The Clash's iconic 1980s hit "Should I Stay or Should I Go" might be the best way to look at the impact that the COVID-19 pandemic has had on court reopenings and expected resolution time frames over the next months and years.

With the economy poised to rebound in the second half of this year and predictions of accelerated economic recovery, many people want to know how reopening trends will affect courts and civil cases. Both federal and state courts suspended in-person jury trials when the pandemic started; however, many jurisdictions have started resuming jury trials.

We wondered how the pandemic has impacted civil trials and what impact reopening courts may have for litigants in different jurisdictions.

In March, we started a research project to collect and analyze court data from federal and state courts to see if we could find meaningful insights.

Our analysis found interesting and potentially significant trends: Some courts have seen the impact of backlogs and terminations increase expected resolution time frames, while others have seen a decrease in expected resolution time frames.

We focused most of our work on federal courts, where it is fairly easy to get and work with historical data. Once we figured out our methodology for analyzing federal case data, we worked with Gavelytics, a company that provides state court litigation analytics, to see what trends we could find from selected cities and counties in California, New York and Texas.

We built a model that predicted what 2020 data would have looked like without COVID-19's interruption. We analyzed case filings, case terminations and pending cases over the prior four years, from 2016 to 2019, and then we calculated what would have been expected for 2020.

Once we had that information, we plugged in the actual 2020 data and analyzed the differences.

On average across all federal circuits, there is a 13-month expected delay for case resolutions.

We believe this number will likely increase once trials resume in earnest, as our model predicts a 38% increase in jury trials over the next two to three years.

The resumption of criminal trials and their precedence over civil trials will likely add more delay to expected resolution time frames in some places.

In the U.S. Court of Appeals for the D.C. Circuit and the California Superior Court in Los Angeles County, the backlog of criminal cases is so large that their impact on civil trial dates will be greater than our current model can predict.
Our predictions looked at the differences between 2020 expected case statistics versus 2020 actual case statistics.

Federal courts report case statistics by number of filings, number of pending cases and number of terminated cases.

Additionally, they publish information on when cases reach resolution and are terminated. Those timeline statistics include cases terminated before court action, before pretrial, during pretrial and at trial.

Our analysis found that the backlog shows up mostly in the pretrial phase, where the number of pending cases is significantly larger than pre-pandemic case statistics.

Before the pandemic, it took an average of 14 months to resolve a case during the pretrial phase. Now the average is more than 26 months.

With jury trials resuming, we expect this number will grow, since the impact on the timing of the number of cases resolved during trial is not yet known.

In addition to this article, we have published our results into an interactive federal circuit court map:

For an interactive dashboard, click here.

The interactive map shows how different circuits' statistics compare for the years 2017 through 2020.

Certain jurisdictions, like the U.S. Court of Appeals for the Fourth Circuit, have been
severely impacted by the pandemic.

Our model predicted 11,615 case filings and 55,590 case terminations for the Fourth Circuit based on the four previous years. The actual case filings were 19,185, and the number of case terminations went down to 18,565.

Those numbers, coupled with the suspension of jury trials at the start of the pandemic, have increased the predicted time it will take a case to get resolved by 64%.

Other circuit courts saw the opposite occur. In the U.S. Court of Appeals for the Fifth Circuit, the number of case filings was down from a predicted 36,506 cases to 28,368 actual filings, and the number of actual cases terminated was far higher than the number of predicted terminations: 46,240 cases were terminated versus a predicted termination of 35,235 cases.

In the Fifth Circuit, the expected time a case will take to get resolved has gone down by 31%.

The U.S. Courts of Appeals for the Sixth, Seventh and Ninth Circuits were minimally impacted when comparing predictions to actual data, and the U.S. Courts of Appeals for the First, Second, Third and Eighth Circuits were negatively impacted. The negative impacts varied from 12% to 42%.

We had to exclude the U.S. Court of Appeals for the Eleventh Circuit due to a data anomaly in the court data, which inflated case numbers by over 200,000 for filings in northern Florida.

A realistic prediction about when a case will go to trial is critical to evaluating a case for litigants and other parties including litigation funders, experts and consultants.

Trial dates are landmarks that drive cases to resolution. Parties frequently get serious about settling only when trial is near, and understanding that it may take extra time to get to trial compared to years past can make a difference in litigation strategy and the expected value of a claim.

The fact that trial dates are pushed out as much as 24 months in some locations changes the calculus for many parties, even if the litigation strategy stays the same.

For example, the decision to stay and fight on might mean getting some funding. Conversely, locations where trial dates are predicted to move up in time might lead parties to a settlement strategy that focuses on getting through discovery and getting experts to provide damage calculations sooner rather than later.

We were also interested in determining the analytics for state courts, which is a more daunting task since data is not as easily available or consistent across states.

Gavelytics provided us data on cases from six cities and counties in the U.S.

Putting aside the challenges of normalizing data, we still found that some courts have been negatively impacted by the COVID-19 pandemic.

This is particularly true in cities like Los Angeles and New York.
In some locations, like the California Superior Court in San Diego and Orange Counties, we predicted that trial dates should happen sooner than expected due to a large drop in new case filings.

While the focus of our work was on the impact the pandemic has made on trial date prediction, it is clear to us that the impact of COVID-19 on courts and litigation events has forever changed how we measure and calculate what the next best thing to do is.

While still in its infancy, the use of predictive artificial intelligence for case evaluation, including settlement predictions and anticipated financial recovery, is becoming more important in valuing cases and adjusting litigation strategies.

Increased judicial pressure to settle cases and pursue alternative dispute resolutions will force the issue for many.

Some courts used COVID-19 as an opportunity to rethink how cases can be resolved more efficiently and more equitably.

We note with enthusiasm Michigan state courts' online dispute resolution program, which is having success by allowing litigants to meet online with court assistance.

Courts as a service is an outgrowth of the pandemic, and programs like Michigan's should reduce the stress on courts and case resolution activities.

Should you stay or should you go? We hate to use an overly used adage, but it rings true here: It depends.

It depends on where your case is, what stage it is in, and what your best calculations for recovery or settlement are. We will learn more over the next six to 12 months as reopening metrics become more available, and this will allow us to perform our analysis with more precision.

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