

80-5323
(Case No.)

2

Courtroom # 1

10/14/81 PM
(Date)

Style of Case:

Counsel

DAVID EARL TIDWELL
DEFENDANT-APPELLANT

KEMPER DURAND

v.

prior felony
DIS Jurors - No objection - no opportunity
Recusal

U.S.A.
PLAINTIFF-APPELLEE

KATHERINE CARLYLE

15 MIN. PER SIDE
(Time Allocation)

affirming decision
of lower court

*Indexed -
9-26-83*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

GARLAND LANSAW,	)	
d/b/a PADEN TIRE SERVICE,	)	
	)	CIVIL ACTION NO. 80-224
Plaintiff,	)	(Unthank, J.)
	)	
v.	)	
	)	
THE GOODYEAR TIRE & RUBBER	)	
COMPANY,	)	
	)	
Defendant.	)	

REPLY MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT GOODYEAR'S
MOTION FOR SUMMARY JUDGMENT

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September 26, 1983

TABLE OF CONTENTS

REPLY MEMORANDUM OF LAW IN
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I.	PLAINTIFF'S ANTITRUST CLAIMS ARE TIME-BARRED <u>AND MUST BE DISMISSED</u>	2
II.	PLAINTIFF HAS FAILED TO SET FORTH SPECIFIC FACTS SHOWING THERE <u>IS A GENUINE ISSUE FOR TRIAL</u>	5
A.	<u>Sherman Act Section 1 Claims</u>	5
B.	<u>Sherman Act Section 2 Claims</u>	7
C.	<u>Robinson-Patman Act Claims</u>	10
D.	<u>Contract Claims</u>	18
	<u>CONCLUSION</u>	21

TABLE OF CASES

	<u>Page</u>
<u>Akron Presform Mold Co. v. McNeil Corp.,</u> 496 F. 2d 230 (6th Cir.) <u>Cert. denied,</u> 419 U.S. 997 (1974)	4
<u>Aluminum Company of America v. Tardet,</u> 235 F. Supp. 111 (D. Conn. 1964)	15
<u>Bouldis v. U.S. Suzuki Motor Corp.,</u> 711 F.2d 1319 (6th Cir. June 27, 1983)	4
<u>Brewer v. Uniroyal, Inc.,</u> 498 F.2d 973 (6th Cir. 1974)	17n
<u>Burnosky Oils, Inc. v. Union Oil Co. of Cal.,</u> 665 F.2d 74 (6th Cir. 1981)	17n
<u>Cromar Co. v. Nuclear Materials</u> <u>Equipment Corp.,</u> 543 F.2d 501 (3rd Cir. 1976)	6-7
<u>Dayco Corp. v. Goodyear Tire & Rubber Co.,</u> 523 F.2d 389 (6th Cir. 1975)	3
<u>J. W. Buress, Inc. v. JLG Industries, Inc.,</u> 491 F. Supp. 15 (W.D. Va. 1980)	16, 17
<u>Joseph E. Seagram & Sons, Inc. v.</u> <u>Hawaiian Oke & Liquors Limited,</u> 416 F.2d 71 (9th Cir.) <u>cert.</u> <u>denied,</u> 396 U.S. 1062 (1969)	7
<u>Littlejohn v. Shell Oil Co.,</u> 483 F.2d 1140 (5th Cir.), <u>cert. denied,</u> 414 U.S. 1116 (1973)	15n
<u>Shreve Equipment, Inc. v. Clay Equipment</u> <u>Corp.,</u> 650 F.2d 101 (6th Cir.), <u>cert. denied,</u> 454 U.S. 897 (1981)	12
<u>Solinger v. A&M Records, Inc.,</u> 586 F.2d 1304 (9th Cir. 1978)	14n
<u>South-End Oil Co. v. Texaco, Inc.,</u> 237 F. Supp. 650 (N.D. Ill. 1965)	14

<u>Southern Concrete Co. v. United States Steel Corp.,</u> 394 F. Supp. 362 (N.D. Ga. 1975), <u>aff'd</u> , 535 F.2d 313 (5th Cir.), <u>cert. denied</u> , 429 U.S. 1096 (1976)	15n
<u>Zenith Radio Corporation v.</u> <u>Hazeltine Research, Inc.,</u> 395 U.S. 100 (1969)	14n

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GARLAND LANSAW,	)	
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Plaintiff,	)	(Unthank, J.)
	)	
v.	)	
	)	
THE GOODYEAR TIRE & RUBBER	)	
COMPANY,	)	
	)	
Defendant.	)	

REPLY MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT GOODYEAR'S
MOTION FOR SUMMARY JUDGMENT

Plaintiff's response to Goodyear's motion for summary judgment does not set forth specific facts showing that there are disputed issues of fact which a jury must resolve in this action. See Fed.R.Civ.P. 56(e). That is hardly surprising because the bulk of the evidence that Goodyear relied on in its motion for summary judgment came from plaintiff's deposition testimony and the documents he produced. When the undisputed facts are examined and the law is applied to them, nothing remains of plaintiff's action.

I.

PLAINTIFF'S ANTITRUST
CLAIMS ARE TIME-BARRED
AND MUST BE DISMISSED

Goodyear has moved for summary judgment against plaintiff's Robinson-Patman Act claims on the ground that any such claims based on purchases made prior to December 10, 1976 - four years before the complaint was filed - are time-barred by Section 4B of the Clayton Act, 15 U.S.C. § 15b (1976), and that plaintiff's de minimis purchases after December 1976 could not have resulted in injury to plaintiff because he never paid Goodyear for those tires.¹

Plaintiff's sole response is to assert that Goodyear fraudulently concealed from him the price discrimination alleged. In doing so, plaintiff fails to come to grips with facts of record testified to by plaintiff himself. In deposition testimony quoted at pages 37-40 of Goodyear's main brief plaintiff expressly conceded that Charlie Roberts - Goodyear's territorial sales manager in 1975, 1976 and 1977 - called upon plaintiff every few months during the period plaintiff was

1 Because plaintiff's purported claims under Sections 1 and 2 of the Sherman Act are, if anything, restatements of his Robinson-Patman claim, Section 4B bars prosecution of these as well.

buying tires from Goodyear and on those occasions explained to him in detail how Goodyear's discount and bonus systems work. Plaintiff's brief never mentions that key testimony out of his own mouth. Plaintiff also conceded in his deposition testimony that he was aware that Texaco and Brad Ragan were receiving lower prices than he because he bought tires from each at prices below those he paid to Goodyear for the same tires. See Goodyear's main brief, pages 40-41. He also testified that in 1975 Homer Johnson told Charlie Roberts in plaintiff's presence that Johnson "could buy the tires much cheaper than what I was buying for...." Lansaw II (p. 259, 270).

The Sixth Circuit has held that three elements must be proved "in order to establish fraudulent concealment: (1) wrongful concealment of their actions by the defendants; (2) failure of the plaintiff to discover the operative facts that are the basis of his cause of action within the limitations period; and (3) plaintiff's due diligence until discovery of the facts." Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir. 1975).

The evidence that Goodyear has presented in support of its summary judgment motion makes it plain that plaintiff cannot meet his heavy burden of proof as to any, let alone all,

of the elements of the fraudulent concealment exception to the statute of limitations. Akron Presform Mold Co. v. McNeil Corp., 496 F.2d 230, 233 (6th Cir.) cert. denied, 419 U.S. 997 (1974) ("All presumptions are against [the party seeking to avoid the statute of limitations], since his claim to exemption is against the current of the law and is founded on exceptions").

In Dayco, the plaintiff's attempts to plead fraudulent concealment were held insufficient, and plaintiff here appears to argue that Goodyear's motion should be denied because he has pleaded fraudulent concealment with sufficient particularity (plaintiff's brief, p. 6). But this is a summary judgment motion; plaintiff cannot now rely upon his pleading alone. Bouldis v. U.S. Suzuki Motor Corp., 711 F.2d 1319 (6th Cir. June 27, 1983). Fed. R. Civ. P. 56(e) provides in pertinent part:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Nor can plaintiff create an issue of fact as to the

existence of fraudulent concealment when the testimony on which Goodyear relies is that of plaintiff himself and when that testimony establishes (i) that Goodyear did not conceal any price differences, (ii) that plaintiff knew of those price differences, and (iii) that plaintiff nonetheless failed to file his complaint until after the statute of limitations had expired.

Finally, plaintiff makes no reference in his brief to the fact that the few tires he purchased from Goodyear within the statutory four-year period were never paid for. None of plaintiff's competitors paid lower prices than that, and plaintiff suffered no conceivable injury in obtaining tires for which he did not pay.

II.

PLAINTIFF HAS FAILED TO SET FORTH
SPECIFIC FACTS SHOWING THERE
IS A GENUINE ISSUE FOR TRIAL

A. Sherman Act Section 1 Claims

Plaintiff's response to Goodyear's motion for summary judgment with respect to his claim under Section 1 of the Sherman Act fails to meet his burden under Fed.R.Civ.P. 56(e) to come forward with evidence showing there is a genuine issue for trial. His sole reference to evidence on which plaintiff purports to rely to support his Section 1 claim is as follows:

"However, Lansaw has testified to facts which support his contention that Goodyear's conduct had a negative impact on competition in the area by removing him from the market-place through intrabrand discriminatory practices competition [sic] between various outlets controlled by Goodyear." (Plaintiff's brief pp. 25-26).

The only claim plaintiff is asserting is that he was forced out of business by price discrimination. That claim is not a violation of the Sherman Act as Goodyear pointed out at pages 62-64 of its main brief, citing cases which plaintiff has ignored.

Moreover, plaintiff has yet to point to evidence of any unlawful contract, combination or conspiracy between Goodyear and anybody else, a failure which alone requires dismissal of his Section 1 count. He has also failed to describe any conceivable per se violation of Section 1, and he has pointed to no injury to any competitive market that resulted from his decision to leave the truck tire business - injury which is an essential element of his case unless a per se violation is present (Goodyear's main brief, pp. 65-67).

As for his charge that Goodyear somehow conspired with the Goodyear tire stores it operates, there is no basis in law for charging Goodyear with conspiring with itself. Cases like Cromar Co. v. Nuclear Materials and Equipment Corp., 543

F.2d 501 (3rd Cir. 1976), involved allegations of conspiracy between a parent corporation and its subsidiary corporation, and are not relevant to stores operated directly by Goodyear. See Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors Limited, 416 F.2d 71 (9th Cir.) cert. denied, 396 U.S. 1062 (1969), holding that separately operated divisions of a single corporation were not legally capable of conspiring with one another.

B. Sherman Act Section 2 Claims

No claim can be asserted under Section 2 of the Sherman Act except with respect to a relevant geographic and product market. At this late date plaintiff has still failed to come forward with proof of any adequately defined geographic and product market on which to base a claim of monopolization or attempt to monopolize. Plaintiff has put forward no evidence that Goodyear exercised or attempted to exercise monopoly power in any such market, and he has pointed to no specific predatory conduct by Goodyear.

Plaintiff's failure to define any relevant geographic and product market means he cannot establish any claim under Section 2. It is not enough to assert that Goodyear has "a monopoly position with regard to the sale of tires utilized on

coal hauling trucks in the Kentucky counties of Breathitt and Perry" (Plaintiff's brief, p. 26). Although Goodyear is the ultimate source for truck tires bearing its trademark, that fact is not relevant to establishing the market at issue. Even were it to be proved (and it has not been) that truckers of coal in Breathitt and Perry Counties buy more Goodyear tires for their trucks than other brands of tires (or even that they predominantly buy Goodyear tires), that would not demonstrate market power on the part of Goodyear. Indeed, such facts, however shown, would be only some evidence of Goodyear's market position vis-a-vis other manufacturers of truck tires, and the market for such tires during the period in question extended far beyond Breathitt and Perry counties.

To determine whether Goodyear had market power in a relevant market which it exercised to impact plaintiff, one must examine the possible markets for the tires in question. There are at least two to consider. One is the market for the sale at wholesale of tires of the kind used by coal hauling truckers to dealers and other resellers who sell to consumers of such tires in Breathitt and Perry Counties ("the wholesale market"). The other is the market for the sale at retail of tires of the kind used by coal hauling truckers to consumers of such tires in Breathitt and Perry Counties.

Plaintiff has made no claim that he competed in the wholesale market. Those who competed in that market at some time since plaintiff began buying tires from Goodyear included at least Texaco, Sunmark, Somerset, Brad Ragan, Bettis Oil, General, Bridgestone and Goodyear. Plaintiff has offered no evidence about Goodyear's sales at wholesale to retailers serving coal truckers in Breathitt and Perry Counties beyond producing certain invoices which indicate that Goodyear sold fewer than 250 such tires to plaintiff during 1975, 1976 and the first half of 1977.

As for sales in the retail market, there is no evidence of any significant retail sales by Goodyear. Indeed, Goodyear has never operated a retail outlet in Breathitt and Perry Counties.

It is undisputed in the record that Goodyear truck tires appear to be markedly superior to competing brands for use on coal hauling trucks and are apparently preferred over competing brands by many, perhaps even most, truckers in Breathitt and Perry Counties.² But, as Goodyear pointed out in

2 Evidence that more Goodyear tires are sold in Breathitt and Perry Counties because Goodyear makes a superior product would of course provide a defense to any charge that Goodyear has wrongfully obtained or maintained market power in a relevant market, but there is no market in which such power has been shown.

detail in its main brief (pp. 68-70), Breathitt and Perry Counties do not constitute a relevant wholesale market or retail market for tires used by coal hauling truckers. Plaintiff himself bought tires at wholesale from sellers located in Huntington, West Virginia, the Ohio cities of Akron, Cincinnati, Cleveland and Middleton, and the Kentucky cities of Lexington, Louisville, Somerset, Winchester, Jackson and Hazard. His retail competitors came from Indiana, Tennessee and Ohio as well as from other counties in Kentucky.

Plaintiff has also failed to point to specific predatory conduct by Goodyear. The only conduct asserted to be predatory is Goodyear's alleged price discrimination against plaintiff, yet there is no logical connection between Goodyear's obtaining and maintaining market power and a decision by it to discriminate against its own dealer in prices. There is no rational benefit to Goodyear to cause one of its dealers to fail, for such a failure would enhance neither Goodyear's sale of tires nor its market share.

C. Robinson-Patman Act Claims

In its moving papers Goodyear demonstrated that, based on plaintiff's own deposition testimony and submissions to this Court, plaintiff cannot establish the essential

elements of a Robinson-Patman claim. He has made no showing that:

(A) Goodyear sold truck tires to plaintiff at a higher price than the price charged by Goodyear on contemporaneous sales of tires of like grade and quality to plaintiff's competitors;

(B) The probable effect of such discrimination may be to substantially injure competitors in the relevant market; and

(C) Plaintiff suffered actual injury as a result of the discrimination.

See Goodyear's main brief at pages 44 et seq. After three years of discovery, he does not point to a single set of transactions in which one of plaintiff's competitors purchased tires from Goodyear at a lower price or on more advantageous terms than plaintiff was paying to Goodyear.

To obscure this failure, plaintiff asserts that he has "stated a viable claim for price discrimination" by pointing to purchases by Breathitt Tire from Sun Oil, ignoring the facts that Breathitt Tire did not begin purchasing truck tires until a year after plaintiff stopped purchasing truck

tires from Goodyear, and that plaintiff never bought truck tires from Sun.

Plaintiff bases his Robinson-Patman allegations primarily on Homer Johnson's purchases of tires from Texaco. Although plaintiff took Homer Johnson's deposition and obtained documents from Texaco on two separate occasions, he does not point to a single instance in which Johnson purchased tires from either Texaco or Goodyear at lower prices than plaintiff was paying for tires that he contemporaneously purchased from these two companies. The fact is that plaintiff had the same arrangement with Texaco as Johnson.³ Plaintiff cannot claim discrimination when a purchasing opportunity was equally available to him.

"Where a purchaser does not take advantage of a lower price or a discount which is functionally available on an equal basis, it has been held that either no price discrimination has occurred or the discrimination is not the proximate cause of the injury." Shreve Equipment, Inc. v. Clay Equipment Corp., 650 F.2d 101, 105 (6th Cir.), cert. denied, 454 U.S. 897 (1981).

3 Despite plaintiff's unsupported allegation to the contrary, plaintiff continued to purchase tires from Texaco after he became a Goodyear authorized dealer and there is no evidence that Texaco ever terminated its relationship with him.

Although he served documentary subpoenas on both Texaco and Bettis Oil Company, plaintiff does not point to a single instance in which either purchased tires from Goodyear at a lower price than plaintiff paid for the same tires in a contemporaneous transaction. Plaintiff's claims as to Texaco and Bettis also fail for other reasons. Bettis had no sales outlet in the plaintiff's proffered geographic market -- Breathitt and Perry Counties. There is no evidence that Texaco ever sold tires to any of plaintiff's customers. The only Texaco customer mentioned by plaintiff -- Homer Johnson -- had stopped buying tires from plaintiff after plaintiff took tires for adjustment and neither returned the tires nor granted Johnson any credit for them. Not until years later did Johnson begin purchasing from Texaco. (See Homer Johnson deposition, not yet transcribed.)

Finally, plaintiff attempts to save his price discrimination claim by citing his own recurring efforts to abuse Goodyear's system of offering price reductions to meet offers of competition -- the so-called "AN" System. Plaintiff claims to have had no knowledge of Goodyear's "AN" system until 1977, but he produced in this action a copy of an AN number that he received in 1975 pursuant to which Goodyear gave him a 2.5% price discount to help him get started in business. By 1977 he

knew that only consumers and not retailers could obtain "AN numbers" for price discounts to meet competition and arranged for AN numbers to be erroneously issued to three of his customers. This scheme broke down when the customers received bills from Goodyear for tires that they had never received, Lansaw Dep. II pp. 57-58. Finally, after describing Jerry Pickett as a competitor in his interrogatory responses and in statements of "Facts" submitted to this Court -- plaintiff has now filed an affidavit in which Pickett admits that he was plaintiff's partner, not his competitor, and that he obtained his AN number fraudulently from Goodyear at plaintiff's request.

Plaintiff's inability to satisfy the essential elements of the Robinson-Patman Act is confirmed by his misstating the applicable law. It is axiomatic that there must be at least two contemporaneous consummated sales at different prices to violate the Act -- a mere offer to sell or quotation of a price will not suffice. South-End Oil Co. v. Texaco, Inc., 237 F. Supp. 650, 652 (N.D. Ill. 1965). Plaintiff attempts to avoid the consequences of his inability to satisfy this requirement of the Act by citing cases arising under other statutes⁴ or involving different fact situations and

4 Neither Solinger v. A&M Records, Inc., 586 F.2d 1304 (9th Cir. 1978), nor Zenith Radio Corporation v. Hazeltine Re-

(Footnote continued on next page)

legal issues.⁵

Finally, plaintiff claims that he need not show two consummated sales at discriminatory prices because he had a dealership agreement with Goodyear. Neither case cited by plaintiff supports this effort to amend the Robinson-Patman Act. In Aluminum Company of America v. Tardet, 235 F. Supp. 111 (D. Conn. 1964), Tardet, after being sued for breach of a written contract to purchase specific goods from Alcoa at a specific price, counterclaimed under the Robinson-Patman Act alleging that the price specified in the contract was higher than the price at which Alcoa had contemporaneously sold goods to Tardet's competitors. The instant case involves no such contract to buy specific goods at a specific price. Plaintiff

(Footnote continued from preceding page)

search Inc., 395 U.S. 100 (1969), concerned the Robinson-Patman Act in any respect.

- 5 Littlejohn v. Shell Oil Company, 483 F.2d 1140 (5th Cir.), cert. denied, 414, U.S. 1116 (1973), and Southern Concrete Company v. United States Steel Corporation, 394 F. Supp. 362, 376-78 (N.D. Ga. 1975), aff'd, 535 F.2d 313 (5th Cir.), cert. denied, 429 U.S. 1096 (1976), both involved allegations of geographic price discrimination in which the defendants were alleged to have sold to retail competitors of the plaintiff at lower prices than they sold products in areas in which the plaintiff did not compete; in both cases there were two contemporaneous sales at different prices, although neither sale was to the plaintiff.

here was never obligated to purchase any products from Goodyear at any specific price and indeed throughout the period in which he was a Goodyear authorized dealer never bought as much as 20% of his truck tires from Goodyear in any year. The other case cited by plaintiff for this novel argument -- J.W. Buress, Inc. v. JLG Industries, Inc., 491 F. Supp. 15 (W.D.Va. 1980) -- does not support plaintiff's attempt to avoid the requirement of two consummated sales requirements, but instead expressly states:

"The threshold of Robinson-Patman liability is not reached until there have been two purchases - binding commitments to buy and sell - at discriminatory prices. Absent such binding commitments, the plaintiff suffers no injury for which the Robinson-Patman Act affords a remedy." Id. at 19.

Plaintiff stopped purchasing truck tires from Goodyear in 1976 -- more than four years before his complaint in this action was filed -- except for a de minimis number of tires which he obtained from Goodyear in 1977, but never paid for. (See Goodyear's main brief at pp. 7-9.) Within the statutory period plaintiff is alleging at most a discriminatory offer to sell. Following established precedent, the court in Burgess rejected just such a claim:

"The Court has found no case that would go so far as to allow recovery for what the plaintiff here terms 'a continuing discriminatory offer to sell.'" Id.⁶

6 Plaintiff's final strategem to avoid the two contemporaneous sales requirement is to point to intracorporate

Although Plaintiff concedes that proof of actual injury is an essential element of a Robinson-Patman claim, he has not come forward with any evidence of resulting injury from conduct by Goodyear. That part of his brief which does refer to the injury requirement of the Robinson-Patman Act is chiefly devoted to discussing the order in which plaintiff must prove injury and the other aspects of a Robinson-Patman Act violation. Plaintiff does not even mention Goodyear's proof -- derived from plaintiff's own documents and deposition testimony -- that plaintiff's greatest sales volume and profits occurred in 1975 and 1976, the years during which he made virtually all

(Footnote continued from preceding page)

transfers by Goodyear to its service stores in Lexington, Kentucky -- well outside of the plaintiff's proffered geographic market. Plaintiff's only support for the argument that such intracorporate transfers are challengeable under the Robinson-Patman Act is his citation to cases which adjudicate different issues. In Brewer v. Uniroyal, Inc., 498 F.2d 973, 977 (6th Cir. 1974), the court mentioned, but did not reach the issue of whether a sale by a parent company to a wholly-owned subsidiary can be challenged under the Robinson-Patman Act. Goodyear's service stores are not separately incorporated and are not subsidiaries of Goodyear. Burnosky Oils, Inc. v. Union Oils of California, 665 F.2d 74, 83 (6th Cir. 1981) concerned the indirect purchaser doctrine.

The rule of law is clear that intracorporate transfers like those referred to by plaintiff are not sales which are actionable under the Robinson-Patman Act. See Goodyear's main brief at p. 49.

of the truck tire purchases he would make from Goodyear, and that plaintiff's profits on truck tire sales would not have been different even if he had purchased tires more cheaply. (See Goodyear's main brief at pp. 20-21.) The only so-called lost customers plaintiff refers to in his brief are Homer Johnson -- who testified at his deposition that he stopped purchasing tires from plaintiff for reasons having nothing to do with prices -- and the truckers who obtained tires through Johnson. There is no evidence in the record that Johnson ever took away any of plaintiff's customers. Rather, an exhibit introduced by plaintiff at Johnson's deposition indicates that Johnson did not begin obtaining tires for his fellow truckers until 1977, after plaintiff had stopped selling truck tires.

D. Contract Claims

Plaintiff's contract claim asserts that Goodyear breached the "Authorized Dealer Arrangement" it entered into with plaintiff with respect to paragraphs 3 and 4 of that agreement.⁷

7 "3. Goodyear will provide Dealer such assistance in advertising and other promotional aids as Goodyear may from time to time provide its Authorized Dealers generally in support of its distribution of Goodyear Products. Dealer shall be entitled to purchase Goodyear Products hereunder at prices specified in the applicable

Despite the contrary allegations of paragraph 7 of his complaint, plaintiff admitted at his deposition that he in fact received advertising support pursuant to Goodyear's published Authorized Dealership cooperative advertising plan, that he received promotional aids for passenger and small truck tires, and that he knew of no one who had been given advertising benefits that were denied him (Lansaw Dep. II at 197, 253-54).⁸ There was no breach of paragraph 3.

Paragraph 8 of the complaint alleges, by misquotation:

(Footnote continued from preceding page)

Goodyear price lists, less such discounts and allowances and subject to such terms and conditions as may be in effect from time to time. Dealer acknowledges and consents that such prices, discounts, allowances, terms and conditions will be subject to change by Goodyear from time to time without prior notice to Dealer. All shipments will be billed at prices (including amount of any Federal Excise Tax) in effect on date of shipment.

"4. Dealer will be afforded the same price protection as may be made available generally to other Authorized Dealers by Goodyear."

- 8 Indeed, Goodyear's Dealer Advertising & Sales Promotion Manual, produced by plaintiff during discovery, shows that no such payments are made to any Authorized Dealer in connection with sales of truck tires of the kind at issue.

"8. Goodyear breached the Agreement by failing to afford Plaintiff 'the same price protections, purchase opportunities and allowances made available generally to other Authorized Dealers by Goodyear' as required by paragraph 4 of the Agreement."

Paragraph 4, quoted at footnote 7 above, relates only to "price protection."⁹ There is no evidence in the record that plaintiff was ever deprived of "price protection." There was no breach of paragraph 4.

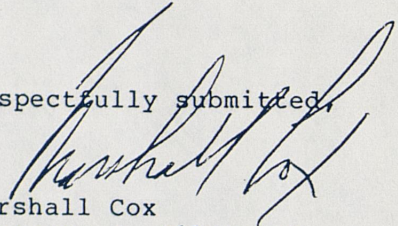
9 On some occasions when Goodyear announces a reduction in the price it charges to its Authorized Dealers for a particular tire, "price protection" is afforded to all Authorized Dealers who bought that particular tire within a stated period -- usually 60 days -- before the qualifying price reduction was announced. All Authorized Dealers entitled to "price protection" in connection with a qualifying price reduction receive a credit from Goodyear.

CONCLUSION

Summary judgment dismissing the action should be entered.

September 26, 1983

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Memorandum of Law has been served upon plaintiff by delivering a true copy thereof to Henry D. Stratton, Esq., Stratton May & Hays, Ward Building, Pikeville, Kentucky 41501, and by mailing a true copy thereof to Richard Boydston, Esq., Strauss Troy & Ruehlmann Co., L.P.A., 2100 Central Trust Center, Cincinnati, Ohio 45202, his attorneys of record, this 26 day of September, 1983.

Charles J. Lisle

ATTORNEY FOR DEFENDANT

BOX NO. 6

*closed
1984?*

<u>CASE NO.</u>	<u>STYLE</u>
77-82	Adams, Helmer, et al v. Estill Blair, et al
83-53	Banks, Billy K. v. Jack M. Burkich, et al
82-443	Blackburn, Elzie Samuel v. C&O RR Company
82-44	Compton, Geraldine v. UMWA, etc.
83-346	Conn, Wilmer N. , et al. v. Colonial Penn Insurance Company
83-409	Council of the Southern Mountains, Inc. v. Secretry of Interior, U. S. Dept. of Interior
82-99	DeBoiard, Mary, et al v. James Wyatt, Secretary of Intrior
82-420	DeRossett, Deborah v. Aetna Casualty & Surety company
83-130	Falcon Coal Co. Employees Assoc. v. Falcon Coal Company, Inc.
82-08	Federal Deposit Ins. Co. v. Red Chief Coal, Inc., et al
76-483	Hamburg, Marjorie A. v. City of Hindman, Kentucky
82-29	Hammond, Lon d/b/a Hammond Coal Company (USA v.)
83-360	Holbrook, Leneva Adkins v. The C&O RR Company
82-329	Hopkins, George v. Mickey Fronto, et al
82-262	Jenkins Clinic Hospital Foundation, Inc. v. Herman Dotson, et al
81-15	Jimmo, Marian v. Thomas Neal & Sears Robebuck & Co.

83-02	Johnson Co. Gas Co. Inc. a KY Corporation
80-124	K&K Coal Co., et seq. (Harrison Combs, v.)
83-200	Kentucky Carbon Corp. (Dist. #30, UMWA v.)
83-45	Kentucky Education Assoc, v. Bd. of Ed. of Wolfe County
80-224	Lansaw, Garland d/b/a Padden Tire Company v. Goodyear Tire & Rubber Company
81-82	Maynard, Tennis, v. John Carl Brewer, et al
82-395	McClure, Norvell, etc. v. Rudy Doderer, et al
84-282	National Mines Corp. v. Jimmy Spears, et al
84-242	National Mine Corp. v. UMWA, et al
81-323	Reffett, Paul v. Tramco Company
8-417	Regan, Ruie Mae, et al v. Collie Hall, et al
81-02	Roark, Kelly B. v. Thomas R. "Skip" Salyer
81-90	Shepherd, Martin v. Thomas R. "Skip" Salyer

No. 84-8504

FILED

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APR 19 1984

JOHN P. HEHMAN, Clerk

ANNIS ASHLEY, INDIVIDUALLY
AND AS ADMINISTRATRIX
OF THE ESTATE OF DILLARD ASHLEY,
ET AL.

Petitioners

v.

ISLAND CREEK COAL COMPANY;
ORVILLE ADKINS, DIXIE ADKINS,
ADAM ADKINS AND SALLY ADKINS,
d/b/a ADKINS COAL COMPANY,
A GENERAL PARTNERSHIP,

Respondents

O R D E R

82-438

Eastern District of Kentucky

FILED

APR 20 1984

AT PIKEVILLE
LESLIE G. WHITMER
CLERK, U.S. DISTRICT COURT

BEFORE: ENGEL, MERRITT, and KRUPANSKY, Circuit Judges

Pursuant to 28 U.S.C. §1292(b), petitioners seek permission to appeal from a pretrial evidentiary ruling of the district court in this diversity action seeking damages for wrongful death.

Upon consideration, we conclude that the present case does not satisfy the criteria necessary to allow an interlocutory appeal under Section 1292(b).

Therefore, it is ORDERED that the petition for permission to appeal be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

A TRUE COPY

Attest:

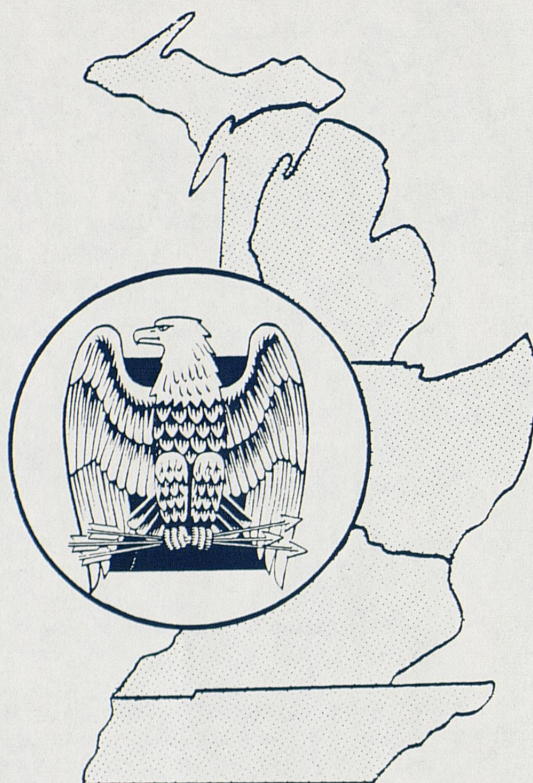
JOHN P. HEHMAN, Clerk

By Audrey Crockett
Deputy Clerk

John P. Hehman
Clerk

United States Court of Appeals

FOR THE SIXTH CIRCUIT



LOCAL RULES

FEBRUARY 1985

**RULES OF THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

SUPPLEMENTING THE FEDERAL RULES OF APPELLATE PROCEDURE
(February 1985)

**Rule 1
NAME, SEAL, and PROCESS**

- (a) **Name.** The name of this court is "United States Court of Appeals for the Sixth Circuit."
- (b) **Seal.** The seal shall contain the words "United States" on the upper part of the outer edge, and the words "Court of Appeals" on the lower part of the outer edge running from left to right, and the words "For the Sixth Circuit" in three lines in the center, with a dash between.
- (c) **Writs and Process.** Writs and process of this court shall be under the seal of the court and signed by the clerk.

**Rule 2
TERMS and SESSIONS**

- (a) **Time.** Regular terms and sessions of this court shall be held at such dates as the court may deem advisable.
- (b) **Place.** All sessions shall be held at Cincinnati, Ohio unless otherwise ordered by the court.
- (c) **Order of Business.** The court will convene at nine o'clock a.m. each day upon which cases are set for argument. Before the call of the calendar for the day, the court will entertain motions to admit attorneys to the bar of the court. The calendar for the day will then be called, and the cases listed thereon will be heard in the order in which they appear upon the calendar unless otherwise directed by the court.
- (d) **Courtroom Deputies.** Courtroom deputies shall be provided by the clerk's office.

**Rule 3
ASSIGNMENT OF JUDGES; QUORUM**

- (a) **Assignment of Judges; Quorum.** The judges of this court shall, as provided in Title 28 U.S.C. §46, be assigned to sit upon the court and its divisions in such order, at such sessions, and for the hearing of such cases, as the court directs. Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court en banc is ordered as provided by Rule 35 of the Federal Rules of Appellate Procedure. A majority of the

number of judges authorized to constitute the court or a division thereof shall constitute a quorum.

(b) Absence of Quorum; Adjournment. If on the opening day or any other day of any term less than a quorum is present, any judge in attendance may adjourn the court until a later time or, if no judge is present, the clerk may adjourn the court from day to day.

Rule 4
CLERK

(a) Location of Office. The clerk's office shall be kept at Cincinnati, Ohio.

(b) Oaths and Bonds. The clerk shall, before entering upon the duties of his office, take such oaths and give such bonds as are required by law. A copy of his oaths and of his bonds, with the approval thereof by this court as to amount, form and sureties, shall be entered in the journal of this court. The oaths and bonds shall be deposited as directed by the court for safekeeping.

(c) The clerk shall perform the duties prescribed by Rule 45 of the Federal Rules of Appellate Procedure.

(d) Reserved.

(e) The office of the clerk shall be open on legal holidays only when the court is in session.

(f) The clerk may prepare, sign, and enter orders or otherwise dispose of the following matters without submission to the court or a judge, unless otherwise directed:

- (1) Procedural motions as set forth in Rule 8(c) of these rules.
- (2) Orders for voluntary dismissal of an appeal or petition or for consent judgment in National Labor Relations Board cases.
- (3) Orders for dismissal of appeals or petitions for want of prosecution.
- (4) Orders appointing counsel under the Criminal Justice Act of 1964, as amended, in criminal cases appealed in forma pauperis, in which the appellant is entitled to the appointment of counsel under the Sixth Circuit Plan for the Implementation of the Criminal Justice Act and in any other case in which an order ordering the clerk to appoint counsel has been entered.
- (5) Bill of costs filed pursuant to Rule 39(c), Federal Rules of Appellate Procedure.
- (6) A fourteen (14) day extension of time in which to file a petition for rehearing or rehearing en banc.

Any party adversely affected by an order so entered shall be entitled to a reconsideration thereof by a judge or judges of the court if, within ten days of service of notice of the entry of such order, such party files a motion for reconsideration given the grounds therefor.

Rule 5
COURT LIBRARY

(a) **To Whom Available.** The law library of this court shall be open to the members of the bar of this court and to the United States Attorneys of the circuit and their assistants and other law officers of the Government, but books may not be removed from the building.

(b) **Librarian; Duties.** The court shall appoint a suitable person as librarian of the court who shall have charge and custody of the court library.

(c) **Library Fund.** All sums received by the librarian shall constitute a fund to be expended by the circuit executive, with the approval of the court or a judge thereof. The circuit executive shall keep an account of his receipts and disbursements for examination and approval of the court.

Rule 6
ADMISSION OF ATTORNEYS

The procedure for the admission, suspension, disbarment or disciplining of attorneys shall be as prescribed in Rule 46 of the Federal Rules of Appellate Procedure and the Sixth Circuit Rules of Disciplinary Enforcement. Every applicant for admission shall pay a fee of \$25.00. Said fee shall be used for the Library Fund of this court and for such other purposes as may be determined by the Judicial Council of the Sixth Circuit. An attorney who is appointed by the court to represent a party in forma pauperis and is qualified for admission, shall be admitted to practice in this court without payment of the admission fee.

Rule 7
CALENDAR

(a) **Hearing Calendar.** A calendar shall be prepared by the clerk for each session of the court. The cases on the calendar shall be called for argument in their order, as far as practicable.

(b) **Advancement of Hearing.** The court may, on its own motion or for good cause shown on motion of either party, advance any case to be heard at any session, though the time permitted under the rules for filing briefs may not have expired at the day set for hearing.

(c) **Postponement of Hearing.** After a case has been set for hearing, it may not be continued by stipulation of the parties or their counsel, but only by an order of the court on good cause shown; and engagement of counsel in other courts will not be considered good cause.

(d) **Companion Cases.** Two or more cases involving the same question may by order of the court be heard together, but they must be argued as one case.

(e) Oral Argument.

- (1) Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs theretofore filed. The court looks with disfavor on any oral argument that is read from a prepared text.
- (2) The appellant or petitioner shall be entitled to open the argument and may reserve part of his time for reply. When there are cross-appeals they shall be argued together as one case and in the time of one case. In cases involving cross-appeals, the plaintiff below shall be deemed the appellant for purposes of this rule unless the parties otherwise agree or the court otherwise directs.
- (3) The amount of time to be allowed each side for oral argument shall be determined by the court, and counsel will be advised by the clerk.
- (4) Divided arguments are not favored by the court.
- (5) Oral argument will not be heard on behalf of any party for whom no brief has been filed unless otherwise directed by the court.
- (6) Counsel for an amicus curiae may, with the consent of a party, argue orally on the side of such party, provided that the time permitted for oral argument on behalf of that party under the preceding paragraphs of this rule will not thereby be exceeded. In the absence of such consent, argument by counsel for an amicus curiae may be made only by special leave of court.

**Rule 8
MOTIONS AND MOTION PRACTICE**

(a) Motion to Dismiss; Lack of Jurisdiction. At any time after a notice of appeal is filed a party may file a motion to dismiss on the ground that the appeal is not within the jurisdiction of the court. The appellant shall have ten (10) days from the date of service of the motion to respond.

Any such motion or response shall be typewritten, and four (4) copies, with proof of service, shall be filed with the clerk.

No motion to affirm the judgment appealed from may be filed. Motions to dismiss ordinarily may not be filed for other than jurisdictional grounds.

(b) Miscellaneous Motions. The Chief Judge or any judge or judges of this court designated by him may hear and determine motions and petitions seeking relief as follows: to consolidate cases; to substitute parties; to appear as amicus curiae; to advance or continue cases; to enlarge the time for argument; to appeal in forma pauperis, including applications for a transcript of testimony at government expense, and to apply for a certificate of probable cause; stay or recall of a mandate; to rule on any other purely procedural matter relating to any suit, proceeding or process in the court preparatory to hearing or decision of the merits; or to perform any other power conferred on a single judge by Rule 27(c) of the Federal Rules of Appellate Procedure.

(c) Procedural Motions. Motions and applications for orders which are procedural or relate to the printing of the appendix or briefs on appeal may be entertained and disposed of by the clerk.

Orders by the clerk disposing of such motions shall show that they were entered by the clerk pursuant hereto.

Any party adversely affected by an order so entered shall be entitled to a reconsideration thereof by a judge or judges of the court if, within ten (10) days of service of notice of the entry of such order, such party files a motion for reconsideration giving the grounds therefor.

Rule 9
DOCKET CONTROL

(a) In the interest of docket control the Chief Judge may from time to time, in his discretion, appoint a panel or panels to review pending cases, or motions pending in such cases, for appropriate assignment or disposition under this rule or any other rule of the court.

(b) In reviewing any pending case for possible disposition pursuant to this rule and prior to argument, the court will determine to allow oral argument unless:

- (1) the appeal is frivolous; or,
- (2) the dispositive issue or set of issues has been recently authoritatively decided; or,
- (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(c) In furtherance of the disposition of pending cases under this rule, any party may include in his brief, at the conclusion of the argument section, a statement setting forth the reasons why, in his opinion, oral argument should be heard.

(d) If, upon the consideration of any interlocutory motion or as a result of a review under subsection (a) of this rule, the court concludes:

- (1) that the appeal is not within the jurisdiction of the court;
- (2) that the appeal is frivolous and entirely without merit;
- (3) that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; or,
- (4) that clear error or an intervening decision of this court or the Supreme Court requires reversal or vacation of the judgment or order appealed from or a remand for additional proceedings;

the panel may enter an appropriate order dismissing the appeal, affirming, reversing or vacating the judgment or order appealed from or remanding the cause for additional proceedings.

Rule 10
BRIEFS

(a) Form of Copies; Number of Copies. The original brief may be typewritten and then the copies reproduced by a copying process capable of producing a clear black image on white paper. Carbon copies may not be filed. The briefs should otherwise conform to Rule 32 of the Federal Rules of Appellate Procedure.

In all cases, ten (10) copies of each brief shall be filed in lieu of the twenty-five (25) copies required by Rule 31(b) of the Federal Rules of Appellate Procedure. Two (2) copies of the brief shall be served on opposing counsel.

If a petition for rehearing is filed, the court may require that additional copies of the briefs be filed.

(b) References to the Record. References in the briefs to the record should indicate the particular document in the record and the page thereof which is cited. The original paging of each part of the transcript shall be indicated in the appendix by placing in brackets the page number of the original transcript in the margin of the appendix where that page begins.

(Amended February 18, 1985)

Rule 11
APPENDIX

(a) Purpose of Appendix. The purpose of the joint appendix is to facilitate the efforts of each judge in studying the briefs in a meaningful way. Inclusion of transcript and exhibits unnecessary to the disposition of the case imposes a burden on both the parties and the court and may subject counsel to sanctions set forth in subsection (h).

(b) Every appendix shall be legible and securely bound so as not to come apart when used.

(c) Time for Filing; Number of Copies. The appellant shall serve and file the joint appendix within twenty-one (21) days of the filing of the appellee's brief.

Five (5) copies of the joint appendix shall be filed in lieu of the ten (10) copies required by Rule 30(a) of the Federal Rules of Appellate Procedure. One (1) copy of the joint appendix shall be served on opposing counsel.

If a petition for rehearing is filed, the court may require that additional copies of the briefs and appendix be filed.

(d) Appendix in Appeals from the District Court and the Tax Court — Contents; Index. The joint appendix shall include the following documents:

(1) Contents

- i) the docket sheet of the district court or the tax court;
- ii) the complaint or indictment;
- iii) the judgment from which the appeal is taken and any memorandum opinion incident thereto;
- iv) the notice of appeal;
- v) any other matter to which either counsel refers in their briefs or wishes to bring to the particular attention of the court.

(2) Index

The joint appendix shall be paginated and shall have an index describing the documents contained therein and the corresponding page numbers of the original record. In appendices containing portions of the transcript, a separate page(s) of the index shall set forth the following information:

- i) a list of transcript pages cross-indexed to pages of the appendix where the particular transcript pages appear;
- ii) an alphabetical list of witnesses, giving the pages of the appendix where their particular testimony begins.

The original paging of each part of the transcript shall be indicated in the appendix by placing in brackets the page number of the original transcript in the margin of the appendix where that page begins. The name of each witness shall appear at the place in the appendix where the testimony of that witness begins.

(e) Appendix in Agency Proceedings - Contents. In addition to the requirements set forth in (c) above, the appendix in agency proceedings shall also include the following:

- (1) the order sought to be reviewed;
- (2) any supporting opinion, findings of fact or conclusions of law filed by the agency, board, commission or officer.

(f) Cases in Which Appendix is Not Required - Record Less than 100 Pages; Social Security Cases. In all cases in which the entire record on appeal including portions of the trial transcript and all exhibits shall be one hundred (100) pages or less, the appellant, in lieu of the appendix, may prepare or cause to be prepared three (3) copies of the record on appeal by standard typographic printing, or by any copying process capable of producing a clear black image on white paper and forward same to the clerk of this court at the time the appellant's brief is filed.

In appeals from a district court involving a review of a decision of the Secretary of Health and Human Services under the Social Security Law, the United States attorney shall submit four (4) copies of the Administrative record provided, however, that the appellant shall attach to his brief copies of the opinion and order of the district court from which the appeal is taken and the recommendation of the Magistrate, if such recommendation was relied upon by the district court. If the appellant shall fail to

attach a copy of the opinion and order and recommendation of the Magistrate to his brief, the United States attorney shall attach a copy to his brief.

(g) Duty to File Appendix in Prisoner Cases. In prisoner cases filed in forma pauperis, when the pro se appellant fails to file an appendix or files an inadequate appendix, it will be the responsibility of the state attorney general or the United States attorney, as the case may be, to file an adequate appendix, which shall include copies of the opinion and order from which the appeal is taken. In habeas corpus cases it will be the obligation of the state attorney general to file, with his brief, copies of all unpublished decisions of state courts involving previous hearings relating to the petition and a copy of the transcript of the trial and any post-conviction hearing of petitioner in the state trial court, if utilized by the district court and available.

(h) Sanctions. This court may deny costs to a party who has been responsible for the insertion of unnecessary material into the appendix. Moreover, any counsel who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs, pursuant to 28 U.S.C. §1927, and may be subject to disciplinary sanctions.

Rule 12 **APPEALS IN CRIMINAL AND POST CONVICTION CASES**

(a) Trial counsel in criminal cases, whether retained or appointed by the district court, is responsible for the continued representation of his client on appeal until specifically relieved by the court of appeals.

(b) If trial counsel was appointed by the district court and a notice of appeal has been filed, trial counsel will be appointed as appellate counsel without further proof of the defendant's indigency.

(c) If a convicted defendant did not qualify for indigent status upon trial, but appears to qualify on appeal, trial counsel must see that the defendant receives and completes the appropriate affidavit form (CJA Form 23) which is available in the district court clerk's office. Pursuant to Rule 24 of the Federal Rules of Appellate Procedure, the application must be first directed to the district court.

(d) A motion to withdraw as counsel on appeal in a criminal case must state the reasons for such relief and be accompanied by one of the following:

- (1) a showing that new counsel has been retained to represent defendant, together with a signed appearance by new counsel; or,
- (2) an affidavit or signed statement from the defendant showing that he has been advised of his rights with regard to the appeal and expressly stating that he elected to withdraw his appeal; or,
- (3) A brief following the procedure described in Anders v. California, 386 U.S. 738 (1967). Counsel shall serve a copy of the brief and motion on the defendant and advise the defendant that he has twenty-one (21) days from the date of service in which to file a brief in support of reversal of the conviction. Such a motion must be accompanied by proof of service on the defendant.

(e) Court appointed counsel is obligated to file a petition for a writ of certiorari in the Supreme Court of the United States if his client requests that such a review be sought.

Rule 13
TRANSCRIPTS

(a) Rule 10(b), Federal Rules of Appellate Procedure, requires that a transcript be ordered within ten (10) days of the filing of notice of appeal. Parties are urged to order any necessary transcript immediately after filing of the notice of appeal. Parties who do not do so, and who thereafter seek extensions of time, will have the burden of showing why they did not comply with this rule. Only those parts of a transcript shall be ordered which relate to issues to be raised on appeal.

(b) **Court Reporters; Transcripts.** Court reporters shall give priority to preparation of reporters' transcripts in connection with appeals in criminal cases over every other duty except those they perform in proceedings in their assigned courtroom. This includes transcripts directed by the district court or this court at government expense as well as transcripts in criminal cases which have been ordered by counsel. The word "transcript" as used herein refers to those portions of the district court proceedings which have been ordered or directed to be transcribed for purposes of appeal.

Any application for extension of time on an appeal in a criminal case which is based upon a delay in preparing a transcript must include the following:

- (1) the reasons for the delay;
- (2) the date the transcript was ordered and the date satisfactory financial arrangements were made with the court reporter;
- (3) the number of transcript pages estimated for preparation and the number of pages completed to date;
- (4) the estimated completion date;
- (5) the date of conviction, the date of sentencing, and the date the notice of appeal was filed.

Rule 14
EN BANC — REQUIRED STATEMENT FOR
REHEARING EN BANC

(a) **Determination of Causes by the Court En Banc.** A suggestion for a hearing or rehearing en banc may be made as provided in Rule 35 of the Federal Rules of Appellate Procedure or by any member of the en banc court. A court en banc shall consist of all circuit judges in regular active service at the time of the filing of the decision sought to be reheard and any senior circuit judge of the court of appeals who was a member of the panel issuing that decision. The effect of the granting of a rehearing en banc shall be to vacate the previous opinion and judgment of this court, to stay the mandate and to restore the case on the docket as a pending appeal.

Any petition for rehearing containing a suggestion for rehearing en banc shall so state plainly on the cover and in the title to the document. Fifteen (15) copies shall be filed. The court ordinarily will not consider any such suggestion which fails to conform to this rule.

(b) Required Statement for Rehearing En Banc. Where the petitioner for rehearing en banc is represented by counsel the petition shall contain, on the first page of the petition, one or both of the following statements of counsel as applicable:

REQUIRED STATEMENTS FOR REHEARING EN BANC
(Designate one or both relied on)

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the United States Court of Appeals for the Sixth Circuit [or the Supreme Court of the United States] and that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court: [citing specifically the case or cases].

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: [set forth each question in one sentence].

(Signature)
Attorney of record for:

Counsel are reminded that en banc consideration of a case is an extraordinary measure, and that in every case the duty of counsel is fully discharged without filing a suggestion for rehearing en banc unless the case meets the rigid standards of Rule 35(a) of the Federal Rules of Appellate Procedure. Counsel are further reminded that the filing of a petition for rehearing or suggestion for rehearing en banc are not prerequisites to the filing of a petition for certiorari.

(Amended February 18, 1985)

Rule 15
MANDATE

(a) Stay of Mandate. In the interest of minimizing unnecessary delay in the administration of justice, the issuance of the mandate will not be stayed simply upon request. The mandate ordinarily will issue pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure unless there is a showing, or an independent determination by the court that a petition for writ of certiorari would not be frivolous or filed merely for delay.

(b) Time for Filing Motion to Stay. A motion to stay the mandate must be received in the clerk's office within twenty-one (21) days after the entry of judgment or seven (7) days from entry of order on petition for rehearing.

Rule 16
JUDICIAL CONFERENCE OF THE SIXTH CIRCUIT

(a) Purpose; Who Shall Attend. There shall be held annually at such time and place as shall be designated by the chief judge of the circuit a Conference of all the circuit and district judges of the circuit for the purpose of considering the state of business of the courts and advising ways and means of improving the administration of justice within the circuit. It shall be the duty of each circuit and district judge in the circuit to attend the Conference and, unless excused by the chief judge, to remain throughout the Conference. The chief judge shall preside at the Conference.

(b) State of Dockets. The first part of the Conference shall be for the judges alone and shall be devoted to a discussion of matters affecting the state of the dockets and administration of justice in the respective districts. Members of the bar to be chosen as set forth in the succeeding paragraph shall be members of the Conference, shall meet at the same time the meeting for judges alone is scheduled, to consider such matters as may be referred for their consideration by the chief judge and as may be programmed by the Chairman and Vice Chairman of the Life Members subject to the approval of the chief judge, and shall participate in its discussions and deliberations during the subsequent sessions of the Conference.

(c) Members of Bar; How Chosen. Members of the Conference from the bar shall be composed of the following:

- (1) The presidents of the state bar associations of the states of the circuit.
- (2) The dean or member of the faculty designated by him of each accredited Law School within the circuit.
- (3) Two or more lawyers of experience and prominence in the profession to be appointed annually by the chief judge of the circuit and two such qualified lawyers to be appointed annually by each other circuit judge and one such qualified lawyer to be appointed by each district judge as members of the Conference of that year.
- (4) All lawyers who have been members of the Conference under any one or more of the foregoing provisions of this paragraph **(c)** and as such have attended as many as three prior Conferences. Such members shall be designated Life Members of the Conference. Beginning with lawyers who shall attend the Conference for the first time in 1970 or thereafter attendance at five Conferences shall be a prerequisite to designation as a Life Member of the Conference.
- (5) At the meeting of the lawyer members of the Conference, the Life Members from each state shall select one of their number as a Vice Chairman to serve from the close of the current Conference to the close of the next annual Conference. The Vice Chairman so selected from the state in which the next annual Conference is to be held shall automatically be the Chairman of the meeting of the lawyer members at the next annual Conference. No person who has served as Chairman shall be eligible for selection as Vice Chairman.

The Chairman shall appoint a secretary and such other officers and committees as may be necessary or desirable, and with the Vice Chairmen from the other states, and subject to the approval of the chief judge, prepare a program for the meeting of the members of the bar who are members of the

Conference, arrange for such other functions as they deem appropriate at the next annual Conference, and assist the judges in arranging for the Conference.

Rule 17
BANKRUPTCY APPEALS BY AGREEMENT
DIRECTLY UNDER 28 U.S.C. §1293(b)
(Repealed February 18, 1985)

Rule 18
PRE-ARGUMENT CONFERENCE PROCEDURE

(a) Transmission of Documents. Upon the filing of a notice of appeal in a civil case, the clerk of the district court shall forthwith transmit a copy of the notice of appeal to the clerk of the court of appeals, who shall promptly enter the appeal upon the appropriate records of the court of appeals. Each notice of appeal so transmitted shall have appended thereto a copy of:

- (1) the docket sheet of the court or agency from which the appeal is taken;
- (2) the judgment or order sought to be reviewed;
- (3) any opinion or findings;
- (4) any report and recommendation prepared by the United States Magistrate.

(b) Filing Pre-Argument Statement.

(1) Civil appeals from United States District Courts. Within fourteen days after filing the notice of appeal in the district court, the appellant shall cause to be filed with the clerk of the court of appeals, with service on all other parties, an original and two (2) copies of a pre-argument statement setting forth information necessary for an understanding of the nature of the appeal (see form 6CA-53).

(2) Review of Administrative Agency Orders; Applications for Enforcement. Within fourteen days after the filing of a petition for review of an order of an administrative agency, board, commission or officer, or an application for enforcement of an order of an agency, the petitioner or applicant shall cause to be filed with the clerk of the court of appeals, with service on all other parties, an original and two (2) copies of a pre-argument statement setting forth information necessary for an understanding of the nature of the petition or application (see form 6CA-54).

(c) Pre-Argument Conference.

(1) All civil cases shall be reviewed to determine if a pre-argument conference, pursuant to Rule 33, Federal Rules of Appellate Procedure, would be of assistance to the court or the parties. Such a conference may be conducted by a circuit

judge or a staff attorney of the court known as the conference attorney. An attorney may request a pre-argument conference in a case if he or she thinks it would be helpful.

(2) A circuit judge or conference attorney may direct the attorneys for all parties to attend a pre-argument conference, in person or by telephone. Such conference shall be conducted by the conference attorney or a circuit judge designated by the chief judge, to consider the possibility of settlement, the simplification of the issues, and any other matters which the circuit judge or conference attorney determines may aid in the handling of the disposition of the proceedings.

(3) A judge who participates in a pre-argument conference or becomes involved in settlement discussions pursuant to this rule will not sit on a judicial panel that deals with that case, except that participation in a pre-argument conference shall not preclude a judge from participating in any en banc consideration of the case.

(4) The statements and comments made during the pre-argument conference are confidential, except to the extent disclosed by the pre-argument conference order entered pursuant to Rule 18(d), and shall not be disclosed by the conference judge or conference attorney nor by counsel in briefs or argument.

(d) Pre-Argument Conference Order. To effectuate the purposes and results of the pre-argument conference, the circuit judge or the clerk of the court at the behest of the conference attorney shall enter a pre-argument conference order controlling the subsequent course of the proceedings.

(e) Non-Compliance Sanctions.

(1) If the appellant, petitioner or applicant has not taken the action specified in paragraph (b) of this procedure within the time specified, the appeal, petition or application may be dismissed by the clerk without further notice.

(2) Upon failure of a party or attorney to comply with the provisions of this rule or the provisions of the pre-argument conference order, the Court of Appeals may assess reasonable expenses caused by the failure, including attorney's fees; assess all or a portion of the appellate costs; or dismiss the appeal.

**Rule 19
DISPOSITIONS IN OPEN COURT**

The demands of an expanding caseload require the court to be ever conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which the decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition of the case may be made in open court.

A written judgment shall be signed and entered by the clerk in accordance with the decision of the panel from the bench.

Counsel may obtain a copy of the audio recording of such decision from the bench, if available, upon the payment of the fee fixed for such service by the Judicial Conference of the United States pursuant to 28 U.S.C. §1913.

Rule 20
FACT SHEETS

A one-page fact sheet shall be prepared by counsel for the appellant and for the appellee in all social security appeals, Title VII appeals, habeas corpus §2254 appeals and motion to vacate §2255 appeals. Such fact sheet shall be of the same page size as the briefs as required by Rule 32(a), Federal Rules of Appellate Procedure, and be incorporated in the briefs of the parties immediately following the table of contents and preceding the statement of issues presented for review which are required by Rule 28(a), Federal Rules of Appellate Procedure (see forms 6CA-55, 6CA-56, 6CA-57, 6CA-58).

Rule 21
EQUAL ACCESS TO JUSTICE ACT

(a) This implements the provisions of the Equal Access to Justice Act, Public Law 96-481, and 94 Stat. 2325 (1980).

(b) Petitions by Permission

(1) A petition for leave to appeal pursuant to 5 U.S.C. §504(c)(2) shall be filed with the clerk of the court of appeals within thirty (30) days after the entry of the agency's order, with proof of service on all other parties to the agency's proceedings.

(2) The petition shall contain a copy of the order to be reviewed and any findings of fact, conclusions of law and opinion relating thereto, a statement of the facts necessary to an understanding of the petition and a memorandum showing why the petition for permission to appeal should be granted. An answer may be filed within thirty (30) days after service of the petition, unless otherwise directed by the court. The application and any answer shall be submitted without further briefing and oral argument unless otherwise ordered.

(3) All papers may be typewritten. Four legible copies shall be filed with the court. The court may require that additional copies be furnished.

(4) Within ten (10) days after the entry of an order granting permission to appeal, the appellant shall pay to the clerk of the court of appeals the docket fee prescribed by the Judicial Conference of the United States. Upon receipt of the payment, the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rule 17 of the Federal Rules of Appellate Procedure. A notice of appeal need not be filed.

(c) Appeals/Petitions to Review. Appeals and petitions to review otherwise contemplated by the Equal Access to Justice Act may be filed pursuant to the applicable statutes and rules of Court.

Rule 22
BRIEFING AND ARGUMENT
IN NLRB APPLICATIONS FOR ENFORCEMENT

In an application for enforcement by the National Labor Relations Board under Rule 15(b), Federal Rules of Appellate Procedure, the respondent(s) shall be considered the petitioner(s), and the NLRB considered the respondent, for the purposes of briefing and oral argument, unless the court orders otherwise.

Rule 23
PETITIONS FOR EXTRAORDINARY WRITS

A petition for a writ of mandamus or writ of prohibition shall not bear the name of the district judge, but shall be entitled simply, In Re: _____, Petitioner. Unless otherwise ordered by the court, the district judge need not file a formal response. Five copies of the petitions are required to be filed.

Rule 24
PUBLICATION OF DECISIONS

(a) Criteria for Publication.

(1) It is the policy of the court that the following criteria shall be considered by panels in determining whether decisions will be designated for publication in the Federal Reporter:

- i) whether it establishes a new rule of law, or alters or modifies an existing rule of law, or applies an established rule to a novel fact situation;
- ii) whether it creates or resolves a conflict of authority either within the circuit or between this circuit and another;
- iii) whether it discusses a legal or factual issue of continuing public interest;
- iv) whether it is accompanied by a concurring or dissenting opinion;
- v) whether it reverses the decision below, unless:
 - (a) the reversal is caused by an intervening change in law or fact, or,
 - (b) the reversal is a remand (without further comment) to the district court of a case reversed or remanded by the Supreme Court;
- vi) whether it addresses a lower court or administrative agency decision that has been published; or,
- vii) whether it is a decision which has been reviewed by the United States Supreme Court.

(2) Designation for Publication. There shall be a presumption in favor of publication of signed and per curiam opinions.¹ Such opinions shall be designated for publication unless a majority of the panel deciding the case determines otherwise upon consideration of the foregoing criteria. An order shall not be designated for publication unless a member of the panel so requests.

(b) Citation of Unpublished Decisions. Citation of unpublished decisions by counsel in briefs and oral arguments in this court and in the district courts within this circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case.

If counsel believes, nevertheless, that an unpublished disposition has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such decision may be cited if counsel serves a copy thereof on all other parties in the case and on the court. Such service may be accomplished by including a copy of the decision in an addendum to the brief.

Rule 25
DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

(a) All parties to a civil or bankruptcy case and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is also required.

(b) Whenever a corporation which is a party to an appeal, or to a motion or other proceedings relating to an appeal, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation which is a party shall advise the clerk in writing of the identity of the parent corporation or affiliate and the relationship between it and the corporation which is a party to the appeal.

(c) Whenever, by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement, a publicly owned corporation, not a party to the appeal, has a substantial financial interest in the outcome of litigation in which another person is a party to an appeal, or to a motion or other proceedings relating to an appeal, counsel for the person who is a party shall advise the clerk in writing of the identity of the publicly owned corporation and the nature of its substantial financial interest in the outcome of the litigation.

(d) The disclosure statement shall be made on a form provided by the clerk and filed, as part of the brief of the party, immediately preceding the statement of issues.

(Amended February 18, 1985)

Rule 26
COSTS RECOVERABLE

1. A signed opinion is one in which the author's name appears at the beginning of the opinion.

(a) Reproduction Costs. The cost of reproducing necessary copies of briefs and joint appendices shall be taxed at the lesser of the actual cost or a cost of twenty-five (25) cents per page, including covers, index, and table of authorities, regardless of the reproductive process used.

(b) Number of briefs and appendices. Costs shall be taxed for twelve (12) copies of each brief plus two (2) copies for each party required to be served, and for six (6) copies of the joint appendix plus one (1) copy for each party required to be served, unless advance approval for additional copies is obtained from the clerk.

Rule 27
ADVISORY COMMITTEE ON RULES

(a) Purpose. Pursuant to 28 U.S.C. §2077(b) there is hereby created an advisory committee on rules for the United States Court of Appeals for the Sixth Circuit. It is the policy of the court that the members of the court's rules committee and its administrative staff shall cooperate with the advisory committee to the end that the advisory committee is well and fully informed upon the existing procedures and rules and practices of the court as they affect the practice of law before the court, but nothing herein shall confer upon the committee any powers other than those which are advisory in nature.

(b) Membership. The advisory committee shall consist of eleven members appointed by the Chief Judge of the circuit as follows:

- (1) two members shall be appointed from each state but from two different districts thereof;
- (2) in addition thereto three members shall be selected at large from within the Sixth Circuit and without respect to the geographical limitations above set forth.

Members shall be selected by the Chief Judge in such a manner as shall in his judgment assure broad representation of all aspects of litigation practiced before the Sixth Circuit and the individual members shall, in the discretion of the Chief Judge, be selected from among those attorneys who are currently active practitioners before the Sixth Circuit, except that the Chief Judge may in his discretion in lieu thereof appoint a representative from an accredited law school in the circuit and a public member who is not a lawyer.

(c) Terms of Office. Except as hereinafter set forth, terms of appointment to the committee shall be for a period of three years except that the initial appointment shall be made by the Chief Judge in staggered terms of one, two, and three years in such a manner as shall best achieve continuity of the committee. No person shall be appointed to serve more than two successive three-year terms on the committee. Initial or interim appointments of less than two years shall commence and end on October 1.

(d) Meetings

- (1) It shall be the responsibility of the committee to meet yearly at the time of, and concurrent with, the holding of the annual Judicial Conference and at least one other time each year upon the invitation of the Chief Judge.

(2) When possible, the meeting of the advisory committee shall be coordinated with the meeting of the Sixth Circuit Rules Committee itself. Any recommendations for changes in the rules and procedures of the Sixth Circuit may be made by resolution of the advisory committee and transmitted to the Chief Judge with copy thereof to be transmitted to the chairman of the Sixth Circuit Rules Committee. Conversely, except where the committee expressly deems it impracticable because of time or other circumstances, any proposals for change in the existing rules of the Sixth Circuit by the rules committee shall first be transmitted for comment to the advisory committee.

(3) Members shall serve without compensation, but travel and transportation expenses may be paid as authorized by the Director of the Administrative Office of the United States Courts in accordance with 5 U.S.C. §5703.

Rule 28 **DEATH PENALTY**

(a) **Application of Rule.** This rule applies to cases filed pursuant to 28 U.S.C. §2254 and otherwise which challenge a state court order imposing a sentence of death.

(b) **Petitioner's Statement.** Whenever such a case is filed in this court, petitioner should file a statement certifying the existence of a sentence of death and the emergency nature of the proceedings and listing the proposed date of execution, any previous cases filed by petitioner in federal court, and any cases filed by petitioner pending in any other court. Petitioner may use form 6CA-99 or the equivalent thereof for the statement.

(c) **Original Applications.** Ordinarily, an original application for habeas corpus relief addressed to this court or to any judge of this court will be transferred to the appropriate district court. All such applications are to be filed in the clerk's office and will be referred to a panel of the court in accordance with approved operating procedures of the court.

(d) **Motions to Stay before the District Court.** Any motion for stay directed to this court must be first presented to the district court pursuant to Fed. R. App. P. 8(a).

(e) **Emergency Motions.** Counsel having emergency motions or applications, whether addressed to the court or to an individual judge, ordinarily shall file such petitions with the clerk of this court rather than with an individual judge. Counsel is encouraged to communicate with the clerk by telephone as soon as it becomes evident that emergency relief will be sought from this court.

(f) **Panel Assignment.** Applications for a certificate of probable cause and motions for stay, once denied by the district court, are to be filed in this court as promptly as possible following filing of the notice of appeal. The clerk of this court shall docket the case upon receipt of the notice of appeal and both the application and motion for stay shall be immediately assigned to a panel of the court in accordance with approved operating procedures of the court. The panel shall be assigned the case and all matters pertaining to the motion to stay, application for certificate of probable cause, the merits, second or successive petitions, remands from the Supreme Court of

the United States, and all incidental and collateral matters, including any separate proceedings questioning the conviction or sentence.

(g) Documents to be Filed with Motion. An original and four copies of any motion for stay of execution and application for a certificate of probable cause shall be filed with the clerk of this court, together with the following documents:

- i) the complaint or petition to the district court;
- ii) each brief or memorandum of authority filed by any party in the district court;
- iii) any available transcripts of proceedings before the district court;
- iv) the memorandum opinion giving the reasons advanced by the district court for denying relief;
- v) the district court's judgment denying relief;
- vi) the application to the district court for a certificate of probable cause to appeal;
- vii) the application to the district court for stay;
- viii) the certificate of probable cause or order denying a certificate of probable cause;
- ix) the district court's order granting or denying a stay and its statement of reasons for this action;
- x) a copy of the docket entries of the district court in the case;
- xi) a copy of each state or federal court opinion or judgment involving any issue presented to this court or, if the ruling was not made in a written opinion or judgment, the copy of the relevant portions of the transcript.

(h) Review of the Merits of the Case. The panel handling the case will allow the ordinary schedule for filing briefs on the merits of the case unless good cause for expedited briefing is demonstrated. However, in considering a motion for stay, the panel may conclude it can appropriately address the merits of the case in addition to the motion to stay. In such a situation, counsel will be given notice to address the merits in briefs to be filed on an expedited basis. The panel may grant a temporary stay pending consideration of the merits if necessary to prevent mooted the case. Any oral argument of the merits will be scheduled as soon as practicable after briefs are filed.

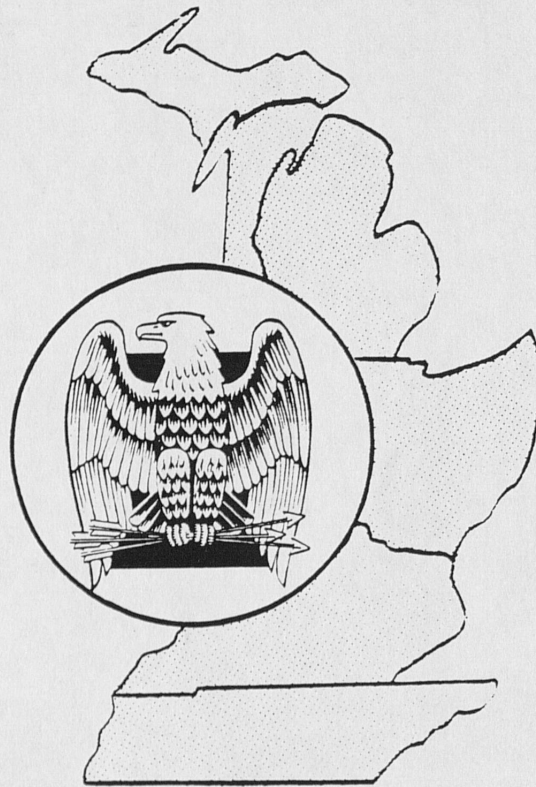
(i) Denial by Court of Appeals of Application for Certificate of Probable Cause. If the district court has refused to grant a certificate of probable cause and this court also denies a certificate of probable cause, no further action need be taken by the court.

(j) Petitions for Rehearing. Because of the difficulty of delivering petitions for rehearing with or without a suggestion for rehearing en banc to judges of the court where a panel of the court has denied a request to stay an execution scheduled for a time within 24 hours of the filing of the petition for rehearing, parties are hereby notified that such petitions will not ordinarily be able to be delivered to the judges of the court in sufficient time for consideration prior to the time of the scheduled execution. Petitions for rehearing filed within 24 hours of the scheduled execution shall be processed and distributed by the most expeditious service normally provided by the United States Mail Service unless the panel handling the case gives specific directions for some other method of delivery.

(k) Mandate. Issuance of the mandate will be governed by the standards of Fed. R. App. P. 41 and 6th Cir. R. 15.

United States Court of Appeals

FOR THE SIXTH CIRCUIT



**INTERNAL OPERATING
PROCEDURES**

MARCH 1985

**TABLE OF CONTENTS
INTERNAL OPERATING PROCEDURES
OF THE COURT**

CHP.	PAGE	TITLE
1.	1	INTRODUCTION
2.	1	COURT STRUCTURE
2.1.	1	Physical Facilities
2.2.	1	Clerk's Office
2.2.1.	1	Telephone Inquiries
2.3.	1	Judges and Other Supporting Personnel
2.3.1.	1	Judges
2.3.2.	2	Circuit Executive
2.3.3.	2	Staff attorneys
2.3.4.	2	Library, amended
3.	2	APPEARANCE OF COUNSEL
4.	2	ADMISSION OF COUNSEL TO PRACTICE
4.1.	2	Requirement and Eligibility, amended
4.2.	2	Fee, amended
4.3.	3	Application Procedures
5.	3	SETTLEMENT CONFERENCE PROCEDURE
5.1.	3	Pre-argument Statement
5.2.	3	Settlement Procedure
6.	3	FILING FEES
6.1.	3	Appeals
6.2.	3	Agency Proceedings
6.3.	3	Original Proceedings
6.4.	4	Appeals Under 28 U.S.C. §1292(b)
7.	4	ORDERING THE TRANSCRIPT ON APPEAL
8.	4	DUTIES OF COURT REPORTERS; EXTENSIONS OF TIME
9.	4,5	TRANSMISSION OF RECORD ON APPEAL
10.	5	DOCKETING THE APPEAL
10.1.	5	Docketing an Appeal
10.2.	5	Briefing Notice
11.	5	BRIEFS
11.1.	5	Contents
11.2.	5	Length
11.3.	5	Number of Copies, amended
11.4.	5	Covers
11.5.	5	Legibility
11.6.	6	Size of Paper
11.7.	6	Time for Filing

IOP CONTENTS (Con't.)

CHP.	PAGE	TITLE
------	------	-------

11.8.	6	Extensions of Time
11.9.	6	Certificate of Service
11.10.	6	Cross-Appeals
11.11.	6	Acknowledgment of Briefs
11.12.	6	Sample Briefs, amended
11.13.	6	Fact Sheets
11.14.	6	Corporate Disclosure Statement, amended

12.	6	APPENDIX
12.1.	6,7	Purpose of Appendix
12.1.1.	7	Responsibility for Filing
12.2.	7	Content
12.3.	7	Number of Copies
12.4.	7	Covers
12.5.	7	Legibility
12.6.	7	Binding
12.7.	7	Size of Paper
12.8.	7	Time for Filing
12.9.	7	Extensions of Time
12.10.	7	Certificate of Service
12.11.	7	Situations Where Joint Appendix not Required, amended
12.12.	8	Unnecessary Material in Appendix

13.	8	PROCEDURES REGARDING ORAL ARGUMENT
13.1.	8	Annual Schedule
13.2.	8	Panel Selection
13.3.	8	Preparation for Oral Argument
13.3.1.	8	General
13.3.2.	8	Calendaring by Case Type
13.3.3.	8	Number of Cases Assigned
13.3.4.	8	Advance Notice to Counsel of Hearing
13.3.5.	8	Forwarding Briefs to Judges
13.3.6.	8	Pre-Argument Preparation
13.3.7.	9	Identity of Panels
13.3.8.	9	Checking in Clerk's Office on Date of Hearing
13.3.9.	9	Continuance of Oral Argument
13.4.	9	Oral Argument
13.4.1.	9	Time for Oral Argument
13.4.2.	9	Additional Time for Oral Argument
13.4.3.	9	Presenting Oral Argument

14.	9	OPINION
14.1.	9	Case Conferences and Designation of Writing Judge
14.2.	9	Processing of Opinions
14.3.	9	Circulation to Non-panel Members
14.4.	10	Publication of Opinions
14.5.	10	Release of Opinions
14.6.	10	Subscription of Opinions

15.	10	MANDATE
15.1.	10	Issuance of Mandate, amended
15.2.	10	Timely Petition for Rehearing; Stay of Mandate
15.3.	10	Stay of Mandate Pending Application for Certiorari

IOP CONTENTS (Con't.)

CHP. PAGE TITLE

16.	10,11	BILLS OF COSTS , amended
17.	11	ATTORNEY FEES , amended
18.	11	PETITIONS FOR REHEARING OR REHEARING EN BANC
18.1.	11	Necessity for Filing
18.2.	11	Petitions for Panel Rehearing
18.3.	11	Response to Petition
18.4.	11	Time for Filing of Extensions
18.5.	11	Composition of En Banc Court
18.6.	11	Extraordinary Nature of Suggestions for Rehearing En Banc
18.7.	11	Rule Requirements
19.	12	MOTION PRACTICE
19.1.	12	Form of Motion
19.2.	12	Acknowledgement
19.3.	12	Certificate of Service
19.4.	12	Motion Panels
19.5.	12	Emergency Motion Procedure
19.6.	12,13	Motions for Release in Criminal Cases
19.7.	13	Motion to Expedite Appeal
19.8.	13	Reconsideration
19.9.	13	Motions after Assignment to Calendar
19.10.	13	Motions for Extension of Time to File Briefs
19.11.	13	Post-Argument Motions
19.11.1.	13	Extension of Time to File Petition for Rehearing of Leave to File Out of Time
19.11.2.	13	Stay or Recall of the Mandate
19.11.3.	14	Motion to Extend Time to File Bill of Cost
19.11.4.	14	Motion to Amend, Correct or Settle a Judgment
19.11.5.	14	Remand from Supreme Court of the United States
20.	14	DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS , amended
21.	14	SCREENING AND SUMMARY DECISIONS (6th Cir. R. 9) WITHOUT ORAL ARGUMENT
22.	14	PETITIONS FOR WRIT OF CERTIORARI
22.1.	14	Discretionary Review
22.2.	14	Time for Filing
22.3.	14,15	Admission Requirements
22.4.	15	Filing Fee
22.5.	15	Form of Petition, Number of Copies
22.6.	15	Transmission of the Record
22.7.	15	Supreme Court Rules and Other Information
23.	15	CRIMINAL JUSTICE ACT VOUCHERS
23.1.	15	Submission of Claim
23.1.1.	15	Form
23.1.2.	15	Instructions
23.1.3.	15	Time for Submitted Claim
23.1.4.	15	Submitting Completed Form
23.2.	16	Writ of Certiorari

IOP CONTENTS (Con't.)
CHP. PAGE TITLE

23.3.	16	Interim Payments
24.	16	EQUAL ACCESS TO JUSTICE (EAJ) ACT
25.	16,17	COMPLAINTS OF JUDICIAL MISCONDUCT
26.	17	ORIGINAL ACTIONS
27.	17	EXHIBITS
28.	17	DEATH PENALTY CASES

INTERNAL OPERATING PROCEDURES OF THE COURT

1. INTRODUCTION

This outline of internal operating procedures describes the responsibilities, functions, organization and procedures of the clerk's office in the day-to-day administration of the court's rules and policies as to the processing of appeals. It also sets out the work of the judges, bench assignments, calendaring, processing of opinions, and other operating procedures of the court.

The large volume of filings requires that the court procedures be organized to increase efficiency for both judges and supporting personnel. New procedures are continually being tested and adopted.

2. COURT STRUCTURE

2.1. Physical Facilities. The headquarters of the court is located in the United States Post Office and Courthouse Building at Fifth and Walnut streets in Cincinnati, Ohio 45202. This building contains two courtrooms for the Sixth Circuit and chambers for each active circuit judge and each senior circuit judges. Additionally, the building contains the circuit executive's office, the clerk's office, the staff attorneys' office and the library.

2.2. Clerk's Office. The clerk's office is the public business office for the court. The business office (room 524) of the clerk is open Monday through Friday, 8:30 A.M. to 5:00 P.M. Any documents to be filed and any dispositions entered by the court are to be accomplished at this office. Questions regarding practice in the court or case status information can be directed to the clerk's office by telephone, (513) 684-2953 or FTS 684-2953, or letter. See Fed. R. App. P. 45 and 6th Cir. R. 4.

2.2.1. Telephone Inquiries. The clerk's office welcomes telephone inquiries from counsel regarding rules and procedures. The clerk, John Hehman, and the chief deputy, Leonard Green, are available to confer with counsel on special problems or upon request. They can be reached at (513) 684-2953 or FTS 684-2953.

On matters requiring special handling or interpretation of rules counsel may contact the case manager, Juanita Temple, or one of the following supervisors:

Michigan appeals — Judy King, Supervisor
Ohio appeals and agency cases — Kathy Preuitt, Supervisor
Tennessee and Kentucky appeals, NLRB cases — Yvonne Henderson,
Supervisor
Scheduling cases for decision or hearing — Marjorie Eliassen, Supervisor

2.3. Judges and Other Supporting Personnel

2.3.1. Judges. The Sixth Circuit is authorized to have fifteen active judges. Each active judge's office is authorized to have three law clerks and two secretaries. The Chief Judge is authorized one additional secretary. The court

IOP (cont.)
3/85

is also served by a number of senior circuit and visiting judges who sit with panels of the court.

2.3.2 Circuit Executive. The circuit executive has a staff assistant and a secretary. The circuit executive operates as an arm of the Judicial Council of the Circuit and provides administrative support to the court. His services are designed to assist judges, particularly the Chief Judge, with administrative duties in order to free them for their primary duty of adjudication.

2.3.3. Staff Attorneys. The staff attorney section has ten lawyers and is responsible for providing legal support to the court as a whole, rather than to individual judges. A senior staff attorney is appointed by the court to supervise the section. The office provides research on substantive motions and reviews the docket to make recommendations concerning 6th Cir. R. 9 dispositions.

2.3.4. Library. The library is for the use of the judges and other court personnel as well as the members of the Sixth Circuit Bar. Hours of operation are from 8:00 A.M. to 5:00 P.M., Monday through Friday. Satellite libraries are maintained in Grand Rapids, Detroit, Nashville and Memphis. See 6th Cir. R. 5.

3. APPEARANCE OF COUNSEL

A Form for Appearance of Counsel, 6CA-68, must be completed and returned by all attorneys who wish to file documents or argue on behalf of any party for a case. Only those attorneys for whom the court has this appearance form on file will receive notice of any hearings, orders, or other court action involving their case. It is counsel's obligation to inform the clerk's office of any change in address or telephone number.

In order to facilitate communications between the court and counsel, it is the practice of the court to look to one counsel for appellant(s)/petitioner(s) and one for appellee(s)/respondent(s), with the expectation that they will, in turn, relay all pertinent information to any other counsel for that side. Accordingly, in cases where there is more than one appellant or petitioner or more than one appellee or respondent, counsel for those parties are asked to designate one of their number to serve as "lead" counsel for the purpose of receiving notices from the clerk's office. In the absence of such a designation, the clerk will assign one counsel to act as lead counsel. Any attorney representing the United States or any officer or agency thereof in an appeal will be permitted to participate in that case without the necessity of being admitted to the Bar of the Sixth Circuit. Any such attorney desiring admittance to the bar of the court will be required to pay the fee.

4. ADMISSION OF COUNSEL TO PRACTICE

4.1. Requirement and Eligibility. Attorneys must be admitted to the Bar of the Sixth Circuit before they will be permitted to file pleadings or briefs on behalf of a party or participate in oral argument. An attorney who has been admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court and who is of good moral and professional character is eligible for admission to the Bar of the United States Court of Appeals for the Sixth Circuit. Any attorney representing the United States or any officer or agency thereof in

an appeal will be permitted to participate in that case without the necessity of being admitted to the Bar of the Sixth Circuit. Any such attorney desiring admittance to the bar of the court will be required to pay the fee.

4.2. Fee. Attorneys appointed by the court to represent clients in forma pauperis and who qualify under the standards of Fed. R. App. P. 46 and attorneys employed by a Federal Public Defender organization created pursuant to 18 U.S.C. §3006A shall be admitted to practice in this court without payment of a fee. All other qualified counsel shall be admitted upon payment of a \$25.00 fee. Payment may be made by cash, check, or money order made payable to the "Clerk of the United States Court of Appeals."

4.3. Application Procedures. Admissions are made upon the motion of a member of the Bar of the Sixth Circuit. Application for admission is made by filing form 6CA-14 in person or by mail, with the Office of the Clerk of the United States Court of Appeals for the Sixth Circuit. (Form 6CA-14 may be obtained from the Clerk's Office.) The completed form 6CA-14 must include the name and mailing address of the applicant; a statement of eligibility; an oath signed and notarized, with seal or stamp of the notary affixed (or, if completed in the Clerk's office attested by a Deputy Clerk); and the motion for admission signed by a fellow attorney previously admitted to the Bar of the Sixth Circuit. Upon admission, a certificate of admission will be forwarded to the applicant.

See Fed. R. App. P. 46 and 6th Cir. R. 6.

5. PRE-ARGUMENT STATEMENT AND SETTLEMENT PROCEDURE

5.1. Pre-argument Statement. It is the obligation of the appellant to file the pre-argument statement required by 6th Cir. R. 18(b) with the clerk's office within fourteen (14) days after filing the notice of appeal in the district court. Petitioners seeking review or enforcement of agency orders are required to file the pre-argument statement within fourteen (14) days after filing the petition or application with the clerk's office. Use form 6CA-53 for civil cases and form 6CA-54 for appeals from agency proceedings. In order to clearly indicate to the court the scope of the appeal, the pre-argument statement should specifically identify the issues to be raised in the case, including citations to governing statutes or dispositive cases, where appropriate. 6th Cir. R. 18 provides for dismissal of cases in which the appellant/petitioner has failed to satisfy the requirements stated therein. A response to the pre-argument statement is neither required nor authorized.

5.2. Settlement Procedure. 6th Cir. R. 18 establishes a procedure whereby civil cases are reviewed shortly after initiation to determine whether a pre-argument conference would benefit the court or the parties. If it appears helpful, an attorney may request a conference. These conferences, conducted by a judge of the court or by a conference attorney, will explore the possibility of settlement, simplification of issues or other appropriate case management measures. See Fed. R. App. P. 33.

6. FILING FEES

6.1. Appeals. When a notice of appeal is filed, the court of appeals \$65.00 docketing fee and the district court \$5.00 filing fee must be paid to the district court. Dismissal proceedings will be commenced by the court of appeals if the fees are not paid. See Fed. R. App. P. 3.

6.2. Agency Proceedings. The \$65.00 docketing fee for agency review proceedings filed pursuant to Fed. R. App. P. 15 must be paid to the court of appeals upon filing. The proceeding will be dismissed if the fee is not paid.

6.3. Original Proceedings. The \$65.00 docketing fee for original proceedings filed pursuant to Fed. R. App. P. 21 must be paid to the court of appeals upon filing. The proceeding will be dismissed if the fee is not paid.

6.4. Appeals Under 28 U.S.C. §1292(b). Fees are not required with a petition for permission to appeal under 28 U.S.C. §1292(b) unless and until the petition is granted.

7. ORDERING THE TRANSCRIPT ON APPEAL

Pursuant to Fed. R. App. P. 10(b), the appellant must order the relevant transcript on appeal and make satisfactory financial arrangements with the district court reporter within ten (10) days after the notice of appeal is filed. The purchase order must be completed on standard form 6CA-30 (purchase order), available either from the district court or court of appeals. If the appellant intends to urge, on appeal, that a finding or conclusion is unsupported by evidence, or is contrary to the evidence, a transcript of all relevant evidence shall be ordered. If a transcript is unnecessary for the appeal, the appellant shall file a certificate to that effect on standard form 6CA-30. The appellant is responsible for serving the various copies of form 6CA-30 upon the appellee and the other persons and offices indicated on the form.

Court reporters have been directed not to suspend preparation of the transcript merely upon the request of counsel. Unless the court of appeals directs otherwise, the court reporter will prepare the transcript without interruption.

If, after receiving his/her copy of form 6CA-30 from the appellant, the appellee finds additional transcript to be necessary, the appellee should, within ten (10) days after service of the form, notify the appellant in writing of the specific transcript required. If the appellant fails to place an order incorporating the appellee's designation of transcript within ten (10) days thereafter, the appellee may either make his own purchase order or move the district court for an order requiring the appellant to place the purchase order. The appellee is not entitled to a copy of the transcript at the appellant's expense.

If these activities, including financial arrangements with the reporter, are not completed in a timely manner, the case will be dismissed.

8. DUTIES OF COURT REPORTERS; EXTENSIONS OF TIME; REDUCTION OF FEES

If the reporter cannot prepare the transcript within thirty (30) days of the purchase order date, the reporter will be required to make a written request to

IOP (cont.)
3/85

the clerk of the court of appeals for an extension of time. The clerk's office will monitor all outstanding transcripts and the problems of delay in filing. Counsel will be kept informed when extensions of time are allowed on request by the court reporters. See 6th Cir. R. 13.

If the transcript cannot be completed within sixty (60) days from the date of order, the reporter is obliged to reduce the transcript preparation fee by 10%; if the transcript is ninety (90) or more days late, a 20% reduction is to be applied by the reporter.

9. TRANSMISSION OF RECORD ON APPEAL

The clerk of the district court will transmit the record on appeal to the court of appeals as soon as possible after the transcript has been completed by the reporter and filed in the district court. It is unnecessary to have the entire record of district court proceedings transmitted to the court of appeals. Especially in cumbersome cases, the court has no objection to the record being retained in the district court to assist counsel in the preparation of briefs. However, counsel should notify the court of appeals if the record is being retained for this reason. See Fed. R. App. P. 11 and 12.

10. DOCKETING THE APPEAL

10.1. Docketing an Appeal. Appeals are immediately docketed upon receipt of the notice of appeal from the district court. A general docket number is assigned and all counsel and pro se parties are so advised. Failure to pay the docket fee does not prevent the appeal from being docketed but is grounds for dismissal of the appeal by the clerk. Forms 6CA-26 and 36 provide a guideline and checklist of major events in case processing. Form 6CA-31 is an information sheet for processing criminal appeals.

10.2. Briefing Notice. As soon as the record has been received and processed, a notice to all counsel scheduling the time for filing briefs is issued by the clerk.

11. BRIEFS

11.1. Contents. See Fed. R. App. P. 28(a) and generally, Fed. R. App. P. 28 through 32 and 6th Cir. R. 10 and 24.

11.2. Length. Briefs in excess of the page length provided by the rules are seldom permitted. A maximum of fifty (50) pages are authorized for either the opening brief or the answer brief; twenty-five (25) pages are permitted for a reply brief.

11.3. Number of Copies. In all cases, ten (10) copies of each brief shall be filed.

11.4. Covers. The covers of briefs operate for a busy court like traffic signals. It assists the court for those signals to be correct. Fed. R. App. P. 32(a) requires that the cover of the appellant's brief be blue, that of the appellee red, and that of the reply brief gray. Intervenor and amicus briefs are green. In cross-appeals, the colors of the briefs shall be as follows: appellant, blue;

IOP (cont.)
3/85

appellee/cross-appellant, red; cross-appellee/appellant, red; cross-appellant reply brief, gray.

11.5. Legibility. While the court encourages inexpensive forms of reproduction to minimize cost, counsel should personally check each copy of the brief for legibility, completeness and proper binding, since copies distributed to the court are selected at random. It is also essential that the type size be at least 11 point.

11.6. Size of Paper. Briefs are to be filed on 8-1/2" x 11" size paper.

11.7. Time for Filing. Briefing schedules will be set in each individual case in accordance with Fed. R. App. P. 26 and 31. These schedules will identify the date upon which the briefs must be received by the Clerk's Office.

11.8. Extensions of Time. The court does not favor applications for extensions of time for the filing of briefs. Applications for extensions of time for the filing of briefs in criminal and other expedited cases will not be granted except in the most extraordinary circumstances. Extensions of time should be sought by motion, not by stipulation of counsel or telephone request. Failure of the appellant to timely process appeals will result in prompt dismissal for want of prosecution.

11.9. Certificate of Service. The certificate of service required by Fed. R. App. P. 25(b) must be included with the brief or it will not be filed.

11.10. Cross-Appeals. Fed. R. App. P. 28(h) provides that in a case with a cross-appeal, the plaintiff in the district court will be considered the appellant for purposes of briefing and appendix rules. If the parties stipulate otherwise, they must so notify the court. The second brief should contain both the argument as an appellant and the response to the opening brief. Briefing schedules will be set in accordance with Fed. R. App. P. 26 and 31. These schedules will identify the date upon which the briefs must be received by the Clerk's Office. Form 6CA-28, Cross-Appeal Briefing Information, explains the briefing schedules in cross-appeals and is available from the clerk's office.

11.11. Acknowledgement of Briefs. The clerk's office does not automatically acknowledge the filing of briefs. Counsel must make a special request, provide a pre-addressed stamped envelope and submit an extra copy of the brief to be file stamped and returned.

11.12. Sample Briefs. The clerk's office will not distribute sample briefs upon request; however, copies are available for inspection in the clerk's office in Cincinnati.

11.13. Fact Sheets. All parties are required to file fact sheets in their briefs for Social Security, Title VII, §2254 and §2255 cases. Failure to do so will delay the processing of the appeal. See 6th C. R. 20 and use forms 6CA-55 through 58.

11.14. Corporate Disclosure Statement. 6th Cir. R. 25 requires the filing of a statement of corporate affiliations and financial interests by all parties in civil and bankruptcy cases and corporate defendants in criminal cases. A report is required even though there may be no corporate affiliation or financial interest

IOP (cont.)

3/85

of the type described in 6th Cir. R. 25. The completed form 6CA-1 must be placed in the party's brief immediately preceding the statement of issues. Failure to do so may result in delays during the processing of the appeal.

12. APPENDIX

12.1. Purpose of the Appendix. The purpose of the joint appendix in the Sixth Circuit is to facilitate the efforts of each judge in studying the briefs in a meaningful way. Judges receive copies of the briefs and joint appendix approximately four to six weeks in advance of hearing. Each judge on the hearing panel is usually situated in a different city within the circuit and is preparing for hearing. The joint appendix allows each judge to become familiar with relevant portions of the record prior to that judge's arrival in Cincinnati where the records on appeal are maintained.

12.1.1. Responsibility for Filing. The appellant shall be responsible for the timely filing of the joint appendix.

12.2. Content and Organization. 6th Cir. R. 11 supercedes Fed. R. App. P. 30. Counsel should carefully consult the local rule when preparing the joint appendix.

12.3. Number of Copies. Five copies of the joint appendix are to be filed. One additional copy shall be served on opposing counsel.

12.4. Covers. White covers are required for the appendix.

12.5. Legibility. Inexpensive forms of reproduction are accepted by the court; however, counsel should personally check each copy of the appendix for legibility, completeness and proper binding, since copies distributed to the court are selected at random. Counsel should re-type any documents which, when reproduced, have become illegible.

12.6. Binding. Counsel are advised to make sure that each copy of the appendix is securely bound so as not to come apart when used.

12.7. Size of Paper. All copies of the appendix should be produced on 8-1/2" x 11" paper.

12.8. Time for Filing. Briefing schedules will be set in each individual case in accordance with Fed. R. App. P. 26 and 30. These schedules will identify the date upon which the joint appendix must be received by the Clerk's Office.

12.9. Extensions of Time. The court does not favor applications for extensions of time for the filing of the joint appendix. Applications for extensions of time for the filing of the joint appendix in criminal and other expedited cases will not be granted except in the most extraordinary circumstances. Failure to timely file the joint appendix will be deemed cause for prompt dismissal of the case for want of prosecution and may be deemed cause for imposing sanctions against legal counsel responsible for the default.

12.10. Certificate of Service. The certificate of service required by Fed. R. App. P. 25(d) must be included with the appendix or it shall not be deemed filed.

12.11. Situations Where a Joint Appendix is not Required. The only cases where a joint appendix is not required to be filed are 1) where the entire record on appeal, including portions of the trial transcript and all exhibits, is 100 pages or less and 2) where the appeal is from a district court and involves review of a decision of the Secretary of Health and Human Services under the social security law. In the first instance, three copies of the record, including the documents required by 6th Cir. R. 11(e), must be filed by the appellant; in the second instance, four copies of the administrative record, including the documents required by 6th Cir. R. 11(e), must be filed by the United States Attorney.

12.12. Unnecessary Material in the Appendix. Under 6th Cir. R. 11(h) the court may impose sanctions where unnecessary material has been included in the appendix.

13. PROCEDURES REGARDING ORAL ARGUMENT

13.1. Annual Schedule. Each active judge sits sixteen weeks of the year. Because the court internally divides itself into two divisions for hearing purposes, oral hearings can be scheduled during 32 weeks of the year. The two divisions of the court have been developed for logistical considerations. Such a division allows greater participation of senior circuit and visiting judges, which the court finds valuable. Every six months the individual judges are reassigned to the divisions with a view towards giving every judge the opportunity to sit with their colleagues as frequently as possible.

13.2. Panel Selection. The circuit executive, at the direction of the Chief Judge, makes up the schedule of panels. The schedules provide for panels to be scrambled each day and are structured so that every judge sits with each of his colleagues at least once and every active judge has the opportunity to preside at least once.

13.3. Preparation for Oral Argument

13.3.1. General. Calendars of cases to be orally argued before the court are prepared by the clerk. Calendars for oral argument sessions are drafted prior to the time the clerk is advised of the identity of the panel to be assigned for a given session. See Fed. R. App. P. 34 and 6th Cir. R. 7.

13.3.2. Calendaring by Case Type. The clerk balances the calendars by dividing the cases evenly among the panels according to case type. This results in each panel for a particular month considering a reasonably equal number of different types of litigation.

13.3.3. Number of Cases Assigned. Unless special provision is made, each judge participating in a week of hearings will sit three days during that week. On those days the judge will hear oral arguments in at least five cases and consider two additional cases which have been recommended by the court's central legal staff for disposition under 6th Cir. R. 9.

13.3.4. Advance Notice to Counsel for Hearing. The court seeks to give four to five weeks advance notice to counsel of assignment of cases for oral argument. In civil cases, the court encourages the submission of a list of citations updating the briefs. Four (4) copies of this list should be filed no later than three weeks

IOP (cont.)
3/85

prior to oral argument. Each citation should include a one-line statement of the subject matter of the case and a reference to the issue number to which the citation relates.

13.3.5. Forwarding Briefs to Judges. The clerk forwards to the panel members copies of the briefs for the cases set on the calendar about six weeks in advance of hearing.

13.3.6. Pre-Argument Preparation. It is the practice of the judges to read all briefs prior to oral argument.

13.3.7. Identity of Panels. The clerk does not disclose the names of the panel members for any individual session until the morning of that session.

13.3.8. Checking in with Clerk's Office on Date of Hearing. Counsel should check in with the clerk's office at least fifteen (15) minutes in advance of the convening of court. For the purposes of check-in, the clerk's office is open at 8:00 am. The names of the judges to hear the case will be available at that time.

13.3.9. Continuance of Oral Argument. After a case has been set for hearing, it may not be continued by stipulation of the parties or counsel, but only by an order of the court on good cause shown. An engagement of counsel in another court will not be considered good cause, except in extraordinary and unusual circumstances.

13.4. Oral Argument.

13.4.1. Time for Oral Argument. The time for oral argument will be indicated on the notice sent to counsel. Most cases are allowed fifteen (15) minutes for each side.

13.4.2. Additional Time for Oral Argument. Additional time for oral argument is sparingly permitted. Requests for additional time for oral argument may be sought by filing a motion or sending a letter to the clerk well in advance of the date set for oral argument.

13.4.3. Presenting Oral Argument. Counsel should prepare for oral argument with the knowledge that the judges have already studied the briefs. Reading from briefs, decisions or the record is not permitted except in unusual circumstances. Counsel should be prepared to answer questions raised by the court.

14. **OPINION**

14.1. Case Conferences and Designation of Writing Judge. At the conclusion of each day's arguments, the panel usually holds a conference concerning the cases heard that day. A tentative decision is usually reached and opinion writing is assigned by the presiding judge of the panel. Judges are always permitted to volunteer for cases. There is no pre-argument assignment of opinion writing.

14.2. Processing of Opinions. After the draft opinion has been prepared, the opinion writing judge circulates the proposed opinion to each of the other two judges on the panel for the purpose of obtaining their concurrence, dissent or special concurrence. Under the court's policy, the view of a judge's proposed

opinion is given high priority by the other members of the panel. When the writing judge has received concurrences from the other judges, or in the case of dissents or special concurrences, sufficient concurrences to constitute a majority, he then sends to the clerk the original typewritten copy, the concurrences, and any dissents or special concurrences.

14.3. Circulation to non-panel Members. All judges receive copies of any proposed opinions.

14.4. Publication of Opinions. Opinions determined by the writing judge to have precedential value are published. All non-published decisions are published in table form in the Federal Reporter. See 6th Cir. R. 24.

14.5. Release of Opinions. All opinions are announced by the clerk. The clerk's office is not given advance notice of when a decision will be rendered and, therefore, cannot make this information available to counsel. When an opinion has been filed, it is made available to the press and copies are sent to all counsel by priority mail on the date of filing. On request, the clerk will notify counsel of record, who so desire, immediate collect telephonic notification.

14.6. Subscriptions to Opinions. Subscriptions for published decisions are available to the general public for an annual fee. Subscribers receive copies of all published decisions issued on a weekly basis. Information on subscription rates can be obtained by contacting the clerk's office.

15. MANDATE

15.1. Issuance of Mandate. The mandate is the document by which the court of appeals relinquishes jurisdiction and authorizes the originating district court or agency to enforce the judgment of the court of appeals. The mandate issues twenty-one (21) days after the entry of judgment and consists of a certified copy of the original judgment, a copy of the opinion and any directions concerning costs. Copies of the mandate are distributed to all parties and the district court clerk's office. The record is then returned to the district court. In agency cases, the mandate is sent to the agency, and any record is returned to that agency. The time for issuance of the mandate may be enlarged or shortened by court order. A motion for stay of the mandate must be received prior to issuance of the mandate and is referred, as a single judge matter, to the judge who authored the opinion.

15.2. Timely Petition for Rehearing; Stay of Mandate. The timely filing of a petition for rehearing will stay the issuance of the mandate until seven (7) days after the denial of the petition. If the petition is granted, the mandate will issue twenty-one (21) days after the new ruling. See Fed. R. App. P. 41 and 6th Cir. R. 15.

15.3. Stay of Mandate Pending Application for Certiorari. The filing of a petition for a writ of certiorari does not automatically stay the issuance of the mandate. A separate application for stay of mandate must be made to this court; however, that application will not be granted automatically. See 6th Cir. R. 15(a). Such an application should be made in the form of a motion.

16. BILLS OF COSTS

Fed. R. App. P. 39 and 6th Cir. R. 26 address what costs are recoverable, by which party and in what amount. Costs in this court include the court of appeals docket fee (where applicable) and production of the briefs and appendix, as limited by 6th Cir. R. 26. This court does not look favorably upon commercial printing or other expensive methods of producing the briefs and appendix. Therefore, 6th Cir. R. 26 limits the costs which are recoverable for the production or reproduction of those documents. Attorney fees are generally not considered costs of appeal. Use form 6CA-69.

17. ATTORNEYS FEES

Applications for an award of attorneys fees for appellate representation, where statutory authorization exists therefor, is first made to the district court or agency where the case originated. Any such applications sent to this court will be referred to the lower court or agency, which has a greater facility for the fact-finding necessary to determine the appropriate amount of fees to be allowed. Attorney fees are generally not considered costs within the meaning of Fed. R. App. P. 39.

18. PETITIONS FOR REHEARING OR REHEARING EN BANC

18.1 Necessity for Filing. It is not necessary to file a petition for rehearing in the court of appeals as a prerequisite to the filing of a petition for writ of certiorari in the Supreme Court of the United States.

18.2. Petitions for Panel Rehearing. A petition for rehearing is intended to bring to the attention of the panel claimed error of fact or law in the opinion. It is not to be used for reargument of the issues previously presented. Petitions for rehearing are reviewed by panel members only. See Fed. R. App. P. 40.

18.3. Response to Petition. No response to a petition for rehearing or rehearing en banc should be filed unless requested by the court.

18.4. Time for Filing Extensions. A petition must be filed within fourteen (14) days of the date of the opinion. Counsel should not request extensions of time except for the most compelling reasons.

18.5. Composition of En Banc Court. The en banc court is composed of all active judges of the court and any senior judge who sat on the original panel.

18.6. Extraordinary Nature of Suggestions for Rehearing En Banc. A suggestion for rehearing en banc is an extraordinary procedure which is intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion which directly conflicts with prior Supreme Court or Sixth Circuit precedent. Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc. Counsel should refer to the statement required by 6th Cir. R. 14(b).

IOP (cont.)
3/85

18.7. Rule Requirements. The form, contents and other rule requirements of a suggestion for rehearing en banc are set forth in Fed. R. App. P. 35 and 6th Cir. R. 14.

19. MOTION PRACTICE

19.1. Form of Motion. Motions to the court must be in writing, in the form prescribed by Fed. R. App. P. 27. This court requires the filing of an original and three copies on 8-1/2" x 11" paper, including a memorandum in support thereof and any documentation necessary to support the motion. All motions must clearly identify the name of the case and the court of appeal's docket number. See also 6th Cir. R. 8.

19.2. Acknowledgement. The clerk's office does not automatically acknowledge the filing of documents. Counsel must make a special request, provide a pre-addressed stamped envelope and submit an extra copy of the document to be file stamped and returned.

19.3. Certificate of Service. All motions must include a certification that service has been effected on all parties.

19.4. Motion Panels. Motion panels, drawn by lot from the active judges, are assigned to review substantive motions filed with the court. Motions are not orally argued unless specifically directed by the court. Each member of the panel receives a complete set of papers for those motions requiring panel action.

19.5. Emergency Motion Procedure. Emergency motions or applications, whether addressed to the court or to an individual judge, ordinarily ARE TO BE FILED WITH THE OFFICE OF THE CLERK IN CINCINNATI rather than with an individual judge. In matters where time does not permit the filing of a motion or application at the clerk's office in Cincinnati, contact may be made with the clerk's office by telephone to explain the situation and to seek guidance.

It is recognized that counsel will, in some cases, have advance indications that a situation may arise which will cause the subsequent filing of an emergency motion. It is expected that the moving party will make every practicable effort to notify the clerk at the earliest possible time that such an emergency motion may be filed, the nature of the motion and the relief to be sought.

Hearings on emergency motions, as with other motions, are extremely unusual. Movants ought not expect that a hearing will be granted and need not move for such a hearing. Should the court feel it necessary to hold a hearing, the clerk will inform counsel of the date and time.

Because emergency motions are usually filed before the the record is transmitted, such motions should be accompanied by a copy of the notice of appeal, a copy of the order appealed from, and copies of any other portions of the record necessary to the disposition of the motion.

19.6. Motions for Release in Criminal Cases. Review of district court orders respecting pre-trial release is by way of appeal, rather than motion. These appeals are given expedited treatment and, for that reason, the filing of the briefs and appendix does not follow the usual time requirements of the Federal Rules of Appellate Procedure. Therefore, counsel will be notified by the clerk as to when these documents are to be filed. As with other appeals, however,

there must be a timely notice of appeal and a resolution of the docketing fee status before any action will be taken.

Application for post-conviction release pursuant to Fed. R. App. P. 9(b) is made by motion. These motions are treated as single-judge, expedited matters. The rule requires that applications for post-conviction release first be presented to the district court. Where that has been done and no relief has been forthcoming, a motion for release can be made to this court. Such motions shall be accompanied by a copy of the notice of appeal, a copy of the district court's order denying or imposing conditions on release and, wherever possible, a transcript of the bond hearing.

Unless a timely notice of appeal from the judgment of conviction has been filed in the district court, thus transferring jurisdiction to the court of appeals, this court cannot act on motions for release pending appeal.

19.7. Motion to Expedite Appeal. An appeal may be expedited for good cause shown. If an appeal is ordered expedited, the clerk will fix a briefing schedule which will permit the appeal to be set for oral argument at an early date, unless an earlier hearing date is directed by a judge. The clerk will usually have some idea of the approximate date of the hearing and will so advise counsel when the order is issued.

19.8. Reconsideration. A panel may reconsider its own action or an action of a single judge upon the filing by a party of a motion for reconsideration.

19.9. Motions after Assignment to Calendar. If a case is assigned to the oral argument calendar, motions in these cases are circulated to the hearing panel rather than to the standard motions panel. The senior active judge on the panel is considered to be the initiating judge.

19.10. Motions for Extensions of Time to File Briefs. In order that matters pending before the court move along toward submission and decision as expeditiously as possible, it is necessary to keep delays occasioned by extensions for completion of briefing to the absolute minimum. MOTIONS FOR EXTENSIONS OF TIME FOR THE FILING OF BRIEFS ARE DISFAVORED BY THE COURT AND WILL BE GRANTED ONLY UPON A SHOWING OF EXTENUATING CIRCUMSTANCES. The fact that the opposing party is unopposed to your request for extension or that the opposing party has previously received an extension will not suffice.

Parties filing motions for extensions should assume that their brief, appendix or other response is due at the time originally called for unless and until they are advised otherwise by the clerk's office.

Any documents for which there is a submission deadline and which are tendered after that deadline has passed, shall be accompanied by a motion for leave to file out of time and a memorandum explaining the circumstances. Absent such a motion, the documents will be returned without action.

Motions for extensions of time in criminal appeals shall state whether the appellant is incarcerated or released on bail.

19.11. Post-Argument Motions

19.11.1. Extension of Time to File Petition for Rehearing or Leave to File Out-of-Time. The clerk may grant a timely motion for an extension of time to file a petition for rehearing for a period not longer than fourteen (14) days. Any motions for additional time, beyond the fourteen days, or for permission to

IOP (cont.)
3/85

file out of time are referred, as a single-judge matter, to the judge who authored the opinion.

19.11.2. Stay or Recall of the Mandate. A motion for stay or recall of the mandate is referred, as a single-judge matter, to the judge who authored the opinion.

19.11.3. Motion to Extend Time to File Bill of Costs. Motions for extensions of time to file a bill of costs are decided by the clerk.

19.11.4. Motion to Amend, Correct or Settle a Judgment. Motions to amend, correct or settle a judgment are referred to the panel which decided the case. The writing judge is responsible for initiating a disposition.

19.11.5. Remand from Supreme Court of the United States. Once a certified copy of the judgment is received in the clerk's office, remands from the Supreme Court of the United States are referred, for disposition, to the panel which decided the case. It is unnecessary for counsel to file a formal motion concerning the remand.

20. DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

6th Cir. R. 25 requires the filing of a statement of corporate affiliations and financial interests by all parties in civil and bankruptcy cases and corporate defendants in criminal cases. A report is required even though there may be no corporate affiliation or financial interest of the type described in 6th Cir. R. 25. The completed form 6CA-1 must be placed in the party's brief immediately preceding the statement of issues.

21. SCREENING AND SUMMARY DECISIONS (6th Cir. R. 9) WITHOUT ORAL ARGUMENT

The staff attorney section reviews every case on the court's docket for the possibility of decision without oral argument pursuant to Fed. R. App. P. 34 and 6th Cir. R. 9. The staff attorneys prepare brief legal research memoranda for any cases so identified and submit them, together with all briefs filed by the parties, to a hearing panel. Every hearing panel receives two cases recommended for 6th Cir. R. 9 disposition. The briefs and memorandum are usually received by the panel six weeks in advance of the date that panel is to convene. Following oral argument of the other cases before the court, the panel discusses these 6th Cir. R. 9 cases and makes an appropriate decision. Unless there is a unanimous agreement of the panel for 6th Cir. R. 9 decision, the case will be returned to the clerk for scheduling on the oral argument calendar.

22. PETITIONS FOR WRIT OF CERTIORARI

22.1. Discretionary Review. Review on writ of certiorari is not a matter of right, but of judicial discretion and will be granted only when there are special and important reasons. (See Sup. Ct. R. 17).

22.2. Time for Filing. The petition must be filed within sixty (60) days of the entry of judgment in the court of appeals in a criminal case, or ninety (90) days of the entry of judgment in a civil case. If a petition for rehearing is timely filed, the time runs from the date of the denial of that petition. (It should be noted that time does not run from the issuance of the mandate.)

22.3. Admission Requirements. The petition must be filed by either a member of the Bar of the Supreme Court, counsel appointed by a lower court or the petitioner pro se. Qualified attorneys should write to the Clerk of the Supreme Court for admission to practice. (See address below)

22.4. Filing Fee. A docket fee of \$200, or a motion for leave to proceed in forma pauperis, with appropriate affidavit, must accompany the petition.

22.5. Form of Petition, Number of Copies. Forty (40) copies of the petition are required. The petition must not exceed thirty (30) pages, excluding index, table of authorities, quotations and appendix. Pages must be 6-1/8" x 9-1/4" in size with type matter approximately 4-1/8" x 7-1/8". Type size must be eleven (11) point or pica. If the petitioner is proceeding in forma pauperis, one typewritten petition on 8-1/2" x 13" paper may be submitted. The lower court opinion(s) and any order on rehearing must be included as the appendix to the petition. Proof of service must accompany the petition.

22.6. Transmission of the Record. Requests to certify and transmit the record to the Supreme Court prior to action on the petition should not be made as a matter of course. The Clerk of the Supreme Court will request the record from this court when review of the record is desired.

22.7. Supreme Court Rules and Other Information. The Rules of the United States Supreme Court are contained in Title 28 of the United States Code Annotated. Specific information may be obtained from the Clerk of the Supreme Court of the United States, 1 First Street, N.E., Washington, D.C. 20543; Telephone: (202) 252-3011.

23. CRIMINAL JUSTICE ACT VOUCHERS

23.1. Submission of Claim

23.1.1. Form. CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel," which is issued to appointed counsel by this court, must be used to apply for compensation for services provided pursuant to the Criminal Justice Act, 18 U.S.C. §3006A.

23.1.2. Instructions. Detailed instructions for documenting and presenting a claim for reimbursement under the Criminal Justice Act are contained in form 6CA-22, which will be supplied with CJA Form 20. (Extra copies are available from the Clerk's Office.) Some instructions also appear on the cover sheet of CJA Form 20. Both documents should be consulted before submitting a claim.

23.1.3. Time for Submitting Claim. Unless good cause for delay is shown, claims for fees and expenses should be submitted within 45 days after final judgment has been entered. However, the form should not be submitted until

IOP (cont.)

3/85

the court has denied any pending motion for reconsideration or until any petition for certiorari has been filed. See 6th Cir. R. 12(f)(5).

23.1.4. Submitting Completed Form. When CJA Form 20 has been completed in accordance with the instructions, it should be signed, dated and returned to the CJA Deputy in the Clerk's Office. The court will notify Counsel of its disposition concerning the claim.

23.2. Writ of Certiorari. Time and expenses in connection with the filing of a petition for a writ of certiorari should be included on the CJA Form 20 submitted to the court of appeals.

23.3. Interim Payments. In some extraordinary cases, interim payments may be made to cover out-of-pocket expenses which have already been advanced by counsel. Interim payments are never made for attorney time.

24. EQUAL ACCESS TO JUSTICE (EAJ) ACT

The Equal Access to Justice Act (Title II of Public Law 96-481, 94 STAT 2325) lessens the financial burden on private parties who prevail against the United States in agency adversary adjudications or non-tort civil actions by authorizing the award of attorney fees and expert witness fees. The Act also covers outlays for any study, project, etc. necessary in building a case. To be eligible for such an award, the party must prevail and meet certain financial requirements of the statute.

Even though the private party prevails against the United States and is financially eligible for funds, the fees and costs applied for can be denied if the United States can demonstrate that its position was "substantially justified" or if the court finds that the private litigant used delaying tactics.

The Act and procedures for commencing action thereunder are contained in 5 U.S.C. §504 and 6th Cir. R. 21.

25. COMPLAINTS OF JUDICIAL MISCONDUCT

Any complaint with respect to the conduct of a circuit or district judge of the Sixth Circuit should be filed, in writing, with the Judicial Council of the Sixth Circuit at the office of the Circuit Executive in Cincinnati, Ohio. The Circuit Executive will open a file and submit the complaint to the Chief Judge of the Circuit or, if the Chief Judge is the subject of the complaint, to the next most senior circuit judge eligible to serve as Chief Judge, who performs the duties of Chief Judge for these procedures.

The Chief Judge may reject the complaint, close the complaint, or refer the complaint to a committee consisting of an equal number of circuit and district judges (appointed by him). A complaint may be rejected if it is frivolous, relates to the merits of any decision or procedural ruling, or relates to the conduct of a judge not connected with his judicial office or which does not prejudice the administration of justice by bringing the judicial office into disrepute. A complaint may be closed if the Chief Judge assures himself that appropriate corrective action has been taken. In each case, the Chief Judge shall inform the judge complained against and the complainant of the rejection or closing of the complaint and the reasons therefor. He then submits a report to the Judicial Council of the Sixth Circuit.

IOP (cont.)
3/85

If a complaint is referred to a committee, the committee will conduct an inquiry, and the judge complained against will be informed of the committee action and be given an opportunity to respond to the complaint and to be represented by counsel. The complainant is also informed of this action and given the opportunity to submit memoranda or affidavits supporting his complaint. In some instances, he may be allowed to appear personally before the committee. When the committee completes its inquiry it submits a report with written recommendations to the Council and the judge complained against. All papers received by, and proceedings and reports of, the committee are confidential, unless released by the Council.

Upon receipt of the committee's report, the Council will take such action as is appropriate to assure the effective and expeditious administration of the courts within this circuit. The Council may take no action other than rejecting or closing the complaint without first giving the judge complained against an opportunity to respond to the complaint and recommendation of the committee. The Council will advise the judge complained against and the complainant of the disposition and action taken. A copy of the procedures is filed in the office of the Circuit Executive and will be made available, without charge, to any person upon reasonable request.

26. ORIGINAL ACTIONS

Petitions for writs of mandamus and prohibition are filed, as original proceedings in this court, according to the provisions of Fed. R. App. P. 21 and 6th Cir. R. 23. Where a petitioner seeks an extraordinary writ to expedite his district court case, this court will request a status report from the respondent. Where the petition also raises substantive legal issues, this court will invite a preliminary response from the respondent. In each case, the petitioner will receive a copy of this court's correspondence with the respondent.

27. EXHIBITS

Counsel is responsible for arranging with the district court for the transmission of demonstrative evidence to the court of appeals. Manageable paper exhibits may be transmitted as part of the record on appeal and, in order to call them to the court's attention, may appear as a separate volume of the appendix. The district court will not automatically include these exhibits with the record; therefore, they must be designated and a request made for their transmittal. Bulky paper exhibits, physical exhibits and any contraband are never to be transmitted to the court of appeals without the express written permission of the clerk of the court of appeals. Fed. R. App. P. 34 sets forth the procedures for use of physical exhibits at oral argument.

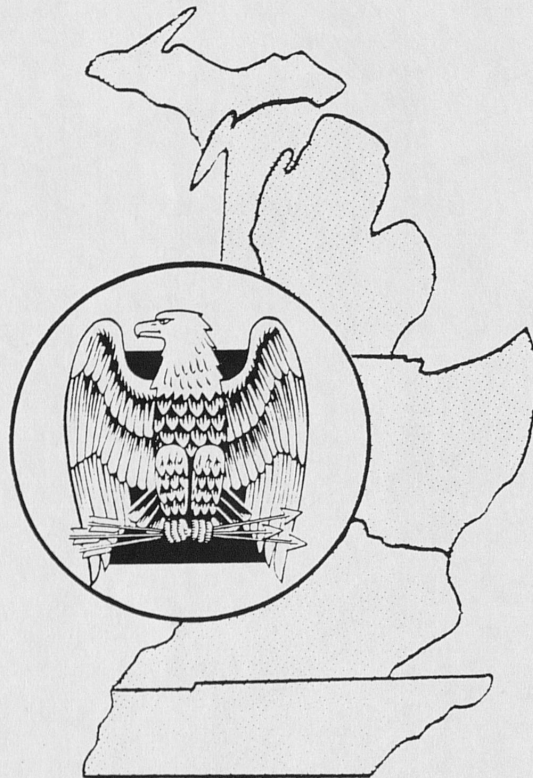
28. DEATH PENALTY CASES

The court has adopted special procedures which apply to cases that challenge a state court order imposing a sentence of death. Counsel who is prosecuting such an appeal should carefully review and follow the provisions of 6th Cir. R. 28. Special attention should be given to the necessity of filing the petitioner's statement required by Paragraph (b) of the rule with this court when the notice of appeal is filed in the district court. Counsel is encouraged to contact the

IOP (cont.)
3/85

Clerk's Office by telephone at the earliest possible time, before the filing of the notice of appeal, if possible, to apprise the Clerk's Office of the progress of the case and to determine the procedures applicable to it.

United States Court of Appeals
FOR THE SIXTH CIRCUIT



COURT POLICIES

FEBRUARY 1985

COURT POLICIES**CONTENTS**

CHAPTER NO.	TITLE	PAGE NO.
Chapter 1.	Order of Precedence	1
Section 1.1.	Presiding Judge	1
Section 1.2.	General Protocol	1
Section 1.3.	Courtroom Protocol	1
1.3.1.	Presiding Panel Judge	1
1.3.2.	Judge Stationed to Right of Presiding Judge	1
1.3.3.	Judge Stationed to Left of Presiding Judge	1
Chapter 2.	Panel Composition	2
Section 2.1.	Definition of Judges of the Court	2
Section 2.2.	Number of Active Judges on a Panel	2
Chapter 3.	Schedule of Oral Argument Sitzings	3
Section 3.1.	Sitting Schedule Preparation	3
Section 3.2.	Oral Argument Schedule	3
Section 3.3.	Issuance of Sitting Schedule	3
Section 3.4.	Makeup of Panels	3
Chapter 4.	Oral Argument Calendar	4
Section 4.1.	Judges' Review of Calendar Assignments	4
Section 4.2.	Handling of Motions Seeking Schedule Changes	4
Section 4.3.	Calendaring by Subject Matter	4
Section 4.4.	Number of Cases Assigned	4
Section 4.5.	Allocation of Time for Oral Argument	4
Section 4.6.	Time Guidelines for Oral Argument	5
4.6.1.	"To be Submitted on Briefs"	5
4.6.2.	"15 Minutes per Side"	5
4.6.3.	"30 Minutes per Side"	5
Section 4.7.	Identity of Hearing Panel	5
Section 4.8.	Public Availability of Oral Argument Calendar	5
Chapter 5.	Recusal or Disqualification of Judges	6
Section 5.1.	Procedure	6
Section 5.2.	Circumstances	7
5.2.1.	Recusal under 18 U.S.C. §455	6,7
5.2.2.	Recusal under 28 U.S.C. §47	7,8
5.2.3.	Disqualification under 28 U.S.C. §47	8
5.2.4.	Recusal for Participation in Pre-Argument Conference	8
Section 5.3.	Corporate/Affiliate/Financial Interest Disclosure	8
Chapter 6.	Panel Conferences	9
Section 6.1.	Tentative Views	9
Section 6.2.	Panel Reports	9
Section 6.3.	Assignment of Writing Responsibility	9

CHAPTER NO.	TITLE	PAGE NO.
Chapter 7.	Decisions from the Bench	10
Section 7.1.	Circumstance	10
Section 7.2.	Procedure	10
Chapter 8.	Orders with Special Concurrences or Dissents	11
Section 8.1.	Preparation of	11
Section 8.2.	Form of Orders with Special Concurrences or Dissents	11
Chapter 9.	Written Decisions	12
Section 9.1.	Case Conferences and Designation of Writing Judge	12
Section 9.2.	Form of Decisions	12
9.2.1.	Cases on Oral Argument Calendar	12
9.2.2.	6th Cr. R. 9 Cases	12
Section 9.3.	Circulation of Opinions	12
9.3.1.	Within Panel	12
9.3.2.	Circulation of Concurring or Dissenting Opinions	12
9.3.3.	Time Schedule for Panel Drafting and Circulating Opinions	12,13
Section 9.4.	Concurrences, Dissents, and Reassignments	13
Section 9.5.	Filing of Opinions	13
Section 9.6.	Publication of Decisions	13
9.6.1.	Publication; Policy	13
9.6.2.	Presumption as to Publication	13
9.6.3.	Form of Release	13
9.6.4.	Notice as to Publication	13,14
9.6.5.	Procedure for Slip Opinion Preparation	14
9.6.6.	Subscriptions	14
Chapter 10.	Retaining Jurisdiction	15
Section 10.1.	Panel Assignment	15
Chapter 11.	Hearing or Rehearing En Banc; Criteria	16
Section 11.1.	Hearing En Banc	16
Section 11.2.	Rehearing En Banc	16
Section 11.3.	Policy of Avoiding Intra-Circuit Conflict of Precedent	16
Section 11.4.	Policy as to Inter-Circuit Conflict of Precedent	16
Section 11.5.	Acceleration	16
Section 11.6.	Determination of a Majority	17
Section 11.7.	Participation of Senior Circuit Judges	17
Chapter 12.	Petitions for Rehearing En Banc; Procedures	18
Section 12.1.	General Scheme	18
Section 12.2.	Definition of En Banc Court	18
Section 12.3.	When Can a Poll be Requested	18
Section 12.4.	Who is Eligible to Request a Poll	18
Section 12.5.	Who is Eligible to Vote	18
Section 12.6.	When Can a Judge Retract or Change a Vote	18
Section 12.7.	Calculation of a Majority Vote	19
Section 12.8.	Effective Date of a Request for Poll or Vote	19
Section 12.9.	When/How May Time Extensions for Polling or Voting be Authorized	19
Section 12.10.	Request by a Party for Added Time to File Petition for Rehearing En Banc	19
Section 12.11.	Clerk's Office Handling of Untimely Petitions	19,20
Section 12.12.	Circulation of an En Banc Petition	20

CHAPTER NO.	TITLE	PAGE NO.
Section 12.13.	Request for a Response	20
Section 12.14.	Responsibility of Panel	20
Section 12.15.	Judge Responsible for Initiating Action on Behalf of Panel	21
Section 12.16.	Responsibility of En Banc Court	21
Section 12.17.	Procedure re Request for a Poll	21
Section 12.18.	Voting Procedure	21
Section 12.19.	Entry of Orders	22
12.19.1.	Granting of an En Banc Petition	22
12.19.2.	Denial of an En Banc Petition	22
Chapter 13.	Petitions for Rehearing	23
Section 13.1.	Motion to Extend Time for Filing	23
Section 13.2.	For Cases from the Oral Argument Calendar	23
Section 13.3.	For Cases Decided Pursuant to 6th Cir. R. 9	23
Section 13.4.	Writing Responsibility	23
Section 13.5.	Circulation of Orders	23
Chapter 14.	Motion Practice	24
Section 14.1.	Motions Panel	24
Section 14.2.	Emergency Motions	24
Section 14.3.	Death Penalty Cases	25
Chapter 15.	Admission to Practice Before the Court	26
Section 15.1.	Application	26
Section 15.2.	When Admission is Required	26
Section 15.3.	Waiver of Admission Fee	26
Chapter 16.	Appointment of Counsel	27
Section 16.1.	Appointment of Appellant's Counsel under CJA	27
Section 16.2.	Habeas Corpus or \$2255 Pauper Appeals	27
Section 16.3.	Civil Rights Pauper Appeals	27
Chapter 17	Compensation of Appointed Counsel Under the CJA	28
Section 17.1.	Submission of Claim	28
Section 17.2.	Judge's Review and Recommendation	28
Section 17.3.	Approval by Chief Judge	28
Chapter 18.	Attorney Disciplinary Problems	29
Section 18.1.	Disbarment or Suspension of Attorney	29
Section 18.2.	Rules of Disciplinary Enforcement	29
Chapter 19.	Financial Disclosure Reports	30
Section 19.1.	Custody	30
Section 19.2.	Availability	30
Chapter 20.	Chambers	31
Section 20.1.	Chief Judge's Chambers	31
Section 20.2.	Senior Judges' Chambers	31
Section 20.3.	Assignment after Renovation	31
Chapter 21.	Production of Appellate Transcript	32
Section 21.1.	Appellant's Obligation	32
Section 21.2.	Court Reporter's Obligation	32
21.2.1.	Calculation of Time Periods	32

CHAPTER NO.

TITLE

PAGE NO.

21.2.2.	30-Day Completion Time for Transcript	32
Section 21.3.	Removal of Reporter from Courtroom	32
Section 21.4.	Extensions to File Transcript	33
Section 21.5.	Automatic Reduction of Fees	33
Section 21.6.	Suspension of Preparation	33
Section 21.7.	District Court Coordinator's Obligation	34

COURT POLICIES

CHAPTER 1 ORDER OF PRECEDENCE

Section 1.1. Chief Judge

The chief judge of the court of appeals shall be the judge in regular active status who is senior in commission of the judges of the court of appeals who (a) are sixty-four years of age or under; (b) have served for one year or more as a court of appeals judge; and (c) have not served previously as chief judge. In the absence of the chief judge, the judge of the court of appeals next senior in date of commission who is qualified to serve as chief judge shall act as chief judge. See 28 U.S.C. §45.

Section 1.2. General Protocol

The precedence of the active judges of the court of appeals shall be based on the seniority of their commissions as judges of the court of appeals except that the chief judge shall always preside whenever he sits. Senior judges are junior in precedence to the active judges. The precedence of the senior judges of the court of appeals is based on the seniority of their commissions as judges of the court of appeals.

Section 1.3. Courtroom Protocol

1.3.1. Presiding Panel Judge

The presiding judge always sits in the middle. The presiding judge shall be the ranking active judge of the court of appeals as determined by paragraph 1.2 hereof. Whenever a Justice of the Supreme Court of the United States sits on a panel, the Justice shall be given the opportunity to preside. If the Justice declines, the Justice shall sit to the right of the presiding judge.

1.3.2. Judge Stationed to the Right of Presiding Judge

The next ranking active judge of the court of appeals, as determined by seniority of commission, is stationed to the right of the presiding judge, facing the courtroom from the bench. However, whenever a senior judge of the Sixth Circuit Court of Appeals sits on the panel, that senior judge will sit to the right of the presiding judge. When a former or current chief judge of another federal court of appeals sits on a panel, he will be accorded precedence in accordance with his commission.

1.3.3. Judge Stationed to Left of Presiding Judge

The third ranking judge on the panel, or any visiting judge (except for a Justice of the Supreme Court of the United States), is stationed to the left of the presiding judge, facing the courtroom from the bench.

CHAPTER 2
PANEL COMPOSITION

Section 2.1. Definition of Judges of the Court

Insofar as 28 U.S.C. §46(b) requires a majority of any three-judge panel to be "judges of the court," the court construes the term "judges of the court" to include active and senior judges of the Sixth Circuit court of appeals.

Section 2.2. Number of Active Circuit Judges on a Panel

At least one member of any three-judge panel will be an active circuit judge of the Sixth Circuit court of appeals.

CHAPTER 3

SCHEDULE OF ORAL ARGUMENT SETTINGS

Section 3.1. Sitting Schedule Preparation

For purposes of scheduling, the active judges of the court shall be separated into two groups as evenly divided as possible. Every six months, these groups shall be reformed with the goal of enabling each judge to sit with every other judge as often as possible. The circuit executive shall be responsible for the semi-annual reforming of these groups and for developing the schedule at the direction of the Chief Judge.

Section 3.2. Oral Argument Schedule

Except for the chief judge, each active judge of the court shall sit as a member of an oral argument hearing panel for three days on each of sixteen weeks of the year. The chief judge shall have a reduced sitting schedule as determined by the court. There shall be at least one common week of sitting for all active judges. Two groups of judges sitting 16 weeks per year with one common week should produce 31 weeks of regularly scheduled hearings during the year.

Section 3.3. Issuance of Sitting Schedule

The circuit executive shall be responsible for issuing a schedule showing composition of panels.

Section 3.4. Makeup of Panels

Panel assignments are to be made at random without regard to any judge's preference as to days of the week for sitting, although adjustments in the sitting schedule due to particular circumstances such as Judicial Conference committee meetings and similar obligations will be honored. Judges may exchange sitting assignments by mutual agreement and, whenever possible, such exchanges should be made at least 8 weeks before the scheduled dates.

CHAPTER 4

ORAL ARGUMENT CALENDAR

Section 4.1. Judges' Review of Calendar Assignments

The oral argument calendar is usually released to judges for review and approval approximately seven weeks prior to a court session. A judge should promptly review the proposed calendar and notify the clerk that it is approved or, if the judge is unable to sit on a case or if a conflict exists, an appropriate change shall be made. Once the calendar has been approved by all judges, counsel will be notified of the oral argument session.

Section 4.2. Handling of Motions Seeking Schedule Changes

When a motion affecting the scheduling of a case is filed, the clerk's office will notify the presiding judge of the panel. The presiding judge acts on behalf of the panel and the clerk's office will notify the other panel members and counsel of the decision.

Section 4.3. Calendaring by Subject Matter

The clerk attempts to balance the calendar by dividing the cases evenly among the panels by subject matter so that each panel for a particular day has more or less an equal number of different types of litigation for consideration.

Section 4.4. Number of Cases Assigned

Five lead cases shall be set for hearing before each panel. Cross-appeals and consolidations may be grouped with a lead case when they have been consolidated for oral argument with the lead case.

In addition, two cases as recommended by the staff attorneys for Sixth Circuit Rule 9 disposition are also assigned to each panel. These cases are separately assigned and dispatched by the staff attorney section.

Section 4.5. Allocation of Time for Oral Argument

The amount of time for oral argument will be indicated on the calendar and will also be noted on the notice of hearing which is sent to counsel. The recommendation as to time is made by the staff attorney section to the clerk in accordance with the criteria of paragraph 4.6 hereof.

A motion of a party for additional oral argument time shall be directed by the clerk to the presiding judge of the panel. The presiding judge may, but is not required to, consult with his colleagues prior to deciding the motion.

Section 4.6. Time Guidelines for Oral Argument

4.6.1. "To be submitted on briefs"

This recommendation is generally made where a pro se appellant is unable to appear at oral argument because of incarceration, and the case is inappropriate for disposition under 6th Cir. R. 9. Any pro se appellant not incarcerated will be given an opportunity to show in writing why oral argument would be beneficial and that will be reviewed by the court, together with the briefs and record on appeal, in determining whether oral argument shall be necessary in the case.

4.6.2. "15 minutes per side"

This recommendation is generally applied to most cases.

4.6.3. "30 minutes per side"

This recommendation is made in the complex case involving a complicated factual situation and difficult legal argument. Examples of cases where this recommendation could be applied are school desegregation cases, environmental legislation cases, and complex cases involving commercial transactions, patent infringement, or admiralty issues. This recommendation could also be applied to cases involving multiple appellants such as criminal cases involving several defendants.

Section 4.7. Identity of Hearing Panel

The names of the panel members and the position of the cases on the calendar are not public information until the day of hearing. The clerk's office should not disclose the name of panel members until the morning of the oral argument. Questions related to the calendar should be addressed by counsel or litigants to the clerk's office and not to judge's chambers.

Section 4.8. Public Availability of the Oral Argument Calendar

The listing of cases to be argued or submitted to the court shall be made available to the media and to the public one week in advance of the beginning of an oral argument session.

CHAPTER 5
RECUSAL OR DISQUALIFICATION OF JUDGES

Section 5.1. Procedure

If, after distribution of the proposed calendar, a judge finds it necessary to recuse himself, that judge should immediately notify the clerk. The clerk will arrange for the case to be heard either by a different judge or by a different panel.

Section 5.2. Circumstances

5.2.1. Recusal under 18 U.S.C. §455

A judge recuses himself under circumstances set forth in 28 U.S.C. §455:

§455. Disqualification of justice, judge, magistrate, or referee in bankruptcy.

(a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

- (ii) is acting as a lawyer in the proceeding;
 - (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iv) is to the judge's knowledge likely to be a material witness in the proceeding.
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (d) For the purposes of this section the following words or phrases shall have the meaning indicated:

- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
- (2) the degree of relationship is calculated according to the civil law system;
- (3) "fiduciary interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:--

- (i) Ownership in a mutual or common investment fund that securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, magistrate, or referee in bankruptcy shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

5.2.2. Recusal under 28 U.S.C. §144

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal

bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

5.2.3. Disqualification under 28 U.S.C. §47

No judge shall hear or determine an appeal from the decision or issue tried by him.

5.2.4. Recusal for Participation in a pre-argument conference.— 6th Cir. R. 18

A judge participating in such a conference should be recused from sitting on a panel deciding the appeal but should not be recused from sitting on en banc consideration of that appeal.

Section 5.3. Corporate/Affiliate/Financial Interest Disclosure

The statement required from the parties in each case pursuant to 6th Cir. R. 25 shall be distributed by the clerk's office at the time the briefs are distributed to the hearing panels. If a judge determines that recusal is appropriate, the clerk shall be notified so that an appropriate change may be made to the calendar.

CHAPTER 6

PANEL CONFERENCES

Section 6.1. Tentative Views

At the conclusion of each day's arguments, a panel conference is usually convened to exchange tentative views as to the decision in each case. The judges express views and tentative votes in the following order, in order of seniority:

- active judges of the court of appeals;
- senior judges of the court of appeals;
- visiting judges.

Section 6.2. Panel Reports

An active judge of the court of appeals on each panel shall be designated to act as secretary and to produce a report on each case submitted to the panel. Usually limited to one or two pages, the panel reports should memorialize the salient facts and issues of the case as well as the tentative views of the panel members. The reports should indicate whether a per curiam or signed opinion is being considered and who has been assigned to write the decision.

The panel reports should be distributed to all active and senior judges of the court of appeals on the court and to any visiting judge sitting on that panel.

The schedule showing the panel assignments of judges ("schedule of sittings") shall also indicate the judge on each panel responsible for preparing panel reports. Responsibilities for panel reports shall be evenly distributed among the judges.

Section 6.3. Assignment of Writing Responsibility

The presiding judge shall be responsible for assigning writing responsibility to a member of the panel if no judge volunteers to be the writing judge. The presiding judge shall notify both the chief judge and the clerk of court as to the panel's assignments by completing and forwarding copies of form 6CA-89. The forms are given to the presiding judge prior to oral argument by the courtroom deputy.

CHAPTER 7

DECISIONS FROM THE BENCH

Section 7.1. Circumstance

A case may be decided from the bench if the decision is unanimous and each judge of the panel agrees that no jurisprudential purpose would be served by written opinion. 6th Cir. R. 19.

Section 7.2. Procedure

The judge responsible for preparing panel reports shall be responsible for identifying cases eligible for a decision from the bench. After the appellant's argument is concluded, the presiding judge shall confer briefly with the other two panel members regarding the decision. Upon unanimous agreement, either the presiding judge or the panel report judge shall report the decision from the bench. The presiding judge shall sign the forms provided by the courtroom deputy. The deputy shall forward the forms to the clerk so that the court's decision is recorded on the docket and distributed to the parties.

CHAPTER 8
ORDERS WITH SPECIAL CONCURRENCES OR DISSENTS

Section 8.1. Preparation of

The judge responsible for the majority decision is responsible for seeing that any order containing a special concurrence or dissent should include such special concurrence or dissent before the clerk's signature line.

Section 8.2. Form of Orders with Special Concurrences or Dissents

No. 84-1000

JOHN DOE,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	O R D E R
	)	
BOB SMITH,	)	
	)	
Defendant-Appellee	)	

BEFORE: MERRITT, KENNEDY and MARTIN, Circuit judges

(Body of Text)

KENNEDY, Dissenting:

(Body of Text)

ENTERED BY ORDER OF THE COURT

 John P. Hehman, Clerk

CHAPTER 9

WRITTEN DECISIONS

Section 9.1. Case Conferences and Designation of Writing Judge

At the conclusion of each day's arguments a conference is usually held on the cases heard by the panel. A tentative decision is usually reached and opinion writing is assigned by the presiding judge of the panel with judges always being permitted to volunteer for cases. There is no pre-argument assignment of opinion writing.

Section 9.2. Form of Decisions

9.2.1. Cases on Oral Argument Calendar

Any decision of a case appearing on the oral argument calendar is to be filed in per curiam or signed opinion form.

9.2.2. 6th Cir. R. 9 Cases

Ordinarily, any 6th Cir. R. 9 decision is to be filed in order form.

Section 9.3. Circulation of Opinions

9.3.1. Within Panel

After the draft opinion has been prepared, the opinion-writing judge circulates it to the other two members of the panel with a request for approval or suggestions they may desire to make with respect to the draft opinion. Answering this request is given the highest priority by the other judges.

An information copy of the opinion is to be sent to all other active and senior judges of the court of appeals. An information copy of the transmittal letter is to be sent to the administrative manager in the clerk's office.

Because it is the opinion of the court, other members of the panel are free to make any suggestions relating to the modification of the proposed text. Where a textual revision is suggested, the suggesting judge submits his modification in specific language capable of being inserted into the opinion whenever possible. When two judges approve of an opinion, it becomes the proposed opinion of the court.

9.3.2. Circulation of Concurring or Dissenting Opinions

A concurring or dissenting opinion is sent to all recipients of the original opinion. A separate concurring opinion or a dissent has the same high priority as a concurrence.

9.3.3. Time Schedule for Panel Drafting and Circulating Opinions

The Administrative Office of the United States Courts, pursuant to a resolution of the Judicial Conference of the United States, requires notification by the clerk of

all cases which have not been terminated within ninety (90) days from submission. The presiding judge of the panel is required to give an explanation for the delay.

Section 9.4. Concurrences, Dissents, and Reassignments

Should both panel members disagree with the opinion-writer's draft, the opinion will be reassigned to another judge by agreement of the panel. If the panel cannot agree as to the new writing judge, the opinion shall be reassigned by the presiding judge unless he is the opinion writer, in which event it will be reassigned by the judge next in precedence.

Section 9.5. Filing of Opinions

The author of the majority opinion shall send the original typescript, together with any concurring or dissenting opinions to the clerk for filing.

Section 9.6. Publication of Decisions

9.6.1. Publication; Policy

6th Cir. R. 24 sets forth seven criteria to determine whether an opinion has precedential or institutional value and therefore should be published in full-text form. Orders ordinarily are not to be published in full-text form.

9.6.2. Presumption as to Publication

The writing judge should advise the clerk when forwarding the typescript for filing as to whether the decision is to be published or not. In the absence of advice, the clerk will assume that a signed opinion or per curiam opinion is to be published in full-text form; an order will not be published.

9.6.3. Form of Release

Any decision to be published in full-text form is to be prepared for release as a slip opinion.

Unpublished decisions are released in typewritten form.

9.6.4. Notice as to Publication

Any decision terminating the case in the court should prominently display one of the following:

"RECOMMENDED FOR FULL-TEXT PUBLICATION"

or

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. Sixth
Circuit Rule 24 limits citation to specific situations. Please**

see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

9.6.5. Procedure for Slip Opinion Preparation

The writing judge is to send the manuscript, including any special concurrences and dissents, to the clerk. The clerk will see that a galley proofs are prepared and returned for editing to each judge who separately wrote in the case. Each judge who separately wrote in the case shall edit his or her own copy and return the edited galleys to the clerk. The clerk will see that the opinion is printed and filed after all separate writings in the case are returned to him.

9.6.6. Subscriptions

Both the published and non-published decisions of the court are available for public subscription at rates and according to procedures established in the clerk's office.

CHAPTER 10
RETAINING JURISDICTION OF A CASE AFTER REMAND

Section 10.1. Panel Assignment

Where the disposition of an appeal contains an order retaining jurisdiction after remand to the district court or agency, the case will be assigned to that panel which ordered the retention of jurisdiction here, or to any other panel if ordered by the Chief Judge.

If a senior judge of the court of appeals or a visiting judge was a member of the original panel, it will not be necessary to issue a special invitation to that judge to return for a hearing of that case upon remand.

CHAPTER 11
HEARING OR REHEARING EN BANC; CRITERIA

Section 11.1. Hearing En Banc

Initial en banc hearing ordinarily is ordered by a majority of the active judges only if there is a determination that the case is controlled by a prior decision of the court which should be reconsidered or the case is of such great importance as to require initial consideration by the full court.

Section 11.2. Rehearing En Banc

Rehearing en banc is not favored and ordinarily will not be ordered except

- (1) where consideration by the full court is necessary to secure or maintain uniformity of its decisions, or
- (2) where the proceeding involves a question of exceptional importance.

This court does not ordinarily grant rehearing en banc where the panel's statement of the law is correct and the controverted issue is solely the application of the law to the circumstances of the case.

Section 11.3. Policy of Avoiding Intra-Circuit Conflict of Precedent

It is the tradition of this court that reported panel opinions are binding on subsequent panels. Thus, no subsequent panel overrules a published opinion of a previous panel. Court en banc consideration is required to overrule a published opinion of this court.

Section 11.4. Policy as to Inter-Circuit Conflict of Precedent

(Ref. March 21, 1983 Court meeting)

When an opinion or decision of the court is circulated, the writing judge shall call attention in the letter of transmittal to the fact that such opinion or decision has initiated or continues a conflict of the circuits.

Section 11.5. Acceleration

The need to accelerate a case scheduled for en banc hearing will be determined by majority vote of the court. However, it is the policy of the court to hold an en banc hearing only at a scheduled en banc session of the court.

Section 11.6. Determination of a Majority

It will be necessary that the majority of judges of the court of appeals who were in regular active service at the time the petition was filed must vote favorably on the en banc petition for the court to favor en banc review.

A majority shall be determined by calculating the number of active judges on the court and not active judges qualified to hear the case.

Section 11.7. Participation of Senior Circuit Judges

Senior judges of the court of appeals shall be eligible to participate as a member of the en banc court reviewing a decision of a panel of which such judge was a member. See, 28 U.S.C. §46(c).

CHAPTER 12
PETITIONS FOR REHEARING EN BANC; PROCEDURES

Section 12.1. General Scheme

If a party files a petition for rehearing with a suggestion for en banc review, the petition shall be first circulated only to the panel issuing the decision under review. The panel shall have fourteen (14) days to comment upon the petition to the en banc coordinator in the clerk's office. The coordinator shall then circulate the petition and the panel's comments to the en banc court. Any member of the en banc court shall have fourteen days from that circulation date to request an en banc poll. If a poll is requested, fourteen days will be allowed for voting.

Section 12.2. Definition of En Banc Court

The en banc court consists of all active judges of the court plus, in the event a rehearing en banc (as opposed to hearing en banc) is sought, any senior judge of the court who sat on the panel whose decision is to be reheard.

Section 12.3. When Can a Poll be Requested

A poll may be requested by any active judge of the court or any member of the original hearing panel whose decision is under review. Usually a poll is requested after a petition for rehearing with suggestion for en banc review has been filed by a party. However, any member of the en banc court may sua sponte request a poll for hearing or rehearing en banc prior to the filing of an en banc petition by a party. If the request for a poll is sua sponte and not based on a party's suggestion, the clerk's office will immediately circulate voting forms to the en banc court.

Any judge requesting a poll should include a summary of relevant facts and issues for the purpose of informing other judges as to the reason for the request.

Section 12.4. Who is Eligible to Request a Poll

Any active judge of the court of appeals and any senior or visiting judge sitting on the panel whose decision is the subject of the rehearing is entitled to request a poll.

Section 12.5. Who is Eligible to Vote

All judges of the court in regular active service at the time of the filing of the petition are eligible to vote. Neither a senior judge of the court nor a visiting judge sitting on the original panel is eligible to vote.

Section 12.6. When Can a Judge Retract or Change a Vote

A judge may retract or change his vote any time within the fourteen day voting period, or extension thereof. This must be done in writing to the en banc coordinator, with copies to all other judges participating in the voting.

Section 12.7. Calculation of a Majority Vote

A hearing or rehearing en banc must be ordered by a vote of a majority of judges of the court who are in regular active service. Recusals shall not affect the calculation of a majority.

Section 12.8. Effective Date of a Request for Poll or Vote

A request for a poll or a vote must be received by the clerk's office en banc coordinator by the specified due date. A telephone vote to the coordinator, confirmed by letter, is acceptable. A failure to vote shall be considered a negative vote.

Section 12.9. When and How May Time Extensions for Polling or Voting be Authorized

Extensions of time may be authorized in three circumstances:

- a) If the panel or the en banc court requires a response from a party to a petition for rehearing en banc, any time period for polling or voting will be suspended and recalculated from the date the clerk's office circulates the response to the panel or en banc court. The en banc coordinator should be instructed to obtain the response. The en banc coordinator will automatically suspend and recalculate the time period and shall so notify the en banc court.
- b) If a panel after reviewing a petition for rehearing en banc needs additional time to make changes to their original decision, an additional fourteen days may be authorized by making a written request to the Chief Judge. The Chief Judge will notify the en banc coordinator of his decision. The en banc coordinator shall then notify the en banc court.
- c) If for cause a judge is unable to either request a poll or to vote, the judge may make a written request to the Chief Judge to enlarge the time period for polling or voting by another additional fourteen days. The Chief Judge shall notify the en banc coordinator of his decision. The coordinator shall then notify the en banc court.

Section 12.10 Request by a Party for Added Time to File a Petition for Rehearing En Banc

A motion filed by a party for additional time to file a petition for rehearing with a suggestion for rehearing en banc will be considered as follows:

- a) The first 14-day extension can be authorized by the clerk pursuant to 6th Cir. R. 4(f)(6).
- b) Any request for additional time shall be directed to the writing judge or, if the writing judge is a visiting judge, then to the presiding judge of the panel for a ruling. The other panel members shall receive information copies.

Section 12.11. Clerk's Office Handling of Untimely Petitions

When the clerk's office receives a petition for rehearing en banc more than 14 but less than 28 days after the entry of judgment:

If the petition is accompanied by a motion for an extension, the extension will be granted as a matter of course and the petition will be filed and circulated in the prescribed fashion.

If there is no motion for an extension of the filing time, the petition will be returned, unfiled, to the sending party.

If a petition is received after the expiration of an extension previously granted pursuant to 6th Cir. R. 4(f)(6), or is first received by the clerk more than 28 days from the entry of judgment:

If the petition is accompanied by a motion to allow the untimely filing, the motion will be filed, the petition will be "tendered" and both will be forwarded to the action judge of the original panel for resolution.

If there is no motion for an extension of the filing time, the petition will be returned, unfiled, to the sending party.

Section 12.12. Circulation of an En Banc Petition

Upon receipt of an en banc petition, the clerk's office will distribute the petition and a copy of the panel's decision to the original panel only by form 6CA-94. A copy will be sent to the en banc coordinator.

If the en banc petition seeks review of a case decided pursuant to 6th Cir. R. 9, the petition will be forwarded by the clerk's office to the staff attorneys. Upon completion of their research, the staff attorneys will forward the petition and other applicable materials to the original panel only via form 6CA-94(a). The staff attorneys will send a copy of 6CA-94(a) to the clerk's office en banc coordinator.

Section 12.13. Request for a Response

If any judge on the en banc court feels that a response to an en banc petition is appropriate, a letter should be directed to the clerk's office en banc coordinator to request a response. The requesting judge should send a copy of the letter to all other judges on the en banc court for their information. The en banc coordinator will notify counsel that a response is required and will suspend any pending time period for polling or voting. (Form 6CA-95)

Section 12.14. Responsibility of Panel

The panel is obliged to give priority review to the petition and to advise the en banc coordinator within fourteen (14) days from distribution by the clerk whether the panel chooses to modify its original decision. The bottom portion of form 6CA-94 is to be used for this purpose.

If the en banc coordinator does not receive advice from the panel within 14 days, it shall be assumed that the panel finds no favor with the petition. The petition shall then be circulated to the en banc court with the statement that the panel does not wish to modify its decision.

Section 12.15. Judge Responsible for Initiating Action on Behalf of Panel

If the writing judge is a visiting judge, the presiding judge of the panel is responsible for initiating action for the panel; in all other instances, the writing judge is responsible for initiating action. This judge shall be referred to as the "action judge."

Section 12.16. Responsibility of En Banc Court

Even though there may be a request for a poll, the en banc coordinator will not circulate the voting forms to the en banc court until the panel has advised the en banc coordinator of its decision on the petition. Thereafter the en banc court will have fourteen (14) days in which to request a poll. The fourteen days run from the distribution date of the petition to the en banc court. The court will also have fourteen days from the circulation of the voting forms in which to vote.

Section 12.17. Procedure re Request for a Poll

Once the panel has reviewed the en banc petition and commented to the en banc coordinator, the coordinator will circulate the petition via 6CA-40 or 6CA-40(a) to the en banc court.

A request for a poll on the en banc petition can be made by endorsement on the bottom portion of the forms 6CA-40 or 6CA-40(a). The endorsed forms should then be circulated by the requesting judge to the active judges and any member of the original panel, and to the en banc coordinator in the clerk's office.

Any senior or visiting judge sitting on the original panel as well as any active judge of the court is entitled to request a poll.

Any judge requesting a poll should attach to the form a summary of relevant facts and issues for the purpose of informing other members of the court as to the reason for the request.

Section 12.18. Voting Procedure

If there is a request for a poll, form 6CA-41 will be completed by the en banc coordinator and circulated to all active judges of the court. Senior judges and visiting judges are not eligible to vote.

Form 6CA-41 will specify the date by which any vote must be received by the en banc coordinator, usually fourteen (14) days from the transmittal date of the form. Judges can vote by endorsement on the form 6CA-41.

No voting is to take place until the form 6CA-41 is issued by the en banc coordinator.

The vote must be received by the en banc coordinator by the due date specified on the form 6CA-41.

Section 12.19. Entry of Orders**12.19.1. Granting of an En Banc Petition**

If the court grants the en banc petition, the clerk will notify the Chief Judge so that a date for rehearing can be set. The clerk will enter an appropriate order.

12.19.2. Denial of an En Banc Petition

If there is no request for a vote or if the voting does not favor en banc rehearing, the en banc coordinator shall notify the court and shall obtain authority from the action judge of the original panel to enter the usual order.

CHAPTER 13
PETITIONS FOR REHEARING

Section 13.1. Motion to Extend Time for Filing

Motions requesting extended time to file a petition for rehearing may be ruled upon by the clerk if the request is for fourteen (14) days or less. All other motions for extended time are referred to the writing judge as a single judge matter.

Section 13.2. For Cases from the Oral Argument Calendar

A petition for rehearing of a case argued or submitted on briefs via the oral argument calendar is directed to the hearing panel.

Section 13.3. For Cases Decided Pursuant to 6th Cir. R. 9

A petition for rehearing on a 6th Cir. R. 9 case is routed to the panel through the staff attorney section for appropriate research.

Section 13.4. Writing Responsibility

The writing judge is responsible for initiating a proposed disposition of the petition. The writing judge will gain the concurrence or dissent from the other two panel members and will thereafter transmit to the clerk the order for filing.

A visiting judge may request that the presiding judge of the panel prepare and file an appropriate order on the petition for rehearing.

Section 13.5. Circulation of Orders

Orders on petitions for rehearing need not be circulated to all other judges unless substantial changes are made to the original decision.

CHAPTER 14

MOTION PRACTICE

Section 14.1. Motions Panel

Three-judge motions panels shall be designated from among the active judges (except the Chief Judge) for each week of a term of court in which the court shall be in session. Each such panel shall receive such panel motions and single-judge matters as shall then be ready for disposition, equalizing the load among successive panels so far as practicable.

Pursuant to Fed. R. App. P. 27(c), a single judge is authorized to act upon requests for relief which do not dismiss or otherwise determine an appeal or other proceeding. Examples of matters which may be determined by a single judge are motions for bail pending appeal, to proceed in forma pauperis on appeal, for the production of transcript at government expense, for a certificate of probable cause, for the appointment of counsel, relating to the scheduling of cases and to the content of written materials being filed with the court, to review orders of the clerk, and for a stay or injunction where panel consideration is impracticable due to the requirements of time. Examples of matters which must be decided by a three-judge panel are motions to dismiss or affirm, petitions for permission to appeal, petitions for extraordinary writs, and, where time permits, requests for a stay or injunction. All substantive motions in death penalty cases must be decided by a three-judge panel. Purely procedural motions may be decided by the lead judge.

It shall be the policy to provide to the motions panel by 9:00 A.M. of the Monday of each week in which that panel is designated to sit in Cincinnati all motions which are to be considered for that week. It is also the policy of the court that all such motions shall be resolved and disposed of in Cincinnati before that week is concluded. To that end the motions panel shall meet at 3:00 P.M. on Wednesday afternoon of that week in the office of the lead judge for the purpose of conferring and disposing of those motions. The senior staff attorney, or another member of his office familiar with those motions, shall be available at that time for assistance and as a resource person to the judges at that time.

14.2. Emergency Motions

Such motions panels should ordinarily be sufficient to handle all substantive motions in cases not yet assigned to a panel, §1292(b) petitions, Fed. R. App. P. 21 petitions, 6th Cir. R. 9(d) dispositions and other such matters. However, any single or three-judge emergency motions which may arise between terms of court shall be assigned to the lead judge or the panel of judges who shall have been designated to sit during that week of court which follows the recess in which such emergency occurred. Where time permits, research memoranda shall be solicited by the clerk from the staff attorney section and shall be included with the other material submitted.

In event the exigencies of a given emergency matter do not permit its reference to a panel of judges as above set forth, assignment shall be at the direction and discretion of the Chief Judge or, in his absence, the active judge next in seniority who is available.

14.3. Death Penalty Cases

Pursuant to 6th Cir. R. 28, an independent roster of active judges, including the chief judge, will be maintained for the exclusive purpose of making panel assignments in death penalty cases as soon as the case is docketed. That panel will be assigned the case and its related motions..

CHAPTER 15
ADMISSION TO PRACTICE BEFORE THE COURT

Section 15.1. Application

Any attorney otherwise qualified for admission pursuant to Fed. R. App. P. 46(a), may apply to practice before the court. Forms may be obtained from the clerk's office. A pre-paid fee of \$25.00 is required. Admission may be accomplished by mail or by personal appearance in the clerk's office at least fifteen (15) minutes before any scheduled hearings are to begin.

Section 15.2. When Admission is Required

An attorney will be required to be admitted to practice in the court in order to file papers and, if requested, will have a formal admission ceremony upon appearance at oral argument. An attorney representing the United States may file papers or orally argue a case without being admitted to practice but, if that attorney seeks admission, payment of the admission fee will be required.

Section 15.3. Waiver of Admission Fee

The admission fee will be waived if the admittee is presently employed by a United States court or is representing a client in this court as a federal public defender or court-appointed counsel.

CHAPTER 16
APPOINTMENT OF COUNSEL

Section 16.1. Appointment of Appellant's Counsel under CJA

Where the court directs the appointment of counsel for an appellant in a case where the appointment can be made pursuant to the Criminal Justice Act, the clerk shall see that appropriate counsel is appointed.

Section 16.2. Habeas Corpus or §2255 Pauper Appeals

When a pro se petitioner is the appellee in a 28 U.S.C. §2241, §2254 or §2255 case, the clerk shall appoint counsel for the petitioner if he is a pauper.

Section 16.3. Civil Rights Pauper Appeals

When counsel is appointed in pro se pauper civil rights appeals, the clerk will send a letter to counsel at the time of appointment advising that the court can not compensate counsel under the Criminal Justice Act but that attorney fees may be available under §1988, if the appeal is successful. If the case is set for oral argument, the reasonable expenses incurred by counsel in attending court as well as costs of reproducing briefs and appendix may be reimbursed from the attorney admission fund of the court.

CHAPTER 17
COMPENSATION OF APPOINTED COUNSEL
UNDER THE CRIMINAL JUSTICE ACT

Section 17.1. Submission of Claim

At the conclusion of the representation, appointed counsel will file a claim for reimbursement of expenses and attorney fees. When the claim form and its attachments are correct and complete, the clerk's office will transmit it to the writing judge of the panel which decided the case. If the writing judge was a visiting judge, the clerk's office will submit these materials to the presiding judge of the panel.

Section 17.2. Judge's Review and Recommendation

The writing judge (or presiding judge, where the writing judge was a visiting judge) may alter the compensation to be approved for expenses and attorney fees and compute different numbers for either, or both, of these amounts. The judge may comment upon any such alterations. When his review and recommendation is complete, the judge should return all of the documents to the clerk's office.

Section 17.3. Approval by Chief Judge

The chief judge must approve recommendations for attorney fees in excess of the statutory maximum. If the writing judge (or presiding judge) has made such a recommendation, the clerk's office will submit the materials to the chief judge for approval.

CHAPTER 18
ATTORNEY DISCIPLINARY PROBLEMS

Section 18.1. Disbarment or Suspension of Attorney

Attorneys disbarred by any federal court or any state court within the circuit will not be permitted to practice before the court.

Suspended attorneys will not be permitted to practice before the court during the course of their suspension.

Attorneys who have received a public reprimand and who still practice in state courts should be allowed to practice before this court.

Section 18.2. Rules of Disciplinary Enforcement

Rules were adopted by the court on October 18, 1979 and are available from the clerk's office.

CHAPTER 19
FINANCIAL DISCLOSURE REPORTS

Section 19.1. Custody

The clerk shall maintain the Financial Disclosure Reports of appropriate court officials.

Section 19.2. Availability

Any request to inspect the reports shall be in writing.

Photocopies of the reports may be made for the prepaid amount of \$.50 per page.

CHAPTER 20

CHAMBERS

Section 20.1. Chief Judge's Chambers

Chambers located at room 626 have been designated as chief judge's chambers to be used or not used as such at the option of the Chief Judge.

Section 20.2. Senior Judges' Chambers

Four of the new non-resident judge chambers to be constructed on the 4th floor of the USPO & Courthouse Building in Cincinnati should be designated as senior judge chambers to be occupied by non-resident judges who assume senior status in the future. The current non-resident senior judges should be given the option of remaining in their present chambers or moving to the new non-resident chambers on the 4th floor.

Section 20.3. Assignment after Renovation

At the time of the completion of the construction project, only those judges required to be relocated by reason of the project should be relocated. Those judges who presently are accommodated in permanent chambers and who will not be affected by the project should remain in their present chambers.

Those judges who are required to be relocated should be permitted to choose new chambers on the basis of seniority.

CHAPTER 21

PRODUCTION OF APPELLATE TRANSCRIPT

Section 21.1. Appellant's Obligation

It is the obligation of the appellant to either notify this court that no additional transcript will be necessary, or to place a timely and specific purchase order for necessary transcript. It is the obligation of the ordering party to make such financial arrangements as are required by the reporter(s) involved. Purchase orders are required to be placed via form 6CA-30, which was developed for this purpose. The clerk of the court of appeals monitors the ordering process closely, and the court invokes the sanction of dismissal where an appellant fails to fulfill this obligation.

Without the express approval of the clerk of the court of appeals, counsel may not request suspension of preparation of transcript. Our clerk's office provides this information to all appellants' counsel.

Section 21.2. Court Reporter's Obligation

Once transcript has been properly ordered and payment secured, it is the obligation of the reporter to produce the transcript and file it with the district court clerk.

21.2.1. Calculation of Time Periods

The court of appeals considers the date on which financial arrangements were made to begin the running of all time periods governing the filing of transcript. Where no such date has been specified by the reporter, the court of appeals will use the date on which it received notice of the placement of the order to start the time running.

21.2.2. 30-Day Completion Time for Transcript

Rule 11(b), Fed. R. App. P., requires that if transcript cannot be completed within thirty (30) days of the purchase order date, the reporter must request an extension of time from the court of appeals. It is expected that a reporter unable to complete transcript within thirty days will voluntarily explore every available alternative, including seeking a substitute reporter, if further courtroom attendance will prevent that reporter from timely completing transcript. The Judicial Conference authorizes a district judge or the chief judge of the circuit to direct appointment of a substitute reporter at the expense of the official reporter if transcript cannot be timely produced.

Section 21.3. Removal of Reporter from Courtroom

A court reporter who has not completed transcript which has been on order for ninety (90) days is required by the Council and the court of appeals to remove himself or herself from the courtroom to devote full time to completing the transcript. The district court coordinator will be responsible for monitoring the reporter's voluntary removal from the courtroom. The reporter will be responsible for securing — at his or her own expense — a substitute approved by the district court coordinator to report courtroom proceedings for the duration of the official reporter's absence from the courtroom.

The clerk of the court of appeals will send a letter to the district court coordinator of any court reporter who has pending transcript which has been on order for sixty (60) days; the letter will identify the particular transcript(s) involved and the date of order, and will serve as notice that unless the complete transcript is filed by the 90th day the reporter will be obligated to leave the courtroom. Copies of the letter will be sent to the judge for whom the reporter reports or the chief district judge, and to the reporter.

Section 21.4. Extensions to File Transcript

As noted above, whenever transcript cannot be completed within thirty (30) days from the date of order an extension of time must be sought from the court of appeals. Because of the "90-day rule," extensions which would carry beyond the 90th day will not be granted.

Section 21.5. Automatic Reduction of Fees

The Judicial Conference of the United States has directed that reporters must automatically reduce their transcript preparation fee if production is untimely. Within the Sixth Circuit, if appellate transcript is not completed within sixty (60) days from purchase order date, reporters must automatically reduce their fee by 10%. A further 10% reduction is required if the delay extends beyond the 90th day. Reporters are responsible for imposing this reduction on themselves.

Pursuant to Judicial Conference and Circuit Council resolution, the clerk of the court of appeals may waive the fee reduction upon written application of the reporter. The circumstances which will support a request for a waiver are:

1. Illness or incapacity of the reporter;
2. pre-planned vacation;
3. excessive number of pages ordered on or about the same date.

It should be noted that waiver of the fee reduction must be explicitly sought and expressly granted. An extension of time for filing transcript by the court of appeals does not waive the fee reduction granted.

Where the transcript preparation fee is to be reduced, the reduction shall be applied to the fee for the entire transcript, and not just that proportion of the fee which corresponds to the portion of transcript yet to be filed as of the date when the fee reduction becomes effective.

Section 21.6. Suspension of Preparation

Requests by counsel that a court reporter suspend preparation of transcript which has been ordered cannot be given effect. Unless the court of appeals directs otherwise, reporters will be expected to prepare transcript without interruption and will be held to the standards of timeliness outlined above. Counsel making such requests of reporters should be advised by the court reporter of this policy, which is set forth in the court of appeals' internal operating procedures, and of which counsel has been advised.

Section 21.7. District Court Coordinator's Obligation

The responsibility of the district court coordinator, with respect to appellate transcript, includes the following:

1. Monitoring the preparation and filing by all reporters in the district of transcript properly ordered from them, to ensure compliance with the standards established by the Circuit Council and the court of appeals. This includes contract and substitute as well as official reporters.
2. Take any action necessary to effect reporters' compliance with the established standards.
3. Bring to the attention of the clerk of the court of appeals, through that court's transcript coordinator, any situations involving appellate transcript which cannot be resolved locally.

March, 1985

COURT POLICIES

ADDENDUM

BANKRUPTCY JUDGES, Appointment

Refer Minutes of Court Meeting, November 13, 1984

An incumbent bankruptcy judge shall not be permitted to be an applicant for a vacancy other than his or her own position in the same district.

FEDERAL PUBLIC DEFENDERS, Selection Procedures

Refer Minutes of Court Meeting, November 13, 1984

Applications for the position of Federal Public Defender, appointed by the court of appeals pursuant to 18 U.S.C. §3006(h)(2)(A), shall be solicited by the chief judge of the district in which the vacancy occurs. Following initial screening and review of applications, the district court will recommend at least three people for the position, enclosing any comments the district judges may wish to make. Less than three people can be recommended if less than three people apply. The district court will transmit the recommendations and any comments to the chief judge of the court of appeals who will transmit same to the active judges of the court. The court by majority vote will then make the appointment.

Attachment #1

TABLE OF CONTENTS

GENERAL INFORMATION

<u>CHAPTER</u>	<u>PAGE</u>
1. Key Personnel	1
2. Telephone Numbers	1
3. Chambers in Cincinnati	1
4. Robe	1
5. Hotel	2
6. Mail	2
7. Xerox	2
8. Library	2
9. Building Hours	2
10. Snack Bar	3
11. Lunch	3
12. Security	3
13. Consumable Supplies	3
Appendix 1 - Key Personnel Listing	
Appendix 2 - 3rd Floor Plan, U.S. Courthouse, Cincinnati	
Appendix 3 - 4th Floor Plan, U.S. Courthouse, Cincinnati	
Appendix 4 - 5th Floor Plan, U.S. Courthouse, Cincinnati	
Appendix 5 - 6th Floor Plan, U.S. Courthouse, Cincinnati	
Appendix 6 - 8th Floor Plan, U.S. Courthouse, Cincinnati	
Appendix 7 - Judges' Resident Chambers	
Appendix 8 - Judges' Cincinnati Chambers	

Rev. August 1985

GENERAL INFORMATION

1. Key Personnel

Our Chief Deputy is Len Green and he is available to answer any questions concerning court operations.

Our Administrative Manager, Linda Gravett, is responsible for handling all logistical matters, e.g., consumable supplies, equipment repair, locating briefs and records of district court proceedings, printing of slip opinions.

Our Automation Manager, Bill Eggemeier is responsible for all statistical matters.

Marjorie Eliassen, our Administrative Supervisor, is responsible for all matters pertaining to the calendar. Contact Marjorie regarding scheduling, hearings, recusals, or any other matter regarding the calendar.

In addition, any question regarding case status or the filing of any document may be directed to our Case Manager, Juanita Temple.

2. Telephone Numbers

The general telephone number for the clerk's office in Cincinnati is FTS 684-2953 or (commercial) (513) 684-2953. We also have a line dedicated to Judges' incoming calls and that number is FTS 684-2987.

3. Chambers in Cincinnati

Mrs. Gravett will check your chambers immediately before and immediately after a Court session to see that everything is in order. If there is undelivered mail, it will be sent to your resident chambers. If you need anything for your chambers in Cincinnati, contact Mrs. Gravett.

4. Robe

If you bring your robe to the courtroom on your first day of hearings, Mrs. Gravett will see that it is placed in the appropriate robing room for each subsequent day's arguments and returned to you when the week is completed.

The robing room for courtroom #1 is located on the sixth floor at room 605; the robing room for courtroom #2 is located on the eighth floor at room 818. (NOTE: floor plans are attached.) You should report to the robing room by 8:55 A.M. Hearings will begin at 9:00 A.M. Mrs. Gravett will assist you in getting to the right room if you call her.

5. **Hotel**

Many of our Judges stay at the Westin Hotel or the Netherland Plaza which are within walking distance to the USPO & Courthouse Building. Our Circuit Executive will contact each Judge concerning hotel arrangements.

6. **Mail**

The clerk's office maintains a mail distribution center in room 522. This center includes a mail delivery box for each office within the court. Each morning and afternoon a member of the clerk's staff will deliver and pick up the accumulated mail to the proper office.

Any mail addressed to a Judge while in Cincinnati will be delivered by the clerk's staff to chambers. Any materials which a Judge needs to be wrapped, packaged or mailed, can be handled by our staff. We have boxes, wrapping paper, etc. A member of the Records Unit will contact you prior to your departure from Cincinnati to make arrangements for shipping materials to your home chambers. Our mailing address is:

United States Court of Appeals
for the Sixth Circuit
538 USPO & Courthouse Building
Cincinnati, Ohio 45202

Call Linda Gravett if you have any questions or need assistance.

7. **Xerox**

Two large copy machines are available for multiple copies of documents and are located in the clerk's office. A Xerox 8200 machine is located in room 522 and an IBM Series 3 machine is located in room 506. Any members of the staff will be happy to provide assistance.

8. **Library**

Our Library is located in room 617 and is open between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday. The keys provided for your chambers will also open the Library should late evening or weekend work be necessary.

Located in the rear of the Library is a WESTLAW (computer assisted legal research) terminal. The Librarian will provide assistance should any Judge or staff member wish to use this equipment.

9. **Building Hours**

The USPO & Courthouse Building is open from 6:00 A.M. to 6:00 P.M., Monday through Friday. The bank of elevators located at the East and West ends of the building operate each day during these hours. The elevators at the East end of the building are turned off at 5:30 P.M. The West end elevators will continue in operation

provided that you have a key to operate the elevators. The Circuit Executive can provide such key upon request.

Any exit from the building after 6:00 P.M. should be through the doors on the West side of the building. Entrance to the building after 6:00 P.M. and before 6:00 A.M. can only be gained with a key card, again available from the Circuit Executive.

10. **Snack Bar**

There is a public snack bar located at the East end of the East-West corridor on the third floor. Hours of operation are between 8:00 A.M. and 4:30 P.M. Drinks and limited food items are available.

There is a cafeteria located on the second floor of the Federal Building (across Main Street from the Post Office Bldg.) which serves a full complement of hot and cold foods available for eat-in or take-out. The hours are 8:00 A.M. to 4:30 P.M.

11. **Lunch**

The Judges usually eat together at the University Club at 12 noon.

12. **Security**

Government I.D. cards are necessary in order to obtain government rates in certain Cincinnati hotels. Any member of a Judge's staff may obtain these cards from the clerk's secretary in room 504.

Throughout the day, uniformed security guards are patrolling the halls. If an occasion arises where a security guard is needed they may be reached at 2325.

13. **Consumable Supplies**

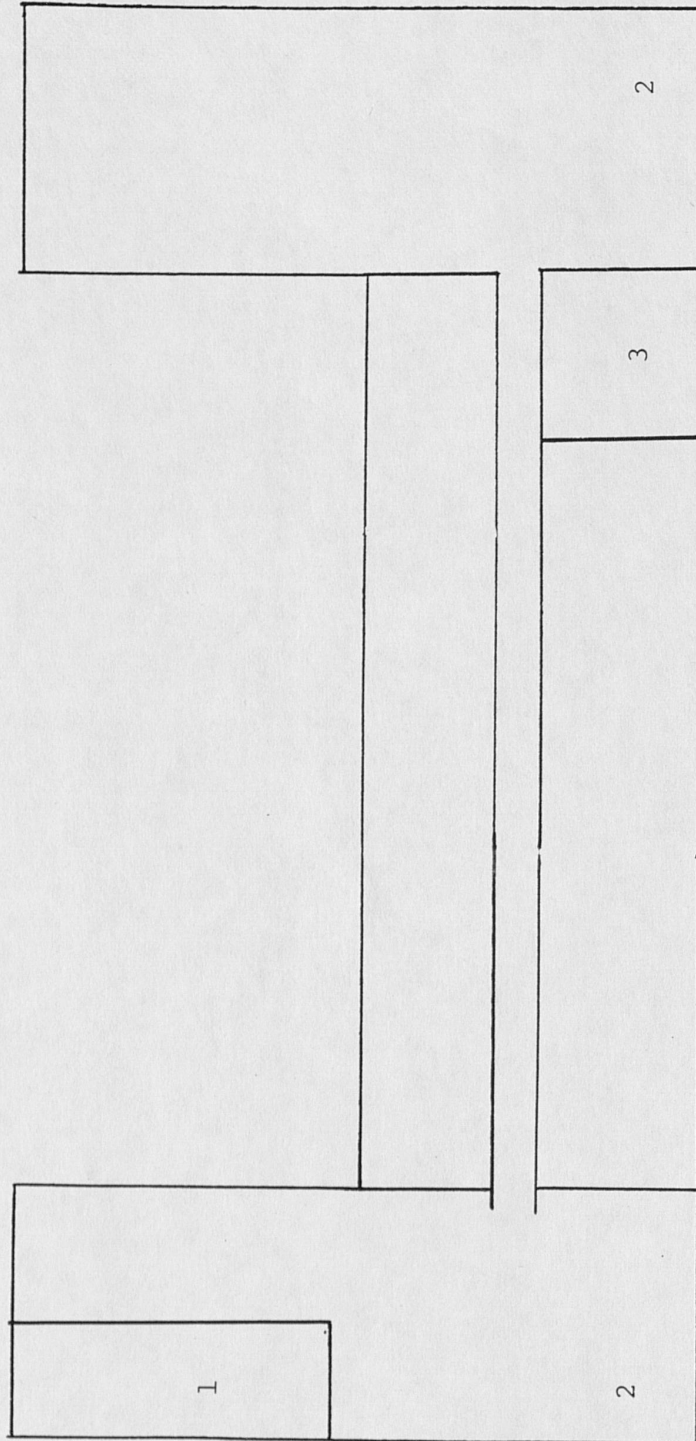
The clerk's office maintains a supply of consumable items such as pencils, pens, ribbons for typewriters, paper, staples, paper clips, etc. You may avail yourself to any of those supplies by contacting the Administrative Manager, Linda Gravett.

Appendix 1

KEY PERSONNEL

<u>SECTION/FUNCTION</u>	<u>NAME</u>	<u>PHONE</u>
<u>Circuit Executive</u>	James A. Higgins	684-3161
Asst. Circuit Executive	Thomas A. D'Alesandro	684-3161
Secretary	Kay Lockett	684-3161
<u>Clerk's Office</u>		
<u>CLERK</u>	John P. Hehman	684-2953/2987
Chief Deputy Clerk	Leonard Green	684-2953/2987
Secretary	Peggy Eshman	684-2953/2987
Administrative Manager	Linda S. Gravett	684-2953/2987
Records Unit	Sandra Williams	684-2953/2987
Calendar Management	Marjorie Eliassen	684-2953/2987
Automation Manager	William M. Eggemeier	684-2953/2987
Case Manager	Juanita S. Temple	684-2953/2987
<u>Staff Attorneys</u>		
Senior Staff Attorney	Kenneth A. Howe, Jr.	684-2949/2987
<u>Library</u>		
Librarian	Kathy Welker	684-2678

-N-



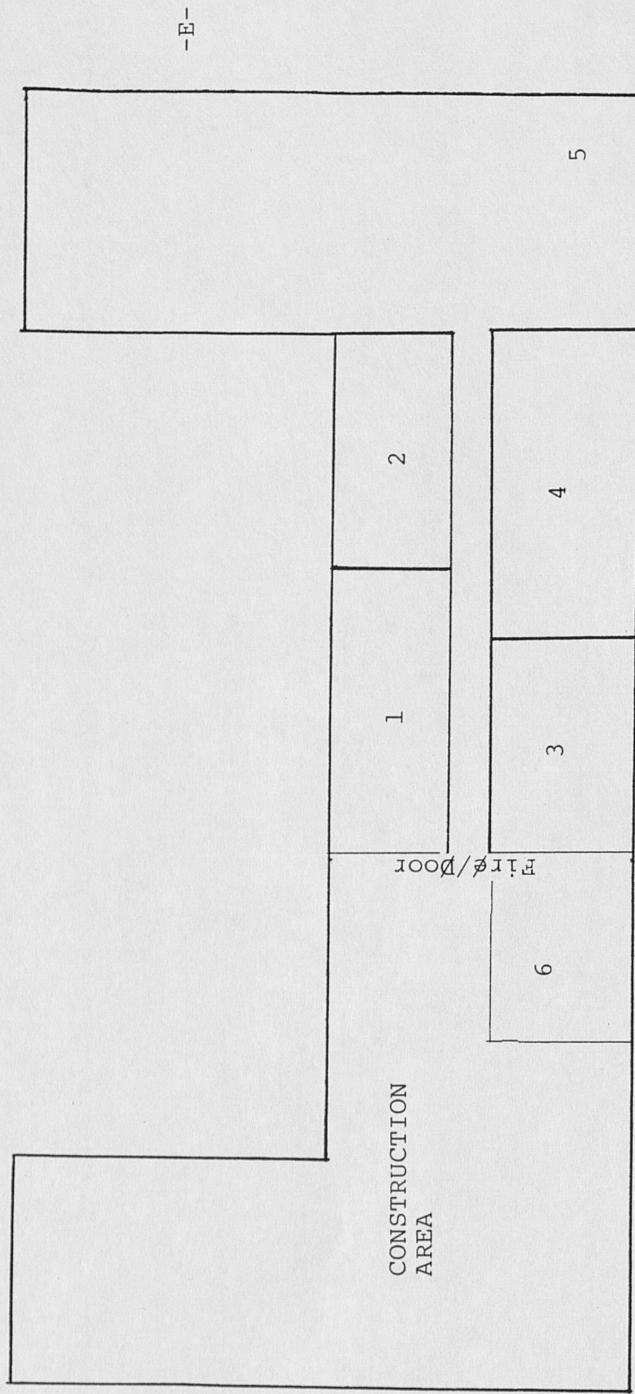
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THIRD FLOOR PLAN

1. Circuit Executive - Rm. 303
2. Elevators
3. Snack Bar

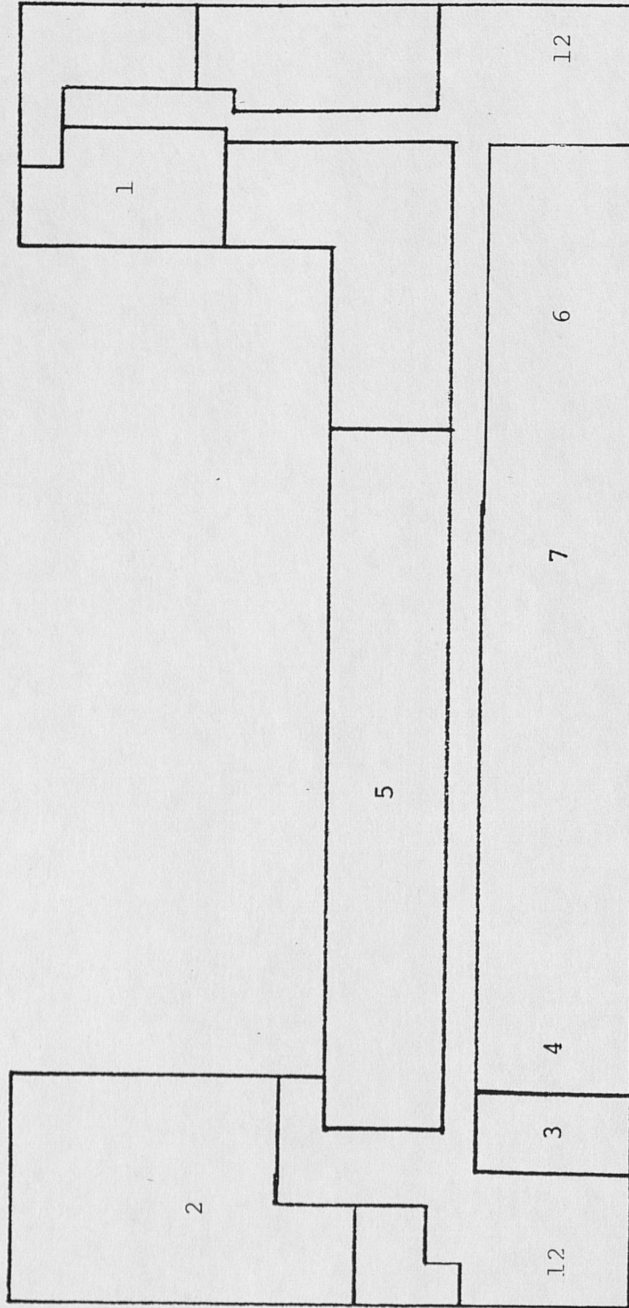


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FOURTH FLOOR PLAN

1. Judge Kennedy - Rm. 425
2. Judge Martin - Rm. 431
3. Vacant - Rm. 426
4. Judge Jones - Rm. 432
5. Elevators
6. Judge Brown

-N-



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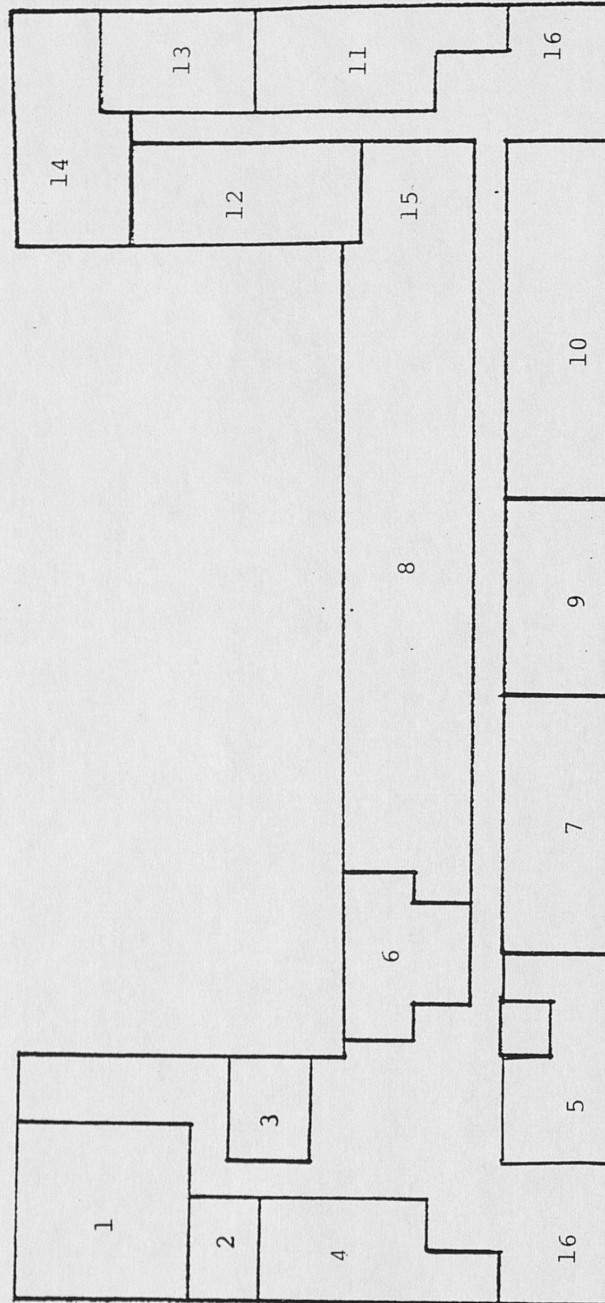
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FIFTH FLOOR PLAN

1. Records-Briefs-Supplies - Rm. 538
2. Construction area
3. Personal Entrance for Clerk - Rm. 504
4. Clerk's office - Xerox Equipment - Rm. 506
5. Staff Attorney Business Entrance - Rm. 509
6. Clerk's Office - Business Entrance - Rm. 524
7. Clerk's Office - Xerox Equipment - Rm. 522
12. Elevators

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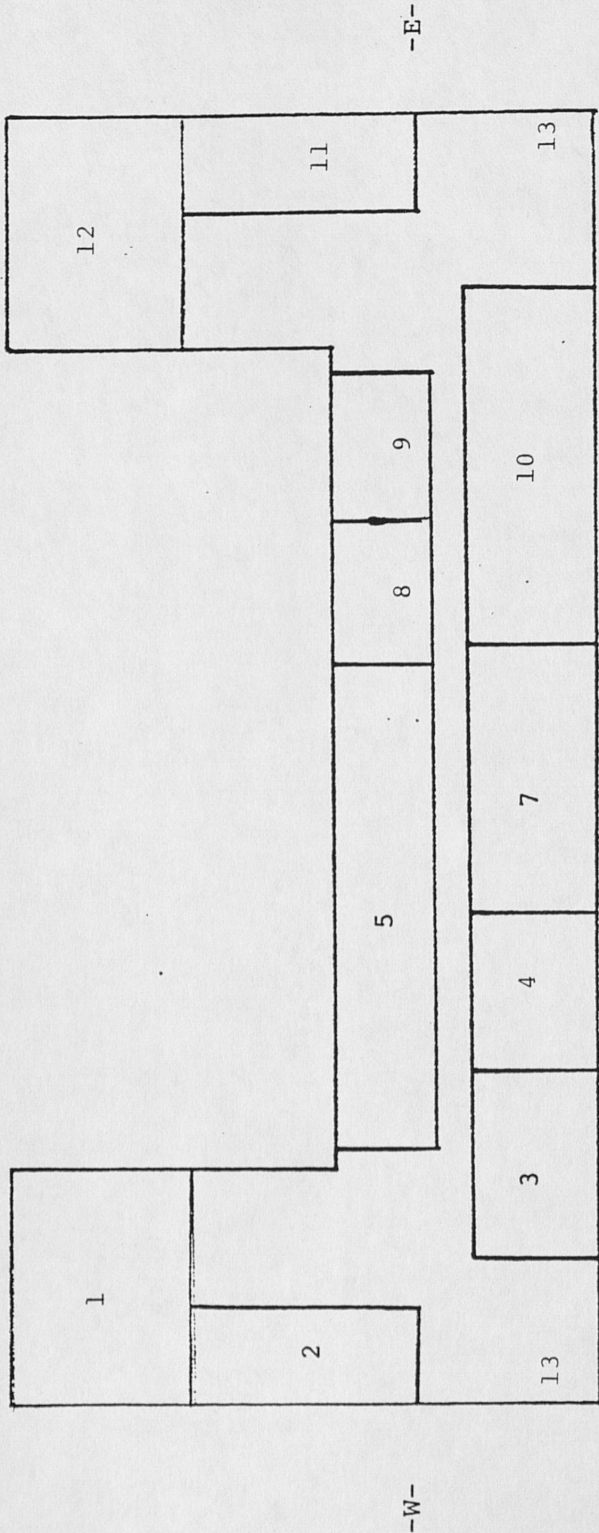


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SIXTH FLOOR PLAN

- | | |
|------------------------------------|--------------------------------|
| 1. Courtroom #1 - Rm. 607 | 9. Vacant - Rm. 622 |
| 2. Robing Room - Rm. 605 | 10. Judge Edwards - Rm. 626 |
| 3. Attorney waiting room - Rm. 602 | 11. Judge Celebrezze - Rm. 632 |
| 4. J. Wellford - Rm. 601 | 12. Judge Keith - Rm. 633 |
| 5. J. Contie - Rm. 608 | 13. Judge Krupansky - Rm. 638 |
| 6. Judge Peck - Rm. 613 | 14. Judge Weick - Rm. 637 |
| 7. Chief Judge Lively - Rm. 618 | 15. WESTLAW Location |
| 8. Court Library - Rm 617 | 16. Elevators |



EIGHTH FLOOR PLAN

1. U.S. Dist. Ct. Courtroom - Rm. 805
2. Dist. Ct. Chief Judge Rubin - Rm. 801
3. Judge Engel - Rm. 808
4. Vacant
5. U.S. Marshal Service - Rm. 815
6. Robing Room - Rm. 820
7. U.S.C.A. Courtroom #2 - Rm. 822
8. District Judge Porter - Rm. 823
9. District Judge Hogan - Rm. 829
10. Vacant
11. District Judge Spiegel - Rm. 838
12. U.S. Dist. Ct. Courtroom - Rm. 842
13. Elevators

**SIXTH CIRCUIT COURT OF APPEALS
JUDGES RESIDENT CHAMBERS**

ACTIVE JUDGES

Hon. Pierce Lively

P.O. Box 1226
Danville, Kentucky 40422
(606) 236-4489

Hon. Albert J. Engel

640 Federal Building
Grand Rapids, Michigan 49503
FTS 372-2551

Hon. Damon J. Keith

240 Federal Building
Detroit, Michigan 48226
FTS 226-6890

Hon. Gilbert S. Merritt

736 U.S. Courthouse
Nashville, Tennessee 37203
FTS 852-5957

Hon. Cornelia G. Kennedy

744 Federal Building
Detroit, Michigan 48226
FTS 226-6893

Hon. Boyce F. Martin, Jr.

244 U.S. Courthouse
601 W. Broadway
Louisville, Kentucky 40202
FTS 352-5082

Hon. Nathaniel R. Jones

432 USPO & Courthouse Bldg.
Cincinnati, Ohio 45202
FTS 684-2921

Hon. Leroy J. Contie, Jr.

365 U.S. Courthouse
Akron, Ohio 44308
FTS 292-5701

Hon. Robert B. Krupansky

328 U.S. Courthouse
Cleveland, Ohio 44114
FTS 942-4288

Hon. Harry W. Wellford

1176 Federal Building
167 North Main Street
Memphis, Tennessee 38103
FTS 222-3865

Hon. H. Ted Milburn

P.O. Box 750
Chattanooga, Tennessee 37401
FTS 852-8276

SENIOR JUDGES

Hon. Paul C. Weick

539 U.S. Courthouse
Akron, Ohio 44308
FTS 292-5624

Hon. George Edwards

618 USPO & Courthouse Bldg.
Cincinnati, Ohio 45202
FTS 684-2961

Hon. Anthony J. Celebrezze

312 U.S. Courthouse
Cleveland, Ohio 44114
FTS 942-4270

Hon. John W. Peck

613 USPO & Courthouse Bldg.
Cincinnati, Ohio 45202
FTS 684-2964

Hon. Bailey Brown

630 Commerce Union Square Bldg.
2670 Union Extended
Memphis, Tennessee 38112
FTS 222-2596

**SIXTH CIRCUIT COURT OF APPEALS
JUDGES LISTING: SECRETARIES, LAW CLERKS**

	<u>Phone</u>	<u>Room</u>
<u>Hon. Pierce Lively, Chief Judge</u> Secretary: Edna Gardner — Law Clerks: Ann Behlen, Kenneth Cox (Cinti.Office - Linda Brinson, Sec'y., Norma Holt Davis, Janice Yates - Law Clerks)	2732	626
<u>Hon. Albert J. Engel</u> Secretaries: Janice DeHaan, Yvonne Carpenter Law Clerks: John B. Hobby, Ronald J. Kuerbitz, Daniel P. Perk	3443	808
<u>Hon. Damon J. Keith</u> Secretaries: Gwendolyn Tucker, Camille Wasik Law Clerks: Constance L. Rice, Edward Ewell, Ezra Greenberg	2651	633
<u>Hon. Gilbert S. Merritt</u> Secretaries: Sara Pettit, Dene Bailey Law Clerks: Steven Chidester, Maria O'Brien, Glenn Reynolds	2959	755
<u>Hon. Cornelia G. Kennedy</u> Secretary: Claire J. Miers Law Clerks: Matthew J. Barrett, Robin Walker-Lee, David J. Debold	2985	425
<u>Hon. Boyce F. Martin, Jr.</u> Secretary: Shirley Calloway — Law Clerks: Grace McLane, James Giesel, Ilam Smith, Lee Willis	2963	431
<u>Hon. Nathaniel R. Jones</u> Secretaries: Marcia Carter, Dorothy Forte' Law Clerks: Patricia Davidson, Michael Pratt, David Shough	2921	432
<u>Hon. Leroy J. Contie, Jr.</u> Secretary: Mary Strauss, Nancy Walters — Law Clerks: Richard Stoper, J. Bret Treier, Ann Butenhof	2566	610
<u>Hon. Robert B. Krupansky</u> Secretaries: Sandy Mark, Barbara L. Nowacki-Wojton Law Clerks: Arthur M. Kaufman, Timothy A. Ita, John M. Moscarino	3103	637
<u>Hon. Harry W. Wellford</u> Secretaries: Ruth Bowen, Carolyn Morgan Law Clerks: Lucian T. Pera, Kathy L. Hayek, Brian S. Steffey	3760	601

<u>Hon. H. Ted Milburn</u>	2960	812
Secretaries: Judy Meffert, Anne Slack		
Law Clerks: John L. Medearis, Steven H. Cook, Roger G. Jones		
<u>Hon. Paul C. Weick (Senior)</u>	3442	426
Secretary: Debbie Zelei — Law Clerks: Jeffrey E. Schobert, John C. Weisensell		
<u>Hon. George Edwards (Senior)</u>	2961	618
Secretary: Virginia Hardin		
Law Clerks: John R. Roth, Tracey A. Yokich		
<u>Hon. Anthony J. Celebrezze (Senior)</u>	2850	632
Secretary: Wendy A. Olszewski		
Law Clerks: Robert Reeder, Craig Pearson		
<u>Hon. John W. Peck (Senior)</u>	2964	613
Secretaries: Sallie Kroeger, Shari Loo		
Law Clerks: Margaret Miller, Janet Campbell		
<u>Hon. Bailey Brown (Senior)</u>	2977	424
Secretary: Annelle Wiley		
Law Clerks: Thomas N. Bulleit, Jr., Mark Steven Izenson		

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

JOHN P. HEHMAN
CLERK

U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

TELEPHONE
(513) 684-2953
FTS 684-2953

October 10, 1985

TO: Hon. G. Wix Unthank

RE: Your Designation to Sit with the Sixth Circuit During the
Week of December 2, 1985

We understand that you have been designated to sit with the court during the week of December 2, 1985. Enclosed is some informational material concerning your visit.

About six weeks in advance of argument, we will be sending the listing of cases to be argued. Under separate cover, but at the same time, you will also be receiving the briefs in those cases. If you find you are unable to sit on any case, or if you have any other problem about the cases or the materials you receive, please call Marjorie Eliassen of our office at FTS 684-2953.

Attachment #1 includes general logistical information regarding your visit. Names and telephone of staff personnel, names and resident addresses of court of appeals judges, and office locations and telephone numbers of judges' chambers in Cincinnati are also included. Floor plans of court facilities on the 3rd, 4th, 5th, 6th and 8th floors are included. We understand your chambers will be at room 632 and your telephone number there will be 684-2850.

Attachment #2 is a copy of the Court Policies and is intended for internal use only and not to be released to the public. The purpose of the policies is to set forth information for the judges as to procedures. This will be your principle reference guide.

You will note that the membership of the panel is not publicly disclosed until the day of argument and when you circulate a decision to the panel members for concurrence, an information copy should be provided to all other circuit judges. Mr. Eggemeier of our office should receive a copy of your circulation letter at that time. This enables our office to track cases. Also, you should know the judges give priority review and comment to the draft decisions of their colleagues.

Attachment #3 are the Internal Operating Procedures of the court. The purpose of the IOP's is to describe for counsel and litigants the general operation of the court and the requirements which must be fulfilled by those who practice before the court. We provide the IOP's to attorneys and they are enclosed for your information.

Attachment #4 is a copy of the local rules of the Sixth Circuit.

Attachment #5 contains descriptions of several places of interest in and about Cincinnati.

We look forward to seeing you. If you have any questions about these materials or if we can otherwise assist you, please call me or Leonard Green, our chief deputy.

Very truly yours,

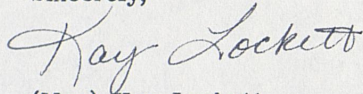
John P. Hehman
John P. Hehman, Clerk

cc: Chief Judge Lively

Honorable G. Wix Unthank
October 9, 1985
Page two

I hope that your service on the Court will be as pleasant as possible, and we will do everything we can to make it so. If you have any questions do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kay Lockett". The signature is written in dark ink and is positioned above the typed name.

(Mrs.) Kay Lockett
Administrative Assistant to the
Circuit Executive

encl.

JAMES A. HIGGINS
CIRCUIT EXECUTIVE

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
303 U. S. COURTHOUSE
CINCINNATI, OHIO 45202

FTS 684-3161
(513) 684-3161

October 9, 1985

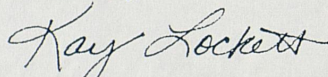
Honorable Albert J. Engel
Honorable Damon J. Keith
Honorable Cornelia G. Kennedy
Honorable Robert B. Krupansky
Honorable H. Ted Milburn
Honorable Ralph B. Guy, Jr.
Honorable Bailey Brown
Honorable G. Wix Unthank
Honorable George E. Woods
Honorable Richard F. Suhrheinrich

Dear Judges:

Enclosed please find a copy of the Schedule of Sittings for the December 2-13, 1985 session of Court.

It would be appreciated if you would advise me at your earliest convenience if this schedule is satisfactory to you. Upon receipt of your approval, the Clerk's Office will mail to you files applicable to your schedule.

Sincerely



(Mrs.) Kay Lockett
Administrative Assistant to
the Circuit Executive

encl.

cc: John P. Hehman, Clerk

SCHEDULE OF SITTINGS
December 2 - 13, 1985

	<u>Courtroom No. 1</u> <u>at 9:00 A.M.</u>	<u>Courtroom No. 2</u> <u>at 9:00 A.M.</u>
Mon., Dec. 2	<u>Engel</u> - Keith - Unthank	
Tues., Dec. 3	<u>Kennedy</u> - Krupansky - Brown	<u>Keith</u> - Milburn - Unthank
Wed., Dec. 4	<u>Engel</u> - Krupansky - <u>Milburn</u>	
Thur., Dec. 5	<u>Keith</u> - <u>Kennedy</u> - <u>Unthank</u>	<u>Krupansky</u> - Milburn - Brown
Fri., Dec. 6	<u>Engel</u> - <u>Kennedy</u> - Brown	
Motions Panel: <u>Keith</u> - <u>Kennedy</u> - <u>Krupansky</u>		

Mon., Dec. 9	<u>Engel</u> - Milburn - Woods	
Tues., Dec. 10	<u>Kennedy</u> - Guy - Woods	
Wed., Dec. 11	<u>Milburn</u> - Guy - Woods	Engel - <u>Krupansky</u> - Suhrheinrich
Thur., Dec. 12	<u>Engel</u> - <u>Kennedy</u> - Milburn	<u>Krupansky</u> - <u>Guy</u> - Suhrheinrich
Fri., Dec. 13	Kennedy - <u>Krupansky</u> - Suhrheinrich	
Motions Panel: Engel - <u>Kennedy</u> - Milburn		

The Judge whose name is underlined each day will prepare the panel reports.

The motions panel judge whose name is underlined will serve as lead judge.

1. Judge Albert J. Engel, 640 Federal Building, Grand Rapids, Michigan 49503, FTS 372-2551, and 622 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-3443.
2. Judge Damon J. Keith, 240 Federal Building, Detroit, Michigan 48226, FTS 226-6890, and 633 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2651.
3. Judge Cornelia G. Kennedy, 744 Federal Building, Detroit, Michigan 48226, FTS 226-6893, and 425 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2985.
4. Judge Robert B. Krupansky, 328 U.S. Courthouse, Cleveland, Ohio 44114, FTS 942-4288, and 637 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-3103.
5. Judge H. Ted Milburn, P.O. Box 750, Chattanooga, Tennessee 37401, FTS 852-8276, and 812 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2960.
6. Judge Ralph B. Guy, Jr., 853 Federal Building, Detroit, Michigan 48226, FTS 226-6017, and 632 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2850.
7. Senior Judge Bailey Brown, 630 Commerce Union Square Building, 2670 Union Extended, Memphis, Tennessee 38112, FTS 222-2596, and 424 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2977.
8. Judge G. Wix Unthank, U.S. District Court, Eastern District of Kentucky, P.O. Box 278, Pikeville, Kentucky 41501, 606-329-2592; and 632 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2850.
9. Judge George E. Woods, U.S. District Court, Eastern District of Michigan, 277 U.S. Courthouse, Detroit, Michigan 48226, FTS 226-2405; and 424 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-2977.
10. Judge Richard F. Suhrheinrich, U.S. District Court, Eastern District of Michigan, 235 U.S. Courthouse, Detroit, Michigan 48226, FTS 226-3680; and 426 USPO & Courthouse, Cincinnati, Ohio 45202, FTS 684-3442.

10/9/85

PLACES OF INTEREST

AIR FORCE MUSEUM near Dayton, Ohio. Located 11 mi. east of Dayton on Hwy.444. Largest military aviation museum in the world. Mon.-Sat. 9-5; Sun. 10-6.

AIRPORT PLAYFIELD off Beechmont Levy near Lunken Airport, 321-6500. Driving range, Par 3 & 18-hole golf courses open all year. Amusement rides, interesting playground, archery, batting practice cages, tennis courts, miniature golf, picnicking, 6-mile bike trail around the airport. Open May-Sept. Small fees.

AMERICAN REPERTORY THEATER Peanut Butter Theater, children's plays served up with peanut butter & jelly sandwiches. Box office 421-6484. Carnegie Arts Center, Scott & Robbins, Covington, Ky.

AMERICANA AMUSEMENT PARK formerly Le-Sourdsville Lake Amusement Park. Located Rt. 4, near Middletown. Offers rides, swimming and dining facilities. 539-7339.

ANDERSON FERRY Rt. 50, Anderson Ferry Rd. & Lower River Rd. Take an old-fashioned car ferry across the beautiful Ohio for a really nostalgic trip. Ferry leaves every 15-20 minutes. Small fees.

ARBORETUM, Mt. Airy Forest, Colerain Ave. 1800 different trees and shrubs. Guided tours and slide lectures by reservation. Call 541-8176.

BUTLER COUNTY HISTORICAL MUSEUM, Benninghofen House, 327 N. 2nd St., Hamilton, Ohio. Interesting genealogy room. Tues.-Sun. 1-4.

CARY COTTAGE, 7000 Hamilton Ave. On premises of Clovernook, this historic home of poets Alice and Phoebe Cary is open the first Sun. of the month, 1-4. Open other times by appointment. 522-3860.

CAREW TOWER OBSERVATION DECK, Carew Tower Building, 441 Vine St. Panoramic view of Cincinnati and Kentucky. Open 9-5 Tues.-Sat. Also open Sundays Memorial Day-Labor Day. Take elevator to 45th floor, follow sign to elevator to 48th floor and walk up one flight. Small admission charge.

CHILDREN'S HOSPITAL, Elland & Bethesda. All tours by appointment only. Elementary school students Thurs. at 1PM. Adult and school group tours of Medical Center Mon. & Wed. 1PM. 559-4421.

CHRIST CHURCH, 4th & Sycamore Sts. Music on alternate Tuesdays 12:10 PM all year. 621-1960.

CINCINNATI ART MUSEUM, Eden Park. Open Tues.-Fri. 10-5. Sat. & Sun. 1-5. Free admission on Sat. Cafeteria open 12:30-3:30 Tues.-Fri. Public guided tours Wed. 2 PM, Sat. 10:30 & 2, Sun. 2 PM. Gift shop. Art lessons available for children and adults. For information, 721-5204.

CINCINNATI BALLET COMPANY. Groups of 20 or less may watch rehearsals by appointment. Call Marge Zupath, 475-2700.

CINCINNATI CITY COUNCIL, 8th & Elm. Guided tours of administration offices and Council Chambers on Wed. at 2 PM when City Council is in session. Call 352-3237.

CINCINNATI ENQUIRER, 617 Vine St. Tours of newspaper printing by reservation Mon.-Thurs. 6:30-8:30 PM. Call 721-2700, Ext. 462.

CINCINNATI GAS AND ELECTRIC COMPANY, 4th & Main. Speakers' Bureau offers interesting and informative programs to schools, clubs, and civic organizations. Films are also available. 381-2000.

CINCINNATI HISTORICAL SOCIETY, Eden Park. Oldest historical society in Ohio, possessing large collection of rare documents, maps, pictures and books relating to local history. Open Mon.-Fri. 8:30-4:30; Sat. 9-4. Closed Sat. June-Aug. For tour information call 241-4622.

CINCINNATI NATURE CENTER, Tealtown Rd. Follow US 32 to Glen Este/Withamsville Rd., turn North and follow CNC signs to entrance. A 755-acre nature preserve for teaching environmental awareness to people of all ages. Open to public Mon.-Fri., dawn to dusk. Building open 9-5. Members only on weekends and holidays. Membership open to all. Bookstore, library, gift shop. Small parking fee. Call for annual program of events for members. 831-1711.

LONG BRANCH FARM Division of CNC teaching agricultural awareness. For information call 831-1711.

CINCINNATI OBSERVATORY, 3 blocks East of Delta Ave., off Observatory Ave. Open Sept.-Apr., 10 nights a month when moon is in sky. Limited to maximum of 30 people. Open by reservation without charge. Call 321-5186.

CINCINNATI PARK BOARD offers 95 parks with varied recreation from free summer concerts to Bowling on the Green. Consult local papers for up-to-date information or call 352-4080.

CINCINNATI PLAYHOUSE IN THE PARK, Mt. Adams Circle. Productions throughout the year. Tours are available. Call Director of Audience Development, 621-7770.

CINCINNATI POLICE DEPARTMENT, 310 Ezzard Charles Drive. For information about tours at district stations call 352-3536.

CINCINNATI WATER WORKS, 5651 Kellogg Ave. Tours Mon.-Fri., 9-2. Minimum age 10. One adult per 10 children. Maximum group 50. Call 231-7825.

CINCINNATI ZOO, 3400 Vine St. Open daily 9-5; animal shows 11 & 2 Tues.-Sun. during summer. Children's birthday parties available summer months. Children's Zoo open late spring through early fall. Admission charged. Yearly memberships available. Call 281-4700.

CLIFTON MILL-Rt. 343 (off Rt. 68) Clifton, Ohio. Near Yellow Springs. An old grist mill that operates on the Little Miami River. Self-guided tours. All types of flour and cornmeal may be purchased.

CLOVERNOOK HOME AND SCHOOL FOR THE D. 6990 Hamilton Ave. Tours of weaving and braille shops Mon.-Fri. by reservation. 522-3860.

Coca Cola Bottling Works, 1507 Dana Ave. Interesting tour for groups of 10-25 persons, including movie, token gift and refreshment. Call 631-6910 Ext. 31.

CONTEMPORARY ARTS CENTER, 115 E. 5th St. Offers changing exhibitions of contemporary works of art plus regularly scheduled events for members and the public. Open Tues.-Sun. 10-5. Facilities available for community groups. 721-0390.

PLACES OF INTEREST

DELTA QUEEN docks at Public Landing, foot of Broadway. Public tours available during summer months. Watch newspaper for time and dates. 621-1445.

EMERY HALL, 2200 Victory Parkway. Victorian stone mansion, ca. 1881, on Edgecliff College campus. Houses Edgecliff College Art Dept. and exhibition galleries for student, local, national and international artists. Outdoor theatrical productions each summer on lawns. House open Mon.-Fri. 9-5; Sat. & Sun. 1-5. 961-3770.

BOB EVANS FARM-Tours, restaurant, general store, craft barn, farm museum, riding stables. Box 330, Rt. 35. Rio Grande, Ohio 45674.

FANTASY FARM, Rt. 4, near Middletown. Rides, animals and swimming for young children. Open 10-10 daily during the summer. One price admission. 1-539-8864.

FINDLAY MARKET, Elder & Race Sts. Historical marketplace for vegetables, fruit, meat, dairy products and other items. Open 6AM-1:30PM Wed. & Fri., 6-6 on Sat.

FIRE DEPARTMENT MUSEUM, 329 E. 9th St. Largest exhibit of historical fire equipment in the nation. Tours between 1 & 4PM and 6 & 9PM every day. No admission charged. 241-6700.

FORT ANCIENT STATE MEMORIAL, 7 mi. east of Lebanon on SR 350. A 685-acre park with prehistoric defensive earthworks and burial mounds. Nature trails and picnicking facilities. Museum of prehistoric Indian culture open Mar. 1-Oct. 31. 9:30-4:45 Tues.-Sat. Small admission charge. 1-932-4421.

FRISCH'S FARM, Rtes. 22 & 3, north of Morrow, Ohio. Children of all ages, preferably under 14. Groups of 15 or more are recommended. Call for confirmed appointment Tues.-Sat. 961-2660.

GARDEN CENTER OF GREATER CINCINNATI, 2715 Reading Rd. Open daily 9-4:30. Special seasonal exhibits. Rose garden, dwarf evergreen garden, reference library. 221-0981.

GENERAL MOTORS ASSEMBLY DIVISION, 4726 Smith Rd., Norwood. 1 to 2 hour tours of automobile assembling plant. Maximum group 50. 9AM or 12:30PM Mon., Tues., Wed., or Fri.. Call for appointment, 841-5000.

GREATER CINCINNATI AIRPORT. Tours for 15-60 people by appointment Mon.-Fri., 9:30AM, 11AM, & 1PM. Picnic and playground facilities available May-Sept. by appointment. Call 283-3144.

HAMILTON COUNTY COURTHOUSE, Court & Main Sts. 2-hour tour for up to 35 visitors Mon.-Fri., 9AM & noon. Make reservations with Dept. of City Buildings, 632-8331.

HAMILTON COUNTY PARK DISTRICT. 7 park areas include Sharon Woods, Winton Woods, Miami-Whitewater Forest, Southeast Park, Shawnee Lookout, Farbach-Werner Nature Preserve, Wildlife Sanctuary. Nature and camera walks; golf courses and riding trails; outdoor movies and band concerts. Films and speakers available for groups. Naturalists available daily. 521-9866.

JOHN HAUCK HOUSE, 812 Dayton St. A 2-block historic preservation area (with printed walking guide) features this Victorian townhouse restored by the Miami Purchase Assn. Open to public for tours Tues., Wed. & Thurs. 10-4; Sat. & Sun. 12-4. Small charge for persons over 12. 721-4506.

HEBREW UNION COLLEGE-JEWISH INSTITUTE OF RELIGION, 3101 Clifton Ave. Tours by appointment Mon.-Fri. Speakers' Bureau available. American-Jewish Archives, Klau Library, Dalheimer Rare Book Room, S.H. & Helen R. Scheuer Chapel are of special interest. 221-1875.

JOHNSON PARTY BOAT, Public Landing. Cruises down the Ohio 2-4PM every Sunday mid-June to Labor Day. Fee charged. 421-4455.

KINGS ISLAND, I-71, Kings Island Drive exit. Family resort with 100 rides, Wild Animal Safari, shows, European shops, International Restaurant, Jack Nicklaus Golf Center, campgrounds, luxurious inn. Open daily Memorial Day-Labor Day, 10AM-10PM. Open weekends spring and fall 10AM-8PM. One price admission. 241-5800.

KROHN CONSERVATORY, Eden Park. Seasonal flower displays, gift shop. Open daily 10-5; Sun. 10-6; Easter & Christmas weeks 10-9. Tours available. 352-4091.

LEBANON, OHIO, approx. 30 mi. from Cincinnati on Rtes. 48 & 123.

GLENDOWER HOUSE, outstanding example of Greek Revival architecture. Open Wed.-Sat. 9-5; Sun. 1-5 April 1-Oct. 31. Group tours call 1-932-5366.

GOLDEN LAMB, 27 S. Broadway. Ohio's oldest inn and restaurant. Open daily. Reservations call 621-8373. **WARREN COUNTY MUSEUM**, open daily except Mon. 9-4; Sun. 12-4. Small fee. Group tours available. 1-932-9511.

LEXINGTON, KENTUCKY, and its surrounding areas afford innumerable opportunities for self-conducted or professionally guided excursions. Attractions are the luxurious horse farms; Keeneland Race Track; Transylvania College; Ashland (home of Henry Clay); Man O'War Statue; University of Kentucky. For added information and free maps of horse farms, write Greater Lexington Chamber of Commerce, Lexington, Kentucky, 40508.

KENTUCKY HORSE PARK-off Rt. 75. Daily 9-5. Admission charge.

MARIEMONT-EMERY MEMORIAL CARILLON, Dogwood Park, Pleasant St., Mariemont. Concerts Sun. 7PM May-Sept., 4PM Oct.-Apr., 2PM on major holidays. Call 271-8519 or 271-8529 for information about tours.

MEIER'S WINE CELLARS, 6955 Plainfield Pk. Tours for up to 50 people, 18 & older, Mon.-Fri. 10AM-2PM. Make reservations 2 weeks ahead by contacting Bob Raussen 891-2900.

METAMORA, INDIANA, off Rt. 52 between Brookville and Loral. Restored canal town with many shops, a grist mill, and a ride through the locks.

MIAMI PURCHASE ASSOCIATION HISTORICAL VILLAGE, Sharon Woods Park. Village and antique shop open May-Oct., Tues.-Thurs. 10-4, Sat. & Sun. 12-4. For large groups call 563-9484. Small admission fee.

PLACES OF INTEREST

MILLER-LEUSER LOG HOUSE, Clough Pike, Anderson Township. Built 1796. Monthly exhibits posted in papers.

MORGAN'S CANOE LIVERY, Rt. 350, Morrow, Ohio. 1-932-7658. Also Blue Creek Rd., Brookville, Ind., 1-317-647-4904. Canoe trips of 6-100 miles along the scenic Little Miami or in the isolated wilderness on the Whitewater Rivers. Open Apr.-Oct.

MUSIC HALL, 1243 Elm St. Century-old National Historic Landmark known for its perfect acoustics. Home of Cincinnati Symphony, May Festival, and Cincinnati Opera. Tours arranged for groups of 15 or more Oct.-May. 621-1919.

NASHVILLE, INDIANA-BROWN COUNTY STATE PARK, Indiana Rt. 46. Open all year. Largest of Indiana's parks. In the beautiful southern hill country, it is especially lovely in the fall.

NATURAL HISTORY MUSEUM & PLANETARIUM, 1720 Gilbert Ave. Small admission charge. Open Tues.-Sat. 9-4:30; Sun. 1-5. Free nature movies Sat. & Sun. 2 & 3PM and summer weekdays 2PM. Gift shop. For information call 621-3889. Planetarium programs Sat. & Sun. 1, 2 & 3PM all year and summer weekdays. Reservations advisable. 621-3336.

PEPSI-COLA BOTTLING CO. OF CINCINNATI, 2121 Sunnybrook Dr. Children's program for grade school ages Tuesdays Oct.-May. Call 761-5800.

PROCTER & GAMBLE COMPANY, 5201 Spring Grove Ave. Tours Mon.-Fri. 9:45 AM & 1 PM, including soap and Crisco packing and laboratory viewing. Children must be 12 or over unless accompanied by a parent. Call 562-1100.

PUBLIC LIBRARY, Information Center at Main Library, 800 Vine St. Scheduled visits for groups. Speakers for clubs, organizations and PTA groups are available on reading interests of children, outstanding children's books, storytelling or children's literature. Film programs for children Sat. 10:30AM. Films on Fri. noon and 7PM; music at noon, May-Sept. 37 branches, 3 bookmobiles. 369-6000.

RIVER DOWNS RACE TRACK, 6301 Kellogg Ave., offers horse racing May through Labor Day. 232-8000.

RIVERFRONT COLISEUM, Broadway & E, 2nd St. For tour information call 241-1818.

RIVERFRONT STADIUM, 201 E. 2nd St. Home of the Cincinnati Reds and Bengals. Tours available Mon.-Fri. by appointment. No charge for school groups. 352-3779.

RUOFF FAMILY FARM, 9579 Brehm Rd., 931-3396. 2-hr. visits by appointment for groups include hay wagon ride, tour of farm, visit with animals and participation in seasonal farm projects such as making apple cider.

ST. PETER IN CHAINS ROMAN CATHOLIC CATHEDRAL, 8th & Plum Sts. Fine example of neo-classic Grecian architecture. Constructed in 1845, possesses Cellini Crucifix from the 16th century. Open daily 6:30AM to 6PM. For tours call 421-5354.

SHOWBOAT MAJESTIC-at Cincinnati Public Landing, foot of Broadway. Spring and Summer performances. Admission charged. 241-6550.

SPRING GROVE CEMETERY, 4521 Spring Grove Ave. Second largest cemetery in the country. Open daily 8-5. Rose gardens, flower borders and lakes. See historical monuments, beautiful trees and the Mausoleum. Maps available. Tours for groups can be arranged. 681-6680.

HARRIET BEECHER STOWE HOUSE, 2950 Gilbert Ave. Open June 1-Sept. 15, 10:30-12; 1-4:15. Closed Mon. & Tues. Small admission charge. Free tours for school groups. 751-2773.

CHARLES PHELPS TAFT MUSEUM, 316 Pike St. A fine example of Federal architecture housing an important art collection. Chamber music recitals. Open Mon.-Sat. 10-5, Sun. & holidays 2-5. Admission free. For information, call 241-0343.

WILLIAM HOWARD TAFT NATIONAL HISTORIC SITE, 2038 Auburn Ave. Open Mon.-Fri. 8-4:30; mid-June through Labor Day 8-4:30 daily. Birthplace and boyhood home of 27th President of the U.S. Call 684-3262.

TOURCRAFTERS, 3 E. 4th St. For individuals or any size group, tours of the scenic and historic landmarks of Cincinnati and the Tri-State area. Special rates for senior citizens and school groups. 721-8230.

TRAILSIDE MUSEUM, Burnet Woods. Open daily 10-5; Sun. 2-5. Exhibits of children's handicrafts, stuffed birds, some live animals. Children's Nature Club alternate Sat., 2:30. 281-0190.

UNITED DAIRY FARMER, 3955 Montgomery Rd. Plant tours arranged Thurs., 1PM, Sept.-May. Children must be over age 7. 631-3385.

VENT HAVEN MUSEUM, 33 W. Maple Ave., Ft. Mitchell, Ky. Largest collection of ventriloquist material in the U.S. Tours on Mon.-Fri., May 1-Sept. 30 by appointment. 341-0461.

CHRISTIAN WALDSCHMIDT HOUSE, SR 126. Finished in 1804, this stone structure is of Pennsylvania Dutch design. Open May-Nov. 1, Sundays 1-5; other days by special appointment. Small donation accepted. 921-3738.

WCET, CHANNEL 48, Ezzard Charles Drive and Centennial Parkway. New home of first public TV station in U.S. Group tours for those over 8 years by appointment, Mon.-Fri. Speakers' Bureau available. 381-4033.

WHITewater VALLEY RAILROAD, Connersville, Ind. Old-fashioned train ride through SE Indiana following old towpath of Whitewater Canal. Sat. & Sun. from Apr.-Nov. For tickets call 1-317-825-2054, or write Whitewater Valley, P.O. Box 406, Connersville, Ind. 47331.

INFORMATION AND ADDRESSES

CHRIST CHURCH 621-1960
Fourth & Sycamore Sts. 45202

CINCINNATI BALLET COMPANY 621-5219
1216 Central Pkwy. 45210
Box Office 241-1038

CINCINNATI BENGALS 621-3550
Riverfront Stadium 45202

CINCINNATI CHAMBER MUSIC
SOCIETY 475-4173
College Conservatory of Music
University of Cincinnati 45221

CINCINNATI CONVENTION AND
CREATIVE SERVICES, INC. 721-8230
3 E. Fourth St. 45202

CINCINNATI CONVENTION AND
EXPOSITION CENTER 381-2210
525 Elm St. 45202

CINCINNATI CHAMBER OF COMMERCE
721-3300
120 W. Fifth St. 45202

CINCINNATI HISTORICAL SOCIETY 241-4622
Eden Park 45202

CINCINNATI OPERA, INC. 621-1919
1241 Elm St. 45210

CINCINNATI PLAYHOUSE IN
THE PARK 421-3888
962 Mt. Adams Circle 45202

CINCINNATI REDS, INC. 421-4510
Riverfront Stadium 45202

CINCINNATI SYMPHONY
ORCHESTRA 621-1919
1241 Elm St. 45210

COLLEGE-CONSERVATORY OF
MUSIC 475-2883
University of Cincinnati 45221

COLLEGE OF MOUNT ST. JOSEPH 244-4200
Delhi & Neeb Rds. 45051

COMMUNITY TICKET OFFICE 241-1083
642 Race St. 45202

EDGECLIFF COLLEGE 961-3770
2220 Victory Pkwy. 45206

FINE ARTS FUND 871-3325
2649 Erie Ave. 45208

GARDEN CENTER OF GREATER
CINCINNATI 221-0981
2715 Reading Rd. 45206

ISAAC M. WISE TEMPLE 762-9419
Eighth & Plum Sts. 45202

JEWISH COMMUNITY CENTER
1580 Summit Rd. 45237

KENLEY PLAYERS
Memorial Hall, Dayton, O. 45402
Cincinnati Telephone No. 381-0626

MAY FESTIVAL 621-1919
Cincinnati May Festival Association
1241 Elm St. 45210
Box Office 381-2661

MUSIC HALL 621-1919
1243 Elm St. 45210

THE PALACE THEATER, 12 E. 6th
579-1222, 579-1095

ST. PETER IN CHAINS ROMAN
CATHOLIC CATHEDRAL 421-5354
Eighth & Plum Sts. 45202

TAFT THEATER 721-0411
Fifth & Sycamore Sts. 45202

THOMAS MORE COLLEGE 341-5800
2701 Turkey Foot Rd., Fort Mitchell, Ky. 41017

TICKETRON 421-6500

UNITED APPEAL 621-5000
2400 Reading Rd. 45202

UNIVERSITY OF CINCINNATI 475-8000
Clifton Ave. 45221

XAVIER UNIVERSITY 745-3000
Victory Pkwy. 45207

Inside Cincinnati

THE RIGHT STUFF

Say you're here on business — trying to impress a potential client or a prospective employer is trying to impress you, here are the genuine signs of wealth and power in the Queen City:

LUNCH AT THE CLUB: Two best are the Queen City Club and the University Club. Both are truly elegant in the tradition of worn carpets and patined silver. You get extra points if you order the Senegalese soup at the QCC or their macaroons, not on the menu, or if Frances greets you by name. At the University Club, Roscoe is the man to know.

DINNER AT THE CLUB: The Club in Cincinnati is Cincinnati Country Club, unless you plan to golf, in which case it's Camargo Club. Both the Banker's Club and Cincinnati Club are less exclusive (and membership considerably cheaper) but are acceptable both for lunch and dinner. If you're hosting and have no club here, Pigall's or the Maisonette will do nicely.

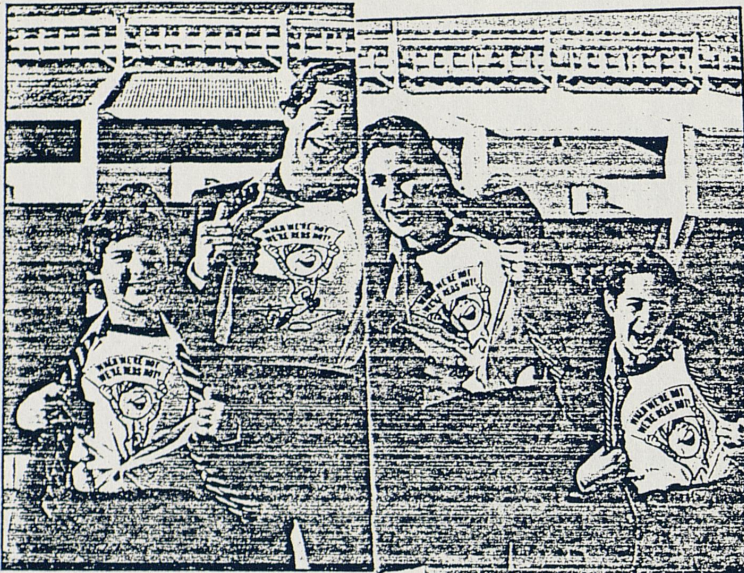
FLOWERS: If you have to send flowers for any reason, have them sent from Jones the Florist or Denny Buttelwerth.

NAME DROPPING: The first thing to learn in Cincinnati is that culture is a higher ticket item than fame. If you must drop names of famous persons, know that a true native will be more impressed if you know Leonard Bernstein than if you know Warren Beatty. As for local celebrities, businessmen are more revered than show biz types. For instance, if they were on baseball cards, a Cincinnati would trade you twenty-five Bob Brauns for one Gus Nippert. By the same token, you get more points for having taken golf lessons from Dick Plummer of Camargo or Bill Wood of Cincinnati Country Club than having danced with Johnny Bench at Lucy's in the Sky.

PLACE DROPPING: Aspen, Leland or Northport Point (the latter two in Michigan, a favored Queen City summer retreat) and Naples are good places to have gone to "get away from it all."

Snob stuff aside, there are dozens of other things that will help you get a quick fix on the city and what makes its folks tick. For instance, for all that the city is a mannerly one, it is justifiably proud of its characters. Izzy Kadetz is one. Izzy owns a deli at 819 Elm and up until about eight months ago he was there every day abusing the patrons and help alike. It amused the locals to put up with this as penance for thick corned beef sandwiches and potato pancakes. Izzy's is still crowded, but his son is in charge of the vocals now and old timers say the younger Kadetz just doesn't have his old man's bite. Here are some other lovely idiosyncrasies that give the city its unique personality:

EAST VS. WEST: People in Cincinnati believe that there's a great gulf separating the two sides of the city. The West side is generally acknowledged to be occupied by the folks who go to Reds games and the East siders are supposed to pay more attention to the Bengals. West siders spend more time in church, the East siders in trendy shops and restaurants. It doesn't matter whether or not this is true. It is believed. It's a city where East is East and West is West, but the twain meet in the bustling downtown area, at the annual Oktoberfest, at the Skywalk Arts and Crafts, at the International Folk Festival. Cincinnati, ultimately, is a city of neighborhoods. It's built on seven hills (but don't ask a native to name them) and the hills seem to help define and isolate



the neighborhoods. Everybody is married to the neighbor's second cousin once removed from the middle-aged couple two miles away.

THE MEDIA: The two daily newspapers, the *Post* and the *Enquirer*, come in for their share of popularly-held theories that may no longer hold water. The *Post* is generally thought to be the blue-collar newspaper, probably a holdover from its *Penny Post* days, the *Enquirer* is supposed to be the "society newspaper." The *Post* is regarded as Cincinnati's liberal newspaper, the *Enquirer*, the conservative. Particularly if you come from either coast, you'll get a howl out of anything Cincinnati counts as liberal. Or, if you have any sense, you may feel wistful. By and large, the *Enquirer* is more dependable, the *Post* is livelier. Channel 9 is the

television station to watch for the day's minutiae.

THE MOOD: Cincinnati is terribly (or wonderfully, depending on your point of view) provincial. Don't mistake this for a lack of sophistication. It is rather, as Webster would put it, "marked by simplicity, informality and relative plainness." Cincinnatians know there's an outside world, but they often simply choose to ignore what's going on there. It's a city of progress with a tremendous pride in the past.

THE MANNERS: Cincinnatians are polite. Many men will tip their hats here. Most anybody will be happy to give you street directions. If you catch a stranger's eye on the street, he'll likely nod and smile, just like in the old days before that was considered an invitation to panhandlers and muggers.

THE HIERARCHY: Just like any place else (except Washington, where power is everything), money has a lot to do with it. But here, there's an important distinction. One must, to really gain the respect of Cincinnatians, do something worthwhile with one's money. Working diligently for a Good Cause is more likely to get you into the Commercial Club or the *Blue Book* than mere money. Cincinnatians don't mind if carpetbaggers use their city, but they're expected to put something back in return.

CLEANLINESS: It's appropriate that a city that is home to the premier soap company in the country is squeaky clean. Not only are the downtown streets free of garbage, but there's a moral cleanliness here as well. Network shows deemed too violent or sexually suggestive are routinely yanked by the local affiliates. For example, Cher's belly-button was judged inappropriate for family viewing. County Prosecutor Simon Leis keeps the local movie theaters and bookstores free of what he considers to be smut. He must be an apt reflection of the majority community conscience as they re-elect him year after year, despite random grouching about censorship. It's definitely a GP and P&G-rated city.

After this crash course in the Queen City psyche, we hope you'll want to look inside at the specific ways to while away pleasant hours or days or weeks here. We've devised tours in an attempt to serve your special interests. Or you can mix and match. Or ignore us entirely and go off on your own. You can't lose.

A recent newcomer from the East, transferred (reluctantly) to Cincinnati, remarked: "I was afraid Cincinnati would be the end of the world. I'm amazed. Literally, it has everything. Even friendliness."

Customized Tours

SHUTTERBUG SPECIALS

To get high in Cincinnati, go to the **CAREW TOWER**, *Fifth Street between Vine and Race*. Tallest building in the city. Enter from Vine just south of Fifth. Take express elevator up forty-eight floors to observation deck. Tuesday through Saturday, 9:30 a.m. to 4:30 p.m. 50 cents.

KROHN CONSERVATORY, *Eden Park*. Small, green gem. Flowers, plants, exotic, domestic, jungly, arid, fragrant. Wonderful. Free. Monday through Saturday, 10 a.m. to 5 p.m.; Sunday 10 a.m. to 6 p.m.

EDEN PARK, *just east of downtown off Gilbert Avenue*. If you are limited to one, close-in geographic area, this is it. The most beautiful and most to do in a city of beautiful parks: River Overlook, Art Museum, Museum of Natural History and Planetarium, Historical Society, Seasongood Pavilion (band concerts), Mirror Lake, President's Grove; ablaze with daffodils in spring, runners and lovers any time. Next to Mt. Adams, Cincinnati's trendy but still charming Bohemian ghetto. Don't go to the overlook at night, when it's appropriated as a private party area for ruffians with radios.

CINCINNATI ZOO, *3400 Vine Street*. Don't have to be a kid to love one of the finest zoos in the country. Unique Insect World. Natural animal environments and landscapes. Doesn't smell. Sophisticated gift shop. Every day, 9 a.m. to 5 p.m. \$3.75 adults; \$1.50 kids; \$1.50 parking.

TAFT MUSEUM, *Fourth Street at Lytle Park*. Exquisite Federalist home and small museum of art and artifacts that you can tour complete without aching feet. Monday through Saturday, 10 a.m. to 5 p.m.; Sunday and holidays, 2 to 5 p.m. Free. Also a ruse to get you to city's finest small park, the Literary Club and Anna Louise Inn buildings. Take the footbridge from there to the riverfront, if you like.

FINDLAY MARKET, *Elder Street between 1800 Elm and Race streets*. Authentic old street market with produce, meat, bakery and butter stands. It's the real article, quaint, and you'll find bargains. Year-round. Wednesdays, 7 a.m. to 1:30 p.m. Fridays and Saturdays, 7 a.m. to 6 p.m. Produce generally sold on Saturdays. Photog's and gourmand's dream.

SHARON WOODS VILLAGE, *Sharon Woods Park, Route 42 Sharonville*. From downtown, take I-71 or I-75 to I-275 to Route 42. A restored Ohio village of the nineteenth century. Beautifully done but not overdone, set in a lovely park beside a creek and waterfall. May through October, Tuesdays, Wednesdays and Thursdays, 10 a.m. to 4 p.m. Saturdays and Sundays, noon to 4 p.m. \$1.50 adults; 50 cents kids.

DELTA QUEEN steamboat, *Public Landing, riverfront*. It's a sight worth seeing when the old girl arrives or leaves home port, great puffs of steam, calliope playing, crowds waving. Try to go aboard for pre-departure party. Also, tours are available 621-1445. She generally docks and leaves at 9 a.m. and 9 p.m. but occasionally she'll come in at 2 p.m. or leave at 6 p.m. In port May 1, 5; July 10, 12; August 7, 28, 30; November 23.

CATHEDRAL BASILICA OF THE ASSUMPTION, *9 E. Twelfth Street, Covington, Kentucky*. Enormous, breathtaking rose window, French Gothic. Monday through Friday, 431-2060. Now, while you're in Covington, there's lots else to see, Riverside Drive with antebellum mansions, remains of the underground railroad; wonderful old village homes, many being restored; some new little pubs and places. Poke around. Then go over and have lunch at Pompilio's in Newport. Need help or directions, call the Northern Kentucky Convention and Visitors Bureau, 261-4677.

UNION TERMINAL, *1301 Western Avenue*. You have never seen a building like this. It looks like an Aztec shrine, or the set of a super colossal movie of the 1930s. Actually, it was once a very busy railroad station. Now it is a shopping and eating mall. You must see Les Palmiers Restaurant. After you leave, drive directly down the avenue and take a look at Music Hall, another colossus.

CULTURED PEARLS

Even if you never hear a note played or sung there, Cincinnati's century-old Music Hall is worth a trip for culture vultures. It is beautifully appointed with stunning chandeliers and hand-crafted woodwork, a fitting home for some of the best of Cincinnati's musical

Customized Tours

arts — Cincinnati Symphony Orchestra, Ballet Company and Opera. At *1241 Elm Street*, telephone 621-1919. Some terrific touring musical and theatrical shows hit the Taft Theatre at *Fifth and Sycamore streets*. Check in at 721-0411. The Palace Theatre on *Sixth Street*, downtown, hosts ballet and touring shows as well. Telephone 579-1222. University of Cincinnati-College Conservatory of Music in Clifton has a marvelous variety of concerts and recitals throughout the year — most of them free. Telephone 475-2884.

October through June you can catch some pretty good plays at the Playhouse in the Park in Eden Park (421-3888) or at the Playhouse's Thompson Shelterhouse. Or you can try the last of the original floating theaters, the Showboat Majestic, docked at Cincinnati's Public Landing at the foot of Broadway. Opens in mid-April for six shows ending mid-October. Information at 241-6550.

If your taste runs to the visual arts, stop in at the Cincinnati Art Museum, celebrating its 100th birthday this year. An outstanding collection of paintings, sculpture, prints and decorative arts. World-famous Near East collection. Open Tuesdays through Saturdays from 10 a.m. to 5 p.m. and Sundays from 1 to 5 p.m. Admission: \$1, adults, and 50 cents, children. Free on Saturday. The fabulous Armand Hammer Collection, the most important private holdings of drawings, watercolors and paintings in America, is on exhibition there from April 18 through June 7. Two other museums worth seeing are within walking distance of each other downtown: the Contemporary Arts Center, *115 East Fifth Street*, and the Taft Museum, *316 Pike Street*. Across from UC is another stop worth making — Hebrew Union College's Gallery of Jewish Art and Artifacts, *3101 Clifton Avenue*. Focuses on Jewish heritage and archeological discoveries. Rare book collection. The west end of Fourth Street, downtown has become something of an art enclave. Visit Walt Burton Gallery, *344 W. Fourth Street*, for art photographs and Carl Solway Gallery, at Not In New York, an artsy shopping mall, *314 W. Fourth Street*, for art.

FOR FITNESS FREAKS

Cincinnati is a town that loves sports, and you can see big time baseball and football talent at Riverfront Stadium. But the city also has plenty to offer if you'd rather play than watch:

RUNNING: You're never very far from a park, track or shaded street in Cincinnati, and all are busy with runners every day of the year. Downtown, a popular place to run is Lytle Park, near the Coliseum and Riverfront Stadium. If the park doesn't give you enough room, head southwest toward the river and follow the Serpentine Wall that rises from its banks.

During the daylight hours, though, the best places to run are the large, wooded parks just a few miles out of town. Among the best are Eden Park, adjacent to Mt. Adams; Mt. Airy, ten minutes west of the downtown center; and Ault Park, in Hyde Park.

RACQUETBALL: Many of the private clubs in town offer day or week memberships for visitors, but prices and court availability varies. A bargain is the YMCA downtown at *1105 Elm (tel. 241-5348)*. For \$6 a day you'll be given full use of their racquetball courts, nautilus equipment, pool, track, handball courts, two gyms and complete locker room facilities.

FITNESS CENTERS: If you're looking for nautilus equipment and knowledgeable personnel, try Pat Matson's fitness centers. There are three locations: *Blue Ash, north of the city (tel. 793-2710)*; *Promenade Shopping Center to the north (tel. 851-8600)*; and *615 Main Street, downtown (tel. 381-2323)*. The fee is \$5 per visit.

TENNIS: There are plenty of public tennis courts in Cincinnati, but almost none downtown. Close to the downtown area, though, there are seven public courts at Reading and William Howard Taft roads. For information about city-owned courts, call the Cincinnati Recreation Commission (tel. 352-4020). Also, the University of Cincinnati has courts available on a wait and play basis. The courts are supposed to be for students only, but identification checks are rare.

THE KIDS ARE PEOPLE TOO TOUR

This tour is designed especially for those people traveling with children who are not prepared to be martyrs about it — things ecumenically entertaining. Let's face it. Cincinnati, like most cities of its size, has dozens of educational places where you can drag the kids. Later they might even have fun — sort of. But if you really want them to have FUN, take them to Kings Island. The amusement park is twenty minutes north of town on Interstate 71 at the Kings Island exit. Open seven days a week, May 30 through September 1, open weekends only April 12 through May 25 and September 6 through 14. Rides, good eats,

Customized Tours

free shows, animal safari. They have out-Disneyed Walt. **Americana Amusement Park**, thirty miles north of Cincinnati on Interstate 75, is smaller, but it offers swimming and is another sure-fire kid-pleaser. Open Monday through Thursday 11 a.m. to 10 p.m. and Friday through Sunday until 11 p.m., Memorial Day to Labor Day and weekends April to Memorial Day and Labor Day through September.

If you don't have a whole day to spend or need to stick closer to town, you can let the little ones work off some steam climbing the hills of **Mt. Adams**, where they can find t-shirts and you can find affordable art. Afterwards stop off at **Rookwood Pottery**. Good hamburgers and do-it-yourself sundaes. Not to belabor food, but if you see any one of the ten **Graeter's** ice cream stores be sure to stop. It's quite simply the best ice cream in this hemisphere. **Eden Park** has one of the best views in the city, nice space for little untrammelled spirits to roam and is close to **Krohn Conservatory**. Nice plants, nice breather.

From the time a 2-year-old discovers the wonders of splashing in the commode, a kid has a fascination for water. Don't let them miss one of Cincinnati's river cruises: the riverboat **Princess** leaves from the landing on Old Coney Island (where you can also take them swimming at **Sunlight Pool**) and the **Lollipop**, which boards passengers in Covington at the foot of Greenup Street. For further information on the Lollipop or its sister riverboat, the **Betty Blake**, telephone (606) 261-8500.

Don't mention that they're educational. Don't even call them museums, if you can help it, and the following "fun places" will delight both you and your children. The **Cincinnati You-Know-What of Natural History**, 1720 Gilbert Avenue. Depending on their ages, the kids probably won't be too crazy about the rocks and fossils, but they'll love exploring the cavern, a simulated and properly scary multi-leveled cavey with a waterfall, crystals and cave-life. The **Wilderness Trail** with its stuffed wildlife and the Indian display are worth seeing, too. Open Tuesday through Saturday from 9 a.m. to 4:30 p.m. and Sunday from 12:30 to 5 p.m. After September 18 of this year, the do-not-touch rule is suspended in at least one room at the **Cincinnati Art Museum** in Eden Park. In the museum's Discovery Room, they're invited to touch and experience the art there, which might make the rest of the tour more interesting for them. The new **Cincinnati Fire Museum** at 315 W. Court Street, just down from Plum, is open daily from noon to 4 p.m.

THE SINGLES SCENE

For exciting nightlife, most singles head straight for Mt. Adams at the end of the day. Overlooking the city and the Ohio River, **Mt. Adams is the Montmartre of Cincinnati**: a monastery crowns the hill, and its narrow streets, intimate bistros and artsy specialty shops give it a European flavor.

Start your evening by taking a cab to any bar in Mt. Adams. (Parking is nearly impossible, so leave your car at the hotel.) A good place to start is **The Pavilion**, 949 Pavilion (tel. 721-7272). It's one of the best bars in the city in the summertime with its spacious, tiered deck out back, and it's cozy around the fireplace in the colder months. The three-piece junior-exec crowd starts drifting in after work on Fridays while drinks are still almost half price, so get there early.

If the Pavilion is packed, take a left out the door and walk just a few feet to **Yesterday's Old Time Saloon**, 941 Pavilion (tel. 721-8700). The scene here will probably be wall-to-wall people, too, and with more than a few under the tables. But if you like '50s rock 'n' roll music and a younger, rowdier crowd, hang around a while and they'll make room for you.

Across the street from Yesterday's is **Chapter XIII**, 920 Pavilion, (tel. 721-8761). One of the original singles' bars in Cincinnati, Chapter XIII is an authentic saloon with a nineteenth-century wooden bar imported from the Wild West. There's usually live entertainment, too, so be prepared to pay a modest cover charge.

If you're under 21, the only place you can drink legally in Mt. Adams is **McCarthy's Pub**, 938 Hatch (tel. 621-3666). All ages frequent the pub through the week, but on the weekends it's almost strictly a young, loud, college crowd.

By no means, however, should you limit yourself to Mt. Adams. Other great singles bars can be found throughout the city. Here are a few of the best: **CADDIE'S**

Sleep Out Loud's, 230 W. Second. 721-3636. Seating is kept to a minimum at this converted warehouse. The management prefers to keep the crowd up and mixing in order to retain its reputation as the city's top meat market. It works, too. All ages and types turn out nightly to party, or simply watch the parade.

Tomorrow's, 120 W. Fifth. 241-9555. Located within a short walk of most of the major hotels downtown, Tomorrow's is the place to go if you have to dance. Once strictly disco, it now rotates disco with rock 'n'

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roll, country and pop. Modest cover charge.

Campus Rendezvous, 239 Calhoun. 221-2194. The name says it all. A campus pick-up bar for jocks, preppies and even the shy, studious type looking for a good time.

FOR BARGAIN HUNTERS

If you love a good buy, here is a sampling of Cincinnati's discount and factory outlets which offer everything from comforters to towels, from footwear to sportswear at considerable savings. Most accept credit cards; a few take cash. Most of them are open from Monday through Saturday, some through Sunday. Call for hours.

BATH AND BEDSPREAD WORLD, 9905 Montgomery Road. 984-2233. Nice store with a large selection of designer bedspreads, sheets and towels. Lots of kings and queens. Plus throw pillows, placemats and napkins, shower curtains and other bath accessories. Firsts, irregulars and discontinued stocks, 10 to 40 percent off.

CHATTERLINGS, 9429-9433 Montgomery Road. 984-2520. Mom and Grandma would love shopping here. It's wall-to-wall children's wear — from infant to preteen — up to size 14 for boys at 20 to 35 percent off. All first quality, no seconds, no overcuts. Nannette, Bull-Frog, Dansk.

CANNON TOWEL OUTLET, 2133 West U.S. Highway 22, near Kings Island. 683-7275. If you want to buy kitchen and bath towels by the pound (and individually), this is the place. Also bedspreads, blankets and mattress pads. Firsts, overruns, irregulars, 30 to 60 percent discount.

COWDEN FACTORY OUTLET, 415 W. Seymour Avenue. 821-9771. As much as 70 percent off retail price on casual wear for men, women and boys. Durable work denims, bib overalls, safari shorts, jackets, shirts and tops. Also silky things for women.

DOWN-LITE, 2525 Commodity Circle, Sharonville Commerce Center. 772-2050. Excellent buys on down vests for men, women and children during September through December. 50 percent off. Current merchandise is good quality feather pillows, down comforters and sleeping bags.

FAME NAME DISCOUNT SHOES, 15 Convention Way (Skywalk downtown). 721-2244. A Potter's outlet for overstocked, closeouts and last season's shoes and boots for men and women. Up to 50 percent discount.

FASHION WAREHOUSE, 335 W. Fifth Street (downtown). 621-1910. Specializes in name brands for Misses and Juniors — Bobbie Brooks, Ecco-Bay, Garland and Huk-a-poo. Jammed on weekends. Offers 30 to 60 percent discount.

POLLY FLINDERS, 234 E. Eighth Street (downtown). 721-7020. You'll save up to 60 percent on overruns, seconds and discontinued stocks on handsomely made infants' and girls' dresses, up to size 12. Also a nice selection of christening gowns.

4 POSTER BEDDING CO., 11551 Grooms Road in Blue Ash. 489-0726. A warehouse store offering closeouts and surplus of nationally known brands in bedspreads, towels, sheets at 50 to 60 percent below market price. Bates, Bloomcraft, Fieldcrest. Also baby things — quilts, buntings, blankets. Inventory changes every two weeks.

GENTRY SHOPS, 6475 E. Galbraith Road, 791-9800; 745 Swifton Center, 351-3220. Great buys in famous brand suits, topcoats, sweaters, jackets and accessories for men. Half of the retail price. Young, upcoming business execs shop here.

GOOF'S, 9688 Colerain Avenue (Prospect Square). 385-3961. A Levi's outlet. Nice place to shop with the whole family. Closeouts and seconds in Levi's suits, corduroy pants, jackets, fashion jeans for men, women and children. Also cowboy boots, belts and wallets.

GOVERNMENT SURPLUS DEPOT, 4031 Hamilton Avenue. 541-8700. If you're looking for cheap chic, this is the place. Jampacked with surplus from all over the world — jackets and sweaters, down coats, workmen's clothes, fashion clothes, army and navy paraphernalia for men and women. Also camping and hiking equipment. Up to 75 percent off.

JUST KIDS, 9910 Colerain Avenue. 385-2137. First quality merchandise from newborn to size 14 in girls and size 18 in boys. Nice selection of little girls' long dresses. Mini-world, Just Girls, Hillbilly at 50 percent or more savings.

THE LINEN SHOPPE, 7390 Reading Road. 731-5116. Top of the line merchandise in bedsheets, bedspreads, towels, bathroom accessories at 25 to 30 percent off regular price. Some seconds and irregulars.

LOEHMANN'S, INC., 1301 Western Avenue, Cincinnati Union Terminal. 579-9900. If you don't mind communal dressing rooms and bossy help, this is a must to check for first quality, designers' merchan-

Customized Tours

dise. Coats, suits, silk blouses and dresses and accessories. One-third to two-thirds off the department stores' prices.

LOVE FORE OUTLET, 8935 Rossash Road, 793-2100. A golf and tennis outlet. Handpainted and hand-applied t-shirts, golf skirts and shirts, sweaters, jeans, rainwear.

MEN'S CLOTHING OUTLET, Fourth and Walnut, Dixie Terminal Building downtown, 579-0033. If you're the Brooks Brothers type shopper, you'll love this place. American-made suits, sportcoats, slacks from size 36 to 53, short, long and extra-long, all hand-tailored at 50 percent savings.

MILL OUTLET SHOP, Fifth and Washington, Newport, Kentucky, 581-7666. Palm Beach and varsity suits for men; blazers, shirts, blouses for women. Lily Austin and some Evan Picone. Always jammed with shoppers.

MISTAKES UNLIMITED, 4470 Montgomery Road, 351-7588. First quality, overruns and irregulars in children's wear. Infants to size 20 (husky) and the hard-to-find boys' sizes 9 and 11. Carter's, Calabash, Wrangler, Rob Roy. Up to 60 percent off.

PARCHMENTS AND PRESENTS, 7733 Reading Road, 761-0177. Lots of Lucite products — coat racks, clocks, salad bowls, candy dishes, picture frames and serving platters which may be monogrammed, 10 to 15 percent off. Also porcelain and unusual stationery.

SCOTCH CLOSET, 9429 Montgomery Road, 791-1470. For the working girl who wants to look sharp but wants to watch her budget, this is the place. Salesmen's samples in ladies wear — casual separates, daytime and after-five dresses. 30 percent off the retail price.

THE SHOE MARKET, 7613 Reading Road (Valley Shopping Center), 761-7644. If you want better shoes for less, this is the place to go. First quality children's, men's and women's shoes and boots at 50 percent off. Jumping Jacks, Nina, Pappagallo, Joyce, Florsheim.

THE SHOWROOM, 7353 Brookcrest Drive (Roselawn), 731-1470. Designers' women's clothing at 25 to 40 percent off. All new merchandise, no overcuts, no irregulars, from sizes 4 to 18.

TOTES, INC., 10078 Kemper in Loveland, 583-2300. Specializes in rainwear for men, women and children. Rain hats and coats, scarves, boots and rubbers, tote bags and luggage and umbrellas at 50 percent off.

VELVA SHEEN, 3715 Paxton Road (near Hyde Park Plaza), 631-7460. If you don't mind wearing mistakes printed on t-shirts, sweatshirts, jackets and jerseys, check this out. Also overruns, returns and discontinued stocks. Savings up to 50 percent.

Food, Drink, Nightlife

EATING CAPITAL OF THE MIDWEST

Why Cincinnati has never billed itself as the Eating Capital of the Midwest is beyond us. Because it is. We have the same number of Mobil five-star restaurants as New York City and Chicago (one), plus a plateful of four-star places. Cincinnatians not only like to eat, but they like to eat well — and with variety. The Queen City has French, Italian, Vietnamese, Chinese, Japanese, Indian and soul food. We have steaks and ribs and fried chicken and clam chowder and tacos. Whatever else you do in Cincinnati, make sure you don't hang out at the fast-food chains. Taste. Explore. Enjoy.

PRICEY BUT WORTH IT

THE MAISONETTE, 114 E. Sixth Street, 721-2260. The best, absolutely the best, French restaurant anywhere around. Recipient of the Holiday Award for Excellence in Dining for twenty-nine years and the coveted Mobil Five Star Award for seventeen uninterrupted years, the Maisonette lives up to its reputation with impeccable classic French food and perfectly charming and gracious service. Make reservations early and don't plan anything else for the evening.

PIGALL'S, 127 W. Fourth Street, 721-1345. Easily the most elegant restaurant in town with an outstanding wine list and a wonderfully rich French menu. Try their loin of veal stuffed with crabmeat for an experience to write home about.

Food, Drink, Nightlife

THE CHINA GOURMET, 3340 Erie Avenue in Hyde Park, 871-6612. Pay no attention to the menu here. Just ask owner Bing Moy to send something over to the table that he thinks you'd like. He'll never let you down. Everything from Peking Duck to Szechwan green beans, served with flair and good humor.

MECKLENBURG GARDENS, 302 E. University Avenue, 281-5352. If you are staying or have business anywhere near the university or hospital complex in Clifton, make this one of your lunch or dinner stops. Adventurous menu and four stars from Mobil to prove they do it right. Food anywhere from Greek to French. Save room for their famous pecan bottom chocolate toffee pie and you also might like to try the garlic soup, a delightful garlicky, cheesy variation on French onion soup.

GOURMET RESTAURANT, 15 W. Sixth Street in the Terrace Hilton Hotel, 381-4000. Surprise! A hotel restaurant at which the food lives up to the prices. Classic French cooking by a highly-respected Swiss chef in a setting that shows off the twinkling lights of the city to their best. Try the veal or rack of lamb. Exceptional.

THE HERITAGE, 7664 Wooster Pike, 561-9300. Now we don't mean to run you all over town, and this one isn't close to any hotel complexes but it's easy to find and only about fifteen or twenty minutes from town. Just head out Columbia Parkway (the lanes are narrow, but it's mostly traveled by natives who know where they're going so it's safe) which will take you through Mariemont, a charming suburb where it's not advisable to speed. An old roadhouse with new French cuisine. Worth a trip.

LA RONDE, 8001 Reading Road, 821-5110. North suburban in Carrousel Inn. Authentic French cuisine accompanied by an excellent selection of imported and domestic wines. Spectacular desserts.

EDWARDS, 529 E. Fifth Street, 381-2030. We almost hesitated to tell you about this one because while it is easy to see sticking up from the city bottoms, it is difficult to find as Fifth Street drops off the end of the world. Call. Beautifully restored old manufactory with its stately board room. Elegant-casual atmosphere. Service errs on the side of being overly solicitous; you'll never be rushed. Food unique and fresh tasting, leaning toward Northern Italy. A wonderful wine cellar. Dress up or down; you'll see both.

MIDDLE OF THE ROAD

LaROSA'S. You can find one in most neighborhoods, including Sixth Street, between Walnut and Main, downtown (421-2025). Buddy LaRosa has done real well by himself in Cincinnati, for good reason — quality pizza and Italian foods at a good price. Kids like it. (Tell them Mr. LaRosa manages welterweight champ Aaron Pryor.) Beer and wine. Nightly dinner special under \$3. If you want to dress up and really stuff yourself Italian-style, with many choices and endless courses, go to the original LaRosa's, 2409 Boudinot Avenue, Western Hills, 451-1334.

COLONNADE, Fourth and Vine streets, 621-1712. Favorite haunt of thrifty Cincinnati businessmen who can afford to eat at the Maisonette. Homemade food, cafeteria style, good and cheap. There is a new Colonnade, slightly dressier, in the basement of Dubois Tower, Fifth and Walnut at Fountain Square, but purists say the Plain-Jane original is better.

GRAMMER'S, 1440 Walnut Street, 721-6570. Since 1870s doing business in Cincinnati's old, German section, Over-the-Rhine, a trifle rough now, but that will change, and Grammer's is worth it. Eat in the old section with the leaded, bay window and magnificent bar. Mock turtle soup, roast beef sandwiches and German dishes are good. Lunch about \$4. Dinners \$7-\$11.

LENHARDT'S, 151 W. McMillan Street, Clifton, 281-3600. Now, we're not pushing schnitzel, but this is another old German-style family restaurant that is so good, so reasonably priced, that even penurious university professors eat there. Divine tortes and other desserts.

WINDOW GARDEN, 3077 Harrison Avenue, Westwood, 481-2743. Also a newer restaurant, at the shopping plaza, Madison and Edwards roads, Hyde Park. Old-fashioned, home-style cooking, nice decor and service. You can get a complete dinner under \$7 here.

T.G.I. FRIDAY'S, 11340 Princeton Road, Tri-County shopping area, 771-3664. If you are staying at one of the Sharonville lodgings, eat lunch or dinner here. Old-timey, antique saloon decor. Noisy and fun. Kids like it but it's not a kiddie place. Enormous, amusing menus with enormous portions. A la carte items hover about \$4, from burgers to potato skins, a specialty. Order one thing, from hors d'oeuvres through entrees and share. We're not kidding, you can't finish two. No reservations and it's usually crowded, so go early.

POGUE'S/SHILLITO'S/McALPIN'S dining rooms, downtown. All serve good quality meals in nice tearoom settings at a moderate price. They are popular with downtown office workers as well as shoppers.

Food, Drink, Nightlife

For lunch, or dinners Monday and Thursdays when stores downtown are open late.

MR. YAKITORI'S STEAK HOUSE, 235 McMillan Street, Clifton. 721-0707. Tiny, charming teahouse decor and Geisha-style hospitality. *Sukiyaki, tempura and other Japanese foods. You can have a romantic dinner for two with wine under \$20. But you don't have to dress up, since this is Clifton, Cincinnati's university village where everything is casual and everyone perpetually a student. Kids love it, too.*

COVINGTON HAUS, 100 W. Sixth Street, Covington. 261-6655. Cincinnati is home to some great Sunday brunches: The Grand Finale, Vernon Manor, Sigee's, the downtown hotels. We're suggesting this one if the little beggars are eating you out of pocket. *Lots to eat, entrees as well as breakfast foods, served in a restored building in a charming old section of Greater Cincinnati. Go there and fill up for the day. \$3.95 for adults. \$2.95 for kids 2-10.*

Cincinnati is home to a growing number of good Chinese restaurants, cloned as chefs leave to open their own restaurants, just the way it goes in the American Dream. You can't go wrong at **THE MAGIC WOK**, 8063 Montgomery Road at I-71, Kenwood. *Medium prices, slightly dressy decor and good service. If you are willing to get off the beaten track, try this new, little treasure, THE FAR EAST RESTAURANT, 889 W. Galbraith Road at Winton. 521-6611. Fresh food and sumptuous portions; many under \$5. Four-star chef. A tiny place that doesn't look like much but is.*

CHEAP GRUB

It is possible to eat well in the Queen City even if you're on a tight budget. For great meals under \$4, consider the following:

ARNOLD'S, 210 E. Eighth Street. 421-6234. At the north end of downtown, Arnold's is a great neighborhood bar that also serves excellent food. Try the dirty rice special for just \$3.35, an enormous serving of whole-grain rice smothered with chicken livers and green peppers. A tossed salad with house dressing, and bread and butter also is included. Afterwards, have a beer and listen to the live entertainment — usually blue grass, folk or jazz — that gets started around 9 o'clock.

ECHO, 3510 Edwards Road. 321-2816. Located in the uppercrust Hyde Park neighborhood eight miles from the downtown center, this well-lit family restaurant draws pensioners and preppies alike. The food is homemade, portions are moderate, and service is friendly. But get there early, or you'll have to wait in line to get in. Finish your meal at Graeter's ice cream parlor around the corner; their handmade ice cream is world famous.

CENTURY INN, 10675 Springfield Road. 771-4816. If you're staying north of the city in one of the inns on the Chester Road "strip," the Century Inn is just a short drive away — and well worth it. This rustic tavern offers eighteen shrimp in a basket with a generous order of french fries for just \$3.10.

SEVENTH HOUSE, 915 Vine Street. 421-9639. For the health-conscious on a budget, try this small, dowdy but clean restaurant in the center city. For less than \$2, you get an enormous portion of brown rice and vegetables that is delicious and filling. Finish your meal with sweet potato pie and a cup of their excellent tea.

SKYLINE CHILI, twenty-three locations. Bella Abzug heads for Skyline every time she visits the city. The chili is "hot," the combinations — chili, cheese and spaghetti; chili, cheese, spaghetti, onions and beans, etc. — are surprisingly well-suited, and it's a cheap, nutritious meal. Quality varies from location to location, but best bets are the Vine Street location downtown, the Kenwood restaurant on Montgomery Road, and the one in Clifton on Ludlow.

GOOD STUFF IN THE RIGHT PLACES

Cincinnati has mellow bars in the San Francisco tradition, grab-ass bars a la New York, quiet, elegant Chicago hotel-style bars, but ours are easier to get to, easier on the pocketbook and have a certain *je ne sais quoi* that is Cincinnati. If you want to bar hop, go directly to Clifton or Mt. Adams. If you want suggestions, try one of these:

THE BLIND LEMON: 936 Hatch Street, Mt. Adams. A Cincinnati legend. You'll think you've taken a wrong turn as you descend stone steps that seem to lead to a dungeon. But it's quintessentially the right place. Mellow. Antique glass and wood. Music in the garden in summer. Fire in the fireplace when inclement.

THE PAVILION: 949 Pavilion Street, Mt. Adams. Classy, brassy singles scene. Young P&G execs, models, professionals. Generous drinks. Marvelous view from deck. Fireplace.

EDWARDS: 529 E. Fifth Street (Call 381-2030 for directions; you'll

Food, Drink, Nightlife

never find it.) Off-beat but quietly elegant. Like the great, mellow bars of a dozen years ago in San Francisco. Wine a specialty. Jazz.

COCO'S: 322 Greenup Street, Covington. Just a few blocks from Suspension Bridge. Intimate with some of the best real music around. The kind of place you imagine Hemingway and troupe might have frequented in Paris.

ARNOLD'S: 210 E. Eighth Street. Who knows why this old-time grill with its off-beat owner and patrons has become an institution in proper Cincinnati? You can carry on a conversation. No need to dress up. Music. Owner Jim Tarbell with the bushy red beard is worth talking to.

TAPLEY'S: 124 E. Sixth Street. New kid downtown. Sleek, chrome. Nice medium-aged crowd. In the heart of downtown on restaurant row.

PANORAMA LOUNGE: 20th floor, Terrace Hilton, Sixth Street. Tres elegant. Tres chic dress. Tres cher bill. Magnificent city view.

CITY VIEW TAVERN: 403 Oregon Street, Mt. Adams. Dress down. Cheap beer. Magnificent city view. Real Cincinnati people.

ARTHUR'S: Edwards Road at Hyde Park Square. Neighborhood bar in the right neighborhood. Youngish, preppy crowd. The garden is pleasant in nice weather.

TOP OF THE CROWN cocktail lounge: Undiscovered little gem at the top of Stouffer's, just under the revolving restaurant. Maybe it's not crowded at happy hour because people have to figure out which elevator to take to the top, ask; or they figure it will be terribly expensive, it's not. Low-key music. Wonderful view from the river right up to Clifton. Not a place filled with bonhomie for all-evening tippling, but ideal for a nice, quiet chat, romantic or business.

CELEBRITY WATERING HOLES

Spotting a Natalie Wood or Robert Redford in Cincinnati obviously isn't as easy as it is in Hollywood or New York, but with a little preparation and good luck, it can be done. The important thing to keep in mind is where the stars hang out when they are in town. A few favorite haunts:

THE RED DOG SALOON, 11320 Chester Road in Sharonville, is one of the few successful comedy clubs in the Midwest, and when comics such as Pat Paulsen come to town they often drop by to catch local favorite Kevin Orr's act.

MONTGOMERY INN, 9440 Montgomery Road, has the best barbecued ribs around. Bob Hope always makes it a point to eat there when he's working in the city, and so do a lot of other stars.

LOLL 43 on Fountain Square is a favorite of out-of-town baseball players. The cocktail waitresses are skimpily dressed, and it's close enough to the downtown hotels that the ballplayers won't miss curfew — if they don't want to.

MR. WHIPPLE'S in Union Terminal is popular with the Cincinnati Bengals, especially during training camp, since their practice field is nearby.

LUCY'S IN THE SKY, Holiday Inn at Eighth and Linn streets, and **DR. POTTS**, Holiday Inn at Third and Philadelphia in Covington, Ky., are the most likely places to catch Johnny Bench out of his uniform. He's a spokesman for Holiday Inn, and makes it a point to swing there.

COUNTRY & WESTERN HONKY-TONKS

Country music fans will find plenty to shout about in Cincinnati's country/western bars. There's something for everyone, from mechanical bulls for the machismo-minded to quick-wristed fiddlers for foot stompers. Here are three of the best:

BOBBY MACKEY'S: 44 Licking Pike, Wilder, Kentucky. 431-5588. This is the local Gilley's — the hottest country/western night spot in the area. Live, loud music. The Bull. Dancing. Young crowd. Bar-by-the-side-of-the-road decor. Go early on weekends, or prepare to wait in line.

LONG-HORN BALLROOM: 3369 Madison Pike, Ft. Wright, Kentucky. 341-4259. An inconspicuous honky-tonk that remains the best-kept secret in local country music. Features Confederate flags, Formica-topped tables and owner Bobby Borchers' White Buffalo Band. Borchers wrote the title track to "The Best Little Whorehouse in Texas," and has also written for Johnny Paycheck, Barbie Benton, Tanya Tucker, Charlie Pride and Waylon Jennings. We can't promise you'll see one of them, but you never know.

LONE STAR SALOON: 4343 Kellogg Avenue, Cincinnati. 871-6659. This cavernous saloon is filled almost nightly with hard-core rednecks,

Food, Drink, Nightlife

and the mechanical bull makes certain only the real thing does any boasting. Pinball machines, electronic games, too. Loud country band.

GONE DANCIN'

One hardly knows whether to disco or do the fandango nowadays, but if you're willing to try, here are a few of the places around town that will let you.

TOMORROW'S: *Fifth and Race streets.* Big city, glossy, glitzy disco with some pretty hilarious theme nights.

THE CONSERVATORY: *650 W. Third Street, Covington.* Disco and greenery but not too green a crowd.

LUCY'S IN THE SKY: *Top of the Holiday Inn, Eighth and Lin.* Youngish chicks, Travoltas and various others. City view.

JOHN Q'S: *Hunt Road at Plainfield in Blue Ash.* New place lavishly decorated with a romantic theme where presumably one holds onto one's partner while tripping the light fantastic.

MILLCROFT INN: *Smack at the heart of downtown Milford.* The restaurant is expense-account luxe, but the bar side is rough and ready with live music and small dance floor.

FREE ENTERTAINMENT

There are dozens of things you can do or see for free in Cincinnati. Throughout the summer months, the *Chamber of Commerce sponsors free parties in downtown parks* on selected Wednesday and Friday afternoons. And on Monday and Thursday evenings big band dances and twilight concerts are held on Fountain Square. For information, call the Downtown Council (579-3150). Fountain Square — the city's gathering place — is also a great place to people-watch any time of day. Take your lunch and find a place to sit . . . On Saturdays, a great place to spend the day free is the Cincinnati Art Museum in Eden Park. Make it a point to see the Egyptian collection in the Arts of Ancient Civilizations gallery . . . The University of Cincinnati College-Conservatory of Music offers daily musical events, many of them free. Call their 24-hour answering service (tel. 475-4036) for information about upcoming events . . . Free concerts in the parks performed by the Cincinnati Symphony Orchestra are held in June and August. Call the Symphony for times and places (tel. 621-1919).

Notable Etceteras

DON'T BE TROUBLED OVER BRIDGED WATERS

Now, when you've got a big river, one thing is for certain: bridges. Here are Cincinnati's, east to west.

I-275 Bridge. Crosses the Ohio near Old Coney Island several miles east of downtown to Brent, Kentucky. Sometimes called the California Bridge, because that part of Cincinnati is called California.

I-471 Bridge. Named the Daniel Carter Beard Bridge but often referred to as the Big Mac Bridge because of its golden arches. Goes from downtown Ft. Washington Way at Columbia Parkway to Tenth Street in Newport, Kentucky, and will eventually hook up I-71 with I-275.

L&N Bridge. An oldie. Painted bright blue. Get on it from Second Street, or Third Street, one block west of Eggleston. Goes to Third and Saratoga streets in Newport.

CENTRAL Bridge. Right next to the Coliseum. Enter from Second Street and continue to Newport and points beyond.

SUSPENSION Bridge. You'll recognize this one right away because it is old and beautiful. What isn't stone is painted blue. Just west of Riverfront Stadium. Enter at the end of Race or Third streets. Crosses to quaint Covington. Go to Riverside Drive this way, and to Coco's, Mike Fink's, Betty Blake, etc.

CLAY WADE BAILEY Bridge. Formerly C&O Bridge. Crosses from Third Street to Covington.

I-75 Bridge. Also known as the Brent Spence Bridge. Also known as a pain in the asphalt during rush hour. Take this bridge to Main Strasse

Notable Etceteras

Village in Covington, to Florence Mall, the International Airport and other small northern Kentucky communities. Get on from I-75 and from Ft. Washington Way.

PLACES TO REST YOUR WEARY HEAD

CLASSIC TO BASIC

TIP: The City of Cincinnati has a 10 percent hotel tax.

THE WESTIN HOTEL Cincinnati, at Fountain Square between Vine and Walnut. 621-7700. Why not go first class at Cincinnati's classiest new hotel? Opening planned March '81. Rooms with a view, \$84, single or with a friend. Also a limited number of rooms without views at \$69.

STOUTER'S, 141 W. Sixth Street. 352-2100. In the utilitarian motor lodge style. Attached to Convention Center; always bustling. Stay here if you like being on top of things. Singles from \$37; doubles from \$48.

NETHERLAND HILTON, 35 W. Fifth Street. 621-3800. Grand old art-deco dragon. It's got atmosphere and location. As with most old hotels, rooms vary in quality. Singles from \$28. Doubles from \$38.

TERRACE HILTON, 15 W. Sixth Street. 381-4000. Not as new as the Westin or Stouffer's or as old as the Netherland. In the heart of downtown. Be fussy about your room. Singles from \$34; doubles from \$46.

HAWAIIAN VILLAGE, Howard Johnson's North, 11440 Chester Road. 771-3400. In the heart of the Sharonville lodging strip off I-75. Pseudo-Hawaiian atmosphere that may appeal to kids and to you if you have an Aloha shirt. Lots to do along the strip. Singles from \$35; doubles from \$41.

HOLIDAY INN RIVERFRONT, W. Third Street, Covington, Kentucky. 291-4300. Despite being in the next state, it's just a minute or so from downtown across the bridge. Nice location for tourists. Singles from \$30; doubles from \$39.

HILTON INN, I-275 and Route 42, Sharonville. 563-8330. Convenient to the industrial/commercial centers north of the city. Singles from \$39; doubles from \$49. Executive Tower rooms, \$60, include morning papers, continental breakfasts, wine and cheese and other amenities.

CARROUSEL INN, 8001 Reading Road. 821-5110. Older, sprawling motel complex with lots to do. Stay here if you don't like heights, or if you have friends in Roselawn, Amberley, Wyoming or other nearby suburbs. Singles from \$36; doubles from \$39.

KINGS ISLAND INN, 5691 Kings Island Drive, right next to the famous amusement park. 241-5800. During Kings Island season: \$63, two per room; \$6 for each person additional over 12; little kids free. You can stuff up to six per room.

FOR THOSE WHO MARCH TO A DIFFERENT DRUMMER

VERNON MANOR, 400 Oak Street at Burnet Avenue. 281-3300. Perfect gem of a medium-small hotel of the '20s beautifully redone. This is where we would stay. This is where The Beatles stayed. Shuttle service to downtown about four minutes away. Singles \$52; doubles \$62; executive studios with dining and kitchens \$72; diplomat suite \$150; penthouse with two bedrooms plus living area \$250; with three bedrooms \$300. The penthouses are spectacular; most of the stars stay here when they come to town.

GOLDEN LAMB, in the heart of Lebanon, Ohio, about forty-five minutes from downtown. 621-2708. Ohio's oldest inn and one of the country's most charming. Stay where Dickens slept when he toured America. Shaker artifacts and other antiques. Wonderful food. Nineteen rooms, quaint but very comfortable, \$36-\$45. Call ahead for reservations particularly in warm weather.

QUEEN CITY CLUB, 331 E. Fourth Street. 621-2708. If you know a member of this prestigious city club, or can locate a friend of a friend to get you in, this is the place. Elegant, quiet, stuffy but wonderful. Like a scene from *Upstairs-Downstairs*, a London men's club of the nineteenth century. And a definite bargain, \$37.50 single and \$46.76 double which already includes taxes.

MARIEMONT INN, 6800 Wooster Pike. 271-2100. Charming little (sixty-two rooms) inn of the suburbs with an English village flavor. If you are visiting friends in Hyde Park or Indian Hill, this is a good location. Singles from \$27; doubles from \$39. Royal chamber \$50; suites with sunken tub, et al. \$60.

CINCINNATI CLUB, 20 Garfield Place. 241-7000. Another old Cincinnati private club, not quite as exclusive as Queen City. Located on one of downtown Cincinnati's loveliest avenues with a park at center. About sixty rooms. Singles from \$27; doubles from \$35. Get explicit description of, or see, the room. The old buildings have character, but accommodations vary.

Notable Etceteras

ON THE CAMPUS

During the summer months, one residence hall on the University of Cincinnati campus offers accommodations to visitors at rates well below half of those at motels in town. Students affiliated with youth hostel organizations, and other large groups get first crack at the limited number of rooms, however, so call ahead. Ask for Miss Menzies (tel. 475-6461). Also available on the UC campus, year round, are one-bedroom guest apartments at \$25 a night, or \$137 a week — including one apartment on the fourteenth floor of Sander Hall that offers a beautiful view. Downtown, the **Milner Hotel**, 108 Garfield Place (tel. 241-3570) offers a clean room in pleasant, convenient surroundings for \$16-\$18/single, \$18-\$20/double. And for women, the **Anna Louise Inn For Women**, 300 Lytle Place (tel. 421-5211) is the best lodging bargain in the city at just \$7.65 a night. The building and grounds are lovely, and a cafeteria and laundry are on the premises. The office closes at 4 p.m., though, so a money order or cashier's check is required to pay for your room if you arrive late.

SHOPPING MALLS

Strictly speaking, a mall is an open or covered passageway accessible to rows of stores or shops. They're usually suburban and surrounded by acres of parking, but Cincinnati's vibrant **downtown** is a *mall of sorts*, thanks to the covered skywalks that crisscross the city. The above-ground walkway connects major department stores, convention center, hotels and restaurants. You can get on it at several points from Elm Street to Walnut Street between Fifth and Sixth streets. Do not expect the escalators to work.

Near downtown, as well as near and dear to Queen City hearts, is **Union Terminal**, a grand old train station which now is a *grand new shopping mall* with gourmet foods, Lochmann's cut-rate designer clothes, F.A.O. Schwartz toys and a variety of shops. Take Metro bus #1, the **Ezzard Charles**, from downtown, or take the **Ezzard Charles Drive** exit off Interstate 75 north. Five minutes from downtown.

The "**Florence Y'All**" water tower off Interstate 75 in Kentucky will lead you to **Florence Mall**, the largest shopping center in Greater Cincinnati and home of major department stores, interesting tiny shops and dozens of places to find good things to eat.

Interstate 275 west to the **Colerain** exit will take you to **Northgate Mall**. Major department stores, good variety of shops and restaurants.

If you stay at any of the motels on the Chester Road strip, you're within spending distance of one of the country's oldest shopping malls — **Tri-County Shopping Center** at Princeton and Kemper roads, just off Interstate 275. Major department stores, plus requisite shops, exhibits, restaurants.

Other malls anchored by department stores scattered around the Greater Cincinnati area include:

Beechmont, 7500 Beechmont Avenue, and **Cherry Grove**, 8820 Beechmont Avenue (Columbia Parkway east to Beechmont exit).

Kenwood Mall and **Kenwood Plaza**, both at the intersection of Kenwood and Montgomery roads, Interstate 71 north to Kenwood or Montgomery exits.

Swifton Center, 7030 Reading Road. Interstate 75 to Paddock Road exit, east to Seymour. Corner of Seymour and Reading.

Western Hills Plaza, 6000 Glenway Avenue, Eighth Street west to Glenway.

Eastgate, Eastgate Boulevard in Amelia, Columbia Parkway east to Beechmont exit, cross levy, then exit at Route 32, follow Route 32 for about ten miles.

HOTLINES

Here's how you can dial your way to a:

BUS — Queen City Metro at 621-4455 has a real, live person who will tell you where to get off (or on) from 6:30 a.m. to 10 p.m. Monday through Friday, from 7 a.m. to 9 p.m. Saturday and 7 a.m. to 10 p.m. Sunday.

DENTIST — Cincinnati Dental Society at 621-2796 will give you a referral from 9 a.m. to 5 p.m. Monday through Thursday and a 24-hour service which begins Friday and lasts through the weekend.

DOCTOR — Academy of Medicine offers a 24-hour referral at 721-2345.

FUN — Greater Cincinnati Convention and Visitors Bureau has a 24-hour recording of things to do, updated regularly, at 421-4636.

Notable Etceteras

LIFT — Dial-a-Devotion at 662-6611 offers a recorded blessing and spiritual message, and Dial-a-Prayer at 791-2345 begins with an inspirational message and ends in prayer.

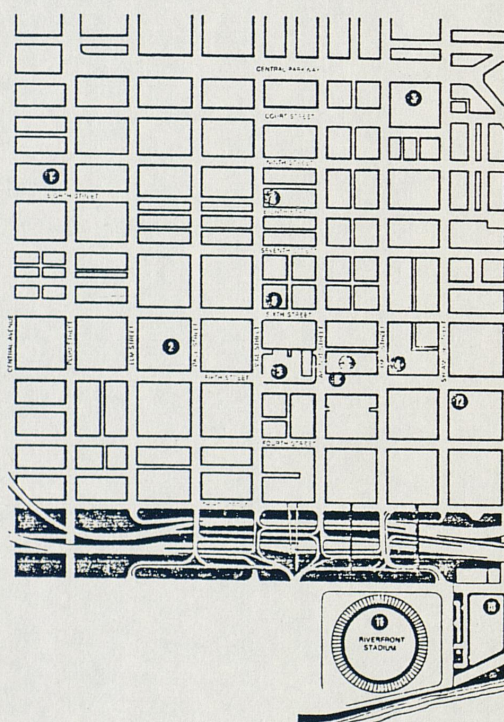
PARK — If you get a sudden urge to see grass and trees, try to get it between 8 a.m. and 4:30 p.m. on weekdays and you can telephone the Cincinnati Park Board at 352-4080 for information on how to get to the park nearest you.

VET — If Felix gets sick during office hours, just head for the **Yekow Pages**. But if your pet is like most, he will fall ill on holidays, evenings and weekends when nobody answers the phone. Animal Emergency Clinic at 248-0111 is open nightly weekdays from 5 p.m. and opens at 1 p.m. Saturdays and stays open until Monday morning.

WHAT TO WEAR

Cincinnati is a city which enjoys fairly moderate temperatures. January averages about 31 degrees; April, 54; July, 76, and October, 57. However, do not be deceived by the modest normal average temperatures of summer months. It is **MUGGY**. We suggest that you bring the coolest possible garb you own which still falls within the bounds of decency.

If you intend to mingle without looking like a tourist, you will have to tailor your wardrobe to your activities. For instance, if you decide to go on one of our Singles Scene Tours, we suggest cowboy hats and designer jeans. On the other hand, if your travels take you to the West side of Cincinnati you may want to invest in a "We're Reds Hot" t-shirt. East side inhabitants regard the image of an alligator a symbol of good fortune and wear likenesses of the creature on their apparel.



- | | |
|----------------------|-------------------------|
| 1. City Hall | 7. Public Library |
| 2. Convention Center | 8. Palace Theater |
| 3. Court House | 9. Post Office |
| 4. Federal Building | 10. Riverfront Coliseum |
| 5. Fountain Square | 11. Riverfront Stadium |
| 6. Government Square | 12. Taft Theater |

Tips For Travelers

IF YOU'RE A DODGERS FAN, *don't mention it while you're in Cincinnati*. It's not that Cincinnatians think everybody favors the Reds, they just, by and large, *hate* the Dodgers.

WHEN THE CROSSWALK SIGNS SAY "Don't Walk," don't — even if there are no cars coming. You could get arrested for jaywalking and, at the very least, be taken for a newcomer or, worse, an outsider.

DON'T TRY TO BRIBE A COP.

DO TRY TO BRIBE THE HEADWAITERS.

DON'T REGARD STREET MAPS as *absolutely designed for motorists*. Many maps will show a street flowing continuously over a hill, when in real life, the street stops at the hill and there's a stairway to the other side where the street continues. If you need to follow that street, you must do so without benefit of your car.

DON'T GO TO THE UNIVERSITY OF CINCINNATI *without a knowledgeable guide*. We've known folks who have wandered around there for weeks trying to remember where they parked their cars.

DON'T ASK DIRECTIONS FROM FLASHILY DRESSED women *loitering on Vine Street after dark*. They're either prostitutes or cops.

DON'T BE RUDE TO CLERKS, ticket takers or waitresses. It's not done here.

WATCH THE THROTTLE on *Columbia Parkway*; it's a speed trap.

BANKING HOURS in Cincinnati generally are from 9:30 a.m. to 5 p.m. Monday through Friday.

IN OHIO, HARD LIQUOR is *sold only at state stores*. It's cheaper in Kentucky and Indiana.

AVOID I-75 SOUTH — *and especially the I-75 bridge into Kentucky* — *on Friday afternoons*. Traffic generally is tied up for miles. If you have a flight scheduled between 4 and 7 p.m. any weekday, allow yourself extra time to cross the river.

SHOE COME UNGLUED? Take it to *Kathman's, 608 Vine St.* They can save almost any sole.

CINCINNATI DRIVERS are *not generally aggressive*. Drivers here are apt to "let you in" if you signal and ask politely.

DOWNTOWN NUMBERED STREETS run parallel to the river beginning with Second Street. Major North/South streets, beginning East and moving West are Broadway, Sycamore, Main, Walnut, Vine, Race, Plum, Central. Vine is the divider for East-West addresses.

WHEN A CINCINNATIAN SAYS "PLEASE?" *he is not begging*. It is a colloquialism for, "Would you please repeat that, I didn't quite hear you."

A REALLY NICE ALL-NIGHT RESTAURANT *downtown* is Rusconi's on Sixth Street between Race and Elm.

IF YOU ARE TOURING UNION TERMINAL *on Sunday, there is nothing more elegant than Sunday brunch at Les Palmiers*. '30s ambiance. Cathedral-ceilinged room with sunshine pouring through a wall of windows. Pianist rustling sweet tunes. Brunch \$6.55, plus some soups, salads and sandwiches. This hasn't thoroughly caught on yet, so it is generally uncrowded.

YOU REALLY CANNOT GO HOME WITHOUT *trying the infamous Cincinnati chili* which is really a kind of Greek dish, but that's a long story. Try any Skyline. There's one downtown at Vine and Seventh streets. Order a three-way and you'll sound like a native.

FOR TICKETS to a Cincinnati Reds game, call 421-4510; Cincinnati Bengals, 621-3550.

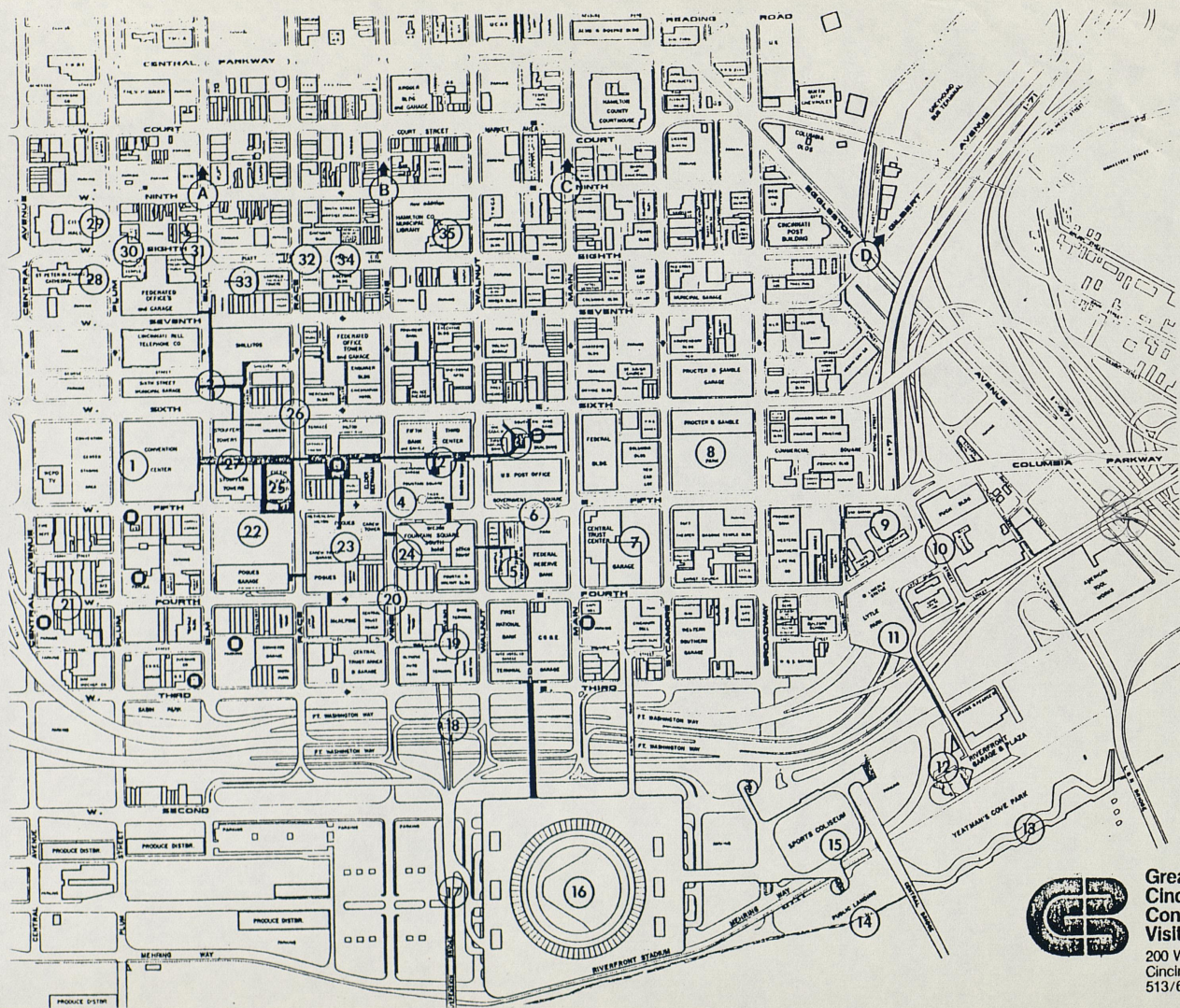
ATTACK OF THE MUNCHIES? If you are tired of paying room service every time you want a munchie, go to Birdie's at Sixth and Vine, across from the Terrace Hilton. You can buy produce, some groceries, baked goods, Cokes plus inexpensive and tasty carry-out soups, salads and sandwiches.

Photography by Trevor Hart. Balloon courtesy of Balloons Unlimited; clothes courtesy of Shillito's; model Marvin Kramer courtesy of Limelight Associates, Inc.

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Additional copies of this brochure are available by sending 50 cents for each plus 15 cents postage to Tours, Cincinnati Magazine, 120 West Fifth Street, Cincinnati 45202. Information on reduced prices for bulk orders can be had by telephoning 579-3111.

Cincinnati



**Greater Cincinnati
Convention and
Visitors Bureau**
200 West Fifth Street
Cincinnati, Ohio 45202
513/621-2142

We are delighted you will be staying at The Westin.

Delmonico's, our Travel Holiday Magazine award winning restaurant, enjoys a strong following in our community.

We would be pleased to reserve a table for you and your guests for a memorable evening with a panoramic view of famous Fountain Square.

Please call (513) 241-3663 or Ext. 2180.

Awaiting your call - Robert Halenbeek
Delmonico's Manager

United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

September 15, 1984

James A. Higgins
Circuit Executive, United States Court of Appeals
for the Sixth Circuit
U. S. Post Office and Courthouse Building
Cincinnati, Ohio 45202

Dear Mr. Higgins:

I received Judge Edwards' invitation to assist on the Court of Appeals during the year 1985. In reviewing my calendar it appears that the week of December 2-6, 1985, would be an appropriate week for me.

Very truly yours,

G. Wix Unthank
Judge

GWU:mem

1985 MASTER SCHEDULE

JANUARY

31-4 NEW YEAR
7-11 _____
14-18 EN BANC SESSION
21-25 _____
28-1 NO COURT

JULY

1-5 FOURTH OF JULY
8-12 _____
15-19 _____
22-26 NO COURT
29-2 _____

FEBRUARY

4-8 NO COURT
11-15 _____
18-22 _____
25-1 NO COURT

AUGUST

5-9 _____
12-16 NO COURT
19-23 _____
26-30 _____

MARCH

4-8 All openings filled
11-15 _____
18-22 NO COURT
25-29 _____

SEPTEMBER

2-6 LABOR DAY
9-13 NO COURT
16-20 _____
23-27 _____

APRIL

1-5 _____
8-12 _____
15-19 _____
22-26 NO COURT
29-3 All openings filled

OCTOBER

30-4 All openings filled
7-11 _____
14-18 NO COURT
21-25 _____
28-1 _____

MAY

6-10 _____
13-17 JUDICIAL CONFERENCE
20-24 NO COURT
27-31 MEMORIAL DAY

NOVEMBER

4-8 _____
11-15 _____
18-22 NO COURT
25-28 THANKSGIVING

JUNE

3-7 All openings filled
10-14 _____
17-21 NO COURT
24-28 NO COURT

DECEMBER

2-6 ✓
9-13 _____
16-20 NO COURT
23-27 CHRISTMAS

CHIEF JUDGE

PIERCE LIVELY
DANVILLE, KENTUCKY 40422

CIRCUIT JUDGES

GEORGE EDWARDS
CINCINNATI, OHIO 45202
ALBERT J. ENGEL
GRAND RAPIDS, MICHIGAN 49502
DAMON J. KEITH
DETROIT, MICHIGAN 48226
GILBERT S. MERRITT
NASHVILLE, TENNESSEE 37203
CORNELIA G. KENNEDY
DETROIT, MICHIGAN 48226
BOYCE F. MARTIN, JR.
LOUISVILLE, KENTUCKY 40202
NATHANIEL R. JONES
CINCINNATI, OHIO 45202
LEROY J. CONTIE, JR.
AKRON, OHIO 44308
ROBERT B. KRUPANSKY
CLEVELAND, OHIO 44114
HARRY W. WELLFORD
MEMPHIS, TENNESSEE 38103

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

MICHIGAN · OHIO · KENTUCKY · TENNESSEE

CHAMBERS OF THE COURT

CINCINNATI, OHIO 45202

September 6, 1984

SENIOR JUDGES

PAUL C. WEICK
AKRON, OHIO 44308
HARRY PHILLIPS
NASHVILLE, TENNESSEE 37203
ANTHONY J. CELEBREZZE
CLEVELAND, OHIO 44114
JOHN W. PECK
CINCINNATI, OHIO 45202
BAILEY BROWN
MEMPHIS, TENNESSEE 38112

Honorable G. Wix Unthank
United States District Judge
Eastern District of Kentucky
P. O. Box 278
Pikeville, Kentucky 41501

Dear Judge Unthank:

For the last three years the District Judges of this Circuit have responded with great generosity to our requests for assistance on the Court of Appeals. Despite heavy workloads in each District, nearly all of the District Judges have served for at least a week on the Court of Appeals during the last three years, and a number of District Judges have served each year. Through that generous response of the District Judges along with the continued heavy workload undertaken by our own Senior Circuit Judges and the assistance of a number of Judges from outside the Sixth Circuit, we have been able to keep up with the increased levels of current filings, although we have not made as much headway on the backlog as we would like.

The Court has recognized for a number of years that our workload requires additional Circuit Judges, and the Congress finally has responded to our pleas by authorizing four additional judgeships for the Court of Appeals. Once all of the additional judges are appointed, I believe that the Court will reduce its reliance on the District Judges of this circuit. However, as you know, the time period for appointment and confirmation of additional judges is quite uncertain, particularly in the present circumstances. It is possible that we may have a new judge or two before the end of this year, but it is likely that we will not have all four of our new judges until well into 1985. We hope to continue our current level of sittings while we await the arrival of our new judges, and I therefore would like to ask you again to consider sitting with the Court of Appeals for a week during 1985.

In making this request, I recognize the considerable burdens which your own dockets place upon you, and I do not lightly ask you to undertake this additional duty. I recognize that there may be instances where your own docket, health or other considerations may preclude your acceptance of a designation for service on the Court

JAMES A. HIGGINS
CIRCUIT EXECUTIVE

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
303 U. S. COURTHOUSE
CINCINNATI, OHIO 45202

FTS 684-3161
(513) 684-3161

October 9, 1985

Honorable G. Wix Unthank
Eastern District of Kentucky
P.O. Box 278
Pikeville, Kentucky 41501

Dear Judge Unthank:

Enclosed is the schedule of sittings for the December 2-13, 1985 session of the Court of Appeals. As you will note you are scheduled to sit for three days during your week with the Court. Five cases will be scheduled for oral argument before each panel each day. In addition two cases will be submitted to each panel for disposition without oral argument pursuant to Sixth Circuit Rule 9. Our Senior Staff Attorney will send to you in the near future additional information regarding the Rule 9 procedure, and our Clerk's office will send to you a listing of cases assigned for oral argument during this session as well as additional general information about internal operating procedures.

Our Clerk's office is preparing the calendar of cases to be scheduled during this December 1985 session and a copy will be forwarded to you for your approval within a few weeks. Upon approval of the calendar by all of the judges, the briefs and appendices will be forwarded to you by the Clerk's office.

not enclosed
As I told you in my previous letter, there are four hotels located within a two block radius of the U.S. Courthouse. They are the Clarion, Hyatt Regency, Netherland Plaza and the Westin Hotel. All of the rates quoted in my letter are subject to a 9% tax. The City of Cincinnati will exempt all federal employees from the payment of this tax provided the enclosed form is presented at the time of registration. The form should be completed by indicating the hotel, name of guest, agency (U.S. Court of Appeals), name of judge with signature. If you have not already done so, I suggest that you contact the hotel of your choice directly and make your reservations as soon as possible.

Chambers will be available for your use while in Cincinnati in Room 632 of the U.S. Post Office and Courthouse. The telephone number of that office is FTS/513-684-2850. Keys for that office will be available in this office upon your arrival in Cincinnati.

Honorable G. Wix Unthank
September 6, 1984
Page two

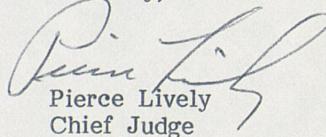
of Appeals. In addition, the appointment of the new judges for our Court may eliminate the need for visiting judges during many of the weeks next year, and it is possible that we may have to notify you sometime next year that the week or weeks of your choice no longer are available because of the appointment of the new circuit judges.

Our present plans are to continue to use in 1985 the sitting schedule which we have used since 1982. Under this schedule the Court is divided into two divisions, with less than all of the active judges of the Court sitting during each hearing session. The Court will be in session for a total of 31 weeks next year, and each active circuit judge will be scheduled for 8 two week sessions.

Enclosed is a schedule showing the weeks the Court will be in session during 1985. To help us in our planning it will be appreciated if you will return a copy of the schedule to Mr. Higgins showing with an "X" the week or weeks during which you would be available to sit with the Court. If you are available for more than one week, it will be helpful if you will indicate your order of preference for the weeks of your availability.

With great appreciation for your understanding and cooperation, I am

Sincerely,



Pierce Lively
Chief Judge

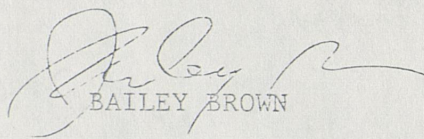
PANEL REPORT

DATE: Wednesday, October 14, 1981 Ctrm 1 1:30 p.m.

PANEL: ENGEL, BROWN & UNTHANK, JJ.

80-5323 United States of America v. David Earl Tidwell
(W.D. Tenn. McRae, J.)

This case was disposed of from the bench, and the Clerk will enter the order.


BAILEY BROWN

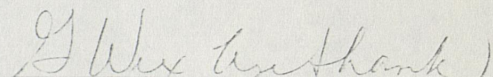
BB:asw

CC: All Judges

October 15, 1981

Dear Judge Brown:

I concur.


G. WIX UNTHANK
JUDGE