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# ICJR Research Brief

## ***Civil Delay in Federal Courts: Is It Getting Worse?***

In 1989, Senator Joseph R. Biden, Jr., Chairman of the Senate Judiciary Committee, convened a task force of legal practitioners from around the nation to address widespread concerns about skyrocketing legal costs. Conducted under the aegis of the Brookings Institution, the Civil Justice Reform Project brought together representatives of diverse groups—including general counsels of major corporations, public interest attorneys, and leaders of both the defense and plaintiff trial bars—united in the belief that delays in the court system drive litigation costs and ultimately reduce access to the legal system for corporate litigants and private citizens alike. The ICJ was asked to serve as a technical consultant to the task force, informing participants about previous research on court congestion and delay, alternative dispute resolution, and other topics related to the project's concerns.

To provide an empirical foundation for the task force's initial discussions, the ICJ undertook an analysis of trends in civil caseloads, time to disposition, and patterns of case resolution in the federal district court system. Using a comprehensive database of all cases filed in the federal courts from 1971 through 1986, ICJ analysts **Terence Dungworth** and **Nicholas Pace** set out to determine:

- How long federal districts currently take to dispose of private civil cases;
- How private civil case processing time has changed over the past couple of decades; and
- Whether particular kinds of cases and particular district courts are more subject to delay.

The results surprised many of the task force participants: on average, federal courts dispose of more than half of their civil cases within a year. Moreover, this rate remained remarkably stable over the 15 years studied. However, detailed analysis of case level data uncovered additional findings with regard to patterns of case disposition and variations among local district courts that raise troubling questions about civil case processing in the federal courts. In the report of their findings, *A Statistical Overview of Trends in Civil Litigation in the Federal Courts (R-3885-ICJ)*, Dungworth and Pace provide a wealth of detail about filings and dispositions of different types of civil cases for the nation and for selected local district courts. They also attempt to explain why some cases take longer to reach resolution than others.

### ***Some cases are being processed faster, others slower***

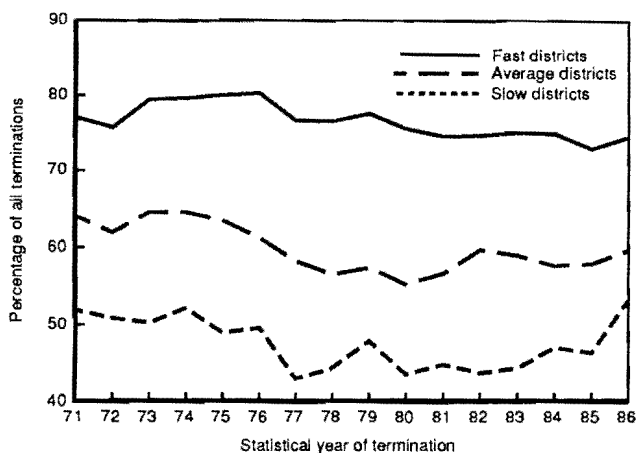
Although the average time to disposition for *all* civil cases remained stable over the 15-year study period, tort and contract cases improved their case processing time, while civil rights cases experienced a sharp increase in time spent in the system. For example, at the beginning of the period, 57 percent of contract cases were resolved within a year of filing and 9 percent took more than 3 years to reach resolution. By the end of the period, 65 percent were in the more rapid category and only 5 percent in the slower. In contrast, the proportion of civil rights cases terminated within a year of filing fell from 73 percent at the beginning of the period to 49 percent at the end.

## Declining trial rates: A sign of efficiency or lowered expectations?

Civil cases are resolved in numerous ways, requiring varying degrees of court involvement. A sizeable proportion of all cases require no formal court action. In others, the court must rule on motions and hold conferences with parties. Trials occur only in a small fraction of cases. The study found that the proportion of cases requiring formal court action before resolution *increased* over the 15-year period. But the proportion of private civil cases tried declined substantially, from 10.9 percent in 1971 to 6.6 percent in 1986. What the declining trial rate indicates is not clear. It could be a consequence of more effective judicial management of the civil caseload, or it might be due to a disproportionate increase in the number of cases with a low likelihood of trial. It could also indicate that an increasing fraction of civil litigants are abandoning hopes of obtaining their "day in court" because of rising litigation costs and lengthening trial queues.

## Individual district courts vary sharply

When specific districts are assessed, the picture grows more complicated. Median disposition times vary dramatically across the 94 district courts in the federal system. Furthermore, these variations persisted from 1971 to 1986. The districts that work fastest process 80 percent of all cases within a year; the slowest districts handle only 40 percent in the same period.



Percentage of private civil cases terminated within one year of filing for fast, slow, and average districts

What accounts for the variations? The authors analyzed groups of the fastest districts, the slowest, and those nearest to the median speed according to 1) caseload, 2) case mix, 3) court action prior to disposition, and 4) the ratio of judges to cases. It might be expected that slow districts have higher workloads, process more complex cases, or possess fewer resources than fast districts. However, none of these factors seems to account for the variations in speed. Fast districts process every type of case more quickly than slow districts, even though fast districts tend to have higher caseloads, similar case mixes, and similar resources.

## Further questions

Perhaps the most important finding of the analysis is that the data routinely collected by the federal court system are not sufficient to explain differences in case processing time. The authors emphasize the need for courts to keep more detailed records; they also suggest lines of inquiry for further research:

- How do particular kinds of cases unfold?
- How do court management practices and philosophies differ across districts?
- How do attorney and litigant practices affect courts' work pace? Are there sources of delay outside courts' control?

*Statistical Overview of Civil Litigation in the Federal Courts* provides a valuable reference tool for judicial policymakers and observers seeking to assess historical trends in the federal courts and the merits of potential reforms.

The research summarized in this brief was carried out within the Institute for Civil Justice of The RAND Corporation. Research results are described in detail in R-3885-ICJ, *A Statistical Overview of Trends in Civil Litigation in the Federal Courts*, by Terence Dungworth and Nicholas Pace, 92 pp., \$7.50.

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