# GDS 20 – Court Clog DA

## NEG

### 1NC – Innovation

#### Courts are backed up due to COVID – the system can’t take any more delays

* Legal professionals are trying to mitigate the current crisis

Arnold 5/28/20 – Robert, investigative reporter at Houston Life, “Judges, attorneys seek ways to alleviate court system back-up,” Houston Life, <https://www.click2houston.com/news/investigates/2020/05/28/judges-attorneys-seek-ways-to-alleviate-court-system-back-up//SH>

The Texas Supreme Court recently ordered no jury trials or jury selections are to take place before Aug. 1, unless a plan is submitted and approved by the Office of Court Administration. This latest crisis only further impacted how quickly cases are adjudicated. Both prosecutors and defense attorneys agree the system can’t handle much more of a back-up and they have got to find a way to get things moving. “We’re at a snail’s pace,” said Harris County prosecutor, JoAnne Musick. “Sadly, crime appears to be up. We’re getting more and more calls, more and more arrests, more and more charges filed right now.” “I have no idea how we’re going to get back to normal with this type of very slow-moving docket,” said defense attorney Mark Thiessen, president of the Harris County Criminal Lawyers Association. The normal day-to-day operations of the courts were already impacted by Hurricane Harvey. Musick said half of the felony courts are still sharing space in the civil courthouse. The pandemic further impacted the system. Thiessen said only 10 people are allowed in a courtroom at a time and that includes court staff. “We’re used to seeing hundreds of people, at least a hundred people in every single court with hundreds of people in the hallways,” Thiessen said. Moving forward, big questions have yet to be answered. One is how to maintain social distancing during a trial. Thiessen and Musick both were quick to say the idea of trial participants wearing masks won’t work. “You want to be able to see and read faces and you’re asking your jury to do the same of witnesses,” Musick said. Thiessen said even basic communications are impacted by masks. “If everybody is standing six feet apart with masks, how are we supposed to communicate with our client?” Thiessen said. “We’re looking for creative ways, you know with large areas. Are we going to do it at a conference center, George R. Brown, you know where the livestock show and rodeo is, maybe a hotel conference center.” Another dilemma is the cattle call of jury duty. “We typically call a thousand to 2,000 people a day down to jury duty, there’s where you’re going to need GRB, there’s where you’re going to need a large facility,” said Musick. Musick points out the DA’s Office has a total of 39,000 pending cases. In May of last year the Office had a total of 27,000 pending cases. The back-up in the courts is also leading to an increase in the population at the Harris County jail. In April, the jail population dipped to 7,455. As of May 26, the Sheriff’s Officer reported the population has jumped to 8,146. According to officials with the Sheriff’s Office, an average of 15 more people are booked into the jail than are released every day. Sheriff’s officials also reported 264 inmates in the jail have been convicted and sentenced to prison, but the Texas Department of Criminal Justice is not yet picking up those inmates as it continues to grapple with an outbreak of COVID-19 in several facilities. “There are innocent people stuck in jail right now that want to get to trial we just got to figure out how it’s fair,” Thiessen said. “It’s really trying at this point but we’re all working together to come up with some way at this new normal.” Thiessen said the felony court judges sent out a survey, asking attorneys what measures would they like to see when it comes to safety measures in the courtroom. No final decisions have been made. According to data compiled by the Harris County District Attorney’s Office, the clearance rate for felony cases in April dropped to below 30%. For comparison, during April 2019, the DA’s office reported an 85% clearance rate. The sharp decline in numbers was similar for misdemeanor cases, which went from an average clearance rate of 76% in 2019, down to a clearance rate of 31% in April of this year.

#### Legislation that causes more defendants to opt for trials clogs the court system to the choking point.

Flynn et al. 94 – Professor of Criminal Justice at Northeastern University; Timothy Flanagan is the dean of the College of Criminal Justice and director of the George J. Beto Criminal Justice Center at Sam Houston State University; Peter Greenwood was the Director of the RAND Corporation's Criminal Justice Research Program; Barry Krisberg is the Director of Research and Policy, and Lecturer in Residence Chief at the Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley School of Law

Edith E. Flynn, Timothy Flanagan, Peter Greenwood, Barry Krisberg, “Three-Strikes Legislation: Prevalence and Definitions,” Critical Criminal Justice Issues, 1994, <https://www.ncjrs.gov/pdffiles/158837.pdf>, pp. 128-129

Short-Term Effects of Three-Strikes Legislation on the Criminal Justice System

Based on what is known about the experiences with three-strikes so far, it is clear that this kind of legislation has begun to clog the court system to the choking point. This is due to greatly reduced plea bargaining rates engendered by this type of law. As more and more defendants opt for trials, court capacities will diminish and court costs will rise. To free crowded court calendars, civil cases will be pushed back beyond the point of tolerance of citizens seeking justice. The dramatic changes in plea bargaining are no surprise. Various mandatory sentences have long been on the books across the Nation. For example, New York’s tough drug control laws or Massachusetts’ gun control legislation prescribe mandatory incarceration of violators. Evaluations of the impact of this type of legislation have shown invariably that it tends to be subverted by practitioners whenever they perceive that injustice would result: “Prosecutors refuse to press for conviction, juries refuse to convict, and judges refuse to sentence people under these provisions. Hundreds of imaginative ways are found at every level of the criminal justice system (including the police) to circumvent the intent of such laws.”15

#### Court backlogs create a variety of domestic problems: lost labor efficiency, free criminals, greatly reduced investment, hindered innovation, and distrust.

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Agencies often struggle to get the funding needed to fix their backlogs. After all, a backlog is an annoyance, but is it really worth the effort to solve it? The problem with this thinking is it ignores the opportunity costs of a backlog, which can be significant for individuals, communities, and businesses. For example, the US security clearance backlog, which peaked at over 700,000 cases in 2018, is a backlog with high opportunity costs. Each clearance case represents an individual who needs access to classified information to do the job right—but instead is unable to do so, or worse, is simply waiting for clearance to be employed. According to a 2018 survey of cleared personnel, jobs that required clearance had an average salary of about US$93,000. The downstream effects of the backlog—in employment terms alone—are felt in lost labor market efficiency, forgone income, and reduced tax revenues (not to mention the mission impact of a shortage of qualified and cleared personnel). Many states face backlogs in everything from human services to examining criminal evidence. With some states facing a serious epidemic of opioid and related drug abuse, a drug-evidence testing backlog can mean delayed justice, which means police could release known drug dealers while they wait on evidence. That means more dealers and traffickers on the street, and more damage to communities. The effects on communities can exacerbate backlogs in other state systems—from children in foster care to state and local court systems to elder care. And government backlogs can reduce the attractiveness of investment and innovation in entire economies. Backlogs in court systems, for example, can deter economic investment by increasing risk, especially for foreign investors, and by enabling anti-competitive behavior, such as bogging down competitors in endless lawsuits or violating agreements with impunity. Backlogs in developing economies in Asia, for example, are soaring, with downstream effects for justice, growth, and long-term development. They can harm developed economies too: By one estimate, Italy’s justice backlog reduces GDP growth by 1 percent annually. Backlogs can also hinder innovation. Studies by the Center for the Protection of Intellectual Property have found that each year of patent delay can reduce a startup’s employment by 21 percent and sales growth by 28 percent over the five years after approval. Patent backlogs can decrease the payoff for R&D, reducing technology progress: For example, backlogs in three top patent offices led to more than US$10 billion in reduced global growth each year. Backlogs can also reduce citizen satisfaction, and in turn, confidence in government. Trust in government today is at historic lows, with only 18 percent of Americans surveyed saying they trust government to do the right thing all or most of the time. For many citizens, case-processing systems are where they encounter government, whether at the registry for motor vehicles, in applying for benefits, or getting permits for their homes or businesses. Long wait times and poor customer experience can further erode confidence in government—no one’s desired outcome.

#### Lack of innovation allows China to win the technological cold war

<https://www.ft.com/content/b6c5558e-ba0e-4381-b2b4-1acceb2ab484>

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The cold war between the US and the Soviet Union was a titanic 45-year ideological, economic and technological struggle that took the world to the brink of nuclear Armageddon, touched almost every country and stretched to the moon. The cold war developing between the US and China is a very different kind of competition in a very different era, but may be no less dangerous and consequential. For the US, China will be a far more formidable foe, given its demographic weight and technological ambition. The struggle will certainly be more complex and multi-dimensional. While the US and the Soviet Union were hermetically separate, the US and China are intimately entangled in economic, technological and cultural terms.  China was the US’s biggest goods trading partner in 2018. TikTok, the video sharing network owned by China’s ByteDance, is currently the world’s most downloaded non-gaming app, with a big presence in the US. Some 369,548 Chinese students were enrolled in US higher education in 2019. President Xi Jinping’s daughter graduated from Harvard university in 2014. The superpower rivalry between the US and China has also acquired a different, and possibly decisive, new dimension: cyber. If cold war 1.0 revolved around military hardware and the threat of nuclear annihilation, then cold war 2.0 is more about civil software and technological innovation.  The internet is emerging as a technology of control, not just communication. Whoever runs the global Internet of Things, connecting billions of devices, will have a geostrategic advantage. And China is strengthening its position: the row over the use of Huawei equipment in the 5G networks of several western countries is a taste of things to come. It is tempting to believe that the bellicose talk between the US and China results from the personal politics of two atypical and disruptive national leaders, US President Donald Trump and Mr Xi, and will not survive their passing. But Orville Schell, one of America’s leading China scholars, takes a bleaker view. He argues the US policy of engagement towards China that endured for almost 50 years through eight Republican and Democratic presidential administrations has died. The best that can be hoped for, he writes, is the US and China remain in the foothills of a new cold war, rather than ascending its peaks. In Mr Schell’s view, US engagement was based on two assumptions, which have both failed the test of time. First, Washington was convinced that increased prosperity and greater interaction with the world would lead to China’s democratisation. Later, it believed the internet would further accelerate societal freedom. In 2000 Bill Clinton, then president, suggested China’s attempts to crack down on the internet would be “like trying to nail jello to the wall”. The world looks different today. China has emerged as the world’s second-biggest economy without loosening the Communist party’s grip on power. And the Great Firewall of China has blocked off the global internet, while enabling Beijing to mess around in others’ cyber backyards. Last week, Twitter culled 23,750 accounts that it claimed were part of a co-ordinated propaganda campaign run by China. “We are in a competition that need not be a shooting war to be just as dangerous for us,” Stanley McChrystal, the former US general, warned last week. Robert Atkinson, president of the Information Technology and Innovation Foundation, a Washington-based think-tank, argues that China has already overtaken the US in some advanced industries and is investing heavily to achieve technological supremacy. “China is becoming more powerful technologically and can easily surpass the US if we do not act,” he says. To respond, Mr Atkinson argues the US urgently needs to develop a national industrial strategy. The widespread belief that free markets, property rights and entrepreneurial spirit will be enough to guarantee success is “ahistorical and naive”.  At the height of the cold war in 1963, the US federal government spent more on research and development than the rest of the world’s public and private sectors combined, Mr Atkinson says. Today, it spends less on R&D as a proportion of gross domestic product than it did in 1955.  The irony is that China’s leaders may have learnt more from American history and its victory in the first cold war than has the US political class. Technological innovation is a national security issue.

#### Losing to China in AI is one of the biggest factors in the rivalry for #1 Global power

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As tensions and tech rivalry between the U.S. and China intensify, artificial intelligence is taking center stage. During the recent [Tortoise Global AI Summit](https://members.tortoisemedia.com/thinkin/the-tortoise-intelligence-ai-summit/content.html), panelists discussed the increasingly fraught relationship between these global superpowers, whose rivalry had shown signs of bitterness even before [President Trump launched a trade war](https://venturebeat.com/2020/05/13/donald-trump-extends-u-s-telecom-supply-chain-ban-aimed-at-huawei-and-zte/). While this competition extends across a wide range of technologies, the panelists agreed [AI has increasingly become a focal point](https://venturebeat.com/2020/03/16/tech-nation-u-s-companies-raised-56-of-global-ai-investment-since-2015-followed-by-china-and-u-k/), thanks to the essential role many predict it will play in the coming decades. And not only is the race for AI supremacy pitting China against the U.S., it is forcing every other country to reassess their place in this technological duel. “We’re seeing a technology competition in the context of a worsening relationship between the world’s two great powers,” said John Sawers, former head of the U.K.’s MI6 spy agency. “These two countries have roughly equal-sized economies, and they are using their economic platform as a vehicle for projecting power for their influence on controlling the world. AI is a central feature in that wider technology race.” Joining Sawers on a panel was Nigel Toon, CEO of Graphcore, and Sana Khareghani, head of the U.K. government’s Office for AI. “I think when it comes to China and the U.S., they’re putting AI in the center of a confrontation they’ve had for a very long time,” Khareghani said. “It’s an economic race to be the leader, and technology had been kind of thrown in there.” The panelists discussed the conventional wisdom that AI efforts in the U.S. are led by companies while in China such innovation is driven by government policy, but Toon pushed back against that view. He acknowledged that the Chinese government plays a greater role than its U.S. counterpart, but he said much of the AI development in China is being led by tech giants like Alibaba and Huawei, who have the same motivations as Google and Facebook: to maintain their competitive edge. Such titans can seem unbeatable from the outside, he said. But they are driven by fears of rivals creating products with superior AI. “If you look at this from the perspective of some of the big tech companies, AI is existential,” Toon said. “If somebody else develops leading edge AI quicker than Google … that’s what Google is worried about. That’s why they’re investing fortunes into this. That’s why Facebook is investing fortunes in this. That’s why [Google buys DeepMind](https://venturebeat.com/2018/03/10/google-and-apple-are-in-a-tight-race-to-acquire-the-most-promising-ai-startups/), because it’s just existential to these massive companies. Same for Alibaba. Same for Tencent.” The main difference in China, Toon added, is that the government has a much closer and more cooperative relationship with its tech companies. In addition, China’s policies and culture around privacy and data give it an edge. “There are no restraints on their collection and use of data,” Sawers said. “In the West, we pride ourselves on individual privacy as being part of the free society … China has set up a surveillance system inside their major cities [that] is so powerful, it’s the sort of control mechanism Joseph Stalin would have died for because it is very, very extensive. That does give them an advantage in this area because AI and machine learning rely very heavily on the mass collection of data and being able to crunch that data and manipulate that data.” This picture of a two-way race inevitably led to the question of where and how Europe fits into the picture. The European Union has, in recent years, also made [AI development a political and economic priority](https://venturebeat.com/2018/03/10/google-and-apple-are-in-a-tight-race-to-acquire-the-most-promising-ai-startups/). The region is investing large sums into research and startups, but it’s also trying to carve out a distinct identity by taking a more ethical approach to AI than that of the U.S. or China. Khareghani said venture capital numbers that show the U.S. and China with big leads tend to underestimate the strength of Europe. “I think it’s worth considering that the U.S. and China are leading in a specific way in terms of how much investment they’re putting into AI,” she said. “But in terms of focus, dedication, and thought leadership, the U.K. is up there, along with the other countries like Canada, Germany, and France. So I do think that there is more than just funding criteria that should go into that.”Still, Europe does have some severe limitations. Toon noted, for instance, that while the region has made impressive strides in many areas related to deep tech, it also remains heavily dependent on other countries for many of the basic components needed to develop advanced computing. “There are very limited supplies for some of the core underlying technology,” Toon said. “Take semiconductors. There are three companies on the planet that can build at the very leading edge of semiconductors. We work with [TSMC](https://www.tsmc.com/english/default.htm), [which] is based in Taiwan. Then there is Samsung in Korea and Intel in the U.S. I think it’s unbelievable — or impossible — to think that we in Europe could develop these leading-edge semiconductor technologies.” So how should Europe respond? Toon worries that growing regulations around data and AI use, while intended to promote public trust and confidence, could backfire by hampering the region’s companies. “We need to be careful that we don’t put in place some policy that actually causes Europe not to be able to compete, because we can’t get access to some of these leading-edge technologies,” Toon said. Until now, Europe has been trying to leverage its status by working with both the U.S. and China. But recent events have made that difficult. And as the U.S. and China increasingly create trade barriers and assert their technological independence from each other, Europe will have to rethink its relationship with both. “I think Europe for a long time felt that somehow it could get the best of both worlds,” Sawers said. “It could maintain political and defensive alliances with [the] United States, but we could treat China as an equal economic partner. I think one thing that COVID has done is really taken the scales from the eyes of many Europeans about the nature of this Chinese regime … The Chinese have become much more assertive. We’re seeing what China is doing in Hong Kong in the South China Sea. And we see what it’s doing in the cybersecurity domain. We’re seeing how much more repressive China is.”

#### Collapse of U.S. democracy green lights autocratic revisionism—emboldens Russian force and hybrid warfare and Chinese expansionism

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The share of democracies in the world has grown steadily over the past 30 years and stands at a postwar high, but the past decade has seen worrisome backsliding. The absolute number of democracies declined between 2011 and 2017.[7](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-7) So too did their quality. Seventy-one countries suffered net reductions in political rights and civil liberties in 2017, marking the 12th consecutive year of decline.[8](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-8) Over the past 12 years, 113 countries have seen net declines, while only 62 countries have improved. In short, the prevalence of democracy masks its weaknesses. More broadly, the share of global income held by countries rated “not free” by Freedom House was 12 per cent in 1990 but is 33 per cent today, with authoritarian powers’ share likely to tip beyond that of democracies within five years.[9](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-9) China and Russia, the two largest of those authoritarian powers, have both moved in more autocratic, personalistic and repressive directions over the past five to ten years. Some of the most serious declines have occurred in Western allies, such as Turkey and Bahrain.[10](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-10) And even states embedded in Western political institutions, such as Poland and Hungary, have suffered eroding civil and political rights. What does this mean for democracies? Autocracies present a series of individual challenges to their local rivals: Russia to the Baltic states, China to Taiwan and North Korea to South Korea, for instance. But the problem they pose to world order is larger than the sum of these issues. It is, rather, an ideological and systemic challenge that will reshape the norms of international relations. Will these norms reflect liberal principles such as openness, rule following and individual rights or competing authoritarian ones such as secrecy, arbitrariness and state power? This competition over norms will influence not only Western liberal democracies but also the wider multipolar order that is emerging. In regions with weak political institutions or nascent democracies—parts of Africa, South and Southeast Asia, and East and Southeast Europe—the regional order is especially malleable. If authoritarian states can shape these regions in their own image, this bolsters their global standing and puts liberal democracy further on the back foot. This argument does not require an acceptance that democracies always act in liberal ways or adhere to a single and consistent set of norms. Authoritarian states also differ widely in levels of openness and repression, the balance between civilian and military authority, and civil versus political freedoms.[11](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-11) Yet despite this variety, there remain systematic differences between democratic and authoritarian states in attitude, inclination and values—and this has important foreign policy implications. TYPES OF AUTHORITARIAN CHALLENGE The authoritarian challenge to liberal democracy can be broken down into six categories. The Military Challenge Authoritarian states represent the most serious military threat to the democracies of Europe and Asia. Russia has dissolved existing norms regarding the use of force, conducting in Europe the first annexation of territory and the first use of chemical weapons since the Second World War.[12](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-12) Russia’s use of hybrid warfare, which prioritises secrecy, deception and political warfare, presents a particular danger to rule-bound open societies.[13](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-13) China, though more cautious, has also demonstrated increasingly assertive behaviour in the South China Sea, including the militarisation of reclaimed islands, the rejection of arbitration efforts and an escalation of the country’s border dispute with India.[14](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-14) The military challenge posed by authoritarian states is not a quirk of the past few years. Russian and Chinese behaviour is rooted in their resentment of the Western order, ambition for great power status and fear of Western power.[15](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-15) All three of these drivers are shaped by these countries’ authoritarian political systems. The best available scholarship continues to show that democracies enjoy more peaceful relations with other democracies than with autocracies, suggesting that authoritarian states are intrinsically more likely to be threatening.[16](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-16) Among states that ratify treaties governing the laws of war, democracies are also more likely to comply with these rules than autocracies are.[17](https://institute.global/policy/authoritarian-challenges-liberal-order%22%20%5Cl%20%22article-summary-footnote-17)

### 1NC – Link – EBS

#### Progressive criminal justice reform ensures court clog – the link alone turns the case

Dosch ’19 (10/13/19, Danielle – writer for the Berkeley Political Review, Policy Debater at University of California Berkeley, Berkeley Political Review, “Plea to Prison Pipeline: Assessing the Feasibility of Mass Plea Refusal,” https://bpr.berkeley.edu/2019/10/03/plea-to-prison-pipeline-assessing-the-feasibility-of-mass-plea-refusal//SH)

Even assuming that judicial crash is capable of jumpstarting progressive criminal justice reform, the intermittent court clog would be detrimental to those most at risk of prosecutorial predation. Already, those who await trial spend years in pretrial detention simply because they cannot afford bail. Studies indicate a strong correlation between race and the likelihood of flight risk designation. Thus, those disproportionately harmed by bail decisions tend to be people of color and the poor. Pretrial detention results in the same harms as incarceration — family separation, job loss, drug addiction and recidivism. Additionally, lengthy pretrial detention can impair the preparation of effective defense because witnesses may forget information critical to securing a non-guilty verdict and face greater difficulty consulting legal counsel.

### 1NC – Link – Rehabilitation

#### Rehabilitation ensures courts are overburdened

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Some critics of community courts say that helping people with substance use disorder, mental health issues, and other social service needs is not the job of courts and should be handled by other entities. In a perfect world, I would agree. However, in the realityof the world today, people with social service needs continue to end up in the courts. Court systems across the country have realized that if defendants with social service needs are not given treatment options, those defendants will be stuck in the revolving door of justice and continue to clog the court system.

### 1NC – Link – Court Procedure Reform

#### Reforms in federal court procedure clog courts – class action reform proves

Mencimer ’05 (February 18, Stephanie – writer for the American Prospect, DCDOTCOM, “Reforms May Clog Courts,” <https://www.cbsnews.com/news/reforms-may-clog-courts//SH>)

When supporters of "class-action reform," which passed in the Senate last week, talk about the alleged horrors of class-action litigation, they frequently hold up the tiny, impoverished, and mostly black Jefferson County, Mississippi, as Exhibit A. "Reformers" allege that current state laws allow plaintiffs' lawyers to "forum shop" for a friendly court, such as Jefferson County, where the itty-bitty courthouse doesn't even posses a computerized docketing system -- yet where Circuit Court Judge Lamar Pickard has presided over a number of multimillion-dollar, mass lawsuits filed against some of the nation's biggest corporations. The American Tort Reform Association has dubbed the court a "judicial hellhole." The new class-action bill would circumvent Pickard, a former member of the Mississippi Trial Lawyers Association board of governors, and push most mass torts to the federal district court level. In Pickard's county, this might mean suits would go before a judge like Charles Pickering Sr., the recently retired U.S. District Court judge in the Southern District of Mississippi, who stated during his 2002 confirmation hearings that almost no employment discrimination cases that come before the federal courts have merit. The business community, led by the U.S. Chamber of Commerce, contends that the federal system will bring "common sense" and "balance" to the world of mass torts. They argue that class actions -- lawsuits involving hundreds and thousands of similarly harmed plaintiffs -- that have plaintiffs from multiple states and national implications should be heard in federal court, not by local yokels like Pickard. On its face, the notion that the federal court will somehow bring a rational voice to a patchwork of different state court forums seems logical. Lost in the debate, though, is the viewpoint of those federal judges. Led by U.S. Supreme Court Chief Justice William Rehnquist, the Judicial Conference of the United States -- the formal organization of federal judges -- has officially opposed the bill in letters to Congress, primarily because it believes that cases involving state law should remain in state courts; most class actions are based on state, not federal law. Ten years ago, in its long-range plan, the Judicial Conference stated emphatically: "If federal courts were to begin exercising, in the normal course, the broad range of subject-matter jurisdiction traditionally allocated to the states, they would lose both their distinctive nature and due to burgeoning dockets, their ability to resolve fairly and efficiently those cases of clear national import and interest that properly fall within the scope of federal concern." Indeed, one reason that most class actions are now filed in state courts is a string of U.S. Supreme Court rulings in the mid-1990s that questioned whether the federal courts were the proper venue for resolving mass tort litigation based, as most is, on state consumer protection or anti-fraud statutes. Critics of the class-action bill argue that these same decisions will prevent judges from allowing state class actions to go forward in federal court, thus making the class actions impossible to bring at all. Trending News "No problem": Yes, it's a BIG problem America's Class War George W. Obama? The federal judges' opposition to the class-action bill is also partly based on money. In 2004, the federal courts saw a nearly 10-percent increase in new filings over the previous year. At the same time, the courts laid off nearly 1,000 employees due to restricted budgets, and the judges have insisted that court backlogs will only grow with the new responsibilities for state class actions. At a House Budget hearing last year, Chief Judge John G. Heyburn II, chair of the Judicial Conference's budget committee, testified, "The courts' workload and the resources provided to handle that workload are headed in opposite directions." Federal judges generally don't take a position on pending legislation individually. Several contacted for this story, in fact, weren't even aware that the class-action bill was so close to passage, and none had actually read the bill. Nonetheless, they recognize some of the potential difficulties. "If Congress thinks this is the work that we should be doing, we'll do it," says Ninth Circuit Court of Appeals Judge Alex Kozinski. "I would only caution that if Congress wants us to do more work, it will have to give us more resources." Indeed, the Congressional Budget Office estimated that the new class-action law would cost the federal courts about $6 million a year but did not assess the cost of the additional judges it suggested would be needed if the bill passed. Congress has not allocated any more money to the courts to handle the new class-action workload. The courts' ability to manage the new class actions is one reason why critics of the bill suspect that it was designed simply to keep such cases out of court altogether. "This is a major effort by big corporations to transfer jurisdiction from state courts, where there is relatively quick resolution of people's claims, to the dark hole of the federal judiciary, which doesn't want them," says West Virginia State Supreme Court of Appeals Judge Larry Starcher, whose court will be losing authority for many class actions under the new law. "It will be the end of class actions." Starcher notes that the West Virginia state courts aren't exactly flush, but he believes they are much better equipped to handle the state class actions than the federal court. "As a trial court judge, I tried about 20,000 individual asbestos cases. I know a little about mass litigation," he says. But some plaintiffs' lawyers who will be impacted heavily by the bill are not entirely convinced that federalizing class actions will eliminate them. "I think this is a classic case of 'Be careful what you ask for,'" says Elizabeth Cabraser, a prominent California plaintiffs' attorney who specializes in mass litigation. "I'm a great believer in the federal judiciary. They are going to certify meritorious cases. Federal judges are not political hacks. This is an added burden that's being put upon them, but they'll deal with that. I think federal courts won't go along with any purported plan to sabotage class actions." Despite his opposition to the bill, Starcher, too, suspects that corporations may be surprised to discover that plaintiffs' lawyers will find a way around it. Indeed, some plaintiffs' attorneys have already observed that under the new law, corporate defendants could end up fighting a lot more litigation, rather than less. The bill forces class actions into federal court if fewer than a third of the plaintiffs are from the same state in which the case was filed (for instance, if the suit was filed against a company in the state where it is headquartered, but many of the injured parties live elsewhere). Lawyers could simply file smaller class actions in many states -- with only state residents as plaintiffs, rather than one national case -- forcing the company to defend itself in far more forums. There are even signs that the new system could prove as costly as the current patchwork. In Texas, where class actions have become harder to bring, one enterprising attorney -- legendary tobacco lawyer John O'Quinn -- has brought a host of lawsuits over the diet drug "fen-phen" one case at a time, rather than consolidating them into a class. In one of those cases last year, O'Quinn won a $1 billion verdict -- for a single plaintiff.

### 1NC – Link – Qualified Immunity

#### Qualified immunity screens out frivolous litigation

Andrew King, 7-1-2016, "Keep Qualified Immunity...For Now," Mimesis Law, http://mimesislaw.com/fault-lines/keep-qualified-immunity-for-now/11010

In the case of qualified immunity, the idea is basically that certain factual circumstances can divest the officer of immunity. Regardless of the nuisances of this doctrine, the Supreme Court expressly noted that the purpose of the doctrine was to be, at least in part, a screening mechanism: Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive a motion to dismiss. In some ways, the screening mechanism is opposite of the procedural screening done under AEDPA. At the pleading stage, qualified immunity often peeks over to the facts and, in large measure, determines the severity of the alleged misconduct, dismissing the less severe conduct, such as mere negligence. On the other hand, AEDPA leads to disposing of many claims without regard to the merit. Although recently the Supreme Court has begun to throw up procedural hurdles in civil rights actions too. Still, like AEDPA, it’s successful at screening out lawsuits early. In this light Judge Newman makes three recommendations: But Congress needs to strengthen Section 1983 in three ways. First, the defense of qualified immunity should be abolished. If an officer violates the Constitution, the victim should win the lawsuit, just as he or she wins when hit by an officer negligently driving his vehicle. Second, the city (or county or state) that employs the officer should pay a damage award, just as a governmental employer pays for injury caused by an officer’s negligent driving. A jury would be more willing to rule against a city than to make a police officer pay out of his own pocket. Third, the local U.S. attorney, not just the victim of the unconstitutional conduct, should be authorized to bring the suit. When federal law has been violated, a federal lawyer should act on behalf of the victim. A jury is more likely to take the matter seriously if a U.S. attorney sues than when the victim is the plaintiff, who can sometimes be perceived as a not very respectable member of the community. Addressing his third suggestion first, it’s not a terrible idea on the face of it, but the reality of DOJ civil rights lawsuits suggest that this is probably wishful thinking. The second suggestion fails to recognize that insurers now are the ones really paying out the judgments, regardless of whether the state agency and/or the agents are found liable. While this has led some to suggest that insurers are the key to reform, insurers care about the pool—not the individual insured. So long as civil rights actions are generally unlikely to succeed or succeed big, the pool is safe. Thus, insurers won’t step in to change behavior until their money is at stake. Finally, that brings us back to qualified immunity. If you get rid of qualified immunity, then you’ll simply have to create another screening mechanism. Governments are usually well-insured, often well-funded, typically risk adverse, and can perpetually refill the treasury through taxes—so long as taxpayers stay put, anyhow. This makes them tempting defendants, as impecunious defendants usually are not sued. On top of that, a defendant who prevails in a civil rights action usually gets attorney’s fees awarded. Mostly, but for qualified immunity, it’s a bonanza for plaintiff’s lawyers. Plus, we’re told, making lawsuits easier would bring about a policing apocalypse: If you want to see active policing plummet, tell law enforcement officers they will be civilly liable for conduct which no reasonable person could have foreseen was a violation of any rights! Here’s an idea. Let’s make Federal Appellate Court judges civilly liable for every decision they have reversed by the Supreme Court. Unlike cops, who have to make real time decisions affecting legal rights, often under life-threatening circumstances, judges have the luxury of time, law clerks and quiet, safe, well-appointed chambers to make sure their legal decisions are correct. Why shouldn’t they be accountable for rendering legal opinions the Supreme Court determines are wrong? The answer is, unlike cops, judges (like Newman) have, “…absolute immunity from Section 1983 damage actions for their ‘judicial’ acts.” It’s disingenuous of Newman to advocate taking away “qualified” immunity from the police when the U.S. Supreme Court has already given “absolute” immunity to him. Law enforcement unions and associations such as ALADS must speak out to protect cops from malicious, politically motivated prosecutions and inflammatory anti-cop rhetoric which is slanted, inaccurate or just lies. Our strength comes from our numbers and our collective ability to band together to support each other and the rightness of the job all of us do to protect the public. Bill Otis agrees. Relatedly, Ken Scheidegger has some interesting thoughts on Judge Newman’s proposal, including suggesting that getting rid of qualified immunity in excessive force actions would be a bad idea because the defendant probably deserved it. I remember the “bitch-deserved-it defense” in my torts class. Doesn’t everyone? The majesty of the law. But of particular interest was Ken’s assertion that constitutional violations should be difficult to prove because they’re more serious. Ken is judging “seriousness” from the point of view of the officer, the person doing the depriving, rather than the defendant, the person who was deprived. If either the zoning inspector or the police officer negligently deprive you of your constitutional rights, haven’t you still been harmed? Yes is the answer. It’s simply a policy decision to ignore low-intensity deprivations under section 1983. What makes this issue particularly intractable is everybody’s at least partially right. Ignoring a raft of constitutional deprivations is unfair and, perhaps, even un-American. And wrongdoers should be held to account for their misdeeds. Yet, even in regular negligence cases, we give professionals, like doctors and lawyers, a different standard of care. So, it’s not ridiculous to give certain governmental agents like police officers a different, more forgiving standard of care. Plus, qualified immunity, along with other mechanisms, prevents and screens out a lot of frivolous litigation. And that cost of frivolous litigation otherwise would be socialized by taxpayers. Plus, in highly variable and discretionary jobs like policing, there is nearly daily opportunity for negligence to occur. So, under such a lower standard of culpability, departments might be essentially uninsurable or unable to effectively patrol. Contrary to how it may appear to some, a madman didn’t appear one day and set-up the doctrine of qualified immunity. It’s there for reasons that plenty of courts deemed to be important reasons. Judge Newman’s suggestion to tear the fence down because he fails to see the value was made without due consideration. Qualified immunity and its related doctrines might not be the best solution of all best possible worlds, but it is a solution. Let’s figure out a better one before tearing down the old one.

### 2NC – AT: U/Q Overwhelms

#### Courts are slowly returning back to normal – the plan wrecks the restoration process

McDermott Will and Emery 6/3/20 – McDermott Will & Emery partners with leaders around the world to fuel missions, knock down barriers and shape markets. With 20 locations on three continents, our team works seamlessly across practices, industries and geographies to deliver highly effective—and often unexpected—solutions that propel success. More than 1,100 lawyers strong, we bring our personal passion and legal prowess to bear in every matter for our clients and the people they serve, Lexology, “COVID Recovery in the Courts: What to Expect as Courts Adapt to the New Normal,” https://www.lexology.com/library/detail.aspx?g=a85de2ff-112c-4943-9490-af9554395f2f//SH

The world’s courts and judicial systems are reacting to the outbreak of the novel coronavirus (COVID-19) in broadly different ways, presenting litigants with a range of conflicting situations and advice. In some jurisdictions, litigation has essentially frozen: The courts are closed, limitation and prescription periods are suspended and times for appeal have been extended. In other jurisdictions, the courts remain more or less open (albeit with most or all hearings conducted remotely) and time continues to run. This article compares the impact of these measures on current and future disputes involving tax, trusts and estates and family business disputes in the United States, England and Wales, and offshore. ILLINOIS: As most of Illinois (outside of Chicago) began a staged reopening on May 29, 2020, the Illinois Supreme Court has ordered that “Effective June 1, 2020, the Court’s order of March 17, 2020, is modified so that each circuit may return to hearing court matters, whether in person or remotely, according to a schedule to be adopted for each county by the chief judge in each circuit. The circuit courts shall continue, to the extent possible, to allow for appropriate social distancing and attempt to reduce the number of persons appearing personally for court appearances.” (Illinois Supreme Court Order M.R. 30370, entered May 20, 2020.) As of June 1, 2020, each of the 24 Illinois Circuit Courts is issuing its own orders regarding procedures for reopening courtrooms. These orders vary widely. For example: On May 28, 2020, the chief judge of the Circuit Court of Cook County issued an amendment to General Administrative Order 2020-01 extending the closure of almost all civil courtrooms until July 6, 2020. Pursuant to G.A.O. 2020-01, hearings in almost all civil matters scheduled prior to July 6 are continued at least 30 days (to a date not more than 30 days after July 6); the Circuit Court of Cook County has limited ability to hold remote hearings by video or telephone conference. E-filing is required (as it was prior to the pandemic), and filing deadlines are not extended. By contrast, on the same day, the chief judge of the Circuit Court for the 3rd Circuit in southern Illinois (Madison and Bond Counties) issued Administrative Order 2020-M-14 reopening all courtrooms “for limited court business” effective June 1, 2020. Everyone entering the courthouse is required to wear a mask, and each courtroom will operate on a separate schedule set by the respective judge. The three US District Courts in Illinois each have their own orders governing practice and procedures during the pandemic; none of them have reopened their courthouses for non-emergency civil cases. In the Northern District, the Fourth Amended General Order 20-0012 issued May 26, 2020, directs that civil hearings are to be conducted remotely, by video or telephone conference, through July 15, 2020, and no civil jury trials will be conducted before August 3, 2020. In the Central District, Third Amended General Order 20-01 extends the closure of courthouses through June 15, 2020, while in the Southern District, courthouses will remain closed except for special settings through July 5. Unlike some of the previous orders in the US District Courts, none of the latest orders extend filing or other deadlines in civil cases. None of the District Courts in Illinois have released plans for a general reopening of their courthouses. NEW YORK: New York state courts began the pandemic closed, except for essential applications, and are slowly opening back up, each in different ways and at a different pace. Litigants can now e-file documents, including to commence new cases, which they could not do previously. For cases commenced pre-COVID, case management depends largely on the court, the case and the judge. However, generally speaking, response deadlines are stayed in the lower courts. Statutes of limitations remain tolled by Executive Order. Courts have been holding appearances, including oral arguments, by video, with increasing frequency, though pre-scheduled routine appearances are often adjourned sine die, unless specifically requested by a party. Many courthouses are beginning to open for in-person operations, depending on the region and in accordance with Governor Cuomo’s phased reopening plan. The reopening of electronic filing led to a heavy influx of new cases and other filings, which created an immediate backlog, but resulting delays may be minimized by the fact that the courts used the “time out” to clear the pre-COVID case backlog. US TAX DISPUTES: Federal tax disputes are heard initially in the US Tax Court, the US Court of Federal Claims or the US District Courts, and on appeal in the federal appeals courts. The Tax Court is the only pre-payment forum where taxpayers may dispute a liability asserted by the IRS, with the Court of Federal Claims and the District Courts limited to hearing refund suits after a taxpayer has paid in full. The Tax Court is headquartered in Washington, DC, but typically conducts trial sessions in 74 cities across the country. The Tax Court cancelled upcoming trial sessions as of March 11, 2020, and closed its building on March 18, 2020. The building remains closed and all trial sessions through June 30, 2020, are cancelled. On May 29, 2020, the chief judge issued Administrative Order No. 2020-02, Remote Court Proceedings During COVID-19 Pandemic. Until further notice, all proceedings of the Tax Court will be conducted remotely and public access to the remote proceedings will be available via real-time audio. The Tax Court’s ability to function remotely, however, is limited by one critical rule: All petitions to initiate a case must be filed on paper with the clerk’s office, which then serves IRS Chief Counsel. With the building closed and no mail being delivered, petitions sent to the court have either been returned to the sender or held, creating a large backlog of unopened cases. Given its commitment to functioning remotely for the foreseeable future, the court will likely modify the procedure for initiating a case or develop a system for receiving and processing its mail in the very near future. The Court of Federal Claims, also located in Washington, DC, restricted access to its courthouse until further notice and entered an order on March 16, 2020, directing that all proceeding scheduled to occur before June 15, 2020, would be held by telephone or video conference unless the chief judge granted express permission. There is no general order extending deadlines. The statuses of the US District Courts and the federal appeals courts vary dramatically because they are located across the country and the courts are individually coordinating with state and local health officials. Both the District Courts and the federal appeals courts handle civil and criminal cases and must be sensitive to the rights of criminal defendants to a speedy trial and timely appeal. The District Courts in particular face the additional challenge of jury trials. In cities where the pandemic has presented the greatest dangers, civil litigants should expect cases to be handled on paper or through remote hearings for quite some time as courts seek to limit the number of people in the courthouses and prioritize criminal hearings. ENGLAND, WALES AND OFFSHORE: By contrast, the majority of courts remain open for business in England and Wales, albeit remotely. This has been driven largely to avoid a backlog of cases and to ensure continuity of access to justice. Consequently, limitation periods have not been suspended and it is highly unlikely that the courts will retrospectively resurrect time-barred claims because of delays caused by the pandemic. E-filing is largely available in civil courts, and rules have been relaxed to allow parties to agree extensions to filing deadlines for up to 56 days without court approval. The Lord Chief Justice also announced in March 2020 that the default position during the pandemic is that hearings should be conducted remotely if possible. The judiciary has moved quickly to embrace technology and published guidance on when and how remote hearings should operate. Adjournments to permit “in-person” hearings/trials will only be granted if the judge is satisfied that there will be real prejudice to one or all parties (e.g., IT issues or illness). In practice this means that parties will need to adapt to conducting hearings and trials remotely for the foreseeable future. Courts in key offshore jurisdictions have also largely remained in operation over this time to deal with urgent business, following short temporary closures at the beginning of the pandemic. Many offshore jurisdictions have temporarily allowed electronic filing and have introduced remote hearings. However, unlike England and Wales, many offshore jurisdictions have encouraged parties to adjourn non-urgent hearings and have generally adjourned trials until such time as they can resume in physical court. On the whole, limitation periods continue to run in offshore jurisdictions except for the Bahamas (where limitation periods are suspended until 30 days after emergency measures are lifted). SUMMARY: As governments ease lockdown measures begin to ease in their jurisdictions, the judicial systems are slowly reopening and various measure are being put in place to allow “in-person” hearings to resume safely. Court users can expect that courts will impose social distancing measures, compulsory wearing of masks and temperature checks as the norm. Much of the guidance published in these jurisdictions since the beginning of the COVID-19 pandemic has already been updated or replaced. As the situation shifts and government advice changes, so will the response of the courts. As a result, all parties in the midst of court proceedings should ensure they stay up to date with the various pieces of guidance issued by courts in their respective jurisdiction

### 2NC – I/L – Growth

#### Court backlogs ensure patent delays that impair innovation—patents are key to investment, product launch, subsequent innovations after delayed patents, and consumer access

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Delays matter because patents matter. Patents affect decisions about which businesses get investments, which products get launched, whether a business gets off the ground, and other key decisions. Without the security provided by a patent, these things often simply don’t happen. Here are three ways in which patent backlog hurts a country’s economy: 3 • Delay Hurts Entrepreneurs. Startups are always a risky proposition, so many business decisions are contingent upon the grant of a patent. Recent research by a scholar in this Center’s Thomas Edison Innovation Fellowship, Deepak Hegde, has demonstrated this point. Hegde, along with his co-authors Joan FarreMensa and Alexander Ljungqvist produced a study titled “The Bright Side of Patents,”1 which found that delays in obtaining a startup’s first patent impair its performance. Every year of delay reduces the startup’s employment and sales growth over the five years following its eventual approval by 21% and 28%, respectively. Delays also hurt a startup’s ability to innovate, reducing the number and quality of its subsequent patents. Furthermore, for each year of delay, the startup’s chances of going public are reduced by half. Patent pendency statistics are a strong indicator of how serious a country is about supporting its own entrepreneurs. If the patent system is to support local innovation, then the patent system needs to serve entrepreneurs with speed and efficiency. • Delay Hurts Consumers by Delaying Access to Products. Patent delay means product delay. Pendency problems deny consumers access to lifesaving drugs and beneficial technology. Research shows that patents make a difference as to whether people can obtain products. Patents matter especially in the case of pharmaceuticals, where companies often must spend significant resources to obtain regulatory approval. Research has shown a link between delayed availability of drugs and weak patent protection. Other research shows a similar link between trade in high tech products and patent rights. • Delay Hurts Society. Patent delay imposes social costs, including lost jobs, lost products, and lost innovation. A report for the UK Intellectual Property Office estimated that combined losses from each year of backlog in the US Patent and Trademark Office, Japan Patent Office, and the European Patent Office costs the global economy over $10 billion a year.2

#### Patent Backlogs increase error likelihood & impose 5 economic costs

London Economics 10, (London Economics is one of Europe’s leading specialist policy and economics consultancies. “Patent Backlogs and Mutual Recognition” January 2010, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328678/p-backlog-report.pdf>)GJ

Growing patent backlogs may have broad costs beyond the impact on patent offices. As examiner workload grows, patent examination and issuance may be delayed leading to longer pendency periods. Alternatively, patent offices may respond to backlogs by expecting examiners to spend less time on each examination, leading to a higher probability of making errors (such as failing to identify relevant prior art). Our research, including both discussions with patent offices and the literature review, has identified five channels through which patent backlogs may impose costs including: the reduction in value of patent protection for applicants; a reduction in the incentive to innovate and undertake research and development; granting of monopoly power to non-patentable applications (through longer pending patent rights); deterring use of the patent system; and the diversion of resources away from productive activities.

## AFF

### 2AC – U/Q Overwhelms – IP

#### Uniqueness Overwhelms – IP litigation is backlogged now because of the virus

Bultman 4/13 (Matthew Bultman is the Intellectual Property Correspondent at Bloomberg Law, New Jersey police & courts reporter for Express-Times, “Virus Delays at Int’l Trade Commission Stir Case Backlog Worries”, April 13, 2020, Bloomberg Law, <https://news.bloomberglaw.com/ip-law/itcs-virus-delays-trigger-case-backlog-worries>)

A potentially extended U.S. International Trade Commission ban on hearing cases has intellectual property litigators feeling uneasy. The commission, a federal agency that handles intellectual property and trade disputes, is known for its speedy handling of investigations and powerful exclusion orders that can prevent the importation of products into the U.S. The commission continues to process cases, including accepting new complaints and issuing orders. But the agency has postponed all hearings in intellectual property disputes through mid-May because of the Covid-19 pandemic, which can prevent judges from making determinations. If the closure lasts into the summer, a backlog of patent and other IP cases will grow, creating delays that cost companies money and potentially leave infringing products on the market longer, attorneys say. If the commission says “we have to push this out even further, then I think people might really start to suffer the consequences of an extended disruption,” David Vondle, a partner at Akin Gump Strauss Hauer & Feld LLP who represents companies in disputes before the commission, said. There are 24 unfair import investigations with a final decision target date within the 180 days pending at the commission. Each case involves patents or other intellectual property. More than a dozen open investigations have started in the past six months, including a complaint Philips North America LLC brought against Fitbit Inc., Garmin International, Inc. and other companies over wearable monitoring devices. **Expecting Delays** The commission’s building in Washington D.C. is closed to the public, and its employees have been working remotely for almost a month. In March, the agency suspended rules that require the filing of paper copies and physical media, including CD-ROMs. The ITC also ordered its judges to postpone all hearings in unfair import investigations until after May 12. The commission has said it will reevaluate that schedule later this month for any additional postponements. An agency spokeswoman said Friday the ITC continues to monitor the situation. But many attorneys expect the commission to extend the postponements. Washington D.C. could see its number of coronavirus cases peak in late June or early July, Mayor Muriel Bowser said at an April 3 press conference. “If that’s the case, I don’t see how the ITC is going to be able to proceed with hearings in May,” Vondle said. **Less Flexibility** Coronavirus disruptions have already been felt in some of the commission’s cases. There have been several schedule extensions, including a handful of cases where the trial date has been rescheduled. Eric Namrow, chair of the ITC practice at Morgan Lewis & Bockius LLP, said he is involved in an investigation where everything has essentially been pushed out by three months. The ITC operates fast, with trials happening in as little as eight to nine months after a complaint is filed. There is less flexibility built into the schedule than district courts, where patent cases take, on average, over two years to reach trial. Any disruptions at the commission can be more pronounced. “The longer it takes to get out of something, the worse it becomes,” said Daniel Yonan, head of the ITC practice group at Sterne Kessler Goldstein & Fox PLLC. “That backlog just gets bigger and bigger, then it takes the commission longer and longer to dig out.” **Respondent Advantage** When the federal government shut down for 35 days in 2018 and 2019, there were some intellectual property cases that took months longer than normal to complete. The commission, in some respects, is more functional now than it was during the shutdown, when work ground to a halt. “The flip side is, we’re in for a longer period of compromised capabilities,” Smith Brittingham, leader of the ITC litigation practice at Finnegan Henderson Farabow Garrett & Dunner LLP, said. “That ultimately will likely have an effect on a fairly broad number of investigations.” Delays interfere with the plans of patent and other IP owners, who could be forced to watch as products that they believe infringe their rights continue being imported and sold in the U.S. Even a few months can amount to a significant amount of money, attorneys said. Accused infringers also have more time to prepare defenses and search for evidence that can be used to challenge the validity of the patents. “Respondents have a huge advantage with what’s going on,” Yonan said.

### 2AC – U/Q Overwhelms – Corona

#### U/Q overwhelms – coronavirus is causing a backlog of thousands of cases, trials are being put on hold indefinitely

Feuer et. al 5/22, (Alan Feuer covers courts and criminal justice for the Metro desk. He has written about mobsters, jails, police misconduct, wrongful convictions, government corruption and El Chapo, the jailed chief of the Sinaloa drug cartel. He joined The Times in 1999, “N.Y.’s Legal Limbo: Pandemic Creates Backlog of 39,200 Criminal Cases”, June 22, 2020, New York Times, <https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html>)

The coronavirus outbreak is putting extraordinary stress on New York City’s judicial system, forcing lengthy delays in criminal proceedings and raising growing concerns about the rights of defendants. **Since February, the backlog of pending cases in the city’s criminal courts has risen by nearly a third** — to 39,200. Hundreds of jury trials in the city have been put on hold indefinitely. Arraignments, pleas and evidentiary hearings are being held by video, with little public scrutiny. Prosecutions have dropped off, too, as the authorities have tried to reduce the jail population. Three months into the crisis, the city’s once bustling courthouses are barely recognizable. Their spacious lobbies and halls, formerly filled with people, are nearly empty, and in the courtrooms clerks in surgical masks tend to virtual hearings on giant video screens. Two centuries of face-to-face judicial traditions have either been cast aside or moved online. The recent arraignment of a police officer on assault charges was done over a video-chat system, with a monitor in the courtroom. Credit...Pool photo by Gabriella Bass The health crisis has tested the technical capacity of the courts and their ability to preserve due process in an emergency. Around the state and country, local and federal [courts are dealing with similar issues](https://www.nytimes.com/2020/06/10/us/coronavirus-jury-trial-oregon.html), installing plastic “sneeze shields” and setting up [directories of remote proceedings on YouTube](https://www.txcourts.net/youtube-channel-directories). Then in May, another shock arrived: New York City erupted into protest over the killing of [George Floyd](https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html), flooding the system with hundreds of arrests. Prosecutors’ offices, which had worked for weeks with skeleton staffs, sprang back into action, and court officials doubled the number of video arraignments in Manhattan. It was, as one city judge described it, [“a crisis within a crisis.”](https://www.nytimes.com/2020/06/04/nyregion/nyc-protests-jail.html) Two weeks ago, the state courts in New York City took a first small step toward physically reopening: Judges started returning to their chambers, though they are still holding court virtually. No one has quite figured out yet how to bring the public back safely to New York City courthouses, nor how to resume trials and state grand jury hearings. Officials said the challenge of balancing public health and the requirements of the law is likely to persist for some time. “It’s a situation we’ve just never seen before,” said Melinda Katz, the Queens district attorney. The Queens district attorney, Melinda Katz, has set aside six rooms on three floors of her office so that simultaneous hearings can be held. Credit...Sarah Blesener for The New York Times Trials have stopped In spring 2019, there were about 570 criminal trials in New York’s state courts, and the city’s courthouses were among the busiest. Before the crisis, there were as many as 15 jury trials going on each day in Manhattan Criminal Court alone. This year, all trials statewide were postponed in mid-March until further notice. To make the move legal, Gov. Andrew M. Cuomo suspended the state’s speedy trial laws. Since then, **not a single trial has been held in the city,** and several mistrials were declared during trials that could not be finished. **Defendants have had to wait, many of them in jail.** Chester Taylor and Darius Hastings, for instance, were nearing the end of their murder trial in March when the judge suspended the proceedings because of the pandemic. Since then, the two men, who maintain they are innocent in the 2016 shooting of a Harlem man who died two years later, have sat in cells at the Manhattan Detention Center, trying to avoid the virus. “I waited over two years for my day in court,” Mr. Taylor, 34, said during a telephone interview from jail. “We’re supposed to be innocent until proven guilty.” The judge is now seeking to restart the trial on July 14, with jurors spaced out in the gallery, the defendants at separate tables and the prosecutors in the jury box, Mr. Taylor’s lawyer, Dawn Florio, said. The halt on jury trials, while highly unusual and difficult for defendants, has not yet reached a crisis point. Even under the best conditions, it can take years for cases to move from arrest to trial, and only about 5 percent ever get that far; most end with a plea bargain. Still, jury trials are the heart of the justice system, and state court officials face significant hurdles as they resume. “I can’t tell you we have a precise plan,” said Judge Lawrence Marks, the state’s chief administrative judge. “It will be one of the last phases.” Unlike other court proceedings, jury trials require people to hear evidence together and then deliberate in close quarters. “The whole idea of ‘12 Angry Men’ screaming at each other over a telephone, over a Zoom network, would be ridiculous,” said one defense lawyer, Joel Cohen. In Federal District Court in Manhattan, architects and carpenters have been redesigning courtrooms, building jury boxes with additional space and inserting plexiglass dividers to keep jurors safer. Shields are being put in front of witness stands and at lecterns where lawyers argue. Certain precautions that are being considered may [raise legal issues](https://www.nytimes.com/2020/06/10/us/coronavirus-jury-trial-oregon.html). “You can’t put a mask on the witnesses in a criminal trial because the defendant has the right to see them,” Chief Judge Colleen McMahon said. “Jury trials are way, way down the road,” she added. Some jurists warn that a prolonged delay in resuming trials could violate the Constitution. “If well past July and for months to come, it is still dangerous for 12 people to gather together in tight quarters to hear and determine civil and criminal cases, it is not easy to see how the constitutional right to a jury trial will be genuinely met,” Judge Jed S. Rakoff wrote in The New York Review of Books. [Continue reading the main story](https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html#after-story-ad-4) Lara Belkin, a defense lawyer with Legal Aid, handles her clients’ cases from her apartment in Long Island City, Queens. Credit...Sarah Blesener for The New York Times A brave new world of virtual hearings One Monday evening last month, Judge Paul McDonnell of Manhattan Criminal Court approached the desk in his living room that held two laptops and a bottle of hand sanitizer. He pulled a black robe over his light gray suit and tie. “I always wear my robe,” Judge McDonnell said. “I want the defendant to understand who I am.” For the next eight hours, the judge conducted night court for people arrested in Manhattan on charges ranging from gun possession to assault — all from his Brooklyn apartment. Like other judges in the city, he was recently ordered to return to his chambers and hold court virtually from there. Updated June 22, 2020 In New York, the City Council [passed a bill that for the first time will require the police to reveal information about their arsenal of surveillance tools,](https://www.nytimes.com/2020/06/18/nyregion/nypd-police-surveillance-technology-vote.html?action=click&pgtype=Article&state=default&module=styln_george_floyd_protests_keepup&variant=1_show&region=body&context=keep_up) some of which may have been used in recent days at protests in New York. Mayor Bill de Blasio and police officials have previously opposed the bill, but changing course this week, the mayor said he was now inclined to sign it. President Trump [signed an executive to encourage changes in policing,](https://www.nytimes.com/2020/06/16/us/george-floyd-rayshard-brooks-protests.html?&action=click&pgtype=Article&state=default&module=styln_george_floyd_protests_keepup&variant=1_show&region=body&context=keep_up#link-4e706ddc) including new restrictions on chokeholds. But the order will have little immediate impact, and does not address calls for broader action and a new focus on racism. Aunt Jemima, the syrup and pancake mix brand, [will change its name and image amid an ongoing backlash,](https://www.nytimes.com/2020/06/17/us/black-lives-matter-protests-live-updates.html?campaign_id=60&action=click&pgtype=Article&state=default&module=styln_george_floyd_protests_keepup&variant=1_show&region=body&context=keep_up&emc=edit_na_20200617&instance_id=0&nl=breaking-news&ref=cta&regi_id=35464541&segment_id=31124&user_id=668420d1d50ece39e7e4cdbddc0196d0#link-738b38b2) with its parent company Quaker Oats acknowledging that the brand’s origins are “based on a racial stereotype.” Jill Snyder, [who has served as director of the Museum of Contemporary Art Cleveland for 23 years,](https://www.nytimes.com/2020/06/19/arts/design/moca-cleveland-director-resigns-.html?action=click&pgtype=Article&state=default&module=styln_george_floyd_protests_keepup&variant=1_show&region=body&context=keep_up) resigned. Her departure comes nearly two weeks after Ms. Snyder publicly apologized to an artist for [canceling his exhibition](https://www.nytimes.com/2020/06/09/arts/design/moca-cleveland-shaun-leonardo.html?searchResultPosition=1&action=click&pgtype=Article&state=default&module=styln_george_floyd_protests_keepup&variant=1_show&region=body&context=keep_up) dealing with police killings of black and Latino boys and men. A statue of Theodore Roosevelt [will be removed from the front of the Museum of Natural History in New York.](https://www.nytimes.com/2020/06/21/arts/design/roosevelt-statue-to-be-removed-from-museum-of-natural-history.html?action=click&pgtype=Article&state=default&module=styln_george_floyd_protests_keepup&variant=1_show&region=body&context=keep_up) The equestrian memorial has long prompted objections as a symbol of colonialism and racism. Before the pandemic, Judge McDonnell had worked in a paneled courtroom, overseeing a mass of humanity — defendants, clerks, prosecutors, defense lawyers and family members — all in close quarters, engaging in the rituals of American justice. Courthouses in New York are still open to the public, officials say, and people have a right to enter courtrooms and view proceedings on a video monitor. Still, court officers are limiting traffic into the buildings, and the digital links needed to watch online are not being made public. People who are arrested no longer set foot inside a physical courtroom to hear the charges against them in an arraignment. They now sit in a windowless booth in a courthouse cell, looking into a camera and speaking into a microphone on the wall. Felony arraignments have fallen by 50 percent this spring compared to last, largely because far fewer people were arrested in the first weeks of the pandemic. That has made the transition to video somewhat easier, though not any faster. In the months after the courts moved to a virtual system, the average arrest-to-arraignment time has increased by as much as three hours. [Continue reading the main story](https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html#after-story-ad-5) Before the pandemic, lawyers generally did most of the talking in court. In the video hearings, defendants, no longer in the same room as their lawyers, have been more prone to sudden and sometimes incriminating outbursts. On May 8, a man arrested in the Bronx on an assault charge became upset when a judge, sitting at home, set his bail at $5,000. Moments after being led away, the defendant ran back into the booth, ranting about details of the assault, a potential disaster for his defense. A court official asked him to step outside then muted his audio feed. During a pause in the arraignments, a cat jumped onto the judge’s desk. Another man asked a judge in Brooklyn federal court last month during a hearing over the telephone if he could have special protection because he was cooperating with the government against his fellow gang members. An uncomfortable silence followed. His lawyer hurriedly asked the judge to seal the transcript. A Manhattan federal court proceeding on video: the defendant at top, with face obscured; Lloyd Epstein, the defense lawyer, at left; Brett Kalikow, assistant U.S. attorney, center; and Judge Loretta A. Preska. Tina Luongo, chief criminal defender for the Legal Aid Society, mentioned another challenge: The inability to see a witness's body language and quietly confer with the defendant seriously hampers defense lawyers. “We’ve got to figure that out,” she said. “When we’re all on one Skype link, how do I talk to my client in a confidential way?” Before hearings begin, lawyers can meet virtually with clients in private Skype conference rooms, but the system is not foolproof. Lara Belkin, a lawyer for Legal Aid, was in her apartment in Long Island City representing defendants at arraignments in the Bronx on a Friday last month, clicking through courtroom links on Skype looking for a client. She entered one virtual room to find another lawyer already using it with a defendant. “Oops,” she said, clicking out quickly. “That’s not good.” After finding the correct link, she yelled the name of a newly arrested individual into an empty video booth. “Please step into Booth D,” she shouted. As they discussed the case, the audio cut in and out, and she asked the man to speak a little louder. He faced a misdemeanor charge for carrying a Taser. Ms. Belkin needed to find out if the government was seeking to keep her client in jail until his trial. In court, she could simply have walked up to the prosecutor’s table. On this day, however, it took her more than an hour to reach the prosecutor by phone. After months of conducting proceedings from home, Judge McDonnell has recently returned to his chambers. Credit...Sarah Blesener for The New York Times During night court on May 11, Judge McDonnell waited for two hours before the first defendant appeared — a 35-year-old man charged with gun possession. The light on the man’s face in the booth was bad. “It’s dehumanizing,” the judge said. “I’m asking for light.” The serial number on the pistol the man had been found with was scratched off. But he didn’t have a long record, and the judge said the police officer’s reason for stopping him might be called into question. Yet, the judge said, sending the defendant to jail with high bail might expose him to the virus. “It’s not easy,” Judge McDonnell said. Some jurists, he went on, think it’s not appropriate for a judge to consider whether jails are safe, but then he added, “We all weigh it.” The pandemic has also shut down many mental health programs he was once able to use as an alternative to jail. [Continue reading the main story](https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html#after-story-ad-7) “What am I supposed to do?” the judge said. “Prior to Covid, I had lots of tools.” He set bail terms that would have required the defendant to come up with at least $2,500. “I don’t have any money,” the defendant said, before being led away. In Chemung County, hearings were held on the portico of the district attorney’s office.Credit...Libby March for The New York Times The new normal Perhaps the biggest headache for the state courts has been the inability to convene grand juries, which given their size — they are usually composed of 16 to 23 people — have been unable to gather safely. Grand juries have traditionally acted as a citizen’s check on overzealous prosecutions by scrutinizing evidence and approving formal charges. They are also used by state and federal prosecutors to conduct long-term investigations. Without them, the rights of both defendants and crime victims are less assured. In New York, anyone arrested on a felony charge must be freed if a grand jury fails to indict within six days. Gov. Cuomo has suspended that deadline, which last month had left about 400 people in custody — in jails that have become hotbeds of infection — without the cases against them being tested. That figure dropped to 87 as of last week. “You’ve had no opportunity to challenge the evidence,” said Elizabeth Daniel Vasquez, a lawyer with Brooklyn Defender Services. Unable to convene grand juries, the city’s five district attorneys are turning instead to preliminary hearings, which have not been conducted in New York in decades. At the hearings, judges hear witnesses, consider evidence and decide if prosecutors’ charges are warranted. Like everything else these days, these hearings are being held by video. ADVERTISEMENT [Continue reading the main story](https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html#after-story-ad-8) Weeden Wetmore, the district attorney in upstate Chemung County, convened a remote preliminary hearing last month — on the portico of his office. The judge was at the local county courthouse, the defendant in the county jail, and the defense lawyer at his office. The witness, a 17-year-old girl who said she had been robbed at knifepoint, arrived to testify on a bicycle. Mr. Wetmore plans to continue the al fresco hearings for as long as possible. “We’re praying for good weather,” he said. In Queens, Ms. Katz has set aside six rooms on three floors of her office so that simultaneous hearings can be held. Each room has its own feed: three for her prosecutors and three for their witnesses. The witnesses could not be in the same room as prosecutors to avoid suggestions that they were being coached. “The criminal justice system is not exactly known for its flexibility,” said Jennifer Naiburg, the chief deputy prosecutor in Queens. “We’re definitely flexible now.” The city’s two federal courts, in Manhattan and Brooklyn, have adapted more smoothly to the crisis. Under their auspices, grand jurors began meeting again recently outside the city, in White Plains and Central Islip. And in both courts, regular audio and video hearings have been held, with dial-in numbers for the public clearly posted on electronic dockets. But obstacles remain, like how to bring in large numbers of prospective jurors for screening. Take the [capital case of the Uzbek man accused in a 2017 terrorist attack that killed eight people on a Manhattan bike path](https://www.nytimes.com/2018/09/28/nyregion/sayfullo-saipov-death-penalty.html?searchResultPosition=1). More than 1,000 prospective jurors had come in to fill out jury-selection questionnaires, but later were dismissed after Judge Vernon S. Broderick postponed the trial indefinitely because of the pandemic. The process would have to be redone.

### 2AC – Link Turn

#### CJR takes cases out of the system

Safe and Just Michigan 19, (Safe & Just Michigan is a nonprofit organization that works to reduce the harm caused by both crime and unnecessary incarceration. We advance evidence-based reforms that can improve public safety and eliminate unnecessary and wasteful corrections spending, “Gongwer article: Criminal Justice Reform A Shift From Tough-On-Crime Era Of ’80s, ’90s”, May 14, 2019, Safe and Just Michigan, <https://www.safeandjustmi.org/2019/05/14/gongwer-article-criminal-justice-reform-a-shift-from-tough-on-crime-era-of-80s-90s/>)

He said he is not surprised by the pace at which changes are being weighed today, but he questioned the motive behind them. Mr. Cropsey said it appears to him that the push for criminal justice reform today is being driven by a desire to drive down inmate populations to allow for prison closures. He said lawmakers should think long-term and weigh the savings of prisons closures versus the cost to society of potentially having more violent criminals on the streets. Mr. Cropsey also said consideration needs to be given to the types of programs being enacted. What was being considered during the tough-on-crime era of the 1980s sharply differs from policy ideas that have been considered in the last couple legislative sessions but have suddenly gained bipartisan support this session. A package of bills was signed last week by Governor Gretchen Whitmer making changes to civil asset forfeiture. Under SB 2, HB 4001 and HB 4002, individuals would need to be convicted of a crime before law enforcement could assume ownership of property through the civil asset forfeiture process from seizures amounting to $50,000 or less. Supporters of the legislation have said while it is an important tool for law enforcement, residents deserve more of an ability to fight for their rights and property if not convicted. After unsuccessful attempts at moving similar legislation in past sessions, the civil asset forfeiture issue emerged at the beginning of this session as one with bipartisan agreement and the support of Attorney General Dana Nessel. The House and Senate have also, after failed attempts in recent sessions, begun making strides in pushing legislation that would end the automatic charging of 17-year-olds as adults in the criminal justice system and moving them to the juvenile justice system. Michigan, Georgia, Texas and Wisconsin are the only states that still automatically charge 17-year-olds as adults, something lawmakers have said needs to change to get with the times. Lawmakers have said evidence has shown that keeping 17-year-olds in the juvenile justice system can help reduce recidivism and not expose the youths to hardened adult criminals. The change in mindset has led many to believe the **change can help reform more young people rather than end up falling into a life of crime, also saving taxpayers in the long run.** The Senate passed SB 90, SB 91, SB 92, SB 93, SB 94, SB 95, SB 96, SB 97, SB 98, SB 99, SB 100, SB 101 and SB 102 in April while the House passed HB 4133, HB 4134, HB 4135, HB 4136, HB 4137, HB 4138, HB 4139, HB 4140, HB 4141, HB 4142, HB 4143, HB 4144, HB 4145, HB 4146, HB 4443 and HB 4452. The main issue being hashed out in the legislation this session has been finding the proper funding mechanism to keep counties whole. Currently the counties and state share juvenile costs 50-50. Lawmakers earlier this month also sent legislation to the governor that would allow inmates with debilitating diseases and significant health issues to be moved to nursing homes for medical care. The bills, HB 4129, HB 4130, HB 4131 and HB 4132, would allow those otherwise eligible for parole who have become medically frail to receive early parole under certain conditions. Sen. Sylvia Santana (D-Detroit) said her focus on criminal justice reform stems from what she said is the need to provide the rehabilitation part of the equation within the system. She said too often those that have served their sentences are released but not prepared to make the adjustment back to everyday life. Many do not have a support system or access to programs to help them succeed, leading to repeat offenses. When asked why the push for change has grown in recent years, Ms. Santana said officials are realizing that not everyone in jail or prison needs to be there, and the sentences in some cases are harsh. Also, more can be done to reduce recidivism particularly for lower-level offenders. “Lawmakers decided we needed to get tough on crime, locking people up and not ever considering the reform aspect of it,” Ms. Santana said. “People are acknowledging the error in their ways.” Ms. Santana was involved in the 17-year-olds being moved to the juvenile justice system legislation. She called it a start but there is more to do to improve the system. Ms. Santana said one idea she supports is a package of House bills introduced in March to ensure those jailed before trial are kept only when they pose a threat to society or are a flight risk and not simply because they cannot afford bail. Indeed, bail reform appears the next major frontier with Ms. Whitmer, Ms. Nessel, Supreme Court Chief Justice Bridget McCormack and top legislative Republicans all signaling an interest in putting together a plan, another move that would have been unthinkable 20 or 30 years ago. The concerns about going too far in the other direction are still there. Sen. Jim Runestad (R-White Lake) said he largely favors many of the changes the Legislature has been working on to the criminal justice system, but voted against raising the charge as an adult age to 18. Mr. Runestad said he considers **it a good thing to unclog the criminal justice system from incarcerating many low-level offenders such as “people who get kind of caught in the web** … who are not terrible human beings, people who just made a mistake.”

#### The pandemic disrupts the justice system and the backlog will only grow

Reynolds 3/19, (Matt Reynolds, a legal affairs writer, joined the *ABA Journal* staff in 2020, “How the coronavirus is upending the criminal justice system”, March 19, 2020, ABA Journal, <https://www.abajournal.com/web/article/pandemic-upends-criminal-justice-system>)

The novel coronavirus is wreaking havoc on the criminal justice system, experts warn, and could delay the right to a fair trial and rob detainees of their day in court. The pandemic will have consequences for criminal defendants’ right to a speedy trial under the Sixth Amendment of the Constitution, according to legal experts. If that right is found to be violated, a defendant’s conviction or sentence can be set aside. ABA Criminal Justice Section Chair Kim Parker notes most states have statutory speedy trial limits and says the impact of the virus is going to overwhelm dockets in courthouses all over the country. She warns the impact of the disease could lead to delays and an expanding backlog of cases. **“It’s not as if anything’s going away. It just keeps backing up, backing up, backing up,** and the days aren’t long enough,” Parker says. Many federal and [state courts](https://www.ncsc.org/Newsroom/Public-health-emergency.aspx) have suspended or postponed criminal jury trials. Among the states hardest hit by the virus is New York, where state courts [responded](https://www.nycourts.gov/whatsnew/pdf/Updated-Protocol-AttachmentA3.pdf) by ordering courts to finish pending criminal and civil trials while delaying new trials until further notice. In Washington state, multiple courts suspended or delayed trials. California has issued no statewide delays or restrictions, leaving it up to individual courts to decide how to handle new cases. “California’s judicial branch is facing an unprecedented challenge with the COVID-19 virus,” Chief Justice Tani Cantil-Sakauye wrote in guidance issued Monday. “I recognize that this situation may require the temporary adjustment or suspension of court operations and procedures. I stand prepared to prioritize all such requests that may be submitted in the days ahead.” Some courts could limit exposure to the virus by encouraging bond review hearings through video or teleconferencing. The Court of Common Pleas of Crawford County in Pennsylvania [issued](https://bloximages.chicago2.vip.townnews.com/meadvilletribune.com/content/tncms/assets/v3/editorial/f/21/f213574a-6890-11ea-a202-5bad6dd5b082/5e713830815b3.pdf.pdf) guidelines this week that limit sentence and parole and probation violation hearings to video or teleconferencing only. The court set the same guidelines for preliminary hearings for inmates and preliminary arraignments. Parker says she has been talking to prosecutors who are trying to provide some relief in the wake of the crisis, ensuring that when appropriate, defendants are not held in custody. Defendants on pretrial release often have longer speedy trial limits than those who are detained. Parker notes people accused of more serious crimes are often held in custody, which will compound existing problems as more defendants enter jails. “If you’re waiting for a trial that’s held out another 50 days, then we make our overcrowded jails already more overcrowded because people continue to be charged and continue to commit crimes that require attention,” Parker says. Sedgwick County District Attorney Marc Bennett in Kansas is one of the prosecutors with whom Parker has been in contact. On Tuesday morning, Bennett watched Kansas state legislators on YouTube as they considered a [bill](http://www.kslegislature.org/li/b2019_20/measures/documents/sb102_enrolled.pdf) that would give the chief justice of the Kansas Supreme Court emergency powers to extend speedy trial deadlines. “We’re talking about extraordinary circumstances where health and human safety is at stake,” says Bennett. Overcrowding in jails could have a broader impact on the public health, Bennett adds, noting deputies, health care workers, kitchen staff and civilian mentors move in and out of the jails along with inmates. “This is going to prove to be very difficult to manage,” Bennett says. The Innocence Project, which works to overturn wrongful convictions, said in an emailed statement it is concerned that state correctional facilities might not be prepared to protect vulnerable inmates in jails and prisons. “It is, of course, also disappointing that **this will inevitably delay justice for our clients**,” the nonprofit legal organization added. Stephen Munkelt, a criminal defense attorney in Nevada City, California, says many inmates in the system are pretrial detainees who have been arrested but not convicted, and cannot afford bail to get out. “One of the greatest at-risk populations in an epidemic situation is people in prisons and jails. If a virus gets into that kind of institution, it’s very hard to slow it down or get rid of it,” Munkelt says, adding he would like to see officials immediately release nonviolent inmates. With more than 2 million inmates, the United States has the [highest prisoner population](https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=) in the world. More than 540,000 incarcerated people who haven’t been convicted or sentenced remained detained, according to a March 2019 report by the Prison Policy Initiative. Many were stuck because they could not afford bail. Last week, Iranian officials released 70,000 prisoners in a bid to fight the coronavirus. On Tuesday, the judiciary in Iran [announced](https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-prisoners-including-political-ones-amid-coronavirus-idUSKBN21410M) it had temporarily freed more than 85,000 people. Prosecutors could cut into their caseloads by offering more plea deals. Neal Sonnett, a former assistant U.S. attorney who is a current ABA delegate and member of the Criminal Justice Section, says in any given week, state prosecutors, defense lawyers and public defenders might have 20 or 30 cases ready for trial. “If a prosecutor has 25 cases set for trial, and they’re all continued or backed up and then the next week, he’s going to have yet another 25 trials. And it’s going to get to a point where there are major backlogs. And one way to deal with the backlogs is to work out plea agreements,” Sonnett says.

#### **Backlogs have existed before the coronavirus, the pandemic only exacerbates it now, even when it ends the preference will be on criminal cases**

Erisman 5/6, (*Kerry L. Erisman is an attorney and associate professor of legal studies with*[*American Military University*](http://start.amu.apus.edu/degrees/overview?utm_source=inpublicsafety.com&utm_medium=link&utm_content=content%20-%20American%20Military%20University&utm_campaign=Degrees%20-%20Overview%20-%20LT%20-%20AMU)*. He is a retired Army officer who previously served as an Army military police officer and later as a prosecutor, chief prosecutor, and defense attorney. Kerry writes and teaches on important criminal justice issues and military spouse issues including leadership, critical thinking, and education,* “How Coronavirus Has Stifled the Criminal Justice System”, May 6, 2020, In Public Safety, <https://inpublicsafety.com/2020/05/how-coronavirus-has-stifled-the-court-system/>)

**The coronavirus has also significantly affected the state and federal court systems, in some cases bringing them to a near standstill. Prior to the spread of COVID-19, many courts had lengthy backlogs of criminal and civil cases. The past few months have exacerbated the backlogs and jeopardized the constitutional rights of defendants.** The Sixth Amendment provides criminal defendants the right to a speedy and public trial, but **the pandemic has significantly impeded the courts from providing these rights to defendants.** *[Related:* [*Holding Prosecutors and Judges Accountable for Unequal Justice*](https://inpublicsafety.com/2019/09/holding-prosecutors-and-judges-accountable-for-unequal-justice/)*]* Court systems are struggling to figure out how to deal with defendants awaiting trial but who currently cannot be tried due to coronavirus restrictions. Many of these individuals are awaiting trials while incarcerated as the judiciary determines how to safely proceed. For example, the judiciary is struggling to determine how to proceed with jury trials that require jurors to be seated in close proximity in the courtroom and in small deliberation rooms. Is it time for prosecutors to seek alternative dispositions to those awaiting trial so as to move cases forward and begin reducing the growing backlog? The coronavirus pandemic has affected every level of the judiciary, including the Supreme Court of the United States, which postponed oral arguments for [March](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_03-16-20) and [April](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-03-20). Oral arguments are a vital part of the judicial process that occurs before the Court’s opinions are drafted. These postponements resulted in about 20 cases being put on hold, some of which could have important consequences for the Executive Branch. Beginning this month, the Supreme Court will take unprecedented steps and conduct a series of [oral arguments via telephone conference](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-30-20). It will also provide real-time, live streaming of oral arguments for the first time in the Supreme Court’s history. Changes to Corrections Finally, COVID-19 has significantly affected prisons throughout the United States. Prisoners live in close quarters and cannot maintain any type of social distancing. Prison personnel also cannot avoid close and daily contact with prisoners, putting both groups at increased risk of exposure. Many states and federal confinement facilities have instituted measures to release nonviolent criminals early to reduce the prison population and make it safer for remaining prisoners and prison employees. For example, Attorney General William Barr has directed the Bureau of Prisons to prepare the release of nonviolent inmates, especially in areas heavily affected by the coronavirus. In a [memo](https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000) dated April 3, the Attorney General noted that [recent legislation](https://www.documentcloud.org/documents/6819239-FINAL-FINAL-CARES-ACT.html) “now authorizes me to expand the cohort of inmates who can be considered for home release upon my finding that emergency conditions are materially affecting the functioning of the Bureau of Prisons.” Barr further stated that in response to the legislation, “I hereby make that finding and direct that … you give priority in implementing these new standards to the most vulnerable inmates at the most affected facilities.” Many states have implemented similar measures and have released nonviolent offenders to help to avoid the spread of the coronavirus. Research Needed to Understand the Total Impact of Coronavirus on the Criminal Justice System While we are still in the midst of combating the spread of COVID-19, it is difficult to predict its long-term effects on the criminal justice system. Backlogs, for example, have extended from months to a year or more, according to a judicial assistant in the Arizona Superior Court who is also a current American Military University master’s student. When trials resume, the preference will be on criminal cases in order to meet the constitutional mandates afforded to criminal defendants. To better understand the full picture will require criminal justice leaders and administrators to collaborate with researchers and academics to collect data and assess the ongoing changes brought about by the coronavirus pandemic. The outcomes and lessons learned from such research will hopefully help law enforcement personnel and criminal justice leaders and administrators to be better equipped and prepared to handle any future emergency situations facing the nation.

### 2AC – Decriminalization Link Defense

#### Decriminalization unclogs courts

SCC 6/10, (SCC Online® Web Edition is the most comprehensive and well-edited legal research tool for Indian & Foreign law, “Centre proposes– decriminalisation of minor offences for improving business sentiment and unclogging Court processes; Stakeholders suggestions invited”, June 10, 2020, SCC Online, <https://www.scconline.com/blog/post/2020/06/10/centre-proposes-decriminalisation-of-minor-offences-for-improving-business-sentiment-and-unclogging-court-processes-stakeholders-suggestions-invited/>)

Decriminalisation of minor offences is one of the thrust areas of the Government. The risk of imprisonment for actions or omissions that aren’t necessarily fraudulent or the outcome of malafide intent is a big hurdle in attracting investments. The ensuing uncertainty in legal processes and the time taken for resolution in the courts hurts ease of doing business. Criminal penalties including imprisonment for minor offences act as deterrents, and this is perceived as one of the major reasons impacting business sentiment and hindering investments both from domestic and foreign investors. This becomes even more pertinent in the post COVID19 response strategy to help revive the economic growth and improve the justice system. Given the nature of pendency in all tiers of the courts and the time taken for disputes to be resolved, legislative measures have been considered to help restore trust in doing business. In this pursuit, it is also important that a balance be found so that malafide intent is punished while other less serious offences are compounded. Accordingly, a framework is required such that a penalty levied is sufficient to act as a deterrent. Actions taken for decriminalisation of minor offences are expected to go a long way in improving ease of doing business and helping unclog the court system and prisons. It would also be a significant step in the Government of India’s objective of achieving ‘*Sabka Saath, Sabka Vikas and Sabka Vishwas*‘. Criminalizing procedural lapses and minor non-compliances increases burden on businesses and it is essential that one should re-look at provisions which are merely procedural in nature and do not impact national security or public interest at large. The following principles should be kept in mind when deciding on reclassification of criminal offences to compoundable offences: (i) Decrease the burden on businesses and inspire confidence amongst investors; (ii) Focus on economic growth, public interest and national security should remain paramount; (iii) *Mens rea* (malafide/ criminal intent) plays an important role in imposition of criminal liability, therefore, it is critical to evaluate nature of non-compliance, i.e. fraud as compared to negligence or inadvertent omission; and (iv) The habitual nature of non-compliance. Stakeholders may kindly propose and submit their comments/ suggestions regarding decriminalisation of a particular Act or particular Sections of an Act, along with the rationale for the same. Comments/ suggestions may kindly be submitted to the Department at the email address bo2@nic.in within 15 days, i.e., by 23rd June, 2020.

### 2AC – Drug Treatment Link Defense

#### Drug Treatment helps unclog courts by reducing recidivism through rehabilitation

Listwan et. al 03, (SHELLEY JOHNSON LISTWAN: Department of Criminal Justice, University of Nevada Las Vegas. JODY L. SUNDT: Center for the Study of Crime, Delinquency, and Corrections, Southern Illinois University. ALEXANDER M. HOLSINGER: Department of Sociology/Criminal Justice and Criminology, University of Missouri–Kansas City. EDWARD J. LATESSA: Division of Criminal Justice, University of Cincinnati, “The Effect of Drug Court Programming on Recidivism: The Cincinnati Experience”, July 2003, Volume 49 No.3, <http://biblioteca.cejamericas.org/bitstream/handle/2015/3538/Effect_of_Drug_Court_Cincinnati.pdf?sequence=1&isAllowed=y>)

The growing number of drug-related cases especially affected urban courts. A 1989 study revealed, for instance, that between 1983 and 1987, drug-related cases increased by 56% across 17 court systems (Goerdt & Martin, 1989). In large urban courts, the increases were more dramatic: Boston experienced a 175% increase, Jersey City’s drug-related caseload rose by 114%, the caseload in the Bronx grew by 109%, and Oakland’s drug caseload increased by 95%. In addition, this research revealed that, overall, drugrelated cases took slightly longer to process than other felonies (excluding murder, rape, and robbery cases). In response to the increased demand, court systems, during the early 1990s, began to search for innovative ways to expedite the processing of drug-related cases. In addition to targeting drug cases for accelerated case processing, **attention has also focused on trying to break the cycle of drug use and crime.** The strong relationship between drug use and criminality, coupled with the chronic nature of addiction, suggests that **drug users will continue to commit crime, clog the courts, and fill our jails and prisons if their addictions go unchecked**. In light of this, the courts and criminal justice policy makers have recognized that improved case processing alone will not address the organizational strain created by drug offenders. Fourth, even after a decade of get-tough policies—from aggressive policing measures to mandatory sentences directed at controlling the use and sale of drugs—drug use remains a persistent, if somewhat less widespread, problem. Indeed, the very individuals who have been most aggressively targeted by the war on drugs—criminal offenders—continue to report high levels of drug use. For example, findings from the Arrestee Drug Abuse Monitoring (ADAM) Program reveal that approximately 65% of arrestees sampled in 1998 tested positive for drug use (Maguire & Pastore, 1999). **Moreover, experience and research have begun to demonstrate that drug addiction is a chronic, relapsing condition that is not effectively addressed by sanctions, enhanced monitoring, or longer prison sentences** (see, e.g., Belenko, MaraDrita, & McElroy, 1992; Fagan, 1994; see also Andrews & Bonta, 1998). In contrast, research has also revealed that **drug addiction is responsive to treatment**. There is a growing body of evidence that indicates that **drug treatment—especially intensive, long-term treatment—can successfully reduce drug use and criminality** (Anglin & Hser, 1990; French, Zarkin, Hubbard, & Valley, 1993; Prendergast, Anglin, & Wellisch, 1995; Van Stelle, Mauser, & Moberg, 1994), even when treatment is involuntary (Anglin, Brecht, & Maddahian, 1989; Hubbard et al., 1989). In short, the failure of past efforts to meaningfully address drug use, together with improved knowledge about the nature of drug addiction and its treatment, has also been instrumental in shaping the drug court movement.

### 2AC – Thumpers

### ---Laundry List

#### There’s a laundry list of factors that contribute to court congestion

Priest 89, (George L. Priest: John M. Olin Professor of Law and Economics, Yale Law School, “PRIVATE LITIGANTS AND THE COURT CONGESTION PROBLEM”, Boston University Law Review, Volume 69, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1612&context=fss_papers>)

 The preceding Part showed substantial, though still only suggestive, evidence of the congestion equilibrium process at work. The evidence indicates why previous studies of litigation delay have failed to discover effects from efforts to reduce delay. And it explains why, in Illinois, despite two decades of continuous reform, the only apparent influence on average delay was a one-time redefinition in the jurisdiction of the courts. The congestion equilibrium hypothesis compels a rethinking of the litigation delay problem. Most importantly, it demonstrates that litigants themselves, as they negotiate over settlement or litigation, centrally determine the extent of delay. **The delay problem is not merely a function of the choice of procedural rules, of management techniques, of a jurisdiction's litigation mores, or even of the volume of underlying disputes. Changes in procedures or management, like changes in litigation volume, will affect the extent of delay, but they will also affect the settlement negotiations of the parties, generating the equilibrium. T**he equilibrium concept implies that the parties' litigation decisions will serve to offset the effects of congestion reform. Indeed, the more effective a particular reform, the greater the offsetting response, as parties choose to litigate rather than settle their disputes. The congestion equilibrium hypothesis does not imply that reform will have no effect. An effective reform measure may well generate a new and lower equilibrium level of congestion. The importance of litigant decisionmaking to the congestion level, however, implies that massive reform investments would be required to achieve significant reductions in delay. For a jurisdiction like Cook County, for example, the investment necessary to substantially reduce delay may not be practically feasible. Indeed, there have been massive investments in congestion reform in Cook County. It will be recalled that the Illinois Legislature at various points during the period of study dramatically increased the size of the Cook County judiciary: In 1963, the judiciary was nearly doubled; later between 1976 and 1979, progressive additions of judges ballooned the 1989] HeinOnline -- 69 B.U. L. Rev. 557 1989 BOSTON UNIVERSITY LAW REVIEW [Vol. 69: 527 judiciary to 2.6 times its 1975 level. 10 3 Yet the effect of these reforms on average delay were totally counteracted by the parties' litigation-settlement decisions. The congestion equilibrium hypothesis suggests that a new approach must be taken in evaluating reform efforts. Changes introduced to reduce delay appear ineffective when their effects are measured in terms of average delay between suit and trial because the counter-reactions of the parties restores, at least in part, the previous suit-to-trial equilibrium. 10 4 A better measure of the effect of reform, however, is the number of tried cases. A reform effort may increase the output of the courts though average delay is unchanged. The congestion hypothesis also suggests that policymakers must reevaluate their normative ambitions for congestion reform. Most reformers, following Zeisel, Kalven, and Buchholz, have presumed that, with a proper commitment to reform, litigation delay could eventually be reduced to modest proportions. Given such a view, the only policy issue is whether the normative harm from delay is equal to the costs of the reform introduced to reduce it. The conception of a congestion equilibrium upsets this seemingly straightforward normative approach. According to the analysis of this paper, there will remain some equilibrium level of congestion within ajurisdiction regardless of the level of investment toward reducing delay. Reform efforts can do little more than increase the number of available jury trials for some set of cases. No substantial effect on the level of delay can be achieved. The normative policy issue relating to court congestion, thus, becomes much more difficult. The consensus so often obtained in favor of congestion reform has stemmed importantly from the fact that there are no clear normative grounds in favor of delay; thus, everyone agrees that delay ought to be reduced. Where it is acknowledged that delay is inevitable and that all that can be achieved by reform is a shift from settlement to trial, consensus disappears. Though some commentators promote litigation as an end in itself, 10 5 the end is impractical if applied without discrimination. In 1979 in Cook County, for example, almost 49,000 cases were pending while only 523 could be tried to juries. The notion of providing access to trial for all cases is unrealistic. 1"I Indeed, the efforts continue. In July 1988, Cook County was given 39 new associate judges, Chicago Tribune, Apr. 18, 1988, § 3, at 2. And in 1989, Cook County Chief Judge Harry G. Comerford told the Cook County Board that "he needs 130 to 140 new courtrooms, at a cost as high as $500 million, and 50 to 60 more judges because of the mushrooming caseload .... " Chicago Tribune, May 30, 1989, Chicagoland sec., at 1, col. 2. 1 am grateful to Geoffrey P. Miller for this information. 104 For a criticism of another common, yet unhelpful, measure of congestion, the number of cases pending, see supra note 75. 105 See generally Fiss, Against Settlement, 93 YALE L.J. 1073 (1984) (promoting social benefit of judicial pronouncements of public values only available if cases proceed to litigation). HeinOnline -- 69 B.U. L. Rev. 558 1989 1989] COURT CONGESTION 559 The congestion equilibrium hypothesis suggests that the normative grounds for congestion reform must derive from some theory of the appropriate means of rationing access to the courts. How many and what kinds of cases deserve trials even if they must wait out the equilibrium delay to achieve them? These issues are far more troubling and complex, and the normative apparatus for resolving them is not in place. It is clear, however, that simple hostility to delay, so important in motivating the congestion reform effort in past decades, cannot provide much help. HeinOnline -- 69 B.U. L. Rev. 559

### ---Court Capacity

#### The problem is not the amount of cases, but rather the capacity of the courts

Kahn 09, (Jeffrey Khan: Assistant Professor of Law, Southern Methodist University Dedman School of Law, “ZOYA'S STANDING PROBLEM, OR, WHEN SHOULD THE CONSTITUTION FOLLOW THE FLAG?” 2009, Michigan Law Review, Volume 108, <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1360&context=law_faculty>)

The first concern is the easiest to set to rest. Whenever a proposal to expand access to courts and tribunals is made, the first criticism is often a practical one: the "the oft-expressed fear that a 'host of parties' will descend upon it and render its dockets 'clogged' and 'unworkable.' ,201 It is clearly the prospect of such litigation that has worried the Supreme Court when confronted with extraterritorial claims in the past.2°9 The argument is **practically self-refuting. The answer to the threat of court clog is not to create an arbitrary device to exclude plaintiffs with legitimate claims. The answer is to expand the capacity of courts**. In any event, it is hard to see how the criticism has any traction: whether the motion to dismiss is for lack of standing or for some other reason, the motion will be submitted and must be decided. A fact-intensive inquiry into the substantiality of connections does not lend itself to quick disposition.1 Indeed, anyone with a genuine fear that foreign litigants would overwhelm American courts should welcome the end of this strange standing test, for once it is removed courts will increasingly reach the merits of extraterritorial claims. Some clauses of the Constitution may be held to extend beyond our shores while others will be held to have only domestic application. Whatever the conclusion of the courts, those merits-based decisions will have the effect of decreasing some foreign litigation, expediting judicial review of other foreign claims, or they may have no more or less effect than the present system. This is so because this case law will inform litigants whether going to court is likely to be worth the expense. Such case law would also presumably have a valuable informative effect on prospective government action. If, for example, the Takings Clause is held not to extend to the claims of noncitizen plaintiffs regarding property abroad, then courts will quickly be able to dismiss such claims without any need for further inquiry. If the opposite conclusion is reached, one would expect greater respect to be shown by American officials for the property interests of aliens abroad, respect born out of knowledge that constitutional liability might result from their decisions. Isn't that what we mean when we say that rules affect behavior? Might a decision on the merits that the Takings Clause extends to foreign-owned property abroad result in the filing of more claims? Perhaps. But it seems unlikely that that number could be so much greater than the number of claims filed when nobody knows-because so few pass through the sieve of a prudential-standing doctrine exercised at the discretion of a changing cohort of judges-what the merits of the claim actually are.

#### Court clog is caused by structural problems that are NOT the aff

Tadiar 99, (Alfredo F. Tadiar: Chairman, National Amnesty Commission and former Associate Dean, U. P. College of Law, “Unclogging the Court Dockets”, Paper presented in the Symposium on Economic Policy Agenda for the Estrada Administration, June 1, 1999 at INNOTECH, Commonwealth Avenue, Diliman, Quezon City, <https://d1wqtxts1xzle7.cloudfront.net/43348257/Decongestion.pdf?1457092273=&response-content-disposition=inline%3B+filename%3DUNCLOGGING_THE_COURT_DOCKETS_1.pdf&Expires=1593495076&Signature=Ku~8afpJr4mxCihFpYCpuUQ4q6WnJsrffV9Mr2fNeYofTm2Rq9nScRy4QE-w1kPSVljx5JPqfHb97f9nqyjDunG6NGE1TD90QIo3GEpknZ3K-6TFERBaEPD-DgGTvs4p5w~LFJ7Ne0rxjyrsjJENQqXNfwpU9JQ3HgfOZbxrbtXk8DT09k0qqS6~w1EC80QW~9xhPI73jxdiK5cOsTUlJiJA13FJZA7IIyw15KA~sW4hamR3gjq9NIldA5sGMu3lj5fLsip6jKyPKKzPVlcp8HiXl~yN7-1aKaYkD0iB8NJwtwQeWUhkMxtW~wHR2BkyTcd4nVLYbzzFq7Iq60DhaA__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA>)

CAUSES OF DELAYS IN THE DISPOSITION OF CASES Many factors cause delays in the disposition of cases filed with the judiciary. For the purpose of this paper, however, these may be classified into three, namely, (1) **those arising from human failures; (2) those caused by the nature of the judicial system itself; and (3) indiscriminate filing of cases in court**. The causes of delays in disposition of cases are discussed in detail below. 1. Human Failings Human failings refer to weaknesses of the men and women administering the judicial system such as judges, lawyer-advocates, court personnel, prosecutors, sheriffs, defense counsel, process servers, and others connected to or with the system. Delayed resolution of cases emanates from inefficiency, incompetence, sloth or laziness, corruption or conflict of interests of these officials.3 2. Constitutional and Procedural Requirements Factors arising from the adversary nature of the judicial process and the constitutional requirements of due process of law also cause judicial delays. Thus, the constitutional presumption of innocence requires careful screening of criminal charges in the form of preliminary investigations conducted by prosecutors or Municipal Trial Courts performing this function. Only upon an affirmative preliminary finding of merit may the criminal charge be filed in court.4 This is an assurance of protection against hasty and malicious prosecutions. The reform problem that arises here is how to shorten the periods in the different stages of processing without detracting from that socially desirable objective of protecting the legal rights of those drawn into the judicial process. In both civil and criminal actions, concern with procedural legality requires a net period of time for giving notices and the preparation of pleadings. These periods are however, often extended many times, even for such an amorphous reason that counsel is “indisposed”.5 A more strict judge could avoid such unnecessary cause of delay. Furthermore, the strict requirements on proof of service of pleadings, judgments and other paers6 taken together with the much-complained of postal service, are major causes of judicial delay. Modern electronic means of communication, such as the use of computers and fax transmission, among others, are not utilized to the fullest. Chief Justice Hilario Davide, Jr. reaffirms that the Philippine legal system “has much catching up to do with the rapid advances in technology”.7 he Constitution limits the period for rendering decisions: for the Supreme Court, 24 months; 12 months for all collegiate courts; and 3 months for all other lower courts.8 Despite such deadlines, even the Supreme Court has not complied. There is, therefore, a clear need to strictly comply with deadlines set. It is not, however, clear as to what sanctions can be imposed upon the offending court for failing to comply with said deadlines nor what is the effect thereof upon the late decisions. 3. Clogged Dockets Due to Indiscriminate Filing of Court Cases Chief Justice Fred Ruiz Castro largely blames the overcrowding of court dockets to what he calls the “over-use, misuse and abuse” of the judicial remedy. This means that a person seeking redress of a grievance has gone directly to court when it probably would have been more practical to have availed of other modes of dispute resolution. The hypothesis of Chief Justice Castro is that litigation prone lawyers have the courts the place of initial settlement rather than the ultimate place of dispute resolution that they were originally meant to be. The solution to this cause must start with the law curriculum to give more emphasis to the “preventive lawyering function” 9 in order to balance the heavy concentration of preparation for litigation. A re-orientation of lawyers along this line seems wanting. 4. Clogged Dockets Due to Filing of Cases Related to the Issuance of Bouncing Checks Majority of the cases that clog our court dockets today are those filed under BP 22 or the “Bouncing Checks law”. Under this law, the mere issuance of a check, which is later dishonored, immediately makes the drawer criminally liable. The basis of this law, passed during the time of President Ferdinand Marcos, is to make checks a viable and credible means of conducting commercial transactions. The proliferation of bad checks may have negatively affected the economy during martial law as many Filipinos refused to accept checks in commercial transactions. With criminal penalties imposed, it was hoped that not only will the issuance of a bouncing check be deterred, but also payment of the value of the bouncing check by those who issued it, will be enhanced. There is no in-depth study so far on whether there are less bouncing checks now due to this law. Whether or not BP 22 is successful in its declared objective, what is clear though is that, victims of bouncing checks found it convenient to file a criminal case in court as a means of collecting from drawers of bouncing checks. Thus, the volume of cases filed has drastically risen as courts are transformed into collection agencies by creditors who received bad checks. Furthermore, due to the criminal nature of the charges against drawers of bouncing checks, judgment is only rendered upon a process more tedious than that applied in civil cases, further adding to the clogging of court dockets.

#### Preventing litigation won’t do anything, it’s an issue of the accessibility of the courts

Mastro 91, (Randy M. Mastro: Adjunct Associate Professor of Law, Fordham University School Of Law; Associate, Gibson, Dunn & Crutcher, New York, N.Y.; B.A. cum laude 1978, Yale University; J.D. 1981, University of Pennsylvania School of Law; Assistant U.S. Attorney, S.D.N.Y., 1985-87; Deputy Chief, Civil Division, U.S. Attorney's Office, S.D.N.Y, “The Myth of the Litigation Explosion”, 1991, Volume 60 Issue 1, Fordham Law Review, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2945&context=flr>)

"Lawyer bashing" is a time-honored tradition. For instance, the "first thing" they wanted to do in Shakespeare's day was "kill all the lawyers."' That sentiment persists today. Indeed, recent surveys show that, of all professionals, lawyers are held in the lowest esteem.2 Now, Walter Olson chooses to reiterate this tired theme in his book, The Litigation Explosion.3 One would expect such a treatise-"written primarily for the nonlawyer, and by one" 4 -to fade into obscurity. This book, however, has not only made the rounds on the media circuit;5 it has won kudos from within the legal community.6 No less an authority than former United States Supreme Court Chief Justice Warren Burger praised it as "a valuable contribution to the public interest."7 I was intrigued. After all, this purported to be an objective look atwhat I do for a living8 It turned out, instead, to be a right-wing manifesto full of purple prose and misguided notions about how our legal system works and ought to work. Olson starts from the defensible premise that the United States is experiencing a "litigation explosion" that is a "disaster."9 He then argues for a series of regressive and draconian changes-such as fee shifting, 10 attorney liability," increased burdens of proof,'2 and limited discovery 13 -that would necessarily discourage and prevent plaintiffs from filing civil suits.' 4 Olson makes little attempt to hide his ideological biases. He is unabashedly pro-business' 5 and pro-defendant.' 6 He views civil litigation as an evil because it is bad for business. Indeed, he waxes eloquently that the "unleashing" of litigation "clogs and jams the gears of commerce, sowing friction and distrust between the productive enterprises on which material progress depends and all who buy their products, work at their plants and offices, [and] join in their undertakings."' 7 Moreover, Olson derides those who consider litigation an opportunity to vindicate rights. In his view, " 'life would be intolerable if every man insisted on his legal rights to the full.' 8 If Olson's pronouncements have a familiar ring, that is because we have heard this all before from conservative politicians and jurists looking to close off the courts as an avenue of redress for individual rights. 1 9 It is not at all surprising that Olson holds such views. The Manhattan Institute from which he hails is a conservative "think tank" founded by former CIA director William J. Casey.2 " Some critics, in fact, have branded its position papers "skillfully publicized rehash of long-stated conservative positions."'" This book falls well within that categorization. It would be easily dismissed as an uninformed layman's ranting and raving if not for the fact that it appears to reflect a growing sentiment, even within the legal profession, that we litigators are the cause, rather than the cure, of many of our society's ills.' Moreover, the book warrants closer scrutiny because it propagates the myth that litigation is inherently bad and therefore needs to be curtailed.2 3 Olson cavalierly proposes placing severe limitations on one of our society's most fundamental rights-namely, the right to have an impartial jury resolve our disputes with each other and with our government.24 Our courts have long been a vehicle for necessary social reform when the executive and legislative branches, whether by choice or by cowardice, have failed to act.25 Olson sees this virtue as a vice. The retrenchment that Olson urges has already begun. Over the past decade the judiciary has unquestionably become more conservative.26 Right-wing politicians now derisively dub courts doing what they are supposed to do as "judicial activism, ' 27 while arch-conservatives like 01-on stoke the fires of public discontent with selective accounts of litigation abuses. These few abuses, however, do not warrant wholesale changes in our judicial system. Let us not be fooled. This attack on litigation is part of a larger political agenda. Olson and his ilk want to bar the courthouse door precisely because litigators have succeeded in using the courts as a vehicle for social reform. **While it is true that our courts currently have more cases than they can efficiently handle, the answer is surely not to chop plaintiffs at the knees and effectively prevent them from being able to stand in court. Rather, the answer is to increase our commitment to the judicial branch and thereby ensure greater access. We deserve no less. Sadly, we may only realize that fact after the axe has fallen.**

### ---Lack of Judges

#### It’s a matter of a lack of resources such as judges, magistrates, and court houses

Mastro 91, (Randy M. Mastro: Adjunct Associate Professor of Law, Fordham University School Of Law; Associate, Gibson, Dunn & Crutcher, New York, N.Y.; B.A. cum laude 1978, Yale University; J.D. 1981, University of Pennsylvania School of Law; Assistant U.S. Attorney, S.D.N.Y., 1985-87; Deputy Chief, Civil Division, U.S. Attorney's Office, S.D.N.Y, “The Myth of the Litigation Explosion”, 1991, Volume 60 Issue 1, Fordham Law Review, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2945&context=flr>)

**Instead of penalizing people for litigating (as Olson would like to do), we should be taking positive steps to protect litigants' rights**. Olson may be correct that we are experiencing a "litigation explosion." Nevertheless, his solution to make wholesale and arbitrary cuts in litigants' rights could not be more wrong. To cope with this "explosion" and yet preserve fundamental rights, we must devote more resources to the judicial branch. We need more judges, more magistrates, and more courthouses. For indigent civil plaintiffs, we need more court-appointed counsel to assess in the first instance the merits of the claim and then to provide proper representation.9 " Most importantly, we must resist the temptation to solve our courts' congestion problems by the "quick fix" method of closing the courthouse door. **If we severely limit access to our courts, we will inflict the greatest harm upon the very people who need our courts the most**. And, in the process, we will lose a most precious right-the right to be heard, to be vindicated, to be made whole. As this freight train of "reform" rumbles toward what may now be its inevitable destination, I am reminded of a scribe's words about an earlier time and a different debate: "There is more fear in this country than the facts warrant. Beset by doubt, the nation listens to those who seem to offer a cure, even though the medicine be more harmful than the disease."

### ---Congestion Equilibrium

#### Court is inevitable—as delay decreases the amount of cases will always increase

Priest 89 (George L. Priest: John M. Olin Professor of Law and Economics, Yale Law School, “PRIVATE LITIGANTS AND THE COURT CONGESTION PROBLEM”, Boston University Law Review, Volume 69, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1612&context=fss_papers>)

The inverse relationship between trial delay and the expected- value of judgments suggests the existence of a dynamic interactive relationship between changes in the extent of court congestion and changes in the volume of litigation. As shown in equation (3), the expected duration of delay before trial will affect the expected value of a judgment and, thus, the parties' settlement offers. Changes in delay will change these expected values and correspondingly change the parties' settlement offers. **As delay increases, the range of expected judgments declines and differences between litigants'** 4' For a consideration of the effect of prejudgment interest awards, see infra notes 53-54 and accompanying text. 42 Of course, the reduction in present value of the expected judgment begins the moment the plaintiff suffers the loss-the incident date-rather than at the inception of the suit. Since the inception of the suit, however, is largely within the control of the plaintiff or the plaintiff's attorney, I neglect the period between incident and suit. 41 See, e.g., Landes, supra note 31, at 67-71; Priest, supra note 31, at 417. HeinOnline -- 69 B.U. L. Rev. 534 1989 COURT CONGESTION settlement demands and offers decline. As a consequence, some set of marginal litigants will become more likely to settle than to litigate their disputes. Conversely, as delay declines, the range of expected judgments increases, in turn increasing the differences between litigants' settlement demands and offers. Some set of marginal litigants will become relatively less likely to settle and more likely to litigate. Changes in litigation delay, thus, generate offsetting changes in the proportion of cases brought to trial. This interactive relationship between delay and the probability of litigation suggests that there is likely to be some equilibrium level of delay within any jurisdiction. That is, if the likelihood of parties failing to settle and, thus, pressing disputes to trial rises and falls as litigation delay decreases and increases, then court congestion in any jurisdiction is likely to vacillate around some equilibrium level. As litigation delay declines from the equilibrium, fewer cases settle (because expected judgments become higher), more cases proceed to trial, and court congestion increases back toward the equilibrium level. Conversely, as court congestion increases, more cases settle (because expected judgments become lower), and court congestion declines toward the equilibrium again. The concept of an interactive relationship between delay and litigation volume as well as the concept of a congestion equilibrium suggests that the logjam or backlog metaphor, dominant in the delay literature, incorporates a significant misconception. The Zeisel team presumed that the rate that disputes were brought to litigation was constant or, at least, exgenous with respect to court congestion itself. As a consequence, they concluded that court congestion could actually be eliminated44 by equalizing the level of filings and dispositions and then plucking off the accumulated litigation like logs off the lake. The economic approach, however, suggests **that this strategy is likely to be futile**. Reducing congestion and delay increases the expected value of litigation and increases the volume of litigation. In terms of the metaphor, plucking logs off the lake increases the rate that logs flow into the lake. The rate of flow will increase until the equilibrium logjam for the jurisdiction is again attained. Indeed, **even the achievement of caseload currency,** which all reformers have agreed to be the first objective in congestion reform, 45 **may be unattainable.** The interactive relationship between delay and the proportion of dis44 Of course, no one has ever presumed that delay between suit and trial could be totally eliminated-that is, that a trial would occur instantaneously upon suit-since all must concede that some time is necessary for trial preparation. Yet, there has remained the ambition of reducing delay to some minimal period corresponding to no more than necessary preparation time. For modem illustrations of this view, see the efforts of various states and the ABA to establish time standards for civil trials, discussed in B. MAHONEY, supra note 20, at 109. 45 See H. ZEISEL, supra note 1. See also supra notes 3-4 and accompanying text. 1989] HeinOnline -- 69 B.U. L. Rev. 535 1989 BOSTON UNIVERSITY LAW REVIEW [Vol. 69: 527 putes that proceed to litigation implies that, as courts process cases with greater and greater rapidity, the expected values ofjudgments will increase, and more disputes will result in trial rather than settlement. In terms of the logjam metaphor, dredging the river to allow logs to flow faster out of the lake simultaneously increases the rate that logs flow into the lake. Again, this is the concept of a congestion equilibrium

### ---IP Litigation Cost

#### The cost of the case puts IP litigation at risk, not the backlog

WLTW 18, (**Willis Towers Watson** is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth, “Intellectual Property Litigation Risk Report”, 2018, Willis Towers Watson, [file:///C:/Users/x/Downloads/global-intellectual-property-litigation-risk-research-report.pdf](file:///C%3A%5CUsers%5Cx%5CDownloads%5Cglobal-intellectual-property-litigation-risk-research-report.pdf))

In the U.S. alone, an average of 12,000 intellectual property (IP) cases are filed in federal court each year; to put that into context, each year there are approximately 6,400 other commercial cases filed in federal court.1 But IP litigation is not limited to the U.S. For example, in China, the number of IP cases filed in the first instance courts doubled from 2013 to 2017,2 and the Global IP Project estimates 1,300 cases are filed each year in Germany.3 As individuals and organizations continue to develop intellectual property at increasingly high quantities and rates, global litigation frequency will also rise. In fact, the number of patents granted nearly doubled from 2002 to 2016,4 as did the number of worldwide trademark registrations.5 What’s more is that the countries in which companies receive IP rights are shifting; these shifts will impact where future IP cases are filed. In today’s competitive business arena, stakes are high and all property is valuable. It’s just as likely that a company could defend itself against a patent infringement suit for a technology it uses to run its business (e.g. CRM or logistics software) as it is to be sued for a new-to-market technology or product that it develops. Not all suits are obvious, and not all are predictable. It isn’t enough to simply manage and honor originality and integrity; you must also manage your risk and exposure. While many companies appreciate intellectual property’s value, they have not yet extended the IP management function to include IP risk management – and, as such, have not quantified their own IP risk. Risk Management, Legal, Finance and Human Resources may all touch on IP and risk in varying capacities, but they typically do not take a coordinated, comprehensive approach to fully managing IP risk itself. Instead, costs to manage that risk tend to be siloed in Legal and Research & Development departments. As a result, the full context and benchmarking data evade companies, preventing them from determining how much they truly spend managing various IP risks. This is a financially costly approach that leaves organizations vulnerable. **Case cause and severity will vary, but all cases share one commonality: costliness.** In the U.S., between litigation expenses and damages or settlements, case costs can easily reach the six-figure range for smaller companies, with large organizations often facing case costs in the eight figures. These hard numbers do not factor in other indirect costs, such as lost productivity, lost customers or diminishing brand equity. Outside of the U.S., those numbers are typically lower, particularly in Europe where the threat of an injunction serves as leverage. However, IP damages awarded by Chinese courts are beginning to increase due to new IP policy initiatives.6

### 1AR – U/Q Overwhelms – Corona

#### **The backlog problem will continue for years even after the pandemic is over**

Chan 3/16, (Melissa Chan (simplified Chinese: 陈嘉韵; traditional Chinese: 陳嘉韻; pinyin: Chén Jiāyùn; Cantonese Yale: Chàn Gāwahn,June 2, 1980) is an American broadcast journalist, who currently presents DW News Asia on Deutsche Welle TV, 'It Will Have Effects for Months and Years.' From Jury Duty to Trials, Coronavirus Is Wreaking Havoc on Courts, March 16, 2020, Time, <https://time.com/5803037/coronavirus-courts-jury-duty/>)

When Joanna Lin appeared for jury duty in New York City on March 12, she noticed the other 180 prospective jurors in the Manhattan waiting room were trying to avoid one another, choosing seats as far apart as possible. Some wore masks, and just about everyone, including the court clerk, was discussing the coronavirus. “After all these other things are canceled,” Lin, 34, recalls thinking, “there’s still jury duty.” The next day, that changed. New York and several other courts across the country had suspended jury selection and postponed new criminal and civil trials to try to stem the spread of the virus. On Monday, **the U.S. Supreme Court announced it was postponing upcoming oral arguments for the first time in more than 100 years**; the last time it did so was in 1918 in response to the Spanish flu epidemic. Jury duty cancellations no doubt are being met with relief by many prospective jurors who feared having to sit in a room teeming with strangers for hours at a time when health officials were urging people to keep their distance from each other. “You’re in close quarters,” says Lin. “If one person gets sick, you’re screwed.” And while closing courtrooms and halting jury duty makes sense for public health reasons, some legal experts warn the delays could create an overwhelming backlog of cases and have legal ramifications, since defendants are guaranteed a speedy and fair trial under the Constitution. “I’ve never heard of anything like this,” says Raffi Melkonian, an appellate lawyer in Houston. “This truly is unprecedented. **It will have effects for months and years after we are back to normal.”** With the [fast-moving coronavirus](https://time.com/5801726/coronavirus-models-forecast/) already affecting thousands of people in the United States, federal and state courts throughout most of the nation have implemented new measures—from restricting who can enter the building to delaying jury trials—in an effort to contain it. In Los Angeles, the high-profile murder trial of real estate scion Robert Durst has been put on hold for three weeks, a judge announced Sunday. The 76-year-old was [arrested and charged](https://time.com/5435645/robert-durst-jinx-murder-trial/) in 2015 with his friend Susan Berman’s murder as HBO was airing *The Jinx*, a documentary series that delved into the disappearance of Durst’s wife Kathie in 1982 and Berman’s murder in Los Angeles 20 years ago. Durst’s highly anticipated trial has been slated to last about five months. Courts in several states, including New York, Washington state, Texas, Connecticut, Missouri, Florida, Arizona, Ohio and Virginia, have suspended jury trials. The U.S. District Court for the Eastern District of Virginia has additionally postponed all misdemeanor, traffic and petty offense cases. In Michigan, an executive order issued Monday by the state Supreme Court granted trial judges the power to adjourn any civil and criminal matter if the defendant is not in custody, and to try to use videoconferencing if the defendant is in custody. “We are not in a position right now to call citizens in for jury duty in big groups. It’s not responsible,” Michigan Supreme Court Chief Justice Bridget McCormack [said](https://www.mlive.com/public-interest/2020/03/michigan-courts-urged-to-adjourn-trials-take-other-emergency-measures-because-of-coronavirus.html?utm_medium=social&utm_campaign=mlive_sf&utm_source=twitter) at a news conference. ***Keep up to date with our daily coronavirus newsletter by clicking*** [***here***](https://cloud.newsletters.time.com/coronavirus?source=article)***.*** Some courts have not yet taken drastic measures, Melkonian says, highlighting a disparity in how various jurisdictions are dealing with the pandemic. In California, for example, while Durst’s case in Los Angeles has been paused, many courts in different counties have not made major changes to their operations. Some have only barred access to people who have recently visited disease-battered countries like China and Italy, or to those who have flu-like symptoms. The pandemic has resulted in at least 65 deaths in the U.S. and more than 7,000 deaths [globally](https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6). [Millions of Americans](https://time.com/5803692/bars-restaurants-closed-coronavirus/) have been urged to stay home as cities and states, including Illinois, Ohio, Massachusetts, Washington state and New York City, have ordered bars to close and restaurants to halt dine-in services. [Schools and colleges](https://time.com/5803355/school-closures-coronavirus-internet-access/) also have been closed. A judge in Dallas expressed his concerns about delays in court while weighing how to proceed. In a statement on March 12, Dallas County Judge Clay Jenkins said he was suspending civil jury trials, but not criminal ones, because the “inability to guarantee a speedy trial could result in cases being dismissed.” Advocates also worry the delays will mean defendants have to languish in already-overcrowded jails for months or even years. “The idea that we might not have jurors really would amplify the problem that already exists,” says Nicole Gonzalez Van Cleve, a criminal justice researcher and Brown University sociology professor. “The pandemic is exerting a real influence on people’s basic rights and dignity and their ability to go free.” Van Cleve says she fears defendants who can’t afford bail and become desperate will take plea bargains just to get out of jail instead of waiting for their day in court. “Imagine the fear of being arrested for a really small crime and the next thing you know, your public defender says, ‘Well, if you plead guilty, we can let you go. But if you stay and wait trial, which could be weeks or months or unknown, then you’d have to wait in the jail with a pandemic,” Van Cleve says. “These aren’t really choices anymore,” she adds. “These are human rights at stake.”

#### The pandemic disrupts the justice system and the backlog will only grow

Reynolds 3/19, (Matt Reynolds, a legal affairs writer, joined the *ABA Journal* staff in 2020, “How the coronavirus is upending the criminal justice system”, March 19, 2020, ABA Journal, <https://www.abajournal.com/web/article/pandemic-upends-criminal-justice-system>)

The novel coronavirus is wreaking havoc on the criminal justice system, experts warn, and could delay the right to a fair trial and rob detainees of their day in court. The pandemic will have consequences for criminal defendants’ right to a speedy trial under the Sixth Amendment of the Constitution, according to legal experts. If that right is found to be violated, a defendant’s conviction or sentence can be set aside. ABA Criminal Justice Section Chair Kim Parker notes most states have statutory speedy trial limits and says the impact of the virus is going to overwhelm dockets in courthouses all over the country. She warns the impact of the disease could lead to delays and an expanding backlog of cases. **“It’s not as if anything’s going away. It just keeps backing up, backing up, backing up,** and the days aren’t long enough,” Parker says. Many federal and [state courts](https://www.ncsc.org/Newsroom/Public-health-emergency.aspx) have suspended or postponed criminal jury trials. Among the states hardest hit by the virus is New York, where state courts [responded](https://www.nycourts.gov/whatsnew/pdf/Updated-Protocol-AttachmentA3.pdf) by ordering courts to finish pending criminal and civil trials while delaying new trials until further notice. In Washington state, multiple courts suspended or delayed trials. California has issued no statewide delays or restrictions, leaving it up to individual courts to decide how to handle new cases. “California’s judicial branch is facing an unprecedented challenge with the COVID-19 virus,” Chief Justice Tani Cantil-Sakauye wrote in guidance issued Monday. “I recognize that this situation may require the temporary adjustment or suspension of court operations and procedures. I stand prepared to prioritize all such requests that may be submitted in the days ahead.” Some courts could limit exposure to the virus by encouraging bond review hearings through video or teleconferencing. The Court of Common Pleas of Crawford County in Pennsylvania [issued](https://bloximages.chicago2.vip.townnews.com/meadvilletribune.com/content/tncms/assets/v3/editorial/f/21/f213574a-6890-11ea-a202-5bad6dd5b082/5e713830815b3.pdf.pdf) guidelines this week that limit sentence and parole and probation violation hearings to video or teleconferencing only. The court set the same guidelines for preliminary hearings for inmates and preliminary arraignments. Parker says she has been talking to prosecutors who are trying to provide some relief in the wake of the crisis, ensuring that when appropriate, defendants are not held in custody. Defendants on pretrial release often have longer speedy trial limits than those who are detained. Parker notes people accused of more serious crimes are often held in custody, which will compound existing problems as more defendants enter jails. “If you’re waiting for a trial that’s held out another 50 days, then we make our overcrowded jails already more overcrowded because people continue to be charged and continue to commit crimes that require attention,” Parker says. Sedgwick County District Attorney Marc Bennett in Kansas is one of the prosecutors with whom Parker has been in contact. On Tuesday morning, Bennett watched Kansas state legislators on YouTube as they considered a [bill](http://www.kslegislature.org/li/b2019_20/measures/documents/sb102_enrolled.pdf) that would give the chief justice of the Kansas Supreme Court emergency powers to extend speedy trial deadlines. “We’re talking about extraordinary circumstances where health and human safety is at stake,” says Bennett. Overcrowding in jails could have a broader impact on the public health, Bennett adds, noting deputies, health care workers, kitchen staff and civilian mentors move in and out of the jails along with inmates. “This is going to prove to be very difficult to manage,” Bennett says. The Innocence Project, which works to overturn wrongful convictions, said in an emailed statement it is concerned that state correctional facilities might not be prepared to protect vulnerable inmates in jails and prisons. “It is, of course, also disappointing that **this will inevitably delay justice for our clients**,” the nonprofit legal organization added. Stephen Munkelt, a criminal defense attorney in Nevada City, California, says many inmates in the system are pretrial detainees who have been arrested but not convicted, and cannot afford bail to get out. “One of the greatest at-risk populations in an epidemic situation is people in prisons and jails. If a virus gets into that kind of institution, it’s very hard to slow it down or get rid of it,” Munkelt says, adding he would like to see officials immediately release nonviolent inmates. With more than 2 million inmates, the United States has the [highest prisoner population](https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=) in the world. More than 540,000 incarcerated people who haven’t been convicted or sentenced remained detained, according to a March 2019 report by the Prison Policy Initiative. Many were stuck because they could not afford bail. Last week, Iranian officials released 70,000 prisoners in a bid to fight the coronavirus. On Tuesday, the judiciary in Iran [announced](https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/iran-temporarily-frees-85000-prisoners-including-political-ones-amid-coronavirus-idUSKBN21410M) it had temporarily freed more than 85,000 people. Prosecutors could cut into their caseloads by offering more plea deals. Neal Sonnett, a former assistant U.S. attorney who is a current ABA delegate and member of the Criminal Justice Section, says in any given week, state prosecutors, defense lawyers and public defenders might have 20 or 30 cases ready for trial. “If a prosecutor has 25 cases set for trial, and they’re all continued or backed up and then the next week, he’s going to have yet another 25 trials. And it’s going to get to a point where there are major backlogs. And one way to deal with the backlogs is to work out plea agreements,” Sonnett says.

#### **Backlogs have existed before the coronavirus, the pandemic only exacerbates it now, even when it ends the preference will be on criminal cases**

Erisman 5/6, (*Kerry L. Erisman is an attorney and associate professor of legal studies with*[*American Military University*](http://start.amu.apus.edu/degrees/overview?utm_source=inpublicsafety.com&utm_medium=link&utm_content=content%20-%20American%20Military%20University&utm_campaign=Degrees%20-%20Overview%20-%20LT%20-%20AMU)*. He is a retired Army officer who previously served as an Army military police officer and later as a prosecutor, chief prosecutor, and defense attorney. Kerry writes and teaches on important criminal justice issues and military spouse issues including leadership, critical thinking, and education,* “How Coronavirus Has Stifled the Criminal Justice System”, May 6, 2020, In Public Safety, <https://inpublicsafety.com/2020/05/how-coronavirus-has-stifled-the-court-system/>)

**The coronavirus has also significantly affected the state and federal court systems, in some cases bringing them to a near standstill. Prior to the spread of COVID-19, many courts had lengthy backlogs of criminal and civil cases. The past few months have exacerbated the backlogs and jeopardized the constitutional rights of defendants.** The Sixth Amendment provides criminal defendants the right to a speedy and public trial, but **the pandemic has significantly impeded the courts from providing these rights to defendants.** *[Related:* [*Holding Prosecutors and Judges Accountable for Unequal Justice*](https://inpublicsafety.com/2019/09/holding-prosecutors-and-judges-accountable-for-unequal-justice/)*]* Court systems are struggling to figure out how to deal with defendants awaiting trial but who currently cannot be tried due to coronavirus restrictions. Many of these individuals are awaiting trials while incarcerated as the judiciary determines how to safely proceed. For example, the judiciary is struggling to determine how to proceed with jury trials that require jurors to be seated in close proximity in the courtroom and in small deliberation rooms. Is it time for prosecutors to seek alternative dispositions to those awaiting trial so as to move cases forward and begin reducing the growing backlog? The coronavirus pandemic has affected every level of the judiciary, including the Supreme Court of the United States, which postponed oral arguments for [March](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_03-16-20) and [April](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-03-20). Oral arguments are a vital part of the judicial process that occurs before the Court’s opinions are drafted. These postponements resulted in about 20 cases being put on hold, some of which could have important consequences for the Executive Branch. Beginning this month, the Supreme Court will take unprecedented steps and conduct a series of [oral arguments via telephone conference](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-30-20). It will also provide real-time, live streaming of oral arguments for the first time in the Supreme Court’s history. Changes to Corrections Finally, COVID-19 has significantly affected prisons throughout the United States. Prisoners live in close quarters and cannot maintain any type of social distancing. Prison personnel also cannot avoid close and daily contact with prisoners, putting both groups at increased risk of exposure. Many states and federal confinement facilities have instituted measures to release nonviolent criminals early to reduce the prison population and make it safer for remaining prisoners and prison employees. For example, Attorney General William Barr has directed the Bureau of Prisons to prepare the release of nonviolent inmates, especially in areas heavily affected by the coronavirus. In a [memo](https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000) dated April 3, the Attorney General noted that [recent legislation](https://www.documentcloud.org/documents/6819239-FINAL-FINAL-CARES-ACT.html) “now authorizes me to expand the cohort of inmates who can be considered for home release upon my finding that emergency conditions are materially affecting the functioning of the Bureau of Prisons.” Barr further stated that in response to the legislation, “I hereby make that finding and direct that … you give priority in implementing these new standards to the most vulnerable inmates at the most affected facilities.” Many states have implemented similar measures and have released nonviolent offenders to help to avoid the spread of the coronavirus. Research Needed to Understand the Total Impact of Coronavirus on the Criminal Justice System While we are still in the midst of combating the spread of COVID-19, it is difficult to predict its long-term effects on the criminal justice system. Backlogs, for example, have extended from months to a year or more, according to a judicial assistant in the Arizona Superior Court who is also a current American Military University master’s student. When trials resume, the preference will be on criminal cases in order to meet the constitutional mandates afforded to criminal defendants. To better understand the full picture will require criminal justice leaders and administrators to collaborate with researchers and academics to collect data and assess the ongoing changes brought about by the coronavirus pandemic. The outcomes and lessons learned from such research will hopefully help law enforcement personnel and criminal justice leaders and administrators to be better equipped and prepared to handle any future emergency situations facing the nation.

### 1AR – AT: Virtual Courts

#### Even with emergency cases and virtual courts, there’s still a huge backlog

Evans 5/7, (Whittney Evans grew up southern Ohio and has worked in public radio since 2005. She has a communications degree from Morehead State University in Morehead, Kentucky, where she learned the ropes of reporting, producing, and hosting, “Judiciary Extends Emergency Order A Fourth Time, Prepares for Massive Case Backlog”, May 7, 2020, VPM News, <https://vpm.org/news/articles/13207/judiciary-extends-emergency-order-a-fourth-time-prepares-for-massive-case>)

The Supreme Court of Virginia is extending a [judicial emergency order](http://www.vacourts.gov/news/items/covid/2020_0506_scv_order.pdf) for a fourth time, through June 7th. And courts can start hearing non-emergency cases in person in about two weeks -- as long as they take steps to minimize the risk of spreading disease. Since the judicial emergency order began nearly two months ago, court dockets have been limited to only emergency cases. That includes criminal arraignments, protective order cases and emergency child custody or protection cases. Most of those hearings have taken place electronically or by phone. Courts are still encouraged to prioritize emergency cases and continue using video conferencing or phone calls to conduct hearings. In addition to the extension, the Supreme Court of Virginia outlined some of the challenges courts are facing as they try to balance public safety while keeping up with caseloads. The Court wrote in the latest update to the emergency order that, last year, Virginia circuit and district courts were hearing more than **100,000 cases per week. Now they have a backlog of 673,000 cases to tackle when they reopen.** “**Every week, with the dockets limited only to emergency cases, adds approximately 60,000, 18,000 and 19,000 more cases to this growing backlog** in the General District, Juvenile and Domestic Relations District Courts and Circuit Courts, respectively,” the order said. The court also noted there’s **an ongoing shortage of court clerks and other judicial staff**; a problem General Assembly members tried to resolve in this years’ budget. But due to the anticipated economic impacts of the pandemic, new spending was frozen and those planned new hires are on hold.

### 1AR – U/Q Overwhelms – SCOTUS

#### The Supreme Court has postponed oral arguments for the first time in over a century

Wolf 3/16, (Richard Wolf covers the Supreme Court and legal issues for USA TODAY and the USA TODAY Network. He previously covered the White House and Congress over a 30-year career in Washington. This is his last branch, “Supreme Court, for first time since 1918, postpones oral arguments”, March 16, 2020, USA Today, <https://www.usatoday.com/story/news/politics/2020/03/16/coronavirus-supreme-court-march-oral-arguments-postponed/5057971002/>)

WASHINGTON – The Supreme Court announced Monday that it is postponing oral arguments scheduled for this month because of the coronavirus outbreak, something **it has not done in more than 100 years.** The court already had [closed its doors to the public](https://www.usatoday.com/story/news/politics/2020/03/11/coronavirus-lawmakers-consider-temporary-halt-capitol-visitors/5022991002/) last Thursday until further notice "out of an abundance of caution." The justices had several major cases scheduled for oral argument in March. Tops on the list were battles over subpoenas for [President Donald Trump's tax returns and financial records](https://www.usatoday.com/story/news/politics/2019/12/13/donald-trump-tax-financial-data-supreme-court/4410231002/) from congressional committees and New York prosecutors. Trump's lawyers want the documents to remain shielded. "In keeping with public health precautions recommended in response to COVID-19, the Supreme Court is postponing the oral arguments currently scheduled for the March session," the announcement said. "The court will examine the options for rescheduling those cases in due course in light of the developing circumstances." The last time oral arguments were postponed was in 1918 amid the Spanish flu epidemic. The court also shortened its argument calendars in August 1793 and August 1798 in response to yellow fever outbreaks. There had been speculation that the court – which famously conducts business as usual even during blizzards and government shutdowns – might hold oral arguments but without allowing the public inside. Only the justices, lawyers arguing the cases, and journalists would have been present under that scenario. Liberal organizations responded quickly to the court's announcement, urging the justices to find another way to hear and decide the battle over Trump's financial records. Although the president has lost in lower courts, any delay at the Supreme Court would help his cause by keeping the records hidden. Christopher Kang, chief counsel of the [liberal advocacy group Demand Justice](https://www.usatoday.com/story/news/politics/elections/2019/07/28/pack-court-liberals-conservatives-fight-over-supreme-court-size/1821303001/), said the postponement should not let Trump "continue stonewalling subpoenas for his financial records." “By pausing correctly-decided lower court decisions and then refusing to take this case on an expedited basis, the court has already denied prosecutors and Congress months of time to bring to light any wrongdoing before the election," Kang said. "That cannot continue indefinitely." In the meantime, the court said the justices will hold their regularly scheduled private conference Friday, but some of them may participate by phone. That probably will include [Associate Justice Ruth Bader Ginsburg](https://www.usatoday.com/story/news/politics/2020/01/08/justice-ruth-bader-ginsburg-says-she-cancer-free/2849999001/), who turned 87 on Sunday and has had four bouts of cancer in the past two decades. Six of the nine justices are at least 65. Also postponed: • A major test of the separation of church and state in a case concerning the [right of religious schools to fire teachers](https://www.usatoday.com/story/news/politics/2019/12/18/church-v-state-supreme-court-consider-religious-schools-autonomy/2685531001/) despite employment discrimination laws. • A copyright battle over [Google's use of Oracle's Java programming](https://www.usatoday.com/story/news/politics/2019/11/15/google-oracle-copyright-dispute-decided-supreme-court/2530706001/) language to create Android, the world's most popular mobile software. The high court holds oral arguments in two-week sittings that begin in early October and extend through April. Decisions are made through the end of June. The next regularly scheduled sitting is set to begin April 20. Among its cases: • Challenges from Washington State and Colorado on whether the [538 members of the Electoral College](https://www.usatoday.com/story/news/politics/2020/01/17/presidential-elections-supreme-court-weighs-power-voters-electors/2834655001/) must vote for their states' winning presidential candidates. • An effort by the Trump administration to let employers and universities with religious or moral objections [deny women insurance coverage for contraceptives](https://www.usatoday.com/story/news/politics/2020/01/17/birth-control-coverage-supreme-court-weigh-religious-objections/2679555001/).

### 1AR – Link Turn

#### Empirics prove that reforms help decrease criminal court summons

NYC Council 17, (The **New York City Council** is the lawmaking body of the **City** of **New York**. It has 51 members from 51 **council** districts throughout the five boroughs. The **council** monitors the performance of **city** agencies and makes land use decisions as well as legislating on a variety of other issues, “The Criminal Justice Reform Act: One Year Later”, June 30, 2017, New York City Council, <https://council.nyc.gov/the-criminal-justice-reform-act-one-year-later/>)

Too many people were focused on an outdated and wrong policy of over-criminalizing small offenses – one that has clearly affected communities of color. Our City is safer than ever and the Council has lead the way with smart, progressive legislation that works. Speaker Melissa Mark-Viverito In May 2016, the Council passed historic legislation to create more proportional penalties for certain low-level, non-violent offenses. The **Criminal Justice Reform Act (CJRA) was signed into law** on June 13, 2016, and has now led to a **90 percent drop** in criminal court summonses. By reducing summonses issued, the City helps to prevent minor offenses from leading to arrests. Being arrested can have a severe impact on a person’s life, even if that person has had no prior interaction with the criminal justice system. In August 2017, the Council also worked with four of the City’s District Attorney offices to clear the summons backlog for minor offenses like having an open container or entering a park after hours. This dismissed over 644,000 outstanding warrants. Speaker Melissa Mark-Viverito called for this initiative in her [2017 State of the City address](https://council.nyc.gov/news/2017/02/27/speaker-melissa-mark-viverito-delivers-state-of-the-city-2017-address/), and spent the next year and a half championing it, so that New Yorkers would no longer have unnecessary interactions with the criminal justice system. Preliminary data shows that **50,854 less** summonses were issued between June 13, and October 1, 2017, than the same period the year prior. Thousands of summonses were being issued annually for these offenses, which disproportionately impacted low-income people of color. This reduction means that thousands of New Yorkers will never face the threat of **unnecessary arrest** for failure to appear in court for a low-level offense. **This translates to less cases clogging up our overburdened court systems,** more people at home caring for their families and not missing work or school, and less New Yorkers being sent to Rikers, which saves the City from unnecessary expenditures for non-violent offenses.