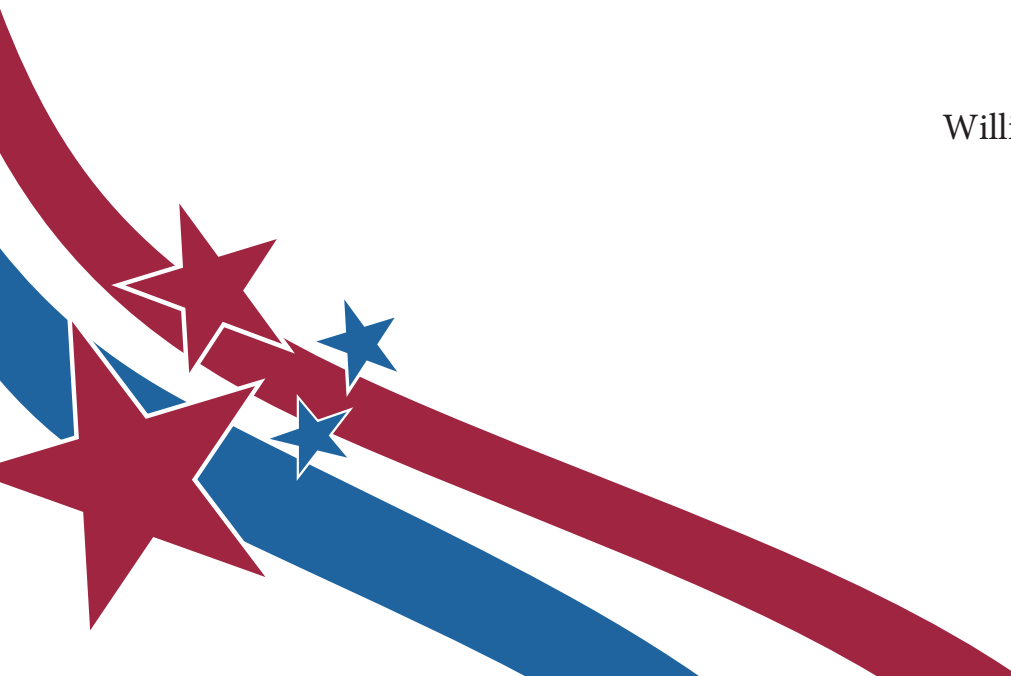


*Analyzing the Caseload of
the Federal District Court in
the District of New Jersey and
the Effects of Unfilled Vacancies
on the Judicial System*

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A great amount of time and scholarly research has gone into analyzing the cases taken on by the highest court in America, the United States Supreme Court. Because it is the “court of last resort,” much attention is paid to not only the issues of the cases heard before the Supreme Court, but also how many cases the Justices chose to hear in the first place. Less attention is paid by researchers to the two “lower” courts in the Federal Judicial system. A large part of the disparity in attention is in part due to the differences between the appeals and case selection processes in each court – the Supreme Court has discretionary review of cases that come before it, meaning they can choose which out of the thousands of appeals to hear. The Circuit Courts have mandatory review, meaning that they must hear every appeal brought to them, creating quite the caseload for the Circuit Court. However, perhaps the most intense caseloads can be found in the “lowest” federal courts, the Federal District Courts. As the trial court for the Federal Courts, every federal case begins in a District Court, meaning that the District Courts carry the largest caseload out of the entire federal system.

Despite this, not much academic work has been done analyzing the caseloads of the district courts, and how the caseloads may vary across different states. Additionally, there is little to no media coverage regarding this topic, despite the importance of the district courts in our national judicial system. However, looking at the caseloads faced by the districts encompassing individual states, it becomes apparent that the federal caseload can be and is in certain cases a problem that can negatively impact the citizens – and the administration of justice – in the affected states.

Introduction: Origins of this Report

This issue was first brought to the attention of the William J. Hughes Center for Public Policy at an event hosted in late January of this year. Former White House Counsel Don McGahn, in the course of an event titled “A Conversation with Don McGahn,” discussed his role in assisting the President with picking judicial nominees for the various levels of the federal judiciary system. After discussing the appointment of Justice Brett Kavanaugh to the Supreme Court, the topic of “blue slipping” came up.¹ Mr. McGahn went on to explain exactly what “Blue Slipping” is, stating that “Blue Slipping is a tradition in the Senate, literally to blue slip a paper where... home state senators return it to the chair of the Judiciary Committee and then the Judiciary Committee chairmen takes up the nomination. Some judiciary committee chairmen will not take up the nomination unless the home state senators have returned the blue slips.”² Mr. McGahn said that “If there weren’t blue slips you’d have full district judges in New Jersey.”³ Elaborating on this point, Mr. McGahn stated that “for District Courts, if your home state senators do not really approve of the choices, they’re not going to go anywhere. Some states, we had a lot of luck, where we got the slate filled. New York, we did quite well. Illinois we did quite well. California’s coming along. New Jersey... no district court judges.”⁴ Mr. William Hughes Jr., who moderated the onstage discussion with Mr. McGahn, discussed how the federal judges in New Jersey’s District were “under siege” and how “they have some of the highest workloads in the nation.”⁵ Mr. Hughes went on to detail how the federal district in New Jersey receives

¹ Hughes Center Stockton, A Conversation with Don McGahn (2020), https://www.youtube.com/watch?v=nbKvphMnURI&ab_channel=HughesCenterStockton at 1:08:54.

² *Id.* at 1:09:05-1:09:21.

³ *Id.* at 1:08:58-1:09:02.

⁴ *Id.* at

⁵ *Id.* at

numerous complex cases, including pharmaceutical liability actions, patent cases, and several “multidistrict” cases falling into New Jersey's jurisdiction.⁶

Mr. McGahn agreed that the New Jersey courts are particularly burdened with an increased workload, but when pressed by Mr. Hughes as to why there have been no replacements, Mr. McGahn said that it “certainly isn’t because of me. I tried... We’ve just had no luck with your senators.”⁷ At the time this report was published, the Hughes Center had reached out to both of New Jersey’s Senators, Senators Cory Booker and Robert Menendez, for comment on Mr. McGahn’s remarks and for some clarification on the Blue Slipping process and judicial nominations. However, we have not received a response before publication.

While Mr. McGahn’s comments focused on the political aspects of the federal judiciary; the Hughes Center wanted to investigate the supposed caseload issues. An important part of a functioning justice system is the judiciary working quickly but fairly, and if the federal courts in New Jersey are overwhelmed, then steps may need to be taken to alleviate that. Thus, we must look at the caseload of the New Jersey District in recent years in order to determine if there really is a workload problem, as Mr. McGahn said, or if the caseload is reasonable.

The District of New Jersey Caseload: Finding the Numbers

A statistical analysis of the yearly caseload is required in order to find out if the caseload in the Federal District Court of New Jersey was actually strenuous on the judicial system in the state and abnormal compared to other districts. These statistics are recorded for every district every quarter by the Federal Courts themselves. In the “Federal Court Management Statistics,” the United States Courts compile and analyze a variety of statistics relating to the number of cases, filings, terminations, and vacancies in the federal district courts. Of most use for the sake

⁶ *Id.* at

⁷ *Id.* at

of our research was the “Comparison Within Circuit” tables, which provided several caseload statistics across the different federal circuits in a manner that made it easy to reference and compare the Districts within each Circuit.

New Jersey is in the Third Federal Circuit, which also contains all the federal district courts in Pennsylvania, Delaware, and the Virgin Islands. We also looked at statistics from other states that are geographically close to New Jersey – those being Connecticut and all four district courts in New York State, which are housed in the Second Federal Circuit.

The data does suggest that a caseload problem is affecting the New Jersey District of the Federal District Court. However, this increased caseload seems to come from a variety of factors all compounding together. It’s the perfect storm, so to speak.

Recent years have seen an unprecedented and significant jump in total case filings in the New Jersey District Court (see the tables in the next section). This jump has coincided with several vacancies opening up on the bench in the district. This in turn means that fewer judges are available to shoulder the increased burden, driving up the number of cases each judge must take on. Additionally, many judges in the New Jersey District have reached the “senior judge” status, which in turn could lead to a decreased caseload due to their age and seniority. While the seats on the bench held by senior judges are designated as vacant upon senior status (meaning that there are technically more judges on the bench than reported in the Federal Court Management Statistics), the sheer volume of filings and cases per judgeship is still astronomical, especially compared to other districts in the Circuit *and* similar if not larger jurisdictions, as will be shown below. All of this has led to a massive increase in the total number of pending cases, and a backlog of sorts at the federal level.

The District of New Jersey Caseload: The Numbers

According to the Federal Court Management Statistics, the last time that the New Jersey District Court was without a vacancy of some kind was 2013. For this reason, we chose 2013 as the first year of our analysis and comparison. In this section, we will analyze several different statistics recorded by the Federal Courts, including Pending Cases per Judgeship, Vacant Judgeship Months (how many months per year vacancies were left unfilled in the District), Pending Cases (across the entire district), and Total Case Filings. While Pending Cases per Judgeship, Pending Cases, and Total Case Filings all deal with the cases, Vacant Judgeship Months deal directly with the vacancies. The Federal Court Management Statistics define “Vacant Judgeship Months” as the “number of months during the year an authorized judgeship was not filled.” If one vacancy is left unfilled for the entire year, then that adds 12 months to the total, allowing an approximate measure of how many seats are vacant and how long they have been vacant in the data.

In 2013, there were only an average total of 536 pending civil and criminal felony cases per judgeship at the end of the year in the New Jersey District. The number of pending cases increased slightly over the next few years, reaching 690 pending cases per judgeship at the end of 2016. This number was despite the fact that there were 4 vacancies in the district for the entire term (calculated from the 48 “Vacant Judgeship Months” listed for that year).

In 2017, the number of Pending Cases per Judgeship began to dramatically increase (see **Figure 1**). By the end of 2017, the Pending Cases per Judgeship reached 1,040 cases, a 50.7% increase from the end of 2016, and a 76.6% increase from two years prior. Despite the total Vacant Judgeship Months being lower at the end of 2017 as compared to both 2015 and 2016, the Pending Cases per Judgeship jumped by over 300 cases per judgeship in a single year. This

was likely due to a sudden increase in total civil and criminal felony filings (including supervised release hearings) in 2017, which saw a jump from 11,341 filings in 2016 to 16,694 total filings in 2017 – a 47.2% increase.

The Pending Cases per Judgeship numbers continued to get worse, reaching 1,469 cases per Judgeship in 2018, and 2,280 cases by the end of 2019 (the most recent data), a 41.2% and 55.2% increase respectively. In just three years, the total pending cases per Judgeship in the New Jersey District has ballooned 230.4%, a major increase.

Figure 1: Pending Cases per Judgeship in the New Jersey District

	2013	2014	2015	2016	2017	2018	2019
Pending Cases per Judgeship	536	571	589	690	1,040	1,469	2,280
% Change from Prev. Year	N/A	6.5%	3.2%	17.2%	50.9%	41.2%	55.2%
% Change from 2 Year Prior	N/A	N/A	9.9%	20.8%	76.6%	113%	119.2%

In that same time, however, there have remained vacancies on the district court. In fact, 2019 saw the Vacant Judgeship Months increase, from 27.4 Vacant Months in 2018 to 67.5 Vacant Months (see **Figure 2**). There are currently 6 vacancies in the New Jersey District, according to the US Courts website.⁸ All of these vacancies have occurred since February of 2015, with four vacancies opening up due to Judges reaching “Senior” Status, while two judges

⁸ *Current Judicial Vacancies*, United States Courts, <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/current-judicial-vacancies>.

have either retired completely from the district or passed away in office.⁹ While judges who retire from the District Court no longer serve on the court, those who reach “Senior” status can continue to serve and receive a reduced caseload. Seniority status is designated based on age and years of service, with the total age and years of service having to total 80 years combined.¹⁰ Seniority status also opens up a “vacancy” in the district, even though the Senior Judge continues to serve and hear cases.

Figure 2: Vacant Judge Months in the New Jersey District

	2013	2014	2015	2016	2017	2018	2019
Vacant Judge Months	0	9.6	37.4	48	31	27.4	67.5

Because there are still several Senior Judges serving in the New Jersey District, who hear a slightly reduced caseload, there was only a slight increase in the Pending Cases per Judgeship in 2015 and 2016 (the first years where vacancies went unfilled). However, 2017 is when we start to see the caseload increase’s major rise. While new vacancies would certainly increase the Pending Cases per Judgeship, it would not be by such an amount as over 50%. As mentioned briefly above, the jump in numbers was mostly caused by an increase in the total number of civil and criminal felony cases filed in the New Jersey District (see **Figure 3**). 2017 saw over 5,000 more cases filed in the Federal District Court than in 2016, a 47.2% increase. While the years prior did see an increase in case filings, with a 7.3% increase from 2015 to 2016, and the 7.2% increase from the year before that, that increase had been relatively steady, and was only single digit percentage increases, similar to the growth seen in other districts. However, starting in

⁹ *Id.*

¹⁰ 28 U.S.C. § 371.

2017, the District began to see a drastic increase in filings, with 2019 seeing almost 7,000 more filings than 2018, which had already eclipsed 20,000 total. This rise in filings is notable when compared to the numbers present in the early years of analysis, and if they continue to rise as they have, could create further problems for the District down the road.

Figure 3: Total Civil and Criminal Filings in the New Jersey District

	2013	2014	2015	2016	2017	2018	2019
Filings	9,525	9,861	10,574	11,341	16,694	20,184	27,017
% Change in Filings from Prev. Year	N/A	3.5%	7.2%	7.3%	47.2%	20.9%	33.9%

The increase in filings has led not only to an increase in the overall caseload of the individual judges in the district, but it has also led to a backup in the New Jersey District itself. Since 2015, the number of Total Pending cases in the District has more than quadrupled (see **Figure 4**). Much like the Filings numbers above, the total pending cases numbers stayed fairly consistent from 2013 to 2016. However, 2017 saw nearly 6,000 more pending cases at the end of the year than the year prior, coinciding with the increase in case filings. 2016 onwards saw what appears to become a backup of cases, with the total pending cases at the end of the year ballooning through 2019. While 2013 through 2016 saw the Total Pending Cases only increase by a few hundred to a little over a thousand new cases, 2017 through 2019 saw that increase reach several thousand new Pending Cases *each year*.

Figure 4: Total Pending Cases at the End of Each Year in the New Jersey District

	2013	2014	2015	2016	2017	2018	2019
Total Pending Cases	9,107	9,708	10,013	11,722	17,686	24,972	38,764

% Change from Prev. Year	N/A	6.6%	3.1%	17.1%	50.9%	41.2%	55.4%
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In the last seven years, the caseload in New Jersey has clearly increased at an unprecedented rate. However, the increase becomes more noteworthy when compared to neighboring districts and states (see **Figure 5**). While some nearby states have far lower numbers than New Jersey ever had (i.e. Delaware, Connecticut; not included in **Figure 5** for this reason), some districts did have comparable numbers in the early years of our analysis. For example, the Eastern District of Pennsylvania had Total Pending Cases statistics that were similar to those found in New Jersey. While New Jersey's total Pending Cases hovered in the 9,000-12,000 cases range until 2017, during that same period, the Eastern District of Pennsylvania was around the 8,000-12,000 cases range. However, after 2017, New Jersey's Pending Cases skyrocketed, while the Eastern District of Pennsylvania's total stayed roughly the same, even through today. 2017 saw New Jersey suddenly overtake the Pending Case total for *all three* of the Districts in Pennsylvania combined. New Jersey's Pending Cases even overtook the total for the Southern District of New York, the Court that encompasses New York City and is largely seen as one of the busiest Districts in the nation.

While most states have seen a rather steady number in their Pending Cases statistic, New Jersey's continued increase stands out as an outlier. At the end of 2019, there were almost 14,000 more pending cases than in 2018, a number that caused New Jersey's total to overtake that of the *entire state* of New York. New York State encompasses *four* separate Federal Districts, and between those districts are a total of 52 seats on the bench. New Jersey only has 17 seats total, 6 of which remain vacant. Yet 2020 began with New Jersey having over 600 more cases pending

than all of New York, while having less than half the number of judges New York has at New Jersey's disposal.

Figure 5: Total Pending Cases in NJ and Other Districts and States

	2013	2014	2015	2016	2017	2018	2019
Total Pending (NJ)	9,107	9,708	10,013	11,722	17,686	24,972	38,764
Total Pending (NY)	37,717	37,935	37,200	36,383	36,418	38,357	38,153
Total Pending (PA)	18,352	16,357	14,124	14,724	14,505	14,649	15,568
Total Pending (South NY)	18,844	18,706	17,972	17,191	17,225	19,293	18,685
Total Pending (East PA)	12,017	10,335	7,870	8,156	7,747	7,689	8,704

The Federal District Court for the District of New Jersey *does* have a caseload problem, but it is one that is the result of the perfect storm, as opposed to simply being because of the “Blue Slipping” process. While the lack of new judges filling the vacancies certainly adds onto the caseload problem, so too does the increase in cases filed in the district. This leads to a higher number of pending cases on the docket at the end of each year, which begins to backup and create a backlog of sorts. This in turn causes the caseload to balloon to potentially unmanageable numbers.

“We’re Only Four People”: Speaking with Judge Joseph H. Rodriguez about the Federal District Court’s Caseload

In order to get a better picture of how this caseload has affected the operation of the District Courts, Dr. John Froomjian, Executive Director of the Hughes Center, and I interviewed Judge Joseph H. Rodriguez at the Federal District Courthouse in Camden, New Jersey. A

Camden native, Judge Rodriguez was first appointed to the District Court by President Ronald Reagan in 1984, and has served on the Court since then, reaching Senior Status in May of 1998.¹¹

On March 2, 2020, Judge Rodriguez invited us to his chambers to talk about our research. At that time, the data for the full calendar year of 2019 had not been released yet, so we only knew about the caseload data through the end of 2018. The 2018 numbers were eye-opening, but we did not yet know just how significant the data were entering 2020.

The first question we asked Judge Rodriguez in our interview was whether or not he feels there actually is a caseload problem in New Jersey. His response was simple: “There obviously is a massive problem in the District of New Jersey.”

Judge Rodriguez explained that there were only four judges in total in the Camden Federal Courthouse: Judge Renee Bumb, Judge Noel Hillman, Judge Robert Kugler, and himself. On top of that, both he and Judge Kugler are Senior Judges, meaning that their caseload can be reduced, which would leave Judges Bumb and Hillman to shoulder a large share of the cases coming through the Courthouse.

That’s not to say however, that the Senior Judges are not putting in work in the Federal Courts. Quite the opposite, actually. Judge Rodriguez explained that Senior Judges can reduce their caseload to as little as 25% of the regular caseload while retaining their chambers and their law clerks and support staff – anything lower would result in them losing their chambers, office, and staff. However, Senior Judges like Judge Rodriguez and Judge Kugler have opted to not reduce their caseloads in order to help lighten those of their colleagues in the District. “I’m going to be 90 in December. They say, ‘Why don’t you cut down?’ Am I gonna put more cases on

¹¹ *Rodriguez, Joseph H.*, Federal Judicial Center, <https://www.fjc.gov/history/judges/rodriguez-joseph-h>.

[Judge] Hillman and [Judge] Bumb? They're already drowning the way it is," Judge Rodriguez explained.

Additionally, Judge Rodriguez emphasized how the numbers in the Federal Court Management Statistics do not tell the whole story. First, Judge Rodriguez illustrated the difference between the Federal District Court and the state courts by looking at the jurisdictions of both. "How many state court judges do you have in Atlantic County? So you have [maybe] 15 that're dealing with one county?" Judge Rodriguez hypothesized, estimating how many state judges cover a single county.¹² "We're four [judges] up here that are dealing with everything from Burlington [County] to Cape May [County]."

Most notably, however, Judge Rodriguez explained that the statistics do not take into account everything a judge must do, such as trial motion hearings and federal sentencing hearings. "These [sentencing hearings] don't show up on the records because they've already been dealt with for a judgement of conviction or acquittal." However, these cases still require a great amount of time and resources to hear, so that Judges impose the proper sentence on those convicted. "You're taking someone's liberty away," Judge Rodriguez emphasized, "You have to be careful and analyze each individual [case]."

Judge Rodriguez also brought attention to how much time judges spend working on cases, oftentimes taking work home with them so that they can continue working and preparing for trials. "There's nights where you go to bed and you can't sleep because you're worried about a decision you have to make. Because you're affecting people's lives. You just [can't go], 'Ah, I got rid of the case. Yeah, I got rid of it!'" Judge Rodriguez went on to explain that despite the

¹² There is a total of 23 judges assigned to Atlantic County, with judges specializing in different areas of the law, such as Civil, Criminal, and Family hearings (as per the state's judge directory found at: <https://www.njcourts.gov/public/judgecontacts.html?Vicinage=Atlantic/Cape%20May>).

increased caseload, he and his colleagues were not going to sacrifice the high quality of their legal opinions for the sake of quickly getting through cases and clearing out the backlog. “I would hate to think that in order to improve your numbers you’re injuring people and injuring their rights. I think you fail in your obligations as a judge if you put numbers ahead of the rights of a litigant,” he said. “A litigant waits two or three years to have their case heard in court, and you’re going to act like it’s just something you’re trying to get off your desk? No. You can’t do that.”

When we asked Judge Rodriguez what could have accounted for the increase in the total cases filed in the district, he said that part of it was the number of pharmaceutical cases that are filed in the district, but also multidistrict cases and cases involving parties from different states that are sent to the New Jersey District. “If they assign a multidistrict case in New Jersey, you can be picking up 900 cases in that one setting of multidistrict [cases].” Additionally, Judge Rodriguez noted the unique jurisdiction of the Federal District Court, and how that can lead to an increase in cases. “Our jurisdiction is anything that deals with the Constitution of the United States... anything implicating the Constitution, acts of Congress, or maritime [law].” This broad jurisdiction thus casts a wide net, which could be part of the reason why more cases have been filed in recent years.

As the interview began to wind down, we asked Judge Rodriguez the effects, if any, that this increased caseload has had on him and his colleagues. “It affects you when you go home and you’re worried about what your next decision will entail,” Judge Rodriguez explained. While there is pressure from the cases quite literally piling up on their desks, Judge Rodriguez knows that he and his colleagues are putting their best into the opinions they write. When asked if he and his colleagues in the Camden Courthouse were keeping a high work ethic despite the

massive backlog, Judge Rodriguez responded “For this courthouse, I can tell you absolutely yes... Here, there’s no playing games with people’s rights... You don’t ever have the time to say ‘Oh, I’m going to sit down and read a comic book.’ You pick up the next case, [you ask] how much of it do I have to take home?”

Judge Rodriguez also aired his concern regarding the public's lack of awareness of the caseload problem in the New Jersey Courts. “The public [when they’re not aware of the caseload problem], they don’t understand the massive delays. The litigants are concerned because of the delay. Somebody with an injury case, that case should be resolved. They’ve got medical bills and other concerns. And they go ‘It’s my case and why isn’t my case moving,’ and you can understand that on the part of the litigant. All we can do is try to do our best to get to it.”

Despite the increased caseload, Judge Rodriguez is still staying positive and keeping his sense of humor about him. “It’s like bailing the beach,” Judge Rodriguez commented at one point. “You get a bucket, and you’re bailing the beach. And they go ‘Whoa there’s more sand back there, that’s a lot of sand!’” At the end of the day, Judge Rodriguez just hopes that he and his colleagues in the Court receive some help in regards to the caseload issue, whether it be help from the Federal Court system or public understanding of the massive backlog of cases. “From Burlington to Cape May, we’re only four people,” he said before the interview concluded, stressing the weight of the work that rests on the Camden Federal Courthouse.

Conclusion

Our conversation with Judge Rodriguez confirmed what we had feared: the New Jersey Federal District Court is facing an unprecedented rise in its caseload. No one factor can be pinpointed to shoulder the blame of this increase. A variety of factors have led to this rise – the fact that there remain six unfilled vacancies in the District and the fact that the total new cases

filed has skyrocketed so suddenly. As mentioned by Don McGahn, the appointments of new judges to the New Jersey District have stalled in the Senate. And as mentioned by Judge Rodriguez, these new cases come from a variety of sources, be it pharmaceutical cases, multidistrict cases being assigned to New Jersey, or many of the other types of cases that fall under Federal Court Jurisdiction.

What can be done now is to raise awareness of this issue and work to help not only the Judges, but also the support staff that helps the judges keep the Courthouse running. The judges are attempting to keep the wheels of justice moving, but without assistance and public knowledge of the caseload problem, the cases may only continue to increase in the future, causing further delays in the courts. “The delay is to the detriment of society,” Judge Rodriguez said at one point during our interview. “The delay is harmful to the public. We’re aware of that and we try to deal with it as efficiently as we can.” The judges in the New Jersey District can only do so much, balancing the need for an efficient justice system with the need to carefully weigh the consequences of their decisions. Until there is help and public understanding, the caseload will unfortunately continue to grow in the coming years.

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