Judicial Reporting Under the Civil Justice Reform Act: Look, Mom, No Cases!

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I. INTRODUCTION

In the Civil Justice Reform Act of 1990,\(^1\) Congress called for major review of the way in which federal district courts handle civil litigation. The Act mandates the creation of advisory groups in each of the ninety-four federal district courts.\(^2\) Each advisory group is to determine the condition of its court's civil and criminal dockets, identify case filing trends, identify the principal causes of cost and delay in civil litigation, and examine the extent to which cost and delay could be reduced by a better assessment of the impact of new legislation on the courts.\(^3\) Each group then is to report to the district court, making recommendations concerning measures to reduce litigation cost and delay.\(^4\)

The scope of the examination of the federal district courts undertaken pursuant to the Civil Justice Reform Act is unprecedented. Never before has there been such an in-depth, simultaneous review of every federal district court in the nation. For fiscal year 1991, Congress authorized twenty-five million dollars for the implementation of the Civil Justice Reform Act.\(^5\) In addition, attorneys, litigants, judges and court personnel have expended tens of thousands of hours in connection with the Act.

These local, ongoing efforts by advisory groups and district courts have received, and will continue to receive, attention from the bar,\(^6\) the

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3. Id. § 472(c).
4. Id. § 472(b).
federal judiciary and law review commentators. However, a provision of the Civil Justice Reform Act that has received relatively little attention may have as great an impact upon the manner in which civil cases are handled within the federal courts as will the work of the advisory groups and district courts. Section 476 of Title 28, entitled "Enhancement of judicial information dissemination," requires the Director of the Administrative Office of the United States Courts to prepare a public semiannual report, identifying for every federal district judge and magistrate judge all motions and bench trials that have been pending

7. Each district court must consider the recommendations of its advisory group in developing or selecting an expense and delay reduction plan. 28 U.S.C. § 472(a) (Supp. II 1990). Each advisory group report and district court plan is then to be reviewed by a committee of judges within each judicial circuit and by the Judicial Conference of the United States. Id. § 474.


Professor Lauren Robel has argued that "the crisis [asserted as justification for the enactment of the Civil Justice Reform Act] is chimerical, the solutions unnecessary, or their necessity unproven." Robel, supra, at 137. See also TERENCE DUNGWORTH & NICHOLAS M. PACE, INSTITUTE FOR CIVIL JUSTICE, STATISTICAL OVERVIEW OF CIVIL LITIGATION IN THE FEDERAL COURTS (1990) ("[O]n average, private civil cases were being disposed of in about the same amount of time in 1986 as in 1971."); WOLF HEYDEBRAND & CARROLL SERON, RATIONALIZING JUSTICE 130 (1990) (Federal district judges "have generally kept pace with the balance between the backlog of pending cases and new filings."). Cf. David S. Clark, Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century, 55 S. CAL. L. REV. 65, 80 (1981) ("Since [World War II], average delay [in resolving federal civil cases] has stabilized at between 0.9 and 1.3 years . . . ").

9. The only person to focus publicly on the significance of this reporting provision has been Alan Morrison, the Director of the Public Citizen Litigation Group. In his congressional testimony, Morrison referred to the reporting provision as "the single most important provision" in the Civil Justice Reform Act. Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary, 101st Cong., 2d Sess. 215 (1990) [hereinafter House Hearing] (statement of Alan Morrison, Director, Public Citizen Litigation Group). In his written statement, Morrison expressed Public Citizen's view that this reporting provision "will do more to speed the judicial process than all of the case management plans ever created." Id. at 218.
for more than six months. These reports also are to list all civil cases that have not been terminated within three years of filing.

This article addresses the new reporting provision of the Civil Justice Reform Act. Part II analyzes the reporting requirement and the requirement's legislative history. Part III describes the implementation of the requirement by the federal judiciary, while Part IV discusses the initial reports filed pursuant to the provision and the media coverage of those reports. Part V next analyzes the wisdom of the reporting requirement, concluding that, on balance, the requirement may be helpful in furthering public accountability of an independent federal judiciary. Part VI then considers what the data now publicly reported under the Civil Justice Reform Act does, and does not, tell us about federal judges and the federal district courts.

II. THE REPORTING PROVISION OF THE CIVIL JUSTICE REFORM ACT

The reporting provision of the Civil Justice Reform Act requires the Director of the Administrative Office of the United States Courts to prepare a semiannual report disclosing for each federal district judge and magistrate judge:

(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;
(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and
(3) the number and names of cases that have not been terminated within three years after filing.

The genesis of this provision is the Brookings Institution Task Force (the "Task Force") report upon which the Civil Justice Reform Act was based. This report recommended that every district court expense and delay reduction plan should provide for the "regular publication of pending undecided motions and caseload progress." A single

11. Id. § 476(a)(3).
12. Id. § 476(a).
14. THE BROOKINGS INST., supra note 13, at 27 (emphasis omitted).
paragraph of the Task Force's report contained the rationale for this recommendation:

To increase the likelihood that the time periods for the disposition of motions . . . are followed, the task force believes that mechanisms must be developed to enhance judicial accountability. Accordingly, we recommend that the Administrative Office of the U.S. Courts be directed to computerize, in each district, the court's docket so that quarterly reports can be made to the public of at least all pending submitted motions before each judge that are unresolved for more than 30, 60, and 90 days, and all succeeding 30-day increments. In addition, courts should report data for each judge indicating the aging of his or her caseload in each of the tracking categories developed by the district. To facilitate this reporting, the Administrative Office should standardize court procedures for categorizing or characterizing judicial actions; for example, defining what is a "dismissal" and how long a case has been "pending." We believe that substantially expanding the availability of public information about caseloads by judge will encourage judges with significant backlogs in undecided motions and cases to resolve those matters and to move their cases along more quickly.\footnote{15}

This reporting requirement, and the entire Task Force report, was based in large part upon a survey conducted by Louis Harris and Associates, Inc.\footnote{16} Those surveyed were asked whether, in an effort to increase judicial accountability, courts should make "publicly available each year the average length of cases, weighted by type of case, under each Federal judge."\footnote{17} A majority of all respondents favored such a proposal, including 61% of the 147 federal judges responding to the survey.\footnote{18}

Sixty-three percent of the judges also favored making "publicly available in the courthouse all civil cases which have been pending for a year or more," which was more than the fifty percent of the five hundred private litigators surveyed who favored the proposal.\footnote{19} Despite these responses, when asked for their "one, most serious criticism . . . of the process of civil litigation in the Federal Courts today," no more than four percent of any category of respondents cited "[j]udges taking too long to make decisions."\footnote{20}

The type of reporting called for by the Brookings Institution Task Force was not new. Prior to the enactment of the Civil Justice Reform

\footnotesize{\begin{itemize}
  \item \footnote{15} Id.
  \item \footnote{16} LOUIS HARRIS AND ASSOC., PROCEDURAL REFORM OF THE CIVIL JUSTICE SYSTEM (1989).
  \item \footnote{17} Id. at 56 (Table 12.3).
  \item \footnote{18} Id.
  \item \footnote{19} Id.
  \item \footnote{20} Id. at 11 (Table 2.0).
\end{itemize}}
Act, the Judicial Conference of the United States had required federal
district and magistrate judges to file quarterly reports concerning civil
cases pending more than three years and matters under advisement for
more than sixty days.\textsuperscript{21} However, this information was not publicly re-
ported, but was merely used internally within the federal court
system.\textsuperscript{22}

The Civil Justice Reform Act as originally introduced by Senator
Biden contained a congressional finding that “the reduction of . . . de-
lays [in deciding fully briefed motions] can be encouraged by substan-
tially expanding the availability of public information about backlogs in
undecided motions.”\textsuperscript{23} The bill required that every expense and delay
reduction plan provide for “the regular publication of pending unde-
cided motions and caseload progress for each individual judge to en-
hance judicial accountability.”\textsuperscript{24} The Administrative Office of the
United States Courts was to automate judicial dockets nationwide so
that each district could make publicly available the quarterly reports of
pending unresolved motions, age of caseload data, and judge-specific
information concerning numbers of written opinions, bench trials, and
jury trials.\textsuperscript{25}

In response to the opposition of the Judicial Conference of the
United States\textsuperscript{26} and several bar groups,\textsuperscript{27} this bill was redrafted.\textsuperscript{28} Sen-

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\item \textsuperscript{21} See Memorandum from L. Ralph Mecham, Director, Administrative Office of the
Magistrate Judges; Circuit Executives; District Court Executives; Clerks, U.S. District Courts
(July 17, 1991) [hereinafter Memorandum on CJRA Reporting Requirements] (concerning re-
porting requirements under the Civil Justice Reform Act of 1990) (on file with author).
\item \textsuperscript{22} Even without judicial reporting, case information of the type made available under the
Civil Justice Reform Act can be obtained from public docket sheets. Alan Morrison argued in a
June 13, 1990, letter to the Senate Judiciary Committee that “the issue is not whether confiden-
tial information should be made public, but whether information that is already public and com-
piled should be released in readily understandable form.” The Civil Justice Reform Act of 1990
and the Judicial Improvements Act of 1990: Hearings on S. 2027 and S. 2648 Before the Senate
Comm. on the Judiciary, 101st Cong., 2d Sess. 474, 476 (1990) [hereinafter Senate Hearings]
(letter from Alan B. Morrison, Public Citizen Litigation Group, to Jeffrey J. Peck, General Coun-
sel, Senate Judiciary Committee (June 13, 1990)).
\item \textsuperscript{23} S. 2027, 101st Cong., 2d Sess. § 2(33) (1990), reprinted in Senate Hearings, supra
note 22, at 517, 526.
\item \textsuperscript{24} Id. at 538 (proposed 28 U.S.C. § 471(b)(13)).
\item \textsuperscript{25} Id. at 544 (proposed 28 U.S.C. § 475(a)-(b)(1)).
\item \textsuperscript{26} Despite extensive negotiations between the Senate Judiciary Committee and the Judicial
Conference of the United States, the Executive Committee of the Judicial Conference opposed
both the original and redrafted versions of the Civil Justice Reform Act. The Judicial Conference
favored its own cost and delay reduction program, it believed the proposed legislation would im-
properly intrude on judicial matters and circumvent the Rules Enabling Act, and its members

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ate hearings were held on both the original and redrafted bills, and an additional hearing on the proposed legislation was held before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the House Judiciary Committee. However, in none of the congressional hearings was there any real focus on the public reporting requirements recommended by the Brookings Institution Task Force and included in the proposed Civil Justice Reform Act.

Appearing on behalf of the Judicial Conference of the United States before the Senate Judiciary Committee and a subcommittee of the House Judiciary Committee, Judge Robert Peckham raised a concern that the reporting requirement contained in the original version of the Civil Justice Reform Act might “focus on the wrong information and give the public perhaps the wrong measurement standard.” Judge Peckham’s major concern with the reporting requirement in the redrafted version of the Civil Justice Reform Act was that pending cases be defined so that the required reports would not be misleading.

The major proponent of the proposed reporting requirement during the congressional hearings was the Public Citizen Litigation Group. Alan Morrison, the group’s director, wrote in a letter to the Senate Judiciary Committee that “the single most important problem that we encounter in moving civil cases in federal district courts is the failure of judges to decide pending motions, particularly dispositive motions.” The Public Citizen Litigation Group endorsed the proposed reporting requirement as a means of dealing with this problem, although Morrison suggested that the public reports should not just include the num-


29. Senate Hearings, supra note 22.


31. Senate Hearings, supra note 22, at 318 (statement of Judge Robert F. Peckham on behalf of the Judicial Conference of the United States).

32. Id. See also id. at 340-41 (statement of Judge Robert F. Peckham); House Hearing, supra note 9, at 107, 134-35 (statements of Judge Robert F. Peckham, Chair, Judicial Conference Ad Hoc Subcomm. on the Civil Justice Reform Act).

33. Senate Hearings, supra note 22, at 474 (letter from Alan B. Morrison, Public Citizen Litigation Group, to Jeffrey J. Peck, General Counsel, Senate Judiciary Committee (June 13, 1990)).
number of older cases and motions pending before each judge but should list the actual cases.\textsuperscript{34}

In his testimony before a subcommittee of the House Judiciary Committee, Morrison called the reporting provision "the single most important provision" of the proposed Civil Justice Reform Act.\textsuperscript{35} He described a Public Citizen lawsuit that had been submitted to the court for one and one-half years but which the judge had not yet decided.\textsuperscript{36} Representative John Bryant responded:

To me, that is just an outrage. I think the fellow ought to be sanctioned, the name of this man or woman ought to be put on the billboard outside the building here stating that they are not working like the rest of us. They can't manage their own business. There just can't be any justification for that.\textsuperscript{37}

In its written submission, the Board of Governors of the American Bar Association suggested that the proposed reporting requirement not state that it was to enhance judicial accountability, because such language was "unnecessary and could be read as implied criticism."\textsuperscript{38} The Board of Governors also suggested that judges be required to report the percentage, rather than the number, of their cases that are more than three years old.\textsuperscript{39}

The only outright opposition to the proposed reporting provision came from the Seventh Circuit Bar Association, the written submission of which contained the following argument:

[W]hile we understand the need for judicial accountability in disposing of motions and deciding cases within a reasonable time, we see no useful purpose to be

\textsuperscript{34} Id. at 475. This suggestion, which was adopted in the final version of the reporting requirement, was considered necessary so "outsiders [can] determine whether the numbers are accurate" and "in order to make some possible assessment of the justification, or lack thereof, for particular delays." Id. at 475-76. See also S. REP. No. 416, supra note 13, at 60, 1990 U.S.C.A.N. at 6849; H.R. REP. No. 732, 101st Cong., 2d Sess. 18 (1990).

\textsuperscript{35} House Hearing, supra note 9, at 215 (statement of Alan Morrison, Director, Public Citizen Litigation Group).

\textsuperscript{36} Id. at 240.

\textsuperscript{37} Id. (statement of Rep. Bryant).

\textsuperscript{38} Senate Hearings, supra note 22, at 481, 487 (memorandum to the Board of Governors of the American Bar Association from the Civil Justice Coordinating Comm. (June 8, 1990)). A similar concern was voiced by Judge Peckham on behalf of the Judicial Conference. Id. at 318 (statement of Judge Robert F. Peckham); House Hearing, supra note 9, at 107, 133-34 (statements of Judge Robert F. Peckham). In the legislation ultimately enacted, the reference to accountability was deleted, with 28 U.S.C. § 476 entitled "Enhancement of judicial information dissemination."

\textsuperscript{39} Senate Hearings, supra note 22, at 481, 487 (memorandum to the Board of Governors of the American Bar Association from the Civil Justice Coordinating Comm. (June 8, 1990)).
served by the requirement in proposed 28 U.S.C. § 473(a)(7) that semiannual reports be published on the statistical performance of each judge relating to disposition of motions and termination of cases. Compilation and publication of the two items of information specified is likely to lead to superficial conclusions by failing to take into account the differing nature of particular cases assigned to different judges, including, for example, the relative size of the criminal docket in different districts. Since no action would be required based on these reports, their publication would serve primarily to focus judicial attention unduly upon the two statistical deadlines which would be reflected in the reports.40

This argument did not prevail. As redrafted, the Civil Justice Reform Act became Title I of the proposed Judicial Improvements Act of 1990.41 This redrafted bill required district court expense and delay reduction plans to include provisions for:

semiannual reports, available to the public, that disclose for each judicial officer the number of motions that have been pending for more than six months, the number of bench trials that have been submitted for more than six months, and the number of cases that have not been terminated within three years of filing.42

While these reports were to be produced by each district court, there was no provision for the compilation of this information on a nationwide basis.

As enacted, the Civil Justice Reform Act does not require that local expense and delay reduction plans provide for public reports concerning the motion and case dispositions of individual judges. Instead, Section 476 of Title 28 provides that semiannual reports containing such information are to be prepared by the Director of the Administrative Office of the United States Courts. Mandatory judicial reporting was thus retained, even though the Civil Justice Reform Act as enacted does not mandate that most district courts adopt particular litigation management principles, guidelines and techniques in their expense and delay reduction plans.43

III. THE IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT REPORTING REQUIREMENT

The Director of the Administrative Office of the United States Courts is charged with the duty of preparing the reports required by

40. Id. at 512, 515 (letter from Harvey M. Silets, President of the Seventh Circuit Bar Association, to Senator Joseph Biden (June 25, 1990)).
41. S. 2648, reprinted in Senate Hearings, supra note 22, at 548.
42. Id. at 557 (proposed 28 U.S.C. § 473(a)(7)).
the Civil Justice Reform Act. The data to be included in these reports, however, comes in the first instance from individual district and magistrate judges in the ninety-four federal district courts. Judges are to indicate by entry of a status code on their semiannual reports the reason for any motion or case delay. In order to put a particular district's report into perspective, the chief judges in each district are permitted to supplement their district's report with "a separate statement describing any unusual circumstances within the district which may affect the number of motions pending and/or bench trials submitted over six months."

To ensure uniformity in reporting, the Civil Justice Reform Act requires the Director of the Administrative Office of the United States Courts to prescribe case reporting standards. These standards are to include a "definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending."

After the enactment of the Civil Justice Reform Act, the Executive Committee of the Judicial Conference of the United States adjusted the prior district court quarterly reporting requirements so that the new Civil Justice Reform Act reports would supercede those prior reports. As with the earlier reports, the Civil Justice Reform Act reports are forwarded to the circuit executives and a consolidated report for all districts within each circuit then is forwarded to the Administrative Office of the United States Courts.

Although the Civil Justice Reform Act places the responsibility for

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44. Id. § 476(a).
45. III ADMIN. OFFICE OF THE U.S. COURTS, GUIDE TO JUDICIARY POLICIES AND PROCEDURES, ch. XXII, Pt. C, at 25 (1991) [hereinafter GUIDE TO JUDICIARY POLICIES]. These codes permit judges to indicate that a case or motion has been delayed for such reasons as "Complexity of Case," "Opinion in Draft," "Heavy Civil and Criminal Caseload," "Voluminous Briefs/Transcripts to be Read," and "No Time Due to Lengthy Trials." Id. at 31.
46. Id. at 22.
48. Id. § 481(b)(2). As defined by the Director of the Administrative Office of the United States Courts, motions become "pending" 30 days after they have been filed; if a motion is referred to a magistrate judge, its "pending date" is either 30 days after filing or the date that it was referred, whichever is later. Memorandum on CJRA Reporting Requirements, supra note 21, at 1. Bench trials are considered submitted "on the day when courtroom proceedings have been concluded," and the age of a case "will be determined on the basis of the filing date in the district court or the reopened date." Id. at 2.
49. Memorandum on CJRA Reporting Requirements, supra note 21, at 2; see also GUIDE TO JUDICIARY POLICIES, supra note 45, at 21.
50. Memorandum on CJRA Reporting Requirements, supra note 21, at 2.
preparing reports upon the Director of the Administrative Office of the United States Courts, some circuit executives and circuit judicial councils were involved in the initial implementation of reporting under the new Act. Judges within the United States Court of Appeals for the Sixth Circuit were advised of their reporting duties by that circuit’s Civil Justice Reform Act newsletter, while judges within other circuits received implementation guidance from their circuit executives.

Requirements for public judicial reporting going beyond the reporting provision of the Civil Justice Reform Act generally have not been recommended by Civil Justice Reform Act advisory groups. Indeed, few advisory groups have made use of judge-by-judge statistical breakdowns concerning judicial caseloads, trials, and age of pending cases and motions in their Civil Justice Reform Act reports.

IV. THE INITIAL CIVIL JUSTICE REFORM ACT REPORTS

The initial report prepared by the Administrative Office of the United States Courts consists of judge-by-judge listings of the numbers of motions and bench trials under submission for more than six months and of cases pending for more than three years as of September 30,

51. U.S. Court of Appeals for the Sixth Circuit, The Civil Justice Reform Act in the Sixth Circuit: A Newsletter, vol. 1, no. 2 (Summer 1991) [hereinafter CJRA Sixth Circuit Newsl.].

52. See, e.g., Memorandum from Andrew M. Teitz, Assistant Circuit Executive, U.S. Court of Appeals for the First Circuit, to First Circuit District Court Judges; Magistrate Judges; Bankruptcy Court Judges; District Court Clerks; Bankruptcy Court Clerks (March 6, 1992) (concerning statistical reports under the Civil Justice Reform Act) (on file with the author).

53. A notable exception is the Civil Justice Reform Act Advisory Group of the United States District Court for the Western District of Texas. As of September 30, 1991, judges in the Western District of Texas reported 1498 motions pending for more than six months—the largest number of such motions in any district in the nation. ADMIN. OFFICE OF THE U.S. COURTS, CIVIL JUSTICE REFORM ACT REPORT OF MOTIONS PENDING OVER SIX MONTHS; BENCH TRIALS SUBMITTED OVER SIX MONTHS; CIVIL CASES PENDING OVER THREE YEARS ON SEPTEMBER 30, 1991 (1991) [hereinafter SEPT. 30, 1991, CJRA REPORT]. The advisory group to this district court recommended:

[A] monthly report that will provide each judicial officer with an accurate analysis of his or her pending motions, including the aging of each judge’s motions. We further recommend that this report of each judge’s progress be made available to the other judges and to the public at large.


A similar report followed, listing the numbers of reportable motions and cases pending as of March 31, 1992. In some judicial circuits, no separate reports have been produced, but the reports from the district and magistrate judges within the circuit merely have been relayed to the Administrative Office of the United States Courts. Some circuit executives, however, have produced reports that contain more information concerning the judges within their districts than is required to be reported by the Civil Justice Reform Act.

Consolidated reports were issued after the March 31, 1992, reporting period in some circuits, comparing the numbers of motions and bench trials reported as of September 30, 1991, and March 31, 1992. Although neither the Civil Justice Reform Act nor any other statute requires that the information be reported publicly, the reports prepared by the Circuit Executive for the First Circuit include a listing of matters taken under advisement for more than sixty days by the circuit's bankruptcy judges. The First Circuit reports also contain a "notes" section, including judicial explanations for particular motions and cases listed in the reports.

The United States Courts of Appeals for the Third and Sixth Circuits have produced the most comprehensive Civil Justice Reform Act reports. The circuit executives for these courts have prepared reports comparing the numbers of cases and motions reported by district and magistrate judges within their circuits as of September 30, 1991, and March 31, 1992. The Sixth Circuit reports break down bench trials and motions in six month intervals, rather than merely lumping together all motions and bench trials that have been pending for more than six months as is done in the initial reports of the Administrative

58. 1st Circuit Matters Pending Over 6 Months, supra note 57.
Office of the United States Courts. Another Sixth Circuit report breaks down cases pending more than three years as of September 30, 1991, and March 31, 1992, into cases pending more than three, four, five, and six years. A final report shows the numerical and percentage change between the two reporting periods for all judges and districts with respect to motions, bench trials, and cases more than three years old.

The Third Circuit reports contain similar information for each district within that circuit. The Third Circuit reports also list, by name and docket number, every case in which a judge has failed to rule on a motion or decide a bench trial within six months, as well as the code entered by the judge to explain the delay.

Prior to the initial Civil Justice Reform Act reporting period, there was apprehension that the media would be very interested in the new reports. Judges in the United States Court of Appeals for the Sixth Circuit were advised as follows:

[T]he first report may be embarrassing to some judges who have significant numbers of motions, bench trials, or civil cases pending. Unlike the current quarterly reporting system of matters under advisement—which will be replaced with the new reporting procedures—the CJRA requires a straightforward report of pending matters, without any subjective determination of whether the matter is under advisement. . . . Since the Act mandates that the reports are available to the public, Chief Judge Merritt anticipates that there will be substantial interest in the media, especially with respect to the first several reports. Judge Merritt suggests that each district judge review his or her pending motions, bench trials, and three-year old cases as soon as possible to see if there are any pending motions that can be ruled upon or pending matters that may be decided prior to the September 30th reporting date.


64. Id.

65. CJRA Sixth Circuit Newsl., supra note 51, at 1.
While Judge Merritt was not alone in his belief that the Civil Justice Reform Act reports would generate intense public interest, the media paid little attention to the initial reports.\textsuperscript{66} The most notable use of these reports occurred in a \textit{Washington Post} article that criticized the judge who was about to become chief judge of the United States District Court for the District of Columbia for having seventy-three cases more than three years old on his docket.\textsuperscript{67} Despite this article and a subsequent editorial suggesting that the judge "decline the post [of chief judge] and concentrate on improving his performance as a trial judge,"\textsuperscript{68} he became chief judge of the district court.\textsuperscript{69}

Articles have been written concerning the timeliness of federal judges in a few other districts. These articles, however, apparently have been confined to the legal press.\textsuperscript{70} The titles of these articles are indicative of their content. The \textit{Texas Lawyer} published an article concerning the first reports filed under the Civil Justice Reform Act entitled "Judges Clog Federal Docket."\textsuperscript{71} This article was accompanied by a table captioned "The Slowpoke Report," containing a listing of the numbers of motions and bench trials reported by each of the federal judges in Texas as of September 30, 1991.\textsuperscript{72}

In a column captioned "Two Tardy Judges Are Late Yet Again," the \textit{Legal Times} focused on two federal judges from the District of Columbia who had failed to file their reports in a timely manner.\textsuperscript{73} Referring to the judges as "two scofflaws," the column stated that the judges "already have reputations for delayed rulings, and their failure to report is a double embarrassment."\textsuperscript{74} While articles such as these focused on pending motions and bench trials, a few legal newspapers have published articles based on the data that was first publicly re-

\begin{itemize}
\item \textsuperscript{66} Telephone Interview with David L. Cook, Chief, Statistics Division, Administrative Office of the United States Courts (June 1, 1992).
\item \textsuperscript{68} \textit{Judge Penn's Backlog}, \textit{WASH. POST}, Jan. 15, 1992, at A22.
\item \textsuperscript{70} Virtually all of the articles concerning Civil Justice Reform Act reports located in a recent NEXIS search were copyrighted by the American Lawyer Newspapers Group, Inc. or the American Lawyer Media, L.P. Search of NEXIS, CURRNT file (Sept. 24, 1992) (search for articles containing "Civil Justice Reform Act").
\item \textsuperscript{71} Gordon Hunter, Judges Clog Federal Docket, \textit{TEX. LAW.}, Nov. 18, 1991, at 1.
\item \textsuperscript{72} \textit{Id.} at 21.
\item \textsuperscript{73} Garry Sturgess, Two Tardy Judges Are Late Yet Again, \textit{LEGAL TIMES}, Dec. 2, 1991, at 7.
\item \textsuperscript{74} \textit{Id.}
\end{itemize}
ported somewhat later concerning civil cases pending for more than three years.\textsuperscript{75}

The articles in some legal newspapers have not only identified those judges with large numbers of older motions and cases, but have praised judges who have reported few such motions and cases. An article in The Connecticut Law Tribune referred to the judge within that district who "runs the tightest ship."\textsuperscript{76} The opening sentence of an article concerning the federal district judges in New Jersey begins: "Despite occasional grumbling by some federal practitioners that clogged civil dockets are denying their clients justice, a new report shows that most of New Jersey's district court judges are moving motions and deciding bench trials swiftly."\textsuperscript{77} Other articles have taken note of judges who have reduced the number of older motions and cases on their dockets between Civil Justice Reform Act reporting periods.\textsuperscript{78}

Civil Justice Reform Act data is available not only from the Administrative Office of the United States Courts; each federal judicial circuit has data concerning the judges within the circuit, and district court clerks are to make the data on each district's judges available to the public at the district court level.\textsuperscript{79} Nevertheless, the mass media generally have ignored the new public reports concerning the nation's federal district judges and magistrate judges.\textsuperscript{80}

V. DOES PUBLIC REPORTING MAKE SENSE?

To determine whether the Civil Justice Reform Act's public re-
reporting requirement makes sense, possible objections to public reporting must be considered. Four primary objections to public reporting have been voiced: (1) reporting of this nature places an added burden upon already overworked federal judges; (2) the data reported is likely to be misinterpreted by the public; (3) public reports will impair judicial collegiality and morale; and (4) the reporting requirement carries with it the suggestion that it is judges who are primarily responsible for delays in the federal judicial system.

The initial argument, that reporting imposes an inappropriate burden upon busy judges, can be disposed of summarily. The same type of information that now must be reported was reported by federal judges before the enactment of the Civil Justice Reform Act. Indeed, the reporting requirements that predated the Civil Justice Reform Act were more comprehensive than the requirements of section 476 of that Act.81 In addition, the reporting burden under the Civil Justice Reform Act should be eased with the advent of computerized docketing in the federal courts.82

Another argument against public reporting is that the data reported may be misconstrued by the general public. What if a large number of older motions and cases is reported in a judicial district because of a shortage of judges or a great increase in criminal prosecutions? What if an individual judge must report many older motions or cases because she is handling a “megacase” that requires virtually all of her time? It is sometimes true that “a little knowledge is a dangerous thing.” The solution for problems of misinterpretation, however, is the provision of additional information to put bare Civil Justice Reform Act statistics in perspective.

In their reports, judges are to explain why particular motions or cases have been listed, and the media typically have attempted to contact judges before writing articles criticizing their tardiness.83 The author of one article concerning Civil Justice Reform Act data was particularly careful to qualify the statistics he reported:

81. Prior to the Civil Justice Reform Act, judges had to file quarterly reports concerning matters under advisement for more than 60 days. Memorandum on CJRA Reporting Requirements, supra note 21, at 2.
82. Section 481(a) of Title 28, another provision of the Civil Justice Reform Act, provides: “The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.” 28 U.S.C. § 481(a) (Supp. II 1990).
83. E.g., Hunter, supra note 71, at 21; Mintz, supra note 75, at 10.
There are a number of caveats to the statistics. Some cases have been closed since the Sept. 30 deadline, but are included nonetheless. Others show up even though they have been frozen by lengthy appeals and bankruptcy stays. In addition, some cases, such as public interest litigation, inherently stay active indefinitely.84

The Civil Justice Reform Act reports prepared by courts of appeals can be useful in putting other reported data into context. While the initial report of the Administrative Office of the United States Courts merely contains raw numbers of cases and motions, a report prepared by the Circuit Executive for the United States Court of Appeals for the First Circuit includes a "Notes" section. Both reports indicate that, as of September 30, 1991, 278 of the civil cases assigned to a federal district judge in Puerto Rico had been pending for more than three years. Only the First Circuit report, though, explains that all but four of these lawsuits are Dupont Plaza Hotel fire cases.85

While the information made available under the Civil Justice Reform Act may be of interest to lawyers and, to a lesser extent, the general public, such public reporting may exact a price in judicial collegiality and morale. Chief Judge James Moran and all but two of his colleagues in the Northern District of Illinois have refused to provide statistical data concerning their dockets to the Chicago Council of Lawyers because of the "profound effect upon collegiality and morale" that the judges believe public reporting of this data could cause.86

Judge Richard Enslen, in congressional testimony concerning the Civil Justice Reform Act, has described the manner in which statistics foster competition among very competitive federal district judges: "The monthly, semi-annual, and annual statistics forwarded to us by court administrative offices are instant and constant reminders of how we 'stand' in relation to our colleagues with regard to disposing of those cases assigned to us."87 One federal judge has suggested that the reporting provision "might have the unfortunate effect of discouraging

84. Mintz, supra note 75, at 1.
86. Susan Beck, Chicago Federal Judges Duck Scrutiny, THE AMERICAN LAWYER, Dec. 1991, at 19. A former federal judge in the Northern District of Illinois has stated that "the judges [in that district] are concerned with the [Civil Justice Reform Act reporting provision]. Now [the status of their dockets] will be aired to the public." Id.
87. Senate Hearings, supra note 22, at 232, 252 (statement of Judge Richard A. Enslen). In his congressional testimony, Judge Robert Peckham alluded to the manner in which "peer pressure" causes judges to remain current in their dockets. House Hearing, supra note 9, at 181 (statement of Judge Robert F. Peckham).
judges from helping one another . . . because of concern about their individual statistics.]

A possible alternative to publicly reporting the relative standing of particular judges and judicial districts might be to pay more attention to judicial selection in an effort to ensure that the very best lawyers become federal judges. This sentiment was expressed during the congressional hearings on the Civil Justice Reform Act by Judge Thomas Eisele of the United States District Court for the Eastern District of Arkansas:

I have always felt that the President should appoint, and the Senate confirm, only able and qualified persons to serve as Article III United States district judges. Then, they (these political branches of our government) should let those judges exercise their discretion and manage their dockets in accordance with the individual requirements of the particular cases before them.

However, the Civil Justice Reform Act merely requires the reporting of cases and motions that have been pending for quite some time. Only motions that have been pending and cases that have been under submission for more than six months must be reported. Pressures imposed by public reporting may be necessary to move either an individual judge or her colleagues to action in extreme cases. A judge who hears few cases and spends little time at the courthouse may be chas-tised by the public spotlight brought to bear because of Civil Justice Reform Act statistics. Public reports of major backlogs within a district may create institutional pressure for judges to work cooperatively to resolve motion and case backlogs.

There are great disparities in the numbers of older motions and

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88. House Hearing, supra note 9, at 378, 382 (letter from Judge J. Frederick Motz to Senator Joseph Biden (Mar. 28, 1990)).
89. Id. at 431, 432 (letter from Judge G. Thomas Eisele to Congressman Robert W. Kas-tenmeier (Aug. 23, 1990)).
90. 28 U.S.C. § 476(a)(1)-(2) (Supp. II 1990). In contrast, the reporting requirement that the Civil Justice Reform Act supplanted required judges to file quarterly reports of matters under advisement for more than 60 days. Memorandum on CJRA Reporting Requirements, supra note 21, at 2. As originally introduced by Senator Biden, the Civil Justice Reform Act would have required "a quarterly report listing all pending submitted motions before each judge that are unresolved for more than 30, 60, and 90 days, and all succeeding 30-day increments." Senate Hearings, supra note 22, at 544 (proposed 28 U.S.C. § 475(b)(1)).
91. At the 1992 Sixth Circuit Judicial Conference, the Sixth Circuit Judicial Council au-thorized the hiring of temporary law clerks to help judges dispose of the reportedly large numbers of unresolved motions in that circuit. Telephone Interview with Kay Lockett, Administrative As-sistant to the Circuit Executive, United States Court of Appeals for the Sixth Circuit (July 30, 1992).
cases reported by judges within some districts. The morale of the more conscientious judges within a district may be improved, rather than impaired, as public attention is focused upon their less productive colleagues. In addition, federal district judges are not infrequently nominated for positions on the United States Courts of Appeals. The timeliness with which a district judge has managed her docket may be relevant to possible elevation to the Court of Appeals.

Some federal judges, though, may resent the reporting requirements of the Civil Justice Reform Act on more general principles. The reporting provision says much about whom the drafters of the Civil Justice Reform Act believed were at fault for the "problems of cost and delay" that underlie the Act. A senior aide to the Senate Judiciary Committee who played a role in drafting the Civil Justice Reform Act has anonymously described the purpose of that Act's reporting provision as "'an incentive [for judges] to work a little faster' and enhance their accountability.'"

Regardless of who is responsible for them, older civil cases and untimely rulings on civil motions are perceived to be growing problems in federal court. Despite the fact that the median time from filing to disposition for federal civil cases has remained constant at nine months

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92. See, e.g., the statistics concerning motions pending for more than six months as of September 30, 1991, for the Southern District of West Virginia (in which three of the active district judges each reported three motions and the fourth judge reported 82 motions) and the District of Massachusetts (in which three district judges reported 116, 73, and 65 motions, while three other active judges reported no motions). Sept. 30, 1991, CJRA REPORT, supra note 53.

93. This point was made by Alan Morrison in his congressional testimony concerning the Civil Justice Reform Act: "[T]here have been situations where judges who had problems managing their docket became elevated to higher courts, something that probably would not have happened if we had section 476." House Hearing, supra note 9, at 240-41 (statement of Alan Morrison).


The original version of the Judicial Improvements Act of 1990 introduced by Senator Biden contained a proposed congressional finding that the "court, the litigants, and the litigants' attorneys share responsibility for cost and delay in civil litigation and its impact on access to the courts and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties." S. 2648, 101st Cong., 2d Sess. § 102(2) (1990). As ultimately enacted, this finding was amended to provide that "the Congress and the executive branch" shared responsibility with courts, litigants, and litigants' attorneys for the problems identified. Civil Justice Reform Act of 1990, Pub. L. No. 101-650, § 102(2), 104 Stat. 5089, 5089 (1990).

95. Houlding, supra note 76, at 2.
since 1984, both the number and percent of civil cases more than three years old have risen every year from statistical year 1984 through statutory year 1991.96

A recurring theme in the reports of Civil Justice Reform Act advisory groups is the delay caused in civil litigation by judicial failure to rule promptly on civil motions. In its survey of attorneys litigating in that district, the Advisory Group of the United States District Court for the Southern District of Texas found “a widespread, repeated sentiment . . . that judges do not rule quickly on substantive motions and that the lawyers and parties need prompt rulings on motions.”97 The Advisory Group to the United States District Court for the Northern District of West Virginia concluded that “historically the underlying problem for the civil docket [in that district] has been the inability to set and maintain firm trial dates or to receive reasonably prompt rulings on dispositive motions.”98

The Southern District of New York Civil Justice Reform Act Advisory Group found a strong correlation between pretrial motion practice and median disposition time for civil cases in that district. Of the almost two thousand cases studied in that district, “The median closing time for dockets without motions was 7.3 months, whereas the median closing time for dockets with motions was 16.7.”99 This study also re-


The increasing number of civil cases more than three years old is noted in the Senate Judiciary Committee Report on the Civil Justice Reform Act:

A March 1989 Judicial Conference report showed . . . that the number of civil cases pending more than 3 years has climbed during the past 5 years from 15,646 to 22,391. According to the Administrative Office of the United States Courts, the percentage of civil cases more than 3 years old has risen in 5 years from 6.3 percent of the total in 1984 to 9.2 percent in 1989. This represents an increase of 46 percent.


The number of civil cases more than three years old rose by 6030 cases between 1989 and 1991, and the 28,421 cases reported in statistical year 1991 represented 11.8 percent of the federal civil cases in that year. 1991 FEDERAL COURT MANAGEMENT STATISTICS at 167.


revealed that judges took almost twice as long to decide motions in cases that took three years or more to resolve than they did in cases that were closed in less than three years.100

While judicial delay is perceived to be a serious problem in many districts, will public reporting really influence the judges at whom the new reporting provision is aimed? Might this provision merely prod those judges who already are quite diligent, while their less conscientious colleagues are not affected by public reports? One federal judge has observed, “I wouldn’t be surprised if there aren't a few [older cases] in everybody's closet that are rotten apples. Some judges are supersensitive to it and [the reports] will help. Others may not be as concerned.”101

Nationwide, there were fewer older motions and cases reported as of March 31, 1992, than had been reported as of the initial Civil Justice Reform Act reporting date of September 30, 1991.

While it is still very early to determine the true impact of the CJRA reporting process on the civil caseload in the U.S. district courts, a review of the first two reports shows that progress is being made in decreasing the number of motions pending over six months, bench trials submitted for more than six months, and civil cases pending more than three years. A comparison of the national and circuit totals for September 30, 1991 and March 31, 1992 shows decreases in all three areas.102

Declines in the numbers of reported motions and cases have been dramatic in some districts. The Civil Justice Reform Act reports from the Western District of Texas suggest that, insofar as older motions are concerned, “[s]unlight [may] be the best of disinfectants.”103 Not only were the judges of this district featured in the Texas Lawyer’s initial “Slowpoke Report,”104 but judge-by-judge statistics concerning older pending motions were contained in the report issued by the district’s

100. Id. at 57. Because of this correlation between case disposition time and the length of time taken to decide pretrial motions, the advisory group recommended that all motions be decided within 60 days and that motions not decided within 60 days be reported monthly to all members of the court and of the advisory group. Id. at 58.
102. March 31, 1991, CJRA Report, supra note 56, at 5. Between the September 30, 1991, and March 31, 1992, reporting periods, the number of motions reported declined by seven percent (from 13,083 to 12,127), the number of reported bench trials declined by three percent (from 221 to 215), and the number of reported cases pending for more than three years declined by five percent (from 15,109 to 14,291). Id. at 5-6.
103. Louis D. Brandeis, Other People’s Money 62 (1933).
Civil Justice Reform Act Advisory Group. After achieving this notoriety concerning their September 30, 1991, reports, the judges' reports for March 31, 1992, showed dramatic drops in the number of motions pending for more than six months. While district and magistrate judges had reported 1498 motions pending for more than six months as of September 30, 1991, they reported only 595 such motions as of March 31, 1992. The district judge who had reported 468 motions as of September 30, 1991, reported only 20 motions six months later, while the motions reported by another judge dropped from 280 to 8. Only one of seven district judges and two of eleven magistrate judges reported more motions pending on March 31, 1992, than on September 30, 1991.

Declines in the numbers of older cases and motions also have been reported in districts that had not experienced major litigation delays. The district and magistrate judges in the Eastern District of Washington reported 11 motions, 1 bench trial and 22 cases in their September 30, 1991, Civil Justice Reform Act reports. On March 31, 1992, the district's judges reported 3 motions, no bench trials, and 5 older cases. The chief judge of this district believes that judge-specific statistics have played a role in keeping the district's docket current:

In this district, we have commenced to circulate among the judges the statistics which will be furnished to this district's [Civil Justice Reform Act] Advisory Group. We have also furnished each judge a schedule of his statistics compared to the national averages, the district averages, and those of other judges in

109. Fifth Circuit March 31, 1992, Report, supra, note 107; Fifth Circuit Sept. 30, 1991, Report, supra, note 106. The number of motions reported by the judges in the Northern and Southern Districts of Texas also dropped from September 30, 1991, to March 31, 1992. Fifth Circuit Sept. 30, 1991, Report, supra note 106; Fifth Circuit March 31, 1992, Report, supra note 107. The number of motions reported within the Eastern District of Texas, the final district covered by the Texas Lawyer's Slowpoke Report, rose during this period from 141 to 571. Fifth Circuit Sept. 30, 1991, Report, supra note 106; Fifth Circuit March 31, 1992, Report, supra note 107. However, 506 of these more recently reported motions were in a single consolidated asbestos case with 2294 plaintiffs. Id.
the district. This procedure has caused each individual judge to sharpen his focus on case management and on the timeliness of his decision making. The case termination statistic in our district has shown a substantial increase.\textsuperscript{112}

A correlation between public reporting and a drop in pending older motions and cases does not establish that the reporting requirement caused the drop in motions and cases reported.\textsuperscript{113} However, it seems reasonable to assume that most judges will focus their attention on pending motions to avoid being featured in "Slowpoke Reports."\textsuperscript{114}

There also may be value to judicial reports totally apart from any general impact those reports have upon judicial delay. In preparing his report of older cases, one federal judge discovered a nine-year-old case that the judge had "never heard of."\textsuperscript{115} Senior Judge William Ingram of the Northern District of California has suggested that "public accounting may have spurred people on to increased activity. There is always dead wood you can get rid of and there are always cases that can fall through the cracks."\textsuperscript{116}

Before rejecting a public reporting requirement, we should consider whether there are other readily available solutions for judges who fail to rule on motions or decide cases in a timely manner. An undoubted reason for the reporting provision of the Civil Justice Reform Act is that there is really no way to require judges to resolve cases and decide motions expeditiously. While the Brookings Institution Task Force recommended that "each district planning group should consider

\begin{itemize}
\item[113.] In the Western District of Texas, the drop in the number of reported motions may have been partially due to greater efforts to validate each judge’s reports. That district’s September 30, 1991, reports were generated from the court’s electronic docketing system, and there was little time to validate all of the motion data electronically produced. W.D. TEX. ADVISORY GROUP REPORT, supra note 53, at 33.
\item[114.] Anecdotal evidence supports this assumption. “One Washington lawyer reports . . . that three cases that had been pending for quite some time in three different district courts were finally resolved the day before the data were due [to be reported]—the implication being that judges across the country were cleaning up old business rather than confessing delay.” Judge Penn’s Backlog, supra note 68.
\item[115.] Mintz, supra note 75, at 10.
\item[116.] Judges are not the only ones who forget cases. In his September 30, 1991, report, a judge in the Western District of Texas reported a case that had been under submission since the conclusion of a bench trial on November 24, 1982. When asked about this case, plaintiff’s counsel replied, “I inherited it from a partner who retired a year ago . . . and I don’t know anything about the case,” while defense counsel admitted, “I thought it was resolved.” Hunter, supra note 71, at 21.
\item[116.] Mintz, supra note 75, at 10.
\end{itemize}
mechanisms by which the chief judge can better monitor the periods within which motions are decided," 117 it did not suggest what those mechanisms should be.

The reporting provision of the Civil Justice Reform Act was not the only means by which Congress addressed judicial accountability in the Judicial Improvements Act of 1990. Recognizing that "impeachment has recently become so cumbersome and unwieldy that it adequately serves neither the Senate nor the accused," 118 Congress enacted the Judicial Discipline and Removal Reform Act of 1990 as Title IV of the Judicial Improvements Act of 1990. 119 This Act created a National Commission on Judicial Impeachment to investigate "the problems and issues involved in the tenure (including discipline and removal) of an article III judge," 120 consider solutions to those problems and issues, and report its findings to Congress, the Chief Justice, and the President. 121

Under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, any person can file a complaint that a judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 122 However, tardiness in deciding civil motions or bench trials is not likely to lead to judicial discipline under this Act, let alone impeachment. 123

Civil Justice Reform Act advisory groups have offered various recommendations to speed judicial rulings. Among the more interesting recommendations is that of the Civil Justice Reform Act Advisory Group for the District of Montana, which recommended a local rule under which counsel would have been required to advise the court, in writing, of any motions pending for more than sixty days without a

120. Id. at 5124 Subtitle II (National Commission on Judicial Impeachment).
121. Id.
123. The "problem" of life tenure was recognized by some of the proponents of the Civil Justice Reform Act. "The real problem here is that Federal judges have lifetime tenure," said a senior Judiciary Committee aide last week, lamenting Article III of the Constitution. "That would make it difficult to make judges accountable and force them to follow the Biden Act." Labaton, supra note 94. One federal judge publicly supported the reporting provision of the Civil Justice Reform Act for precisely this reason, arguing that "particularly because we have life tenure, we should be held publicly accountable." House Hearing, supra note 9, at 382 (letter from Judge J. Frederick Motz to Senator Joseph Biden (Mar. 28, 1990)).
judicial decision. While this proposed rule was not adopted by the court, the district's civil justice expense and delay reduction plan contains a provision requiring the clerk of court to inform judges of motions pending for more than sixty days. If the judge does not rule within thirty days after the clerk's notice, she must issue a written report as to the status of the pending motion.

In its efforts to control motion practice, the United States District Court for the Eastern District of Texas focused on both attorneys and judges. This district's civil justice expense and delay reduction plan requires leave of court before most motions are filed, but also requires the court to resolve non-dispositive motions within thirty days and to "employ its best efforts" to resolve dispositive motions within sixty days. The Civil Justice Reform Act Advisory Group of the United States District Court for the Western District of Texas recommended that each judge in that district be provided with an additional law clerk to help with motions.

One or more of these recommendations may prove effective in reducing judicial delay in resolving civil cases and motions. In the event they do not, the reporting requirement of the Civil Justice Reform Act may play an even more significant role in efforts to reduce delay in civil litigation in the federal district courts.

VI. WHAT DOES THE CIVIL JUSTICE REFORM ACT DATA TELL US?

While Civil Justice Reform Act reports may have an impact upon judicial behavior, what do these reports actually mean? Does the data now made publicly available tell us important things about individual judges or judicial districts that we don't already know?

Public reports of pending motions and bench trials may indicate that a particular district court is handling its civil caseload quite effi-

124. The recommended local rule was similar to local rules predating the Civil Justice Reform Act in the Central District of California and the District of Oregon. C.D. Cal. R. 32; D. Or. R. 205-2. Rule 205-2 of the District of Oregon requires counsel to file a written "reminder" with the court concerning motions and bench trials that have been under advisement for more than 60 days. Rule 32 in the Central District of California requires counsel to file a request for a ruling after a motion or bench trial has been under submission for more than 120 days. If the judge does not rule within 30 days after a request for ruling, she must advise the parties and the chief judge in writing of the date by which a decision will be rendered.


ciently. For the September 30, 1991, reporting period, there were several districts that reported no, or virtually no, pending motions or submitted cases more than six months old. In their initial Civil Justice Reform Act reports, the district judges in the Middle District of Louisiana, the Eastern District of Oklahoma, and the Western Districts of Arkansas, Washington, and Wisconsin listed no motions that had been pending or cases that had been submitted for more than six months.\textsuperscript{128}

District judges in some much more populous and urbanized districts also reported very few motions and bench trials that had been pending for more than six months. California is a case in point. The motions and bench trials, respectively, reported pending as of September 30, 1991, by the federal district judges in California were as follows: 19 and 3 (Northern District); 29 and 0 (Eastern District); 35 and 6 (Central District); and 1 and 0 (Southern District).\textsuperscript{129} The initial reports of the district judges in another court noted for active judicial management, the United States District Court for the Eastern District of Virginia, listed only five motions and one bench trial, all of which were on the dockets of senior district judges.\textsuperscript{130} Lawyers fearful that a judge may delay ruling on civil motions or bench trials might consider these districts as potential judicial forums.\textsuperscript{131}

Judges in other districts reported many more older motions and cases. The districts in which the greatest numbers of motions were reported by district judges as of September 30, 1991, were: the District of Massachusetts (439); the Southern District of Texas (481); the District of Colorado (482); the Middle District of Florida (575); the District of Arizona (664); the District of Kansas (868); and the Western District of Texas (1370).\textsuperscript{132}

\textsuperscript{128} \textit{Sept. 30, 1991, CJRA Report, supra note 53.}

\textsuperscript{129} \textit{Id.}

\textsuperscript{130} \textit{Id.}

\textsuperscript{131} Because cases are assigned to federal judges on a random basis, attorneys cannot choose the judge who will hear their cases. Lawyers, however, often have a choice as to the particular federal district within which to file an action or can decide whether to file in state or federal court. The reports filed under the Civil Justice Reform Act may prove helpful to counsel with such a choice of forum. \textit{See} Hunter, \textit{supra} note 71, at 21.

Some attorneys actually have considered using Civil Justice Reform Act reports in such a fashion. Two lawyers have requested data concerning a Sixth Circuit judge to use in support of a motion to transfer a case to that judge. The data was sought to show that, because the judge in question had a current docket, a transfer would not result in undue docket congestion. Telephone Interview with Kay Lockett, Administrative Assistant to the Circuit Executive, United States Court of Appeals for the Sixth Circuit (July 30, 1992).

\textsuperscript{132} \textit{Sept. 30, 1991, CJRA Report, supra note 53.}
These large numbers of older motions should be a public warning that, for whatever reason, there are problems with a court or with particular judges on that court. In many of these districts, the backlog of pending motions indicates that the district is struggling with a rapidly growing criminal caseload that has taken the court's attention away from its civil docket. In all of these districts, the bench, the bar, and the general public should determine the source of the problems suggested by these statistics and work together to solve the problems.

In some districts there is a correlation between the number of pending motions reported under the Civil Justice Reform Act and the court's median disposition times. For the statistical year ended June 30, 1991, the United States District Court for the Eastern District of Virginia was the fastest court in the nation as measured by median time from issue to trial in civil cases and the third fastest court in median time from filing to disposition of civil cases. As of September 30, 1991, only seven motions had been pending for more than six months and only one bench trial had been under submission for more than six months within the district.

This pattern does not uniformly exist, though. In their initial Civil Justice Reform Act reports, district and magistrate judges within the Western District of Texas reported 1498 civil motions that had been pending more than six months. This was more than the number of such motions reported by all but two of the eleven judicial circuits other than the Fifth Circuit. Despite this backlog of motions, the district

133. In their September 30, 1991, Civil Justice Reform Act reports, judges within the Western District of Texas indicated that more than one-half of the motions they reported had not been resolved because of a heavy civil and criminal caseload. W.D. TEX. ADVISORY GROUP REPORT, supra note 53, at 34 (Table 8). This court's advisory group concluded "[t]he scarcity of judicial resources in the Western District is principally the product of the burgeoning criminal docket." Id. at 35.

134. 1991 FEDERAL COURT MANAGEMENT STATISTICS, supra note 96, at 70.

135. SEPT. 30, 1991, CJRA REPORT, supra note 53. Despite this extremely short median disposition time, 24.2% of the civil cases within the Eastern District of Virginia were more than three years old as of June 30, 1991. 1991 FEDERAL COURT MANAGEMENT STATISTICS, supra note 96, at 70. Only seven district courts in the country had a higher percentage of civil cases more than three years old. Id. However, "[a]proximately ninety to ninety-five percent of the court's civil cases that are over three-years-old are cases that have been stayed as a result of . . . bankruptcy orders [in asbestos and Dalkon Shield products liability cases]." Dayton, supra note 8, at 485.

136. For the September 30, 1991, reporting period, the district and magistrate judges within the Sixth Circuit reported 1810 motions pending for more than six months, while the judges within the Tenth Circuit reported 1926 such motions. SEPT. 30, 1991, CJRA REPORT, supra note 53.

Only a single judge within the Western District of Texas reported any bench trials under
ranked thirty-fourth out of ninety-four district courts in the median
time from filing to disposition of civil cases. 137

There does, however, appear to be a rough correlation between
median disposition time and unresolved older motions when those dis-
tricts with the fewest and greatest number of unresolved older motions
are considered. The median disposition times in statistical year 1991
for the five federal districts in which district judges reported no pend-
ing motions as of September 30, 1991, were as follows: the Middle Dis-
trict of Louisiana (12 months), the Eastern District of Oklahoma (6
months), the Western District of Arkansas (6 months), the Western
District of Washington (9 months), and the Western District of Wis-
consin (3 months). 138 The mean of these median disposition times is 7.2
months.

In contrast, the median disposition times for the five federal dis-
tricts whose district judges reported the greatest number of pending
motions as of September 30, 1991, were as follows: the District of Col-
orado (8 months), the Middle District of Florida (10 months), the Dis-
trict of Arizona (8 months), the District of Kansas (12 months), and
the Western District of Texas (9 months). 139 The mean of these median
disposition times is 9.4 months, which is 30% longer than the 7.2
month mean computed for the five districts that reported no motions
pending for more than six months as of September 30, 1991. Large
numbers of older unresolved motions therefore appear to be an indica-
tor of a slower civil docket in many instances.

Whatever specific Civil Justice Reform Act reports tell us, the re-
porting requirement evidences an erosion of respect for, and confidence
in, the federal judiciary. Similar efforts recently have been made to
quantify the efforts of other professionals, especially teachers. The re-
results of these efforts to establish public accountability have been mixed.
While many bemoan the inability of American students to master
higher-level thinking skills, numerous teachers and school systems have

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137. 1991 FEDERAL COURT MANAGEMENT STATISTICS, supra note 96, at 85. In addition,
during statistical year 1991 the Western District of Texas had 22.3 "vacant judgeship months"
due to judicial vacancies. Id.

138. Id.

139. Id.
reconfigured their curricula to focus on simple decoding and computation of the sort covered on standardized tests.\textsuperscript{140}

The public has the right to demand accountability from its officials, especially those with life tenure. It is difficult, however, to determine important types of knowledge or to quantify justice with a simple, objective measure. Public accountability may require measurement, but the thing for which we want to hold officials accountable may not be susceptible of easy measurement. Professor Laurence Tribe has referred to this problem as the "dwarfing of soft variables."\textsuperscript{141} "The syndrome is a familiar one: If you can't count it, it doesn't exist. . . . Readily quantifiable factors are easier to process—and hence more likely to be recognized and then reflected in the outcome—than are factors that resist ready quantification."\textsuperscript{142}

This is precisely why the proponents of judicial reporting believe that such reporting is a powerful tool against judicial delay. As one study concluded: "[D]eveloping the monitoring portion of the delay reduction system was the most important phase. Since the system participants will concentrate on what is being monitored, if the design team carefully selects what will be counted, improvement in performance will result merely because counting is occurring."\textsuperscript{143}

We therefore need to be clear as to exactly what is being counted and publicly reported under the Civil Justice Reform Act. Even more importantly, we need to remember what the Civil Justice Reform Act statistics do not measure. Rule 1 of the Federal Rules of Civil Proce-

\textsuperscript{140} Professor Linda Darling-Hammond of Columbia University Teachers College has equated the current movement to evaluate teachers based upon their students' standardized test scores to determining the health of a community based upon body temperatures. Linda Darling-Hammond, \textit{Mad-Hatter Tests of Good Teaching}, N.Y. \textit{Times}, Jan. 8, 1984, § 12, at 57. She argues that, although body temperatures are easily and objectively determined and recorded, they may not provide an accurate reflection of the public's health; establishing thermometer readings as the sole indicator of public health merely may encourage doctors to prescribe more aspirin. \textit{Id.}


\textsuperscript{142} \textit{Id.} at 1361-62. See also Amitai Etzioni, \textit{Modern Organizations} 9 (1964) ("Frequent measuring tends to encourage over-production of highly measurable items and neglect of the less measurable ones.").

\textsuperscript{143} \textit{Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, Judicial Admin. Division, Am. Bar Ass'n, Defeating Delay} 69 (1986). Case monitoring is facilitated by the assignment of cases to specific judges, as is done in the federal district courts. "Individual assignment systems fix responsibility for cases on the assigned judge. When accompanied by appropriate monitoring systems and statistical reports, individual assignment systems provide a mechanism for holding the judge accountable for the advancement and ultimate disposition of the cases assigned." \textit{Task Force on Reduction of Litigation Cost and Delay, Judicial Admin. Division, Am. Bar Ass'n, Caseflow Management in the Trial Court} 34 (1987).
dure instructs judges to apply those rules "to secure the just, speedy, and inexpensive determination of every action." The Civil Justice Reform Act, however, requires no reports concerning "just" resolutions, only reports concerning adjudications that are less than speedy.

Section 3B(8) of the Model Code of Judicial Conduct provides that judges "shall dispose of all judicial matters promptly, efficiently and fairly." The commentary to this section states that in so doing "a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay." According to this commentary, the judge is to "contain[ ] costs while preserving fundamental rights of parties." The Civil Justice Reform Act statistics merely measure judicial speed in resolving motions and cases, not whether the rights of parties are protected in the process. Indeed, one way in which a judge can resolve matters expeditiously is by compromising the parties' rights. If given more time for decision, a judge may craft a better reasoned opinion that is less likely to be reversed on appeal and that may provide a helpful precedent for other parties.

While Civil Justice Reform Act statistics may not, by themselves, be a good measure of "justice," they may help identify instances of injustice in the federal courts. Litigants, lawyers, and the public generally should not have to wait more than six months for motions to be decided or more than three years for cases to be resolved. Careful scrutiny may be required to determine responsibility for motions that are not decided or cases that are not resolved, especially because forces beyond an individual judge's control may be responsible for the delay. Nevertheless, large numbers of these motions and cases indicate a problem that merits further study.

VII. CONCLUSION

Judicial speed and efficiency are not ends in themselves. While justice delayed may be justice denied, justice is the goal of our legal system. The new judicial reporting requirement of the Civil Justice Reform Act may speed the resolution of civil motions and cases in the federal district courts. This provision may spark greater public interest in the federal courts, lead to increased financial support for those

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146. Id.
courts, and spur other judicial reforms. To the extent that litigants also receive more just results, this new reporting provision truly will have furthered civil justice reform.