CIVIL JUSTICE ADVISORY GROUP
FOR THE WESTERN DISTRICT OF NEW YORK

April 21, 1993

Honorable Michael A. Telesca
United States District Judge
U.S. District Court, Room 272
100 State Street
Rochester, New York 14614

Re: Report and Recommendations of the CJRA Advisory Group

Dear Judge Telesca:

I am pleased to enclose and deliver to you the Report and Recommendations of the CJRA Advisory Group pursuant to 28 U.S.C. §426.

Very truly yours,

Kenneth A. Payment
Chairman

KAP:cgs
Enclosure

Report and Recommendations

of the

Civil Justice Reform Act Advisory Group

for the

Western District of New York

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

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I. INTRODUCTION

In recognition of the problems of cost and delay in civil litigation in the federal courts, Congress enacted the Civil Justice Reform Act of 1990, 28 U.S.C. §471 et seq., (hereinafter referred to as the "Act" or the "CJRA"). The CJRA called upon each District Court to appoint an Advisory Group to assess the condition of its docket and recommend the adoption of measures to reduce cost and delay in civil litigation within the District. Following its review of the Advisory Group's report and recommendations, the Court is to develop and implement an expense and delay reduction plan.

Pursuant to 28 U.S.C. §478, in 1991 the Honorable Michael A. Telesca, Chief Judge of the Western District of New York, appointed the members of the Advisory Group (see Appendix "A"). The Advisory Group was directed by an active executive committee comprised of the Chief Judge, the Chairman and the Reporter of the Advisory Group, the Clerk of the Court, the former Clerk of the Court (currently a United States Bankruptcy Judge and a member of the Advisory Group) and the CJRA Attorney. The executive committee met frequently to determine the strategy the full Advisory Group would pursue to accomplish its responsibilities set forth in the Act. Appendix "B" contains a description of the Advisory Group's activities. It is contemplated that the Advisory Group will assist the Court with periodic assessments of it docket as required by the provisions of the CJRA.

As charged under the CJRA, the Advisory Group has prepared this Report containing its assessment of the current condition of the docket for the Western District of New York and its recommendations as to measures the Court could implement to reduce cost and delay in civil litigation.

II. DESCRIPTION OF THE COURT

A. The Court from 1900 to the Present

The United States District Court for the Western District of New York was formed in 1900.[1] Until then, the territory of the Western District of New York was included in the Northern District of New York, which in 1900 was the largest District in the country serving a population of 2,900,000 and spanning forty-six counties.[2] Because the Northern District had grown to that size, Congress enacted legislation designating the seventeen western-most counties of New York as the Western District of New York. At the time of its establishment, approximately 1,500,000 persons lived within its boundaries.[3]

The District Court for the Western District of New York currently serves a population of approximately 2,840,000.[4] The District possesses some unique features that affect the cases heard by the Court. For example, it shares a border with Canada, which results in the filing of drug smuggling, customs and other international border-related cases. Also, located within the Western District of New York are several state and local prison facilities which generate numerous civil rights and habeas corpus filings. Moreover, its location on the shores of Lakes Erie and Ontario result in the filing of matters under the federal maritime laws.

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[1]"Act of May 12, 1900 to Amend the Revised Statutes", Ch. 391, 31 Stat. 175 (1900).

[2]H.R. Rep. No. 428, 56th Cong., 1st Sess. 1 (1900).

[3]*Id. See also,* J.B. Morris, *Federal Justice in the Second Circuit: A History of the United States Courts in New York, Connecticut and Vermont 1787-1987,* 95 (1987).

[4]"Filing Rates in Second Circuit", *Within the Second Circuit Newsletter,* Fall 1991, p. 13.

The legislation establishing the Western District of New York designated six locations for holding court: Elmira, Buffalo, Rochester, Jamestown, Lockport, and Canandaigua. In 1948 Lockport was omitted as a place of holding court in the District because thirty-two years had passed since court had been held there.[5] Although by statute five locations for holding court remain in the Western District of New York, regular sessions of the Court are held only in Buffalo and Rochester.[6]

When the District was established, only one judge was authorized by Congress. A second judge was approved and appointed in 1927. Forty years later, in 1967, a third judgeship was approved[7] and in 1984 Congress authorized a fourth judge for the District.

Currently, the District has four active and two senior Judges. In addition, the District has four full-time Magistrate Judges, one of whom retired and was recalled to service pursuant to 28 U.S.C. §375. Two of the active Judges, including the Chief Judge, and one Magistrate Judge, are stationed in Rochester. All other judicial officers have chambers and hold court in Buffalo.

The Bankruptcy Court for the Western District of New York has three bankruptcy judges, two of whom regularly sit in Buffalo and one of whom regularly hears cases in Rochester, but all of whom travel to other locations in the District for holding court when necessary. The District Court hears appeals taken from the decisions of the bankruptcy judges, but generally the

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[5]28 U.S.C. §112(d) and Reviser's Notes contained in 1948 *United States Code Congressional Service,* 80th Congress, 2nd Sess., p. 1722.

[6]Rule 2(b), Local Rules for the Western District of New York.

[7]Hon. John T. Curtin, "An Informal History of the Western District of New York", Annual Lecture sponsored by the Federal Bar Council and the Second Circuit Historical Committee (April 26, 1986), *reprinted in Second Circuit Redbook 1986-1987 Supplement,* 170-181.

percentage of matters appealed is small; approximately one-half of one percent of the bankruptcy matters filed in fiscal year 1991 were appealed to the District Court.[8]

During the past five years total case filings in the Western District of New York increased from 1,771 in 1988,[9] to a high of 1,805 in 1990. Total filings in the District dropped slightly to 1,697 in 1991, and rose to 1,734 in 1992, mirroring the national trend. Case terminations also increased from 1,443 in 1988, to 1,796 in 1990, and, despite a drop in 1991 to 1,558, rose to 2,107 in 1992. The number of matters pending steadily increased from 2,647 in 1988, to 2,772 in 1991, but dramatically decreased to 2,375 in 1992. The number of pending matters has not been below 2,400 since 1987.

B. Case Assignment Procedures

All civil actions and criminal cases are filed with the Clerk who, in turn, assigns them to the District Judges. Pursuant to Local Rule 6(b), for case assignment purposes, the District is divided into two areas: the "Buffalo area" (the eight western counties in the District) and the "Rochester area" (the nine eastern counties in the District).

Cases arising in the "Buffalo area" are ordinarily assigned by random selection to a District Judge sitting in Buffalo. At the same time that the Clerk selects a District Judge for cases arising in the Buffalo area, he also randomly assigns the matter to one of the three full-

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[8]Of the 8,066 bankruptcy filings during FY '91, only 44 matters were brought before the District Court on appeal.

[9]The data regarding filings, terminations and pending matters is taken from *1992 Federal Court Management Statistics* and is based on the twelve month period ending June 30 for each year indicated.

time Magistrate Judges who sit in Buffalo. The assigned Magistrate Judge will become actively involved in the matter only after the assigned District Judge executes an order referring any part of the case to the Magistrate Judge for handling.

Cases that originate in the "Rochester area" typically are assigned by random selection to one of the two District Judges sitting in Rochester. Because only one full-time Magistrate Judge is stationed in Rochester, he receives all referrals from the Rochester District Judges. Thus, for cases in the "Rochester area" the Clerk dispenses with the procedure of assigning a Magistrate Judge at the time he assigns an incoming action to a District Judge.

C. Present Court Resources

The Clerk maintains his primary office in Buffalo and a satellite office in Rochester. The Clerk's employees include senior staff members, financial and procurement administrators, staff attorneys, automation support staff, courtroom deputies, administrative analysts, docket clerks and secretarial staff. Most of the staff members employed by the Clerk are stationed in Buffalo, while a smaller number are stationed in Rochester. Furthermore, several members of the Clerk's office staff travel between Buffalo and Rochester to provide services throughout the District. All non-judicial functions delegated by the Court are handled by the Clerk and his staff.

Although the center for the administration of the District is located in Buffalo, the staff members assigned to the Court, including the United States Attorney, the Federal Public Defender, the United States Marshal, the United States Probation Service, and the Bankruptcy Court, maintain offices in Buffalo and Rochester. In this way, Judges and Magistrate Judges

in both Rochester and Buffalo are sufficiently supported and matters arising in the two locations are efficiently handled.

The public is also a valuable and important resource for the Court in the selection of petit and grand jurors. The District's Jury Plan for the selection of jurors, adopted by the Court in 1989, comports with the Jury Selection and Service Act of 1968, 28 U.S.C. § 1861 et seq., and sets forth the policies and procedures governing the jury selection process in the Western District of New York. Specifically, the Jury Plan establishes two divisions within the District which are for jury selection purposes only, and provides the procedures for selecting names of jurors from lists of registered voters within each division. Further, the Jury Plan defines how persons are determined to be qualified for, exempt from or otherwise excused from jury service.

In 1990, the District Judges and Magistrate Judges presided over the selection of petit jurors for 60 trials. A total of 2,047 persons reported for juror selection for those trials, of whom 669 were chosen to serve as jurors, 805 were challenged and 573 were unused. The Western District of New York is one of only two districts in the Second Circuit that have met the juror utilization goal established by the Judicial Conference of the United States of having no less than seventy percent of all jurors summoned selected, serving or challenged on the first day of service [11]

In addition to petit jury service, persons may be selected for service on one of several grand juries which are drawn at the request of the United States Attorney. In 1990, 102 persons were selected for grand jury service in the District.

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[11] *United States Courts Second Circuit Report 1992*, p. 30.

D. Automation in the District

Automation has played a key role in the management of the civil docket in recent years. The docketing records for all civil actions commenced on or after November 1, 1990 are completely automated. Furthermore, all docketing activity that has occurred since January 1, 1992 in any civil case is maintained in the Court's computer system.[12] This system provides the Court with a powerful tool for case-tracking that has never before been available. These features allow the Court to monitor its caseload more effectively[13] and greatly simplify the preparation of reports required by the Administrative Office of the United States Courts under the CJRA.

Access to the computerized docketing system is available to all Clerk's staff through personal computers at their workstations. Terminals allowing access to the system are located in the chambers of each District Judge and Magistrate Judge. Also, a terminal dedicated for access by the public is located in each Clerk's office.

In addition to the automated system for recording civil docket activity, the Clerk's office and all chambers are enhanced by advanced wordprocessing capabilities. Personal computers are available to all staff and to each District Judge or Magistrate Judge. Additionally, the

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[12]The criminal docket remains a manual system in the Western District of New York. It is expected that automation of the criminal docket will begin in June 1993.

[13]It should be noted that the electronic docketing of all pending civil matters in the District is not complete at this time. Currently, the docketing records for cases that were opened prior to November 1990 are not fully automated. Rather, the records maintained in those cases for activity prior to January 1992 is contained on paper docket sheets. For instance, a motion filed prior to January 1992 in a civil matter that was commenced before November 1990 would not appear on a computer-generated list of pending motions. Therefore, the case-tracking capabilities of the automated system are not yet fully realized with respect to these civil matters.

personal computers in some chambers are internally networked to permit information sharing and document exchange with only a few keystrokes. Furthermore, all Judges and Magistrate Judges and their law clerks are furnished with desktop access to computer assisted legal research services including Lexis and Westlaw.

E. Court-Annexed Arbitration in the Western District of New York

The Western District of New York has been designated as one of ten pilot courts in the nation to establish a voluntary court-annexed arbitration program pursuant to 28 U.S.C. §651, et seq. The Court adopted a local rule governing arbitration in the Western District of New York on October 28, 1992. Arbitration in the District is entirely voluntary and, unlike some other Districts with voluntary court-annexed arbitration, all parties must affirmatively choose to participate in the program.

The Court's arbitration program is open to all litigants in pending civil cases. No particular types of cases are categorically excluded from the program. In all cases filed after the effective date of the Local Rule, upon joining of issue the Clerk mails the parties a notice of their option to proceed to arbitration together with a consent form. Upon filing of the executed consent form the Arbitration Clerk will randomly select the arbitrator or arbitrators to hear the matter (depending upon whether the parties elected to proceed before a single arbitrator or a panel of three arbitrators) and will schedule the arbitration hearing.

The court-annexed arbitration programs authorized by 28 U.S.C. § 651, et seq., are non-binding. However, in the Western District of New York the parties may waive the opportunity to demand a trial de novo and agree to accept the decision of the arbitrator or panel of arbitrators as final.

The arbitration program in the Western District of New York possesses some features that are unique among the pilot districts. One such feature is that the parties may request an immediate hearing. If such a request is made, a hearing will be scheduled within thirty days of the filing of the consent with the Clerk. This will be attractive to parties seeking a speedy resolution of their litigation and will give them some control over the scheduling of the hearing.

Another way in which the District's arbitration program differs from programs in other pilot districts is that the parties may agree to proceed before and select a single arbitrator who has expertise in a field relevant to the matter to be arbitrated. This can be particularly useful in cases involving highly technical issues. Payment of any fees charged by an expert arbitrator which exceed the amount of payment to be made to court-appointed arbitrators is the responsibility of the parties.

The arbitration program has the solid support of all of the Judges and Magistrate Judges in the District and they are committed to encouraging participation in the arbitration program. At this time, it is too early to assess whether arbitration in the Western District of New York will contribute meaningfully to reducing the burdens of the civil caseload.

F. Reimbursement of Expenses of Assigned Counsel in Civil Cases

The Court is one of only a few districts to have established a District Court Fund to be used for reimbursing expenses incurred by counsel appointed by the Court to represent indigent clients in civil cases. Reimbursement for documented expenses totalling up to $1,200.00 per client represented can be obtained from the fund with the approval of the judge or magistrate judge who appointed pro bono counsel. Additional amounts may also be reimbursed if the

attorney demonstrates to the satisfaction of the appointing judge or magistrate judge that the action presented extraordinary circumstances to justify payment in excess of $1,200.00. The Fund was established in recognition of the outstanding efforts of pro bono counsel before the Court and to provide an opportunity to defray part of the financial burdens associated with pro bono representation.

Monies for the District Court Fund are generated by a thirty dollar surcharge on the fees paid by attorneys admitted to practice in the District. Moreover, a thirty dollar fee is charged to attorneys admitted pro hac vice unless that fee is waived by the presiding judge or magistrate judge upon a showing of good cause.

The Fund was established officially on May 1, 1993, with the enactment of revisions to Local Rule 3 governing attorney admissions. Therefore, it is undetermined what the annual deposits in and withdrawals from the Fund will be; however, it is projected that the surcharge imposed on newly admitted attorneys will generate approximately $12,000.00 each year. The Court and the Clerk, as trustee of the Fund, will monitor the balance of the Fund and the extent of its utilization to determine whether other sources of monies are needed to supplement the District Court Fund.

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The Court has maintained a collegial and civilized atmosphere for the practice of law despite the burdens imposed by its docket. The condition of the Court's docket is addressed in the following pages. While analysis of the docket suggests some areas for improvement, any

changes in current procedures should not be effected to the detriment of the nature of practice in the District.

III. ASSESSMENT OF THE CONDITIONS IN THE DISTRICT

A. Condition of the Docket [28 U.S.C. § 472(c)(1)(A),(B)].

A mountain of statistical data is available regarding the workload and performance of the District Court of the Western District of New York. Collectively it supports the composite picture portrayed by the tables accompanying this section.

That picture is of a District in transition from "small" to "large" in terms of both workload and judicial staffing. Because increased staffing has lagged behind increased workload, and continues to do so, the District, like many others nationally, has experienced difficulty managing its expanding caseload. As the statistics highlighted in this section indicate, the Court is doing an admirable job of disposing of cases. However, those efforts are being threatened by increases in the numbers of matters, both civil and criminal, filed and pending. Therefore, the District appears statistically to be in need of the self-evaluation required by the CJRA. As explained below the statistics appear to support the recommendations proposed in section IV of this Report.

1. An Overview of the Western District of New York: 1981 through 1992

A review of the District's docket from 1981 to the present is necessary to identify and evaluate current trends and future directions. To illustrate this analysis, reference is directed to Table 1.

TABLE 1

OVERVIEW OF WDNY: 1982 THROUGH 1992

YEAR	No. of Judges at Y-E	No. of Judges Authrized	No. of Mag. Jdgs. at Y-E	Civil Filed	Civil Term.	Civil Pend.	Civil Compl.	Comb. ICI**	Criminal Filed	Criminal Term.	Criminal Pend.	Criminal Compl.	TOTAL CIVIL & CRIMINAL PER AUTHORIZED JUDGESHIP Filed	Term.	Pend.	Trials	Civil Durtn.	COMMENTS
1982	2	3	1.5	1199	866	1761	44	22.7	162	124	122	69	454	331	628	38	24.4	Judge Burke's illness and death; Judge Telesca's appointment in 5/82.
1983	3	3	1.5	1384	1101	2044	49	20.5	186	174	134	87	523	425	726	45	22.2	
1984	3	3	1.5	1561	1472	2133	54	16.6	181	173	142	80	583	551	758	45	17.4	
1985	3	4	2	1656	1616	2173	57	15.3	192	193	141	64	462	452	579	30	16.1	4th judgeship authorized in 7/84.
1986	3	4	2	1444	1482	2135	63	16.3	204	196	149	69	412	420	571	33	17.3	
1987	3	4	2	1479	1456	2158	60	16.7	206	204	151	68	461*	415	577	32	17.7	
1988	4	4	2	1564	1219	2503	45	22.2	207	214	144	64	427*	358	662	27	24.6	Judge Larimer elevated 11/87 and replaced as Mag. by KRF; Asbestos cases flood the distric
1989	5	4	2	1555	1615	2437	45	17.7	195	159	178	59	400*	446	654	26	18.1	Judge Elfvin took Senior Status 7/87; Judge Arcara sworn in on 6/88.
1990	5	4	2	1599	1606	2440	47	17.6	206	190	194	76	466*	449	659	31	18.2	
1991	6	4	3	1423	1351	2495	52	21.4	274	207	253	52	460*	390	693	26	22.2	Judge Curtin took Senior Status 7/89; Judge Skretny sworn in on 10/90; LGF added in 2/91.
1992	6	4	4	1442	1877	2060	54	13.5	292	230	315	75	471*	527	594	32	13.2	

* = Weighted cases

** ICI = Inventory Control Index = Number of months to close all pending cases at current rate of termination, if no new cases were assigned

Note: Estimated average duration = ((No. of pending cases)/(No. of terminated cases))*(12 months)

All statistics are for the 12-month period ended June 30 of the indicated year

Criminal data includes only felonies

a. The first six years: July 1, 1981 through June 30, 1987

By June 30, 1981, it had been recognized that the caseload of the Court supported increasing the number of Judges in the District from three to four. Judge Burke's long illness had made matters worse. Judge Telesca's appointment to the bench was badly-needed.

From July 1, 1981 to June 30, 1987, the following occurred:

- Civil filings jumped from 1,200 per year to 1,656, then back to 1,444 and 1,479.
- Civil terminations rose from only 866 in 1981-1982 to over 1,400 in each year from 1984 to 1987.
- Both criminal filings and criminal terminations rose dramatically.
- The number of civil cases pending rose significantly until 1984, then plateaued in 1984-1987.
- The number of criminal cases pending rose steadily throughout the period (from 122 to 151).
- The inventory control index[14] dropped in 1982 and 1983, then plateaued for four years.

Throughout this six-year period, the only staffing changes the Court realized were that Judge Telesca succeeded Judge Burke, and then-Magistrate Larimer replaced Magistrate Joy and became a full-time, rather than a part-time, Magistrate.

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[14]The inventory control index is a computation of the number of months that would be required to close all pending cases at the current rate of termination provided that no new cases were assigned.

b. The next four years: July 1, 1987 through June 30, 1991

From July 1, 1987 to June 30, 1991 there was dramatic change in the Court. The number of District Judges increased from three to six[15] and the number of Magistrate Judges increased from two to three.[16] The period from July 1, 1987 to June 30, 1988 was an aberrant transition year. But the following two years saw a marked increase in civil productivity. The annual number of civil case terminations rose from a plateau in the mid-1,400's during 1986 and 1987 to a plateau of approximately 1,600 in 1989 and 1990 despite an increase in civil filings. In 1991 civil case terminations dropped to 1,351, mirroring a decrease in civil filings.

However, criminal terminations and the pending caseload worsened as more criminal cases were to be governed by the United States Sentencing Guidelines and more complex, multi-defendant cases were filed.

c. The past year: July 1, 1991 through June 30, 1992

During the past eleven years, the Court has expanded in size from three to six District Judges and from one full-time and one part-time Magistrate to four full-time Magistrate Judges. This dramatic increase in judicial resources has begun to result in statistical improvements, particularly in the civil caseload. The Western District of New York realized an increase in total filings in 1992. In 1992, 1,734 cases were filed in the District as compared to 1,697 in 1991, an overall increase of 2.2%. Nationally case filings increased 8.4% from 1991 to 1992. Total

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[15]There are currently four active and two senior judges in the District. Both senior judges, however, maintain large caseloads and are of great benefit to the Court in managing its docket.

[16]Currently, there are four full-time Magistrate Judges, one of whom retired in 1992 and was recalled to service in accordance with 28 U.S.C. § 375.

case terminations in the Western District of New York increased from 1,558 in 1991 to 2,107 in 1992. This noteworthy 35.2% increase in case terminations is nearly three times that of the 12.2% increase in terminations nationally. Because of the Court's increased termination rate, the total number of cases pending in the District dropped from 2,772 in 1991 to 2,375 in 1992, reflecting nearly a 15% reduction in the number of cases pending. This is the lowest total number of pending cases in the District since 1987. The District's decrease in pending cases far outpaced the 4.7% national decrease in pending cases.

With respect to civil matters, filings in the Western District of New York increased 1.3%, from 1,423 in 1991 to 1,442 in 1992. In 1992 a total of 399 United States civil cases were filed, the majority of which were forfeiture/penalty, contract, and social security cases. A total of 1,043 private civil cases were filed in 1992, the majority of which were prisoner petitions, civil rights, personal injury (other than marine or automobile), and contract claims. Civil case terminations in the District rose 38.9%, from 1,351 in 1991 to 1,877 in 1992. This resulted in a 17.4% reduction in pending civil cases from 2,495 in 1991 to 2,060 in 1992.

Criminal case filings (felonies and misdemeanors) in the Western District of New York increased 8.1%, from 360 in 1991 to 389 in 1992. This increase is slightly higher than the national increase of 5.7%. The majority of criminal matters commenced in 1992 involved drug, fraud, and larceny offenses. Criminal case terminations in 1992 increased by only 0.7% from 305 in 1991 to 307 in 1992. Because filings exceeded terminations, the number of criminal cases pending in the Western District of New York increased by 29.4% from 279 in 1991 to 361 in 1992. Similarly, the number of defendants in pending criminal cases increased 36.6% from 434 in 1991 to 593 in 1992. These figures reflect that at the same time the Court is gaining

control of its civil cases, the criminal caseload is growing at a rapid pace. The Court's admirable accomplishments in managing its civil docket as demonstrated by these figures currently statistically offset the burgeoning criminal caseload.

The statistics per active judgeship show the Western District of New York to be in many respects the busiest district in the Second Circuit and one of the busiest in the nation. Total filings per judgeship in the Western District of New York increased 2.4% from 424 in 1991 to 434 in 1992, rendering the District the highest district in the circuit and twenty-seventh highest district in the nation for total filings per judgeship. Similarly, weighted filings increased 2.4%, from 460 in 1991 to 471 in 1992 and the Western District of New York ranks first in the circuit and twelfth in the nation as to total weighted filings per judgeship. Civil filings per judgeship increased 1.4%, from 356 in 1991 to 361 in 1992, making the district the highest in the circuit and the thirty-sixth highest district in the nation with respect to civil filings per judgeship. Criminal felony filings per judgeship increased 7.4%, from 68 in 1991 to 73 in 1992. As to criminal felony filings per judgeship, the Western District of New York ranks as the second highest district in the circuit and the twenty-second highest district in the nation.

Terminations per judgeship increased in the Western District of New York by 35.1%, from 390 in 1991 to 527 in 1992. As a result, the Western District of New York ranks first in the circuit and thirteenth in the nation as to terminations per active judgeship. Because of this increased termination rate, the number of pending cases per active judgeship decreased 14.3%, from 693 in 1991 to 594 in 1992. Despite this significant decrease, the District has the second highest number of pending cases per judgeship in the circuit and the fifth highest number of

pending cases per judgeship in the nation. It is notable that the number of pending cases per judgeship in the Western District of New York has not been below 600 since 1987.

The June 30,1992 statistics also show that the number of trials completed per judgeship in the District increased 23.1% from 26 in 1991 to 32 in 1992. Given the burdens of its caseload, this increase is remarkable and, in fact, the District outpaced the national average of 31 trials completed per judgeship.

The median time from filing to disposition of criminal felony cases in the Western District of New York decreased from 9.1 months in 1991 to 7.1 months in 1992. The median time from filing to disposition for civil cases in the district increased slightly from 11 months in 1991 to 14 months in 1992. Although the statistics reflect a dramatic increase in the median time from issue to trial (from 21 months in 1991 to 34 months in 1992), this can be viewed positively as a reflection that the Court is disposing of its oldest pending cases. This is further supported by a review of the statistics regarding cases that have been pending for three or more years. The number of pending three-year-old cases dropped from 580 in 1991 to 406 in 1992. Similarly the percentage of the caseload comprised of three-year-old cases dropped from 23.1% in 1991 to 19.7% in 1992. These reductions clearly indicate that the Court has successfully directed its efforts to disposing of its oldest cases.

2. The Pro Se Caseload in the Western District of New York

As noted above, of all civil cases filed in the 12-month period ended June 30, 1992, a large number were prisoner petitions including both civil rights matters and habeas corpus petitions. Out of 1,442 total civil filings, 357 or 24.8 percent were filed by prisoners. As

shown in Table 2, since 1985, the percentage of civil filings comprised of prisoner petitions has been nearly as high as 29 percent but has never fallen below 21.3 percent. The great number of prisoner filings is the result of numerous State and local correctional facilities within the Court's jurisdiction.[17]

Prisoner Filings in WDNY			
year	total civil filings	prisoner filings	percent of civil filings
1985	1,579	372	23.6%
1986	1,332	364	27.3%
1987	1,644	370	22.5%
1988	1,494	432	28.9%
1989	1,696	452	26.7%
1990	1,392	321	23.1%
1991	1,454	309	21.3%
1992	1,442	357	24.8%

Table 2

Because virtually all prisoner petitions are filed pro se, the Court has had to devote substantial resources to managing this portion of its caseload. In addition to time spent by the Judges and Magistrate Judges and their law clerks on prisoner matters, the Clerk has dedicated several of his staff members to work solely on pro se prisoner matters. The Court also has a pro se staff attorney to assist in managing pro se cases. Moreover, the Marshal must devote resources to the pro se caseload inasmuch as he and his staff are responsible for serving copies of the plaintiffs' initial papers upon defendants. Many times defendants are not adequately

[17]There are fourteen State and numerous local correctional facilities located within the boundaries of the Western District of New York that generate prisoner filings; however, the majority of the Court's prisoner petitions are filed by inmates at the Attica, Southport and Elmira correctional facilities, all of which are maximum security facilities operated by the State of New York.

identified or cannot be located to allow the Marshal readily to serve necessary papers upon them which results in delayed service and sometimes renders service impossible.

The Court has undertaken to control the prisoner pro se caseload in several significant ways. In 1989 the Court adopted a standing order which requires partial payment of filing fees by inmates based upon their available financial resources. Specifically an inmate seeking to proceed in forma pauperis in a civil rights or habeas corpus action must furnish the Court with an official statement of his prison account for the previous three months. The inmate is required to pay a partial filing fee of ten percent of the amounts deposited to the account during the three-month period, provided that the fee does not exceed $5.00 for a habeas corpus petition and $120.00 for a civil rights action.

The partial filing fee requirement demands that all incoming prisoner matters in which a plaintiff seeks permission to proceed as a pauper must be screened for determination of the appropriate fee. Furthermore, a significant number of inmates allege that exceptional circumstances exist to justify waiver of the partial filing fee requirement. Each such application must be reviewed by the Clerk's pro se staff and the Court. Although the number of prisoner filings as a percentage of all civil filings has decreased from nearly 29 percent in 1988 since the adoption of the partial filing fee order, the number of prisoner filings as a percentage of civil filings remains above twenty percent.

Another standing order was signed by the Chief Judge on November 18, 1992, which requires inmates in the custody of the State of New York to exhaust any remedies available under the New York Department of Correctional Services Inmate Grievance Program prior to pursuing a claim pursuant to 42 U.S.C. § 1983 in federal court. In accordance with 42 U.S.C.

§ 1997e and 28 C.F.R. Part 40, inmates may be required to exhaust available remedies under a grievance program if that program is certified by the United States Attorney General. The United States Department of Justice granted full certification to the New York Department of Correctional Services Inmate Grievance Program on September 28, 1992.

Pursuant to the terms of the Court's standing order, an inmate in the custody of the State of New York seeking to assert a claim under 42 U.S.C. § 1983 must include a statement in his or her complaint stating that the complained-of action is not grievable under the Grievance Program or that remedies under the Grievance Program have been fully exhausted. Any action in which the complaint filed by a State inmate does not contain the required statement will be continued for ninety days to allow the inmate the opportunity to exhaust his or her remedies under the Grievance Program. The inmate is allowed one hundred days from the date of the continuance to submit proof of exhaustion of remedies. Failure to provide proof of exhaustion of remedies may result in dismissal of the action with prejudice.

It is uncertain to what extent this order will reduce the number of pro se inmate filings in the District because the certification of the Attorney General and the Court's issuance of this order occurred so recently. However, it is projected that the Court's exhaustion requirement will reduce the burdens of the pro se inmate caseload insofar as two of the most often-cited grounds asserted by inmates seeking relief under 42 U.S.C. § 1983--namely inadequate care and assault and/or harassment by corrections staff--are grievable. Future consideration and analysis of the pro se inmate caseload will be necessary to determine the effect of the Court's exhaustion requirement as set forth in the November 18, 1992 standing order.

3. Social Security Cases in the Western District of New York

As a result of the number of actions filed with the Court pursuant to 42 U.S.C. §405(g) that seek review of final determinations rendered by the Secretary of Health and Human Services denying payment of disability benefits, Chief Judge Telesca signed an order dated December 28, 1992. Although in accordance with Fed. R. Civ. P. 12(a), the Government has sixty days within which to respond to a claim challenging the Secretary's determination to deny benefits, it is frequently impracticable for the Government to prepare a response within that time. Thus, for purposes of uniformity and to ensure that such cases proceed timely, the December 28, 1992 order provides that the Government has ninety days after service of the complaint to file and serve its answer or otherwise move. If the Government files and serves an answer to the complaint, the order further provides that all dispositive motions must be filed and served within ninety days of the date on which the answer was filed.

By adopting the uniform procedures set forth in the December 28, 1992 order, the Court will be able to monitor more effectively the prompt disposition of social security cases in the Western District of New York.

4. Duration of Cases in the Western District of New York

The estimated average duration of a case is defined as the ratio of pending cases to terminated cases, divided by twelve to render the average case duration in months. This statistic is representative of the Court's caseload.[18]

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[18]Shapard, J. "How Caseload Statistics Deceive", Federal Judicial Center (August 9, 1991).

As shown in Table 1 on page 13, the estimated average duration of civil cases in the Western District of New York did not dramatically improve in the ten year period from 1982 through 1991 despite a marked increase in judicial resources and a stable rate of civil filings per authorized judgeship. It was as low as 16.1 months (in 1984-1985) and as high as 24.6 months (in 1987-1988), but otherwise approximated 17 or 18 months. However, in 1992 the estimated average duration of civil cases dropped significantly to 13.2 months.

In the nation, for the twelve-month period ended June 30, 1992, the estimated average duration of a civil case was 11.2 months. In the prior year, the national average case duration was 13.6 months. Thus, although historically cases in the Western District of New York have had an average lifespan that is longer than the national average lifespan, the average lifespan of cases in the district is approaching the national average.

To examine why the average duration of cases pending in the District exceeds the national average, attention must be given to the posture of cases at the time they are terminated. The 1991 national average disposition rates at four different procedural stages are shown in Table 3. Comparing the average statistics with the disposition rates for the Western District of New York illustrated in Table 4, it is apparent that in the District a lower-than-average percentage of cases terminate before pretrial and a higher-than-average percentage of cases terminate during or after pretrial.

NATIONAL CIVIL CASE DISPOSITIONS

year	total cases terminated	% terminated with no court action	% terminated before pretrial	% terminated during or after pretrial	% terminated at or after trial
1991	170,192	24	60	12	4
median months to termination	9	7	8	15	20

Table 3

More cases reach the two later procedural stages in the Western District of New York than in the rest of the nation.

Analysis shows that far and away the largest numbers of cases that reach the pretrial stage have nature of suit codes which indicate that they are tort cases (specifically FELA, products liability and medical malpractice) and non-prisoner civil rights cases. These statistics strongly suggest a need for some form of judicial intervention in such cases as early as possible.

Table 5 is similar to Table 4 except that it contains statistics for 1991 only and reflects dispositions rendered by each of the District Judges. A review of the data in Table 5 demonstrates that cases in Rochester (before Judges Telesca and Larimer) rarely reach the stage of pretrial.

ANNUAL CIVIL CASE DISPOSITIONS IN WDNY

year*	total cases terminated	% terminated with no court action	% terminated before pretrial	% terminated during or after pretrial	% terminated at or after trial
1982	740	65	17	13	4
median months to termination	9	5	13	20	25
1983	865	44	29	23	5
median months to termination	11	6	12	25	24
1984	1107	34	46	15	5
median months to termination	11	6	11	26	31
1985	1199	32	51	13	4
median months to termination	8	3	10	19	29
1986	1134	20	61	13	6
median months to termination	9	4	9	18	18
1987	1027	4	74	16	6
median months to termination	12	3	11	24	20
1988	912	18	56	20	6
median months to termination	10	4	10	23	34
1989	1215	33	36	27	3
median months to termination	11	6	10	21	26
1990	1147	19	50	29	2
median months to termination	10	4	9	17	34
1991	1351	34	39	19	4
median months to termination	11	5	11	20	29

*The twelve month period ended June 30 of the stated year.
The above excludes condemnation, deportation reviews, and prisoner petitions.

Table 4

CIVIL CASE DISPOSITIONS BY JUDGE IN WDNY
July 1, 1990 through June 30, 1991

Judge	Total Cases Terminated	% terminated with no court action	% terminated with no pretrial	% terminated during or after pretrial	% terminated at or after trial
Judge Telesca	263	35	59	4	3
(median months)	13	10	13	25	21
Judge Larimer	264	40	55	2	3
(median months)	9	8	8	31	41
Judge Arcara	273	35	26	37	2
(median months)	10	3	10	15	24
Judge Skretny	75	35	23	39	4
(median months)	3	2	2	19	29
Judge Curtin	238	26	33	38	3
(median months)	14	4	13	26	47
Judge Elfvin	175	29	31	34	6
(median months)	10	5	12	15	17
Unassigned*	28	96	4	0	0
(median months)	4	4	6		

*Dismissal of frivolous complaint.
The above excludes condemnation, deportation reviews, and prisoner petitions.

Table 5

B. Cost and Delay [28 U.S.C. § 472(c)(1)(C),(D)]

In evaluating and analyzing the issues of cost and delay the Advisory Group addressed the cases on the Court's docket that have been pending for more than three years. As of September 30, 1991 there were approximately 375 civil cases that had been pending for three

years or longer.[19] Of the 375 cases, 145, or 39 percent, were prisoner petitions; 68, or 18 percent, were employment civil rights or other civil rights cases; 74, or 20 percent, were complex litigation such as environmental, patent, copyright, securities, labor, antitrust, trademark or product liability, or were stayed by pending bankruptcy proceedings. Only 86, or 23 percent, of the 375 cases that had been pending for more than three years as of September 30, 1991 could be categorized as miscellaneous personal injury, contract, commercial or property damage cases. A number of the oldest pending cases are class actions.

Each of the judges was asked during the interview conducted by members of the Advisory Group as described in Appendix "B" what he believes are causes of cost and delay in the civil docket. According to the interview summaries prepared by Advisory Group members, collectively, the judges perceive some of the causes of cost and delay in civil cases in the District to be:

- the number of pending criminal cases;
- the impact of the pro se caseload;
- uncontrolled discovery in some cases;
- the need for greater judicial intervention and case management in some cases;
- unnecessary motion practice in some instances; and
- the federalization of drug-related crimes.

Further, the Advisory Group membership contains several attorneys who are involved (either personally or by office affiliation) in the representation of parties in many of the cases listed on the September 30, 1991 report of three-year-old cases. These attorneys were asked to submit their perceptions as to the reasons for the delay in those cases which resulted in their

[19]This figure excludes all of the asbestos cases that were transferred to the Eastern District of Pennsylvania for disposition.

inclusion in the September 30, 1991 report. The following is a list of the perceptions of Advisory Group members as to the reasons for cost and delay in particular matters pending over three years. It is not surprising that the Court and counsel share many of the same perceptions as to the reasons for cost and delay in pending civil cases. The following are perceived reasons for cost and delay:

Court-Related:

- Delay by judges in hearing/deciding motions
- Burdens of pro se litigation
- Inconsistent or unreasonable scheduling orders
- Disorganized conference practice
- Delay in deciding summary judgment motions
- Trial dates not adhered to
- Size of class in class action
- Failure of judges to undertake active case management
- Extensive settlement attempts

Counsel-Related:

- Case complexity
- Failure of counsel to compromise on minor matters
- Burdens of pro se litigation
- Some lawyers' abuse of discovery
- Disorganized conference practice
- Trial dates not adhered to
- Size of class in class action
- Extensive discovery

- Plaintiff's inability to decide proper party
- Addition of new party during case pendency
- Change of counsel during case pendency
- Extensive settlement attempts

Party-Related:

- Case complexity
- Failure of pro se plaintiffs to compromise on minor matters
- Pro se plaintiffs' abuse of discovery
- Transfer of inmate plaintiffs to other correctional facilities necessitating extensive travel by opponent and/or communication by mail;
- Size of class in class action
- Extensive discovery
- Plaintiff's inability to decide proper party
- Addition of new party during case pendency
- Change of counsel during case pendency
- Extensive settlement attempts
- Complications in plaintiff's medical condition

Case complexity and delay by judges in hearing/deciding motions, were by far the most oft-cited reasons given by members of the Advisory Group to explain why particular matters have been pending before the Court for longer than three years.

The statistical evidence presented in this Report supports the reasons for the cost and delay cited by the judges and the members of the Advisory Group. The burdens imposed by particular categories of cases, particularly prisoner cases, is abundantly clear. Moreover, complex cases, including class actions, comprise a significant percentage of the oldest pending

cases. These cases could progress through the stages of the litigation process more quickly and effectively if a judicial officer became involved early and regularly in the matter for the purpose of monitoring case progress, including scheduling and discovery, and if the Court could more quickly hear and rule on dispositive and non-dispositive motions. In all cases, there is a need for establishing and adhering to scheduled deadlines and trial dates. So doing will result in speedier and more economical litigation in the District. Based upon these conclusions, the Advisory Group has formulated recommended measures to reduce expense and delay in litigation in the District and has proposed a plan for the Court's consideration which is designed to implement those recommendations.

IV. RECOMMENDATIONS AND THEIR BASIS

Preamble

The Advisory Group has very seriously accepted the Congressional mandate to recommend ways to improve the efficient and speedy disposition of civil cases in the United States District Court for the Western District of New York. For these recommendations to be effective, however, they must be honored and implemented by the bench and bar. Individual court rules must give way to uniformity in the handling of cases. Excessive discovery, unnecessary motions and lack of cooperation among counsel cannot be part of any attorney's arsenal. The Advisory Group believes that the Civil Justice Reform Act mandates effective, beneficial change, and requires both the bench and bar to scrupulously follow these recommendations.

A. Recommended Measures, Rules and Programs

The Advisory Group believes that the bench and bar in the Western District of New York have, in general, cooperated to establish an appropriate professional environment in which to litigate civil cases. This should not be sacrificed for the sake of speed; rather, every effort should be made to retain these desirable qualities. Nevertheless, the Advisory Group believes that there is room for improvement with respect to the efficiency of litigation, and therefore makes the following recommendations[20]:

1. Upon filing, the Clerk of the Court should immediately assign every civil case both to a District Judge and to a Magistrate Judge. Pursuant to 28 U.S.C. § 636(b)(1), the District

[20]As explained in detail in Section IV. C. of this Report, in making these recommendations, the Advisory Group considered all of the principles of litigation management and cost and delay set forth in 28 U.S.C. § 473. However, where particular recommendations embody any of the principles enumerated in 28 U.S.C. § 473, such is noted parenthetically.

Judge to whom each civil case is assigned should immediately designate the Magistrate Judge to whom the case is assigned to hear and determine all issues involving discovery and non-dispositive motions. Local Rules 6(a), 13 and 29 should be amended accordingly.

2. In addition to the assignment of discovery and non-dispositive motions, the parties and their attorneys should be advised of the options of consenting to (a) referral of the entire case (dispositive motions and trial), or (b) referral of dispositive motions, to the Magistrate Judge. They should be encouraged to consent to one of these alternatives. This information should be provided in a written notice from the Clerk to the litigants, and should include the names of the District Judge and Magistrate Judge to whom the case has been assigned.[21]

3. In all cases, the Magistrate Judge should be responsible for the efficient handling of discovery and non-dispositive motions.

4. The parties should be encouraged, in all appropriate cases, to make dispositive motions.

5. Dispositive motions may be made at any time during the pendency of a case and consistent with the time constraints provided in the case scheduling order pursuant to Fed. R. Civ. P. 16.

6. Local Rule 13, "Pre-trial Procedures in Civil Cases", should be amended to provide as follows:

(a) Within sixty days of issue being joined, the Magistrate Judge shall hold a Rule 16 pre-trial discovery conference ("first discovery conference") in all cases except pro se prisoner civil rights, social security and habeas corpus cases, and shall issue an order providing for a discovery cut off date, a date for a settlement conference ("first settlement conference") to be held before the Magistrate Judge, and a proposed trial date. The order shall also include a time limitation on the joinder of other parties, the commencement of third-party practice, and the filing of all pre-trial motions. No further or additional discovery, joinder, third-party practice,

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[21]The method used by the Clerk to assign matters to District Judges and Magistrate Judges is set forth in the discussion of case assignment procedures beginning on page 4 of this Report.

or non-dispositive motions shall be permitted thereafter except by leave of the Court good cause shown stated in writing. [28 U.S.C. § 473(a)(2)].

At the first discovery conference, counsel for each party shall present a plan and schedule for discovery and the proposed management of the case. This plan and schedule may be presented orally or in writing, depending on the preference and in the discretion of the Magistrate Judge. [28 U.S.C. § 473(b)(1)].

Unless there is good cause shown noted in writing, the discovery cut-off date shall not be more than six months from the date of the order setting that date, the initial settlement conference shall be within ninety days after the date of the order, and the proposed trial date shall be no later than twelve months of the discovery cut-off date. A firm trial date will be set by the trial court. [28 U.S.C. § 473(a)(2),(3)].

Additional discovery conferences may be scheduled in the discretion of the Magistrate Judge, sua sponte, or at the request of a party. [28 U.S.C. § 473(a)(4)].

In an appropriate, uncomplicated action, upon issue being joined, any party may request, or the Court on its own motion may provide for, an advanced trial date and limited discovery. In such a case, a scheduling order shall issue providing for abbreviated discovery and a proposed early trial date. [28 U.S.C. § 473(a)(1)].

(b) All non-dispositive pre-trial motions as authorized by 28 U.S.C. § 636(b)(1) shall be made returnable before the Magistrate Judge, and all motion papers shall be filed with the Clerk.

(c) At the first settlement conference, the attorneys shall be present and shall be prepared to state their respective positions to the Magistrate Judge. Each plaintiff shall communicate a demand for settlement to the Magistrate Judge, and each defendant shall be prepared to communicate a response. The attorneys shall have spoken with their respective clients regarding their settlement positions prior to the settlement conference. Likewise, in cases involving insurance coverage, defense counsel shall have spoken with the insurance carrier regarding its position prior to this settlement conference. Each party shall submit in writing, or be prepared to discuss, the undisputed facts and legal issues relevant to the case, and the legal and factual issues about which the party believes there is a dispute. [28 U.S.C. § 473(b)(2)].

If a settlement is not reached at the first settlement conference, the Magistrate Judge may schedule additional settlement conferences from time to time as appropriate.

Upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions, or the parties themselves, must be present or available by telephone during any settlement conference. [28 U.S.C. § 473(b)(5)].

Each settlement conference is designed to provide a neutral, non-binding evaluation program for the presentation of the legal and factual issues in a case, and the opportunity to present these issues to a judicial officer as early in the process as possible. [28 U.S.C. § 473(b)(4)].

(d) At any subsequent discovery conference held in the discretion of the Magistrate Judge, the attorneys shall provide a status update and a time-table for the remaining discovery to be completed within the discovery period.

(e) No extensions of the discovery period shall be granted, except for good cause shown stated in writing by order of the Magistrate Judge.

(f) After completion of discovery and motions as set forth in the scheduling order, any case in which the parties have not consented under 28 U.S.C. § 636 shall be referred to the District Judge assigned to the case, who shall then be responsible for the further efficient scheduling and disposition of that case; any other case shall remain with the Magistrate Judge, who will retain responsibility for the efficient scheduling and disposition of that case.

(g) Within thirty days after the close of discovery, the District Judge, or if the parties have consented to disposition by the Magistrate Judge, the Magistrate Judge, shall hold a pre-trial conference for the purpose of setting a cut-off date for remaining motions, setting a firm trial date, and discussing settlement. Except for good cause shown stated in writing by the District Judge or Magistrate Judge, such motion cut-off date shall not be more than ninety days after the date of the discovery cut-off and not less than 120 days prior to the trial date. Nothing contained in this Rule shall be read as precluding or discouraging dispositive motions at any time during the pendency of a case.

(h) Each District Judge or Magistrate Judge conducting this pre-trial conference, shall make an earnest effort to encourage and become involved in settlement negotiations between the parties. If the case is not resolved at this conference, the District Judge or the Magistrate Judge shall schedule further pre-trial conferences for the purpose of discussing settlement, as appropriate.

(i) If the case is not thereafter resolved, counsel for each party, no later than thirty days before the trial date, and in no event later than the final pretrial conference, shall file with the Court and serve upon counsel for all other parties, a pre-trial statement which shall include the following:

(1) A detailed statement of contested and uncontested facts, and of the party's position regarding contested facts;

(2) A detailed statement as to the issues of law involved, the issues of fact involved, and any unusual questions relative to the admissibility of evidence together with supporting authority;

(3) A list of witnesses (other than rebuttal witnesses) expected to testify, together with a brief statement of their anticipated testimony and their addresses;

(4) A brief summary of the qualifications of all expert witnesses, and a concise statement of each expert's expected opinion testimony and the material upon which that testimony is expected to be based;

(5) A list of exhibits anticipated to be used at trial, except exhibits which may be used solely for impeachment or rebuttal;

(6) A list of any deposition testimony to be offered in evidence;

(7) An itemized statement of each element of special damages and other relief sought; and

(8) Such additional submissions as the District Judge or Magistrate Judge directs.

(j) A final pretrial conference shall be held at the direction of the District Judge or the Magistrate Judge within thirty days of the trial date. Trial counsel shall be present at this conference and shall be prepared to discuss all aspects of the case and any matters which may narrow the issues and aid in its prompt disposition, including:

(1) The possibility of settlement;

(2) Motions in limine;

(3) The resolution of any legal or factual issues raised in the pre-trial statement of any party;

(4) Stipulations (which shall be in writing); and

(5) Any other matters that counsel or the Court deems appropriate.

(k) Prior to the final pre-trial conference, counsel shall meet to mark and list each exhibit contained in the pre-trial statements. At the conference, counsel shall produce a copy of each exhibit for examination by opposing counsel and for notice of any objection to its admission in evidence. Following the final pretrial conference, a pre-trial order may be entered as directed by the District Judge or the Magistrate Judge, and the case certified as ready for trial.

(l) Each party shall be represented at each pre-trial, discovery or settlement conference by an attorney who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

(m) For purposes of procedural information, copies of standard referral orders used by each Judge in this District are available in the Clerk's office.

(n) A District Judge may also refer to the Magistrate Judge any other pre-trial matter as authorized by 28 U.S.C. § 636(b)(1)(A) and (B).

(o) If the Court so directs, a request for an extension of the deadline for the completion of discovery or for the postponement of the trial date shall be signed both by the attorney and the party making the request. [28 U.S.C. § 473(b)(3)].

It is further recommended, for purposes of consistency, that the Court adopt a uniform pre-trial scheduling order for use in conjunction with the procedure proposed above.

7. A number of the oldest cases pending in the Western District of New York are class actions. The complexity inherent in some class actions may cause them to have a longer life span than other types of civil matters; nonetheless, class actions can and should be more efficiently handled in this District. This may be accomplished by expressly requiring the parties and their counsel to establish at an early stage the propriety of proceeding as a class action and by encouraging the Court to take a more pro-active approach to managing cases of this type. [28 U.S.C. § 473(a)(1)].

Local Rule 15, "Class Actions", should be revised to provide for greater judicial involvement and attorney accountability, particularly during the early stages of class action litigation in the Western District of New York. Specifically, Local Rule 15 should be modified to provide as follows:

> (a) The title of any pleading purporting to commence a class action shall bear the legend "Class Action" next to its caption.
>
> (b) The complaint (or other pleading asserting a claim for or against a class) shall contain next after the jurisdictional grounds and under the separate heading "Class Action Allegations,":
>
> > (1) a reference to the portion or portions of Fed. R. Civ. P. 23 under which it is claimed that the action is properly maintainable as a class action, and
> >
> > (2) appropriate allegations thought to justify the claim, including, but not necessarily limited to:
> >
> > > (A) the size (or approximate size) and definition of the alleged class,
> > >
> > > (B) the basis on which the party or parties claim to be an adequate representative of the class,
> > >
> > > (C) the alleged questions of law and fact claimed to be common to the class, and

(D) in actions claimed to be maintainable as class actions under Fed. R. Civ. P. 23(b)(3), allegations thought to support the findings required by that subsection.

(c) Within sixty days after issue having been joined in any class action, counsel for the parties shall meet with a judge or magistrate judge and a scheduling order shall issue providing for orderly discovery and may initially limit discovery only as to facts relevant to the certification of the alleged class.

(d) Within 120 days after the filing of a pleading alleging a class action, unless this period is extended on motion for good cause filed prior to the expiration of said 120-day period or in the scheduling order, the party seeking class certification shall move for a determination under Fed. R. Civ. P. 23(c)(1) as to whether the case is to be maintained as a class action. The motion shall include, but is not limited to, the following:

(1) a brief statement of the case;

(2) a statement defining the class sought to be certified, including its geographical and temporal scope;

(3) a description of the party's particular grievance and why that claim qualifies the party as a member of the class as defined;

(4) a statement describing any other pending actions in any court against the same party alleging the same or similar causes of actions, about which the party or counsel seeking class action certification is personally aware;

(5) in cases in which a notice to the class is required by Fed. R. Civ. P. 23(c)(2), a statement of what the proposed notice to the members of the class should include and how and when the notice will be given, including a statement regarding security deposit for the cost of notices; and

(6) a statement of any other matters that the movant deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits.

The other parties shall respond to said motion in accordance with the provisions of these Rules.

(e) In ruling upon a motion for class certification, the Court may allow the action to be so maintained, may disallow and strike the class action averments, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where the determination is ordered to be postponed, a date shall be fixed for renewal of the motion before the same Judge.

(f) The burden shall be upon any party seeking to maintain a case as a class action to present an evidentiary basis to the Court showing that the action is properly maintainable as such. If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall, unless otherwise ordered by the Court, initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

(g) Failure to move for class determination and certification within the time required herein shall constitute and signify an intentional abandonment and waiver of all class action allegations contained in the pleading and the action shall proceed as an individual, non-class action thereafter. If any motion for class determination or certification is filed after the deadline provided herein, it shall not have the effect of reinstating the class allegations unless and until it is acted upon favorably by the Court upon the finding of excusable neglect and good cause.

(h) The attorneys for the parties are governed by the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association concerning contact with and solicitation of potential class members.

(i) No class action allegation shall be withdrawn, deleted, or otherwise amended without Court approval. Furthermore, no class action shall be compromised without Court approval and notice of the proposed compromise shall be given to all members of the class in such manner as the Court directs.

(j) Six months from the date of issue having been joined and every six months thereafter until the action is terminated, counsel in all class actions shall file with the Clerk a joint case status report indicating whether any motions are pending, what discovery has been completed, what discovery remains to be conducted, the extent of any settlement negotiations that have taken place and the likelihood of settlement, and whether the matter is ready for trial. Counsel shall provide a copy of the case status report to the CJRA Attorney.

(k) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

8. The Court has taken steps to control and manage the pro se prisoner caseload as detailed in Part III of this Report. To further assist in the management and permit accurate monitoring of this caseload, within sixty days of issue being joined, a scheduling order should be issued in each pro se prisoner civil rights matter providing a deadline for filing amended pleadings, a discovery cut-off date, a deadline for filing dispositive motions, a trial date, and permission to conduct the deposition of plaintiff at the correctional facility in which he is

incarcerated. Although, ideally these cases should proceed along the same timeline established for standard civil cases, the Advisory Group recognizes the existence of delays that necessarily occur in such cases due to the plaintiffs' incarceration. As a result of the burdens faced by inmate plaintiffs in prosecuting cases before the Court, the Advisory Group recommends that, absent a showing of good cause in writing, the deadline for filing amended pleadings should be no later than thirty days from the date of the scheduling order, the discovery cut-off date should not be more than eight months from the date of the scheduling order (with a deadline one month earlier for filing motions related to discovery disputes), the deadline for filing dispositive motions should be no more than ninety days after the discovery cut-off date, and the trial date should be within twelve months of the discovery cut-off date. No modification to the dates set forth in the scheduling order should be permitted except by leave of Court for good cause shown in writing. [28 U.S.C. § 473(a)(1)].

Furthermore, the Court should continue the practice of issuing scheduling orders upon filing of petitions seeking habeas corpus relief. Absent extraordinary circumstances, the Court should endeavor to terminate habeas corpus actions within twelve months of the date on which the initial petition is filed. [28 U.S.C. § 473(a)(1)].

9. The active involvement of the Magistrate Judge and/or District Judge in settlement negotiations is of paramount importance to the efficient handling of cases. Therefore, District Judges and Magistrate Judges should take a more active role in encouraging the settlement of cases by bringing the parties together to discuss settlement in the presence of the Court, making whatever recommendations the District Judge or Magistrate Judge deems appropriate, and taking any other steps to promote and effect settlement within applicable legal and ethical principles. [28 U.S.C. § 473(a)(3)].

10. The efficient use of all court personnel is vital for the expeditious handling of cases. This may involve changing duties or adding assignments as appropriate. For example, the Courtroom Deputy in each Court should assume responsibility for the logistics of all conferences, motions, trial dates, and other appearances in court by the attorneys including: (1) scheduling any attorney appearance; (2) ensuring that attorneys have been notified of all dates and times for trial, oral argument of motions, conferences or other appearances; (3) initial handling of all requests for adjournments; and (4) facilitating all other scheduling or logistical difficulties encountered by the Court or counsel.

11. All pending decisions by a District Judge or Magistrate Judge should be internally monitored by the Clerk's office, and each month a report should be issued that includes:

> (a) All motions that have not been decided within sixty days of the original return date of the motion, regardless of whether there have been additional submissions, additional oral argument, or other potentially delaying factors;
>
> (b) All bench trials that have not been decided within 120 days of the close of proof, regardless of the submission of legal memoranda, oral argument, re-opening of proof, or other potentially delaying factors.

12. Not all motions or bench trials are alike, and due to complexity, scheduling and other difficulties, some motions or bench trials will take longer to decide than others; notwithstanding that, each Judge should target decision of all motions within sixty days of the initial return date, and decision of all bench trials within 120 days of the close of proof.

13. The position of the Civil Justice Reform Act Attorney ("CJRA Attorney"), originally created to assist the Advisory Group in the preparation of its report and the Court in developing its expense and delay reduction plan, should be a permanent position held by an attorney who has been appointed by, and serves at the pleasure of, the Court. The CJRA Attorney should be authorized:

(a) To investigate, and respond to, inquiries by attorneys or litigants regarding the status of a pending motion or bench trial decision; such investigation shall ensure the anonymity of the source and shall be made with the approval of the Chief Judge, and with the assistance of the Chief Judge or the Chief Judge's office personnel, if necessary;

(b) To assist the Court in monitoring the progress of pending class actions by reviewing the joint case status reports required by proposed Local Rule 15(j), by serving as the liaison between counsel and the Court when necessary, and by serving, when so designated by the Court, as special master pursuant to Fed. R. Civ. P. 53 for the purpose of making findings and recommendations to the Court;

(c) To establish and administer further court-annexed alternative dispute resolution programs at the direction of the Court and the Clerk of Court;

(d) To serve as an ombudsman to facilitate the implementation and success of the Court's CJRA expense and delay reduction plan. In this regard, the responsibilities of the CJRA Attorney should include, but not be limited to: (1) serving as liaison between members of the bar or litigants and the Court with respect to case status inquiries; (2) responding to requests for information from litigants and their counsel to ensure the efficient handling and disposition of pending civil cases; (3) educating the Court, members of the bar, litigants and other interested individuals about the Civil Justice Reform Act and the Court's expense and delay reduction plan and their impact on federal court practice; (4) providing information to and soliciting comments from bar associations within the district as to the Court's expense and delay reduction plan and modifications to the Local Rules and individual judges' practice guidelines occasioned thereby; and (5) making litigants and their attorneys aware of alternative dispute resolution mechanisms or other means of intervention that allow for the prompt disposition of cases.

(e) To conduct settlement conferences, scheduling conferences, or other meetings at the request of a District Judge or Magistrate Judge, and to serve as a Special Master under Federal Rule of Civil Procedure 53 when so appointed;

(f) At the direction of the Magistrate Judges, to screen new civil filings in which Rule 16 conferences will be conducted primarily for the purpose of suggesting to the presiding Magistrate Judge any alternative dispute resolution method or other procedure that might expedite disposition. Inasmuch as the utility and cost-effectiveness of such case screening has not yet been proven, the screening program should be conducted initially as an experiment. New civil filings with selected nature of suit codes should be subject to screening by the CJRA Attorney for three months intervals over a period of twelve months. Upon completion of the twelve month experimental period, the Court and the Clerk should determine the types of civil actions that benefit the most from such a procedure. Thereafter, the CJRA Attorney should screen new civil filings bearing nature of suit codes for those case types in which case screening has proven the most effective;

(g) At the direction of the Chief Judge, and in conjunction with the Clerk of the Court, to inquire into the status of all cases pending for more than three years, all motions awaiting decision for more than sixty days, and all bench trials awaiting decision for more than 120 days, including a review of the docket and the questioning of court personnel, litigants, and/or attorneys;

(h) In conjunction with the Clerk of the Court, to report to the Chief Judge on a monthly basis regarding the status of each case pending for more than three years, each motion awaiting decision for more than sixty days, and each bench trial awaiting decision for more than 120 days;

(i) In conjunction with the Clerk of the Court, to report to the Chief Judge twice yearly with respect to the general condition of the District's docket;

(j) To monitor compliance with the Court's expense and delay reduction plan on an ongoing basis and report in writing thereupon to the Chief Judge and the Advisory Group for purposes of the annual assessment called for by 28 U.S.C. § 475. The CJRA Attorney shall monitor compliance with the expense and delay reduction plan by (1) reviewing monthly reports of motions that have not been decided within sixty days of the initial return date; (2) reviewing monthly reports of bench trials that have not been decided within 120 days of the close of proof; (3) consulting with courtroom deputies regarding individual judges' pending caseload; (4) tracking the proceedings in "test groups" of cases to be designated periodically by the Clerk; (5) reviewing reports of cases that have been pending for longer than three years; (6) reviewing and analyzing workload statistics compiled and published by the Federal Judicial Center and the Administrative Office of the United States Courts; and (7) utilizing any other method as directed by the Court or the Clerk of Court.

(k) To coordinate the annual assessment required by 28 U.S.C. § 475 by providing the Court and the Advisory Group with a comprehensive review of the Court's civil and criminal dockets and a report on compliance with the Court's expense and delay reduction plan;

(l) To solicit, receive and process suggestions by attorneys, litigants, court personnel or any interested individuals with respect to increasing the efficiency or decreasing the cost of litigating in the United States District Court for the Western District of New York.

These responsibilities may be modified by the Court or the Clerk as circumstances require.

14. The position of the Civil Justice Reform Act Management Analyst ("CJRA Analyst") should be a permanent position held by an individual who is appointed by, and serves at the pleasure of, the Court. The CJRA Analyst should be authorized:

(a) To assist in coordinating and to evaluate the effectiveness of programs established in accordance with the Court's CJRA expense and delay reduction plan;

(b) To furnish semiannual written reports to the Clerk of Court and the CJRA Attorney regarding the utilization and effectiveness of the Court's CJRA programs, along with appropriate recommendations for improved program operations or litigation management techniques;

(c) To act, together with the CJRA Attorney, as the district's liaison with other districts and agencies on CJRA matters;

(d) To support the CJRA Advisory Group and its Executive Committee in the annual assessments called for by 28 U.S.C. § 475. Such support shall include, but not be limited to: (1) scheduling meetings and sending meeting notices at the direction of the Advisory Group Chairman; (2) attending all Executive Committee and Advisory Group meetings; (3) disseminating information to Advisory Group members at the direction of the Court, the Clerk, the Advisory Group Chairman, or the CJRA Attorney; (4) conducting research and studies at the direction of the Advisory Group or the Executive Committee; and (5) drafting meeting reports;

(e) To develop and coordinate the implementation of methodologies to assess cost and delay in civil and criminal cases;

(f) To review and document case management practices in the district and elsewhere for the purpose of formulating recommendations for improving litigation management and further reducing cost and delay in the processing of civil cases;

(g) To prepare procedural manuals that the Court or the Clerk of Court require in conjunction with the implementation of the Court's expense and delay reduction plan or as may be required from time to time thereafter; and

(h) To perform such other functions as the Court and the Clerk of Court may deem appropriate in furtherance of the CJRA's objectives.

15. Each District Judge and Magistrate Judge should encourage use of the court-annexed voluntary arbitration program described in Part II.E. of this Report or other alternative dispute resolution methods, where appropriate, in order to encourage and facilitate settlement. To supplement the Court's voluntary arbitration program, it is recommended that the Court establish

additional court-annexed programs for alternative dispute resolution such as mediation, early neutral evaluation, mini trial or summary jury trial. Furthermore, the Court should make available information regarding court-annexed and other methods of alternative dispute resolution that litigants and their counsel may pursue to effect early disposition of cases. [28 U.S.C. § 473(a)(6)].

* * * * * * *

The above recommendations should help to reduce excessive cost and delay in a variety of ways. First, they should serve to streamline procedures and provide uniformity from case to case and courtroom to courtroom, thus addressing the Advisory Group's concerns in this regard. Likewise, by providing target dates for various decisions, conferences, and other matters, and by requiring written reasons for departures from these target dates, the recommendations address the Advisory Group's concern with respect to the monitoring of discovery and the issuance of decisions. The use of the CJRA Attorney as an aide to the Chief Judge in evaluating the status of the docket should also serve this purpose. The recommendations also encourage, and provide specific means to achieve, the more effective utilization of personnel, including Magistrate Judges and Courtroom Deputies. Finally, and perhaps most importantly, the recommendations encourage District Judges and Magistrate Judges to become actively involved in settlement negotiations, thus addressing the most troublesome deficiency noted by the Advisory Group.

B. Significant Contributions by the Court, The Litigants and Counsel [28 U.S.C. § 472(c)(2),(3)]

Perhaps the most significant contribution to the increased efficiency that should result from these recommendations must come from the District Judges and Magistrate Judges themselves. For these recommendations to result in effective changes, the Judges must emphasize their roles in facilitating settlement negotiations and monitoring the progress of cases. Moreover, the judges' efforts to meet the target dates for decisions of motions and bench trials, and their candid reporting of all cases in which these target dates are not met, with explanations for any delay, will ensure that this plan can be reevaluated and additional necessary changes effected.

Likewise, consistent with their professional responsibilities, counsel will be expected to make every effort to adhere to the schedules set by the Court to request adjournments only in extraordinary circumstances, and to enter into forthright settlement negotiations as early in the process as possible.

Litigants will be expected to contribute both by cooperating with their attorneys in adhering to deadlines set by the Court, and by adopting a reasonable settlement position early in the litigation.

The Advisory Group recognizes that because each case is different, rigid rules that provide for no deviation would be neither fair nor particularly efficient. Consequently, these recommendations expect and need good faith efforts by all involved in the litigation process in order to be effective.

C. Consideration of Principles and Techniques for Litigation Management and Cost and Delay Reduction [28 U.S.C. § 472(b)(4)]

By providing for some flexibility in the scheduling process, the Advisory Group has taken into account the different treatment needed by different cases. Beyond that, the Advisory Group feels that it is not advisable to require systematically different treatment of different types of cases. [28 U.S.C. § 473(a)(1)].

In its revision of Local Rule 13, the Advisory Group has provided for early and on-going control of the pre-trial process. The structure and timing recommended by the Advisory Group are designed to provide a realistic and workable goal for the handling of cases, without sacrificing the civility and decency referred to earlier in this report. [28 U.S.C. § 473(a)(2)].

Likewise, by providing for discovery conferences and settlement conferences, the recommendations create a system for a series of meetings whereby a judicial officer can carefully monitor the possibility of settlement, the resolution of factual and legal issues in a case, and the status of discovery. [28 U.S.C. § 473(a)(3)].

The local rules of the United States District Court for the Western District of New York already encourage cost effective discovery through voluntary exchange of information and the use of cooperative discovery devices, and conservation of judicial resources by prohibiting discovery motions unless a good faith effort has been made to reach agreement with opposing counsel. Because the Advisory Group does not feel that there is any routine or widespread abuse of the discovery process in the District, no recommendation to impose limits on discovery or further specific recommendation regarding discovery is needed. [28 U.S.C. § 473(a)(4),(5)].

Finally, in encouraging the use of the Court's voluntary arbitration program and other alternative dispute resolution mechanisms, the Advisory Group has specifically considered referral of appropriate cases to alternative dispute resolution programs. [28 U.S.C. § 473(a)(6)].

The Advisory Group notes that the six items listed in 28 U.S.C. § 473(b) have been considered and included in the Civil Justice Expense and Delay Reduction Plan.

D. Recommended Plan

The Advisory Group recommends adoption of the Proposed Cost and Delay Reduction Plan attached as Appendix "C".

APPENDIX A

APPENDIX "A"

MEMBERS OF THE CJRA ADVISORY GROUP FOR THE WESTERN DISTRICT OF NEW YORK

PAUL R. BRAUNSDORF, Esq.

Mr. Braunsdorf was awarded his B.A. degree from the University of Notre Dame in 1965 and his L.L.B. degree in 1968 from the University of Virginia Law School. He is a member of the firm of Harris, Beach & Wilcox where he concentrates in civil litigation specializing in antitrust, trade regulation, commercial law and product liability litigation with particular emphasis on federal court practice. Mr. Braunsdorf is admitted to practice before the courts of the State of New York, the federal courts for the Western and Northern Districts of New York, the Second Circuit Court of Appeals, and the United States Supreme Court. He is a member of the American, New York State and Monroe County Bar Associations.

ALEXANDER C. CORDES, Esq.

Mr. Cordes received his B.A. degree from Yale University in 1947 and his L.L.B. from the University of Buffalo in 1950. From 1950 to 1954 he was an associate with the firm of Kenefick, Bass, Letchworth, Baldy and Phillips. From 1954 to 1956 Mr. Cordes was an assistant U.S. Attorney for the Western District of New York. In 1956, he became a member of the firm of Phillips, Lytle, Hitchcock, Blaine & Huber. He now is counsel to that firm. Mr. Cordes is a fellow of the American College of Trial Lawyers, the American Bar Foundation and the New York Bar Foundation and a member of the American, New York State and Erie County Bar Associations. He has lectured in New York State Bar Association programs on federal court practice and other topics and, until his retirement, co-edited the column "Western District Case Notes" summarizing recent decisions from the District. From 1989 to 1992, Mr. Cordes co-chaired the New York State Bar Association's Committee on Attorney Professionalism.

HONORABLE RODNEY C. EARLY, Clerk, United States District Court for the Western District of New York.

Mr. Early earned his B.A. degree in 1973 from Duquesne University and his M.A. degree in 1980 from Fordham University. He served as a Probation/Parole Officer for the Philadelphia Court of Common Pleas from 1974 through 1976. In 1976, he assumed the position of U.S. Probation Officer in the Western District of New York. He subsequently became the Supervising U.S. Probation Officer and the Chief U.S. Probation Officer for the

Western District of New York. In 1992 Mr. Early was appointed as Clerk of the United States District Court for the Western District of New York. Mr. Early is a member of the Federal Probation Officers' Association, the Federal Law Enforcement Officers' Association, the Federal Probation/Pretrial Services Clerks' Council, and the American Correctional Association. Mr. Early is a member of the Advisory Group's Executive Committee.

ANGELO G. FARACI, Esq.

Mr. Faraci was awarded his law degree at Albany Law School in 1957 and thereafter entered into the private practice of law. He is a member of the firm of Faraci, Guadagnino, Lange & Johns. Mr. Faraci specializes in civil litigation, with emphasis on tort litigation. He is a member of the American and New York State Bar Associations as well as the New York State Trial Lawyers and American Trial Associations. Mr. Faraci has served as an officer and as a member of the Board of Trustees of the Monroe County Bar Association.

JONATHAN W. FELDMAN, Federal Public Defender, Western District of New York.

Mr. Feldman received his B.S. degree in 1978 from the New York State School of Industrial Labor Relations at Cornell University and his J.D. degree in 1981 from Syracuse University College of Law. He began his legal career as an associate with the firm of Harris, Beach, Wilcox, Rubin and Levey. Thereafter, he served as a law clerk to Honorable Michael A. Telesca, United States District Judge for the Western District of New York. After completing his clerkship, Mr. Feldman was employed as an Assistant United States Attorney in the Western District of New York. In 1987 he entered into the private practice of law as a partner in the firm of Geraci and Feldman. In February 1992, Mr. Feldman was appointed to serve as Federal Public Defender for the Western District of New York. He is admitted to practice before the courts of the State of New York, the United States District and Bankruptcy Courts for the Western District of New York and the United States Court of Appeals for the Second Circuit. Mr. Feldman is a member of the American, New York State and Monroe County Bar Associations.

HONORABLE KENNETH R. FISHER, United States Magistrate Judge, United States District Court for the Western District of New York.

Magistrate Judge Fisher received his B.A. degree from Williams College in 1974 and his J.D. degree from Vermont Law School in 1977. He began his law career as an Assistant District Attorney for the Monroe County District Attorney's Office, during which time he also served as a Special Assistant United States Attorney and Special Counsel for the Steuben County District Attorney. Subsequently, he served as Deputy County Attorney for the Monroe County Law Department until his appointment to the Bench in 1988. Magistrate Judge Fisher is a member of the National Council of United States Magistrate Judges, the American Bar

Association, the Federal Bar Council, the New York State Bar Association, the Monroe County Bar Association and the Greater Rochester Association for Women Attorneys.

HONORABLE LESLIE G. FOSCHIO, United States Magistrate Judge, United States District Court for the Western District of New York.

Magistrate Judge Foschio received his B.A. degree from the University of Buffalo in 1962 and his L.L.B degree from the State University of New York at Buffalo School of Law in 1965. He began his legal career as a law clerk to Justice William B. Lawless of the New York State Supreme Court, following which he served as a staff attorney in the Office of Legal Counsel at the State University of New York at Albany. Thereafter he was an Assistant District Attorney in Erie County and served as Senior Assistant District Attorney from 1968 to 1969. Subsequently he served as an Associate Professor of Law and Assistant Dean at the Notre Dame Law School. From 1975 to 1977 Magistrate Judge Foschio was Corporation Counsel for the City of Buffalo after which he was a member of the firm of Cohen, Swados, Wright, Hanifin, Bradford and Brett. Thereafter, from 1981 through 1983 Magistrate Judge Foschio was the Commissioner of Motor Vehicles for the State of New York. Subsequently he served as Vice President/General Counsel for Barrister Information Systems Corporation. On February 1, 1991, Magistrate Judge Foschio was appointed to the Bench.

LOUIS J. GICALE, JR., Esq. First Assistant United States Attorney, Western District of New York.

Mr. Gicale began his legal career as an Assistant District Attorney in the District Attorney's Office, Erie County, where he served from 1976 to 1981. While there, he served as a trial attorney in the Felony Trial Bureau and later as Chief of the Fraud and Administrative Bureaus. From 1981 to 1989, Mr. Gicale was an Assistant Attorney General for the State of New York. In that position he served in the Division of State Counsel and as Chief of the Frauds Bureau. In 1989 Mr. Gicale became an Assistant United States Attorney for the Western District of New York. From 1989 to 1990 he was Chief of the Asset Forfeiture Unit and from 1989 to 1991 he served as Chief of the Civil Division. Mr. Gicale currently is the First Assistant United States Attorney for the Western District of New York.

RICHARD F. GRIFFIN, Esq.

Mr. Griffin was awarded his A.B. degree from Canisius College in 1954 and his J.D. degree in 1957 from the University of Buffalo Law School. He is a partner and member of the trial department of Phillips, Lytle, Hitchcock, Blaine & Huber. Mr. Griffin is a fellow of the American College of Trial Lawyers, an executive committee member of the Commercial and Federal Litigation Section of the New York Bar State Association, a member of the Board of Directors of the Legal Services for the Elderly Project, and co-chairman of the Special Task

Force on Minorities in the Legal Profession. He has served as president of the National Association of Railroad Trial Counsel, Vice President and member of the Executive Committee of the New York State Bar Association, President of the Erie County Bar Association, Chairman of the Federal Practice Committee of the Erie County Bar Association, Chairman of the Public Interest Committee and Pro Bono Project Advisory Board of the Erie County Bar Association and Chairman and member of the Advisory Board of the Volunteer Lawyers Project of Erie County.

HONORABLE CAROL E. HECKMAN, United States Magistrate Judge, United States District Court for the Western District of New York.

Magistrate Judge Heckman was awarded her B.A. degree from Lawrence University and her J.D. degree from the Cornell University Law School in 1977. She began her legal career as a law clerk to the Honorable John T. Curtin, United States District Judge for the Western District of New York. Magistrate Judge Heckman also served as a trial attorney for the United States Department of Justice, Civil Rights Division and held the position of Assistant United States Attorney for the Western District of New York. Following her service as an Assistant U.S. Attorney, Magistrate Judge Heckman was named a partner in the firm of Albrecht, Maguire, Heffner and Gregg, P.C., and until her appointment to the Bench, was a partner with the firm of Lippes, Silverstein, Mathias & Wexler. Magistrate Judge Heckman is a member of the Erie County Bar Association, the Trial Lawyers of Western New York, the New York State Women's Bar Association, the Women Lawyers of Western New York, and the New York State Bar Association.

BRYAN D. HETHERINGTON, Esq.

Mr. Hetherington received his B.A. degree from LaSalle College in 1972 and his J.D. degree from the Cornell Law School in 1975. From September 1975 through July 1980 he served in various positions for Mid-Hudson Legal Service, Inc., and was the managing attorney in both its Kingston and Poughkeepsie, New York locations. Since July 1980 Mr. Hetherington has served as the Litigation Director for the Monroe County Legal Assistance Corporation. He is admitted to practice before the Courts of the State of New York and the Commonwealth of Pennsylvania, the Federal Courts of the Southern, Northern and Western Districts of New York, and the Supreme Court of the United States. Mr. Hetherington is the president of the Housing Council of Monroe County, Inc. and a member of the New York State Department of Social Services' State Commissioner's Advisory Council, the New York State Department of Social Services' General Counsel's Legal Services Advisory Council and the Monroe County Bar Association.

HONORABLE MICHAEL J. KAPLAN, Chief Judge, United States Bankruptcy Court for the Western District of New York.

Judge Kaplan received his B.A. degree from Columbia College in 1968 and his J.D. degree from the Boston University School of Law in 1971. He began his legal career as a senior editor for the Lawyer's Cooperative Publishing Company. He also taught at various colleges and engaged in a private law practice. In 1981, Judge Kaplan was appointed as the Clerk of the United States Bankruptcy Court for the Western District of New York. Subsequently he was appointed as Clerk of the United States District Court for the Western District of New York. In 1991, he was appointed as United States Bankruptcy Judge for the Western District of New York and was appointed Chief Judge on January 1, 1993. Judge Kaplan is a member of the Erie County Bar Association and the National Conference of Bankruptcy Judges. Judge Kaplan serves on the Advisory Group's Executive Committee.

BRIAN M. MC CARTHY, Esq., Assistant United States Attorney, Western District of New York.

Mr. McCarthy was awarded his B.A. degree from St. John Fisher College in 1974 and his J.D. degree from Syracuse University in 1977. He served as an Assistant District Attorney in the Monroe County District Attorney's Office before assuming his present position as Assistant United States Attorney for the Western District of New York. Mr. McCarthy is a member of the Monroe County Bar Association.

MICHAEL W. MC CARTHY, Esq.

Mr. McCarthy received his B.S.F.S. degree from the Georgetown University School of Foreign Service and his J.D. degree from the Fordham University Law School in 1979. He began his law career as a confidential law assistant to the Honorable Paul J. Yesawich, Jr., Associate Justice, New York State Appellate Division, Albany, New York. From 1981 through 1984, Mr. McCarthy was an associate with Jennings, Kepner & Haug in Phoenix, Arizona, following which he assumed the position of Assistant Attorney General in the Arizona Attorney General's Office. Thereafter Mr. McCarthy engaged in the private practice of law and served as consultant and Special Arizona Attorney General for the State of Arizona in construction contract disputes. Subsequently Mr. McCarthy served as the managing attorney for Community Legal Services in Prescott, Arizona. He assumed the duties of his present position as managing attorney of Prisoner's Legal Services of New York in Buffalo, New York in September 1989.

ELIZABETH J. MC DONALD, Assistant Attorney General, New York State Department of Law.

Ms. McDonald was awarded her B.A. degree from Elmira College in 1975 and her J.D. degree from Albany Law School of Union University in 1978. She began her legal career as a confidential law clerk for the New York State Court of Appeals. Thereafter she served as an associate with the law firm of Harter, Secrest & Emery. Since 1984, Ms. McDonald has held the position of Assistant Attorney General for the New York State Department of Law. Ms. McDonald is admitted to practice before the courts of the State of New York and the United States District Court for the Northern and Western Districts of New York. She is a member of the New York State and Monroe County Bar Associations and the Greater Rochester Association for Women Attorneys.

GREGORY P. MILLER, Esq.

Mr. Miller received his B.A. degree from Canisius College in 1978 and his J.D. degree in 1982 from the State University of New York at Buffalo. He began his legal career as a public defender with the Legal Aid Bureau of Buffalo where he served from 1982 to 1984. Since that time Mr. Miller has been employed as a personal injury defense attorney in the law offices of Carl R. Ellis. He is admitted to practice before the courts of the State of New York. Mr. Miller is a member of the Erie County and New York State Bar Associations, the Minority Bar Association of Western New York, and the Eighth Judicial District's Attorney Grievance Committee. He is president of the Thurgood Marshall Lawyers Club of Buffalo, vice-president of the Board of Directors of Neighborhood Legal Services, Inc. and an original member of the Erie County Bar Association's and the Minority Bar Association's Joint Task Force on Minorities in the Profession. From 1989 to 1990 Mr. Miller served a vice-president of the Minority Bar Association of Western New York and in 1989 he served as vice-chair of the Erie County Bar Association's Judiciary Committee.

JAMES M. MORRISSEY, Esq.

Mr. Morrissey earned his J.D. degree in 1978 from the State University of New York at Buffalo. He began his legal career in New York City, holding positions with Advocates for Children of New York and The Door and as a member of the firm of Morrissey and Thorpe. Mr. Morrissey subsequently served as the Deputy Director for the Public Utility Law Project prior to assuming his responsibilities as Executive Director of Neighborhood Legal Services, Inc. Mr. Morrissey is admitted to practice in all state and federal courts in New York and the Second Circuit Court of Appeals.

CAROLYN G. NUSSBAUM, Esq.

Ms. Nussbaum received her B.A. degree from Smith College and her J.D. degree from George Washington University. She is currently a member of the firm of Nixon, Hargrave, Devans & Doyle. In her practice, Ms. Nussbaum concentrates in the areas of commercial litigation and securities law. Ms. Nussbaum is licensed to practice law in the State of New York and in the District of Columbia. She has served on the Character and Fitness Committee for the Seventh Judicial District, on the Board of the Greater Rochester Association of Women Attorneys as Chair of its Judicial Evaluation Committee, and as Chair of the Monroe County Bar Association's Women in the Law Committee and its Subcommittee to study gender bias in the courts.

KENNETH A. PAYMENT, Esq.

Mr. Payment was awarded his B.A. degree from Union College in 1963 and his L.L.B. degree from the Cornell Law School in 1966. He served as an associate with the firm of Wiser, Shaw, Freeman, VanGraafeiland, Harter & Secrest and became a member of that firm, now known as Harter, Secrest & Emery. Mr. Payment specializes in class actions, litigation of business disputes, ERISA litigation, and estate and fiduciary litigation. He is a member of the American, New York State and Monroe County Bar Associations and the Federal Bar Council. Mr. Payment has served as Chairman of the United States Magistrate Screening Panel for the Western District of New York in 1983, 1984 and 1987; the United States Bankruptcy Judge Screening Panel for the Western District of New York in 1982 and 1985; and currently is the Chairman of the Civil Justice Reform Act Advisory Group for the Western District of New York. As Chairman of the CJRA Advisory Group, Mr. Payment is a member of its Executive Committee.

DANIEL T. ROACH, Esq.

Mr. Roach is a 1950 graduate of Williams College and a 1953 graduate of the University of Buffalo Law School. From 1953 to 1955 he served in the United States Army in the Courts and Boards Section of the 167th Infantry Regiment. From 1955 to the present he has engaged in the private practice of law and is a member of the firm of Maloney, Gallup, Roach, Brown & McCarthy, P.C. From 1970 to the present he has served as a lecturer at the State University of New York at Buffalo School of Law. Mr. Roach is a member of the American College of Trial Lawyers.

SUSAN C. RONEY, Esq.

Ms. Roney was awarded her B.A. degree in 1979 from the State University of New York at Buffalo and her J.D. degree in 1982 from the University of San Diego School of Law. She began her career as an associate at Moot & Sprague and became a litigation partner

with that firm in January, 1989. She is now counsel to Nixon, Hargrave, Devans & Doyle. Ms. Roney is admitted to practice in the New York State courts, the Federal Courts for the Western, Eastern and Southern Districts of New York and the Second Circuit Court of Appeals. She is a member of the American, New York State, and Erie County Bar Associations, and serves on the Executive Committee of the National Association of Railroad Trial Counsel and the Board of Directors of the Western New York Defense Trial Lawyers Association. Ms. Roney served on the Magistrate Selection Committee for the United States District Court for the Western District of New York in 1992.

H. KENNETH SCHROEDER, JR., Esq.

Mr. Schroeder earned his B.A. degree from Canisius College in 1958, his J.D. degree from the University of Buffalo Law School in 1961, and his L.L.M. degree and Certificate of Proficiency in Trial Advocacy from the Georgetown University Law Center in 1962. He began his law career in Washington, D.C. where he was employed by the United States Department of Justice and served as a Special Assistant United States Attorney. Subsequently, he served as a trial attorney in the litigation department of Hodgson, Russ, Andrews, Woods & Goodyear. In 1969, Mr. Schroeder was appointed as the United States Attorney for the Western District of New York. He served in that role until 1972. Mr. Schroeder is now a partner with the firm of Hodgson, Russ, Andrews, Woods & Goodyear where he is a senior trial attorney in the litigation department. His practice includes general civil and criminal litigation as well as appellate practice in state and federal courts. Mr. Schroeder is admitted to practice before the courts of the State of New York, including all federal district courts in New York State and the Second Circuit Court of Appeals. He is also admitted to practice in all District of Columbia courts, including the United States Court of Appeals for the District of Columbia, and the courts of the State of Florida. Mr. Schroeder is a member of the Erie County Bar Association.

SANFORD R. SHAPIRO, Esq.

Mr. Shapiro conducted his undergraduate studies at the University of Illinois and the Cornell University School of Industrial and Labor Relations and received his J.D. degree from the Syracuse University College of Law in 1958. He is a senior partner with the firm of Shapiro, Rosenbaum and Liebschutz, Esqs., with emphasis in civil litigation and appeals. He is admitted to practice before the courts of New York State, the Federal Court for the Western District of New York, the Second Circuit Court of Appeals, and the United States Supreme Court. Mr. Shapiro is a member of the American Bar Association and is a trustee of the Monroe County Bar Association. He also serves as a member of the Fourth Judicial Department's Special Grievance Committee.

PETER B. SULLIVAN, Esq., Assistant Attorney General In Charge, State of New York Department of Law, Buffalo Regional Office.

Mr. Sullivan was awarded his B.S. degree from Bucknell University in 1970 and his J.D. degree from Albany Law School in 1974. From 1974 to 1975 he was a staff attorney with the New York State Office of Court Administration. Thereafter, from 1975 to 1981 Mr. Sullivan served as an Assistant Public Defender in Monroe County. In 1981, he assumed the position of Assistant Attorney General for the State of New York Department of Law in the Buffalo regional office and has served in his present role as assistant attorney general in charge of that office since 1983. Mr. Sullivan has served as a board member of the Buffalo and Fort Erie Public Bridge Authority since 1983.

HONORABLE MICHAEL A. TELESCA, Chief Judge, United States District Court for the Western District of New York.

Judge Telesca received his A.B. degree from the University of Rochester in 1952 and his J.D. degree from the University of Buffalo Law School in 1955. Judge Telesca served in the United States Marine Corps as an Infantry Platoon Leader and also as a Staff Legal Officer, having been discharged with the rank of First Lieutenant. Thereafter, he was a partner in the Rochester law firm of Lamb, Webster, Walz, Telesca & Donovan for 16 years as a general practitioner and trial counsel. He also served as Town Attorney for the Township of Gates, New York from 1966 through 1970. Judge Telesca was elected Surrogate Court Judge of Monroe County and served in that capacity from 1973 until his appointment to the federal Bench in 1982. Judge Telesca is a member of the Monroe County, New York State and American Bar Associations, the American Judicature Society and the Justinian Society of Jurists. In May 1992, Chief Justice Rehnquist appointed Judge Telesca to serve a four-year term on the Board of Directors of the Federal Judicial Center in Washington, D.C. Judge Telesca is a member of the Advisory Group's Executive Committee.

HONORABLE DENNIS C. VACCO, United States Attorney, Western District of New York.

Mr. Vacco received his B.A. degree from Colgate University in 1974 and his J.D. degree from the State University of New York at Buffalo in 1978. He began his career as an Assistant District Attorney with the Erie County District Attorney's Office and also served as Chief of the Grand Jury Bureau under the Erie County District Attorney. In 1988, Mr. Vacco was appointed as the United States Attorney for the Western District of New York. Mr. Vacco is admitted to practice in both the state and federal courts in New York State. He is a member of the National District Attorney's Association, the New York State District Attorney's Association and the Erie County Bar Association.

LAWRENCE J. VILARDO, Esq.

Mr. Vilardo earned his B.A. degree from Canisius College in 1977 and his J.D. degree from the Harvard Law School in 1980. From 1980 through 1981 he served as a law clerk to the Honorable Irving L. Goldberg of the Fifth Circuit Court of Appeals. He is a member of the firm of Connors & Vilardo. Mr. Vilardo has served as a faculty member of Canisius College and a lecturer at the State University of New York at Buffalo School of Law. He is a member of the American, New York State and Erie County Bar Associations. Mr. Vilardo serves as the Reporter for the Advisory Group and is a member of its Executive Committee.

EUGENE WELCH, Esq., Assistant Attorney General In Charge, State of New York Department of Law, Rochester Regional Office.

Mr. Welch was awarded his B.A. degree in 1967 from St. John Fisher College and his J.D. degree in 1970 from Columbus School of Law, Catholic University of America. He served as a law clerk for the Honorable Aubrey E. Robinson, Jr., United States District Judge for the District of Columbia. Thereafter, Mr. Welch served as an Assistant United States Attorney in the Northern and Western Districts of New York. In 1979, he joined the New York State Attorney General's Office and is currently the Assistant Attorney General In Charge of the New York State Attorney General's Rochester Regional Office. Mr. Welch is admitted to practice before the courts of the State of New York, the United States District Courts for the Northern and Western Districts of New York, and the United States Court of Appeals for the Second Circuit. Mr. Welch is a member of the New York State and Monroe County Bar Associations.

APPENDIX B

APPENDIX "B"

The full Advisory Group met on several occasions to share ideas on cost and delay in civil litigation in the Western District of New York. Meetings of the full Advisory Group were held in Batavia, New York to accommodate members from both the Buffalo and Rochester metropolitan areas.

The members of the Advisory Group undertook to develop a questionnaire to be presented to each of the District Judges regarding chambers and courtroom procedures. The Advisory Group was divided into subcommittees and the members of each subcommittee met with one of the active or senior Judges in the District. Using the questionnaire (a copy of which follows this Appendix) the subcommittee members interviewed the Judges as to their procedures for case management, scheduling, motion and trial practice, as well as their perceptions as to the causes of cost and delay in civil litigation in the Western District of New York.

Upon completion of the interviews with the Judges, the chairperson of each subcommittee prepared a written summary of the interview. Those summaries were circulated to the full Advisory Group membership and were central to the preparation of this Report.

In addition, the members of the full Advisory Group provided information as to cost and delay in the cases pending in the District for three years or longer as of September 30, 1991. A list of such cases was circulated to all members of the Advisory Group and each member was asked to identify those matters in which he or she was personally or by office affiliation involved in the representation of any of the parties and to indicate the reasons he or she believed were responsible for the matter's continued pendency. The responses of the Advisory Group are indicated in Section III of this Report. A copy of the memorandum (without the case list) circulated to the Advisory Group Members follows this Appendix.

Furthermore, various members of the Advisory Group assisted in the drafting of portions of this Report. All members participated in reviewing and commenting upon the draft versions of the Report and collectively prepared this final Report for submission to the Court.

QUESTIONNAIRE

1. Time Limits

   a. What is your practice regarding monitoring service of process?

   b. What is your practice regarding extensions of time to respond to complaints and motions?

   c. What procedures have you found most effective in enforcing time limits?

2. Rule 16 Conferences

   a. Do you hold Rule 16 conferences?

   b. What is the format of your conference?

   c. Do you use a scheduling order? (if so, obtain a copy of order)

   d. Are any types of cases exempted from Rule 16 conferences?

   e. Do you find the conferences effective? Why or why not?

   f. Describe your use of magistrate judges in your Rule 16 conferences.

3. Discovery Procedures

   a. Do you set cut-off dates for discovery? (If so, obtain a copy of any scheduling order.)

   b. Describe your procedures and practices regarding controlling the scope and volume of discovery.

   c. Do you use a Rule 26(f) discovery conference? If so, describe the scope of the conference.

   d. Describe your use of magistrate judges for resolving discovery disputes.

4. Motion Practice

a. Describe your practice regarding requests for oral argument.

b. What is your criteria for granting oral argument?

c. What time limits (if any) do you place on oral argument?

d. What criteria do you use for placing such time limits and how are the attorneys informed of such time limits?

e. Describe your procedure for monitoring the filing of motions, responses and briefs.

f. How far in advance of oral argument do you require all papers to be submitted?

g. Do you use proposed orders from attorneys?

h. What is your opinion of a motion day practice?

i. Do you make oral rulings on motions? If so, describe frequency, type of case, effectiveness, etc.

5. Decisions

a. Describe your internal policies for handling motions and bench trials which are ready for a decision -- i.e., priority of ruling, policies for written opinions, policies regarding published opinions, etc.

b. Describe any internal time limits that you place on yourself and your staff with respect to deciding motions or bench trials, and your procedure for monitoring such time limits.

c. Do you have a procedure to discuss with your clerks and/or office staff any motions/bench trials which have been awaiting decision for a certain length of time? If so, please describe this procedure.

d. For internal purposes, how do you decide when a motion or bench trial is "ready for ruling"?

6. Pretrial Conferences

a. Describe your procedures regarding final pretrial conferences.

b. Do you send out a pretrial conference order? (If so, obtain copy.)

c. How do you structure the sequence of trial issues, i.e., do you bifurcate trials and under what conditions?

d. The Committee believes that it is important for the trial judge to be involved in settlement discussions at an early stage of litigation and throughout the process. In what ways do you think your role in settling cases can be increased or improved?

e. When do you first discuss settlement in a case?

f. What role do you assume?

g. How many settlement conferences do you have and what criteria do you use to decide whether negotiations might be fruitful?

h. Do you include the parties themselves in settlement conferences? If so, under what circumstances and when?

i. Do you utilize magistrate judges to help to settle cases? If so, how and when?

j. Once trial begins, do you continue your role? If so, how?

k. What procedures have you found to be especially helpful in settling cases?

7. Setting Trial Date

a. Describe your method for scheduling trials (i.e., date certain, following, etc.)

b. Describe procedures you have found to be most effective in scheduling trials.

8. Trial

a. Do you have any procedures for limiting the length of the trial itself (e.g. witness lists and conferences to weed out duplicative testimony; encouraging in limine motions to avoid wasting time during trial, etc.)? If so, what are they and when do you use them?

b. What procedures have you found to be most effective in this regard?

c. Have there been any procedures that you have abandoned as ineffective?

9. Alternative Dispute Resolution

a. What are your opinions of the effectiveness of alternative forms of dispute resolution?

b. Have you ever used any forms of alternative dispute resolution? If so, what forms?

10. Impact of Criminal Caseload

a. How do criminal cases impact the processing of civil cases?

b. What criminal cases should or should not be handled by the U.S. Attorney (i.e. are there categories or types of cases by group or size which should not be handled by the U.S. Attorney in the District Court?)

c. What can the U.S. Attorney do to expedite the handling of criminal cases?

11. Impact of Pro Se Cases

a. How do pro se cases impact the processing of other civil cases?

b. What can be done to expedite the handling of pro se cases?

c. What can be done to alleviate the burden of pro se cases on other civil cases?

12. General Comments

a. Do you think civil cases take too long in this District? If so, are there certain types of cases which take longer than others?

b. Do you think it costs too much to litigate civil cases in this District? If so, what can be done to decrease the costs of litigation?

c. What, in your opinion, is the most effective tool or process to expedite civil cases?

d. What difficulties have you encountered in moving your civil case docket?

e. What other recommendations or suggestions do you have for addressing the cost or delay of civil cases?

f. Do you think that courtroom deputies and office staff are currently utilized effectively? If not, what ideas do you have for more effective utilization?

MEMORANDUM

U.S. District Court
Western District of New York
282 U.S. Courthouse ■ Rochester, New York 14614 ■ 716-263-6719

TO: CJRA Advisory Group

FROM: Rachel Brody Bandych RBB

DATE: May 12, 1992

RE: Analysis of Cost and Delay in the Western District of New York

As was discussed at the March 3, 1992 meeting of the Advisory Group, the members of the executive committee are working to prepare a draft Advisory Group report and a draft plan for the reduction of cost and delay to circulate to you for your review and comment. In gathering the information necessary to prepare those drafts, Judge Michael Kaplan, Rodney Early and I have undertaken to conduct a statistical analysis of the docket for the Western District of New York. In doing so we will identify trends in both the District and in the nation over the past ten years to determine what the statistics reflect as the strengths and weaknesses pertinent to civil litigation in the Western District of New York.

One area of particular concern to the Court relates to civil matters that have been pending three or more years. Each District is required to submit to the Administrative Office of the U.S. Courts quarterly reports of such cases which indicate the current status of each case listed. While the report indicates the current status of each case, it is not designed to explain the reason or reasons why each case has had more than a three-year lifespan. A copy of the most recent list of such cases for the Western District of New York is enclosed.

Last Spring Judge Kaplan canvassed the Advisory Group for your views as to the reasons for cost and delay in civil litigation in this District. A copy of his compilation of those responses is also enclosed with this letter.

In order to further our analysis of cost and delay in the District, Judge Kaplan, Rod Early and I ask that you review the list of three-year-old cases and identify those cases in which you are personally or vicariously involved. Then indicate, by referring to the numbers noted on the list of reasons for cost and delay, why you believe the matter is still pending. In order to obtain the most useful data possible, please respond for each case as to which you have knowledge, not only those cases that you find particularly problematic. You may feel free to indicate additional reasons for cost

and delay, beyond those appearing on the enclosed list, if applicable in a particular instance.

Please be assured that no information you submit with respect to a particular case will be disclosed to the judge or magistrate judge assigned to that case. However, if you would prefer not to identify your involvement in a specific case, please refer to it in general terms (i.e., "a certain civil rights case that has been pending for eight years."). Even such general information will aid us in our attempt to reconcile the statistical data for the District with the views of the Advisory Group members as to the reasons for cost and delay in civil litigation in the District.

In order to adhere to our schedule for preparing and circulating the draft report and plan, we would like to receive your responses as soon as practicable, but in no event later than Friday, May 29, 1992. You may send them to me at the above noted address. If you have any questions, please do not hesitate to contact Judge Kaplan, Rod Early or myself. Thank you for your assistance in completing our analysis.

RBB/lar
Enclosures

June 25, 1991

To: CJRA Advisory Group
From: Michael Kaplan
Re: Cost and Delay "tally"

SET FORTH IN NO PARTICULAR ORDER

1. Delay by judges in hearing/deciding motions, in general

2. Delay by judges in deciding summary judgment motions

3. Failure of judges to undertake active case management (such as in discouraging motions)

4. Case complexity (2 aspects -- some cases are inherently lengthy and expensive; also, the complex cases drain resources away from the simpler cases -- the "Love Canal" effect)

5. Failure to set trial date in scheduling order results in long wait for trial after completion of discovery

6. Trial dates not adhered to (results in delay, expense of re-preparing, postponing of serious settlement efforts)

7. Failure of lawyers to compromise on minor matters

8. Some lawyers' abuse of discovery

9. Burdens (on the court) of pro se litigation

10. Burdens (on opponents) of pro se litigation

11. Failure or inability of judges or of local rules to facilitate settlement

12. Underuse of grant of summary judgment

13. Underuse of grant of motion to dismiss (FRCP 12(b)(6) ?)

14. Inconsistent or unreasonable scheduling orders

15. Disorganized conference practice (too many conferences, too few, etc.)

16. Needless oral argument

17. Lack of use of a Ready Calendar

Statutory requirement of priority for criminal cases

Size of per-judge caseload

In addition to some of the above, IN PRISONER CASES (25% of our civil caseload)--

18. Defendants (often, but not always, represented by NYS Atty. Gen) often force plaintiff to compel discovery of materials which clearly must be provided Failure of defendants to negotiate settlement in good faith

19. Extensive delays on defendants' part in responding to offers of settlement, particularly in injunctive cases

20. [M. Kaplan would note that the above 3 problems are <u>much worse</u> when the plaintiff is pro se]

21. Failure of court to conduct <u>in camera</u> inspections after agreeing to do so

22. Transfer of plaintiffs to other sites across the state, necessitating extensive travel or communication by mail

23. [M.Kaplan would add to this the fact that since almost all prisoners are <u>in forma pauperis</u>, service of process is by the US Marshal, and service by the Marshal is made into a very long and terribly expensive process by DOCS: piecemeal service is a drain on the court's resources]

24. [M.Kaplan would also add to this the fact that when a case is settled for money, lengthy delay in payment places added drain on the court]

25. [M. Kaplan would hasten to point out that prisoner cases are the ONE area of civil litigation in which the Clerk's office could be of major help in freeing-up the Judges for other litigation IF the Clerk's office could have more lawyer-resources in its Pro Se Department.]

NOT MENTIONED BY ANYONE -- NOT PERCEIVED AS A PROBLEM ?

26. Lack of Alternative Dispute Resolution methods other than settlement conferences

27. Trial practice and jury practices

28. Use of supporting personnel (Magistrates, Courtroom Deputies and other Deputies, and law clerks)

29. Incentives/disincentives to litigation (or to choice of federal forum)

30. Criminal case volume (e.g. charging practices, plea-bargaining practices, discovery, etc.)

31. Legislation other than Speedy Trial (e.g., civil RICO, ERISA pre-emption)

32. Legislative inaction (e.g., further narrowing diversity)

APPENDIX C

APPENDIX "C"

PROPOSED COST AND DELAY REDUCTION PLAN

[Prior to amendment of the local rules as called for by this proposed plan, the Court must give public notice and receive public comment pursuant to Federal Rule of Civil Procedure 83.]

1. Upon filing, the Clerk of the Court shall assign every civil case both to a District Judge and to a Magistrate Judge. Pursuant to 28 U.S.C. § 636(b)(1), the District Judge to whom each civil case is assigned shall immediately designate the Magistrate Judge to whom the case is assigned to hear and determine all issues involving discovery and non-dispositive motions. The first two sentences of Local Rule 6(a) are amended to provide as follows:

> Every civil action shall be filed with the Clerk. It shall then be assigned by the Clerk to a Judge of the District and a Magistrate Judge.

2. Within ten days of the filing of a civil action, the Clerk shall notify the litigants in writing of their option to consent to the handling of the entire case (including dispositive motions and trial) by the Magistrate Judge. The parties and their attorneys shall also be advised that, as an alternative, they may consent to referral of only dispositive motions to the Magistrate Judge. This notice shall also include the names of the District Judge and Magistrate Judge to whom the case has been assigned.

3. If the parties consent to the handling of the entire case by the Magistrate Judge, the Magistrate Judge shall be responsible for the efficient handling of the case through disposition; otherwise, the Magistrate Judge shall be responsible for the efficient handling of the case through the close of discovery, and the case shall be referred to the District Judge at that time. If the

parties consent, the Magistrate Judge may hear and decide dispositive motions; otherwise, dispositive motions shall be heard and decided by the District Judge. The parties shall be encouraged, in all appropriate cases, to make dispositive motions. Dispositive motions may be made at any time during the pendency of a case and consistent with the time constraints provided in the case scheduling order pursuant to Fed. R. Civ. P. 16.

4. Local Rule 13, "Pre-trial Procedures in Civil Cases", is amended to provide as follows:

(a) Within sixty days of issue being joined, the Magistrate Judge shall hold a Rule 16 pre-trial discovery conference ("first discovery conference") in all cases except pro se prisoner civil rights, social security and habeas corpus cases, and shall issue an order providing for a discovery cut off date, a date for a settlement conference ("first settlement conference") to be held before the Magistrate Judge, and a proposed trial date. The order shall also include a time limitation on the joinder of other parties, the commencement of third-party practice, and the filing of all pre-trial motions. No further or additional discovery, joinder, third-party practice, or non-dispositive motions shall be permitted thereafter except by leave of the Court for good cause shown stated in writing.

At the first discovery conference, counsel for each party shall present a plan and schedule for discovery and the proposed management of the case. This plan and schedule may be presented orally or in writing, depending on the preference and in the discretion of the Magistrate Judge.

Unless there is good cause shown noted in writing, the discovery cut-off date shall not be more than six months from the date of the order setting that date, the initial settlement conference shall be within ninety days after the date of the order, and the proposed trial date shall be no later than twelve months of the discovery cut-off date. A firm trial date will be set by the trial court.

Additional discovery conferences may be scheduled in the discretion of the Magistrate Judge, sua sponte, or at the request of a party.

In an appropriate, uncomplicated action, upon issue being joined any party may request, or the Court on its own motion may provide for, an advanced trial date and limited discovery. In such a case, a scheduling order shall issue providing for abbreviated discovery and a proposed early trial date.

(b) All non-dispositive pre-trial motions as authorized by 28 U.S.C. § 636(b)(1) shall be made returnable before the Magistrate Judge, and all motion papers shall be filed with the Clerk.

(c) At the first settlement conference, the attorneys shall be present and shall be prepared

to state their respective positions to the Magistrate Judge. Each plaintiff shall communicate a demand for settlement to the Magistrate Judge, and each defendant shall be prepared to communicate a response. The attorneys shall have spoken with their respective clients regarding their settlement positions prior to the settlement conference. Likewise, in cases involving insurance coverage, defense counsel shall have spoken with the insurance carrier regarding its position prior to this settlement conference. Each party shall submit in writing, or be prepared to discuss, the undisputed facts and legal issues relevant to the case, and the legal and factual issues about which the party believes there is a dispute.

If a settlement is not reached at the first settlement conference, the Magistrate Judge may schedule additional settlement conferences from time to time as appropriate.

Upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions, or the parties themselves, must be present or available by telephone during any settlement conference.

Each settlement conference is designed to provide a neutral, non-binding evaluation program for the presentation of the legal and factual issues in a case, and the opportunity to present these issues to a judicial officer as early in the process as possible.

(d) At any subsequent discovery conference held in the discretion of the Magistrate Judge, the attorneys shall provide a status update and a time-table for the remaining discovery to be completed within the discovery period.

(e) No extensions of the discovery period shall be granted, except for good cause shown stated in writing by order of the Magistrate Judge.

(f) After completion of discovery and motions as set forth in the scheduling order, any case in which the parties have not consented under 28 U.S.C. § 636 shall be referred to the District Judge assigned to the case, who shall then be responsible for the further efficient scheduling and disposition of that case; any other case shall remain with the Magistrate Judge, who will retain responsibility for the efficient scheduling and disposition of that case.

(g) Within thirty days after the close of discovery, the District Judge, or if the parties have consented to disposition by the Magistrate Judge, the Magistrate Judge, shall hold a pre-trial conference for the purpose of setting a cut-off date for remaining motions, setting a firm trial date, and discussing settlement. Except for good cause shown stated in writing by the District Judge or Magistrate Judge, such motion cut off date shall not be more than ninety days after the date of the discovery cut-off and not less than 120 days prior to the trial date. Nothing contained in this Rule shall be read as precluding or discouraging dispositive motions at any time during the pendency of a case.

(h) Each District Judge or Magistrate Judge conducting this pre-trial conference, shall make an earnest effort to encourage and become involved in settlement negotiations between the parties. If the case is not resolved at this conference, the District Judge or the Magistrate Judge shall schedule further pre-trial conferences for the purpose of discussing settlement, as appropriate.

(i) If the case is not thereafter resolved, counsel for each party, no later than thirty days before the trial date, and in no event later than the final pretrial conference, shall file with the Court and serve upon counsel for all other parties, a pre-trial statement which shall include the following:

(1) A detailed statement of contested and uncontested facts, and of the party's position regarding contested facts;

(2) A detailed statement as to the issues of law involved, the issues of fact involved, and any unusual questions relative to the admissibility of evidence together with supporting authority;

(3) A list of witnesses (other than rebuttal witnesses) expected to testify, together with a brief statement of their anticipated testimony and their addresses;

(4) A brief summary of the qualifications of all expert witnesses, and a concise statement of each expert's expected opinion testimony and the material upon which that testimony is expected to be based;

(5) A list of exhibits anticipated to be used at trial, except exhibits which may be used solely for impeachment or rebuttal;

(6) A list of any deposition testimony to be offered in evidence;

(7) An itemized statement of each element of special damages and other relief sought; and

(8) Such additional submissions as the District Judge or Magistrate Judge directs.

(j) A final pretrial conference shall be held at the direction of the District Judge or the Magistrate Judge within thirty days of the trial date. Trial counsel shall be present at this conference and shall be prepared to discuss all aspects of the case and any matters which may narrow the issues and aid in its prompt disposition, including:

(1) The possibility of settlement;

(2) Motions in limine;

(3) The resolution of any legal or factual issues raised in the pre-trial statement of any party;

(4) Stipulations (which shall be in writing); and

(5) Any other matters that counsel or the Court deems appropriate.

(k) Prior to the final pre-trial conference, counsel shall meet to mark and list each exhibit contained in the pre-trial statements. At the conference, counsel shall produce a copy of each exhibit for examination by opposing counsel and for notice of any objection to its admission in evidence. Following the final pretrial conference, a pre-trial order may be entered as directed by the District Judge or the Magistrate Judge, and the case certified as ready for trial.

(l) Each party shall be represented at each pre-trial, discovery or settlement conference by an attorney who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

(m) For purposes of procedural information, copies of standard referral orders used by each Judge in this District are available in the Clerk's office.

(n) A District Judge may also refer to the United States Magistrate Judge any other pre-trial matter as authorized by 28 U.S.C. § 636(b)(1)(A) and (B).

(o) If the Court so directs, a request for an extension of the deadline for the completion of discovery or for the postponement of the trial date shall be signed both by the attorney and the party making the request.

For purposes of consistency, that the Court adopt a uniform pre-trial scheduling order for use in conjunction with the procedure set forth above.

5. Local Rule 29(b)(1) is amended to provide that all civil cases shall be assigned by the Clerk to a District Judge and a Magistrate Judge, and that the District Judge to whom the case is assigned shall designate the Magistrate Judge to conduct pretrial procedures pursuant to Local Rule 13.

6. Local Rule 15, "Class Actions", is amended to provide as follows:

(a) The title of any pleading purporting to commence a class action shall bear the legend "Class Action" next to its caption.

(b) The complaint (or other pleading asserting a claim for or against a

class) shall contain next after the jurisdictional grounds and under the separate heading "Class Action Allegations,":

(1) a reference to the portion or portions of Fed. R. Civ. P. 23 under which it is claimed that the action is properly maintainable as a class action, and

(2) appropriate allegations thought to justify the claim, including, but not necessarily limited to

(A) the size (or approximate size) and definition of the alleged class,

(B) the basis on which the party or parties claim to be an adequate representative of the class,

(C) the alleged questions of law and fact claimed to be common to the class, and

(D) in actions claimed to be maintainable as class actions under Fed. R. Civ. P. 23(b)(3), allegations thought to support the findings required by that subsection.

(c) Within sixty days after issue having been joined in any class action, counsel for the parties shall meet with a judge or magistrate judge and a scheduling order shall issue providing for orderly discovery and may initially limit discovery only as to facts relevant to the certification of the alleged class.

(d) Within 120 days after the filing of a pleading alleging a class action, unless this period is extended on motion for good cause filed prior to the expiration of said 120-day period or in the scheduling order, the party seeking class certification shall move for a determination under Fed. R. Civ. P. 23(c)(1) as to whether the case is to be maintained as a class action. The motion shall include, but is not limited to, the following:

(1) a brief statement of the case;

(2) a statement defining the class sought to be certified, including its geographical and temporal scope;

(3) a description of the party's particular grievance and why that claim qualifies the party as a member of the class as defined;

(4) a statement describing any other pending actions in any court against the same party alleging the same or similar causes of actions, about which

the party or counsel seeking class action certification is personally aware;

(5) in cases in which a notice to the class is required by Fed. R. Civ. P. 23(c)(2), a statement of what the proposed notice to the members of the class should include and how and when the notice will be given, including a statement regarding security deposit for the cost of notices; and

(6) a statement of any other matters that the movant deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits.

The other parties shall respond to said motion in accordance with the provisions of these Rules.

(e) In ruling upon a motion for class certification, the Court may allow the action to be so maintained, may disallow and strike the class action averments, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where the determination is ordered to be postponed, a date shall be fixed for renewal of the motion before the same Judge.

(f) The burden shall be upon any party seeking to maintain a case as a class action to present an evidentiary basis to the Court showing that the action is properly maintainable as such. If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall, unless otherwise ordered by the Court, initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

(g) Failure to move for class determination and certification within the time required herein shall constitute and signify an intentional abandonment and waiver of all class action allegations contained in the pleading and the action shall proceed as an individual, non-class action thereafter. If any motion for class determination or certification is filed after the deadline provided herein, it shall not have the effect of reinstating the class allegations unless and until it is acted upon favorably by the Court upon the finding of excusable neglect and good cause.

(h) The attorneys for the parties are governed by the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association concerning contact with and solicitation of potential class members.

(i) No class action allegation shall be withdrawn, deleted, or otherwise amended without Court approval. Furthermore, no class action shall be compromised without Court approval and notice of the proposed compromise shall be given to all members of the class in such manner as the Court directs.

(j) Six months from the date of issue having been joined and every six months thereafter until the action is terminated, counsel in all class actions shall file with the Clerk a joint case status report indicating whether any motions are pending, what discovery has been completed, what discovery remains to be conducted, the extent of any settlement negotiations that have taken place and the likelihood of settlement, and whether the matter is ready for trial. Counsel shall provide a copy of the case status report to the CJRA Attorney.

(k) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

7. In each pro se prisoner civil rights action filed after the effective date of this Plan, the Court will issue an order, within sixty days of issue being joined, setting deadlines for filing amended pleadings, completing discovery, filing dispositive motions, a trial date, and granting permission to conduct the deposition of the plaintiff at the correctional facility in which he is incarcerated. Absent good cause shown in writing, the deadline for filing amended pleadings shall be no later than thirty days from the date of the scheduling order, the deadline for completion of discovery shall be not longer than eight months from the date of the scheduling order (with a deadline one month earlier for filing motions related to discovery disputes), the deadline for filing dispositive motions shall be no later than ninety days after the discovery cut-off date, and the trial date shall be within twelve months of the discovery cut-off date. No modification of the dates set forth in the scheduling order shall be permitted except by leave of Court for good cause shown in writing.

The Court shall continue the practice of issuing scheduling orders upon filing of petitions seeking habeas corpus relief. Absent extraordinary circumstances, the Court shall endeavor to terminate habeas corpus actions within twelve months of the date on which the initial petition is filed.

8. The Court recognizes that the active involvement of a judicial officer in settlement

of negotiations is of paramount importance to the efficient handling of cases. Therefore, District Judges and Magistrate Judges will take an active role in encouraging the settlement of cases by bringing the parties together to discuss settlement in the presence of the Court, will make whatever recommendations the District Judge or Magistrate Judge deems appropriate, and will take any other steps necessary to promote and effect settlement within applicable legal and ethical principles.

9. Each District Judge and Magistrate Judge shall give serious consideration to the effective utilization of courtroom personnel, and shall change duties or add assignments as appropriate. More specifically, the Courtroom Deputy in each Court shall immediately assume responsibility for the logistics of all conferences, motions, trial dates, and other appearances in court by the attorneys. This includes: (1) scheduling any attorney appearance; (2) ensuring that attorneys have been notified of all dates and times for trial, oral argument of motions, conferences or other appearances; (3) initial handling of all requests for adjournments; and (4) facilitating all other scheduling or logistical difficulties encountered by the Court or counsel.

10. All pending decisions by a District Judge or Magistrate Judge shall be internally monitored by the Clerk's office and each month a report shall be issued that includes:

> (a) All motions that have not been decided within sixty days of the original return date of the motion, regardless of whether there have been additional submissions, additional oral argument, or other potentially delaying factors;
>
> (b) All bench trials that have not been decided within 120 days of the close of proof, regardless of the submission of legal memoranda, oral argument, re-opening of proof, or other potentially delaying factors.

11. Each motion shall be targeted for decision within sixty days of the initial return date, and each bench trial shall be targeted for decision within 120 days of the close of proof.

12. The position of the Civil Justice Reform Act Attorney ("CJRA Attorney"), originally created to assist the Advisory Group in the preparation of its report and the Court in developing its expense and delay reduction plan, shall be a permanent position held by an attorney who has been appointed by, and serves at the pleasure of, the Court. The CJRA Attorney is authorized to:

(a) To investigate, and respond to, inquiries by attorneys or litigants regarding the status of a pending motion or bench trial decision; such investigation shall ensure the anonymity of the source and shall be made with the approval of the Chief Judge, and with the assistance of the Chief Judge or the Chief Judge's office personnel, if necessary;

(b) To assist the Court in monitoring the progress of pending class actions by reviewing the joint case status reports required by proposed Local Rule 15(j), by serving as the liaison between counsel and the Court when necessary, and by serving, when so designated by the Court, as special master pursuant to Fed. R. Civ. P. 53 for the purpose of making findings and recommendations to the Court;

(c) To establish and administer further court-annexed alternative dispute resolution programs at the direction of the Court and the Clerk of Court;

(d) To serve as an ombudsman to facilitate the implementation and success of the Court's CJRA expense and delay reduction plan. In this regard, the responsibilities of the CJRA Attorney should include, but not be limited to: (1) serving as liaison between members of the bar or litigants and the Court with respect to case status inquiries; (2) responding to requests for information from litigants and their counsel to ensure the efficient handling and disposition of pending civil cases; (3) educating the Court, members of the bar, litigants and other interested individuals about the Civil Justice Reform Act and the Court's expense and delay reduction plan and their impact on federal court practice; (4) providing information to and soliciting comments from bar associations within the district as to the Court's expense and delay reduction plan and modifications to the Local Rules and individual judges' practice guidelines occasioned thereby; and (5) making litigants and their attorneys aware of alternative dispute resolution mechanisms or other means of intervention that allow for the prompt disposition of cases.

(e) To conduct settlement conferences, scheduling conferences, or other meetings at the request of a District Judge or Magistrate Judge, and to serve as a Special Master under Federal Rule of Civil Procedure 53 when so appointed;

(f) At the direction of the Magistrate Judges, to screen new civil filings in which Rule 16 conferences will be conducted primarily for the purpose of suggesting to the presiding Magistrate Judge any alternative dispute resolution method or other procedure that might expedite disposition. Inasmuch as the utility and cost-effectiveness of such case screening has not yet been proven, the screening program should be conducted initially as an experiment. New civil filings with selected nature of suit codes should be subject to screening by the CJRA Attorney for three months intervals over a period of twelve months. Upon completion of the twelve month experimental period, the Court and the Clerk should determine the types of civil actions that benefit the most from such a procedure. Thereafter, the CJRA Attorney should screen new civil filings bearing nature of suit codes for those case types in which case screening has proven the most effective;

(g) At the direction of the Chief Judge, and in conjunction with the Clerk of the Court, to inquire into the status of all cases pending for more than three years, all motions awaiting decision for more than sixty days, and all bench trials awaiting decision for more than 120 days, including a review of the docket and the questioning of court personnel, litigants, and/or attorneys;

(h) In conjunction with the Clerk of the Court, to report to the Chief Judge on a monthly basis regarding the status of each case pending for more than three years, each motion awaiting decision for more than sixty days, and each bench trial awaiting decision for more than 120 days;

(i) In conjunction with the Clerk of the Court, to report to the Chief Judge twice yearly with respect to the general condition of the District's docket;

(j) To monitor compliance with the Court's expense and delay reduction plan on an ongoing basis and report in writing thereupon to the Chief Judge and the Advisory Group for purposes of the annual assessment called for by 28 U.S.C. § 475. The CJRA Attorney shall monitor compliance with the expense and delay reduction plan by: (1) reviewing monthly reports of motions that have not been decided within sixty days of the initial return date; (2) reviewing monthly reports of bench trials that have not been decided within 120 days of the close of proof; (3) consulting with courtroom deputies regarding individual judges' pending caseload; (4) tracking the proceedings in "test groups" of cases to be designated periodically by the Clerk; (5) reviewing reports of cases that have been pending for longer than three years; (6) reviewing and analyzing workload statistics compiled and published by the Federal Judicial Center and the Administrative Office of the United States Courts; and (7) utilizing any other method as directed by the Court or the Clerk of Court;

(k) To coordinate the annual assessment required by 28 U.S.C. § 475 by providing the Court and the Advisory Group with a comprehensive review of the Court's civil and criminal dockets and a report on compliance with the Court's expense and delay reduction plan;

(l) To solicit, receive and process suggestions by attorneys, litigants, court personnel or any interested individuals with respect to increasing the efficiency or decreasing the cost of litigating in the United States District Court for the Western District of New York.

These responsibilities may be modified by the Court or the Clerk as circumstances require.

13. The position of the Civil Justice Reform Act Management Analyst ("CJRA Analyst") shall be a permanent position held by an individual who is appointed by, and serves at the pleasure of, the Court. The CJRA Analyst shall be authorized:

(a) To assist in coordinating and to evaluate the effectiveness of programs established in accordance with the Court's CJRA expense and delay reduction plan;

(b) To furnish semiannual written reports to the Clerk of Court and the CJRA Attorney regarding the utilization and effectiveness of the Court's CJRA programs, along with appropriate recommendations for improved program operations or litigation management techniques;

(c) To act, together with the CJRA Attorney, as the district's liaison with other districts and agencies on CJRA matters;

(d) To support the CJRA Advisory Group and its Executive Committee in the annual assessments called for by 28 U.S.C. § 475. Such support shall include but not be limited to: (1) scheduling meetings and sending meeting notices at the direction of the Advisory Group Chairman; (2) attending all Executive Committee and Advisory Group meetings; (3) disseminating information to Advisory Group members at the direction of the Court, the Clerk, the Advisory Group Chairman, or the CJRA Attorney; (4) conducting research and studies at the direction of the Advisory Group or the Executive Committee; and (5) drafting meeting reports.

(e) To develop and coordinate the implementation of methodologies to assess cost and delay in civil and criminal cases;

(f) To review and document case management practices in the district and elsewhere for the purpose of formulating recommendations for improving litigation management and further reducing cost and delay in the processing of civil cases;

(g) To prepare procedural manuals that the Court or the Clerk of Court require in conjunction with the implementation of the Court's expense and delay reduction plan or as may be required from time to time thereafter; and

(h) To perform such other functions as the Court and the Clerk of Court may deem appropriate in furtherance of the CJRA's objectives.

14. Each District Judge and Magistrate Judge shall encourage the use of the Court's voluntary arbitration program as governed by Local Rule 47 or other alternative dispute resolution mechanisms, where appropriate, in order to encourage and facilitate settlement. To complement its voluntary arbitration program, the Court shall establish additional court-annexed programs for alternative dispute resolution. Furthermore, the Court shall make available information regarding court-annexed and other methods of alternative dispute resolution that litigants and their counsel may pursue to effect early disposition of cases.