges.*

7. *Encourage the consensual referral of appropriate cases to magistrate judges.*

8. *Provide a pamphlet for pro se litigants with instructions in complying with basic tenets of practice and procedure in the federal courts. Such litigants should be required to certify that they have read, understand and agree to comply with the practices and procedures set forth therein.*

9. *Conduct an educational program on the implementation and impact of the CJRA Plan soon after approval and adoption by the Court to educate the Federal Bar and the public on changes resulting from implementation of the CJRA Plan.*

10. *Consider the use of video technology to conduct arraignments to reduce cost associated with transporting prisoners and detainees as well as eliminating the security risks inherent in that process.*

XIV. EXAMINATION OF THE IMPACT OF NEW AND PENDING LEGISLATION

Several Congressional proposals have recently been introduced which may impact significantly affect the federal courts. In 1992 new legislation was enacted that is expected to further add to the Court's criminal docket, including the Anti-Car-Theft Act of 1992, Child Support Recovery Act of 1992, and the Animal Enterprise Control Act of 1992. In 1993, additional legislation has been introduced which may also affect upon the Court's criminal docket, including the Violence Against Women Act of 1993, Sexual Assault Prevention Act of 1993, In addition Senate Bill 470 introduced in June 1993, seeks to amend Chapter 41, Title 18 of the United States Code to make it a crime to "stalk" ("a course of conduct that harasses or makes a credible threat against another person"). These proposals allow new civil and criminal causes of action to be brought in Federal Courts for offenses which were previously reserved for state courts.

This new legislation threatens to burden this Court significantly in both traditional and non-traditional areas of civil and criminal litigation. Torts, civil rights, weapons and larceny filing are likely to increase. In addition, the possibility exists that areas traditionally reserved for the state court will emerge as major categories of case filings in the Rhode Island Federal Court.

The legislation will not just affect judges; it will likely influence every facet of the court administration. The clerk's office will have to contend with massive increases in

filings. Full-time interpreters will be required to assist in the domestic matters which will inundate every magistrate's daily calendar.

Ironically, this legislation is being enacted at a time when courts are forced to downsize and hiring freezes are in effect. Vacancies in both administrative and judicial positions often remain unfilled. Unless hiring keeps pace with the demands of the new legislation or creative alternatives are employed, the court risks sacrificing both efficiency and safety.

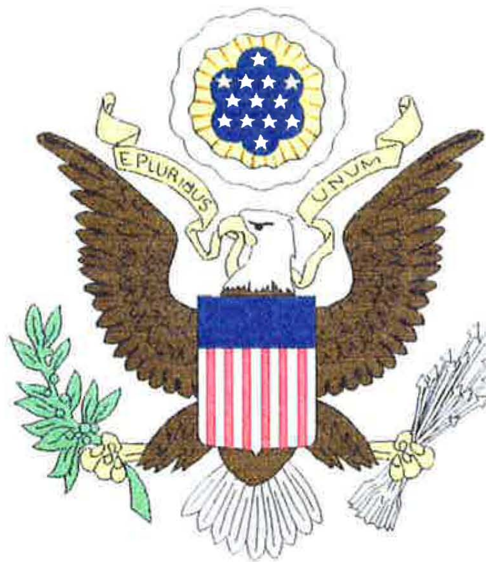
XV. CONCLUSION

As noted in the Executive Summary of this Report, the present state of the civil docket in this district is very good. Civil cases proceed expeditiously. A revision of the local rules, minor changes in pre-trial motion practice, uniform pre-trial orders, and full use of the magistrate judges will improve procedures and reduce time and cost. The Group's recommendation to use ADR should be viewed as "experimental" . The Group will continue to monitor its effectiveness and advice the Court as to whether this program actually contributes to significant reduction in the percentage of civil cases being tried, on the one hand, and, on the other, whether the ADR program imposes significant additional burdens that cannot be justified.

The Group and its staff are prepared to work with the Court in implementing these recommended changes. Should the Court have questions regarding this report, we stand ready to respond to them.

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND



Civil Justice Reform Act Advisory Group Report

Appendices

THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE DISTRICT OF RHODE ISLAND

MEMBERS BIOGRAPHICAL INFORMATION

THOMAS C. ANGELONE, ESQ.
[Chair, Practices & Procedures Subcommittee and Member of the Local Rules and Assessment of the Docket Subcommittees]

Mr. Angelone is presently a partner in the Providence law firm of Hodosh, Spinella & Angelone. He received his A.B. in 1965 from Providence College and his LL.B. in 1968 from Boston University. He specializes in litigation, with particular expertise in insurance defense litigation. Mr. Angelone is a member of the Rhode Island, Federal, and American Bar Associations. He is also a member of the Defense Research Institute; International Association of Defense Counsel and is a "Fellow" of the American College of Trial Lawyers. He is also an "Advocate" of the American Board of Trial Advocates."

HONORABLE RAYMOND F. BURGHARDT,
Clerk of the United States District Court [Media Subcommittee/Non-Voting Member]

Mr. Burghardt received his B.A. in 1960 from Kenyon College and his LL.B. from George Washington University Law School in 1963. In addition, Mr. Burghardt graduated from the Institute for Court Management (ICM) in 1971. He received additional education and training in Auditing and Finance In Agency Management at the U.S. Civil Service Commission. He also received advanced post-graduate training at ICM in Jury Management, Public Information Programs and Advanced Court Management. Mr. Burghardt served as Clerk of Court for the U.S. District Court, Southern District of New York from 1973 until his appointment as Clerk for the District of Rhode Island in 1991. In addition to the foregoing, he served as Attorney Advisor to the U.S. Department of Justice, assigned to the Law Enforcement Assistance Administration (LEAA), wherein he served as a Courts Program Specialist, Technical Assistance Division, providing technical assistance to courts and prosecutors and administering grants. Mr. Burghardt served as Chief Deputy Clerk to the U.S. District Court in Newark, New Jersey from 1969 to 1971; Attorney Advisory, Federal Judicial Examiner, to the U.S. Department of Justice, wherein he examined operation of U.S. Courts, including: Clerks of Court for the Bankruptcy Courts, U.S. Magistrates, U.S. Attorneys and U.S. Marshals Offices from 1965 to 1969. Mr. Burghardt also served as an Assistant Commonwealth Attorney (Prosecutor) in Arlington, Virginia from 1963 to 1965. From 1962-1963 he served as a Special Justice (Justice of the Peace) in

Arlington, Virginia, conducting bail hearings, issuing arrest and search warrants, and resolving traffic offenses.

JOSEPH V. CAVANAGH, JR.
[Member: Local Rules and Assessment of the Docket Subcommittees]

Mr. Cavanagh is currently a partner in the Providence law firm of Blish & Cavanagh. He received his undergraduate degree from Harvard College in 1971 and his law degree from Boston College Law School in 1974. He specializes in Civil litigation. He is a member of the Rhode Island and American Bar Associations. He is also a fellow in the American College of Trial Lawyers.

HONORABLE EDWARD C. CLIFTON,
Rhode Island District Court [Chair, Assessment of the Docket Subcommittee]

Judge Clifton is an Associate Judge of the District Court of the State of Rhode Island. He received his B.A. from the University of California, Berkeley in 1972 and his J.D. from the University of California, Los Angeles in 1975. He is a member of the Rhode Island State Trial Judges Association. Prior to his appointment to the District Court, during his years of practicing law, in addition to a general private practice, he previously served as a Municipal Court Judge for the City of Providence from 1979-1984 and served as the City Solicitor for the City of Providence from 1984-1990. He worked for Rhode Island Legal services, Inc. and the Department of the Public Defender for the State of Rhode Island. He served on the Executive Committee of the Rhode Island Bar Association and as a member of its House of Delegates. He served both as a member and later as Chairman of the Disciplinary Board of the Rhode Island Supreme Court from 1986 to 1993 as well as a member of the Character and Fitness Committee of the Rhode Island Supreme Court from 1991 to 1993.

WILLIAM A. CURRAN, ESQ
[Chair, Civil Justice Reform Act Advisory Group]

Mr. Curran is presently a Senior Partner in the Providence law firm of Hanson, Curran, Parks & Whitman. He received his B.S. in 1948 from the University of Rhode Island and his J.D. in 1951 from Boston College. In the earlier period of his legal career, Mr. Curran served as Law Clerk to then U.S. District Court Judge Edward W. Day from, 1956-1957. Since, he has served as State Chairman and Northeast Vice-President of the Defense Research Institute from, 1970-1974; Chairman, Governors Advisory Commission on Judicial Appointments, from 1977-1985. He served as a Member of the Disciplinary Board of the Rhode Island Supreme Court, from 1977-1980. Mr. Curran also served as a Member of the Rhode Island House of Delegates to the American Bar Association, from 1971-1979. He was also President of the Rhode Island Bar Association from 1972-1973.

DIANE M. DISNEY, PH.D.,
[Vice-Chair, Civil Justice Reform Act Advisory Group and Member of the Assessment of the Docket and Editorial Drafting Subcommittees]

Dr. Disney is presently a professor of management at the University of Rhode Island (URI), where she also serves as the Director of the Research Center on Business and Economics at the College of Business Administration. In addition to her teaching at URI, Dr. Disney is also Director of the state's Office of Defense Economic Adjustment and holds an adjunct appointment at the Heller School of Brandeis University. She received her B.A. in English and Russian from Stetson University, M. A. T. in English from Duke University, M.B.A. from URI, and her Ph.D. from Brandeis University in policy analysis. Dr. Disney has extensively published in her field and has served as a consultant to numerous governmental agencies and private concerns.

MARK P. DOLAN, ESQ.
[Local Rules and Alternative Dispute Resolution Subcommittees]

Mr. Dolan is currently a partner in the Providence law firm of Rice, Dolan & Kershaw. He received his A.B. from Brown University in 1982 and his J.D., magna cum laude from Georgetown University in 1985. He served as Editor of the Georgetown Law Journal from 1984-1985 and served as Law Clerk to then U.S. District Court Judge, Bruce M. Selya.

DAVID A. DUFFY
[Chair, Media Subcommittee]

Mr. Duffy is currently the President of Duffy & Shanley, Inc., a Providence-based advertising firm. He is Chairman of the New England Council of the American Association of Advertising Agencies and a member of the Executive Board of the National Council of Christians and Jews (New York). Mr. Duffy is a 1991 graduate of Providence College (PC) and currently serves as a Trustee and Chairman of the President's Council at the College. He is also a past President of PC's National Alumni Association.

EDWIN J. GALE, ESQ.
Interim United States Attorney, District of Rhode Island [Ex-Officio]

Mr. Gale is presently serving as Interim United States Attorney. He received his B.S. from the United States Naval Academy in 1965 and his J.D. from the University of Santa Clara in 1972. He joined the United States Department of Justice in 1972. He served on the Organized Crime and Racketeering Section from 1973 to 1987. He served as Chief of the Criminal Division/First Assistant, Office of the U.S. Attorney from 1987 to 1993. Mr. Gale is a Member of the State Bars of California and Rhode Island.

JAY S. GOODMAN, ESQ., PH.D.
[Member: Media and Assessment of the Docket Subcommittees]

Mr. Goodman has been a Professor of Political Science at Wheaton College since 1965. He also maintains a law and lobbying practice in Providence. He received his B.A. from Beloit College in 1961, his M.A. from Stanford University in 1963, a Ph.D. from Brown in 1965 and his J.D. from Suffolk University Law School in 1978. While in attendance at Suffolk he was a member of the Suffolk University Law Review and clerked for U.S. District Judge Francis J. Boyle. Mr. Goodman is presently a member of the **Rhode Island Bar Journal Editorial Board.**

J. MICHAEL KEATING, JR., ESQ.
[Chair, Alternative Dispute Resolution Subcommittee]

Mr. Keating is presently a partner and Director of Alternative Dispute Resolution Services in the Providence law firm of Tillinghast, Collins & Graham. Mr. Keating received his undergraduate degree from Holy Cross College, and M.A. from New York University and a law degree from George Town University. He has practiced as a mediator and arbitrator for over twenty years, has trained thousands of mediators all around the world, and has written over forty monographs, articles and books on dispute resolution. He is the chair of the Rhode Island Bar Association's ADR committee and played a key role in the development of the Rhode Island Superior Court's court-annexed arbitration and settlement week programs. He has served as a special master for federal district courts in complex institutional cases in Georgia, Massachusetts, Rhode Island, and Texas.

HONORABLE RONALD R. LAGUEUX, CHIEF JUDGE
United States District Court [Non-Voting Member]

Chief Judge Lagueux received his A.B. (cum laude) in 1953 from Bowdoin College and his LL.B. in 1956 from the Harvard Law School. He was appointed a United states District Judge in September, 1986 by then, President Ronald R. Reagan. He has served as Chief Judge since December, 1992. Prior to service as Federal District Judge, he served as an Associate Justice of the Rhode Island Superior Court from 1968-1986, and prior to his service as Associate Justice, served as Executive Counsel to Governor John H. Chafee while a Partner in the Providence law firm of Edwards and Angell. He has served on a number of committees while serving in the Rhode Island State Court System, including: Committee to Revise Civil Calendaring, Chairman (1960) , Committee on Specialization of the Law (1978), Committee to Draft a Code of Evidence, 1982 to 1986, Committee to Draft Rules of Criminal Procedure, from 1969 to 1970 and Committee on Financial Disclosure, Judicial Conference of the United States from 1991 to present. Chief Judge Lagueux is also a member of the

CJRA Circuit Committee charged with reviewing Civil Justice Reform Act Reports and Plans for District Courts within the First Circuit. In addition to his service on the above Committees, Chief Judge Lagueux is a Lecturer for the Rhode Island Bar Association and Rhode Island Trial Lawyers Association.

BEVERLY E. LEDBETTER, ESQ.
[Member:Alternative Dispute Resolution and Editorial Drafting Subcommittees]

Ms. Ledbetter is currently Vice President and General Counsel to Brown University. She received her B.S. in Chemistry from Howard University and her J.D. from the University of Colorado. She serves as a Judge on the Providence Housing Court, NCAA Committee on Infractions, Tucson, Arizona; President-elect, Board of Directors, National Association of College and University Attorneys; Board of Advisors, Institute for Educational Management, Harvard University; Chairman, Non-Profit Section, American Corporate Counsel Association, Washington, D.C.; Board of Directors, Visions Foundation (American Visions Magazine) Frederick Douglas House-Capital Hill, Smithsonian Institute, Washington, D.C., and the House of Delegates, Rhode Island Bar Association.

KENNETH E. LIFFMANN, M.D.
[Member:Alternative Dispute Resolution Subcommittee]

Dr. Liffmann is currently a practicing Surgeon on staff at Rhode Island Hospital, Women and Infants Hospital of Rhode Island and Surgical Courtesy Staff at Roger Williams General Hospital. He is Assistant Professor of Surgery at Brown University Medical School. Dr. Liffmann also serves as a member of the Board of Directors of Blue Cross & Blue Shield of Rhode Island and is Chief Executive Officer of the Medical Malpractice Joint Underwriting Association of Rhode Island. Dr. Liffmann received his A.B. from Brown University in Psychology, cum laude in 1951, his M.D. from Tufts University in 1958 and a D.M.D. from Harvard University in 1955. He received postgraduate residency training at Massachusetts General Hospital, Boston, in Oral Surgery from 1955-1956; Internship at Rhode Island Hospital, Providence, from 1958-1960 and General Surgical Residency at Rhode Island Hospital, Providence from 1962-1965. Dr. Liffmann served as a General Surgeon and Captain in the U.S. Air Force from 1960-1962.

THE HONORABLE JAMES M. LYNCH,
Clerk, United States Bankruptcy Court [Member: Alternative Dispute Resolution and Editorial Drafting Subcommittees]

Mr. Lynch received his B.A. from Providence College and his J.D. from George Mason University School of Law. Mr. Lynch was appointed Clerk of Court in October 1979. Mr. Lynch teaches Bankruptcy and Corporations law, as well as a course in Federal Jurisdiction at Southern New England School of Law. He also teaches Bankruptcy Law in the Roger Williams University's Paralegal Program. Mr. Lynch served from 1978 to 1979 as Chief Clerk/Law Clerk in this Court, as well as, Law Clerk to the Bankruptcy Judge. He was a Deputy Clerk in this Court from March, 1978 to November, 1978. In addition to the foregoing, Mr. Lynch served as Legislative Correspondence Supervisor, United States Senate Committee on Commerce, Science and Transportation, Washington , D.C. from 1977 to 1978; Research Assistant to United States Senator John O. Pastore from 1975 to 1977 and an English teacher at La Salle Academy from 1969 to 1974. Mr. Lynch is a Lecturer on bankruptcy for the Continuing Legal Education Program and the Young Lawyers Internship Program; is a Charter Member of the National Conference of Bankruptcy Clerks and its' Board of Governors from 1980 to 1982 [Chairman of the Court Sizing Committee]. Mr. Lynch also served as a Member of the Clerks' Advisory Committee to the Administrative Office of the U.S. Courts from 1985-1992.

ROBERT B. MANN, ESQ.
[Member: Local Rules and Assessment of the Docket Subcommittees]

Mr. Mann is currently a partner is the providence firm of Mann & Mitchell. He received his B.A. in 1968 from Yale University and his J.D. from Yale Law School in 1973. He was a member of the Yale Law Journal from 1972-1973 and served as a Lieutenant in the U.S. Army from 1968- 1970.

SHERYL SERREZE,ESQ.
[Member: Local Rules, Assessment of the Docket and Editorial Drafting Subcommittees]

Ms. Serreze is currently the Attorney-In-Charge of United States Trustee's Office for Rhode Island for the District of Rhode Island. She received her B.A. in Anthropology, magna cum laude from Wheaton College and received her J.D. from Boston College Law School in 1984, cum laude. She served as legal intern to Judge Francis J. Boyle, United States District Judge in 1983. From January, 1989 to October, 1990 Ms. Serreze was associated with the law firm of Hinkley, Allen & Synder. She was formally a Partner in the San Diego law firm of Twersky & Serreze.

ANDREW C. SPACONE, ESQ.
[Member: Alternative Dispute Resolution Subcommittee]

Mr. Spacone is currently Litigation Counsel for Textron, Inc. He received his B.S. with honors from Canisius College in 1968, his Masters in History in 1975 from the State University of New York at Buffalo and his J.D. from Buffalo School of Law, State University of New York with honors in 1977. While at Buffalo, he was Articles Editor of the Law Review. He was a litigator in the New York law firm of Jaeckle, Fleishmann and Mugel from 1977 to 1981. While employed at the Firm , Mr. Spacone took a year leave of absence to be serve as a member of a government Task Force which studied the Department of Defense audit, inspection and investigation components pursuant to the Inspector General Act of 1978. His major areas of practice include civil litigation, products liability and environmental law. Mr. Spacone is also a Lieutenant Colonel in the United States Army Reserves.

JOHN TRAMONTI, JR., ESQ.
[Member of the Local Rules and Alternative Dispute Resolution Subcommittees]

Mr. Tramonti is engaged in criminal trial practice. He received his undergraduate education at Providence College and received his J.D. from Boston College Law School. Mr. Tramonti served on the Rhode Island Penal Code Study Commission, Rhode Island Supreme Court Special Committee to Develop Uniform Rules of Evidence from 1981-1987. He served as Chair of the Rhode Island Bar Association Criminal Law Bench/Bar Committee from 1985 to 1989. Mr. Tramonti serves as a Federal Bar Examiner for the United States District Court for the District of Rhode Island.

CJRA STAFF

HONORABLE TIMOTHY M. BOUDEWYNS [Reporter]

Judge Boudewyns is a United States Magistrate Judge for the U.S. District Court, District of Rhode Island. He received his undergraduate degree from California State University at Sacramento in 1971 and received his J.D. from the University of Kansas Law School in 1974. He was awarded an L.L.M degree in Labor Law by the University of Missouri at Kansas City Law School in 1981. Prior to his service as Magistrate Judge, Judge Boudewyns served as an officer in the Judge Advocate General's Corps of the U.S. Navy. He retired from the Navy in 1991.

BERRY B. MITCHELL, PH.D. [Project Manager]

Dr. Mitchell received his B.A. in history from the University of Tennessee in 1978, M.S.J.A. in judicial administration from the University of Denver, College of Law in 1982 and received his Ph.D. in judicial administration from the School of Administration and Management at Columbia Pacific University (CPU) in 1986. In 1986, Dr. Mitchell was elected by the Dean's Council at CPU to **Whose Who Among Students In American Universities & Colleges** in recognition of outstanding merit and accomplishment as a student at the University. Dr. Mitchell also received legal training at both the University of Denver, College of Law and Thomas M. Cooley Law School. In addition to his role as Project Manager, Dr. Mitchell serves as an Adjunct Professor at Johnson & Wales University Graduate School, wherein he teaches Organizational Behavior; Salve Regina University where he teaches Judicial Administration; and the University of Rhode Island, where he teaches Business Law. Dr. Mitchell was formally the Director of the Lansing, Michigan firm, "Legal Writes"; Justice System Planner in the nationally recognized criminal justice, courts and transportation planning and management consulting firm, Carter Goble Associates. As a Justice System Planner, Dr. Mitchell was directly involved in the development of the State of Hawaii's Judicial System Master Plan. In addition, Dr. Mitchell's experience includes having served as Assistant Project Director for the Lawyers Conference Task Force on Reduction of Litigation Cost & Delay of the American Bar Association; Clerk of Court for the U.S. Bankruptcy Court, Eastern District of Texas and Estate Administrator, U.S. Bankruptcy Court, Western District of Oklahoma. Dr. Mitchell also served in the U.S. Marine Corps.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE U.S. DISTRICT COURT OF DISTRICT OF RHODE ISLAND

BAR SURVEY

In December 1990 Congress passed and the President signed into law, **The Judicial Improvements Act of 1990**, Public Law No. 101-650. Title I of this important legislation consists of the **Civil Justice Reform Act of 1990** hereafter (the **"Act"**). The Act seeks to bring about reductions in the cost and delay, if any, of civil litigation in the U.S. District Courts through "significant contributions by the courts, and by the litigants, litigant's attorneys, and by the Congress and the executive branch." Thus the Act contemplates a community effort and requires each district court to develop and implement a civil justice expense and delay reduction plan as the primary means of mobilizing that effort.

The Advisory Group for this district in the full spirit of the Act seeks constructive input from members of the bar. Your response should be directed to the Advisory Group Chair, William A. Curran in care of Berry B. Mitchell, Ph.D.,Project Manager/CJRA Analyst, U.S. Courthouse and Federal Building, One Exchange Terrace, Providence, Rhode Island 02903. Only written responses which conform to the format and content of the survey enclosed will be reviewed by the Advisory Group.

The input and contribution of members of the bar is a vital link in developing a plan that reflects a holistic examination and response to the particular dynamics of the Court and those it serves. Examination and responses need not be limited to critical commentary but may also reflect comments on those areas where the Court has succeeded in meeting the needs of litigants, litigant's attorneys and the "ends of justice".

Please take the time to review and respond to the following questions.

INSTRUCTIONS

Please circle the number that most nearly corresponds to your view or experience in the District Court for the District of Rhode Island.

_ **1** indicates the strongest level of agreement. It is tantamount to complete agreement with the stated proposition.

_ **2** signifies qualified agreement, that is, for the most part you agree but you may have some reservations short of complete adoption of the proposition.

_ **3** signifies a neutral position. On the whole you neither agree nor disagree.

_ **4** reflects qualified disagreement, that is, for the most part you disagree but you are not prepared to report complete disagreement.

_ **5** indicates the strongest level of disagreement, that is you completely and unqualifiedly disagree with the stated proposition.

Please limit your responses to only one of the five choices. If you find that the question does not lend itself to a response within the stated categories you may comment on a separate sheet of paper and attach those comments to this survey.

The responses will be compiled and the results reviewed by the Civil Justice Reform Act Advisory Group. The data submitted by counsel will not be used for any purpose other than that directly related to the **Civil Justice Reform Act** and it's mandates.

The questions that follow refer only to civil practice and procedures in the United States District Court for the District of Rhode Island.

Please complete the following information:

I. GENERAL QUESTIONS

1. Name (optional):
2. Year admitted to practice:
3. Number of years engaged in the active practice of law:

4. Area or areas of specialty:

5. Practice confined to the federal courts__ yes __ no?

6. Approximate percentage of practice devoted to federal litigation:

II. CASE MANAGEMENT PRACTICES AND PROCEDURES

1. There is an intensive level of case management by the Court.

1 2 3 3 5

2. There is an intensive level of case management on the part of certain judges.

1 2 3 4 5

3. There is an intensive level of case management in certain types of cases.

1 2 3 4 5

4. Case management procedures should be uniform among the judges of the Court.

1 2 3 4 5

5. There should be more pre-trial case management.

1 2 3 4 5

6. Case management should be initiated early and include a mandatory disclosure requirement, that counsel make every reasonable effort to agree to exchange a disclosure statement containing "core information" relevant to the dispute. Core information at a minimum means, the names and addresses of persons having information that is relevant to ä proffered claims and defenses, and the location of information relevant to the case.

1 2 3 4 5

7. The degree of judicial case management is effective, however case

management should be enlarged.

1 2 3 4 5

8. The process is effective and requires no change.

1 2 3 4 5

III. PRE-TRIAL PRACTICES AND PROCEDURES

9. A uniform pre-trial order should be utilized by the judges of the Court.

1 2 3 4 5

10. A pre-trial conference should be held in all cases.

1 2 3 4 5

11. Pre-trial conferences need only be held in complex cases.

1 2 3 4 5

12. Status conferences should be held during established time periods during the pre-trial phase, e.g. every 30-60 days.

1 2 3 4 5

13. Enhance the use of Magistrate Judges for purposes of narrowing issues and weeding out meritless claims.

1 2 3 4 5

14. Date certain scheduling should be implemented with regard to all pre-trial and trial matters.

1 2 3 4 5

IV. MOTION PRACTICE

15. There is extensive to moderate abuse of motion practice in this district.

1 2 3 4 5

16. Before any motion is filed with the Court, parties should be required to attempt to settle the matter and certify that they have met face to face and discussed resolution and possible settlement; that the parties efforts have failed, stating with particularity the reasons for their failure before permitting a motion to be filed.

1 2 3 4 5

17. The Court should adopt a practice of holding a motion calendar at least once a month.

1 2 3 4 5

18. The time frame from submission to rulings by a district judge or in the case of magistrate judges (Reports and Recommendations) should not exceed 30 days except in "complex" cases.

1 2 3 4 5

19. Unless a motion is complex and has been designated as such by the parties and approved by the Court only limited oral argument should be permitted and the Court whenever possible should rule from the bench. In no event should a motion be taken under advisement longer than 60 days.

1 2 3 4 5

20. Require that routine motions either be resolved from the bench or taken under advisement for no longer than 10 day.

1 2 3 4 5

21. Limit the length of any brief accompanying a motion to 10 pages.

1 2 3 4 5

22. Limit the practice of oral argument on motions to only the most exceptional circumstances where counsel is able to show the court why oral argument is necessary beyond arguments presented in their respective briefs.

1 2 3 4 5

23. Have magistrate judges hear more motions by referral.

1 2 3 4 5

24. Enhance the disposition and use of the phone to resolve motion matters.

1 2 3 4 5

25. Expand the imposition of sanctions for frivolous motions.

1 2 3 4 5

V. DISCOVERY

26. The Court is effective in it's management of pre-trial discovery.

1 2 3 4 5

27. There is extensive to moderate abuse of discovery in this district.

1 2 3 4 5

28. The Court stays on schedule with trial and discovery schedules.

1 2 3 4 5

29. The Court effectively utilizes pre-trial conferences early in the litigation process in order to better manage discovery.

1 2 3 4 5

30. The Court establishes realistic cutoffs for discovery.

1 2 3 4 5

31. The Court promptly rules on discovery disputes.

1 2 3 4 5

32. Discovery time limits are too long in "routine", i.e. non-complex cases.

1 2 3 4 5

33. Discovery time limits are too short in complex litigation.

1 2 3 4 5

34. The Court should impose strict control of the discovery process by local rule to prevent abuses.

1 2 3 4 5

35. Enhance and encourage the referral of most discovery matters to magistrate judges.

1 2 3 4 5

36. Court should strictly enforce discovery cut-off deadlines.

1 2 3 4 5

37. The Court should set and enforce firm trial dates.

1 2 3 4 5

38. The Court should grant extension of time **only** in the most exceptional circumstances and only upon timely motion signed by the **party** and counsel for the party requesting the extension.

1 2 3 4 5

39. Discovery should be "staged", that is only certain kinds of discovery should take place during given time frames and strict limitations upon the number of interrogatories, request for production of documents and ä depositions may be taken during a given stage of discovery.

1 2 3 4 5

V. TRIAL DATES

40. The Court should set early and firm trial dates.

1 2 3 4 5

41. The Court should grant continuances of a trial date only in the most exceptional circumstances.

1 2 3 4 5

VI. COST & DELAY

42. The pace of litigation is too fast.

1 2 3 4 5

43. The pace of litigation is too slow.

1 2 3 4 5

44. There is unnecessary delay involved in litigating in this federal court.

1 2 3 4 5

45. There is unnecessary delay resulting from the Court's management of the docket.

1 2 3 4 5

46. There is unnecessary delay resulting from poor case management by counsel.

1 2 3 4 5

47. There is unnecessary cost and delay resulting from poor judgment or inexperience of lawyers who fail to adequately prepare and conduct litigation.

1 2 3 4 5

48. There is a tendency in this district to "go to trial" rather than settle.

1 2 3 4 5

VII. ALTERNATIVE DISPUTE RESOLUTION

49. The Court should adopt and utilize alternative dispute resolution on an "experimental basis".

1 2 3 4 5

50. The Court should adopt one or more of the following (Please circle one or more)

_ Court-annexed arbitration

_ Mediation

_ Summary jury trials

_ Mini-trials

_ Differentiated case management

_ Early neutral evaluation

_ Summary bench trial

_ Use of special masters

_ Enhanced use of magistrate judges generally

_ Enhanced use of magistrate judges as part of an ADR pilot program.

THANK YOU FOR PARTICIPATING IN THE SURVEY

Civil Justice Reform Act Advisory Group

Honorable Ronald R. Lagueux,
United States District Court Judge
Honorable Lincoln C. Almond,
United States Attorney
Honorable Raymond F. Burghardt,
Clerk of Court
Thomas C. Angelone, Esq.
Joseph V. Cavanagh, Esq.
Edward C. Clifton, Esq.
William C. Curran, Esq.,Chairman
Professor Diane Disney
Mark P. Dolan, Esq.
Mr. David Duffy
Jay S. Goodman, Esq.
J. Michael Keating, Esq.
Ms. Beverly E. Ledbetter, Esq.
Kenneth E. Liffmann, M.D.
Robert S. Mann, Esq.
Andrew C. Spacone, Esq.
John Tramonti, Esq.

Narrative Corresponding to Survey Responses

The following are questions and responses that generated the most significant information reported as part of the Civil justice Reform Act Report.

- ☞ The average number of years engaged in active practice is approximately 14 years (3).

- ☞ The percentage of respondents whose practice is confined to the Federal courts is 6% (5).

- ☞ Most respondents believe that uniform Pre-Trial conferences should be utilized by the judges of the court (9).

- ☞ Majority of respondents believe that Pre-Trial conferences should be held in all cases not just complex cases (10 and 11).

- ☞ Majority of respondents believe that the time it takes from submission to rulings should not exceed 30 days except in complex cases. Complex motions should not be taken under advisement for more than 60 days, and routine motions should not take more than 10 days. This indicates the possibility that lawyers practicing in this court would welcome the idea of a tracking system for cases (18 through 20).

- ☞ Many respondents believe that referral of most discovery matters to magistrate judges should be enhanced and encouraged (35).

- ☞ Most respondents believe that there is not unnecessary delay involved in litigating in this court. This result may explain why such a small number of the surveys were returned. If the lawyers who responded are satisfied with this court, the general population of lawyers practicing in this court may also be satisfied, and thus would not be apt to voice their opinions in this survey (44).

- ☞ There are mixed reviews as to whether or not the court should adopt ADR on an experimental basis (49). The most preferable forms of ADR would be Court annexed arbitration, Mediation, enhanced use of magistrate judges as part of an ADR pilot program, and enhanced use of magistrate judges generally (50A through 50J)

		1	2	3	4	5
	II. Case Management Practices And Procedures	**1**	**2**	**3**	**4**	**5**
1.	There is an intensive level of case management by the Court.		✓			
2.	There is an intensive level of case management on the part of certain judges.		✓			
3.	There is an intensive level of case management in certain types of cases.			✓		
4.	Case management procedures should be uniform among the judges of the Court.		✓			
5.	There should be more pre-trial case management.			✓		
6.	Case management should be initiated early and include a mandatory disclosure requirement.			✓		
7.	The degree of judicial case management is effective, however case management should be enlarged.			✓		
8.	The process is effective and requires no change.			✓		
	III. Pre trial Practices and Procedures					
9.	A uniform pre-trial order should be utilized by the judges of the Court.		✓			
10.	A pre-trial conference should be held in all cases.		✓			
11.	Pre-trial conferences need only be held in complex cases.				✓	
12.	Status conferences should be held during established time periods during the pre-trial phase, e.g. every 30-60 days.			✓		
13.	Enhance the use of Magistrate Judges for purposes of narrowing issues and weeding out meritless claims.			✓		
14.	Date certain scheduling should be implemented with regard to all pre-trial and trial matters.			✓		
	IV. Motion Practice					
15.	There is extensive to moderate abuse of motion practice in this district.				✓	
16.	Before any motion is filed with the Court, parties should be required to attempt to settle the matter.			✓		
17.	The Court should adopt a practice of holding a motion calendar at least once a month.		✓			
18.	The time frame from submission to rulings by a district judge or in the case of magistrate judges (Reports and Recommendations) should not exceed 30 days except in "complex" cases.		✓			
19.	Unless a motion is complex and has been designated as such by the parties and approved by the Court only limited oral argument should be permitted.		✓			
20.	Require that routine motions either be resolved from the bench or taken under advisement for no longer than 10 day.		✓			
21.	Limit the length of any brief accompanying a motion to 10 pages.			✓		
22.	Limit the practice of oral argument on motions to only the most exceptional circumstances.			✓		
23.	Have magistrate judges hear more motions by referral.			✓		
24.	Enhance the disposition and use of the phone to resolve motion matters.		✓			
25.	Expand the imposition of sanctions for frivolous motions.			✓		

	V. Discovery	1	2	3	4	5
26.	The Court is effective in it's management of pre-trial discovery.			✓		
27.	There is extensive to moderate abuse of discovery in this district.			✓		
28.	The Court stays on schedule with trial and discovery schedules.		✓			
29.	The Court effectively utilizes pre-trial conferences early in the litigation process in order to better manage discovery.			✓		
30.	The Court establishes realistic cutoffs for discovery.			✓		
31.	The Court promptly rules on discovery disputes.			✓		
32.	Discovery time limits are too long in "routine", i.e. non-complex cases.				✓	
33.	Discovery time limits are too short in complex litigation.			✓		
34.	The Court should impose strict control of the discovery process by local rule to prevent abuses.			✓		
35.	Enhance and encourage the referral of most discovery matters to magistrate judges.		✓			
36.	Court should strictly enforce discovery cut-off deadlines.			✓		
37.	The Court should set and enforce firm trial dates.			✓		
38.	The Court should grant extension of time **only** in the most exceptional circumstances				✓	
39.	Discovery should be "staged",				✓	
	V. Trial Dates					
40.	The Court should set early and firm trial dates.			✓		
41.	The Court should grant continuances of a trial date only in the most exceptional circumstances.			✓		
	VI. Cost and Delay					
42.	The pace of litigation is too fast.			✓		
43.	The pace of litigation is too slow.			✓		
44.	There is unnecessary delay involved in litigating in this federal court.				✓	
45.	There is unnecessary delay resulting from the Court's management of the docket.			✓		
46.	There is unnecessary delay resulting from poor case management by counsel.			✓		
47.	There is unnecessary cost and delay resulting from poor judgment or inexperience of lawyers who fail to adequately prepare and conduct litigation.			✓		
48.	There is a tendency in this district to "go to trial" rather than settle.				✓	
	VII. Alternative Dispute Resolution					
49.	The Court should adopt and utilize alternative dispute resolution on an "experimental basis".			✓		

	1	2	3	4	5
50. The Court should adopt one or more of the following					
– Court-annexed arbitration			✓		
– Mediation		✓			
– Summary jury trials	✓				
– Mini-trials	✓				
– Differentiated case management	✓				
– Early neutral evaluation	✓				
– Summary bench trial	✓				
– Use of special masters	✓				
– Enhanced use of magistrate judges generally		✓			
– Enhanced use of magistrate judges as part of an ADR pilot program.		✓			

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FOR THE U.S. DISTRICT COURT OF DISTRICT OF RHODE ISLAND

LITIGANT SURVEY

In December 1990 Congress passed and the President signed into law The Judicial Improvements Act of 1990, Public Law No. 101-650, including the Civil Justice Reform Act of 1990. The Act seeks to bring about reductions in the cost and delay, if any, of civil litigation in the U.S. District Courts. The Act contemplates a community effort and requires each district court to develop and implement a expense and delay reduction plan as the primary means of mobilizing that effort.

The Advisory Group for this district seeks constructive input from litigants, such as yourself, who have in the past had matters resolved in the U.S. District Court for the District of Rhode Island. The Advisory Group has selected you at random from cases filed and closed for the period January 1, 1991 to June 30, 1992. Your response should be directed no later than June 18, 1993, to the Advisory Group Chair, William A. Curran in care of Berry B. Mitchell, Ph.D., Project Manager/CJRA Analyst, U.S. Courthouse and Federal Building, One Exchange Terrace, Providence, Rhode Island 02903. A self-addressed stamped return envelope is provided for your convenience.

The input and contribution of litigants is a vital link in developing a plan that reflects a holistic examination and response to the particular dynamics of our Court and those it serves. Responses need not be limited to critical commentary. In your consideration of the following questions, please, consider also, areas where the Court, your attorneys and other justice system participants have succeeded in meeting your needs. If you feel it is necessary, you may make additional comments on separate paper. Please be sure to securely attach any additional response to this Survey.

PLEASE NOTE: THE INFORMATION PROVIDED IS CONFIDENTIAL AND WILL NOT BE USED FOR ANY OTHER PURPOSE OTHER THAN THOSE ASSOCIATED WITH THE MANDATES OF THE CIVIL JUSTICE REFORM ACT. ONLY THE LITIGANT SHOULD COMPLETE THIS SURVEY.

Response Key: [1] strongest level of agreement; [2] qualified agreement; [3] neutral; [4] qualified disagreement; [5] strongest level of disagreement.

INSTRUCTIONS

The questions that follow refer only to civil practice and procedures in the United States District Court (the questions apply to federal court only) for the District of Rhode Island.

Please circle the number that most nearly corresponds to your view or experience in the District Court for the District of Rhode Island.

1 indicates the strongest level of agreement. It reflects complete agreement with the stated proposition.

2 signifies qualified agreement, that is, for the most part you agree but you may have some reservations short of complete adoption of the proposition.

3 signifies a neutral position. On the whole you neither agree nor disagree.

4 reflects qualified disagreement, that is, for the most part you disagree but you are not prepared to report complete disagreement.

5 indicates the strongest level of disagreement, that is you completely and unqualifiable disagreement with the stated proposition.

Please limit your responses to only one of the five choices. If you find that the question does not lend itself to a response within the stated categories, please comment on a separate sheet of paper and attach those comments to this survey. Your response should be received by the Court no later than June 18, 1993.

I. GENERAL QUESTIONS

1. Name:

2. Address:

Response Key: [1] strongest level of agreement; [2] qualified agreement; [3] neutral; [4] qualified disagreement; [5] strongest level of disagreement.

II. THE COURT

1. I was satisfied with steps taken by the Court to resolve the case.

1 2 3 4 5

2. I was satisfied that appropriate measures were taken by the court to curtail excessive legal expenses (e.g., attorneys fees, time invested by counsel, unnecessary duplication of work by counsel, minimization of unnecessary discovery).

1 2 3 4 5

3. I was satisfied that appropriate measures were taken by the Court to minimize the time required by me.

1 2 3 4 5

4. I felt the Court's management of the case was not active enough.

1 2 3 4 5

5 I felt the Court properly managed the level of discovery.

1 2 3 4 5

6. I felt the Court permitted abuse of the discovery process (voluntary and mandatory exchange of information in preparation for trial).

1 2 3 4 5

Response Key: [1] strongest level of agreement; [2] qualified agreement; [3] neutral; [4] qualified disagreement; [5] strongest level of disagreement.

7. I felt the Court permitted the case to become too lengthy due to the granting of extensions of time.

1 2 3 4 5

8. I felt that the Court did not control the focus of the case.

1 2 3 4 5

9. I felt that the Court did not actively control counsel's focus during proceedings and as a result delayed the resolution of the case.

1 2 3 4 5

10. The Court's management of the proceedings resulted in delay in the case.

1 2 3 4 5

III. LITIGANT'S COUNSEL

1. The fee arrangement between Counsel and me was reasonable given the nature and complexity of the case.

1 2 3 4 5

2. I was satisfied that appropriate measures were taken by my counsel to minimize cost or avoid unnecessary cost or expenditures.

1 2 3 4 5

3. Counsel kept me reasonably informed of the status of the case.

1 2 3 4 5

Response Key: [1] strongest level of agreement; [2] qualified agreement; [3] neutral; [4] qualified disagreement; [5] strongest level of disagreement.

4. I was satisfied that appropriate measures were taken by my counsel to minimize the amount of time I had to spend in court.

1 2 3 4 5

5. Counsel was reasonably accessible to me at all stages of the case.

1 2 3 4 5

6. Counsel provided adequate advice to me regarding settlement options, if any.

1 2 3 4 5

7. I was made aware of alternative forums which were available for resolution of the issues in advance of filing the case in federal court and counsel explained the options to me.

1 2 3 4 5

8. My pretrial conference with the Court was of value.

1 2 3 4 5

9. If case went to trial, my counsel was adequately prepared for trial.

1 2 3 4 5

10. Counsel zealously represented my interests.

1 2 3 4 5

11. I was satisfied with the steps taken by my Counsel to resolve the case.

1 2 3 4 5

THANK YOU FOR PARTICIPATING IN THE SURVEY

Response Key: [1] strongest level of agreement; [2] qualified agreement; [3] neutral; [4] qualified disagreement; [5] strongest level of disagreement.

	APPENDIX C	1	2	3	4	5
	THE COURT					
a	Steps taken by the Court to resolve the case were satisfactory.	5	6	7	0	4
b	Measures taken by the court to curtail excessive legal expenses were appropriate.	9	6	5	0	1
c	Measures taken by Court to minimize litigant's time requirements were appropriate.	8	4	4	3	1
d	Court's management of the case was not active enough.	1	0	7	3	9
e	Court properly managed the level of discovery.	5	7	4	2	0
f	Court permitted abuse of the discovery process	1	2	3	4	8
g	Court permitted the case to become too lengthy due to granting of extensions of time.	1	2	3	3	11
h	Court did not control the focus of the case.	2	3	2	3	10
i	Court did not actively control counsel's focus during proceedings, delaying the case's resolution.	1	3	1	4	11
j	Court's management of the proceedings resulted in delay.	2	0	1	6	11
	LITIGANT'S COUNSEL					
a	Fee arrangement between the Counsel and litigant was reasonable given the nature and complexity of case.	9	0	7	1	0
b	Appropriate measures were taken by counsel to minimize cost or avoid unnecessary cost or expenditures.	11	2	4	1	0
c	Counsel kept litigant reasonably informed of case status.	10	3	2	0	1
d	Appropriate measures were taken by counsel to minimize amount of time litigant spent in court	13	0	4	0	0
e	Court was reasonably accessible to litigant at all stages of the case.	12	2	1	2	0
f	Counsel provided adequate advice to litigant regarding settlement options.	10	2	1	1	1
g	Litigant was made aware of alternative forums available for resolution of the issues in advance of filing the case in federal court and counsel explained the options.	9	1	4	0	1
h	Litigant's pretrial conference with the Court was of value.	3	4	4	1	0
i	If case went to court, counsel was adequately prepared for trial.	11	1	0	2	1
j	Counsel zealously represented litigant's interests.	12	2	1	1	1
k	Litigant satisfied with steps taken by Counsel to resolve case.	10	2	1	1	1

Responses to Litigant Survey:

1 Strong Agreement
2 Qualified Agreement
3 Neutral Position
4 Qualified Disagreement
5 Strong Disagreement

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
UNITED STATES DISTRICT COURT
THE DISTRICT OF RHODE ISLAND

CHAPTER 1 INTRODUCTION

CHAPTER 2 ENHANCED USE OF MAGISTRATE JUDGES

CHAPTER 3 ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 4 REVISION TO LOCAL DISTRICT COURT RULES

CHAPTER 5 CONTINUED MONITORING OF COMPLIANCE

NOTE

OTHER RECOMMENDATIONS ARE CONTAINED IN THE CJRA REPORT. THE COURT MAY WISH TO CONSIDER ADDING ANY OR ALL OF THE SUGGESTED RECOMMENDATIONS TO THE FINAL CJRA PLAN ADOPTED BY THE COURT.

CHAPTER 1

INTRODUCTION

In accordance with the provisions of the Civil Justice Reform Act, 28 U.S.C. 471 (the "Act") the judges of the United States District court for the District of Rhode Island have reviewed the report of the Advisory Group and adopt this Plan in order to expedite the disposition of civil cases and to reduce the expense of litigation in this District. This Plan shall take effect on December 1, 1993 and shall remain in effect through November 31, 1997.

CHAPTER 2

ENHANCED USE OF MAGISTRATE JUDGES

The court will expand the range and scope of duties of Magistrate Judges in this District. All non-dispositive motions filed with the Clerk's Office will automatically be sent to the Magistrate Judge assigned to that case for disposition. The District Court Judge may, in his or her discretion, refer dispositive motions to the Magistrate judge assigned to that case for disposition.

ALTERNATIVE DISPUTE RESOLUTION

In light of the extraordinarily high number of cases which go to trial in this district, mandatory settlement conferences before a Magistrate Judge will be scheduled in all civil cases. Alternatively, the parties may elect to participate voluntarily in a number of alternative dispute resolution options, including early neutral evaluation, summary jury and bench trials, mediation and court-annexed arbitration.

ALTERNATE ADR DRAFT PROPOSAL

I. INTRODUCTION

This revised proposal is submitted by the ADR Subcommittee for the consideration of the full Advisory Group. The revisions were drafted and approved after further consideration of the Subcommittee's earlier recommendations and follows a survey of districts presently utilizing the options originally proposed by the Subcommittee and a review of other districts' ADR plans, both conducted by Advisory Group staff.

II. GENERAL PROVISIONS

This Court endorses and supports alternative dispute resolution and chooses to make available to litigants a variety of options to aid in the resolution of disputes short of trial. These options, if undertaken seriously and in good faith, may prove to be expeditious, less expensive than litigation, and useful in the preservation of established relationships among parties to disputes.

III. ADR: ACCESS TO INFORMATION

The Court shall prepare and distribute a pamphlet on ADR to attorneys appearing as counsel for parties and to pro se litigants in all civil cases filed with the Court. The pamphlet, which shall be distributed at the time of filing, shall describe the alternative dispute resolution (ADR) options available to litigants, as well as provide information on how to obtain access to these alternatives. The information shall be written in simple language and accurately describe the process associated with each ADR option listed in the pamphlet.

IV. CASES SUBJECT TO ADR

All civil cases filed in this district shall be submitted to a settlement conference before a magistrate judge, unless the parties elect to participate voluntarily in an

approved ADR option offered by the Court. Approved forms of alternative dispute resolution shall include early neutral evaluation, summary jury and bench trials, mediation and court-annexed arbitration. These alternatives are voluntary, and are not binding. Cases in which parties do not elect to participate in an approved ADR option shall be randomly assigned to magistrate judges for a mandatory settlement conference.

V. DEFINITIONS

1. "***Magistrate Settlement Conference***" is a non-binding settlement process involving a neutral, in this case always a magistrate judge, who works with the parties and their counsel to identify issues, promote settlement dialogue and, if possible, resolve the dispute in a mutually acceptable way. The magistrate judge's fundamental task will be to help the parties overcome obstacles to effective negotiation and settlement.

2. "***Early Neutral Evaluation***" (ENE) is a pre-trial process involving a neutral evaluator who meets with the parties early in the development of the litigation (less than 75 days after the answer is filed) to help parties and their counsel focus on the issues, organize discovery, prepare the case for trial and, to the extent possible, aid in the settlement of the case. The evaluator provides an expert assessment of disputed legal and factual issues and estimates the perceived value of the case.

3. "***Summary Jury/Bench Trial***" is a non-binding process in which the parties present an abbreviated version of their respective cases to a mock jury or before a judicial officer. In a summary jury trial, the parties use the decision of the jury and information about the jurors' reactions to the parties' legal and factual arguments as an aid to settlement. A summary bench trial works in the same way, except there is no jury. The Court has already conducted summary jury trials with some success. They are sometimes referred to in this jurisdiction as "mini-trials."

4. "***Mediation***" is a voluntary, non-binding process in which the parties, with the help of a neutral mediator, identify underlying interests and develop acceptable means of addressing those interests and settling differences. The focus in mediation is on the pragmatic needs of parties and the preservation of any relationship that may exist between them.

5. "***Arbitration***" is a non-binding, adjudicative process in which a neutral decides the rights and obligations of parties and imposes an appropriate remedy in the form of an award.

VI. ADR ADMINISTRATOR

The proposed ADR options, with the sole exception of the mandatory magistrate settlement conference, will require an ADR Administrator to manage and supervise their operations. The ADR Administrator should be appointed by the Chief Judge of the Court and, while attached administratively to the Clerk's Office, should report directly to

the Chief Judge. The ADR Administrator should possess a full range of authority and responsibility to implement and direct the program of options described in this proposal. The Administrator should possess both legal and administrative training and experience, together with a firm understanding of alternative dispute resolution and the various options created by this proposal. The ADR Administrator shall:

1. *Administer the selection, training, and use of a panel of neutral intervenors for the various ADR options established by the Court;*

2. *Collect and maintain biographical data on neutral intervenors to permit assignments commensurate with the neutral's experience, training and expertise and make the collected biographical data available to parties and counsel (these functions shall apply to all voluntary ADR options set forth in this proposal);*

3. *Prepare applications for funding the proposed options to submit to the United States Government or other funding sources;*

4. *Prepare reports required by the United States Government or other funding sources on the use of funds in the operation and evaluation of the established ADR options;*

5. *Develop and maintain necessary forms, records, docket controls, and* data to administer and evaluate the options effectively;

6. *Periodically evaluate, or arrange for the outside evaluation of, the ADR options and submit the resulting evaluation to the Court, along with appropriate recommendations for change;*

7. *Develop, and make available upon request, a list of private or extra-judicial ADR providers; and,*

8. *Revise and update the Court's ADR pamphlet.*

VII. PANEL OF NEUTRAL INTERVENORS

The Court shall establish a panel of neutral intervenors, comprised of individuals whose education, experience, training and character qualify them to act as neutrals in one or more of the ADR options (ENE, mediation and arbitration) implemented by the Court.

A. Appointment to the panel. The panel of intervenors shall consist of persons nominated by the Advisory Group and confirmed by the judges of this Court. Intervenors shall be appointed for a period of three years. Appointment may be renewed upon a demonstration of continued qualification.

B. Qualifications and Training.

1. Panelists shall be lawyers who have been admitted to the practice of law for at least ten years and who are currently members of the bar of the United States District Court for the District of Rhode Island. The panel may also include non-lawyers or lawyers with less than ten years of practice or who are not members of the bar of the United States District Court for the District of Rhode Island, if they possess special or unique expertise in a particular field, or substantial experience or training in one of the dispute resolution options, and are certified for inclusion on the panel by the Court.

2. All persons selected as intervenors shall:

    a. *Undergo such dispute resolution training as the Court may prescribe;*

    b. *Take the oath set forth in 28 U.S.C. § 453; and*

    c. *Agree to follow the guidelines for the various options established by the Court.*

C. Compensation.

1. *Magistrate judges presiding over settlement conferences shall serve without compensation;*

2. *Persons serving as neutral intervenors shall receive no compensation for the first hour of their service. Thereafter, the parties shall be equally responsible for an intervenor's compensation at a rate agreed to by the parties, but not to exceed $150 per hour.*

3. *No single intervenor may be assigned in any one calendar year to more than one complex case (defined as a case in which discovery is likely to exceed fourteen months), nor to a total of more than five* cases, without his or her consent.

VIII. THE PROCESS

At the time of filing, litigants shall be provided with a pamphlet of information on alternative dispute resolution and the options for ADR that are available through this Court. Within 30 days of the filing of an answer, the parties and counsel must certify that they have conferred with one another regarding the case, including the possibility of settlement. Assuming no settlement is reached within 60 days after the answer is filed, the parties must submit to the magistrate judge a confidential memorandum, which shall not be exchanged among the parties, but provided only to the magistrate

judge. The memorandum shall set forth the facts and legal issues in the case and the estimated worth of the case, together with the respective settlement positions of each party.

Parties in all civil cases shall be required to participate in the settlement conference before a magistrate judge, unless they elect to use one of the other ADR options provided by the Court. If no such election is made, the case shall be scheduled for a magistrate settlement conference within 120 days of the filing of the answer. If the parties select one of the ADR options, the ADR Administrator shall assist the parties in initiating the selected option.

Proceedings in all of the ADR options are confidential. Rule 408 of the Federal Rules of Evidence shall apply to information, statements and evidence generated in the course of any of the ADR options and shall make inadmissible evidence of conduct or statements made unless otherwise discoverable. Moreover, all memoranda and other work product, including files, reports, interviews, case summaries and notes, prepared by the neutral intervenor, shall not be subject to disclosure in any subsequent civil proceeding involving any of the parties to the ADR option in which such materials were generated, nor shall a neutral intervenor be compelled to disclose in any subsequent civil proceeding any communication made to him or her in the course of, or relating to the subject matter of, any of the ADR options by a participant in any such option.

The time frames for the events set forth in the following descriptions may be extended with the mutual agreement of the parties, subject to the approval of the district court judge or magistrate to whom the case is assigned.

Parties to a dispute, with the permission of the supervising district judge or magistrate judge, may submit their dispute to more than one ADR option. Thus, for example, if parties resolve all but one factual issue in the mandatory magistrate settlement conference, they may elect to submit that issue to court-annexed arbitration.

IX. ADR OPTIONS

A. MANDATORY MAGISTRATE SETTLEMENT CONFERENCE

Parties in all civil cases filed in this district must participate in a settlement conference before a magistrate judge, unless they have elected to use one of the other ADR options available. This mandatory conference is in addition to any pretrial conference the district judge may require of the parties to prepare a case for trial pursuant to Rule 16 of the Federal Rules of Civil Procedure. If the parties fail to activate one of the ADR options, they shall be required to appear before a magistrate judge for a settlement conference within 120 days of the filing of the answer. Upon the assignment of a magistrate judge to the case, the ADR Administrator shall promptly confer with the magistrate judge to determine whether any potential conflicts of interest exist, and, in the event of such a conflict, reassign the case to a different magistrate judge. Anytime prior to the settlement conference, the parties may move for a reassignment based on a belief that the assigned magistrate judge is not impartial.

1. Preliminaries to a magistrate settlement conference:

At least ten days prior to the settlement conference, the parties shall submit to the magistrate judge:

a. *A joint copy of relevant pleadings and motions;*

b. *A brief memorandum, not to exceed ten pages, stating the legal and factual positions of each party on the issues in dispute; and*

c. *Such other material as each party believes would be beneficial to the magistrate judge.*

2. Attendance of parties:

The primarily responsible attorney in each case (or the party, if proceeding pro se) shall attend the magistrate settlement conference. Parties shall also be present. If a party other than an individual is involved, or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend.

3. Magistrate settlement conference procedures:

a. *The magistrate settlement conference shall be informal. The magistrate judge shall conduct the process to assist the parties in arriving at a settlement of all or some of the issues involved in the case.*

b. *The magistrate judge may hold separate, private discussions with any party or counsel associated with the case, but may not, without the consent of that party or counsel, disclose the contents of the discussion to any other party or counsel.*

c. *If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties so request, the magistrate judge may submit to the parties a final settlement proposal which the magistrate judge believes to be reasonable and fair. The parties shall carefully consider the proposal and, if requested, the magistrate judge may discuss it with the parties. The magistrate judge may comment on questions of law at any appropriate time.*

The magistrate judge may conclude the process when:

1. *A settlement is reached; or*

2. *The magistrate judge concludes, and so informs the parties, that further efforts will not be useful.*

If a settlement agreement is not reached, the magistrate judge shall inform the ADR Administrator in writing that the settlement conference has been held, forward any resulting agreements, stipulations or other pertinent developments and make any appropriate recommendation for the future processing of the case.

B. EARLY NEUTRAL EVALUATION (ENE)

Any civil case may be referred to ENE upon the election of both parties. The parties must select ENE within 30 days of the filing of the answer. Once the parties have communicated to the ADR Administrator in writing their selection of ENE as their ADR option, they must select a neutral from a list of approved evaluators provided by the ADR Administrator within ten days of receipt of the list. If the parties fail to make selection within the ten days, the ADR Administrator shall select randomly from the list of approved evaluators a qualified neutral to serve as the evaluator. Following the selection of a neutral intervenor, the ADR Administrator shall notify counsel of the selection (including the name and address of the designated neutral) and provide any other materials or information that may facilitate the process. The ADR Administrator shall also notify the neutral.

1. Challenges to neutrality:

If the evaluator becomes aware of, or if a party raises an issue about the evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the evaluator shall immediately disclose to the parties the relevant facts giving rise to the alleged conflict of interest. If a party requests the evaluator to withdraw because of the disclosed facts, the evaluator shall withdraw, and the parties shall select another evaluator from the list provided by the ADR Administrator.

2. Preliminaries to ENE:

a. *Promptly after receiving a notice of designation, the neutral shall schedule the evaluation session. The neutral shall send written notice to all parties, with a copy to the ADR Administrator, of the time and place of the session. The evaluation session shall be held within 30 days of the receipt by the neutral of the notice of designation unless otherwise ordered by the Court for good cause. A request for postponement of a scheduled evaluation session must be presented to the neutral and served on the ADR Administrator and all parties without delay;*

b. *No later than ten days prior to the evaluation session each party shall submit to the evaluator and serve on all other parties a written evaluation statement. The statement shall not exceed ten pages and shall:*

1. *Identify the person, in addition to counsel, who will attend the session as representative of the party with decision making authority;*

2. *Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement; and,*

3. *Describe discovery which is contemplated.*

The statement may include any other information the party believes useful in preparing the neutral and other parties for a productive session. The statement may identify individuals connected to another person (including a representative of an insurer) whose presence would be helpful or necessary to make the session productive. The neutral shall determine whether any person so identified should be requested to attend and, where appropriate, may order such attendance. Written evaluation statements shall not be filed with, nor revealed to, the Court.

In addition to submitting a written evaluation statement, the parties shall prepare to respond fully and candidly in a private caucus to questions from the neutral concerning:

1. *The estimated cost, including legal fees, to that Party, of litigating the case through trial;*

2. *Witnesses (both lay and expert);*

3. *Damages, including the method of computation and proof to be offered; and*

4. *Plans for discovery.*

3. Attendance of parties:

All parties shall be present. When a party other than an individual is involved, or when a party's interests are represented by an insurance company, an authorized representative of such party or insurance company, with full authority to act and to settle, shall attend. Willful failure of a party to attend the evaluation conference shall be reported to the assigned magistrate judge or district judge who may impose appropriate sanctions. Each party shall be represented at the session by the attorney expected to be primarily responsible for handling the trial of the case.

4. Procedures:

a. *Each ENE conference shall be informal. The neutral shall conduct the process in order to help the parties to focus on the issues and work efficiently and expeditiously to ready the case for trial or settlement.*

b. *At the conference, the neutral shall:*

1. *Permit each party to make a brief oral presentation (not to exceed 15 minutes) of its position, without interruption, through counsel or otherwise;*

2. *Help the parties to identify areas of agreement and, if feasible, enter stipulations on the court record;*

3. *Determine whether the parties wish to negotiate, with or without neutral assistance, before evaluation of the case;*

4. *Help the parties identify issues and assess the relative strengths and weaknesses of the parties' positions;*

5. *Help the parties to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement, or dispositive motions;*

6. *Help the parties to assess litigation costs realistically;*

7. *Determine whether one or more additional conferences would assist in the settlement of the case and, if so, schedule such a conference and direct the parties to prepare and submit any additional written materials needed for the conference;*

8. *Provide the parties with an evaluation of the parties' strengths and weaknesses and the probable outcome, if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;*

9. *Report, promptly and in writing, to the ADR Administrator the fact that the ENE process has been completed, any agreements reached by the parties, and the neutral's recommendation, if any, as to any other ADR processes that might be of assistance in resolving the dispute. For example, as a result of the ENE, the parties may elect to submit their dispute, or some element(s) thereof, to court-annexed arbitration. Any such referrals must be* coordinated with the supervising district judge or magistrate judge.

C. SUMMARY JURY/BENCH TRIAL ("MINI-TRIAL")

The summary jury trial is a flexible ADR process. The procedures to be followed should be determined in advance by the judicial officer assigned to the case in light of the circumstances of each case. Ordinarily a case should be set for summary jury trial when discovery is substantially completed and conventional pretrial

negotiations have failed to achieve settlement. Some cases may be ripe for early summary jury trial, with limited and expedited discovery. The summary jury trial should precede the trial by approximately 60 days.

1.) Preliminaries to a summary jury trial:

a. *Materials, such as statements of the case, stipulations if any, exhibits, and proposed jury instructions, should be submitted in advance of the summary jury trial.*

2.) Attendance of parties: Each party shall attend the summary jury trial. When a party is other than an individual or when the party's interest is being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, shall attend.

3.) Procedures:

a. *Usually, the jury will consist of six jurors. Trials are generally concluded in a day or less.*

b. *The Court, at its discretion, may permit counsel to engage in limited voir dire or may, on its own, question members of a jury panel. The Court may also, in its sole discretion, determine whether to allow challenges.*

c. *Each party shall make a brief opening statement.*

d. *A party may cause a transcript or recording to be made of the proceedings at the party's expense, but no transcript of the proceedings shall be submitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.*

e. *Counsel shall present a condensed narrative summarizing the entire case, including opening statements, presentation of evidence, and final arguments. Counsel may present exhibits, read excerpts from exhibits, reports and depositions, all of which should be subject to the approval of the presiding judge by the filing of motions in limine reasonably in advance of the summary jury trial . Generally, live witnesses shall not be permitted, except in exceptional cases and only upon the approval of the presiding judicial officer.*

f. *Jury instructions shall be given.*

g. *Jury deliberations shall be limited in time, subject to the sole discretion of the judicial officer.*

h. After the verdict, the judicial officer should initiate and encourage parties and jurors to discuss the case.

i. Within a reasonable time after the summary jury trial, the judicial officer and the parties should meet to see whether the matter can be settled. If the case does not settle as a result of the summary jury trial, it should proceed to trial on the scheduled trial date.

j. The judicial officer shall not admit at a subsequent trial any evidence that discloses there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless;

1. *The evidence would otherwise be admissible under the Federal Rules of Evidence; or*

2. *The parties have stipulated otherwise.*

D. SUMMARY BENCH TRIAL

The summary bench trial is a pretrial procedure intended to facilitate settlement through a summarized presentation of a case to either a district judge (if the case is heard by a district judge, it shall be a judge other than the one who will ultimately preside at the binding trial) or a magistrate judge, whose decision and subsequent factual and legal analysis may serve as an aid to settlement negotiations. A case may be referred to a summary bench trial when making the selection of one of the ADR alternatives provided for in this proposal.

The parties shall submit proposed findings of facts and conclusions of law in advance of the summary bench trial to the judicial officer. Where appropriate, the same procedures applicable in summary jury trials may be adapted to summary bench trials.

E. MEDIATION

Parties in all civil cases filed in the district may elect to submit their case to mediation. The parties must notify the ADR Administrator in writing within 30 days of the filing of the answer of their election of mediation. The ADR Administrator shall provide the parties with a list of approved mediators, from which the parties shall select a mediator within ten days. If the parties fail to make a selection within the ten days, the ADR Administrator shall select randomly from the list of approved mediators a qualified neutral to serve as the mediator. Following the selection of a neutral intervenor, the ADR Administrator shall notify counsel of the selection (including the name and address of the designated neutral) and provide any other materials or information that may facilitate the process. The ADR Administrator shall also notify the neutral.

1. Challenges to neutrality: If the assigned mediator becomes aware of, or if a party raises an issue about the mediator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the mediator shall immediately disclose to the parties the relevant facts giving rise to the alleged conflict of interest. If a party requests the mediator to withdraw because of the disclosed facts, the mediator shall withdraw, and the parties shall select another mediator from the list provided by the ADR Administrator.

2. Preliminaries to mediation:

a. *Promptly after receiving a notice of designation and after consultation with counsel, the mediator shall schedule the mediation session. The mediator shall send written notice to all parties, with a copy to the ADR Administrator, of the time and place of the session. The mediation session shall be held within 30 days of the receipt by the mediator of the notice of designation unless otherwise ordered by the Court for good cause. A request for postponement of a scheduled mediation session must be presented to the neutral and served on the ADR Administrator and all parties without delay.*

b. *No later than five days prior to the mediation session, each party shall submit to the mediator a written, confidential summary of the case. The summary shall not exceed five pages and shall describe the nature and history of the dispute, the applicable legal theory and any settlement discussions that may have occurred. The summary may identify individuals whose presence could be helpful or necessary to make the session productive. The written summaries shall not be filed with, nor revealed to, the Court, nor shall the mediator share the summaries with other parties.*

3. Attendance of parties:

All parties shall be present.

When a party other than an individual is involved or when a party's interest is being represented by an insurance company, an authorized representative of the party or the insurance company, with full authority to settle, shall attend. The absence of a party shall not be grounds for a continuance, but the mediator may continue the session and compel the attendance of an absent party.

4. Procedures at the mediation session:

The mediator shall open the session with an explanation of mediation, the mediator's role and the ground rules for the session. Parties shall be given an opportunity to provide an initial uninterrupted overview of the dispute.

The mediator may find it useful to meet separately with the parties in a caucus. Disclosures to the mediator in a caucus shall be treated confidentially unless the

parties give permission to the mediator to use the disclosed information with the other party or parties.

No transcripts or recordings shall be made of the proceedings, and, at the conclusion of the mediation, the mediator shall destroy any notes made during the course of the session.

The mediator shall help the parties identify their respective underlying interests and develop creative options for meeting those interests in ways that are mutually acceptable.

The mediator may determine, with the consent of the parties, that one or more additional mediation sessions would assist in the settlement of the case, and, if so, schedule another session.

The mediator shall report to the ADR Administrator that the mediation process is complete, any agreements reached by the parties, and the mediator's recommendation, if any, as to other ADR processes that might be of assistance in resolving the dispute.

F. ARBITRATION

Any civil case may be referred to arbitration as authorized by 28 U.S.C. § 651 et seq. notwithstanding any provision of law to the contrary and except as provided in subsection (b) and (c) of 28 U.S.C. § 652, and section 901(c) of the Judicial Improvements and Access to Justice Act. The district court may also refer a case to arbitration upon the election of the parties. The ADR Administrator shall give or send written notice of the election to all parties.

Parties to any civil action may elect private consensual arbitration under the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and agree that the case be referred to binding arbitration. The order of referral shall specify the agreement of the parties with respect to the conduct of the arbitration and payment of the arbitrator(s).

1. Selection of the arbitrator: When a case has been referred for arbitration, the ADR Administrator shall immediately furnish to each party the names of three proposed arbitrators drawn at random from the neutrals available on the panel of approved neutral intervenors. If there are multiple parties not united in interest on either side of the case, the ADR administrator shall add the name of one proposed arbitrator for each additional party. The parties shall then confer for the purpose of selecting an arbitrator in the following manner:

a. *Each party shall be entitled to strike one name from the list, beginning with the first named plaintiff, who may strike the first name, followed next by the first-named defendant, and alternating thereafter between plaintiffs and defendants in the order named until a single name remains.*

b. The parties shall submit to the ADR Administrator, within ten days of receipt by them of the original list, the name of the arbitrator selected from the list by means of the process just described. In the event that the parties fail to notify the ADR Administrator of the selection of an arbitrator within the time provided, the ADR Administrator, or in the absence of the ADR Administrator, the Clerk, shall make the selection at random from the original list of three named arbitrators.

c. The ADR Administrator shall promptly notify the neutral of his or her selection. If any neutral so selected is unable or unwilling to serve, the process of selection shall begin again.

2. Notification of hearing: When the selected arbitrator has agreed to serve, the ADR Administrator shall confer with the arbitrator concerning any potential conflicts of interest, scheduling, and place of hearing, and shall thereafter promptly send written notice to the arbitrator and to each party advising them as to:

a. The identity of the selected arbitrator;

b. The date and time of the arbitration hearing, which shall be held not more than 30 days from the date of the written notice and not more than 180 days from the date of filing of the answer or the date of the filing of a reply counterclaim;

c. The place of the arbitration hearing; and,

d. There shall be no continuance of the date set for the arbitration hearing except for good cause, as determined by the judge assigned to the case.

3. Neutrality of arbitrators: No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist. If the arbitrator becomes aware of, or if a party raises, an issue about the arbitrator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the arbitrator shall immediately disclose the relevant facts giving rise to the alleged conflict of interest to the parties. If a party requests the arbitrator to withdraw because of the disclosed facts, the arbitrator may withdraw, and the parties shall select another arbitrator from the list provided by the ADR Administrator. If the challenged arbitrator determines that withdrawal is unwarranted, the arbitrator may elect to continue, subject to an appeal to the judge assigned to the case, who may allow the arbitrator to continue or remove the arbitrator.

4. Preliminaries to arbitration: At least five days before the arbitration hearing, the parties shall submit to each arbitrator:

a. A set of relevant pleadings;

b. A short memorandum by each party (not to exceed ten pages), stating the legal and factual positions of the party, together with copies of the documentary exhibits the party intends to offer at the hearing; and,

c. At least five days before the arbitration hearing, each party shall deliver to the other party a copy of the memorandum and copies of documentary exhibits provided to the arbitrator, and each party shall make available any non-documentary exhibits for examination by the other party. If the party fails to deliver a copy of the documentary exhibit or to make available for examination a non-documentary exhibit as required, the arbitrator may refuse to receive the exhibit into evidence.

5. Attendance at the arbitration hearing: Each individual who is a party shall attend the hearing in person. When a party other than an individual is involved, or when a party's interest is being represented by an insurance company, an authorized representative of the party or the insurance company, with full authority to settle, shall attend. The absence of a party shall not be grounds for a continuance.

6. Procedures at the arbitration hearing:

a. The arbitrator may administer oaths and affirmations, and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence considered by the arbitrator to be relevant and trustworthy, and which is not privileged. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45 of the Federal Rules of Civil Procedure.

b. A party may cause a transcript or recording to be made of the proceedings at the party's expense.

c. Arbitration hearings may be held at any location within the District of Rhode Island selected by the arbitrator. In making the selection, the arbitrator shall consider the convenience of the panel, the parties, and the witnesses. Unless the parties agree otherwise, hearings shall be held during normal business hours.

d. The arbitrator may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing.

e. There shall be no ex parte communication between the arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing a hearing upon good cause.

7. Award of judgment:

a. *The arbitrator shall promptly, and in any event not more than ten days following the close of the hearing, file the award with the ADR Administrator who shall transmit the award to the Office of the Clerk for filing in the appropriate case file. As soon as the award is filed with the ADR Administrator, the Administrator shall serve copies on the parties.*

b. *The award shall state clearly and concisely the name of the prevailing party and the party or parties against whom it is rendered, and the sum of money damages, if any, awarded. If interest is awarded, the award shall separately state the amount. No findings of fact and conclusions of law or opinions supporting an award are required unless requested by a party.*

c. Unless a party has filed a demand for trial de novo within 30 days, the ADR Administrator shall enter judgment on the arbitration award in accordance with Rule 58, Federal Rules of Civil Procedure, and shall transmit forthwith the judgment to the Office of the Clerk for final entry of the judgment. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

d. The content of any arbitration award rendered under this chapter shall be confidential and shall not be made known to any judge unless:

   1. The assigned judge is asked to decide whether to assess costs;

   2. The Court has entered final judgment or action has been otherwise terminated; or

   3. The judge needs the information for the purpose of preparing the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

8. Trial de Novo:

a. *Any party may demand a trial de novo in the district court by filing with the ADR Administrator a written demand containing a short and plain statement of the reason for the demand. The party shall serve a copy of the demand upon all counsel of record and any unrepresented party. Such demand must be filed and served within 30 days of the date of the filing of the arbitration award, except that the United States, its officers and agencies, shall have 60 days to file and serve a written demand for trial de novo. Upon the filing of the demand for trial de novo, the action shall be treated for all purposes as if it had not been*

referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of the court for good cause. Any right of trial by jury that a party otherwise would have, shall be preserved inviolate. Withdrawal of the demand for trial de novo shall reinstate the arbitrator's award.

b. *The assigned judge shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceedings, unless:*

   1. *The evidence would otherwise be admissible under the Federal Rules of Evidence; or*

   2. *The parties have stipulated otherwise.*

9. Assessment of Cost:

a. *The party requesting a trial de novo shall deposit with the ADR Administrator a sum equal to the arbitrator's fees as advance payment for costs, except that this requirement does not apply to parties proceeding in forma pauperis or to the United States, its officers or agencies.*

b. *Any sum deposited shall be returned to the party demanding trial de novo if;*

   1 *The party obtains a final judgment more favorable than the arbitration award; or*

   2 *The assigned judge determines that the demand for trial de novo was for good cause.*

c. *Any sum deposited which is not returned to the party shall be taxed as costs of the arbitration and paid to the Treasury of the United States.*

d. *In any trial de novo, the assigned judge may assess costs of that trial, as provided in 28 U.S.C. § 1920, against the party who demanded trial de novo if:*

   1. *That party fails to obtain a judgment, exclusive of interest and costs, which is substantially more favorable to that party than the arbitration award; and*

   2. *The assigned judge determines that the party's conduct in seeking trial de novo was in bad faith.*

3. *For the purposes of this section, a verdict may be considered substantially more favorable if it is at least ten percent greater for the party than the arbitration award. This section does not apply to any party in cases involving the United States or one of its agencies as a party.*

4. *No penalty shall be assessed against a party for demanding trial de novo.*

CHAPTER 4

REVISIONS TO LOCAL DISTRICT COURT RULES

In 1992, the Local Rules Subcommittee developed suggested revisions to the existing Federal District Court Local Rules. These rules, after review and comment by the Federal Bar, were submitted to the Court for its consideration in May, 1992. The Court has delayed rendering its final decision as to the proposed Local Rules until Congress acts upon the changes to the Federal Rules of Civil Procedure and its final review of the Civil Justice Reform Act Report and Plan.

CONTINUED MONITORING OF COMPLIANCE

As required by 28 U.S.C. §475, after developing, and, the Court selecting a civil justice expense and delay reduction plan, the Court shall assess annually the condition of the civil and criminal dockets with a view to determining appropriate additional action that may be taken by the Court to reduce cost and delay in civil litigation and to improve litigation management practices of the Court. In performing such assessment, the court shall consult with the Advisory Group appointed in accordance with section 28 U.S.C. §478.

JUDICIAL IMPROVEMENTS ACT OF 1990

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress makes the following findings:

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

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

APPENDIX E

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

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

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.