



**2020: THE YEAR IN REVIEW  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO**

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United States Magistrate Judge  
July 16, 2021**

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## **I. OVERVIEW**

This report analyzes trial results and statistics in civil and criminal cases in the District of Colorado (“the District”) for the calendar year 2020, as well as information concerning dispositive motions practice, ADR, and Magistrate Judge consent.

The most noteworthy statistics from 2020 involve the dichotomy between the actual courtroom work of the District and the number of case filings. Clearly the COVID-19 Pandemic eviscerated in-court proceedings, particularly trials, and the District saw a record plunge in civil and criminal jury trials. On the other hand, the District also saw a record number of civil cases filed, which includes a record number of pro se cases filed. The District also had the second lowest number of settlement conferences in recorded history, which was also a result of the lockdown. Finally, although this is not a statistic that is normally kept in the District, it appears that we now have reached a record number of cases pending per judicial officer, a result of the record number of filings, the delay in appointment of new Article III judges, the extensions of time necessitated by the lockdown (and, thus, less ability to push cases through the pipeline), and the general decrease in Senior District Judges. Needless to say, it was a historic (and strange) year!

## **II. SUMMARY OF TRIALS**

As the reader will recognize, 2020 was an extraordinary year in many respects due to the COVID-19 Pandemic, including its significant impact on the business of the District, resulting in a nearly 75% decrease in jury trials. This significant decrease is largely related to both the District suspending trials and the protocols that were implemented when the District resumed jury trials during COVID-19. Accordingly, although many of the numbers presented in this memo are remarkable, they are also statistically insignificant for most comparative analytical purposes.

The District stopped holding trials the week of March 16, 2020 - the onslaught of the COVID-19 Pandemic. A few months later, on June 30, 2020, the District adopted a list of protocols in preparation for resuming trials as soon as possible. In July 2020, the District began conducting “pilot trials” to determine whether it could hold trials in accordance with the new COVID-19 protocols. These protocols related to jury selection and the process the District used to determine which cases to try during COVID-19.

For jury selection, the District anticipated a higher rate of excused jurors and therefore increased jury pools by 40%. The District also adjusted its jury screening process and was more lenient in excusing jurors. For example, any juror who was experiencing COVID-19 symptoms or was deemed to be at “high risk” of contracting COVID-19 was automatically excused. Once the jurors passed the screening process, the District implemented protocols to ensure the jurors maintained proper social distancing in the courthouse. The social distancing policies created the most difficulty in conducting jury trials during COVID-19. Notably, jurors were required to sit in the gallery during trial in order to maintain proper social distancing. Because jurors were sitting in the gallery, the gallery was closed to in-person spectators during jury trials. However, the gallery was open to in-person spectators during bench trials. Additionally, everyone in the courtroom was required to wear a mask; the only exception allowed witnesses to pull their mask down as they introduced themselves to the jury.

The majority of the District’s pilot trials were either settled or continued. Therefore, after one trial in July, the District did not hold another trial until August 31, 2020. To determine which cases would receive trial dates, Judicial Officers sent a monthly list of proposed trials to Chief Judge Brimmer. Chief Judge Brimmer would then select the most feasible candidates for trial. The District favored shorter cases that could be conducted in five days or less to avoid jurors returning

to the courthouse after being home for the weekend. Civil trials were preferred over criminal trials due to the smaller jury needed. The District began attempting one trial per week and eventually moved to two trials per week.

Due to an increase in COVID-19 cases, trials were again suspended on November 5, 2020 through the remainder of 2020. As a result, the District had only sixteen total jury cases tried to verdict in 2020. Five of these trials were after the COVID-19 shutdown. The sixteen jury trials were evenly split with eight civil jury trials and eight criminal jury trials, compared to the thirty-one civil jury trials and twenty-five criminal jury trials in 2019. Additionally, the District had six civil bench trials and no criminal bench trials (there were also six civil bench trials and no criminal bench trials in 2019).

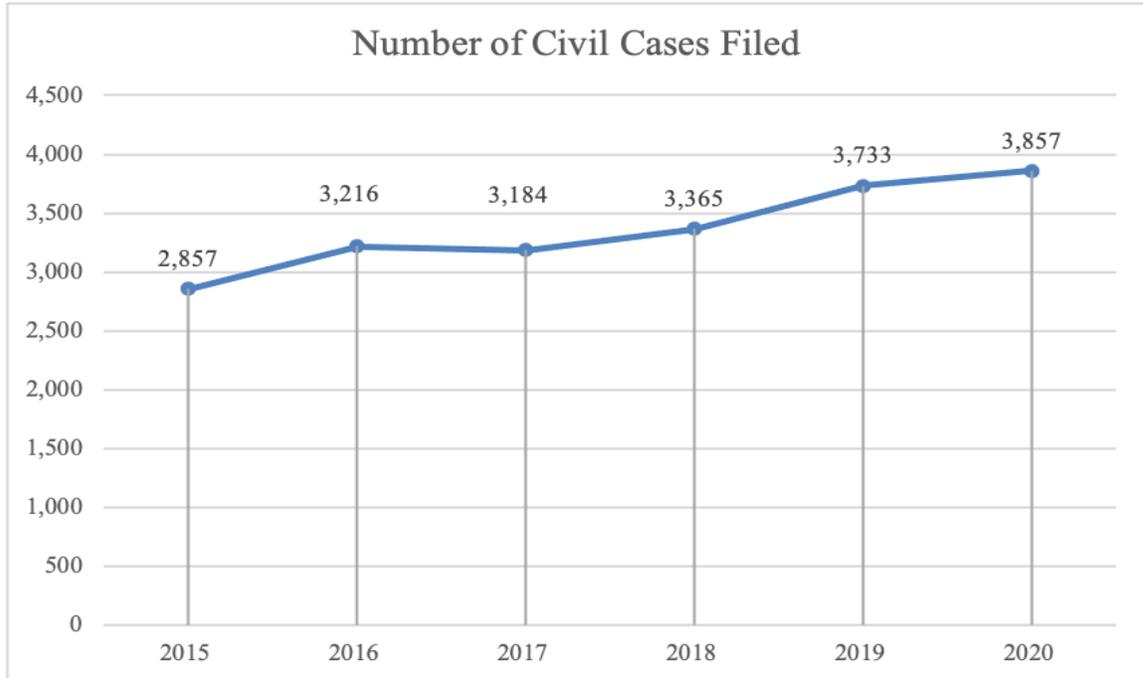
### **III. CIVIL JURY TRIALS**

#### **A. Overview**

In light of the COVID-19 Pandemic, the District tried a record low eight civil cases to jury verdicts in 2020.<sup>1</sup> The eight civil trials in 2020 are a substantial drop from the thirty-one civil jury trials in 2019. Surprisingly, however, the District saw a record number of civil lawsuits filed during the COVID-19 Pandemic, a total of 3,857. This compares to the civil case filings of 3,733 in 2019; 3,365 in 2018; 3,184 in 2017; 3,216 in 2016; and 2,857 in 2015. These case filing totals are demonstrated in the chart below:

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<sup>1</sup> This number reflects only the jury trials that resulted in a verdict. There was an additional civil jury trial that was settled on the third day of trial.



Taking the average number of cases filed from 2015 through 2020 of 3,369 (rounded to the nearest whole number) and comparing it with the eight civil jury verdicts in 2020 represents a 0.21% trial rate, compared to last year's 0.92% rate using the same 3,369 cases total. Of course, this is not a true comparison due to the impact of COVID-19.

The filing year for each case tried to jury verdict in 2020 is reported below:

YEAR FILED	NO. TRIED IN 2020
2019	1
2018	1
2017	5
2016	1

## **B. Time to Trial**

The average time from case filing to jury trial for civil cases in 2020 was 36.1 months, a 16.6% increase from 30.97 months in 2019. This increase in time to trial was impacted by COVID-19. Notably, of the eight civil cases tried to a jury in 2020, five were tried prior to the District halting jury trials in March. The three cases tried in the later part of the year were conducted in July, September, and October - before the District suspended trials again in November. The shortest time from filing to trial was seventeen months (in an intellectual property case). The longest time to trial was sixty-eight months (in a civil rights case). It is important to note that a large reason why this case took sixty-eight months to reach trial was because of an interlocutory appeal. Further, only two cases were tried within two years of filing (22.22%), compared with nine of the thirty-one cases filed in 2019 (29.03%), and twenty-seven of the forty-eight cases in 2018 (56.2%). Both of the “under two years” civil jury trials were tried by an active District Judge.

## **C. Volume of Trials**

The 3,857 civil cases filed in 2020 was the highest number of civil cases ever filed in the District.<sup>2</sup> Comparatively, the eight civil jury trials that reached a verdict in 2020 was the lowest number of civil jury trials to reach a verdict on record.<sup>3</sup> This was a significant decrease from thirty-one civil jury trials tried to verdict in 2019 and was an even more significant drop compared to 2018 (forty-eight) and 2017 (forty). In light of the 3,857 civil cases filed in 2020, the eight civil cases that reached a verdict represents a 0.21% trial rate. Again, this is a significant drop from 2019’s trial rate of 0.83% and 2018’s trial rate of 1.43%. Given this year’s drastic drop, the five-year average from 2016 through 2020 is 34.6 trials per year, slightly below the new nineteen-year

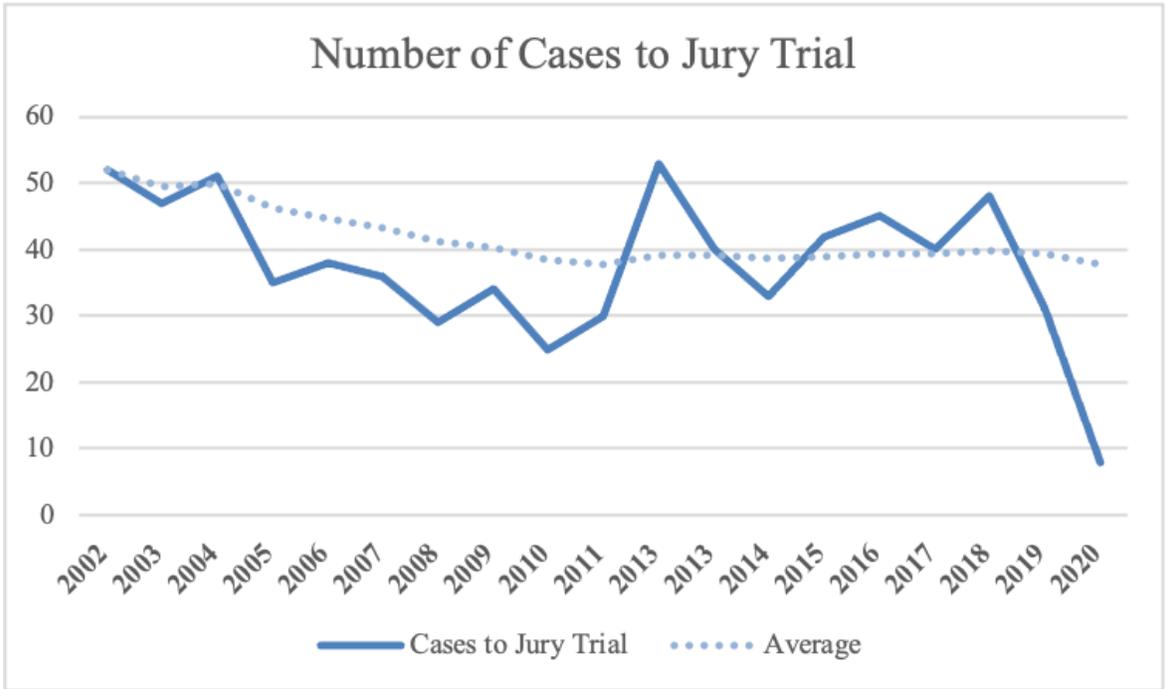
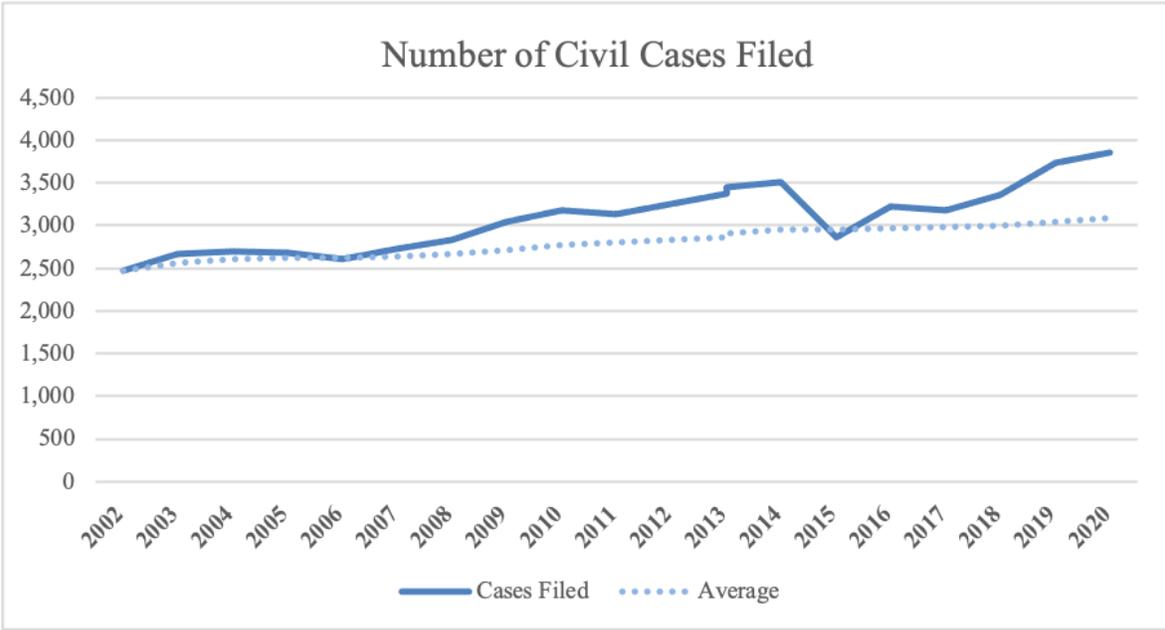
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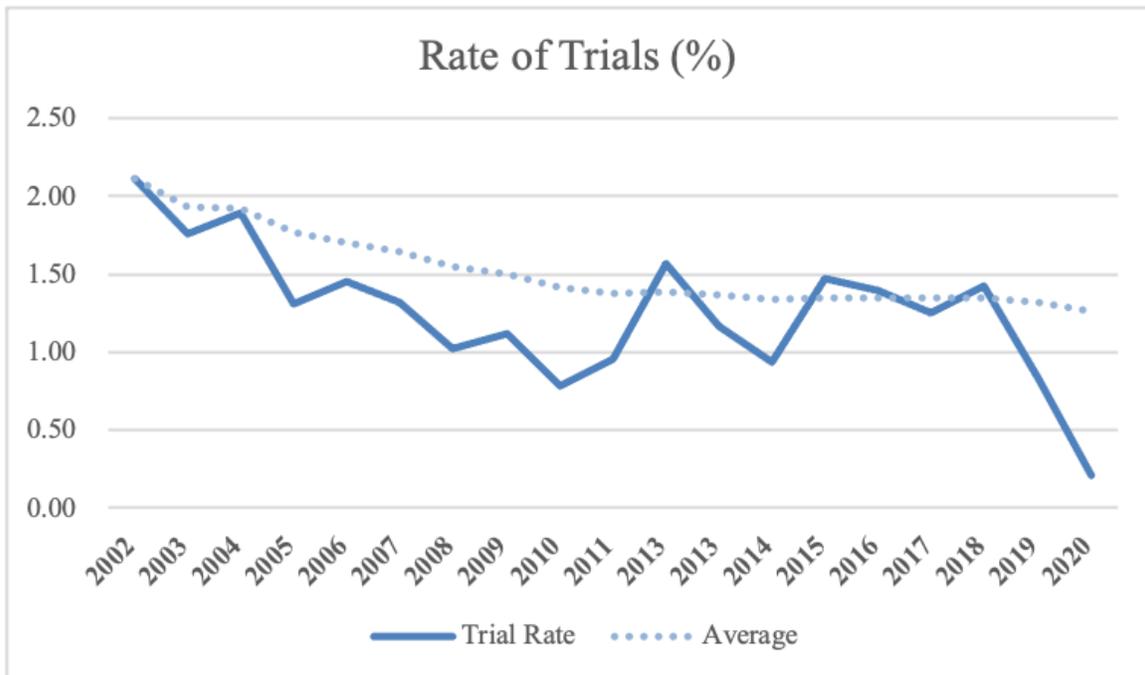
<sup>2</sup> The previous high was 3,733 civil cases filed in 2019.

<sup>3</sup> The previous low was twenty-five civil jury trials in 2010.

average of 37.8 trials per year. Relevant tables and graphs regarding civil jury trials are reported below:

Year	No. of Cases Filed	No. of Civil Jury Trials	Rate of Trials (%)
2020	3,857	8	0.21
2019	3,733	31	0.83
2018	3,365	48	1.43
2017	3,184	40	1.26
2016	3,216	45	1.40
2015	2,857	42	1.47
2014	3,516	33	0.94
2013	3,444	40	1.16
2012	3,380	53	1.57
2011	3,136	30	0.96
2010	3,177	25	0.79
2009	3,042	34	1.12
2008	2,838	29	1.02
2007	2,726	36	1.32
2006	2,607	38	1.46
2005	2,679	35	1.30
2004	2,698	51	1.89
2003	2,672	47	1.75
2002	2,464	52	2.10
Average	3,084	37.74	1.26





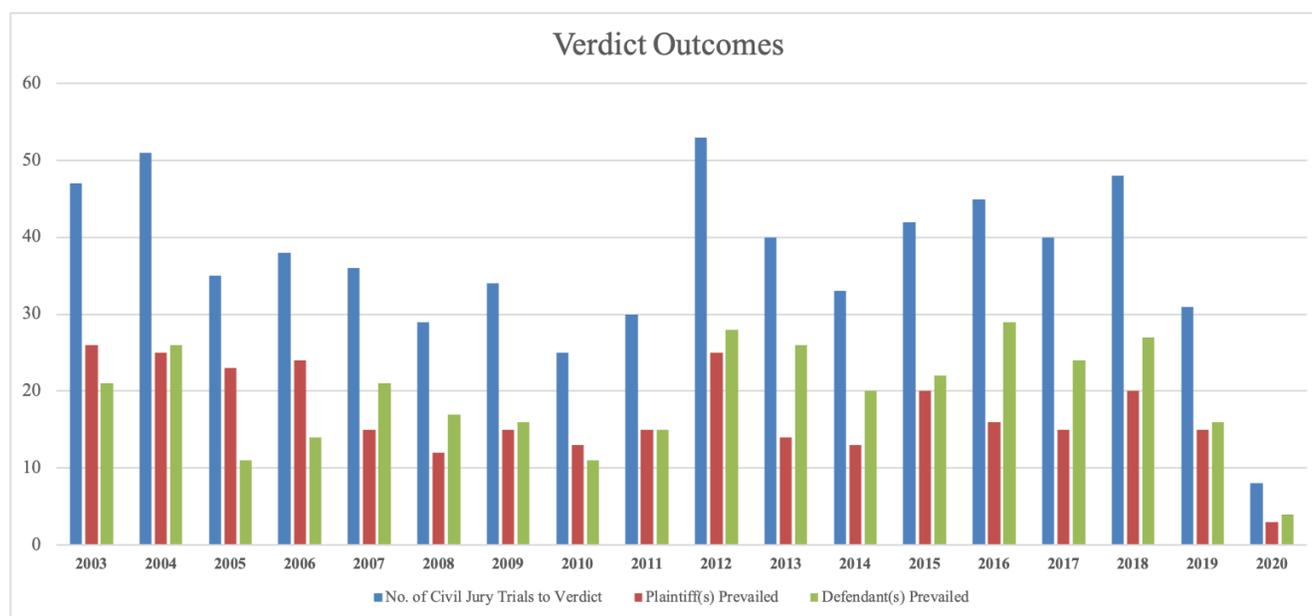
#### D. Parties' Success Rates

The success rates between plaintiffs and defendants in 2020 were similar, with plaintiffs prevailing in three of the eight jury trials (37.5%) and defendants prevailing in four (50%). There was also one split verdict this year. Since 2003, there have been 657 civil jury trials. The cumulative success rates of these 657 trials have been relatively similar between plaintiffs and defendants, with plaintiffs prevailing in 309 cases (46.47%), and defendants prevailing in 348 (52.33%). Of the 657 trials, there were seven split verdicts (1.05%) and one judgment vacated (0.15%).

Rates of success since 2003 are presented below:

Year	No. of Civil Jury Trials	Plaintiff(s) Prevailed	Defendant(s) Prevailed	Split Verdicts	Judgment Vacated
2020	8	3 (37.5%)	4(50%)	1	0
2019	31	15 (49.4%)	16 (51.4%)	0	0
2018	48	20 (43.7%)	27 (56.3%)	0	1

2017	40	15 (37.5%)	24 (60.0%)	1	0
2016	45	16 (35.5%)	29 (64.5%)	0	0
2015	42	20 (47.6%)	22 (52.4%)	0	0
2014	33	13 (39.4%)	20 (60.6%)	0	0
2013	40	14 (35.0%)	26 (65.0%)	0	0
2012	53	25 (47.2%)	28 (52.8%)	0	0
2011	30	15 (50.0%)	15 (50.0%)	0	0
2010	25	13 (52.0%)	11 (44.0%)	0	0
2009	34	15 (44.1%)	16 (47.1%)	1	0
2008	29	12 (41.1%)	17 (58.6%)	3	0
2007	36	15 (41.8%)	21 (58.3%)	0	0
2006	38	24 (63.2%)	14 (36.8%)	0	0
2005	35	23 (65.7%)	11 (31.4%)	0	0
2004	51	25 (49.0%)	26 (51.0%)	1	0
2003	47	26 (55.3%)	21 (44.7%)	0	0
<b>TOTAL</b>	<b>665</b>	<b>309 (46.47%)</b>	<b>348 (52.33%)</b>	<b>7 (1.05%)</b>	<b>1 (0.15%)</b>



### E. Level of Plaintiffs' Verdicts

The largest civil jury verdict in 2020 was \$921,059 in a breach of insurance contract case. By comparison, the largest verdict in 2019 was \$2,995,004 in an unlawful arrest case. This represents

a 69.25% decrease in the largest verdict from 2019 to 2020. Additionally, the smallest verdict in 2020 was \$3,190 in an intellectual property case, while the smallest verdict in 2019 was \$6,000 in an auto accident case. The average civil jury verdict in 2020 was \$365,906 compared to the average verdict of \$545,968 in 2019. The following chart reports the jury verdicts in 2020 from highest to lowest:

Rank	Amount	Type of Case
1	\$ 921,059	Insurance Contract
2	\$ 499,527	Trade Secret
3	\$ 280,987	Breach of Contract (Non-Insurance) <sup>4</sup>
4	\$ 39,129	Fair Labor Standards
5	\$ 3,190	Trademark Infringement

Active District Judges presided over five jury trials to verdict (compared to twenty-three last year); Senior District Judges presided over one jury trial to verdict (the same number as last year); and Magistrate Judges presided over two jury trials to verdict (down six from last year). The following is a breakdown of civil jury trials in 2020. The table is listed in alphabetical order based on the presiding judge’s last name.

Judge	Claims of the Case	Prevailing Party	Amount of Verdict
PAB	Misappropriation of Trade Secrets	Plaintiff	\$499,527
	Breach of Contract	Defendant	\$280,987

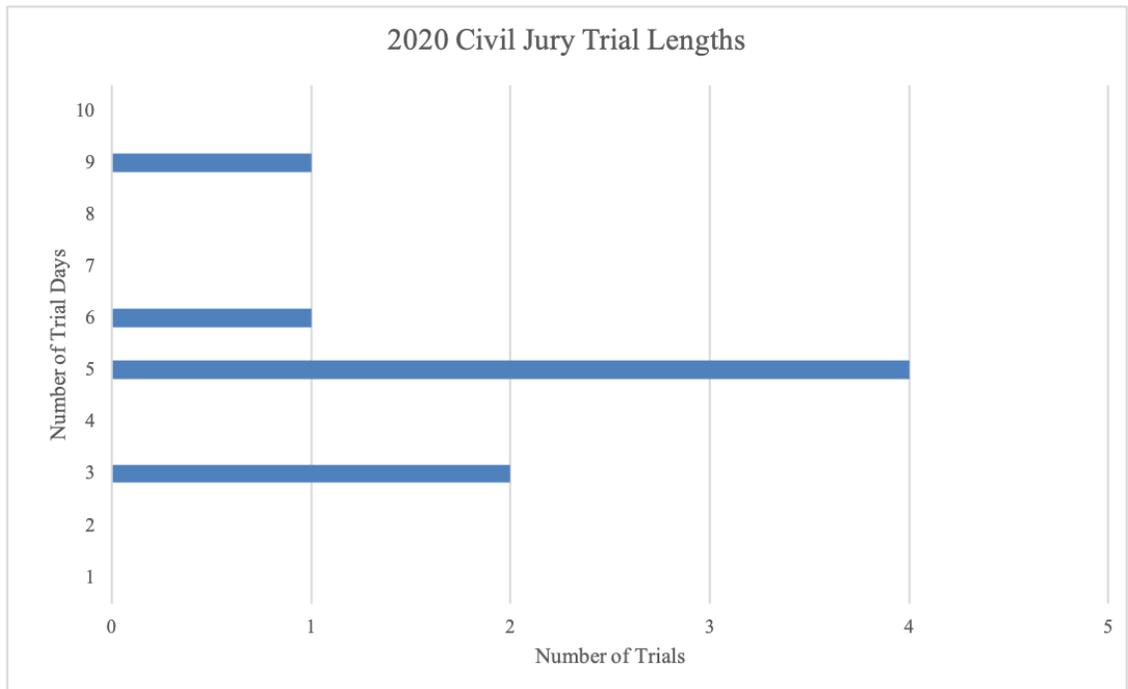
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<sup>4</sup> Defendant/Counterclaim Plaintiff

RBJ	Fair Labor Standards	Plaintiff	\$39,129
RBJ	Employment Age Discrimination	Defendant	
RBJ	Trademark Infringement	Plaintiff	\$3,190
	Copyright Infringement	Defendant	
	CCPA Violation	Defendant	
JLK	Employment ADA Violation	Defendant	
WJM	Armed Forces Military Claims Act	Defendant	
KLM	Breach of Contract (Insurance)	Defendant	
STV	Breach of Contract (Insurance)	Plaintiff	\$546,059
	Bad Faith Breach of Contract	Plaintiff	\$175,000
	Unreasonable Delay/Denial of Benefits	Plaintiff	\$200,000

#### **F. Trial Lengths**

Civil jury trials in 2020 required 41 total trial days, compared to 168 in 2019 and 252 in 2018. The longest trial was held in February (pre COVID-19 shutdown) and lasted nine days; the shortest trials were held in July and September (post COVID-19 shutdown) and lasted three days. The average trial length was 5.13 days, while the most common trial length was five days. Notably, the average trial length of the trials held prior to the shutdown in March was six days, and the average trial length after the District resumed hearings in July was 3.67 days. The difference in length between trials held pre-shutdown compared to the trials held post-shutdown is likely due to the fact that the District prioritized trying shorter cases during COVID-19. The total cases at each trial length were as follows: nine days (1), six days (1), five days (4), and three days (2). These figures are represented in the following chart:



**G. Nature of Claims**

The civil jury trials conducted in 2020 fall into the following categories:

Category	Number of Cases	Percent of Cases Tried
Breach of Contract (Insurance)	2	25%
Employment <sup>5</sup>	4	50%
Intellectual Property <sup>6</sup>	2	25%

<sup>5</sup> The “employment” category includes claims involving fair labor standards, retaliation under the Military Claims Act, ADA violations, age discrimination, etc.

<sup>6</sup> One of these cases also involved a breach of contract counterclaim; however, this case is classified as an intellectual property case for the purpose of these statistics.

**1. Breach of Insurance Contract**

There were two jury trials for breach of contract regarding insurance coverage. The defendant prevailed in one trial and the plaintiff prevailed in one trial. The plaintiff was awarded \$921,059.

**2. Employment**

There were four employment cases this year, which represents 50% of the civil jury cases tried to verdict in 2020. These four employment cases are a drop from the seven cases in 2019, and fourteen cases in 2018. The defendants prevailed in three (75%) of the cases whereas the plaintiffs prevailed in only one (25%) of the cases. The results by nature of the alleged claims are reported below:

Nature of Claim	Prevailing Party	Verdict
ADA Violation	Defendant	
Age Discrimination	Defendant	
Fair Labor Standards	Plaintiff	\$39,129
Military Claims Act	Defendant	

In the last nineteen years, 212 employment cases have been tried to verdict. The plaintiffs have prevailed in 104 employment cases (49%), and the defendants have prevailed in 108 (51%). The following table is organized by the nature of the employment claim and shows the number of verdicts rendered in favor of plaintiffs for the past nineteen years:

Nature of Claim	Cases Tried	Cases Won by Plaintiff	Plaintiff's Success Rate
Retaliation <sup>7</sup>	46	29	63.04%
Gender	47	20	42.55%
Pregnancy	1	1	100%
Race/National Origin	36	10	27.78%
Disability	31	16	51.61%
Age	16	5	31.25%
Public Employee	10	5	50%
Religion	3	3	100%
Public Policy Violation	7	5	71%
Luring	1	0	0%
Breach of Contract	4	2	50%
Negligent Misrep.	2	2	100%
FLSA	7	6	85.71%
FMLA	1	1	100%
Total	212	105	49.5%

### 3. Intellectual Property

The District had two intellectual property jury trials in 2020: a trademark infringement case and a misappropriation of trade secrets case. The plaintiff in the trademark infringement case prevailed on its claim and was awarded \$3,190.<sup>8</sup> The trade secret case was a split verdict in which the plaintiff was awarded \$499,527 for its trade secret claim and the defendant was awarded \$280,987 for its breach of contract counterclaim.

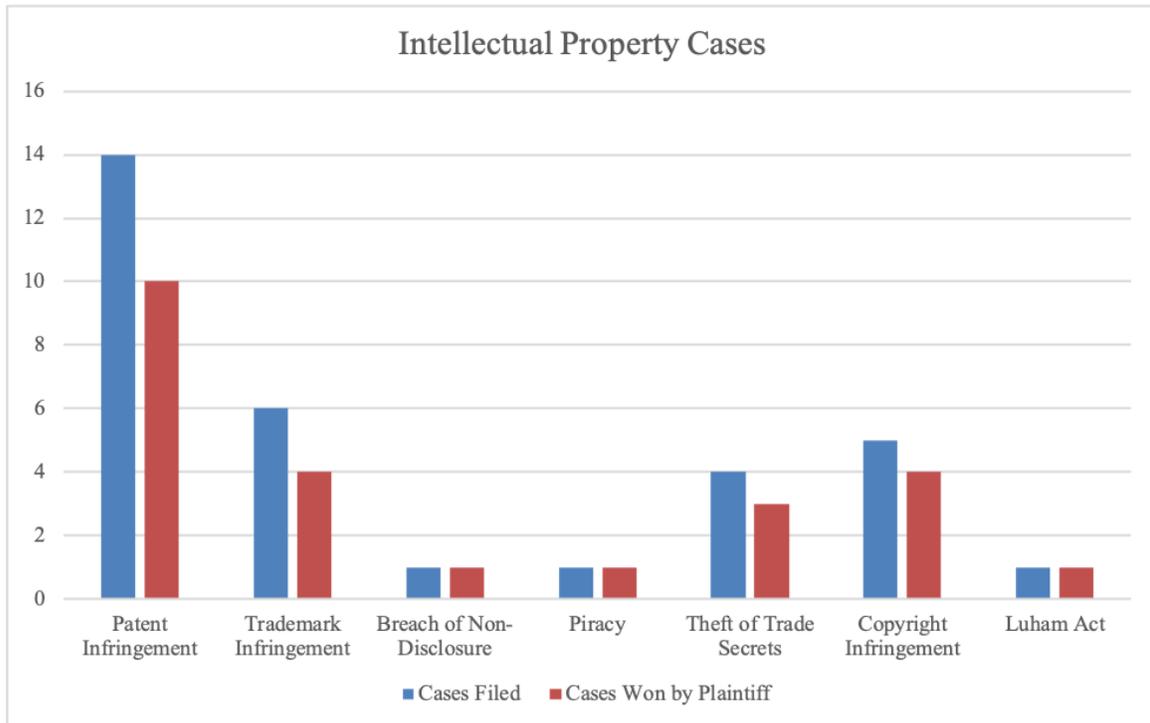
Historically, plaintiffs have fared well in intellectual property cases in this District. In the last nineteen years, thirty-two intellectual property cases have been tried to verdict, and the plaintiff prevailed in twenty-four of them (75%).

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<sup>7</sup> The retaliation claim in 2020 involved the Military Claims Act.

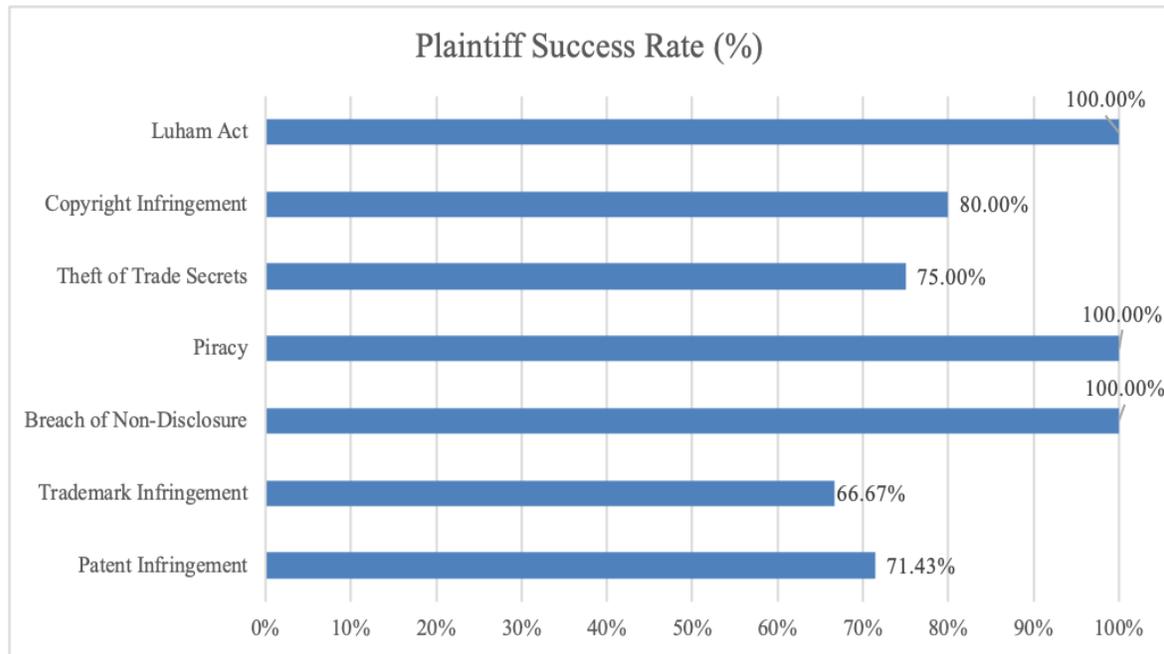
<sup>8</sup> This case also involved a copyright claim in which the Court found in favor of the defendant.

The results over the last nineteen years are reported below:<sup>9</sup>



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<sup>9</sup> These statistics include a case in which the plaintiff filed both a trademark claim and a copyright claim. The plaintiff prevailed on the trademark claim and the defendant prevailed on the copyright claim. Those numbers are reflected in the chart.



#### IV. CIVIL BENCH TRIALS

Judges in the District held six civil bench trials in 2020, the same number that was held in 2019. This is a drastic drop from the fifteen civil bench trials in 2018. Plaintiffs prevailed in two of the six cases: a class action ERISA case and an FTCA case. Defendants prevailed in four cases: a real property case, an age discrimination case, an Investment Company Act case, and a declaratory action in a copyright infringement case. Plaintiffs prevailed in 40% of the bench trials in 2020. However, similar to 2019, there was a significantly smaller sample size of bench trials compared to previous years (fifteen in 2018 and nine in 2017).

The average time from filing to trial for bench trials in 2020 was 41.3 months, up roughly 15% from the average 36.2 months in 2019. Additionally, the average 41.3 months to trial is higher than the average 36.1 months for civil jury trials. However, it is important to note that this average is likely skewed by an outlier case that took sixty-four months to reach trial. Without that outlier case, the average time to trial for bench trials would have been 36.8 months. The average time to issue a ruling following the trial was 106 days; however, this average is somewhat skewed by a

bench trial that took only eight days to issue a ruling. Without that outlier case, the average would have been 126 days. The average length of a bench trial was 5.5 days.

The nature of the bench trials and their outcomes are reported below. The cases are listed in alphabetical order based on the presiding judge’s last name:

Judge	Type of Case	Time from filing to Judgment (mos.)	Prevailing Party	Award
CMA	Investment Company Act	54	Defendant	
RBJ	Real Property	43	Defendant	
JLK	FTCA	27	Plaintiff	\$897,111
WJM	Class Action ERISA Benefits	54	Plaintiff	\$3,131,082
RM	Copyright infringement <sup>10</sup>	67	Defendant	
STV	Employment Age Discrimination	25	Defendant	

## V. CRIMINAL TRIALS

### A. Overview

COVID-19 also had a substantial impact on criminal trials. Six of the eight criminal jury trials in 2020 occurred prior to March 13, 2020. The last criminal trial pre-shutdown began on March 2, 2020 and ended on March 12, 2020. Trials were already facing difficulties caused by the COVID-19 Pandemic by the time of the first shutdown.<sup>11</sup>

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<sup>10</sup> Declaratory Action.

<sup>11</sup> On March 13, 2020, one trial had to be continued after the Court was unable to empanel a complete jury. The case went to trial over a year later on April 5, 2021. Another trial had to be continued on March 3, 2020, its second day when the Defense learned their expert had fallen ill. As of time of publishing, that trial still has not taken place; it is docketed to begin on July 26, 2021.

A total of fifteen criminal cases were selected to be pilot trials. Thirteen cases were either continued or the defendant entered a change of plea; only two went to trial. Both of these cases were on gun possession charges and only lasted two days each. The first criminal pilot trial began on August 31, 2020; at that time there had not been a criminal jury trial in over five months. The defendant appeared pro se and did not attempt to file a motion to continue or object to the protocols. He was found guilty. The second and last criminal pilot trial of 2020 began on October 6. That defendant was found not guilty.

### **1. Trial Protocols**

Protocols for criminal trials were substantially similar to civil trials with a few key differences. Typically, the District gathers a pool of approximately thirty-two members of the general public for jury selection in a criminal trial. This increased by forty percent due to the unique challenges COVID-19 presented in jury selection; specifically, fewer jurors appearing when notified and jurors being excused for COVID-19 related reasons. Due to the large size of the jury pool combined with the need for social distancing, the Court was unable to seat all potential jury members in the trial courtroom during *voir dire*. Instead, jurors were split into two groups with half seated in the trial courtroom and half in the large, typically unused courtroom on the second floor. These jurors watched a live video feed of *voir dire* of jurors in the trial courtroom. Replacement jurors were brought up to the trial courtroom in groups of two, as needed.

Unlike in civil trials, alleged victims in criminal proceedings have a statutory right to be present in the courtroom. Although jury trials were generally closed to the public, criminal proceedings allowed victims or victims' families to attend. This meant that these individuals would

be seated in the gallery with members of the jury. The two pilot criminal trials in 2020 did not face this issue as those cases did not involve victim-related crimes.<sup>12</sup>

## **2. Impact on Trial Proceedings**

Court protocols were particularly challenging in criminal trials, often juxtaposing the constitutional and statutory rights of the parties with health codes instituted for public safety. Defendants expressed concern that witnesses' masks would impede the jury's ability to assess their credibility. Many objected to the gallery being closed to members of the public, arguing this violated the accused's constitutional right to a public trial. Defendants also expressed concern that seating the victims in the gallery amongst members of the jury would unduly influence the verdict. All of these reasons were cited in motions requesting continuances. Members of the public were able to phone in to listen to the trial; video feed was not available. There were concerns that the audio was not functioning properly at all times. Defendants further asserted the mask mandate violated the confrontation clause which gives individuals the right to confront their accuser(s).

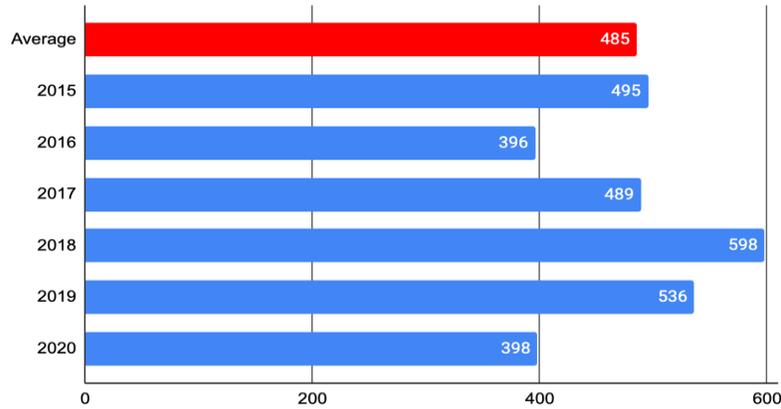
The most persistent issue in criminal cases was the ticking clock of the Speedy Trial Act. The Speedy Trial Act dictates trial must commence within seventy days of a defendant's indictment. However, the statute allows exceptions if a trial judge finds additional time would best serve the interests of justice. Immediately after the March shutdown, defendants began requesting trial dates (which were obviously unavailable), or in the alternative, case dismissal for violating the accused's right to a speedy trial. These motions were all denied. However, in the summer when pilot trial dates became available, very few accepted the opportunity.

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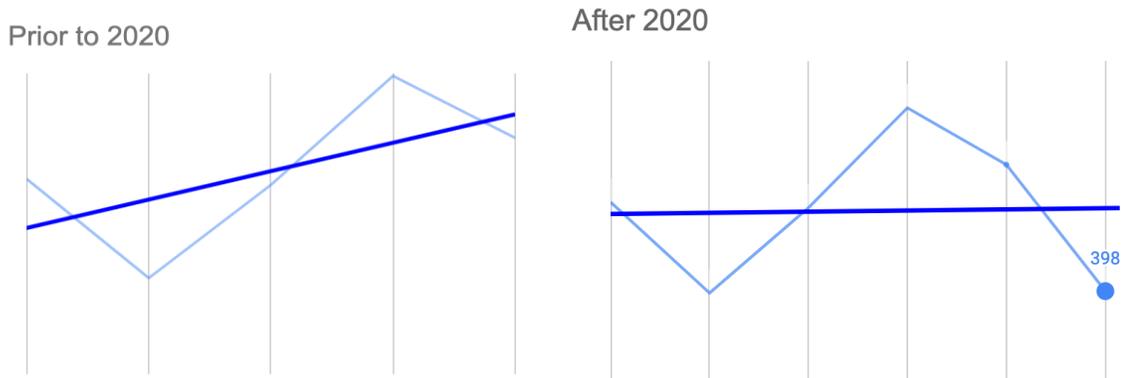
<sup>12</sup> This situation did occur during a trial in April 2021 regarding distribution of fentanyl. The victim's mother and her colleague were seated in the gallery between members of the jury. Post-trial, the Defense filed a motion for an acquittal or, in the alternative, a new trial arguing the Defendant was denied the right to a fair trial by this and other COVID-19 protocols.

## B. Felony Trials

There were 398 felony cases filed in 2020. Comparatively, there were 536 filed in 2019, 598 in 2018, 489 in 2017, 396 in 2016, 495 in 2015. These figures are charted below:



There was a substantial decrease in total felony case filings between 2019 and 2020. Prior to 2020, the trendline for the number of cases filed was steadily rising. However, this year's significant drop has flattened the trendline. This effect is represented below:



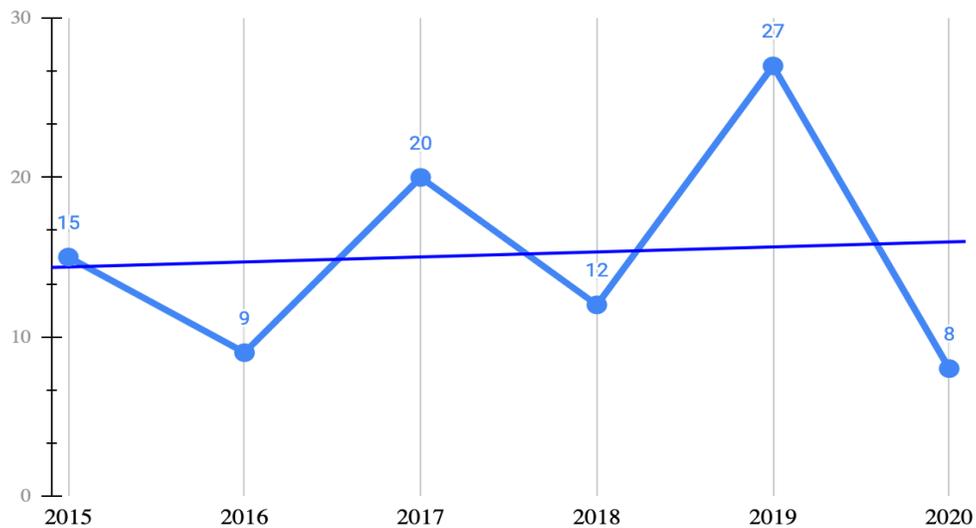
In 2020, eight felony cases went to trial. This year saw the fewest number of felony trials since this office began tracking criminal trial statistics in 2007. However, before the shutdown the district was on track for a record thirty trials, with six trials in seventy-two days.

The trial rate for 2020 was 2.01%, based on an annual average of 485 filings between 2015 and 2020. This is a substantial decrease from the previous year's rate of 5.57%, calculated using the same 485 filing average. The average trial rate over the past six years is 3.13% cases versus the average annual filings.

The number of felony jury trials compared to annual filings over the last six years is reported below:

Year	No. of Cases Filed	No. of Felony Jury Trials	Rate of Trials (% per year filings)	Rate of Trials (% per avg filings)
2020	398	8	2.01	1.65
2019	536	27	5.04	5.56
2018	598	12	2.01	2.47
2017	489	20	4.09	4.12
2016	396	9	2.27	1.85
2015	495	15	3.03	3.09
Average	485.3	15.2	3.07	3.13

A visual representation of the number of felony jury trials per year for the last six years is presented below:



The defendant was found guilty in six of the eight trials; defendants were acquitted in two trials, producing a historically high acquittal rate of 25% (albeit statistically insignificant due to the small sample size). The conviction rate fell from the prior year, from 88.89% in 2019 to 75% in 2020. Of the twenty-seven felony trials in 2019, the defendant was convicted in twenty-four and two of the non-convictions were the result of mistrials.

Out of the six trials in which defendants were convicted, five have been sentenced. One defendant who was found guilty on February 13, 2020 is still awaiting sentencing. The sentencing hearing is scheduled for August 5, 2021 as of time of publishing. The most severe sentence imposed was 360 months (thirty years) for Aggravated Sexual Abuse in Indian Country. The least severe was three years of probation for False Statements and Conspiracy. That defendant was also found not guilty of Marriage Fraud. He was tried alongside three other defendants, all of whom were found guilty on all counts and received sentences of three, four, and eight months, respectively.

The felony prosecutions in 2020 are reported below:

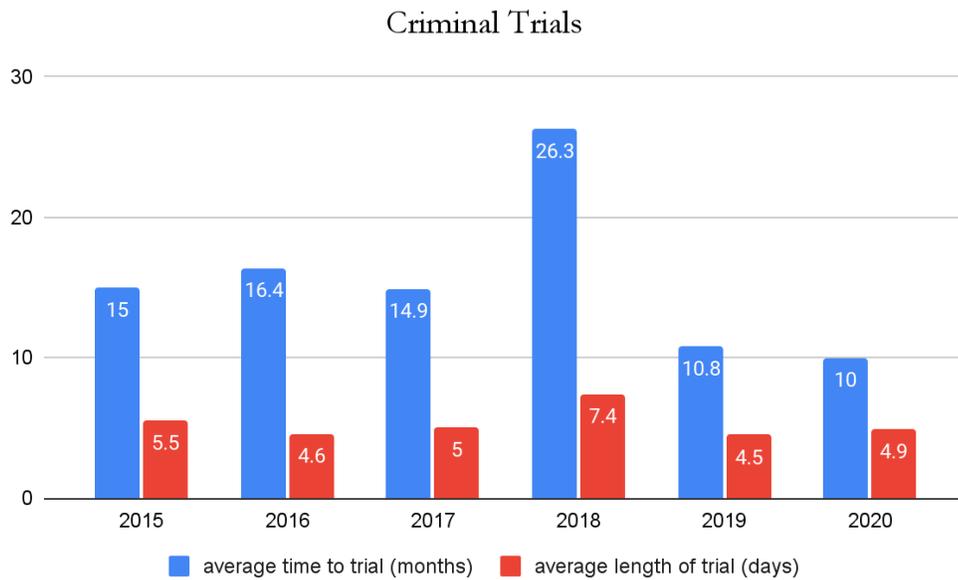
Judge	Crime Charged	Verdict	Sentence (mos.)
CMA	Mail Fraud	Convicted	Pending
DDD	Bank Fraud	Convicted	6
DME	Marriage Fraud	Convicted	8
PAB	Possession of Firearm	Acquitted	N/A
RBJ	Possession of Firearm	Convicted	58
REB	Conspiracy to Possess	Acquitted	N/A
	Aggravated Sexual Abuse	Convicted	360
RM	Health Care Fraud	Convicted	192

In total, thirty-nine days were spent trying these eight cases, for an average of 4.9 days per trial. The longest criminal trials lasted nine days (one concerned Marriage Fraud and False Statements, and the other concerned Health Care Fraud). The shortest criminal trials lasted two days (both trials concerned Possession of a Firearm by a Felon). Despite the significantly fewer number of trials in 2020 compared to 2019, 2020's average trial length of 4.9 days is higher than 2019's average of 4.5 days.

In 2020, the average time to the start of trial from a defendant's initial appearance was 10 months. This is slightly shorter than the 2019 average of 10.8. It is substantially shorter than the 2018 average of 26.3 months, the 2017 average of 14.9 months, and the 2015-2020 average of 15.6 months. It is tied with 2014 for the shortest average time to trial. The longest duration between initial appearance and trial was twenty months (Health Care Fraud). The fastest time to trial was three months for a four-day trial where the defendant was found guilty of Bank Fraud.

It is important to note that the year's short time to trial is misleading. COVID-19 had a substantial impact on the average amount of time to trial. However, this impact will not be represented in trial statistics until 2021, and later, due to the backlog of continued trials.

The average time to trial and days per trial for the last six years are presented in the chart below:



**A. Misdemeanor Jury Trials**

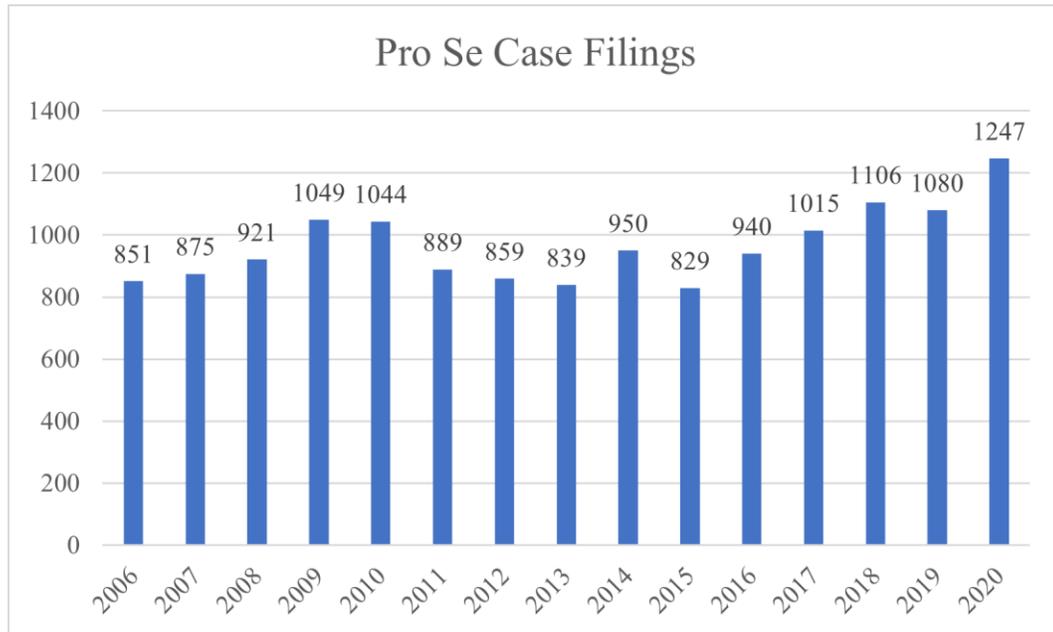
There were no misdemeanor jury trials in 2020. There has not been a misdemeanor jury trial since 2017.

**B. Petty Offense Bench Trials**

There were two petty offense bench trials in 2020. Both defendants presented pro se; both trials resulted in verdicts for the prosecution. This is the highest number of petty offense trials since 2016, when there were four. Between the years of 2016 and 2020 there was only one petty offense trial which was held in 2018.

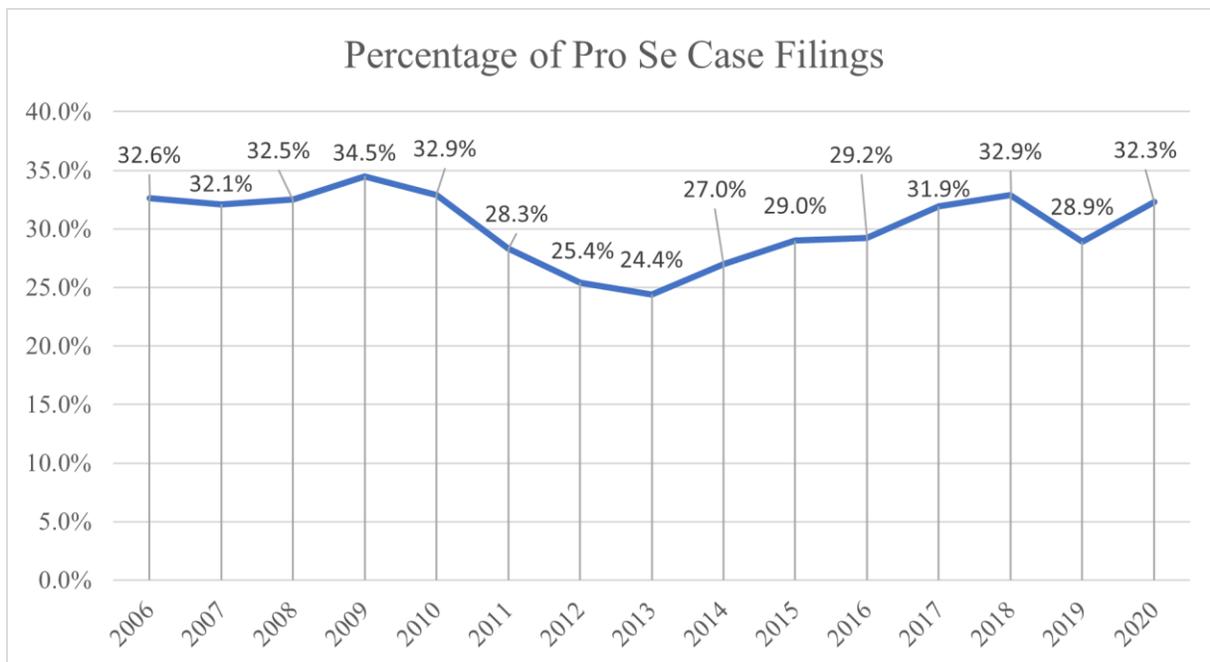
## VI. PRO SE

Over the last fifteen years, a total of 14,494 cases have been filed by pro se litigants for an average of 966 cases per year. The number of pro se cases filed each year are outlined in the chart below:



Over the past fifteen years, pro se case filings have averaged around 30% of the total number of civil cases filed per year. The year 2013 saw a significant drop in the percentage of pro se case filings to 24.4%; That percentage increased steadily and peaked at 34.9% in 2018, and subsequently, dropped to 28.9% in 2019. In 2020, the pro se filing rate rebounded to 32.3%.

These figures are shown in the chart below:



In 2020, no civil cases that began with pro se litigants proceeded to trial. Three total litigants appeared pro se at trial; all were defendants in criminal matters (two petty offense bench trials and one felony jury trial). The defendant in the jury trial faced a Felon in Possession of a Firearm charge. The defendant dismissed counsel only 38 days before trial, choosing to exercise his Sixth Amendment right to represent himself. After strongly cautioning the defendant of the potential obstacles, the District Judge granted defense counsel’s unopposed motion to withdraw. The defendant was found guilty following a two-day trial.

## **VII. CASELOAD AND CONSENT**

In February 2014, the District initiated a Pilot Project on Consent, utilizing the full-time Magistrate Judges in the drawing of civil lawsuits. Under this project and the subsequent Local Rule arising therefrom, the Magistrate Judges are given an equal draw of civil cases with the active District Judges. Of course, to keep the drawn Magistrate Judge as the presiding judicial officer, the parties must unanimously consent (by filing the appropriate consent form). If they do not, the case is drawn to a District Judge, and the previously assigned Magistrate Judge stays on the case

in a referral role. Additionally, under 28 U.S.C. § 636(c), parties have long had the ability to choose “traditional consent,” *i.e.*, when a case is drawn to a District Judge, the parties may consent to a Magistrate Judge instead. For either “traditional consent” or those cases drawn directly to a Magistrate Judge, if consent is achieved, there will be only one judicial officer on the case (except when the parties seek, and are granted, a judicially conducted settlement conference or early neutral evaluation).

Although mathematically the introduction of direct draw to Magistrate Judges has, in absolute terms, reduced the number of civil cases that a District Judge carries, their workload has increased despite consent. Comparing the workload of the judges of the Court, and the change in civil caseload over time, in 2013, the active District Judges in Colorado averaged 224 civil cases pending, compared to 304 civil cases pending per active District Judge at the end of December 2020 (up from 238 in December 2019). This was an astounding **27.7% increase in one year**. Further, Senior District Judges averaged 161 cases in 2013 but had 113 cases per judge in December 2020 (down from 162 cases per judge in December 2019), a **decrease of 30.2% in one year**. Further, in December 2020, Magistrate Judges were the presiding judicial officer (on consent) in 930 pending cases (an average pending civil case load per Magistrate Judge of around 100) but were the referral judges for another 1,670 civil cases assigned to the active and senior District Judges, for a total of 2,600 cases for seven full-time and two part-time positions, meaning a per judge civil caseload of about 335 cases. For many, if not most of these referred civil cases, the Magistrate Judges handle most or all pretrial matters (scheduling, discovery disputes, settlement conferences, dispositive motions for report and recommendation, final pretrial conferences, and even pretrial evidentiary and Rule 702 motions). The bottom line for practitioners is that *all* judges in the District are busy (a truth borne out in national statistics, showing our District

to be one of the busiest in the nation), and the steady diet of criminal cases on a District Judge's docket (with the concomitant Speedy Trial and motions practice burdens) make it only worse.

Regarding the efficacy of the direct draw program, from February 2014 through December 2020, Magistrate Judges received collectively 7,128 cases in eighty-three months under the direct assignment of cases. Of the total 3,857 civil cases filed in the District in 2020, 1,407 (36.5%) were directly drawn to Magistrate Judges. On average since 2014, 1,069 cases annually have been drawn directly to Magistrate Judges. Many cases never have a consent decision made because (1) they are dismissed voluntarily before the time for consent arrives, (2) they are reassigned randomly because the assigned Magistrate Judge has a conflict, (3) they are reassigned to a District Judge because of an early dispositive issue (*e.g.*, temporary restraining order, motion to remand to state court, etc.) before consent has been achieved, or other reasons, and, thus, must be handled by an Article III judge), and other causes. However, an average of around 290-300 cases per year have consent achieved.

In 2014, the then-novel "direct draw" of a Magistrate Judge in a civil case resulted in a nearly 50% rate of consent (*i.e.*, 50% of the time the parties consented, 50% did not consent). That percentage went down to approximately 40% in 2015 and has bumped around between 36% and 39% since then. In 2020, parties consented in 361 cases, a record number for a complete year and a 15.7% increase in consent from 2019's 312 consented cases, although remember that 2020 also saw a record number of civil cases filed.

## VIII. ALTERNATIVE DISPUTE RESOLUTION

In November 2011, the District instituted a new paradigm concerning ADR, offering an Early Neutral Evaluation (“ENE”) as the presumptive process, with settlement conferences occurring only on motion to the presiding judicial officer. In 2009, the first full year with six full-time Magistrate Judges, the District had 717 settlement conferences. In 2011, the last (essentially) full year of Magistrate Judges conducting settlement conferences on a regular basis, the District held 486 settlement conferences.

Since 2012, the District has experienced the following ADR activity:

2012:	166 settlement conferences	18 ENEs
2013:	116 settlement conferences	15 ENEs
2014:	122 settlement conferences	8 ENEs
2015:	79 settlement conferences	15 ENEs
2016:	114 settlement conferences	8 ENEs
2017:	115 settlement conferences	2 ENEs
2018:	103 settlement conferences	1 ENE
2019:	129 settlement conferences	None known
2020:	98 settlement conferences	None known
Totals:	1042 settlement conferences (116/year)	67(+) ENEs (7/year)

The ENE is a virtually extinct (and unknown) procedure. In fact, as of January 2018, the Clerk’s Office of the District of Colorado ceased monthly reporting on ENEs. In 2019, the process appears to have gone out of use entirely. There may be an occasional ENE in the District (perhaps among practitioners from other districts who find the procedure efficacious).

Settlement conferences with Magistrate Judges are still available on a case-by-case basis.

The receptivity of such conferences differs from judge to judge (both District Judges and Magistrate Judges). Some judges require motions to be filed requesting a settlement conference, while others handle it more informally (perhaps even as simple as an email, phone call, or suggestion at the Scheduling Conference).