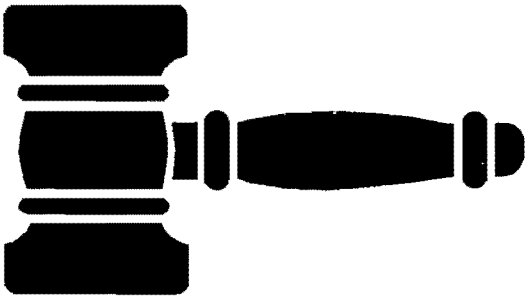
REPORT AND RECOMMENDATIONS OF THE

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

FOR THE

NORTHERN DISTRICT OF NEW YORK



APRIL 27TH, 1993

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APPENDIX

I. DESCRIPTION OF COURT

A. Geographical Area

The Northern District of New York is a geographically large district encompassing 32 of the 62 counties in New York State and covering 30,511 square miles. The population of the District was 3,357,709 at the time of the 1990 census. Its northern boundary reaches to Canada and its southern one extends to Pennsylvania. The District has staffed courthouses in Albany, Syracuse, Utica, and Binghamton. The District also has unstaffed courthouses in Watertown, Auburn and Malone.

B. Personnel

The District has been authorized 4 permanent judgeships and one temporary judgeship. In addition it presently has 1 senior judge. As discussed in Section IIB2, failure to fill the authorized positions has been a significant cause of delay in this District. The District is authorized 3 full-time magistrate judgeships, one each in Albany, Syracuse, and Utica. The District also has 1 part-time magistrate judge who is assigned one-seventh of the cases and a part-time magistrate judge who conducts initial appearances of individuals arrested while crossing the US-Canada boarder.

The Clerk's office staff has historically been controlled by the work measurement formula approved by the Judicial Conference of the United States. The Clerk's office operated at less than 100% staffing for several years. In 1991, the Clerk's office was funded for only 96% of the positions justified by the formula. The formula

was amended in 1992, and under the new formula the district would be entitled to an additional five positions. These positions, however, will be phased in over the next five years as funding is made available. It should also be noted that the district is periodically subjected to hiring freezes similar to the one that was in effect October 1, 1992 through January, 1993. Although the freeze was lifted, the Clerk's Office will be allocated less than 100% of the entitled positions in FY 1993. Failure to fund the new positions will have a detrimental effect on the ability of the Clerk's office to properly monitor and assist in the implementation of the requirements of the Civil Justice Reform Act Plan of this court. It may also have an effect on the ability of the Clerk's staff to continue to provide a high level of services and support.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. Conditions of the Docket

1. Present Conditions

In this section we will describe the conditions of the docket in the year ending June 30, 1992. The Northern District experienced a slight increase in the total number of cases filed in that year. As **Table I** reveals, 1816 cases were filed, a 4.5% increase over the number of filings in 1991.[1] This total number represents 363 cases per *authorized* judgeship. We underscore "authorized" because while the District had 5 authorized judgeships, 1 of those positions

[1]Unless otherwise indicated, figures stated in this report are for statistical years, ending June 30.

was not filled for the entire year and the other judgeship was not filled until March 13, 1992. Moreover, when the caseload is adjusted for complexity (i.e., weighted), the filed cases per authorized judgeship increases to 393.

Table I also reveals the breakdown of the total cases filed in 1992 into civil and criminal cases. The number of civil cases (1576) represents a 6.9% increase from the previous year. The total number of criminal (felony and misdemeanor) cases (523) filed in 1992 increased 13.2% over 1991.

TABLE I[2]

Total Cases in 1992

Total filed	1816
Per judgeship (unweighted)	363
Per judgeship (weighted)	393
Civil cases	1576
Per judgeship (unweighted)	315
Per judgeship (weighted)	393
Criminal Cases (Felony Only)	239
Per judgeship (unweighted)	48

In 1992, the number of civil cases terminated increased dramatically (49.6%) over the number terminated in 1991. **(See Table II)**. At the same time, the number of criminal (felony and misdemeanor) cases terminated in 1992 increased significantly

[2]This Table refers to "authorized" judgeships.

(38.8 %) over the previous year. The number of pending civil cases decreased 14.9% over 1991, and the number of pending criminal (felony and misdemeanor) cases increased .3%. Although the number of pending criminal cases rose slightly, the district maintained the fastest median time from filing to disposition for criminal felony cases in the Circuit. The Northern District has one of the highest level of cases pending per judgeship among all district courts in the country. The national average of pending cases per judgeship was 407, while the average in the Northern District was 607. The number of pending cases per judgeship decreased by 102 cases over 1991 as compared to the national average which decreased 23 cases per judgeship.

TABLE II

Status of Cases in 1992

Total terminated	2587
Civil	2065
Criminal[3]	522
Total Pending	3133
Civil	2804
Criminal	329
Trials Completed	117
Civil	77
Criminal	40

[3]In this Table, criminal includes felony and misdemeanor cases.

As **Table II** also indicates, a total of 117 trials were completed in 1992. This represents an increase of 24% over 1991. A large portion of the increase was attributed to use of magistrate judges who held 22 consent trials.

A large percentage of the pending civil cases were pending for at least 3 years. Indeed, 23.6% (663 cases) of the pending civil cases were 3 years and over. This percentage of older cases is much higher than the national average of 8.7%. The district did decrease its pending 3 year list by 8% over 1991. An additional 127 cases on the pending 3 year list have been closed due to the decision of the Judicial Conference to allow courts to close cases stayed because of bankruptcy.

The median time for disposing of cases in the Northern District increased in 1992. The median time for disposing of criminal cases was 5.9 months, the fastest in the Second Circuit. The median time for disposing of civil cases was 20 months, well above the circuitwide and national averages of 9 months. The median time for disposition may have increased because the district significantly decreased the number of cases pending for 3 years or more.

The Northern District relies heavily on magistrate judges. **Table III** reveals that in 1992 there was significant use of magistrate judges particularly in the following categories: (1) pretrial conferences in civil cases; (2) prisoner petitions; (3) motions in civil cases; and (4) consensual civil cases terminated pursuant to 28 U.S.C. 636(c). With regard to civil cases terminated by magistrate judges, the Northern District accounted for nearly one fourth of the number of such terminations in the entire Second Circuit.

TABLE III

Magistrate Judge Activity in 1992

I. Petty Offenses (6 Months/$5,000)

Defendants disposed of	
Petty offense	3061
CVB Tickets Issued	6570

II. Matters disposed of pursuant to 28 U.S.C. 636(a)

A. Preliminary Felony Matters

Search Warrants	166
Summonses	13
Arrest Warrants	185
Initial Appearances/Arraignments and Preliminary Exams	603
Attorney Appointment Hearings	9
Detention Hearings	143
Bail Reviews/Forfeiture and Nebia Hearings	42
Grand Jury Sessions for Returns	76
All other preliminary felony matters	302

B. Miscellaneous Matters:

Includes: Seizure Warrants; Admin. Inspection Warrants; IRS Enforcement; Orders of Entry; Judgment Debtor Exams; Extradition Hearings; Contempt Hearings; and Fee Applications	141

III. ADDITIONAL DUTIES UNDER 28 U.S.C. 636(b)

A. Felony Cases

Pretrial Conferences, Omnibus Hearings, Calendar Call, Status Conference ------	18
Mental Competency Hearings ----------	4
Probation Hearings, Evidentiary Hearings ----------	2
Voir Dire and Other Jury Matters ------	12
Issuance of Writs ----------	44
Motion Hearings/Arguments ----------	3
Miscellaneous Matters (Felony Cases) --	13

B. Prisoner Cases

State Habeas (28 U.S.C. 2254) ---------	62
Federal Habeas (28 U.S.C. 2255,2241) --	40
Civil Rights (42 U.S.C. 1983 & Bivens)-	143
Pretrial Conferences ----------	61
Motions ----------	321
Granting of Forma Pauperis Status -----	180
Miscellaneous Matters (Prisoner Cases)-	131

C. Civil Cases (Duties under 28 U.S.C. 636(b))

Non-Dispositive Motions ----------	61
Dispositive Motions ----------	15
Fee Applications & Evidentiary Hearings ----------	7
Social Security Appeals ----------	33
Initial Pretrial Conferences (Rule 16(b)) ----------	84
Discovery Conferences (Rule 26(f)) ----	92
Settlement Conferences ----------	30
Final Pretrial & Status Conferences ---	49

Motion Hearings/Arguments ---------- 18

Miscellaneous Matters (Civil Cases) --- 22

IV. CONSENT CASES UNDER U.S.C. 636(c)

Cases Terminated ---------- 87

Total Trial Hours ---------- 576

Total Trial Days ---------- 96

Non-Dispositive Motions _____ 35

Dispositive Motions ---------- 24

Pretrial Conferences ---------- 145

Miscellaneous Matters (Consent Cases) ---- 22

2. Trends in Case Filings and Demands on Judicial Resources

Table IV reveals the trends in filings, terminations and pending cases from 1985-1992.

TABLE IV

Trends in Filings, 1985--1992

	1985	1986	1987	1988	1989	1990	1991	1992
Filings	1939	1682	1646	1752	1688	1701	1738	1816
Terminations	1859	1787	1587	1563	1697	1582	1575	2325
Pending	3139	3034	3092	3280	3272	3391	3545	3036

a. Criminal docket

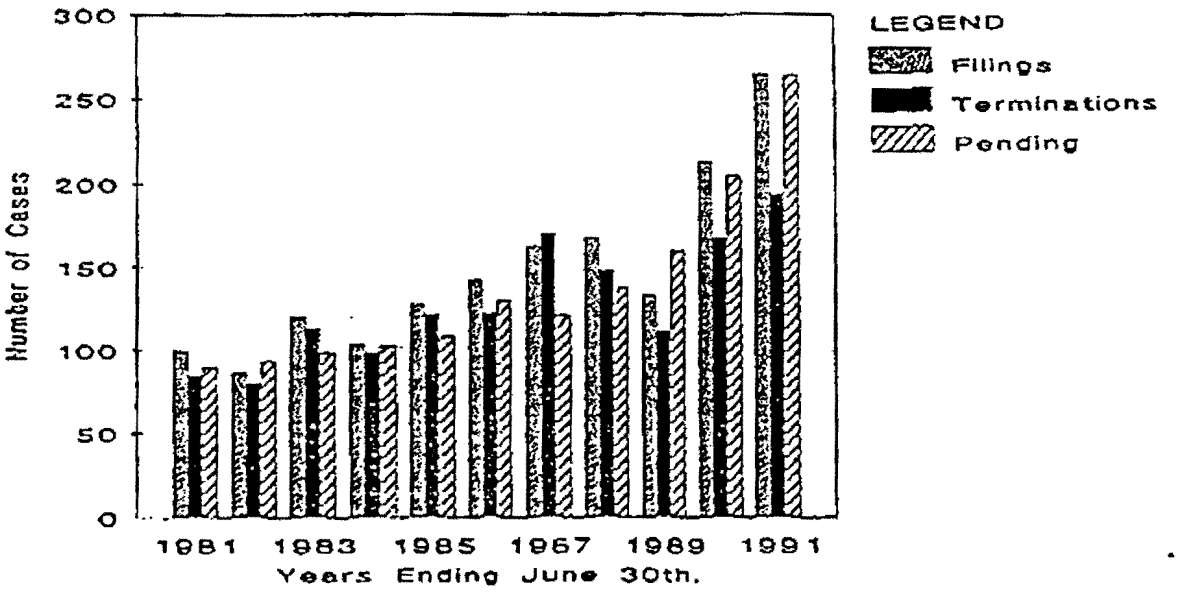
To fully appreciate the trends over the past decade, one must examine separately the criminal and civil dockets. Since

1981, the criminal caseload in the Northern District has more than doubled. Although the precise reasons for this increase are difficult to assess, it is clear that the dramatic increase in the criminal docket has a direct bearing on the ability of the district courts to manage civil litigation.

Chart I indicates the trends in criminal cases since 1981-1991. In 1992, there were 239 criminal felony case filings, representing a slight (.3%) decrease from the previous year.

CHART I

Criminal Case Filings, 1981--1991



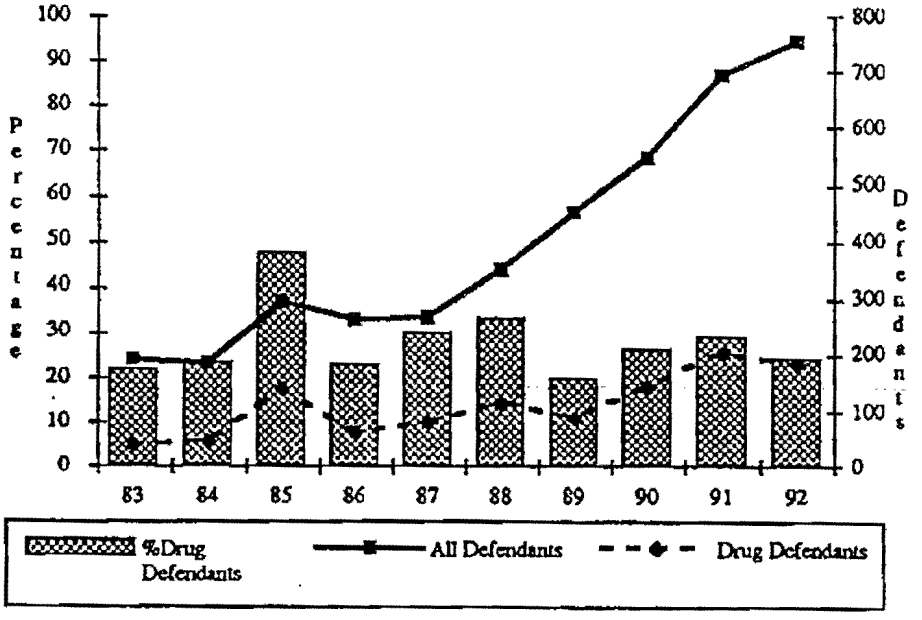
Note: Includes only felonies.

Recent studies suggest that the burden of a criminal case is directly related to the number of defendants. A more accurate assessment of the impact of the criminal docket, therefore, can be made by examining the trend of criminal defendant filings rather than criminal case filings. **Chart II** reveals that criminal defendant filings have increased dramatically since 1983. The burden imposed by the criminal docket, thus, is even more dramatic than suggested by the large increase in criminal case filings.

CHART II

Criminal (Felony and Misdemeanor) Defendant Filings

1983--1992

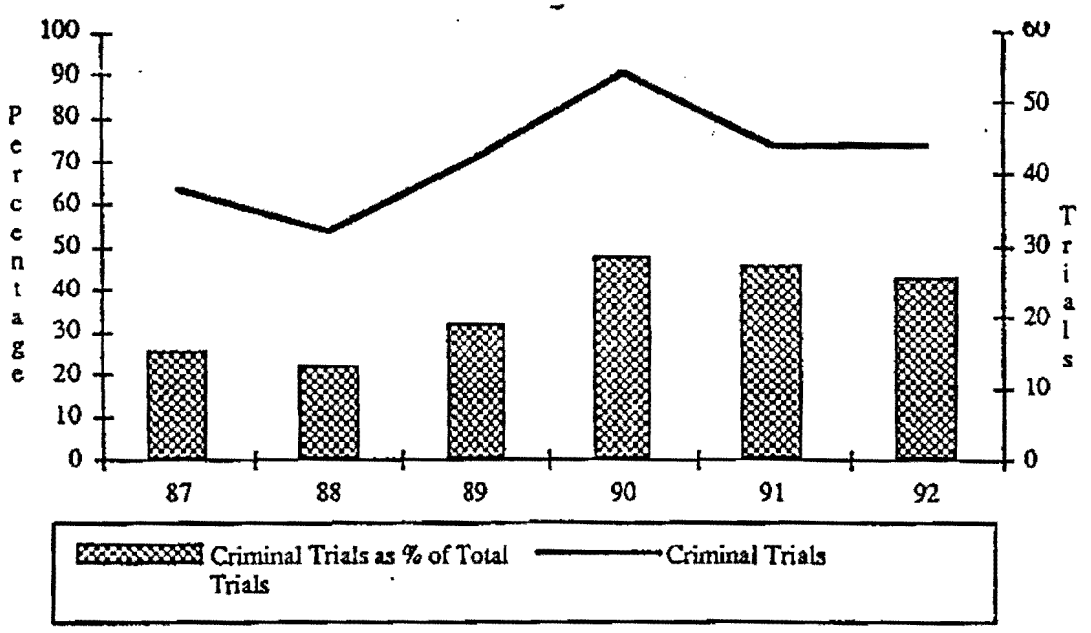


The criminal docket's demand on judicial resources is also a function of the number of criminal trials. In each year since 1986, criminal cases represented about 10-15% of the total case

filings. Yet, as **Chart III** indicates, criminal felony trials accounted for 30-45% of all cases tried.

CHART III

Criminal (Felony) Trials, 1986--1992



b. Civil Cases

Table V reveals the types of civil cases filed in each year since 1983. In those years, the majority of case filings consisted of four types of cases-- civil rights, contract, personal injury and prisoner. In 1987 and 1988 asbestos cases also represented a large proportion of the new case filings.

TABLE V

Civil Case Filings, 1983-1992

	83	84	85	86	87	88	89	90	91	92
Asbestos	6	1	6	5	256	161	64	78	43	6
Bankruptcy Matters	21	27	15	15	16	11	17	46	18	27
Banks and Banking	4	0	0	1	2	2	1	1	1	1
Civil Rights	150	147	187	173	96	128	149	153	169	206
Commerce: ICC Rates, etc.	4	4	3	5	2	64	8	13	6	8
Contract	129	149	180	210	176	176	214	129	140	132
Copyright, Patent, Trademark	35	50	62	41	44	42	48	32	40	38
ERISA	34	31	46	20	10	24	38	44	52	64
Forfeiture and Penalty (excl. drug)	22	34	18	21	21	29	57	89	75	87
Fraud, Truth in Lending	11	7	7	12	7	9	4	2	7	6
Labor	67	83	72	94	60	58	58	63	67	66
Land Condemnation, Foreclosure	24	37	38	46	20	28	27	47	55	62
Personal Injury	250	289	302	280	273	279	259	213	238	230
Prisoner	528	548	567	303	281	302	306	324	341	382
RICO	0	0	0	4	1	2	6	7	7	7
Securities, Commodities	9	10	13	25	16	8	11	8	8	3
Social Security	235	257	122	133	66	95	72	55	62	46
Student Loan and Veteran's	24	50	80	39	15	34	63	44	26	49
Tax	17	24	18	19	21	10	9	10	12	5
All Other	89	92	90	95	92	108	131	131	126	146
All Civil Cases	1659	1840	1826	1541	1475	1570	1542	1489	1493	1571

Contract and personal injury cases represented about one-third of the new civil case filings in each of these years. Most of these cases were based on diversity, suggesting that diversity jurisdiction places a heavy burden on the court. Table VI indicates the number of diversity filings from 1985-1992. In all but one of the years from 1985 to 1990 diversity cases represented about 20% of the new civil filings. (In 1987, diversity cases were nearly 40% of the new civil case filings due in large part to the increase in asbestos cases). It is interesting to note that the number of diversity filings have decreased in the years following the effective date of the increase in the jurisdictional amount requirement of 28 U.S.C. 1332.

TABLE VI

Diversity Filings, 1985-1992

1985	322	
1986	317	
1987	652	
1988	333	
1989	364	
1990	311	
1991	269	
1992	225	(as of 11/05/92)

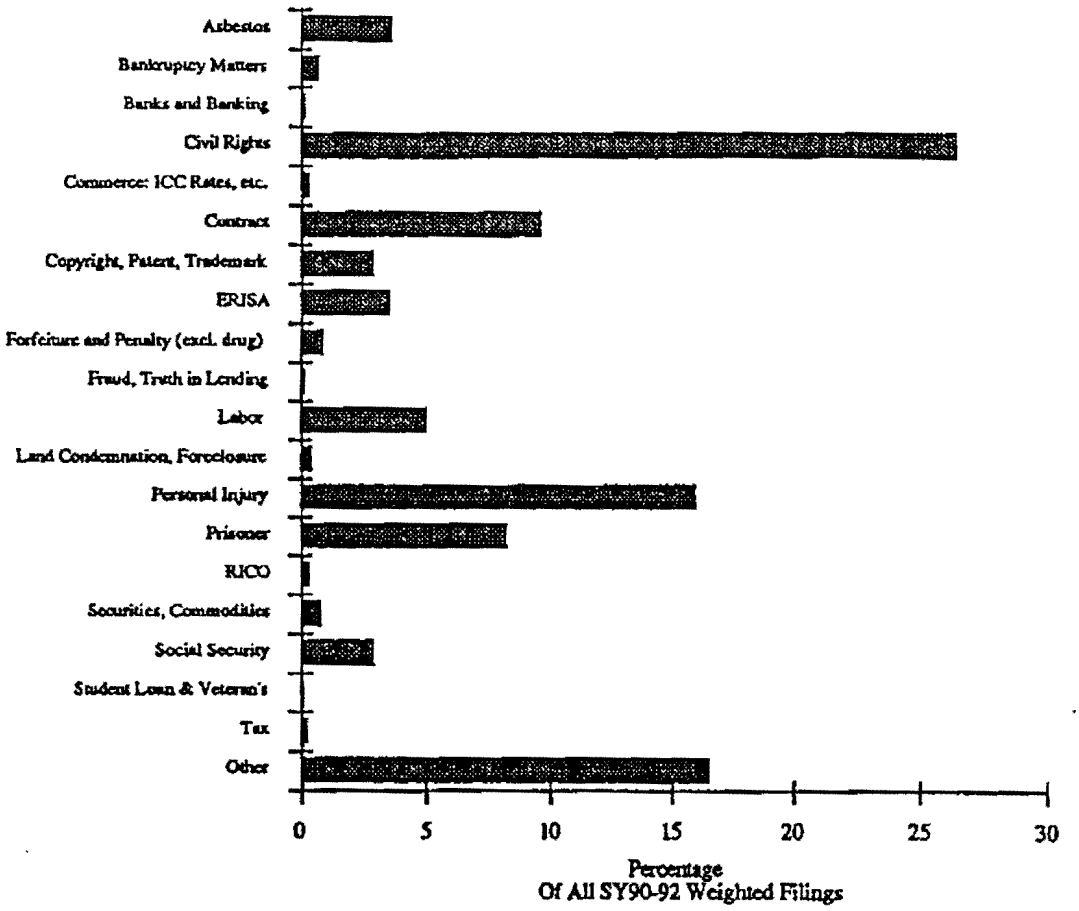
Prisoner cases represented a significant proportion of the civil cases filed in each of these years. In percentage terms, these cases ranged from 20 to over 30 percent of the civil cases filed each year. Prisoner cases in the District fall into two categories: 88% of the pending prisoner cases in 1991 were civil rights actions and all but a few of the remainder were habeas corpus petitions. Most of these cases (over 90%) are prosecuted *pro se*. A large number of prisoner cases have been pending for more than three years. As of May, 1991, 41% of the pending prisoner cases had been filed in 1988 or earlier, and 27% had been filed in 1987 or earlier. The average time for disposition of prisoner civil rights cases that were closed in 1989 and 1990 was 34 months; for those closed in 1988 it was 46 months.

The burden on the District can be measured not simply

by the total number of civil case filings but by the amount of time judges must devote to different kinds of cases. **Chart IV** indicates the distribution of civil case filings adjusted (i.e., weighted) to show the actual burden imposed by each type of case. When weighted for time devoted by judges, prisoner cases, for example, impose less burden than suggested by the number of such cases filed. Asbestos, non-prisoner civil rights, and "other" cases impose a heavier burden than might be indicated by the number of such cases filed.

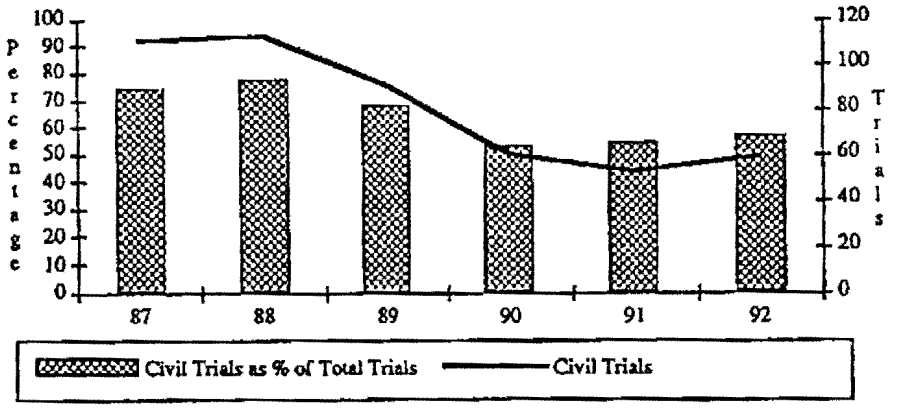
CHART IV

Distribution of Weighted Civil Case Filings, 1990-1992



The burden imposed by civil cases can also be measured by the number of civil trials. By this measurement, civil cases impose less burden on the District than might be indicated by the number of civil case filings. Although civil cases accounted for approximately 85-90% of the total case filings in the past six years, they accounted for 55 to 70% of the total cases tried in that period.

CHART V

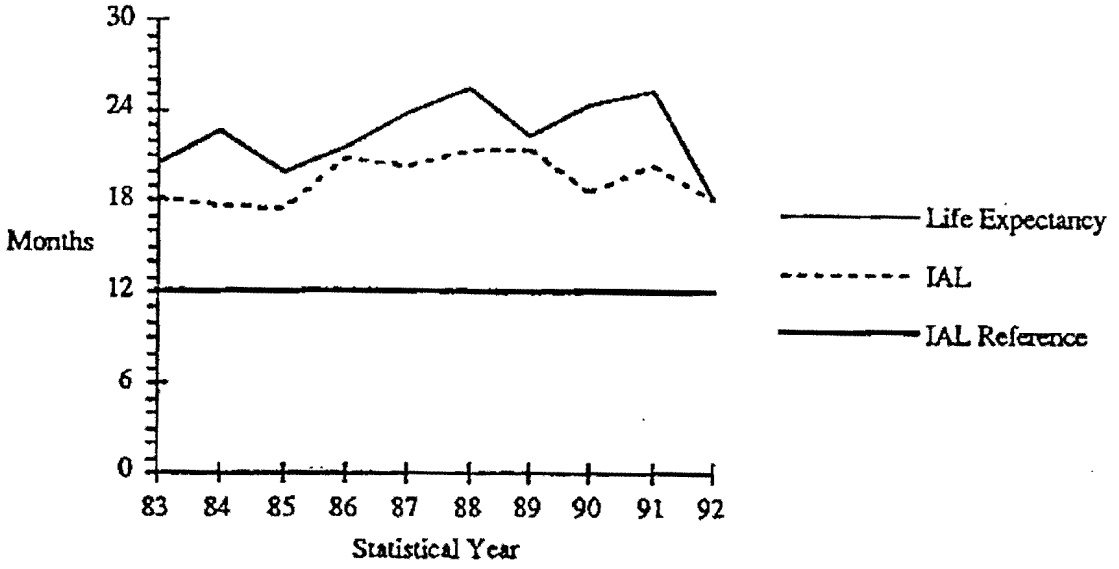


Civil Trials, 1986-1991

Delay in disposing of civil cases has been a serious problem in this District. The median time for disposing of a civil case in each of the past 7 years has ranged from a high of 20 months in 1992 to a low of 12 months in 1990 and 1991. Last year, the Northern District ranked 77th of the 94 districts in median time for disposing of cases.

Chart VI indicates that the life expectancy of a civil case (the length of time a new case is likely to require for disposition) in the Northern District for the past ten years has ranged from 18 to 27 months. The Indexed Average Lifespan (IAL) compares the characteristic lifespan of the Northern District's cases to that of all district courts. The index used is 12 months, the national average for time of disposition. In this regard, the District has been well over the national average throughout the 10 year period.

CHART VI



Life Expectancy and Lifespan, 1983-1992

When corrected for type of case, the District's time for disposition of certain types of civil cases improves. The Administrative Office of the U.S. Courts sorts civil case types into two categories. A case type is included in the first category (Type

1) if the vast majority of cases within that type are disposed of in the same way. For example, most Social Security cases are disposed of by decision upon the Court's review of the record. The Type 1 category includes such case types as student loan collection cases, social security cases, asbestos cases, conditions of prison confinement cases, and veteran benefits cases. A case type is included in the second category (Type 2) if the cases within that type follow a variety of paths to disposition. The Type 2 category includes such case types as contract actions, personal injury suits, non-prisoner civil rights cases, labor cases, ERISA cases and tax cases. **Chart VII** shows that the life expectancy of Type 2 cases has ranged from 18 to 24 months and that the Indexed Average Lifespan for these case types is closer to that of the national average.

CHART VII

Life Expectancy and Lifespan Type 2 Cases, 1983-1992

The Northern District also has an unusually high percentage of cases that have been pending for 3 or more years. In 1992, the District's rank in this category was 92nd of the 94 districts. **Table VII** shows the percentage of older cases in each of the years since 1985.

TABLE VII

Percent of Civil Cases 3 Years & Older, 1985-1992

1985	11.3%
1986	14.8%
1987	17.2%
1988	19.2%
1989	17.4%
1990	26.6%
1991	31.6%
1992	23.6%

The large percentage of older cases pending in 1992 may well have resulted in part from the failure to fill promptly vacant judgeship positions in this District.

3. Trends in Court Resources

The most significant trend with regard to resources concerns the number of judgeships and the failure to fill vacancies. In each of the years from 1985 to 1990, the District had 4

authorized judgeships. Recently, it was authorized a temporary judgeship position as well. These authorized positions, however, have not been promptly filled. In 1985, the District had 11.6 vacant judgeship months. In 1986, the number of vacant judgeship months increased to 17.9. (The judgeship vacancies in these years may well explain the large number of older cases today.) In 1991, the District had 2 vacancies in judgeships. The first of these vacancies began in November, 1990, when Judge Howard Munson assumed senior status. This position has yet to be filled. On March 13, 1992, 15 months after Judge Munson's vacancy, the temporary judgeship position was filled.

The district has recently suffered an additional set back to its judicial resources with the disabling illness of one of its active Article III judges in Albany, N.Y. On October 23, 1992, President George Bush signed a certificate pursuant to the authority vested in him by virtue of Section 372(b) of Title 28 of the United States Code, which made a specific finding that: (1) the judge is unable to discharge efficiently all the duties of his office by reason of permanent physical disability, and (2) the appointment of an additional judge is necessary for the efficient dispatch of the business of the United States District Court for the Northern District of New York. The Court anticipates that it will take well over one year to fill the replacement position.

As the statistical profile indicates, the judges of this court are already dealing with an enormous backlog of pending cases, the continued failure to promptly fill the vacancies coupled with the fact that one of our judges has suffered a disabling illness for the past year has resulted in the necessity to increase the

number of new assignments to the district's active judges.

Effectively, the court is functioning with only three active judges. In addition, the newly appointed judge, a former United States Attorney, had to recuse himself from most criminal cases for several months. Based upon three judgeships, the court in 1992 would have ranked above the national averages in most caseload categories, including total cases filed (605 compared to 403), weighted caseload (655 compared to 405), cases pending (1012 compared to 402), and cases terminated (775 compared to 416).

A second resource trend relates to the magistrate judges. As discussed above, this District relies heavily on magistrate judges. Their jurisdiction has been expanded to include consent cases, and attorneys increasingly are consenting to trials by the magistrate judges. Additionally, they handle much of the prisoner caseload, and are beginning to handle most pretrial matters. One magistrate judge has been assigned a substantial number of criminal cases. The District currently has three full-time magistrate judges, one half-time magistrate judge, and one part-time magistrate judge. Recently the Judicial Conference's Judicial Magistrate Committee recommended the conversion of the half-time magistrate judge position to full-time.

A third resource concerns the availability of adequate space for judges and magistrate judges. The existing space is inadequate and steps are being taken to remedy the problem. In Syracuse, two additional chambers and one courtroom were recently constructed, and there are plans to construct an additional courtroom and chambers for Judge Scullin. In Albany, construction on one

courtroom and one judge's chambers has commenced to accommodate Senior Judge Munson's replacement when appointed. In October 1992, the court approved a 30 year plan for space and facilities. The plan includes another courtroom and chambers in Albany for Judge Cholakis' replacement. Approval has been given to the leasing of a site in Watertown for construction or renovation of Courthouse facilities. GSA is currently evaluating proposals for sites for a long-term lease. The Advisory Group concluded that a site in or near the downtown area of the City of Watertown, convenient to law offices, businesses, and other courts, would best serve the public interest and the interests of justice. The Advisory Group urges that a downtown site be given preference.

For the past years, the clerk's office has not been adequately staffed. This problem results from the inadequate formula previously used by the Administrative Office of the U.S. Courts to calculate authorized positions. Moreover, in 1991 the District was allocated only 96% of the positions authorized under that formula. The formula was amended in 1992, and under the new formula the district should be authorized 5 additional positions to be phased in over the next 5 years. However, shortfalls in congressional funding of the federal judiciary have reduced the likelihood of receiving any new positions even after new judges are appointed. This may result in reduced service to the Court, attorneys and the public.

B. Cost and Delay

1. Existence of Excessive Cost and Delay

In attempting to assess the cost and delay in civil

litigation in the Northern District, the Advisory Group considered four sources. First, it relied on the extensive experience of the Group members. Second, it considered the data discussed in the previous Sections. Third, the Group conferred with the judges and magistrate judges within the District. Finally, the Group held hearings in five locations throughout the District. Chief Judge McCurn invited each member of the Bar to attend the hearings and provide input about the causes of delay and unreasonable costs. Moreover, he urged the bar members to invite clients who regularly have cases in the District. The letter designated the various topics that would be addressed at the hearings, which were chaired by at least one member of the Advisory Group. (A copy of Chief Judge McCurn's letter is attached as **Appendix C.**)

Relying on these sources, the Group devoted considerable attention to the question of whether there is excessive cost or delay in civil litigation. With respect to the cost of litigation, the Group was unable to reach any firm conclusions. The Group did not have data on the actual costs of various kinds of cases and, thus, had no basis to ascertain whether the costs of litigation are "excessive." Moreover, although it had data about delay (see discussion below), it had difficulty determining the correlation, if any, between delay and costs. The Advisory Group recognized that delay in disposing of cases may lead to increased costs because attorneys may need to spend additional time reviewing the file, or conducting pretrial proceedings and discovery. In some instances, however, the delay may not be accompanied by significant increases in costs. For example, litigants may be awaiting a decision from the

court on a motion and, during the waiting period, take no action in their case. The delay in these circumstances may not lead to expenditure of additional time and may not necessarily translate into higher costs for the parties.

The district's experiences with prisoner cases illustrates the complicated relationship between delay and costs. As discussed below, for example, prisoner cases are a major source of delay in the Northern District. The delay often occurs because the state Attorney General does not make an early motion that is likely to dispose of the matter. The assistant attorneys general often find that they have time only to answer a prisoner *pro se* civil rights action without making the dispositive motion or conducting discovery. Such a response may be attractive when it is known that a large number of such cases are eventually dismissed for failure to prosecute. The state thereby postpones or avoids the cost of defense by allowing the action to linger.

On the other hand, the delay in prisoner cases may lead to increased costs for the Court. Before placing an action on the dismissal calendar, the clerk's office staff must review the file to determine whether the case is appropriate for dismissal. Moreover, the staff must devote time (and, thus, cost) to reporting on the reasons for the delay in disposing of prisoners cases.

Attorneys attending the public hearings did not identify litigation costs as a matter of concern. For example, it was the impression of those attorneys, as well as Group members, that while discovery procedures constitute a large portion of litigation expenses they generally are not abused in this District. On occasion

when abuse occurs, local procedures adequately address the problems. Local Rule 10(k) requires, and custom provides, that attorneys confer with opposing parties and make good faith efforts to resolve discovery disputes before any motions may be made.

It should be noted that although attorneys did not identify litigation expenses as a problem, a non-lawyer member of the Advisory Group expressed concerns about the high costs of litigation. As the General Manager of the commercial insurance division of a major insurance company, he has considerable experience with cases in the federal courts.

The Advisory Group could not make any conclusions about the excessiveness of litigation costs. It stressed, however, that in the process of examining the expense of litigation we should not lose sight of the fact that, as stated in Rule 1 of the Federal Rules of Civil Procedure, one of the purposes of a procedural system is the "just" determination of the lawsuit. Moreover, although Group members had no data on the expense issue, they were sensitive to the general public perception that litigation costs are high. The Group believed that litigation expenses could be reduced in certain respects, whether or not they are "excessive." This report, therefore, discusses the possible reasons for unnecessary costs and makes recommendations designed to reduce those costs. (See Section III).

The Advisory Group concluded that delay in litigation is a problem in the Northern District. Interestingly, only a few of the attorneys attending the hearings identified delay as a major concern. The data, however, highlight the problem. The Northern District has one of the highest number of cases pending per judgeship in the

country. In 1992, the average number of cases pending per judgeship was 607 in the Northern District compared to 402 nationally. Slightly over 23% of the pending cases were 3 years or older. This percentage of older cases exceeds the Second Circuit percentage (15.3%) as well as the national one (8.7%). Further evidence of delay is found when one considers the time for disposing of cases. In 1992, the time for disposing of civil cases in the Northern District was 20 months, above the Second Circuit average of 12 months and the national average of 9 months. Similarly, the life expectancy of cases in the District was well above the national average. (See **Charts VI** and **VII**, *supra*).

Prisoner cases constitute a significant proportion of the older cases. The latest Civil Justice Reform Act Report for the District reveals that prisoner cases represented 38% of the cases that were pending more than 3 years. Moreover, a significant proportion of the prisoner cases have lingered for more than 3 years. (See **Table VIII**, *supra*). In 1991, 41% of the pending prisoner cases were 3 years, or older; 27% were 4 years or older.

2. Causes of Delay and Expense

The Advisory Group identified the following as the principal causes of delay and expense:

(1) One of the most significant causes of delay in this District has been the failure to fill judgeship vacancies in a timely fashion. In 1985, the District had 11.6 vacant judgeship months. In 1986, the number increased to 17.6. Following the appointment of Judge Thomas J. McAvoy in 1986, the District had no vacancies. But,

in 1991, it again had 2 vacancies resulting in 14.9 vacant months. In 1992 (as of November 1), the district had 24.4 months of vacancy, not including the vacancy created by the disability of one of the judges. The total for the period 1985-92 was 68.8 vacant judgeship months. To highlight the impact, this is the equivalent of over 5 full-time judges for one year.

The delay in filling judgeship vacancies contributes significantly to delay in the litigation process. The vacancies in judgeship positions over the past 6 years may well explain the relatively large number of older cases, the longer life expectancy of cases, and the longer length of time for disposing of cases in this District. The inadequate number of judges places additional burdens on the sitting judges, creating difficulties for expediting cases. For example, some attorneys at the public hearings commented on a perceived delay in getting decisions on motions. Any such delay is perhaps not surprising in light of the additional workload assumed by the judges while vacancies remain.

(2) Another resource matter has contributed to delay and increased costs in this District. In the past, magistrate judges were underutilized, in part because of the District's custom. This underutilization deprived the District of a resource that could relieve the workload on the district judges, facilitate the disposition of cases, and lead to a reduction of costs.

More recently, the District has started to make much greater use of magistrate judges. In 1992, the District reported increases in most categories of magistrate judge work, including pretrial conferences, prisoner cases, motions in civil cases, and

consensual civil cases terminated pursuant to 28 U.S.C. 636(c). (See **Table III**, *supra*) In that same year, The Northern District accounted for nearly one-fourth of the civil cases terminated by magistrate judges in the Second Circuit.

The District further increased its utilization of magistrate judges by adopting General Order 30 on March 1, 1992, which provides that the clerk will assign a district judge and a magistrate judge to each civil action at the time of filing. (See **Appendix E**). The magistrate judge will manage all discovery, resolve all discovery motions, implement Rule 16, and hold any settlement conferences.

We are confident that the increased utilization of magistrate judges will serve the twin aims of reducing delay and costs. Nevertheless, two related resource problems remain. First, the funding is required for the magistrate judge position that is to be converted from part-time to full-time. Second, as the magistrate judges assume greater responsibilities, they require additional support. Specifically, they currently have only one law clerk each, and they need two.

(3) The method used in the past for assigning cases contributed to additional costs and delay in resolving civil cases. Until recently, cases were assigned randomly to judges throughout the District, regardless of where the parties resided, or the claim arose. As **Table VIII** indicates, the District covers a large geographical area, and, thus, parties are often forced to bear the expense of paying for travel of their attorneys to a distant courthouse for conferences, hearings, and trials. In some instances, district judges

may also be required to travel to a distant courthouse, thereby devoting time to travel rather than disposition of cases.

TABLE VIII

Authorized Places of Holding Court and Distance from Syracuse

Syracuse	
Albany	148 miles
Utica	54 miles
Binghamton	76 miles
Auburn	27 miles
Watertown	71 miles
Malone	170 miles

On May 8, 1992, Chief Judge McCurn entered General Order 31 which is designed to remedy some of the problems created by the previous assignment system. This Order provides that the District will be divided into three filing divisions, each consisting of designated counties (See **Appendix F**). Civil cases will be assigned on the basis of the county in which venue lies, to those judges designated to hold court in that location.

(4) As discussed above, prisoner cases represent a large number of the older cases. The Advisory Group identified a number of reasons for the relatively large number of pending prisoner matters. First, the high number of prisoner filings is related to the large number of prisoners within the District. New York operates 37 correctional facilities in the Northern District, housing over 27,000

prisoners. Although less than one-fifth of the state's population resides in the Northern District, nearly one-half of the state's prison population is confined there. In addition, one federal prison and 32 county correctional facilities are located in the district. The delay in disposing of prisoner cases is attributable in part to the litigation strategy often adopted by the Office of the New York State Attorney General. Frequently the Office will answer the prisoner complaint, which is usually filed *pro se*, but then will not make a dispositive motion, or conduct discovery unless circumstances warrant the use of the Office's resources. Historically, a significant number of the prisoner cases eventually have been dismissed for failure to prosecute. The State, thus, postpones or avoids the cost of a more active defense by allowing the case to linger. Third, to facilitate the disposition of prisoner cases (as well as other pro se litigation), the District has established a *Pro Se* Staff Attorney's Office. Currently, that Office is staffed by one attorney and one writ clerk. The size of the staff is inadequate to meet the demands on the Office. Under the recently adopted standards of the Judicial Conference, the district should have one *pro se* clerk for every 209 prisoner *pro se* filings. The Northern District anticipates receiving over 500 *pro se actions* each year and, thus, should have an additional *pro se* attorney. Finally, the Second Circuit strongly disfavors *sua sponte* dismissals of *pro se* prisoner petitions before service of process and filing of defendant's response.

(5) The Advisory Group found that motion practice in the District contributes to delay and unnecessary costs in three

respects. First, Local Rule 10(i) requires oral argument on all motions unless otherwise ordered by the court. As a matter of practice, personal appearances are mandatory at oral arguments. The Advisory Group, as well as bar members attending the public hearings, believed that in many instances oral argument is unnecessary and that the Local Rule 10(i) requirement creates substantial additional costs for parties. The requirement also contributes to delay because if a judge's motion calendar for a particular date is filled, additional motions must be made returnable at some later date.

The Advisory Group and bar members also noted that motion practice requires that the parties must submit an unnecessary amount of paperwork. Specifically, the Rule requires parties to file memoranda and affidavits even when a memo or affidavit, or both, may not be required. Likewise, the Rule requires parties to submit proposed orders, which usually are not adopted by the Court.

A final concern relating to motion practice involves the delay in rendering decisions. Generally, rulings on motions are quite prompt. The Advisory Group and bar members, however, observed that in some instances such rulings remain outstanding for a long period of time. The delay in rendering the decision, thus, postpones the ultimate disposition of the action and, if a lengthy period, may lead to the additional costs of the attorney time needed for refamiliarization with the file, or for case preparation that is unnecessary.

(6) The Civil Justice Reform Act mandates consideration of "early and ongoing control of the pre-trial process through involvement of a judicial officer in (A) assessing and planning the

progress of a case; and (B) setting early, firm trial dates, such that the trial is scheduled to occur within 18 months of the filing of the complaint...." During the course of the Advisory Group's deliberations, the District adopted General Orders 25 (**Appendix D**) and 30 (**Appendix E**), both designed to standardize compliance with the Act. The former Order provides that a magistrate judge shall be assigned to each civil action and shall manage all discovery, resolve all discovery motions, hold pretrial conferences in accordance with Fed.R.Civ.P.16, and enter scheduling orders.

General Order 30 provides for early judicial management and creates the mechanism for an early Rule 16 conference out of which a uniform pre-trial scheduling order will evolve as soon as practicable but not later than 60 days after the appearance of the defendant. Prior to the initial Rule 16 conference, a civil case management plan is sent to all parties, setting forth the issues that will be discussed at the conference. It requires that not less than 10 days before the conference, counsel must file a statement addressing each agenda item. General Order 30 also directs the magistrate judge to explore settlement possibilities.

The District has adopted a Uniform Pretrial Scheduling Order **(Appendix G)** that is issued by the magistrate judges. The pretrial scheduling order specifies cut-off dates for joinder of parties, amendment of pleadings, discovery, motions and trial dates. It also states that a settlement conference will be scheduled approximately 2 weeks prior to the trial, or sooner if ordered by the court or requested by the parties.

The bar has had relatively little experience operating

under these General Orders which were entered on March 1, 1992. Nevertheless, the Orders appear well designed to expedite civil litigation. Two concerns that existed under the previous practice may need to be addressed. First, the Advisory Group and bar expressed concerns about whether the court enforces deadlines stated in scheduling orders. Failure to comply with the deadlines, of course, leads to delay in disposition of the action. Second, concern was expressed about the failure to set firm trial dates. Without a firm date, parties may delay completion of pre-trial work. Moreover, the changing of a trial date may lead to increased costs because parties may be forced to prepare witnesses on more than one occasion.

(7) The Advisory Group noted incidents of discovery abuse but found that as a general matter discovery practice in the Northern District does not present serious problems relating to delay or cost. The District has adopted measures to limit these problems. Under Local Rule 10(K) and General Order 25 parties must make good faith efforts to resolve discovery disputes by meeting among themselves and then by a conference with the magistrate judge. These steps must be taken before any motions may be filed. The Advisory Group found that usually such disputes in fact are resolved among the parties and without the intervention of the court. To ensure expeditious resolution of discovery matters that are not informally resolved, the recently adopted General Order 30 authorizes magistrate judges to handle all discovery motions.

To reduce costs associated with discovery, General Order 25 provides that parties must discuss discovery plans at the initial pretrial conference and agree to discovery deadlines. Additionally,

parties need not file discovery material unless the court orders. Discovery material to be used at trial, or in support of any motion, must be filed at a later date, prior to such use.

In at least one aspect, discovery practice may contribute to delay and unnecessary costs. Often, parties do not comply with discovery schedules after they are set in the Civil Case Management Plan. Attorneys either underestimate the time needed to conduct discovery, or do not diligently pursue discovery throughout the entire allotted period. As a result, the discovery period is extended, thereby delaying the resolution of the matter and perhaps increasing the costs. The Advisory Group also concluded that on occasion excessive use of interrogatories may contribute to increased transaction costs and delays. This may be particularly true in simple negligence cases where parties must answer lengthy interrogatories, only to be forced to respond to the exact same questions at depositions. (The 1969 Lou Harris survey found that 62% of private litigants blamed lawyers who abuse the discovery process as a major cause of excessive transactions and costs.)

(8) The Advisory Group found that avoidable delay and expense result from failure to disseminate information about amendments to Local Rules and issuance of General Orders. Absent prompt information about such changes, attorneys may take action no longer required (e.g., routinely filing discovery papers), or fail to take steps required by newly adopted amendments and orders (e.g. request a discovery conference before making a motion). In either event, unfamiliarity with the changes may delay the ultimate resolution of the case or increase the cost of litigation.

(9) The Advisory Group had extended discussions about alternative dispute resolution (ADR) mechanisms and the extent to which the absence of widespread use of such mechanisms contributes to delay and costs. At the outset, it was noted that the Northern District is a pilot court, sponsoring a voluntary court-annexed, non-binding arbitration program. The court sends notice of the availability of this program to all parties as part of the civil case management plan. The notice encourages parties to participate, and includes a consent form. Nevertheless, since the program was adopted in April, 1991, parties in only 5 cases have consented to arbitration. Perhaps because of a lack of experience with arbitration, or uncertainty about its effectiveness, the members of the bar are reluctant to use this alternative.

The Advisory Group discussed various ADR mechanisms, including arbitration, early neutral evaluation, mediation, and mini-trial. It found that research on the effectiveness of these ADR mechanisms is promising but not definitive. Most research has focused on court annexed arbitration (CAA), and the data suggests that litigants view CAA positively. The findings related to its effects on time and cost reduction, however, are mixed. A study by the Federal Judicial Center of 10 CAA programs found that 97% of surveyed judges agreed that CAA reduced their workloads. The study further found that a majority of attorneys in each district reported costs savings, and that attorneys and litigants overwhelmingly approved of the program. The study, however, found no strong link between CAA and reduced disposition time. A 1990 RAND study of the CAA program in the Middle District of North Carolina similarly concluded that while CAA

reduced private litigation costs, it did not significantly reduce public court costs or case duration.

The data on the other court annexed ADR procedures, such as mediation or early neutral evaluation (ENE), are more fragmented but also suggest possibilities for reduction of costs or delay. According to a 1991 report by the Federal Judicial Center, all judges in the Western District of Kansas found the mediation program worthwhile, and attorneys had even greater enthusiasm for the program. A study of the ENE program in the Northern District of California reported that 80% of the attorneys and 74% of the litigants were highly satisfied with the program and that settlement was achieved in over one-third of the cases. The study, however, could not provide meaningful data on the cost effectiveness of ENE.

The Advisory Group concluded that lack of ADR procedures may contribute to delay and expenses in the District. Because experience with such programs in this District is very limited, emphasis must be placed on educating district judges, magistrate judges, attorneys, and litigants about the benefits of ADR.

(10) The act directs each advisory group to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts. (28 U.S.C. 472(c)(1)(D)."

The Federal Courts Study Committee published a report in April of 1990 that counted 195 statutes enacted by the Congress over the past 40 years which have affected the overall workload of the federal courts. Statutes are promulgated without the benefit of a judicial impact study and without consideration of the necessary

judicial resources to deal with the new issues of law which are ultimately raised by new legislation.

Both civil and criminal jurisdiction in the federal courts continue to be expanded by new legislation. The impact on new legislation is not easily quantified in terms of the additional resources required to handle the excessive and unnecessary litigation which is often prompted by the drafting defects of such legislation. However, with the increase in litigation in the areas where new legislation has been promulgated (such as civil rights, environmental law, Americans with Disabilities Act, civil asset forfeiture, civil and criminal RICO, and ERISA) the courts can draw a correlation between new legislation and the increase in court filings in these areas, which has added to the general congestion of the court docket.

Additionally, new criminal legislation has had a more immediate impact on the general congestion of the court's civil docket, adding to delay and possibly additional costs. It is clear that the changes caused by legislation providing for pretrial detention, mandatory minimum penalties, abolition of parole and the sentencing guidelines, provide an incentive to bring into federal court cases that might otherwise be handled in local and state courts. In this regard, the U.S. Attorney for the Northern District of New York has undertaken a cooperative effort to educate local and state law enforcement officials on the advantages of prosecuting certain offenses in federal court. The new educational program of training state and local authorities is the subject of the Department of Justice's "Trigger Lock Program". Title 18:924(c) of the United States Code is an example of new legislation which may and has

persuaded local and state law enforcement officials to prosecute in federal court. It provides for a mandatory minimum sentence of five years without parole for any person who uses or carries a firearm in connection with a crime of violence or drug-trafficking. A second or subsequent conviction under this section carries a minimum mandatory sentence of 20 years without parole. Title 18:924(e), the Armed Career Criminal Statute, provides that a felon in possession of a firearm, who has three previous convictions for violent felonies or serious drug offenses, faces a minimum mandatory sentence of 15 years without parole and a maximum sentence of life without parole. This type of legislation will undoubtedly attract cases that would otherwise be prosecuted in a state forum, adding to the delay in our already crowded civil docket.

The Advisory Group did note that our district has experienced a positive impact from new legislation regarding actions brought under 28 U.S.C. Section 1332 (Diversity of Citizenship). Since the amount in controversy was amended, this district has noted a continuing decrease in the number of diversity filings. (See Table VI Diversity Filings). The Advisory Group also believes that the new legislation authorizing arbitration (28 U.S.C. Section 651) will have a positive impact on cost and delay in this district. Although this court is operating as a pilot court under voluntary arbitration, the Advisory Group notes that cases disposed of through the program will have a positive impact by reducing the overall docket of this court. The statistics on mandatory arbitration programs suggest an even more favorable impact on reduction of the docket.

It is, therefore, the assessment of the Advisory Group that

cost and delay in federal court are clearly affected by new legislation. A system should be developed to evaluate the impact of new legislation on total court resources needed to handle resulting litigation. Before enacting new legislation, the legislature and executive branches should consider the impact on judicial resources.

III. RECOMMENDATIONS AND THEIR BASES

A. Recommendations

The Advisory Group makes the following recommendations to reduce cost and delay in civil litigation:

(1) Judgeship vacancies should be filled in a timely fashion.

(2) The Watertown part-time magistrate judgeship position should be converted to a full-time position and funded. Each magistrate judge should be provided 2 law clerks.

(3) Courthouse facilities in Watertown should be located in the downtown area, convenient to law offices, businesses, and other Courts.

(4) The District should be divided into three civil filing divisions: Albany, Syracuse, and Binghamton. Civil cases for which venue lies in one of the counties listed shall be assigned to those judges designated to hold court in the Division in which the county is located. Counties would be allocated in the following manner:

ALBANY DIVISION: Albany, Clinton, Columbia, Essex, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, and Washington.

BINGHAMTON DIVISION: Broome, Chenango, Delaware, Franklin,

Jefferson, Lewis, Ostego, St. Lawrence, and Tioga.

SYRACUSE DIVISION: Cayuga, Cortland, Fulton, Hamilton, Herkimer, Madison, Montgomery, Oneida, Onondaga, Oswego, and Tompkins.

To avoid judge shopping, the Clerk should implement an automated case assignment system within each division.

This recommendation was implemented by General Order 31, dated May 8, 1992. The Local Rules should be amended to include this case assignment plan as well as the other provisions of General Order 30 (**Appendix E**). In addition, General Order 31 should be amended by adding the following language: "Except when efficiency or justice may otherwise be served, discovery, pretrial proceedings, and the trial itself should be held within the division where venue lies, giving due regard to the convenience of the parties and witnesses."

(5) The court should take available measures to ensure that prisoner cases are resolved in an expeditious manner. Specifically, the court should consider implementation of a fast track for disposition of prisoner cases. Under this tracking system, the *pro se* clerk would screen petitions and complaints before service to determine if any petitions appear to raise meritorious and complicated issues requiring extensive discovery. Such petitions would be removed from the fast track. All other prisoner petitions would remain on the track and tried within 6 to 8 months of the filing. A scheduling order would be issued for each fast track petition to ensure that dispositive motions, discovery, and other pretrial matters are completed prior to the trial date. The Pro Se Staff Attorney's Office should be assigned an additional law clerk to

assist in the handling of prisoner complaints and petitions. Assignment of an additional law clerk would bring the District into compliance with the Judicial Conference's formula for *pro se* clerkships.[4]

(6) With respect to motion practice, the Local Rules should be amended to provide that (a) oral argument will not be required unless directed by the court; (b) if oral argument is not held, moving parties only will be permitted to submit reply papers without leave of court; (c) affidavits will not be required in support of motions presenting pure questions of law; and (d) parties will not be required to submit proposed orders.

Motions should be decided within 60 days of submission of all papers. The Clerk's Office should implement a monitoring system that would enable the clerk to make monthly inquiry to a judicial officer before whom a motion has been pending for more than 60 days.

(7) The Local Rules should conform with the Model Rules approved by the Judicial Conference of the United States. The Local Rules should be amended to include the provisions of General Order 25, dated March 1, 1992, regarding service of process, case management plan, pretrial and settlement conference requirements, non-filing of discovery material, procedures for resolving discovery disputes, opportunity to consent to trial by a magistrate judge, and cases exempt from the preparation of a case management plan.

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[4] A member of the Adivsory Group, on the staff of the State Attorney General, identified additional causes of cost and delay in prisoner civil litigation and recommended a different mix of approaches to the problem. His views are set forth in Appendix (H).

(Appendix D). The Local Rules should be further amended to provide that representatives of the parties with the authority to bind them shall be present, or available by telephone, during any settlement conference.

(8) The Local Rules should be amended to include the provision that the Clerk shall assign a district judge and a magistrate judge to each civil action at the time of filing. As set forth in General Order 30, dated March 1, 1992, the magistrate judge shall manage all discovery, resolve all discovery motions, hold conferences, enter scheduling orders, and explore settlement possibilities. General Order 30 should be amended by adding to paragraph 1: "In managing discovery, the assigned Magistrate Judge may consider directing the parties to avoid unnecessary discovery, including interrogatories that will merely duplicate anticipated depositions."

(9) The scheduling order issued in each civil action does include a fixed trial date that will not be postponed, advanced or accelerated by the court except on a showing of good cause by the parties. The court should adopt a plan for assuring that the trial will begin on the scheduled date even though the assigned district judge may be unavailable because of the demands of the criminal docket, a longer than anticipated civil trial, or some other unanticipated event. Such a plan might include the following factors: (a) the trial date will be rescheduled to a date agreed to by all parties; (b) if all parties consent, the case will be assigned for trial by a magistrate judge; (c) in the event the parties do not

consent to a new trial date or trial by a magistrate judge, the case will be assigned for trial by another district judge (if available); and (d) case will be tried contemporaneously with another trial.

(10) The scheduling order deadlines regarding joinder of parties, amendment of pleadings, discovery, filing of motions, final pretrial conference, and trial should be strictly enforced and should not be extended except on a showing of good cause.

(11) The Clerk's Office should develop a plan for prompt publication and distribution of amendments to the Local Rules and General Orders.

(12) An ADR Subcommittee of the Advisory group should be appointed to design an additional ADR Program for the District. The specific objectives of the ADR Program would include the following: (a) reduce case processing time as well as costs to litigants and the court by enabling litigants to confront the facts and issues before engaging in expensive and time consuming discovery; (b) reduce burden on the court so that it can better address those cases that are inappropriate for ADR; (c) provide litigants with opportunities for remedies that may not be available through the adversarial process; (d) maximize the effective use of magistrate judges; and (e) provide data about the effective use of ADR.

Appointment of the Subcommittee would be the first step in the implementation of the Program. The Subcommittee would be required to: (a) develop a training program designed to educate district judges, magistrate judges, attorneys, and litigants about the various ADR options (e.g., arbitration, early neutral evaluation, mediation, and mini-trial); (b) recommend methods for early case evaluation,

such as two-stage discovery that would allow parties in stage one to conduct the minimal discovery needed before a realistic assessment of the case can be made and that would then require selection of an ADR option before the second stage of discovery (preparation for trial) can be pursued; (c) establish criteria for identifying those categories of cases, if any, that would be excluded from ADR; (d) develop a process for training, certifying, and evaluating ADR providers (such as arbitrators, mediators, and evaluators); (e) develop a method of evaluating the effectiveness of the ADR Program; (f) secure court resources and funding for implementation of the Program; and (g) recommend amendments to the Local Rules needed to implement the Program.

Members of the Subcommittee should be appointed by the Chief Judge and should include attorneys, representative(s) of litigants regularly appearing before the Court, district judge(s), magistrate judge(s) and representative(s) of the Clerk's Office. If necessary, the members may include individuals not currently serving on the Advisory Group.

(13) The Clerk's Office staff should be increased by addition of a data quality control position in each of the four clerk's offices and by addition of an administrative analyst position. These positions would be in addition to the 5 positions that are required under the new formula adopted by the Judicial Conference. (See Section I.B.)

B. Contributions that the Recommendations Would Require, and How They Account for the Particular Needs and Circumstances of the Court, Bar, and Litigants

(1) Recommendation 1 takes account of the fact that the delay in filling judgeship vacancies results in a high number of older cases in the District and a delay in disposing of cases.

(2) Recommendation 2 takes account of the increased role expected of magistrate judges in disposing of cases and the need for an additional full-time position and additional law clerk support to assist in performing that role.

(3) Recommendation 3 takes account of the need for convenient courthouse facilities in Watertown.

(4) Recommendation 4 takes account of the particular problems created by the previous case assignment system and requires adoption of a Local Rule and additional assistance from the Clerk's Office.

(5) Recommendation 5 takes account of the particular problems relating to prisoner litigation in the District and requires the cooperation of the Office of the New York Attorney General and additional assistance for the *Pro Se* Clerk's Office.

(6) Recommendation 6 takes account of the delays and costs associated with motion practice in the District and requires contributions by (a) the Court in promptly deciding motions; (b) attorneys in submitting the requisite papers without oral arguments; (c) the Clerk's Office in monitoring; and (d4) the Court in adopting a Local Rule to reflect the changes.

(7) Recommendation 7 takes account of the benefits of ongoing case management in reducing costs and delay. It requires contributions by (a) magistrate judges in managing pretrial aspects of civil cases; (b) attorneys in complying with deadlines; (c) the court in adopting a Local Rule; and (d) the Clerk's Office in ensuring implementation of the case management system.

(8) Recommendation 8 takes account of the increased role of magistrate judges in handling cases and requires contributions from the magistrate judges and from the court in adopting a Local Rule.

(9) Recommendation 9 takes account of the costs and delays created by the absence of fixed trial dates and requires contributions from the court in enforcing fixed dates, and from the attorneys and litigants in complying with the dates by completing pretrial preparation in a timely fashion.

(10) Recommendation 10 takes account of the delay, and perhaps increased costs, resulting from failure to comply with deadlines in scheduling orders. It requires contributions from (a) magistrate judges in strictly enforcing such deadlines; (b) attorneys and litigants in complying with the deadlines; and (c) the Clerk's Office in tracking the deadlines and notifying the Court.

(11) Recommendation 11 takes account of the costs and delays caused by the failure to notify attorneys of changes in Local Rules and entry of General Orders. It requires contributions from the Clerk's Office in developing and implementing a plan for prompt distribution.

(12) Recommendation 12 takes account of the potential benefits of ADR procedures and recognizes the lack of experience with such procedures in the District. It requires contributions from all participants in the process--judicial officers, litigants, attorneys, and the Clerk's Office.

(13) Recommendation 13 takes account of the fact that the Clerk's Office has been understaffed and that many of the previous recommendations place additional demands on that Office.

C. How the Recommendations Fulfill the Mandate of Section 473(a)

In conducting its study, the Advisory Group considered the principles and guidelines described in Section 473(a) of the Act, and concluded that the Recommendations fulfill the mandate of that Section in the following ways:

(1) Individual Case Management. The Group concluded that individual case management reduces delays in civil litigation and may reduce costs as well. Many of the recommendations are designed to facilitate an individual case management system in the District. Recommendation 8 amends the Local Rules to require that a magistrate judge be assigned to each civil action to manage discovery, resolve discovery motions, hold conferences, enter scheduling orders and explore settlement.

Recommendation 7 amends the Local Rules to include the provisions of General Order 25, requiring the parties to develop a case management plan for each civil action. Counsel are directed to confer in advance of a conference with a magistrate judge and

complete the plan which includes a designation of deadlines for joinder of parties, amendment of pleadings, discovery, and motions. In the plan, counsel must also address any jurisdictional issues, factual and legal bases for the claims and defenses, issues that are in dispute, specific relief sought, kind of discovery, use of stipulations or other expedited means of presenting evidence, and prospects for settlement.

Recognizing the appropriateness of differential case treatment, the Advisory Group proposes that certain categories of cases be exempt from the requirement of a case management plan **(Appendix D)**. Those exemptions include actions in which one of the parties is incarcerated, bankruptcy proceedings, and actions for judicial review of administrative agency decisions. Although these actions would be exempt from the case management plan, they would receive scheduling orders setting deadlines for such matters as motions, completion of discovery, and trial.

Recommendation 6 aids individual case management by requiring the Clerk's Office to develop and implement a monitoring system that would enable a clerk to make monthly inquiry to a judicial officer before whom a motion has been pending for more than 60 days.

(2) Judicial Officer Control of Pretrial Process. The recommendations provide for early and ongoing control of the pretrial process by a judicial officer. Specifically, Recommendation 8 requires assignment of a magistrate judge to manage all discovery, decide discovery motions, hold conferences, enter scheduling orders, and explore settlement possibilities. The case management plan required by Recommendation 7 includes deadlines for various aspects

of pretrial preparation, including amendment of pleadings, joinder of parties, filing of motions, and discovery. Recommendation 10 requires that the magistrate judge strictly enforce the deadlines included in the case management plan and does not allow extensions of time except on a showing of good cause. Finally, Recommendation 9 requires that the magistrate judge set a fixed trial date.

(3) Management of Complex Cases. The Recommendations regarding individual case management and a judicial officer's control of the pretrial process apply fully to complex cases.

(4) Cost-effective Discovery. Recommendation 7 amends the Local Rules to include the provisions of recently adopted General Order 25. That Order encourages cost effective discovery in three respects. First, it requires discussion of discovery at the initial pretrial conference and sets a deadline for completion of discovery. Second, it provides that discovery material shall not be filed with the court except when needed for a motion, or for trial. Third, it directs counsel to meet about any discovery disputes, and make a good faith effort to resolve those disputes. If the consultations do not resolve the differences, counsel may request a conference with the magistrate judge. A formal motion may be made only if the disputed issues remain unresolved following the conference.

(5) Conservation of Judicial Resources Relating to Discovery. As discussed above, the recommendation that the District adopt the provisions of General Order 25 as a Local Rule conserves judicial resources by requiring parties to make good faith efforts to resolve discovery disputes and, if those efforts fail, to request a conference with the court before making a formal discovery motion. The attorney requesting the conference must submit an affidavit setting forth the dates of the meetings and consultations to resolve the disputes. Existing Local Rule 10(k) similarly requires that when making a formal discovery motion, the attorney must submit an affidavit certifying that the attorney has conferred with counsel for the opposing party and made a good faith effort to resolve the issues raised by the motion.

(6) Alternative Dispute Resolution Program. The District has been a pilot sponsoring a voluntary court-annexed, non-binding arbitration program. Upon filing a complaint, the party is given a "Notice and Consent Form for the Court-Annexed Arbitration Program" and directed to serve a copy of the form with the summons and complaint. Despite the availability of the program, few litigants have consented to court-annexed arbitration.

Recommendation 12 addresses this problem and requires the District to appoint a subcommittee of the Advisory Group to design an ADR program for the District. The subcommittee would consider not only court-annexed arbitration, but also other ADR procedures such as early neutral evaluation, mediation, and mini-trial. It would develop a training program to educate district judges, magistrate judges, attorneys, and litigants about these various procedures; recommend

methods for early evaluation of cases appropriate for ADR; establish criteria for identifying those categories of cases that would be excluded from the ADR program; develop a process for training ADR providers; develop a method of evaluating the effectiveness of the program; and secure resources and funding for implementation of the program.

D. How the Recommendations Fulfill the Mandate of Section 473(b)

The Advisory Group's recommendations also incorporate the cost and delay reduction techniques, as well as the litigation management techniques, described in Section 473(b) of the Act.

(1) Joint Discovery Plan. Recommendation 7 requires amendment of the Local Rule to include the provisions of General Order 25. That Order directs counsel, together with authorized representatives of the parties, to jointly address each item in the Case Management Plan including discovery, and to present the Plan to the court at the initial pretrial conference.

(2) Attorney with Power to Bind Party. General Order 25 directs that each party must be represented at each pretrial conference by an attorney who has the authority to bind the party regarding all matters identified by the court for discussion at the conference and all reasonably related matters including settlement. That provision would become part of the Local Rules on the adoption of Recommendation 7.

(3) Requests for Delays. Recommendations 9 and 10 prohibit changes in the trial date or extensions of deadlines for discovery except upon a showing of good cause.

(4) Neutral Evaluation Program. Recommendation 12 requires the ADR Subcommittee to consider early neutral evaluation among the alternative dispute resolution procedures.

(5) Availability of Party for Settlement Conference. General Order 25 directs the parties to submit a Settlement Conference Statement prior to any settlement conference. The Statement must include a brief statement of the facts and proceedings to date; a brief statement of the claims, defenses, and issues upon which the parties agree; any issues which, if resolved, would aid in the disposition of the case; the relief sought; an estimate of the cost and time to be expended for further pretrial preparation; and the parties' positions on settlement, including present demands and offers as well as the history of past demands and offers. Recommendation 7 incorporates these recently adopted provisions into the Local Rules. The Recommendation specifically requires that representatives of parties with authority to bind them be present or available by telephone at settlement conferences.

E. Development of a Plan

The Advisory Group recommends that the District formulate a Civil Justice Expense and Delay Reduction Plan that incorporates the Recommendations contained in this study. These Recommendations address the problems of cost and delay in civil litigation in the Northern District of New York. The Advisory Group is confident that implementation of the Recommendations will lead to reductions in delay and cost, thereby enhancing the ability of the District to provide proper and timely judicial relief for all litigants.

A P P E N D I X (A)

ADVISORY GROUP MEMBERS

ADVISORY GROUP MEMBERS

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Syracuse University College of Law
E.I. White Hall
Syracuse, New York 13244

A P P E N D I X (B)

MINUTES OF MEETINGS

COLLEGE OF LAW

OFFICE OF THE DEAN

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
APRIL 19, 1991
MINUTES

Present: Chief Judge Neal McCurn, Judge Thomas J. McAvoy, George Ray, Donald P. Berens, Jr., Stephen R. Coffey, Catherine A. Gale, Deborah H. Karalunas, Joseph A. Pavone, Paul E. Scanlon, Michael W. Schell, and Daan Braveman

Absent: Magistrate Ralph W. Smith, Jr., Richard B. Long and Taylor H. O'Bold

Judge McCurn welcomed the Group members and explained our charge. The Advisory Group was appointed pursuant to the Civil Justice Reform Act of 1990. It has three responsibilities: (1) identify the causes of delay and cost: (2) recommend a plan to reduce delay and cost; and (3) consult with the court after adoption of the plan. Judge McCurn mentioned that because the Northern District is not a pilot program we have until December 1, 1993, to implement our plan. He requested, however, that we complete our report by September 1, 1992.

Judge McCurn also stated that members of the Group would be appointed for either a two or four year term. He will designate the terms before the next meeting. Finally, he observed that a member of the judiciary should not chair the Group and that he would appoint a chair.

Judge McAvoy suggested that we begin by identifying the various causes of delay and costs. It was agreed that George Ray would prepare a report and that the judges would present their assessment of the problems for our next meetings. Group members should call or write George requesting specific information.

Our next meeting will be held in Syracuse on May 31, 1991 at 11:00 a.m.

Daan Braveman, Esq.
Advisory Group Reporter

COLLEGE OF LAW

OFFICE OF THE DEAN

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
MAY 31, 1991
MINUTES

Present: Chief Judge Neal McCurn, Judge Howard Munson, Judge Thomas McAvoy, Judge Con. G. Cholakis, Magistrate Ralph W. Smith, George Ray, Donald P. Berens, Jr., Daan Braveman, Stephen R. Coffey, Catherine A. Gale, Deborah H. Karalunas, Richard B. Long, Taylor H. O'Bold, Joseph A. Pavone, Paul E. Scanlon, and Michael W. Schell

Judge McCurn called the meeting to order and announced that Taylor O'Bold has agreed to serve as chair of the Advisory Group.

Committee members were provided documents assessing the docket for the Northern District of New York. These documents included reports of (1) the number of civil cases pending before each judge by year and by case category, (2) case status categories for each judge; (3) major case categories for each judge; (4) number of cases older than three years for each judge; (5) number of prisoner, habeas and HHS filings before each magistrate; (6) type and number of pending criminal cases before each judge and magistrate; and (7) the Second Circuit caseload activity report. George Ray explained the documents and responded to questions from committee members.

With regard to backlog, it was explained that over one-fourth of the cases have been pending for more than three years. Prisoners' cases as well as nonjury cases account for a large portion of the backlog. Part of the backlog may be explained by the fact that two judicial positions remain vacant. Finally, it was suggested that we should examine the effect of the district's geographical spread on delay and cost.

Two suggestions were offered as reasons for the backlog of prisoners' cases. First, there are logistical problems associated with bringing prisoners to and from court for hearings. Second, many of the prisoners' cases are resolved on motion but the Attorney General's office may delay making the motions. It was

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agreed that a subcommittee should examine the causes of delay in prisoners' cases and report to the full committee. Don Berens agreed to sit on that subcommittee.

There was discussion about the Rule 16 conference and its effectiveness as a vehicle for case management. Under current practice, lawyers file the required stipulations but do not appear for a conference. There was divided opinion on the utility of the conference itself. Some believed it was unnecessary and added to the cost of litigation. Others maintained that it was useful particularly when lawyers do not know each other. There was also discussion about whether the judge should strictly enforce the deadlines in the stipulations. This is an area that deserves further consideration.

Another area of discussion concerned motion practice. Should motions be submitted rather than argued? Should judges hold pre-motion conferences, or send letters narrowing the precise issues that should be addressed in the briefs?

It was suggested that the causes of delay/costs may vary depending on the case category. RICO and securities cases, for example, are very time consuming. It was agreed that we should examine each case category separately.

Taylor O'Bold indicated that he would divide the committee into subcommittees with specific assignments.

The next meeting will be held on July 1, 1991, at 11:00 a.m., in the Federal Courthouse in Syracuse.

Daan Braveman
Advisory Group Reporter

COLLEGE OF LAW

OFFICE OF THE DEAN

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
AUGUST 2, 1991
MINUTES

Present: Alfred Austin, Donald Berens, Daan Braveman, Stephen Coffey, Catherine A. Gale, Deborah Karalunas , Tayor O'Bold, and George Ray

Absent: Chief Judge Neal McCurn, Judge Thomas J. McAvoy, Magistrate Ralph W. Smith, Jr., Richard B. Long, Joseph Pavone, Paul Scanlon, and Michael Schell

Skip O'Bold called the meeting to order and distributed the proposed subcommittee assignments. At the September meeting we will discuss additions and modifications of the assignments.

We had a lengthy discussion about the use of questionnaires. Although we postponed final decision until the September 13 meeting, we had general agreement that surveys would not be helpful. It was suggested that rather than distribute questionnaires we should hold public hearings to obtain information.

A question was raised about the issue of "costs". Are we concerned about costs to the litigants, the system, and/or the public? The "problem" might be perceived differently by each of these groups.

George Ray reported that a law clerk may be appointed to work in the Clerk's office on prisoners' cases. The Advisory Group strongly supports the appointment of the additional law clerk for this purpose.

The next meeting will be held in Albany on September 13 at 11:00 a.m.

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Civil Justice Reform Act Advisory Group
Minutes of the Meeting on September 13, 1991

Present: Magistrate Judge Ralph W. Smith, Donald Berens Jr., Stephen Coffey, Richard Long, Taylor Obold, Joseph Pavone, Paul Scanlon, Michael Schell.

Absent: Chief Judge Neal P. McCurn, Judge Thomas J. McAvoy, George A. Ray, Alfred Austin, Katherine Gale, Deborah Karalunas, Daan Bravemen.

The meeting was devoted generally to a discussion of the best way to input information from the trial bar of the Northern District. It was decided not to utilize a general survey with multiple questions but, instead, to set up a series of "public hearings" or informational meetings wherein the Bar would be invited to attend and express their concerns about the causes for delay and expense. Names of the attorneys to be invited will be taken from the Bar list for the Northern District and will be obtained from the Clerk. These will be scheduled in five locations (Syracuse, Utica, Albany, Watertown, and Binghamton) at 4:00 p.m. on a date to be decided in February 1992. In conjunction therewith, it was decided that a brief survey should be forwarded with the invitations in December to acquaint the Bar with the topics under consideration and solicit their written responses in advance. It was also determined that efforts will be made to schedule a social hour immediately following each session.

Magistrate Judge Smith reported that the new law clerk's position should be filled in several weeks since there have been a number of applications. It is anticipated that such clerk will work in Albany primarily on prisoners cases.

The next meeting of the entire Group is scheduled for January 10, 1992 at 11:00 a.m. in the Federal Court House in Syracuse. Prior to that time, it is anticipated that each subcommittee will meet, work on their respective topics, and have a preliminary report prepared for discussion at that meeting. These reports will form the basis for a "draft report" which can be utilized during the meetings with the Bar in February and as a foundation for the eventual final report of the Group which will incorporate any suggestions and recommendations made at the Bar meetings.

HISCOCK & BARCLAY

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WATERTOWN, NEW YORK

ORLANDO, FLORIDA
AUGUSTA, MAINE
SEATTLE, WASHINGTON
SILVERDALE, WASHINGTON
WASHINGTON, D.C.

September 19, 1991

TO: Chief Judge Neal P. McCurn, Judge Thomas J. McAvoy, Magistrate Judge Ralph W. Smith, George A. Ray, and Members of the Civil Justice Reform Act Advisory Group

Members of the Committee:

We enclose herewith minutes of the September 13th meeting of the Advisory Group. As you can see, the next full group meeting will be held on January 10, 1992 at 11:00 a.m. at the Federal Court House in Syracuse. In the meantime, we would appreciate it if each of you would meet with your subcomittees or work on your topics individually so that each subcommittee can submit a preliminary report at the January 10th meeting. We are sure that all of the Judges would be happy to confer with anyone about a particular topic and, at the same time, it might also be helpful to confer informally with attorneys who practice regularly before the Court in the Northern District. All of this would precede the meetings with the Bar in February and prepare us to start formalizing the final report in March.

Between now and January 10th, if anyone feels the need for a full or partial group meeting, please let us know.

Very truly yours,

Taylor H. Obold

THO:mah
Enclosure

COLLEGE OF LAW

OFFICE OF THE DEAN

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
January 11, 1992
MINUTES

Present: Chief Judge Neal P. McCurn, Magistrate Judge Ralph W. Smith, Alfred Austin, Donald P. Berens, Jr., Daan Braveman, Catherine A. Gale, Deborah Karalunas, Richard Long, Taylor Obold, Joseph Pavone, George Ray and Michael Schell

Absent: Judge Thomas J. McAvoy, Stephen Coffey and Paul Scanlon

We discussed the hearings that will be used to solicit comments and suggestions about cost and delay in the Northern District. The hearings will be held from 4:00-6:00 p.m. in the Federal Courthouse in Watertown, Utica, Syracuse, Binghamton and Albany on the following dates:

February 25:	Binghamton	(Chair: Long)
February 26:	Utica	(Chair: Pavone)
February 26:	Syracuse	(Chair: Obold)
February 27:	Albany	(Chair: Berens, Jr.)
February 27:	Watertown	(Chair: Schell)

It was agreed that the hearings will be used principally to solicit suggestions from members of the bar. Parties who regularly have cases in the Northern District will also be invited to the hearings. Daan Braveman will prepare an agenda for the hearings.

George Ray reported that the District is considering two proposals that relate to our work. One proposal provides for assignment of all cases to magistrate judges for disposition of pre-trial matters. The other proposal provides for division -- rather than district-wide -- filing.

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Magistrate Judge Ralph Smith reported that the law clerk hired to work on pending prisoners' cases has greatly assisted in disposing of cases.

Don Berens, Jr., circulated his report on prisoners' cases and Daan Braveman circulated his report on the conditions/trends in the docket.

The next meeting will be held on February 12, 1992, at 11:00 a.m. in Syracuse.

Daan Braveman
Advisory Group Reporter

COLLEGE OF LAW

OFFICE OF THE DEAN

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
FEBRUARY 12, 1992
MINUTES

Present: Daan Braveman, Richard Long, Taylor Obold, Joseph Pavone, George Ray and Michael Schell

Absent: Chief Judge Neal McCurn, Judge Thomas J. McAvoy, Donald P. Berens, Jr., Stephen R. Coffey, Catherine A. Gale, Deborah H. Karalunas, and Paul E. Scanlon

We began with a discussion of the topics that might be addressed at the hearings. Daan Braveman circulated copies of a proposed agenda for those hearings.

George Ray reported on recent developments that may have an impact on cost and/or delay in the Northern District. First, under General Order 30 (effective March 1) magistrate judges will be assigned to each case for Rule 16 conferences, discovery matters, and coordination of trial dates. Second, beginning June 1, the District will assign cases by Division, thereby reducing time and costs associated with travel. Third, Chief Judge McCurn has applied for conversion of the part-time magistrate judge position to a full-time position. Fourth, to assure greater representation in the jury pool, the District will use lists supplied by the Department of Motor Vehicles.

We discussed the utility of voluntary or mandatory arbitration. It was noted that relatively few attorneys have agreed to serve as arbitrators, perhaps because of the low pay ($75/day for each panel member; $150/day for single arbitrator). Moreover, parties have not agreed to submit to the voluntary arbitration plan currently in effect in the District. Some other districts require arbitration of claims under a specified amount. These jurisdictions allow de novo review of the arbitration award, but impose a penalty if the party recovers less than the arbitration award. It was recommended that we would need training programs for arbitrators if the District relied increasingly on arbitration.

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We also discussed the timing of the Rule 16 conference. It was suggested that if the conference is held too early in the process, lawyers may not have sufficient information about the case. On the other hand, early conferences might be useful in identifying the weak cases.

The next meeting will be held at 11:00 a.m. on March 20, 1992.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
MARCH 20, 1992
MINUTES

Present: Chief Judge Neal McCurn, Alfred Austin, Donald P. Berens, Jr., Daan Braveman, Deborah H. Karalunas, Richard B. Long, Taylor H. Obold, Joseph A. Pavone, George Ray, and Paul E. Scanlon

Skip Obold began the meeting with a description of the agenda for future meetings and the timetable for completion of our report. (See attached). It was agreed that each subcommittee will circulate a list of questions and topics prior to the April 10 and May 15 meetings.

We then discussed the comments and observations made at the various public hearings. Although the statistical data indicate a delay problem, the lawyers did not express any serious concerns about delay. Some observed that the moving of trial dates created problems for witnesses. They suggested fixed trial dates.

At the hearings, objections were made to mandatory use of arbitration. There appeared to be greater support for other alternative despute measures, such as neutral evaluation or mini-trials. Al Austin indicated that the insurance industry supports the use of alternative despute mechanisms, including arbitration.

There seemed to be general consensus at the hearing that oral arguments on motions were unnecessary. Elimination of oral arguments would reduce cost. The Advisory Group suggested that the District adopt a local rule that oral argument on motions will not be heard unless the Court directs it. If the District adopts such a role, it should also include a provision allowing reply papers. Some expressed concern that Local Rule 10 imposes additional costs because it requires unnecessary paper work. Other members of the Committee suggested that the Court might make greater use of orders (rather than decisions) and thereby reduce delay in deciding motions.

Lawyers attending the hearings expressed serious concern about travel problems arising from assignment of cases. Many of these concerns have been addressed by the new rule assigning cases by division based on the county in which the cause of action arises.

The hearings produced little sentiment for significant changes in the discovery rules. Discovery abuse is not widespread and can be addressed by imposition of sanctions.

Daan Braveman will review the transcripts of the hearings and prepare a detailed summary of the comments.

Finally, we discussed the handling of pro se litigation. The Clerk's office will supply the Advisory Group with information about the kinds of cases filed pro se.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

Agenda For Future Meetings

April 10: Syracuse - 11:00 a.m.

1. Subcommittee reports finalized.

2. Subcommittees to meet prior to meeting and be prepared with list of topics for full committee discussion.

   a. Subcommittee on Assessing Court's Criminal and Civil Dockets.

   b. Subcommittees on Assignment Procedures and Time Limits.

   c. Subcommittees on Rule 16 Conferences and Pre-Tril and Settlement Conferences.

   d. Subcommittee on Local Rules.

   e. Subcommittee on Sanctions.

May 15: Albany - 11:00 a.m.

1. Subcommittees to meet prior to meeting and be prepared with list of topics for full committee discussion.

   a. Subcommittees on Discovery Procedures and Motion Practice.

   b. Subcommittees on Jury and Non-Jury trials.

   c. Subcommittees on Prisoner Cases and Special Problems Relating to Complex Cases.

   d. Subcommittee on Alternative Dispute Resolution.

   e. Subcommittee on Special Problems in U.S. Litigation.

   f. Subcommittee on Assissing Impact of New Legislation.

June 5: Watertown - 11:00 a.m.

1. All subcommittee reports should be in final form after incorporating revisions from previous meetings.

2. Discussion of preparation of final Advisory Group Report.

June 6 - July 24:

Preparation of Advisory Group report.

July 24: Binghamton - 11:00 a.m.

Discussion and revision of final report.

September 1:

Final report due.

Civil Justice Reform Act Advisory Group
May 15, 1992
Albany, NY

MINUTES

PRESENT: Taylor Obold, Chairperson, Donald Berens, Catherine Gale, Deborah Karalunas, Richard Long, Paul Scanlon and Michael Schell

ALSO PRESENT: Ex Officio Members, Magistrate Judge Ralph W. Smith, and District Court Clerk George A. Ray

ABSENT: Chief Judge Neal P. McCurn, Judge Thomas J. McAvoy, Reporter Daan Braveman, Alfred Austin, Stephen Coffey, and Joseph Pavone

Chairperson Obold called the meeting to order at 11:10 a.m.

Richard Long presented the Case Assignment subcommittee report. The subcommittee recommends the adoption of General Orders 25 and 31. The advisory group approved the report for inclusion in the Plan.

George Ray reported that Westlaw does have the local rules available for subscribers. Lexus does not wish to collect and provide local rules information.

Paul Scanlon presented the Discovery and Procedures subcommittee report. After general discussion, the Advisory Group agreed that the proposals should be included in the Plan. George Ray expressed his concern about the proposals for Clerk's Office staff to generate reminder orders (page 5 of report). George Ray also noted that Magistrate Judges may not have time to hold two discovery conferences in each case as suggested on page 9 of the report, and the proposal on page 12 is unnecessary since the Circuit Executives office is monitoring CJRA motion activity. The Court is now receiving information that should result in orders being filed expeditiously.

Donald Berens presented the Prisoner Litigation and Complex Litigation subcommittee report. Magistrate Judge Smith and George Ray suggested that the Attorney General's Office should seriously consider filing motions to dismiss at the outset of the prisoner case. The policy of allowing prisoner litigation to languish for up to three years will not be continued under CJRA. Donald Berens will communicate the suggestions to the Attorney General. The Advisory Group approved the complex litigation recommendations.

The Alternative Dispute Resolution subcommittee report was continued to the next meeting which will be held in Watertown, June 5, 1992 at 11:00 a.m. Michael Schell will make arrangements for a meeting site.

The meeting was adjourned at 1:00 p.m.

COLLEGE OF LAW

OFFICE OF THE DEAN

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
JUNE 5, 1992
MINUTES

Present: Larry Baerman, Daan Braveman, Catherine A. Gale, Deborah H. Karalunas, Taylor Obold and Michael Schell

The Advisory Group met in Watertown and began by discussing the need for additional support for magistrate judges, who are assuming increased responsibilities for managing civil cases. The Group concluded that we should recommend two law clerks for each magistrate judge.

Most of the meeting involved a discussion of the subcommittee report on alternative dispute resolution procedures. It was concluded that we should recommend creation of an ADR subcommittee to prepare a proposal for implementing an ADR program in the District.

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UNITED STATES DISTRICT COURT
Northern District of New York

GEORGE A. RAY
Clerk of Court

100 S. Clinton Street
P.O. Box 7367
Syracuse, New York 13261-7367
(315) 423-5209

CIVIL JUSTICE REFORM ACT ADVISORY GROUP
JANUARY 22, 1993, SYRACUSE
MINUTES

Present: *Magistrate Judge Smith, Catherine Gale, Deborah H. Karalunas, Richard B. Long, Taylor H. O'Bold, William H. Pease, George A. Ray, Paul E. Scanlon, and Michael W. Schell*

Absent: *Chief Judge McCurn, Judge Thomas J. McAvoy, Alfred L. Austin, Donald Berens, Jr., Daan Braveman, and Stephen Coffey*

The meeting began with a discussion regarding the time schedule for completing the CJRA plan. The Court has asked that the draft report be corrected and submitted to George Ray by February 12, 1993. The Clerk's Office will circulate the draft to the judges, magistrate judges and advisory group. Everyone will have twenty days to comment and suggest any further changes. Shortly after March 5, 1993, the Clerk's Office will circulate the proposed changes to the advisory group. The final CJRA plan will be due on April 5, 1993. Once the plan is received by the Court, it will be forwarded to the Second Circuit Review Committee; and if we are not required to make any additional changes by the Committee, it will be forwarded to the Judicial Conference of the United States for review and approval. Copies of the "Guidelines for Review of CJRA Advisory Group Reports and Court Plans" were distributed at the meeting.

Taylor O'Bold led a discussion regarding the need to meet the requirement that the plan considered the impact of legislation on the district. The Group agreed there is a need to state that we considered the impact of legislation on our district even if there was no significant impact. For example, how were civil trials affected when criminal cases were given formal priority by the Speedy Trial Act? How have the sentencing guidelines affected work, cost and delay in the district? George Ray will prepare the necessary statement for inclusion in the draft report.

There was considerable discusion regarding the new Federal Rules of Civil Procedure which are expected to become effective December 1, 1993. The Clerk's Office provided the Group with copies of the proposed rules. The Group recommended that the Court amend the local rules and general orders to conform to the new federal rules. The Rules Committee will make the necessary changes and recommend them to the Court.

The Group reviewed each page of the draft report, and made suggestions for changes. The Clerk's Office will communicate the changes to Daan Braveman's office.

Taylor O'Bold thanked everyone for their participation.

COLLEGE OF LAW

OFFICE OF THE DEAN

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP
April 27, 1993
Binghamton, New York
MINUTES

Present: Chief Judge Thomas J. McAvoy, Donald P. Berens, Jr., Larry Baerman, Daan Braveman, Stephen R. Coffey, Catherine A. Gale, Deborah H. Karalunas, Richard B. Long, Taylor H. Obold, William Pease, George Ray, Michael W. Schell, and Magistrate Ralph W. Smith, Jr.

Taylor Obold called the meeting to order and there was discussion of the draft report dated March 23, 1993. Mr. Berens raised questions regarding the recommendation made on prison cases. After discussion, it was concluded that the recommendation in the draft report be retained with one minor editorial change on page 39. It was further suggested that Mr. Berens submit a statement to be included in the report as a minority view. After making a few editorial changes, a motion was made to approve the report and was passed unanimously with one abstention.

The Advisory Group also discussed the proposed Plan and voted to adopt the plan as recommended by the Committee. The plan will be forwarded to the judges for their final action.

Daan Braveman, Esq.
Advisory Group Reporter

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A P P E N D I X (C)

LETTER TO MEMBERS OF THE BAR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
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SYRACUSE, NEW YORK 13260

TEL. (315) 423-5432

CHAMBERS OF
NEAL P. McCURN
CHIEF JUDGE

APPENDIX C

Dear Member of the Northern District Bar:

The Civil Justice Reform Act of 1990 requires each federal district court to develop a plan to reduce cost and delay in civil litigation. I have convened an Advisory Group to study the problems in our District and make recommendations for change. The Group, chaired by Taylor Obold, Esq., has been working since May 1991.

The Advisory Group needs input from those who use the system. It is seeking information about the causes of delay and unreasonable costs in civil litigation as well as suggestions for change. Specifically, the Advisory Group would like your views on such matters as the following:

1. Have you experienced delay in cases filed in this District?

2. In what kinds of cases have you experienced the delay?

3. What were the major issues of delay in those cases? Opposing lawyer? Motion practice? Discovery disputes? Complexity of the issues? Scheduling of trial? Failure to enforce dates in pretrial orders? Rulings on motions? Other causes?

4. What specific improvements should we adopt to reduce the delay?

5. Do you find pretrial conferences to be effective in reducing delay?

6. Is oral argument necessary for all motions? If not, when should it be used?

7. Was a judicial officer actively involved in settlement conferences? Would a judicial office's active involvement in settlement conferences reduce delay and/or cost? Is such involvement desirable?

- over -

8. Should we make greater use of alternative dispute resolution mechanisms such as mediation, arbitration, and summary jury trials?

9. Has travel to courthouses contributed to delay and increased costs?

10. Have you consented to resolution of a civil matter by a magistrate judge? Did such resolution have the effect of reducing delay and/or cost?

11. What specific changes would you recommend to reduce the cost of civil litigation?

The Advisory Group has scheduled hearings to be held at the Federal Courthouse in the designated cities on the following dates:

February 12	Watertown, New York	4:00-6:00 p.m.
February 25	Binghamton, New York	4:00-6:00 p.m.
February 26	Syracuse, New York	4:00-6:00 p.m.
February 26	Utica, New York	4:00-6:00 p.m.
February 27	Albany, New York	4:00-6:00 p.m.

I encourage you to attend and help in our efforts to reduce the cost and delay in civil litigation in the Northern District. I also invite you to ask clients who regularly have cases in the Northern District to attend and present their suggestions.

To assist in planning, please return the attached form before February 12, 1992.

Thank you.

Sincerely,

Neal P. McCurn
Chief Judge

A P P E N D I X (D)

GENERAL ORDER #25

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

N O T I C E

THE ATTACHED FILING ORDER IS A TIME SENSITIVE DOCUMENT

1. THE SUMMONS, COMPLAINT AND GENERAL ORDER #25 FILING PACKET MUST BE SERVED WITHIN SIXTY 60 DAYS OF THE FILING DATE OF THE COMPLAINT.

2. COMPLETE AND FILE THE ATTACHED CASE MANAGEMENT PLAN NO LATER THAN TEN (10) DAYS BEFORE THE CONFERENCE DATE.

   CONFERENCE DATE/TIME:_____

   LOCATION:_____

   BEFORE MAGISTRATE JUDGE:_____

3. PAY SPECIAL ATTENTION TO:

   A. FILING LOCATIONS
   B. MOTION SCHEDULE OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE
   C. CONSENT FORM TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE
   D. CONSENT FORM TO PROCEED INTO COURT- ANNEXED ARBITRATION

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK
GENERAL ORDER #25

ORDER DIRECTING THE EXPEDITED SERVICE OF THE SUMMONS AND COMPLAINT AND FURTHER DIRECTING THAT A RULE 16 STATUS CONFERENCE BE HELD WITHIN 120 DAYS OF THE FILING OF THE COMPLAINT

SERVICE OF PROCESS

IT IS ORDERED that: Service of Process be completed within SIXTY (60) days from the filing date of the Complaint with the Clerk of the Court.

The plaintiff is directed to serve copies of this order and the attached materials at once on all parties to this action, and on any parties subsequently joined, in accordance with the provisions of Rules 4 and 5, FRCP. Following service of the Summons and complaint and of the materials contained in this packet, plaintiff shall file a certificate of service with the Clerk of this Court.

MATERIALS INCLUDED WITH THIS ORDER:

1.) Judicial Case Assignment Form
2.) Notice of Initial Pretrial Conference (Rule 16 Filing Packet)
3.) Notice and Consent Form to Proceed before a United States Magistrate Judge
4.) Notice and Consent Form for the Court-Annexed Arbitration Program.
5.) General Orders 28, 30, 34 & 37

CIVIL JUSTICE REFORM ACT

All litigants in Federal Court must comply with the provisions of the Civil Justice Reform Act. This Court will tailor the level of individualized case management needs to such criteria as case complexity, and the amount of time reasonably needed to prepare the case for trial. Counsel together with authorized representatives of the parties are directed to jointly address each item contained in the attached Rule 16 Case Management Plan packet and present the proposed plan to the Court at the initial pretrial conference.

The notice setting the date, time, and location for the initial conference is included as part of this filing order.

The Act further requires the Court to set "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."

PRETRIAL & SETTLEMENT CONFERENCE REQUIREMENTS

The Court requires that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters identified by the Court for discussion at the conference and all reasonably related matters including settlement authority.

Settlement Conference Statement: One week prior to any settlement conference scheduled by this Court, the parties shall lodge directly with the Court, a Settlement Conference Statement, which shall include the following.

1. A brief statement of the facts of the case;

2. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are found; an evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute;

3. A summary of the proceedings to date;

4. An estimate of the cost and time to be expended for further discovery, pretrial and trial;

5. A brief statement of the facts and issues upon which the parties agree;

6. Any discrete issues which, if resolved, would aid in the disposition of the case;

7. The relief sought;

8. The parties' position on settlement, including present demands and offer, the history of past settlement discussions, offers and demands.

The settlement Conference Statement shall be provided to the Court and not filed with the Clerk of the Court.

Copies of the Statement shall be served upon the other parties or counsel at the time the statement is lodged with the Court.

Should the case be settled in advance of the settlement conference date, counsel are required to notify the Court immediately. Failure to do so could subject counsel for all parties to sanctions.

NON FILING OF DISCOVERY MATERIAL

IT IS ORDERED that: this Court having found that no public purpose will be served by the filing of discovery materials with the Clerk of the Court, the parties hereto are directed that they shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, request for admissions, and answers and responses thereto unless the Court orders otherwise; provided, however, that discovery material to be used at trial or in support of any motion, including a motion for summary judgment, shall be filed with the Court prior to such use and provided further that any motion pursuant to Rule 37 of the Federal Rules of Civil Procedure shall be accompanied by the discovery materials to which the motion relates if those materials have not previously been filed with the Court.

PROCEDURE FOR DISCOVERY DISPUTE RESOLUTION

IN ACCORDANCE WITH GENERAL RULE 10(K) OF THE NORTHERN DISTRICT OF NEW YORK: PRIOR TO THE FILING OF ANY MOTION UNDER FEDERAL RULES 26 THROUGH 37, COUNSEL MUST MEET AND DISCUSS THE DISPUTED ISSUES IN DETAIL IN A GOOD FAITH EFFORT TO ELIMINATE OR REDUCE THE AREA OF CONTROVERSY, AND ATTEMPT TO ARRIVE AT A MUTUALLY SATISFACTORY RESOLUTION. IF CONSULTATIONS OF COUNSEL DO NOT FULLY RESOLVE THE DISCOVERY ISSUES, COUNSEL MAY THEN REQUEST A COURT CONFERENCE WITH THE ASSIGNED JUDGE OR MAGISTRATE JUDGE. THE ATTORNEY MAKING THE REQUEST FOR A COURT CONFERENCE MUST FILE AN AFFIDAVIT SETTING FORTH THE DATE OR DATES OF THE MEETINGS AND CONSULTATIONS. THE AFFIDAVIT SHALL BE ACCOMPANIED BY A LETTER BRIEF THAT CONCISELY SETS FORTH THE NATURE OF THE CASE AND A SPECIFIC VERBATIM LISTING OF EACH OF THE ITEMS OF DISCOVERY SOUGHT OR OPPOSED.

IMMEDIATELY FOLLOWING EACH DISPUTED ITEM COUNSEL SHALL SET FORTH THE REASON WHY THE ITEM SHOULD BE ALLOWED OR DISALLOWED. FOLLOWING RECEIPT OF THE REQUEST FOR A DISCOVERY CONFERENCE WITH THE COURT, THE CLERK WILL ADVISE ALL COUNSEL OF A DATE AND TIME FOR THEIR APPEARANCE BEFORE THE COURT.

IN THE EVENT THAT OPPOSING COUNSEL REFUSES TO COMPLY WITH A REQUEST FOR A CONFERENCE UNDER RULE 10(K), THE ATTORNEY SEEKING THE DISCOVERY SHALL APPLY TO THE COURT FOR AN ORDER DIRECTING THE OPPOSING COUNSEL TO APPEAR AT HIS OR HER OFFICE TO DISCUSS THE AREAS OF DISPUTE. THE APPLICATION FOR THE EX PARTE ORDER SHALL CONTAIN AN AFFIDAVIT SETTING FORTH THE ATTEMPTS MADE IN SCHEDULING A MUTUALLY AGREEABLE DATE AND TIME FOR THE 10(K) CONFERENCE AND THE RESULTS THEREOF.

IF THE DISPUTED ISSUE REMAINS UNRESOLVED FOLLOWING THE CONFERENCE WITH THE COURT, COUNSEL WILL BE DIRECTED TO FILE THE APPROPRIATE FORMAL MOTIONS WITH THE COURT.

CASES EXEMPT FROM THE REQUIREMENTS OF RULE 16(b)

IT IS ORDERED that: the following categories of cases are exempt from the requirements of Rule 16(b) of the Federal Rules of Civil Procedure regarding the preparation of a case management plan; the Court will issue standard pretrial scheduling orders on these actions to regulate the progression of the case:

a) all actions in which one of the parties is incarcerated, unless the Court directs otherwise;

b) all actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;

c) prize proceedings, actions for forfeiture and seizures, for condemnation, for foreclosure of mortgages or sales to satisfy liens of the United States, actions to redeem judgments due and owing the United States, recovery of overpayment and enforcement of judgments, recovery of defaulted student loans, recovery of overpayment of veterans benefits, and, other contract actions which involve the collection of debts owed to the United States.

d) proceedings in bankruptcy, for admission to citizenship or to cancel or revoke citizenship;

e) proceedings to compel arbitration or to confirm or set aside arbitration awards;

f) proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

1) **SETTLEMENT CONFERENCES CONDUCTED BY A JUDGE OR MAGISTRATE JUDGE:**
The parties are advised that the Court will honor a request for a settlement conference at any stage of the proceeding.
A representative of the parties with the authority to bind the parties must be present with counsel at any settlement conference.

2) **CONSENT TO JURY OR COURT TRIAL BEFORE A MAGISTRATE JUDGE:**
By written stipulation, the parties to any civil action may elect to have a magistrate judge (instead of the assigned Article III judge) conduct all proceedings in any civil case, including presiding over a jury or non-jury trial. A trial before a magistrate judge is governed by exactly the same procedural and evidentiary rules as trial before a district judge, and a right to appeal is automatically preserved directly to the United States Court of Appeals under the same standards which govern appeals from district court judgments. Parties often consent to resolution of their civil disputes by magistrate bench or jury trial because magistrate judges have less crowded calendars.

3) **COURT-ANNEXED ARBITRATION:**
The Northern District of New York through a congressional pilot program, offers all litigants in Federal Court the opportunity to consent to proceed into the Courts Consensual Arbitration Program. Pursuant to Local Rule 50, the parties may consent to have their cases presented to an arbitrator for decision. The cases referred to court-annexed arbitration are heard by qualified individual arbitrators or three-member panels, usually within six months of the filing of the answer. If a party is not satisfied with the arbitrators award, the party must file a written demand for trial de novo within thirty days of the entry of judgment on the arbitration award. If no demand is filed, the award becomes final judgment of the court and is not subject to appellate review.

REVISED GENERAL ORDER 25
ENTERED BY THE COURT ON THIS 1ST DAY OF MARCH, 1992

So Ordered: Neal P. McCurn - Chief U.S. District Court Judge

2/24/93

CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VS No. _____CV_____

IT IS HEREBY ORDERED that, pursuant to Rule 16, Federal Rules of Civil Procedure, and General Order 30 of this Court, a status and scheduling conference will be held in this case before the Honorable _____, United States Magistrate Judge on _____,19____, at ___:___ .M at the United States Courthouse, Room No. _____, at _____, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in advance of the status conference with respect to all of the agenda items listed below. Not less than ten days before the conference, counsel shall file jointly a status conference statement addressing each agenda item. Plaintiff's counsel shall bear the responsibility for convening all counsel and completing and filing the proposed case management plan.

Matters which the Court will take up at the status conference will include the following:

1) **JOINDER OR PARTIES:** Any application to join any person as a party to this action shall be made on or before the _____ day of _____,19____.

2) **AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before the _____ day of _____,19____.

3) **DISCOVERY:** Discovery is to be conducted in accordance with Local Rule 10(k). All discovery in this action shall be completed on or before the _____ day of _____, 19____. **(Discovery timetable shall be based upon the complexity of the action.)**

4) **MOTIONS:** All motions, including discovery motions, shall be made on or before the _____, day of _____,19____. Pursuant to the requirements of Local Rule 10(c); all memorandum of law filed shall contain parallel citations wherever possible. **(Discovery motions will be heard by the assigned Magistrate Judge)**

Continued.

5) **PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL:** The action will be ready to proceed to trial on or before the _____, day of _____,(MONTH),19____. It is anticipated that the trial will take approximately _____ days to complete. The parties request that the trial be held in _____(CITY). ***THE PROPOSED DATE FOR TRIAL MUST BE WITHIN EIGHTEEN MONTHS OF THE FILING OF THE COMPLAINT.**

6) **HAVE THE PARTIES FILED A JURY DEMAND:** _____(YES)/_____(NO).

7) **DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? DO ANY REMAIN TO BE SERVED?**_____

8) **WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES?**_____

9) **WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?**

10) **CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?**_____

Continued.

11) WHAT SPECIFIC RELIEF DOES PLAINTIFF SEEK? WHAT IS THE AMOUNT OF DAMAGES SOUGHT AND GENERALLY HOW IS IT COMPUTED?

12) WHAT DISCOVERY DOES EACH PARTY INTEND TO PURSUE? CAN DISCOVERY BE LIMITED? ARE LESS COSTLY AND TIME-CONSUMING METHODS AVAILABLE TO OBTAIN INFORMATION?

13) IS THE CASE SUITABLE FOR REFERENCE TO THIS DISTRICT'S VOLUNTARY ARBITRATION PROGRAM? _____(YES)/_____(NO).
IF YOUR ANSWER WAS NO PLEASE STATE WHY.

14) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

Continued.

15) **ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?**

16) **IN CLASS ACTIONS, WHEN AND HOW WILL CLASSES BE CERTIFIED?**

17) **WHAT ARE THE PROSPECTS FOR SETTLEMENT? HOW CAN SETTLEMENT EFFORTS BE ASSISTED?**

18) **SUCH OTHER MATTERS AS ANY PARTY CONSIDERS CONDUCIVE TO THE JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF THIS ACTION.**

Please detach this form and return it to the Court ten (10) days in advance of the conference date. Please attach a signature page for all counsel indicating the party or parties that you represent. At the conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE ASSIGNMENT FORM

CIVIL ACTION NUMBER: _____

THIS ACTION HAS BEEN ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE SHOWN BELOW.

ALL CORRESPONDENCE AND FILINGS SHOULD BEAR THE INITIALS OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE IMMEDIATELY FOLLOWING THE CIVIL ACTION NUMBER.
(IE: CIVIL ACTION NO. 92-CV-0123, HGM-DNH)

*ALL ORIGINAL PAPERS **MUST** BE FILED WITH THE CLERK'S OFFICE WHICH HAS BEEN CHECKED ON SIDE TWO OF THIS FORM.
(REFER TO PAGE #B-2 FOR MAILING ADDRESSES)

THE PARTIES ARE DIRECTED TO FILE A COPY OF ALL FILINGS ON ANY ACTION ASSIGNED TO MAGISTRATE JUDGE HURD. THE COPIES ARE TO BE MAILED DIRECTLY TO THE CHAMBERS OF THE MAGISTRATE JUDGE. * ORIGINAL PLEADINGS MUST BE FILED WITH THE OFFICE AS NOTED ON PAGE #2 OF THIS FORM.

PLEASE REFER TO PAGE #3 OF THE CASE ASSIGNMENT FORM FOR INFORMATION ON MOTION PRACTICE IN THE NORTHERN DISTRICT OF NEW YORK.

ACTION ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE CHECKED BELOW:

		INITIALS
	SENIOR JUDGE NEAL P. McCURN	**(NPM)**
	SENIOR JUDGE HOWARD G. MUNSON	**(HGM)**
	CHIEF JUDGE THOMAS J. McAVOY	**(TJM)**
	JUDGE CON G. CHOLAKIS	**(CGC)**
	JUDGE FREDERICK J. SCULLIN, JR.	**(FJS)**
	MAGISTRATE JUDGE RALPH W. SMITH	**(RWS)**
	MAGISTRATE JUDGE GUSTAVE J. DiBIANCO	**(GJD)**
	MAGISTRATE JUDGE DAVID N. HURD	**(DNH)**
	MAGISTRATE JUDGE DANIEL SCANLON, JR.	**(DS)**

FRM-4/26/93

SEND ALL ORIGINAL PAPERS TO THE CLERK'S OFFICE CHECKED BELOW

☐ - CLERK, U.S. DISTRICT COURT
FEDERAL BUILDING AND COURTHOUSE
POST OFFICE BOX 7367
SYRACUSE, NEW YORK 13261-7367

****

☐ - CLERK, U.S. DISTRICT COURT
FEDERAL BUILDING AND COURTHOUSE
15 HENRY STREET
BINGHAMTON, NEW YORK 13901

****

☐ - CLERK, U.S. DISTRICT COURT
JAMES T. FOLEY U.S. COURTHOUSE
POST OFFICE BOX 1037
ALBANY, NEW YORK 12201-1037

****

☐ - CLERK, U.S. DISTRICT COURT
ALEXANDER PIRNIE FEDERAL BUILDING
AND U.S. COURTHOUSE
10 BROAD STREET
UTICA, NEW YORK 13501

****

* PLEASE FORWARD A COPY OF ALL FILINGS DIRECTLY TO THE CHAMBERS LISTED BELOW ON ANY ACTION WHICH IS ASSIGNED TO MAGISTRATE JUDGE HURD.
PLEASE INDICATE ON THE DOCUMENT THAT IT IS A "COPY".
THE COPIES ARE TO BE MAILED DIRECTLY TO THE CHAMBERS OF THE MAGISTRATE JUDGE AT THE ADDRESS LISTED BELOW.

MAIL COPIES TO:

THE HONORABLE DAVID N. HURD
UNITED STATES MAGISTRATE JUDGE
ALEXANDER PIRNIE FEDERAL BUILDING & COURTHOUSE
10 BROAD STREET
UTICA, NEW YORK 13501

ALL MOTIONS MUST BE FILED IN ACCORDANCE WITH **RULE 10** OF THE LOCAL RULES OF THE NORTHERN DISTRICT OF NEW YORK. (PLEASE ALSO REFER TO GENERAL ORDER #37 - IN THE MATTER OF PAGE LIMITATIONS FOR BRIEFS AND MEMORANDA.)

ALL **NON-DISPOSITIVE** MOTIONS ARE TO BE MADE RETURNABLE ON A SUBMIT BASIS BEFORE THE ASSIGNED **MAGISTRATE JUDGE.** * PLEASE SEND THE ORIGINAL PAPERS TO THE OFFICE OF THE CLERK AS CHECKED ON PAGE #2 OF THIS FORM.

****ALL MOTIONS FILED AND MADE RETURNABLE BEFORE MAGISTRATE JUDGES WILL BE TAKEN ON A SUBMIT BASIS UNLESS:** THE PARTIES REQUEST ORAL ARGUMENT AND/ OR THE COURT DIRECTS THE PARTIES TO APPEAR FOR ORAL ARGUMENT.

JUDGE McCURN AND JUDGE MUNSON WILL NOT HAVE REGULAR CIVIL MOTION DAYS DURING THE MONTH OF AUGUST. JUDGE McAVOY WILL NOT HAVE REGULAR MOTION DAYS DURING THE MONTH OF JULY. MOTIONS MAY NOT BE FILED WITHOUT PRIOR APPROVAL OF THE COURT DURING THESE PERIODS.

MONTHLY MOTION SCHEDULES

DISTRICT COURT JUDGES

SENIOR JUDGE NEAL P. McCURN
10:00 A.M. - 2ND AND 4TH TUESDAYS
AT SYRACUSE, N.Y.
11:00 A.M. - 1ST TUESDAY
AT ALBANY, N.Y.

****

CHIEF JUDGE THOMAS J. McAVOY
10:00 A.M. - 2ND MONDAY
AT ALBANY, N.Y.
10:00 A.M. - 4TH FRIDAY
AT BINGHAMTON, N.Y

****

JUDGE FREDERICK J. SCULLIN, JR.
10:00 A.M. - 2ND FRIDAY
AT SYRACUSE, N.Y.
10:00 A.M. - 4TH FRIDAY
AT ALBANY, N.Y.

****

JUDGE CON G. CHOLAKIS
9:30 A.M. - 1ST & 3RD FRIDAY
AT ALBANY, N.Y.

SENIOR DISTRICT COURT JUDGES

SENIOR JUDGE HOWARD G. MUNSON
10:00 A.M. - 2ND FRIDAY
AT SYRACUSE, N.Y.
11:00 A.M. - LAST MONDAY OF THE MONTH AT ALBANY, N.Y.

****
****

MAGISTRATE JUDGES

MAGISTRATE JUDGE GUSTAVE J. DiBIANCO
10:00 A.M. - LAST THURSDAY OF EACH MONTH AT SYRACUSE, N.Y.

****

MAGISTRATE JUDGE DAVID N. HURD
10:00 A.M. - 2ND THURSDAY OF EACH MONTH AT UTICA, N.Y.

****

MAGISTRATE JUDGE RALPH W. SMITH
9:30 A.M. 1ST THURSDAY OF EACH MONTH AT ALBANY, N.Y.

****

MAGISTRATE JUDGE DANIEL SCANLON, JR.
10:00 A.M. - 3RD THURSDAY OF EACH MONTH AT WATERTOWN, N.Y.
FEDERAL BUILDING & COURTHOUSE
163 ARSENAL STREET, 2ND FLOOR

NOTICE OF OPPORTUNITY TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE AND APPEAL OPTION

In accordance with the provisions of 28 U.S.C. Section 636(c) and Fed.R.Civ.P. 73, you are hereby notified that the United States Magistrate Judges of this district court, in addition to their other duties, may, upon consent of all the parties in a civil case, conduct any or all proceedings in the case, including a jury or non jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, to the referral of your case to a United States Magistrate Judge for disposition is entirely voluntary and should be indicated by counsel endorsing the attached consent form for the plaintiff(s) and defendant(s). If the form is executed by all counsel for the parties, it should be communicated solely to the clerk of the district court. ONLY if all the parties to the case consent to the reference to a magistrate judge will either the judge or magistrate judge to whom the case has been assigned be informed of your decision.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. Section 636(c)(3) and Fed.R.Civ.P. 73(c), an appeal from a judgment entered by a magistrate judge may be taken to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate judge may be taken directly to a district judge in accordance with 28 U.S.C. Section 636(c)(4) and Fed.R.Civ.73(d). Cases in which an appeal is taken to a district judge may be reviewed by the United States court of appeals for this circuit only by way of petition for leave to appeal.

Copies of the consent form are available from the clerk of the court.

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

_____
Plaintiff

V.

CONSENT TO PROCEED BEFORE A
UNITED STATES MAGISTRATE JUDGE
AND ORDER OF REFERENCE

CASE NUMBER:_____

_____
Defendant

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c) and Fed.R.Civ.P.73, the parties in this case hereby voluntarily waive their rights to proceed before a judge of the United States District court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

Signatures	Date
_____	_____
_____	_____
_____	_____

Unless otherwise indicated below, any appeal shall be taken to the United States court of appeals for this judicial circuit, in accordance with 28 U.S.C. 636(c)(4) and Fed.R.Civ.P.73(d).

ELECTION TO APPEAL TO DISTRICT JUDGE

(DO NOT EXECUTE THIS PORTION OF THE FORM IF THE PARTIES DESIRE THAT THE APPEAL LIE DIRECTLY TO THE COURT OF APPEALS.)

_____	_____
_____	_____
_____	_____

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to the Honorable _____ United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Fed.R.Civ.P.73 and the foregoing consent of the parties.

_____ _____
Date United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF COURT.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

N O T I C E T O A L L L I T I G A N T S

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK IS PROUD TO BE A MEMBER PILOT COURT SPONSORING A VOLUNTARY COURT-ANNEXED NON-BINDING ARBITRATION PROGRAM.

BECAUSE THE ARBITRATION PROGRAM WAS CHOSEN DUE TO ITS ADJUDICATIVE NATURE, THE PARTIES SHOULD CONSIDER THE COST OF ARBITRATION, A FAIR AND VIRTUALLY FREE FORUM, VERSUS THE MORE COSTLY FULL TRIAL IN FEDERAL COURT.

ALL COUNSEL AND LITIGANTS ARE ENCOURAGED TO TAKE ADVANTAGE OF THIS PROGRAM AND TAKE PART IN THIS INNOVATIVE APPROACH TO RESOLVING CONFLICT.

RULES GOVERNING THE COURT-ANNEXED ARBITRATION PROGRAM CAN BE FURNISHED BY ANY OF THE FOUR STAFFED OFFICES WITHIN THE DISTRICT.

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****

THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK
COURT ANNEXED - A R B I T R A T I O N

ARBITRATION CONSENT FORM AND HEARING SCHEDULE INFORMATION SHEET

Plaintiff,

-v-

Civil Case #_____

Assigned Judge/Magistrate:
_____

Defendant,

In accordance with the provisions of 28 U.S.C. Section 652 (a)(1)(A) and Local Rule 50, the parties to the above captioned civil matter hereby consent to proceed into non-binding arbitration under Local Rule 50 and have their case heard by an arbitrator or arbitrators chosen by the parties in an attempt to justly, efficiently, and economically resolve this controversy without giving up any rights to a full trial on demand.

Please estimate the number of days needed for discovery

_____

(not to exceed 120 days)

Please estimate the number of day(s) that the hearing will take

_____

Pursuant to Local Rule 50-4(b) the parties have agreed that the Arbitration Hearing will proceed before a panel of: (Please check one category)

Single Arbitrator:_____

Panel of Three Arbitrators:_____

The arbitration hearing will be set based upon the information presented on this form. That hearing date will not be vacated except upon showing of extreme and unanticipated emergency made at least ten days before the scheduled date.

Please complete Page #2 and Return to the Clerk.

Please sign the form and return it to the clerk within ten (10) days of receipt. Pursuant to Local Rule 50-2 it shall be the responsibility to the Plaintiff for securing the execution of the consent form by the parties and for filing such form with the Court.

No party or attorney shall be prejudiced for refusing to participate in the arbitration program.

Counsel for Plaintiff or Plaintiff if appearing Pro Se.	Counsel for Defendant or Defendant if appearing Pro Se.

For purposes of case tracking, the Federal Judicial Center requires all pilot courts to collect the following information on cases that are referred to arbitration.

Information on COUNSEL: **Plaintiff**	**Defendant**
Name: _____	_____
Address: _____	_____
_____	_____
_____	_____
Phone # _____	_____

Information on PARTIES: **Plaintiff**	**Defendant**
Name: _____	_____
Address: _____	_____
_____	_____
_____	_____
_____	_____
Phone # _____	_____

(Use additional sheet if necessary)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 28

IT IS ORDERED THAT: All attorneys of record and pro se litigants in the Northern District of New York shall immediately notify the court of any change in address. Such Notice of Change of Address is to be filed with the Clerk of the court, and shall identify each and every action of which the Notice shall apply. **FAILURE TO NOTIFY THE COURT OF A CHANGE OF ADDRESS MAY RESULT IN THE DISMISSAL OF ANY PENDING ACTION.**

SO ORDERED.

Dated: September 13th, 1991
Syracuse, New York

Neal P. McCurn, Chief Judge

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 30

The Court wishes to provide early judicial management in civil cases through increased utilization of Magistrate Judges.

Therefore, **IT IS ORDERED** that, the Clerk shall assign a District Judge and a Magistrate Judge to each civil action at the time of filing.

IT IS FURTHER ORDERED that:

(1) The assigned Magistrate Judge will manage all discovery and resolve all discovery motions.

(2) In accordance with FRCP 16, the assigned Magistrate Judge will hold conferences before trial and enter scheduling orders that limit the times (a) to join other parties and to amend pleadings; (b) to file and hear motions; and (c) to complete discovery. The scheduling order may also include dates for a final pretrial conference and other conferences, a trial ready date and a trial date, and any other matters appropriate in the circumstances of the case. The order shall issue as soon as practicable but in no event more than 60 days after the appearance of the defendant. A schedule shall not be modified except by leave of the assigned District Judge or Magistrate Judge.

(3) The assigned Magistrate Judge will explore the possibility of settlement, and will hold settlement conferences.

Date: March 1st, 1992

So Ordered: Neal P. McCurn
Chief, U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

N O T I C E

CIVIL RICO STATEMENTS PURSUANT TO GENERAL ORDER #34

Dear Counsel/Litigant;

Please take notice that if your case contains any allegations which are founded under the Racketeer, Influenced and Corrupt Organizations Act (RICO),
Title 18:USC Section 1961 et seq., you are required by this Court to file a Civil RICO Statement within thirty (30) days from the filing date of your complaint.

Copies of GENERAL ORDER #34 - CIVIL RICO STATEMENT FILING REQUIREMENTS may be obtained from any office of the U.S. District Court Clerk for the Northern District of New York.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER #37

IN THE MATTER OF:

PAGE LIMITATIONS FOR BRIEFS AND MEMORANDA

IT IS ORDERED THAT:

Briefs and Memoranda submitted to this Court shall contain an accurate statement of the questions to be decided; set forth succinctly the relevant facts and the argument of the party with supporting authorities; and not be excessive in length.

Briefs and Memoranda must be limited to 25 pages of text unless, upon application of counsel, the limitation is removed by the Court. Parallel citations should be included in briefs and memoranda.

SO ORDERED

Dated: February 10, 1993
Syracuse, New York

S/

NEAL P. McCURN
Chief, U.S. District Judge

A P P E N D I X (E)

GENERAL ORDER #30

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

GENERAL ORDER 30

The Court wishes to provide early judicial management in civil cases through increased utilization of Magistrate Judges.

Therefore, **IT IS ORDERED** that, the Clerk shall assign a District Judge and a Magistrate Judge to each civil action at the time of filing.

IT IS FURTHER ORDERED that:

(1) The assigned Magistrate Judge will manage all discovery and resolve all discovery motions.

(2) In accordance with FRCP 16, the assigned Magistrate Judge will hold conferences before trial and enter scheduling orders that limit the times (a) to join other parties and to amend pleadings; (b) to file and hear motions; and (c) to complete discovery. The scheduling order may also include dates for a final pretrial conference and other conferences, a trial ready date and a trial date, and any other matters appropriate in the circumstances of the case. The order shall issue as soon as practicable but in no event more than 60 days after the appearance of the defendant. A schedule shall not be modified except by leave of the assigned District Judge or Magistrate Judge.

(3) The assigned Magistrate Judge will explore the possibility of settlement, and will hold settlement conferences.

Date: March 1st, 1992

So Ordered: Neal P. McCurn
Chief, U.S. District Judge

A P P E N D I X (F)

GENERAL ORDER #31

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

General Order Number 31

CIVIL CASE ASSIGNMENT PLAN

A. Purpose. The purpose of the Assignment Plan is to implement the provisions of 28 U.S.C. Section 137 by providing an equitable system for randomly dividing the caseload among the judges, making necessary adjustments to caseload assignments and providing a basis for monitoring the operation of the case assignment system.

B. Administration.

1. The Assignment Plan shall be administered by the clerk under the supervision of the Chief Judge.

C. Case Numbers.

1. Each case commenced in or transferred to this district shall be assigned a case number by the clerk upon filing. A separate sequence of case numbers shall be maintained for criminal and civil cases. Civil case numbers shall be preceded by the letter "CV" and criminal cases by the letters "CR". Each case number shall consist of the last two digits of the year in which the case is filed followed by a sequential number for each case. On the first business day of each calendar year the sequential number will revert to "1".

D. Assignment of Civil Cases.

1. Civil cases for which venue lies in one of the counties listed shall be assigned to those judges designated to hold court in that location.

a. Albany Civil Filing Division: Albany, Clinton, Columbia, Essex, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, and Washington

b. Binghamton Civil Filing Division (Watertown): Broome, Chenango, Delaware, Franklin, Jefferson, Lewis, Otsego, St. Lawrence, and Tioga

c. Syracuse Civil Filing Division (Auburn & Utica): Cayuga, Cortland, Fulton, Hamilton, Herkimer, Madison, Montgomery, Oneida, Onondaga, Oswego, Tompkins

2. Civil cases shall be assigned blindly and at random by the clerk by means of a manual, automated or combination system approved by the judges of the court. Such system will be designed to accomplish the following:

a. Random and blind assignment of cases.

b. An approximately equal distribution of newly filed cases within each of the categories set forth below to each of the active judges of the court.

1. Contract
2. Real Property
3. Personal Injury
4. Personal Property
5. Civil Rights
6. Habeas Corpus
7. Forfeiture/Penalty
8. Labor
9. Property Rights
10. Antitrust
11. Bankruptcy
12. Social Security
13. Prisoner Civil Rights
14. Tax/Other Actions

c. A high level of security so as to reasonably avoid prediction of the results of any case assignment.

d. A system of credits and debits to adjust for reassignments of cases among and between judges.

E. Reassignment of Cases.

1. **Related Cases.** Upon the filing of a notice of related cases, all involved cases will be submitted by the clerk to the judge to whom the earliest filed case is assigned who shall advise the clerk whether such cases are related. If such cases are related the

clerk shall reassign them to the judge to whom the earliest-filed case is assigned, give the transferee judge a credit in the appropriate category for each case so reassigned and give the transferor judge a debit in the appropriate category for each case so reassigned.

If at the time of filing an action, Section VII of the Civil Cover Sheet (JS-44) indicates that a related action is pending before this Court, the clerk shall assign the action to the corresponding judge as noted on the cover sheet. The new action shall be submitted to the assigned judge with the related case files for review. If the assigned judge determines that the new action is not related to the original case (s), the clerk shall be directed to reassign the case. The clerk shall give the transferee judge a credit in the appropriate category for each case so reassigned and will give the transferor judge a debit in the appropriate category for each case reassigned.

2. **Disqualification.** If a judge is disqualified to hear a case assigned to him, the clerk shall reassign the case at random, and the clerk shall give the transferee judge a debit in the appropriate category.

3. **Reassignment of cases to a different division.** Whenever a case is transferred to a different division, the transferring judge may retain the case for further proceedings by him at that location, or the case may be reassigned. In the event the case is reassigned to another judge, a credit will be given in the appropriate category to the transferee judge and a debit in the appropriate category will be given to the transferor judge.

4. Cases may be reassigned between judges on written order signed by the transferring and accepting judges.

5. With the approval of the court, the clerk may make such other assignments, reassignments or related orders as are conducive to the equitable division and just, efficient and economical determination of the business of the court.

F. **Senior Judges.** A senior judge of this court may participate in the regular assignment of cases to the extent that he is willing and able to do so. The Chief Judge shall issue appropriate instructions to the clerk to effectuate such participation. The Chief Judge may, from time to time, after consultation with the judge to whom a case is assigned, reassign a case to a senior judge who is willing and able to accept such reassignment.

G. **Visiting Judges.** Whenever a judge is assigned to serve as a visiting judge in this court, the Chief Judge shall, prior to the arrival of such judge, make an order forming his calendar by reassignment from other judges cases designated by them as available for transfer. Selection of cases for this purpose shall be made upon a basis equitable among all the judges of this court and after consultation with them.

H. **Newly Appointed Judges.** When a judge is appointed to serve on this court, the clerk shall, under the direction of the Chief Judge, prepare a pending caseload for him, representing as nearly as possible the average pending caseload of an active judge at the

time. Upon approval of such caseload by the Chief Judge, such cases will be reassigned to the newly appointed judge.

I. When a judge becomes unavailable for the assignment of cases due to retirement, resignation, illness or death, the Chief Judge shall order the reassignment of such judge's pending cases to the other judges of this court on an equitable basis.

J. Review of Assignments.

1. This Plan is adopted by the court pursuant to 28 U.S.C. Section 137 only to provide for the orderly conduct of its business and does not create any right or privilege to any litigant to demand or challenge the assignment of a case.

K. Reassignment Register and Reports.

1. The clerk shall maintain an assignment register in a form approved by the court containing a record of all cases assigned to each of the judges of the court or to any visiting judge, all reassignments among judges.

2. At the end of each month the clerk shall prepare and distribute to the judges of the court a report showing the number of cases assigned to and pending before each judge and such other information as the Chief Judge may direct.

Dated: October 14, 1992

FOR THE COURT

Neal G. McCurn

Chief Judge

A P P E N D I X (G)

UNIFORM PRETRIAL SCHEDULING ORDER

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNIFORM PRETRIAL SCHEDULING ORDER

_____

vs. Civil No. -CV-

_____

Counsel for all parties having reported on the status of this action as directed by the Court, and the Court having considered the positions of the respective counsel regarding a schedule for the progression of the case,

IT IS ORDERED that:

1.) **JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before the _____ day of _____, 19 .

2.) **AMENDMENT OF PLEADINGS:** Any application to amend any pleading in this action shall be made on or before the _____ day of _____, 19 .

3.) **DISCOVERY** is to be conducted in accordance with Local Rule 10(k). All discovery in this matter is to be completed on or before the _____ day of _____, 19 .

4.) **MOTIONS** are to be filed on or before the _____ day of _____, 19 .
***Discovery motions and non-dispositive motions will be made returnable before and decided by the assigned Magistrate Judge.** No discovery motions shall be made until after a discovery conference to be arranged through the Courtroom Deputy Clerk assigned to the Magistrate Judge. Letter briefs concisely setting forth the contested issue(s) will be submitted five (5) days in advance of the conference. All discovery conference requests must be accompanied by an affidavit showing compliance with this District's Local Rule 10(k). All memoranda filed should contain parallel citations.

5.) **JURISDICTION AND VENUE MOTIONS** are to be filed within thirty (30) days from the date of this order.

6.) **SETTLEMENT CONFERENCE:** A settlement conference pursuant to FRCP 16(d) will be scheduled by the Court approximately two weeks prior to the trial or sooner if ordered by the Court or requested by the parties.

A representative of each party with settlement authority shall attend the settlement conference or be available by telephone.

7.) **TRIAL DATES:**

a.) This case has been marked trial ready as of the _____ day of _____, 19___. It is anticipated that the trial will take approximately _____ days to complete.

b.) Trial is scheduled for the _____ day of _____, 19___ at _____ a.m. at the Federal Courthouse in _____, New York.

Trial dates are firm and will only be continued upon extreme and unanticipated emergencies. Trial dates can only be amended by the presiding judge. Counsel and the parties are advised that in the event of an opening in the Court's schedule and the availability of counsel, the trial date may be moved up in accordance with 7(a) above.

Counsel are directed to report to the trial judges chambers at least one-half hour prior to trial commencement to discuss jury selection and any other issues related to trial.

8.) **ASSESSMENT OF JUROR COSTS:** The parties are advised that pursuant to General Rule 45(b) of the Rules of the Northern District of New York, whenever any civil action scheduled for jury trial is required to be postponed, settled, or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage and per diem, shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, unless the court and the clerk's office are notified at least one full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

9.) PRETRIAL STIPULATIONS: A joint pretrial stipulation shall be subscribed by counsel for all parties and shall be filed with the Court in duplicate **FIFTEEN (15) DAYS BEFORE TRIAL,** and shall contain:

(a) The basis of Federal Jurisdiction;

(b) A list of all exhibits which can be stipulated into evidence or which will be offered without objection as to foundation.

(c) Relevant (a) facts not in dispute, (b) facts in dispute, and (c) issues of law to be considered and applied by the court.

10.) WITNESSES:

(a) **FIFTEEN (15) DAYS BEFORE TRIAL** counsel for each party shall file in duplicate a list containing the identity and a descriptive designation of each witness to be called and a brief summary of the testimony to be offered by the witness.

(b) The unavailability of any witness, expert or otherwise, will not be grounds for a continuance. In order to avoid the possibility of going forward with the trial without the testimony of an unavailable witness, counsel, where appropriate, shall preserve same by written or video-taped deposition for possible use at trial.

Please refer to the enclosed instruction sheet for the use of video taped depositions at trial.

(c) **Special procedures for management of expert witnesses:**

(1) There shall be early and binding disclosure of the identity of expert witnesses. Such disclosure, including a curriculum vitae, must be made before the completion of discovery. The court will preclude the testimony of a witness not so identified.

(2) In order to avoid the possibility of the unavailability of an expert witness at the time set for trial, counsel may preserve his or her testimony as outlined in 10(b) above for use at trial. In the absence of same, the trial will proceed without such testimony.

WARNING: EXPERTS WHO ARE NOT DISCLOSED PURSUANT TO THIS ORDER WILL NOT BE ALLOWED TO TESTIFY AT TRIAL.

11.) EVIDENTIARY ISSUES: FIFTEEN (15) DAYS BEFORE TRIAL counsel shall file with the Court in duplicate a concise statement of any and all evidentiary issues to be presented upon trial together with a letter brief citing the applicable rules of evidence and case law;

12.) EXHIBITS: All exhibits shall be marked for identification prior to the filing of the trial briefs. A complete set of the original exhibits should be presented to the clerk at the beginning of the trial. A complete set of copies should be presented to the Court also.

EXHIBIT LISTS: The exhibits shall be marked on the form prescribed by the Court, a copy of the form is attached to this order. Counsel are to supply all the requested information with the exception of the two "Date Boxes" which should remain blank. The original exhibit list should be given to the clerk along with the exhibits. A copy of the exhibit list should also be given to the Court.

EXHIBIT MARKERS: Counsel should fill in the appropriate markers leaving the "File" and "Deputy Clerk" lines blank. All exhibits shall be assigned numbers by using a prefix of "P" for plaintiff, "D" for defendant, and, "G" for U.S. Attorney.

Plaintiff's exhibits should be denoted as: P-1, P-2, P-3; etc. Defendant's exhibits should be denoted as: D-1, D-2, D-3; etc. Government's exhibits should be denoted as: G-1, G-2, G-3; etc. In cases involving multiple defendants, the exhibits shall be denoted with the initial of the last name of the defendant and its numerical identification number.

Stickers shall be affixed whenever possible to the lower right hand corner of the exhibit. If the exhibit marker is going to cover any information on the exhibit, then affix the marker to the reverse side of the exhibit. Each exhibit shall also have an exhibit number in the upper right hand corner of the exhibit. (P-1, P-2, etc. or D-1, D-2, etc.)

The exhibits shall have been inspected by the opposing party and copied at their expense (unless waived), **NO LATER THAN ONE (1) WEEK PRIOR TO TRIAL.** All documents and/or papers intended as exhibits or to be used during the course of trial, including but not limited to, documents, photographs, charts, diagrams, etc., shall be assembled in BINDERS with each document properly marked at the lower right corner for identification purposes as previously directed.

In voluminous cases consult with the clerk of the court for the proper procedure to follow.

WARNING: EXHIBITS WHICH ARE NOT LISTED OR DISCLOSED PURSUANT TO THIS ORDER WILL NOT BE ADMITTED IN EVIDENCE OR USED AT TRIAL IN ANY FASHION.

* NOTE: During the course of trial the clerk shall take charge of exhibits which are received into evidence. At the conclusion of the trial, the clerk will immediately return all of the exhibits to the proper parties. It is the responsibility of the parties to maintain the exhibits and to produce the exhibits for any appeal.

13.) DEPOSITIONS: All depositions to be used at trial shall be filed with the Court. Not earlier than fifteen (15) days and not less than ten (10) days prior to trial, each party shall indicate to the other party the portion of the deposition to be offered. To the extent possible, objections will be resolved between the parties. Areas of unresolved disagreement shall be presented to the Court for ruling prior to the trial.

14.) NON-JURY TRIALS: Fifteen (15) days before trial, counsel for each party shall submit to the Judge in duplicate and to opposing counsel, prepared findings of fact and conclusions of law, exhibit lists (see paragraph 12 above), witness lists (see paragraph 10(a) above), and a trial brief containing argument and citations on all disputed issues of law.

15.) JURY TRIAL: Fifteen (15) days before trial, counsel for each party shall submit to the Judge in duplicate and to opposing counsel, proposed voir dire, requests to charge, a trial brief containing argument and citations on all disputed issues of law, exhibit lists (see paragraph 12 above), witness lists (see paragraph 10(a) above), and Court Ordered Voir Dire (see attachment #1). Attachment Number 1 must be submitted in addition to any proposed voir dire requests. **FOR JURY TRIALS BEFORE MAGISTRATE JUDGE SMITH, and MAGISTRATE JUDGE DiBIANCO, counsel need not submit proposed voir dire or attachment #1**

DATED: _____,19____
_____, **NEW YORK**

_____

____ U.S. District Judge
____ U.S. Magistrate Judge

COURT ORDERED VOIR DIRE
TO BE USED BY THE JUDGE AT TRIAL

CASE TITLE _____

CIVIL ACTION NO. _____

ASSIGNED JUDGE OR MAGISTRATE JUDGE _____

ATTACHMENT #(1)

Each attorney is required to submit the following information on behalf of his/her client for use by the Court during Voir Dire and must be filed with the Court **fifteen (15)** days in advance of the scheduled trial date.

NAMES AND ADDRESSES OF ALL PARTIES TO THE LAW SUIT.

(use additional page if necessary)

YOUR NAME, FIRM NAME, ADDRESS AND THE NAME OF ANY PARTNER OR ASSOCIATE WHO MAY BE AT COUNSEL TABLE DURING THE COURSE OF THE TRIAL.

(use additional page if necessary)

SET FORTH THE DATE OF THE OCCURRENCE, THE PLACE OF THE OCCURRENCE AND A BRIEF STATEMENT OF THE EVENTS CENTRAL TO THE LITIGATION.

(Use additional page if necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL LAY WITNESSES TO CALLED.

(use additional page of necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL EXPERT WITNESSES TO BE CALLED GIVING A BRIEF DESCRIPTION OF THEIR AREA OF EXPERTISE.

(use additional page of necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY CAUSE OF ACTION IN THE COMPLAINT.

(use additional page if necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY AFFIRMATIVE DEFENSE ASSERTED AS WELL AS A STATEMENT ADDRESSING ANY COUNTERCLAIMS RAISED IN THE ANSWER.

(use additional page if necessary)

PLEASE TAKE NOTICE that any delay in jury selection occasioned by the failure to provide this information will be explained to the jury as to the extent of the delay and the attorney causing same and if the delay causes a one day or more postponement of this trial, appropriate monetary sanctions will be imposed by the Court.

Submitted by: _____

INSTRUCTIONS FOR THE USE OF VIDEO TAPED DEPOSITIONS

COUNSEL ARE TO VIEW ALL VIDEOTAPES WHICH MAY BE OFFERED INTO EVIDENCE AT THE TIME OF TRIAL, AND SUBMIT ALL OBJECTIONS IN WRITING, ALONG WITH THE VIDEOTAPE(S) TO THE COURT FOR RULING PRIOR TO TRIAL. COUNSEL ARE TO SUBMIT THE OBJECTIONS AND VIDEOTAPE(S) AT LEAST FIFTEEN (15) DAYS PRIOR TO THE TRIAL DATE, SO THAT AN EVIDENTIARY HEARING MAY BE SCHEDULED IF NECESSARY.

THE CLERKS OFFICE HAS AVAILABLE A VHS FORMAT VIDEO CASSETTE PLAYER AND TELEVISION FOR USE AT TRIAL. PLEASE BE ADVISED THAT YOU MUST PROVIDE A PERSON TO RUN THE EQUIPMENT DURING THE COURSE OF THE TRIAL.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

PLAINTIFF EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK

BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

DEFENDANT EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK

BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

PLAINTIFF EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK

BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

DEFENDANT EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK

BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

PLAINTIFF EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK

BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

DEFENDANT EXHIBIT NO. ______

DATE ENTERED:________________

GEORGE A. RAY, CLERK

BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

PLAINTIFF EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK
BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CASE NO.____________________

DEFENDANT EXHIBIT NO.________

DATE ENTERED:________________

GEORGE A. RAY, CLERK
BY:________________________
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CASE NO._____CV_____ PAGE____ OF _____PAGES

DATE:_____

PRESIDING JUDGE_____

( ) PLAINTIFF ( ) DEFENDANT

EXHIBIT NUMBER	DATE		REMARKS	WITNESS	EXHIBIT DESCRIPTION
	MARKED FOR IDENTIFICATION	ADMITTED IN EVIDENCE			

EXHIBITS RETURNED TO COUNSEL (DATE):_____ SIGNATURE_____

A P P E N D I X (H)

COMMENTS ON PRISONER LITIGATION BY A MEMBER OF THE ADVISORY STAFF

ROBERT ABRAMS
Attorney General

JOSEPH P. PERRETTA
Assistant Attorney General in Charge
Claims Bureau (Albany)

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ALBANY, NY 12224

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EIDIN BEIRNE
Assistant Attorney General in Charge
Contract Unit

BRUCE D. FELDMAN
Assistant Attorney General in Charge
Tort Unit

May 5, 1993

Taylor H. Obold, Esq.
Hiscock & Barclay
P.O. Box 4878
Syracuse, NY 13211

Dear Mr. Obold:

Thank you for the opportunity to set forth my views on prisoner litigation in the Northern District of New York insofar as they differ from those in the March 23, 1993 draft report which was approved by a majority of the Advisory Group on April 27, 1993.

The Advisory Group has recognized that the Civil Justice Reform Act's ("CJRA's") twin goals of reduction of cost and delay in civil litigation are to some extent incompatible with each other in the context of prisoner civil rights litigation. In my view, the Advisory Group has focused too extensively on delay and insufficiently on the cost of resolving such litigation. It has overestimated the cost to the Court of allowing such cases to be resolved as slowly as the parties' conduct would permit; it has underestimated the cost to the Court and to the parties of requiring such cases to be resolved as quickly as the Advisory Group would recommend.

In addition to the factors which the Advisory Group has identified, the jurisprudence of the U.S. Court of Appeals for the Second Circuit is a factor contributing to both cost and delay in resolving pro se prisoner litigation. The Second Circuit strongly disfavors sua sponte dismissals of pro se prisoner petitions before service of process and the filing of a response by the State defendants. See Bayron v Trudeau, 702 F.2d 43 (2nd Cir. 1983), and Massop v Coughlin, 770 F.2d 299 (2nd Cir. 1985). The U.S. Supreme Court does not require the circuits to do this and I am informed that other circuits permit sua sponte dismissals. It is my impression that the District Court in the Northern District of New York is reluctant to dismiss sua sponte on the pleadings, even after defendants' appearance, because it believes the Second Circuit would disapprove. While it is not

the role of the Advisory Group to recommend changes in Second Circuit jurisprudence, it is appropriate to recognize the effect of such jurisprudence on the cost and delay involved in prisoner litigation.

The Advisory Group has not come to grips with the fact that the vast majority (over 95% by two estimates) of prisoner civil rights cases are not found to be meritorious. The longer such cases are allowed to remain on the docket without major expenditure of cost or effort by any party, the greater the chance that the prisoner will abandon the case and permit its dismissal at minimal cost to the Court and the parties. The CJRA limits the period during which any District Court may permit this approach in any case, by requiring the courts to set early firm trial dates, generally such that trial is scheduled to occur within 18 months after filing of the complaint. 28 U.S.C. § 473(a)(2)(B). However, there is no need for the period to be further shortened as the Advisory Group has recommended, generally to 6 to 8 months. The effect of such shortening is to require costly trials to resolve some meritless prisoner cases that might otherwise be dismissed for lack of prosecution or upon motion. I see no reason to adopt such an accelerated schedule for disposition of prisoner litigation, either the few meritorious cases or the many meritless ones. At least as many trial costs can be avoided by permitting dispositive motions to be granted up to the time of a trial 18 months after filing, as a trial 6 months after filing.

Without additional staff, at state taxpayer expense, the State Attorney General will be unable to make significantly more motions on the more than 300 prisoner cases filed each year. Without additional judges, magistrates or clerks, at federal taxpayer expense, the District Court would be unable promptly to decide such motions made in significantly greater numbers. Nor would the court be able promptly to try significant numbers of prisoner cases, either those currently trial ready (over 250) or additional cases to be placed on the fast track recommended by the Advisory Group. If the District Court, without additional resources, were to try prisoner cases on an accelerated track, it would inevitably dispose of other cases more slowly than otherwise.

I believe the Advisory Group recommendation for fast-tracking most prisoner pro se cases would not succeed in reducing the delay in disposition of such cases. It will not stimulate the State Attorney General to make significantly more pre-trial motions because the Attorney General has insufficient staff to do so on such an expedited basis. In fact the fast track would arbitrarily shorten the time to make pre-trial dispositive

motions. The fast track will not dispose of significantly more cases by trial because the court has insufficient judicial staff to try them on a delayed or normal schedule, much less on an accelerated schedule. The fast track will increase costs to the court and the litigants with no benefit to the vast majority of prisoners with meritless cases. It threatens to require early costly trials in those cases which might otherwise be resolved by sua sponte dismissals, motions, or abandonments. It threatens to require accelerated trial preparation without a realistic chance that a trial will be held close to the scheduled trial date and the subsequent additional cost to prepare again when the trial is actually held.

Without additional resources, I do not believe the Court can make more than marginal reductions in the backlog of pending prisoner cases. Nonetheless, such marginal reductions should be attempted, even in the absence of additional court resources. I suggest putting prisoner cases on the same trial schedule as comparable non-prisoner cases, generally 18 months as directed by CJRA. This would allow more than 6 or 8 months for prisoners to abandon claims and for the State Attorney General to make dispositive motions. I suggest that the District Court use sua sponte dismissal after answers have been filed where appropriate to the case and where the Second Circuit will allow it. I suggest that the Advisory Group include prisoner cases among those for which it explores the possibility of alternative dispute resolution.

Where prisoner plaintiffs take no steps to prepare for trial, it is inappropriate to require the Court or defendants to devote extraordinary resources to the accelerated disposition of such cases.

While I find much to applaud in the Advisory Group's report, I must say that I find its recommendation for fast-tracking most prisoner claims is unlikely to reduce delay and is likely to increase cost, all without significant change in the outcomes of the cases.

Very truly yours,

DONALD P. BERENS, JR.
Assistant Attorney General

DPB/dac