



SURVEY OF UNITED STATES ATTORNEYS, 2005

SUMMARY REPORT

Projections of U.S. Attorney Caseload for the Purpose of Forecasting the Impact on Detention

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EXECUTIVE SUMMARY

Between 2000 and 2004 the average daily population (ADP) of prisoners detained pending adjudication of criminal charges increased by 42 percent, from 34,907 to 49,600. During 2003 and 2004, the ADP exceeded the population levels upon which the Department of Justice's annual budget requests were based by 2,075 and 4,438 detainees on an average daily basis, respectively. Generally, the higher detention populations were the result of greater than anticipated increases in the number of persons arrested/booked by the U.S. Marshals Service and subsequently prosecuted by the U.S. Attorneys. Nearly one-half of the 14,700-bed increase that occurred between 2000 and 2004 was observed in the eight federal judicial districts that comprise the SouthWest border area of the United States. As a result of these unanticipated increases in the detention population, supplemental funding for detention had to be identified – generally from within existing DOJ funding – and authorized by Congress. In response to the budgetary shortfalls that occurred during fiscal years 2003 and 2004, Congress, as part of the conference reports accompanying the 2004 and 2005 appropriations, expressed concern that OFDT did not have a sound methodology for anticipating detention needs and costs and that the Department of Justice was not adequately considering department-wide initiatives during budget formulation. Consequently, as part of the fiscal year 2005 Commerce-Justice-State appropriation, Congress directed the Attorney General to ensure "... that the Department's entire law enforcement agenda, including its prosecutorial policies and detention resources is thoroughly considered when determining the future funding needs for [OFDT]." Based on the general notion that the U.S. Attorneys ultimately control the inflow of new criminal cases into the federal criminal justice system, OFDT concluded that the U.S. Attorneys could serve as a valuable resource for assisting OFDT and BOP with projecting the number of federal arrests/bookings and subsequent convictions. Accordingly, to comply with the Congressional directive, during May 2005 OFDT – in conjunction with the BOP and the Office of the Deputy Attorney General – conducted a survey of the 93 U.S. Attorneys to solicit information about current and future law enforcement initiatives, district-level law enforcement priorities, and their anticipated criminal caseloads for fiscal years 2005 through 2007. Based on the information provided by the U.S. Attorneys, it is anticipated that by 2007 the U.S. Attorneys' criminal caseload will increase by 32 percent, from 88,275 during fiscal year 2004 to 116,113 during fiscal year 2007. About half of this increase in caseload is anticipated in the eight judicial districts that comprise the SouthWest border of the United States. Most U.S. Attorneys anticipate that increased caseload will be result of the increased productivity of their existing staff; only a third anticipate increases in the number of assistant U.S. attorneys in their districts. Additionally, most U.S. Attorneys anticipate increased referrals of priority prosecutions from federal law enforcement agencies and increased assistance from state and local law enforcement with targeting violent, drug, and recidivist offenders for federal prosecution. Much of the increase in immigration-related U.S. Attorney workload has been the product of measures to expedite, or fast-track, immigration offenders through the federal criminal justice process. Districts with fast-tracking programs have prosecuted and expect to continue to prosecute more immigration offenders than other districts. In addition to increasing the productivity of the assistant U.S. attorneys, these fast-track programs have a substantial impact on the length of time defendants are held in detention pending adjudication and subsequent commitment to the Bureau of Prisons. For example, in those districts with fast-track programs, time-in-detention was 98 days, on average, for defendants charged with illegal entry; by comparison, in other districts time-in-detention was 179 days, on average, for defendants charged with the same offense. Based on the anticipated increases in U.S. Attorney caseload through fiscal year 2007, the federal criminal detention population could be expected to increase by 33 percent, from an average daily population of 49,600 during fiscal year 2004 to 66,069 during fiscal year 2007. More than a third of this increase is projected to occur along the SouthWest border. In contrast to projections made independent of the survey responses, the U.S. Attorneys generally expect a greater increase in the number of defendants to be charged with drug offenses compared to weapons offenses through 2007.

As part of the fiscal year 2001 Commerce-Justice-State appropriation, the Office of the Federal Detention Trustee (OFDT) was created, in part, to better manage, plan, and coordinate federal detention resources.¹ One of OFDT's primary areas of responsibility is to formulate budgetary resources to support the federal criminal detention program. Projecting future detention trends and estimating budgetary resource requirements for criminal detention has historically been a difficult task. At the macro-level, impediments to accurately projecting the detention population include the dynamic nature of the federal criminal justice process; ongoing changes in federal criminal law and policy; changes in federal law enforcement priorities; and events external to the criminal justice process such as unforeseen events that might cause mass illegal migration to the United States. At the micro-level, these macro-level impediments translate to volatility in (1) the number of federal arrests/bookings reported to the USMS, (2) prosecutorial priorities and declination criteria, (3) offender/offense characteristic necessitating pretrial detention, and (4) case processing time resulting from overburdened criminal justice resources. Accordingly, projecting the impact of systemic and/or short-term events or initiatives that will impact arrests/bookings is the greatest challenge for accurately and reliably projecting the federal criminal detention population.

Between 2000 and 2004 the average daily population of prisoners detained pending adjudication of criminal charges increased by 42 percent, from 34,907 to 49,600. Nearly one-half of this 14,700-bed increase was observed in the eight federal judicial districts that comprise the SouthWest border area of the United States. (See, Figure 1.) As a result of greater than anticipated increases in the number of immigration offenders arrested/booked by the USMS during fiscal years 2003 and 2004, during these years the criminal detention population exceeded *budgeted* levels (by 2,075 and 4,438 detainees on an average daily basis, respectively) thereby resulting in projections of substantial budgetary shortfalls. These projected budgetary shortfalls were ultimately accommodated through supplemental appropriations and Congressional authorization to re-program funds from other Department of Justice components.

Generally, the increase in the detention population is the result of substantial increases in the number of persons arrested/booked by the USMS. Between 2000 and 2004 the number of persons arrested and booked by the USMS increased by 29 percent, from 134,901 to 173,617. More than half of this 38,716 increase in arrests/bookings was observed in the eight federal judicial districts that comprise the SouthWest border area of the United States. (See, Figure 2.) Arrests for immigration offenses and material witnesses accounted for 40% of the total increase in arrests/bookings; supervision violations, 22%; weapon offenses, 17%; and drug offenses, 16%. (See, Figure 3.)

Unlike the projection of persons admitted to the incarcerated population, there is no clear and patent leading indicator of the number of persons to be admitted to the USMS detention population. Arrest and the subsequent detention of defendants pending adjudication is at the beginning of the criminal justice process and, accordingly, there are no preceding events that could be used as leading indicators.² By contrast, because of the substantial time lag (approximately 12 months, on average) between indictment and sentencing/incarceration, the Federal Bureau of Prisons is able to use – with some reliability – the rate of change in criminal indictments filed by U.S. attorneys as a leading indicator of the change in future admissions to prison.³ Consequently, absent a reliable leading indicator for new arrests/bookings, OFDT has used time series-based statistical models to estimate the size of future USMS arrest/booking cohorts.⁴ However, in an environment where the underlying trend in arrests/bookings can be substantially impacted in the short-term by exogenous factors such as changing law enforcement

1. Pub. L. 106-553, 114 Stat. 2762 (2000).

2. The General Accounting Office has proposed using budgetary resources to estimate changes in federal criminal justice workload and the federal prison population. (See, General Accounting Office, Federal Criminal Justice System. A Model to Estimate System Workload. (GAO/GGD-91-95) (1991).) Notably excluded from the GAO model was the impact on the detention population resulting from changes in budgetary resources of federal law enforcement agencies.

3. Additionally, the BOP prison population is proportionately less sensitive to changes in the admission cohort: approximately 90% of sentenced prisoners in the prison population at the beginning of a 12-month period are in the population at the end of that period. By contrast, less than 10% of detained prisoners remain in the detention population at the end of a 12-month period.

4. Time-series models are based on the assumption that historic trends – and the factors that influenced those trends – are useful predictors of future events and the observed relationships will continue into the near future.

priorities, these time-series models may not always result in valid projections of federal arrests/bookings.⁵

In response to the budgetary shortfalls that occurred during fiscal years 2003 and 2004, as part of the conference reports accompanying the 2004 and 2005 appropriations, Congress expressed concern that OFDT did not have a sound methodology for anticipating detention needs and costs.⁶ Further, as part of the fiscal year 2005 Commerce-Justice-State appropriation, Congress directed the Attorney General to ensure "... that the Department's entire law enforcement agenda, including its prosecutorial policies and detention resources is thoroughly considered when determining the future funding needs for [OFDT]."^{7,8} Based on the general notion that the U.S. Attorneys ultimately control the inflow of new criminal cases into the federal criminal justice system, OFDT concluded that the U.S. Attorneys could serve as a valuable resources for assisting OFDT and BOP with projecting the number of federal arrests/bookings and subsequent convictions. Accordingly, to comply with the Congressional directive, OFDT – in conjunction with the BOP and the Office of the Deputy Attorney General – conducted a survey of the 93 U.S. Attorneys to solicit information about current and future law enforcement initiatives, law enforcement priorities, and their anticipated criminal caseloads for fiscal years 2005 through 2007. Additionally several questions addressing "environmental" factors that could influence U.S. Attorney caseload and case processing time were also included in the questionnaire. (See, Appendix C.) The information collected through the survey would be used to identify and describe the law enforcement priorities of the 93 U.S. Attorneys for fiscal years 2006 and 2007.

ROLE OF THE U.S. ATTORNEYS

The U.S. Attorneys, as the principal litigators for the federal government, serve as the chief federal law enforcement official in their respective communities. As the chief federal law enforcement official, the U.S. Attorneys investigate and prosecute a wide range of criminal activities and handle the majority of cases prosecuted by DOJ – both criminal and civil.⁹ While historically the U.S. Attorneys were responsible for enforcing uniquely federal offenses, their responsibilities began to change with the rise of organized crime during the first half of the 20th Century. The increased responsibilities of the U.S. Attorneys were codified through enactment of legislation such as the Omnibus Crime Control and Safe Streets Act of 1968, the Gun Control Act of 1968, the Organized Crime Control Act of 1970 and the Drug Abuse Prevention and Control Act of 1970.¹⁰ This legislation resulted in a major expansion of the law enforcement jurisdiction of the federal government and resulted in new law enforcement authorities assigned to the U.S. Attorneys, such as wiretapping authority and the enforcement of firearms and drug trafficking laws.

Drawing upon the momentum of the 1968 and 1970 legislation, during the Carter Administration Attorney General Griffin Bell began to envision a more robust role for the U.S. Attorneys as prominent law enforcement officers in American cities. As part of his vision, the U.S. Attorneys would be responsible for organizing all federal law enforcement agencies and coordinate the attack on violent crime and drug trafficking. Additionally, the U.S. Attorneys would be authorized to organize and manage multi-jurisdictional task forces between federal, state, and local agencies to leverage tougher federal statutes for targeting and incapacitating violent offenders and offenders involved with major drug trafficking organizations.¹¹ Attorney General Bell's vision endures today through several decades old initiatives

5. To the extent that these "exogenous" factors could be anticipated, parameters could be incorporated into the model based on the observed impact of similar events.

6. See, S. REP. NO. 344, 108th Cong., 2nd Sess. (2004); H. R. REP. NO. 576, 108th Cong., 2nd Sess. (2004). *But, see*, H. R. CONF. REP. NO. 792, 108th Cong., 2nd Sess. (2004) (in which the conferees recognize "that the Trustee has made progress in refining the detention forecasting model ... and ... encourage the much-needed work to continue.")

7. H. R. CONF. REP. NO. 792, 108th Cong., 2nd Sess. (2004).

8. As part of the fiscal year 2005 Commerce-Justice-State appropriation, the conference committee directed DOJ to assess the impact of hiring an investigator on the workload of the U.S. Attorneys, the U.S. Marshals Service, the Detention Trustee, and the Federal Prison System. (See, H. R. CONF. REP. NO. 792, 108th Cong., 2nd Sess. (2004).)

9. Cases may also be prosecuted by the DOJ litigating divisions.

10. See, Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351, 82 Stat. 197 (1968)); Gun Control Act of 1968 (Pub. L. 90-618, 82 Stat. 1213); Organized Crime Control Act of 1970 (Pub. L. 91-452, 84 Stat. 922 (1970)); Comprehensive Drug Abuse and Prevention Act of 1970 (Pub. L. 91-513, 84 Stat. 1236 (1970)).

11. Roger Connor, Michael Dettmer, and Redding Pitt. *The Office of the U.S. Attorney and Public Safety: A Brief History*. Proceedings of the 1999 Symposium on the Changing Role of U.S. Attorneys' Offices in Public Safety (1999).

such as the *Organized Crime and Drug Enforcement Task Force (OCDETF)* and newer initiatives such as the *High Intensity Drug Trafficking Area (HIDTA)* program and *Project Safe Neighborhoods* program.¹²

The terrorist attacks of September 11, 2001, however, significantly changed the focus of federal law enforcement. Following the September 11th terrorist attacks, federal law enforcement resources have been increasingly redirected and new law enforcement initiatives implemented to secure the Nation's borders, identify and track potential terrorists, and to apprehend illegal aliens.¹³ Currently, the top priority of the 93 U.S. Attorneys is to disrupt and prevent terrorist acts and to prosecute those involved in terrorism or the support of terrorism.¹⁴ Through *Anti-Terrorism Advisory Councils* established in each district, the U.S. Attorneys coordinate the investigation of threats and incidents between federal, state, and local law enforcement agencies. This increased focus on domestic security and attention on securing the Nation's borders has substantially impacted the workload and caseload of the U.S. Attorneys, particularly in those districts that comprise the United States' international borders. For example, 21 percent of the 89,000 defendants charged with a criminal offense during fiscal year 2004 were charged with an immigration offense. Additionally, the U.S. Attorneys filed terrorism-related charges against 725 defendants.¹⁵ By contrast, during fiscal year 2000, 19 percent of defendants prosecuted were charged with an immigration offense and no terrorism-related prosecutions were reported.¹⁶

The majority of criminal referrals to the U.S. Attorneys are initially received from the federal investigative agencies of the Department of Justice and the Department of Homeland Security. Criminal referrals are also routinely received from state and local investigative agencies and other federal authorities. For example, during fiscal year 2003, the U.S. Attorneys received 129,388 new matters for prosecutorial evaluation.¹⁷ Of these new matters, 21 percent were received from the FBI; 17 percent, agencies comprising the former INS; 16 percent, the Drug Enforcement Administration; 11 percent, the Bureau of Alcohol Tobacco and Firearms; 7 percent, agencies comprising the former U.S. Customs Service; 5 percent state and local law enforcement authorities; and 25 percent all other federal agencies.¹⁸ Once a referral, or matter, is received, the U.S. Attorney evaluates the appropriateness of criminal charges and, if deemed appropriate, initiates a criminal prosecution. Prosecutorial decisions are based on a variety of factors including the merits of the case, the federal interest, district-level policies, and available resources. In many instances, the arrest of a suspect may not be made until after the U.S. Attorney has evaluated and accepted the matter for federal prosecution.¹⁹

Because the U.S. Attorneys control the flow of offenders into the federal criminal justice process, greater understanding of their workload and caseload can provide valuable insight into future changes in federal arrests/bookings and the resulting detention and prison populations.

METHODOLOGY

Based on the notion that the U.S. Attorneys ultimately control the inflow of new criminal cases into the federal criminal justice system, OFDT concluded that the U.S. Attorneys could serve as a valuable

12. See, U.S. Department of Justice. Executive Office for the Organized Crime and Drug Enforcement Task Force; Executive Office of the President. Office of National Drug Control Policy; and PROJECT SAFE NEIGHBORHOODS: AMERICA'S NETWORK AGAINST GUN VIOLENCE. (<http://www.psn.gov>)

13. Get citation.

14. Executive Office for United States Attorneys. United States Attorneys' Annual Statistical Report. Fiscal Year 2004. (2005).

15. *Id.*

16. Executive Office for United States Attorneys. United States Attorneys' Annual Statistical Report. Fiscal Year 2000. (2001).

17. These new matters reflect only those matters for which an assistant U.S. attorney spent more than one hour evaluating. Additionally, excluded from this statistic are Class B and C misdemeanor offenses prosecuted by the U.S. Attorneys.

18. Federal Justice Statistics Resource Center. Suspects in Matters Received, Fiscal Year 2003.

(See, http://fjsrc.urban.org/noframe/wqs/q_freq.cfm?var1=AGENCY&agency=EO_MAT&value1='All'&saf=in&year=2003)

19. For example, for immigration offenders, the timing of the arrest may precede the consideration by the U.S. Attorney. However, in the event of a declination by the U.S. Attorney, the illegal alien would remain in federal custody but jurisdiction would revert from the U.S. Marshals Service to U.S. Immigration and Customs Enforcement for removal. Historically, few referrals for immigration offenses are declined for prosecution by the U.S. Attorney. Of the 20,378 felony immigration offenders referred for prosecution during fiscal year 2003, the U.S. Attorneys declined 5.6 percent. (See, http://fjsrc.urban.org/noframe/wqs/q_cross.cfm?var1=DECFLAG&agency=EO_MAT&value1='All'&saf=out&var2=SUB_CAT&value2='420'&year=2003)

resource for assisting OFDT and BOP to project federal arrests/bookings and convictions.²⁰ The U.S. Attorneys – as the chief federal law enforcement officials in their district – are most familiar with the district-level law enforcement priorities and available resources for investigating and prosecuting criminal cases. Further, future criminal caseloads would increase or decrease based on changes in national- and district-level priorities and available resources. Accordingly, in conjunction with the BOP and the Office of the Deputy Attorney General, OFDT undertook an effort to conduct a survey of the 93 U.S. Attorneys to solicit information addressing their anticipated criminal caseload for fiscal years 2005 through 2007.

Survey Instrument

To conduct the survey, OFDT developed an Internet-based survey application. The survey consisted of three major sections: (1) a presentation of historical caseload data for fiscal years 2000 through 2004; (2) questions addressing U.S. Attorney caseload projections for fiscal years 2005 through 2007; and (3) questions addressing “environmental” factors that could influence U.S. Attorney caseload and case processing time. Additionally, once the survey was completed, respondents were presented with a summary of responses and an approximation of the impact the anticipated change in the criminal caseload would have on the federal detention population. (See, Appendix C.)

Historical criminal caseload. To provide a baseline for future caseloads, respondents were provided with the district's historical caseload for the years 2000 through 2004. The caseload counts were reported for six generic offense categories: violent, property, drugs, weapons, immigration, and other.

Anticipated criminal caseload, Fiscal Year 2005 through 2007. For each of the six offense categories, respondents were asked to provide a “projection” of their district's anticipated criminal caseload for 2005, 2006, and 2007. The projection reflected a percentage increase over the prior year's caseload.

“Environmental” questions. Respondents were also asked to answer several questions addressing “environmental” issues that could possibly impact future detention and prison populations. These environmental questions addressed issues relating to immigration, case processing time, recent decisions addressing the constitutionality of the federal sentencing guidelines, and reasons for anticipated growth in the criminal caseload.

5 District Pilot

Following development of the survey application, in February 2005 the application was piloted in five districts. The U.S. Attorneys for the five pilot districts were members of the Attorney General Advisory Committee. Following the pilot, the U.S. Attorneys were debriefed on the appropriateness of the questions and usability of the survey application. The changes recommended by the pilot participants, primarily addressing the “environmental” questions, were incorporated into the survey application.

Full Survey

On May 9, 2005, each of the 93 U.S. Attorneys was notified by the Director of the Executive Office for U.S. Attorneys (EOUSA) of the survey requirement by e-mail. Included in the notification was a memorandum from the Deputy Attorney General describing the importance of the survey to DOJ, and specifically OFDT and BOP. (See, Appendix A.) In a separate transmission from OFDT, each U.S. Attorney was provided with instructions for accessing the survey application on the Internet and completing the survey, including the time-frame for completing the survey. (See, Appendix B.) Respondents were given approximately two weeks to complete the survey. All 93 U.S. Attorneys successfully completed the survey.

Most respondents completed the survey with little difficulty. However, in some instances respondents had difficulty accessing the survey application as a result of particular configurations of their Internet browser. (The survey application relied on the use of JAVA scripting. In some districts the use of JAVA scripting was disabled by the network administrator. Accordingly, the survey application could not be

20. Re-arrests for supervision violations can be separately estimated, using survival-based statistical techniques, based on the number of persons under active supervision by federal probation officers.

accessed by these respondents. For these districts, the survey instrument and supporting documentation were faxed, the survey completed manually by the district, and the responses keypunched by OFDT.) Further, because the U.S. Attorney delegated responsibility for completing the survey to the first assistant or the criminal chief, there were instances in which the log-in and user instructions, included in the OFDT e-mail, were not appropriately routed to the person responsible for completing the survey. Accordingly, in some instances, user log-ins and instructions had to be re-transmitted to the functional respondent.²¹

SUMMARY OF SURVEY RESPONSES

Between 2000 and 2004, the number of persons prosecuted by the 93 U.S. Attorneys increased by 20 percent, from 73,287 to 88,275.²² Of this increase, 33 percent represented increases in the number of firearms offenders prosecuted; 32 percent, immigration; 18 percent, drugs; 11 percent, property; and 6 percent, all other offenses. While the total caseload increased during the 2000-2004 period, in those districts comprising the MidAtlantic, MidWest, and SouthEast, the total U.S. Attorney caseload decreased by a total 11,567. By contrast, the U.S. Attorney caseload in the districts comprising the SouthWest increased nearly sixfold, from 5,076 to 28,902. In the NorthEast and West U.S. Attorney caseload increased more modestly from 9,867 to 11,295 and 7,863 to 9,164, respectively.

By fiscal year 2007, the U.S. Attorneys anticipate that their criminal caseload will increase by 32 percent (compared to fiscal year 2004) to 116,113. (See, Figure 4.) While caseloads are anticipated to increase in all regions, the greatest growth is anticipated in the eight districts comprising the SouthWest border of the United States. These eight judicial districts account for approximately half of the total anticipated growth in the U.S. Attorney caseload during the 2004-2007 period. By comparison, the districts that comprise the MidAtlantic region are expected to account for 12 percent of the anticipated growth in the U.S. Attorney caseload; the MidWest, 12 percent; the NorthEast, 8 percent; the SouthEast, 11 percent; and the West, 8 percent.

Similar to the growth in the U.S. Attorney caseload during the 2000-2004 period, the anticipated growth primarily reflects continued growth in the immigration-related caseload: approximately 40 percent of the growth in caseload anticipated through 2007 represents increases in the number of immigration offenders prosecuted. By comparison, 32 percent reflects increases in drug prosecutions; 10 percent, weapons; 8 percent property; and 10 percent, all other offenses. (See, Figure 5.) At the district level, the types of offenses routinely prosecuted in each district generally dictated the anticipated growth. U.S. Attorneys whose districts focused on prosecuting violent, property, and drug cases generally anticipated smaller increases in their district's caseload compared to those districts that expected to focus on prosecuting immigration and weapons cases.

Two-thirds of the U.S. Attorneys indicated that the anticipated increase in their district's caseload would be the result of continued increases in the productivity of their existing staff.²³ By contrast, only 35 percent anticipate that the increase will be the result of increases in the number of assistant U.S. attorneys in their districts. Most U.S. Attorneys anticipate increases in the number of referrals of priority prosecutions from federal law enforcement agencies (59%) and increased assistance from state and local law enforcement that targets violent, drug, and/or recidivist offenders for federal prosecution (75%).

21. For future surveys, it might be more prudent to identify the functional respondent in advance and direct technical instructions to that person rather than the solely the U.S. Attorney.

22. Statistics represent only those defendants prosecuted before U.S. district court judges. An additional 14,000 defendants charged with Class A misdemeanors are disposed of before magistrate judges.

23. This perception of the U.S. Attorneys is statistically valid. Controlling for the type and number of cases prosecuted in the various districts, U.S. Attorneys who reported "general increases in AUSA productivity" as one of the reasons for the anticipated increase in caseload, anticipated 57 more additional defendants prosecuted, on average, annually over the three year forecast period, than other districts. By contrast, there did not appear to be a conclusive statistical relationship between anticipated increases in caseload and anticipated increases in the number of AUSAs in the district. These findings are in contrast to earlier reports by the General Accounting Office which concluded that "... more U.S. Attorneys result in more defendants brought to court ..." (See, General Accounting Office. FEDERAL CRIMINAL JUSTICE SYSTEM. A MODEL TO ESTIMATE SYSTEM WORKLOAD. (GAO/GGD-91-75) (1991).)

Immigration Offenses

Between 1995 and 2004 the number of persons arrested/booked for immigration offenses increased by nearly fourfold, from 10,147 to 39,993. During this period, the number of persons charged by the U.S. Attorneys with a felony or Class A misdemeanor immigration offense increased threefold, from 6,294 to 18,252. Nearly an equal number were charged with a lesser offense. The increase in immigration-related prosecutions has had a substantial impact on both detention and incarceration. For example, during the 1995-2004 period, the number of persons held in detention in the eight judicial districts that comprise the SouthWest border area (the area with the greatest number of immigration offenders) increased from 4,939 to 19,264. Based on current per diem rates paid, the cost of detaining these offenders during fiscal year 2004 was more than \$400 million.

Following improvements to information systems used by the Department of Homeland Security, particularly the integration of DHS's IDENT system (used to identify recidivist illegal aliens) with the FBI's IAFIS system (used to identify persons with a criminal history), there was concern that these improvements could substantially increase referrals to the U.S. Attorneys in the coming years.²⁴ Additionally, the *Intelligence Reform and Terrorism Prevention Act of 2004* authorized the hiring of an additional 2,800 border patrol agents and immigration inspectors over a five-year period.²⁵

To address the potentiality of substantial increases in immigration-related arrests/bookings and criminal caseload, as part of the survey, the U.S. Attorneys were posed with a hypothetical 15 percent increase in their immigration-related caseload and asked to respond to several questions addressing case- and charge-selection and efforts undertaken in their districts to expedite the adjudication of immigration cases. Most (84%) U.S. Attorneys indicated that, in the event of a substantial increase in referrals, their office's caseload would be prioritized to emphasize the prosecution of offenders arrested for the most serious immigration offenses such as illegal entry by a convicted felon (8 U.S.C. § 1326) and alien smuggling (8 U.S.C. 1324). Generally, this increased emphasis on the more serious immigration offenses constrained the anticipated growth of the district's immigration caseload. U.S. Attorneys who anticipated targeting more serious offenders generally anticipated that their immigration caseload would increase at about half the rate of those in other districts.

Notwithstanding the potential increase in the immigration caseload projected by DOJ to result from the IDENT/IAFIS integration project, the U.S. Attorneys generally anticipate that their immigration caseload will increase by 60 percent between 2004 and 2007, from 18,252 to 29,315. (See, Figure 4.) As expected, most (88%) of this increase will be observed in the districts comprising the SouthWest border area.

Many (40%) of the U.S. Attorneys responded that they would accommodate the increased immigration caseload through measures to expedite the prosecution of these offenders such as charge-bargaining or other initiatives to fast-track the adjudication/sentencing process. For those 17 districts that reported having in place fast-tracking initiatives, the anticipated increase in immigration caseload for 2005 was greater than for those districts that reported being in the process of developing such initiatives. As a result of the effectiveness of these initiatives, 75% of the U.S. Attorneys in districts with existing or planned programs anticipated that their assistant U.S. attorneys would prosecute a greater number of immigration cases in the future compared to prior years.

In addition to increasing the productivity of current staff, the effectiveness of fast-tracking programs – particularly as it relates to detention – can also be evaluated in terms of the average length of time immigration offenders are detained pending adjudication and sentencing. The available data suggest that these programs may substantially reduce the time offenders are held in detention pending adjudication and subsequent release or commitment to the BOP. In those districts that are developing or have existing programs in place, the average length of detention for immigration offenders charged with illegal entry during fiscal year 2004 was 98 days; by comparison the average length of detention for offenders

24. DOJ estimated that had the integrated IDENT/IAFIS system been fully implemented and operational during fiscal year 2004, DHS would have identified an additional 222,823 aliens with a criminal history attempting to enter the United States. A portion of these aliens would have been potential targets for federal prosecution. See, U.S. Department of Justice. COST AND OPERATIONAL EFFECTIVENESS ANALYSIS. *Third Report to the United States Congress*. (2005).

25. Pub. L. 108-458, 118 Stat. 3638 (2004).

charged with illegal entry in other districts was 179 days. No district-level differences in detention time was observed for those defendants charged with alien smuggling (approximately 185 days, on average).

Case Processing Time

About half of the U.S. Attorneys reported that prosecutors in their office had observed that it was taking longer to adjudicate and sentence defendants. Most reported that this increase in case processing time was the result of sentencing issues (78%), general resource issues within their office (75%), and resource issues within the Federal Judiciary (67%). Additionally, some reported that case characteristics may also be a factor: 53%, general increases in case complexity; 41 percent, types of cases prosecuted; 31 percent, increased trial rates; and 16 percent, plea negotiations. However, the sentiment that it was taking longer to prosecute criminal cases was not localized to any specific region. (See, Appendix D, Figure D-5.) Further, based on the U.S. Attorneys responses, it does not appear that the observed increase in case processing time would impact their ability to increase their criminal caseload: caseloads appear to increase at approximately the same rate in districts reporting increases in case processing time as other districts.

Impact of *Blakely v. Washington* and *United States v. Booker* on Federal Sentencing

On January 12, 2005, the Supreme Court affirmed both the Seventh Circuit's ruling in *United States v. Booker* and the District Court of Maine's decision in *United States v. Fanfan*. This ruling extended the Court's earlier decision in *Blakely v. Washington* (that the State's sentencing guidelines violated the Sixth Amendment because they provided for increased penalties based on judicial determinations beyond those included in the jury verdict) to the federal courts and the Federal Sentencing Guidelines.²⁶ As part of these rulings, the Court concluded that any facts necessary to authorize a sentence enhancement under the sentencing guidelines must be admitted by the defendant or proven to a jury beyond a reasonable doubt. While the Court concluded that the Federal Sentencing Guidelines violated the Sixth Amendment, the Court permitted the guidelines to remain in effect as advisory guidelines. Accordingly, district courts could continue to consult the guidelines and take them into account at sentencing.

Without the certainty in sentencing afforded by the sentencing guidelines, concern arose that the plea and/or sentencing process would take substantially longer, thereby increasing the time detained defendants are held pending sentencing. Despite this concern only a third of U.S. Attorney reported that they expected the sentencing process to take longer. The majority (58%) of U.S. Attorneys reported, however, that to expedite and to provide for more certainty in the sentencing process, they have adopted practices in their districts to include more detailed information in the indictment and/or plea agreement. For those few who anticipated an increase in case processing time, the impact was expected to be the greatest for drug offenders.

The expected impact of *Booker* on imposed sentences was mixed: about half of the U.S. Attorneys reported that they had observed no changes in imposed sentences while half reported that they observed a decrease in imposed sentences. For those observing a decrease, the decrease observed was 17.5 percent, on average, corresponding to about one guideline offense level.

The U.S. Attorneys' perception of sentencing trends following *Booker* are consistent with trends observed by the U.S. Sentencing Commission. The Commission has reported that about 10 percent of defendants sentenced subsequent to *Booker* received a sentence that was below the recommended guideline sentencing range. These lower sentences were not specifically identified as departures by the sentencing court thereby suggesting that the imposed sentence reflected the greater discretion provided by *Booker*.²⁷ Despite this greater use of discretion by the federal courts, the Commission further reported that average terms of imprisonment imposed for drug trafficking, illegal entry by aliens, firearms, and theft offenses have not appreciably changed subsequent to *Booker*.

IMPACT FUTURE U.S. ATTORNEY CASELOAD ON FEDERAL CRIMINAL DETENTION POPULATION

26. *Blakely v. Washington*, ___ U.S. ___, 124 S.Ct. 2531 (2004); *United States v. Booker*, ___ U.S. ___, 125 S.Ct. 738 (2005).

27. United States Sentencing Commission. Special Post-Booker Coding Project. August 17, 2005. (See, http://www.ussc.gov/Blakely/PostBooker_082305.pdf.)

U.S. Attorney caseload is one of the primary determinants of the detention population. At the most fundamental level the detention population is a function of the number of arrests/bookings made by federal law enforcement, the probability of court-ordered detention, and the length of time the defendant is held in detention. Consequently, increasing the capacity of the U.S. Attorneys to prosecute cases can result in increases in the number of arrests/bookings by law enforcement agencies and increases in the detention and prison populations. Further, to the extent that the increased caseload stresses the resources of the federal judiciary, case processing time – and concomitantly time-in-detention – may also increase, leading to further increases in the detention population.

Based on survey responses, the 93 U.S. Attorneys anticipate that their criminal caseload will increase to 116,113 during fiscal year 2007, representing a 32 percent increase over their fiscal year 2004 criminal caseload. As a result of this anticipated increase in the criminal caseload, the USMS detention population could be expected to increase by 33 percent, from an average daily population (ADP) of 49,600 during fiscal year 2004 to 66,069 during fiscal year 2007, assuming that the detention rate and time-in-detention remain at currently observed levels through 2007. More than a third of the increase is anticipated in the judicial districts that comprise the SouthWest border area; 22 percent, the MidWest; 17 percent, the MidAtlantic; 12 percent, the SouthEast; 7 percent, the West; and 5 percent, the NorthEast. (See, Figure 6.)

It is anticipated that the MidAtlantic and MidWest regions will experience the greatest rates of growth in the detention population, with the detention population in each region increasing by more than 50 percent during the 2004-2007 period. By comparison, the NorthEast will experience the lowest growth rate, increasing by only 11 percent during the same period.

COMPARISON OF TIME-SERIES ANALYSIS OF ARRESTS/BOOKINGS AND U.S. ATTORNEY SURVEY RESPONSES

As part of its budget formulation process, OFDT regularly projects the number of arrests/bookings and the size of the USMS detention population. In lieu of a reliable leading indicator for new arrests/bookings, future USMS arrests/bookings cohorts have been estimated by OFDT using time series-based statistical models.²⁸ Using such models, future growth rates in the number of arrests/bookings are extrapolated from historical case processing data aggregated by offense and region. The offense- and region-based growth rates extrapolated from the time-series models are applied to the most recent arrest/booking cohort and future “admission” cohorts are created.

Based on these time series models, OFDT had projected that USMS arrests/bookings for new criminal offenses would increase to 192,409 during fiscal years 2007, representing an 11 percent increase over the 173,617 arrests/bookings reported by the USMS during fiscal year 2004.²⁹ Based on this projection of the admission cohort, as of September 2005, OFDT’s projection of the USMS average daily detention population for fiscal years 2006 and 2007 are 58,908 and 65,295, respectively, assuming the detention rate and time-in-detention remain at currently observed levels through 2007.

The time series- and the survey-based approaches to projecting the detention population yielded comparatively similar estimates for fiscal year 2007 USMS arrests/bookings and the detention population, assuming that each additional prosecution would result in a proportionate increase in U.S. Attorney declinations. Overall, the survey-based approach yielded an average daily USMS detention population of 66,069 compared to a population of 65,295 resulting from the time series-based approach. (See, Figure 7.) However, the survey-based projection was not uniformly higher: for judicial districts in the SouthEast and MidWest regions, the survey-based projection was lower than the time series-based projection by 277 and 367 prisoners, respectively.

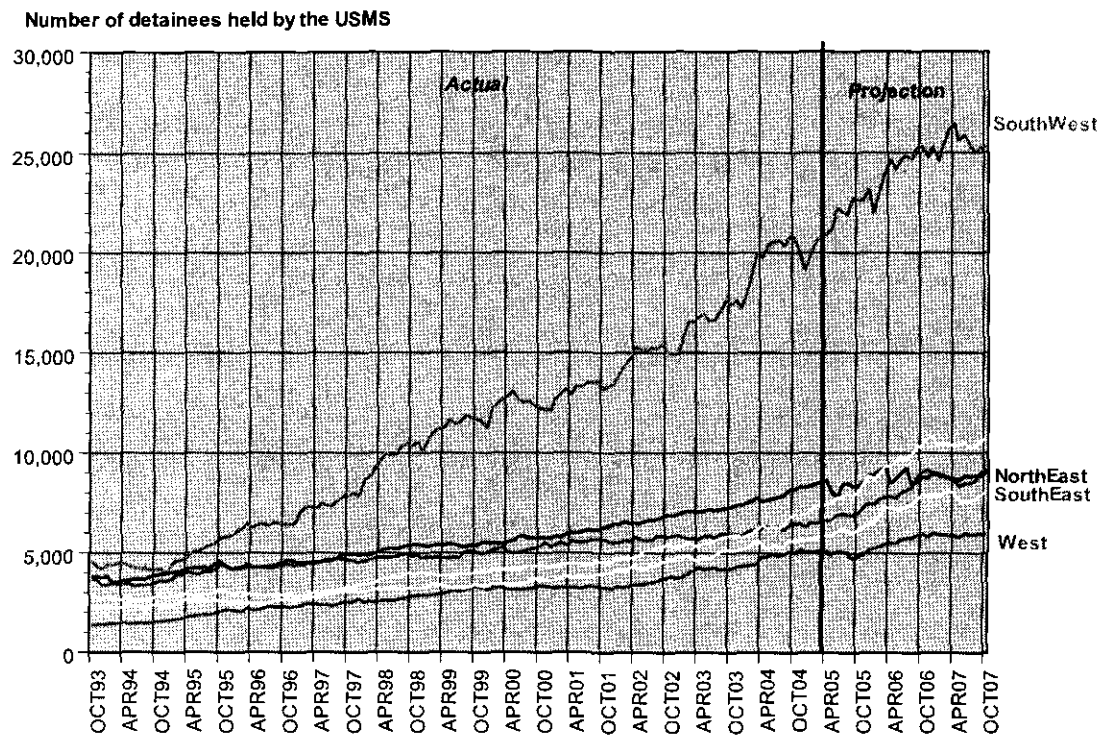
Additionally, while the survey-based approach yielded approximately 2,400 more arrests/bookings than the time series-based estimate, a comparison suggests that the U.S. Attorneys exercise some flexibility or discretion when selecting charges, or identifying the lead charge. While both approaches yielded

28. Time-series models are based on the assumption that historic trends – and the factors that influenced those trends – are useful predictors of future events and the observed relationships will continue into the near future.

29. USMS arrests/bookings include persons other than those charged with a criminal offense by the U.S. Attorneys, *i.e.*, persons suspected of criminal offenses whom the U.S. Attorneys decline to prosecute on federal charges, persons arrested for supervision violations, and material witnesses booked and detained to secure their testimony in a criminal proceeding.

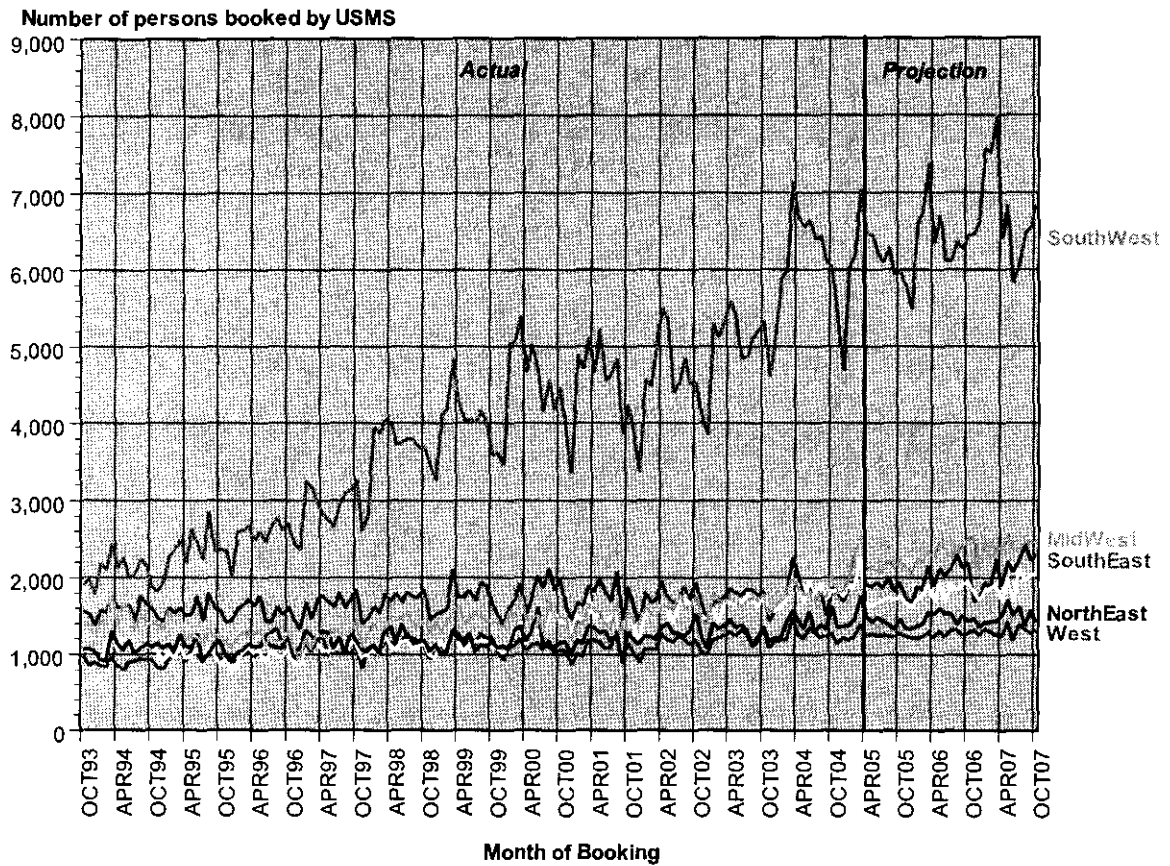
similar estimates of the number of persons arrest/booked for property and immigration offenses, the survey approach yielded a slower rate of growth for weapons offenses and a greater rate of growth for drug offenses (when compared to the time series approach). (See, Figure 8.) Specifically, the time series approach suggested a 12 percent annual growth rate for weapons offenses and less than 1 percent for drug offenses. By contrast, the U.S. Attorneys anticipated a 5 percent growth rate for weapons offenses and a 3 percent growth rate for drug offenses. In terms of number of defendants, the slower growth rate for weapons offenses is entirely offset by the greater growth rate for drug offenses.

FIGURE 1. Detainees under the custodial jurisdiction of the U.S. Marshals Service, by Region of the Country, Fiscal Year 1994 through 2007 (projected)



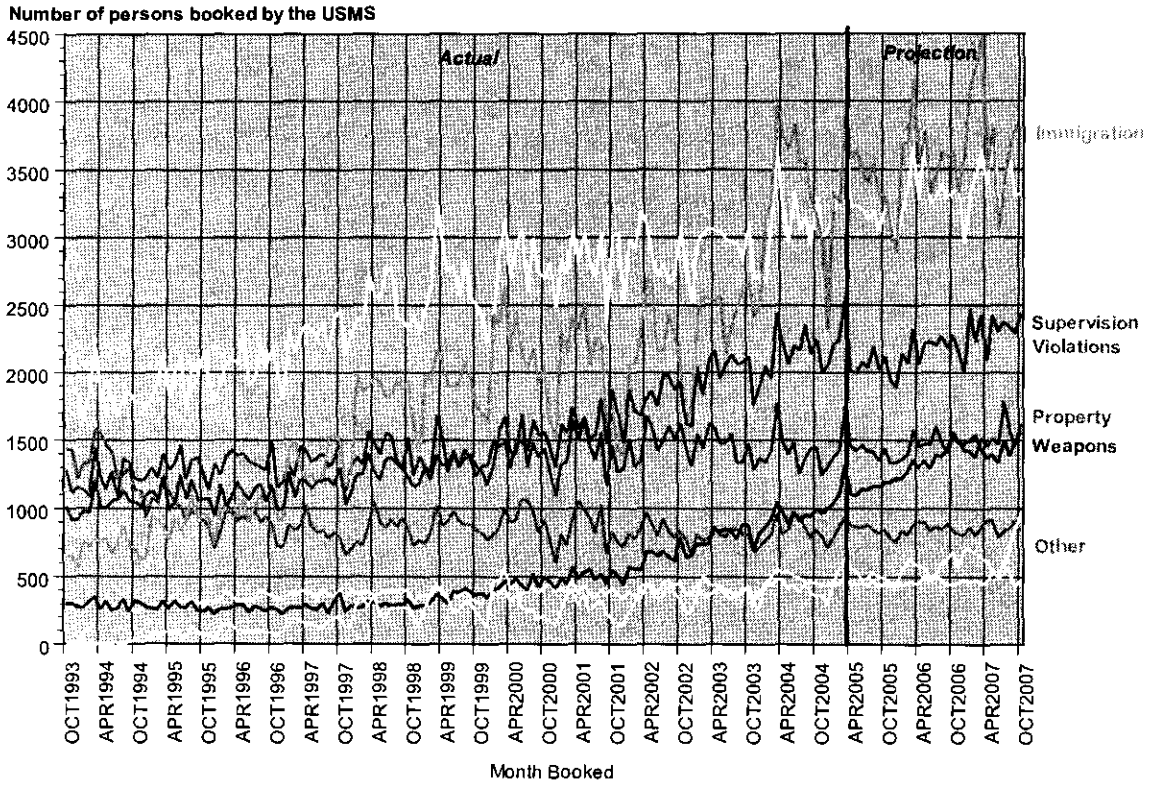
Data Sources: U.S. Marshals Service, Prisoner Tracking System, March 31, 2005 Extract; Office of the Federal Detention Trustee, Detention Population Projection Model (June, 2005 projections).
Source: Office of the Federal Detention Trustee.

FIGURE 2. Persons Arrested or Booked by the U.S. Marshals Service, by Region of the Country, Fiscal Year 1994 through 2007 (projected)



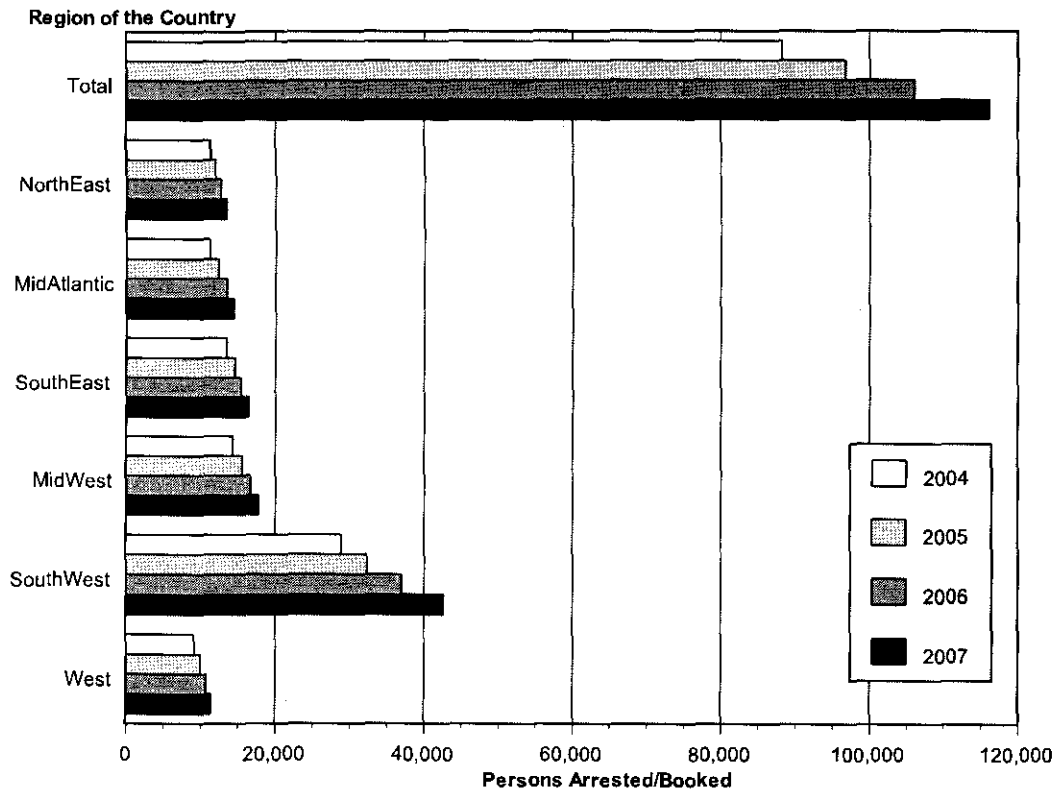
Data Sources: U.S. Marshals Service, Prisoner Tracking System, March 31, 2005 Extract; Office of the Federal Detention Trustee, Detention Population Projection Model (June, 2005 projections).
Source: Office of the Federal Detention Trustee.

FIGURE 3. Persons Arrested or Booked by the U.S. Marshals Service, by Offense at Arrest/Booking, Fiscal Year 1994 through 2007 (projected).



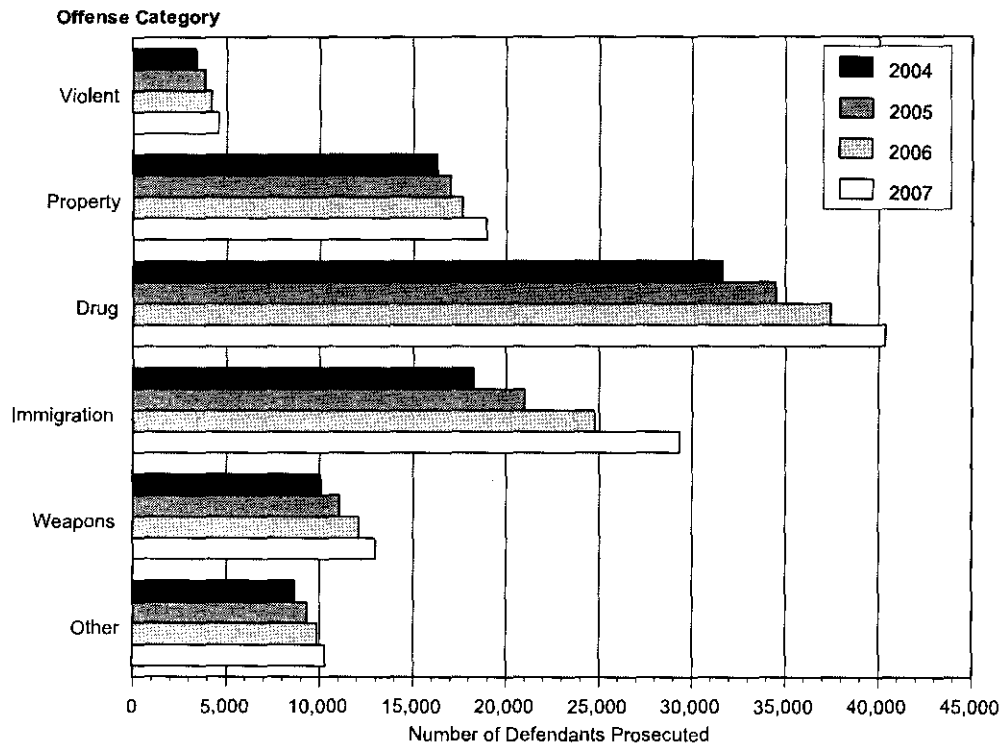
Data Sources: U.S. Marshals Service, Prisoner Tracking System, March 31, 2005 Extract; Office of the Federal Detention Trustee, Detention Population Projection Model (June, 2005 projections).
Source: Office of the Federal Detention Trustee.

FIGURE 4. Defendants prosecuted by U.S. Attorneys, Fiscal Year 2004-2007, by Region



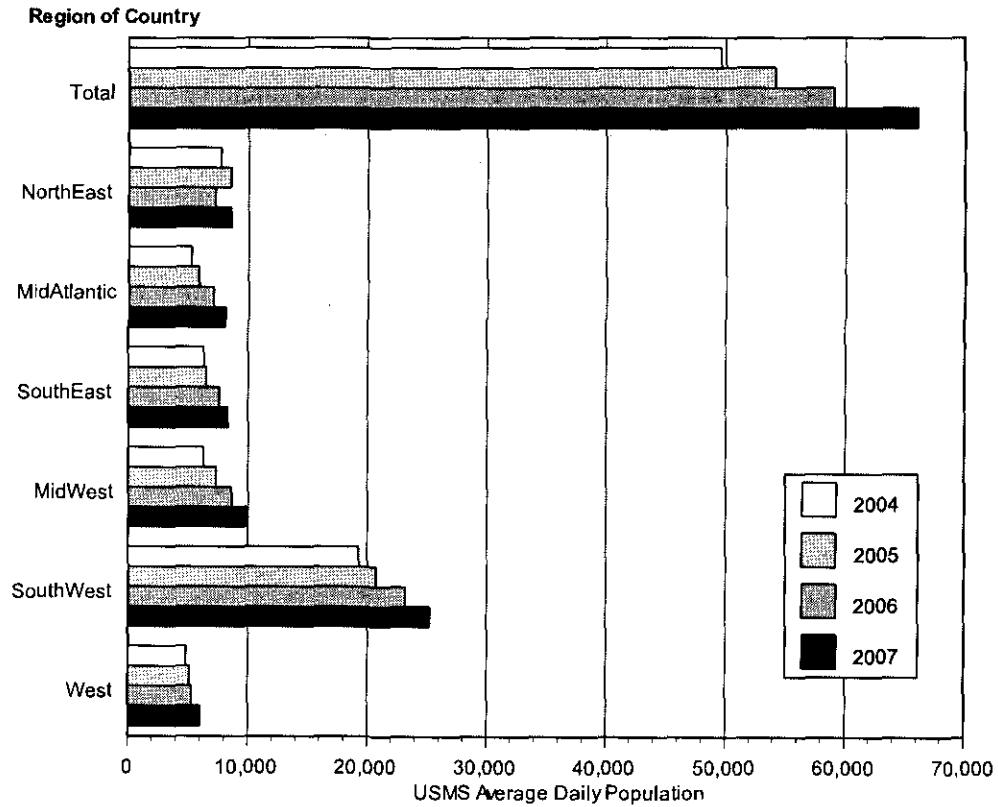
Note: Statistics for Fiscal Years 2005 through 2007 represent projections by U.S. Attorneys.
 Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
 Source: Office of the Federal Detention Trustee.

FIGURE 5. Defendants prosecuted by U.S. Attorneys, Fiscal Year 2004-2007, by Offense



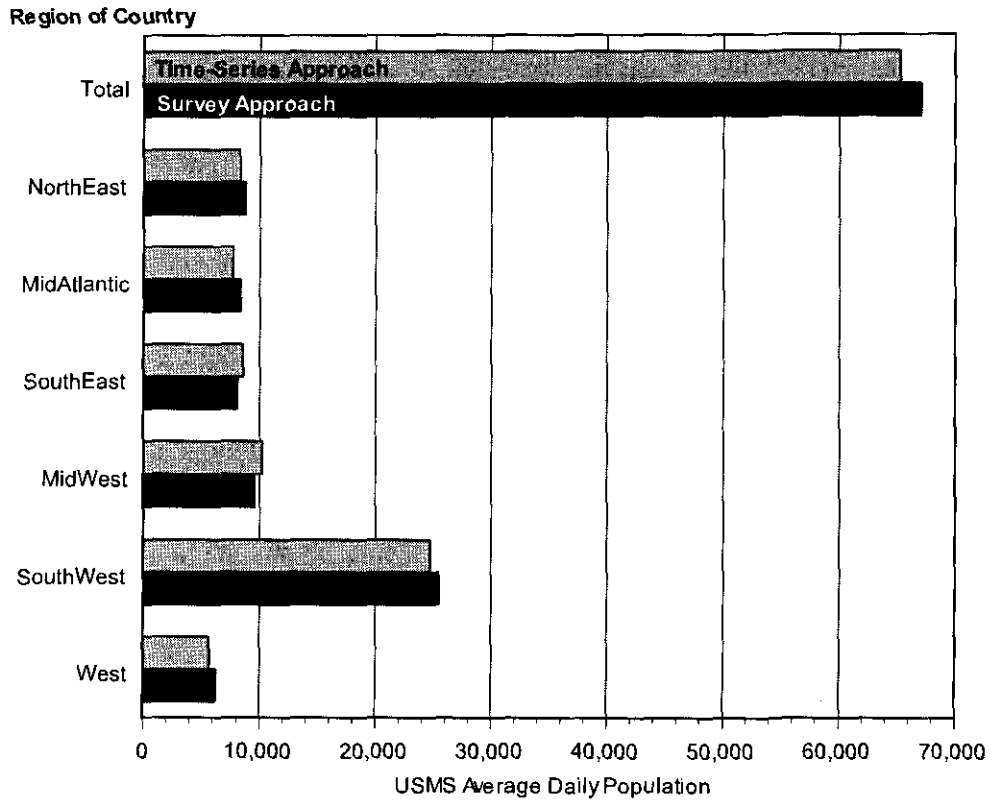
Note: Statistics for Fiscal Years 2005 through 2007 represent projections by U.S. Attorneys.
Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE 6. Detainees under the Custodial Jurisdiction of the U.S. Marshals Service, by Region of the Country, Fiscal Year 2004 to 2007: Survey-Based Population Projection



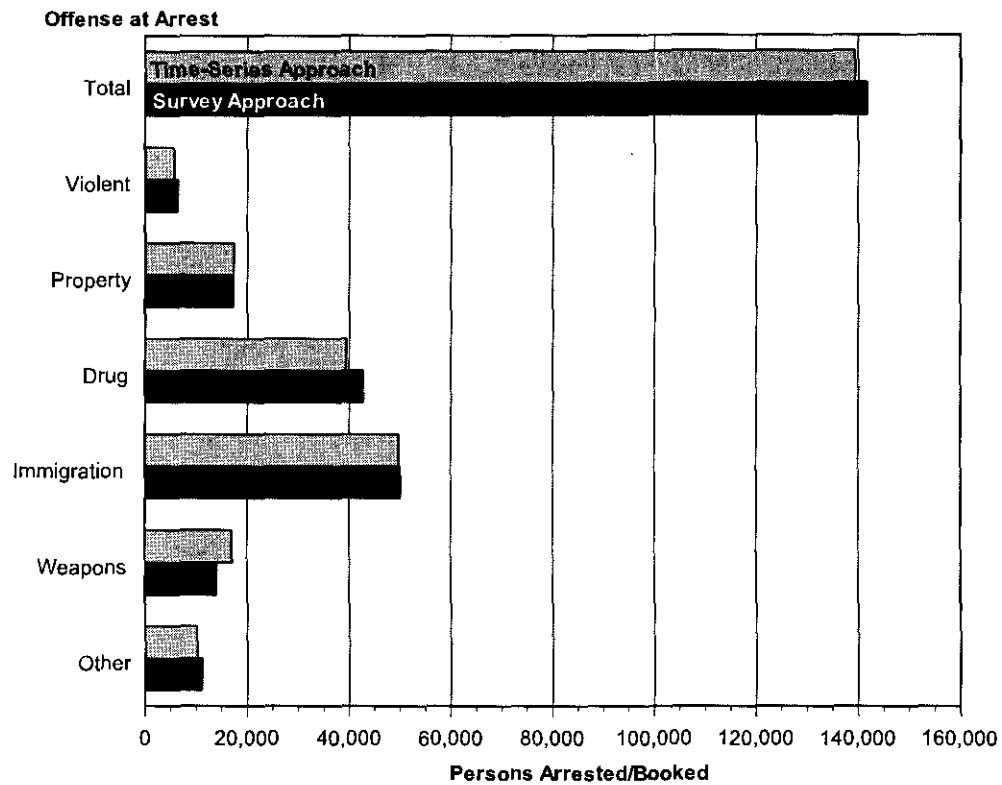
Note: Statistics for Fiscal Years 2005 through 2007 represent projections by U.S. Attorneys.
Data Sources: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005 U.S. Marshals Service, Prisoner Tracking System, March 31, 2005 Extract; Office of the Federal Detention Trustee, Detention Population Projection Model (June, 2005 projections).
Source: Office of the Federal Detention Trustee.

FIGURE 7. Comparison of Survey-Based and Time Series-Based Projections of the U.S. Marshals Service Detention Population, by Region of the Country, Fiscal Year 2007



Note: Statistics for Fiscal Years 2005 through 2007 represent projections by U.S. Attorneys.
Data Sources: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005; U.S. Marshals Service, Prisoner Tracking System, March 31, 2005 Extract; Office of the Federal Detention Trustee, Detention Population Projection Model (June, 2005 projections).
Source: Office of the Federal Detention Trustee.

FIGURE 8. Comparison of Survey-Based and Time Series-Based Projections of Persons Arrested/Booked by the U.S. Marshals Service, by Region of the Country, Fiscal Year 2007



Note: Statistics for Fiscal Years 2005 through 2007 represent projections by U.S. Attorneys.
Data Sources: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005; U.S. Marshals Service, Prisoner Tracking System, March 31, 2005 Extract; Office of the Federal Detention Trustee, Detention Population Projection Model (June, 2005 projections).
Source: Office of the Federal Detention Trustee.

Appendix A . NOTIFICATION LETTER FROM THE DEPUTY ATTORNEY GENERAL

Appendix B. INSTRUCTIONS TO RESPONDENTS

Appendix C. EXAMPLE SURVEY RESPONSE

Appendix D. SUPPLEMENTAL DISTRICT-LEVEL GRAPHICS.

Figure 1. Increase in criminal caseload anticipated by U.S. Attorneys, Fiscal Year 2004-2005, by federal judicial district.

Figure 2. Increase in criminal caseload anticipated by U.S. Attorneys, Fiscal Year 2005-2006, by federal judicial district.

Figure 3. Increase in criminal caseload anticipated by U.S. Attorneys, Fiscal Year 2006-2007, by federal judicial district.

Figure 4. Strategies to expedite the adjudication and sentencing of persons prosecuted for immigration offenses, 2005, by federal judicial district.

Figure 5. U.S. Attorneys reporting an increase in case processing time resulting from an increased caseload, 2005, by federal judicial district.

Figure 6. U.S. Attorneys reporting a change in practices (such as more detailed information included in the indictment and/or plea agreement) to expedite and provide more certainty in the sentencing process following the Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker*, 2005, by federal judicial district.

Figure 7. U.S. Attorneys reporting an observed decrease in imposed sentences resulting from the Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker*, 2005, by federal judicial district.

Appendix E . SUPPLEMENTAL STATISTICAL TABLES

Appendix F. REGIONS OF THE COUNTRY

Appendix A . NOTIFICATION LETTER FROM THE DEPUTY ATTORNEY GENERAL



U.S. Department of Justice
Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 2261
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

Memorandum - Sent via Electronic Mail

DATE: **MAY - 6 2005**

TO: ALL UNITED STATES ATTORNEYS

FROM: Mary Beth Buchanan *MBB*
Director

SUBJECT: Memorandum from the Deputy Attorney General on the Office of the
Federal Detention Trustee Survey on Anticipated Criminal Caseloads
for Fiscal Years 2005 - 2007

ACTION REQUIRED: Please complete survey by May 20, 2005.

CONTACT PERSON: Dayle Elieson
Assistant United States Attorney
Counsel to the Director Staff
(202) 616-6913

Please see the attached memorandum from Deputy Attorney General James Comey regarding an Office of the Federal Detention Trustee (OFDT) survey that you are being asked to complete.

In the next couple of days, you will receive an e-mail from OFDT's John Scalia, which will include a user name and password which you will need to use to complete the online survey.

Please let us know if you have any questions or need assistance.

Attachment



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 4, 2005

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM:

James B. Comey
James B. Comey
Deputy Attorney General

SUBJECT: Office of the Federal Detention Trustee Survey on
Anticipated Criminal Caseloads for Fiscal Years 2005 - 2007

For the past three years, we have experienced a significant shortfall in funding for our detention budget. This shortfall has required that substantial funds be reprogrammed from other components within the Department so the detention program can remain solvent. In addition, the Department needs to better link law enforcement and prosecutorial activities and prisoner detainment/incarceration into a cohesive budget development process. To remedy these two issues, we have developed a survey and need your input.

Currently the Office of the Federal Detention Trustee (OFDT) and the Bureau of Prisons (BOP) are responsible for projecting detention and prison populations. Both agencies utilize independent methodologies that rely on trend analysis of persons prosecuted by the U.S. Attorneys. We are soliciting your help with incorporating anticipated criminal caseloads for fiscal years 2005 through 2007 into both projection models.

Through my office, both agencies have met with the Attorney General's Advisory Committee (AGAC) and worked closely with the Executive Office for United States Attorneys (EOUSA) to identify information and data that currently exists to determine what is needed without being repetitive with other data your office routinely provides. This collaboration resulted in the development of an easy-to-use web-based survey that includes historical caseload information for your district and, primarily, asks for your perspective on the potential growth of your future caseload by generic offense categories.

The information collected as part of this survey will be utilized only by the Detention Trustee and BOP for the purpose of developing and validating their current projections.

Our long-term goal is to collect this U.S. Attorney caseload projection information by merging it with annual data collections from your districts conducted by EOUSA. I appreciate your assistance in this matter which is critical for the Department's budget process.

Appendix B. INSTRUCTIONS TO RESPONDENTS

-----Original Message-----

From: Scalia, John
Sent: Monday, May 09, 2005 11:16 AM
To:
Cc: Scalia, John
Subject: DOJ Survey of U.S. Attorneys

At the direction of the Deputy Attorney General, the Department of Justice is conducting a survey of the U.S. Attorneys to solicit information on anticipated criminal caseloads for fiscal years 2005 through 2007. The attached memorandum from the Deputy Attorney General describes the purpose of the data collection.

Due Date. The survey should be completed by Friday, May 20, 2005. The survey should take less than 20 minutes to complete.

Survey Web Address and User Log-in

- The survey is located on the web at <http://ofdt.symplicity.com>.
- The following user account has been established for your district:

Username:
Password:

Web Browser must have JAVA enabled. To access the survey application your Web browser must have JAVA scripting enabled. If the web site is accessed without JAVA enabled, an error message will be displayed. JAVA can be enabled by editing the browser's preferences.

- If you are using Netscape, two steps must be taken to enable JAVA scripting:
 - select the following tool bar menu options in the following sequence: "Edit" – "Preferences" – "Advanced" and on the right-hand side of the preferences box, click on the boxes for "Enable JAVA"; and
 - on the left-hand side of the preferences box, double-click on the "Advanced"; click on "Scripts & Plug-ins" and click on the boxes for "Navigator".
- If you are using Microsoft Internet Explorer, select the following tool bar menu option, in the following sequence: "Tools" – "Internet Options" – "Advanced" and scroll-down to the section entitled "JAVA" and click on the box for "Use JAVA".

User Support. If you should have difficulty accessing the survey web site and/or need technical assistance with completing the survey, please contact OFDT for assistance.

- OFDT Contact: John Scalia
(202) 305-9379
E-mail: John.Scalia@usdoj.gov

Appendix C. EXAMPLE SURVEY RESPONSE

Department of Justice
US Attorney Survey

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Survey Information
Year: 2005
District: [REDACTED]
Completed: yes
Date Completed: May 20, 2005 12:19 pm

Fiscal Year Caseload Projections 1
Fiscal Year: 2005
Violent
Anticipated Direction of Change: Increase
Growth Rate: 25
Property
Anticipated Direction of Change: Increase
Growth Rate: 15
Drugs
Anticipated Direction of Change: Increase
Growth Rate: 20
Immigration
Anticipated Direction of Change: Increase
Growth Rate: 40
Weapons
Anticipated Direction of Change: Increase
Growth Rate: 15
Other
Anticipated Direction of Change: Increase
Growth Rate: 10

Fiscal Year Caseload Projections 2
Fiscal Year: 2006
Violent
Anticipated Direction of Change: Increase
Growth Rate: 25
Property
Anticipated Direction of Change: Increase

Survey Response Record Info
Created: Fri, May 20, 2005, 12:06 pm
By: [REDACTED]
Modified: Fri, May 20, 2005, 12:19 pm
By: [REDACTED]

Survey Progress
- Introductory Questions
- Caseload Projection 2005
- Caseload Projection 2006
- Caseload Projection 2007
Status: Complete

Growth Rate
20
Drugs
Anticipated Direction of Change
Increase
Growth Rate
25
Immigration
Anticipated Direction of Change
Increase
Growth Rate
40
Weapons
Anticipated Direction of Change
Increase
Growth Rate
10
Other
Anticipated Direction of Change
Increase
Growth Rate
10

Fiscal Year Caseload Projections 3

Fiscal Year
2007
Violent
Anticipated Direction of Change
Increase
Growth Rate
10
Property
Anticipated Direction of Change
Increase
Growth Rate
20
Drugs
Anticipated Direction of Change
Increase
Growth Rate
20
Immigration
Anticipated Direction of Change
Increase
Growth Rate
40
Weapons
Anticipated Direction of Change
Increase
Growth Rate
10
Other
Anticipated Direction of Change
Increase
Growth Rate
10

Additional Questions

Topic 1: Immigration

Question 1.1: Assuming a substantial (15% or more) increase in referrals for immigration offenses, did you anticipate that the caseload in your district would be prioritized to emphasize prosecuting the most serious immigration offenses such as those referred for illegal entry by aliens with a history of aggravated felonies (pursuant to 8 USC - 1326) alien smuggling (8 USC - 1324)?

yes

Question 1.2: To expedite the prosecution of this increased caseload, do you anticipate that some of this additional immigration caseload would be prosecuted as petty offenses (e.g. Class B and C misdemeanors)?

no

Question 1.3: To maximize the number of prosecutions that your district can handle, do you anticipate that your district will develop strategies, such as fast-tracking programs, to expedite the adjudication and sentencing of immigration cases?

yes

Question 1.3.1: Are the initiatives/strategies...
currently in place

Topic 2: Case Processing Time

Question 2.1: Over the past several years the number of persons charged with a criminal offense in the federal courts has increased substantially, increasing from 77,980 during fiscal year 2000 to 88,277 during fiscal year 2004. As a result of this increase in caseload, have the AUSAs in your office observed that cases are taking longer to adjudicate and/or sentence?

yes

Question 2.1.1: Identify the reasons for the increase in case processing time. (Check all that apply)

**U.S. Attorney resources challenged,
General increases in case complexity (such as number of defendants or counts charged), Types of cases prosecuted**

Topic 3: Impact of Booker/Fanfan

Question 3.1: Following these decisions, has or do you believe that the plea and/or sentencing process will take substantially longer?

no

Question 3.2: Following these decisions to expedite and to provide more certainty in the sentencing process, have practices been adopted (or will they be adopted) in your district to include more detailed information in the indictment and/or plea agreement?

yes

Question 3.3: Have AUSAs at your office observed that the likelihood of a sentence has resulted in lower imposed sentences particularly for drug offenses?

no

Question 3.3.1: If 'Yes' above, what is your estimate of the typical decrease in imposed sentences that AUSAs in your

Question 1.1: Assuming a substantial (15% or more) increase in offenses for immigration offenses, do you anticipate that the caseload in your district would be prioritized to emphasize prosecuting the most serious immigration offenders such as those referred for illegal entry by aliens with a history of aggravated felonies (pursuant to 8 USC - 1026), alien smuggling (8 USC - 1024)?

yes

Question 1.2: To expedite the prosecution of this increased caseload, do you anticipate that some of this additional immigration caseload would be prosecuted as petty offenses (i.e., Class B and C misdemeanors)?

no

Question 1.3: To maximize the number of prosecutions that your district can handle, do you anticipate that your district will develop strategies, such as fast-tracking programs, to expedite the adjudication and sentencing of immigration cases?

yes

Question 1.3.1: Are the strategies currently in place:

Topic 2: Case Processing Time

Question 2.1: Over the past several years, the number of persons charged with a criminal offense in the federal courts has increased substantially, increasing from 77,000 during fiscal year 2000 to 88,075 during fiscal year 2004. As a result of this increase in caseload, have the AUSAs in your office observed that cases are taking longer to adjudicate and/or sentence?

yes

Question 2.1.1: Identify the reasons for the increase in case processing time. (Check all that apply)

U.S. Attorney resources challenged, General increases in case complexity (such as number of defendants or counts charged), Types of cases prosecuted

Topic 3: Impact of Booker/Fanton

Question 3.1: Following these decisions has, or do you believe, that the plea and/or sentencing process are taking substantially longer?

no

Question 3.2: Following these decisions to expedite and to provide more certainty in the sentencing process, have practices been adapted (or will they be adapted) in your district to include more detailed information in the indictment and/or plea agreement?

yes

Question 3.3: Have AUSAs in your office observed that the Blakey decision has resulted in lower imposed sentences, particularly for drug offenses?

no

Question 3.3.1: If "Yes" above, what is your estimate of the typical decrease in imposed sentences that AUSAs in your

Question 1.1: Assuming a substantial (15% or more) increase in referrals for immigration offenses, do you anticipate that the caseload in your district would be prioritized to emphasize prosecuting the most serious immigration offenses such as those referred for illegal entry by aliens with a history of aggravated felonies (pursuant to 8 USC - 1326), Alien Smuggling (8 USC - 1324)?

yes

Question 1.2: To expedite the prosecution of this increased caseload, do you anticipate that some of this additional immigration caseload would be prosecuted as petty offenses, i.e., Class B and C misdemeanors?

no

Question 1.3: To maximize the number of prosecutions that your district can handle, do you anticipate that your district will develop strategies, such as fast-tracking programs, to expedite the adjudication and sentencing of immigration cases?

yes

Question 1.3.1: Are the initial investigations currently in place

Topic 2: Case Processing Time

Question 2.1: Over the past several years the number of persons charged with a criminal offense in the federal courts has increased substantially, increasing from 77,660 during fiscal year 2000 to 86,276 during fiscal year 2004. As a result of this increase in caseload, have the AUSAs in your office observed that cases are taking longer to adjudicate and/or sentence?

yes

Question 2.1.1: Identify the reasons for the increase in case processing time. (Check all that apply):

**U.S. Attorney resources challenged.
General increases in case complexity (such as number of defendants or counts charged). Types of cases prosecuted.**

Topic 3: Impact of Booker/Fanfan

Question 3.1: Following these decisions has, or do you believe, that the plea and/or sentencing process will take substantially longer?

no

Question 3.2: Following these decisions to expedite and to provide more certainty in the sentencing process, have practices been adopted (or will they be adopted) in your district to include more detailed information in the indictment and/or plea agreement?

yes

Question 3.3: Have AUSAs in your office observed that the Blakey decision has resulted in lower imposed sentences, particularly for drug offenses?

no

Question 3.3.1: If 'yes' above, what is your estimate of the typical decrease in imposed sentences that AUSAs in your

office have observed?

0

Topic 4: Reasons for Growth in Caseload

Question 4.1: If you are anticipating that the criminal caseload in your district will increase during fiscal years 2005, 2006 and/or 2007, identify the causes for the increased caseload. - check all that apply:
Attorney General/DOJ mandates/National Priorities, Increases in number of AUSAs, General increases in AUSA productivity, i.e., more cases handled per AUSA, Increased referrals of priority prosecutions from federal law enforcement

Question 4.2: Does your district routinely request or receive assistance from the DOJ litigating divisions, e.g., TDY staff or special couriers, to assist with the prosecution of criminal cases in your district?
occasionally

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Caseload Summaries Detention Impact Incarceration Impact

Caseload Summaries

Calculated Potential Impact on District Caseload

Fiscal Year 2005				
Offense	Your Caseload Will	Growth Rate (over FY2005)	New Cases	Total Cases
Violent	Increase	25%	11	53
Property	Increase	15%	36	273
Drugs	Increase	20%	389	2335
Immigration	Increase	40%	1628	5697
Weapons	Increase	15%	39	298
Other	Increase	10%	19	208
Total	Increase	31%	2122	8864

Fiscal Year 2006				
Offense	Your Caseload Will	Growth Rate (over FY2006)	New Cases	Total Cases
Violent	Increase	25%	13	66
Property	Increase	20%	55	328
Drugs	Increase	25%	584	2919
Immigration	Increase	40%	2279	7976
Weapons	Increase	10%	30	328
Other	Increase	10%	21	229
Total	Increase	34%	2982	11846

Fiscal Year 2007				
Offense	Your Caseload Will	Growth Rate (over FY2007)	New Cases	Total Cases
Violent	Increase	10%	7	73
Property	Increase	20%	66	394
Drugs	Increase	20%	584	3503
Immigration	Increase	40%	3190	11166
Weapons	Increase	10%	33	361
Other	Increase	10%	23	252
Total	Increase	33%	3903	15749

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Core **Summaries** [help](#)

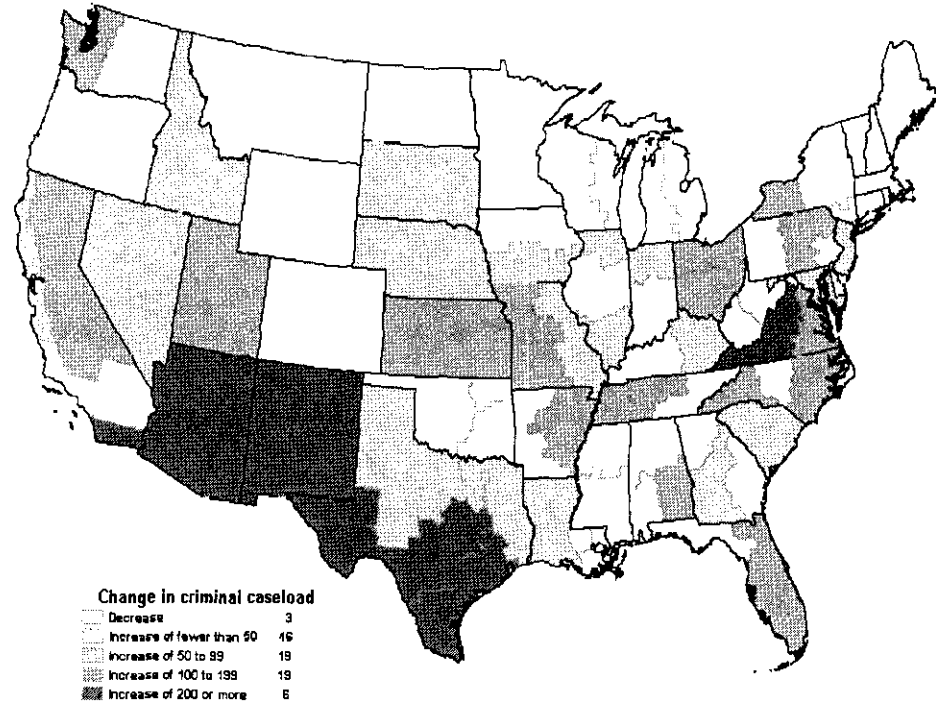
[Caseload Summaries](#) **Detention Impact** [Incarceration Impact](#)

Impact on Detention
 Calculated Potential Impact on Detention

Offense	Detention Rate	Additional Detainees	Length of Detention (Days)	Increase in Detention Population
Violent	92%	10	1445	40
Property	78%	41	162	18
Drugs	97%	506	184	255
Immigration	87%	2060	136	770
Weapons	93%	32	149	13
Other	77%	16	127	6
Total	90%	2714	127	946

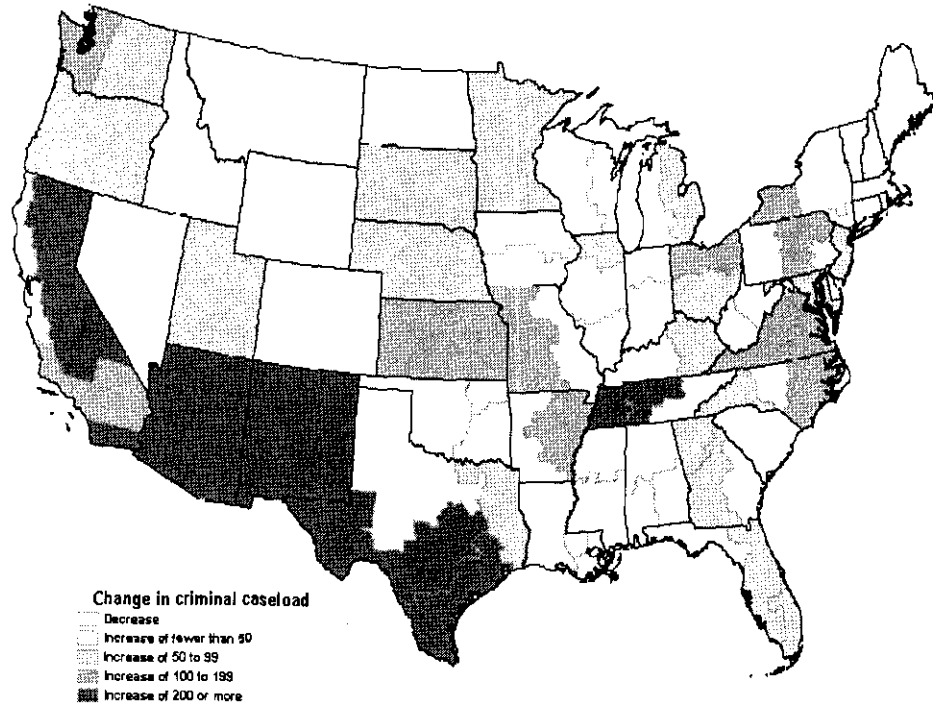
Appendix D. SUPPLEMENTAL DISTRICT-LEVEL GRAPHICS.

FIGURE D-1. Increase in criminal caseload anticipated by U.S. Attorneys, Fiscal Year 2004-2005



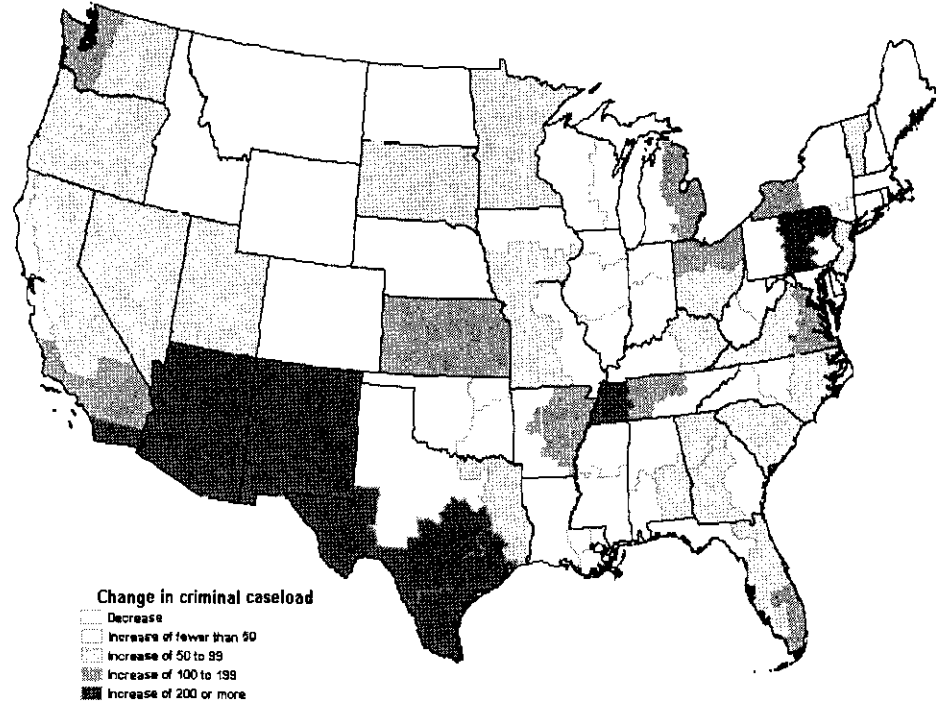
Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE D-2. Increase in criminal caseload anticipated by U.S. Attorneys, Fiscal Year 2005-2006



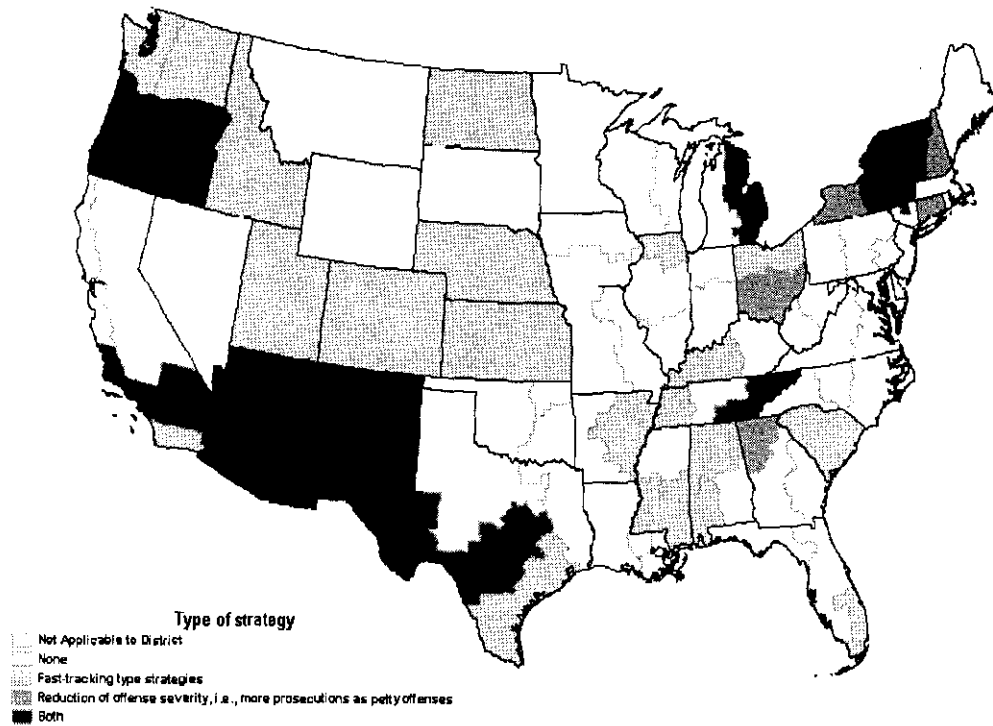
Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE D-3. Increase in criminal caseload anticipated by U.S. Attorneys, Fiscal Year 2006-2007



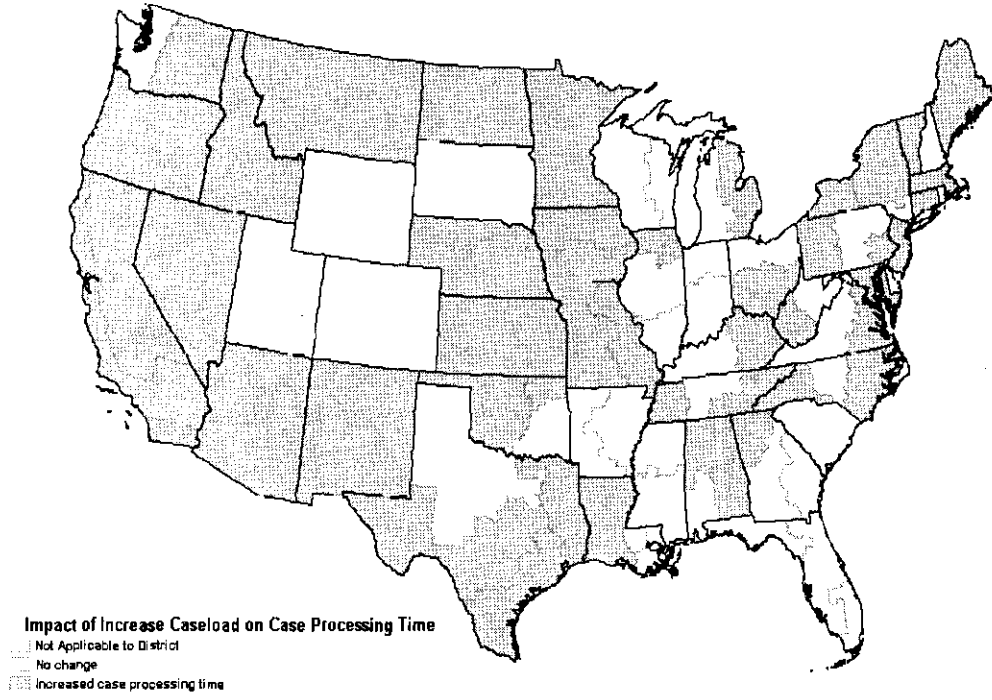
Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE D-4. Strategies used by U.S. Attorneys to expedite the adjudication and sentencing of increased numbers of persons arrested for immigration offenses, 2005



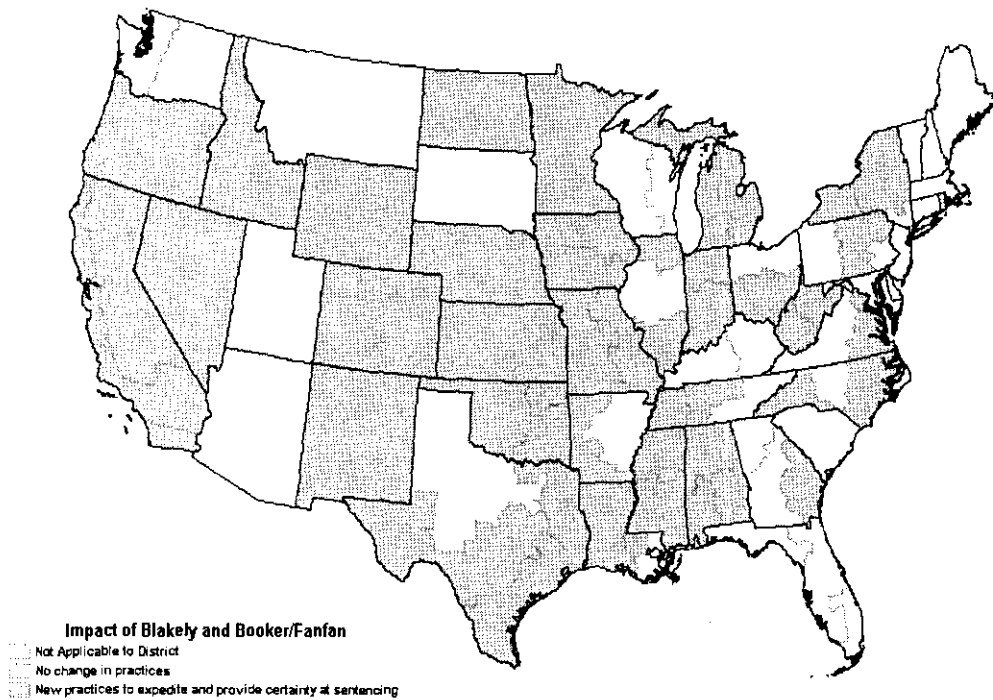
Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE D-5. U.S. Attorneys reporting an increase in case processing time resulting from an increased caseload, 2005



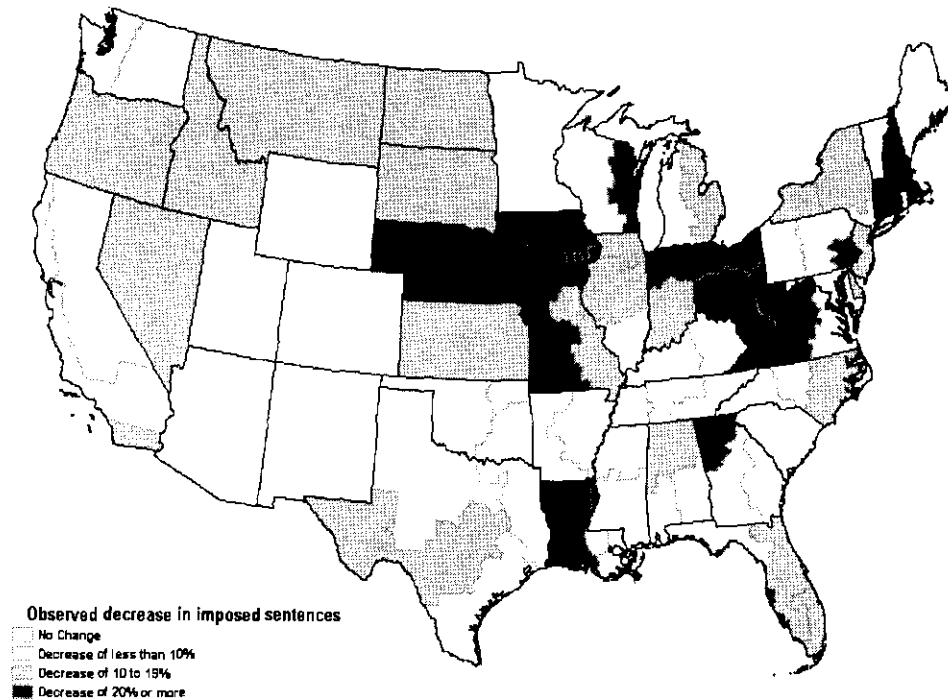
Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE D-6. U.S. Attorneys reporting a change in practices (such as more detailed information included in the indictment and/or plea agreement) to expedite and provide more certainty in the sentencing process following the Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker*, 2005



Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

FIGURE D-7. U.S. Attorneys reporting an observed decrease in imposed sentences resulting from the Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker*, 2005



Data Source: U.S. Department of Justice, SURVEY OF UNITED STATES ATTORNEYS, May, 2005.
Source: Office of the Federal Detention Trustee.

Appendix E. SUPPLEMENTAL STATISTICAL TABLES

Question 1.1: *Assuming a substantial (15% or more) increase in referrals for immigration offenses, do you anticipate that the caseload in your district would be prioritized to emphasize prosecuting the most serious immigration offenders such as those referred for "illegal entry by an alien with a history of aggravated felonies" (pursuant to 8 U.S.C. § 1326), and "alien smuggling" (pursuant to 8 U.S.C. § 1324)?*

Number of Valid Responses 93

Response	Number	Percent
Yes	78	84 %
No	10	11 %
Not Applicable	5	5 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 1.2: *To expedite the prosecution of this increased caseload, do you anticipate that some of the additional immigration caseload would be prosecuted as petty offenses, i.e., Class B or Class C misdemeanors?*

Number of Valid Responses 93

Response	Number	Percent
Yes	15	16 %
No	71	76 %
Not Applicable	7	8 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 1.3: *To maximize the number of prosecutions that your district can handle, do you anticipate that your district will develop strategies, such as fast-tracking programs, to expedite the adjudication and sentencing of immigration cases?*

Number of Valid Responses 93

Response	Number	Percent
Yes	32	34 %
No	48	52 %
Not Applicable	13	14 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 1.3.1: *If "Yes" to Question 1.3, Are the initiatives/strategies ...*

Number of Valid Responses 30

Response	Number	Percent
Being Developed	13	26 %
Currently in Place	17	54 %
Being Piloted	0	0 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.

Source: Office of the Federal Detention Trustee.

Question 2.1: *Over the past several years the number of persons charged with a criminal offense in the federal courts has increased substantially, increasing from 77,990 during fiscal year 2000 to 88,275 during fiscal year 2004. As a result of this increase in caseload, have the Assistant U.S. Attorneys in your office observed that cases are taking longer to adjudicate and/or sentence?*

Number of Valid Responses 93

Response	Number	Percent
Yes	51	55 %
No	40	43 %
Not Applicable	2	2 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.

Source: Office of the Federal Detention Trustee.

Question 2.1.1: *If "Yes" to Question 2.1, Identify the reasons for the increase in case processing time. (Check all that apply.)*

Number of Valid Responses 51

Response	Number	Percent
U.S. Attorney Resources Challenged	38	75 %
General Increases in Case Complexity	27	53 %
Sentencing Issues	40	78 %
Plea Negotiations	8	16 %
Judicial Resources Challenged	34	67 %
Increased Trial Rates	16	31 %
Types of Cases Prosecuted	21	41 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.

Source: Office of the Federal Detention Trustee.

Question 3.1: *Following ... [the Supreme Court's decision in Blakely v. Washington and its subsequent decision in United States v. Booker] has, or do you believe, that the plea and/or sentencing process will take substantially longer?*

Number of Valid Responses 93

Response	Number	Percent
Yes	33	35 %
No	60	65 %
Not Applicable	0	—

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 3.1.1: *If "Yes" to Question 3.1, Which offenses will be impacted most substantially by these decisions? (Check all that apply.)*

Number of Valid Responses 33

Response	Number	Percent
Violent	19	58 %
Property	18	55 %
Drug	30	91 %
Immigration	13	39 %
Weapons	16	48 %
Any Other	18	55 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 3.2: *Following ... [Blakely and Booker], to expedite and provide more certainty in the sentencing process, have practices been adopted (or will they be adopted) in your district to include more detailed information in the indictment and/or plea agreement?*

Number of Valid Responses 93

Response	Number	Percent
Yes	54	58 %
No	36	39 %
Not Applicable	3	3 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 3.3: Have Assistant U.S. Attorneys in your office observed that the Blakely decision has resulted in lower imposed sentences, particularly for drug offenses?

Number of Valid Responses 93

Response	Number	Percent
Yes	48	52 %
No	44	47 %
Not Applicable	1	1 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 3.3.1: If "Yes" to Question 3.3, What is your estimate of the typical decrease in imposed sentences that Assistant U.S. Attorneys in you office have observed?

Number of Valid Responses 48

Average	17.5 %
Upper 25 th Percentile	20.0 %
50 th Percentile	15.0 %
Lower 25 th Percentile	10.0 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Question 4.1: If you are anticipating that the criminal caseload in your district will increase during fiscal years 2005, 2006, and/or 2007, identify the causes for the increased caseload. (Check all that apply.)

Number of Valid Responses 93

Response	Number	Percent
Attorney Genera/DOJ Mandates/National Priorities	69	74 %
Increases in the number of Assistant U.S. Attorneys	33	35 %
Increase assistant from State and/or local law enforcement agencies to target violent, drug, and/or recidivist offenders	70	75 %
General increases in the productivity of Assistant U.S. Attorneys, i.e., more cases handled per prosecutor	62	67 %
Increased referrals or priority prosecutions from federal law enforcement	55	59 %
Caseload will not increase	4	4 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May,7 2005.
Source: Office of the Federal Detention Trustee.

Question 4.2: Does your district routinely coordinate or receive assistance from the Department of Justice litigating divisions, e.g., TDY staff or special counsels, to assist with the prosecution of criminal cases?

Number of Valid Responses 93

Response	Number	Percent
Routinely	7	8 %
Occasionally	74	80 %
Never	12	13 %

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Change in U.S. Attorney Criminal Caseload, Fiscal Year 2004 to 2005

Offense	Average Percentage Increase	Defendants in New Criminal Cases Filed				Total
		Average	Percentiles			
			25 th	50 th (Median)	75 th	
Total	10 %	91	20	46	108	8,436
Violent	13 %	5	1	3	6	451
Property	4 %	7	0	0	10	677
Drug	9 %	31	5	21	43	2,881
Immigration	15 %	30	0	3	11	2,761
Weapons	10 %	11	2	8	16	1,012
Other	8 %	7	0	2	9	654

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.
Source: Office of the Federal Detention Trustee.

Change in U.S. Attorney Criminal Caseload, Fiscal Year 2005 to 2006

Offense	Average Percentage Increase	Defendants in New Criminal Cases Filed				
		Average	Percentiles			Total
			25 th	50 th (Median)	75 th	
Total	10 %	100	20	37	75	9,292
Violent	9 %	4	0	2	5	359
Property	4 %	7	0	0	8	655
Drug	9 %	32	7	15	35	2,935
Immigration	18 %	40	0	2	9	3,756
Weapons	9 %	11	1	7	11	1,040
Other	6 %	6	0	2	8	547

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.

Source: Office of the Federal Detention Trustee.

Change in U.S. Attorney Criminal Caseload, Fiscal Year 2006 to 2007

Offense	Average Percentage Increase	Defendants in New Criminal Cases Filed				
		Average	Percentiles			Total
			25 th	50 th (Median)	75 th	
Total	10 %	109	16	40	82	10,110
Violent	8 %	4	0	1	4	338
Property	5 %	9	0	0	10	863
Drug	8 %	32	5	16	37	2,978
Immigration	18 %	49	0	2	8	4,546
Weapons	7 %	9	0	5	11	862
Other	5 %	6	0	0	6	523

Data Source: U.S. Department of Justice, Survey of United States Attorneys, May, 2005.

Source: Office of the Federal Detention Trustee.

Appendix F. REGIONS OF THE COUNTRY

