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TECHNICAL REPORT

Case Weights for Federal Defender Organizations

Nicholas M. Pace, Greg Ridgeway,
James M. Anderson, Cha-Chi Fan, Mariana Horta

Sponsored by the Administrative Office of the United States Courts



Safety and Justice

A RAND INFRASTRUCTURE, SAFETY, AND ENVIRONMENT PROGRAM

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Preface

About This Document

This technical report presents work performed on behalf of the Office of Defender Services (ODS) of the Administrative Office of the U.S. Courts (AOUSC). The goal was to help ODS develop a set of case weights for estimating the funding and staffing requirements of federal defender organizations (FDOs) throughout the United States. Attorneys working at FDOs represent financially eligible individuals in federal criminal prosecutions and related proceedings, both at the trial court level and on appeal. Case weights provide a means for viewing FDO attorney caseloads in a way that “weights” client matters by the average number of hours attorneys throughout the system spend on cases involving similar types of offenses or legal services. Weights are not used to determine how much effort any particular case should require; rather, they can help in understanding how resource needs evolve over time as the mix of cases handled by FDOs changes from year to year.

The work had two major components. First, RAND was asked to develop a statistically reliable measure of the number of attorney hours required for various types of cases, based on national averages. In addition, RAND was asked to examine issues related to factors, other than the type of case, that might affect the amount of resources necessary for providing an effective defense. A substantial portion of the effort was also focused squarely on the interrelated questions of whether it made sense to employ case weights for evaluating and projecting FDO resource needs, what might be the best ways for calculating those weights, and what appeared to be the most-significant limitations on their application in this manner.

This report presents our main findings regarding a functional case-weighting system for FDOs, discusses our examination of factors that might influence attorney time expenditures, examines issues related to caseload projections, sets forth historical weighted caseload totals for the federal defender system, and makes recommendations for increasing the accuracy and functionality of any future case-weight update. The work will be of particular interest to the federal defender community, as well as to justice system organizations interested in the development and use of case weights.

The RAND Safety and Justice Program

This research was conducted in the Safety and Justice Program within RAND Infrastructure, Safety, and Environment (ISE). The mission of ISE is to improve the development, operation, use, and protection of society’s essential physical assets and natural resources and to enhance the related social assets of safety and security of individuals in transit and in their work-

places and communities. Safety and Justice Program research addresses all aspects of public safety and the criminal justice system—including violence, policing, corrections, courts and criminal law, substance abuse, occupational safety, and public integrity.

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Contents

Preface	iii
Figures and Text Boxes	ix
Tables	xi
Executive Summary	xiii
Summary	xvii
Acknowledgments	xxxvii
Abbreviations	xxxix
CHAPTER ONE	
Introduction	1
Assessing Defender Resources	1
Background	4
Scope of the Work	7
Organization of This Technical Report	8
CHAPTER TWO	
Overview of Methodological Approach	9
Background on Case Weights	9
Key Components of the Work	10
Project Advisory Group	10
Case Management System and TimeKeeper System Data Extracts	10
System-Level and Office-Level Records and Document Collection	11
Familiarization Visits	12
Telephone Interviews	12
Survey of Federal Public Defenders and Chief Community Defenders	13
Analysis of Factors Affecting Workload	14
Case-Weight System Review	15
Critique of the Initial Office of Defender Services Case-Weight Calculations	15
Issues with Fiscal Year 2004–Fiscal Year 2008 TimeKeeper System/Case Management System	
Data and How They Were Addressed	15
Background	15
Data Issues and Modifications	16
Structural Issues and Modifications	28

CHAPTER THREE

Factors Other Than Case Type That Influence Attorney Time	31
Introduction	31
Developing a Preliminary List of Workload Factors.....	36
Summary of Interviews and Surveys on the Issue of Workload Factors.....	38
Possible Drivers of Attorney Time	63
Framework for Testing the Relative Influence of Various Factors.....	70
Building the Database.....	70
Factors Dropped from the Analysis.....	75
Analysis Variables.....	77
Methodological Approach	77
Analysis.....	106
General Model Results	106
Individual-Level Model Results.....	117
Interaction Model Results	118
Conclusions.....	125
Top Influences.....	125
Secondary Influences.....	127
Limitations in the Approach.....	127

CHAPTER FOUR

Case Weights Based on National Hours of Attorney Time Per Case Type	129
Introduction	129
Case-Type Categories.....	129
Analysis Period	130
The Effect That Extreme Outliers Can Have on Case Weights	131
M-Estimation for Case Weights.....	132
Accounting for District Variation in Case Weights.....	134
Gauging the Effect of District Adjustments	138
Case Weights Proposed for Federal Defender Organization Workload and Staffing	
Requirements.....	144
All Districts Included.....	144
Exclusion of Immigration Cases in the Southern and Western Districts of Texas	163

CHAPTER FIVE

Weighted Caseloads at the Federal Defender Organizations	187
Caseloads and Alternative Weighting Strategies.....	187
Weighted Caseloads Using District-Adjusted M-Estimates.....	188
Weighted Caseloads Excluding TXS and TXW Immigration Cases.....	188

CHAPTER SIX

Statistical Reliability of the Proposed Case-Weight System	205
Measuring Reliability with Caseload Projections	205
Measuring Reliability with Coefficients of Variation.....	206
Conclusion.....	208

CHAPTER SEVEN

Projecting Caseloads 211
 Sensitivity of Caseload Forecasts to Case-Type Grouping 211
 Recommendations 214

CHAPTER EIGHT

Conclusions 215
 Introduction 215
 Applying Nationally Derived Case Weights to Local Caseloads 219
 Other Concerns 226
 Additional Recommendations 228

APPENDIXES

A. Federal Public Defender/Chief Community Defender Survey 231
B. Calculation Details for District-Adjusted Case Weights 247
C. Weighted and Unweighted Caseloads at the Federal Defender Organizations 249
Bibliography 269

Figures and Text Boxes

Figures

S.1.	Caseload Change During Five-Year Study Period, by Case-Weighting Method.....	xxx
4.1.	Comparison of Case Weights Based on Means and M-Estimates	135
4.2.	Comparison of Case Weights Based on M-Estimates and District-Adjusted Case Weights.....	139
5.1.	Caseload Change During Five-Year Study Period, by Case-Weighting Method.....	187
6.1.	Projected Total Attorney Hours from Case Weights Based on National Average Attorney Hours Compared with Actual Attorney Hours Recorded.....	206
6.2.	Projected Total Attorney Hours from Case Weights Based on M-Estimation Compared with Actual Attorney Hours Recorded	207
6.3.	Projected Total Attorney Hours from District-Adjusted Case Weights Compared with Actual Attorney Hours Recorded.....	208

Text Boxes

3.1.	Sample Client and Case Information Form	33
3.2.	“The 20 Complexity Caseload Factors”	34

Tables

S.1.	District-Adjusted M-Estimate Case Weights.....	xx
S.2.	Effects of District-Adjusted M-Estimate Case Weights on District Caseload.....	xxxi
2.1.	Record Counts in Transactional Data Sets Received from the Office of Defender Services.....	11
2.2.	Case Types in Which More Than 25 Percent Were Without Recorded Case-Related Attorney Time.....	17
2.3.	Case Types with More Than 3 Percent of All Cases Without Recorded Case-Related Attorney Time.....	18
2.4.	Relative Ranking of Top 50 Case Types in Average Case-Related Attorney Time, by Value Substituted for Missing Time.....	21
3.1.	“Case Complexity/Weighting Factors”.....	34
3.2.	Workload Factors from Interviews, Surveys, and Other Sources.....	63
3.3.	Case Types of Special Interest.....	72
3.4.	Data Elements Tested in Workload Factor Analysis.....	78
3.5.	General Model Test: All Cases, All Analysis Covariates, Top 20 Rankings.....	107
3.6.	General Model Test: All Cases, All Analysis Covariates Except DISTCASE, Top 20 Rankings.....	111
3.7.	General Model Test: Offenses Only, All Analysis Covariates, Top 20 Rankings.....	113
3.8.	General Model Test: Offenses Only, All Analysis Covariates Except DISTCASE, Top 20 Rankings.....	114
3.9.	General Model Test: Appeals Only, All Analysis Covariates, Top 20 Rankings.....	115
3.10.	General Model Test: Appeals Only, All Analysis Covariates Except DISTCASE, Top 20 Rankings.....	116
3.11.	General Model Test: Other Representations Only, All Analysis Covariates, Top 20 Rankings.....	118
3.12.	General Model Test: Other Representations Only, All Analysis Covariates Except DISTCASE, Top 20 Rankings.....	119
3.13.	Individual Model Test: All Cases, All Analysis Covariates, Top 100 Rankings.....	119
4.1.	Case-Related Attorney Hours by Fiscal Year of Case Closing.....	131
4.2.	Case Weights That Are Most Sensitive to Outliers.....	133
4.3.	M-Estimate Case Weights for the Most-Common Case Types Are Essentially Unchanged.....	134
4.4.	Illustrative Example 1: Comparing Case-Weight Calculations With and Without a District Adjustment.....	135
4.5.	Illustrative Example 2: Comparing Case-Weight Calculations With and Without a District Adjustment.....	136
4.6.	Illustrative Example 2, Continued: Comparing Case-Weight Calculations With and Without a District Adjustment.....	138

4.7.	Case Types Most Influenced by the Use of District-Adjusted Case Weights.....	140
4.8.	Weighted Caseloads Under Case-Weight Alternatives	141
4.9.	Case-Weight Options: Data from All Districts	145
4.10.	Case-Weight Options: CR8710 and CR8720 Cases in the Southern and Western Districts of Texas Excluded.....	164
4.11.	Weighted Caseloads Using Weights Developed by Excluding Certain Immigration Cases from the Western and Southern Districts of Texas.....	183
5.1.	Comparison of Effects of Case-Weighting Alternatives on District Caseload.....	189
5.2.	Annual Caseloads for Federal Defender Organizations, by Fiscal Year of Case Closing: Weighted Based on District-Adjusted M-Estimates	195
5.3.	Comparison of Effects of Case-Weighting Alternatives on District Caseloads; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW	198
6.1.	Case Types with Case-Weight Coefficients of Variation Exceeding 1.0.....	209
7.1.	Case Types for Which Changes in Frequency Would Affect Caseload Forecasts.....	213
8.1.	Average Case-Related Attorney Hours for Selected Case Types by District	220
C.1.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Unweighted	249
C.2.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on Arithmetic Average.....	251
C.3.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on M-Estimates.....	254
C.4.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Unweighted; Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW	256
C.5.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on Arithmetic Average; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW.....	259
C.6.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on M-Estimates; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW	262
C.7.	Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on District-Adjusted M-Estimates; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW	264

Executive Summary

This work was designed to help the Office of Defender Services (ODS) develop a set of case weights for estimating the funding and staffing requirements of federal defender organizations (FDOs). The case weights would be based on information submitted by FDO attorneys to the TimeKeeper System (TKS) and Case Management System (CMS). TKS tracks staff time expenditures, while CMS is used to manage information related to cases and clients served by the FDOs. CMS is also the means of categorizing each newly opened file using an extensive list of case-type codes.

Initially, we reviewed the use of case weights in justice system organizations, including an earlier effort by ODS to create and apply such weights, examining the advantages and disadvantages of various methodologies employed to collect time expenditure data and to utilize weights in assessing staffing and resource needs. Early in our work, we conducted FDO site visits and interviewed attorneys and other staff members to learn more about practices regarding timekeeping at the FDOs, and supplemented that information with an analysis of TKS and CMS data. Our conclusion was that, although there were clearly areas of concern regarding the accuracy and completeness of timekeeping records, such issues would not block the use of the information for the limited purpose of creating a functional system of case weights.

Applying such weights to caseloads in individual offices can be done only with an understanding of how cases within the same broad category differ from one another in terms of expected time consumption. To inform that work, we used attorney interviews and surveys to develop a list of more than 200 candidate factors that describe how variation in client characteristics, case features, local legal culture, and many other areas might play a role in driving attorney hours. From regression modeling of the data, it appeared that the CMS case type, the district, and the manner in which the case was concluded were the three identifiable factors most strongly associated with attorney time. The results suggested that the CMS case-type category would provide a reasonable basis for a system of functional case weights.

Our recommended set of case weights for 284 different case types was developed using attorney time records in TKS for all cases closed by FDOs over a five-year period from fiscal year (FY) 2004 through FY 2008. Although these relative case weights are essentially just the average attorney time expended for a specific type of case divided by the average for all cases taken together, we applied two important statistical techniques to such calculations. First, we used a robust statistical method known as an *M-estimator* to account for the influence on the mean from outlier cases in which extraordinarily large amounts of time were recorded. Second, we incorporated a district-adjustment multiplier, a way to account for some of the district influences we noted during our factor cataloging and to avoid statistical issues that can produce counterintuitive results.

We ran tests to confirm that the set was statistically reliable. The weights had high agreement between actual and projected attorney hours, with reasonable variance observed in categories with 20 or more cases during the study period. We also applied the weights to the number of cases closed by the FDOs, which result in caseload counts that better reflect expected workload. For example, there were 25 percent more cases closed systemwide in FY 2008 than in FY 2007. But, in terms of weighted cases, the increase was a far more modest 2 percent. Five-year weighted caseload totals in individual offices ranged from 46 percent less to more than 60 percent larger than the unweighted case counts.

Average FDO attorney hours required over the life of a case vary by case type; districts vary in the mix of cases they handle; and districts vary in average attorney time requirements for the same types of cases. These realities are at the core of our recommendation that, although weighted caseloads would do a much better job of initially identifying new resource requirements than do raw case numbers, additional information about operational challenges in each district would nevertheless be required before making an informed decision on staffing levels. The distinct differences observed between districts in attorney time for the same type of case, coupled with what we learned during our site visits, interviews, and surveys, convinced us that nationally derived case weights should not be used as a means of comparing weighted caseloads per attorney (WCLPAs) in one district to another or for establishing a national WCLPA to be used as an inflexible formula for assessing productivity, quality, or other evaluative standard in individual districts. They do present a much better way, however, of assessing evolving needs across the entire FDO program and within individual offices than using raw case counts.

Clearly, examination of qualitative, location-specific factors that might differentially affect the need for resources is required in addition to any weighted caseload analysis when evaluating staffing and funding needs. Such is the approach taken by many other justice system organizations, including the federal judiciary. We believe that there are too many district-level differences in the larger legal environment, client characteristics, and other factors for ODS to use nationally derived case weights as a *stand-alone* way of assessing individual FDO performance or adjusting staff levels by way of comparison to those found in other districts.

Case weights do have inherent limitations. One drawback to maintaining existing WCLPA from year to year is the risk of unquestioningly preserving the status quo, an issue that is a special concern in times of system stress. There are also concerns that the calculations of national case weights based on data from every district will result in the setting of standards that reflect the experiences of only the largest FDOs in the country. We do believe that our recommended set of weights addresses this issue to some degree, though locally based qualitative considerations should still be taken into account. And, though issues related to current timekeeping practices are not believed to adversely affect the functionality of our proposed relative case weights, they limit what can be done with time expenditure data generally. Using TKS-based averages to calculate, for example, the total number of attorney hours likely to be required at an individual office given a particular caseload mix and size is not advised.

We also make additional recommendations:

- Standardize procedures regarding how case-type codes are assigned and how TKS is used for minimal-contact cases.
- Reinforce the purpose of TKS in the minds of attorney staff as an important means of balancing caseload demand with appropriate office resources.
- Provide better ways for attorneys to make near-real-time entries into TKS.

- Elicit the opinion of the federal defender community as to the most-constructive ways to categorize cases in CMS.
- Revisit case-weight calculations on a regular basis.
- Continue to make qualitative assessments of conditions not explained by weighted caseloads.

Summary

Introduction

Scope of the Work

This technical report presents work performed on behalf of the Office of Defender Services (ODS), a directorate of the Administrative Office of the U.S. Courts (AOUSC).¹ The goal was to help ODS develop a set of case weights for estimating the funding and staffing requirements of federal defender organizations (FDOs) throughout the United States. Case weights provide a means for viewing FDO attorney caseloads that “weights” client matters by the average number of hours attorneys throughout the system spend on cases involving similar types of offenses or legal services. The weights are normalized so that a case type with average time expenditures that are twice the average for all cases taken together would have a weight of 2.0. Such relative case weights are not used to determine how much effort any particular case should require; rather, they can help in understanding how resource needs evolve over time as the mix of cases handled by FDOs changes from year to year.

The primary focuses of our work were twofold. First, we were asked to develop a measure of the number of attorney hours required for various types of cases, based on national averages, and to use those averages to create a statistically valid set of case weights. Our main sources of information for calculating such weights were two transactional databases: (1) Case Management System (CMS) (used for tracking client matters handled by FDO attorneys) and (2) TimeKeeper System (TKS) (an application used for recording the self-reported time expenditures of FDO attorneys and certain other office staff members). Much of our initial work in this project was focused on reviewing and evaluating data from TKS and CMS in regard to their appropriateness as data sources for developing functional case weights. We conducted site visits at five FDOs, holding confidential interviews with attorneys and support staff that centered primarily on recordkeeping practices related to TKS and CMS. The data in our extracts of TKS and CMS were refined using information we obtained during those site visits, as well as from an initial analysis conducted to identify indicators of possible quality issues. Suspect areas were noted and informed other aspects of this project. To help inform our work, we reviewed the use of case weights in justice system organizations, including an earlier effort by ODS to create and apply such weights, examining the advantages and disadvantages of various methodologies employed to collect time expenditure data and to utilize weights in assessing staffing and resource needs.

¹ Discussion in this section is based on Chapters One and Two.

Second, we were asked to examine issues related to factors, other than the type of case, that might affect the amount of resources necessary for providing an effective defense. To help us catalog the key drivers behind the amount of time attorneys spend on one case compared to another involving similar charges or other characteristics, we set up a series of semistructured interviews with attorneys from 40 different districts. We also conducted a confidential survey of Federal Public Defenders and Chief Community Defenders, seeking information about the legal environment in which their FDOs operate and their views regarding workload-influencing factors. Earlier site-visit interviews of FDO attorneys also sought input on these influences. To identify which on a list of approximately 220 potential factors we cataloged had the greatest relative influence, we built an analytic data set from the CMS and TKS extracts we received from ODS and supplemented those case-level records with additional information about the districts where the cases were located. Multivariate regression techniques were used to rank elements in the data set by the degree to which they explain case-related attorney time expenditures.

Background on Case Weights

Justice system organizations in the United States, including some court systems, probation departments, prosecutor offices, and criminal defense programs, have relied on case weights for years as a means for estimating personnel need and for allocating scarce resources. Time-based case weights are of two types: absolute (reflecting the average time measured for a particular type of case) and relative (reflecting how the average time measured for a particular type of case compares to the average for all cases taken together). For example, assume that cases classified as type A are found to require an average of 200 minutes of personnel time to process, those of type B require an average of 20 minutes, and all cases taken together (i.e., the total of all cases of types A and B) require an average of 50 minutes. As such, the absolute case weights for types A and B would be 200 and 20, respectively (essentially just the average times for the two types), while the relative case weight for type A would be 4.0 (200 minutes divided by the 50-minute average for all cases), and, for type B, it would be 0.4 (20 minutes divided by 50 minutes).

Though absolute and relative case weights can differ in terms of magnitude, both measures can be multiplied by the actual number of cases (based on case openings, disposition, or active cases) handled over a span of time to produce weighted caseloads. For example, assume that 3,000 cases of type A and 15,000 cases of type B were filed in a single year. Using the relative weights from the previous example, type A cases have a weighted case count of 12,000 because each case, on average, would require four times as much personnel time as all cases taken together (3,000 cases \times 4.0 relative weight). The more-numerous type B cases actually have a smaller weighted caseload count of 6,000 (15,000 cases \times 0.4 relative weight). Overall, the weighted caseload for type A is twice that for type B, suggesting that twice as much personnel time would be needed to process the type A caseload as for type B's. Absolute weights can also yield weighted caseloads. Here, the weighted caseload for type A would be 600,000 (3,000 cases \times 200 absolute weight) and type B would be 300,000 (15,000 cases \times 20 absolute weight). Weighted caseloads using absolute weights essentially describe the amount of time expected to be required to process the caseload; in this example, 15,000 hours would be needed for both types of cases (600,000 minutes + 300,000 minutes).

Evaluation of the Primary Data Sources for Federal Defender Organization Case Weights

We conducted interviews of FDO staff in some locations to learn more about how attorneys approach their timekeeping responsibilities.² These interviews were conducted in conjunction with an analysis of TKS and CMS data to identify patterns suggesting systematic problems with time and event entries. From what we learned during this phase of our investigation, we determined that there were issues related to timekeeping practices and quality control that need to be taken into account, both in our analysis and in the way ODS might employ our proposed set of case weights.

After reviewing these concerns, we nevertheless concluded that existing TKS/CMS data can be reliably used for the creation of relative case weights. Relative case weights reflect how the amount of work typically required to process a case of a particular type compares to the average for all cases taken together. The shortcomings we noted with FDO timekeeping practices are not fatal impediments to determining how case types compare to each other in terms of attorney time requirements. We do caution, however, against using information about average time expenditures in an absolute sense, such as for estimating the total number of attorney hours needed at an FDO or for the entire federal defender system. Some of the issues we identified during our evaluation are likely to negatively affect the accuracy of such estimates.

Workload Factor Cataloging

Based on our regression modeling of the many factors reported to us as influencing attorney time expenditures, it appeared that the CMS case type, the district, and the manner in which the case was concluded were the three identifiable factors most strongly associated with attorney time across all FDO cases.³ Case type by far exhibited the strongest association with time, suggesting that a case-weighting system based on case type would yield a reasonable measure of resource demand. The specific means of disposition was also found to be highly associated with attorney time, a somewhat obvious relationship given that disposition categories can include such outcomes as a guilty verdict following a district court jury trial, as well as potentially less resource-intensive conclusions, such as a modification of the terms of a supervised release. Our analysis also revealed that district identification was likewise associated with average FDO attorney time expenditures, but there was no single reason we could identify that might explain why districts differ in this way for the same type of case. The relatively high influence of district location in explaining attorney time suggests that location needs to be taken into account as part of any case-weight calculation. Other factors that exhibited larger influence in predicting attorney time expenditure include the staffing levels of the U.S. Attorneys' Office (USAO), the identity of the circuit court of appeals, and discovery volume information recorded in CMS, such as the number of boxes of hard-copy discovery or the number of transcript pages.

² Discussion in this section is based on Chapter Two.

³ Discussion in this section is based on Chapter Three.

Case Weights Proposed for the Federal Defender Organizations

We developed three alternative sets of case weights using attorney time records in TKS for all cases closed during the five-year period of fiscal year (FY) 2004 through FY 2008.⁴ Mean averages for time were calculated for each of 284 case types associated with the closed cases, and a set of weights was based on those averages. Because of concerns over the influence on the mean from outlier cases in which extraordinarily large amounts of time were recorded, we then used a robust statistical method known as an *M-estimator* (rather than the simple mean) to create a second set of alternative weights. Finally, we created a third set that employed an M-estimator but also used statistical modeling techniques that compare average attorney time for one case type to the average time for another case type within the same district and adjusted the weights accordingly. The purpose of doing so was to account for some of the district influences we noted during our cataloging of workload factors and to avoid the effects of a statistical quirk that can skew relative weights from what might be expected when average times are viewed at the individual district level. Though we presented various sets of candidate weights for ODS's review (including sets in which certain categories of immigration cases found in the Southern and Western Districts of Texas were dropped from our analysis), our recommendation is that ODS use a single set of nationally derived weights for all 79 FDOs based on district-adjusted M-estimation calculations (see Table S.1).

Table S.1
District-Adjusted M-Estimate Case Weights

CMS Code	Case-Type Description	Number of Cases	Case Weight
AA	Court of Appeals: Amendment Appeal	74	0.21
AC	Amicus	1	14.59
AF	Appeal: Civil Asset Forfeiture Representation	10	0.63
ANCPRO	Ancillary Proceedings	350	0.45
APM	Appeal: Magistrate Decision	544	1.02
BP	Bail/Presentment	7,110	0.06
CA	Court of Appeals: Other Matters	12,873	2.29
CAO	Circuit Argument Only	12	1.68
CCA	Co-Counsel Appointment	21	1.04
CCC	Criminal or Civil Contempt	151	0.66
CCO	Conflict Counsel	223	0.12
CD	Court Directed Prisoner Representation	1,587	0.19
CF	Civil Asset Forfeiture Representation	76	0.70
CK	Crack Cocaine Retroactive Amendment	11,493	0.13
CONSUL	Consultation	4,589	0.46
CR0100	Homicide: Murder, First Degree	384	8.61

⁴ Discussion in this section is based on Chapters Four and Six in this document.

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR0101	Homicide: Murder, First Degree, Government Official	4	6.33
CR0200	Homicide: Murder, Second Degree	99	7.77
CR0201	Homicide: Murder, Second Degree, Government Official	4	1.74
CR0300	Homicide: Manslaughter	136	5.73
CR0310	Homicide: Negligent	4	2.23
CR0311	Homicide: Negligent	1	2.97
CR1100	Robbery: Bank	4,350	2.59
CR1200	Robbery: Postal	73	3.30
CR1400	Robbery: Other	90	1.92
CR1500	Assault: Assault	2,535	2.27
CR1501	Assault: Felony, on a Government Official	10	1.20
CR1560	Federal Statute: Fair Housing Law	5	2.35
CR1600	Assault: Other	1,137	0.44
CR1601	Assault: Misdemeanor, on a Government Official	18	0.70
CR1602	Assault: Obstruction of Justice—Interference	16	2.12
CR1700	Racketeering: Violent Crime	155	2.81
CR1800	Carjacking	81	2.70
CR2100	Burglary: Bank	1	2.11
CR2200	Burglary: Postal	52	1.51
CR2300	Burglary: Interstate Commerce	4	1.68
CR2400	Burglary: Other	86	1.18
CR3100	Larceny and Theft: Bank	226	1.77
CR3200	Larceny and Theft: Postal	1,224	1.74
CR3300	Larceny and Theft: Interstate Commerce	236	2.72
CR3400	Larceny and Theft: U.S. Property	4,382	0.99
CR3500	Larceny and Theft: Theft Within Special Maritime Jurisdiction	350	0.26
CR3600	Larceny and Theft: Transportation Stolen Property	388	2.56
CR3700	Larceny and Theft: Felony Other	225	1.37
CR3800	Larceny and Theft: Misdemeanor Other	601	0.31
CR4100	Embezzlement: Bank	599	1.62
CR4200	Embezzlement: Postal	818	1.16
CR4310	Embezzlement: Public Moneys or Property	39	1.60
CR4320	Embezzlement: Lending, Credit, Insurance Institute	64	2.13

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR4330	Embezzlement: By Officers of a Carrier	5	2.94
CR4340	Embezzlement: World War Veterans Relief	8	1.45
CR4350	Embezzlement: Officer or Employee of U.S.	34	1.30
CR4390	Embezzlement: Other	415	2.26
CR4510	Fraud: Income Tax, Evade or Defeat	181	3.78
CR4520	Fraud: Income Tax, Felony Other	269	3.25
CR4530	Fraud: Income Tax, Failure to File	72	2.62
CR4540	Fraud: Income Tax, Misdemeanor Other	2	0.17
CR4600	Fraud: Lending, Credit Institution	273	1.97
CR4601	Fraud: Bank	2,115	2.09
CR4700	Fraud: Postal, Interstate Wire, Radio, etc.	2,057	3.15
CR4800	Fraud: Veterans and Allotments	21	1.24
CR4900	Fraud: Bankruptcy	214	3.50
CR4910	Fraud: Marketing Agreements and Commodity Credit	6	2.01
CR4920	Fraud: Securities and Exchange	99	4.66
CR4931	Fraud: Excise Tax, Other	2	4.72
CR4932	Fraud: Wagering Tax, Other	5	0.65
CR4933	Fraud: Other Tax	46	1.00
CR4940	Fraud: Railroad Retirement and Unemployment	11	0.86
CR4941	Fraud: Food Stamp Program	123	1.08
CR4950	Fraud: Social Security	2,056	1.50
CR4960	Fraud: False Personation	160	2.04
CR4970	Fraud: Nationality Laws	917	1.16
CR4980	Fraud: Passport	1,960	0.86
CR4991	Fraud: False Claims and Statements	3,515	1.66
CR4992	Fraud: Conspiracy to Defraud, Other	1,422	2.18
CR4993	Fraud: Conspiracy (General), Other	3	0.91
CR4994	Fraud: False Entries, Other	25	0.87
CR4995	Fraud: Credit Card	1,885	1.87
CR4996	Fraud: Computer	219	2.71
CR4997	Fraud: Telemarketing	16	4.81
CR4998	Fraud: Health Care	425	2.40
CR4999	Fraud: Other	392	2.91

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR5100	Transportation Stolen Vehicle; Aircraft	118	1.71
CR5200	Auto Theft: Other	248	4.00
CR5500	Forgery and Counterfeiting: Transport Forged Securities	1	0.05
CR5600	Forgery and Counterfeiting: Postal	1	0.73
CR5710	Forgery and Counterfeiting: Other U.S.	203	1.41
CR5720	Forgery and Counterfeiting: Other	13	0.87
CR5800	Forgery and Counterfeiting: Counterfeiting	2,899	1.76
CR5900	Sex Offenses: Sexually Explicit Material	1,163	2.39
CR6100	Sex Offenses: Sexual Abuse of Adult	659	4.80
CR6110	Sex Offenses: Sexual Abuse of Children	1,633	3.49
CR6120	Sex Offenses: Interstate Domestic Violence	38	6.13
CR6121	Sex Offenses: Violent Offenses, Other	48	2.85
CR6200	Sex Offenses: White Slavery and Importing Aliens	514	3.12
CR6300	Sex Offenses: Other	1,450	3.03
CR6301	Sex Offenses: Transportation for Illegal Sexual Activity	235	2.65
CR6501	Drug Offenses: Marihuana, Sell, Distribute or Dispense	9,462	1.72
CR6502	Drug Offenses: Marihuana, Importation/Exportation	3,611	1.94
CR6503	Drug Offenses: Marihuana, Manufacture	187	1.94
CR6504	Drug Offenses: Marihuana, Possession	2,092	0.34
CR6700	Drug Offenses: Narcotics, Other (Terms/Reopens)	17	0.14
CR6701	Drug Offenses: Narcotics, Sell, Distribute or Dispense	11,329	1.92
CR6702	Drug Offenses: Narcotics, Importation/Exportation	1,582	1.72
CR6703	Drug Offenses: Narcotics, Manufacture	113	2.50
CR6704	Drug Offenses: Narcotics, Possession	609	1.08
CR6705	Drug Offenses: Narcotics, Records, Prescriptions, Fraudulent	4	0.59
CR6800	Drug Offenses: Controlled Substance, Continuing Criminal Enterprise	40	1.39
CR6801	Drug Offenses: Controlled Substance, Sell, Distribute, Dispense	23,870	1.86
CR6802	Drug Offenses: Controlled Substance, Importation/Exportation	1,455	1.81
CR6803	Drug Offenses: Controlled Substance, Manufacture	452	2.55
CR6804	Drug Offenses: Controlled Substance, Possession	1,429	0.68
CR6805	Drug Offenses: Controlled Substance, Fraudulent Records, Prescription	11	1.04
CR6806	Drug Offenses: Drug Cultivation	6	1.35

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR6807	Drug Offenses: Illicit Drug Profits	1	5.43
CR6809	Drug Offenses: Mail Order Drug Paraphernalia	2	0.22
CR6810	Drug Offenses: Under Influence Alcohol/Drugs	43	0.71
CR6830	Drug Offenses: Under Influence Alcohol/Drugs	62	0.26
CR6905	Drug Offenses: Other	19	1.76
CR6909	Drug Offenses: Mail Order Drug Paraphernalia	38	0.51
CR6911	Drug Offenses: Other Drug Abuse Prevention and Control Act Offenses	30	2.30
CR7100	Miscellaneous: Bribery	180	2.21
CR7210	Miscellaneous: Traffic Offenses, Drunken Driving	3,399	0.26
CR7220	Miscellaneous: Traffic Offenses, Other	7,615	0.15
CR7310	Miscellaneous: Escape	1,284	0.94
CR7311	Miscellaneous: Escape, Jumping Bail	397	0.45
CR7312	Miscellaneous: Escape, Bail Reform Act of 1966	28	0.18
CR7313	Miscellaneous: Escape from Custody	60	1.35
CR7314	Miscellaneous: Criminal Default	5	0.32
CR7315	Miscellaneous: Supervision Condition Violation	23	0.56
CR7320	Miscellaneous: Escape, Aiding or Harboring	271	1.31
CR7330	Miscellaneous: Prison Contraband	136	1.20
CR7400	Miscellaneous: Extortion, Racketeering and Threats	815	3.20
CR7401	Miscellaneous: Threats Against the President	139	2.79
CR7410	Miscellaneous: Racketeering, Arson	3	0.97
CR7420	Miscellaneous: Racketeering, Bribery	1	0.03
CR7430	Miscellaneous: Racketeering, Extortion	10	6.63
CR7440	Miscellaneous: Racketeering, Gambling	4	14.99
CR7450	Miscellaneous: Racketeering, Liquor	1	0.03
CR7460	Miscellaneous: Racketeering, Narcotics	14	2.92
CR7470	Miscellaneous: Racketeering, Prostitution	1	1.93
CR7471	Miscellaneous: Racketeering, Murder	50	5.93
CR7473	Miscellaneous: Racketeering, Maim	1	0.69
CR7474	Miscellaneous: Racketeering, Conspiracy, Murder, Kidnap	5	0.14
CR7477	Miscellaneous: Racketeering, Monetary Laundering	413	2.26
CR7480	Miscellaneous: Racketeering	38	3.05
CR7481	Miscellaneous: Racketeering, Robbery	2	10.73

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR7482	Miscellaneous: Racketeering, Threats	3	1.15
CR7490	Miscellaneous: Racketeering, Extortion Credit Transactions	28	3.39
CR7500	Miscellaneous: Gambling and Lottery	12	1.73
CR7530	Miscellaneous: Gambling and Lottery, Transmit Wager	3	0.52
CR7600	Miscellaneous: Kidnapping (18:1201,1202)	227	3.85
CR7610	Miscellaneous: Kidnapping (18:13)	1	3.87
CR7611	Miscellaneous: Kidnapping, Hostage	43	6.34
CR7700	Miscellaneous: Perjury	98	2.34
CR7800	Miscellaneous: Firearms and Weapons	1,394	2.31
CR7820	Miscellaneous: Firearms, Unlawful Possession	5,020	2.21
CR7830	Miscellaneous: Firearms	20,255	2.59
CR7831	Miscellaneous: Furtherance of Violence	392	2.62
CR7910	Miscellaneous: Arson	55	4.01
CR7940	Miscellaneous: Malicious Destruction of Property	96	0.87
CR7941	Miscellaneous: Other, Property	2	4.42
CR7950	Miscellaneous: Disorderly Conduct	327	0.33
CR7962	Miscellaneous: Civil Disorder	7	0.23
CR7990	Miscellaneous: General Offenses, Other	2,433	0.58
CR7991	Miscellaneous: Juvenile Delinquency	136	1.72
CR8100	Miscellaneous: Failure to Pay Child Support	164	0.77
CR8200	Miscellaneous: False Claims and Services, Government	211	1.88
CR8201	Miscellaneous: Identification Documents and Information Fraud	1,565	0.80
CR8500	Miscellaneous: Mail Fraud	309	1.92
CR8600	Miscellaneous: Wire, Radio, or Television Fraud	335	2.08
CR8710	Miscellaneous: Immigration Laws, Illegal Entry	84,363	0.15
CR8720	Miscellaneous: Immigration Laws, Illegal Reentry	51,699	1.08
CR8730	Miscellaneous: Immigration Laws, Other	11,229	1.14
CR8731	Miscellaneous: Immigration Laws, Fraud and Misuse of Visa/Passport	1,186	0.57
CR8740	Miscellaneous: Immigration Laws, Illegal Entry	119	0.70
CR8750	Miscellaneous: Immigration Laws, Fraudulent Citizen	11	0.54
CR8900	Miscellaneous: Liquor, Internal Revenue	10	0.60
CR9001	Federal Statute: Waste-Treatment/Disposal/Storage	35	4.47

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR9110	Federal Statute: Agriculture Acts	9	0.25
CR9130	Federal Statute: Game Conservation Acts	242	1.57
CR9140	Federal Statute: Agriculture, Insecticide Act	2	0.35
CR9150	Federal Statute: National Park/Recreation Violations	205	0.96
CR9160	Federal Statute: Agriculture, Packers and Stockyard Act	5	0.12
CR9180	Federal Statute: Agriculture, Handling Animals, Research	1	4.71
CR9300	Federal Statute: Fair Labor Standards Act	63	1.04
CR9400	Federal Statute: Food and Drug Act	53	1.67
CR9500	Federal Statute: Migratory Bird Laws	25	0.88
CR9600	Federal Statute: Motor Carrier Act	2	2.04
CR9720	Federal Statute: Illegal Use of Uniform	10	1.34
CR9740	Federal Statute: Alien Registration	37	0.31
CR9741	Federal Statute: Energy Facility	5	10.90
CR9752	Federal Statute: Espionage	17	4.95
CR9753	Federal Statute: Sabotage	1	1.16
CR9754	Federal Statute: Sedition	1	4.52
CR9760	Federal Statute: Curfew, Restricted Areas	321	0.24
CR9780	Federal Statute: Trading with the Enemy Act	2	10.89
CR9790	Federal Statute: Other	80	2.93
CR9791	Federal Statute: Subversive Activities Control Act	3	0.27
CR9810	Federal Statute: Obscene Mail	25	2.08
CR9820	Federal Statute: Obscene Matter in Interstate Commerce	41	4.05
CR9901	Federal Statute: Civil Rights	83	4.68
CR9902	Federal Statute: Election Law Violators	27	1.67
CR9903	Federal Statute: Public Officers/Employees	2	0.14
CR9905	Federal Statute: Foreign Relations	65	1.28
CR9906	Federal Statute: Bank and Banking	2	0.34
CR9907	Federal Statute: Money and Finance	326	1.64
CR9908	Federal Statute: Public Health and Welfare	2	25.44
CR9910	Federal Statute: Communication Acts (Including Wire Tap)	10	1.84
CR9911	Federal Statute: Wire Interception	31	2.21
CR9912	Federal Statute: Copyright Laws	3	0.62
CR9914	Federal Statute: Coast Guard	2	4.59

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
CR9915	Federal Statute: Commerce and Trade	2	0.24
CR9921	Federal Statute: Contempt	132	1.22
CR9923	Federal Statute: Forfeiture, Criminal or Drug Related	7	1.56
CR9929	Federal Statute: Labor Laws	1	6.39
CR9930	Federal Statute: Minerals and Land Mining	1	5.89
CR9931	Federal Statute: Customs Laws (Except Narcotics and Liquor)	157	2.19
CR9938	Federal Statute: Veterans Benefits	5	0.32
CR9940	Federal Statute: Social Security	5	0.71
CR9943	Federal Statute: Railroad and Transportation Acts	1	1.08
CR9949	Federal Statute: Transportation	2	0.14
CR9950	Federal Statute: War and National Defense, Other	1	3.69
CR9954	Federal Statute: Peonage	19	2.46
CR9957	Federal Statute: Terrorist Activity	89	4.35
CR9960	Federal Statute: Liquor (except internal revenue)	30	0.43
CR9971	Federal Statute: Maritime and Shipping Laws	165	1.71
CR9972	Federal Statute: Stowaways	5	0.88
CR9973	Federal Statute: Federal Boat Safety Act of 1971	7	0.88
CR9981	Federal Statute: Postal, Non Mailable Material	16	2.06
CR9982	Federal Statute: Postal, Injury to Property	6	1.40
CR9983	Federal Statute: Postal, Obstructing the Mail	196	0.63
CR9984	Federal Statute: Postal, Violations by Postal Employees	166	0.90
CR9989	Federal Statute: Postal, Other	63	0.79
CR9991	Federal Statute: Destroying Federal Property	176	1.00
CR9992	Federal Statute: Intimidation of Witnesses, Jurors, etc.	238	3.15
CR9993	Federal Statute: Aircraft Regulations	366	1.74
CR9994	Federal Statute: Explosives (except on vessels)	461	3.64
CR9999	Federal Statute: Other	1,355	0.75
D1	Death Penalty: Habeas Corpus Challenge to State Sentence	10	39.15
D2	Death Penalty: Federal Capital Prosecution (and Direct Appeal)	163	37.00
D3	Death Penalty: Motion Attacking Sentence (2255)	1	66.87
D4	Death Penalty: Other	6	18.33
D5	Death Penalty: Redesignation from D2: No Death Sought by Government	3	366.18
EXTRAD	Extradition	660	0.62

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
FAO	First Appearance Only	17,856	0.05
HA	Appeal: Noncapital Habeas	1,092	4.04
HC	Habeas Corpus	3,954	3.04
JU	Juror Representation	8	1.66
LU	Line-Up	2	0.07
M4243A	Mental Disease 4243(a)	5	1.43
M4243C	Mental Disease 4243(c)	6	1.04
M4243E	Mental Disease 4243(e)	2	1.96
M4243F	Mental Disease 4243(f)	12	1.38
M4243G	Mental Disease 4243(g)	7	0.96
M4245A	Mental Disease 4245(a)	229	0.37
M4246A	Mental Disease 4246(a)	281	0.75
M4246E	Mental Disease 4246(e)	46	0.28
M4246F	Mental Disease 4246(f)	70	0.39
M4248A	Mental Disease 4248(a)	12	3.22
MA	Motion Attacking Sentence (2255)	578	2.06
MC	Motion to Correct or Reduce (Rule 35)	2,468	0.37
MNT	Motion for New Trial	25	1.82
MOP	Modification of Probation	1,896	0.13
ODC	Drug Court Participant	186	0.51
OT	Other	9,995	0.25
PA	Parole Revocation	2,475	0.30
PD	Pretrial Diversion	437	0.41
PL	Appeal: Parole Commission	61	0.32
PO	Petty Offenses	26,139	0.10
PP	Pre-Petition	279	0.81
PR	Probation Revocation	12,875	0.31
PT	Prisoner Transfer	2,509	0.20
PTR	Pretrial Release	1,476	0.26
RHO	Remanded: Habeas or Other	199	0.89
RTL	Remanded: Trial Level	863	0.79
SB	Standby or Advisory Counsel	6	0.42
SC	Supreme Court (Certiorari Granted)	16	52.12

Table S.1—Continued

CMS Code	Case-Type Description	Number of Cases	Case Weight
SO	Sentencing Only	1,575	0.82
SR	Supervised Release	63,281	0.41
SS	State Statutes	617	0.28
TD	Court of Appeals: Trial Disposition	11,208	3.30
WI	Witness	5,102	0.41
WW	Witness for a Grand Jury, Federal Agency, Congress	611	0.66

NOTE: FY 2004–FY 2008 closed cases.

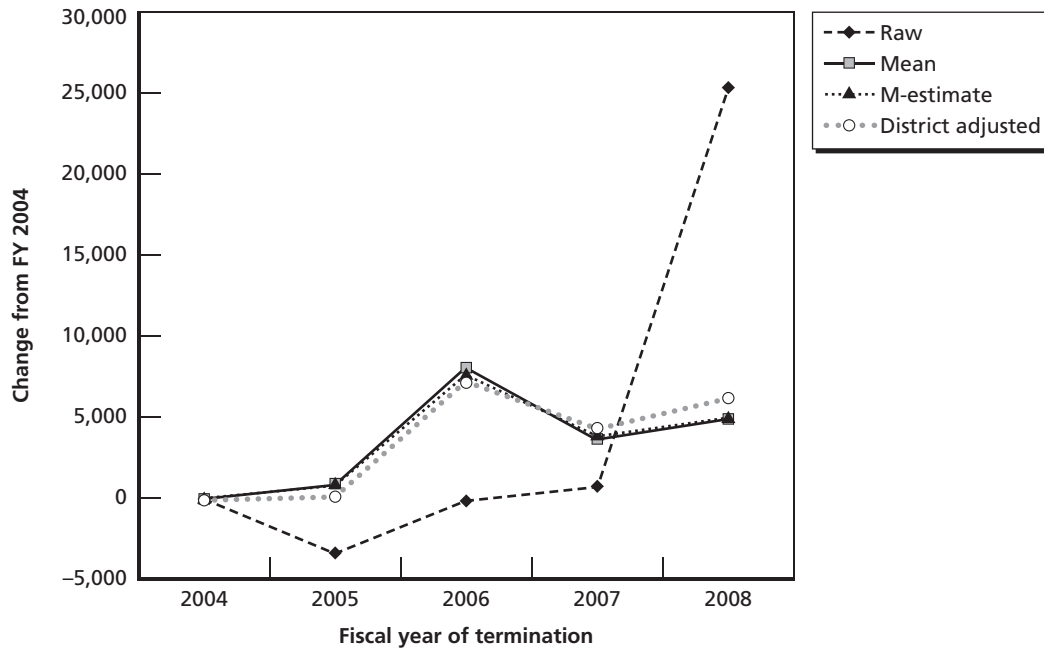
To assess the statistical reliability of the three possible weight systems, we plotted the attorney hours projected from the weighted caseloads against the actual total attorney hours in the three systems and computed the correlation coefficient between the weighted caseloads and attorney hours. Weights based on the mean or M-estimation alone had a coefficient of 0.87, indicating moderate agreement between the actual and projected attorney hours for each FDO. For district-adjusted M-estimations, there was much better agreement, with a correlation coefficient of 0.97, substantially higher than those for the other two systems. We also used the coefficient of variation (CV, the ratio of the standard errors to the case weight) as a measure to assess the variability of an estimate. CVs that exceed 1.0 are considered high variance, but all case types with at least 20 cases had CVs less than 0.45 in our data. The high correlation coefficients observed for district-adjusted M-estimation case weights and the low CVs for all but the most–infrequently used case-type categories suggest that the proposed case weights are statistically reliable.

Weighted Caseloads at the Federal Defender Organizations

We also applied the weights to the number of cases closed by the FDOs, which result in caseload counts that better reflect expected workload. Figure S.1 compares counts for unadjusted “raw” cases with those derived using the three case-weight alternatives described above (arithmetic average, M-estimates, and district-adjusted M-estimates), measuring the change in closed cases each year from FY 2004.⁵ Until FY 2007, all three weighted caseloads were increasing more quickly than the unadjusted figures, but, in FY 2008, as compared to FY 2007, 11,400 CK (Crack Cocaine Amendment) cases were added, as were 9,200 additional CR8710 (Illegal Entry) cases (all in all, there were 25 percent more cases closed in FY 2008 than in FY 2007). However, both of these case types have relatively small weights no matter which alternative weighting strategy is used, none being more than 15 percent of the overall average. When weighted, that same FY 2008 spike was far more modest in size. Using the district-adjusted approach, for example, there would be just 1,500 crack cocaine amendment and 1,350 illegal-entry cases added to the weighted totals in FY 2008 compared to FY 2007, and, when all case types are considered, the overall increase was only 2 percent.

⁵ Discussion in this section is based on Chapter Five in this document.

Figure S.1
Caseload Change During Five-Year Study Period, by Case-Weighting Method



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No matter which case-weight system is adopted, some districts will find that their new weighted caseload calculations are markedly larger than the raw counts, while others see a profound decrease (see Table S.2 for a comparison of actual and weighted caseloads based on district-adjusted M-estimate weights). Of course, the real change is simply in the way cases are counted, here reflecting national average attorney case-related hours recorded in TKS. With that being understood, districts with heavy immigration caseloads or large volumes of other relatively low-weight case types have five-year totals for district-adjusted M-estimate weighted cases that are as much as 46 percent less than the unweighted figures. Some low-volume districts with a high proportion of complex or otherwise time-consuming case types can have weighted caseload totals that are at least 60 percent larger than the raw count in CMS. The rank of the largest districts (in terms of volume) stays fairly constant across the three alternative approaches.

Caseload Forecasting

We reviewed the reported methodology employed by the AOUSC's Statistics Division in its annual *Criminal Justice Act Forecasts*.⁶ The application of standard autoregressive integrated moving average (ARIMA) models and dynamic regression models to monthly case-closing patterns and trends going back to 1999 appeared to be reasonable and sophisticated techniques for predicting future FDO caseloads. However, the Statistics Division's projections are presented in terms of just seven general categories of cases handled by FDOs. In contrast, our

⁶ Discussion in this section is based on Chapter Seven in this document.

Table S.2
Effects of District-Adjusted M-Estimate Case Weights on District Caseload

District	Unadjusted			Weighted			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
AKX	70	1,513	17.7	63	2,236	1.7	47.8
ALM	72	1,462	56.7	65	2,142	28.8	46.5
ALS	67	1,643	50.4	59	2,470	34.6	50.3
ARE	59	2,149	71.9	57	2,661	9.6	23.8
ARW	75	1,128	19.4	77	1,257	57.0	11.4
AZX	2	38,300	62.4	3	20,547	1.8	-46.4
CAC	5	16,726	12.2	4	17,915	-2.9	7.1
CAE	9	9,823	9.3	11	10,224	-14.5	4.1
CAN	26	4,623	13.0	23	6,275	-10.1	35.7
CAS	4	24,064	6.1	5	17,205	5.9	-28.5
COX	31	4,021	10.8	31	5,363	-4.0	33.4
CTX	71	1,479	12.3	68	2,108	-0.5	42.5
DCX	35	3,494	-12.2	29	5,713	-39.7	63.5
DEX	77	1,059	75.9	78	1,229	58.8	16.1
FLM	11	8,782	56.9	10	10,685	7.2	21.7
FLN	37	3,309	10.3	45	3,784	-8.4	14.4
FLS	8	10,204	-0.9	7	13,132	-13.3	28.7
GAM	90	141	—	90	137	—	-2.8
GAN	16	6,241	-10.3	19	7,203	-29.9	15.4
GUX	81	769	-18.5	87	743	-31.7	-3.4
HIX	45	2,916	-14.3	53	3,228	-45.2	10.7
IAN	64	1,691	-9.4	66	2,137	-3.8	26.4
IAS	54	2,446	22.2	55	2,756	36.9	12.7
IDX	73	1,236	1.3	74	1,755	-8.4	42.0
ILC	44	2,954	110.5	39	4,293	26.0	45.3
ILN	27	4,392	1.9	30	5,657	-8.4	28.8
ILS	40	3,203	53.6	60	2,390	8.7	-25.4
INN	66	1,661	156.1	61	2,280	31.4	37.3
INS	65	1,678	23.5	75	1,720	9.5	2.5
KSX	25	4,633	41.4	27	6,051	35.7	30.6
KYW	69	1,541	33.5	64	2,204	-5.3	43.0

Table S.2—Continued

District	Unadjusted			Weighted			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
LAE	50	2,626	101.2	52	3,253	15.9	23.9
LAM	86	684	2.5	82	1,084	-34.0	58.5
LAW	52	2,608	67.7	49	3,402	3.1	30.4
MAX	68	1,579	36.2	62	2,250	-3.0	42.5
MDX	12	8,550	16.1	20	7,096	-4.5	-17.0
MEX	89	217	—	88	244	—	12.4
MIE	24	4,644	9.3	25	6,216	-12.4	33.9
MIW	62	1,722	64.5	58	2,552	23.4	48.2
MNX	49	2,718	35.6	48	3,414	-8.3	25.6
MOE	22	5,078	62.0	21	6,764	17.7	33.2
MOW	23	4,999	27.9	17	7,796	2.1	56.0
MSN	88	218	—	89	231	—	6.0
MSS	41	3,194	81.5	51	3,330	55.8	4.3
MTX	39	3,215	12.7	38	4,445	9.5	38.3
NCE	17	6,237	31.4	24	6,249	1.0	0.2
NCM	58	2,191	2.6	46	3,755	-16.2	71.4
NCW	60	2,126	—	50	3,362	—	58.1
NDX	84	722	—	81	1,086	—	50.4
NEX	36	3,484	61.8	33	4,758	16.4	36.6
NHX	80	826	47.4	76	1,302	11.8	57.6
NJX	18	6,209	-0.2	16	7,861	-24.4	26.6
NMX	6	11,922	7.5	6	13,616	11.7	14.2
NVX	20	5,780	-9.5	13	8,535	-25.2	47.7
NYE	28	4,384	-13.6	26	6,181	-24.4	41.0
NYN	51	2,617	9.3	56	2,679	1.3	2.4
NYS	21	5,496	1.6	14	8,395	-7.0	52.7
NYW	33	3,643	22.7	37	4,501	-1.5	23.6
OHN	47	2,729	84.7	47	3,473	42.4	27.3
OHS	34	3,593	28.8	40	4,285	-9.2	19.3
OKE	87	557	-30.1	85	967	-33.7	73.6
OKN	76	1,112	13.3	73	1,780	2.3	60.1

Table S.2—Continued

District	Unadjusted			Weighted			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
OKW	57	2,201	8.5	67	2,118	-12.5	-3.8
ORX	13	7,728	10.2	9	11,212	-1.4	45.1
PAE	19	6,033	30.5	22	6,613	1.7	9.6
PAM	38	3,277	84.9	42	4,043	29.3	23.4
PAW	48	2,722	88.0	44	3,973	28.8	46.0
PRX	32	3,949	78.9	32	4,992	21.6	26.4
RIX	85	709	20.3	79	1,188	-6.8	67.6
SCX	15	6,574	85.1	15	8,281	7.7	26.0
SDX	55	2,433	10.9	41	4,060	-3.7	66.9
TNE	42	3,191	30.0	43	4,018	-8.5	25.9
TNM	53	2,567	4.1	54	3,208	1.1	25.0
TNW	46	2,813	39.5	35	4,635	-8.1	64.8
TXE	43	3,050	22.9	34	4,671	-5.9	53.1
TXN	14	6,611	1.4	12	10,192	6.9	54.2
TXS	1	107,265	21.4	1	57,996	17.4	-45.9
TXW	3	37,054	10.4	2	38,739	25.7	4.5
UTX	29	4,338	19.1	28	5,880	-6.4	35.5
VAE	7	11,691	26.1	8	11,490	-2.1	-1.7
VAW	78	1,020	—	83	1,082	—	6.1
VIX	79	837	-61.7	84	997	-35.0	19.1
VTX	83	724	29.0	80	1,088	-4.8	50.3
WAE	30	4,091	11.4	36	4,596	-5.7	12.3
WAW	10	9,650	24.6	18	7,484	-4.1	-22.4
WIE	56	2,337	97.8	70	1,980	58.6	-15.3
WIW	82	732	10,866.7	86	751	6,075.4	2.6
WVN	63	1,707	296.0	72	1,787	123.7	4.7
WVS	61	2,090	16.1	69	2,092	-1.4	0.1
WYX	74	1,136	0.0	71	1,965	-26.2	73.0
Total		513,491	26.0		513,491	6.2	

NOTE: FY 2004–FY 2008 closed cases. Weighted caseloads are rounded to the nearest whole number. Some FDOs were not in formal operation in FY 2004.

proposed sets of case weights were based on a much larger number of possible case-type designations, with notable differences observed in the relative case weights for certain large-volume case types that would be combined under the Statistics Division strategy. We believe that more-granulated caseload information than is currently included in the projections is needed to best represent anticipated changes in workload, though we are aware of limits to any forecasting technique, such as ARIMA, one being low case counts within individual categories.

We examined whether changes in certain case types could meaningfully change the case-weighted totals of the seven Statistics Division categories. Seven CMS case types were identified as ones for which a 10-percent increase in their share of the larger Statistics Division category would most notably affect the weighted caseload for that entire group. Of these seven, two codes related to immigration violations and one for matters involving petty offenses were deemed to be the most-compelling candidates for separate treatment as part of Statistics Division caseload forecasts.

Conclusions

Applying Nationally Derived Case Weights to Local Caseloads

Average FDO attorney hours required over the life of a case vary by case type; districts vary in the mix of cases they handle; and districts vary in average attorney time requirements for the same types of cases.⁷ These realities appear to be inherent in the current approach taken by ODS, one that considers adjustments in staffing levels when a district's unweighted caseload is expected to change markedly from the current fiscal year while informing such decisions with information about local conditions. FDOs are given an opportunity to document their experiences and expectations regarding their changing mix of cases and unique needs, and argue for either adjusting staff numbers or maintaining the current level. But caseload counts that are weighted by expected attorney time would do a much better job of initially identifying new resource requirements in this regard than do raw case numbers, although, no matter which workload metric was used, additional information about operational challenges in each district would still be required before making an informed decision on staffing levels.

Many case types exhibit wide variation in regard to attorney time consumption, and, in about half of all categories, the difference between the least amount of time recorded in TKS for any case within a particular type and the most time intensive can be a factor of 1,000 or more. Average time expenditures for the same type of case also show high variability across districts, though some of that variation is due to low numbers of cases within certain case-type categories at the district level. National weights smooth out some, though not all, of these issues. The differences observed between districts in attorney time for the same type of case, coupled with what we learned during our site visits, interviews, and surveys, convinced us that nationally derived case weights should not be used as a means of comparing weight caseload per attorney (WCLPAs) in one district to those in another or for establishing a national WCLPA to be used as an inflexible formula for assessing productivity, quality, or other evaluative standard in individual districts. They do present a much better way, however, of assessing evolving needs across the entire FDO program and within individual offices than using raw case counts. The need to make any such adjustments will be clearer, since more than minor

⁷ Discussions in this section are based on Chapter Eight in this document.

changes in WCLPA make an even more compelling case for closer scrutiny of external demand versus attorney supply.

Case weights help policymakers understand what the relative impact of changes in caseload size and mix might be. But employing them successfully is a process that must be informed by much more than simply an analysis of timekeeping data, caseload trends, and office staff levels. Examination of qualitative, location-specific factors that might differentially affect the need for resources is required as well. Such is the approach taken by many other justice system organizations, including the federal judiciary, due to their understanding that local-level distinctions can override nationally derived weights. We believe that there are too many district-level differences in the larger legal environment, client characteristics, and other factors for ODS to use nationally derived case weights as a *stand-alone* way of assessing individual FDO performance or adjusting staff levels by way of comparison to those found in other districts.

Limitations of a Weighted Caseload Approach

One drawback to maintaining an existing WCLPA in a district from year to year is the risk of unquestioningly preserving the status quo. In districts where attorneys are consistently working far in excess of 40 hours each week in the interests of their clients and in districts where staff address far lighter workloads, keeping WCLPA constant over time simply means that the same level of effort will be required from year to year in those locations despite changes in total cases, the case mix, and staff resources.

Concerns that the calculations of national case weights based on data for every district could result in the setting of standards that reflect the experiences of only the largest FDOs in the country are legitimate ones. Nevertheless, our recommendation is to use a single set based on data from all 90 districts because doing so makes the most sense when the goal is making systemwide resource assessments. If an assessment needs to be made at the local level, qualitative considerations can be taken into account to inform estimates derived from nationally based weights.

Although we believe that issues related to current timekeeping practices in the FDOs do not adversely affect the functionality of our proposed relative case weights, they limit what can be done with time expenditure data generally. Using TKS-based averages to calculate, for example, the total number of attorney hours likely to be required at an individual office given a particular caseload mix and size is not advised.

Finally, case weights based on attorney time consumption do not account for nonattorney needs at an FDO. Examining the methods used for assessing nonattorney staff levels and other resource requirements is beyond the scope of this work, but it is clear that weighted caseloads might not be the best way to make that assessment.

Additional Recommendations

Standardize procedures across and within FDOs in regard to how CMS case-type codes are assigned to newly opened cases and in regard to how TKS is used for first appearances and bail settings. New client matters might not always be coded in a uniform way, and timekeeping entries might not be consistently made for clients with minimal attorney contact—practices that, in the aggregate, can adversely affect case-weight calculations.

Reinforce the purpose of TKS in the minds of attorney staff as an important means of balancing caseload demand with appropriate office resources. Attorneys throughout the system should

be made aware of the possible impact that submitting inaccurate or incomplete time records could have on FDO budget requests.

Provide better ways for attorneys to make near–real-time entries into TKS. The lack of a capability to routinely make TKS entries outside of the office appears to be a significant problem for accurate timekeeping.

Determine what event and activity information is truly needed for TKS’s primary purposes. Event coding should be either eliminated in order to streamline timekeeping responsibilities or collapsed into just a handful of the most-useful categories.

Elicit the opinion of the federal defender community as to the most-constructive ways to categorize cases in CMS. Creating new categories that better capture differences in the scope and severity of the offenses charged could help in developing more-accurate case weights.

Revisit case-weight calculations on a regular basis. Given that continued use of TKS provides a way to generate new case weights at a relatively modest cost when compared to a traditional time study, our proposed set of weights should be revisited periodically and, if warranted, be updated.

Determine whether the need for updated case weights justifies TKS’s existence. If time records are rarely used for management or case-weight calculation purposes, ODS should reconsider its requirement of daily timekeeping.

Continue to make qualitative assessments of conditions not explained by weighted caseloads. FDOs should continue to provide reasoned and locally informed arguments for adjusting or maintaining current staff levels because doing so will result in more-accurate and more-reliable projections of district needs than the application of case weights alone.

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Abbreviations

District Abbreviations

Code	Federal District	Federal Defender Organization Coverage and Type
AKX	Alaska	District of Alaska Federal Public Defender
ALM	Alabama (Middle)	Middle District of Alabama Community Defender
ALN	Alabama (Northern)	No federal defender organization in this district
ALS	Alabama (Southern)	Southern District of Alabama Community Defender
ARE	Arkansas (Eastern)	Eastern and Western Districts of Arkansas Federal Public Defender
ARW	Arkansas (Western)	Eastern and Western Districts of Arkansas Federal Public Defender
AZX	Arizona	District of Arizona Federal Public Defender
CAC	California (Central)	Central District of California Federal Public Defender
CAE	California (Eastern)	Eastern District of California Federal Public Defender
CAN	California (Northern)	Northern District of California Federal Public Defender
CAS	California (Southern)	Southern District of California Community Defender
COX	Colorado	Districts of Colorado and Wyoming Federal Public Defender
CTX	Connecticut	District of Connecticut Federal Public Defender
DCX	District of Columbia	District of Columbia Federal Public Defender
DEX	Delaware	District of Delaware Federal Public Defender
FLM	Florida (Middle)	Middle District of Florida Federal Public Defender
FLN	Florida (Northern)	Northern District of Florida Federal Public Defender
FLS	Florida (Southern)	Southern District of Florida Federal Public Defender
GAM	Georgia (Middle)	Middle District of Georgia Community Defender
GAN	Georgia (Northern)	Northern District of Georgia Community Defender
GAS	Georgia (Southern)	No federal defender organization in this district
GUX	Guam	District of Guam Federal Public Defender
HIX	Hawaii	District of Hawaii Federal Public Defender
IAN	Iowa (Northern)	Southern and Northern Districts of Iowa Federal Public Defender
IAS	Iowa (Southern)	Southern and Northern Districts of Iowa Federal Public Defender

Code	Federal District	Federal Defender Organization Coverage and Type
IDX	Idaho	District of Idaho Community Defender
ILC	Illinois (Central)	Central District of Illinois Federal Public Defender
ILN	Illinois (Northern)	Northern District of Illinois Community Defender
ILS	Illinois (Southern)	Southern District of Illinois Federal Public Defender
INN	Indiana (Northern)	Northern District of Indiana Community Defender
INS	Indiana (Southern)	Southern District of Indiana Community Defender
KSX	Kansas	District of Kansas Federal Public Defender
KYE	Kentucky (Eastern)	No federal defender organization in this district
KYW	Kentucky (Western)	Western District of Kentucky Community Defender
LAE	Louisiana (Eastern)	Eastern District of Louisiana Federal Public Defender
LAM	Louisiana (Middle)	Western and Middle Districts of Louisiana Federal Public Defender
LAW	Louisiana (Western)	Western and Middle Districts of Louisiana Federal Public Defender
MAX	Massachusetts	Districts of Massachusetts and New Hampshire and Rhode Island Federal Public Defender
MDX	Maryland	District of Maryland Federal Public Defender
MEX	Maine	District of Maine Federal Public Defender
MIE	Michigan (Eastern)	Eastern District of Michigan Community Defender
MIW	Michigan (Western)	Western District of Michigan Federal Public Defender
MINX	Minnesota	District of Minnesota Federal Public Defender
MOE	Missouri (Eastern)	Eastern District of Missouri Federal Public Defender
MOW	Missouri (Western)	Western District of Missouri Federal Public Defender
MPX	Northern Mariana Islands	No federal defender organization in this district
MSN	Mississippi (Northern)	Southern and Northern Districts of Mississippi Federal Public Defender
MSS	Mississippi (Southern)	Southern and Northern Districts of Mississippi Federal Public Defender
MTX	Montana	District of Montana Community Defender
NCE	North Carolina (Eastern)	Eastern District of North Carolina Federal Public Defender
NCM	North Carolina (Middle)	Middle District of North Carolina Federal Public Defender
NCW	North Carolina (Western)	Western District of North Carolina Community Defender
NDX	North Dakota	Districts of South Dakota and North Dakota Federal Public Defender
NEX	Nebraska	District of Nebraska Federal Public Defender
NHX	New Hampshire	Districts of Massachusetts and New Hampshire and Rhode Island Federal Public Defender
NJX	New Jersey	District of New Jersey Federal Public Defender
NMX	New Mexico	District of New Mexico Federal Public Defender
NVX	Nevada	District of Nevada Federal Public Defender

Code	Federal District	Federal Defender Organization Coverage and Type
NYE	New York (Eastern)	Southern and Eastern Districts of New York Community Defender
NYN	New York (Northern)	Northern District of New York Federal Public Defender
NYS	New York (Southern)	Southern and Eastern Districts of New York Community Defender
NYW	New York (Western)	Western District of New York Federal Public Defender
OHN	Ohio (Northern)	Northern District of Ohio Federal Public Defender
OHS	Ohio (Southern)	Southern District of Ohio Federal Public Defender
OKE	Oklahoma (Eastern)	Northern and Eastern Districts of Oklahoma Federal Public Defender
OKN	Oklahoma (Northern)	Northern and Eastern Districts of Oklahoma Federal Public Defender
OKW	Oklahoma (Western)	Western District of Oklahoma Federal Public Defender
ORX	Oregon	District of Oregon Federal Public Defender
PAE	Pennsylvania (Eastern)	Eastern District of Pennsylvania Community Defender
PAM	Pennsylvania (Middle)	Middle District of Pennsylvania Federal Public Defender
PAW	Pennsylvania (Western)	Western District of Pennsylvania Federal Public Defender
PRX	Puerto Rico	District of Puerto Rico Federal Public Defender
RIX	Rhode Island	Districts of Massachusetts and New Hampshire and Rhode Island Federal Public Defender
SCX	South Carolina	District of South Carolina Federal Public Defender
SDX	South Dakota	Districts of South Dakota and North Dakota Federal Public Defender
TNE	Tennessee (Eastern)	Eastern District of Tennessee Community Defender
TNM	Tennessee (Middle)	Middle District of Tennessee Federal Public Defender
TNW	Tennessee (Western)	Western District of Tennessee Federal Public Defender
TXE	Texas (Eastern)	Eastern District of Texas Federal Public Defender
TXN	Texas (Northern)	Northern District of Texas Federal Public Defender
TXS	Texas (Southern)	Southern District of Texas Federal Public Defender
TXW	Texas (Western)	Western District of Texas Federal Public Defender
UTX	Utah	District of Utah Federal Public Defender
VAE	Virginia (Eastern)	Eastern District of Virginia Federal Public Defender
VAW	Virginia (Western)	Western District of Virginia Federal Public Defender
VIX	Virgin Islands	District of Virgin Islands Federal Public Defender
VTX	Vermont	District of Vermont Federal Public Defender
WAE	Washington (Eastern)	Eastern District of Washington Community Defender
WAW	Washington (Western)	Western District of Washington Federal Public Defender
WIE	Wisconsin (Eastern)	Eastern and Western Districts of Wisconsin Community Defender
WIW	Wisconsin (Western)	Eastern and Western Districts of Wisconsin Community Defender

Code	Federal District	Federal Defender Organization Coverage and Type
WVN	West Virginia (Northern)	Northern District of West Virginia Federal Public Defender
WVS	West Virginia (Southern)	Southern District of West Virginia Federal Public Defender
WYX	Wyoming	Districts of Colorado and Wyoming Federal Public Defender

NOTE: Names in the "Federal Defender Organization Coverage and Type" column might not always correspond to the formal labels in current use by federal public defender organizations and community defender organizations.

Case Management System Case-Type Codes

CMS Code	Case-Type Description
AA	Court of Appeals: Amendment Appeal
AC	Amicus
AF	Appeal: Civil Asset Forfeiture Representation
ANCPRO	Ancillary Proceedings
APM	Appeal: Magistrate Decision
BP	Bail/Presentment
CA	Court of Appeals: Other Matters
CAO	Circuit Argument Only
CCA	Co-Counsel Appointment
CCC	Criminal or Civil Contempt
CCO	Conflict Counsel
CD	Court Directed Prisoner Representation
CF	Civil Asset Forfeiture Representation
CK	Crack Cocaine Retroactive Amendment
CONSUL	Consultation
CR0100	Homicide: Murder, First Degree
CR0101	Homicide: Murder, First Degree, Government Official
CR0200	Homicide: Murder, Second Degree
CR0201	Homicide: Murder, Second Degree, Government Official
CR0300	Homicide: Manslaughter
CR0301	Homicide: Manslaughter
CR0310	Homicide: Negligent
CR0311	Homicide: Negligent
CR0320	Larceny and Theft: Postal
CR0710	Miscellaneous: Bribery

CMS Code	Case-Type Description
CR0997	Federal Statute: Maritime and Shipping Laws
CR0998	Federal Statute: Postal
CR1100	Robbery: Bank
CR1200	Robbery: Postal
CR1400	Robbery: Other
CR1500	Assault: Assault
CR1501	Assault: Felony, on a Government Official
CR1560	Federal Statute: Fair Housing Law
CR1600	Assault: Other
CR1601	Assault: Misdemeanor, on a Government Official
CR1602	Assault: Obstruction of Justice-Interference
CR1700	Racketeering: Violent Crime
CR1800	Carjacking
CR2100	Burglary: Bank
CR2200	Burglary: Postal
CR2300	Burglary: Interstate Commerce
CR2400	Burglary: Other
CR3100	Larceny and Theft: Bank
CR3200	Larceny and Theft: Postal
CR3300	Larceny and Theft: Interstate Commerce
CR3400	Larceny and Theft: U.S. Property
CR3500	Larceny and Theft: Theft Within Special Maritime Jurisdiction
CR3600	Larceny and Theft: Transportation Stolen Property
CR3700	Larceny and Theft: Felony Other
CR3800	Larceny and Theft: Misdemeanor Other
CR4100	Embezzlement: Bank
CR4200	Embezzlement: Postal
CR4310	Embezzlement: Public Moneys or Property
CR4320	Embezzlement: Lending, Credit, Insurance Institute
CR4330	Embezzlement: By Officers of a Carrier
CR4340	Embezzlement: World War Veterans Relief
CR4350	Embezzlement: Officer or Employee of U.S.
CR4390	Embezzlement: Other
CR4510	Fraud: Income Tax, Evade or Defeat

CMS Code	Case-Type Description
CR4520	Fraud: Income Tax, Felony Other
CR4530	Fraud: Income Tax, Failure to File
CR4540	Fraud: Income Tax, Misdemeanor Other
CR4600	Fraud: Lending, Credit Institution
CR4601	Fraud: Bank
CR4700	Fraud: Postal, Interstate Wire, Radio, etc.
CR4800	Fraud: Veterans and Allotments
CR4900	Fraud: Bankruptcy
CR4910	Fraud: Marketing Agreements and Commodity Credit
CR4920	Fraud: Securities and Exchange
CR4931	Fraud: Excise Tax, Other
CR4932	Fraud: Wagering Tax, Other
CR4933	Fraud: Other Tax
CR4940	Fraud: Railroad Retirement and Unemployment
CR4941	Fraud: Food Stamp Program
CR4950	Fraud: Social Security
CR4960	Fraud: False Personation
CR4970	Fraud: Nationality Laws
CR4980	Fraud: Passport
CR4991	Fraud: False Claims and Statements
CR4992	Fraud: Conspiracy to Defraud, Other
CR4993	Fraud: Conspiracy (General), Other
CR4994	Fraud: False Entries, Other
CR4995	Fraud: Credit Card
CR4996	Fraud: Computer
CR4997	Fraud: Telemarketing
CR4998	Fraud: Health Care
CR4999	Fraud: Other
CR5100	Transportation Stolen Vehicle: Aircraft
CR5200	Auto Theft: Other
CR5500	Forgery and Counterfeiting: Transport Forged Securities
CR5600	Forgery and Counterfeiting: Postal
CR5710	Forgery and Counterfeiting: Other U.S.
CR5720	Forgery and Counterfeiting: Other

CMS Code	Case-Type Description
CR5800	Forgery and Counterfeiting: Counterfeiting
CR5900	Sex Offenses: Sexually Explicit Material
CR6100	Sex Offenses: Sexual Abuse of Adult
CR6110	Sex Offenses: Sexual Abuse of Children
CR6120	Sex Offenses: Interstate Domestic Violence
CR6121	Sex Offenses: Violent Offenses, Other
CR6200	Sex Offenses: White Slavery and Importing Aliens
CR6300	Sex Offenses: Other
CR6301	Sex Offenses: Transportation for Illegal Sexual Activity
CR6500	Drug Offenses: Narcotics Marihuana Tax Act
CR6501	Drug Offenses: Marihuana, Sell, Distribute or Dispense
CR6502	Drug Offenses: Marihuana, Importation/Exportation
CR6503	Drug Offenses: Marihuana, Manufacture
CR6504	Drug Offenses: Marihuana, Possession
CR6505	Drug Offenses: Marihuana, Records, Prescriptions, Fraudulent
CR6600	Drug Offenses: Narcotics, Border Registration (Terms/Reopen)
CR6700	Drug Offenses: Narcotics, Other (Terms/Reopens)
CR6701	Drug Offenses: Narcotics, Sell, Distribute or Dispense
CR6702	Drug Offenses: Narcotics, Importation/Exportation
CR6703	Drug Offenses: Narcotics, Manufacture
CR6704	Drug Offenses: Narcotics, Possession
CR6705	Drug Offenses: Narcotics, Records, Prescriptions, Fraudulent
CR6706	Drug Offenses: Narcotics, Other (Terms/Reopens)
CR6707	Drug Offenses: Narcotics, Other (Terms/Reopens)
CR6800	Drug Offenses: Controlled Substance, Continuing Criminal Enterprise
CR6801	Drug Offenses: Controlled Substance, Sell, Distribute, Dispense
CR6802	Drug Offenses: Controlled Substance, Importation/Exportation
CR6803	Drug Offenses: Controlled Substance, Manufacture
CR6804	Drug Offenses: Controlled Substance, Possession
CR6805	Drug Offenses: Controlled Substance, Fraudulent Records, Prescription
CR6806	Drug Offenses: Drug Cultivation
CR6807	Drug Offenses: Illicit Drug Profits
CR6808	Drug Offenses: Controlled Substance Aboard Aircraft
CR6809	Drug Offenses: Mail Order Drug Paraphernalia

CMS Code	Case-Type Description
CR6810	Drug Offenses: Under Influence Alcohol/Drugs
CR6830	Drug Offenses: Under Influence Alcohol/Drugs
CR6900	Drug Offenses: Polluting Federal Lands, Controlled Substance
CR6905	Drug Offenses: Other
CR6907	Drug Offenses: Illicit Drug Profits
CR6909	Drug Offenses: Mail Order Drug Paraphernalia
CR6911	Drug Offenses: Other Drug Abuse Prevention and Control Act Offenses
CR7100	Miscellaneous: Bribery
CR7130	Miscellaneous: Conflict of Interest, Mining
CR7131	Miscellaneous: Conflict of Interest, Health/Welfare
CR7210	Miscellaneous: Traffic Offenses, Drunken Driving
CR7220	Miscellaneous: Traffic Offenses, Other
CR7310	Miscellaneous: Escape
CR7311	Miscellaneous: Escape, Jumping Bail
CR7312	Miscellaneous: Escape, Bail Reform Act of 1966
CR7313	Miscellaneous: Escape from Custody
CR7314	Miscellaneous: Criminal Default
CR7315	Miscellaneous: Supervision Condition Violation
CR7320	Miscellaneous: Escape, Aiding or Harboring
CR7330	Miscellaneous: Prison Contraband
CR7331	Miscellaneous: Fraud, Other
CR7400	Miscellaneous: Extortion, Racketeering and Threats
CR7401	Miscellaneous: Threats Against the President
CR7410	Miscellaneous: Racketeering, Arson
CR7420	Miscellaneous: Racketeering, Bribery
CR7430	Miscellaneous: Racketeering, Extortion
CR7440	Miscellaneous: Racketeering, Gambling
CR7450	Miscellaneous: Racketeering, Liquor
CR7460	Miscellaneous: Racketeering, Narcotics
CR7470	Miscellaneous: Racketeering, Prostitution
CR7471	Miscellaneous: Racketeering, Murder
CR7472	Miscellaneous: Racketeering, Kidnap
CR7473	Miscellaneous: Racketeering, Maim
CR7474	Miscellaneous: Racketeering, Conspiracy, Murder, Kidnap

CMS Code	Case-Type Description
CR7475	Miscellaneous: Racketeering, Attempt Conspire/Maim, Assault
CR7477	Miscellaneous: Racketeering, Monetary Laundering
CR7478	Miscellaneous: Racketeering, Murder, First Degree
CR7480	Miscellaneous: Racketeering
CR7481	Miscellaneous: Racketeering, Robbery
CR7482	Miscellaneous: Racketeering, Threats
CR7490	Miscellaneous: Racketeering, Extortion Credit Transactions
CR7500	Miscellaneous: Gambling and Lottery
CR7520	Miscellaneous: Gambling and Lottery, Travel/Racketeering
CR7530	Miscellaneous: Gambling and Lottery, Transmit Wager
CR7600	Miscellaneous: Kidnapping (18:1201,1202)
CR7601	Miscellaneous: Kidnapping, Government Officials
CR7610	Miscellaneous: Kidnapping (18:13)
CR7611	Miscellaneous: Kidnapping, Hostage
CR7700	Miscellaneous: Perjury
CR7800	Miscellaneous: Firearms and Weapons
CR7820	Miscellaneous: Firearms, Unlawful Possession
CR7830	Miscellaneous: Firearms
CR7831	Miscellaneous: Furtherance of Violence
CR7910	Miscellaneous: Arson
CR7920	Miscellaneous: Abortion
CR7930	Miscellaneous: Bigamy
CR7940	Miscellaneous: Malicious Destruction of Property
CR7941	Miscellaneous: Other, Property
CR7950	Miscellaneous: Disorderly Conduct
CR7961	Miscellaneous: Travel to Incite to Riot
CR7962	Miscellaneous: Civil Disorder
CR7990	Miscellaneous: General Offenses, Other
CR7991	Miscellaneous: Juvenile Delinquency
CR8100	Miscellaneous: Failure to Pay Child Support
CR8200	Miscellaneous: False Claims and Services, Government
CR8201	Miscellaneous: Identification Documents and Information Fraud
CR8500	Miscellaneous: Mail Fraud
CR8600	Miscellaneous: Wire, Radio, or Television Fraud

CMS Code	Case-Type Description
CR8710	Miscellaneous: Immigration Laws, Illegal Entry
CR8720	Miscellaneous: Immigration Laws, Illegal Reentry
CR8730	Miscellaneous: Immigration Laws, Other
CR8731	Miscellaneous: Immigration Laws, Fraud and Misuse of Visa/Passport
CR8740	Miscellaneous: Immigration Laws, Illegal Entry
CR8750	Miscellaneous: Immigration Laws, Fraudulent Citizen
CR8900	Miscellaneous: Liquor, Internal Revenue
CR8901	Miscellaneous: Fraud, Other Tax
CR9001	Federal Statute: Waste-Treatment/Disposal/Storage
CR9110	Federal Statute: Agriculture Acts
CR9115	Federal Statute: Agriculture Acts
CR9120	Federal Statute: Agriculture, Federal Seed Act
CR9130	Federal Statute: Game Conservation Acts
CR9140	Federal Statute: Agriculture, Insecticide Act
CR9150	Federal Statute: National Park/Recreation Violations
CR9160	Federal Statute: Agriculture, Packers and Stockyard Act
CR9170	Federal Statute: Agriculture, Plant Quarantine
CR9180	Federal Statute: Agriculture, Handling Animals, Research
CR9200	Federal Statute: Antitrust Violations
CR9300	Federal Statute: Fair Labor Standards Act
CR9400	Federal Statute: Food and Drug Act
CR9500	Federal Statute: Migratory Bird Laws
CR9600	Federal Statute: Motor Carrier Act
CR9710	Federal Statute: Selective Service
CR9720	Federal Statute: Illegal Use of Uniform
CR9730	Federal Statute: Defense Production Act
CR9731	Federal Statute: Economic Stabilization Act of 1970—Price
CR9732	Federal Statute: Economic Stabilization Act of 1970—Rents
CR9733	Federal Statute: Economic Stabilization Act of 1970—Wages
CR9740	Federal Statute: Alien Registration
CR9741	Federal Statute: Energy Facility
CR9751	Federal Statute: Treason
CR9752	Federal Statute: Espionage
CR9753	Federal Statute: Sabotage

CMS Code	Case-Type Description
CR9754	Federal Statute: Sedition
CR9755	Federal Statute: Smith Act
CR9760	Federal Statute: Curfew, Restricted Areas
CR9770	Federal Statute: Exportation of War Materials
CR9771	Federal Statute: Anti-Apartheid Program
CR9780	Federal Statute: Trading with the Enemy Act
CR9790	Federal Statute: Other
CR9791	Federal Statute: Subversive Activities Control Act
CR9792	Federal Statute: Defense Contractors
CR9793	Federal Statute: Armed Forces
CR9810	Federal Statute: Obscene Mail
CR9820	Federal Statute: Obscene Matter in Interstate Commerce
CR9901	Federal Statute: Civil Rights
CR9902	Federal Statute: Election Law Violators
CR9903	Federal Statute: Public Officers/Employees
CR9904	Federal Statute: U.S. Emblems/Insignias
CR9905	Federal Statute: Foreign Relations
CR9906	Federal Statute: Bank and Banking
CR9907	Federal Statute: Money and Finance
CR9908	Federal Statute: Public Health and Welfare
CR9909	Federal Statute: Census
CR9910	Federal Statute: Communication Acts (Including Wire Tap)
CR9911	Federal Statute: Wire Interception
CR9912	Federal Statute: Copyright Laws
CR9914	Federal Statute: Coast Guard
CR9915	Federal Statute: Commerce and Trade
CR9916	Federal Statute: Consumer Credit Protection
CR9917	Federal Statute: Consumer Product Safety
CR9918	Federal Statute: Toxic Substance Control
CR9919	Federal Statute: Title 5
CR9920	Federal Statute: Conservation Acts
CR9921	Federal Statute: Contempt
CR9922	Federal Statute: Contempt, Congressional
CR9923	Federal Statute: Forfeiture, Criminal or Drug Related

I Case Weights for Federal Defender Organizations

CMS Code	Case-Type Description
CR9926	Federal Statute: Extort/Oppress Under Law
CR9928	Federal Statute: Removal from State
CR9929	Federal Statute: Labor Laws
CR9930	Federal Statute: Minerals and Land Mining
CR9931	Federal Statute: Customs Laws (Except Narcotics and Liquor)
CR9932	Federal Statute: Customs Laws, Import Injurious Mammals
CR9935	Federal Statute: Patents and Trade Marks
CR9936	Federal Statute: Patriotic Societies and Observances
CR9938	Federal Statute: Veterans Benefits
CR9940	Federal Statute: Social Security
CR9941	Federal Statute: Connally Act/Hot Oil Act
CR9942	Federal Statute: Transport Convict-Made Goods Interstate
CR9943	Federal Statute: Railroad and Transportation Acts
CR9944	Federal Statute: Destruction/Property, Interstate Commerce
CR9947	Federal Statute: Telephones Telegraphs and Radios
CR9949	Federal Statute: Transportation
CR9950	Federal Statute: War and National Defense, Other
CR9951	Federal Statute: Transportation of Strikebreakers
CR9952	Federal Statute: Taft Hartley Act
CR9953	Federal Statute: Eight Hour Day on Public Works
CR9954	Federal Statute: Peonage
CR9956	Federal Statute: PHW
CR9957	Federal Statute: Terrorist Activity
CR9960	Federal Statute: Liquor (except internal revenue)
CR9971	Federal Statute: Maritime and Shipping Laws
CR9972	Federal Statute: Stowaways
CR9973	Federal Statute: Federal Boat Safety Act of 1971
CR9974	Federal Statute: Federal Water Pollution Control Act
CR9981	Federal Statute: Postal, Non Mailable Material
CR9982	Federal Statute: Postal, Injury to Property
CR9983	Federal Statute: Postal, Obstructing the Mail
CR9984	Federal Statute: Postal, Violations by Postal Employees
CR9989	Federal Statute: Postal, Other
CR9990	Federal Statute: National Park/Recreation Violations

CMS Code	Case-Type Description
CR9991	Federal Statute: Destroying Federal Property
CR9992	Federal Statute: Intimidation of Witnesses, Jurors, etc.
CR9993	Federal Statute: Aircraft Regulations
CR9994	Federal Statute: Explosives (except on vessels)
CR9995	Federal Statute: Gold Acts
CR9996	Federal Statute: Train Wrecking
CR9999	Federal Statute: Other
D1	Death Penalty: Habeas Corpus Challenge to State Sentence
D2	Death Penalty: Federal Capital Prosecution (and Direct Appeal)
D3	Death Penalty: Motion Attacking Sentence (2255)
D4	Death Penalty: Other
D5	Death Penalty: Redesignation from D2: No Death Sought by Government
D6	Death Penalty: Redesignation from D2: Life Verdict after Trial
EXTRAD	Extradition
FAO	First Appearance Only
HA	Appeal: Noncapital Habeas
HC	Habeas Corpus
JU	Juror Representation
LU	Line-Up
M4243A	Mental Disease 4243(a)
M4243C	Mental Disease 4243(c)
M4243E	Mental Disease 4243(e)
M4243F	Mental Disease 4243(f)
M4243G	Mental Disease 4243(g)
M4245A	Mental Disease 4245(a)
M4246A	Mental Disease 4246(a)
M4246E	Mental Disease 4246(e)
M4246F	Mental Disease 4246(f)
M4248A	Mental Disease 4248(a)
MA	Motion Attacking Sentence (2255)
MC	Motion to Correct or Reduce (Rule 35)
MNT	Motion for New Trial
MOP	Modification of Probation
ODC	Drug Court Participant

CMS Code	Case-Type Description
OT	Other
PA	Parole Revocation
PD	Pretrial Diversion
PL	Appeal: Parole Commission
PO	Petty Offenses
PP	Pre-Petition
PR	Probation Revocation
PT	Prisoner Transfer
PTR	Pretrial Release
RHO	Remanded: Habeas or Other
RTL	Remanded: Trial Level
SB	Standby or Advisory Counsel
SC	Supreme Court (Certiorari Granted)
SO	Sentencing Only
SR	Supervised Release
SS	State Statutes
TD	Court of Appeals: Trial Disposition
WI	Witness
WW	Witness for a Grand Jury, Federal Agency, Congress

Other Abbreviations

AFD	Assistant Federal Defender
AOUSC	Administrative Office of the U.S. Courts
ARIMA	autoregressive integrated moving average
AUSA	Assistant U.S. Attorney
CCE	Continuing Criminal Enterprise
CDO	community defender organization
CHU	capital habeas unit
CJA	Criminal Justice Act of 1964
CLPA	caseload per attorney
CMS	Case Management System

CV	coefficient of variation
FDO	federal defender organization
FJC	Federal Judicial Center
FPDO	federal public defender organization
FTE	full-time equivalent
FY	fiscal year
GBM	generalized boosted regression model
ISE	RAND Infrastructure, Safety, and Environment
IT	information technology
ODS	Office of Defender Services
PAG	Project Advisory Group
R&W	research and writing specialist
RICO	Racketeer Influenced and Corrupt Organizations
RIV	relative influence value
SE	standard error
TKS	TimeKeeper System
USAO	U.S. Attorneys' Office
WCLPA	weighted caseload per attorney

Introduction

Assessing Defender Resources

Precisely how many defense attorneys, judges, prosecutors, probation officers, court clerks, secretaries, investigators, interpreters, marshals, and paralegals are needed in order to dispense justice fully and fairly? Although an accurate answer for such a complex process seems far from reach, this is nevertheless a question routinely asked by those responsible for allocating scarce resources among sometimes-competing segments of the U.S. legal system. Fairness, justice, impartiality, and adherence to the rule of law might be intangible philosophical concepts, but calculating how many people are needed to ensure that these goals can be translated into reality has been a fundamental concern of policymakers for centuries.¹ Achieving an optimum balance between staff numbers and workload demand in aspects of the justice system continues to be an important task today.

Can this effort be taken too far? Certainly, there is oft-voiced concern among many that the process of dispensing justice should not be viewed in the same way as we do the manufacturing of consumer products, a perspective that might result in

an assembly line or a conveyor belt down which moves an endless stream of cases, never stopping, carrying the cases to workers who stand at fixed stations and who perform on each case as it comes by the same small but essential operation that brings it one step closer to being a finished product, or, to exchange the metaphor for the reality, a closed file.²

Others have also warned of a “technocratic rationalization of justice,” in which the legal system moves away from one based on an adversarial model with a shared goal of providing due process and toward one with a distinct management-science orientation. This evolving reality is asserted to be marked by an emphasis on cost-effectiveness and maximizing results, an increased judicial involvement in shaping outcomes, and a blurring of the former roles of key players, such as judges, prosecutors, and others.³ But though these concerns are vitally important ones to keep in mind when thinking about system needs, the reality is that govern-

¹ Nearly 2,000 years ago, for example, the Talmud addressed similar questions in matching judicial resource needs to specific types of criminal and civil proceedings: Monetary suits, charges of theft, and personal injury offenses would require three judges for each trial; capital cases require 23 judges and charges against high priests allegedly committing capital sins require 71 judges each (Mishnah/Seder Nezikin/Tractate Sanhedrin/Chapters 1/1–1/5).

² Packer, 1964, p. 11.

³ Heydebrand and Seron, 1990, pp. 13–14.

mental funding for justice system organizations is not unlimited, a reality that has come into even sharper focus during the current period of uncertain revenues and competing demands.

It is against this background that we have been asked by the Office of Defender Services (ODS) to help it develop a potential tool for estimating the funding and staffing requirements of federal defender organizations (FDOs) throughout the United States that provide legal counsel to individuals in federal criminal prosecutions and related proceedings, both at the trial court level and on appeal. ODS is a directorate of the Administrative Office of the U.S. Courts (AOUSC), the central administrative component of the federal judiciary. FDOs operate, in many ways, like independent law offices and are staffed by attorneys supported by a team of colleagues that includes investigators, paralegals, interpreters, secretaries, information technology providers, and legal research and writing specialists. The individual organizations (79 in total during the 2008 fiscal year) provide the bulk of legal defense services available under the Criminal Justice Act of 1964 (CJA)⁴ to financially eligible defendants in 90 different federal judicial districts (nine of these organizations cover two districts, and one office covers three).⁵

Sixty-one of the organizations are governmental entities known as *federal public defender organizations* (FPDOs). A Federal Public Defender directly manages the operations at each of these FPDOs, though major financial decisions and the creation of staff positions are subject to ODS and other approvals. The Federal Public Defender and his or her staff are employees of the judicial branch of the federal government. The other 18 organizations are private nonprofit entities known as *community defender organizations* (CDOs), funded by grants administered by ODS with approval of the Judicial Conference of the United States, the principal policymaking body for the federal judiciary. Day-to-day operations at the CDOs are directly managed by a Chief Community Defender, with the organization itself governed by a board of directors.⁶ The Chief Community Defender and his or her staff are employees of the CDO rather than the federal judiciary. FPDOs and CDOs are collectively known as *FDOs*, and, in aspects that involve the provision of professional legal services to their clients, they operate with a substantial degree of independence. Nevertheless, FDOs are subject to oversight by both the Judicial Conference's Committee on Defender Services and ODS. ODS makes recommendations to the committee regarding FDO budgets and as to how many attorneys are needed to adequately staff each FDO. ODS and the committee assist the AOUSC and the Judicial Conference in seeking funding appropriations from Congress for the defender services program.

⁴ 18 U.S.C. § 3006A and related statutes.

⁵ In total, there are 94 distinct federal court districts covering the United States and its territories. In the four districts not serviced by an FDO during fiscal year (FY) 2008 (the Northern District of Alabama, the Southern District of Georgia, the Eastern District of Kentucky, and the District of the Northern Mariana Islands), financially eligible clients are represented exclusively by private attorneys appointed by the court.

Multidistrict defender organizations are those with their main offices in the following districts (additional districts served are shown in parentheses): Eastern District of Arkansas (Western District of Arkansas), District of Colorado (District of Wyoming), Southern District of Iowa (Northern District of Iowa), Western District of Louisiana (Middle District of Louisiana), District of Massachusetts (District of New Hampshire and the District of Rhode Island), Southern District of Mississippi (Northern District of Mississippi), Southern District of New York (Eastern District of New York), Northern District of Oklahoma (Eastern District of Oklahoma), District of South Dakota (District of North Dakota), and Eastern District of Wisconsin (Western District of Wisconsin).

⁶ We use the term *Chief Community Defender* as a convenient way to describe the head of a CDO. The titles in actual use in these offices include Executive Director, Chief Federal Defender, Federal Defender, and Federal Community Defender.

The proposed estimation tool is known as a *case weight*, a statistical technique of assigning a value reflecting a measure of interest (such as resource demand) to a unit of analysis so that, when that unit is used as the basis of a computation, the results are “weighted” (i.e., influenced) according to that value and, as such, might better reflect real-world conditions. ODS has traditionally evaluated attorney levels at individual FDOs based on the overall number of cases closed per attorney in that office during a fiscal year. We refer to this measure as *caseload per attorney*, or CLPA. A projected change in the number of cases closed would indicate that a proportional change to the number of attorneys might be needed in order to maintain the same CLPA.⁷ Although useful, this approach has one serious limitation: CLPA calculations for each FDO make no distinction between cases in terms of their potential consumption of organizational resources. A homicide prosecution with a possible sentence of death is treated in the exact same way (i.e., simply counted as a single unit of work) as is a misdemeanor prosecution for driving with a suspended license in a national park, even though it is all but certain that the former type of case will typically require a far greater level of attention from attorneys and other office staff than the latter. As such, it is possible that an FDO’s CLPA might hold steady from year to year but that, because the mix of cases can change significantly over time, the number of attorneys needed might have changed significantly as well. Case weighting, in contrast, would conceivably give additional “weight,” for example, to those death penalty–eligible homicide cases when calculating CLPA and less weight to the traffic offenses. If the weights applied to each case reflect the average levels of attorney resources that might be required, caseload measures can then become workload measures.⁸ A weighted CLPA (WCLPA) should yield a more reliable measure for estimating the number of attorneys needed as the number of cases and the nature of the representations change, although, as has been the situation with unweighted CLPAs, other considerations would obviously need to be taken into account when making these important decisions.

This project is intended to develop a system of statistically valid case weights for ODS based on FDO attorney time expenditures and evaluate whether such a system would be useful in estimating individual and national FDO funding and staffing requirements. The scope of the work ODS asked us to perform was extensive, with a substantial portion of our effort focused squarely on the interrelated questions of whether it made sense to employ case weights for those purposes, what might be the best ways for calculating those weights, and what appear to be the most-significant limitations on their application in this manner. The next section of this chapter provides additional background for understanding what we were asked to do and the approach that was designed to accomplish those goals.

⁷ See, e.g., Macartney, 2010.

⁸ Relative case weights essentially indicate how much work might be needed to handle one type of case relative to the average for all cases taken together. For example, assume that all cases handled by FDOs across the country in a single year were found to have required an average of 16 hours of staff attorney time to defend. Also assume that cases primarily involving a charge of bank fraud during that same period of time required, on average, 32 hours of staff attorney time, while prosecutions involving misuse of a passport required an average of eight hours. Thus, the relative case weight for bank-fraud cases would be 2.0 (32 hours for this type of case divided by the 16 hour average for all cases taken together), while passport-misuse cases would have a relative case weight of 0.5 (8/16). If these case weights were applied to a subsequent year’s caseload, and, if, within that year, 50 bank-fraud cases and 60 passport-misuse cases were handled, the unadjusted caseload for these two offense types would be 110 cases (50 + 60), while the weighted caseload would be 130 (50 × 2.0 + 60 × 0.5). The weighted caseload total better reflects the amount of work on the part of staff attorneys that might be required with this particular combination of case types.

Background

Not only is the “right of an indigent defendant in a criminal trial to have the assistance of counsel . . . a fundamental right essential to a fair trial,”⁹ it is arguably an indispensable feature of any modern democratic society. But, for most of this country’s history, the Sixth Amendment was essentially viewed as giving an accused appearing in federal court only the privilege of representation by counsel of his or her choice—in other words, only the right to hire an attorney. Though a statutory exception had been made for capital crimes, it was not until the 1930s in landmark rulings, such as *Johnson v. Zerbst* and *Powell v. Alabama*,¹⁰ that the Supreme Court began to solidify the “duty of the trial judge, where the accused is unable to employ counsel, to appoint counsel for him” as we know it today.¹¹

By the 1960s, an indigent defendant’s right to counsel had been greatly expanded by subsequent appellate court opinions. However, the corresponding growth in the demand for attorney services had outpaced the resources available (the traditional practice was for federal judges to appoint local attorneys who would provide services on a pro bono basis). In response to this changing environment, the CJA and its subsequent amendment in 1970 provided a formalized mechanism to engage the services of competent counsel in federal proceedings, through a mix of (1) private attorneys compensated on a case-by-case basis (known as *CJA panel attorneys*) and (2) attorneys employed by FDOs. That mix varies from district to district, but, in most locations, the share of all financially eligible defendant representations handled by an FDO ranges from roughly 50 to 80 percent. Today, ODS functions as the primary administrator of both the federal defender and the CJA panel attorney programs.¹²

In response to concerns over rising costs and with the goal of developing better methods for assessing program needs, ODS explored the potential use of case weights as part of its performance-based strategic planning process. In 2005, ODS initiated an effort to calculate the average consumption of federal defender attorney time for different categories of cases.¹³ In simplistic terms, there were two primary sources of data for those calculations. First, client representations throughout the federal defender system are tracked using a transactional database known as the Case Management System (CMS), which is used to record such information as client contact data, the nature of the charges against the client, the maximum authorized sentence, key dates (such as when counsel was appointed and when the case was concluded), and how the charges were resolved. Although the hard-copy file maintained by the attorney handling the matter would contain the most-detailed case information, CMS is the sole place in which the business of the FDOs is recorded centrally. As is true with many aspects of the relationship between ODS and the FDOs, individual office independence and required attorney–client privileges are safeguarded by having each FDO host CMS locally on its own servers, with only subsets of the information stored in CMS sent to ODS on a regular basis. When ODS reports to the AOUSC and the Judicial Conference on the business of the federal

⁹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

¹⁰ 304 U.S. 458 (1938); 287 U.S. 45 (1932).

¹¹ 287 U.S. 45 at 73.

¹² The operations and activities of the CJA panels and their attorneys are beyond the scope of this study.

¹³ In actuality, there might have been some earlier ODS efforts to analyze attorney time expenditures in relation to the type of representation provided by FDO counsel.

defender system or engages in budgetary planning activities, it relies heavily on the information available in CMS.

It should be understood that the term *case* as used in this document is not necessarily the same as a formal criminal filing in a federal district court. For example, the attorneys at the FDOs can be appointed to represent clients in matters that do not begin with the filing of criminal charges by an information or indictment, such as supervised-release violations, habeas corpus cases, appeals, petitions for certiorari, or representations of material witnesses (they also have duties that are not linked to any specific client, such as training, supervision, and completing routine administrative paperwork, but our focus here is on client-related work). Conceivably, one might view the workload of the FDOs in terms of the number of individuals represented by FDO attorneys during a particular period of time. The problem with such an approach is that there are often instances in which the same client is involved in multiple and distinct prosecutions or other events, each of which might require a different attorney to handle or result in very different sorts of outcomes. Instead, the most useful way of looking at workload would be to focus on the number of representations, in a manner similar to the way recordkeeping is conducted at private-practice law firms. They organize their records along the lines of “client matters,” tracking billable time, scheduling tasks, or assigning attorneys by each discrete case or project handled or performed on behalf of an individual or organizational client. CMS is organized in essentially the same way. Each new matter handled by an office, even for a client currently represented by staff attorneys or who might have been a client in the past or was previously represented by another office, is assigned a new and unique record number and treated as a distinct “case” in CMS. The same individual represented by an office might have two or more open cases in CMS, and, in instances in which a trial verdict has been reached and was subsequently appealed, the original prosecution and the appeal are treated as separate client matters (the original prosecution’s CMS file would be considered “closed” following sentencing). For ease of reference in this document, we follow the terminology conventions employed by CMS and use the term *case* interchangeably with *client matter* or *client representation*, though it should always be kept in mind that some client-related matters involve legal services that are very different in nature and extent from those required when the office is appointed to defend a client facing criminal charges.

The other source for ODS’s calculations involved a system for recording the self-reported time expenditures of FDO attorneys and certain other office staff members (though the weights would be calculated only on attorney time). The vehicle for collecting and storing those records is known as the TimeKeeper System (TKS), and, as is the case with CMS, TKS is maintained on servers located at the FDOs. FDO attorneys are required to use TKS to keep track of their time (in tenths of an hour) for each client matter on which they worked each day, selecting a code that best represents the general nature of the task they performed (such as a trial appearance or research related to a motion). The way that information is recorded has evolved over time and differs somewhat from office to office, but, generally, attorneys are encouraged to directly input TKS data on a daily basis into an application that resides on their desktop computers. In practice, the entry of time expenditures might not take place until shortly before an FDO submits an extract of recent TKS records for the entire office to ODS. Although, as discussed elsewhere, there are regularly voiced concerns about the accuracy of this timekeeping effort, TKS is the sole vehicle currently available for tracking and analyzing information related to FDO attorney time expenditures in individual cases.

ODS's 2005 attempt at calculating its version of a case-weight system had mixed results. ODS examined all cases that were open at any time from FY 1999 through FY 2003 and merged CMS information concerning the subject matter of each case with TKS information as to the amount of attorney time recorded for that particular representation. The cases were organized by a categorization scheme used by CMS to classify each new client matter (by the nature of the most serious criminal charge against the defendant) or by the type of services being provided (such as an appeal or a challenge to a probation revocation).¹⁴ All in all, there are about 350 different codes available to classify cases in CMS. ODS used a modified version of this set by combining codes relating to similar sorts of charges (for example, six different CMS codes for various types of immigration offenses were collapsed into one), resulting in about 115 codes for the analysis.

The ODS case-weight effort calculated the average amount of attorney time recorded for cases within each of the 115 categories on the basis of location and time period (both for all five years together and for each year separately). Using those national averages and on U.S. Office of Personnel Management assumptions about the annual work-related hours for federal employees, and after making various adjustments for non-case-related work (such as training or administrative duties), ODS produced what it believed to be the expected attorney full-time equivalent (FTE) required for cases in each of the case-type categories. Those numbers, in turn, were plugged into ODS's existing formulas already used for calculating FY 2004 attorney requirements at the local office level and the results compared to the previous staff projections for that fiscal year.

This initial analysis of national average attorney time expenditure data resulted in a 24-percent increase in estimated staffing needs (requiring a commensurate 19-percent increase in defender services funding) compared to ODS's existing approach that relied on historical CLPA at the district level to help predict when staff levels should be adjusted. The marked expansion of required system resources produced by ODS's new calculations would suggest that, under the then-current conditions, there existed a significant shortfall of legal staff nationwide, with a potential catastrophe looming in the wings as FDO attorneys became increasingly unable to handle new appointments and clients failed to receive the professional attention they deserve. Although there were probably few, if any, FDOs that had a comfortable excess of staff members to handle the offices' often-complex and ever-changing caseload, such a steep jump in the number of attorneys needed did not seem to be warranted, especially in view of the far more-modest budget requests submitted by Federal Public Defenders and Chief Community Defenders in FY 2004 and subsequent years.

Clearly, something was amiss, perhaps with the underlying data sources, the way in which ODS calculated national average time expenditures across various case-type categories, the assumptions used to turn those averages into FTE requirements for different types of cases, or perhaps the way in which the numbers were employed as a means of calculating resource requirements at the individual office level. One possible explanation for the unexpected result was the assumption of a 40-hour workweek for calculating attorney staffing requirements, despite evidence that far more time was being expended, especially on nights and weekends, by salaried legal staff in performance of their constitutionally mandated duties. Another explanation might be that interdistrict differences arising out of the characteristics unique to each

¹⁴ Additional information about how CMS classifies new case openings can be found in Chapter Two.

local legal environment required a revised strategy for applying nationally derived attorney time averages to caseloads at the FDO level. Those differences could conceivably encompass a wide variety of local aspects, such as the prosecutorial policies of the district's U.S. Attorney, the typical travel time required to visit clients awaiting trial in commonly used detention facilities, or the availability of legal support staff, such as paralegals or investigators, to share some of the duties associated with client representations. Failure to account for or acknowledge such "factors" might be responsible for producing the ODS results.

In spite of these concerns, ODS was nevertheless interested in developing a statistically valid case-weighting approach, one based on average FDO attorney time expenditures. As described more fully elsewhere in this document, case weights are employed regularly in other justice system organizations, perhaps most notably in the calculations of the number of authorized judgeships for the federal courts and judicial staff levels in many state court systems. A similar approach in the context of federal defender services could provide a more accurate way to assess future staff needs, both at the individual office level and nationally. In turn, case weight-derived calculations would hopefully provide stronger support for funding requests to the Judicial Conference and ultimately to Congress. A request for quotations was issued to identify contractors that might be able to assist ODS in that effort, and the RAND Corporation was the successful bidder.

Scope of the Work

The primary focuses of our work were twofold. First, we were asked to develop a statistically reliable measure of the number of FDO attorney hours required for various types of cases, based on national averages. Doing so would require that we first explore various options for defining and acquiring the data necessary for such calculations, but it was anticipated from the start of the project that a major component of our effort would be to review and evaluate data from TKS and CMS in regard to their appropriateness as primary data sources for developing functional case weights.

Second, we were asked to identify factors, other than the type of case, that might affect the amount of resources necessary for providing an effective defense. Given that ODS's underlying purpose in developing case weights was to assist in its responsibilities of estimating FDO funding and staffing requirements, understanding any limitations of using case type-based weights in such a way would be extremely important.

Specifically, our contract with ODS requires us to execute the following tasks:

- Report on and evaluate existing case-weight systems, including the one initially developed by ODS.
- Develop a functional case-weight system based on the national average hours per case type.
- Develop a method to convert unweighted case totals into weighted case totals for each FDO and provide weighted case totals for each FDO for the previous five fiscal years.
- Recommend methods to project weighted cases, both nationally and for individual FDOs.
- Evaluate the statistical reliability of the recommended system, and identify any of its elements that might affect its statistical reliability.
- Catalog factors other than case type that affect the workload of individual FDOs.

One important component of the workload at some FDOs would be excluded from this analysis. We were asked by ODS not to calculate case weights for the activities of capital habeas units (CHUs), a group of attorneys, secretaries, research and writing specialists, investigators, and other staff established in certain offices who concentrate almost exclusively on representations involving federal habeas corpus review of state and federal capital convictions. Under 28 U.S.C. § 2254, a state prisoner under a sentence of death can ask a federal court to vacate or to set aside the sentence; 28 U.S.C. § 2255 provides a similar right for federal prisoners. In such postconviction proceedings, financially eligible petitioners would be entitled to court-appointed counsel, as well as the furnishing of investigative, expert, and other reasonably necessary services. This work is highly specialized and is administered in ways that are distinctly different from what takes place in what is referred to as an FDO's *traditional unit*, i.e., the section of the office (and, in most FDOs, the entire office) that handles representations involving district court criminal cases, ancillary proceedings, and appeals.¹⁵

Organization of This Technical Report

This report presents our primary findings regarding a functional case-weighting system for ODS to use in helping to estimate FDOs' funding and staffing requirements. Chapter Two offers a description of how we addressed the various data-collection needs of this work and how our analysis data set was shaped. Chapter Three discusses what we learned about possible factors that can affect the amount of time an FDO attorney spends on any one case and presents the main results of our efforts to empirically test influences on attorney resource needs. Chapter Four explains our approach to calculating case weights and presents the results of that work. Chapter Five applies the set of case weights to historical FDO caseloads. Chapter Six discusses the statistical reliability of the proposed system of case weights. Chapter Seven critiques ODS's current approach in projecting future caseloads and discusses how the use of case weights might help in that effort. Chapter Eight summarizes the study's findings, discusses the implications of those results, and suggests steps ODS should take when revisiting the issue of case weights in the future.

Appendix A contains a copy of the survey we distributed to FDOs as part of our investigation into those factors, as well as frequency distributions for the responses. Appendix B contains a technical explanation of how one proposed set of case weights was adjusted to reflect observed variations at the district level. Appendix C at the FDOs presents the number of cases closed from FY 2004 to FY 2008 in each FDO, weighted by various case-weight options.

Explanations for the codes used for federal judicial districts and the subject matter of the cases handled by FDOs can be found in the "Abbreviations" section of this report.

Additional materials providing background information about case-weighting options and data sources, as well as supplemental tables and survey results, were submitted to ODS under separate cover in the form of a project memorandum titled *Case Weights for Federal Defender Organizations: Technical Appendixes* (hereinafter referred to as the *technical appendixes*).

¹⁵ Habeas corpus cases that do not involve capital punishment aspects are within the scope of this project. In addition, capital habeas cases handled by FDO traditional units (rather than CHUs) were included in our analysis.

Overview of Methodological Approach

This chapter provides background on how case weights are typically used, describes the most-notable steps we took to address the requirements of our study, and presents a summary of our assessment of TKS and CMS, as well as the manner in which an analysis data set was created from those two sources.

Background on Case Weights

Justice system organizations, such as court systems, probation departments, prosecutor offices, and criminal defense programs, have relied on case weights for years as a means for estimating personnel need and for allocating scarce resources. Time-based case weights are of two types: absolute (reflecting the average time measured for a particular type of case) and relative (reflecting how the average time measured for a particular type of case compares to the average for all cases taken together). For example, assume that cases classified as type A are found to require an average of 200 minutes of personnel time to process, those of type B require an average of 20 minutes, and all cases taken together (i.e., cases of types A and B, as well as all other types in the system) require an average of 50 minutes. As such, the absolute case weights for types A and B would be 200 and 20, respectively (essentially just the average times for the two types), while the relative case weight for type A would be 4.0 (200 minutes divided by the 50-minute average for all cases) and for type B it would be 0.4 (20 minutes divided by 50 minutes).

Though absolute and relative case weights might differ in terms of magnitude, both measures can be multiplied by the actual number of cases (which, depending on the need, can be based on case openings, dispositions, or active cases) handled over a span of time to produce weighted caseloads. For example, assume that 3,000 cases of type A and 15,000 cases of type B were filed in a single year. Using the relative weights from the previous example, type A cases have a weighted case count of 12,000 because each case, on average, would require four times as much personnel time as all cases taken together (3,000 cases \times 4.0 relative weight). The more-numerous type B cases actually have a smaller weighted caseload count of 6,000 (15,000 cases \times 0.4 relative weight). Overall, the weighted caseload for type A is twice that for type B, suggesting that twice as much personnel time would be needed to process the type A caseload as for type B's.

Absolute weights can also yield weighted caseloads. Here, the weighted caseload for type A would be 600,000 (3,000 cases \times 200 absolute weight) and type B would be 300,000 (15,000 cases \times 20 absolute weight). Weighted caseloads using absolute weights essentially

describe the amount of time expected to be required to process the caseload; in this example, 15,000 hours would be needed for both types of cases (600,000 minutes + 300,000 minutes).

The initial challenge faced in calculating case weights is how best to collect reliable information on staff time expenditures. A variety of approaches, such as third-person observation, longitudinal case-tracking studies, short-term diary studies, event-triggered studies, random-moment sampling, continuous self-reporting (analogous to timekeeping at private law firms), consensus estimates, modeling, and event-based methodologies have been employed to estimate the amount of time spent by judges, defenders, prosecutors, clerks, and others in performance of their duties.¹ Each approach reflects a mix of advantages and disadvantages, and the selection is often driven by concerns over cost, the time required until results are available, issues of bias and accuracy, and disruption to workflow.

Key Components of the Work

Project Advisory Group

Throughout the course of this work, we consulted with a Project Advisory Group (PAG) consisting of representatives from three FDOs and two ODS staff members. We used the PAG as a vehicle for RAND project staff to regularly obtain insight into federal defender operations and learn more about the larger context within which such work is performed. Our work plan, selection of FDOs for site visits and other data-collection activities, specific questions used in the Federal Public Defender/Chief Community Defender survey, and other key components of the study were reviewed and commented on by the PAG.

Case Management System and TimeKeeper System Data Extracts

ODS provided an extract of CMS and TKS data for our analysis. We received two sets, the first covering cases closed during the period of FY 1999–FY 2003 and the second covering FY 2004–FY 2008. Each set consisted of one file containing a single record for each case closed during the subject period with summary information about the representation (CMS Case Summaries), another with individual records for each separate criminal charge filed against

¹ Third-person observation can be used, for example, to monitor judicial activities in dependency court and record the start and end times for each hearing (see Chapter Three in Hardin et al., 2009). Longitudinal case tracking, in which all time expended in a sample of cases is recorded, was used, for example, in the Federal Judicial Center's 1987 judicial case-weight study for the federal district courts (see Shapard, 1996). Diary studies that record all time expended during a period of a few weeks or months are commonly employed by state courts and defender organizations (see, for example, Beeman et al., 2003). An example of event-triggered studies is the AOUSC requirement that district courts record the time spent whenever a trial or other type of hearing is held (see AOUSC, 2000). For an example of random-moment sampling, see Ohio Department of Job and Family Services, 2009. Consensus-estimate approaches include those employing the Delphi method or focus groups (see, e.g., Ostrom, Ostrom, Hall, Hewitt, and Fautsko, 2000). For an example of regression modeling use to estimate staff level requirements, see Jacoby et al., 1996. For event-based methodologies, see, e.g., Lombard and Krafka, 2005.

clients if applicable (CMS Charges), and a third containing individual time and event entries (TKS Time and Event Entries).² Table 2.1 provides the original record counts in each file.³

We performed an initial analysis of the data to identify invalid entries, formatting errors, and other indicators of possible problems. We then compared the distributions of the values in the fields by different offices, types of cases, attorneys, years, and other characteristics to highlight potential inconsistencies in the way time, events, and other types of key information were recorded. Suspect areas were noted and informed other aspects of this project.

After addressing various issues, the information contained in the three files covering FY 2004–FY 2008 closings were merged to create a single record for each case. Each case-level record was then supplemented by office-level information obtained through other components of the project, such as the survey of Federal Public Defenders and Chief Community Defenders discussed later in this chapter. The final set was used for the analysis of non–case-type factors that might contribute to attorney time expenditures (see Chapter Three), the development of our recommended case weights (see Chapter Four) and assessment of their statistical reliability (see Chapter Six), and our calculations of weighted caseloads in the 79 FDOs (see Chapter Five). The section “Issues with Fiscal Year 2004–Fiscal Year 2008 TimeKeeper System/Case Management System Data and How They Were Addressed” in this chapter provides additional details on the steps taken to clean and reorganize the data and create an analytic data set.

System-Level and Office-Level Records and Document Collection

We compiled information about both the system as a whole and individual offices from various sources in order to better understand how these offices differ in general characteristics, workload, staffing, and the larger legal environment in which they operate. Much of this information came from documents received from our ODS liaisons and included such items as local office staff levels, staff composition, features of the caseload, number of attorneys in the corresponding U.S. Attorney’s Office (USAO), number of judges and magistrate judges in the district, recent requests for additional attorney positions, and detailed narrative reports written

Table 2.1
Record Counts in Transactional Data Sets Received from the
Office of Defender Services

File Type	FY 1999–FY 2003 Closed Cases	FY 2004–FY 2008 Closed Cases
CMS Case Summaries	353,622	516,407
CMS Charges	272,105	421,115
TKS Time and Event Entries	8,879,407	11,306,699

² As described in Chapter One, not every FDO representation involves the defense of formal criminal charges. As such, the number of records representing individual charges contained in the CMS Charges file does not necessarily match or exceed the record count in the CMS Case Summaries file for individual client matters handled by the FDOs.

³ These extracts contain only a subset of all data elements available in CMS and TKS. Much of the information contained in these two database systems, such as due dates for motions and briefs, expert fees, or dates when data were entered, would have little utility when developing a set of functional case weights. Furthermore, fields with identifiable information, such as client name, client social security number, or client address, were not included in order to avoid interfering with the attorney–client privilege.

by the Federal Public Defenders and Chief Community Defenders about office activities and unique challenges.

Familiarization Visits

To obtain a better understanding of the key policy issues in play, the nature and character of the case and time data routinely collected by the individual FDOs, and what factors could be influencing attorney time expenditures, we conducted a series of nonevaluative “familiarization visits” early in the project at five offices. The locations included four FPDOs and one CDO located throughout the country. We conducted semistructured interviews with attorneys and support staff who were assured that their disclosures would be kept in confidence and that the substance of their remarks would not be linked to their identity or provided to members of the judiciary, ODS staff, other AOUSC staff, or anyone else other than RAND project personnel.

Overall, we interviewed five Federal Public Defenders and Chief Community Defenders; 31 staff attorneys, including those in supervisory positions; four administrative officers; two investigators; three research and writing specialists; one paralegal; one interpreter; and seven other administrative support staff members. Much of the discussion focused on recordkeeping practices related to TKS and CMS, but an equally important topic concerned the interviewees’ perspectives on what appeared to drive the number of hours needed to provide quality legal representation to eligible defendants.

The RAND project team selected the five offices used for our familiarization visits primarily for logistical considerations, with an attempt to reflect some measure of geographic diversity, although, with 79 different FDOs spread across 50 states, the District of Columbia, and various external territories, it would not be possible to obtain a representative sample of locations with only a handful of site visits.

Telephone Interviews

In order to identify some of the key drivers behind the amount of time attorneys spend on one case compared to another involving similar charges and other characteristics, we set up a series of semistructured, off-the-record interviews with staff attorneys from offices across the federal defender system. The interviews were conducted by telephone and often lasted one hour. It was understood by the attorney and his or her supervisors that the interviews would not be evaluative in nature; that all conversations with staff members would be elicited on a confidential basis between the interviewee and RAND and not shared with ODS, the AOUSC, FDO staff, judges, or outsiders; and that no interviewee would be identified in any research product.

Because of our interest in better understanding interoffice differences in the factors influencing attorney time expenditures, our approach was to identify a set of interviewees that would be diverse as possible in terms of location. We selected 40 districts at random and then randomly selected one assistant federal defender based in each of those districts (because an FDO might service more than one district, it was possible that multiple interviewees could be from the same FDO). On three occasions, another randomly selected assistant federal defender was chosen when the original candidate was unavailable or was a very recent hire. In addition, we interviewed three attorneys at three different offices who do significant amounts of habeas corpus work other than that involved with capital offenses. The names of these noncapital habeas attorneys were provided to us by our PAG.

Survey of Federal Public Defenders and Chief Community Defenders

An important question at the outset of this project involved how best to collect information about the characteristics of local offices and the legal environment in which they operate. Early investigation into the factors that might differentiate cases and districts from one another suggested that data regarding many important aspects of such influences would not be available in publicly available sources (such as the AOUSC's *Annual Report of the Director*), information routinely collected by ODS, or our analysis of CMS or TKS records. For example, some interviewees contacted during our initial familiarization visits indicated a belief that, when the local USAO has a vigorous open-file discovery policy, cases typically take less time to defend than if they had been filed in another district where the prosecutor had a more adversarial, more confrontational philosophy. Such a policy is unlikely to be documented in any consistent and centralized way. Moreover, a determination of whether any specific USAO routinely allows liberal access by defense attorneys to the case file soon after indictment or limits production of discovery to that required by the Federal Rules of Criminal Procedure is likely to be a highly subjective one that must be informed by actual and extensive experience. Arguably, attorneys at the corresponding FDO would be in the best position to make that call.

Another example of information missing from sources provided to us involves the question of whether English was the primary language for a client in any specific case. Early discussions with FDO attorneys revealed a generally shared conclusion that cases in which interpreters were needed for client meetings, witness interviews, and court appearances would require more attorney time than those in which translation was not required. In theory, CMS can be used to track this particular bit of information about clients served by the FDOs. In the offices that we visited, a "case-closing worksheet" affixed to hard-copy case files had two relevant check-off boxes for the attorney to mark if applicable when wrapping up the representation and formally closing the case. A check mark in one box would indicate that the "Client did not speak English," and a mark in the other would indicate that "An interpreter was required" at some point. At the time a case is closed, the staff member performing final data-entry tasks enters the status of those boxes into CMS. As explained elsewhere in this document, however, we have considerable doubts over the degree to which FDO attorneys actually make a consistent effort to review the many factor check boxes at the bottom and reverse sides of this form, as well as the degree to which information marked on the case-closing worksheets makes its way into CMS. Although we have few concerns over false positives (i.e., a box incorrectly checked and therefore indicating that a specific event occurred or a client or case actually had the indicated characteristic when in fact this was not the case), false negatives (i.e., a box not checked when it should have been) are likely to be present to an unacceptable degree. Unfortunately, there was no practical way to go back and confirm whether language issues played a role in any particular case.

To address these needs, we conducted a confidential survey of the Federal Public Defenders and Chief Community Defenders that requested descriptive and, sometimes, subjective information about the legal environment in which their offices operate. A copy of that survey and additional information about the instructions provided to the questionnaire's recipients can be found in Appendix A. The survey was targeted at the district level rather than the FDO level (some FDOs cover more than one federal district). As such, ten respondents were asked to submit a survey once for the district where their FDO is located and again for any additional district served by that FDO.

The questions in the survey can be roughly divided into five groups. The first involves questions about the office's client base; for example, the respondents were asked to estimate the percentage of clients over the previous year for whom English was not their primary language, whose primary residence was on an Indian reservation, who spent the majority of the period prior to the disposition of the case in a detention facility, and whose sentencing exposure was significantly increased or affected by virtue of a statutory or sentencing guideline enhancement. Although we would have preferred to get this information at the individual case level, existing sources were not considered adequate, and it would not have been possible to do a retrospective data collection. Instead, the survey provided some insight into the likelihood that any individual case handled by the office might have certain features potentially affecting the attorney time needed to deliver an effective representation.

Another group of questions focused on travel and wait-time issues within the district. We asked the respondents, for example, to estimate the typical amount of time required for an attorney in the main office to travel to the incarceration facility where the majority of clients were held prior to case disposition, have the client brought to a meeting room, conduct a one-hour interview, and then return to the office. We went beyond just asking about travel time because early discussions with defenders elicited many comments about how the waiting time required to actually meet the client after arrival at some facilities could result in a significant loss of productive time, sometimes greater than that consumed by the travel itself.

A third group sought information about the local legal environment within which the office operates. Questions included ones focusing on prosecutorial policies (such as the degree to which prosecutors generally provided complete and open discovery of all evidence assembled or revealed in the government's investigation), special programs available for expediting case dispositions (such as the percentage of the district's illegal-reentry immigration cases that participated in a fast-track or other early-disposition program), and sentencing needs (such as the percentage of cases in which the office's attorneys filed a sentencing memorandum prior to sentencing).

A fourth set asked about office characteristics and staff policies. We asked, for example, about the degree to which attorneys in the office use research and writing specialists for assisting in the drafting of motions and memoranda, the percentage of attorneys who are functionally fluent in speaking or reading Spanish, and how the district's CJA client base was divided up between the FDO and CJA panel attorneys.

Finally, we provided the respondents with an opportunity to present their views as to what they believe to be the most-important factors explaining why the average amount of attorney time needed to deliver effective representation might vary from FDO to FDO for the same CMS case type.⁴

The answers to the survey were used in our work examining influences on attorney time expenditures, as described in Chapter Three. We received responses covering activities in 87 of the 90 districts in the federal defender system.

Analysis of Factors Affecting Workload

Using information we obtained through interviews, surveys, practice materials, and other sources, we created a catalog of factors that were suggested by FDO attorneys as playing a

⁴ The respondents' comments and views regarding this question were submitted to ODS under separate cover in the technical appendixes.

role in driving the amount of time they spend representing their clients. To identify which of those factors appears to have the greatest relative influence, we built an analytic data set from the CMS and TKS extracts we received and supplemented those case-level records with additional information about the districts where the cases were located. Multivariate regression techniques were used to rank elements in the data set by the degree to which they explain case-related attorney time expenditures. A complete discussion of the specific methodology employed for this aspect of the work can be found in Chapter Three.

Case-Weight System Review

We conducted a literature review of various case-weight approaches used in state and local defenders' offices, in federal and state courts, and in other justice system organization settings. The results of this review were used to help shape our study plan and to inform our recommendations as to possible limitations in the use of case weights for the federal defender system.⁵

Critique of the Initial Office of Defender Services Case-Weight Calculations

We reviewed materials related to the methodological approach employed by ODS in its initial work in developing a set of case weights, examined the underlying data used in that effort, consulted with staff from ODS's Information Technology Division to help us reconstruct what steps were taken, and compared the effort's results to the average attorney time expenditures by case-type category yielded by our analysis of FY 1999–FY 2003 CMS and TKS data. The review was an important step in evaluating the quality of the data available to us for calculating case weights.⁶

Issues with Fiscal Year 2004–Fiscal Year 2008 TimeKeeper System/Case Management System Data and How They Were Addressed

Background

Case-Type Code Assignment. The manner in which new client representations are classified in CMS depends on the type of services being rendered by the FDO. Each new felony or misdemeanor prosecution in the federal district court is assigned a case-type code based on the type of offense being charged. For example, a case involving a charge of first-degree murder would receive a code of CR0101, while a case involving a charge of bank robbery would receive a code of CR1100 (a listing of CMS case-type codes and their meanings can be found in the "Abbreviations" section of this report). CMS makes this assignment automatically based on the specific title and section of the relevant U.S. Code provision reflected in the charging document. Each new case receives only one case-type code designation, even when multiple counts or multiple offenses are contained within an information, indictment, or complaint. In such instances, CMS assigns the code based on what the application has determined to be the most serious charge. Thus, a case involving both first-degree murder and bank robbery would likely be assigned a code of CR0101 (First-Degree Homicide), even though the substantive law differs for the two charges. Case-type codes not directly involving a prosecution are chosen by

⁵ The results of this literature review were provided to ODS under separate cover in the technical appendixes.

⁶ The results of this critique were provided to ODS under separate cover in the technical appendixes.

the person opening the new file in CMS and generally represent a stage in the criminal justice process without reference to the underlying offense, if any, that gave rise to the representation.⁷ For example, an appeal might be given a code of CA (Court of Appeals: Other Matters), while a probation-revocation matter might be given a code of PR, despite the fact that both types of representations are related to a prior criminal prosecution with identifiable charges. The distinctions between the broad categories of cases used by CMS (e.g., individual offenses, types of appeals, various other types of representations) are not always sharp ones.

Scope of the Time-Record Analysis. It should be noted that, as per our agreement with ODS, we were directed to “develop a statistically reliable measure—a national average—of the number of attorney hours required for each type of case.” As such, our concern here is solely with case-related attorney time. TKS entries associated with specific cases can be made by other staff members in the office, such as investigators, paralegals, and research and writing specialists. Information on nonattorney staff levels and their contribution in addressing an office’s caseload was considered as part of our work described in Chapter Three of cataloging factors that influence attorney time expenditures but were not included in our case-weight calculations. We also examined nonattorney TKS entries as part of our analysis of data file integrity and possible duplicate records. In addition, attorneys and others can associate TKS entries with activity codes that indicate that their time was spent addressing duties involving such matters as “skill development” or “general administration.” Unless otherwise noted in this document, however, references made to time expenditures are only to those associated with FDO attorneys and directly related to client matters.

Data Issues and Modifications

Zero-Time Cases. Of the 514,000 records in the FY 2004–FY 2008 CMS Case Summaries file, 76,000 (about 15 percent) had no associated case-related attorney time records in the TKS Time and Event Entries file. In other words, these zero-time cases were ones opened by an FDO; case numbers and case types were assigned; and information about the clients, the nature of the services provided, and the way the case was resolved were entered into CMS, but the matter appeared from the data to have been handled without any attorney involvement whatsoever.⁸

Cases assigned certain CMS case-type codes were much more likely than others to lack any recorded attorney time (Table 2.2), and four categories with significant numbers of cases over the five-year study period had more than half missing any attorney time entries: SC (Supreme Court: Certiorari granted), BP (Bail/Presentation), FAO (First Appearance Only), and CK (Crack Cocaine Retroactive Amendment).

Putting the question of the SC (Supreme Court: certiorari granted) cases aside for the moment, a different way to view zero-time cases is by impact on the overall FDO caseload

⁷ It is our understanding that the FDO staff member who would make the initial designation of CMS case type in these circumstances is unlikely to be an attorney. Even when the code is automatically selected by CMS based on the relevant U.S. Code title and section, there might be some instances in which a nonattorney staff member is required to choose from a short list of possible case-type options. The degree to which the attorney who has been assigned the case later reviews any case-type designation to confirm its accuracy is likely to vary from office to office and from attorney to attorney.

⁸ Our definition of a zero-time case includes only those records for which no attorney time was recorded. About 17 percent (almost 13,000 cases) of these zero-time cases had some TKS time entries from nonattorney support staff, such as investigators or research and writing specialists.

Table 2.2
Case Types in Which More Than 25 Percent Were Without Recorded Case-Related Attorney Time (75 or More Cases)

CMS Code	Case-Type Description	Percentage with No Time Recorded	Total Cases
SC	Supreme Court (Certiorari Granted) ^a	79.4	504
BP	Bail/Presentment	73.4	7,110
FAO	First Appearance Only	63.6	17,856
CK	Crack Cocaine Retroactive Amendment	43.8	11,493
CCO	Conflict Counsel	34.1	223
SS	State Statutes	33.4	617
MOP	Modification of Probation	32.8	1,896
PT	Prisoner Transfer	31.4	2,509
CD	Court Directed Prisoner Representation	30.8	1,587
PD	Pretrial Diversion	30.7	437
PA	Parole Revocation	27.1	2,475
OT	Other	26.2	9,995

NOTE: FY 2004–FY 2008 closed cases.

^a As described later in this section, we believe that the case count for representations coded as SC (Supreme Court: Certiorari Granted) is not an accurate reflection of reality.

(Table 2.3). CR8710 (Illegal Entry) made up 18 percent of all no-time cases, with FAO (First Appearance Only) contributing another 15 percent.

Though zero-time cases were found in every district, the situation was more common in some locations. More than 40 percent of all cases in three districts had no attorney time recorded, while, for another ten districts, cases with this characteristic comprised anywhere from 24 to 34 percent of their overall totals.

Are all of these cases actually ones in which no attorney spent any time on the matter? When we discussed this issue during our familiarization visits, none of the interviewees could describe a plausible scenario in which staff attorneys had no involvement whatsoever in an opened client matter, at least not one that might account for a substantial portion of the office's caseload. Indeed, they were generally adamant that every case file opened by an FDO required some minimal investment of attorney time, unless it was the result of some very trivial or uncommon administrative recordkeeping function. On the other hand, it was reported that, for a variety of reasons, TKS entries might not always be made for a case even when attorney effort was expended. For example, an attorney on intake duty might meet with a defendant before the initial appearance, conduct an inquiry into the basic facts surrounding the charges, and then decide that a conflict exists requiring alternative representation by a CJA panel attorney instead of one from the FDO.⁹ Though no further services would likely be provided at that point, the duty attorney would nevertheless bring the client and case information back

⁹ A similar result was said to take place in other districts where the FDO assists the court in determining financial eligibility for CJA services.

Table 2.3
Case Types with More Than 3 Percent of All Cases Without Recorded Case-Related Attorney Time

CMS Code	Case Type	Percentage of Total	Cases Without Time
CR8710	Miscellaneous: Immigration Laws, Illegal Entry	18.2	13,833
FAO	First Appearance Only	15.0	11,353
SR	Supervised Release	8.7	6,613
BP	Bail/Presentment	6.9	5,218
CK	Crack Cocaine Retroactive Amendment	6.6	5,031
PO	Petty Offenses	6.0	4,583
OT	Other	3.5	2,623
PR	Probation Revocation	3.3	2,490
CR6801	Drug Offenses: Controlled Substance, Sell Distribute, Dispense	3.0	2,261

NOTE: FY 2004–FY 2008 closed cases.

to the office, where, eventually (perhaps as soon as a day in some districts but in a week or two elsewhere), a new CMS record would be opened. Until a file number is in fact created, it would be difficult to enter time expenditure information into TKS linked to a particular client matter. Conceivably, the attorney could wait until administrative staff at the FDO opened up that new case record, but it is more reasonable to assume that the attorney's entries for the day would reflect only work performed on behalf of other existing clients or those new clients who subsequently consumed more than a brief amount of the attorney's attention. Two codes most often used in CMS for designating intake matters have an extremely high incidence of zero time, suggesting that something to do with the process, as opposed to attorney failure to adhere to good timekeeping practices, is primarily responsible: Sixty-four percent of the cases coded in CMS as an FAO (first appearance only) and 73 percent of the cases coded as a BP (bail/presentment) had no time recorded. But practices seemed to be varied among districts when it came to classifying intake-only cases. Some interviewees appeared to use FAO in such situations; others usually used BP, and still others indicated that they would be most likely to use a charge code that reflected the nature of the underlying offenses.

What about a scenario in which an extensive amount of work on an individual case is performed by an FDO attorney over a period of days or weeks without any time ever being recorded in TKS? There is no doubt that this can happen; nor is there any doubt that certain attorneys in the FDO program consistently make all or most of their TKS entries for only the most-serious or most-time-consuming matters among their assigned caseload. Nevertheless, the fact that the apparent problem affects certain case types more than others is telling. This is especially true when examining cases with criminal charges other than those involving petty offenses. When we look only at case types with 1,000 or more records over the study period, the top criminal offense categories in terms of percentage of cases without time were CR7990 (General Offenses, Other, 19.6 percent), CR8710 (Immigration, Illegal Entry, 16.4 percent), CR7220 (Traffic Offenses, Other, 15.7 percent), CR9999 (Federal Statute, Other; 13.9 percent), and CR1600 (Assault, Other, 13.2 percent). With the exception of the illegal-entry and

assault matters, by and large, these offense categories either cover charges that are not common enough to merit their own CMS case-type code or involve what appear to be minor types of offenses. It is not clear why assaults would have such a high percentage of zero-time cases (compared to other offense categories, which are usually under 10 percent), but the high percentage associated with illegal-entry cases might be a function of expedited processing, such as that triggered by Operation Streamline (or the local equivalent).¹⁰ If indeed many illegal-entry defendants are being processed in such a way as to encourage same-day disposition of their cases, it is possible that attorneys handling such multiple matters are not accurately allocating their TKS entries for that day. In comparison, less than 3 percent of nearly 52,000 CR8710 illegal-reentry cases in our data were lacking time information, suggesting that the problem is of less concern in what might be thought of as more-serious client matters than in less serious matters.

We believe that, for the most part, the zero-time issue is a function of unique circumstances that discourage recording time in cases in which the attorney's effort actually expended was either very brief or spread across a large number of clients without proper attribution (with relatively small amounts of time expended on behalf of each of those clients). Lending credence to this assumption is the fact that the median time a zero-time case remains open was but a single day, while, for all other cases, it was about two and a half months. Still, some time out of an attorney's workday was likely to have been consumed by zero-time client matters, though our assumption is that, when making TKS entries, the attorney effectively adds such time to other cases.¹¹

Given the foregoing, what might be the best way to address the problem of zero-time cases? We think it makes sense to substitute a minor amount of attorney time in these cases in order to reflect that some work was in fact expended on behalf of the federal defender system client base. If left as is, we would not be able to include such cases in our factor analysis. Moreover, our case-weight calculations would significantly undervalue the importance of the intake process, which can constitute a nontrivial portion of an attorney's workweek. The question that arises is this: What substitute value should be used in these instances? Interviewees differed in their estimates of the minimum amount of time that might be invested for the briefest client

¹⁰ Operation Streamline and similar programs are multiagency law enforcement initiatives led by the U.S. Border Patrol to aggressively target and prosecute those who are suspected of entering the country illegally. The sharp spike in the number of immigration prosecutions in districts where these enhanced enforcement operations are in place has led to the implementation of expedited procedures in some courts, resulting in what one FDO attorney characterized as a situation in which a "criminal case with prison and deportation consequences is resolved in 2 days or less" (Williams, 2008, p. 4).

¹¹ Another possibility we considered was that time spent on zero-time cases essentially disappears altogether, resulting in significant blocks of the workday lost forever in terms of TKS tracking. We were not persuaded that this scenario holds true in the majority of case records with zero time recorded. Our strong suspicion is that the zero-time issue is primarily driven by how intake duties and expedited processing sessions are conducted and recorded, especially in a relatively small number of districts. Such activities would consume a not-insignificant portion of an attorney's day, much of which might be spent at the courthouse. If such time spent were truly missing, there would be a large hole in the hours recorded in TKS for that particular day. In the offices we visited, a check is performed to ensure that attorneys submitting TKS reports to ODS have at least eight hours recorded for each weekday, which would require missing blocks of time resulting from the zero-time issue to be allocated to one or more valid case files. It should be noted that the check concerns only total time, not how the time was spent, so it is possible that the hours spent performing intake duties might be coded as non-case related, such as professional development, supervision, or general administration. We think that would be a very uncommon scenario. There is no question that at least some attorney effort arising out of zero-time cases never gets tracked in TKS, even for the wrong cases, but the issue is less of concern for us than problems noted elsewhere in this report related to attorneys self-limiting TKS entries to eight hours per weekday and 40 hours per week even if far more time is spent addressing FDO-related tasks.

contacts during intake or any other client matter, but a commonly mentioned duration was 30 minutes. A few attorneys, it should be noted, were adamant that one hour would be insufficient for meeting with a potential client and determining eligibility or for simply addressing the paperwork involved in even the briefest representations.

We looked at this issue from multiple perspectives, the first oriented toward how case weights might change in absolute terms. It should be noted that, as an artifact of the approach we chose in creating our analysis data set, what we have termed “zero-time” cases include both records in which the case-related attorney time field was set to missing and records in which the value in that field was set to zero (the latter situation reflects instances where nonattorney staff recorded at least some time in conjunction with the case). Both missing and zero values in this field are functionally equivalent because they both indicate a lack of any information in TKS about case-related attorney time expenditures. As a test, we examined four options for zero-time cases: changing all missing values to zero, imputing five minutes whenever the value was zero or missing, imputing 18 minutes, or imputing 30 minutes. We chose these three candidates for imputation because we assumed that five minutes was the shortest amount of time that could really be invested in a case, 10 percent of all cases with recorded time lasted less than 18 minutes, and 30 minutes was more or less the attorneys’ consensus response as noted above.

We then estimated a simplified version of relative case weights using each of these values. As explained at the outset of this chapter, a relative weight is the average attorney time expenditure in cases of a particular type divided by the average attorney time expenditures for all cases taken together. The case weights were essentially insensitive to the value imputed. Only seven of the 284 case types in our analysis data set had case weights that varied by more than 10 percent, depending on the imputation choice. However, for five of these case types, the case weights were small and varied little in absolute terms—variation like 0.04 to 0.07, for example. For the remaining two case types, CR7420 (Racketeering: Bribery) and CR7450 (Racketeering: Gambling), there was only one case each in the database, and both had zero recorded attorney time. As a result, these two case weights were entirely dependent on the imputation choice, though whatever choice was made would not meaningfully affect staffing or workload requirement estimations either for the system as a whole or in individual districts.

As a second test of the effect of substituting a default value for minimum attorney time for each case in which it is currently missing, we examined the change in weights taking place in relative terms, focusing on case types in which change might indeed have a major effect on staffing and workload requirements. We compared the relative rankings of case types for average attorney time under another five scenarios: (1) no change to existing values (cases with no associated TKS records are treated as having “missing” time and are therefore excluded from the calculations), (2) zero minutes if no TKS records were located, (3) one-tenth of an hour (six minutes, i.e., the minimum amount of time that can be entered into TKS), (4) one half-hour, and (5) one hour. Only those case types making up 300 or more records over the five-year study period were included in this comparison. As can be seen in Table 2.4, the relative rankings remain, with one exception, more or less the same for the top 50 based on the averages for unadjusted cases.

Obviously, the exception to the pattern of more or less consistent rankings is case type SC (Supreme Court, Certiorari Granted). With no adjustment for missing data, such cases had the second-greatest average time of any category with 300 or more records. But when zero minutes, six minutes, 30 minutes, or one hour was substituted for a missing time value, this case type dropped into the mid-30s in terms of ranking. The reason that this occurs is easy to

Table 2.4
Relative Ranking of Top 50 Case Types in Average Case-Related Attorney Time, by Value Substituted for Missing Time (300 or More Cases)

CMS Code	Case-Type Description	Total Cases	Original Ranking	Rank with 0 Minutes Used	Rank with 6 Minutes Used	Rank with 30 Minutes Used	Rank with 60 Minutes Used
CR0100	Homicide: Murder, First Degree	384	1	1	1	1	1
SC	Supreme Court (Cert. granted)	504	2	37	37	37	36
CR9994	Federal Statute: Explosives (except on vessels)	461	3	2	2	2	2
HA	Appeal: Noncapital Habeas	1,092	4	4	4	4	4
CR6100	Sex Offenses: Sexual Abuse of Adult	659	5	3	3	3	3
CR4700	Fraud: Postal, Interstate Wire, Radio, etc.	2,057	6	5	5	5	5
CR4999	Fraud: Other	392	7	8	8	8	8
CR6110	Sex Offenses: Sexual Abuse of Children	1,633	8	6	6	6	6
CR6200	Sex Offenses: White Slavery and Importing Aliens	514	9	7	7	7	7
CR7400	Miscellaneous: Extortion, Racketeering and Threats	815	10	9	9	9	9
CR3600	Larceny and Theft: Transportation of Stolen Property	388	11	10	10	10	10
CR4998	Fraud: Health Care	425	12	11	11	11	11
HC	Habeas Corpus	3,954	13	13	13	13	13
CR6300	Sex Offenses: Other	1,450	14	12	12	12	12
CR4390	Embezzlement: Other	415	15	15	15	15	15
CR1100	Robbery: Bank	4,350	16	14	14	14	14
CR7831	Miscellaneous: Furtherance of Violence	392	17	16	16	16	16
CR7477	Miscellaneous: Racketeering, Money Laundering	413	18	20	20	20	20
CR7830	Miscellaneous: Firearms	20,255	19	17	17	17	17
CR5900	Sex Offenses: Sexually Explicit Material	1,163	20	19	19	19	19
CR7800	Miscellaneous: Firearms and Weapons	1,394	21	18	18	18	18

Table 2.4—Continued

CMS Code	Case-Type Description	Total Cases	Original Ranking	Rank with 0 Minutes Used	Rank with 6 Minutes Used	Rank with 30 Minutes Used	Rank with 60 Minutes Used
CR4992	Fraud: Conspiracy to Defraud, Other	1,422	22	25	25	25	25
CR6803	Drug Offenses: Controlled Substance, Manufacture	452	23	21	21	21	21
CA	Court of Appeals: Other Matters	12,873	24	23	23	23	23
CR1500	Assault: Assault	2,535	25	22	22	22	22
MA	Motion Attacking Sentence (2255)	578	26	27	27	27	27
CR8600	Miscellaneous: Wire, Radio, or Television Fraud	335	27	30	30	30	30
CR4601	Fraud: Bank	2,115	28	26	26	26	26
CR6802	Drug Offenses: Controlled Substance, Importation/Exportation	1,455	29	24	24	24	24
CR8500	Miscellaneous: Mail Fraud	309	30	31	31	31	31
CR7820	Miscellaneous: Firearms, Unlawful Possession	5,020	31	28	28	28	28
TD	Court of Appeals: Trial Disposition	11,208	32	29	29	29	29
CR9993	Federal Statute: Aircraft Regulations	366	33	32	32	32	32
CR6801	Drug Offenses: Controlled Substance, Sell Distribute, Dispense	23,870	34	35	35	35	35
CR4995	Fraud: Credit Card	1,885	35	33	33	33	33
CR6701	Drug Offenses: Narcotics, Sell, Distribute or Dispense	11,329	36	34	34	34	34
CR6702	Drug Offenses: Narcotics, Importation/Exportation	1,582	37	36	36	36	37
CR5800	Forgery and Counterfeiting: Counterfeiting	2,899	38	38	38	38	38
CR4991	Fraud: False Claims and Statements	3,515	39	39	39	39	39
CR3200	Larceny and Theft: Postal	1,224	40	40	40	40	40
CR9907	Federal Statute: Money and Finance	326	41	42	42	42	42

Table 2.4—Continued

CMS Code	Case-Type Description	Total Cases	Original Ranking	Rank with 0 Minutes Used	Rank with 6 Minutes Used	Rank with 30 Minutes Used	Rank with 60 Minutes Used
CR4100	Embezzlement: Bank	599	42	41	41	41	41
CR4950	Fraud: Social Security	2,056	43	43	43	43	43
CR6704	Drug Offenses: Narcotics, Possession	609	44	44	44	44	44
CR6502	Drug Offenses: Marihuana, Importation/Exportation	3,611	45	45	45	45	45
APM	Appeal: Magistrate Decision	544	46	50	50	50	50
CR4200	Embezzlement: Postal	818	47	46	46	46	46
EXTRAD	Extradition	660	48	52	52	52	51
CR6501	Drug Offenses: Marihuana, Sell, Distribute or Dispense	9,462	49	48	48	48	48
CR8730	Miscellaneous: Immigration Laws, Other	11,229	50	47	47	47	47

NOTE: FY 2004–FY 2008 closed cases.

understand: This particular category has the highest percentage of missing- or zero-time cases (79 percent) of any, with more than 300 occurrences over five years, even greater than the two major intake categories mentioned previously.¹² The relatively high percentage of SC records with missing time combine to make this particular field highly sensitive to changes triggered by using different assumptions for default time. What was especially troubling was that 80 percent of the SC cases missing attorney time came from just two districts, suggesting some sort of systematic CMS/TKS policy or practice in those locations for attorneys using this specific case-type code that differed markedly from how the code was employed elsewhere. After we discussed this issue with our PAG, it became clear that the code was being used inappropriately to track some sort of appeal-related activity (most likely that involved with preparing the petition for writ of certiorari), primarily in those two districts and, to a far lesser degree, in other locations as well. Two factors supported this conclusion. First, the code is reserved for tracking work on matters before the Supreme Court of the United States in which a writ of certiorari has been granted. During our study period, 504 SC cases were opened in CMS for an average of about 100 per year. But, in recent years, the Supreme Court has usually granted fewer than 100 petitions for writs of certiorari annually, and this count would include numerous civil matters, as well as criminal appeals brought by attorneys other than those working at FDOs. Second, 96 percent of SC cases had less than 100 hours of time recorded in TKS, and 92 percent had about 13 hours or less. This distribution does not seem logical given the amount of time presumably needed to draft briefs on the merits and prepare for oral argument before the highest court in the land.

We believed that it made sense to address the missing-time problem for case types—other than those with the SC code—by using a substitute value for the missing time, especially given that the rankings for high-volume non-SC case types were not greatly affected by the alternative time values we tested. Given what we heard during our visits, 30 minutes appeared to be a conservative approach to dealing with the missing-time problem, and we modified records in the database accordingly. The manner in which we addressed cases with the SC code is discussed later in this chapter.

District. Another change we made in the data involved the field used for indicating the specific organization supplying the attorneys handling the case. During FY 2008, there were 11 districts in which federal defender services were provided by an FDO with its main office outside of those districts (in total, 79 FDOs serviced 90 districts). In addition, a few FDOs active in FY 2008 were established at various points during our five-year study period. Prior to creation of the FDOs, either federal defender services were nonexistent in those districts (in other words, CJA panel attorneys handled all financially eligible clients) or the district had been a branch of a multidistrict FDO. In order to analyze the data in a consistent manner and,

¹² One likely effect of imputing values for missing cases is reduced averages for attorney time expenditures within individual case types and, in turn, corresponding case weights are reduced as well. When attorney time is missing in TKS, such cases are not counted in the time-related calculations. Changing missing time values to zero results in more cases being added to the denominator for calculations of averages without any change in the total number of hours used for the numerator. Imputation of a relatively small nonzero value, such as 30 minutes, will also depress mean time expenditures if the cases without missing values already averaged more than the imputed value. Because about three-fourths of all SC cases were missing attorney time and because the average for the cases with nonmissing data was about 144 hours, imputation of anything less than a substantial number of hours would trigger a dramatic drop in the average for this case type. Although some other case types had similarly high percentages of cases without recorded attorney time, none had a similarly high average for time expenditures in cases with nonmissing information.

most importantly, to focus our work at the individual district level, we examined the field in CMS for the specific branch location (in other words, the city where the attorney was based) for the ten FDOs that provided services in multiple districts and for the six FDOs that provided services in adjacent districts prior to the establishment of new and separate FDOs in such districts during our study period.¹³ We modified the location codes for any such case in which the branch field indicated that legal services were provided by attorneys located within the district, even if the original CMS value used the FDO abbreviation for an external organization. In addition, cases identified as having been handled by the appellate division of the Federal Public Defenders of New York, the FDO based in the Southern District of New York, were combined with those handled by the trial division in the same Manhattan office because the data we obtained regarding staff levels in that location did not distinguish between appellate and trial personnel. Fewer than 700 cases in total were affected by all of these changes.

Unless otherwise noted, when tables and figures in this document present information about individual locations, the analysis was based on district-level information rather than at the FDO level.

Case Type. We examined the existing CMS case-type codes for the cases in our data to confirm whether they complied with what were described to us as the standard naming conventions used by FDO case-management computer systems for identifying the most serious criminal charge in a case or the nature of other client services provided by the representation. Those cases with case-type codes failing to conform to such rules were reviewed, and, if possible, information from the specific U.S. Code sections contained in the underlying charge files were used to correct obvious errors. After these modifications were performed, 235 cases out of more than 500,000 had missing or invalid codes and could not be used in our analysis.

Time Values. We rounded the time entries found in TKS to the nearest tenth of an hour.

Concerns About Timekeeping Practices at the FDOs. As indicated earlier in this chapter, we conducted interviews of FDO staff in multiple locations to learn more about how attorneys approach their timekeeping responsibilities. These interviews were conducted in conjunction with an analysis of TKS and CMS data to identify patterns suggesting systematic problems with time and event entries. From what we learned during this phase of our investigation, we determined that there were issues related to timekeeping practice that need to be taken into account both in our analysis and in the way ODS might employ our proposed set of case weights.¹⁴

Given what we were told during these discussions, it was apparent that the attitudes and practices of FDO attorneys in regard to tracking their time expenditures can vary significantly both across offices and within offices. Moreover, the underlying purpose of tracking time in TKS is generally unclear to those asked to perform the task, which could affect the level of compliance and the way hours are recorded.

Some attorneys indicated their belief that entry of no more and no less than eight hours of total event information for each of the five days during a normal workweek is all that is required by TKS, and they will adhere to that standard no matter how many hours were actually worked. Attorneys who record only eight hours of time each day despite working more

¹³ Our case-weight development calculations and analysis of factors influencing time expenditures were generally conducted at the district level in order to account for the important differences between local legal environments in those locations. Presentation of results at the FDO level is found only in Chapter Five and weighted caseload tables in Appendix C.

¹⁴ Additional discussion of our evaluation of TKS was submitted to ODS under separate cover in the technical appendixes.

than that amount of time generally reported either compressing actual time expenditures or overlooking or excluding work done on all but the most-dominant matters.

The timing of TKS submissions also appeared to vary. Some attorneys reported that they waited until nearly a month had transpired before recording time expenditure information, requiring extensive reconstruction of the events from memory and supplemental documents. The long delay is likely to exacerbate the problem of recall bias, skewing entries toward certain types of cases. Internal deadlines for submission of attorney time records also appear to differ from office to office, a situation that could contribute to interdistrict differences in data quality.

There are few controls on how an FDO attorney chooses to comply with timekeeping requirements. Checks of attorney TKS submissions in the offices we visited appear to have been performed primarily to confirm whether entries totaling at least eight hours per day are included. No quality-control procedures exist to ensure that the entries are correct in terms of capturing all cases worked on, classifying the type of activity by the most appropriate code, or entering correct time values. No office we visited has such a system in place, and it is difficult to imagine how one could be designed.

Where an event or activity takes place appears to be an influence on whether the time spent is accurately recorded in TKS. From what we learned during our interviews, TKS is likely to best reflect activities conducted in the offices of an FDO. Time spent at courthouses, detention facilities, the attorney's home, or any location other than the FDO appears to have a greater chance of being overlooked or underreported. In addition, events of relatively brief duration or that pop up while more-pressing matters are being addressed also appear to have a greater chance of being overlooked. Given that timekeeping duties appear to require a non-trivial investment of time and effort on the part of ODS attorneys, there is also a risk that the accuracy of entries will be adversely affected during periods of heavy workload.

In addition to the amount of time spent, TKS entries also require the attorney to indicate the type of event or task performed. This classification is highly suspect due to a lack of uniformity in the way codes are chosen and the availability of options that are overly generic.

Despite the foregoing, our assessment is that it is possible to rely on the data in TKS for crafting relative case weights. At its core, the development of relative case weights is primarily interested in distinguishing case types that typically consume greater-than-average levels of resources from more-ordinary matters. All that we heard during our familiarization visits, including from attorneys who described their timekeeping habits as being in need of significant improvement, suggests that FDO attorneys generally make a good-faith attempt to enter the greatest amount of time in TKS for those cases that dominated their workload over a single day, week, or month. They might not always be successful in that objective, but the intention to do so seems to be present.

We did not perceive any indications of a meaningful, systematic difference between the "strict" and "inattentive" timekeepers in terms of their caseloads or their approach to representing clients. It is reasonable to assume that whatever errors are occurring in timekeeping practices are more or less spread across FDOs and case types randomly.

The most serious issue involves the possibly common practice of truncating actual hours worked to an eight-hour-a-day standard, though we have no evidence to believe that the caseloads of the attorneys conforming to this practice are dissimilar to those who approach TKS duties in a different way. Our assumption, based on our discussions with FDO attorneys who claimed to follow the eight-hour "rule," is that an effort is usually made to record total daily time expenditures for each case in a way that roughly approximates its proportional share of

the entire workday. To the extent that the attorney worked more than eight hours that day, the total amount of time recorded over the life of a case will be depressed to some degree from actual expenditures. Nevertheless, the most-time-consuming cases handled by these attorneys will have more total TKS hours recorded than the least time-consuming ones. Another important issue involves the failure of FDO attorneys to capture the briefest blocks of time, such as taking a phone call of less than ten minutes' duration in the middle of hours spent drafting a motion in a completely different case. Our assumption is that it is likely the conversation is never noted in TKS, with the time expended on the call being subsumed into what was recorded for the work on the motion. To the extent that the types of cases involved in these fleeting diversions (both from the perspective of the interrupting case and the case that was primary source of the attorney's attention when it occurred) reflect a random distribution of CMS categories, then the problem is minimized. If instead the "phone calls" tend to be related to case types with relatively low actual average attorney time expenditures and the "motion draftings" tend to be related to the types with the highest expenditures, then the potential exists for generating weights for the former group that are smaller than they should be and weights for the latter group that are larger than they should be. Although the result of this scenario would be less than desirable, the bottom line is that the most-time-consuming case types will have the largest weights (and vice versa).

If these assumptions hold true in general, then it would appear that the relative rankings of average attorney time by case type would generally reflect real-world experiences, even if the absolute amount of average time as recorded in TKS is not usable for all potential purposes.¹⁵ Even with the deficiencies noted throughout this document, the average time for homicide cases based on information tracked through TKS will be greater than that for post office burglaries, which, in turn, will be greater than those associated with driving-while-intoxicated charges. Moreover, TKS issues that do not directly affect the allocation of time to specific cases can be ignored for purposes of the instant work.

Although we believe that ODS should take steps to improve the quality of the information entered into TKS in anticipation of updating our proposed initial set of relative case weights at some point in the future (see Chapter Eight), the data in their current state should be sufficient for providing a more defensible basis for gauging personnel needs over time. Few large-scale data sets are free of obvious flaws and potential pitfalls in the manner in which the data were collected, organized, or interpreted. TKS/CMS is certainly no exception, and, as has been true with other data sets of similar size and reflecting similar concerns, useful analysis can nevertheless be performed subject to well-described limitations. TKS/CMS also has to be viewed in the context of what other approaches might provide the depth of information necessary for the development of case weights, and to do so at a reasonable cost and within a reasonable amount of time. Moreover, we do not think that alternative strategies, such as consensus-building exercises or short-term diary-type time studies, would produce markedly better results than ones available from analyzing data already in hand. There certainly is room for improvement, but existing time expenditure data recorded in TKS/CMS for hundreds of thousands of cases over multiple years constitute a reasonable first step toward ODS's development of a weighted caseload analysis capability.

¹⁵ We caution against using information derived from TKS about average time expenditures in an absolute sense, such as for estimating the total number of attorney hours needed at an FDO or for the entire federal defender system. Some of the issues noted in this discussion are likely to negatively affect the accuracy of such estimates.

Structural Issues and Modifications

CMS Case Summaries. The original 516,407 records in the CMS Case Summaries file for FY 2004–FY 2008 contained 2,193 record pairs sharing the same theoretically unique case number.¹⁶ All but two pairs came from one district. The pairs had the same values for all other fields in the record, suggesting that these were simply duplicate records rather than truly unique cases that, for some reason, had the same case number. As such, we dropped the second duplicate record in every instance, reducing our analysis data set to 514,214 cases.

TKS Time and Event Entries. Duplicate Records. The identification of duplicate records in the TKS Time and Event Entries file was less straightforward than was the case with the CMS Case Summaries file. We ran a test in which we looked for multiple instances within each case of time entries with the same staff position code (we knew only the general job classification of the person making the TKS entry, not his or her actual identity), event date, activity code, and length of time.¹⁷ It is certainly possible that an attorney or other staff member might make two or more entries for the same day with the same amount of time spent doing the same thing on the same case. According to what we heard from FDO staff during our visits, however, they would be more likely to simply combine those two or more instances into one when they did their accounting at the end of the day (or week or month). In the FY 2004–FY 2008 data, there were 11.3 million time records, and, of those, 717,436 were not unique entries based on position, date, code, and time. About 23 percent of these came from the same office that had duplicates in the CMS Case Summaries file for this period. The other 77 percent were scattered around the system in a way that more or less matches the FDO’s share of systemwide case volume, though three districts reflected greater-than-expected shares given those offices’ annual volume of cases.

These suspect duplicates occurred in 83,272 cases, or about 16 percent of the total, suggesting that entering the same information twice for the same day could in fact be an occasional, though not common, practice among attorneys and others who use TKS. In 52 percent of the cases with suspected duplicates, there was only a single instance of a multiple entry with the same basic information (90 percent had seven or fewer sets of multiple entries). In 49 percent of the cases with a suspected duplicate, there were only two records matching each other, and two-thirds had no more than four matching records.

Although it is possible that many, perhaps most, of the suspected duplicates were recorded in the normal course of business, there are clearly instances in the data that strongly suggest an error in either the way entries were submitted into the system or the way time records were extracted for our case-weight work. There were some cases with as many as 22 time records with the exact same information, others with hundreds of duplicate sets, and still others in which the total number of suspected duplicates across all sets approaches 1,000. Many of the cases with the most-striking duplicate counts came from the district noted above with 23 per-

¹⁶ We use the term *case number* here even though the value present in the file is not an official federal district court docket number. Nor does the theoretically unique number contained in the CMS/TKS extract provided to us match what individual FDOs use internally for client-matter identification. Because of concerns over the sensitivity of the data and to preserve attorney–client privilege, our version of CMS/TKS records contains a substitute record identifier.

¹⁷ Our investigation of the potential problem of TKS record duplication included entries made by nonattorney support staff, though information about time expenditures for those positions were not incorporated into our case-weight calculations.

cent of the total, which points to a possible systematic problem with the data submission or extraction process in these locations for some subset of cases.

It should be noted that we were constrained in our ability to evaluate the issue of duplicates in the time files because of the lack of any field that would allow us to organize the data on the basis of the individual submitting the time records. We could have, for example, identified instances in which two different staff members independently entered the same information, such as might take place with co-counsel attending the same trial or interview. We could have also discerned instances in which suspected duplicates appeared to be common to certain staff members in an office and not others, suggesting that duplicates are simply a matter of individualized style and habit when it comes to timekeeping responsibilities. With suitable sensitive-data safeguarding protections in place, this type of analysis could be performed without anyone, RAND or otherwise, learning of the actual identity of these staff members.

Given these limitations, we felt that the only realistic approach would be to drop the second and all subsequent records with the same staff position code, event date, activity code, and length of time. The record counts in the TKS time file were reduced to 10,921,951 when we dropped 384,748 individual time records with such duplicate information.

Merging with CMS Case Summaries. We then collapsed the time entries into a single record for each unique case number, aggregating reported time and event records by whether they were associated with an FDO attorney or other staff member.¹⁸ This created a case-level time file with 450,973 records. Merging this information with the case file, we created a new data set with a total of 514,214 records, containing both CMS fields and aggregated time expenditures. Because our analysis strategy requires that each case in the data contain a valid case-type code, the file was reduced by 235 records due to the fact that we could not determine the subject matter of the representation in those cases, resulting in 513,979 total records.

CMS Charge Entries. The 421,115 records in the CMS charge-level files were examined, and we dropped 17,863 records that duplicated the case number, charge count, U.S. Code title and section, CMS case-type categorization, AOUSC case-type categorization, severity indicator, and death penalty–eligibility indicator of another record in the file.¹⁹ We then collapsed the 403,252 unique records with charge-level information into a case-level record format, resulting in 305,075 records containing information for up to five individual charges. These records were merged with the master case file, and, with the changes described above, the result was a case-level file containing 513,979 records.

Cases with SC Case-Type Codes. Although there are no doubt other instances of case-type codes being systematically employed in an unexpected manner, the apparent use of the SC category other than for work actually associated with a granted writ of certiorari presented a unique problem for our analysis. The considerable spread in hours recorded in TKS for cases with this designation adversely affected the way in which we generated case weights, as described in Chapter Four. In consultation with our PAG, we concluded that SC-designated cases for which the amount of time recorded in TKS for all attorneys associated with the matter was less than 400 hours were likely to be instances where the case-type code was misap-

¹⁸ We also aggregated time and event records by whether TKS indicated that the entries were for case-related work or for some other type of activity (e.g., administrative or staff development). However, only 59 cases had at least one attorney time entry in TKS associated with non–case-related activity codes. Such entries were not included in our case-weight analysis.

¹⁹ The same district noted above as having contributed many of the suspect duplicates for the CMS Case Summaries and TKS Time and Event Entries files was responsible for 22 percent of the suspect duplicates in the CMS Charge file as well.

plied. We dropped those 488 cases when calculating case weights and annual weighted case-loads, resulting in a case-level file of 513,491 records. The full set of 513,979 cases was used for all other purposes, primarily in our analysis of non–case-type factors influencing time, as described in Chapter Three.

Factors Other Than Case Type That Influence Attorney Time

Introduction

One of the key tasks for this project was to catalog factors, other than the type of case, that might affect the workload of individual FDOs. Understanding the extent to which unique aspects of a particular case—in terms of the type of client, the district and court division where it takes place, the identity of the judge and prosecutor assigned to the matter, or the characteristics of the FDO itself—can affect attorney resource needs certainly has been a major concern of ODS and others within the federal defender system for years. Although, as explained in Chapter One, ODS has used a district-specific unweighted CLPA count as the starting point for setting staff levels, the actual decision is also informed by the explanatory narrative in the annual *Report of Operations* submitted by each district’s Federal Public Defender or Chief Community Defender, as well as the information contained in budget-adjustment justification letters sent to the chair of the Judicial Conference’s Committee on Defender Services’ Budget Subcommittee. These reports and letters provide a real-world perspective on resource drivers at the individual FDO level and present convincing arguments for why a raw caseload count alone would be an inadequate way to determine adequate attorney staff levels. The documents often reflect the authors’ concerns that the absolute number of cases handled by an FDO might be presenting a misleading picture of the real workload, since it might be failing to take into account the type of cases being handled as well. The following are a few examples of such arguments:

Although our caseload per attorney has remained fairly constant in recent years, there have been shifts in the nature of the cases, which has resulted in an increase in the overall complexity.

While our caseload remains relatively low compared to other districts, the nature of our practice demands [that] more time and effort be devoted to each case.

Given the decline in the number of cases handled per year, one might think that this office is over-staffed. Nonetheless, while it is true that the raw number of cases has declined, the mix of cases that we are now handling is more complex than in the past, and many of the cases have far more serious ramifications for the clients involved. . . . [The] nature and complexity of the cases being brought by the government, and thus the nature and complexity of the cases this organization is handling, have changed over the last several years.

What exactly constitutes such a change in the “nature and complexity” of the caseload? Are there ways for those charged with setting staff levels at individual FDOs to neutrally and fairly evaluate these statements? Which factors bearing on nature and complexity should be given the greatest weight in these decisions? These questions are behind ODS’s request that we describe potential workload drivers and, to the extent possible, explain the relative impact of each on attorney time consumption. We were also asked to discuss how the utility of any case-weight system as a principal component of future ODS resource calculations might be affected as a result of the presence of these nature and complexity factors.

As mentioned, this is hardly a brand-new concern. Attempts have been made over the years to measure the extent to which a district’s caseload presents various challenges that might turn an “ordinary” representation into one requiring a significantly greater investment of a defender’s time. An internal case data sheet (or its equivalent) attached to (or included within) a newly opened case’s file jacket is routinely used by FDOs for capturing names of clients and witnesses, as well as disposition information, but it also asks the attorney closing out the case to check boxes on a list of case events and characteristics (as represented in Text Box 3.1) if any occurred or were present during the client representation. At the time the case is formally closed by office support staff, information in these check boxes would be keyed into CMS and made available for later analysis by ODS or individual FDOs.¹

Our understanding is that the specific set of factors on these internal case data sheets was developed by a group of Federal Public Defenders and Chief Community Defenders in conjunction with ODS and that the underlying purpose of requiring attorneys to review the factor list was to capture information pertaining to case characteristics that might affect the resource needs of individual offices.

Individuals within the defender system also have their own opinions in regard to similar issues. For example, we received a list of 20 factors from a staff member at ODS that he believes explain many of the variances in office-level CLPA figures (see Text Box 3.2). Though this list is not used for formal purposes, such as noting case and client characteristics in CMS, it does reflect the considerable thought that has been put into this important topic.

And, as can be seen in Table 3.1, one FDO attorney provided us with an even more detailed outline of his own take on potentially influential factors.

The question of what influences might exist to drive attorney time in individual cases and individual districts has clearly been a concern of many within the FDO program. As evidenced by the internal case data sheet fields and the various personal views on this subject set forth above, a wealth of sources exist to use as a starting point for any effort designed to catalog potential workload factors and test their relative influences. But such sources would be only a starting point, for several reasons. First, the internal case data sheet fields were developed years ago and might not be as relevant today, given that legal authority, caseload characteristics, local legal cultures, and FDO resources and practices have certainly evolved in the intervening years.

¹ Not all of the indicators of events and characteristics in Text Box 3.1 are available to outside researchers examining CMS data. In the CMS extract provided to us by ODS in conjunction with this project, there were no fields available for indicating whether the client spoke English, was illiterate, presented mental health issues, or was a juvenile. Nor were there any fields for indicating whether the matter was one in which a career-offender designation was possible or whether the case involved cooperation. Our understanding is that the ODS extract we received only contains fields in CMS that could not reasonably lead to identifying a specific client, attorney, or district court case, and, as such, potentially sensitive information regarding client language and the like was not included.

Text Box 3.1
Sample Client and Case Information Form

Internal Case Data Sheet

Note: Please check off all items as they are entered into database.

Client-Related Factors

- Client did not speak English
- An interpreter was required
- Client was illiterate
- Case presented mental health issues
- Client was a juvenile
- Case had immigration consequences

Discovery Factors

- Discovery limited to Rule 16 material
- Discovery was tardy
- Discovery was voluminous
 - Number of pages:
 - Number of bankers' boxes:
 - Length of transcripts (pages):
 - Length of audio recordings (hours):
 - Length of videotapes (hours):

Charge-Related Factors

- Capital case
- Potential statutory mandatory minimum
 - Years:
 - Other potential statutory enhancement
- Potential career offender
- Case included RICO count
- Case included CCE count

Attorney Investigation/Preparation/Trial

- Number of potential witnesses:
- Number of witnesses interviewed:
- Remote witness interviews (explain below)
- Remote court location (explain below)

Detention Factors

- Client was detained
- Detention in remote jail
 - Distance to client in . . .
 - Round trip road miles:
 - Round trip air travel time:
 - Number of remote visits:

Other Factors

- Case had novel legal issues (explain below)
- Contested sentencing issues (explain below)
- Case required complex original motions (explain below)
- Case involved cooperation
 - Number of hours in debriefing:
- Case involved ancillary proceedings (describe number and type below)
- Case required expert services (describe number and type below)
- Case was produced by a special prosecutorial or law enforcement initiative (explain below)

Miscellaneous

- Number of defendants:
- Total number of counts:
- Number of counts charging client:
- Misdemeanor only charged
- Reduced to misdemeanor
 - Months from appointment to judgment:

Remarks continued and additional remarks:

NOTE: RICO = Racketeer Influenced and Corrupt Organizations. CCE = Continuing Criminal Enterprise.

Second, although the two lists set forth in Text Box 3.2 and Table 3.1 are clearly the product of professionals with considerable background in federal defense work, the lists might not reflect all of the unique experiences of defenders in locations across the country who might be operating in very different types of legal environments.

Text Box 3.2
“The 20 Complexity Caseload Factors”

Complexity of cases
Case mix
Court culture (for example, written rather than oral advocacy)
Rate of detention
Discovery policies
Percentage of cases going to trial
Plea policies
Support staff ratios
Percentage of non-English-speaking clients
Percentage of noncitizen clients
Number of AUSAs
Experience levels of AUSAs
Experience level of AFDs
Local law enforcement initiatives
Number of federal capital prosecutions
Number of appeals
Number of places of holding court (travel time from staffed defender offices)
Size of district (location of clients and investigations)
Distance to pre-trial detention facilities
Situs of court of appeals

NOTE: AUSA = Assistant U.S. Attorney. AFD = Assistant Federal Defender.

Table 3.1
“Case Complexity/Weighting Factors”

Factor	Details
1. Defendants	<ul style="list-style-type: none"> a. Single defendant versus multiple defendants b. Cooperative attitude versus hostile or needy c. English speakers versus non-English speakers d. Literate versus illiterate e. Involvement/interference by family or friends
2. Charges	<ul style="list-style-type: none"> a. Indictment versus complaint b. Misdemeanor/petty offense versus felony c. Single count versus multiple counts d. Mandatory minimum e. Statutory enhancements f. Complexity of charges (RICO, money laundering, CCE, terrorism)
3. Arrest versus summons	<ul style="list-style-type: none"> a. Detention hearing(s) b. Detention appeal c. Posting of property for release d. Remote detention
4. Mental health	<ul style="list-style-type: none"> a. Competence issues b. Suicidal c. Other mental health issues
5. Physical health issues	
6. Tape recordings or wiretaps	<ul style="list-style-type: none"> a. Video/audio tapes b. Voluminous tapes c. Non-English-language tapes
7. Discovery	<ul style="list-style-type: none"> a. Open file versus minimal discovery b. Federal law enforcement only versus state law enforcement involvement c. Pretrial subpoenas d. Discovery motions e. Voluminous discovery f. Examination of discovery by expert witnesses (e.g., forensic accountants, forensic computer experts)

Table 3.1—Continued

Factor	Details
8. Witness interviews	a. English speakers versus non-English speakers b. Local versus remote c. Cooperative versus hostile d. Potential targets as witnesses
9. Travel time to court	
10. Cooperating defendant	a. Lengthy or multiple debriefings b. Cooperation requires testimony c. Security/safety concerns d. Rule 35 motion
11. Pretrial motions	a. Novel legal issues b. Boilerplate versus original motions c. Number of motions
12. Evidentiary hearing	a. Numerous witnesses b. Expert witness required c. Lengthy hearing
13. Interlocutory appeal	
14. Ancillary proceedings	a. Civil forfeiture b. State court proceedings c. Pending charges in other jurisdictions
15. Guilty pleas	a. Lengthy plea agreement b. Conditional plea c. <i>Alford</i> plea
16. Trial	a. Court trial versus jury trial b. Attorney-assisted voir dire c. Jury questionnaires d. Single defendant versus multiple defendants e. Number of witnesses f. Expert witnesses g. Number of exhibits h. Number of trial days
17. Sentencing	a. Agreed upon versus contested b. Number of witnesses c. Expert witnesses d. Number of exhibits e. Lengthy hearing
18. Appeal	a. Single defendant versus multiple defendants b. Numerous issues c. Oral argument granted d. Petition for rehearing e. Petition for certiorari
19. Habeas	a. Lengthy record b. Number of issues c. Evidentiary hearing d. Age of case e. Additional investigation needed

Third, as noted elsewhere, acquiring solid empirical data on complexity, client characteristics, and the challenges posed by federal criminal representations is a difficult task. One obvious source would be the factors listed on the internal case data sheet, which, in theory, could be compared to actual time expenditures as recorded in TKS. Unfortunately, the level of attention paid to checking off those boxes varies considerably among the attorneys with whom we spoke during our familiarization visits, some of whom remarked that they rarely take any

serious time to review the list, given more-pressing demands on their work schedule. In their view, the case is more or less over at that point, and other clients now have a far greater need for their full and undivided professional attention. There were also concerns voiced about whether information contained in these check boxes is entered into CMS by office staff in a consistent and uniform manner across FDOs. Other evidence supports our concerns about relying solely on CMS data based on the internal case data sheet factor list. As part of our exploratory work, we reviewed the frequency distribution of the internal case data sheet factors for a single FDO and a single year with the Federal Public Defender for that office. The unexpectedly low percentages of cases flagged as having clients detained at some point or who did not speak English were part of the reason that the Federal Public Defender remarked that “[I] can tell you that the numbers are not a reflection of my knowledge of the caseload.”²

We approached this task from two directions. First, we built on the existing factor catalogs described above by collecting more-recent qualitative information on the subject from attorneys in offices around the federal defender system. This was initially accomplished through a series of telephone interviews and face-to-face interviews conducted as part of familiarization visits to five FDOs. In addition, we surveyed each Federal Public Defender and Chief Community Defender to get his or her views on factors other than case type that might be playing a role in attorney time expenditures. All of these sources were used to develop a list of candidate workload factors.

Second, we used that list to guide our collection of data elements that we hoped would allow empirical testing of various factors. We built an analytic database of all cases handled by FDOs that were closed at any point during the period of FY 2004 through FY 2008 and, to the extent possible, populated that database with fields representing various factors from our preliminary list. CMS and TKS provided information related to attorney time expenditures, the offenses charged and other aspects of the services provided to the client, case location and key date information, client characteristics, the existing CMS workload flags described in Text Box 3.1, and the manner in which the case was resolved. Added to each record were district-level characteristics we obtained through the Federal Public Defender/Chief Community Defender survey, as well as from ODS, that describe office staff levels, average travel times to detention facilities, prosecutorial policies, and other features of the local legal environment. Ultimately, the database was analyzed with the goal of better understanding the degree to which various case-level and district-level features might influence the amount of time required to professionally represent clients in the FDO program.

Specific details about our qualitative data collection and our statistical analysis of our “factor database” follow.

Developing a Preliminary List of Workload Factors

As described in Chapter Two, we reached out to many members of the FDO program for their views as to the factors that appear to drive attorney time expenditures. We conducted

² Additional evidence for inconsistent coding of the internal case data sheet might be the fact that CMS data indicated that the check box for a RICO case (“Case included RICO count”) had been marked in only 61 cases (out of 541,000 total cases) over five years. About 1,500 cases in CMS had an offense code of beginning with “CR74,” which indicates that the most serious charge involved a racketeering allegation.

more than 40 telephonic interviews with FDO attorneys from as many different districts; we elicited the opinions of nearly every Federal Public Defender and Chief Community Defender in the system through an online survey;³ we had face-to-face conversations with 39 attorneys (including supervisors) at five different FDOs in which the subject of influential factors was one of the topics discussed; we received additional comments from FDO attorneys through direct contacts over the course of the project; we reviewed FDO operations reports and budget-adjustment justification letters for FY 2008; and we discussed these issues with ODS senior managers and our PAG.

Although we learned much from our site visits and other direct contacts with FDO attorneys on the subject of influential factors, perhaps the most fruitful avenue in this regard involved our random telephonic interviews and our survey of Federal Public Defenders and Chief Community Defenders. The interviews were primarily intended to explore case characteristics and external factors that FDO attorneys see as influencing the time they spend defending their clients.⁴ Essentially, we wanted to learn why the same sort of case might result in markedly different total number of attorney hours from another in the same district or elsewhere. Because the interviews were typically with individual attorneys who had practiced in only one district during their careers as federal defenders, the conversations were sometimes less focused on district-to-district distinctions and more on case-to-case differences. The interviews generally involved free-form discussions about workload issues, although, to help guide the conversation, we also asked the interviewees for their opinions about the relative influences of various factors suggested to us during our preliminary research.

The survey of Federal Public Defenders and Chief Community Defenders also provided considerable insight into these issues. The bulk of the questionnaire was directed at obtaining descriptive information about each district and its local legal environment, but two questions at the end asked the respondent to provide his or her comments regarding the issue of influential factors. Most took this opportunity to submit detailed comments (which were provided to ODS in the technical appendixes). Unlike the interviews described earlier, these remarks almost always reflected the experiences of longtime members of FDOs with a high-level perspective on interdistrict differences and, in some instances, were provided by attorneys who had practiced in multiple districts over the years. Nevertheless, the results from the survey and the qualitative interviews were generally consistent, suggesting that there is a consensus about some of the factors that can affect the amount of work a case might require.

Because the attorney interviews (both those conducted by phone and those conducted in person), the survey comments, and our direct contacts with FDO counsel touched on many

³ Only two of the 78 Federal Public Defenders and Chief Community Defenders did not respond to our survey request.

⁴ Though our focus was on factors that could influence the amount of time spent on individual cases compared to others involving similar issues, we were told on occasion about circumstances that could affect the proportion of an attorney's workday available for client-related activities. For example, some attorneys (often Federal Public Defenders or Chief Community Defenders) told us that assisting CJA panel attorneys (which is within the scope of the FDO's responsibilities) required a significant amount of office resources. This duty involved such tasks as handling phone calls from CJA panel attorneys requesting advice or assistance, publishing newsletters, and conducting training seminars, all of which decreased the amount of time that attorneys could devote to their client caseloads. FDOs are required and receive funding to assess local panel attorney training needs, and provide panel attorneys with training and educational resources. The effort needed to enter hour and task information into TKS was also mentioned as significantly diverting attorney attention from their primary mission. We did not specifically address non-case-related tasks in our work, though it is plausible that some interdistrict variation in average hours per case can be explained by local practices in regard to CJA assistance, professional education opportunities, general timekeeping duties, and other activities not associated with an individual FDO client.

of the same issues, we present below a combined summary of what we learned from all such sources.⁵

Summary of Interviews and Surveys on the Issue of Workload Factors

The principal goal of the interviews and questions on the survey was to identify the factors other than case type that affect the workload of federal defenders. The four most–commonly cited factors were (1) whether the client was in detention, (2) the travel and wait times associated with specific detention facilities, (3) whether the defendant spoke English, and (4) whether the case went to trial,⁶ but there were certainly many others. In general, these can be roughly described as client characteristics and requirements, case features, detention-facility issues, judicial preferences, court-specific issues, prosecutorial policies and practices, probation-officer practices, law enforcement aspects, pretrial discovery impacts, sentencing issues, office characteristics, defense-attorney characteristics, district-level issues, and issues unique to handling appeals. It should be noted that, in the sections that follow, we are describing generally what was perceived by FDO attorneys. Although the statements struck us as credible given the direct experience of those who participated in interviews and surveys, we have not sought to independently ascertain that any particular statement is an accurate reflection of reality.

Client Factors. This section describes factors related to the client.

Language. Interviewees and survey respondents generally agreed that clients who were not fluent in English required substantially more time than those who were. Interactions with the nonfluent client often require time-consuming interpretation. Contacts with family members and witnesses from the client’s community often required interpreters as well.

Even apart from the additional effort required to conduct basic conversations, translating technical legal concepts into other languages was reported as posing particular difficulties and increasing the chances that the defendant and his or her family might not understand important aspects of the complex federal legal process. Some non–English-speaking defendants were described as not understanding the basic functioning of the U.S. legal system, though this limitation might be more of a cultural issue rather than one purely of language. In general, the more complex the case, the more additional time was believed to be required to translate and explain complex legal concepts.

One repeatedly cited language-related problem concerned difficulties in communicating legal strategies and developing a strong attorney–client relationship. Some respondents reported that clients who did not speak English as their primary language often received considerable misinformation from other defendants from the defendant’s home country, which, in turn, made the attorney’s job of explaining the benefits and downsides of various options more difficult. This dynamic was sometimes exacerbated by the vast differences between the state and federal criminal justice systems.

⁵ Selected excerpts of comments provided by survey respondents and those defenders contacting RAND staff directly through email presented in the following section have been edited for clarity.

⁶ In explaining what the combined effect of these factors might be, one respondent said that

this can mean that a simple document that would take 10 minutes in the office with an English-speaking client can easily take four hours with a detained Spanish-speaking client (three hours travel; 40 minutes waiting at the jail; and 20 minutes so that the document can be translated and explained).

Interpreters might be required for translating discovery, plea agreements, and presentence reports. The logistics of coordinating jail visits with interpreters could also be complex and time-consuming, particularly if clients were not detained nearby.

Interpreter availability was reported as a particular problem for relatively rural districts, where finding qualified and reliable translators, even for Spanish-language needs, was not always easy.

In some offices, bilingual attorneys, investigators, or secretaries handled some or most of the interpretation and translation tasks, particularly for Spanish-speaking clients, though the availability of such informal services varies. One respondent reported that “some offices have several Spanish-speaking attorneys and members of their support staff. We are lucky to have one, and many offices have none.”

Some interviewees pointed out that Spanish speakers might not be their greatest language challenge. With bilingual English/Spanish staff available at some locations, the real problems involved less commonly spoken languages, such as those used by indigenous people from Central and South America.

A related concern involved the unavailability of assigned interpreters and bilingual staff at local jail facilities, the courts, and other agencies, a situation that could also cause delay and wasted time for counsel.

Immigration Issues. Interviewees had mixed opinions on whether the threat of deportation or a possible change in immigration status added significantly to the amount of time a case would take. Some interviewees indicated that researching and understanding immigration issues could be quite complex and that they sometimes consulted with an immigration attorney or other resource to help them understand the potential immigration consequences of a case. Others stated that they were familiar with the relevant law and that the immigration consequences were quite clear; as a result, having a client with such issues did not add appreciably to the time that a case might consume.

One survey respondent pointed out that immigrants from countries without an immigration treaty with the United States can be indefinitely detained (our assumption is that this can add to the complexity of representing such defendants).

Another respondent suggested that parallel immigration proceedings would also add to the attorney’s workload in the case handled by the FDO.

It should be noted that our interviews and surveys were conducted prior to the U.S. Supreme Court’s March 2010 decision in *Padilla v. Kentucky*, holding that defense attorneys must advise clients of the deportation consequences of guilty pleas to criminal charges.⁷

Illiteracy. Most interviewees felt that illiterate clients took appreciably more effort to represent because it was necessary for the attorney to read everything to the client. In cases with substantial discovery, this could require a large amount of attorney time. Illiteracy was said to be occasionally associated with mental health problems that already impaired the client’s comprehension of the legal proceedings against him or her. Sometimes, illiterate clients were most comfortable with a family member as the conduit for advice, but this need could complicate the attorney–client relationship. One interviewee reported that illiterate clients are particularly susceptible to believing jailhouse rumors and misinformation.

⁷ 130 S. Ct. 1473.

In contrast, one interviewee felt that illiterate clients did not take much additional time because this attorney was reading everything to most clients anyway.

Mental Health Impairments and Substance Abuse. Many interviewees and numerous survey respondents agreed or noted that a client's mental health impairment can require much more time than similar cases without such issues. A related concern involves clients with substance-abuse issues, and many of the aspects discussed in this section also apply to those with alcohol or other chemical addictions.

Interviewees and survey respondents indicated that the degree to which a case involving a client with mental health issues requires additional work depends on the particular impairment, regardless of whether an impairment has been formally diagnosed. Clients with developmental disabilities, for example, might struggle to understand even relatively simple legal concepts. Clients with personality or other mental disorders can be hostile, suspicious, or delusional, any of which can adversely affect their ability to assist counsel in their defense. Those with mental impairments or substance-abuse issues might require treatment at facilities that are farther away from the FDO's offices than more-routinely used detention centers or that have other aspects complicating the logistics involved in attorney-client meetings. Conversely, an inability to place a defendant in such a treatment program was cited by some as an important factor in driving attorney time requirements, since not being able to find or provide such treatment could "prolong the bail process [and] affect how a case is processed/resolved and the ultimate outcome."

Mental health impairments can also give rise to additional legal proceedings, issues, or defenses not present in other cases of the same offense type. For example, the attorney might petition the court to have the client sent out for a Bureau of Prisons evaluation or hire one or more mental health experts for an independent evaluation. Either situation was noted by one respondent as possibly resulting in "extended absences [that] can require more lawyer time in communicating with the client." Impairments also require additional attorney time to track down the client's prior mental health history, which might be relevant at either the trial or sentencing phase of the representation. Even if the client is found incompetent to stand trial, the government might seek indefinite commitment, necessitating additional defense attorney work.

Physical Health Impairments. Several interviewees and survey respondents mentioned that, in cases in which the client has serious physical health problems, a significant amount of additional time is often spent ensuring that he or she is receiving adequate treatment while detained and that medical issues do not interfere with the representation.

Juveniles. One survey respondent reported that that respondent's district handled many juvenile cases. These cases were felt to be particularly time-consuming because an attorney has to deal with parents, guardians, and relatives of the client, as well as adhere to special rules with respect to juveniles.

Knowledge of Criminal Law and Procedure. With respect to clients without knowledge of the criminal justice system, one respondent stated that the attorneys in the FDO

see a lot of first offenders, particularly in the child pornography cases. These people are looking at the rest of their lives behind bars and have no idea how to navigate the criminal justice system and cannot believe what we are telling them in terms of penalties. We also see a lot of immigration clients without any prior contact with the criminal justice system even though they may have been deported before. These cases seem straightforward but are

very difficult due to this lack of familiarity with the process [and] our rights [and] laws, coupled with language and significant literacy issues.

Several interviewees and survey respondents mentioned that clients who were familiar with state sentencing practices (which can have less severe penalties than federal practices) often took more time than might be expected because they wrongly believed that their experience in state court was representative of how the federal criminal system worked. As a result, these clients might be more likely than others to move toward trial or believe that their FDO attorney should be able to obtain a better plea agreement than is actually available. If such a client does ultimately accept a plea agreement, doing so might take place on the eve of trial after extensive work preparing for trial had already been completed. Another interviewee mentioned that the complications related to state-experienced clients would be more likely in cases with federal sentencing enhancements, ones that would result in a particularly long sentence for charges that would likely not result in as much prison time if brought in state court.

In contrast, some interviewees explained that clients with a high degree of familiarity with the federal criminal justice system might be more likely to accept an early plea offer when there was no mandatory minimum sentence looming or if the potential punishment was perceived to be relatively mild.

Reservation and Indian Jurisdiction Aspects. Some interviewees and survey respondents indicated that the fact that a client lived on an Indian reservation could greatly increase the amount of attorney time spent on a case. Compared to cases with nonreservation clients, travel times can be greater, travel arrangements might be more complex, more time can be spent tracking down witnesses, prosecutorial and judicial plea policies might differ, and cooperation and trust might be more difficult to obtain from both client and witnesses. Some interviewees noted that the trust issues often required many time-consuming visits to sometimes-remote locations.

One survey respondent noted that these can be “tough cases, given substance abuse issues, travel, family issues, and [the] long sentence potential that goes with crimes [that] are frequently violent.”

Criminal Histories. One survey respondent noted that defendants with prior serious convictions have an increased potential for a lengthy sentence in the current case, which, in turn, affects the time necessary to negotiate pleas and results in more trials than plea agreements.

Another survey respondent stated that the courts in the state where that respondent’s district is located did not have a functioning local public defender system for many years. Pretrial defendants in such states would sit in local jails for relatively long periods of time and then be offered time served if they would plead guilty, which many accepted in order to be released. As a result, federal defendants in that district often have longer criminal records than those from other locations. This, in turn, leads to more career-offender designations, more serious sentences, more mandatory sentences, and more-extensive litigation than might be seen elsewhere. Another respondent voiced similar concerns that

the peculiarities of the state sentencing scheme . . . results in a high percentage of career offenders and [Armed Career Criminal Act] cases, based on records that would not have the same result elsewhere. We spend a significant amount of time trying to ameliorate the sentencing implications in such cases, including attempting to vacate prior convictions in state court.

Another respondent noted that the FDO's

drug and gun cases usually involve clients who have had previous contact with the state criminal justice system but not usually the federal system. This is a major wrinkle, since the systems are vastly different in terms of the law (including constitutional issues and penalties) and practice/plea policies. This dichotomy can really [affect] the way a case is handled and will always be different for each office/district.

Client Attitude. Others cited client-by-client differences in demeanor and behavior, distinguishing those with a cooperative attitude from those who are more hostile or needy or those who distrust anyone from the federal defender system. One example given was of comparatively “low-work” clients who accept lengthy plea agreements while others require a lot of attorney attention on misdemeanor charges. Another respondent remarked that “some clients require hours of an attorney’s time to gain the trust to move the case forward in the client’s best interest.” In addition, more-difficult clients might decide to independently file their own motions, thus adding to the issues demanding their attorneys’ time.

Family Aspects. Some interviewees and multiple survey respondents commented on the impact that the client’s family could have on an attorney’s workload. Family members can require considerable attorney attention, complicate the attorney–client relationship, and provide poor or misleading advice to clients, which then takes more time for the attorney to refute. On the other hand, a supportive family can make a client more willing to consider the benefits and disadvantages of a plea agreement and less likely to reject the attorney’s advice.

Case Factors. This section describes factors related to the case itself.

RICO or CCE Cases. Few interviewees had any personal experience with RICO or CCE cases, but many noted that the cases were complex both legally and factually, though they could not assess the impact of having such a charge included.

Conspiracy. When asked, nearly all interviewees felt that cases in which there was a conspiracy charge involved tended to be more time-consuming than others. The interviewees explained that the law in this area is complicated and that these cases are usually very factually complex as well, often involving multiple defendants, one or more of whom might be cooperating with the government and testifying against the client. Wiretaps are often involved, sometimes generating hundreds of hours of recordings that must be listened to and, in some cases, translated. It was also noted that other types of discovery are often also very copious. Coordinating with numerous other defense lawyers was also said to be very complex both legally and logistically.

In contrast, one interviewee emphasized that the time required for the representation hinged on the underlying complexity of the conspiracy alleged and that simple conspiracy cases were “no big deal.”

Multidefendant Cases. Numerous interviewees and survey respondents mentioned multidefendant cases as being particularly time-consuming, potentially turning “an average drug or fraud case into a case that requires much more attorney time.” One reason given was the need to coordinate aspects of the defense with other counsel. Developing a coordinated defense consistent with both the facts and each defendant’s interests was described as very time-consuming.

The amount of discovery to be reviewed was also asserted to be related to the number of defendants (“The additional defendants can require that you review thousands of audio recordings instead of only hundreds”), as would be the amount of time needed for court appearances.

The practice of charging cases as multiple-defendant conspiracies (such as in drug or fraud cases) was identified as a prosecutorial option, which would suggest interdistrict variation as to the frequency with which these types of multidefendant cases occur.

Unfamiliar or Novel Legal Issues. Interviewees generally agreed that a case initially appearing very simple and straightforward could require much more attorney time if there were unfamiliar or novel legal issues. Two situations were mentioned as possibly requiring more attorney time otherwise than might be expected. First, charges or other client matters that are new to the attorney or to the office can present difficulties. Several interviewees mentioned that a case that might be routine in one district could consume much more attorney and other staff time if the attorneys in the office were unfamiliar with the particular subject matter of the offense and the set of issues it might raise.

The second situation involved novel legal issues arising within an otherwise ordinary representation. Several interviewees mentioned challenges to the constitutionality of the statute underlying the charges filed against the client as one example of an unexpected turn in a case that might consume additional attorney time.

Multiple Counts. When asked, most interviewees felt that multiple counts in a case resulted in more work and made the relevant sentencing guideline calculations more complex.⁸

Multiple Charges. A few interviewees spoke of the additional demands on their time when their clients were charged with more than one criminal offense arising out of the same series of events. However, it appeared that these concerns were not that much different from those voiced by interviewees regarding the presence of multiple counts in the indictment (for example, the additional charges were asserted to complicate the guideline calculations). A different story was told in the context of multiple charges in which each involved distinctly different legal theories, defenses, or procedures. Many interviewees noted that marked diversity in the types of charges filed against a client increases the workload because each of the charges has to be separately investigated, creating what was characterized as “a case within a case.” One example was of a single case involving immigration, drug, and firearm charges against the same client, a situation asserted to increase “dramatically the complexity of the case and [decrease] the positive resolutions that are available.”

Numerous Criminal Transactions. Some interviewees mentioned that some drug conspiracy cases involve multiple transactions; such cases could be very time-consuming because the facts surrounding each transaction needed to be investigated separately.

Especially Large Amounts of Controlled Substance or Money. Some asserted that the scope of the subject matter of the case played a role. Cases involving massive amounts of drugs, for example, were felt to be much more time-consuming and complex than those with smaller amounts. One interviewee noted that a “\$50 million case was a lot different than a \$50 thousand one,” even though both might have the same CMS case-type code.

⁸ Sentencing guideline calculations are but one aspect of federal sentencing laws often mentioned during our interviews and in response to our surveys. These laws include the Sentencing Reform Act of 1984 (as amended), the U.S. Sentencing Guidelines and policy statements promulgated by the U.S. Sentencing Commission, and applicable federal case law (see 18 U.S.C. § 3553 et seq.; 28 U.S.C. § 994; and *United States v. Booker*, 543 U.S. 220, 2005). Other aspects of federal sentencing laws and practices include prosecutorial charging practices, plea agreement opportunities, potential maximum (or mandatory minimum) sentences, judicial departures from guideline sentence ranges, sentencing enhancements, “substantial assistance” (client cooperation with the government with the intent of receiving a reduction in sentence), and career-offender status.

International or High-Seas Aspects. Some interviewees and respondents said that the location where the alleged crimes took place could affect attorney time. One respondent asserted that cases involving drugs seized on the high seas required significantly more investigative and research time. Others noted various problems associated with cases in which the crimes were alleged to have taken place outside of the United States, with travel issues being only one aspect that could markedly increase attorney time. And one border-state respondent asserted that “nearly every trial case involves extensive investigation in Mexico.”

Multiple Jurisdictional Aspects. One respondent felt that “cases that involve multiple local jurisdictions will also require more overall time due to discovery from multiple sources.”

Inflammatory or High-Profile Matters. Interviewees generally felt that inflammatory or high-profile cases require somewhat more attorney time because the investigation might be more difficult; in addition, it could be harder to negotiate with prosecutors. Charges involving allegations of crimes against the elderly, infants, or the disabled might fall into this group.

Evidentiary Issues. The need for extensive evidentiary hearings was cited by some interviewees as making a major difference in terms of attorney time between cases with otherwise-similar aspects. One provided the example of a simple gun case in which litigating a suppression issue could take as much time as a trial.

Unusual Number of Complex Original Motions. Interviewees generally agreed that extensive motion practice could make an otherwise-straightforward case very time-consuming.

Experts and Technical Evidence. Interviewees generally agreed that cases with technological issues or issues requiring expert testimony took longer because identifying, hiring, and preparing experts to testify was a time-consuming process. Mental health experts, forensic accountants, computer forensic experts, and child-pornography experts were mentioned as having been frequently utilized.

Client Cooperating with Government. Many of those we interviewed, as well as some survey respondents, felt that a case with a cooperating client could take more time because the attorney would likely need to be present at most or all of the debriefings or conversations in which the client shares information with the government. The attorney’s presence would also be required during the client’s testimony in other defendants’ cases. One respondent reported that

Substantial assistance is a large part of our practice. Because the government charges everything [that it believes] is readily provable, we often have clients subject to [mandatory sentences] of fifty years or more. To reach the government’s threshold level of substantial assistance, clients must spend countless hours meeting with the government and [its] agents. It is our practice that as counsel, we must be present at all proffers. These meetings typically take up to two to three whole mornings a week but usually work out well for the clients in the long run. However, given the level of violence today, safety considerations also take up a lot of time.

Interviewees also emphasized that these cases could remain open for relatively long periods if the agreement called for the client to testify in numerous cases, resulting in additional effort required on the part of the attorney.

State Court Prosecutions. Parallel prosecutions under state law were said to be fairly common and were generally felt to require additional time to coordinate with the state defense counsel and the state prosecutor. One respondent noted that the personality of the state pros-

ecutor could come into play: “When state court charges are pending while a client also faces federal charges, some state court prosecutors are easier to deal with than others on resolving the state court charges.”

Similar state charges were said to have an adverse effect on attorney time. One respondent noted that massively overworked local public defender offices were unable to spend enough time with clients to explain that they would be better off by pleading guilty to much less serious state charges than they would if the case were transferred to federal court. As such, the respondent’s FDO spent a substantial amount of time helping local attorneys keep in state court those cases that affected FDO clients. Another respondent related the story of a local increase in gun possession charges that originate in state court but are nevertheless selected for federal prosecution due to more-severe sentencing possibilities:

Many of these cases should be (and could be) resolved in state court and many defendants are given a choice: plead here or your case is going federal. Because the local public defenders are facing caseloads of 150 cases per attorney, they generally are not able to focus on their cases at an early enough stage to stop the move to federal court. When we know a case may be targeted, we spend a great deal of time assisting local attorneys in an effort to keep the case in state court. If we do not become aware until a case is [federally] indicted, we then spend a great deal of time trying to work a miracle to get the case back to state court.

In some instances, the order in which the defendant is sentenced in state and federal courts could have important implications for the way in which the federal Bureau of Prisons calculates the time the client must serve. As a result, the FDO attorney must involve him- or herself in trying to coordinate the scheduling of the state and federal court proceedings. This can involve conversations with the state prosecutor, the state public defender, and the state court judge.

Asset Forfeiture and Other Ancillary Proceedings. The few interviewed attorneys with experience in asset-forfeiture matters indicated that the process was quite complex and could take a considerable amount of attorney time. Other types of ancillary proceedings were also cited as affecting required attorney time.

Special Prosecutorial or Law Enforcement Initiatives. Many interviewees indicated that whether a prosecution was the result of a special initiative made very little difference with respect to the attorney time required and that “a case was a case” no matter its origin. Others mentioned that cases that were part of a special initiative often relied more on local law enforcement agents, who made more errors and were less reliable than most federal law enforcement personnel. Such cases required additional investigation and had a greater likelihood of involving a viable motion to suppress.

Others mentioned that special initiatives sometimes relied on new law that could be constitutionally challenged, resulting in additional work for the defense attorney. Another explanation given for possibly increased attorney time was that cases arising from these programs were more likely to have other aspects that influenced the time needed to represent the client. One example given was of Project Safe Childhood prosecutions, which were said to routinely involve mandatory minimum sentences and high sentencing-guideline ranges.

One interviewee mentioned that special initiatives sometimes involved the U.S. Department of Justice’s “Main Justice” central office. When this occurred, more defense attorney time was required in the case as a result of the actual prosecutorial decisionmaking being moved

from the local USAO to Washington, D.C., a complication that usually resulted in more litigation and less informal negotiation.

Number of Witnesses. Many interviewees felt that a large number of witnesses could be a significant factor in the overall complexity of a case, though others felt that additional witnesses primarily affected the amount of FDO investigator time required.

Witnesses Requiring Extensive Travel. Many interviewees and survey respondents clearly felt that distant government or defense witnesses were a significant factor in influencing attorney time. Those from geographically larger districts or more-rural ones called attention to how much time they spent driving to find, interview, and prepare witnesses, sometimes in areas without good roads or in hazardous winter weather. Those from western districts with a significant proportion of the workload involving Indian-reservation cases strongly emphasized the need for extensive travel to investigate those cases.

Child Witnesses. Some interviewees felt that cases with child witnesses took more time than was typical for similar matters with solely adult witnesses. For example, witness competence-to-testify issues might be raised, depending on the age of the child. In contrast, others felt that the mere fact that a child was a witness did not make that much difference in the amount of attorney time spent on the case, and, in any event, most felt that cases with child witnesses were not very common.

Conditional Plea Agreements and Interlocutory Appeals. Conditional pleas of guilty or nolo contendere that reserve the right of the defendant to have an appellate court review an adverse determination of a specified pretrial motion were cited as having an influence on attorney time because an immediate appeal would be likely. Interlocutory appeals prior to final case disposition were also cited as requiring more attorney time.⁹

Trial. Cases that go to trial were, not surprisingly, strongly felt to require more defense attorney time than those that did not. Indeed, trials were one of the most-commonly cited attorney time influences suggested by in-person and telephonic interviewees. One example often mentioned during our interviews was of a hypothetical trial for drug possession (or other relatively minor offense) that consumed significantly more FDO attorney time than a homicide resulting in a plea agreement. However, numerous interviewees mentioned that trials now consume much less of their time overall than in the past. Other interviewees indicated that sentencing is now much more important (and therefore much more time-consuming) as a result of the increased ability of judges to vary from the sentencing guidelines.

Interviewees and respondents suggested reasons that cases result in a trial rather than a guilty plea. One respondent noted that “harsh mandatory sentences, statutory enhancements, . . . inability to negotiate fair settlements, [and] harsh judicial sentencing practices” would explain the district’s trial rate. Another respondent explained it this way:

In our district, we used to have easy cases, those where the client would say at the initial interview that he wanted to plead [guilty] and move the case along. However, now it seems that every case is the perfect storm with a combination of mandatory [minimum sentences] that cannot be affected by a guilty plea, clients with mental health issues, and prosecutors

⁹ It should be noted that a new file is opened in CMS when a criminal prosecution or other client matter handled by an FDO is appealed. As a result, appeals following a conditional plea agreement and interlocutory appeals would not necessarily add to the total time recorded by an attorney for the original case, though they would have an impact on the aggregate legal services provided to the client.

who believe that they have to charge the most serious charge and never drop anything, all leading to more negotiating challenges and more trials.

The specific type of trial (jury versus bench) was also thought by some to make a difference in attorney time requirements. Jury trials—with voir dire, more formal trial procedures, scheduling issues, and the like—require more attorney time than a more streamlined hearing before a judge. The number of witnesses was also pointed out as a key factor affecting the length of a trial.

Prison Cases. Several survey respondents mentioned that cases arising from incidents taking place while the defendant was incarcerated are likely to consume more attorney time than the specific case type (e.g., assault) would otherwise indicate. One respondent suggested that they “are a species unto themselves yet in CMS they tend often to be indistinguishable from other cases.”

Location of the Underlying Events. In addition to cases arising out of incidents on Indian reservations or in remote parts of the district (both situations discussed elsewhere), other aspects related to location (such as where relevant events occurred or where potential witnesses can be found) can play a role in attorney time needs. One respondent argued that the “mode of investigation will also vary from district to district depending on the level of danger involved to the investigating team. Some of our high-crime neighborhoods are still safe enough to go into; others are gang-controlled.”

“Precharge” Cases. Comments from some of the interviewees and respondents suggest that there could be considerable variation in the level of attorney effort expended to represent a client prior to the initiation of a formal federal prosecution. One respondent noted that the attorneys in the office “also spend a lot of time in local jails advising defendants, on a pre-charge basis [about] the ramifications of a threatened federal prosecution.”

Length of Time the Case Remains Open. Some interviewees and respondents commented on problems associated with cases in which dispositions are delayed or, for other reasons, are anything but speedy. One interviewee suggested that additional time spent by clients in detention facilities increases the chances that fellow inmates will give clients misinformation and bad advice. If the detention is in a state facility, it becomes increasingly difficult to explain to the client why inmates facing what appear to be similar state charges are being released with only time served while the FDO’s client continues to face far more potential prison time. Additional client contact is then needed to rebuild trust and develop consensus on the litigation strategy for the federal case.

Categorization of Cases. Although we were primarily interested in factors other than case type that could influence attorney time, some interviewees distinguished the work they perform by whether the matter involved a prosecution, an appeal, or some other type of representation, with each category presenting unique challenges and resource demands. Prosecutions were also divided up by whether violence was involved. One respondent noted that “crimes of violence generally involve numerous witnesses, factual disputes, and the potential for huge sentences.” Many of our contacts also mentioned important distinctions between felonies, misdemeanors, or petty offenses in regard to the amount of attorney time needed.

Specific Nature of the Offense or Client Matter. Our interviews and other discussions with FDO attorneys primarily focused on learning how cases differ from one another even if they share the same CMS case-type category. But some FDO attorneys asserted their belief that CMS’s classification scheme itself failed to accurately identify the subject matter of the

charge or activity. For example, one survey respondent noted that cases with the same “fraud codes” can be “tiny or massive” and vary enormously in the amount of time required. Other interviewees complained that they could not understand the logic behind CMS’s categorization scheme and were unclear whether the single case-type code assigned to the case originally would change as charges were added or dropped over the life of the case. One interviewee pointed out that CMS lumped all immigration reentry cases together without distinguishing the relatively minor 8 U.S.C. § 1326(a)(1) reentry cases from those with enhanced penalties under 8 U.S.C. § 1326(b)(2) for reentry of an alien removed after conviction on an aggravated felony (our assumption is that the interviewee was referring to CMS’s designation of a single case-type code to the case, since it is possible to distinguish these two types of reentries within CMS for other purposes). In a similar vein, one respondent pointed out that cases charged as simple reentries of removed aliens, reentries after conviction of a felony, and reentries after a conviction of an aggravated felony have very different potential sentences from one another, despite the fact that they can all apply to the same fact pattern and event. Additionally, the exercise of the prosecutor’s discretion in choosing which reentry offense to charge was said to vary from district to district.

One survey respondent noted that there was no specific CMS immigration code to distinguish alien-smuggling cases, “which are labor intensive, from the [illegal-alien] status cases.” Another respondent commented on the fact that the type of drug was not taken into account by CMS when defining case type:

Each community has different drug issues. Some see a lot of meth cases; others, almost none. Some see a lot of prescription drugs or heroin or crack. This is a variable [that affects] the case in many ways that cannot be quantified in CMS. For instance, we see few meth cases, so our learning curve (and the court’s) is greater than in other districts.

Child Sex Offenses and Child Pornography. We include child molestation and child pornography in our list of factors mentioned by interviewees and survey respondents, even though these charges technically fall under the definition of a case type. Our work here is primarily oriented toward identifying influences on attorney time other than case type, but, since so many contacts mentioned these offenses as especially problematic, it makes sense to discuss them separately here.

Nearly all interviewees emphasized that these types of cases were very difficult and time-consuming. Many of their clients charged with child-pornography offenses had never been involved with law enforcement in the past, and, as a result, they could require a lot of attorney attention. Interviewees mentioned that they often had to spend time addressing the case-related concerns of the client’s family. In addition, defendants often had untreated depression and could be at risk for suicide. They were also at an increased risk for being assaulted in jail.

Often, child-pornography cases required dealing with computer forensic evidence, which was said to be time-consuming. In addition, recent statutory restrictions on transporting or reproducing the relevant images in child-pornography cases created additional logistical complications for attorneys when reviewing discovery. One respondent also pointed out that discovery could also vary greatly among child-pornography cases because “the mode of possession may be electronic, requiring expert services and forensic computer analysis. Or, it may simply be a couple Polaroid photos.”

Interviewees mentioned that developing a persuasive mitigation case at sentencing usually involved mental health experts, an aspect that also added to the attorney time expended. As one survey respondent noted, the cases “require immense amounts of time and resources to beat back excessive sentencing ranges in the guidelines.”

Some pointed out that complex restitution issues are becoming more common in child-pornography cases. In some instances, the alleged victims seek restitution from the defendants, creating complex and novel legal issues, which, in turn, affect attorney time.

Detention Factors. This section describes factors that pertain to the client being detained.

Whether Client Is Detained. Many interviewees and respondents mentioned that cases in which clients are detained can require more attorney time than other cases because the client cannot effectively assist counsel in contacting witnesses or finding documents. In addition, attorneys must travel to detention facilities to meet with their clients rather than schedule sessions at the FDO’s offices. In contrast, one interviewee noted that an advantage of having a detained client is that he or she is easier to locate as needed.

Administration of the Detention Facility. Many interviewees and respondents, though certainly not all, felt that the identity of the organization managing the facility would not, in and of itself, add to the attorney’s workload. To be sure, many interviewees identified specific detention centers within their district (or in a nearby state) where visits usually required far more time than they believed to be necessary, but whether a facility was “good” (meaning that access to clients was made available in a timely and predictable manner) or “bad” (e.g., excessively long wait times, “lost” paperwork, failure to notify the attorney of the client’s transfer) was not much related to whether it was run by federal, state, or local authorities or by a private corporation. In contrast, one respondent did note that “poorly run or poorly staffed facilities (primarily local jails) place an inordinate burden on lawyer hours,” and another suggested that “whether most clients are held in a federal facility or a state facility influences matters.”

Location of Detention Facility. Distinct from the question of detention-facility administration is one of convenience. One respondent suggested that, due to a variety of factors, individuals charged with committing federal offenses in the district while subject to state probation were likely to have the probation revoked and be returned to a state prison prior to federal defender appointment, remaining in state prison while represented by the FDO. The respondent noted that it was unlikely that the time spent traveling to such state detention facilities could be spread across multiple FDO clients (as would be the case at a federal facility), since “rarely, if ever, would a lawyer find himself simultaneously representing two or more federal clients housed at the same state prison.”

Nearly every interviewee and numerous survey respondents identified prison or jail location as a very important factor in cases in which clients are detained. They pointed out that clients might be housed a significant distance away from the office where the attorney is based, particularly in more-rural districts. In one district, for example, the facility where most of the clients were detained prior to trial was a six-hour drive each way from the location of the FDO. An attorney in another district indicated that overnight trips were necessary to see their detained clients, meaning that a significant portion of this attorney’s overall work time was spent in the car. Another respondent noted that “approximately 50 percent of detained clients are close by; 50 percent are two to three hours distant” from any of the FDO’s offices.

Other interviewees reported substantial variation in the distance and amount of travel time necessary, depending on the particular detention facility at which the client was housed. Interviewees who did not cite “windshield time” needed to visit clients as a problem were usu-

ally those in urban areas with federal detention centers located close to the district's main courthouse or the FDO's main office.

Some survey respondents noted that defendants charged with child-pornography offenses, first-time offenders, and low-level offenders were often housed in remote facilities for their own safety, increasing travel time for their attorneys in such cases.

Several interviewees noted that, in their opinions, some federal defender offices discourage plane travel (to reduce the office's travel expenses) even if ground travel results in a substantially greater expenditure of attorney time.

Waiting Time and Visiting Hours. Most interviewees indicated that there was substantial variation in the time spent waiting for the client once the attorney arrived for a visit at a detention facility. Some pointed out that this could be the most frustrating part of communicating with the client, especially in regard to detention facilities that were otherwise relatively convenient for visits due to proximity to the attorney's office. At some facilities, the client would be brought to the meeting room just minutes after the attorney arrived, but, at others, it might be one or more hours. Other interviewees mentioned that some facilities would routinely lose paperwork or claim that no advance request was ever received, thus wasting significant amounts of the attorney's time that could be better spent on other activities.

Some interviewees mentioned their negative experiences with facilities that had only a single visiting room available. If another attorney, a member of the clergy, or other professional visitor arrived earlier for a meeting with another defendant, there would be little choice for the FDO attorney but to wait until the room was free.

It should be noted that many attorneys with whom we spoke made it clear that they prepared for time spent "cooling their heels" while waiting for a client meeting (or a court appearance or other event) by bringing along paperwork, advance sheets, or discovery needing review. Nevertheless, they emphasized that such work could have been done more efficiently back in their offices.

Limited visiting hours were also cited as a factor making it difficult to see multiple clients per visit.¹⁰ Some survey respondents and several interviewees indicated that their primary detention facility had short or disjointed hours that might be interrupted by lockdowns, lengthy lunch times, court sessions, or other periods in which visiting was not permitted, a situation that would not facilitate lengthy meetings or visits with multiple clients.

Other Detention-Related Factors. Policies and practices appear to differ among institutions as to the degree in which they facilitate or hinder phone contacts between clients and FDO attorneys, a situation that might require additional travel for in-person meetings.

Some detention facilities were reported as prohibiting laptops or other computers from being brought into the facility. Several interviewees mentioned that this complicates and slows the review of discovery with the client, particularly because voluminous discovery is often provided electronically and might include audio recordings.

One survey respondent indicated that some "jails also like to adjust the medication for clients with mental health issues. This meddling and the resulting problems causes additional work for the lawyer." Another respondent remarked on the ability or willingness of the U.S. Marshals Service to transfer the client to court far enough in advance of proceedings to provide

¹⁰ The ability to conduct separate meetings with multiple clients during a single visit to a detention facility was cited as a much-welcomed offset to the time burden of traveling to distant locations.

an opportunity for more than just a very brief attorney–client conversation. If this could not be arranged, an additional trip to the jail would be required for any sort of extended meeting.

Judge Factors. Many interviewees felt that the identity of the judge (both Article III judges and magistrate judges) assigned to the case made a significant difference in the amount of attorney time the case required. Others reached the conclusion that the judge’s influence was quite small in relationship to the overall amount of time spent on the case.

Court Management. A few interviewees noted that some judges conduct proceedings more quickly than others. According to these attorneys, there are also certain judges who take the bench long after a hearing is scheduled to begin, which means that attorneys must wait for significant amounts of time. One respondent suggested that, “depending on who the duty judge is in one of our divisions, the wait can be minimal in one instance, to several hours for another.” Failure to consistently finish matters scheduled earlier in the day was cited as a major time consumer. On the other hand, overly rigid adherence to court schedules, such as requiring counsel to arrive 15 minutes early for appearances, was cited as adding “significantly not only to the lawyers’ stress level, but also to the time required to handle cases.” Other interviewees and survey respondents mentioned that districts or judges with inflexible trial calendaring policies create a less efficient pretrial work strategy.

One respondent called attention to the overall pace of the court, opining that “judges who adhere to a rocket docket require more–resource-intensive and more-costly pretrial work than courts that allow for reasonable trial calendaring, especially when discovery is produced late and piecemeal.” Another stated that, due to “quick turnaround times required by the court,” FDO attorneys sometimes have to do additional legwork for their cases. A third described the impact of short deadlines in this way:

This forces quick decisions with little time to develop a rapport with the client, obtain their trust, or engage in meaningful negotiations. It results in trials [in cases] that might otherwise have been negotiated away. In the long run, this system requires more work for the lawyer.

In contrast, one respondent noted that the court’s slowness could actually add to attorney time:

The amount of time that the court takes between [a change of plea] and sentencing matters. The more clients wait, the more they get second thoughts . . . about objections, wanting a new attorney, or a host of other things.

Sentencing Practices. One respondent noted that more work by defense attorneys is requested when the judge is a “stiff sentencer.” Additional discussion regarding judicial attitudes toward sentencing aspects is provided elsewhere in this section.

Release and Detention Policies. It was pointed out that individual judges differ in their policies and attitudes in regard to releasing defendants awaiting trial. As indicated elsewhere, many interviewees and respondents suggested that detention of a client can result in additional work for the client’s attorney.

Plea Policies. As noted by respondents, district court requirements for accepting a plea of guilty can also play a role in attorney time considerations. One respondent reported that local rules as to how extensive the recitations and advisements should be “prompt questions, concerns and delays.” Another felt that “some judges are unwilling to accept negotiated agreements of the parties, [requiring] additional lawyer preparation for sentencings.”

General Judicial Preferences. Some interviewees and respondents noted that some judges required more-elaborate written briefing for motions, even routine ones, than others, and required submissions pre- and posthearing. One respondent noted that some judges want to see a sentencing memo in every case, while others never want to see one. A judicial preference for numerous pretrial conferences was also seen as influencing attorney time expenditures.

A few interviewees commented that some judges are more receptive to certain categories of arguments (suppression was often mentioned; sentencing preferences are discussed elsewhere), making additional effort in these areas especially worthwhile.

Court Features. This section describes factors that relate to the court.

Locations. Interviewees were mixed as to whether travel to court was a significant factor in their particular districts. In most instances, the district's primary courthouse is located within a short distance of the main office for the FDO. But, in more-rural districts and for those FDOs covering considerable territory with low population densities, interviewees and survey respondents indicated that time traveling to remote court locations was often a significant factor in their workload, both in the aggregate and in individual cases. One respondent reported that "travel time to court varies from 25 minutes to four and one-half hours (each way)," while another noted that "half of our settings occur in a district courthouse three to four hours away from our offices."

Satellite court locations at considerable distance from the closest defender office were especially problematic. In some instances, appearances would require air travel. When such travel is required for a single hearing or other appearance, unfavorable airline schedules might force an overnight trip. In other districts, there were branch defender offices near the satellite court locations (or no satellite court locations at all), so court location was not a routine concern.

How cases are assigned to judges can also affect attorney travel requirements. A respondent indicated that judges in the district take cases from an assignment wheel that selects across multiple divisions; thus, it would be possible to have a case in which all the key participants were in one division of the district but the assigned judge was located in another.

Divisional Differences. Multiple court divisions also were seen as influencing attorney time expenditures, depending on where the matter was to be heard. As one survey respondent suggested, "the culture in the legal community and court for each office is wildly different—thus the practice in each seat of court is different."

Scheduling and Calendaring. An interviewee and one survey respondent mentioned that multidefendant docket calls could result in unnecessary time spent waiting until the FDO client's matter is heard. On the other hand, another respondent suggested that scheduled case appearances can require additional attorney time as well: "Every case is given a specific court time slot, [with] no docket calls, so we may go back and forth [to court] three or four times in a single day for hearings."

Judicial Resources. One respondent commented on the effect of judicial vacancies: "As judge vacancies remain unfilled, things back up. Clients get antsy. More work [is needed in order] to keep together what otherwise would close."

Prosecutorial Factors. Nearly every interviewee and many survey respondents commented on the effect of the formal policies and decisions of the USAO. Such policies and practices were felt to be important drivers of defense attorney time, since the work of the FDOs was characterized as primarily "reactive" in nature. Federal defenders were characterized as generally in the position of responding to the actions of the Department of Justice, which were said to

vary from the USAO in one district to another, from one local USAO branch to another in the same district, and from one individual prosecutor to another. Various respondents claimed that “prosecutor attitudes affect cases as much [as] or more than any other factor”; “the different U.S. Attorneys’ offices handle their cases differently”; “the charging practices and plea policies of the U.S. Attorneys in this district vary greatly between our main office and branch office. The branch office is much more severe in its practices and policies”; and “even the government has different discovery and plea agreement policies within the many court divisions within our district.”

Attitude. Some prosecutors were described as more willing to compromise in order to reach a mutual understanding on various aspects of a case. Others were said to be less likely to agree, and, as a result, cases managed by those prosecutors would result in additional litigation, consuming more time to resolve issues big and small.

On the other hand, one respondent observed that no matter what the prosecutor’s style might be, there would always be the need to aggressively defend the client:

One U.S. Attorney’s office may do most of the investigation in-house ([resulting in fewer] pre-trial issues); others just indict cases arrested by local authorities. [An AUSA] may give you a good deal or may simply do no work on a case, so that you need to work it up. If an AUSA is a hard liner, than you may have to work every angle to get a break of any kind.

Experience. The inexperience of the staff at the USAO was cited by one respondent as an important driver of attorney time, resulting in “more effort and wasted time than when dealing with seasoned, professionally responsible prosecutors.”

Number of AUSAs. One survey respondent and a few interviewees noted that the size of the district’s USAO affects the volume of the work it can provide, which, in turn, affects FDO attorney workload.

Plea Policies. One survey respondent noted that the U.S. Attorney in the respondent’s district requires defendants to waive appeal and collateral attack if they accept a plea agreement. As these agreements are expected to take place prior to proffers for cooperation and full discovery, the local USAO’s policy was said to force FDO attorneys to plea “straight up,” resulting in more sentencing litigation and appeals. Another respondent voiced a similar concern, noting that, if there is a plea with an appellate waiver provision and an appeal is filed, “[we] are required to do full blown briefs in expedited fashion in response to the government’s motions to dismiss the appeals on jurisdictional grounds.”

Other survey respondents indicated that plea negotiations do not take place in their districts so that, as a result, there is more litigation than in other districts.

In some districts, AUSAs have a considerable amount of autonomy to negotiate plea agreements, while, in others, every agreement must be approved by supervisors, which we were told can lead to more work on the part of the defense attorney to get U.S. Attorney approval. One survey respondent reported that supervisor approval was not always forthcoming on the initial agreement worked out between the FDO attorney and the AUSA. Another asserted that, “in some districts, defense attorneys have to spend hours of work to support why they should get a particular outcome, where a defense attorney in another district might easily get the same result as a matter of routine.”

The amount of defense attorney time to finalize a plea negotiation can vary. An example that was cited involved a district where the average plea agreement is 24 pages long, while, in

another district, it is just four pages, leading to the conclusion that “the differing length and complexity translates into differences in time required to negotiate deals and in explaining agreements to clients.”

One survey respondent noted that the local USAO, unlike those with which he had dealt in other districts, tended to make the best offers on the eve of trial. This led to the need to “keep the case steaming towards trial” with concomitant expenditures of attorney time in preparing the case, compared to other districts, where the prosecutorial practice was to make the best offer very early in the process. Another noted an “unwillingness among many prosecutors to make reasonable plea offers, requiring a surprising number of trials.”

Sentencing. Some AUSAs were noted to be more likely to stipulate to facts or to resolve sentencing issues amicably, but others were thought to be less likely to do so for various reasons. As one respondent put it,

in some districts, prosecutors refuse to negotiate deals on even minor, one-level issues on the sentencing guidelines. In other districts, the parties reach agreements that avoid contested sentencing hearings and all the preparation that entails. Some districts’ prosecutors are willing to negotiate on whether to file [21 U.S.C. § 851] notices of prior convictions, will agree to [Federal Rules of Criminal Procedure] Rule 11(c)(1)(C) plea agreements, and have relatively straightforward practices on granting substantial assistance reductions. Others do not, so resolving cases requires far more work for the defense lawyer.

Use of Enhancements. It was asserted by interviewees and at least one survey respondent that prosecutors varied in whether to seek enhanced penalties for weapon charges or prior convictions, resulting in longer sentences and producing more requests for trials. One respondent reported that

we also have a prosecutor’s office that routinely files multiple enhancements that would throw ordinary and relatively small cases that get three to seven years elsewhere into the 20–40-year range, so zealous advocacy, a strong trial ethic (we do a fair number of trials compared to some other offices), and great need for mitigation creates more work.

Other interviewees and respondents noted that “guns” and “career-offender” designations can require collateral representation to vacate the predicate prior convictions.

Preference for Criminal Complaints or Grand-Jury Indictments. One survey respondent indicated that the frequency with which preliminary hearings are used in a district was an important factor in influencing attorney workload demands.

Relationship with Local Authorities. Some of the interviewees asserted that USAOs varied in the degree to which they rely on local law enforcement officers. It was claimed that, in districts with greater reliance, there could be an increased number of contested evidentiary hearings, adding substantially to the amount of attorney time any particular case will require.

Use of Fast-Track or Other Early-Disposition Programs. Several survey respondents and interviewees indicated their perception that attorney time requirements for immigration cases were reduced in districts with fast-track programs. This opinion was usually voiced by attorneys located in districts where no such program had been implemented. For example, one survey respondent asserted that an immigration case “resolved with several hours work in a fast-track district will take at least 10 times that long here.” Another stated that “other districts might have a local immigration facility or a fast-track program, streamlining how these cases

are handled. In districts without such things, these cases can be very time-consuming.” And a third reported that “our time per case is greatly increased by the lack of any fast-track dispositions in our district.”

The availability of a fast-track program elsewhere was suggested as a factor that can increase attorney effort in one’s own district. One respondent noted that

many of our immigration clients have had previous immigration cases in other districts that do have fast track. It is more difficult (and as a result time-consuming) to explain to and convince our clients that [despite] the fact that it is the same offense, the same statute and federal court, the sentence is significantly higher.

In some high-volume federal districts in the southwest and elsewhere, special “fast-track” disposition programs have been implemented for common immigration and drug cases. Fast-track programs are formalized mechanisms for encouraging defendants to make a prompt guilty plea in exchange for either a multiple-level “downward” departure (from the applicable sentencing-guideline range) or a modification of the charge to one that will effectively “cap” (limit) the defendant’s sentence. Although rules for participation differ from district to district, the sentencing guidelines authorize up to a four-level downward departure under a government fast-track program.

Some interviewees asserted that there are districts where “mass guilty pleas” of multiple defendants in unrelated cases routinely take place, with misdemeanor immigration cases being a common example. One respondent noted that “our cases are overwhelmingly immigration status cases, [and] more than half are misdemeanors handled on the day of court.”

Discovery. Some interviewees and respondents felt that prosecutors in their district varied in the number and timing of discovery disclosures and that formal policies differed from one USAO to another. They variously attributed these policies and practices to the relationship between prosecutors and investigating agencies, to prosecutorial claims about protecting informants, and to the underlying prosecutor attitudes regarding their particular roles in an adversarial system of justice. Discovery-related issues generally are discussed more fully elsewhere in this section.

Probation-Officer Factors. Several interviewees and survey respondents noted that the probation officer involved could make a significant difference in the amount of attorney time required. Some probation officers were said to be willing to work with defense counsel in addressing inaccuracies in the presentence report or in guideline calculations, which play an important role at sentencing. Others were unwilling to do so, a position that would sometimes result in additional time-consuming litigation. It was reported that there were probation officers who would not accept amendments to the presentence report or who were not amenable to informal compromise. One respondent thought that the role of the probation officer was as important as that of the AUSA in regard to the overall amount of attorney time a case would require.

Several survey respondents noted that some probation officers were simply more efficient and more predictable than others. The slower and less predictable ones often required attorneys to wait while the probation officer interviewed the defendant or completed paperwork.

Probation-officer attitudes were thought to influence attorney time. One respondent suggested that a “hostile probation officer can cause considerable work at sentencing,” while another noted that probation officers “wield a great deal of influence in our district and are

extremely conservative. Their approach and openness to reduced sentences is almost as important here as the attitude or openness of prosecutors.”

Law Enforcement Factors. Some interviewees and survey respondents noted that the agency and individuals conducting the criminal investigation could have an impact on the attorney time required in a case. One example given was of inexperienced or inadequately trained law enforcement officers (often local or state) whose actions provide the opportunity for additional defense motions. Another example was that the use of local law enforcement to investigate weapon charges usually led to motions to suppress that were extensively litigated. Some said that the degree to which an FDO’s caseload might consist of charges with state enforcement aspects varied from district to district; one respondent believed that opinions on search and seizure issues handed down by the state’s appellate courts had resulted in increased numbers of federal prosecutions that would have normally remained a state matter.

The availability of law enforcement agents for meetings with counsel and the ease of dealing with them to set up and conduct proffers of expected testimony were thought by one respondent to make a difference in the amount of attorney time required when a client is cooperating with the government.

Discovery-Related Factors. Most interviewees and survey respondents felt that discovery-related issues were extremely important factors in determining overall time spent on a case. Several interviewees cited their prior experiences with cases that, while appearing superficially simple based on charge type alone, turned out to be far more complex and time-consuming because of the production of voluminous amounts of discovery.

Volume. Many survey respondents and interviewees cited the volume of discovery as an important factor. One respondent noted that discovery could vary between “a few hundred pages or several thousand in addition to audio and video-tapes,” while another mentioned “white-collar cases with terabytes of discovery.” Drug conspiracy, fraud, and child-pornography cases were cited as being especially likely to have extensive discovery. The existence of wire-taps and tape recordings in a case were often mentioned as adding to workload. One interviewee suggested that video surveillance recordings could also require many hours to review, although, generally, video evidence was usually shorter than that in audio form.

Language Issues. Discovery in a language other than English, such as might be the case with recordings or wiretaps, was said to also add appreciably to the amount of attorney time expended.

Electronic Discovery. Disclosure of electronically stored information has also increased the sheer volume of discovery and the time necessary for review. Workload was said to increase if a case involved, for example, computer drives, web fraud, PayPal records, or data from social networking sites. Several survey respondents and interviewees noted that, as data in electronic form become more common, variation in the amount of discovery between individual cases is likely to grow.

One survey respondent noted that electronic discovery was being provided by the government in a format that was not accessible (or not easily accessible) by defense counsel; furthermore, discovery related to co-defendants was provided in a nonsearchable format, which required additional time to review. Along the same lines, another respondent reported that USAOs in some districts will not subject electronic discovery to optical character recognition processes to make it readily searchable, making the defense attorneys “search for the relevant information like a needle in the haystack.”

Need for Experts. Interviewees and respondents often mentioned the need for experts to review discovery as an important time driver. Particular case types seemed to present special issues. Some pointed out that the discovery materials in fraud cases can be especially hard to understand and require forensic accounting experts to inspect and interpret. Discovery in child-pornography cases can be particularly time-consuming because it often requires the defense's forensic expert to examine physical computer equipment rather than just files and to meet with the defense attorney in a special room at the USAO or other location.

Agency Records. Some interviewees indicated that the difficulty involved in seeking access to U.S. Citizenship and Immigration Services records needed to challenge the underlying citizenship issues in an immigration reentry case could greatly increase the amount of time they spent on the representation.

Overall Prosecutorial Approach to Discovery. Some interviewees strongly felt that the identity of the AUSA and the investigating agency and officer would affect the time necessary to obtain the appropriate discovery. For other interviewees, in contrast, there was little difference noted.

Prosecutorial Policies in Regard to Access. Several survey respondents and interviewees mentioned that some districts have a consistent policy of refusing to let defense counsel have a copy of the discovery. Instead, they require defense counsel to review the discovery at the office of the AUSA and permit the attorney only to make notes or dictation as to its contents. Particularly in cases in which discovery is voluminous, these restrictions were felt to have substantially increased the amount of attorney time that a case required. Whether the USAO allowed investigators and paralegals to review discovery materials unattended was also cited as affecting the amount of attorney time.

Prosecutorial Policies in Regard to Amount and Timing. Similarly, interviewees noted that there was substantial variation both among AUSAs and among districts in terms of the amount and timing of discovery that was provided. In cases (or districts) in which the discovery provided was very minimal or late, more FDO attorney time was often necessary in pretrial investigation. The distinction between prosecutors with an "open-file" policy and those providing only minimal access to discovery materials was a commonly mentioned driver of attorney time by interviewees and survey respondents. On the other hand, one respondent noted that there "can be lengthy delays here depending on the AUSA despite an office's open-file policy," which is "never defined, never enforced." Furthermore, there can be downsides to such a policy, as one respondent noted, due to the volume of production: "Open file ends up being counter-productive as you get needle-in-a-haystack issues."

The pace of production also affects defense attorney time. One interviewee mentioned the interaction between the rate of discovery disclosure and the distance to the detention facility. He noted that, when the prosecution turned over discovery piecemeal, it took more time driving back and forth to the client for review purposes than it would have had the prosecution turned over all the relevant material at one time.

Judicial Influences. The amount of discovery ordered by judges within particular districts was reported to be fairly standard, though some said that the amount of discovery varied by district.

Sentencing Factors. Several interviewees indicated that the bulk of their time is spent preparing for sentencing because many of their clients would benefit most from additional efforts made in addressing sentencing issues. One interviewee emphasized that even a very "simple" case could require extensive time to prepare for sentencing, depending on the criminal history

of the defendant and whether the prosecution was generally agreeable to favorable sentencing recommendations.

Judicial Receptiveness to Departures and Variances. One key legal event affecting sentencing practices was *United States v. Booker*.¹¹ Interviewees consistently indicated that, since the U.S. Supreme Court squarely held in *Booker* that the federal sentencing guidelines were not “mandatory,” FDO attorneys have spent much more time developing mitigation evidence (such as presentations by family members about the defendant or documenting the defendant’s past mental history) with the goal of persuading judges to decide on a sentence below the discretionary guideline range. One interviewee indicated that sentencing now involved an “extra dimension” and was “a whole new ballgame.” Several survey respondents also emphasized this factor, one noting that, “because of the risk of upward departures or variance presented by post-*Booker* sentencing, our pretrial preparation has expanded exponentially. Every variable is subject to dispute.” Differences in the level of receptiveness to mitigation evidence among individual judges would create intercase and interdistrict distinctions in how *Booker* affects attorney time expenditures. Some interviewees explained that their workload was increased when they had cases before judges who were thought to be more open to the idea of a departure from the discretionary sentencing guidelines. One respondent indicated that the district

has one of the highest rates of departure/variance in the country. For us, that means that it is absolutely imperative that we focus a great deal of effort on the sentencing phase of the case. This requires more attorney time than what is required in jurisdictions where the overwhelming majority of sentences will be guideline sentences.

Seriousness of Sentence. In general, most interviewees thought that the more serious the potential sentence, the more attorney time the case would require. That said, many emphasized that the correlation was very inexact and that there were many exceptions. Several cited misdemeanor cases with minimal jail time possible that nevertheless involved serious potential personal, immigration, or career repercussions for the client. Some interviewees felt that there could be an increased likelihood of a trial in a case with an especially severe potential sentence. Numerous survey respondents also suggested that the relationship was inexact, though one noted that there was a closer relationship between the amount of attorney time a case would consume and the seriousness of the eventual sentence than between attorney time and the seriousness of the original charge.

Interviewees generally asserted that, for clients facing a life sentence, the office is likely to do more investigation and spend more time developing mitigation than in cases with less severe potential sentences. And, although most interviewees did not have personal experience representing clients in cases in which a sentence of death was possible, all believed that such cases were enormously time-consuming, both because the stakes were so high and because the scope of investigation for the penalty phase was potentially vast. Survey respondents also often cited death-penalty cases as being particularly time- and resource-consuming for the entire office. Interviews with Federal Public Defenders and Chief Community Defenders often focused on the resource constraints triggered by death penalty–eligible cases, with one or more attorneys and support staff essentially being unavailable for any other tasks, which, in turn, had negative repercussions for workflow throughout the office.

¹¹ 543 U.S. 220, 2005.

In contrast, some interviewees mentioned that the increase in attorney time could also happen with cases at the other end of the severity spectrum. It was said that, when the client is facing a relatively minor amount of jail time, the client can feel like he or she has little to lose by taking the case to trial.

Mandatory Minimums. Interviewees generally agreed that cases subject to a mandatory minimum sentence often required more attorney time than others, even if all other aspects of the offense (such as the case-type category) were fairly similar. This observation was based not only on the increased severity of the potential sentence. One related reason given was that the client would be more likely to take the case to trial because there was less room for the AUSA to bargain for a plea agreement. Another was that additional work would be needed to investigate the underlying predicates. Some felt that attorney time was increased because of more-intensive attempts to get state authorities to take the case back or engage in charge bargaining in light of the possible outcomes. One survey respondent suggested that, because of a local prosecutorial policy seeking all possible mandatory sentences and enhancements, “more motions to suppress were litigated and more cases were tried.”

In contrast, a few interviewees explained that, in some instances, mandatory minimums could involve less time spent developing mitigation evidence for presentation at sentencing. One interviewee mentioned that the office would nevertheless prepare mitigation evidence in an effort to convince the U.S. Attorney to drop the relevant charge.

Career Offender. Interviewees generally agreed that the cases of defendants designated as being career offenders take more attorney time because of the need to obtain and research the offender’s criminal history to determine whether it met the specific legal standards necessary to enhance the sentence.

Other Enhancements and Upward Adjustment Factors. A few interviewees and survey respondents suggested that sentencing factors, such as use of a firearm, wearing body armor, or various “other enhancements, increase time spent on a case.” Since such enhancements or grounds for upward adjustments carry with them the potential of a more severe sentence, more effort was said to be expended to counter the possible application of these factors. In addition, trials were said to be more likely than they would be in cases involving similar charges without the enhancements or potential adjustments.

Especially Complex or Contested Sentencing Issues. Sentencing issues can be especially time-consuming in certain types of cases. Several interviewees noted, for example, that there can be substantial disagreement in drug cases about the amount of the drugs in question, which, in turn, affects the presumptive sentence under the applicable sentencing guidelines. Several interviewees also mentioned that child-pornography cases involved particularly time-consuming attorney preparation for sentencing.

Office-Related Factors. This section describes factors related to the defender’s office.

Resources. Several interviewees expressed their belief that more office support in the form of legal secretaries, other support staff, or more up-to-date computers was available to attorneys in other FDOs, thus generally reducing the amount of time such attorneys would need to spend on cases.

One interviewee mentioned that most FDO attorneys in their district had privately purchased BlackBerry devices, which were felt to increase productivity.

Some respondents stated that the number of research and writing specialists (sometimes abbreviated as *R&Ws*) in the office and how they were used affected the number and type of cases FDO attorneys could handle. Another respondent noted that “some offices have sophisti-

cated systems for handling major fraud cases and use paralegals and outsourcing of document management and others do not.” Another wrote that computer cases were problematic because the FDO did not have the staff support and expertise to handle them in a comprehensive manner.

Support Staff Experience. The experience level of the investigators in an office was mentioned by an interviewee as affecting the level of effort an FDO attorney spends on a case. It was noted that less experienced investigators required closer supervision, while those who have been “in the business” for years could operate more independently and allow counsel to concentrate on other aspects of the case.

Caseload Volume and Office Size. One survey respondent suggested that the “sheer number of cases (difference between 200 cases [and] 2,000)” handled by an office might play a role in average attorney time needs. Some interviewees spoke of the relative advantages and disadvantages of working in a very large or very small office in terms of total staff size.

Impact That Particular Case Types Can Have on Office Resource Flexibility. We repeatedly heard about how the workflow of an entire office can be affected by the demands of just a handful of cases. One common example involved capital homicide prosecutions, though “huge white-collar cases” were mentioned as well. Such cases can require full-time assignment of attorneys and support staff to these cases for many months. The resulting reduced availability of investigators, paralegals, and research and writing specialists can mean that attorneys handling other matters must shoulder an increased share of the office workload. Cases involving terrorism charges (including clients detained at Guantánamo Bay), Securities and Exchange Commission matters, alleged large-scale bank frauds, Internet pharmacies, international aspects, and theft of “bandwidth” charges were also cited as potentially disruptive events, since they might require changes and adjustments to existing FDO staff member assignments.

Impact That Particular Case Types Can Have on Office Staff Experience and Expertise. More generally, some saw the mix of cases handled by an office as driving attorney time expenditures. Some interviewees felt that offices with considerable experience with certain case types should be able to handle those cases with greater efficiency than locations where such matters are seen only infrequently.

Trial Rate. Although, as noted above, whether a case went to trial was repeatedly mentioned as a major influence on attorney time requirements, one interviewee explained that the FDO’s overall trial rate was an influence as well. Higher trial rates were felt to effectively reduce FDO attorney time spent on cases that do not go to trial, since prosecutors in the district would know that unfavorable plea agreements would be quickly rejected. As a result, the prosecutors would make plea offers that were more likely to be accepted by clients.

Branch Offices. One respondent asserted that the number of FDO branch offices to be a possible influence on attorney time, though the underlying rationale was not provided. Another respondent spoke of the “investigative burden of covering an entire district, as opposed to a single division within the district.”

Workload Calculations. Some interviewees commented during our familiarization visits that FDOs vary in how they documented attorney intake duties, with some opening files for every client or potential client seen by FDO attorneys, while other FDOs create new case records for only those individuals who continue to be represented by the office. One respondent asserted that

other offices may make initial appearances only to later learn of conflicts and that the case is opened and quickly closed whereas our district avoids this by recognizing immediate conflicts and paneling the case out without ever opening the case.

Another respondent stated that

we start by meeting the new client and reviewing the financial forms to give to the magistrate showing [whether the] client qualifies for appointed counsel. Then we are present for pre-trial services interview for bail. These two meetings can last two or even three hours!

Attorney-Related Factors. This section describes factors that pertain to the attorney.

Experience. Some interviewees and survey respondents mentioned that the level of experience that an FDO attorney has with a particular type of case generally permits that attorney to spend less time on such matters in the future. Some also applied this assumption to an attorney's entire caseload (i.e., more experience as an FDO attorney results in fewer hours needed on average for all cases). On the other hand, one survey respondent noted that highly experienced lawyers can spend more time on case with familiar legal and factual aspects rather than less because they are more likely to "recognize, develop and create more legal issues" than a less experienced attorney.

Practices in Regard to Different Types of Cases. One interoffice difference pointed out during some of the interviews was that FDOs could vary in the way their attorneys approached certain types of cases. A common example involved immigration cases alleging reentry after removal (8 U.S.C. § 1326). It was opined that pretrial motions regarding the prior deportation or the defendant's underlying citizenship status were more aggressively pursued in some districts than others. Attorneys in FDOs with high volumes of reentry cases suggested that they were more likely to spend more time to "work up the cases" than those at locations where technical issues would be rarely seen or addressed due to the FDO's staff's relative inexperience in such immigration matters. In contrast, we also spoke with attorneys in FDOs with low-volume immigration caseloads who asserted that they would be the ones most likely to explore these ancillary issues due to less pressure to quickly move a high volume of cases through the system.

Attorney Work Style and Quality. A few interviewees and respondents provided observations regarding intangible qualities that might affect FDO attorney time expenditures. One mentioned "lawyer styles and thoroughness" as affecting time spent, while another indicated that it would be "hard to opine from a distance whether the number of trials in a given district is related to the quality of representation provided to the defendants." However, with respect to the tangible factor of time spent, one respondent commented,

I have learned over the years that some of the most successful lawyers really do put in a lot of hours on any particular case. The inverse is also true: some of the most unsuccessful lawyers leave routinely at 5 p.m. At the end of the day, time invested into a case seems to be one of the best barometers to measure client satisfaction with the representation. Some clients are needier than others, but still, good lawyers learn how to compensate for that and address that unique factor of every case. Again, at the end of the day, if little time is spent on a case, typically that is a good measure as to how good a job the lawyer did on the case (inefficiencies of some lawyers aside).

District-Related Factors. This section describes factors that pertain to the district.

Diversion Opportunities. Another respondent noted that the availability of alternative treatment programs varies district to district. In districts with such programs, an appropriate defendant might be successfully diverted and the case resolved. Absent such programs, the case is more likely to involve increased litigation.

Community and Culture. One survey respondent suggested that local culture can affect attorney time needed for case disposition in various ways. For example, the so-called “Stop Snitchin’” movement that we were told exists in some urban districts might make it more difficult to resolve cases via clients agreeing to cooperate with law enforcement.

Transportation Issues. One survey respondent noted that, as a result of poor mass-transit resources in the district, clients released on bond might have difficulties visiting the office for meetings, thus increasing the amount of case-related time required for their attorneys to travel to meet with them.

Environment. Seasonal weather problems, natural disasters, vast geographical distances (which can affect investigation, client interviews, witness interviews, and jail visits), formidable mountain barriers, need for extensive transportation by air or water, and traffic were some of the district-level aspects that, some interviewees asserted, added to the amount of attorney time needed to represent an office’s client base.

Nonfederal Public Defender System. As described elsewhere in this section, the indirect influences that the state and local public defender system could have on FDO attorney time were mentioned by many FDO attorneys. For example, “weak” systems were said to result in relatively less favorable criminal histories for some FDO clients, requiring additional FDO attorney effort to avoid enhanced penalties when such clients face federal charges.

Appeal-Related Factors. Although many of the factors mentioned above apply to all activities conducted by the traditional units of the FDOs, appellate work was said to have some important distinctions in terms of time influences. To better understand those distinctions, we spoke with some attorneys whose workdays are normally focused solely on handling FDO appellate work as part of our familiarization-visit interviews and our telephone interviews. We also spoke with staff attorneys at FDOs in which the normal practice was that an appeal remains the responsibility of the trial attorney.

Transcript Length. The number of days the underlying district court case was in trial and the resultant effect on the length of the record were often cited as an important time influence. The attorney handling the appeal has to carefully review the transcript line by line for indications of judicial error, so longer trials take longer to review. One attorney told us that his rule of thumb was that the time to review the transcript would be about as long as the trial itself.

Oral Argument. Some interviewees and survey respondents discussing appeal-related time influences mentioned that whether oral argument was granted was an important factor influencing attorney time.

Petitions for Rehearing and Stays of Mandate. Whether an adverse outcome at the appellate level was subsequently challenged was also identified by some interviewees and at least one respondent as greatly adding to FDO attorney workload in individual appeals.

Petitions for Certiorari. Several survey respondents cited the fact that a petition for certiorari was filed in the U.S. Supreme Court after an unsuccessful intermediate court appeal was an important time driver for the posttrial period. One survey respondent noted that that respondent’s office consistently filed more certiorari petitions than other FDOs because that particular circuit court of appeals was very divided, while another suggested that the FDO

filed more petitions because the chances of success were higher, due to increased scrutiny of the relevant court of appeals' opinions by the Supreme Court.

Noncapital Habeas Aspects. Habeas corpus petitions involving noncapital state convictions are very dissimilar to defending traditional prosecutions discussed in other sections of this chapter. Although they are perhaps more akin to appeals in the factors affecting the attorney time they require, they also have many unique characteristics. One that is asserted to influence attorney resource expenditures is whether the petitioner had been provided counsel in any state postconviction proceedings. A lack of counsel at the state level was felt by one respondent to increase the amount of FDO attorney time needed during the federal petition phase because the federal attorney could not build on the work done by the state court attorney and because the failure to raise issues in state court creates complex procedural issues in federal court.

Possible Drivers of Attorney Time

We developed a list of possible factors from various sources, including our familiarization-visit interviews, telephonic interviews, surveys, discussions with ODS staff, other direct conversations with FDO attorneys during the course of this project, and materials we obtained from ODS. This list contains 220 separate items and is set forth in Table 3.2, roughly following the structure of the discussion above summarizing what we learned from interviews and surveys.

Table 3.2
Workload Factors from Interviews, Surveys, and Other Sources

Factor Type	Factor
Client	Client's primary language not English
	Interpreter services needed
	Client's primary language neither English nor Spanish
	Client was not of U.S. origin
	Potential immigration consequences for client
	Client was illiterate
	Client had mental health impairments or substance-abuse issues
	Insanity or incompetence defense possible
	Client had physical health impairments
	Client was a juvenile
	Client was mostly familiar with state criminal system
	Client had minimal or no prior contact with any criminal justice system
	Client lived on a reservation or case involved Indian jurisdiction
	Client had extensive prior criminal history
	Client was "hostile," "needy," or "uncooperative," or "untrusting"
Client's family was "hostile," "needy," or "uncooperative," or "untrusting"	
Case and charges	RICO aspects
	CCE aspects

Table 3.2—Continued

Factor Type	Factor
Case and charges, continued	Money-laundering aspects
	Terrorism aspects
	Conspiracy charges included
	Multiple defendants involved
	Co-counsel involved
	Unfamiliar or unusual type of case
	Novel legal issues or aspects
	Multiple counts included
	Multiple charges included
	Unusual or diverse combination of charges
	Multiple criminal transactions
	Case involved very large amounts of contraband or money
	Case involved international incident
	Case involved incident on high seas
	Case involved multiple districts
	Case was inflammatory or high profile
	Extensive evidentiary hearings
	Unusually complex or extensive motion practice
	Complex technical evidence involved
	Extensive expert services required
	Client cooperating with government
	Related or parallel state court prosecution
	Ancillary proceeding involved
	Special prosecutorial or law enforcement initiative involved
	Numerous witnesses in investigation
	Extensive travel to witness(es) required
	Witness' primary language not English
	Witness was "hostile," "needy," or "uncooperative," or "untrusting"
	Witness was potential target
	Child witness involved
	Conditional plea made
	Interlocutory appeal made
Trial held versus other disposition types	

Table 3.2—Continued

Factor Type	Factor	
Case and charges, continued	Type of trial conducted	
	Numerous witnesses at trial	
	Expert witness(es) at trial	
	Attorney-conducted voir dire allowed	
	Jury questionnaires allowed	
	Numerous exhibits at trial	
	Lengthy trial	
	Charges arise from time client was incarcerated	
	Events or people located in difficult-to-access areas	
	Representation was prior to filing of federal charges	
	Length of time between case initiation and disposition	
	Specific CMS type of case	
	Category of client representation (offense, appeal, other)	
	Category of offense (violence, financial, moral, other)	
	Category of charge (felony, misdemeanor, petty offense)	
	Child pornography or molestation aspects involved	
	Case was sealed	
	Overall case complexity	
	District where the representation took place	
	FDO branch location where the representation took place	
	FDO with jurisdiction over the district where the representation took place	
	Detention	Client was detained during representation
		Detention hearing held
Detention appeal made		
Property posted for release		
Administration of detention facility		
Travel time to detention facility		
Time necessary to see client after arrival at facility		
Limited meeting space		
Limited visiting hours		
Availability of regular and on-demand attorney–client phone calls		
Restrictions on attorneys bringing electronic devices into facility		
Modification of client medications		

Table 3.2—Continued

Factor Type	Factor
Detention, continued	Ability to meet with client prior to court appearances
Judge	Timeliness of court sessions
	Calendaring flexibility
	Pacing of scheduled case events
	General severity of sentences imposed
	Pre-trial release policies and preferences
	Preferences regarding plea documentation
	Attitudes toward accepting negotiated pleas
	Preference for oral or written advocacy
	Preference for multiple pre-trial conferences
	Receptiveness to suppression arguments
	Court culture
	Judicial plea policies
Court	Travel times from FDO offices to court locations
	Proximity of assigned court division to, e.g., location of underlying case events, witnesses
	Specific court division where case is assigned
	Judicial staff levels and workload
Prosecutor	General attitude toward cooperation and compromise with defense
	Experience level of USAO prosecutors
	Number of AUSAs in the district
	Policies regarding appellate waivers in plea agreements
	Policies regarding conditional plea agreements
	Policies regarding <i>Alford</i> pleas
	Negotiated plea policies
	Supervisory approval of negotiated pleas
	Preference regarding length and complexity of plea agreements
	Point in case progress when most defendant-favorable pleas are accepted
	General severity of sentences sought
	Willingness to negotiate on various sentencing aspects
	Preference for including sentencing enhancements
	Preference for criminal complaints versus indictments
	Degree of reliance on nonfederal law enforcement agencies
	Implements fast-track disposition program

Table 3.2—Continued

Factor Type	Factor
Prosecutor, continued	Implements “mass guilty plea” appearances Implements “drug court” or “reentry court” program
Probation officer	Attitude toward addressing inaccuracies in pre-sentence and guideline calculations General efficiency and predictability General attitude toward cooperation and compromise with defense
Law enforcement	Experience level of investigating law enforcement officers Agency of investigating law enforcement officers Preference for triggering mandatory minimum enhancements General attitude toward cooperation and coordination with defense
Discovery	Volume of discovery produced Audio discovery production Video discovery production Discovery produced other than in English Electronic discovery production Format of electronic discovery materials Experts needed to review discovery Ability to access government agency records Prosecutorial attitudes toward cooperation and coordination with defense re discovery Prosecutor restrictions on making copies of discovery Prosecutor restrictions on FDO support staff access Prosecutor attitude and practices regarding open-file discovery Prosecutor attitude and practices regarding discovery production timing Prosecutor attitude and practices regarding pace of discovery production Prosecutorial discovery policies Use of pretrial subpoenas Discovery motion practice
Sentencing	Judicial receptiveness toward departures and variances Severity of potential sentence Severity of imposed sentence Death sentence possible Life sentence possible Minimal sentence or minor fine likely Mandatory minimum involved

Table 3.2—Continued

Factor Type	Factor
Sentencing, continued	Career-offender designation involved
	Other enhancements possible
	Complex or contested sentencing issues
	Prosecutorial plea policies
Office	Secretarial support levels
	Secretarial use practices
	Experience level of secretarial staff
	Paralegal support levels
	Paralegal use practices
	Experience level of paralegal staff
	Research and writing specialist support levels
	Research and writing specialist use practices
	Experience level of research and writing specialists staff
	Investigator support levels
	Investigator use practices
	Experience level of investigator staff
	Interpreter support levels
	Interpreter use practices
	Experience level of interpreter staff
	Informal translation/interpretation resources
	Informal translation/interpretation resources
	Nonattorney legal support (paralegals, investigators, R&Ws) levels
	Nonattorney legal support (paralegals, investigators, R&Ws) practices
	Remote access (e.g., BlackBerry devices) to FDO email
	Quality of computer resources
	In-house capability for handling electronic evidence
	Case volume handled by FDO
	Size of FDO staff
	Size of attorney staff
	Attorney supervision/management availability
	Major case staff diversions
	Mix of case types handled by FDO
	FDO trial rate

Table 3.2—Continued

Factor Type	Factor
Office, continued	CDO versus FPDO
	Structure of FDO regarding branches
	Structure of FDO regarding multiple district coverage
	CJA panel appointment authority
	Pre-appointment review policy
	Policy and practices toward intake recordkeeping
Attorney	Experience of attorney staff generally
	Experience of attorney staff with specific case types
	Attorney workload levels
	Practice of attacking original entry conviction or citizenship issues
District	Availability of diversion programs
	Community attitudes toward law enforcement officers, activities, prosecutions
	Availability of mass transit for in-office meetings with clients
	Seasonal weather issues (e.g., severe winters, summer hurricanes)
	Geographical size
	Population density
	Rural versus urban environments
	Transportation issues for attorneys
	Effectiveness of state public defender system
	Circuit court of appeals for this district
	State in which the district is located
	CJA panel caseload size and percentage of financially eligible clients in district
	Appeal specific
Length of record from lower court proceedings	
Granting of oral argument	
Petition for rehearing or for stay of mandate made	
Petition for certiorari made	
Number of issues raised in appeal	
Situs of the circuit court of appeal	
State-level counsel for noncapital habeas petitioner	
Age of original case in noncapital habeas petition	
Length of record in original case in noncapital habeas petition	
Evidentiary hearing granted in noncapital habeas case	

Table 3.2—Continued

Factor Type	Factor
Appeal specific, continued	Number of issues in noncapital habeas case
	Need for investigation in noncapital habeas case

As is often the case whenever researchers attempt to develop a taxonomy of legal concepts or events, the items in this table can hardly be described as discrete, uniform in character, or unambiguous in meaning. For example, some of the potential factors listed above address specific client or case characteristics, while others focus on what is taking place in the larger legal environment. The factors also vary in the degree to which they might be subject to measurement by an impartial observer. One could objectively identify whether a client was under the age of 18 and therefore a juvenile, but whether a client was “hostile” would require a much more subjective assessment. In some instances, the suggested factor is quite specific (such as whether any discovery produced was in a language other than English), but others describe very general concepts, such as “court culture” or “prosecutorial attitude.” There are factors that address aspects of the legal environment applicable to all cases handled by an FDO (such as the number of AUSAs in the district), factors that can be determined only once the FDO is appointed to the case (such as whether the English is the client’s primary language), and factors that could not be assessed until the representation is nearly complete (such as whether a trial was held). Moreover, some suggested influences might well apply to most cases within a district (such as a general prosecutorial policy favoring appellate waivers in negotiated pleas) but not necessarily be relevant in specific cases. Nevertheless, we believe the list to be a comprehensive reflection of what attorneys in FDOs across the country currently perceive to be important influences on the amount of time they spend on any one case. The question presenting itself at this point is whether it is possible to test these assertions and measure their relative influence on attorney time expenditures empirically.

Framework for Testing the Relative Influence of Various Factors

We felt that the first step needed to identify the degree to which the factors on the preliminary list have an effect on attorney time would be to build a case-level database of FDO representations. The database would include as key elements the amount of case-related attorney time recorded in TKS, CMS’s categorization of the type of case, and as many fields as could be created within our resource and time limitations that might reflect the underlying essence of what we were told were (or suspected might be) important influences on attorney time, at least compared to others within the same CMS case-type grouping. The second step would be to apply an appropriate statistical modeling technique allowing the simultaneous testing of hundreds of different possible influences on time, as there did not appear to be a sufficient level of consensus among attorneys systemwide as to the core group of factors that might be explored on an individual basis. Each step is discussed below.

Building the Database

The initial source for our analysis file was the CMS and TKS extracts provided to us by ODS. The original case-level file alone contained nearly 70 separate fields describing case location,

dates of case opening and disposition, the CMS case-type designation, severity levels associated with prosecution-related case types, method of case disposition, sentence imposed (if any), an ODS-generated case number to substitute for the actual identifier used at FDOs, and more than 30 fields appearing to reflect many of the items found in the case-closing internal case data sheet, as represented in Text Box 3.1. The subsequent merging of time entry-level and charge-level information with this file added many more fields capturing the amount of time recorded in TKS by attorneys and other FDO staff members, as well as details about the five most significant (as defined by the CMS application) criminal charges against the client, if any.¹²

The information obtained from these various sources constitutes the outer limits of our ability to populate the database with information about case characteristics, client characteristics, and time expenditures. Even if confidentiality concerns were adequately addressed, it would not be practical to read through hard-copy case files maintained by the FDOs, interview the attorneys handling the representations, contact clients for additional background information, discuss the cases with prosecutors and law enforcement, or review district court and circuit court dockets, pleadings, and documents, at least not for anything more than a tiny portion of the more than 500,000 individual cases in our database. As such, any additional fields we might include in the analysis database can consist only of descriptive information about the larger legal environment in which these client representations took place, but nothing in addition to what CMS and TKS already tell us about what occurred in any specific case.¹³

Such district-level fields would be useful in two regards. The first would directly address factors in the list in Table 3.2 regarding local aspects about, for example, the bench, the USAO, or jail locations. The second would help to fill gaps in information for important case- and charge-level characteristics, though what we could learn would apply to the caseload generally and not necessarily to any specific case. For example, the CMS extract provided to us does not contain any record of whether the client lived on a reservation, a factor repeatedly mentioned as making a difference in the level of attorney time needed on a case. We could, however, include a field that represents the percentage of the district's caseload with reservation-resident clients. To the extent that it is truly possible to control for all other aspects of a client representation, cases in districts with larger proportions of reservation clients should, on average, be associated with greater attorney times than those in other locations, assuming that what we were told was indeed correct. This is a less desirable approach than having more-precise information about

¹² To the extent possible, we looked across each of the five possible charges that could be present in any one case and summarized the information in a way that would facilitate our factor analysis with case-level information, rather than separately analyzing what was present in each separate charge. For example, we created variables that indicated whether any of the five charges was a felony, what the most severe possible prison sentence was across all five charges, and whether any of the charges involved a crime against a person.

¹³ One possible source of case-level information that we did not examine were the codes used in TKS to indicate the type of activity the attorney was performing during each period of time recorded in a TKS entry. We have significant reservations about the consistency and manner in which these codes are used, especially given the availability of generic "other" event codes that can be freely substituted for more-detailed descriptions. We are also unaware of any standardized method used to assess the accuracy of activity-code entries, in contrast to what is at least a minimal review performed at many FDOs to ensure that at least 40 hours per week are recorded by every attorney in the office. We also reviewed distributions of TKS activity codes with some Federal Public Defenders and Chief Community Defenders. When shown a TKS report that indicated that attorneys in the district had entered travel-related codes for just 7 percent of their case-related time, one office head indicated the belief that the real percentage was perhaps three times as large.

what actually took place in any specific matter, but, as indicated above, we are limited to what is already available in our CMS/TKS extracts for historical case and client data.

We then added district-level fields for the state in which the district is located, the circuit, whether defender services in the district were provided by an FDO with its headquarters office elsewhere, frequencies and percentages for trials and other types of case dispositions in the district, the number of attorneys at the district's USAO, the number of district court judges and magistrates, and information about appointments from the CJA panel.

We also included five-year totals for selected case types and the percentages that each makes up of the district's overall caseload. Our rationale for adding these fields was based on the comments of interviewees suggesting that greater experience and familiarity with particular types of client matters influences legal strategies and work efficiencies. We could not reasonably include all 284 case types appearing in the CMS extract in our analysis, so, after examining CMS data over the five-year study period, a smaller set was chosen on the basis of the case types' potential impact on FDO operations. We included the top 19 case types for mean attorney case-related time, the top 19 based on their standard deviation for attorney case-related time (a way of identifying case types that are perhaps the least predictable in terms of time), the top 13 for total number of cases, and the top 11 in terms of the total number of attorney case-related hours.¹⁴ Because some case types fell into two categories, a total of 40 were selected (see Table 3.3).¹⁵

Table 3.3
Case Types of Special Interest

CMS Code	Case Type	Top Average Time	Top Standard Deviation for Time	Top No. of Cases	Top in Total Attorney Time
AC	Amicus	x			
CA	Court of Appeals: Other Matters			x	x
CK	Crack Cocaine Retroactive Amendment			x	
CR0100	Homicide: Murder, First Degree	x	x		
CR1100	Robbery: Bank				x
CR4510	Fraud: Income Tax, Evade or Defeat		x		
CR4900	Fraud: Bankruptcy		x		
CR6701	Drug Offenses: Narcotics, Sell, Distribute, or Dispense			x	x

¹⁴ The cutoffs for each of the four criteria were chosen after review of the distributions for natural break points. Attorney time calculations exclude cases without any TKS time entries reported.

¹⁵ SC (Supreme Court: Certiorari Granted) cases were originally included in this table based on their observed distribution in the data as received from ODS. It appeared that SC cases exhibited very high variation in recorded attorney time, resulting in the category being ranked as having one of the largest standard deviations of any case type. Subsequent to this phase of the analysis, it became clear that this CMS code might have been inappropriately applied in the majority of instances when it was associated with a new case opening. See discussion of this issue in Chapter Two. When suspect SC cases were dropped from our analysis, the variation was markedly reduced, but the increase in average attorney time moved this case type into the top ten for that particular measure. Thus, SC cases would have been included as a "case type of special interest" both before and after modification of the analysis data set, though for different reasons.

Table 3.3—Continued

CMS Code	Case Type	Top Average Time	Top Standard Deviation for Time	Top No. of Cases	Top in Total Attorney Time
CR6801	Drug Offenses: Controlled Substance, Sell Distribute, or Dispense			x	x
CR7430	Miscellaneous: Racketeering, Extortion	x	x		
CR7440	Miscellaneous: Racketeering, Gambling	x	x		
CR7480	Miscellaneous: Racketeering	x	x		
CR7481	Miscellaneous: Racketeering, Robbery	x			
CR7611	Miscellaneous: Kidnapping, Hostage	x	x		
CR7820	Miscellaneous: Firearms, Unlawful Possession				x
CR7830	Miscellaneous: Firearms			x	x
CR8710	Miscellaneous: Immigration Laws, Illegal Entry			x	
CR8720	Miscellaneous: Immigration Laws, Illegal Reentry			x	x
CR8730	Miscellaneous: Immigration Laws, Other			x	x
CR9741	Federal Statute: Energy Facility	x			
CR9780	Federal Statute: Trading with the Enemy Act	x	x		
CR9901	Federal Statute: Civil Rights	x	x		
CR9908	Federal Statute: Public Health and Welfare	x	x		
CR9929	Federal Statute: Labor Laws	x			
CR9954	Federal Statute: Peonage	x	x		
CR9957	Federal Statute: Terrorist Activity	x	x		
CR9994	Federal Statute: Explosives (except on vessels)		x		
D1	Death Penalty: Habeas Corpus Challenge to State Sentence	x	x		
D2	Death Penalty: Federal Capital Prosecution (and direct appeal)	x	x		

FDO staff levels were also included. Because CDOs and FPDOs differ in the ways they report their staffing numbers to ODS, we were unable to obtain uniform FTE counts for each position type for each year in our study period. Instead, we calculated a staff-level proxy based on the annual average over FY 2007 and FY 2008. Although there appear to be nearly 100 different titles in use by FDOs to describe the various duties of their staff members, we collapsed our counts into just seven groups: (1) administrators (e.g., secretaries, case managers, property and procurement administrators, administrative officers, computer system administrators);

Table 3.3—Continued

CMS Code	Case Type	Top Average Time	Top Standard Deviation for Time	Top No. of Cases	Top in Total Attorney Time
D3	Death Penalty: Motion attacking sentence (2255)	x			
D4	Death Penalty: Other	x	x		
D5	Death Penalty: Redesignation from D2: No Death Sought by Government	x	x		
FAO	First Appearance Only			x	
HC	Habeas Corpus				x
PO	Petty Offenses			x	
PP	Prepetition		x		
PR	Probation Revocation			x	
SC	Supreme Court: Certiorari Granted		x		
SR	Supervised Release			x	x
TD	Court of Appeals: Trial Disposition			x	x

NOTE: FY 2004–FY 2008 closed cases.

(2) FDO managing attorneys (e.g., Federal Public Defenders, Chief Community Defenders, first assistant Federal Public Defenders, senior litigators); (3) AFDs; (4) interpreters; (5) investigators; (6) paralegals; and (7) research and writing specialists. Those staff members described as covering more than one function, such as a “paralegal/administrative assistant,” were split into two half-time positions. The total number of attorneys (managers and staff) was also used to calculate various office support position ratios, as well as various comparisons to USAO staff levels. We also calculated five-year CLPAs for total cases, as well as for the 40 special-interest case types described above.¹⁶

The final set of fields added to our analysis data set came from the results of our survey of Federal Public Defenders and Chief Community Defenders. A copy of the questionnaire and frequency distributions for the responses are provided in Appendix A. Many of the questions

¹⁶ One concern that we had regarding the inclusion of five-year caseload variables in our analysis (in both absolute terms and relative to the number of FDO attorneys) was the fact that seven of the districts do not appear to have had full caseloads during the entire study period. The Middle District of Georgia had no FDO-represented cases in FY 2004 through FY 2007, and a similar situation exists for the District of Maine (FY 2004–FY 2006, with FY 2007 appearing to be a partial year), the Northern District of Mississippi (FY 2004–FY 2007), the Western District of North Carolina (FY 2004–FY 2005), the District of North Dakota (FY 2004–FY 2005), and the Western District of Virginia (FY 2004–FY 2005). The Western District of Wisconsin does have cases for all years, but the numbers for FY 2004 and FY 2005 are smaller than one might expect. Discussions with ODS personnel reveal that during the study period, new FDOs or branch offices of existing FDOs in other locations were set up in these districts where legal services for financially eligible defendants had been previously provided exclusively by CJA panel attorneys. As such, the use of a five-year total might give a misleading impression of the size of the seven districts relative to their other 83 counterparts today. We considered options to inflate case counts for the seven districts, but we did not have solid information about the number of client matters within specific case types handled by the CJA panel prior to establishing the new local offices. We felt that, given the relatively small size of these operations in FY 2008, the overall analysis would not be adversely affected by leaving the counts unadjusted. Our case-weight calculations are unaffected by this problem.

in the survey were designed to provide district-level information to fill in some of the known gaps in the data regarding case- and client-level characteristics, although, as indicated above, the answers would be only suggestive of what might have been true in specific cases. Additional information about the scope of the survey questions can be found in Chapter Two, though questions of interest to the workload factor analysis included the composition of the client caseload, detention-facility usage and distances, courthouse locations, prosecutorial policies and preferences, judicial receptiveness to sentencing departure arguments, office support staff practices, FDO structure, and CJA panel allocation procedures.

In the end, 280 different fields were created for the analysis data set for the purpose of testing the relative influence of suggested factors. But, even with such a large number of variables, we were unable to cover each and every area outlined in Table 3.2. Again, the most important reason for any shortcomings in this regard is historical; the information needed to determine whether many of the factors were present in individual cases was not collected at the time the client was represented by an FDO attorney, and there is no practical way to obtain it now. There were also limitations on the number of fields that could be tested simultaneously; even just 280 variables translate into nearly 40,000 pairs of two-way interactions to be processed, a workload that requires weeks of computer time when looking at five years' worth of data. Some suggested factors (e.g., child witnesses) were judged to be present in such a small number of cases that it would not make sense to seek district-level information as a substitute. Others, such as "court culture," were felt to be too vague or subjective to measure. There were also limits to the number of questions that could be included in the survey without affecting response rates. We worked with our PAG to reduce a rather lengthy preliminary list of questions to one that would require only a moderate investment of time from the respondents. In doing so, we might have eliminated some questions that might have helped explain attorney time better than those found in the final version.

Factors Dropped from the Analysis

Nonattorney Staff Time, TKS Entry Counts, and Case Length. Two general areas of factor-related data were eliminated from the analysis after initial testing, even though we did have reasonably reliable information of what took place in individual cases. The first involved three different aspects of time. Attorney case-related time was, of course, the dependent variable that we were hoping to explain by examining the relative influence of various potential factors. But other time recorded in CMS for nonattorney staff, such as investigators and paralegals, was also available for testing. Early analysis suggested that nonattorney staff time was strongly associated with attorney time. This preliminary finding was not a surprise; the most-complex and attorney time-intensive cases in an office would likely have a correspondingly high level of legal support involved as well. We were concerned, however, about interoffice differences in the manner in which nonattorney staff are required to record their case-related time. Our impression from the familiarization visits was that office administrative staff pay the closest attention in making sure that attorneys are up to date in regard to TKS entries but are less rigorous about how other staff in the office perform when it comes to logging in case-related hours.¹⁷ We were also reluctant to label legal support staff time as a "factor," since there was little reason to sus-

¹⁷ One could argue that the most useful form of a case weight for the federal defender system would be one that captured not just attorney time but also other resource requirements in an office, including the effort expended by legal support staff. Including nonattorney time in our case weights is beyond the scope of the work.

pect that extensive contributions of these staff members in any one case was a cause, or could be related to a cause, of additional attorney time expenditures compared to other cases of the same type.¹⁸ Another concern was that, by leaving time expenditures of nonattorneys in our analysis, their influence would overwhelm the relative contributions to attorney time observed for other factors in our data.

Another time-related issue involved the number of individual entries made in TKS for any one case. About 16 percent of the cases in which any case-related time was recorded by an FDO attorney had a single entry in TKS, but there were also some with more than 1,000 separate entries. Our initial analysis found that the number of entries in any one case was highly associated with overall time. Because the result was unhelpful when trying to identify factors influencing intercase variation in attorney time and because the association was high enough to obscure the influence of all other possible factors, we dropped the number of entries from our analysis.

The final time-related aspect that was excluded from the analysis involved the length of time the case was active. As was true with the number of entries, the number of days from FDO appointment to case disposition was highly associated with overall attorney time in early testing. Again, the finding was not a surprise because, the longer a case remains open, the more opportunities are available for an attorney to perform some sort of task, even if just for the purpose of updating the client on case progress. Longer periods in which the case was pending might well be associated with additional continuances, waivers of the Speedy Trial Act of 1974, increased complexity, significant investigatory challenges, and the like. Our concern was that duration was not an influence in and of itself but rather a reflection of something else going on in the case, something that was the real driver behind attorney time. We were reluctant to drop duration variables from the analysis because of comments made by interviewees regarding the additional effort required to deal with client needs triggered by lengthy case resolutions. However, the association dwarfed most other variables in terms of relative influence and made it difficult to identify those factors with more-subtle but equally important contributions.¹⁹

¹⁸ Indeed, it is very possible that attorney time in a case might be reduced by the corresponding contributions of legal support staff to draft motions and memoranda, conduct investigations, prepare trial exhibits, review discovery, or do any of the other important tasks that would otherwise be the sole responsibility of an attorney working without such help. As such, the availability of legal support staff in an office might well be associated with lower average attorney time expenditures. Our initial analysis, however, suggested that any legal support staff time expended was generally associated with cases involving greater attorney time, a result that was no doubt influenced by the presence of many large cases in our data in which both legal support staff members and FDO attorneys put in hundreds of hours of work. We felt that the question of whether legal support resources were influential factors would be better explored looking at office-level staff levels and ratios (such as the number of attorneys to the number of paralegals) for all cases within an office.

¹⁹ A somewhat related issue involved variables indicating the year when a case began or ended. Because of the way the CMS and TKS extracts were selected for us, we had no information about cases that were pending at the end of FY 2008. Thus, any case in our data that began in FY 2008 had to also close in FY 2008, though cases opening in FY 2007 could last as long as two years, those opening in FY 2006 could last as long as three years, and so on. Thus, cases beginning in FY 2008 would, on average, remain open the shortest length of time and likely have smaller amount of attorney time than those starting in earlier years, though not for any reason that could be labeled as a time-influencing factor. The situation is different when the data are viewed from the perspective of the year in which the case closed. The truncation issue associated with the way in which cases were selected does not exist, but our concern is that timekeeping practices have evolved over the years included in the study period. Interviews conducted during our familiarization visits suggested that attorney compliance with TKS rules have improved markedly in recent years. If true (and we have no independent ways of verifying whether this is so), cases that were active primarily during FY 2008 might reflect additional hours compared to those active primarily during FY 2004, even if the actual number of hours expended was the same. Because of these concerns over truncation and timekeeping practices, the year of case initiation and resolution were not included in our factor analysis.

Case Location. The second group of potential data elements we dropped involved those relating to the location where the representation occurred, other than the district itself or the identity of the federal appellate circuit with jurisdiction over the district. Early analysis included variables for the state where the district was located, the branch office designation, and the district where the main office of the FDO was located (as has been mentioned previously, 11 districts are served by multidistrict FDOs). That analysis suggested that the relative influence of these case characteristics was nearly the same as the actual district, so, in the interest of reducing the number of variables to test, state and managing FDO were dropped.

Analysis Variables

The final list of variables we included for testing is presented in Table 3.4, with each associated with a specific factor found in the preliminary list of factors set forth in Table 3.2. Along with the names of the variables, the definition of each is included in Table 3.4, along with an indication of whether the information the variable attempts to capture is at the “case level” (i.e., something that actually occurred or was present in the individual case or for the individual client) or at the “district level” (i.e., general characteristics of the location where the case occurred, which can include such aspects as the policies and preferences of the local bench and prosecutors or features of the office’s client caseload). Note that some district-level variables are used as secondary substitutes for case-level information that is no longer available. It should also be noted that the table contains some potentially important factors in this list for which we were unable to identify reasonably accessible sources of reliable information as to whether such factors were present either in individual cases or in the district. These obvious gaps in our analysis are identified by the phrase “no information available” in the variable name field.

One important aspect to note regarding Table 3.4 involves those variables with the remark “closing info sheet” in the definition column. These are CMS fields that appear to reflect entries made by attorneys at the time the matter was closed as to whether certain case characteristics or events were present. A representation of a form used as a case-closing internal case data sheet can be found in Text Box 3.1. We included these variables in our analysis because they address many of the time-influencing factors that were commonly mentioned by our interviewees and survey respondents, even though we believe that FDO attorneys are far from uniform in how they approach the task of answering the set of questions on the form. As we explain in greater detail below, we believe that indications that any of these characteristics or events were present in a specific case are very instructive as to what factors might be especially important in driving attorney time but that, because of concerns over reliability, they would not be dispositive in this regard.

Methodological Approach

To test the relative influence of the variables described above (more properly called *covariates* in the context of this type of analysis) on case-related attorney time, we constructed generalized boosted regression models (GBM).²⁰ Boosting (or boosted regression) is a data-mining technique that has shown considerable success in predictive accuracy.²¹ GBM is a flexible multivariate regression technique that estimates nonlinear relationships between a variable of interest

²⁰ Friedman, 2001; Ridgeway, 2007.

²¹ See, e.g., Bauer and Kohavi, 1999, and Friedman, Hastie, and Tibshirani, 2000.

Table 3.4
Data Elements Tested in Workload Factor Analysis

Type	Factor	Variable Name	Meaning	Level
Client	Client's primary language not English	Q03PCTNONENG	District's percentage of non-English-speaking clients	DISTRICT
	Interpreter services needed	INTERPRETE	Was interpreter required for the case? (closing info sheet)	CASE
	Client's primary language neither English nor Spanish	(no information available)		
	Client was not of U.S. origin	Q04PCTFOR	District's percentage of foreign national clients	DISTRICT
	Potential immigration consequences for client	(no information available)		
	Client was illiterate	Q08PCTILL	District's percentage of illiterate clients	DISTRICT
	Client had mental health impairments or substance-abuse issues	Q06PCTMENT	District's percentage of clients with mental health or substance-abuse issues	DISTRICT
	Insanity or incompetence defense possible	Q07PCTEVAL	District's percentage of cases with mental health evaluation	DISTRICT
	Client had physical health impairments	(no information available)		
	Client was a juvenile	(no information available)		
	Client was mostly familiar with state criminal system	(no information available)		
	Client had minimal or no prior contact with any criminal justice system	(no information available)		
	Client lived on a reservation or case involved Indian jurisdiction	Q05PCTREZ	District's percentage of clients living on a reservation	DISTRICT
	Client had extensive prior criminal history	(no information available)		
	Client was "hostile," "needy," or "uncooperative," or "untrusting"	(no information available)		
	Client's family was "hostile," "needy," or "uncooperative," or "untrusting"	(no information available)		

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level	
Case and charges	RICO aspects	RICO	Did case include RICO count? (closing info sheet)	CASE	
	CCE aspects	CCE	Did case include CCE count? (closing info sheet)	CASE	
	Money-laundering aspects	(no information available)			
	Terrorism aspects	(represented by questions related to CMS case type)			
	Conspiracy charges included	(no information available)			
	Multiple defendants involved	NUMBERDEF	Number of defendants in case (closing info sheet)	CASE	
	Co-counsel involved	COCOUNSEL	Co-counsel involved?	CASE	
	Unfamiliar or unusual type of case	(no information available)			
	Novel legal issues or aspects	NOVELISSUE	Novel issues in case? (closing info sheet)	CASE	
	Multiple counts included		COUNTTOT	Total counts in charge files	CASE
			COUNTMAX	Maximum number of counts for any particular charge in charge files	CASE
			CLIENTCNT	Number of counts against this client, main case record information only (closing info sheet)	CASE
			TOTALCOUNT	Total number of counts, main case record information only (closing info sheet)	CASE
	Multiple charges included	(no information available)			
	Unusual or diverse combination of charges	(no information available)			
	Multiple criminal transactions	(no information available)			
	Case involved very large amounts of contraband or money	(no information available)			
	Case involved international incident	(no information available)			
	Case involved incident on high seas	(no information available)			

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Case and charges, continued	Case involved multiple districts	(no information available)		
	Case was inflammatory or high profile	(no information available)		
	Extensive evidentiary hearings	(no information available)		
	Unusually complex or extensive motion practice	COMPMOTION	Complex motions in case? (closing info sheet)	CASE
	Complex technical evidence involved	(no information available)		
	Extensive expert services required	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
	Client cooperating with government	(no information available)		
	Related or parallel state court prosecution	(no information available)		
	Ancillary proceeding involved	ANCILLARY	Ancillary proceedings held in case? (closing info sheet)	CASE
	Special prosecutorial or law enforcement initiative involved	SPECIALLAW	Charges related to special law enforcement initiative? (closing info sheet)	CASE
	Numerous witnesses in investigation	NUMINTER	Number of witness interviews (closing info sheet)	CASE
	Extensive travel to witness(es) required	REMINTER	Remote interviews required in case? (closing info sheet)	CASE
	Witness's primary language not English	(no information available)		
	Witness was "hostile," "needy," or "uncooperative," or "untrusting"	(no information available)		
	Witness was potential targets	(no information available)		
	Child witness involved	(no information available)		
	Conditional plea made	(no information available)		
	Interlocutory appeal made	(no information available)		
	Trial held versus other disposition types	DISPOSCAT01	Case disposition code in CMS, grouping 1	CASE
		DISPOSCODE	Case disposition code in CMS, original	CASE

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Case and charges, continued	Type of trial conducted	DISPOSDESC	Case disposition code in CMS, descriptive	CASE
		TRIALCAT01	Trial outcomes from case disposition code in CMS, grouping 1	CASE
		TRIALCAT02	Trial outcomes from case disposition code in CMS, grouping 2	CASE
		TRIALCAT03	Trial outcomes from case disposition code in CMS, grouping 3	CASE
		TRIALCAT04	Trial outcomes from case disposition code in CMS, grouping 4	CASE
	TRIALCAT05	Trial outcomes from case disposition code in CMS, grouping 5	CASE	
	Numerous witnesses at trial	(no information available)		
	Expert witness(es) at trial	(no information available)		
	Attorney-conducted voir dire allowed	(no information available)		
	Jury questionnaires allowed	(no information available)		
Numerous exhibits at trial	(no information available)			
Lengthy trial	(no information available)			
Charges arise from time client was incarcerated	(no information available)			
Events or people located in difficult-to-access areas	(no information available)			
Representation was prior to filing of federal charges	(no information available)			
Length of time between case initiation and disposition	(length of time case opened excluded)			
	(length of time case opened excluded)			

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Case and charges, continued	Specific CMS type of case	CASEYPEMOD	Case type from CMS, corrected	CASE
	Category of client representation (offense, appeal, other)	(represented by CMS case type)		
	Category of offense (violence, financial, moral, other)	ANYPERSCRM	Any charge in charge file involving crime against person?	CASE
		ANYPROPCRM	Any charge in charge file involving crime against property?	CASE
		ANYTURPCRM	Any charge in charge file involving crime against morality?	CASE
	Category of charge (felony, misdemeanor, petty offense)	ANYFELONY	Any charge in charge file involving felony charges (based on listed statutes)?	CASE
		ANYMISDEMS	Any charge in charge file involving misdemeanor charges (based on listed statutes)?	CASE
		ANYPETTY	Any charge in charge file involving petty offense charges (based on listed statutes)?	CASE
		MISDEMEAN1	Case involved misdemeanor only? (closing info sheet)	CASE
		MISDEMEAN2	Charges reduced to misdemeanors? (closing info sheet)	CASE
		OFFENSELEVEL1	Mix of offense levels found in charge file statute listings	CASE
		NOSTATS	Was there a specific criminal statute listed in the charge file?	CASE
		RULE40	Did case involve transfers and other out-of-district matters?	CASE
	Child pornography or molestation aspects involved	(no information available)		
	Case was sealed	SEALED	Was the case sealed?	CASE
Overall case complexity	(no information available)			

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Case and charges, continued	District where the representation took place	DISTCASE	District where the case was active	CASE
	FDO branch location where the representation took place	(location other than district excluded)		
	FDO with jurisdiction over the district where the representation took place	(location other than district excluded)		
Detention	Client was detained during representation	DETAINED	Was client detained? (closing info sheet)	CASE
		Q11PCTDETENT	District’s percentage of clients in detention facilities	DISTRICT
	Detention hearing held	(no information available)		
	Detention appeal made	(no information available)		
	Property posted for release	(no information available)		
	Administration of detention facility	(no information available)		
	Travel time to detention facility	AIRTIME	Air time required to visit client (closing info sheet)	CASE
		REMOTEJAIL	Was client in a remote jail? (closing info sheet)	CASE
		ROADMILES	Road miles required to visit client (closing info sheet)	CASE
		VISITS	Number of client visits (closing info sheet)	CASE
		Q12TIMEMAINJAIL	Estimated time needed to travel and complete a one-hour interview at the most commonly used detention facility in the district	DISTRICT
		Q13PCTMAINJAIL	District’s percentage of clients at the main detention facility	DISTRICT
	Q13Q12VALMAINJAIL	Proxy used for relative time consumed for traveling to clients at the main detention facility in the district	DISTRICT	
	Q14TIMEFARJAIL	Estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district	DISTRICT	

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Detention, continued		Q15PCTFARJAIL	District's percentage of clients at the most time-consuming facility	DISTRICT
		Q15Q14VALFARJAIL	Proxy used for relative time consumed for traveling to clients at the most time-consuming detention facility in the district	DISTRICT
		Q16PCT3HRJAIL	District's percentage of clients at remote detention facilities	DISTRICT
	Time necessary to see client after arrival at facility	(no information available)		
	Limited meeting space	(no information available)		
	Limited visiting hours	(no information available)		
	Availability of regular and on-demand attorney-client phone calls	(no information available)		
	Restrictions on attorneys bringing electronic devices into facility	(no information available)		
	Modification of client medications	(no information available)		
	Ability to meet with client prior to court appearances	(no information available)		
Judge	Timeliness of court sessions	(no information available)		
	Calendaring flexibility	(no information available)		
	Pacing of scheduled case events	(no information available)		
	General severity of sentences imposed	(no information available)		
	Pretrial release policies and preferences	(no information available)		
	Preferences regarding plea documentation	(no information available)		
	Attitudes toward accepting negotiated pleas	(no information available)		
	Preference for oral or written advocacy	(no information available)		

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Judge, continued	Preference for multiple pre-trial conferences	(no information available)		
	Receptiveness to suppression arguments	(no information available)		
	Court culture	(no information available)		
	Judicial plea policies	(no information available)		
Court	Travel times from FDO offices to court locations	REMCOURT	Was the matter heard in a remote court? (closing info sheet)	CASE
		Q17TIMEFARCT	Estimated time needed to travel and complete a one-hour appearance at the most time-consuming court division in the district	DISTRICT
		Q18PCTFARCT	District’s percentage of appearances at the most time-consuming court division	DISTRICT
		Q18Q17VALFARCT	Proxy used for relative time consumed for traveling and appearing to the most time-consuming court division	DISTRICT
	Proximity of assigned court division to, e.g., location of underlying case events, witnesses	(no information available)		
	Specific court division where case is assigned	(no information available)		
	Judicial staff levels and workload	DISTJUDGES	Number of district judges in this district	DISTRICT
		MAGJUDGES	Number of magistrate judges in this district	DISTRICT
		SENIORJUDGES	Number of senior judges in this district	DISTRICT
		TOTDISTMAGJS	Number of district and magistrate judges in this district	DISTRICT
Prosecutor	General attitude toward cooperation and compromise with defense	(no information available)		
	Experience level of USAO prosecutors	Q27USAEXP	Perceived experience levels of local AUSAs in this district	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level	
Prosecutor, continued	Number of AUSAs in the district	PCTTOTUSAALL	District percentage USAO attorneys (all types) of sum of same and all FDO attorneys	DISTRICT	
		PCTCRMUSAALL	District percentage USAO attorneys (criminal only) of sum of same and all FDO attorneys	DISTRICT	
		USACRMATTYS	Number of USAO attorneys (criminal only) in the district	DISTRICT	
		USATOTATTYS	Number of USAO attorneys (all types) in the district	DISTRICT	
	Policies regarding appellate waivers in plea agreements	(no information available)			
	Policies regarding conditional plea agreements	(no information available)			
	Policies regarding <i>Alford</i> pleas	(no information available)			
	Negotiated plea policies	(no information available)			
	Supervisory approval of negotiated pleas	(no information available)			
	Preference regarding length and complexity of plea agreements	(no information available)			
	Point in case progress when most defendant-favorable pleas are accepted	(no information available)			
	General severity of sentences sought	(no information available)			
	Willingness to negotiate on various sentencing aspects	(no information available)			
	Preference for including sentencing enhancements		Q09PCTSTAT	District's percentage of clients with potential of a significant statutory or guideline enhancement	DISTRICT
			Q26USASTATEN	Commonly used statutory enhancements for prior drug felonies in the district	DISTRICT
	Preference for criminal complaints versus indictments	(no information available)			

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Prosecutor, continued	Degree of reliance on nonfederal law enforcement agencies	(no information available)		
	Implements fast-track disposition program	Q22ANYFT	Fast track or other special immigration case procedures in the district	DISTRICT
		Q23PCTFT	District’s percentage of cases in the fast-track program	DISTRICT
		Q24INCENFT	District’s fast-track/early-disposition program methodologies	DISTRICT
		Q25OTHFT	Other fast-track programs in the district	DISTRICT
	Implements “mass guilty plea” appearances	(no information available)		
	Implements “drug court” or “reentry court” program	(no information available)		
Probation officer	Attitude toward addressing inaccuracies in pre-sentence and guideline calculations	(no information available)		
	General efficiency and predictability	(no information available)		
	General attitude toward cooperation and compromise with defense	(no information available)		
Law enforcement	Experience level of investigating law enforcement officers	(no information available)		
	Agency of investigating law enforcement officers	(no information available)		
	Preference for triggering mandatory minimum enhancements	Q10PCTMAND	District’s percentage of clients with potential of a significant mandatory minimum	DISTRICT
	General attitude toward cooperation and coordination with defense	(no information available)		
Discovery	Volume of discovery produced	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Discovery, continued		DISCPAGES	Number of pages of hard-copy discovery received (closing info sheet)	CASE
		DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
		DISCVOLUM	Was discovery voluminous in this case? (closing info sheet)	CASE
	Audio discovery production	DISCAUDIO	Number of hours of audio recordings in discovery received (closing info sheet)	CASE
	Video discovery production	DISCVIDEO	Number of hours of video recordings in discovery received (closing info sheet)	CASE
	Discovery produced other than in English	(no information available)		
	Electronic discovery production	(no information available)		
	Format of electronic discovery materials	(no information available)		
	Experts needed to review discovery	(no information available)		
	Ability to access government agency records	(no information available)		
	Prosecutorial attitudes toward cooperation and coordination with defense re discovery	(no information available)		
	Prosecutor restrictions on making copies of discovery	(no information available)		
	Prosecutor restrictions on FDO support staff access	(no information available)		
	Prosecutor attitude and practices regarding open file discovery	DISCRULE16	Was discovery limited to Rule 16 production? (closing info sheet)	CASE
	Q20USAOPEND	Proportion of prosecutors in the district with open file discovery policies	DISTRICT	
Prosecutor attitude and practices regarding discovery production timing	DISCTARDY	Was the discovery production tardy? (closing info sheet)	CASE	

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level	
Discovery, continued		Q21USAWITSTM	Proportion of prosecutors in the district with timely discovery deliverables	DISTRICT	
	Prosecutor attitude and practices regarding pace of discovery production	(no information available)			
	Prosecutorial discovery policies	(no information available)			
	Use of pretrial subpoenas	(no information available)			
	Discovery motion practice	(no information available)			
Sentencing	Judicial receptiveness toward departures and variances	Q19JDGVAR	Proportion of judges in the district receptive to sentencing guideline departures	DISTRICT	
		Q28PCTSEMEMO	District’s percentage of cases with sentencing memoranda	DISTRICT	
		Q29LENSEMEMO	Size of typical sentencing memoranda in the district	DISTRICT	
	Severity of potential sentence		MAXFINE	Most severe fine found in charge file	CASE
			MAXSENT	Most severe sentence found in charge file	CASE
	Severity of imposed sentence		COMMUNITYS	Days of community service ordered	CASE
			DEPARTURE	Was there a departure from the guidelines?	CASE
			INCARCERTOT	Sentence: total months plus days incarceration	CASE
			MONEYTOT	Sentence: total dollars of fines, restitution, and assessments	CASE
			PROBATTOT	Sentence: total months plus days probation	CASE
			SUPERVISTOT	Sentence: total months plus days supervised release	CASE
		Death sentence possible		ANYDEATHELG	Any death penalty–eligible flags in charge file?
			USAGAPPR	Death penalty authorized?	CASE
	USAGDENY		Death penalty denied?	CASE	

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Sentencing, continued		CAPITAL	Capital case? (closing info sheet)	CASE
	Life sentence possible	(no information available)		
	Minimal sentence or minor fine likely	(no information available)		
	Mandatory minimum involved	STATMANMIN	Potential mandatory minimum involved? (closing info sheet)	CASE
		STATMANYRS	Number of years for potential mandatory minimums (closing info sheet)	CASE
	Career offender designation involved	(no information available)		
	Other enhancements possible	STATENHANC	Other potential sentencing enhancements? (closing info sheet)	CASE
	Complex or contested sentencing issues	SENTISSUE	Contested sentencing issues? (closing info sheet)	CASE
	Prosecutorial plea policies	(no information available)		
Office	Secretarial support levels	FTEADMIN	Number of office administrative support staff members (e.g., secretaries, case managers, IT staff) in district	DISTRICT
	Secretarial use practices	(no information available)		
	Experience level of secretarial staff	(no information available)		
	Paralegal support levels	FTEPARAL	Number of paralegals in district	DISTRICT
		FTERATATTYPARAL	Ratio of all FDO attorneys in district to sum of paralegals and all attorneys	DISTRICT
	Paralegal use practices	Q32PARAL	Paralegal practices in this district	DISTRICT
	Experience level of paralegal staff	(no information available)		
	Research and writing specialist support levels	FTERANDW	Number of research and writing specialists in district	DISTRICT
		FTERATATTYRANDW	Ratio of all FDO attorneys in district to sum of research and writing specialists and all attorneys	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Office, continued	Research and writing specialist use practices	Q31RANDW	Research and writing specialist practices in this district	DISTRICT
	Experience level of research and writing specialists staff	(no information available)		
	Investigator support levels	FTEINVES	Number of investigators in district	DISTRICT
		FTERATATTYINVES	Ratio of all FDO attorneys in district to sum of investigators and all attorneys	DISTRICT
	Investigator use practices	(no information available)		
	Experience level of investigator staff	(no information available)		
	Interpreter support levels	FTEINTER	Number of interpreters in district	DISTRICT
	Interpreter use practices	(no information available)		
	Experience level of interpreter staff	(no information available)		
	Informal translation/interpretation resources	Q35TRANSL	Informal translator approaches in this district	DISTRICT
		Q36PCTSPAN	District’s percentage of Spanish-speaking attorneys	DISTRICT
	Nonattorney legal support (paralegals, investigators, R&Ws) levels	FTETOTHELP	Number of nonattorney case support staff members (paralegals, R&Ws, investigators)	DISTRICT
		FTERATATTYHELP	Ratio of all FDO attorneys in district to sum of all case support staff members and all attorneys	DISTRICT
	Nonattorney legal support (paralegals, investigators, R&Ws) practices	Q33MOTPRACT	Staff member motions and briefing assistance practices in this district	DISTRICT
		Q34TRLPREP	Trial exhibit preparation practices in this district	DISTRICT
	Remote access (e.g., BlackBerry devices) to FDO email	(no information available)		
	Quality of computer resources	(no information available)		
	In-house capability for handling electronic evidence	(no information available)		

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level	
Office, continued	Case volume handled by FDO	DISTTOTCS0408	Total cases in this district, FY 2004–FY 2008	DISTRICT	
	Size of FDO staff	FTEOFFICE	Number of all FDO staff members in this district	DISTRICT	
	Size of attorney staff	FTETOTATTYS	Number of all FDO attorneys in this district	DISTRICT	
		FTEATTYS	Number of all nonmanager FDO attorneys in this district	DISTRICT	
		FTEATTYM	Number of all manager FDO attorneys in this district	DISTRICT	
		FTERATATTYOFF	Ratio of all FDO attorneys in this district to all office staff	DISTRICT	
	Attorney supervision/management availability	FTEPCTMGRSTOTATTY	Percentage of manager FDO attorneys in this district to all attorneys	DISTRICT	
	Major case staff diversions	(no information available)			
	Mix of case types handled by FDO		DISTTOTDTH0408	Total death cases in this district, FY 2004–FY 2008	DISTRICT
			DISTTOTAPP0408	Total appeals in this district, FY 2004–FY 2008	DISTRICT
			NUM5YRCR0100	District count FY 2004–FY 2008 for CR0100: Homicide: Murder, First Degree	DISTRICT
			NUM5YRCR1100	District count FY 2004–FY 2008 for CR1100: Robbery: Bank	DISTRICT
			NUM5YRCR4510	District count FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT
		NUM5YRCR4900	District count FY 2004–FY 2008 for CR4900: Fraud: Bankruptcy	DISTRICT	
		NUM5YRCR6701	District count FY 2004–FY 2008 for CR6701: Drug Offenses: Narcotics, Sell, Distribute, or Dispense	DISTRICT	
	NUM5YRCR6801	District count FY 2004–FY 2008 for CR6801: Drug Offenses: Controlled Substance, Sell, Distribute, or Dispense	DISTRICT		

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Office, continued		NUM5YRCR7430	District count FY 2004–FY 2008 for CR7430: Miscellaneous: Racketeering, Extortion	DISTRICT
		NUM5YRCR7440	District count FY 2004–FY 2008 for CR7440: Miscellaneous: Racketeering, Gambling	DISTRICT
		NUM5YRCR7480	District count FY 2004–FY 2008 for CR7480: Miscellaneous: Racketeering	DISTRICT
		NUM5YRCR7481	District count FY 2004–FY 2008 for CR7481: Miscellaneous: Racketeering, Robbery	DISTRICT
		NUM5YRCR7611	District count FY 2004–FY 2008 for CR7611: Miscellaneous: Kidnapping, Hostage	DISTRICT
		NUM5YRCR7820	District count FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT
		NUM5YRCR7830	District count FY 2004–FY 2008 for CR7830: Miscellaneous: Firearms	DISTRICT
		NUM5YRCR8710	District count FY 2004–FY 2008 for CR8710: Miscellaneous: Immigration Laws, Illegal Entry	DISTRICT
		NUM5YRCR8720	District count FY 2004–FY 2008 for CR8720: Miscellaneous: Immigration Laws, Illegal Reentry	DISTRICT
		NUM5YRCR8730	District count FY 2004–FY 2008 for CR8730: Miscellaneous: Immigration Laws, Other	DISTRICT
		NUM5YRCR9741	District count FY 2004–FY 2008 for CR9741: Federal Statute: Energy Facility	DISTRICT
		NUM5YRCR9780	District count FY 2004–FY 2008 for CR9780: Federal Statute: Trading with the Enemy Act	DISTRICT
		NUM5YRCR9901	District count FY 2004–FY 2008 for CR9901: Federal Statute: Civil Rights	DISTRICT
		NUM5YRCR9908	District count FY 2004–FY 2008 for CR9908: Federal Statute: Public Health and Welfare	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Office, continued		NUM5YRCR9929	District count FY 2004–FY 2008 for CR9929: Federal Statute: Labor Laws	DISTRICT
		NUM5YRCR9954	District count FY 2004–FY 2008 for CR9954: Federal Statute: Peonage	DISTRICT
		NUM5YRCR9957	District count FY 2004–FY 2008 for CR9957: Federal Statute: Terrorist Activity	DISTRICT
		NUM5YRCR9994	District count FY 2004–FY 2008 for CR9994: Federal Statute: Explosives (except on vessels)	DISTRICT
		NUM5YRD1	District count FY 2004–FY 2008 for D1: Death Penalty: Habeas Corpus Challenge to State Sentence	DISTRICT
		NUM5YRD2	District count FY 2004–FY 2008 for D2: Death Penalty: Federal Capital Prosecution (and direct appeal)	DISTRICT
		NUM5YRD3	District count FY 2004–FY 2008 for D3: Death Penalty: Motion Attacking Sentence (2255)	DISTRICT
		NUM5YRD4	District count FY 2004–FY 2008 for D4: Death Penalty: Other	DISTRICT
		NUM5YRD5	District count FY 2004–FY 2008 for D5: Death Penalty: Redesignation from D2: No Death Sought by Government	DISTRICT
		NUM5YRAC	District count FY 2004–FY 2008 for AC: Amicus	DISTRICT
		NUM5YRCA	District count FY 2004–FY 2008 for CA: Court of Appeals: Other Matters	DISTRICT
		NUM5YRCK	District count FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
		NUM5YRFAO	District count FY 2004–FY 2008 for FAO: First Appearance Only	DISTRICT
	NUM5YRHC	District count FY 2004–FY 2008 for HC: Habeas Corpus	DISTRICT	

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level	
Office, continued		NUM5YRPO	District count FY 2004–FY 2008 for PO: Petty Offenses	DISTRICT	
		NUM5YRPP	District count FY 2004–FY 2008 for PP: Prepetition	DISTRICT	
		NUM5YRPR	District count FY 2004–FY 2008 for PR: Probation Revocation	DISTRICT	
		NUM5YRSC	District count FY 2004–FY 2008 for SC: Supreme Court: Certiorari Granted	DISTRICT	
		NUM5YRSR	District count FY 2004–FY 2008 for SR: Supervised Release	DISTRICT	
		NUM5YRTD	District count FY 2004–FY 2008 for TD: Court of Appeals: Trial Disposition	DISTRICT	
	FDO trial rate		PCT5YRTRIAL	District percentage of trial representations of sum of trials and pleas, FY 2004–FY 2008	DISTRICT
			PCT5YRTRLGLTY	District percentage of trial verdicts of guilty of all cases, FY 2004–FY 2008	DISTRICT
			PCT5YRTRLINNO	District percentage of trial verdicts of not guilty/acquittal of all cases, FY 2004–FY 2008	DISTRICT
			PCT5YRPLEA	District percentage of guilty or nolo pleas of all cases, FY 2004–FY 2008	DISTRICT
			PCT5YROTHDISP	District percentage of outcomes other than trial or plea of all cases, FY 2004–FY 2008	DISTRICT
			PCT5YRWINS	District percentage of trial verdicts of not guilty/acquittal of all trials, FY 2004–FY 2008	DISTRICT
			NUM5YRTRLGLTY	District count of trial verdicts of guilty, FY 2004–FY 2008	DISTRICT
			NUM5YRTRLINNO	District count of trial verdicts of not guilty/acquittal, FY 2004–FY 2008	DISTRICT
		NUM5YRPLEA	District count of guilty or nolo pleas, FY 2004–FY 2008	DISTRICT	

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Office, continued		NUM5YROTHTDISP	District count of outcomes other than trial or plea, FY 2004–FY 2008	DISTRICT
	CDO versus FPDO	FDOTYPE	Type of FDO (CDO or FPDO)	DISTRICT
	Structure of FDO regarding branches	Q39FDOORG	Branch structure for the FDO in this district	DISTRICT
		Q40CASEDIST	Distribution of caseload by branch for the FDO in this district	DISTRICT
	Structure of FDO regarding multiple district coverage	MGMTTYPE	Multidistrict FDO?	DISTRICT
		OFFICETYPE	Branch of FDO based in another district?	DISTRICT
		Q38OTHDIST	Does the office manage more than one district?	DISTRICT
	CJA panel appointment authority	Q41PANELMGT	CJA panel management approaches	DISTRICT
	CJA panel appointment criteria	Q42PANELALLOC	FDO/CJA panel allocation scheme	DISTRICT
	Preappointment review policy	(no information available)		
	Policy and practices toward intake recordkeeping	(no information available)		
Attorney	Experience of attorney staff generally	Q37ATTYEXP	Perceived experience levels of AFDs in this district	DISTRICT
	Experience of attorney staff with specific case types	DISTPCTDTH0408	Percentage of death cases of all cases in this district, FY 2004–FY 2008	DISTRICT
		DISTPCTAPP0408	Percentage of appeals of all cases in this district, FY 2004–FY 2008	DISTRICT
		PCT5YRCR0100	District percentage of all cases FY 2004–FY 2008 for CR0100: Homicide: Murder, First Degree	DISTRICT
		PCT5YRCR1100	District percentage of all cases FY 2004–FY 2008 for CR1100: Robbery: Bank	DISTRICT
		PCT5YRCR4510	District percentage of all cases FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		PCT5YRCR4900	District percentage of all cases FY 2004–FY 2008 for CR4900: Fraud: Bankruptcy	DISTRICT
		PCT5YRCR6701	District percentage of all cases FY 2004–FY 2008 for CR6701: Drug Offenses: Narcotics, Sell, Distribute, or Dispense	DISTRICT
		PCT5YRCR6801	District percentage of all cases FY 2004–FY 2008 for CR6801: Drug Offenses: Controlled Substance, Sell, Distribute, or Dispense	DISTRICT
		PCT5YRCR7430	District percentage of all cases FY 2004–FY 2008 for CR7430: Miscellaneous: Racketeering, Extortion	DISTRICT
		PCT5YRCR7440	District percentage of all cases FY 2004–FY 2008 for CR7440: Miscellaneous: Racketeering, Gambling	DISTRICT
		PCT5YRCR7480	District percentage of all cases FY 2004–FY 2008 for CR7480: Miscellaneous: Racketeering	DISTRICT
		PCT5YRCR7481	District percentage of all cases FY 2004–FY 2008 for CR7481: Miscellaneous: Racketeering, Robbery	DISTRICT
		PCT5YRCR7611	District percentage of all cases FY 2004–FY 2008 for CR7611: Miscellaneous: Kidnapping, Hostage	DISTRICT
		PCT5YRCR7820	District percentage of all cases FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT
		PCT5YRCR7830	District percentage of all cases FY 2004–FY 2008 for CR7830: Miscellaneous: Firearms	DISTRICT
		PCT5YRCR8710	District percentage of all cases FY 2004–FY 2008 for CR8710: Miscellaneous: Immigration Laws, Illegal Entry	DISTRICT
		PCT5YRCR8720	District percentage of all cases FY 2004–FY 2008 for CR8720: Miscellaneous: Immigration Laws, Illegal Reentry	DISTRICT
		PCT5YRCR8730	District percentage of all cases FY 2004–FY 2008 for CR8730: Miscellaneous: Immigration Laws, Other	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		PCT5YRCR9741	District percentage of all cases FY 2004–FY 2008 for CR9741: Federal Statute: Energy Facility	DISTRICT
		PCT5YRCR9780	District percentage of all cases FY 2004–FY 2008 for CR9780: Federal Statute: Trading with the Enemy Act	DISTRICT
		PCT5YRCR9901	District percentage of all cases FY 2004–FY 2008 for CR9901: Federal Statute: Civil Rights	DISTRICT
		PCT5YRCR9908	District percentage of all cases FY 2004–FY 2008 for CR9908: Federal Statute: Public Health and Welfare	DISTRICT
		PCT5YRCR9929	District percentage of all cases FY 2004–FY 2008 for CR9929: Federal Statute: Labor Laws	DISTRICT
		PCT5YRCR9954	District percentage of all cases FY 2004–FY 2008 for CR9954: Federal Statute: Peonage	DISTRICT
		PCT5YRCR9957	District percentage of all cases FY 2004–FY 2008 for CR9957: Federal Statute: Terrorist Activity	DISTRICT
		PCT5YRCR9994	District percentage of all cases FY 2004–FY 2008 for CR9994: Federal Statute: Explosives (except on vessels)	DISTRICT
		PCT5YRD1	District percentage of all cases FY 2004–FY 2008 for D1: Death Penalty: Habeas Corpus Challenge to state sentence	DISTRICT
		PCT5YRD2	District percentage of all cases FY 2004–FY 2008 for D2: Death Penalty: Federal Capital Prosecution (and direct appeal)	DISTRICT
		PCT5YRD3	District percentage of all cases FY 2004–FY 2008 for D3: Death Penalty: Motion Attacking Sentence (2255)	DISTRICT
		PCT5YRD4	District percentage of all cases FY 2004–FY 2008 for D4: Death Penalty: Other	DISTRICT
		PCT5YRD5	District percentage of all cases FY 2004–FY 2008 for D5: Death Penalty: Redesignation from D2: No Death Sought by Government	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		PCT5YRAC	District percentage of all cases FY 2004–FY 2008 for AC: Amicus	DISTRICT
		PCT5YRCA	District percentage of all cases FY 2004–FY 2008 for CA: Court of Appeals: Other Matters	DISTRICT
		PCT5YRCK	District percentage of all cases FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
		PCT5YRFAO	District percentage of all cases FY 2004–FY 2008 for FAO: First Appearance Only	DISTRICT
		PCT5YRHC	District percentage of all cases FY 2004–FY 2008 for HC: Habeas Corpus	DISTRICT
		PCT5YRPO	District percentage of all cases FY 2004–FY 2008 for PO: Petty Offenses	DISTRICT
		PCT5YRPP	District percentage of all cases FY 2004–FY 2008 for PP: Prepetition	DISTRICT
		PCT5YRPR	District percentage of all cases FY 2004–FY 2008 for PR: Probation Revocation	DISTRICT
		PCT5YRSC	District percentage of all cases FY 2004–FY 2008 for SC: Supreme Court: Certiorari Granted	DISTRICT
		PCT5YRSR	District percentage of all cases FY 2004–FY 2008 for SR: Supervised Release	DISTRICT
		PCT5YRTD	District percentage of all cases FY 2004–FY 2008 for TD: Court of Appeals: Trial Disposition	DISTRICT
Attorney workload levels		CPATOT0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for total cases	DISTRICT
		CPADTH0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for all deaths	DISTRICT
		CPAAPP0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for all appeals	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		CPA5YRCR0100	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR0100: Homicide: Murder, First Degree	DISTRICT
		CPA5YRCR1100	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR1100: Robbery: Bank	DISTRICT
		CPA5YRCR4510	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT
		CPA5YRCR4900	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR4900: Fraud: Bankruptcy	DISTRICT
		CPA5YRCR6701	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR6701: Drug Offenses: Narcotics, Sell, Distribute, or Dispense	DISTRICT
		CPA5YRCR6801	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR6801: Drug Offenses: Controlled Substance, Sell, Distribute, or Dispense	DISTRICT
		CPA5YRCR7430	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7430: Miscellaneous: Racketeering, Extortion	DISTRICT
		CPA5YRCR7440	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7440: Miscellaneous: Racketeering, Gambling	DISTRICT
		CPA5YRCR7480	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7480: Miscellaneous: Racketeering	DISTRICT
		CPA5YRCR7481	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7481: Miscellaneous: Racketeering, Robbery	DISTRICT
		CPA5YRCR7611	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7611: Miscellaneous: Kidnapping, Hostage	DISTRICT
		CPA5YRCR7820	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		CPA5YRCR7830	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7830: Miscellaneous: Firearms	DISTRICT
		CPA5YRCR8710	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8710: Miscellaneous: Immigration Laws, Illegal Entry	DISTRICT
		CPA5YRCR8720	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8720: Miscellaneous: Immigration Laws, Illegal Reentry	DISTRICT
		CPA5YRCR8730	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8730: Miscellaneous: Immigration Laws, Other	DISTRICT
		CPA5YRCR9741	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9741: Federal Statute: Energy Facility	DISTRICT
		CPA5YRCR9780	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9780: Federal Statute: Trading with the Enemy Act	DISTRICT
		CPA5YRCR9901	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9901: Federal Statute: Civil Rights	DISTRICT
		CPA5YRCR9908	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9908: Federal Statute: Public Health and Welfare	DISTRICT
		CPA5YRCR9929	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9929: Federal Statute: Labor Laws	DISTRICT
		CPA5YRCR9954	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9954: Federal Statute: Peonage	DISTRICT
		CPA5YRCR9957	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9957: Federal Statute: Terrorist Activity	DISTRICT
		CPA5YRCR9994	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9994: Federal Statute: Explosives (except on vessels)	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		CPA5YRD1	Cases per FDO attorney in this district, FY 2004–FY 2008 for D1: Death Penalty: Habeas Corpus Challenge to state sentence	DISTRICT
		CPA5YRD2	Cases per FDO attorney in this district, FY 2004–FY 2008 for D2: Death Penalty: Federal Capital Prosecution (and direct appeal)	DISTRICT
		CPA5YRD3	Cases per FDO attorney in this district, FY 2004–FY 2008 for D3: Death Penalty: Motion Attacking Sentence (2255)	DISTRICT
		CPA5YRD4	Cases per FDO attorney in this district, FY 2004–FY 2008 for D4: Death Penalty: Other	DISTRICT
		CPA5YRD5	Cases per FDO attorney in this district, FY 2004–FY 2008 for D5: Death Penalty: Redesignation from D2: No Death Sought by Government	DISTRICT
		CPA5YRAC	Cases per FDO attorney in this district, FY 2004–FY 2008 for AC: Amicus	DISTRICT
		CPA5YRCA	Cases per FDO attorney in this district, FY 2004–FY 2008 for CA: Court of Appeals: Other Matters	DISTRICT
		CPA5YRCK	Cases per FDO attorney in this district, FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
		CPA5YRFAO	Cases per FDO attorney in this district, FY 2004–FY 2008 for FAO: First Appearance Only	DISTRICT
		CPA5YRHC	Cases per FDO attorney in this district, FY 2004–FY 2008 for HC: Habeas Corpus	DISTRICT
		CPA5YRPO	Cases per FDO attorney in this district, FY 2004–FY 2008 for PO: Petty Offenses	DISTRICT
		CPA5YRPP	Cases per FDO attorney in this district, FY 2004–FY 2008 for PP: Prepetition	DISTRICT
		CPA5YRPR	Cases per FDO attorney in this district, FY 2004–FY 2008 for PR: Probation Revocation	DISTRICT

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
Attorney, continued		CPA5YRSC	Cases per FDO attorney in this district, FY 2004–FY 2008 for SC: Supreme Court: Certiorari Granted	DISTRICT
		CPA5YRSR	Cases per FDO attorney in this district, FY 2004–FY 2008 for SR: Supervised Release	DISTRICT
		CPA5YRTD	Cases per FDO attorney in this district, FY 2004–FY 2008 for TD: Court of Appeals: Trial Disposition	DISTRICT
District	Practice of attacking original entry conviction or citizenship issues	(no information available)		
	Availability of diversion programs	(no information available)		
	Community attitudes toward law enforcement officers, activities, prosecutions	(no information available)		
	Availability of mass transit for in-office meetings with clients	(no information available)		
	Seasonal weather issues (e.g., severe winters, summer hurricanes)	(no information available)		
	Geographical size	(represented by questions related to detention and court location)		
	Population density	(represented by questions related to detention and court location)		
	Rural versus urban environments	(no information available)		
	Transportation issues for attorneys	(no information available)		
	Effectiveness of state public defender system	(no information available)		
Circuit court of appeals for this district	CIRCUIT	Circuit in which this judicial district sits	DISTRICT	
State in which the district is located	(location other than district excluded)			

Table 3.4—Continued

Type	Factor	Variable Name	Meaning	Level
District, continued	CJA panel caseload size and percentage of financially eligible clients in district	PANELREPSCT	Percentage of panel appointments of all financially eligible appointments in this district, FY 2004–FY 2008	DISTRICT
Appeal specific	FDO practices and preference toward appealing adverse outcomes	Q43AppealS	Approaches used to handle appeals in this district	DISTRICT
		Q44COLDREC	Approaches used to handle cold record appeals in this district	DISTRICT
		Q30NONCAPHAB	Does the office do noncapital habeas?	DISTRICT
	Length of record from lower court proceedings	(no information available)		
	Granting of oral argument	(no information available)		
	Petition for rehearing or for stay of mandate made	(no information available)		
	Petition for certiorari made	(no information available)		
	Number of issues raised in appeal	(no information available)		
	Situs of the circuit court of appeal	(no information available)		
	State-level counsel for noncapital habeas petitioner	(no information available)		
	Age of original case in noncapital habeas petition	(no information available)		
	Length of record in original case in noncapital habeas petition	(no information available)		
	Evidentiary hearing granted in noncapital habeas case	(no information available)		
	Number of issues in noncapital habeas case	(no information available)		
Need for investigation in noncapital habeas case	(no information available)			

NOTE: IT = information technology.

(here, the amount of case-related attorney time) and covariates of mixed type (e.g., continuous, binary, categorical, ordinal, or interval). GBM is especially useful when, as is the case with the current work, the number of possible covariates to be tested is very large, and there is insufficient information available to select a much smaller set, as would be required with more-traditional techniques. Although we suspect that certain factors mentioned to us are likely to have greater influence on attorney time than others might have, there is no empirical literature or other independent basis available for us to confidently drop large numbers of factors without additional testing. GBM provides a useful and efficient tool to weed through these hundreds of influences in order to identify the most promising.²²

We used three different analytical approaches for the data. The first uses a general model, examining the overall effect of each covariate on case-related attorney time, and calculates their relative influence value (RIV). The relative influence is the percentage of explainable variation in attorney time that is attributable to a variable's inclusion in the model. Covariates with larger RIVs are those that have the most information in explaining the variation in the amount of attorney time needed. The model looks at the individual values of each covariate to make an RIV determination for its overall effect. For example, the 90 different values in our district variable (DISTCASE) and the 284 different values for our case-type variable (CASETYPEMOD) would be examined, assigning a single RIV to each of the two covariates. By comparing RIVs, those variables in the database with the greatest impact on attorney time can be identified.

It should be noted that a higher RIV does not imply an association with increased time expenditures—only that the variable is more helpful than others in explaining time generally. If, for example, the analysis data contained a variable called AGE representing the client's age in years, and the variable was found to have a very high RIV, it is not necessarily true that older clients are associated with greater time expenditures. The direction of the association might be in the opposite direction. More generally, GBM allows for nonlinear relationships, yet still the RIV describes the strength of AGE's association with time expenditure. Moreover, categorical variables (such as CIRCUIT, with only 12 possible values) with high RIVs might have some values associated with increased time (for example, the First, Third, and Fifth Circuits), some associated with decreased time (e.g., the Second, Fourth, and Sixth), and all others without any measurable association.

The general model identifies which variables appear to have the greatest influence on attorney time but does not help us understand what specific values for such variables are most influential. For example, a variable that describes the manner in which the case was resolved might be found to have a high RIV in a general model analysis, but knowing this tells us nothing about which type of disposition (e.g., a plea of guilty or a verdict following a jury trial) best

²² GBM can be applied to most-common forms of error distributions, such as Gaussian, binomial, or Poisson. Because our dependent variable (case-related attorney time) is continuous and we wished to model the effects on average attorney time, we selected a Gaussian model. Unlike models constructed based on narrowly drawn hypotheses, data-mining techniques often include all or most available covariates, making model validation especially important. A standard validation approach is to divide the data into "training" and "testing" data sets. Models are first fitted to the training data and then used to predict the testing data. This procedure also prevents model overfitting, in which models are tuned to fit the training data but predict testing data poorly. In particular, cross-validation, which was used as the validation approach in our work, first splits the data into several equal-size subsets. Then, each subset served as training data separately while the rest serve as the testing data. In our analysis, we performed a tenfold cross-validation with the data divided into ten subsets. See, e.g., Ridgeway, 1999; Friedman, 2001; and Hastie, Tibshirani, and Friedman, 2009.

explains the relationship to attorney time expenditures. Thus, our second approach uses an individual-level model. This model tests the individual effect of different covariate categories. For example, each of the 284 case types in CASEYPEMOD would be broken out as part of our RIV testing. With all variables included, our individual-level models analyzed more than 1,100 different values.

The third approach uses an interaction model. This model tests the relative influence of various combinations of variables (both categorical and continuous) between two covariates.²³ Although the main analytical model we employed was the general model described above, we included an interaction model in order to eliminate the possibility that any particular combination of factors would have an unexpectedly large influence on case-related attorney time even if their individual RIVs were relatively low. Interaction models greatly increase the complexity of the analysis. If, for example, only CASEYPEMOD and DISTCASE were being tested, the 284 case types and the 90 case locations would be combined (i.e., interacted) to form 284 by 90 combinations (e.g., CR0100 at district A, CR0100 at district B, CR0101 at district A, CR0101 at district B), resulting in a total of 25,560 interactions of possible interest and ultimately producing a single RIV for each CASEYPEMOD + DISTCASE pairing. With 280 variables subject to testing, there are 39,340 possible pairings and therefore 39,340 different RIVs.

Analysis

General Model Results

All Cases. As can be seen in Table 3.5, the most important factor influencing case-related attorney time is the CMS-assigned case type, at least when all cases from all districts over the entire five-year study period are considered together. The RIV for the variable CASEYPEMOD is 47.1, implying that 47.1 percent of the model's predictive capability depends on the case type. A relative influence of 47.1 is more than twice the size of the next-highest covariate. This is a significant result because it is strong evidence that a case-weight system based on case type makes sense if the dependent variable of interest is case-related attorney time.

The next-highest RIV is that for DISPOSCODE, a CMS-generated code for the disposition of the client matter. There are 109 possible levels for this variable, with such outcomes as whether the case resulted in a verdict of guilty at a trial conducted by a magistrate judge, a dismissal of the indictment, a Rule 5 transfer, a reversal of the underlying conviction subsequent to a defendant's appeal, a terminated probation, the granting of a writ of habeas corpus, counsel being waived by the defendant, a prisoner transfer, or a drug court graduation. Many of the possible values map directly into certain case types but not others (for example, the outcomes that involve circuit court decisions would be associated only with CMS case-type codes for appeals). The RIV for case type would already absorb the effect of circuit court decisions, so

²³ Continuous variables are ones that can have an infinite number of values within an interval. For example, a variable representing the percentage of non-English-speaking clients would be continuous, with such values as 0.4 percent, 25 percent, and 72.456 percent. When interacting a continuous variable with another continuous variable, the interaction term will be the product of two continuous-variable values. When interacting a continuous variable with categorical variables, for example, a 0/1 indicator variable, the interaction consists a mixture of zero values for records with the 0 indicator variable value and continuous values for records with the 1 indicator variable value.

Table 3.5
General Model Test: All Cases, All Analysis Covariates, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	47.14	CASEYPEMOD	Case type from CMS, corrected	CASE
2	19.70	DISPOSCODE	Case disposition code in CMS, original	CASE
3	13.16	DISTCASE	District where the case was active	CASE
4	7.04	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
5	5.31	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
6	1.56	DISCVOLUM	Was discovery voluminous in this case? (closing info sheet)	CASE
7	1.51	COMPMOTION	Complex motions in case? (closing info sheet)	CASE
8	1.41	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
9	0.79	CAPITAL	Capital case? (closing info sheet)	CASE
10	0.77	DISCPAGES	Number of pages of hard-copy discovery received (closing info sheet)	CASE
11	0.34	Q13Q12VALMAINJAIL	Proxy used for relative time consumed for traveling to clients at the main detention facility in the district	DISTRICT
12	0.20	Q14TIMEFARJAIL	Estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district	DISTRICT
13	0.19	CPATOT0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for total cases	DISTRICT
14	0.17	Q06PCTMENT	District’s percentage of clients with mental health or substance-abuse issues	DISTRICT
15	0.13	MAXFINE	Most severe fine found in charge file	CASE
16	0.13	CPA5YRCR8730	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8730: Miscellaneous: Immigration Laws, Other	DISTRICT
17	0.12	Q36PCTSPAN	District’s percentage of Spanish-speaking attorneys	DISTRICT
18	0.11	NUMINTER	Number of witness interviews (closing info sheet)	CASE
19	0.09	COCOUNSEL	Co-counsel involved?	CASE
20	0.06	NOVELISSUE	Novel issues in case? (closing info sheet)	CASE

the magnitude of the disposition code suggests a strong effect in addition to case type. Other modeling work discussed below explores this question further.

The third most important factor, at least in terms of RIV for all cases taken together, is the district where the case was located (DISTCASE), with 13 percent of the variation in time can be explained by the district where the case took place. The RIV for DISTCASE is nearly twice the size of the next-highest variable. The fact that district looms so large in this analysis lends considerable credence to the oft-mentioned comment from our interviewees and respon-

dents that every district differs in terms of its unique local legal culture, clientele, resources, and other criteria:

The major factors likely involve the culture surrounding the practice in each individual district. The clients may differ, the judges do differ and the policy employed by each U.S. Attorney differs.

As this survey appears to recognize, there are differences, district to district, which have an immense impact on the time needed to provide effective representation. The policies and practices of the local U.S. Attorneys office, and those of the court/individual judges—not to mention the culture and norms of the district—sometimes make it seem as though we are not all doing the same work.

It is important to note that no district-level covariate comes close to DISTCASE (which is a case-level covariate) in terms of relative influence. Although we have tried to populate our database with fields addressing many of the location-specific factors mentioned by our contacts, none appears to be the sole explanation for why FDO attorneys believe that “districts are different.” What is more likely is that there is some unique combination of district-level characteristics driving attorney time expenditures rather than just a few important factors that would allow the various offices across the country to be easily categorized and perhaps treated differently for the purposes of generating case weights.

One should view RIVs as relative indicators of explanatory value, not as absolute measures of association. There is nothing magical about an RIV of a certain size; our only interest here is in understanding how one variable compares to other in regard to the degree of influence it might have on attorney time expenditures.

Type of case, the manner in which the client matter was concluded, and the location of the case take on even greater importance in explaining attorney time when the seven covariates with the next-highest RIVs are examined. As indicated in the “Meaning” column in Table 3.5, the original source for the information contained in the variables DISCBOXES (number of boxes of hard-copy discovery received), DISCTRANS (number of pages of transcripts in discovery received), DISCVOLUM (was discovery voluminous in this case?), COMPMOTION (complex motions in case?), EXPERTSERV (expert services required in case?), CAPITAL (capital case?), and DISCPAGES (number of pages of hard-copy discovery received) was the folder-jacket information sheet used to record particularly notable events and features of a case at the time the matter was concluded. From what we were told during our familiarization visit interviews, we are not confident that FDO attorneys across the system approach the task of flagging these items with the same degree of enthusiasm or employ the same criteria for making their subjective assessments about, for example, the complexity of the motions in the case or whether discovery was especially voluminous. Our interviews suggested that attorneys who have completed a case with a large number of total hours might be more likely to make note of such things as the number of boxes of discovery they were required to review than they might in representations involving fewer hours within the same case-type category. We suspect that the frequency of “false positives” (instances in which questions, such as whether the discovery was particularly voluminous, are answered in the affirmative when, in fact, most FDO attorneys would disagree with the assessment) is low. On the other hand, the frequency of “false negatives” (instances in which a box should have been checked but was not) is likely to be high. The

false-negative problem could explain the high RIVs for these seven variables. If attorneys are motivated to answer questions about discovery volume (i.e., number of boxes or pages or hours of recordings) primarily when the production is especially large (with a corresponding impact on attorney time) but mostly ignore those same questions when the case progressed in a more typical manner, then any indications of discovery size at all will be associated with cases with greater numbers of attorney hours.²⁴ The same might be true for the question as to whether the client spoke English. Attorneys with considerable experience in border-state jurisdictions and a Spanish-speaking clientele might never check the box unless some particularly difficult aspect of the case arose, such as difficulties in finding an interpreter for Nahuatl or Huichol. As such, we believe that high RIVs for CMS variables based on the internal case data sheet need to be carefully assessed. It is certainly possible that the number of boxes of discovery received, for example, is an extremely important driver of attorney time (our interviews and surveys suggest that this is indeed the case), but whether it is as important as its RIV in Table 3.5 would indicate is not quite clear.

It would not be a surprise to many of our interviewees and respondents that two variables related to detention-facility travel and wait times were ones with the next-highest RIVs. Q13Q12VALMAINJAIL is a proxy variable we created to capture the impact that visits to the main detention facility in the district could have on an office's overall caseload. It uses information from the Federal Public Defender/Chief Community Defender survey's question 12 (estimated time needed to travel and complete a one-hour client interview at the main facility) and question 13 (estimated percentage of clients at that same facility) to rank the districts by what is more or less the product of time and percentage. Districts with both relatively long travel and waiting times and a relatively large proportion of clients at the facility would have the highest value for this variable. Somewhat less influential was the variable Q14TIMEFARJAIL (estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district). It should be noted that we included waiting time as part of our inquiry into detention facilities because of comments we received suggesting that, for many jail visits, travel time might be relatively modest compared to time wasted while waiting for the client to be finally brought to the meeting room.

CLPA (CPATOT0408, based on a five-year total) was also identified as having a greater influence on average attorney time than many other proposed factors. The underlying relationship driving this association is not clear. One explanation could be that attorneys are unable to spend as much time on individual cases as they would have had they had been assigned lower caseloads. But it is possible that the association is being driven by districts where very large numbers of cases are moved through the system quickly. Another explanation might be that we are seeing the effects of large blocks of cases processed through expedited procedures, such as en masse appearances in immigration matters; in such hearings, magistrate judges explain the charges filed to dozens of defendants simultaneously, read the defendants their rights, accept any guilty pleas, and sentence them.²⁵ Our assumption is that only minimal attorney

²⁴ Although there might be specific instructions given to newly arrived FDO attorneys in this regard, the correct protocol for answering the questions on this form is not obvious to the casual observer. For example, the question seeking information about the number of transcript pages follows a higher-level question asking whether the discovery was voluminous. It might not be clear to all FDO attorneys whether the transcript question should be answered only if discovery production was considered to be especially large.

²⁵ See, e.g., Williams, 2008.

time would be expended for such cases, at least compared to similar matters elsewhere with a more traditional procedural approach. One variable that had a somewhat smaller RIV was CPA5YRCR8730, representing cases per FDO attorney for CMS case-type code CR8730, which covers charges involving illegal reentries following removal under 8 U.S.C. § 1326(a)(1), including those with enhanced penalties under 8 U.S.C. § 1326(b)(2) for reentry after removal subsequent to a conviction for an aggravated felony. Our understanding of practices in districts with heavy caseloads triggered by Operation Streamline is that many defendants with prior removals are charged with one count of illegal reentry under 8 U.S.C. § 1326 and a second and less serious count of improper entry into the United States by an alien under 8 U.S.C. § 1325. CMS would pick up the more severe reentry charge when defining case type even though many defendants would plead guilty to the lesser misdemeanor illegal entry in exchange for having the felony charge dismissed.

The proportion of a district's client base who have either mental health or substance-abuse issues adversely affecting the delivery of legal services (Q06PCTMENT) was also found to have a higher level of association with attorney time than the majority of other variables we tested. Ignoring a few internal case data sheet–derived variables because of concerns about false negatives, similar RIVs were present for the most severe potential fine among the charges filed against a defendant (MAXFINE), the district's percentage of Spanish-speaking FDO attorneys (Q36PCTSPAN), and whether co-counsel was involved (COCOUNSEL).

Table 3.5 shows only the 20 highest variables in terms of RIV. The reason we do not set forth the entire list here is that GBMs are primarily designed to identify the most-important explanatory covariates, resulting in zero or near-zero RIV for those judged to be of lesser value in explaining dependent variables. It makes little sense, for example, to compare a covariate with a ranking of number 50 with one with a ranking of 250 if both were found to have negligible influence on attorney time, at least for all cases examined together. A complete list of variables with their relative rankings for this run was provided to ODS under separate cover.

One way to “drill down” deeper into large numbers of covariates would be to drop some variables from our analysis that are so highly correlated with attorney time that they might be obscuring what is taking place with other factors of interest. We felt that leaving out DISTCASE (district) on a second run would help expand the list of covariates with some measurable amount of influence (see Table 3.6). As before, only a limited number of covariates with nonzero RIVs is included in the table in this chapter, with a complete list provided to ODS under separate cover.

One side effect of GBM is that covariates that are highly correlated with those with a high RIV have their own RIVs “suppressed” somewhat. An example of this involves the federal circuit for the district where the case was litigated (CIRCUIT). In the initial run represented by Table 3.5, CIRCUIT did not make the top 25 RIV rankings. When DISTCASE was removed, however, it became the ninth most important covariate. The reason is that CIRCUIT is highly correlated with DISTCASE (each district is matched up with one and only of the 12 regional federal circuits), resulting in a suppressed RIV in the first run. In the second, the real influence of CIRCUIT can be seen, though the reasons behind the apparent relationship are not obvious. It is possible that intercircuit variation in applicable case law might be at work here, but it is also possible that CIRCUIT is acting as a proxy either for the considerable district effect described above or for some sort of geographical difference (such as a possible concentration of immigration cases in the Ninth and Fifth Circuits).

Table 3.6
General Model Test: All Cases, All Analysis Covariates Except DISTCASE, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	49.59	CASEYPEMOD	Case type from CMS, corrected	CASE
2	20.73	DISPOSCODE	Case disposition code in CMS, original	CASE
3	7.20	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
4	5.39	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
5	3.40	NUM5YRCK	District count FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
6	1.89	NUM5YRCR6801	District count FY 2004–FY 2008 for CR6801: Drug Offenses: Controlled Substance, Sell, Distribute, or Dispense	DISTRICT
7	1.71	COMPMOTION	Complex motions in case? (closing info sheet)	CASE
8	1.58	DISCVOLUM	Was discovery voluminous in this case? (closing info sheet)	CASE
9	1.42	CIRCUIT	Circuit in which this judicial district sits	DISTRICT
10	1.36	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
11	0.77	CPA5YRCK	Cases per FDO attorney in this district, FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
12	0.77	DISCPAGES	Number of pages of hard-copy discovery received (closing info sheet)	CASE
13	0.63	CPA5YRCR7480	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7480: Miscellaneous: Racketeering	DISTRICT
14	0.42	Q14TIMEFARJAIL	Estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district	DISTRICT
15	0.33	NUM5YROTHDISP	District count of outcomes other than trial or plea, FY 2004–FY 2008	DISTRICT
16	0.33	NUM5YRCR4900	District count FY 2004–FY 2008 for CR4900: Fraud: Bankruptcy	DISTRICT
17	0.27	Q09PCTSTAT	District's percentage of clients with potential of a significant statutory or guideline enhancement	DISTRICT
18	0.24	FTERATATTYHELP	Ratio of all FDO attorneys in district to sum of all case support staff members and all attorneys	DISTRICT
19	0.23	PCT5YRCA	District percentage of all cases FY 2004–FY 2008 for CA: Court of Appeals: Other Matters	DISTRICT
20	0.19	Q16PCT3HRJAIL	District's percentage of clients at remote detention facilities	DISTRICT

In any event, the type of case (CASEYPEMOD) and the method of disposition (DISPOSCODE) continue to be the two most-important covariates. Other than internal case data sheet variables, the total number of cases in a district involving the retroactive application of the crack-cocaine amendments (NUM5YRCK), the total number of CR6801 drug offenses (NUM5YRCR6801), and the five-year case counts per attorney for crack-amendment matters

(CPA5YRCK) all resulted in high relative ranks. An examination of Table 3.6 reveals that the number of covariates with nonzero RIVs nearly doubled compared to the previous run with DISTCASE, but the overwhelming takeaway from this table is that CASETYPEMOD (and, to a much lesser extent, DISPOSCODE) continues to dominate the rankings.

Cases by Representation Category. The categories used in CMS to classify the case-related work performed by FDO attorneys can be roughly divided up into three groups: (1) those identifying representations directly related to criminal charges brought in federal district court, (2) those identifying representations related to appeals at all levels, and (3) those identifying all other types of representations, such as probation revocations or supervised-release matters. In actuality, these three broad groupings are artificial ones with somewhat blurred divisions. For example, the case-type categories FAO (First Appearance Only) and BP (Bail/Presentment) fall under the “other type of representations” group, but, in fact, the work performed in conjunction with an initial appearance or setting bail is indeed related to district court criminal prosecutions. Nevertheless, dividing CMS case types into these three groups (criminal representations, or “offenses,” as we refer to them in this chapter, appeals, and other representations) is a commonly employed way of viewing the representations of federal defenders.²⁶ In terms of caseloads, offenses comprise 65 percent of all cases handled by FDO attorneys, appeals make up another 5 percent, and other representations account for the remaining 30 percent.²⁷ In terms of time, however, offenses account for three-quarters of reported attorney case-related hours, with the other two groupings splitting the residual one-quarter.

We wanted to know whether the factors described to us as important influences varied in that importance depending on whether the cases of interest fell within one of these three groups. For example, whether a client spoke only Spanish might well play a significant role in the amount of time spent on a case by an FDO attorney as he or she prepared to take the matter to trial. But would language have as significant an impact on the work conducted by an FDO attorney who is involved solely with filing and arguing an appeal on behalf of that same client? In the same vein, the identity of the circuit court with jurisdiction over the district where the appeal originates might well be an important driver of attorney time due to local rules and practices, even though that same factor might have negligible impact on the effort in other types of representation.²⁸

Offenses. Given that case types falling into the offense-related category make up such a large proportion of systemwide caseload in terms of case counts and total attorney time, it would not be surprising to see that the general model test for just these types of cases (see Table 3.7) more or less mirrors what we saw in Table 3.5: Case type is clearly the most important driver, with disposition method and district following in second and third places, respectively (a more complete listing was provided to ODS under separate cover). Various internal

²⁶ See, e.g., the table titled “Revised Criminal Justice Act Forecast—2009” in Golmant, 2009.

²⁷ This group consists of all CR case-types codes (for example, CR4950 Social Security fraud cases), D1 through D6 death penalty cases, PO petty offenses, and SS state statute matters.

²⁸ In addition, some of the factors we include in this analysis arise from what was marked on the internal case data sheet described at the beginning of this chapter. The primary focus of the check boxes on that sheet appears to be on factors found primarily in direct criminal prosecutions, ones that were believed to have some time or resource ramifications. As a result, several of the check-box factors have no relevance whatsoever to other types or stages of representations (e.g., the number of boxes of discovery in a case at the appellate stage). Conducting our analysis in a way that divides the caseload into offenses, appeals, and other representations groupings should help provide additional clarity to these issues.

Table 3.7
General Model Test: Offenses Only, All Analysis Covariates, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	43.12	CASEYPEMOD	Case type from CMS, corrected	CASE
2	18.12	DISPOSCODE	Case disposition code in CMS, original	CASE
3	16.97	DISTCASE	District where the case was active	CASE
4	7.77	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
5	6.17	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
6	2.00	COMPMOTION	Complex motions in case? (closing info sheet)	CASE
7	1.40	DISCVOLUM	Was discovery voluminous in this case? (closing info sheet)	CASE
8	0.91	CAPITAL	Capital case? (closing info sheet)	CASE
9	0.85	DISCPAGES	Number of pages of hard-copy discovery received (closing info sheet)	CASE
10	0.84	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
11	0.33	Q14TIMEFARJAIL	Estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district	DISTRICT
12	0.32	INCARCERTOT	Sentence: total months plus days incarceration	CASE
13	0.25	NOVELISSUE	Novel issues in case? (closing info sheet)	CASE
14	0.23	NUMINTER	Number of witness interviews (closing info sheet)	CASE
15	0.17	Q06PCTMENT	District's percentage of clients with mental health or substance-abuse issues	DISTRICT
16	0.13	REMINTER	Remote interviews required in case? (closing info sheet)	CASE
17	0.11	DETAINED	Was client detained? (closing info sheet)	CASE
18	0.10	Q16PCT3HRJAIL	District's percentage of clients at remote detention facilities	DISTRICT
19	0.10	DISPOSEDESC	Case disposition code in CMS, descriptive	CASE
20	0.10	DISCAUDIO	Number of hours of audio recordings in discovery received (closing info sheet)	CASE

case data sheet–related variables follow, but, other than in regard to covariates arising from that particular source, the RIVs for the remainder of our analysis data set are quite small.

Dropping DISTCASE from the analysis does not affect the high relative rankings of case type and disposition method (see Table 3.8; the more complete version was provided to ODS under separate cover). The district's total number of crack-cocaine amendment cases (NUM5YRCK) now ranks higher while the number of CLPA cases, CPA5YRCK, is not quite as important. Some variables that address some other commonly mentioned factors, such as the availability of Spanish-speaking attorneys, prosecutorial preferences for seeking enhancements, appellate circuit, and investigatorial resources, move up through the rankings, though they are not as influential as the specific type of case or the manner in which it was resolved.

Table 3.8
General Model Test: Offenses Only, All Analysis Covariates Except DISTCASE, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	43.37	CASEYPEMOD	Case type from CMS, corrected	CASE
2	19.59	DISPOSCODE	Case disposition code in CMS, original	CASE
3	8.12	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
4	6.53	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
5	6.16	NUM5YRCK	District count FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
6	2.08	COMPMOTION	Complex motions in case? (closing info sheet)	CASE
7	1.95	NUM5YR6801	District count FY 2004–FY 2008 for CR6801: Drug Offenses: Controlled Substance, Sell, Distribute, or Dispense	DISTRICT
8	1.54	DISCVOLUM	Was discovery voluminous in this case? (closing info sheet)	CASE
9	1.30	CAPITAL	Capital case? (closing info sheet)	CASE
10	1.25	DISCPAGES	Number of pages of hard-copy discovery received (closing info sheet)	CASE
11	0.94	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
12	0.67	Q36PCTSPAN	District's percentage of Spanish-speaking attorneys	DISTRICT
13	0.64	CPA5YRCK	Cases per FDO attorney in this district, FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
14	0.60	Q09PCTSTAT	District's percentage of clients with potential of a significant statutory or guideline enhancement	DISTRICT
15	0.49	CIRCUIT	Circuit in which this judicial district sits	DISTRICT
16	0.46	FTERATATTYINVES	Ratio of all FDO attorneys in district to sum of investigators and all attorneys	DISTRICT
17	0.41	NOVELISSUE	Novel issues in case? (closing info sheet)	CASE
18	0.41	INCARCERTOT	Sentence: total months plus days incarceration	CASE
19	0.37	NUMINTER	Number of witness interviews (closing info sheet)	CASE
20	0.34	Q43Appeals	Approaches used to handle appeals in this district	DISTRICT

Appeals. The importance of location is strongly felt in these cases, with DISTCASE receiving an RIV of more than 50, twice as much as the next-highest covariate (see Table 3.9 for the top 20 rankings; the complete table was provided to ODS under separate cover). One possibility is that the mix of appeal types in a district is the primary driver but that, in fact, CASEYPEMOD has an RIV that is less than one-quarter the size of that of DISTCASE. It is also possible that DISTCASE is acting as a substitute for CIRCUIT, a covariate that one might expect to be related to appellate workload. For the first time, the influence of the size of the

Table 3.9
General Model Test: Appeals Only, All Analysis Covariates, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	51.03	DISTCASE	District where the case was active	CASE
2	25.53	DISPOSCODE	Case disposition code in CMS, original	CASE
3	11.83	CASETYPEMOD	Case type from CMS, corrected	CASE
4	5.41	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
5	1.04	PCTTOTUSAALL	District percentage USAO attorneys (all types) of sum of same and all FDO attorneys	DISTRICT
6	0.98	AIRTIME	Air time required to visit client (closing info sheet)	CASE
7	0.90	USATOTATTYS	Number of USAO attorneys (all types) in the district	DISTRICT
8	0.89	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
9	0.76	Q18Q17VALFARCT	Proxy used for relative time consumed for traveling and appearing to the most time-consuming court division	DISTRICT
10	0.36	NOVELISSUE	Novel issues in case? (closing info sheet)	CASE
11	0.34	DISPOSCAT01	Case disposition code in CMS, grouping 1	CASE
12	0.28	MAXSENT	Most severe sentence found in charge file	CASE
13	0.13	CLIENTCNT	Number of counts against this client, main case record information only (closing info sheet)	CASE
14	0.13	MAXFINE	Most severe fine found in charge file	CASE
15	0.08	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
16	0.07	ROADMILES	Road miles required to visit client (closing info sheet)	CASE
17	0.04	DISCPAGES	Number of pages of hard-copy discovery received (closing info sheet)	CASE
18	0.03	Q21USAWITSTM	Proportion of prosecutors in the district with timely discovery deliverables	DISTRICT
19	0.03	Q13PCTMAINJAIL	District's percentage of clients at the main detention facility	DISTRICT
20	0.02	Q15Q14VALFARJAIL	Proxy used for relative time consumed for traveling to clients at the most time-consuming detention facility in the district	DISTRICT

corresponding USAO moves up the rankings via a couple of covariates (PCTTOTUSAALL and USATOTATTYS), though the RIVs are comparatively small.

When DISTCASE is dropped from the appeals-only model, the importance of the identity of the circuit court becomes apparent (Table 3.10 contains the top 20 rankings; a more complete table was provided to ODS under separate cover). The RIV for CIRCUIT is nearly the same as the one for CASETYPEMOD. The size of the USAO, both in absolute terms and in comparison to the attorney staff levels at the FDO, also appears to be a significant factor when appeals are examined. Although one can easily hypothesize what role CPAAPP0408 (number of appeals per attorney over five years) might play in influencing attorney time, it is

Table 3.10
General Model Test: Appeals Only, All Analysis Covariates Except DISTCASE, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	25.97	DISPOSCODE	Case disposition code in CMS, original	CASE
2	9.41	CASETYPEMOD	Case type from CMS, corrected	CASE
3	8.46	CIRCUIT	Circuit in which this judicial district sits	DISTRICT
4	6.66	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
5	5.61	USATOTATTYS	Number of USAO attorneys (all types) in the district	DISTRICT
6	4.77	PCTTOTUSAALL	District percentage USAO attorneys (all types) of sum of same and all FDO attorneys	DISTRICT
7	4.44	CPAAPP0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for all appeals	DISTRICT
8	3.36	CPA5YRCR7830	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7830: Miscellaneous: Firearms	DISTRICT
9	2.98	CPA5YRCR4510	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT
10	2.73	CPA5YRCR7820	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT
11	1.87	CPATOT0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for total cases	DISTRICT
12	1.18	CPA5YRD4	Cases per FDO attorney in this district, FY 2004–FY 2008 for D4: Death Penalty: Other	DISTRICT
13	1.17	Q14TIMEFARJAIL	Estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district	DISTRICT
14	1.01	Q18Q17VALFARCT	Proxy used for relative time consumed for traveling and appearing to the most time-consuming court division	DISTRICT
15	0.99	AIRTIME	Air time required to visit client (closing info sheet)	CASE
16	0.93	DISPOSCAT01	Case disposition code in CMS, grouping 1	CASE
17	0.91	Q12TIMEMAINJAIL	Estimated time needed to travel and complete a one-hour interview at the most commonly used detention facility in the district	DISTRICT
18	0.88	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
19	0.82	NUM5YRTRLINNO	District count of trial verdicts of not guilty/acquittal, FY 2004–FY 2008	DISTRICT
20	0.81	NUM5YRCR4510	District count FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT

harder to understand why similar CLPA measures for CMS case types of CR7830 (Firearms), CR4510 (Income Tax Evasion), or CR7820 (Firearms, Unlawful Possession) would have any association with time spent in an appeal without additional information about such cases. Nevertheless, a relationship does exist, though review of the marginal effects suggests that

more immigration cases per attorney in the office is associated with less time on appeals, while the reverse is observed for the income-tax offenses.²⁹

Other Representations. These miscellaneous types of client matters (i.e., cases classified by CMS neither as representations directly related to criminal charges brought in federal district court nor as representations related to appeals) make up one area in which case type does not appear to be one of the most-influential covariates we tested (Table 3.11 sets forth the top 20 variables; a more complete table was provided to ODS under separate cover). When we controlled for just this broad category of CMS cases, DISTCASE and DISPOSCODE were once again the top-ranked variables, but the specific case type was less influential than the absolute number of USAO attorneys assigned to the office's criminal division (USACRMATTYS). To a much lesser extent, the size of the criminal division relative to the size of the FDO's attorney staff also appears to be important.

When DISTCASE is dropped, the relative influence of the size of the USAO's criminal division increases, and, in fact, the absolute measure is more than twice as large as the case disposition variable (Table 3.12 presents the top 20 rankings; a more complete table was provided to ODS under separate cover). The reason for the strong association between USAO size and "other" representations requiring more attorney time is unclear.³⁰

Individual-Level Model Results

We next examined the individual effects of the discrete values for each of the categorical covariates. For example, instead of testing the overall influence of a variable representing case location against that of a variable representing case outcome, each of the individual districts and each of the individual case disposition possibilities (such as a trial or a guilty plea) were compared.³¹ A total of 1,113 separate elements were tested.

In order to enhance the efficiency of the testing, the individual model was based on 200,000 randomly chosen samples. The results are represented by Table 3.13 for the top 100 rankings (a table with the complete set of 1,113 levels was provided to ODS under separate cover). By a considerable margin, a CMS case-type code indicating a federal capital prosecution (CASEYPEMOD = D2) was the most influential individual covariate in these tests, with an RIV that is more than twice the size that for the continuous variable representing the internal case data sheet entry for the number of boxes of discovery (DISCBOXES). Whether the case was tried by a district court judge was the next most influential categorical variable value (TRIALCAT01 = 2), followed by another categorical variable value for whether the case resulted in an outcome other than a trial or guilty plea (including nolo contendere). Other influential factors include whether the case included a charge other than one involving

²⁹ Marginal-effect calculations measure the expected change in a dependent variable as a function of change in an explanatory variable, keeping other covariates constant. Our GBM modeling only identifies the covariates with the greatest relative influence on attorney time. Examination of marginal effects tells us in which direction that influence is pushing (e.g., as discovery volume increases, so does the total number of attorney hours).

³⁰ Two possible explanations for this apparent association were advanced by one interviewee. The first was that, in the smallest USAO locations, there is a greater reliance on outside prosecutors, such as those associated with military bases and other federal institutions. In larger offices, full-time AUSAs have these responsibilities. Another explanation suggested was that larger offices with bigger staff are more likely to prosecute relatively complex matters, which might require more-intensive FDO representation for such tasks as witness representations, consultations, and probation revocations.

³¹ Continuous variables were also included in this analysis but were treated the same way as in the general model tests.

Table 3.11
General Model Test: Other Representations Only, All Analysis Covariates, Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	36.07	DISTCASE	District where the case was active	CASE
2	22.40	DISPOSCODE	Case disposition code in CMS, original	CASE
3	12.06	USACRMATTYS	Number of USAO attorneys (criminal only) in the district	DISTRICT
4	11.66	CASETYPEMOD	Case type from CMS, corrected	CASE
5	5.17	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
6	3.44	PCTCRMUSAALL	District percentage USAO attorneys (criminal only) of sum of same and all FDO attorneys	DISTRICT
7	2.87	CAPITAL	Capital case? (closing info sheet)	CASE
8	1.32	CLIENTCNT	Number of counts against this client, main case record information only (closing info sheet)	CASE
9	0.87	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
10	0.63	DISPOSCAT01	Case disposition code in CMS, grouping 1	CASE
11	0.48	EXPERTSERV	Expert services required in case? (closing info sheet)	CASE
12	0.44	COMPMOTION	Complex motions in case? (closing info sheet)	CASE
13	0.25	MONEYTOT	Sentence: total dollars of fines, restitution, and assessments	CASE
14	0.18	PCT5YRSR	District percentage of all cases FY 2004–FY 2008 for SR: Supervised Release	DISTRICT
15	0.14	DETAINED	Was client detained? (closing info sheet)	CASE
16	0.14	Q16PCT3HRJAIL	District's percentage of clients at remote detention facilities	DISTRICT
17	0.14	NUMINTER	Number of witness interviews (closing info sheet)	CASE
18	0.12	CPA5YRSR	Cases per FDO attorney in this district, FY 2004–FY 2008 for SR: Supervised Release	DISTRICT
19	0.12	Q14TIMEFARJAIL	Estimated time needed to travel and complete a one-hour interview at the most time-consuming detention facility in the district	DISTRICT
20	0.11	Q28PCTSENTMEMO	District's percentage of cases with sentencing memoranda	DISTRICT

a property crime (ANYPROPCRM = no), the internal case data sheet variable for total counts (TOTALCOUNT), and the CLPA for death penalty (D4) cases (CPA5YRD4).

Because individual district values did not result in a high ranking in the testing represented by Table 3.13, there was no need to do a parallel test with DISTCASE dropped.

Interaction Model Results

We performed extensive testing using an interaction model, but none of the factor pairings (i.e., two-way combinations of individual variable values) appeared to have any increased influ-

Table 3.12
General Model Test: Other Representations Only, All Analysis Covariates Except DISTCASE,
Top 20 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	38.05	USACRMATTYS	Number of USAO attorneys (criminal only) in the district	DISTRICT
2	16.47	DISPOSCODE	Case disposition code in CMS, original	CASE
3	10.66	PCTCRMUSAALL	District percentage USAO attorneys (criminal only) of sum of same and all FDO attorneys	DISTRICT
4	7.67	CASETYPEMOD	Case type from CMS, corrected	CASE
5	3.92	CAPITAL	Capital case? (closing info sheet)	CASE
6	3.30	DISCBOXES	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
7	2.15	CPA5YRCR7440	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7440: Miscellaneous: Racketeering, Gambling	DISTRICT
8	1.72	PCT5YRPO	District percentage of all cases FY 2004–FY 2008 for PO: Petty Offenses	DISTRICT
9	1.27	NUM5YRCR9957	District count FY 2004–FY 2008 for CR9957: Federal Statute: Terrorist Activity	DISTRICT
10	1.21	CLIENTCNT	Number of counts against this client, main case record information only (closing info sheet)	CASE
11	0.74	USATOTATTYS	Number of USAO attorneys (all types) in the district	DISTRICT
12	0.73	DISCTRANS	Number of pages of transcripts in discovery received (closing info sheet)	CASE
13	0.65	NUM5YRCR7820	District count FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT
14	0.65	FTEOFFICE	Number of all FDO staff members in this district	DISTRICT
15	0.61	FTEATTYM	Number of all manager FDO attorneys in this district	DISTRICT
16	0.61	CPATOT0408	Cases per FDO attorney in this district, FY 2004–FY 2008 for total cases	DISTRICT
17	0.56	CPA5YRSR	Cases per FDO attorney in this district, FY 2004–FY 2008 for SR: Supervised Release	DISTRICT
18	0.56	CPA5YRSC	Cases per FDO attorney in this district, FY 2004–FY 2008 for SC: Supreme Court: Certiorari Granted	DISTRICT
19	0.46	DISPOSCAT01	Case disposition code in CMS, grouping 1	CASE
20	0.43	PCT5YRSR	District percentage of all cases FY 2004–FY 2008 for SR: Supervised Release	DISTRICT

Table 3.13
Individual Model Test: All Cases, All Analysis Covariates, Top 100 Rankings

Rank	RIV	Variable Name	Meaning	Level
1	19.47	CASETYPEMOD = D2 (Death Penalty: Federal Capital Prosecution [and Direct Appeal])	Case type from CMS, corrected	CASE

Table 3.13—Continued

Rank	RIV	Variable Name	Meaning	Level
2	7.15	DISCBOXES (all)	Number of boxes of hard-copy discovery received (closing info sheet)	CASE
3	5.91	TRIALCAT01 = 02: Trial by District Judge to Verdict	Trial outcomes from case disposition code in CMS, grouping 1	CASE
4	5.53	TRIALCAT03 = 05: No Trial to Verdict or Guilty/Nolo Plea	Trial outcomes from case disposition code in CMS, grouping 3	CASE
5	4.85	ANYPROPCRM = N	Any charge in charge file involving crime against property?	CASE
6	3.15	TOTALCOUNT (all)	Total number of counts, main case record information only (closing info sheet)	CASE
7	3.08	CPA5YRD4 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for D4: Death Penalty: Other	DISTRICT
8	2.11	Q19JDGVAR = C	Proportion of judges in the district receptive to sentencing guideline departures	DISTRICT
9	2.00	DISCPAGES (all)	Number of pages of hard-copy discovery received (closing info sheet)	CASE
10	1.86	TRIALCAT03 = 04: Guilty/Nolo Plea in District Court	Trial outcomes from case disposition code in CMS, grouping 3	CASE
11	1.77	DISCTRANS (all)	Number of pages of transcripts in discovery received (closing info sheet)	CASE
12	1.41	PANELREPSPT (all)	Percentage of panel appointments of all financially eligible appointments in this district, FY 2004–FY 2008	DISTRICT
13	1.34	DISCVOLUM (all)	Was discovery voluminous in this case? (closing info sheet)	CASE
14	1.32	INCARCERTOT (all)	Sentence: total months plus days incarceration	CASE
15	1.31	EXPERTSERV (all)	Expert services required in case? (closing info sheet)	CASE
16	1.30	COMPMOTION (all)	Complex motions in case? (closing info sheet)	CASE
17	1.25	CPA5YRPR (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for PR: Probation Revocation	DISTRICT
18	1.25	ANYDEATHELG = Y	Any death penalty–eligible flags in charge file?	CASE
19	1.18	ANYPERSCRM = Y	Any charge in charge file involving crime against person?	CASE
20	1.15	CPA5YRCR7820 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT

Table 3.13—Continued

Rank	RIV	Variable Name	Meaning	Level
21	1.08	NUM5YRCR7820 (all)	District count FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT
22	1.06	CLIENTCNT (all)	Number of counts against this client, main case record information only (closing info sheet)	CASE
23	1.01	NUMINTER (all)	Number of witness interviews (closing info sheet)	CASE
24	0.97	MAXSENT = 9	Most severe sentence found in charge file	CASE
25	0.95	MAXFINE = 9	Most severe fine found in charge file	CASE
26	0.91	DISCAUDIO (all)	Number of hours of audio recordings in discovery received (closing info sheet)	CASE
27	0.90	ANYTURPCRM = N	Any charge in charge file involving crime against morality?	CASE
28	0.89	NUM5YRTRLGLTY (all)	District count of trial verdicts of guilty, FY 2004–FY 2008	DISTRICT
29	0.89	FTERATATTYHELP (all)	Ratio of all FDO attorneys in district to sum of all case support staff members and all attorneys	DISTRICT
30	0.83	DISPOSCODE = 203	Case disposition code in CMS, original	CASE
31	0.74	CPAAPP0408 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for all appeals	DISTRICT
32	0.72	CPATOT0408 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for total cases	DISTRICT
33	0.70	PCT5YRTRIAL (all)	District percentage of trial representations of sum of trials and pleas, FY 2004–FY 2008	DISTRICT
34	0.64	ANYFELONY (all)	Any charge in charge file involving felony charges (based on listed statutes)?	CASE
35	0.62	DISTTOTDTH0408 (all)	Total death cases in this district, FY 2004–FY 2008	DISTRICT
36	0.61	FTERATATTYOFF (all)	Ratio of all FDO attorneys in this district to all office staff	DISTRICT
37	0.53	CPA5YRCR8730 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8730: Miscellaneous: Immigration Laws, Other	DISTRICT
38	0.52	PCT5YRTRLGLTY (all)	District percentage of trial verdicts of guilty of all cases, FY 2004–FY 2008	DISTRICT
39	0.48	PCT5YRTRLINNO (all)	District percentage of trial verdicts of not guilty/acquittal of all cases, FY 2004–FY 2008	DISTRICT
40	0.48	CPA5YRHC (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for HC: Habeas Corpus	DISTRICT
41	0.47	NOVELISSUE (all)	Novel issues in case? (closing info sheet)	CASE

Table 3.13—Continued

Rank	RIV	Variable Name	Meaning	Level
42	0.45	NUM5YRTRLINNO (all)	District count of trial verdicts of not guilty/acquittal, FY 2004–FY 2008	DISTRICT
43	0.42	NUM5YRCA (all)	District count FY 2004–FY 2008 for CA: Court of Appeals: Other Matters	DISTRICT
44	0.41	DISPOSCAT01 = 15: Appeal by Client: Affirmed	Case disposition code in CMS, grouping 1	CASE
45	0.40	Q09PCTSTAT = E	District's percentage of clients with potential of a significant statutory or guideline enhancement	DISTRICT
46	0.37	CASETPEMOD = CR9994	Case type from CMS, corrected	CASE
47	0.37	CPA5YRCR8720 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8720: Miscellaneous: Immigration Laws, Illegal Reentry	DISTRICT
48	0.36	PCT5YRPR (all)	District percentage of all cases FY 2004–FY 2008 for PR: Probation Revocation	DISTRICT
49	0.36	PCT5YRCR8720 (all)	District percentage of all cases FY 2004–FY 2008 for CR8720: Miscellaneous: Immigration Laws, Illegal Reentry	DISTRICT
50	0.34	DISPOSCODE = 201	Case disposition code in CMS, original	CASE
51	0.34	DISTPCTAPP0408 (all)	Percentage of appeals of all cases in this district, FY 2004–FY 2008	DISTRICT
52	0.34	ANCILLARY (all)	Ancillary proceedings held in case? (closing info sheet)	CASE
53	0.33	PCT5YRCR9901 (all)	District percentage of all cases FY 2004–FY 2008 for CR9901: Federal Statute: Civil Rights	DISTRICT
54	0.31	MONEYTOT (all)	Sentence: total dollars of fines, restitution, and assessments	CASE
55	0.31	RICO (all)	Did case include RICO count? (closing info sheet)	CASE
56	0.30	CPA5YRTD (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for TD: Court of Appeals: Trial Disposition	DISTRICT
57	0.30	NUM5YRTD (all)	District count FY 2004–FY 2008 for TD: Court of Appeals: Trial Disposition	DISTRICT
58	0.27	COUNTTOT (all)	Total counts in charge files	CASE
59	0.27	PCT5YRD2 (all)	District percentage of all cases FY 2004–FY 2008 for D2: Death Penalty: Federal Capital Prosecution (and direct appeal)	DISTRICT
60	0.26	CPA5YRPO (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for PO: Petty Offenses	DISTRICT
61	0.26	CPA5YRCK (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT

Table 3.13—Continued

Rank	RIV	Variable Name	Meaning	Level
62	0.25	CPA5YRD2 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for D2: Death Penalty: Federal Capital Prosecution (and direct appeal)	DISTRICT
63	0.25	SPECIALLAW (all)	Charges related to special law enforcement initiative? (closing info sheet)	CASE
64	0.25	CPA5YRCR7830 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR7830: Miscellaneous: Firearms	DISTRICT
65	0.24	CASETYPEMOD = CR0100	Case type from CMS, corrected	CASE
66	0.23	NUM5YRCK (all)	District count FY 2004–FY 2008 for CK: Crack Cocaine Retroactive Amendment	DISTRICT
67	0.23	DISTPCTDTH0408 (all)	Percentage of death cases of all cases in this district, FY 2004–FY 2008	DISTRICT
68	0.23	Q36PCTSPAN = C	District's percentage of Spanish-speaking attorneys	DISTRICT
69	0.22	NUM5YROTHDISP (all)	District count of outcomes other than trial or plea, FY 2004–FY 2008	DISTRICT
70	0.22	CPA5YRCR9901 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR9901: Federal Statute: Civil Rights	DISTRICT
71	0.21	VISITS (all)	Number of client visits (closing info sheet)	CASE
72	0.21	CASETYPEMOD = CA	Case type from CMS, corrected	CASE
73	0.19	PCT5YRHC (all)	District percentage of all cases FY 2004–FY 2008 for HC: Habeas Corpus	DISTRICT
74	0.19	FTEINVES (all)	Number of investigators in district	DISTRICT
75	0.19	NUM5YRCR6701 (all)	District count FY 2004–FY 2008 for CR6701: Drug Offenses: Narcotics, Sell, Distribute, or Dispense	DISTRICT
76	0.18	PCT5YRCR4510 (all)	District percentage of all cases FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT
77	0.18	Q07PCTEVAL = D	District's percentage of cases with mental health evaluation	DISTRICT
78	0.17	Q29LENSEMENTMEMO = C	Size of typical sentencing memoranda in the district	DISTRICT
79	0.17	NUM5YRPLEA (all)	District count of guilty or nolo pleas, FY 2004–FY 2008	DISTRICT
80	0.16	Q15Q14VALFARJAIL (all)	Proxy used for relative time consumed for traveling to clients at the most time-consuming detention facility in the district	DISTRICT
81	0.16	FTETOTHELP (all)	Number of nonattorney case support staff members (paralegals, R&Ws, investigators)	DISTRICT

Table 3.13—Continued

Rank	RIV	Variable Name	Meaning	Level
82	0.16	NUM5YRCR7830 (all)	District count FY 2004–FY 2008 for CR7830: Miscellaneous: Firearms	DISTRICT
83	0.15	PCT5YRPLEA (all)	District percentage of guilty or nolo pleas of all cases, FY 2004–FY 2008	DISTRICT
84	0.15	CPA5YRCR8710 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR8710: Miscellaneous: Immigration Laws, Illegal Entry	DISTRICT
85	0.14	NUM5YRPR (all)	District count FY 2004–FY 2008 for PR: Probation Revocation	DISTRICT
86	0.14	DISPOSCAT01 = 27: Habeas Corpus: Denied	Case disposition code in CMS, grouping 1	CASE
87	0.14	PCT5YRCR7820 (all)	District percentage of all cases FY 2004–FY 2008 for CR7820: Miscellaneous: Firearms, Unlawful Possession	DISTRICT
88	0.14	Q18Q17VALFARCT (all)	Proxy used for relative time consumed for traveling and appearing to the most time-consuming court division	DISTRICT
89	0.14	FTEPCTMGRSTOTATTY (all)	Percentage of manager FDO attorneys in this district to all attorneys	DISTRICT
90	0.13	Q13PCTMAINJAIL = D	District's percentage of clients at the main detention facility	DISTRICT
91	0.13	CPADTH0408 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for all deaths	DISTRICT
92	0.12	CPA5YRCR1100 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR1100: Robbery: Bank	DISTRICT
93	0.12	PCTCRMUSAALL (all)	District percentage USAO attorneys (criminal only) of sum of same and all FDO attorneys	DISTRICT
94	0.11	ANYDEATHELG = N	Any death penalty–eligible flags in charge file?	CASE
95	0.11	CPA5YRCR4510 (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CR4510: Fraud: Income Tax, Evade or Defeat	DISTRICT
96	0.11	CPA5YRCA (all)	Cases per FDO attorney in this district, FY 2004–FY 2008 for CA: Court of Appeals: Other Matters	DISTRICT
97	0.11	PCT5YRTD (all)	District percentage of all cases FY 2004–FY 2008 for TD: Court of Appeals: Trial Disposition	DISTRICT
98	0.11	DISTJUDGES (all)	Number of district judges in this district	DISTRICT
99	0.11	PCT5YRWINS (all)	District percentage of trial verdicts of not guilty/acquittal of all trials, FY 2004–FY 2008	DISTRICT
100	0.10	REMINTER (all)	Remote interviews required in case? (closing info sheet)	CASE

ence. Interaction modeling identifies additional changes in dependent variable values for combinations of two covariates, compared to their individual main effects. For example, assume that variables for case type and whether a case goes to trial have high RIVs when tested separately, but zero RIV when tested as a pair. The lack of interaction effects suggests that cases that go to trial take an additional amount of attorney time, but the amount of additional time does not vary across case types, at least not by a large enough amount to substantially improve our estimates of average attorney time. It is plausible that attorney time does vary across case types for cases that go to trial, but other factors in the analysis, such as measures of the volume of discovery, are surrogate predictors of those differences, masking the more direct link between trials and attorney time because they are so strongly associated with trial dispositions. Since none of the pairs appeared to be more influential than their components, we rely primarily on the results of the general and individual modeling for our analysis.

Conclusions

Top Influences

What does all this mean? First, our analysis indicates that, of the factors we were able to test, the CMS case type, the district, and the specific disposition of the case are the three identifiable factors with the greatest impact on workload. Variables that speak to some aspect of these three areas were at or close to the top rankings in terms of relative influence value in most of the model tests described above. The term *impact* here might be misleading, suggesting as it does that any one of these three factors in and of itself causes a case to require more (or less, depending on the value of the variable) attorney time than others. However, we can say with confidence, based on the data we have, that the presence of these factors is associated with attorney time in some way. For example, cases that ultimately result in a trial might well require significantly more attorney time, on average, than those with other outcomes. What we cannot say is whether the increased average is the direct result of a trial being held or the cumulative result of all other events and influences in the case that ultimately led the matter proceeding to trial. For example, the seeking of a particularly severe mandatory-minimum sentence at the time of case initiation might have set in motion a course for trial with minimal likelihood of a plea agreement, which would be associated with significant increases in the time needed for defense investigation, motions, and trial preparation over the following months, with the trial proceeding itself contributing only a few days of additional attorney effort. Ultimately, such explanations constitute only informed guesses as to possible causation. The association is clearly there, even if the reasons for that association remain unclear.

The same caution applies to the apparent influence of the location where the case was handled. In our model, the variable that captures location describes the federal court district, a concept that can be geographical, jurisdictional, judicial, demographical, cultural, and organizational in nature. Our analysis strongly suggests that district in and of itself is highly influential on average attorney time, but the specific reason (or set of reasons) that this is true cannot be easily identified. When we removed DISTCASE (district) from follow-up analysis, there were no district-level factors that consistently exhibited similarly high RIVs across different cuts of the data. There were, however, a few general categories of factors that appeared to play a role in certain instances. One is the circuit in which an appeal has been brought (CIRCUIT), perhaps not a surprise to any attorney who handles a lot of appellate work, but, as is the case

with the more nuanced DISTCASE factor, CIRCUIT might be capturing something that is not directly tied to controlling appellate authority or the local rules of the circuit court.

One intriguing factor category that moved up in the rankings when DISTCASE was removed was the size of the USAO, in absolute and relative (to the FDO) terms, when the cases involved client matters other than those directly related to criminal prosecutions (e.g., matters involving probation revocations). Why USAO size makes a difference here is not clear. Attorney staff levels at the USAO were certainly cited by individual interviewees as important drivers behind an FDO's entire caseload. Those levels were often discussed in regard to the comparative advantage enjoyed by resource-rich USAOs in the adversarial process (the lack of parity in resources between the FDOs and the prosecution was an oft-mentioned concern during our interviews). But how these assertions would translate into influences on average time spent on a case by an FDO attorney was not made clear. Examination of the marginal effects (see p. 117) of prosecutorial office size suggests that, as absolute USAO size increases, the averages for attorney time spent on FDO cases involving "other" representations decrease. In contrast, as size relative to FDO staff levels increases, averages for attorney time increase as well. Beyond circuit and USAO size, no other district-level factors stand out as universally important influences on time. In other words, given any limitations in our analysis data set, there is no single reason we can discern for districts differing in attorney time expenditures at the individual case level.³²

So how should this district effect be interpreted? There are four aspects that should be kept firmly in mind here. First, there is no question that we were unable to capture every nuance of every possible influence mentioned to us by our interviewees and respondents. We have no information, for example, as to whether prosecutors in a district typically make their best plea offers early on in a case or wait until trial is imminent, the latter preference asserted to require a considerably greater FDO attorney time investment, even though the ultimate outcome might be unaffected. Second, some of the variables we do have might well be imperfect representations of actual circumstances at the district level. For example, we would have much preferred to have consistently reported information about travel time consumed in individual cases in addition to the Federal Public Defender's or Chief Community Defender's estimate of typical travel time in the district, which might or might not apply in any particular case. After hearing the repeated assertions of our interviewees and respondents regarding this factor, we were somewhat surprised that district travel did not test higher, which might reflect problems in the way we captured the information. Third, though we believe we have conducted a very comprehensive canvassing of FDO attorney opinion on the subject, the list in Table 3.2 might nevertheless be missing some important factors. And finally, the possibility exists that districts differ systematically in the way the attorneys in those locations approach their timekeeping duties. If true, recorded time for cases of a certain type in one district might differ markedly from those of the same type in another, even if actual expenditures were similar. That being said, our site visits and additional attorney interviews suggest that there is more variation in

³² It should be kept in mind that our analysis attempted to look across all locations to identify influences on individual cases that might help explain time expenditures throughout the FDO system. It might well be that a factor tested can have a negligible RIV but nevertheless be responsible for turning ordinary cases into highly complex and resource-intensive ones. This can result when a factor occurs only very rarely or is of importance in only a few locations. Identifying what that particular factor might be in any one office might well be best accomplished through a mix of qualitative methodologies (such as in-depth interviews or focus groups) at the locations in question in conjunction with a more focused analysis of TKS and CMS data.

timekeeping practices within offices than there is between offices as a whole. Moreover, easily observable interoffice distinctions in local legal cultures and physical environments (such as the travel times between an FDO's main office and the most-commonly visited courthouses and detention facilities or the manner in which illegal-entry defendants are processed) make systematic differences in timekeeping practices an unlikely primary explanation for the profound district effect we observed.

The bottom line is that district matters, more so than any other non-case-type factor we tested, though the exact reason might not be discernible. Case outcome is important, but it simply helps explain why individual client matters can vary from one another in regard to attorney time needs. Had we been able to consistently identify specific district-level factors of similar influence, it might have been possible to control for district characteristics when developing case weights. However, as described in Chapter Four, we did explore this issue by taking into account a factor reflecting how much more or less time cases require in each district compared to the overall average in one set of proposed case weights.

Secondary Influences

Besides case type, district (and circuit when district is removed from the analysis), outcome (especially those matters that result in district court trials), and, to some degree, variables related to USAO staff levels (in other representations and appeals), discovery-volume variables consistently yielded high RIVs in our testing. The number of boxes of hard-copy discovery and the number of transcript pages were associated with recorded attorney time, a not-very-surprising finding, perhaps, and one that might be exaggerated because of the way the information was tracked. Still, it is difficult to ignore the results of the analysis, given the links between discovery size and time also mentioned by numerous interviewees and respondents.

Other factors that appeared to influence attorney time, in no particular order, included the overall caseload in a district related to crack-cocaine retroactive amendment cases, whether a case involved alleged crimes other than those against property, the district's unweighted CLPA, whether the case involved a capital offense, the number of CR7830 and CR7820 fire-arm cases per attorney, the total number of counts in the case, the number of D4 death-penalty cases per attorney, the number of CR4510 income-tax fraud cases per attorney, the number of CR7440 racketeering/gambling cases per attorney, the degree to which judges in the district are perceived to be receptive to guideline departures, the number of CR6801 drug sale/distribution cases per attorney, whether the matter resulted in guilty or nolo pleas in district court, sentence length, whether the attorney noted that there were complex motions or expert services required, attorney indications of discovery volume (including the number of boxes, pages, or transcripts), and estimated travel and waiting time for remote detention facilities and remote court locations.

Limitations in the Approach

Our approach here was designed to catalog a comprehensive set of possible workload factors and identify those appearing to have the greatest influence on reported attorney time across all cases. We were not interested in determining whether any specific factor that was suggested to us was without measurable influence. There are two reasons that we chose this approach. First, we have no independent basis to doubt the thoughtful observations of our interviewees and respondents in regard to what they perceive to have increased the time needed to defend clients in the past. Their reported experiences are the most-important evidence available that cases

can differ in meaningful ways affecting attorney resource needs, ways that might be observed in only a handful of instances. In contrast, our testing was intended to look for broader trends and influences, identifying those factors that might consistently affect a sizable portion of an FDO's caseload. We might not be able to confirm, for example, whether the presence of child witnesses in a case indeed increases attorney workload generally, but we have to assume that it has happened at least once in the careers of the attorneys describing this situation to us.

Second, we are not confident that all of our analysis variables are accurate reflections of the factors they attempt to measure. The obvious problem with using district-level proxies for case-level characteristics, such as mental health status, is but one concern in this regard; internal case data sheet check boxes and subjective survey questions are just a few of the others. We believe that variables with high RIVs are indeed indicators of especially important factors but that those with low or zero values might simply be the result of data or analysis errors.

A cursory review of Table 3.4 will quickly reveal many gaps in our analysis data set, with such areas as client attitude and probation-officer practices being just a few of the factors we were unable to quantify successfully. Nevertheless, we are confident that the modeling supports our key assumptions that case-related attorney time, on average, is strongly related to the CMS case-type category assigned to the client matter and that the district where the case resides is perhaps the second most notable influence. In the next chapter, we explore how these associations might be used to develop a set of functional case weights.

Case Weights Based on National Hours of Attorney Time Per Case Type

Introduction

The primary goal of this project was to develop a functional set of case weights based on the national average number of attorney hours recorded by case type. The calculation of what are known as *absolute* (or *raw*) case weights is actually straightforward:

$$average_i = \frac{totaltime_i}{N_i}.$$

$totaltime_i$ is the total number of attorney hours recorded in TKS for case type i , and N_i is the number of cases of type i . We then normalize the absolute case weights so that they average 1.0, thus converting them into relative case weights, a more appropriate form for the intended purposes of this project:

$$caseweight_i = \frac{average_i}{\left(\frac{sum(average_i \times N_i)}{sumN_i} \right)}.$$

As one attorney we interviewed put it succinctly (though perhaps not enthusiastically), “case weights are just an exercise in arithmetic.” Although that might be true, very real difficulties lie in developing relative case weights that are functional, both in how they reflect the actual experiences of defenders in the field and in how they perform as a useful tool for assisting in the estimation of FDO staffing and workload requirements. Four particularly important threshold issues involve case-type categories, size of the case-weight calculation sample, outlier effects, and district variations, any of which can adversely affect how truly functional the case weights might be for their intended purposes. Each issue is discussed in this chapter.

Case-Type Categories

The first issue involved the question of whether to use all existing CMS case types when developing case weights or to collapse the codes into a smaller number of categories. The latter approach was attractive primarily because it would simplify tables and graphic displays both in the instant report and in future ODS publications. One commonly employed scheme involves

the use of a two-digit offense code rather than CMS's full four-digit format. In such an abbreviated set, for example, "CR87" would include all cases with CMS immigration offense codes CR8710, CR8720, CR8730, CR8731, CR8740, and CR8750. Our concern was that doing so might merge important client-matter types (at least from the standpoint of average attorney time consumed) with more-modest ones, thus obscuring trends that could affect resource needs. Another approach considered would reorganize the CMS code set not only by subject matter but by time consumption levels as well, collapsing client-matter codes into coarse groups with unified themes (e.g., violent crimes, appeals, financial crimes, homicides, intake activities, post-conviction matters) and then form data-driven clusters within each group based on time consumption, such as collecting all with individual case weights greater than 5.0, those between 2.0 and 5.0, between 0.5 and 2.0, and so on. One issue here is that the clustering rules would change when ODS updates any future set of case weights, thus making comparisons over time problematic. Another concern for any collapsing involving subject matter is that the criteria for doing so would be best developed by consensus among ODS administrators and FDO staff, and not chosen by an outside entity, such as RAND. In the end, we decided that going with the full set of 284 individual codes observed during the study period made the most sense, especially because doing so provides ODS the raw material needed to go with a more streamlined set in the future if it so chooses.¹

Analysis Period

The second major issue involved the number of years of data to include in the case-weight analysis. The extract we received from ODS covered all cases closed between FY 2004 and FY 2008. We originally considered an approach that would have used a subset of those years for calculations of case weights for most case-type categories (perhaps the last two or three years' worth of data) in order to reflect what is currently taking place within the federal defender system and its larger legal environment. Case weights for case types that were recorded only infrequently during the study period would have been calculated using the full five years. For several reasons, we decided to use all five years for all case types. Though there are more than half a million cases available for our analysis, there would be just four cases on average for each unique combination of case-type category (284 in total), year (five), and district served by an FDO (90) if broken out to that degree of granularity. Significant reductions in the total might reduce our confidence in weight calculations at the individual district level (as we were required to do for immigration cases in two specific locations, as explained below). There also seemed to be no consistent pattern in average attorney time by the year the case closed (Table 4.1), at least not one that would provide a clear understanding of whether the large drop in mean and median attorney hours for cases closing in FY 2008 was a one-time aberration or the start of a downward trend. Although we recognize that average attorney time expenditures for specific case types can vary over time (for example, it is likely that the evolving jurisprudence surrounding the sentencing guidelines would have had an important effect on how FDO attorneys addressed sentencing-related tasks over the five-year period), we felt that including all

¹ CMS appears to have 350 different case-type codes available for classifying any new client matter. Just under 70 of these codes do not appear in any of the FY 2004–FY 2008 cases we used for our case-weight calculations.

Table 4.1
Case-Related Attorney Hours by Fiscal Year of Case Closing

Year	Number of Cases	Mean	Median	Total Hours Recorded
2004	98,139	15.0	3.3	1,472,070
2005	95,026	15.9	3.8	1,514,555
2006	98,163	16.4	4.0	1,605,372
2007	98,950	16.2	3.8	1,598,967
2008	123,701	13.4	2.3	1,659,189
Total	513,979	15.3	3.4	7,850,152

five years would be the most prudent approach for this initial set of case weights.² No matter which years might be selected for this work, however, there is a clear need for ODS to update the initial case weights on a regular basis, especially so after significant changes occur in case law, legislation, court rules, prosecutorial policies, or FDO resource levels.

The Effect That Extreme Outliers Can Have on Case Weights

It is difficult to overstate the potential impact of cases that make up what can be characterized as the “heavy tail” of the attorney time distribution.³ Case weights are very sensitive to the influence of cases in which extraordinarily large amounts of time were recorded, especially when other cases of the same type typically involved far more-modest expenditures. A particularly notable example of this effect involves one case with a CMS code of CR7480 (Miscellaneous: Racketeering) that had TKS entries totaling 15,723 hours of case-related attorney time, the greatest number of hours of any in our analysis data set. In contrast, the CR7480 racketeering case with the second-largest total had just 312 hours recorded. Because there were just 38 such racketeering cases during the study period, the inclusion or exclusion of one 15,723-hour case

² Expanding the time period used for case-weight calculations was also felt to be necessitated by the form in which CMS/TKS records were provided to us. Because we were limited to case closings from FY 2004–FY 2008, there are no records in our extract for cases opened in FY 2008 or earlier but still pending on September 30, 2008. Ostensibly, the purpose of shaping the extract in this way was to provide us with a set of cases for which time records were complete through closing. The effect was to underrepresent the time spent by FDO attorneys in FY 2008 in our analytical data set. In our data, about 2.3 million hours in 2.2 million events were recorded by TKS users for events taking place in FY 2004, totals that remained about the same for the next three years. In contrast, total time recorded for FY 2008 was just 1.4 million hours for 1.5 million events, due to the exclusion of pending cases. We felt that this initial set of case weights should be based on the most-comprehensive data available on time expenditures (i.e., all 514,000 cases), with the assumption that ODS will update the weights at a future point using more-current information. It should be noted that the fewer hours associated with FY 2008 time entries than for entries in FY 2004 does not mean that the cases indicated in our data as closing in FY 2008 are in any way “missing” any attorney time. We have complete information about all TKS entries for those cases no matter when they were submitted. Nevertheless, our strong preference would have been to receive CMS information for all cases active at any time during the period of FY 2004–FY 2008, which would have included time expenditure data from TKS associated with these cases through the end of the study period.

³ Distributions are said to have a heavy tail when a sizable fraction of the observations are substantially larger than most of the cases. The shape of its histogram (a plot of attorney hours versus the number of cases with that number of hours) often has a classic bell-shaped curve for most values of attorney hours, but also has the right side of the curve, the “heavy tail,” notably elongated due to the presence of large outliers.

would have a large effect on the estimated average number of attorney hours for this case type. With the outlier case, the average number of attorney hours for CR7480 racketeering cases is 435 hours; without that one case, the average is just 22 hours. In addition, the outlier case will have a lasting effect for any subsequent ODS update of case weights as future cases are added to TKS. Even with 100 more CR7480 racketeering cases averaging 22 hours of attorney time, the overall average will still be 135, substantially more than the average without the one extreme case.

The vast majority of cases in our data set have far more-modest numbers of total attorney hours, but there were eight with more than 5,000 hours each, 143 with more than 1,000 hours, and 588 with more than 500 hours. One frequently used analytical strategy is to drop such outliers in order to avoid the problems noted above, but, for this particular application, doing so would provide a misleading impression of the volatility associated with FDO cases in terms of attorney resource needs. The better approach would be to find a middle ground between dropping some of the most-notable cases handled by FDOs over the five-year study period and leaving them in and possibly obscuring what happens in the vast majority of instances.

M-Estimation for Case Weights

Even if a national average case weight might be appropriate for most case types, there would nevertheless be some with weights that were highly sensitive to the inclusion or exclusion of single cases. Robust statistical methods, those that are less sensitive to extreme values than other methods, are more appropriate in these instances. The sample average is not considered to be a robust statistic because, as we have seen for CR7480 racketeering cases, single cases can drastically change its value. The M-estimator provides a more robust estimate of the “central value” of a set of numbers. It essentially tries to find a single value that is close to most of the values (the simple average does this as well) but does not penalize itself much for being far away from extreme outliers.⁴ In simple terms, the M-estimator can be thought of as a way to express central tendency and is a generalization of the mean and the median.

Specifically, the M-estimator replaces extreme outliers with an estimate of a less extreme percentile. For example, a specific case type consists of a total of 11 cases with reported attorney times of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 10,000 hours. The M-estimator examines the spread of the data near the median (six, in this example) and then projects what the 99th percentile should be for this set of 11 values. Because most of the data are near six, the M-estimator in this example projects that the 99th percentile is near 23.5. The M-estimator then effectively replaces the 10,000 with 23.5 and computes the average of these values. If we had asked the M-estimator to project to the 50th percentile, it would give the median, and, if we had asked it to project to the 100th percentile (the maximum value), the M-estimator would have produced the mean. By selecting the 99th percentile, we still allow cases with a large amount of attorney time to contribute to the case weight, but their contribution is diminished so as not to completely skew the results. In regard to the CR7480 racketeering cases noted above, the M-estimator would yield a result of 33.6 attorney hours, not the same result as completely

⁴ For more information about the M-estimator, see Huber, 2004. The arithmetic mean minimizes $\sum_i (y_i - \text{mean})^2$. The quadratic form imposes large penalties for having a mean estimate far from an outlier. An M-estimate also minimizes a sum: For y_i s near the middle, $(y_i - M)^2$ is included in the sum, while, for extreme values, $a |y_i - M| + b$ is used. $(y_i - M)^2$ is used for most observations—99 percent, in our case—and $a |y_i - M| + b$ is reserved for only the most extreme. The values of a and b depend only on the percentage of values labeled as extreme.

ignoring the 15,723-hour case but also not the same as allowing it to dominate the other 37 cases in the data.

Table 4.2 shows the case types that are most affected by the choice of using the M-estimate for “average” attorney case-related time compared to the unmodified arithmetic mean. We converted those values to case weights by rescaling them so that the average case weight is 1.0. The use of a mean for case-weight calculations that does not address the outlier results in a case weight of 28.5 for CR7480 racketeering, but the M-estimate yields a case weight of 2.4. Only those case types in which the M-estimate case weights resulted in at least a 40-percent change are shown in Table 4.2.

Though there were a few other case types for which the use of M-estimates resulted in a larger relative change from a mean-derived case weight, the approach might have the greatest effect on caseload calculations in regard to EXTRAD extradition cases. The median number of attorney hours in EXTRAD extradition cases was 2.3. However, there were 26 cases requiring more than 100 hours and two cases requiring more than 500 hours. These outliers pull the average up to 17.3 hours. Further complicating the story is the fact that 23 percent of EXTRAD extradition cases had zero time recorded in TKS, for which we imputed 30 minutes. Given that more than 60 percent of EXTRAD extradition cases have less than four hours of recorded attorney time (or no attorney time) in TKS, the M-estimate case weight of 0.6 (indicating 40 percent less time than the overall average case) is more reasonable for EXTRAD extradition cases.

All CCA (co-counsel appointment) cases except one reflected less than 44 hours of attorney time; the exception required 770 hours. One CR9957 terrorism case required 9,400 hours, but all the other such cases required fewer than 900 hours. One CR7611 kidnapping case

Table 4.2
Case Weights That Are Most Sensitive to Outliers

CMS Code	Case-Type Description	Number of Cases	Case Weights Based on Arithmetic Average	Case Weights Based on M-Estimates	Ratio (M-estimate divided by average)
CR7480	Racketeering	38	28.5	2.4	0.08
CR9954	Peonage	19	11.7	3.5	0.30
CCA	Co-counsel appointment	21	3.3	1.1	0.34
CR9957	Terrorism	89	11.6	4.5	0.39
CR7611	Kidnapping	43	11.8	5.6	0.48
PP	Prepetition	279	1.6	0.8	0.48
CR7440	Racketeering, Gambling	4	19.8	10.5	0.53
EXTRAD	Extradition	660	1.1	0.6	0.54
CR6911	Drug offenses	30	2.9	1.6	0.57
MNT	Motion for new trial	25	3.6	2.2	0.60

NOTE: FY 2004–FY 2008 closed cases. The table shows case weights for which the M-estimate results in at least a 40-percent change in the case weight.

required 5,100 hours, while the other 42 CR7611 cases combined required 2,700 hours. Similar results hold for the other cases in Table 4.2: Single outliers have a large influence on case weights if left unadjusted.

For case types with such extreme outliers, the M-estimate does “the right thing”; it prevents single cases from excessively influencing a case weight. Furthermore, for the case types with large sample sizes or those without extreme outliers, the case weights are essentially unchanged. Table 4.3 shows, for example, that, for the ten most frequent case types in our data, the case weights are nearly the same whether we calculate the case weight with the mean or the M-estimate.

Figure 4.1 compares the case weights computed using means and those computed using M-estimates. Almost all of the case weights fall close to the 45-degree line, indicating that, for the majority of case types, the two methods of estimation yield similar case weights.⁵ Figure 4.1 also highlights some of the case types mentioned previously that change substantially with the M-estimate.

Accounting for District Variation in Case Weights

Basing the case weights solely on the national average of attorney time by case type can also skew the weights from their intended purpose. Ideally, systemwide-derived weights would reflect more or less how case types compare to each other in most districts. If case type A required twice as many attorney hours as case type B in just about every location across the

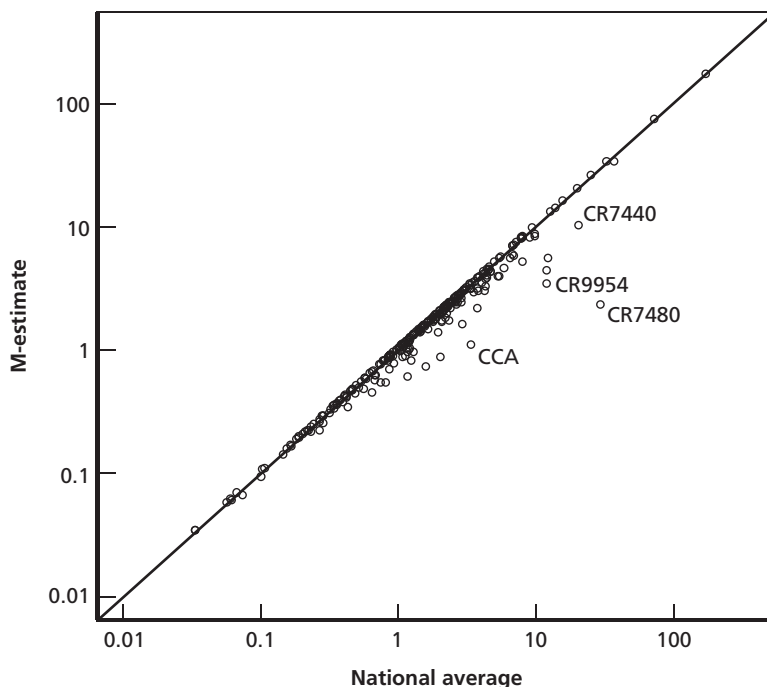
Table 4.3
M-Estimate Case Weights for the Most-Common Case Types Are Essentially Unchanged

CMS Code	Case-Type Description	Number of Cases	Case Weights Based on Arithmetic Average	Case Weights Based on M-Estimates	Ratio of Case-Weight Approaches
CR8710	Illegal entry	84,363	0.1	0.1	1.03
SR	Supervised release	63,281	0.4	0.4	1.04
CR8720	Illegal reentry	51,699	0.9	0.9	1.01
PO	Petty offenses	26,139	0.1	0.1	0.97
CR6801	Drug offenses	23,870	2.0	2.0	1.01
CR7830	Firearms	20,255	2.7	2.8	1.04
FAO	First appearance only	17,856	0.1	0.1	1.06
PR	Probation revocation	12,875	0.3	0.3	1.03
CA	Court of appeals	12,873	2.4	2.5	1.04
CK	Crack retroactive	11,493	0.1	0.1	1.02

NOTE: FY 2004–FY 2008 closed cases. Ratio is calculated as M-estimate divided by average.

⁵ We also checked whether the M-estimation was sensitive to the imputation choice for cases with zero recorded attorney hours and, consistent with our findings for the national average method, found that the case weights were largely insensitive to the imputation choice.

Figure 4.1
Comparison of Case Weights Based on Means and M-Estimates



RAND TR1007-4.1

country, we would want a set of case weights that include a relative weight for A that is about double the size of the one for B. Due to a mathematical quirk, however, that ideal result might not always hold true. An example can illustrate the potential problem. In this example, we consider two hypothetical districts and two case types. Table 4.4 shows the average attorney time and the number of cases for these districts and for these case types. Among all illegal-reentry cases across both districts, attorney time averages 19.6 hours, and, for passport fraud, attorney time averages 15.4 hours. If these two districts comprised the United States, then we would compute a national relative case weight with illegal entry weighted 1.3 times larger than passport fraud.

A closer look, however, reveals that, in both districts, the illegal-reentry cases take, on average, twice as long as the passport-fraud cases, not 1.3 times. There could be numerous reasons that cases in district A generally might require less attorney time than those in district B, many of which were discussed in the previous chapter. Regardless of the reason, the example

Table 4.4
Illustrative Example 1: Comparing Case-Weight Calculations With and Without a District Adjustment

District	Illegal Reentry (CR8720)		Passport Fraud (CR8731)		Relative Attorney Time (CR8720 versus CR8731)
	Number of Cases	Average Hours per Case	Number of Cases	Average Hours per Case	
A	32	18.0	2	9.0	2.0
B	4	32.0	21	16.0	2.0
Overall	36	19.6	23	15.4	1.3

data suggest that an attorney in either district will record twice as much time to handle an illegal-reentry case than a passport-fraud case. Ignoring district in the construction of the case weights results in a set that might not truly reflect relative attorney time expenditures across different types of cases. If the case weights are to serve their intended functionality, the weight for illegal-reentry cases should be twice the weight of the fraud cases, rather than just 1.3 times larger.

Table 4.4 demonstrates that accounting for district can change the magnitude of the case weights. Table 4.5, on the other hand, uses social security fraud and drug-sale offenses to provide an example for which weights actually reverse. In both district A and district B, drug-sale cases take about 25 percent more time than social security fraud. However, the overall average suggests that in fact social security fraud takes more time than drug-sale cases—about 28 percent more time. This is an example of a known statistical phenomenon known as *Simpson's paradox*: Analyses that neglect to account for a characteristic (district, in this case) that is associated with both the feature of interest (case type) and the outcome (attorney time) can yield the opposite finding of an analysis that does account for the characteristic. In this example, social security fraud cases were more common in district B, which averaged larger recorded attorney times in general, and drug-sale cases were more common in district A, which generally recorded less attorney time per case.

With appropriate statistical modeling, we can construct case weights that come close to this ideal and substantially reduce the risk of Simpson's paradox. The basic model formulation can be written simply as

$$\text{attorney time} = \text{average case time} \times \text{case weight} \times \text{district multiplier.}$$

The “average case time” is simply the average number of attorney hours across cases of all types (34.4 hours for the 741 cases represented by the examples in Table 4.5). The case weight indicates how much more attorney time a specific case type requires. For example, if, for a specific case type, the relative case weight is 0.8, then, on average, attorneys record 20 percent less time on average for this case type than they do for all case types taken together. The district multiplier indicates on average how much more attorney time gets recorded for cases in a specific district relative to the system as a whole. A district multiplier of 2.0 for a specific district indicates that attorneys record twice as much time on average than they do in all districts taken together.

The value of the district multiplier for district A and district B and the case weights for social security fraud and narcotic sales will be estimated so that, across all cases, the average

Table 4.5
Illustrative Example 2: Comparing Case-Weight Calculations With and Without a District Adjustment

District	Social Security Fraud (CR4950)		Narcotic Sales (CR6701)		Relative Attorney Time (CR4950 versus CR6701)
	Number of Cases	Average Hours per Case	Number of Cases	Average Hours per Case	
A	5	14.3	513	18.5	0.77
B	10	58.5	213	72.2	0.81
Overall	15	43.8	726	34.3	1.28

attorney hours times the case weight times the district multiplier will be as close as possible to the actual recorded attorney time. We will estimate a single multiplier for each district. Note that the district multipliers do not depend in any way on data we collected from the districts. The value of a district multiplier and the case weights depend only on the attorney times recorded in TKS.

Specifically, the district A multiplier can be estimated as

$$\begin{aligned} \text{district A multiplier} = & p \frac{\text{average hours district A, case type 1}}{\text{average case time} \times \text{case weight 1}} \\ & + (1 - p) \frac{\text{average hours district A, case type 2}}{\text{average case time} \times \text{case weight 2}}, \end{aligned}$$

where p is a number between 0 and 1 that depends on the number of cases of each type and the value of case weights.⁶ The products in the denominators are the average number of attorney hours we expect for case type 1 and for case type 2. The two ratios, therefore, measure how much more time the cases require in that district compared to the average. Then the ratios are combined in a weighted average that depends on p ; the ratio corresponding to the case type with the (case-weighted) number of cases will have greater influence on the district multiplier. The district B multiplier has the same form.

The case-weight estimator has the form

$$\begin{aligned} \text{case weight 1} = & q \frac{\text{average hours district A, case type 1}}{\text{average case time} \times \text{district A multiplier}} \\ & + (1 - q) \frac{\text{average hours district B, case type 1}}{\text{average case time} \times \text{district B multiplier}}, \end{aligned}$$

where q is a number between 0 and 1 that depends on the number of cases of each type and the value of district multipliers.⁷ Here, the products in the denominators give the average amount of attorney time required for cases in each of the districts. The ratios measure relatively how much more time is required for case type 1 than for the average case in that district. As with the district multiplier, the ratios are combined in a weighted average that depends on q ; the ratio corresponding to the district with more cases of that type will have greater influence on the case weight. The case weight for case type 2 has a similar form.

Since the estimator for the district multipliers and the estimator for the case weights depend on one another, we use an iterative process to jointly estimate these. That is, we initialize the district multipliers to be 1 and the case weights to be 1. Then we iterate between obtaining new district multipliers and new case-weight estimates, continuing to iterate until the values converge, about three or four iterations.

⁶ $p = (n_{A1} w_1^2) / (n_{A1} w_1^2 + n_{A2} w_2^2)$, where n_{A1} and n_{A2} are the number of cases in district A of case type 1 and case type 2, respectively, and w_1 and w_2 are the case weights for case type 1 and case type 2, respectively.

⁷ $q = n_{A1} \alpha_A^2 / (n_{A1} \alpha_A^2 + n_{B1} \alpha_B^2)$, where n_{A1} and n_{B1} are the number of cases of case type 1 in districts A and B, respectively, and α_A and α_B are the district multipliers for district A and district B, respectively. In order for the parameters to be identifiable, we constrain the case weights so that the average case weight is 1.0.

In the example presented in Table 4.6, the estimated district multipliers are 0.53 and 2.09 for district A and district B, respectively, and the case weights are 0.81 and 1.00 for social security fraud and narcotic sales, respectively. These combinations of values offer the best fit to the average times reported in Table 4.5. Table 4.6 demonstrates that this selection of values results in predicted attorney times that nearly match the actual average recorded attorney time. For our practical purposes, the adjusted case weights capture the pattern that the average social security fraud case records about 80 percent of the attorney time that narcotic sales cases do.

Before discussing the effects of the district-adjusted case weights, we wish to highlight a few key points. First, the above examples focus on the simplest case of two districts and two case types and show that the district-adjusted case weights capture a case type's relative attorney time. The method we actually applied to estimate district-adjusted case weights extends the estimation process to estimate 90 district multipliers and 284 case weights and utilizes M-estimation in these calculations to make sure that extreme outliers do not excessively influence the case weights. Second, for each individual district, we compute a single district multiplier, and, for each case type, we compute one case weight. It should be understood that using district multipliers does not create 90 different sets of case weights; instead, the very same set of case weights is used across all districts. Last, the district multipliers themselves are of no utility beyond the instant purpose of calculating case weights. Although we use them in the estimation process to absorb any differences between districts, such as TKS practices, district geography, or nonattorney support staff levels, they do not reflect on the performance of a district or provide any other quality metric.

Gauging the Effect of District Adjustments

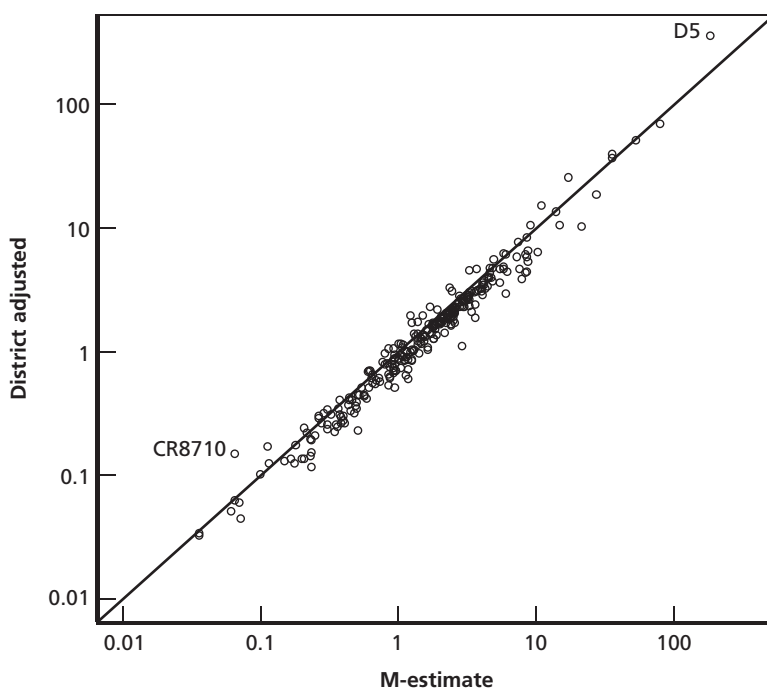
For most case types, adjusting for district has little effect on the case weights. Figure 4.2 compares the case weights constructed using the M-estimate of attorney time per case with the district-adjusted case weights. Each point represents a case type. For the most part, the points lie along the 45-degree diagonal line, indicating that the two methods generate similar case weights. However, a few case types have markedly different case weights under the district-adjusted model.

Table 4.6
Illustrative Example 2, Continued: Comparing Case-Weight Calculations With and Without a District Adjustment

District	Case Type	District Multiplier	Case Weight	Predicted Attorney Time	Actual Average Attorney Time
A	Social security fraud (CR4950)	0.53	0.81	14.7	14.3
A	Narcotic sales (CR6701)	0.53	1.00	18.2	18.5
B	Social security fraud (CR4950)	2.09	0.81	58.2	58.5
B	Narcotic sales (CR6701)	2.09	1.00	71.9	72.2

NOTE: Predicted attorney time is 34.4-hour average for all cases multiplied by the district multiplier and by the case weight.

Figure 4.2
Comparison of Case Weights Based on M-Estimates and District-Adjusted Case Weights



RAND TR1007-4.2

Table 4.7 shows the case types for which the case weights based on a district multiplier differ by at least 50 percent from those based only on the M-estimation approach. There are two primary reasons for the district adjustment to have a large effect: (1) The cases are concentrated in districts that tend to record much more or much less attorney time per case, or (2) the context of the district refines the meaning of a case with a large amount of attorney time.

For example, for CR9160 (Agriculture, Packers and Stockyard Act) cases, the district adjustment results in a case weight of 0.1, about half that of the M-estimate case weight. The primary reason is that these cases tend to occur in districts that generally record more attorney time in individual client matters than do other locations. The average of the district-adjustment multipliers for the districts with CR9160 agriculture cases is 1.24, indicating that these districts generally use 24 percent more attorney time for similar cases, thus skewing the average time upward. Use of multipliers in each district reduces the weight that would be applied nationally for CR9160 agriculture cases, which is a result more consistent with what would be observed in most individual districts across the FDO system.

The column in Table 4.7 labeled “Average District Multiplier” shows the average district multiplier for each of the cases. Generally, if the cases occur in districts that, on average, record less attorney time in cases (indicated by a district multiplier less than 1.0), then the district-adjusted case weight will be larger than the case weight with no district adjustment.

District adjustment arguably has the most profound effect on CR8710 illegal-entry cases. The large swing in the weights when district adjustment is used instead of a simple arithmetic average or an M-estimation approach (a ratio of 2.33 to 1; note that the values in the table for the three weight options appear similar only because the table displays to the first significant

Table 4.7
Case Types Most Influenced by the Use of District-Adjusted Case Weights

CMS Code	Case-Type Description	Number of Cases	Case Weights Based on Arithmetic Average	Case Weights Based on M-Estimates	Case Weights Based on District-Adjusted M-Estimates	Ratio of Case-Weight Approaches	Average District Multiplier
CR7482	Racketeering, Threats	3	2.6	2.8	1.2	0.41	1.76
CR9915	Commerce and trade	2	0.5	0.5	0.2	0.48	1.43
CR9160	Agriculture, Packers and Stockyard Act	5	0.2	0.2	0.1	0.51	1.24
CR9908	Public health	2	15.4	16.5	25.4	1.54	0.83
CR4540	Tax fraud	2	0.1	0.1	0.2	1.56	0.73
M4243E	Mental disease	2	1.1	1.2	2.0	1.66	0.63
D5	Death Penalty: Redesignation from D2: No Death Sought by Government	3	164.3	176.6	366.2	2.07	0.55
CR8710	Illegal entry	84,363	0.1	0.1	0.1	2.33	0.54

NOTE: FY 2004–FY 2008 closed cases. Ratio is district-adjusted M-estimate divided by M-estimate only.

digit), coupled with the fact that CR8710 illegal entry was the most frequently occurring case type in the five-year study period (84,363 cases overall), means that district adjustment can in fact make a significant difference in weighted caseload calculations. However, it should be kept in mind that, in terms of ranking, the weight associated with CR8710 cases was the 280th overall out of 284 different case types when an arithmetic average was used but moved only to 269th place when district adjustment was used. Moreover, the use of a district adjustment in this regard makes sense given that the result better reflects the relative impact illegal-entry cases have in districts all across the country, rather than skewed toward what took place in only a few very large offices where such representations dominate their annual caseloads.

The other case type with a significant change in its weight when district adjustment is used is D5 (redesignated from D2 death penalty), for which the adjusted weight (366.2) is twice the already considerable size of the M-estimation weight (164.3). These values are artifacts of the very low frequency of this type of case, just three terminations seen in five years, two of which took place in a single district. That district happens to be one with a very small district multiplier, which resulted in a significant increase in the size of the unadjusted weight. It should be kept in mind that the impact that D5 cases can have on systemwide demand estimates will likely be negligible, since it is very possible that, in any particular year of interest, there could be no D5 cases at all to include in any weighted caseload analysis.

Another way to view the effect of the district-adjusted case weights is on an office's overall caseload counts. Table 4.8 sets forth how those counts might differ whether calculated

Table 4.8
Weighted Caseloads Under Case-Weight Alternatives

District	District Values		Weighted Caseloads		
	Number of Cases	Total Attorney Hours	Based on Arithmetic Average	Based on M-Estimates	Based on District-Adjusted M-Estimates
AKX	1,513	47,180.4	2,433.7	2,437.1	2,235.9
ALM	1,462	33,377.4	2,302.1	2,343.0	2,141.8
ALS	1,643	32,041.8	2,642.4	2,693.4	2,469.9
ARE	2,149	36,763.6	2,936.1	2,901.0	2,660.8
ARW	1,128	18,215.7	1,291.4	1,291.5	1,257.3
AZX	38,300	282,764.8	19,683.3	19,520.3	20,546.6
CAC	16,726	420,943.2	19,256.1	19,127.4	17,914.7
CAE	9,823	162,215.7	10,800.5	10,800.5	10,223.5
CAN	4,623	153,950.6	6,424.4	6,433.4	6,275.4
CAS	24,064	322,793.7	15,922.9	15,695.7	17,205.4
COX	4,021	117,013.3	5,609.3	5,696.0	5,363.3
CTX	1,479	51,429.1	2,412.6	2,300.0	2,108.1
DCX	3,494	114,690.3	5,849.7	5,794.9	5,712.6
DEX	1,059	25,992.2	1,306.6	1,317.7	1,228.5
FLM	8,782	223,105.2	10,668.9	10,683.5	10,684.6
FLN	3,309	51,482.6	4,043.1	4,073.3	3,783.7
FLS	10,204	389,737.3	14,439.0	14,315.3	13,132.0
GAM	141	1,785.2	149.3	150.9	136.7
GAN	6,241	140,299.5	7,881.6	7,810.6	7,203.4
GUX	769	13,943.9	845.3	829.4	743.4
HIX	2,916	58,244.7	3,560.3	3,561.7	3,228.3
IAN	1,691	29,490.4	2,240.8	2,255.1	2,137.3
IAS	2,446	43,344.6	2,857.9	2,898.1	2,756.4
IDX	1,236	34,412.3	1,832.6	1,817.5	1,755.4
ILC	2,954	46,526.3	4,599.9	4,695.8	4,292.5
ILN	4,392	127,894.7	6,133.4	6,089.5	5,656.6
ILS	3,203	49,100.1	2,590.2	2,580.2	2,389.8
INN	1,661	38,515.8	2,426.9	2,458.6	2,279.5
INS	1,678	15,435.6	1,773.9	1,770.5	1,719.9
KSX	4,633	82,519.5	6,010.8	6,066.2	6,051.1
KYW	1,541	31,677.7	2,376.6	2,391.4	2,203.8

Table 4.8—Continued

District	District Values		Weighted Caseloads		
	Number of Cases	Total Attorney Hours	Based on Arithmetic Average	Based on M-Estimates	Based on District-Adjusted M-Estimates
LAE	2,626	50,673.5	3,428.6	3,455.2	3,252.9
LAM	684	8,545.7	1,179.0	1,170.1	1,084.4
LAW	2,608	20,198.6	3,740.7	3,680.7	3,402.4
MAX	1,579	83,732.2	2,443.4	2,442.7	2,250.0
MDX	8,550	166,242.3	7,827.3	7,842.4	7,096.2
MEX	217	6,902.2	262.5	266.4	244.5
MIE	4,644	118,177.9	6,569.3	6,565.6	6,216.2
MIW	1,722	45,020.2	2,717.9	2,730.9	2,551.7
MNX	2,718	56,502.3	3,570.6	3,606.8	3,414.3
MOE	5,078	85,158.0	7,257.6	7,305.6	6,763.8
MOW	4,999	90,393.8	8,289.9	8,448.5	7,796.4
MSN	218	1,546.3	245.2	250.0	231.0
MSS	3,194	38,678.4	3,584.5	3,625.2	3,330.0
MTX	3,215	59,025.2	4,638.7	4,690.6	4,444.7
NCE	6,237	124,939.3	6,680.0	6,808.7	6,249.3
NCM	2,191	43,454.3	3,912.7	4,011.5	3,755.0
NCW	2,126	23,359.6	3,777.1	3,581.8	3,362.1
NDX	722	18,581.6	1,119.1	1,122.7	1,086.1
NEX	3,484	64,048.6	5,038.0	5,093.9	4,758.4
NHX	826	25,373.6	1,389.8	1,402.4	1,301.9
NJX	6,209	167,418.3	8,814.2	8,701.0	7,860.5
NMX	11,922	169,714.9	12,529.0	12,550.3	13,616.0
NVX	5,780	175,061.2	8,655.4	8,651.8	8,535.1
NYE	4,384	105,251.1	6,914.6	6,779.3	6,180.5
NYN	2,617	61,829.4	2,878.1	2,864.6	2,678.7
NYS	5,496	107,904.9	8,970.1	8,977.7	8,395.1
NYW	3,643	71,772.2	4,855.8	4,865.4	4,500.7
OHN	2,729	64,872.6	3,708.7	3,742.8	3,472.8
OHS	3,593	79,661.2	4,681.3	4,724.6	4,284.6
OKE	557	12,043.8	997.9	986.7	967.0
OKN	1,112	22,054.0	1,821.0	1,843.3	1,780.2

Table 4.8—Continued

District	District Values		Weighted Caseloads		
	Number of Cases	Total Attorney Hours	Based on Arithmetic Average	Based on M-Estimates	Based on District-Adjusted M-Estimates
OKW	2,201	45,283.5	2,283.3	2,258.0	2,117.8
ORX	7,728	189,984.9	11,612.2	11,615.8	11,212.2
PAE	6,033	123,658.4	7,206.7	7,152.0	6,612.7
PAM	3,277	63,317.2	4,125.9	4,126.2	4,042.8
PAW	2,722	67,116.4	4,298.0	4,281.7	3,973.4
PRX	3,949	64,365.2	4,841.7	4,799.1	4,992.0
RIX	709	15,524.5	1,163.0	1,156.2	1,188.2
SCX	6,574	82,394.7	8,363.0	8,491.1	8,281.2
SDX	2,433	52,927.2	4,184.6	4,216.3	4,060.4
TNE	3,191	53,051.9	4,297.1	4,352.3	4,017.9
TNM	2,567	44,357.7	3,455.6	3,467.4	3,207.8
TNW	2,813	65,712.1	4,983.7	5,052.7	4,634.9
TXE	3,050	58,138.7	4,746.5	4,800.7	4,671.0
TXN	6,611	133,075.8	9,722.9	9,767.9	10,192.5
TXS	107,265	386,187.1	46,063.4	46,008.3	57,995.7
TXW	37,054	306,192.2	31,962.9	32,078.1	38,738.8
UTX	4,338	89,076.9	6,152.0	6,143.6	5,880.0
VAE	11,691	197,610.9	12,450.4	12,469.7	11,490.5
VAW	1,020	18,260.1	1,208.5	1,187.1	1,081.5
VIX	837	15,365.0	1,033.3	1,021.0	996.6
VTX	724	22,184.8	1,163.8	1,165.8	1,087.7
WAE	4,091	93,638.5	4,723.9	4,786.3	4,596.1
WAW	9,650	143,078.7	8,524.9	8,364.1	7,483.6
WIE	2,337	50,766.1	2,071.7	2,039.6	1,980.0
WIW	732	11,635.4	786.3	795.5	750.9
WVN	1,707	23,900.4	1,938.0	1,943.7	1,786.6
WVS	2,090	42,919.1	2,265.5	2,275.9	2,092.0
WYX	1,136	23,299.9	2,062.8	2,086.3	1,965.4
Total	513,491	7,848,048	513,491	513,491	513,491

NOTE: FY 2004–FY 2008 closed cases.

using the raw numbers, a case weight based on a simple average amount of attorney hours per type, M-estimates, or M-estimates that have been subjected to a district adjustment. Although we more fully present weighted caseloads in the next chapter, it is important at this point to see how the three possible weighting approaches would affect a weighted caseload workload analysis.

Case Weights Proposed for Federal Defender Organization Workload and Staffing Requirements

All Districts Included

Table 4.9 compares the three candidate approaches for calculating case weights when all districts are included in the analysis: (1) one based on the national average (the arithmetic or mean average), (2) one that uses M-estimates, and (3) one that adjusts those M-estimates by a district multiplier. Included with the weights are the standard errors (SEs), a statistical measure useful for gauging the precision of the case weight. SEs can be used to assess how likely it is that the estimated case weight will be near the true case weight (the case weight we would get if we knew the attorney times for all future cases of this type). The probability that the estimated case weight is within two SEs of the true case weight is at least 75 percent. For case types with a large number of cases (100 or more), the probability of the true case weight being within two SEs is 95 percent. For example, we are fairly certain that the true M-estimate case weight for CR0100 (first-degree homicide) is between 6.74 and 9.70 (8.22 calculated M-estimate case weight plus or minus twice the corresponding SE of 0.74; see Table 4.9). Because the sample size is in excess of 100, intervals calculated in this way contain the true case weight 95 percent of the time. The true M-estimate case weight for CR1601 (Misdemeanor Assault on a Government Official) is likely between 0.43 and 1.43 ($0.93 \pm 2 \times 0.25$), but, because there are only 18 cases, the probability that intervals calculated in this way contain the true value could be as low as 75 percent. In this way, SEs helps analysts understand how confident they can be for particular case-weight estimates.

SEs are an important consideration to take into account when interpreting any application of case weights to actual caseloads at FDOs. A small SE for a particular case type implies that the spread of observed attorney hours for cases of this type is small, that there is a large number of cases of this type, or both. A smaller number of cases within the case-type category or a larger spread in observed values for attorney time will drive up SE. Comparing the SEs for different case types can help identify relative strength of each category as a predictor of attorney time. For example, with an SE of 5.78, D2 (Death Penalty, Federal Capital Prosecution + Direct Appeal) cases are likely to exhibit significant sampling fluctuation, and, arguably, our case weights are relatively weak as predictors for these cases. The district-adjusted weight for D5 (redesignated from D2 death penalty) also has a relatively high SE (7.00), a reflection of the fact that only three cases with this code were observed during our study period, one of which reported total attorney time expenditures that were nine times the size of the next largest. Again, this weight is likely to be a relatively weak predictor of expected attorney time requirements. In contrast, CR8720 (Illegal Reentry) has an SE of but 0.01, suggesting that, although there are certainly individual cases with total attorney hours that are far greater or lower than the mean, the estimate of the case weight is precise. There is not an absolute standard with which to evaluate the size of an SE, but rather we compare its size with the associated case-

Table 4.9
Case-Weight Options: Data from All Districts

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
AA	Court of Appeals: Amendment Appeal	74	0.23	0.06	0.24	0.07	0.21	0.07
AC	Amicus	1	12.46	—	13.40	—	14.59	—
AF	Appeal: Civil Asset Forfeiture Representation	10	0.65	0.31	0.70	0.34	0.63	0.34
ANCPRO	Ancillary Proceedings	350	0.80	0.15	0.55	0.05	0.45	0.04
APM	Appeal: Magistrate Decision	544	1.17	0.10	1.23	0.10	1.02	0.08
BP	Bail/Presentment	7,110	0.07	0.00	0.07	0.00	0.06	0.00
CA	Court of Appeals: Other Matters	12,873	2.43	0.03	2.53	0.03	2.29	0.03
CAO	Circuit Argument Only	12	1.61	0.60	1.73	0.65	1.68	0.65
CCA	Co-Counsel Appointment	21	3.28	2.36	1.12	0.25	1.04	0.30
CCC	Criminal or Civil Contempt	151	1.22	0.26	0.83	0.09	0.66	0.08
CCO	Conflict Counsel	223	0.10	0.01	0.11	0.01	0.12	0.02
CD	Court Directed Prisoner Representation	1,587	0.26	0.03	0.23	0.01	0.19	0.01
CF	Civil Asset Forfeiture Representation	76	1.06	0.40	0.90	0.22	0.70	0.22
CK	Crack Cocaine Retroactive Amendment	11,493	0.14	0.00	0.14	0.00	0.13	0.00
CONSUL	Consultation	4,589	0.54	0.02	0.50	0.01	0.46	0.01
CR0100	Homicide: Murder, First Degree	384	8.78	1.19	8.21	0.74	8.61	0.87
CR0101	Homicide: Murder, First Degree, Government Official	4	7.57	5.95	8.14	6.39	6.33	6.33

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR0200	Homicide: Murder, Second Degree	99	6.59	0.99	7.09	1.06	7.77	1.23
CR0201	Homicide: Murder, Second Degree, Government Official	4	1.25	0.93	1.34	1.00	1.74	1.29
CR0300	Homicide: Manslaughter	136	4.43	0.63	4.76	0.67	5.73	0.90
CR0310	Homicide: Negligent	4	1.74	0.50	1.87	0.53	2.23	0.50
CR0311	Homicide: Negligent	1	5.39	—	5.80	—	2.97	—
CR1100	Robbery: Bank	4,350	2.80	0.06	2.90	0.05	2.59	0.05
CR1200	Robbery: Postal	73	4.02	0.60	4.16	0.57	3.30	0.49
CR1400	Robbery: Other	90	2.13	0.37	2.21	0.35	1.92	0.33
CR1500	Assault: Assault	2,535	2.44	0.07	2.49	0.06	2.27	0.07
CR1501	Assault: Felony, on a Government Official	10	1.38	0.70	1.48	0.75	1.20	0.69
CR1560	Federal Statute: Fair Housing Law	5	2.72	1.83	2.93	1.97	2.35	1.83
CR1600	Assault: Other	1,137	0.72	0.22	0.55	0.04	0.44	0.03
CR1601	Assault: Misdemeanor, on a Government Official	18	0.86	0.23	0.92	0.25	0.70	0.19
CR1602	Assault: Obstruction of Justice-Interference	16	2.19	0.46	2.36	0.49	2.12	0.46
CR1700	Racketeering: Violent Crime	155	2.91	0.47	3.03	0.47	2.81	0.49
CR1800	Carjacking	81	2.55	0.35	2.74	0.37	2.70	0.42
CR2100	Burglary: Bank	1	3.04	—	3.27	—	2.11	—
CR2200	Burglary: Postal	52	1.45	0.14	1.55	0.15	1.51	0.14

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR2300	Burglary: Interstate Commerce	4	1.74	1.40	1.77	1.88	1.68	1.29
CR2400	Burglary: Other	86	1.36	0.15	1.43	0.15	1.18	0.14
CR3100	Larceny and Theft: Bank	226	2.18	0.32	2.03	0.18	1.77	0.17
CR3200	Larceny and Theft: Postal	1,224	1.76	0.06	1.85	0.06	1.74	0.06
CR3300	Larceny and Theft: Interstate Commerce	236	4.08	0.63	3.05	0.29	2.72	0.29
CR3400	Larceny and Theft: U.S. Property	4,382	1.10	0.04	1.11	0.03	0.99	0.03
CR3500	Larceny and Theft: Theft Within Special Maritime Jurisdiction	350	0.28	0.03	0.30	0.03	0.26	0.03
CR3600	Larceny and Theft: Transportation Stolen Property	388	3.42	0.33	2.94	0.20	2.56	0.20
CR3700	Larceny and Theft: Felony Other	225	1.41	0.14	1.45	0.13	1.37	0.14
CR3800	Larceny and Theft: Misdemeanor Other	601	0.34	0.03	0.36	0.03	0.31	0.03
CR4100	Embezzlement: Bank	599	1.69	0.10	1.76	0.09	1.62	0.09
CR4200	Embezzlement: Postal	818	1.27	0.07	1.34	0.06	1.16	0.06
CR4310	Embezzlement: Public Moneys or Property	39	2.01	0.80	1.74	0.52	1.60	0.56
CR4320	Embezzlement: Lending, Credit, Insurance Institute	64	2.28	0.32	2.45	0.34	2.13	0.32
CR4330	Embezzlement: By Officers of a Carrier	5	3.67	1.47	3.95	1.58	2.94	0.94
CR4340	Embezzlement: World War Veterans Relief	8	1.95	0.71	2.09	0.76	1.45	0.56

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR4350	Embezzlement: Officer or Employee of U.S.	34	2.01	0.78	1.74	0.45	1.30	0.34
CR4390	Embezzlement: Other	415	2.80	0.39	2.45	0.15	2.26	0.15
CR4510	Fraud: Income Tax, Evade or Defeat	181	5.67	0.99	4.68	0.52	3.78	0.46
CR4520	Fraud: Income Tax, Felony Other	269	4.22	0.60	3.79	0.33	3.25	0.30
CR4530	Fraud: Income Tax, Failure to File	72	2.79	0.46	2.95	0.46	2.62	0.42
CR4540	Fraud: Income Tax, Misdemeanor Other	2	0.10	0.06	0.11	0.06	0.17	0.03
CR4600	Fraud: Lending, Credit Institution	273	2.05	0.25	2.07	0.19	1.97	0.20
CR4601	Fraud: Bank	2,115	2.34	0.09	2.40	0.08	2.09	0.08
CR4700	Fraud: Postal, Interstate Wire, Radio, etc.	2,057	3.94	0.21	3.55	0.12	3.15	0.12
CR4800	Fraud: Veterans and Allotments	21	1.32	0.19	1.42	0.21	1.24	0.19
CR4900	Fraud: Bankruptcy	214	5.30	1.19	4.02	0.40	3.50	0.38
CR4910	Fraud: Marketing Agreements and Commodity Credit	6	2.12	0.57	2.28	0.62	2.01	0.56
CR4920	Fraud: Securities and Exchange	99	6.38	1.16	5.60	0.80	4.66	0.71
CR4931	Fraud: Excise Tax, Other	2	6.79	0.32	7.30	0.34	4.72	0.22
CR4932	Fraud: Wagering Tax, Other	5	1.03	0.97	1.11	1.04	0.65	0.65
CR4933	Fraud: Other Tax	46	0.84	0.22	0.91	0.24	1.00	0.29
CR4940	Fraud: Railroad Retirement and Unemployment	11	1.00	0.16	1.08	0.17	0.86	0.13
CR4941	Fraud: Food Stamp Program	123	0.77	0.19	0.82	0.20	1.08	0.33

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR4950	Fraud: Social Security	2,056	1.52	0.06	1.59	0.05	1.50	0.05
CR4960	Fraud: False Personation	160	2.08	0.24	2.23	0.25	2.04	0.26
CR4970	Fraud: Nationality Laws	917	1.14	0.27	0.97	0.06	1.16	0.09
CR4980	Fraud: Passport	1,960	1.18	0.06	1.21	0.04	0.86	0.03
CR4991	Fraud: False Claims and Statements	3,515	1.82	0.08	1.78	0.05	1.66	0.05
CR4992	Fraud: Conspiracy to Defraud, Other	1,422	2.39	0.13	2.40	0.11	2.18	0.11
CR4993	Fraud: Conspiracy (General), Other	3	1.03	1.00	1.11	1.07	0.91	1.09
CR4994	Fraud: False Entries, Other	25	1.00	0.25	1.07	0.27	0.87	0.22
CR4995	Fraud: Credit Card	1,885	2.07	0.06	2.21	0.06	1.87	0.06
CR4996	Fraud: Computer	219	3.27	0.45	3.16	0.34	2.71	0.32
CR4997	Fraud: Telemarketing	16	4.32	1.69	4.62	1.91	4.81	1.61
CR4998	Fraud: Health Care	425	3.31	0.33	3.17	0.26	2.40	0.20
CR4999	Fraud: Other	392	3.68	0.51	3.17	0.32	2.91	0.34
CR5100	Transportation Stolen Vehicle: Aircraft	118	1.87	0.33	1.89	0.27	1.71	0.25
CR5200	Auto Theft: Other	248	4.53	0.56	4.37	0.36	4.00	0.36
CR5500	Forgery and Counterfeiting: Transport Forged Securities	1	0.07	—	0.07	—	0.05	—
CR5600	Forgery and Counterfeiting: Postal	1	1.05	—	1.13	—	0.73	—
CR5710	Forgery and Counterfeiting: Other U.S.	203	1.59	0.13	1.68	0.13	1.41	0.12
CR5720	Forgery and Counterfeiting: Other	13	1.05	0.45	1.13	0.49	0.87	0.45

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR5800	Forgery and Counterfeiting: Counterfeiting	2,899	1.92	0.05	1.98	0.04	1.76	0.04
CR5900	Sex Offenses: Sexually Explicit Material	1,163	2.62	0.09	2.81	0.10	2.39	0.09
CR6100	Sex Offenses: Sexual Abuse of Adult	659	4.39	0.24	4.45	0.20	4.80	0.26
CR6110	Sex Offenses: Sexual Abuse of Children	1,633	3.78	0.12	3.96	0.11	3.49	0.11
CR6120	Sex Offenses: Interstate Domestic Violence	38	6.74	1.86	5.82	1.24	6.13	1.43
CR6121	Sex Offenses: Violent Offenses, Other	48	2.80	0.85	2.67	0.70	2.85	0.88
CR6200	Sex Offenses: White Slavery and Importing Aliens	514	3.74	0.23	3.86	0.21	3.12	0.18
CR6300	Sex Offenses: Other	1,450	3.25	0.10	3.44	0.10	3.03	0.10
CR6301	Sex Offenses: Transportation for Illegal Sexual Activity	235	2.96	0.31	3.08	0.29	2.65	0.28
CR6501	Drug Offenses: Marihuana, Sell, Distribute or Dispense	9,462	1.18	0.02	1.22	0.02	1.72	0.04
CR6502	Drug Offenses: Marihuana, Importation/Exportation	3,611	1.41	0.04	1.44	0.04	1.94	0.06
CR6503	Drug Offenses: Marihuana, Manufacture	187	2.31	0.23	2.42	0.23	1.94	0.22
CR6504	Drug Offenses: Marihuana, Possession	2,092	0.45	0.02	0.49	0.02	0.34	0.01
CR6700	Drug Offenses: Narcotics, Other (Terms/Reopens)	17	0.19	0.07	0.20	0.07	0.14	0.05

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR6701	Drug Offenses: Narcotics, Sell, Distribute or Dispense	11,329	2.03	0.03	2.06	0.03	1.92	0.03
CR6702	Drug Offenses: Narcotics, Importation/Exportation	1,582	1.98	0.08	1.97	0.06	1.72	0.05
CR6703	Drug Offenses: Narcotics, Manufacture	113	2.46	0.23	2.64	0.25	2.50	0.33
CR6704	Drug Offenses: Narcotics, Possession	609	1.48	0.08	1.59	0.09	1.08	0.07
CR6705	Drug Offenses: Narcotics, Records, Prescriptions, Fraudulent	4	0.63	0.40	0.67	0.43	0.59	0.40
CR6800	Drug Offenses: Controlled Substance, Continuing Criminal Enterprise	40	1.62	0.59	1.49	0.44	1.39	0.49
CR6801	Drug Offenses: Controlled Substance, Sell, Distribute, Dispense	23,870	2.01	0.02	2.04	0.02	1.86	0.02
CR6802	Drug Offenses: Controlled Substance, Importation/Exportation	1,455	2.40	0.09	2.43	0.07	1.81	0.06
CR6803	Drug Offenses: Controlled Substance, Manufacture	452	2.48	0.14	2.62	0.15	2.55	0.15
CR6804	Drug Offenses: Controlled Substance, Possession	1,429	0.85	0.05	0.89	0.04	0.68	0.03
CR6805	Drug Offenses: Controlled Substance, Fraudulent Records, Prescription	11	1.48	0.30	1.59	0.32	1.04	0.23
CR6806	Drug Offenses: Drug Cultivation	6	1.19	0.42	1.28	0.45	1.35	0.28
CR6807	Drug Offenses: Illicit Drug Profits	1	7.81	—	8.40	—	5.43	—
CR6809	Drug Offenses: Mail Order Drug Paraphernalia	2	0.20	0.13	0.21	0.14	0.22	0.11

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR6810	Drug Offenses: Under Influence Alcohol/Drugs	43	0.56	0.13	0.60	0.14	0.71	0.17
CR6830	Drug Offenses: Under Influence Alcohol/Drugs	62	0.35	0.05	0.37	0.05	0.26	0.04
CR6905	Drug Offenses: Other	19	1.80	0.49	1.93	0.53	1.76	0.53
CR6909	Drug Offenses: Mail Order Drug Paraphernalia	38	0.85	0.32	0.91	0.34	0.51	0.15
CR6911	Drug Offenses: Other Drug Abuse Prevention and Control Act Offenses	30	2.89	1.79	1.64	0.52	2.30	0.80
CR7100	Miscellaneous: Bribery	180	2.57	0.49	2.35	0.27	2.21	0.27
CR7210	Miscellaneous: Traffic Offenses, Drunken Driving	3,399	0.34	0.01	0.34	0.01	0.26	0.01
CR7220	Miscellaneous: Traffic Offenses, Other	7,615	0.22	0.00	0.23	0.00	0.15	0.00
CR7310	Miscellaneous: Escape	1,284	0.98	0.04	1.02	0.03	0.94	0.04
CR7311	Miscellaneous: Escape, Jumping Bail	397	0.51	0.06	0.50	0.04	0.45	0.04
CR7312	Miscellaneous: Escape, Bail Reform Act of 1966	28	0.16	0.06	0.17	0.06	0.18	0.07
CR7313	Miscellaneous: Escape from Custody	60	1.42	0.17	1.53	0.19	1.35	0.19
CR7314	Miscellaneous: Criminal Default	5	0.35	0.20	0.37	0.21	0.32	0.22
CR7315	Miscellaneous: Supervision Condition Violation	23	0.61	0.12	0.65	0.13	0.56	0.12
CR7320	Miscellaneous: Escape, Aiding or Harboring	271	1.41	0.12	1.41	0.10	1.31	0.10
CR7330	Miscellaneous: Prison Contraband	136	1.28	0.17	1.34	0.15	1.20	0.17

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR7400	Miscellaneous: Extortion, Racketeering and Threats	815	3.54	0.22	3.65	0.19	3.20	0.19
CR7401	Miscellaneous: Threats Against the President	139	2.90	0.26	3.12	0.28	2.79	0.30
CR7410	Miscellaneous: Racketeering, Arson	3	1.26	0.57	1.36	0.61	0.97	0.38
CR7420	Miscellaneous: Racketeering, Bribery	1	0.03	—	0.04	—	0.03	—
CR7430	Miscellaneous: Racketeering, Extortion	10	9.44	5.59	8.38	5.11	6.63	4.92
CR7440	Miscellaneous: Racketeering, Gambling	4	19.78	19.38	10.49	13.42	14.99	20.15
CR7450	Miscellaneous: Racketeering, Liquor	1	0.03	—	0.04	—	0.03	—
CR7460	Miscellaneous: Racketeering, Narcotics	14	2.90	1.65	3.11	1.78	2.92	1.76
CR7470	Miscellaneous: Racketeering, Prostitution	1	3.23	—	3.47	—	1.93	—
CR7471	Miscellaneous: Racketeering, Murder	50	6.53	1.04	7.02	1.12	5.93	1.08
CR7473	Miscellaneous: Racketeering, Maim	1	0.56	—	0.60	—	0.69	—
CR7474	Miscellaneous: Racketeering, Conspiracy, Murder, Kidnap	5	0.15	0.09	0.16	0.09	0.14	0.08
CR7477	Miscellaneous: Racketeering, Monetary Laundering	413	2.54	0.30	2.55	0.24	2.26	0.24
CR7480	Miscellaneous: Racketeering	38	28.47	27.04	2.36	1.11	3.05	1.37
CR7481	Miscellaneous: Racketeering, Robbery	2	13.36	8.07	14.36	8.68	10.73	4.98

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR7482	Miscellaneous: Racketeering, Threats	3	2.60	2.32	2.79	2.50	1.15	1.27
CR7490	Miscellaneous: Racketeering, Extortion Credit Transactions	28	4.05	1.38	4.34	1.53	3.39	1.26
CR7500	Miscellaneous: Gambling and Lottery	12	2.50	1.61	2.50	1.68	1.73	0.99
CR7530	Miscellaneous: Gambling and Lottery, Transmit Wager	3	0.49	0.12	0.53	0.13	0.52	0.09
CR7600	Miscellaneous: Kidnapping (18:1201,1202)	227	4.27	0.74	4.07	0.49	3.85	0.47
CR7610	Miscellaneous: Kidnapping (18:13)	1	7.03	—	7.56	—	3.87	—
CR7611	Miscellaneous: Kidnapping, Hostage	43	11.82	7.75	5.63	1.71	6.34	2.11
CR7700	Miscellaneous: Perjury	98	2.73	0.45	2.86	0.45	2.34	0.38
CR7800	Miscellaneous: Firearms and Weapons	1,394	2.65	0.11	2.67	0.08	2.31	0.09
CR7820	Miscellaneous: Firearms, Unlawful Possession	5,020	2.30	0.04	2.41	0.04	2.21	0.04
CR7830	Miscellaneous: Firearms	20,255	2.71	0.03	2.81	0.02	2.59	0.02
CR7831	Miscellaneous: Furtherance of Violence	392	2.73	0.19	2.84	0.18	2.62	0.17
CR7910	Miscellaneous: Arson	55	4.55	0.92	4.41	0.72	4.01	0.73
CR7940	Miscellaneous: Malicious Destruction of Property	96	1.12	0.20	1.20	0.21	0.87	0.15
CR7941	Miscellaneous: Other, Property	2	2.95	0.12	3.17	0.13	4.42	0.95
CR7950	Miscellaneous: Disorderly Conduct	327	0.41	0.04	0.44	0.04	0.33	0.03

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR7962	Miscellaneous: Civil Disorder	7	0.31	0.15	0.34	0.16	0.23	0.12
CR7990	Miscellaneous: General Offenses, Other	2,433	0.84	0.13	0.71	0.04	0.58	0.03
CR7991	Miscellaneous: Juvenile Delinquency	136	1.58	0.21	1.70	0.23	1.72	0.25
CR8100	Miscellaneous: Failure to Pay Child Support	164	0.78	0.08	0.84	0.09	0.77	0.09
CR8200	Miscellaneous: False Claims and Services, Government	211	1.83	0.19	1.96	0.20	1.88	0.21
CR8201	Miscellaneous: Identification Documents and Information Fraud	1,565	0.72	0.03	0.78	0.04	0.80	0.04
CR8500	Miscellaneous: Mail Fraud	309	2.22	0.20	2.32	0.20	1.92	0.17
CR8600	Miscellaneous: Wire, Radio, or Television Fraud	335	2.23	0.22	2.28	0.20	2.08	0.20
CR8710	Miscellaneous: Immigration Laws, Illegal Entry	84,363	0.06	0.00	0.06	0.00	0.15	0.00
CR8720	Miscellaneous: Immigration Laws, Illegal Reentry	51,699	0.90	0.01	0.90	0.00	1.08	0.01
CR8730	Miscellaneous: Immigration Laws, Other	11,229	1.19	0.03	1.05	0.01	1.14	0.01
CR8731	Miscellaneous: Immigration Laws, Fraud and Misuse of Visa/Passport	1,186	0.68	0.04	0.64	0.02	0.57	0.02
CR8740	Miscellaneous: Immigration Laws, Illegal Entry	119	0.66	0.15	0.58	0.09	0.70	0.11
CR8750	Miscellaneous: Immigration Laws, Fraudulent Citizen	11	0.77	0.28	0.82	0.30	0.54	0.21

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR8900	Miscellaneous: Liquor, Internal Revenue	10	1.07	0.49	1.15	0.53	0.60	0.32
CR9001	Federal Statute: Waste-Treatment/ Disposal/Storage	35	6.55	1.60	5.98	1.28	4.47	0.92
CR9110	Federal Statute: Agriculture Acts	9	0.19	0.08	0.20	0.09	0.25	0.09
CR9130	Federal Statute: Game Conservation Acts	242	1.77	0.26	1.72	0.20	1.57	0.20
CR9140	Federal Statute: Agriculture, Insecticide Act	2	0.33	0.30	0.36	0.32	0.35	0.31
CR9150	Federal Statute: National Park/ Recreation Violations	205	1.17	0.33	1.01	0.16	0.96	0.17
CR9160	Federal Statute: Agriculture, Packers and Stockyard Act	5	0.21	0.09	0.23	0.10	0.12	0.04
CR9180	Federal Statute: Agriculture, Handling Animals, Research	1	3.34	—	3.59	—	4.71	—
CR9300	Federal Statute: Fair Labor Standards Act	63	1.18	0.12	1.27	0.13	1.04	0.14
CR9400	Federal Statute: Food and Drug Act	53	2.22	0.45	2.32	0.43	1.67	0.29
CR9500	Federal Statute: Migratory Bird Laws	25	0.84	0.19	0.90	0.21	0.88	0.17
CR9600	Federal Statute: Motor Carrier Act	2	1.85	0.76	1.99	0.81	2.04	0.11
CR9720	Federal Statute: Illegal Use of Uniform	10	1.40	0.51	1.50	0.54	1.34	0.45
CR9740	Federal Statute: Alien Registration	37	0.26	0.05	0.28	0.05	0.31	0.08
CR9741	Federal Statute: Energy Facility	5	9.49	5.43	8.78	5.57	10.90	6.84
CR9752	Federal Statute: Espionage	17	5.23	1.23	5.62	1.32	4.95	1.40

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR9753	Federal Statute: Sabotage	1	0.94	—	1.01	—	1.16	—
CR9754	Federal Statute: Sedition	1	7.59	—	8.16	—	4.52	—
CR9760	Federal Statute: Curfew, Restricted Areas	321	0.28	0.04	0.30	0.04	0.24	0.04
CR9780	Federal Statute: Trading with the Enemy Act	2	19.30	13.25	20.74	14.24	10.89	14.56
CR9790	Federal Statute: Other	80	3.74	1.09	3.04	0.62	2.93	0.71
CR9791	Federal Statute: Subversive Activities Control Act	3	0.37	0.20	0.40	0.21	0.27	0.14
CR9810	Federal Statute: Obscene Mail	25	2.29	0.56	2.46	0.60	2.08	0.58
CR9820	Federal Statute: Obscene Matter in Interstate Commerce	41	4.46	0.96	4.59	0.93	4.05	0.79
CR9901	Federal Statute: Civil Rights	83	7.78	1.79	5.21	0.81	4.68	0.91
CR9902	Federal Statute: Election Law Violators	27	2.15	0.47	2.31	0.51	1.67	0.35
CR9903	Federal Statute: Public Officers/ Employees	2	0.21	0.02	0.22	0.02	0.14	0.02
CR9905	Federal Statute: Foreign Relations	65	2.30	0.94	1.76	0.36	1.28	0.24
CR9906	Federal Statute: Bank and Banking	2	0.28	0.08	0.30	0.09	0.34	0.10
CR9907	Federal Statute: Money and Finance	326	1.63	0.15	1.74	0.16	1.64	0.17
CR9908	Federal Statute: Public Health and Welfare	2	15.37	14.53	16.52	15.62	25.44	7.35
CR9910	Federal Statute: Communication Acts (Including Wire Tap)	10	2.12	0.62	2.28	0.67	1.84	0.51

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR9911	Federal Statute: Wire Interception	31	2.19	0.48	2.35	0.51	2.21	0.43
CR9912	Federal Statute: Copyright Laws	3	0.78	0.42	0.83	0.45	0.62	0.28
CR9914	Federal Statute: Coast Guard	2	7.69	1.29	8.27	1.39	4.59	0.77
CR9915	Federal Statute: Commerce and Trade	2	0.46	0.36	0.49	0.39	0.24	0.29
CR9921	Federal Statute: Contempt	132	1.89	0.73	1.40	0.26	1.22	0.24
CR9923	Federal Statute: Forfeiture, Criminal or Drug Related	7	1.68	0.87	1.80	0.94	1.56	1.02
CR9929	Federal Statute: Labor Laws	1	9.21	—	9.90	—	6.39	—
CR9930	Federal Statute: Minerals and Land Mining	1	7.64	—	8.21	—	5.89	—
CR9931	Federal Statute: Customs Laws (Except Narcotics and Liquor)	157	2.61	0.43	2.48	0.33	2.19	0.31
CR9938	Federal Statute: Veterans Benefits	5	0.24	0.13	0.25	0.14	0.32	0.17
CR9940	Federal Statute: Social Security	5	0.86	0.17	0.93	0.18	0.71	0.24
CR9943	Federal Statute: Railroad and Transportation Acts	1	0.95	—	1.02	—	1.08	—
CR9949	Federal Statute: Transportation	2	0.18	0.03	0.19	0.03	0.14	0.04
CR9950	Federal Statute: War and National Defense, Other	1	4.87	—	5.24	—	3.69	—
CR9954	Federal Statute: Peonage	19	11.68	9.10	3.49	1.63	2.46	1.27
CR9957	Federal Statute: Terrorist Activity	89	11.64	6.95	4.49	0.66	4.35	0.73
CR9960	Federal Statute: Liquor (except internal revenue)	30	0.40	0.06	0.43	0.06	0.43	0.07

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
CR9971	Federal Statute: Maritime and Shipping Laws	165	1.96	0.33	1.95	0.28	1.71	0.25
CR9972	Federal Statute: Stowaways	5	0.90	0.52	0.96	0.56	0.88	0.61
CR9973	Federal Statute: Federal Boat Safety Act of 1971	7	0.85	0.24	0.91	0.26	0.88	0.22
CR9981	Federal Statute: Postal, Non Mailable Material	16	1.99	0.47	2.14	0.50	2.06	0.50
CR9982	Federal Statute: Postal, Injury to Property	6	1.26	0.43	1.35	0.46	1.40	0.49
CR9983	Federal Statute: Postal, Obstructing the Mail	196	0.82	0.09	0.84	0.07	0.63	0.06
CR9984	Federal Statute: Postal, Violations by Postal Employees	166	1.12	0.17	1.05	0.10	0.90	0.09
CR9989	Federal Statute: Postal, Other	63	0.82	0.11	0.87	0.12	0.79	0.13
CR9991	Federal Statute: Destroying Federal Property	176	1.16	0.18	1.18	0.15	1.00	0.16
CR9992	Federal Statute: Intimidation of Witnesses, Jurors, etc.	238	4.20	0.70	3.30	0.33	3.15	0.33
CR9993	Federal Statute: Aircraft Regulations	366	2.12	0.20	2.13	0.16	1.74	0.13
CR9994	Federal Statute: Explosives (except on vessels)	461	5.19	0.99	3.99	0.23	3.64	0.22
CR9999	Federal Statute: Other	1,355	1.01	0.08	1.00	0.06	0.75	0.05
D1	Death Penalty: Habeas Corpus Challenge to State Sentence	10	31.82	11.47	34.21	12.33	39.15	8.71
D2	Death Penalty: Federal Capital Prosecution (and Direct Appeal)	163	36.11	7.52	34.08	5.28	37.00	5.78

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
D3	Death Penalty: Motion Attacking Sentence (2255)	1	70.57	—	75.86	—	66.87	—
D4	Death Penalty: Other	6	24.41	17.56	26.24	18.87	18.33	12.32
D5	Death Penalty: Redesignation from D2: No Death Sought by Government	3	164.26	135.88	176.57	146.07	366.18	7.00
EXTRAD	Extradition	660	1.13	0.16	0.61	0.04	0.62	0.04
FAO	First Appearance Only	17,856	0.06	0.00	0.06	0.00	0.05	0.00
HA	Appeal: Noncapital Habeas	1,092	4.24	0.24	4.27	0.18	4.04	0.18
HC	Habeas Corpus	3,954	3.21	0.13	3.18	0.10	3.04	0.10
JU	Juror Representation	8	1.53	0.97	1.61	1.17	1.66	1.44
LU	Line-Up	2	0.06	0.03	0.06	0.03	0.07	0.02
M4243A	Mental Disease 4243(a)	5	1.17	0.23	1.26	0.25	1.43	0.26
M4243C	Mental Disease 4243(c)	6	1.12	0.40	1.21	0.43	1.04	0.26
M4243E	Mental Disease 4243(e)	2	1.10	0.12	1.18	0.13	1.96	0.22
M4243F	Mental Disease 4243(f)	12	2.15	0.90	1.84	0.62	1.38	0.63
M4243G	Mental Disease 4243(g)	7	0.72	0.23	0.77	0.25	0.96	0.30
M4245A	Mental Disease 4245(a)	229	0.44	0.04	0.47	0.04	0.37	0.03
M4246A	Mental Disease 4246(a)	281	0.82	0.05	0.88	0.06	0.75	0.05
M4246E	Mental Disease 4246(e)	46	0.36	0.11	0.39	0.12	0.28	0.07
M4246F	Mental Disease 4246(f)	70	0.45	0.06	0.48	0.07	0.39	0.05
M4248A	Mental Disease 4248(a)	12	4.32	1.31	3.90	1.34	3.22	1.13

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
MA	Motion Attacking Sentence (2255)	578	2.34	0.28	2.20	0.15	2.06	0.15
MC	Motion to Correct or Reduce (Rule 35)	2,468	0.41	0.01	0.42	0.01	0.37	0.01
MNT	Motion for New Trial	25	3.63	1.13	2.19	0.47	1.82	0.48
MOP	Modification of Probation	1,896	0.16	0.01	0.17	0.01	0.13	0.01
ODC	Drug Court Participant	186	0.57	0.05	0.60	0.05	0.51	0.05
OT	Other	9,995	0.42	0.02	0.35	0.01	0.25	0.00
PA	Parole Revocation	2,475	0.39	0.02	0.39	0.01	0.30	0.01
PD	Pretrial Diversion	437	0.35	0.03	0.37	0.03	0.41	0.03
PL	Appeal: Parole Commission	61	0.63	0.19	0.46	0.11	0.32	0.08
PO	Petty Offenses	26,139	0.10	0.00	0.10	0.00	0.10	0.00
PP	Pre-Petition	279	1.56	0.72	0.75	0.06	0.81	0.08
PR	Probation Revocation	12,875	0.31	0.00	0.32	0.00	0.31	0.00
PT	Prisoner Transfer	2,509	0.23	0.01	0.22	0.01	0.20	0.01
PTR	Pretrial Release	1,476	0.26	0.01	0.27	0.01	0.26	0.01
RHO	Remanded: Habeas or Other	199	1.26	0.19	0.98	0.08	0.89	0.08
RTL	Remanded: Trial Level	863	1.11	0.07	0.91	0.04	0.79	0.04
SB	Standby or Advisory Counsel	6	0.53	0.23	0.57	0.25	0.42	0.28
SC	Supreme Court (Certiorari Granted)	16	53.48	5.59	53.25	5.24	52.12	7.33
SO	Sentencing Only	1,575	0.91	0.04	0.80	0.02	0.82	0.03
SR	Supervised Release	63,281	0.41	0.00	0.43	0.00	0.41	0.00

Table 4.9—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimates	SE	Based on District-Adjusted M-Estimates	SE
SS	State Statutes	617	0.28	0.04	0.26	0.01	0.28	0.02
TD	Court of Appeals: Trial Disposition	11,208	2.24	0.04	2.28	0.04	3.30	0.06
WI	Witness	5,102	0.48	0.03	0.45	0.01	0.41	0.01
WW	Witness for a Grand Jury, Federal Agency, Congress	611	0.66	0.05	0.64	0.04	0.66	0.04

NOTE: FY 2004–FY 2008 closed cases.

weight estimate. In Chapter Six, we utilize these comparisons to identify specific case weights that are particularly unreliable.

It should be noted that SEs cannot be calculated for case types with only one observed case, since a single measurement cannot give any sense of variability in the number of attorney hours needed. Although SEs can technically be calculated for those with two or more cases, the SE estimates are highly unstable for case types with fewer than five cases.

Exclusion of Immigration Cases in the Southern and Western Districts of Texas

Because of concerns that the heavy immigration caseloads in the Southern and Western Districts of Texas would overly influence weights in other locations, we were asked to present an alternative set of case weights based on time expenditures in all cases other than CR8710 illegal-entry and CR8720 illegal-reentry immigration cases in those two FDOs. The alternative data set used for these calculations therefore excludes 77,236 illegal-entry and 23,679 illegal-reentry cases from the overall total.

Table 4.10 repeats the information seen in Table 4.9 for these revised case weights. For district-adjusted case weights, the most consequential change occurs for CR8710 illegal-entry cases. The exclusion resulted in a 64-percent increase in the national case weight for such cases, from 0.15 to 0.24 (the rightmost column in Table 4.10 presents the percentage change in the district-adjusted weights found in Table 4.9). In contrast, CR8720 illegal-reentry case weights moved in the opposite direction when these two types of TXS and TXW cases were excluded, from 1.08 to 0.93. Because we rescale the case weights to average 1.0, dropping a large number of cases with small case weights has the effect of reducing the relative case weights of the remaining cases. A simple example demonstrates this. If the universe involved ten cases of type A with case weight equal to 10.0 and 100 cases of type B with a case weight equal to 0.1, then the average case weight is 1.0 $\left(\frac{(10 \times 10.0) + (100 \times 0.1)}{110} = 1.0\right)$. If, however, we were to drop the 100 type B cases from the universe, then, in order for the remaining type A cases to have case weights average 1.0, we need to reduce their case weight to 1.0, a reduction of 90 percent from their original case weight of 10.0. Removing more than 77,000 CR8710 illegal-entry cases (which have small case weights) from the data has the effect of reducing the weights for all other cases by an average of 16 percent. However, the change is not uniform across all case types because district multipliers must be recalculated on the basis of the revised universe of cases. For example, CR8730, CR8731, and CR8740 (all related to illegal entry or misuse of visas) had slightly reduced case weights on the order of 7-percent reductions, an indication that their values are particularly sensitive to the impact of the district multipliers.

Though historical trends in weighted caseloads for various weighting scenarios are presented in the next chapter, Table 4.11 shows what the total weighted caseloads for the study period would be if these particular cases were dropped and revised weights produced.

Though the exclusion did have a marked effect on the case weight for CR8710 illegal entries, we recommend that ODS reconsider its decision to break out immigration cases in TXS and TXW separately when calculating weights for workload and staffing requirements for the federal defender system as a whole. Note that we have no similar concern with the development of district-specific case weights as a tool to better understand how changes in local caseloads could affect local resource needs. Such weights would be based on time expenditure data from the individual offices of interest and applied to those offices only. In this situation, however, the case weights would be applied nationally even though, based on a subset of districts and cases. Moreover, there is an apparent assumption that TXW and TXS are the

Table 4.10
Case-Weight Options: CR8710 and CR8720 Cases in the Southern and Western Districts of Texas Excluded

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
AA	Court of Appeals: Amendment Appeal	74	0.19	0.05	0.20	0.06	0.18	0.06	-13.8
AC	Amicus	1	10.38	—	11.12	—	12.51	—	-14.2
AF	Appeal: Civil Asset Forfeiture Representation	10	0.54	0.26	0.58	0.28	0.54	0.30	-13.9
ANCPRO	Ancillary Proceedings	350	0.66	0.13	0.45	0.04	0.39	0.03	-14.1
APM	Appeal: Magistrate Decision	544	0.98	0.09	1.02	0.08	0.87	0.07	-14.0
BP	Bail/Presentment	7,110	0.06	0.00	0.06	0.00	0.05	0.00	-15.2
CA	Court of Appeals: Other Matters	12,873	2.02	0.03	2.10	0.03	1.97	0.03	-14.0
CAO	Circuit Argument Only	12	1.34	0.50	1.44	0.54	1.44	0.56	-14.0
CCA	Co-Counsel Appointment	21	2.73	1.97	0.93	0.21	0.89	0.26	-13.7
CCC	Criminal or Civil Contempt	151	1.02	0.22	0.69	0.08	0.57	0.07	-14.1
CCO	Conflict Counsel	223	0.09	0.01	0.09	0.01	0.10	0.01	-14.3
CD	Court Directed Prisoner Representation	1,587	0.22	0.02	0.19	0.01	0.17	0.01	-13.9
CF	Civil Asset Forfeiture Representation	76	0.88	0.34	0.75	0.19	0.60	0.19	-14.1
CK	Crack Cocaine Retroactive Amendment	11,493	0.12	0.00	0.12	0.00	0.11	0.00	-13.9
CONSUL	Consultation	4,589	0.45	0.02	0.41	0.01	0.39	0.01	-14.1
CR0100	Homicide: Murder, First Degree	384	7.31	0.99	6.81	0.61	7.41	0.75	-13.9
CR0101	Homicide: Murder, First Degree, Government Official	4	6.30	4.95	6.75	5.30	5.48	5.46	-13.5

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR0200	Homicide: Murder, Second Degree	99	5.49	0.82	5.88	0.88	6.68	1.06	-14.0
CR0201	Homicide: Murder, Second Degree, Government Official	4	1.04	0.77	1.11	0.83	1.49	1.10	-14.2
CR0300	Homicide: Manslaughter	136	3.69	0.52	3.95	0.56	4.93	0.78	-14.0
CR0310	Homicide: Negligent	4	1.45	0.41	1.56	0.44	1.91	0.43	-14.0
CR0311	Homicide: Negligent	1	4.49	—	4.81	—	2.56	—	-13.9
CR1100	Robbery: Bank	4,350	2.33	0.05	2.41	0.04	2.23	0.04	-14.0
CR1200	Robbery: Postal	73	3.34	0.50	3.45	0.47	2.84	0.42	-13.8
CR1400	Robbery: Other	90	1.77	0.31	1.83	0.29	1.65	0.28	-14.0
CR1500	Assault: Assault	2,535	2.03	0.06	2.06	0.05	1.96	0.06	-14.0
CR1501	Assault: Felony, on a Government Official	10	1.15	0.58	1.23	0.62	1.03	0.59	-14.3
CR1560	Federal Statute: Fair Housing Law	5	2.27	1.53	2.43	1.63	2.02	1.57	-14.1
CR1600	Assault: Other	1,137	0.60	0.18	0.46	0.03	0.38	0.02	-14.1
CR1601	Assault: Misdemeanor, on a Government Official	18	0.72	0.19	0.77	0.21	0.61	0.16	-14.2
CR1602	Assault: Obstruction of Justice-Interference	16	1.83	0.38	1.96	0.41	1.81	0.39	-14.7
CR1700	Racketeering: Violent Crime	155	2.43	0.39	2.51	0.39	2.41	0.42	-14.0
CR1800	Carjacking	81	2.12	0.29	2.27	0.31	2.32	0.36	-14.0
CR2100	Burglary: Bank	1	2.53	—	2.71	—	1.82	—	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR2200	Burglary: Postal	52	1.20	0.12	1.29	0.12	1.30	0.12	-14.0
CR2300	Burglary: Interstate Commerce	4	1.44	1.17	1.47	1.56	1.44	1.11	-14.0
CR2400	Burglary: Other	86	1.13	0.12	1.18	0.12	1.01	0.12	-14.1
CR3100	Larceny and Theft: Bank	226	1.81	0.26	1.68	0.15	1.52	0.15	-13.9
CR3200	Larceny and Theft: Postal	1,224	1.47	0.05	1.54	0.05	1.49	0.05	-14.0
CR3300	Larceny and Theft: Interstate Commerce	236	3.40	0.52	2.53	0.24	2.35	0.25	-13.8
CR3400	Larceny and Theft: U.S. Property	4,382	0.92	0.03	0.92	0.02	0.85	0.02	-14.0
CR3500	Larceny and Theft: Theft Within Special Maritime Jurisdiction	350	0.23	0.02	0.25	0.02	0.22	0.02	-14.3
CR3600	Larceny and Theft: Transportation Stolen Property	388	2.85	0.27	2.44	0.17	2.20	0.17	-14.0
CR3700	Larceny and Theft: Felony Other	225	1.17	0.12	1.21	0.11	1.18	0.12	-14.0
CR3800	Larceny and Theft: Misdemeanor Other	601	0.28	0.02	0.30	0.03	0.27	0.03	-14.2
CR4100	Embezzlement: Bank	599	1.40	0.09	1.46	0.08	1.40	0.08	-14.1
CR4200	Embezzlement: Postal	818	1.06	0.05	1.11	0.05	0.99	0.05	-14.0
CR4310	Embezzlement: Public Moneys or Property	39	1.68	0.67	1.44	0.43	1.38	0.48	-13.9
CR4320	Embezzlement: Lending, Credit, Insurance Institute	64	1.90	0.27	2.04	0.28	1.83	0.28	-14.1
CR4330	Embezzlement: By Officers of a Carrier	5	3.06	1.22	3.27	1.31	2.53	0.80	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR4340	Embezzlement: World War Veterans Relief	8	1.62	0.59	1.74	0.63	1.24	0.48	-14.1
CR4350	Embezzlement: Officer or Employee of U.S.	34	1.67	0.65	1.44	0.37	1.12	0.29	-13.9
CR4390	Embezzlement: Other	415	2.33	0.33	2.03	0.12	1.95	0.13	-13.9
CR4510	Fraud: Income Tax, Evade or Defeat	181	4.72	0.82	3.88	0.43	3.24	0.39	-14.1
CR4520	Fraud: Income Tax, Felony Other	269	3.51	0.50	3.15	0.27	2.79	0.26	-14.1
CR4530	Fraud: Income Tax, Failure to File	72	2.32	0.38	2.45	0.38	2.25	0.37	-14.0
CR4540	Fraud: Income Tax, Misdemeanor Other	2	0.08	0.05	0.09	0.05	0.15	0.02	-12.5
CR4600	Fraud: Lending, Credit Institution	273	1.70	0.21	1.72	0.15	1.70	0.17	-14.1
CR4601	Fraud: Bank	2,115	1.95	0.08	1.99	0.07	1.79	0.06	-14.0
CR4700	Fraud: Postal, Interstate Wire, Radio, etc.	2,057	3.28	0.17	2.94	0.10	2.71	0.11	-14.0
CR4800	Fraud: Veterans and Allotments	21	1.10	0.16	1.18	0.17	1.07	0.16	-14.0
CR4900	Fraud: Bankruptcy	214	4.41	0.99	3.33	0.33	3.01	0.33	-14.0
CR4910	Fraud: Marketing Agreements and Commodity Credit	6	1.76	0.48	1.89	0.51	1.73	0.48	-14.0
CR4920	Fraud: Securities and Exchange	99	5.31	0.96	4.65	0.66	4.01	0.61	-14.1
CR4931	Fraud: Excise Tax, Other	2	5.66	0.26	6.06	0.28	4.06	0.19	-14.0
CR4932	Fraud: Wagering Tax, Other	5	0.86	0.81	0.92	0.87	0.56	0.56	-13.7
CR4933	Fraud: Other Tax	46	0.70	0.19	0.75	0.20	0.86	0.25	-14.2

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR4940	Fraud: Railroad Retirement and Unemployment	11	0.83	0.13	0.89	0.14	0.73	0.11	-14.3
CR4941	Fraud: Food Stamp Program	123	0.64	0.16	0.68	0.17	0.93	0.28	-13.7
CR4950	Fraud: Social Security	2,056	1.26	0.05	1.32	0.04	1.29	0.04	-14.0
CR4960	Fraud: False Personation	160	1.73	0.20	1.85	0.21	1.75	0.22	-14.1
CR4970	Fraud: Nationality Laws	917	0.95	0.22	0.80	0.05	1.01	0.08	-13.2
CR4980	Fraud: Passport	1,960	0.98	0.05	1.01	0.04	0.74	0.03	-13.9
CR4991	Fraud: False Claims and Statements	3,515	1.52	0.07	1.48	0.04	1.43	0.05	-13.9
CR4992	Fraud: Conspiracy to Defraud, Other	1,422	1.99	0.11	1.99	0.09	1.87	0.09	-14.0
CR4993	Fraud: Conspiracy (General), Other	3	0.86	0.83	0.92	0.89	0.78	0.94	-14.0
CR4994	Fraud: False Entries, Other	25	0.83	0.21	0.89	0.23	0.75	0.19	-14.1
CR4995	Fraud: Credit Card	1,885	1.73	0.05	1.84	0.05	1.61	0.05	-14.0
CR4996	Fraud: Computer	219	2.72	0.37	2.62	0.28	2.33	0.27	-14.0
CR4997	Fraud: Telemarketing	16	3.59	1.40	3.83	1.59	4.13	1.38	-14.1
CR4998	Fraud: Health Care	425	2.75	0.27	2.63	0.22	2.06	0.18	-14.0
CR4999	Fraud: Other	392	3.06	0.42	2.63	0.27	2.50	0.29	-14.0
CR5100	Transportation Stolen Vehicle; Aircraft	118	1.55	0.28	1.57	0.22	1.47	0.22	-14.0
CR5200	Auto Theft: Other	248	3.77	0.47	3.63	0.30	3.44	0.31	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR5500	Forgery and Counterfeiting: Transport Forged Securities	1	0.05	—	0.06	—	0.04	—	-14.0
CR5600	Forgery and Counterfeiting: Postal	1	0.88	—	0.94	—	0.63	—	-14.0
CR5710	Forgery and Counterfeiting: Other U.S.	203	1.32	0.11	1.40	0.11	1.21	0.11	-14.0
CR5720	Forgery and Counterfeiting: Other	13	0.88	0.38	0.94	0.40	0.75	0.39	-13.9
CR5800	Forgery and Counterfeiting: Counterfeiting	2,899	1.60	0.04	1.64	0.04	1.52	0.04	-14.0
CR5900	Sex Offenses: Sexually Explicit Material	1,163	2.18	0.08	2.33	0.08	2.06	0.08	-14.0
CR6100	Sex Offenses: Sexual Abuse of Adult	659	3.65	0.20	3.69	0.17	4.13	0.22	-14.0
CR6110	Sex Offenses: Sexual Abuse of Children	1,633	3.15	0.10	3.29	0.10	3.00	0.10	-14.0
CR6120	Sex Offenses: Interstate Domestic Violence	38	5.61	1.55	4.83	1.03	5.26	1.22	-14.2
CR6121	Sex Offenses: Violent Offenses, Other	48	2.33	0.71	2.21	0.58	2.45	0.76	-13.9
CR6200	Sex Offenses: White Slavery and Importing Aliens	514	3.12	0.19	3.21	0.17	2.68	0.15	-14.0
CR6300	Sex Offenses: Other	1,450	2.70	0.09	2.85	0.09	2.61	0.08	-14.0
CR6301	Sex Offenses: Transportation for Illegal Sexual Activity	235	2.47	0.26	2.56	0.24	2.28	0.24	-13.9
CR6501	Drug Offenses: Marihuana, Sell, Distribute or Dispense	9,462	0.99	0.02	1.01	0.02	1.50	0.03	-12.9
CR6502	Drug Offenses: Marihuana, Importation/Exportation	3,611	1.18	0.04	1.20	0.03	1.67	0.05	-13.9

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR6503	Drug Offenses: Marihuana, Manufacture	187	1.92	0.19	2.01	0.19	1.68	0.19	-13.9
CR6504	Drug Offenses: Marihuana, Possession	2,092	0.38	0.01	0.40	0.02	0.29	0.01	-14.2
CR6700	Drug Offenses: Narcotics, Other (Terms/ Reopens)	17	0.16	0.05	0.17	0.06	0.12	0.04	-14.1
CR6701	Drug Offenses: Narcotics, Sell, Distribute or Dispense	11,329	1.69	0.03	1.71	0.02	1.66	0.02	-13.8
CR6702	Drug Offenses: Narcotics, Importation/ Exportation	1,582	1.65	0.07	1.64	0.05	1.47	0.05	-14.2
CR6703	Drug Offenses: Narcotics, Manufacture	113	2.05	0.19	2.19	0.21	2.15	0.28	-13.8
CR6704	Drug Offenses: Narcotics, Possession	609	1.23	0.07	1.32	0.07	0.93	0.06	-14.0
CR6705	Drug Offenses: Narcotics, Records, Prescriptions, Fraudulent	4	0.52	0.33	0.56	0.35	0.51	0.34	-14.3
CR6800	Drug Offenses: Controlled Substance, Continuing Criminal Enterprise	40	1.35	0.49	1.24	0.37	1.19	0.42	-14.0
CR6801	Drug Offenses: Controlled Substance, Sell, Distribute, Dispense	23,870	1.67	0.02	1.69	0.01	1.60	0.02	-14.0
CR6802	Drug Offenses: Controlled Substance, Importation/Exportation	1,455	2.00	0.08	2.02	0.06	1.56	0.05	-14.0
CR6803	Drug Offenses: Controlled Substance, Manufacture	452	2.06	0.12	2.18	0.12	2.20	0.13	-13.9
CR6804	Drug Offenses: Controlled Substance, Possession	1,429	0.71	0.04	0.74	0.03	0.58	0.03	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR6805	Drug Offenses: Controlled Substance, Fraudulent Records, Prescription	11	1.23	0.25	1.32	0.27	0.90	0.20	-14.1
CR6806	Drug Offenses: Drug Cultivation	6	0.99	0.35	1.06	0.38	1.16	0.24	-14.0
CR6807	Drug Offenses: Illicit Drug Profits	1	6.50	—	6.97	—	4.67	—	-14.0
CR6809	Drug Offenses: Mail Order Drug Paraphernalia	2	0.16	0.11	0.18	0.12	0.19	0.09	-14.0
CR6810	Drug Offenses: Under Influence Alcohol/ Drugs	43	0.47	0.11	0.50	0.12	0.61	0.14	-13.8
CR6830	Drug Offenses: Under Influence Alcohol/ Drugs	62	0.29	0.04	0.31	0.04	0.23	0.03	-14.4
CR6905	Drug Offenses: Other	19	1.50	0.41	1.60	0.44	1.51	0.45	-14.0
CR6909	Drug Offenses: Mail Order Drug Paraphernalia	38	0.71	0.26	0.76	0.28	0.44	0.13	-13.9
CR6911	Drug Offenses: Other Drug Abuse Prevention and Control Act Offenses	30	2.40	1.49	1.36	0.43	2.02	0.71	-12.5
CR7100	Miscellaneous: Bribery	180	2.14	0.41	1.95	0.23	1.90	0.24	-14.0
CR7210	Miscellaneous: Traffic Offenses, Drunken Driving	3,399	0.28	0.01	0.29	0.01	0.22	0.00	-14.1
CR7220	Miscellaneous: Traffic Offenses, Other	7,615	0.18	0.00	0.19	0.00	0.13	0.00	-14.0
CR7310	Miscellaneous: Escape	1,284	0.82	0.03	0.85	0.03	0.81	0.03	-14.1
CR7311	Miscellaneous: Escape, Jumping Bail	397	0.42	0.05	0.42	0.04	0.38	0.04	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR7312	Miscellaneous: Escape, Bail Reform Act of 1966	28	0.13	0.05	0.14	0.05	0.15	0.06	-13.9
CR7313	Miscellaneous: Escape from Custody	60	1.18	0.14	1.27	0.15	1.16	0.16	-14.1
CR7314	Miscellaneous: Criminal Default	5	0.29	0.16	0.31	0.18	0.27	0.19	-14.1
CR7315	Miscellaneous: Supervision Condition Violation	23	0.51	0.10	0.54	0.11	0.48	0.10	-14.0
CR7320	Miscellaneous: Escape, Aiding or Harboring	271	1.17	0.10	1.17	0.08	1.13	0.09	-13.8
CR7330	Miscellaneous: Prison Contraband	136	1.06	0.14	1.11	0.13	1.03	0.15	-14.0
CR7400	Miscellaneous: Extortion, Racketeering and Threats	815	2.94	0.18	3.02	0.16	2.75	0.16	-14.0
CR7401	Miscellaneous: Threats Against the President	139	2.42	0.22	2.59	0.23	2.40	0.26	-14.0
CR7410	Miscellaneous: Racketeering, Arson	3	1.05	0.47	1.13	0.51	0.83	0.33	-14.1
CR7420	Miscellaneous: Racketeering, Bribery	1	0.03	—	0.03	—	0.03	—	-14.1
CR7430	Miscellaneous: Racketeering, Extortion	10	7.86	4.65	6.96	4.24	5.71	4.22	-13.8
CR7440	Miscellaneous: Racketeering, Gambling	4	16.46	16.13	8.71	11.13	12.78	17.18	-14.8
CR7450	Miscellaneous: Racketeering, Liquor	1	0.03	—	0.03	—	0.03	—	-14.4
CR7460	Miscellaneous: Racketeering, Narcotics	14	2.41	1.38	2.58	1.47	2.51	1.51	-14.1
CR7470	Miscellaneous: Racketeering, Prostitution	1	2.69	—	2.88	—	1.66	—	-13.7
CR7471	Miscellaneous: Racketeering, Murder	50	5.44	0.87	5.82	0.93	5.09	0.93	-14.1

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR7473	Miscellaneous: Racketeering, Maim	1	0.46	—	0.50	—	0.59	—	-14.4
CR7474	Miscellaneous: Racketeering, Conspiracy, Murder, Kidnap	5	0.13	0.07	0.13	0.08	0.12	0.06	-14.2
CR7477	Miscellaneous: Racketeering, Monetary Laundering	413	2.11	0.25	2.11	0.20	1.94	0.21	-14.0
CR7480	Miscellaneous: Racketeering	38	23.70	22.51	1.96	0.92	2.61	1.17	-14.4
CR7481	Miscellaneous: Racketeering, Robbery	2	11.12	6.72	11.91	7.20	9.20	4.30	-14.3
CR7482	Miscellaneous: Racketeering, Threats	3	2.16	1.93	2.31	2.07	0.99	1.09	-13.9
CR7490	Miscellaneous: Racketeering, Extortion Credit Transactions	28	3.37	1.15	3.60	1.27	2.92	1.09	-13.9
CR7500	Miscellaneous: Gambling and Lottery	12	2.09	1.34	2.07	1.40	1.48	0.85	-14.1
CR7530	Miscellaneous: Gambling and Lottery, Transmit Wager	3	0.41	0.10	0.44	0.11	0.45	0.08	-14.5
CR7600	Miscellaneous: Kidnapping (18:1201,1202)	227	3.55	0.62	3.38	0.41	3.31	0.40	-14.0
CR7610	Miscellaneous: Kidnapping (18:13)	1	5.86	—	6.27	—	3.34	—	-13.9
CR7611	Miscellaneous: Kidnapping, Hostage	43	9.84	6.45	4.67	1.42	5.49	1.83	-13.4
CR7700	Miscellaneous: Perjury	98	2.27	0.38	2.37	0.38	2.02	0.33	-13.9
CR7800	Miscellaneous: Firearms and Weapons	1,394	2.20	0.10	2.21	0.07	1.99	0.07	-13.9
CR7820	Miscellaneous: Firearms, Unlawful Possession	5,020	1.91	0.04	2.00	0.03	1.91	0.03	-13.9
CR7830	Miscellaneous: Firearms	20,255	2.25	0.02	2.33	0.02	2.23	0.02	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR7831	Miscellaneous: Furtherance of Violence	392	2.27	0.16	2.36	0.15	2.25	0.15	-13.9
CR7910	Miscellaneous: Arson	55	3.79	0.77	3.66	0.60	3.45	0.63	-13.9
CR7940	Miscellaneous: Malicious Destruction of Property	96	0.93	0.16	1.00	0.18	0.75	0.13	-14.1
CR7941	Miscellaneous: Other, Property	2	2.46	0.10	2.63	0.11	3.81	0.88	-13.8
CR7950	Miscellaneous: Disorderly Conduct	327	0.34	0.03	0.36	0.04	0.29	0.03	-14.0
CR7962	Miscellaneous: Civil Disorder	7	0.26	0.12	0.28	0.13	0.20	0.10	-14.0
CR7990	Miscellaneous: General Offenses, Other	2,433	0.70	0.11	0.59	0.03	0.50	0.03	-14.2
CR7991	Miscellaneous: Juvenile Delinquency	136	1.31	0.18	1.41	0.19	1.48	0.21	-14.1
CR8100	Miscellaneous: Failure to Pay Child Support	164	0.65	0.07	0.69	0.07	0.66	0.08	-14.0
CR8200	Miscellaneous: False Claims and Services, Government	211	1.53	0.16	1.62	0.16	1.62	0.18	-14.1
CR8201	Miscellaneous: Identification Documents and Information Fraud	1,565	0.60	0.03	0.64	0.03	0.69	0.03	-13.9
CR8500	Miscellaneous: Mail Fraud	309	1.85	0.17	1.92	0.17	1.65	0.15	-14.0
CR8600	Miscellaneous: Wire, Radio, or Television Fraud	335	1.86	0.18	1.89	0.17	1.79	0.17	-14.1
CR8710	Miscellaneous: Immigration Laws, Illegal Entry	7,127	0.23	0.01	0.23	0.01	0.24	0.01	64.4
CR8720	Miscellaneous: Immigration Laws, Illegal Reentry	28,020	0.94	0.01	0.97	0.01	0.93	0.01	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR8730	Miscellaneous: Immigration Laws, Other	11,229	0.99	0.02	0.94	0.01	1.07	0.02	-6.1
CR8731	Miscellaneous: Immigration Laws, Fraud and Misuse of Visa/Passport	1,186	0.56	0.04	0.56	0.02	0.52	0.02	-8.5
CR8740	Miscellaneous: Immigration Laws, Illegal Entry	119	0.55	0.13	0.52	0.09	0.64	0.10	-8.4
CR8750	Miscellaneous: Immigration Laws, Fraudulent Citizen	11	0.64	0.24	0.68	0.25	0.46	0.18	-14.0
CR8900	Miscellaneous: Liquor, Internal Revenue	10	0.89	0.41	0.95	0.44	0.51	0.27	-14.0
CR9001	Federal Statute: Waste-Treatment/Disposal/Storage	35	5.45	1.33	4.96	1.06	3.84	0.79	-14.1
CR9110	Federal Statute: Agriculture Acts	9	0.15	0.07	0.17	0.07	0.21	0.08	-14.1
CR9130	Federal Statute: Game Conservation Acts	242	1.47	0.22	1.43	0.17	1.35	0.17	-14.0
CR9140	Federal Statute: Agriculture, Insecticide Act	2	0.28	0.25	0.29	0.27	0.30	0.27	-14.1
CR9150	Federal Statute: National Park/Recreation Violations	205	0.97	0.27	0.84	0.13	0.83	0.15	-14.1
CR9160	Federal Statute: Agriculture, Packers and Stockyard Act	5	0.18	0.07	0.19	0.08	0.10	0.03	-13.9
CR9180	Federal Statute: Agriculture, Handling Animals, Research	1	2.78	—	2.98	—	4.03	—	-14.5
CR9300	Federal Statute: Fair Labor Standards Act	63	0.99	0.10	1.06	0.11	0.90	0.12	-14.0
CR9400	Federal Statute: Food and Drug Act	53	1.85	0.37	1.93	0.36	1.43	0.25	-14.3

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR9500	Federal Statute: Migratory Bird Laws	25	0.70	0.16	0.75	0.17	0.76	0.15	-14.0
CR9600	Federal Statute: Motor Carrier Act	2	1.54	0.63	1.65	0.67	1.75	0.10	-13.9
CR9720	Federal Statute: Illegal Use of Uniform	10	1.16	0.42	1.25	0.45	1.15	0.39	-14.0
CR9740	Federal Statute: Alien Registration	37	0.22	0.04	0.23	0.04	0.27	0.07	-13.1
CR9741	Federal Statute: Energy Facility	5	7.90	4.52	7.29	4.62	9.35	5.87	-14.2
CR9752	Federal Statute: Espionage	17	4.35	1.02	4.66	1.09	4.26	1.20	-14.0
CR9753	Federal Statute: Sabotage	1	0.78	—	0.84	—	1.00	—	-13.9
CR9754	Federal Statute: Sedition	1	6.32	—	6.77	—	3.91	—	-13.7
CR9760	Federal Statute: Curfew, Restricted Areas	321	0.23	0.03	0.25	0.03	0.20	0.03	-14.2
CR9780	Federal Statute: Trading with the Enemy Act	2	16.06	11.03	17.21	11.82	9.44	12.65	-13.3
CR9790	Federal Statute: Other	80	3.11	0.91	2.53	0.52	2.52	0.61	-14.1
CR9791	Federal Statute: Subversive Activities Control Act	3	0.31	0.16	0.33	0.18	0.23	0.12	-14.4
CR9810	Federal Statute: Obscene Mail	25	1.90	0.47	2.04	0.50	1.79	0.50	-14.0
CR9820	Federal Statute: Obscene Matter in Interstate Commerce	41	3.71	0.80	3.81	0.77	3.48	0.68	-14.0
CR9901	Federal Statute: Civil Rights	83	6.48	1.49	4.33	0.67	4.01	0.78	-14.3
CR9902	Federal Statute: Election Law Violators	27	1.79	0.39	1.91	0.42	1.43	0.31	-13.9

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR9903	Federal Statute: Public Officers/ Employees	2	0.17	0.02	0.18	0.02	0.12	0.01	-14.0
CR9905	Federal Statute: Foreign Relations	65	1.92	0.78	1.46	0.30	1.10	0.21	-14.1
CR9906	Federal Statute: Bank and Banking	2	0.23	0.07	0.25	0.07	0.30	0.09	-14.2
CR9907	Federal Statute: Money and Finance	326	1.35	0.13	1.44	0.13	1.41	0.14	-13.6
CR9908	Federal Statute: Public Health and Welfare	2	12.79	12.10	13.71	12.96	22.25	5.77	-12.6
CR9910	Federal Statute: Communication Acts (Including Wire Tap)	10	1.77	0.52	1.89	0.55	1.58	0.44	-14.2
CR9911	Federal Statute: Wire Interception	31	1.82	0.40	1.95	0.43	1.90	0.37	-14.1
CR9912	Federal Statute: Copyright Laws	3	0.65	0.35	0.69	0.38	0.53	0.24	-14.1
CR9914	Federal Statute: Coast Guard	2	6.41	1.07	6.86	1.15	3.96	0.66	-13.7
CR9915	Federal Statute: Commerce and Trade	2	0.38	0.30	0.41	0.32	0.21	0.25	-13.5
CR9921	Federal Statute: Contempt	132	1.57	0.61	1.16	0.22	1.05	0.21	-13.9
CR9923	Federal Statute: Forfeiture, Criminal or Drug Related	7	1.40	0.73	1.50	0.78	1.34	0.88	-14.2
CR9929	Federal Statute: Labor Laws	1	7.66	—	8.21	—	5.50	—	-14.0
CR9930	Federal Statute: Minerals and Land Mining	1	6.36	—	6.81	—	5.05	—	-14.3
CR9931	Federal Statute: Customs Laws (Except Narcotics and Liquor)	157	2.17	0.36	2.06	0.28	1.88	0.27	-14.3

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR9938	Federal Statute: Veterans Benefits	5	0.20	0.10	0.21	0.11	0.28	0.15	-14.1
CR9940	Federal Statute: Social Security	5	0.72	0.14	0.77	0.15	0.61	0.21	-14.2
CR9943	Federal Statute: Railroad and Transportation Acts	1	0.79	—	0.85	—	0.93	—	-14.1
CR9949	Federal Statute: Transportation	2	0.15	0.02	0.16	0.03	0.12	0.04	-14.0
CR9950	Federal Statute: War and National Defense, Other	1	4.06	—	4.35	—	3.17	—	-14.1
CR9954	Federal Statute: Peonage	19	9.72	7.58	2.89	1.35	2.12	1.09	-13.9
CR9957	Federal Statute: Terrorist Activity	89	9.69	5.79	3.73	0.55	3.74	0.62	-14.1
CR9960	Federal Statute: Liquor (except internal revenue)	30	0.33	0.05	0.35	0.05	0.37	0.06	-13.9
CR9971	Federal Statute: Maritime and Shipping Laws	165	1.63	0.28	1.62	0.23	1.47	0.22	-13.7
CR9972	Federal Statute: Stowaways	5	0.75	0.43	0.80	0.46	0.75	0.52	-14.2
CR9973	Federal Statute: Federal Boat Safety Act of 1971	7	0.71	0.20	0.76	0.22	0.76	0.19	-14.2
CR9981	Federal Statute: Postal, Non Mailable Material	16	1.65	0.39	1.77	0.42	1.77	0.43	-14.0
CR9982	Federal Statute: Postal, Injury to Property	6	1.04	0.36	1.12	0.38	1.21	0.43	-13.9
CR9983	Federal Statute: Postal, Obstructing the Mail	196	0.68	0.08	0.69	0.06	0.54	0.05	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
CR9984	Federal Statute: Postal, Violations by Postal Employees	166	0.93	0.14	0.87	0.08	0.77	0.08	-14.2
CR9989	Federal Statute: Postal, Other	63	0.68	0.09	0.72	0.10	0.68	0.11	-14.1
CR9991	Federal Statute: Destroying Federal Property	176	0.96	0.15	0.98	0.13	0.86	0.14	-13.9
CR9992	Federal Statute: Intimidation of Witnesses, Jurors, etc.	238	3.50	0.59	2.74	0.27	2.71	0.29	-13.9
CR9993	Federal Statute: Aircraft Regulations	366	1.76	0.16	1.77	0.13	1.49	0.12	-14.1
CR9994	Federal Statute: Explosives (except on vessels)	461	4.32	0.82	3.31	0.19	3.13	0.19	-14.0
CR9999	Federal Statute: Other	1,355	0.84	0.07	0.83	0.05	0.64	0.04	-14.0
D1	Death Penalty: Habeas Corpus Challenge to State Sentence	10	26.49	9.55	28.38	10.23	33.60	7.52	-14.2
D2	Death Penalty: Federal Capital Prosecution (and Direct Appeal)	163	30.06	6.26	28.28	4.38	31.77	4.96	-14.1
D3	Death Penalty: Motion Attacking Sentence (2255)	1	58.74	—	62.94	—	57.49	—	-14.0
D4	Death Penalty: Other	6	20.32	14.61	21.77	15.66	15.76	10.60	-14.0
D5	Death Penalty: Redesignation from D2: No Death Sought by Government	3	136.73	113.11	146.51	121.20	313.13	6.03	-14.5
EXTRAD	Extradition	660	0.94	0.13	0.51	0.03	0.53	0.03	-14.1
FAO	First Appearance Only	17,856	0.05	0.00	0.05	0.00	0.04	0.00	-14.8

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
HA	Appeal: Noncapital Habeas	1,092	3.53	0.20	3.55	0.15	3.46	0.16	-14.2
HC	Habeas Corpus	3,954	2.67	0.11	2.64	0.08	2.60	0.08	-14.5
JU	Juror Representation	8	1.27	0.81	1.34	0.97	1.43	1.24	-13.8
LU	Line-Up	2	0.05	0.02	0.05	0.02	0.06	0.02	-14.2
M4243A	Mental Disease 4243(a)	5	0.97	0.19	1.04	0.21	1.24	0.23	-13.5
M4243C	Mental Disease 4243(c)	6	0.93	0.33	1.00	0.35	0.90	0.23	-13.7
M4243E	Mental Disease 4243(e)	2	0.92	0.10	0.98	0.11	1.68	0.19	-14.2
M4243F	Mental Disease 4243(f)	12	1.79	0.75	1.53	0.52	1.19	0.55	-13.7
M4243G	Mental Disease 4243(g)	7	0.60	0.20	0.64	0.21	0.82	0.26	-14.7
M4245A	Mental Disease 4245(a)	229	0.36	0.03	0.39	0.03	0.32	0.03	-14.0
M4246A	Mental Disease 4246(a)	281	0.69	0.04	0.73	0.05	0.64	0.04	-14.0
M4246E	Mental Disease 4246(e)	46	0.30	0.09	0.32	0.10	0.24	0.06	-14.0
M4246F	Mental Disease 4246(f)	70	0.37	0.05	0.40	0.06	0.34	0.05	-14.0
M4248A	Mental Disease 4248(a)	12	3.60	1.09	3.24	1.11	2.77	0.97	-14.1
MA	Motion Attacking Sentence (2255)	578	1.95	0.23	1.83	0.12	1.77	0.13	-14.2
MC	Motion to Correct or Reduce (Rule 35)	2,468	0.34	0.01	0.35	0.01	0.32	0.01	-13.9
MNT	Motion for New Trial	25	3.02	0.94	1.82	0.39	1.57	0.39	-13.9
MOP	Modification of Probation	1,896	0.14	0.01	0.14	0.01	0.11	0.00	-14.2
ODC	Drug Court Participant	186	0.47	0.04	0.49	0.04	0.44	0.04	-14.2

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
OT	Other	9,995	0.35	0.02	0.29	0.01	0.21	0.00	-14.0
PA	Parole Revocation	2,475	0.32	0.01	0.32	0.01	0.26	0.01	-13.9
PD	Pretrial Diversion	437	0.29	0.02	0.30	0.02	0.35	0.02	-14.0
PL	Appeal: Parole Commission	61	0.52	0.16	0.38	0.09	0.27	0.06	-15.4
PO	Petty Offenses	26,139	0.08	0.00	0.08	0.00	0.09	0.00	-14.0
PP	Pre-Petition	279	1.30	0.60	0.62	0.05	0.70	0.06	-14.0
PR	Probation Revocation	12,875	0.26	0.00	0.26	0.00	0.26	0.00	-13.7
PT	Prisoner Transfer	2,509	0.19	0.01	0.18	0.01	0.17	0.01	-14.1
PTR	Pretrial Release	1,476	0.22	0.01	0.22	0.01	0.23	0.01	-14.0
RHO	Remanded: Habeas or Other	199	1.05	0.16	0.81	0.07	0.76	0.07	-14.1
RTL	Remanded: Trial Level	863	0.92	0.06	0.76	0.03	0.68	0.03	-14.1
SB	Standby or Advisory Counsel	6	0.44	0.19	0.47	0.21	0.35	0.24	-14.7
SC	Supreme Court (Certiorari Granted)	16	44.52	4.65	44.18	4.35	44.73	6.27	-14.2
SO	Sentencing Only	1,575	0.76	0.04	0.66	0.02	0.71	0.02	-13.7
SR	Supervised Release	63,281	0.34	0.00	0.36	0.00	0.36	0.00	-14.0
SS	State Statutes	617	0.23	0.03	0.21	0.01	0.24	0.01	-14.1
TD	Court of Appeals: Trial Disposition	11,208	1.86	0.03	1.89	0.03	2.89	0.05	-12.6
WI	Witness	5,102	0.40	0.03	0.37	0.01	0.36	0.01	-14.0

Table 4.10—Continued

CMS Code	Case-Type Description	Number of Cases	Based on Arithmetic Average	SE	Based on M-Estimate	SE	Based on District-Adjusted M-Estimate	SE	Change in District-Adjusted M-Estimate Weights from Primary Case Weights (%)
WW	Witness for a Grand Jury, Federal Agency, Congress	611	0.55	0.05	0.53	0.03	0.57	0.04	-14.0

NOTE: FY 2004–FY 2008 closed cases.

Table 4.11
Weighted Caseloads Using Weights Developed by Excluding Certain Immigration Cases from the Western and Southern Districts of Texas

District	District Values		Weighted Caseloads		
	Number of Cases	Total Attorney Hours	Based on Arithmetic Average	Based on M-Estimates	Based on District-Adjusted M-Estimates
AKX	1,513	47,180.4	2,031.8	2,029.5	1,923.6
ALM	1,462	33,377.4	1,920.9	1,950.0	1,844.2
ALS	1,643	32,041.8	2,208.5	2,245.5	2,125.6
ARE	2,149	36,763.6	2,456.7	2,421.4	2,295.5
ARW	1,128	18,215.7	1,106.5	1,109.3	1,089.4
AZX	38,300	282,764.8	17,613.1	17,594.3	18,096.6
CAC	16,726	420,943.2	16,516.3	16,431.3	15,449.9
CAE	9,823	162,215.7	9,190.8	9,191.7	8,793.8
CAN	4,623	153,950.6	5,480.6	5,493.0	5,402.0
CAS	24,064	322,793.7	13,951.0	13,949.1	14,992.0
COX	4,021	117,013.3	4,771.3	4,845.0	4,617.4
CTX	1,479	51,429.1	2,016.6	1,918.3	1,815.1
DCX	3,494	114,690.3	4,878.4	4,820.2	4,930.9
DEX	1,059	25,992.2	1,102.7	1,110.8	1,058.5
FLM	8,782	223,105.2	9,019.0	9,032.2	9,237.7
FLN	3,309	51,482.6	3,377.2	3,397.4	3,267.3
FLS	10,204	389,737.3	12,102.1	12,019.3	11,373.2
GAM	141	1,785.2	124.4	125.4	117.6
GAN	6,241	140,299.5	6,653.3	6,584.4	6,234.2
GUX	769	13,943.9	706.3	692.5	642.2
HIX	2,916	58,244.7	2,967.0	2,959.8	2,778.5
IAN	1,691	29,490.4	1,906.1	1,921.4	1,847.9
IAS	2,446	43,344.6	2,417.2	2,452.7	2,378.8
IDX	1,236	34,412.3	1,589.3	1,581.0	1,511.2
ILC	2,954	46,526.3	3,842.3	3,914.2	3,701.1
ILN	4,392	127,894.7	5,135.1	5,088.3	4,869.7
ILS	3,203	49,100.1	2,167.8	2,155.0	2,058.1
INN	1,661	38,515.8	2,022.0	2,042.2	1,963.1
INS	1,678	15,435.6	1,482.6	1,475.9	1,483.4
KSX	4,633	82,519.5	5,063.7	5,105.2	5,208.2

Table 4.11—Continued

District	District Values		Weighted Caseloads		
	Number of Cases	Total Attorney Hours	Based on Arithmetic Average	Based on M-Estimates	Based on District-Adjusted M-Estimates
KYW	1,541	31,677.7	1,986.5	1,993.7	1,896.2
LAE	2,626	50,673.5	2,890.1	2,909.4	2,803.3
LAM	684	8,545.7	985.0	974.9	933.3
LAW	2,608	20,198.6	3,121.1	3,063.3	2,929.0
MAX	1,579	83,732.2	2,046.0	2,041.2	1,936.9
MDX	8,550	166,242.3	6,546.0	6,542.0	6,112.8
MEX	217	6,902.2	220.4	223.6	210.8
MIE	4,644	118,177.9	5,491.2	5,474.9	5,358.0
MIW	1,722	45,020.2	2,286.8	2,295.0	2,196.8
MNX	2,718	56,502.3	2,986.7	3,009.5	2,941.2
MOE	5,078	85,158.0	6,068.7	6,093.6	5,824.1
MOW	4,999	90,393.8	6,930.8	7,045.3	6,705.7
MSN	218	1,546.3	205.4	209.1	198.8
MSS	3,194	38,678.4	2,997.2	3,024.8	2,867.6
MTX	3,215	59,025.2	3,887.9	3,922.6	3,827.9
NCE	6,237	124,939.3	5,609.6	5,702.0	5,397.6
NCM	2,191	43,454.3	3,280.5	3,356.1	3,234.4
NCW	2,126	23,359.6	3,164.4	2,995.5	2,897.0
NDX	722	18,581.6	942.6	947.1	939.5
NEX	3,484	64,048.6	4,241.6	4,282.6	4,095.3
NHX	826	25,373.6	1,162.3	1,169.8	1,121.4
NJX	6,209	167,418.3	7,366.1	7,256.4	6,767.2
NMX	11,922	169,714.9	11,458.4	11,596.4	12,001.9
NVX	5,780	175,061.2	7,306.7	7,296.6	7,357.2
NYE	4,384	105,251.1	5,811.6	5,692.2	5,320.4
NYN	2,617	61,829.4	2,478.6	2,471.1	2,327.5
NYS	5,496	107,904.9	7,563.7	7,562.3	7,233.3
NYW	3,643	71,772.2	4,128.5	4,135.5	3,894.7
OHN	2,729	64,872.6	3,099.4	3,120.0	2,990.6
OHS	3,593	79,661.2	3,910.9	3,937.2	3,692.1
OKE	557	12,043.8	831.5	819.6	833.7

Table 4.11—Continued

District	District Values		Weighted Caseloads		
	Number of Cases	Total Attorney Hours	Based on Arithmetic Average	Based on M-Estimates	Based on District-Adjusted M-Estimates
OKN	1,112	22,054.0	1,517.8	1,531.7	1,535.6
OKW	2,201	45,283.5	1,903.4	1,876.9	1,826.0
ORX	7,728	189,984.9	9,843.5	9,836.8	9,658.3
PAE	6,033	123,658.4	6,037.6	5,979.4	5,695.0
PAM	3,277	63,317.2	3,451.5	3,444.4	3,488.5
PAW	2,722	67,116.4	3,603.1	3,583.1	3,422.1
PRX	3,949	64,365.2	4,120.0	4,090.5	4,333.8
RIX	709	15,524.5	978.5	971.4	1,027.0
SCX	6,574	82,394.7	6,986.6	7,074.8	7,150.8
SDX	2,433	52,927.2	3,501.7	3,520.9	3,495.3
TNE	3,191	53,051.9	3,596.6	3,634.0	3,457.6
TNM	2,567	44,357.7	2,897.3	2,901.4	2,760.3
TNW	2,813	65,712.1	4,157.3	4,202.8	3,987.9
TXE	3,050	58,138.7	4,001.8	4,043.0	4,028.0
TXN	6,611	133,075.8	8,247.7	8,285.7	8,838.0
TXS	24,701	220,549.9	24,133.1	24,068.5	28,474.0
TXW	18,703	198,704.7	19,292.4	19,342.7	23,924.4
UTX	4,338	89,076.9	5,316.6	5,322.0	5,067.1
VAE	11,691	197,610.9	10,417.4	10,418.5	9,904.0
VAW	1,020	18,260.1	1,006.9	986.1	930.8
VIX	837	15,365.0	898.3	890.8	882.3
VTX	724	22,184.8	980.3	983.9	943.1
WAE	4,091	93,638.5	4,059.7	4,118.4	3,955.7
WAW	9,650	143,078.7	7,166.5	7,019.9	6,452.3
WIE	2,337	50,766.1	1,736.9	1,706.6	1,707.7
WIW	732	11,635.4	657.0	662.9	646.6
WVN	1,707	23,900.4	1,615.5	1,615.6	1,536.6
WVS	2,090	42,919.1	1,887.8	1,890.6	1,800.7
WYX	1,136	23,299.9	1,736.5	1,753.1	1,693.5
Total	412,576	7,574,923	412,576	412,576	412,576

NOTE: FY 2004–FY 2008 closed cases.

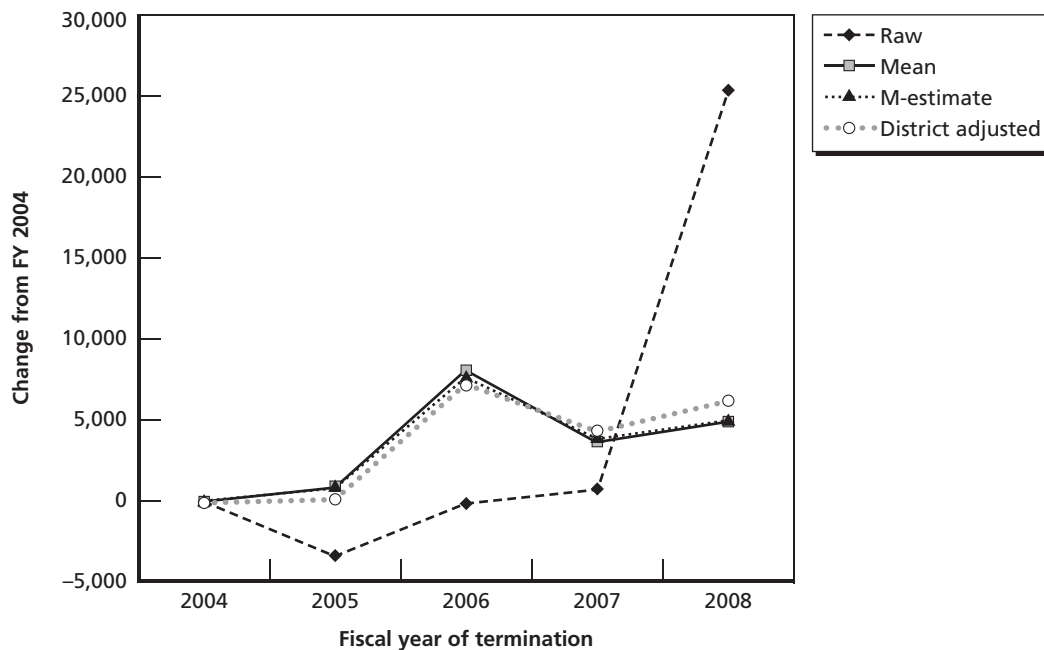
only two districts in the federal defender system where the local legal environment involving CR8710 illegal-entry and CR8720 illegal-reentry cases is unique enough to warrant special treatment, while the other 88 districts exhibit sufficient homogeneity to be grouped together. In addition, it is not clear whether other district and case-type combinations have been fully considered as candidates for similar treatment. Though a cursory glance at the caseloads for these two districts in terms of size, client-matter types, and average attorney time reported certainly suggest that the FDOs servicing those locations face distinct challenges, the decision to exclude a substantial part of their workload from national case-weight calculations should be carefully reviewed.

Weighted Caseloads at the Federal Defender Organizations

Caseloads and Alternative Weighting Strategies

So how do case weights help describe workloads when applied to historical federal defender caseloads? Figure 5.1 compares counts for unadjusted “raw” cases with those derived using the three case-weight alternatives described earlier (arithmetic average, M-estimates, and district-adjusted M-estimates), measuring the change in closed cases each year from FY 2004. Until FY 2007, all three weighted caseloads were increasing more quickly than the unadjusted figures, but, in FY 2008, as compared to FY 2007, 11,400 CK (Crack Cocaine Amendment) cases were added, as were 9,200 additional CR8710 (Illegal Entry) cases (all in all, there were 25 percent more cases closed in FY 2008 than in FY 2007). Both of these case types have relatively small weights no matter which alternative weighting strategy is used, none being more than 15 percent of the overall average. When weighted, that same FY 2008 spike was far more modest in size. Using the district-adjusted approach, for example, there would be just

Figure 5.1
Caseload Change During Five-Year Study Period, by Case-Weighting Method



RAND TR1007-5.1

1,500 crack cocaine amendment and 1,350 illegal-entry cases added to the weighted totals in FY 2008 compared to FY 2007, and, when all case types are considered, the overall increase was only 2 percent.

Striking differences between raw and weighted caseloads can also be seen at the district level. Table 5.1 describes the total count of unadjusted and adjusted cases for all 90 districts, the district's rank based on those numbers, how the caseload changed between FY 2004 and FY 2008, and how the weighted caseloads compare to unweighted totals. As the table illustrates, no matter which case-weight system is adopted, some districts will find that their new weighted caseload calculations are markedly larger than the raw counts, while others see a profound decrease. Of course, the real change is simply in the way cases are counted, here reflecting national average attorney case-related hours recorded in TKS. Districts with heavy immigration caseloads or large volumes of other relatively low-weight case types have five-year totals for district-adjusted M-estimate weighted cases that are as much as 46 percent less than the unweighted figures. Some low-volume districts with a high proportion of complex or otherwise time-consuming case types can have weighted caseload totals that are at least 60 percent larger than the raw counts found in CMS. The rank of the largest districts (in terms of volume) stays fairly constant across the three alternative approaches.

Weighted Caseloads Using District-Adjusted M-Estimates

Table 5.2 presents weighted case totals for each FDO for the five fiscal years in our data, basing those weights on district-adjusted M-estimates. As asserted in Chapter Four, we believe that district-adjusted M-estimate case weights would provide the highest degree of functionality for the weight's intended purposes, if nationally derived weights are desired. For comparison purposes, Table C.1 in Appendix C sets forth the unadjusted counts for each FDO, while Tables C.2 and C.3 provide similar information using case weights based on arithmetic averages and M-estimations, respectively. The tables present historical caseloads for each of the 79 FDOs rather than for each of the 90 districts because ODS budgeting practices are directed at the organizational level. It should be remembered, however, that the case weights themselves were developed using data that reflect the experiences of the individual districts.

Our weighted case total tables only provide information for FY case closings. Arguably, another key measure here for the purposes of calculating defender resources might be new cases opened within the year or perhaps a "clients served" count, consisting of all new openings plus all cases still pending at the start of the year (in other words, all cases that were active at any point during the year). However, we do not have information about case openings and FY-end pending cases broken out by the most-detailed CMS case-type codes. Information that we do have on counts for case openings and year-end pendings is at the AOUSC two-digit code level, which we believe inappropriately collapses some important case types.

Weighted Caseloads Excluding TXS and TXW Immigration Cases

As suggested elsewhere, we do not believe that it is necessary to create one set of case weights based on data for all districts and all case types and another in which certain species of cases (specifically CR8710 and CR8720 illegal-entry and illegal-reentry cases in TXW and TXS)

**Table 5.1
Comparison of Effects of Case-Weighting Alternatives on District Caseload**

District	Unadjusted			Weighted Based on Arithmetic Average				Weighted Based on M-Estimates				Weighted Based on District-Adjusted M-Estimates			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
AKX	70	1,513	17.7	62	2,434	1.3	60.9	63	2,437	1.2	61.1	63	2,236	1.7	47.8
ALM	72	1,462	56.7	66	2,302	27.9	57.5	65	2,343	29.5	60.3	65	2,142	28.8	46.5
ALS	67	1,643	50.4	59	2,642	32.6	60.8	59	2,693	34.1	63.9	59	2,470	34.6	50.3
ARE	59	2,149	71.9	55	2,936	8.9	36.6	55	2,901	6.5	35.0	57	2,661	9.6	23.8
ARW	75	1,128	19.4	78	1,291	50.5	14.5	78	1,292	53.8	14.5	77	1,257	57.0	11.4
AZX	2	38,300	62.4	3	19,683	3.1	-48.6	3	19,520	4.0	-49.0	3	20,547	1.8	-46.4
CAC	5	16,726	12.2	4	19,256	-3.4	15.1	4	19,127	-4.0	14.4	4	17,915	-2.9	7.1
CAE	9	9,823	9.3	10	10,801	-15.5	10.0	10	10,801	-14.8	10.0	11	10,224	-14.5	4.1
CAN	26	4,623	13.0	26	6,424	-11.2	39.0	26	6,433	-11.1	39.2	23	6,275	-10.1	35.7
CAS	4	24,064	6.1	5	15,923	6.7	-33.8	5	15,696	6.2	-34.8	5	17,205	5.9	-28.5
COX	31	4,021	10.8	31	5,609	-6.2	39.5	31	5,696	-5.9	41.7	31	5,363	-4.0	33.4
CTX	71	1,479	12.3	64	2,413	-4.5	63.2	66	2,300	-2.9	55.5	68	2,108	-0.5	42.5
DCX	35	3,494	-12.2	30	5,850	-41.5	67.4	30	5,795	-42.6	65.9	29	5,713	-39.7	63.5
DEX	77	1,059	75.9	77	1,307	53.4	23.4	77	1,318	56.3	24.5	78	1,229	58.8	16.1
FLM	11	8,782	56.9	11	10,669	5.2	21.5	11	10,683	6.2	21.6	10	10,685	7.2	21.7
FLN	37	3,309	10.3	45	4,043	-9.8	22.2	45	4,073	-9.2	23.1	45	3,784	-8.4	14.4
FLS	8	10,204	-0.9	6	14,439	-12.8	41.5	6	14,315	-13.8	40.3	7	13,132	-13.3	28.7
GAM	90	141	—	90	149	—	5.7	90	151	—	7.1	90	137	—	-2.8

Table 5.1—Continued

District	Unadjusted			Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates					
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
GAN	16	6,241	-10.3	19	7,882	-28.7	26.3	20	7,811	-29.3	25.2	19	7,203	-29.9	15.4
GUX	81	769	-18.5	86	845	-35.4	9.9	86	829	-32.4	7.8	87	743	-31.7	-3.4
HIX	45	2,916	-14.3	52	3,560	-43.3	22.1	52	3,562	-44.4	22.2	53	3,228	-45.2	10.7
IAN	64	1,691	-9.4	69	2,241	-4.4	32.5	69	2,255	-2.3	33.4	66	2,137	-3.8	26.4
IAS	54	2,446	22.2	57	2,858	35.0	16.8	56	2,898	37.4	18.5	55	2,756	36.9	12.7
IDX	73	1,236	1.3	73	1,833	-8.7	48.3	74	1,818	-5.6	47.1	74	1,755	-8.4	42.0
ILC	44	2,954	110.5	40	4,600	25.8	55.7	39	4,696	27.1	59.0	39	4,293	26.0	45.3
ILN	27	4,392	1.9	28	6,133	-10.4	39.6	28	6,090	-8.9	38.7	30	5,657	-8.4	28.8
ILS	40	3,203	53.6	60	2,590	7.6	-19.1	60	2,580	11.2	-19.5	60	2,390	8.7	-25.4
INN	66	1,661	156.1	63	2,427	30.5	46.1	61	2,459	33.2	48.0	61	2,280	31.4	37.3
INS	65	1,678	23.5	75	1,774	10.1	5.7	75	1,771	10.2	5.5	75	1,720	9.5	2.5
KSX	25	4,633	41.4	29	6,011	15.7	29.7	29	6,066	16.9	30.9	27	6,051	35.7	30.6
KYW	69	1,541	33.5	65	2,377	-3.4	54.3	64	2,391	-2.3	55.2	64	2,204	-5.3	43.0
LAE	50	2,626	101.2	54	3,429	12.8	30.6	54	3,455	14.4	31.6	52	3,253	15.9	23.9
LAM	86	684	2.5	80	1,179	-35.0	72.4	80	1,170	-34.1	71.1	82	1,084	-34.0	58.5
LAW	52	2,608	67.7	48	3,741	0.6	43.4	48	3,681	3.2	41.1	49	3,402	3.1	30.4
MAX	68	1,579	36.2	61	2,443	-2.4	54.7	62	2,443	-2.4	54.7	62	2,250	-3.0	42.5
MDX	12	8,550	16.1	20	7,827	-5.2	-8.5	19	7,842	-5.7	-8.3	20	7,096	-4.5	-17.0

Table 5.1—Continued

District	Unadjusted			Weighted Based on Arithmetic Average				Weighted Based on M-Estimates				Weighted Based on District-Adjusted M-Estimates			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
MEX	89	217	—	88	263	—	21.2	88	266	—	22.6	88	244	—	12.4
MIE	24	4,644	9.3	25	6,569	-11.7	41.5	25	6,566	-12.3	41.4	25	6,216	-12.4	33.9
MIW	62	1,722	64.5	58	2,718	23.8	57.8	58	2,731	24.7	58.6	58	2,552	23.4	48.2
MNX	49	2,718	35.6	51	3,571	-9.3	31.4	50	3,607	-7.7	32.7	48	3,414	-8.3	25.6
MOE	22	5,078	62.0	21	7,258	20.2	42.9	21	7,306	20.1	43.9	21	6,764	17.7	33.2
MOW	23	4,999	27.9	18	8,290	0.9	65.8	17	8,449	1.4	69.0	17	7,796	2.1	56.0
MSN	88	218	—	89	245	—	12.4	89	250	—	14.7	89	231	—	6.0
MSS	41	3,194	81.5	50	3,585	55.0	12.2	49	3,625	55.8	13.5	51	3,330	55.8	4.3
MTX	39	3,215	12.7	39	4,639	8.6	44.3	40	4,691	8.8	45.9	38	4,445	9.5	38.3
NCE	17	6,237	31.4	24	6,680	1.0	7.1	23	6,809	1.0	9.2	24	6,249	1.0	0.2
NCM	58	2,191	2.6	46	3,913	-16.2	78.6	46	4,012	-15.7	83.1	46	3,755	-16.2	71.4
NCW	60	2,126	—	47	3,777	—	77.7	51	3,582	—	68.5	50	3,362	—	58.1
NDX	84	722	—	83	1,119	—	55.0	83	1,123	—	55.5	81	1,086	—	50.4
NEX	36	3,484	61.8	32	5,038	16.7	44.6	32	5,094	16.7	46.2	33	4,758	16.4	36.6
NHX	80	826	47.4	76	1,390	13.8	68.3	76	1,402	14.1	69.7	76	1,302	11.8	57.6
NJX	18	6,209	-0.2	14	8,814	-28.5	42.0	14	8,701	-26.2	40.1	16	7,861	-24.4	26.6
NMX	6	11,922	7.5	7	12,529	11.6	5.1	7	12,550	11.0	5.3	6	13,616	11.7	14.2
NVX	20	5,780	-9.5	15	8,655	-26.6	49.7	15	8,652	-26.7	49.7	13	8,535	-25.2	47.7

Table 5.1—Continued

District	Unadjusted			Weighted Based on Arithmetic Average				Weighted Based on M-Estimates				Weighted Based on District-Adjusted M-Estimates			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
NYE	28	4,384	-13.6	23	6,915	-27.2	57.7	24	6,779	-25.5	54.6	26	6,181	-24.4	41.0
NYN	51	2,617	9.3	56	2,878	0.0	10.0	57	2,865	1.9	9.5	56	2,679	1.3	2.4
NYS	21	5,496	1.6	13	8,970	-7.7	63.2	13	8,978	-7.6	63.4	14	8,395	-7.0	52.7
NYW	33	3,643	22.7	34	4,856	-2.6	33.3	34	4,865	-3.7	33.5	37	4,501	-1.5	23.6
OHN	47	2,729	84.7	49	3,709	38.4	35.9	47	3,743	40.0	37.2	47	3,473	42.4	27.3
OHS	34	3,593	28.8	38	4,681	-10.8	30.3	38	4,725	-9.8	31.5	40	4,285	-9.2	19.3
OKE	87	557	-30.1	85	998	-34.3	79.2	85	987	-35.0	77.2	85	967	-33.7	73.6
OKN	76	1,112	13.3	74	1,821	2.6	63.8	73	1,843	3.6	65.7	73	1,780	2.3	60.1
OKW	57	2,201	8.5	67	2,283	-12.6	3.7	68	2,258	-11.9	2.6	67	2,118	-12.5	-3.8
ORX	13	7,728	10.2	9	11,612	-0.6	50.3	9	11,616	-0.5	50.3	9	11,212	-1.4	45.1
PAE	19	6,033	30.5	22	7,207	0.5	19.5	22	7,152	1.3	18.5	22	6,613	1.7	9.6
PAM	38	3,277	84.9	44	4,126	25.9	25.9	44	4,126	29.7	25.9	42	4,043	29.3	23.4
PAW	48	2,722	88.0	41	4,298	24.6	57.9	42	4,282	28.7	57.3	44	3,973	28.8	46.0
PRX	32	3,949	78.9	35	4,842	18.8	22.6	36	4,799	20.9	21.5	32	4,992	21.6	26.4
RIX	85	709	20.3	82	1,163	-12.3	64.0	82	1,156	-13.9	63.0	79	1,188	-6.8	67.6
SCX	15	6,574	85.1	17	8,363	6.1	27.2	16	8,491	6.6	29.2	15	8,281	7.7	26.0
SDX	55	2,433	10.9	43	4,185	-2.3	72.0	43	4,216	-1.5	73.3	41	4,060	-3.7	66.9
TNE	42	3,191	30.0	42	4,297	-9.8	34.7	41	4,352	-7.8	36.4	43	4,018	-8.5	25.9

Table 5.1—Continued

District	Unadjusted			Weighted Based on Arithmetic Average				Weighted Based on M-Estimates				Weighted Based on District-Adjusted M-Estimates			
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
TNM	53	2,567	4.1	53	3,456	-1.5	34.6	53	3,467	-0.9	35.1	54	3,208	1.1	25.0
TNW	46	2,813	39.5	33	4,984	-7.8	77.2	33	5,053	-7.0	79.6	35	4,635	-8.1	64.8
TXE	43	3,050	22.9	36	4,747	-2.0	55.6	35	4,801	-1.3	57.4	34	4,671	-5.9	53.1
TXN	14	6,611	1.4	12	9,723	1.2	47.1	12	9,768	2.5	47.8	12	10,192	6.9	54.2
TXS	1	107,265	21.4	1	46,063	19.1	-57.1	1	46,008	18.7	-57.1	1	57,996	17.4	-45.9
TXW	3	37,054	10.4	2	31,963	27.0	-13.7	2	32,078	26.2	-13.4	2	38,739	25.7	4.5
UTX	29	4,338	19.1	27	6,152	-3.9	41.8	27	6,144	-7.9	41.6	28	5,880	-6.4	35.5
VAE	7	11,691	26.1	8	12,450	-4.0	6.5	8	12,470	-3.5	6.7	8	11,490	-2.1	-1.7
VAW	78	1,020	—	79	1,209	—	18.5	79	1,187	—	16.4	83	1,082	—	6.1
VIX	79	837	-61.7	84	1,033	-31.4	23.4	84	1,021	-31.2	22.0	84	997	-35.0	19.1
VTX	83	724	29.0	81	1,164	-4.1	60.8	81	1,166	-3.5	61.0	80	1,088	-4.8	50.3
WAE	30	4,091	11.4	37	4,724	-5.2	15.5	37	4,786	-5.2	17.0	36	4,596	-5.7	12.3
WAW	10	9,650	24.6	16	8,525	-3.4	-11.7	18	8,364	-3.3	-13.3	18	7,484	-4.1	-22.4
WIE	56	2,337	97.8	70	2,072	66.9	-11.3	71	2,040	71.3	-12.7	70	1,980	58.6	-15.3
WIW	82	732	10,866.7	87	786	6,108.7	7.4	87	796	6,207.6	8.7	86	751	6,075.4	2.6
WVN	63	1,707	296.0	72	1,938	127.4	13.5	72	1,944	125.1	13.9	72	1,787	123.7	4.7
WVS	61	2,090	16.1	68	2,266	-1.4	8.4	67	2,276	-0.8	8.9	69	2,092	-1.4	0.1
WYX	74	1,136	0.0	71	2,063	-26.5	81.6	70	2,086	-24.2	83.6	71	1,965	-26.2	73.0

Table 5.1—Continued

District	Unadjusted			Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates					
	Rank	Total	Change from FY 2004 to FY 2008 (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)	Rank	Total	Change from FY 2004 to FY 2008 (%)	Change from Unadjusted Total (%)
Total		513,491	26.0		513,491	5.0		513,491	5.1			513,491	6.2		

NOTE: FY 2004–FY 2008 closed cases. Weighted caseloads are rounded to the nearest whole number. Some FDOs were not in formal operation in FY 2004.

Table 5.2
Annual Caseloads for Federal Defender Organizations, by Fiscal Year of Case Closing: Weighted
Based on District-Adjusted M-Estimates

FDO	2004	2005	2006	2007	2008	Total
AKX	444	481	517	343	451	2,236
ALM	351	417	499	422	452	2,142
ALS	422	561	515	405	568	2,470
ARE-ARW	625	796	781	952	764	3,918
AZX	3,688	3,781	4,866	4,457	3,755	20,547
CAC	3,722	3,713	3,690	3,178	3,612	17,915
CAE	2,123	2,128	2,199	1,958	1,816	10,224
CAN	1,186	1,290	1,179	1,555	1,066	6,275
CAS	4,014	2,750	3,004	3,187	4,250	17,205
COX-WYX	1,500	1,462	1,607	1,418	1,342	7,329
CTX	398	449	454	411	396	2,108
DCX	1,469	1,305	1,186	867	885	5,713
DEX	217	230	209	228	345	1,229
FLM	1,982	2,045	2,319	2,213	2,126	10,685
FLN	741	715	852	797	678	3,784
FLS	2,771	2,732	2,700	2,525	2,404	13,132
GAM	0	0	0	0	137	137
GAN	1,591	1,688	1,534	1,275	1,116	7,203
GUX	139	194	160	156	95	743
HIX	878	716	657	496	481	3,228
IAS-IAN	942	848	1,008	1,002	1,095	4,894
IDX	318	301	390	456	291	1,755
ILC	707	792	947	956	891	4,293
ILN	1,172	1,112	1,118	1,181	1,074	5,657
ILS	439	456	521	497	477	2,390
INN	323	509	512	510	425	2,280
INS	327	301	394	340	358	1,720
KSX	982	1,092	1,240	1,405	1,333	6,051
KYW	465	382	461	456	440	2,204
LAE	633	583	582	722	733	3,253
LAW-LAM	754	849	1,173	1,016	695	4,487
MAX-NHX-RIX	915	928	889	1,094	914	4,740

Table 5.2—Continued

FDO	2004	2005	2006	2007	2008	Total
MDX	1,447	1,403	1,505	1,360	1,381	7,096
MEX	0	0	0	86	159	244
MIE	1,289	1,265	1,337	1,198	1,128	6,216
MIW	440	487	657	424	543	2,552
MNX	715	657	714	672	656	3,414
MOE	1,218	1,251	1,415	1,447	1,433	6,764
MOW	1,463	1,472	1,685	1,682	1,494	7,796
MSS-MSN	536	612	701	645	1,066	3,561
MTX	842	908	833	939	922	4,445
NCE	1,192	1,239	1,321	1,293	1,204	6,249
NCM	754	771	868	730	632	3,755
NCW	0	0	1,003	1,075	1,285	3,362
NEX	798	1,019	1,033	981	928	4,758
NJX	1,672	1,917	1,587	1,419	1,265	7,861
NMX	2,568	2,321	3,260	2,600	2,867	13,616
NVX	1,948	1,570	2,001	1,559	1,457	8,535
NYN	515	599	518	525	522	2,679
NYS-NYE	3,189	3,326	2,750	2,599	2,713	14,576
NYW	866	934	904	944	853	4,501
OHN	565	764	664	676	804	3,473
OHS	807	962	962	821	733	4,285
OKN-OKE	548	582	537	604	477	2,747
OKW	429	418	468	428	375	2,118
ORX	2,232	2,205	2,372	2,201	2,202	11,212
PAE	1,243	1,520	1,312	1,275	1,263	6,613
PAM	756	702	730	878	977	4,043
PAW	626	838	866	837	806	3,973
PRX	833	778	1,197	1,172	1,012	4,992
SCX	1,650	1,505	1,700	1,649	1,777	8,281
SDX-NDX	791	866	1,136	1,178	1,175	5,147
TNE	804	932	765	782	735	4,018
TNM	636	631	660	638	643	3,208
TNW	920	935	946	989	845	4,635

Table 5.2—Continued

FDO	2004	2005	2006	2007	2008	Total
TXE	972	853	947	983	915	4,671
TXN	2,020	1,948	2,022	2,043	2,160	10,192
TXS	11,081	10,072	12,129	11,710	13,004	57,996
TXW	7,085	7,690	7,266	7,795	8,903	38,739
UTX	1,209	1,208	1,112	1,220	1,131	5,880
VAE	2,375	2,289	2,263	2,239	2,325	11,490
VAW	0	0	15	451	616	1,082
VIX	213	283	179	184	138	997
VTX	247	232	213	161	235	1,088
WAE	909	974	926	930	858	4,596
WAW	1,570	1,360	1,574	1,473	1,507	7,484
WIE-WIW	321	483	543	571	814	2,731
WVN	201	340	378	418	449	1,787
WVS	423	449	392	411	417	2,092
Total	99,155	99,175	106,523	103,369	105,269	513,491

NOTE: Weighted caseloads are rounded to the nearest whole number.

are excluded from the calculations. As indicated in Chapter Four, doing so affects the size of all case weights, not just those for these two case types, because of the need to rescale the weights to account for the reduced size of the caseload and, if district-adjusted weights are used, because of the impact on the district multiplier. This, in turn, makes comparisons between unweighted and weighted caseloads at the national level somewhat less intuitive because the sum of the individual weights will equal the adjusted total (here, 412,576 when the Texas immigration cases are removed) rather than the true overall total of 513,491 cases over the five-year study period.

Table 5.3 presents district-level caseloads using this alternative case-weight approach. One interesting by-product of the exclusion is that TXS and TXW remain the top two districts in the FDO program in terms of weighted caseloads (as they were in Table 5.1), despite losing more than half of their unadjusted caseloads as a result of the exclusion. Indeed, the application of these alternative weights resulted in modifying the rankings of just four districts in terms of district-adjusted M-estimate weighted caseloads (ALM and IAN swap the 65th and 66th positions, while CAE and TXN swap the 11th and 12th positions). One might argue that, based on the stability of these rankings, case weights generated by dropping the Texas immigration cases do little to help distinguish differences between districts in terms of weighted caseloads.

Caseload counts for FDOs in each of the five fiscal years in our analysis data set based on case-weight calculations that exclude CR8710 and CR8720 illegal-entry and illegal-reentry cases in TXW and TXS can be found in Appendix C. Table C.4 in Appendix C sets forth the unadjusted counts for the modified set of cases, while Tables C.5, C.6, and C.7 provide

Table 5.3
Comparison of Effects of Case-Weighting Alternatives on District Caseloads; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW

District	Unadjusted		Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates		
	Rank	Total	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)
AKX	70	1,513	63	2,032	34.3	63	2,029	34.1	63	1,924	27.2
ALM	72	1,462	65	1,921	31.4	65	1,950	33.4	66	1,844	26.1
ALS	67	1,643	59	2,208	34.4	59	2,245	36.6	59	2,126	29.4
ARE	59	2,149	57	2,457	14.3	57	2,421	12.7	57	2,296	6.8
ARW	75	1,128	78	1,106	-2	78	1,109	-1.7	77	1,089	-3.5
AZX	1	38,300	3	17,613	-54	3	17,594	-54.1	3	18,097	-52.7
CAC	5	16,726	4	16,516	-1.3	4	16,431	-1.8	4	15,450	-7.6
CAE	9	9,823	10	9,191	-6.4	10	9,192	-6.4	12	8,794	-10.5
CAN	26	4,623	25	5,481	18.6	25	5,493	18.8	23	5,402	16.9
CAS	3	24,064	5	13,951	-42	5	13,949	-42	5	14,992	-37.7
COX	31	4,021	30	4,771	18.7	30	4,845	20.5	31	4,617	14.8
CTX	71	1,479	67	2,017	36.4	67	1,918	29.7	68	1,815	22.7
DCX	35	3,494	31	4,878	39.6	31	4,820	38	29	4,931	41.1
DEX	77	1,059	77	1,103	4.2	77	1,111	4.9	78	1,058	-0.1
FLM	11	8,782	11	9,019	2.7	11	9,032	2.8	10	9,238	5.2
FLN	37	3,309	45	3,377	2.1	45	3,397	2.7	45	3,267	-1.3
FLS	8	10,204	6	12,102	18.6	6	12,019	17.8	7	11,373	11.5
GAM	90	141	90	124	-12.1	90	125	-11.3	90	118	-16.3

Table 5.3—Continued

District	Unadjusted		Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates		
	Rank	Total	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)
GAN	16	6,241	19	6,653	6.6	19	6,584	5.5	19	6,234	-0.1
GUX	81	769	86	706	-8.2	86	693	-9.9	87	642	-16.5
HIX	45	2,916	52	2,967	1.7	52	2,960	1.5	53	2,778	-4.7
IAN	64	1,691	66	1,906	12.7	66	1,921	13.6	65	1,848	9.3
IAS	54	2,446	56	2,417	-1.2	56	2,453	0.3	55	2,379	-2.7
IDX	73	1,236	73	1,589	28.6	73	1,581	27.9	74	1,511	22.2
ILC	44	2,954	40	3,842	30.1	40	3,914	32.5	39	3,701	25.3
ILN	27	4,392	29	5,135	16.9	29	5,088	15.8	30	4,870	10.9
ILS	40	3,203	60	2,168	-32.3	60	2,155	-32.7	60	2,058	-35.7
INN	66	1,661	61	2,022	21.7	61	2,042	22.9	61	1,963	18.2
INS	65	1,678	75	1,483	-11.6	75	1,476	-12	75	1,483	-11.6
KSX	25	4,633	28	5,064	9.3	28	5,105	10.2	27	5,208	12.4
KYW	69	1,541	64	1,986	28.9	64	1,994	29.4	64	1,896	23
LAE	50	2,626	53	2,890	10.1	53	2,909	10.8	52	2,803	6.7
LAM	86	684	81	985	44	81	975	42.5	82	933	36.4
LAW	52	2,608	48	3,121	19.7	48	3,063	17.4	49	2,929	12.3
MAX	68	1,579	62	2,046	29.6	62	2,041	29.3	62	1,937	22.7
MDX	12	8,550	20	6,546	-23.4	20	6,542	-23.5	20	6,113	-28.5
MEX	89	217	88	220	1.4	88	224	3.2	88	211	-2.8

Table 5.3—Continued

District	Unadjusted		Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates		
	Rank	Total	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)
MIE	24	4,644	26	5,491	18.2	26	5,475	17.9	25	5,358	15.4
MIW	62	1,722	58	2,287	32.8	58	2,295	33.3	58	2,197	27.6
MNX	49	2,718	50	2,987	9.9	50	3,010	10.7	48	2,941	8.2
MOE	22	5,078	21	6,069	19.5	21	6,094	20	21	5,824	14.7
MOW	23	4,999	17	6,931	38.6	17	7,045	40.9	17	6,706	34.1
MSN	88	218	89	205	-6	89	209	-4.1	89	199	-8.7
MSS	41	3,194	49	2,997	-6.2	49	3,025	-5.3	51	2,868	-10.2
MTX	39	3,215	39	3,888	20.9	39	3,923	22	38	3,828	19.1
NCE	17	6,237	23	5,610	-10.1	23	5,702	-8.6	24	5,398	-13.5
NCM	58	2,191	46	3,281	49.7	46	3,356	53.2	46	3,234	47.6
NCW	60	2,126	51	3,164	48.8	51	2,996	40.9	50	2,897	36.3
NDX	84	722	83	943	30.6	83	947	31.2	81	939	30.1
NEX	36	3,484	32	4,242	21.8	32	4,283	22.9	33	4,095	17.5
NHX	80	826	76	1,162	40.7	76	1,170	41.6	76	1,121	35.7
NJX	18	6,209	15	7,366	18.6	15	7,256	16.9	16	6,767	9
NMX	6	11,922	7	11,458	-3.9	7	11,596	-2.7	6	12,002	0.7
NVX	20	5,780	14	7,307	26.4	14	7,297	26.2	13	7,357	27.3
NYE	28	4,384	24	5,812	32.6	24	5,692	29.8	26	5,320	21.4
NYN	51	2,617	55	2,479	-5.3	55	2,471	-5.6	56	2,328	-11

Table 5.3—Continued

District	Unadjusted		Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates		
	Rank	Total	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)
NYS	21	5,496	13	7,564	37.6	13	7,562	37.6	14	7,233	31.6
NYW	33	3,643	34	4,129	13.3	34	4,136	13.5	37	3,895	6.9
OHN	47	2,729	47	3,099	13.6	47	3,120	14.3	47	2,991	9.6
OHS	34	3,593	38	3,911	8.9	38	3,937	9.6	40	3,692	2.8
OKE	87	557	85	831	49.2	85	820	47.2	85	834	49.7
OKN	76	1,112	74	1,518	36.5	74	1,532	37.8	73	1,536	38.1
OKW	57	2,201	69	1,903	-13.5	69	1,877	-14.7	67	1,826	-17
ORX	13	7,728	9	9,844	27.4	9	9,837	27.3	9	9,658	25
PAE	19	6,033	22	6,038	0.1	22	5,979	-0.9	22	5,695	-5.6
PAM	38	3,277	44	3,451	5.3	44	3,444	5.1	42	3,489	6.5
PAW	48	2,722	42	3,603	32.4	42	3,583	31.6	44	3,422	25.7
PRX	32	3,949	36	4,120	4.3	36	4,091	3.6	32	4,334	9.7
RIX	85	709	82	978	37.9	82	971	37	79	1,027	44.9
SCX	15	6,574	16	6,987	6.3	16	7,075	7.6	15	7,151	8.8
SDX	55	2,433	43	3,502	43.9	43	3,521	44.7	41	3,495	43.6
TNE	42	3,191	41	3,597	12.7	41	3,634	13.9	43	3,458	8.4
TNM	53	2,567	54	2,897	12.9	54	2,901	13	54	2,760	7.5
TNW	46	2,813	33	4,157	47.8	33	4,203	49.4	35	3,988	41.8
TXE	43	3,050	37	4,002	31.2	37	4,043	32.6	34	4,028	32.1

Table 5.3—Continued

District	Unadjusted		Weighted Based on Arithmetic Average			Weighted Based on M-Estimates			Weighted Based on District-Adjusted M-Estimates		
	Rank	Total	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)	Rank	Total	Change from Unadjusted Total (%)
TXN	14	6,611	12	8,248	24.8	12	8,286	25.3	11	8,838	33.7
TXS	2	24,701	1	24,133	-2.3	1	24,069	-2.6	1	28,474	15.3
TXW	4	18,703	2	19,292	3.1	2	19,343	3.4	2	23,924	27.9
UTX	29	4,338	27	5,317	22.6	27	5,322	22.7	28	5,067	16.8
VAE	7	11,691	8	10,417	-10.9	8	10,418	-10.9	8	9,904	-15.3
VAW	78	1,020	79	1,007	-1.3	79	986	-3.3	83	931	-8.7
VIX	79	837	84	898	7.3	84	891	6.5	84	882	5.4
VTX	83	724	80	980	35.4	80	984	35.9	80	943	30.2
WAE	30	4,091	35	4,060	-0.8	35	4,118	0.7	36	3,956	-3.3
WAW	10	9,650	18	7,167	-25.7	18	7,020	-27.3	18	6,452	-33.1
WIE	56	2,337	71	1,737	-25.7	71	1,707	-27	70	1,708	-26.9
WIW	82	732	87	657	-10.2	87	663	-9.4	86	647	-11.6
WVN	63	1,707	72	1,616	-5.3	72	1,616	-5.3	72	1,537	-10
WVS	61	2,090	68	1,888	-9.7	68	1,891	-9.5	69	1,801	-13.8
WYX	74	1,136	70	1,736	52.8	70	1,753	54.3	71	1,694	49.1
Total		412,576		412,576			412,576			412,576	

NOTE: FY 2004–FY 2008 closed cases. Weighted caseloads are rounded to the nearest whole number. Caseload totals exclude CR8710 and CR8720 cases in TXS and TXW.

weighted caseloads using weights based on arithmetic averages, M-estimations, and district-adjusted M-estimations, respectively.

Statistical Reliability of the Proposed Case-Weight System

Measuring Reliability with Caseload Projections

We compared the performance of the case-weight systems by their ability to reconstruct the number of attorney hours reported in TKS for each FDO. For each FDO, we computed the total case-weighted caseload,

$$\text{case-weighted caseload} = \sum W_i \times N_i,$$

where W_i is the case weight for case type i and N_i is the number of cases of type i that the FDO handled. Since the case weights are scaled so that the average case has a weight of 1.0, we then multiplied that caseload by a constant to turn the caseloads into a projected number of total attorney hours. That constant depends on how the case weights were calculated, because of the differences in how the methods handle outliers.

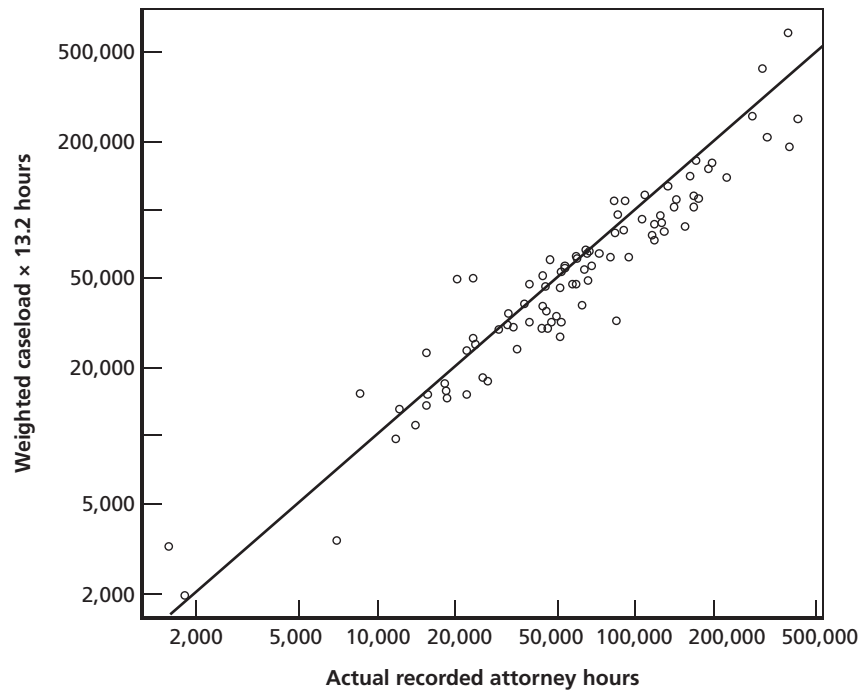
For each comparison of the case-weight systems, we plotted the attorney hours projected from the weighted caseloads against the actual total attorney hours. In addition, we computed the correlation coefficient between the weighted caseloads and attorney hours. The correlation coefficient is a number between -1 and 1 , indicating the degree of agreement between two sets of numbers. Correlations near 0 indicate that the two sets of numbers are completely unrelated, while correlations near 1 or -1 indicate near-perfect linear relationship.

Figure 6.1 indicates the performance of a case-weight system computed from the national average of attorney hours per case. The correlation coefficient is 0.87 , indicating moderate agreement between the actual and projected attorney hours for each FDO. The correlation is the same also for a system of weights calculated by excluding CR8719 and CR8720 immigration cases from the Southern and Western Districts of Texas.

Figure 6.2 shows that the case weights based on M-estimation result in similar weighted caseload projections as the case weights based on national average attorney hours. Many of the FDOs with the greatest difference between actual and projected attorney time (the ones farthest away from the diagonal) are the same FDOs indicated in Figure 6.1. The correlation coefficient is also 0.87 for this case-weight system. This indicates that choosing between a case-weight system based on the national average and one based on an M-estimate will have essentially the same effect at the FDO level. The primary reason to choose the M-estimation approach over the arithmetic average is that specific case weights, such as CR7480 and others noted in Table 4.2 in Chapter Four, are more stable under the M-estimation system.

Projections of total attorney time for the district-adjusted case weights differ from the previous two weighting approaches. The district-adjustment method computes, for each dis-

Figure 6.1
Projected Total Attorney Hours from Case Weights Based on National Average Attorney Hours Compared with Actual Attorney Hours Recorded



RAND TR1007-6.1

trict, a district multiplier that rescales the district's caseload. For this method, we compute the projected attorney time as

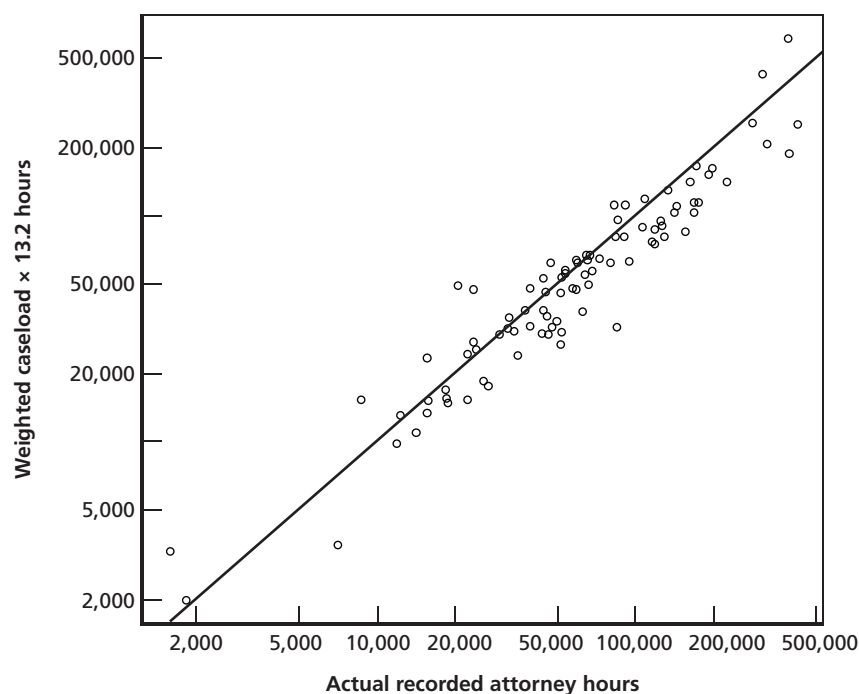
$$\begin{aligned} \text{projected attorney time} &= \text{district factor} \times \text{weighted caseload} \\ &= \text{district factor} \times \sum W_i \times N_i. \end{aligned}$$

Figure 6.3 describes the performance of this method. When compared with the previous figures, Figure 6.3 shows a much tighter fit around the 45-degree line, indicating greater agreement between the projected and actual recorded attorney hours. The correlation coefficient is 0.97, substantially higher than those for the other two systems. For a system excluding immigration cases from the Southern and Western Districts of Texas, the correlation between recorded attorney hours and weighted caseload is also 0.97.

Measuring Reliability with Coefficients of Variation

The previous analysis assessed the performance of the case weights by examining their effect aggregated to the level of the FDO. If we have a poor estimate of a case weight for a specific case type that does not appear frequently in the data, then the effect of the poorly estimated case weight will be minimal. We believe that the quality of the case-weight system is best measured by how well it captures recorded attorney time at the FDO level, as we demonstrated in

Figure 6.2
Projected Total Attorney Hours from Case Weights Based on M-Estimation
Compared with Actual Attorney Hours Recorded



RAND TR1007-6.2

Figure 6.3. However, we recognize that assessing the stability of individual case weights might also be of interest.

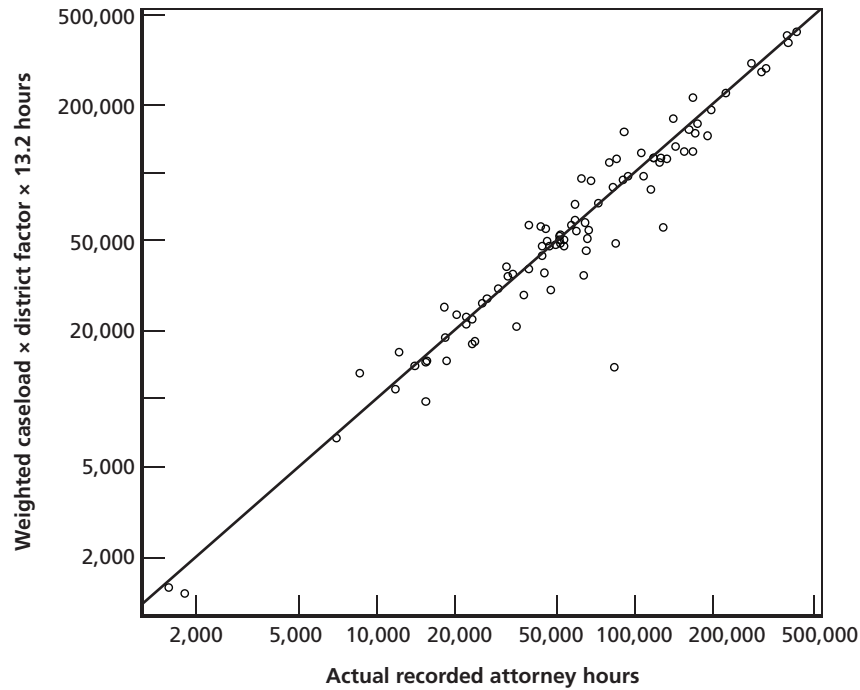
The coefficient of variation (CV)—the ratio of the standard error to the case weight—is a commonly used measure to assess the variability of an estimate.¹ CVs that exceed 1.0 are considered high variance. Table 6.1 shows the case types for which the CV exceeds 1.0 for at least one of the proposed case-weight systems. The table consists entirely of case types with five or fewer cases. These represent 2.3 percent of all case types but less than 0.004 percent of all cases. Also, case types with moderately sized CVs (between 0.5 and 1.0) are only rarely observed in the data, representing 9.4 percent of case types but only 0.04 percent of all cases. All case types with at least 20 cases had CVs less than 0.45.

The district-adjusted case-weight system has more case types with large CVs. This is largely due to district-adjusted case weights being, on average, smaller than both the national average case weights and the M-estimate case weights. A smaller case weight in the denominator makes the CV larger for the same SE in the numerator.

One case type in particular deserves special mention. D5's (redesignated from D2 death penalty) district-adjusted weight has a relatively modest CV of 0.019. However, its district-adjusted weight of 366 is far larger than any other case type, which suggests caution in its application despite not being included in Table 6.1. As noted elsewhere, the weight was derived from what was reported in only three cases over five years, and, because two of those cases were in a district with a very small adjustment factor, the result might not serve well in predicting

¹ See Chapter Four for a discussion of standard errors.

Figure 6.3
Projected Total Attorney Hours from District-Adjusted Case Weights
Compared with Actual Attorney Hours Recorded



RAND TR1007-6.3

effort in cases of this type. However, the presumably infrequent appearance of D5 cases in the future is not likely to have a marked effect on systemwide weighted caseloads.

Dropping immigration cases from the Southern and Western Districts of Texas yields the same table except that the CV for CR4932 fraud/wagering/tax cases is slightly less than 1.0.

Conclusion

We believe that, by comparing the projected caseload with actual attorney hours and by examining the CVs of the case weights, we have demonstrated the statistical reliability of the estimated case weights.

Table 6.1
Case Types with Case-Weight Coefficients of Variation Exceeding 1.0

CMS Code	Case-Type Description	Number of Cases	National Average			M-Estimate			District Adjusted		
			Weight	SE	CV	Weight	SE	CV	Weight	SE	CV
CR7440	Racketeering, gambling	4	19.8	19.4	1.0	10.5	13.4	1.3	15.0	20.2	1.3
CR9780	Trading with Enemy Act	2	19.3	13.2	0.7	20.7	14.2	0.7	10.9	14.6	1.3
CR9915	Commerce and trade	2	0.5	0.4	0.8	0.5	0.4	0.8	0.2	0.3	1.2
CR4993	Fraud: Conspiracy (General), Other	3	1.0	1.0	1.0	1.1	1.1	1.0	0.9	1.1	1.2
CR7482	Racketeering, threats	3	2.6	2.3	0.9	2.8	2.5	0.9	1.2	1.3	1.1
CR4932	Fraud, wagering tax	5	1.0	1.0	0.9	1.1	1.0	0.9	0.6	0.6	1.0
CR2300	Burglary, interstate commerce	4	1.7	1.4	0.8	1.8	1.9	1.1	1.3	1.3	0.8

NOTE: FY 2004–FY 2008 closed cases.

Projecting Caseloads

Sensitivity of Caseload Forecasts to Case-Type Grouping

The AOUSC’s Statistics Division annually produces a *Criminal Justice Act Forecast* that presents the division’s estimates regarding the number and type of FDO representations expected to be closed over the next few fiscal years (projections for CJA panel attorney representations are included as well, but the discussion herein focuses solely on FDO caseload estimates).¹ To develop these projections, the division applies standard autoregressive integrated moving average (ARIMA) models and dynamic regression models (models that incorporate a regression component into an ARIMA model) to monthly case closings going back to 1999, examining patterns and trends in the historical data to predict what might be observed in the future. The models also employ indicator variables, such as the “number of criminal defendants, the number of criminal appeals, the number of petty offense immigration defendants, and the number of representations opened,” “so that the forecasts are in line with the expected behavior of other program areas (e.g., immigration filings in the federal courts).”² The estimates are also examined in the context of other information available to the Statistics Division, such as recently passed state and federal legislation and shifts in announced Department of Justice priorities. The estimates are reviewed by ODS staff before the final forecasts are issued. In our assessment, this is a very reasonable approach to forecasting future caseloads. Given the considerable experience the Statistics Division has in making projections and its use of a sophisticated technique that is superior to common time-series analysis methodologies, we see no advantage for ODS in developing a parallel capability that would likely produce more or less the same forecasts.

However, in presenting their projections, the Statistics Division analysts effectively collapse 350 possible case types available in CMS into just seven categories of FDO representations: (1) Criminal: Drugs; (2) Criminal: Immigration; (3) Criminal: Fraud; (4) Criminal: Weapons; (5) Criminal: Other; (6) Appeals; and (7) Other Representations (such as probation revocations and ancillary proceedings).³ A potential limitation of such an approach is that col-

¹ See, e.g., Golmant, 2010.

² Golmant, 2010, p. 3.

³ Our working assumption is that the Statistics Division’s Criminal: Drug category is composed of all cases with CMS case-type codes beginning with CR65, CR66, CR67, CR68, or CR69 (see list of CMS codes in the “Abbreviations” section of this report); the Criminal: Immigration category contains all cases with CMS codes beginning with CR87; the Criminal: Fraud category is composed of all cases with codes beginning with CR45, CR46, CR47, CR48, or CR49; the Criminal: Weapons category is composed of all cases with CMS codes beginning with CR78; the Criminal: Other category is composed of all other cases with CMS codes beginning with CR, as well as PO petty offenses, SS state statutes, and D1 through

lapsing in this way means that the Statistics Division is providing ODS with only high-level projections for the upcoming fiscal years. The AOUSC's Statistics Division can assert, as it did recently, that FDO criminal-offense representations (the combined total of the individual drugs, immigration, fraud, weapons, and other criminal representation categories) are projected to increase 4.2 percent from FY 2009 to FY 2012, appeals are projected to drop 0.2 percent, and other representations are projected to decline by 11.7 percent but that, overall, the net change from FY 2009 to FY 2012 would be negligible (an increase of about 0.9 percent).⁴ Looking at these unweighted numbers, one might assume that no net system-wide changes in FY 2009 attorney levels would be needed in FY 2012. We know, however, that these aggregate numbers could be hiding important shifts in specific case types that do, in fact, make a meaningful difference in workload. The total might not be changing, but, if, say, resource-consuming racketeering cases are making up an increasingly larger proportion of the caseload, then more attorneys might well be required to meet the demand. If ODS decides to use case weights for national budgeting, then more-granulated caseload information is needed. However, there are limits to any forecasting technique, such as ARIMA, one being low case counts within individual categories, a situation that might not yield a sufficient number of historical data points for the modeling or might result in overly volatile counts from period to period. Many of the 284 case-type codes we observed in the FY 2004–FY 2008 data (out of 350 possible categories) are likely to have issues in this regard. As such, some practical middle ground needs to be found between the seven Statistics Division categories used to present the projections and the far more detailed set of CMS case-type codes.

We examined whether changes in certain CMS case-type counts could meaningfully change the case-weighted totals of the seven Statistics Division categories. Without modifying the total number of cases—changing only the relative representation of each type of case—we examined how various percentage changes in each case type would affect the case-weighted totals.

Table 7.1 shows seven CMS case types for which a 10-percent increase in their share of the larger Statistics Division category would greatly affect the weighted caseload for that entire group. These case types are typically characterized by having a large number of cases combined with a case weight that differs substantially from the larger category's average case weight.

Two specific types of immigration cases appear to have the greatest potential to affect caseload. If there were a 10-percent increase in CR8710 illegal-entry prosecutions, and, at the same time, there was a proportional reduction in other immigration cases (thus representing a shift in case type rather than an increase in all immigration cases), then the weighted caseload for the Statistical Division's Criminal: Immigration category would decrease between 9.7 and 11.3 percent, depending on the adopted case-weight system. Similarly, a 10-percent increase in the number of CR8720 illegal-reentry cases without any change in the total number of cases in the Statistics Division's Criminal: Immigration category would result in a 5.2-percent to 5.7-percent increase in that category's weighted caseload. This implies that the Statistics Divi-

D6 death-penalty cases; the Appeals category is composed of about 12 different CMS case-type codes related to appeals; and the Other Representations category is composed of all other CMS codes. Minor differences between these assumptions and the Statistics Division's actual approach in collapsing CMS codes into their seven key categories would not change our recommendations in any meaningful way.

⁴ See table titled "Final Criminal Justice Act Forecast—June 2010" in Golmant, 2010.

Table 7.1
Case Types for Which Changes in Frequency Would Affect Caseload Forecasts

CMS Code	Case-Type Description	Statistics Division Category	Number of Cases	District-Adjusted Case Weight	Percentage Increase in Case-Weighted Caseload for a 10% Increase in Case Prevalence		
					National Average	M-Estimate	District Adjusted
CR8710	Illegal entry	Criminal: Immigration	84,363	0.15	-11.2	-11.3	-9.7
CR8720	Illegal Reentry	Criminal: Immigration	51,699	1.08	5.7	5.5	5.2
PO	Petty Offense	Criminal: Other	26,139	0.10	-4.4	-4.4	-4.3
HC	Habeas Corpus	Other Representations	3,954	3.04	1.7	1.7	1.8
CA	Appeals: Other	Appeals	12,873	2.29	0.2	0.1	-1.8
TD	Trial disposition	Appeals	11,208	3.30	-0.6	-0.6	1.4
FAO	First appearance only	Other Representations	17,856	0.05	-1.1	-1.1	-1.1

NOTE: FY 2004–FY 2008 closed cases.

sion's current practice of forecasting trends in immigration cases without breaking out these two case types could miss subtrends that would be highly relevant for FDO staffing decisions.

Another example of an important case type in this regard is Petty Offenses (PO). These cases are high volume but are aggregated in the Offenses: Other category containing case types with an average case weight of 1.18. Since the case weight of PO cases is 0.10, a 10-percent increase in the number of PO cases would have a large downward effect on the case-weighted caseload of the Offenses: Other category, assuming that the total for the group remained steady.

The other case types listed in Table 7.1 are less likely to have as large an impact on weighted caseload forecasts. For these case types, a 10-percent increase would result in a change of less than 2 percent in case-weighted caseload. However, large changes, such as a doubling of the number of such cases, would have a larger impact.

Recommendations

This analysis suggests that the current Statistics Division practice of forecasting case trends in the seven categories is, for the most part, reasonable and practical, but we strongly suggest that separate forecasts for CR8710 illegal-entry, CR8720 illegal-reentry, and PO petty-offense cases (with corresponding reductions in other case types included in the AOUSC groups for immigration and "other" offenses) be produced to help identify hidden trends that could have a major impact on workload. Moving toward additional categories would also help in the transition to weighted caseload forecasting. Ideally, projections for HC Habeas Corpus, CA Court of Appeals: Other Matters, CA Court of Appeals: Trial Disposition, and FAO First Appearance Only would also be broken out separately, but we are mindful of the difficulties that can arise when attempting to project future incoming cases using categories with relatively modest counts.⁵

It might be prudent for ODS to discuss this issue with the Statistics Division to determine the limits of ARIMA models in terms of sample size. At that point, an analysis similar to that represented by Table 7.1 should be conducted and, if possible, additional case types be broken out from the current Statistics Division forecasting categories. At a minimum, however, the two immigration categories and the one for petty offenses are most in need of separate treatment.

⁵ Our choice of a 10-percent change as the test for determining whether a CMS case-type code should be projected separately from others in the same Statistics Division category is, of course, an arbitrary one. A different value could certainly be tested, one that would hopefully strike a balance between the desire for increased accuracy in ODS resource projections and any limitations in the AOUSC's forecasting models.

Conclusions

Introduction

If there is one common characteristic that can be said to be shared by each and every FDO in the country, it is that the attorneys in these offices are asked each day to deliver effective representation in an amazingly diverse set of cases. From charges involving capital homicides to minor traffic violations, from U.S. Supreme Court appeals to supervised-release modifications, the client matters handled by FDO staff are anything but predictable, uniform, or routine. Although there certainly are FDOs in which a few case types seem to dominate their caseloads or occur in greater frequency than found elsewhere, 57 of the 90 districts handled cases covering 100 or more different CMS categories during our study period.¹

This diversity would mean little in regard to ODS's quest for a systematic methodology for calculating resource needs if there were only minor differences between those categories in terms of how much attorney effort might be required in a so-called typical case. If this were true, ODS could simply count up all the cases handled by each of the 79 FDOs serving the 90 federal districts and compare year-to-year changes to understand how resource needs might evolve over time. A 10-percent increase in the case counts would, assuming that all other aspects of the legal environment remain constant, suggest that a 10-percent increase in attorney availability would be needed to maintain the same level of services.

In reality, case type matters, and it matters a lot. There is an oft-quoted saying among federal defenders that “death is different,”² an acknowledgment of the fact that death-penalty cases require special legal procedures and a level of professional representation and effort corresponding to the extreme impact of the potential sentence. From the far more mundane perspective of examining average attorney time expenditures, death penalty–related case-type categories do have many of the largest weights we calculated. But, from that same perspective, it is equally true that “probation revocation is different,” as are CR1100 bank robberies, PO petty offenses, CR7600 kidnappings, CK crack cocaine retroactive amendment resentencings, hundreds of other categories, and even the case type that arguably represents what might be thought of as the most typical client representation in the entire system: CR3400 larcenies/thefts of U.S. property, with a district-adjusted case weight of about 1. Confirmation of this comes not just from Chapter Three's finding that the most important factor influencing case-related attorney time we could identify was the CMS-assigned case type, but also from the

¹ At least 75 different types of cases were handled by 82 districts over the five years.

² *Ford v. Wainwright*, 477 U.S. 399 at 411, 1986.

way experienced Federal Public Defenders and Chief Community Defenders characterize the workload challenges faced by their own offices:³

The U.S. Attorney's various task forces have focused particular attention on offenses involving drugs, firearms, immigration status, and child sexual abuse and pornography. These categories of cases remain a significant portion of our caseload, requiring substantial court time, evidentiary hearings, expert assistance, and investigative travel.

Unlike districts with many misdemeanor and/or illegal reentry cases, which may allow for fast-track resolution, most of the defendants in [this district] face very serious felonies with significant amounts of time in the balance. These cases are, at times, complex and often take more time to resolve.

These prosecutions appear to reflect an overall shift in priorities by the United States Attorney to prosecute violent crime and gang-related activities. These cases are often multi-defendant, multi-count prosecutions that are the result of lengthy investigations. Voluminous discovery in the form of tape recordings is often involved, the clients are always detained, and translators are often necessary. The result is a tremendous drain on attorney and investigator time.

[Certain types of cases] are voluminous and require a massive number of attorney hours for review and preparation.

The new United States Attorney . . . announced that he intended to increase "white collar" (i.e., financial or corporate crime) prosecutions. . . . [G]iven the amount of work, volume of paperwork, and complexity of white-collar defense, an increase in these filings could have a notable impact on the [FDO's] workload in [FY 2009].

Obviously, the extent of work required in the crack retroactivity cases is significantly different than that required for the average felony case.

White-collar cases, in general, tend to be more labor intensive.

[C]hild-pornography prosecutions . . . are very labor intensive, particularly as it pertains to sentencing mitigation issues.

Mortgage-fraud cases are complex and rely on intense scrutiny of documents, which is very time-consuming.

³ Excerpts are from *Fiscal Year 2008 Report of Operations* submissions and have been edited for clarity and to preserve anonymity.

The petty offenses tend to be cases that can be resolved within one day or a few hours spread over two court appearances, so this should not affect our resources. . . . The fraud cases involve voluminous discovery and are very labor intensive to prepare for trial.

To respond to these case-mix changes, we continue to use a three-tier system for periodically reviewing and projecting caseloads according to three main operational types—immigration felonies, petty offenses (including many immigration offenses), and other offenses (including most of our “traditional” caseload). We have found that these operational types generally require different levels of attorney and support staff time and that we can do a better job of deploying our resources using this model than we could by simply looking at the raw caseload numbers.

As the statements suggest, certain categories of prosecutions and other client matters are felt to require, on average, more FDO attorney time and other office resources than cases involving other broad subject areas or other client needs. That being said, if the mix of cases that makes up the caseload of each FDO stayed relatively stable from year to year, raw case counts might still be a viable tool for assessing new resource needs. A 10-percent increase in caseload would mean a commensurate 10-percent increase in every case-type category, including the “drugs, firearms, immigration status, and child sexual abuse and pornography” cases mentioned as being particularly resource intensive, but also the “petty offenses” that tended to need just “a few hours.” In this scenario, a 10-percent increase in available attorney hours should handle the uptick in the caseload. Instead, the mix is ever changing, and, more importantly, it varies from district to district.

Though unweighted CLPA is the current metric used, the approach ODS now employs in adjusting staff levels based on need reflects these realities of fluid and diverse case mixes that can markedly affect resource requirements. The unweighted CLPA figure is not set on national experience but is instead tailored to each district and appears to be based on historical levels of representations compared to staff on board in each location. In other words, the CLPA used for FDO A can be very different from that used for FDO B’s budgeting, a practice that appears to be an acknowledgment that the workloads in individual districts differ markedly by their case mix (as well as other factors).⁴ Moreover, CLPAs in an individual FDO can adjust to reflect new conditions. Actual or anticipated shifts in CLPA greater than 10 percent in either direction can trigger action to adjust staff levels to return a district’s CLPA to something approaching what it was before the number of cases or the number of available attorneys changed. But an alternative strategy appears to involve fine-tuning the CLPA figure itself if operations at the FDO appear to justify a revised perspective on what the “new normal” might be. Our impression from speaking to Federal Public Defenders and Chief Community Defenders and from reading various materials submitted in conjunction with requests for ODS authorizations for hiring new employees or to approve an anticipated change in CLPA is that the process for obtaining such approvals is not easy and requires substantial documentation of need or changing conditions. Indeed, FDOs are told that

⁴ We have been informed by ODS that CLPAs vary generally between 30 and 300 across all FDOs, with a mean of 100 and a median of 70.

[i]f the caseload per attorney would be less than the budgeted level, the defender must provide an explanation of why the caseload per attorney needs to be lowered. Caseloads per attorney in FDOs usually decline due to a change in case complexity. Every opportunity should be taken to describe how changes in the case mix are causing your caseload per attorney to decrease.⁵

Again, organizations requesting an FTE ceiling that is 0.5 FTE or more above [ODS-calculated] levels or those with a 10 percent or more decrease in caseload per attorney will be required to submit a justification in the form of a memorandum to [the] Chair of the Defender Services Budget Subcommittee.⁶

The Committee has directed that ODS disapprove requests to hire assistant defenders if doing so would cause the organization's projected caseload per attorney for FY 2008 to drop below its authorized FY 2008 level (as shown on each organization's budget chart), unless the defender provides a justification for the decrease that ODS finds compelling. [D]efenders requesting decreases to their caseload per attorney should justify the decrease in terms of the case complexity factors included in the case management system, and support their justification with data.⁷

The focus here on case mix and case complexity reflects the reality that raw case numbers are not enough to explain workload in the local districts and that CLPA might need to be adjusted to conform to changing circumstances. It is for these reasons that we believe that WCLPAs would do a better job of accounting for actual need in ODS's initial analysis of whether adjustments in defender resources are required.

Are time-based weights the sole method for estimating workload and staffing requirements? Absolutely not. A weight merely reflects average time expenditures observed over some period. That average represents one type of measure of central tendency, a measure that provides no hint as to how attorney time expenditures vary within the case type. Any individual case handled by an FDO can require far more or far less time than might be suggested by the case weight assigned to its CMS case type. Some case types are more volatile in this sense (see Table 6.1 in Chapter Six), but, in about half of all categories, the difference between the least amount of time recorded in TKS (often just six minutes) for any case within that particular type and the most time-intensive can be a factor of 1,000 or more. Standard deviations (a useful measure of variation from the average) for attorney time expenditures in some case types effectively represent weeks and even months of lawyer effort above or below the calculated mean. Are there ways to help predict where any particular case within any particular case-type

⁵ Macartney, 2007, Attachment 2, p. 1.

⁶ Macartney, 2010, p. 2.

⁷ Macartney, 2007, Attachment 2, p. 2. The passage indicates that the "case complexity factors included in the case management system" are used as a metric to help determine whether workloads in individual districts have changed. Our interviews suggest that many attorneys pay little attention to the factor check-off boxes that form the basis for this type of CMS data, or do so in an inconsistent manner. If this information is to have any explanatory value for planning purposes or future case-weight work, we recommend that the underlying purpose of the caseload factor check-offs as an important means of balancing demand with resources be reinforced in the minds of staff attorneys and that steps are taken to enhance uniformity in how the factor questions are answered.

category will fall on this time continuum? Probably none that makes practical sense for ODS staffing and workload assessments. Even experienced defenders tell us that precisely predicting effort required for new cases as they come in the door is speculative at best:

[Y]ou can't weight cases when they first come in. You have no discovery, you don't know the issues and you don't know how the witnesses or clients will behave.

I personally have spent fewer hours on a second-degree murder case than a complex drug conspiracy—just because of the unique facts of each case.

I truly can say that each case is different—despite similarities in charging decisions, charge elements, and penalties, the unique circumstances of each client can turn what appears to be a run-of-the-mill case into complex litigation.

We are not attempting to predict what any specific case will require in terms of attorney time. That type of assessment is the difficult responsibility of Federal Public Defenders and Chief Community Defenders who have to spread the varying demands of the incoming caseload across the desks of all attorneys in the office. And, though we believe that case type is a very useful measure of aggregate demand, actual total attorney hours in individual cases reflect numerous influences, some of which were cataloged in Chapter Three but also many others regarding the unique features of the case; the larger legal, social, and physical environment; and the behavior and attitudes of all of those involved (e.g., FDO attorneys, judges, prosecutors, probation officers, the client, law enforcement, witnesses) that resist both precise assessment at the time a court appoints a FDO to represent a new client and easy quantification after the case is closed. Instead, case weights are used when the focus of interest is at much higher level, providing a way to estimate total attorney hours likely to be needed in hundreds or even tens of thousands of cases. We believe that the district-adjusted *M*-estimation weights presented in Table 4.9 in Chapter Four constitute a reasonable, cost-effective, and reliable way of initially assessing systemwide demand for attorney time when informed by qualitative considerations. There are, however, cautions that should be taken into account when using national average hours per case type as the basis for case weights that will be applied at the local level.

Applying Nationally Derived Case Weights to Local Caseloads

Three case types illustrate one potential problem. Table 8.1 shows the mean average case-related attorney time in hours for CR4601 (Fraud: Bank), CR3400 (Larceny and Theft: U.S. Property), and CONSUL (Consultation), broken out by each of the 90 districts.⁸ These three categories were selected because they have district-adjusted weights of about 2, 1, and 0.5, respectively, and because there were at least 2,000 cases of each type in our data closed during our five-year study period. Because the average number of attorney hours for all cases nationally was about 15.3, one might expect that the averages for bank fraud in each of the districts

⁸ *Consultation* describes a type of representation provided by FDOs to individuals prior to actual arrest or the filing of a formal charge.

Table 8.1
Average Case-Related Attorney Hours for Selected Case Types by District

District	CR4601 (Fraud: Bank)	CR3400 (Larceny and Theft: U.S. Property)	CONSUL (Consultation)
AKX	32.7	32.2	7.1
ALM	24.9	13.2	—
ALS	17.8	10.7	—
ARE	54.7	17.7	0.8
ARW	99.3	23.8	7.4
AZX	14.4	20.3	9.4
CAC	50.7	34.0	17.0
CAE	29.6	18.2	4.3
CAN	47.9	19.9	2.0
CAS	52.4	26.4	23.4
COX	24.4	22.9	0.7
CTX	40.1	32.2	4.8
DCX	45.8	18.8	4.4
DEX	47.7	12.0	11.0
FLM	69.8	25.6	11.4
FLN	19.5	9.3	—
FLS	54.5	33.5	—
GAM	16.3	22.8	—
GAN	28.2	13.5	6.1
GUX	18.5	16.2	5.5
HIX	39.2	6.8	3.6
IAN	64.1	1.6	7.7
IAS	73.9	24.1	5.3
IDX	47.0	8.8	2.0
ILC	29.5	17.7	—
ILN	45.0	26.0	4.6
ILS	1.0	16.7	16.8
INN	19.4	19.3	7.0
INS	20.7	26.2	4.6
KSX	48.7	4.6	4.8
KYW	32.8	3.1	1.0
LAE	12.8	17.2	4.6

Table 8.1—Continued

District	CR4601 (Fraud: Bank)	CR3400 (Larceny and Theft: U.S. Property)	CONSUL (Consultation)
LAM	4.3	3.3	3.2
LAW	10.4	3.8	3.7
MAX	85.7	47.0	3.2
MDX	66.7	17.1	—
MEX	74.6	—	19.2
MIE	34.0	32.4	—
MIW	53.2	22.2	11.5
MNX	48.1	43.2	2.9
MOE	22.4	14.8	—
MOW	38.4	12.3	13.6
MSN	0.1	19.1	—
MSS	11.5	14.9	—
MTX	17.3	39.2	12.2
NCE	73.6	27.7	16.2
NCM	49.6	29.0	—
NCW	10.9	21.1	—
NDX	47.4	16.0	4.0
NEX	30.8	18.8	0.5
NHX	44.1	—	—
NJX	60.7	18.4	2.1
NMX	28.6	24.9	—
NVX	25.8	18.8	6.3
NYE	28.9	25.9	5.0
NYN	66.5	12.4	25.2
NYS	19.2	12.7	1.9
NYW	22.5	12.1	2.2
OHN	48.7	25.9	9.8
OHS	34.4	22.0	—
OKE	21.7	17.5	12.2
OKN	27.6	19.2	5.4
OKW	52.4	13.7	1.0
ORX	30.1	39.8	9.7
PAE	27.8	18.0	—

Table 8.1—Continued

District	CR4601 (Fraud: Bank)	CR3400 (Larceny and Theft: U.S. Property)	CONSUL (Consultation)
PAM	27.6	16.4	2.7
PAW	55.8	9.2	7.3
PRX	26.1	17.5	—
RIX	31.7	31.1	0.7
SCX	19.8	12.1	0.5
SDX	40.6	27.1	3.7
TNE	26.8	17.9	1.8
TNM	23.2	4.0	13.8
TNW	20.4	18.6	10.1
TXE	23.2	21.9	—
TXN	40.6	22.1	17.2
TXS	26.2	7.4	2.4
TXW	18.1	7.1	12.6
UTX	79.5	8.4	54.0
VAE	26.6	11.9	6.4
VAW	94.1	23.4	5.7
VIX	41.3	28.2	—
VTX	37.2	20.6	4.4
WAE	58.2	39.0	—
WAW	28.9	22.1	6.3
WIE	83.0	32.2	1.6
WIW	20.6	33.9	34.3
WVN	5.9	13.3	—
WVS	6.4	39.5	—
WYX	—	8.5	3.0

NOTE: FY 2004–FY 2008 closed cases. Missing values are the result of no cases of that type closing in the district during the five-year study period.

would usually be something slightly more than 30 hours; for larceny and theft, they would be about 15 hours; and, for consultations, the averages would be about 7.5 hours.⁹ As can be seen in Table 8.1, however, the averages are anything but consistent across districts. For example, the top ten districts in terms of CR4601 averages exceeded 65 hours, while the bottom ten were

⁹ Our recommended set of case weights is based on district-adjusted M-estimations rather than simple arithmetic means. As such, a weight of 2 does not precisely translate to average attorney hours that are twice the size of the arithmetic mean for all cases. The average hours for CR4601, CR3400, and CONSUL cases were 35.8, 16.8, and 8.3, respectively.

less than 15; the top ten for CR3400 had averages of 32 hours or more, while the bottom ten were less than nine; and the top ten for CONSUL were 13 hours or more, with the bottom ten less than two. Another apparent problem is that the relationships between the averages for the three case types differ markedly between districts, an important factor to consider when applying relative case weights. For example, average time expenditures for CR4601 in 26 of the 90 districts were about the same or less than those recorded in CR3400 cases. But, in another 20 districts, the averages for CR4061s were three or more times the size of CR3400s.

Based on what Table 8.1 implies, can ODS reliably apply case weights derived nationally to the caseloads found in individual districts? One thing to keep in mind is that the count of cases used for calculating averages at the individual district level is far smaller than the systemwide totals. The top five districts in terms of CR4601 average hours had just 1, 2, 7, 11, and 15 cases, respectively, to use when calculating those averages; in contrast, there were 2,115 bank-fraud cases closed across the entire FDO system over a five-year period. Compared to averages based on national counts, individual district averages are much more sensitive to the inclusion of very large or very small outliers. A few intakes that are immediately reassigned to CJA panel attorneys but enter CMS under an offense case type (rather than as a BP Bail/Presentment or FAO First Appearance Only) will cause a district's average time for that case type to plunge. On the other hand, one or two very lengthy cases made especially complex or time-consuming by something unrelated to the type of case will cause a district's average to spike. National numbers smooth out these problems.

Moreover, it is not necessarily true that an FDO's prior experience handling a particular type of case is the best indication of what might be expected for those same types of matters in the future. Turnover in FDO staff, new judicial appointments, changes in prosecutorial policies, increased experience in defending cases concerning that subject matter, a shift in client demographics, revised policies for allocating cases between the FDO and the CJA panel, and a myriad of other factors might suggest that what happened in a district back in FY 2004 or FY 2005 might not hold true in FY 2011 and beyond.

And even if national case weights applied to individual district caseloads might not precisely reflect local conditions and experiences, they nevertheless provide a more defensible foundation for examining year-to-year changes in resource requirements in those locations than does counting homicide cases in the same way as trespassing charges. We see no compelling reason for moving away from the current ODS practice of comparing caseload to available staff from year to year, adjusting staff numbers to maintain a more or less uniform level over time. With weighted caseloads, however, the need to make any such adjustments will be clearer, since more than minor changes in WCLPA make an even more convincing case for closer scrutiny of external demand versus attorney supply.

Nevertheless, the district where the case was located was determined to be one of the three top factors influencing attorney time, after case type and after the method in which the matter was resolved (see Chapter Three). Case types matter, but so do districts. It is for this reason that we do not recommend the use of nationally derived case weights as a means of comparing WCLPAs in one district to another or for establishing a national WCLPA to be used as an inflexible formula for assessing productivity, quality, or other evaluative standard in individual districts. Case weights certainly help policymakers understand what the relative impact of changes in caseload size and mix might be. But using them in a normative sense—for example, to determine whether an FDO is operating in an inefficient manner given the resources available and the demands of the caseload—is a process that must be informed by

much more than simply an analysis of TKS data and FDO FTE levels. It might well be that FDOs with very high or very low WCLPA compared to a national average are reflecting conditions that merit an inquiry by ODS, but the absolute size of that metric alone would not explain much, if anything, about quality of the representation being delivered or the specific demands of the caseload. Moreover, we know that districts differ from one another in a variety of important ways that can influence FDO attorney time expenditures. Significantly, in the context of calculating federal judgeships, notes of caution are expressed when district-level distinctions might override nationally derived weights: “Factors indicating that a district’s cases are not typical of those nationwide should be considered legitimate evidence of the unreliability of the weighted filings statistic as applied to that district.”¹⁰ That is because the “weighted filings measure employs an implicit assumption that the cases of a given type in a given district are merely a random selection chosen from among all cases of that type filed nationwide.”¹¹ To the extent that cases falling within the same case-type category can reflect fundamentally different characteristics or be subject to unique external influences solely because of where they are brought, this important assumption of an essentially random distribution across FDOs of cases within each case-type category might not always be justified. We believe that there are too many district-level differences in the larger legal environment, client characteristics, and other factors cataloged in Chapter Three for ODS to use nationally derived case weights as a *stand-alone* way of assessing individual FDO performance or adjusting staff levels by way of comparison to those found in other districts. However, they appear to be an adequate and useful way of gauging systemwide resource requirements and as a tool available to ODS to help understand changing needs at the individual district level.

Why is our recommendation different from weighted caseload approaches used in the federal judiciary? The Judicial Conference currently employs a nationwide standard of 430 weighted cases per authorized judgeship for deciding whether to recommend to Congress that new federal district court judgeships be established. Use of this threshold suggests that what might be termed *judicial productivity* can indeed be the subject of interdistrict comparison.¹² There are two reasons we do not think that anything similar to the 430 rule should be used by ODS in adjusting staff levels. First, though they are often found in the same room together with their attention focused on the same matter, the work of a federal defense attorney appears to be very different from the work of a federal district court judge in terms of the predictability of and variability in the amount of time any individual case might consume. In comparison to FDO attorneys who must build their daily schedules around the decisions of the USAO and the sometimes unpredictable needs of their clients, judges have far greater control over the pace and timing of their workday; they can, for example, limit the length of a hearing or other courtroom activity in a case to a predetermined number of hours, and they can postpone all of their involvement in a case for months in order to avoid affecting others in the queue. This level of control is needed because, in modern case management, great value is placed on predictability and certainty in calendar management. A structured, reliable schedule is not just a convenience for the court; it is a vital component of the entire justice system, given that so many stakeholders are dependent on a firm judicial calendar for moving cases to

¹⁰ Shapard, 1996, p. 2.

¹¹ Shapard, 1996, p. 2.

¹² See, e.g., Gillespie, 1977.

completion and for setting their own priorities and schedules. This orderly aspect of a judicial workday would be an important foundation for successfully conducting an event-based case weighting study, as was done in the Federal Judicial Center's (FJC's) 2003–2004 update of district court case weights.¹³ Such an approach breaks down the job of a judge into various individual events and activities, including trials and evidentiary hearings, motion hearings, conferences, and in-chambers case-related work. Average times were either estimated or reported for those individual elements and then, based on data on event frequency, summed up to paint a complete picture of the typical judicial time spent on cases of a particular type. It is difficult to imagine the workweek of many federal defenders being deconstructed in the same fashion.

Although, for the same case, in-court time expenditures for both the judge and defense counsel might be similar, the range of case-related activities and the time needed to complete them outside of the courtroom would likely be much greater for the attorney. No judge, for example, would have to regularly complete a multihour round trip to visit a defendant in a federal detention facility, design and produce exhibits to be used at trial, or visit the defendant's friends and family members in preparation for a sentencing hearing. This is not to say that judges do little case-related work outside of instances in which the parties are present in court or chambers. Indeed, the FJC's 2003–2004 district court time study indicates that, for at least some case types, such work can exceed, on average, all time spent in evidentiary hearings (such as trials or sentencing) and all time spent in conferences, hearings on motions, and other nonevidentiary hearings.¹⁴ But what we heard during our familiarization visits to FDO offices suggests to us that FDO staff attorneys generally spend considerably more time in the office, working at home, or conducting interviews with their clients and others than they do at the courthouse.

Second, there appears to be less variation in judicial time spent on specific categories of cases than what might be true of defenders. Many attorneys with whom we spoke were adamant that the level of effort needed to provide an effective defense was highly case dependent, while, in contrast, the judges in the 2003–2004 study told the FJC researchers that, when it came to judicial time expenditures in criminal cases, "a conference (or hearing or suppression motion) was much the same in one type of criminal case as it was in another, with just a few exceptions."¹⁵ Furthermore, the criminal weights calculated as part of that study ranged from 0.14 for a nonevidentiary supervised-release or probation-revocation hearing to 4.36 for a drug prosecution arising out of the CCE statute.¹⁶ CCE cases thus had weights 31 times that reported for supervised release and probation revocations.¹⁷ In contrast, we calculated that a

¹³ Lombard and Krafka, 2005, pp. 10–12.

¹⁴ For example, aggravated or felonious assault and kidnapping cases were calculated on average to require a total of 194.6 minutes for trial and other evidentiary hearings, 161.5 for conferences and other nonevidentiary hearings and meetings, and 233.5 minutes for all other activities, such as trial preparation or working on orders. See Figure 3 in Lombard and Krafka, 2005. It should be noted that the estimates for average time for these three broad categories of events are expected values for all cases.

¹⁵ Lombard and Krafka, 2005, p. 34.

¹⁶ Lombard and Krafka, 2005, pp. 60–62. Death-penalty capital habeas cases were given a case weight of 12.89 in the civil case groupings.

¹⁷ Differences of similar magnitude can also be found in the results of the FJC's 1993 federal district court case-weight study, one that used a more traditional case-tracking approach for gathering information on time expenditures. Final criminal case weights ranged from 0.45 for fraud involving food stamps, passports, or credit cards to 5.31 for fraud involving bankruptcy, Securities and Exchange Commission, or a catchall group of other matters. As such, the most intensive case

D2 death-penalty prosecution should receive a district-adjusted FDO attorney weight of 37, a number that is 720 times the size of a FAO (first appearance only) case with a weight of just 0.05.

The purpose of this discussion is not to suggest that the application of a uniform weighted-caseload-per-staff-member standard to local operations is always appropriate in the context of judicial resources and without any utility whatsoever when it comes to FDO attorneys. The Judicial Conference, for example, does not make its authorized judgeship recommendations solely on the basis of weighted caseloads; instead, it also considers “a variety of information, including responses to its biennial survey of individual courts, temporary increases or decreases in case filings and other factors specific to an individual court.”¹⁸ In the context of bankruptcy judges, for example, those other factors can include “the nature and mix of the court’s caseload,” “historical caseload data and filing trends,” “geographic, economic, and demographic factors in the district,” “the effectiveness of the court’s case management efforts,” “the availability of alternative solutions and resources for handling the court’s caseload,” and “the impact that approval of requested additional resources would have on the court’s per judgeship caseload.”¹⁹ The case-weight approach we recommend for ODS should also include a similar broad-based approach, one that tempers case weight-based resource calculations “with more qualitative, [location]-specific factors that may differentially affect the need for resources.”²⁰

Other Concerns

One drawback to examining year-to-year changes in WCLPAs at the district and national levels is that actions taken to maintain existing levels (based solely on WCLPA) run the risk of an unquestioning preservation of the status quo. Interviewees repeatedly asserted that they work long hours in the interests of their clients, requiring considerable effort to be spent during weekends, late nights, vacations, and holidays. We have no doubt that this can be the case and that, as such, maintaining existing WCLPA in a district where 50 or 60 hours each week is the norm for FDO attorneys year after year simply means that the same level of personal effort will be required despite changes in total cases, the case mix, and available staff. Obviously, the concern here is not just with attorney burnout; with so many hours expended each and every week just to handle the usual caseload, quality of representation can reasonably be expected to suffer. Conversely, districts where staff enjoy lighter loads will continue to do so indefinitely when WCLPA is maintained, even if some FDO resources at those locations might be better utilized elsewhere.

Throughout this work, we have been made aware of the concerns of many in the FDO system that the calculations of national case weights based on data for every district will result in the setting of standards that reflect the experiences of only the largest FDOs in the country. This is a legitimate concern, especially given that there were 15 districts with fewer than

type in terms of judicial time expenditures had a weight that was 12 times the size of the lowest (Shapard, 1996). Death-penalty capital habeas cases received a case weight of 5.99, but they were considered to be civil in nature.

¹⁸ Jenkins, 2008, p. 1.

¹⁹ Stana, 1997, p. 10.

²⁰ Flango and Ostrom, 1996, p. 22.

300 cases closed in FY 2008 and 11 districts with 2,000 or more. Using the number of cases closed from FY 2004 through FY 2007 (to avoid including the impact of the FY 2008 spike in crack cocaine amendment and immigration cases into the calculations), half of all cases during that period were handled in just eight districts. At least in terms of average attorney time, a handful of districts do dominate the numbers. One possible approach suggested by ODS was to separate out the Southern and Western Districts of Texas for the purpose of calculating case weights in regard to certain immigration matters. Our recommendation is to use a single set for all 90 districts, one that includes a district-adjustment factor that helps account for inter-district differences in observed attorney time consumption. It is not that we believe that the separation of these two locations for these specific types of cases is without merit. It is that we are unsure why the same approach should not be employed for other districts that also have very large and arguably equally unusual caseloads. In the interests of simplicity and transparency, however, a single set seems to make the most sense and is the preferred approach among case-weighting experts in the absence of identification of other locations where the differences are similarly significant enough to justify separate sets of case weights.²¹

It should be kept in mind that the problem of a handful of districts overly influencing case-type averages is unlikely to affect one of ODS's primary purposes in developing functional case weights: the making of systemwide resource assessments. Such assessments do need to reflect the experience of the largest districts because those are where the bulk of clients are served. It is when the weights are applied at the local level that the issue of district domination comes into play. We nevertheless believe that nationally derived case weights can be used to weight local caseloads for a better understanding of changing workloads, with the realization that a weighted caseload analysis's underlying assumption of random case selection across all locations might not always hold true when applied to the smallest offices in the system.

In addition, it is important to repeat a caution already noted elsewhere in this document that, although issues related to current timekeeping practices in the FDOs are not believed to adversely affect the functionality of our proposed relative case weights, they limit what can be done with TKS time expenditure data. As far as we can determine, CR4601 bank-fraud cases require about twice as many attorney hours as cases generally, which is the reason that particular code was assigned a relative case weight of about 2.0. What we cannot say with similar confidence is whether CR4601 cases required precisely 35.8 hours of actual attorney time on average, as our analysis of TKS and CMS records suggested. Based on what we heard during our FDO visits, average recorded time expenditures within individual case types are likely to be compressed to some unknown degree as compared to what actually occurred in those cases. Unfortunately, data limitations prevented us from measuring the possible error introduced by any less-than-optimal practices regarding TKS duties. As such, using TKS-based averages to calculate, for example, the total number of attorney hours likely to be required at an individual office given a particular caseload mix and size would not be advised.

Finally, another concern raised by interviewees and others regarding the use of case weights based on attorney time consumption is that the metric does not account for nonattorney needs at an FDO. Certain case types might require more or less support staff assistance than others on average, meaning that changes in the case mix that result in a steady weighted caseload might nevertheless affect total time spent by investigators, paralegals, research and

²¹ See Guideline 9 in Flango and Ostrom, 1996, p. 52.

writing specialists, secretaries, interpreters, information technology staff, and others. Examining the methods used for assessing nonattorney staff levels and other resource requirements is beyond the scope of this work, but weighted caseloads might not be the best way to make that assessment.

Additional Recommendations

We have additional suggestions that are advanced in the interest of increasing the accuracy and functionality of any future case-weight update.

Standardize procedures across and within FDOs in regard to how CMS case-type codes are assigned to newly opened cases. We believe that much of the problem with zero-time cases was due to the way in which FDO staff address intake work during first appearances and bail settings. CMS records are being opened, but the codes routinely employed to classify the work done on behalf of who might be considered temporary clients vary by office and perhaps among the staff members within an office who are charged with the responsibility of choosing the most appropriate code to apply. But our concerns over case-type designation go beyond just first appearances and bail settings. In essentially all matters other than those directly involving a criminal prosecution (for example, an extradition or juror representation), a support staff member rather than the attorney assigned to the case is likely to be the one making this critical case-type designation decision. Some minimal level of professional review should be required to make sure the code selected properly reflects the work expected to be performed.

Standardize procedures across and within FDOs in regard to how TKS is used for first appearances and bail settings. Timekeeping entries are not consistently made for clients with minimal attorney contact, a problem that might seem to be minor but that, in the aggregate, can affect averages within case types (and, as such, case weights).

Reinforce TKS's purpose in the minds of attorney staff as an important means of balancing caseload demand with appropriate office resources. There was confusion among our interviewees as to the underlying purpose of TKS, despite an apparent effort in recent years by some Federal Public Defenders and Chief Community Defenders to send a message about the importance of keeping good records. If TKS duties are to be used not only for calculating case weights but also for documenting work performed by attorney staff that exceeds the standard 40-hour workweek (one criterion used for evaluating the need for additional attorney staff),²² then those responsible for making entries should be made aware of the possible impact that submitting inaccurate or incomplete time records can have on FDO budget requests.

Provide better ways for attorneys to make near-real-time entries into TKS. The lack of a capability to routinely make TKS entries while at the courthouse, visiting clients, on the road, or at home was a significant limitation voiced by some interviewees. Use of personal data assistants or “smart phones” might help in this regard.

Determine what event and activity information is truly needed for TKS's primary purposes. Event codes in TKS appear to be inconsistently chosen, with popular generic values providing

²² “Often, defenders will request additional attorneys in order to reduce the workload of existing staff. This results in a decrease in caseload per attorney. Before ODS will approve [hiring new employees] to reduce workload of current staff, defenders must submit TKS data demonstrating that the current staff are working enough overtime to justify additional positions” (Macartney, 2007, Attachment 2, p. 1).

little concrete information about the activity. We suggest that event coding be either eliminated in order to streamline the TKS process or collapsed into just a handful of categories that would be of greatest utility to ODS.

Elicit the opinion of the federal defender community as to the most-constructive ways to categorize cases in CMS. The codes found in CMS appear to have been the result of decisions by the AOUSC years ago to develop categories that make the most sense from the court's perspective. But, during our interviews, we sometimes heard complaints that the codes did not make sense from the perspective of a federal defense attorney in FY 2010. For example, the fraud codes appear to cover everything from low-level scams to the most-headline-grabbing conspiracies. Creating new categories that better capture differences in the scope and severity of the offenses charged could help in developing more-accurate case weights.

Revisit case-weight calculations on a regular basis. The federal defender system is a constantly evolving environment, and case weights need to reflect those changes. Unlike the situation in many justice system organizations, the federal defender system already has an ongoing time-related data-collection process. Most courts, public defender offices, and other entities would have to conduct expensive longitudinal, diary, or other time studies to collect the type of information that is routinely sent to ODS each month. Given that continued use of TKS provides a means to monitor trends over time in FDO attorney time expenditures and, if need be, generate new case weights at a relatively modest cost compared with the cost of a traditional time study, our proposed set of weights should be revisited periodically (perhaps every two years) and, if warranted, be updated. This appears to be an especially important need given that changes in case complexity (and corresponding changes in attorney time requirements) are often used as justification for increases requested by the judiciary for congressional funding to meet Defender Services program needs.

Determine whether the need for updated case weights justifies TKS's existence. TKS is not without cost, and, like any data-collection process, it must justify its existence. If time records are rarely used for management or case-weight calculation purposes, ODS should reconsider its requirement of daily entry of time and event data. One option might be to trigger timekeeping duties only during special data-collection periods, following a campaign to encourage participation in the temporary program.

Continue to make qualitative assessments of conditions not explained by weighted caseloads. If ODS implements a case-weighting approach while continuing to employ its present practice of collecting and reviewing a considerable wealth of information regarding local features and operations before making any decisions on FDO staff level adjustment, then FDOs should not be concerned that such a vitally important decision is being driven solely by a set of impersonal statistics. Weighted caseloads will explain much, but not all, about resource needs. Thus, it is our recommendation that FDOs continue to provide reasoned and locally informed arguments for adjusting or maintaining current staff levels. We believe that doing so will result in more-accurate and more-reliable projections of district needs than the application of case weights alone.

Federal Public Defender/Chief Community Defender Survey

Case-Weight Study: Federal Public Defender/Chief Community Defender Survey

Note: The frequency distributions for responses to the questions in this survey are provided beside each possible answer. The first value (“districts”) is the percentage of district managers (i.e., a Federal Public Defender or Chief Community Defender) who indicated the particular response choice. The second value (“cases”) is the percentage of cases over the five-year study period attributed to the districts whose managers selected the response choice.

Section I: Overview and Instructions

Introduction

ODS has contracted with the RAND Corporation to help in developing a system of case weights and in evaluating whether such a system would be useful in estimating FDO funding and staffing requirements. One very important aspect of this work involves the cataloging of factors other than case type that might be affecting the workloads of individual FDOs. For example, the travel and wait time routinely needed to conduct interview with clients in remote detention facilities would be one such a factor. RAND, a nonprofit public policy research institution based in California, will be drafting a report that, in part, will describe how the presence of such factors might affect the use of a case-weight system as a predictor of resource needs for individual offices. In furtherance of that task, RAND is collecting a wide variety of information about FDO office characteristics, caseloads, local legal environments, and the like. Ultimately, the goal is to identify those characteristics that appear to have an influence over the average amount of attorney time needed to adequately defend a client, compared to what might be seen at a national level for those same types of cases. Some of this information (such as the Circuit in which the office is located) is readily available, other information (such as staffing levels or ratios of paralegals to attorneys) has been provided to the researchers by ODS, and caseload counts (such as the percentage of cases reaching trial verdict or involving immigration matters) have been obtained through RAND analysis of CMS data. What are not available through any of these sources are the “boots-on-the-ground” perspectives of those who practice each day in the courts within your office’s jurisdiction. This survey is intended to collect, in a uniform way, sometimes difficult to obtain information about each of the FDOs in the federal defender system and describe how they differ. A survey form has been sent to every Federal Public Defender or Chief Community Defender in the system.

Confidentiality

The responses collected will not be available to the public, to prosecutors, to the bench, or to your fellow defenders in any fashion that would allow identification of the respondent. It should be noted that ODS management will be provided with the responses to this survey.

Answering the Questions

As indicated previously, RAND has already obtained many of the hard numbers that can help describe each FDO and the environment within which it operates. What we need from the survey's recipients are the "seat-of-the-pants" estimates of currently unknown facts and perceptions, such as the percentage of clients who are not fluent in English or the local prosecutors' attitudes toward an open file discovery policy. For example, a question that asks about "typical" travel and waiting times for client interviews at a detention facility should be answered in the same way as you might if asked how long you might be gone from the office today as you were leaving for such a visit. It may be an approximation but it's one informed by experience. The same sort of approach should be used for similar questions, such as those asking about the makeup of the client base or whether judges in your district are generally amenable to sentencing variances.

Use of the Information

None of the responses collected by this survey will be used by RAND for any type of evaluative purposes. The answers are intended to provide some context for what CMS and TKS data reveal regarding average time expenditures for specific types of cases. There is a free form question at the end that will allow you to provide input on the issue of key factors influencing attorney time expenditures (both from district to district and from case to case) but your answers will not be publicly associated with your identity.

Multiple Districts Serviced by the Same Federal Defender Organization

If you are the Federal Public Defender or Chief Community Defender of an FDO providing attorney services to indigent clients in multiple Federal districts, you will have received a separate survey for each of those districts. Please craft your answers for each survey solely on the basis of what takes place in the district in question, not the FDO as a whole.

Instructions for Completing the Survey

An asterisk at the end of a question indicates that an answer is required, even if you are simply indicating that the question is not applicable to your district or that you were unable to respond to your satisfaction. In such instances, please check the "Other/not applicable/cannot estimate" option and explain in the space provided.

If you are leaning toward a particular answer but would nevertheless like to provide additional explanation, just check off the "Other/not applicable/cannot estimate" option and in the text box below, simply indicate the letter code for your intended answer (such as "b") in addition to your comment. The survey application will ignore any entries in the text box unless you have checked off the "Other.." answer choice.

The survey is divided up into sections covering particular subject matter areas (e.g., "Respondent Information," "Client Caseload Characteristics," "Detention Facilities"). You can move to the next section in the survey by hitting the NEXT button (or BACK to go to the previous one) but all required questions within the current section must be completed first. Hit

the SAVE button when you want to save your responses for the current and all preceding sections. The survey will only allow you to save a partially completed questionnaire IF the section you are working on is complete. Once saved, you can log out and return to the survey in the future using the same link provided in the email announcement.

Hit the DONE button when you are ready to submit the entire survey and then close your browser window. Note that the survey application will not allow responses to be submitted unless every required question is completed.

Only a single answer is allowed to be checked in any multiple choice question. Checking two or more boxes will result in an error message when the survey is saved or submitted. Required questions that have not been answered when the survey is saved or submitted will also result in an error message.

Questions?

Hopefully the survey will be self-explanatory and able to be completed in a relatively brief amount of time. If you have any questions about the purpose of the questionnaire, the meaning of a question, the best way to consider an answer, or any technical issues regarding the survey, please do not hesitate to contact Nicholas Pace at the RAND Corporation (1-310-393-0411 ext. 6176; nickpace@rand.org).

Section II: Respondent Information

1. Your Name...*

2. The district this survey refers to . . . (if your FDO serves multiple districts, a separate questionnaire should be returned for each district)*

INDICATE THE SPECIFIC DISTRICT, NOT THE FDO WHERE YOU WORK

Section III: Client Caseload Characteristics

3. Estimate the percent of your client caseload over the last year for whom English was not the primary language.*

Select at least 1 and no more than 1	(districts/cases)
a: None or almost none	(1.1%/0.4%)
b: Less than 10%	(17.8%/6.5%)
c: 10% to less than 20%	(35.6%/21.2%)
d: 20% to less than 40%	(29.8%/19.7%)
e: 40% to less than 60%	(4.4%/3.9%)
f: 60% to less than 80%	(4.4%/13.6%)
g: 80% or more	(3.3%/32.2%)
h: All or nearly all	(1.1%/0.8%)
i: Other/not applicable/cannot estimate	(3.3%/1.7%)

4. Estimate the percent of your client caseload over the last year who were foreign nationals.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	(2.2%/0.7%)
b: Less than ten percent	(25.6%/11.1%)
c: Ten to less than 20 percent	(30.0%/17.8%)
d: 20 to less than 40 percent	(26.7%/18.7%)
e: 40 to less than 60 percent	(5.6%/4.5%)
f: 60 to less than 80 percent	(6.7%/45.5%)
g: 80 percent or more	
h: All or nearly all	
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

5. Estimate the percent of your client caseload over the last year whose primary residence was on an Indian reservation.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	(67.8%/61.2%)
b: Less than ten percent	(16.7%/20.6%)
c: Ten to less than 20 percent	(6.7%/5.5%)
d: 20 to less than 40 percent	(3.3%/10.0%)
e: 40 to less than 60 percent	(1.1%/0.6%)
f: 60 to less than 80 percent	(1.1%/0.4%)
g: 80 percent or more	
h: All or nearly all	
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

6. Estimate the percent of your client caseload over the last year whose mental health or substance abuse issues have adversely affected the delivery of legal services.*

["Adversely affected" refers to instances where additional attorney hours would have been required to handle the matter compared to typical cases involving the same core issues]

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	
b: Less than ten percent	(7.8%/3.5%)
c: Ten to less than 20 percent	(22.2%/34.7%)
d: 20 to less than 40 percent	(35.6%/32.9%)
e: 40 to less than 60 percent	(20.0%/23.1%)
f: 60 to less than 80 percent	(4.4%/1.80%)
g: 80 percent or more	(2.2%/1.1)
h: All or nearly all	(4.4%/1.3)
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7)

7. Estimate the percent of your client caseload over the last year who were evaluated by a defense mental health expert.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	(1.1%/0.1%)
b: Less than ten percent	(34.4%/21.4%)

c: Ten to less than 20 percent	(34.4%/21.4%)
d: 20 to less than 40 percent	(23.3%/18.8%)
e: 40 to less than 60 percent	(1.1%/0.7%)
f: 60 to less than 80 percent	(1.1%/0.3%)
g: 80 percent or more	
h: All or nearly all	
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

8. Estimate the percent of your client caseload over the last year who were functionally illiterate.*

[Do not include clients who can read in a language other than English]

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	(3.3%/0.9%)
b: Less than ten percent	(38.9%/42.5%)
c: Ten to less than 20 percent	(30.0%/23.4%)
d: 20 to less than 40 percent	(13.3%/26.6%)
e: 40 to less than 60 percent	(7.8%/3.4%)
f: 60 to less than 80 percent	(2.2%/1.1%)
g: 80 percent or more	(1.1%/0.4%)
h: All or nearly all	
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

9. Estimate the percent of your client caseload over the last year where the client's sentencing exposure was significantly increased or affected by virtue of a statutory or guideline enhancement.*

Examples of statutory or guideline enhancements include a 924(c) charge, a 21 U.S.C. 851 enhancement, armed career criminal exposure, career offender classification, or other charging or sentencing event which either increased the client's potential sentence by 5 years or more, created a mandatory minimum sentence not applicable in a "routine" commission of the offense, increased a pre-existing mandatory minimum, or eliminated the legal potential for the client to receive safety valve benefits (such as charging 841 distribution as 860 distribution in a school zone).

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	
b: Less than ten percent	(3.3%/1.3%)
c: Ten to less than 20 percent	(8.9%/4.8%)
d: 20 to less than 40 percent	(27.8%/38.1%)
e: 40 to less than 60 percent	(31.1%/37.0%)
f: 60 to less than 80 percent	(16.7%/11.9%)
g: 80 percent or more	(7.8%/4.1%)
h: All or nearly all	(1.1%/1.0%)
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

10. Estimate the percent of your client caseload over the last year for whom there may have been a potential for a significant mandatory minimum penalty.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	
b: Less than ten percent	(2.2%/0.6%)
c: Ten to less than 20 percent	(11.1%/35.9%)
d: 20 to less than 40 percent	(48.9%/40.1%)
e: 40 to less than 60 percent	(21.1%/12.7%)
f: 60 to less than 80 percent	(6.7%/4.8%)
g: 80 percent or more	(6.7%/4.2%)
h: All or nearly all	
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

Section IV: Detention Facilities

11. Estimate the percent of your client caseload over the last year for whom the majority of the period prior to case disposition was spent in a detention facility.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	
b: Less than ten percent	
c: Ten to less than 20 percent	
d: 20 to less than 40 percent	(8.9%/4.6%)
e: 40 to less than 60 percent	(26.7%/14.2%)
f: 60 to less than 80 percent	(24.4%/14.9%)
g: 80 percent or more	(28.9%/52.9%)
h: All or nearly all	(7.8%/11.7%)
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

12. For the incarceration facility where the greatest number of your clients are held prior to case disposition, estimate the amount of time it would take for an attorney in your main office to leave the office, travel to the facility, have the client brought to a meeting room, conduct a one hour interview, and then return to the office.*

[Estimated time should be based on a typical weekday visit]

Select at least 1 and no more than 1.	(districts/cases)
a: Less than two hours	(2.2%/1.2%)
b: Two to less than three hours	(23.3%/19.9%)
c: Three to less than four hours	(38.9%/53.5%)
d: Four to less than five hours	(17.8%/7.9%)
e: Five to less than six hours	(10.0%/5.9%)
f: Six to less than seven hours	(3.3%/9.8%)
g: Seven to less than eight hours	
h: Eight to less than ten hours	
i: Ten hours or more	(1.1%/0.1%)
j: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

13. For the incarceration facility referred to in the previous question (the one where the greatest number of your detained clients are held), estimate the percentage of the office's clients who would be housed at that location.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	
b: Less than ten percent	
c: Ten to less than 20 percent	(10.0%/7.0%)
d: 20 to less than 40 percent	(17.8%/10.1%)
e: 40 to less than 60 percent	(21.1%/16.5%)
f: 60 to less than 80 percent	(22.2%/16.0%)
g: 80 percent or more	(11.1%/25.7%)
h: All or nearly all	(7.8%/13.4%)
i: Other/not applicable/cannot estimate (please explain below)	(10.0%/11.5%)

14. For the incarceration facility that typically requires the most time (travel and waiting combined) to visit of any in your district, estimate the amount of time it would take for an attorney in your main office to leave the office, travel to the facility, have the client brought to a meeting room, conduct a one hour interview, and then return to the office.*

[Estimated time should be based on a typical weekday visit]

Select at least 1 and no more than 1.	(districts/cases)
a: Less than two hours	
b: Two to less than three hours	(3.3%/0.7%)
c: Three to less than four hours	(11.1%/7.0%)
d: Four to less than five hours	(16.7%/9.9%)
e: Five to less than six hours	(17.8%/14.6%)
f: Six to less than seven hours	(12.2%/31.4%)
g: Seven to less than eight hours	(12.2%/12.2%)
h: Eight to less than ten hours	(10.0%/6.1%)
i: Ten hours or more	(10.0%/14.5%)
j: Other/not applicable/cannot estimate (please explain below)	(6.7%/3.6%)

15. For the incarceration facility referred to in the previous question (the one typically requiring the most travel and waiting time in the district), estimate the percentage of the office's clients who would be housed at that location.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	(2.2%/2.2%)
b: Less than ten percent	(27.8%/24.1%)
c: Ten to less than 20 percent	(33.3%/49.2%)
d: 20 to less than 40 percent	(13.3%/8.7%)
e: 40 to less than 60 percent	(7.8%/2.8%)
f: 60 to less than 80 percent	(2.2%/1.2%)
g: 80 percent or more	(2.2%/1.1%)
h: All or nearly all	(3.3%/1.4%)
i: Other/not applicable/cannot estimate (please explain below)	(7.8%/9.4%)

16. Estimate the percent of your client caseload over the last year who were detained at some point at an incarceration facility that typically requires more than three hours of combined waiting and round trip travel time for the attorneys handling their cases.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	(4.4%/0.9%)
b: Less than ten percent	(7.8%/7.9%)
c: Ten to less than 20 percent	(10.0%/7.3%)
d: 20 to less than 40 percent	(17.8%/11.1%)
e: 40 to less than 60 percent	(17.8%/22.0%)
f: 60 to less than 80 percent	(13.3%/6.4%)
g: 80 percent or more	(16.7%/30.7%)
h: All or nearly all	(8.9%/12.0%)
i: Other/not applicable/cannot estimate (please explain below)	(3.3%/1.7%)

Section V: Courthouse Locations

17. For the court division in your district served by the main office that typically requires the most time (travel and waiting combined), estimate the amount of time it would take for an attorney at that location to travel to that courthouse, remain in a courtroom for one hour, and then return to the office.*

[Estimated time should be based on a typical weekday appearance]

Select at least 1 and no more than 1.	(districts/cases)
a: Less than two hours	(50.0%/44.8%)
b: Two to less than three hours	(5.6%/3.0%)
c: Three to less than four hours	(5.6%/2.3%)
d: Four to less than five hours	(7.8%/4.2%)
e: Five to less than six hours	(11.1%/10.8%)
f: Six to less than seven hours	(6.7%/26.5%)
g: Seven to less than eight hours	(1.1%/0.1%)
h: Eight to less than ten hours	(5.6%/5.3%)
i: Ten hours or more	(2.2%/0.5%)
j: Other/not applicable/cannot estimate (please explain below)	(4.4%/2.4%)

18. For the court division referred to in the previous question (the one typically requiring the most travel and waiting time combined to visit of any in your district), estimate the percentage of the office's appearances taking place at that location.*

Select at least 1 and no more than 1.	(districts/cases)
a: None or almost none	
b: Less than ten percent	(21.1%/38.0%)
c: Ten to less than 20 percent	(7.8%/4.0%)
d: 20 to less than 40 percent	(14.4%/14.9%)
e: 40 to less than 60 percent	(6.7%/2.4%)
f: 60 to less than 80 percent	(4.4%/12.6%)
g: 80 percent or more	(11.1%/11.4%)

- h: All or nearly all (28.9%/13.7%)
 i: Other/not applicable/cannot estimate (please explain below) (5.6%/2.9%)

Section VI: The District's Judges

19. Describe this district's bench in terms of receptiveness to a defense request for a variance from the Sentencing guidelines. *

- Select at least 1 and no more than 1. (districts/cases)
- a: Few if any judges would vary under any circumstances (5.6%/3.6%)
 b: The majority of judges usually would NOT vary (21.1%/10.9%)
 c: The district's bench is roughly split in regard to variances (20.0%/52.7%)
 d: The majority of judges here are usually receptive to such arguments in some types of cases. (25.6%/15.6%)
 e: All or nearly all are receptive to such arguments in some cases. (22.2%/14.6%)
 f: Other/not applicable/cannot estimate (please explain below) (5.6%/2.5%)

Section VII: The District's Prosecutors

20. Describe the degree to which the prosecutors in this district generally provide complete and open discovery of all evidence assembled or revealed in the government's investigation. *

[Compare to prosecutors who generally limit discovery to only that absolutely required by FRCP16 or case law. If applicable, include the policies and practices of federal law enforcement agencies if they regularly affect the level of openness in the discovery provided by local U.S. Attorneys.]

- Select at least 1 and no more than 1. (districts/cases)
- a: Few if any prosecutors embrace an open file discovery policy (32.2%/18.6%)
 b: The majority of prosecutors usually would NOT provide open file discovery (14.4%/7.3%)
 c: The district's prosecutors are roughly split in this regard (18.9%/40.3%)
 d: The majority of prosecutors here usually have such a policy (22.2%/27.8%)
 e: All or nearly all provide complete and open discovery (5.6%/2.0%)
 f: Other/not applicable/cannot estimate (please explain below) (6.7%/4.1%)

21. Describe the degree to which the prosecutors in this district routinely deliver witness statements well before trial*

- Select at least 1 and no more than 1. (districts/cases)
- a: Few if any prosecutors provide statements well before trial (31.1%/21.5%)
 b: The majority of prosecutors usually do NOT provide statements well before trial (18.9%/9.6%)
 c: The district's prosecutors are roughly split in this regard (20.0%/40.5%)
 d: The majority of prosecutors here usually provide statements well before trial (22.2%/25.0%)

- e: All or nearly all provide statements well before trial (3.3%/1.2%)
 f: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

22. Does this district offer a “fast-track” or early-disposition program for handling illegal-reentry immigration cases?*

[Such programs implement a policy of the U.S. Attorney in certain types of cases to give defendants who enter a prompt guilty plea either a multiple level downward departure or a modification of the charge to one that will effectively cap his or her sentence.]

DESCRIBE ONLY PROGRAMS THAT HAVE BEEN IMPLEMENTED AND NOT JUST AUTHORIZED

- Select at least 1 and no more than 1. (districts/cases)
- a: No such active program exists for illegal-reentry cases in this district (75.6%/43.5%)
 b: A fast-track or early-disposition program for illegal-reentry cases is occasionally used in this district (4.4%/24.9%)
 c: This type of program for illegal-reentry cases is extensively used in this district (14.4%/28.7%)
 d: Other/not applicable/cannot estimate (please explain below) (5.6%/3.0%)

23. Estimate the percent of the district’s illegal-reentry immigration cases over the past year that participated in a fast-track or early-disposition program as described.*

- Select at least 1 and no more than 1. (districts/cases)
- a: No such active program exists for illegal-reentry cases in this district (73.3%/42.6%)
 b: None or almost none (1.1%/0.2%)
 c: Less than ten percent (1.1%/0.4%)
 d: Ten to less than 20 percent (1.1%/0.4%)
 e: 20 to less than 40 percent (4.4%/25.3%)
 f: 40 to less than 60 percent (1.1%/0.7%)
 g: 60 to less than 80 percent (1.1%/4.9%)
 h: 80 percent or more (8.9%/20.0%)
 i: All or nearly all (1.1%/2.0%)
 j: Other/not applicable/cannot estimate (please explain below) (6.7%/3.4%)

24. What type of incentives are offered for the fast-track or early-disposition programs for illegal-reentry immigration cases in this district?*

- Select at least 1 and no more than 1. (districts/cases)
- a: No such active program exists for illegal-reentry cases in this district (76.7%/44.2%)
 b: Defendants in the program are eligible for a downward departure from the Sentencing guidelines of one or more levels (13.3%/44.1%)
 c: Defendants in the program are eligible for a reduced charge(s) that will cap their sentences
 d: Both downward departures and charge bargaining are used in this district’s programs (4.4%/9.0%)
 e: Other/not applicable/cannot estimate (please explain below) (5.6%/2.7%)

25. If there are fast-track or early-disposition programs in your district for matters OTHER than illegal-reentry prosecutions, please describe type and frequency of implementation below.¹

DESCRIBE ONLY PROGRAMS THAT HAVE BEEN IMPLEMENTED AND NOT JUST AUTHORIZED

26. What is the apparent policy of local prosecutors in regards to seeking statutory enhancements in drug cases based on prior felony drug convictions?*

[Consider only instances where prior felony drug convictions are at issue.]

Select at least 1 and no more than 1. (districts/cases)

- a: Statutory enhancements are likely to be sought in the vast majority of instances (46.7%/23.8%)
- b: Statutory enhancements are often waived with a guilty plea (36.7%/44.3%)
- c: Statutory enhancements are not commonly sought (4.4%/23.1%)
- d: No consistently followed policy among prosecutors (7.8%/6.5%)
- e: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

27. How experienced are the AUSAs in this district?*

Select at least 1 and no more than 1. (districts/cases)

- a: Most AUSAs here have had relatively brief careers as prosecutors (3.3%/9.7%)
- b: Most AUSAs here are relatively experienced prosecutors (58.9%/35.6%)
- c: The AUSAs in this district are a mix of experienced and inexperienced prosecutors (33.3%/52.4%)
- d: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

Section VIII: Sentencing

28. Estimate the percent of cases over the past year in which your office filed a sentencing memorandum prior to sentencing.*

[Base the percentage only on the total number of cases where a sentencing memorandum could have been submitted.]

Select at least 1 and no more than 1. (districts/cases)

- a: None or almost none
- b: Less than ten percent (1.1%/0.6%)
- c: Ten to less than 20 percent (6.7%/9.2%)
- d: 20 to less than 40 percent (4.4%/2.5%)
- e: 40 to less than 60 percent (7.8%/4.1%)
- f: 60 to less than 80 percent (18.9%/34.4%)
- g: 80 percent or more (25.6%/13.4%)
- h: All or nearly all (31.1%/33.5%)
- i: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

¹ Common responses to this question were categorized as “No other types of fast track are offered” (district frequency: 87.8%/case frequency: 53.3%), “Alien smuggling” (2.2%/28.7%), “Alien smuggling plus other types” (1.1%/4.9%), “Yes, other than alien smuggling” (4.4%/10.7%), and “Other/not applicable/cannot estimate” (4.4%/2.3%).

29. Estimate the number of pages (double spaced) for the typical sentencing memorandum filed by the attorneys in your FDO. Please include pages contained in any letters or attachments.*

- | | |
|--|-------------------|
| Select at least 1 and no more than 1. | (districts/cases) |
| a: Less than 5 pages | (5.6%/25.4%) |
| b: Five to ten pages | (37.8%/31.0%) |
| c: 11 to 20 pages | (35.6%/28.0%) |
| d: 21 to 30 pages | (10.0%/10.6%) |
| e: 31 to 40 pages | (1.1%/0.5%) |
| f: 41 or more pages | |
| g: Other/not applicable/cannot estimate (please explain below) | (10.0%/4.5%) |

Section IX: Habeas Work

30. Does this FDO handle noncapital habeas matters? *

- | | |
|---|-------------------|
| Select at least 1 and no more than 1. | (districts/cases) |
| a: No, noncapital habeas matters in this district are extremely rare | (26.7%/21.4%) |
| b: No, all noncapital habeas matters in this district are handled by attorneys not in this office | (7.8%/1.8%) |
| c: Yes, we do handle noncapital habeas but only for this district | (57.8%/71.2%) |
| d: Yes, we handle noncapital habeas for both this district and some other FDOs | (3.3%/3.3%) |
| e: Other/not applicable/cannot estimate (please explain below) | (4.4%/2.3%) |

Section X: Office Staff

31. How are Research and Writing Attorneys/Specialists generally used in your office?*

- | | |
|--|-------------------|
| Select at least 1 and no more than 1. | (districts/cases) |
| a: We do not have any R&W positions filled | (17.8%/28.4%) |
| b: R&W staff are primarily used for appellate briefs, motions, and petitions | (23.3%/11.1%) |
| c: R&W staff are primarily used for drafting of motions and memoranda in the district court | (8.9%/16.0%) |
| d: R&W staff are primarily used in the CHU | (4.4%/13.5%) |
| e: R&W staff are involved in a mix of trial court-level, appellate-level, and (if applicable) CHU work | (41.1%/28.8%) |
| f: Other/not applicable/cannot estimate (please explain below) | (4.4%/2.3%) |

32. How are paralegals generally used in your office?*

- | | |
|--|-------------------|
| Select at least 1 and no more than 1. | (districts/cases) |
| a: We do not have any paralegal positions filled | (27.8%/40.2%) |
| b: Paralegals are primarily used for appellate work | |
| c: Paralegals are primarily used for traditional unit trial-level work | (33.3%/23.0%) |
| d: Paralegals are primarily used in the CHU | (4.4%/2.7%) |

- e: Paralegals are involved in a mix of court-level, appellate-level, and (if applicable) CHU work (30.0%/31.8%)
- f: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

33. Do the attorneys in your office make extensive use of paralegals and/or Research and Writing Attorneys/Specialists for traditional unit motion practice?*

- Select at least 1 and no more than 1. (districts/cases)
- a: A significant number of cases involve paralegal services for drafting motions, briefs, or memorandum (18.9%/17.6%)
- b: A significant number of cases involve R&W staff services for drafting motions, briefs, or memorandum (7.8%/5.4%)
- c: R&W staff and paralegals are used in a significant number of cases for drafting motions, briefs, or memorandum (50.0%/42.3%)
- d: Attorneys here generally draft their own motions, briefs, or memorandum (12.2%/9.0%)
- e: No common approach in regards to drafting these pleadings (11.1%/25.8%)
- f: Other/not applicable/cannot estimate (please explain below)

34. Which staff members have the largest role in preparing trial exhibits?*

- Select at least 1 and no more than 1. (districts/cases)
- a: Attorneys generally assemble and prepare own exhibits to use at trial (35.6%/37.5%)
- b: Paralegals generally assemble and prepare exhibits to use at trial (18.9%/23.2%)
- c: Investigators generally assemble and prepare exhibits to use at trial (7.8%/6.3%)
- d: R&W staff generally assemble and prepare exhibits to use at trial (1.1%/0.6%)
- e: Secretaries generally assemble and prepare exhibits to use at trial (5.6%/10.6%)
- f: No common approach in regards to trial exhibits (26.7%/19.5%)
- g: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

35. Which staff members most often assist attorneys with non-English speaking clients and witnesses?*

- Select at least 1 and no more than 1. (districts/cases)
- a: Not an issue: Very few non-English speaking clients and witnesses in this district
- b: Not an issue: Most trial attorneys in this FDO can speak and understand the most commonly used language(s) other than English in this district (5.6%/30.5%)
- c: Staff interpreters generally accompany attorneys during these client and witness contacts (18.9%/21.3%)
- d: Outside interpreters generally accompany attorneys during these client and witness contacts (51.1%/24.5%)
- e: Staff investigators generally accompany attorneys during these client and witness contacts (8.9%/5.4%)
- f: Other lawyers in the office who speak the needed language generally accompany attorneys during these client and witness contacts
- g: Staff members other than interpreters, investigators, or lawyers (e.g., secretaries or paralegals) generally accompany attorneys during these client and witness contacts (2.2%/0.3%)

- h: No common approach in regards to interpretation needs (8.9%/15.8%)
 i: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

36. Estimate the percent of attorneys in your office who are functionally fluent when speaking or listening to Spanish.*

[Do not include Research and Writing Attorneys/Specialists]

- Select at least 1 and no more than 1. (districts/cases)
- a: None or almost none (38.9%/16.6%)
 b: Less than ten percent (20.0%/15.7%)
 c: Ten to less than 20 percent (20.0%/17.1%)
 d: 20 to less than 40 percent (10.0%/8.4%)
 e: 40 to less than 60 percent (1.1%/0.6%)
 f: 60 to less than 80 percent (3.3%/32.1%)
 g: 80 percent or more (1.1%/6.3%)
 h: All or nearly all (1.1%/0.8%)
 i: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

37. How experienced are the AFDs in this district?*

- Select at least 1 and no more than 1. (districts/cases)
- a: Most AFDs here have had relatively brief careers as federal defense attorneys (2.2%/5.0%)
 b: Most AFDs here are relatively experienced federal defense attorneys (71.1%/56.1%)
 c: The AFDs in this district are a mix of experienced and inexperienced federal defense attorneys (71.1%/56.1%)
 d: Other/not applicable/cannot estimate (please explain below) (71.1%/56.1%)

Section XI: Office Characteristics

38. Does this FDO's management routinely supervise FDO attorneys representing clients in another district? *

- Select at least 1 and no more than 1. (districts/cases)
- a: No (74.4%/75.6%)
 b: Yes, this office provides federal defender representations in another district on an occasional basis (7.8%/7.6%)
 c: Yes, this office oversees federal defender representations in another district but operations in that location are largely autonomous (1.1%/0.7%)
 d: Yes, this office handles federal defender representations in another district; locations in that district are treated as a branch of this FDO (11.1%/13.4%)
 e: Other/not applicable/cannot estimate (please explain below) (5.6%/2.6%)

39. How is this FDO organized? *

- Select at least 1 and no more than 1. (districts/cases)
- a: One office is the duty station for all attorneys in this FDO (24.4%/8.8%)
 b: We have a main office and a single branch (27.8%/21.8%)
 c: We have a main office and multiple branches (42.2%/67.1%)

- d: There are no permanent offices within this district; FDO attorneys are stationed elsewhere (1.1%/0.1%)
- e: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

40. How is the caseload distributed among the FDO's branches, if any?*

Select at least 1 and no more than 1. (districts/cases)

- a: All cases are handled by our single office (24.4%/9.1%)
- b: Our main office handles more cases than all branches combined (38.9%/30.1%)
- c: Our main office handles about the same or fewer cases than all branches combined (27.8%/55.8%)
- d: Other/not applicable/cannot estimate (please explain below) (8.9%/5.0%)

Section XII: Relationship with CJA Panel

41. Does the FDO oversee the management of the CJA panel and exercises primary control over assignments?*

Select at least 1 and no more than 1. (districts/cases)

- a: No, the court generally decides whether to appoint attorneys from the FDO or from the Panel (54.4%/67.9%)
- b: Yes, the FDO generally makes the decision on appointments (41.1%/29.8%)
- c: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)

42. Briefly describe how the caseload is divided between the FDO and CJRA Panel attorneys in terms of the type of matters generally handled by each group.^{2*}

[Describe whether assignments are randomized (if so, what ratio is used), divided by case type (e.g., all felonies to FDO, all homicides to Panel), Panel only when conflict arises, or other scheme.]

Section XIII: Appeals

43. How does your office handle appeals arising from the FDO's trial-level cases?*

Select at least 1 and no more than 1. (districts/cases)

- a: The majority of such appeals are handled by outside attorneys (either on the Panel or from another FDO) (2.2%/0.4%)
- b: The majority of such appeals are handled by the attorney who represented the client at the trial level (43.3%/38.6%)
- c: The majority of such appeals are assigned to certain attorneys in the office who also represent a substantial number of trial-level clients (3.3%/2.7%)

² Common responses to this question were categorized as "All cases go to FDO unless there is a conflict, a co-defendant, a prior representation, or caseload level issues" (district frequency: 62.2%/case frequency: 44.6%), "Proportionally allocated (in addition to conflicts or other common concerns)" (21.1%/16.4%), "Matter type or complexity plays a significant role in the allocation decision" (3.3%/29.4%), "No discernable policy" (3.3%/1.0%), "Some other method is used" (3.3%/3.7%), and "Other/not applicable/cannot estimate" (6.7%/4.8%).

- d: The majority of such appeals are assigned to certain attorneys in the office who generally concentrate on appellate work (42.2%/54.4%)
 - e: Other/not applicable/cannot estimate (please explain below) (4.4%/2.3%)
 - f: A mix of approaches is used³ (4.4%/1.7%)
44. How does your office handle “cold record” appeals in cases from other jurisdictions?*
- Select at least 1 and no more than 1. (districts/cases)
- a: Cold record appeals from outside this district are never handled by this office (38.9%/28.8%)
 - b: Cold record appeals from outside this district are handled by this office only occasionally (35.6%/49.8%)
 - c: This office routinely handles cold record appeals (20.0%/18.9%)
 - d: Other/not applicable/cannot estimate (please explain below) (5.6%/2.5%)

Section XIV: General

45. Please use the field below to describe what you believe to be the most-important factors explaining why the average amount of attorney time needed to provide effective representation would vary from FDO to FDO for the exact same case type (as recorded in CMS).

[For example, distances needed to travel to the most remote regions of the district for interviews and investigation would vary greatly from office to office.]

[RESPONSES TO THIS QUESTION WERE PROVIDED TO ODS UNDER SEPARATE COVER]

46. Please use the field below for any other comments you would like to provide regarding this survey or other issues.

[RESPONSES TO THIS QUESTION WERE PROVIDED TO ODS UNDER SEPARATE COVER]

³ Not on original survey; was a common explanation for an “Other” response.

Calculation Details for District-Adjusted Case Weights

The estimated attorney time for case type j in district k is

$$f(j, k) = \exp(\beta_0 + \alpha_j + \beta_k). \quad (\text{B.1})$$

We estimated the parameters to minimize an M-estimating equation

$$\ell(y, f) = \frac{1}{2}(y - f)^2 I(|y - f| \leq \delta) + \left(\delta |y - f| - \frac{\delta^2}{2} \right) I(|y - f| > \delta), \quad (\text{B.2})$$

where δ is a parameter that controls robustness. When δ is large, f will estimate the mean, while, for a small δ , the estimated f will target the median. We set δ to be the 99th percentile of the residuals.

The loss function for α and β is

$$\begin{aligned} L(\alpha, \beta) &= \sum_{i=1}^n \ell(y_i, f(j(i), k(i))) \\ &= \sum_{i=1}^n \ell\left(y_i, \exp(\beta_0 + \alpha_{j(i)} + \beta_{k(i)})\right). \end{aligned} \quad (\text{B.3})$$

We select estimates for α and β by minimizing Equation B.3 via gradient descent. Using the notation $\hat{y}_i = f(j(i), k(i))$, the necessary first derivatives are

$$\begin{aligned} \frac{\partial}{\partial \alpha_j} L(\alpha, \beta) &= - \sum_{i=1}^n I(j(i) = j) \left(\begin{array}{l} (y_i - \hat{y}_i) \hat{y}_i I(|y_i - \hat{y}_i| \leq \delta) \\ + \delta \text{sign}(y_i - \hat{y}_i) \hat{y}_i I(|y_i - \hat{y}_i| > \delta) \end{array} \right) \\ \text{and} \\ \frac{\partial}{\partial \beta_k} L(\alpha, \beta) &= - \sum_{i=1}^n I(k(i) = k) \left(\begin{array}{l} (y_i - \hat{y}_i) \hat{y}_i I(|y_i - \hat{y}_i| \leq \delta) \\ + \delta \text{sign}(y_i - \hat{y}_i) \hat{y}_i I(|y_i - \hat{y}_i| > \delta) \end{array} \right), \end{aligned} \quad (\text{B.4})$$

and the second derivatives are

$$\frac{\partial^2}{\partial \alpha_j^2} L(\alpha, \beta) = -\sum_{i=1}^n I(j(i) = j) \left(\begin{aligned} &((y_i - \hat{y}_i) \hat{y}_i - \hat{y}_i^2) I(|y_i - \hat{y}_i| \leq \delta) \\ &+ \delta \text{sign}(y_i - \hat{y}_i) \hat{y}_i I(|y_i - \hat{y}_i| > \delta) \end{aligned} \right)$$

and

$$\frac{\partial^2}{\partial \beta_k^2} L(\alpha, \beta) = -\sum_{i=1}^n I(k(i) = k) \left(\begin{aligned} &((y_i - \hat{y}_i) \hat{y}_i - \hat{y}_i^2) I(|y_i - \hat{y}_i| \leq \delta) \\ &+ \delta \text{sign}(y_i - \hat{y}_i) \hat{y}_i I(|y_i - \hat{y}_i| > \delta) \end{aligned} \right). \quad (\text{B.5})$$

We estimate the variance using the linearization method. When the estimate is the solution of an equation of the form $U(\hat{\theta}) = 0$, then the linearization estimate of the variance is

$$\text{Var}(\hat{\theta}) \approx \frac{\text{Var}(U(\hat{\theta}))}{U'(\hat{\theta})^2}. \quad (\text{B.6})$$

Since, in our case, $U()$ is a sum of independent components, we can rewrite (B.6) as

$$\text{Var}(\hat{\theta}) \approx \frac{\text{Var}(\sum U_i(\hat{\theta}))}{U'(\hat{\theta})^2} = \frac{\text{Var}\left(\sum \frac{\partial}{\partial \alpha_j} L_i(\alpha, \beta)\right)}{U'(\hat{\theta})^2} = \frac{n \text{Var}\left(\frac{\partial}{\partial \alpha_j} L_i(\alpha, \beta)\right)}{U'(\hat{\theta})^2}. \quad (\text{B.7})$$

The numerator can be estimated by computing the sample variance of the U_i and multiplying by n .

Weighted and Unweighted Caseloads at the Federal Defender Organizations

Table C.1
Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Unweighted

FDO	2004	2005	2006	2007	2008	Total
AKX	294	319	291	263	346	1,513
ALM	238	256	302	293	373	1,462
ALS	264	360	339	283	397	1,643
ARE-ARW	531	598	617	729	802	3,277
AZX	5,523	5,579	8,090	10,140	8,968	38,300
CAC	3,179	3,455	3,320	3,204	3,568	16,726
CAE	1,865	1,891	2,019	2,009	2,039	9,823
CAN	870	969	852	949	983	4,623
CAS	5,549	3,888	4,134	4,606	5,887	24,064
COX-WYX	972	1,007	1,076	1,048	1,054	5,157
CTX	302	294	278	266	339	1,479
DCX	812	782	657	530	713	3,494
DEX	170	195	161	234	299	1,059
FLM	1,581	1,608	1,567	1,546	2,480	8,782
FLN	633	589	692	697	698	3,309
FLS	2,090	2,150	2,014	1,879	2,071	10,204
GAM	0	0	0	0	141	141
GAN	1,343	1,233	1,185	1,276	1,204	6,241
GUX	130	193	147	193	106	769
HIX	664	665	552	466	569	2,916
IAS-IAN	833	748	851	805	900	4,137
IDX	235	210	250	303	238	1,236
ILC	429	482	570	570	903	2,954
ILN	915	866	787	892	932	4,392

Table C.1—Continued

FDO	2004	2005	2006	2007	2008	Total
ILS	543	600	580	646	834	3,203
INN	205	292	314	325	525	1,661
INS	319	303	334	328	394	1,678
KSX	799	932	940	832	1,130	4,633
KYW	275	282	300	317	367	1,541
LAE	433	409	430	483	871	2,626
LAW-LAM	509	614	728	667	774	3,292
MAX-NHX-RIX	550	544	570	707	743	3,114
MDX	1,600	1,621	1,742	1,730	1,857	8,550
MEX	0	0	0	72	145	217
MIE	904	907	953	892	988	4,644
MIW	276	307	379	306	454	1,722
MNX	491	506	530	525	666	2,718
MOE	858	912	942	976	1,390	5,078
MOW	904	912	1,010	1,017	1,156	4,999
MSS-MSN	507	565	622	580	1,138	3,412
MTX	604	675	605	650	681	3,215
NCE	1,102	1,143	1,274	1,270	1,448	6,237
NCM	419	445	483	414	430	2,191
NCW	0	0	523	685	918	2,126
NEX	560	637	662	719	906	3,484
NJX	1,252	1,236	1,235	1,237	1,249	6,209
NMX	2,446	2,203	2,470	2,173	2,630	11,922
NVX	1,238	1,101	1,253	1,067	1,121	5,780
NYN	538	564	448	479	588	2,617
NYS-NYE	2,084	2,125	1,899	1,806	1,966	9,880
NYW	695	675	682	738	853	3,643
OHN	424	537	472	513	783	2,729
OHS	619	672	813	692	797	3,593
OKN-OKE	349	345	314	329	332	1,669
OKW	422	438	440	443	458	2,201
ORX	1,510	1,512	1,523	1,519	1,664	7,728
PAE	1,106	1,158	1,161	1,165	1,443	6,033

Table C.1—Continued

FDO	2004	2005	2006	2007	2008	Total
PAM	531	579	550	635	982	3,277
PAW	418	479	512	527	786	2,722
PRX	603	616	841	810	1,079	3,949
SCX	1,146	1,052	1,106	1,149	2,121	6,574
SDX-NDX	442	510	711	734	758	3,155
TNE	610	640	542	606	793	3,191
TNM	516	483	492	539	537	2,567
TNW	506	514	524	563	706	2,813
TXE	581	537	597	621	714	3,050
TXN	1,370	1,246	1,320	1,286	1,389	6,611
TXS	22,882	18,794	19,850	17,959	27,780	107,265
TXW	7,745	8,701	6,254	5,804	8,550	37,054
UTX	815	854	802	896	971	4,338
VAE	2,193	2,186	2,252	2,294	2,766	11,691
VAW	0	0	10	363	647	1,020
VIX	256	197	156	130	98	837
VTX	138	141	151	116	178	724
WAE	753	816	812	871	839	4,091
WAW	1,778	1,693	1,934	2,029	2,216	9,650
WIE-WIW	324	489	600	692	964	3,069
WVN	150	267	319	377	594	1,707
WVS	409	405	412	389	475	2,090
Total	98,129	94,708	98,129	98,873	123,652	513,491

**Table C.2
Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted
Based on Arithmetic Average**

FDO	2004	2005	2006	2007	2008	Total
AKX	482	528	555	381	488	2,434
ALM	379	450	536	452	485	2,302
ALS	453	607	548	434	601	2,642
ARE-ARW	687	867	834	1,019	820	4,228
AZX	3,520	3,720	4,653	4,160	3,631	19,683
CAC	3,955	3,961	4,055	3,465	3,819	19,256

Table C.2—Continued

FDO	2004	2005	2006	2007	2008	Total
CAE	2,234	2,266	2,334	2,078	1,889	10,801
CAN	1,263	1,369	1,247	1,425	1,121	6,424
CAS	3,671	2,541	2,822	2,971	3,918	15,923
COX-WYX	1,576	1,552	1,681	1,477	1,386	7,672
CTX	445	519	581	444	424	2,413
DCX	1,545	1,322	1,206	872	905	5,850
DEX	238	240	220	242	366	1,307
FLM	2,036	1,984	2,311	2,195	2,143	10,669
FLN	794	771	915	847	716	4,043
FLS	3,056	3,023	2,954	2,742	2,664	14,439
GAM	0	0	0	0	149	149
GAN	1,729	1,832	1,690	1,399	1,233	7,882
GUX	161	216	183	180	104	845
HIX	952	799	724	547	539	3,560
IAS-IAN	984	877	1,051	1,055	1,132	5,099
IDX	331	324	403	472	302	1,833
ILC	757	848	1,020	1,022	953	4,600
ILN	1,286	1,220	1,209	1,265	1,153	6,133
ILS	478	492	561	544	515	2,590
INN	346	537	540	553	451	2,427
INS	345	310	395	344	379	1,774
KSX	1,050	1,155	1,327	1,264	1,215	6,011
KYW	496	410	495	496	479	2,377
LAE	677	621	608	759	763	3,429
LAW-LAM	837	944	1,279	1,105	755	4,920
MAX-NHX-RIX	967	972	937	1,159	961	4,996
MDX	1,591	1,575	1,641	1,511	1,509	7,827
MEX	0	0	0	92	171	263
MIE	1,350	1,355	1,404	1,269	1,192	6,569
MIW	463	515	708	457	574	2,718
MNX	755	697	725	708	685	3,571
MOE	1,290	1,334	1,517	1,565	1,551	7,258
MOW	1,558	1,571	1,790	1,797	1,573	8,290

Table C.2—Continued

FDO	2004	2005	2006	2007	2008	Total
MSS-MSN	580	663	756	686	1,144	3,830
MTX	884	943	876	975	961	4,639
NCE	1,276	1,323	1,404	1,388	1,289	6,680
NCM	787	801	906	759	659	3,913
NCW	0	0	1,080	1,133	1,564	3,777
NEX	842	1,077	1,092	1,045	982	5,038
NJX	1,929	2,168	1,763	1,576	1,378	8,814
NMX	2,369	2,149	2,990	2,378	2,644	12,529
NVX	1,988	1,603	1,988	1,616	1,460	8,655
NYN	556	651	556	560	556	2,878
NYS-NYE	3,530	3,639	2,983	2,799	2,935	15,885
NYW	939	1,017	973	1,011	915	4,856
OHN	608	818	715	726	842	3,709
OHS	894	1,047	1,048	896	797	4,681
OKN-OKE	572	600	543	607	497	2,819
OKW	469	450	487	467	410	2,283
ORX	2,305	2,290	2,460	2,267	2,291	11,612
PAE	1,354	1,666	1,417	1,409	1,361	7,207
PAM	788	716	741	889	992	4,126
PAW	696	899	933	903	867	4,298
PRX	829	748	1,184	1,096	985	4,842
SCX	1,670	1,552	1,688	1,682	1,772	8,363
SDX-NDX	810	899	1,165	1,207	1,222	5,304
TNE	865	998	824	830	781	4,297
TNM	690	678	715	692	680	3,456
TNW	982	1,010	1,021	1,066	905	4,984
TXE	983	866	949	985	963	4,747
TXN	1,992	1,866	1,961	1,889	2,016	9,723
TXS	8,499	8,196	9,885	9,360	10,123	46,063
TXW	5,741	6,316	6,196	6,420	7,289	31,963
UTX	1,236	1,270	1,166	1,291	1,188	6,152
VAE	2,600	2,473	2,444	2,438	2,496	12,450
VAW	0	0	16	520	672	1,209

Table C.2—Continued

FDO	2004	2005	2006	2007	2008	Total
VIX	210	294	192	194	144	1,033
VTX	263	251	227	171	252	1,164
WAE	930	1,005	941	968	881	4,724
WAW	1,769	1,555	1,798	1,694	1,709	8,525
WIE-WIW	326	495	565	607	866	2,858
WVN	215	371	411	451	490	1,938
WVS	459	483	430	441	453	2,266
Total	99,174	100,166	107,147	102,859	104,144	513,491

NOTE: Weighted caseloads rounded to nearest whole number.

Table C.3
Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on M-Estimates

FDO	2004	2005	2006	2007	2008	Total
AKX	484	528	554	381	490	2,437
ALM	384	456	545	460	498	2,343
ALS	461	612	560	441	618	2,693
ARE-ARW	678	846	840	1,024	804	4,193
AZX	3,480	3,656	4,598	4,166	3,620	19,520
CAC	3,943	3,942	4,009	3,448	3,785	19,127
CAE	2,235	2,253	2,332	2,077	1,904	10,801
CAN	1,265	1,376	1,239	1,429	1,125	6,433
CAS	3,642	2,520	2,758	2,906	3,869	15,696
COX-WYX	1,595	1,568	1,701	1,501	1,417	7,782
CTX	442	488	493	448	429	2,300
DCX	1,541	1,319	1,195	855	885	5,795
DEX	240	244	219	241	374	1,318
FLM	2,041	1,993	2,276	2,207	2,168	10,683
FLN	804	772	916	850	731	4,073
FLS	3,049	2,982	2,910	2,746	2,628	14,315
GAM	0	0	0	0	151	151
GAN	1,729	1,816	1,665	1,379	1,222	7,811
GUX	156	216	180	172	105	829
HIX	960	798	726	544	534	3,562

Table C.3—Continued

FDO	2004	2005	2006	2007	2008	Total
IAS-IAN	989	886	1,054	1,064	1,160	5,153
IDX	322	319	402	471	304	1,818
ILC	771	862	1,036	1,048	979	4,696
ILN	1,270	1,215	1,193	1,254	1,158	6,090
ILS	469	490	562	539	521	2,580
INN	345	543	551	560	459	2,459
INS	346	314	396	334	381	1,771
KSX	1,055	1,168	1,328	1,282	1,234	6,066
KYW	494	415	504	497	482	2,391
LAE	678	630	610	762	775	3,455
LAW-LAM	819	927	1,259	1,091	756	4,851
MAX-NHX-RIX	969	979	933	1,160	960	5,001
MDX	1,599	1,574	1,652	1,510	1,508	7,842
MEX	0	0	0	93	174	266
MIE	1,363	1,337	1,399	1,273	1,194	6,566
MIW	467	515	707	461	582	2,731
MNX	755	705	735	713	697	3,607
MOE	1,305	1,347	1,516	1,571	1,567	7,306
MOW	1,591	1,602	1,826	1,817	1,613	8,449
MSS-MSN	586	667	766	693	1,163	3,875
MTX	893	954	881	991	972	4,691
NCE	1,302	1,349	1,432	1,412	1,315	6,809
NCM	806	818	928	780	680	4,012
NCW	0	0	1,086	1,154	1,341	3,582
NEX	853	1,089	1,101	1,056	996	5,094
NJX	1,875	2,113	1,762	1,567	1,383	8,701
NMX	2,372	2,161	2,995	2,389	2,633	12,550
NVX	1,994	1,612	1,991	1,594	1,461	8,652
NYN	546	645	559	559	556	2,865
NYS-NYE	3,479	3,591	2,966	2,796	2,925	15,757
NYW	939	1,019	978	1,024	904	4,865
OHN	609	825	724	731	853	3,743
OHS	898	1,053	1,056	907	810	4,725

Table C.3—Continued

FDO	2004	2005	2006	2007	2008	Total
OKN-OKE	576	600	545	606	502	2,830
OKW	467	448	484	448	411	2,258
ORX	2,305	2,291	2,450	2,278	2,292	11,616
PAE	1,351	1,633	1,418	1,381	1,368	7,152
PAM	775	715	740	891	1,006	4,126
PAW	680	891	932	903	875	4,282
PRX	817	746	1,156	1,092	989	4,799
SCX	1,691	1,574	1,722	1,703	1,802	8,491
SDX-NDX	814	899	1,174	1,221	1,231	5,339
TNE	868	1,012	826	846	801	4,352
TNM	693	681	718	690	686	3,467
TNW	993	1,025	1,027	1,085	923	5,053
TXE	989	874	960	1,001	976	4,801
TXN	1,988	1,871	1,958	1,915	2,037	9,768
TXS	8,520	8,180	9,862	9,332	10,116	46,008
TXW	5,779	6,327	6,197	6,480	7,295	32,078
UTX	1,263	1,277	1,163	1,277	1,163	6,144
VAE	2,591	2,487	2,450	2,440	2,502	12,470
VAW	0	0	16	495	676	1,187
VIX	209	286	188	195	144	1,021
VTX	263	249	227	172	254	1,166
WAE	946	1,023	954	966	897	4,786
WAW	1,747	1,518	1,749	1,660	1,690	8,364
WIE-WIW	317	488	559	603	869	2,835
WVN	218	373	412	449	491	1,944
WVS	460	486	432	441	457	2,276
Total	99,206	100,063	106,921	102,997	104,304	513,491

NOTE: Weighted caseloads rounded to nearest whole number.

**Table C.4
Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Unweighted;
Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW**

FDO	2004	2005	2006	2007	2008	Total
AKX	294	319	291	263	346	1,513

Table C.4—Continued

FDO	2004	2005	2006	2007	2008	Total
ALM	238	256	302	293	373	1,462
ALS	264	360	339	283	397	1,643
ARE-ARW	531	598	617	729	802	3,277
AZX	5,523	5,579	8,090	10,140	8,968	38,300
CAC	3,179	3,455	3,320	3,204	3,568	16,726
CAE	1,865	1,891	2,019	2,009	2,039	9,823
CAN	870	969	852	949	983	4,623
CAS	5,549	3,888	4,134	4,606	5,887	24,064
COX-WYX	972	1,007	1,076	1,048	1,054	5,157
CTX	302	294	278	266	339	1,479
DCX	812	782	657	530	713	3,494
DEX	170	195	161	234	299	1,059
FLM	1,581	1,608	1,567	1,546	2,480	8,782
FLN	633	589	692	697	698	3,309
FLS	2,090	2,150	2,014	1,879	2,071	10,204
GAM	0	0	0	0	141	141
GAN	1,343	1,233	1,185	1,276	1,204	6,241
GUX	130	193	147	193	106	769
HIX	664	665	552	466	569	2,916
IAS-IAN	833	748	851	805	900	4,137
IDX	235	210	250	303	238	1,236
ILC	429	482	570	570	903	2,954
ILN	915	866	787	892	932	4,392
ILS	543	600	580	646	834	3,203
INN	205	292	314	325	525	1,661
INS	319	303	334	328	394	1,678
KSX	799	932	940	832	1,130	4,633
KYW	275	282	300	317	367	1,541
LAE	433	409	430	483	871	2,626
LAW-LAM	509	614	728	667	774	3,292
MAX-NHX-RIX	550	544	570	707	743	3,114
MDX	1,600	1,621	1,742	1,730	1,857	8,550
MEX	0	0	0	72	145	217

Table C.4—Continued

FDO	2004	2005	2006	2007	2008	Total
MIE	904	907	953	892	988	4,644
MIW	276	307	379	306	454	1,722
MNX	491	506	530	525	666	2,718
MOE	858	912	942	976	1,390	5,078
MOW	904	912	1,010	1,017	1,156	4,999
MSS-MSN	507	565	622	580	1,138	3,412
MTX	604	675	605	650	681	3,215
NCE	1,102	1,143	1,274	1,270	1,448	6,237
NCM	419	445	483	414	430	2,191
NCW	0	0	523	685	918	2,126
NEX	560	637	662	719	906	3,484
NJX	1,252	1,236	1,235	1,237	1,249	6,209
NMX	2,446	2,203	2,470	2,173	2,630	11,922
NVX	1,238	1,101	1,253	1,067	1,121	5,780
NYN	538	564	448	479	588	2,617
NYS-NYE	2,084	2,125	1,899	1,806	1,966	9,880
NYW	695	675	682	738	853	3,643
OHN	424	537	472	513	783	2,729
OHS	619	672	813	692	797	3,593
OKN-OKE	349	345	314	329	332	1,669
OKW	422	438	440	443	458	2,201
ORX	1,510	1,512	1,523	1,519	1,664	7,728
PAE	1,106	1,158	1,161	1,165	1,443	6,033
PAM	531	579	550	635	982	3,277
PAW	418	479	512	527	786	2,722
PRX	603	616	841	810	1,079	3,949
SCX	1,146	1,052	1,106	1,149	2,121	6,574
SDX-NDX	442	510	711	734	758	3,155
TNE	610	640	542	606	793	3,191
TNM	516	483	492	539	537	2,567
TNW	506	514	524	563	706	2,813
TXE	581	537	597	621	714	3,050
TXN	1,370	1,246	1,320	1,286	1,389	6,611

Table C.4—Continued

FDO	2004	2005	2006	2007	2008	Total
TXS	4,849	4,525	5,378	5,077	4,872	24,701
TXW	3,568	3,696	3,470	3,825	4,144	18,703
UTX	815	854	802	896	971	4,338
VAE	2,193	2,186	2,252	2,294	2,766	11,691
VAW	0	0	10	363	647	1,020
VIX	256	197	156	130	98	837
VTX	138	141	151	116	178	724
WAE	753	816	812	871	839	4,091
WAW	1,778	1,693	1,934	2,029	2,216	9,650
WIE-WIW	324	489	600	692	964	3,069
WVN	150	267	319	377	594	1,707
WVS	409	405	412	389	475	2,090
Total	75,919	75,434	80,873	84,012	96,338	412,576

Table C.5

Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on Arithmetic Average; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW

FDO	2004	2005	2006	2007	2008	Total
AKX	482	528	555	381	488	2,434
ALM	379	450	536	452	485	2,302
ALS	453	607	548	434	601	2,642
ARE-ARW	687	867	834	1,019	820	4,228
AZX	3,520	3,720	4,653	4,160	3,631	19,683
CAC	3,955	3,961	4,055	3,465	3,819	19,256
CAE	2,234	2,266	2,334	2,078	1,889	10,801
CAN	1,263	1,369	1,247	1,425	1,121	6,424
CAS	3,671	2,541	2,822	2,971	3,918	15,923
COX-WYX	1,576	1,552	1,681	1,477	1,386	7,672
CTX	445	519	581	444	424	2,413
DCX	1,545	1,322	1,206	872	905	5,850
DEX	238	240	220	242	366	1,307
FLM	2,036	1,984	2,311	2,195	2,143	10,669
FLN	794	771	915	847	716	4,043
FLS	3,056	3,023	2,954	2,742	2,664	14,439

Table C.5—Continued

FDO	2004	2005	2006	2007	2008	Total
GAM	0	0	0	0	149	149
GAN	1,729	1,832	1,690	1,399	1,233	7,882
GUX	161	216	183	180	104	845
HIX	952	799	724	547	539	3,560
IAS-IAN	984	877	1,051	1,055	1,132	5,099
IDX	331	324	403	472	302	1,833
ILC	757	848	1,020	1,022	953	4,600
ILN	1,286	1,220	1,209	1,265	1,153	6,133
ILS	478	492	561	544	515	2,590
INN	346	537	540	553	451	2,427
INS	345	310	395	344	379	1,774
KSX	1,050	1,155	1,327	1,264	1,215	6,011
KYW	496	410	495	496	479	2,377
LAE	677	621	608	759	763	3,429
LAW-LAM	837	944	1,279	1,105	755	4,920
MAX-NHX-RIX	967	972	937	1,159	961	4,996
MDX	1,591	1,575	1,641	1,511	1,509	7,827
MEX	0	0	0	92	171	263
MIE	1,350	1,355	1,404	1,269	1,192	6,569
MIW	463	515	708	457	574	2,718
MNX	755	697	725	708	685	3,571
MOE	1,290	1,334	1,517	1,565	1,551	7,258
MOW	1,558	1,571	1,790	1,797	1,573	8,290
MSS-MSN	580	663	756	686	1,144	3,830
MTX	884	943	876	975	961	4,639
NCE	1,276	1,323	1,404	1,388	1,289	6,680
NCM	787	801	906	759	659	3,913
NCW	0	0	1,080	1,133	1,564	3,777
NEX	842	1,077	1,092	1,045	982	5,038
NJX	1,929	2,168	1,763	1,576	1,378	8,814
NMX	2,369	2,149	2,990	2,378	2,644	12,529
NVX	1,988	1,603	1,988	1,616	1,460	8,655
NYN	556	651	556	560	556	2,878

Table C.5—Continued

FDO	2004	2005	2006	2007	2008	Total
NYS-NYE	3,530	3,639	2,983	2,799	2,935	15,885
NYW	939	1,017	973	1,011	915	4,856
OHN	608	818	715	726	842	3,709
OHS	894	1,047	1,048	896	797	4,681
OKN-OKE	572	600	543	607	497	2,819
OKW	469	450	487	467	410	2,283
ORX	2,305	2,290	2,460	2,267	2,291	11,612
PAE	1,354	1,666	1,417	1,409	1,361	7,207
PAM	788	716	741	889	992	4,126
PAW	696	899	933	903	867	4,298
PRX	829	748	1,184	1,096	985	4,842
SCX	1,670	1,552	1,688	1,682	1,772	8,363
SDX-NDX	810	899	1,165	1,207	1,222	5,304
TNE	865	998	824	830	781	4,297
TNM	690	678	715	692	680	3,456
TNW	982	1,010	1,021	1,066	905	4,984
TXE	983	866	949	985	963	4,747
TXN	1,992	1,866	1,961	1,889	2,016	9,723
TXS	5,526	4,991	6,499	6,398	5,577	28,991
TXW	4,350	4,484	4,369	4,901	5,071	23,176
UTX	1,236	1,270	1,166	1,291	1,188	6,152
VAE	2,600	2,473	2,444	2,438	2,496	12,450
VAW	0	0	16	520	672	1,209
VIX	210	294	192	194	144	1,033
VTX	263	251	227	171	252	1,164
WAE	930	1,005	941	968	881	4,724
WAW	1,769	1,555	1,798	1,694	1,709	8,525
WIE-WIW	326	495	565	607	866	2,858
WVN	215	371	411	451	490	1,938
WVS	459	483	430	441	453	2,266
Total	94,809	95,129	101,935	98,378	97,380	487,631

NOTE: Weighted caseloads rounded to nearest whole number.

Table C.6
Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted
Based on M-Estimates; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from
TXS and TXW

FDO	2004	2005	2006	2007	2008	Total
AKX	484	528	554	381	490	2,437
ALM	384	456	545	460	498	2,343
ALS	461	612	560	441	618	2,693
ARE-ARW	678	846	840	1,024	804	4,193
AZX	3,480	3,656	4,598	4,166	3,620	19,520
CAC	3,943	3,942	4,009	3,448	3,785	19,127
CAE	2,235	2,253	2,332	2,077	1,904	10,801
CAN	1,265	1,376	1,239	1,429	1,125	6,433
CAS	3,642	2,520	2,758	2,906	3,869	15,696
COX-WYX	1,595	1,568	1,701	1,501	1,417	7,782
CTX	442	488	493	448	429	2,300
DCX	1,541	1,319	1,195	855	885	5,795
DEX	240	244	219	241	374	1,318
FLM	2,041	1,993	2,276	2,207	2,168	10,683
FLN	804	772	916	850	731	4,073
FLS	3,049	2,982	2,910	2,746	2,628	14,315
GAM	0	0	0	0	151	151
GAN	1,729	1,816	1,665	1,379	1,222	7,811
GUX	156	216	180	172	105	829
HIX	960	798	726	544	534	3,562
IAS-IAN	989	886	1,054	1,064	1,160	5,153
IDX	322	319	402	471	304	1,818
ILC	771	862	1,036	1,048	979	4,696
ILN	1,270	1,215	1,193	1,254	1,158	6,090
ILS	469	490	562	539	521	2,580
INN	345	543	551	560	459	2,459
INS	346	314	396	334	381	1,771
KSX	1,055	1,168	1,328	1,282	1,234	6,066
KYW	494	415	504	497	482	2,391
LAE	678	630	610	762	775	3,455
LAW-LAM	819	927	1,259	1,091	756	4,851

Table C.6—Continued

FDO	2004	2005	2006	2007	2008	Total
MAX-NHX-RIX	969	979	933	1,160	960	5,001
MDX	1,599	1,574	1,652	1,510	1,508	7,842
MEX	0	0	0	93	174	266
MIE	1,363	1,337	1,399	1,273	1,194	6,566
MIW	467	515	707	461	582	2,731
MNX	755	705	735	713	697	3,607
MOE	1,305	1,347	1,516	1,571	1,567	7,306
MOW	1,591	1,602	1,826	1,817	1,613	8,449
MSS-MSN	586	667	766	693	1,163	3,875
MTX	893	954	881	991	972	4,691
NCE	1,302	1,349	1,432	1,412	1,315	6,809
NCM	806	818	928	780	680	4,012
NCW	0	0	1,086	1,154	1,341	3,582
NEX	853	1,089	1,101	1,056	996	5,094
NJX	1,875	2,113	1,762	1,567	1,383	8,701
NMX	2,372	2,161	2,995	2,389	2,633	12,550
NVX	1,994	1,612	1,991	1,594	1,461	8,652
NYN	546	645	559	559	556	2,865
NYS-NYE	3,479	3,591	2,966	2,796	2,925	15,757
NYW	939	1,019	978	1,024	904	4,865
OHN	609	825	724	731	853	3,743
OHS	898	1,053	1,056	907	810	4,725
OKN-OKE	576	600	545	606	502	2,830
OKW	467	448	484	448	411	2,258
ORX	2,305	2,291	2,450	2,278	2,292	11,616
PAE	1,351	1,633	1,418	1,381	1,368	7,152
PAM	775	715	740	891	1,006	4,126
PAW	680	891	932	903	875	4,282
PRX	817	746	1,156	1,092	989	4,799
SCX	1,691	1,574	1,722	1,703	1,802	8,491
SDX-NDX	814	899	1,174	1,221	1,231	5,339
TNE	868	1,012	826	846	801	4,352
TNM	693	681	718	690	686	3,467

Table C.6—Continued

FDO	2004	2005	2006	2007	2008	Total
TNW	993	1,025	1,027	1,085	923	5,053
TXE	989	874	960	1,001	976	4,801
TXN	1,988	1,871	1,958	1,915	2,037	9,768
TXS	5,499	4,934	6,434	6,332	5,507	28,705
TXW	4,373	4,478	4,356	4,951	5,059	23,217
UTX	1,263	1,277	1,163	1,277	1,163	6,144
VAE	2,591	2,487	2,450	2,440	2,502	12,470
VAW	0	0	16	495	676	1,187
VIX	209	286	188	195	144	1,021
VTX	263	249	227	172	254	1,166
WAE	946	1,023	954	966	897	4,786
WAW	1,747	1,518	1,749	1,660	1,690	8,364
WIE-WIW	317	488	559	603	869	2,835
WVN	218	373	412	449	491	1,944
WVS	460	486	432	441	457	2,276
Total	94,780	94,967	101,652	98,468	97,459	487,327

NOTE: Weighted caseloads rounded to nearest whole number.

Table C.7

Annual Caseloads for Federal Defender Organizations by Fiscal Year of Case Closing: Weighted Based on District-Adjusted M-Estimates; Weight Calculations and Case Counts Exclude CR8710 and CR8720 Cases from TXS and TXW

FDO	2004	2005	2006	2007	2008	Total
AKX	444	481	517	343	451	2,236
ALM	351	417	499	422	452	2,142
ALS	422	561	515	405	568	2,470
ARE-ARW	625	796	781	952	764	3,918
AZX	3,688	3,781	4,866	4,457	3,755	20,547
CAC	3,722	3,713	3,690	3,178	3,612	17,915
CAE	2,123	2,128	2,199	1,958	1,816	10,224
CAN	1,186	1,290	1,179	1,555	1,066	6,275
CAS	4,014	2,750	3,004	3,187	4,250	17,205
COX-WYX	1,500	1,462	1,607	1,418	1,342	7,329
CTX	398	449	454	411	396	2,108
DCX	1,469	1,305	1,186	867	885	5,713

Table C.7—Continued

FDO	2004	2005	2006	2007	2008	Total
DEX	217	230	209	228	345	1,229
FLM	1,982	2,045	2,319	2,213	2,126	10,685
FLN	741	715	852	797	678	3,784
FLS	2,771	2,732	2,700	2,525	2,404	13,132
GAM	0	0	0	0	137	137
GAN	1,591	1,688	1,534	1,275	1,116	7,203
GUX	139	194	160	156	95	743
HIX	878	716	657	496	481	3,228
IAS-IAN	942	848	1,008	1,002	1,095	4,894
IDX	318	301	390	456	291	1,755
ILC	707	792	947	956	891	4,293
ILN	1,172	1,112	1,118	1,181	1,074	5,657
ILS	439	456	521	497	477	2,390
INN	323	509	512	510	425	2,280
INS	327	301	394	340	358	1,720
KSX	982	1,092	1,240	1,405	1,333	6,051
KYW	465	382	461	456	440	2,204
LAE	633	583	582	722	733	3,253
LAW-LAM	754	849	1,173	1,016	695	4,487
MAX-NHX-RIX	915	928	889	1,094	914	4,740
MDX	1,447	1,403	1,505	1,360	1,381	7,096
MEX	0	0	0	86	159	244
MIE	1,289	1,265	1,337	1,198	1,128	6,216
MIW	440	487	657	424	543	2,552
MNX	715	657	714	672	656	3,414
MOE	1,218	1,251	1,415	1,447	1,433	6,764
MOW	1,463	1,472	1,685	1,682	1,494	7,796
MSS-MSN	536	612	701	645	1,066	3,561
MTX	842	908	833	939	922	4,445
NCE	1,192	1,239	1,321	1,293	1,204	6,249
NCM	754	771	868	730	632	3,755
NCW	0	0	1,003	1,075	1,285	3,362
NEX	798	1,019	1,033	981	928	4,758

Table C.7—Continued

FDO	2004	2005	2006	2007	2008	Total
NJX	1,672	1,917	1,587	1,419	1,265	7,861
NMX	2,568	2,321	3,260	2,600	2,867	13,616
NVX	1,948	1,570	2,001	1,559	1,457	8,535
NYN	515	599	518	525	522	2,679
NYS-NYE	3,189	3,326	2,750	2,599	2,713	14,576
NYW	866	934	904	944	853	4,501
OHN	565	764	664	676	804	3,473
OHS	807	962	962	821	733	4,285
OKN-OKE	548	582	537	604	477	2,747
OKW	429	418	468	428	375	2,118
ORX	2,232	2,205	2,372	2,201	2,202	11,212
PAE	1,243	1,520	1,312	1,275	1,263	6,613
PAM	756	702	730	878	977	4,043
PAW	626	838	866	837	806	3,973
PRX	833	778	1,197	1,172	1,012	4,992
SCX	1,650	1,505	1,700	1,649	1,777	8,281
SDX-NDX	791	866	1,136	1,178	1,175	5,147
TNE	804	932	765	782	735	4,018
TNM	636	631	660	638	643	3,208
TNW	920	935	946	989	845	4,635
TXE	972	853	947	983	915	4,671
TXN	2,020	1,948	2,022	2,043	2,160	10,192
TXS	6,351	5,374	7,213	7,392	6,134	32,463
TXW	5,202	5,250	5,003	5,940	6,077	27,472
UTX	1,209	1,208	1,112	1,220	1,131	5,880
VAE	2,375	2,289	2,263	2,239	2,325	11,490
VAW	0	0	15	451	616	1,082
VIX	213	283	179	184	138	997
VTX	247	232	213	161	235	1,088
WAE	909	974	926	930	858	4,596
WAW	1,570	1,360	1,574	1,473	1,507	7,484
WIE-WIW	321	483	543	571	814	2,731
WVN	201	340	378	418	449	1,787

Table C.7—Continued

FDO	2004	2005	2006	2007	2008	Total
WVS	423	449	392	411	417	2,092
Total	92,542	92,037	99,345	97,196	95,572	476,691

NOTE: Weighted caseloads rounded to nearest whole number.

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