

# THE WALL STREET JOURNAL.

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### SENATE JUDICIARY

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## Record Backlog Jams Courts

### Some 330,000 civil suits wait as judicial vacancies go unfilled and criminal cases take priority

By Joe Palazzolo

Ronald Porter filed a federal lawsuit in 2007 after the Navy eliminated his job. He still is waiting for his employment-discrimination case to be heard.

Civil suits such as Mr. Porter's are piling up in some of the nation's federal courts, leading to long delays in cases involving Social Security benefits, personal injury and civil rights, among others. More than 330,000 such cases were pending as of last October—a record—up nearly 20% since 2004, according to the Administrative Office of the United States Courts. The number of cases awaiting resolution

for three years or more exceeded 30,000 for the fifth time in the past decade. The federal court for California's Eastern District, where Mr. Porter filed his suit, has a particularly deep backlog. The number of cases filed per judge, 974 last year, is almost twice the national average. More than 14% of civil cases in that district have been pending for three years or more. The Seventh Amendment to the U.S. Constitution guarantees

the right to a jury trial in civil cases. But the Sixth Amendment gives people in criminal cases the right to a "speedy" trial. The upshot: Criminal cases often displace and delay civil disputes, creating a backlog. "Over the years I've received several letters from people indicating, 'Even if I win this case now, my business has failed because of the delay. How is this justice?'" said Judge Lawrence

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# BACKLOG

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J. O'Neill in Fresno, Calif., who sits in the Eastern District. "And the simple answer, which I cannot give them, is this: It is not justice. We know it."

Behind the backlog is a combination of population shifts, politics and a surge in the number of federal prisoners. California's Eastern District has the same number of full-time judgeships, six, as it did in 1980, when its population was about half what it is now.

But only Congress can create new judge positions or move them from slower-growing regions to faster-growing ones, and efforts to do so have run into political resistance.

The nomination and Senate approval of federal judges, meanwhile, has become so politicized that some vacancies go unfilled for a year or more.

Meantime, the federal prisoner population has ballooned by 55% since 1999, which has led to more lawsuits and petitions by prisoners seeking to undo their convictions or challenge prison conditions.

The Judicial Conference of the United States, the policymaking body of the federal judiciary, asked Congress last month to create 68 new judgeships for the U.S. trial courts, including six in California's Eastern District, which hears cases from a swath of the state that includes Sacramento, Fresno and Bakersfield. In the past, Congress has approved new judgeships but deferred at least some of the posts until the next president takes office.

"For some reason we just can't get there," said Chief Judge Morrison C. England Jr., the leader of the Eastern District.



Ronald Porter with his girlfriend, Chris Kasal. His employment-discrimination lawsuit against the Navy has been pending for eight years.

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Some of his cases are nearly a decade old, including a suit that is imperiled because a key witness recently died, he said.

The Senate's pace of judicial confirmations quickened in the second half of 2014, reducing vacancies on federal trial courts to 43, for which 13 nominees are pending. But even if the judiciary were at full strength, places like the Eastern District, which has one vacancy, would see little relief, according to court watchers. The court's five full-time judges are assisted by three "senior" judges, who are semiretired but often handle full case loads.

"If every single vacancy were filled by this afternoon, that still wouldn't be enough to get the work done," said Paul Gordon, senior legislative counsel for People for the American Way, a group advocating for more federal resources for the courts.

Mr. Porter, of Ridgecrest, Calif., who was a police officer and later a technician at the Naval Air Weapons Station China Lake for a total of 25 years, was laid off in a force reduction in 1999. After exhausting challenges to his dismissal within the Navy, he filed his federal case in 2007, alleging age discrimination and retaliation for making complaints internally. The Navy denies the allegations.

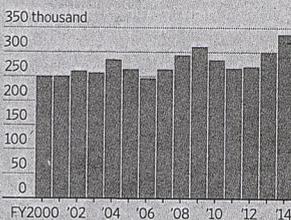
Mr. Porter, now 60, hasn't found steady work in a decade. He said he ekes by on his savings and worries about how he will manage if his day in court doesn't materialize soon. "Clearly, justice delayed is justice denied," he said.

U.S. Attorney Benjamin B. Wagner, whose office is defending the Navy against Mr. Porter's suit, described his employee action as "a case in point" for the need for more judges in the district.

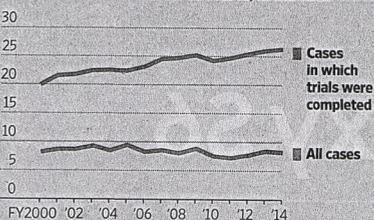
## Case Overload

Caseloads in federal district courts have grown in recent years and cases are taking longer to complete. The problem is particularly acute in California's Eastern District, where the number of judges hasn't kept pace with the region's population growth.

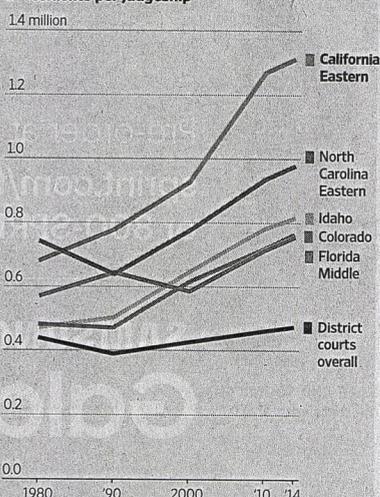
### Total number of civil cases pending in U.S. district courts



### Median time from filing to disposition for civil cases in U.S. district courts, in months



### U.S. district courts with the largest number of residents per judgeship



Note: Cases pending and median times are for fiscal years ending Sept. 30. Population figures are as of April 1 of each year except 2014 (July 1). Ratios based on number of active judges.  
Sources: Administrative Office of the U.S. Courts (cases pending, median times); Federal Judicial Center; WSJ analysis of U.S. Census Bureau data via Minnesota Population Center's National Historical Geographic Information System (population per judge)

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"It is a routine employment discrimination suit of the sort that used to conclude in two to three years when our bench was adequately staffed," Mr. Wagner said.

Lawyers and plaintiffs in the Eastern District complain of judges repeatedly pushing out trial dates and taking a year or more to rule on pretrial motions due to their packed dockets.

"How long people are willing to work under those circumstances is a real question mark,"

Judge O'Neill said, adding that his typical workday lasts 12 to 13 hours. "In less than four years, I am retiring, and there's no way I'm going senior. Frankly, it's because this job is no fun anymore."

Efforts by lawmakers from California to add more judgeships have failed. Sen. Dianne Feinstein, a Democrat, introduced legislation in 2011 that gained bipartisan support in the Senate Judiciary Committee but fizzled in the full Senate, she

said. She has since tried to squeeze new judgeships into budget bills, unsuccessfully, she said.

Sen. Chuck Grassley (R., Iowa), chairman of the Judiciary Committee, said the issue came down to responsible use of taxpayer money. At a cost of \$1 million a year per judgeship for life terms, he said, "adding judgeships in busier courts without simultaneously reducing the number in courts where they aren't needed is irresponsible."

## U.S. Magistrate Judges Play Outsized Role in Handling Heavy Case Loads

U.S. magistrate judges are the junior officers of the nation's 94 federal trial courts, but it is getting harder to tell them apart from their Senate-confirmed peers, especially in court districts buckling under heavy case loads.

Parties to civil lawsuits have a right to have their cases heard by federal district judges, who are appointed by the president and confirmed by the Senate for life. But they have to wait in line, sometimes for years, in courts with high numbers of criminal cases and older lawsuits.

For a speedier resolution, the parties may choose to place their cases in the care of U.S. magis-

trate judges, who otherwise are limited to playing a supporting role in litigation.

In the fiscal year that ended in September 2014, magistrate judges disposed of a record 16,000 "civil consent" cases, up 20% since 2004 and a reflection, legal experts said, of a growing backlog in U.S. district courts. All but about 400 of the cases were resolved without a trial, according to the Administrative Office of the United States Courts.

Magistrate judges—who often are former prosecutors or public defenders—are selected by federal courts with the help of a screening committee and serve

eight-year terms. They typically perform routine pretrial work in criminal and civil cases, and have become indispensable to the day-to-day functioning of the courts, especially in lean times, U.S. district judges said.

But some lawyers and legal-advocacy groups raise concerns about the growing role of magistrate judges.

"The reason we give [federal district] judges life tenure is to make them completely immune from outside pressure," said Paul Gordon, senior legislative counsel for People for the American Way, which advocates for more federal resources for courts. "That's one

of the things that gives the system legitimacy."

There is no research showing that magistrate judges have committed more errors in civil cases than federal district judges since Congress granted them so-called consent jurisdiction in 1979. They also can preside over misdemeanor trials but not felony cases. "It is no quality compromise for litigants to consent to a magistrate judge," said U.S. District Judge Lawrence J. O'Neill, in Fresno, Calif., whose case load is among the largest in the country. "We are hiring the brightest and best."

—Joe Palazzolo