

ANALYSIS OF THE EIGHTH CIRCUIT

A. Number of Authorized Judges and Current Request for Additional Judges

Former Chief Judge Richard Arnold testified that the Eighth Circuit's current complement of 11 judges is adequate and no new positions should be created. However, at the time of the Subcommittee hearing, the court was operating with one judicial vacancy and Judge Arnold urged that this vacancy be filled. He cautioned that if the vacancy was not filled, the court's active judges would see a per panel increase of 47% above the Judicial Conference's standard. In July 1998, the 105th Congress did fill the Eighth Circuit's single vacancy. However, the appointee, Judge Kelly, tragically passed away in October 1998. Consequently, the Eighth Circuit is yet again operating with one vacancy.

B. Discussion of Eighth Circuit Caseload

At the time of the Subcommittee hearing, the Eighth Circuit's caseload consisted of 58% private civil cases (which includes prisoner cases), 38% civil and direct criminal appeals, and 5% agency and original proceedings. Approximately 43% of these court filings began as pro se appeals.

The number of filings increased by 24.4%, or 666 cases, from 1990 to 1997. Despite the rise in filings, over that same time period increased court productivity resulted in the pending case load increasing by only 249 cases. There were 3388 filings in 1997, which was a 1.1% increase from 1996. The number of terminations increased by 3.8%, from 3136 in 1996 to 3255 in 1997. There was also a 6.5% increase in pending motions, for a total of 2167. While these statistics are historically high for the Eighth Circuit, Judge Arnold felt that the court's case backlog was manageable.

At the time of the hearing, Judge Arnold testified that the Eighth Circuit heard oral argument in 850 cases, or 45.4% of all appeals. This number exceeded the national average for oral hearings by 5%. Notwithstanding the caseload increase, for the twelve month period ending in June 1997, the court's median disposition time to terminate appeals was only 9.6 months. This was significantly better than the national average of 11.1 months.

The Eighth Circuit experienced a 70% increase in rehearing petitions from 1990 to 1996, from 54 to 92 petitions per judgeship. The circuit's criminal and habeas cases have also increased, resulting in more judge time spent reviewing Criminal Justice Act vouchers. Judge Arnold testified that there were a number of factors affecting the Eighth Circuit's workload that are not reflected in the case filing and panel participation data. For example, he indicated that the Antiterrorism and Effective Death Penalty Act should eventually decrease appeals. However, in the short term, that legislation has actually spawned increased litigation as the court has had to resolve questions of statutory interpretation, including issues such as who had authority to issue certificates of appealability. In addition, while the Prison Litigation Reform Act is expected to eventually decrease the number of appeals filed, the Eighth Circuit has not yet experienced such a decrease in filings.

C. Eighth Circuit Case Management

The Eighth Circuit does not afford oral argument in all appeals. The court does not have a summary calendar, and instead operates under a circuit rule which delimits the requirements for dismissing cases without oral argument. According to Judge Arnold, 61% of cases submitted by the end of June 1995 were disposed of on the merits without oral argument.

Court Schedule and Recess Period: While the Eighth Circuit does not have a recess period, it does not schedule oral arguments in July. From June 1995 to June 1996, the court convened 36 3-judge panels for five days, for a total of 540 days. In addition to regular sittings, special and additional sittings comprised an additional 63 days of judge time. The court sits en banc two to four times a year, with each such sitting lasting about a day. For two days in August, the court sits in St. Paul and St. Louis to hear pending criminal cases.

Judges travel to each of the law schools within the circuit to hear oral arguments. Oral arguments are heard three to four times a year for a full day. A 3-judge panel, sitting three to five days per session, also holds special annual sessions in Kansas City and Omaha. The court may also hold special sessions at other locations for “historic or special” reasons.

Use of Staff Attorneys: The Eighth Circuit currently has 15 staff attorneys who work on approximately 40% of the cases filed with the court. Staff attorneys do initial case screening, review briefs filed by parties without counsel, and help draft opinions. They are not involved in alternative dispute resolution.

Use of Visiting Judges: The Eighth Circuit makes use of visiting judges, who accounted for 5.7% of oral argument participations in the year ending June 30, 1997.

Use of Senior Judges: The Eighth Circuit has seven senior judges. According to Judge Arnold, these senior judges make a substantial contribution to keeping the court’s backlog and workload current. In 1996, when eight senior judges were active, the senior judges heard 14.2% of the oral arguments in the Eighth Circuit.

Use of Mediation Programs: For approximately the last 20 years, the Eighth Circuit has made use of a Civil Appeals Management Program (CAMP). This program occurs at the beginning of the appeals process and brings eligible parties before a Settlement Director for the purpose of settling, disposing, or narrowing issues on appeal. Of all cases which go to appeal, approximately 40% - which is most of the civil cases - go through the process. The CAMP effectively settles between 100 and 150 cases a year.

D. Eighth Circuit Use of Other Court Efficiencies

According to Judge Arnold, the Eighth Circuit cuts costs by having its circuit conference every other year, and scheduling other meetings during the conference. In addition, the Eighth Circuit does not publish all of its opinions, although they are available to the public on an electronic bulletin board.

Judge Arnold agreed that within the Eighth Circuit, space is not efficiently utilized. The Judicial Conference Committee on Security, Space, and Facilities found that six locations within the circuit were not being used at all because there was no judge sitting in that location at this time.

E. Conclusion

Judge Arnold and the other Eighth Circuit judges unanimously recommended that the court's one judicial vacancy should be immediately filled, and, in fact, that vacancy was filled in July 1998. As stated earlier, due to the untimely death of Judge Kelly, the vacancy exists again.

Filling the vacancy will help the Eighth Circuit avoid an excessive backlog and continue the judges' laudable efforts to increase productivity. These efforts, including the use of CAMP and bi-yearly instead of yearly conferences, have enabled the Eighth Circuit to keep its pending caseload relatively low despite significant increases in the number of filings. Judicial productivity within the Eighth Circuit has also meant that the court has kept its mean disposition time for appeals well below the national average. The Eighth Circuit has historically refrained from requesting additional judgeships, and instead has implemented a variety of cost-effective and time-efficient reforms. As such, the Eighth Circuit's request for the filling of the vacancy has been honored and should be honored again.

**1997 Statistical Year
Docketing Summary - Case Type**

| | |
|---------------|------|
| U.S. Civil | 657 |
| Private Civil | 1906 |
| Criminal | 649 |
| Agency | 120 |
| Original | 39 |

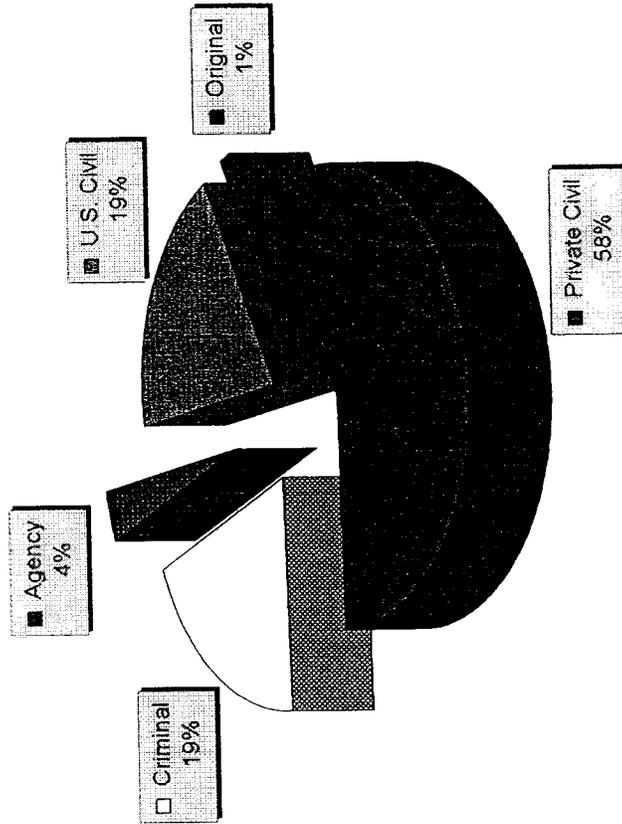
Agency Types

| | |
|--------------|----|
| Tax Court | 15 |
| NLRB | 18 |
| Other Agency | 87 |

Criminal Case Types

| | |
|-----------------------|-----|
| Pre Guidelines/Other | 79 |
| Sentence | 251 |
| Conviction | 72 |
| Sentence & Conviction | 247 |

New Case Filings - Percentage by Case Type



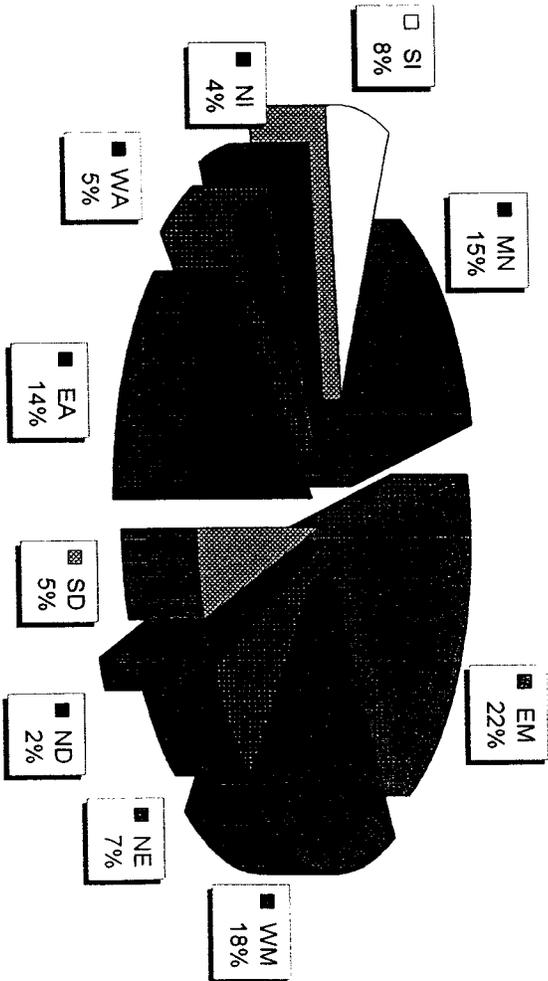
Total New Cases: 3371

New Cases by District of Origin

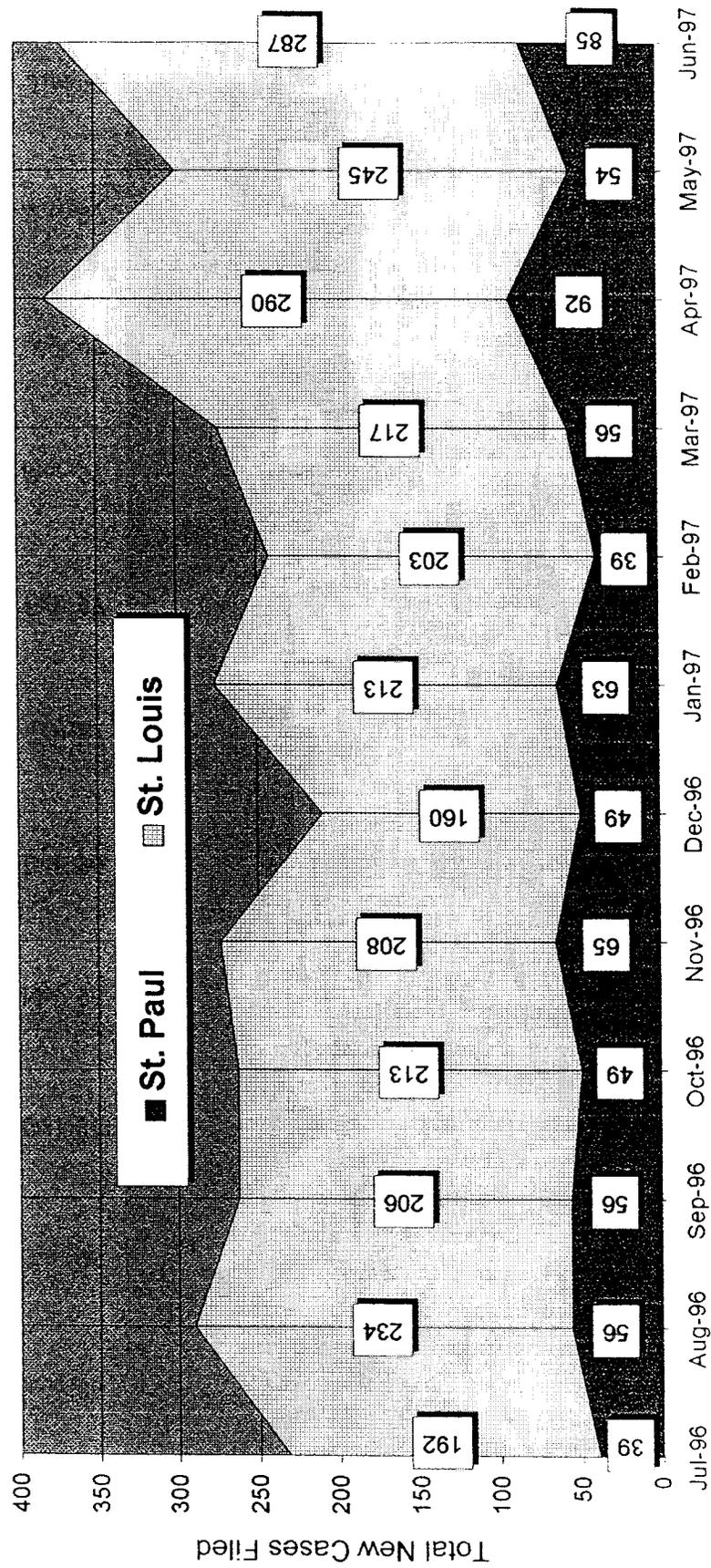
| | Total | Monthly Average |
|----|-------|-----------------|
| EA | 458 | 38.2 |
| WA | 160 | 13.3 |
| NI | 139 | 11.6 |
| SI | 271 | 22.6 |
| MN | 471 | 39.3 |
| EM | 663 | 55.3 |
| WM | 586 | 48.8 |
| NE | 240 | 20.0 |
| ND | 63 | 5.3 |
| SD | 161 | 13.4 |

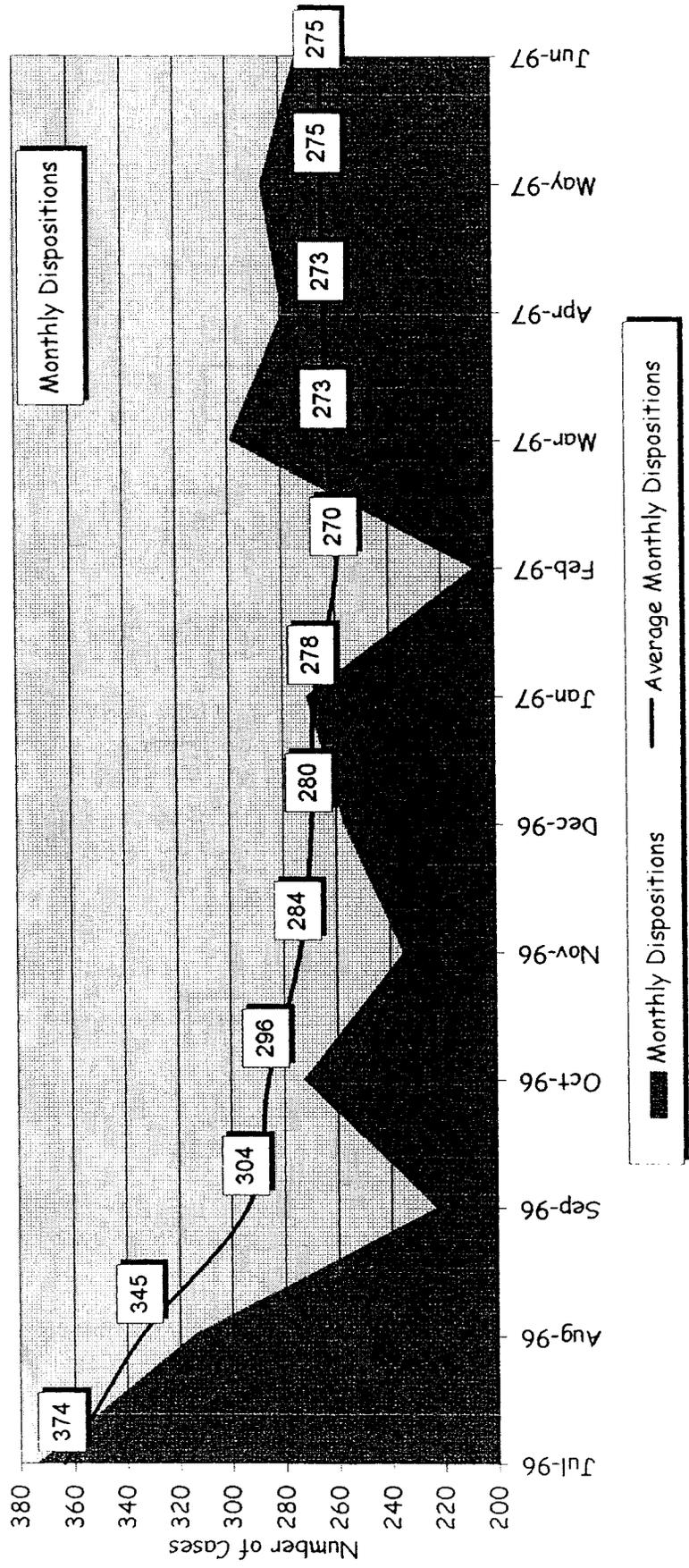
| | |
|-----------------------------------|-------|
| New District Court Cases: | 3212 |
| Total New Cases: | 3371 |
| District Court as % of Total New: | 95.3% |

Total Filings from District Courts - % by District

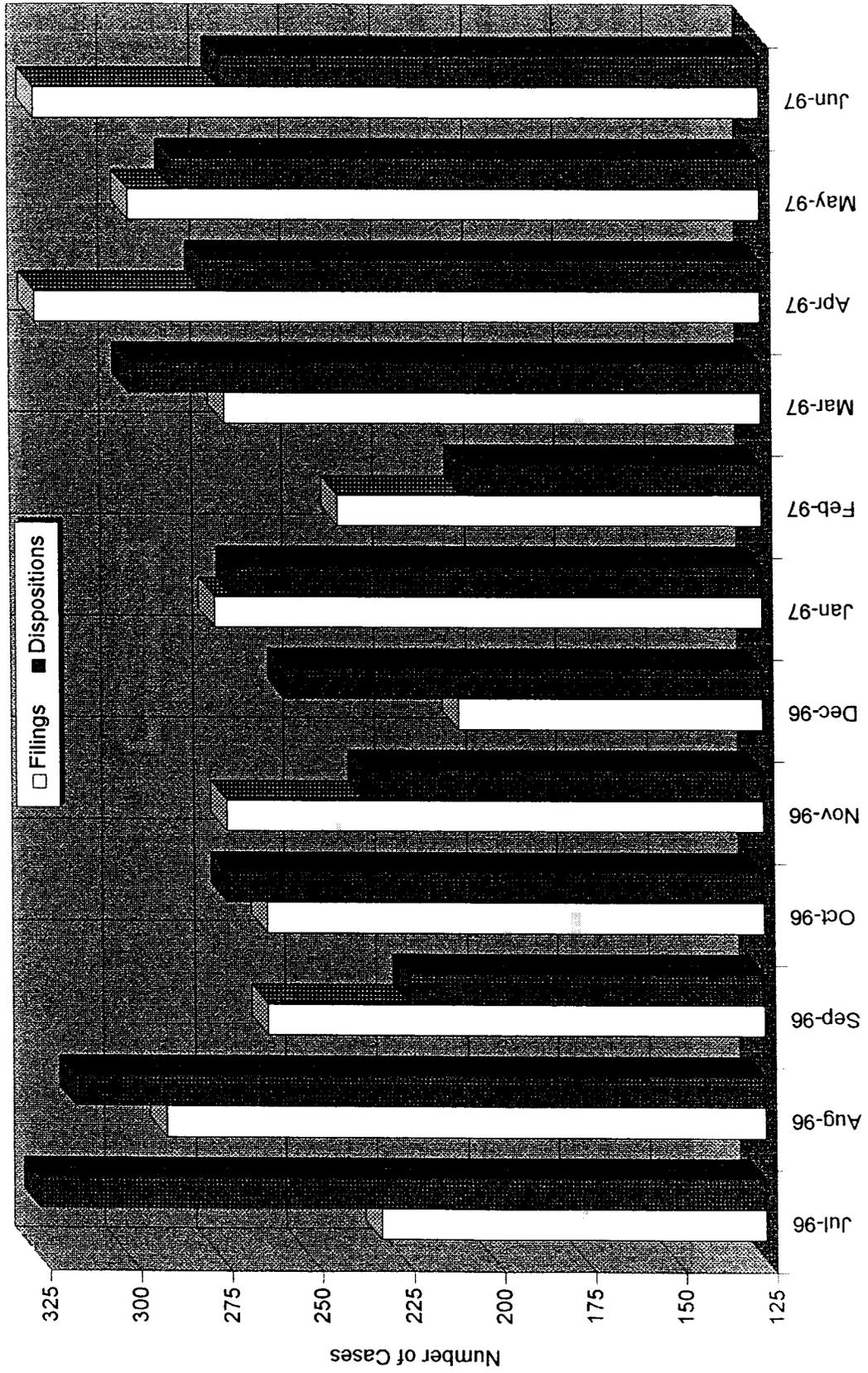


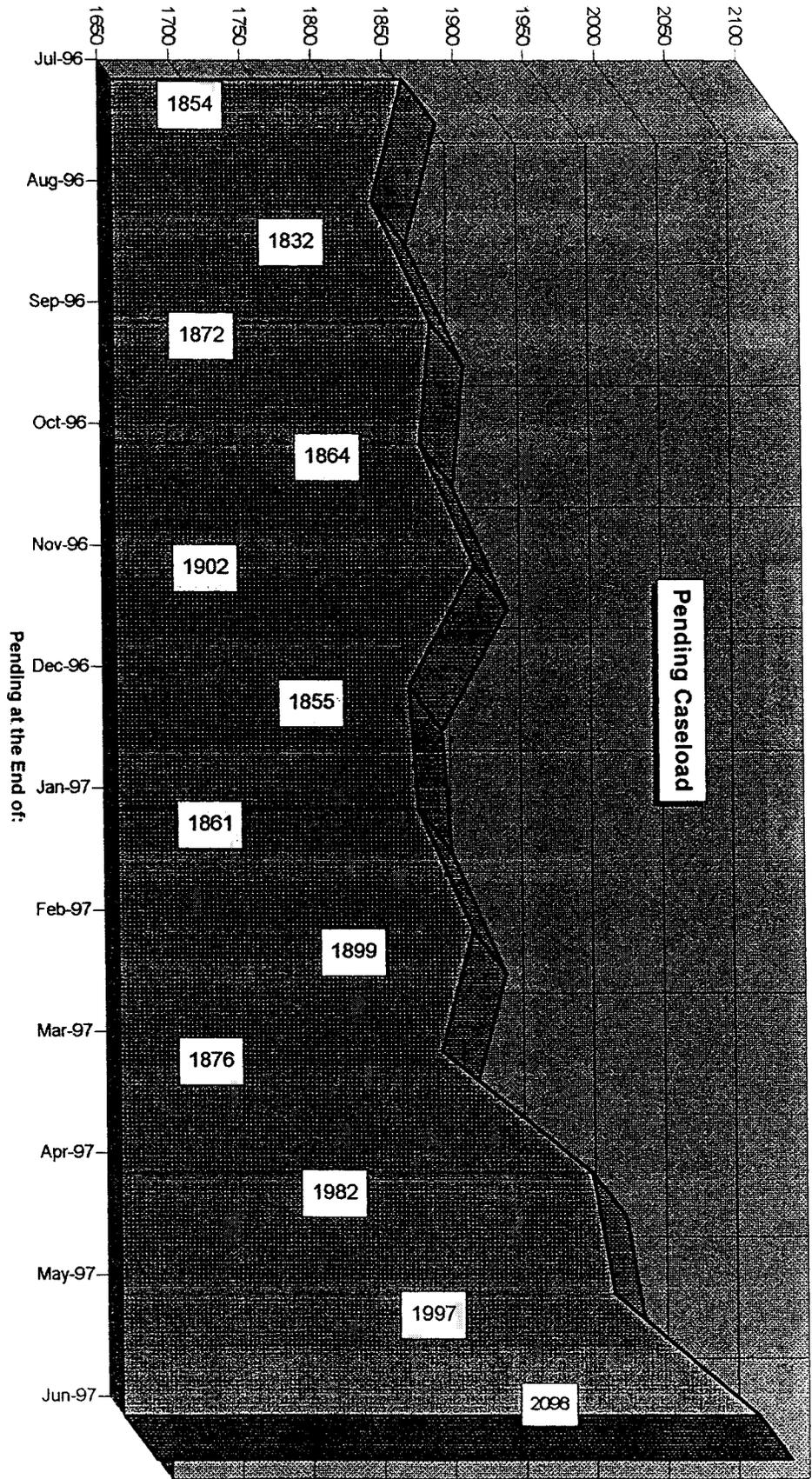
New Cases Filed - Divisional Offices



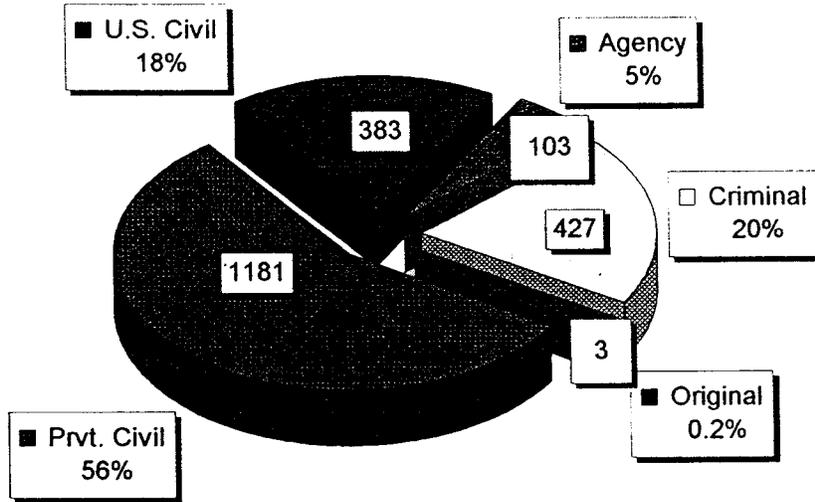


Monthly Filings v. Monthly Dispositions





Pending Caseload - % by Case Type



Pending Caseload - % by Processing Interval

