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Presented To
Sixth Circuit Judicial
Conference
May 10-12, 1989
Lexington, Kentucky

Hon. Albert J. Engel
Chief Judge

FRONT COVER

The front cover is a photograph of one of the two large banners which hang on the outside of the Federal Courthouse in Cincinnati in celebration of the Bicentennial of the Constitution, the Bill of Rights and the creation of the Federal Judiciary. The banners, along with similar banners which adorn the Federal Courthouse in Detroit, were furnished by the Sixth Circuit Bicentennial Committee, Honorable Damon J. Keith, Chairman.

Foreword

This report attempts to give a brief, yet complete, picture of the administration of justice in the Sixth Circuit. It is my hope that all members of the Conference will carefully review this report in order to understand more fully the work of the federal courts in the Sixth Circuit and the issues facing our courts in the future.

As the report discloses, the federal courts in the Sixth Circuit have remained busy over the last year, with several of the courts, including the Court of Appeals, again experiencing growth in their dockets. The increased productivity of the circuit judges shown by this year's statistics is not an event which will automatically continue year after year and yet there is every indication that the caseload of the Sixth Circuit will continue to grow. We hope, of course, to achieve a good deal of economies and efficiencies through the increased use of computer capability, but the time of our judges to think carefully upon important issues is still the most precious commodity and one which is already strained to the maximum.

Efforts to maintain collegiality in a circuit of this size are understandably most difficult, but we continue to search for new ways to reinforce old and important values. For example, we have a dinner meeting of the circuit judges at the commencement of each circuit Conference. We also have begun holding an annual "retreat" for our circuit judges where all of the members of the court can discuss important policy and administrative issues in a relaxed setting over a two or three day period. In addition, the Court of Appeals has effected a healthy change in the sitting schedule that will give a greater opportunity for our visiting judges to become acquainted with the individual members of the Court of Appeals while also permitting our circuit judges to see more of one another.

As this report indicates, the outlook presents a mixed picture. We are still plagued by budgetary restraints and it is evident that in 1989, and probably in 1990, we shall be severely restricted in the amount of physical improvements which can be funded out of existing appropriations, with little hope that there will be increases in the budget for adequate performance of many of the new obligations imposed on the courts by new laws such as guideline sentencing.

Regarding the future agenda, I would like to invite your attention to the section of this report dealing with the Ad Hoc Committee to review the Sixth Circuit Judicial Conference. The meeting of that Committee in February was one of the most interesting events of the year for me, and I was exceptionally impressed by the contribution which each individual member of the committee made to the problems of modernization of our Conference structure. Changes, if they are made, do not come without some pain but the consensus of the meeting was that indeed we are rapidly reaching the point where changes may become necessary. I hope we can retain the best of the old while at the same time we meet more sensitively the needs which are occasioned by the expansion and development of the federal court system in the Sixth Circuit over the last twenty years. I can only ask that the members of the Conference cooperate and give careful attention to whatever final recommendations may ultimately be produced by this conscientious committee.

Albert J. Engel
Chief Judge

JUDICIAL ADMINISTRATION IN THE SIXTH CIRCUIT

Introduction

The citizens of the Sixth Circuit continue to be served by 167 judicial officers and over 1,000 supporting staff who help process over 31,500 civil and criminal cases filed in the district courts of the Sixth Circuit and over 84,000 bankruptcy petitions filed in the bankruptcy courts of the Sixth Circuit. The Sixth Circuit Court of Appeals experienced another year of growth during 1988, with a total of 3,951 new appeals filed.

This year marks the Bicentennial of the Judiciary Act of 1789 which established the federal court system. As a part of the preparation for the next century of the federal judiciary, a high level special committee has been established to develop a long range plan for the future of the federal court system.

This year also marks the Fiftieth Anniversary of the Sixth Circuit Judicial Conference. The Conference began as a relatively brief meeting of all of the circuit and district judges of the circuit, all of whom could group around the two counsel tables in the Sixth Floor Appellate Courtroom in Cincinnati. Over the years the Conference has grown in size and complexity, with the addition of members of the bar, representatives of academia and representatives of the state courts. It seems appropriate then in this Fiftieth Anniversary year that a major study of the future direction of the Circuit Conference be undertaken.

In the face of an increasing workload the judiciary experienced two major disappointments during the last year at the hands of Congress. For the first time in the modern history of the judiciary, Congress failed to appropriate sufficient funds for the judiciary to function at the same level as last year along with the needed funds to meet the increased workload and additional responsibilities imposed by Congress. In February Congress voted to deny the President's proposed pay increase for federal judges which would have restored purchasing power to federal judges' salaries which has been lost over the last twenty years.

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 James P. Churchill of the Eastern District of Michigan was designated to attend the March 1989 meeting of the Judicial Conference to fill the vacancy created by the untimely death of Judge Philip Pratt. The judges of the circuit will elect a representative to fill the unexpired portion of Judge Pratt's term which ends in August 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.

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

Hon. James G. Carr Northern Ohio	Committee on Criminal Law and Probation Administration
Hon. Julian Abele Cook Eastern Michigan	Committee on Judicial Ethics
Hon. Avern L. Cohn Eastern Michigan	Committee on the Administration of the Magistrate System
Hon. Benjamin F. Gibson Western Michigan	Committee on Judicial Improvements
Hon. Horace W. Gilmore Eastern Michigan	Committee on Judicial Ethics
Hon. Ralph B. Guy Sixth Circuit	Committee on the Judicial Branch
Hon. John D. Holschuh Southern Ohio	Advisory Committee on Codes of Conduct
Hon. Odell Horton Western Tennessee	Committee on Defender Services
Hon. Charles W. Joiner Eastern Michigan	Committee to Review Conduct and Disability Orders
Hon. Damon J. Keith Sixth Circuit	Committee on the Bicentennial of the Constitution
Hon. David Kennedy Western Tennessee	Administration of the Bankruptcy Law
Hon. Ralph H. Kelley Eastern Tennessee	Committee on the Budget
Hon. Pierce Lively Sixth Circuit	Committee on Rules of Practice and Procedure
Edward F. Marek, Esq. Northern Ohio	Advisory Committee on Criminal Rules
Hon. Boyce F. Martin, Jr. Sixth Circuit	Committee on Federal-State Jurisdiction
Hon. Gilbert S. Merritt Sixth Circuit	Committee on Judicial Resources
Joseph Patchen, Esq. Cleveland, Ohio	Advisory Committee on Bankruptcy Rules

Hon. James L. Ryan Sixth Circuit	Committee on Space and Facilities
Hon. Robert F. Stephens Chief Justice of Kentucky	Committee on Federal-State Jurisdiction
Hon. Harry W. Wellford Sixth Circuit	Committee on Criminal Law and Probation Administration
Hon. Thomas A. Wiseman Middle Tennessee	Advisory Committee on Bankruptcy Rules

Federal Court Study Committee

On November 19, 1988, the President signed into law the "Judicial Improvements and Access to Justice Act", Public Law 100-702. Consisting of ten titles covering a wide range of topics, the bill established within the Judicial Conference of the United States a Federal Courts Study Committee consisting of fifteen members appointed by the Chief Justice. The Committee is to study the courts of the United States for the purpose of identifying problems and issues currently facing the federal courts. The Committee also is to develop a long range plan for the future of the judiciary along with recommendations for revision of law or other appropriate action the Committee deems advisable. The statute specifically provides that the long range plan include assessments of alternative dispute resolution mechanisms, the structure and administration of the Federal court system and methods of resolving intracircuit and intercircuit conflicts in the appellate courts.

The Honorable Joseph F. Weis, Jr., Senior Circuit Judge for the Third Circuit was named chairman of the Committee. J. Vincent Aprile, General Counsel of the Department of Public Advocacy of Kentucky was named a member. Under the provisions of the statute, the Committee must complete its study within fifteen months and report its findings to the President, the Congress and the Judicial Conference of the United States. The Committee will conduct several days of public hearings around the United States. Any person wishing to submit views to the Committee in writing may do so by writing to Mr. William K. Slate, Staff Director, Federal Courts Study Committee, Room 22716 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania, 19106.

*Ad Hoc Committee on Federal Habeas Corpus
Review of Capital Sentences*

An additional special committee of the Judicial Conference of the United States was appointed by the Chief Justice to consider the substantial logistical problems posed by habeas corpus petitions seeking review of state criminal convictions in capital cases. The committee is chaired by retired Supreme Court Justice Lewis F. Powell, Jr., and includes among its members judges from the Fifth and Eleventh Circuits, where the preponderance of such cases now occur.

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

The Judicial Council of the Sixth Circuit is, in many respects, the counterpart at the circuit level of the Judicial Conference of the United States. The council plays a major role in formulating the policies established by the Judicial Conference as well as in executing those policies. For example, the council reviews any proposals regarding additional judgeships or magistrate positions and submits recommendations to the Conference. The council also reviews a variety of matters involving the management of judicial resources

for compliance with Conference established standards such as the plans for jury selection, criminal representation under the Criminal Justice Act, speedy trial, and the management of court reporters. The council also formulates circuit policy in a wide range of matters such as the allocation of personnel and approval of space and facilities matters, and it is authorized to issue orders for the division of business and the assignment of cases within a district court if the district judges are unable to agree.

The Judicial Council, which is established by 28 U.S.C. 332, is authorized to issue "all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit." It consists of all of the active judges of the court of appeals and five district judges. The Chief Judge of the Circuit presides over the council. Four of the district judge representatives to the council are selected on the basis of seniority within their state. Ordinarily the district judge representative will be a chief district judge. However, when each incumbent chief judge from a state has served a three-year term on the council, the next most senior active judge from that state becomes the council representative. The fifth district judge member is elected annually by the District Judges Association of the Sixth Circuit. The district judges currently serving on the council are:

Hon. James P. Churchill¹
 Chief Judge, Eastern District of Michigan
 Hon. Thomas D. Lambros
 Northern District of Ohio
 Hon. Edward H. Johnstone
 Chief Judge, Western District of Kentucky
 Hon. Odell Horton
 Chief Judge, Western District of Tennessee
 Hon. Benjamin F. Gibson
 Western 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:

INVESTIGATING COMMITTEE

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

JURY UTILIZATION COMMITTEE

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

¹Judge Churchill replaced Chief Judge Philip Pratt of the Eastern District of Michigan who passed away on February 7, 1989.

COURT REPORTER COMMITTEE

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

LOCAL RULES REVIEW COMMITTEE

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

SENIOR JUDGE PERSONNEL AND FACILITIES COMMITTEE

Honorable Robert B. Krupansky, Chair
 Honorable Danny J. Boggs
 Honorable Odell Horton

AD HOC COMMITTEE ON THE APPOINTMENT OF BANKRUPTCY JUDGES

Honorable Harry W. Wellford, Chair
 Honorable Albert J. Engel
 Honorable Gilbert S. Merritt
 Honorable Boyce F. Martin, Jr.
 Honorable Nathaniel R. Jones
 Honorable Ralph B. Guy, Jr.
 Honorable James P. Churchill
 Honorable Thomas D. Lambros
 Honorable Edward H. Johnstone
 Honorable Odell Horton

JUDICIAL COUNCIL STUDY COMMITTEE (AD HOC)

Honorable Thomas D. Lambros, Chair
 Honorable Damon J. Keith
 Honorable Harry W. Wellford
 Honorable Alan E. Norris
 Honorable Edward H. Johnstone

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

The following is a brief overview of some of the more significant actions of the Council in the past year:

Appointment of Bankruptcy Judges

The Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98-353, provides for the appointment of bankruptcy judges by the Court of Appeals for a term of 14 years from a list of not more than three persons recommended by the judicial council. In the appointment process the council has chosen to make use of merit selection panels in each district made up of judges and lawyers who assist the council by screening and evaluating the applicants for appointment. The initial review of the recommendations of the merit selection panels is performed by the Ad Hoc Committee on the Appointment of Bankruptcy Judges, but the full council reviews the recommendations of the panels and the ad hoc committee.

The council was involved in the screening and recommendation of persons to fill the vacancy created by the untimely death of Chief Bankruptcy Judge G. William Brown of the Western District of Kentucky at Louisville. On March 1, 1989 the council began the selection process for a new bankruptcy judge position in the Eastern District of Kentucky which was authorized by Public Law 100-587.²

Judicial Budget

The judiciary received a total appropriation of approximately \$1.4 billion for the fiscal year beginning October 1, 1988. While this amount represented a nine percent increase over the prior year and a significantly greater percentage increase than the other agencies funded in the same appropriations bill, the judiciary faces a shortfall of nearly \$250 million in its budget needs submitted to Congress. In many areas of its operations, the judiciary will be forced to operate at less than FY 1988 levels because the FY 1989 budget resulted in some \$16 million less than the amount established by the Executive Committee of the Judicial Conference as necessary to maintain a current operations budget.

In FY 1990 the judiciary, as well as the rest of the government, can expect a very difficult funding situation. The Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as "Gramm-Rudman" establishes a deficit target for FY 1990 of \$100 billion. This compares to \$144 billion for FY 1988 and \$136 billion for FY 1989.

The current shortfall in appropriations has resulted in a 7% reduction in the staffing level formula for clerks' offices, probation offices and pretrial services offices, as well as a reduction in funding for the implementation of automation in the federal courts. As workload continues to grow and additional duties are thrust upon supporting staff, such as the additional responsibilities given to probation officers under the guideline sentencing system, staffing may fall to below 90% in the upcoming fiscal year.

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

Bicentennial Committee

The celebration of the Bicentennial of the Constitution continues until 1991, the two hundredth anniversary of the ratification of the Constitution. The special emphasis this year is on activities designed to remind judges, lawyers and other citizens of important events surrounding the birth of our nation 200 years ago.

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.

The national Bicentennial Committee suggested that each circuit feature the Judiciary Act of 1789 in their circuit judicial conferences, and the first segment of the program at the Sixth Circuit Conference will be devoted to that subject.

²Although the additional bankruptcy judgeship for the Eastern District of Kentucky was authorized by P.L. 100-587 effective November 3, 1988, Congress failed to fund the position. It is anticipated that funding will be provided in the FY 1990 appropriation effective October 1, 1989.

In November of last year two significant events were held in Michigan marking the Bicentennial celebration. A special conference on the Constitution and Law Related Education was held in Lansing, and on November 17, 1988, Governor James J. Blanchard hosted a Ratification Celebration in Detroit, the state's first capital, commemorating the Constitution of the United States and the Michigan Constitution adopted in 1837.

On December 7, 1988 Judge Keith chaired the dedication ceremony for two large banners which were hung on the outside of the Federal Courthouse in Cincinnati calling attention to the important dates relating to the Constitution, the Bill of Rights and the creation of the Federal Judiciary. Similar banners were dedicated in Detroit on January 23, 1989 along with a large framed lobby mural depicting the drafting of the Constitution. In remarks at both dedication ceremonies Judge Keith and Chief Judge Engel emphasized the importance of rededication to the principles of the Constitution.

*Ad Hoc Committee to Review
The Sixth Circuit Judicial Conference*

In January of this year Chief Judge Engel appointed an ad hoc committee to review the Sixth Circuit Judicial Conference. Judge Engel's mandate to the committee was broad: 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 mandate of Section 333 of Title 28, United States Code, that the circuit conferences shall "consider[ing] the business of the courts and advising means of improving the administration of justice within such circuit."

Circuit Judge Gilbert S. Merritt was named by Judge Engel to chair the Ad Hoc Study Committee. In recognition of the statutory authority vested in the Court of Appeals to establish by rule the composition of the conference, the formal committee is made up of members of the Court of Appeals. However, Judge Engel also named a broad based Advisory Committee consisting of active and senior circuit and district judges, a bankruptcy judge, a magistrate, and several life members of the Conference in the expectation that the formal committee and the advisory committee would function as one body. The full membership of the committee and the advisory committee is as follows:

Study Committee

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

Advisory Committee

Honorable Pierce Lively, Senior Circuit Judge
Honorable Charles W. Joiner, Senior District Judge
Honorable Douglas W. Hillman, Chief District Judge
Honorable John D. Holschuh, District Judge
Honorable Henry R. Wilhoit, District Judge
Honorable Julia S. Gibbons, District Judge
Honorable George C. Paine, II, Bankruptcy Judge

Honorable James Carr, U.S. Magistrate
Charles F. Clarke, 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 combined committee held its first meeting on February 8, 1989. Since firm planning commitments have been made for the 1990 and 1991 conferences, the committee agreed to seek authorization from the Court of Appeals to plan the 1992 circuit conference in order to give the committee a first hand view of the issues and concerns involved in the current conference structure and format.

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 new rules are available from the circuit executive's office or from any clerk's office in the Sixth Circuit.

During the year ended December 31, 1988, 23 complaints were filed in the Sixth Circuit, and 23 complaints were terminated. Twenty-two of the complaints were filed by disappointed litigants, four of whom were prison inmates. Seventeen 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. Four complaints were dismissed by the Chief Judge in whole or in part as not in conformity with the statute, and ten complaints were dismissed in whole or in part as frivolous.³ One complaint was referred to a special investigative committee, following which it was acted upon by the full Judicial Council.

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.

A major focus of each of the task forces has been the establishment of death penalty resource centers to provide training, assistance and support for attorneys appointed to represent petitioners in death penalty habeas corpus cases. In the Summer of 1988 the Capital Case Resource Center of Tennessee was established with William P. Redick, Jr. as the Director. As a result of the cooperative efforts of the state and federal participants, the Tennessee center was the first state nationally to receive full matching funds from the state legislature. Similar efforts are underway in Kentucky and Ohio.

Pattern Criminal Jury Instructions

The Sixth Circuit Pattern Criminal Jury Instruction Committee was formed in 1986 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 Judge Julian Abele Cook, Jr. of the Eastern District of Michigan. The other members of the Committee are: Chief Judge Carl B. Rubin of the Southern District of Ohio; Chief Judge Thomas A. Wiseman, Jr. of the Middle District of Tennessee; Judge Ann Aldrich of the Northern District of Ohio; Judge William O. Bertelsman of the Eastern District of Kentucky; and Judge Walter H. Rice of the Southern District of Ohio.

During the past year, the Committee has continued the process of drafting proposed instructions for suggested use throughout the circuit. To date, the Committee has drafted a total of fifty-five instructions, covering general principles, defenses, special evidentiary matters, deliberations and verdicts and instructions for use in connection with questions or problems that may arise after deliberations begin.

Assisting the Committee is a task force of eight distinguished prosecutors and defense attorneys. In addition, eight district judges and eight practitioners have agreed to review the proposed instructions drafted by the Committee and to react with critical comment. Finally, the Committee has obtained the assistance of an expert on federal criminal law and of an expert on the use of plain English. It is hoped that this large and diverse group of participants will produce instructions which will reduce the amount of time and effort practitioners and judges now spend in drafting instructions, reduce litigation at both the trial and appellate level, and, by emphasizing plain English, accurately state the law in a way that is easily understandable by lay jurors.

The first step in the drafting process has been for the reporters to draft proposed instructions, along with accompanying commentaries explaining the law relied on in the instruction. These instructions then are reviewed by the plain English expert to ensure that they will be as comprehensible to lay jurors as possible while retaining compliance with applicable principles of law. Next the proposed instructions are debated and revised at a joint meeting of the Committee and the task force of experienced prosecutors and defense attorneys. The revised instructions then are sent out for comment to the panel of eight district judge reactors. Upon receipt of all reactions, the revised instructions are submitted to the Committee for final approval.

The Committee hopes to complete its work by the end of 1989. At that time all instructions will be distributed to all circuit and district judges in the Sixth Circuit as well as

to all United States Attorneys, all Federal Defender Offices and all Federal Bar Associations for comments, criticisms, and suggestions. Following this the Committee will reconvene to consider all comments and to make final changes in the instructions. The final product will be submitted to the Sixth Circuit Judicial Council for approval in principle only. Because of the inevitable variations from case to case, the Committee will not be seeking approval of the particular wording of the instructions or seeking an order mandating the use of the instructions.

The Committee's goal remains that of producing a set of model instructions that will offer the opportunity to reduce the amount of time and effort judges and practitioners now spend in drafting instructions and litigating their validity at the trial and appellate level.

Funding for this project has been obtained from a variety of sources. Particularly noteworthy are the contributions of several bar groups and law schools. The State Bar Foundations of Michigan, Ohio, Kentucky and Tennessee and the Federal Bar Association for the Eastern District of Michigan have provided grants, while the Ohio Northern College of Law and the Thomas M. Cooley Law School each have agreed to contribute student research assistance and administrative support.

State Federal Judicial Councils

Former Chief Justice Warren E. Burger first called for the creation of ad hoc state-federal councils to promote the cooperative and cordial relationships between the state and federal courts in his 1970 remarks to the American Bar Association. Several states and a number of the circuits responded to his call and established such committees. In 1984 the National Conference of Chief Justices adopted a resolution urging the revitalization of the councils.

There currently are no serious problems affecting the relationship between the state and federal courts in the Sixth Circuit. To the contrary, significant advances have been achieved in the last year. Ohio and Tennessee have now joined Michigan and Kentucky in adopting a procedure whereby federal courts may certify a question of state law to the appropriate state supreme court, and the state judiciary in Ohio, Kentucky and Tennessee have been particularly supportive of the efforts of the Death Penalty Task Forces to obtain adequate resources to support the appointment of counsel in death penalty habeas corpus cases.

Under the leadership of Chief Judge Engel, the state federal councils have been revived in all four states. Meetings of the key federal and state judiciary, including the chief justice in each of the four states, will occur by the end of June of this year.

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. In recent years the office has become increasingly involved in the management of circuit-wide funds for court construction and renovation projects and in providing automation technical support and coordination of the judiciary's long-range plan for court automation.

As secretary and executive officer of the Council, the Circuit Executive provides administrative and staff support to the Council and its committees. For example, the

Circuit Executive's office provides staff support for each of the Bankruptcy Merit Selection Panels, and it administers the complaint procedure under the Judicial Councils Reform and Judicial Conduct and Disability Act.

For the Court of Appeals, the Office of the Circuit Executive exercises administrative control over all 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, assistance with the review of requests for excess compensation under the Criminal Justice Act, and assistance with the intracircuit designation and assignment of circuit, district and bankruptcy judges.

JUDICIAL PERSONNEL IN THE SIXTH CIRCUIT

Each year brings several changes in the judicial personnel of the Sixth Circuit. A chief district judge and a chief bankruptcy judge were lost to death along with two senior district judges. Three judges, including the former chief judge of the Sixth Circuit, assumed senior status. Three new district judges were appointed and one new bankruptcy judge was appointed.

Deaths

Philip Pratt. The Honorable Philip Pratt, Chief United States District Judge of the Eastern District of Michigan, died on February 5, 1989. Judge Pratt was appointed to the District Court on December 1, 1970 and became Chief Judge on March 2, 1986. At the time of his death he was a member of the Sixth Circuit Judicial Council and a member of the Judicial Conference of the United States.

David S. Porter. The Honorable David S. Porter, Senior United States District Judge for the Southern District of Ohio, died on January 5, 1989 following a short illness. Judge Porter was appointed to the District Court on November 3, 1966. He served as Chief Judge of the District from September 19, 1977 to September 23, 1979 when he assumed senior status. After taking senior status, Judge Porter continued to render valuable service to the District Court and by designation to the Sixth Circuit Court of Appeals.

Timothy S. Hogan. The Honorable Timothy S. Hogan, Senior United States District Judge for the Southern District of Ohio, died on January 30, 1989 following a long illness. Judge Hogan was appointed to the District Court on November 3, 1966. He served as Chief Judge of the District from September 19, 1975 to September 19, 1977. He took senior status on September 24, 1979.

G. William Brown. The Honorable G. William Brown, Chief Judge of the United States Bankruptcy Court for the Western District of Kentucky, died on August 13, 1988. Judge Brown was appointed to the bankruptcy bench on August 2, 1982 and was appointed to a new 14-year term on October 1, 1986. At the time of his death, Judge Brown was a member of the Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States.

Senior Status

Pierce Lively. The Honorable Pierce Lively assumed senior status on December 31, 1988. Judge Lively was appointed to the United States Court of Appeals for the Sixth Circuit on October 5, 1972. He served as Chief Judge from October 1, 1983 to April 1, 1988. Judge Lively continues to render valuable service to the Court as a senior judge.

Scott Reed. The Honorable Scott Reed assumed senior status on August 1, 1988. Judge Reed was appointed to the United States District Court for the Eastern District of Kentucky on November 2, 1979. At the time of his appointment to the Bench, Judge Reed was a Justice on the Supreme Court of Kentucky.

G. Wix Unthank. The Honorable G. Wix Unthank assumed senior status on June 14, 1988. Judge Unthank was appointed to the United States District Court for the Eastern District of Kentucky on June 18, 1980. Before his appointment to the Bench, Judge Unthank was Commonwealth Attorney of the 26th Judicial District of Kentucky.

New Appointments

District Courts

Karl S. Forester. The Honorable Karl S. Forester was sworn in as United States District Judge for the Eastern District of Kentucky on August 1, 1988 to the position which was vacated by District Judge G. Wix Unthank's assumption of senior status. Prior to his appointment to the Bench, Judge Forester was engaged in private practice in Harlan, Kentucky.

Leon Jordan. The Honorable Leon Jordan was sworn in as United States District Judge for the Eastern District of Tennessee on November 15, 1988 to the position which was vacated by United States District Judge Robert L. Taylor's assumption of senior status on January 15, 1985. Prior to his appointment to the Bench, Judge Jordan was Chancellor of the First Judicial District of Tennessee.

Paul V. Gadola. The Honorable Paul V. Gadola was sworn in as United States District Judge for the Eastern District of Michigan on January 6, 1989 to the position which was vacated by Chief Judge John Feikens' assumption of senior status on March 1, 1986. Prior to his appointment to the Bench, Judge Gadola was a practicing attorney in Genesee County, Michigan.

Bankruptcy Courts

J. Vincent Aug, Jr. The Honorable J. Vincent Aug, Jr. was appointed United States Bankruptcy Judge for the Southern District of Ohio at Cincinnati on December 1, 1988. Judge Aug was appointed to fill the vacancy created by the resignation of Judge Randall J. Newsome. Prior to his appointment, Judge Aug had served for 12 years as United States Magistrate for the Southern District of Ohio at Cincinnati.

JUDICIAL WORKLOAD IN THE SIXTH CIRCUIT

Workload in the District Courts

Reversing the trend of decreasing filings over the last several years, the filings in the district courts in the Sixth Circuit increased last year. Civil filings increased by 15%, while criminal filings increased by only 6%, leading to an overall increase in total filings of approximately 14% for the twelve month period ending December 31, 1988. Civil terminations increased by 4%, but criminal terminations decreased by 6%. Accordingly, the number of cases pending in the District Courts of the Sixth Circuit increased by about 5%. **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
6th Circuit 1978-1988

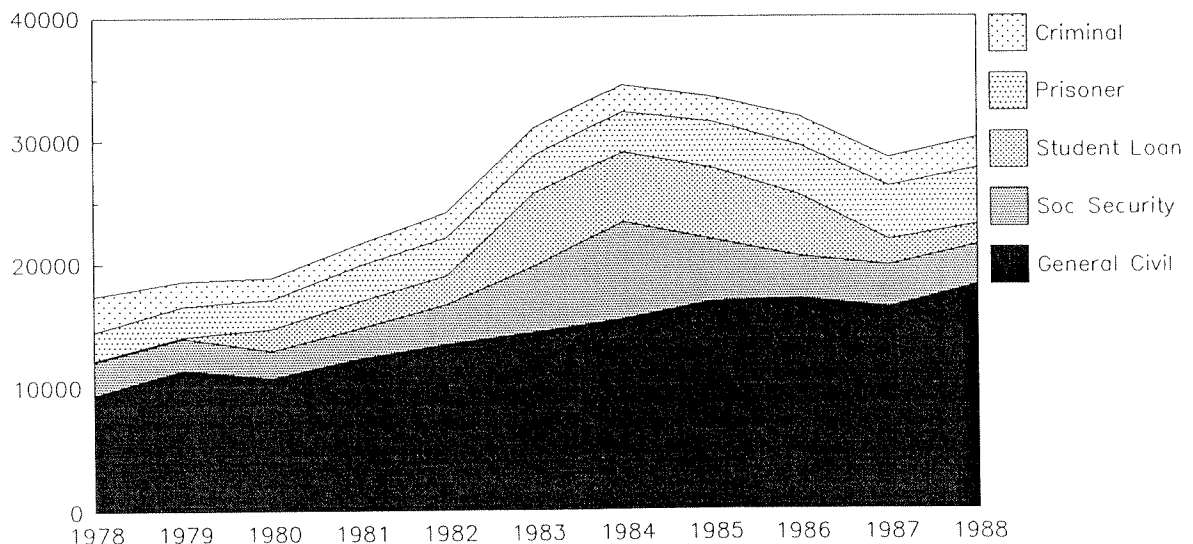


FIGURE 1

Filings. The number of cases filed increased in all of the district courts of the Sixth Circuit during the reporting period which ended December 31, 1988, with the exception of the Eastern District of Kentucky and the Southern District of Ohio. The Northern District of Ohio and the Middle District of Tennessee experienced the largest increases in filings. (Figure 2)

Terminations. The total number of terminations also increased in the Sixth Circuit last year, although the Eastern and Western Districts of Kentucky, the Eastern District of Michigan and the Middle District of Tennessee experienced decreases in terminations during 1988. (Figure 3)

Pending. The total number of pending cases in the district courts of the Sixth Circuit also increased during 1988. The Northern District of Ohio, and the Eastern and Middle Districts of Tennessee experienced increases, while the Western District of Michigan had the largest decline in pending cases. (Figure 4)

District Courts◇Sixth Circuit
Comparison 85 ◇ 88 Filings

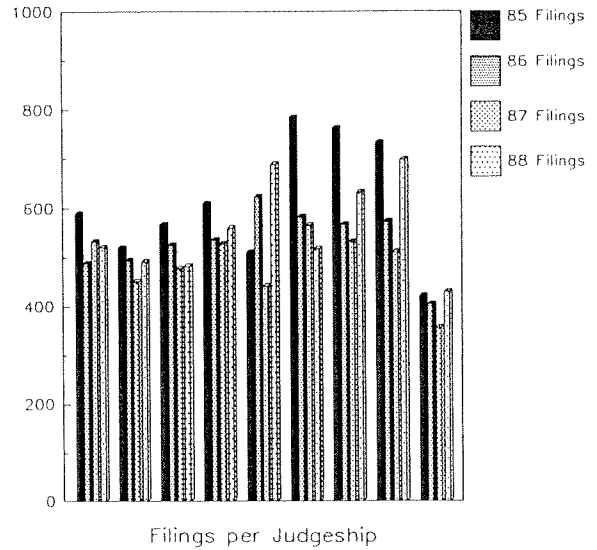


FIGURE 2

District Courts◇Sixth Circuit
Comparison 85 ◇ 88 Terminations

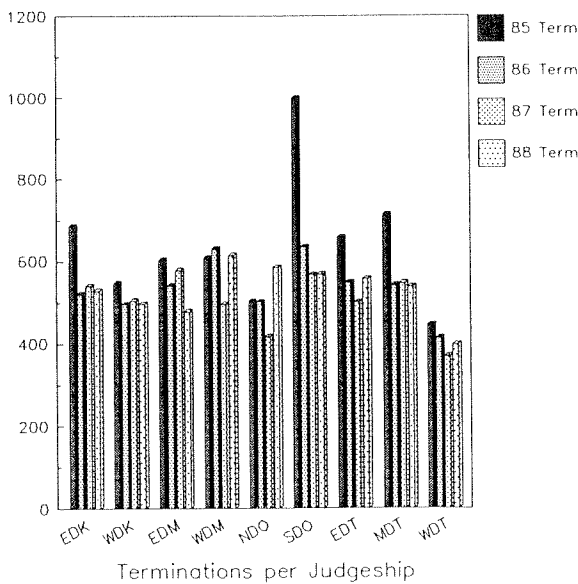


FIGURE 3

District Courts◇Sixth Circuit
Comparison 85 ◇ 88 Pending

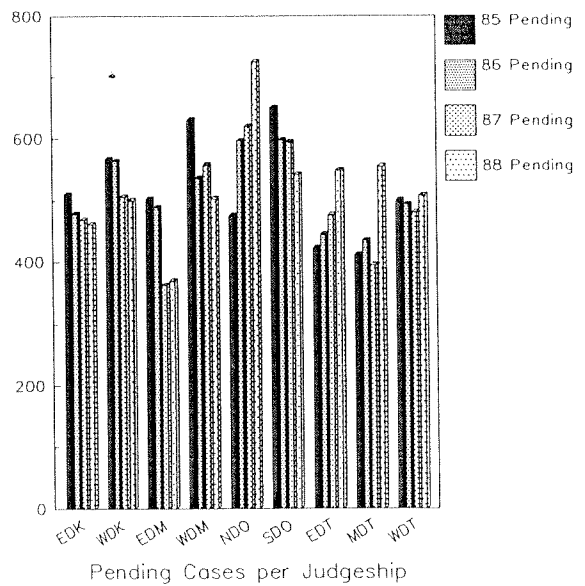


FIGURE 4

Median Disposition Times. The median number of months from filing to disposition of civil cases increased substantially in the Western District of Michigan, the Northern District of Ohio and the Eastern and Middle Districts of Tennessee. Smaller increases occurred in the Eastern District of Michigan and the Southern District of Ohio, while the Eastern District of Kentucky remained constant. Only the Western District of Tennessee achieved a reduction in the median disposition time for civil cases. In all districts except the Eastern District of Kentucky, the median number of months for the disposition of civil cases exceed the national average of approximately eight months. **Figure 5** shows the median disposition times for civil cases in each of the districts in the Sixth Circuit during 1986, 1987 and 1988, and **Figure 6** shows the civil actions three years old or older as a percentage of pending cases for 1987 and 1988 for each of the district courts in the Sixth Circuit.

District Courts ◊ Sixth Circuit
Median Months for Dispositions

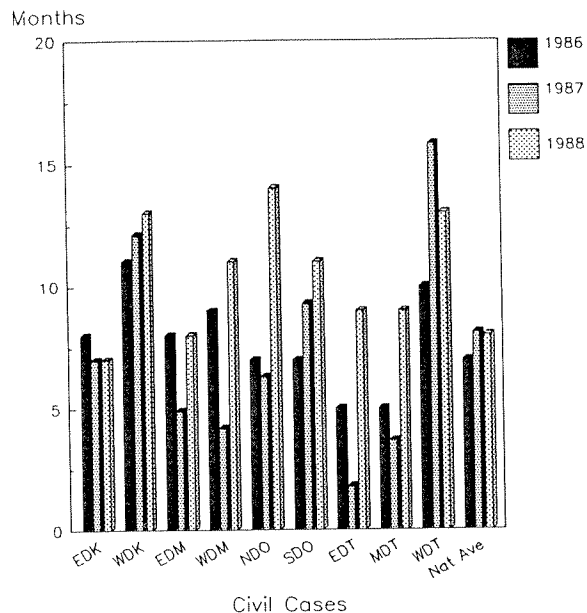


FIGURE 5

District Courts ◊ Sixth Circuit
Percentage of 3yr Old Cases

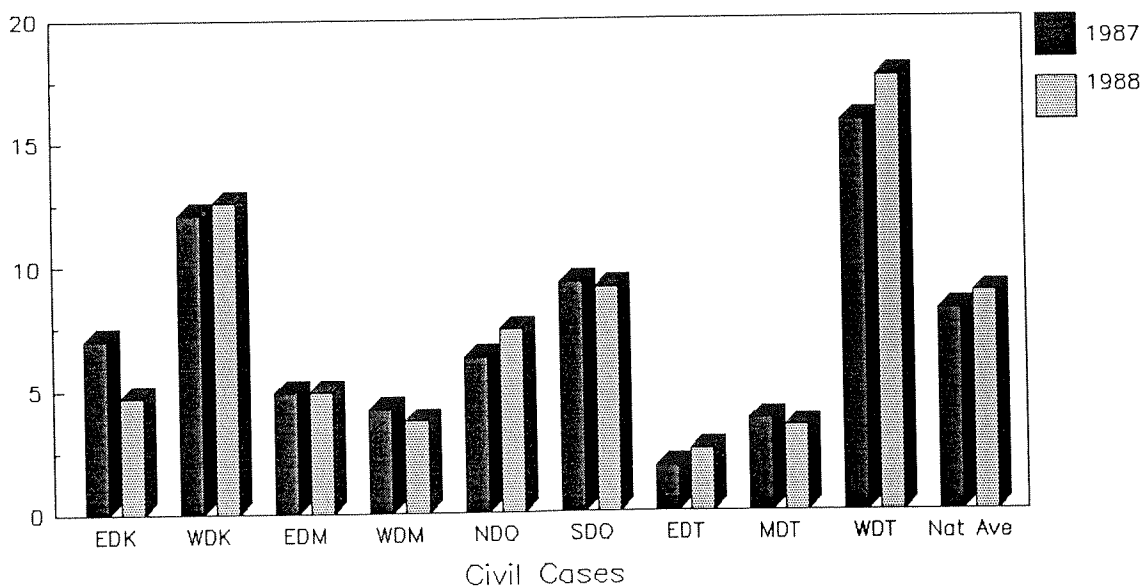


FIGURE 6

Juror Utilization. Figure 7 depicts the juror utilization trends (measured as the percentage of jurors not selected, serving or challenged on the first day of service) for each of the districts in the Sixth Circuit compared to the national average over the last five reporting years. Again in 1988 the district courts in the Sixth Circuit do not compare favorably with the national average. The Sixth Circuit average remains one of the highest in the nation, and only the Eastern District of Kentucky and the Western District of Tennessee had a jury utilization record in 1988 that compared favorably with the national average.

Jurors Not Selected Serving Challenged Jury Utilization Trends 1983-1988

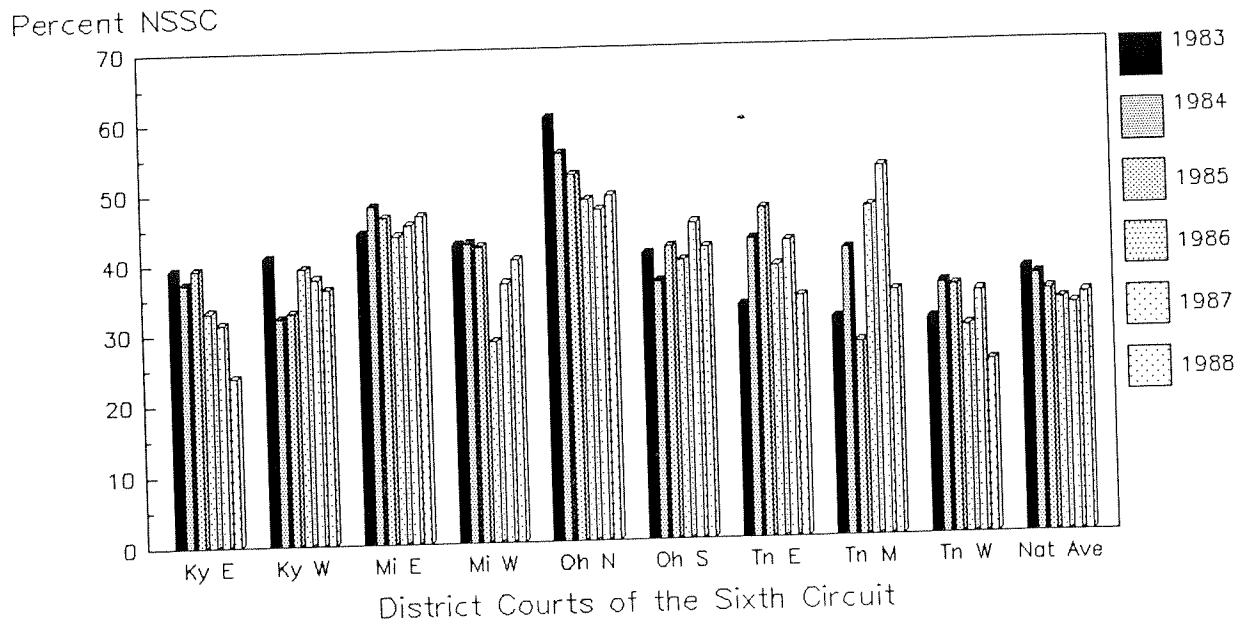


FIGURE 7

Workload in the Bankruptcy Courts

For the third straight year bankruptcy filings increased in the Sixth Circuit, with the total filings (Figure 8) up by 10% circuit-wide. Chapter 7 (Figure 9) and Chapter 13 (Figure 10) cases increased by approximately 10% and 12%, respectively, but Chapter 11 (Figure 11) filings decreased by 3%.

Bankruptcy Courts ◊ Sixth Circuit
Comparison of All Chapter Filings

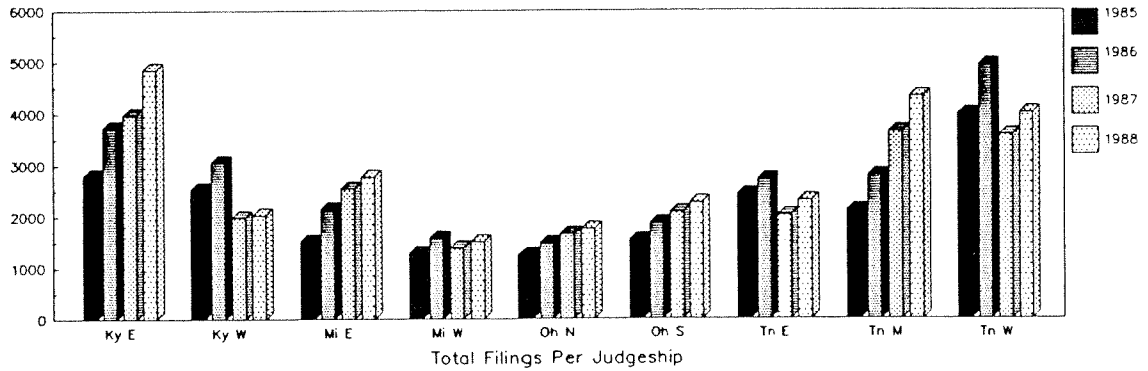


FIGURE 8

Bankruptcy Courts ◊ Sixth Circuit
Comparison of Chapter 7 Filings

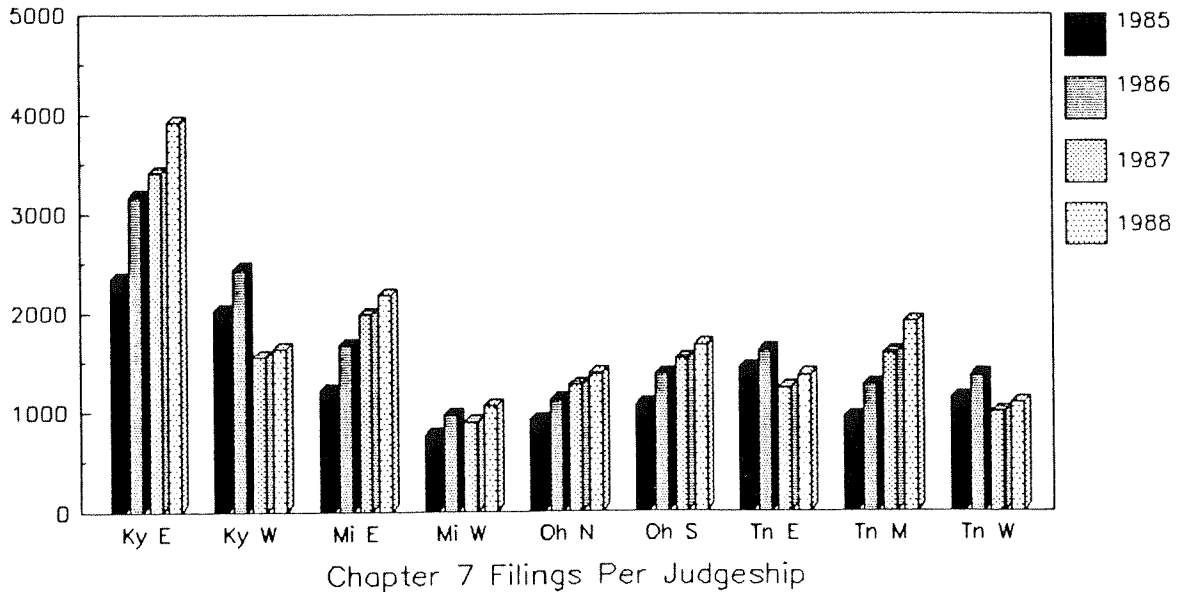


FIGURE 9

Bankruptcy Courts ◊ Sixth Circuit Comparison of Chapter 11 Filings

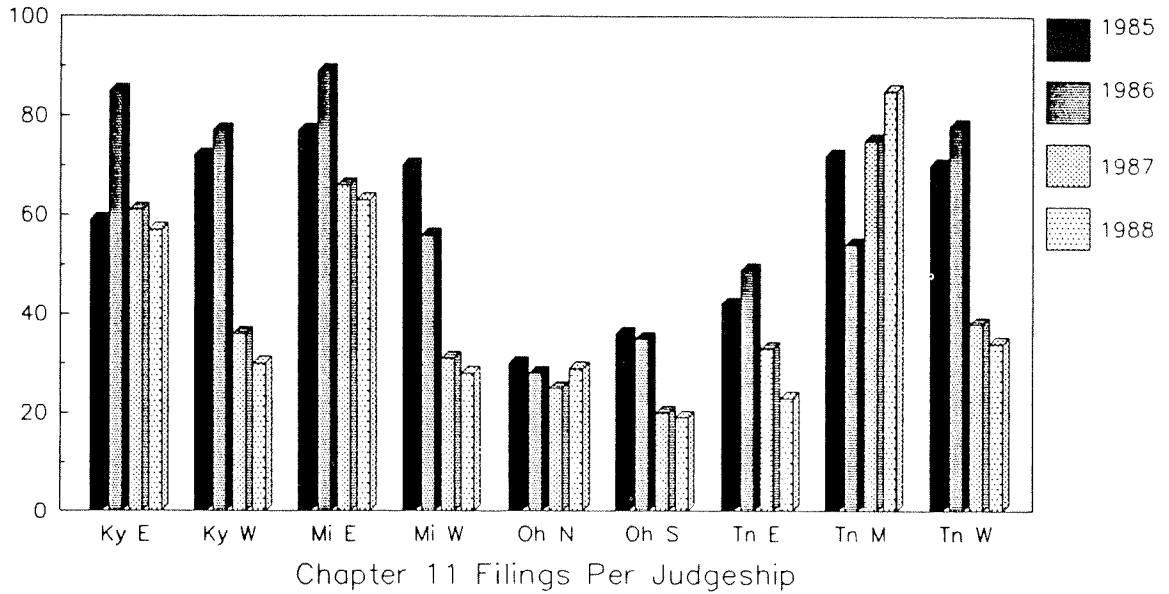


FIGURE 10

Bankruptcy Courts ◊ Sixth Circuit Comparison of Chapter 13 Filings

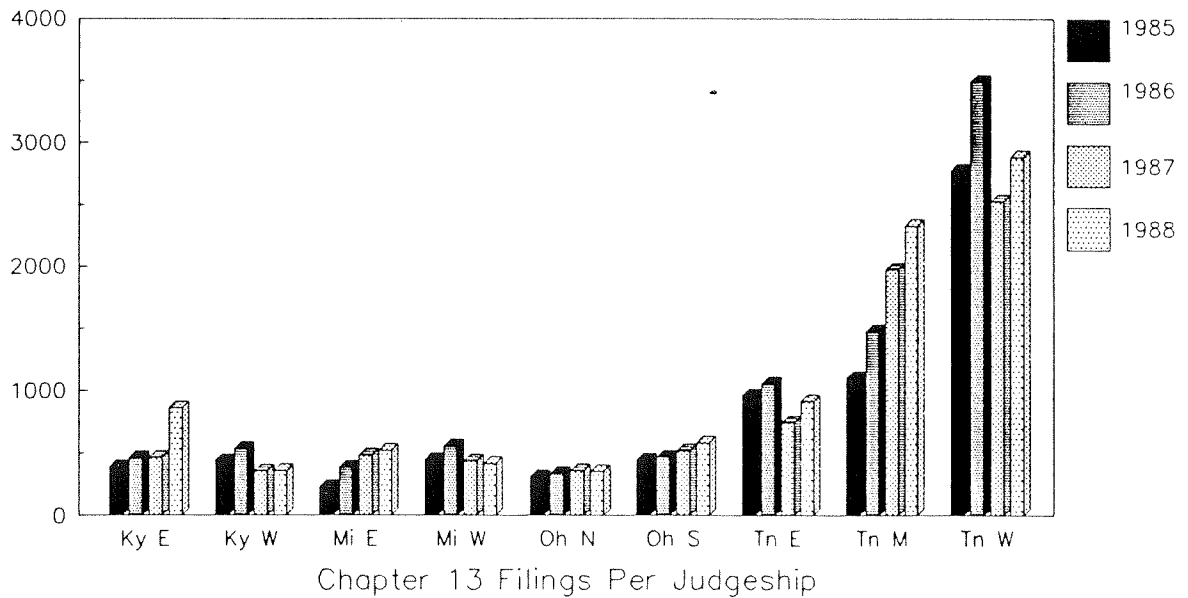


FIGURE 11

REPORT OF THE COURT OF APPEALS

CLERK'S OFFICE

Leonard Green, Clerk

Janice E. Yates, Chief Deputy

As has been the pattern established over the last decade, the volume of new appellate filings continues to rise. During the twelve months ending December 31, 1988, 3,951 new appeals were initiated; this represented an increase of 2.75% over filings for the preceding twelve months. Even this relative respite in the tide of new filings, however, may be short-lived. Statistics for the most recent months suggest that the rate at which new appellate filings grow may again be on the rise. Should filings continue at this recent level for all of 1989, total new appeals will double the number of new cases which were filed as recently as 1980. Encouragingly, decisions during 1988 totalled 3932, an increase of 9.2% over the number of case decisions in 1987. The court's ability to increase its already high level of production is due to its willingness to continue to shoulder one of the heaviest workloads in the entire federal appellate system. Detailed statistics are contained in the appendix to this report.

The court and its supporting personnel continue to search for ways to maximize the use of the resources available to them in this time of continuing draconic budget constraints. The court's commitment to full-scale automation of its docket, and the automation of the judges' own chambers, offers the promise that the creative use of new means of processing more information than has previously been available about the docket will lead to an enhanced ability to manage its caseload.

As expected, the most significant change in the court of appeals' docket during the year was in the area of criminal appeals, due principally to the availability of appellate review of sentence decisions afforded by the Sentencing Reform Acts of 1984 and 1987. From 1987 to 1988 the court's criminal docket increased from 448 to 575 new filings, an increase of 28.3%. With the decision of the Supreme Court of the United States in Mistretta v. United States, 109 S.Ct. 647 (1989), having addressed the issue of the constitutional validity of the guidelines, the focus of appellate activity in these cases has shifted to review of the application of particular guidelines in individual cases.

Beginning in January 1989 the court implemented a schedule of oral argument sittings different from that of previous years. Under the current schedule arguments are scheduled in Cincinnati 24 weeks of the year, spaced as evenly throughout the year as possible. During each hearing week three panels convene to hear cases on Monday, Tuesday, Thursday, and Friday; Wednesdays remain reserved for motions panels, en banc hearings, court and council meetings, and other administrative activity. This schedule allows for a greater degree of collegiality among the court by having more judges together in Cincinnati than was formerly the case, while at the same time allowing the court to continue to adhere to its traditional approach that oral argument is an integral component of the appellate process. The Sixth Circuit continues to be among the leaders among the circuit courts in the proportion of its cases in which the opportunity for oral argument is offered.

The court continues to maintain a productive and close working relationship with its Attorney Advisory Committee, whose work in reviewing the court's rules and procedures and recommending appropriate changes to it has been invaluable. The Advisory Committee includes:

William Baughman, Jr. (Chairman)
Cleveland, Ohio
William Bell
Cincinnati, Ohio
Paul Borman
Detroit, Michigan
Stephen C. Bransdorfer
Grand Rapids, Michigan
Robert R. Campbell
Knoxville, Tennessee
Maura D. Corrigan
Detroit, Michigan
Frank E. Haddad, Jr.
Louisville, Kentucky
Katherine Randall
Lexington, Kentucky
Edward Stopher
Louisville, Kentucky
Nick Zeppos
Nashville, Tennessee

With the implementation of changes in the rulemaking process mandated by the Judicial Branch Improvements Act of 1988, the court will have an additional opportunity to consider the perspective of the bar as it considers changes to the rules of the Sixth Circuit.

With the parameters of practice before the court, as defined by the Federal Rules of Appellate Procedure and the Sixth Circuit rules and internal operating procedures, subject to change over time, the clerk's office continues to work closely with counsel to educate them to the requirements of practice before the court. Through the use of prepared informational aids and personal contact, the office endeavors to assist counsel in preparing their appeals so that unnecessary delay, expense, and confusion are eliminated. The clerk's office always welcomes suggestions from the bar on how it might improve the delivery of its services.

OFFICE OF THE STAFF ATTORNEYS

Kenneth A. Howe, Jr. Senior Staff Attorney

Michael C. Cassidy, Supervising 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's 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 a supervisory staff attorney, thirteen staff attorneys and six 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. 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 issue indexes all civil (excluding Rule 9 cases) and criminal cases on the basis of the appellant's preargument statement and 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 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 Office of the Staff Attorneys provides an assistance to the court in processing of a large number of appeals. During calendar years 1987 and 1988, 866 legal memoranda were prepared each year for panels considering the merits of cases without oral argument pursuant to Sixth Circuit Rule 9. Motions panel research memoranda prepared on substantive motions and appeals lacking proper appellate jurisdiction increased from 217 in 1987 to 278 in 1988. Although issue coding is a new process, over 2,000 appeals were coded in 1988.

PRE-ARGUMENT CONFERENCE PROGRAM

Robert W. Rack, Jr., Senior Pre-Argument Attorney

Lance Olwell, Attorney

Deborah Ginocchio, Attorney

The Court established the Pre-Argument Conference Program in 1981 to reduce procedural problems, clarify issues and facilitate settlements in new civil appeals. 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. The program has grown steadily more effective since its inception; 1988 was its most productive year ever.

Most conferences were scheduled routinely and randomly from eligible appeals before briefs were submitted. Eligible civil cases include all except habeas corpus, prisoner and pro se appeals and most agency cases. About 30 percent of the conferenced cases were scheduled at the request of one or more of the parties. The program treats requests for conferences as confidential. A few cases were 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 was settled.

More than 95 percent of conferences and subsequent negotiations were conducted by telephone. Program involvement in 22 percent of the cases went no further than the initial conference. In the most active 25 percent of the cases, however, conference attorneys engaged in an average of 17 additional conversations with appellate counsel over a period of several months.

SETTLEMENT STATISTICS FOR CALENDAR YEAR 1988⁴

	<u>No. of Cases</u>	<u>No. Settled</u> ⁵	<u>Settlement Rate</u>
All Cases	784	381	49%
In-Person Conferences	27	16	59%
Requested Conferences	239	119	52%
Referred by the Court	5	4	80%

⁴All statistics are from cases in which program involvement was concluded in 1988.

⁵Generally, 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 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.

Some significant number of the cases reported here as settled would have settled or been voluntarily dismissed even without program intervention. Results of a study by the Federal Judicial Center to measure the impact exclusively attributable to the program are expected this summer. Preliminary results show highly favorable ratings from the bar.

CIRCUIT LIBRARY

Kathy Joyce Welker, Circuit Librarian

Pamela Schaffner, Deputy Circuit Librarian

Introduction. In 1988 the Sixth Circuit Library System continued to enhance and develop legal research support services to the judiciary. At the same time, staff positions planned for under the National Library Plan still had not been funded at the end of 1988. The lack of these positions made the establishment of new satellite libraries impossible and denied existing librarians the technical support which they needed to provide the expanded services rightfully expected by the courts which they serve.

The major areas of service to the courts provided by the libraries continue to be reference and legal research support services, coordination of the provision of CALR services, acquisition of new works and materials in various media for libraries and for all individual chambers and offices located within the geographical boundaries of the circuit, resolution of subscription problems, organization of materials, maintenance of all inventory records, and provision of facilities to house collections. Program enhancements in all of these areas were accomplished during 1988.

Personnel Changes. One permanent library position was filled in 1988. Due to the resignation of Marianne Maher, Reference/CALR Librarian in Detroit, Sheryl Summers was hired. Ms. Summers began her duties as Detroit's Reference/CALR Librarian in September.

A temporary indefinite position was established in Cleveland. Joan Rattay began in that position in April, 1988, and funding is provided at least through September, 1989. Special circumstances also led to the placement of short-term temporary technician positions in Nashville and in Detroit. The Nashville technician was hired to expedite the establishment of a computerized opinion index for District Court opinions. The Detroit technician filled in during the concurrent absence of both librarians on staff (one due to resignation, the other due to surgery). Both the Nashville and Detroit temporary positions had expired by the end of 1988.

Reference and Legal Research Support Services. Two satellite libraries started indexes to local district court opinions in 1988. With information supplied by local court personnel, the Grand Rapids and Nashville librarians are creating and maintaining opinion indexes. In Detroit, library personnel are contributing to the indexing and proofreading of the published local district court rules.

Reference and research support services have been extended further to litigants before the courts. In Detroit, the satellite library was opened for the first time to attorneys practicing in court. In Cleveland, library information was added to attorney registration materials distributed by the District Clerk's office. In Cincinnati, a public access personal computer was purchased with attorney admission funds to facilitate access to WESTLAW and LEXIS by attorneys using the library. Attorneys use their own passwords therefore are billed directly to their offices for access.

Reference services were enhanced in Cincinnati with the establishment of a staffed information desk at the entrance to the new third floor library. Another enhancement of public service was the participation of Detroit librarians in the District Court orientation program. By introducing library services at the point of entrance on duty, librarians can apprise new personnel of the services available.

Coordination of the Provision of CALR Services. CALR services to judicial officers increased dramatically in 1988. The "CALR Access in Chambers" program began in April and by the end of 1988, 70 applications were processed by Sixth Circuit librarians. In each case librarians worked closely with interested judicial officers to certify the possession of compatible equipment and to identify titles that could be canceled in order to obtain CALR access. Librarians researched the continuation costs of countless titles so that judges could make informed cancellation decisions. They also tested equipment and coordinated training on chambers equipment. In Detroit, librarians developed a manual for the operation of CPT equipment (held by district judges) in accessing LEXIS and WESTLAW.

Acquisition of New Works and Materials. Collection development was in evidence throughout the circuit. The Cleveland librarian started a collection of slip opinions from circuits beyond the Sixth Circuit and of unpublished Sixth Circuit opinions. The Grand Rapids librarian developed the reference, labor, and environmental law collections. The Cincinnati librarian added a number of state codes, newspapers and the unpublished opinions of the Sixth Circuit. The Memphis librarian began a microfiche collection with the purchase of ALR 1st to replace this space consuming set on the shelves. The Nashville librarian converted the Federal Register and CFR to fiche to save space. He also acquired the New York Supplement and California Reporter completing the National Reporter System in Nashville. Core collections were also purchased for the anticipated Toledo and Columbus libraries at a cost of \$58,000.

In addition to library collection development, library personnel continued to prepare virtually all book requests submitted to the Administrative Office by every judicial officer and every court official within the geographical boundaries of the Sixth Circuit. To make this process as efficient as possible, the Sixth Circuit continued to serve as pilot for the computerized lawbook requisition project that is slated for nationwide adoption in 1989. In October 1988, all orders from the Sixth Circuit were prepared via this new program. A major side benefit of this program is the availability for the first time of accurate cost figures for every location in the circuit.

A computerized purchase order program for materials ordered directly by the circuit (bypassing the AO) also began operation in 1988. Accounts spent via this program include discretionary, GPO and local library funds.

Maintenance and Organization of Materials. The care and feeding of collections continued unabated. A major accomplishment was the solidifying of the service relationships of librarians to court personnel when subscription or billing problems developed. Librarians were increasingly called upon to solve subscription problems, to arrange for the replacement of lost materials, to expedite payment through AO for continuations, and to advise on the upkeep or organization of materials in chambers collections.

Proper organization of materials was enhanced in both Detroit and Cincinnati by the creation of separate superseded collections. In Cincinnati additional space made it possible to interfile materials previously held in storage with the existing collection. A major benefit of this change was the reintroduction of the English collection into the main library collection. Conversely, in Cleveland off-site storage for lesser-used materials was acquired.

Maintenance of All Inventory Records. The Grand Rapids librarian inventoried all collections within the Western District of Michigan. Collections included were in Marquette, Lansing, Kalamazoo as well as in Grand Rapids. Library personnel established shared bankruptcy collections in the three cities of Memphis, Detroit and Cincinnati. All necessary transfers of titles and subscriptions were submitted to AO for processing.

The Cincinnati library staff effected the closing out of Circuit Judge Weick's collection in Akron. Materials were excessed to the federal judiciary throughout the country. A large portion of his collection was transferred to Columbus to form a major part of the core collection for that authorized satellite library scheduled for opening in 1989.

Provision of Facilities to House Collections. A major accomplishment in 1988 was the move of the Cincinnati library into greatly expanded quarters on the third floor of the court building. This new facility culminated four years of planning and design. Over twice the size of the former sixth floor library space, the new space incorporates special function rooms and specialized collections. Seating capacity is tripled and staff work areas are adequate for the first time. The electronic library of the future will gradually take shape in this electronically adaptable space.

Space planning moved into high gear in Memphis, Toledo and Columbus. The Memphis library is quickly running out of room. Plans have been developed to maximize limited space which includes compact shelving. The five-year plan developed for Memphis incorporates anticipated needs for additional equipment and personnel. In Toledo, space was selected, approved, and designed for an anticipated satellite library. In Columbus, the Circuit Librarian participated in the planning for major building renovation that includes adequate satellite library facilities.

Conclusion. Library programs continue to develop. The list of 1988 program enhancements demonstrate that services are far from static. Yet, the provision of all of these services does stretch staff capabilities nearly to the limit. The need for additional staff remains critical and, if not met, services may yet need to be limited. It is hoped that staffing levels will soon be increased so that the necessity of curtailing services can be averted.

REPORTS OF THE DISTRICT 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 was invited to submit for inclusion in this report a separate report for his district highlighting particular achievements or problems which may have been experienced in the preceding year. Pursuant to this invitation, separate reports were received from Chief Judge Siler of the Eastern District of Kentucky, Chief Judge Churchill of the Eastern District of Michigan, Chief Judge Hillman of the Western District of Michigan, Chief Judge Rubin of the Southern District of Ohio, and Chief Judge Horton of the Western District of Tennessee. The reports follow.

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

1988 Annual Report

During the past year, the Eastern District of Kentucky has continued its trend for the past five years by terminating more cases than were filed. This is a remarkable achievement, due to the fact that the district has had one vacancy during most of this time, and had two judges who were ill for part of the period.

The district has continued to have a large portion of its docket coming from social security and prisoner petition cases, but more of these have been terminated than filed.

Some of the success in the district can be credited to the assistance rendered to the Court by the two senior judges, Honorable Scott Reed and Honorable G. Wix Unthank. Both of these judges became senior because of their health, but have accepted and disposed of more than their proportional share of the cases on the dockets.

Judge Unthank has now changed his official duty station to London, Kentucky. Judge Reed has continued his station at Lexington, where Judge Forester is also officially stationed. The current vacancy exists in Pikeville. Nevertheless, the Pikeville docket has been kept current by Judge Forester's handling of that docket, while being located in Lexington.

Although a new bankruptcy judgeship was authorized for this district in 1988, funds were not appropriated, so the vacancy is not expected to be filled until October 1989. The Court has been appreciative of the efforts by Bankruptcy Judge J. Wendell Roberts of the Western District of Kentucky for his assistance in the interim. Judge Roberts had to curtail his activities in the Eastern District of Kentucky when Bankruptcy Judge William Brown died and created a vacancy there.

Respectfully submitted,

Eugene E. Siler, Jr.
Chief Judge

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

1988 Annual Report

LONG RANGE FACILITIES PLAN. Under the leadership of Chief Judge Philip Pratt, the Court laid the foundation for future development in the U.S. Courthouse in Detroit until the year 2000. The Court's Long Range Planning Committee, consisting of Chief Judge Pratt and Judges Feikens, Churchill, Cook, Woods and Suhrheinrich, discussed and revised staff proposals which drew on the consultations among District Court executive staff, the Circuit Executive's Office, Administrative Office Facilities Branch, GSA Field Office in Detroit and GSA Regional Office in Chicago. The Committee's recommendations were then approved by the entire Court. The Court's new long-range planning efforts were spurred by the awareness that six District Judges would be eligible for Senior Status between July 1989 and December 1993. Of these, four are Detroit judges whose successors will presumably need to be accommodated in the U.S. Courthouse in Detroit.

The process of planning, funding and constructing facilities being as lengthy as it is, it was necessary to accommodate Judge Paul V. Gadola in a magistrate's facility in Detroit until two additional chambers and courtrooms can be constructed on the 2nd floor of the U.S. Courthouse. Completion of those facilities is expected in 1991 or 1992. Two additional courtrooms and chambers will be constructed on the 1st floor of the U.S. Courthouse requiring relocation of the District Court Clerk's Office to the 5th floor. The U.S. Attorney's Office expansion on the 9th floor will require relocation of the grand jury rooms to the 5th floor. In a decision yet to be made, either the Magistrates or the Bankruptcy Court, who currently share the 10th floor, will move to the 3rd floor allowing room for expansion and renovation on the 10th floor as well as creation of new facilities on the 3rd floor. It is expected that future circuit judge chambers and U.S. Attorney's Office expansion will consume all available space on the 6th floor. The projected growth of the Bankruptcy Court, Magistrates, District Court and Bankruptcy Court Clerk's Offices, Probation Department and Pretrial Services Agency, and the U.S. Attorney's Office indicate that by the mid or late 1990's, U.S. Courts and the U.S. Attorney's Office will be the sole occupants of the U.S. Courthouse in Detroit.

Chief Judge Churchill has notified the President of his intention to take Senior Status on December 30, 1989 and has requested the creation of senior judge chambers in Bay City.

Since the existing district judge chambers contain more than ample space and, in addition, since there is adjacent vacant space, it will be possible to complete the senior judge chambers for Chief Judge Churchill at minimal cost prior to his retirement date.

JOINT FINAL PRETRIAL ORDER. Years of intermittent consultation with the Detroit Chapter of the Federal Bar Association, the Federal Court Committee of the Detroit Bar Association and the Court's own Local Rules Advisory Committee, finally culminated in the adoption by the Court of Local Rule 40 - Joint Final Pretrial Order. Local Rule 40 took effect on January 1, 1989, so it is too early, at this writing, to determine the effectiveness of this new procedure. However, the adoption of the Rule was widely hailed by both the organized bar and individual Federal Court practitioners as being a giant step toward making it easier for lawyers to practice effectively and efficiently in different courtrooms in the Eastern District.

SENTENCING GUIDELINES. In the Eastern District, the transition to sentencing guidelines proved to be much less painful than many judges had anticipated. Under the

leadership of Chief Judge Philip Pratt and the Court's Probation and Pretrial Services Committee (Judge Patrick J. Duggan, Chair, and Judges DeMascio, Cohn, Newblatt, Gilmore, and Zatkoff), Judges, Magistrates and court staff received the best training available at the time. Chief Probation Officer Raymond L. Frank, Jr., and Supervising Probation Officer Fred Tryles not only played a key role in training our judicial officers and staff but assisted other districts in making the transition to sentencing guidelines.

DISTRICT JUDGES BERNARD A FRIEDMAN AND PAUL V. GADOLA. During 1988, Bernard A. Friedman, Judge of the 48th District Court serving Birmingham, Bloomfield Hills, Bloomfield Township and West Bloomfield Township, Michigan, was nominated, confirmed and sworn in as a United States District Judge for the Eastern District of Michigan. Paul V. Gadola, Flint attorney, was confirmed by the Senate and sworn in on January 6, 1989.

CHIEF BANKRUPTCY JUDGE GEORGE BRODY RETIREMENT. Chief Judge Brody retired effective April 13, 1988 after serving the Court for 27 years. The District Judges appointed Judge Ray Reynolds Graves Chief Judge for a one-year term beginning April 14, 1988 and ending April 13, 1989.

BANKRUPTCY JUDGE WALTER SHAPERO. Thanks to the Circuit Council and the Court of Appeals, the Bankruptcy Court in the Eastern District of Michigan was strengthened immeasurably by the appointment of Detroit lawyer Walter Shapero to the vacant position created by the retirement of Chief Judge George Brody.

COURT AUTOMATION. A UNISYS 5000 computer was installed and implementation of the CIVIL system begun.

PRO BONO ATTORNEY EXPENSE REIMBURSEMENT. The judges adopted the Plan for Reimbursement of Pro Bono Attorney Expenses in Civil Cases and increased the attorney admission fee by \$10 from \$30 to \$40 in order to provide a source of funds reimbursement.

CLERK OF COURT. Robert A. Mossing resigned as Clerk of the District Court, and Bankruptcy Court Clerk David R. Sherwood was appointed Clerk of Court. Mr. Sherwood continues to serve as Acting Clerk of the Bankruptcy Court until a new Bankruptcy Clerk is appointed.

Respectfully submitted,

James P. Churchill
Chief Judge

United States District Court Western District of Michigan

1988 Annual Report

During 1988, the U.S. District Court for the Western District of Michigan experienced an outstanding year. Major changes occurred in personnel, facilities, automation, the probation office, and court workload.

PERSONNEL. In January of 1988, Magistrate Stephen W. Karr retired and was replaced by Joseph G. Scoville. On January 11, 1988, Timothy P. Greeley was sworn in as the first half-time Magistrate in Marquette, Michigan.

Another highly successful Trial Skills Workshop was held January 24-26th to teach 72 newly admitted attorneys basic advocacy skills. This seminar has been held annually the past eight years through the combined efforts of the Western District Judiciary and the West Michigan Chapter of the Federal Bar Association.

February 25th was a noteworthy date in the Western District of Michigan, as Judge Robert Holmes Bell became the first resident federal judicial officer in the City of Lansing, Michigan. On that date, the clerk's divisional office joined Kalamazoo, Marquette and headquarters at Grand Rapids, with a judicial presence in Michigan's capital city.

On August 18, 1988, the court held a portrait hanging ceremony and reception for Senior Judge Miles and Chief Judge Albert Engel of the Sixth Circuit. Through the auspices of the Federal Bar Association, portraits of Senior Judge Miles and Chief Judge Engel were presented to the court in ceremonies that overflowed into two courtrooms, attended by the judges' wives, family, former law clerks, lawyers from all over the district, and many notable friends and guests.

The district judges have continued throughout the year to meet monthly and during November, all the judges and the clerk spent two days meeting in Muskegon on court goals and other important topics of mutual concern.

FACILITIES. A dedication ceremony for the Lansing courthouse was held on April 18, 1988. Notable dignitaries from Congress, the Executive Branch and the Judicial Branch, as well as members from state and local government, attended the dedication and dinner sponsored jointly by the Ingham County Bar Association and the Federal Bar Association, West Michigan Chapter.

Through the cooperative efforts of G.S.A., the clerk's office in Kalamazoo was moved to a more spacious location in the Kalamazoo Courthouse. In addition, a new magistrate's facility was constructed on the fifth floor in the Grand Rapids Federal Building.

Construction renovations to the Marquette facility were initiated and have been on-going since early 1988. Chief Judge Hillman, representatives of G.S.A., the Administrative Office of the United States Courts, and the U.S. Postal Service met in Washington, D.C. to resolve the benign neglect the Marquette facility had experienced over many years. It is anticipated that construction of a new multi-purpose bankruptcy/magistrate courtroom and magistrate's chambers will commence in late 1989.

AUTOMATION. The Western District was extremely pleased to be chosen as one of the automation courts through a joint venture between district court and bankruptcy court. The district clerk established a systems administrator position out of his regular staff allocation in May, 1988. To date, Judge Gibson's office, two magistrate offices and the

Marquette clerk's office have been networked with computers. In addition, some administrative, financial, and operational clerk's office functions have been computerized.

PROBATION. Under the direction of Chief Probation Officer Brent, the district successfully met the Sentencing Guidelines implementation with a minimum of problems during the initial year of utilization. The probation office continues to provide the court quality service and continues to be a valued member of the court family.

Beginning in 1988, the supervision caseload numbered 401 persons. By year's end, 205 new individuals were placed under probation supervision, while 200 individuals were removed from supervision.

In addition, there were 79 active magistrate cases. Probation received 27 new cases, removed 41 cases and ended the year with 65 magistrate cases under supervision.

COMMITTEES. Chief Judge Hillman appointed a committee headed by Magistrate Scoville, consisting of lawyers, the clerk, and a professor from Cooley Law School as reporter, to conduct a complete review of the local court rules. It is hoped that the rules will be adopted in the current year.

In addition, a Federal Bar Committee headed by Attorney Roger M. Clark was appointed to recommend changes in the Alternative Dispute Resolution court procedures for mediation, arbitration and summary jury trials. It is anticipated this committee's recommendations will also be adopted in the current year.

COURT WORKLOAD. During calendar year 1988, the judges and staff continued to concentrate efforts on the court's workload. New filings reached 2,243 civil and criminal cases, which was an increase of 6% over 1987. Dispositions reached 2,461, approximately +23% over 1987, or an average of 492 disposed cases per judge. The pending caseload of 2,020 cases was -9.7%, compared to the 2,238 pending cases at the beginning of the year. Our district is proud of the hard work of all the judges and court staff, not only in the quantity of cases handled, but also in the quality of service which we have given to the citizenry that we serve.

Respectfully submitted,

-
Douglas W. Hillman
Chief Judge

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

1988 Annual Report

The Southern District of Ohio reports no significant problems during the past year. The District is at full strength with three active judges in Columbus, Ohio, one in Dayton, Ohio, and three in Cincinnati, Ohio. We report with sadness the deaths of The Honorable Timothy S. Hogan and The Honorable David S. Porter, Senior Judges of this District, who died during January, 1989. It is worthy of note that Judges Hogan and Porter were born on the same day, were appointed to the federal bench on the same day, and died within three weeks of each other. One Senior Judge, The Honorable Joseph P. Kinneary, sits in Columbus, Ohio.

As of the date of this report, the district is short one magistrate, although former Hamilton County Common Pleas Court Judge Jack Sherman has been selected and awaits only routine processing. The full complement of Magistrates is three in Columbus, one in Dayton, and two in Cincinnati.

Statistically, the District is ninth in the United States and first in the Circuit in terminations per judgeship. We are seventy-third in the nation and seventh in the Circuit in trials completed per judgeship, leading to the conclusion that cases are disposed of in this District by means other than trial. Our filings per judgeship are such that we are included in the pending Omnibus Judgeship Bill for two additional judges, one of whom will be assigned to the Eastern Division at Columbus and the other will have responsibility in the Western Division for cases both in Dayton and Cincinnati.

Our current district project is to reduce the number of pending cases which are over three years old. As of June 30, 1988, three year old cases constituted 9.1% of the total docket. As of March 1, 1989, the percentage is 8.67, which is slightly below the national average of 8.8%.

We show 534 pending cases per judgeship which is substantially above the national average of 466.

The current situation may be summarized by a paraphrase of the title of Erich Remarque's famous World War I novel: All Quiet in The Southern District.

Respectfully submitted,

Carl B. Rubin
Chief Judge

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

1988 Annual Report

In June of 1988 the judges of the Western District of Tennessee established an accelerated jury trial docket for sixty (60) selected civil cases that could each be tried in three days. The docket was set for a three-week period beginning in the middle of October. All active judges and Senior District Judge Robert M. McRae, Jr., agreed to be available for three weeks, five days a week, to conduct trials. Circuit Judge Harry Wellford and Senior Circuit Judge Bailey Brown each generously agreed to try cases during one week of the three week period. Judge Julia Gibbons, assisted by Clerk J. Franklin Reid, was the coordinator of the docket.

We entered a joint order, filed in each of the cases, in June setting out the procedure for the accelerated trial docket and advising lawyers that none of the cases would be continued because of conflicting engagements or because discovery had not been completed. The order told the lawyers that, as the trial date approached, they would be given further information concerning the placement of their case on the docket so they could, to some extent, anticipate when their trial would begin. We, however, cautioned that they would be expected to be available for trial at any time during the three-week period on a one-half day notice. The order contained a list of all sixty cases on the docket in the order they were to be disposed of.

The two Magistrates for the district, Aaron Brown, Jr., and James H. Allen, were referred all the cases to hold pretrial conferences and mandatory settlement conferences.

As the time for the trials approached and the magistrates began holding conferences, it became necessary for us to remove sixteen (16), or 26%, of the cases from the docket. Some of these were removed for unexpected causes and others were removed because we did not screen them sufficiently before placing them on the docket, a problem that we expect to correct the next time. Eight (8) of the sixty (60) cases were dismissed or had summary judgments granted. In three cases the parties agreed to trials by a magistrate.

The most interesting statistic was that twenty-nine (29) of the cases, or 48%, were settled either at the settlement conferences held by the magistrates or prior to the beginning of the accelerated docket, confirming the conventional wisdom that sureness of a trial is the key to compromising litigation.

When the time for the trials arrived we only had four cases remaining for trial. Three of those were actually tried, and the other one was continued.

We heard some grumbling from attorneys when we set the docket, but we felt that it was fair given the age and brevity of the cases involved and the substantial advance notice that everyone had. We also received considerable positive comment from the bar.

We concluded that our experiment was sufficiently successful to set another accelerated trial docket for this fall.

Respectfully submitted,

Honorable Odell Horton
Chief Judge
Honorable Julia S. Gibbons
Honorable James D. Todd

Honorable Jerome Turner
Honorable Robert M. McRae
Senior Judge

MEMORIAL RESOLUTIONS

**Memorial Resolution
for
Philip Pratt
United States District Judge
Eastern District of Michigan**

Judges, Delegates and Guests of this Conference, it is with great sorrow and a profound sense of loss that we take note of the death of our beloved friend and colleague, Philip Pratt, distinguished United States District Judge of the Eastern District of Michigan. And acting on behalf of one and all of this Conference, let this Resolution be duly recorded in the minutes and records of the Conference of this Circuit.

Born on July 14, 1924, in Pontiac, Michigan, of parents who immigrated to this country from their native Greece, Philip had the highest sensitivity as to how freedom and human dignity were defined and should be nurtured.

Educated in the Pontiac public school system, where he distinguished himself academically, he won a scholarship to the University of Michigan in the fall of 1942, from whose law school he graduated in 1950. That eight year period, of course, as with so many, was interrupted by Philip's service with the Office of Strategic Services from the late spring of 1943 to early 1946.

From a strong Greek Orthodox background, Philip's religious training had, as a matter of course, included a thorough and rigorous instruction in complex ecclesiastical Greek, which he mastered without difficulty as he did everything else in life he undertook. The University of Chicago later was to provide the wartime opportunity for Philip to become sufficiently fluent in Japanese and Chinese that he might serve with great courage and distinction behind enemy lines in China in the last half of the war in the Pacific - and for this, not unexpectedly, he was awarded the Bronze Star for heroism.

With the end of World War II and the completion of law school at the University of Michigan, which he loved dearly, Philip "came home", back to Pontiac where he served with the respect of the bench and bar as an Assistant Prosecuting Attorney in Oakland County in 1951-52. Philip next undertook the private practice of law for the next eleven years - and quickly established himself as a dedicated advocate of high principles and unquestioned integrity in all his professional and personal relationships.

It was these years of his legal pursuits that honed the extraordinary skills that our profession and the extended community came to know and appreciate in the last 25 years of Philip's life.

As a former President of the Oakland Bar Association, a former Director of Project Hope, Governor George Romney appointed Philip Pratt as Judge of the Oakland County Circuit Court on September 6, 1963, to the consummate satisfaction of every last judge and lawyer, wherever located, whatever their political persuasion. And for the next seven years, to the surprise of absolutely no one, Judge Pratt again distinguished himself.

Hardly a surprise, therefore, when, on December 1, 1970, Philip Pratt was sworn in as United States District Judge for the Eastern District of Michigan, having been nominated by President Richard M. Nixon and confirmed with high marks by the Senate. And it was on this Court where Judge Pratt served with great honor and distinction, the admiration, respect and affection of all of us until his passing on February 7, 1989, after a long and painful illness.

Becoming the Chief Judge of his Court on March 1, 1986, Judge Pratt also served as a member of the Judicial Conference Advisory Committee on Civil Rules from 1978-1984.

He was also a member of the Circuit Council of the Sixth Circuit and of the Judicial Conference of the United States from 1987 to his death.

Though our loss cannot be measured in the loss of this warm, this kind, this gentle, this truly remarkable, very private and gifted man, the outpouring in the remembrances of him is of epic proportions:

"He symbolized everything a federal judge should be. . . . He had compassion, intelligence, the ability to work hard, patience, and the understanding of human values."

"He was the epitome of what a trial judge should be. . . ."

"The greatest tribute to Judge Pratt is that the Clark Adams-Philip Pratt law library in the (Oakland County) courthouse was named after him."

"He was a fine man with no prejudices. . . a most distinguished lawyer, a wonderful judge and father and a loyal friend."

"He was certainly the most intellectual judge on the bench, a real student of the law. He was also the kindest judge. . . . He firmly believed he had a duty to see that everyone received fair and equal treatment."

". . . and such a sense of humor - so perceptive, so wry and never unkind. . . ."

And for a closing assessment:

"It is given to some of us, sometime in our lives, the opportunity to cross the path of a rare man, and depending on the degree of our good fortune to walk along that path together for a time. . . . But, I don't intend to imply by that that he was perfect or, as a matter of fact, that he had any pretensions in that regard. On the contrary, he was heir to human frailties as we all are. His rarity was that he readily understood that inheritance and never ceased to search out these frailties so that he could identify and control them.

"He was. . . a very introspective man, who sought constantly to know, to understand and to comprehend himself. . . . His realization of self and his understanding of, and the compassion for, his fellow man made him a great judge. "Yet, all in all, he was a man; he was unique, but we are all unique, none like any other. But, beyond that, he was a rare man and blessed am I because he was my friend."

Those eloquent words from Judge Pratt some fifteen years ago in a farewell tribute to a friend. As it was with his friend, so, too, it was as to himself. . . .

Above all else Philip loved his family, and all of their tomorrows will yet be filled with his love, his understanding, his caring. Judge Pratt is survived by his widow, the former Mary C. Hill, loved and respected in her own right by all who know her; one son, Peter; two daughters, Laura and Kathleen Stirby; one grandson, Andrew; his mother, Helen; and one sister, Evelyn Weiss.

NOW, THEREFORE, BE IT RESOLVED that the Fiftieth Judicial Conference of the Sixth Circuit in session at Lexington, Kentucky, this 10th day of May, 1989, pays tribute and appreciation to the memory of Philip Pratt, who served his country and 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.

Judge

Albert J. Engel
Chief United States Circuit

Cornelia G. Kennedy
United States Circuit Judge

James P. Churchill
Chief United States District

Judge

George E. Woods
United States District Judge

**Memorial Resolution
for
David Stewart Porter
United States District Judge
Southern District of Ohio**

The Judicial Conference of the Sixth Circuit notes with deep sorrow the death of its colleague David Stewart Porter on January 5, 1989 in Cincinnati, Ohio.

Judge Porter was born in Cincinnati on September 23, 1909 and attended Clifton Elementary School. He graduated from Hughes High School where he was a member of the basketball team. Following graduation from Hughes, he went to the University of Cincinnati and graduated ultimately from the UC Law School in 1934.

Unable to find employment in a law office during the depths of the Depression, he went to work for the old City Ice and Fuel Company in one of those green ice houses, where he worked long hours seven days a week. In 1935 he obtained employment with the Tennessee Valley Authority and worked there for several years.

Upon leaving employment of the TVA, he went to Troy, Ohio where his sister, Sue Pauly, lived and opened a law office. After a few years of practicing law on his own, he was appointed Common Pleas Judge of Miami County to fill the vacancy created by the death of another judge. He was reelected several times without opposition, and had served a total of 17 years on that bench when President Lyndon B. Johnson appointed him to the federal bench in Cincinnati in 1966.

Judge Porter was a kindly man and unfailingly courteous to members of the bar practicing before him. Nevertheless, he maintained strict discipline in his courtroom.

Over his 22 years on the federal bench, he had a fairly large number of clerks, all of whom he treated as his sons. All of his clerks had a great fondness for him. He maintained contact with them after they left the court, and continued to keep an interest in their progress in the profession.

Judge Porter's decisions were made after lengthy and serious study and reflection, and were not often reversed. He was a man about whom it could be said, without fear of contradiction, that nobody ever said anything bad about him.

Judge Porter leaves his wife Marjorie, his three daughters, Molly Porter of London, England; Margaret Alexander of San Francisco, California; and Elizabeth Blistein of Annapolis, Maryland, and three grandchildren.

The Judicial Conference of the Sixth Circuit conveys its deepest sympathy to Judge Porter's family, and requests that this Resolution be sent to his family as a symbol of the respect in which his colleagues held him.

Respectfully submitted,

Carl B. Rubin
Chief District Judge

Herman J. Weber
United States District Judge

John W. Melville, Esq.

**Memorial Resolution
for
Timothy Sylvester Hogan
United States District Judge
Southern District of Ohio**

The Judicial Conference of the Sixth Circuit notes with sorrow the death of Judge Timothy Sylvester Hogan on January 30, 1989.

He had been appointed Judge of the U.S. District Court for the Southern District of Ohio in 1966 by Lyndon B. Johnson to fill the vacancy created by the promotion of John W. Peck, his very close and dear friend, to the Court of Appeals, Sixth Circuit. He served until 1979, at which time he took senior judge status, which function he was performing at the time of his death.

While in the private practice of law, Tim was considered by his peers to be one of the very finest trial lawyers in Southern Ohio. He developed his initiative and legal capacity at a very early age while acting as trial counsel for the receiver of the various Detroit Banks during the bank holiday in the 1930's. After a four-year stint in the military during World War II, he returned to Cincinnati and assumed a leadership role among the practicing members of the Cincinnati bar who held him in the highest regard.

Tim was active in the affairs of the Democratic party. His father had been Attorney General of the State of Ohio and a candidate for U. S. Senator as the opponent of Warren G. Harding. Tim unsuccessfully ran for the state House of Representatives, the state Senate and state Attorney General. The Democratic Party recognized his ability and dedication by requesting him on several occasions to institute election contest lawsuits. He was also active in the primary campaign of Estes Kefauver for President.

Tim was courageous. Although he was not subject to the draft because of age and family, he enlisted in the Army Air Force on the day after Pearl Harbor. He rose to the rank of Lt. Colonel while serving in military government. He was speech writer for General Lucius Clay until he refused to write a speech condemning the Germans as members of the postwar peacetime world. Even at that early date, it was Tim's firm opinion that the Germans would become essential partners of the United States in dealing with the Soviet Union militarily, economically and politically. Among his other duties was as conferee at the Potsdam Conference.

Tim, although he would never have so described himself, was an intellectual. He attended the law college at the University of Cincinnati at the same time as working on his undergraduate degree at Xavier University, graduating No. 1 in the class from both institutions and being awarded the Order of the Coif. He was No. 2 in the state bar examination.

Tim was always sensitive to the problems of the downtrodden. His decision limiting the doubling up of occupants at the state prison in Lucasville, Ohio, evidenced this. He took an active role in assisting those addicted to substance abuse. He never forgot the modest circumstances of his birth in Wellston, Ohio in 1909, continuing throughout his life his close association with the people of that depressed area. No one seeking assistance from him came away unsatisfied.

The community of Cincinnati recognized his dedication, love of others and self-imposed standard of excellence. He was awarded an honorary degree by Xavier University in 1976. In August of 1988, Xavier University further expressed the appreciation

of the community by creating an award in his honor and name to be given to the person each year who best exemplified his qualities and his contributions to his fellow man. The citation read:

"A JURIST, STATESMAN, AND PATRIOT RESPECTED FOR GOODNESS AND WISDOM, LEARNING AND WIT, WHO FOLLOWED THE WAY OF HIS CONSCIENCE AND WHOSE CONDUCT WAS CHARACTERIZED BY HUMILITY AND CALMNESS OF SPIRIT."

Tim is survived by Evalon, his wife of 55 years and his daughters, Nancy Dutton and Peggy Wyant; and his son, Tim, Jr.; and nine grandchildren.

The Judicial Conference conveys its deepest sympathy to Judge Hogan's family and requests that this resolution be sent to his family as a symbol of affection and respect for our colleague.

Respectfully submitted,

Honorable John W. Peck
Senior Circuit Judge

Honorable S. Arthur Spiegel
United States District Judge

William McD. Kit, Esq.
Chairman

APPENDIX

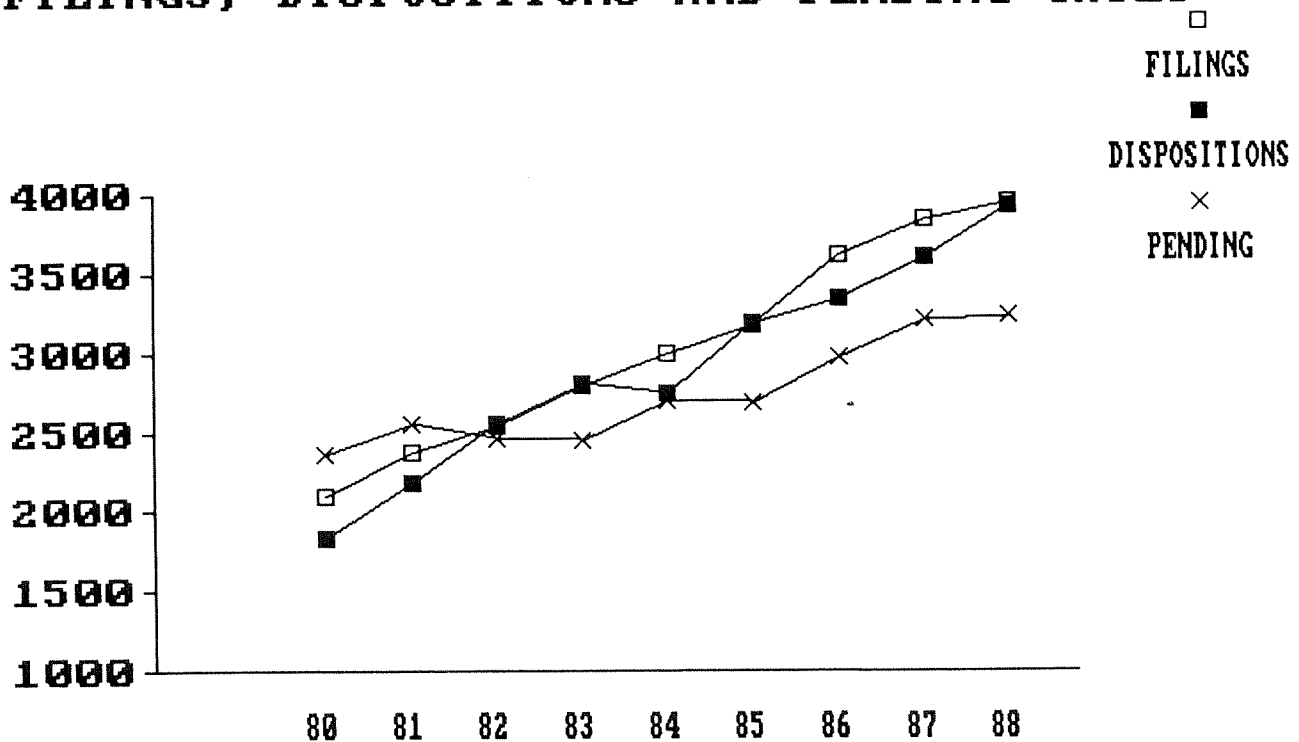
STATUS OF THE DOCKET

Changes in the status of the Court of Appeals docket during the 1980's are illustrated in the graph below.

The table on the next page provides the actual number of filings, dispositions and pending cases in each year since 1980. The bar graph presents the same filing and disposition data in an alternate format.

In each of the following tables and graphs the figures for the years 1980 through 1986 are based on the twelve-month period ending June 30. Figures for 1987 and 1988 are for the twelve months ending December 31.

FILINGS, DISPOSITIONS AND PENDING CASES

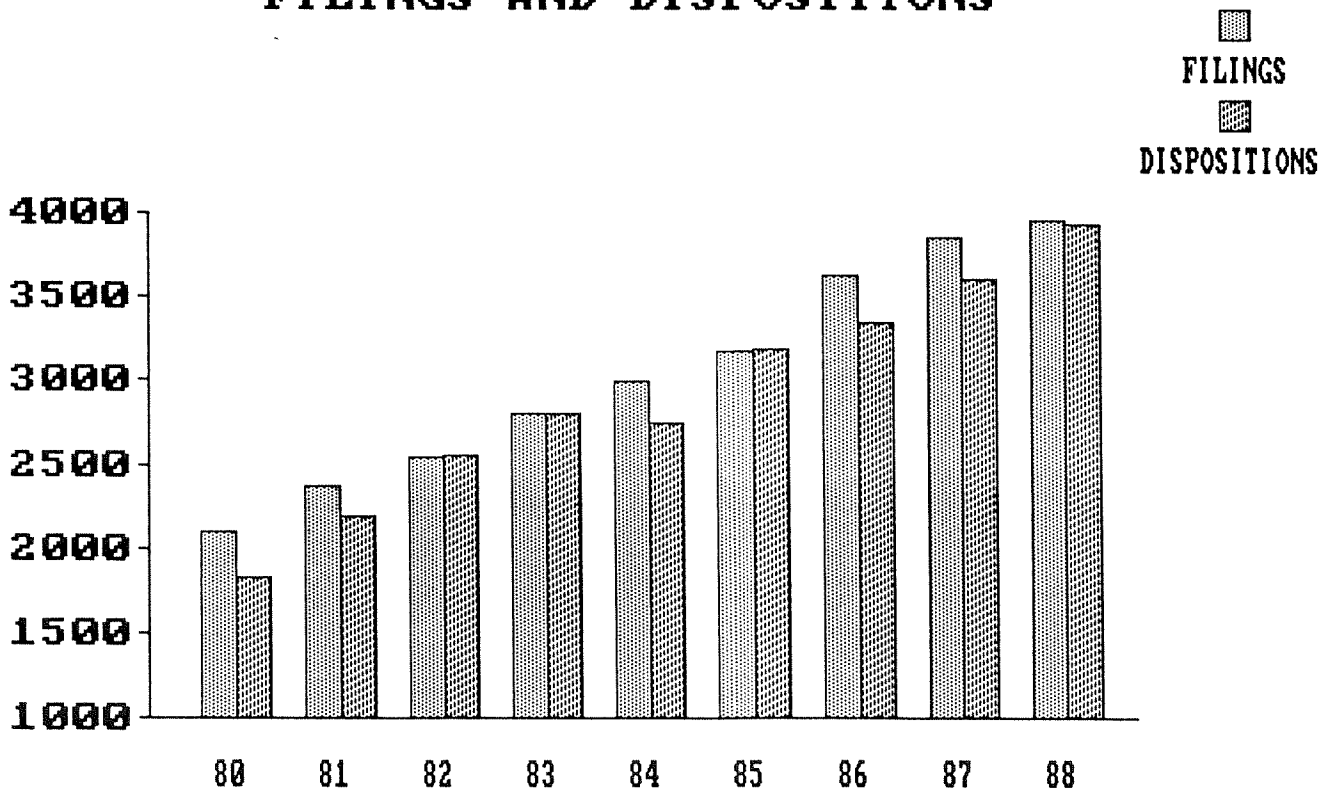


FILINGS, DISPOSITIONS AND PENDING CASES

	1980	1981	1982	1983	1984	1985	1986	1987	1988
FILINGS	2103	2376	2541	2795	2996	3172	3618	3845	3951
Annual Increase	11.3%	13.0%	6.9%	10.0%	7.2%	5.9%	14.1%	6.3%	2.8%
DISPOSITIONS	1832	2189	2551	2803	2743	3183	3337	3602	3932
Annual Increase	12.2%	19.5%	16.5%	9.9%	-2.1%	16.0%	4.8%	7.9%	9.2%
PENDING	2366	2553	2457	2449	2702	2691	2972	3215	3234
Annual Increase	12.9%	7.3%	-3.9%	-.3%	9.4%	-.4%	9.5%	8.2%	.5%

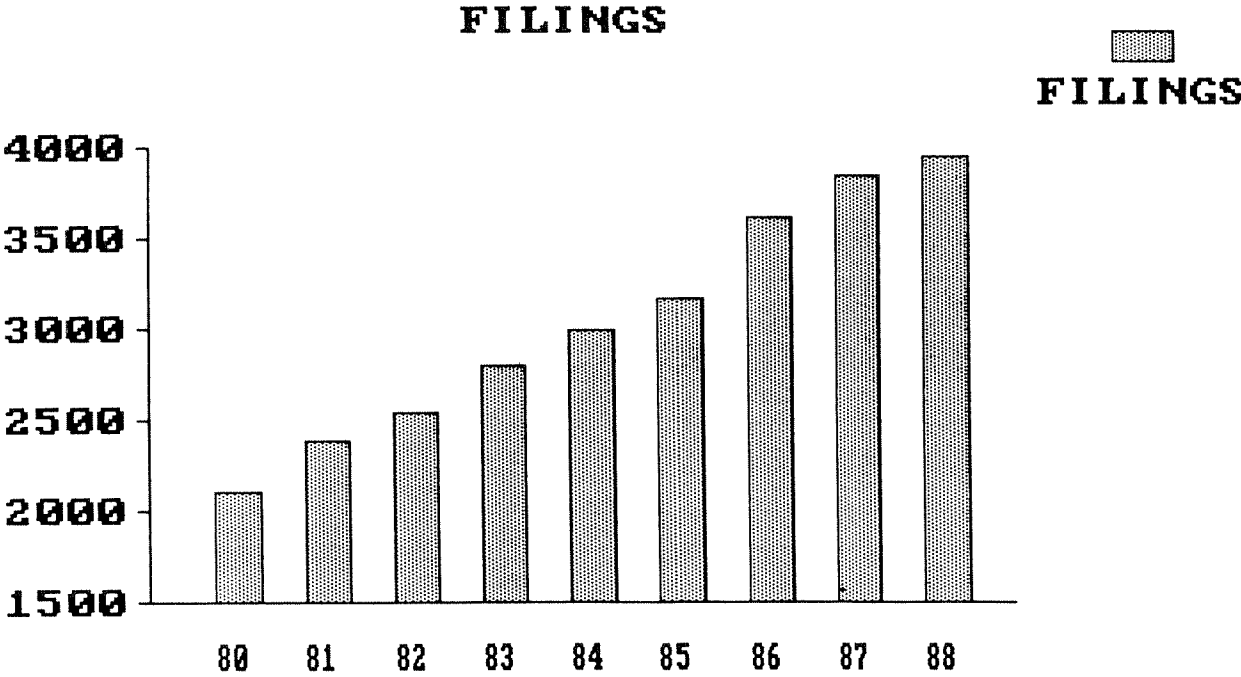
COURT OF APPEALS - SIXTH CIRCUIT

FILINGS AND DISPOSITIONS



FILINGS

New filings have increased annually throughout the decade, with the rate of increase having moderated somewhat in the last two years.



FILINGS, (cont.)

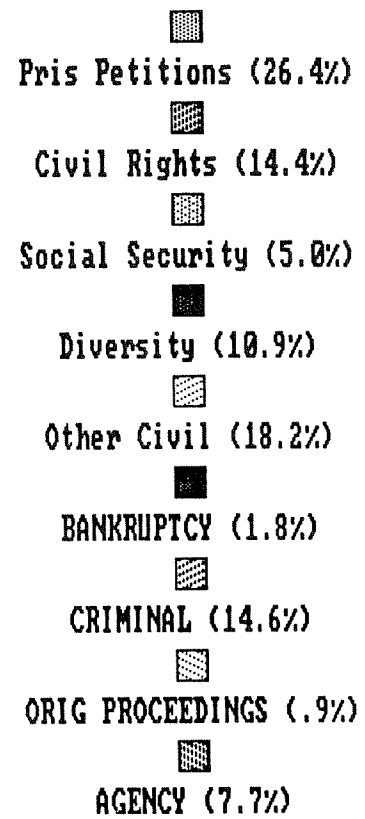
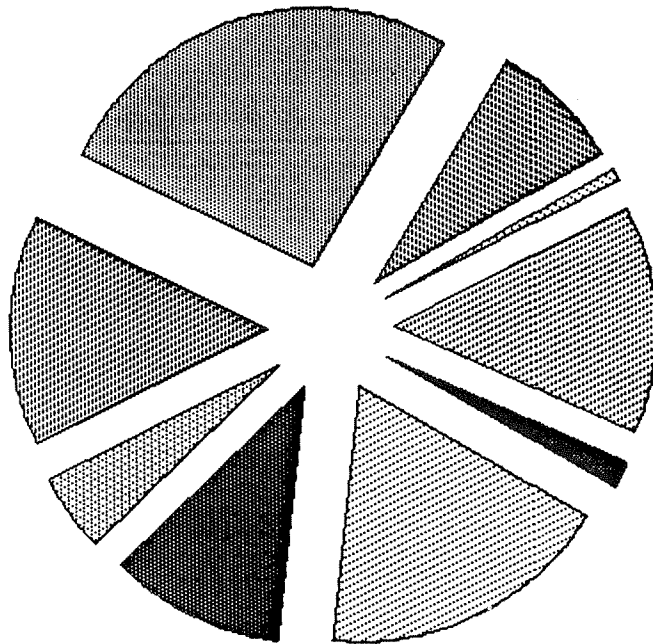
The following table presents a summary of filings during the decade, and identifies the types of cases that have comprised the court's docket during that period.

The two pie charts on the next page show the proportions of filings by case type and by source of filing.

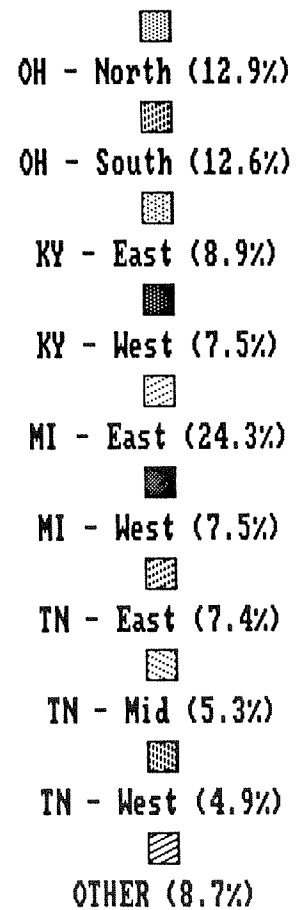
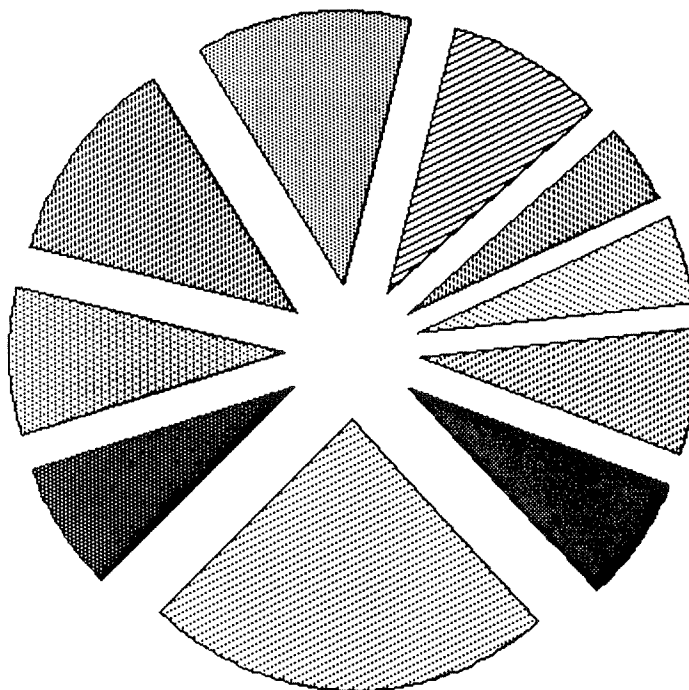
FILINGS BY CASE TYPE

	1980	1981	1982	1983	1984	1985	1986	1987	1988
TOTAL CIVIL	1476	1665	1866	2038	2198	2347	2843	3061	2963
Pris Petitions	420	546	517	568	551	731	953	1098	1045
Civil Rights	272	304	396	411	405	502	553	621	570
Social Security	142	150	165	197	284	240	321	238	198
Diversity	212	254	261	240	231	288	389	408	431
Other Civil	430	411	527	622	727	586	627	696	719
BANKRUPTCY	21	44	52	63	97	93	80	62	71
CRIMINAL	347	351	347	380	405	386	395	448	575
ORIG PROCEEDINGS	21	33	21	32	29	40	32	23	36
AGENCY & TAX COURT	238	283	255	282	267	306	268	251	306
TOTAL CASES FILED	2103	2376	2541	2795	2996	3172	3618	3845	3951

TOTAL FILINGS BY CASE TYPE



SOURCES OF FILINGS



January 1, 1988 - December 31, 1988

FILINGS BY SOURCE

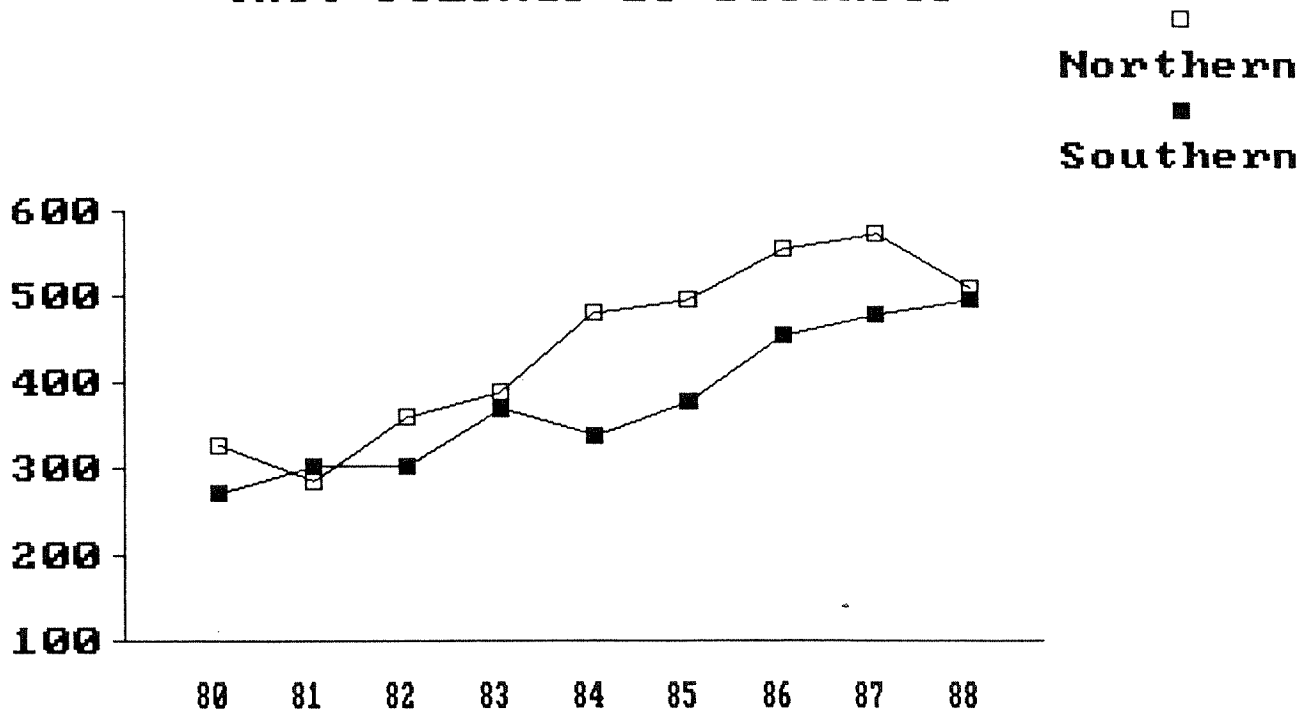
The table below shows the new appeals filed during each of the past nine years, showing the number of appeals originating in each of the individual districts within the circuit.

		SOURCE OF FILINGS								
		1980	1981	1982	1983	1984	1985	1986	1987	1988
OHIO	Northern	327	284	359	388	481	496	556	573	510
	Southern	271	303	303	369	337	378	455	480	497
	TOTAL	598	587	662	757	818	874	1011	1053	1007
KENTUCKY	Eastern	118	190	174	166	239	213	252	314	352
	Western	184	213	200	166	181	191	260	285	296
	TOTAL	302	403	374	332	420	404	512	599	648
MICHIGAN	Eastern	482	496	578	704	683	722	887	1018	960
	Western	75	124	139	173	129	171	171	215	298
	TOTAL	557	620	717	877	812	893	1058	1233	1258
TENNESSEE	Eastern	147	144	164	157	225	213	265	263	292
	Middle	78	113	152	135	162	184	183	208	209
	Western	141	149	144	160	166	165	209	246	192
	TOTAL	366	406	460	452	553	562	657	717	693
AGENCY & TAX COURT		238	283	255	282	267	306	268	243	345
TOTAL		2061	2299	2468	2700	2870	3039	3506	3845	3951

FILINGS BY SOURCE, cont.

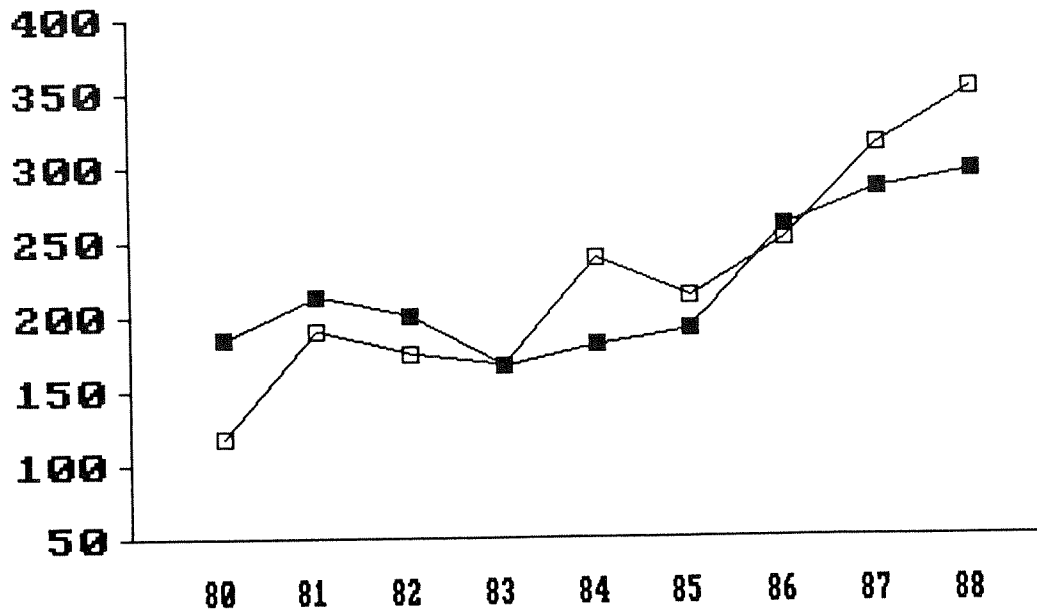
The graphs on the following pages show filings from the district courts of each state. The last graph in this section shows changes in agency and bankruptcy case filings along with cases originating in the court of appeals.

OHIO FILINGS BY DISTRICT



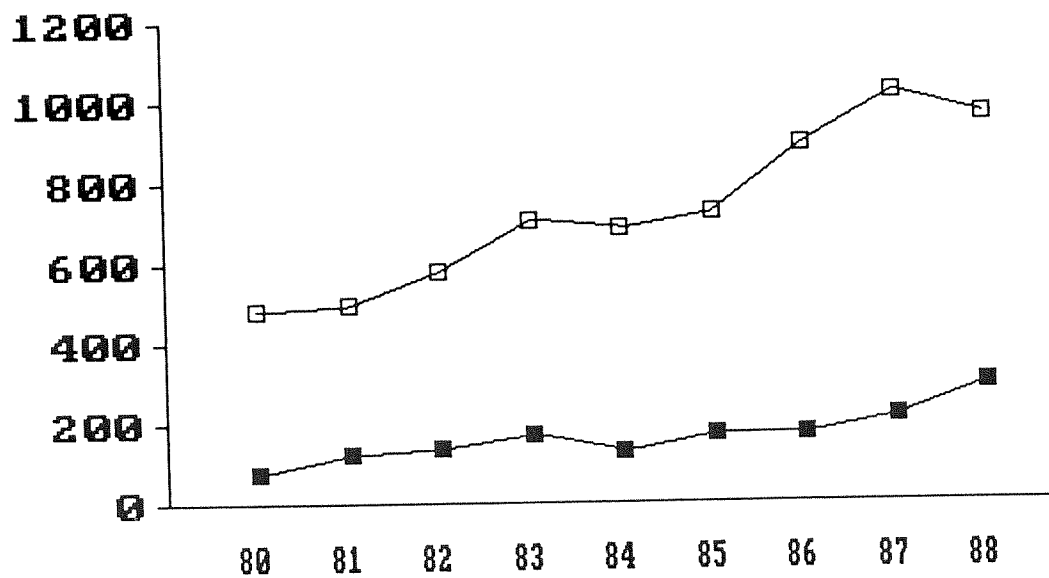
KENTUCKY FILINGS BY DISTRICT

□ Eastern
■ Western

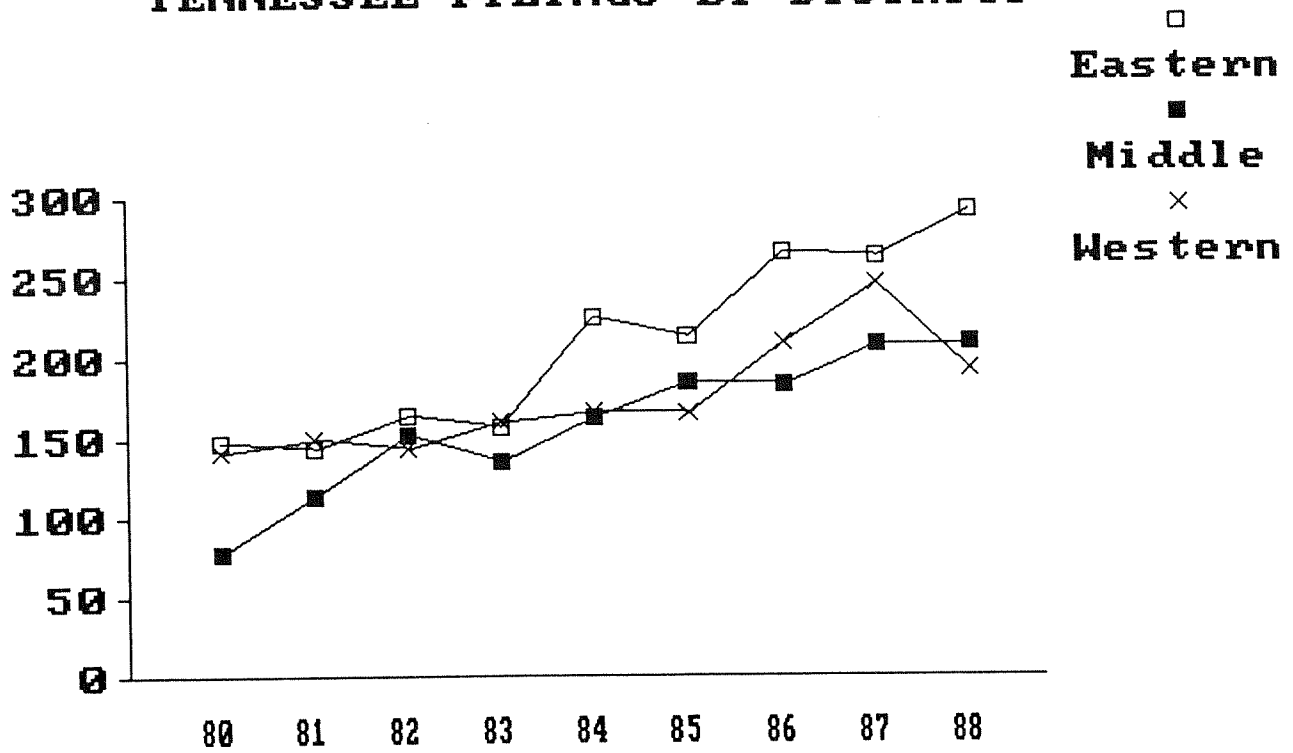


MICHIGAN FILINGS BY DISTRICT

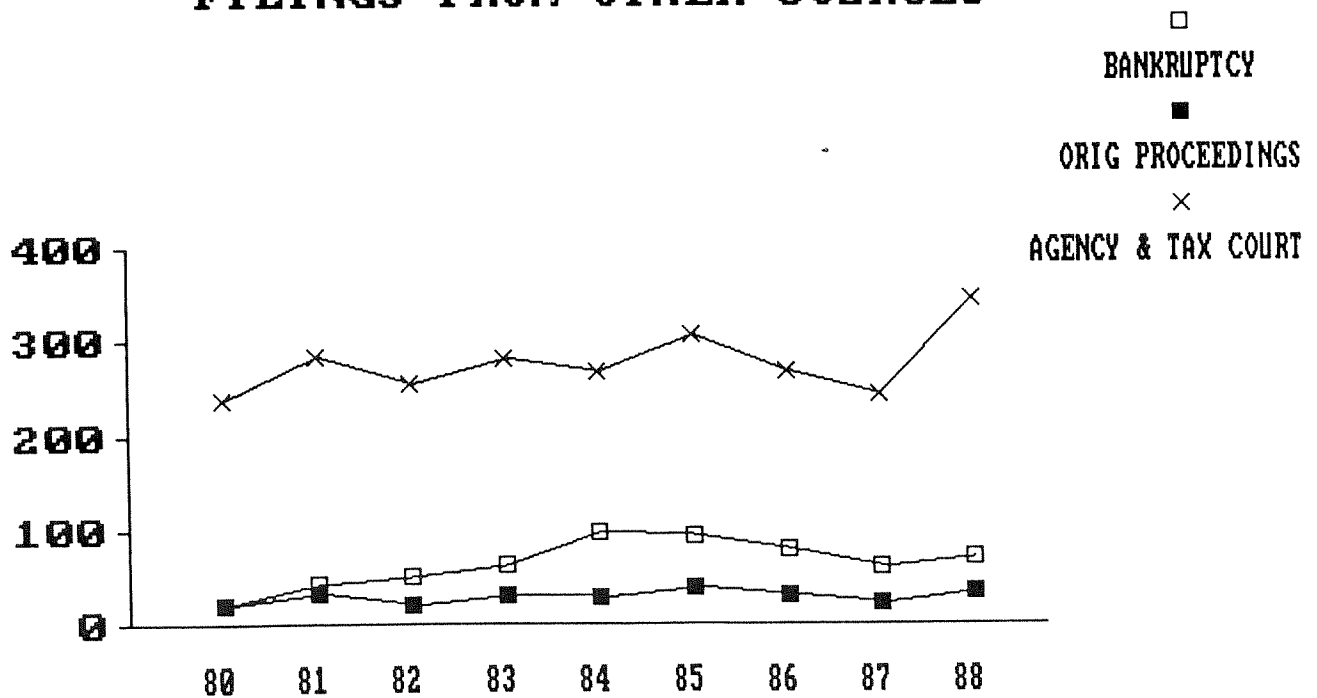
□ Eastern
■ Western



TENNESSEE FILINGS BY DISTRICT

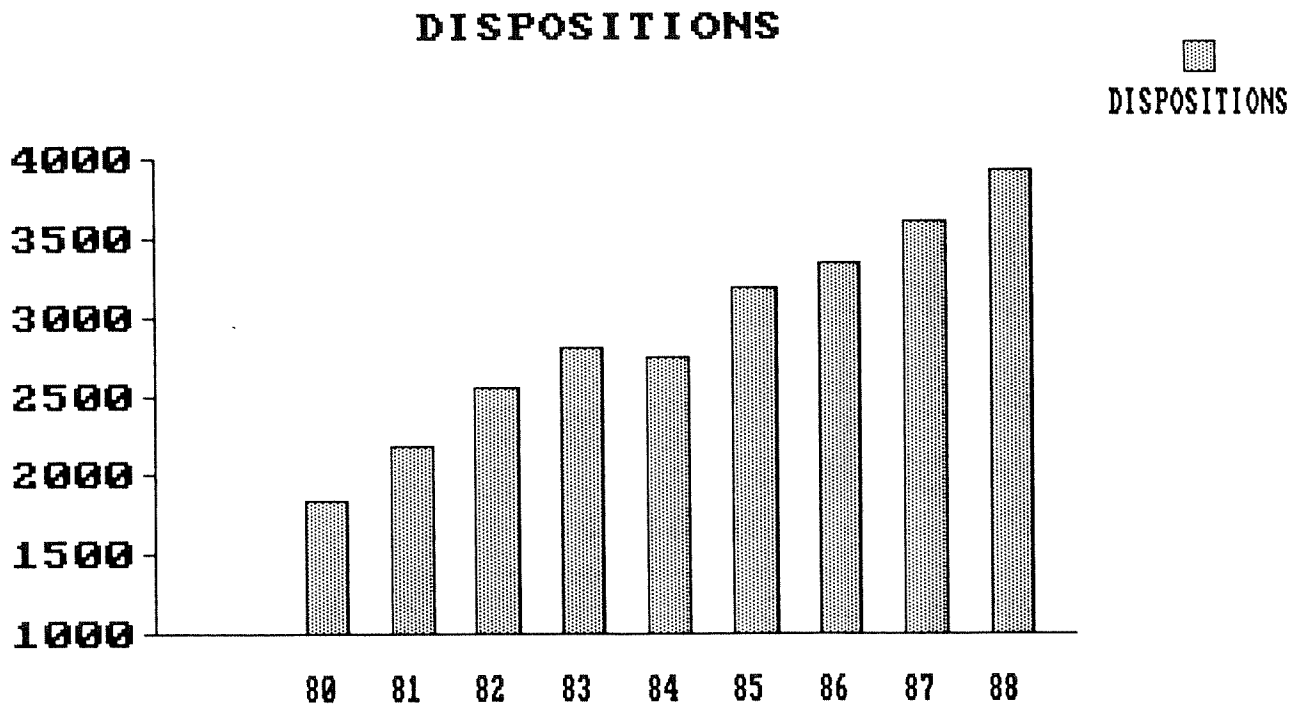


FILINGS FROM OTHER SOURCES



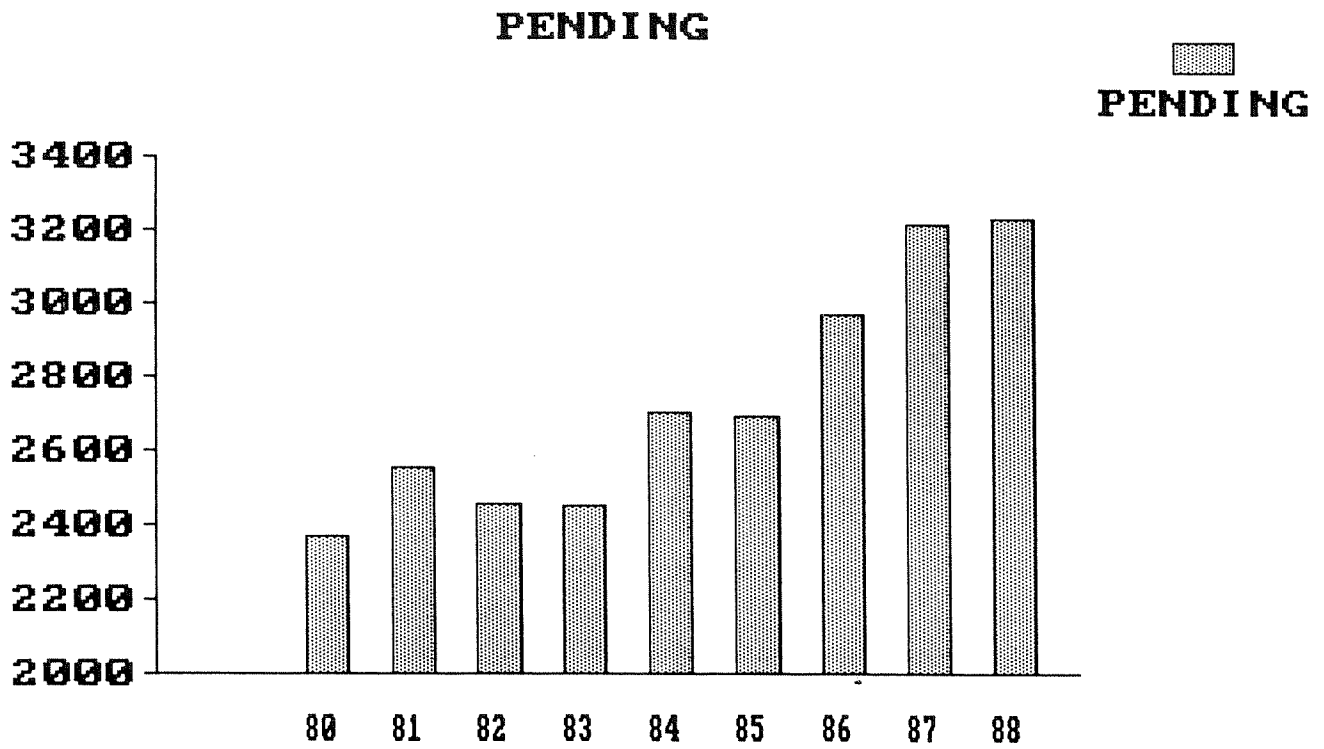
DISPOSITIONS

The bar graph below shows the case dispositions for each year since 1980. The pie chart on the following page identifies how cases were disposed of in 1988 by category of disposition. The table below that chart provides a breakdown of dispositions by category for the past nine years.

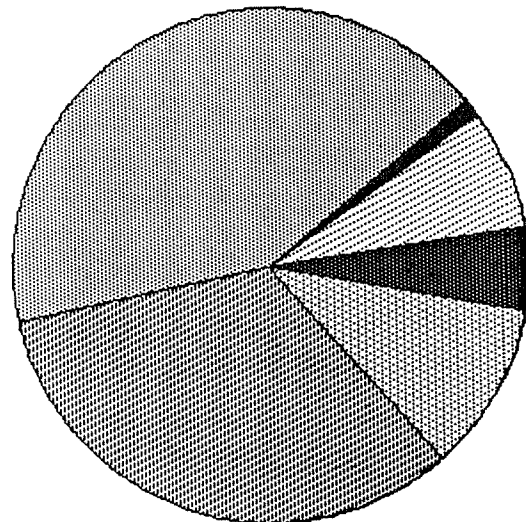


PENDING CASES

The chart below shows pending cases at the end of each of the last nine years. The court's efforts in managing its docket and increasing its level of dispositions have led to a levelling off of the pending caseload.



SUMMARY OF DISPOSITIONS



- Oral Argument (42.4%)
- Summary Dispositions (33.1%)
- Voluntary Dismissals (10.5%)
- Want of Prosecution (5.3%)
- Settlement Program (7.6%)
- Other (1.1%)

1988

SUMMARY OF DISPOSITIONS

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

Fifty Years of Sixth Circuit Judicial Conferences

January 12-13, 1940	607 USPO & Courthouse	Cincinnati, Ohio
May 19-20, 1941	U.S. Courthouse	Detroit, Michigan
May 8-9, 1942	607 USPO & Courthouse	Cincinnati, Ohio
April 16-17, 1943	607 USPO & Courthouse	Cincinnati, Ohio
October 13-14, 1944	607 USPO & Courthouse	Cincinnati, Ohio
October 18-19, 1945	607 USPO & Courthouse	Cincinnati, Ohio
October 24-25, 1946	607 USPO & Courthouse	Cincinnati, Ohio
June 6-7, 1947	607 USPO & Courthouse	Cincinnati, Ohio
June 4-5, 1948	607 USPO & Courthouse	Cincinnati, Ohio
June 3-4, 1949	607 USPO & Courthouse	Cincinnati, Ohio
October 14-15, 1950	607 USPO & Courthouse	Cincinnati, Ohio
October 5-6, 1951	607 USPO & Courthouse	Cincinnati, Ohio
April 18-19, 1952	734 U.S. Courthouse	Detroit, Michigan
April 17-18, 1953	Courtroom, University of Michigan Law School	Ann Arbor, Michigan
April 23-24, 1954	Room 150, University of Michigan Law School	Ann Arbor, Michigan
April 29-30, 1955	Room 150, University of Michigan Law School	Ann Arbor, Michigan
April 20-21, 1956	607 USPO & Courthouse	Cincinnati, Ohio
April 19-20, 1957	University of Michigan Law School	Ann Arbor, Michigan
June 5-6, 1958	University of Michigan Law School	Ann Arbor, Michigan
April 24-25, 1959	805 USPO & Courthouse	Cincinnati, Ohio
April 22-23, 1960	New College of Law Building. Ohio State University	Columbus, Ohio
April 28-29, 1961	The Dearborn Inn	Dearborn, Michigan
April 13-14, 1962	University of Louisville Law School	Louisville, Kentucky
April 19-20, 1963	The Biltmore Hotel	Dayton, Ohio
May 7-9, 1964	The Riverside Motor Lodge	Gatlinburg, Tennessee
May 6-8, 1965	The Netherland Hotel	Cincinnati, Ohio
June 1-3, 1966	The Grand Hotel	Mackinac Island, Michigan
May 4-6, 1967	The Sheraton Cleveland Hotel	Cleveland, Ohio
May 23-25, 1968	The Phoenix Hotel	Lexington, Kentucky
June 25-28, 1969	The Sheraton-Mayflower Hotel	Akron, Ohio
May 20-23, 1970	The River Terrace Motel	Gatlinburg, Tennessee
July 1-3, 1971	The Grand Hotel	Mackinac Island, Michigan
May 24-27, 1972	The Netherland Hilton Hotel	Cincinnati, Ohio
May 30-June 2, 1973	The Galt House	Louisville, Kentucky
May 15-18, 1974	The River Terrace Motel	Gatlinburg, Tennessee
July 9-13, 1975	The Grand Hotel	Mackinac Island, Michigan
May 12-15, 1976	The Neil House	Columbus, Ohio
May 11-14, 1977	The Galt House	Louisville, Kentucky
May 10-13, 1978	The Hyatt Regency	Nashville, Tennessee
May 9-12, 1979	The Detroit Plaza	Detroit, Michigan
July 28-August 1, 1980	The Greenbrier	White Sulphur Springs, West Virginia
May 11-15, 1981	The Galt House	Louisville, Kentucky
July 13-18, 1982	The Grove Park Inn	Asheville, North Carolina
July 7-10, 1983	The Grand Hotel	Mackinac Island, Michigan
May 16-19, 1984	The Westin Hotel	Cincinnati, Ohio
May 15-18, 1985	The Galt House	Louisville, Kentucky
May 14-17, 1986	The Peabody Hotel	Memphis, Tennessee
June 3-6, 1987	The Amway Grand Plaza Hotel	Grand Rapids, Michigan
July 6-9, 1988	The Homestead	Hot Springs, Virginia
May 10-13, 1989	The Radisson Plaza Hotel	Lexington, Kentucky