

Flattening Filings, Unrepresented Litigants, MDLs, and the Federal Courts

prepared for
**The Future of Civil Litigation
in Federal Courts**

United States District Court for the
District of Rhode Island Conference, 2017

March 23, 2017

Judith Resnik
Yale Law School
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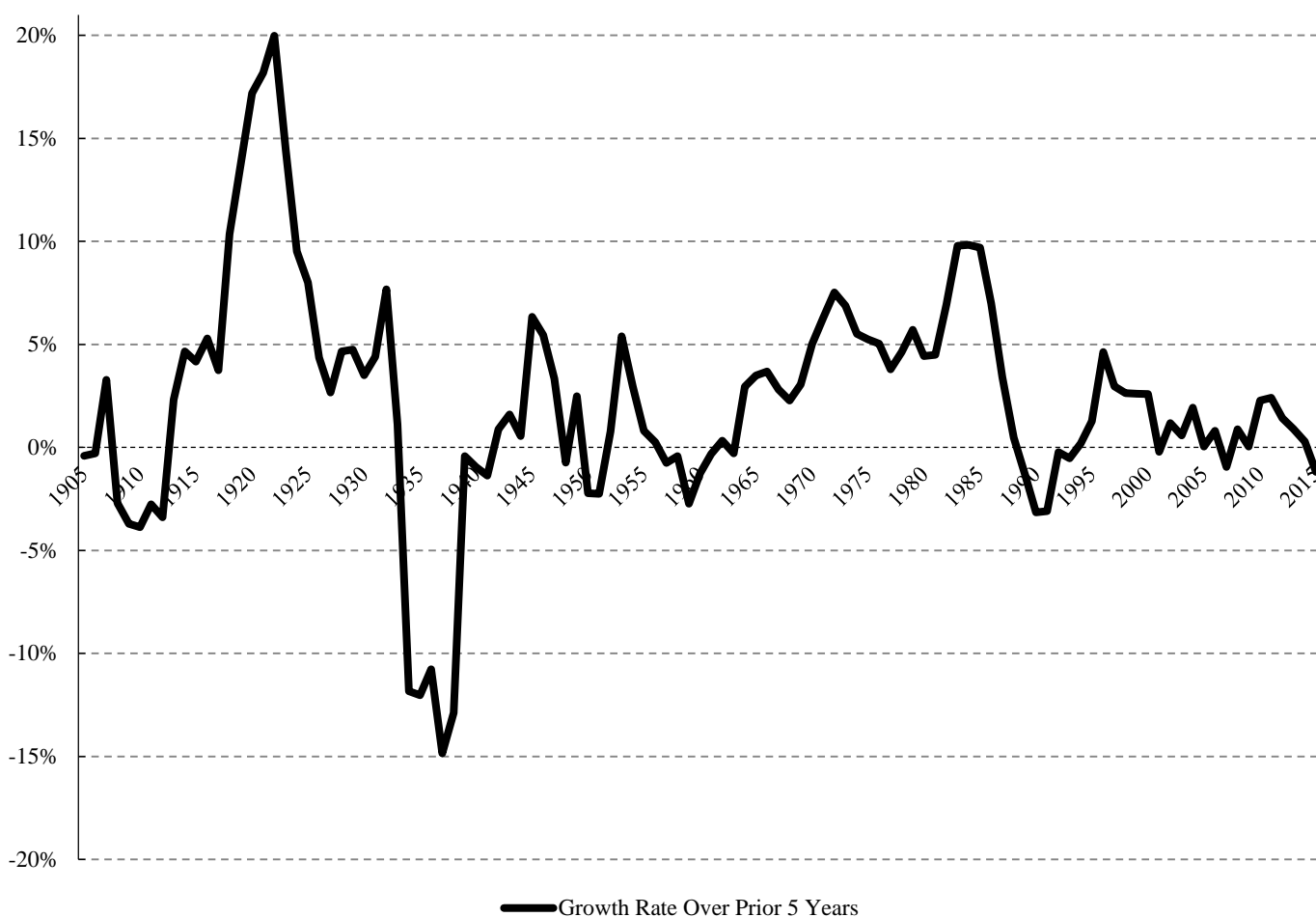


United States Post Office, Court House, and Custom House, 1906.

Renamed the Providence Federal Building and Courthouse, 1961. Architect: Clarke & Howe.

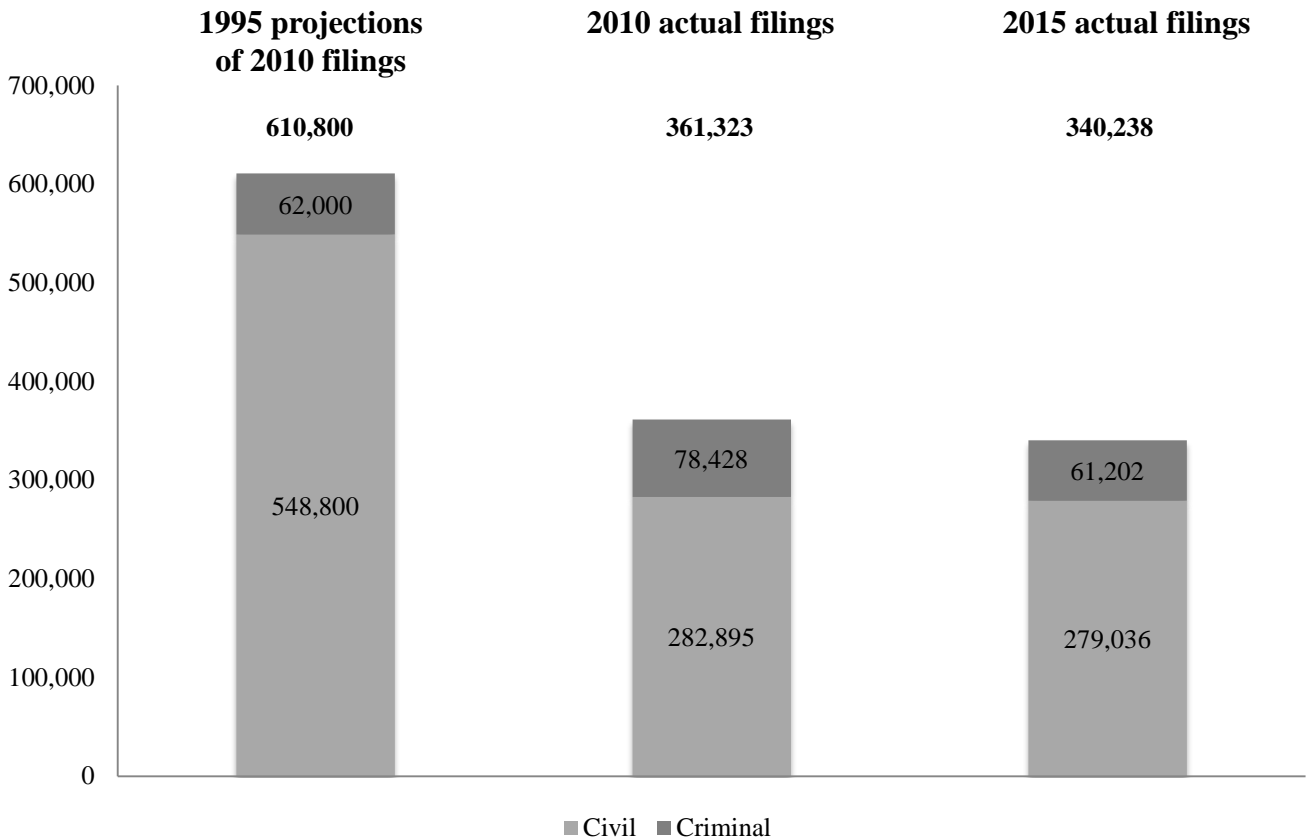
Source: National Archives, RG121-BS, Box 79, Folder M.

Growth Rate of Federal District Court Filings, 1905-2015



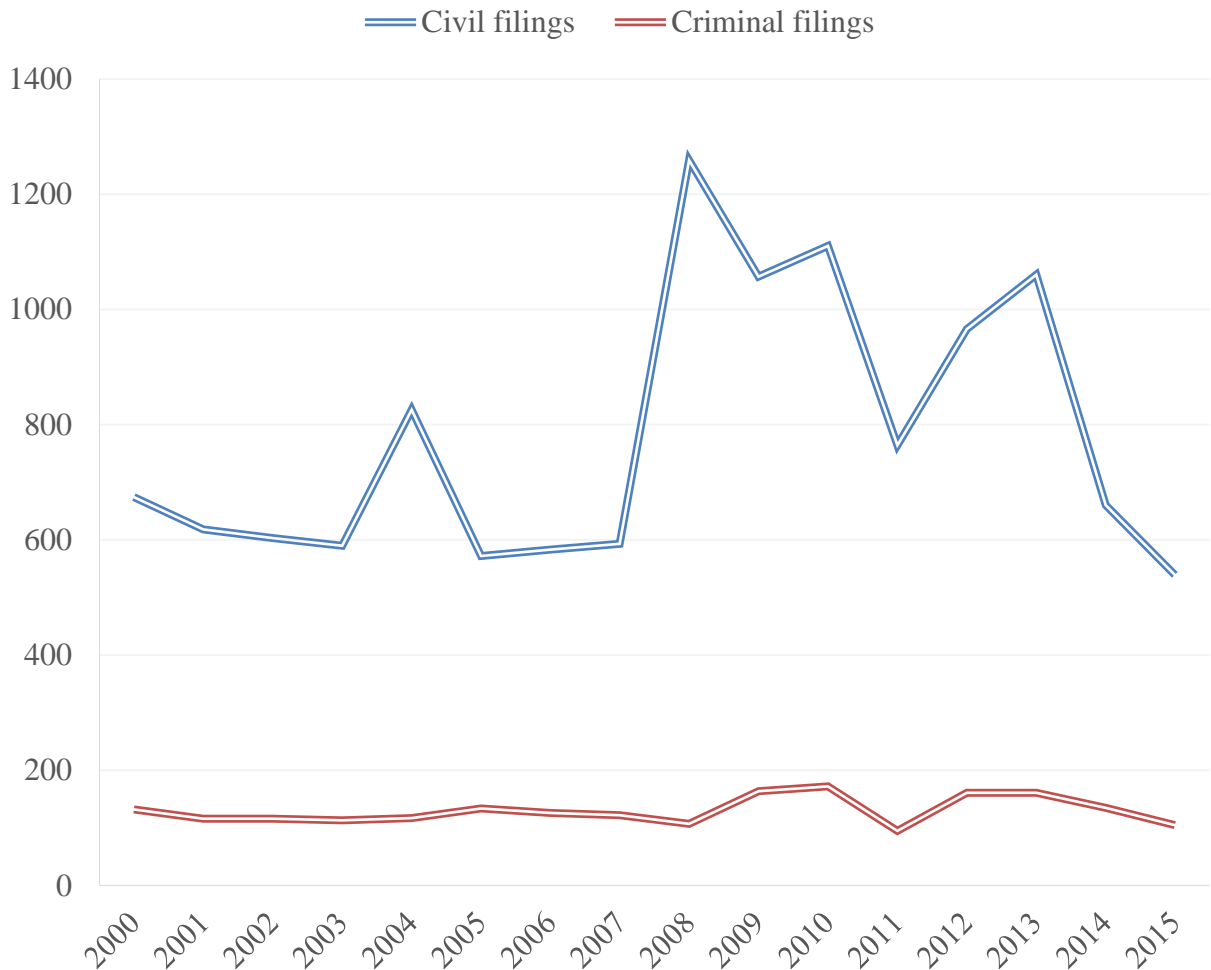
Data for 1905–1998 are from William F. Shughart & Gökhan R. Karahan, *Determinants of Case Growth in Federal District Courts in the United States*, 1904–2002 (ICPSR 3987), Inter-Univ. Consortium for Political & Soc. Research (Jan. 4, 2016), <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/3987>. For data for years 1999–2012, see FED. JUDICIAL CTR., HISTORICAL CASELOADS IN THE FEDERAL COURTS (Jan. 4, 2016), http://www.fjc.gov/history/caseload.nsf/page/caseloads_main_page. Data for 2000 until 2015 were also adapted from tables C & D of the respective yearly reports accessible at ADMIN. OFFICE OF THE U.S. COURTS, FEDERAL JUDICIAL CASELOAD STATISTICS (Jan. 4, 2016), <http://www.uscourts.gov/statistics-reports/analysis-reports/federal-judicial-caseload-statistics>. The effective annual growth rate reflects growth that would have occurred if filings had increased at a constant rate during the prior five years. This rate, based on actual growth in each of the five years, has been smoothed out. Five-year growth rates for 1905–1908 are based in part upon estimated filings during 1900–1903, projected backwards from years with reported numbers. Data do not include bankruptcy filings.

1995 Projections of 2010 U.S. Federal District Court Filings, 2010 and 2015 Actual Filings in U.S. District Courts



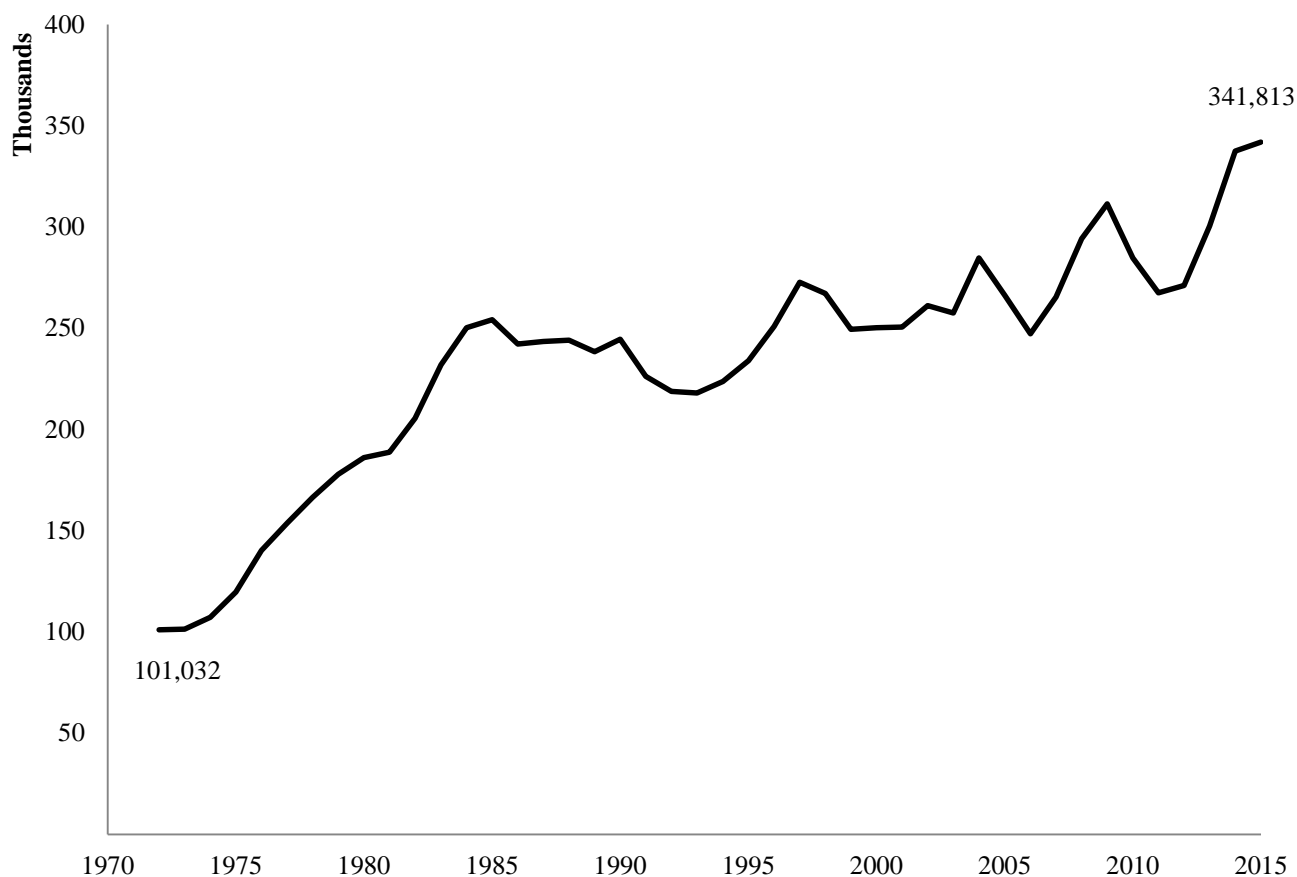
This figure is derived from multiple sources. Data for 1995 projects of 2010 filings are derived from Judicial Conference of the United States, Long Range Plan for the Federal Courts 15, tbl. 3 (Dec. 1995), reprinted in 166 Federal Rules Decision 49 (1996). Data for 2010 actual filings and 2015 actual filings are derived from Administrative Office of the United States Courts tables C & D of the respective yearly reports accessible at ADMIN. OFFICE OF THE U.S. COURTS, FEDERAL JUDICIAL CASELOAD STATISTICS (Jan. 4, 2016), <http://www.uscourts.gov/statistics-reports/analysis-reports/federal-judicial-caseload-statistics>. Note: Criminal filings are of cases, not defendants.

U.S. District Court, District of Rhode Island Filings: 2000-2015



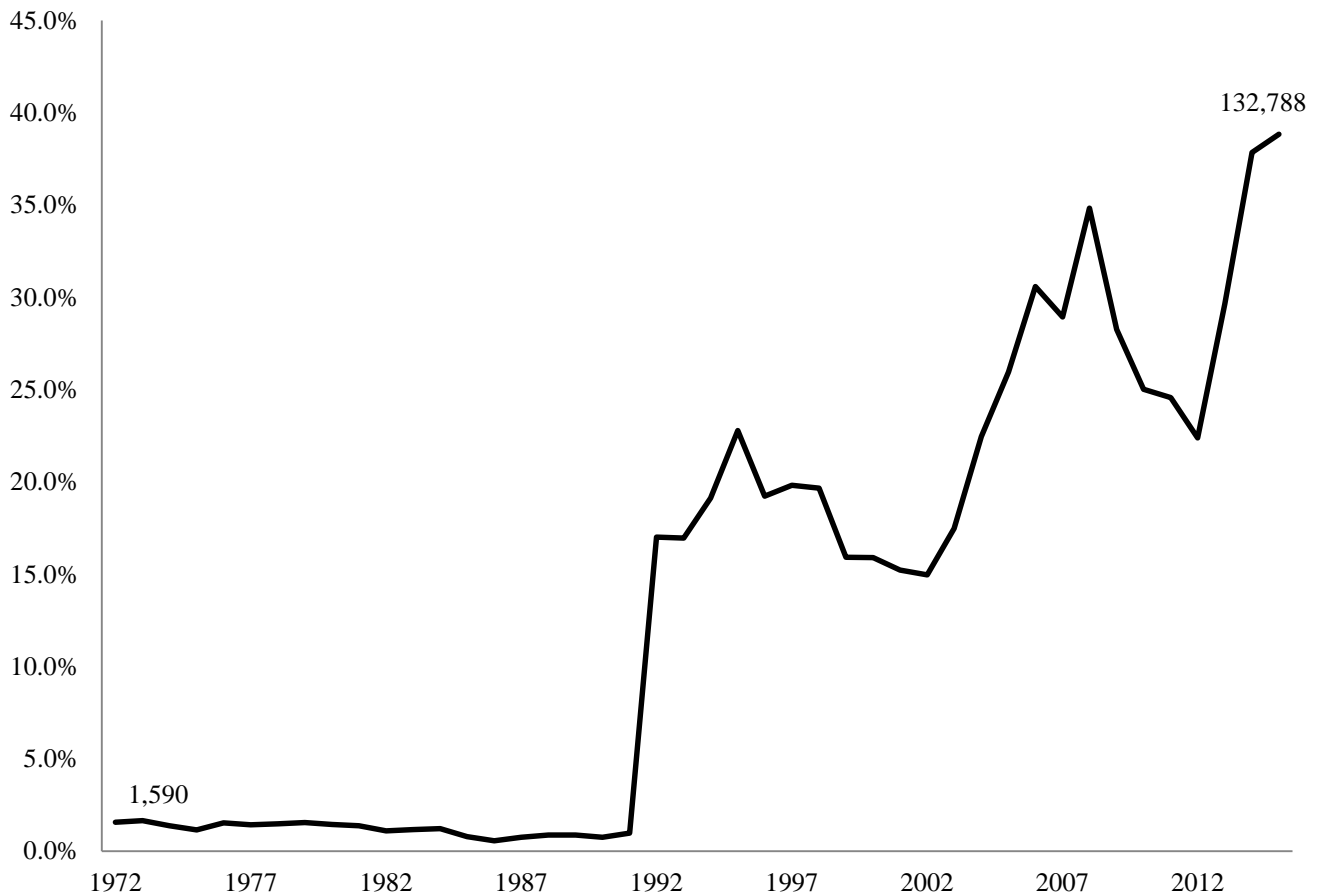
Civil Actions Pending data from 2000 to 2015 are taken from USCourts.gov Caseload Statistics Data Tables, Table C: U.S. District Courts – Civil Cases Filed, Terminated and Pending.” Criminal pending data from 2000 to 2015 are taken from USCourts.gov Caseload Statistics Data Tables, Table D. Cases: “U.S. District Courts—Criminal Cases Filed, Terminated, and Pending (Including Transfers).” All data are for year ending on Sept. 30.

Total Civil Cases Pending in U.S. District Courts: 1972-2015



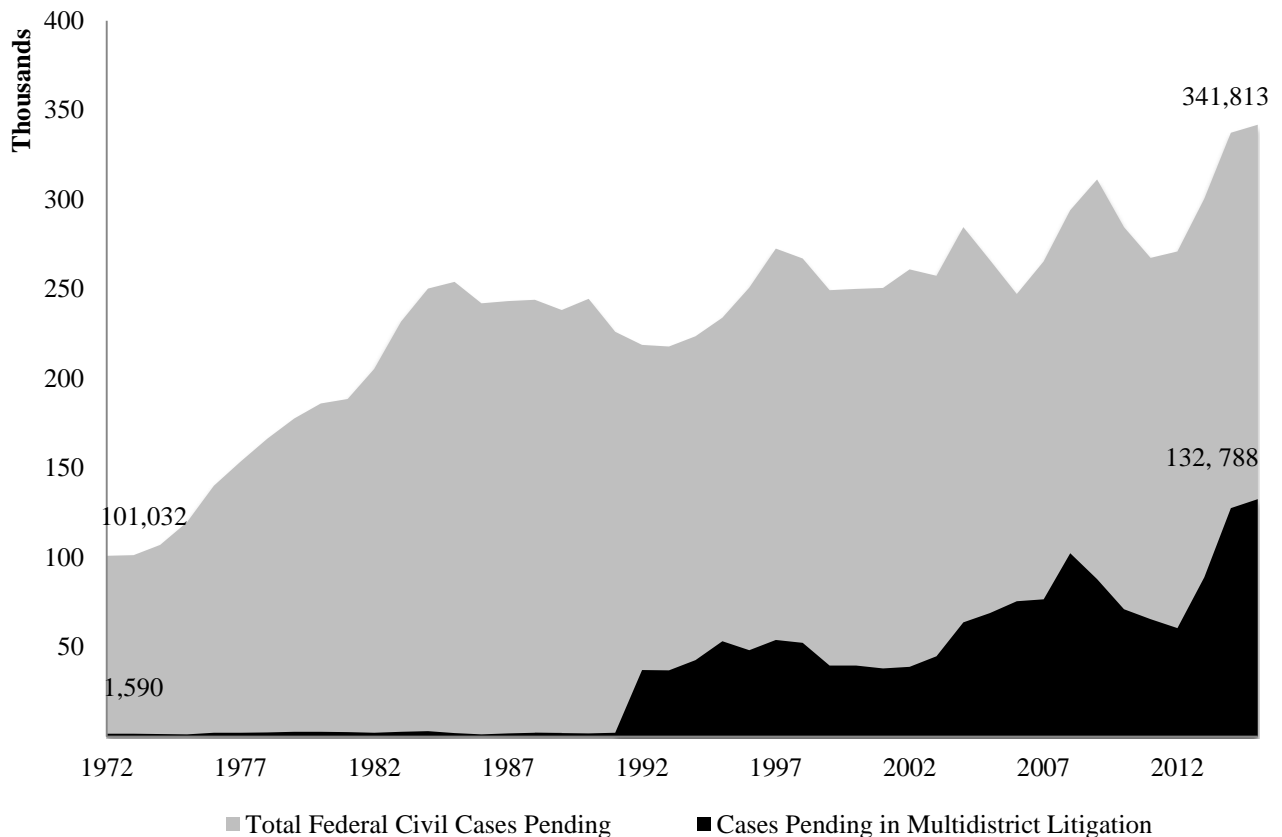
Civil Actions Pending data from 1968 through 1990 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbls. C-6a, C-6b. Data are from year ending on June 30. Civil Actions Pending data from 1991 through 2015 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbl. C-6. Data are from year ending on Sept. 30.

The Percentage of the Pending Federal Civil Docket in Multidistrict Litigation: 1972-2015



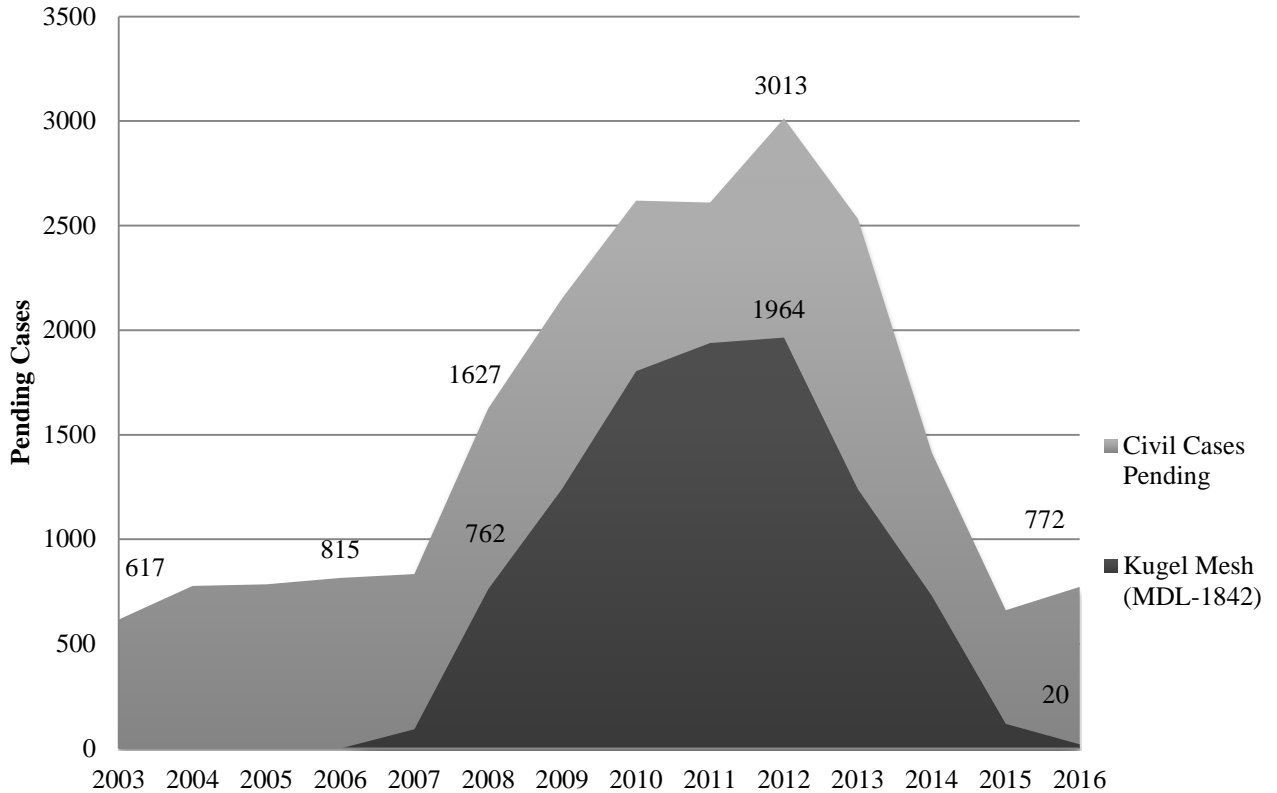
Civil Actions Pending data from 1968 through 1990 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbls. C-6a, C-6b. Data are from year ending on June 30. Civil Actions Pending data from 1991 through 2015 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbl. C-6. Data are from year ending on Sept. 30. Civil Actions Pending in Multidistrict Litigation data from 1972 through 1990 are taken from the Annual Reports of the Judicial Panel on Multidistrict Litigation, available at <http://www.jpml.uscourts.gov/statistics-info>. Data are from year ending on June 30. Civil Actions Pending in Multidistrict Litigation data from 1991 through 2015 are taken from the UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, Fiscal Year Statistics (1992-2015), available at <http://www.jpml.uscourts.gov/statistics-info>. Data are from year ending on Sept. 30.

Pending Cases in the Federal Civil Docket and in Multidistrict Litigation: 1972-2015

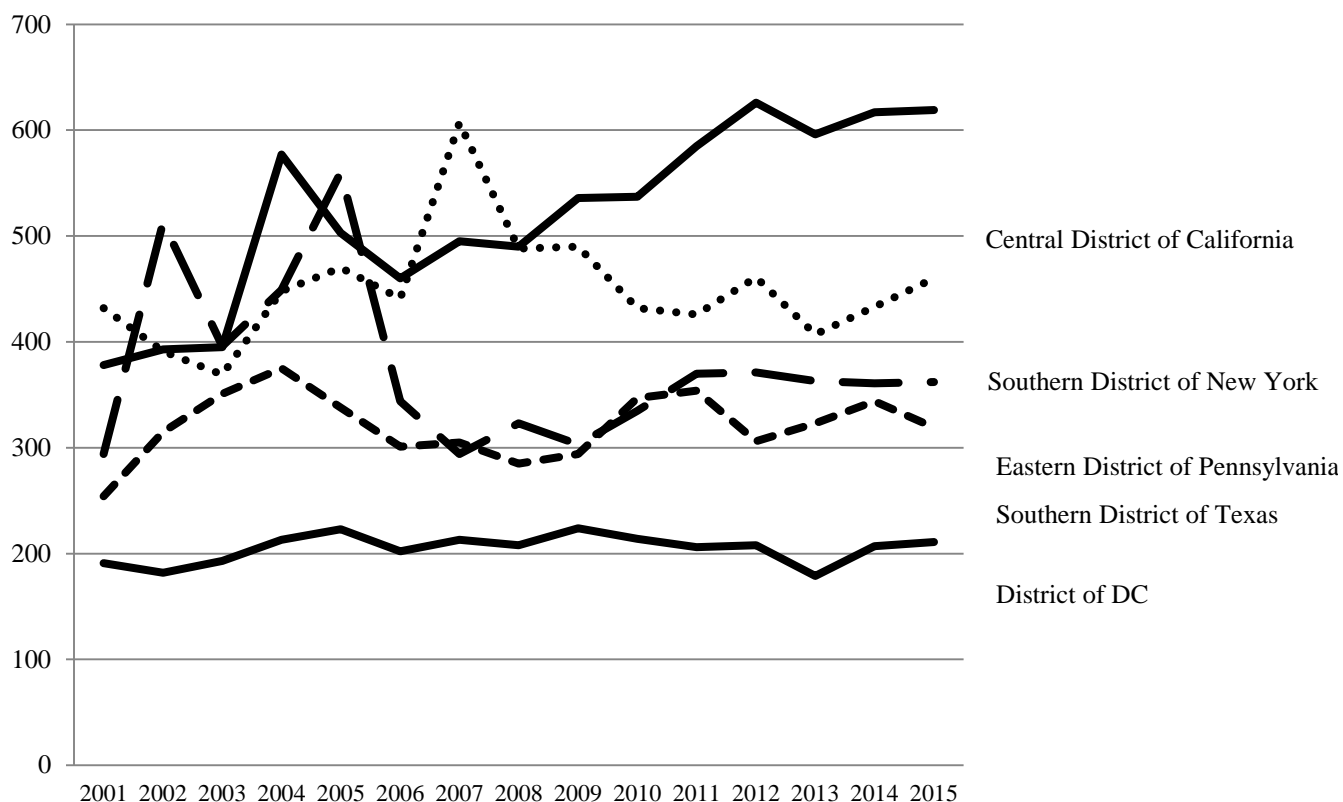


Civil Actions Pending data from 1968 through 1990 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbls. C-6a, C-6b. Data are from year ending on June 30. Civil Actions Pending data from 1991 through 2015 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbl. C-6. Data are from year ending on Sept. 30. Civil Actions Pending in Multidistrict Litigation data from 1972 through 1990 are taken from the Annual Reports of the Judicial Panel on Multidistrict Litigation, available at <http://www.jpml.uscourts.gov/statistics-info>. Data are from year ending on June 30. Civil Actions Pending in Multidistrict Litigation data from 1991 through 2015 are taken from the UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, Fiscal Year Statistics (1992-2015), available at <http://www.jpml.uscourts.gov/statistics-info>. Data are from year ending on Sept. 30.

Pending Civil Cases in U.S. District Court, D. Rhode Island, 2003-2015

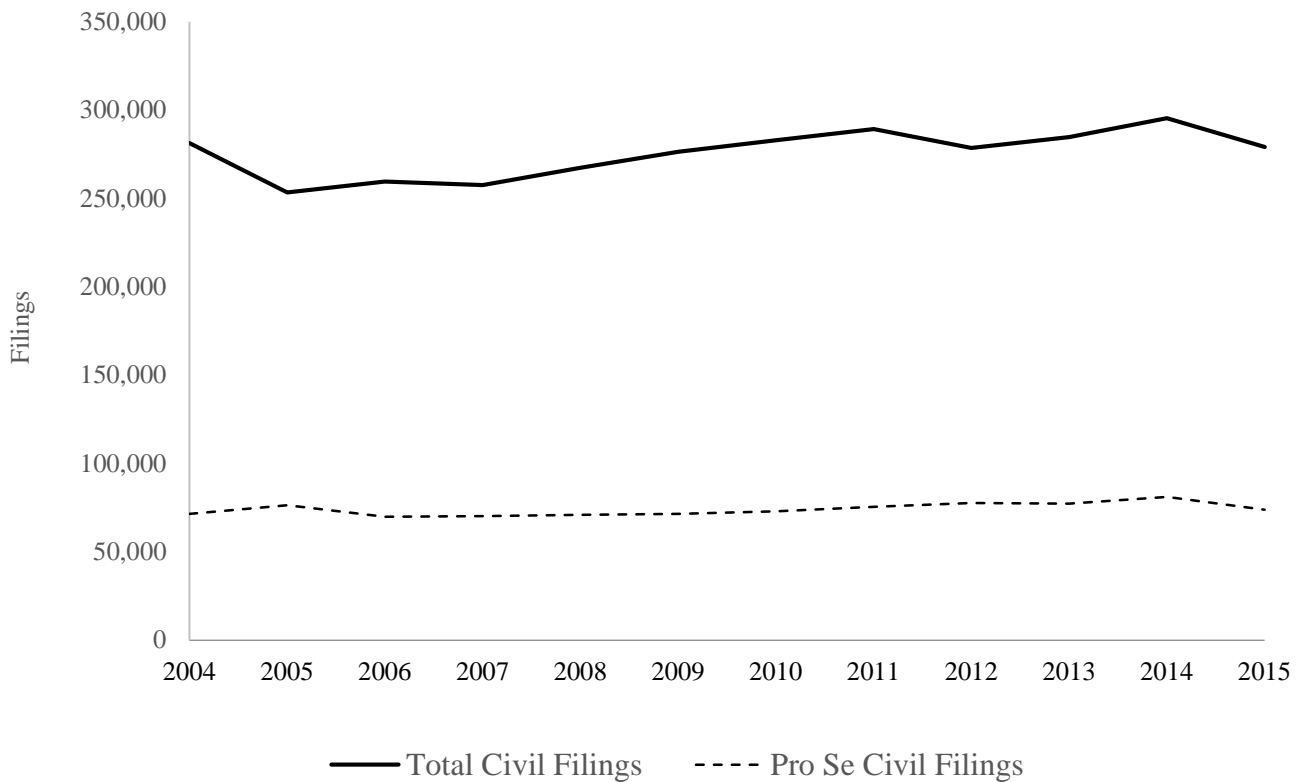


Weighted Civil Filings per Authorized Judgeship: 2000-2015



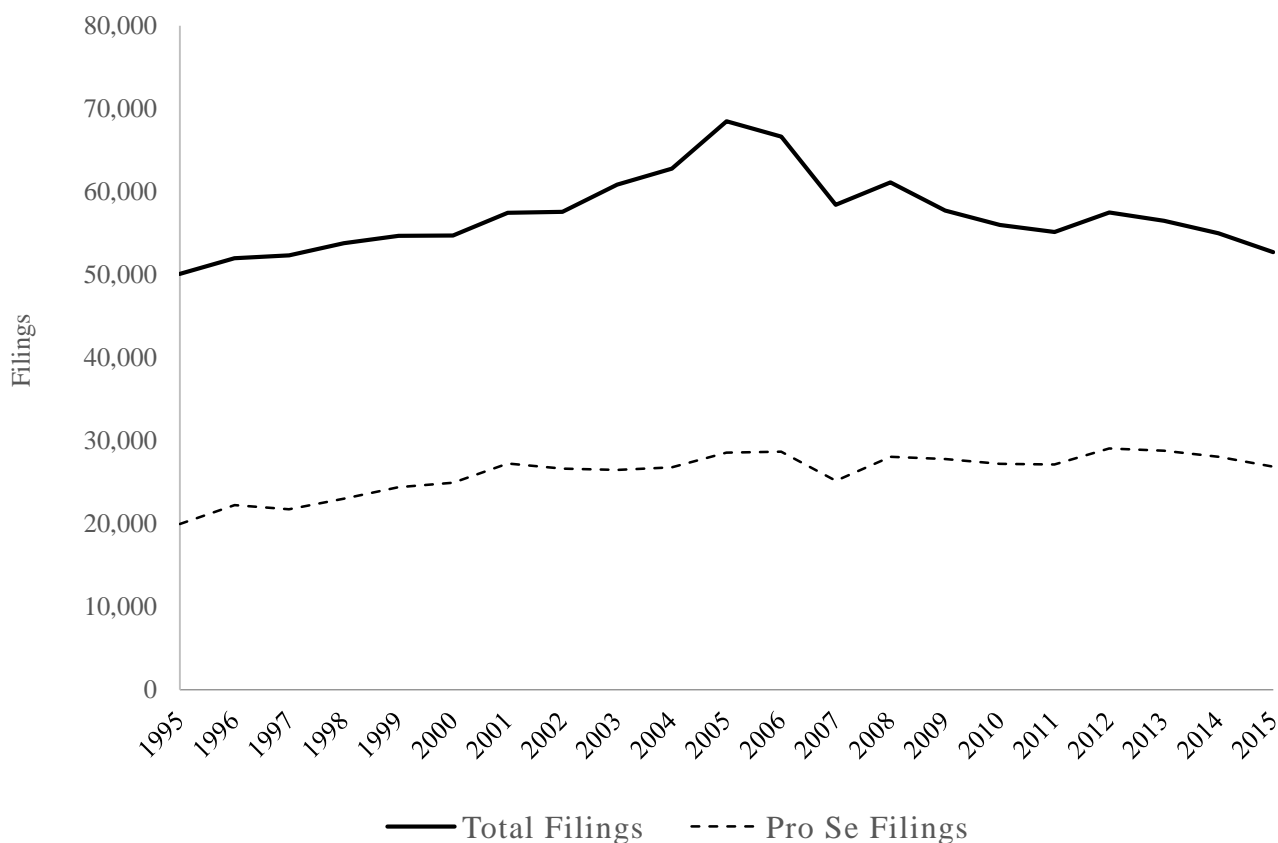
Weighted Civil Filings per Authorized Judgeship from 2001-2015 are taken from ADMIN. OFFICE OF U.S. COURTS, REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, tbl. X-1A, ADMIN. OFFICE OF THE U.S. COURTS. Data are from year ending on Sept. 30. The weighting measure changed in 2004, and changed again in 2015.

Unrepresented Litigants in the U.S. District Courts: 2004-2015



Data are taken from Tables C-13 the Administrative Office of the U.S. Court's Judicial Reports (2004 -2014), available at Judicial Business, tbls. C-13, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/report-names/judicial-business?tn=C-13&pt=All&t=All&m%5Bvalue%5D%5Bmonth%5D=&y%5Bvalue%5D%5Byear%5D>. The categories provided by the Administrative Office are "Prisoner Petitions" and "Nonprisoner Petitions."

Unrepresented Filings in the U.S. Courts of Appeals: 1995-2015



Data for 1996-2014 are taken from Tables B-19 –Pro Se Cases Commenced, by Source—in the Administrative Office of the U.S. Court’s Judicial Reports (1996 - 2014), available at Judicial Business, tbls. B-19, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/report-names/judicial-business?tn=B-19&pt=All&t=37&m%5Bvalue%5D%5Bmonth%5D=&y%5Bvalue%5D%5Byear%5D=>. Data for 1995 are taken from Table 2.4—U.S. Courts of Appeals-Pro Se Cases Filed, available at U.S. Courts of Appeals Judicial Facts and Figures, tbl. 2.4, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/statistics/table/24/judicial-facts-and-figures/2014/09/30>. The categories provided by the Administrative Office are: “Criminal,” “Prisoner Petitions,” “U.S. Civil,” “Private Civil,” “Bankruptcy Appeals,” “Administrative Agency Appeals,” and “Original Proceedings and Miscellaneous Applications.”

Declining Rate of Civil and Criminal Trials, United States Federal Courts, 1976-2000



Provided by the Honorable Patrick Higginbotham, June 2002

Declining Bench Presence, United States Federal Courts, 2008 - 2013

“. . . an average of only 423 hours of open court proceedings per active district judge . . . – the equivalent of less than two hours per judge per day in the courtroom.”

Jordan M. Singer & William G. Young, *Bench Presence 2014: A Updated Look at Federal District Court Productivity*, 48 NEW ENG. L. REV. 565, 565-566

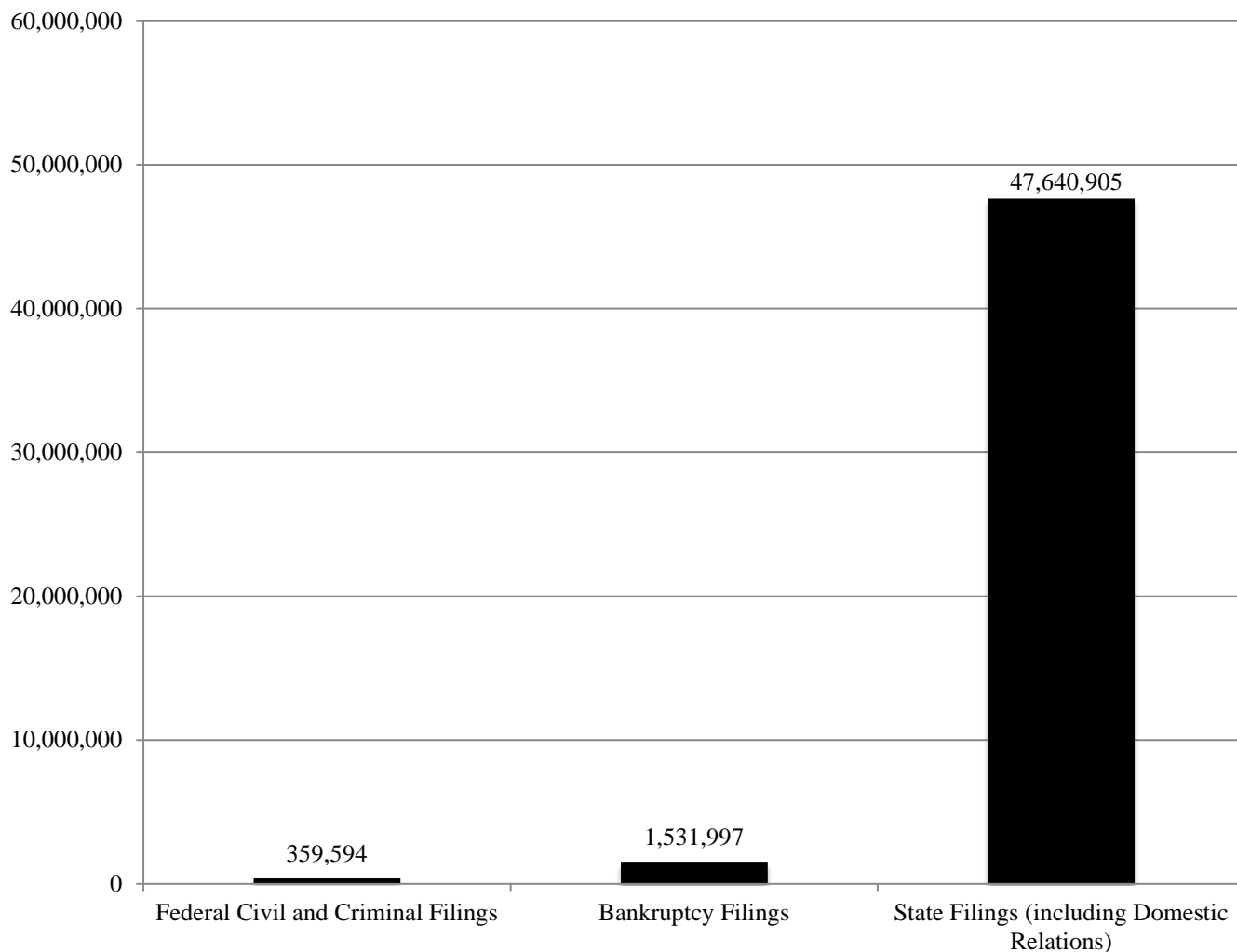
“So how might reality television portray a federal ‘trial’ judge in civil lawsuit garb?

In an office setting without the robe, using a computer and court administrative staff to monitor the entire caseload and individual case progress

For federal civil cases, the black-robed figure up on the bench, presiding publicly over trials and instructing juries, has become an **endangered species**, replaced by a person in business attire at an office desk surrounded by electronic assistants.”

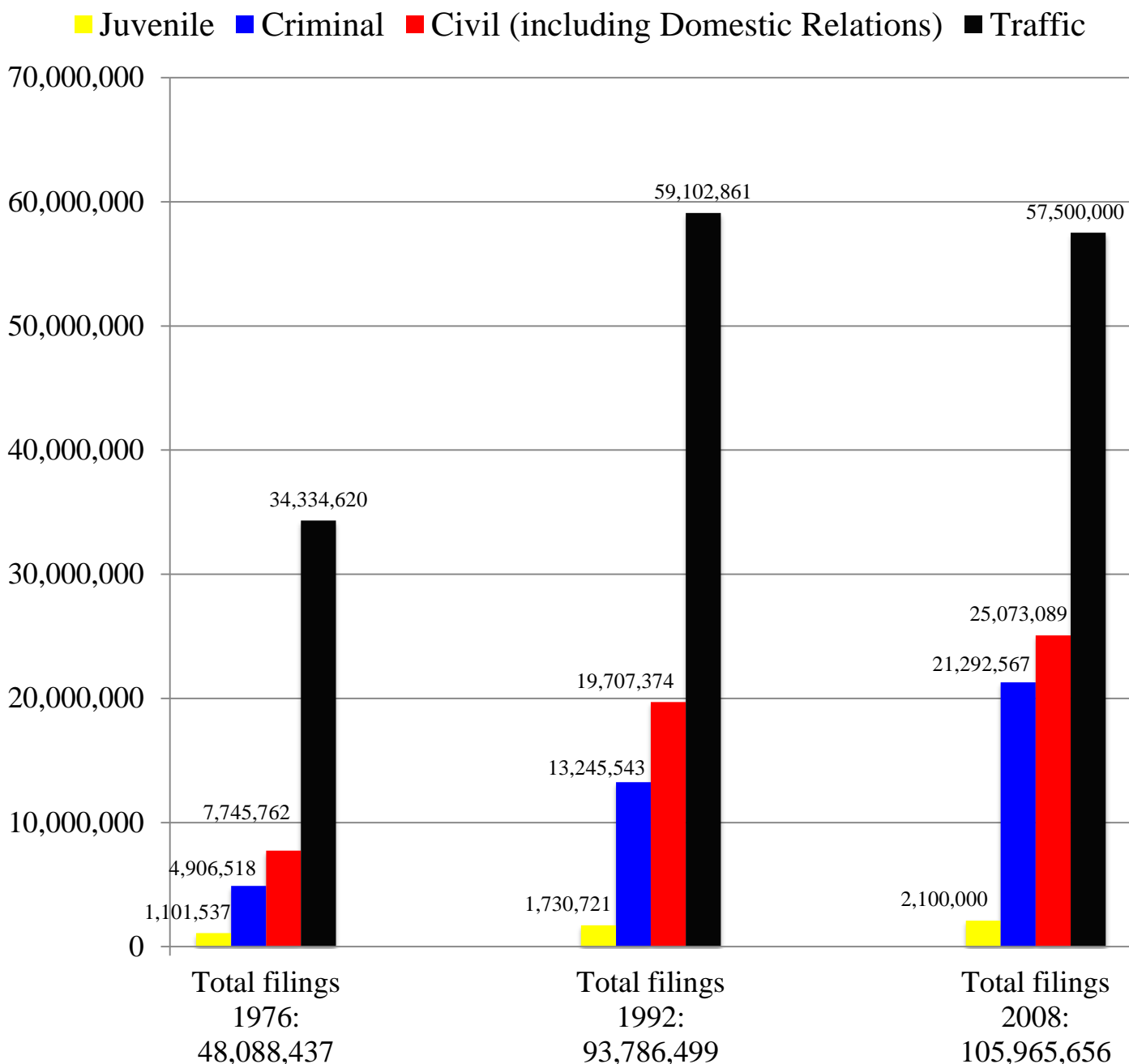
The Honorable Brock Hornby,
The Business of the U.S. District Courts,
10 Green Bag 453, 462 (2007)

Comparing the Volume of Filings: State and Federal Courts, 2010



Sources: Administrative Office of the U.S. Courts, Caseload Statistics, 2010, tbls C-1, D-1 and F, <http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/FederalJudicialCaseloadStatistics2010.aspx>. Data on state filings come from the National Center for State Courts, Court Statistics Project, National Civil and Criminal Caseloads (2010), <http://www.courtstatistics.org/Other-Pages/StateCourtCaseloadStatistics.aspx>. The number of state filings is an estimate, as states do not uniformly report data on all categories; further, this number does not include juvenile or traffic cases.

State Trial Court Filings, 1976-2008



Figures are estimates, as not all states report data in all categories.

Source: National Center for State Courts annual reports, entitled Examining the Work of State Courts, http://www.ncsconline.org/D_Research/csp/EWSC-pastreports.html.

National Center for State Courts: The Landscape of Civil Litigation in State Courts, 2012-2013

925,344 civil cases, 10 major urban counties

| | |
|---------------------------------|------------|
| Contracts | 64% |
| Debt collection | 37% |
| Landlord/tenant | 29% |
| Foreclosure | 17% |
| Small claims | 16% |
| Other civil cases | 9% |
| Tort | 7% |
| Automobile tort | 40% |
| Personal injury/property damage | 20% |
| Medical malpractice | 3% |
| Products liability | 2% |

| Case dispositions N = 925,344 | | Cases without lawyers N = 649,811 | |
|--|-----|--------------------------------------|-----|
| Dismissed | 35% | Parties without representation | |
| Judgment unspecified | 26% | Both parties | 6% |
| Default judgment | 20% | Defendants | 74% |
| Settled | 10% | Plaintiffs | 8% |
| Trial, summary judgment, or binding arbitration | 4% | | |

Waffle House Employment Application

WAFFLE

HOUSE

AMERICA'S PLACE TO WORK
AMERICA'S PLACE TO EAT

APPLICATION FOR EMPLOYMENT

(PLEASE PRINT PLAINLY)

MUST BE COMPLETED IN THE RESTAURANT

TO BE COMPLETED UPON EMPLOYMENT

| | |
|---------------|------|
| Work Location | Rate |
| Position | Date |

To Applicant: We deeply appreciate your interest in our organization and assure you that we are sincerely interested in your qualifications. A clear understanding of your background and work history will aid us in placing you in the position that best meets your qualifications and may assist us in possible future upgrading.

Date JUNE 23, 1994
Name BAKOR ERIC SCOTT Social Security No. 251-75-4659
Last First Middle Telephone No. (803) 794-4777
Present Address 106 OAKDALE ST. GASTON SC 29053
No. Street City State Zip
Next of kin to be notified in event of emergency: Name: Robert G OR Sylvia G BAKOR
Relationship: FATHER/MOTHER Address: 106 OAKDALE ST. GASTON SC 29053 Telephone No. (803) 794-4777

GENERAL INFORMATION

To Applicant: READ THIS INTRODUCTION CAREFULLY BEFORE ANSWERING ANY QUESTIONS IN THIS BLOCKED-OFF AREA. The Civil Rights Act of 1964 prohibits discrimination in employment practice because of race, color, religion, sex, or national origin. P.L. 90-202 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years old.

The following requested information is needed for a bona fide occupational qualification, business necessity, or other legally permissible reasons. Answers to any questions below will not automatically bar employment to any applicant. Questions pertaining to race, color, sex, national origin, age, and marital status are necessary to insure our compliance with applicable discrimination laws.

Race: WHITE Birthdate: 10/27/74 Sex: M Height: 5 ft. 8 in. Weight: 158 lbs.
Marital Status: Single Engaged Married Separated Divorced Widowed
Number of dependents including yourself: 0 Are you a citizen of the U.S.A.? YES
Have you ever been bonded? NO If yes, on what job? _____
Have you ever been convicted of a crime in the past ten years? NO If yes, describe in full: _____
Are you now or have you been a user of or addicted to: Drugs NO Alcohol to excess _____

What kind of car do you drive? Make Buick Model SKYHAWK Year 1985
Will you use your car to get to work? yes
If not, what method of transportation will you use to get to work? _____
Position(s) applied for _____ Rate of pay expected \$ _____ per/hr. \$ _____ per/wk.
Would you work Full-Time ✓ Part-Time _____ Specify days and hours if part-time _____
Were you previously employed by Waffle House? NO If yes, when and where? _____
List any friends or relatives working for us and where NONE (Name) _____
If your application is considered favorably, on what dates will you be available for work? TWO WEEK FROM TODAY 19 94
Are there any other experiences, skills, or qualifications which you feel would especially fit you for work with the Company? CLAN A
CREW WORK IN THE FOOD BUSINESS FOR 4 YEARS.
Have you been refused a Health Permit to work at any occupation? NO If yes, explain fully: _____
Can you lift 20 lbs to shoulder height? YES
Are you able to remain standing on your feet for a full 7-10 hour shift? YES
Are you able to sweep, mop, etc.? YES
MILITARY SERVICE: Are you a veteran? NO If yes, dates of service: _____ Branch: _____
Rank attained: _____ Date/Type of dismissal: _____
Are you a member of any Reserve organization or National Guard? NO

• IMPORTANT • NOTICE TO APPLICANT

Before we can hire you, the Government requires that we review and verify certain information. Please bring the following items with you on your first day.

1. Drivers license with your picture AND
2. A U.S. social security card OR an original or certified copy of your birth certificate.

If you don't have any of the above, please tell the unit manager and he will tell you what other documents are acceptable for completing the I-9 form.

The parties agree that any dispute or claim concerning Applicant's employment with Waffle House, Inc., or any subsidiary or Franchisee of Waffle House, Inc., or the terms, conditions or benefits of such employment, including whether such dispute or claim is arbitrable, will be settled by binding arbitration. The arbitration proceedings shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time a demand for arbitration is made. A decision and award of the arbitrator made under the said rules shall be exclusive, final and binding on both parties, their heirs, executors, administrators, successors and assigns. The costs and expenses of the arbitration shall be borne evenly by the parties.

© COPYRIGHT — WAFFLE HOUSE, INC. 1992 REV 4/93
FORM # 4002

EXHIBIT A

PERSONAL REFERENCES (Not former employees or relatives)

| Name and Occupation | Address | Phone Number |
|---------------------|---------------------------------|--------------|
| Krita Gunter | P.O. Box 201 Gaston SC 29053 | 791-6601 |
| Deanis Adams | 104 Oakdale St. Gaston SC 29053 | 939-0797 |
| NITA Bridgen | Box 146 Gaston SC 29053 | 796-1360 |

RECORD OF EDUCATION

| School | Name and Address of School | Dates Attendance Mo./Year | Course of Study | Circle Last Year Completed | Did You Graduate? | GPA | List Diploma or Degree |
|-----------------|----------------------------|---------------------------|-----------------|----------------------------|--|-----|------------------------|
| High | Swansea High School | 90-94 | Business | 1 2 3 4 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | Diploma |
| College | | | | 1 2 3 4 | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Other (Specify) | | | | 1 2 3 4 | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |

WORK EXPERIENCE (List below last three employers, starting with last one first)

| | NAME AND ADDRESS OF COMPANY AND TYPE OF BUSINESS | FROM | | TO | | DESCRIBE IN DETAIL THE WORK YOU DID | STARTING HOURLY RATE | LAST HOURLY RATE | REASON FOR LEAVING | NAME OF SUPERVISOR |
|-----|--|------|-----|-----|-----|--|----------------------|------------------|--------------------------|---------------------------|
| | | MO. | YR. | MO. | YR. | | | | | |
| I | Little Cakes Restaurant | 2 | 94 | - | - | P.C. Run crew; handle money; organize; help; clean, etc. | 4.15 | 5.50 | Still employed. | PHATTI PHONE: 791-1704 |
| II | Winn-Dixie | 6 | 93 | 7 | 94 | Deli. Ass. mtd. Run open. prep. Secn. etc. | 4.35 | 4.35 | School. | Buence PHONE: - |
| III | Bi-Rite | 12 | 92 | 5 | 93 | Stocker | 4.25 | 4.35 | Manager. Medical - work. | Scottsdale PHONE: - |

NOTICE TO EMPLOYEES

Failure to be truthful on the application may affect the applicant's subsequent ability to receive workers' compensation benefits.

The facts set forth above in my application for employment are true and complete. I understand that if employed, false statements or omission of facts called for on this application shall be considered sufficient cause for dismissal. You are hereby authorized to make any investigation of my personal history and financial credit record through any investigative or credit agencies or bureaus of your choice. I further understand that I am an "Employee at Will" and that Waffle House, Inc. does not guarantee my employment for any specific period of time.

In making this application for employment I also understand that an investigative consumer report may be made whereby information is obtained through personal interviews with my neighbors, friends, or others with whom I am acquainted. This inquiry includes information as to my character, general reputation, personal characteristics, and mode of living. I understand that I have the right to make a written request within a reasonable period of time to receive additional, detailed information about the nature and scope of this investigative consumer report.

I FULLY UNDERSTAND THAT IF ASSIGNED TO ANY POSITION WHEREBY MONIES, EQUIPMENT, OR OTHER SUPPLIES OF WAFFLE HOUSE, INC. ARE ASSIGNED TO ME, I SHALL BE ACCOUNTABLE FOR THE AFORESAID ITEMS AND LIABLE FOR ANY SHORTAGES IN SAME. I AGREE THAT WAFFLE HOUSE, INC. MAY DEDUCT FROM ANY MONIES DUE ME, AN AMOUNT TO COVER ANY SHORTAGES WHICH MAY OCCUR AND WILL INDEMNIFY WAFFLE HOUSE, INC. AGAINST ANY LEGAL LIABILITY FOR WITHHOLDING SAID SHORTAGES FROM MONIES DUE ME AS A RESULT OF MY EMPLOYMENT WITH WAFFLE HOUSE. IF THERE ARE ANY SHORTAGES OR LOSSES IN MONEY, FOOD, OR EQUIPMENT WHICH IS ASSIGNED TO ME OR TO WHICH I HAVE ACCESS, I AGREE TO SUBMIT TO A POLYGRAPH OR OTHER SCIENTIFIC EVALUATION TEST CONDUCTED IN COMPLIANCE WITH APPLICABLE LAW DURING ANY INVESTIGATION OF SUCH SHORTAGE OR LOSS, AS PART OF THIS APPLICATION PROCESS AND AS A CONDITION OF MY CONTINUED EMPLOYMENT, AT THE REQUEST OF WAFFLE HOUSE, INC. I AGREE TO SUBMIT TO TESTING TO DETERMINE MY USE OF DRUGS OR ALCOHOL. I UNDERSTAND THAT REFUSING TO SUBMIT TO A TEST OR A POSITIVE RESULT IN ANY TEST INDICATING DRUG OR ALCOHOL USE MAY RESULT IN MY IMMEDIATE TERMINATION FROM EMPLOYMENT.

IF THE POSITION TO WHICH I AM ASSIGNED SHALL BE A POSITION WHERE I NORMALLY RECEIVE TIPS, I UNDERSTAND THAT IT IS MY OBLIGATION TO REPORT ALL TIPS TO THE INTERNAL REVENUE SERVICE FOR INCOME TAX PURPOSES. THIS MAY BE DONE EITHER BY REPORTING THEM ON THE PRELIST OR ON MY TAX RETURN AT THE END OF THE YEAR. DELIBERATELY NOT REPORTING ALL INCOME COULD RESULT IN SEVERE PENALTIES.

I UNDERSTAND AND ACKNOWLEDGE THAT WAFFLE HOUSE IS TAKING A CREDIT AGAINST MY WAGES FOR TIPS RECEIVED, IN THE EVENT I DO NOT RECEIVE TIPS EQUAL TO THAT CREDIT. I SHALL NOTIFY MY UNIT MANAGER SO THAT MY TIPS CAN BE COUNTED AND AUDITED TO ESTABLISH WHAT LEVEL OF TIPS I AM MAKING. I UNDERSTAND WAFFLE HOUSE, INC. IS ALSO BOUND TO REPORT TO THE IRS THE AMOUNT OF THOSE TIPS THAT THEY COUNT. THE TIPS COUNTED WILL BE POSTED BY THE UNIT MANAGER ON THE PRELIST.

MEAL POLICY: As a part of your compensation, Waffle House allows its employees to eat during their shift at a reduced rate. This includes 1 full meal if your workday is 4 hours or less and 2 full meals if your workday is over 4 hours. In addition, beverages and snacks as desired are allowed. The only limitation is that dinner steaks, chicken and pork chops are not offered under this meal policy. Please try to eat the meal at some time during the shift. However, this should be during a slow time and must not interfere with customer service. To cover the cost of the meal, drinks, snacks and the time to eat these items, Waffle House will deduct from your paycheck an amount based on the number of hours worked that day. Please see your Unit Manager for the schedule of meal charges.

I have read and understand the above notice and agree to comply with the provisions above.

Signed this 23 day of June, 19 94 
Signature of Applicant

INDEPENDENT ARBITRATION

INSTEAD OF SUING IN COURT, YOU'RE AGREEING TO ARBITRATE DISPUTES ARISING OUT OF OR RELATED TO THIS OR PRIOR AGREEMENTS. THIS AGREEMENT INVOLVES COMMERCE AND THE FEDERAL ARBITRATION ACT APPLIES TO IT. ARBITRATION ISN'T THE SAME AS COURT. THE RULES ARE DIFFERENT AND THERE'S NO JUDGE AND JURY. YOU AND WE ARE WAIVING RIGHTS TO PARTICIPATE IN CLASS ACTIONS, INCLUDING PUTATIVE CLASS ACTIONS BEGUN BY OTHERS PRIOR TO THIS AGREEMENT, SO READ THIS CAREFULLY. THIS AGREEMENT AFFECTS RIGHTS YOU MIGHT OTHERWISE HAVE IN SUCH ACTIONS THAT ARE CURRENTLY PENDING AGAINST US OR OUR PREDECESSORS IN WHICH YOU MIGHT BE A POTENTIAL CLASS MEMBER. (We retain our rights to complain to any regulatory agency or commission.) YOU AND WE EACH AGREE THAT, TO THE FULLEST EXTENT POSSIBLE PROVIDED BY LAW:

(1) ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR TO ANY PRIOR AGREEMENT FOR CELLULAR SERVICE WITH US . . . WILL BE SETTLED BY INDEPENDENT ARBITRATION INVOLVING A NEUTRAL ARBITRATOR AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER WIRELESS INDUSTRY ARBITRATION ("WIA") RULES, AS MODIFIED BY THIS AGREEMENT. WIA RULES AND FEE INFORMATION ARE AVAILABLE FROM US OR THE AAA;

(2) EVEN IF APPLICABLE LAW PERMITS CLASS ACTIONS OR CLASS ARBITRATIONS, YOU WAIVE ANY RIGHT TO PURSUE ON A CLASS BASIS ANY SUCH CONTROVERSY OR CLAIM AGAINST US . . . AND WE WAIVE ANY RIGHT TO PURSUE ON A CLASS BASIS ANY SUCH CONTROVERSY OR CLAIM AGAINST YOU. . . .

(3) No arbitrator has authority to award relief in excess of what this agreement provides, or to order consolidation or class arbitration, except that an arbitrator deciding a claim arising out of or relating to a prior agreement may grant as much substantive relief on a non-class basis as such prior agreement would permit. NO MATTER WHAT ELSE THIS AGREEMENT SAYS, IT DOESN'T AFFECT THE SUBSTANCE OR AMOUNT OF ANY CLAIM YOU MAY ALREADY HAVE AGAINST US OR ANY OF OUR AFFILIATES OR PREDECESSORS IN INTEREST PRIOR TO THIS AGREEMENT. THIS AGREEMENT JUST REQUIRES YOU TO ARBITRATE SUCH CLAIMS ON AN INDIVIDUAL BASIS. In arbitrations, the arbitrator must give effect to applicable statutes of limitations and will decide whether an issue is arbitrable or not. In a Large/Complex Case arbitration, the arbitrators must also apply the Federal Rules of Evidence and the losing party may have the award reviewed by a panel of 3 arbitrators.

(4) IF FOR SOME REASON THESE ARBITRATION REQUIREMENTS DON'T APPLY, YOU AND WE EACH WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY TRIAL BY JURY. A JUDGE WILL DECIDE ANY DISPUTE INSTEAD;

(5) NO MATTER WHAT ELSE THIS AGREEMENT SAYS, IT DOESN'T APPLY TO OR AFFECT THE RIGHTS IN A CERTIFIED CLASS ACTION OF A MEMBER OF A CERTIFIED CLASS WHO FIRST RECEIVES THIS AGREEMENT AFTER HIS CLASS HAS BEEN CERTIFIED, OR THE RIGHTS IN AN ACTION OF A NAMED PLAINTIFF, ALTHOUGH IT DOES APPLY TO OTHER ACTIONS, CONTROVERSIES, OR CLAIMS INVOLVING SUCH PERSONS.

Consumer Arbitrations Filed with the American Arbitration Association, 2009-2014

| Sources | Types | | Average per Year | Total |
|--|--|--|------------------------|-------|
| AAA Data, <i>Provider Organization Report</i> | AAA-defined consumer claims | | 1,460 | 7,303 |
| June 2009 – July 2014 | AAA claims involving AT&T | 85-120 million consumers | 27 | 134* |
| Consumer Financial Protection Bureau, <i>2015 Arbitration Study</i> | AAA claims in credit card, prepaid card, checking account, payday, private student, and auto loan markets | 80 million credit-card consumers | 616** | 1,847 |

* All 134 of the consumer claims involving AT&T were filed by consumers.

** Of the 616 consumer arbitrations a year, approximately two-thirds were filed by consumers.

Data from: AAA *Data, July 2009-June 2014, Provider Organization Report*; Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress Pursuant to Dodd-Frank Wall Street and Consumer Protection Act, Section 102.8(A)* (2015).



Thomas F. Eagleton Federal Courthouse, St. Louis, Missouri, 2000.

Architects: Hellmuth, Obata + Kassabaum, Inc. Photographer: The Honorable David D. Noce, U.S. Magistrate Judge for the Eastern District of Missouri. Photograph courtesy of and reproduced with the permission of the photographer.