

**2010 Litigation Review Conference
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United States Custom House, Galveston, Texas. Supervising Architect: Ammi B. Young, 1861; converted for use as a federal courthouse in 1917. Image reproduced courtesy of the National Archives and Records Administration.

Federal Lower Court Judges

1850: 37

1886: 64

1861: 37,000 federal employees

1891: 160,000 federal employees

New Federal Jurisdictional Grants

1867: Habeas Corpus, individuals in state custody

1871: Civil Rights Act

1875: Federal Question Jurisdiction

1870: Creation of Department of Justice

Federal Trial Court Caseload

1876: 29,000

1900: 55,000

1930: 150,000

Federally Built/Owned Buildings

1850s: 56 buildings

1897: 350+ buildings

1902: 150 more authorized to be built

1912: 1126 new projects underway



The Grand Forks U.S. Post Office and Courthouse, Grand Forks, North Dakota. Architect: James Knox Taylor, 1906; renamed in 2002 the Ronald N. Davies Federal Building and U.S. Courthouse. Photographer: Steve Silverman. Copyright: Steve Silverman, www.stevesilvermanimaging.com. The image is reproduced with the permission of the photographer and of the building's Property Manager, Bryan Saylor.



Thomas F. Eagleton Federal Courthouse, St. Louis, Missouri. Architects: Hellmuth, Obata + Kassabaum, Inc., 2000. Photographer: The Honorable David D. Noce, U.S. Magistrate Judge for the Eastern District of Missouri. Photograph courtesy of and reproduced with the permission of the photographer.

Court-Mandated ADR

U.S. District Court, District of Massachusetts

RULE 16.4 ALTERNATIVE DISPUTE RESOLUTION

- (a) The judicial officer shall encourage the resolution of disputes by settlement or other alternative dispute resolution programs.

- (b) Settlement. At every conference conducted under these rules, the judicial officer shall inquire as to the utility of the parties conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance may be appropriate in the circumstances. Assistance may include a reference of the case to another judicial officer for settlement purposes. Whenever a settlement conference is held, a representative of each party who has settlement authority shall attend or be available by telephone.

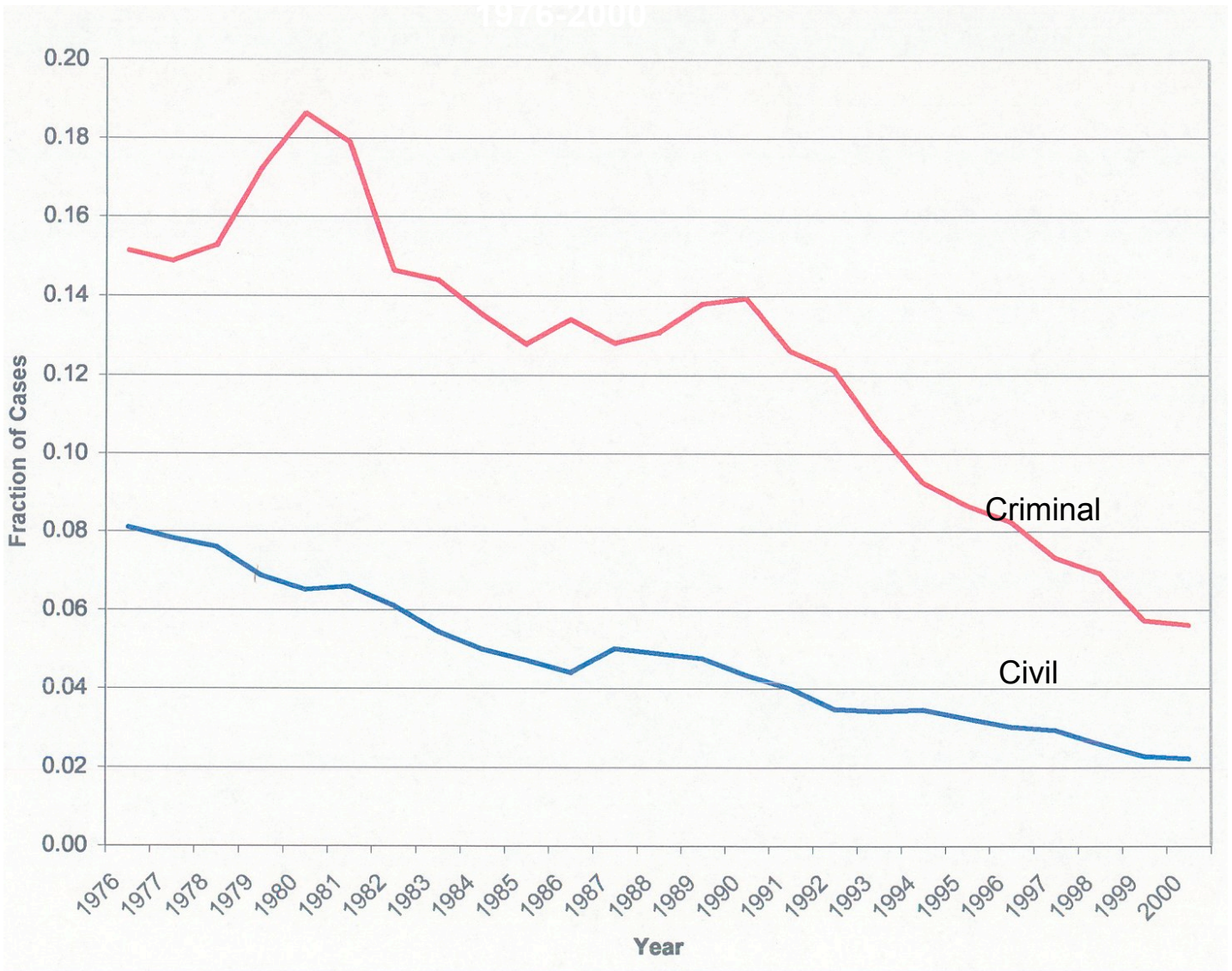
Excerpted from "Procedures for Implementing Settlement Options," U.S. District Court, <http://www.mad.uscourts.gov/general/pdf/combined01.pdf>

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

In an office setting without the robe, using a computer and court administrative staff to monitor the entire caseload and individual case progress; conferring with lawyers (often by telephone or videoconference) in individual cases to set dates or limits; in that same office at a computer, poring over a particular lawsuit's “facts,” submitted electronically as affidavits, documents, depositions, and interrogatory answers; structuring and organizing those facts, rejecting some or many of them; finally, researching the law (at the computer, not a library) and writing (at the computer) explanations of the law for parties and lawyers in light of the sorted facts.

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

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



Provided by the Honorable Patrick Higginbotham, June 2002

Review of Trends

The *Plan* devoted a chapter and appendix to trends that could threaten the judiciary's core values of providing equal justice, maintaining high standards of legal excellence, and sustaining legitimacy in the eyes of the public. Forecasts suggested the possibility of continued caseload increases at both the trial and appellate levels, and concomitant growth in the size of the judiciary.

Caseload and Judgeships: Forecasts versus Actuals

	Forecasts		Actual	
	2000	2010	2000	2007
District Cases Commenced	364,800	610,800	322,262	325,920
Criminal Cases	47,800	62,000	62,745	68,413
Civil Cases	317,000	548,800	259,517	257,507
Appeals	85,700	174,700	54,697	58,410
Authorized Appellate Judges	440	870	167	167
Authorized District Judges	890	1,430	665	692

Although the large growth trends forecast in 1995 have not borne out, new and unanticipated challenges have arisen such as the increase in immigration cases.

Individual committees continue to examine trends closely. The Committee on the Administration of the Bankruptcy System noted that while "the 1995 plan does not contain any explicit projection of trends in the bankruptcy system, there is at least an implicit assumption that the bankruptcy system would continue in its historical form into the foreseeable future. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 radically altered the basis for that assumption, making extensive changes to the substantive, procedural and administrative aspects of bankruptcy law and practice." As it concerns the future of the bankruptcy system, the Bankruptcy Committee notes that "as part of its long-range planning, the [committee] will have to evaluate what that steady state might look like, as well as how future economic developments...will affect the system."

Adjudication and Democracy

- Proto-democratic norms
- From Rites to Rights: democratic changes and challenges to adjudication
 - Independent judges
 - Public processes
 - Equal access for all
- Privatization
 - Reconfiguring court procedure towards settlement
 - Outsourcing
 - Devolution to agencies
- The democracy in adjudication
 - The role of the audience: participatory observers
 - The discipline of adjudication's etiquette
 - Normative iterations

Bring Back Bentham

Considered in itself, a room allotted to the reception of the evidence in question [...] is an instrument rather of privacy than of publicity; since, if performed in the open air [...], the number of persons capable of taking cognisance of it would bear no fixed limits.

-Bentham, Chapter X, Of Publicity and Privacy, as Applied to Judicature in General, and to the Collection of the Evidence in Particular (1843), p. 354.