Research

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Just, Speedy, and Inexpensive?
An Evaluation of Judicial Case Management Under the CJRA

The Civil Justice Reform Act (CJRA) of 1990 is rooted in more than a decade of concern that cases in federal courts take too long and cost litigants too much. In the late 1980s, several groups began formulating reform proposals. One of these—the Task Force on Civil Justice Reform, initiated by Senator Joseph Biden and convened by the Brookings Institution—produced a set of recommendations that ultimately led to legislation.

The new legislation, the CJRA, required each federal district court to assess its dockets and to develop a plan for civil-case management to reduce costs and delay. To establish an empirical basis for assessing new procedures adopted under the Act, the legislation also provided for an independent evaluation. Ten district courts, denoted "pilot" courts, were required to adopt plans that incorporated certain case management principles. Expectations were high that the implementation of those principles would have substantial effects.

The mandated evaluation, which focused on the consequences of the pilot program, was conducted by RAND's Institute for Civil Justice (ICJ). In a comprehensive five-year effort, the ICJ research team, led by James Kakalik, examined the effects of the CJRA's case management principles on time to disposition, costs, and participants' satisfaction and views of fairness.

To preview the main findings of the evaluation:

- The CJRA pilot program as implemented had little effect on time to disposition, litigation costs, satisfaction, or views of fairness.
- Some case management procedures—for example, certain types of alternative dispute resolution—have no major effects on cost and delay.
- However, a package of procedures containing early judicial management, early setting of a trial date, and shorter discovery cutoff could reduce time to disposition by 30 percent, with no change in direct litigation costs, satisfaction, or perceived fairness.

OVERVIEW OF THE CJRA EVALUATION

The CJRA's pilot program required ten federal district courts to incorporate certain case management principles into their plans and to consider incorporating certain other case management techniques. To permit comparisons, the evaluation included ten other districts; these districts were not required to adopt any of the case

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management Under the Civil Justice Reform Act, *by J. S. Kakalik, T. Dunworth, L. A. Hill, D. McCaffrey, M. Oshiro, N. M. Pace, and M. E. Vaiana, RAND MR-800-ICJ, 1996, 51 pp., $8.00, ISBN: 0-8330-2472-8;* Implementation of the Civil Justice Reform Act in Pilot and Comparison Districts, *by J. S. Kakalik et al., RAND MR-801-ICJ, 1996, 283 pp., $20.00, ISBN: 0-8330-2455-8;* An Evaluation of Judicial Case Management Under the Civil Justice Reform Act, *by J. S. Kakalik et al., RAND MR-802-ICJ, 1996, 386 pp., $20.00, ISBN: 0-8330-2474-4; and* An Evaluation of Mediation and Early Neutral Evaluation Under the Civil Justice Reform Act, *by J. S. Kakalik et al., RAND MR-803-ICJ, 1996, 492 pp., $20.00, ISBN: 0-8330-2475-2. These documents are available from National Book Network (Telephone: 800-462-6420; FAX: 301-459-2118) or from RAND on the Internet (order@rand.org). RAND is a nonprofit institution that helps improve public policy through research and analysis; its publications do not necessarily reflect the opinions or policies of its research sponsors.*

management principles or techniques. Neither the pilot nor the comparison districts had the option of not participating in the evaluation.

The pilot and comparison districts, which are comparable and represent the full range of districts in the United States, encompass about one-third of all federal judges and one-third of all federal case filings.

The pilot districts were required to implement their plans by January 1992; the other 84 districts, including the comparison districts, could implement their plans any time before December 1993.

The case management principles and techniques mandated in the pilot program fall into four basic categories:

Differential case management: Tailoring the type of management to the needs of the case, rather than processing every case the same way.

Early active judicial management: Having the judge play an active role rather than leaving management of the case to the lawyers.

Judicial management of discovery: Having the judge set time limits and perhaps other controls on the process by which each side discovers information about the other side's case.

Referral of appropriate cases to nonbinding alternative dispute resolution such as arbitration, mediation, and neutral evaluation to supplement the normal court processes.

To evaluate the effects of these principles, the ICJ team compiled the largest and most comprehensive database on the federal courts to date. Selecting a random sample of more than 12,000 cases, they followed them from filing to termination. They surveyed lawyers, litigants, and judges associated with those cases, and received responses from judges on about 3,000 cases, from about 10,000 lawyers, and from about 5,000 litigants. They also used data from court databases and records; from districts' plans, rules, and documents; and from time sheets reflecting a judge's work on each case. Much of this information had never before been available for independent analysis.

The team used multivariate statistical analyses to estimate the relationship between case management and time, cost, satisfaction, and perceptions of fairness. They also interviewed hundreds of people to place the study findings in the context of how the court system operates.

HOW THE COURTS REACTED TO THE CJRA

The CJRA called for the creation of advisory groups in each district. The groups' mandate was to assess the condition of the civil dockets, identify the principal causes of delay and excess cost, and make recommendations, which the court was free to accept or reject, for dealing with these problems. The advisory groups were also to provide input to an annual reassessment for each district.

In general, the advisory groups approached their mission with dedication and conscientiousness, and most courts adopted their advisory group's recommendations.

All of the pilot and comparison districts created plans that complied with the loosely worded statutory language of the Act. But the amount of real change varied widely. Some districts did not plan major changes, and, in some districts, planned changes were not fully implemented. Thus, if the spirit of CJRA was experimentation and change, then the districts met that spirit to varying degrees.

Table 1 illustrates this point with respect to differential case management. There are two principal approaches to differential case management, both of which comply with the language of the CJRA. In the **judicial discretion** approach, the judge individually tailors management for each case. In the **track** approach, each case is assigned to a specific management track such as standard or complex; the type of management that the case receives is at least partly determined by the track assignment.

Table 1

Pilot Districts Did Not Fully Implement Differential Case Management

Stage	Judicial Discretion Approach	Track Approach
Before CJRA (12/91)	10 districts	0 districts
Pilot district plans	4 districts	6 districts
Implementation of plans	4 districts + 5 districts de facto	1 district

Before CJRA, all ten pilot districts used the judicial discretion approach. Subsequently, six districts adopted plans that incorporated tracking. However, only one of them implemented the plan with a substantial volume of cases; the remaining five actually retained the judicial discretion approach in managing the vast majority of their general civil cases.

Interviews with judges and lawyers suggested some reasons a tracking system was not successfully implemented. They include the difficulty in determining the correct track assignment for most civil cases if only the objective data available at case filing are used, and judges' desire to tailor case management to the needs of specific cases and to their own style of management.

EFFECTS OF THE CJRA PILOT PROGRAM

As implemented, the CJRA's package of case management policies had little effect on time, costs, or attorneys' satisfaction or views of fairness. This assessment is based on statistical analysis of cases in the pilot and comparison districts, on the results of judicial time studies, and on the survey of judges about how they managed cases before and after CJRA.

Figures 1 and 2 illustrate these findings.

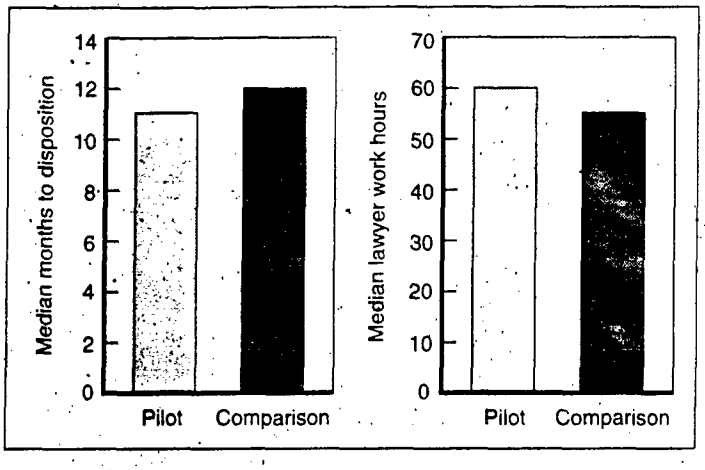

Figure 1—Pilot Program Had No Significant Effects: Time and Cost

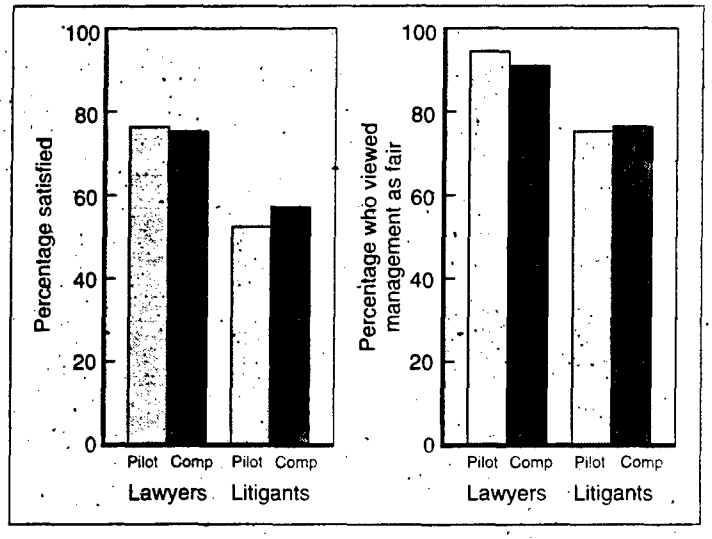

Figure 2—Pilot Program Had No Significant Effects: Satisfaction and Views of Fairness

Figure 1 shows median months to disposition and median lawyer work hours. The small differences depicted in Figure 1 are not statistically significant. Figure 2 shows a similar pattern of results for participants' satisfaction and views of fairness.

An analysis of the time judges spent on cases sheds further light on the failure of the CJRA pilot program—as implemented—to have much of an effect. The time sheets that judges filled out for each case in the sample revealed that judges did not change the amount of time they spent on civil cases, on average, after CJRA. In addition, judges overwhelmingly said that they did not manage cases any differently after CJRA than before.

However, one aspect of CJRA appears to have had an effect. The Act requires a semiannual report, available to the public, disclosing how many "old" cases each judge has. Although the total number of pending cases has been rising since the CJRA was enacted, the number of 3-year-old cases pending has been declining since this public reporting began.

WHY THE CJRA PILOT PROGRAM HAD LITTLE EFFECT

Why didn't the CJRA generate much change in most districts? There are at least three reasons:

- First is the Act itself, which was loosely worded to allow districts to experiment with different forms of case management. However, that wording also allowed many districts and judges to interpret their prior practices as complying with the Act.
- Second, the pilot program incorporated in the Act was viewed by many as an attempt by Congress to mandate judges' behavior; this view gained credence from the fact that the driving force behind the legislation was a task force that did not include any active judges. (It did include four former federal district court judges.) Such perceptions did not foster implementation. Some judges and others viewed the congressional mandates as curtailing judicial independence accorded judges by the Constitution. Others viewed the Act's procedural innovations as placing undue emphasis on speed and efficiency at the possible expense of justice.
- Finally, the Act lacked effective mechanisms for ensuring that the policies adopted in district plans were carried out.

EFFECTS OF CASE MANAGEMENT POLICIES

Despite the fact that the pilot program, as implemented, had little overall effect, the wide variation in how individual judges manage cases made it possible to evaluate the effect of specific case management policies, using detailed data from the study's sample of more than 12,000 cases. And the analysts found that what judges do to manage cases does indeed matter. Among the procedures assessed, three warrant particular attention: early judicial case management, early setting of a trial date, and reducing the time to discovery cutoff.

Early Judicial Management

The case-level analysis clearly showed that early judicial management significantly reduced time to disposition, lowering the median time by about 1.5 months. (In this instance, *early judicial case management* is defined as beginning management within six months of the case's being filed. Alternative definitions of *early* produced similar results.)

The component of early management that had the biggest effect was setting the trial date early. Indeed, early management that includes setting the trial date early reduces median time by an additional 1.5 to 2 months. Figure 3 illustrates the effect of this component of early management.

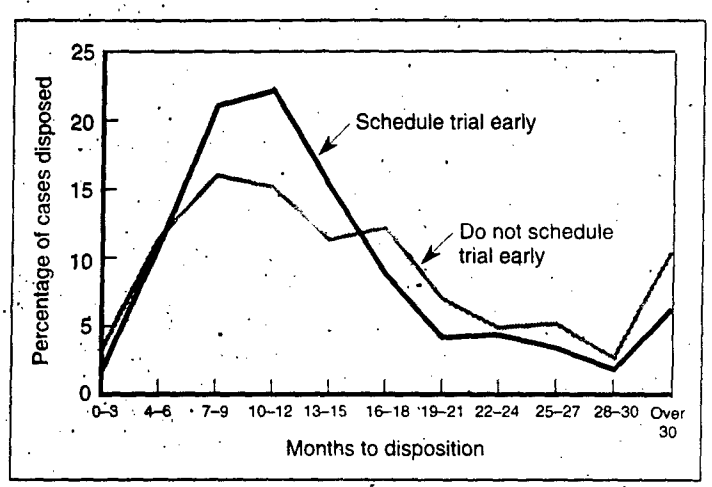

Figure 3—Early Judicial Management That Includes Setting the Trial Date Early Further Reduces Time to Disposition

However, the study also found that early judicial management significantly *increases* the direct cost of litigation, thus debunking the myth that cutting time to disposition necessarily cuts costs. As Table 2 illustrates, cases receiving early management have costs per litigant—legal fees and expenses—that are $3,000 higher and lawyer work hours that are 35 hours longer than they are for other cases.

Table 2

Early Judicial Management Increases Costs

Measures of Cost	Early	Not Early
Costs per litigant (median)	$12,000	$9,000
Lawyer work hours (median)	95	60

Why would litigation costs rise if time to disposition declines? The lawyers appear to do much the same work, but in a shorter period. And they also assume some extra tasks that are precipitated by judicial management—for example, extra meetings between lawyers and parties, extra documents to submit to the court, travel, time spent meeting with the judge, etc. In addition, once the judge sets a discovery cutoff date, many lawyers feel compelled to begin discovery, even though the case might otherwise be settled soon.

In contrast to its effects on time and costs, early judicial management does not significantly affect lawyers' satisfaction with case management or their views of its fairness.

Judicial Control of Discovery

One of the components of judicial control of discovery appears to be a win-win situation: Shortening the median time to discovery cutoff from six to four months

- reduces time to disposition by 1.5 months (about 10 percent)
- reduces lawyer work time by 17 hours (about 25 percent)
- does not change lawyer satisfaction or views of fairness.

Another component of discovery control failed to produce either the benefits that advocates hoped for or the dire results that critics had predicted: Early mandatory disclosure neither significantly affected time or costs nor generated an explosion of ancillary motions.

A Note of Caution

Successful use of a case management procedure by some judges on some cases in some districts does not necessarily mean that the procedure will be equally effective if all judges are asked to implement it for all cases. Nevertheless, practices that are effective among judges who currently use them are good candidates for wider implementation. The estimated effects of the policies described above should be viewed as an upper bound on

what might be anticipated if the procedures were implemented more widely.

Alternative Dispute Resolution

The CJRA evaluation assessed the effects of six different alternative dispute resolution (ADR) programs that included mediation and early neutral evaluation. The study found that, once litigation had begun, referral to ADR was not a panacea, nor was it detrimental. Neither time nor costs nor lawyer views of satisfaction or fairness changed significantly as a result of referral to any of these programs. The finding that ADR had no major effect on litigation cost or delay is generally consistent with the results of prior empirical research on court-related ADR.

The total costs to courts of administering the ADR programs in the districts studied ranged from $130 to $490 per case (1995 dollars). Program start-up costs to district courts ranged from $10,000 to $69,000 (1995 dollars), depending on whether the advisory group or the court did most of the start-up work and whether the district provided training for ADR providers.

The only statistically significant ADR finding pertains to outcomes: Cases referred to ADR were more likely to have a monetary outcome. ADR is a process intended to facilitate settlement, and in a settlement, money is likely to change hands. In addition, fewer cases are dropped without payment or decided by a judge on the basis of motions.

Participants in these ADR programs—both lawyers and litigants—liked them. However, many lawyers and ADR providers thought that the ADR sessions were being held before the parties were ready to settle.

Magistrate Judges

The CJRA included a technique called "other features," intended to give districts some latitude in their plans. One case management approach included in this category is the increased use of magistrate judges in the civil pretrial process.

The evaluation showed that substituting magistrate judges for district judges in pretrial case management did not significantly affect time, costs, or attorneys' views of fairness. However, lawyers were significantly more satisfied when magistrate judges managed the pretrial process, perhaps because the lawyers found them more accessible.

IMPLICATIONS OF THE CJRA RESULTS

Two broad principles emerge from the CJRA evaluation:

- **Judicial case management policy appears to have a limited role to play in reducing litigation costs. Indeed, case management policy accounted for only about 5 percent of the explained variation in lawyer work hours.** Case and lawyer characteristics, especially the case's complexity and stakes, accounted for the rest.
- **In contrast, case management procedures have a substantial effect on time to disposition**, and case management policy accounted for about 50 percent of the explained variation in time.

These principles help to define a case management package that could speed cases without significantly affecting costs, satisfaction, or views of fairness. Figure 4 profiles this package.

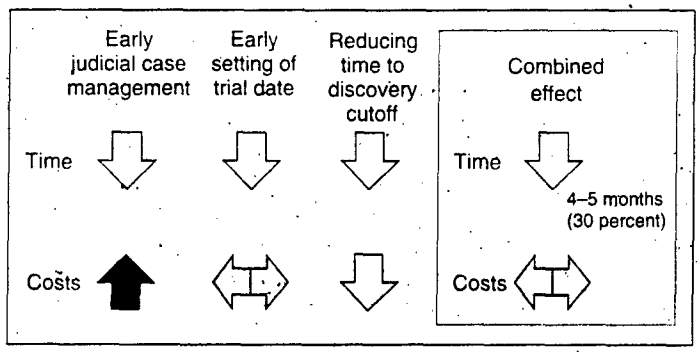

Figure 4—Profile of Balanced Case-Management Package

On the time dimension: In combination, early judicial case management, early setting of a trial date, and shortening the time to discovery cutoff could reduce median time to disposition by four to five months—about 30 percent of the median time for cases lasting at least nine months.

On the cost dimension: If early management is packaged with reduced time to discovery cutoff, then the increase in costs predicted by the former is offset by the decrease in costs predicted by the latter. The net effect is no significant change in litigation costs.

None of these case management policies affects satisfaction or views of fairness.

TAKING A BROAD PERSPECTIVE

For those who hoped that passing the CJRA statute would bring about substantial change in the federal courts, the results described above may be disappointing. But the CJRA experience contains important lessons, well worth our attention:

- For the first time, every federal district court established an advisory group of court users, including some nonlawyers, to address important issues of court management. Although some might wish that these groups had included a broader spectrum of litigants, and others might wish that the groups had played a greater role in guiding change, the advisory groups provided a model of how courts can engage the public in assessing and responding to the needs of the civil justice system.
- The ICJ's evaluation produced some unanticipated results: Some highly touted reforms had no effect, others proved difficult or impossible to implement, and still others had effects that were contrary to those hoped for. Clearly, there is an important role for evaluation in the rule-making process.
- The evaluation also highlighted the complicated relationship between time and costs. In particular, achieving reductions in one does not guarantee reductions in the other. And those who want to reduce the costs of litigation must look beyond court procedures for answers.

Taken together, the experiences of all those involved with this historic Act—the members of the original task force, the advisory committees, the judges and lawyers who worked to implement the Act, and the researchers who evaluated its effects—provide rich food for thought and lively debate. The next step for the ICJ research team is to engage with the bench, the bar, and other experts in what will surely be an extended and spirited discussion.

The mission of the Institute for Civil Justice is to help make the civil justice system more efficient and more equitable by supplying policymakers and the public with the results of objective, empirically based, analytic research. ICJ research is supported by pooled grants from corporations, trade and professional associations, and individuals; by government grants and contracts; and by private foundations. The Institute disseminates its work widely to the legal, business, and research communities, and to the general public.

For additional information about the Institute for Civil Justice, call Deborah Hensler at (310) 393-0411, x6916, or write to: 1700 Main St., P.O. Box 2138, Santa Monica, CA 90407-2138. Internet (Deborah_Hensler@rand.org).

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