(10)

Eastern District of Kentucky
FILED
DEC 01 1995
AT LEXINGTON
LESLIE G. WHITMER
CLERK U.S. DISTRICT COURT

ANNUAL REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

appointed under the
CIVIL JUSTICE REFORM ACT OF 1990

DECEMBER 1, 1995

CONTENTS

CIVIL JUSTICE REFORM ACT
ADVISORY GROUP
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

HON. LIONEL A. HAWSE, CHAIRMAN

MEMBERS

LESLIE G. WHITMER
MICHAEL J. O'HARA
MARY ANN STEWART
PETER PERLMAN
DENNIS STUTSMAN
CHRIS GORMAN
JOSEPH L. FAMULARO
ALLISON I. CONNELY
LARRY C. DEENER
KEITH HARDISON
DEBRA H. DAWAHARE
JOSEPH M. SCOTT, JR.
AL SMITH
C. EDWARD HENRY
RON L. WALKER
RICHARD G. GRIFFITH

EX-OFFICIO MEMBERS

Honorable William O. Bertelsman
Honorable Henry R. Wilhoit, Jr.
Honorable Karl S. Forester
Honorable Joseph M. Hood
Honorable Jennifer B. Coffman
Honorable G. Wix Unthank

Robert M. Bratton, Reporter

3) Pro Se Litigation (prisoner appeals);
4) Alternate Dispute Resolution;
5) New Rule 26;
6) The newly proposed Bankruptcy Appellate Panel;
7) Court staffing and facilities;
8) Magistrate Judges

Sub-committees were appointed to examine each topic and to identify any current problems related to these subjects and the possible effect on expense and delay in the district.

THE STATE OF THE CIVIL AND CRIMINAL DOCKETS ASSESSMENT AND CONCLUSIONS

A.) The Civil Docket Generally

A review of civil caseload statistics for the last nine months ending September 30, 1995, when compared with the same time frame for 1994, shows a total pending unweighed caseload of 1683 cases in 1995 compared with 1768 cases in 1994. At the close of the 1994 statistical year on January 31, 1994, there were 1756 civil cases pending.

B.) The Criminal Docket Generally

A review of criminal caseload statistics reveals that on September 30, 1995, 248 cases involving 317 defendants have been filed for the first nine months of 1995 compared to 229 cases involving 331 defendants a year earlier. During the 1994 calendar year, 308 cases involving 440 defendants were filed. As for pending cases, on September 30, 1995, there were 211 pending cases involving 282 defendants compared with 193 cases involving 273 defendants pending a year earlier.

C.) Conclusion

A review of the entire caseload for a twelve month period ending September 30, 1995, reveals that the Court has been successful in reducing the backlog of civil cases despite the substantial increase in criminal cases. While social security cases do not seem to be increasing at this time, there is a significant increase in prisoner filings. Overall the number of

civil cases in other classifications appear to remain fairly constant. (See Appendix A, 1995 statistical data from the Administrative Office for year ending June 30, 1995).

SOCIAL SECURITY CASES

A.) Caseload Statistics

A review of the statistical information furnished to the Committee reveals that as of September 30, 1995, 323 Social Security cases were pending compared with 462 cases pending at the same time the preceding year. At the close of the 1994 statistical year (December 31, 1994), there were 456 Social Security cases pending. During the calendar year 1994, 468 Social Security cases had been filed. For the first nine months of 1995, 270 cases have been filed.

B.) Assessment

The Committee took note that the District Court of Eastern District of Kentucky, still continues to have more Social Security case filings than any other individual district in the country. In fact the district had more filings than the entire Seventh Circuit.

This trend continues and has required constant monitoring. There had been a substantial increase in those filings in the 1993 and 1994 fiscal years, creating a serious problem for the Court. An attempt was made to assign a specific number of cases to all the magistrates to reduce the backlog of cases. However, due to the amount of criminal cases, personnel problems and other case commitments, there was no substantial reduction to the overload of Social Security cases at that time. Accordingly, funding was sought and provided to reduce the caseload by hiring a third law clerk. This has been extremely helpful, but the third law clerk's position is temporary and must be reviewed annually and may, in fact, be discontinued.

A Senior Judge of the District has been handling Social Security cases exclusively. As of September 30, 1994, he had been assigned 394 cases and disposed of 348 of them. For fiscal 1995 (as of August 30, 1995), there were 339 Social Security

cases pending before him. He had been assigned 229 cases and had closed 355 of them.

C.) Conclusion

The Committee takes special note of the fact that the district is indeed fortunate to have a Senior Judge who devotes his time exclusively to one type of case with such heavy filings. This judge, with the assistance of 2.5 (one temporary) law clerks and one secretary, are able to handle these cases in such an efficient and dispositive manner. However, the Committee noted at the same time, in the future this case load could overburden the District Judges and create significant backlogs without the assistance of the Senior Judge.

D.) Recommendation

The Committee is of the opinion that under the circumstances the Social Security docket is being efficiently handled at this time and makes no formal recommendation, but suggests the development of a long range plan to deal with the possible condition that would exist without the assistance of a Senior Judge.

PRISONER CASE FILINGS

A.) Caseload Statistics

A review of the official case filings reports for the months of September and October 1995 (Appendices B and B-1) reveals that during the first nine and ten months of 1995, the pro se law clerk was assigned a total of 345 and 389 cases for those periods respectively. Based on both months on the total filings for the year and the pro se cases for the year, the pro se caseload was twenty three (23%) of the civil cases of the court.

At the close of the 1994 statistical year on December 31, 1994, 102 Writs of Habeas Corpus (state and federal) were filed for the year. The Committee notes that the pro se law clerk does not currently handle state Habeas Corpus cases or motions to vacate. The Committee also noted that official statistics are not maintained by the Clerk's office on the number of prisoner or

writs of Habeas Corpus cases pending at the end of each month. However, the pro se law clerk estimates 47 pending matters in the office as of September 30, 1995, which is considered a small backlog by the Administrative Office of the U.S. Courts. The pro se caseload consists of civil rights actions, Bevins actions, § 2241 filings, some federal habeas actions filed by state prisoners, and anything else that is not designated. Additonally the pro se law clerk's office may handle about 20 motions to proceed in forma pauperis per year which are denied but not counted. They may never become a case.

B.) Assessment

Pro se law clerk positions are part of the staffing compliment allocated to the District Court Clerk. The Eastern District has had only one pro se law clerk for approximately seven years. However, a second pro se law clerk has been hired after having successfully obtaining an exception to the existing hiring freeze.

The recent allocation by Washington of a second pro se law clerk was based on June 30, 1995, case filings of 522 cases involving prisoner petitions. This includes (1) pro se civil rights cases, (2) Writs of Habeas Corpus both Federal and State and (3) motions to vacate. At the 84% staffing level which will hold for some years to come, one pro se law clerk position is allotted for each 211 cases filed as of June 30, 1995, for the past twelve months ending on that date. Under this formula set by the Judicial Conference of the United States we are approaching 2.47 pro se law clerk positions. The present pro se law clerk does not handle all the matters considered by Washington for the position. She handles only prisoner civil rights matters and Federal writs of Habeas Corpus. With the employment of a second pro se law clerk, it is expected, over time, that the full scope of matters will be handled by the pro se office. Of those matters permitted to be filed, the pro se law clerk at this time does not handle all cases to completion.

The Magistrate Judges Chambers refers on the average of 0-7 subsequent matters of that office per month for additional work.

However, while the Committee and the Court gratefully acknowledge the addition of another pro se law clerk to handle the heavy prisoner case filings, this may be only temporary as prisoner case filings could even be greater than its current level.

The Eastern District of Kentucky has one of the highest number of prisons and prisoners, per capita in the United States. With the addition of a fourth Federal prison in the Eastern District, the number of pro se prisoner filings will only increase. Likewise, with the addition of another 500-1200 bed state prison and longer state sentences, there will be a complimentary increase in prisoner filings by state inmates in Federal Court. Indeed, there has been a 13% increase in state prison admissions since 1990. Obviously, increasing incarceration rates will inevitably effect the Pro Se Law Clerk's Office. (See also "Study Reveals Surge in Prisoner Appeals," ABA Journal, 11/95, pg. 222, Appendix C).

Moreover, Kentucky's Federal District Courts will begin to see an influx of habeas corpus petitions filed by inmates on Kentucky's death row. Presently, approximately 70% of all Kentucky's death row cases are in state post conviction. As the Chief Judge of the District has pointed out a death penalty habeas corpus proceeding can "engulf" a judge's chamber.

C.) Conclusions

It seems clear that the number of pro se petitions and habeas corpus petitions in death penalty cases will significantly increase in the next few years. The Eastern District needs to proactively plan for this occurrence. Based on the current official caseload and the impending increase of their filings, it would appear that the addition of one more pro se law clerk over the next two years would be justified.

The Advisory Committee considered the potential impact and complexity of the voluminous filings in pro se petitions and death penalty habeas corpus proceedings. The Eight Amendment law is extremely complex. Because of the voluminous filings the law changes frequently and rapidly. Thus, the "learning curve" for attorneys unfamiliar with this area of the law increases the cost, both in time and money to the Court. It is obvious that a staff of permanent experts, as career employees, will develop a particular expertise in a complex area of the law which could serve the Court well. These permanent experts, working in close proximity to each other and the judges could function more efficiently and effectively in handling not only the current and projected increased pro se caseload, but the capital caseload that will begin to flood the Federal Courts.

To reflect the increased caseload and duties, the pro se law clerk's office should probably be restructured. It should have a senior supervising attorney who would be the office administrator who would carry a substantial caseload, have the power to assign cases, conduct evaluations and direct all pro se attorneys and staff.

With the office of the pro se law clerk being composed of highly trained career public servants the Judicial Conference of the United States should be urged to change the title "Pro Se Law Clerk" to "Pro Se Staff Attorney."

The Committee is aware that the Court will require the necessary funding from Congress in order to prepare for the potential influx of capital cases and prisoner filings. By increasing the number of pro se attorneys on the Chief Judge's staff and the necessary support staff which would be supplied by the Clerk's office, the Court will have at its command a group of career professionals who are experts in this complex area of the law. This should significantly reduce case disposition time and add to the reliability of the Courts final disposition.

D.) Recommendations

1.) The Advisory Committee recommends that the Chief Judge appoint one additional pro se law clerk to the Court's staff.

2.) The Advisory Committee recommends that the pro se law clerk's office be restructured, headed by a senior supervising attorney with the appropriate duties of supervision, etc.

3.) The Advisory Committee recommends that the Judicial Conference of the United States be urged to change the name of Pro Se Law Clerk to Pro Se Staff Attorney.

4.) The Advisory Committee recommends that Congress appropriately fund the additional pro se law clerk position and the appropriate staffing of the pro se law clerk office which is supplied by the Clerk of Court.

ALTERNATE DISPUTE RESOLUTION (ADR)

A.) Introduction

The previous Advisory Committee had recommended the implementation of a voluntary mediation program for use in the Eastern District.

Currently ADR remains open and considered ad-hoc and voluntarily in the district. Independent mediation services are currently being used by the Court.

B.) Preliminary Activity

In order to determine the current status of ADR in the district, the Advisory Committee conducted a survey of both the Article III and Magistrate Judges of the Eastern District. Questions focused on the availability and efficacy of ADR techniques throughout the district. The questions required both empiracle and narrative answers. A review of the responses and questionnaires reveal the following:

1) The most frequently used ADR technique in civil cases is the settlement conference with the magistrate judge.

(One respondent estimated that this ADR technique was used in 50 to 60% of his/her cases);

2) The next most popular ADR technique is the conference directly with the district judge. (Estimated use in this technique is 20 to 30% of the cases);

3) In evaluating which techniques are useful in avoiding trial, the settlement conference with the magistrate judge, voluntary mediation and settlement conferences directly with the district judge are the most helpful, in that order;

4) Least helpful procedures are court ordered arbitration and summary jury trial.

5) Both the Article III and Magistrate Judges encourage the use of ADR technique in their court;

6) Most Judges/Magistrate Judges think that the use of ADR will assist the Court and parties in achieving earlier and less costly resolution of civil cases,;

7) Commercial, personal injury and admiralty litigation are the areas most amenable to resolution through the use of ADR techniques and the parties most amenable to ADR techniques are business and private litigants. (State government officials were mentioned specifically in several answers);

8) Employment discrimination, civil rights and prisoner cases are the least amenable to ADR settlement techniques and the parties least amenable to ADR techniques are governmental entities, local governmental entities and civil rights plaintiffs;

9) ADR is least useful prior to the Rule 26 disclosures or post Rule 26 disclosures but before formal discovery, however, there is no consensus among the judges/ magistrate judges in considering the optimum stage for intervention to be after deposition of the parties, after all formal discovery, or after discovery and the filing of dispositive motions;

10) Generally, counties in the Eastern District have mediation services available, however, it would be beneficial to have a Bar sponsored mediation service established;

11) Arbitration services are considered much less available and only two of the six respondents thought it would be beneficial to initiate them;

12) Involuntary ADR is not effective and only is effective if counsel desired the same;

13) ADR is most effective if a trial date is set early in the litigation;

14) Rule 16(b) scheduling conferences are effective in exploring settlement. (It is to be noted that one respondee expressed a desire to have Rule 26(f) reports require a statement of settlement activity);

15) There is a clear agreement among the judges/magistrate judges that ADR in the district is not mandatory.

C.) Future Activity

The Advisory Committee noted that the respondents uniformly stated their desire to know what practitioners thought were the most beneficial ADR techniques and the most effective timing for the use of such techniques. Accordingly, based on the current survey responses from the District Judges/Magistrate Judges, the Advisory Committee will undertake the drafting and submission of a survey of the Federal Bar of the Eastern District of Kentucky in its 1996 activities.

RULE 26

The nature and extent of disclosures under the proposed amendment to Rule 26 were examined in depth by the prior committee. Subsequent to that report, the Rule 26 disclosure amendments were adopted and have been in effect nearly two years.

The present Advisory Committee is of the opinion that a review of the Rule changes as practiced should be completed.

To that end representatives of the current committee met with the sitting Judges of the Eastern District who expressed their interest in soliciting from the practicing bar of the district how the new disclosure amendments have affected litigation in the district. Special emphasis would be placed upon any unforeseen problems and suggested improvements in litigation practice and procedure in the Eastern District.

The Committee plans a survey of the practicing bar in early 1996 and a report on this issue in the 1996 Committee Report.

BANKRUPTCY APPELLATE PANEL (BAP)

A.) Introduction

The concept of a Bankruptcy Appellate Panel (BAP) was originated by the Federal Courts Study Committee on April 2, 1990, as a means of decreasing the work load of the judges of the Circuit Court of Appeals.

Recognizing that adoption of such a panel in the Circuit could impact the docket of the District Court, the Advisory Committee undertook the investigation of such potential impact if a BAP is established.

The Committee was advised that on October 17, 1995, that the Sixth Judicial Council unanimously established a BAP, subject to the availability of funding. Also, each district would be given the opportunity to determine, by majority vote of the district judges, whether or not to authorize a BAP to hear and determine the appeals originating in that district as required by statute (28 U.S.C. §158(6)(5)). Each district will have the choice of establishing a BAP or opting out of its implementation.

B.) Preliminary Findings

Preliminarily, the Committee was informed that the Bankruptcy Judges think BAP would help create a body of bankruptcy law in the Sixth Circuit which should help reduce bankruptcy litigation. However, the District Court Judges do not

believe a BAP would be cost effective for the litigants or any quicker than the existing turnaround time on bankruptcy appeals.

A review of the records of bankruptcy appeals for August 1, 1994 to August 16, 1995 was only thirty three (33) in number, and is inconsequential with regard to the overall docket of the District Court. Two major business reorganizations, Calumet Farm, Inc. and Century Offshore Management Corporation, provided about one-half of the appeals from the Lexington docket, all of which involved very complicated issues. However, the issues in the Calumet case were principally state law issues of lien priority and ownership rights in stallions and breeding rights. The Century cases were mainly bankruptcy reorganization issues, although state law issues were also present.

C.) Assessment

Beyond the two cases, referred to herein, there appears to be no appreciable impact upon the docket of the District Court, particularly when it is considered that some of the appeals are not prosecuted at all.

D.) Recommendation

The Sixth Circuit Judicial Council, like the Advisory Committee, has recognized that the establishment of a BAP may impact the local Bar. Accordingly, it is necessary that the opinions of the organized Bar be sought so that informed positions for or against BAP may be submitted to the respective District Judges.

The Advisory Committee has considered the preliminary information gathered so far, but is of the opinion that it does not have enough information at this time to make any recommendation regarding the establishment of BAP in the district. Therefore, alerting and surveying the organized bar who specialize in bankruptcy practice will be subsequently studied in its 1996 activities. The Committee will make its recommendation at that time.

COURT STAFFING AND FACILITIES

A.) Current Assessment: Staff

For the past year the staffing of the Clerk's Office has remained constant at 17 positions including one position allocated to become the second Pro Se Law Clerk's position, approved by the Administrative Office prior to September 30, 1995. Since October 1, 1995, Pro Se Law Clerks are not considered in the Clerk's staffing formula but rather on the Chief Judge's staff of the District Courts. The Clerk's office had 36 filled positions on September 30, 1995.

B.) Current Assessment: Funding

As of October 1, 1995, the beginning of the government's fiscal year, the Court is functioning under a continuing resolution pending Congress' approval of the Judiciary's budget, probably sometime in December, 1995. The Eastern District of Kentucky Judges have entered an order finding all of its chamber staffs, U.S. Magistrate Judges and their staffs, the Clerk of Court and his staff and the Chief Probation Officer and his staff, essential to cause the normal processing of case should the debt ceiling not be extended or the continuing resolution terminates without the approval of the Judiciary's budget. A hiring freeze was imposed on October 1, 1995.

C.) Current Assessment: Facilities

In addition, the lack of a 1996 budget and the freezing of 1995 fiscal year funds for design and site purchase for new courthouses at Covington and London, has caused these projects to fall behind schedule. Architects for both projects have been selected and the initial work on considering possible building sites is in progress. The General Services Administration will soon be considering work patterns, etc. as early government planning on the projects continues without the expenditure of funds to begin work by private contractors. The Covington Courthouse will contain 56,050 square feet of court space. The London Courthouse will contain 46,553 square feet of court space.

D.) Recommendations

1.) The hiring freeze must be lifted and the appropriate funding must be made for staff.

2.) Congress must budget the necessary funds for completion of the newly proposed facilities.

ARTICLE III JUDGES AND MAGISTRATE JUDGESHIPS

A.) Current Status

The previous Advisory Committee had recommended the filling of an Article III Judgeship that had been vacant since 1991, and authorization of a full time Magistrate Judgeship at London, Kentucky to replace the part time Magistrate Judgeship previously held at that location.

During the calendar year 1995, the Article III Judgeship had been filled and funded. However, even though the approval of a full-time Magistrate Judgeship position has been made, the lack of a 1996 fiscal year budget funding, this position has not been filled. The U.S. Magistrate Judge's Selection Panel has submitted its recommendation for appointment to the Court. On the announcement of the appointment on approval of the Judiciary budget, up to four months may be needed for an FBI investigation of the proposed appointee. It is imperative that this position be filled with all due dispatch.

The previous Advisory Committee had also recommended the assignment of an additional law clerk for each Magistrate Judge, raising the number of law clerks from one per Magistrate Judge to two. To date, this recommendation has not be implemented. This Committee stands firm on that recommendation.

B.) Assessment

The Advisory Committee expresses concern over the Article III Judgeship at London, Kentucky, due to the already heavy case filings in the areas of Social Security and prisoner cases, and the imminent increases in prisoner cases (see pgs. 4-8). This concern relates to the fact that this District Judgeship is shared with the Courts of the Western District of Kentucky,

rendering this position part-time for the Eastern District. It involves extensive travel throughout the Commonwealth and a partial allocation of time between the two districts. This current condition continues to tax the London docket. Increased prisoner case filings, Social Security cases and a heavy drug trafficking docket could render a currently (barely) manageable situation totally unmanageable. Because of these potential conditions, the Committee thinks it may warrant making the London Article III Judgeship full time rather than part time.

C.) Future Activity

The Advisory Committee's concerns over the impact of increased filings in prisoner and Social Security cases on the expeditions handling of its current docket will be subject of inquiry in its 1996 report.

CONCLUSION

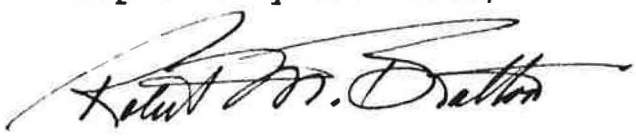
Overall, the Advisory Committee is of the opinion that the docket of the Court is doing well under the circumstances. While the Social Security, prisoner and drug cases still remain high, the handling and disposition of those cases remains at a satisfactory level, because the Court and it's staff are working at full capacity to keep abreast of its docket.

However, the Advisory Committee is fully aware that this cannot continue unless adequate funding is received to implement the recommendations of this and the previous Advisory Committee.

The Advisory Committee is also fully aware of the fact that the present rate of case filings in the area of prisoner cases could rise dramatically and undo those areas of case management and disposition which have been the subject of discussion, recommendation and implementation by the Court as mandated by Section 476 of the Civil Justice Reform Act. From the perspective of the Committee the docket management of the Court has been improved and is more efficient. Continued improvement can be made. It can however, be stymied by deadlock and inactivity of the Executive and Legislative branches of

government. Otherwise our improvement to date will be short lived. The Advisory Committee will continue its monitoring.

Respectfully Submitted,



Robert M. Bratton
Reporter

APPENDIX A

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY95 Statistics Supplement

October 1995

Prepared for the Eastern District of Kentucky

NOTES:

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1995 (the twelve months ended June 30, 1995). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 and all charts except charts 4 and 10 may show slight variations even for prior years, owing to retroactive changes in caseload data. The variations arise from at least three sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing and termination counts. Finally, significant discrepancies are occasionally discovered between the true status of a district's caseload and A.O. caseload data for that district, which may be corrected by a significant one-time change in the district data (e.g. a statistical adjustment that decreases pending cases by 300).

2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been corrected in this and previous updates. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.

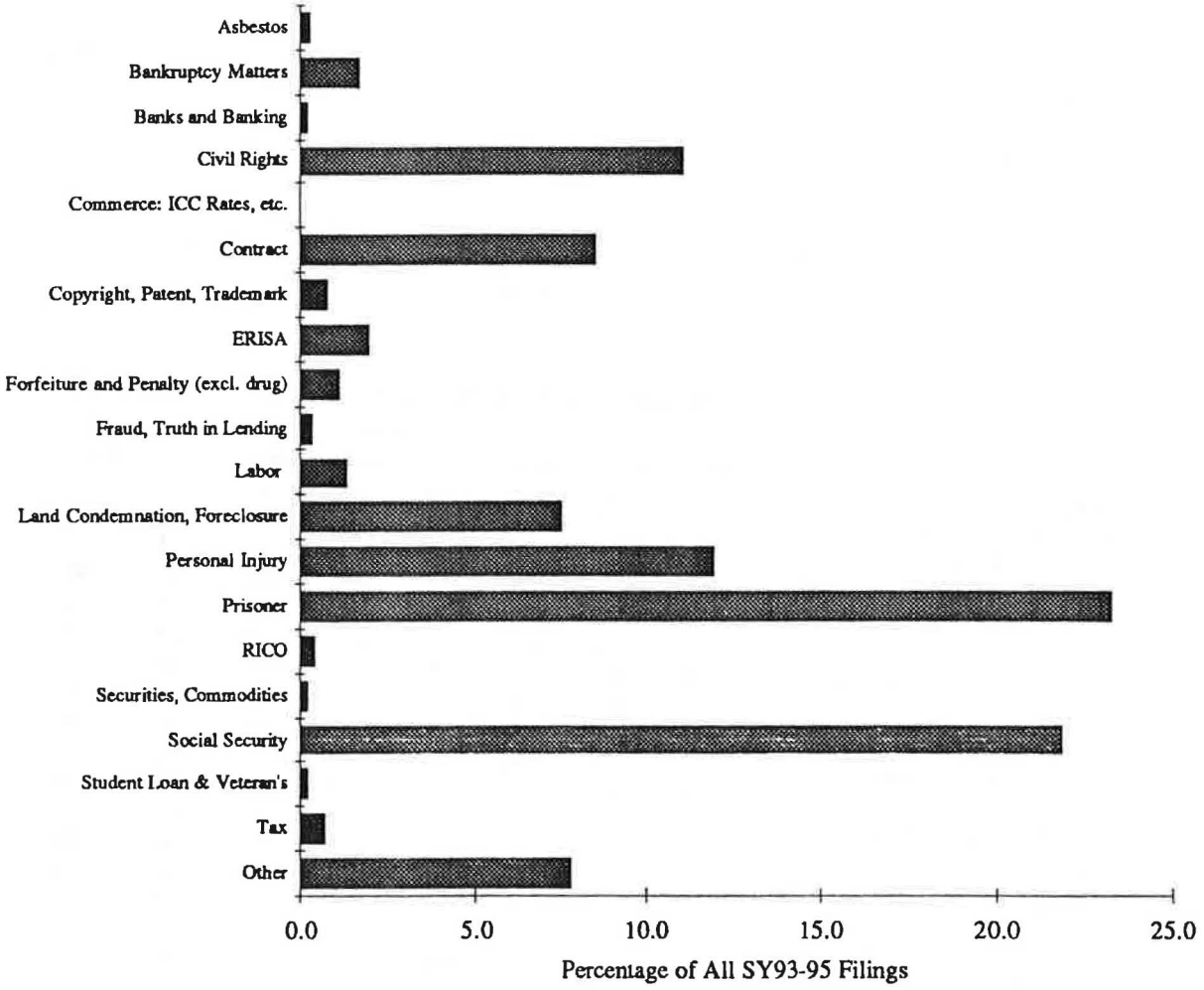
3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this and previous updates.

4. In December, 1993, the Subcommittee on Judicial Statistics accepted a new set of case weights based on a time study begun in 1987. These new weights were employed to prepare Chart 3 (page 13), which may result in updates of Chart 3 for 1993 and later years looking significantly different from previous editions.

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

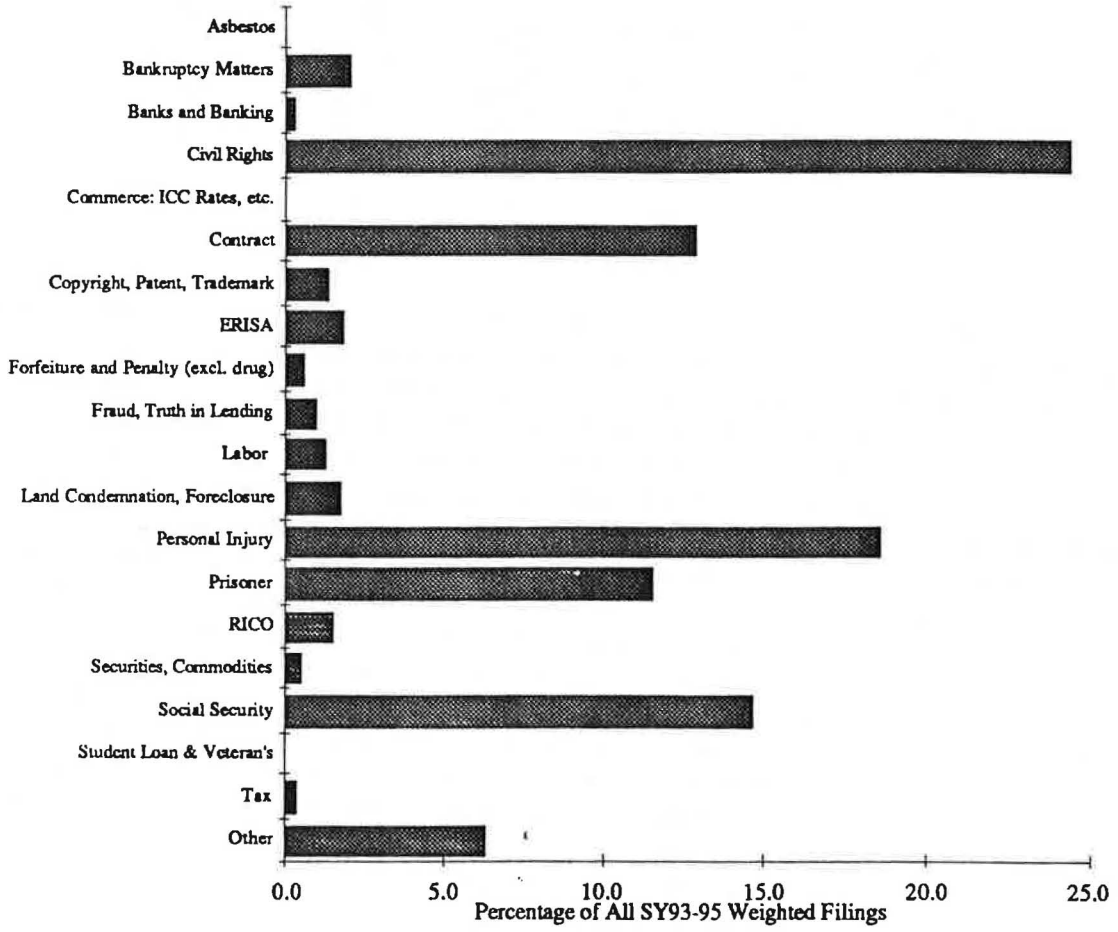
Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Civil Case Filings, SY93-95
Eastern District of Kentucky



c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights (revised in August, 1993) to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

Chart 3: Distribution of Weighted Civil Case Filings, SY93-95
Eastern District of Kentucky



indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY86-95
Eastern District of Kentucky

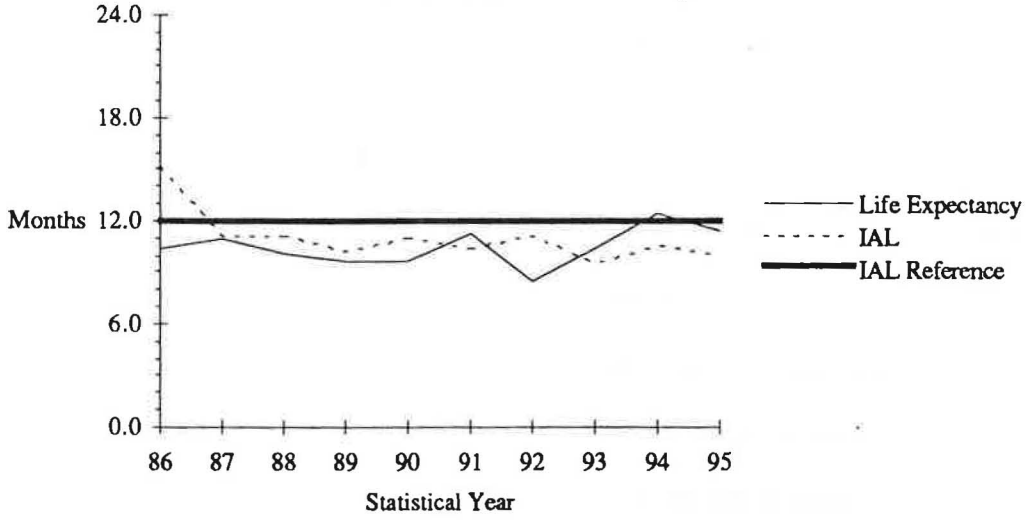


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY86-95
Eastern District of Kentucky

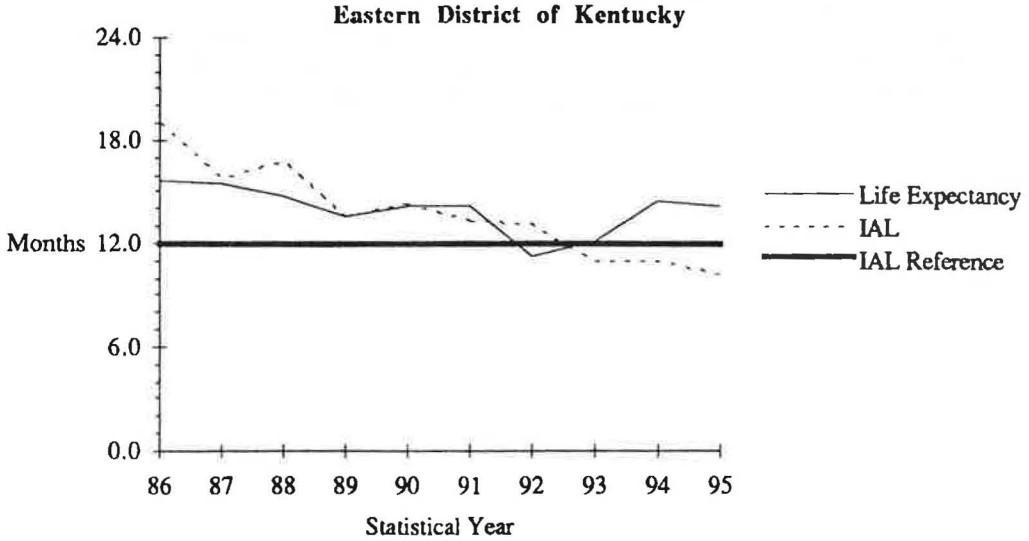
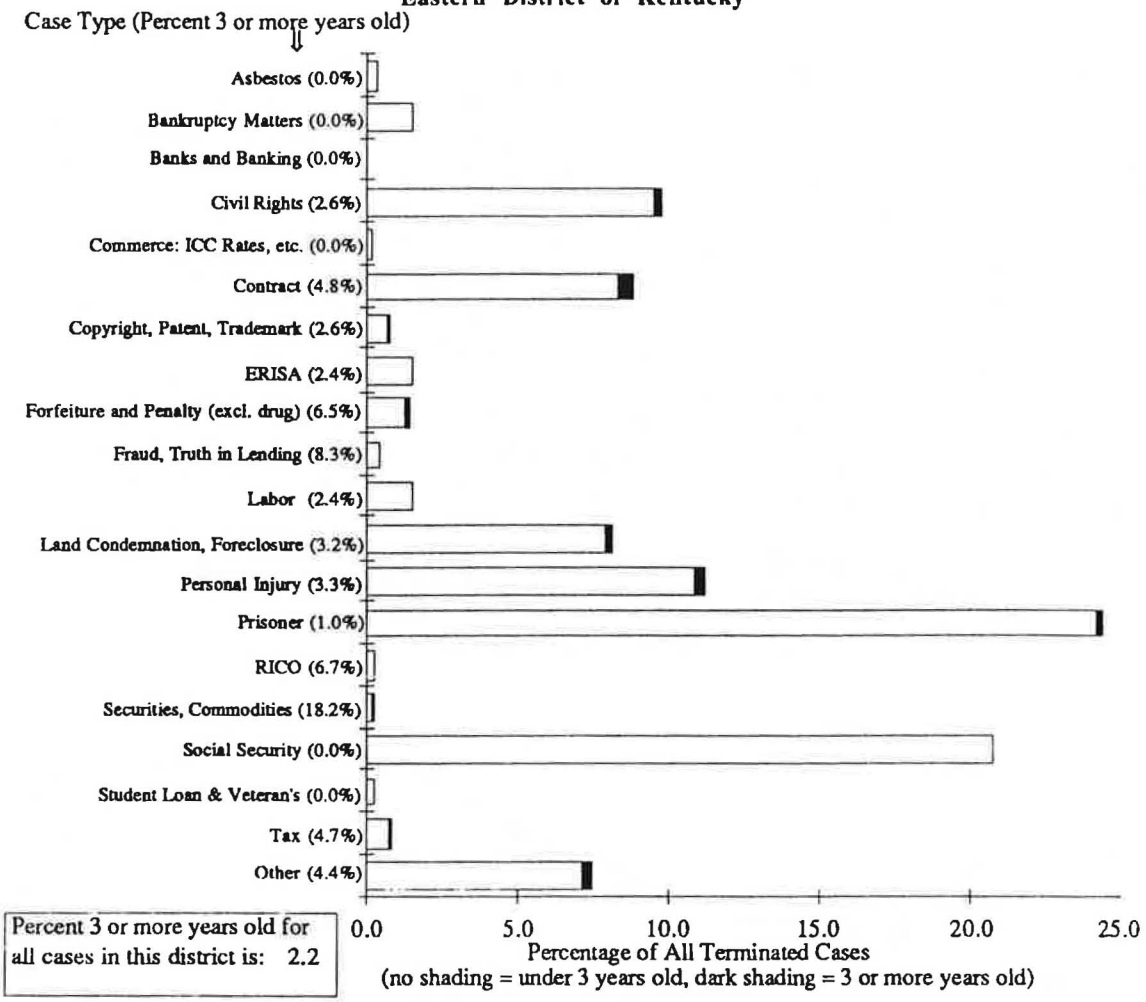


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY93-95, By Case Type and Age
Eastern District of Kentucky

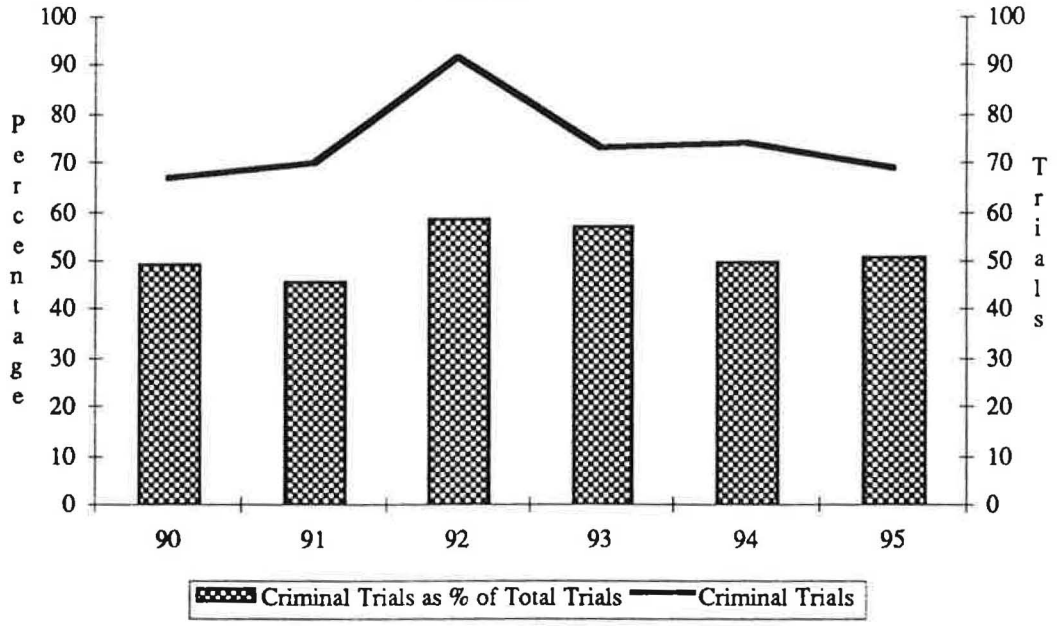


f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 × 1.2). This will overstate the workload of the active judges if

b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY90-95

Eastern District of Kentucky



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (202) 273-4070.

APPENDIX B

U.S. DISTRICT COURT - EASTERN DISTRICT OF KENTUCKY

Summary of Civil Case Statistics for Month Ending 09/30/95

*** TOTALS BY OFFICE INCLUDE MAGISTRATE CASES ***

Page 4

ALL CIVIL CASES

DIVISIONAL OFFICE

	Ash	Cov	Fkt	Lex	Lon	Pke	Total
Pending as of 09/01/95	235	209	90	375	422	387	1718
Cases Assigned (mo.)	16	12	9	36	37	37	147
Cases Closed (mo.)	27	21	3	51	36	44	182
PENDING END OF 09/30/95	224	200	96	360	423	380	1683
Assigned Yr to 09/30/95	205	145	87	408	325	331	1501
Closed: Yr to 09/30/95	236	155	79	420	337	347	1574
ASSIGNED LAST 06 MONTHS	139	105	55	270	210	245	1024
ASSIGNED LAST 12 MONTHS	274	208	115	540	433	439	2009
WTD FILINGS TO 06/30/95	159	209	90	398	280	334	1470
WTD FILINGS TO 03/31/95	173	206	83	414	302	276	1454

SOCIAL SECURITY CASES

I .ding as of 09/01/95	24	9	1	24	129	139	326
Assigned (mo.)	2	0	0	1	18	16	37
Cases Closed (mo.)	8	2	0	0	9	21	40
PENDING END OF MONTH:	18	7	1	25	138	134	323
Cases Assigned (yr)	18	5	4	20	117	106	270
Cases Closed (yr)	49	11	5	25	142	171	403

TOTAL CASES FILED BY SELECTED TYPE

MONTH							
Civil Rights, Non-prisoner	3	4	1	4	2	5	19
Civil Rights, Prisoner	8	3	4	11	3	4	33
Writ of Habeas Corpus State	0	0	1	2	1	1	5
Writ of Habeas Corpus Fed	1	0	0	3	1	0	5
Motion to Vacate	0	0	0	2	2	0	4
Pro Se Law Clerk Cases	9	3	4	14	4	4	38
YEAR							
Civil Rights, Non-prisoner	11	39	14	51	26	35	176
Civil Rights, Prisoner	89	15	19	107	36	36	302
Writ of Habeas Corpus State	6	6	3	33	8	8	64
W··it of Habeas Corpus Fed	12	1	0	18	12	0	43
. cion to Vacate	1	5	1	6	9	2	24
Pro Se Law Clerk Cases	101	16	19	125	48	36	345

345 ÷ 1,501 = .23

23%

APPENDIX B-1

U.S. DISTRICT COURT - EASTERN DISTRICT OF KENTUCKY

Summary of Civil Case Statistics for Month Ending 10/31/95

*** TOTALS BY OFFICE INCLUDE MAGISTRATE CASES ***

ALL CIVIL CASES

DIVISIONAL OFFICE

	Ash	Cov	Fkt	Lex	Lon	Pke	Total
Pending as of 10/01/95	224	200	96	360	423	380	1683
Cases Assigned (mo.)	22	15	5	56	42	38	178
Cases Closed (mo.)	27	23	9	60	43	42	204
PENDING END OF 10/31/95	219	192	92	356	422	376	1657
Assigned Yr to 10/31/95	227	160	92	464	367	369	1679
Closed: Yr to 10/31/95	263	178	88	480	380	389	1778
ASSIGNED LAST 06 MONTHS	140	95	50	282	215	233	1015
ASSIGNED LAST 12 MONTHS	264	201	115	551	438	439	2008
WTD FILINGS TO 06/30/95	159	209	90	398	280	334	1470
WTD FILINGS TO 03/31/95	173	206	83	414	302	276	1454

SOCIAL SECURITY CASES

ı ıding as of 10/01/95	18	7	1	25	138	134	323
Assigned (mo.)	2	4	0	4	20	12	42
Cases Closed (mo.)	0	2	0	5	17	17	41
PENDING END OF MONTH:	20	9	1	24	141	129	324
Cases Assigned (yr)	20	9	4	24	137	118	312
Cases Closed (yr)	49	13	5	30	159	188	444

TOTAL CASES FILED BY SELECTED TYPE

389 ÷ 1,679 = .2 23%

MONTH							
Civil Rights, Non-prisoner	0	3	1	6	3	5	18
Civil Rights, Prisoner	10	2	1	23	3	2	41
Writ of Habeas Corpus State	2	1	0	5	0	1	9
Writ of Habeas Corpus Fed	1	0	0	2	0	0	3
Motion to Vacate	1	0	0	0	0	0	1
Pro Se Law Clerk Cases	11	2	1	25	3	2	44
YEAR							
Civil Rights, Non-prisoner	11	42	15	57	29	40	194
Civil Rights, Prisoner	99	17	20	130	39	38	343
Writ of Habeas Corpus State	8	7	3	38	8	9	73
' it of Habeas Corpus Fed	13	1	0	20	12	0	46
..otion to Vacate	2	5	1	6	9	2	25
Pro Se Law Clerk Cases	112	18	20	150	51	38	389

Study Reveals Surge in Prisoner Appeals

Combined with civil rights claims, they continue to dominate appellate dockets

BY HENRY J. RESKE

Contrary to popular belief, the recent explosion in federal civil appeals is not an across-the-board phenomenon, but one that is concentrated largely in the areas of prisoner litigation and civil rights.

Furthermore, while the rate of appeals in both types of cases has risen dramatically, prisoner litigation has had a far greater impact on the courts because of the sheer number of cases involved.

Of the approximately 32,000 civil appeals filed in 1993, nearly 13,000 came from prisoners, according to a study by the Federal Judicial Center, the research arm of the federal courts. Only about 6,000 cases were civil rights filings.

Staggering Growth

Ira Robbins, a law school professor at American University in Washington, D.C., who has studied prisoner litigation for 20 years, calls the growth in the number of inmate appeals "staggering."

"When you conclude that [prisoner] appeals grew 400 percent, that's quite an increase," he said. "It gives us pause to wonder what's going on in the treatment of prisoners and prisoner cases."

In fact, if Social Security cases are excluded from the mix, the study shows that prisoner appeals and other civil rights litigation accounted for nearly 60 percent of all appellate court filings in 1993, compared to about 38 percent in 1977. The other 40 percent or so of 1993 filings covered a range of categories, from torts and contract law to tax cases and securities litigation.

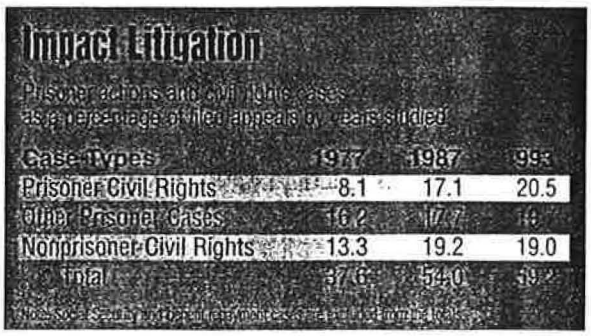
Those findings not only contradict previous work on the subject, but were completely unexpected.

"We were very surprised," said Joe S. Cecil, a co-author of the study. "We began the study expecting to find evidence of a more broad-based increase."

According to the study, prisoner appeals grew by 400 percent between 1977 and 1993, more than twice as fast as cases were disposed of in district court. Put another way, there were 14 prisoner appeals filed for every 100 district court cases disposed of in 1977; in 1993, there were 25.2.

Among civil rights cases, the number of appeals filed during the same period grew by 331 percent, nearly double the rate of district court dispositions. In other words, there were 13 appeals for every 100 civil rights cases disposed of in 1977; in 1993, there were 24.4.

Ira Robbins: Rise in inmate appeals is "staggering."



By way of contrast, the study showed that the percentage of appeals filed to cases disposed of in other types of litigation remained fairly constant through the years, at about 8.6 percent.

Yet prison rights advocates say the figures, when taken in context, are not all that surprising.

Alvin J. Bronstein, director of the ACLU's National Prison Project, said the numbers merely reflect a massive increase in the prison population. There were only about 325,000 prisoners in 1977, he said, compared with about 1.4 million at the end of 1993. Taking that into account, he said, the rate of prisoner appeals actually has declined.

Bronstein attributes at least some of the growth in prisoner appeals to an increase in conservative judges. Such jurists are "hostile and unsympathetic" to the plight of prisoners, he said, and thus more prone to dismiss their complaints.

Creating a Dilemma

The new study's findings are somewhat at odds with a 1990 report by the Federal Courts Study Committee, which warned generally of a "heightened proclivity to appeal district court terminations."

"Our findings suggest that the [earlier warning] is stated too broadly," the new study's authors conclude, citing the disproportionate increase in prisoner and civil rights appeals.

The results also may give some politicians ammunition in their efforts to curb the amount of prisoner litigation. The U.S. House of Representatives recently passed legislation aimed at limiting an inmate's right to sue over prison conditions. In September, a similar bill was pending before the U.S. Senate.

The U.S. Judicial Conference, while taking no position on the bill itself, has suggested in a letter to the Senate Judiciary Committee that the proposed legislation may create more problems than it would solve.

And Robbins warned that any attempt to make the courts more efficient must ensure that they remain accessible. With that goal in mind, he offered several suggestions, ranging from increasing the number of judges to streamlining appellate court procedures. ■

DISTRIBUTION

Chief Judge William O. Bertelsman
Judge Henry R. Wilhoit, Jr.
Judge Karl S. Forester
Judge Joseph M. Hood
Judge Jennifer B. Coffman
Judge G. Wix Unthank
Magistrate Judge James B. Todd
Magistrate Judge Peggy E. Patterson
Magistrate Judge J. Gregory Wehrman
Magistrate Judge J. B. Johnson, Jr.
Hon. James A. Higgins, Cir. Exe., 6CCA
Chief Judge Gilbert S. Merritt, 6CCA
Hon. Lionel Hawse, Chairman, Advisory Committee
Hon. Michael J. O'Hara Esq., Member
Hon. Chris Gorman, Member
Hon. Joe Famularo, Member
Hon. Dennis M. Stutsman, Esq., Member
Hon. Allison I. Connelly, Esq., Member
Hon. Larry C. Deener, Esq., Member
Hon. James M. Scott, Jr., Esq., Member
Hon. Ron L. Walker, Esq., Member
Hon. Mary Ann Stewart, Esq., Member
Hon. Peter Perlman, Esq., Member
Hon. Keith Hardison, Esq., Member
Professor Robert Bratton, Member
Hon. Debra Dawahare, Esq., Member
Mr. Al Smith, Member
Hon. G. Edward Henry, Esq., Member
Hon. Richard Griffith, Esq., Member
Hon. Douglas McSwain
Donna Terrell, Pro Se Law Clerk
Mr. Abel Mattos, Adm. Office of U. S. Courts
Ms. Donna Stienstra, Federal Judicial Center
Mary Coyne, West Publishing Co.
Professor Carl Tobias, Univ. of Montana

Bea 12/1/95