Backlog Disadvantage

Thesis: Our court system is overloaded. Any case that increases the number of cases going through the system - by cracking down, speeding up prosecution, or even *trying to solve backlog* - merely makes the problem worse and subverts justice.

This is a linear disadvantage; the impacts are already happening, but the Aff makes them worse.

Recommended outline: read the Universal Internal Link on page 298-A; read an appropriate link card (or use logical reasoning) to show how the case increases the problem; and read a few impacts.

TABLE OF CONTENTS

One-Card Version: More cases = less justice

Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779 (page 1)

Over the past four decades, caseloads in the federal courts have grown by leaps and bounds. During the twelve months ending in September 2008, more than sixty-one thousand cases reached the twelve regional United States courts of appeals, which have only 167 active judgeships. Such impossibly inflated dockets have forced the federal appellate courts to create an administrative system that sacrifices justice for efficiency.

LINKS

UNIVERSAL INTERNAL LINK: Status quo = staggering caseload
Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779 (page 2-3)

I begin with the numbers. Driven by immigration appeals, social security disability cases, and habeas petitions, our caseload has reached astounding proportions. During the twelve months ending in September 2008, more than sixty-one thousand cases reached the twelve regional United States courts of appeals. That number is actually down by almost three percent from 2004, when nearly sixty-three thousand appeals were filed.5 However, the 2008 numbers reflect an increase of more than six percent from September 2002, showing that overall our caseload is trending upward.6 Indeed, my own court has seen a *thirty-one percent* rise in the number of appeals since 2001. These numbers are extraordinary, especially when one considers that the nation has only 167 active judgeships on the federal courts of appeals. But even those numbers understate the problem's magnitude. Because three judges are assigned to each case, many appeals produce dissents, creating ever more writing responsibility. Significant time is allotted for oral argument. On the larger courts like mine, judges must regularly travel to courthouses within the circuit, in my case to San Francisco, Pasadena, Seattle, Phoenix, and sometimes to Honolulu and Anchorage, in addition to hearing arguments at my own courthouse in Portland. Thus, the actual burden is even greater than the raw numbers suggest. The federal district courts face similarly crushing caseloads. As in the courts of appeals, the number of cases filed annually has dipped slightly since the 2005 conference. Between March 31, 2004 and March 31, 2008, the number of annual filings in the district courts dropped by more than six percent to about 315,000.9 Despite the drop, that number remains more staggering even than the number of federal appeals. Each one of the 678 active district court judgeships is responsible, on average, for over five hundred cases per year, though there is some variance between circuits.

Federalization (dealing with crimes on the federal level, instead of the state level)
Hon. Susan A. Ehrlich (JD, judge on the Arizona Court of Appeals), 2000, Arizona State Law Journal, "The Increasing Federalization Of Crime", 32/825, accessed August 22, 2011, http://www.law.asu.edu/LinkClick.aspx?fileticket=DfDOr_3KeJ4%3D&tabid=1122 (page 13)

The growing number of federal crimes also floods the federal courts with cases that can be well-handled by the state courts to the detriment of cases for which the federal system was designed and is suited. In this context, there is the irony that the historic reason for having a distinct system of federal courts no longer justifies its existence.

Backlog Disadvantage

Immigration Prosecution: Huge immigration caseload
Prof. Lenni Benson (JD, professor of immigration law at New York Law School), 2006, New York Law School Law Review, "Making Paper Dolls: How Restrictions on Judicial Review and the Administrative Process Increase Immigration Cases in Federal Court", 51/37, accessed July 20, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1846595 (page 2)

The number of federal court cases reviewing removal orders has increased 970% in the past ten years. As of September 2005, the immigration cases represented 18% of the appellate civil docket.

New Laws/Regulations
Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779 (page 8-9)

No solution to the caseload crisis will be painless or will satisfy every litigant. All will involve tradeoffs between justice and efficiency. We should prioritize cases that have been reviewed only once at the district court, while also leaving the door ajar to administrative appeals that present particularly important issues. Such a system necessarily involves rethinking our fundamental assumption that the federal courts of appeals are not certiorari courts, and that so long as a federal question is fairly presented or diversity jurisdiction is satisfied, litigants may seek appellate review as of right. Judge Hand may have been correct, but so long as Congress continues to pass criminal laws and so long as agencies continue to regulate, I see no superior alternatives.

Reducing Backlog: Backfires - people fight convictions harder
Prof. Lenni Benson (JD, professor of immigration law at New York Law School), 2006, New York Law School Law Review, "Making Paper Dolls: How Restrictions on Judicial Review and the Administrative Process Increase Immigration Cases in Federal Court", 51/37, accessed July 20, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1846595 (page 3-4)

[Note: Although this evidence is talking about immigration, the issue at stake - more litigation - applies generically; regardless of the crime, people will fight to delay/stall conviction.]

For these men, women and children in removal proceedings, the incentives to litigate beyond the agency have partially increased as a reaction to the narrowing and elimination of prior forms of relief. Prior to 1996, the immigration statutes provided many people with a way to regularize their status, to become "legal" through the removal process. Now, statutory bars on relief are very strict and other forms of relief have been entirely eliminated. Thus, the individual fights harder either to defeat the government assertion that he or she is subject to removal or in the hope that litigation or time will somehow prevent removal. In this paper, I argue that many of the reforms taken by Congress or by the agency, although designed to increase efficiency have, in essence, backfired.

Reducing Backlog: Backfires - people fight convictions harder (immigration-specific)
Prof. Stephen Yale-Loehr (JD, adjunct professor of law at Cornell University), John Palmer (JD), and Elizabeth Cronin (Director of Legal Affairs at the U.S. Court of Appeals for the Second Circuit), Fall 2005, Georgetown Immigration Law Journal, "Why are so Many People Challenging Board of Immigration Appeals Decisions in Federal Court? An Empirical Analysis of the Recent Surge in Petitions for Review", accessed July 20, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=818964&

In contrast, the Justice Department's Executive Office for Immigration Review (EOIR) denies that there has been any diminution in quality. It argues that people are challenging a greater proportion of BIA decisions simply to delay being expelled. According to the EOIR, whereas aliens could previously take advantage of the BIA's long backlog to gain extra time in the United States, prompt BIA decisions are driving these people to rely on petitions for review-and the Courts of Appeals' willingness to stay removals while adjudicating them-as a new mechanism for delay.

Reducing Backlog - Mandating Speedy Trials: Increases civil case backlog
Prof. Stephen Scott Meinhold (PhD in political science, professor of political science and dean of research at the University of North Carolina Wilmington) and David W. Neubauer (PhD in political science, former professor and chair of political science at the University of New Orleans), 2010, Thomson/Wadsworth, Belmont, CA, "Judicial process: law, courts, and politics in the United States", 5th Edition, accessed August 22, 2011

Over the last thirty years, district court filings have more than tripled; court of appeals cases have increased more than tenfold (Figure 3.4). The problem is particularly acute in some metropolitan jurisdictions, where federal judges must postpone civil trials for months and even years to accommodate criminal trial schedules (particularly of major drug dealers) in accordance with the Speedy Trial Act.

Reducing Backlog - More Judges: Can allow political abuse
Prof. John M. de Figueiredo (PhD, associate professor of law at UCLA Anderson), Prof. Gerald S. Gryski (PhD, professor of political science at Auburn University), Prof. Emerson H. Tiller (PhD, professor of law and busienss at Northwestern University), and Prof. Gary Zuk (associate professor of political science at Auburn University), April 2000, "Congress and the Political Expansion of the United States District Courts", accessed July 21, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=224330 (page 2)

Expanding the number of U.S. district judgeships is often justified as a response to expanding caseloads. Increasing judgeships during unified government, however, allows Congress and the President to engage in political (patronage and ideological) control of the federal district courts.

Reducing Backlog - More Judges: Really motivated by politics
Prof. John M. de Figueiredo (PhD, associate professor of law at UCLA Anderson), Prof. Gerald S. Gryski (PhD, professor of political science at Auburn University), Prof. Emerson H. Tiller (PhD, professor of law and busienss at Northwestern University), and Prof. Gary Zuk (associate professor of political science at Auburn University), April 2000, "Congress and the Political Expansion of the United States District Courts", accessed July 21, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=224330

The timing of the district court judicial expansion appears closely tied to politics. Indeed, there is a 39 percentage point higher probability of an expansion in the district court during times of unified government than when divided government obtains. This result is consistent, though not the same magnitude, with the findings of de Figueiredo and Tiller, who have shown that in the appellate courts, caseload has no effect on the timing of expansion, and that unified government increases the probability of an expansion by 53 percentage points.

IMPACTS

Assembly-Line Justice: Many cases get just four minutes in court
Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779 (page 4)

Impossibly large dockets and administrative responsibilities have forced us to create a system that might be called, with only slight exaggeration, "assembly-line justice." In the Ninth Circuit, we dispose of our twelve thousand-odd annual appeals in several streamlined ways. Motions attorneys sift through our filings, identifying those that can be addressed immediately on procedural grounds. About half of our appeals are disposed of in this way. The remaining six thousand appeals are then funneled to a group of staff attorneys, who assign each case a "weight" from one to ten based on the staff attorney's judgment about the difficulty level of the case. About two thousand of these six thousand appeals receive a weight of "one," which means that the staff attorney thinks that the law involved is plain and the proper resolution of the case is clear. These cases are then presented to a three judge screening panel, which either agrees with the staff attorney's recommendation, modifies the proposed disposition, or kicks the case over to the regular argument calendar. In the first five months of this year, the Ninth Circuit panel has agreed with the staff attorney's recommendation ninety-five percent of the time. Based upon my personal experience, each of these "screened out" cases receives about four to nine minutes of consideration by a Ninth Circuit panel before filing. I am not entirely confident that such cursory judicial review is error-free.

Backlog Disadvantage

Bad Decisions: Endless screening panels cause mental fatigue (immigration-specific)
Prof. Anna O. Law (PhD, associate professor of political science at De Paul University), August 2010, "Rationing Justice?: The Effect Of Caseload Pressures On The U.S. Courts Of Appeals In Immigration Cases", accessed July 21, 2011, http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=anna_law (page 41)

Another cost of moving 60% of the immigration appeals through screening panels and "bundling" the cases is that while the method is effective in speeding the processing, the judges may suffer mental fatigue from the monotony. After sitting through staff presentations of up to 100 to 150 cases in a two or three-day period, the judges on these screening panels must make a decision based on those oral descriptions. Judge D complained that screening is "too mechanistic and it doesn't give you time to think about it." In reference to the screening system in general but not immigration appeals in particular, Judge Kozinski has written, "After you decide a few dozen such cases on a screening calendar, your eyes glaze over, your mind wanders, and the urge to say O.K. to whatever is put in front of you becomes almost irresistible."

Delays: Cases take years, subverting justice
Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779 (page 4-5)

We also cope with our backlog by making litigants wait for calendaring and a decision. In the Ninth Circuit, on average, nineteen months pass from the moment a notice of appeal is filed to the moment a panel of judges files the disposition. And our experience is not entirely atypical. The most expeditious circuits take between eight to ten months while the next slowest take fourteen to seventeen months. Even worse, a party who files suit in a district court within the Ninth Circuit can expect to wait nearly forty months before his case is finally resolved on appeal. The striking length of time we take to dispose of cases is alarming. No litigant should be required to wait that long to receive due justice.

Delays: Crowds out civil cases
Prof. Stephen Scott Meinhold (PhD in political science, professor of political science and dean of research at the University of North Carolina Wilmington) and David W. Neubauer (PhD in political science, former professor and chair of political science at the University of New Orleans), 2010, Thomson/Wadsworth, Belmont, CA, "Judicial process: law, courts, and politics in the United States", 5th Edition, accessed August 22, 2011 (page 30)

Although there are four times more civil filings than criminal ones, in some districts the number and the complexity of criminal filings limit the ability of the district courts to address promptly the more numerous civil cases.

Backlog Disadvantage

Tougher Sentences (see Toughness - Bad (page 271) for impacts)
Prof. Todd Ulmer (PhD, associate professor of sociology and crime, law, and justice at Penn State), Prof. James Eisenstein (PhD from Yale, professor of political science at Penn State), and Prof. Brian Johnson (PhD, associate professor of criminology and criminal justice at the University of Maryland), 2009, Justice Quarterly, "Trial Penalties in Federal Sentencing: Extra-Guidelines Factors and District Variation", Vol. 27, No. 4, accessed July 20, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1578444 (page 2-3)

Second, we investigate how such differences vary according to offense and defendant characteristics, as well as court caseloads and trial rates. We use federal sentencing data for fiscal years 2000-02, along with aggregate data on federal district court caseload features. We find that meaningful trial penalties exist after accounting for Guidelines-based rationales for differentially sentencing those convicted by guilty plea versus trial. Higher district court caseload pressure is associated with greater trial penalties, while higher district trial rates are associated with lesser trial penalties.

Rationed Justice
Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779 (page 8)

Judge Learned Hand said in 1951 that "[I]f we are to keep our democracy there must be one commandment: Thou shalt not ration justice." The number of cases we must address, however, makes it impossible to obey Judge Hand's commandment.

Oral Arguments: Link - More cases = fewer oral arguments
Hon. Diarmuid F. O'Scannlain (JD, judge of the U.S. Court of Appeals for the Ninth Circuit), 2009, Lewis & Clark Law Review, "Striking A Devil's Bargain: The Federal Courts And Expanding Caseloads In The Twenty-first Century", 13/473, accessed July 20, 2011, http://www.lclark.edu/livewhale/download/?id=779

Impossibly large dockets and administrative responsibilities have forced us to create a system that might be called, with only slight exaggeration, "assembly-line justice."

[later, in the same context:]

In the end, approximately two thousand cases out of more than twelve thousand see oral argument. Put differently, a litigant who files an appeal in the Ninth Circuit has about a sixteen percent chance of ever discussing his case in front of a three judge oral argument panel. I speak, of course, from my experience as a judge on the Ninth Circuit, but I know that other circuits have had to make similar compromises.

Oral Arguments: Impact - Oral arguments enhance justice

Shaun M. Pettigrew and Hon. David R. Stras (JD, Minnesota Supreme Court justice, former associate professor of law at the University of Minnesota), March 2010, South Carolina Law Review, "The Rising Caseload in the Fourth Circuit: A Statistical and Institutional Analysis", Vol. 61, No. 3, accessed July 20, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1573880

The United States Court of Appeals for the Fourth Circuit has adopted certain procedural reforms to adapt to its increased caseload. The most important and controversial of these reforms is a reduction in the percentage of cases allotted oral argument time and an increase in the percentage of cases decided through unpublished opinions. The benefits of oral argument are well-known. Oral argument permits judges to question the attorneys representing the litigants; promotes uninterrupted focus by the panel on the case being argued; and encourages judicial preparation for the hearing.