

1993 ANNUAL REPORT



presented to

SIXTH CIRCUIT JUDICIAL CONFERENCE

April 15-18, 1993

**Hilton Head Island
South Carolina**

Honorable Gilbert S. Merritt
Chief Judge

**Kentucky
1792-1992**

Kentucky

1792 - 1992

The picture on the front cover is in commemoration of the Bicentennial Celebration of Kentucky's admission to the Union in 1792. The statute is a replica of the "two friends" who appear on the flag and seal of the Commonwealth of Kentucky, and it is located in Constitution Square State Park, Danville, Kentucky, the site of the signing of Kentucky's first Constitution. The statute symbolizes "two friends" who have been represented in various ways over the years; from buckskin and broadcloth garb, to knee breeches and frock coats. The original intent apparently was to depict two friends in hunter's garb, their right hands clasped, their left resting on each other's shoulder, their feet at the edge of a precipice, giving rise to the words, "United We Stand, Divided We Fall."

Constitution Square itself was a section of land set aside and dedicated for government buildings in the original survey of Danville. It received the name, Constitution Square, after the first constitution of Kentucky was signed there.

The picture is courtesy of the Kentucky Department of Travel Development, Frankfort, Kentucky.

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Judicial Administration in the Sixth Circuit

Introduction

The judiciary's budget for Fiscal Year 1993 tops the list of concerns for the current year. The funding level approved by Congress for the operation of the federal courts for the fiscal year beginning October 1, 1992 is about \$200 million below the amount needed to continue to provide the same level of service

as was provided in the prior year. Unless supplemental appropriations are approved, there will be no money left by spring to pay court-appointed attorneys in criminal cases, and the funds necessary to pay jurors will be depleted by late summer. Without a supplemental appropriation, there will be no funds available to pay for the salaries or facilities for the 35 new bankruptcy judgeships authorized by Congress in the 1992 Bankruptcy Judgeship Act. Three of those new judgeships are for the Sixth Circuit. Without question, there will be severe reductions in funds available for construction of facilities, purchase of equipment, expansion of automation capabilities, and travel. In addition, the cost of living adjustment in the salaries for all government employees for fiscal year 1993 was deferred for the staff

Two critical problems face the judiciary this year: the number of prolonged judicial vacancies in this circuit and the large budget reductions affecting the courts' budget

of the judiciary for two months. Another casualty of the budget cuts is the 1994 Sixth Circuit Judicial Conference which has been cancelled in light of the budget reductions.

Judicial vacancies continue to be a major concern in the Sixth Circuit. There are now two vacancies on the Court of Appeals and eight district

judge vacancies. Five of the eight district court vacancies are in the Northern District of Ohio, where the problem is most acute. Six of the vacancies in this circuit have been designated as judicial emergencies because the vacancies have existed for more than eighteen months.

The format, size, and composition of the Sixth Circuit Judicial Conference continues to be a matter of study and debate among the judges and bar of the Sixth Circuit. The Ad Hoc Committee appointed to study the conferences has submitted its report, the details of which are discussed at greater length in this report.



JUDICIAL CONFERENCE of the UNITED STATES

The Judicial Conference of the United States is the chief policy-making body for the federal judiciary. Established in 1922 as the Conference of Senior Circuit Judges, the Conference oversees the general performance of the federal judiciary and makes various policy recommendations for changes in policies or procedures of the courts. The Conference also 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 meets twice each year - in March and September. The Conference is composed of the Chief Justice, the Chief Judge of each of the

twelve geographic circuits, the Chief Judge of the Federal Circuit, the Chief Judge of 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. Upon the appointment of Judge Eugene E. Siler, Jr. to the Court of Appeals in September of 1991, the Chief Justice designated Judge Edward H. Johnstone of the Western District of Kentucky to serve as a member of the Judicial Conference, and in May of last year, Judge Johnstone was elected by his peers to compete the term which will expire in September of this year.

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. In addition to the regular committees of the Conference, a seven member Executive Committee oversees the assignment of matters to the substantive committees, sets the agenda for the Judicial Conference sessions, and acts for the Conference in between formal sessions. In the current times of fiscal austerity, perhaps the most important responsibility of the Executive Committee is to establish the spending plan which determines how the funds appropriated by Congress are spent within the judiciary.

The following persons from the Sixth Circuit currently serve on committees of the Conference:

J. Vincent Aprile, Esq.
Kentucky
Committee to Review the Criminal Justice Act

Hon. Alice M. Batchelder
Sixth Circuit
Advisory Committee on Bankruptcy Rules

Hon. William O. Bertelsman
Eastern District of Kentucky
Committee on Rules of Practice and Procedure

Hon. Danny J. Boggs
Sixth Circuit
Advisory Committee on Appellate Rules

Hon. Avern L. Cohn
Eastern District of Michigan
Committee on the Administration of the Magistrate Judges System

Hon. Julian Abele Cook, Jr.
Eastern District of Michigan
Chair, Committee on Judicial Ethics

Prof. Edward H. Cooper
Michigan
Reporter, Advisory Committee on Civil Rules

Hon. Julia Smith Gibbons
Western District of Tennessee
Committee on Judicial Resources

Hon. Benjamin F. Gibson
Western District of Michigan
Committee on Automation and Technology

Hon. Ralph B. Guy
Sixth Circuit
Committee on the Judicial Branch

Hon. Thomas A. Higgins
Middle District of Tennessee
Committee on Court Administration and Case Management

Hon. Odell Horton
Western District of Tennessee
Committee on Defender Services

Hon. Edward H. Johnstone
Western District of Kentucky
Committee on the Administration of the Bankruptcy Law

Hon. Nathaniel R. Jones
Sixth Circuit
Advisory Committee on Codes of Conduct

Edward F. Marek, Esq.
Northern District of Ohio
Advisory Committee on Criminal Rules

Hon. Gilbert S. Merritt
Sixth Circuit
Executive Committee Chair, Committee on International Judicial Relations

H. Ted Milburn
Sixth Circuit
Committee on the Administrative Office

Hon. Virginia M. Morgan
Eastern District of Michigan
Committee on Long Range Planning

Hon. Thomas J. Moyer
Chief Justice, Ohio Supreme Court
Committee on Federal-State Jurisdiction

Hon. David A. Nelson
Sixth Circuit
Committee on Criminal Law

Hon. Stewart A. Newblatt
Eastern District of Michigan
Advisory Committee on Civil Rules

Hon. George C. Paine II
Middle District of Tennessee
Committee on State Federal Jurisdiction

James K. Robinson, Esq.
Michigan
*Advisory Committee on the
Rules of Evidence*

Hon. James L. Ryan
Sixth Circuit
Committee on Space and Facilities

Hon. Lawrence P. Zatkoff
Eastern District of Michigan
Committee on Court and Judicial Security

New Committees Created. Chief Justice William H. Rehnquist has appointed Chief Judge Gilbert S. Merritt to chair a new five-member Ad Hoc Committee on International Judicial Relations. The committee was created in response to increased requests from foreign judges and judicial

systems for assistance from the federal judiciary and its support systems. The new committee's charter asks it to study how the federal judiciary might best respond to these requests and whether federal activities in the international relations field should be better coordinated.

The Chief Justice, acting upon the recommendation of the Committee on Rules of Practice and Procedure, has created a new Advisory Committee on the Rules of Evidence. James K. Robinson, Esq. of Detroit has been named to the committee. Mr. Robinson is a Life Member of the Sixth Circuit Judicial Conference and has served as United States Attorney for the Eastern District of Michigan and as President of the State Bar of Michigan.

Committee Membership Changes. Several other changes were made in committee assignments pursuant to the Chief Justice's policy of generally limiting appointments to the Judicial Conference Committees to two three-year terms. The following judges completed service as committee members and were released from further service with the appreciation of the Chief Justice: Magistrate Judge James G. Carr, Committee on Criminal Law, Judge Charles W. Joiner, Committee to Review Judicial Conduct and Disability Orders, Judge Damon J. Keith, Committee on the Bicentennial of the Constitution, and Judge Boyce F. Martin, Jr., Committee on Federal-State Jurisdiction. In addition, Professor Edward H. Cooper of Michigan, formerly a member of the Advisory Committee on Civil Rules, was named reporter for that committee.

New Appointments. Circuit Judge

Alice M. Batchelder was appointed to a three year term as a member of the Advisory Committee on Bankruptcy Rules, and Judge Stewart A. Newblatt was appointed to a three year term as a member of the Advisory Committee on Civil Rules.

Reappointments. Judge William O. Bertelsman was reappointed to a three year term on the Committee on Rules of Practice and Procedure, and Judge David A. Nelson was reappointed to a three year term on the Committee on Criminal Law.



JUDICIAL COUNCIL of the SIXTH CIRCUIT

The Judicial Council of the Sixth Circuit is established by 28 U.S.C. § 332 to make "all necessary orders for the effective and expeditious administration of justice within its circuit." In addition to its responsibility for making administrative policy decisions within the circuit, 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 judgeship 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 repre-

sentation under the Criminal Justice Act, speedy trial plans, 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 projects, 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. Section 332(d)(2) requires all judicial officers and employees to carry into effect all orders of the judicial council. Failure to abide by council orders could lead to civil contempt proceedings.

There are 19 members of the council consisting of the chief judge, nine circuit judges, and nine district judges. The current membership of the Sixth Circuit Judicial Council is as follows:

Council Membership

Chief Judge Gilbert S. Merritt
Chair

Circuit Judge Cornelia G. Kennedy
Circuit Judge Boyce F. Martin, Jr.
Circuit Judge Nathaniel R. Jones
Circuit Judge H. Ted Milburn
Circuit Judge Ralph B. Guy
Circuit Judge Alan E. Norris
Circuit Judge James L. Ryan
Circuit Judge Eugene E. Siler, Jr.
Circuit Judge Richard F. Suhrheinrich
District Judge William O. Bertelsman
Eastern District of Kentucky
Chief District Judge Ronald E. Meredith
Western District of Kentucky
Chief District Judge Julian Abele Cook, Jr.

Eastern District of Michigan
Chief District Judge Benjamin F. Gibson
Western District of Michigan
Chief District Judge Thomas D. Lambros
Northern District of Ohio
Chief District Judge John D. Holschuh
Southern District of Ohio
Chief District Judge James H. Jarvis
Eastern District of Tennessee
Chief District Judge John T. Nixon
Middle District of Tennessee
Chief District Judge Odell Horton
Western District of Tennessee

Non-voting Members:

Bankruptcy Judge William T. Bodoh
Northern District of Ohio
Magistrate Judge Peggy P. Patterson
Eastern District of Kentucky

Council Committees

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

Executive Committee

Honorable Gilbert S. Merritt, Chair
Honorable Cornelia G. Kennedy
Honorable Boyce F. Martin, Jr.
Honorable Nathaniel R. Jones
Honorable Thomas D. Lambros
Honorable Julian Abele Cook, Jr.

Honorable John T. Nixon

Investigating Committee

Honorable Gilbert S. Merritt, Chair
Honorable Cornelia G. Kennedy
Honorable Boyce F. Martin, Jr.
Honorable Nathaniel R. Jones
Honorable H. Ted Milburn
Honorable Douglas W. Hillman
Honorable William O. Bertelsman
Honorable Thomas A. Higgins
Honorable S. Arthur Spiegel

Local Rules Review Committee

Honorable Robert B. Krupansky, Chair
Honorable H. Ted Milburn
Honorable Odell Horton

**Senior Judge Personnel and
Facilities Committee**

Honorable Benjamin F. Gibson, Chair
Honorable H. Ted Milburn
Honorable John D. Holschuh

The Council meets in regular session twice 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, either of the full council or of the executive committee. The circuit executive provides the staff and administrative support for the Council.

The matters considered in the last year

Judicial Council continues to focus on reducing delay in civil cases.

by the council have dealt heavily with the problem of backlogs of pending motions, bench trials under advisement and civil cases awaiting trial. In May of 1992 the Council adopted as a goal that civil cases pending for more than five years should be disposed of by January 1, 1993, except for those cases that are not subject to disposition because they have been held in abeyance by a stay in bankruptcy, an appeal to the Court of Appeals, or the certification to the state supreme court of a question of state law. Also exempt from the goal are cases of continuing jurisdiction such as school desegregation or prison conditions cases. A similar goal was adopted calling for the disposition by January 1, 1993 of all motions pending for more than two years and bench trials under submission for more than two years.

The Council also reviewed reports of pending social security and bankruptcy appeals pending in the District Courts. The Council adopted a goal that all social security cases and bankruptcy appeals should be disposed of within one year of filing in the district court.

The Council also instituted a new practice of asking judges who serve on selected committees of the Judicial Conference of the United States to report to the council on the activities of their committees and the more significant issues pending before their committees.

The Council continues to perform an important role in the appointment of bankruptcy judges in the Sixth Circuit. In 1984

the council adopted procedures governing the application and screening process for bankruptcy judges. Those procedures specify the use of a prescribed application form and the use of a merit selection panel for a district made up of members of the bar. After the merit selection panel narrows the list of applicants to the five to ten best qualified, the council chooses three applicants and submits that list of three persons to the Court of Appeals which must make the selection from one of those persons.

The resignation of R. Guy Cole as United States Bankruptcy Judge for the Southern District of Ohio at Columbus activated those selection procedures. In December 1992 the Council narrowed the list of best qualified applicants to three persons, and in January 1993 the Court of Appeals selected Charles O. Caldwell of Columbus for appointment to that vacancy.



JUDICIAL CONDUCT and 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 a circuit, district, bankruptcy or magistrate judge of the circuit. A complaint is submitted first to the Chief Judge of the Cir-

cuit, 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. Actions which may be taken 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 has adopted Rules Governing Complaints of Judicial Misconduct or Disability, which were most recently amended in 1992. Copies of the rules are available from the circuit executive's office or from any clerk's office in the Sixth Circuit.

During the year ended December 31, 1992, 52 complaints were filed in the Sixth Circuit, and 47 complaints were terminated. Forty-seven of the complaints were filed by disappointed litigants; twenty-two of that number were prison inmates. Thirty-seven of the complaints were dismissed by the Chief Judge as directly related to the merits of a decision or procedural ruling of the judge or judges who were the subject of the complaint. Five of the complaints were dismissed by the Chief Judge as not in conformity with the statute, and four of the complaints were dismissed

as frivolous. One complaint was closed by the Chief Judge upon his finding that appropriate corrective action had been taken. No complaints were referred to the special investigating committee of the Judicial Council during 1992.



SIXTH CIRCUIT JUDICIAL CONFERENCE

Background. Nearly four and one-half years ago the Sixth Circuit embarked on a review of the effectiveness of the policies governing the Sixth Circuit Judicial Conference. An Ad Hoc Committee composed of a broad representation of judicial officers and life members were asked to evaluate whether the conference conforms to the statutory purpose of "considering the business of the courts and advising means of improving the administration of justice within such circuit." 28 U.S.C. § 333 The committee was asked to consider concerns expressed by several judges and lawyers about the growing size of the conference, as well as issues involving the increasing costs of conferences, the fairness of the delegate selection process, the small number of minority and women delegates, and the failure to offer the lawyer members of the conference a more substantive, active role in the conference.

1992 Experimental Conference. Early in its deliberations, the Ad Hoc Committee concluded that the Sixth Circuit should hold an experimental conference to try out alternative delegate selection methods and

program content. Accordingly the 1992 conference was held in Columbus, Ohio with a significantly reduced number of lawyers in attendance. Only members of the bar who were selected under the experimental process were in attendance. Life members, law school deans, bar representatives, state court chief justices, and U.S. Attorneys did not receive the usual invitations. Overall, there were approximately an equal number of judges and lawyers in attendance. This resulted in a conference with approximately 300 participants, compared to approximately 500 participants at a traditional conference. Delegates were to be selected by an entire court, rather than by individual judges as has been the usual practice. The criteria used for selection of delegates to the 1992 conference were that the delegates must have been: (1) actively involved in federal practice; (2) interested in the work and the purpose of the conference; (3) able to contribute to the work and purpose of the conference; and (4) in the aggregate, represent a fair cross-section of the practitioners before the selecting court, taking into account such factors as area of practice, type of clients represented, professional affiliation, age, gender, race, and prior attendance at judicial conferences.

No final decisions have been reached about the future size of membership of the Sixth Circuit Judicial Conference. The 1994 Conference has been cancelled for budgetary reasons.

Following the selection of court-selected delegates, the 1992 program planning committee selected approximately twenty-five additional delegates to ensure that the delegates represented a fair cross-section of the bar. Rather than the traditional lectures or panel discussions, the substantive program at the 1992 conference utilized small group workshop sessions on practical issues involving day to day federal court practice.

Following the 1992 conference the Ad Hoc Committee surveyed all of the participants in that conference, following which it made recommendations about the future of the circuit conferences to the Court of Appeals. The report was made to the Court of Appeals because that is the body that has the authority to provide for the rules for participation by lawyers in the circuit conferences.

Ad Hoc Committee Recommendations. The Ad Hoc Committee submitted four recommendations:

1. Delegate selection should be by the court as a whole, pursuant to stated merit criteria, rather than the present system of delegate selection by individual judges.
2. Life membership should not be abolished. However, the creation of new life memberships should be terminated, provided, that any circuit or district judge with a delegate who has attended at least three conferences (exclusive of 1992) should be allowed to designate that delegate for future conferences, over and above the delegate quota for that judge's court. Thus, delegates with three years attendance

could become life members if their sponsoring judge names them to at least two more conferences.

3. There should be a standing committee on the Judicial Conference, made up of representatives of the bar and all levels of the judiciary. The proposed responsibilities of the standing committee would be (1) program planning; (2) delegate selection to provide for appropriate balance and diversity among the delegates; and, (3) ongoing evaluation.
4. There should be another "experimental" conference with open registration at which any attorney who practices in the federal courts is given an opportunity to attend.

Court of Appeals Defers Action. The Ad Hoc Committee's Report and Recommendations were considered by the Court of Appeals at its October 1992 administrative meeting. The Court of Appeals first expressed its great appreciation to the Ad Hoc Committee for its outstanding work in studying the issues relating to the size, composition, and program content of the circuit conference and for its superb work in planning the 1992 experimental conference in Columbus, Ohio. Recognizing that the committee's report recommended several significant changes in the delegate selection process and the overall membership of the Sixth Circuit Conference, the Court of Appeals decided to defer action on the report and recommendations and to provide a copy to every judicial officer of the Sixth Circuit for information and comment. The Court also agreed to seek the recommendation of the Sixth

Circuit Judicial Council since each district is represented on the Council by its chief judge. As a result of the decision by the Court of Appeals to defer action on the Ad Hoc Committee's recommendations, the traditional rules about delegate selection and qualification for life membership in the conference remained in effect for the 1993 conference **not** the proposals in the Ad Hoc Committee's report.

1994 Conference Cancelled. The 1994 Sixth Circuit Judicial Conference previously scheduled to be held at the Grove Park Inn, Asheville, North Carolina June 7-12, 1994 has been cancelled due to reductions in the judiciary's budget for holding circuit conferences. If the funding reduction becomes permanent, it may be necessary to schedule circuit conferences on a biennial rather than an annual basis, but no final decision has been reached on that issue, nor has any decision been made about the dates or location for a conference in 1995.



CAPITAL PUNISHMENT RESOURCE CENTERS

The United States Supreme Court and various courts of appeals and district courts continue to wrestle with the intractable problems posed by capital punishment cases. The United States Court of Appeals for the Sixth Circuit and the district courts within this circuit are no exception.

Kentucky, Ohio and Tennessee are the

Sixth Circuit States with death penalty statutes. Each has established capital punishment resource centers. The Sixth Circuit encouraged the creation of these centers in order that, among other reasons, the federal courts of the circuit would be able to respond in a systematic and responsible manner as the capital cases reached the federal courts.

A report of the activities of the three resource centers provides some insights of the progress that has been made and serves as an indicator of the challenges that remain.

Kentucky Capital Litigation Resource Center. There are twenty-eight persons on death row in Kentucky. One case is pending before the Sixth Circuit and another petition for a writ of habeas corpus is pending in the District Court. Two other cases are poised to enter the federal court system very soon. Of the remaining twenty-four cases, fourteen are at the state post-conviction stage and ten are proceeding on direct appeal.

During the past year two cases were reversed by the Kentucky Supreme Court and another death sentence case was reinstated.

All direct appeal cases as well as post conviction cases are being handled by the Department of Public Advocacy attorneys. There have been twelve private attorneys recruited to provide representation on some of the other cases. The Center has been functioning with only two of the four authorized staff attorneys. It is anticipated that during the current year a full complement of staff lawyers will be on board.

The problem of recruiting lawyers from the private bar is an ongoing one. It is

extremely hard to come by competent lawyers willing to accept the time consuming and emotionally draining post conviction cases for the statutory maximum fee of \$2500. The attorneys recruited, however, are not primarily interested in the remuneration, but are dedicated to the proposition that persons sentenced to death are as much entitled to quality counsel as are other criminal defendants.

Finally, it should be noted that the Department of Public Advocacy has been undergoing a reorganization under the new Public Advocate, Allison Connelly. This Center has been intimately involved in the process to insure that the interests of its program are furthered. Foremost among the recommendations of the Center have been the need to ensure that there are sufficient state-funded attorneys to handle capital post-conviction cases at the state level.

Other meaningful activities include the enlisting of services of three volunteer law students during the 1992 Summer. They were from Tulane, Harvard and the University of Birmingham in England. Their services were extremely helpful, particularly in light of the severe budget shortfall.

With regard to future activities, planning is moving forward for the first major training event for lawyers on September 9-11, 1993. This 2-1/2 day workshop will focus on mitigation and will be offered to any attorneys, public or private, desirous of providing capital post-conviction services. Also, a computerized capital litigation decision and pleading bank has been planned. The Center has also been involved in a study mandated by the Kentucky legislature to update a previously

concluded examination into the issue of racial disparity patterns in capital sentences. University of Louisville Professors Thomas Keil and Gennero Vito are directing the study.

Ohio Death Penalty Resource Center.

The Ohio Death Penalty Resource Center commenced operations on October 1, 1991. At that time, three Ohio cases were in habeas corpus status with two of them being held in abeyance pending resolution of litigation concerning the commutation of death sentences by former Governor Celeste. Those two cases are likely to remain in abeyance for an indefinite period of time.

During the past year there was a change at the helm of the Resource Center. Upon the resignation of the Ohio Public Defender, Randall Dana, James Kura, a former Franklin County public defender, was appointed to head the organization. He designated Randall Porter as Assistant Director of the Center. Gregory Ayers is now serving as Chief Counsel and performing other administrative duties.

Between October 1, 1991 and September 30, 1992, ten capital federal habeas petitions were filed in Southern and Northern Ohio Federal District Courts. No additional petitions have been filed since that time. The Ohio Center has provided counsel in nine of those cases and provided consultation in the other case.

Of the ten cases filed during FY 1992, four have been dismissed outright because of unexhausted appellate ineffectiveness claims. In addition, two of the cases are being held in abeyance to permit the petitioner to return to State court to litigate the appellate ineffectiveness issue.

On February 19, 1992, the Supreme Court of Ohio established the procedure for litigating appellate ineffectiveness claims in the case of *State v. Murnahan*, 63 Ohio St. 3d 60 (1992). Prior to *State v. Murnahan*, the procedure was undefined in Ohio. In *State v. Murnahan*, the Supreme Court of Ohio rejected the procedure (post-conviction) for exhausting and litigating appellate ineffectiveness claims that were determined to be appropriate by the United States Sixth Circuit Court of Appeals in *Manning v. Alexander*, 912 F.2d 878, 881 (1990). Instead the Supreme Court of Ohio determined that such claims should be raised in Delayed Motions for Reconsideration.

Prior to *State v. Murnahan*, all of the Ohio capital cases had raised appellate ineffectiveness claims in post-conviction litigation pursuant to *Manning v. Alexander*. As a result of *State v. Murnahan*, most of the cases reaching federal court had unexhausted appellate ineffectiveness claims and needed to return to state court to exhaust such claims pursuant to the new procedure. While there was initially some confusion as to which court would grant stays of execution to exhaust appellate ineffectiveness claims pursuant to the new procedure, the Supreme Court of Ohio has now begun to grant stays of execution for this purpose.

None of the remaining cases in federal court, which are not being held in abeyance, have received an evidentiary hearing or been ruled on substantively. One case is on appeal to the United States Sixth Circuit Court of Appeals, by the Respondent, on the limited issue of the Federal District Court's authority to grant a stay of

execution without the filing of a federal habeas petition.

The Ohio Center expects a flurry of activity within the next twelve months, including the possibility of the filing of as many as twenty federal habeas petitions. This includes cases in which the petitions were previously dismissed from federal court because of an unexhausted appellate ineffectiveness issue; petitions not yet filed in federal court because the appellate issues were not properly exhausted, pursuant to the new procedure; and petitions that were not filed earlier because neither the post-conviction nor the appellate ineffectiveness issues were exhausted.

The Ohio DPRC will attempt to co-counsel as many federal habeas petitions as possible. However, the Center realizes the need to share its responsibility in these cases with the private bar. Therefore, the search will continue for qualified attorneys with significant experience in federal court to provide representation in these cases.

The Ohio Supreme Court is rewriting its rules of practice. Capital punishment lawyers, including those at the Resource Center, have been studying the ramifications of one of the proposed changes, i.e. Rule III, Section 1 (C), which limits jurisdictional briefs (memorandums in support of jurisdiction), to fifteen pages. Their concerns have been communicated to judges in the state and federal systems.

Capital Case Resource Center Of Tennessee. Under the direction of William Redick, Jr., the Capital Case Resource Center of Tennessee has had a full range of activities. There are now 108 persons on death row in Tennessee, twenty-two of whose cases are presently pend-

ing in federal court (or were pending in federal court; a few have returned to state court for the purpose of exhausting unexhausted federal issues). There are fifty-plus death sentenced defendants in state post-conviction status, while twenty five-plus are on direct appeal from a death sentence trial. At any given time there are approximately 200 first degree murder prosecutions pending in state trial courts, approximately sixty of which are serious death penalty cases.

CCRC has seven attorneys and a total of ten full time staff; one attorney on the staff is classified as a mitigation specialist/investigator and is working full time in that capacity.

With equal funding from the state and federal governments, the Resource Center divides its time between state and federal courts: primarily providing direct representation to capital defendants; consulting with and training attorneys in this state who represent capital defendants; and, recruiting attorneys to represent capital defendants. Otherwise, the Resource Center performs virtually any task dealing with the death row in Tennessee, such as: "ghosting" pleadings and briefs for attorneys; identifying and locating investigators and expert or fact witnesses; getting stays of execution when the defendants are unrepresented; negotiating with judges about appointing attorneys recommended by the Resource Center; etc.

The Center's involvement in the individual cases in federal court is much more comprehensive than in the cases in state court, primarily because while the federal and state contribution to the funding is almost equal, the numbers of cases in

federal court is far less than the numbers of cases in state court. CCRC staff attorneys are active in all pending federal habeas corpus petitions and serve as counsel of record in half of those cases. In state cases the staff attorneys have had only minimal involvement in some of the cases, for example, pre-trial in state court.

In federal court, CCRC staff attorneys, David Stebbins and Paul Bottei, are presently attorneys of record (or are "ghosting" all of the work for attorney of record) in eight federal habeas corpus petitions.

In state court, staff attorneys are presently counsel of record in 13 cases. One staff attorney position, funded with state funds for the purpose of working as counsel of record and as consultant in pre-trial cases, is currently vacant; Brock Mehler is counsel on nine direct appeals from trial; Bill Redick is on two cases pre-trial (one presently on interlocutory appeal); and Paul Morrow is on two cases on state post conviction.

In January of 1992 the Center presented a two-day death penalty seminar in Nashville. Two hundred twenty attorneys were in attendance.

In March 1992, two of the staff attorneys and the director of CCRC were on the faculty of the annual national death penalty seminar put on by the National Legal Aid and Defenders Association.

In March 1993, CCRC is hosting a one-and-a-half day "strategy session" in Nashville for attorneys who represent petitioners in federal habeas corpus petitions in this state, and in September 1993, the center is presenting a two-day seminar for attorneys and investigators involved in capital trials in this state.

The Resource Center periodically produces issue-oriented research publications and case specific pleadings and briefs in capital cases at all stages of litigation. At the one day (seven city) seminar put on by the Resource Center, a 700-plus page handout was distributed. Another substantial handout was generated for the jury selection seminar. In January 1992, CCRC released a practitioner's death penalty litigation manual, a three volume, 1500 page product.



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. In addition, 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 administra-

tive control over all non-judicial functions of the court. The Circuit Executive serves as chief of staff of the Court of Appeals senior staff, and his office administers the budget, personnel, procurement and facilities management policies 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, and assistance with the intercircuit and intracircuit designation and assignment of circuit, district and bankruptcy judges.



Judicial Personnel in the Sixth Circuit

Death

Nicholas J. Walinski. The Honorable Nicholas J. Walinski, Senior United States District Judge for the Northern District of Ohio, died on December 24, 1992. Judge Walinski was appointed to the District Court on October 21, 1970. He became a senior judge on December 1, 1985 and continued to serve in that capacity until his death. After the resignation of Judge Richard B. McQuade of Toledo, Judge Walinski assumed Judge McQuade's docket and was carrying a full caseload at the time of his death.

Senior Status

District Court

John W. Potter. The Honorable John W. Potter assumed senior status on August 1, 1992. Judge Potter was appointed United States District Judge for the Northern District of Ohio on June 21, 1982. Prior to his appointment to the District Court, Judge Potter was a Judge of the Court of Appeals, Sixth Appellate District of Ohio. Judge Potter continues to render valuable service to the District Court.

Resignation

R. Guy Cole. The Honorable R. Guy Cole, United States Bankruptcy Judge for the Southern District of Ohio at Columbus, resigned effective January 8, 1993. Judge Cole was appointed to the Bankruptcy Court on January 5, 1987. He has returned to private practice in Columbus.

New Appointments

United States District Courts

John G. Heyburn II. The Honorable John G. Heyburn II was sworn in as United States District Judge for the Western District of Kentucky on August 28, 1992, to the position which was formerly held by the late United States District Judge Thomas A. Ballantine of Louisville, Kentucky. Prior to his appointment to the bench, Judge Heyburn was a partner in the law firm of Brown, Todd & Heyburn in Louisville, Kentucky.

Gordon J. Quist. The Honorable Gordon J. Quist was appointed United States District Judge for the Western District of Michigan on August 28, 1992 to a new position created by P.L. 101-650. Prior to his appointment to the bench, Judge Quist was managing partner of Miller, Johnson, Snell & Cummiskey of Grand Rapids.

Judicial Workload in the Sixth Circuit

Workload in the District Courts

After three years of decreasing filings in the district courts of the Sixth Circuit, both civil and criminal cases showed substantial increases last year. During 1992 civil filings increased by 13%, from 21,993 cases to 24,756 cases. Criminal filings increased by 6% from 3,666 to 3,883. Civil terminations decreased by 8% from 27,322 to 25,126, while criminal terminations increased by 8% from 3,411 to 3,700. The number of civil cases pending in the District Courts of the Sixth Circuit decreased by 2% from 21,073 to 20,703, but the number of pending criminal cases increased by 7% from 2,758 to 2,941. **Figure 1** depicts the history of filings in the district courts of the Sixth Circuit by major category of cases over the last ten years.

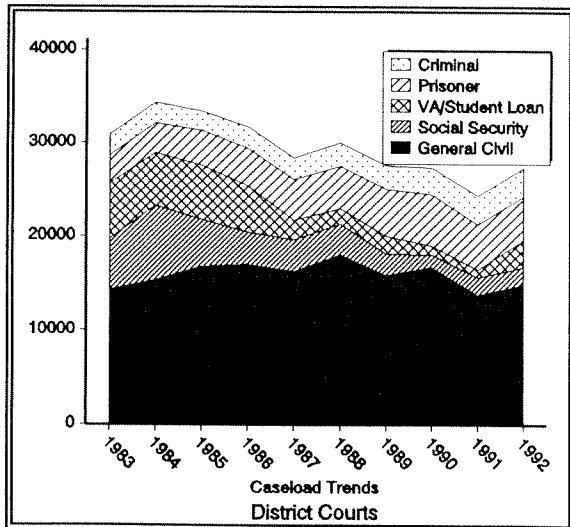


Figure 1

Filings. The Eastern District of Michigan, the Eastern District of Tennessee experienced the largest increases in filings last year. The big jump in filings in the Eastern District of Michigan was due to an increase in student loan and other recovery cases. The Eastern District of Kentucky had the largest decrease in filings, while the number of new cases filed in the Western District of Kentucky and the Northern District of Ohio were about constant. **Figure 2** depicts the total number of cases filed per judgeship for the district courts in the Sixth Circuit.

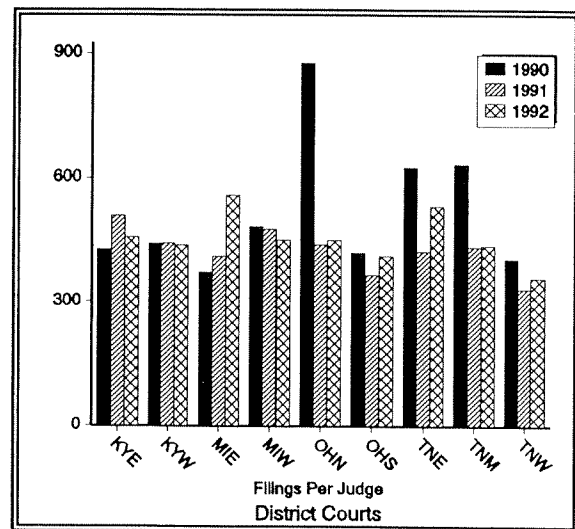


Figure 2

Terminations. The largest increase in total terminations was in the Eastern District of Michigan with a 37% increase over last year. This reflected the prompt disposition of much of the influx of student loan cases. The Northern District of Ohio

experienced a 47% drop in civil terminations, but only in comparison to the large number of asbestos cases that were transferred out of the district in 1991. The Eastern District of Kentucky and the Western District of Tennessee also had significant increases in terminations. **Figure 3** shows the total number of terminations per judgeship for the district courts in the Sixth Circuit.

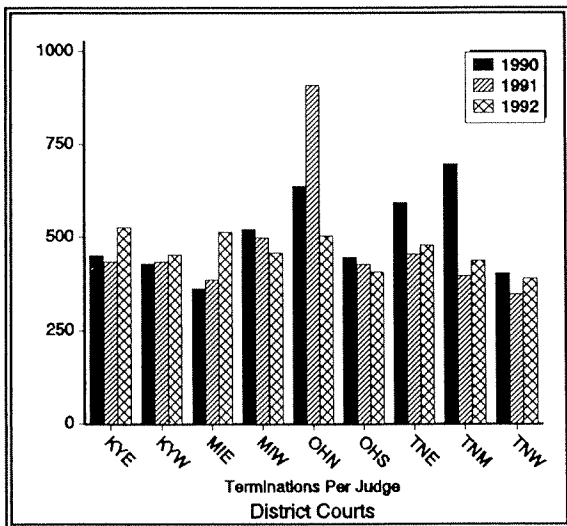


Figure 3

Pending. **Figure 4** shows a comparison of pending cases per judgeship in each of the districts in the Sixth Circuit. The Eastern of Kentucky and the Northern District of Ohio achieved the largest decreases in their pending civil matters, while the Middle District of Tennessee achieved the largest decrease in pending criminal cases.

Median Disposition Times. The median number of months from filing to disposition of civil cases increased in the Eastern District of Kentucky, the Western

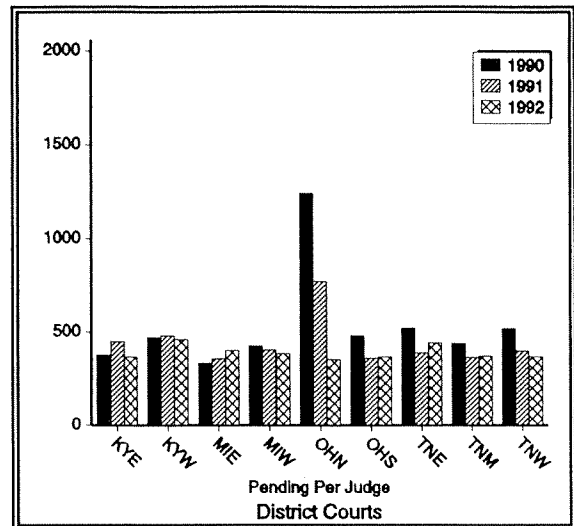


Figure 4

District of Kentucky, and the Northern District of Ohio. The Eastern and Western Districts of Michigan, the Southern District of Ohio, and the Eastern and Western Districts of Tennessee achieved decreases in the median months for disposition. **Figure 5** shows the median disposition times for civil cases in each of the districts in the Sixth Circuit.

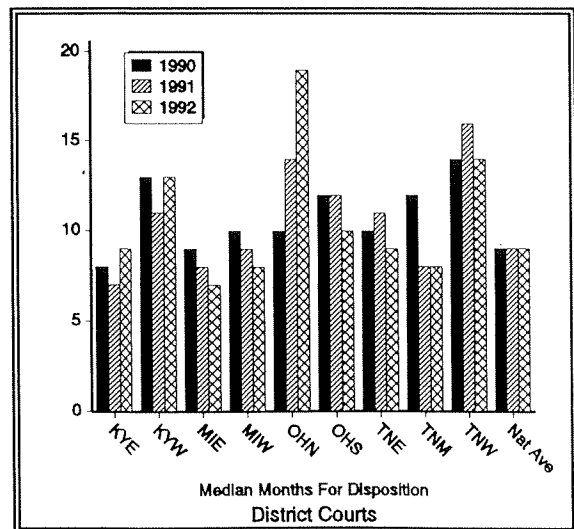


Figure 5

Three Year Old Cases. Figure 6 shows the percentage of civil actions three years old or older for 1990, 1991 and 1992 for each of the district courts in the Sixth Circuit. The Northern District of Ohio, the Southern District of Ohio, and the Western District of Tennessee achieved reduction in their percentage of three year old civil cases. Several of the districts now have a lower percentage of three year old civil cases than the national average of 8.8 percent.

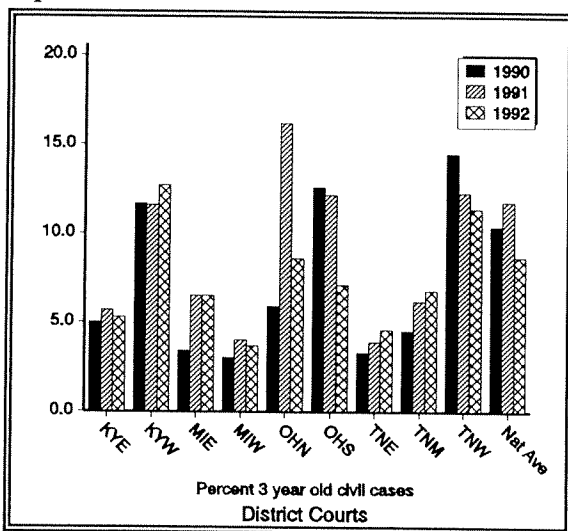


Figure 6

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 for the last three years. Although three district courts in the Sixth Circuit do not compare favorably with the national average, the majority of the districts now have a more favorable juror utilization rate than the national average.

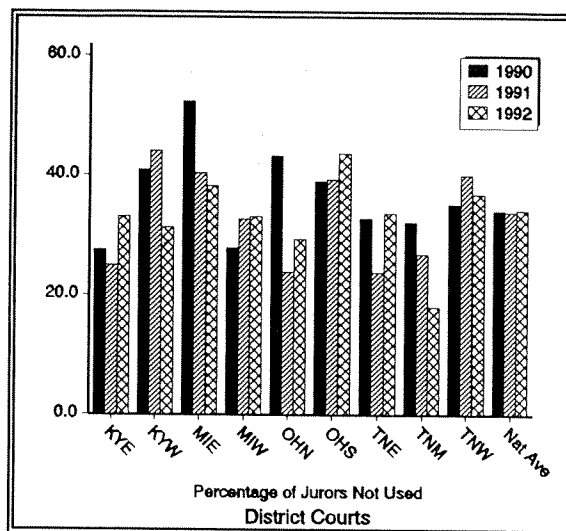


Figure 7

Workload in the Bankruptcy Courts

After four years of increasing filings, the filings in the bankruptcy courts in the Sixth Circuit remained level for 1992, with 126,021 new bankruptcy cases filed in 1992 compared to 126,235 filed in 1991. Figure 8 shows the total bankruptcy filings per judge for each of the bankruptcy courts in the Sixth Circuit.

Chapter 7 filings decreased by .7% circuit wide from 80,828 in 1991 to 80,279 in 1992. Only the Eastern and Western Districts of Michigan had any increase in Chapter 7 cases. Figure 9 shows the comparison of Chapter 7 filings per judge in each of the districts in the Sixth Circuit for the fiscal years 1990, 1991 and 1992.

Chapter 11 filings showed the greatest decrease over all in the Sixth Circuit during fiscal year 1992. Only the Eastern District of Kentucky and the Northern District of Ohio had any increase in Chap-

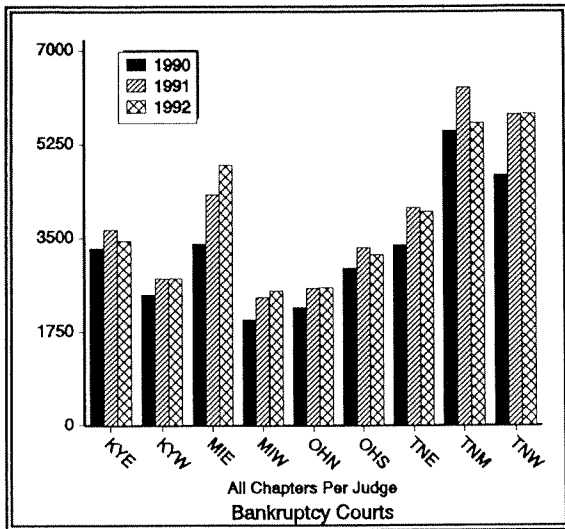


Figure 8

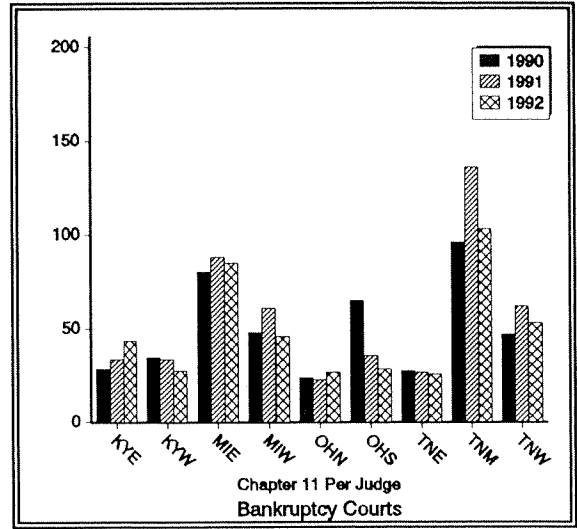


Figure 10

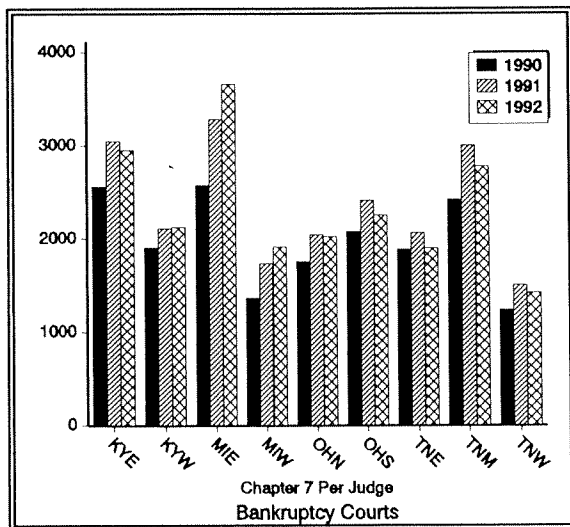


Figure 9

creases in Chapter 11 cases occurred in the Eastern District of Michigan and the Eastern and Western Districts of Tennessee. Figure 11 shows the comparison of Chapter 13 cases filed per judgeship in fiscal years 1990, 1991 and 1992 in each of the districts of the Sixth Circuit.

ter 11 cases during 1992. Figure 10 shows the comparison of Chapter 11 cases per judgeship in fiscal years 1990, 1991 and 1992 for each of the districts in the Sixth Circuit.

Chapter 13 filings increased by 1% on a circuit-wide basis, from 43,570 cases in 1991 to 44,055 in 1992. The small in-

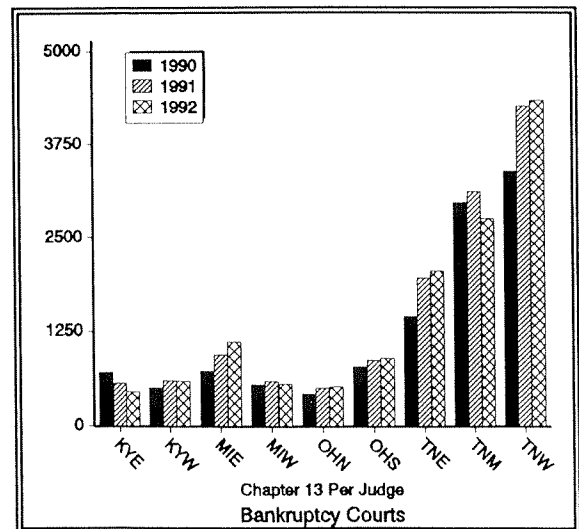


Figure 11

Report of the Court of Appeals

CLERK'S OFFICE

Leonard Green, Clerk

Jan Yates, Chief Deputy

This past year saw an interruption, which it is hoped will be temporary, in the docket equilibrium which the court has enjoyed for the preceding three years. In 1992 the court's filings rose by almost 13%, its largest increase in seven years. This upsurge in filings reflects a national trend. According to statistics prepared by the Administrative Office of the U.S. Courts, every one of the circuit courts experienced an increase in filings, with the national average being 9.3%. At the same time, the Sixth Circuit's case terminations decreased by 4.5% due to the removal of two weeks from the court's 1992 hearing calendar.

It is noteworthy that the rise in filings encompassed most of the different types of cases which come into the court. Filings rose in diversity, federal question, civil rights, criminal, Social Security, federal agency, and bankruptcy appeals, while the only case categories to show a decline were habeas corpus, Tax Court, and original actions. Criminal appeals continue to account for one of every five new appeals, while habeas corpus and prisoner civil rights cases combine to make up almost one of every three new cases.

The increase in the court's pending caseload, although substantial, has not yet resulted in any significant delay in the pace at which cases come before the court for resolution on the merits. Criminal appeals are argued within approximately three months of the filing of the initial brief, while civil cases are routinely argued within about six months of the completion of briefing. The court and the clerk's office are taking aggressive steps to ensure that, however the docket may continue to grow, cases will continue to come before the court for decision in a timely manner. The court continues to offer the opportunity for oral argument in a higher percentage of cases than do other circuits, and has developed such mechanisms as the requirement that counsel state in the brief whether or not argument is desired, to more effectively manage the limited resource of oral argument.

The court operated throughout virtually all of 1992 with two vacancies in its statutory complement of sixteen active judges. It was able to maintain its traditional commitment to oral hearings due to the high level of participation by senior circuit judges and district court judges, who take time away from their own busy dockets to accept designations to sit with the court of appeals.

The budget of the federal judiciary sustained a severe blow in FY 93, the effects of which reverberate throughout the entire system. One consequence of the major budget shortfall is that staffing levels for support offices such as that of the clerk

will remain static, and in some cases be reduced, even as rising filings increase those offices' workloads. The Sixth Circuit clerk's office is in a better position than most to adapt to the new circumstances. Having been fully automated for several years, it continues to realize the efficiencies made possible by automated docketing and reporting systems. The clerk's office is particularly fortunate to have a highly motivated and professional staff, dedicated to providing the court, the bar, and the public with the high level of service which has long been a hallmark of the office. In addition to their work for the court, senior members of the clerk's office staff serve the Administrative Office and Federal Judicial Center in a variety of advisory capacities, as those offices work to enhance the ability of the courts to fulfill their mission.

The clerk's office continues to work closely with the court's Attorney Advisory Committee in its ongoing review of the Sixth Circuit Rules and Internal Operating Procedures. The Committee, chaired by Professor Nicholas S. Zeppos of the Vanderbilt University School of Law, and comprised of attorneys from each state representing a cross-section of the practicing bar, remains a prime resource as the court continues to refine its rules and practices. The input of the general bar, whether directed toward particular amendments to the rules or procedures, or of a more general nature, is always welcome; suggestions may be directed to the clerk, who will see that they receive proper attention.



OFFICE OF THE STAFF ATTORNEYS

Kenneth A. Howe, Jr.
Senior Staff Attorney

Michael C. Cassady
Supervisory Staff Attorney

Joseph C. Merling
Supervisory Staff Attorney

Staff Attorneys were first employed by the Sixth Circuit in 1971. At that time, three attorneys were hired for these newly budgeted positions in the clerk's office. In 1976, the court appointed its first senior staff attorney and created the Staff Attorney's Office as a separate entity, both administratively and operationally, from the other support offices of the court. Title 28 U.S.C. § 715(a)-(b), which became effective October 1, 1982, codified each court of appeals' prior budget authority to appoint a senior staff attorney, staff attorneys and secretaries. The Sixth Circuit Staff Attorney Office and all its personnel are located in Cincinnati. The senior staff attorney is responsible for personnel and all administrative and operational activities of the office. The office has eighteen attorneys. The office has an administrative manager/budget analyst and six legal secretaries. All staff attorney personnel are employed as permanent career-oriented professionals.

The office provides various support services to the court. The primary service

is to review all pro se and prisoner-related appeals and to prepare legal research memoranda for those cases which do not appear to require oral argument. More recently, this review process has been extended to counsel-represented appeals where counsel have waived oral argument. The criteria used in this review process are set forth in Sixth Circuit Rule 9 and Fed. R. App. P. 34. If a case falls within one of the enumerated criteria, it is assigned to a staff attorney for review and legal research on the facts and relevant legal issues for consideration by the court under Sixth Circuit Rule 9.

To utilize less judge time, the staff attorney office presents motions for in forma pauperis status to a single judge for a ruling. Many of these motions are denied because the appeal is frivolous and the appeals are subsequently dismissed for failure to pay the filing fee. The staff attorney office also presents applications for a certificate of probable cause in habeas corpus cases to a single judge. The rulings which deny such applications dispose of the cases.

The office also reviews all pro se and prisoner-related cases for proper appellate jurisdiction. A research memorandum for consideration by a motions panel of the court is prepared in cases lacking proper appellate jurisdiction or where a substantive motion is filed. In addition, the office issue indexes all civil (except for cases submitted under Sixth Circuit Rule 9) and criminal cases upon review of the appellate briefs. Codes are assigned to each issue, type of decision appealed, and relief granted or denied. A numerical weight is also assigned on the basis of the complexity of

the appeal. Such coding and weighting provides information for the preparation of the court calendars, allows monitoring of cases raising the same or similar issues, and assists in the identification of additional cases for consideration under Sixth Circuit Rule 9.

In the past year, the senior staff attorney and one staff attorney have analyzed the local rules of various district courts to compare their contents with the Federal Rules of Civil and Appellate Procedure. A staff attorney has monitored and reported to the circuit council on the progress of the district courts in implementing the Civil Justice Reform Act.

The Staff Attorney Office assists the court in processing a large number of appeals. During calendar year 1992, the office prepared 818 legal memoranda on the merits of cases under Sixth Circuit Rule 9, and 536 memoranda on substantive motions and appeals lacking proper appellate jurisdiction. In 1992, the office also presented to the court 178 applications for certificate of probable cause and 335 motions seeking permission to proceed in forma pauperis under 28 U.S.C. §1915(a). The office also issue coded 2,055 appeals in 1992.



CIRCUIT LIBRARY

Kathy Joyce Welker
Circuit Librarian

Pamela Schaffner
Deputy Librarian

Introduction. Major developments for the Sixth Circuit Library System in 1992 included increasing federal court reliance on the libraries for the provision of research support services, preparation and planning for lawbook ordering decentralization, and expansion (including renovation) of the space for the Toledo library. Nationally, work progressed (with participation of Sixth Circuit staff) toward the design and installation of an Integrated Library System.

Personnel changes. In Cincinnati, two full-time staff members were hired. Nabihah Glennon became the library's Systems Analyst/Programmer. Having come from the insurance industry where she had worked as a programmer, Ms. Glennon did extensive programming work on the lawbook ordering program in preparation for the decentralization of lawbook ordering. In addition, she surveyed all branch libraries regarding their computer support needs and compiled this information in a form which would allow for the development of a systems support system for the libraries. Margaret Morris replaced Patricia Francis as Secretary to the Circuit Librarian. Her previous experience was as a secretary in the Staff Attorneys' Office. Three part-time technicians were also hired in three branch libraries. Martha Armbrister became the first technician to work in

the Columbus library. Carmen Martin replaced Gail Regulski as a technician in Toledo and Dorian Meaders replaced Nancy Dulniak as a technician in the Nashville library.

Reference and legal research support services. Reference and research questions come on a continuous basis to the libraries from courts and other library users within and beyond the Sixth Circuit. These questions and requests are answered and satisfied in a number of ways ranging from faxing a copy of the answer to loaning a book to directing the requestor to the appropriate publication containing the answer. A quantitative description of these questions and requests for service and the resulting responses is in **Table 1** below:

Service Category	Number	Percent increase over 1991
Directional reference question answered	7695	11%
Research or substantive question answered	7124	15%
Interlibrary loans and mailings to court personnel	207	234%
Photocopied materials sent	3066	-31%
Faxing transactions	1291	82%

Table 1

The drop in number of times photocopied materials are sent is, at least in part, related to the increase in faxing

transactions. Given the option of receipt on a later date versus immediate fax receipt, more requestors are opting for fax transmission.

Collection development and maintenance. Due to frequent "crashes" of the AO Lawbook Section's

computer and to the decimation of the AO Lawbook Section's staff in 1992, the book procurement process was **again** highly unsatisfactory. Ordering and renewing existing titles were frequently delayed for months at a time with six month delays being not unusual. This circumstance had the potential for very serious consequences for our libraries and library users who rely on the currency of information available within the court.

Faced with a system that was failing to serve the courts effectively, the Sixth Circuit Library staff moved ahead in developing a lawbook procurement staff that could take over all of the work currently assigned to AO staff. In effect, the Sixth Circuit is working toward total decentralization of the lawbook budgeting and ordering processes. The major remaining impediment to this decentralization is final approval at the AO for it to occur and for

Library	1/1/92	12/31/92	'92 Growth
Cincinnati	62960	66235	3275
Cleveland	30747	31424	677
Columbus	14916	15875	959
Detroit	33994	35276	1282
Grand Rapids	19372	20298	926
Memphis	11228	11715	487
Nashville	20330	21821	1491
Toledo	19372	18378	-994
TOTAL	212919	221022	8103

Table 2

did continue to arrive in the libraries. The measurement of how these new materials contributed to collection development is, in part, by volume count. The growth of the volume count is quantified in **Table 2**.

A decline in volume count in a library reflects an active program of weeding a collection in order to gain more room for new books or to improve the overall quality of the collection. Materials that are weeded out have been offered throughout the federal judiciary for transfer to where they may be needed.

Space Development. The Toledo Library benefitted from major renovation in 1992. Additional space adjacent to the library was incorporated into existing library space expanding the ability to provide more services to Toledo library users. Plans for construction of the Louisville and Chattanooga branch libraries were delayed due to budget freezes on

preparation at the AO of supporting budget and legal documents. It is anticipated that this new responsibility will be transferred to the Sixth Circuit before the end of 1993.

Even while the procurement process was faltering, new materials

construction money. Until these spaces are renovated, we will be unable to open branch libraries in those cities.

Conclusion. During 1992, library staff continued to provide support to court personnel in all of the courts of the Sixth Circuit including circuit, district and bankruptcy courts. In a year when the quality of some services (i.e. book procurement) declined, uses of the other research support services continued to increase and thrive. During 1993 every effort will be made to solve the lawbook procurement problems so that improvement in this process can be noted in the next annual report. The staff is also cautiously hopeful that 1993 will actually be the year when the Chattanooga and Louisville libraries become a reality, even though grim budget projections make this hope somewhat faint at times.



PRE-ARGUMENT CONFERENCE PROGRAM

Robert W. Rack, Jr.
Senior Conference Attorney

Deborah Ginocchio
Martha H. Good
Roderick M. McFaull
Conference Attorneys

The Court established the Pre-Argument Conference Program in 1981 to mediate settlements in civil appeals. Secondary objectives are to reduce procedural problems and to clarify issues on appeal.

Pursuant to Local Rule 18, a staff of four conference attorneys initiates confidential discussions in as many new civil appeals as possible and works with all sides to thoroughly explore and evaluate settlement possibilities.

Most conferences are scheduled randomly from eligible appeals before briefs are submitted. Eligible civil cases include all except habeas corpus, prisoner and pro se appeals and most agency cases. About 40 percent of the conferenced cases are scheduled at the request of one or more of the parties. The program treats requests for conferences as confidential. Occasionally cases are referred to the program from the Court's oral argument calendar. In such cases, the conference attorneys report back to the court only whether or not the case is settled.

The great majority of conferences and subsequent negotiations are conducted by telephone. Program involvement in about 20 percent of the cases goes no further than the initial conference. In the most active 25 percent of the cases, however, conference discussions are much more involved, often lasting a month or longer.

Settlement statistics for cases in which the pre-argument conference program involvement was concluded during 1992 are shown below. Generally, counted here as settlements are all cases voluntarily terminated, following program involvement, without judicial review of the merits. These include cases remanded to District Courts on joint motions pursuant to *First National Bank of Salem v. Hirsch* for implementation of settlement terms negotiated by the parties. No judgment on the merits is required for such remands.

Also included are cases dismissed for failure to make timely filings following negotiated settlements. These two categories of cases are counted by the Clerk respectively as Summary Dispositions and Dismissals for Want of Prosecution, thus accounting for the higher number of "settlements" reported in this section of the Court's annual report.

**Settlement Statistics
Calendar Year 1992**

	Number of Cases	Number Settled	Settlement Rate
All Cases	608	243	40%
Requested Conferences	265	125	47%
Referred By Court	5	2	40%



AUTOMATION SUPPORT UNIT

William M. Eggemeier
Assistant Circuit Executive

Michael Nagel
Systems Manager

The Automation Support Unit is a consolidated office made up of positions from the other appellate support offices. It provides automation support for the judges and staff of the U.S. Court of Appeals for the Sixth Circuit. It is the only consolidated automation support office of its kind in

the federal judiciary. The unit provides training, support and maintenance for all personal computers assigned to court staff. In the Sixth Circuit there are over 280 computers in use in the Appellate Judges' Chambers, the Office of Circuit Executive, the Clerk's Office, the Office of the Staff Attorney, Circuit Library and its seven satellites, and the Conference Attorney Office.

In addition, the staff supports an automated case management system for the court that is essential to the operation of the clerk's office. The court uses the system to maintain the docket, track the status of cases, help with calendar preparation, and provide information on cases to the judges, the court staff, the lower courts, the bar and the public. The CITE electronic bulletin board is also a part of this system. For anyone with a computer and a modem, CITE provides access to case information, published opinions, and the court's calendar and local rules.

The Automation Support Unit also coordinates several office automation projects for the district, bankruptcy and probation offices in the Sixth Circuit. During 1992 the circuit held two meetings for technical staff in these offices. The meetings provided an opportunity for technical staff from throughout the circuit to receive information and ask questions about technical issues in the judiciary, to share ideas, and to learn about new hardware and software applications.

Over the past year the Automation Support Unit has been involved in many projects. The most important was the installation of the JURIST personal computer network in all chambers and offices

of the Sixth Circuit Court of Appeals as well as those in the Eastern District of Michigan. This was the first installation of the network that will eventually tie together every computer in the federal judiciary. Together with the installation of JURIST, all appellate judges' chambers received new personal computers and the court switched to WordPerfect word processing software.

Plans for 1993 include:

- Efforts to improve the operation of the JURIST Network and promote its use through continued training.
- Increased use of the network to help improve the operation of the court (e.g., the expanded use of electronic mail).
- Use of the JURIST Network to improve access to case information kept on computers.
- Use of the network to improve PC support for those appellate offices outside Cincinnati.
- Expanded training and documentation on all software applications used by the appellate staff.
- Hosting another circuit-wide meeting of courts' technical staff that is planned for May 1993.



Reports of the District and Bankruptcy Courts

United States District Court Eastern District of Kentucky

In 1992 the Eastern District of Kentucky experienced a year of continued and expanded service to the bar and public.

Court Personnel. The judgeship at London, Kentucky remains vacant since the elevation of Circuit Judge Siler to the Sixth Circuit Court of Appeals in September, 1991. Notwithstanding this vacancy, the civil and criminal case filings continue to increase. See **Case Filings, *infra***. Thus, in addition to the redistribution of the London docket, the remaining judges in the Eastern District have been required to administer increases in their own regular case load.

Automation. The District has fully implemented ICMS on its civil docket for cases filed after October 1. In addition to the case management and reporting functions included in ICMS, the Unix network is used for e-mail, court calendaring, and public access to court records via telecommunications. Specifically, any member of the public can telephone the public access line to view and print docket sheets and the court's calendar. The District has been very fortunate in obtaining a highly experienced Systems Manager and ICMS Administrator. The Systems Manager and ICMS Administrator have been extremely diligent and effective in starting and maintaining ICMS system software and hardware.

Space and Facilities. Renovation of the fourth floor of the Lexington court-

house is in progress. These renovations include chambers, a courtroom and related facilities for the full-time permanent magistrate judge assigned at Lexington. Site selection of the new courthouse at Covington will begin by the summer of 1993. Site selection for a new courthouse at London, Kentucky is in progress.

Case Filings. Criminal cases continue to be filed at an increasing rate in the district. Despite an increase in the number of criminal case closings, which very nearly exactly parallels the case filings, the number of pending criminal cases continues to increase in the District. See **Figure 12**.

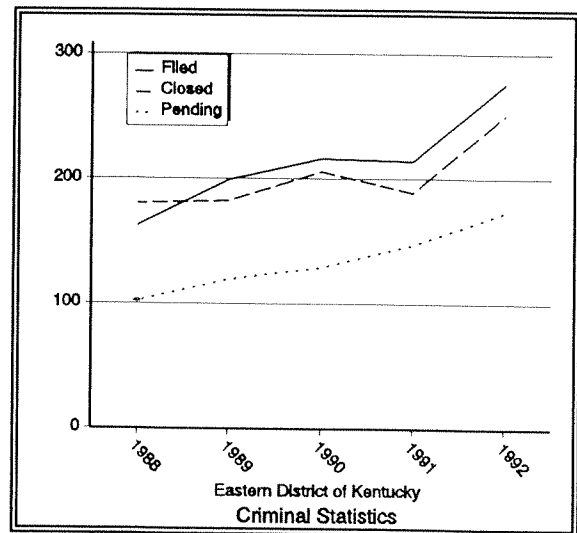


Figure 12

The number of pending civil cases has decreased in the District reflecting the real and significant increase in case closings notwithstanding the only very slight de-

crease in civil filings. The judges in the District have decreased the number of pending cases significantly over the decrease in civil filings reflecting an extraordinary collective effort by the judicial officers in the District. See **Figure 13**.

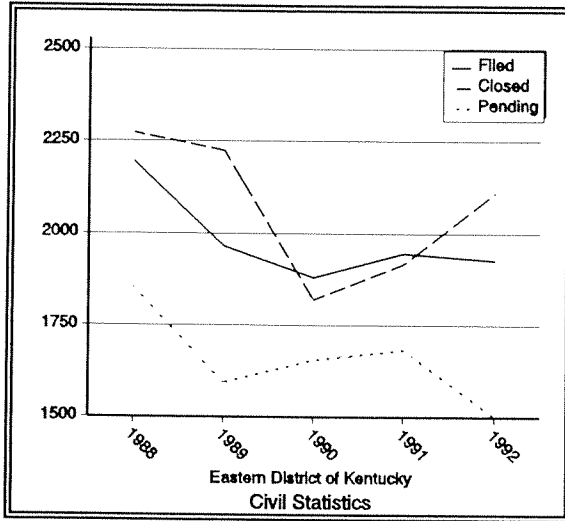


Figure 13

Civil Justice Reform Act Advisory Group. The Eastern District of Kentucky has been selected as a comparison court in the RAND study of the implementation of the Civil Justice Reform Act in the courts. A representative of the RAND corporation has had an initial meeting with the Chief Judge and members of the Clerk's office and the case studies will soon be in process.

Joint Local Rules. The operation of the Joint Local Rules for the Eastern and Western Districts of Kentucky continues to be successful. The rules are continually being reviewed for improvements. The use of identical rules in both districts in Kentucky has been highly applauded by the bar.

United States District Court Western District of Kentucky

Each year the U.S. District Court for the Western District of Kentucky continues to change and grow, and 1992 has been no exception. The changes are too numerous to list in this brief report, so it will only highlight the major events.

Personnel. John G. Heyburn II was sworn in as United States District Judge for this District on August 28, 1992, filling the vacancy created by the death of Judge Thomas A. Ballantine, Jr.

Decentralized Budget. This Court was one of twenty courts selected for decentralized budgeting for fiscal year 1992. We are pleased with the results and the system seems to be working out well. As in all Districts, our District is feeling the effects of the 1993 budget restrictions during the second quarter of FY 1993. We are hopeful the third quarter will improve.

Court Workload. Our criminal filings for calendar year 1992 increased 6.5 percent. Our civil filings were down 3.6 percent in calendar year 1992.

Clerk's Office. In November of 1992 our Clerk's Office in Louisville was relocated to the fourth floor. They are very satisfied with their space although it is somewhat inconvenient to the Judges Chambers and Courtrooms.

Probation. Enhanced supervision has been implemented during 1992 and the changes should provide for a smoother operation of the office. All U.S. Probation Officers received training on electronic monitoring. Participants in the program wear an ankle transmitter that sends a

radio signal to a device on the telephone in their home. If outside the range of the device during required time periods, the probation office is notified. There is district-wide capability to monitor pretrial clients as well as those on supervision.

Supervision caseload increased 12 percent to an average monthly caseload of 690. The number of pretrial services initial interviews increased 23 percent for a yearly total of 406. During 1992, presentence investigations increased 11.3 percent for a total of 499. Also completed were 193 collateral investigations. Of the presentence investigations, 45 were pre-guideline, and six were pretrial diversion reports. The number of guideline presentence investigation reports was 454.

Summary. Cooperation between the Judges, Clerk's Office, Probation, and Bankruptcy remains outstanding. Our Court is filled with dedicated employees at all levels. Without exception, our personnel have been willing to put forth the extra effort necessary to keep up with the ever-increasing workload, including the demands caused by budget restrictions.



United States Bankruptcy Court Western District of Kentucky

The Bankruptcy Court for the Western District of Kentucky continues to strive for goals that facilitate improving service with reduced resources. We have continued to

refine our case management techniques and are planning to utilize automation to enhance access to the court for all users.

Workload. There was a slight decrease in filings in the Western District of Kentucky for the calendar year of 1992. Total case filings for 1992 were 7,777 while for 1991 total case filings were 8,588.

Statistical Profile

Year	Chap 7	Chap 11	Chap 12	Chap 13	Total
1992	6,034	73	15	1,655	7,777
1991	6,602	116	8	1,862	8,588
1990	6,028	113	16	1,602	7,759
1989	5,349	72	10	1,445	6,876

Even though filings have decreased, the workload for the judges has actually increased due to this court's participation in other districts. Specifically, we have been holding court in New Albany, Indiana, Tampa, Orlando, and West Palm Beach, Florida, as well as Nashville, Tennessee and Columbus, Ohio.

In addition, we have been renewing our emphasis on case closings. We closed more cases than were filed and maintained a pending case level substantially below filing levels.

Training. We have found that training sessions on bankruptcy procedure and court operations has enhanced our ability to operate efficiently. We recently held procedure seminars for 250 secretaries, paralegals and attorneys in each place of holding court. These have been very

successful in reducing errors and facilitating better information access. In addition, and perhaps most importantly, these seminars have fostered good will between the public and the court.

Automation. The Bankruptcy Clerk's Office began operations on BANCAP on July 1, 1992. In addition, we are in the process of developing imaging technology that we have purchased. We plan to scan our closed case files initially to conserve court space, reduce files maintenance costs, and facilitate information retrieval. The final component of our system will be the x-terminal computer that will allow us to view several databases simultaneously as well as provide for video conferencing.

Local Rules. The court revised its local rules effective January 1, 1993. There were extensive revisions that took place over the last four years. The new publication has been mailed to all members of the bar. In addition, we held several sessions with the public before formal adoption. We are very pleased with the final product.

Case Management. We have continued to develop our case management performance standards. Our average case disposition time for chapter seven cases is three and one-half months, and one year for Chapter 11 cases. We have found that early and ongoing judicial participation has enhanced disposition times.



United States District Court Eastern District of Michigan

Historical Society for the United States District Court for the Eastern District of Michigan. The Historical Society for the United States District Court for the Eastern District of Michigan was formally incorporated as a non-profit organization in January 1992 by Chief Judge Julian Abele Cook, Jr., Professor Philip P. Mason, Dennis J. Levasseur, Esq., Chief of Court Operations David R. Sherwood and Administrative Manager Judith K. Christie.

The Board of Trustees presently includes two active Judges, Judge Paul V. Gadola and Judge Nancy G. Edmunds. Other members are President, Dores McCree, University of Michigan Law School; Vice President, Stanley Winkelman, retired Chairman of Winkelman's Clothing Stores; Secretary-Treasurer, Dennis J. Levasseur, Bodman, Longley and Dahling; Joe H. Stroud, Editor, Detroit Free Press, Professor Harold Norris, Detroit College of Law; Otis M. Smith, Lewis, White and Clay; William M. Saxton, Butzel Long; and John M. MacMillan, past president of the Detroit Chapter of the Federal Bar Association.

The mission statement of the Society is ". . . to seek to compile, organize, preserve and provide such relevant and probative historical and archival information as will help the public, the media, the legal profession, and the judges, officials and personnel of the court to secure such information, data and documents about the

court as will enable all units of our self-governing society to make good governing decisions about courts generally and the United States District Court for the Eastern District of Michigan."

The Historical Society received a \$50,000 challenge grant from the Irwin I. and Sadie Cohn Fund of the United Jewish Charities, and a \$10,000 grant from the Michigan State Bar Foundation. A membership drive began in late December and several substantive projects are underway: oral histories of former Chief Judges John Feikens and James P. Churchill, a photographic exhibit of the construction of U.S. Courthouse in Detroit and a bibliography of judicial papers.

Civil Justice Reform Act of 1990. The Civil Justice Reform Act Advisory Group submitted its report to Chief Judge Julian Abele Cook, Jr. in July. The Court appointed a Committee consisting of Judges Anna Diggs Taylor, Robert H. Cleland and Bernard A. Friedman to consider the report and to formulate a Proposed Plan for Reduction of Expense and Delay in Civil Cases. The Court expects to approve the Proposed Plan during the second quarter of 1993.

Judge Nancy G. Edmunds. Judge Edmunds took the oath of office on February 20, 1992, replacing Judge Richard F. Suhrheinrich.

Judge James Harvey. Judge Harvey retired from judicial service effective June 29, 1992.

Magistrate Judge Marcia G. Cooke. Magistrate Judge Cooke resigned her position effective August 7, 1992. The Court has deferred making a decision regarding filling the vacancy created by

Magistrate Judge Cooke's resignation until late in 1993.

Magistrate Judge Charles E. Binder. Magistrate Judge Binder was reappointed to an additional eight-year term beginning October 30, 1992 and ending October 29, 2000.

Judge Robert E. DeMascio. In November, Senior Judge DeMascio became the resident Judge in Port Huron.

Magistrate Judge Lynn V. Hooe, Jr. On December 17, 1992, Magistrate Judge Lynn V. Hooe, Jr., informed the Court of his intention to retire effective May 31, 1993.

Judicial Conference of the United States. Several judicial officers served on Committees of the Judicial Conference of the United States. They are: Chief Judge Julian Abele Cook, Jr. (Chair, Committee on Financial Disclosure), Judge Charles W. Joiner (Committee to Review Circuit Council Conduct and Disability Orders), Judge Avern Cohn (Committee on Administration of the Magistrate Judges System), Judge Lawrence P. Zatkoff (Committee on Court and Judicial Security) and Magistrate Judge Virginia M. Morgan (Committee on Long Range Planning).

Judicial Council of the Sixth Circuit. Magistrate Judge Paul J. Komives concluded his three-year term as a magistrate judge representative on the Judicial Council of the Sixth Circuit.

Records Management Programs. Beginning January 1, 1992, all case files of the Court are imprinted with bar codes as well as the more familiar case numbers. The automated Records Management System allows Court staff to keep better track of the active case files and to incre-

ase the speed with which the files can be packed for shipment to the Federal Records Center. Everyone who wants to read a new or archived case file will benefit from this system. Imaging by optical disk was also implemented at the Court and administrative records in the Court Operations section of the Clerk's Office are routinely stored on optical disk rather than on paper.

A terminal was installed in the Clerk's Office in December to allow public access to automated information on civil and criminal cases. This is the first step to completely automating public access to court records, whether pending or archived.

Pilot Case Records Management Team Project. Taking a cue from the success of teams and total quality management in the private sector, the Court authorized a Pilot Case Records Management Team Project in the Clerk's Office. After extensive training during the summer and fall months, the project began in November. The concept of combining the intake, docketing and records maintenance functions of a large office and assigning the work collectively to a team of deputy clerks appears to add flexibility in responding to the demands placed on the office.

Local Rules. Following the Court's adoption of the report of the Special Committee on Review of the Local Rules, Local Rules in Civil Cases became effective January 1, 1992. The Local Rules in Criminal Cases were approved to take effect on July 1, 1992. The Court has contracted with Darby Printing Company in Atlanta, Georgia to handle the printing

and distribution of the Court's Local Rules.

Court Facilities. Due to space limitations in the U.S. Courthouse in Detroit, the Probation Department opened a satellite office in Southfield, Michigan. The office, which is located 13 miles from the Detroit Courthouse, is staffed with 18 employees (13 probation officers and 5 probation clerks) and serves those offenders from the surrounding communities.

Funding was approved during FY-92 for design of the Prospectus Project in the U.S. Courthouse in Detroit. The Prospectus Project will provide two District Judge facilities, five Magistrate Judge facilities and office space for the District Court Clerk's Office and the Pretrial Services Agency. The estimated completion date for the entire Project is early 1997.

A major long-range space and facilities planning project was initiated in June 1992. This planning process will continue to determine the long-range space needs for the entire Court.

No Smoking Policy. The Court approved a policy whereby each judicial officer and court manager may permit or prohibit smoking within areas under his or her supervision and that smoking be prohibited in the corridors and public restrooms on the 2nd, 4th, 7th and 8th floors of the U.S. Courthouse in Detroit.

United States Attorney. Following the election of President Clinton, the Court requested United States Attorney Stephen J. Markman to remain in office until his successor is appointed and qualifies.

Meetings of Michigan Trial Court Chief Judges. In December 1992, Chief

Judge Cook met with the Chief Judges of Michigan trial courts in the metropolitan area. Items discussed included mutual concerns of the respective courts such as scheduling conflicts, companion cases, etc. At year's end, plans were being made to form a State-Federal Judicial Council.

Budget Decentralization. The Eastern District of Michigan completed its first fiscal year under the Budget Decentralization Program on September 30, 1992. The increased flexibility that the Program allows produced many benefits for the Court.

Cameras in the Courtroom. In 1992, 21 requests were submitted by media organizations under the Cameras in the Courtroom Pilot Program. Of these 21 requests, cameras were present in 8 cases.

Data Communications Network (DCN). Implementation of DCN began during 1992. The Eastern District, as the pilot district in the pilot circuit, is now part of the wide-area network connecting it to circuit headquarters in Cincinnati and the Administrative Office in Washington, D.C., as well as direct (not modem) access to LEXIS and WESTLAW.



United States Bankruptcy Court Eastern District of Michigan

Case filings have continued to rise in the United States Bankruptcy Court for the Eastern District of Michigan. The number of cases filed reached 19,379 in 1992,

which represents an increase of 8% over the 1991 totals. Despite the high number of cases both filed and pending, the disposition of cases continued in an expeditious manner. The number terminated almost equaled the number of cases filed. Therefore, the pending caseload rose only 3%.

The severe lack of space and facilities noted in last year's report has worsened. This is a major constraint on all three offices in the district in light of the increases in both staffing and caseload. There have been serious efforts on the part of the Bankruptcy Court to acquire both temporary emergency and permanent leased space. A long range study has also been performed.

In 1992, Clerk's Office staff volunteered and participated as committee members for several programs sponsored by the Detroit Federal Executive Board. These programs included Disability Awareness, Health and Safety, Federal Woman's Program and EEOC. On the national level, several employees served on the faculties for training workshops given by the Federal Judicial Center. Their knowledge and skills were shared at Budget Decentralization and Training Coordinator Workshops as well as a Case Review Workshop for Bankruptcy Administrator Program Personnel. In addition, the Chief Deputy Clerk was selected as a member of the Bankruptcy Clerk's Office Benchmark Work Group in conjunction with the Judiciary Salary Plan Project being addressed by the Human Resource Division of the Administrative Office. The benchmark work group was established to refine potential benchmark positions, apply job factors to them

and simplify the qualification standards program.

The increase in case filings and the lack of space for the staff of the Clerk's Office prompted the creation of an alternate work tour and an increase in flexible work schedules. A temporary afternoon shift was also established due to space limitations. These modifications of the normal work schedule resulted in a 54% increase in closed cases from May through September, 1992. It also enabled the Clerk's Office to archive closed cases to the Federal Record Center in an expeditious manner.

Research and development of several automation projects were accomplished in 1992, most notably an automated cash register program, a judge select program and the transition from the NIBS system to BANCAP, effective October 1, 1992.

The U.S. Bankruptcy Court for the Eastern District of Michigan believes strongly in providing training opportunities for all employees to ensure their growth and development. Training highlights for 1992 include extensive BANCAP training developed and taught locally, court operation training for the newly created Chapter 13 case administrators, the annual district wide seminar focusing on Cultural Diversity, and several presentations and workshops on basic skills and career development. As the court moves towards the twenty-first century and the technology it brings, training will continue to be a priority for all staff members.

The United States District Court approved the request of the United States Bankruptcy Court for a survey to determine the need for a fifth bankruptcy judge in the District.

United States District Court Western District of Michigan

The Western District of Michigan is pleased to report that it has concluded another productive year. The effort put forward this past year by all of our judicial officers and court staff has permitted us to pursue several special projects while maintaining the quality of service expected by those who utilize our court.

Personnel. The Hon. Gordon J. Quist was sworn in on August 28, 1992, filling our temporary fifth district judgeship and last judicial vacancy. Judge Quist comes to us from private practice. His chambers are located in the district's Grand Rapids courthouse. Our two senior judges also continue to actively assist this and other courts around the country, including the Foreign Intelligence Surveillance Court in Washington, D.C.

Civil Justice Reform Act of 1990. Our court serves as one of two demonstration districts designated by the Civil Justice Reform Act of 1990 to experiment with a system of Differentiated Case Management (DCM). An advisory group, appointed pursuant to the Act's requirements, played an essential role in assessing the court's docket and assisting the court in creating its DCM plan which was adopted December 18, 1991. Prior to the operational date of the plan, the court also created a task force of court personnel to oversee details of implementing DCM in both the Clerk's Office and the chambers of each judge.

Among its other projects, the task force created standard forms for orders and

notices to be used on a court-wide basis in implementing DCM. In April of 1992, the court held a three-day workshop to educate court personnel on the operational aspects of DCM. The workshop was led by consultants from the Institute for Court Management of the National Center for State Courts and involved all the court's judges and most of the support staff. The workshop resulted in several modifications to the court's original plan, which were embodied in an amended plan and amended local rules approved by the court on September 1, 1992. On September 3, 1992, the court and the local chapter of the Federal Bar Association conducted a seminar, attended by 400 lawyers, to explain DCM in our district.

Under the court's amended plan and local rules, all civil cases filed on or after September 1, 1992, will be assigned to one of six case management tracks, or randomly assigned to a seventh non-DCM track, which will serve as a control group for statistical purposes. The court makes a track assignment only after meeting with counsel for all parties at a Rule 16 conference, which must be held no later than thirty days after the filing of an answer or first responsive motion. Each track operates under distinct procedures and time frames for discovery, motion practice, and trial.

As required by the Act, the court will conduct periodic reviews of its docket and the operation of the plan. The annual report from the Advisory Group reflecting the activities of 1992 will be submitted to the court in the spring of 1993. In addition, both the court and the Advisory Group actively monitor all aspects of

DCM, with a view toward implementing further modifications to the system on the basis of the court's experience.

Technology in the Court. The court continues to research and implement the latest in computer technology. During 1992, the court installed a 486 multi-user computer to run the PC/CHASER (Chambers Access to Selected Electronic Records) application supplied by the Administrative Office. This application provides greatly expanded access for chambers to the court's ICMS CIVIL/CRIMINAL database. Also installed during 1992, was the foundation for the Data Communications Network (DCN) in our district. The DCN is currently serving Chief Judge Gibson and Senior Circuit Judge Engel's offices. Additionally, our court installed and implemented the ICMS CRIMINAL application beginning in April of 1992 and has enhanced its ICMS CIVIL for use with our demonstration of Differentiated Case Management (DCM) in response to the Civil Justice Reform Act.

The court also made great strides in the area of office automation during 1992. All court PCs were upgraded to MS-DOS 5.0 and WordPerfect 5.1 and 486SX computers were purchased to upgrade all chambers' staff. The court now utilizes 126 personal computers in chambers, the Clerk's office, for the Central Financial Systems and for training.

Our court staff participated in the National CIVIL/CRIMINAL Users' Group, organized by the Administrative Office, and our Clerk continues to chair the Bugs and Enhancements Subcommittee. Chief Judge Gibson continues to serve on the

Automation and Technology Committee of the Judicial Conference.

Court Workload. The district filed 1,505 civil cases and 196 criminal cases, for a total of 1,701 cases in 1992. This was a decrease over the previous year. Terminations again exceeded filings and totaled 1,718. The pending caseload as of December 31, 1992, was 1,373 civil cases and 120 criminal cases for a total of 1,493 or 5 percent decrease in pending caseload.

As of June 30, 1992, the district had only 51 cases or 3.7 percent of its caseload, over three years old, giving the district a ranking of first in the circuit, up from second the preceding year.

Training seminars, including video and local in-house training programs, were provided to the staff. These programs ranged from computer training to office productivity and docketing. The court continued its participation in the second Employee Recognition Program, awarding approximately \$4,250 to court family employees, along with award certificates for distinguished service.

The Probation Office ended 1992 with a caseload of 371, up from 359 the previous year. Pretrial Services officers continued to interview and submit bond recommendations for 96 percent of the defendants appearing in court.

The Probation Office continues a specialization of work function with Presentence and Supervision units. Probation Officers are assigned to those units on a rotating basis, enabling the officers to operate more efficiently and to devote adequate time to both functions. The office is expanding its programs in the areas of mental health and drug aftercare.

Special Projects. The court continues to run the Hillman Advocacy Program to teach basic advocacy skills to new attorneys each January in Grand Rapids and later in the year in Marquette. The continuing success of the program is attributed to the combined efforts of the court and the Western Michigan Chapter of the Federal Bar Association. This past year marked the 11th anniversary of this workshop, which has enrolled nearly 900 attorneys since its inception. Our judges were also frequent participants in other bar seminars in 1992 dedicated to federal court practice.

The district also remains a member of the pilot court-annexed arbitration program, as part of its comprehensive ADR effort. The court extensively utilizes mediation and, upon occasion, conducts summary jury trials. The court continues to take part in the Central Financial System (CFSII) pilot program, and in 1992 completed its first full year as a budget decentralized court.



United States Bankruptcy Court Western District of Michigan

On October 1, 1992 the Hon. David E. Nims, Jr., Senior Bankruptcy Judge, retired after 37 years on the bench. Judge Nims was appointed in 1955 and officially retired in October of 1986. Until October 1 he worked as a recalled judge, handling a full caseload until the end of his career at the age of 80. The court will greatly miss his presence.

The caseload of the court has continued to increase during the first half of 1992, but filings began to decline in the second half. After several years of double digit increases, the court's caseload ended the year just 1% above the final figures for 1991. When divided by chapter, it appears that chapter 7 cases have increased while chapter 11 and 13 cases have declined. This contrasts with a 17% increase in 1992 over the previous year's figures. This trend seems to be continuing into the first quarter of 1993 with filings running well behind last years figures for the first two months of the year.

The major challenge facing this court, as well as many others, will be to maintain services to litigants, the bankruptcy bar and the public, while absorbing losses of funding and personnel. The Western District of Michigan covers a large geographical area. three judges of the court visit four bankruptcy courtrooms at various distances from Grand Rapids. With travel funds reduced and with the staff of the clerk frozen for an indefinite period by reduction of the staffing allocation, the court is faced with the necessity of finding ways to cope with a static caseload but declining support for judicial activities.



United States District Court Northern District of Ohio

The winds of change swept across the political horizon in November 1992, ushering in a new president and a congress

bestowed with a mandate to cast aside outmoded policies and procedures and encouraged to adopt a fresh approach to the economic and political challenges confronting the nation. The voice of the electorate has demanded that the political process be more responsive to individual needs, more inclusive in its scope, more conservative in its spending and more focused upon results.

Nearly a year earlier, in response to similar concerns regarding the administration of justice in the United States, this Court endorsed sweeping changes in the way civil litigation is to be conducted in the Northern District of Ohio by adopting new Local Rules focused on providing alternatives to conventional case management techniques and traditional forms of civil litigation. The new rules were specifically designed to offer more satisfying alternatives to traditional litigation, streamline litigation time frames and reduce costs. Through the adoption of innovative case management procedures, the Court believes it can better serve the legal needs of the citizens of Northern Ohio, the ninth largest district in the United States, with a population of 5,770,574.

Among the innovations implemented by the Court to enhance the efficient management of its docket, reduce the pending inventory of cases and motions and avoid unnecessary cost and delay were: a Differentiated Case Management (DCM) plan, a broad menu of court-annexed Alternative Dispute Resolution (ADR) techniques, a Pending Inventory Reduction Plan (PIRP), a Docket Equalization process, a Master Trailing Docket and a Visiting Judge program.

Although most of these new programs and procedures are still in their infancy, the early results are encouraging. For instance:

- The number of civil case closings rose 4.76% and the number of criminal case closings rose 6.25% over 1991 despite an increased judicial workload caused by a sharp reduction in the number of active district court judgeships, a 4.75% increase in civil case filings and a 26.74% increase in criminal case filings.
- The number of cases three years and older was reduced by over 55% during the past year and the Northern District's percentage of such cases is now below the national average.
- Over 66% of the civil cases that were pending on December 31, 1991 were closed by the last day of 1992. Included in this category are many actions referred to as "hard core durable" cases that had been pending several years.
- Nearly 39% of the civil cases filed in 1992 were closed by December 31, including 73% of the cases filed in January, 67% of those filed in February and 59% of those filed in March.
- New case filings under DCM are being resolved at a quicker pace than in 1991. While 39% of the cases filed in 1992 were closed by December 31, 1992, only 34% of the cases filed in 1991 during a comparable time period were closed by December 31, 1991.

- About 350 cases were referred to the district's court-annexed ADR program including: 177 cases to Early Neutral Evaluation; 140 cases to Mediation; 16 cases to Arbitration; and 17 cases to Summary Jury Trial. Of the 245 cases that have now completed ADR, 89 or over 36% were resolved prior to or through the ADR proceeding.
- The civil caseloads of active judges in the Eastern Division were more efficiently distributed through the Docket Equalization Process.

Civil Docket. Case closings increased in the Northern District of Ohio during 1992 despite a heavier judicial workload caused by a dramatic reduction in the number of active district court judges and an increase in both civil and criminal case filings. Civil case closings rose 4.76% from 3,655 in 1991 to 3,829 in 1992 while the number of active district judges fell from 10 to 7, a 30% decrease, and civil case filings increased 4.75% from 3,386 to 3,547. Moreover, according to the June 1992 Federal Court Management Statistics Profile, the most recent report comparing all U.S. District Courts, the district's weighted filings per judgeship for 1992 was 16% above the national average (470 to 405).

Criminal Docket. While the new case management techniques adopted by the Court are being applied to the civil caseload, the effects of the criminal caseload on overall case management cannot be overlooked due to the priority criminal cases are assigned by The Speedy Trial Act of 1974. During 1992, 545 new

criminal cases were filed, a 26.74% increase over 430 criminal cases filed in 1991. Criminal case closings also increased, although at a smaller rate, with 476 closings in 1992, a 6.25% increase over the 448 criminal cases closed in 1991. The result was a criminal case docket that increased 22.77% from 303 cases on December 31, 1991 to 372 cases on December 31, 1992. The number of remaining defendants in criminal cases also rose 13.78% from 508 to 578.

Asbestos Docket. On July 29, 1991, the Judicial Panel on MultiDistrict Litigation (MDL) transferred all asbestos cases pending in federal courts to the E.D. of Pennsylvania for pretrial management supervision. Although the MDL transferee judge has assumed overall pretrial management supervision of this complex mass tort docket, the presence of the asbestos docket continues to influence staff workload in the Northern District of Ohio. Pursuant to the Judicial Panel's order of transfer, case files and pleadings continue to be maintained and docketed by the transferor courts. Some 1,523 new asbestos cases were filed and docketed in this district during 1992, an average of 126 per month. The district now maintains nearly 4,000 pending asbestos case files.

Judicial Vacancies. The efficiencies provided by the new case management programs and procedures are of particular importance because the Northern District of Ohio is now operating under a severe shortage of judicial officers. Although the district is authorized 12 judgeships and six magistrate judgeships, only seven regular judges and five magistrate judges are now on active duty. Many of the judicial va-

cancies developed during 1992 when one judge was elevated to the Sixth Circuit Court of Appeals and two judges, one of whom eventually retired, took senior status. The Western Division, which has had one vacancy existing since 1989, has been particularly affected by the judicial shortage and currently operates without an active district court judge. The Western Division's judicial shortage was exacerbated recently by the death of Senior Judge Nicholas J. Walinski who had served the Court with distinction since 1970. The district is fortunate to be receiving the continuing support of its senior judges and a retired recalled magistrate judge during the judicial shortage.

Differentiated Case Management. Under the Civil Justice Reform Act of 1990, the Northern District of Ohio was designated to "experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and time frames for the completion of discovery and for trial." 28 U.S.C. § 482. Upon the recommendation of the Local Rules Committee and the Civil Justice Reform Act Advisory Group and its special Task Force on Differentiated Case Management, the Court adopted Section 8 of the new Local Rules which sets forth the DCM plan. Because the DCM plan was operational by January 1, 1992, the Court also received status as an Early Implementation District under the Civil Justice Reform Act.

The underlying principle of the DCM plan is to make access to a fair and efficient court system available and affordable

to all citizens by reducing costs and avoiding unnecessary delay without compromising the independence or the authority of either the judicial system or the individual judicial officer. The DCM plan attempts to meet these goals by providing early involvement of a judicial officer in each case and by establishing "event-date certainty" for case management conferences, status hearings, final pretrial conferences and trial dates as well as for discovery and motion cut-off dates. Under the DCM system, judicial officers review each case and assign it to one of five processing "tracks": expedited, standard, complex, administrative or mass tort. Each track employs case management guidelines tailored to the general requirements of similarly situated cases and case management plans are issued to meet the specific needs of individual cases.

While it is still too early in the DCM implementation process to determine the effects, if any, of differentiated case management, it is now possible to provide some descriptive statistics related to DCM case processing. During 1992 there were 3,547 non-asbestos civil cases filed in the Northern District of Ohio. During that period 1,381 (38.93%) of those actions were terminated while 2,166 remained pending. It appears that cases are being resolved at a significantly quicker pace under DCM. While nearly 39% of the cases filed in 1992 were terminated by December 31, only 34% of the cases filed during 1991 were closed by December 31 that year.

Alternative Dispute Resolution. Upon the recommendation of the Advisory Group and its subcommittee on Alternative

Dispute Resolution, the new Local Rules also incorporate a broad menu of non-binding, court-annexed ADR processes designed to provide quicker, less expensive, and generally more satisfying alternatives to traditional litigation. Section 7 of the new rules provides guidelines for the use of Early Neutral Evaluation, Mediation, Arbitration, Summary Jury Trials and Summary Bench Trials. These processes are court-annexed in that the Court manages and supervises the implementation of these ADR procedures. Section 7 also encourages parties to consider the use of extrajudicial ADR procedures to resolve disputes. The Northern District of Ohio has also been designated a Pilot District for voluntary arbitration.

In order to implement its new Alternative Dispute Resolution (ADR) programs, the Court established a Federal Court Panel of neutrals currently consisting of 218 individuals who, by experience, training, and character, are qualified to serve as early neutral evaluators, mediators and arbitrators. Once a case is referred to ADR, the parties, in consultation with the Court, select a neutral experienced in both the substantive area of the law and the specific ADR process. Federal Court Panel members serve the parties and the Court overwhelmingly on a pro bono basis.

During 1992, judicial officers of the Northern District of Ohio referred 350 cases to ADR including: 177 cases to Early Neutral Evaluation, 140 cases to Mediation (including 48 cases referred as part of the district's first Settlement Week program), 16 cases to Arbitration and 17 cases to Summary Jury Trial. The results

of 245 ADR referrals are now known. The remaining 105 cases have not yet completed the ADR process. Of the 245 cases now completed with ADR, 60 or over 24%, were resolved, either by settlement or by binding arbitration award. Another 12% of the cases were resolved after the actions were referred to ADR but before the ADR proceedings took place. Even those actions that are not resolved through ADR benefit from the process because the ADR proceedings frequently place actions in shape for more efficient case processing and set the stage for future settlement negotiations.

Pending Inventory Reduction Plan.

In addition to recommending that the Court adopt the new DCM and ADR programs, the Advisory Group also specifically advised that attention be given to cases then pending in the Court's inventory to assure the public and the bar of the Court's commitment to the fair and expeditious processing of all cases. In response to that recommendation, the Court adopted a Pending Inventory Reduction Plan. The goals of the PIRP are that: 1) no cases be pending which are over three years old, 2) no motions be pending more than six months, 3) no bench trials be awaiting rulings for more than six months, 4) no case be inactive for more than 90 days, 5) the median time from filing to disposition be reduced from the then 14 months to the national average of nine months and 6) the "Unassigned" docket be eliminated.

The early results of these programs have been positive. For instance, of the 3,568 non-asbestos civil cases that were pending on December 31, 1991, approximately 2,364 (66.26%) were closed by

December 31, 1992. The number of cases three years and older was also reduced by over 55% during the past year, from 399 to 177. There are no longer any bench trials awaiting rulings for six months. Work remains to be done, however, to ensure that no motion remains outstanding for six months, that no action remains inactive for 90 days, that the median time to disposition is reduced and that the unassigned docket is eliminated. Once the six judicial vacancies are filled, the Court should be in a better position to achieve these goals.

The Docket Equalization Process.

Civil cases in the Northern District of Ohio are assigned to individual judges at the time of filing by computerized random draw. As the Court entered 1992, however, the size of the pending civil dockets of individual judges in the Eastern Division varied considerably. In order to more efficiently utilize its limited judicial resources and to permit judges with already sizable dockets to place emphasis on their pending caseloads, the court adopted a docket equalization process which was operational from January 1, 1992 through June 9, 1992. Under docket equalization, judges with relatively small pending dockets received a larger proportion of the new civil case filings.

The docket equalization process undoubtedly contributed to more efficient case processing by making more productive use of scarce judicial resources. Entering 1992, the size of the individual civil caseloads of the seven active Eastern Division judges varied considerably ranging from a low of 49 cases to a high of 512 cases with an average of 297 cases per

judge. Following the conclusion of the equalization process in June, the range of pending civil cases for the seven judges had been narrowed to a low of 123 cases and a high of 397 cases with an average of 267 cases per judge.

Master Trailing Docket and Visiting Judge Program. A primary objective of the new DCM Plan is the establishment of a firm trial date. In order to accomplish this ambitious goal, the Court has initiated a Master Trailing Docket which lists cases which have been unable to proceed to trial as scheduled. Procedures have been established to bring cases on the Master Trailing Docket to the attention of available judicial officers who may voluntarily accept assignment of a case for prompt trial. In addition to the Master Trailing Docket concept, the Court also utilizes visiting judges from other districts to assist in the processing of trial ready cases. During the past year, this district has received assistance from judges of the Southern District of Ohio and the Eastern District of Michigan. As a result of the visiting judge program, 13 civil cases and two criminal cases were resolved.

Circuit Council Resolution of April 1, 1992. Substantial progress was made by the Northern District of Ohio in reducing the number of civil cases pending more than five years, motions pending more than two years and cases in which bench trials had been submitted for over two years. Since April 1, 1992, the district reduced its number of civil cases pending more than five years from 79 to 45. The number of motions pending more than two years was reduced from 245 to 121. There are no cases in which bench trials had been sub-

mitted for more than two years. The goal of the Circuit's Resolution is an integral part of the court's overall case management plan and all efforts will continue to be made by each judge toward that goal.

Juror Utilization. The Northern District of Ohio improved its juror utilization statistics for the third year in a row. The percentage of jurors called but not used was reduced from 31% in 1990 to 27.5% in 1991 to 27.3% in 1992, below the 30% goal set by the Judicial Conference of the United States. For the year ending September 30, 1992, the district ranked 35th out of 94 courts with a juror utilization percentage of 27.47%. Reductions in the number of jurors called but not used resulted from the implementation of innovative juror management techniques such as multiple voir dire, staggering of trial starts, pooling of jurors, and summary jury trial assignments for those jurors not selected or challenged.

Naturalization of New Citizens. The Judicial Naturalization Ceremonies Amendment of 1991 returned to the Court the exclusive authority to administer the oath of allegiance to new citizens. During 1992, naturalization ceremonies were held on six occasions in Toledo and bi-monthly in Cleveland. A special ceremony was also conducted in Cleveland at The Nationalities Services Center in September. The number of new citizens naturalized by the Court rose sharply from 1,282 in 1991 to 1,814 in 1992.

Clerk's Office Personnel Allocation. The Clerk's Office continued to be significantly impacted by the reduction imposed last year in its personnel allocation from 89 positions to 76. While the Clerk's

Office currently has an on-board strength of 88, it has been unsuccessful in obtaining critical exceptions to fill such significant positions as Procurement Administrator and Facilities Administrator.

Automation. During the spring and summer of 1992, a new 486 computer system was installed in our district. The new system more than doubled the computer power available to the Court and enabled several new projects to be implemented. In November, electronic access to civil docket reports was made available through a new information service called Public Access to Court Electronic Records (PACER). The PACER system allows individuals to access docket reports from their office or home by phone using a computer terminal and modem. Four network connections to the Data Communications Network (DCN) equipment were also installed as part of the Sixth Circuit pilot networking project.

Facilities. Planning for the proposed U.S. Courthouse and Federal Building in Cleveland, Ohio is well underway as the prospectus has been approved by the General Services Administration (GSA) Planning Board and referred to the Office of Management and Budget to be included in the President's 1994 Budget. GSA is proceeding to advertise for architectural, engineering, and design services. In July construction began on the new U.S. Courthouse and Federal Building in Youngstown, Ohio. Occupancy is scheduled by November, 1993. GSA also performed a historical refurbishment of two beautiful, turn-of-the-century courtrooms in Cleveland. The first courtroom was completed

just in time for the annual Christmas naturalization ceremony.

Due to the space shortage crisis in the Cleveland Courthouse, the Court has been working with GSA to relocate the senior judges to another location. GSA is preparing the contract award for the commercial lease space, and it is anticipated that the senior judges will be able to occupy new chambers by Summer 1993.

Court Reporting Services. The Court is presently served by ten court reporters, two electronic court recorder operators (ECROs), and four deputy clerks trained as back up ECROs. The Court extended its experiment with real-time court reporting which permits the Court to view the text of the proceedings as transcribed by the Court Reporter instantaneously on a monitor. The system is capable of scrolling back to review previous testimony at any time. A hard copy of the unedited transcript can also be made whenever needed.

Training. Members of the Court staff attended a variety of educational programs sponsored by the Administrative Office and the Federal Judicial Center. The programs which were offered highlight the many changes the Northern District of Ohio and the Federal Court System are experiencing. These programs include the following: Executive Team Development Workshop; workshops for newly appointed Clerks and Chief Deputy Clerks; seminars on courthouse design and construction projects and space and facilities management; workshops for human resources managers, newly appointed training coordinators, procurement personnel, and a financial seminar. These programs exemplify the continuing effort of the Adminis-

trative Office and the Federal Judicial Center to educate court personnel.

The adoption of the DCM Plan also prompted the district to sponsor a series of training seminars and programs related to the new local rules. Programs were specifically designed for practicing attorneys, Federal Court Panel members, judges and support personnel. Educational programs were conducted by judges, key members of the Civil Justice Reform Act Advisory Group and court staff on the subjects of Differentiated Case Management and Alternative Dispute Resolution at the United States District Court, the Akron, Cleveland and Toledo Bar Associations, the City of Cleveland Law Department, and several area law firms.

Criminal Justice Act Panel. The Court implemented its new plan for the composition, administration and management of panels of private attorneys under the Criminal Justice Act, adopting new panels effective November 3, 1992. The Court established panels in each division of the district made up of local counsel available for appointment in criminal cases. A continuing legal education course sponsored by the Federal Defender for the Northern District of Ohio was conducted in June, 1992 to provide panel members with the educational requirements set forth in the plan. Panel appointments are tracked by the Clerk's Office to ensure competent counsel is provided for defense in criminal matters and to equalize the appointments among the panelists and the Federal Public Defender's office.

Pretrial Services Office. Now in its fifth year, the Pretrial Services Office, with a staff of 15, continues to play a

valuable role in the criminal justice system. There were 723 cases activated in 1992 and prebail reports were prepared on 98.7% of the defendants. There were 247 defendants under supervision, including 19 electronic monitoring and 90 drug aftercare cases. A total of 225 defendants were charged with narcotics offenses.

The Northern District of Ohio was trained on the Pretrial module for the Probation and Pretrial Automated Case Tracking System (PACTS) in May 1992 and it was the first district in the nation to go on-line one month later.

Probation Office. The Probation Office workload increased during 1992. By year end there were 1,272 persons under supervision, up 4% over 1991. Investigations increased by 6%, with 2,661 completed. Probation officers collected \$793,-225 in fines and restitutions, an increase of 82% over 1991. Allocated staff positions grew from 82 to 83.

The Probation Office offers a range of intermediate sanctions. During 1992, 165 offenders participated in The Home Confinement Program which utilizes electronic monitoring equipment to aid in the enforcement of home detention sentences, a 135% increase. The Intensive Supervision Program supervised 137 offenders during the year, a 5% increase over 1991. The number of offenders in the drug, alcohol, and mental health treatment program, which provides outpatient and residential services, increased 31% from 364 to 521.

Security Committee. The Court's Security Committee continues to meet on a regular basis to identify and resolve security issues throughout the district. In Akron, a new security perimeter system

was installed which has enhanced the security for that facility. The U.S. Marshal's Office was successfully relocated from the downstairs area of the Cleveland courthouse to its new location on the 17th floor of the Eaton Building.

Conclusion. Last year this report was concluded with the expectation that the then existing judicial vacancies in Cleveland and Toledo would be filled in 1992. With a new administration now in office, the nominating process must begin anew, but this time with even more judgeships to be filled. Having labored under a severe judicial shortage in 1992, the accomplishments of the Northern District of Ohio are all the more satisfying. Despite an increase in filings and six judicial vacancies (five judgeships and one magistrate judgeship), the court increased its disposition rate while implementing a dramatically revised set of local rules designed to provide quicker, less costly and more satisfying alternatives to conventional case management techniques and traditional civil litigation. In the upcoming year, the Court will press on with renewed vigor and commitment to improve and enhance the quality of judicial administration and strive to provide a state-of-the-art delivery system.



United States Bankruptcy Court Northern District of Ohio

The United States Bankruptcy Court for the Northern District of Ohio has experienced continued growth in case filings

since 1988. Figures for Fiscal Year 1992 do reveal a slight decrease in filings as compared to one year ago.

Space and Facilities. Several major projects are ongoing and at various stages of completion. Construction of a new Federal Building in Youngstown is underway with occupancy expected in January, 1994.

Relocation of chambers and courtroom of Hon. H. F. White of Akron was completed this year. Efforts to relocate the Bankruptcy Clerk's Office in Akron continue.

The Cleveland Bankruptcy Court will be relocating into leased space. Negotiations are underway and General Services Administration estimates that we will occupy approximately 42,000 square feet of space in a downtown location by January, 1994.

Automation. Technological advancements have continued this year. We are converting our BANCAP system from a dual mainframe to two 486 personal computers. Steps to implement a new financial program in all five court locations were completed in 1992. Further developments in the areas of finance and personnel are expected this coming year.

Decentralized Budget. We have been selected for decentralized budget training in March, 1993. Implementation of this program in Fiscal Year 1994 is anticipated.

Summary. A high level of cooperation among the Judges, their staffs and Clerk's office has allowed us to maintain our longstanding tradition of providing excellent service to the Bar and public despite budgetary restraints and staffing deficiencies.

United States District Court Southern District of Ohio

The highlight of the past year was the addition to our Court of the Honorable Sandra S. Beckwith who took the oath of office in Cincinnati, her home city, on February 21, 1992. She is the first woman to serve as a District Judge of the Southern District of Ohio and has been assigned to sit primarily in Columbus. Judge Beckwith is a graduate of the University of Cincinnati College of Law, and, prior to her appointment by President Bush as a federal judge, she had served as a judge of the Hamilton County Municipal Court and as a judge of the Hamilton County Court of Common Pleas.

The workload in the District increased markedly in 1992. Civil case filings increased over ten percent from 1991 and criminal case filings increased almost nine percent. One of the most notable ADR programs has been the Court's participation with the local state courts in conducting "Settlement Week." In Columbus, 116 federal court cases were submitted to mediation conducted by prominent members of the bar, with a settlement rate of 50 percent. In Cincinnati, 53 cases were submitted during "Settlement Week," with a settlement rate of 62 percent.

Major construction and renovation projects progressed, in varying degrees, at all three locations of the Court to meet the expanding needs of the Court. Included in these plans are relocations of the Bankruptcy Court at Columbus, Cincinnati, and Dayton to buildings outside the courthouse.

The Clerk's office in 1992 completed the automation of the criminal docket and, to increase communication among the judicial officers of the District, arranged for the installation of fax boards in all chambers.

The Probation office in 1992 began a home confinement program with electronic monitoring, although funding shortages prevented full utilization of that program. The Court in 1992 authorized a firearms program for probation officers, and thirty officers elected to receive firearms training.

The Pretrial Services office in 1992 continued to expand as its workload increased. During fiscal year 1992, a total of 826 cases were activated by this office, second in number only to the Eastern District of Michigan in the Sixth Circuit.

Typical of all federal courts, our court has been confronted with major problems due to funding shortages and personnel restrictions in 1992 and faces increasing problems in these areas in 1993. The Judges take this opportunity to acknowledge and thank the dedicated employees in our District for coping with these problems without reducing the quality of service rendered to the litigants, the bar, and the public.



United States Bankruptcy Court Southern District of Ohio

1992 was a year of opportunity for Bankruptcy Court operations in Southern

Ohio. Many firsts were posted this year including Cultural Diversity Training, opening of an on site copy center, new employee orientation program and numerous other training initiatives designed to protect and develop our most precious asset - our human resources.

What follows is a synopsis of the events, initiatives and changes which occurred in 1992:

Workload. For the first time in six years, the Southern District of Ohio recorded a decrease in the filing of bankruptcy petitions in 1992. During 1992, 21,375 bankruptcy petitions were filed in the Southern District of Ohio, representing a decline of over 10% from the previous year. Chapter 7 filings led the way with a 13% decrease in filings, followed by chapter 11's (7.3% decrease) and chapter 13's (3.5% decrease). Although filings were down, 1992 will still be remembered as the second highest filing year on record.

Cultural Diversity Training. Early in 1992, the Bankruptcy Court in Southern Ohio embarked on a cultural diversity training program for all court employees. Funding for this training was provided by the Federal Judicial Center. Connections Training Group, out of the University of Dayton, conducted the training sessions for the Court. A total of four training sessions were held in the district, which included training for the Clerk's office management staff and a separate training session at each Court location for all deputy clerks. The purpose of cultural diversity training was to provoke an awareness, acceptance and appreciation of the diversity which makes up today's work force. An understanding of the differences which define us as indi-

viduals and groups will promote a more harmonious working environment, facilitate expressions of ideas and concerns, and enhance the overall productivity of Court employees.

On Site Copy Center. Docucopy, Inc. was awarded a two year contract beginning January 1, 1993 to provide on site copying services for both Bankruptcy Court and District Court patrons. Docucopy opened its doors on the first floor of the U.S. Courthouse in Dayton on January 1, 1993. Court patrons now have an alternative to paying the \$.50 statutory copy charge to the Clerk. Docucopy provides copying service at \$.25 a page. Docucopy also provides delivery and fax service, will accept telephone orders and will maintain accounts for customers.

New Employee Orientation. Beginning in 1992, the Bankruptcy Court for the Southern District of Ohio implemented an orientation program for new Court employees. Within a few weeks of entering on duty, new employees attend a two day workshop in Dayton focusing on the organizational structure of the Court, benefits, personnel policies and procedures, bankruptcy rules and procedures, terminology and automation. The program is designed to give each employee a thorough overview of the Court system thereby preparing the new employee for subsequent local training.

Ergonomic Training. The automation age is placing more of our employees at risk of developing such maladies as carpal tunnel syndrome, and back, neck and eye strain. Recent government statistics indicate that the incidents of work related injuries related to automation is on the

increase. However, most of these injuries are preventable if sound ergonomic principles are practiced. Recognizing the need for training in this area, the Clerk's office offered ergonomic training to every Court employee during calendar year 1992 utilizing trainers from the private sector, employee assistance program and in-house personnel.

District Posts Low Absenteeism Rate.

A low absenteeism rate is a strong indicator of a satisfied and efficient work force. During calendar year 1992, the total hours of sick leave used by deputy clerks accounted for only 3% of the total work hours scheduled. The Clerk attributes this low absenteeism rate to an overall policy which encourages involvement of all employees in managing the Clerk's office.

Automation. On April 1, 1992, the Southern Ohio Bankruptcy Court commenced live operation of the PACER system (Public Access to Court Electronic Records). The Bar and public can now query the Court's database from personal computers for case histories, claims registers, new case filings and other pertinent data around the clock. Nationwide 800 numbers were established for the convenience of users outside the dialing area and to encourage use of this time saving device.

Case Administrators. In late 1992, the Clerk's office embarked on a plan to adopt the case administration organizational model. Under case administration, deputy clerks are trained to administer cases from opening to closing. Case administration will serve to promote case management awareness, enrich the jobs of deputy clerks and will more fully utilize our human

resources. Deputy clerks will better serve the Court if they are knowledgeable about the whole case management process. The Court hopes to implement case administration by the fall of 1993.

Judge Cole Resignation. After six years of dedicated service, the Honorable R. Guy Cole, Jr., United States Bankruptcy Judge for the Southern District of Ohio, tendered his resignation effective January 1, 1993 to pursue private practice. Judge Cole played an integral role in the administration of the bankruptcy system in the Southern District of Ohio. He will be missed not only by the Court family but the entire legal community.

New Bankruptcy Judge Selected. Charles M. Caldwell, Assistant United States Trustee for the Southern District of Ohio, was selected by the United States Court of Appeals for the Sixth Circuit to serve as a United States Bankruptcy Judge for the Southern District of Ohio at Columbus, filling the vacancy created by the resignation of the Honorable R. Guy Cole, Jr.



United States District Court Eastern District of Tennessee

We feel that we were able to make reasonably good progress on several projects during 1992 despite the limited resources that were available. Some of these projects were taxing on our staff, but everyone put forth a special effort and we

look back on the year as one filled with accomplishment.

We finalized the design of a new courthouse that is being planned for Knoxville, our Civil Justice Reform Act Report was completed and submitted to us, and we completed major installation of wiring and equipment in three very old courthouses, preparing us for our Integrated Case Management System (ICMS).

New Courthouse - The design of the new courthouse planned for Knoxville took shape during the year, and we now have begun to realize that we will have modern facilities in the Knoxville division of the court by late 1995 or early 1996. Numerous meetings were held by court personnel, the General Services Administration and the architectural-engineering firm to develop the best design possible to serve the court's needs for at least the first third of the twenty-first century.

Another New Courthouse Planned - As we struggled with the plans for the new Knoxville courthouse and took a good hard look at our long-range needs, it became apparent that our Greeneville division, which serves a major growth area of the district, the northeastern part of the state, likewise needs improved and expanded facilities. Plans were set into motion to construct a new courthouse in Greeneville to enable the court operations to move from a century-old (but adequately modernized) facility. Funding has not yet been obtained, but we are well into the preliminary stages of planning.

New Bankruptcy Judgeship - Another indication of the growth of the Greeneville division was the creation by the Judicial Conference of an additional bankruptcy

judgeship to serve the northeastern section of the district. A committee appointed by the Judicial Council is now screening applicants for the judgeship.

Pretrial Services Office - In late 1992, this court determined that it would be of benefit to the court to establish a pretrial services office in the district. Authority was granted by the Judicial Council and applicants for the chief officer are now being solicited.

Automation Progress - The conversion to electronic docketing through ICMS (Integrated Case Management System) was nearing completion by the latter part of 1992, not a simple accomplishment in antiquated courthouse structures such as those in our district. The installation of the necessary wiring, equipment and related facilities was expensive and difficult. As predicted, the transition was stressful for everyone, but we are now nearing the end of the conversion process and are able to benefit from this system.

CJRA Report Filed - Our Civil Justice Reform Act Advisory Committee worked long and hard during the year and filed its 122-page report on December 18, 1992. Our clerk's staff had a big hand in helping the committee gather and compile the statistics necessary for the report. Deputy clerks and the committee's chairman and reporter did an outstanding job in writing a thorough report.

Community Defender Organization - Federal Defender Services of Eastern Tennessee went into full operation in March of 1992, with headquarters in Knoxville. Offices were opened in the Chattanooga and Greeneville divisions of the court in April.

After-Hours Depositories - We completed the installation of after-hours depositories in the two remaining offices of the district during the year, and this service has been of great benefit to the public, the bar and our staff. The depositories enable attorneys to file pleadings after normal office hours, or, if they wish, even during regular business hours. The depositories are emptied several times a day by deputy clerks. Use of the depositories reduces the number of interruptions at the public counter.

History Society Formed - The court's historical society began to take shape in the latter part of 1992, and we look for it to go into full operation in the first part of 1993. The court already has more than a dozen oral histories completed on various key figures whose involvement with the court goes back to the late 1930s.

Intern Program - The Clerk's Office utilized the volunteer services of seven interns during the year. These college-student volunteers received excellent experience that is certain to benefit them for years to come, and the assistance provided by the students was of immeasurable benefit to the court in these times of fiscal austerity.

Chief Magistrate Judge Designated - The court felt it would be of value to designate one of its magistrate judges as "chief magistrate judge," and the Honorable Robert P. Murrian was selected for that designation. Magistrate Judge Murrian has served as a magistrate judge since 1978 and is senior among the district's four magistrate judges. The system has worked well. Magistrate Judge Murrian makes a regular report to the district judge-

es at their bimonthly meetings, keeping a smooth flow of information between the magistrate judges and the district judges.

A Top Honor - Last but not least on the district's report is the acknowledgment that our chief probation officer, Mrs. Rosalind Andrews, was chosen as a recipient of the Director's Award for Outstanding Leadership. The award was established in 1992 by the United States Courts to recognize managerial employees who have made long-term contributions to increase effectiveness or reduce costs in administration in the federal judiciary.



United States Bankruptcy Court Eastern District of Tennessee

Filings in the Eastern District of Tennessee remained steady. For the year ended December 31, 1992, there were 11,619 cases filed. In addition there were 518 adversary proceedings filed and the judges together heard approximately 20,000 motions.

After court costs and attorneys' fees, for the year ended December 31, 1992, creditors in the Eastern District of Tennessee netted \$54,853,472.41 in pending chapter 13 cases.

A new bankruptcy judgeship has been authorized for the Eastern District of Tennessee to be located at Greeneville, Tennessee. The Merit Selection Panel has been chosen and interviews of candidates for the position were underway in February.

United States District Court Middle District of Tennessee

The watershed event in this District during 1992 was our addition of a fourth District Judge, the Honorable Robert L. Echols, who took the bench on April 20, 1992. Having suffered from an average ratio of case filings to active district judges of over 560 in the last decade, a fourth district judge had an immediate impact on the District. The average ratio of case filings (civil cases and criminal felony cases) to active district judges dropped from 556 to 417 at the time he took the bench. Similarly, the average pending caseload per active District Judge went from 486 cases to 365 cases.

A third Bankruptcy Judge was approved for this District in 1992. This position is welcomed and well overdue based on the extraordinary rate of Bankruptcy filings in this District over the last several years. The selection process is underway for this judgeship.

Ernest W. Williams was appointed the United States Attorney for this District the end of 1991 and has brought new direction to that office, particularly by developing and promulgating written standards for prosecution of cases in this Court. Joe Brown, previously United States Attorney for the preceding decade, is now an Assistant U.S. Trustee in this District and is responsible for national coordination of Bankruptcy fraud referrals.

The criminal case filings in this District decreased in 1992 by 32% from the 1991 level. Defendants prosecuted in this District decreased by approximately the same

percentage between 1991 and 1992. This decrease appears to be in large part the result of the change in policy of the U.S. Attorney in this District away from prosecuting smaller criminal cases, such as postal theft, credit card cases, and smaller bank fraud and embezzlement cases.

The civil case filings in this District rose by seven percent in 1992 over the 1991 level. The case category comprising the largest percentage of civil cases in this District remains prisoner cases at approximately one-third of the total civil caseload.

The Civil Justice Reform Act Advisory Group appointed by this Court has been hard at work. The first phase of their task, focusing on gathering data and identification of causes of cost and delay, has been completed. The Group is now engaged in developing recommendations for solutions to those identified causes of cost and delay. The Court looks forward to reviewing the Advisory Group report by mid-year and to implementing a cost and delay reduction plan by the end of the year.

In the interim, there has been some experimentation in the District with early Court intervention by teaming a District Judge with a Magistrate Judge, responsible for early and firm case management to encourage early settlement and to monitor the case. We have not adopted Court-wide programs in this area at this point, but are awaiting the CJRA Advisory Group Report before comprehensive implementation.

In mid-1992, the District requested a third Magistrate Judge position. After a site visit, the Administrative Office declined to recommend such a position. The

Court strongly believes that a third Magistrate Judge position is justified in light of not only the existing workload of the Magistrate Judges but also in light of the anticipated increased responsibilities concomitant with our anticipated CJRA cost and reduction plan. However, the position of the Administrative Office was that a third Magistrate Judge position could not be justified at this time based on projected or anticipatory needs. Although the Court deferred to that assessment for the time being, once the CJRA plan is implemented and innovations are operational and increased workload is empirically verifiable, rather than anticipatory, the Court will again request a third Magistrate Judge position.



United States Bankruptcy Court Middle District of Tennessee

Workload. The total number of bankruptcy petitions continue to fall in the Middle District of Tennessee. Calendar year 1992 finished 11% lower than 1991 with a total of 10,953 petitions. Of this total, Chapter 7 and Chapter 13 were evenly split with 49% each of the total, and Chapter 11 accounted for 2% of the filings. The most significant overall decrease was in Chapter 11 filings which were 24% lower than the previous year. It should be noted, however, that adversary cases continued to be significant, with no decrease over 1991. Even with this

decrease in case filings, the caseload per judge continued to be among the highest in the country. Visiting judges from Kentucky and the Western District of Tennessee continued to provide assistance by hearing certain designated cases and adversary proceedings. This workload problem is expected to ameliorate with the appointment of a new judge which has been approved by Congress and is awaiting funding.

Personnel. The clerk's office staff seems to have caught up with the rate of filings for the first time in five years resulting in more cases being closed in a more timely manner and more efficient administration of all cases. The organizational structure implemented in 1991 continues to prove to be extremely efficient for this size office, and no new positions have been created except for a mail room clerk who plays a vital role in the mail program discussed under automation. Continued funding for authorized positions, however, is vital for efficient operation and service to the people of Middle Tennessee.

Automation. Integrating technology has been the keyword this past year in the Middle District of Tennessee. As a result, court management has become more efficient and effective. The judges and chambers, as well as the clerk's office, are automated using a wide variety of locally written and off-the-shelf software. Date communication technology has provided immediate access to information by the court staff and the public. The appellate court DCN is managed by the bankruptcy staff. Locally written applications, e.g., the Matrix Manager, have capabilities of

influencing national automation needs in the judiciary for the next decade. the court staff is trained on integrating applications and can be categorized as intelligent users. Hardware recycling allows our court with scarce funding to remain vibrant and positioned for measured growth. With an increasingly large amount of data to manage, 140,000 cases and 2.5 plus megs, and anticipating installation of technologies such as a multi-functional optical disks for archiving and storage, mobile office computing, communications with local and wide area networks, paper less computing and video-tele-conferencing, we have test installed TCNS 100bps fibre-optic backbone as a bridge to our live LAN. Job performance on this LAN has increased dramatically due to the increased network throughput speeds. Increased speed of data transmission has been extremely well received by the entire staff and has resulted in greater efficiency throughout the office.

Local Rules. Effective February 15, 1992, the local rules were completely revised to include techniques that have been beneficial in streamlining the court's docket. Additionally, the local rules now detail the specific operating procedures of the clerk's office and include an appendix of all local forms. The revised rules have been divided into chapters that correspond to the chapters in the Bankruptcy Code. Further, each local rule includes a cross-reference to the appropriate Code section and/or Bankruptcy Rule. A local rules subcommittee of the Nashville Bar Association Bankruptcy Committee is appointed each year to constantly review and recommend revisions to these rules. The chief

deputy clerk is a member of the subcommittee. Presently, the committee reports that the local rules have been extremely helpful in controlling and battling the court's burgeoning backlog due to the tremendous growth of prior years. Moreover, all attorneys, including those who rarely practice in the Bankruptcy Court or come from other districts, can understand the local practices of the court by reading the local rules. No major revisions to the local rules are anticipated at this time.



United States District Court Western District of Tennessee

During 1992 the Western District of Tennessee increased its number of active judges and hired a new clerk of court. As a pilot district, we implemented our Civil Justice Reform Plan. Our clerk's office moved into new Memphis quarters in 1992 and implemented Integrated Case Management System (ICMS) for civil docketing. Our criminal case filings increased substantially, while civil case filings increased very modestly. At year end we gratefully looked forward to Chief Judge Odell Horton's return to the court, after successful treatment for prostate cancer.

Judge Jon Phipps McCalla took office February 28, 1992, filling the new judgeship created by the 1990 Judgeship Act, and became the district's fifth active judge. Following a national search, the court, on

October 2, 1992, appointed Robert R. Di Trolio as Clerk of Court. Mr. Di Trolio replaced J. Franklin Reid, who retired after seventeen years as clerk.

Implementation of the court's CJRA Plan resulted in a number of changes in civil case management in the court, a more formalized commitment to alternative dispute resolution and certain revisions in our local rules. Probably the most significant change imposed by the CJRA Plan was creation of a criminal rotation docket plan, which relieves each judge periodically from trying routine criminal cases so that uninterrupted periods can be devoted to civil matters.

In mid-summer 1992 clerk's office staff in Memphis moved to newly-acquired and renovated space on the second floor of the Clifford Davis Federal Building. This move relieved serious crowding in the clerk's office. The space vacated by the clerk's office was renovated and became a visiting judge's chambers, offices for case managers, and the district's first jury assembly room. ICMS-civil was fully implemented during 1992.

During the statistical year (SY) ending June 30, 1992, criminal case filings and defendants increased 33% over the previous year. Criminal filings were 475 cases with 760 defendants, as compared to 357 cases with 573 defendants in SY 1991. According to Administrative Office data 68% of the trials conducted in this district in SY 1992 were criminal. During SY 1992 civil filings increased 2.6%.

At the end of 1992 Judge Odell Horton was away from the court for over two months for treatment for cancer surgery. The treatment was successful, and he is

now back at work part time and working toward resumption of his full responsibilities. During Judge Horton's absence, a number of visiting judges assisted with the criminal rotation docket. We are very grateful for Judge Horton's recovery and their help.



United States Bankruptcy Court Western District of Tennessee

For the first time since the end of calendar year 1983, the Bankruptcy Court for the Western District of Tennessee experienced a decrease in the number of new cases filed. During CY 1992, the court received 16,990 new case filings as compared to 17,843 new case filings in CY 1991. This change represents a decrease of 5 percent.

The Administrative Office of the United States Courts recorded 17,473 new case filings in the Bankruptcy Court for the Western District of Tennessee for the period ending September 30, 1992. This figure was 37 cases more than the same period last year and placed our district as the eighteenth largest bankruptcy court in the country, down from fifteenth in 1991.

Chapter 13 filings continue to constitute the majority of cases (76%) filed in the Western District of Tennessee. During CY 1992, chapter 13 filings were down in the district by 310 cases (2%) compared to CY 1991. The most notable change in chapter 13 filings was the Eastern Division

at Jackson where chapter 13 filings were down 15% compared to 1991.

The distribution of case filings between the Western Division (Memphis) and the Eastern Division (Jackson) continues to remain relatively constant. During CY 1992, the Western Division received 84% of the new case filings compared with 82% in CY 1991.

**Cases Filed for 1991 and 1992
By Division
1991**

	Memphis	Jackson	Total
Chap 7	3576	923	4499
Chap 11	105	76	181
Chap 13	10898	2255	13153
Chap 12	0	10	10
TOTAL	14579	3264	17843

1992

	Memphis	Jackson	Total
Chap 7	3267	740	4007
Chap 11	98	47	145
Chap 13	10874	1960	12834
Chap 12	0	4	4
TOTAL	14239	2751	16990

Congress approved an additional bankruptcy judgeship for the Western District

of Tennessee in 1992. It is anticipated that the position will be funded sometime during FY 1993. In calculating the weighted case hours per judge in the district, the Administrative Office included the newly authorized judgeship even though the position had not been filled. The Western District of Tennessee ranked seventh nationally in the weighted caseload per judge with 1,968 hours. Had the Administrative Office calculated the weighted case hours with the judgeships actually filled during 1992, the Western District of Tennessee would have ranked fourth with 2,624 hours per judgeship.

During CY 1992, the court completed two major construction projects. One project was the expansion of the clerk's office in Memphis into 4,000 square feet on the fourth floor of One Memphis Place. The intake, reception, and records functions were relocated to the new space and provided much needed file space. The move also created a new intake counter configuration which has eased access to the clerk's office for the public. We also installed a drop box which has enabled the public to file documents with the court 24 hours a day, seven days a week, which has reduced the amount of overcrowding at the intake counter. The court now holds leased space on the 4th, 5th, 6th, and 9th floors within One Memphis Place.

The second project completed was the creation of a multi-use courtroom on the 9th floor. The courtroom is complete with a fourteen person jury box, jury deliberation room and judge's chambers. The courtroom will be used by visiting district court judges, magistrate judges, and the fourth bankruptcy judge when sitting in

Memphis. The United States Coast Guard has used the courtroom for trials, and it is anticipated that other federal agencies will also make use of the courtroom.

During the fourth quarter of FY 1993, the Eastern Division Office will relocate into leased space in Jackson, Tennessee. The new space will include a courtroom and judge's chamber for the new bankruptcy judge and clerk's office space to accommodate a doubling of staff to allow for full case processing of Eastern Division cases to be carried out in the Eastern Division.



In Memoriam

Honorable Nicholas J. Walinski

**MEMORIAL RESOLUTION
FOR
NICHOLAS J. WALINSKI
UNITED STATES DISTRICT JUDGE**

The United States District Court for the Northern District of Ohio records with sadness the death of our colleague and friend, Senior United States District Judge Nicholas J. Walinski. Judge Walinski died on December 24, 1992. It has been said that memorials need not be erected for men like him, their deeds are their memorials. This is certainly true of Judge Nicholas J. Walinski.

Appointed by President Richard M. Nixon, Judge Walinski served 22 years on the district bench. While in active service, he served on the Judicial Conference of the United States's Subcommittee on Federal Jurisdiction.

In 1978, Judge Walinski perceived the need for a program to introduce young lawyers to local federal procedure and customs. Thus arose the Federal Court Practice Seminar, an instructional program offered annually in the Northern District of Ohio, Western Division for newly admitted lawyers who aspire to a federal court practice. At Judge Walinski's insistence, the seminar was designed as and remains today a thoroughly practical program dedicated to putting a human face on the sometimes intimidating visages of the federal court. To recognize his role in its conception and development, the seminar has been renamed The Nicholas J. Walinski Federal Practice Seminar.

Judge Walinski took senior status in 1987. The seat he had held as an active judge became vacant again in 1989. Because no one has even yet been appointed to fill the vacancy, Judge Walinski assumed full responsibility for attending to what formerly had been his docket. He attended the docket full time until his death. We, as his colleagues in the Northern District of Ohio, recognize that the judiciary of the United States received more than a full share of dedication from Judge Walinski.

Judge Walinski was born November 29, 1920 in Toledo, Ohio, the third son of a prominent Toledo attorney. He attended parochial and public schools in Toledo. While in high school, he became an accomplished airplane pilot. By the time he enrolled in The University of Toledo, he had flown solo from California to Toledo, navigating by dead-

reckoning and landing in fields along the way. In college, he pursued a degree in engineering, a discipline close to his life-long love of aviation.

The outbreak of World War II interrupted his undergraduate study. He enlisted in the United States Navy and soon received an officer's commission. He became a highly skilled pilot of carrier-based fighters and torpedo bombers. For much of the war and for a period thereafter, he served as a flight instructor at the United States Naval Air Training Station in Pensacola, Florida.

The Judge was justifiably proud of his career as a naval aviator. It came into play in the courtroom, too. During a hearing on a request for a temporary restraining order to delay the transfer of a Grumman Amphibious plane, counsel for the plaintiff had planned to spend several hours demonstrating how unique the plane was. As he began his first line of inquiry with his first witness, the Judge leaned forward from the Bench and said "Counselor, I am qualified to fly this aircraft if that is of any help." It was, needless to say.

Returning from active naval service, he entered law school in order to take up the profession of his father and older brother. He graduated from The University of Toledo College of Law in 1952.

Judge Walinski spent most all of his professional life in public service. Within a few years after graduating from law school, he became an Assistant Director of Law for the City of Toledo. He was soon appointed Judge of the Toledo Municipal Court. Eventually he was appointed to a seat on the Common Pleas Court of Lucas County, Ohio. A very popular judge, he was elected to a full term on the Common Pleas bench. He resigned his position on the Common Pleas bench in 1970 upon his appointment to the United States District Court for the Northern District of Ohio, but even before his qualification as District Judge he arranged to have a full docket of cases assigned to him and started working on them.

Throughout his tenure in practice and on the state court bench, Judge Walinski remained active in the United States Navy Reserve. He eventually obtained the rank of Captain. When obliged to resign his commission in order to accept appointment to the federal bench, he had become commanding officer of the U.S. Naval Air Reserve Wing at Grosse Ile Naval Air Station.

In his nearly forty years on the trial bench, Judge Walinski was consistently regarded as a kind, practical and hard-working judge. He liked the courtroom, and he admired lawyers who brought skill to his venue. Every lawyer, however, skillful or not, was

treated with respect and dignity in Judge Walinski's courtroom. The trial of litigation was his life.

An anecdote, perhaps trivial, exemplifies the dignity that Judge Walinski afforded lawyers. During an uninterrupted first morning of trial, one of the attorneys routinely put his feet on counsel table. Judge Walinski appeared not to notice. At the lunch break, however, he invited the offending lawyer to chambers. There, he very politely -- and privately -- advised that "In this district, we don't sit with our feet on tables." Other judges might have addressed counsel's conduct differently.

During a hearing on damages being tried to the Court, a young lawyer representing the plaintiff began objecting loudly and with great zeal to the rather unfair question put by counsel for the defendant. He seemed to feel the need to explain his objection in considerable detail. However, the Judge cut him short, saying "Don't worry. That's just a typical defense lawyer's trick!"

Lawyers enjoyed appearing before him, appreciating especially his view that a case was for the lawyers, not the judge, to try. He was able to temper the austerity of the federal courtroom with courtesy, humor, and a kind disposition. "Just because this is a federal court," he was fond of saying, "doesn't mean this is a Federal Case." He wore the robes of his judicial office lightly.

In recognition of his special affinity for the young and unsure advocate, the Toledo Junior Bar Association awarded him the "Order of the Heel," a highly coveted recognition given to members of the senior bar who over time extend themselves exceptionally to assist young lawyers. He displayed this award prominently in his chambers. Those closest to him knew that no other accolade gave him as much pride as this recognition of his standing in the eyes of the younger members of the practicing bar.

The University of Toledo College of Law honored him in 1989 as its Distinguished Alumnus.

Despite his life and his tireless energies being committed to the law, his love and devotion for his wife and family remained his foremost priority. Judge Walinski was married to Vivian Melotti. They had five children: Marcianne (Catignani), Barbara (Schwankel), Donna (Hinkle), Deanna (Herfel), and Nicholas J. Walinski, III, and seven grandchildren. His son died in a motor vehicle accident in 1980 at age 17. Vivian died in 1988.

The proverb tells us to "appoint good judges, but not so good as to forget what human frailty is." Judge Nicholas Walinski was a good man who never forgot human frailty.

These were among the attributes that made him a dearly beloved and much esteemed judge, whether it be in a courtroom, or in the presence of strangers or of devoted friends and family. We wish to express our appreciation to Richard S. Walinski, nephew of Judge Walinski, and Richard M. Kerger, both of whom are members of the Bars of the Northern District of Ohio and Toledo. Mr. Walinski and Mr. Kerger have helped us in revitalizing some of Judge Walinski's tributes and honors.

THEREFORE, BE IT RESOLVED that the 1993 Sixth Circuit Judicial Conference in session at Hilton Head, South Carolina, this 15th day of April, 1993, pays tribute and appreciation to the memory of Nicholas J. Walinski who served the nation and this Circuit faithfully well.

BE IT FURTHER RESOLVED that a copy of this resolution be preserved upon the records of this Conference and that copies be furnished to the family as a mark of sympathy and esteem.

Respectfully submitted,

Thomas Lambros
Chief Judge
United States District Court
Northern District of Ohio

Don J. Young
Senior Judge
United States District Court
Northern District of Ohio

John W. Potter
Senior Judge
United States District Court
Northern District of Ohio

APPENDIX

Statistical Tables

Sixth Circuit Court of Appeals

1986 - 1992

FILINGS BY SOURCE

The table below shows the new appeals filed in recent years, showing the number of appeals originating in each of the individual districts within the circuits.

SOURCE OF FILINGS

		1986	1987	1988	1989	1990	1991	1992
OHIO	Northern	556	573	510	512	570	610	649
	Southern	455	480	497	479	464	491	627
	TOTAL	1011	1053	1007	991	1034	1101	1276
KENTUCKY	Eastern	252	314	352	358	349	351	350
	Western	260	285	296	339	323	285	277
	TOTAL	512	599	648	697	672	636	627
MICHIGAN	Eastern	887	1018	960	1081	1012	996	1198
	Western	171	215	298	339	337	373	352
	TOTAL	1058	1233	1258	1420	1349	1369	1550
TENNESSEE	Eastern	265	263	292	361	360	291	330
	Middle	183	208	209	241	259	224	260
	Western	209	246	192	208	245	280	391
	TOTAL	657	717	693	810	864	795	981
Agency, Tax Court & Original Proceedings		268	243	345	296	248	292	302
TOTAL		3506	3845	3951	4214	4167	4193	4736

The following table presents a summary of filings in recent years, and identifies the types of cases that have comprised the court's docket during that period.

FILINGS BY CASE TYPE

	1986	1987	1988	1989	1990	1991	1992
TOTAL CIVIL	2843	3061	2963	3144	3053	2970	3346
Prisoner Petitions	953	1098	1045	1303	1271	1365	1376
Civil Rights	553	621	570	536	532	501	650
Social Security	321	238	198	221	131	115	160
Diversity	389	408	431	506	463	393	443
Other Civil	627	696	719	578	656	596	717
BANKRUPTCY	80	62	71	80	102	93	108
CRIMINAL	395	448	575	694	806	929	972
ORIG. PROCEEDINGS	32	23	36	44	42	48	45
AGENCY	268	251	306	252	164	153	265
TOTAL CASES FILED	3618	3845	3951	4214	4167	4193	4736

SUMMARY OF DISPOSITIONS

	1986	1987	1988	1989	1990	1991	1992
ORAL ARGUMENT	1428	1628	1667	1738	1649	1735	1501
SUMMARY DISPOSITIONS (Rule 9)	989	1122	1302	1470	1499	1440	1468
VOLUNTARY DISMISSALS	340	383	413	345	339	356	364
DISMISSALS FOR WANT OF PROSECUTION	340	266	207	342	373	598	612
SETTLEMENT PROGRAM	211	172	299	330	280	231	195
OTHER	29	31	44	53	68	41	61
TOTAL	3337	3602	3932	4278	4208	4401	4201

FILINGS, DISPOSITIONS AND PENDING CASES

	1986	1987	1988	1989	1990	1991	1992
FILINGS	3618	3845	3951	4214	4167	4193	4736
Percentage of Annual Change	14.1	6.3	2.8	6.7	-1.1	0.6	13.0
DISPOSITIONS	3337	3602	3932	4278	4208	4401	4201
Percentage of Annual Change	4.8	7.9	9.2	8.8	-1.6	4.6	-4.5
PENDING (as of Dec. 31)	2972	3215	3234	3170	3132	2924	3427
Percentage of Annual Change	9.5	7.6	0.6	-2.0	-1.2	6.6	17.2

