

1991

Annual Report

The
Bill of
Rights

and
Beyond

Presented to
Sixth Circuit Judicial Conference

June 12 - 15, 1991

Grand Traverse Resort Village, Michigan

Gilbert P. Merritt
Chief Judge

The artwork on the cover was taken from a publication entitled *A Resource Guide* published by The Commission on the Bicentennial of the United States Constitution.

JUDICIAL ADMINISTRATION IN THE SIXTH CIRCUIT

Introduction

A relatively stable circuit and district court caseload, an ever increasing bankruptcy court caseload, the creation of additional circuit, district and bankruptcy judgeships, and several significant legislative actions are important developments covered in this report.

**CIVIL CASE MANAGEMENT
LEGISLATION AND ADDITIONAL
JUDGESHIPS ARE TWO OF THE
SIGNIFICANT EVENTS TO AFFECT THE
FEDERAL COURTS IN THE SIXTH
CIRCUIT.**

In the closing days of the 101st Congress, the Civil Justice Reform Act of 1990 was passed. The Act mandates the appointment in each district court of an advisory group that is representative of the litigants before the court to study the problems of cost and delay in civil cases. Each district must adopt a civil justice expense and delay reduction plan after consideration of the recommendations of the advisory group.

In addition to the Civil Justice Reform Act, Congress also passed the Federal Judgeship Act of 1990 which authorized one additional judgeship for the Court of Appeals and one additional judgeship for the Western District of Michigan, the Northern and Southern Districts of Ohio, and the Eastern, Middle, and Western Districts of Tennessee.

The current Congress will consider later this year a much needed bill calling for the creation of additional bankruptcy judgeships.

When all of the anticipated new judges are appointed, there will be over 170 judicial officers in the Sixth Circuit to deal with the over 118,600 cases filed in the circuit, district and bankruptcy courts of this circuit.

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. Chief District Judge Eugene E. Siler, Jr. of the Eastern District of Kentucky was elected in March of last year to a three year term as the district judge representative of the Sixth Circuit beginning in September of 1990.

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. Effective

May 1, 1991, Chief Judge Merritt was appointed by the Chief Justice to the Executive Committee.

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

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

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

Hon. James G. Carr - *Committee on Criminal Law and Probation Administration*
Northern Ohio

Hon. Julian Abele Cook, Jr. - *Committee on Judicial Ethics*
Eastern Michigan

Hon. Avern L. Cohn - *Committee on the Administration of the Magistrate System*
Eastern Michigan

Hon. David D. Dowd - *Ad Hoc Committee on Asbestos Litigation*
Northern Ohio

Hon. Julia Smith Gibbons - *Committee on Judicial Resources*
Western Tennessee

Hon. Benjamin F. Gibson - *Committee on Automation and Technology*
Western Michigan

Hon. Horace W. Gilmore - *Committee on Judicial Ethics*
Eastern Michigan

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

Hon. Odell Horton - *Committee on Defender Services*
Western Tennessee

Hon. Thomas A. Higgins - *Committee on Court Administration and Case Management*
Middle Tennessee

Hon. Charles W. Joiner - *Committee to Review Conduct and Disability Orders*
Eastern Michigan

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

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

Hon. Damon J. Keith - *Committee on the Bicentennial of the Constitution*
Sixth Circuit

Hon. David Kennedy - *Committee on the Administration of the Bankruptcy Law*
Western Tennessee

Edward F. Marek, Esq. - *Advisory Committee on Criminal Rules*
Northern Ohio

Hon. Boyce F. Martin, Jr. - *Committee on Federal-State Jurisdiction*
Sixth Circuit

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

Hon. David A. Nelson - *Committee on Criminal Law and Probation Administration*
Sixth Circuit

Joseph Patchen, Esq. - *Advisory Committee on Bankruptcy Rules*
Cleveland, Ohio

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

Hon. Robert F. Stephens - *National State-Federal Judicial Council*
Chief Justice, Kentucky Supreme Court

Hon. Lawrence P. Zatkoff - *Committee on Court Security*
Eastern Michigan

New Committees Created. In order to give adequate attention to the implementation of the Civil Justice Reform Act as well as to permit enhanced oversight over the growing federal court automation program, the former Committee on Judicial Improvements was split into two new committees - Committee on Court Administration and Case Management and Committee on Automation and Technology. Chief Judge Benjamin F. Gibson of the Western District of Michigan, formerly a member of the Judicial Improvements Committee was appointed to the new Automation and Technology committee, and Judge Thomas A. Higgins of the Middle District of Tennessee was appointed to the Committee on Court Administration and Case Management. A new Committee on Long Range Planning also was created, but no judge from the Sixth Circuit was appointed to that new committee.

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: Judge Gilbert S. Merritt, Committee on Judicial Resources and Judge John D. Holschuh, Committee on the Codes of Conduct. In addition, J. Vincent Aprile, Esq. of Frankfort Kentucky, a member of the Federal Court Study Committee was released from service upon the submission of the report.

New Appointments. Judge Nathaniel R. Jones was appointed to a three year term as a member of the Committee on the Codes of Conduct, and Judge Danny J. Boggs was appointed to a three year term as a member of the Advisory Committee on Appellate Rules. Judge Edward H. Johnstone was appointed to a three year term on the Committee on the Administration of the Bankruptcy System, Judge Julia Smith Gibbons was appointed to a three year term on the Committee on Judicial Resources, and Judge Lawrence P. Zatkoff was appointed to a three year term on the Committee on Court Security. Chief Justice Thomas J. Moyer of the Supreme Court of Ohio was appointed to the Committee on Federal-State Relations.

Ad Hoc Committee on Asbestos Litigation

An additional special committee of the Judicial Conference of the United States was appointed by the Chief Justice to consider the serious problems posed for the federal courts by the nearly 30,000 asbestos suits presently pending in federal courts. The Committee includes Judge David D. Dowd, Jr. of the Northern District of Ohio.

The Special Committee submitted its report to the September 1990 meeting of the Judicial Conference. The Conference approved the report which recommended that Congress consider a national legislative scheme that would be aimed at achieving timely and appropriate compensation for present and future asbestos victims, as well as maximizing the prospects for the economic survival and viability of the defendants. The Conference also recommended, as a back-up position, that Congress consider legislation

authorizing the consolidation and collective trial of asbestos cases to expedite the disposition of cases in federal courts with heavy asbestos caseloads.

National State-Federal Judicial Council

In response to a recommendation of the Federal Court Study Committee, which endorsed a suggestion of the Conference of Chief Justices, the Judicial Conference of the United States and the Conference of Chief Justices created a body made up of an equal number of state and federal judges called the National Judicial Council of State and Federal Courts.

The National Council will serve as a national coordinator to encourage the establishment of local state-federal judicial councils and to strengthen existing councils. Calendar conflicts, habeas corpus procedures, removal of cases and other jurisdictional issues have been useful subjects for the local councils in many areas. The National Council also will seek to engage in educational projects which highlight issues of mutual interest in state and federal courts. Chief Justice Robert F. Stephens of Kentucky serves on the National Council.

Judicial Council of the Sixth Circuit

**JUDICIAL COUNCIL
RECONSTITUTED - NOW
CONSISTS OF AN EQUAL
NUMBER OF CIRCUIT AND
DISTRICT JUDGES.**

One of the recommendations of the Federal Court Study Committee was that the Judicial Councils be reconstituted to provide for equal representation of district and circuit judges. 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 representation 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.

The Judicial Council, which is established by 28 U.S.C. §332, is authorized to issue "all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit." The Judicial

Improvements Act of 1990, Public Law No. 101-650, amended the law with respect to the composition of circuit judicial councils. As amended, the law requires that the council consist of the chief judge of the circuit and an equal number of circuit and district judges. The amendments also specify that all circuit and district judges of the circuit in active service shall determine by majority vote the number of district and circuit judges who shall serve on the council as well as the terms of office of such service.¹

After consultation with the members of the old judicial council as well as with the chief district judges of the circuit, a proposal was submitted to all active Article III judges in the Sixth Circuit in early February, and the proposal was approved by a mail vote of all such judges.

Effective March 1, 1991, there are 19 members of the council consisting of the chief judge, nine circuit judges, and nine district judges. The circuit judges will be selected according to a formula agreed upon by them. Each district will be represented at the outset by its chief judge regardless of whether he or she has served on the council under the old selection system. Prior service on the council will not be counted in determining length of term. However, no district judge may serve longer than three years under the new procedures. If a chief judge has served a three year term under the new selection procedures and remains chief judge, then the active judge of the district senior in date of commission who has not previously served on the council under the new procedures will become the council member from that district. If that judge serves a three year term, or if that judge should cease being an active judge during his or her term, then the next judge in seniority would serve, and so on. If a judge who has not already served a three year

¹As amended, 28 U.S.C. 332 reads as follows:

332 Judicial councils of circuits

(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such number is determined by majority vote of all such judges of the circuit in regular active service.

(2) Members of the council shall serve for terms established by a majority vote of all judges of the circuit in regular active service.

(3) Only circuit and district judges in regular active service shall serve as members of the council.

(4) No more than one district judge from any one district shall serve simultaneously on the council, unless at least one district judge from each district within the circuit is already serving as a member of the council.

(5) In the event of the death, resignation, retirement, or disability of a member of the council, a replacement member shall be designated to serve the remainder of the unexpired term by the chief judge of the circuit.

(6) Each member of the council shall attend each council meeting unless excused by the chief judge of the circuit.

term on the council becomes chief judge during the term of office on the council of another judge of the district, then the new chief judge shall have the right to "bump" the other judge from the council.

The current membership of the Sixth Circuit Judicial Council is as follows:

Chief Judge Gilbert S. Merritt
Sixth Circuit, Chair
Circuit Judge Damon J. Keith
Circuit Judge Cornelia G. Kennedy
Circuit Judge Boyce F. Martin, Jr.
Circuit Judge Nathaniel R. Jones
Circuit Judge H. Ted Milburn
Circuit Judge David A. Nelson
Circuit Judge Ralph B. Guy, Jr.
Circuit Judge James L. Ryan
Circuit Judge Danny J. Boggs
District Judge William O. Bertelsman
Eastern District of Kentucky
Chief District Judge Thomas A. Ballantine, Jr.
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 Thomas G. Hull
Eastern District of Tennessee
Chief District Judge Thomas A. Wiseman, Jr.
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 Paul J. Komives
Eastern District of Michigan

Although not as extensive as the committee structure of the Judicial Conference of the United States, the Council also operates through a committee structure. The committees of the Council are as follows:²

Executive Committee

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

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

Jury Utilization Committee

Honorable Cornelia G. Kennedy, Chair
Honorable Robert B. Krupansky

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

²Some Council committees will be reconstituted following the first regular meeting of the new council on June 12, 1991.

transacted by mail votes. The circuit executive provides the staff and administrative support for the Council.

Among the many items considered in the last year, the Council: (1) commended the Pattern Jury Instruction Committee for its work in developing pattern jury instructions for use in criminal cases in the Sixth Circuit and authorized the distribution of the pattern instructions to the judges of the circuit; (2) approved in principle the establishment of a rate of \$75.00 per hour for both in-court and out-of-court services by counsel appointed in criminal cases under the Criminal Justice Act and authorized the initiation of a study necessary to determine whether, on a district by district basis, the increased rates are justified; (3) reviewed the asbestos docket in the Northern District of Ohio and authorized Chief Judge Merritt to work with Chief Judge Lambros of the Northern District of Ohio in providing assistance with the problem of the asbestos docket in that court; and, (4) authorized the study of, and the development of, a proposal for consideration by the Council of a plan for the establishment of a Bankruptcy Appellate Panel pursuant to 28 U.S.C. § 158.

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

Bicentennial Committee

The celebration of the Bicentennial of the Constitution culminates this year with the celebration of the two hundredth anniversary of the ratification of the Bill of Rights. As part of the judiciary's participation in the celebration of the Bicentennial of the Constitution, the Judicial Conference of the United States created a special committee on the Bicentennial made up of one representative of each circuit. The Conference also requested that each circuit establish its own Bicentennial Committee. The Honorable Damon J. Keith serves as the Chairman of the Bicentennial Committee of the Judicial Conference of the United States and as the Chairman of the Sixth Circuit Bicentennial Committee.

**BILL OF RIGHTS
BICENTENNIAL
CONFERENCE PLANNED
FOR OCTOBER 20-23, 1991
IN WILLIAMSBURG,
VIRGINIA.**

At the urging of the Bicentennial Committee, each circuit is including in its circuit judicial conference program some recognition of the two hundredth anniversary of the Bill of Rights. As attendees at the Sixth Circuit Judicial Conference will note, the entire theme of the 1991 Conference will be the Bill of Rights. The program will examine the Bill of Rights from an historical perspective and also probe the actual application of the guarantees of the Bill of Rights to several complex and challenging issues facing our society today.

In addition, the Bicentennial Committee, in cooperation with the Federal Judicial Center, is sponsoring a three-day Bill of Rights Bicentennial Conference. All Article III judges of the United States have been invited to attend, and, to date, over 450 judges have signed up to attend. The Conference will be held October 20-23, 1991 in cooperation with the Institute of Bill of Rights Law at the Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia. The Bill of Rights Bicentennial Conference will examine, in part, the everyday aspects of managing civil rights and civil liberties litigation, but its emphasis will be on the historic, philosophical, and jurisprudential underpinnings of the Bill of Rights.

The Bicentennial Committee of the Judicial Conference also continued its support for the installation of bronze Bill of Rights plaques on federal courthouses throughout the country. On June 13, 1990, a plaque installed at the main entrance to the United States Post Office and Court House in Cincinnati was dedicated with an impressive program that included remarks by Chief Judge Merritt, by Judge Damon J. Keith, Chairman of the

Bicentennial Committee of the Judicial Conference, and by Chief Judge John D. Holschuh of the Southern District of Ohio along with patriotic musical selections by the U.S. Army band from Fort Knox, Kentucky. To date, over 200 plaques have been ordered, and the Committee has authorized the installation of plaques at major state libraries, at libraries in the United States territories, and at major historical and national sites.

Ad Hoc Committee to Review The Sixth Circuit Judicial Conference

In late 1988, then Chief Judge Albert J. Engel appointed an *ad hoc* committee to review the effectiveness of the policies governing the Sixth Circuit Conference.

After considering its mandate to examine the size and composition of the conference, to review the substantive elements of the conference program, and to evaluate whether the conference, as presently structured, conforms to the requirements of 28 U.S.C. § 333, the full committee recommended that the 1992 conference be considered an experimental conference. The Court of Appeals approved the recommendation, and the Hyatt Hotel on Capitol Square in Columbus, Ohio has been selected as the site of the 1992 conference. In approving the proposal for the 1992 experimental conference, the Court of Appeals directed that the total attendance at the 1992 conference be limited to 300 judges and delegates and that only those members of the bar named as special delegates to the 1992 conference would be eligible to attend.

The subcommittee's recommendations have been approved by the full *ad hoc* committee and are awaiting approval of the Court of Appeals.

Senior Judge Douglas W. Hillman of the Western District of Michigan was selected as chair of a subcommittee to develop delegate selection criteria and substantive program content. The subcommittee has recommended that 122 delegates be selected for the 1992 conference. It has proposed that 100 delegates be allocated among the circuit and district courts of the circuit in proportion to each court's number of active Article III judges. All delegates must meet certain minimal criteria that are intended to assure that the 1992 conference is attended by those practitioners who have demonstrated an interest as well as experience in federal courts. The subcommittee has recommended that delegates must (1) be actively involved in federal practice; (2) be interested in the work and the purpose of the conference; (3) be 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.

**PLAN PROPOSED FOR
EXPERIMENTAL JUDICIAL
CONFERENCE TO BE HELD
IN COLUMBUS, OHIO IN
1992.**

Study Committee

Chief Judge Gilbert S. Merritt, Chair
Circuit Judge Damon J. Keith
Circuit Judge Boyce F. Martin, Jr.
Circuit Judge Harry W. Wellford
Circuit Judge David A. Nelson

Advisory Committee

Senior Circuit Judge Pierce Lively
Senior District Judge Charles W. Joiner
Senior District Judge Douglas W. Hillman
Chief District Judge John D. Holschuh
District Judge S. Arthur Spiegel
District Judge Henry R. Wilhoit
District Judge Julia S. Gibbons
Bankruptcy Judge George C. Paine, II
Magistrate Judge James Carr
Charles F. Clarke, Esq., Life Member (Ohio)
Robert G. Stachler, Esq., Life Member (Ohio)
Kathleen Lewis, Esq., Life Member (Michigan)
Katherine Randall, Esq., Life Member (Kentucky)
Alfred H. Knight, III, Esq., Life Member (Tennessee)
Kay Lockett, Assistant Circuit Executive, Reporter

The subcommittee also has recommended that each court select its delegates as a court, rather than by selection by individual judges as has been the practice in the past. Each court would be expected to adhere to the selection criteria, and each court would be asked to submit a brief resume of each delegate demonstrating how each meets the criteria. After reviewing the delegates selected by the various courts, the *ad hoc* committee would invite the remaining 22 delegates, using the additional delegates to assure that the overall composition of the lawyer delegates meets the objective outlined above.

With respect to program, the subcommittee has recommended that small-group, workshop sessions replace the traditional lectures presented to large groups at the conferences. The subcommittee seeks to encourage an open exchange between bench and bar that would focus on techniques to promote "fairness and justice" and explore means to eliminate inefficiencies and excessive costs of litigation.

Judicial Discipline

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

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

The Sixth Circuit Judicial Council first published Rules for Processing Complaints of Judicial Misconduct in 1981. Upon the recommendation of the Conference of Chief Circuit Judges that some degree of uniformity among the circuits was desirable in the handling of conduct or disability matters, the Sixth Circuit Judicial Council has adopted the illustrative rules proposed by the Conference of Chief Judges, with slight modifications. Copies of the rules are available from the circuit executive's office or from any clerk's office in the Sixth Circuit. Several minor amendments to conform the Sixth Circuit's rules to the recent amendments to 28 U.S.C. § 372(c) are under consideration by the Council and will be distributed for public comment in the near future.

During the year ended December 31, 1990, 41 complaints were filed in the Sixth Circuit, and 47 complaints were terminated. All of the complaints were filed by disappointed litigants, some of whom were prison inmates. Thirty-six of the complaints were dismissed in whole or in part by the Chief Judge as directly related to the merits of a decision or procedural ruling. Two complaints were dismissed by the Chief Judge in whole or in part as not in conformity with the statute, and eight complaints were dismissed in whole or in part as frivolous.³ One complaint was withdrawn by the complainant prior to the Chief Judge's review of it. No complaints were referred to the special investigating committee of the Judicial Council during 1990.

³Some complaints contained multiple allegations and may have been dismissed on multiple grounds.

Death Penalty Task Forces

Under the able leadership of Circuit Judge Nathaniel R. Jones, and with the support of the Chief Justices and leaders of the bar in Tennessee, Kentucky and Ohio, the death penalty task forces continue to evaluate the potential problems and to plan for the resources necessary to deal with the potential onslaught of federal habeas corpus petitions filed by defendants in capital cases. Each of the task forces include district judges, magistrates, federal and state public defender organizations, attorneys general, representatives of the private defense bar, and state bar associations.

CIRCUIT-WIDE TRAINING IN CAPITAL HABEAS CORPUS WILL BE A PRIORITY OF THE CAPITAL CASE RESOURCE CENTERS IN KENTUCKY, OHIO AND TENNESSEE.

The spirited debate in the Judicial Conference of the United States, lively hearings before the Senate Judiciary Committee over the habeas corpus process, and the April 16, 1991, Supreme Court decision in the case of *McCleskey v Zant* point up the wisdom of former Chief Judge Pierce Lively in creating death penalty task forces in the Sixth Circuit. His chief judge successors, Judge Engel and Judge Merritt, have carried through in fully supporting the task forces and the Resource Centers formed in Kentucky, Ohio and Tennessee. Michigan does not have the death penalty.

The *McCleskey* opinion limits the number of appeals under the habeas corpus statute in death penalty cases. This development adds urgency to the work of the resource centers. *McCleskey* redefines the "abuse of the writ" doctrine to include all habeas corpus petitions after a petitioner's initial one. Previously, death penalty cases were treated differently because of the irreversibility associated with capital punishment.

The central mission of the task forces created in the three Sixth Circuit states was to search for the most effective way of dealing with the problems of providing training assistance and support for attorneys appointed to represent petitioners in death penalty habeas corpus cases. Each of the task forces chose the resource center method. Accordingly, Kentucky, Ohio and Tennessee moved to develop one. They are staffed and functioning quite effectively as the following summary indicates.

Kentucky. The Kentucky Capital Litigation Resource Center was established with federally-funded staff positions, as a branch of the Kentucky Department of Public Advocacy. Former Chief Judge Edward Johnstone worked closely with other members of the Kentucky Task Force, and Paul E. Isaacs, the Public Advocate, in bringing this program into fruition. The center is currently staffed by two attorneys, an investigator, two secretaries and two paralegals. It has provided attorneys to persons sentenced to death

for both their state and federal post-conviction proceedings. In addition to staff lawyers, there have been private attorneys involved. The recruiting of private attorneys is a significant accomplishment. These attorneys and staff counsel are currently providing representation in three federal and twelve state post conviction actions.

The need to involve the private Bar in the habeas corpus process is sparking training initiatives by the Center. In that connection, a capital post-conviction manual is in the initial stage of development and will prove to be an invaluable training tool.

Ohio. The Ohio Public Defender's Office has been designated as the Ohio Resource Center. It had essentially been functioning as a Resource Center at the state level since 1982. Thus, even before receiving the designation as a community defender organization and thus, eligible for federal funds, it accepted assignments as counsel in federal habeas corpus death penalty cases. Having tracked all death penalty cases in Ohio, it was endeavoring to ensure that counsel were provided at all stages.

Significantly, the Resource Center, under the direction of Randall Dana and David Stebbins, have continued efforts to recruit and train attorneys state-wide who are interested in accepting appointments in death penalty habeas corpus cases. This is an invaluable role in that the Supreme Court of Ohio has adopted a rule prescribing minimum qualifications lawyers must meet before being appointed by state trial court judges to represent indigent defendants in capital cases.

Presently there is a core panel of 5-7 attorneys from the private Bar. The recruiting efforts among the larger law firms will increase that number of lawyers who will be trained to assist in providing representation, and in further recruiting. Commutation action by the Governor reduced, somewhat, the death row population. Also, the much slower than anticipated pace of litigation in the state courts has affected earlier projections. Earlier it was projected that there would be twenty to twenty-two death penalty cases in habeas corpus litigation by October 1991. However, there is presently only one death penalty case in litigation in Ohio and another three are expected to be filed before October. An additional thirteen to fifteen are anticipated for the following year.

The above numbers may be disarming, unless the complexities inherent in capital litigation are understood.

Tennessee. The Capital Case Resource Center of Tennessee continues to be viewed as a model for the nation. William Redick, Jr., the director, and his staff, are carrying out the high expectations envisioned by Chief Judge Odell Horton, who serves as chairman of the Task Force, and Henry Martin,

the Federal Defender who helped to mobilize the impressive legal and political support that led to the establishment and funding of the center.

The Center has five attorneys and a total of nine full time staff. Its funding comes, in equal amounts, from the federal and state governments and, of course, the work performed is divided between federal and state courts. Not only does the Center staff provide representation but it recruits, consults with and trains private lawyers throughout the state. Thus far, the Center has recruited 59 attorneys who now are prepared to accept appointments in federal and state courts.

Tennessee has approximately eighty-eight persons on death row with eleven of these cases pending in federal courts, fifty in a state post-conviction status and twenty on direct appeal. The Center reports that at any given time there are 175 first degree prosecutions pending in state courts, 30 to 40 of which are denominated death penalty cases. The Center staff consults with the numerous counsel involved in the representation of a number of these cases. The level of participation of the Center staff is much more intensive in the federal cases. At the present time the Center attorneys are counsel of record in four state cases and of record in six federal cases.

In the Winter and Spring the Resource Center conducted seminars in seven cities -- Memphis, Jackson, Columbia, Clarksville, Cookeville, Chattanooga and Johnson City with approximately 300 attorneys in attendance. The Center also hosted a one-day seminar on jury selection in Nashville. It should also be noted that as a part of its training responsibility, the Resource Center issues research publications and case-specific pleadings in cases at all stages of litigation. In the final stages of preparation is a practitioner's state of the art manual.

Conclusion. In August, the three Resource Center Directors, along with the Federal Public Defenders, met with Chief Judge Merritt in Nashville. They discussed such matters as the length of briefs in capital cases, time limitations placed on briefing and the allocation of time for oral argument. They also discussed methods of informing district judges of the compensation guidelines from the federal Anti-Drug Abuse Act of 1988 in capital cases, and the advisability of providing circuit-wide training in habeas corpus. The *McCleskey* decision makes the latter a matter of major priority. Given the high rate of reversals in capital habeas cases for constitutional error, the requirement that trial courts provide competent counsel becomes imperative.

Pattern Criminal Jury Instructions

The Sixth Circuit Pattern Criminal Jury Instruction Committee was formed to explore the feasibility of drafting pattern criminal jury instructions for suggested use throughout the Circuit. The Committee consists of six district judges and is chaired by Chief Judge Julian Abele Cook, Jr. of the Eastern District of Michigan.

**CRIMINAL PATTERN JURY
INSTRUCTIONS NOW
COMPLETED AND READY
FOR DISTRIBUTION.**

The committee has completed its work. The 85 instructions, plus approximately 150 pages of explanatory legal commentary will be organized into nine chapters. Chapter 1 will contain general principles that arise in every criminal case, such as presumption of innocence, burden of proof, reasonable doubt, and the like. Chapter 2 will cover the elements of the crime charged, using a general offense definition format that easily can be adapted to most crimes along with the particular offense definitions already developed. Chapter 3 will contain a comprehensive treatment of the law of conspiracy. Chapters 4 and 5 will cover accomplice liability and attempts. Chapter 6 will cover special defenses such as alibi, entrapment, insanity, duress, and self-defense. Chapter 7 will include special evidentiary matters, such as expert witnesses, impeachment, informer and accomplice testimony, and similar problems that may arise in particular cases. Chapter 8 will deal with general matters relating to the jury's deliberations and verdict, and Chapter 9 will cover special problems that may arise after deliberations have begun, including questions from the jury, deadlocked juries, and partial verdicts.

Pattern Criminal Jury Instructions Committee
Honorable Julian Abele Cook, Jr., Chair
Honorable Carl B. Rubin
Honorable Thomas A. Wiseman, Jr.
Honorable Ann Aldrich
Honorable William O. Bertelsman
Honorable Walter H. Rice

Each of the instructions has gone through a five step drafting process designed to insure that it is legally correct, understandable to lay jurors, and amenable to daily use by busy district judges. Step one has been a thorough legal review by the committee's two reporters, both of whom are law professors. The second step has been review by a plain English expert. Step three has been a review by a task force of judges, prosecutors, and defense

attorneys from throughout the circuit, followed by a fourth step review by a separate "reactor" group of judges, prosecutors and defense attorneys. The final step has been a second review by the committee, taking into account the comments, criticisms and suggestions obtained through the review process.

The Sixth Circuit Judicial Council has given its approval in principal to the pattern instructions and authorized their distribution. Both a printed and an electronic version of the Sixth Circuit Pattern Jury Instructions will be distributed to all district judges in the Sixth Circuit this summer. West Publishing Company has agreed to print and distribute the instructions and to make them generally available to bench and bar. In addition, Matthew Bender company will include both printed and automated electronic versions of the pattern instructions in a multi-volume set of federal jury instructions that it is developing.

Civil Justice Reform Act

The Civil Justice Reform Act was passed by the Congress and signed by the President effective December 1, 1990. The Act requires each district court to implement a civil justice expense and delay reduction plan. The plan may be developed by the district or it may be a model plan developed by the Judicial Conference of the United States.

According to the Act, the plans are intended to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure a just, speedy, and inexpensive resolution of civil cases.

Plans are to be adopted by the district courts after consideration of the recommendations of an advisory group appointed by the chief judge of the district court after consultation with the other judges of the district. Size and membership are not prescribed, but the bill states that the advisory group "shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court." Pursuant to the Act's mandate that all advisory groups be appointed within 45 days of the effective date of the Act, all districts within the Sixth Circuit had appointed their advisory group by March 1, 1991. The functions of the advisory groups will be: (1) to review the condition of the civil and criminal dockets; (2) identify trends in case filings and in the demands placed on the court's resources; (3) identify the principal causes of cost and delay in civil litigation; (4) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

The advisory group must submit a report, which shall be made available to the public, on its findings regarding the district court.

The plans shall consider and may include: (1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case; (2) early and ongoing control of the pretrial process through involvement of a judicial officer in assessing and planning the progress of a case and setting early, firm trial dates, such that the trial is scheduled to occur within 18 months of the filing of the complaint unless a judicial officer certifies that the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice, or that the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases; (3) controlling the extent of discovery and the time for completion of discovery, and ensuring

compliance with appropriate requested discovery in a timely fashion and setting, at the earliest practical time, deadlines for filing motions and a time framework for their disposition; (4) for complex cases a case management conference or series of such conferences that explore settlement, identify principle issues and provides for staged resolution of issues or bifurcation consistent with Rule 42(b) FRCivP, and prepares a discovery schedule which avoids unnecessary or unduly burdensome or expensive discovery, and sets, at the earliest practical time, deadlines for filing motions and a time framework for their disposition; (5) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices; (6) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; (7) authorization to refer appropriate cases to alternative dispute resolution programs that have been designated for use in a district court, or the court may make available, including mediation, mini-trial, and summary jury trial.

The court also shall consider and may include the following litigation management and cost control techniques: (1) a requirement that counsel jointly present a discovery-case management plan for the case at the initial pretrial conference; (2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at that conference and all reasonably related matters; (3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request; (4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a non-binding conference conducted early in the litigation; (5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conferences; (6) such other features as the district court considers appropriate after considering the recommendation of the planning group. The plans must be approved by a committee consisting of the chief judges of the district courts within the circuit and the chief judge of the circuit.

Five districts named in the act are to implement specific programs, with the Judicial Conference of the U.S. and the Federal Judicial Center studying the results. Two of the five demonstration districts are in the Sixth Circuit. The Western District of Michigan and the Northern District of Ohio are 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. Three other districts outside of the Sixth Circuit, are to experiment with various methods of alternate dispute resolution.

The Judicial Conference of the United States also was required to select ten districts to implement their plan no later than December 31, 1991. Each of the pilot districts must agree to include in their expense and delay reduction plan all of the items which for every other district must be considered but not necessarily included in the plan. Four years after implementation of the pilot districts, the Judicial Conference of the United States must submit a report which compares the expense and delay reduction results in the pilot districts with that achieved in comparable non-pilot districts. The Conference will then recommend whether or not all districts should be required to include some or all of the six principles and guidelines of litigation management in their plan.

The Act also requires, for the first time, public reporting of cases and motions under submission. Twice each year the Administrative Office of the U.S. Courts shall prepare a semiannual report - available to the public - showing for each judicial officer: (1) a listing of each case in which a motion has been pending for more than six months; (2) A listing of each case tried by bench trial that has been under submission for more than six months; and, (3) a listing of cases that have not been terminated within three years of filing.

Sixth Circuit Advisory Committee

The Sixth Circuit Advisory Committee advises the Court on matters pertaining to rules and internal operating procedures and serves as a conduit for communication between the judges of the Court and the attorneys who practice before it. The current members of the Committee are:

William H. Baughman, Jr.	Cleveland
Leo Bearman, Jr.	Memphis
William Bell	Cincinnati
Robert R. Campbell	Knoxville
Maura D. Corrigan	Detroit
Donald A. Davis	Grand Rapids
Katherine Randall	Lexington
Donald McG. Rose	Cincinnati
Kenneth R. Sasse	Detroit
Edward Stopher	Louisville
Galen J. White, Jr.	Louisville
Nicolas Zeppos	Nashville

The Advisory Committee met twice in 1990, once in conjunction with the Judicial Conference on Hilton Head Island in March and a second time in Cincinnati in August. As a result of those meetings the Committee made the following recommendations to the Court's Rules Committee:

1. That the Court continue to hear oral argument in all sentencing guidelines appeals and adopt a presumption in favor of publication with respect to decisions in such appeals.
2. That all districts within the Circuit implement formal training programs on the sentencing guidelines and that participation in such a program become a mandatory prerequisite for those appointed counsel pursuant to the Criminal Justice Act.
3. That Circuit Rule 9 not be amended to require parties not waiving oral argument to include in their briefs statements in support of oral argument.

The Committee also recommended to the National Advisory Committee on the Federal Rules of Appellate Procedure a unified rule on cross-appeals patterned after Circuit Rule 30 in place of the fragmented approach to cross-appeals now taken by the Federal Rules.

In November the Committee participated in the Second Sixth Circuit Appellate Practice Institute, which the Section on Litigation of the American Bar Association and the Cincinnati Bar Association co-sponsored. Nine

Circuit Judges and seven Committee members appeared on various panels at the Institute, which approximately 150 attorneys attended.

In the coming year the Committee plans to continue its ongoing review of the Court's rules and internal operating procedures and will also review the comment process recently instituted for proposed amendments to the Circuit Rules. The Committee welcomes and invites feedback from attorneys regarding any issues relating to practice before the Sixth Circuit. Those having such feedback should contact any member of the Committee or direct their comments in writing to Leonard Green, Clerk of Court, 538 U.S.P.O. and Courthouse, Cincinnati, Ohio 45202-3988.

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 administrative 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.

In the last year the Office of the Circuit Executive has undertaken additional responsibilities for court automation. Oversight of all automation functions for the Court of Appeals, including the central case management computer systems, the personal computers in chambers and staff offices, and the data communications network linking chambers to the central computer system, have been consolidated under a new Automation Unit supervised by an Assistant Circuit Executive who also is responsible for oversight of the circuit-wide coordination of personal computer support for all district and bankruptcy courts in the circuit.

In the next few months, the Office of the Circuit Executive, along with all of the other senior staff of the Court of Appeals, will devote significant resources to the preparation to undertake complete decentralization of the Court of Appeals budget for fiscal year 1992. The Office of the Circuit Executive will be responsible for the overall management of the court's financial system and budget administration.

JUDICIAL PERSONNEL IN THE SIXTH CIRCUIT

Deaths

Ralph M. Freeman. The Honorable Ralph M. Freeman, Senior United States District Judge for the Eastern District of Michigan, died on March 29, 1990. Judge Freeman was appointed United States District Judge for the Eastern District of Michigan on June 10, 1954 and served as Chief Judge of that Court from 1967 to 1972. Judge Freeman took senior status in 1973 and continued to carry a half caseload, both civil and criminal, until his death.

Girard E. Kalbfleisch. The Honorable Girard E. Kalbfleisch, Senior United States District Judge for the Northern District of Ohio, died on April 1, 1990. Judge Kalbfleisch was appointed United States District Judge for the Northern District of Ohio on September 21, 1959, and served as Chief Judge of that Court from 1967 to 1969. Judge Kalbfleisch assumed senior status in 1970.

James F. Gordon. The Honorable James F. Gordon, Senior United States District Judge for the Western District of Kentucky, died on February 9, 1990. Judge Gordon was appointed United States District Judge for the Western District of Kentucky on July 23, 1965 and served as Chief Judge of that Court from 1969 until 1976, at which time he took senior status. While in active status, Judge Gordon served in Louisville, Kentucky. Upon his assumption of senior status, he moved his duty station to Owensboro, Kentucky, where he continued to serve until 1984 when his health required that he discontinue handling a regular docket.

Senior Status

Court of Appeals

Harry W. Wellford. The Honorable Harry W. Wellford assumed senior status on January 21, 1991. Judge Wellford was appointed United States Circuit Judge for the Sixth Circuit on August 20, 1982. Prior to his appointment to the Sixth Circuit Court of Appeals, he served as United States District Judge for the Western District of Tennessee from 1971 to 1982. Judge Wellford continues to render valuable service to both the Sixth

Circuit Court of Appeals and the United States District Court for the Western District of Tennessee.

District Courts

John M. Manos. The Honorable John M. Manos assumed senior status on April 1, 1991. Judge Manos was appointed United States District Judge for the Northern District of Ohio on March 29, 1976. Prior to his appointment to the district court bench, he was a Judge on the Ohio Court of Appeals. Judge Manos continues to render valuable service to the District Court.

Douglas W. Hillman. The Honorable Douglas W. Hillman assumed senior status on February 15, 1991. Judge Hillman was appointed United States District Judge for the Western District of Michigan on September 26, 1979, and he served as Chief Judge of the District from April 17, 1986 to February 15, 1991. Judge Hillman continues to render valuable service to the District Court.

Horace W. Gilmore. The Honorable Horace W. Gilmore assumed senior status on May 1, 1991. Judge Gilmore was appointed United States District Judge for the Eastern District of Michigan on June 18, 1980. Prior to his appointment to the District Court bench, he was circuit judge for Wayne County, Michigan, and served as chairman of the National Conference of State Trial Judges in 1979-1980. Judge Gilmore continues to render valuable service to the District Court.

District Court Elevations

Thomas A. Ballantine, Jr. The Honorable Thomas A. Ballantine, Jr., became the Chief Judge of the United States District Court for the Western District of Kentucky on September 17, 1990. Judge Ballantine was appointed to the District Court on October 12, 1977, and prior to his appointment, served as circuit judge of Jefferson County, Kentucky. He succeeds United States District Judge Edward H. Johnstone of Paducah as Chief Judge of the District.

Benjamin F. Gibson. The Honorable Benjamin F. Gibson became the Chief Judge of the United States District Court for the Western District of Michigan on February 15, 1991. Judge Gibson was appointed to the District Court on September 26, 1979, and was professor of law at Thomas M. Cooley Law School before his appointment to the bench. He succeeds Senior United States District Judge Douglas W. Hillman of Grand Rapids as Chief Judge of the District.

New Appointments

Sixth Circuit Court of Appeals

Richard F. Suhrheinrich. The Honorable Richard F. Suhrheinrich was appointed United States Circuit Judge for the Sixth Circuit Court of Appeals on July 10, 1990 to the position which was vacated by Judge Albert J. Engel's assumption of senior status. Prior to his appointment to the Court of Appeals, Judge Suhrheinrich served as United States District Judge for the Eastern District of Michigan from 1984 to 1990.

United States District Courts

Gerald E. Rosen. The Honorable Gerald E. Rosen was appointed United States District Judge for the Eastern District of Michigan on March 9, 1990 to the position which was vacated by the death of Chief Judge Philip Pratt. Prior to his appointment to the district court bench, Judge Rosen was a senior partner in the law firm of Miller, Canfield, Paddock and Stone of Detroit.

Joseph M. Hood. The Honorable Joseph M. Hood was appointed United States District Judge for the Eastern District of Kentucky on April 30, 1990 to the position which was vacated by Judge Scott Reed's assumption of senior status. Prior to his appointment to the district court bench, Judge Hood served the District as a full-time Magistrate Judge for fourteen years.

Robert Cleland. The Honorable Robert Cleland was appointed United States District Judge for the Eastern District of Michigan on June 19, 1990 to the position which was vacated by Judge James P. Churchill's assumption of senior status. Prior to his appointment to the bench, Judge Cleland was prosecuting attorney of St. Clair County, Michigan, and served as president of the Prosecuting Attorney's Association of Michigan in 1988-1989.

United States Bankruptcy Judge

William Stewart Howard. The Honorable William Stewart Howard was appointed United States Bankruptcy Judge for the Eastern District of Kentucky at Lexington on March 19, 1990 to a new position established pursuant to Public Law 100-587. Prior to his appointment, Judge Howard was in private practice.

United States Magistrate Judges

Peggy E. Patterson. The Honorable Peggy E. Patterson was appointed United States Magistrate Judge for the Eastern District of Kentucky at Ashland on August 24, 1990. She was appointed to the position vacated by the elevation of U.S. Magistrate Judge Joseph M. Hood to the district court bench. Prior to her appointment, Judge Patterson was in private practice.

Thomas Wade Phillips. The Honorable Thomas Wade Phillips was appointed United States Magistrate Judge for the Eastern District of Tennessee at Knoxville on February 14, 1991. He was appointed to a new full-time magistrate judge position. Prior to his appointment, Judge Phillips was engaged in the private practice of law.

JUDICIAL WORKLOAD IN THE SIXTH CIRCUIT

Workload in the District Courts

The trend of decreasing civil filings, with a slight increase in criminal filings continued in the district courts of the Sixth Circuit last year.

During 1990 civil filings decreased by 5%, while criminal filings increased by 3%, leading to an overall decrease in total filings of approximately 8%. Civil terminations also decreased by 2%, but criminal terminations increased by 5%. Accordingly, the number of cases pending in the District Courts of the Sixth Circuit decreased by about 10%. Figure 1 depicts the history of filings in the district courts of the Sixth Circuit by major category of case over the last ten years.

District Court Filings by Type of Case
1980 - 1990

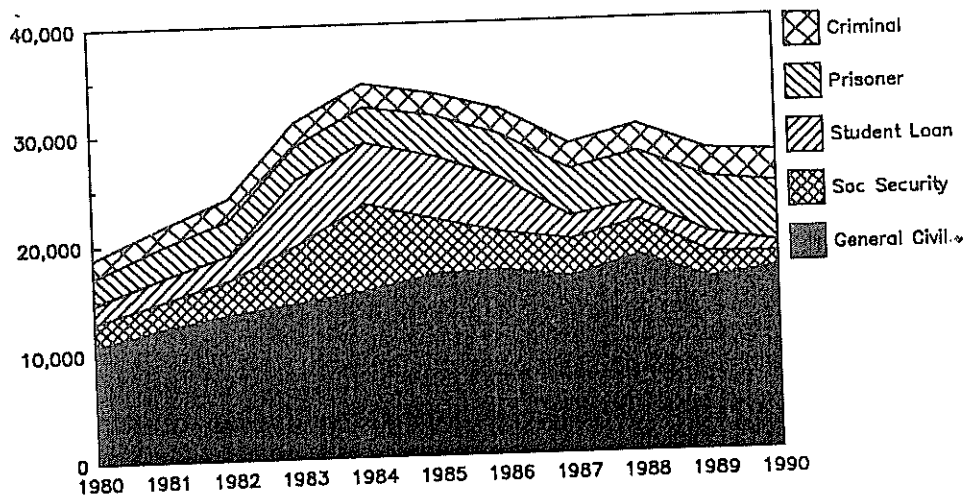


Figure 1

Filings. The number of cases filed decreased in all of the district courts of the Sixth Circuit during the reporting period, with the exception of the Eastern District of Michigan and the Middle District of Tennessee. The Northern District of Ohio and the Eastern District of Kentucky experienced the largest decreases in filings. (Figure 2)

District Courts - Sixth Circuit
Comparison of Filings 1988 - 1990

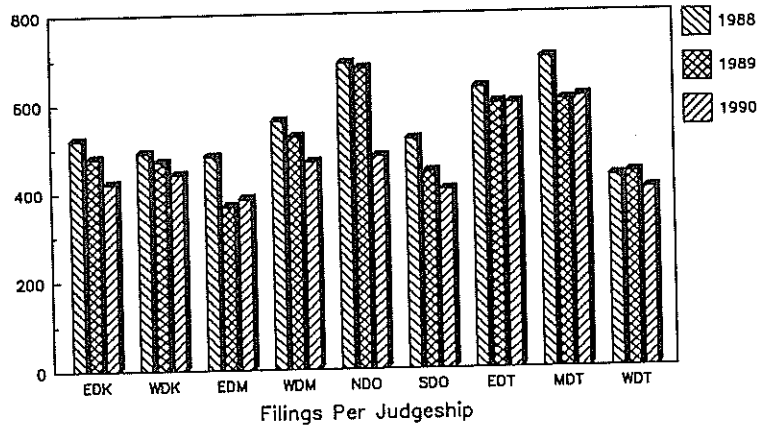


Figure 2

Terminations. Total terminations decreased in all districts in the Sixth Circuit last year, with the exception of the Northern District of Ohio and the Middle District of Tennessee. The Northern District of Ohio experienced the largest increase in terminations per judge during 1990. (Figure 3)

District Courts - Sixth Circuit
Comparison of Terminations 1988 - 1990

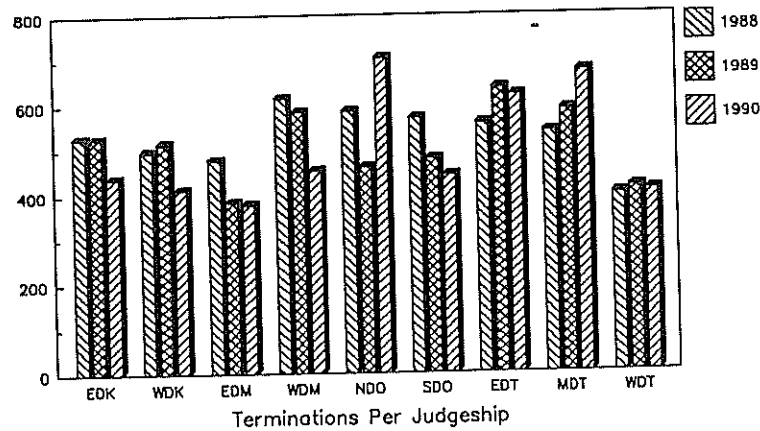


Figure 3

Pending. Figure 4 shows a comparison of pending cases per judgeship in each of the districts in the Sixth Circuit. The Eastern and Western Districts of Kentucky experienced increases in the number of pending cases per judgeship, while each of the other districts showed some decrease. The Northern District of Ohio and the Middle District of Tennessee had the largest decline in the number of pending cases per judgeship.

District Courts - Sixth Circuit
Comparison of Pending Cases 1988 - 1990

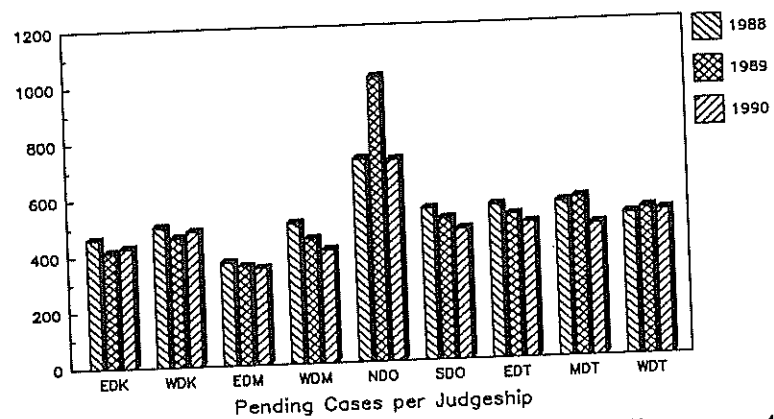


Figure 4

Median Disposition Times. The median number of months from filing to disposition of civil cases increased in the Eastern District of Michigan, the Southern District of Ohio, and the Eastern and Western Districts of Tennessee. The Northern District of Ohio achieved a large decrease in the median months for disposition, and the Western District of Tennessee experienced the largest increase.

District Courts - Sixth Circuit
Median Months for Disposition

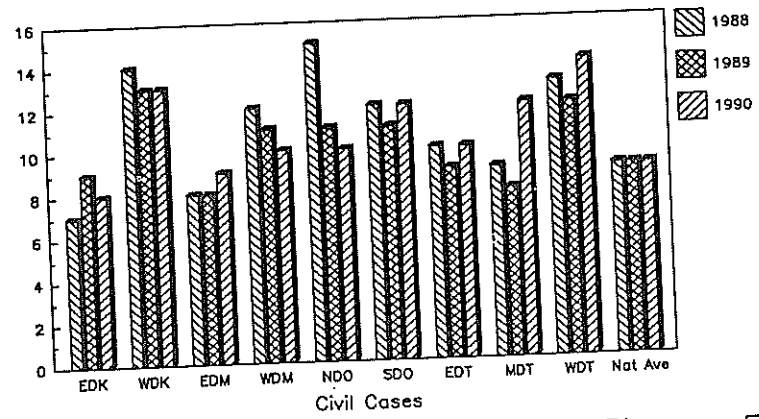


Figure 5

**District Courts – Sixth Circuit
Percentage of 3yr Old Cases**

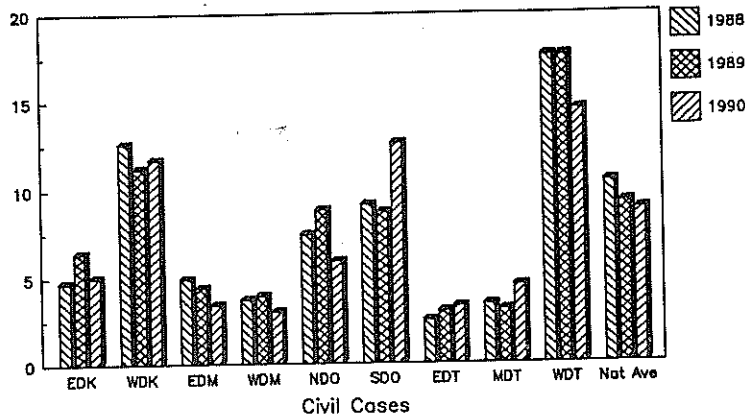


Figure 6

Figure 5 shows the median disposition times for civil cases in each of the districts in the Sixth Circuit during 1988, 1989 and 1990, and Figure 6 shows the civil actions

three years old or older as a percentage of pending cases for 1988, 1989 and 1990 for each of the district courts in the Sixth Circuit.

Juror Utilization.

Figure 7 depicts the juror utilization trends (measured as the percentage of jurors not selected, serving or challenged on the first

**Jurors Not Selected Serving Challenged
Jury Utilization Trends 1988 – 1990**

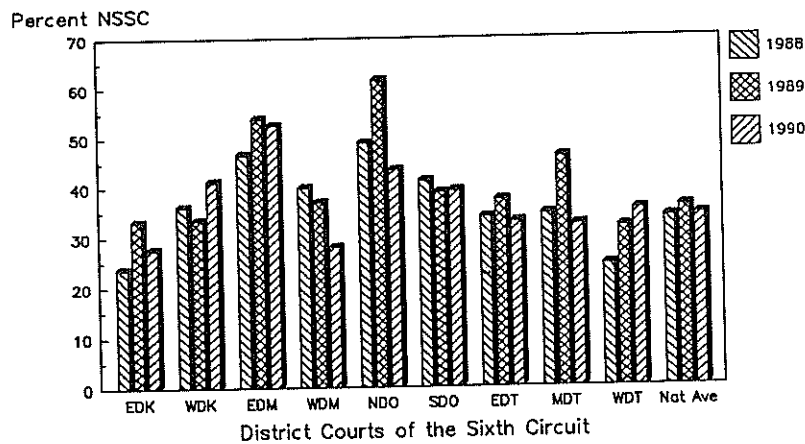


Figure 7

day of service) for each of the districts in the Sixth Circuit compared to the national average over the last three years. Again in 1990 several district courts in the Sixth Circuit do not compare favorably with the national average. However, some courts, notably the Northern District of Ohio and the Middle District of Tennessee achieved significant improvements in their juror utilization records.

Workload in the Bankruptcy Courts

For the fourth straight year bankruptcy filings increased in the Sixth Circuit, with the total filings (Figure 8) up by 6% circuit-wide. Chapter 7 filings also increased by 6% (Figure 9). Chapter 11 filings increased by 4% (Figure 10), and Chapter 13 filings increased by 6% (Figure 11).⁴

Bankruptcy Courts – Sixth Circuit
Comparison of All Chapter Filings

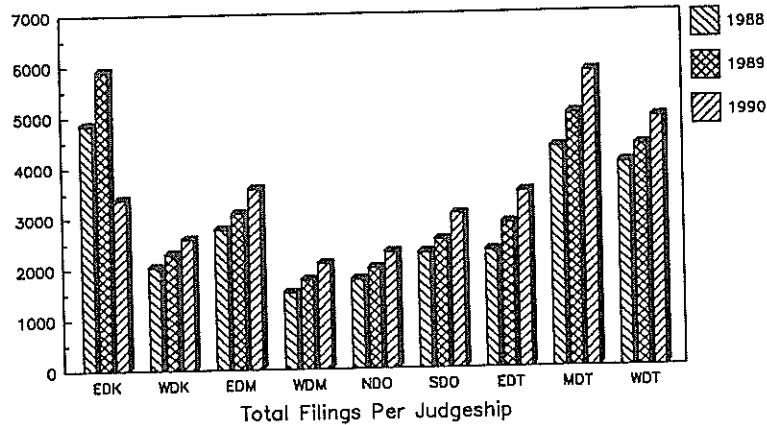


Figure 8

Bankruptcy Courts – Sixth Circuit
Comparison of Chapter 7 Filings

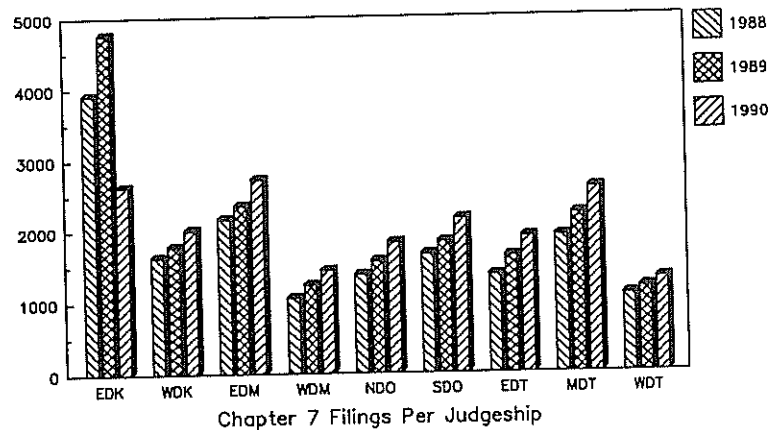


Figure 9

⁴Figures 8-11 are comparisons based on per judge statistics. The Eastern District of Kentucky, which had an absolute increase in all categories of cases, reflects a reduced caseload per judge in all categories in 1990 because of the appointment of an additional judge for that district in 1990.

Bankruptcy Courts – Sixth Circuit
Comparison of Chapter 11 Filings

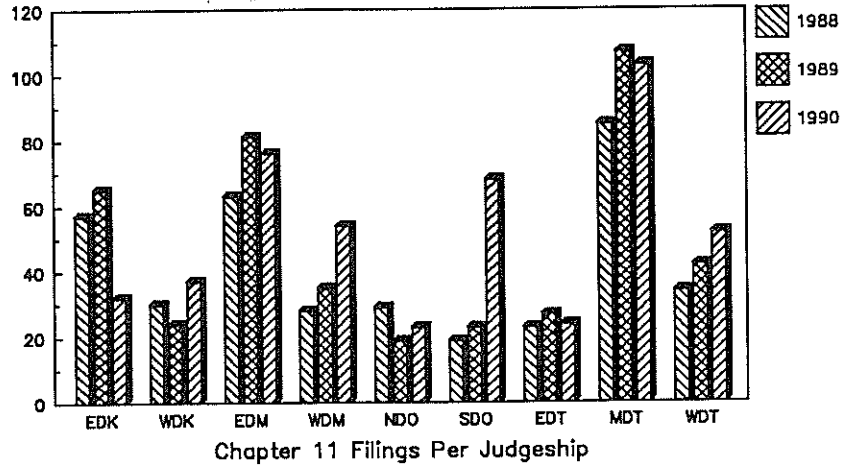


Figure 10

Bankruptcy Courts – Sixth Circuit
Comparison of Chapter 13 Filings

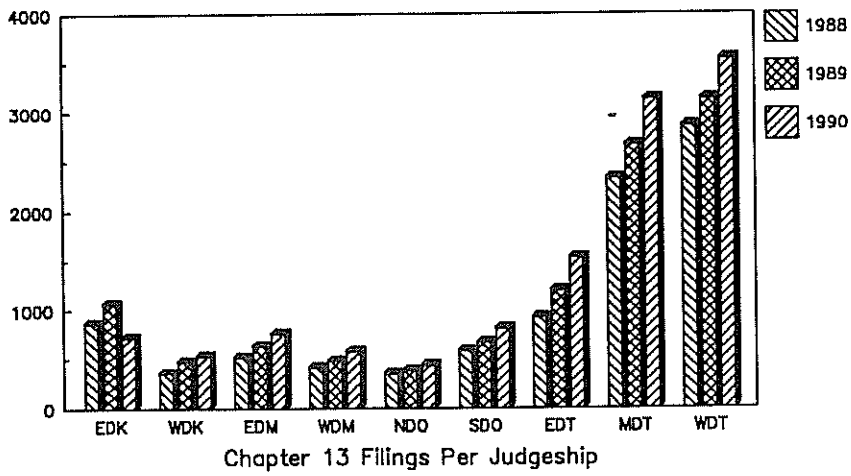


Figure 11

REPORT OF THE COURT OF APPEALS

CLERK'S OFFICE

Leonard Green, Clerk

Janice E. Yates, Chief Deputy

For the first time in more than a decade the court experienced a decline in new filings from the level of the previous year. Although the decline was slight -- a drop of 1.1%, to 4167 new appeals -- it afforded some relief from the unrelenting waves of filings which had seen the court's caseload more than double in less than ten years' time. Although dispositions declined to a similar degree, by 1.6%, for the second year in a row the court decided more appeals than were filed. By maintaining this sort of stability in its level of pending appeals, the court has been able to avoid the backlogs and delays which plague other circuits.

Even though it operated for the entire year with fewer than its full complement of judges, the court continued to offer oral argument in nearly half of the appeals terminated on the merits. This level of hearings, consistent with the court's traditional commitment to oral argument, was possible only because of the level of participation by senior circuit judges and district court judges, who take time away from their own demanding dockets to accept designations to sit with the court of appeals.

Appeals from criminal proceedings continue to increase as a proportion of the overall docket. Criminal appeals now make up nearly 20% of all new filings, nearly twice the level of only five years ago, and make up over 30% of the cases orally argued. Prisoner filings make up another 30% of new filings, giving the Sixth Circuit one of the busiest habeas corpus and prisoner civil rights dockets of any of the circuits.

In an effort to use its limited time and resources as efficiently as possible, the court has implemented a program designed to reduce the burden attributable to litigants seeking to maintain appeals, without being required to pay the prescribed fees, in cases which have been judicially determined to have not been brought in good faith. This program, founded on the requirement of 28 U.S.C. § 1915(a) that an appeal may not be taken in forma pauperis if the trial court certifies that it is not taken in good faith, has resulted in the elimination of over two hundred appeals which would otherwise have commanded the attention of a three-judge panel. No litigant proceeding in good faith is denied the opportunity to bring an appeal in forma pauperis, but those whose appeals are determined by the court to have

not been taken in good faith are no longer allowed free entree into the appellate stream.

The Public Information Office, created at the end of 1989, has proven itself a valuable arm of the court. Through the efforts of Public Information Officer Debra Nagle the Office serves as a source of reliable information about the work of the court, and about the court as an institution. By availing itself of the resource which the Public Information Office represents, the media is able to enhance its coverage of the court and its decisions, improving the level of the general public's awareness and understanding of the federal courts. The principal informational vehicle supporting the Public Information Office is CITE, the court's electronic bulletin board which makes readily available current information about the court's published decisions, docket information, the court's rules and procedures, hearing schedules, and other items of interest. CITE can be accessed by calling (513) 684-2842.

Throughout the year the efforts of the Attorney Advisory Committee on Rules continued to bear fruit. The Advisory Committee, chaired by William Baughman, Jr., of Cleveland, Ohio, continued its ongoing review of the court's rules and operating procedures. The Committee lends an invaluable perspective as the court continues to refine and articulate those standards which govern practice before it.

The clerk's office continues its tradition of offering as much assistance and procedural guidance as it can to those bringing appeals to the court, with an eye toward eliminating any unnecessary obstacles and delays to the timely submission of appeals to the court. The office is always receptive to suggestions from bench and bar as to how it might further improve the services it offers.

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. Over the years the number of staff attorneys increased. In 1976, the court appointed its first senior staff attorney and created the Staff Attorneys' Office as a separate entity, both administratively and operationally, from the other support offices of the court. Title 28 U.S.C. § 715(a) and (b), which became effective October 1, 1982, codified each circuit court of appeals' prior budget authority to appoint a senior staff attorney, staff attorneys and secretaries. The Sixth Circuit Staff Attorneys' Office and all its personnel are located in Cincinnati. The senior staff attorney, Kenneth Howe, is responsible to the court for administrative, personnel and operational activities of the office. Additional personnel in the office include two supervisory staff attorneys, sixteen staff attorneys and seven secretaries. All personnel are employed in the office 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 certain counsel-represented appeals (black lung, social security, and federal sentence guideline cases), where counsel have expressly waived oral argument. The criteria used in this review process are set forth in Sixth Circuit Rule 9 and Federal Rule of Appellate Procedure 34. If a case falls within one of the enumerated criteria, it is assigned to a staff attorney for review of the record and briefs and the performance of any necessary research. If the case is amenable to the court's Rule 9 process, the staff attorney prepares a memorandum on the facts and law for consideration by a panel of the court.

Another responsibility of the office is to review 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. Additionally, the office now issues indexes all civil (excluding Rule 9 cases) and criminal cases on the basis 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.

The Staff Attorneys' Office assists the court in processing a large number of appeals. During calendar year 1990, the office prepared 895 legal memoranda on the merits under Sixth Circuit Rule 9, and 312 memoranda on substantive motions and appeals lacking proper appellate jurisdiction. In 1990, the office also verbally presented 149 applications for certificate of probable cause and, since June 1990, 45 motions seeking permission to proceed in forma pauperis on appeal under 28 U.S.C. § 1915(a). In addition, the office issued 3,092 appeals in 1990.

PRE-ARGUMENT CONFERENCE PROGRAM

Robert W. Rack, Jr., Senior Conference Attorney

Lance Olwell, Conference Attorney

Deborah Ginocchio, Conference Attorney

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 three 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 25 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.

More than 95 percent 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 CALENDAR YEAR 1990 ⁵			
	Number Of Cases	Number Settled ⁶	Settlement Rate
All Cases	786	307	39%
Requested Conferences	141	52	37%
Referred by the Court	4	4	100%

⁵All statistics are from cases in which program involvement was concluded in 1990.

⁶Generally, 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* to implement 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

In March of this year the Federal Judicial Center released a report on the Sixth Circuit's program entitled, *The Pre-Argument Conference Program in the Sixth Circuit Court of Appeals*. The report is the result of a study begun in 1985 to determine whether the settlement conference program result in cases being settled that otherwise would have proceeded to a judicial decision, whether the court realizes any savings from the program, whether the bar supports the program, and whether telephone conferencing can effectively replace face-to-face meetings.

The Federal Judicial Center's report provided affirmative answers to all of the questions. The study found that the program has a clear and substantial effect on the workload of the court with 12% of the studied cases being diverted from the argument calendar by the program. The results of the study confirmed the Court's own evaluation of the program and lends credence to the enhanced productivity figures that have resulted in the years since the study was done. Moreover, the Federal Judicial Center's report, along with a growing awareness of the importance of all forms of alternate dispute resolution programs, has been the catalyst for increasing interest among the other federal circuits in the Sixth Circuit's program. In recent months Robert Rack, Senior Conference Attorney, has consulted with the Ninth and Tenth Circuits about establishing similar programs in those courts, and several other circuits have expressed interest.

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.

CIRCUIT LIBRARY

Kathy Joyce Welker, Circuit Librarian

Pamela Schaffner, Deputy Circuit Librarian

Introduction. Major developments in the Sixth Circuit Library System in 1990 revolved around computerization of library functions and enhancements of personnel skills and specializations in the design and use of library databases and word processing. Other areas of development remaining for completion in 1991 include the establishment of the Louisville Satellite Library and the court history program.

Personnel changes. Permanent positions were added to the Cincinnati library staff that provided specialization in two functional areas of library operations. Elizabeth Bourner began her duties as the Technical Services Librarian providing centralized cataloging support for the eight libraries in the system. She is also providing leadership in design of a system that will provide an on-line catalog for libraries and chambers and automated serials records control in all library locations. Donna Vice became the Reference Assistant responsible for the transfer of all book materials among Sixth Circuit locations and for supplementation of continuation materials in the Cincinnati library.

Additional technical support was also provided to three of the satellite libraries. Lisa Dorris became a half-time technician in the Cleveland library. Kathy Bush began her duties as quarter-time technician in the Grand Rapids library and Ruth Hicks, library technician, increased her hours from 10 to 20 hours per week in the Memphis library.

Developments in the two newest satellite libraries. The two newest satellite libraries are located in Columbus and Toledo. The Columbus library was relocated to the fifth floor where books could be moved from storage and unpacked for the first time. Other enhancements to that library include the provision of a usable photocopy machine, a microfiche reader/printer, a card catalog and more adequate seating. A marked increase in usage by both court personnel and by the practicing bar has been accomplished since the provision of more spacious facilities.

The Toledo library officially began operation in February with the arrival of Marianne Mussett as the Toledo Satellite Librarian. While still awaiting expansion space in order to place all library materials out on shelves, Ms. Mussett has organized and updated the collection for the convenience of users and is now providing extensive reference services to all who request it.

Computerization. As part of the Office of Automation and Technology (OAT) allotment approved for fiscal year 1990, the Sixth Circuit libraries were able to acquire a foundation of office automation equipment and related items.

In April 1990, 80386-based PCs were purchased for libraries in Cincinnati, Columbus, Toledo, Louisville, Cleveland, Detroit, and Nashville. Laser printers were purchased for the Grand Rapids and Memphis libraries. In addition, we were able to purchase WordPerfect software for Cincinnati and all of the satellite libraries, as well as communications and graphics software.

With the additional allocation by OAT in September 1990, the Sixth Circuit libraries were able to acquire additional PCs for Cincinnati, Detroit, Grand Rapids, Memphis, and Cleveland. Additional laser printers were purchased for Cincinnati, Detroit, and Cleveland. A laptop computer was also acquired for the use of the Circuit Librarian while traveling. The second allocation ensured that technically every full-time library staff member in the Circuit was provided with a PC and peripheral equipment.

Computer training at a variety of levels was also funded in 1990. The Cincinnati library staff took courses in personal computer basics and database creation and maintenance. The Detroit library staff took courses in database creation and maintenance and WordPerfect. The Cleveland and Memphis library staff members also completed courses in WordPerfect.

With the funding of the next phase of planning for library automation, namely the retention of a national library automation consultant, the Sixth Circuit libraries will be surveyed and host two on-site visits, to the Cincinnati library and the Grand Rapids satellite library. This consultant will consider the court libraries' need for an Integrated On-line Library System, and determine the best system available to suit our complex and disparate requirements.

Meanwhile, the libraries continue to work with Bill Eggemeier and his staff from the Circuit Automation Office in the areas of automation support, hardware and software inventory maintenance, and user group participation.

Reference and legal research support services. The major contact point between library personnel and other court personnel is the provision of legal research support by answering reference questions. These answers are located either in materials held in one of our libraries or by searching out information to be found in other libraries (interlibrary loans) across the nation. Another major source of needed information is the numerous databases to which our libraries subscribe and which can be searched by trained librarians for library users.

A quantitative description of the provision of these reference services follows:

Service Category	Number	% of Increase over 1989
Directional questions answered	5,884	19%
Research/substantive questions answered	4,368	31%
Library books circulated	7,534	42%
Interlibrary loans and mailings to court personnel	480	15%
Photocopying transactions	1,225	30%
Faxing transactions	639	41%

Collection Development and Maintenance. Another major area of service to the courts is the preparation of all book requests or orders for every judicial officer and court official in the circuit. These orders are for both new titles and for replacement materials. 1,171 such orders were processed in fiscal year 1990 (an increase of 105% over 1989).

A major difference in the process was that money for libraries and for non-library locations (e.g. judges' chambers and court offices) was combined into one fund. For the first time, a specific budgeted fund was provided to the circuit for all new book needs. This change necessitated the development of a spending plan for new book needs that fairly supported all locations throughout the circuit. Based upon previous years' spending patterns, 1/2 of the money was allotted to non-library locations and the other half to staffed libraries. The spending plan was reviewed and approved by the Circuit Advisory Committee on Libraries.

Total expenditures for new books and other published materials for all circuit locations during fiscal year 1990 were \$146,114.97.⁷ This figure does not include an estimated \$85,000.00 of local library funds (non-appropriated attorney admission fees in both circuit and district courts) spent on library materials.

The addition of new library materials and the ongoing supplementation of existing materials results in the growth of library collections. This growth is quantified as follows:

⁷This amount includes \$28,326.00 spent on new judgeships which is not budgeted to the circuit but paid for by the Administrative Office. It also includes \$761.81 spent by the AO for Probation and Pre-trial Offices.

LIBRARY	01/01/90	12/31/90	'90 GROWTH
Cincinnati	55,337	58,894	3,557
Cleveland	28,281	29,542	1,261
Columbus	unavailable	14,500	unavailable
Detroit	31,717	32,773	1,056
Grand Rapids	18,425	19,291	866
Memphis	9,887	10,744	857
Nashville	18,626	19,567	941
Toledo	unavailable	18,473	unavailable
TOTAL	162,273	203,784	8,538

Uncompleted Tasks Remaining for 1991. The establishment of a satellite library in Louisville and of a fully functioning court history program remain as uncompleted tasks to be accomplished in 1991. Now that the space currently occupied by the District Clerk's office in Louisville has been officially designated as future satellite library space, a librarian can be hired in the first half of 1991 to oversee the establishment of a satellite library.

With the preparation of workable office and archives storage space in the library and the location of an individual to perform the duties of Court Historian, the Circuit Court history program will move into a more active stage. The first priority for this program is to establish an oral history program in an effort to obtain valuable historical information from those who have first-hand knowledge of court proceedings and developments. A committee of Circuit judges is overseeing the development of the court history program.

Conclusion. The library program continued to develop new methods of serving the federal judiciary in the Sixth Circuit. At the same time, quantitative measures of service to library users clearly demonstrate that the level of service to the court has increased dramatically. Additionally, the provision of significant numbers of personal computers made it possible for all library staff members to upgrade their working skills and to provide new levels of service to library users.

REPORTS OF THE DISTRICT AND BANKRUPTCY COURTS

Introduction

In order to give a more complete picture of the business of the courts in the Sixth Circuit, the Chief Judge of each district and bankruptcy court was invited to submit for inclusion in this report a separate report for his court highlighting particular achievements or problems which may have been experienced in the preceding year. The reports follow.

**United States District Court
Eastern District of Kentucky**

1990 Annual Report

Personnel. For the first time since 1987, the Eastern District of Kentucky had a full complement of active judges at the end of the year. After Judge Joseph Hood was appointed on April 30, 1990, his position as Magistrate Judge was filled by Peggy P. Patterson of Ashland, the first woman to be appointed as a Magistrate Judge in the district. She will handle the Magistrate Judge duties for the Ashland and Pikeville dockets and carry out some of the duties on the Covington docket. In 1991, the Judicial Conference approved the change of the part-time Magistrate Judge position at Covington to a full-time position. Although a committee of the Judicial Conference had recommended that the part-time Magistrate Judge position at London be abolished when the position at Covington became full-time, that was not recommended by the Sixth Circuit Judicial Council. Subsequently, the U.S. Judicial Conference supported the continuation of the part-time Magistrate Judge so that position will remain.

With the appointment of Bankruptcy Judge William Howard on April 12, 1990, this was also the first year in which the Eastern District of Kentucky had more than one full-time Bankruptcy Judge. Retired Bankruptcy Judge Clive Bare of Knoxville also assisted during much of 1990. Judge Bare's appointment is to expire at the end of this fiscal year. As a result, although the filings in the bankruptcy courts in the Eastern District of Kentucky increased by 20% from 1989 to 1990, the terminations also increased by 19%, which would not have been possible without the hard work of all three Judges.

Workload. The number of filings of civil cases decreased for the fifth year in a row. However, the number of criminal filings increased by 17%.

The district was first in the circuit on the median time between the filing to the disposition of its civil cases, and it was also first among the districts for the percentage of jurors not selected or challenged.

A committee to implement the Civil Justice Reform Act of 1990 was appointed, with Judge William O. Bertelsman as the Chair. Members on the Committee represent a cross section of the bar and lay persons, and includes women and minority representation. It is expected to begin its work as soon as funding is available.

Facilities. plans are currently being made for new facilities at Covington, as the current courthouse is inadequate for accommodating the new full-time

Magistrate Judge along with a District Judge, a visiting District Judge and a
Bankruptcy Court.

Respectfully submitted,

Honorable Eugene E. Siler
Chief Judge

**United States Bankruptcy Court
Western District of Kentucky**

1990 Annual Report

Workload - There have been continued increases in filings in the Bankruptcy Court for the Western District of Kentucky. For the year ending December 30, 1990, 7,759 cases were filed. This is a 22% increase over calendar year 1988 and a 12% increase over 1989. While filings have increased, the court has been able to maintain a good filing to pending ratio and median disposition times. According to measures provided by the Administrative Office of the U.S. Courts, the court was rated 2nd in the nation in median disposition time for Chapter 7 cases, 6th in cases pending over 3 years and 4th in pending to filing ratio for the year ending June 30, 1990.

To maintain appropriate case management standards the court has a team philosophy. All procedures are uniformly applied to enhance the clerical processes needed to close cases. The court pools courtroom deputies to facilitate disposition of orders resulting from hearings. In addition, the judges discuss all substantive and procedural differences and compromise on a position in order to dissuade forum shopping. Case assignment is not by judge but by a number. Therefore, by adhering to these policies the court has striven to be one court, without divisions that would complicate proper workload disposition.

Space and Facilities - The court has three major on-going construction projects. Three new courtrooms and adjoining Clerk's Offices will be completed by April 1, 1991. The court will be relocating within the same building on or about April 18, 1991. The court is very appreciative of the opportunity to obtain facilities that are appropriate for our statutory functions. In addition, the court has completed a non-headquarter courtroom in Bowling Green for Judge Dickinson and is in the process of building a joint tenant non-headquarter facility in Owensboro for Judge Stosberg and a magistrate.

Local Rules Committee - In November of 1989, the court appointed a local rules committee chaired by two members of the local bar. Judge Henry H. Dickinson is the court's liaison with the committee. Completion of Local Rule revisions is expected by late spring of 1991.

Automation - The court had several automation projects under development in 1990. Training sessions for the implementation of automated docketing and case management have begun for BANCAP. We are expected to go "live" in July of 1991. In addition, the court has automated

the master calendar and financial records and is in the process of automating index cards, closed files, and personnel.

The court is particularly proud of the court's nearly completed automated Western District of Kentucky opinion data base. We have procured an "or logic" data base manager that has summaries and full opinion text of every opinion written in this district since 1980, as well as every bankruptcy opinion written by the District Court for the Western District of Kentucky, the Sixth Circuit Court of Appeals and the United States Supreme Court. With the implementation of this system, the court will improve the efficiency of research and be sure to maintain consistency with previous topical decisions. For example, if the judge wants to see what decisions have been written regarding 11 U.S.C. § 523 (a) (6), the judge merely enters this cite and all cases with this language appear on screen.

Respectfully Submitted,

Honorable J. Wendell Roberts
Chief Judge
Honorable Henry H. Dickinson
Honorable David T. Stosberg

**United States District Court
Eastern District of Michigan**

1990 Annual Report

**IN MEMORIAM
JUDGE RALPH M. FREEMAN
1902 - 1990**

Judge Ralph M. Freeman. On March 29, 1990, Judge Ralph M. Freeman died at the age of 87 after a short illness. He had still been carrying a one-half caseload, both civil and criminal. Less than two weeks before his death, he presided over a trial. Judge Freeman, with 35 years and 9 months on the bench, was the second-longest serving Judge in the history of the Eastern District. He served as Chief Judge from February 18, 1967 until May 5, 1972. Judge Freeman's wide learning in the law, his industriousness and his cheerful nature made him one of the most respected Judges ever to sit in the Eastern District of Michigan. The roster of his former law clerks include some of the most respected members of the Bar of Michigan and also of other states. He is greatly missed by colleagues, Court staff and members of the Bar.

Court Administration Reorganization Plan. In August, the Court approved a Court Administration Reorganization Plan designating as the Chief Administrative Officer of the Court the Court Administrator/Clerk of Court. The Chief Probation Officer, Chief Pretrial Services Officer, Chief of Court Operations and Chief of Court Services all report to the Court Administrator/Clerk of Court.

Local Rules Project. Joining the national movement initiated by the Judicial Conference Committee on Rules of Practice and Procedure, the Court undertook a complete revision of its Local Rules. This was the first such revision since 1980. Chaired by Judge Patrick J. Duggan and assisted by the Court's Local Rules Advisory Committee which consists of members of the Bar, the revised draft of Local Rules was prepared for consideration by the Court and the Bar early in 1991.

Special Committee on Evaluation of the Magistrate Judge Program. The Special Committee on Evaluation of the Magistrate Judge Program, chaired by Judge Avern Cohn, which also includes members of the Bar, evaluated the role of Magistrate Judges in the work of the Court and made recommendations which will be acted on early in 1991.

Judicial Officers. Judge Gerald E. Rosen was sworn in on March 30, 1990. Judge Rosen came to the Court from private practice.

Judge Robert R. Cleland was sworn in on June 21, 1990 after serving several years as St. Clair County prosecuting attorney. His official station is Bay City, Michigan.

On July 10, 1990, Judge Richard F. Suhrheinrich resigned from the Court to accept an appointment to the United States Court of Appeals for the Six Circuit.

Workload and Staffing. The Court's civil caseload has continued a steady decline for several years, although a slight upturn was discerned late in 1990. However, the criminal caseload continues to increase steadily both in numbers of cases and defendants. Since staffing allocations are based on caseload, the Clerk's Office staff is subject to attrition, while the staffs of both the Pretrial Services Agency and the Probation Department continue to increase steadily. It has reached the point where it will be necessary to lease space outside the U.S. Courthouse and establish a satellite office of the Probation Department for the first time.

Long-Range Facilities Plan. Implementation of the Court's Long-Range Facilities Plan is continuing. Design of two additional courtrooms and one set of chambers on the 2nd floor has been funded. Design of the prospectus project which will lead to two additional courtrooms and chambers and new Magistrate Judge facilities continues to be on schedule. Design of Magistrate Judge chambers and a courtroom to be shared by the Magistrate Judge and Senior Judge was substantially completed.

Respectfully submitted

Julian Abele Cook, Jr.
Chief Judge

**United States Bankruptcy Court
Eastern District of Michigan**

1990 Annual Report

Workload. Bankruptcy filings continue to increase dramatically. Overall, filings for calendar year 1990 increased 15.8%. Projected case filings for the first quarter of 1991 suggest a conservative 25% increase. These statistics reflect a continued and substantial five year pattern of growth.

Eastern Michigan is still quite dependent upon the auto industry. The continued recession and steep decline in auto sales have contributed to significant layoffs and distress to businesses, particularly small automotive suppliers. These statistics combined with the near doubling of chapter 11 filings in the first quarter of 1991 suggest continued difficulty for Michigan businesses.

Although each Judge was current at the end of 1990, projected caseload increases will create additional demands upon the Court and test the efficiency of our Court staff. The Court has requested a new Bankruptcy Judgeship.

Local Rules. Effective September 1, 1990, certain provisions of the Bankruptcy Court's local rules were modified to place the burden and expense of noticing on the litigants rather than on the taxpayers. Notice and opportunity for a hearing procedures were extended to cover most matters under Bankruptcy Rule 2002 including professional fees, sales and settlements. These changes eliminate the need for judicial intervention unless there is an actual dispute.

Automation. Under the National Interim Bankruptcy System (NIBS) approximately fifty nine computers have been networked within the District to automate our manual case management system. NIBS has streamlined the Court's operation providing us with improved case monitoring abilities as well as information service to the Bench, Bar and Public.

The Court is also in the process of testing a mail matrix program originally developed by the Bankruptcy Court for the Southern District of Indiana. If successful, Debtor's attorneys will have an option to file their matrix of creditors on floppy disks. The names, addresses of creditors and case number will be printed on the envelope using a high speed printer, which will significantly reduce the labor cost associated with high volume notices.

Clerk's Office. During 1990 the Bankruptcy Court held a district wide training seminar to prepare staff for the implementation of case administration management system and full automation. Consequently, the Court has invested heavily in the retraining and skill development of existing staff. Optimally, the result of this effort will be twofold:

- 1) the elimination of some specialized repetitious, mundane work assignments and;
- 2) the creation of a well rounded, knowledgeable employee involved in multiple aspects of case administration.

Respectfully submitted

Steven W. Rhodes
Chief Judge

**United States District Court
Northern District of Ohio**

1990 Annual Report

The Northern District of Ohio continued to build upon its strong foundation of a cooperative bench and bar and took several significant steps toward planning to accept future challenges. The district received national recognition when it was selected as one of ten districts authorized to establish a voluntary arbitration program and when it was selected as one of five national demonstration sites to experiment with systems of differentiated case management under the Civil Justice Reform Act of 1990. Other major projects included establishment of committees to update the local rules, review the Criminal Justice Act Plan, and improve juror utilization.

Planning for the future is of particular importance to the Northern District of Ohio because it is among the larger districts in the country, encompassing the major metropolitan areas of Cleveland, Akron and Toledo as well as medium-sized cities such as Youngstown and Canton. The Cleveland metropolitan area contains the third-largest concentration of "Fortune 500" corporate headquarters, trailing only New York and Chicago. The district is also the home to many of the largest law firms in the nation. As a result, this district has a high preponderance of complex civil litigation and many of the country's most accomplished attorneys practice before it.

Court Workload. Although the number of civil and criminal filings in the district decreased from 1989 to 1990, the Northern District of Ohio continues to rank first among all districts in filings per judgeship, according to the United States District Courts National Judicial Workload Profile. The district also carries the heaviest weighted caseload per judge. The weighted caseload per judge increased from 649 in 1989 to 876 in 1990. Over the past 21 years, the district has consistently maintained a weighted caseload per judge that was above the national average.

Overall civil case dispositions increased by 60% in 1990, and the pending caseload decreased 6.8%.

The asbestos docket is one of the five largest nationally and continues to have a significant impact on our court. Asbestos cases now comprise 54% of the district's pending civil docket and nearly half of the civil case filings in 1990 were asbestos cases.

Judgeships. The Judicial Improvements Act of 1990 increased the number of authorized judgeships for this district to twelve; eleven permanent

and one temporary judgeships. Prior to the recent authorization, however, judges were managing a heavier than normal workload caused by the 1989 resignation of a judge who has not yet been replaced. It is expected that these two vacancies will be filled in mid-1991 as the selection process is underway.

Magistrate Judge System. The Magistrate Judge system is well integrated into the processing of the court's workload. The five Magistrate Judges of this district have conducted several thousand proceedings, both criminal and civil, over the past year. By fully utilizing these very capable judicial officers, the district is able to alleviate some of the burdens placed upon the judges as a result of the above-average workload and shortage of one judge. The local Rules Advisory and Alternative Dispute Resolution Committees are considering additional methods of utilizing the Magistrate Judge system in 1991.

Civil Justice Reform Act of 1990 Advisory Group. The Civil Justice Reform Act of 1990 requires each district court to "develop and adopt a civil justice expense and delay reduction plan." 28 U.S.C. § 471. In this regard, the court has appointed an Advisory Group composed of private and public attorneys, law professors and business persons, all of whom have accepted their responsibility with great eagerness and enthusiasm. The court is confident that the Advisory Group will exercise its best efforts and expertise in developing an unprecedented and efficient adversarial model for this court.

The Northern District of Ohio is honored to have been legislatively designated as one of five district courts to participate in a demonstration program. This district is required 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. The Judicial Conference of the United States will study the reports of demonstration districts and will, in turn, report to the Committees on the Judiciary of the Senate and the House of Representatives. Within the Advisory Group, a Task Force on Differentiated Case Management has been appointed and is diligently working toward its objectives under the Act.

Local Rules Advisory Committee. In May, 1990, the court established a local Rules Advisory Committee divided into five subcommittees to review and propose new local rules in the following areas: civil procedure, criminal procedure, bankruptcy, magistrates and internal operating procedure. The subcommittees are comprised of public and private attorneys and law professors with a judge or magistrate judge serving as an ex-officio member. The steering committee has reviewed the final drafts of proposed rules

submitted by the subcommittees, and it is expected that a new set of local rules will be approved by August 1, 1991.

Criminal Justice Act Task Force. A Criminal Justice Act task force was established in June, 1990, and placed under the direction of the Federal Defender. The Task Force has worked closely with the Judges Liaison Committee, and has been busy reviewing our local Criminal Justice Act plan.

Alternative Dispute Resolution. The Northern District of Ohio was selected as a pilot district for voluntary arbitration. In December, 1990, the court created a Committee on Alternative Dispute Resolution (ADR) to draft a comprehensive ADR program which will offer a wide array of ADR processes to the judges, lawyers and litigants. The Committee is divided into five subcommittees to explore and develop guidelines for the use of such processes as mediation, arbitration, early neutral evaluation, summary jury trial and magistrate participation in each of the above processes. Subcommittees submitted preliminary proposals to the steering committee, and final recommendations from the steering committee are anticipated in August, 1991.

Juror Utilization. In 1990, emphasis was placed on improving juror utilization. Juror utilization statistics are now dramatically improved as evidenced by a jump in ranking from 93rd out of 94 districts in 1989 to 53rd in 1990. In 1989 the percentage of jurors called but not used was 58%; that figure was reduced to 31% in 1990, just shy of the 30% goal set by the Judicial Conference of the United States. Continued improvement is anticipated.

Automation. Office automation became a reality in judicial chambers and in the Clerk's office with the installation of 96 personal computers. Each personal computer has software for word processing, scheduling, chamber access to legal research (CALR), including WESTLAW, LEXIS, and CITE, and database management systems (DBMS). Training on the personal computers was provided for all judicial officers and their staffs by the Clerk's office. Additionally, 30 personal computers were also made available for the Probation Department, and personal computers were provided for the first time for Pretrial Services. Following intensive training of fifteen deputy clerks and supervisors at the Automation Training Center in Phoenix in 1990, the Clerk's office entered all new civil cases into the ICMS civil system and entered approximately 57% of all pending cases. All cases will be on automated dockets by the end of 1991.

Naturalization of New Citizens. The Northern District of Ohio continues to take great pride in its naturalization program. This non-litigational function is vital to our strength as an institution because of the importance of the process itself and because it provides an essential link

between the Court and the community, particularly the young citizens through school participation in these programs. Naturalization ceremonies are conducted bimonthly and on special occasions in conjunction with the Immigration and Naturalization Service. The Court also works with the Woman's Forum, the Cleveland Public Library and other civic-minded groups in sponsoring a "Salute to New Citizens" educational program and reception immediately following each ceremony. The number of persons naturalized in 1990 was 1,227.

Personnel. In response to our courts increased caseload, the Administrative Office increased by 20% the Clerk's office personnel allocation.

Security. The Court Security Committee meets regularly and has improved security of all judicial facilities.

Employee Assistance Prom. The Clerks office has implemented an employee assistance program. The program offers initial short-term counseling and referral services for all employees who are experiencing personal problems, such as: problems concerned with family, stress or life crisis, emotional, financial, eating disorders, problem drinking, and drugs. Professionally trained counselors are available to counsel employees, help them assess their needs, and obtain assistance from local counselors.

Criminal Justice Act Payment Program. In 1990, the Clerk's Office participated in a pilot program administered through the Administrative Office to implement an automated payment program to expedite payment for services provided by court appointed Criminal Justice Act (CJA) attorneys.

Pretrial Services. Our Pretrial Services department was one of the first offices in the country to utilize electronic monitoring as an alternative to detention. Pretrial Services ranks among the top departments in the country both in the number of cases activated per officer, 158, and in the percentage of cases in which pre-bail reports are submitted to the court, 96.7%.

Probation Office. The Probation Office completed its 50th year of operation with significant workload increases. Investigations increased by 30% over the previous year, with 1,983 completed. Persons under supervision increased by 6%, to 1,187. Allocated staff positions grew from 52 to 67.

An Intensive Supervision Program is in operation. The Office is one of twelve districts participating in the National Home Confinement Program. Electronic monitoring equipment is used to assist in the enforcement of home detention requirements. The office implemented a comprehensive drug treatment program and the number of offenders receiving drug

treatment increased by 37%, to 306 persons. During 1990, all employees were provided with 44 hours of training opportunities.

Circuit Satellite Libraries. The Northern District of Ohio is served by two Circuit Satellite Libraries--one in the Eastern Division located in Cleveland and the other in the Western Division located in Toledo. Both libraries are staffed by skilled librarians who provide research assistance, conduct regular seminars on the use of available information technologies and coordinate LEXIS, WESTLAW, CheckCite and WESTCheck installation and training. The librarians also hold open houses and orientations and are actively involved in various library associations.

Conclusion. The past year was an eventful and productive year in the history of our court. The upcoming year is filled with challenging opportunities for exploration of new means to resolve disputes. With the advent of the Civil Justice Reform Act of 1990, the Northern District of Ohio is ready to usher in a new model of advocacy to meet the challenges of a new era.

Respectfully submitted,

Thomas D. Lambros
Chief Judge

**United States Bankruptcy Court
Northern District of Ohio**

1990 Annual Report

The United States Bankruptcy Court for the Northern District Of Ohio has offices in five locations with a total of eight Judges supported by their personal staffs of law clerks and secretaries and a Clerk's office in each location with a total of 97 employees.

New bankruptcy filings in our District, which ranked 8th in the nation in filings in 1990, were 16% higher than in the preceding year. Increases occurred in each of our courts, ranging from 10% at Akron to 25% at Canton.

The Court meets regularly in a continuing effort to promote uniformity in policies and procedures. Committees of Judges actively deal with such matters as advances in technology, budgetary requirements and local rules.

Presently, our Rules Committee is working with an Advisory Committee formed by the U.S. District Court for the Northern District of Ohio to promulgate an updated, comprehensive set of local rules for the entire Court.

Our Technology Committee has been the key force in bringing about the automation of our Court through the installation of personal computers in Judges' chambers throughout the District and has coordinated that effort with the Systems Division of the Clerk's office in a continuing effort to meet the challenges of a burgeoning case load and increased need for information.

Efforts to enhance the efficiency of our Clerk's Office are ongoing. A major facet of case administration was converted to the electronic docketing system known as BANCAP in August, 1990. We are presently piloting a major automation project with the Administrative Office of the United States Courts to analyze the feasibility of handling the case load of a large bankruptcy court in a split database environment.

Respectfully submitted,

James H. Williams
Chief Judge

**United States District Court
Southern District of Ohio**

1990 Annual Report

There were a number of significant events in 1990 that will have an impact on our Court.

Additional Judgeship. The Judicial Conference Committee on Judicial Resources in May 1990, based on its 1990 Biennial Survey of Judgeship Needs, recommended one additional permanent judgeship plus one additional temporary judgeship for the Southern District of Ohio. Although the Sixth Circuit Judicial Council also endorsed this need for the additional judgeships, the bill introduced by Senators Biden and Thurmond creating additional judgeships as a part of Civil Justice Reform Act of 1990 did not provide for any additional judgeships for our District. A great amount of time and effort was spent to obtain at least one additional judgeship, and, fortunately, as passed in October 1990, one permanent additional judgeship is authorized by the Act for our District.

Pretrial Services Office. A Pretrial Services Office was established in January 1990 with the appointment of Jeffrey L. Burkholder as Chief Pretrial Services Officer. The office became completely operational in April with the appointment of pretrial services officers in Columbus and Cincinnati. According to a report by a Pretrial Services Specialist of the Administrative Office, the establishment of the office in this District has been successfully accomplished.

Space and Facilities. Major problems confronted the judiciary regarding needed space. The courthouse in Columbus cannot accommodate the needs of the District Judges, Magistrate Judges and Bankruptcy Judges without major changes being made to the entire building. In 1990 a great amount of time was devoted to a prospectus level project which will result in a restructuring and refurbishing of virtually the entire courthouse. All non-court related tenants will leave the building, and by completion in the third quarter of 1994, we will have a courthouse meeting our needs as of that time but without significant room for expansion. Space problems, to a somewhat lesser extent, also exist at Cincinnati and Dayton.

Automation. In 1990, data entry began and reports started to be generated in the Integrated Case Management System. All pending civil cases have now been entered in the system. ICMS is now being used for indexing purposes only in criminal cases, with automated docketing of criminal cases probably one or two years distant. The Court Financial System software was received and installed in 1990, and parallel systems (manual

and automated) are presently being run until permission is obtained from the Administrative Office to drop the manual system.

Electronic Mail. The judicial officers of our District sit in three metropolitan areas, Columbus, Cincinnati and Dayton, and the geographical distances result in mail delays which sometimes are as long as four or five days. To increase communication between District Judges, Bankruptcy Judges and Magistrate Judges in the District, work began in 1990 to install the DaVinci Electronic Mail system in all chambers. It is now completed with the exception of one Magistrate Judge who does not have IBM/AT compatible equipment. The electronic mail will increase the ability of all judicial officers to keep in better communication with each other.

Revision of Local Rules. Our District has traditionally had an Advisory Committee on Local Rules conduct a comprehensive review every five years and to make recommendations for changes in our local rules. In 1990 a new Advisory Committee was appointed to review the local rules, after public notice and opportunity for comment. Recognizing that passage of the Civil Justice Reform Act of 1990 evidences national policy on litigation management, the Advisory Committee assessed the local rules for the effect they may have on reducing cost and delay in litigation in our court. The Committee has issued an exhaustive report in which a number of substantive changes have been recommended.

Conclusion. 1990 was a year in which a number of important events occurred that will have a direct impact on the ability of the Judges and Magistrate Judges to cope with problems that are certainly not unique to our District. We look forward to the future and especially to 1992 when Columbus will be the site of the Sixth Circuit Judicial Conference.

Respectfully submitted,

John D. Holschuh
Chief Judge
Carl B. Rubin
S. Arthur Spiegel
Herman J. Weber
James L. Graham
George C. Smith
Joseph P. Kinneary

**United States Bankruptcy Court
Southern District of Ohio**

1990 Annual Report

Workload. This Court has undergone an explosion of case filings during 1990. In the year just ended, this district posted a 21% increase in bankruptcy petitions filed. According to the latest statistics from the Bankruptcy Division, that places the Southern District of Ohio as the fifth largest district in the country. On the average, each Bankruptcy Judge was assigned over 3,000 cases last year, vastly exceeding the recommended 1,800 cases per Bankruptcy Judge.

Distribution to Creditors. Last year, this Court distributed an excess of \$78,000,000.00 from chapter 7 and 13 cases. Chapter 7 disbursements totaled over \$28,500,000.00 and chapter 13 disbursements totaled nearly \$49,500,000.00 for calendar year 1990.

Mega Cases. Included in this filing category, are the chapter 11 mega cases of Cardinal Industries, et al., in Columbus and the Federated and Allied Stores, et al., in Cincinnati. Although these cases have increased our workload substantially, Judicial and Clerk's Office personnel have responded efficiently while maintaining other operations of the Court at optimum levels. The total number of cases associated with these chapter 11's is 73 Federated and Allied cases and 280 Cardinal Industries cases.

Joint U.S. District/U.S. Bankruptcy Judges Meeting. On December 7, 1990, the first ever joint meeting with U. S. District Judges and U. S. Bankruptcy Judges was held in Dayton, Ohio in the chambers of the Honorable Walter Rice. At this meeting, several issues of mutual concern were discussed including interaction between Clerk's Offices, appeal procedures and other areas involving linkage between the two Courts.

The meeting was deemed successful and future joint meetings are contemplated.

Automation. The year 1990 will be known as the year of BANCAP in this district. BANCAP, the bankruptcy version of the ICMS application, was installed during the summer of 1990 and with live operations commencing on December 3, 1990. Because of the size of our district, a second BANCAP system was procured and is presently being installed. The Chief Judge and the Clerk of Court, Office Managers, Supervisors and the docketing and systems sections have undergone major training as a result of the installation of BANCAP. BANCAP training was conducted at the training center in San Antonio, Texas. To date, the transition to automation has been very

successful, with only minor disruptions with the work flow in the office and service to the public.

Chambers automation has been completed with full access to Lexis and Westlaw in all chambers.

Staffing. Clerk's Office staffing has been increased in an attempt to keep up with the burgeoning caseload. The Clerk's Office was allotted 13 additional employees during calendar year 1990 to a total allocation of 100 permanent full time positions. In addition, two temporary positions were allocated to the Clerk's Office and three temporary positions to Judicial staffing as a result of the two mega cases filed in the district. The total allotment of personnel for this Court now numbers 126, including Judges and their staff.

Local Rules. Local Rules Committees were formed throughout the District in preparation for revisions to be effective August 1, 1991.

Space and Facilities. Due to increases in personnel, the United States Bankruptcy Court for the Southern District of Ohio has outgrown its present facilities in Cincinnati, Columbus and Dayton. Planning is underway in all three locations in an attempt to address our space needs now and in the future.

Training. This District has forged ahead on a district wide campaign to enhance our training and cross training techniques. The first targeted sections in our Clerk's Office has been at records, intake and docketing. Other sections will be reached over the coming year. Current status in all of our offices is a strong indicator of the success for training efforts.

Recruitment. Extensive and enhanced recruitment practices for positions in our Court have been developed and used to employ the very best personnel obtainable, not only in the technical fields but also in all areas of the Court. We are advertised extensively in newspapers and publications and we have attended a number of job fairs in the District to reach as many varied sections of the work force as possible.

Respectfully submitted,

Burton Perlman
Chief Judge

**United States District Court
Eastern District of Tennessee**

1990 Annual Report

The year 1990 was a milestone year for this district. A fifth judgeship was created for the district, a fourth full-time magistrate judgeship was approved and filled, and a new U. S. courthouse was approved and a site was chosen.

Fifth Judgeship. Our four judges, each carrying a weighted caseload of 597 cases (149 higher than the national average of 448), welcomed the creation of the additional judgeship. An order was signed, designating Chattanooga (our Southern Division) as the location of this judgeship.

New Magistrate Judge Position. This new position was created and funded during the year, and an extensive selection process was held. More than 60 applications were received, several from exceptionally qualified candidates. Thomas W. Phillips, an Oneida, Tennessee, attorney, was selected for the position and took office on Feb. 14, 1991.

Part-time Position Abolished. The part-time magistrate judgeship that had existed in this district for seven years was abolished simultaneous with the swearing-in of the new full-time magistrate judge. The part-time position had served primarily to handle the petty offense cases arising out of the Great Smoky Mountains National Park. Magistrate Judge Ronald E. Sharp, who served the court well during his tenure, was presented with a framed order signed by our four judges in a special ceremony sponsored by the Sevier County Bar Association.

A spin-off development of the change in magistrate positions was the creation of a part-time position in the clerk's office to handle the courtroom work that will now be conducted on an alternating basis by three of our four full-time magistrate judges. The courtroom work previously was handled by the part-time magistrate judge's secretary and was funded through reimbursable expenses to the magistrate judge.

New Courthouse. Design funds for a new U. S. Courthouse in Knoxville were appropriated and a site for the building was chosen in the Central Business District. The \$33 million structure, when completed in 1996, will enable all court operations in Knoxville to be housed in one location. In addition to the current U. S. Courthouse, various court offices occupy leased space in three privately-owned buildings, resulting in reduced efficiency in carrying out the business of the court.

Upgraded Facilities. Considerable remodeling work was commenced on the U. S. Courthouses in Knoxville and Chattanooga during the year. These projects will provide improved and expanded work areas for the court personnel. The projects are being funded by the post office in Knoxville and General Services Administration in Chattanooga. In addition, a wall and two bathrooms were removed in the clerk's office at Greeneville, enlarging the work area where the public is served.

The Probation Office in Knoxville moved to expanded and improved space to accommodate its growing staff. The magistrate judge in Chattanooga moved to improved quarters in the U. S. Courthouse in Chattanooga, providing a much better work area.

In anticipation of the additional magistrate judge coming on duty, space in the U. S. Courthouse at Knoxville was acquired and remodeled to house the current magistrate judge, Robert P. Murrian, and his staff. Magistrate Judge Murrian's former quarters were upgraded and assigned to the new magistrate judge.

Automation. As in all other district courts, our automation capability expanded greatly during the past year. We have only personal computers and are not fully automated yet, but we have made great strides in making use of the PC's, which have increased in number from five a little over a year ago to 48 today. Our employees are comfortably using dBase systems, spreadsheets and communications packages. With our district having three fully-staffed divisional offices, we have made excellent use of the communications capability.

We have expanded the civil and jury systems and added inventory and annual/sick leave programs to our computers. During the next three months, we plan to implement a card index system for use by our staff and the public, an intake system and a system analysis for a financial package.

We have employees using a portable system when traveling, meaning they are able to retrieve their home office files while at another divisional office. Most of our judges and magistrate judges are making extensive use of Computer Assisted Legal Research capability, and most, along with their law clerks, have had training in WordPerfect and are making use of the word processing capability. In general, there is an overwhelming interest in computers throughout the district.

Community Defender Organization. Federal Defender Services of Eastern Tennessee, a recently-created non-profit defense counsel service, was authorized by our district to provide representation as a community defender organization for the Eastern District of Tennessee under terms of the Criminal Justice Act. The bylaws of the new organization were

incorporated as part of our CJA Plan and approved by the Circuit Council. We feel that the addition of this service will streamline and improve operation of the indigent representation program in our district.

Training Program. We placed great emphasis during 1990 on expanding our training program. A training coordinator was appointed and several training sessions were commenced, including one for judicial secretaries and one for law clerks. We plan to try to hold two such meetings for each group twice a year. These meetings have greatly increased communication and understanding among these staff members. In addition, we held a district wide picnic in Gatlinburg last fall. It was well attended and a similar outing is planned for next fall.

Our four judges have held bimonthly meetings for the past two years and recently the meetings have become more formal, with minutes being kept by the clerk and regular reports being made by the clerk and chief probation officer. These meetings have proven to be very helpful in improving communication between our judges, communication sometimes being a problem because of our district's geographical division.

History Program. Our court began a history program during 1990 and has to date completed three oral histories, which have been forwarded to the Federal Judicial Center. In addition, our clerk's office was instrumental in arranging for the papers of the late U. S. District Judge Robert L. Taylor to be donated to the University of Tennessee Collections Library.

Respectfully submitted,

Thomas G. Hull
Chief Judge

**United States District Court
Middle District of Tennessee**

1990 Annual Report

Workload. As with many district courts in the country, the number of cases filed in this District decreased after a high in 1985. Since 1986, however, the number of cases has gradually increased each year, but the number of filings for 1990 is still significantly lower than for 1985. As reflected in the 1990 Federal Court Management Statistics, for the period July 1, 1989, through June 30, 1990, the total filings per judge was 569, the third highest in this Circuit and the eleventh highest in the country.

Despite the heavy workload, this District can boast an excellent record for 1990 for disposing of civil cases from the time they are at issue to the time of final disposition. The Court has also been able to maintain a low percentage of civil cases over three years old.

The fourth judgeship, provided in the Judgeship Act of 1990, should alleviate the current burden on this Court and enable the Court to dispose of cases even more expeditiously than in the past.

Master Jury Wheel. In 1987, the Court directed that the Clerk investigate the possibility of adopting a dual source for its jury pool in an attempt to insure greater participation of all segments of the population. In 1988, the Clerk promulgated a report on this investigation and recommended that a merged pool using registered voters and holders of valid drivers' licenses be implemented.

As a result, the Court entered an administrative order directing that the master wheel established as of July 1, 1989, be composed of jurors derived from a merged listing of voters and drivers.

In late 1989, the Court began empaneling new jurors from the new, merged master wheel. The Court's experience with the new system has shown that a merged listing is administratively workable. In addition, the Court has not seen any significant effects on the level of juror competence. The Court's experience with the new system has been favorable and it is expected that this District will continue to use a merged system.

Jury Utilization, Scheduling Jury Trials, and Settlement Deadlines. Since the latter part of 1987, this Court has functioned under a system of pooling and bunching jurors for better jury utilization. The jury utilization statistics show increasingly better utilization as a result.

As part of the juror utilization plan, the Court determined that the judges in the Nashville Division should schedule all of their jury trials to begin on the same day each week. Each judge schedules both civil and criminal trials on a trailer docket for the same day. By staggering trial times among the judges and by the judges' empaneling all the juries on one day for the cases to be tried that week, jurors not chosen for one trial can be utilized for other cases.

After cases are settled or continued, if any judge ends up with more cases that he can try in that week and there is another judge available, the overflow cases are transferred to the available judge(s) for trial. In that way, the parties can be almost totally assured that their cases will be tried when set, albeit not necessarily by the judge to whom the case was originally assigned. Since this system was implemented, very few cases have had to be "bumped" or continued by the Court because the Court did not have time to try them.

This system, originally designed to promote better juror utilization, has had a beneficial effect on case management by promoting the expeditious disposition of cases.

Originally, all jury trials were set on Mondays. The disadvantage of the system became apparent when sentencings, pleas, and hearings on civil motions caused interruptions and delays in the scheduled trials. Therefore, in late 1989, in part in response to concerns raised by the bar, the Court changed the day for starting trials to Tuesdays. Mondays are now generally used for scheduling sentencings, pleas, and other hearings.

At the same time the start-day for jury trials was changed to Tuesday, the Court implemented a settlement deadline of the Friday preceding the date of the trial. The parties are notified that their failure to inform the Court of settlement by Friday noon may result in their being taxed juror costs.

1990 was the first full year of the new system of scheduling jury trials on Tuesdays, using Mondays to schedule other matters, and establishing settlement deadlines. This procedure continues to assist in better jury utilization, positively impacts on case management and disposition, and generally works well.

Automation. By 1990, all chambers were fully automated with personal computers available to the judges, secretaries, and law clerks, with CALR access to judges and law clerks.

The Clerk's office has been fully automated in the areas of financial and jury and other administrative functions since 1987. In fact, this Court was one of the first courts to become fully automated on the financial system. The Financial Administrator in the Clerk's office has provided assistance to other courts in training their personnel and to the AO and FJC in their

training programs. In 1988 and 1989, she assisted three district courts (two of which are in the Sixth Circuit) by visiting them and/or hosting their personnel in this court for training sessions; she participated in a Chief Deputies' workshop and a financial deputies' seminar; and she assisted the AO in training newly automated courts on the Financial Management Training during four week-long trips to San Antonio. In 1990, she devoted a considerable amount of time to serving as a sponsor court for newly automated courts or other courts having difficulty with the automated system.

In 1986, the AO provided the Clerk's office with one Four Phase system. By 1990, it was apparent that this equipment was not sufficient. New Sperry Unisys equipment with greater capacity was installed in the early fall of 1990. Having this hardware will enable the Clerk's office to install the ICMS automated civil docketing, scheduled for 1991.

The Satellite Librarian has developed a Local Opinion Index, composed of listings of local opinions (published and unpublished) for use by the Court's law clerks and the bar. The index includes cases decided January 1989 and thereafter. The law clerks are responsible for composing appropriate "headnotes" on each judge's opinions for the librarian to enter on his system. This index was made available to the law clerks and the bar in June of 1990.

Civil Appointments Panel. With the cooperation of the Nashville Bar Association's Federal Court Committee, this District established a civil appointments panel plan for lawyers who were willing to be appointed to Title VII, age discrimination, and prisoner civil rights cases. Although the plan was created in 1989, it was not until 1990 that most of the panel lawyers volunteered to participate in the plan.

Under the plan, a Judge or Magistrate Judge makes an initial determination that a case "may have merit" and then the Clerk contacts members of the panel to determine if they are willing to be appointed. Any panel member may decline appointment for up to three times and remain on the panel. The Clerk contacts attorneys for appointment on a rotation basis.

Ten attorneys or law firms have volunteered to participate on the panel and to receive 1-2 cases per year. Since November of 1989, the Court has appointed counsel from the panel in eleven cases.

Accomplishments. After two summer terms of classes in the Graduate Program for Judges, Chief Judge Wiseman earned his LLM from the University of Virginia School of Law in May of 1990. His thesis was entitled Recommendations of the Federal Courts Study Committee: A District Judge Response.

In late 1990, District Judge Higgins was appointed to the Committee on Court Administration and Case Management of the Judicial Conference.

Bar Association Activities. In 1989 and 1990, the local bar association's federal court committee sponsored round table discussions with each of the active judges and magistrates in this District. At these meetings, bar representatives candidly raised concerns, giving the bench an opportunity to hear from the bar in an informal setting.

The judiciary participated in Continuing Legal Education activities and programs sponsored by the Nashville Bar Association and a panel program for summer law clerks sponsored by the Recruiting Administrators of Nashville.

The individual judges in this District and the Court as a whole are receptive to cooperative efforts between the bench and bar and believe that it is healthy to obtain input from attorneys practicing in this district.

Respectfully submitted,

Thomas A. Wiseman, Jr.
Chief Judge

**United States Bankruptcy Court
Middle District of Tennessee**

1990 Annual Report

Workload. Bankruptcy petition filings continue to increase at a rate of 16 percent, resulting in the second highest number of cases filed per judge in the country with a workload 192 percent above the national average.

Unfortunately, local economic factors continue to contribute to the rapidly growing caseload and they include a steady population growth and an over-expanded real estate market. The Chapter 11 cases are increasing in size as measured by the number of creditors, amount of assets and liabilities and the number of debtor employees. Of the 206 Chapter 11 cases filed in 1990, 187 were business cases that dramatically increased the volume and complexity of litigation. Through February 15, 1991, 46 Chapter 11 cases have been filed compared with 30 for the same period in 1990 or a 53 percent increase. The additional increase in the number of adversary proceedings and relief stay motions has further increased the volume of litigation. Other reasons litigation has increased are an active United States Trustee program, the success of the Chapter 13 program that pays out over \$60,000,000 annually to creditors and a sophisticated bar that advertises heavily.

Judges. An additional judgeship for the Middle District of Tennessee was approved by the Judicial Conference and the recommendation was sent to Congress in late 1988. It is now currently in the legislation recently introduced in the Senate, along with 13 other judgeships. Even with an additional judgeship, the workload per judge will be 42 percent above the national average.

The Circuit has continued the joint designation of Judge William Houston Brown of the Western District of Tennessee. Originally, Judge Brown was assigned to handle the largest case ever filed in this district and provided world class docket relief to the sitting judges. Fortunately, he continues to hear cases in which the sitting judges have recused themselves giving them further docket help.

Personnel. The staff of the court continues to grow with its burgeoning caseload. The court has increased 63 percent, from 38 employees (including two judges and the clerk), in 1987 to 62 employees today. The clerk's office has reorganized its operations to efficiently handle the voluminous documents filed, entered and shuffled daily. There are now management sections made up of several functional teams. The teams are headed by work

leaders and each section is managed by a supervisor. Coordination among the sections is accomplished by regular meetings with the chief deputy clerk.

An additional nine positions are expected in the next allocation this spring which will provide assistance in the areas most needing attention i.e., the management of large case files and case closings.

Local Rules. Each year the Bankruptcy Committee of the Nashville Bar Association appoints a local rules subcommittee that includes the chief deputy clerk. This year, the local rules have been completely revised to include measures to streamline the court's docket, the operating procedures of the clerk's office and all local forms. The revised local rules have been arranged in chapters similar to the Bankruptcy Code and include cross references to appropriate Code sections and Rules. The new local rules should be effective soon and will incorporate the proposed changes to the Bankruptcy Rules and Official Forms, expected to take effect August, 1991.

Automation. Use of automation has substantially grown within the court during the past year with an increase in hardware, software and peripheral components. The networked PC system now has 35 workstations with a dedicated file server using two 350 Meg duplexed hard drives and a battery backup system. Case administration is accomplished through the use of NIBS software. This provides the court and the public with full docketing of over 18,000 cases and basic lookup information in 120,000 cases. In addition, it is possible to access Lexis, Westlaw, Check Cite and Wordperfect from any workstation. The network is also used to generate the weekly court docket of 300 plus cases, Meeting of Creditors dockets of 30 pages per week as well as associated notices of hearing and proceedings memoranda. Plans are underway to begin an attorney "dial-in" capability for access to case information and the court docket within the next month. This experiment is being funded with a grant from the federal court library fund chaired by Chief District Judge Thomas A. Wiseman, Jr. with the hope that it will have additional federal and state court application.

Respectfully submitted,

Thomas A. Wiseman, Jr.
Chief Judge

**United States Bankruptcy Court
Western District of Tennessee**

1990 Annual Report

In July 1990, the court relocated to new leased space in the downtown Memphis area approximately four blocks from the United States District Court. This change has had a tremendous positive impact on both the court family and the public. Previously, the bankruptcy court occupied leased office space located approximately four miles from the downtown Memphis business center since April 15, 1983.

The bankruptcy court is now within short walking distance to the district court which enables both courts to share resources and information more freely. The court is now also located in the heart of the legal and business community which makes access a great deal easier for, among others, attorneys and litigants. The standing Chapter 13 Trustees, the United States Trustee's office for Region 8 and Assistant United States Attorneys responsible for bankruptcy matters have also relocated to the same office building where the bankruptcy court is now located.

The caseload of the court has continued to increase as anticipated. Calendar year 1990 saw a record number of new case filings in both the Western and Eastern Divisions of the District (Memphis (11,910) and Jackson (2,729) respectively). The breakdown of the case filings for 1990 is as follows and represents a 9% increase over total 1989 filings.

<u>Chapter</u>	<u>Western Division at Memphis</u>	<u>Eastern Division at Jackson</u>	<u>Total for Year 1990</u>
Chapter 7	3,138	744	3,882
Chapter 11	97	61	158
Chapter 12	1	5	6
Chapter 13	8,674	1,919	10,593
TOTAL	11,910	2,729	14,639

Based on the number of raw case filings received for the 12 month period ending June 30, 1990, the Western District of Tennessee ranks as the 16th largest bankruptcy court in the country.

The weighted case hours per bankruptcy judge for the western district during calendar year 1990 was 1742 hours. This figure ranks our court 15th out of 91 courts in per Judge caseload and represents a 23.1% increase during the previous 18 months.

To aid the clerk's office in its efficient and effective case management procedures, the court began the installation of the Bankruptcy Court Automation Project (BANCAP) in the fall of 1990. In the spring of 1991, thirty staff members from the clerk's office will travel to the BANCAP training center in San Antonio, Texas for intense system training. We anticipate that the court will go live on BANCAP by June 1, 1991 and begin to phase out the cases currently maintained on the NIBS system as they are closed.

To better enable the clerk's office to manage its caseload, thirteen additional positions were allocated by the Court Administration Division. One of the positions was detailed to the Jackson Divisional office and the remainder to Memphis. Several positions in Memphis were used in the administrative sector of the clerk's office including expanding the computer staff to 4 positions, expanding the Property and Procurement section to 2 positions and the creation of a Personnel Specialist position. The remaining positions were disbursed throughout the clerk's office to ease the transition to the case administration method of case management.

Mr. Jed G. Weintraub has been appointed the new Clerk of Court. Mr. Weintraub is the former Clerk of the Ninth Circuit Bankruptcy Appellate Panel and brings with him 8 years of Federal Court experience and a specialization in court management.

Respectfully submitted,

David S. Kennedy
Chief Judge
William H. Brown
Bernice B. Donald

Odell Horton
Chief District Judge

MEMORIAL RESOLUTIONS

**Memorial Resolution
for
Ralph M. Freeman
United States District Judge
Eastern District of Michigan**

With deepest sorrow the Judges of the Sixth Circuit note the death on March 29, 1990 of their distinguished colleague, Ralph M. Freeman, United States District Judge for the Eastern District of Michigan for over 35 years.

Ralph McKenzie Freeman was born May 5, 1902 in Genesee County, Michigan. He attended the public schools in Swartz Creek and later Flint, Michigan. He obtained both his undergraduate degree and his law degree at the University of Michigan. He financed his years at the University by working summers at General Motors as an hourly employee.

After graduation in 1926, he practiced for two years in Flint, Michigan. He was then appointed an assistant prosecuting attorney. Two years later in 1930 he was elected prosecuting attorney of Genesee County. He had numerous stories of his experiences as a prosecutor. After one term, he returned to private practice and continued that practice until his appointment to the bench. In 1939 he joined Stephen J. Roth, who also became a United States District Judge, in the practice of law. Lawyers who opposed him during his years of practice say that he was an aggressive attorney who gave no quarter, yet he always was a gentleman.

He served on the Flint Board of Education for 14 years, holding several offices including president. The Ralph M. Freeman Elementary School in Flint recognizes this service.

Shortly before his appointment to the bench he was president of the Genesee County Bar Association.

He was also active in politics, serving as chairman of the Genesee County Republican Committee and as a member of the Republican State Central Committee.

On Friday, August 13, 1938 Ralph M. Freeman married Emmalyn Ellis and this happy marriage continued until his death. They both loved animals, especially dogs and horses. Most weekends were spent at the Freeman farm. The Freemans were very hospitable, frequently inviting members of the court and their families to the farm where the children were invited to ride the horses. They loved to hunt and for years leased land near Albany, Georgia where they shared hunting rights with Emmalyn's brother and his wife. Ralph trained his own dogs. He also loved to garden and frequently shared

his vegetables with the other judges on the court. In addition he loved golf, bridge and dancing. He was a very good photographer.

Ralph and Emmalyn also loved to travel visiting every continent except Antarctica.

Judge Freeman was appointed United States District Judge for the Eastern District of Michigan on June 10, 1954 by President Eisenhower. He served as the Sixth Circuit's representative to the Judicial Conference of the United States from 1963 to 1966. He was Chief Judge of the Eastern District of Michigan from 1967 to 1972 and took senior status on July 1, 1973. During the 17 years he was a senior judge he worked full time, only extending his vacation time to a month or 6 weeks. He worked until a few days before his death at age 87.

Judge Freeman was a scholar. His opinions were carefully researched and analytically sound. He did not publish as many opinions as some other judges but he always provided the parties with a well reasoned disposition of their case. He was recognized in the community as an outstanding jurist.

In *Ford Motor Co. v. United States*, 405 U.S. 562 (1972), *affg* 315 F. Supp. 372 and 286 F. Supp. 407 (E.D. Mich. 1968), a direct appeal from one of Judge Freeman's decisions, Justice Douglas ended the opinion of the Court by noting:

The thorough and thoughtful way the District Court considered all aspects of this case, including the nature of the relief, is commendable. The drafting of such a decree involves predictions and assumptions concerning future economic and business events. Both public and private interests are involved; and we conclude that the District Court with a single eye to the requirements of §7 and the violation that was clearly established made a reasonable judgment on the means needed to restore and encourage the competition adversely affected by the acquisition.

405 U.S. at 578.

When Judge Freeman came to the court the chambers designed to go with his courtroom were occupied by Judge Charles Simon of the United States Court of Appeals. For many, many years Judge Freeman used chambers constructed down the hall which required that he walk to and from the courtroom through the public hallway. However, he never attempted to get Judge Simon to move.

Judge Freeman was always concerned about the public fisc. While Chief Judge he examined all court expenditures very carefully. Anything that was

not necessary was not included in the budget request. Yet he was always generous, making substantial gifts to his alma mater.

Several members of this committee had the privilege of practicing before Judge Freeman. We knew that in his courtroom we would be treated with mutual respect. He liked lawyers and recognized their importance to the functioning of our judicial system. We all respected his intelligence, his common sense, and his fairness and sense of justice.

Judge Freeman was always cheerful and positive and had a delightful sense of humor. And he loved his work. He ordinarily ate lunch with his law clerks at a nearby cafeteria where he was frequently joined by other judges who enjoyed his company. As one of his law clerks said at a memorial ceremony, "He was such a special person, an outstanding jurist, a patient teacher, a giving friend, that no summary seems quite adequate to explain the impact he had on those of us who were fortunate enough to know him and work with him and to love him."

Red Smith, the former great sports editor of the New York Times, began a eulogy in this way: "Dying is no big deal. The least of us will manage that. Living is the trick." For most of his 87 years, Ralph Freeman did that very well. He knew how to live.

Now therefore, be it resolved that the Fifty-Second Annual Conference of the Sixth Circuit, at a session held on June 12, 1991 at Grand Traverse Village, Michigan, that this tribute of admiration, love and remembrance for the Honorable Ralph M. Freeman be spread on the record of this Conference and that a copy thereof be forwarded to his family.

Respectfully submitted,

Cornelia G. Kennedy
Circuit Judge
United States Court of Appeals
Sixth Circuit

Damon J. Keith
Circuit Judge
United States Court of Appeals
Sixth Circuit

Julian Abele Cook, Jr.
Chief Judge
United States District Court
Eastern District of Michigan

John Feikens
Senior Judge
United States District Court
Eastern District of Michigan

**Memorial Resolution
for
James F. Gordon
United States District Judge
Western District of Kentucky**

The United States District Court for the Western District of Kentucky records with sadness the death of our esteemed colleague and friend, Senior United States District Judge James F. Gordon, on February 9, 1990.

Even after his health forced him to move to Florida, Judge Gordon maintained his association with the membership of the Kentucky Bench and Bar. Any member of the Kentucky Bar who passed within a day's drive of Venice without calling or visiting Judge Gordon did so at his or her extreme peril.

Although Judge Gordon's service on the bench was marked with a number of significant and far-reaching decisions, he is and always will be best remembered for his sweeping decision integrating the public schools of Louisville and Jefferson County, Kentucky. That decision and the ensuing uproar placed him under terrible physical and emotional strain. Those of us who knew him watched with dismay the deterioration of his physical condition, and we watched with admiration his refusal to let that deterioration adversely affect his indomitable spirit.

Judge Gordon's opinion ranged in style from the keening of an Irish minstrel or the lamentations of an Old Testament psalmist to the homespun humor and wisdom of Will Rogers or Mark Twain.

He once opined that if the Almighty had visited upon the Pharaoh the tribulations he sent to a Social Security claimant, Moses would have had the children of Israel into the Promised Land a great deal sooner and with considerably less difficulty. On another occasion in addressing a medical malpractice suit against a plastic surgeon, Judge Gordon wrote at great length in medical terminology to describe plaintiff's treatment and concluded by observing, "in short, plaintiff had a nose job." He also noted that although the surgeon had told plaintiff that her nose would look like Elizabeth Taylor's, it in fact looked like Dick Tracy's.

Judge Gordon's devotion to the law was exceeded only by his devotion to his family. He and Iola Young Gordon his wife of nearly half a century, watched with pride as their three children, Maurice Kirby Gordon II, James Fleming Gordon, Jr., and Mariana Gordon Dyson, followed the Judge's path to the bar.

Those of us who practiced with Judge Gordon or before him, and those of us who served with him on the Court, are richer for that association, and we probably feel more deeply a sense of personal loss than those who knew him on a less intimate basis.

Judge Gordon left a monument which will stand long after the stone marking his final resting place has crumbled into dust.

His like shall not pass this way soon again.

Respectfully submitted,

Thomas A. Ballantine, Jr.
Chief Judge
United States District Court
Western District of Kentucky

Boyce F. Martin, Jr.
Circuit Judge
United States Court of Appeals
Sixth Circuit

Edward H. Johnstone
District Judge
United States District Court
Western District of Kentucky

**Memorial Resolution
for
Girard Edward Kalbfleisch
United States District Judge
Northern District of Ohio
1899-1990**

Girard Edward Kalbfleisch, born August 3, 1899, in Piqua, Ohio, died in Mansfield, Ohio, on April 1, 1990. After graduating from Ohio Northern Law School in 1923 he practiced law in Richland County. In 1928 he was elected prosecuting attorney of the county and re-elected in 1930. On May 1, 1929 he married Chattie Lenore Spohn with whom he had two children. In 1935 he was elected judge of Mansfield Municipal Court and served until he was elected Richland County Common Pleas judge in 1942. In the latter office he served until September 14, 1959 when President Eisenhower appointed him to the United States District Court for the Northern, District of Ohio, Eastern Division. He took office on October 16, 1959. On September 20, 1967 he became Chief Judge succeeding Judge James C. Connell. Judge Kalbfleisch took senior status on September 30, 1970.

The Ohio Northern University Law Review "with this issue [Vol XVII, pp 1-12:] honors the memory of Judge Girard E. Kalbfleisch, distinguished graduate of this university's college of law." With the Law Review's consent three articles from the issue are here republished to form the Sixth Circuit's memorial resolution to Judge Kalbfleisch.

A TRIBUTE TO JUDGE GIRARD E. KALBFLEISCH

Judge Girard Kalbfleisch walked through life as tall as an oak, with giant strides, doing for others whatever he could with compassion, thoughtfulness and tact. Judge Kalbfleisch was my friend, my advisor on occasion, my critic on occasion, but always he was a man I respected.

I am certain that his leadership, his dedication and his enthusiasm for the democratic principle will live on forever in those who knew him: all those whose lives were touched by his work and friendship. Like the proverbial stone in a pond, his labors will forever ripple on, capturing other adherents, inspiring others to pick up the baton and carry on the effort to secure for all people justice under our constitutions and laws.

We build on what has gone before, we add to what we have inherited. Judge Kalbfleisch left us a legacy of devotion to the cause of justice and freedom. His works, his legal opinions, his concern for the well-being of his community and nation, his desire to improve the quality of life, will be forever interwoven into the fabric of our lives, adding richness to its texture and strength to its fiber.

I knew him as a man and friend, others knew him as a judge. Whether we knew him in his private or professional capacity his basic philosophy was the same--that we are each of us in one way or another, trustees of the public good, that together we share the task of administering either publicly or privately to the needs of the people and together we share a tremendous responsibility of safeguarding the future of our democratic institution. All who knew him were stimulated by his personality, his alertness of mind and the breadth of his knowledge. He possessed the rarest of qualities, that of being learned as well as witty; he was confident and possessed in equal portions of integrity and virtue. His devotion to his community and his country were strong and passionate. Those of us who knew him will surely miss him.

Hon. Anthony J. Celebrezze

GIRARD E. KALBFLEISCH

Governor Frank J. Lausche appointed me Geauga County Common Pleas Judge and I took office June 9, 1950. In November, 1950, I was elected to a full term. When I walked into my first meeting of the Ohio Common Pleas Judges' Association at the Neil House in Columbus, the judges were discussing how to get a pay raise. Leading the charge for a salary increase was feisty Gerry Kalbfleisch of the Richland County Common Pleas Court. Before becoming a judge, I had represented several unions. I told Gerry afterwards that I thought I had walked into a union meeting debating economic issues.

Gerry remained active in the Common Pleas Judges' Association and served as its president one year. I continued to see Gerry at the annual meeting of the Association. I had moved across the county line into Cuyahoga County where Governor Lausche appointed me Common Pleas Judge in February of 1953. Gerry remained a Common Pleas Judge until President Eisenhower appointed him as United States District Judge for the Northern District of Ohio in October of 1959.

President Johnson appointed me United States District Judge and I joined Gerry in March of 1966 on the Northern District of Ohio, Eastern

Division. Many an enjoyable tete-a-tete over the luncheon table was enjoyed by the District Judges and Sixth Circuit Appellate Judge Anthony J. Celebrezze. Gerry was often more than a match for the rest of us. His long experience in a trial courtroom and his earthy pragmatic approach to resolving the case before him served well the Northern District of Ohio. But Gerry and Chattie were glad to move back to Richland County in Mansfield after he took senior status as a United States District Judge on September 30, 1970.

Shondor Birns, a bright Cleveland hoodlum, was convicted by a jury before Judge Kalbfleisch on an indictment of perjury in connection with an offer to compromise income tax liability. The Sixth Circuit reversed the guilty judgment because an admitted exhibit contained a reference to Shondor's earlier conviction for income tax fraud and his incarceration in a Federal Penitentiary. Birns had elected not to testify. Gerry never got over the carelessness of the U.S. Attorney in allowing Shondor's criminal record to go to the jury and the resulting reversal.

Two other notable cases that Judge Kalbfleisch tried in the Northern District of Ohio are *United States v. White Motor Company*, and *Hobson v. Cyrus S. Eaton*.

The recollections of one of the Judge's former law clerks close this piece. U.S. Magistrate Jack B. Streepy observes:

While serving as law clerk in 1964 to 1966 for Judge Kalbfleisch, I learned that some trial counsel nicknamed him "The Hawk," largely due to his physiognomy. The nickname was apt, but not for the stated reason. A hawk soars above the ground, possesses keen eyesight, and swoops upon whatever attracts it. During most cases, the judge soared, hawklike, above counsel (and his law clerk) in spying the critical issues, and homing in on those issues. By exposing me to these traits, the judge continues teaching me to this day.

Hon. William K. Thomas

RECOLLECTIONS OF JUDGE KALBFLEISCH

[As his first law clerk, from November 1959] I worked with Judge Kalbfleisch until June, 1962 when I was appointed as an Assistant United States Attorney.

I found the Judge to be a master at the art of dealing with human beings-lawyers, other judges, parties, witnesses, spectators-who constantly ebb and

flow in any judge's courtroom and chambers. His manner was generally genial and non-threatening unless he sensed disrespect or unwillingness to follow the rulings or procedures he had prescribed. At such a point he would become quite stern and direct a brief but sharp rebuke at the offending party or parties and, without having to raise his voice, order would be restored.

Judge Kalbfleisch had effective techniques for settling cases. I recall an instance when he had what appeared would be a long and complicated patent case with multiple parties and at least five lawyers on either side, all armed with blueprints, models and pages of discovery proceedings. At a prehearing conference that lasted all day, all parties had insisted, initially, that settlement was impossible but the Judge encouraged counsel to vent their oratory and legal theories. As time wore on the Judge, who was a superb storyteller, occasionally entertained counsel with an appropriate anecdote. Finally, the tensions began to ease. The lawyers began to realize that a trial would not only be difficult but costly. I believe they also sensed that this Judge knew the facts and the law and that he would not be swayed by extraneous issues or confused by the voluminous evidence if the case were to be tried. He succeeded in getting counsel to look at their respective cases realistically. They, in turn, were able to do the same for their clients because, on the following day, the case was settled.

"When they came in, they were loaded for bear" the Judge said later, "so I had to let them talk themselves out and to realize the other fellow's case had merit too." but the Judge had not achieved the settlement by some special gift of persuasion and personality; because he had spent several days reviewing the discovery proceedings and the briefs, and reading other court decisions, he had been thoroughly familiar with the case. Yet he allowed the lawyers to learn for themselves the pitfalls they could encounter and they had settled, satisfied that they achieved the best deal for their clients without any coercion from the Court.

Harry E. Pickering

[Retired Administrative Law Judge with
the Social Security Administration of
Hearings and Appeals]

Girard Edward Kalbfleisch was a man of honesty and integrity. He was tough, straight as an arrow, and always fair-minded. Affectionately known as "Gerry," his vivid and dynamic personality deeply touched the lives of all those who came to know him. He was a thoughtful and caring man whose

sense of selflessness is best exemplified by a never-waning touch of humor. Even in his final illness Gerry was able to look over at a man laying next to him and remark, "That guy's in a hell of a lot worse shape than I am."

An avid outdoorsman who was able to appreciate the gamesmanship of hunting and fishing as well as the intellectual challenges presented by the bench, Gerry was loved, respected and admired by colleagues and friends.

Girard Edward Kalbfleisch is one of those rare individuals whose entire life and work will continue to serve as an inspiration to each of us.

THEREFORE, BE IT RESOLVED that the Fifty-Second Judicial Conference of the Sixth Circuit in session at Grand Traverse Village, Michigan, this 12th day of June, 1991 pays tribute and appreciation to the memory of Girard Edward Kalbfleisch who served the nation and this Circuit faithfully and 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 D. Lambros
Chief Judge
United States District Court
Northern District of Ohio

Anthony J. Celebrezze
Senior Judge
United States Court of Appeals
Sixth Circuit

William K. Thomas
Senior Judge
United States District Court
Northern District of Ohio

APPENDIX

FILINGS BY SOURCE

The table below shows the new appeals filed during each of the past ten years, showing the number of appeals originating in each of the individual districts within the circuit.

		SOURCE OF FILINGS									
		1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
OHIO	Northern	284	359	388	481	496	556	573	510	512	570
	Southern	303	303	369	337	378	455	480	497	479	464
	TOTAL	587	662	757	818	874	1011	1053	1007	991	1034
KENTUCKY	Eastern	190	174	166	239	213	252	314	352	358	349
	Western	213	200	166	181	191	260	285	296	339	323
	TOTAL	403	374	332	420	404	512	599	648	697	672
MICHIGAN	Eastern	496	578	704	683	722	887	1018	960	1081	1012
	Western	124	139	173	129	171	171	215	298	339	337
	TOTAL	620	717	877	812	893	1058	1233	1258	1420	1349
TENNESSEE	Eastern	144	164	157	225	213	265	263	292	361	360
	Middle	113	152	135	162	184	183	208	209	241	259
	Western	149	144	160	166	165	209	246	192	208	245
	TOTAL	406	460	452	553	562	657	717	693	810	864
AGENCY, TAX COURT & ORIGINAL PROCEEDINGS		283	255	282	267	306	268	243	345	296	248
TOTAL		2299	2468	2700	2870	3039	3506	3845	3951	4214	4167

FILINGS, (cont.)

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

	FILINGS BY CASE TYPE									
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
TOTAL CIVIL	1665	1866	2038	2198	2347	2843	3061	2963	3144	3053
Pris Petitions	546	517	568	551	731	953	1098	1045	1303	1271
Civil Rights	304	396	411	405	502	553	621	570	536	532
Social Security	150	165	197	284	240	321	238	198	221	131
Diversity	254	261	240	231	288	389	408	431	506	463
Other Civil	411	527	622	727	586	627	696	719	578	656
BANKRUPTCY	44	52	63	97	93	80	62	71	80	102
CRIMINAL	351	347	380	405	386	395	448	575	694	806
ORIG PROCEEDINGS	33	21	32	29	40	32	23	36	44	42
AGENCY	283	255	282	267	306	268	251	306	252	164
TOTAL CASES FILED	2376	2541	2795	2996	3172	3618	3845	3951	4214	4167

FILINGS, DISPOSITIONS AND PENDING CASES

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
FILINGS	2376	2541	2795	2996	3172	3618	3845	3951	4214	4167
Annual Increase	13.0%	6.9%	10.0%	7.2%	5.9%	14.1%	6.3%	2.8%	6.7%	-1.1%
DISPOSITIONS	2189	2551	2803	2743	3183	3337	3602	3932	4278	4208
Annual Increase	19.5%	16.5%	9.9%	-2.1%	16.0%	4.8%	7.9%	9.2%	8.8%	-1.6%
PENDING	2553	2457	2449	2702	2691	2972	3215	3234	3170	3132
Annual Increase	7.30%	-3.90%	-0.33%	9.40%	-0.40%	9.50%	7.60%	0.60%	-2.00%	-1.20%

SUMMARY OF DISPOSITIONS

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
ORAL ARGUMENT	1327	1233	1354	1366	1461	1428	1628	1667	1738	1649
SUMMARY DISPOSITIONS (Rule 9)	444	574	646	618	817	989	1122	1302	1470	1499
VOLUNTARY DISMISSALS	344	445	382	353	375	340	383	413	345	339
DISMISSALS FOR WANT OF PROSECUTION	107	187	217	211	321	340	266	207	342	373
SETTLEMENT PROGRAM		14	101	132	164	211	172	299	330	280
OTHER	42	98	103	63	45	29	31	44	53	68
TOTAL	2264	2551	2803	2743	3183	3337	3602	3932	4278	4208

