

CRIMINAL CASELOAD IN U.S. DISTRICT COURTS: MORE THAN MEETS THE EYE

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INTRODUCTION

There is no dearth of remarks by commentators on the extraordinary growth in the number of civil cases filed annually in the federal courts. From 1940 to 1994, the number of annual civil filings has risen approximately 580%,¹ and, in the nearly thirty-five years from

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1. Compare ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. 3 (1940) [hereinafter 1940 ANNUAL REPORT] with STATISTICS DIV., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, SPECIAL TABLES tbl. C-2 (1994) [hereinafter SPECIAL TABLES]. In 1992, the Administrative Office of the United States Courts changed its statistical reporting year to 12 months ending September 30. Consequently, in order to preserve consistency in reporting periods, we have relied on tables prepared by the Statistics Division of the Administrative Office for the 12 months ending June 30, 1994, which are identical in form to tables published in the Annual Report. These tables, which are on file with the Statistics Division, will be cited as Special Tables x-x, where x-x denotes the form of the table as it normally appears in the Annual Report.

1960 to 1994, civil filings have grown nearly 400%.² Jurists³ and scholars⁴ have noted this growth and have analyzed its causes and consequences, debating possible measures to curb the tide of litigation, although the desirability of abating the flood remains fiercely contested.

Concern over the criminal docket is seemingly all but ignored in the literature. This apparent lack of concern results naturally enough from the sheer force of numbers: in 1940, there were approximately equal numbers of criminal and civil cases filed in the federal courts;⁵ by 1960, there were approximately two civil cases filed for every criminal case;⁶ and in 1994, there were more than five civil cases for every criminal case.⁷ As compared to civil filings, which have demonstrated a strong upward trend since 1940,⁸ criminal case filings have tended to fluctuate, averaging about 37,300 per year, while never exceeding 49,100⁹ nor falling below 28,900.¹⁰

The focus on case filings in particular and cases in general is a natural outgrowth of the fact that the "case" is the basic currency of judicial business. Attorneys file cases; clerks docket cases; judges try cases. Of the thirty tables dealing with civil and criminal activities of the federal district courts appearing in the 1993 *Annual Report of the Director of the Administrative Office of the United States Courts*,¹¹ more

2. Compare ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. C-1 (1960) [hereinafter 1960 ANNUAL REPORT] with SPECIAL TABLES, *supra* note 1, at tbl. C-1.

3. See, e.g., RICHARD A. POSNER, THE FEDERAL COURTS: CRISIS AND REFORM (1985); Harry T. Edwards, *The Rising Workload and Perceived "Bureaucracy" of the Federal Courts: A Causation-Based Approach to the Search for Appropriate Remedies*, 68 IOWA L. REV. 871 (1983).

4. See, e.g., WILLIAM P. McLAUGHLAN, FEDERAL COURTS CASELOADS (1984); Erwin Chemerinsky & Larry Kramer, *Defining the Role of the Federal Courts*, 1990 B.Y.U. L. REV. 67; Marc Galanter, *The Life and Times of the Big Six; or, the Federal Courts Since the Good Old Days*, 1988 WIS. L. REV. 921.

5. Compare 1940 ANNUAL REPORT, *supra* note 1, at tbl. 3 with 1940 ANNUAL REPORT, *supra* note 1, at tbl. 11.

6. Compare 1960 ANNUAL REPORT, *supra* note 2, at tbl. C-1 with 1960 ANNUAL REPORT, *supra* note 2, at tbl. D-1.

7. Compare SPECIAL TABLES, *supra* note 1, at tbl. C-2 with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

8. Compare 1940 ANNUAL REPORT, *supra* note 1, at tbl. 3 with SPECIAL TABLES, *supra* note 1, at tbl. C-1.

9. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-1 (1972) [hereinafter 1972 ANNUAL REPORT].

10. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-1 (1980) [hereinafter 1980 ANNUAL REPORT]. Significantly, the maximum was reached in 1972 while the minimum was achieved *eight years later* in 1980.

11. See ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbls. C-1 to D-12 (1993).

than half deal directly with cases filed, terminated, pending, and tried, and with time intervals associated with case milestones.¹²

Federal judges today are spending a disproportionate amount of their time on criminal cases, due to the increase in defendants, trials, motions, hearings, and sentencings. This Article investigates several underlying characteristics of the criminal dockets of the federal courts. What we hope to make clear is the notion that judicial "workload" is not reflected adequately in a single-dimensional measure such as case filings, but rather is multidimensional. "[F]igures on case filings cannot tell the whole story about caseload. A case is not a standard measurement like a quart or a constant (that is, inflation-free) dollar."¹³ To understand the nature of judicial workload, one must look beyond the raw filing numbers.

I. THE CRIMINAL CASELOAD: A PERSPECTIVE

Over the last fifty-five years, the federal district court caseload has grown dramatically. From 1940 to 1994, the number of civil cases filed in the district courts increased nearly 580%.¹⁴ Even more significant changes have occurred in bankruptcy courts and courts of appeals, where filings have risen 1510%¹⁵ and 1290%,¹⁶ respectively. The increases are similarly spectacular from 1960 to 1994. Civil filings have expanded by 300%,¹⁷ bankruptcy filings have increased 670%,¹⁸ and appeals have risen approximately 1150%.¹⁹

Unlike these areas that have had a relatively consistent upward trend in filings, criminal filings have fluctuated since 1940. In 1994, criminal filings were nearly fifty-eight percent higher than in 1980,²⁰ but only fourteen percent higher than in 1970,²¹ fifty-three percent

12. *Id.* tbls. C-C-10, D to D-3, D-8.

13. POSNER, *supra* note 3, at 66.

14. Compare 1940 ANNUAL REPORT, *supra* note 1, at tbl. 3 with SPECIAL TABLES, *supra* note 1, at tbl. C-2.

15. Compare 1940 ANNUAL REPORT, *supra* note 1, at tbl. 21 with SPECIAL TABLES, *supra* note 1, at tbl. F.

16. Compare 1940 ANNUAL REPORT, *supra* note 1, at tbl. 1 with SPECIAL TABLES, *supra* note 1, at tbl. B.

17. Compare 1960 ANNUAL REPORT, *supra* note 2, at tbl. C-1 with SPECIAL TABLES, *supra* note 1, at tbl. C-1.

18. Compare 1960 ANNUAL REPORT, *supra* note 2, at tbl. F-1a with SPECIAL TABLES, *supra* note 1, at tbl. F.

19. Compare 1960 ANNUAL REPORT, *supra* note 2, at tbl. B-1 with SPECIAL TABLES, *supra* note 1, at tbl. B-1.

20. Compare 1980 ANNUAL REPORT, *supra* note 10, at tbl. D-2 with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

21. Compare ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1970) [hereinafter 1970 ANNUAL REPORT] with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

higher than in 1950,²² and twenty-one²³ percent higher than in 1960.

While the criminal caseload has fluctuated over the last twenty years, other factors, taken in combination with the criminal caseload, have spurred Congress to provide more judicial resources. Since 1972, Congress has increased the number of Article III judgeships in district courts on three separate occasions—in 1978,²⁴ 1984,²⁵ and 1990.²⁶

The number of judgeships is now sixty-two percent higher than in 1972. This increase, taken in combination with criminal case filings which have grown by a smaller relative amount, has resulted in raw criminal case filings per judge almost forty percent below that of 1972.²⁷ Criminal case filings per judge²⁸ stood at 117 in 1972²⁹ but only fifty-eight in 1994.³⁰ The number of defendants filed per judge reflects a similar comparison: 163 defendants per judge in 1972,³¹ but only eighty-five per judge in 1994.³²

22. Compare ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1950) [hereinafter 1950 ANNUAL REPORT] with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

23. Compare 1960 ANNUAL REPORT, *supra* note 2, at tbl. D-2 with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

24. Act of Oct. 20, 1978, Pub. L. No. 95-486, §§ 1-2, 92 Stat. 1629 (codified as amended at 28 U.S.C. § 133 (1988 & Supp. V 1993)).

25. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 202, 98 Stat. 333, 347 (codified as amended at 28 U.S.C. § 1334 (1988 & Supp. V 1993)).

26. Federal Judgeship Act of 1990, Pub. L. No. 101-650, § 203, 104 Stat. 5089, 5099 (codified as amended at 28 U.S.C. § 44 (1988 & Supp. V 1993))

27. For the remainder of this Article, all traffic offenses are not included in criminal caseload statistics. These offenses, which make up the bulk of misdemeanor offenses, are included in A.O. data beginning in 1974-1975. See, e.g., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1976) [hereinafter 1976 ANNUAL REPORT]. They are not included in this Article because of their tendency to distort any comparisons made with prior years and because they are usually disposed of by magistrate judges rather than Article III judges. See 1976 ANNUAL REPORT, *supra*, at 226.

28. This comparison uses the number of authorized judgeships rather than the actual number of judges available. While the use of this number is not completely valid because of the number of vacant positions and the number of senior judges who provide caseload assistance, it is the only one consistently available over the twenty-year period. In addition, recent data from the A.O. suggests that nationwide, the work performed by senior judges tends to offset the vacancy rate (except during the years immediately following a judgeship bill), thus making the number of "judgeships" an acceptable substitute for the number of "judges."

29. 1972 ANNUAL REPORT, *supra* note 9, at tbl. D-2.

30. SPECIAL TABLES, *supra* note 1, at tbl. D-2.

31. STATISTICS DIV., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, SPECIAL TABLES OF DEFENDANTS BY OFFENSE FROM 1969-1975 (1994) [hereinafter SPECIAL TABLES OF DEFENDANTS]. From 1964 to 1975, the A.O. did not publish statistics on criminal defendants filed. Through special analysis of its databases, however, the Statistics Division of the A.O. was able to construct tables of defendants filed by type of criminal offense dating back to 1969. These data are used herein. These Special Tables are on file with the Statistics Division of the Administrative Office.

32. SPECIAL TABLES, *supra* note 1, at tbl. D-2.

II. CHANGES IN THE NATURE OF THE CRIMINAL CASELOAD

While the absolute volume of criminal case filings has changed comparatively little, significant changes have occurred in the *mix* of cases. Table 1 below illustrates that drug offenses, particularly those involving marijuana, increased rapidly and then declined in the 1970s. Selective service cases³³ experienced similar changes. At the beginning of the 1970s, selective service case filings numbered over 5000.³⁴ By 1980 they had all but disappeared.³⁵ Drug filings also fell significantly during the ten-year period, from a high of 8800 in 1973³⁶ to only 3130 in 1980.³⁷ From 1980 to 1990, however, drug cases caused a dramatic increase in the overall criminal caseload. During that time, criminal case filings rose by sixty percent,³⁸ while drug cases grew from 3130 cases in 1980³⁹ to 12,226 in 1990,⁴⁰ a 290% increase.

Chart 1 below shows the changing nature of the criminal dockets. In 1972, drug defendants accounted for only eighteen percent of all defendants charged with a crime in federal court.⁴¹ Violations of national defense laws, primarily the Selective Service Act,⁴² comprised eight percent of the total criminal docket, while auto theft violations accounted for five percent.⁴³ By 1982, auto theft had decreased to one percent of all cases filed,⁴⁴ and violations of national defense laws declined to less than one-half of one percent.⁴⁵

33. Selective Service cases are generally charged under 50A U.S.C. § 462 (1988).

34. 1972 ANNUAL REPORT, *supra* note 29, at tbl. D-2.

35. A total of four cases representing violations of National Defense Laws were filed in 1980. 1980 ANNUAL REPORT, *supra* note 10, at tbl. D-2. Beginning in 1978, the A.O. ceased separate reporting of Selective Service cases and combined such cases with others under the heading National Defense Laws.

36. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1973) [hereinafter 1973 ANNUAL REPORT].

37. 1980 ANNUAL REPORT, *supra* note 10, at tbl. D-2.

38. Compare 1980 ANNUAL REPORT, *supra* note 10, at tbl. D-2 with ADMINISTRATIVE OFFICE OF THE U.S. COURTS, REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1990) [hereinafter 1990 ANNUAL REPORT].

39. 1980 ANNUAL REPORT, *supra* note 10, at tbl. D-2.

40. 1990 ANNUAL REPORT, *supra* note 38, at tbl. D-2.

41. 1972 ANNUAL REPORT, *supra* note 9, at tbl. D-2.

42. Military Selective Service Act of 1948, 62 Stat. 604 (codified at 50 App. U.S.C. § 451-473 (1988)).

43. 1972 ANNUAL REPORT, *supra* note 9, at tbl. D-2.

44. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1982) [hereinafter 1982 ANNUAL REPORT].

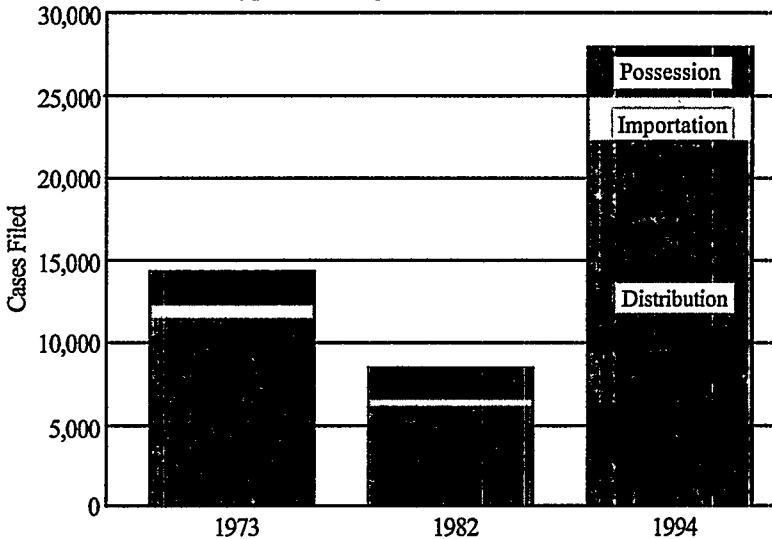
45. *Id.*

Defendants charged with drug violations accounted for twenty-one percent of the total that same year.⁴⁶

Table 1. Total Criminal and Drug Cases and Defendants

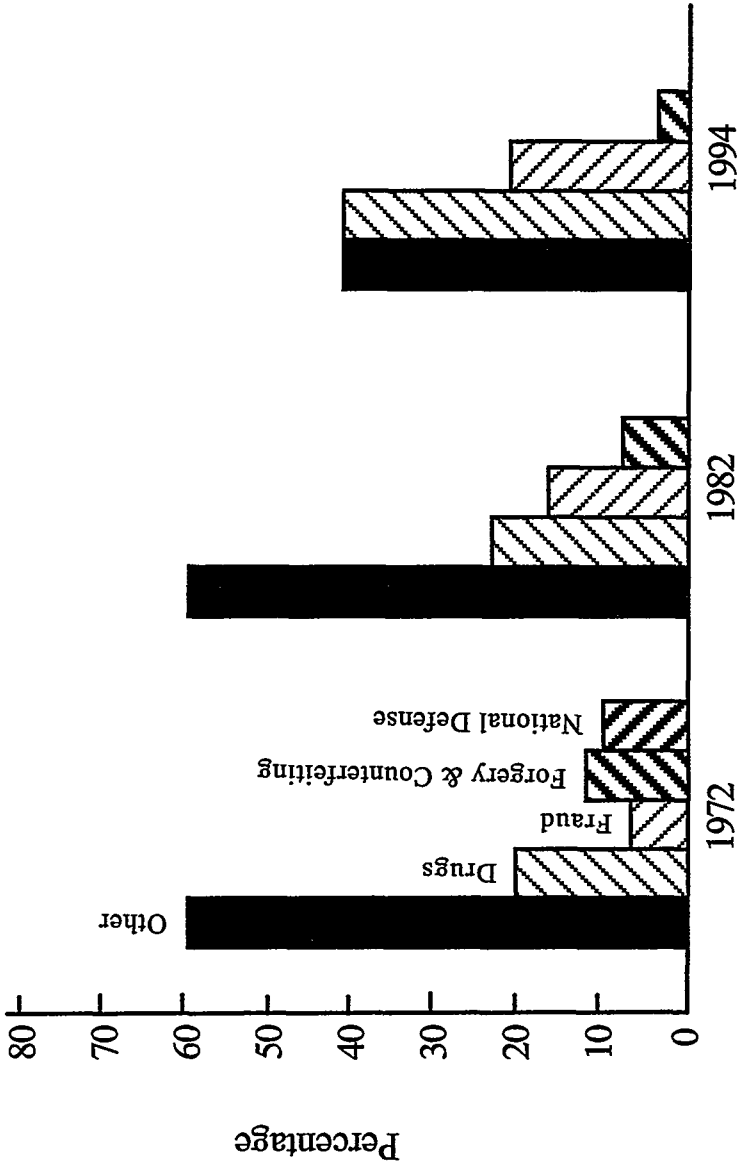
Year	Total		Drug	
	Cases	Defendants	Cases	Defendants
1969	33,535	44,814	3,458	5,373
1974	37,136	51,088	7,374	12,369
1979	26,088	36,791	3,277	7,208
1984	28,685	42,446	5,606	11,854
1989	35,749	52,298	11,541	21,805
1994	37,547	55,091	11,356	21,910

Chart 2. Types of Drug Offenses: 1973, 1982 and 1994



46. *Id.*

Chart 1. Criminal Defendants Filed: 1972, 1982 and 1994



By 1994, drug offenses accounted for forty percent of all criminal defendants.⁴⁷ Forgery and counterfeiting offenses, which accounted for ten percent of all defendants in 1972⁴⁸ and seven percent in 1982,⁴⁹ comprised only three percent of the criminal caseload in 1994.⁵⁰ Therefore, while the number of criminal cases was high in the early 1970s, the nature of the offenses charged was entirely different from what they would later be in the first half of the 1990s. The portion of the criminal caseload attributable to drug offenses has undergone the greatest transformation. The percentage has more than doubled over the last twenty years.

Chart 2 above demonstrates that the nature of drug offenses filed in the district courts has also changed. Drug distribution has always been the most frequently charged offense; however, after falling significantly to 1982, by 1994 it made up a greater percentage both of all drug cases (seventy-four percent) and of all drug defendants (eighty-one percent) than in 1972. Similarly, distribution cases also made up a greater absolute number of cases in 1994 (7753) than in 1972 (6520).⁵¹ Drug offenses relating to importation and manufacturing have also increased, but each of these offenses represents a much smaller percentage of all drug offenses than distribution.⁵²

Possession⁵³ is the one category of drug crime where filings have declined. In 1972, there were 1561 possession cases—seventeen percent of drug cases filed. The numbers decreased slightly in 1994—1469 cases, or fourteen percent of drug cases filed. The ratio of defendants per case for possession was only 1.2 in 1994 compared to 1.3 in 1972. The average number of defendants per case for distribution, however, was 2.3 in 1994 compared to 1.8 in 1972.⁵⁴

Changes in case mix and average defendants per case has significant implications for judicial workload that can be appreciated by examining the results of the most recent weighted caseload time study conducted by the Federal Judicial Center (F.J.C.).⁵⁵ The F.J.C. study

47. SPECIAL TABLES, *supra* note 1, at tbl. D-2.

48. SPECIAL TABLES OF DEFENDANTS, *supra* note 31.

49. 1982 ANNUAL REPORT, *supra* note 44, at tbl. D-2.

50. SPECIAL TABLES, *supra* note 1, at tbl. D-2.

51. While the tables published in the A.O.'s Annual Report broadly classify drug filing by type of drug, i.e., marijuana, narcotics, controlled substances or other, data on the type of offense had to be assembled from A.O. databases of individual defendant records. The results of this special analysis are on file with the Statistics Division.

52. *See supra* note 51.

53. Possession cases are frequently charged under 21 U.S.C. §§ 841, 843, 844, 955, 960, 962, and 963.

54. *See supra* note 51.

55. Memorandum to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources, Federal Judicial Center, Recommended New Weights and Weighting System, Judicial

found that cocaine/heroin distribution offenses take an average of six hours of a judge's time per defendant, compared to only 1.5 hours per defendant for cocaine/heroin possession offenses. Similarly, the time spent per defendant for distribution of marijuana (four hours) is twenty times the amount of time spent for possession offenses (0.2 hours).⁵⁶

Distribution, a drug crime that has a high defendant-to-case ratio, is increasing as a share of all drug offenses. Possession, a drug offense with a low defendant-to-case ratio, is falling in both absolute and relative terms. These changes are particularly significant when considered in light of the time required for disposition of the charges. The consequence for the courts is that the time required for disposition of the defendants is increasing at a much faster rate than the number of defendants; more defendants require several hours of judicial time and fewer require a relatively short amount of time.

For example, a hypothetical district court that had one hundred drug cases in both 1973 and 1994 would have had seventy-two drug distribution cases and seventeen drug possession cases in 1973. In 1994, the court would have had seventy-four distribution cases and fourteen possession cases.⁵⁷ In 1973, there were 1.8 defendants per distribution case, so the court would have had 130 defendants charged with distribution. In 1994, the 2.3 defendants per case would have resulted in a total of 172 defendants. The number of defendants charged with possession would have been twenty-two in 1973 and seventeen in 1994.

Applying the F.J.C. time study data to the 1994 hypothetical figures indicates that a total of 946 hours of judicial time would have been required for defendants charged with drug distribution and seven hours for defendants charged with possession. If the current F.J.C. results were appropriate in 1973,⁵⁸ the judicial time would have been 689 hours for distribution offenders and twenty-four hours for

Conference of the United States (Nov. 9, 1993) (on file with authors) [hereinafter *Recommended New Weights*]. The Federal Judicial Center periodically conducts studies of the amount of judge-time consumed by various types of civil and criminal cases. These studies, generally referred to as weighted caseload time studies, provide two means of adjusting for the difficulty, as measured by average required judge-time, of different case types in making comparisons of caseloads.

56. *Id.*

57. For simplicity, we ignore drug cases involving manufacture and importation. These offenses account for a small percentage of drug cases in both 1973 and 1994. *See supra* note 51.

58. The amount of time to dispose of cases was probably lower in 1973 than in 1994. Compare current weights for drug cases, *Recommended New Weights*, *supra* note 55 with weights for drug cases, FEDERAL JUDICIAL CTR., THE 1969-1970 FEDERAL DISTRICT COURT TIME STUDY 67C (1971).

possession defendants. Thus, the judicial time required for the *same number of drug cases* would have been 713 hours in 1973 and 953 hours in 1994, an increase of thirty-four percent due entirely to changes in mix and defendants per case. Considering that the number of drug cases has actually grown substantially since 1973, the impact of the changes in the defendant-to-case ratio and in the mix of cases is even more significant.

This example demonstrates clearly why a numerical change in the number of filings does not fully account for the workload impact at the federal district court level. When auto theft cases decline and drug cases increase, a criminal case that would normally conclude quickly is replaced by one that demands more court resources. The workload implications vary according to the number of defendants per case, the likelihood of a bench trial or jury trial, the length of the trial, and the probability of conviction.

The number of criminal defendants per case has risen modestly since 1978, from 1.4 to 1.5.⁵⁹ When drug defendants are not included, the ratio of defendants to cases has remained stable, at about 1.3.⁶⁰ This results from the increasing proportion of drug cases and has occurred despite the criminal-defendants-per-case ratio for *drug cases* declining over the same time period from 2.1 to 1.93.⁶¹

Although the number of criminal defendants per case rose modestly, the number of multidefendant cases grew from 4805 in 1980 to more than 7000 in 1994,⁶² an increase of forty-six percent. These movements are consistent with the general growth in criminal filings and, consequently, have not resulted in a significant change in the percentage of total criminal filings represented by multidefendant cases. That percentage has remained fairly constant at about twenty percent for almost twenty years.⁶³ The absolute increase in all multidefendant cases, however, is the most revealing in its effect on the courts: the number of district court judgeships has grown only

59. Compare ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1978) [hereinafter 1978 ANNUAL REPORT] with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

60. Compare 1978 ANNUAL REPORT, *supra* note 59, at tbl. D-2 with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

61. Compare 1978 ANNUAL REPORT, *supra* note 59, at tbl. D-2 with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

62. Special analysis of unpublished A.O. data. This analysis cross-tabulated criminal cases filed by year and case type against the number of defendants charged in each case. The analysis is on file with the Statistics Division.

63. The number of multidefendant *drug cases* in the four-year period from 1988 to 1994 increased from 3471 to 3702. See *supra* note 62.

twenty-six percent, from 516 authorized in 1980 to 649 in 1994.⁶⁴ Thus, more than 2200 additional multidefendant cases had to be distributed among a judiciary that had added only 133 new positions, not all of which had been filled by the end of 1994.⁶⁵

Compounding this problem is what might be called "diseconomies of scale" present in multidefendant cases. According to recent F.J.C. time-study research, the average time spent *per defendant* in multidefendant cases is 347 minutes, compared to only 178 minutes in cases with a single defendant.⁶⁶ For cocaine distribution, the differential is considerably higher: multidefendant cases average 447 minutes per defendant, and single-defendant cases average 232 minutes.⁶⁷

Although the increase in criminal defendants since 1980 has driven the total close to the number found in the early 1970s, the nature of the disposition of these defendants is not the same as it was two decades ago, when the conviction rate was approximately seventy-five percent.⁶⁸ By 1994, the conviction rate was eighty-four percent.⁶⁹ Drug defendants, who have an eighty-six percent conviction rate,⁷⁰ are not solely responsible for this gain; other criminal activities, such as fraud⁷¹ and illegal immigration,⁷² were more likely to result in conviction.

Because of higher conviction rates, judges today sentence proportionally more defendants. Sentencing is further complicated by the Sentencing Guidelines,⁷³ which require more of a judge's time than discretionary sentencing did in the past. Even when accepting guilty pleas, judges must now hold hearings and make findings that were not required before the Sentencing Guidelines.⁷⁴ A higher conviction

64. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, HISTORY OF THE AUTHORIZATION OF FEDERAL JUDGESHIPS INCLUDING PROCEDURES AND STANDARDS USED IN CONDUCTING JUDGESHIP SURVEYS (1991).

65. *Judicial Boxscore*, THE THIRD BRANCH (A.O. of the U.S. Courts, Washington, D.C.), Jan. 1995, at 5 (noting that Courts of Appeals and District Courts had 68 vacancies).

66. Memorandum from John Shepard, Federal Judicial Center, on Effect of Sentencing Guidelines, Drug Cases and Multi-Defendant Cases on Judicial Workload to Dewey Heising, Administrative Office of the United States Courts (Feb. 4, 1993) (on file with authors).

67. *Id.*

68. 1972 ANNUAL REPORT, *supra* note 9, at tbl. D-4.

69. SPECIAL TABLES, *supra* note 1, at tbl. D-4.

70. SPECIAL TABLES, *supra* note 1, at tbl. D-4.

71. The conviction rate for fraud was 90%. SPECIAL TABLES, *supra* note 1, at tbl. D-4.

72. The conviction rate for illegal immigration was 92%. SPECIAL TABLES, *supra* note 1, at tbl. D-4.

73. See generally UNITED STATES SENTENCING COMMISSION, FEDERAL SENTENCING GUIDELINES MANUAL, ch. 1, pt. A (1994-95 ed.) (stating that United States Sentencing Commission's mission is to prescribe guidelines for sentences of convicted persons).

74. See *id.* § 6B1.1 to .4.

tion rate also means that more defendants will eventually serve terms of supervised release, which will be monitored by the court instead of a parole board,⁷⁵ further adding to a judge's workload. From just June 1990 to June 1994, the number of persons serving terms of supervised release grew from 5011 to 31,739.⁷⁶

III. THE IMPACT ON THE TRIAL DOCKET

Changes in the number of criminal defendants tend to correlate with similar changes in the number of trials. Although the association is not exact (correlation necessarily varies according to variations in plea rates and defendants per case) the general pattern has existed over the last twenty years. In breaking with this pattern, criminal trials did not really begin to increase in response to the rise in defendants until 1987. From 1980 to 1987, the number of defendants filed rose by almost fifty percent,⁷⁷ while the number of criminal trials rose only two percent.⁷⁸ From 1987 to 1994, the number of defendants filed rose by nearly fifteen percent,⁷⁹ with the number of criminal trials⁸⁰ up more than twelve percent.⁸¹ The number of trials in criminal cases is now near a twenty-year high. One of the clearest results of the continuing increase in the number of criminal trials is a decrease in the number of civil trials. Since 1987, the number of civil trials has fallen by twenty-one percent,⁸² as courts devote more time to their criminal docket.⁸³

75. See *id.* § 7B.1 to .3.

76. Compare 1990 ANNUAL REPORT, *supra* note 38, at tbl. E-2 with SPECIAL TABLES, *supra* note 1, at tbl. E-2.

77. Compare 1980 ANNUAL REPORT, *supra* note 10, at tbl. D-2 with ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1987) [hereinafter 1987 ANNUAL REPORT].

78. Compare 1980 ANNUAL REPORT, *supra* note 10, at tbl. C-7 with 1987 ANNUAL REPORT, *supra* note 77, at tbl. C-7.

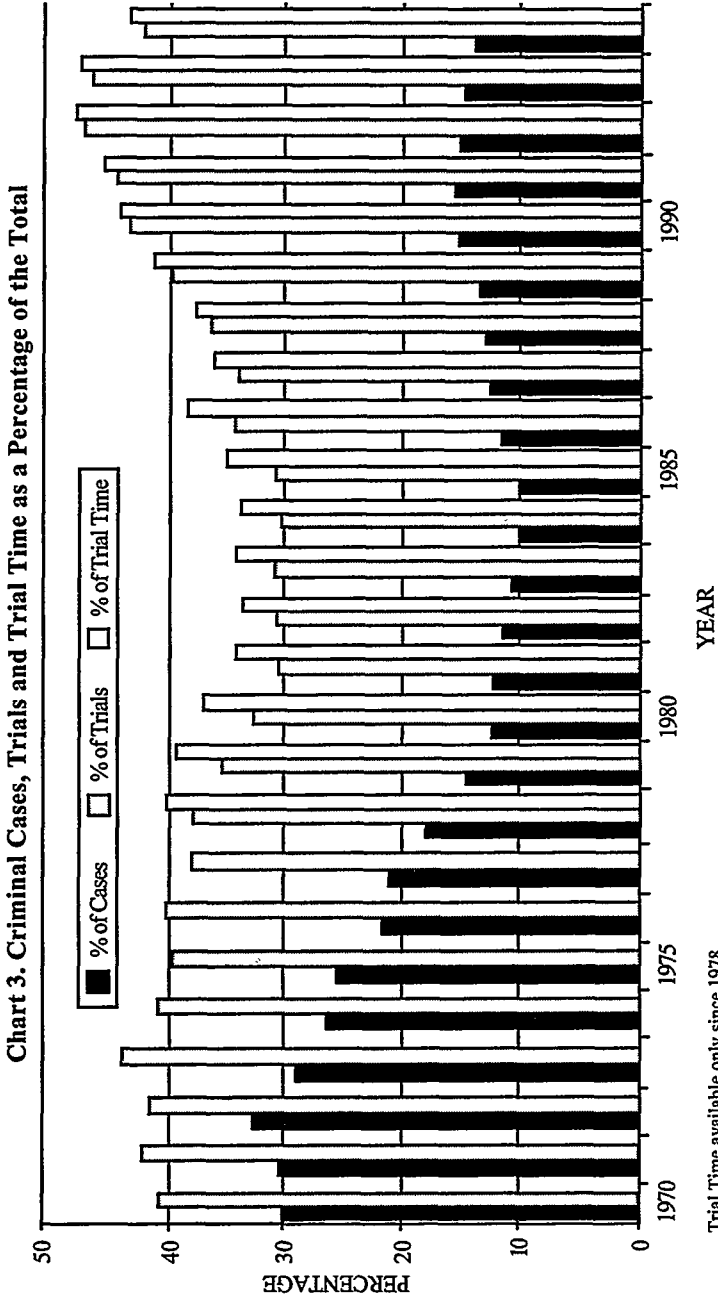
79. Compare 1987 ANNUAL REPORT, *supra* note 77, at tbl. D-2 with SPECIAL TABLES, *supra* note 1, at tbl. D-2.

80. The definition of a trial for reporting purposes is any contested proceeding in which evidence is introduced. Hearings on contested motions are reported as trials, thus, contributing to the increase in trials after 1987.

81. Compare 1987 ANNUAL REPORT, *supra* note 77, at tbl. C-7 with SPECIAL TABLES, *supra* note 1, at tbl. C-7.

82. Compare 1987 ANNUAL REPORT, *supra* note 77, at tbl. C-7 with SPECIAL TABLES, *supra* note 1, at tbl. C-7.

83. Part of this effect undoubtedly arises as a result of the Speedy Trial Act of 1974, Pub. L. No. 93-619, 88 Stat. 2080 (codified as amended at 18 U.S.C. §§ 3161-3174 (1988)), which effectively gives criminal cases a priority in competing for limited trial time. *Id.* § 3161. Other related factors include the need to devote increasing amounts of judicial time to civil case management designed to limit the number of civil cases going to trial. See generally *Report of the Subcommittee on the Role of the Federal Courts and Their Relationship to the States*, in 1 FEDERAL COURTS STUDY COMMITTEE, WORKING PAPERS AND SUBCOMMITTEE REPORTS 47-57 (1990).



The increase in the number of trials may or may not suggest a more difficult criminal caseload, but it does suggest the need for the courts to devote more time to their criminal docket and possibly a larger proportion of their available time to criminal matters. Chart 3 illustrates that this is what has happened in the district courts. In 1972, criminal trials made up more than forty percent of all trials.⁸⁴ As criminal filings declined in the 1970s, the proportion of criminal trials to total trials fell steadily to its low point of slightly over one-third in 1980.⁸⁵

Then, as criminal filings began to rise, the ratio of criminal trials to total trials gradually rose. The most significant increases have occurred since 1987.⁸⁶ By 1992, criminal trials represented more than forty-seven percent of all trials,⁸⁷ though by 1994 the proportion of criminal trials to all trials had fallen to forty-two percent.⁸⁸ Data regarding the amount of time devoted to criminal trials show a similar pattern, but at slightly higher levels. In 1992, judges spent more than forty-eight percent of their trial time on criminal cases, while in 1994 criminal cases required forty-four percent of trial time.⁸⁹

These percentages do not seem particularly high until they are placed in the context of the total district court caseload. In 1972, criminal cases accounted for thirty-three percent of all cases filed in district courts and forty-two percent of all trials.⁹⁰ In 1994, with criminal filings lower than in 1972, criminal case filings represented only thirteen percent of all cases filed in district courts.⁹¹ *Yet, criminal trials in 1994 accounted for more than forty-two percent of all trials conducted by district judges.*⁹²

Although the national data shows a dramatic change in the trial docket, a review of the data on a district-by-district basis shows even more striking evidence of the impact of the criminal caseload. In 1994, criminal trials accounted for more than fifty percent of the trial

84. 1972 ANNUAL REPORT, *supra* note 9, at tbl. C-7.

85. 1982 ANNUAL REPORT, *supra* note 44, at tbl. C-7.

86. *See* Chart 3. *Compare* 1987 ANNUAL REPORT, *supra* note 77, at tbl. C-7 with 1972 ANNUAL REPORT, *supra* note 9, at tbl. C-7 and SPECIAL TABLES, *supra* note 1, at tbl. C-7.

87. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. C-7 (1992).

88. SPECIAL TABLES, *supra* note 1, at tbl. C-7.

89. Although the A.O. has published some data on trial length such as is contained in tbl. C-8 of the 1982 ANNUAL REPORT, *supra* note 44, these data are not well-suited to computing total trial time. Consequently, two special analyses of trial data were conducted using data from 1978 through 1994. Results of these analyses are on file with the Statistics Division.

90. 1972 ANNUAL REPORT, *supra* note 9, at tbls. C-1, C-7, and D-1.

91. SPECIAL TABLES, *supra* note 1, at tbl. D-1.

92. SPECIAL TABLES, *supra* note 1, at tbl. C-7.

docket in thirty-one courts. In six districts, over seventy percent of the trials were criminal.⁹³ By comparison, in 1972, only twenty-four districts devoted more than fifty percent of their trials to criminal cases.⁹⁴

Even more striking is the comparison with data from 1988. Just twenty districts had criminal trial dockets representing more than fifty percent of the total.⁹⁵ This dramatic change in such a short period is one of the reasons why the criminal docket should cause greater concern. More and more districts are feeling the impact of the increase in criminal cases. The heavy criminal caseload is no longer concentrated in just a few districts; it has spread to many more, with most of the impact having occurred since 1987.⁹⁶

Jury trials, which make up the bulk of criminal trials, represent another aspect of the criminal docket that has had a significant impact on the resources of the district courts. The number of criminal jury trials in 1994 was ten percent less than in 1972, but nearly thirty percent higher than in 1980.⁹⁷ The real difference between the present and the early 1970s, however, is in the length of jury trials. In 1970, the average criminal jury trial took 2.5 days.⁹⁸ The average increased gradually to a peak of 4.9 days in 1987.⁹⁹ Since then, the average length has fallen slightly, yet remains about two days longer than in 1970.¹⁰⁰

This change in the length of trials has significantly affected resources of the district courts. In 1973, when criminal cases peaked, the 5630 criminal jury trials required 16,000 trial days;¹⁰¹ the 3418 trials in 1980 required just over 15,000 days;¹⁰² and the 5630 jury trials in 1992 required almost 25,000 days.¹⁰³ This meant that fifty-six percent more time was required in 1992 than in 1973, for virtually the same number of trials.¹⁰⁴ This undoubtedly reflects the change

93. SPECIAL TABLES, *supra* note 1, at tbl. C-7.

94. 1972 ANNUAL REPORT, *supra* note 9, at tbl. C-7.

95. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. C-7 (1988).

96. Compare 1987 ANNUAL REPORT, *supra* note 77, at tbl. C-7 with SPECIAL TABLES, *supra* note 1, at tbl. C-7.

97. Compare 1972 ANNUAL REPORT, *supra* note 9, at tbl. C-7 with 1980 ANNUAL REPORT, *supra* note 10, at tbl. C-7 and SPECIAL TABLES, *supra* note 1, at tbl. C-7.

98. The analysis of special cross tabulation of trials by year and type (civil/criminal and jury/nonjury) against trial length in days is on file with the Statistics Division.

99. Data is on file with the Statistics Division.

100. Data is on file with the Statistics Division.

101. Data is on file with the Statistics Division.

102. Data is on file with the Statistics Division.

103. Data is on file with the Statistics Division.

104. Data is on file with the Statistics Division.

in the composition of the caseload noted earlier;¹⁰⁵ a larger proportion of drug cases that are more likely to result in trials.

An important facet of criminal jury trials is the increase in the number of trials lasting six to twenty days. In 1994, nearly 875 criminal jury trials fell in that range.¹⁰⁶ This was ninety-one percent more than in 1973¹⁰⁷ and more than seven percent higher than in 1990.¹⁰⁸ Even during some periods when criminal filings were declining, jury trials lasting six to twenty days were increasing.¹⁰⁹ The significance of the growing number of longer trials is that district judges are now spending a significant portion of their time trying only a small number of criminal cases. Based on data from 1994, judges spent an average of about three weeks trying less than two cases (13.9 days on 1.5 trials).¹¹⁰ If we consider that the number of criminal jury trials over twenty days grew from twenty-six in 1973¹¹¹ to sixty-nine in 1994,¹¹² the impact of the criminal trial docket on judges' time is substantial.

IV. RESOURCE CHANGES AT THE DEPARTMENT OF JUSTICE

The criminal caseload of the federal judiciary arises mostly as a result of actions of the Department of Justice. During the Reagan and Bush administrations, the Department of Justice stressed its leadership role in the battle against violent crime and drug abuse. As former Attorney General William P. Barr stated:

Over the last decade, we have substantially increased resources at all stages of the federal law enforcement system We are developing these new resources . . . in innovative ways to assist our state and local colleagues in helping law abiding citizens take back their streets. Project Triggerlock is a cooperative effort among state and federal prosecutors to target the most dangerous armed offenders. In its first year of operation, Project Triggerlock has produced over 6,450 arrests. Tough federal sentencing laws are resulting in thousands of armed dangerous offenders being behind bars, preventing countless crimes. And this is just the first year of this effort.¹¹³

105. See *supra* Part II.

106. Data is on file with the Statistics Division.

107. Data is on file with the Statistics Division.

108. Data is on file with the Statistics Division.

109. Data is on file with the Statistics Division.

110. Data is on file with the Statistics Division.

111. Data is on file with the Statistics Division.

112. Data is on file with the Statistics Division.

113. U.S. DEP'T OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, COMBATTING VIOLENT CRIME: 24 RECOMMENDATIONS TO STRENGTHEN CRIMINAL JUSTICE 2-3 (1992).

Criminal cases filed in the district courts are generally submitted by U.S. Attorneys nationwide and the Department of Justice Criminal Division.¹¹⁴ Because the Department of Justice is the source for prosecuting federal criminal cases, one likely reason for the steady increase in federal criminal filings since 1980 is increased resources for U.S. Attorneys.¹¹⁵ It is also important to note that the ninety-one percent growth from 1981 to 1994 in the number of authorized prosecutors, which includes both U.S. Attorneys and Assistant U.S. Attorneys,¹¹⁶ far exceeds the forty-two percent growth in authorized district and magistrate judges who deal in the first instance with the cases brought before the federal judiciary by the prosecutors.¹¹⁷

The key criminal investigative agencies of the Department of Justice received substantial increases in personnel and budget from 1975 to 1993,¹¹⁸ and thus have been able to refer an increasing number of cases for prosecution.¹¹⁹ Between 1975 and 1993, the Bureau of Alcohol, Tobacco and Firearms had a thirteen percent increase in personnel and a 299% rise in budget.¹²⁰ The Criminal Investigation Division of the Internal Revenue Service had eleven percent growth in positions and a 219% growth in budget over the same period.¹²¹

These increased resources have enabled both federal investigative agencies and prosecutors to prosecute increasing numbers of criminal cases in federal court.¹²² Furthermore, increases in personnel and budget in the investigative and prosecutorial agencies have far exceeded the increases in the number of criminal prosecutions brought to the district courts. Criminal case filings are up only fifty

114. Only a small number of prosecutions emanate from other divisions.

115. UNITED STATES ATTORNEYS—HISTORICAL DATA ON RESOURCES AND BUDGET AUTHORITY, 1981-1995 (unpublished data from the U.S. Dep't of Justice) (copy on file with Statistics Division, Administrative Office of the United States Courts).

116. *Id.*

117. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 301, 322 (1981); ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 25, 27 (1994).

118. Telephone Interview with Mary Fox, Justice Management Division, United States Department of Justice (June 12, 1995).

119. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1975-1993).

120. Telephone Interview with Melissa McCoy, Budget Office, Bureau of Alcohol, Tobacco and Firearms (June 7, 1995). The budget figures on which this comparison was based were not adjusted for inflation.

121. Memorandum from Cheri Mitchell, Acting Chief, Office of Budget Formulation, Internal Revenue Service (June 12, 1995) (on file with the Statistics Division, Administrative Office of the United States Courts). The budget figures on which this comparison was based were not adjusted for inflation.

122. *See supra* note 119.

percent since 1981,¹²³ yet the number of prosecutors in U.S. Attorneys' offices is ninety-one percent higher.¹²⁴ This means that there are either more prosecutors per case or that each prosecutor is bringing fewer cases. Although it may be stretching a point, the numbers also suggest that prosecutors are bringing more difficult and time-consuming cases to the courts. Data showing the impact that the criminal caseload is having on the trial dockets of the district courts support this view.

CONCLUSION

Although the number of criminal cases filed in the district courts has fluctuated over the last twenty years, the *nature* of the caseload has changed dramatically. For this reason, a simple reference to case filings does not provide a realistic picture of the changes in workload that the current criminal cases reflect. Some of the more significant factors documented in this report that belie the changes in raw numbers of cases are:

- In 1972, drug offenses accounted for only eighteen percent of the criminal dockets; less time-consuming offenses, such as selective service and auto theft, accounted for an additional thirteen percent. In 1994, both auto theft and selective service cases had all but disappeared, while more demanding drug offenses accounted for forty percent of the criminal filings.
- The number of multidefendant cases has grown by forty-seven percent since 1980. Based on the recent F.J.C. time study, the average judge time required per defendant in multidefendant cases is 5.8 hours compared to 3.0 hours per defendant in single defendant cases.
- The conviction rate in 1972 was approximately seventy-five percent. Since that time the rate has grown gradually to its present eighty-four percent. This increase in the conviction rate would translate into a greater number of defendants requiring sentencing even if there were no increase in criminal case filings.
- In 1972, criminal case filings represented one-third of total filings in district courts and criminal trials accounted for forty percent of all trials. By 1994, criminal filings were only thirteen percent of all filings, but forty-two percent of all trials.

123. Compare ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1981) with ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS tbl. D-2 (1993).

124. See *supra* note 115.

- There were only twenty districts in 1972 in which criminal cases represented more than fifty percent of the trial dockets; in 1994, thirty-one districts devoted more than fifty percent of their trial dockets to criminal cases.
- Since 1970, the average length of a criminal jury trial has increased from 2.5 to 4.5 days.
- Criminal jury trials in the six- to twenty-day range have increased ninety-one percent since 1973.
- District judges on average now spend about three weeks of their year conducting less than two criminal jury trials.
- The number of prosecutors has increased ninety-eight percent since 1980, while the number of judicial officers has increased only eighteen percent.

Taken as a whole, these factors explain why increasing amounts of court time and resources are being consumed by a criminal docket that constitutes a diminishing proportion of the overall district court caseload. This signals a need for cognizance of the multidimensional aspects of district court workload and for vigilance in maintaining the resources of the federal courts at levels adequate to insure that justice is served. There are surely a number of approaches to gauge the nature of court workload, but it is misleading to focus only on the numbers of cases filed.

