

## ORGANIZATION OF REPORT

This report, *Exploring the Work of the California Trial Courts: A Twenty-Year Retrospective*, begins to identify and document major factors, both internal and external, that have contributed to caseload and workload fluctuations experienced by the state's trial courts for the period FY80-81 through FY99-00. It does not, however, attempt to quantify the possible impact of the various external and internal factors on the filing and workload trends presented. Instead, its purpose is to serve as a detailed description of caseload trends, and as a starting point for future research on factors likely to influence workload.

The report is organized in three parts: the introduction, the main body with information on the various case-type categories, and a final part that identifies some future research needs. To assist the reader, each part of this report, including the sections within each part, are organized in a similar manner and follow the same format and order of presentation. In addition, the authors include brief summaries throughout the report to help the reader digest the considerable amount of information contained in this report. The format of this report is explained below.

**Part I** is the introduction. This section provides an overview of statewide filing trends and follows with some environmental changes that have probably influenced these trends. Some of these environmental changes have not impacted the number of case filings, but have impacted the amount of judicial and staff workload required to dispose of each case. Regardless of their impact, the influences included in this section are wide in scope and impact filings and workload across several types of cases. In some instances, the impact of these environmental changes is not well understood and will require further research. For example, according to the Public Policy Institute of California, one in four Californians is foreign born. Language diversity resulting from this immigration presents many challenges and additional workload for the courts, which must meet the special needs of these members of the public. However, it may also be that recent immigrants are less likely to use the court system to resolve disputes. It is obvious that immigration affects filings and workload in many ways, but further research will be required to better understand its impact. This section ends with a description of the methodology used throughout this report.

**Part II** is the main body of the report and is divided into several chapters, with each chapter devoted to one of the following case categories—General Civil, Criminal, Traffic, Family, Juvenile, Mental Health. Each chapter is divided into three substantive sections: 1) statewide filing trend information; 2) internal and external factors that influence filing and workload; and 3) individual case type analysis, which includes an analysis of filings trends and of factors influencing filing and workload for the individual types of cases within each case category (e.g., juvenile delinquency and juvenile dependency cases within the Juvenile category).

### *(1) Statewide filing trend information*

Each chapter begins with an overview of the statewide filing trend for both the case-type category as a whole and the individual case types including, when available, a comparison to national trends. Courts are additionally categorized into three groupings based on their size to ascertain whether the size of a court influences case-type filing trends. The court-size grouping analysis follows the general statewide trend analysis.

*(2) Internal and external factors that influence filing and workload*

A discussion of external and internal factors that influence filings and workload for the given case-type category and the individual case types follows the filing trend analysis in each chapter. Factors highlighted in this section impact all individual case types within the specific case-type category. Those factors that only influence a specific case type within a case type category (e.g., automatic administrative suspensions of driver's licenses for persons arrested with blood alcohol levels of .08% and above, which only impacts traffic misdemeanor cases within the Traffic case-type category) are discussed in the third substantive section concerning individual case types. Some chapters contain a discussion of possible "future trends" in the particular case-type category, which is always included in the *Influences* section of the chapter.

*(3) Individual case type analysis*

The last substantive section of each chapter concerns trends in the individual case types within each case-type category. For example, the chapter on the Unlimited Civil case category includes trends for the following case types: Auto PI, Other PI, and Other Civil Complaints. Each individual case-type discussion follows a format similar to the statewide analysis, i.e., it begins with an analysis of filing trends and concludes with a discussion of possible external or internal factors influencing these filing and workload trends. As noted above, factors highlighted in this section only influence particular case types within the overall case-type category.

**Part III** focuses on future research needs. It was not the intent of the authors nor were there sufficient resources available to attach causality to the various external and internal factors for the filing and workload trends presented in this report. Consequently, the report serves primarily as a detailed description of caseload trends, and as a starting point for future research on factors likely to influence workload. Part III outlines the kinds of research efforts needed to establish links between some of these external or internal events and the observed changes over the past 20 years in filings and workload. The authors also make recommendations concerning areas for future research efforts.

## CONVENTIONS

**1. Notation of Fiscal Years.** For purposes of this report, a fiscal year is noted by the last 2 digits of the last year in the fiscal year. For example, FY1999-2000 is noted as FY00.

**2. Case-Type Categories.** Part II of this report examines filing trends for specific case-type categories. Filing data cited in the report are from the Judicial Branch Statistical Information System (JBSIS) unless otherwise noted in the text. During the period studied, JBSIS disaggregated filings into the following case-type categories:

- Criminal
- Traffic
- Unlimited Civil
- Limited Civil
- Probate
- Small Claims
- Family
- Juvenile
- Mental Health

**3. Individual Case Types.** During the period studied, JBSIS disaggregated a limited number of individual case types. Those individual case types are listed below under the corresponding case-type category.

<b>Criminal</b>	<b>Traffic</b>	<b>Unlimited Civil</b>	<b>Family</b>	<b>Juvenile</b>
Felony	Misdemeanor	Auto PI	Marital	Delinquency
Misdemeanor	Infraction	PI Other	Other	Dependency
Infraction		Other Complaints		

### 4. Court-Size Groupings.

<b>Largest (n=3)</b>	<b>Large/Medium (n=24)</b>		<b>Smallest (n=31)</b>			
Los Angeles	Alameda	San Bernardino	Tulare	Alpine	Lake	Shasta
Orange	Butte	San Francisco	Ventura	Amador	Lassen	Sierra
San Diego	Contra Costa	San Joaquin		Calaveras	Madera	Siskiyou
	Fresno	San Luis Obispo		Colusa	Mariposa	Sutter
	Kern	San Mateo		Del Norte	Mendocino	Tehama
	Marin	Santa Barbara		El Dorado	Modoc	Trinity
	Merced	Santa Clara		Glenn	Mono	Tuolumne
	Monterey	Santa Cruz		Humboldt	Napa	Yolo
	Placer	Solano		Imperial	Nevada	Yuba
	Riverside	Sonoma		Inyo	Plumas	
	Sacramento	Stanislaus		Kings	San Benito	

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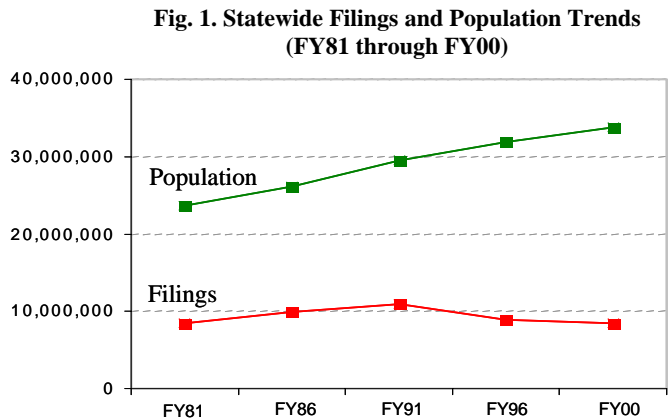
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# I. INTRODUCTION

There have been considerable fluctuations in statewide filings over the past 20 years, with case filings for many case types decreasing or remaining relatively unchanged over the decade of the 1990s. However, even in light of this stable or decreasing trend in filings, trial courts continue to identify the need for new resources to handle their increasing workload. How can workload increase when caseload is decreasing? To answer this question, the Administrative Office of the Courts (AOC) embarked on this study to begin identifying and documenting major factors, both internal (e.g., the establishment of collaborative courts) and external (e.g., demographic, socioeconomic, and legislative changes), that have contributed to caseload and workload fluctuations experienced by the state’s trial courts for the period FY81 through FY00. The study addresses the major case-type categories (e.g., Unlimited Civil, Criminal, Family, Traffic) as well as individual case types (e.g., Felony, Family—Other, Auto—PI).

## A. FILINGS

Preceded by a steady rise in the 1980s, the number of total cases filed in California’s trial courts declined over the decade of the 1990s, dropping by more than 2.4 million cases (22%). Eighty percent of this drop (1.95 million cases) can be attributed to a 25% decline in the number of traffic filings. Excluding traffic cases, however, there was still a drop of almost 500,000 cases over the course of the decade. This significant drop in filings over the 1990s occurred while the state’s population grew considerably over the same time period.



A very different picture emerges over a longer, 20-year span, from FY81 through FY00. The 20-year picture, Table 1 below, shows that there were 11,750 more total filings in FY00 than in FY81. If traffic filings are excluded, filings in FY00 were 117,600 cases higher (+4.6%) than in FY81.

**Table 1. Filing Increases Over 20 Years—FY81 through FY00**

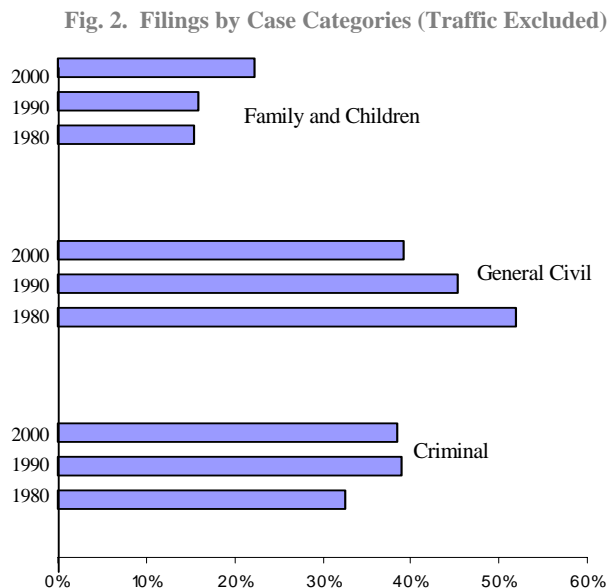
	Filings		Change	
	FY81	FY00	Difference	Percent
<b>All Case Types</b>	8,497,198	8,508,948	11,750	0.1%
<b>Excluding Traffic</b>	2,574,373	2,691,97	117,601	4.6%

Also emerging in the 20-year view is a spike in the number of filings occurring in the late 1980s. Statewide filings reached a high of 10,903,549 total filings in FY90-91 for all case types; excluding Traffic cases, statewide filings hit their peak in FY89-90. Thus, there was a swing of almost 600,000 in non-Traffic filings between the 1990s’ loss and the 20-year gain, suggesting

some positive correlation between filings and population. Nonetheless, the reasons behind the substantial decrease in total filings in the 1990s are complex, and vary by case type as well as across case types.

## 1. Case Categories

The mix of the state’s caseload by case categories has changed over the 20-year span as well. In FY81, General Civil cases—auto personal injury, other personal injury, other civil complaints, probate, and mental health—made up 51.9% of the total caseload (traffic cases excluded), but only 39.1% of the total by FY00. Criminal cases, on the other hand, rose from 32.9% of the statewide total in FY81 to 39.3% in FY00. The largest gain was the Family and Children case category. The three case types that make up this category—Family Law, Juvenile Delinquency, and Juvenile Dependency—increased as a proportion of total caseload only slightly between FY81 and FY91 (hovering about 15%), but by FY00, they had grown to 22.4% of the total statewide filings. The *Filings by Case Categories* (traffic excluded) table above illustrates changes in the proportions for General Civil, Criminal, and Family and Children case categories.



The proportion of traffic cases has been relatively stable over the past 20 years, contributing 70% to the statewide total in FY81, 71% in FY91, and 68% in FY00.

## 2. Case-Type Categories and Individual Case Types

Most of the case-type categories and individual case types studied in this report experienced increases in the number of filings over the 20-year span. These categories and individual case types are highlighted in the table below. In general, the 20-year span contains a period during the 1980s when filings increased significantly for each category and individual case type, followed by a decrease in filings from FY91 through FY00. Table 2 below details the increase in filings over the 1980s and the decreases over the 1990s. The shaded individual case types experienced increases in the 1990s; thus, these case types did not follow the general declining trend.

**Table 2. Change in Filings Over 20-Year Span**

	<b>Filings</b>		
	FY81	FY91	FY00
<b>General Civil</b>			
a. PI-Auto	50,723	80,208	45,782
b. Other PI/PD	30,247	37,100	25,359
<b>c. Civil Complaints</b>	<b>93,916</b>	<b>102,848</b>	<b>123,118</b>
d. Limited Civil	521,374	636,335	470,768
e. Small Claims	561,908	515,364	320,650
f. Probate	64,779	62,833	50,750
<b>Criminal</b>			
<b>a. Felonies</b>	<b>128,850</b>	<b>229,677</b>	<b>238,685</b>
b. Misdemeanors	632,292	734,955	547,486
<b>c. Infractions</b>	<b>72,775</b>	<b>218,012</b>	<b>242,917</b>
<b>Traffic</b>			
a. Misdemeanors	650,310	1,354,200	686,178
b. Infractions	5,272,515	6,403,924	5,130,796
<b>Family<sup>1</sup></b>			
a. Family-Marital	177,255	169,633	152,293
<b>b. Family-Other</b>	<b>113,917</b>	<b>215,154</b>	<b>312,103</b>
<b>Juvenile</b>			
a. Delinquency	81,242	96,705	93,649
b. Dependency	22,679	38,477	40,672
<b>Mental Health</b>	<b>3,783</b>	<b>8,124</b>	<b>7,671</b>

### 3. Los Angeles's Influence

Filings in Los Angeles represent a significant proportion of total statewide filings for most case types. This portion varies by case type, ranging from a low of 13% of the total mental health filings to a high of 42% of the other personal injury/property damage cases statewide. Overall, about three of every ten cases (30%) in the state are filed in the Superior Court of Los Angeles County. Table 3 shows the filings for FY81 through FY00 for Los Angeles and the state as a whole, and Los Angeles' average annual share of the total statewide filings during that period.

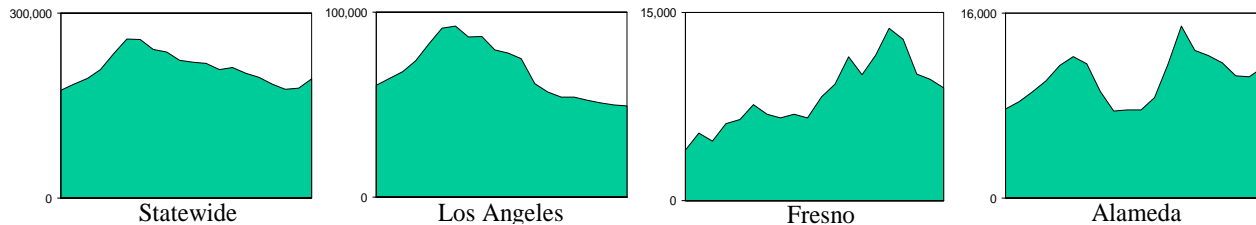
**Table 3. Los Angeles's Share of Statewide Filing Totals**

CASE CATEGORY/TYPE	LA Totals FY81—FY00	Statewide Totals FY81—FY00	LA's Share of State Total
General Civil	8,911,428	26,319,368	33.9%
Criminal	5,876,132	21,153,575	27.8%
Traffic	39,595,739	132,215,237	29.9%
Family	2,205,359	7,962,266	27.7%
Juvenile	802,818	2,608,652	30.8%
Mental Health	17,652	136,781	12.9%
<b>TOTAL</b>	<b>57,391,476</b>	<b>190,259,099</b>	<b>30.2%</b>

<sup>1</sup> A number of reporting changes in the 1990s saw dramatic filing increases in family law cases other than those pertaining to marital status, i.e., dissolutions, legal separations, and nullities. Consequently, a division of the case type into Family—Marital and Family—Other was made in order to facilitate an analysis. For a more complete explanation, see chapter on Family Law herein.

Because Los Angeles filings comprise a significant proportion of total state filings, changes in its filings will tend to drive any statewide trends, which in turn might not be representative of filing trends in other areas of the state. As can be seen from the four charts below (Fig. 3), only Los Angeles follows a similar trend to the statewide trend. Because unlimited civil filings in Los Angeles comprise approximately 32.5% of all unlimited civil filings in the state, its numbers have skewed the 20-year picture for Fresno (4.0% of the statewide unlimited civil filings) and Alameda (4.9% of the statewide unlimited civil filings).

**Fig. 3. Comparison of Unlimited Civil Filings (FY81 through FY00)**



## B. WORKLOAD

A main focus of this report is to determine what changes, if any, are actually occurring in workload in relation to case filings. To begin this analysis of workload, it was important to thoroughly review case filing patterns and trends. Because data associated with workload is limited, the analysis of workload is particularly difficult and complicated. Nonetheless, an understanding of filings provides important information about courts and adds to the understanding of workload. There is also enough ancillary evidence to strongly suggest workload has increased over the last 10 years. The spread of collaborative courts provides a good example of increased court workload that would not be apparent if one simply looked at case filing data.

The 1990s was a decade of reinvention for the courts. Judges and court executives around the state established “collaborative courts” or “therapeutic courts” to resolve cases involving addictive behavior or family law cases. Collaborative courts work in conjunction with treatment and social service agencies to address the multifaceted problems indicative of these cases. Each court builds a treatment process to ensure that enrolling participants cooperate and appropriate services are provided.<sup>2</sup> In July 2001, there were a total of 252 collaborative courts in California. Table 4 lists the types and numbers of problem-solving courts as of July 2001.

**Table 4. Collaborative Courts in California**

Type of Collaborative Court	No. of Courts	No. of Counties
Adult Drug Court	91	47
Community Court	2	2
Domestic Violence Court	30	26
Family Treatment Court	7	6
Homeless Court	6	6
Juvenile Drug Court	34	30
Dependency Drug Court	22	22
Mental Health Court	16	15
Re-Entry Drug Court	4	4
Teen/Peer Court	34	29
Other	6	5

<sup>2</sup> Bureau of Justice Assistance, *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts* (Washington D.C.: US Department of Justice).

The coordination efforts required for these courts to be effective, especially in the initial period of development, increases workload over the traditional court model. Partly this is due to the complexities of these case types and partly to changes in case processing. For example, these courts may be responsible for coordination with agencies such as: batterer intervention programs, substance abuse treatment, shelter services, mental health services, and probation services. Although there has been little research evaluating workload in this area, there are a number of indicators that suggest workload increases, including the following:

- More hearings: every two weeks for most courts at the beginning, stretching to every month or so later in the program;<sup>3</sup>
- Added paperwork for staff following each hearing;
- Meetings with, and monitoring of, the service providers by the judicial officer and the project coordinator; and
- Coordination by staff with service providers between court sessions.

Some of these workload increases may be offset over time by factors such as reduced recidivism, increased efficiencies, and fewer contested matters. More research is needed.

## **C. FACTORS AFFECTING FILINGS AND WORKLOAD CHANGES**

Factors that influence filing and workload trends can have either a statewide impact or a local impact. Factors with statewide impact may affect multiple case types, and most are external to the court. Significant external statewide factors that affect filings and workload are largely related to demographic changes, statutory changes, and the growth of self-represented litigants.

### **1. Demographic Changes**

Population is closely correlated with filings.<sup>4</sup> Generally speaking, the larger the population the larger the number of cases filed. This correlation largely holds true when comparing California to different states, and when comparing filing totals from county to county in California. No one is surprised that Los Angeles has more filings than Fresno and that Fresno, in turn, has more filings than Mariposa. But, as stated above, simple population growth alone does not fully explain filing patterns of the 1980s and 1990s.

On the other hand, the demographic changes occurring within the population do appear to impact filings and workload, although how these changes impact filings and workload is as complex as the changes themselves. Two demographic changes that appear to significantly influence filing and workload trends are (1) immigration and (2) the aging of Californians.

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<sup>3</sup> If there is a problem client, a judge may require weekly court appearances.

<sup>4</sup> A report by the National Center for State Courts puts the correlation between filings and population at .83. A Pearson's correlation over .80 is a strong correlation. V.E. Flango & Brian J. Ostrom, *Assessing the Need for Judges and Court Support Staff* (Williamsburg, VA: National Center for State Courts, 1996), p. 98.

## **a. Immigration**

Between 1980 and 2000, California's foreign-born population increased greatly. As summarized by the Public Policy Institute of California:

- One in four Californians is an immigrant, a higher proportion than in any other state. The proportion of the state's population that is foreign born is at its highest level since 1890. California has a much higher share of immigrants in its population than does the United States as a whole (26% versus 11%).
- Eighty-nine percent of California's immigrants are from Latin America or Asia, with slightly over half from Latin America (56%) and one-third (33%) from Asia.
- Immigrants live in all parts of California and comprise at least 10% of the population in 36 of the state's 58 counties.
- Immigrants in California are concentrated in young-adult age groups. Half of California's immigrants were between the ages of 22 and 44 in 2000, compared to less than 30% of the state's US-born residents.<sup>5</sup>

The impact of immigration on filings and workload is unclear, and there is little research on the subject. One obvious impact, however, is the need for language interpretation in the courts.

### **(1) Impact of Language Diversity**

The growing diversity in California has resulted in a proliferation of the number of languages spoken in the state. Many residents are non- or limited-English-speaking persons and need the assistance of interpreters when they go to court. The use of interpreters impacts the length of court proceedings and, consequently, the workload of judges and their courtroom-based staff.

Another aspect of court workload that is hidden from the filing numbers is the time it takes to obtain and manage interpreters. As the state's population continues to diversify, an increasing number of cases require interpreter assistance. Data on interpreter use in the 1980s are not available; however, a recent report for the Judicial Council examines interpreter use since FY95.<sup>6</sup> From FY95 through FY99, the number of Spanish-language interpreter service days increased by 19%.<sup>7</sup> The service days for interpreters of all languages increased by over 21%, an increase of a little over 29,000 service days in five years.

As of FY99, only six counties employed on-staff interpreters. In the other 52 counties, all interpreters are independent consultants who often work for several courts or other entities needing interpreter services. Even in the six counties with staff interpreters, the employees

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<sup>5</sup> Public Policy Institute, *Just the Facts: Immigrants in California* (2002) <[www.ppic.org/facts/immigrantscalif\\_july02.pdf](http://www.ppic.org/facts/immigrantscalif_july02.pdf)> .

<sup>6</sup> Walter R. McDonald & Assoc., Inc., *2000 Language Need and Interpreter Use Study* (San Francisco, CA: Judicial Council of California, 2000).

<sup>7</sup> In this same time frame, felony filings fell 5% and misdemeanor filings fell by 9%.

cannot translate for all needed languages, as virtually all these employees are Spanish-language interpreters. Accordingly, staff in all 58 counties must: (1) locate interpreters as needed; (2) negotiate time availability and discuss with the judge rescheduling of the upcoming matter; (3) until the late 1990s, negotiate compensation; (4) deal with any last-minute changes in both the court's and the interpreters' schedules; and (5) review and approve interpreter invoices when submitted.

In FY00, 46 counties together used the equivalent of 54.8 employees to coordinate interpreter services. Some of the smaller courts currently use as little as four employee hours a week for coordination activities. Los Angeles and Riverside, on the other hand, use the equivalent of 440 and 400 hours a week of employee time, respectively, to coordinate their use of contract interpreters.

## **(2) Impact on Case Types**

In general, immigrants may be less likely to use the courts to resolve disputes. The reasons for nonuse of the system are largely related to a lack of understanding of the American justice system, as well as cultural and linguistic differences that create barriers to access. Immigrants may also fear that using the justice system might somehow impair their immigration status.<sup>8</sup> Specific case types may be impacted by immigration as well. However, further empirical work will be necessary to establish links between the research highlighted below and actual influences on filing trends.

### **Family Law**

Research indicates that Hispanic immigrants, the largest immigrant population and the second largest ethnic population, exhibit few incidents of marital disruption in the first 10 years of residency. After 10 years, marital disruption increases.<sup>9</sup> The tendency toward non-disruption appears to be a family adaptation strategy to cope with the difficult economic and social circumstances that often confront immigrants. However, the strain of coping with the economic and social environment begins to undermine family relationships after about 10 years; consequently, marital disruption rates begin to approach the norm. By the second generation, Hispanics show marital disruption patterns similar to non-Hispanic whites, especially for those groups that have remained economically marginalized.<sup>10</sup> Nonetheless, the relatively stable marriage patterns of Hispanic immigrants in the first decade of residency may have contributed to the decline in divorce filings. At the same time, the disruptive patterns after the first decade of residency may account for some of the rise in Family—Other filings.<sup>11</sup>

There is also indication of marital disruption in Asian populations. The percentage of married-couple households decreased from 59.1% in 1998 to 56.7% in 2001 (California Current Population Survey, March 1998 and March 2001). While it is uncertain whether this decline is

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<sup>8</sup> Joanne I. Moore, ed., *Immigrants in Courts* (Seattle: University of Washington Press, 1999).

<sup>9</sup> Frank D. Bean, Ruth R. Berg, and Jennifer V. W. Van Hook, "Socioeconomic And Cultural Incorporation And Marital Disruption Among Mexican Americans" (Dec. 1996) 75(2) *Social Forces* 593(25).

<sup>10</sup> *Ibid.*

<sup>11</sup> Family—Other filings primarily include cases involving domestic violence, spousal support, and child custody/visitation changes and violations.



due to disruption or a growing number of Asians remaining single, there is a respectable body of research documenting marital disruption and domestic violence in Asian populations.<sup>12</sup>

### Juvenile Law

Several studies on second-generation children of immigrants found evidence of risk-taking behavior, especially among groups that have been economically marginalized. Risk behavior is manifested in such activities as dropping out of school, substance abuse, and gang activity.<sup>13</sup> These behavior patterns found in second generation adolescents may explain a part of the steady rise in delinquency filings for most of the 20 years studied.

### b. Aging of California

California's population is aging. Between 1990 and 2000, the population age 50 and older grew from 6.6 million to 8.1 million (18%). It is projected that this population will increase to 11.6 million by 2010, or another 30% after 2000.<sup>14</sup> One of the fastest growing populations in California are persons age 85 and older. Today, 1 in 77 Californians is over the age of 85.<sup>15</sup> This "graying" of California may impact filings for the following case types.

### Traffic

The rate of arrest for both DUI and hit-and-run cases committed by seniors (60+) compared to the general population is dramatically lower (-80%).<sup>16</sup> The growth of the older driving population may partially account for the significant declines in traffic misdemeanor filings in the 1990s.

### Civil—Auto PI

The number of traffic accidents per 100 drivers decreases steadily after age 20 through age 70.<sup>17</sup> The increasing proportion of persons in this population range may account for some of the decline in Auto PI filings. However, it should be noted that around age 65, the number of fatal or injury accidents begin to increase. Furthermore, the number of at-fault fatal or injury collisions dramatically increases between ages 75 and 85. Nationally, persons 65 and older represented approximately 10% of the driving population in 1999 but were involved in 14% of all fatal motor vehicle accidents.<sup>18</sup> How these interrelated findings impact traffic filings is not fully known and requires more research.

It may be that this impact will be felt more as the first wave of Baby Boomers reach their 60s in the next 10 years. Automobile collisions are more likely to result in injuries or fatalities to

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<sup>12</sup> See Y. L. Espiritu, "Gender and Labor in Asian Immigrant Families" (Jan. 1999) 42(4) *American Behavior Scientists* 628 - 647.

<sup>13</sup> See Ruben G. Rumbaut, "Assimilation and its Discontents: Immigrant Adaptation and Native-Born Responses in the Making of Americans, (Winter 1997) 31(4) *International Migration Review* 923(38).

<sup>14</sup> Department of Finance, *California Population Survey Report, March 2001*.

<sup>15</sup> California Dept. on Aging, *The Aging Baby Boomers: Influence on the Growth of the Oldest Old* <[http://www.aging.state.ca.us/html/stats/oldest\\_old\\_narrative.htm](http://www.aging.state.ca.us/html/stats/oldest_old_narrative.htm)>.

<sup>16</sup> Rhonda Aizenberg and Debbie M. McKenzie, *Teen and Senior Drivers* (Sacramento, CA: Department of Motor Vehicles and Beverly Foundation, 1997) p. 15.

<sup>17</sup> Gebers, et al., *supra*.

<sup>18</sup> Insurance Institute for Highway Safety, *Fatality Facts: Elderly* (October 2001 Fact Sheet) <[http://www.hwysafety.org/safety\\_facts/fatality\\_facts/elderly.htm](http://www.hwysafety.org/safety_facts/fatality_facts/elderly.htm)>.

elderly drivers and passengers than to the rest of the population because elder persons are more frail. It also follows that it takes less of a collision to cause any kind of injury to an elderly person.<sup>19</sup>

### Criminal—Elder Abuse

In its common usage, the term elder abuse represents a wide array of abusive behavior toward older adults. This mistreatment can be of one or more types: physical, emotional, or financial abuse and neglect that result in unnecessary suffering, injury, pain, loss, or violation of human rights.<sup>20</sup> Most elder abuse cases fall into one of three categories: domestic elder abuse, elder fraud, and institutional abuse.

Domestic elder abuse takes place in the elder's home or that of a spouse, adult child, or caregiver and involves physical and emotional abuse, neglect, and financial exploitation perpetrated by a family member or a caregiver. Nationally, the number of reported cases of domestic elder abuse, calculated by combining state reports and adjusting for differences in definitions and eligibility criteria, has increased steadily from 117,000 cases in 1986 to 296,000 cases in 1996.<sup>21</sup> Although it is not clear what portion of the increase is due to growth of elder population,<sup>22</sup> the numbers are assumed to be an undercount. A study commissioned by Congress in 1996 estimated that for every case reported to adult protective services, five cases were not reported.<sup>23</sup> Of course, not every report to adult protective services reaches the court system and becomes a filing, and there is not much data on the number of filings involving elder abuse that did not originate from a report to adult protective services. Nonetheless, the considerable growth of the elder population in the last 20 years has probably contributed to filing increases in both criminal and domestic violence proceedings, and will quite probably continue to impact these filings as the elder population undergoes another growth spurt in the next 20 years.

Approximately 70% of our nation's wealth is held by those aged 50 years and above. Over the next 10 years, there will be \$10 trillion in assets invested by the elderly.<sup>24</sup> Elder fraud involves financial predators engaged in the illegal exploitation of an elder's funds, property, or assets. There is little data quantifying elder fraud crime, but the National Elder Abuse Incidence Study mandated by Congress determined that 30% of all reported and substantiated elder abuse cases were financial exploitation, while 25% involved physical abuse.<sup>25</sup> Data on specific types of fraud help illuminate the magnitude of the problem. For example, telemarketing fraud robs U.S. citizens of at least \$40 billion annually, according to congressional estimates, and surveys conducted by the American Association of Retired People indicate that over half of those victims are age 50 and older.<sup>26</sup> Because fraud cases are not disaggregated in the criminal data collected, it is difficult to know the degree to which elder fraud impacts criminal filings. It is reasonable to

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<sup>19</sup> Insurance Institute for Highway Safety, Status Report, *Older Drivers Up Close—They Aren't Dangerous, Except Maybe to Themselves* (September 8, 2001) 36(8).

<sup>20</sup> Wolf, Rosalie S., "The Nature and Scope of Elder Abuse" (Summer 2000) 24(2) *Generations* 6.

<sup>21</sup> *Ibid.*

<sup>22</sup> Greater public awareness may have resulted in an increase in reporting.

<sup>23</sup> National Center on Elder Abuse, *National Elder Abuse Incidence Study: Final Report* (Washington DC: American Public Health Services Association, 1998).

<sup>24</sup> Senator Breaux, "Financial Predators and the Elderly," FDCH Congressional Testimony, May 20, 2002.

<sup>25</sup> National Center on Elder Abuse, *supra*.

<sup>26</sup> National Center on Elder Abuse, *supra*.

assume that there was some impact over the 20 years studied for this report. In the next 20 years, there is likely to be more instances of fraud as the elderly population grows.

Finally, institutional abuse involves neglect of the elderly living generally in nursing homes and other similar institutions. Neglect is very difficult to prove and, consequently, criminal charges are rarely filed. On the other hand, there has been some growth in civil filings related to neglect. Nonetheless, the numbers are few and have little impact on filing trends.

## 2. Statutory Changes

Between 1990 and 2000, 1,590 new bills that affect the courts became law. Of these bills, AOC staff identified 437 (27%) that would have some impact on filings and workload (see chapter on Methodology for a greater description of selection process).

### a. Statutes Impacting Filings

Statutory changes in the 1990s have had a material impact on filings for a few case types. Among the 437 new laws examined, 66 (15%) related to new crimes, causes of action, and violations. The statutes classified in the “New crimes, causes of action, and violations” category affect filing trends. A breakdown of the various statute types by case type is provided in the chart below.

Table 5. Statutes by Case Type

Case Type	Statute Purpose	No. of Statutes
Adult Crime	New or expanded crimes	28
	Reductions in adult crime	3
Civil Causes of Action	New or expanded civil causes of action	27
	Reductions in civil causes of action	1
Juvenile Crimes	New or expanded juvenile crimes	3
Family Causes of Action	New or expanded family law causes of action	5
Traffic Violations	New or expanded traffic violations	3

Each of these changes would be reflected in the filing totals. The relative frequency with which new crimes and causes of action have been created in the past 10 years is illustrative of the impact such statutes can have on filings, although data do not permit specific analyses of the impact of each statutory change.

### b. Statutes Impacting Workload

Workload changes caused by statutes are grouped broadly into two types: statutes with an impact on courtroom proceedings and statutes with an impact on staff workload. The former activities primarily affect judicial workload, although staff may be affected because many courtroom actions require staff-generated notices or create a record of court proceedings. The

difference between the two types of changes is that the laws with an impact on staff normally would not involve or affect the workload of judicial officers.

### **(1) Statutes That Impact Courtroom Proceedings**

Statutory changes that impact courtroom proceedings fall primarily into two categories:

1. Laws requiring judicial findings or creating rebuttable presumptions;<sup>27</sup> and,
2. New parties, witnesses or hearing participants, and procedures that are likely to extend courtroom time.

Both have an effect on the bench time spent, and may additionally impact the time required by staff to complete minutes of the proceeding or other follow-up paper work. Among the 437 statutes reviewed, many (more than 25%) require some activity. Thus, these statutes add workload to each filing. Even if the number of filings stays the same, the amount of work the court must do has increased. Following are examples of statutory changes affecting courtroom proceedings made during the 1990s:

<i>Civil:</i>	1996	Requires expert opinion in certain actions for professional negligence.
	1997	Requires the court to determine the extent of harm caused by polluting waters before issuing a temporary restraining order.
<i>Criminal:</i>	1991	Requires a hearing to determine whether to continue or rescind an order for medical treatment for a prisoner.
	1996	Requires an interpreter to be present in a proceeding involving domestic violence.
<i>Family Law:</i>	1992	Establishes factors that will rebut the presumption created by child support guidelines.
<i>Juvenile:</i>	1995	Allows victim statements to be made at a minor's disposition hearing if the acts would have been felonious if committed by an adult.
<i>Traffic:</i>	1994	Allows trial by written declaration for infractions.
<i>Probate:</i>	1991	Expands and changes creditor claim proceedings.

### **(2) Statutes That Impact Staff Workload**

Statutory changes that impact staff workload fall into three categories:

1. New noticing or reporting requirements to government agencies and others;
2. New case processing procedures; and
3. New requirements affecting records and/or record keeping.

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<sup>27</sup> If a statute creates a rebuttable presumption, and a party wishes to overcome the presumption, he or she will introduce evidence rebutting the presumption. Such a presentation clearly takes time, either in the courtroom or in the judge's chambers, as the judge reviews the written submission.

Representative examples from the selected subset of 437 new laws adopted in the 1990s follow:

*New noticing or reporting requirements:*

- 1991 Requires a report to the DOJ on criminal restraining orders.
- 1996 Requires the court to notify DMV of a failure to appear in certain DUI cases.

*New case processing procedures:*

- 1996 Requires sealing of jurors' personal information upon completion of a criminal proceeding.
- 1996 Requires the court to obtain a thumbprint of criminal defendants charged with a felony, which, upon conviction, must be attached to the minute order and filed.

*Records and records management:*

- 1993 On the victim's request, courts must order the identity of alleged victim to be made "Doe" in the records.

Occasionally, a statutory change clearly will impose significant additional work or save significant time. These changes generally are recognized by the Legislature, and their impact becomes part of the consideration whether or not to enact the law. Far more often, however, the change is considered minor, driven by the desire to address a problem. The workload impact of a bill may be deemed to be insignificant or it may not even be recognized, so it is not part of the deliberative process. Over time, as each of these "minor impact" bills becomes law, their cumulative impact on workload is major and virtually hidden in the sense that it is not reflected in a filing or even in a disposition statistic.

### **c. Federal Statutes**

Federal statutes increasingly impose greater informational demands from the state courts. Thomas A. Henderson, Director of the Washington Liaison Office of the National Center for State Courts, puts it this way: "Congress has placed an increased responsibility on state justice agencies to report information to state and national data repositories through such acts as the Brach Gun Act, the Violence Against Women Act, the Juvenile Justice Reform Act, and the Welfare Reform Act, and these information needs change each year."<sup>28</sup> Some of these reporting requirements are placed directly on courts. Others are placed on other agencies in the justice system, but often these agencies need information from courts to fully comply. The amount of time necessary to comply with the various federal statutes is not known, but the cumulative effect certainly impacts workload significantly.

### **3. Self-Represented Litigants**

Judges, staff, attorneys, and other observers agree that self-represented individuals increase workload. The focus of attention regarding the self-represented has largely been in the Family

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<sup>28</sup> "The Washington Review" (1998) 13(2/3) *The Court Managers* 35 - 36.

Law area. The following are examples of the increased workload in cases with self-represented individuals:

- A recently completed study for the Judicial Council of child support cases indicates that in just four years (FY95-96 through FY99-00), the percentage of cases in which both parents are unrepresented when the district attorney brings a child support action has grown from 79% to 96%.<sup>29</sup>
- When the district attorney is not involved and the support issue is solely between the two parents, a majority of cases (53%) now involve two self-represented parents, up from 47% in FY95-96.
- In Alameda County, the number of self-represented parties in Family Law cases has grown 9% since 1990 and 85% in that same time in Family Law—Other cases.<sup>30</sup>
- Similarly in San Diego, since 1992 the number of self-represented parties in Domestic Court (i.e., in both subcategories of Family Law) has grown by 32%, an increase of almost 4,000 cases. In calendar year 1999, 4 out of every 10 filings in San Diego involved self-represented litigants.<sup>31</sup>

The self-represented party phenomenon is not limited to Family Law, however. There is evidence that it is affecting civil cases as well. Alameda County provided the results of a recent survey it completed on the number of self-represented parties in the former “superior court” jurisdiction. The results are as follows:

- Since 1990, the number of self-represented parties in Family and Children cases, which includes probate cases, increased by over 30%.
- Over that same time period, the number of self-represented parties in General Civil cases (those involving claims exceeding \$25,000) increased by 26%.
- In the early 1990s, the number of self-represented plaintiffs in these civil cases was a little over twice the number of self-represented defendants.
- By the end of the 1990s, self-represented plaintiffs were about six times as high as the self-represented defendants, caused by both an increase in self-represented plaintiffs and a decrease in self-represented defendants.<sup>32</sup>

The self-represented parties affect workload for both judicial officers and staff. Some examples of their effect on workload are as follows:

*Judicial Officers:*

- More continuances are required because of incomplete documents, missing documents, failure to provide information to the court in a timely way, and failure to arrange for needed witnesses.

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<sup>29</sup> David M. Betson et al., *2001 Review of California’s Statewide Uniform Child Support Guideline* (San Francisco, CA: Policy Studies, Inc., 2001) p. 27 (draft report).

<sup>30</sup> Family—Other cases involve domestic violence, spousal support, and child support. Summary data provided by the Alameda County Superior Court’s Planning and Research Unit to the author.

<sup>31</sup> Data provided by the San Diego County Superior Court to the author.

<sup>32</sup> Interestingly, the number of cases in which both parties were self-represented barely changed throughout the decade. The shift toward more plaintiffs and fewer defendants being self-represented raises issues of access and due process. Those issues, however, are outside the scope of this report.

- Additional legal research is needed because of the failure to cite relevant law or to present it properly to the court.
- Additional court time is needed to explain court procedures.

*Staff*

- Answering questions of the self-represented to which an attorney would know the answer.
- Reviewing filed forms more carefully to be sure all needed items are complete.
- Preparing paperwork and adjusting calendars for continuances.

## II. METHODOLOGY

### A. DATA SOURCES

The original focus of this report was filing and workload trends in the 1990s. However, to test whether changes in the 1990s had their origin in the 1980s, filing data was collected and examined from FY80-81 through FY99-00. The filing data over the 20-year span offer numerous insights into the filing and workload trends seen only during the 1990s.

#### 1. Filing Data

Filing data were obtained from the Judicial Branch Statistical Information System (JBSIS). The fiscal year data are the sum of the data collected from the trial courts in monthly statistical reports submitted to the AOC. Analysis of the data rendered a statewide picture of filing trends over the last 20 years as well as a picture of filing trends for specific case types. The case types for this study mirror those used in JBSIS and are as follows:

**Table 6. Case Categories and Affiliated Individual Case Types**

General Civil	Criminal	Family	Other
a. Unlimited Civil	a. Felonies	a. Family-Marital	a. Mental Health
1. PI-Auto	b. Misdemeanors	b. Family-Other	
2. Other PI/PD	c. Infractions		
3. Civil Complaints			
b. Limited Civil	Traffic	Juvenile	
c. Small Claims	a. Misdemeanors	a. Delinquency	
d. Probate	b. Infractions	b. Dependency	

To assess whether other factors affected filing patterns, courts were additionally arrayed, grouped, and analyzed based on their population. Three population groupings were constructed for this purpose, which are described below in Table 7:

**Table 7. Court-Size Groupings**

Largest (n=3)	Large/Medium (n=24)		Smallest (n=31)			
Los Angeles	Alameda	San Bernardino	Tulare	Alpine	Lake	Shasta
Orange	Butte	San Francisco	Ventura	Amador	Lassen	Sierra
San Diego	Contra Costa	San Joaquin		Calaveras	Madera	Siskiyou
	Fresno	San Luis Obispo		Colusa	Mariposa	Sutter
	Kern	San Mateo		Del Norte	Mendocino	Tehama
	Marin	Santa Barbara		El Dorado	Modoc	Trinity
	Merced	Santa Clara		Glenn	Mono	Tuolumne
	Monterey	Santa Cruz		Humboldt	Napa	Yolo
	Placer	Solano		Imperial	Nevada	Yuba
	Riverside	Sonoma		Inyo	Plumas	
	Sacramento	Stanislaus		Kings	San Benito	



## 2. Workload Data

The data on workload reported to the AOC by the trial courts are minimal; there are essentially limited to the number of court and jury trials. To supplement that data, *existing* reports and memoranda from the trial courts<sup>33</sup> including more than 50 FY02-03 budget requests data supporting workload changes were reviewed. Those, too, were limited, but they add rich examples and illustrations of workload at the trial court level independent of the number of cases filed.

Workload that remains unmeasured or unarticulated was considered to be “hidden workload” for the purposes of this report. It is hidden because the AOC, the Department of Finance, the Legislative Analyst’s Office, and legislators have no information to illuminate it. Since the workload exists but is not captured in any of the filing numbers, it is not measured or reported; so, it is unseen and unknown. Strategies for identifying hidden workload included interviews with AOC staff, judges, court staff, attorneys, and independent researchers. Other strategies involved reviewing statutory changes from FY90-91 through FY99-00 and relevant research conducted in both California and other state courts.

## 3. Statutory Summary

Between 1990 and 2000, 1,590 new “bills that affect the courts and are of general interest to the legal community” became law.<sup>34</sup> AOC staff reviewed all 1,590 proposed laws and identified 437 (27%) for their impact on filings or workload. To identify bills that would impact filings or workload, AOC staff established 11 categories of changes that would likely result in either an increase or decrease in filings and/or an increase or decrease in workload for court personnel. The 11 categories are:

1. New crimes, causes of action, or violations
2. Hearing changes
3. Changes in courtroom proceedings
4. Alternative procedures for existing processes or cases
5. Alternative Dispute Resolution (ADR) programs for civil, misdemeanor, and family law cases
6. New case processing requirements
7. New time requirements affecting case events or processing
8. Records management requirements
9. Sentencing changes
10. Attorney fee incentives or disincentives
11. Miscellaneous fee changes

Thus, a bill requiring an additional hearing (a change in courtroom proceedings) would add to workload and, consequently, be identified as a bill likely to cause a change in workload for court personnel.

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<sup>33</sup> In order not to burden trial courts unduly and because of time constraints on this analysis, trial courts were asked not to run special reports or undertake special studies for this study.

<sup>34</sup> From the introduction to the *2000 Legislative Summary* published by the Office of Governmental Affairs of the AOC in December 2000.

## **B. CAUTIONS AND LIMITATIONS REGARDING THE DATA**

Both filing and workload data were examined for this report; each has its own unique issues and limitations.

### **1. Filing Data**

Filing data from the monthly statistical reports submitted by the trial courts to the AOC are limited; their use therefore warrants some caution. The most critical problems with the data from the reports are as follows:

- ***Data are missing or incomplete.*** Some courts have not submitted data for all case types for all years, so JBSIS is unavoidably incomplete. In addition, when the numbers reported by a particular court appear to AOC staff to be questionable, the matter is referred back to the trial court. If a trial court does not change the numbers, the report is submitted as is and the irregularities, to the extent that they reflect errors, remain. However, the inaccurate and/or incomplete data probably has had little or no impact on the broad trends and conclusions reported here.
- ***Data are inconsistently reported.*** In some cases, courts fail to follow the AOC-provided definitions and instructions for categorizing cases. This could result in case filings that are underreported for some case types and overreported for other case types. This error probably affects all case types to some unknown degree.
- ***Data for individual case types are reported under an umbrella category.*** If a statistical case category includes several case types, filing and other information about the individual case types cannot be separated out. Thus, important changes in several case categories cannot be identified and analyzed. Examples of cases that cannot be separated from broader case categories include contract cases, drug cases, domestic violence cases (either civil or criminal), family support cases, professional malpractice, and complex civil cases.

### **2. Workload Data**

The current data from JBSIS do not capture many data elements that measure or identify workload. Most of these missing data elements will be captured when all courts use the revised statistical reporting system. Therefore, one cannot obtain statewide data on key workload indicators. This limits documentation of workload changes and the conclusions that can be reached.

To attempt to overcome this limitation, several alternative methods of unearthing workload data were pursued. While none of the following provided a perfect solution, valuable additional information was uncovered:

- The 27 largest courts<sup>35</sup> were asked to submit any reports or studies already produced that address workload change during the 1990s; however, only eight courts submitted such management or statistical reports.
- Thirty-one (31) FY01-02 budget requests for new case processing support staff were reviewed for relevant statistical support data. These data from trial courts are valuable adjuncts to the many opinions about workload gathered via interviews. Because of their limited number, however, they should only be used to suggest statewide impacts, but not conclusive evidence of a statewide impact.
- Finally, data from other states were used to provide a measure of confidence that a workload change is supported by data in *some* courts, and those data can be regarded as informative even if not definitive.

Even if there were additional workload statistics, it is important to understand that these workload impacts can vary considerably from court to court. Given California's tremendous diversity and differences among counties, it is probably not possible to identify statewide workload impacts with any confidence without data from all 58 courts.

### 3. Statutory Summary

This statutory analysis has two limitations:

1. To select statutes for review, AOC staff used the brief paragraph written by OGA about each of the 1590 statutes proposed between 1990 and 2000 that are of interest to the courts. Although OGA works diligently to capture in the summary the scope and importance of each statute, it is likely that there were changes in the 437 selected statutes that were not categorized because they were not in the summary paragraph. It is also likely that some of the other 1,153 statutes not reviewed contain provisions that have had a significant impact on workload. As with the data obtained from trial courts regarding workload changes, the statutes identified and discussed in this report should be deemed illustrative and representative, not definitive.
2. There is a differential impact of a particular new statute on each of the various courts. Implementation will have some bearing on the degree of impact for any one court, as will the varying interpretations of what the new statute requires. The result may be that different procedures are put into place and, consequently, there are differing workload impacts. Many other factors influence workload consequences, including a court's computer software, staffing levels, and administrative infrastructure. This variable reality must be borne in mind in all discussions of workload impacts driven by statutory changes.

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<sup>35</sup> The 31 other courts *may* have reports or data that contain information on workload, but the AOC is trying to respond to many requests from trial courts that the number of surveys and special requests for information be as limited as possible. It is likely that, because of the case management systems and staff levels in these smaller courts, the relevant reports have not ever been generated. In order not to burden these smaller courts unduly, however, the request was limited to the largest 27 courts.