

**REPORT AND RECOMMENDATIONS
OF THE
CIVIL JUSTICE REFORM ACT**

ADVISORY GROUP



FOR THE DISTRICT OF KANSAS

CIVIL JUSTICE REFORM ACT OF 1990

**REPORT OF THE CIVIL JUSTICE REFORM ACT
ADVISORY GROUP
FOR THE DISTRICT OF KANSAS**

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October 25, 1991

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Summary of Report

Part I: Description of the Court

The District of Kansas has had, since December 1, 1990 when the Judicial Improvements Act of 1990 became effective, six district judgeships, only four of which are currently filled. At present the court has five senior judges who maintain caseloads or otherwise assist the court with case management and court administration. The district has four bankruptcy judges, four full-time federal magistrate judges, and one part-time magistrate judge. The court has no divisions.

The District of Kansas is neither a demonstration district nor a pilot district under section 482 of the Civil Justice Reform Act. The Civil Justice Reform Act Advisory Group recognizes that the court has acted promptly to comply with the requirements of the Act, and recommends below that the court request designation as an Early Implementation district under that section.

Part II: Assessment of Conditions in the District of Kansas

Condition of the Docket. The caseload of the District of Kansas is, with respect to most aspects of the docket, average compared to that of other federal district courts. The weighted caseload and per judgeship civil caseload is very close to the national average, and the per judgeship criminal caseload and felony defendant-loads are only slightly less than the national average. Pro se prisoner filings, however, represent a larger proportion of the total civil filings in this district than elsewhere.

Total filings and total case terminations in the district have shown a continuous upward trend since the middle of the 1970's, while the total number of pending cases has shown an overall decrease since that time. The trend in the ratio of pending cases to case terminations indicates that the court has been making improvements in the last decade in its case disposition rates. These rates are still, however, somewhat higher than the national average, as are the life expectancy and lifespan of civil cases of the district. Disposition rates for criminal cases are comparable to the national average.

The total number of authorized judgeships in the District of Kansas has increased from four in 1979 to six beginning in December 1990. There have been significant judicial vacancies during that time, due exclusively to the failure of the executive and legislative branches to fill these vacancies in a prompt and timely fashion. The potential impact of these judicial vacancies on the court's case management statistics has, however, been offset somewhat by the willingness of the court's senior judges to maintain full or near-full caseloads despite their senior status.

Cost and Delay. In conducting its evaluation of case management procedures in this district, the Advisory Group was given full and unimpeded access to all court personnel and was permitted to interview all persons having a role in the case management processes of the court. As a result of this access and the cooperation that these persons provided, the Advisory Group was able to gain a unique, and complete, perspective of case management procedures in this district, and to identify the limited and discrete areas in which refinements in that process might be warranted. The Advisory Group's recommendations stem largely from the perspectives that it gained during these interviews.

The Advisory Group has found that some litigants have encountered unnecessary expense and delay stemming from case management procedures in the district. This expense and delay has several causes, but appears to result most directly from (1) a lack of information concerning the status of cases and pending motions, (2) unacceptably lengthy disposition times for some pretrial motions, (3) inadequate judicial control over the discovery process, (4) the failure of some attorneys to comply with local rules, and (5) the lack of judicial intervention to encourage settlement. The Advisory Group has also identified a number of problems associated with case management procedures for the pro se prisoner docket. Principal among these are a lack of resources to deal with a large backlog of pro se cases, and insufficient judicial control over their processing. The Advisory Group notes that, with respect to the pro

se caseload, the court has already begun to address the problems discussed in this Report.

Part III: Recommendations to the Court and Their Basis

Recommended Measures, Rules, and Programs. The Advisory Group has proposed a number of recommendations which, if adopted, the Group believes will reduce expense and delay in the District of Kansas without compromising the high standard of justice currently delivered here. These recommendations include (1) the preparation of monthly reports on case and motions status, to be circulated to all judges and magistrate judges having caseloads in the district, (2) the development of case management goals or norms with respect to reasonable disposition times for cases and motions, (3) the development, by each judge and magistrate judge or the court as a whole, of pretrial procedures that will ensure expanded judicial control over the timing of and time for discovery, allow for regular pretrial conferences in appropriate cases, permit settlement discussions and possible mediation, and otherwise foster more judicial control over the pretrial process, (4) amendment of some local rules regarding certain discovery and summary judgment matters; (5) modifications to and expanded use of D. Kan. Local R. 214, which provides for settlement-mediation conferences, (6) enforcement of the court's local rules, and (7) increasing staff resources associated with the pro se caseload.

Roles of the Court, Litigants, and the Bar in Proposed Plan. The Plan proposed to the court requires the cooperation of the court, litigants, and the bar in order successfully to address any unnecessary expense and delay in the District of Kansas.

Compliance with the Requirements of Section 473 of the Civil Justice Reform Act. The Civil Justice Reform Act identifies several principles and techniques of litigation management that Congress has declared to be effective means of reducing unnecessary expense and delay in the federal courts. The Act requires Advisory

Groups to consider each of these principles and techniques prior to its formulation of a proposed Plan. If the Group chooses not to incorporate any particular principle or technique in its Plan, it must explain its reasons for rejecting that principle or technique.

The Advisory Group for the District of Kansas has fully considered each of the statutory principles and techniques in developing the recommended measures, rules, and programs summarized above and described in detail in Part III below. Most of the principles and techniques are incorporated in whole or in part either in the court's existing case management procedures, or in the Advisory Group's recommendations. To the extent that a principle or technique is not so incorporated, the Advisory Group has concluded that such principles or techniques would not contribute to reduced expense or delay, and could impair the quality of justice administered in the District of Kansas or otherwise be counterproductive.

Recommendation Concerning Adoption of a Proposed or Model Plan. The Advisory Group believes that the court should adopt its existing local rules, as modified by the recommendations contained in this Report. as it Civil Justice Reform Act Expense and Delay Reduction Plan.

Introduction

The Advisory Group on Expense and Delay Reduction for the District of Kansas submits this Report to the judges of the District of Kansas in partial fulfillment of its obligations under relevant provisions of the Civil Justice Reform Act of 1990, 28 U.S.C. § 471-82 ("CJRA"). This Report conforms generally to the recommendations of the Judicial Conference Committee on Court Administration and Case Management concerning the format for such reports, as articulated in the Committee's memorandum dated August 1991.

Part I of this Report describes the administrative structure of the District of Kansas. Part II is an assessment of the current condition of the court's civil, criminal, and pro se prisoner dockets, recent trends in case filings in the district, and the corresponding demands that are being placed on the court's resources, see 28 U.S.C. § 472(c)(1)(A)-(B). Part II also identifies areas in which problems leading to undue expense and delay appear to exist with respect to the management of civil cases in the District of Kansas, and contains the Advisory Group's assessment of the causes of undue expense and delay here, see 28 U.S.C. § 472(c)(1)(C). Part III contains the Advisory Group's recommendations to the court concerning a proposed plan for managing the civil caseload of the District of Kansas, see 28 U.S.C. § 472(b). Part III also outlines the manner in which the Advisory Group's proposed plan complies with the requirements of section 473 of the CJRA, see 28 U.S.C. § 472(b)(4).

The Advisory Group has concluded that the District of Kansas's existing civil case management procedures have been largely effective in controlling the expense and delay commonly associated with civil litigation in federal courts, but that some problem areas exist. On one hand, the district has, over the last several years, significantly reduced its backlog of civil cases that have been pending for more than three years. Through its use of a "three-year list," and the district court judges' efforts to dispose of these older cases, the court has reduced the percentage of cases that are over three years

old to 4.5% of the total pending civil cases. This compares to a national figure of 10.4%. The court has accomplished this without sacrificing its termination rates with respect to the rest of its civil caseload. In addition, the court has absorbed substantial increases in its criminal caseload over the last decade without compromising its commitment to managing its civil cases.

On the other hand, the district's court management statistics reflect that the court's overall disposition rates are longer than the national average, and that the average life expectancy and average lifespan of a civil case in the district are also longer than average. There are also significant delays associated with the court's pro se prisoner cases. Although these cases have no direct impact on the rest of the civil caseload, they present a unique problem which the court has recognized and is already addressing. Finally, the Advisory Group believes that the number of pending motions, in particular dispositive motions, has adversely affected the court's overall management statistics.

As is explained more fully in Part III, the Advisory Group recommends that the District of Kansas adopt its existing local rules and procedures, as modified by the measures, rules, and programs outlined in Part III, as its CJRA Expense and Delay Reduction Plan, see 28 U.S.C. § 472(b). The Advisory Group has fully considered each of the principles, guidelines, and techniques of litigation management outlined in the CJRA, see 28 U.S.C. § 472(b), 473(a)-(b), in making its recommendations to the court.

The Advisory Group recommends that the District of Kansas file its plan by December 31, 1991 and request designation as an Early Implementation District pursuant to 28 U.S.C. § 482(c).

I. Description of the Court

A. Characteristics of the Court

The District of Kansas has six district judgeships; this figure does not include senior district judgeships. One of these six is a temporary judgeship created by section 203(b)(2)(C) of the Federal Judgeship Act of 1990. As of September 30, 1991, the temporary judgeship had not yet been filled.

A total of 5.3 judgeships months were vacant during the statistical year ending June 30, 1990.¹ Two judicial vacancies currently exist on the court. One of the district's permanent judgeships has been vacant since November 1990, although the President submitted a nomination to Congress on July 24, 1991. The district's temporary judgeship has been vacant since its creation on December 1, 1990, although the President submitted a nomination to Congress on July 26, 1991.

The District of Kansas has a total of five senior district judges. All of these senior judges maintain a partial or full caseload within the district, serve at trials in other district courts, and serve on federal appellate panels.

The district has four bankruptcy judges.

There are five federal magistrate judges in the district, one of whom is a part-time magistrate judge.

The District of Kansas has no divisions. The district has four "offices" where cases are filed: Kansas City, Leavenworth, Topeka, and Wichita. The district clerk's headquarters is located in Wichita.

B. Special Statutory Requirements

Congress has not designated the District of Kansas in section 482 of the CJRA as a "demonstration district," that is, as a court that must incorporate specific litigation

¹ The Administrative Office compiles court management statistics for the "statistical year" July 1 to June 30; a compilation of some of these statistics is published annually under the title "Federal Court Management Statistics." Much of the discussion of case management statistics and trends in the civil and criminal workloads contained in this Report is based on Administrative Office data reported in these yearly publications.

management principles or techniques into its expense and delay reduction plan. Nor has the Judicial Conference designated the court a "pilot district" under that section. Accordingly, the court is not statutorily required to include all six principles and guidelines of litigation management listed in section 472(a) in its expense and delay reduction plan.

The Advisory Group has recommended below that the court file its expense and delay reduction plan by December 31, 1991 and request designation as an Early Implementation district pursuant to section 482(c) of the CJRA.

II. Assessment of Conditions in the District of Kansas

A. Condition of the Docket

The CJRA requires that each advisory group "promptly complete a thorough assessment of the state of the court's civil and criminal dockets." 28 U.S.C. § 472(c)(1)(A). This assessment is a necessary predicate to formulating the proposed expense and delay reduction plan. Although the Federal Judicial Center and the Administrative Office have repeatedly cautioned Advisory Groups about the potentially misleading nature of court management statistics, it is clear that Congress considers such statistics a relevant indicator of judicial workload and the extent of unacceptable expense and delay within individual district courts. Accordingly, the subsections below discuss relevant judicial workload statistics (civil and criminal) for the District of Kansas, and compare those statistics to national medians.

1. State of the Civil and Criminal Dockets

a. State of the Civil Docket

During the statistical year ending June 30, 1990,² a total of 2173 criminal and civil cases were filed in the District of Kansas, of which 1931 were civil cases. A total of 2360 cases were terminated. At the close of SY 1990, 2173 cases were pending before the court.

Expressed in terms of per judgeship statistics, these figures reflect 386 civil and 49 criminal felony filings per judgeship, 435 pending cases per judgeship, 401 weighted civil filings³ per judgeship, and 472 terminations per judgeship. Each judge

² As of September 30, 1991, when this section of the Report was completed, complete court management statistics for SY 1991 were unavailable to the Reporter from the Administrative Office.

³ This "weighted filings" figure is calculated by the Administrative Office based on a formula developed in 1979. The formula "weights" civil cases according to their presumptive complexity. The formula was developed after a district court time study conducted by the Federal Judicial Center in several district courts throughout the nation; it is revised periodically. For more information concerning the 1979 Time Study, see **1979 Federal District Court Time Study (Federal Judicial Center 1979)**. As discussed at the Advisory Group meeting on April 19, 1991, some judges and court administrators believe that the current formula no longer accurately reflects the realities of processing different categories of cases.

in the district completed an average of 36 trials in SY 1990, of which about 21 were civil trials. About 4.5% of the court's civil cases were more than three years old.

The per judgeship figures for the District of Kansas compare to national median figures, for SY 1990, of 379 civil filings per judgeship, 58 criminal felony filings per judgeship, 474 pending cases per judgeship, 448 weighted civil filings per judgeship, terminations per judgeship, and 36 trials completed per judgeship. Nationally, about 10.4% of all civil cases are more than three years old.

In SY 1990, a total of 1931 civil cases were filed in the District of Kansas. Of these civil cases, 24 (1.2%) were categorized by the Administrative Office as social security appeals; 88 (4.6%) as actions for recovery of overpayments or enforcement of a judgment; 474 (24.5%) as prisoner petitions and complaints; 62 (3.2%) as forfeiture and tax suits; 198 (10.3%) as real property-related actions; 58 (3.0%) as labor suits; 320 (16.6%) as contract actions; 301 (15.6%) as tort suits; 24 (1.2%) as intellectual property-related actions; 209 (10.8%) as civil rights actions; 1 (0.0%) as antitrust actions; and 172 (8.9%) as some other type of civil matter.

These percentages compare to a national civil filings mix of 7439 (3.4%) social security appeals; 10878 (5.0%) overpayments and judgments actions; 42630 (19.6%) prisoner complaints; 8797 (4.0%) forfeiture and tax suits; 9505 (4.4%) real property-related actions; 13841 (6.4%) labor suits; 35161 (16.1%) contract actions; 43759 (20.1%) tort suits; 5700 (2.6%) intellectual property actions; 18793 (8.6%) civil rights actions; 472 (.2%) civil antitrust actions; and 20904 (9.6%) some other type of civil matter.

Figure 1 illustrates the civil case profile for the District of Kansas, and the national profile, for SY 1990.

Figure 1



The median time from filing to disposition⁴ of a civil case in the District of Kansas was eleven months in SY 1990. The median time of eleven months compares to a national median time from filing to disposition of nine months.

The median time from issue to trial,⁵ in cases going to trial, was twenty months in the District of Kansas. It compares to a national median of fourteen months.

The Federal Judicial Center has prepared a caseload analysis for the District of Kansas that includes, among other things, a discussion of the "life expectancy" and "indexed average lifespan" of civil cases filed in the district. See Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 (Feb. 1991) (version prepared for the United States District Court for the District of Kansas) [hereinafter Guidance]. The "life expectancy" of a civil case is expected average duration of a civil cases in a federal court at the time the case is filed. It is comparable to the average life expectancy of a newborn at birth. The "indexed average lifespan" of a civil case is a means to compare the average lifespan of civil cases filed in a particular district to the national average lifespan of 12 months, taking account of the case mix in the district court. It is analogous to comparing the prices of a selection of groceries to a national price index for that group of groceries. The Center has suggested that it considers these statistics to be a better predictor of a court's future efficiency than many other variables. *Id.* at 15.

The Federal Judicial Center has calculated average life expectancy and indexed average lifespan for all cases filed in the District of Kansas, and for so called "Type II"

⁴ The median time from filing to disposition reflects the time interval in months from the filing of the complaint to termination of the case, whether by trial or other disposition, for the middle (median) case. In determining the median time from filing to disposition for civil cases, the Administrative Office excludes land condemnation, recovery of overpayments, and enforcement of judgments cases, prisoner petitions, and deportation reviews. **1990 Federal Court Management Statistics f (Administrative Office 1990).**

⁵ The median time from issue to trial reflects, for all cases going to trial during the statistical year, the time interval in months from the filing of an answer or other response to the date trial begins for the middle (median) case. **1990 Federal Court Management Statistics f (Administrative Office 1990).**

cases. The "Type II" category excludes cases such as student loan collections actions, condemnations, prisoner petitions, and other kinds of cases which are generally concluded without trial.

The average life expectancy for all civil cases in the District of Kansas is 12 months. The average life expectancy in the District of Kansas for Type II cases is 16 months. The average life expectancy for all civil cases in all federal courts is about 13 months. The average life expectancy for Type II cases in all federal courts is not available.

The indexed average lifespan for all civil cases in the District of Kansas is 14 months. The indexed average lifespan for Type II cases is 14 months. An indexed average lifespan value above the national average lifespan reference of 12 months indicates that a court disposes of its civil cases more slowly than average. An indexed average lifespan for Type II cases is not available.

b. State of the Criminal Docket

The Civil Justice Reform Act is principally concerned with district court management of civil caseloads. The criminal docket in a district court, however, can have an impact on how effectively the court handles its civil docket. This is primarily because the federal Speedy Trial Act of 1974 (as amended), 18 U.S.C. .. 3161-62, 3164, requires that all criminal cases be tried within 70 days of the filing of the indictment, unless a delay beyond this period is expressly authorized by the statute and court order. Because no similar statutes exist with respect to most civil filings, criminal cases have a priority over civil cases. If the criminal caseload in a district is large and many defendants go to trial, this can conceivably impair the court's ability to attend to its civil docket. Recently, a number of district judges have expressed concern that increasing criminal caseloads threaten their ability to deal with the civil docket.⁶ The

⁶ See, e.g., Hon. Diana E. Murphy, The Concerns of Federal Judges, JUDICATURE, Aug.-Sept. 1990, at 112. At least two of the Article III judges whom this Advisory Group interviewed expressed similar concerns about increasing criminal caseloads in the District of Kansas.

Federal Judicial Center has specifically recognized that criminal case loads have had such an impact in some district courts.

There is a widespread perception that the "war on drugs" has increased the number and complexity of criminal cases being filed in the federal district courts.⁷ National court management statistics show increases in the total and per judgeship criminal felony filings in the federal courts since 1980. The total number of federal criminal defendants (felony and misdemeanor) prosecuted in the federal courts almost doubled during the period 1980-90. The number of felony defendants prosecuted in the federal courts increased by 20% nationally from SY 1987-91, and the total number of felony defendants prosecuted for federal drug-related offenses nearly doubled during that period.

There are anecdotal reports that the new Federal Sentencing Guidelines, which became effective on November 1, 1987, have had the effect of discouraging guilty pleas, thereby increasing the number of criminal cases going to trial.⁸ Administrative Office data show that criminal trials now make up a slightly higher percentage of total trials than they did in 1985, both nationally and within the District of Kansas.⁹ Judges and other court personnel have indicated that the sentencing process under the Federal Sentencing Guidelines requires more court resources and time than the prior sentencing scheme. Otherwise, however, the Advisory Group is aware of no empirical data or studies to support such anecdotes. The Group believes that there is a need for further empirical study of this question in light of its possible impact on the district's future

⁷ See e.g., John A. Martin, Drugs, crime, and Urban Trial Court Management: The Unintended Consequences of the War on Drugs, 8 Yale Law & Pol'y Rev. 75 (1990).

⁸ Judges in this district, during Advisory Group interviews, noted their perception that more criminal defendants are going to trial under the Federal Sentencing Guidelines because of the lack of incentive under the Guidelines to plead guilty.

⁹ In 1985, 31.3% of all trials conducted nationally were criminal trials. That figure is now 36.6%. In the District of Kansas, 20.2% of all trials conducted were criminal trials in 1985; that figure for the district is now 26.1%.

ability to manage the civil docket, and will continue to monitor the situation and make recommendations to the court as conditions warrant.

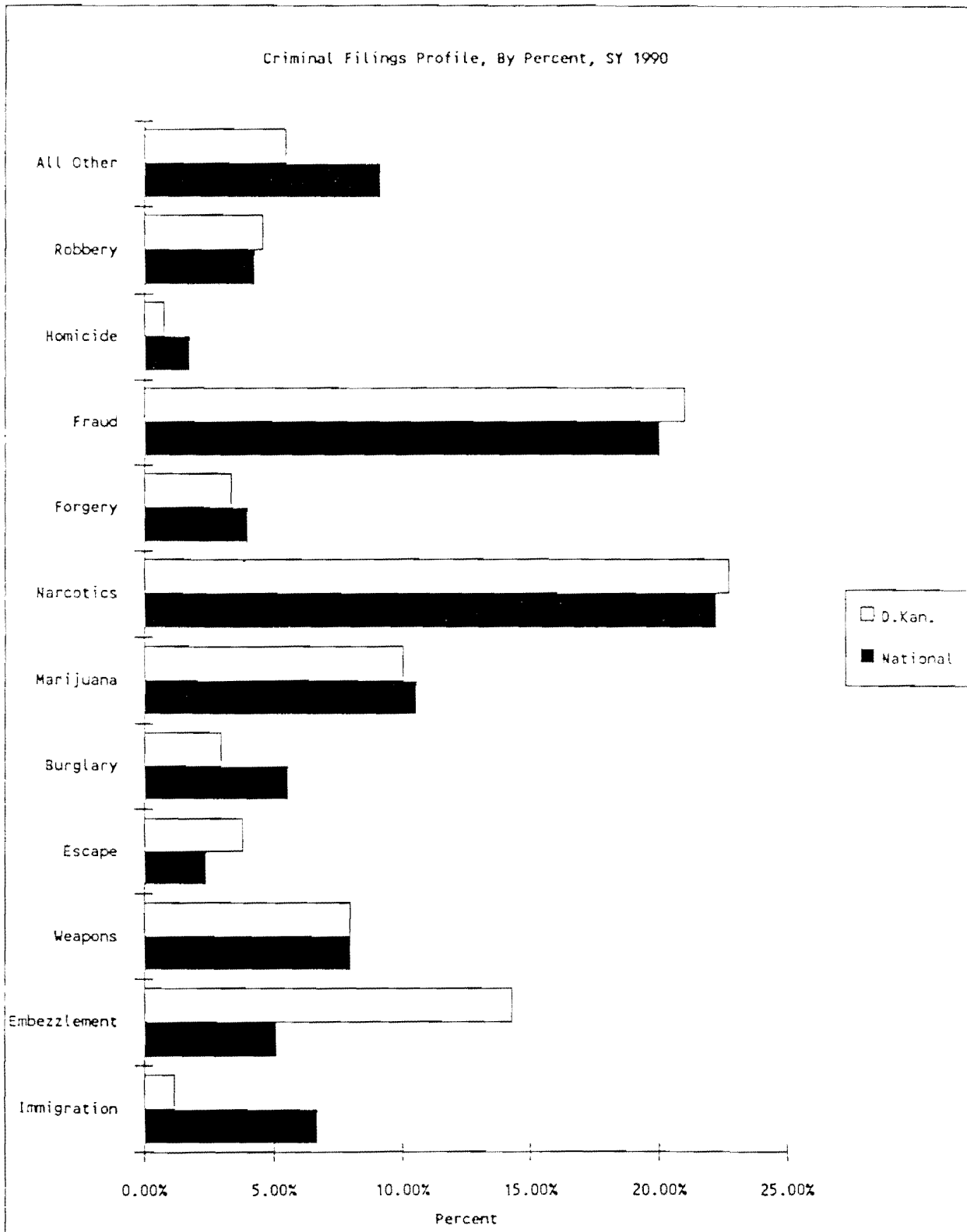
During the statistical year ending June 30, 1990, 237 criminal felony indictments or informations were filed in the District of Kansas. These cases included 3 immigration cases (1.3% of all criminal felony cases), 34 embezzlement cases (14.3%), 19 weapons/firearm cases (8.0%), 9 escape cases (3.8%), 7 burglary/larceny cases (3.0%), 24 marijuana/controlled substances cases (10.1%), 54 narcotics cases (22.8%), 8 forgery/counterfeiting cases (3.4%), 50 fraud cases (21.1%), 2 homicide/assault cases (.8%), 11 robbery cases (4.6%), and 16 other (unclassified) cases (6.8%). Approximately 8 cases were transferred to the district, bringing the total number of criminal filings to 245. This total represents a figure of 49 felony cases per judgeship. Criminal cases made up about 11.2% of total filings in the district for SY 1990.

Nationally, the criminal felony profile is as follows: immigration, 6.7%; embezzlement, 5.1%; weapons/firearms, 8.0%; escape, 2.4%; burglary/larceny, 5.6%; marijuana/controlled substances, 10.6%; narcotics, 22.3%; forgery/counterfeiting, 4.0%; fraud, 20.1%; homicide/assault, 1.8%; robbery, 4.3%; all other, 9.2%. The national average for felony filings per judgeship was 58 cases per judgeship. Nationally, criminal cases accounted for about 13.3% of total case filings in SY 1990.

Figure 2 illustrates the criminal case filings profile for the District of Kansas, and the national profile, for 1990.

A total of 341 felony defendants were prosecuted in the District of Kansas during SY 1990. A total of 147, or 43% of all felony defendants, were charged with drug-related crimes during that year. Nationally, felony drug defendants represented 35.5% of all defendants prosecuted in the federal courts during SY 1990.

Figure 2



The 341 felony defendants prosecuted in the district in SY 1990 represented a per judgeship defendant load of 68 felony defendants. This is fewer defendants than the national per judgeship defendant load of 85 felony defendants. There were about 29 felony drug defendants prosecuted per judgeship in the District of Kansas in SY 1990. This is also fewer defendants than the national average of 37 felony drug defendants prosecuted per judgeship.

The median time from filing to disposition of a felony case in District of Kansas was 5.6 months in SY 1990. The national median time for filing to disposition of a criminal felony case was 5.3 months during that year.

c. State of the Pro Se Prisoner Docket

Pro se prisoner petitions constitute nearly one quarter of all civil filings in Kansas which is a somewhat higher percentage than the national average (see **Figure 1**, supra.) All of those cases are assigned to the two judges who are located in Topeka. Two pro se law clerks have responsibility to work on those cases,¹⁰ and a one-half time magistrate in Leavenworth County handles a portion of related pre-trial proceedings. Between 1985 and 1990 only one full time equivalent law clerk was assigned to those cases, which at that time were divided between Kansas City and Topeka, and there was substantial turn-over among the law clerks who filled that position. Because of an absence of substantial, stable resources, a large backlog of cases developed.

A total of 574 new cases were filed in calendar year 1991. One or more motions are pending in more than 320 cases. A total of 98 cases have been pending for more than three years and another 119 cases have been pending for more than two

¹⁰ Because the pro se law clerks in Kansas continue to work on cases from initial screening to final disposition, their actual involvement in each case is more extensive than that of pro se clerks in most other districts. This arrangement is potentially very efficient, especially if well qualified and experienced clerks can be retained for longer periods of time. It is important to recognize, however, that these clerks should have smaller case loads than the case load carried by clerks elsewhere whose responsibility is more limited.

years. Despite an entitlement to statutory priority, approximately 90 habeas corpus cases are more than two years old, and a high percentage of those have been ready and awaiting judicial action for more than a year. The addition of a second law clerk and the transfer of virtually all prisoner cases to Topeka has improved the process for handling pro se prisoner petitions, but the problems of a large backlog have persisted. In response to preliminary recommendations of the Advisory Group, temporary law clerk and paralegal positions were added to assist with this backlog.

d. State of the Pending Motions Docket

On September 30, 1991, there were 871 civil motions in the district that were more than six months old. Of these, 263 were motions in civil cases other than pro se prisoner cases, and 608 were civil motions filed in pro se cases.

2. Trends in Case Filings and Demands on Court Resources

The following discussion of trends in case filings and other trends in the District of Kansas is based on an analysis of court management statistics compiled and published, or provided to the Reporter, by the Administrative Office. Trends with respect to the civil caseload are analyzed over the statistical years 1976- 90. Trends with respect to most aspects of the criminal caseload are analyzed over the period SY 1980-90. With respect to criminal defendant-load trends, the Report considers the period SY 1987-90.

a. Trends in Civil Filings

i. District statistics.

Total filings. The District of Kansas has experienced an overall increase in total filings during the period 1976-90, although the total filings figure fluctuated greatly during that period. The total filings figure of 2173 (which includes both criminal and civil filings) for SY 1990 represents a decrease of 11.4% in total filings from SY 1989. It represents an increase in total filings of 9.0% since 1980 and of

about 20.0% since 1976. **Figure 3** illustrates the overall trend in total filings for the District of Kansas from 1976-90.¹¹

Total terminations. The total terminations figure of 2360 for SY 1990 represents a 9.2% decrease in total terminations from that statistic in SY 1989. It is a 29.7% increase from total terminations since 1980 and a 61.4% increase in total terminations since 1976. These figures show that, overall, the court has more than kept pace with increased filings in the district through its increased termination rates.

Figure 4 illustrates the trend in case terminations in the District of Kansas for 1976-90.

Total pending cases. The total pending cases figure of 2173 for SY 1990 represents a decrease of about 7.9% from the previous year. It is a decrease of 2% from SY 1980 and an increase of 29.9% from SY 1976. The trend in number of pending cases correlates roughly to changes in the trend respecting total cases filed in the district during 1976-90. **Figure 5** illustrates the trend in total pending cases in the District of Kansas from 1976- 90.

Ratio of pending cases to total terminations. The Federal Judicial Center has suggested that one measure of a court's effectiveness in handling its caseload over time is the ratio of pending cases to total terminations over time. If this ratio decreases over time, the trend indicates that the court is improving on its overall disposition times. See Shapard, *How Caseload Statistics Deceive* 3 (Draft of May 2, 1991) . At the close of SY 1990, the ratio of pending cases to total terminations in the District of Kansas was 2173/2360, or .92. This an increase from .91 in SY 1989, a decrease from 1.22 in SY 1980, and a decrease from 1.14 in SY 1976. Nationally, the ratio in pending cases to total case terminations for SY 1990 was 1.12. **Figure 6** illustrates the trend in this pending/termination ratio for the District of Kansas and nationally from 1976-90.

¹¹ The total case filings, total case terminations, and total case pending figures for SY 1976-79 include all civil cases, felony criminal cases, and misdemeanor criminal cases. Totals for these variables from SY 1980-90 do not include misdemeanor criminal cases. See **1981 Management Statistics for United States Courts d (Administrative Office 1981)**

Figure 3

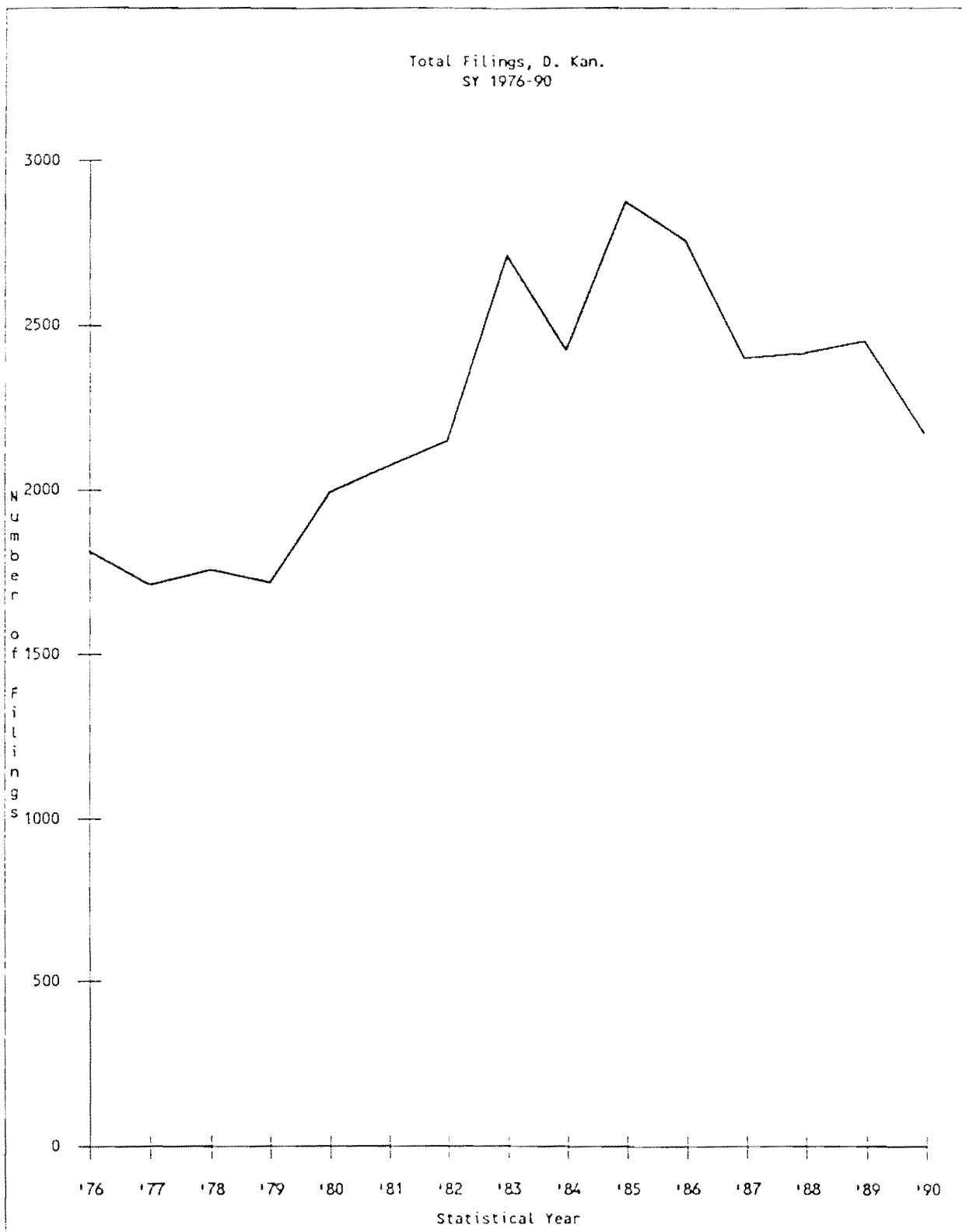


Figure 4

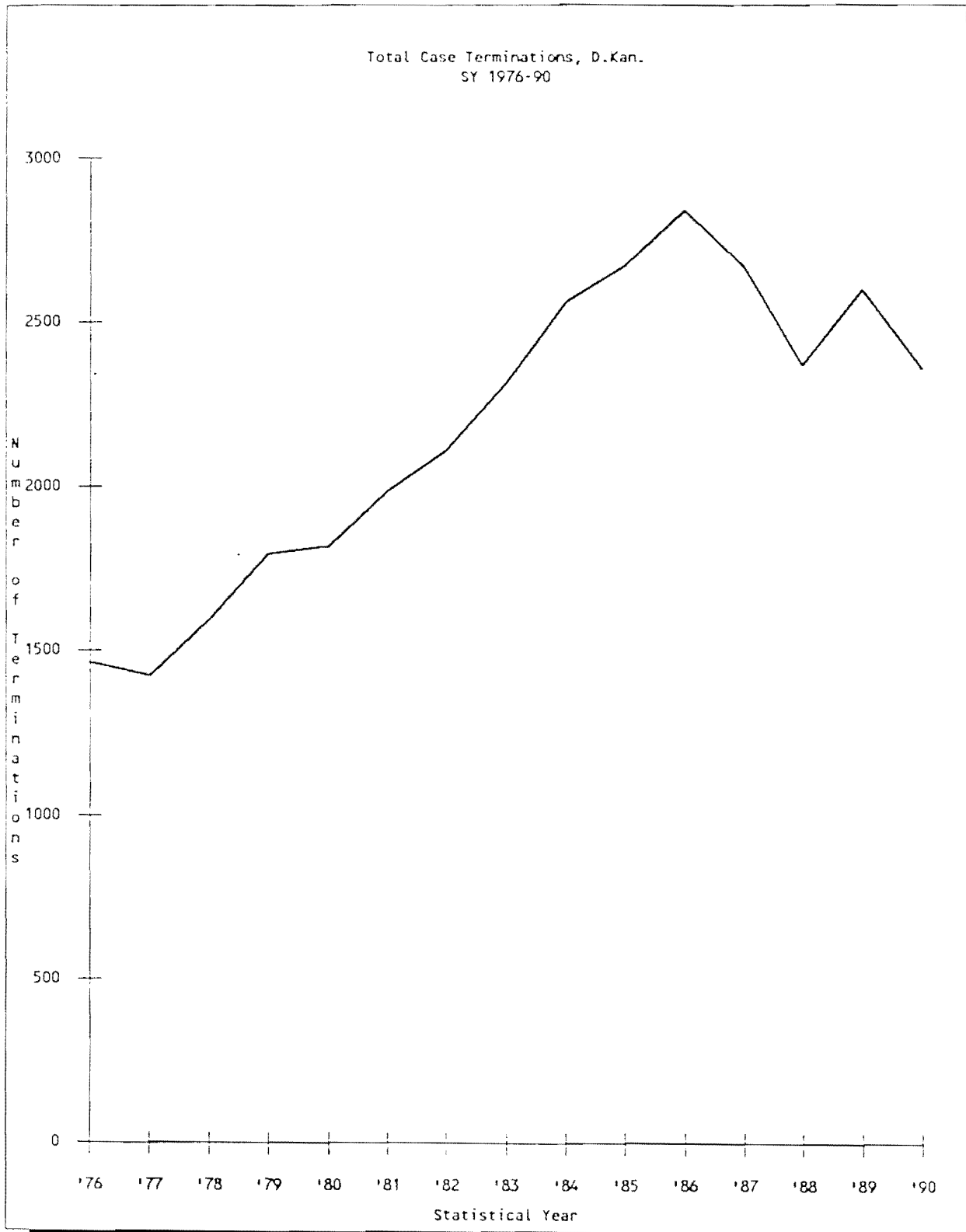


Figure 5

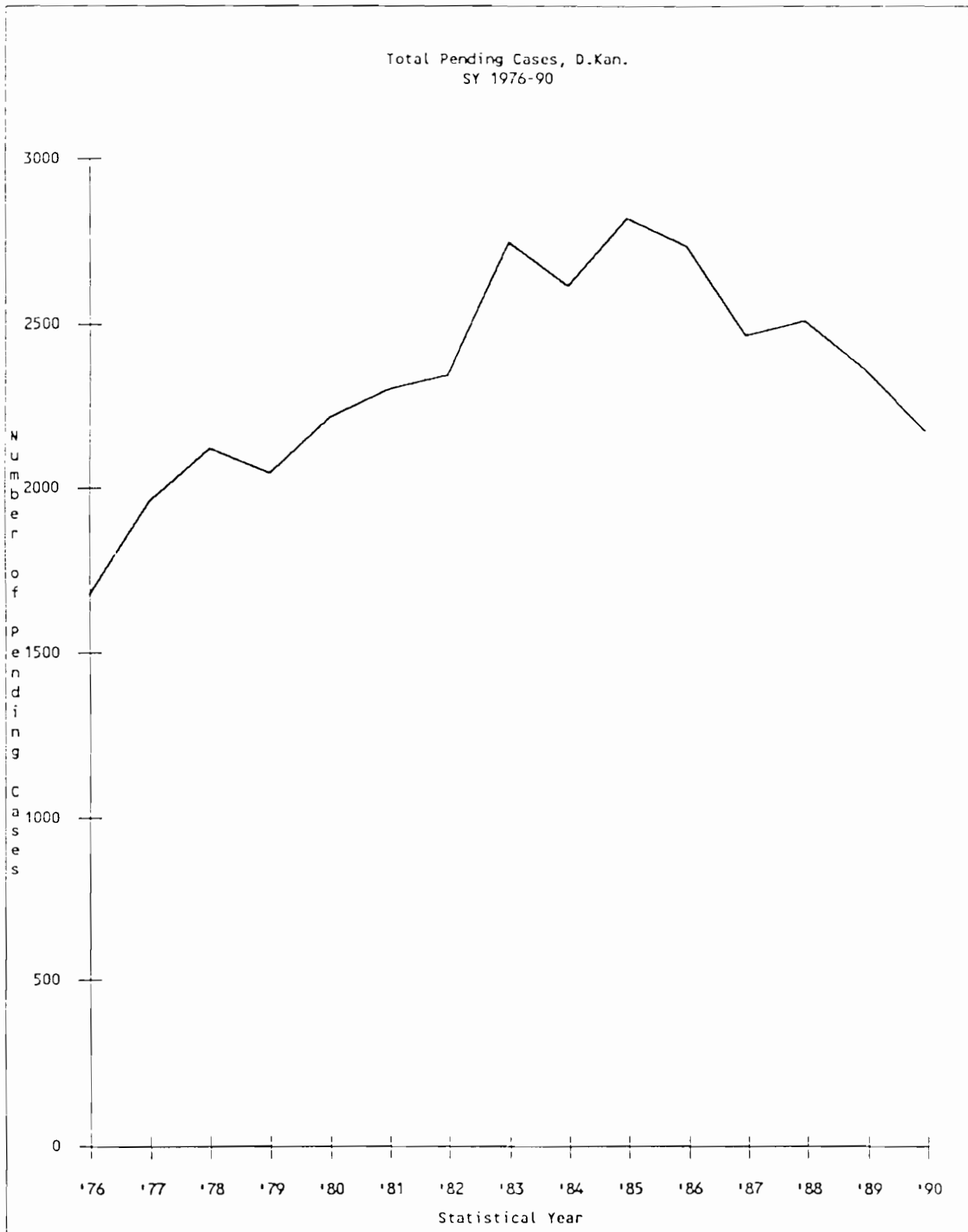
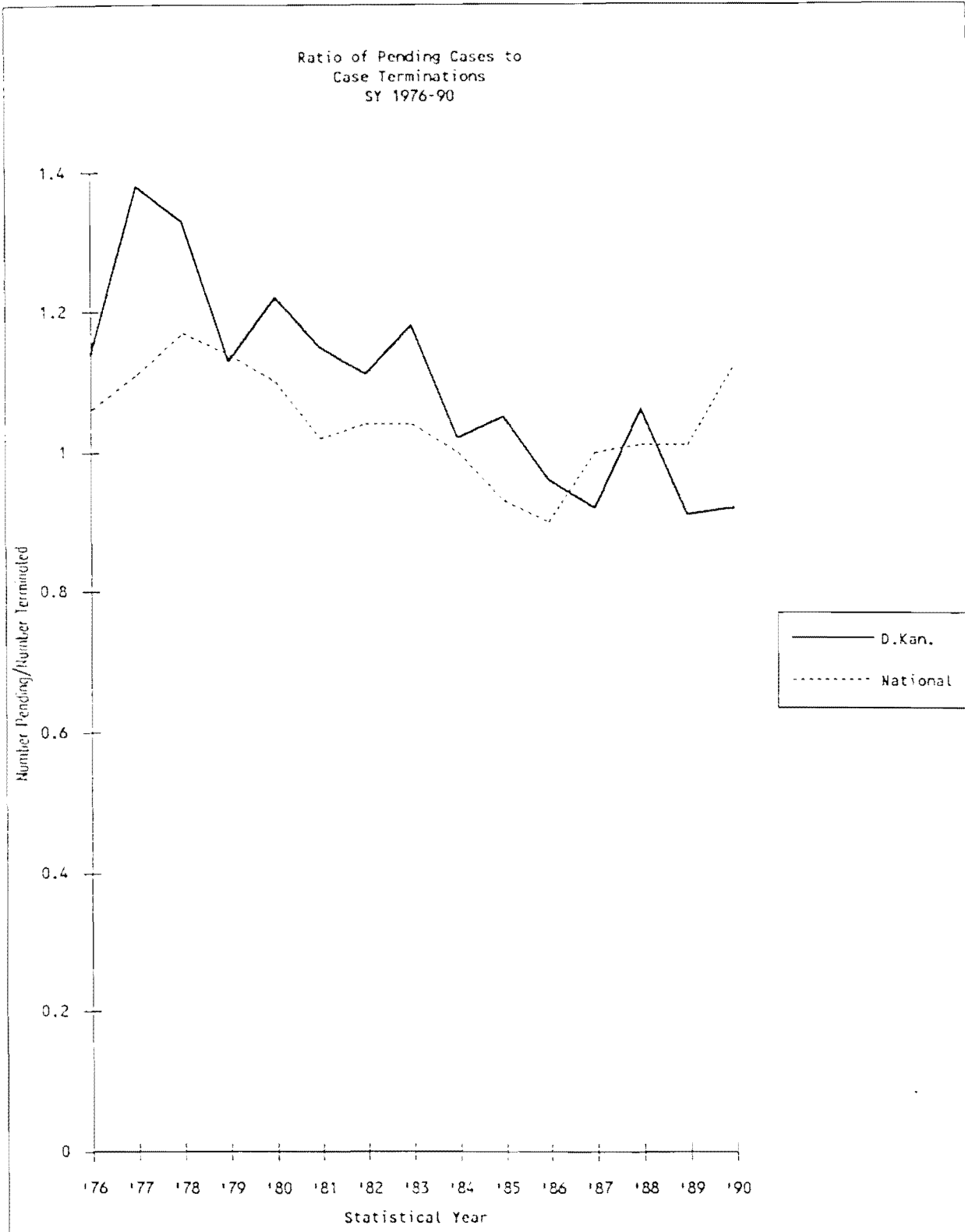


Figure 6



Filing to disposition rates. The median time from filing to disposition of eleven months in SY 1990 represents no change in that median time since 1989. It is an increase of two months from 1980 and a decrease of one month from the SY 1976 figure. **Figure 7** shows the trend in median time from filing to disposition for the District of Kansas, and the national trend, from 1976-90.

Issue to trial rates. The median time from issue to trial (for cases going to trial) of twenty months in SY 1990 is the same as for 1989. It represents a decrease of eight months from 1980 and of one month from 1976. **Figure 8** illustrates the trend in median time from issue to trial for the District of Kansas, and the national trend, for 1976-90.

ii. Per judgeship statistics and comparison to national figures. Because the federal district courts differ from one another in terms of their size and the complexity of their caseloads, overall case filing and related statistics do not always permit ready comparison among districts of many variables affecting expense and delay. Per judgeship statistics, in contrast, permit direct comparison of one court's judicial workload to the national average or to that of another individual court. Per judgeship statistics also allow for better longitudinal study of individual judges' workloads within a district, because they account for increases in the number of judges allotted to a district court. This section compares trends in the per judgeship case management statistics for the District of Kansas to national per judgeship trends.

Civil filings per judgeship. In SY 1990 there were 386 civil filings per judgeship in the District of Kansas. This is an increase of 6.3% over 1980, and of 13.1% from 1976. It compares to a national per judgeship civil filings figure of 379 cases. **Figure 9** illustrates the trend in civil filings per judgeship for the District of Kansas, and the national trend, from 1976-90.

Figure 7

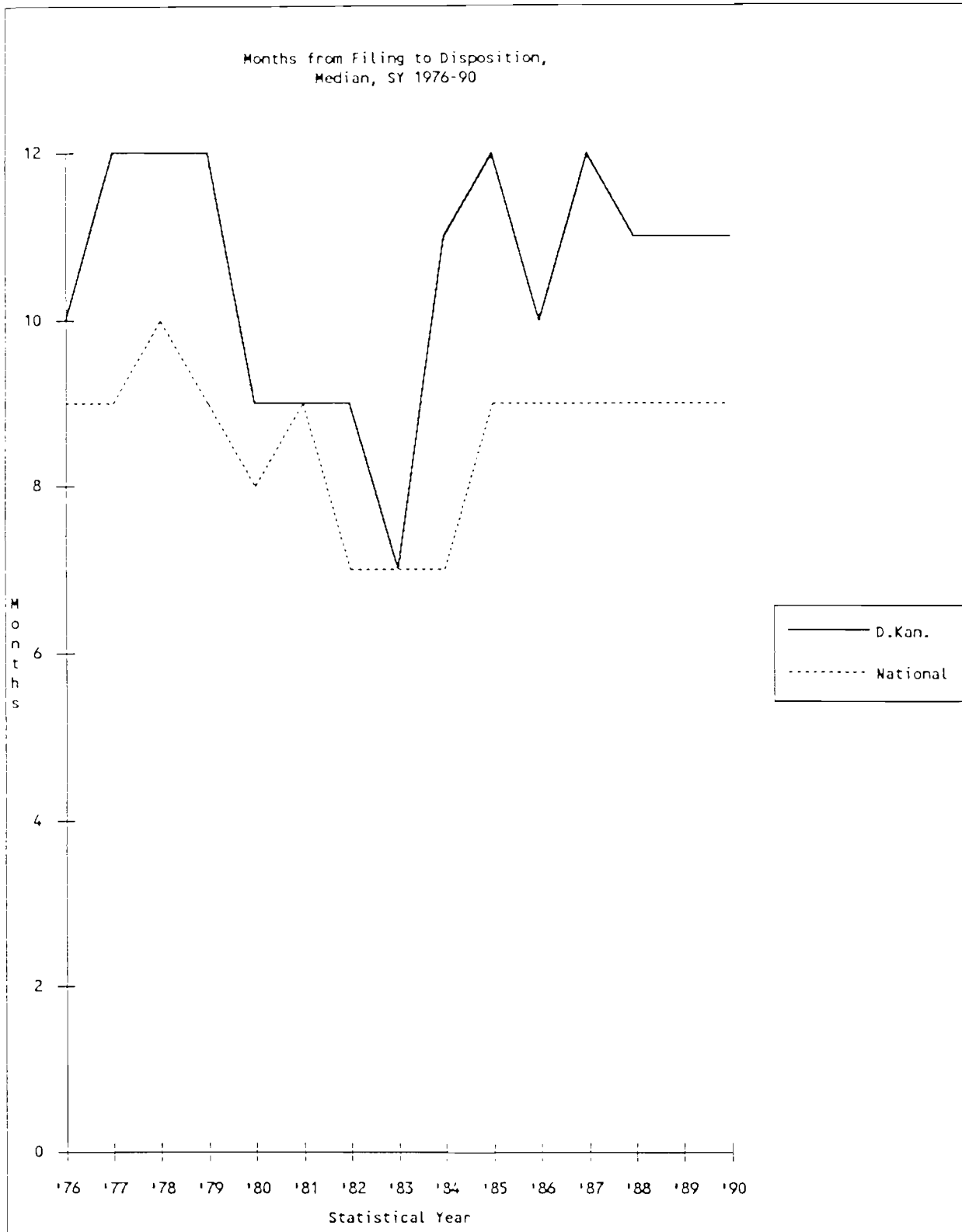


Figure 8

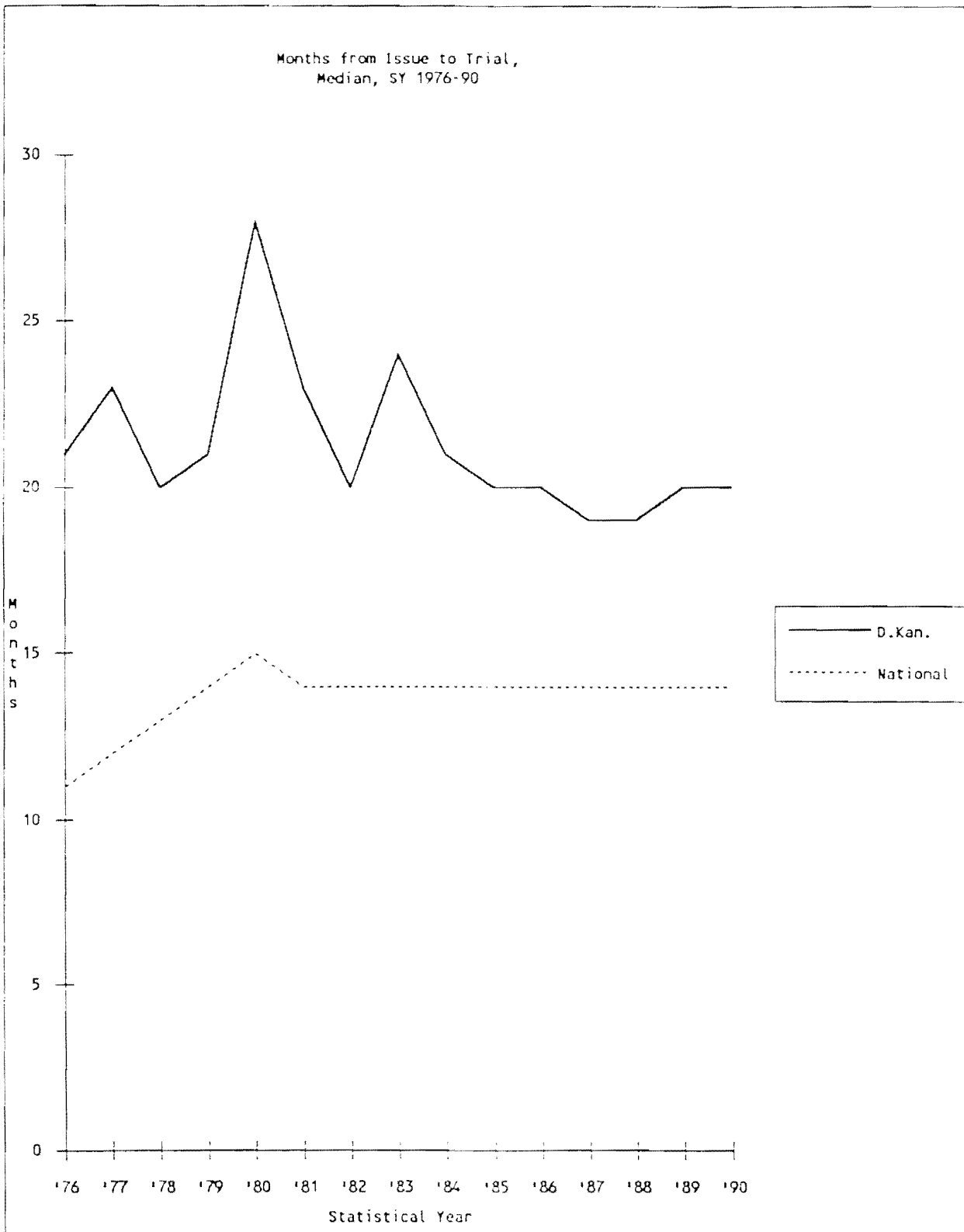
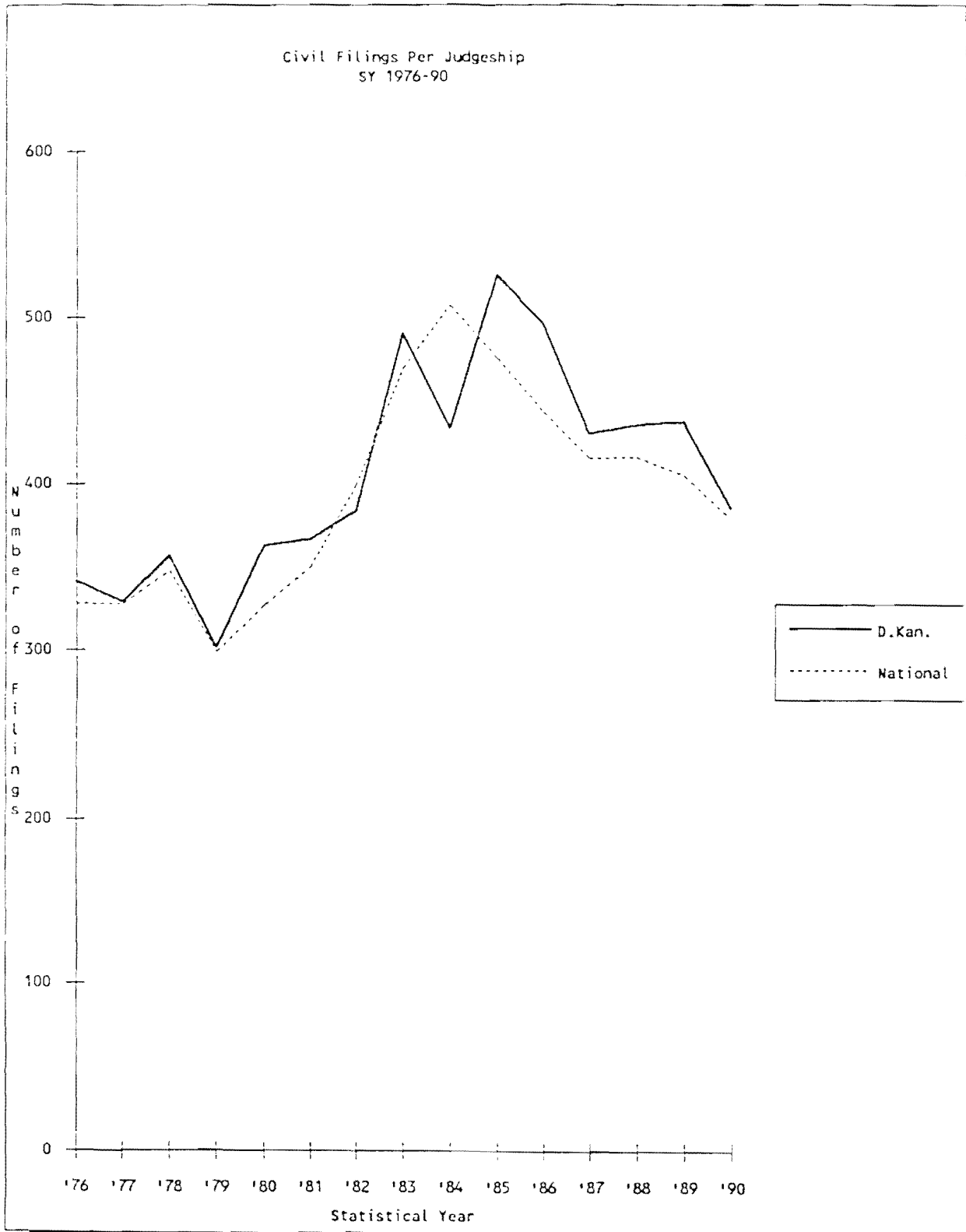


Figure 9



Terminations per judgeship. In SY 1990, 472 cases (criminal and civil) per judgeship were terminated. This is a decrease of 9.2% from 1989. It is an increase of 29.7% from 1980, and of 29.0% from 1976. It compares to a national per judgeship figure of 423 case terminations in 1990. **Figure 10** shows the trend for the District of Kansas and the national trend in terminations per judgeship from 1976-90.

Pending cases per judgeship. At the close of the SY 1990 there were 435 pending cases (criminal and civil) per judgeship in the District of Kansas. This is a decrease of 7.8% since 1989, an increase of 2.0% since 1980, and an increase of 4.1% since 1976. This figure compares to a national per judgeship pending caseload of 474 cases. **Figure 11** shows the trend in pending cases per judgeship for District of Kansas, and the national trend, from 1976-90.

Weighted filings per judgeship. The statistic weighted filings is an important variable, at least to the extent that the formula used to weight cases is accurate and cases are classified uniformly in all federal district courts. It allows for comparisons of caseloads among districts and within districts over time, because it restates the total filings figure in a way that reflects the complexity of those cases. The weighted filings figure calculated by the Administrative Office has historically been given great weight when Congress is considering an individual district's need for additional judgeships.

The weighted filings per judgeship figure of 401 for SY 1990 in the District of Kansas represents a 13.0% decrease in weighted filings per judgeship from 1989, a 4.5% decrease from 1980, and a 9.7% decrease from 1976. It compares to a national weighted filings per judgeship figure of 448 for SY 1990. **Figure 12** shows the trend in weighted filings for the District of Kansas, and the national trend, from 1976-90. This trend chart shows that the cases filed in the District of Kansas, as a group, have historically been comparable in their complexity to the national average.

Trials completed per judgeship. Each judge in the District of Kansas completed an average of 36 trials (civil and criminal) in SY 1990. This represents a

Figure 10

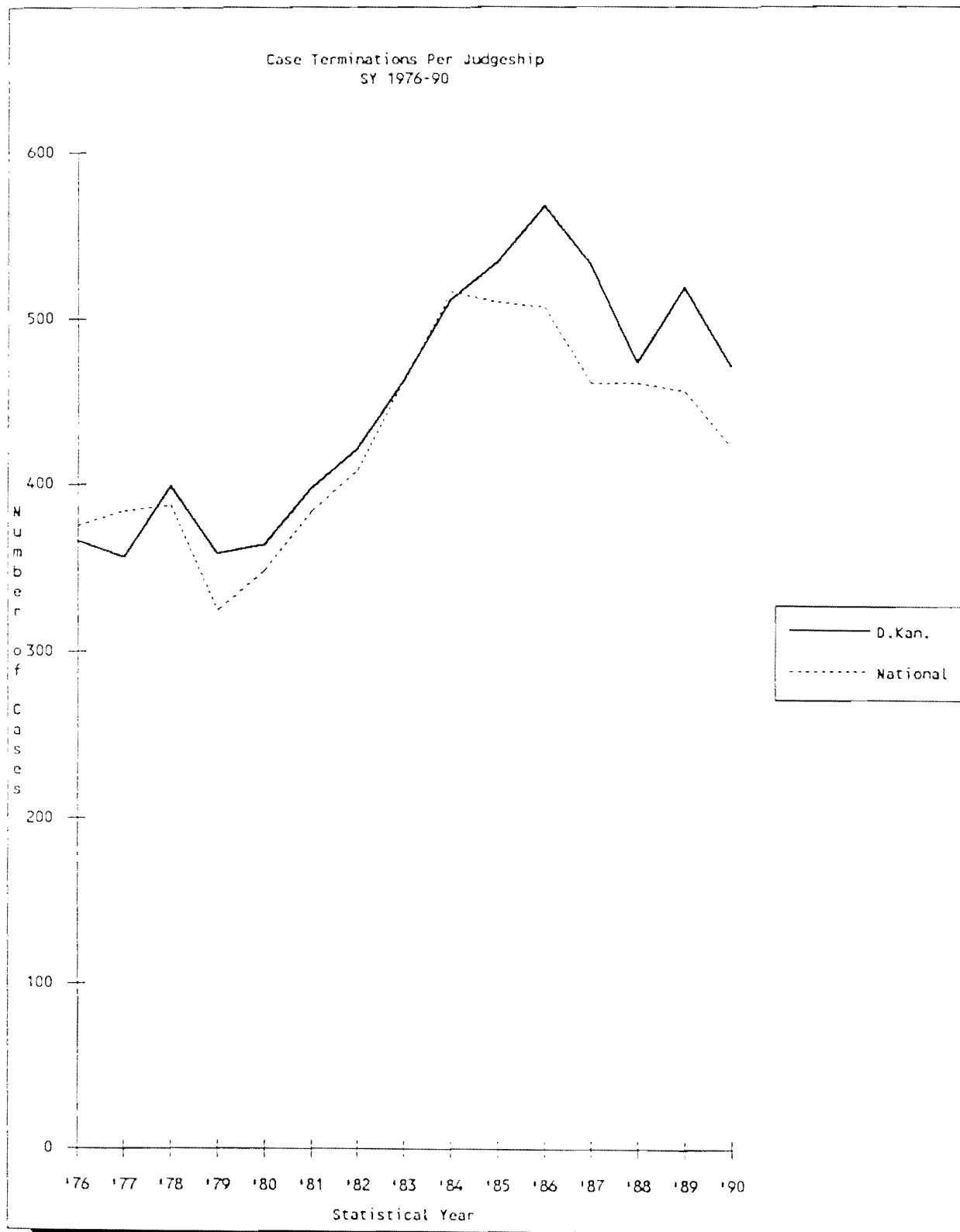


Figure 11

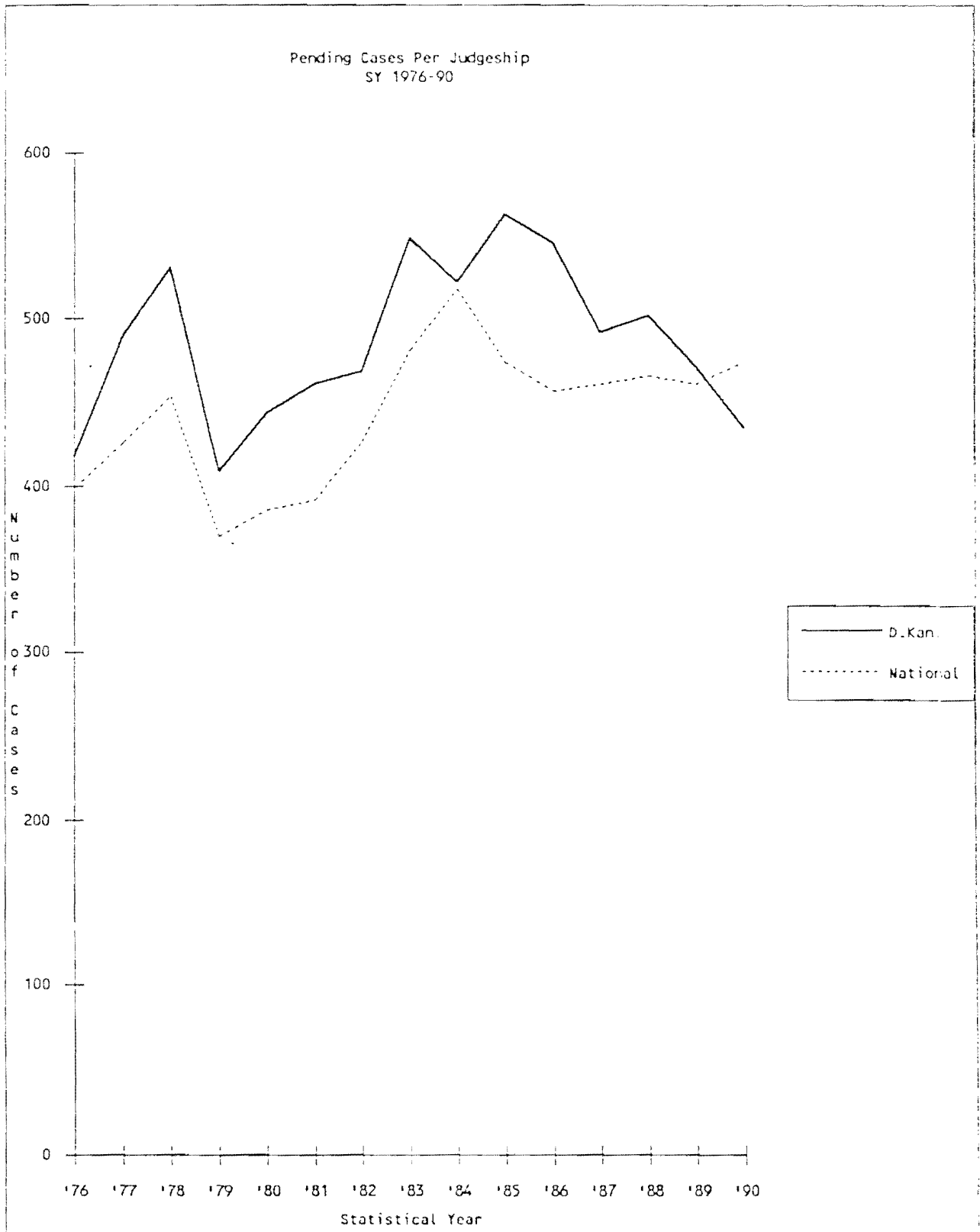
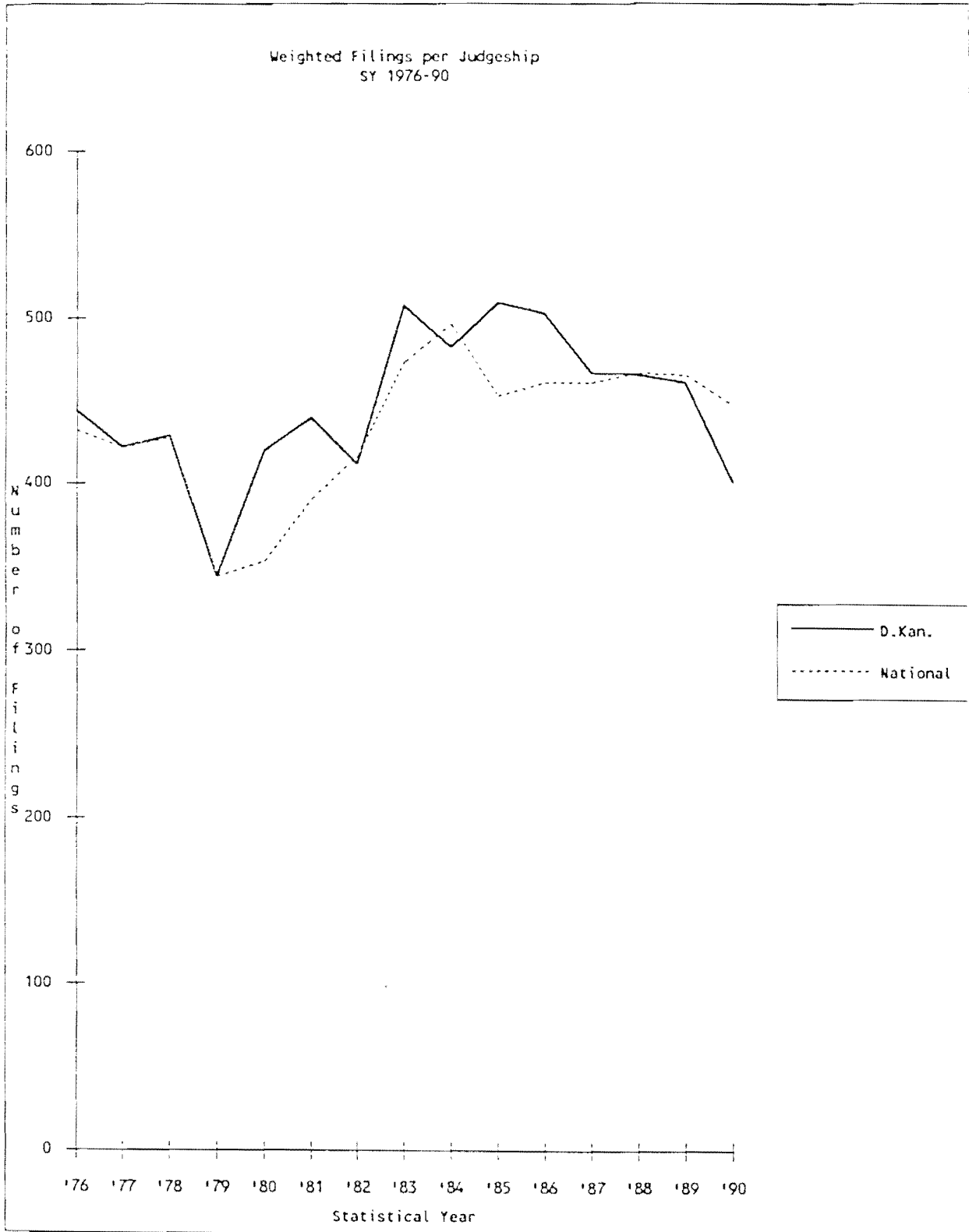


Figure 12



decrease of 12.2% (5 trials per judgeship) since 1989, an increase of 5.9% (2 trials per judgeship) since 1980, and a decrease of 10% (4 trials per judgeship) since 1976. The 1990 figure is identical to the national average of 36 trials per judgeship. **Figure 13** illustrates the trend in number of trials completed per judgeship for the District of Kansas and nationally from 1972-90.

Percentage of civil cases over three years old. At the close of the SY 1990, 4.5% of the district's civil cases were over three years old. This is a decrease from 4.8% in 1989, from 11.6% in 1980, and from 6.9% in 1976. Nationally, 10.4% of civil cases were more than 3 years old at the close of the SY 1990. **Figure 14** shows the trend in percentage of civil cases more than three years old for the District of Kansas, and the national trend, from 1976-90. This trend chart shows that in recent years, the District of Kansas has greatly reduced its backlog of older cases, and that the percentage of cases more than three years old in this district is currently considerably lower than the national average.

b. Trends in Criminal Filings

i. District statistics. The criminal felony caseload of the District of Kansas has increased in the last decade,¹² both in terms of the number of felony indictments filed and in terms of the number of felony defendants prosecuted. This is consistent with nationwide trends.

Total criminal felony filings. The total criminal felony filings figure of 245 cases in the District of Kansas for SY 1990 reflects a decrease of 6% from 1989. It is an increase of 36% from 1980. **Figure 15** illustrates the trend in total criminal filings from 1980-90 for the District of Kansas.

¹² In this section, trends for the period SY 1980-90, or in some cases SY 1987-91, are reported and analyzed. Prior to SY 1980, the Administrative Office reported misdemeanor criminal filings as part of the total criminal caseload. See **1981 Court Management Statistics for United States Courts d (Administrative Office 1981)**.

Figure 13

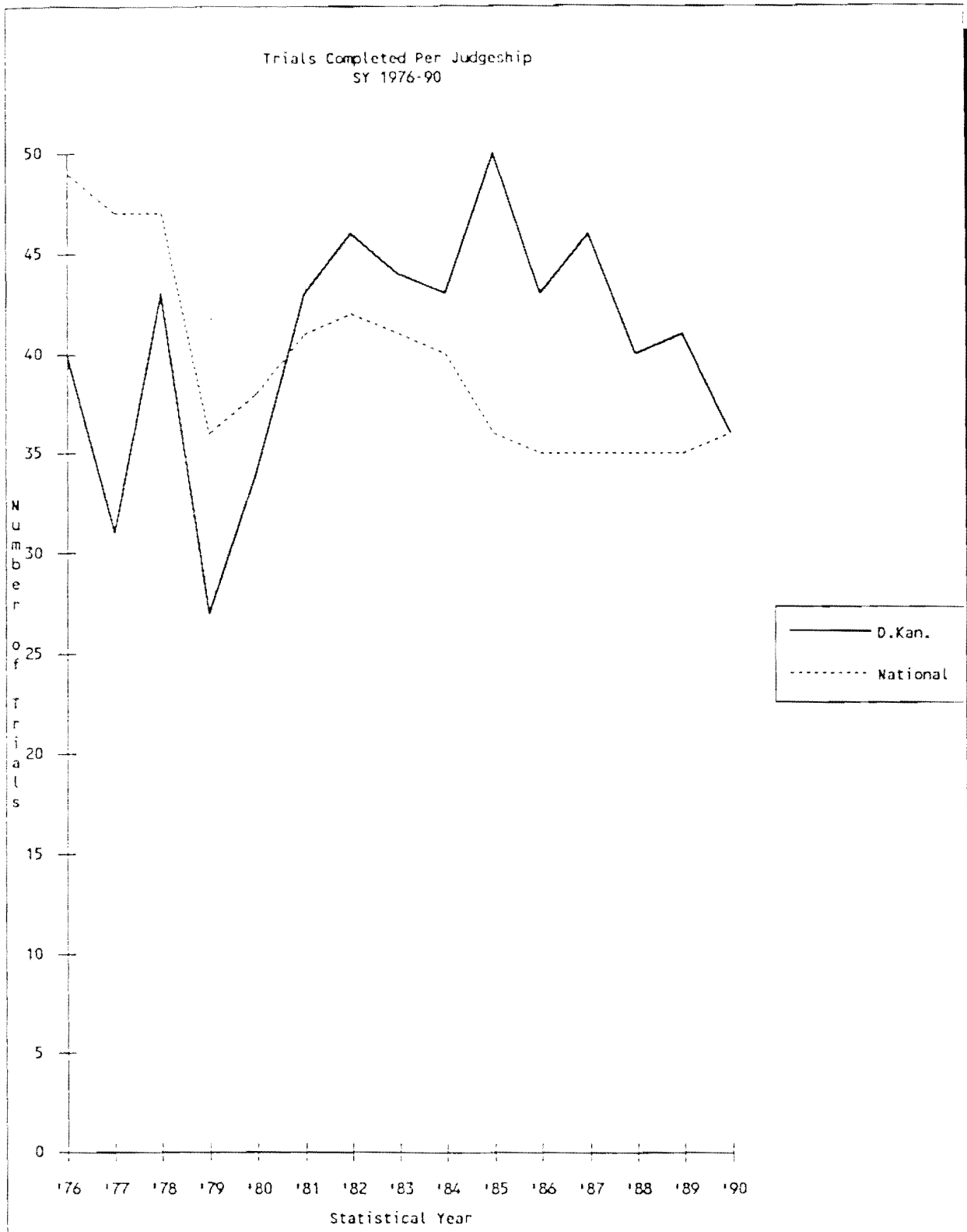


Figure 14

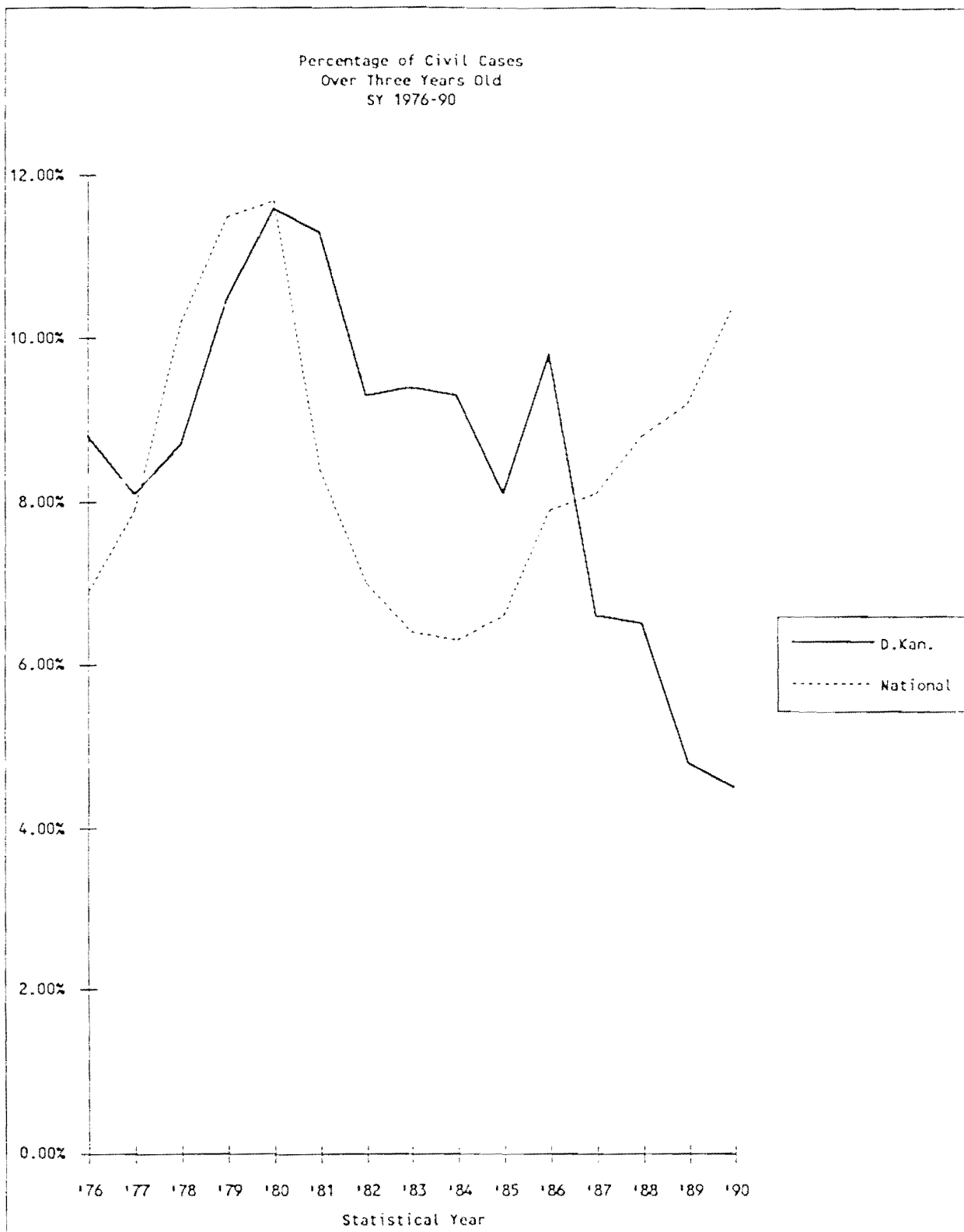
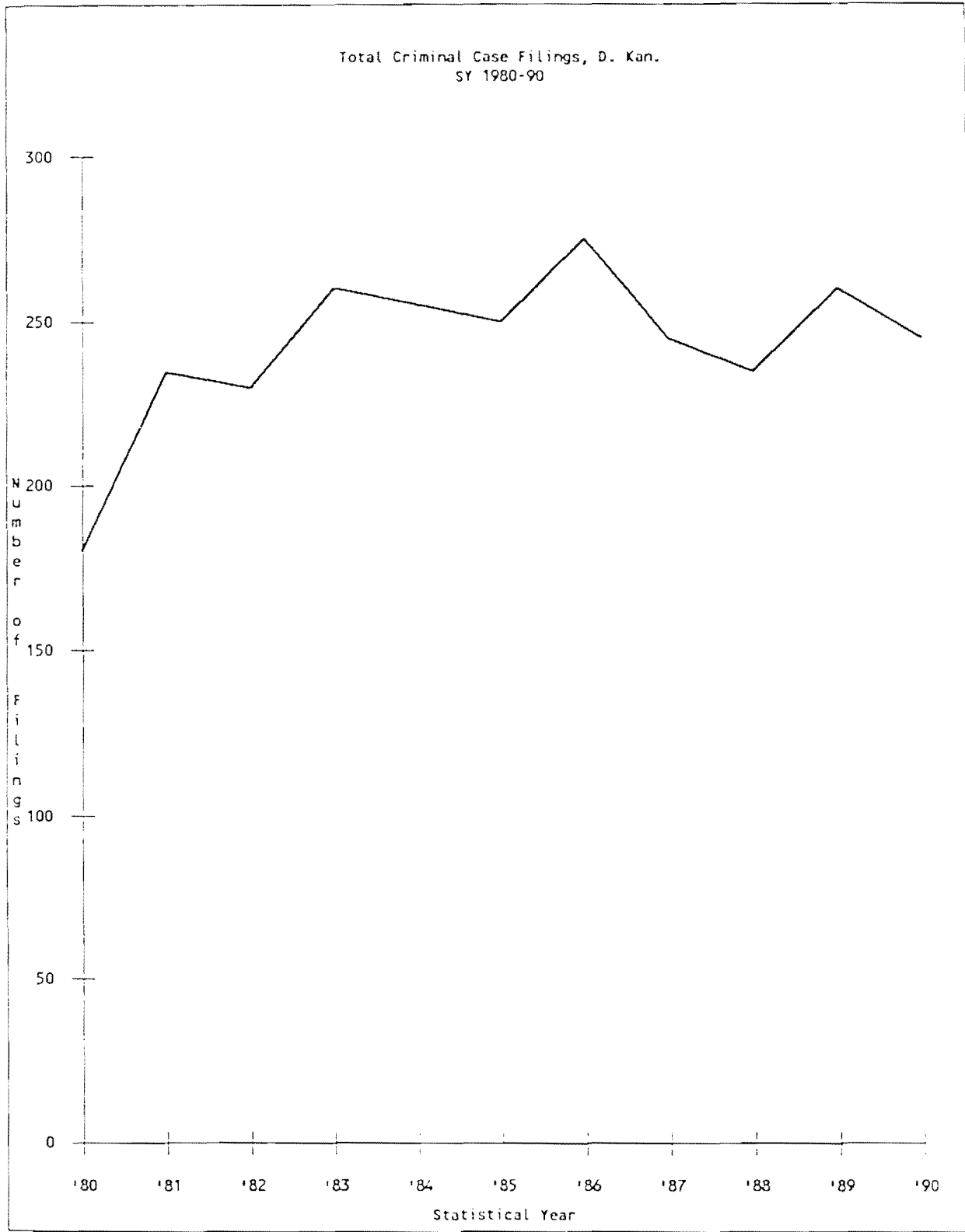


Figure 15



Criminal filings as a percentage of total filings. In SY 1990, criminal filings represented 11.2% of total filings in the district. This is an increase from 10.6% in 1989 and from 9.0% in 1980. Nationally, criminal filings made up 13.3% of total filings in SY 1990. **Figure 16** shows the trend in criminal filings as a percentage of total filings for the District of Kansas, and the national trend, from SY 1980-90.

Criminal felony defendants prosecuted. The Federal Judicial Center has indicated that it considers the number of felony defendants prosecuted within a district to be a more accurate indicator of criminal workload than the number of cases filed by indictment or information. Administrative Office data on the felony defendant-load of the District of Kansas are available beginning in SY 1987. These data show that the number of felony defendants prosecuted increased, both in the District of Kansas and nationally, between SY 1987-90.

In SY 1990, felony indictments or informations were filed against 341 criminal defendants. This is an increase of 12.9% from 1987. **Figure 17** shows the trend in total felony defendants prosecuted from 1987-90 for the District of Kansas and nationally.

Felony drug defendants prosecuted. The number of felony drug defendants prosecuted has increased tremendously during the period 1987-90. In SY 1990, there were 147 defendants against whom federal drug-related felony prosecutions were instituted in the District of Kansas. This is an increase of 79.3% from SY 1987, and compares to an increase nationally of 36% since 1987. **Figure 18** shows the trend in number of felony drug defendants prosecuted from 1987-90 for the District of Kansas and nationally.

Felony drug defendants as a percentage of all felony defendants. Felony drug defendants represented 43.1% of all felony defendants prosecuted in the District of Kansas in SY 1990. This compares to 43.0% nationally. In recent years, felony drug defendants have generally represented a smaller percentage of total defendants in

Figure 16

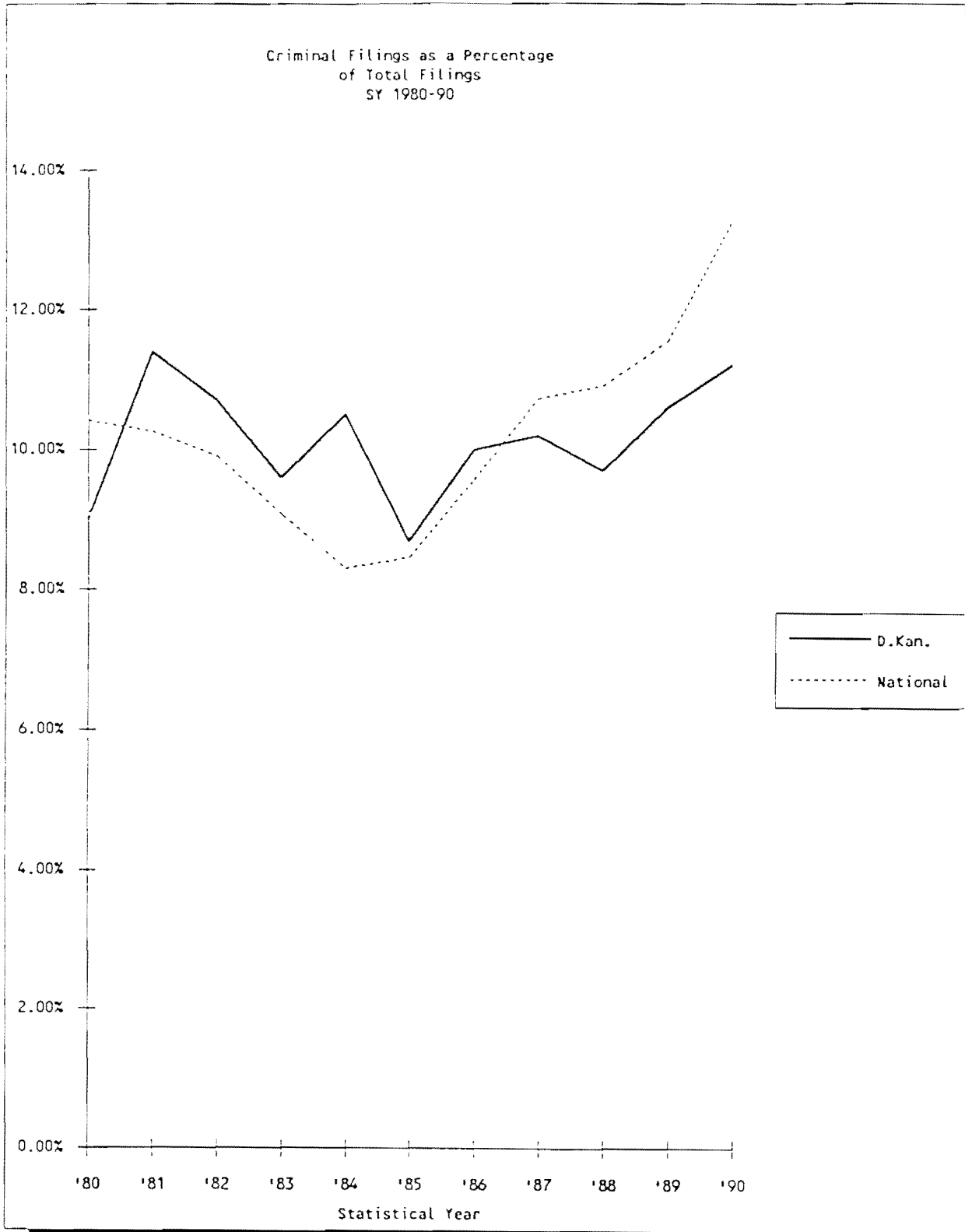


Figure 17

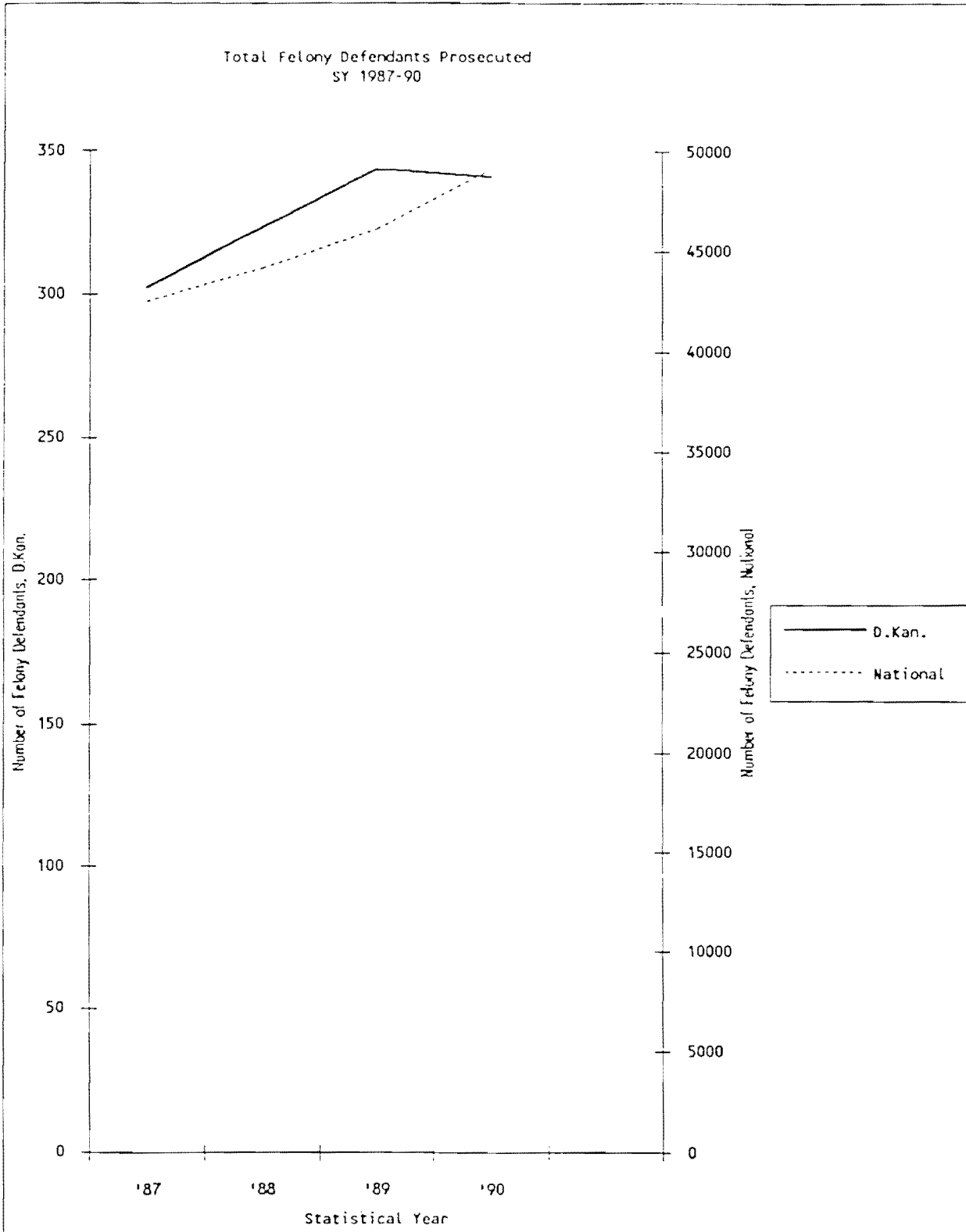
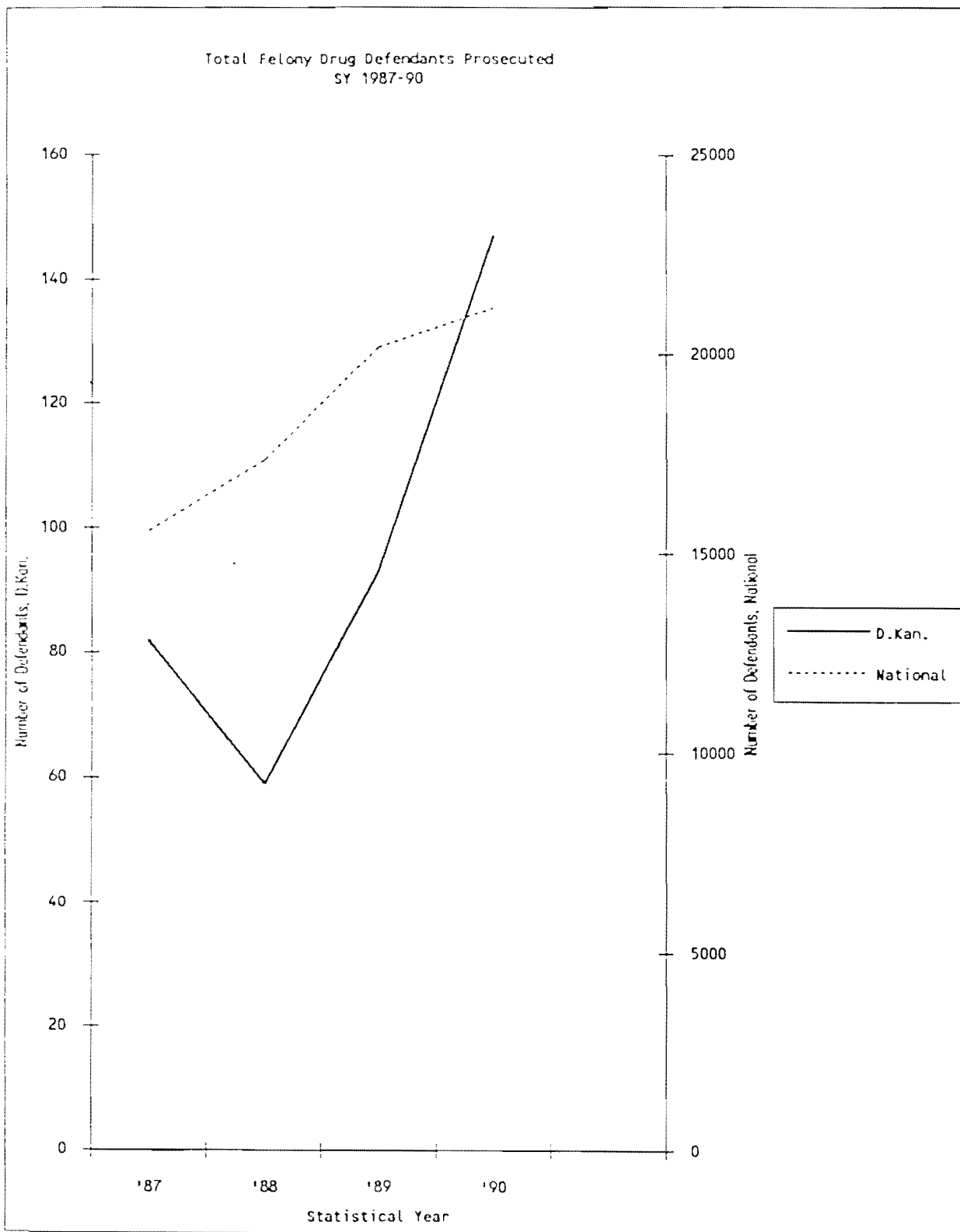


Figure 18



this district than the national average. **Figure 19** illustrates the trend in drug defendants prosecuted, expressed as a percentage of all defendants prosecuted, for the District of Kansas and nationally from SY 1987-90.

Filing to disposition rates. The median filing-to-disposition rate for a criminal case in the District of Kansas has varied from year to year but for the most part has tracked the national median. **Figure 20** illustrates the trend in median filing-to-disposition rate for a criminal felony case in the District of Kansas from 1980-90, and the national trend.

ii. Per judgeship statistics and comparison to national statistics. As is true in the civil context, per judgeship statistics concerning criminal filings can be helpful in assessing an individual court's workload over time, and for comparison purposes. This section compares recent trends in the criminal workload of the District of Kansas to national trends.

Criminal felony filings per judgeship. In SY 1990 there were 49 criminal felony filings per judgeship in the District of Kansas. This is an increase of 26.5% since 1980. It compares to a national per judgeship criminal felony filings figure of 58 cases. **Figure 21** shows the trend in criminal case filings per judgeship for the District of Kansas, and the national trend, for SY 1980-90.

Criminal felony defendants prosecuted per judgeship. A total of about 68 felony defendants per judgeship were prosecuted in the District of Kansas in SY 1990, compared to a national average of 85 felony defendants defendants per judgeship.

Figure 22 illustrates the trend in felony defendants prosecuted per judgeship for the District of Kansas and nationally from SY 1987-90.

Felony drug defendants prosecuted per judgeship. Approximately 29 felony drug defendants were prosecuted per judgeship in the District of Kansas in SY 1990. This compares to a national average of 47 felony drug defendants per judgeship.

Figure 19

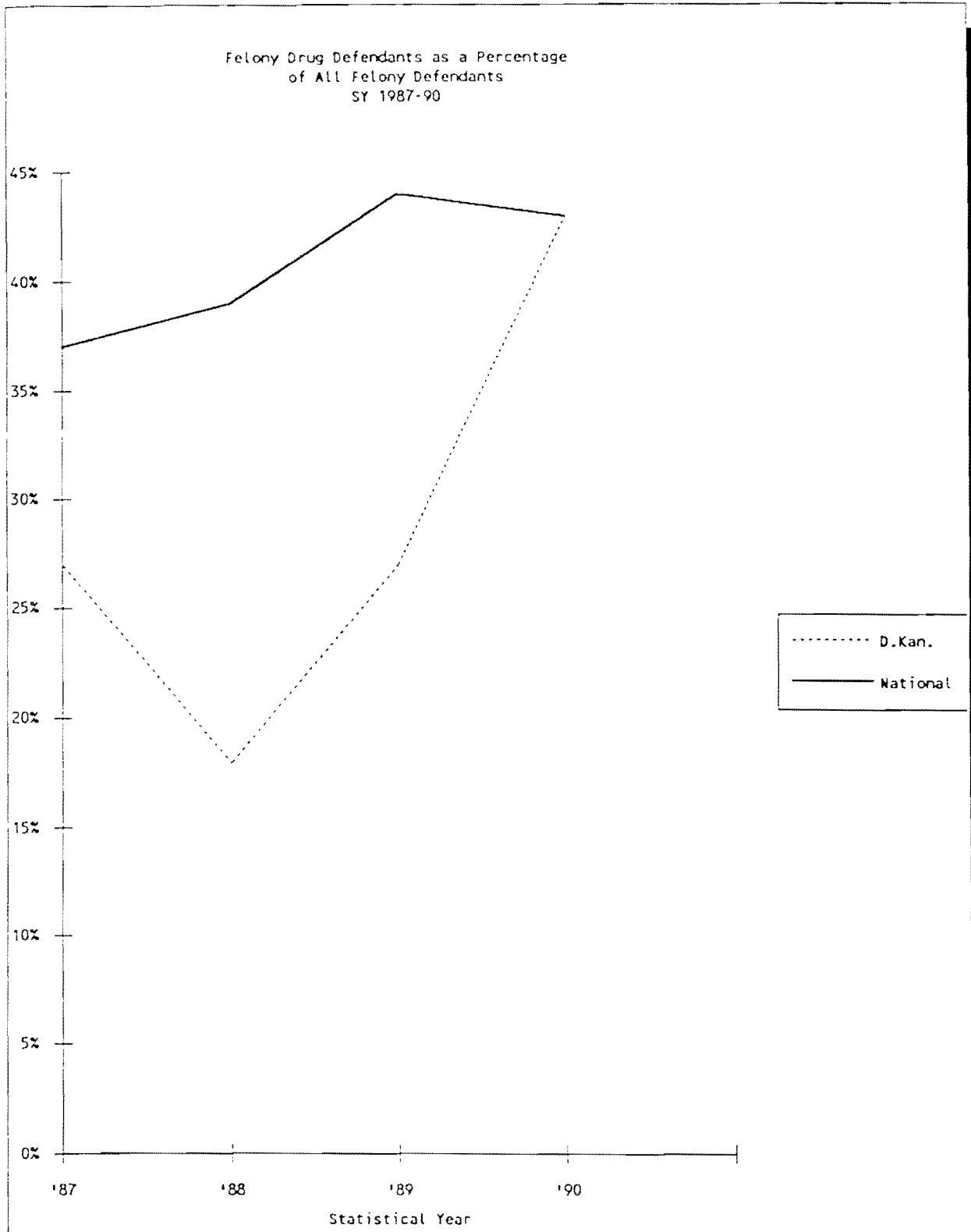


Figure 20

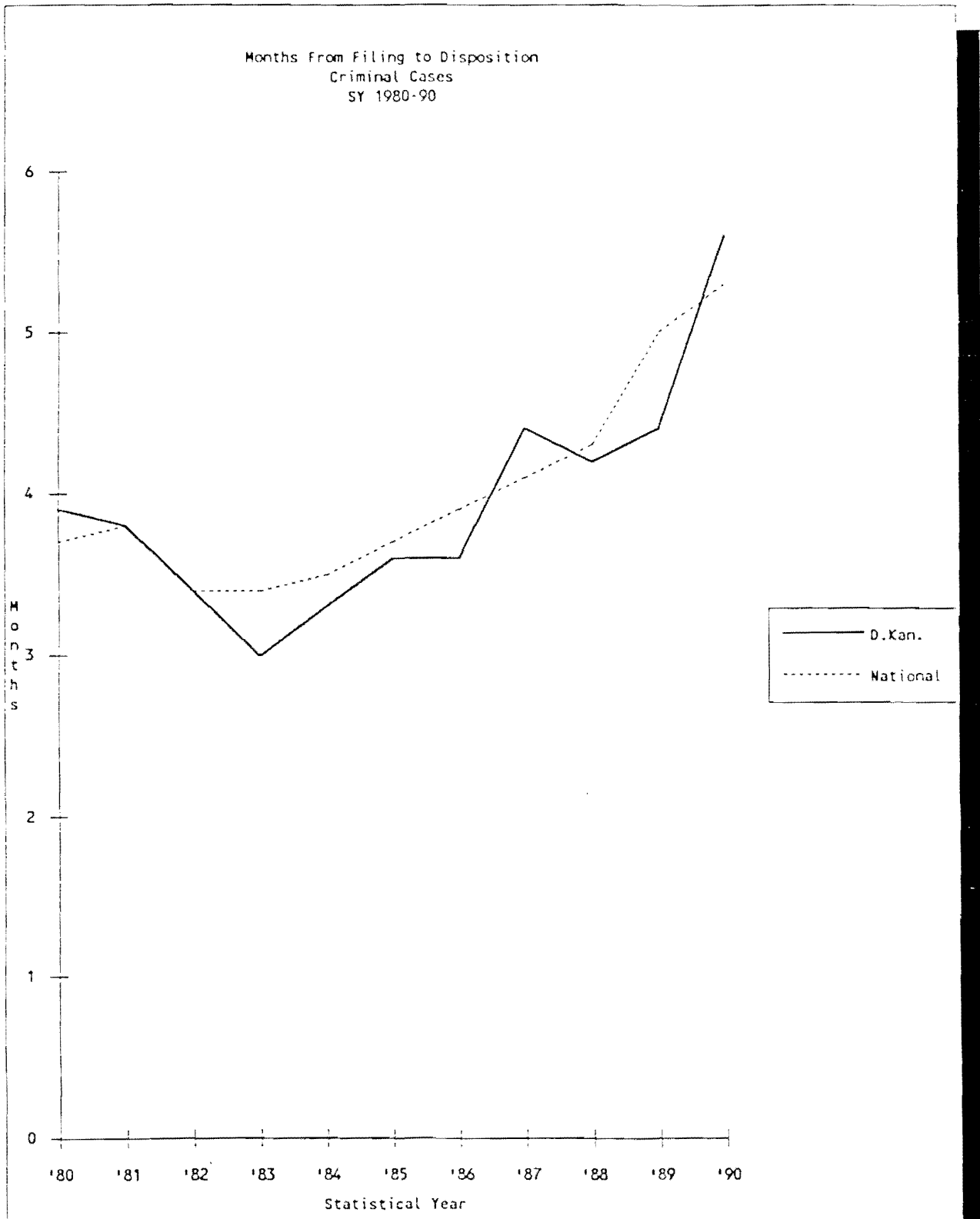


Figure 21

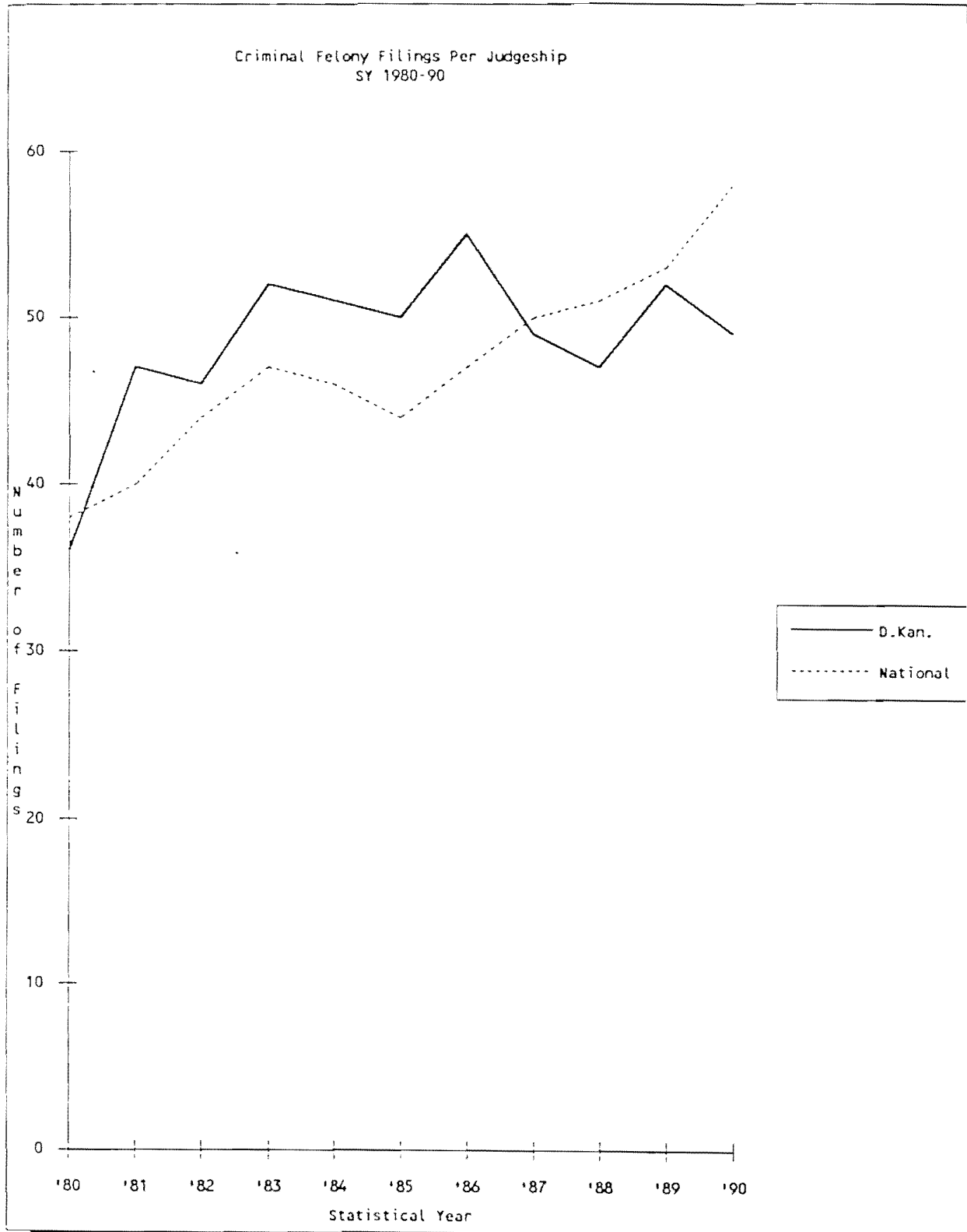


Figure 22

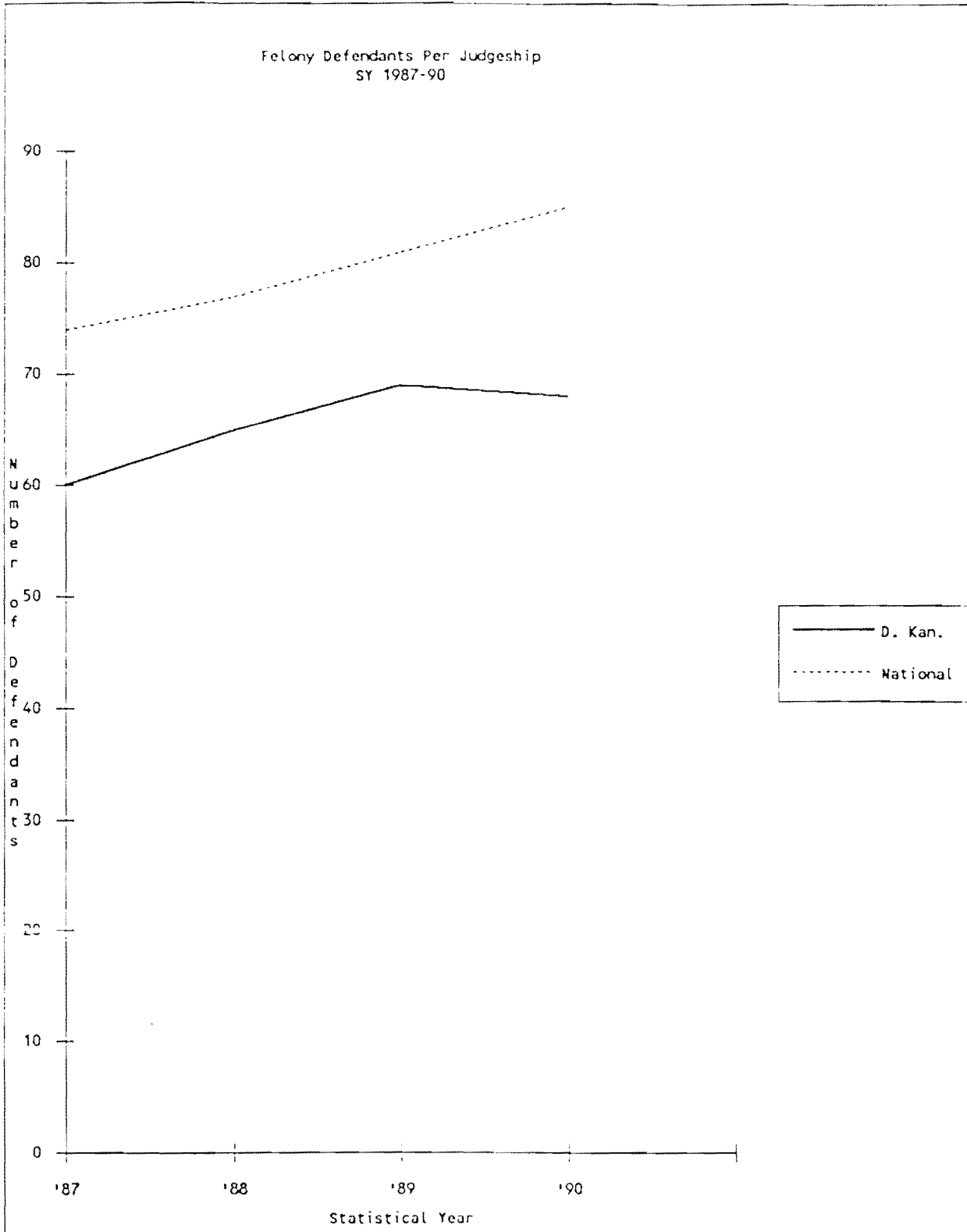


Figure 23 illustrates the trend in felony drug defendants prosecuted per judgeship for the District of Kansas and nationally from SY 1987-90.

c. Trends in Pro Se Prisoner Filings

The number of pro se prisoner petitions filed in the District of Kansas has more than doubled in the last ten years. Increased numbers of both habeas corpus and civil rights petitions were filed by both state and federal prisoners. For example, state civil rights petitions increased from 75 in 1980 to 224 in 1990; combined state and federal habeas petitions increased from 72 to 185¹³ during the same time period. Explanations include both increased awareness of litigation and an increase in the state inmate population which more than doubled during this time period.¹⁴ **Figure 24** illustrates the trend in pro se prisoner filings from calendar years 1976-90.

Recent developments in the law affecting prisoner petitions may influence these trends in the future. Constraints on multiple federal habeas corpus petitions may cause some reduction in those cases, although the current case load does not reflect frequent multiple petitions. Expansion of federal court jurisdiction to include more pendent state claims may push in the opposite direction. Recent additions to the state prison system reflect an expectation of increases in the inmate population. Adoption of a federal death penalty may also add to this load. At this time, however, none of these changes have had an observable impact.

3. Trends in Judicial Resources

a. District Judgeships

The District of Kansas currently has six district judgeships, of which one is a temporary judgeship allocated to the court under section 203(b)(2)(C) of the Federal

¹³ This figure includes more than forty petitions filed by Cuban inmates who were being held at the Leavenworth Penitentiary. A similar category of complaints is not anticipated in future years.

¹⁴ The Kansas state inmate population increased from 2,333 on June 30, 1980, to 6,172 on June 30, 1989 and then dropped slightly to 5,677 on June 30, 1990. Kansas Department of Corrections, Statistical Profile of the FY 1990 Offender Population, November 1990.

Figure 23

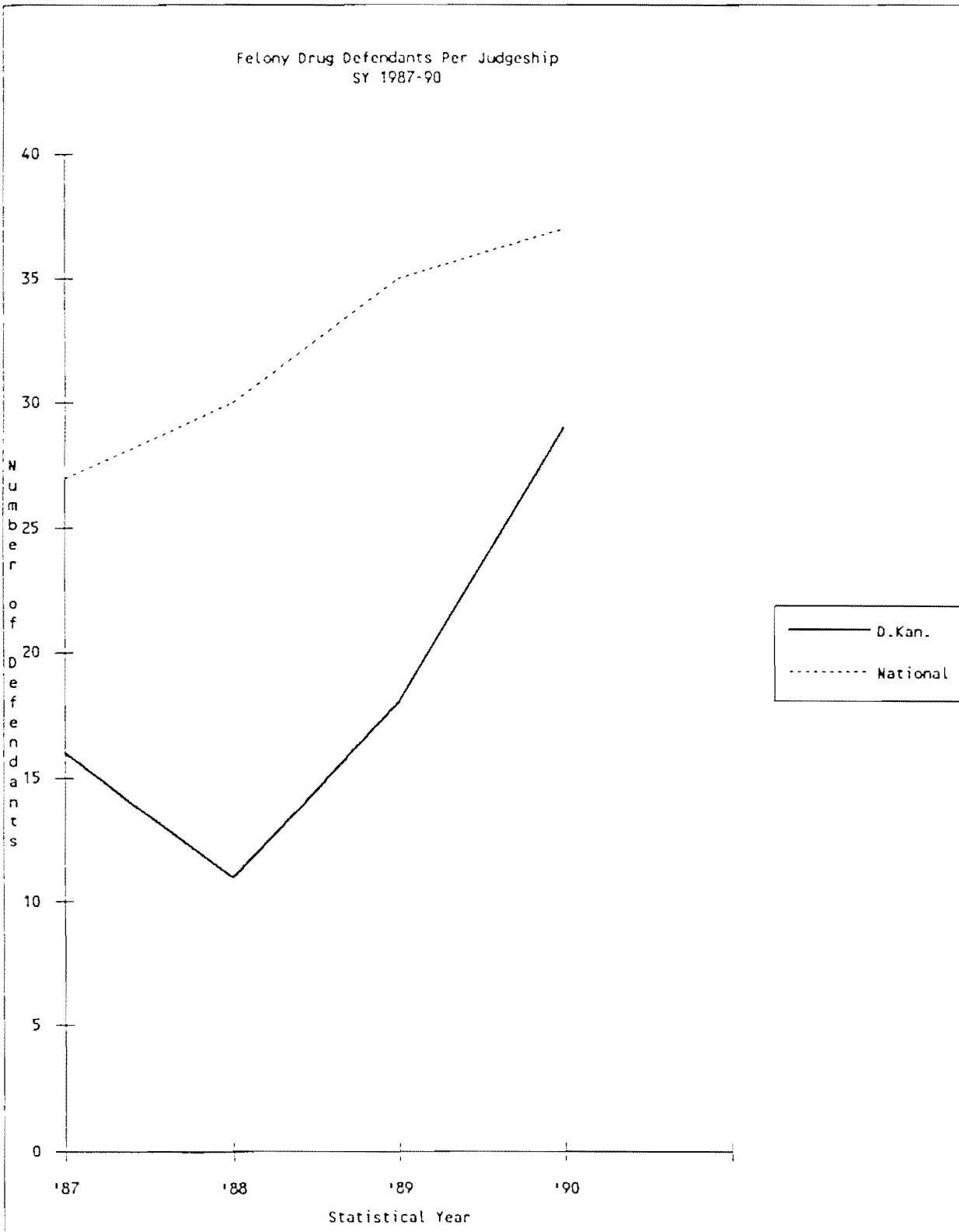
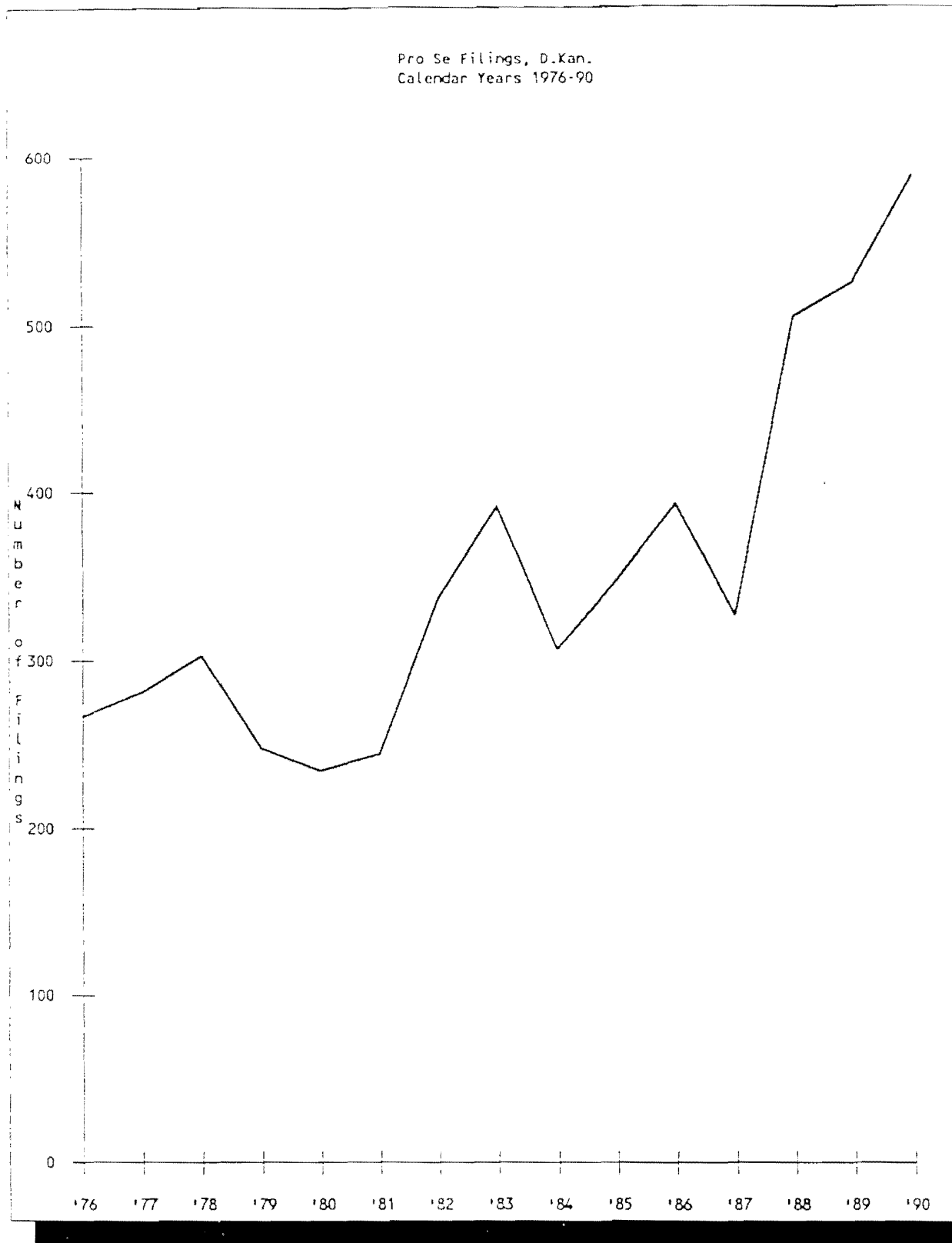


Figure 24



Judgeship Act of 1990. The district had five judgeships from SY 1979 to December 1, 1990, and four judgeships prior to that time.

b. Judicial Vacancies

The District of Kansas has experienced significant judicial vacancies over the last two decades. These vacancies are the direct result of the failure of the executive branch and Congress promptly to fill district judgeships as they become vacant or are created.¹⁵ Although vacancies are a problem in many judicial districts, they present particularly serious problems in districts such as this one with relatively few district judgeships. The existence of vacancies exerts undue pressure on the court's senior judges to maintain full caseloads despite their senior status.

In SY 1990, there were 5.1 vacant judgeship months in the District of Kansas. This represents 9% of the total judgeship months allocated to the District of Kansas during that year. Nationally, 8% of the total judgeship months were vacant in SY

c. Senior Judges

The senior judges in the district have historically carried significant caseloads, and the court has benefitted greatly from their willingness to do so. Because many of the court's senior judges maintain virtually full loads, the current caseload of the active judges of District of Kansas is actually somewhat lower than case management statistics compiled by the Administrative Office, which are based on the total judgeships allocated to the district, would suggest.¹⁶ The court had two senior district judges from SY 1976-78, three senior district judges from SY 1979-80, and four from SY 1982-90. The court currently has five senior district judges.

B. Cost and Delay

1. Assessment of Conditions

¹⁵ See Report of the Federal Courts Study Committee 36 (1990) ("Nor can [the committee] overstate the importance of the executive and legislative branches' filling the vacancies that exist today.")

¹⁶ This is true even if judicial vacancies are considered in determining the actual judicial workload of the court's active judges.

The Advisory Group has considered carefully the information set forth in Parts II.A.1-3. It has considered the materials provided to all Advisory Groups by the Federal Judicial Center and the Administrative Office, and it has reviewed working papers on the civil and criminal caseloads of this district and a variety of materials on alternative dispute resolution. In addition, the Advisory Group was given the unique opportunity to interview fully all of the active district court judges, all but one of the senior judges, all magistrate judges, all judicial law clerks, the deputy clerks, secretaries, and several other persons associated with the case management process.¹⁷ These interviews took the better part of seven days at three different geographic locations around the district and included review of forms for different procedures and discussions of various suggestions for resolving problems of many types. The interviews were conducted in a candid fashion, and the Advisory Group was impressed both with the quality of the court's judicial and parajudicial personnel, and with their forthrightness and cooperation during the interviews. Additionally, the Group interviewed party litigants and attorneys during the same period of time and solicited commentary from various organizations such as the American College of Trial Lawyers, the American Trial Lawyers Association and the Kansas Association of Defense Counsel. These organizations represent a cross section of plaintiffs' attorneys and attorneys representing defendants.¹⁸

Based on their review of the Civil Justice Reform Act, the information set forth in Part II.A. and that obtained during their interviews with court personnel, their collective experience as lawyers in the federal district court for the District of Kansas, and the input of selected representatives of bar organizations operating within the

¹⁷ Appendix 2 to this Report, which contains the Group's Statement of Operating Procedures, lists the names of all persons interviewed by the Advisory Group prior to its formulation of findings and recommendations.

¹⁸ The backgrounds of the members of the Advisory Group reflect the same concern for obtaining a fair and balanced perspective of practice and problems within the District of Kansas. Appendix 1 to this Report contains short biographies of the Advisory Group membership.

district, the members of the Advisory Group have made the following findings and conclusions:

(1) Litigants in the District of Kansas have encountered delay and unnecessary expense associated with the processing and management of civil cases filed there.

(2) The expense and delay with which the Civil Justice Reform Act is concerned, and to which this Report is addressed, is that encountered by a litigant in the United States District Court for the District of Kansas.

(3) "Case management" includes ensuring that a civil case moves efficiently and economically through the federal judicial system, as contemplated by Federal Rule of Civil Procedure 16 and other relevant federal rules.

(4) Case management is the non-delegable responsibility of each district judge maintaining a caseload within the District of Kansas. Judges may assign portions of the case management authority to magistrate judges or parajudicial personnel, but the final responsibility for case management remains with the district judge.

(5) Lack of case management by some judicial officers is a serious problem in this district and has contributed to delay.

(6) The United States District Court for the District of Kansas currently has, and historically has had, a civil judicial workload that is comparable, in terms of number and complexity of cases, to the national average.

(7) The court currently has, and historically has had, a criminal caseload that is equivalent to the national average in terms of number of cases filed per judgeship, less burdensome than the national average in terms of the number of defendants prosecuted per judgeship, and approximately equivalent to the national average in terms of the complexity of the cases.

(8) The Advisory Group is unable to determine from statistics presently available to it whether the criminal caseload of the District of Kansas has affected, either favorably or unfavorably, the court's civil case management statistics.

(9) Good case management begins with accurate information concerning the status of individual cases and motions. The Clerk's office is presently capable of providing such information to the judges of the district court through the Integrated Cases Management System (ICMS). This system is being used by the court as the authoritative source of case management information within the district.

(10) Case management statistics show that the District of Kansas has significantly reduced the number and percentage of pending civil cases that are over three years old. This reduction is attributable in part to the periodic circulation of a "three-year list" and the district judges' special attention to those older cases.

(11) Case management statistics for the District of Kansas show that the court has longer disposition rates with respect to its civil cases than the national average. These longer disposition rates include, for civil cases, a longer median time from filing to disposition, a substantially longer median time from issue to trial, and a longer indexed average lifespan, than the national average.

(12) Judges in the District of Kansas try as many or more cases than the national per judgeship average.

(13) With few exceptions, 60 days from filing is a reasonable time within which to decide nondispositive motions, and 120 days from filing is a reasonable time within which to decide dispositive motions.

(14) The District of Kansas currently has a large number of pending motions that have not been decided within a reasonable time.

(15) There is a relationship between lack of early intervention in the civil litigation process by a judicial officer, and subsequent expense and delay. Accordingly, problems of expense and delay stemming from the pending motions docket would be reduced through the early intervention of a judicial officer in all civil cases.

(16) In many civil cases filed in the district, the discovery process results in the taking of unnecessary discovery, unnecessary discovery delays, and the filing of unnecessary motions.

(17) There is some inconsistency within the district with regard to the manner in which commonly arising discovery issues and disputes are treated.

(18) There currently exists in the district no systematic, formalized procedure for judicial intervention to encourage settlement.

(19) There is generally insufficient intervention in civil cases to encourage settlement of appropriate cases at early stage of the litigation.

(20) The District of Kansas has a large backlog of pro se prisoner petitions which are not being addressed within a reasonable time.

(21) The magistrates' involvement in the pro se docket is very limited and it is not well integrated with other clerk and judicial management of the cases. Although assignment of responsibility to Topeka judges and pro se law clerks is relatively efficient, there has been a lack of systematic management or control of these cases, and the district's resources have been inadequate for the case load that has developed.

2. Causes of Expense and Delay in the District of Kansas

Section 472(c)(1)(C) of the CJRA and the Judicial Conference's recommended format for Reports contemplates that each Advisory Group articulate its views concerning the causes for undue expense or delay existing within the district. The Advisory Group is well aware that there are instances in which reducing delay will result in an increase in expense, and that in such cases the goal of case management should be to strike an appropriate balance between such concerns.

The Advisory Group believes that the principal causes of expense and delay in the District of Kansas have included:

(1) a lack of awareness among some judicial and parajudicial personnel of the precise status of cases and pending motions;

(2) the lack of agreed case management goals applicable to all judges and magistrate judges;

(3) the absence in some areas of appropriate judicial control over timing and scope of discovery;

(4) the frequent filing of unnecessary discovery matters and other motions in some areas of the district;

(5) the state of the pending motions docket in some portions of the district and in particular, lengthy disposition times associated with dispositive motions in some areas of the district;

(6) delays in the consideration of settlement possibilities in appropriate cases in some areas of the district;

(7) the failure of some attorneys to comply with the district's local rules and, relatedly, the lack of enforcement of local rules by the court in some areas; and,

(8) the failure of the executive and congressional branches to act promptly to fill judicial vacancies on the court as they arise.

III. Recommendations to the Court and Their Bases

A. Recommended Measures, Rules and Programs

The Advisory Group recommends that the District of Kansas adopt its existing local rules, standing orders, and internal procedures, as modified or supplemented by a number of specific measures, rules, and programs, described below, as its Civil Justice Reform Act Expense and Delay Reduction Plan. The measures, rules, and programs discussed below are intended to address the specific causes of expense and delay mentioned above. To the extent that implementation of any measure, rule, or program described below would require the court to promulgate a local rule or standing order, the Group recommends that the procedures for promulgating such rule or order be initiated prior to December 31, 1991.

1. Monthly Status Reports on Cases and Motions

The Clerk's office has recently acquired the capacity to report to the court on the status of all cases and motions pending in the district through the integrated case management system ("ICMS"), and has already begun making status reports to the court on a monthly basis. The Advisory Group recommends that the Clerk's office continue and expand this practice, and that status reports be compiled monthly and circulated to all judges and magistrate judges in the district. Such reports should cover all civil cases and the pro se prisoner docket, and should address all areas identified in the discussion of "goals" below. This status report should be an internal document not available to the public except to the extent required by the reporting requirements of section 476 of the CJRA.

This recommended measure is intended to address those problems of delay that stem merely from a lack of awareness by judicial and parajudicial personnel of case and motion status.

2. Articulation of Case Management Goals

The Civil Justice Reform Act speaks of "expense" and "delay" in abstract terms. The CJRA offers little guidance to Advisory Groups or to the district courts concerning the "goals" for which its expense and delay reduction plan ought to strive. Nevertheless, the Act requires the Group to report yearly on whether the district's Plan has achieved reductions in expense and delay within the district court. Accordingly, the Advisory Group believes that it is appropriate for the court to identify and articulate quantitative case management goals. Such goals should be developed for the district as a whole, and should be made applicable to each district judge, senior judge, and magistrate judge who maintains a caseload within the district. Each judge in the district should periodically review his or her docket and compare its status to that of other judges in the district and to national case management statistics. The court should also consider identifying peer districts whose case management statistics might serve as a basis for comparison.

The Advisory Group believes that the following quantitative case disposition goals are appropriate in the District of Kansas given the nature of the court's civil caseload: (1) the median time from filing to disposition (currently 11 months) should approximate the national median (currently 9 months) at the end of SY 1993; (2) the median time from issue to trial (currently 20 months) should approximate the national median (currently 14 months) at the end of SY 1993; (3) the average life expectancy and indexed average lifespan of a civil case (currently 14 months) should equal the national lifespan reference (currently 12 months) at the end of SY 1993. In suggesting these goals, the Advisory Group is aware that national medians and averages may decrease over the seven years of the CJRA's lifespan due to the impact of the CJRA on case management procedures. The current national median or average is presently the goal intended for SY 1993, but the Advisory Group's suggests that these goals be reconsidered in the reviews that the Advisory Group conducts in succeeding years.

The Advisory Group believes that specific case disposition goals should be applicable to three special categories of civil cases: (1) social security appeals should be decided no more than 60 days after they are at issue; (2) bankruptcy appeals should be decided no more than 120 days after they are filed; and (3) as interim goals, prisoner habeas corpus cases should generally be resolved within 180 days of filing, dispositive motions in prisoner civil rights cases should be ruled upon within 180 days of filing, and non-dispositive motions in prisoner cases should be ruled upon within 90 days of filing. Highest immediate priority should be given to reducing the backlog of habeas corpus cases. Eventually, pending motions in prisoner cases should be resolved within the time frame applied to other civil motions.

The Advisory Group believes that the following motion disposition goals are appropriate for civil motions: (1) with respect to most nondispositive motions, including discovery related motions, disposition within 60 days of filing; and (2) with respect to most dispositive motions, including motions to dismiss and motions for summary judgment, disposition within 120 days of filing.

The Advisory Group believes that the goals articulated above are achievable without detracting from the standard of justice available in the District of Kansas and specifically agrees that the quality of justice must never yield to temporary goals of efficiency. It recognizes that there may be a need to articulate interim goals with respect to some case management statistics and/or categories of cases. The Group encourages the court to articulate such additional or interim goals as it believes are consistent with achieving the ends of justice.

In addition, the Advisory Group recommends that the clerk's office devise methods for retrieving data from the chambers of judges, magistrate judges, and the integrated case management system so that the court and the CJRA Advisory Group periodically

may assess whether implementation of the CJRA Plan adopted by the court has had an impact on the delay and expense associated with civil litigation in this district.

These measures are intended to address the expense and delay associated with lengthy disposition times for individual motions and for cases, and to allow periodic assessment of whether the court is achieving its articulated goals. The establishment of institutional goals, coupled with individual judges' and magistrate judges' routine evaluation of the status of their caseloads, will almost certainly encourage timely rulings on motions, which will in turn eventually improve the court's overall case management statistics.

3. Expanded Judicial Control Over the Management of Civil Litigation

The Advisory Group believes that the key to successful case management and expense and delay reduction is early and ongoing intervention in the pretrial process by an Article III judge coupled with a well-considered and articulated discovery plan, developed jointly by counsel for all litigants with the guidance of the court. The Advisory Group recommends that the court implement this judicial control and discovery planning process as follows.

a. Early involvement by an Article III judge in all civil cases and an initial scheduling conference. The judges and magistrate judges in each district office should establish a procedure for the entry of an initial scheduling order tailored to particular cases, such as requiring the attorneys to develop such an order within thirty days of the date upon which the defendant appears in the case. See Amendments to Fed. R. Civ. P. 16 (effective July 1, 1990) and Proposed Amendments to Rule 16, Preliminary Draft of August 1991. The order, which will constitute the order required by Rule 16 of the Federal Rules, should be reviewed, modified, and entered by the court, after conducting actual initial scheduling conferences in those cases which the Article III judge deems may require a conference to control the cost and duration of discovery. In

addition to those items that Fed. R. Civ. P. 16 requires be included in the initial order, the initial scheduling order should address:

(1) whether a limited amount of discovery would enable the parties to present substantive issues for the court's resolution which would narrow the scope of remaining discovery;

(2) how potential dispositive motions can be presented for the court's determination at the earliest appropriate opportunity;

(3) whether an exchange of documents should be required without formal discovery requests; and,

(4) whether issues should be bifurcated.

The order should also, where appropriate,

(5) comment preliminarily on dispositive or discovery issues;

(6) place cases in categories for case management by identifying, *inter alia*,

(a) cases that should be pretried within four months of issue;

(b) cases in which only limited discovery will be permitted prior to the filing of motions;

(c) cases in which discovery will be stayed pending resolution of a substantive issue; and

(d) cases requiring longer than four months of discovery;

(7) discuss the setting, at the earliest appropriate time, of a definite date for the final pretrial conference and trial; and,

(8) raise the issue of the best time to consider mediation or settlement.

Upon entry of the initial scheduling order, issues concerning its implementation could be referred to a magistrate judge.

The goal of this initial scheduling order should be a preliminary but realistic discovery plan and time frame for the case, embodied in a meaningful Rule 16 scheduling order.

b. Pretrial conferences and ongoing pretrial involvement by the Article III judge. The Article III judge should conduct additional conferences with counsel and/or the magistrate where necessary to eliminate or minimize delays and expense in the discovery or trial process. In complex cases, the Article III judge should conduct the final pretrial conference to finalize issues, complete the final pretrial order, narrow the issues to be tried where appropriate, and, if possible, establish a firm trial date.

c. Article III and magistrate judges. To facilitate better coordination between Article III judges and magistrate judges, the Advisory Group recommends that judges and magistrates meet on a frequent and regular basis to discuss cases in which case management responsibilities are shared and otherwise facilitate the efficient and effective management of the civil caseload. These meetings could also address ways in which magistrate judges might be better utilized, including trying civil cases where counsel consent and making recommendations on dispositive motions or other matters deemed beneficial to the early and thorough resolution of the case.

d. Adoption of local rules or standing orders. To the extent that implementation of any of the above measures requires the court to adopt a local rule or standing order, the Advisory Group encourages the court to initiate the process of promulgating such rule or order prior to December 31, 1991.

The Advisory Group believes that the measures described in this section will partially address problems of expense and delay associated with the absence of judicial control over the timing and scope of discovery. These measures may also help reduce the number of discovery and other motions filed in some cases, and facilitate earlier settlement discussions in appropriate cases.

4. Modify Local Rules Regarding Discovery and Summary Judgment Motions

The Advisory Group believes that some changes in discovery and motion practice would benefit all litigants in the District of Kansas. The Group observes that

there is a concern with inconsistent practice in the district in some areas, including the following: (1) definitions of terms used in interrogatories; (2) where witness depositions may be taken; (3) the circumstances in which a witness may be instructed not to answer a question during a deposition; (4) standardized protective orders; and (5) obtaining medical records through discovery. The Advisory Group recommends that the Rule Committee consider these issues, and make such recommendations for modifications of the local rules as it deems appropriate.

In addition, the Advisory Group recommends that the court modify Local R. 206 to provide that briefs or memoranda filed in support of a motion for summary judgment be limited to 30 pages of argument and authority, exclusive of exhibits attached pursuant to the requirements of existing Local R. 206, unless counsel seeking to file a longer brief first obtains leave of court. The Advisory Group submits the following language as a proposed amendment to Local R. 206:

RULE 206

MOTIONS IN CIVIL CASES

(a) **Form and Filing.** All motions, unless made during a hearing or at trial, shall be in writing and shall be filed with the clerk. An original and one copy of all motions shall be filed and, except for motions pursuant to Local Rules 114 and 115, shall be accompanied by a brief or memorandum unless otherwise provided in these rules. The arguments and authorities section of such brief or memorandum shall not exceed thirty (30) pages, absent an order of the Court. With the approval of the Court, parties may be relieved from the requirement of serving and filing written briefs or memoranda in support of motions, responses, and replies.

(b) **Responses and Replies.** A party opposing a motion other than one to dismiss or for summary judgment shall, within ten days after service of the motion upon him, file an original and one copy with the clerk and serve upon all other parties a written response to the motion containing a short, concise statement of his opposition to the motion, and if appropriate, a brief memorandum in support thereof. A party shall have twenty days to respond to a motion to dismiss or for summary judgment. The moving party may, within ~~five~~ten days after the service of such statement in opposition upon him, file an original and one copy with the clerk and serve upon all other parties a copy of a written reply memorandum.

The recommendation that certain discovery practices be standardized is intended to address problems stemming from a perceived lack of consistent practices throughout the district as to some issues, which has encouraged discovery disputes and the motions that inevitably result from such disputes. The recommended rule change concerning briefs in support of summary judgment motions is intended to minimize the filing of briefs of unnecessary length, and thereby reduce the expense to litigants on both sides of the summary judgment issue. The Advisory Group suggests that procedures for amending the local rules be initiated prior to December 31, 1991.

5. Encourage Broader Use of D. Kan Local R. 214

The Advisory Group believes that Local R. 214, which presently authorizes mandatory mediation by a magistrate judge or voluntary mediation by a mediator selected by the litigants, has been effective in facilitating the settlement of civil cases filed in the Wichita office. A settlement conference managed by a magistrate judge trained in mediation techniques (and who has not otherwise been involved in the pretrial stage of the case) can be helpful in resolving some cases efficiently and economically. In addition, the Wichita system, which relies on a list of experienced litigators who have mediation training, has been used effectively as an alternative to a settlement conference before a magistrate judge. The Advisory Group recommends that Local R. 214 be invoked, and the use of outside mediators encouraged, whenever settlement is a realistic possibility.

The Advisory Group believes that some modifications to Local R. 214 are necessary to codify the practices that have evolved in Wichita under this rule. The Group also believes that the rule should be amended to require that a party representative must attend in person any settlement/mediation conference held pursuant to this rule. The proposed rule changes are as follows:

RULE 214

SETTLEMENT CONFERENCES

Consistent with Fed. R. Civ. P. 16, the judge to whom a case has been assigned shall encourage, but not require if so requiring would be futile, that each case so assigned be submitted at the earliest appropriate opportunity to a settlement conference before an attorney-mediator chosen from a panel of local attorneys, a magistrate judge, or any trial judge consenting thereto. ~~may refer it to any other trial judge consenting thereto, a magistrate judge, or with consent of the parties to an attorney or panel of attorneys for the purpose of undertaking a settlement conference with the parties and counsel.~~ The settlement conference shall be conducted in such a way as to permit an informal discussion between counsel, the parties, and the judge, magistrate judge, or attorney-mediator of every possible aspect of the case bearing on its settlement, thus permitting the judge, magistrate judge, or attorney-mediator to privately express his views concerning the settlement of the cases. Absent an order from the Court, attendance by a party representative with settlement authority while at such conferences is mandatory, except as to the United States in cases in which the United States is a party and settlement authority for the United States has not been delegated to the United States Attorney for the District of Kansas.

The Civil Justice Reform Act Advisory Group for the District of Kansas shall develop the initial panel of local attorneys after consultation with all interested local bar associations. The list of local attorneys shall be approved, after additions and deletions, and maintained by a trial judge selected by the Court for each office within the district. Said judge may thereafter add names to or strike names from the list, after consultation with the Advisory Group or interested local bar associations.

Settlement conference statements or memoranda submitted to the court or any other communications that take place during the settlement conference shall not be used by any party in the trial of the case. The judge, magistrate judge, or attorney-mediator presiding over the settlement conference shall not communicate to the trial judge the confidences of the conference except to advise whether or not the case has been settled. If the conference is conducted by an attorney-mediator or panel of attorney-mediators, the costs of the conference, including the reasonable fees of the attorney-mediator or panel of attorney-mediators, shall be assessed to the parties in such proportions as shall be determined by the trial judge.

The Advisory Group recommends that the court initiate procedures for amending Local R. 214 prior to December 31, 1991.

In addition, the Advisory Group would encourage the court to continue experimentation with mini-trials, summary jury trials, and possibly other settlement techniques in appropriate cases. The Group does not recommend that alternative dispute resolution methodology be used solely for its sake. It does, however,

encourage attorneys and judges to use their creativity to develop procedures appropriate in this District for each particular case to encourage the fair, just and efficient resolution of disputes in order to better serve party litigants and to improve the trial system.

This recommendation is intended to facilitate and expedite pretrial settlement of cases without unnecessary discovery expense or delay where such settlement is a realistic possibility.

6. Enforcement of Local and Federal Rules

During the course of its interviews and its internal deliberations, the Advisory Group has come to realize that many attorneys practicing in the District of Kansas fail to comply with the court's local rules of practice and the Federal Rules of Civil Procedure concerning discovery. The court, in addition, has failed to enforce the rules through dismissal of nonconforming pleadings or other sanctions. Often, the rules being ignored are rules that the court has promulgated for the purpose of reducing expense and/or delay. For example, one rule that appears to be ignored quite frequently is Local R. 206's requirement that a party filing a motion for summary judgment must attach relevant portions of the pretrial record in support of the motion. This rule obviously exists to facilitate both the preparation of a response, and disposition of the motion by the courts. When the moving party ignores this requirement, the responding party must incur additional expense to respond to the motion. Moreover, due to the extra effort required by the law clerks and the court to evaluate the merits of the motion, unnecessary delay in deciding the motion generally occurs. Thus, this noncompliance and nonenforcement in the long run increases expenses to litigants and adds to delay.

Accordingly, the Advisory Group recommends that the court make clear, through a local rule or standing order, that henceforth pleadings and briefs which fail to comply with applicable rules shall be dismissed or otherwise returned to the filing party

without action. This policy should be publicized in advance, and to the extent necessary, judicial law clerks should be trained to identify nonconforming pleadings and briefs.

Most noncompliance with local rules appears to be inadvertent rather than deliberate. There appears to be a need for more frequent and thorough lawyer education concerning the local rules of civil practice in the District of Kansas. Accordingly, the Advisory Group commends the court's decision to develop a handbook of district court procedures and recommends that it continue on a regular basis to work with the Kansas Bar Association and local bar associations to provide adequate continuing legal education concerning federal local court practice and procedures.

The rule and measures recommended herein are intended to reduce expense and delay stemming from noncompliance with local rules.

7. Additional Staff Resources for Pro Se Caseload

Staff resources have not been adequate to handle the pro se caseload. Although it is efficient to concentrate those efforts in the Topeka office, the additional law clerk and paralegal resources which have been recently committed to the District of Kansas are needed to manage and reduce the backlog of cases. The Advisory Group recommends that the Administrative Office conduct a management review of the handling of pro se prisoner petitions with particular attention given to increased use of a magistrate to oversee those activities. There should also be further study of potential improved coordination with the U.S. Attorney's Office, the state Attorney General's Office and private counsel who may be available for appointment to those cases, and there should also be a study of possible assessment of partial filing fees. Additional local rules may help to clarify the responsibilities of appointed counsel and to improve the efficiency of actions by the magistrate.

These recommendations are intended to address delays associated with the court's pro se prisoner docket.

B. Roles of the Court, Litigants, and the Bar in Proposed Plan

This expense and delay reduction plan involves all participants, including the court, litigants, and the bar, in the federal civil litigation process and relies on each of these constituencies to achieve its objectives of reduced expense and delay in the federal courts. The plan envisions more judicial involvement with the pretrial stages of litigation than currently exists, calls upon litigants, through their counsel, to be responsive to the need for pretrial conferences and possible mediation, and to attend mediation conferences when they are held, and demands that lawyers become familiar with the local rules of the court and adhere to them. Thus, the plan as proposed is faithful to the congressional mandate that the plan "include significant contributions to be made by the court, the litigants and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts," see 28 U.S.C. § 472(c)(3).

C. Compliance with the Requirements of Section 473 of the Civil Justice Reform Act

Sections 473(a) and (b) of the CJRA provide that each district court, in consultation with the Advisory Group, "shall consider and may include" six specific principles and guidelines of litigation management and cost and delay reduction in formulating a proposed expense and delay reduction plan to recommend to the district court. The six statutory principles are: (1) systematic, differential treatment of civil cases depending on their relative complexity, see 28 U.S.C. § 473(a)(1); (2) early and ongoing control of the litigation process by a judicial officer, see 28 U.S.C. § 473(a)(2); (3) use of discovery-case management conferences in complex cases, see 28 § 473(a)(3); (4) encouraging discovery through voluntary and cooperative means, see 28 U.S.C. § 473(a)(4); (5) requiring counsel to meet and attempt to resolve discovery disputes informally prior to the filing of discovery-related motions, see U.S.C. §

473(a)(5); and (6) authorization to refer appropriate cases to alternative dispute resolution, see 28 U.S.C. § 473(a)(6). The five statutory techniques for implementing these principles are: (1) a requirement that counsel submit a discovery-case management plan prior to the initial pretrial conference, see 28 U.S.C. § 473(b)(1); (2) a requirement that each party be represented at each pretrial conference by an attorney having binding authority in connection with matters to be discussed at the conference, see 28 U.S.C. § 473(b)(2); (3) a requirement that all requests for extension of discovery deadlines and postponement of trial dates be signed by the party as well as the attorney making the request, see 28 U.S.C. § 473(b)(3); (4) a program for early neutral evaluation, see 28 § 473(b)(4); and (5) a requirement that a party representative with binding settlement authority be available at any settlement conference, see 28 U.S.C. § 473(b)(5).

Section 472(b)(2) requires that the Advisory Group state in its report to the district court how the proposed plan complies with the requirements of section 473(a) and (b). The Judicial Conference has interpreted section 472(b)(2) to mean that the Report must show how the proposed plan incorporates these principles and techniques, and, if the proposed plan does not incorporate any particular technique or principle, why the Advisory Group has decided not to include it.

This section summarizes the Advisory Group's views on these issues.

1. Statutory Principles and Guidelines for Litigation Management

a. Systematic, Differential Treatment of Civil Cases

Section 473(a)(1) requires each district court, in consultation with the Advisory Group, to consider incorporating a procedures for "systematic, differential treatment of civil cases" depending on their relative complexity. To the extent that this provision envisions that the court should adopt a case "tracking" system such as that discussed in the Brookings Institution's report on expense and delay in the federal courts, see

Justice for All 14-21 (Brookings Institution 1989), the Advisory Group does not believe that such a system is either needed or desirable in this court, inasmuch as it would appear to be another layer of activity with the potential to create its own expense and delay if utilized in a mechanical fashion. The procedures recommended in Part III.A.3. above, however, are intended to facilitate differentiation of cases based on their relative complexity through the particulars of the scheduling order entered in the case and the ongoing involvement of the Article III judge to adjust and revise the management of the case as necessary.

**b. Early and Ongoing Control of the Litigation Process
By a Judicial Officer**

Section 473(a)(2) directs the district court, in consultation with the Advisory Group, to consider mechanisms that ensure "early and ongoing control of the litigation process by a judicial officer." Specifically, this section suggests procedures requiring the judicial officer to assess and plan the progress of the case, see 28 U.S.C. § 473(a)(2)(A), set an early and firm trial date no later than 18 months after filing, see 28 § 473(a)(2)(B); control the time spent on discovery and ensure compliance with time deadlines, see 28 U.S.C. § (2)(C); and set time frames for filing and ruling on motions, see 28 U.S.C. § 473(a)(2)(D). The procedures recommended in Part III.A.3. above incorporate this principle.

c. Use of Discovery-Case Management Conferences

Section 473(a)(3) provides that the district court, in consultation with the Advisory Group, must consider a procedure requiring one or more discovery-case management conferences in complex or other "appropriate" cases. Among the matters for consideration at such discovery-case management conferences are the propriety of settlement, see 28 U.S.C. § 473(a)(3)(A); identification of issues and possible bifurcation of discovery and trial pursuant to Fed. R. Civ. P. 42(b), see 28 U.S.C. §

(3)(B); a proposed discovery schedule, see 28 U.S.C. § (3)(C); and a proposed schedule for the filing of and ruling on motions, see 28 U.S.C. § 473(a)(3)(D).

The initial scheduling conference will serve as a vehicle for addressing many if not all of the matters mentioned in section 473(a)(3). In addition, the Advisory Group envisions that the ongoing judicial involvement described in Part above will likely result in additional pretrial conferences at which such matters as managing discovery in complex cases, settlement prospects, and issue identification will be discussed. As a matter of informal practice, discovery conferences are already usually held in such complex cases that appear to require them. At this time, the Advisory Group is unwilling to propose a formal requirement of additional discovery-case management conferences, other than the initial scheduling conference, in any or all civil cases.

d. Encouraging Discovery Through Voluntary and Cooperative Means

Section 473(a)(4) requires the district court, in consultation with the Advisory Group, to consider procedures that will encourage the litigants to engage in voluntary or cooperative discovery. The Group does not believe that a formal measure or procedure for voluntary discovery need be implemented in the district at this time. To the extent that the nature and needs of a particular case will permit such voluntary discovery, however, it will likely result from discussions occurring at the initial scheduling conference.

e. Informal Resolution of Discovery Disputes

Section 473(a)(5) requires consideration of a rule or procedure requiring that lawyers attempt to resolve discovery disputes informally before they file discovery related motions. Kan. Local R. 210(j) embodies this principle, and the Advisory Group recommends that the court retain and enforce this rule.

f. Authorization for Alternative Dispute Resolution

Section 473(a)(6) requires the Advisory Group to consider incorporating alternative dispute resolution (ADR) devices, including mediation, summary jury trial, mini-trial, early- neutral evaluation, and possibly arbitration, into the court's case management procedures. The Advisory Group has recommended expanded use of Local R. 214 (as amended by the proposed rule changes described above). This rule expressly authorizes court- sponsored mediation in the District of Kansas. In addition, the Group has encouraged the court to experiment with other forms of alternative dispute resolution to the extent permitted by the Federal Rules of Civil Procedure, relevant federal statutes, and the needs and desires of individual litigants and their attorneys.

2. Statutory Techniques of Litigation Management

Section 473(b)(1) requires the court to consider five specific techniques of litigation management as means to incorporate the six principles and guidelines described above. Although the CJRA does not explicitly require the Report to explain to what extent the proposed plan incorporates these techniques, the Advisory Group would like briefly to discuss these techniques and their relevance to the proposed plan.

a. Discovery-Case Management Plans

Section 473(b)(1) states that the district court must consider implementing a requirement that counsel submit a discovery-case management plan prior to the initial pretrial conference. The Advisory Group believes that the procedures recommended in Part III.A.3. above will accomplish the objectives of this particular technique.

b. Attendance at Pretrial Conferences of an Attorney Having Binding Authority

Section 473(b)(2) requires the district court to consider implementing a requirement that each party be represented at each pretrial conference by an attorney having binding authority in connection with matters to be discussed at the conference. Under existing practice this is already the case in the District of Kansas, and it is the

Advisory Group's view that an additional district-wide procedure or rule of this nature is unnecessary. The court can rightly assume that any counsel appearing on behalf of a litigant for any scheduled conference has such authority.

c. Signature of Party on All Requests for Extension

Section 473(b)(4) provides that the district court should consider adopting a requirement that all requests for extension of discovery deadlines and postponement of trial dates be signed by the party as well as the attorney making the request. Such a rule would imply that attorneys routinely seek unnecessary extensions that are not in their client's best interests, a situation that does not appear to exist on any widespread scale in this court. Moreover, it could entail additional expenses for clients resulting from their lawyers' efforts to transmit motions for their clients' signatures. The Advisory Group thus believes that such a rule is unnecessary and would be counterproductive to achieving the objective of expense reduction in this court, and declines therefore to recommend adoption of such a rule.

d. Implementation of an Early Neutral Evaluation Program

Section 473(b)(4) requires the court to consider implementing a program for early neutral evaluation. The Advisory Group believes that the initial scheduling conference procedure will serve the basic functions of early neutral evaluation, and does not otherwise believe that an early neutral evaluation program is needed at this time.

e. Availability of Party Representative at Settlement Conferences

Finally, section 473(b)(5) directs the court to consider a rule that requires a party with binding settlement authority to be available, either in person or by telephone, at any settlement conference. The Advisory Group believes that a person having authority to settle should be available in person or by telephone at all informal settlement conferences, but that such a party representative should attend in person any

settlement-mediation conference held pursuant to Local R. 214, as provided by the terms of that rule.

D. Recommendation Concerning Adoption of a Proposed or Model Plan

Each district court has the authority to formulate its own plan, or to indicate its intention to adopt a model plan formulated by the Judicial Conference pursuant to 28 U.S.C. § 477. As noted in the introduction to Part III above, the Advisory Group recommends that the judges of the District of Kansas adopt its existing local rules, standing orders, and internal procedures, as modified by the measures, rules, and programs described herein, as its CJRA Expense and Delay Reduction Plan. The plan is set out in full following this Report. The plan proposed herein has been formulated to account for the special needs and concerns of litigants, lawyers, and judicial personnel of this district. The Group believes that this plan is more likely to address those needs and concerns than a generic plan formulated at the national level.

E. Resources Necessary for Implementation of the Proposed Plan

The Group is unable at this time to determine the resources necessary for implementation by the court of the proposed CJRA Plan. The Group anticipates that once the court has adopted a CJRA Plan, and begun its implementation, funds will be available through the Administrative Office of the United States Courts to fully implement the Plan.

IV. Conclusion

The members of the Civil Justice Reform Act Advisory Group for the District of Kansas believe that the judges of this district recognize their obligations and have been working to fulfill them. The suggestions for reform contained herein are the result of input provided by many interested parties, including the district judges themselves, judicial personnel, the Advisory Group's membership, and other representatives of the court's litigation constituencies. We believe that the changes suggested in this Report will assist the court in fulfilling its mission to provide fair and efficient justice to all litigants before it, and may in fact improve its performance and enhance its service to our citizens.

It has been an honor for us to serve as advisors to this court.

Appendices

1. Membership of Advisory Group
2. Statement of Operating Procedures

Appendix 1

Membership of Advisory Group

Membership of Advisory Group

Martin W. Bauer is a partner at the Wichita law firm of Martin, Pringle, Oliver, Wallace and Swartz. He has a B.A. degree from Kansas State University and a J.D. degree from the University of Kansas. He has extensive federal court litigation experience, specializing in commercial litigation, bond failures, insurance defense, and bankruptcy. He is a member of numerous bar organizations, and is a member of the Tenth Circuit Advisory Committee on Rules.

Monti L. Belot is currently a partner in the Coffeyville law firm of Hall, Levy, Lively, DeVore, Belot and Bell. He has been nominated for a federal district judgeship in the District of Kansas. He has the B.A. and J.D. degrees from the University of Kansas. He has served as a law clerk to then-Chief Judge Wesley Brown of the District of Kansas and as Assistant and Special Assistant United States Attorney in this district. He has had extensive litigation experience in both the criminal and civil areas.

Wendell Betts is a partner with the Topeka law firm of Friedan, Haynes and Forbes. He received his B.A. and J.D. degrees from Washburn University. He is a member of numerous bar organizations and has served as an Adjunct Instructor on the Washburn Law school faculty, and as Adjunct Professor in the School of Business and Criminal Justice Departments at Washburn. His practice includes a wide variety of litigation, including insurance defense and commercial litigation.

Professor A. Kimberley Dayton, Co-Reporter to the Advisory Group, is Professor of Law at the University of Kansas School of Law, where she teaches courses in civil procedure, criminal procedure, and intellectual property. She has a B.A. degree from the University of Kansas and a J.D. from the University of Michigan. She has served as a judicial law clerk on the United States Court of Appeals for the Fourth Circuit, and as a trial and appellate litigator in the Washington, D.C. law firm of Shea and Gardner. She is also the Reporter to the Civil Justice Reform Act Advisory Group for the Eastern District of Virginia.

Ralph L. DeLoach, Co-Reporter to the Advisory Group, is the Clerk of the United States District Court for the District of Kansas. He has a B.A. from Loretto Heights College (Denver), an M.A. from the University of Northern Colorado, and a J.D. from Washburn University. He has served as a United States Probation Officer in Topeka and Kansas City. As Clerk of the Court, Mr. DeLoach supervises a staff of 43 deputy clerks and oversees the Court's day-to-day administration, information systems, financial matters, space and facilities, human resources, and planning.

Jack Focht is senior partner in the Wichita law firm of Focht, Hughey, Hund and Calvert. His undergraduate degree is from Southwestern College, and his law degree from Washburn Law School. For over twenty years, he has been actively

engaged in federal practice; during that time, he has both prosecuted and defended civil rights cases, and he has defended a number of white collar crime cases, including but not limited to tax evasion and bank fraud. He is a member of and has been an officer in numerous bar organizations.

Robert S. Goudy is Deputy Chief Counsel for the Wichita Division of the Boeing Commercial Airplane Group. He has a B.S.C.E. from Duke University, and S.M.C.E. from M.I.T., an M.S. and Ph.D. in Applied Mechanics from Kansas State University, and an M.B.A. He has a J.D. from Michigan. He was an Assistant Professor of Aeronautical Engineering at Wichita State University and has been in private practice. He has been with Boeing's legal staff since 1978. Included in his current responsibilities are oversight of Boeing's litigation and of the legal division staff.

Ruth E. Graham is a partner in the Topeka office of Sloan, Eisenbarth, Sloan and Glassman. She has a B.S. and M.S. from Kansas State University, and a J.D. from Washburn University. She works in the areas of domestic law, juvenile law, real estate, bankruptcy, and corporations.

John J. Jurcyk, Jr. is a trial lawyer with the Kansas City, Kansas firm of McAnany, Van Cleave and Phillips. Mr. Jurcyk tries personal injury cases involving products and other instrumentalities as well as business cases involving contractual or commercial disputes. He has extensive trial experience in the District of Kansas, as well as in the Kansas state courts and the federal district court for the Western District of Missouri.

Hon. Patrick F. Kelly, ex officio member of the Advisory Group, is a United States District Judge for the District of Kansas. He has a B.A. from Wichita University and a J.D. from Washburn University. He served in the United States Air Force from 1953-55, and was in private practice from 1955 until his appointment to the federal bench in 1980.

Hon. Ronald C. Newman, ex officio member of the Advisory Group, is a United States Magistrate Judge for the District of Kansas. Judge Newman has an A.B. degree from William Jewell College and a J.D. from the University of Kansas School of Law. He was in private practice from 1970-1990, where he represented a variety of clients in various kinds of civil litigation. He became a United States Magistrate Judge in 1990.

Professor William J. Rich is Professor of Law at Washburn Law School, where he teaches courses primarily in the constitutional law area. He has the J.D. degree from Boalt Hall School of Law at the University of California, Berkeley. From 1975-77 he was a staff attorney at the Legal Aid Society of Wichita where he represented low income clients in a wide range of cases. Since 1977 he has been a member of the Washburn faculty, where he has also served as Associate Dean and

Acting Dean of the Law School. Since 1978, he has represented inmates challenging prison conditions at the Lansing Correctional Facility.

Gerald W. Scott is a solo practitioner in Wichita, where he limits his practice to plaintiff's personal injury litigation and insurance law. He has a B.S. from Wichita University and a J.D. from Washburn University School of Law. He is an active member of the Kansas Trial Lawyers Association and other bar organizations. Mr. Scott has lectured at the University of Kansas School of Law and for the Kansas Trial Lawyers Association, and is the author of and manual entitled **Kansas Insurance Law**.

Roger D. Stanton, Co-Chairman of the Advisory Group, is a partner at the Kansas City-based law firm of Stinson, Mag and Fizzell, with his offices in Overland Park, Kansas. He has been a practicing trial lawyer since his graduation from the University of Kansas School of Law in 1963. He has handled numerous cases in federal and state courts throughout the nation. The types of trials in which he has been involved include products liability, professional liability, tortious interference with business contracts, breach of warranty, breach of contract, and many other kinds of complex commercial cases.

Mikel L. Stout, Co-Chairman of the Advisory Group, is a partner at the Wichita law firm of Foulston and Siefkin. He has a B.S. from Kansas State University and an LL.B. from the University of Kansas. Prior to joining Foulston and Siefkin in 1963, he was a Captain, in the Judge Advocate General Corps, United States Army. Mr. Stout has served as an officer of numerous bar groups and is a member of the Judicial Qualifications Committee of the State of Kansas.

Lee Thompson is the United State Attorney for the District of Kansas. He has a B.A. from Wichita State University, an M.A. from Emporia State University, and a J.D. from George Washington University. He has served in the United States Army Reserves and worked for Senator James Pearson. Prior to his appointment as U.S. Attorney, he was with the firm of Martin, Pringle, Oliver, Wallace and Swartz, where he handled a wide variety of insurance defense, commercial, antitrust, and oil and gas litigation. As U.S. Attorney, he is responsible for approximately 1,300 civil cases in the District of Kansas.

Hon. G. Thomas Van Bebber, ex officio member of the Advisory Group, is United States District Judge for the District of Kansas. He has a B.A. and an LL. B. from the University of Kansas. Prior to his appointment as a federal district judge, he was in private practice, served as Assistant United States Attorney and Wyandotte County Attorney, and as a United States Magistrate in the District of Kansas. He was appointed as a federal district judge in 1989.

Michaela M. Warden is a litigation associate at the Overland Park office of Spencer, Fane, Britt and Browne. She has a B.A. from Mount St. Scholastica College, an M.S. from the University of Nebraska, and a J.D. from Creighton University. Her

federal court litigation experience is primarily in the areas of products liability and commercial litigation in both private and regulated industries, including breach of contract, unfair competition, and insurance coverage disputes.

David J. Waxse joined the Kansas City-based law firm of Shook, Hardy and Bacon in 1984, after practicing 14 years with Payne and Jones, Chartered, of Johnson County, Kansas. He has a B.A. degree from the University of Kansas and a J.D. from Columbia University. He is co-chair of the Labor and Employment Law section at Shook, Hardy and Bacon, and concentrates his practice in employment law and litigation. He is a member of numerous bar organizations, and is volunteer General Counsel for the ACLU of Western Missouri. He has authored several publications on employment law.

Thomas E. Wright is a partner in the Topeka law firm of Davis, Wright, Unrein, Hummer and McAllister, and has more than twenty-five years of experience in civil litigation and trial practice. His undergraduate degree is from the University of Wichita, and an LL.B. and J.D. from Washburn University. He has served as a Kansas Workmen's Compensation Examiner and as counsel to the Kansas Real Estate Commission.

Harold D. Youngentob is a partner in the Topeka law firm of Goodell, Stratton, Edmonds and Palmer. He has an A.B. degree from Hunter College and a J.D. from the State University of New York at Buffalo. He was a litigator in New York prior to joining the Goodell, Stratton Firm in 1972. He has practiced extensively in the federal district court for the District of Kansas

Appendix 2

Statement of Operating Procedures

Statement of Operating Procedures

The Civil Justice Reform Act Advisory Group for the District of Kansas is composed of members who are broadly representative of the district's litigation constituencies. The Advisory Group met as a committee of the whole on April 5, 1991, April 19, 1991, June 5, 1991, July 1, 1991, and September 7, 1991. Chief Judge Earl O'Connor and John Shapard of the Federal Judicial Center attended the April 5 meeting. At these meetings, all of which lasted for several hours, members considered working papers, memoranda, and other material prepared for the Group by the Administrative Office, the Federal Judicial Center and the Co-Reporters, discussed statistical matters and court management practices, addressed each of the principles and techniques of litigation management articulated in relevant sections of the Civil Justice Reform Act, and developed a proposed Civil Justice Reform Act Plan for the District of Kansas.

On May 13-14, 1991, selected members of the Advisory Group and the Co-Chairmen interviewed judicial and parajudicial personnel in the Wichita office of the District of Kansas. Persons interviewed included personnel from the Clerk's office (Marlin Miller and Carla Ray); Judge Patrick Kelly and his staff (Barbara Roehl, Secretary; Ruth Thompson, courtroom deputy; Brian Wood and Sidney Thomas, law clerks), Judge Crow's staff (Martin Albrecht and Chris Allman, Law Clerks; Carolyn Lary, courtroom clerk), Senior District Judge Frank G. Theis and his staff (Anne Ethen and Charlie Schwartz, law clerks; Anne Butler, courtroom deputy); Magistrate Judge John B. Wooley and his staff (Joann Mackey, secretary; Jose Hurlston-Peggs, law clerk), and Magistrate Judge John Thomas Reid and his staff (Mike Morrow, law clerk; Angela Whittle, secretary; Sally Arbuckle, courtroom assistant).

On May 16-17, 1991, selected members of the Advisory Group and the Co-Chairmen interviewed judicial and parajudicial personnel in the Topeka office of the

District of Kansas. Persons interviewed included Clerk's office personnel (Cindy Cunningham and Brenda Wessel); the Court's pro se law clerks (Rachel Lyle and Connie Hamilton); Senior Judge Richard Rogers and his staff (Patty Stones, secretary; Sharon Stark, courtroom deputy; Jim Prentice and Pat Haley, law clerks), senior Judge Dale E. Saffels (Sheryl Collins, secretary; M.J. Willoughby and Marilyn Horsch, law clerks; Wayne Correll, courtroom deputy), Magistrate Judge Ronald C. Newman and his staff (Peggy Helmkamp, secretary; Doris Van Horn, courtroom deputy; Michelle Nill, law clerk).

On May 23-24, 1991, selected members of the Advisory Group and the Co-Chairmen interviewed judicial and parajudicial personnel located in the Kansas City, Kansas office of the District of Kansas. The Group interviewed persons in the Clerk's office there (Kathy Supica, Linda South), Chief Judge Earl E. O'Connor and his staff (Mary Petty, secretary; James Moore and Tracy Venters, law clerks; Michael Ratliff, courtroom deputy), Judge G. Thomas Van Bebber and his staff (Carol Barnthson, secretary; Brenda White and Randy Larkin, law clerks; Dennis Smarker, courtroom deputy), Magistrate Judge Gerald L. Rushfeldt and his staff (Judy Marler, secretary; Donna Price-Cofer, law clerk; Lori Lopez, courtroom deputy), Senior Judge Arthur J. Stanley, Jr., and Magistrate Judge John Tillotson.

The Advisory Group solicited the views of numerous bar organizations throughout the District of Kansas, inviting them to comment on any and all aspects of the civil case management process of the District of Kansas.

The findings, recommendations, and proposed Plan contained herein are based on the Advisory Group's study, deliberation, and discussion of all the above.

The Advisory Group would like to thank the judges and magistrate judges of the Court, secretaries, deputy clerks, law clerks, and other parajudicial personnel in the District of Kansas, for their extensive cooperation, assistance, and patience during the

last six months. The Co-Reporters would also like specifically to thank Betty Ross for her help in preparing this Report.