

Jury News

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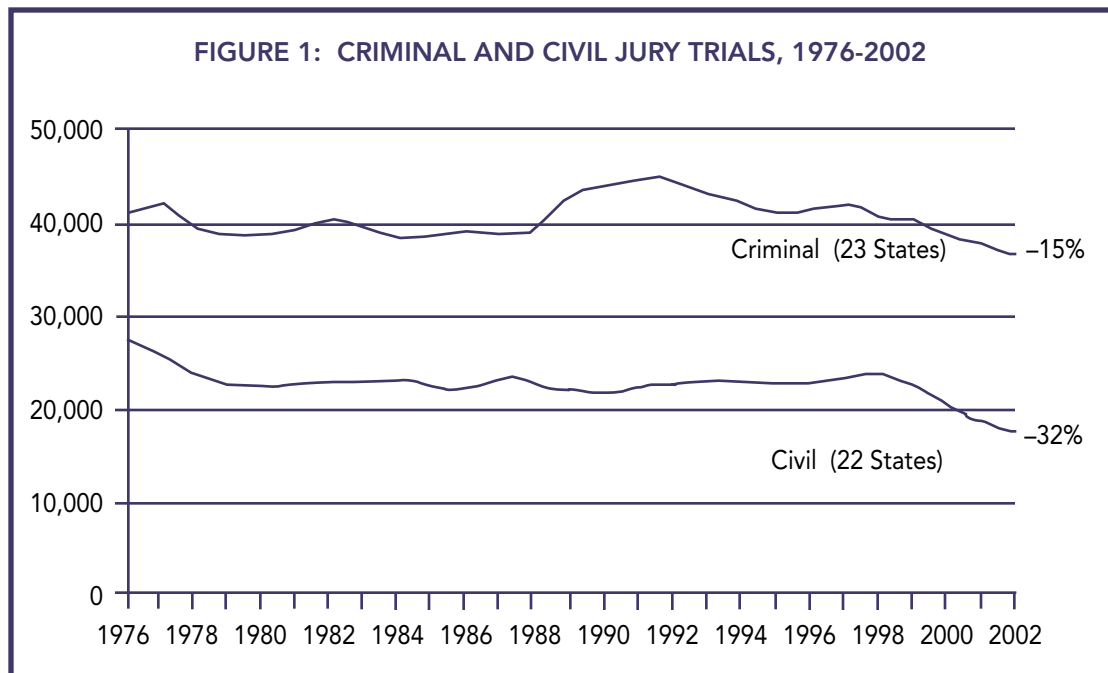
THE VANISHING TRIAL?

In this column, we step back and consider the trend toward reduced numbers of bench and jury trials, which many courts — in fact most, we believe, now experience. I thank Shauna Strickland, of the Research Division of The National Center for State Courts, for writing this column. She coauthored a paper at a national symposium that examined, among many things, recent trends in the number and rate of trials.

In December 2003, the Civil Justice Initiative Task Force of the American Bar Association's (ABA) Litigation Section sponsored a symposium on the "vanishing trial," which focused on four issues — the causes of the decline in the use of trials; the consequences of that decline; the experience of other adjudicatory systems with respect to the decline in the use of trials; and the nature of courtroom activity in the absence of trials. The cornerstone for the symposium was the report drafted by Prof. Marc Galanter entitled "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts." Other symposium papers and presentations related to the focus areas, and the participants, who included judges, ABA leaders, scholars, and lawyers, responded to and engaged in discussion about the findings presented. The November 2004 issue of the *Journal of Empirical Legal Studies* will feature all of the articles submitted for the symposium.

In preparation for the ABA symposium, the NCSC Court Statistics Project (CSP) compiled an extensive database on the manner of disposition of criminal and civil cases in state courts of general jurisdiction to examine trends over time.

FIGURE 1: CRIMINAL AND CIVIL JURY TRIALS, 1976-2002

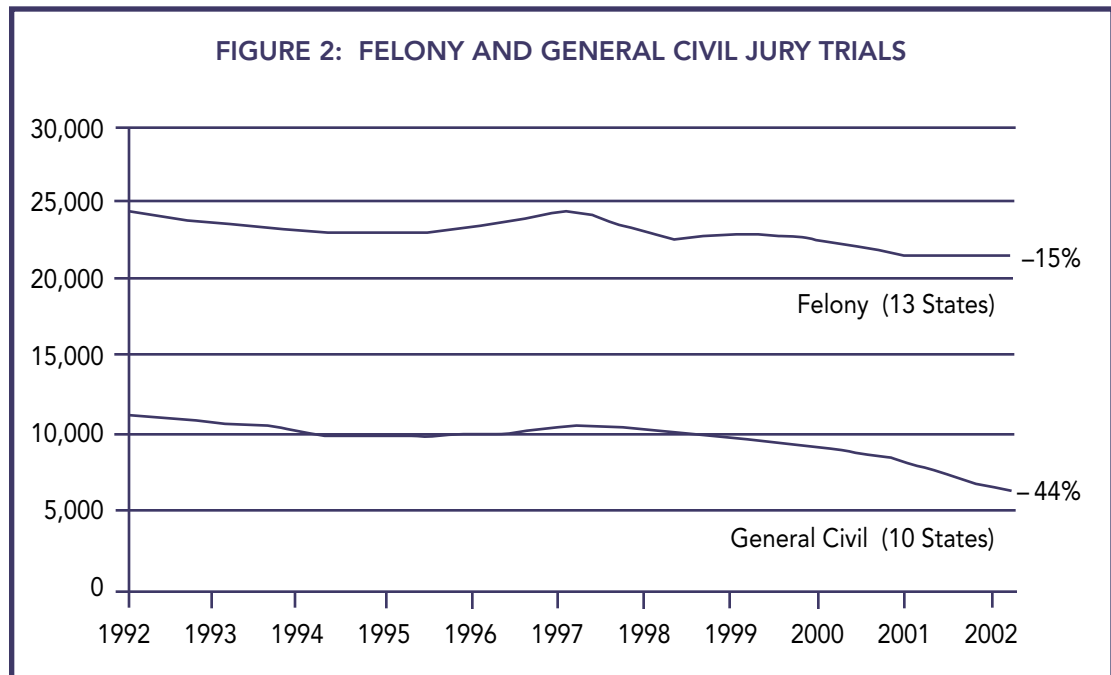


“Examining Trial Trends in State Courts: 1976-2002” offers a first look at long-term trend data on the trial activity in state courts of general jurisdiction. Analysis of these trends shows that both the number and rate of trials in state courts have declined for four case type categories (criminal, civil, felony, and general civil) and for both jury and bench trials.¹

Twenty-three states (representing 58 percent of the nation’s total 2002 population) reported trial data for criminal cases and 22 states (representing 59 percent of the nation’s total 2002 population) reported trial data for civil cases for the period 1976 through 2002. Figure 1 displays the 27-year jury trial trend for criminal and civil cases. Bench trial trends, though not shown, are discussed.

The number of jury trials has declined for both criminal and civil cases. The 15 percent decline in the number of criminal jury trials compares to a 10 percent decline in the number of criminal bench trials (from approximately 61,400 in 1976 to about 55,400 in 2002). For civil cases there was a 32 percent decline in the number of jury trials, but only a 7 percent decline in the number of bench trials (from 502,500 to 469,500).

A pattern of decline is also evident when looking at the number of jury trials held in the smaller subsets of felony and general civil cases. Felony trial data were available for 13 states, representing 40 percent of the nation’s total 2002 population, while general civil (tort, contract, and real property) trial data were available for 10 states, representing 34 percent of the nation’s total 2002 population. Figure 2 shows the jury trial trends for these case types for the years 1992-2002, the 11 years for which general civil data were available.



For the period 1992-2002, the number of felony jury trials declined by 15 percent. During this same period, however, the number of felony bench trials increased 15 percent, from approximately 8,400 to approximately 9,700. The number of general civil jury trials experienced a huge 44 percent decline, while the number of general civil bench trials only declined 21 percent, from about 27,000 to 21,400.

Another perspective on the trial trends in state courts is gained by examining trial rates, that is, the number of trials per 1,000 dispositions. The use of trial rates standardizes the variations that are inherent in states of different sizes and with different disposition trends, thus allowing for better comparisons to be made among states. In 1976, the starting point for the felony trial trend, there were 52 felony jury trials per 1,000 felony dispositions (approximately 5 percent of all felony dispositions) and 37 felony bench trials per 1,000 felony dispositions. By 2002, the felony jury trial rate had fallen to 22 trials per 1,000 dispositions, or just over 2 percent of all felony dispositions, while the felony bench trial rate fell to 10 trials per 1,000 dispositions.

Similarly, general civil jury trial rates fell from 1992 to 2002, from 18 trials per 1,000 general civil dispositions to 13 trials per 1,000 dispositions. General civil bench trial rates experienced no change; both the 1992 and 2002 bench trial rates were 43 trials per 1,000 dispositions.

The jury trial rates for each state included in the felony and general civil trends are presented in Figures 3 and 4, respectively. As seen in Figure 3, jury trial rates declined for each of the 13 states included in the felony jury trial trend. The extent of the downturn varied by state with three states, Puerto Rico, and the District of Columbia seeing declines of more than 70 percent; seven states experiencing declines between 40 percent and 70 percent; and only one state, California, showing a decline of less than 40 percent.

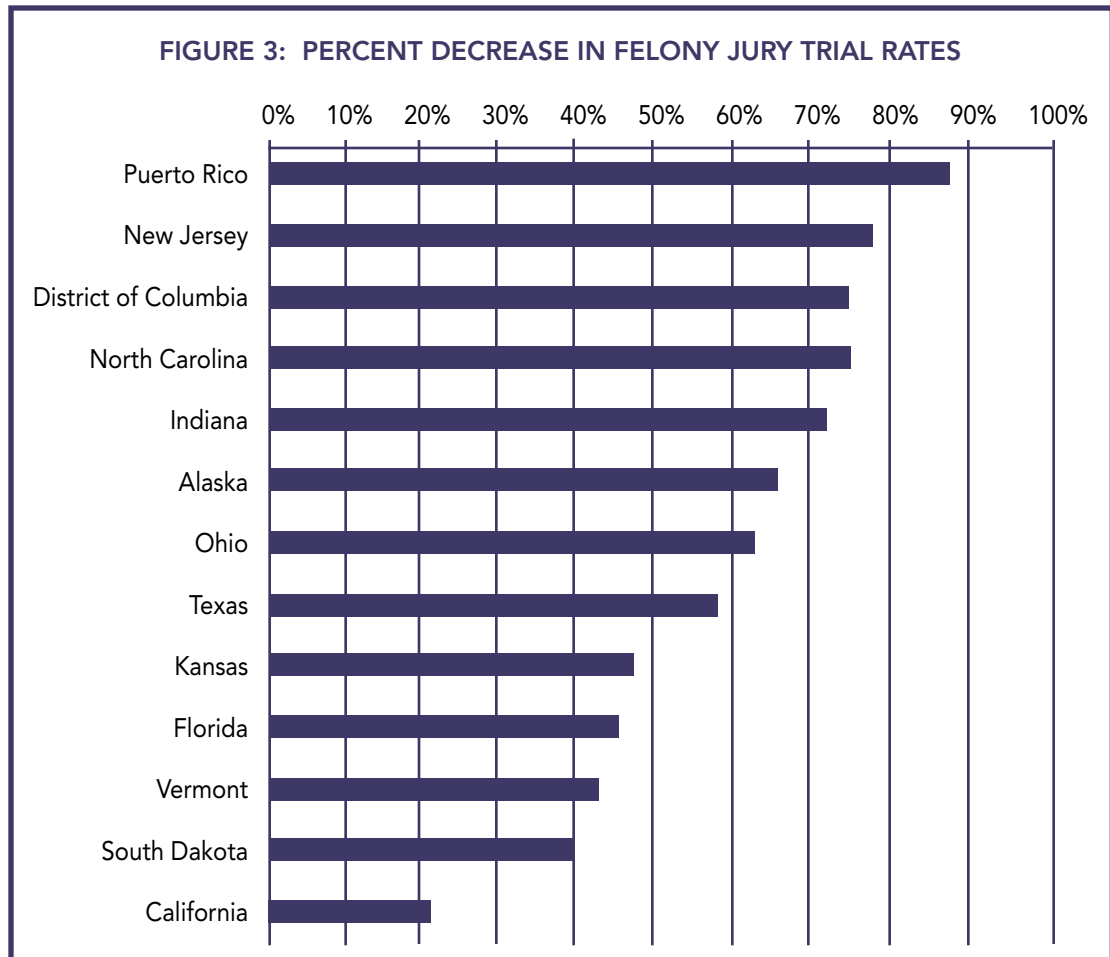
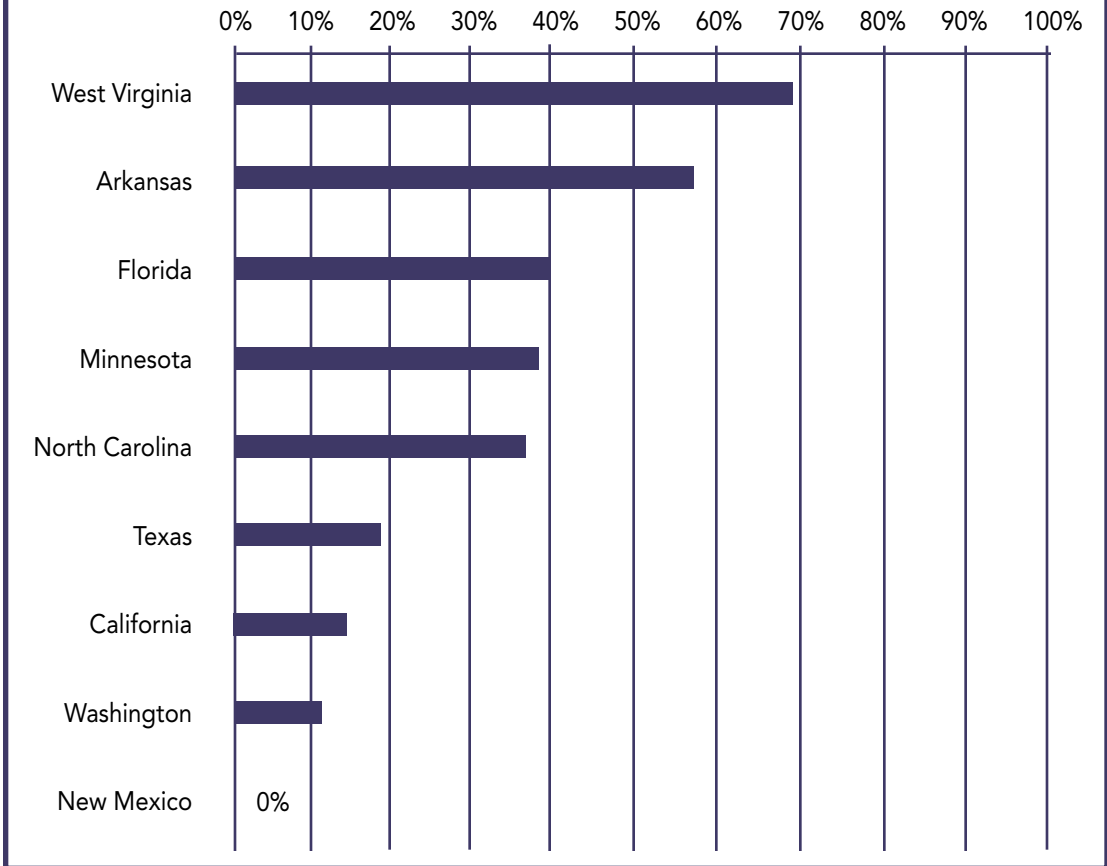


Figure 4 shows that jury trial rates declined in eight of the 10 states in the general civil trend, with the majority of the states experiencing declines of less than 40 percent. The two states that did not experience a decline were New Mexico, where the jury trial rate was the same in 2002 as it was in 1992, and Hawaii (not shown in Figure 4), whose jury trial rate actually increased from five jury trials per 1,000 general civil dispositions in 1992 to 11 jury trials per 1,000 dispositions in 2002.

FIGURE 4: PERCENT DECREASE IN GENERAL JURY TRIAL RATES



A FINAL NOTE FROM TOM

The data indicate that trials are indeed vanishing or at least decreasing at a precipitous rate. Should we be alarmed by this trend? Or should we have expected this given declining crime rates and increasing options for resolving civil disputes? If I may paraphrase Professor Al Altschuller, “Isn’t it a shame that now that we are finally getting it right, we are using the trial less?”

NOTES

1. Additional information on trial trends in state courts can be obtained by contacting the Court Statistics Project of the National Center for State Courts, while additional information regarding the “Vanishing Trials Project” can be obtained by contacting the Litigation Section of the American Bar Association. The Court Statistics Project Web site is located at http://www.ncsconline.org/D_Research/csp/CSP_Main_Page.html, and the Litigation Section Web site is located at <http://www.abanet.org/litigation/taskforces/cji/>.

2. The trend in the number of felony trials for the last 11 years is markedly different from the pattern seen when examining the full 27-year felony trial trend. For the period 1976-2002, the number of felony jury trials declined a mere 6 percent, from 21,767 to 20,557, while the number of felony bench trials declined by 36 percent, from 15, 222 to 9,695.

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