

MICHIGAN-OHIO-KENTUCKY-TENNESSEE  
**UNITED STATES COURTS - SIXTH CIRCUIT**

**1987**

**ANNUAL REPORT**

**Presented to**  
**Sixth Circuit Judicial Conference**  
**June 3-6, 1987**  
**Grand Rapids, Michigan**

**PIERCE LIVELY**  
Chief Judge

**JAMES A. HIGGINS**  
Circuit Executive

**JOHN P. HEHMAN**  
Clerk

## FOREWORD

*The attached report was prepared by James A. Higgins, Circuit Executive, and John P. Hehman, Clerk of the Court of Appeals, with input from other staff members. Its purpose is to present, in narrative and graphic form, an overview of the work of the courts of this circuit during the past year.*

*We are particularly pleased to welcome Justice Antonin Scalia as our new circuit justice. Justice Scalia practiced law in Ohio early in his career, and it is good to have him back in the Sixth Circuit. In addition, Chief Judge James R. Browning of the Ninth Circuit and Chief Judge Donald P. Lay of the Eighth Circuit are guests of this Conference. They are meeting with the judges and sharing insights and suggestions based on their years of experience as successful judicial administrators.*

*All of the judges and supporting personnel within the Sixth Circuit continue to be quite busy, though there are some indications that filings may be leveling off, at least in some areas. Any slowdown in the rate of filings appears to be more than offset by the complexity of many of the cases filed. Hence, there is no realistic expectation that the actual workload of any court or judge will be reduced significantly in the foreseeable future.*

*It is my hope that the judges, delegates, life members and guests will find in this report a convenient summary of the year's activities. We come together each year as a Conference "for the purpose of considering the business of the courts and advising means of improving the administration of justice within [this] circuit." 28 U.S.C. 333. Questions about the information in this report and suggestions for improving our procedures and processes are always welcome.*

Pierce Lively  
Chief Judge

# JUDICIAL ADMINISTRATION IN THE SIXTH CIRCUIT

## *Introduction*

The growth in the courts in the the Sixth Circuit continues. The circuit, which consists of the states of Michigan, Ohio, Kentucky and Tennessee, is served by a total of 161 authorized full-time judicial officers. That number includes fifteen active and six senior circuit judges, fifty-seven active and seventeen senior district judges, thirty-four active and recalled retired bankruptcy judges and thirty-two magistrates who serve a population of over 28 million people in the four states of the circuit. The total supporting staff numbers in excess of one thousand, and the total budget for the courts in the Sixth Circuit during FY 1986 was slightly over \$81 million.

## JUDICIAL CONFERENCE OF THE UNITED STATES

The Conference originally was established in 1922 as the Conference of Senior Circuit Judges. Pursuant to 28 U.S.C. 331, the Conference is the chief policy-making body for the federal judiciary. In addition to its general oversight of the performance of the federal judiciary, which often results in recommendations for changes in policies or procedures of the courts, the Conference performs a number of responsibilities which have a direct impact on the day-to-day operations of the judiciary. Some of those responsibilities include:

- + Formulation of the budget for the judicial branch and presentation of the budget to the Congress.
- + Submission of recommendations to Congress for additional judgeships.
- + Determination of the number, location and salary of magistrates.
- + Submission to the Supreme Court, subject to Congressional approval, of amendments to the Federal Rules of Procedure and Evidence.
- + Supervision of judicial ethics and discipline.

The Judicial Conference of the United States is convened in March and September by the Chief Justice. The Conference is composed of the Chief Judge of each of the twelve geographic circuits and the Chief Judges of the Federal Circuit and the Court of International Trade, and a district judge representative from each of the twelve circuits. The district judge representative is elected by vote of the judges of the circuit he or she represents and serves for a term of three years. Senior Judge Robert M. McRae, Jr. completed a three year term in March 1987. A new district judge representative to the Conference for a three year term beginning in September 1987 will be elected at the Annual Judicial Conference of the Sixth Circuit.

The spring and fall meetings of the Conference are only a small part of the total work of the Conference. Much of the work of the Conference is done by standing and ad hoc committees. Membership on the committees is by appointment by the Chief Justice and is not limited to members of the Conference. The following persons from the Sixth Circuit currently serve on committees of the Conference:

Hon. Charles M. Allen Western Kentucky	Committee on the Administration of the Criminal Law
Hon. Bailey Brown Sixth Circuit	Committee on Court Administration
Hon. G. William Brown Western Kentucky	Committee on the Administration of the Bankruptcy Law
Hon. James G. Carr Northern Ohio	Committee on the Administration of the Criminal Law
Hon. James P. Churchill Eastern Michigan	Subcommittee on Judicial Statistics
Hon. Horace W. Gilmore Eastern Michigan	Committee on Judicial Ethics
Hon. James Harvey Eastern Michigan	Committee on the Judicial Branch
James A. Higgins Sixth Circuit	Committee to Study the Judicial Conference
Hon. John D. Holschuh Southern Ohio	Advisory Committee on Codes of Conduct
Hon. Damon J. Keith Sixth Circuit	Subcommittee on Supporting Personnel Committee on the Bicentennial of the Constitution
Hon. Ralph H. Kelly Eastern Tennessee	Committee on the Budget
Hon. Paul J. Komives Eastern Michigan	Committee on the Administration of the Magistrate System
Hon. Thomas D. Lambros Northern Ohio	Committee on the Operation of the Jury System
Hon. Pierce Lively Sixth Circuit	Advisory Committee on Appellate Rules
Prof. Wade H. McCree University of Michigan	Committee on Rules of Practice and Procedure
Joseph Patchen, Esq. Cleveland, Ohio	Advisory Committee on Bankruptcy Rules
Hon. Robert L. Taylor Eastern Tennessee	Committee on Intercircuit Assignments
Hon. Nicholas J. Walinski Northern Ohio	Subcommittee on Federal Jurisdiction
Hon. Thomas A. Wiseman Middle Tennessee	Advisory Committee on Bankruptcy Rules

One of Justice Rehnquist's first actions as Chief Justice was the appointment of a Committee to Study the Judicial Conference of the United States. The Committee will review the operation of the Conference and its committees and recommend improvements which will permit the Conference and committees to better respond to the increased challenges resulting from the growth of the judiciary. Among the issues under study by the Committee are the Conference committee structure, committee appointment and membership practices, and improved Conference management and communications with judges and supporting personnel.

The members of the Committee are Chief Judge Levin H. Campbell of the First Circuit, Chief Judge Wilfred Feinberg of the Second Circuit, Chief Judge Charles Clark of the Fifth Circuit, Chief Judge James R. Browning of the Ninth Circuit, Chief Judge Aubrey E. Robinson, Jr. of the District Court for the District of Columbia, Chief Judge John F. Nangle of the Eastern District of Missouri, Chief Judge Barbara B. Crabb of the Western

Nangle of the Eastern District of Missouri, Chief Judge Barbara B. Crabb of the Western District of Wisconsin, and James A. Higgins, Circuit Executive of the Sixth Circuit. The Committee expects to submit its report and recommendations to the September 1987 meeting of the Judicial Conference.

## **JUDICIAL COUNCIL OF THE SIXTH CIRCUIT**

The Judicial Council of the Sixth Circuit is, in many respects, the counterpart at the circuit level of the Judicial Conference of the United States. The council plays a major role in formulating the policies established by the Judicial Conference as well as in executing those policies. For example, the council reviews any proposals regarding additional judgeships or magistrate positions and submits recommendations to the Conference. The council also reviews a variety of matters involving the management of judicial resources for compliance with Conference established standards such as the plans for jury selection, criminal representation under the Criminal Justice Act, speedy trial, and the management of court reporters. The council also formulates circuit policy in a wide range of matters such as the allocation of personnel and approval of space and facilities matters, and it is authorized to issue orders for the division of business and the assignment of cases within a district court if the district judges are unable to agree.

The Judicial Council, which is established by 28 U.S.C. 332, is authorized to issue "all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit." It consists of all of the active judges of the court of appeals and five district judges. The Chief Judge of the Circuit presides over the council. Four of the district judge representative to the council are chief judges - the chief district judge from each of the four states of the circuit with the greatest seniority who has not served on the council. Those district judges serve for a term of three years. The fifth district judge member is elected annually by the District Judges Association of the Sixth Circuit. The district judges currently serving on the council are:

Hon. Philip Pratt  
 Chief Judge, Eastern District of Michigan  
 Hon. Carl B. Rubin  
 Chief Judge, Southern District of Ohio  
 Hon. Eugene E. Siler, Jr.  
 Chief Judge, Eastern District of Kentucky  
 Hon. Thomas A. Wiseman, Jr.  
 Chief Judge, Middle District of Tennessee  
 Hon. Odell Horton  
 Chief Judge, Western District of Tennessee

Although not as extensive as the committee structure of the Judicial Conference of the United States, the council also operates through a committee structure. The committees of the council are as follows:

### **INVESTIGATING COMMITTEE**

Honorable Pierce Lively, Chair  
 Honorable Albert J. Engel  
 Honorable Gilbert S. Merritt  
 Honorable Boyce F. Martin, Jr.

Honorable Douglas W. Hillman  
 Honorable William O. Bertelsman  
 Honorable Thomas A. Higgins  
 Honorable S. Arthur Spiegel

**JURY UTILIZATION COMMITTEE**

Honorable Cornelia G. Kennedy, Chair  
 Honorable Robert B. Krupansky  
 Honorable Harry W. Wellford

**COURT REPORTER COMMITTEE**

Honorable Cornelia G. Kennedy, Chair  
 Honorable Robert B. Krupansky  
 Honorable Ralph B. Guy, Jr.  
 Honorable Leroy J. Contie, Jr. (Advisory)

**LOCAL RULES REVIEW COMMITTEE**

Honorable Robert B. Krupansky, Chair  
 Honorable H. Ted Milburn  
 Honorable Odell Horton  
 Honorable Eugene E. Siler, Jr.

**AD HOC COMMITTEE ON THE APPOINTMENT OF BANKRUPTCY JUDGES**

Honorable Harry W. Wellford, Chair  
 Honorable Albert J. Engel  
 Honorable Gilbert S. Merritt  
 Honorable Boyce F. Martin, Jr.  
 Honorable Nathaniel R. Jones  
 Honorable Ralph B. Guy, Jr.  
 Honorable Philip Pratt  
 Honorable Carl B. Rubin  
 Honorable Eugene E. Siler, Jr.  
 Honorable Thomas A. Wiseman, Jr.

The council meets in regular session three times each year, including a meeting in conjunction with the circuit judicial conference. Special meetings are held as necessary, and much of the routine business of the council is transacted by mail votes. The circuit executive provides the staff and administrative support for the council.

Among the issues currently under consideration by the council are the adoption of new rules for processing complaints of judicial misconduct or disability, the appointment of additional bankruptcy judges, the establishment of bankruptcy appellate panels, guidelines for the trial of civil cases by part-time magistrates and procedures for the transfer of bankruptcy judges. Space does not permit a full description of all of the council's activities in the past year. A brief overview of some of the most significant actions follows.

*Appointment of Bankruptcy Judges*

The Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98-353, provides for the appointment of bankruptcy judges by the Court of Appeals for a term of 14 years from a list of not more than three persons recommended by the judicial council. The bankruptcy judges who were appointed to serve fourteen year terms beginning October 1, 1986 pursuant to the Act are as follows:

Eastern District of Kentucky  
 Hon. Joe Lee  
 Western District of Kentucky  
 Hon. G. William Brown  
 Eastern District of Michigan  
 Hon. Ray Reynolds Graves  
 Western District of Michigan  
 Hon. Laurence E. Howard  
 Northern District of Ohio  
 Hon. John F. Ray  
 Hon. William J. O'Neill  
 Hon. H.F. White  
 Hon. Richard F. Speer  
 Southern District of Ohio  
 Hon. Burton Perlman  
 Hon. Randall J. Newsome  
 Eastern District of Michigan  
 Hon. Ralph J. Kelley  
 Hon. Richard F. Stair  
 Middle District of Tennessee  
 Hon. George C. Paine II  
 Hon. Keith M. Lundin  
 Western District of Tennessee  
 Hon. David S. Kennedy

In the appointment process the council has chosen to make use of merit selection panels in each district made up of judges and lawyers who assist the council by screening and evaluating the applicants for appointment. The initial review of the recommendations of the merit selection panels is performed by the Ad Hoc Committee on the Appointment of Bankruptcy Judges, but the full council reviews the recommendations of the panels and the ad hoc committee.

The council is working on additional vacancies which have occurred since October 1, 1986 by reason of death, resignation or expiration of terms of office.

#### *Additional Judgeships*

Every two years the Judicial Conference of the United States, through its Subcommittee on Judicial Statistics, conducts a survey of circuit and district judgeship needs. The council's review of the workload statistics and other factors and its recommendations are a critical part in the development of the final recommendations of the Judicial Conference. The last survey was conducted in 1986 and resulted in the Conference's acceptance of the council's recommendations for the following additional district judgeships:

<u>District</u>	<u>Additional Judgeships</u>
Western Kentucky	1 <sup>1</sup>
Western Michigan	1

<sup>1</sup>The council recommended that Chief Judge Eugene E. Siler, Jr., who holds a commission for and regularly sits in both the Eastern and Western Districts of Kentucky, should be assigned to sit in the Eastern District of Kentucky only, and that one additional judgeship should be authorized for the Western District of Kentucky.

Northern Ohio	1
Southern Ohio	2
Eastern Tennessee	1
Middle Tennessee	1 (temporary)

Congress has not acted on the Conference's 1986 recommendations for additional circuit or district judgeships; early Congressional action is not expected. A new survey will be conducted, however, in 1988, with the hope of favorable action by Congress in 1989.

Fortunately, Congress did pass legislation creating a number of badly needed additional bankruptcy judgeships. Included were the following positions which had been endorsed by the Sixth Circuit Judicial Council:

<u>District</u>	<u>Additional Judgeships</u>
Western Kentucky	1 <sup>2</sup>
Western Michigan	1
Eastern Tennessee	1
Western Tennessee	1

#### *Judicial Budget*

Fiscal Year 1986 was very difficult for the judiciary as a result of the impact of the Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as "Gramm-Rudman." Although the budget for the entire federal judiciary represents approximately one-tenth of one percent of the total federal budget, the courts were not exempted from the automatic spending reductions mandated by Gramm-Rudman. The first round of Gramm-Rudman spending reductions went into effect on March 1, 1986. Some of the more significant cuts which were imposed as a result of Gramm-Rudman included a temporary mandatory suspension of civil jury trials because of the unavailability of funds to pay jurors, a 6% reduction in the staffing level formula for clerks' offices, probation offices and pretrial services offices, a 10% reduction in the compensation paid to attorneys appointed under the Criminal Justice Act, and severe restrictions on the construction of needed court facilities.

Fortunately, Fiscal Year 1987 brought a better financial picture for the federal courts. While a number of restrictions on staffing levels and construction of facilities remain in effect, adequate funds for jury trials and payment of CJA counsel are available.

<sup>2</sup>The Council recommended one additional judgeship to be stationed in the Western District of Kentucky to assist also in the Eastern District of Kentucky.



## OTHER CIRCUIT-WIDE ACTIVITIES OR ISSUES OF INTEREST TO THE BENCH AND BAR

### *Bicentennial Committee*

As part of the judiciary's participation in the celebration of the Bicentennial of the Constitution, the Judicial Conference of the United States created a special committee on the Bicentennial made up of one representative of each circuit. The Conference also requested that each circuit establish its own Bicentennial Committee.

The Honorable Damon J. Keith serves as both the Sixth Circuit representative to the Bicentennial Committee of the Judicial Conference and as Chairman of the Sixth Circuit Bicentennial Committee. The Sixth Circuit committee has established a number of activities to draw the attention of persons from all walks of life to the importance of the Constitution. Some of the activities include:

- + Moot court competitions in the law schools of the circuit centered around important Constitutional cases emanating from the Sixth Circuit.
- + Essay competitions for elementary, junior high and high school level students in which appropriate awards would be given for the best essays on the importance of the Constitution in our society.
- + Recognition of the Bicentennial of the Constitution in a variety of public performances such as parades and sports events.

The kickoff for the Sixth Circuit's participation was a gala banquet held in Detroit, Michigan on January 30, 1987. Retired Chief Justice Warren E. Burger was the featured speaker at the banquet which was attended by over 1500 persons. Also in attendance were Governors Blanchard of Michigan and Celeste of Ohio and Chief Judge Lively who also addressed the gathering. Entertainment was provided by the Interlochen Arts Academy Band. Following the banquet Chief Justice Burger stated that the affair had set the standard for the committees throughout rest of the country to emulate.

On Law Day, May 1, 1987, an extensive exhibition celebrating the Bicentennial theme of *THE U.S. CONSTITUTION: 200 YEARS OF PROGRESS TOWARDS EQUAL JUSTICE UNDER LAW* was opened in the lobby of the United States Courthouse in Detroit. The exhibition traces the history of the development and growth of the Constitution, and focuses on some of the landmark cases which helped shape the Constitution, including some significant cases which arose in the Sixth Circuit.

### *Sentencing Guidelines*

The Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, established the United States Sentencing Commission as an independent agency within the judicial branch. The Commission is required to establish sentencing policies and practices for the federal criminal justice system, including the promulgation of detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes.

Under the sentencing reform provisions of the Act, parole and the control over the duration of incarceration by the Parole Commission are terminated. Instead, defendants must be sentenced in accordance with the guidelines for each offense, and the entire

sentence imposed, less good time, must be served. Both defendants and the government may appeal from sentences which are outside the guidelines, and defendants may appeal on the grounds of improper application of the guidelines.

The Sentencing Commission published a first draft of the guidelines in September, 1986. It then conducted a series of public hearings on the draft guidelines. The Commission published a second draft of the guidelines in February, 1987 and submitted the final proposed guidelines to Congress on April 13, 1987. Under the provisions of the Act, the guidelines will become effective six months after their submission to Congress unless Congress acts to modify the guidelines or to delay their implementation.

It is clear that guideline sentencing will have a significant impact on federal courts. The sentencing process at the district court level will be more lengthy and complex, and, for the first time, the courts of appeals will become involved in the appellate review of criminal sentences. A large scale educational effort will be required to train judges, magistrates and probation officers in the implementation of the sentencing guidelines.

### *Judicial Discipline*

The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. 372(c)) establishes a procedure whereby any person may file a complaint of misconduct or disability against any judicial officer of the circuit. A complaint is submitted first to the Chief Judge of the Circuit, who may dismiss a complaint which he finds to be directly related to the merits of a decision or procedural ruling of the judge complained against or which he finds to be frivolous. The Chief Judge also may close a complaint if he concludes that appropriate corrective action has been taken.

If the Chief Judge cannot dispose of the complaint, he must certify the complaint to the Investigating Committee of the Council. The Investigating Committee must conduct an investigation and prepare a report with recommendations for appropriate action by the Council. Sanctions which may be imposed by the Council, if necessary, include certification of disability, request that a judge voluntarily retire, temporary suspension of case assignments, or public or private censure or reprimand.

The Sixth Circuit Judicial Council first published Rules for Processing Complaints of Judicial Misconduct in 1981. The Conference of Chief Circuit Judges began a study of the experience under the Act in 1983. That study quickly led to the conclusion that some degree of uniformity among the circuits was desirable in the handling of conduct or disability matters. The Conference of Chief Judges then developed illustrative rules governing complaints of judicial misconduct and disability for consideration by each of the circuits.<sup>3</sup> At its March 1987 meeting, the Judicial Conference of the United States recommended that each circuit substantially adopt the illustrative rules. The Sixth Circuit Judicial Council has the illustrative rules under consideration for adoption, with slight modifications, in the Sixth Circuit. Upon adoption, copies of the new rules will be available from the circuit executive's office or from any clerk's office in the Sixth Circuit.

During the year ended June 30, 1986, seventeen complaints were filed in the Sixth Circuit, and fourteen complaints were terminated. Eleven of the complaints terminated were dismissed by the Chief Judge as directly related to the merits of a decision or procedural ruling. One additional complaint was dismissed by the Chief Judge as not in

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<sup>3</sup>J. Browning, C. Seitz & C. Clark, *Illustrative Rules Governing Complaints of Judicial Misconduct and Disability* (Federal Judicial Center 1986) (Publication No. FJC-R-86-5)

conformity with the statute, one complaint was dismissed as frivolous, and one complaint was concluded by the Chief Judge on the grounds that appropriate corrective action had been taken. No complaints were referred to a special investigative committee, and no complaints required action by the Judicial Council.

#### *Death Penalty Task Forces*

Three states of the Sixth Circuit, Ohio, Kentucky and Tennessee have reinstated the death penalty. Although there have been no executions since the reinstatement of the death penalty in those three states, there currently are over 150 persons on death row in the state prisons throughout the circuit. The experience of other circuits where executions have resumed suggests that there will be a significant impact on federal courts when the death penalty cases currently in state courts reach the federal courts through petitions for writ of habeas corpus.

In order to evaluate the potential problems and to plan for the resources, particularly the availability of counsel to represent the petitioners, Chief Judge Lively has appointed a task force for each of the three states which have the death penalty. Each of the task forces include district judges, magistrates, federal and state public defender organizations, attorneys general, representatives of the private defense bar, and state bar associations. Circuit Judge Nathaniel R. Jones has been coordinating the work of the task forces for the Sixth Circuit, and Judge Jones will present the report of the task forces to the Sixth Circuit Judicial Conference and to the Committee to Implement the Criminal Justice Act of the Judicial Conference of the United States in June.

### **OFFICE OF THE CIRCUIT EXECUTIVE**

The Office of the Circuit Executive occupies a somewhat unique position within the administrative structure of the Sixth Circuit. Although appointed by the Sixth Circuit Judicial Council, the Circuit Executive is administratively attached to the Court of Appeals and performs a variety of administrative responsibilities relating to all of the courts of the circuit.

As secretary and executive officer of the Council, the Circuit Executive provides administrative and staff support to the Council and its committees. For example, the Circuit Executive's office provides staff support for each of the Bankruptcy Merit Selection Panels, and it administers the complaint procedure under the Judicial Councils Reform and Judicial Conduct and Disability Act.

For the Court of Appeals, the Office of the Circuit Executive exercises administrative control over all of the non-case management related functions of the court. The office administers the budget, personnel, procurement and facilities management for the Court of Appeals. In addition, the Office of the Circuit Executive, under the supervision of the Chief Judge, prepares the panel assignments for the Court of Appeals and makes arrangements for scheduling visiting judges to sit with the court.

The Office of the Circuit Executive also provides administrative staff support to the Chief Judge of the Circuit and to other circuit wide activities such as the Sixth Circuit Judicial Conference. Included is assistance with the liaison with other federal courts, state courts and various departments and agencies of the government, assistance with the review of requests for excess compensation under the Criminal Justice Act, and assistance with the intracircuit designation and assignment of circuit, district and bankruptcy judges.

Some of the principal activities of the Circuit Executive's office during the last year include:

- + Completion of phase two of the multi-million dollar renovation project for the Court of Appeals headquarters facility in Cincinnati, including the construction of a new *en banc* appellate courtroom and a number of additional appellate chambers, and the completion of planning for phase three which will include the relocation of the Sixth Circuit Library into newer larger quarters.
- + Establishment of an Internal Financial Controls Management Committee to study financial controls practices in district and bankruptcy courts and make recommendations for improvements.
- + Coordination of training of personnel in each district to assist employees in making decisions about options under the new Federal Employees Retirements Systems.
- + Administrative support for the Merit Selection Panels, the Judicial Council and the Court of Appeals in the appointment of bankruptcy judges.
- + Representing the Sixth Circuit on the Office Automation Committee for federal courts in the evaluation of the specifications for the procurement of personal computer based word processing and electronic communications equipment to replace the current generation of word processing for judicial chambers and support offices.
- + Administration of circuit-wide funding of facilities construction and renovation projects.
- + Administration of circuit-wide funding of temporary personnel in support of judicial officers.

## JUDICIAL PERSONNEL IN THE SIXTH CIRCUIT

In any institution of the size of the Sixth Circuit each passing year brings a number of changes in the judicial personnel. One experienced bankruptcy judge was lost to death last year, and three judges assumed senior status. In addition, two bankruptcy judges who retired were recalled to service. A number of new circuit, district and bankruptcy judges were appointed.

### *Death*

**William B. Leffler.** The Honorable William B. Leffler, Chief Judge of the U.S. Bankruptcy Court for the Western District of Tennessee died suddenly on April 13, 1987. Judge Leffler was appointed to the Bankruptcy Court in 1971. Prior to his appointment he practiced law in Memphis and served terms on the Shelby County Circuit Court and General Sessions Court.

### *Senior Status*

**Leroy J. Contie, Jr.** The Honorable Leroy J. Contie, Jr. assumed senior status on July 1, 1986. Judge Contie was appointed to the United States District Court for the Northern District of Ohio in 1971. In 1982 Judge Contie was appointed United States Circuit Judge for the Sixth Circuit.

**Joseph P. Kinneary.** The Honorable Joseph P. Kinneary assumed senior status on December 31, 1986. Judge Kinneary was appointed United States District Judge for the Southern District of Ohio in 1966.

**Robert M. McRae, Jr.** The Honorable Robert M. McRae, Jr. assumed senior status on December 31, 1986. Judge McRae was appointed to the United States District Court for the Western District of Tennessee in 1966, and he served as Chief Judge of that district from 1979 until his assumption of senior status.

**David E. Nims, Jr.** The Honorable David E. Nims, Jr. retired from the United States Bankruptcy Court for the Western District of Michigan on September 30, 1986. Judge Nims was appointed to the bankruptcy court for the Western District of Michigan on April 15, 1955. Pursuant to the provisions of the 1984 Bankruptcy Amendments, Judge Nims has been recalled to service by the Judicial Council of the Sixth Circuit, and he continues to serve as a bankruptcy judge for the Western District of Michigan.

**Clive Bare.** The Honorable Clive Bare retired from the United States Bankruptcy Court for the Eastern District of Tennessee on September 30, 1986. Judge Bare was appointed to the bankruptcy court for the Eastern District of Tennessee on July 1, 1957. Pursuant to the provisions of the 1984 Bankruptcy Amendments, Judge Bare has been recalled to service by the Judicial Council of the Sixth Circuit, and he continues to serve as a bankruptcy judge for the Eastern District of Tennessee.

*New Appointments**Court of Appeals*

**Alan E. Norris.** The Honorable Alan E. Norris of Ohio was appointed to the United States Court of Appeals for the Sixth Circuit on July 1, 1986 to the position which was vacated by Judge Leroy J. Contie Jr.'s assumption of senior status. Prior to his appointment, Judge Norris served as a Judge of the Ohio Court of Appeals for the Tenth District from 1981 until 1986, and as a member of the Ohio Legislature from 1967 until 1980.

*District Courts*

**Lawrence P. Zatkoff.** The Honorable Lawrence P. Zatkoff was appointed to the United States District Court for the Eastern District of Michigan in June, 1986 to the position which was vacated by Judge Ralph B. Guy, Jr.'s appointment to the Court of Appeals. Prior to his appointment, Judge Zatkoff served as a judge of the Circuit and Probate Courts in Macomb County, Michigan.

**James L. Graham.** The Honorable James L. Graham was appointed to the United States District Court for the Southern District of Ohio at Columbus in November, 1986 to the position which was vacated by reason of the resignation of Judge Robert M. Duncan. Prior to his appointment, Judge Graham engaged in the practice of law in Columbus, Ohio, specializing in the trial of civil cases.

**Patrick J. Duggan.** The Honorable Patrick J. Duggan was appointed to the United States District Court for the Eastern District of Michigan at Detroit in January, 1987 to one of the new positions which were created by the 1984 Bankruptcy Amendments and Federal Judgeship Act, P.L. 98-353. Prior to his appointment, Judge Duggan served as a judge of the Wayne Circuit Court from 1978 to 1986 and engaged in private law practice in Livonia, Michigan.

**Richard B. McQuade, Jr.** The Honorable Richard B. McQuade, Jr. was appointed to the United States District Court for the Northern District of Ohio at Toledo in December, 1986. Prior to his appointment, Judge McQuade served as a judge of the Court of Common Pleas of Fulton County, Ohio from 1978 to 1986. Prior to his judicial service he practiced law and served as prosecuting attorney in Fulton County.

**Charles R. Simpson III.** The Honorable Charles R. Simpson III was appointed to the United States District Court for the Western District of Kentucky at Owensboro in August, 1986 to the position which was vacated by reason of the assumption of senior status by Judge Charles M. Allen. Prior to his appointment Judge Simpson practiced law in Louisville, Kentucky.

*Bankruptcy Courts*

**Richard S. Stair.** The Honorable Richard S. Stair was appointed United States Bankruptcy Judge for the Eastern District of Tennessee at Knoxville on October 1, 1986. Judge Stair assumed the position vacated by the retirement of Judge Clive Bare. Prior to his appointment, Judge Stair practiced law in Knoxville.

**R. Guy Cole, Jr.** The Honorable R. Guy Cole was appointed United States Bankruptcy Judge for the Southern District of Ohio at Columbus on January 5, 1987 to the position which was vacated by the resignation of Bankruptcy Judge Grady L. Pettigrew. Prior to his appointment, Judge Cole engaged in private law practice in Columbus.

**James D. Gregg.** The Honorable James D. Gregg was appointed United States Bankruptcy Judge for the Western District of Michigan at Grand Rapids in May, 1987 to the position which was vacated by the retirement of Bankruptcy Judge David E. Nims, Jr. Prior to his appointment, Judge Gregg engaged in private law practice in Grand Rapids.





## JUDICIAL WORKLOAD IN THE SIXTH CIRCUIT

### *Workload in the District Courts*

The decline in total filings in the district courts in the Sixth Circuit continued last year. A 10% decrease in civil filings coupled with a modest 4% increase in criminal filings led to an overall decline in total filings of approximately 9% for the twelve month period ending December 31, 1986. Terminations also declined in most of the districts at a somewhat reduced rate leading to a reduction in the overall number of cases pending in the District Courts of the Sixth Circuit. For the second straight year, the number of Social Security Act cases declined significantly. Figure 1 depicts the filings in the district courts of the Sixth Circuit by type of case for 1985 and 1986. As shown in Figure 1, social security filings, which were nearly one quarter of total civil filings in 1984, decreased from 16% of total filings in 1985 to 11.7% of total filings in 1986.

**Filings.** The number of cases filed in the district courts of the Sixth Circuit decreased during the reporting period which ended December 31, 1986. Only the Northern District of Ohio reported an increase in filings. The Southern District of Ohio and the Middle and Eastern Districts of Tennessee experienced the largest decreases in filings.

**Terminations.** Along with the general decrease in the number of filings, the total number of terminations also decreased in the Sixth Circuit last year. Terminations declined in all districts except the Northern District of Ohio, where they remained about the same as in 1985.

**Pending.** The number of pending cases in the district courts of the Sixth Circuit declined in most districts and by 7% overall during the reporting period. Only the Northern District of Ohio experienced a substantial increase, while the Eastern and Middle Districts of Tennessee had modest increases.

Figures 2, 3, and 4 show, respectively, the filings, terminations and pending cases per authorized judgeship for each of the district courts in the Sixth Circuit for calendar years 1984, 1985 and 1986.

**Median Disposition Times.** Median disposition times increased in the Western District of Kentucky, the Western District of Michigan, and the three Tennessee districts. The Eastern District of Michigan and the Northern District of Ohio achieved one month reductions. The Northern and Southern Districts of Ohio and the Eastern and Middle Districts of Tennessee equal or better the national average for the time for disposition of civil cases. Figure 5 shows the median disposition times for civil cases in each of the districts in the Sixth Circuit, and Figure 6 shows the civil actions three years old or older as a percentage of pending cases for 1985 for each of the district courts in the Sixth Circuit.

**Juror Utilization.** Figure 7 depicts the juror utilization trends (measured as the percentage of jurors not selected, serving or challenged on the first day of service) for each of the districts in the Sixth Circuit compared to the national average over the last four reporting years. Overall, the district courts in the Sixth Circuit do not compare favorably with the national average. The Sixth Circuit average remains one of the highest in the nation, although the circuit wide percentage of jurors not selected, serving or challenged was reduced by nearly three percentage points last year. The Western District of Tennessee continues to have an outstanding juror utilization record, and the Western

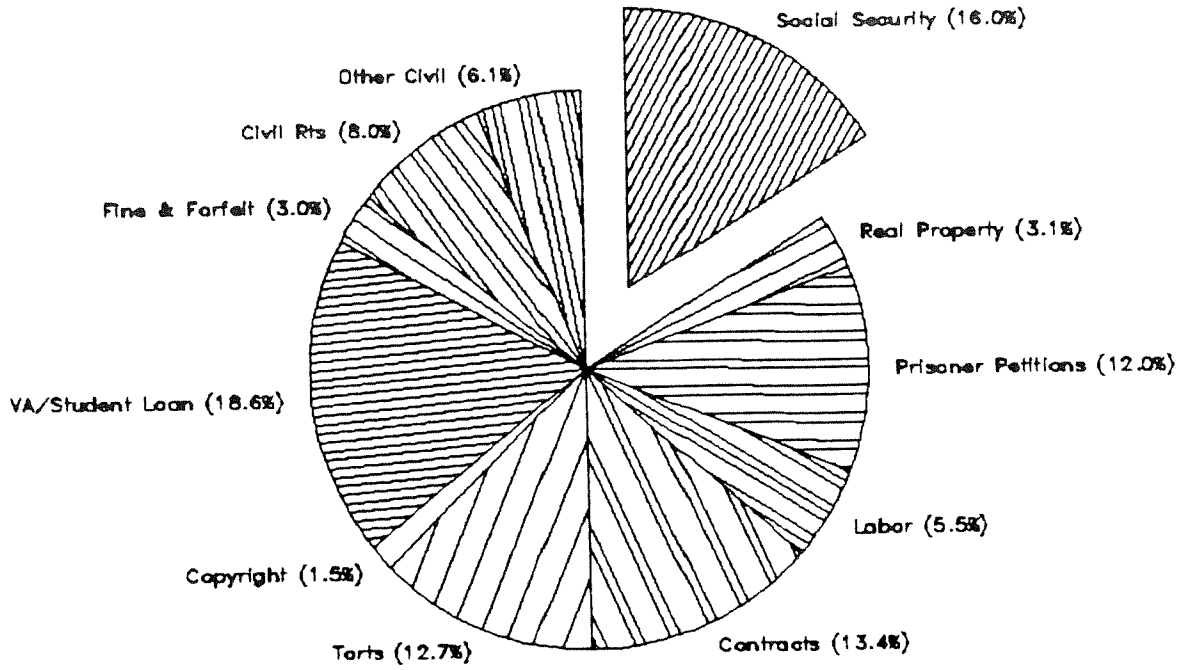
District of Michigan also has moved below the national average with improvements achieved last year. Significant improvements in juror utilization occurred in the Eastern District of Kentucky, the Western District of Michigan, the Eastern District of Tennessee, and the Western District of Tennessee. Figure 7 shows the percentage of jurors not selected, serving or challenged for each of the district courts in the Sixth Circuit.

*Workload in the Bankruptcy Courts*

For the second straight year filings were up in every bankruptcy court in the Sixth Circuit. Chapter 7 filings showed an increase in every district, with the largest increases occurring in the Eastern and Western Districts of Kentucky and the Eastern District of Michigan. Chapter 11 filings increased sharply in the Eastern District of Kentucky and the Eastern District of Michigan and decreased in the Western District of Michigan and the Middle District of Tennessee. Chapter 13 filings increased in every district of the Sixth Circuit, with the largest increases in the Middle and Western Districts of Tennessee.

Figures 8, 9, 10, and 11 show, respectively, the Chapter 7 filings, the Chapter 11 filings, the Chapter 13 filings, and the Total filings per authorized judgeship for each of the bankruptcy courts in the Sixth Circuit for calendar years 1984 and 1985.

All Districts in Sixth Circuit  
Source of Filings SY 1985



All Districts in Sixth Circuit  
Source of Filings SY 1986

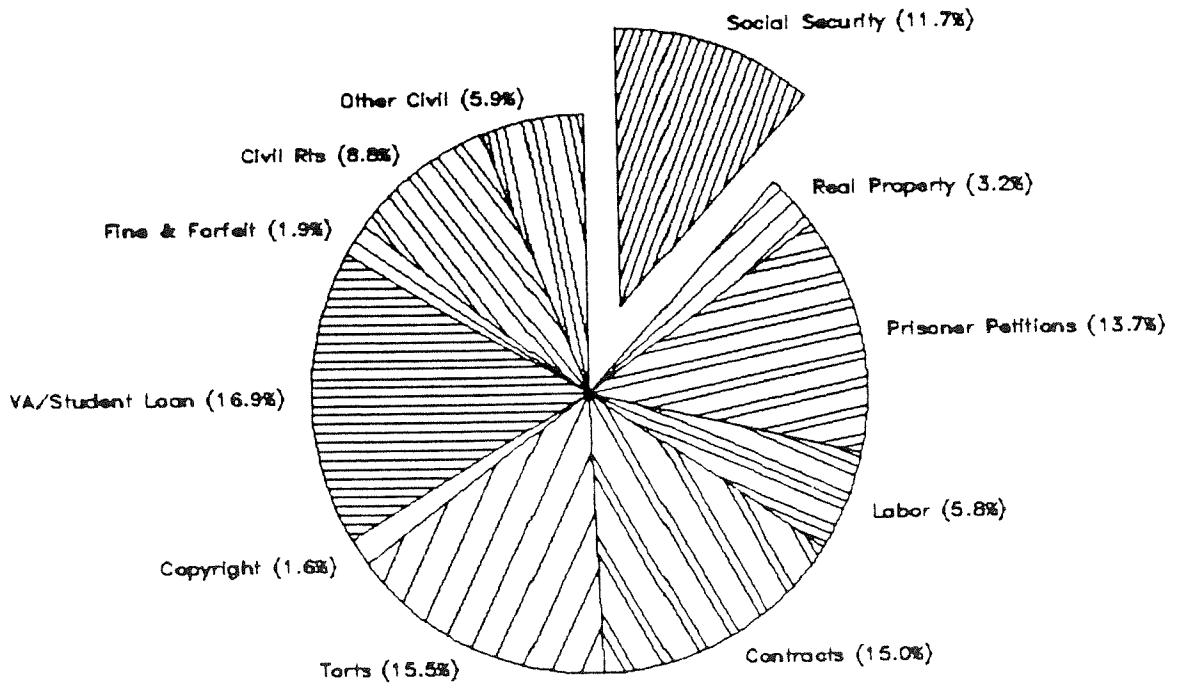


Figure 1

# District Courts <> Sixth Circuit

Comparison 84  $\diamond$  86 Filings

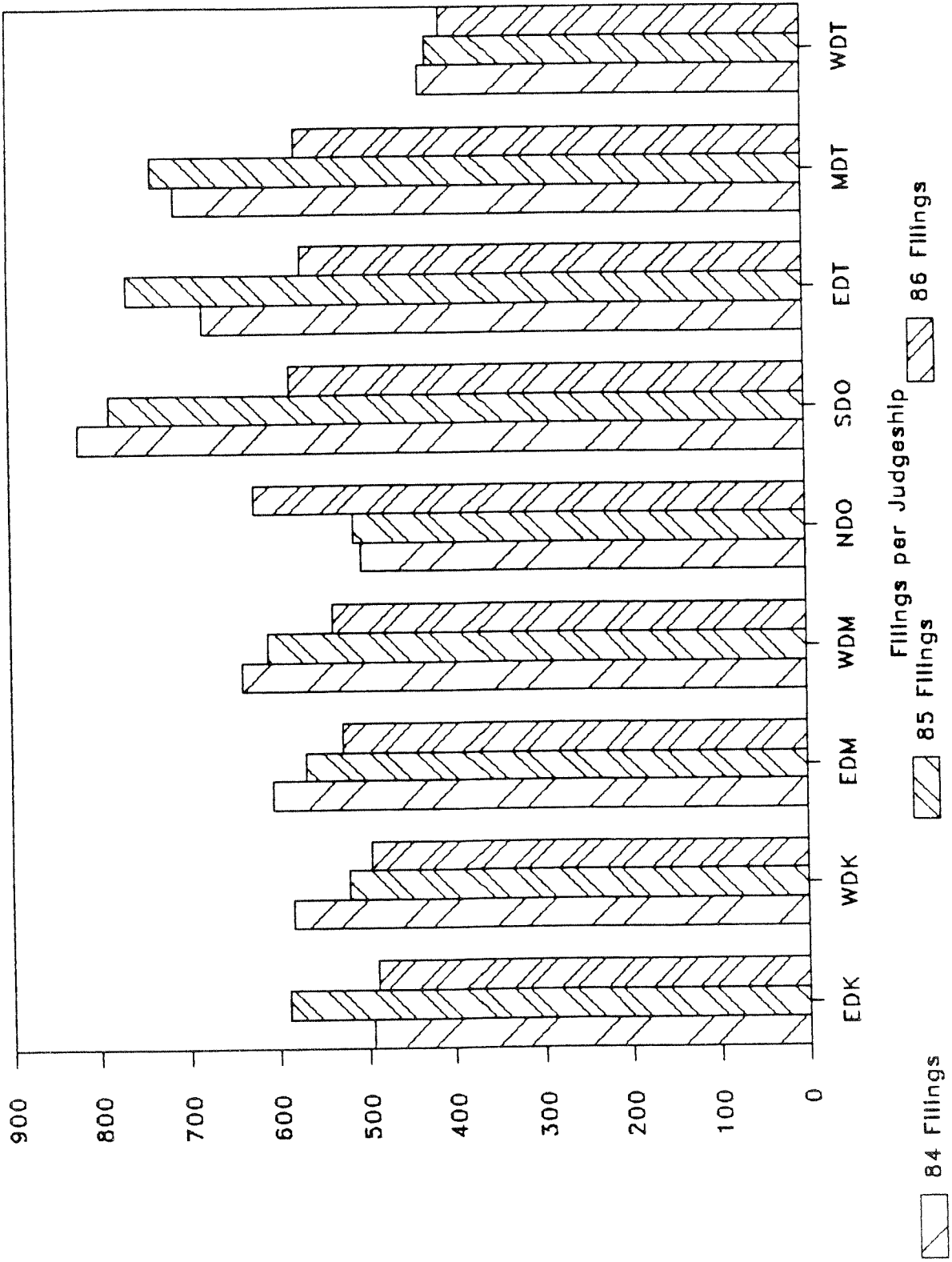


Figure 2

# District Courts <> Sixth Circuit

Comparison 84 < > 86 Terminations

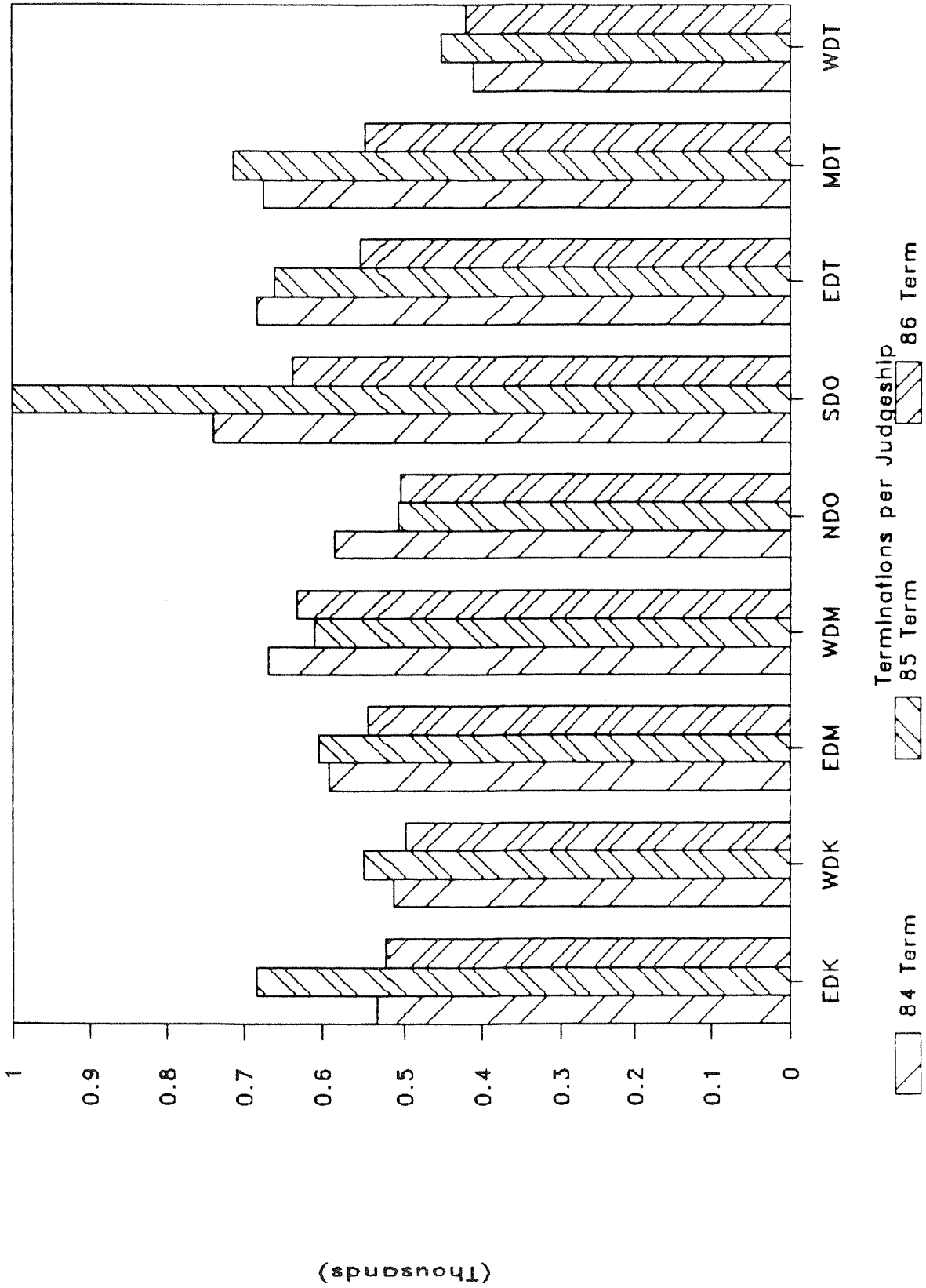


Figure 3

# District Courts <> Sixth Circuit

Comparison 84 ◊ 86 Pending

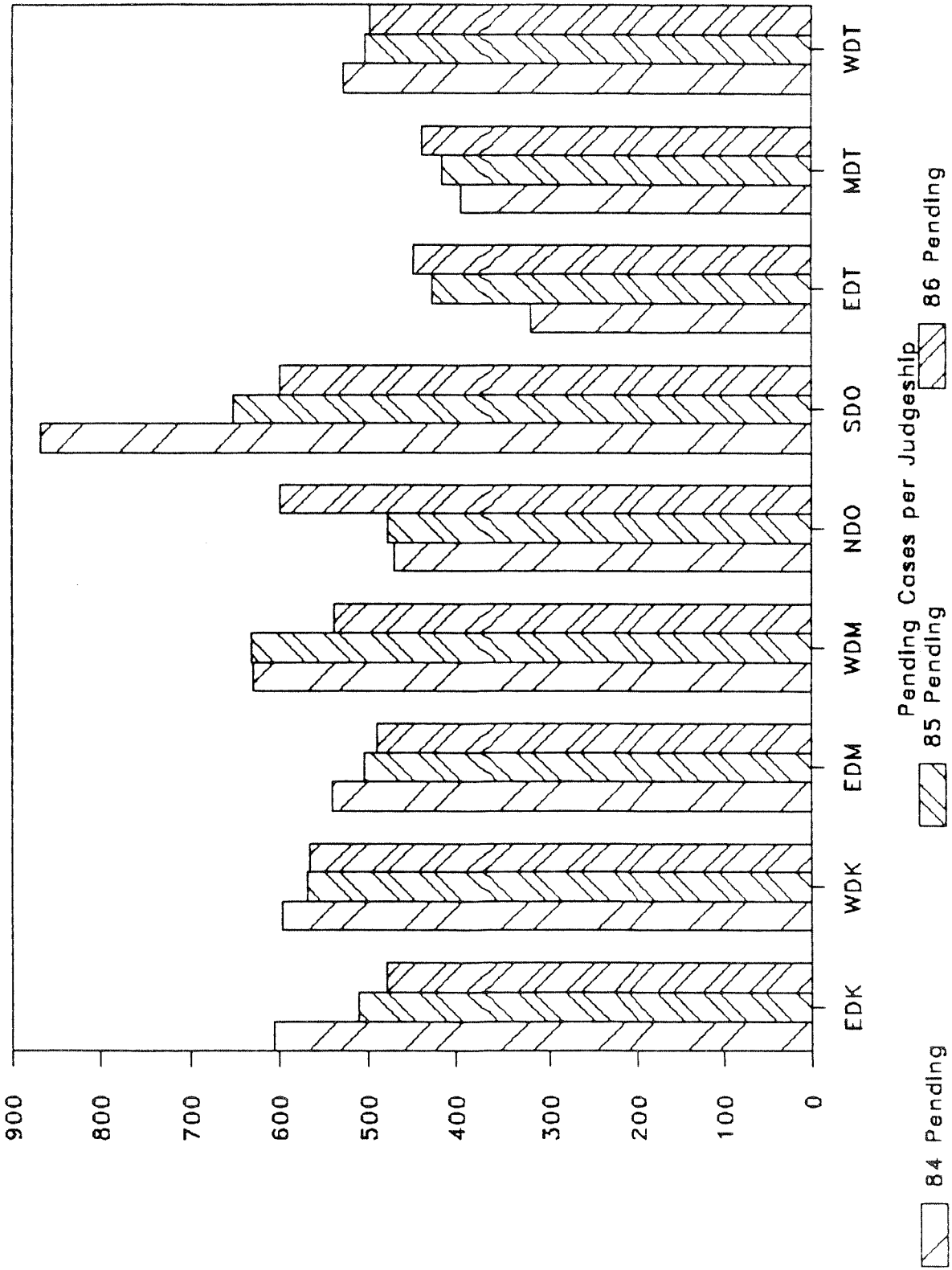


Figure 4

# District Courts <> Sixth Circuit

## Median Months for Dispositions

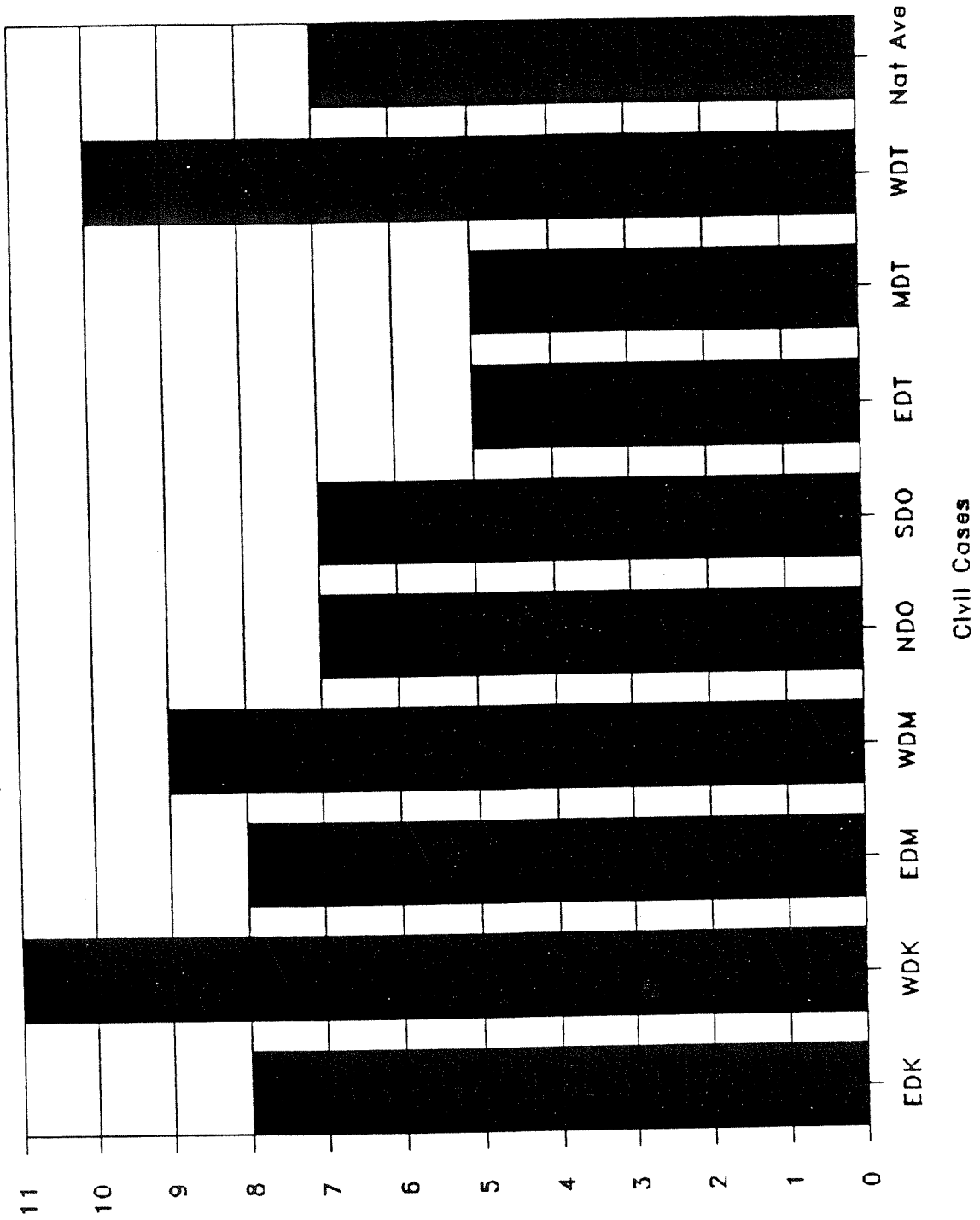


Figure 5

# District Courts <> Sixth Circuit

Percentage of 3yr Old Cases

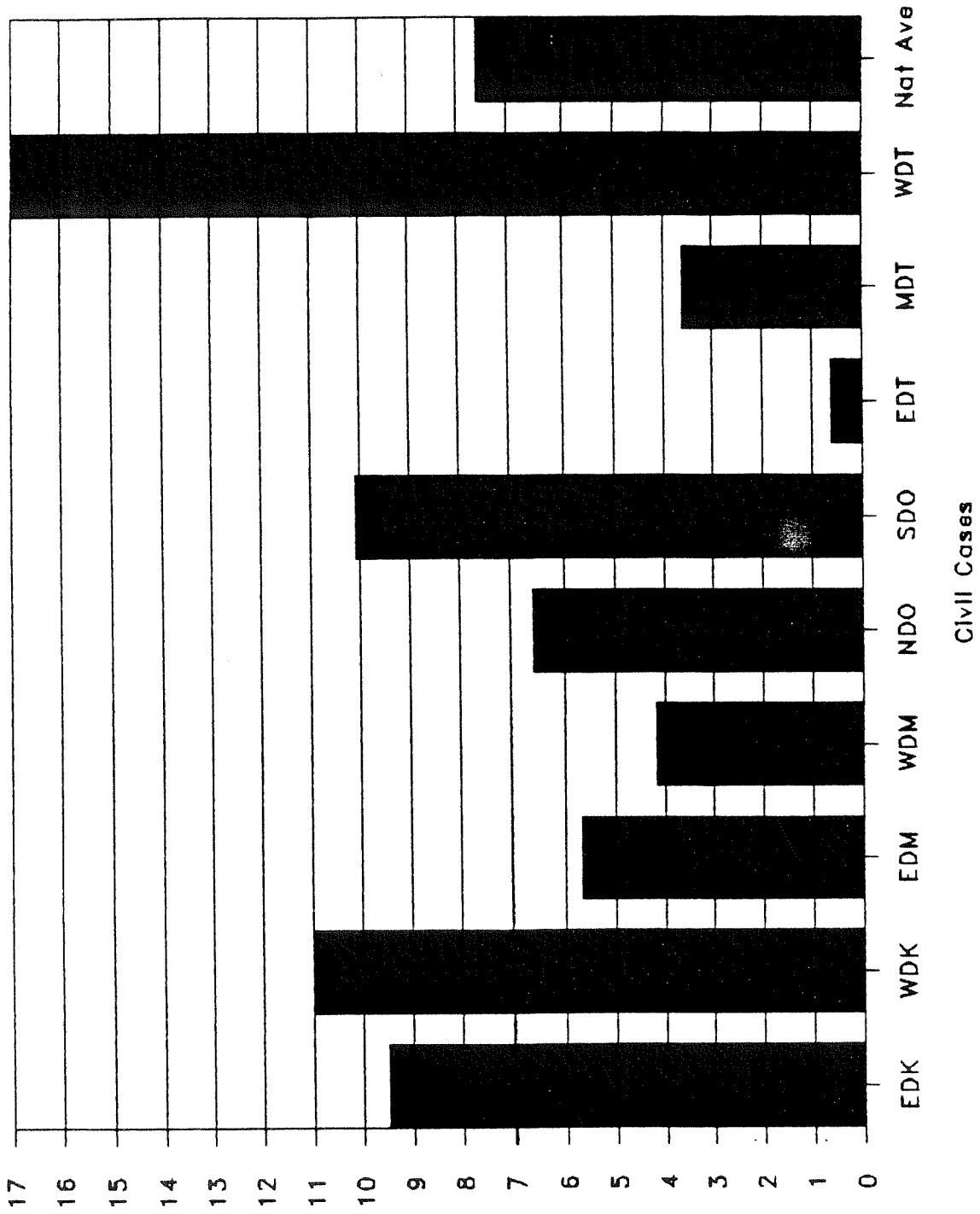


Figure 6



# Jurors Not Selected Serving Challenged

## Jury Utilization Trends 1983-1986

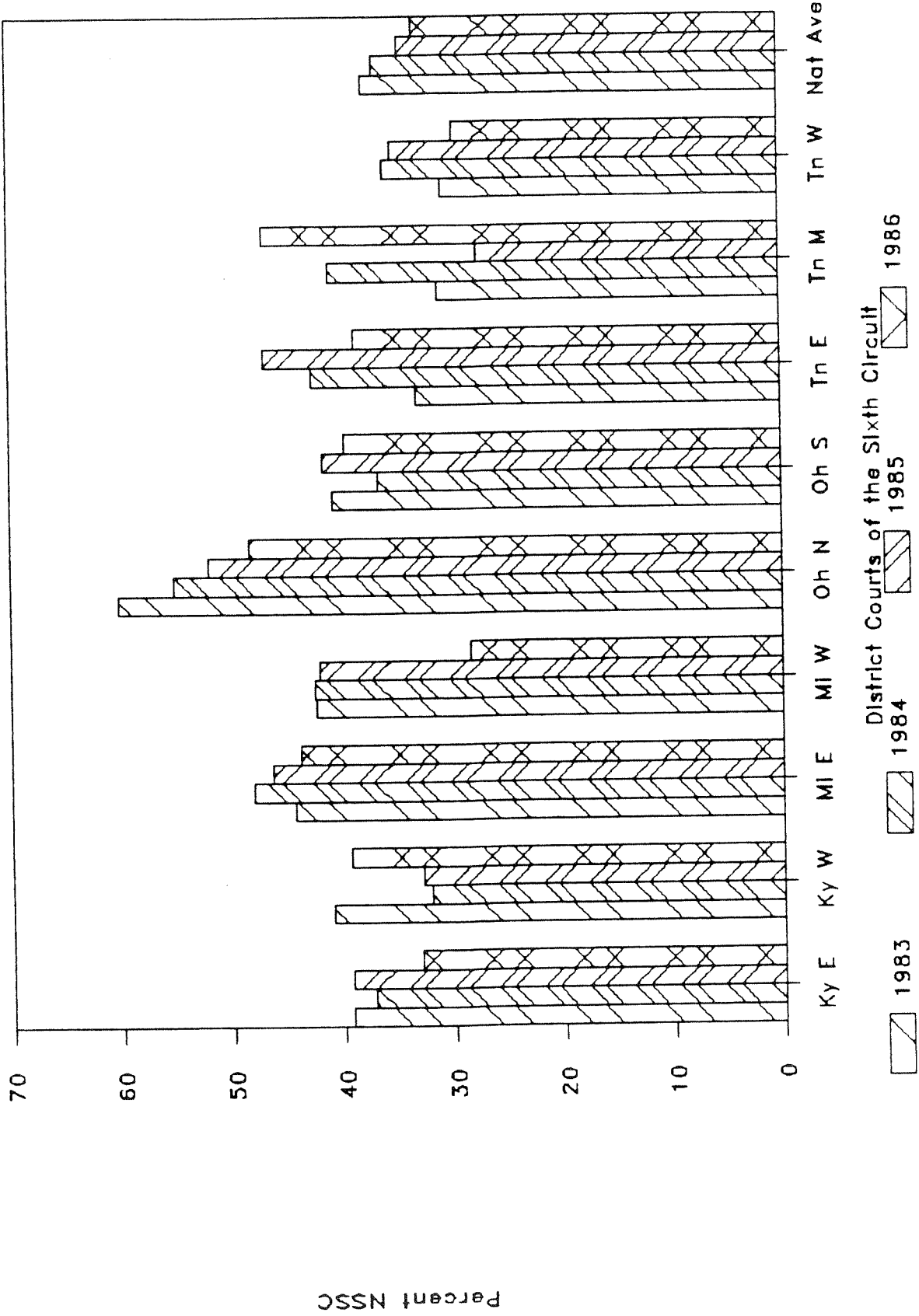
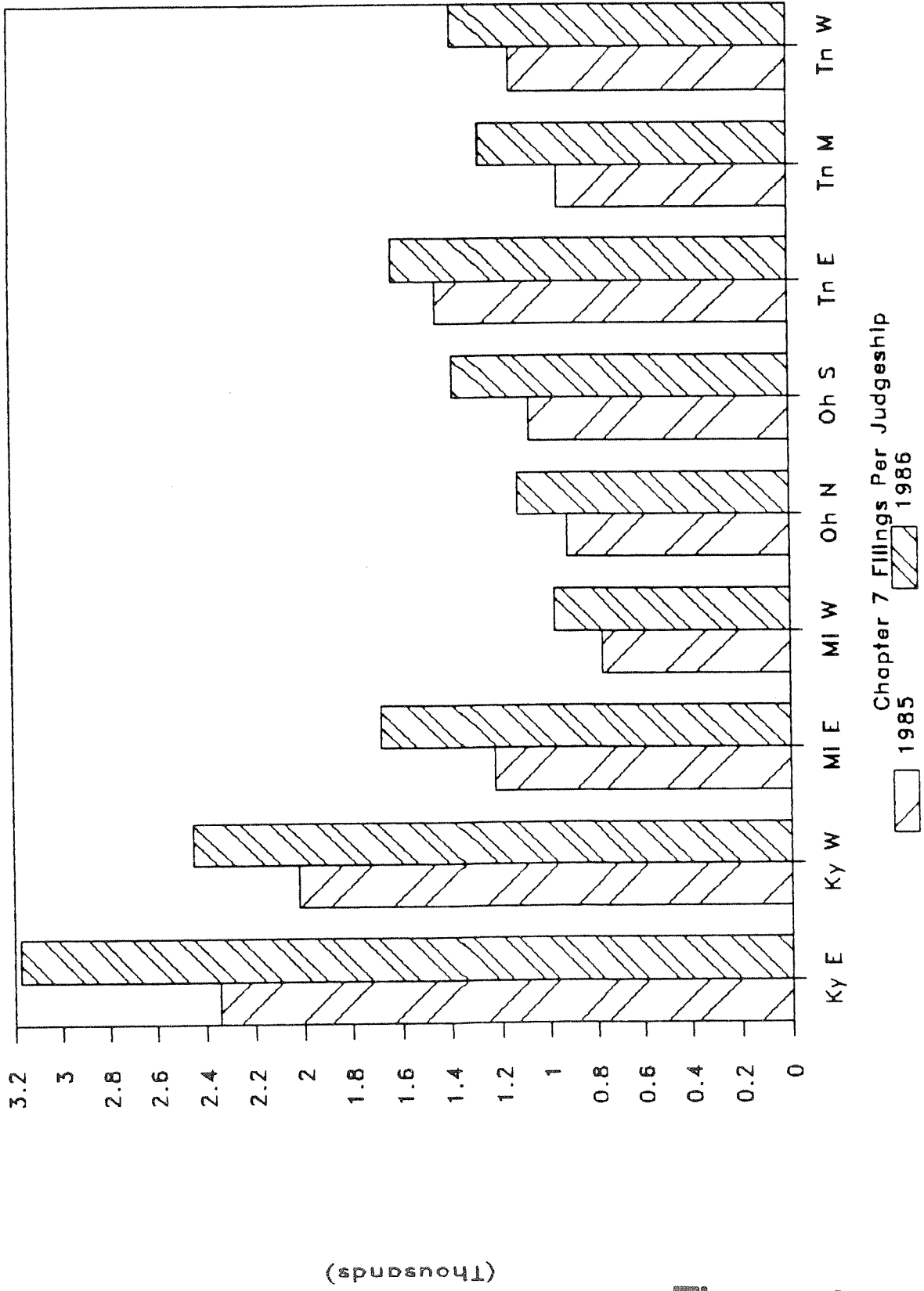


Figure 7

# Bankruptcy Courts <> Sixth Circuit

## Comparison of Chapter 7 Filings



(Thousands)

Figure 8

# Bankruptcy Courts <> Sixth Circuit

## Comparison of Chapter 11 Filings

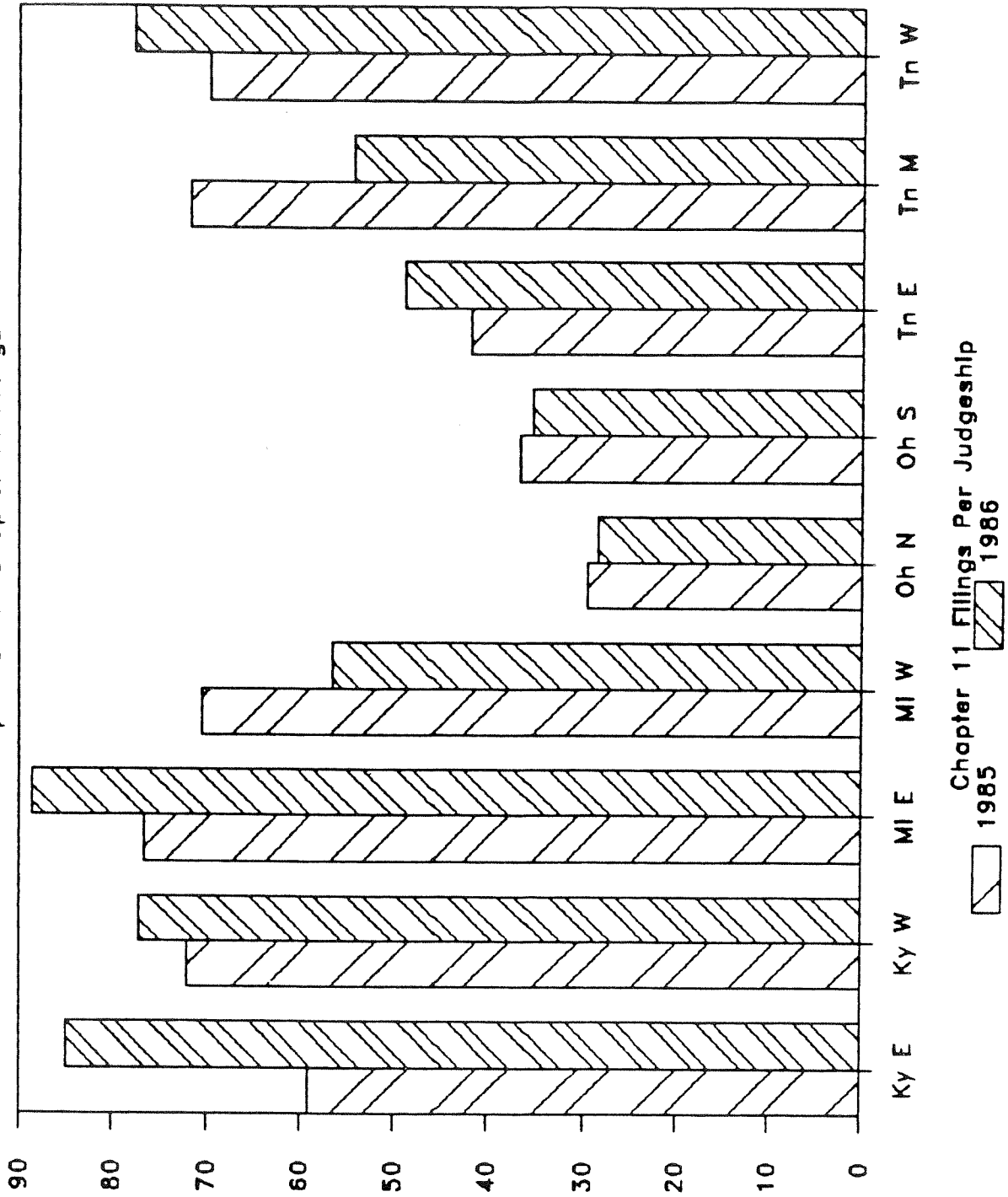
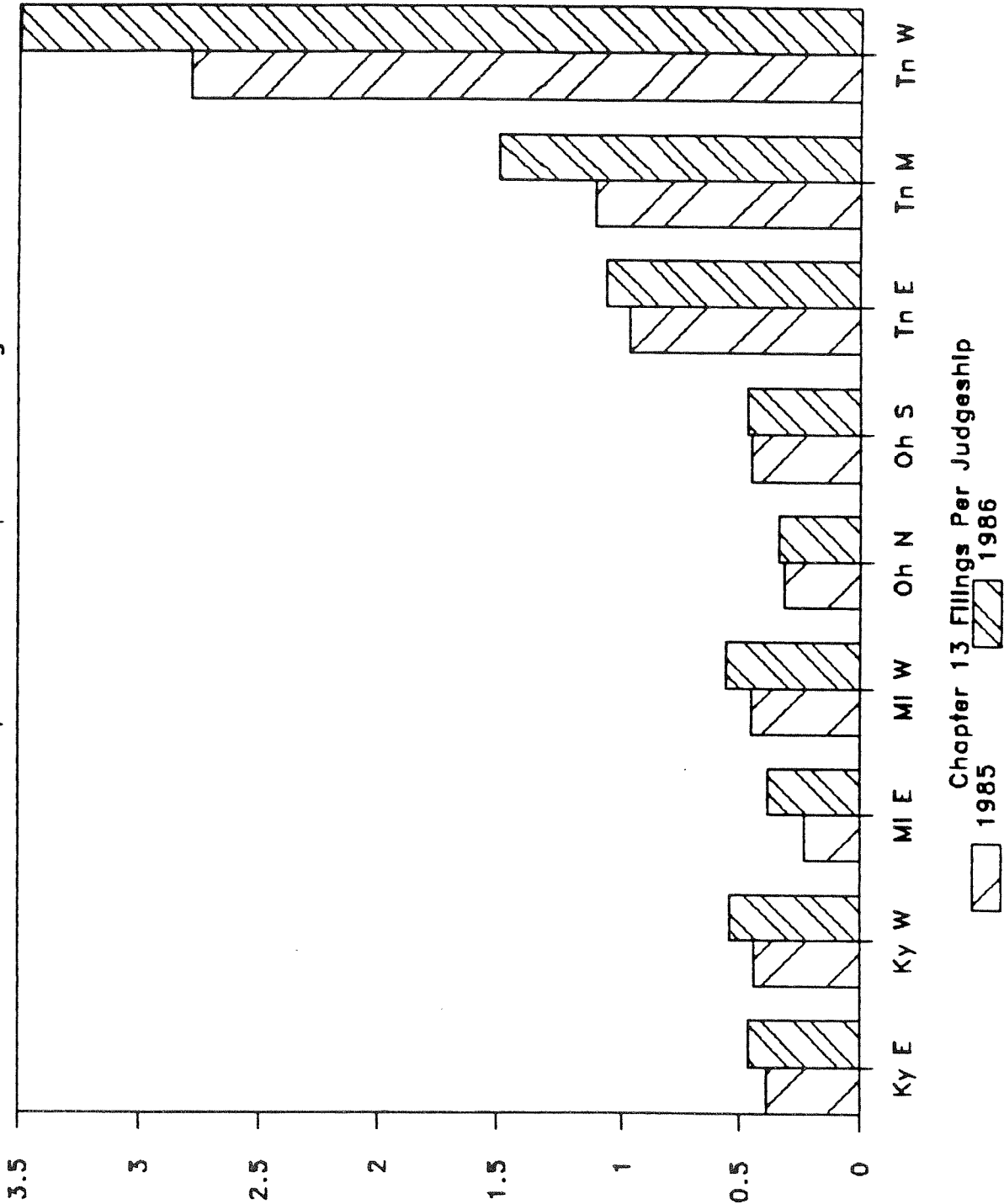


Figure 9

# Bankruptcy Courts <> Sixth Circuit

## Comparison of Chapter 13 Filings



(Thousands)

Figure 10

# Bankruptcy Courts <> Sixth Circuit Comparison of All Chapter Filings

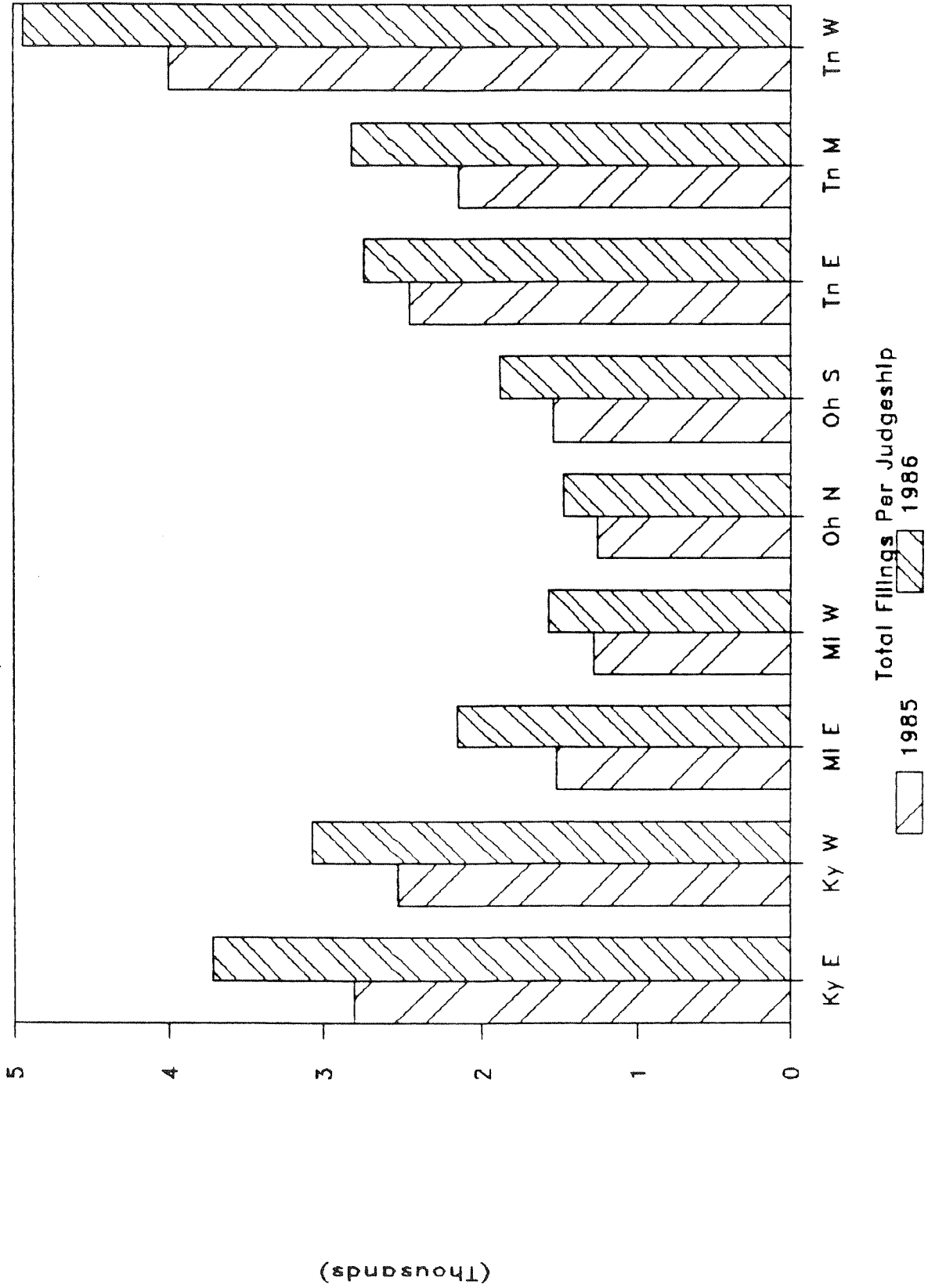


Figure 11



## REPORT OF THE U. S. COURT OF APPEALS

As has been the case throughout the last decade, the volume of new filings continues to increase. Encouraging, though, is the fact that the rate of increase in filings slowed somewhat during the year while the court continued to increase the pace of its dispositions. In the twelve months ended March 31, 1987, 3740 new appeals were filed, an increase of 3.4% over the previous year. The court increased its decisions to 3561 during that period, an increase of 6.7% over the previous year.

The court's schedule of oral arguments continues in the pattern established last year, with hearings scheduled for 33 weeks throughout the year in Cincinnati. During the week of April 20-24, 1987, the court for the first time sat outside of Cincinnati in regular session hearing oral argument in 20 cases. During each of the court's hearing weeks, two panels are scheduled to hear arguments on Monday, Tuesday, Thursday and Friday. On each argument day, each of the panels has scheduled five oral arguments and three cases to be submitted on the briefs. Wednesday remains reserved for motions panels, court meetings and, when necessary, en banc hearings.

In terms of workload, the Administrative Office of the U.S. Courts reports that each active judge of the court participated in 1986 in deciding an average of 331 cases on the merits and 98 cases on procedural grounds. The report also indicated that each active judge was responsible for writing an average of 138 decisions during the year in cases decided on the merits.

Of special concern to the court is the large number, currently about 165, of prisoners under sentence of death in the three states in the circuit which have the death penalty. Although none of those cases has yet found its way into the court of appeals via a habeas corpus petition, a concerted circuit-wide effort is underway to ensure that when the cases do come into the federal courts, the resources will be in place to guarantee uninterrupted representation of these litigants. In February of this year, Chief Judge Lively convened task forces comprised of representatives of the state and federal bench, the bar, and other interested groups from each of the states involved to explore the issues and challenges posed by the unique demands of capital cases. Under the chairmanship of Judge Nathaniel R. Jones, each task force has prepared a report to the court which will assist the Judicial Conference of the United States Committee to Implement the Criminal Justice Act in determining the level of funding necessary to ensure proper representation. Having met that immediate goal, the task forces of each of the states are continuing their efforts to mobilize their respective bars to prepare for the introduction of significant numbers of capital cases into the courts of the circuit.

Although the expected influx of capital cases is a new phenomenon, the need to provide effective appellate representation for large numbers of indigent litigants pursuant to the Criminal Justice Act is not. In the past year the court of appeals has made appointments under the Act in over 125 cases. While those attorneys accepting appointments under the Act find their primary

motivation in their sense of professional obligation, recent Congressional amendments to the levels of compensation provided CJA attorneys have lessened the financial sacrifice such appointments entail. In addition, the court has appointed pro bono counsel in over 30 cases in the past year. The commitment evidenced by the bar in undertaking these appointments continues to be a source of pride and satisfaction to the court.

The increasing complexity of appellate practice, as well as the increasing number of appeals itself, is reflected in the burgeoning motions traffic with which the court has had to deal. Indeed, for several years the court has found the need to devote an increasing proportion of its efforts to deal with the rising tide of motions. As a result of an intensive inquiry undertaken by the court's docket control committee at the behest of the Chief Judge, a reallocation of judicial and staff resources in place since the beginning of 1987 has already made substantial inroads into resolving the motions dilemma. A new division in the clerk's office, headed by an experienced attorney and supported by legal and technical assistants, has consolidated staff activity in this area. Combining these resources with streamlined techniques for the preparation of motions for judicial review and for overall management of the motions docket, the program has, in the short time it has been in operation, achieved results which are encouraging and which augur well for the future.

The contours of practice before the court of appeals are defined by the Sixth Circuit Rules and Internal Operating Procedures, in addition to the Federal Rules of Appellate Procedure. In its role of manager of the court's docket and interpreter of its requirements to the bar, the clerk's office continues to maintain a close working relationship with the court's Attorney Advisory Committee in reviewing the rules and procedures, and developing and recommending to the court such changes as appear warranted. This process has most recently yielded not only amendments to the rules effective February 17, 1987, but in addition the supplementation of the individual rules with helpful commentary and references to the appropriate federal rules. Listed below are the members of the Advisory Committee.

J. Vincent Aug (Chairman) - Cincinnati, Ohio  
William Baughman, Jr. - Cleveland, Ohio  
Paul Borman - Detroit, Michigan  
Stephen C. Bransdorfer - Grand Rapids, Michigan  
John H. Burlew - Cincinnati, Ohio  
Robert R. Campbell - Knoxville, Tennessee  
Maura D. Corrigan - Detroit, Michigan  
Frank E. Haddad, Jr. - Louisville, Kentucky  
Alfred H. Knight, III - Nashville, Tennessee  
Katherine Randall - Lexington, Kentucky  
Edward Stopher - Louisville, Kentucky

Principal among the management innovations is the impending integration into the case-related activities of a full electronic docketing system. Known as AIMS (Appellate Information Management System), the system is



the fruit of a national program at the appellate court level to which this court has been a major contributor since its inception. Powered by a minicomputer already installed and in operation in the clerk's office, and supported by a technical staff second to none, AIMS will ultimately centralize all case docketing activity into a single data base which will produce the full array of letters, other routine communications, and statistical and management reports which are not so labor-intensive. It is anticipated that after a concentrated period of staff training, the office will go "on line" on January 1, 1988.

These changes complement continuing efforts by the clerk's office to educate, through prepared informational aids as well as personal contact, those members of the bar whose intermittent appearances before the court all but guarantee their need to re-educate themselves to the fine details of appellate practice and procedure. During the past year the clerk and other senior staff found occasion to appear before bar groups to share their perspectives on Sixth Circuit appellate practice. Moreover, an updated version of the popular Sixth Circuit appellate practice guide, originally issued in 1985, is about to be issued.

The expanded responsibilities placed upon the clerk's office call for an increasing level of managerial expertise and creativity. In order to prepare staff to discharge these responsibilities, the office continues to avail itself of opportunities provided by the Federal Judicial Center and others to maintain a regimen of training and continuing education designed to place at the service of the court the professional and technical resources it requires.

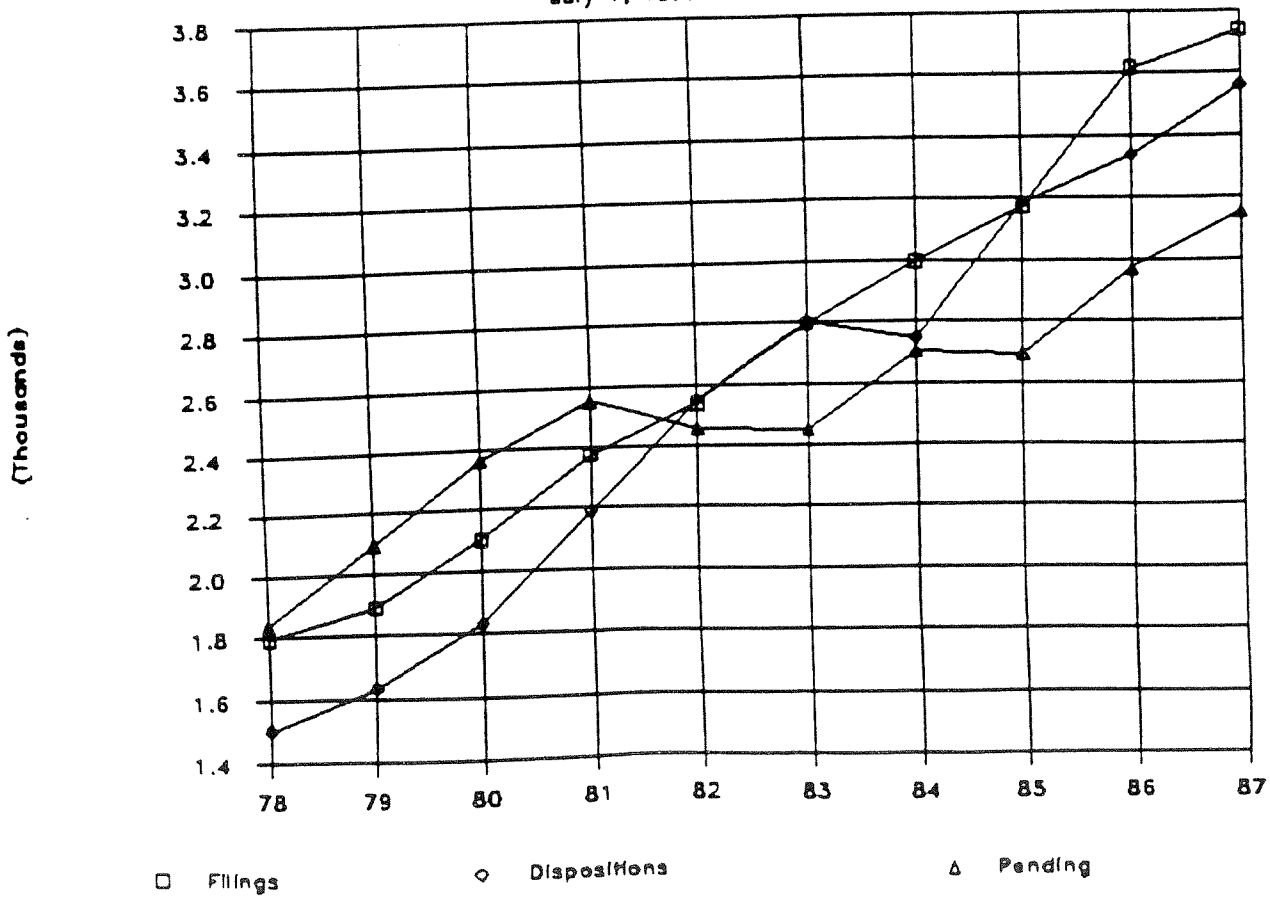
## STATUS OF THE DOCKET

Changes in the status of the Court of Appeals docket of the past ten years is illustrated in the graph below.

The table on the next page provides the actual number of filings, dispositions and pending cases in each year since 1978. The bar graph presents the filing and disposition data in a different format.

### FILINGS, DISPOSITIONS AND PENDING CASES

July 1, 1977 - March 31, 1987

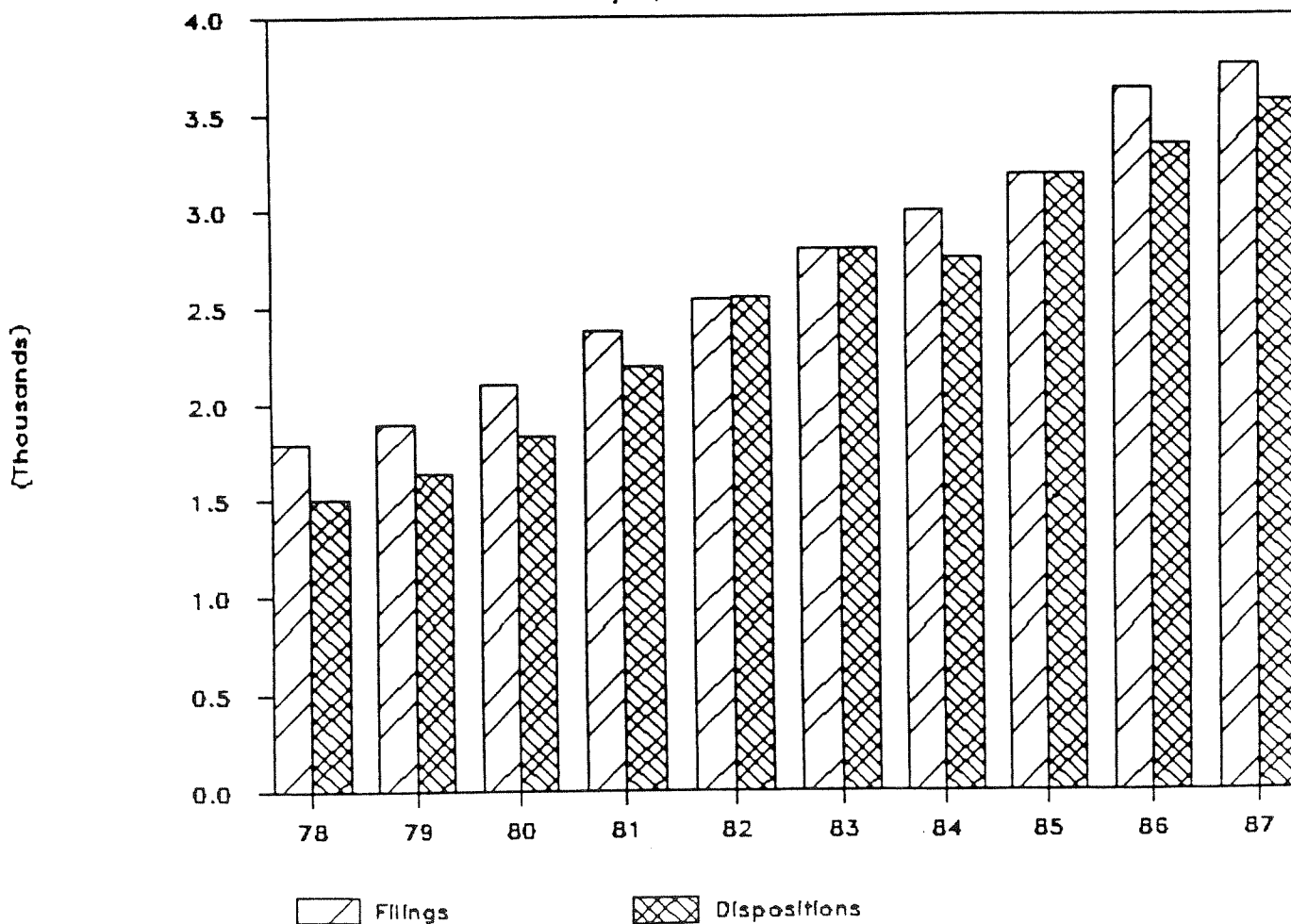


FILINGS, DISPOSITIONS AND PENDING CASES

	As of June 30th										12 Months Ending March 31,
	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	
FILINGS	1795	1889	2103	2376	2541	2795	2996	3172	3618	3740	
Annual Increase	-1.8%	5.2%	11.3%	13.0%	6.9%	10.0%	7.2%	5.9%	14.1%	3.4%	
DISPOSITIONS	1503	1633	1832	2189	2551	2803	2743	3183	3337	3561	
Annual Increase	5.5%	8.6%	12.2%	19.5%	16.5%	9.9%	-2.1%	16.0%	4.8%	6.7%	
PENDING	1839	2095	2366	2553	2457	2449	2702	2691	2972	3151	
Annual Increase	18.9%	13.9%	12.9%	7.9%	-3.8%	-0.3%	10.3%	-0.4%	10.4%	6.0%	

FILINGS AND DISPOSITIONS

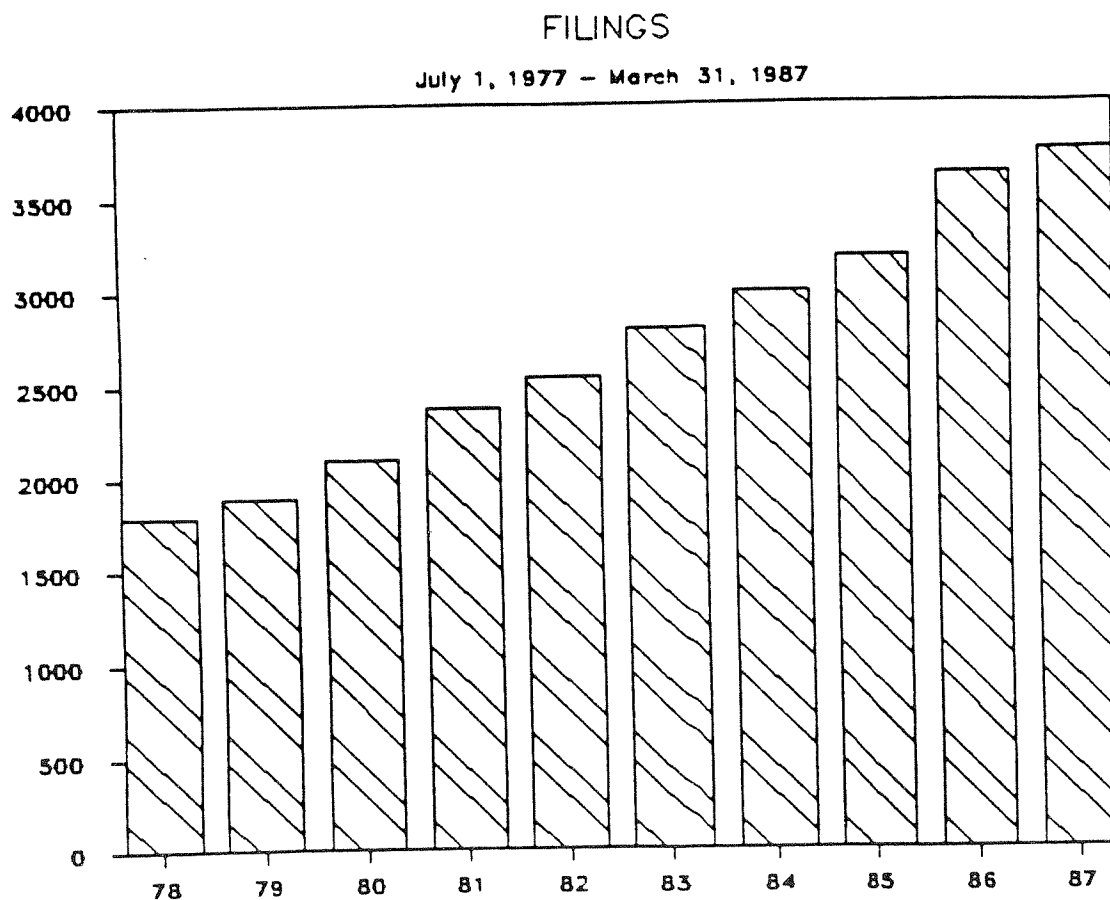
July 1, 1977 - March 31, 1987



## FILINGS

Since 1978, the number of cases filed in the U.S. Court of Appeals for the Sixth Circuit has increased dramatically, although the increase from 1986 to the present year has been relatively minor.

In 1987 there are approximately 2000 more cases than ten years earlier. The chart below shows this rise in filings.



*FILINGS.cont.*

The following table illustrates a summary of filings for the past ten years. The types of cases that have comprised the court's docket during those periods are delineated. As in the past, civil cases continue to comprise almost three-fourths of our docket.

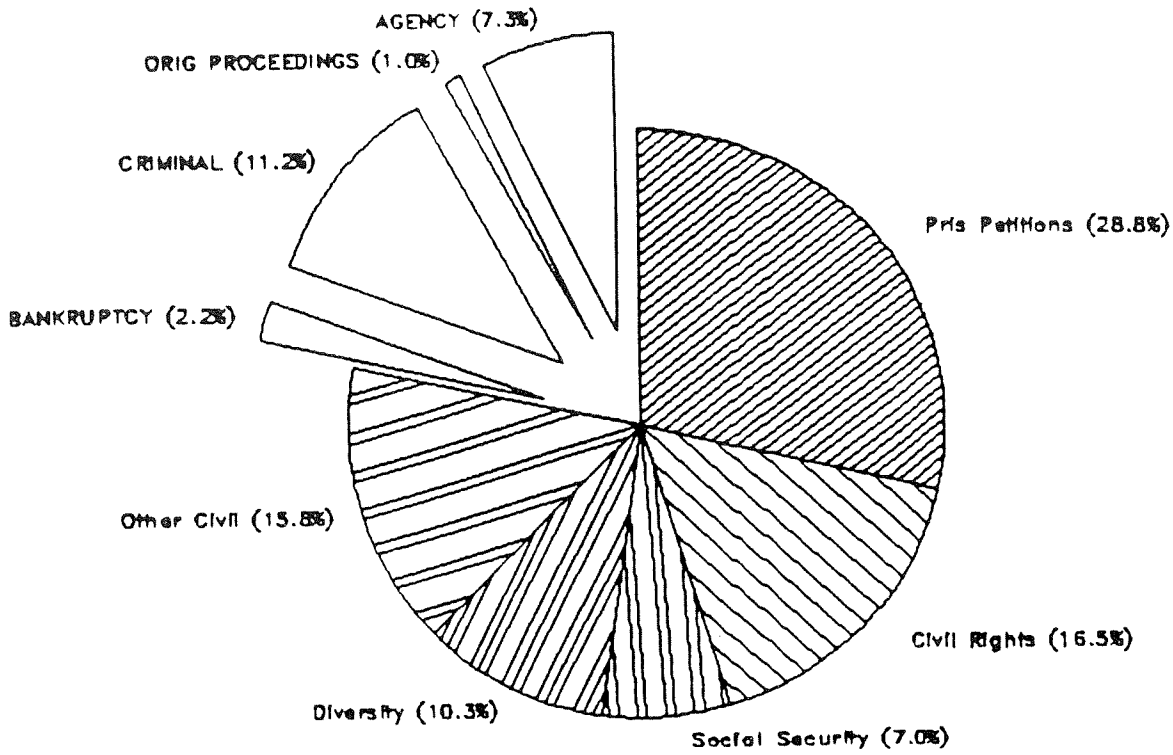
Note that there has been either a slight decrease or a relatively minor increase in social security, diversity, bankruptcy, criminal and agency cases from last year. Original proceedings have continued to remain below their peak filings in the year 1985. Overall our total cases filed have increased only slightly when compared to the increase from 1985 to 1986.

FILINGS BY CASE TYPE

	As of June 30th		12 Months Ending March 31,							
	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
TOTAL CIVIL	1112	1246	1476	1665	1866	2038	2198	2347	2843	2932
Pris Petitions	279	417	420	546	517	568	551	731	953	1077
Civil Rights	216	219	272	304	396	411	405	502	553	618
Social Security	89	143	142	150	165	197	284	240	321	262
Diversity	167	165	212	254	261	240	231	288	389	385
Other Civil	361	302	430	411	527	622	727	586	627	590
BANKRUPTCY	26	20	21	44	52	63	97	93	80	81
CRIMINAL	456	354	347	351	347	380	405	386	395	418
ORIG PROCEEDINGS	20	34	21	33	21	32	29	40	32	36
AGENCY	181	235	238	283	255	282	267	306	268	273
TOTAL CASES FILED	1795	1889	2103	2376	2541	2795	2996	3172	3618	3740

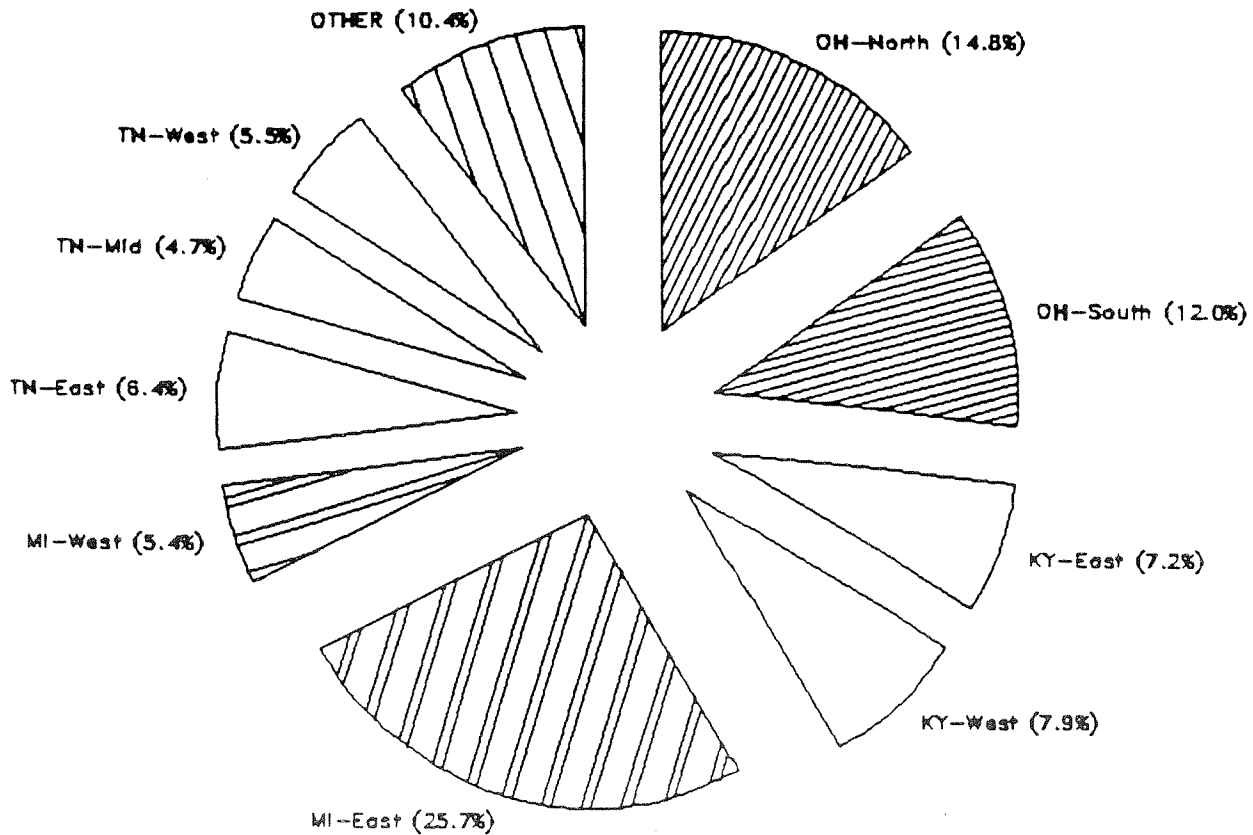
# TOTAL FILINGS BY CASE TYPE

April 1, 1986 - March 31, 1987



# SOURCES OF FILINGS

April 1, 1986 - March 31, 1987



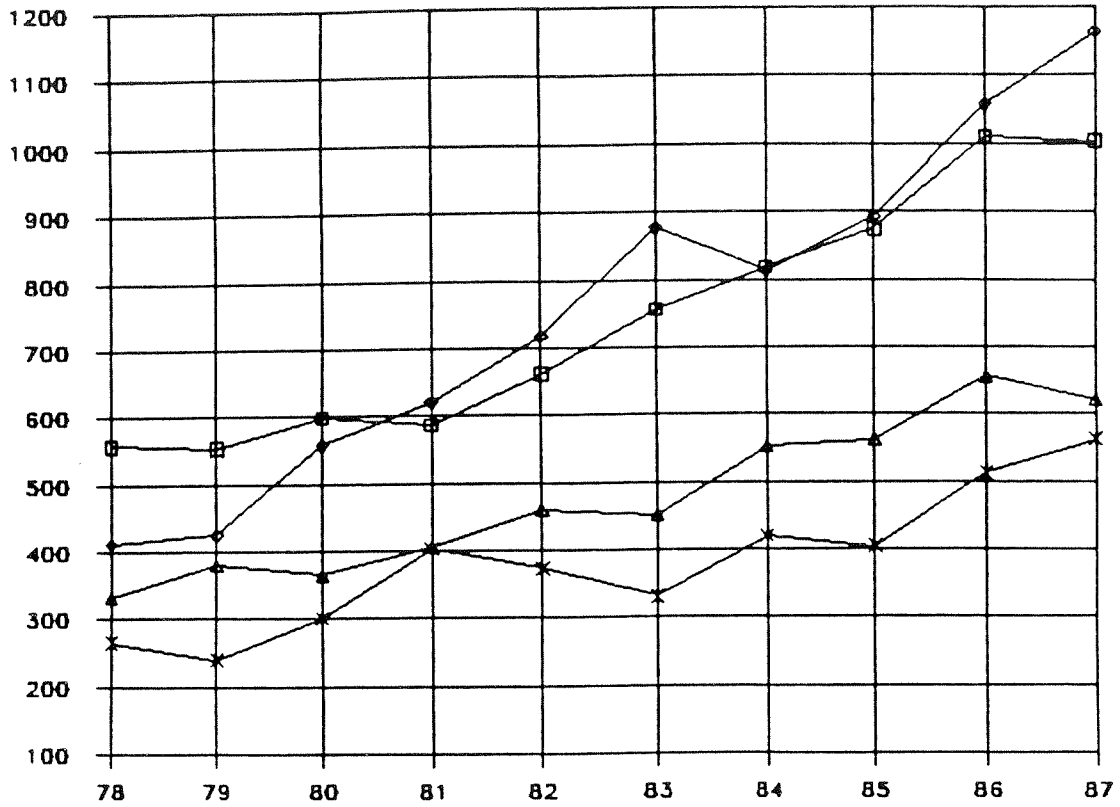
## FILINGS BY SOURCE

The graph on the preceding page and this table show the sources of cases filed during the past ten years. This year, cases filed from Michigan represented the largest increase of approximately 10%. The number of cases filed from Ohio fell from the year before for the first time since 1981. Note that Kentucky's filings increased by approximately 10%.

		SOURCE OF FILINGS									
		As of June 30th								12 Months Ending March 31,	
		1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
OHIO	Northern	241	265	327	284	359	388	481	496	556	555
	Southern	316	289	271	303	303	369	337	378	455	448
	TOTAL	557	554	598	587	662	757	818	874	1011	1003
KENTUCKY	Eastern	138	107	118	190	174	166	239	213	252	268
	Western	128	133	184	213	200	166	181	191	260	295
	TOTAL	266	240	302	403	374	332	420	404	512	563
MICHIGAN	Eastern	364	378	482	496	578	704	683	722	887	962
	Western	48	47	75	124	139	173	129	171	171	201
	TOTAL	412	425	557	620	717	877	812	893	1058	1163
TENNESSEE	Eastern	108	113	147	144	164	157	225	213	265	241
	Middle	90	118	78	113	152	135	162	184	183	176
	Western	135	150	141	149	144	160	166	165	209	204
TOTAL	333	381	366	406	460	452	553	562	657	621	
AGENCY		181	235	238	283	255	282	267	306	268	273
ORIG. PROCEEDINGS		20	34	21	33	21	32	29	40	32	36
BANKRUPTCY		26	20	21	44	52	63	97	93	80	81
TOTAL		1795	1889	2103	2376	2541	2795	2996	3172	3618	3740

# SOURCE OF FILINGS

by State



□ Ohio

◇ Michigan

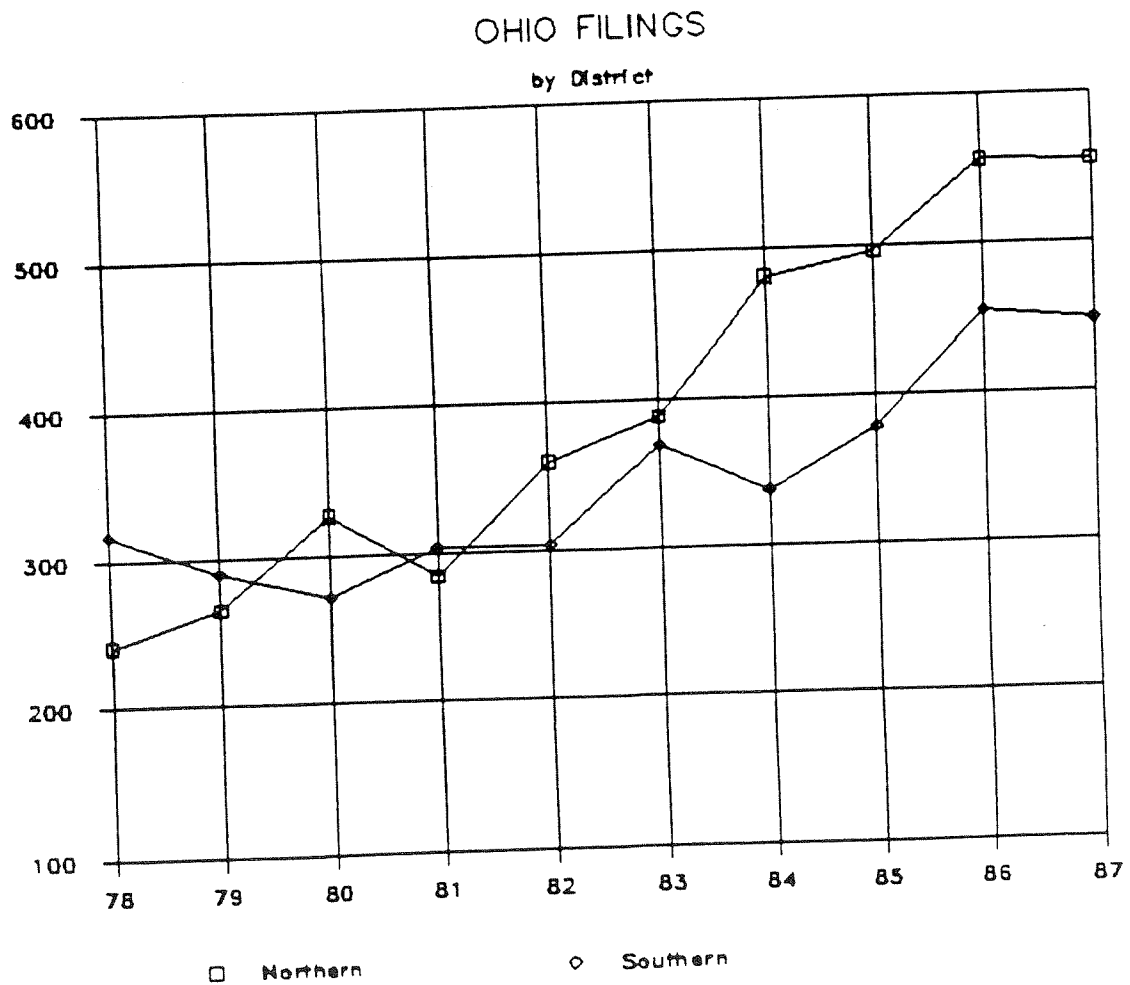
△ Tennessee

X Kentucky



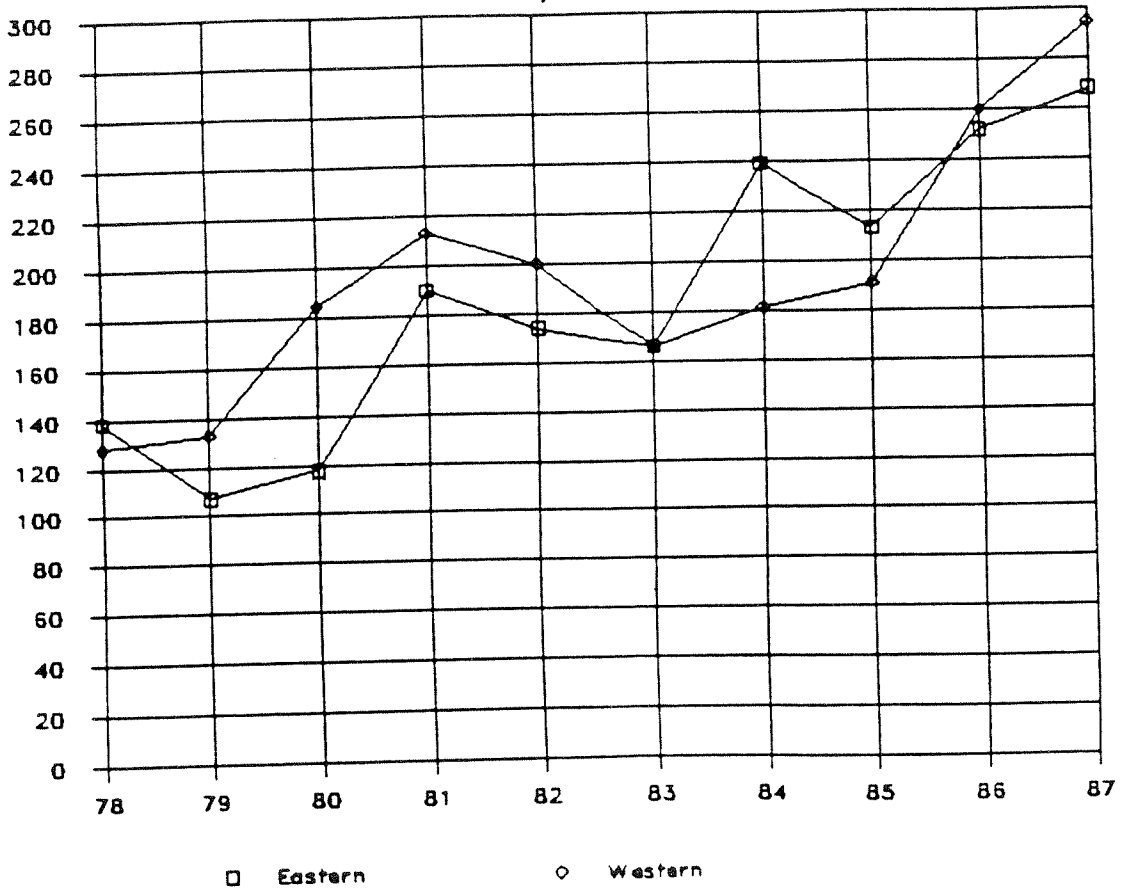
## FILINGS BY SOURCE, cont.

The graphs on the following pages show filings from the district courts of each state. The last graph in this section shows changes in agency and bankruptcy case filings along with cases originating in the court of appeals.



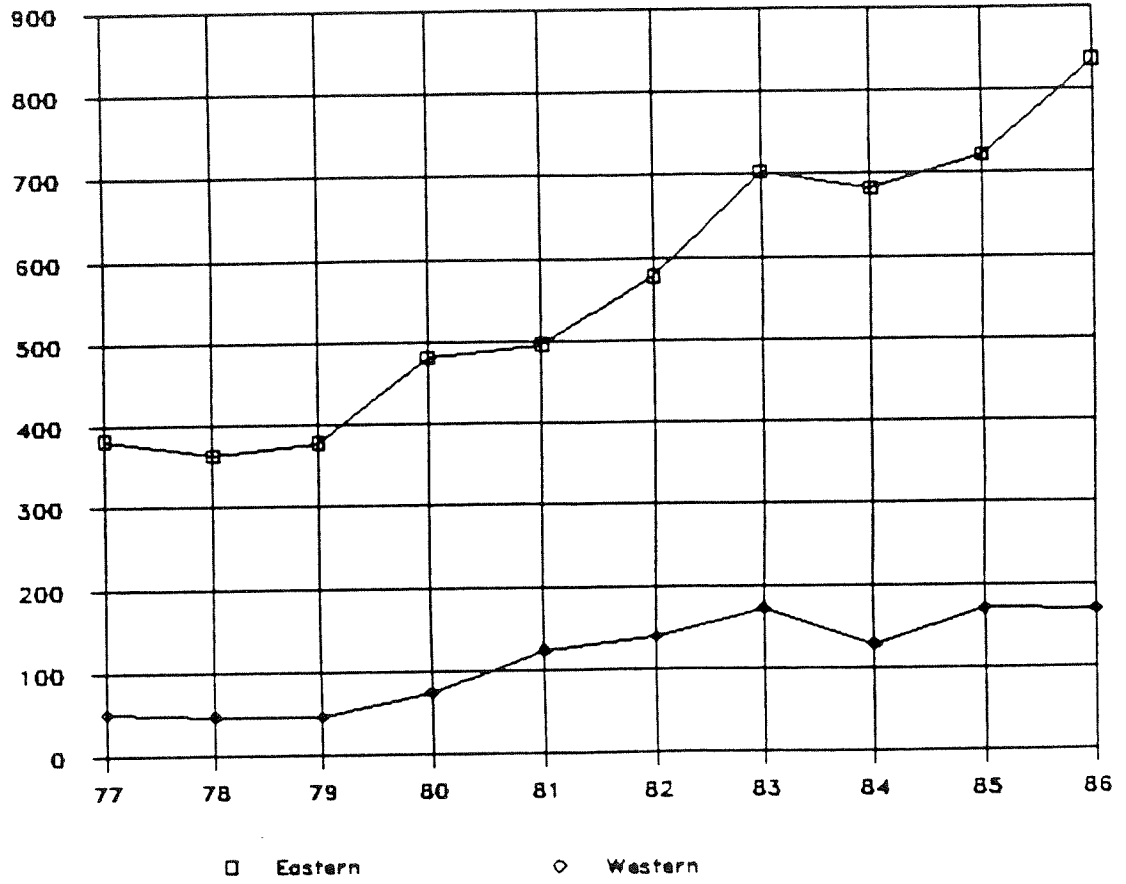
# KENTUCKY FILINGS

by District



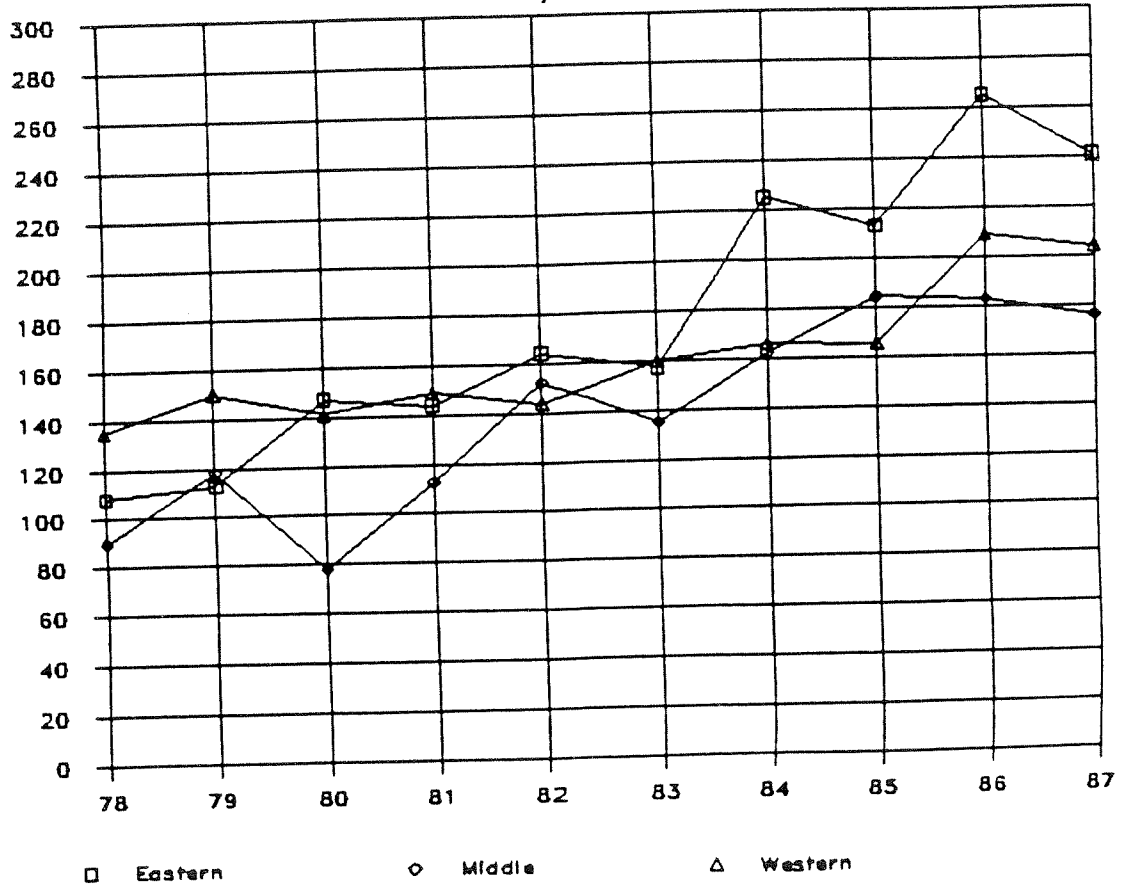
# MICHIGAN FILINGS

by District

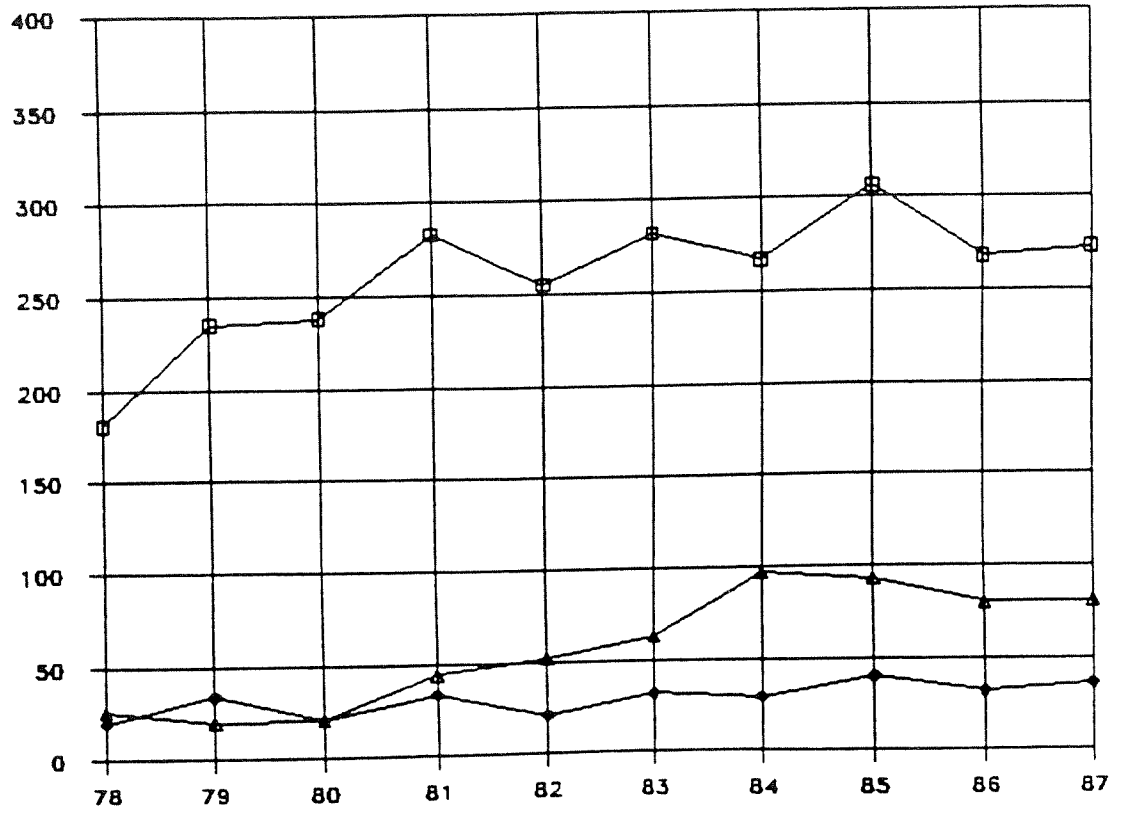


# TENNESSEE FILINGS

by District



# FILINGS FROM OTHER SOURCES



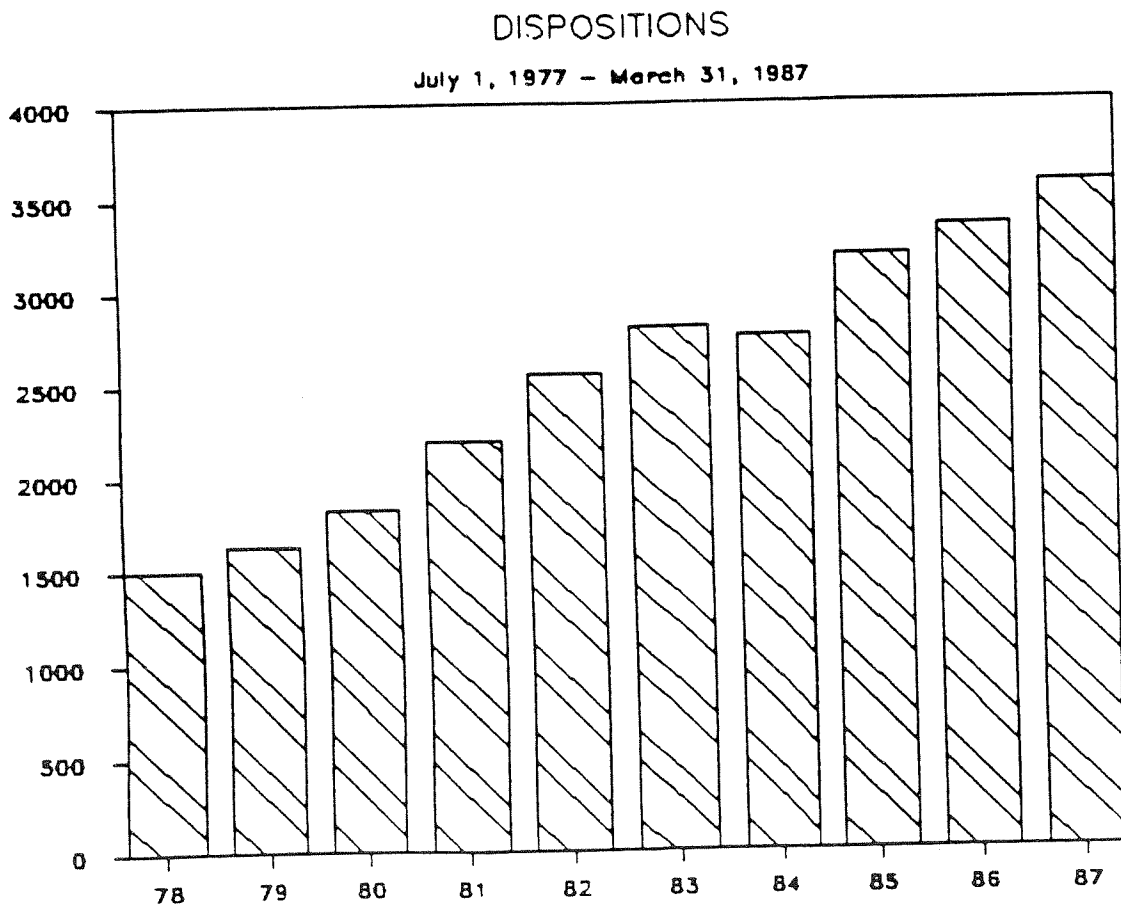
□ Agency

◇ Orig Proceedings

△ Bankruptcy

## DISPOSITIONS

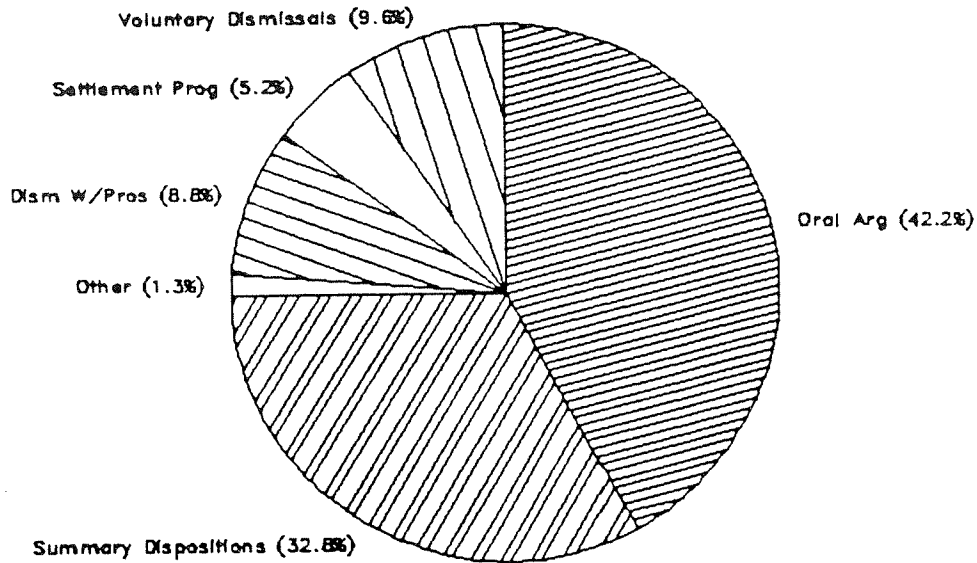
The bar graph below shows the case disposition for each year since 1978. Note that the dispositions have steadily increased.



*DISPOSITIONS, cont.*

The table and pie chart below effectively demonstrate the categories of the dispositions by the court. Note that in 1987 there was 32.8% summary dispositions while there were only 27.9% in 1986.

SUMMARY OF DISPOSITIONS  
1987



SUMMARY OF DISPOSITIONS

	As of June 30th						12 Months Ending March 31,	
	1980	1981	1982	1983	1984	1985	1986	1987
ORAL ARGUMENT (Bench Decisions)	1012	1327 (1)	1233 (66)	1354 (98)	1366 (73)	1461 (87)	1428 (106)	1502 (131)
SUMMARY DISPOSITIONS (Rule 9)	406	444	574	646	618	817	989	1169
VOLUNTARY DISMISSALS	289	344	445	382	353	375	340	342
DISMISSALS FOR WANT OF PROSECUTION	95	107	187	217	211	321	340	315
SETTLEMENT PROGRAM			14	101	132	164	211	185
OTHER	45	42	98	103	63	45	29	48
TOTAL	1847	2264	2551	2803	2743	3183	3337	3561

## PENDING CASES

The chart below depicts pending cases at the end of each of the last ten years. Currently we have approximately 10% more pending cases than we did at this time last year.

